START

Title: FEDERAL REGISTER.

Volume: 60 Issues: 95 - 110
PAGES: 26,339 - 30,456

Date: MAY 17 - JUNE 8, 1995

UMI Number: 2575.00

Note: REEL NO: 8 OF 10
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5–17–95
Vol. 60 No. 95

federal register

Wednesday
May 17, 1995

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(ISSN 0097–6326)

5–17–95
Vol. 60 No. 95
Pages 26339–26666

Wednesday
May 17, 1995

federal register

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Presidential Documents

Title 3—

The President

Proclamation 6800 of May 15, 1995

Peace Officers Memorial Day and Police Week, 1995

By the President of the United States of America

A Proclamation

Each year, we pause to remember and to honor the brave men and women whose heartfelt commitment to the law and to their fellow citizens cost them their lives. During 1994, we lost 56 law enforcement officers to on-duty accidents. Seventy-six officers—72 State and local police and four Federal agents—were murdered. Thirty-three of these officers were wearing body armor when they were killed. All but one were killed with a firearm. Three were gunned down inside police headquarters in our Nation's capital.

America's law enforcement officers face extraordinary risks—breaking up a drug ring, apprehending a fugitive, responding to an incident of domestic violence, even making a traffic stop. Since the first recorded police death in this country in 1794, more than 13,500 law enforcement officers have been killed in the line of duty. On average, more than 62,000 officers are assaulted and some 20,000 are injured each year.

Tragically, the dangers of law enforcement service are increasing. From 1960 to 1993, the number of violent crimes in America increased 567 percent. In the past 10 years, it increased 51 percent. During 1993, more than 1.9 million violent crimes—murders, rapes, robberies, and assaults—were reported to police. And our police responded.

Despite the rising tide of crime, good and brave men and women continue to join the ranks of law enforcement. Today, more than 600,000 sworn officers work every day to preserve the peace and improve the safety of cities and towns across America. These heroic individuals and their fallen colleagues come from many different backgrounds. But they are linked by a common faith—that freedom is worth defending and that justice shall prevail. For those who died to uphold these ideals and for those who still stand to protect them, we salute America's law enforcement officials.

The Congress, by a joint resolution approved October 1, 1962 (76 Stat. 676), has authorized and requested the President to designate May 15 of each year as "Peace Officers Memorial Day," and the week in which it falls as "Police Week," and by Public Law 103–322 (36 U.S.C. 175) has requested that the flag be flown at half-staff on Peace Officers Memorial Day.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim May 15, 1995, as Peace Officers Memorial Day, and May 14–20, 1995, as Police Week. I call upon the people of the United States to observe this occasion with appropriate programs, ceremonies, and activities. I also request the Governors of the United States and the Commonwealth of Puerto Rico, and the appropriate officials of all units of government, to direct that the flag be flown at half-staff on Peace Officers Memorial Day on all buildings, grounds, and naval vessels throughout the United States and in all areas under its jurisdiction and control, and I invite the people of the United States to display the flag at half-staff from their homes on that day.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of May, in the year of our Lord nineteen hundred and ninety-five, and of the Independence of the United States of America the two hundred and nineteenth.

William J. Clinton

[FR Doc. 95–12290
Filed 5-15-95; 2:38 pm]
Billing code 3195–01–P

Rules and Regulations

Federal Register
Vol. 60, No. 95
Wednesday, May 17, 1995

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AG76

Prevailing Rate Systems; Abolishment of Atlanta, Georgia, Special Wage Schedules for Printing Positions

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management is issuing interim regulations to abolish the Federal Wage System special wage schedule for printing positions in the Atlanta, Georgia, wage area. Printing and lithographic employees in Atlanta will now be paid rates from the regular Atlanta, Georgia, wage schedule.

DATES: This interim rule becomes effective on May 17, 1995. Comments must be received by June 16, 1995. Employees paid rates from the Atlanta, Georgia, special wage schedule for printing positions will continue to be paid rates from that schedule until their conversion to the regular Atlanta, Georgia, wage schedule on July 9, 1995, the effective date of the new Atlanta, Georgia, regular wage schedule.

ADDRESSES: Send or deliver comments to Donald J. Winstead, Acting Assistant Director for Compensation Policy, Human Resources Systems Service, U.S. Office of Personnel Management, Room 6H31, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Paul Shields, (202) 606–2848.

SUPPLEMENTARY INFORMATION: The Department of Defense recommended to the Office of Personnel Management that the Atlanta, Georgia, Printing and Lithographic wage schedule be abolished and that the regular Atlanta, Georgia, wage schedule apply to printing employees in the Atlanta, Georgia, wage area. This recommendation was based on the fact that the number of employees paid from this special schedule has declined in recent years from a total of 38 employees in 1993 to a current total of 25 employees, only 6 of whom are in grade levels benefiting from the special survey. The Atlanta, Georgia, special printing wage survey would produce special schedule rates lower than the regular area wage schedule rates for all but 6 of the 25 employees covered by the special printing schedule. Because regulations provide that the special printing schedule rates may not be lower than the regular schedule rates for an area, Atlanta, Georgia, special printing schedule rates for the first eight grades are currently based on the Atlanta, Georgia, regular wage schedule rates.

In addition with the reduced number of employees, it has been difficult to comply with the requirement that workers paid from the special printing schedule participate in the special wage survey process. The last full-scale survey involved the substantial work effort of contacting 65 printing establishments spread over 15 counties in the Atlanta metropolitan area.

Upon abolishment of the Atlanta special printing schedule, the printing and lithographic employees will be converted to the regular schedule on a grade-for-grade basis. Their new rate of pay will be set at the rate for the step of the applicable grade of the regular schedule that equals the employees' existing scheduled rate of pay. When the existing rate falls between two steps, the employees's new rate will be set at the rate for the higher of those two steps. This conversion does not constitute an equivalent increase for within-grade increase purposes. In accordance with the OPM Operating Manual, *The Guide to Processing Personnel Actions*, this pay plan change will be processed as a "Pay Adjustment," Nature of Action Code 894, authority code ZLM, citing this **Federal Register** notice as authority. Pay retention provisions will apply for the few employees not receiving increases upon conversion.

The Federal Prevailing Rate Advisory Committee has reviewed this recommendation and by consensus has recommended approval.

Pursuant to 5 U.S.C. 553(b)(3)(B), I find that good cause exists for waiving the general notice of proposed rulemaking. Also, pursuant to section 553(d)(3) of title 5, United States Code, I find that good cause exists for making this rule effective in less than 30 days. The notice is being waived and the regulation is being made effective in less than 30 days because preparations for the May 1995 Atlanta, Georgia, survey must begin immediately.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

Accordingly, OPM is amending 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

§ 532.279 [Amended]

2. In § 532.279, paragraph (j)(5) is removed, and paragraphs (j)(6) through (j)(9) are redesignated as paragraphs (j)(5) through (j)(8), respectively.

[FR Doc. 95–12033 Filed 5–16–95; 8:45 am]
BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 981

[Docket No. FV94–981–4 FR]

Almonds Grown in California; Reduction of Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule revises the expenses and assessment rate previously established under Marketing Order No. 981 for the 1994–95 crop year. This rule reduces the budget of expenses and rate which almond handlers may be assessed for funding expenses by the Almond Board of California (Board) that are reasonable and necessary to administer the program.

EFFECTIVE DATE: Effective July 1, 1994, through June 30, 1995.

FOR FURTHER INFORMATION CONTACT: Kathleen M. Finn, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2522–S, Washington, DC 20090–6456, telephone 202–720–1509, or FAX (202) 720–5698; or Martin Engeler, Assistant Officer-In-Charge, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721, telephone 209–487–5901, or FAX (209) 487–5906.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 981, both as amended (7 CFR part 981), regulating the handling of almonds grown in California. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674) hereinafter referred to as the Act.

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the provisions of the marketing order now in effect, California almonds are subject to assessments. It is intended that the assessment rate issued herein will be applicable to all assessable almonds handled during the 1994–95 crop year, which began July 1, 1994, and ends June 30, 1995. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A), any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 7,000 producers of California almonds under this marketing order, and approximately 115 handlers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of California almond producers and handlers may be classified as small entities.

A budget of expenses and rate of assessment for the 1994–95 crop year was recommended on May 18, 1994, by the Board, the agency responsible for local administration of the program. An interim final rule was issued in the **Federal Register** on July 14, 1994, (59 FR 35847) and a final rule was issued in the September 8, 1994 **Federal Register** (59 FR 46321). Approved expenditures totalled $9,435,262 with an approved assessment rate of 2.25 cents per pound. Of the 2.25 cents per pound, handlers could receive credit-back against their assessment obligation up to one cent per pound for their own promotional expenditures. Specific explanations of various expenditure categories and comparisons with a prior period are contained in the aforementioned final rule.

The Board met on September 14, 1994, and recommended, by a seven to two vote, postponing its paid advertising campaign and directly related activities until further notice. It also voted to postpone assessment billings pending evaluation of legal issues and future program activities. Generic public relations activities and other promotion-related activities to which the Board was contractually committed at that time are to be continued. This action was taken as a result of uncertainty created by legal decisions regarding the Board's former advertising and promotion program.

Specifically, the Ninth Circuit Court of Appeals ruled in December 1993, that aspects of the Board's former advertising and promotion program in the 1980's were unconstitutional. On remand, the district court subsequently awarded plaintiff handlers refunds of assessments and other money spent under the program. This decision was issued on September 6, 1994, which led to the Board's actions to postpone advertising activities at its September 14, 1994, meeting. The district court's remand decision is currently being appealed. In addition, several handlers filed legal challenges to the Board's current credit-back advertising and promotion program, pursuant to section 608(c)(15)(A) of the Act.

The Board again met on November 30, 1994, and recommended, by a seven to three vote, reducing the assessment rate by eliminating the portion applicable to credit-back to handlers for their own promotional activities (one cent), and by eliminating the portion of the remaining assessment applicable to generic promotion activities. The resulting assessment rate the Board recommended handlers pay was .47 cents per pound. Concurrently, the Board again postponed assessment billings pending further evaluation of the Board's financial status. These actions were taken because of the apparent lack of support by some handlers at the time for generic promotion and credit-back programs, demonstrated by legal challenges filed by such handlers representing a significant portion of the industry volume. One Board member commented that since the handlers who have filed legal challenges are not likely to pay the advertising assessment, it is not equitable for the remainder of the industry to shoulder the expense of an advertising program.

The Board met again on February 1, 1995, and recommended, by a six to four vote, to further reduce the assessment rate. The Board recommended an assessment rate of .25 cents per pound. This action was taken after the Board further evaluated its financial position and current and future program activities.

An assessment rate of .25 cents per pound will generate income of $1,675,000 based on an estimated assessable crop of 670 million pounds. When combined with cash and cash equivalents held by the Board, this will provide the Board with sufficient income to meet its administrative expenses and those promotional expenses to which it is contractually obligated for the remainder of the current fiscal year.

To reduce the budget of expenses previously approved ($9,435,262), the Board deleted the funds budgeted for reserve replenishment ($300,000) and at its November 30, 1994, meeting, postponed a major portion ($3.9 million) of the $4.7 million funds budgeted for promotional activities. These revisions will reduce the budget to $5,235,262. The reduced budget will provide the Board with sufficient capital to carry into the next fiscal year to finance operations prior to collection of future assessments.

Concerns were raised that the reduction of the assessment rate mid-way through the crop year may generate complaints from those handlers who relied on the final rule of September 8, 1994, which established an assessment rate of 2.25 cents per pound, of which handlers could receive credit-back up to one cent per pound for their own promotional expenditures. Some handlers have incurred expenses that would be eligible for credit-back under the provisions of that rule.

Under this assessment rate reduction, there is no assessment for these handlers to claim credit-back against. However, an assessment rate of .25 cents per pound is significantly lower than the previously established rate of 2.25 cents. Under the previous assessment of 2.25 cents, if handlers claimed credit-back for the entire one cent, they would still be required to pay 1.25 cents per pound to the Board. Handlers will pay significantly less even if they conducted advertising for which they believed credit-back would be obtained. In addition, benefits are derived from advertising undertaken by these handlers.

A proposed rule concerning this rule was published in the March 24, 1995, **Federal Register** (60FR 15523), with a 30-day comment period. Two comments were received.

The first comment received was from an independent handler who was concerned that some handlers will make their final accountings to growers prior to the finalization of the proposed rule. If handlers make final payment to their growers based on the proposed assessment and USDA modifies the proposal, the commenter states that some of these handlers will file petitions against USDA for modifying the proposal under section 608c(15)(A) of the Act. However, this final rule does not modify the proposed rule and both handlers and growers had adequate notice of this change. In addition, the marketing order does not regulate contractual relationships between handlers and growers.

The second comment was received from the Office of Chief Counsel for Advocacy of the United States Small Business Administration (SBA). The SBA contended that although it concurs with the cancellation of the advertising component of the order until legal disputes are resolved, USDA's assertion that this cancellation of the advertising program would not have a significant economic impact on a substantial number of small entities was illogical. SBA contends that rational businesses are not going to subject themselves to the increased paperwork generated by the advertising program for insignificant economic gain and USDA appears to be avoiding its responsibilities under the RFA.

Although SBA's comment seems to relate to the implementation of the almond promotional program, rather than the elimination of that program, consideration was given to the impact of this rule on large and small handlers. As stated previously in this final rule and in the proposed rule, concerns were raised about the handlers who have incurred expenses that would be eligible for credit-back. It was determined that handlers will pay significantly less even if they conducted advertising for which they believed they would be entitled to credit-back as well as derive benefits from the advertising they conducted.

Another determination made in this rule and in the proposed rule was that the action taken by the Board to minimize financial liability in the event the pending litigation is decided unfavorably to the Board, is sensible and reduces economic risk to handlers.

For the above reasons, USDA disagrees with the SBA's assertion that this action fails to meet the requirements of the RFA. The program's impact on small businesses has been properly addressed in this document and in the proposed rule.

This rule reduces the assessment obligation imposed on handlers. The assessments are uniform for all handlers. The assessment cost will be offset by the benefits derived by the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of the Board's recommendations and other relevant information presented, it is found that this final rule will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This rule reduces the assessment rate currently in effect; (2) this rule should be in effect as soon as possible because the 1994 crop year began on July 1, 1994; and (3) the proposed rule provided a 30-day comment period and the only comments received did not oppose the reduction.

List of Subjects in 7 CFR Part 981

Almonds, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 981 is amended as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 981 continues to read as follows:

Authority: 7 U.S.C. 601–674.

Note: The following section will not appear in the Code of Federal Regulations.

2. Section 981.341 is revised to read as follows:

§ 981.341 Expenses and assessment rate.

Expenses of $5,235,262 by the Almond Board of California are authorized for the crop year ending June 30, 1995. An assessment rate for the crop year payable by each handler in accordance with § 981.81 is fixed at .25 cents per kernel pound of almonds. Of the .25 cents assessment rate, none is available for handler credit-back pursuant to § 981.441.

Dated: May 11, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–12145 Filed 5–16–95; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 989

[FV95-989-2IFR]

Raisins Produced From Grapes Grown in California; Final Free and Reserve Percentages for the 1994-95 Crop Year for Natural (Sun-Dried) Seedless Raisins

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule invites comments on the establishment of final free and reserve percentages for 1994-95 crop Natural (sun-dried) Seedless raisins. The percentages are 77 percent free and 23 percent reserve. These percentages are intended to stabilize supplies and prices and to help counter the destabilizing effects of the burdensome oversupply situation facing the raisin industry. This rule was recommended by the Raisin Administrative Committee (Committee), the body which locally administers the marketing order.

DATES: This interim final rule becomes effective May 17, 1995, and applies to all Natural (sun-dried) Seedless raisins acquired from the beginning of the 1994-95 crop year. Comments which are received by June 16, 1995, will be considered prior to any finalization of this interim final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2525-S, PO Box 96456, Washington, DC 20090-6456, or faxed to 202-720-5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Richard Van Diest, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: 209-487-5901 or Mark A. Slupek, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2523-S, PO Box 96456, Washington, DC 20090-6456; telephone: 202-205-2830.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under marketing agreement and Order No. 989 (7 CFR part 989), both as amended, regulating the handling of raisins produced from grapes grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, final free and reserve percentages may be established for raisins acquired by handlers during the crop year. This rule establishes final free and reserve percentages for Natural (sun-dried) Seedless raisins for the 1994-95 crop year, beginning August 1, 1994, through July 31, 1995. This interim final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempt therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his/her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 20 handlers of California raisins who are subject to regulation under the raisin marketing order, and approximately 4,500 producers in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts (from all sources) are less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. No more than eight handlers, and a majority of producers, of California raisins may be classified as small entities. Twelve of the 20 handlers subject to regulation have annual sales estimated to be at least $5,000,000, and the remaining eight handlers have sales less than $5,000,000, excluding receipts from any other sources.

The order prescribes procedures for computing trade demands and preliminary and final percentages that establish the amount of raisins that can be marketed throughout the season. The regulations apply to all handlers of California raisins. Raisins in the free percentage category may be shipped immediately to any market, while reserve raisins must be held by handlers in a reserve pool for the account of the Committee, which is responsible for local administration of the order. Under the order, reserve raisins may be: Sold at a later date by the Committee to handlers for free use; used in diversion programs; exported to authorized countries; carried over as a hedge against a short crop the following year; or disposed of in other outlets noncompetitive with those for free tonnage raisins.

While this rule may restrict the amount of Natural (sun-dried) Seedless raisins that enter domestic markets, final free and reserve percentages are intended to lessen the impact of the oversupply situation facing the industry and promote stronger marketing conditions, thus stabilizing prices and supplies and improving grower returns. In addition to the quantity of raisins released under the preliminary percentages and the final percentages, the order specifies methods to make available additional raisins to handlers by requiring sales of reserve pool raisins for use as free tonnage raisins under "10 plus 10" offers, and authorizing sales of reserve raisins under certain conditions.

The Department's "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" specifies that 110 percent of recent years' sales should be made available to primary markets each season before recommendations for volume regulation are approved. This goal is met by the establishment of a final percentage which releases 100 percent of the computed trade demand

and the additional release of reserve raisins to handlers under "10 plus 10" offers. The "10 plus 10" offers are two simultaneous offers of reserve pool raisins which are made available to handlers each season. For each such offer, a quantity of raisins equal to 10 percent of the prior year's shipments is made available for free use.

Pursuant to § 989.54(a) of the order, the Committee, which is responsible for local administration of the order, met on August 15, 1994, to review shipment and inventory data, and other matters relating to the supplies of raisins of all varietal types. The Committee computed a trade demand for each varietal type for which a free tonnage percentage might be recommended. The trade demand is 90 percent of the prior year's shipments of free tonnage and reserve tonnage raisins sold for free use for each varietal type into all market outlets, adjusted by subtracting the carryin of each varietal type on August 1 of the current crop year and by adding to the trade demand the desirable carryout for each varietal type at the end of that crop year. As specified in § 989.154, the desirable carryout for each varietal type shall be equal to the shipments of free tonnage raisins of the prior crop year during the months of August, September, and one half of October. If the prior year's shipments are limited because of crop conditions, the total shipments during that period of time during one of the three years preceding the prior crop year may be used. In accordance with these provisions, the Committee computed and announced a 1994-95 trade demand of 294,422 tons for Natural (sun-dried) Seedless raisins.

As required under § 989.54(b) of the order, the Committee met on October 5, 1994, and computed and announced a preliminary crop estimate and preliminary free and reserve percentages for Natural (sun-dried) Seedless raisins which released 65 percent of the trade demand since the field price had not been established. The preliminary crop estimate and preliminary free and reserve percentages were as follows: 404,677 tons, and 47 percent free and 53 percent reserve. The Committee authorized the Committee staff to modify the preliminary percentages to release 85 percent of the trade demand when the field price was established. The preliminary percentages for Natural (sun-dried) Seedless raisins were adjusted soon thereafter to 62 percent free and 38 percent reserve.

Also at that meeting, the Committee computed and announced preliminary crop estimates and preliminary free and reserve percentages for Dipped Seedless, Oleate and Related Seedless, Golden Seedless, Zante Currant, Sultana, Muscat, Monukka, and Other Seedless raisins. On January 12, 1995, the Committee determined that volume control percentages only were warranted for Zante Currant, Other Seedless, and Natural (sun-dried) Seedless raisins, and it recommended final percentages of 40 percent free and 60 percent reserve for both Zante Currant and Other Seedless raisins. It determined that the supplies of the other varietal types would be less than or close enough to the computed trade demands for each of these varietals. In view of these factors, volume control percentages would not be necessary to maintain market stability for the other varietal types.

Pursuant to § 989.54(c), the Committee may adopt interim free and reserve percentages. Interim percentages may release less than the computed trade demand for each varietal type. Interim percentages for Natural (sun-dried) Seedless raisins of 75 percent free and 25 percent reserve were computed and announced on January 15, 1995. That action released most, but not all, of the computed trade demand for Natural (sun-dried) Seedless raisins.

Under § 989.54(d) of the order, the Committee is required to recommend to the Secretary, no later than February 15 of each crop year, final free and reserve percentages which, when applied to the final production estimate of a varietal type, will tend to release the full trade demand for any varietal type.

The Committee's final estimate of 1994-95 production of Natural (sun-dried) Seedless raisins is 379,972 tons. Dividing the computed trade demand of 294,422 tons by the final estimate of production results in a final free percentage of 77 percent and a final reserve percentage of 23 percent.

The free and reserve percentages established by this interim final rule will apply uniformly to all handlers in the industry, whether small or large, and there are no known additional costs incurred by small handlers. Although raisin markets are limited, they are available to all handlers, regardless of size. The stabilizing effects of the percentages impact both small and large handlers positively by helping them maintain and expand markets.

Based on available information, the Administrator of the AMS has determined that the issuance of this interim final rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant information presented, including the Committee's recommendations and other information, it is found that this regulation, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that upon good cause it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The relevant provisions of this part require that the percentages designated herein for the 1994-95 crop year apply to all Natural (sun-dried) Seedless raisins acquired from the beginning of that crop year; (2) handlers are currently marketing 1994-95 crop raisins of the Natural (sun-dried) Seedless varietal type and this action should be taken promptly to achieve the intended purpose of making the full trade demand quantity computed by the Committee available to handlers; (3) handlers are aware of this action, which was recommended by the Committee at an open meeting, and need no additional time to comply with these percentages; and (4) this interim final rule provides a 30-day period for written comments and all comments received will be considered prior to finalization of this interim final rule.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 989 is amended to read as follows:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 989 continues to read as follows:

Authority: 7 U.S.C. 601-674.

2. Section 989.248 is added to Subpart—Supplementary Regulations to read as follows:

Note: This section will not appear in the annual Code of Federal Regulations.

§ 989.248 Final free and reserve percentages for the 1994-95 crop year.

The final percentages for standard Natural (sun-dried) Seedless raisins acquired by handlers during the crop year beginning on August 1, 1994, which shall be free tonnage and reserve tonnage, respectively, are designated as follows:

Varietal type	Free percentage	Reserve percentage
Natural (sun-dried) Seedless	77	23

Dated: May 11, 1995.

Terry C. Long,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–12148 Filed 5–16–95; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 989

[FV95–989–1FIR]

Raisins Produced From Grapes Grown in California; Final Free and Reserve Percentages for the 1994–95 Crop Year for Zante Currant and Other Seedless Raisins

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule which established final free and reserve percentages for 1994 crop Zante Currant and Other Seedless raisins. The percentages are 40 percent free and 60 percent reserve for each of these varietal types. These percentages are intended to help stabilize supplies and prices and counter the destabilizing effects of the burdensome oversupply situation facing the raisin industry. This rule was recommended by the Raisin Administrative Committee (Committee), which is responsible for local administration of the marketing order.

EFFECTIVE DATE: June 16, 1995.

FOR FURTHER INFORMATION CONTACT: Richard Van Diest, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (209) 487–5901; or Mark A. Slupek, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2523–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: 202–205–2830.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 989 (7 CFR part 989), both as amended, regulating the handling of raisins produced from grapes grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, final free and reserve percentages may be established for raisins acquired by handlers during the crop year. This action finalizes final free and reserve percentages for Zante Currant and Other Seedless raisins for the 1994–95 crop year, beginning August 1, 1994, through July 31, 1995. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempt therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his/her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 20 handlers of California raisins who are subject to regulation under the raisin marketing order, and approximately 4,500 producers in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts (from all sources) are less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. No more than eight handlers, and a majority of producers of California raisins, may be classified as small entities. Twelve of the 20 handlers subject to regulation have annual sales estimated to be at least $5,000,000, and the remaining eight handlers have sales less than $5,000,000, excluding receipts from any other sources.

An interim final rule was published in the **Federal Register** on March 7, 1995 (60 FR 12403), with an effective date of March 7, 1995. That rule established final free and reserve percentages for Zante Currant and Other Seedless raisins for the 1994–95 crop year. The percentages were established in a new § 989.247 of the rules and regulations in effect under the marketing order. That rule provided a 30-day comment period which ended April 6, 1995. No comments were received.

The order prescribes procedures for computing trade demands and preliminary and final percentages that establish the amount of raisins that can be marketed throughout the season. The regulations apply to all handlers of California raisins. Raisins in the free percentage category may be shipped immediately to any market, while reserve raisins must be held by handlers in a reserve pool for the account of the Committee, which is responsible for local administration of the order. Under the order, reserve raisins may be: Sold at a later date by the Committee to handlers for free use; used in diversion programs; exported to authorized countries; carried over as a hedge against a short crop the following year; or disposed of in other outlets noncompetitive with those for free tonnage raisins.

While this rule continues in effect restrictions limiting the amount of Zante Currant and Other Seedless raisins entering domestic markets, final free and reserve percentages are intended to lessen the impact of the oversupply situation facing the industry and promote stronger marketing conditions, thus stabilizing prices and supplies and improving grower returns. In addition to the quantity of raisins released under the preliminary percentages and the final percentages, the order specifies methods to make available additional raisins to handlers by requiring sales of reserve pool raisins for use as free tonnage raisins under "10 plus 10" offers, and authorizing sales of reserve raisins under certain conditions.

The Department's "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" specifies that 110 percent of recent years' sales should be made available to primary markets each season before recommendations for volume regulation are approved. This goal is met by the establishment of a final percentage which releases 100 percent of the trade demand and the additional release of reserve raisins to handlers under "10 plus 10" offers. The "10 plus 10" offers are two simultaneous offers of reserve pool raisins which are made available to handlers each season. For each such offer, a quantity of raisins equal to 10 percent of the prior year's shipments is made available for free use.

Pursuant to § 989.54 of the order, the Committee met on August 15, 1994, to review shipment and inventory data, and other matters relating to the supplies of raisins of all varietal types. The Committee computed a trade demand for each varietal type for which a free tonnage percentage might be recommended. The trade demand is 90 percent of the prior year's shipments of free tonnage and reserve tonnage raisins sold for free use for each varietal type into all market outlets, adjusted by subtracting the carryin of each varietal type on August 1 of the current crop year and by adding to the trade demand the desirable carryout for each varietal type at the end of that crop year. As specified in § 989.154, the desirable carryout for each varietal type shall be equal to the shipments of free tonnage raisins of the prior crop year during the months of August, September, and one half of October. If the prior year's shipments are limited because of crop conditions, the total shipments during that period of time during one of the three years preceding the prior crop year may be used. In accordance with these provisions, the Committee computed and announced a 1994–95 trade demand of 787 tons for Other Seedless raisins.

Section 989.54 of the order also authorizes the Committee to consider factors which pertain to the marketing of raisins, including an estimated trade demand which differs from the computed trade demand. At its August 15, 1994, meeting, the Committee computed a trade demand of 500 tons for Zante Currants. The Committee, however, determined that anticipated changes in the market conditions for Zante Currants warranted an estimated trade demand substantially higher than this.

Entering this season, the California raisin industry was carrying a very large supply of 1992–93 and 1993–94 crop Zante Currants and projected a record production in 1994–95. The Committee recommended actions to help handlers sell their tonnage at prices competitive with other currant prices in domestic and export markets. Because of these actions, the Committee believed that the computed trade demand was insufficient and decided to calculate its percentages based on an estimated trade demand of 2,200 tons.

When the Committee met on October 5, 1994, the field price for Zante Currants had been established, but the field price for Other Seedless raisins had not. Section 989.54(b) of the order requires the Committee to compute percentages which release 85 percent of the trade demand for varieties for which field prices have been established and 65 percent for varieties which have not. Thus, when the Committee met on that date, it computed and announced preliminary crop estimates and preliminary free and reserve percentages for Zante Currant and Other Seedless raisins which released 85 percent and 65 percent of the trade demands, respectively. The preliminary crop estimates and preliminary free and reserve percentages were as follows: 6,074 tons, 31 percent free and 69 percent reserve for Zante Currants; and 4,073 tons, 13 percent free and 87 percent reserve for Other Seedless Raisins. The Committee also authorized the Committee staff to increase the preliminary percentages to release 85 percent of the trade demands for varietal types without established field prices when the field prices were established. For Other Seedless raisins, the preliminary percentages were adjusted soon thereafter to 16 percent free and 84 percent reserve.

Also at that meeting, the Committee computed and announced preliminary crop estimates and preliminary free and reserve percentages for Dipped Seedless, Oleate and Related Seedless, Sultana, Muscat, Monukka, and Golden Seedless raisins. On January 12, 1995, the Committee decided that volume control percentages only were warranted for Zante Currant, Other Seedless, and Natural (sun-dried) Seedless raisins. The Committee delayed announcing final percentages for Natural (sun-dried) Seedless raisins until more shipment and production information was available. It determined that the supplies of the other varietal types would be less than or close enough to the computed trade demands for each of these varietals. Thus, volume control percentages would not be necessary to maintain market stability.

Pursuant to § 989.54(c), the Committee may adopt interim free and reserve percentages. Interim percentages may release less than the computed trade demand for each varietal type. Interim percentages for both Zante Currant and Other Seedless raisins of 39.75 percent free and 60.25 percent reserve were computed and announced on January 12, 1995. That action released most, but not all, of the computed trade demand for Zante Currant and Other Seedless raisins.

Under § 989.54(d) of the order, the Committee is required to recommend to the Secretary, no later than February 15 of each crop year, final free and reserve percentages which, when applied to the final production estimate of a varietal type, will tend to release the full trade demand for any varietal type.

The Committee's estimates, as of January 12, 1995, of 1994–95 production of Zante Currant and Other Seedless raisins were 5,507 and 1,973 tons, respectively. For Zante Currants, dividing the estimated trade demand of 2,200 tons by the final estimate of production results in a final free percentage of 40 percent and a final reserve percentage of 60 percent. For Other Seedless raisins, dividing the computed trade demand of 787 tons by the final estimate of production results in a final free percentage of 40 percent and a final reserve percentage of 60 percent.

The free and reserve percentages established by the interim final rule, and continued in effect, without changes, by this rule, apply uniformly to all handlers in the industry, whether small or large, and there are no known additional costs incurred by small handlers. Although raisin markets are limited, they are available to all handlers, regardless of size. The stabilizing effects of the percentages impact both small and large handlers positively by helping them maintain and expand markets.

Based on available information, the Administrator of the AMS has determined that the issuance of this final rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant information presented, including the Committee's recommendations and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** on March 7, 1995 (60 FR 12403), will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 989 is amended as follows:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 989 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Accordingly, the interim final rule adding § 989.247, which was published at 60 FR 12403 on March 7, 1995, is adopted as a final rule without change.

Dated: May 11, 1995.

Terry C. Long,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–12147 Filed 5–16–95; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 998

[Docket No. FV95–998–1IFR]

Expenses, Assessment Rate, and Indemnification Reserve for Marketing Agreement No. 146 Regulating the Quality of Domestically Produced Peanuts

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule authorizes expenditures for administration and indemnification, establishes an assessment rate, and authorizes continuation of an indemnification reserve under Marketing Agreement 146 (agreement) for the 1995–96 crop year. This rule also increases the administrative assessment rate for the 1994–95 crop year. Authorization of this budget enables the Peanut Administrative Committee (Committee) to incur operating expenses, collect funds to pay those expenses, and settle indemnification claims during the 1995–96 crop year. Authorization of the increase in the administrative assessment rate for the 1994–95 crop year enables the Committee to collect sufficient funds to pay expenses projected for the remainder of that year. Funds to administer this program are derived from assessments on handlers who have signed the agreement.

DATES: Effective July 1, 1995, through June 30, 1996 (§ 998.408) and July 1, 1994, through June 30, 1995 (§ 998.407). Comments received by June 16, 1995, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, FAX 202–720–5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918, or William G. Pimental, Southeast Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, P.O. Box 2276, Winter Haven, FL 33883–2276, telephone 813–299–4770.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement 146 (7 CFR part 998) regulating the quality of domestically produced peanuts. This agreement is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

The U.S. Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This interim final rule has been reviewed under Executive Order 12887, Civil Justice Reform. Under the agreement now in effect, peanut handlers signatory to the agreement are subject to assessments. Funds to administer the peanut agreement program are derived from such assessments. This rule authorizes expenditures and establishes an assessment rate for the Committee for the crop year beginning July 1, 1995, and increases the administrative assessment rate for the crop year which began July 1, 1994. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

There are approximately 47,000 producers of peanuts in the 16 States covered under the agreement, and approximately 76 handlers regulated under the agreement. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. A majority of the producers may be classified as small entities, and some of the handlers covered under the agreement are small entities.

Under the agreement, the assessment rate for a particular crop year applies to all assessable tonnage handled from the beginning of such year (i.e., July 1). An annual budget of expenses is prepared by the Committee and submitted to the Department for approval. The members of the Committee are handlers and producers of peanuts. They are familiar with the Committee's needs and with the costs for goods, services, and personnel for program operations and, thus, are in a position to formulate appropriate budgets. The budgets are formulated and discussed at industry-wide meetings. Thus, all directly affected persons have an opportunity to provide input in recommending the budget, assessment rate, and indemnification reserve. The handlers of peanuts who are directly affected have signed the marketing agreement authorizing the expenses that may be incurred and the imposition of assessments.

The assessment rate recommended by the Committee for the 1995–96 crop year was derived by dividing anticipated expenses by expected receipts and acquisitions of farmers' stock peanuts. It applies to all assessable peanuts received or acquired by handlers from July 1, 1995. Because that rate is applied to actual receipts and acquisitions, it must be established at a rate which will produce sufficient income to pay the Committee's expenses.

The Committee met on March 23, 1995, and unanimously recommended 1995–96 crop year administrative expenses of $1,067,500 and an administrative assessment rate of $0.70 per net ton of assessable farmers' stock peanuts received or acquired by handlers. In comparison, 1994–95 crop year budgeted administrative expenditures were $1,056,000, and the administrative assessment rate was initially recommended and fixed at $0.60 per ton.

Administrative budget items for 1995–96 which have increased compared to those budgeted for 1994–95 (in parentheses) are: Executive salaries, $145,051 ($140,146), clerical salaries, $138,856 ($132,500), field representatives salaries, $304,344 ($290,420), payroll taxes, $44,000 ($43,000), employee benefits, $148,000 ($145,000), insurance and bonds, $9,500 ($8,500), postage and mailing, $13,200 ($12,000), and audit fees, $10,400 ($9,200). Items which have decreased compared to those budgeted for 1994–95 (in parentheses) are: Office rent and parking, $44,360 ($50,000), furniture and equipment, $4,000 ($9,500), and lab data processing, $1,000 ($1,500). All other items are budgeted at last year's amounts. The administrative budget includes $4,789 for contingencies ($14,234 last year).

The Committee also unanimously recommended 1995 crop indemnification claims payments of up to $7,000,000 and an indemnification assessment of $1.00 per net ton of farmers' stock peanuts received or acquired by handlers to continue its indemnification program. For the 1994 crop, indemnification claim payments of up to $9,000,000 and an assessment rate of $2.00 per net ton were established. The decreases for 1995 reflect the Committee's desire to lower indemnification costs.

The costs to carry out indemnification procedures (sampling and testing of 2–AB and 3–AB Subsamples, and crushing supervision, of indemnified peanuts, pursuant to § 998.200(c)), are paid from available indemnification funds. Such costs are not expected to exceed $500,000.

The total assessment rate is $1.70 per ton of assessable peanuts ($0.70 for administrative and $1.00 for indemnification). Assessments are due on the 15th of the month following the month in which the farmers' stock peanuts are received or acquired. Application of the recommended rates to the estimated assessable tonnage of 1,525,000 will yield $1,067,500 for program administration and $1,525,000 for indemnification. The indemnification amount, when added to expected cash carryover from 1994–95 indemnification operations of $8,700,000, will provide $10,225,000 which should be adequate for the 1995 fund, and to maintain an adequate reserve.

The 1994–95 budget was published in the **Federal Register** as an interim final rule on May 12, 1994 (59 FR 24633), and finalized on August 3, 1994 (59 FR 39421). The administrative expenses and assessment rate for the 1994–95 crop year were based on an estimated assessable tonnage of 1,760,000. Due to handlers purchasing fewer peanuts than originally projected, the assessable tonnage is expected to be only 1,676,000. In order to have sufficient revenue to cover budgeted expenses of $1,056,000, the Committee unanimously recommended that the 1994–95 crop year administrative assessment be increased from $0.60 to $0.63 per net ton of assessable farmers' stock peanuts.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers signatory to the agreement. Some of the additional costs may be passed on to producers. However, these costs will be significantly offset by the benefits derived from the operation of the marketing agreement. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the 1994–95 crop year began on July 1, 1994, and the 1995–96 crop year begins on July 1, 1995, and the marketing agreement requires that the rate of assessment for the fiscal period apply to all assessable peanuts handled during the fiscal period; (3) handlers are aware of these actions which were unanimously recommended by the Committee at a public meeting and are similar to other budget actions issued in past years; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Part 998

Marketing agreements, Peanuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 998 is amended as follows:

PART 998—MARKETING AGREEMENT REGULATING THE QUALITY OF DOMESTICALLY PRODUCED PEANUTS

1. The authority citation for 7 CFR part 998 continues to read as follows:

Authority: 7 U.S.C. 601–674.

Note: These sections will not appear in the Code of Federal Regulations.

2. New § 998.408 is added to read as follows:

§ 998.408 Expenses, assessment rate, and indemnification reserve.

(a) *Administrative expenses.* The budget of expenses for the Peanut Administrative Committee for the crop year beginning July 1, 1995, shall be in the amount of $1,067,500, such amount being reasonable and likely to be incurred for the maintenance and functioning of the Committee and for such purposes as the Secretary may, pursuant to the provisions of the marketing agreement, determine to be appropriate.

(b) *Indemnification expenses.* Expenses of the Committee not to exceed $7,000,000 for indemnification claims payments and claims expenses, pursuant to the terms and conditions of indemnification applicable to the 1995 crop effective July 1, 1995, are authorized. In addition, indemnification expenses, in an undetermined amount estimated not to exceed $500,000, which are incurred by the Committee for sampling and testing fees for 2–AB and 3–AB Subsamples, and fees for the supervision of the crushing of indemnified peanuts are also authorized.

(c) *Rate of assessment.* Each handler shall pay to the Committee, in accordance with § 998.48 of the marketing agreement, an assessment at the rate of $1.70 per net ton of farmers' stock peanuts received or acquired other than from those described in §§ 998.31(c) and (d). A total of $0.70 shall be for administrative expenses and a total of $1.00 shall be for indemnification. Assessments are due on the 15th of the month following the month in which the farmers' stock peanuts are received or acquired.

(d) *Indemnification reserve.* Monetary additions to the indemnification reserve, established in the 1965 crop

year pursuant to § 998.48 of the agreement, shall continue. That portion of the total assessment funds accrued from the $1.00 rate not expended on indemnification claims payments on 1995 crop peanuts and related expenses shall be kept in such reserve and shall be available to pay indemnification expenses on subsequent crops.

§ 998.407 [Amended]

3. On § 998.407, paragraph (c) is amended by removing "$2.60" and adding in its place "$2.63" and by removing "$0.60" and adding in its place "$0.63."

Dated: May 11, 1995.

Terry C. Long,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–12146 Filed 5–16–95; 8:45 am]

BILLING CODE 3410–02–P

Rural Housing and Community Development Service; Rural Business and Cooperative Development Service; Rural Utilities Service; Consolidated Farm Service Agency

7 CFR Part 1980

RIN 0575–AB84

Business and Industrial Loan Program

AGENCIES: Rural Housing and Community Development Service, Rural Business and Cooperative Development Service, Rural Utilities Service, and Consolidated Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: The Rural Business and Cooperative Development Service (RBCDS), (pursuant to section 234 of the Department of Agriculture Reorganization Act of 1994 (Pub. L. 103–354, October 13, 1994) and the Secretary's decision to implement such Authority) is the successor to the Rural Development Administration (RDA), which is the successor to the Farmers Home Administration (FmHA). RBCDS amends the Business and Industry Loan Servicing regulations to clarify the procedure for categorizing and classifying loans according to payment frequency criteria. The intended effect is to clarify procedures for classifying and categorizing loan payment history.

EFFECTIVE DATE: May 17, 1995.

FOR FURTHER INFORMATION CONTACT: Kenneth E. Hennings, Senior Loan Specialist, Business and Industry Division, RBCDS (formerly RDA), U.S. Department of Agriculture, Room 6337, South Agriculture Building, 14th Street and Independence Avenue, SW., Washington, DC, 20250–0700, Telephone: (202) 690–3809.

SUPPLEMENTARY INFORMATION:

Classification

This rule has been determined to be not-significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget (OMB).

Programs Affected

The Catalog of Federal Domestic Assistance program impacted by this action is: 10.768, Business and Industrial Loans.

Intergovernmental Review

The Business and Industrial Loan programs are subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. RBCDS has conducted intergovernmental consultation in the manner delineated in FmHA Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities."

Civil Justice Reform

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. (In accordance with this rule:) (1) All state and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings in accordance with the regulations of the agency at 7 C.F.R. 1900–B or those regulations published by the Department of Agriculture to implement the provisions of the National Appeals Division as mandated by the Department of Agriculture Reorganization Act of 1994 must be exhausted before bringing suit in court challenging action taken under this rule unless those regulations specifically allow bringing suit at an earlier time.

Paperwork Reduction Act

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB control number 0575–0029 in accordance with the Paperwork Reduction Act of 1980. This rule does not revise or impose any new information collection or recordkeeping requirement from those approved by OMB.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR Part 1940, subpart G, "Environmental Program." RBCDS has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Background

The regulations for Business and Industrial guaranteed loans require the lender to classify each loan in accordance with specific criteria set out in the regulations. It has been discovered that loans that are in compliance with requirements and have been current for more than 23 months but still have an outstanding balance of more than two-thirds of the original loan amount do not fit the criteria provided for in any classification. This action is to revise the criteria so that those loans will be included in the current non-problem classification.

Comments

On June 24, 1994, FmHA published a proposed rule with a comment period ending on August 23, 1994 in the **Federal Register** (59 FR 32660) to revise the loan classification criteria so that those loans that have been current for more than 23 months but still have an outstanding balance of more than two-thirds of the original loan amount will be included in the current non-problem classification. There were no comments on the proposed rule.

List of Subjects in 7 CFR Part 1980

Loan programs—Business and industry, Rural development assistance, Rural areas.

Accordingly, part 1980 of chapter XVIII, title 7 of the Code of Federal Regulations is amended as follows:

PART 1980—GENERAL

1. The authority citation for part 1980 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 7 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart E—Business and Industrial Loan Program

2. Section 1980.469 is amended by revising paragraph (c)(3) to read as follows:

§ 1980.469 Loan servicing.

* * * * *

(c) * * *

(3) *Current Non-problem Classification*—Those loans that are current and are in compliance with all loan conditions and B&I regulations but do not meet all the criteria for a Seasoned Loan classification. All loans not classified as Seasoned or Current Non-problem will be reported on the quarterly status report with documentation of the details of the reason(s) for the assigned classification.

* * * * *

Dated: March 28, 1995.

Michael V. Dunn,

Acting Under Secretary, Rural Economic and Community Development.

[FR Doc. 95–12154 Filed 5–16–95; 8:45 am]

BILLING CODE 3410–32–U

DEPARTMENT OF JUSTICE

8 CFR Part 3

[EOIR No. 103F; AG Order No. 1966–95]

RIN 1125–AA03

Executive Office for Immigration Review; Stipulated Requests for Deportation or Exclusion Orders, Telephonic, Video Electronic Media Hearings

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This final rule amends 8 CFR 3.25 by codifying an Immigration Judge's discretion to enter an order of deportation or exclusion without a hearing if satisfied that the alien voluntarily entered into a plea-negotiated or otherwise stipulated request for an order of deportation or exclusion. It further codifies the practice of Immigration Judges conducting telephonic hearings in deportation, exclusion, or recission cases, and codifies the authority of the Immigration Judge to hold video electronic media hearings.

The proposed rule also clarifies the language in § 3.25(a) to conform with *in absentia* hearing provisions under the Immigration and Nationality Act (the "Act"), 8 U.S.C. 1252, 1252b.

EFFECTIVE DATE: June 16, 1995.

FOR FURTHER INFORMATION CONTACT: Gerald S. Hurwitz, Counsel to the Director, Executive Office for Immigration Review, suite 2400, 5107 Leesburg Pike, Falls Church, Virginia 22041 (703) 305–0470.

SUPPLEMENTARY INFORMATION: The Department of Justice published a proposed rule on May 13, 1994 (59 FR 24976). The proposed rule sought to amend § 3.25 of title 8, CFR, to require an Immigration Judge to enter an order of deportation or exclusion on the written record, without an in-person hearing, based upon the stipulated written request of the respondent/applicant and the government under certain specified circumstances. The requirement to enter orders of deportation or exclusion based on the written record would arise only in instances where the Immigration Judge determined that the charging document set forth a valid basis for deportability or excludability; the stipulated request for an order of deportation or exclusion was voluntarily entered into by the respondent/applicant; and the respondent/applicant specifically waived relief from deportation or exclusion as well as the described hearing rights.

The rule also proposed to establish the authority of the Immigration Judge to hold telephonic hearings and video electronic media hearings. Additionally, the proposed rule made minor technical changes in paragraph (a) to conform with the *in absentia* provisions of 8 U.S.C. 1252.

The Executive Office for Immigration Review ("EOIR" or "the Agency") received eighteen comments concerning the proposed rule. The comments addressed the waiver of presence of the parties, the requirement that an Immigration Judge enter stipulated orders of deportation and exclusion under certain circumstances, and an Immigration Judge's discretion to conduct telephonic and video electronic media hearings.

1. Section 3.25(a) Waiver of Presence of the Parties

The Agency received one comment objecting to the proposed rule's provision allowing the Immigration Judge to waive the presence of an alien who is a child where a parent or legal guardian is present. The commenter argued that the rule would provide children with less due process protection than it provides adults.

This rule is for the convenience of the parties. For example, if parents and their infant child are in deportation proceedings, this rule allows the Immigration Judge to waive the presence of the infant. Such a waiver allows parents to place the child in childcare during the hearing. The waiver allows the parents and the Immigration Judge to concentrate on the substantive issues. For pragmatic reasons, the Agency has decided to retain this rule.

2. Section 3.25(b) Stipulated Request for Deportation or Exclusion Orders

Numerous commenters expressed due process concerns with the proposed rule's provision requiring an Immigration Judge to enter an order of deportation or exclusion if, based on the written record, the Judge determines that a represented respondent/applicant voluntarily entered into a stipulated request for an order of deportation or exclusion. Conversely, other commenters expressed approval of the requirement and suggested that the Agency expand the requirement to include motions for changes of venue and some forms of relief. Commenters also expressed concern that the rule requiring that a respondent/applicant make no application for relief unjustly limits the options of the respondent/applicant.

The rule has been modified to respond to the commenters' due process concerns. The final rule does not require an Immigration Judge to enter an order of deportation or exclusion based on the parties' written stipulation. stead, the rule explicitly recognizes a Judge's discretion to enter an order of deportation or exclusion based on the parties' written stipulation. The Immigration Judge's discretion to enter an order by written stipulation in the absence of the parties is limited to cases in which the applicant or respondent is represented at the time of the stipulation and where the stipulation is signed on behalf of the government and by both the applicant or respondent and his or her attorney or other representative qualified under part 292 of this chapter. At this juncture, the Agency declines to modify the scope of the stipulation procedure, and so the final rule does not address venue and has not changed with respect to application for relief.

Commenters stated that the proposed rule did not give sufficient emphasis to the requirement that only represented respondents/applicants may enter into stipulation requests. In response, the word "represented" has been inserted before each reference to respondent/applicant in the final version of § 3.25(b).

Commenters stated that the proposed rule did not give sufficient emphasis to the requirement that the respondent/applicant fully understand the ramifications of a stipulation. In ascertaining the extent of understanding, one commenter suggested that the Immigration Judge should focus specifically on the respondent/applicant's English language skills. The words "voluntarily,

knowingly and intelligently" have been added to ensure maximum protection for aliens entering into stipulations. Because language skills are subsumed in the voluntarily, knowingly and intelligently formula, the Agency considers it unnecessary for the rule to specifically address language skills.

One commenter, although supporting the rule's concept, expressed a technical concern with the elimination of "hearings" when the requirements for a stipulated deportation or exclusion are met. According to the comment, there is a statutory mandate that Immigration Judge conduct "hearings". In response to this comment, the final rule now states that the Immigration Judge may "conduct hearings in the absence of the parties."

A few commenters stated, in essence, that the requirement that the respondent/applicant introduce written statements as an exhibit to the record of proceedings was superfluous. The commenters suggested deletion of this requirement. Because of the potential value of a complete record, the Agency rejects this suggestion.

One commenter suggested that the rule should explicitly permit revocation of stipulated deportations and exclusions. Because the Code of Federal Regulations already provides mechanisms for motions to reopen, motions to reconsider, and notices of appeal, e.g., 8 CFR 103.5, 208.19, 242.21, 242.22, and 3.3, a revocation provision would be redundant and potentially confusing.

The rule implements the statutory requirement of expeditious deportation of criminal aliens under 8 U.S.C. 1252(i), 1252a(d), while protecting the rights of the parties. The rule contemplates employing stipulated deportations to expedite departures of aliens convicted of offenses rendering them immediately deportable or excludable. Stipulated deportations also allow the prompt departure of imprisoned criminal aliens who have no apparent avenue of relief from deportation or exclusion and who wish to avoid immigration-related detention after having completed their criminal sentences. If used more widely by litigants and criminal prosecutors, the procedure could alleviate overcrowded federal, state, and local detention facilities and eliminate the need to calendar such uncontested cases on crowded Immigration Court dockets.

The procedure is not limited to cases arising in the criminal context and can be used in other appropriate settings. The practice codified by the final rule already exists in some jurisdictions. The final rule promotes judicial efficiency in uncontested cases and resolves the commenters' due process concerns.

3. Section 3.25(c) Telephonic or Video Electronic Media Hearing

Commenters raised both statutory and practical concerns with this section of the proposed rule. The statutory concerns revolved around the proper construction of the phrase "before a special inquiry officer" as used in 8 U.S.C. 1252(b). According to some comments, the word "before" must be construed to mean that an alien is entitled to appear physically before an Immigration Judge. Commenters made no distinction between telephonic and video electronic media hearings. These comments relied on *Purba* v. *INS*, 884 F.2d 516, 517–18 (9th Cir. 1989) (holding that "section 242a(b) [of the Act] requires that the hearing be conducted with the hearing participants in the physical presence of the IJ [Immigration Judge]" and that "telephonic hearings by an IJ, absent consent of the parties, simply are not authorized by the statute"). The Ninth Circuit decision in *Purba* informs the issue of whether telephonic hearings are appropriate. However, *Purba* disposes of the issue in the Ninth Circuit only. Notably, the Eleventh Circuit also has addressed the issue of whether the statutory language of the Act allows for telephonic hearings at the Immigration Judge's discretion or whether the statutory language requires parties' consent. *Bigby* v. *INS*, 21 F.3d 1059 (11th Cir. 1994).

The Eleventh Circuit expressly cited to and disagreed with the holding in *Purba*, finding instead that an Immigration Judge has the discretion to hold a hearing by telephonic means and that party consent is unnecessary, at least where credibility determinations are not at issue. *Bigby*, 21 F.3d at 1062–64. *See also U.S.* v. *McCalla*, 821 F. Supp. 363, 369 n. 11 (E.D.Pa. 1993) ("Assuming that the defendant in this case did not consent to holding the hearing by telephone, this is of no moment * * * [the defendant] has demonstrated no prejudice resulting from the use of the telephone such that he would have been entitled to relief from deportation on appeal.")

Commenters relied exclusively on the Ninth Circuit decision and, as of the date of their comments, apparently were unaware of the Eleventh Circuit's recent decision. Numerous commenters conceded that the telephonic hearings currently conducted are procedurally effective and convenient, citing as examples, detained aliens and attorneys who practice some distance from the Immigration Court. However, commenters asserted that telephonic and video electronic media hearings, as contemplated by the proposed rule, would result in deprivations of respondents' due process rights. The commenters argued that, in some instances, this rule would deprive respondents of the opportunity to present and inspect evidence and the right to cross-examine adverse witnesses. They also stated that telephonic and video electronic media hearings would impair the Immigration Judge's ability to assess credibility. furthermore, commenters maintained that telephonic and video electronic media hearings would handicap the communication between non-English speaking respondents and their interpreters and would handicap respondents' representation by counsel. In addition, commenters noted that this rule would lead to disparate treatment in the various circuits. Given these perceived harms, the commenters suggested that the Agency either withdraw the telephonic/video electronic media hearing provision or modify it to be consistent with *Purba* by requiring party consent.

In response to the commenters' due process concerns, the Agency has modified the rule's telephonic hearing provision, The final rule requires that parties consent to telephonic procedures which are full evidentiary hearings on the merits. Consequently, the parties will have an opportunity to elect an in-person hearing at a critical juncture.

The final rule, however, distinguishes between telephonic and video electronic media hearings. The final rule does not require that parties consent to video electronic media hearings of any kind. Video electronic media hearings are completely within the discretion of the Immigration Judge. The sophistication of modern video electronic media coupled with the prudent use of Immigration Judge discretion should be sufficient to preserve the integrity of the procedure and the due process rights of the parties.

The final rule, furthermore, retains the proposed rule's provision recognizing the Immigration judge's discretion to conduct hearings telephonically and by video electionic media when such proceedings are not contested, full evidentiary merit hearings. Judicial discretion will ensure that telephonic and video electronic media hearings will be conducted only as appropriate.

Althought his rule probably will result in disparate treatment among the circuits, this situation is neither unusual nor prohibited in our federal system. The Immigration Judges in the geographical confines of the Ninth Circuit currently follow *Purba* and will continue to follow the law of that circuit.

Commenters also raised practical concerns with telephonic and video electronic media hearings. Given the nature of immigration proceedings, they correctly note that parties are often unable to communicate proficiently in the English language. These comments posit that telephonic and video electronic media hearings would further impair communication. The caliber of today's technology, the requirement for party consent in critical telephonic merit hearings, the prudent use of Immigration Judge discretion, and the availability of procedural vehicles for review of Immigration Judge decisions sufficiently safeguard non-English speakers from potential prejudice.

The final rule codifies some of the current practices of Immigration Judges holding telephonic hearings at their discretion and extends these practices to video electronic media hearings. The final rule also codifies a limitation on Immigration Judge discretion to conduct certain telephonic hearings. The final rule allows implementation of modern technology in order to increase procedural efficiency while protecting parties' due process rights. The rule assists the Agency in carrying out the country's immigration policy in an equitable and productive manner.

The final rule also makes minor technical changes in paragraph 9a) to conform with the *in absentia* provisions of 8 U.S.C. 1252.

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. The Attorney General has determined that this rule is not a significant regulatory action under Executive Order No. 12866, § 3(f), and accordingly this rule has not been reviewed by the Office of Management and Budget. This rule has no Federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order No. 12612. The rule meets the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order No. 12778.

List of Subjects in 8 CFR Part 3

Administrative practice and procedure, Immigration and Naturalization Service, Organization and functions (government agencies).

Accordingly, 8 CFR part 3 is amended as set forth below:

PART 3—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

1. The authority citation for part 3 continues to read as follows:

Authority: 5 U.S.C. 301; 8 U.S.C. 1103, 1252 note, 1252b, 1362; 28 U.S.C. 509, 510, 1746; Section 2, Reorganization Plan No. 2 of 1950, 3 CFR, 1949–1953 Comp., p. 1002.

2. Section 3.25 is revised to read as follows:

§ 3.25 Waiver of presence of the parties.

(a) *Good cause shown.* The Immigration Judge may, for good cause, waive the presence of a respondent/applicant at the hearing when the alien is represented or when the alien is a minor child at least one of whose parents or whose legal guardian is present. In addition, *in absentia* hearings may be held pursuant to sections 1252(b) and 1252b(c) of title 8, United States Code with or without representation.

(b) *Stipulated request for order; waiver of hearing.* Notwithstanding any other provision of this chapter, upon the written request of the respondent/applicant and upon concurrence of the government, the Immigration Judge may conduct hearings in the absence of the parties and enter an order of deportation or exclusion on the written record if the Immigration Judge determines, upon a review of the charging document, stipulation document, and supporting documents, if any, that a represented respondent/applicant voluntarily, knowingly, and intelligently entered into a stipulated request for an order of deportation or exclusion. The stipulation document shall include:

(1) An admission that all factual allegations contained in the charging document are true and correct as written;

(2) A concession of deportability or excludability as charged;

(3) A statement that the respondent/applicant makes no application for relief from deportation or exclusion, including, but not limited to, voluntary departure, asylum, adjustment of status, registry, de novo review of a termination of conditional resident status, de novo review of a denial or revocation of temporary protected status, relief under 8 U.S.C. 1182(c), suspension of deportation, or any other possible relief under the Act;

(4) A designation of a country for deportation under 8 U.S.C. 1253(a);

(5) A concession to the introduction of the written statements of the respondent/applicant as an exhibit to the record or proceedings;

(6) A statement that the attorney/representative has explained the consequences of the stipulated request to the respondent/applicant and that the respondent/applicant enters the request voluntarily, knowingly and intelligently;

(7) A statement that the respondent/applicant will accept a written order for his or her deportation or exclusion as a final disposition of the proceedings; and

(8) A waiver of appeal of the written order of deportation or exclusion.

The stipulated request and required waivers shall be signed on behalf of the government and by both the respondent/applicant and his or her attorney or other representative qualified under part 292 of this chapter. The attorney or other representative shall file a Notice of Appearance in accordance with § 3.16(b) of this part.

(c) *Telephonic or video electronic media hearing.* An Immigration Judge may conduct hearings via video electronic media or by telephonic media in any proceeding under 8 U.S.C. 1226, 1252, or 1256, except that contested full evidentiary hearings on the merits may be conducted by telephonic media only with the consent of the alien.

Dated: May 8, 1995.

Janet Reno,

Attorney General.

[FR Doc. 95–12080 Filed 5–16–95; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 85

[Docket No. 94–064–2]

Official Pseudorabies Tests

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the pseudorabies regulations by adding the glycoprotein I enzyme-linked immunosorbent assay approved differential test to the list of official pseudorabies tests. This rule will allow, under certain conditions, the glycoprotein I enzyme-linked immunosorbent assay approved differential test to be used as an official pseudorabies test to qualify certain pseudorabies vaccinated swine for interstate movement to destinations other than slaughter or a quarantined herd or quarantined feedlot. Adding the glycoprotein I enzyme-linked immunosorbent assay approved differential test to the list of official

pseudorabies tests will also allow its use for the testing of nonvaccinated swine.

EFFECTIVE DATE: June 16, 1995.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold C. Taft, Senior Staff Veterinarian, National Animal Health Programs, VS, APHIS, Suite 3A01, 4700 River Road Unit 43, Riverdale, MD 20737–1231; (301) 734–7767.

SUPPLEMENTARY INFORMATION:

Background

Pseudorabies is a contagious, infectious, and communicable disease of livestock, primarily swine, and other animals. The disease, also known as Aujeszky's disease, mad itch, and infectious bulbar paralysis, is caused by a herpes virus. The Animal and Plant Health Inspection Service's regulations in 9 CFR part 85 (referred to below as the regulations) govern the interstate movement of swine and other livestock (cattle, sheep, and goats) in order to help prevent the spread of pseudorabies.

For the purposes of interstate movement, the regulations separate swine into four basic categories: (1) Swine infected with or exposed to pseudorabies; (2) pseudorabies vaccinated swine (except swine from qualified negative gene-altered vaccinated herds) not known to be infected with or exposed to pseudorabies; (3) swine not vaccinated for pseudorabies and not known to be infected with or exposed to pseudorabies; and (4) swine from qualified negative gene-altered vaccinated herds. Provisions governing the interstate movement of swine from each category are found in §§ 85.5, 85.6, 85.7, and 85.8, respectively.

On January 31, 1995, we published in the **Federal Register** (60 FR 5876–5880, Docket No. 94–064–1) a proposal to amend the regulations governing the interstate movement of certain pseudorabies vaccinated swine by adding the glycoprotein I (gpI) enzyme-linked immunosorbent assay (ELISA) approved differential test to the list of official pseudorabies tests. We also proposed to amend the definition of *certificate* and add provisions to allow, under certain conditions, the gpI ELISA approved differential test to be used as an official test to qualify certain pseudorabies vaccinated swine for interstate movement to destinations other than slaughter, quarantined herds, or quarantined feedlots.

We solicited comments concerning our proposal for 60 days ending April 3, 1995. We received three comments by that date. They were from a State agriculture agency, a national veterinary association, and a pharmaceutical company. Two of the commenters supported the proposed rule without reservation. The third commenter, however, expressed concern regarding the use of a term in the proposed regulations. Specifically, the commenter noted that the proposed rule referred to gpI-deleted pseudorabies vaccines as "gene-altered" pseudorabies vaccines, which he felt inferred that only genetically engineered gpI deletions would be acceptable, to the exclusion of natural gpI gene-deleted pseudorabies vaccines.

We believe that our use of the term "gene-altered" does not exclude natural gpI gene-deleted pseudorabies vaccines. The gpI-deleted pseudorabies vaccine is an official gene-altered pseudorabies vaccine. The regulations in § 85.1 define *official gene-altered pseudorabies vaccine* as "[a]ny official pseudorabies vaccine for which there is an approved differential pseudorabies test," and *official pseudorabies vaccine* is defined as "[a]ny pseudorabies virus vaccine produced under license from the Secretary of Agriculture under the Virus, Serum and Toxin Act of March 4, 1913, and any legislation amendatory thereof (21 U.S.C. 151 *et seq.*)." Neither definition contains a requirement that an official gene-altered pseudorabies vaccine be the product of genetic engineering, so we have made no changes in this final rule based on that comment.

Therefore, based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposal as a final rule.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This final rule amends the pseudorabies regulations to allow, under certain conditions, swine vaccinated with a gpI-deleted gene-altered pseudorabies vaccine, but that are not from a qualified negative gene-altered vaccinated herd, to be moved interstate to destinations other than slaughter or a quarantined herd or quarantined feedlot. This final rule also allows the use of the gpI ELISA test to determine the pseudorabies status of nonvaccinated swine.

In December 1993, there were 235,840 swine operations in the United States, with a total inventory of about 56.8 million head. The value of the total swine inventory was estimated to be about $4.3 billion (Agricultural Statistics Board, National Agricultural Statistics Service, U.S. Department of Agriculture, "Hogs and Pigs," December 29, 1993). We believe that about 99 percent of all domestic swine operations would be considered small entities.

We estimate that there are approximately 25,000 domestic swine herds that contain vaccinated animals. Of those herds, there are only about 250 qualified negative gene-altered vaccinated herds. The provisions of this rule pertaining to individual swine vaccinated with the gpI-deleted pseudorabies vaccine (referred to below as gpI vaccinates) will have an economic impact only on the owners of gpI vaccinates that are not part of a qualified negative gene-altered herd. Because there have been no provisions for the interstate movement of gpI vaccinates that are not part of a qualified negative gene-altered herd to destinations other than slaughter, quarantined herds, or quarantined feedlots, this rule will have the effect of opening up new markets for the owners of such swine. Testing costs will be incurred only when an owner chooses to move gpI vaccinates interstate to destinations other than slaughter or a quarantined herd or quarantined feedlot, since pseudorabies vaccinated swine do not require a test prior to interstate movement for slaughter or to a quarantined herd or quarantined feedlot. We expect that swine owners will accept the costs of testing with the gpI ELISA test if they feel the economic opportunities afforded by the new markets balance or outweigh the costs associated with the interstate movement.

The provisions of this rule that allow the use of the gpI ELISA test to determine the pseudorabies status of nonvaccinated swine will not have a significant economic impact on the owners of nonvaccinated swine. Although the gpI ELISA test costs from $0.50 to $1.00 more per test than other official serologic tests used to determine the pseudorabies status of nonvaccinated swine, its use to test nonvaccinated swine will be optional. It is likely, therefore, that most owners of nonvaccinated swine will continue using less expensive official pseudorabies tests until the cost of the gpI ELISA test becomes comparable to that of other official tests.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB), and there are no new requirements. The assigned OMB control number is 0579–0070.

List of Subjects in 9 CFR Part 85

Animal diseases, Livestock, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 9 CFR part 85 is amended to read as follows:

PART 85—PSEUDORABIES

1. The authority citation for part 85 continues to read as follows:

Authority: 21 U.S.C. 111, 112, 113, 115, 117, 120, 121, 123–126, 134b, and 134f; 7 CFR 2.17, 2.51, and 371.2(d).

§ 85.1 [Amended]

2. In § 85.1, in the definition of *certificate*, the first sentence is amended by adding the words "vaccinated with a glycoprotein I (gpI) deleted gene-altered pseudorabies vaccine or" immediately after the words "gene-altered pseudorabies vaccinates".

3. In § 85.1, in the definition of *official pseudorabies test*, in the second sentence, item 4 is amended by adding the words "other than the glycoprotein I (gpI) ELISA test" immediately after the word "tests".

4. In § 85.6, a new paragraph (c) is added to read as follows:

§ 85.6 Interstate movement of pseudorabies vaccinate swine, except swine from qualified negative gene-altered herds, not known to be infected with or exposed to pseudorabies.

* * * * *

(c) *General movements.* Swine vaccinated for pseudorabies with a glycoprotein I (gpI) deleted gene-altered pseudorabies vaccine and not known to be infected with or exposed to pseudorabies, but that are not from a qualified negative gene-altered vaccinated herd, may be moved interstate to destinations other than those set forth in paragraphs (a) and (b) of this section only if:

(1) The swine are accompanied by a certificate and such certificate is delivered to the consignee; and

(2) The certificate, in addition to the information described in § 85.1, states:

(i) The identification required by § 71.19 of this chapter;

(ii) That each animal to be moved was vaccinated for pseudorabies with a gpI-deleted gene-altered pseudorabies vaccine;

(iii) That each animal to be moved was subjected to a gpI enzyme-linked immunosorbent assay (ELISA) approved differential pseudorabies test no more than 30 days prior to the interstate movement and was found negative;

(iv) The date of the gpI ELISA approved differential pseudorabies test; and

(v) The name of the laboratory that conducted the gpI ELISA approved differential pseudorabies test.

Done in Washington, DC, this 11th day of May 1995.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–12149 Filed 5–16–95; 8:45 am]

BILLING CODE 3410–34–P

Animal and Plant Health Inspection Service, USDA

9 CFR Parts 92 and 98

[Docket No. 94–087–2]

Canadian Border Ports; Baudette, MN

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: On March 29, 1995, the Animal and Plant Health Inspection Service published a direct final rule. (See 60 FR 16043–16045). The direct final rule notified the public of our intention to amend the animal importation regulations by adding Baudette, MN, as a Canadian border port for pet birds, poultry, horses, ruminants, swine, and germ plasm. We did not receive any written adverse comments or written notice of intent to submit adverse comments in response to the direct final rule

EFFECTIVE DATE: The effective date of the direct final rule is confirmed as May 30, 1995.

FOR FURTHER INFORMATION CONTACT: Dr. David Vogt, Senior Staff Veterinarian, Import/Export Animals, National Center for Import and Export, VS, APHIS, Suite 3B05, 4700 River Road Unit 39, Riverdale, MD 20737–1231; (301) 734–8172.

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 135, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, DC, this 11th day of May 1995.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–12153 Filed 5–16–95; 8:45 am]

BILLING CODE 3410–34–M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 11 and 25

RIN 3150–AF21

NRC Licensee Renewal/ Reinvestigation Program

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations to eliminate the five-year expiration date for licensee "U" and "R" special nuclear material access authorizations and "Q" and "L" access authorizations and to require the licensee to submit NRC renewal application paperwork only for an individual who has not been reinvestigated by the Department of Energy (DOE) or another Federal agency within the five-seven year span permitted in the regulations. This final rule is necessary to achieve administrative efficiencies that reduce paperwork and cut red tape in a manner that is consistent with National Performance Review initiatives.

EFFECTIVE DATE: June 16, 1995.

FOR FURTHER INFORMATION CONTACT: James J. Dunleavy, Division of Security, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 telephone (301) 415–7404.

SUPPLEMENTARY INFORMATION: The NRC currently requires "U" and "R" special nuclear material access authorizations and "Q" and "L" access authorizations

to expire five years from the issuance date unless a timely application is made for renewal. An application for renewal must include a personnel security forms packet, including a Questionnaire for Sensitive Positions (SF–86, Parts 1 and 2), two completed standard fingerprint cards (FD–258), other related forms, and a statement of continuing need by the licensee.

For those individuals who also have an active DOE or other comparable access authorization and are subject to DOE's or another Federal agency's reinvestigation program, the application that must be filed with the NRC consists of an NRC Form 237, "Request for Access Authorization," or comparable list containing the individual's full name, social security number, date of birth, type of request (renewal), the agency conducting the reinvestigation and the date of reinvestigation submittal, and a statement of continuing need by the licensee.

The final rule eliminates the five-year expiration date for "U", "R", "Q" and "L" access authorizations and requires renewal application paperwork to be submitted to NRC only for an individual who has not been reinvestigated by DOE or another Federal agency for any reason within the five-seven year span permitted in the regulations.

This final rule reduces paperwork for the licensee and NRC, cuts red tape, and achieves the timely reinvestigation of licensee personnel on a more cost effective basis.

The comment period on the proposed rule (December 28, 1994; 59 FR 66812) closed on January 27, 1995. No comments were received from the public. This final rule becomes effective 30 days after publication in the **Federal Register**.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq). These requirements were approved by the Office of Management and Budget, approval numbers 3150–0050, –0062 and –0046. Because the rule relaxes existing information collection requirements, the public burden for this collection of information is expected to be reduced by three hours per licensee. This reduction includes the time required for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Information and Records Management Branch (T6–F33), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0050, –0062, and –0046), Office of Management and Budget, Washington, DC 20503.

Regulatory Analysis

The NRC has prepared a regulatory analysis on this final rule. The analysis examines the costs and benefits of the alternatives considered by the Commission. The analysis is available for inspection in the NRC Public Document Room, 2120 L Street, NW (Lower Level), Room LL6, Washington, DC. Single copies of the analysis may be obtained from James J. Dunleavy, Division of Security, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–7404.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C.605(b), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities. This final rule only applies to those licensees and others who need to use, process, store, transport, or deliver to a carrier for transport, formula quantities of special nuclear material (as defined in 10 CFR Part 73) or generate, receive, safeguard, and store National Security Information or Restricted Data (as defined in 10 CFR Part 95). Approximately 20 NRC licensees and other license-related interests are affected under the provisions of 10 CFR Parts 11 and 25. Because these licensees are not classified as small entities as defined by the NRC's size standards (April 11, 1995; 60 FR 18344), the Commission finds that this rule will not have a significant economic impact upon a substantial number of small entities.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule, and therefore, that a backfit analysis is not required because these amendments do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subject

10 CFR Part 11

Hazardous materials—transportation, Investigations, Nuclear materials, Reporting and recordkeeping requirements, Security measures, Special nuclear material.

10 CFR Part 25

Classified information, Criminal penalties, Investigations, Reporting and recordkeeping requirements, Security measures.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR Parts 11 and 25.

PART 11—CRITERIA AND PROCEDURES FOR DETERMINING ELIGIBILITY FOR ACCESS TO OR CONTROL OVER SPECIAL NUCLEAR MATERIAL

1. The authority citation for part 11 continues to read as follows:

Authority: Sec. 161, 68 stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Section 11.15(e) also issued under sec. 501, 85 Stat. 290 (31 U.S.C. 483a).

2. In § 11.15, paragraph (c) is revised to read as follows:

§ 11.15 Application for special nuclear material access authorization.

* * * * *

(c)(1) Except as provided in paragraphs (c)(2) and (c)(3) of this section, NRC-U and NRC-R special nuclear material access authorizations must be renewed every five years from the date of issuance. An application for renewal must be submitted at least 120 days before the expiration of the five year period and must include:

(i) A statement by the licensee that at the time of application for renewal the individual's assigned or assumed job requires an NRC-U special nuclear material access authorization, justified by appropriate reference to the licensee's security plan;

(ii) The questionnaire for Sensitive Positions (SF–86, Parts 1 and 2);

(iii) Two completed standard fingerprint cards (FD–258); and

(iv) Other related forms specified in accompanying NRC instructions (NRC Form 254).

(2) An exception to the time for submission of NRC-U special nuclear material access authorization renewal applications and the paperwork required is provided for those individuals who have a current and active DOE-Q access authorization and who are subject to DOE Reinvestigation Program requirements. For these individuals, the submission to DOE of the SF–86 pursuant to DOE Reinvestigation Program requirements (generally every five years) will satisfy the NRC renewal submission and paperwork requirements even if less than five years has passed since the date of issuance or renewal of the NRC-U access authorization. Any NRC-U special nuclear material access authorization renewed in response to provisions of this paragraph will not be due for renewal until the date set by DOE for the next reinvestigation of the individual pursuant to DOE's Reinvestigation Program.

(3) An exception to the time for submission of NRC-R special nuclear material access authorization renewal applications and the paperwork required is provided for those individuals who have a current and active DOE-L or DOE-Q access authorization and who are subject to DOE Reinvestigation Program requirements. For these individuals, the submission to DOE of the SF–86 pursuant to DOE Reinvestigation Program requirements (generally every five years) will satisfy the NRC renewal submission and paperwork requirements even if less than five years has passed since the date of issuance or renewal of the NRC-R access authorization. Any NRC-R special nuclear material access authorization renewed pursuant to this paragraph will not be due for renewal until the date set by DOE for the next reinvestigation of the individual pursuant to DOE's Reinvestigation Program.

(4) Notwithstanding the provisions of paragraph (c)(2) or (c)(3) of this section, the period of time for the initial and each subsequent NRC-U or NRC-R renewal application to NRC may not exceed seven years. Any individual who is subject to the DOE Reinvestigation Program requirements but, for administrative or other reasons, does not submit reinvestigation forms to DOE within seven years of the previous submission, shall submit a renewal application to NRC using the forms prescribed in paragraph (c)(1) of this section before the expiration of the seven year period.

* * * * *

PART 25—ACCESS AUTHORIZATION FOR LICENSEE PERSONNEL

3. The authority citation for Part 25 continues to read as follows:

Authority: Secs. 145, 161, 68 Stat. 942, 948, as amended (42 U.S.C. 2165, 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); E.O. 10865, as amended, 3 CFR 1959–1963 COMP., p. 398 (50 U.S.C. 401, note); E.O. 12356, 47 FR 14874, April 6, 1982.

Appendix A also issued under 96 Stat. 1051 (31 U.S.C. 9701.)

4. In § 25.21, paragraph (c) is revised to read as follows:

§ 25.21 Determination of initial and continued eligibility for access authorization.

* * * * *

(c) (1) Except as provided in paragraph (c)(2) of this section, NRC "Q" and "L" access authorizations must be renewed every five years from the date of issuance. An application for renewal must be submitted at least 120 days before the expiration of the five year period, and must include:

(i) A statement by the licensee or other person that the individual continues to require access to classified National Security Information or Restricted Data; and

(ii) A personnel security packet as described in § 25.17(c).

(2) Renewal applications and the paperwork required for renewal applications are not required for individuals who have a current and active access authorization from another Federal agency and who are subject to a reinvestigation program by that agency that is determined by NRC to meet NRC's requirements (the DOE Reinvestigation Program has been determined to meet NRC's requirements). For such individuals, the submission of the SF–86 by the licensee or other person to the other government agency pursuant to their reinvestigation requirements will satisfy the NRC renewal submission and paperwork requirements, even if less than five years has passed since the date of issuance or renewal of the NRC "Q" or "L" access authorization. Any NRC access authorization continued in response to the provisions of this paragraph will, thereafter, not be due for renewal until the date set by the other government agency for the next reinvestigation of the individual pursuant to the other agency's reinvestigation program. However, the period of time for the initial and each subsequent NRC "Q" or NRC "L" renewal application to NRC may not exceed seven years. Any individual who is subject to the reinvestigation program requirements of another Federal agency but, for administrative or other reasons, does not submit reinvestigation forms to that agency within seven years of the previous submission, shall submit a renewal application to NRC using the forms prescribed in § 25.17(c) before the expiration of the seven year period.

Dated at Rockville, MD, this 8th day of May 1995.

For the Nuclear Regulatory Commission,

James M. Taylor,

Executive Director for Operations.

[FR Doc. 95–12104 Filed 5–16–95; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. ANM–106; Special Conditions No. 25–ANM–98]

Special Conditions; Raytheon Corporate Jets, Inc., Model Hawker 800 Airplanes, High-Intensity Radiated Fields

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are for the Raytheon Corporate Jets, Inc., Model Hawker 800 airplanes equipped with modifications that install Garrett TFE731–5BR–1H engines and a mach trim system. The configuration of these airplanes will utilize new and revised electronic systems that perform functions critical to the safety of the airplane. The applicable regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity radiated fields. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

EFFECTIVE DATE: June 16, 1995.

FOR FURTHER INFORMATION CONTACT: William Schroeder, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055–4056.

SUPPLEMENTARY INFORMATION:

Background

On February 7, 1994, Raytheon Corporate Jets, Inc., 3 Bishop Square, St. Albans Road West, Hatfield, Hertfordshire AL 10 9NE, England, applied for a revision to type certificate

number A3EU to add new engines and a mach system to the Model Hawker 800 series airplanes currently included on that TC. This revised Model Hawker 800 is a cruciform tail, low wing, 15 passenger business jet powered by two Garrett TFE 731–5BR–1H turbofan engines mounted on pylons extending from the aft fuselage. The engines will be capable of delivering 4,634 lbs. of mzx continous thrust each and 4750 pounds of thrust on the operating engine for up to 5 minutes at automatic power reserve (APR) power.

Type Certification Basis

Under the provisions of § 21.29 of the FAR, Raytheon must show, except as provided in § 25.2, that the revised Model Hawker 800 complies with the certification basis of record shown on TC Data Sheet A3EU for Model Hawker 800 airplanes plus, for the engine and mach trim system installations, § 25.1316 as amended by Amendment 25–80, § 25.933 as amended by Amendment 25–40, § 25.934 as amended through Amendment 25–23, § 25.1309 as amended through Amendment 25–23, parts 34 and 36 of the FAR as amended through the latest amendment in effect at the time of certification of this revision to the TC and any additional equivalent safety findings made for this revision of the TC. These special conditions form an additional part of the type of certification basis.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25, as amended) do not contain adequate or appropriate safety standards for the Model Hawker 800 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29, and become part of the type certification basis in accordance with § 21.29(a)(1)(ii) and § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novei or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The Model Hawker 800 airplanes with TFE731–5BR–1H engines incorporate a revised engine electronic control system and an electronic controlled mach trim system. These systems perform critical to safety of flight functions and may be vulnerable to high-intensity radiated fields external to the airplane.

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground based radio transmitters and the growing use of sensitive electrical and electronic systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are proposed for the Model Hawker 800 with TFE731–5BR–1H engines and a mach trim system. These special conditions require that electrical and electronic components that perform critical functions and are embodied in the mach trim system or TFE731–5BR–1H engine electronic control system be designed and installed to ensure that operation and operational capabilities of these systems to perform critical functions are not adversely affected when the airplane is exposed to HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground based transmitters, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical digital electronic systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraphs 1 or 2 below:

1. A minimum threat of 100 volts per meter peak electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strength for the frequency ranges indicated.

Frequency	Peak (V/M)	Average (V/M)
10 KHz–100 KHz	50	50
100 KHz–500 KHz	60	60
500 KHz–2000 KHz	70	70
2 MHz–30 MHz	200	200
30 MHz–70 MHz	30	30
70 MHz–100 MHz	30	30
100 MHz–200 MHz	150	33
200 MHz–400 MHz	70	70
400 MHz–700 MHz	4,020	935
700 MHz–1000 MHz	1,700	170
1 GHz–2 GHz	5,000	990
2 GHz–4GHz	6,680	840
4 GHz–6 GHz	6,850	310
6 GHz–8 GHz	3,600	670
8 GHz–12 GHz	3,500	1,270
12 GHz–18 GHz	3,500	360
18 GHz–40 GHz	2,100	750

As discussed above, these special conditions are applicable initially to certain components on Model Hawker 800 airplane with TFE731–5BR engines and a mach trim system. Should Raytheon Corporate Jets, Inc. apply at a later date for a change to the type certificate to add or revise electrical or electronic equipment that performs critical functions or to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Discussion of Comments

Notice of Proposed Special Conditions No. SC–95–2–NM for the Raytheon Corporate Jets, Inc., Model Hawker 800 Airplanes, was published in the **Federal Register** on February 8, 1995 (60 FR 7479). No comments were received.

Conclusion

This action affects only certain design features on the Model Hawker 800 airplane. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Federal Aviation Administration, Reporting and recordkeeping requirements.

The authority citation for these proposed special conditions is as follows:

Authority: 49 U.S.C. app. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f–10, 4321 et seq.; E.O. 11514; and 49 U.S.C. 106(g).

The Special Conditions

Accordingly, the following special conditions are issued as part of the type certification basis for the Raytheon Corporate Jets, Inc., Model Hawker 800 series airplanes equipped with Garrett TFE731–5BR–1H turbo fan engines and electronically controlled mach trim system. These special conditions would apply only to electrical and electronic components that perform critical functions and are embodied in the mach trim system or TFE731–5BR–1H engine electronic control system.

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields.

2. For the purpose of these special conditions, the following definition applies: *Critical Functions.* Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on May 9, 1995.

Darrell M. Pederson,

Assistant Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–101.

[FR Doc. 95–12155 Filed 5–16–95; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Penicillin G Potassium in Turkey Drinking Water

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Wade Jones Co., Inc. The ANADA provides for use of penicillin G potassium powder to make a medicated turkey drinking water for the treatment of erysipelas caused by *Erysipelothrix rhusiopathiae.*

EFFECTIVE DATE: May 17, 1995.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1643.

SUPPLEMENTARY INFORMATION: Wade Jones Co., Inc., Highway 71 North, 409 North Bloomington, Lowell, AR 72745, has filed ANADA 200–122, which provides for use of penicillin G potassium powder to make a medicated turkey drinking water used for the treatment of erysipelas in turkeys caused by *E. rhusiopathiae.*

Wade Jones' ANADA 200–122 for penicillin G potassium powder is approved as a generic copy of Solvay's NADA 55–060 for the same product. The ANADA is approved as of April 17, 1995, and the regulations are amended in 21 CFR 520.1696b(b) to reflect the approval. The basis for this approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. Section 520.1696b is amended by revising paragraph (b) to read as follows:

§ 520.1696b Penicillin G potassium in drinking water.

* * * * *

(b) *Sponsors.* See Nos. 017144, 047864, 050604, and 053501 in § 510.600(c) of this chapter.

* * * * *

Dated: May 5, 1995.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 95–12095 Filed 5–16–95; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 522

Implantation and Injectable Dosage Form New Animal Drugs; Zeranol

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Mallinckrodt Veterinary, Inc. The supplemental NADA provides for use of a 72-milligram (mg) zeranol implant in steers being fed in confinement for slaughter for increased rate of weight gain.

EFFECTIVE DATE: May 17, 1995.

FOR FURTHER INFORMATION CONTACT: Jack Caldwell, Center for Veterinary Medicine (HFV–126), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0217.

SUPPLEMENTARY INFORMATION: Mallinckrodt Veterinary, Inc., 421 East Hawley St., Mundelein, IL 60060, filed supplemental NADA 38–233 to provide for the use of Ralgro Magnum (a 72-mg zeranol implant) in steers being fed in confinement for slaughter for increased rate of weight gain (i.e., use of six 12-mg zeranol pellets). The supplemental NADA is approved as of April 6, 1995, and the regulations are amended in 21 CFR 522.2680(d) to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch

(HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), this approval for food-producing animals qualifies for 3 years of marketing exclusivity beginning April 6, 1995, because the supplemental NADA contains reports of new clinical investigations (other than bioequivalence or residue studies) essential to the approval and conducted or sponsored by the applicant. Three years of marketing exclusivity applies only to the use for which the supplemental NADA is approved.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. Section 522.2680 is amended by adding new paragraph (d)(3) to read as follows:

§ 522.2680 Zeranol.

* * * * *

(d) * * *

(3) *Steers*—(i) *Amount.* 72 milligrams (six 12-milligram pellets) per animal.

(ii) *Indications for use.* For increased rate of weight gain in steers fed in confinement for slaughter.

(iii) *Limitations.* Implant subcutaneously in ear only.

Dated: May 5, 1995.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 95–12094 Filed 5–16–95; 8:45 am]

BILLING CODE 4160–01–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–30072L; FRL–4950–7]

Tolerance Processing Fees

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule increases fees charged for processing tolerance petitions for pesticides under the Federal Food, Drug, and Cosmetic Act (FFDCA). The change in fees reflects a 3.22 percent increase in locality pay for civilian Federal General Schedule (GS) employees working in the Washington, DC/Baltimore, MD metropolitan area in 1995.

EFFECTIVE DATE: June 16, 1995.

FOR FURTHER INFORMATION CONTACT: Concerning this rule contact: By mail: Delores A. Furman, Program Management and Support Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number and e-mail address: Rm. 700–G, CM #2, 1921 Jefferson Davis Highway, Arlington, VA (703–305–7016), furman.delores. Concerning tolerance petitions and individual fees contact: Jim Tompkins (703–305–5697)

SUPPLEMENTARY INFORMATION: The EPA is charged with administration of section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA). Section 408 authorizes the Agency to establish tolerance levels and exemptions from the requirements for tolerances for raw agricultural commodities. Section 408(o) requires that the Agency collect fees as will, in the aggregate, be sufficient to cover, among other things, the costs of processing petitions for pesticide products, i.e., that the tolerance process be as self-supporting as possible. The current fee schedule for tolerance petitions (40 CFR 180.33) was published in the **Federal Register** on June 2, 1994 (59 FR 28482) and became effective on July 5, 1994. At that time the fees were increased 4.23 percent in accordance with a provision in the regulation that provides for automatic annual adjustments to the fees based on annual percentage changes in Federal salaries. The specific language in the regulation is contained in paragraph (o) of § 180.33 and reads in part as follows:

(o) This fee schedule will be changed annually by the same percentage as the percent change in the Federal General Schedule (GS) pay scale.... When automatic adjustments are made based on the GS pay scale, the new fee schedule will be published in the **Federal Register** as a final rule to become effective thirty days or more after publication, as specified in the rule.

The Federal Employees Pay Comparability Act of 1990 (FEPCA) initiated locality-based comparability pay, known as "locality pay." The intent of the legislation is to make Federal pay more responsive to local labor market conditions by adjusting General Schedule salaries on the basis of a comparison with non-Federal rates on a geographic, locality basis.

The processing and review of tolerance petitions is conducted by EPA employees working in the Washington, DC/ Baltimore, MD pay area. The pay raise in 1995 for Federal General Schedule employees working in the Washington, DC/Baltimore, MD metropolitan pay area is 3.22 percent; therefore, the tolerance petition fees are being increased 3.22 percent. All fees have been rounded to the nearest $25.00.

List of subjects in 40 CFR Part 180

Administrative practice and procedures, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 5, 1995.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I, part 180 is amended as follows:

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.33 is amended by revising paragraphs (a), (b), (c), (d), (e), (f), (g), (i), (j)(3), and (m) to read as follows:

§ 180.33 Fees.

(a) Each petition or request for the establishment of a new tolerance or a tolerance higher than already established, shall be accompanied by a fee of $60,425, plus $1,500 for each raw agricultural commodity more than nine on which the establishment of a tolerance is requested, except as provided in paragraphs (b), (d), and (h) of this section.

(b) Each petition or request for the establishment of a tolerance at a lower numerical level or levels than a tolerance already established for the same pesticide chemical, or for the establishment of a tolerance on additional raw agricultural commodities at the same numerical level as a tolerance already established for the same pesticide chemical, shall be accompanied by a fee of $13,825 plus $925 for each raw agricultural commodity on which a tolerance is requested.

(c) Each petition or request for an exemption from the requirement of a tolerance or repeal of an exemption shall be accompanied by a fee of $11,150.

(d) Each petition or request for a temporary tolerance or a temporary exemption from the requirement of a tolerance shall be accompanied by a fee of $24,150 except as provided in paragraph (e) of this section. A petition or request to renew or extend such temporary tolerance or temporary exemption shall be accompanied by a fee of $3,425.

(e) A petition or request for a temporary tolerance for a pesticide chemical which has a tolerance for other uses at the same numerical level or a higher numerical level shall be accompanied by a fee of $12,050 plus $925 for each raw agricultural commodity on which the temporary tolerance is sought.

(f) Each petition or request for repeal of a tolerance shall be accompanied by a fee of $7,550. Such fee is not required when, in connection with the change sought under this paragraph, a petition or request is filed for the establishment of new tolerances to take the place of those sought to be repealed and a fee is paid as required by paragraph (a) of this section.

(g) If a petition or a request is not accepted for processing because it is technically incomplete, the fee, less $1,500 for handling and initial review, shall be returned. If a petition is withdrawn by the petitioner after initial processing, but before significant Agency scientific review has begun, the fee, less $1,500 for handling and initial review, shall be returned. If an unacceptable or withdrawn petition is resubmitted, it shall be accompanied by the fee that would be required if it were being submitted for the first time.

* * * * * *

(i) Objections under section 408(d)(5) of the Act shall be accompanied by a filing fee of $3,025.

(j) * * *

(3) An advance deposit shall be made in the amount of $30,175 to cover the costs of the advisory committee. Further advance deposits of $30,175 each shall be made upon request of the Administrator when necessary to prevent arrears in the payment of such costs. Any deposits in excess of actual expenses will be refunded to the depositor.

* * * * *

(m) The Administrator may waive or refund part or all of any fee imposed by this section if the Administrator determines in his or her sole discretion that such a waiver or refund will promote the public interest or that payment of the fee would work an unreasonable hardship on the person on whom the fee is imposed. A request for waiver or refund of a fee shall be submitted in writing to the Environmental Protection Agency, Office of Pesticide Programs, Registration Division (7505C), Washington, DC 20460. A fee of $1,500 shall accompany every request for a waiver or refund, except that the fee under this sentence shall not be imposed on any person who has no financial interest in any action requested by such person under paragraphs (a) through (k) of this section. The fee for requesting a waiver or refund shall be refunded if the request is granted.

* * * * *

[FR Doc. 95–12143 Filed 5–16–95; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Parts 180, 185, and 186

[FAP 4H5683/R2131; FRL–4952–5]

RIN 2070–AB78

Hexazinone; Pesticide Tolerances and Food/Feed Additive Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document amends the current tolerance for residues of the herbicide hexazinone (3-(cyclohexyl-6-(dimethylamino)-1-methyl-1,3,5-triazine-2,4(1*H*,3*H*)-dione) and its metabolites (calculated as hexazinone) in or on sugarcane at 0.2 part per million (ppm) by revoking the current tolerance and reestablishing the same tolerance with regional registration and tolerance as described in 40 CFR 180.1(n). EPA also establishes food and feed additive regulations for residues of hexazinone and its metabolites in sugarcane molasses at 0.5 ppm. E.I. du Pont de Nemours & Co., Inc., requested these regulations pursuant to the Federal Food, Drug and Cosmetic Act.

EFFECTIVE DATE: These regulations become effective May 17, 1995.

ADDRESSES: Written objections, identified by the document control number, [PP 4H5683/R2131], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [FAP 4H5683/R2131]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Joanne I. Miller, Product Manager (PM) 23, Registration Division (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 237, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-7830; e-mail: miller.joanne@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 22, 1995 (60 FR 15113), EPA issued a proposed rule that gave notice that E.I. du Pont de Nemours & Co., Inc., had petitioned EPA under section 408 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a, to amend 40 CFR parts 180, 185, and 186 to establish tolerances with regional registration for combined residues of the herbicde hexazinone (3-

cyclohexyl)-6-(dimethylamino)-1-methyl-1,3,5-triazine-2,4(1*H*,3*H*)-dione) and its metabolites (calculated as hexazinone) in or on the raw agricultural commodity sugarcane at 0.2 part per million (ppm), the food additive commodity sugarcane, molasses at 0.5 ppm, and the feed additive commodity sugarcane, molasses at 0.5 ppm.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted with the proposal and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerances will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

A record has been established for this rulemaking under docket number [FAP 4H5683/R2131] (including objections and hearing requests submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Written objections and hearing requests, identified by the document control number [FAP 4H5683/R2131], may be submitted to the Hearing Clerk (1900), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

A copy of electronic objections and hearing requests filed with the Hearing Clerk can be sent directly to EPA at:

opp-Docket@epamail.epa.gov

A copy of electronic objections and hearing requests filed with the Hearing Clerk must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all objections and hearing requests submitted directly in writing. The official rulemaking record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of the Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Parts 180, 185, 186

Environmental protection, Administrative practice and procedure, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 1, 1995.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

Therefore, 40 CFR parts 180, 185, and 186 are amended as follows:

PART 180—[AMENDED]

1. In part 180:

a. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

b. In § 180.396, the existing text is designated as paragraph (a), and the table therein is amended by removing the entry for sugarcane, and new paragraph (b) is added, to read as follows:

§ 180.396 Hexazinone; tolerances for residues.

* * * * *

(b) A tolerance with regional registration, as defined in § 180.1(n) and which excludes use of hexazinone on sugarcane in Florida, is established for combined residues of the herbicide hexazinone (3-cyclohexyl-6-(dimethyamino)-1-methyl-1,3,5-triazine-2,4(1*H*,3*H*)-dione) and its metabolites (calculated as hexazinone) in or on the following raw agricultural commodity:

Commodity	Parts per million
Sugarcane	0.2

PART 185—[AMENDED]

2. In part 185:

a. The authority citation for part 185 continues to read as follows:

Authority: 21 U.S.C. 346a and 348.

b. By adding new § 185.3575, to read as follows:

§ 185.3575 Hexazinone; tolerances for residues.

A food additive tolerance with regional registration, as defined in § 180.1(n) and which excludes use of hexazinone on sugarcane in Florida, is established for combined residues of the herbicide hexazinone (3-cyclohexyl-6-(dimethyamino)-1-methyl-1,3,5-triazine-2,4(1*H*,3*H*)-dione) and its metabolites (calculated as hexazinone) in or on the following food commodity:

Commodity	Parts per million
Sugarcane, molasses	0.5

PART 186—[AMENDED]

3. In part 186:

a. The authority citation for part 186 continues to read as follows:

Authority: 21 U.S.C. 348.

b. By adding new § 186.3575, to read as follows:

§ 186.3575 Hexazinone; tolerances for residues.

A feed additive tolerance with regional registration, as defined in § 180.1(n) and which excludes use of hexazinone on sugarcane in Florida, is established for combined residues of the herbicide hexazinone (3-cyclohexyl-6-(dimethyamino)-1-methyl-1,3,5-triazine-2,4(1*H*,3*H*)-dione) and its metabolites (calculated as hexazinone) in or on the following feed commodity:

Commodity	Parts per million
Sugarcane, molasses	0.5

[FR Doc. 95–11812 Filed 5–16–95; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: Modified base (1% annual chance) flood elevations are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified base flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below of modified base flood elevations for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Associate Director has resolved any appeals resulting from this notification.

The modified base (1% annual chance) flood elevations are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 et seq., and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base (1% annual chance) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Florida: Citrus County (FEMA Docket No. 7111).	City of Inverness	July 25, 1994, Aug. 1, 1994, *Citrus County Chronicle.*	The Honorable O.J. Humphries, Mayor of the City of Inverness, 212 West Main Street, Inverness, Florida 34450.	July 18, 1994	120348 B
Illinois:					
Will County (FEMA Docket No. 7115).	Village of Crete	Aug. 18, 1994, Aug. 25, 1994, *Crete Record.*	Mr. David L. Wallace, Crete Village Administrator, 524 Exchange Street, Crete, Illinois 60417.	Aug. 11, 1994 ...	170700 B
Will County (FEMA Docket No. 7104).	City of Lockport	June 22, 1994, June 29, 1994, *Herald News.*	The Honorable Richard G. Dystrup, Mayor of the City of Lockport, 222 East Ninth Street, Suite 4, Lockport, Illinois 60441–3497.	June 14, 1994 ...	170703 B
Cook County (FEMA Docket No. 7104).	Village of Orland Hills ..	June 30, 1994, July 7, 1994, *The Star.*	Mr. Kyle R. Hastings, President of the Village of Orland Hills, 16795 South 94th Avenue, Orland Hills, Illinois 60477.	June 24, 1994 ...	170172 B
Minnesota: Hennepin County (FEMA Docket No. 7123).	City of St. Louis Park ..	Oct. 5, 1994, Oct. 12, 1994, *Sun Sailor.*	The Honorable Lyle Hanks, Mayor of the City of St. Louis Park, 505 Minnetonka Boulevard, St. Louis Park, Minnesota 55416–2290.	Sept. 28, 1994 ..	270184 B
Mississippi Panola County (FEMA Docket No. 7123).	City of Batesville	Oct. 26, 1994, Nov. 2, 1994, *The Panolian.*	The Honorable Bobby Baker, Mayor of the Town of Batesville, P.O. Box 689, Batesville, Mississippi 38606.	Sept. 19, 1994 ..	280126 C
North Carolina: Granville County (FEMA Docket No. 7123).	Unincorporated areas ..	Sept. 29, 1994, Oct. 6, 1994, *Oxford Public Ledger* and *Butner Creedmoor News.*	Mr. John W. Lewis, Jr., Granville County Manager, P.O. Box 906, Oxford, North Carolina 27565.	Sept. 23, 1994 ..	370325 C
Pennsylvania: Dauphin County (FEMA Docket No. 7123).	Township of Middle Paxton.	Oct. 7, 1994, Oct. 14, 1994, *The Patriot* and *The Evening News.*	Mr. Richard Peffer, Chairman, Middle Paxton Township Board of Supervisors, P.O. Box 277, Dauphin, Pennsylvania 17018.	Jan. 11, 1995	420387 B
New Jersey: Sussex County (FEMA Docket No. 7123).	Township of Byram	Mar. 23, 1994, Mar. 30, 1994, *The New Jersey Herald.*	The Honorable Richard A. Bowe, Mayor of the Township of Byram, 10 Mansfield Drive, Stanhope, New Jersey 07874.	Sept. 15, 1994 ..	340557
New York: Monroe County (FEMA Docket No. 7123).	Town of Gates	Oct. 5, 1994, Oct. 12, 1994, *Gates Chili News.*	Mr. Ralph J. Esposito, Supervisor for the Town of Gates, 1605 Buffalo Road, Rochester, New York 14624.	Sept. 28, 1994 ..	360416 B
West Virginia: Putnam County (FEMA Docket No. 7123).	Unicorporated areas	May 12, 1994, May 19, 1994, *Putnam Democrat.*	Mr. Dave Alford, President of the Putnam County Commission, P.O. Box 149, Winfield, West Virginia 25213.	May 6, 1994	540164

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: May 9, 1995.

Richard T. Moore,

Associate Director for Mitigation.

[FR Doc. 95–12124 Filed 5–16–95; 8:45 am]

BILLING CODE 6718–03–P

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified base (100-year) flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW, Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below of the final determinations of modified base (100-year) flood elevations for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Associate Director has resolved any appeals resulting from this notification.

The modified base (100-year) flood elevations are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified base (100-year) flood elevation determinations are available for inspection.

The modifications are made pursuant to Section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 et seq., and with 44 CFR Part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in base (100-year) flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base (100-year) flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective Date of modification	Community No.
Texas: Tarrant (FEMA Docket No. 7121).	City of Bedford	November 22, 1994, November 29, 1994, Fort Worth Star Telegram.	The Honorable Rick Hurt, Mayor, City of Bedford, P.O. Box 157, Bedford, Texas 76095.	October 31, 1994	480585

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: May 9, 1995.

Richard T. Moore,

Associate Director for Mitigation.

[FR Doc. 95–12125 Filed 5–16–95; 8:45 am]

BILLING CODE 6718–03–P

44 CFR Part 65

[Docket No. FEMA–7135]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (1% annual chance) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base (1% annual chance) flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any

person has ninety (90) days in which to request through the community that the Associate Director reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The modified base (1% annual chance) flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 et seq., and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base (1% annual chance) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This interim rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements. Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Illinois: DuPage County.	Unincorporated areas.	February 17, 1995, February 24, 1995, *The Chicago Tribune.*	Mr. Gayle Franzen, DuPage County Board Chairman, 421 North County Farm Road, Wheaton, Illinois 60187.	February 10, 1995	170197 B
Michigan: Macomb County.	City of Sterling Heights.	February 12, 1995, February 19, 1995, *The Source.*	The Honorable Richard J. Notte, Mayor of the City of Sterling Heights, 40555 Utica Road, P.O. Box 8009, Sterling Heights, Michigan 48311–8009.	February 2, 1995 ..	260128 E
Mississippi: Oktibbeha County.	Unincorporated areas.	February 15, 1995, February 22, 1995, *Starkville Daily News.*	Mr. David Oswalt, President of the Oktibbeha County Board of Supervisors, 101 East Main Street, Starkville, Mississippi 39759.	February 8, 1995 ..	280277 B
New Hampshire: Belknap County.	Town of Tilton	February 15, 1995, February 22, 1995, *Laconia Citizen.*	Mr. Kenneth Money, Senior Selectman for the Town of Tilton, 145 East Main Street, Tilton, New Hampshire 03276.	February 8, 1995 ..	330009 B
Rhode Island: Bristol County.	Town of Barrington	February 22, 1995, March 1, 1995, *Barrington Times.*	Dennis M. Phelan, Barrington Town Manager, 283 County Road, Barrington, Rhode Island 02806.	February 14, 1995	445392 E
South Carolina: Richland County.	Unincorporated areas.	February 10, 1995, February 17, 1995, *The State.*	Mr. W. Anthony McDonald, Richland County Administrator, P.O. Box 192, Columbia, South Carolina 29202.	May 18, 1995	450170 G

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: May 9, 1995.

Richard T. Moore,

Associate Director for Mitigation.

[FR Doc. 95–12127 Filed 5–16–95; 8:45 am]

BILLING CODE 6718–03–P

44 CFR Part 65

[Docket No. FEMA–7139]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (100-year) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base (100-year) flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Associate Director, Mitigation Directorate, reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base (100-year) flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW, Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The modified base (100-year) flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base (100-year) flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to Section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 et seq., and with 44 CFR Part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base (100-year) flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This interim rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
California: Solano ..	City of Vacaville	Mar. 23, 1995, Mar. 30, 1995, *The Reporter.*	The Honorable David A. Fleming, Mayor, City of Vacaville, 650 Merchant Street, Vacaville, California 95688.	Mar. 7, 1995	060373
Colorado: Douglas	Town of Parker	Mar. 15, 1995, Mar. 22, 1995, *Douglas County, News-Press.*	The Honorable Greg Lopez, Mayor, Town of Parker, 20120 East Main Street, Parker, Colorado 80134.	Feb. 21, 1995	080310

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Montana: Flathead	Unincorporated areas.	Mar. 16, 1995, Mar.23, 1995, *Daily Inter Lake.*	The Honorable Sharon L. Stratton Chairman, Flathead County, Board of Commissioners, 800 South Main Street, Kalispell, Montana 59901,.	Mar. 3, 1995	300023
Nevada: Independence.	City of Carson City	Mar. 23, 1995, Mar. 30, 1995, *Nevada Appeal.*	The Honorable Marv Teixeira, Mayor, City of Carson City, 2621 Northgate Lane, Carson City, Nevada 89706.	Feb. 27, 1995	320001
Texas: Dallas, Denton, City of Dallas Collin, Rockwall, and Kaufman.	City of Dallas	Mar. 15, 1995, Mar. 22, 1995, *Daily Commercial Record.*	The Honorable Steve Bartlett, Mayor, at Large, City of Dallas, 1500 Marilla, Office of the Mayor and City Council, 5E North, Dallas, Texas 75201.	Mar. 1, 1995	480171

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: May 9, 1995.

Richard T. Moore,

Associate Director for Mitigation.

[FR Doc. 95–12126 Filed 5–16–95; 8:45 am]

BILLING CODE 6718–03–P

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (1% annual chance) flood elevations and modified base (1% annual chance) flood elevations are made final for the communities listed below. The base (1% annual chance) flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) makes final determinations listed below of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the **Federal Register**.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
FLORIDA	
Taylor County, (unincorporated areas) (FEMA Docket No. 7112)	
Woods Creek:	
Approximately 350 feet upstream of confluence with Spring Creek	*31
Approximately 100 feet upstream of U.S. Route 221 and State Route 55	*50
Maps available for inspection at the Courthouse Basement, 108 North Jefferson Street, Perry, Florida.	
ILLINOIS	
Bolingbrook (village), Will County (FEMA Docket No. 7093)	
Lily Cache Creek:	
Approximately 2,200 feet downstream of 224th Avenue	*620
Approximately 1,600 feet upstream of Naperville Road	*658
Lily Cache Lane Tributary:	
Approximately 920 feet upstream of confluence with Lily Cache Creek	*674
Approximately 650 feet downstream of State Route 53	*698
Maps available for inspection at the Village Hall/Zoning Department, 375 West Briarcliff Road, Bolingbrook, Illinois.	
Channahon (village), Will County (FEMA Docket No. 7093)	
Du Page River:	
At confluence with Des Plaines River	*512
Approximately 0.54 mile downstream	*512
Maps available for inspection at the Village Hall, 24441 West Eames Street, Channahon, Illinois.	
Crete (village), Will County (FEMA Docket No. 7093)	
Deer Creek:	
Upstream face of Columbia Street Bridge	*693
Approximately 1,950 feet upstream of Columbia Street Bridge	*696
Maps available for inspection at the Village Hall, 524 West Exchange Street, Crete, Illinois.	
Elmhurst (city), DuPage County (FEMA Docket No. 7124)	
Salt Creek:	
Approximately 0.4 mile downstream of State Route 56 (Butterfield Road)	*662
Approximately 0.54 mile upstream of State Route 64 (North Avenue)	*673
Sugar Creek:	
At the confluence with Salt Creek	*663
At State Route 83 (Robert Kingery Expressway)	*684
Maps available for inspection at the Public Works Department, Elmhurst City Hall, 209 North York Street, Elmhurst, Illinois.	
Frankfort (village), Will County (FEMA Docket No. 7093)	
Hickory Creek Tributary A:	
Approximately 75 feet downstream of Saulic Trail Road	*710
Approximately 75 feet upstream of Saulic Trail Road	*710
Hickory Creek:	
Approximately 750 feet downstream of U.S. Route 45	*676
Approximately 0.4 mile upstream of U.S. Route 45	*678
Maps available for inspection at the Village Administration Building, 432 West Nebraska Street, Frankfort, Illinois.	
Joliet (city), Will County (FEMA Docket No. 7093)	
Rock Run North:	
Downstream face of Mound Road (at corporate limit)	*547
Approximately 1,200 feet upstream of Theodore Street	*583
Sunnyland Drain:	
Approximately 1,025 feet downstream of Caton Farm Road	*592
At Plainfield Road (U.S. Route 30)	*604
Sunnyland Drain Tributary:	
At Hennepin Road	*602
Approximately 700 feet downstream of Stateville Road	*605
Rock Run South:	
At confluence with Des Plaines River	514
Approximately 1,500 feet downstream of U.S. Route 6	*514
Rock Run Tributary No. 1:	
At confluence with Rock Run North	*578
Approximately 1,500 feet upstream of Barber Lane	*623
Rock Run Tributary No. 2:	
Approximately 160 feet upstream of confluence with Rock Run North	*577
Approximately 800 feet upstream of Barber Lane	*622
Rock Run Tributary No. 3:	
Approximately 50 feet downstream of Jefferson Street	*580
Approximately 520 feet upstream of Barney Road	*632
Hickory Creek:	
Approximately 1,150 feet downstream of McKinley Avenue	*518
Approximately 850 feet upstream of Gougar Road	*605
Sugar Run:	
At Chicago Street (State Route 55)	*565
Approximately 200 feet downstream of Wildwood Lane	*588
Maps available for inspection at the City Hall, 150 West Jefferson Street, Joliet, Illinois.	
Lockport (city), Will County (FEMA Docket No. 7093)	
Des Plaines River:	
Approximately 150 feet upstream of W. 9th Street	*565
Approximately 250 feet upstream of W. 9th Street	*585
Maps available for inspection at the City Hall, 222 East 9th Street, Lockport, Illinois.	
Plainfield (village), Will County (FEMA Docket No. 7093)	
Lily Cache Creek:	
Approximately 3,350 feet downstream of U.S. Route 30	*593
Approximately 1,600 feet upstream of Lockport Street	*601
West Norman Drain:	
Downstream side of State Route 59	*608
Approximately 1,250 feet upstream of U.S. Route 30	*628
Maps available for inspection at the Village Hall, 1400 North Division Street, Plainfield, Illinois.	
Romeoville (village), Will County (FEMA Docket No. 7093)	
Des Plaines River:	
Approximately 600 feet downstream of 135th Street (Romeo Road)	*586
Approximately 2,600 feet upstream of 135th Street (Romeo Road)	*588

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
Maps available for inspection at the Village Hall Annex Building, 17 Montrose Drive, Romeoville, Illinois.	
Will County (unincorporated areas) (FEMA Docket No. 7093)	
Jackson Branch Creek:	
Approximately 300 feet downstream of Cherry Hill Road Bridge	*651
Upstream face of Spencer Road Bridge	*703
Hickory Creek Tributary A:	
Approximately 75 feet upstream of Saulic Trail Road	*710
Approximately 150 feet upstream of Saulic Trail Road	*710
Lily Cache Creek:	
Approximately 3,750 feet downstream of U.S. Route 30	*593
At Rockhurst Road	*696
Marley Creek:	
At confluence with Hickory Creek	*635
Approximately 450 feet downstream of Norfolk Southern Railway Bridge	*641
Naperville Road Tributary:	
At confluence with Lily Cache Creek	*655
Approximately 850 feet downstream of Naperville Road	*655
Sunnyland Drain:	
Approximately 1,025 feet downstream of Caton Farm Road	*592
Approximately 100 feet upstream of Elgin, Joliet, and Eastern Railway	*621
Sunnyland Drain Tributary:	
At Plainfield Road	*604
Approximately 100 feet upstream of Elgin, Joliet, and Eastern Railway	*615
West Norman Drain:	
Approximately 200 feet downstream of 143rd Street	*610
Approximately 0.6 mile upstream of Ferguson Road (119th Street)	*695
Wolf Creek:	
Upstream side of Book Road	*620
Approximately 0.7 mile upstream of 111th Street	*681
Deer Creek:	
Approximately 1.2 miles upstream of Blackhawk Drive	*744
Approximately 1.3 miles upstream of Blackhawk Drive	*744
Hickory Creek Tributary 1:	
Approximately 1,250 feet downstream of Indiana Court	*690
Approximately 650 feet downstream of U.S. Route 45	*714
Thorn Creek:	
Approximately 0.27 mile upstream of Thorn Creek Drive	*700
Approximately 0.39 mile upstream of Thorn Creek Drive	*701
Des Plaines River:	
Approximately 600 feet downstream of 135th Street (Romeo Road)	*586
Approximately 1.78 miles upstream of 135th Street (Romeo Road)	*589
Springhole Creek:	
Approximately 75 feet upstream of Old Indian Boundary Line Road	*508
Approximately 1,375 feet upstream of Old Indian Boundary Line Road	*611
Spring Creek Tributary:	
Approximately 1,300 feet downstream of Lioletta Avenue	*601
Approximately 900 feet downstream of Lioletta Avenue	*607
Jackson Creek:	
Approximately 1.26 miles upstream of Illinois Central Gulf Railroad	*599
Approximately 1.29 miles upstream of Illinois Central Gulf Railroad	*599
Kankakee River:	
Approximately 1,500 feet east along South River Road from its intersection with Jewel Lane	*535
Plum Creek:	
Approximately 1,550 feet upstream of the county boundary	*646
Approximately 400 feet upstream of Richton Road	*660
Lily Cache Lane Tributary:	
Approximately 920 feet upstream of confluence with Lily Cache Creek	*674
Approximately 1,180 feet downstream of Lily Cache Lane	*691
Maps available for inspection at the Health Department, Land Use Building, 501 Ella Avenue, Joliet, Illinois.	
KENTUCKY	
Taylor Mill (city), Kenton County (FEMA Docket No. 7110)	
Banklick Creek:	
Approximately 0.5 mile downstream of State Highway 16	*499
Approximately 1,300 feet upstream of State Highway 16	*499
Map available for inspection at the City Hall, 5225 Taylor Mill Road, Taylor Mill, Kentucky.	
MINNESOTA	
Olmsted County (unincorporated areas) (FEMA Docket No. 7120)	
South Fork Zumbro River:	
Approximately 1.1 miles downstream of 37th Street NW	*969
At Mayowood Road SW	*1036
Cascade Creek:	
Approximately 0.6 mile upstream of U.S. Highway 52	*1007
At County Road 34	*1019
Middle Fork Zumbro River:	
Approximately 0.7 mile upstream of southbound lane U.S. Highway 52	*964
Approximately 0.8 mile upstream of southbound lane U.S. Highway 52	*964
North Branch Root River:	
Approximately 700 feet downstream of abandoned Chicago and North Western Railway	*1185
At County Road 6 (6th Street SW) At Lake Florence	*1202
South Fork Whitewater River:	
Approximately 0.5 mile downstream of Chicago and North Western Railway	*1136
At confluence of Tributary B	*1145
West Tributary to Willow Creek:	
Approximately 630 feet downstream of Chicago and North Western Railway	*1023
Approximately 950 feet upstream of Chicago and North Western Railway	*1031
West Fork of Willow Creek:	
Approximately 400 feet upstream of the confluence with Willow Creek	*1066
Approximately 470 feet upstream of the confluence with Willow Creek	*1066
South Run of the North Fork of Cascade Creek:	
Approximately 0.9 mile upstream of Chicago and North Western Railway	*1035
Approximately 1.3 miles upstream of Chicago and North Western Railway	*1041
East Fork of Willow Creek:	
At confluence with Willow Creek	*1022
At County Road #101	*1075
South Fork of Willow Creek:	
At confluence with Willow Creek	*1040
Approximately 1,075 feet upstream of confluence with Willow Creek	*1043
South Branch Middle Fork Zumbro River:	
Approximately 0.6 mile upstream of southbound lane U.S. Highway 52	*964

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 1.1 miles upstream of southbound lane U.S. Highway 52	*965
Willow Creek:	
Approximately 250 feet downstream of the confluence of East Fork Willow Creek	*1022
At 48th Street SW	*1075
Maps available for inspection at the County Auditor's Office Government Center, 151 4th Street, SE., Rochester, Minnesota.	
Rochester (city), Olmsted County (FEMA Docket No. 7120 and 7124)	
Bear Creek:	
At confluence with South Fork Zumbro River	*986
Approximately 400 feet downstream of 6th Street, SE.	*993
Approximately 0.8 mile upstream of confluence with South Fork Zumbro River	*1004
Approximately 200 feet upstream of the confluence of Willow Creek	*1012
Cascade Creek:	
At confluence with South Fork Zumbro River	*979
Approximately 50 feet downstream of County Road 34	*1017
Silver Creek:	
At confluence with South Fork Zumbro River	*981
At Silver Creek Road	*1015
South Fork of Willow Creek:	
Approximately 1,650 feet upstream of confluence with Willow Creek	*1045
Approximately 500 feet downstream of St. Bridget Road	*1047
South Fork of Zumbro River:	
Approximately 1.1 miles downstream of 37th Street, NW	*969
At confluence of Bear Creek	*986
Approximately 750 feet upstream of 16th Street, SW	*1005
Approximately 0.6 mile downstream of Mayowood Road	*1027
West Tributary to Willow Creek:	
Approximately 630 feet downstream of Chicago and North Western Railway	*1023
Approximately 400 feet downstream of Chicago and North Western Railway	*1025
Willow Creek:	
At confluence with Bear Creek	*1012
Approximately 0.7 mile upstream of County Road 147	*1094
West Fork of Willow Creek:	
At confluence with Willow Creek	*1066
Approximately 400 feet upstream of confluence with Willow Creek	*1066
Cascade Creek Split Flow:	
Approximately 300 feet upstream of 16th Avenue	*1001
Approximately 0.5 mile downstream of U.S. Highway 52	*1004
Maps available for inspection at the City Clerk's Office, Government Center, 224 1st Avenue, S.W., Rochester, Minnesota.	
MISSISSIPPI	
Lauderdale County, (unincorporated areas) (FEMA Docket No. 7120)	
Sowashee Creek:	
Approximately 4.3 miles downstream of 49th Avenue (Valley Road)	*286
Approximately 2.4 miles upstream of U.S. Highway 45 By-pass	*383
Okatibbee Creek:	
Approximately 1.16 miles downstream of the confluence of Burwell Creek	*289
Approximately 1.03 miles downstream of the confluence of Burwell Creek	*289
Maps available for inspection at the Lauderdale County Courthouse Tax Assessor's Office, 500 Constitution Avenue, Meridian, Mississippi.	
Marion (town), Lauderdale County (FEMA Docket No. 7116)	
Sowashee Creek:	
Approximately 0.8 mile upstream of confluence of Nanabe Creek	*344
Approximately 1.3 miles upstream of U.S. Highway 45 By-pass	*372
Maps available for inspection at the Marion Town Hall, 6021 Dale Drive, Marion, Mississippi.	
Meridian (city), Lauderdale County (FEMA Docket No. 7120)	
Sowashee Creek:	
Approximately 3 miles downstream of 49th Avenue (Valley Road)	*289
Approximately 0.9 mile downstream of confluence of Nanabe Creek	*340
Gallagher Creek:	
At confluence with Sowashee Creek	*307
Approximately 0.2 mile upstream of the confluence with Sowashee Creek	*308
Robbins Branch:	
At confluence with Sowashee Creek	*330
At U.S. Highway 45 bridge	*330
Magnolia Branch:	
At confluence with Sowashee Creek	*321
Approximately 400 feet on the downstream side of the Illinois Central Railroad bridge	*329
Okatibbee Creek:	
Approximately 1.16 miles downstream of the confluence of Burwell Creek	*289
Approximately 1.03 miles downstream of the confluence of Burwell Creek	*289
Maps available for inspection at the Meridian City Hall, 601 24th Avenue, Meridian, Mississippi.	
NEW YORK	
Ballston (town), Saratoga County (FEMA Docket No. 7120)	
Larue Creek:	
Approximately 1.39 miles downstream of Jenkins Road	*352
Approximately 1.02 miles downstream of Jenkins Road	*362
Maps available for inspection at the Ballston Town Office, 323 Charlton Road, Ballston Spa, New York 12020.	
Ballston Spa (village), Saratoga County (FEMA Docket No. 7120)	
Kayaderosseras Creek (Lower Reach):	
Approximately 1,700 feet downstream of Ralph Road	*232
At the upstream side of Ralph Road	*237
Maps available for inspection at the Ballston Spa Village Office, 66 Front Street, Ballston Spa, New York.	
Ellicottville (town), Cattaraugus County (FEMA Docket No. 7064 and 7116)	
Elk Creek:	
Approximately 650 feet downstream of Maples Ellicottville Road	*1,548
Approximately 1.5 miles upstream of Maples Ellicottville Road	*1,598

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
Plum Creek:	
Approximately 620 feet upstream of confluence with Great Valley Creek	*1,534
Approximately 0.3 mile upstream of State Route 242	*1,740
South Branch Plum Creek:	
At confluence with Plum Creek	*1,665
Approximately 260 feet upstream of Woods Road	*1,742
Great Valley Creek:	
Approximately 900 feet upstream of downstream corporate limits	*1,514
At Chessie System	*1,552
Holiday Valley Creek:	
Approximately 1,025 feet downstream of Chessie System	*1,521
At the upstream crossing of Holiday Valley Road	*1,649
Shallow Flooding Area:	
Between Chessie System and U.S. Route 219	#2
South of intersection of U.S. Route 219 and Holiday Valley Road	#2
Maps available for inspection at the Ellicottville Town Hall, 1 West Washington, Ellicottville, New York.	
Greenfield (Town), Saratoga County (FEMA Docket No. 7120)	
Kayaderosseras Creek (Upper Reach):	
Approximately 100 feet downstream of downstream corporate limits	*523
Approximately 150 feet upstream of the downstream corporate limits	*523
Maps available for inspection at the Greenfield Town Hall, Corner of 9N and Walton Road, Greenfield Center, New York.	
Malta (town), Saratoga County (FEMA Docket No. 7120)	
Kayaderosseras Creek:	
Approximately 1,000 feet downstream of the upstream corporate limits	*228
At upstream corporate limits	*229
Maps available for inspection at the Malta Town Hall, 2840 Route 9, Malta, New York.	
Northumberland (town), Saratoga County (FEMA Docket No. 7120)	
Snook Kill:	
Approximately 50 feet downstream of Mott Road	*132
At Strong Road	*244
Maps available for inspection at the Northumberland Town Office, Cathrine Street, Northumberland, New York.	
Waterford (town), Saratoga County (FEMA Docket No. 7120)	
Hudson River:	
At downstream corporate limits	*36
Approximately 300 feet upstream of the downstream corporate limits	*36
Fourth Branch Mohawk River (Left Channel):	
Approximately 1,140 feet upstream of confluence with Fourth Branch Mohawk River	*44
Approximately 1,400 feet upstream of confluence with Fourth Branch Mohawk River	*48
Maps available for inspection at the Waterford Town Clerk's Office, 65 Broad Street, Waterford, New York.	
PENNSYLVANIA	
California (borough), Washington County (FEMA Docket No. 7110)	
Monongahela River:	
Approximately 1.3 miles downstream of confluence of Pike Run	*769
Approximately 2.9 miles upstream of the confluence of Pike Run	*773
Maps are available for inspection at the Municipal Building, 114 5th Street, California, Pennsylvania.	
Coal Center (borough), Washington County (FEMA Docket No. 7110)	
Monongahela River:	
Approximately 1,650 feet downstream of confluence of Pike Run	*770
Approximately 200 feet upstream of confluence of Pike Run	*770
Maps available for inspection at the Coal Center Borough Building, 132 Water Street, Coal Center, Pennsylvania.	
West Brownsville (borough), Washington County (FEMA Docket No. 7110)	
Monongahela River:	
Approximately 100 feet downstream of confluence of Lily Run	*773
Approximately 1,350 feet upstream of Bridge Street	*775
Maps available for inspection at the West Brownsville Borough Building, 235 Main Street, West Brownsville, Pennsylvania, or at the home of Mr. Jack J. Sabo, West Brownsville Secretary, 615 Woodlawn Avenue, West Brownsville, Pennsylvania.	
TENNESSEE	
Hendersonville (city), Sumner County (FEMA Docket No. 7116)	
Drakes Creek:	
Approximately 1.31 miles upstream of Gallatin Pike	*460
At the downstream side of Long Hollow Pike	*515
Drakes Creek Right Bank Tributary No. 2:	
Approximately 50 feet upstream of Louisville and Nashville Railroad	*455
Approximately 0.18 mile upstream of Forest Retreat Road	*522
Drakes Creek Right Bank Tributary No. 3:	
At confluence with Drakes Creek	*467
Approximately 0.15 mile upstream of Goshen Town Road	*527
Drakes Creek Left Bank Tributary No. 1:	
At confluence with Drakes Creek	*466
At upstream side of Stop Thirty Road	533
Drakes Creek Unnamed Tributary No. 1:	
At confluence with Drakes Creek Right Bank Tributary	*452
Approximately 0.29 mile upstream of Wessington Place	*522
Maps available for inspection at the Hendersonville City Hall, One Executive Park Drive, Hendersonville, Tennessee.	

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: May 9, 1995.

Richard T. Moore,

Associate Director for Mitigation.

[FR Doc. 95–12121 Filed 5–16–95; 8:45 am]

BILLING CODE 6718–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Parts 205, 224, 233, 238, 239, 240, and 282

Public Assistance Programs; etc.; Removal of Obsolete Work Program Regulations

AGENCY: Administration for Children and Families (ACF), HHS.

ACTION: Final rule; removal.

SUMMARY: This notice removes several obsolete provisions from the Code of Federal Regulations. Most involve work program activities which were superseded when State welfare agencies began their JOBS programs in 1989 or 1990.

DATES: Effective date is May 17, 1995.

FOR FURTHER INFORMATION CONTACT: Ann Burek (202) 401–4528.

SUPPLEMENTARY INFORMATION: In September of 1993 President Clinton issued Executive Order 12866 which called for Federal regulations which were less burdensome, more effective and more consistent with Administration priorities. In response, in January of 1994, ACF published a notice in the **Federal Register** providing a plan for periodic review of existing rules and soliciting ideas.

In early March of 1995, the President issued a new directive to Federal agencies regarding their responsibilities under his Regulatory Reinvention Initiative. (This initiative is part of the National Performance Review and calls for more immediate, comprehensive regulatory reform.) He directed all agencies to undertake an exhaustive review of all their regulations—with an eye towards eliminating or modifying those that are obsolete or which are otherwise in need of reform. This notice represents one of the first steps in ACF's response to this new directive.

We are issuing a final rule rather than a notice of proposed rulemaking because we have determined, for good cause, that publication of a proposed rule and solicitation of comments would be neither necessary nor fruitful. This final rule affects only obsolete provisions and programs. Furthermore, this final rule will be effective immediately upon publication. It is unnecessary to postpone the effective date since none of the provisions being removed are in effect, and no time for implementation is required.

Statutory Authority

We are publishing these rules under the general authority provided under section 1102 of the Social Security Act, 42 U.S.C. § 1302. This section requires publication of regulations that may be necessary for the efficient administration of the functions under the Social Security Act.

Work Programs

Under the Family Support Act of 1988, Pub. L. 100–485, Congress created the Job Opportunities and Basic Skills Training (JOBS) program to improve the job prospects of welfare recipients and help them become self-sufficient. It required States to begin operating their JOBS programs by October 1, 1990. If a State began operating its JOBS programs sooner, the regulations governing the separate work programs authorized under parts A and C of title IV of the Social Security Act—i.e., the Work Incentive (or WIN) program; the Work Incentive Demonstration (or WIN Demo) program; the Community Work Experience Program (or CWEP); the Work Supplementation Program; and the Employment Search Program—became inapplicable with the start of the JOBS program. Nationwide, these programs were repealed as of October 1, 1990. Thus, the regulations which governed these programs are obsolete. (In fact, the regulations at 45 CFR 224.0(c), 238.01(b), 239.01(b), and 240.01(b) explicitly provided for the repeal of the provisions of parts 224, 238, 239 and 240, respectively, effective October 1, 1990.)

Accordingly, this notice removes parts 224 (covering WIN), 238 (covering CWEP), 239 (covering Work Supplementation), and 240 (covering Employment Search) from Title 45. It also removes regulations at: 1) 45 CFR 233.20(a)(11)(iv), which provided for the disregard of certain payments made under the WIN program; and 2) 45 CFR 205.146(a), which provided for penalties on States which did not meet WIN certification requirements.

The only regulations issued for the WIN Demo program were regulations governing WIN Demo evaluations. These regulations, at 45 CFR 205.80, are also obsolete and being removed.

Demonstration Projects

Section 1115(b) of the Social Security Act authorizes work-related demonstration projects for welfare recipients. Under paragraph (6) of that subsection, such demonstrations could not extend beyond September 30, 1980. Thus, we have no further need of rules for these demonstrations, and we are deleting 45 CFR part 282.

Income, Eligibility and Verification Systems

Finally, 45 CFR 205.62 includes provisions covering the initial implementation of State Income, Eligibility and Verification Systems (or IEVS) in 1986. Since the provisions are no longer relevant, we are deleting them.

Regulatory Procedures—Executive Order 12866

This final rule has been reviewed pursuant to Executive Order 12866. Executive Order 12866 requires that regulations be reviewed for consistency with the priorities and principles set forth in the Executive Order. ACF has determined that this rule is consistent with these priorities and principles. Most specifically, it responds directly to the President's new Regulatory Reinvention Initiative by cutting obsolete regulations and getting rid of yesterday's government. It entails no increase in cost or burden on State and local governments or other entities.

Regulatory Flexibility Act

Consistent with the Regulatory Flexibility Act (Pub. L. 96–354), which requires the Federal government to anticipate and reduce the impact of rules and paperwork requirements on small businesses and other small entities, the Department certifies that this rule has no significant effect on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

This regulation contains no information collection requirements which are subject to review and approval by OMB under the Paperwork Reduction Act of 1980 (44 U.S.C. § 3500 *et. seq.*).

List of Subjects

45 CFR Part 205

Computer technology, Grant programs—social programs, Privacy, Public Assistance programs, Reporting and recordkeeping requirements, Wages.

45 CFR Part 224

Administrative practice and procedure, Grant programs—social programs, Reporting and recordkeeping requirements, Work Incentive (WIN) Programs.

45 CFR Part 233

Aliens, Grant programs—social programs, Public assistance programs, Reporting and recordkeeping requirements.

25 CFR Part 238

Aid to Families with Dependent Children, Grant programs—social programs.

45 CFR Part 239

Aid to Families with Dependent Children, Employment, Grant programs—social programs.

45 CFR Part 240

Aid to Families with Dependent Children, Employment, Grant programs—social programs.

45 CFR Part 282

Aid to Families with Dependent Children, Employment, Family Assistance Office, Grant programs—social programs, Manpower training programs.

(Catalog of Federal Assistance Programs No. 93.560 Family Support Payments to States—Assistance Payments (AFDC Maintenance Assistance—State Aid); and No. 93.562, Assistance Payments—Research.)

Dated: April 25, 1995.

May Jo Bane,

Assistant Secretary for Children and Families.

Accordingly, we are amending Chapter II of Title 45 of the Code of Federal Regulations as set forth below:

PART 205—GENERAL ADMINISTRATION—PUBLIC ASSISTANCE PROGRAMS

1. The authority citation for part 205 continues to read as follows:

Authority: 42 U.S.C. 602, 603, 606, 608, 1302, and 1306(a).

§§ 205.62 and 205.80 [Removed]

2. Sections 205.62 and 205.80 are removed.

§ 205.146 [Removed and Reserved]

3. Section 205.146(a) is removed and reserved.

PART 224—WORK INCENTIVE PROGRAMS FOR AFDC RECIPIENTS UNDER TITLE IV OF THE SOCIAL SECURITY ACT

1. Under the authority of section 1102 of the Social Security Act, Part 224 is removed.

PART 233—COVERAGE AND CONDITIONS OF ELIGIBILITY IN FINANCIAL ASSISTANCE PROGRAMS

1. The authority citation for Part 233 continues to read as follows:

Authority: 42 U.S.C. 301, 602, 602 (note), 606, 607, 1202, 1302, 1352, and 1382 (note).

§ 233.20 [Amended]

2. Section 233.20 is amended by removing and reserving paragraph (a)(11)(iv).

PART 238—COMMUNITY WORK EXPERIENCE PROGRAM

1. Under the authority of section 1102 of the Social Security Act, Part 238 is removed.

PART 239—WORK SUPPLEMENTATION PROGRAM

1. Under the authority of section 1102 of the Social Security Act, Part 239 is removed.

PART 240—EMPLOYMENT SEARCH PROGRAM

1. Under the authority of section 1102 of the Social Security Act, Part 240 is removed.

PART 282—DEMONSTRATION PROJECTS

1. Under the authority of section 1102 of the Social Security Act, Part 282 is removed.

[FR Doc. 95–11911 Filed 5–16–95; 8:45 am]

BILLING CODE 4184–01–M

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45 CFR Parts 1010, 1050, 1060, 1061, 1064, 1067, 1068, 1069, 1070, and 1076

Removal of Obsolete Provisions Related to the Former Community Services Administration

AGENCY: Administration for Children and Families (ACF), HHS.

ACTION: Final rule.

SUMMARY: This final rule removes a number of obsolete provisions from the Code of Federal Regulations. These provisions concern program activities under the former Community Services Administration (CSA) which were superseded by Community Services Block Grant Act, enacted as part of the Omnibus Budget Reconciliation Act of 1981.

DATES: Effective date is May 17, 1995.

FOR FURTHER INFORMATION CONTACT: Mae Brooks, (202) 401–9344.

SUPPLEMENTARY INFORMATION: In September of 1993, President Clinton issued Executive Order 12866 which called for Federal regulations which were less burdensome, more effective and more consistent with Administration priorities. In response, in January of 1994, ACF published a notice in the **Federal Register** providing a plan for periodic review of existing rules and soliciting ideas.

In early March of 1995, the President issued a new directive to Federal agencies regarding their responsibilities under his Regulatory Reinvention Initiative. This initiative is part of the National Performance Review and calls for immediate, comprehensive regulatory reform. He directed all agencies to undertake an exhaustive review of all their regulations—with an eye towards eliminating or modifying those that are obsolete or which are otherwise in need of reform. This final rule represents one of the first steps in ACF's response to this new directive.

We are issuing a final rule rather than a notice of proposed rulemaking because we have determined, for good cause, that publication of a proposed rule and solicitation of comments would be neither necessary nor fruitful. This final rule affects only obsolete provisions and programs. Furthermore, this final rule will be effective immediately upon publication because none of the provisions being removed is in effect and no time for implementation is required.

Background

On August 13, 1981, the Community Services Block Grant (CSBG) Act was enacted as part of the Omnibus budget Reconciliation Act (OBRA) of 1981 (Pub. L. 97–35, 42 U.S.C. 9901 *et seq.*). OBRA of 1981 created seven block grants in the Department of Health and Human Services, one of which was the Community Services Block Grant (CSBG) established through the CSBG Act. The CSBG Act also established a new Office of Community Services to administer the CSBG program. This new office replaced the former Community Services Administration (CSA), and the new CSBG program replaced the programs administered through the former CSA.

Soon after passage of OBRA of 1981, the Department developed and published final rules at 45 CFR Part 96 to govern the seven new block grant programs created by OBRA of 1981, including CSBG (See 47 FR 29486, July 6, 1982). Therefore, the regulations which governed the former Community Services Administration and its grantees are being removed because they are absolete.

Accordingly, this regulation removes 45 CFR Parts 1010 (civil rights program requirements of CSA grantees; civil rights regulations), 1050 (uniform federal standards), 1060 (general characteristics of CSA-funded programs), 1061 (character and scope of specific programs), 1064 (limited purpose agencies; eligibility, organization and functions) 1067 (funding of CSA grantees), 1068 (grantee financial management), 1069 (grantee personnel management), 1070 (grantee public affairs), 1076 (economic development programs).

Regulatory Procedures

Executive Order 12866

This final rule has been reviewed pursuant to Executive Order 12866. Executive Order 12866 requires that regulations be reviewed for consistency with the priorities and principles set forth in the Executive Order. ACF has determined that this rule is consistent with these priorities and principles. Most specifically, it responds directly to the President's new Regulatory Reinventor Initiative by cutting obsolete regulations. It entails no increase in cost or burden on State and local governments or other entities.

Regulatory Flexibility Act

Consistent with the Regulatory Flexibility Act (Pub. L. 96–354), which requires the Federal government to anticipate and reduce the impact of rules and paperwork requirements on small businesses and other small entities, the Department certifies that this rule has no significant effect on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

This regulation contains no information collection requirements which are subject to review and approval by OMB under the Paperwork Reduction Act of 1980 (44 U.S.C. section 3500 *et seq.*).

List of Subjects

45 CFR Part 1010

Administrative practice and procedures, Civil rights, Community activities programs, Community Services Offices, Grant programs—social programs.

45 CFR Part 1050

Administration practice and procedures, Civil rights, Community activities programs, Community Services Offices, Grant programs—social programs, Government procedures, Report and recordkeeping, Charity bonds.

45 CFR Part 1060

Administrative practice and procedures, Civil rights, Community activities programs, Community Services offices, Grant programs—social programs.

45 CFR Part 1061

Aged, Community Services Offices, Energy, Family planning, Nutrition, Recreation and recreation activities, Reporting and recordkeeping.

45 CFR Part 1064

Administrative practice and procedures, Civil rights, Community activities programs, Community Services Offices, Grant programs—social programs.

45 CFR Part 1067

Administrative practice and procedures, Civil rights, Community activities programs, Community Services Offices, Grant programs—social programs, Accounting.

45 CFR Part 1068

Administrative practice and procedures, Civil rights, Community activities programs, Community Services Offices, Grant programs—social programs, Accounting, Income taxes, Social security.

45 CFR Part 1069

Civil disorders, Community Services Offices, Lobbying, Political activities (government employees), Social security, Travel.

45 CFR Part 1070

Administrative practice and procedures, Civil rights, Community activities programs, Community Services Offices, Grant programs—social programs, News media.

45 CFR Part 1076

Administrative practice and procedures, Civil rights, Community activities programs, Community Services Offices, Grant programs—social programs, Credit unions, Loan programs—social programs, Rural areas and small businesses.

(Catalog of Federal Domestic Assistance Program Number 93.569, Community Services Block Grant)

(42 U.S.C. 9912)

Dated: April 25, 1995.

Mary Jo Bane,

Assistant Secretary for Children and Families.

For the reasons set forth in the preamble and under the authority of 42 U.S.C. 9912, Chapter X of title 45 is amended by removing parts 1010, 1050, 1060, 1061, 1064, 1067, 1068, 1069 1070, and 1076.

[FR Doc. 95–11912 Filed 5–16–95; 8:45 am]

BILLING CODE 4184–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 24

[GEN Docket No. 90–314, ET Docket No. 92–100, FCC 95–92]

Personal Communications Services

AGENCY: Federal Communications Commission (FCC).

ACTION: Correction to final rules.

SUMMARY: This document contains corrections to the final rules which were published Wednesday, March 15, 1995, (60 FR 13915). The rules related to the ownership attribution of licenses in view of the Commission's decisions to use a multiplier when assessing indirect ownership interests.

EFFECTIVE DATE: March 15, 1995.

FOR FURTHER INFORMATION CONTACT: Michael Wack, Policy Division, Wireless Telecommunications Bureau, (202) 418–1310.

SUPPLEMENTARY INFORMATION: On March 3, 1995, the Commission released the full text of a Memorandum Opinion and Order (Order) in the captioned matter (FCC 95–92). However, there are several errors in the appendix to the Order, "Appendix A: Final Rules," as released and as subsequently published in the **Federal Register**, on March 15, 1995, at 60 FR 13915. There is a need for correction because these rules contain errors which may prove misleading and are in need of clarification. The final rules that are the subject of these corrections supersede §§ 24.101(b) and 24.229(c) on the effective date of publication in the **Federal Register** and affect nationwide narrowband PCS licenses and certain other PCS licensees that are institutional investors.

Accordingly, the publication on March 15, 1995 of the final regulations, which were the subject of FR Doc. 95–6488, is corrected as follows:

§ 24.101 [Corrected]

1. On page 13917, first column, in § 24.101, in paragraph (b), line one, the word "had" is removed and the words "applies for a license after August 16, 1994 or has a license transferred to it after that date, and the party has" are added in its place.

§ 24.229 [Corrected]

2. On page 13917, third column, in § 24.229, paragraph (c) is corrected to read as follows:

§ 24.229 Frequencies.

* * * * * *

(c) PCS licensees shall not have an ownership interest in frequency blocks

that total more than 40 MHz and serve the same geographic area. For purposes of this section, PCS licensees are:

(1) Any institutional investor, as defined in § 24.720(h), with an ownership interest of 10 or more percent in a broadband PCS license; and

(2) Any other entities having an ownership interest of 5 or more percent or other attributable ownership interest, as defined in § 24.204(d), in a PCS license.

Example 1: Company A, which is a rural telephone company with no cellular interests, buys a 7 percent stake in a 30 MHz BTA that constitutes 8 percent of the population in MTA 1, which encompasses BTA 1. It is then offered an opportunity to buy 8 percent of the equity in a 30 MHz license in MTA 1. It cannot accept this offer because it would be over the 5 percent threshold on two overlapping PCS licenses. Its status as a rural telephone company has no impact on the 5 percent threshold for PCS licensees.

Example 2: (1) Company A has two investors, Company B and Company C. Company B owns 15 percent of Company A. Company C, a rural telephone company, owns 25 percent of Company A. Company B and Company C do not have any interests in each other.

(2) Company B has 100 percent ownership of cellular license 1 that covers 20 percent of the pops in BTA 1 and 6 percent of the pops in MTA 1. Company C owns 25 percent of cellular license 2 that covers 20 percent of the pops in BTA 2 and 6 percent of the pops in MTA 1. Company A has no separate cellular interests. MTA 1 encompasses both BTA 1 and BTA 2.

(3) Company A cannot purchase 30 MHz of spectrum in BTA 1. Such a purchase would put Company B over the aggregation limit of 40 MHz in BTA 1 because it would have over 5 percent ownership of the PCS license in addition to its cellular license.

(4) Company A can, however, purchase 30 MHz in BTA 2 or MTA 1 because Company C is a rural telephone company, and thus Company C's interest in cellular license 2 falls below the 40 percent threshold and is not counted against the spectrum cap. If Company C were not a rural telephone company, then Company A could not acquire 30 MHz in BTA 2 or MTA 1 because its partners in those licenses would be over the spectrum cap.

(5) Company B can also buy 30 MHz in BTA 2 or MTZ 1 as long as Company A does not also buy 30 MHz in BTA 2 or MTA 1 because Company B and Company C have no joint ownership.

(6) Company C can also buy 30 MHz in BTA 1 or 2 or MTA 1 as long as Company A does not also buy in the region where Company C buys. If Company A were to buy a 30 MHz MTA 1 license, then Company B and Company C would be prohibited from acquiring either of the BTAs because they would be over the 5 percent threshold for PCS spectrum in the same region.

* * * * *

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–11931 Filed 5–16–95; 8:45 am]

BILLING CODE 6712–01–M

Proposed Rules

Federal Register

Vol. 60, No. 95

Wednesday, May 17, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 50, 51, 77 and 78

[Docket No. 95–006–1]

Tuberculosis and Brucellosis in Cattle and Bison; Identification Requirements

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the tuberculosis and brucellosis regulations by requiring brands for certain cattle and bison to be placed on the hip rather than the jaw. This action would reduce distress to cattle and bison that need to be identified with a brand by moving the brand to a less sensitive location, but would allow them to continue to be clearly identified. We are also proposing to allow certain cattle and bison to be moved interstate to slaughter without branding if they are accompanied directly to slaughter by an Animal and Plant Health Inspection Service or State representative or are moved in vehicles closed with official seals. This proposed rule responds to increasing public concern that branding on the jaw causes unnecessary distress to cattle and bison.

DATES: Consideration will be given only to comments received on or before June 16, 1995.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 95–006–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 95–006–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. J.D. Kopec, Senior Staff Veterinarian, Cattle Diseases and Surveillance, VS, APHIS, Suite 3B08, 4700 River Road Unit 36, Riverdale, MD 20737–1231; (301) 734–6188.

SUPPLEMENTARY INFORMATION:

Background

Bovine tuberculosis is a serious communicable disease of cattle, bison, and other species, including humans, caused by *Mycobacterium bovis*. Tuberculosis causes weight loss, general debilitation, and sometimes death.

Brucellosis, also called Bang's disease or undulant fever, is a serious infectious disease of cattle, bison, and other species, including humans, caused by bacteria of the genus *Brucella*. Brucellosis in cattle and bison is characterized by the birth of weak or stillborn calves, slow breeding, abortion, and loss of milk production.

In accordance with the regulations in 9 CFR parts 50, 51, 77, and 78 (referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) administers programs designed to control and eradicate tuberculosis and brucellosis in cattle and bison. As part of these programs, hot-iron branding on the jaw and on the tailhead is used to identify certain cattle and bison. Specifically, hot-iron branding on the jaw is required or allowed in the following cases: (1) To identify cattle or bison that have contracted or been exposed to tuberculosis or brucellosis; (2) to identify certain cattle or bison to be moved interstate to slaughter because of tuberculosis or brucellosis; and (3) to identify adult cattle or bison that have been immunized against brucellosis.

There has been increasing public concern that hot-iron branding on the jaw may cause undue distress to cattle and bison. A number of animal rights groups and other members of the public have requested that APHIS remove hot-iron branding on the jaw from our regulatory programs. In response to their concerns, we are in this document proposing to remove hot-iron branding on the jaw from the regulations in 9 CFR parts 50, 51, 77, and 78. In places where branding is required to be on the jaw, we would move the required location of the brand to high on the hip near the tailhead. In places where the regulations offer an owner the option of branding either on the jaw or on the hip, we would remove the option of branding on the jaw, but would retain the brand on the hip.

We also considered proposing identification options such as freeze branding, by requiring that the cattle and bison be identified by a brand or by another distinct, permanent, and legible mark. We chose not to propose these options. A limitation of freeze branding is that the brand takes a minimum of 18 to 21 days to become visible. In order that we may continue to prevent the spread of tuberculosis and brucellosis, it is imperative that exposed and affected animals be instantly recognizable from the time of their identification until they are slaughtered, so that they are not commingled with healthy animals. In most cases, exposed or affected cattle or bison would be identified, shipped, and slaughtered before the freeze brand becomes visible. To date, an acceptable alternative to hot-iron branding has not been found for marking exposed or affected cattle or bison that satisfies the criteria of being instantly visible upon application, as well as distinct, permanent, and legible. Until an acceptable alternative is developed, we have chosen to continue to require that branding of cattle and bison under the brucellosis and tuberculosis regulations be with a hot iron. We believe that moving the location of the brand from the jaw to the hip would reduce distress to cattle and bison, but would allow them to continue to be identified distinctly, permanently, legibly, and instantly.

We are, however, proposing several alternatives to branding certain cattle and bison that are to be moved interstate for slaughter. We would allow brucellosis reactor and exposed cattle or bison moving directly to slaughter to be moved without branding if they are accompanied directly to slaughter by an APHIS or State representative. We would also allow brucellosis reactor and exposed cattle or bison moving interstate in slaughter channels (e.g, to a quarantined feedlot, a specifically approved stockyard, or an approved intermediate handling facility, and then to slaughter) to be moved without branding if they are moved in vehicles closed with official seals applied and removed by an APHIS representative, a State representative, an accredited

veterinarian, or an individual authorized for this purpose by an APHIS representative. For movement in sealed vehicles, cattle and bison moving interstate to slaughter because of brucellosis would have to be accompanied by a permit or "S" brand permit, and the official seal numbers would have to be recorded on the accompanying permit or "S" brand permit. (*Permit* and *"S" brand permit* are defined in the regulations, and, in accordance with the definitions, must list: The points of origin and destination, the number of animals covered, the purpose of movement, and one of several possible identification numbers.)

We would allow tuberculosis exposed cattle and bison moving directly to slaughter to be moved without branding if they are accompanied directly to slaughter by an APHIS or State representative. We would allow tuberculosis exposed cattle or bison moving interstate in slaughter channels to be moved without branding if they are moved in vehicles closed with official seals applied and removed by an APHIS representative, a State representative, an accredited veterinarian, or an individual authorized for this purpose by an APHIS representative. For tuberculosis reactor cattle and bison, we would allow the same movement without branding as for tuberculosis exposed cattle and bison, but we would require that the reactors be identified by a permanent and legible "TB" tattooed on the left ear, and by spraying the left ear with yellow paint. Unlike brucellosis reactor cattle and bison, tuberculosis reactor cattle and bison can only be sold for consumption if the meat is cooked. Presently, there are only four slaughtering facilities in the United States that have the capacity to cook the meat, so this option is not available to the majority of cattle and bison owners. Consequently, most tuberculosis reactor cattle and bison sent to slaughter constitute a monetary loss of $500 or more to the owner. Such monetary loss could provide an incentive to substitute less valuable tuberculosis-free animals for more valuable infected animals, or to otherwise divert valuable tuberculosis infected animals from slaughter channels, impeding tuberculosis eradication efforts in the United States. We believe that requiring tuberculosis reactors to have their left ear tattooed with a "TB" and spray painted yellow would make it difficult for these reactors to be diverted.

These options would provide owners of cattle and bison with an alternative to branding, while helping to ensure that brucellosis- and tuberculosis-affected cattle and bison are handled and moved to slaughter in a manner that prevents dissemination of these diseases.

Miscellaneous

The branding requirements in the regulations are currently inconsistent, providing different size specifications and different descriptions for the location of the brand. This proposed rule would revise the branding requirements not only to remove the option for branding on the jaw, but to make the descriptions consistent. All brands would be required to be positioned high on the left hip near the tailhead and to be at least 5 by 5 centimeters (2 by 2 inches) in size.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

We do not anticipate that this proposed rule would have an economic impact on any entities, large or small. Cattle and bison that have contracted or been exposed to tuberculosis or brucellosis, or that have been immunized against brucellosis, are already required to be identified by a brand; this rule would simply change the location of the brand. Under the tuberculosis and brucellosis eradication programs, the Animal and Plant Health Inspection Service (APHIS) and cooperating States bear the costs of branding cattle and bison, and changing the location of the brand would not result in any change in costs to APHIS or the States. Further, although branding is generally done on the ranch or farm where the cattle or bison are located, no new equipment would be necessary for branding the cattle or bison on the hip, so there would be no new costs to the owner of the animals.

This rule would also allow certain cattle and bison to be moved interstate to slaughter without branding if they are accompanied directly to slaughter by an APHIS or State representative, or if they are moved in vehicles closed with official seals applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by an APHIS representative. Such movement would be a voluntary alternative to branding, and would not impose any additional costs to owners of cattle or bison that are to be moved interstate.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects

9 CFR Part 50

Animal diseases, Bison, Cattle, Hogs, Indemnity payments, Reporting and recordkeeping requirements, Tuberculosis.

9 CFR Part 51

Animal diseases, Cattle, Hogs, Indemnity payments, Reporting and recordkeeping requirements.

9 CFR Part 77

Animal diseases, Bison, Cattle, Reporting and recordkeeping requirements, Transportation, Tuberculosis.

9 CFR Part 78

Animal diseases, Bison, Cattle, Hogs, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 9 CFR parts 50, 51, 77, and 78 would be amended as follows:

PART 50—ANIMALS DESTROYED BECAUSE OF TUBERCULOSIS

1. The authority citation for part 50 would continue to read as follows:

Authority: 21 U.S.C. 111–113, 114, 114a, 114a-1, 120, 121, 125, and 134b; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 50.6, paragraphs (a) and (b) would be revised to read as follows:

§ 50.6 Identification of animals to be destroyed because of tuberculosis.

* * * * *

(a) *Reactor cattle and bison.* Reactor cattle and bison shall be identified by branding the letter "T," at least 5 by 5 centimeters (2 by 2 inches) in size, high on the left hip near the tailhead and by attaching to the left ear an approved metal eartag bearing a serial number and the inscription "U.S. Reactor", or a similar State reactor tag. Reactor cattle and bison may be moved interstate to slaughter without branding if they are permanently identified by the letters "TB" tattooed legibly on the left ear, they are sprayed on the left ear with yellow paint, and they are either accompanied by an APHIS or State representative or moved directly to slaughter in vehicles closed with official seals. Such official seals must be applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by an APHIS representative.

(b) *Exposed cattle and bison.* Exposed cattle and bison shall be identified by branding the letter "S," at least 5 by 5 centimeters (2 by 2 inches) in size, high on the left hip near the tailhead and by attaching to the left ear an approved metal eartag bearing a serial number. Exposed cattle and bison may be moved interstate to slaughter without branding if they are either accompanied by an APHIS or State representative or moved directly to slaughter in vehicles closed with official seals. Such official seals must be applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by an APHIS representative.

* * * * *

PART 51—ANIMALS DESTROYED BECAUSE OF BRUCELLOSIS

3. The authority citation for part 51 would continue to read as follows:

Authority: 21 U.S.C. 111–113, 114, 114a, 114a-1, 120, 121, 125, and 134b; 7 CFR 2.17, 2.51, and 371.2(d).

4. In § 51.5, paragraph (b) would be revised to read as follows:

§ 51.5 Identification of animals to be destroyed because of brucellosis.

* * * * *

(b) Except as in paragraph (b)(4), cattle and bison to be destroyed because of brucellosis shall be individually identified prior to moving interstate by attaching to the left ear a metal tag bearing a serial number and the inscription "U.S. Reactor," or a similar State reactor tag, and must be:

(1) "B" branded (as defined in § 78.1); or

(2) Accompanied directly to slaughter by an APHIS or State representative; or

(3) Moved in vehicles closed with official seals applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by an APHIS representative. The official seal numbers must be recorded on the accompanying permit.

(4) Reactor and exposed cattle and bison in herds scheduled for herd depopulation may be moved interstate without eartagging or branding if they are identified by USDA approved backtags and either accompanied directly to slaughter by an APHIS or State representative or moved directly to slaughter in vehicles closed with official seals. Such official seals must be applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by an APHIS representative.

* * * * *

PART 77—TUBERCULOSIS

5. The authority citation for part 77 would continue to read as follows:

Authority: 21 U.S.C. 111, 114, 114a, 115–117, 120, 121, 134b, and 134f; 7 CFR 2.17, 2.51, and 371.2(d).

6. In § 77.5, the heading would be amended by removing the word "comtaining" and adding the word "containing" in its place, and paragraphs (a)(1) and (b)(1) would be revised to read as follows:

§ 77.5 Interstate movement of cattle and bison that are exposed, reactors, or suspects, or from herds containing suspects.

(a) Reactor cattle and bison. * * *

(1) Reactor cattle and bison must be individually identified by attaching to the left ear an approved metal eartag bearing a serial number and the inscription "U.S. Reactor", or a similar State reactor tag, and must be:

(i) Branded with the letter "T," at least 5 by 5 centimeters (2 by 2 inches) in size, high on the left hip near the tailhead; or

(ii) Permanently identified with the letters "TB" tattooed legibly on the left ear and sprayed on the left ear with yellow paint, and either accompanied directly to slaughter by an APHIS or State representative or moved directly to slaughter in vehicles closed with official seals. Such official seals must be applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by an APHIS representative.

* * * * *

(b) *Exposed cattle and bison.* * * *

(1) Exposed cattle and bison must be individually identified by attaching to the left ear an approved metal eartag bearing a serial number, and must be:

(i) Branded with the letter "S," at least 5 by 5 centimeters (2 by 2 inches) in size, high on the left hip near the tailhead; or

(ii) Accompanied directly to slaughter by an APHIS or State representative; or

(iii) Moved directly to slaughter in vehicles closed with official seals. Such official seals must be applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by an APHIS representative.

* * * * *

PART 78—BRUCELLOSIS

7. The authority citation for part 78 would continue to read as follows:

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, and 134f; 7 CFR 2.17, 2.51, and 371.2(d).

Subpart A—General Provisions

§ 78.1 [Amended]

8. Section 78.1 would be amended as follows:

a. In the definition for *"B" branded*, the phrase "at least 5 sq. cm. (2 × 2 inches) in size on the left jaw" would be removed and "high on left hip near the tailhead and at least 5 by 5 centimeters (2 by 2 inches) in size" would be added in its place.

b. In the definition for *Official adult vaccinate*, paragraph (b)(1) would be amended by removing "on the right jaw or" and by adding "at least 5 by 5 centimeters (2 by 2 inches) in size" immediately after "tailhead".

c. In the definition for *"S" branded*, the phrase "at least 5 sq. cm. (2 ×2 inches) in size on the left jaw or high on the tailhead (over the fourth to the seventh coccygeal vertebrae)" would be removed and "high on left hip near the tailhead and at least 5 by 5 centimeters (2 by 2 inches) in size" would be added in its place.

Subpart B—Restrictions on Interstate Movement of Cattle Because of Brucellosis

9. In § 78.7, paragraph (b) would be revised to read as follows:

§ 78.7 Brucellosis reactor cattle.

* * * * *

(b) *Identification.* Brucellosis reactor cattle must be individually identified prior to moving interstate by attaching to the left ear a metal tag bearing a serial number and the inscription "U.S.

Reactor," or a metal tag bearing a serial number designated by the State animal health official for identifying brucellosis reactors, and must be:

(1) "B" branded (as defined in § 78.1); or

(2) Accompanied directly to slaughter by an APHIS or State representative; or

(3) Moved in vehicles closed with official seals applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by an APHIS representative. The official seal numbers must be recorded on the accompanying permit.

* * * * *

10. Section 78.8 would be amended by removing the period at the end of paragraphs (a)(3)(iii)(C), (a)(5)(iii)(C), and (b)(3)(ii) and adding "; or" in its place; and by adding new paragraphs (a)(3)(iii)(D), (a)(5)(iii)(D), and (b)(3)(iii) to read as follows:

§ 78.8 Brucellosis exposed cattle.

* * * * *

(a) * * *

(3) * * *

(iii) * * *

(D) Moved in vehicles closed with official seals applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by an APHIS representative. The official seal numbers must be recorded on the accompanying permit or "S" brand permit.

* * * * *

(5) * * *

(iii) * * *

(D) Moved in vehicles closed with official seals applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by an APHIS representative. The official seal numbers must be recorded on the accompanying permit or "S" brand permit.

* * * * *

(b) * * *

(3) * * *

(iii) Moved in vehicles closed with official seals applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by an APHIS representative. The official seal numbers must be recorded on the accompanying permit or "S" brand permit.

* * * * *

11. Section 78.9 would be amended by removing the period at the end of paragraphs (c)(1)(v)(C), (c)(1)(vii)(C), (c)(2)(i)(C), (c)(2)(ii)(B), (d)(1)(v)(C), (d)(1)(vii)(C), (d)(2)(i)(C), and (d)(2)(ii)(B) and adding "; or" in its place; and by adding new paragraphs (c)(1)(v)(D), (c)(1)(vii)(D), (c)(2)(i)(D), (c)(2)(ii)(C), (d)(1)(v)(D), (d)(1)(vii)(D), (d)(2)(i)(D), and (d)(2)(ii)(C) to read as follows:

§ 78.9 Cattle from herds not known to be affected.

* * * * *

(c) * * *

(1) * * *

(v) * * *

(D) They are accompanied by an "S" brand permit and moved in vehicles closed with official seals applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by an APHIS representative. The official seal numbers must be recorded on the accompanying "S" brand permit.

* * * * *

(vii) * * *

(D) They are accompanied by an "S" brand permit and moved in vehicles closed with official seals applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by an APHIS representative. The official seal numbers must be recorded on the accompanying "S" brand permit.

* * * * *

(2) * * *

(i) * * *

(D) A quarantined feedlot, a specifically approved stockyard and then directly to a quarantined feedlot, or an approved intermediate handling facility and then directly to a quarantined feedlot if the cattle are accompanied by an "S" brand permit and moved in vehicles closed with official seals applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by an APHIS representative. The official seal numbers must be recorded on the accompanying "S" brand permit.

* * * * *

(d) * * *

(1) * * *

(v) * * *

(D) They are accompanied by an "S" brand permit and moved in vehicles closed with official seals applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by an APHIS representative. The official seal numbers must be recorded on the accompanying "S" brand permit.

* * * * *

(vii) * * *

(D) They are accompanied by an "S" brand permit and moved in vehicles closed with official seals applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by an APHIS representative. The official seal numbers must be recorded on the accompanying "S" brand permit.

* * * * *

(2) * * *

(i) * * *

(D) A quarantined feedlot, a specifically approved stockyard and then directly to a quarantined feedlot, or an approved intermediate handling facility and then directly to a quarantined feedlot if the cattle are accompanied by an "S" brand permit and moved in vehicles closed with official seals applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by an APHIS representative. The official seal numbers must be recorded on the accompanying "S" brand permit.

* * * * *

(ii) * * *

(C) They are accompanied by an "S" brand permit and moved in vehicles closed with official seals applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by an APHIS representative. The official seal numbers must be recorded on the accompanying "S" brand permit.

* * * * *

Subpart C—Restrictions on Interstate Movement of Bison Because of Brucellosis

12. In § 78.22, paragraph (b) would be revised to read as follows:

§ 78.22 Brucellosis reactor bison.

* * * * *

(b) *Identification.* Brucellosis reactor bison must be individually identified

prior to moving interstate by attaching to the left ear a metal tag bearing a serial number and the inscription "U.S. Reactor," or a metal tag bearing a serial number designated by the State animal health official for identifying brucellosis reactors, and must be:

(1) "B" branded (as defined in § 78.1); or

(2) Accompanied directly to slaughter by an APHIS or State representative; or

(3) Moved in vehicles closed with official seals applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by an APHIS representative. The official seal numbers must be recorded on the accompanying permit.

* * * * *

Done in Washington, DC, this 11th day of May 1995.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–12150 Filed 5–16–95; 8:45 am]

BILLING CODE 3410–34–P

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9 CFR Parts 101 and 113

[Docket No. 94–051–1]

RIN 0579–AA65

Viruses, Serums, Toxins, and Analogous Products; In Vitro Tests for Serial Release

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations regarding the use of in vitro potency tests in place of animal tests for immunogenicity to: change the title of the section; prescribe requirements for in vitro immunoassays used to determine the relative antigen content of inactivated biological products; require that such immunoassays be parallel line assays based upon unexpired reference preparations; require that in vitro tests for relative antigen content be converted to parallel line assays within 2 years; specify procedures and requirements for qualifying or requalifying reference preparations for inactivated products; and add certain definitions to the regulations.

The effect of the amendment would be to standardize the methods used to determine the relative potency of inactivated biological products.

DATES: Consideration will be given only to comments received on or before August 15, 1995.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 94–051–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 94–051–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. David A. Espeseth, Deputy Director, Veterinary Biologics, BBEP, APHIS, 4700 River Road Unit 148, Riverdale, MD 20737–1237, (301) 734–8245.

SUPPLEMENTARY INFORMATION:

Background

The regulations pertaining to the testing of biologics provide that no biological product shall be released (for sale) prior to the completion of tests prescribed to establish the product to be pure, safe, potent, and efficacious (9 CFR 113.5). Efficacy refers to the specific ability of the product to effect the result for which it is offered when used as recommended by the manufacturer. Studies conducted to establish efficacy include immunogenicity tests in host animals using product manufactured according to specific requirements which include specifications for antigen content and/or animal potency. These requirements apply to every serial of product which is produced. Therefore, if a product has been tested for immunogenicity in animals and shown to have the desired effect, it follows that subsequent serials (batches) of the product manufactured to the same specifications should also have the same effect.

Once immunogenicity is established in relation to a specific minimum antigen content in a product, it should no longer be necessary to test every subsequent serial for potency in animals if an evaluation can be made with reasonable certainty of the relative antigen content by testing the serial or subserial in an acceptable in vitro test system. Therefore, when properly qualified and validated, in vitro immunoassays that determine relative antigen content of the product can serve as acceptable substitutes for potency tests that otherwise would need to be performed in animals.

The regulations in 9 CFR 113.8 pertain to the use of in vitro tests in place of animal tests for determining the potency of veterinary biological products. Currently, the in vitro tests prescribed in § 113.8 which include determining the $\log_{10}$ virus titer and performing live bacterial counts are only applicable to veterinary biologicals which contain live microorganisms. The changes and test procedures prescribed in this proposal would make § 113.8 applicable to both live and inactivated products by prescribing validity requirements for in vitro test systems used, in place of animal tests, to test for the potency of inactivated products.

We are proposing to amend the title of § 113.8 to read: "In vitro potency tests for serial release." This change is intended to clarify the fact that the in vitro procedures described in § 113.8 are applicable to in vitro tests used to release serials or subserials of veterinary biological products after the prescribed animal protection studies required for licensing have been completed. In the case of inactivated products, the proposal specifies that in vitro immunoassays (test systems) which compare the relative antigen content (relative potency) of a test serial to a reference preparation must be parallel line assays using an unexpired reference preparation whose potency has been correlated directly or indirectly to immunogenicity in host animals.

In addition, the proposal would require: confirming the accuracy of the protective dose established for live products 3 years after the initiation of the host animal immunogenicity study; and confirming the immunogenicity of reference preparations used in immunoassays for inactivated biological products prior to their expiration. The expiration date for a reference would be equal to the dating of the product or as supported by data acceptable to APHIS.

APHIS is proposing these amendments because current requirements for many of the immunoassays being used to release serials or subserials of product do not have uniform validity criteria and do not include a provision to confirm periodically the immunogenicity of the reference used in such immunoassays. The proposed amendment would standardize the requirements for in vitro potency tests for relative antigen content and update and improve the reliability of such tests that are currently included in filed outlines of production. The proposed amendment does not specify a particular immunoassay provided that it is a parallel line assay using an unexpired reference preparation. While there is not a generally accepted "best" immunoassay, there is general agreement that an acceptable

immunoassay must demonstrate linearity, specificity, and reproducibility; and that the reference must be capable of eliciting a protective immune response in animals for as long as it serves as the reference.

APHIS has selected the parallel line assay because it demonstrates linearity, specificity, and reproducibility, and also compares the "similarity" of the responses elicited by the test and reference preparations in the immunoassay. APHIS feels that the "similarity" feature is critical to the acceptance of any in vitro immunoassay purporting to measure relative antigenic content. We realize that the proposed amendment would necessitate the revalidation of immunoassays currently contained in some filed outlines of production and propose to implement the requirements as set out below.

Firms with filed outlines of production for licensed products with in vitro potency tests that are immunoassays that are not parallel line assays would be allowed 2 years after the effective date of the final rule to come into compliance with the proposed amendments. In the interim, immunoassays, utilizing unexpired references, contained in previously approved outlines of production would continue to be allowed for serial release of previously licensed fractions but would not be acceptable for fractions not previously licensed to the firm. Firms with filed outlines of production for licensed product with in vitro potency tests for relative antigen content would be required to use unexpired references. References that have expired or that are about to expire would need to be requalified or have the dating period extended in accordance with protocols and time schedules acceptable to APHIS.

APHIS has determined that immunoassays that are not based on a parallel line assay using an unexpired reference may not provide reliable relative potency data in all instances. Such instances include the determination of relative potency based on a reference preparation that may have expired or the extrapolation of data based upon standard curves that may not be proportional between serial and reference. These amendments are being proposed in order to provide greater assurance that a serial of product provides adequate potency in all instances.

We are also adding to the regulations in § 101.5 definitions of the term "immunogenicity", and the terms "master reference", "working reference", and "qualifying serial" as they apply to reference preparations used in in vitro immunoassays.

Licensees, researchers, and scientists at the National Veterinary Services Laboratories, U.S. Department of Agriculture, have cooperated in the development of this proposed rule. We are therefore proposing to amend §§ 101.5 and 113.8 as set forth below.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be no significant for purposes of Executive Order 12866, and therefore, has not been reviewed by the Office of Management and Budget.

This proposed amendment, if adopted, would allow any valid in vitro immunoassay to be used in determining the relative antigen content of an inactivated veterinary biological product, provided that it satisfies the parallel line criteria and that it is conducted using an unexpired reference preparation that has been tested, directly or indirectly, for immunogenicity in a manner acceptable to APHIS. This amendment would affect all licensed manufacturers of veterinary biologicals utilizing in vitro relative potency immunoassays for determining the potency of inactivated products. This proposal, however, does not impose any additional economic burden since the testing of product for potency is already required under § 113.5 of the regulations and outlines of production are routinely amended and updated. Section 113.5 specifies that no biological product shall be released prior to the completion of tests prescribed in a filed outline of production or standard requirement to establish that the product is pure, safe, potent, and efficacious. In the absence of a standard requirement prescribing a specific potency test for inactivated products, the firms develop a potency test suitable for their product, and designate such tests in the outline of production that is filed with APHIS. Currently, firms are using host animal tests, laboratory animal tests, and a variety of in vitro immunoassays as potency tests for inactivated products. This proposed rule does not restrict the firm's discretion to choose the most appropriate test for its product. The proposed rule would only prescribe validity requirements for in vitro immunoassays for relative potency. The overall effect of this proposed amendment would be to standardize in vitro immunoassays that are used to determine the potency of inactivated veterinary biological products.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been approved by the Office of Management and Budget (OMB), and there are no new requirements. The assigned OMB control number is 0579–0013.

List of Subjects

9 CFR Part 101

Animal biologics.

9 CFR Part 113

Animal biologics, Exports, Imports, Reporting and recordkeeping requirements.

Accordingly, 9 CFR parts 101 and 113 would be amended as follows:

PART 101—DEFINITIONS

1. The authority citation for part 101 would continue to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 101.5 would be amended by adding new paragraphs (o), (p), (q), and (r) to read as follows:

§ 101.5 Testing terminology.

* * * * *

(o) *Master Reference.* A Master Reference is a reference whose potency is correlated, directly or indirectly, to host animal immunogenicity. The Master Reference may be used as the working reference in in vitro tests for relative potency. The Master Reference may also be used to establish the relative potency of a serial of product used in requalification studies and to establish the relative potency of working references. A Master Reference may be:

(1) A completed serial of vaccine or bacterin prepared in accordance with a field Outline of Production;

(2) A purified preparation of the protective immunogen or antigen; or

(3) A nonadjuvanted harvested culture of microorganisms.

(p) *Working Reference.* A Working Reference is the reference preparation that is used in the in vitro test for the release of serials of product. Working References may be:

(1) Master References; or

(2) Serials of product that have been prepared and qualified, in a manner acceptable to APHIS, for use as reference preparations.

(q) *Qualifying Serial.* (1) A serial of biological product used to test for immunogenicity when the Master or Working Reference is a purified antigen or nonadjuvanted harvest material. Qualifying serials shall be produced in accordance with the filed Outline of Production, tested for immunogenicity in host animals in accordance with protocols acceptable to Animal and Plant Health Inspection Service, and have a geometric mean relative potency, when compared to the Master Reference, of not greater than 1.0 as established by independent parallel line assays with 5 or more replicates.

(2) Qualifying serials used to requalify or extend the dating period of a Master Reference in a repeat immunogenicity test shall satisfy all criteria prescribed above and, it addition, shall have been prepared within 6 months of requalifying testing, i.e., the initiation of the repeat immunogenicity test.

(r) *Immunogenicity.* The ability of a biological product to elicit an immune response in animals as determined by test methods or procedures acceptable to the Animal and Plant Health Inspection Service.

PART 113—STANDARD REQUIREMENTS

3. The authority citation for part 113 would continue to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.17, 2.51, and 371.2(d).

4. Section 113.8 would be amended as follows:

a. The section heading would be revised to read as set forth below.

b. Paragraph (a) would be revised to read as set forth below.

c. Paragraph (b) the introductory text would be revised to read as set forth below.

d. Paragraph (b)(5) would be revised to read as set forth below.

e. Paragraph (c) would be redesignated as paragraph (e) and new paragraphs (c) and (d) would be added to read as set forth below.

f. In redesignated paragraph (e), in the introductory text, the reference to "paragraph (b)" would be removed and "Paragraphs (b) and (c)" would be added in its place. In paragraph (e)(4), the reference to "paragraphs (c)(1)," would be removed and "paragraphs (e)(1)," would be added in its place.

§ 113.8 In vitro potency tests for serial release.

(a) Master Seed which has been established as pure, safe, and immunogenic shall be used for preparing seed for production as specified in the Standard Requirements or in the filed Outline of Production. The Administrator may exempt a product from a required animal potency test for release when an evaluation can, with reasonable certainty, be made by:

(1) Subjecting the master seed to the applicable requirements prescribed in §§ 113.64, 113.100, 113.200, and 113.300;

(2) Testing the Master Seed for immunogenicity in a manner acceptable to the Animal and Plant Health Inspection Service (APHIS);

(3) Establishing a satisfactory potency for live products based on the protective dose used in the Master Seed immunogenicity test plus an adequate overage allowance for adverse conditions and test error; and

(4) For inactivated products, determining the potency of each serial or subserial, or both, using an accepted test system. Acceptable potency tests shall include:

(i) Determining the $\log_{10}$ live virus titer;

(ii) Determining the live bacterial count; or

(iii) For inactivated products, determining the relative antigen content, as compared with a reference, using a parallel line immunoassay.

(b) In the case of live products, each serial and subserial of desiccated product derived from an approved Master Seed and bulk or final container samples of each serial of completed liquid product derived from an approved Master Seed shall be evaluated by a test procedure acceptable to APHIS. On the basis of the results of the test, as compared with the required minimum potency, each serial and subserial shall either be released to the firm for marketing or withheld from the market. The evaluation of such products shall be made in accordance with the following criteria:

(1) * * *

* * * * * *

(5) *Exceptions.* When a product is evaluated in terms other than $\log_{10}$ virus titer or organism count, an appropriate difference between the average potency value obtained in the retests and the potency value obtained in the initial test shall be established for use in paragraphs (b)(3) or (b)(4) of this section to evaluate such products and shall be specified in the Product Standard Requirement or filed Outline of Production.

(c) In the case of inactivated products, bulk or final container samples of completed product from each serial derived from an approved Master Seed, shall be evaluated for relative antigen content (potency), as compared with a reference, by a parallel line immunoassay procedure acceptable to APHIS. Firms currently using immunoassays which do not meet the requirements of a parallel line assay shall have 2 years from the effective date of the final rule to update their filed Outlines of Production to be in compliance with this requirement. On the basis of the results of such test procedures, each serial that meets the required minimum potency shall be released to the firm for marketing; each serial not meeting the required minimum potency shall be withheld from the market. The evaluation of such products shall be made in accordance with the following criteria:

(1) A test that results in no valid lines is considered a no test and may be repeated.

(2) An initial test that results in valid lines that are not parallel is considered a valid equivocal test. Release of the serial may not be based on such test since the result cannot be termed "satisfactory" or "unsatisfactory".

(3) If the initial test shows that potency equals or exceeds the required minimum potency, the serial is satisfactory without additional testing.

(4) If the initial test is an equivocal test due to lack of parallelism, the serial may be retested up to three times: *Provided,* That, if the test is not repeated, the serial shall be deemed unsatisfactory.

(i) If more than 50% of all valid repeat tests show that potency equals or exceeds the required minimum potency, the serial is satisfactory.

(ii) If greater than 50% of all valid repeat tests show either lack of parallelism or that potency is less than the required minimum potency, the serial is unsatisfactory.

(5) If the initial test shows that potency is less than the required minimum potency, the serial may be retested. If retested, two additional tests, must be conducted: *Provided*, That, if the serial is not retested, the serial shall be deemed unsatisfactory.

(i) If more than 50% of all valid tests show that potency equals or exceeds the required minimum potency, the serial is satisfactory.

(ii) If more than 50% of all valid tests show either lack of parallelism or that potency is less than the required minimum potency, the serial is unsatisfactory.

(d) *Repeat immunogenicity tests.*

(1) The accuracy of the protective dose established for live products in the Master Seed immunogenicty test and defined as live virus titer or live bacterial count shall be confirmed in 3 years in a manner acceptable to APHIS, unless use of the lot of Master Seed previously tested is discontinued.

(2) All determinations of relative antigen content using parallel line immunoassays shall be conducted with an unexpired reference. The lot of reference used to determine antigenic content shall have an initial dating period equal to the dating of the product or as supported by data acceptable to APHIS. Prior to the expiration date, such reference may be granted an extension of dating by confirming its immunogenicity using a Qualifying Serial of product. Tests to establish or confirm immunogenicity of references shall be conducted in a manner acceptable to APHIS. The dating period of the Master Reference and Working Reference may be extended as supported by data acceptable to APHIS if the minimum potency of the Master Reference is determined to be adequately above the minimum level needed to provide protection in the host animal. If a new Master Reference is established, it shall be allowed an initial dating period equal to the dating of the product or as supported by data acceptable to APHIS.

* * * * *

Done in Washington, DC, this 11th day of May 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Services.

[FR Doc. 95–12152 Filed 5–16–95; 8:45 am]

BILLING CODE 3410–34–M

9 CFR Part 113

[Docket No. 93–039–2]

Viruses, Serums, Toxins, and Analogous Products; Standard Requirement or Escherichia Coli Bacterin

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of reopening and extension of comment period.

SUMMARY: We are reopening and extending the comment period for the proposed Standard Requirement for *Escherichia coli* bacterin. This extension will provide interested persons with additional time in which to prepare comments on the proposed rule.

DATES: Consideration will be given only to written comments on Docket No. 93–039–1 that are received on or before August 15, 1995.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 93–039–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 93–039–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. David Espeseth, Deputy Director, Veterinary Biologics, BBEP, APHIS, 4700 River Road Unit 148, Riverdale, MD 20737–1237, (301) 734–8245.

SUPPLEMENTARY INFORMATION: On October 11, 1994, we published in the **Federal Register** (59 FR 51390–51392, Docket No. 93–039–1) a proposed rule to amend the regulations in 9 CFR 113.124 to include a Standard Requirement for *Escherichia coli* bacterins. Comments on the proposed rule were required to be received on or before December 12, 1994.

So that we may consider comments submitted after that date, we are reopening and extending the public comment period on Docket No. 93–039–1 until 90 days after the date of publication of this notice in the **Federal Register**. During this period, interested persons may submit their comments for our consideration.

Authority: 21 U.S.C. 151–159, 7 CFR 2.17, 2.51, and 371.2(d). Done in Washington, DC, this 11th day of May 1995.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–12151 Filed 5–16–95; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 95–ANE–23]

Proposed Establishment of Class E Airspace; Portland, ME

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would establish Class E airspace at Portland International Jetport, Portland, Maine, that coincides with the hours that the associated radar approach control facility is not in operation. Since the Portland Class C airspace is predicated on an operational air traffic control tower (ATCT) serviced by a radar control approach facility (TRACON), Class E airspace must be defined for the hours when that facility is not in operation. This proposal would not change the designated boundaries or altitudes of the Portland Class C airspace, but only establish the necessary Class E airspace to provide sufficient controlled airspace for those aircraft operating under instrument flight rules during the hours when the Portland ATCT and TRACON are not in operation.

DATES: Comments must be received on or before June 16, 1995.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, ANE–530, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7530; fax (617) 238–7596.

The official docket may be examined in the Office of the Assistant Chief Counsel for the New England Region, ANE–7, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7049; fax (617) 238–7055.

An informal docket may also be examined during normal business hours in the Office of the Manager, System Management Branch, Air Traffic Division, ANE–530, at the first address shown above.

FOR FURTHER INFORMATION CONTACT: Karl D. Anderson, System Management Branch, ANE–530, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7533; fax (617) 238–7596.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above.

Commentators wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comment to Airspace Docket No. 95–ANE–23." The postcard will be date/time stamped and returned to the commeter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, at 12 New England Executive Park, Burlington, MA 02108–5299, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, Air Traffic Division, 12 New England Executive Park, Burlington, MA 02108–5299. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Portland International Jetport, Portland, Maine. The current Portland, ME Class C airspace area is predicated on continuous operation and availability of the Portland air traffic control tower (ATCT) and the associated radar control approach facility (TRACON). Since this facility does not operate continuously, Class E airspace is needed to provide sufficient controlled airspace for those aircraft operating under instrument flight rules (IFR) during the hours when the Portland ATCT and TRACON are not in operation. This proposal would not change the designated boundaries or altitudes of the Portland Class C airspace. Class E surface airspace areas are published in Paragraph 6002 of FAA Order 7400.9B, dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Calss E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation involves only an established body of technical regulations for which frequent and routine amendments are necessary to keep these regulations operationally current. It, therefore—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated economic cost will be so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, the FAA certifies that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposed to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963, Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

* * * * *

Paragraph 6002 Class E Airspace Areas Designated as a Surface Area for an Airport

* * * * *

ANE ME E2 Portland International Jetport, ME [New]

Portland International Jetport, ME
(Lat. 43°38'46" N, long. 70°18'31" W)

Within a 5-mile radius of the Portland International Jetport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airman. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Burlington, Massachusetts, On May 8, 1995

John J. Boyce,

Acting Manager, Air Traffic Division, New England Region.

[FR Doc. 95–12157 Filed 5–16–95; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 95–ANE–24]

Proposed Revocation of Class D and Class E Airspace; Limestone, ME

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would revoke the Class D and Class E airspace areas established at the former Loring Air Force Base (AFB), Limestone, Maine, and amend the Class E airspace at the Northern Maine Regional Airport at Presque Isle, Maine, to delete that portion of that airspace in the vicinity of Loring AFB. This action is necessary since Loring Air Force Base is no longer in operation, all standard instrument approach procedures to Loring AFB have been cancelled, and the air traffic control tower at Loring AFB is closed.

DATES: Comments must be received on or before June 16, 1995.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, ANE–530, Federal Aviation Administration, 12 New England Executive Park,

Burlington, MA 01803–5299; telephone (617) 238–7530; fax (617) 238–7596.

The official docket may be examined in the Office of the Assistant Chief Counsel for New England Region, ANE–7, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7050; fax (617) 238–7055.

An informal docket may also be examined during normal business hours in the Office of the Manager, System Management Branch, Air Traffic Division, ANE–530, at the first address shown above.

FOR FURTHER INFORMATION CONTACT:

Karl D. Anderson, System Management Branch, ANE–530, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7533; fax (617) 238–7596.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commentators wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comment to Airspace Docket No. 95–ANE–24." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, at 12 New England Executive Park, Burlington, MA 02108–5299, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, Air Traffic Division, 12 New England Executive Park, Burlington, MA 02108–5299. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to revoke the Class D and Class E airspace areas established at the former Loring Air Force Base (AFB), Limestone, Maine, and to amend the Class E airspace at the Northern Maine Regional Airport at Presque, Isle, Maine, to delete the portion of that airspace in the vicinity of Loring AFB. As of October 1, 1994, Loring AFB ceased operations, and since that time all standard instrument approach procedures to Loring AFB have been cancelled. The air traffic control tower at Loring is closed, and weather observation reports are no longer available from that facility. Therefore, this action is necessary to revoke the Limestone Class D and Class E airspace areas, and to amend the Presque Isle Class E airspace area to delete the controlled airspace in the vicinity of the former Loring AFB. Class D and Class E airspace areas are published in FAA Order 7400.9B, dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. Class D airspace areas appear in paragraph 5000 of FAA Order 7400.9B, Class E areas designated as extensions to a Class D areas appear in paragraph 6004, and Class E areas extending upward from 700 feet or more about the surface of the earth appear in paragraph 6005. The Class D and Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation involves only an established body of technical regulations for which frequent and routine amendments are necessary to keep these regulations operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated economic cost will be so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, the FAA certifies that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposed to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963, Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 5000 General

* * * * *

ANE ME D Limestone, ME [Removed]

* * * * *

Paragraph 6004 Class E Airspace Areas Designated as an Extension to a Class D Surface Area

* * * * *

ANE ME E4 Limestone, ME [Removed]

* * * * *

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth

* * * * *

ANE ME E5 Presque Isle, ME [Amended]

Northern Maine Regional Airport at Presque Isle, ME
(Lat. 46°41'20" N, long. 68°02'41" W)
Presque Isle VORTAC
(Lat. 46°46'27" N, long. 68°05'40" W)
EXCAL LOM
(Lat. 46°36'37" N, long. 68°01'08" W)
Caribou Municipal Airport, ME
(Lat. 46°52'17" N, long. 68°01'04" W)

That airspace extending upward from 700 feet above the surface within an 11-mile radius of Northern Maine Regional Airport at Presque Isle, and within 3 miles each side of the EXCAL LOM 165° bearing extending from the 11-mile radius to 9.2 miles south of the EXCAL LOM, and within 4 miles east and 8 miles west of the Presque Isle 340° radial extending from the 11-mile radius to 16 miles northwest of the VORTAC, and within an 8.5-mile radius of Caribou Municipal Airport; excluding that airspace outside of the United States.

* * * * *

Issued in Burlington, Massachusetts, on May 8, 1995.

John J. Boyce,

Acting Manager, Air Traffic Division, New England Region.

[FR Doc. 95–12156 Filed 5–16–95; 8:45 am]

BILLING CODE 4910–13–M

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 416

[Regulations No. 16]

RIN 0960–AD87

Supplemental Security Income for the Aged, Blind, and Disabled; Extension of Time Period for Not Counting as Resources, Funds Received for Repair or Replacement of Damaged or Destroyed Excluded Resources in the Supplemental Security Income Program

AGENCY: Social Security Administration.

ACTION: Proposed rule.

SUMMARY: In the past several years, portions of the United States have experienced natural disasters that have had unprecedented effects on supplemental security income (SSI) recipients. To provide us with the flexibility to deal with these and future occurrences, we propose to modify our current regulations regarding the period of time that cash and in-kind items received for the repair or replacement of certain destroyed or damaged excluded resources would not count toward the resource limit.

DATES: To be sure that your comments are considered, we must receive them no later than July 17, 1995.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, P.O. Box 1585, Baltimore, MD 21235, sent by telefax to (410) 966–2830, sent by E-mail to "regulations@ssa.gov" or delivered to 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, between 8:00 a.m. and 4:30 p.m. on regular business days.

The electronic file of this document is available on the Federal Bulletin Board (FBB) at 9 a.m. on the date of publication in the **Federal Register**. To download the file, modem dial (202) 512–1387. The FBB instructions will explain how to download the file and the fee. This file is in WordPerfect and will remain on the FBB during the comment period.

FOR FURTHER INFORMATION CONTACT: Henry D. Lerner, Legal Assistant, Division of Regulations and Rulings, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1762.

SUPPLEMENTARY INFORMATION: The regulations at § 416.1205(c) provide that SSI recipients can have no more than $2,000 in countable resources and SSI couples can have no more than $3,000. The regulations at § 416.1237 provide that assistance received under the Disaster Relief and Emergency Assistance Act or other assistance provided under a Federal statute because of a catastrophe which is declared to be a major disaster by the President of the United States or comparable assistance received from a State or local government, or from a disaster assistance organization, is excluded permanently under the SSI program in determining countable resources.

The regulations at § 416.1232 complement the disaster assistance exclusion by providing that cash or in-kind items for the repair or replacement of lost, stolen, or damaged excluded resources are not treated as resources for 9 months. The regulations also provide for one extension for a reasonable period up to an additional 9 months for good cause if circumstances do not permit repair or replacement within the initial 9-month period and the individual intends to use the funds for repair or replacement.

Excluded resources generally include the individual's home, household goods and personal effects, and the automobile, as are described in §§ 416.1212, 416.1216 and 416.1218 respectively.

Private insurance payments do not qualify as disaster assistance and, therefore, cannot be permanently excluded from resources. For some SSI recipients affected by natural disasters, the maximum period of 18 months during which monies received to repair or replace excluded resources are not treated as resources will not be sufficient and some of these individuals will consequently lose SSI and Medicaid eligibility.

In the past several years, portions of the United States have experienced natural disasters that have had unprecedented effects on SSI recipients. In August 1992, Hurricane Andrew devastated south Florida causing damage estimated in excess of $18 billion. Because of the extent of the devastation, SSI recipients in the area were unable to use insurance payments to repair or replace their damaged property within the maximum 18-month period provided by regulations during which those payments would not be treated as resources. With the expiration of this period, the payments would have counted as resources for SSI purposes. On March 17, 1994 (59 FR 12544), we published interim final regulations with a request for comments which provided victims of Hurricane Andrew with an additional 12-month time period in which to repair or replace their property.

History has shown that current regulations generally provide a sufficient time period for individuals to repair or replace their excluded resources destroyed or damaged by natural disasters. However, in the event disasters of the magnitude of Hurricane Andrew occur, we wish to have the flexibility in regulations to extend the period that payments or in-kind assistance for the repair or replacement of affected excluded resources will not count as resources.

We are proposing regulations which provide us with the flexibility to provide individuals with additional time to repair or replace destroyed or damaged excluded resources when such disasters occur and certain other criteria are met. These proposed regulations will extend the maximum 18-month period during which cash or in-kind replacement received from any source for purposes of repairing or replacing an excluded resource is not counted as a resource for up to an additional 12 months. This additional time period only applies in the case of presidentially declared major disasters as long as the individual intends to repair or replace the property and good cause still exists.

Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that this rule does not meet the criteria for a significant regulatory action under Executive Order 12866. Thus, it was not subject to OMB review.

Paperwork Reduction Act of 1980

These proposed regulations impose no new reporting or recordkeeping requirements requiring OMB clearance.

Regulatory Flexibility Act

We certify that these proposed regulations will not have a significant economic impact on a substantial number of small entities because they

affect eligibility for or the amount of SSI payments of individuals. Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Program No. 93.807, Supplemental Security Income)

List of Subjects in 20 CFR Part 416:

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income.

Dated: May 3, 1995.

Shirley S. Chater,

Commissioner of Social Security.

Part 416 of Chapter III of Title 20 of the Code of Federal Regulations is amended as follows:

1. The authority citation for subpart L of part 416 continues to read as follows:

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Authority: Secs. 1102, 1602, 1611, 1612, 1613, 1614(f), 1621, and 1631 of the of the Social Security Act; 42 U.S.C. 1302, 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, and 1383; sec. 211 of Pub. L. 93–66, 87 Stat. 154.

2. Section 416.1232 is amended by revising paragraph (b), by redesignating paragraph (c) as paragraph (d) and by adding a new paragraph (c), to read as follows:

§ 416.1232 Replacement of lost, damaged, or stolen excluded resources.

* * * * *

(b) The initial 9-month time period will be extended for a reasonable period up to an additional 9 months where we find the individual had good cause for not replacing or repairing the resource. An individual will be found to have good cause when circumstances beyond his or her control prevented the repair or replacement or the contracting for the repair or replacement of the resource. The 9-month extension can only be granted if the individual intends to use the cash or in-kind replacement items to repair or replace the lost, stolen, or damaged excluded resource in addition to having good cause for not having done so. If good cause is found for an individual, any unused cash (and interest) is counted as a resource beginning with the month after the good cause extension period expires. *Exception: For victims of Hurricane Andrew only,* the extension period for good cause may be extended for up to an additional 12 months beyond the 9-month extension when we find that the individual had good cause for not replacing or repairing an excluded resource within the 9-month extension.

(c) The time period described in paragraph (b) of this section (except the time period for individuals granted an additional extension under the Hurricane Andrew provision) may be extended for a reasonable period up to an additional 12 months in the case of a catastrophe which is declared to be a major disaster by the President of the United States if the excluded resource is geographically located within the disaster area as defined by the presidential order; the individual intends to repair or replace the excluded resource; and, the individual demonstrates good cause why he or she has not been able to repair or replace the excluded resource within the 18-month period.

* * * * *

[FR Doc. 95–12099 Filed 5–16–95; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF LABOR

Office of Labor-Management Standards

29 CFR Part 452

RIN 1294–AA09

Eligibility Requirements for Candidacy for Union Office

AGENCY: Office of Labor-Management Standards, Labor.

ACTION: Proposed rule.

SUMMARY: The Office of Labor-Management Standards proposes to amend its interpretative regulations on labor organization officer elections. The proposed amendment will add a reference to a ruling by the Court of Appeals for the District of Columbia Circuit regarding the reasonableness of meeting attendance requirements set by labor organizations for eligibility for union office. This amendment will inform the public of a court decision that guides the Office in its enforcement actions.

DATES: Interested parties may submitted comments on or before July 17, 1995.

ADDRESSES: Written comments should be submitted to Edmundo A. Gonzales, Deputy Assistant Secretary for Labor-Management Standards, Office of the American Workplace, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–2203, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Kay H. Oshel, Chief, Division of Interpretations and Standards, Office of Labor-Management Standards, Office of the American Workplace, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5605, Washington, DC 20210, (202) 219–7373. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

I. Background and Overview

Title IV of the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA) sets forth standards and requirements for the election of labor organization officers. Section 401(e) of title IV, 29 U.S.C. § 481(e), provides in part that every member in good standing has the right to be a candidate subject "to reasonable qualifications uniformly imposed."

In connection with the Department's enforcement responsibilities under LMRDA title IV, interpretative regulations have been promulgated, 29 CFR part 452, in order to provide the public with information as to the Secretary's "construction of the law which will guide him in performing his (enforcement) duties." 29 CFR 452.1. Several provisions in the interpretative regulations discuss union-imposed qualifications on candidacy eligibility. One of these provisions, 29 CFR 452.38, deals specifically with meeting attendance requirements and lists several factors to consider in determining whether, under "all the circumstances," a particular meeting attendance requirement is reasonable.

On June 15, 1994, OLMS published an advance notice of proposed rulemaking (ANPRM) requesting comments from the public on the possible need to modify the interpretative regulations on meeting attendance requirements in order to incorporate a ruling of the United States Court of Appeals for the District of Columbia Circuit in *Doyle* v. *Brock*, 821 F.2d 778 (D.C. Cir. 1987). In *Doyle*, the Secretary's decision not to bring enforcement action under LMRDA title IV was reviewed by the courts pursuant to *Dunlop* v. *Bachowski*, 421 U.S. 560 (1975). (In *Bachowski*, the Supreme Court held that judicial review of the Secretary's decision not to bring litigation in LMRDA title IV cases is available under the Administrative Procedure Act.) The Secretary had decided not to bring civil action on a member's complaint about his union's meeting attendance requirement, even though the requirement disqualified 97% of the members. The Secretary's position, after reviewing the factors set forth in 29 CFR 452.38, was that since

the requirement was not on its face unreasonable (i.e., it did not require a member to decide to become a candidate an excessively long period before the election) and it was not difficult to meet (i.e., the meetings were held at convenient times and locations and the union provided liberal excuse provisions), the large impact of the requirement was not by itself sufficient to render it unreasonable.

The district court held that the Secretary's decision not to bring litigation against the union was arbitrary and capricious, *Doyle* v. *Brock*, 641 F. Supp. 223 and 632 F. Supp. 256 (D.D.C. 1986). The court of appeals affirmed, rejecting the Secretary's position summarized above. The court emphasized the importance of the impact of the meeting attendance requirement in disqualifying 97% of the membership as a sufficient factor in determining the requirement to be unreasonable:

> There is *no* basis, in [the Supreme Court's decision in *Steelworkers, Local 3489* v. *Usery*, 429 U.S. 305 (1977)] or in any other case, for the notion that an attendance requirement that has a large antidemocratic effect can be reasonable on its face, and that some additional factor is necessary to find the requirement violative of the LMRDA.

821 F.2d 778, 785.

The ANPRM suggested three options for modifying the interpretative regulations. The first suggested option was to delete the current language in 29 CFR 452.38(a) and replace it with the statement that all meeting attendance requirements are per se unreasonable. The second suggested option was to retain the current language in 29 CFR 452.38(a) stating that the reasonableness of a meeting attendance requirement is determined by reviewing a number of factors on a case-by-case basis, but add language to the effect that there is an inverse relationship between the impact of the requirement and the probability that it will be considered reasonable. The third suggested option, a combination of the first two, was to retain the current case-by-case language of 29 CFR 452.38, but add a statement that once the impact reaches a certain point (such as 50%, 75% or 90%) the meeting attendance requirement will be considered to be unreasonable per se.

II. Comments on the ANPRM

OLMS received sixteen (16) comments pursuant to the ANPRM on the meeting attendance regulation. Fourteen (14) comments were received from the following labor organizations, which generally opposed restrictions on meeting attendance requirements:

—International Organization of Masters, Mates & Pilots
—Association of Western Pulp and Paperworkers
—United Cereal, Bakery and Food Workers, No. 374
—International Association of Fire Fighters
—Glass, Molders, Pottery, Plastics & Allied Workers International Union
—American Federation of Grain Millers
—International Guards Union of America
—Graphic Communications International Union
—Amalgamated Transit Union
—Oil, Chemical & Atomic Workers International Union
—Amalgamated Clothing and Textile Workers Union
—International Brotherhood of Painters & Allied Trades
—The American Federation of Labor and Congress of Industrial Organization (joined by the United Steelworkers of America and the International Association of Machinists and Aerospace Workers)
—International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers & Helpers

The other two comments, which opposed meeting attendance requirements and supported the option of holding that they are *per se* unreasonable, were received from the following:

—The Association for Union Democracy
—Acuna, Casas & Araiza (a law firm)

The points that were most frequently made in the comments submitted by labor organizations are as follows.

—A substantial number of union constitutions continue to have meeting attendance requirements, either because the parent national or international union requires one or the parent allows subordinate locals to choose to impose one.
—Although a large majority of union members do not attend meetings, it is not possible to make generalizations on the portion of membership disqualified by meeting attendance requirements. One comment stated that determining who is ineligible because of a meeting attendance requirement in a particular case is difficult because of the availability of excuse provisions and the need to review meeting sign-in sheets and records of excuse requests.
—The primary purpose of meeting attendance requirements is to ensure that candidates are knowledgeable about the duties of the positions they seek and that they are committed to the union and serving its members; the labor organizations stated that they and their members feel very strongly that this is a valid purpose. Meeting attendance requirements have served this purpose well (but the labor organizations presented no facts to support this belief).
—It is not appropriate to judge the reasonableness of a candidacy qualification by the number of member who choose not to attempt to meet it. The reasonableness of a rule should be determined primarily by how difficult the qualification is to meet.
—*Doyle* is not persuasive and should not be followed in the other circuits.
—No court has held meeting attendance requirements to be per se unreasonable, and there is no legal basis for the Department to make them per se unreasonable.
—If any change is made to the regulations, that change should state that a meeting attendance requirement is presumptively reasonable as long as the requirement is flexible (e.g., liberal excuse provisions are available) and/or the union takes other action to encourage attendance (e.g., meetings held at different times, extensive notice of meetings, etc.).

In addition, one of the labor organization comments cited several Supreme Court and lower court decisions to support the proposition that although "Congress' model of democratic elections was public elections in this country," *Wirtz v. Hotel, Motel and Club Employees Union, Local 6*, 391 U.S. 492 (1968), the *Doyle* court's standard for judging union candidacy qualifications was far more demanding than the standards which courts have used for judging state election rules (and therefore, presumably, the *Doyle* standard would not survive a challenge to the Supreme Court). The most recent of the Supreme Court cases, *Munro v. Socialist Workers Party*, 479 U.S. 189, 107 S. Ct. 533 (1986), involved a challenge to a Washington state law which required a minority party candidate to run in the state's open primary and receive at least 1% of all votes cast for that office in order to be a candidate in the general election. The Court upheld this candidacy restriction, even though such restrictions "impinge" upon the First and Fourteenth Amendment rights of candidates and voters, because those rights "are not absolute and are necessarily subject to qualification if elections are to be run fairly and effectively." *Id.*, at 193.

The state interests generally cited to justify the impingement on

constitutional rights are ensuring that candidates have a "modicum of support," *Id.*, at 193, avoiding voter confusion, and eliminating frivolous candidates. The Court has held that states are not required to show that the restriction is actually needed to serve valid state interests. In *Munro*, the Court accepted the determination of the Court of Appeals (which has found the restriction unconstitutional) that, as a "historical fact," there was no evidence of voter confusion from ballot overcrowding, but went on to state that

> [W]e have never required a State to make a particularized showing of the existence of voter confusion, ballot overcrowding, or the presence of frivolous candidates prior to the imposition of reasonable restrictions on ballot access * * *. *Id.*, at 194–5.
>
> Legislatures, we think, should be permitted to respond to potential deficiencies in the electoral process with foresight rather than reactively * * * *Id.*, at 195.

For the Court, it was sufficient that the restriction on candidacy in the general election was based on the state's "perception" of harmful developments requiring that restriction. *Id.*, at 196.

The two commenters who opposed meeting attendance requirements stated generally that

—they disqualify too many members, discriminate in favor of incumbents, are difficult to administer, and serve no useful purpose,
—their alleged purpose, of ensuring knowledgeable and committed candidates, is undermined rather than supported by the availability of liberal excuse provisions,
—only a minority of unions have them, and
—members should make the decision in the election as to whether a person is qualified.

One of the comments which supported a per se ruling against meeting attendance requirements made a number of additional points. First, in support of the position that most meeting attendance requirements have been held to violate the LMRDA, this commenter stated that its review of court and administrative decisions on title IV cases disclosed only one court decision and a handful of administrative decisions which upheld the application of a meeting attendance requirement after *Steelworkers Local 3489*.

Second, this commenter argued that the Supreme Court's approval of the Department's case-by-case approach under 29 CFR 452.38 in *Steelworkers Local 3489* does not prohibit the Department "from adopting a less flexible ban on all meeting attendance requirements." It stated that in other areas of law the courts "have not hesitated to make the transition from a test based on all the circumstances to the adoption of per se rules." In particular, the commenter cited a Supreme Court decision involving anti-trust laws, *Northwest Stationers* v. *Pacific Stationery*, 472 U.S. 284 (1985), which rejected the "rule of reason" approach and held that certain business arrangements were per se illegal because experience has shown that they "always or almost always" tend to restrict competition. This commenter also cited a handbook of tort law to support its position that courts have held that certain actions in violation of statutes or ordinances are per se unreasonable.

Third, this commenter stated that several of the Department's regulations already contain per se rulings on eligibility requirements. It cited the following regulations which set forth per se prohibitions: prior office holding (29 CFR 458.40), membership in a particular branch (29 CFR 458.42), discrimination on the basis of personal characteristics such as race, religion, sex, and national origin which violates Federal law (29 CFR 458.46), and declaration of candidacy months prior to the election (29 CFR 458.51). It also cited several regulations which hold that certain candidacy qualifications are per se reasonable: ineligibility of full-time non-elective employees (29 CFR 458.48), term limits (29 CFR 458.49), and two years prior membership (29 CFR 458.37).

Finally, an article cited in these comments, that was written by the author of these comments, refers to several sources which support the proposition that attendance at union meetings is and always has been low. One of these is a statement by Senator Hubert Humphrey in discussions on bills which lead to the LMRDA. Senator Humphrey's exact statement, made in the context of emphasizing the importance of members' attending union meetings, was that "[i]f only 10 percent of union members attend meetings—and that is a good average—we can expect abuse of power." 105 Cong. Rec. 17,918.

This commenter concluded by arguing that it is important to completely prohibit meeting attendance requirements because any action short of this will encourage unions to retain those requirements and discourage members who have not met the requirements from running for office, even though most such requirements would not survive challenge. This commenter also noted that some judges have upheld an eligibility requirement because it disqualified only 10% or 25% of members, even though its justification was otherwise questionable; continuing the current case-by-case approach might encourage the case law to develop in this direction, a tendency which should be "resisted."

III. Discussion

After reviewing the comments on the ANPRM and the pertinent court decisions in view of these comments, the Department has decided to propose a modification of the interpretative regulations at 29 CFR 452.38 in order to cite *Doyle* and refer to its essential ruling. The Department has concluded the *Doyle* is an important decision "which will guide [the Secretary] in performing his duties," 29 CFR 452.1, and it is therefore appropriate to include it in the interpretative regulations, but that there is an insufficient basis at this time to take further action such as holding that meeting attendance requirements are per se unreasonable.

The proposal to cite *Doyle* and refer to its essential ruling is contrary to the recommendations of both the labor organization commenters and those commenters who supported a per se ruling against meeting attendance requirements. Several labor organizations stated in their comments that they disagreed with *Doyle* and recommended that *Doyle* not be followed in other circuits. However, this recommendation is not feasible. Since *Doyle* was decided in the District of Columbia Circuit, where the Secretary is located, and since the Supreme Court's decision in *Dunlop* v. *Bachowski* held that any member may bring litigation against the Secretary for judicial review of his decision not to take enforcement action, a decision by the Secretary not to follow *Doyle* in another circuit would be susceptible to successful legal challenge in the D.C. Circuit.

In addition, several labor organizations recommended that the Department create a "safe harbor" whereby a meeting attendance requirement would be presumed to be reasonable if, for example, meetings are not difficult to attend, the union makes significant efforts to encourage attendance, and there are liberal excuse provisions. However, many of these factors were considered and rejected in *Doyle* as well as in *Steelworkers Local 3489*, and the establishment of a presumptively "safe harbor" is therefore not possible.

The proposal to cite *Doyle* is also contrary to the recommendations made in the other two comments to prohibit meeting attendance requirements per se. The Department has concluded that such recommended action, at a minimum, raises serious legal questions. As the labor organizations comments noted, the LMRDA expressly allows unions to impose "reasonable qualifications uniformly imposed" on candidacy eligibility, Congress did not discuss any abuses stemming from meeting attendance requirements even though many unions had such requirements at the time the LMRDA was enacted and attendance was undoubtedly very low at that time as well, and no court has actually held meeting attendance requirements to be per se unreasonable, not even the *Doyle* court.

The arguments presented in the comments in support of the legal validity of adopting a per se rule do not overcome these difficulties. In particular, the Department does not feel that the Supreme Court decision involving anti-trust laws, which reflected the "rule of reason" approach and held that certain business arrangements were per se illegal because the experience shows that they "always or almost always" tend to restrict competition, is persuasive here. Unlike the statutes discussed in that Court decision (§ 1 of the Sherman Act, 15 U.S.C. § 1, and section 4 of the Robinson-Patman Act, 15 U.S.C. § 13(b)), LMRDA section 401(e) expressly allows unions to adopt reasonable rules limiting candidacy. Moreover, as stated above, the fact that attendance at union meetings is low was acknowledged during Congressional deliberations, so that the Department's "experience" in implementing the LMRDA is not different from the facts known by Congress when it enacted the LMRDA.

In addition, the four kinds of eligibility requirements referred to one of the commenters which are prohibited per se in the Department's regulations can be readily distinguished from meeting attendance requirements. "Prior office holding" by its very terms makes it impossible for every member to be a candidate *and* was expressly found to be unreasonable by the Supreme Court in *Wirtz* v. *Hotel, Motel and Club Employees Union, Local 6*, 391 U.S. 492 (1968). "Discrimination on the basis of certain personal characteristics" also by its very terms makes it impossible for every member to be a candidate *and* is illegal under other Federal law. "Membership in a particular union branch" also by its very terms makes it impossible for every member to be a candidate. "Declaration of candidacy" restricts the right of members to nominate candidates and has been held by the courts to serve no arguable purpose.

The Department recognizes that many of the statements made by the commenters who supported a per se prohibition on meeting attendance requirements may well be valid. For those cases of which the Department has knowledge through its investigation of a complaint, meeting attendance requirements have most often disqualified the overwhelming majority of members and the requirements have most often been found to be unreasonable. The justifications for meeting attendance requirements have most often been seriously questioned by the courts. Meeting attendance requirements are difficult and burdensome to administer equitably and uniformly, especially with regard to excuse provisions, and they lead to uncertainty and costly litigation for all concerned. These are all considerations which labor organizations should be aware of if they choose to have meeting attendance requirements, in addition to the fact that the Department under *Doyle* will take enforcement action whenever a meeting attendance requirement disqualifies a large portion of a union's membership from candidacy.

Nevertheless, the LMRDA recognizes that labor organizations have the right to establish reasonable candidacy qualifications, and the Department has concluded that there is not a sufficient basis at this time for holding this one type of candidacy qualification to be per se unreasonable. It is therefore not appropriate or necessary under the present case law to replace the case-by-case approach, set forth in 29 CFR 452.38 and cited approvingly by the Supreme Court in *Steelworkers Local 3489*, for determining whether a meeting attendance requirement is reasonable.

IV. The Proposed Revision

As stated above, the Department proposes to revise the interpretive regulations to cite *Doyle* and refer to its essential ruling. Under this proposal, the text of § 452.38 would remain, but the text of footnote 25 would be replaced with the following:

> [25] If a meeting attendance requirement disqualifies a large portion of members from candidacy, that large antidemocratic effect alone may be sufficient to render the requirement unreasonable. In *Doyle* v. *Brock*, 821 F.2d 778 (D.C. Circuit 1987), the court held that the impact of a meeting attendance requirement which disqualified 97% of the union's membership from candidacy was by itself sufficient to make the requirement unreasonable notwithstanding any of the other factors set forth in 29 CFR 452.38(a).

The current text of footnote 25, which would be eliminated under this proposal, refers to the holding of the Supreme Court in *Wirtz* v. *Hotel, Motel and Club Employees Union, Local 6*, 391 U.S. 492, at 502, as support for the importance of impact in determining whether a meeting attendance requirement is reasonable. However, the *Doyle* decision is a more appropriate citation for this point because in this case, unlike *Local 6*, the meeting attendance requirement was found unreasonable solely on the basis of its impact; in contrast, *Local 6* involved the issue for prior office holding, which is covered in 29 CFR 452.40 and footnote 26, which summarizes *Local 6*. In addition, even if the current text of footnote 25 is replaced, there will continue to be references to *Local 6* in footnote 26 and the text of 452.36(a).

V. Administrative Notices

A. Executive Order 12866

The Department of Labor has determined that this proposed rule is not a significant regulatory action as defined in section 3(f) of Executive Order 12866 in that it will not (1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities, (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency, (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof, or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

B. Regulatory Flexibility Act

The Agency Head has certified that this proposed rule will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act. Any regulatory revision will only apply to labor organizations, and the Department has determined that labor organizations regulated pursuant to the statutory authority granted under the LMRDA do not constitute small entities. Therefore, a regulatory flexibility analysis is not required.

C. Paperwork Reduction Act

This proposed rule contains no information collection requirements for

purposes of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

List of Subjects Affected in 29 CFR Part 452

Labor unions.

Text of Proposed Rule

In consideration of the foregoing, the Department of Labor proposes that part 452 of title 29, Code of Federal Regulations, be amended as follows:

PART 452—GENERAL STATEMENT CONCERNING THE ELECTION PROVISIONS OF THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT OF 1959

The authority citation for Part 452 continues to read as follows:

Authority: Secs. 401, 402, 73 Stat. 532, 534 (29 U.S.C. 481, 482); Secretary's Order No. 2–93 (58 FR 42578).

2. Footnote 25 cited at the end of section 452.38(a) is revised to read as follows:

§ 452.38 Meeting attendance requirements.

* * * * *

[25] If a meeting attendance requirement disqualifies a large portion of members from candidacy, that large antidemocratic effect alone may be sufficient to render the requirement unreasonable. In *Doyle* v. *Brock*, 821 F.2d 778 (D.C. Circuit 1987), the court held that the impact of a meeting attendance requirement which disqualified 97% of the union's membership from candidacy was by itself sufficient to make the requirement unreasonable notwithstanding any of the other factors set forth in 29 CFR 452.38(a).

Signed in Washington, DC this 11th day of May 1995.

Charles L. Smith,

Special Assistant to the Deputy Secretary.

[FR Doc. 95–12137 Filed 5–16–95; 8:45 am]

BILLING CODE 4510–86–M

LIBRARY OF CONGRESS

36 CFR Part 701

[Docket No. LOC 95–1]

Reading Rooms and Service to the Collections

AGENCY: Library of Congress.

ACTION: Proposed rules.

SUMMARY: The Library of Congress is proposing to amend its regulations on access to the Library's collections by members of the public and policies and procedures for service to the collections. This amendment reflects the new capabilities of the Library's reader registration system, specifically requiring all members of the public wishing to use the Library's collections to obtain a Library-issued User Card. The User card will contain the name, current address, and a digitized photograph of the user. This amendment also describes new policies and procedures for providing and maintaining security for Library materials from accidental or deliberate damage or loss caused by users of these collections and the penalties for misuse. These measures include establishing conditions and procedures for the use of material that requires special handling, instructing and monitoring readers, assuring that the conditions and housing of all materials are adequate to minimize risk, and establishing control points at entrances to reading rooms. These new procedures will enhance the security of the Library's collections.

DATES: Comments should be received on or before June 16, 1995.

ADDRESSES: Ten copies of written comments should be addressed, if sent by mail to: Library of Congress, Mail Code 1050, Washington, DC 20540. If delivered by hand, copies should be brought to: Office of the General Counsel, James Madison Memorial Building, Room LM–601, First and Independence Avenue, SE., Washington, DC 20540–1050, (202) 707–6316.

FOR FURTHER INFORMATION CONTACT: Johnnie M. Barksdale, Regulations Officer, Office of the General Counsel, Library of Congress, Washington, DC 20540–1050. Telephone No. (202) 707–1593.

SUPPLEMENTARY INFORMATION: Under the authority of 2 U.S.C. 136, the Librarian of Congress is authorized to make rules and regulations for the government of the Library and for the protection of its property. In March of 1992, James H. Billington, the Librarian of Congress, announced that new security measures had to be taken to protect the Library's collections due to an increase in thefts and mutilation of materials. "The Library of Congress has long prided itself on being open to all readers," Dr. Billington said. "However, as the nation's Library and the world's largest repository of mankind's intellectual accomplishments, we have an obligation to protect our collections for future generations of Americans. Many of our books, maps, prints, and manuscripts are irreplaceable. We cannot risk their loss or desecration. We are responsible for the nation's patrimony." Dr. Billington's announcement followed lengthy planning by the Library to tighten security. It also followed the third arrest for theft from the Library since April 1991. 36 CFR 701.5 is amended to announce the Library's new capability to capture and store the name, address, and a digitized photograph of registered users of its collections in an automated file for collections security purposes. The existing text in 36 CFR 701.5 will become paragraph (b) and a new paragraph (a) is added. 36 CFR 701.6 is amended to set forth the general policy of the Library on the use of materials in its custody. 18 U.S.C. 641, 1361, and 2071; and 22 D.C. Code 3106 set forth criminal provisions for mutilation or theft of Government property. The existing text in 36 CFR 701.6, Chapter VII will become paragraph (a) and new paragraphs (b), (c), and (d) are added. The last sentence in paragraph (a) should be removed.

List of Subjects in 36 CFR Part 701

Libraries, Seals and insignias.

Proposed Regulations.

In consideration of the foregoing the Library of Congress proposes to amend 36 CFR part 701 as follows:

PART 701—PROCEDURES AND SERVICES

1. The authority citation for part 701 will continue to read as follows:

Authority: 2 U.S.C. 136.

2. Section 701.5 is amended by redesignating the existing text as paragraph (b) and adding a new paragraph (a) to read as follows:

§ 701.5 The Library's reading rooms and public use thereof.

(a) All members of the public wishing to use materials from the Library's collections first must obtain a User Card. The Library will issue User Cards, in accordance with established access regulations, to those persons who present a valid photo identification card containing their name and current address. The Library-issued User Card will include the name, digitized photograph, and signature of the user. It must be presented when requesting materials housed in the book stacks or other non-public areas or upon request of a Library staff member. In accordance with Library regulations which prescribe the conditions of reader registration and use of Library materials, presentation of a User Card may be required for entry into certain reading rooms. The Library will maintain the information found on the User Cards, including the digitized photograph and other pertinent information, in an automated file for collections security purposes. Access to the automated file shall be limited to only those Library staff whose official duties require access. The automated file shall be physically separated and accessible only from inside the Library.

* * * * *

3. Section 701.6 is amended by redesignating the existing text as paragraph (a), except for the last sentence which should be removed, and adding new paragraphs (b), (c), and (d) to read as follows:

§ 701.6 Service to the collections

* * * * *

(b) Definitions.

(1) *Security* means administration of continuing, effective controls in areas where materials are housed for the purpose of preprocessing or processing, storage, access, or use. These controls are designed to safeguard against theft, loss, misplacement, or damage from improper use or vandalism and may vary as appropriate to the quality, monetary value, replaceability, fragility, or other special or unusual conditions relating to the materials concerned.

(2) *Library material* means:

(i) Items in all formats (including, but not limited to, books and pamphlets; documents; manuscripts; maps; microfiche, microfilms, and other microforms; motion pictures, photographs, posters, prints, drawings, videotapes, and other visual materials; newspapers and periodicals; recorded discs, tapes, or audio/video/digital materials in other formats) either in the collections of the Library of Congress or acquired for and in process for the Library's collections;

(ii) Objects such as musical instruments, printing blocks, copper engraving plates, paintings, and scrolls, and

(iii) *Control files,* which are manual or automated files essential to the physical or intellectual access to Library materials, such as catalogs, computer tapes, finding aids, and shelflists. These include items that are acquired as an integral part of Library materials and are accessioned into the collections with them permanent inventory records, public catalogs, and other finding aids.

(3) *Security-controlled environment* means, but is not limited to: general and special reading rooms and research facilities where materials are issued under controlled circumstances for use of readers; the bookstacks and other storage facilities where materials are housed when not in use; and work areas where materials are held temporarily for processing.

(c) *General policy for use of Library materials.* Materials retrieved for readers' use shall be used only in assigned reading rooms or research facilities. Use elsewhere in Library buildings requires specific authorization from designated staff members of the custodial unit. Use of materials assigned to reference collections shall be in accordance with established regulations. To minimize the risk of theft, loss, or damage when the materials are removed from designated storage areas, the conditions of availability and use will vary as appropriate to the quality of materials, their monetary value, replaceability, format, physical condition, and the purpose for which they are to be circulated—reader use within the Library, exhibits, preservation, photoduplication, or loan outside the Library. Unless otherwise specified by Library regulations, and/or legal or contractual obligations, the conditions and procedures for use of materials, including duplication, either inside or outside of the Library buildings, shall be determined by or in consultation with the unit head responsible for the custody of the material used.

(1) Any material removed from the security-controlled environment of a reading room or storage area, and meeting the established criteria must be charged as an internal or external loan through the Loan Division, in accordance with established loan regulations. The security of in-process material, and special collections material not meeting the criteria of these regulations, is the responsibility of the division chief or equivalent Library officer with physical control of the material. That division shall determine whether or not a Loan Division internal charge must be created when an item is removed for use. If a Loan Division record is not created, the division shall create and maintain a local record until the item is returned.

(2) When the period of use is completed, all materials shall be returned immediately to the custodial unit to be placed in designated shelf or other locations in assigned storage areas. Charge records for the returned materials shall be removed from the charge files.

(d) *Penalties.* Readers who violate established conditions and/or procedures for using material are subject to penalties to be determined by or in consultation with the unit head responsible for the custody of the material used.

(1) When a reader violates a condition and/or procedure for using material, the division chief or head of the unit where the infraction occurred may, upon written notification, deny further access to the material, or to the unit in which it is housed, to be determined by the nature of the infraction and the material involved.

(2) Within five workdays of receipt of such notification, the reader may make a written request, including the reasons for such request to the Associate Librarian for that service unit, or his/her designee, for a reconsideration of said notification.

(3) The Associate Librarian for that service unit, or his/her designee, shall respond within five workdays of receipt of such request for reconsideration and may rescind, modify, or reaffirm said notification, as appropriate.

(4) Repeated violations of established conditions and/or procedures for using material may result in denial of further access to the premises and further use of the Library's facilities or revocation of the reader's User Card, in accordance with established access regulations.

(5) Mutilation or theft of Library property also may result in criminal prosecution, as set forth in 18 U.S.C. 641, 1361, and 2071; and 22 D.C. Code 3106.

(6) In certain emergency situations requiring prompt action, the division chief or head of the unit where the infraction occurred immediately may deny further access to the material or unit prior to making written notification action. In such cases, the reader shall be notified, in writing, within three days of the action taken and the reasons therefor. The reader then may request reconsideration.

(7) A copy of any written notification delivered pursuant to this part shall be forwarded to the Captain, Library Police, the service unit, and the Director, Integrated Support Services, for retention.

Dated: May 11, 1995.

James H. Billington,

The Librarian of Congress.

[FR Doc. 95–12129 Filed 5–16–95; 8:45 am]

BILLING CODE 1410–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–7135]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood

elevation modifications for the communities listed below. The base (1% annual chance) flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) proposes to make determinations of base (1% annual chance) flood elevations and modified base flood elevations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood Insurance Program. As a result, a regulatory flexibility analysis has not been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/ county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Florida	Pinellas County Unincorporated Areas.	Alligator Creek Channel A	Approximately 800 feet downstream of McMullen Booth Road.	*11	*10
			Approximately 625 feet downstream of Sunset Point Road.	None	*54
		Alligator Creek Channel B	Approximately 1,250 feet upstream of CSX Transportation.	None	*24
			At 4th Avenue South	None	*89
		Alligator Creek Channel C	At confluence with Channel A	*37	*38
			Approximately 1,400 feet upstream of Sunset Point Road.	None	*66
		Alligator Creek Channel E	Approximately 250 feet downstream of CSX Transportation.	*10	*12
			At downstream side of McMullen Booth Road.	None	*22
		Alligator Creek	At confluence with Channel A	*25	*26
		Channel H	Approximately 600 feet upstream of Sharkey Road.	None	*35
Maps available for inspection at the County Technical Services Building, First Floor, 440 Court Street, Clearwater, Florida. Send comments to Mr. Fred E. Marquis, Pinellas County Administrator, 315 Court Street, Clearwater, Florida 34616.					
Indiana	Tipton (City)	Cicero Creek	At the confluence of Tobin Ditch	None	*859
	Tipton County		Approximately 0.95 mile upstream of State Route 19 (Main Street).	None	*866

State	City/town/ county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
		Buck Creek	Approximately 0.5 mile downstream of State Route 28 (Jefferson Street).	None	*866
			At Norfolk & Western Railroad	None	*870
Maps available for inspection at the City of Tipton Planning Commission, 113 Court Street, Tipton, Indiana. Send comments to The Honorable David Berkemeier, Mayor of the City of Tipton, 113 Court Street, Tipton, Indiana 46072.					
Maine	Anson (Town) Somerset County.	Kennebec River	Approximately 5,580 feet downstream of U.S. Route 201A, and U.S. Route 8, 43, and 148.	*196	*201
			Approximately 3 miles upstream of the confluence of Carrabassett River.	*272	*275
		Carrabassett River	At the confluence with Kennebec River	*267	*270
			Approximately 0.56 mile upstream of the confluence with Big Brook.	*344	*345
		Getchell Brook	Approximately 180 feet downstream of State Route 43 and 148 (Main Street).	*255	*258
			Approximately 545 feet upstream of State Routes 43 and 148 (Main Street).	*257	*258
Maps available for inspection at the Anson Town Hall, Main Street, Anson, Maine. Send comments to Mr. Ralph Withee, Chairman of the Town of Anson Board of Selectrfien, Anson Town Hall, P.O. Box 297, Anson, Maine 04911.					
Maine	Holden (Town) Penobscot County.	Brewer Lake	Entire shoreline within community	None	*112
		David Pond	Entire shoreline within community	None	*199
		Holbrook Pond	Entire shoreline within community	None	*199
Maps available for inspection at the Holden Town Office, 1460 Main Road, East Holden, Maine. Send comments to Mr. Joel Dearborn, Chairman of the Town of Holden Board of Selectmen, P.O. Box 490, East Holden, Maine 04429.					
Massachusetts	Monson (Town) Hampden County.	Twelvemile Brook	At the upstream side of Pulpit Rock Pond dam.	Done	*367
			Approximately 1,000 feet upstream of Reimers Street	None	*425
		Thayer Brook	Approximately 210 feet downstream of Lakeshore Drive.	None	*367
			Approximately 40 feet upstream of Lakeshore Drive	None	*385
Maps available for inspection at the Building Inspector's Office, 110 Main Street, Monson, Massachusetts. Send comments to Mr. Peter A. Rouette, Chairman of the Board of Selectmen for the Town of Monson, 110 Main Street, Monson, Massachusetts 01057.					
Michigan	Bangor (Township)	Saginaw Bay	Shoreline from approximately 4,500 feet south of Parrish Road along Detroit and Mackinac Rail to a point approximately 1,500 feet south of intersection of Tobico Road and Ploof Road.	*585	*589
Maps available for inspection at the Bangor Township Hall, 180 State Park Drive, Bay City, Michigan. Send comments to Mr. Joseph Rivet, Supervisor of the Bangor Charter Township, Bay County, 180 State Park Drive, Bay City, Michigan 48706.					
Michigan	Cadillac (City) Wexford County.	Clam River	Approximately 50 feet upstream of Chestnut Street 1.	None	*1291
			At Thirteenth Street and No. 6 Road	None	*1288
		Lake Cadillac	Entire shoreline within community	None	*1291
		Lake Mitchell	Entire shoreline within community	None	*1291
Maps available for inspection at the Cadillac City Hall, 200 Lake Street, Cadillac, Michigan. Send comments to The Honorable Ronald Blanchard, Mayor of the City of Cadillac, Cadillac City Hall, 200 Lake Street, Cadillac, Michigan 49601.					
Michigan	Fraser (Township) Bay County.	Saginaw Bay	Shoreline along Saginaw Bay (approximately 925 feet east of the intersection of Elevator Road and Anderson Road, to Gregory Drain.	*589	*586

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Fraser Township Hall, 1474 North Mackinaw Road, Linwood, Michigan. Send comments to Mr. Richard Gromaski, Supervisor of the Township of Fraser, Bay County, Fraser Township Hall, 1474 North Mackinaw Road, Linwood, Michigan 48634.					
Michigan	Monitor (Township) Bay County.	Kawkawlin River	At downstream corporate limits Approximately 500 feet upstream of confluence with North Branch Kawkawlin River.	None	*591
		North Branch Kawkawlin River	At confluence with Kawkawlin River	None	*592
			At upstream corporate limits	None	*593
Maps available for inspection at the Monitor Township Hall, 2483 Midland Road, Bay City, Michigan. Send comments to Mr. Warren J. Sinke, Supervisor for the Township of Monitor, Bay County, 2483 Midland Road, Bay City, Michigan 48706.					
Michigan	Selma (Township) Wexford County.	Lake Mitchell	Entire shoreline within community	None	*1291
		Gyttja Lake	Entire shoreline within community	None	*1291
		Pleasant Lake	Entire shoreline within community	None	*1330
Maps available for inspection at the Selma Township Hall, 3730 South 37th Road, Cadillac, Michigan. Send coments to Mr. David DeForest, Supervisor of the Township of Selma, 3730 South 37th Road, Cadillac, Michigan 49601.					
Mississippi	Pearl River Valley Water Supply District Hinds, Madison, Leake, Scott, and Rankin Counties.	Brashear Creek	Approximately 1,250 feet downstream of Charity Church Road.	*286	*287
			Approximately 850 feet upstream of Rice Road (upstream corporate limits).	*296	*297
		Hearn Creek	Approximately 1,500 feet downstream of North Bay Drive.	*304	*303
			Approximately 1,480 feet upstream of North Bay Place.	*310	*308
		Ross Barnett Reservoir	At the north side of North Shore Parkway	None	*300
			At corporate limits approximately 150 feet north of North Shore Parkway.	None	*300
Maps available for inspection at the Water Supply District General Office, 115 Madison Landing Circle, Madison, Mississippi. Send comments to Mr. Kenneth Griffin, General Manager of the Pearl River Valley Water Supply District, P.O. Box 12750, Jackson, Mississippi 39236.					
New Jersey	Moorestown (Township) Burlington County.	Swede Run	Approximately 0.54 mile downstream of Garwood Road.	*31	*34
			Approximately 150 feet upstream of Stanwick Avenue.	*56	*57
		Swede Run Tributary	At the confluence with Swede Run	*47	*48
			Approximately 600 feet upstream of the confluence with Swede Run.	*47	*48
Maps available for inspection at the Building Inspector's Office, 111 West Second Street, Moorestown, New Jersey. Send comments to The Honorable Walter Maahs, Mayor of the Township of Moorestown, 111 West Second Street, Moorestown, New Jersey 08057.					
New York	Bolivar (Village) Allegany County.	Root Creek	Approximately 0.27 mile downstream of Main Street.	*1582	*1583
			Approximately 0.4 mile upstream of David Street.	*1637	*1638
Maps available for inspection at the Village Clerk's Office, 252 North Main Street, Bolivar, New York. Send comments to The Honorable David Evans, Mayor of the Village of Bolivar, 252 North Main Street, Bolivar, New York 14715.					
New York	Huron (Town) Wayne County.	Lake Ontario	Within Sodus, East, and Port Bays	*249	*250
			Entire Lake Ontario shoreline within the Town of Huron corporate limits.	*249	*251
Maps available for inspection at the Town Clerk's Office, 10880 Lummisville Road, Wolcott, New York. Send comments to Mr. Carl Prober, Huron Town Supervisor, 10880 Lummisville Road, Wolcott, New York 14590.					
New York	Potsdam (Village) St. Lawrence County.	Raquette River	Approximately 240 feet upstream of downstream corporate limits.	*400	*399
			Approximately 200 feet downstream of upstream corporate limits.	*412	*411
Maps available for inspection at the Code Enforcement Office, Park and Elm Streets, Potsdam, New York. Send comments to Mr. Marvin E. Rust, Flood Control Officer for the Village of Potsdam, P.O. Box 5168, Potsdam, New York 13676.					

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
North Carolina	Durham County (Unincorporated Areas).	Little Lick Creek	Approximately 200 feet downstream of State Route 1814 (Fletcher Chapel Road).	None	*278
			Approximately 200 feet downstream of State Route 1815 (North Mineral Springs Road).	None	*290
		Little Lick Creek Tributary 1B.	At confluence with Little Lick Creek	*275	*279
			Approximately 50 feet upstream of Delmar Road.	None	*345
		Northeast Creek	Approximately 1,800 feet downstream of State Route 1100 (Grandale Drive).	None	*245
			Approximately 100 feet downstream of State Route 1951 (Sohi Road).	*295	*301
		Northeast Creek Tributary	Approximately 150 feet upstream of confluence with Northeast Creek.	None	*245
			Just upstream of State route 1100 (Old Alex Drive).	None	*286
		Northeast Creek Tributary C.	At confluence with Northeast Creek	*243	*248
			Approximately 100 feet upstream of State Route 1201 (McCormack Road).	None	*297
		Stirrup Iron Creek	Approximately 0.4 mile downstream of Southern Railway Spur.	*327	*330
			Approximately 0.7 mile upstream of Cart Path Dam.	None	*399
		Stirrup Iron Creek Tributary A.	At confluence with Stirrup Iron Creek	None	*344
			Just upstream of State Route 1966 (Lumley Road).	None	*383
		Stirrup Iron Creek Tributary B.	At downstream side of Soil Access Road	*325	*327
			Approximately 600 feet upstream of Soil Access Road.	None	*331
		Stirrup Iron Creek Tributary C.	Approximately 600 feet downstream of State Route 1969 (Chin Page Road).	None	*317
			Just upstream of State Route 1967 (Evans Road).	None	*349
		Cabin Branch	Approximately 850 feet downstream of State Route 1631 (Snowhill Road).	None	*268
			Approximately 1.29 miles upstream of Glen Oaks Drive.	None	*385
		Crooked Creek	At the City of Durham Extraterritorial Jurisdiction Boundary.	*375	*376
			Approximately 50 feet upstream of Terry Road.	None	*455
		Crooked Creek Tributary 1	At confluence with Crooked Creek	*443	*444
			Approximately 35 feet upstream from confluence with Crooked Creek.	*444	*443
		Eno River	Approximately 0.8 mile downstream of confluence of Eno River Tributary 3.	*327	*328
			Approximately 0.7 mile upstream of State Route 1401 (Cole Mill Road).	None	*369
		Eno River Tributary 3	At confluence with Eno River	*336	*337
			Approximately 600 feet upstream of Brook Lane.	None	*438
		Ellerbe Creek	Approximately 3,700 feet (0.7 mile) upstream from Glenn Road.	*273	*274
			Approximately 1.8 miles upstream from Glenn Road.	*278	*286
		Chunky Pipe Creek	Approximately 0.19 mile downstream of State Route 1815 (North Mineral Springs Road).	*264	*267
			Approximately 1.2 miles upstream of	*294	*297

State	City/town/ county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			State Route 1815 (North Mineral Springs Road).		
		Burdens Creek	At confluence with Northeast Creek	*250	*252
			At upstream face of State Route 54	None	*283
		Burdens Creek Tributary	At confluence with Burdens Creek	*261	*267
			Approximately 100 feet upstream of State Route 54 (Nelson-Chapel Hill Highway).	None	*283
		Sevenmile Creek	At confluence with Eno River	*338	*339
			Approximately 50 feet upstream of State Route 2359 (Quincemore Road).	None	*495
		Panther Creek	Approximately 7,700 feet (1.4 miles) downstream of State Route 1818.	None	*269
			Approximately 75 feet upstream of State Route 1822 (Carpenter Road).	None	*314
		Falls Lake (Neuse River)	Entire shoreline within community	None	*263
		Knap of Reeds Creek	Approximately 1 mile upstream of confluence with Neuse River.	None	*263
			Approximately 4.9 miles upstream of the confluence with Neuse River.	None	*266
Maps available for inspection at the Durham City Engineer's Office, 101 City Hall Plaza, Durham, North Carolina. Send comments to Mr. George H. Williams, Durham County Manager, 200 East Main Street, Durham, North Carolina 27701.					
North Carolina	Durham (City) Durham County.	Chunky Pipe Creek	Approximately 1.2 miles upstream of State Route 1815 (North Mineral Springs Road).	*294	*297
			Approximately 1.64 miles upstream of State Route 1815 (North Mineral Springs Road).	*320	*319
		Goose Creek	At confluence with Ellerbe Creek	*288	*293
			Upstream face of Holloway Street	*338	*339
		Goose Creek Tributary A	At confluence with Goose Creek	*308	*317
			Approximately 2,050 feet downstream of South Miami Boulevard.	*323	*324
		Little Lick CreekApproximately 0.8 mile upstream of State Route 1814 (Fletcher Chapel Road).	*281	*284	
		Approximately 200 feet downstream of State Route 1815 (North Mineral Spring Road)	None	*289	
		Little Lick Creek	At confluence with Little Lick Creek	*289	*293
		Tributary 1A	Approximately 60 feet upstream of Chandler Road.	None	*317
		Little Lick Creek Tributary 1B.	Approximately 1,700 feet upstream of confluence with Little Lick Creek.	None	*281
			Approximately 100 feet upstream of State Route 1911 (Holder Road).	None	*314
		Little Lick Creek Tributary 1D.	At confluence with Little Lick Creek Tributary 1A.	*306	*303
			Approximately 50 feet upstream of State Route 1844 (Chandler Road).	*318	*317
	Mud Creek	At confluence with New Hope Creek.	*254	*256	
			Approximately 50 feet upstream of American Drive.	None	*360
		New Hope Creek	Approximately 400 feet downstream of State Route 2220 (Chapel Hill Road).	*249	*250
			Approximately 2.3 miles upstream of confluence of New Hope Creek Tributary.	None	*263
		New Hope Creek Tributary	Approximately 500 feet upstream of confluence with New Hope Creek.	*259	*260
			Approximately 1,750 feet upstream of State Route 1113 (New Mt. Moriah Road).	None	*265
		Northeast Creek	Approximately 0.6 mile downstream of State Route NC54 (Nelson-Chapel Hill Way).	*254	*258

State	City/town/ county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 50 feet upstream of Sohi Road.	None	*305
		Stirrup Iron Creek	Approximately 120 feet downstream of State Route 1969 (Chin Page Road).	None	*317
			Approximately 750 feet upstream of confluence of Stirrup Iron Creek Tributary A.	None	*344
		Stirrup Iron Creek Tributary A	Approximately 200 feet upstream of confluence with Stirrup Iron Creek.	None	*344
			Approximately 400 feet upstream of confluence with Stirrup Iron Creek	None	*344
		Stirrup Iron Creek Tributary B.	At confluence with Stirrup Iron Creek	*323	*326
			Approximately 1,440 feet upstream of Soil Access Road.	None	*339
		Third Fork Creek	Approximately 1,000 feet downstream of South Roxboro Road.	*253	*254
			Approximately 50 feet upstream of Forest Hills Boulevard (East)	None	*310
		Third Fork Creek	At Abandoned Road	*251	*249
		Tributary A	Approximately 800 feet upstream of Rollingwood Drive.	None	*286
		Third Fork Creek Tributary C.	Approximately 400 feet downstream of South Roxboro Road.	*254	*255
			Upstream side of Princeton Avenue	None	*317
		Third Fork Creek Tributary D.	At confluence with Third Fork Creek	*253	*255
			Approximately 60 feet upstream of Morningside Drive.	None	*289
		Third Fork Creek	At confluence with Third Fork Creek	*287	*291
		Tributary E	Approximately 50 feet upstream of Ward Street.	None	*331
		Third Fork Creek Tributary	At confluence with Third Fork Creek Tributary C.	*274	*277
			Approximately 50 feet upstream of Sherbon Drive.	None	*329
		Warren Creek	At confluence with Eno River	*293	*297
			Approximately 40 feet upstream of State Route 1407 (Carver Road).	None	*388
		Warren Creek	At confluence with Warren Creek	*313	*316
		Tributary A	Approximately 50 feet upstream of State Route 1321 (Hillandale Road).	*381	*383
		Warren Creek	At confluence with Warren Creek	*306	*311
		Tributary B	Approximately 225 feet upstream of State Route 1321 (Hillandale Road).	None	*340
		Crooked Creek	At confluence with Eno River	*291	*296
			At the City of Durham Extraterritorial Jurisdiction Boundary.	*375	*376
		Ellerbe Creek	Approximately 1.5 miles downstream of State Route 1669 (East Club Boulevard) (At Extraterritorial Jurisdiction Boundary).	*278	*286
			At State Route 1477 (Shocoree Drive)	*404	*417
		Ellerbe Creek	At confluence with Ellerbe Creek	*299	*302
		Tributary A	At downstream side of Bluefield Street	*301	*302
		Ellerbe Creek	At confluence with Ellerbe Creek	*285	*291
		Tributary B	Approximately 1,660 feet upstream of confluence with Ellerbe Creek.	*290	*291
		Eno River	Approximately 2 miles downstream of U.S. Route 15/501.	None	*284
			Approximately 0.73 mile upstream of State Route 1401 (Cole Mill Road).	None	*369

State	City/town/ county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
		Eno River Tributary 1	Approximately 350 feet upstream of State Route 1648 (Danube Lane).	*315	*316
			Approximately 0.3 mile upstream of State Route 1648 (Danube Lane).	*318	*329
		Eno River	Downstream of Rivermont Drive	*360	*361
		Tributary 2	Approximately 50 feet upstream of Interstate 85.	None	*498
		Eno River	At confluence with Eno River	*286	*289
		Tributary A	At downstream side of Fox Hunt Road	*288	*290
		Burdens Creek	At upstream side of Southern Railway	*254	*262
			Approximately 250 feet downstream of South Alston Avenue.	*256	*263
		Northeast Creek	At confluence with Northeast Creek	*264	*271
		North Prong	Approximately 1,100 feet upstream of State Route 55 (Apex Highway).	*324	*330
		Northeast Creek North Prong Tributary A.	Approximately 80 feet upstream of confluence of Northeast Creek North Prong.	*283	*282
			Approximately 100 feet upstream of Akron Avenue.	*349	*348
		Northeast Creek North Prong.	At confluence with Northeast Creek North Prong.	*265	*271
		Tributary	Approximately 110 feet upstream of State Route 1,182 (Carpenter Fletcher Road).	None	*280
		Rocky Creek	At confluence with Third Fork Creek	*283	*289
			Approximately 150 feet upstream of Briggs Avenue.	None	*336
		◆South Ellerbe Creek	At confluence of South Ellerbe Creek Tributary.	*307	*311
			Approximately 150 feet upstream of West Club Boulevard.		
		◆◆South Ellerbe Creek Tributary.	At confluence with South Ellerbe Creek	*305	*311
			Approximately 865 feet upstream of Dacian Street (Upstream Limit).	*324	*329
		Sandy Creek	At confluence with New Hope Creek	*253	*256
			Approximately 50 feet upstream of State Route 1317 (Moreene Road).	*314	*317
		Sandy Creek	At confluence with New Hope Creek	*253	*255
		Tributary A	Approximately 0.4 mile upstream of University Drive.	*271	*274
		Sandy Creek Tributary D	At confluence with Sandy Creek	*285	*292
			Approximately 50 feet upstream of Anderson Street.	None	*321

Maps available for inspection at Durham City Engineer's Office, 101 City Hall Plaza, Durham, North Carolina.
Send comments to The Honorable Harry E. Rodenheizer, Jr., Mayor of the City of Durham, 101 City Hall Plaza, Durham, North Carolina 27701.
◆ Shown as South Ellerbe Creek Tributary in the effective Flood Insurance Rate Map.
◆◆ Shown as South Ellerbe Creek in the effective Flood Insurance Rate Map.

Pennsylvania	Charleroi (Borough) Washington County.	Monongahelia River	Approximately 700 feet downstream of Lock and Dam #4 at downstream corporate limits.	*760	*762
			Approximately 1.07 miles upstream of Lock and Dam #4 at upstream corporate limits.	*762	*764

Maps available for inspection at the Municipal Building, 4th and Fallowfield Avenue, Charleroi, Pennsylvania.
Send comments to The Honorable Edward M. Paluso, Mayor of the Borough of Charleroi, Washington County, Municipal Building, 4th and Fallowfield Avenue, Charleroi, Pennsylvania 15022.

Pennsylvania	Roulette (Township) Potter County.	Allegheny River	Approximately 160 feet upstream of the confluence of Trout Brook.	None	*1549
			Approximately 750 feet upstream of the Township of Roulette's upstream corporate limits.	None	*1581

State	City/town/ county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Roulette Township Building, 253 Railroad Avenue, Roulette, Pennsylvania. Send comments to Mr. William Grandin, Chairman of the Township of Roulette, P.O. Box 253, Roulette, Pennsylvania 16746.					
Rhode Island	Barrington (Town) Bristol County.	Providence River	Approximately 600 feet west of the intersection of Allen Avenue and Narragansett Avenue.	*20	*19
			At intersection of Washington Road and Annawamscutt Road.	*16	*15
		Narragansett Bay	Approximately 500 feet south of the intersection of Middle Highway and Nayatt Road.	*20	*19
			Approximately 400 feet west of the intersection of Vans Lane with Rumstick Road.	*20	*19
		Barrington River	At the intersection of Kyle Street and Peck Lane.	*11	*10
			At the intersection of Jennys Lane and Mathewson Road.	*18	*13
		Palmer River	Approximately 1,000 feet east along Sowams Road from its intersection with Barneyville Road.	*11	*10
			At the intersection of Sowams Road and Jessie Davis Lane.	*18	*10
		Warren River	At the confluence of Barrington and Palmer Rivers.	*18	*13
			At Adams Point	*20	*13
Maps available for inspection at the Building Inspector's Office, Barrington Town Hall, 283 County Road, Barrington, Rhode Island. Send comments to Mr. Dennis Phelan, Barrington Town Manager, 283 County Road, Barrington, Rhode Island 02806.					
Rhode Island	Bristol (Town) Bristol County.	Kickamuit River	Approximately 1,000 feet east northeast from the intersection of Butterworth Avenue and Hawthorne Avenue.	*16	*17
			Approximately 500 feet east of Harrison Avenue extended.	*15	*18
Maps available for inspection at the Office of Community Development Planning, Bristol Town Hall, 10 Court Street, Bristol, Rhode Island. Send comments to Mr. Joseph Parella, Bristol Town Administrator, 10 Court Street, Bristol, Rhode Island 02809.					
Vermont	Weston (Town) Windsor County.	Greendale Brook	At the confluence with West River	None	*1363
			Approximately 1.7 miles upstream of Greendale Road.	None	*1595
		Ludlow Mountain Brook	At the confluence with West River	None	*1466
			Approximately 110 feet upstream of State Route 100 (Ludlow Road).	None	1769
		Trout Club Brook	At the confluence with West River	None	*1294
			Approximately 1,100 feet upstream of Trout Club Road.	None	*1762
		Trout Club Brook Backside	At the confluence with West River	None	*1300
			Approximately 650 feet upstream of Parker Lane.	None	*1627
		West River	Approximately 0.9 mile downstream of most downstream crossing of State Route 100 (Wantastiquet Road).	None	*1171
			Approximately 0.8 mile upstream of State Route 155 (Wantastiquet Road).	None	*1748
Maps available for inspection at the Weston Town Office, Lawrence Hill, Weston, Vermont. Send comments to Mr. Donald Hart, Chairman of the Town of Weston Board of Selectmen, P.O. Box 98, Weston, Vermont 05161.					

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: May 9, 1995.

Richard T. Moore,

Associate Director for Mitigation.

[FR Doc. 95–12128 Filed 5–16–95; 8:45 am]

BILLING CODE 6718–03–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 32

[DA 95–1027]

Proposed Elimination of Detailed Continuing Property Records ("CPRs") for Certain Support Assets

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; rulemaking notice.

SUMMARY: The Accounting and Audits Division has released a Public Notice seeking comments on a Petition for Rulemaking filed by the United States Telephone Association ("USTA") to eliminate CPRs for certain support assets in Part 32 accounts. USTA proposes an alternative property record system for these support assets. This will enable the Commission to determine whether it should initiate a rulemaking proceeding.

DATES: Comments due by July 5, 1995; Replies due by August 1, 1995.

ADDRESSES: Federal Communications Commission, 1919 M Street N.W., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Debra Weber, Common Carrier Bureau, Accounting and Audits Division, (202) 418–0810.

SUPPLEMENTARY INFORMATION: Released: May 10, 1995.

United States Telephone Association Files a Petition for Rulemaking to Amend Part 32 of the Commission's Rules to Eliminate Detailed Property Records for Certain Support Assets

Public Comment Invited

The United States Telephone Association ("USTA") filed a Petition for Rulemaking ("petition"), proposing that the Commission amend Part 32 of its rules to eliminate detailed continuing property records ("CPRs") for certain support asset accounts. These support assets include the items in Accounts 2115, Garage work equipment; 2116, Other work equipment; 2122, Furniture; 2123, Office equipment; and the personal computers and peripheral equipment in Account 2124, General purpose computers. In place of CPRs for those accounts, USTA proposes that carriers be permitted to use a vintage amortization level ("VAL") property record system. Under this system, the net book value of existing assets in each account would be placed in a VAL group and amortized on a straight-line basis over the remaining life that results from the asset life chosen from the Commission approved range of lives. All new purchases would also be placed in a VAL group for each vintage for each account, and amortized in the same manner. When the assets in a VAL group are fully amortized, the assets and their associated reserves would be removed from the carriers' books. Salvage proceeds would be reflected as a decrease in amortization expense, and the cost of removal would be reflected as an increase in amortization expense.

We seek comment on the USTA petition, and we invite parties to propose alternatives for simplifying the CPR requirements for these support assets. We encourage parties to focus on how USTA's proposal or any alternative proposal provides for adequate internal controls to safeguard these support assets. We seek comment on what records are necessary to ascertain the location, existence, and cost of these assets. We also seek comment on how carriers should account for retirement of these support assets, and whether these assets should be removed from the carrier's books when fully amortized, as USTA proposes. Finally, we seek comment from any parties believing that our CPR requirements should not be modified for support assets. These parties should explain why, and should emphasize what aspects of our current CPR requirements are the most useful.

Parties may file comments on USTA's petition, or propose alternatives no later than July 5, 1995. Replies should be filed by August 1, 1995. Comments should refer to RM–8640. A copy of each pleading should be sent to Debbie Weber, FCC, Common Carrier Bureau, 2000 L St., N.W., Room 812, Washington, D.C. 20554 and the International Transcription Service (ITS), 2100 M St., N.W., Suite 140, Washington, D.C. 20037, (202) 857–3800. Copies of USTA's petition and any comments will be available for public inspection and copying in the Office of Public Affairs Reference Center, 1919 M St., N.W., Room 239, Washington, D.C. Copies are also available from ITS.

For further information contact Debbie Weber at (202) 418–0812.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–12109 Filed 5–16–95; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 95–65, RM–8595]

Radio Broadcasting Services; Billings, MT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Conway Broadcasting requesting the allotment of Channel 242C1 to Billings, Montana. Channel 242C1 can be allotted to Billings without a site restriction at coordinates 45–46–58 and 108–30–13.

DATES: Comments must be filed on or before July 3, 1995, and reply comments on or before July 18, 1995.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Lars Conway, Conway Broadcasting, 4415 Freemont Ave., South, Minneapolis, Minnesota 55409.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 95–65, adopted May 4, 1995, and released May 12, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW, Suite 140, Washington, D.C. 20037, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–12108 Filed 5–16–95; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 659

[I.D. 050595A]

Shrimp and Calico Scallop Fisheries Off the Southern Atlantic States; Public Hearings and Scoping Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public hearings and scoping meetings.

SUMMARY: The South Atlantic Fishery Management Council (Council) is holding public hearings to solicit comments on management options for Amendment 1 to the Fishery Management Plan (FMP) for the Shrimp Fishery of the South Atlantic Region (Shrimp FMP) that would add rock shrimp to the management unit. Immediately after the hearings, the Council will hold public scoping meetings to solicit comments on the development of an FMP for the calico scallop fishery and on Amendment 2 to the Shrimp FMP dealing with fishery bycatch issues. See the **SUPPLEMENTARY INFORMATION** section for additional information on the hearings and scoping meetings.

DATES: The hearings are scheduled as followed:

1. Monday, May 22, 1995, 7 p.m., Wilmington, NC
2. Tuesday, May 23, 1995, 7 p.m., Charleston, SC
3. Wednesday, May 24, 1995, 7 p.m., Cocoa Beach, FL
4. Thursday, May 25, 1995, 7 p.m., Mobile, AL

The public scoping meetings on an FMP for calico scallops and on Amendment 2 to the Shrimp FMP will be held immediately after the public hearings on May 22 and 23. Also, a public scoping meeting on calico scallops will be held immediately after the public hearing on May 24.

ADDRESSES: The hearings will be held at the following locations:

1. Wilmington—Ramada Conference Center, 5001 Market Street, Wilmington, NC 28405; public hearing and scoping meeting.
2. Charleston—Department of Natural Resources, Fort Johnson Auditorium, 217 Fort Johnson Road, Charleston, SC 29412; public hearing and scoping meeting.
3. Cocoa Beach-Holiday Inn, 300 N. Atlantic Avenue, Cocoa Beach, FL 32931; public hearing and scoping meeting.
4. Mobile—Holiday Inn Downtown, 301 Government Street, Mobile, AL 36602; public hearing.

Written comments regarding the issues being discussed at the hearings and scoping meetings must be received on or before June 2, 1995. Requests for copies of the public hearing documents should be sent to the Council at the following address: South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407–4699.

FOR FURTHER INFORMATION CONTACT: Sharon Coste (Council staff); telephone: 803–571–4366; fax: 803–769–4520.

SUPPLEMENTARY INFORMATION: Public hearings will be held to solicit comments on management options for Amendment 1 to the Shrimp FMP that proposes to add rock shrimp to the management unit, prohibit trawling for rock shrimp in designated areas, and implement mandatory permitting and reporting requirements for vessels fishing for and dealers handling rock shrimp in the South Atlantic region. In addition, a mandatory vessel operator license and other management measures to enhance law enforcement are under consideration.

Public scoping meetings will be held to solicit comments on the development of an FMP for the calico scallop fishery. The Council may consider the following measures as possible management options for this fishery: (1) No action; (2) prohibit calico scallop trawling (trawling) south of 28°30' N. lat.; (3) prohibit trawling south of 28° N. lat.; (4) allow trawling south of Cape Canaveral only with transponders; (5) prohibit trawling west of Oculina Bank; (6) prohibit trawling south of Bethal Shoals; (7) prohibit trawling in depths less than 120 ft. (8) allow trawling with transponders only from Duval through St. Lucie Counties; (9) limit trawling to Duval through St. Lucie Counties; and (10) prohibit trawling south of Cape Canaveral, Florida (i.e., south of 28°35.1' N. lat).

The Council will also hold public scoping meetings to solicit comments on Amendment 2 to the Shrimp FMP to address the issue of finfish bycatch in the shrimp trawl fishery. The Shrimp FMP was prepared by the Council in 1992 and approved and implemented by NMFS in 1993. At the time of FMP implementation, the Council was concerned about finfish bycatch in the shrimp trawl fishery and intended, at that time, to begin developing management measures through an FMP amendment that would reduce bycatch. The Council's goal for bycatch reduction was affected by the 1990 Amendments to the Magnuson Fishery Conservation and Management Act that mandated a 3-year research program to assess the impacts of shrimp trawl bycatch on fishery resources under management of the Council before management action is taken. The results of this research program have been recently summarized in a NMFS report to Congress titled "A Report to Congress—Cooperative Research Program Addressing Finfish Bycatch in the Gulf of Mexico and South Atlantic Shrimp Fisheries—April 1995."

These research results will be considered by the Council as an important basis for any specific management actions. Recent advances in gear development through cooperative efforts of Federal and state governments and the shrimp industry have produced Bycatch Reduction Devices (BRDs) that successfully exclude juvenile fish from shrimp trawls with a minimum of shrimp loss. At its October 1994 meeting in Wrightsville Beach, North Carolina, the Council recommended that NMFS emphasize the development of efficient and effective BRDs in its bycatch reduction research efforts in the South Atlantic; this would provide the Council and the South Atlantic states with expanded options to reduce finfish bycatch in the shrimp trawl fishery. Both the Council and the South Atlantic states have requested that NMFS proceed as rapidly as possible to obtain the research information needed to identify and assess options for requiring the use of BRDs under the Shrimp FMP and under coastal fishery management plans (CFMPs) developed by the Atlantic States Marine Fisheries Commission (Commission) under provisions of the Atlantic Coastal Fisheries Cooperative Management Act of 1993 (Atlantic Coastal Act).

The Council has asked NMFS to conduct a bycatch characterization of the rock shrimp fishery off Cape

Canaveral, Florida. Concerns still exist relative to the impacts of shrimp bycatch on the Spanish and king mackerel resources. In addition, under the current Amendment 2 to the CFMP for Weakfish, prepared by the Commission under the Atlantic Coastal Act, all South Atlantic states must implement management measures to reduce the bycatch of weakfish by 50 percent in the shrimp trawl fisheries for the 1996 fishing season. Bycatch reduction plans must be submitted to the Commission's Weakfish Technical Committee by October 1, 1995.

The Council is closely coordinating their efforts with the marine resource agencies of the South Atlantic states and has also initiated action on the shrimp trawl bycatch issue by beginning the scoping process on the development of Amendment 2 to the Shrimp FMP. Among several management alternatives under consideration by the Council are the use of BRDs by season and/or area as well as areal or seasonal closures.

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office by May 19, 1995. For special accommodations regarding the hearings and meetings, contact the Council (see **ADDRESSES**).

Authority: 16 U.S.C. 1801 *et. seq.*

Dated: May 11, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–12027 Filed 5–16–95; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 60, No. 95

Wednesday, May 17, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Opta Food Ingredients, Inc. of Bedford, Massachusetts, an exclusive license for all uses in the field of food ingredients to U.S. Patent Application Serial No. 08/233,173 filed April 26, 1995, "Non-Separable Starch-Oil Compositions." Notice of Availability was published in the **Federal Register** on October 24, 1994.

DATES: Comments must be received on or before July 16, 1995.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, Room 401, Building 005, BARC-West, Baltimore Boulevard, Beltsville, Maryland 20705–2350.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights to this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as Opta Food Ingredients, Inc. has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

R.M. Parry, Jr.,

Assistant Administrator.

[FR Doc. 95–12047 Filed 5–16–95; 8:45 am]

BILLING CODE 3410–03–M

Grain Inspection, Packers and Stockyards Administration

Deposting of Stockyards

Notice is hereby given, that the livestock markets named herein, originally posted on the dates specified below as being subject to the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*), no longer come within the definition of a stockyard under the Act and are therefore, no longer subject to the provisions of the Act.

Facility No., name, and location of stockyard	Date of posting
AL–122 Fayette Stock Yard, Inc., Fayette, Alabama	May 19, 1959.
AZ–109 Rawhide Stockyards, Inc., Chandler, Arizona	May 11, 1977.
AR–106 Bentonville Livestock Auction, Inc., Bentonville, Arkansas	December 11, 1958.
AR–125 Richardson Livestock Commission Company, Inc., Little Rock, Arkansas	December 17, 1959.
AR–130 Drew County Auction Sale, Monticello, Arkansas	February 24, 1959.
AR–133 Montgomery County Livestock Auction, Mt. Ida, Arkansas	June 13, 1957.
AR–139 White Auction Company, Russellville, Arkansas	December 15, 1958.
AR–142 Siloam Springs Sale Barn, Siloam Springs, Arkansas	December 11, 1958.
AR–149 Boone County Livestock Auction, Harrison, Arkansas	November 27, 1973.
AR–150 Farmers and Ranchers Livestock Auction, Mt. View, Arkansas	November 27, 1973.
AR–154 Rector Auction Sale Barn, Rector, Arkansas	February 23, 1976.
AR–163 Ward Livestock Auction, Inc., Ward, Arkansas	July 28, 1987.
AR–155 Lafayette County Livestock Auction, Lewisville, Arkansas	November 13, 1976.
AR–157 Hot Springs County Livestock Auction, Inc., Malvern, Arkansas	July 11, 1977.
CA–118 Mike's Livestock Auction, El Monte, California	October 24, 1969.
CA–158 Tulare Sales Yard, Inc., Tulare, California	October 7, 1959.
FL–125 Madison Stockyard, Inc., Madison, Florida	February 21, 1978.
GA–156 Soperton Stockyard, Soperton, Georgia	May 19, 1959.
GA–205 Crystal Farms Livestock Auction, Ranger, Georgia	March 10, 1990.
GA–207 K&K Hair and Feather Auction Swainsboro, Georgia	August 8, 1990.
ID–101 Bonners Ferry Livestock, Bonners Ferry, Idaho	October 13, 1959.
IA–102 Albia Sales Company, Inc., Albia, Iowa	April 28, 1941.
IA–113 Baxter Sale Company, Baxter, Iowa	June 8, 1959.
IA–124 Chariton Livestock Exchange, Chariton, Iowa	May 22, 1959.
IA–136 Winneshiek Cooperative Association, Decorah, Iowa	May 29, 1959.
IA–148 Hawkeye Livestock Auction, Fairfax, Iowa	March 1, 1960.

Facility No., name, and location of stockyard	Date of posting
IA–204 Postville Sale Barn, Postville, Iowa	May 19, 1959.
IA–218 Stanton Livestock Auction, Market Stanton, Iowa	May 25, 1959.
IA–255 Mahaska Sale Barn Oskaloosa, Iowa	September 17, 1979.
LA–104 Bastrop Livestock Auction, Bastrop, Louisiana	April 9, 1957.
LA–115 Eunice Stockyards, Inc., Eunice, Louisiana	June 13, 1957.
LA–116 W.H. Hodges & Company, Inc., Franklinton, Louisiana	May 21, 1957.
LA–125 Mansfield Livestock Commission Company, Mansfield, Louisiana	April 10, 1957.
LA–128 W.H. Hodges & Company, Inc., New Roads, Louisiana	June 20, 1957.
LA–134 Lum Livestock Auction, Inc., Vidalia, Louisiana	August 22, 1958.
LA–137 Franklin Livestock Auction, Winnsboro, Louisiana	May 23, 1957.
LA–142 Mouiller Livestock Auction, Mamou, Louisiana	November 28, 1989.
MD–117 Woodsboro Livestock Sales, Inc., Woodsboro, Maryland	November 10, 1959.
NB–110 Beatrice Sales Pavilion, Beatrice, Nebraska	August 15, 1955.
NB–166 Pawnee Livestock, Pawnee City, Nebraska	April 6, 1959.
NC–162 Walking Acres Auction Plymouth, North Carolina	October 23, 1991.
SC–144 Interstate Stock Barn, Inc., Pelzer, South Carolina	October 31, 1989.
WA–107 Deer Park Livestock Auction, Deer Park, Washington	October 1, 1959.

This notice is in the nature of a change relieving a restriction and, thus, May be made effective in less than 30 days after publication in the **Federal Register** without prior notice or other public procedure. This notice is given pursuant to section 302 of the Packers and Stockyards Act (7 U.S.C. 202) and is effective upon publication in the **Federal Register**.

Done at Washington, D.C. this 10th day of May 1995.

Daniel L. Van Ackeren,

Acting Director, Livestock Marketing Division.

[FR Doc. 95–12048 Filed 5–16–95; 8:45 am]

BILLING CODE 3210–KD–P

Proposed Posting of Stockyards

The Grain Inspection, Packers and Stockyards Administration, United States Department of Agriculture, has information that the livestock markets named below are stockyards as defined in Section 302 of the Packers and Stockyards Act (7 U.S.C. 202), and should be made subject to the provisions of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*).

FL–136 Florida Classic Horse Sales, Inc., Ocala, Florida
GA–214 Lee's Auction, Sylvania, Georgia
IN–165 Reel Livestock Center, Inc., Congerville, Indiana
MI–149 Rosebush Sale Barn, Rosebush, Michigan
NC–168 Lyman Livestock, Chinquapin, North Carolina
MS–167 Sebastopol Livestock Association, Inc., Sebastopol, Mississippi
OK–211 Prague Livestock Auction LLC, Prague, Oklahoma
PA–158 John Whiting Auction, New Wilmington, Pennsylvania

Pursuant to the authority under Section 302 of the Packers and Stockyards Act, notice is hereby given that it is proposed to designate the stockyards named above as posted stockyards subject to the provisions of said Act.

Any person who wishes to submit written data, views or arguments concerning the proposed designation may do so by filing them with the Acting Director, Livestock Marketing Division, Grain Inspection, Packers and Stockyards Administration, Room 3408–South Building, U.S. Department of Agriculture, Washington, D.C. 20250 by *May 25, 1995.* All written submissions made pursuant to this notice will be made available for public inspection in the office of the Director of the Livestock Marketing Division during normal business hours.

Done at Washington, D.C. this 10th day of May 1995.

Daniel L. Van Ackeren,

Acting Director, Livestock Marketing Division.

[FR Doc. 95–12049 Filed 5–16–95; 8:45 am]

BILLING CODE 3410–KD–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050895D]

Marine Mammals and Endangered Species

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application for a scientific research permit (P557D).

SUMMARY: Notice is hereby given that Scripps Institution of Oceanography, Institute for Geophysics and Planetary Physics, Acoustic Thermometry of Ocean Climate Program, 9500 Gilman Drive, La Jolla, CA 92093–0225, has applied in due form for a permit to take several species of marine mammals and sea turtles for purposes of scientific research. The subject application supersedes a previous application published at 59 FR 5177 and a subsequent revision to that application which was never published, both of which have been withdrawn.

DATES: Written comments must be received on or before June 16, 1995.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289); and

Director, Southwest Region, NMFS, NOAA, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213 (301/980–4016).

Written data or views, or requests for a public hearing on this request, should be submitted to the Director, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

FOR FURTHER INFORMATION CONTACT: Jeannie Drevenak, Permits Division, 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222), the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*), and fur seal regulations at 50 CFR part 215.

The permit application requests authorization to harass marine mammals and sea turtles by a low frequency sound source (peak frequency 75 Hz, 35 Hz bandwidth; 195 dB level (re 1 μPa at 1 m)) which would be located approximately 88 km offshore central California on Pioneer Seamount, at a depth of 980 m. The proposed research would be conducted over a 2-year period.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: May 11, 1995.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–12026 Filed 5–16–95; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in Bangladesh

May 11, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: May 15, 1995.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being increased by recrediting unused carryforward and special carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Also see 60 FR 5371, published on January 27, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 11, 1995

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on January 24, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Bangladesh and exported during the twelve-month period which began on January 1, 1995 and extends through December 31, 1995.

Effective on May 15, 1995, you are directed to amend the January 24, 1995 directive to increase the limits for the following categories, as provided under the terms of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
237	376,930 dozen.
331	906,360 dozen pairs.
334	109,143 dozen.
335	195,967 dozen.
336/636	350,689 dozen.
342/642	329,155 dozen.
369–S [2]	1,376,141 kilograms.
638/639	1,184,778 dozen.
641	839,306 dozen.
645/646	302,555 dozen.
647/648	942,193 dozen.
847	500,270 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

[2] Category 369–S: only HTS number 6307.10.2005.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C.553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.95–12106 Filed 5–16–95; 8:45 am]

BILLING CODE 3510–DR–F

Request for Public Comments on Bilateral Textile Consultations on Spun Yarn

May 11, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialists, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on categories for which consultations have been requested, call (202) 482–3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On April 27, 1995, under the terms of Article 6 of the Uruguay Round Agreement on Textiles and Clothing (ATC) and the Uruguay Round Agreements Act, the Government of the United States requested consultations with the Government of Thailand with respect to spun yarn containing 85 percent or more by weight artificial staple fiber in Category 603, produced or manufactured in Thailand.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations with the Government of Thailand, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of textile

products in Category 603, produced or manufactured in Thailand and exported during the twelve-month period April 27, 1995 through April 26, 1996, at a level of not less than 1,249,659 kilograms. On April 27, 1995, CITA dropped its request for consultations with Thailand on Category 603 that was made on November 28, 1994 (see 60 FR 2081, published on January 6, 1995) and resubmitted the request under Article 6 of the ATC.

A summary statement of serious damage concerning Category 603 follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Category 603, or to comment on domestic production or availability of products included in Category 603, is invited to submit 10 copies of such comments or information to Rita D. Hayes, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; ATTN: Helen L. LeGrande. The comments received will be considered in the context of the consultations with the Government of Thailand.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning Category 603. Should such a solution be reached in consultations with the Government Thailand, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994).

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Summary Statement of Serious Damage

Spun Yarn Containing 85 Percent or More By Weight Artificial Staple Fiber—Category 603

April 1995

The sharp and substantial increase in imports of spun yarn containing 85 percent or more by weight artificial staple fiber, Category 603, is causing serious damage to the U.S. industry producing spun yarn containing 85 percent or more by weight artificial staple fiber.

Category 603 imports surged from 5,259,000 kilograms in 1992 to 9,886,000 kilograms in 1993, a 88 percent increase. Imports of spun yarns containing 85 percent or more by weight artificial staple fiber, Category 603, continued to increase in 1994 and 1995, reaching 12,966,000 kilograms during year ending January 1995, 27 percent above the year ending January 1994 level and two and a half times the 1992 level.

Serious damage to the domestic industry resulting from the sharp and substantial increase in imports of spun yarn containing 85 percent or more by weight artificial staple fiber is attributed to imports from Thailand. Surging imports and low priced yarns from Thailand have resulted in loss of domestic output, market share, investment, employment, and man-hours worked.

U.S. imports of spun yarn containing 85 percent or more by weight artificial staple fiber, Category 603, from Thailand reached 1,249,659 kilograms during the year ending January 1995, three times the 408,257 kilograms imported during the year ending January 1994 and two times Thailand's calendar year 1992 import level.

[FR Doc. 95–12107 Filed 5–16–95; 8:45 am]

BILLING CODE 3510-DR-F

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Base Closure and Realignment Commission Investigative Hearings

AGENCY: Defense Base Closure and Realignment Commission (a Presidentially appointed commission *separate from and independent of DoD.*

ACTION: Notice of additional bases for closure/realignment consideration.

SUMMARY: Pursuant to Pub. L. 101–510, as amended, the Defense Base Closure and Realignment Commission announces 36 domestic U.S. defense activities that require further analysis as potential candidates for closure or realignment.

The Commission added Minot Air Force Base ND on March 7, 1995, as a potential candidate for realignment. Included on the following list are 31 activities in addition to those recommended for closure or realignment by the Secretary of Defense on February 28, 1995. Also included on the list are 4 installations recommended for realignment on the February 28, 1995, list that the Commission will consider for increasing the extent of the Secretary's recommended realignment or for closure.

On May 10, 1995, the Commission approved the following 35 activities for further analysis and consideration and as proposed changes to the Secretary's February 28, 1995, list:

Alabama
- Space and Strategic Defense Command (Huntsville leased space)

California
- Oakland Army Base
- Engineering Field Activity West, Naval Facilities Engineering Command
- Fleet and Industrial Supply Center Oakland
- Naval Air Station Point Mugu
- Naval Warfare Assessment Division Corona
- Supervisor of Shipbuilding, Conversion, and Repair San Francisco
- McClellan Air Force Base
- Defense Distribution Depot McClellan

Florida
- Homestead Air Reserve Station

Georgia
- Naval Air Station Atlanta
- Robins Air Force Base
- Defense Distribution Depot Warner-Robins

Guam
- Public Works Center

Illinois
- Chicago O'Hare International Airport Air Reserve Station

Maine
- Portsmouth Naval Shipyard

Maryland
- Fort Holabird

Minnesota
- Minneapolis-Saint Paul International Airport Air Reserve Station

Mississippi
- Columbus Air Force Base

New York
- Niagra Falls International Airport Air Reserve Station

North Dakota
- Grand Forks Air Force Base

Ohio
- Youngstown-Warren Municipal Airport Air Reserve Station

Oklahoma
- Tinker Air Force Base
- Defense Distribution Depot Oklahoma City
- Vance Air Force Base

Pennsylvania
- Letterkenny Army Depot
- Tobyhanna Army Depot
- Defense Distribution Depot Tobyhanna

Texas
- Kelly Air Force Base
- Defense Distribution Depot San Antonio
- Carswell Air Reserve Station, Naval Air Station Fort Worth Joint Reserve Base Laughlin Air Force Base

Utah
- Hill Air Force Base
- Defense Distribution Depot Hill

Wisconsin
- General Mitchell International Airport Air Reserve Station

FOR FURTHER INFORMATION CONTACT: Mr. Wade Nelson, Director of Communications, at (703) 696–0504.

Dated: May 11, 1995.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–12030 Filed 5–16–95; 8:45 am]

BILLING CODE 5000-04-M

Department of the Air Force

USAF Scientific Advisory Board Meeting

The USAF Scientific Advisory Board's Science & Technology Review of Advanced Weapons will meet on 5–9 June 1995 at Kirtland AFB, NM from 8:00 a.m. to 5:00 p.m.

The purpose of the meeting is to fulfill the yearly SAB Science and Technology Review in the area of Advanced Weapons.

The meeting will be closed to the public in accordance with Section 552b of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–8845.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 95–12130 Filed 5–16–95; 8:45 am]

BILLING CODE 3910-01-P

Corps of Engineers

Intent To Prepare an Environmental Impact Statement and Notice of Public Scoping Meeting

AGENCY: Corps of Engineers, Omaha District.

ACTION: Notice of intent.

SUMMARY: The Metropolitan Utilities District (District), Omaha Nebraska, proposes to construct a 104 million gallon per day (MGD) well field near the Platte River in western Douglas and eastern Saunders Counties, Nebraska. The proposed project also includes a water treatment plant and transmission pipelines. The purpose of the proposed project is to provide additional public water supply to meet customer requirements through the year 2030 and to improve water source reliability for the District's growing service area.

The proposed action will require a Corps of Engineers' permit pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344), which authorizes the Corps of Engineers to issue permits for the discharge of dredged or fill material into the waters of the United States. In accordance with the National Environmental Policy Act of 1969 and implementing regulations, an environmental impact statement will be prepared to analyze the environmental impacts of the proposed action and alternatives. A public scoping meeting has been scheduled to solicit comments regarding the scope of the environmental studies.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and Environmental Impact Statement should be directed to: Mr. Richard D. Gorton, Chief, Environmental Analysis Branch, U.S. Army Corps of Engineers, 215 North 17th Street, Omaha, Nebraska 68102–4978; phone (402) 221–4598; fax (402) 221–4886.

SUPPLEMENTARY INFORMATION: The Metropolitan Utilities District (District) is the potable water supplier of Omaha, Nebraska, and the surrounding area. The District is experiencing a steady growth within its existing and expanding service area boundaries. It has determined that an additional 100 MGD supply would be required by the year 2030. It has also concluded that if peak day design conditions were to occur any year after 1995, the District would not be able to meet those demands. The District does not currently have any excess production capacity to provide reliability during peak water demand periods.

The proposed project would include a total of 42 wells in the Platte River alluvial aquifer and associated pumping equipment, water transmission pipelines, a water treatment facility, and a 25-million-gallon storage reservoir. These facilities would deliver water to the western portion of the District's distribution system.

Alternatives to the proposed action identified to date include:

- Construction of well facilities in the Platte River alluvial aquifer in alternative locations;
- Construction of additional facilities to supply water from the Missouri River;
- No Federal action.

A public scoping meeting has been scheduled for June 1, 1995 at 7:00 p.m. at the Russell Middle School Cafeteria, 5304 South 172 Street, Omaha, Nebraska.

The purpose of the scoping meetings is to solicit public input on issues, studies needed, alternatives to be evaluated, and potential environmental effects. Written comments will also be requested.

Potential significant environmental issues include effects on threatened and endangered species and the indirect effects of drawdown on wetlands and recreational lakes.

Other applicable and pertinent environmental review and consultation requirements will be undertaken simultaneously with the NEPA process, including requirements of the Endangered Species Act, Fish and Wildlife Coordination Act, National Historic Preservation Act, Clean Water Act, Clean Air Act, and others.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 95–12072 Filed 5–16–95; 8:45 am]

BILLING CODE 3710-42-M

Department of the Army

International Personal Property Program—Synopsis of Comments Received

AGENCY: Military Traffic Management Command, DOD.

ACTION: Notice (Provide industry a synopsis of comments received from the carrier industry regarding the increase in carrier liability for international shipments and the elimination of the valuation charges for domestic shipments).

SUMMARY: The following synopsis includes the comments received from a total of six carriers/associations/bureaus and MTMC's response to each of these comments:

1. *Comment:* MTMC's proposal states that it is based upon the results of a

General Accounting Office (GAO) study. This study has not yet been released by GAO in final form. Thus any attempt to implement the so-called findings of this study is premature.

MTMC Response: MTMC recognizes the proposal to increase liability to $1.25 times the net shipment weight is based on a draft GAO report. MTMC anticipates the final study will recommend the increase in carrier liability. However, MTMC will review its proposal should GAO decide to change the final study recommendations.

2. *Comment:* Concerned that GAO has misinterpreted the data collected and thus drawn some erroneous conclusions. Believe that GAO has used an inflation index that has overstated the actual level of inflation between 1986 and 1993.

MTMC Response: MTMC changes to the domestic and international solicitations will be based on a GAO's recommendations.

3. *Comment:* Change to the $1.25 carrier liability will expose the Government to significant additional risk of stranding shipments by increasing the possibility of carriers going bankrupt and out of the program. Any increase in carrier liability beyond the base liability of $.60 per pound per article must be accompanied by an appropriate compensatory valuation charge, as in commercial practice. Failure to pay this charge will inappropriately transfer costs onto the shoulders of private industry. Nothing is accomplished in carrier liability in the international program except to transfer liability from the military to the mover.

MTMC Response: MTMC believes international carriers will be able to adapt to the increase in carrier liability to $1.25 times the net shipment weight just as carriers have adapted to a similar increase in the domestic program and the increase in carrier liability to $1.80 per pound per article in the international program. MTMC feels confident that carriers will be able to adjust their rates appropriately, to include costs for the increase in carrier liability. In addition, as recommended by GAO, MTMC will compensate carriers with an appropriate valuation charge.

4. *Comment:* By making household goods carriers liable for much more of the claims costs, the Government simply transferred responsibility for paying these costs to the carriers. This shifting of claims costs can be characterized as more of a tax than a savings.

MTMC Response: MTMC's desire is to transfer responsibility for loss and damage to carriers and to improve carrier quality control and assurance programs. Limited or undervalued liability provisions do not incentivize carriers to provide quality service. In addition, after MTMC raised the domestic carrier liability in May 1987, carrier rated did not significantly increase. A study of selected personal property shipping offices (PPSOs) did not show significant increases. Some decrease in rates occurred. Carriers with successful programs to reduce loss and damage will be subjected to a reduced frequency of claims and reduction in overall claims cost, to include personnel costs associated with claims processing.

5. *Comments:* If increase in carrier liability to $1.25 did not have the desired effect in the domestic market, there is no reason to expect that it would work in the international market.

MTMC Response: Changes to the domestic and international solicitations will be based on GAP's recommendations. GAO concluded the $1.25 minimum released valuation for domestic shipments and resulted in reducing shipment loss and damage and overall program cost.

6. *Comment:* Nothing is accomplished by the increase in carrier liability in the program except to transfer liability from the military to the mover. The liability level should either be returned to the $.60 per pound per article, or carriers should be adequately compensated for the additional liability.

MTMC Response: MTMC's desire is to transfer responsibility for less and damage to carriers and to improve carrier quality control and assurance programs. Limited or undervalued liability provisions do not incentivize carriers to provide quality service. In addition, after MTMC raised the domestic carrier liability in May 1987, carrier rates did not significantly increase. A study of selected PPSOs did not show significant increase. Some decrease in rates occurred. Carriers with successful programs to reduce loss and damage will be subjected to reduced frequency of claims and reduction in overall claims cost, to include personnel costs associated with claims processing.

7.*Comment:* MTMC proposes to set the valuation charge for international shipments at $1.28 for $100 declared value. The GAO report shows that this level with be inadequate. It must be increased to a reasonable level.

MTMC Response: MTMC is revising the compensation charge originally proposed in the **Federal Register** for international shipments. The following are the valuation charges in effect for 3 years: $2.04 for the first year (1 Oct 95–30 Sep 96); $1.36 for the second year (1 Oct 96–30 Sep 97); and $.68 for the third year (1 Oct 97–30 Sep 98). Effective 1 Oct 98, the valuation charge will be eliminated.

8. *Comment:* Table 3.2 of the GAO draft report shows an average cost to carriers of $6.2 million over FY 89 to FY 91, with liability at 60 cents per pound per article. When the liability is increased to $1.25, GAO projects a recovery from carriers of $22.5 million. To compensate carriers for the $16.3 million difference, a valuation charge of $2.31 would be required. If MTMC is not willing to pay this compensation, it should return carrier liability to the 60 cents per pound per article level.

MTMC Response: MTMC does not agree with the recommendation to compensate carriers with a valuation charge of $2.31 for each $100 declared value. However, MTMC is implementing the following valuation charge, which will be in effect for 3 years: $2.04 for the first year (1 Oct 95–30 Sept 96); $1.36 for the second year (1 Oct 96–30 Sep 97); $.68 for the third year (1 Oct 97–30 Sep 98). The valuation charge will be eliminated effective 1 Oct 98.

9. *Comment:* Strongly agree with GAO's recommendation to shorten the time that a DOD member is given to file his/her claim for damages to one year from the current 2 years.

MTMC Response: Claims matters are under the purview of the U.S. Army Claims Service. Comments regarding claims will be forwarded to them for review.

10. *Comment:* The two most important cost components which affect increase or decrease in the transportation rate level, in addition to carrier liability, are steamship costs and fluctuation in foreign currency. These factors do not exist in connection with the domestic program and their very absence underscores the unreliability and illogic of using domestic experience as a predictor of the impact of the $1.25 liability on the international program.

MTMC Response: MTMC has established a separate compensation factor for international shipments. See MTMC response to comment number 8.

11. *Comment:* Suggest MTMC let carriers settle claims directly with the member, both for the International and Domestic programs. This is what is really going to save the Government money, not the proposal in the **Federal Register**.

MTMC Response: At this time, MTMC proposes no changes to the claims settlement process. However, MTMC is considering direct claims settlement as part of the reengineering initiative.

12. *Comment:* In the Domestic program, the current valuation charge of $.64 per $100 of declared value should not only be retained, but increased to $1.35 per $100 of declared value. Removing the $.64 valuation charge will simply serve to take even more money away from carriers, with no valid reason. Unless liability level is returned to $.60 per pound per article, the valuation charge is needed in return.

MTMC Response: MTMC agrees with GAO's recommendation that the valuation charge is unnecessary. Carriers should include appropriate claims costs in their rates. MTMC is examining alternatives to phase out/eliminate the valuation charge.

13. *Comment:* The Total Quality Assurance Program and the High Risk Item Protection Program and the present carrier liability should be used for evaluation and utilized to reach a supportable decision.

MTMC Response: The commenter has mixed evaluation of carrier services with liability for loss and damage. Each of these areas is separate and distinct. Also, the industry's HRIP is an excellent initiative to reduce loss and damage; however, this also is a quality control/assurance tool and should not be confused with carrier liability when loss/damage does occur.

14. *Comment:* It is unfair and not justified to hold international carriers responsible for the full value of damages incurred on an international move. The movement in international trade is many times outside the carrier's direct control, such as movement by vessel, aircraft, or the movement of goods in foreign lands. It is just and right that the Government should take part in a portion of that risk.

MTMC Response: MTMC recognizes international personal property shipments require additional handling and over-ocean movement. Accordingly, MTMC expects carriers to subcontract with ocean and linehaul carriers and other parties that provide quality service and damage-free movement. MTMC also expects carriers to have appropriate provisions in their contracts with underlying service providers, which include adequate reimbursement options for loss and damage.

FOR FURTHER INFORMATION CONTACT: Questions should be referred to Mr. Alex Moreno, MTOP–T–NP, (703) 756–2383.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 95–12071 Filed 5–16–95; 8:45 am]

BILLING CODE 3710–08–M

Department of the Navy

CNO Executive Panel; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Chief of Naval Operations Executive Panel will meet May 24-25, 1995, from 9:00 a.m. to 4:00 p.m. on each day. The meeting will be held at 4401 Ford Avenue, Alexandria, Virginia. This session will be closed to the public.

The purpose of this meeting is to conduct discussions on strategies for an uncertain future to include information warfare, reserve structure and mobilization, and the changing strategic environment. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact: Timothy J. Galpin, Assistant for CNO Executive Panel Management, 4401 Ford Avenue, Suite 601, Alexandria, Virginia 22302-0268, Phone: (703) 756-1205.

Dated: May 2, 1995

L. R. McNees,

LCDR, JAGC, USN, Federal Register Liaison Officer

[FR Doc. 95-12073 Filed 5-16-95; 8:45 am]

BILLING CODE 3810-FF-F

CNO Executive Panel; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel will meet June 16, 1995, from 3:00 p.m. to 4:00 p.m., at the Pentagon, room 4E630. This session will be closed to the public.

The purpose of this meeting is to brief the Chief of Naval Operations on naval warfare innovations in the areas of joint operations, information warfare, naval doctrine, and research and development. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact: Timothy J. Galpin, Assistant for CNO Executive Panel Management, 4401 Ford Avenue, Suite 601, Alexandria, VA 22302-0268, Phone: (703) 756-1205.

Dated: May 4, 1995

L. R. McNees,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 95-12088 Filed 5-16-95; 8:45 am]

BILLING CODE 3810-FF-F

Intent to Grant Exclusive Patent License; Biocompatibles Limited

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant Biocompatibles Limited, a revocable, nonassignable, exclusive license in the United States to practice the Government owned inventions described in U.S. Patents Nos. 4,867,917, "Method for Synthesis of Diacetylenic Compounds," patented 19 September 1989; 4,877,501, "Process for Fabrication of Lipid Microstructures," patented 31 October 1989; 4,911,981, "Metal Clad Lipid Microstructures," patented 27 March 1990; 5,049,382, "Coating and Composition Containing Lipid Microstructure Toxin Dispenses," patented 17 September 1991; and Patent Application Serial No. 08/077,503, "Method of Controlled Release and Controlled Release Microstructures," filed 17 June 1993 in the field of lipid derived controlled release systems for non-medical biofouling applications.

Anyone wishing to object to the granting of this license has 60 days from the date of this notice to file written objections along with supporting evidence, if any. Written objections are to be filed with the Office of Naval Research, ONR, 00CC, Ballston Tower One, Arlington, Virginia 22217–5660.

FOR FURTHER INFORMATION CONTACT: Mr. R.J. Erickson, Staff Patent Attorney, Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone (703) 696–4001.

Dated: May 1, 1995.

L.R. McNees,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 95–12131 Filed 5–16–95; 8:45 am]

BILLING CODE 3810–AE–M

CNO Executive Panel; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel will meet June 20-21, 1995, from 9:00 a.m. to 4:00 p.m., on each day. The meeting will be held at the Applied Physics Laboratory, JHU, Johns Hopkins Road, Laurel MD. This session will be closed to the public.

The purpose of this meeting is to conduct discussions on strategies for an uncertain future to include information warfare, reserve structure and mobilization, and the changing strategic environment. Additionally, the panel members will discuss and synthesize recommendations and conclusions which will appear in the Task Force final report. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact: Timothy J. Galpin, Assistant for CNO Executive Panel Management, 4401 Ford Avenue, Suite 601, Alexandria, VA 22302-0268, Phone: (703) 756-1205.

Dated: May 4, 1995

L. R. McNees,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 95-12089 Filed 5-16-95; 8:45 am]

BILLING CODE 3810-FF-F

DELAWARE RIVER BASIN COMMISSION

Notice of Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, May 24, 1995. The hearing will be part of the Commission's regular business meeting which is open to the public and scheduled to begin at 11:00 a.m. in Conference Room Two, 30th Floor, 290 Broadway, New York, New York.

An informal conference among the Commissioners and staff will be open for public observation at 10:00 a.m. at the same location and will include reports on the Upper Delaware ice diversion project; New York State's FY 1996 budgetary contribution to the Commission; review policy for depletive water uses exceeding 100,000 gpd and possible local sponsorship of a Lehigh River Basin automated flood warning system.

The subjects of the hearing will be as follows:

Applications for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or Section 3.8 of the Compact

1. West Deptford Township D–79–82 CP RENEWAL–2

An application for the renewal of a ground water withdrawal project to supply up to 108.5 million gallons (mg)/30 days of water to the applicant's distribution system from Well Nos. 3 through 8. Commission approval on December 23, 1986 was limited to five years. The applicant requests that the total withdrawal from all wells be increased from 105 mg/30 days to 108.5 mg/30 days. The project is located in West Deptford Township, Gloucester County, New Jersey.

2. Rollins Environmental Services Inc. D–93–63

An application for approval of an industrial wastewater treatment plant (IWTP) modification project. The applicant proposes to replace its existing outfall flume with a submerged outfall diffuser for its current discharge to Raccoon Creek in Water Quality Zone 4. The project IWTP will continue to serve the applicant's commercial hazardous waste treatment facility situated just south of U.S. Route 322 and north of Raccoon Creek in Logan Township, Gloucester County, New Jersey.

3. Seabrook Water Corporation D–94–48 CP

An application for approval of an existing ground water withdrawal project to supply up to 20 mg/30 days of water to the applicant's distribution system from existing Well Nos. 12 and 13, and to limit the withdrawal from all wells to 20 mg/30 days. The project is located in Upper Deerfield Township, Cumberland County, New Jersey.

4. Pocono Farms Water Company D–94–65 CP

An application for approval of a ground water withdrawal project to supply up to 15.75 mg/30 days of water to the applicant's distribution system from Well Nos. 4, 5 and 7, and to increase the existing withdrawal limit of 4.84 mg/30 days from all wells to 15.75 mg/30 days. The project is located in Coolbaugh Township, Monroe County, Pennsylvania.

5. Thornbury Township, Delaware County D–94–76 CP

A project to expand an existing 0.06 million gallons per day (mgd) sewage treatment plant (STP) to 0.12 mgd to serve growth in the planned residential development of Thornbury Hunt in Thorny Township, Delaware County, Pennsylvania. The STP will continue to provide secondary biological treatment and discharge to Chester Creek near the Penn Central Railroad in Thornbury Township.

6. Jericho National Golf Club, Inc. D–95–2

An application for approval of a ground water withdrawal project to supply up to 9 mg/30 days of water to the applicant's golf course irrigation system from existing Well Nos. B–100 and B-C, and to limit the withdrawal from all wells to 9 mg/30 days. The project is located in Upper Makefield Township, Bucks County, Pennsylvania.

7. Town of Thompson, Emerald Green STP D–95–16 CP

A STP upgrade project that will replace a 0.41 mgd capacity secondary level plant with a 0.41 mgd capacity tertiary plant. The upgraded STP will continue to serve development in the Emerald Green/Lake Louise Marie Sewer District in the Town of Thompson, Sullivan County, New York. The STP will be situated on the site of the existing STP located just south of Route 17 and north of Lake Louise Marie in the Town of Thompson, and will continue to discharge to McKee Brook, a tributary of the Neversink River, via the existing outfall.

8. Outletter Associates D–95–17

A project to expand the existing 0.017 mgd tertiary STP to 0.024 mgd by replacing the existing extended aeration biological treatment process with a sequencing batch reactor process, along with other modifications. The STP will continue to serve the Crossings Outlet Square shopping center located in Pocono Township, Monroe County, Pennsylvania. Treated effluent, after ultraviolet disinfection, will continue to discharge to Pocono Creek in Pocono Township.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact George C. Elias concerning docket-related questions. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing.

Dated: May 9, 1995.

Susan M. Weisman,

Secretary.

[FR Doc. 95–12070 Filed 5–16–95; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Office of Administrative Law Judges; Intent To Compromise Claims, South Carolina Commission for the Blind

AGENCY: Department of Education.

ACTION: Notice of intent to compromise claims.

SUMMARY: The Department intends to compromise claims against the South Carolina Commission for the Blind (Commission) now pending before the Office of Administrative Law Judges (OALJ), Docket Nos. 93–131–R and 93–141–R (20 U.S.C. 1234a(j)).

DATES: Interested persons may comment on the proposed action by submitting written data, views, or arguments on or before July 3, 1995.

ADDRESSES: All comments concerning this notice should be addressed to Jeffrey B. Rosen, Office of the General Counsel, U.S. Department of Education, 600 Independence Avenue SW., Room 5411, FB–10B, Washington, D.C. 20202–2242.

FOR FURTHER INFORMATION CONTACT: Jeffrey B. Rosen. Telephone: (202) 401–6009. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Pursuant to the Single Audit Act of 1984 (P.L. 98–502) and the provisions of Office of Management and Budget (OMB) Circular A–128, the Office of the State Auditor, State of South Carolina, conducted an audit of the Commission for the period July 1, 1987 through June 30, 1989. A final audit report was issued on February 11, 1993 (ACN: 04–23147 SC) (hereinafter "SC I").

Based upon this audit report, the Regional Commissioner, Region IV, Rehabilitation Services Commission, U.S. Department of Education (ED), issued a Preliminary Department Decision (PDD) on September 28, 1993 in which he requested that the Commission repay $294,232 of funds misspent under Title I of the Rehabilitation Act of 1973, as amended (the Act), 29 U.S.C. 701 et seq. There were seven different monetary findings as follows:

a. Finding 1(b)—$8,528.23—Unallowable vehicle purchase.
b. Finding 2—$1,217.00—Purchases not properly allocated to particular cost objectives.
c. Finding 4—$51,294.74—Time distribution records not maintained for employees.
d. Finding 6(a)—$205,640.00—Documentation not maintained for Federal activities.
e. Finding 8—$8,109.41—Computer lease payments not properly allocated.
f. Finding 9—$17,614.62—Expenditures obligated after project end.
g. Finding 12—$1,828.00—Unallowable interest charges.

On October 27, 1993 the Commission filed an application for review of the PDD with the Office of Administrative Law Judges (OALJ). On September 26, 1994, the Regional Commissioner filed a Notice of Reduction of Claim notifying the OALJ that, based upon new information submitted by the Commission, Finding 6(a) was reduced by $139,353.37. Thus, the total amount outstanding in the appeal was reduced to $154,878.63.

The Office of the State Auditor conducted another audit covering the period July 1, 1990 through June 30, 1991. A final audit report was issued on February 23, 1993 (ACN: 04–23165G SC) (hereinafter "SC II"). In SC II, the Regional Commissioner issued a PDD on September 29, 1993 in which he requested that the Commission repay $129,369.26 of funds under the Act. There were three different monetary findings as follows:

a. Finding 1—$88,805.26—Time distribution records not maintained for employees.
b. Finding 2—$18,156.80—Using funds under the Act for unallowable expenditures.
c. Finding 3—$22,407.20—Purchases not properly allocated to particular cost objectives.

The Commission filed an appeal of the PDD with the OALJ on November 3, 1993.

The Commission and ED have agreed to settle all of the issues in these cases. The outstanding amounts in the two cases are covered by the Settlement Agreements.

Under the terms of the proposed agreement in SC I, the Commission owes ED a total of $68,955. This repayment amount, including four percent interest accruing from July 15, 1995, is to be paid in three equal annual payments of $23,904 beginning July 15, 1995 and continuing through July 15, 1997. The Commission would be assessed interest at a rate of four percent per year if any of the foregoing payments are not made in a timely fashion. Failure to make timely payment within 20 days would result in a late payment fee of 10 percent of the payment due. Finally, under the agreement, the parties would jointly move for dismissal of the appeal.

For the following reasons, ED recommends approval of the proposed Settlement Agreement in SC I. The Commission has agreed to repay in full the cost disallowances in Findings 1, 2, 8, and 12. In Finding 9, ED determined that there was insufficient evidence of harm to the Federal interest and, as a result, agreed not to seek any recovery on this issue in the agreement.

With respect to Finding 4, which pertains to a time distribution issue for employees, the parties agreed that the Commission should repay $15,826, which represents a repayment of greater than 30 percent of the original disallowed amount of $51,294.74. The evidence presented by the Commission demonstrated that the employees in question worked a substantial portion of time on grant activities. Although the Commission clearly had an obligation to keep time distribution records, it presented other less reliable and circumstantial evidence that could persuade an administrative law judge or a Federal court to rule in substantial part or in full for its position.

With respect to the final issue, Finding 6(a), ED originally recommended a cost disallowance of $205,640 for the failure of the Commission to maintain proper documentation for Federal activities. Following an on-site review of the documentation in question in this issue, ED agreed to reduce the cost disallowance to $66,286.63, which consisted of obligations the liquidation of which the Commission had been unable to verify. Notwithstanding the Commission's failure to satisfy its burden of providing this information, ED did not have evidence demonstrating that all of these outstanding obligations were, in fact, unliquidated or detailing the extent to which the Federal interest was harmed. In order to reach a settlement of all the issues in this case, ED agreed to a 50 percent payback of $33,143 on this issue.

Based upon the foregoing, ED believes that it is prudent to accept the settlement offer in SC I, which represents almost 45 percent of the disallowed costs outstanding in this case.

Under the terms of the proposed agreement in SC II, the Commission owes ED a total of $71,044. This repayment amount, including four percent interest accruing from July 15, 1995, is to be paid in three equal annual payments of $24,628 beginning July 15, 1995 and continuing through July 15, 1997. The Commission would be assessed interest at a rate of four percent per year if any of the foregoing payments are not made in a timely fashion. Failure to make timely payment within 20 days would result in a late payment fee of 10 percent of the payment due. Finally, under the agreement, the parties would jointly move for dismissal of the appeal.

For the following reasons, ED recommends approval of the proposed Settlement Agreement in SC II. The Commission has agreed to repay in full the cost disallowances in Findings 2 and 3. With respect to Finding 1, which pertains to a time distribution issue for employees, the parties agreed that the Commission should repay $30,480, which represents a repayment of over 30 percent of the original disallowed amount of $88,805.26. The evidence presented by the Commission demonstrated that the employees in question worked a substantial portion of time on grant activities. Although the Commission clearly had an obligation to keep time distribution records, it presented other less reliable and circumstantial evidence that could persuade an administrative law judge or a Federal court to rule in substantial part or in full for its position.

Based upon the foregoing, ED believes that it is prudent to accept the settlement offer in SC II, which represents almost 55 percent of the original costs disallowed in the PDD for this finding.

If these issues are not settled, ED will incur further litigation costs. Additional discovery efforts would be necessary before these cases can be litigated. Furthermore, it is unlikely that ED would be able to recover 100 percent of the cost disallowance for the time distribution issues in SC I and SC II and the failure to maintain documentation issue in SC I. The recovery amounts for these issues not only reflect the demonstrated harm to the Federal interest, but were essential to the overall settlements that were agreed to by the parties.

There are even litigation risks with respect to the issues the Commission has conceded in the Settlement Agreements. If these issues are litigated, ED would run the risk of not recovering 100 percent. Moreover, the Commission would have the right to appeal any decision to the U.S. Court of Appeals. *See* 20 U.S.C. 1234g. There is no certainty that ED would recover 100 percent on these issues as is contemplated in the Settlement Agreements.

After weighing the risks in litigating the issues that are the subject of the settlements, it is ED's assessment that the proposed Settlement Agreements are the most advantageous resolution of the outstanding issues in these cases.

The public is invited to comment on the Department's intent to compromise these claims. Additional information may be obtained by writing to Jeffrey B. Rosen at the address given at the beginning of this notice.

Program Authority: 20 U.S.C. 1234a(j) (1990)

Dated: May 11, 1995.

Donald R. Wurtz,

Chief Financial Officer.

[FR Doc. 95–12068 Filed 5–16–95; 8:45 am]

BILLING CODE 4000–01–P

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Group, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by May 17, 1995.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue SW., Room 5624, Regional Office Building 3, Washington DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill, (202) 708–9915. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Resources Group, publishes this notice with the attached proposed information collection request prior to submission of this request to OMB. This notice contains the following information: (1) Type of review requested, e.g., expedited; (2) Title; (3) Abstract; (4) Additional Information; (5) Frequency of collection; (6) Affected public; and (7) Reporting and/or Recordkeeping burden. Because an expedited review has been requested, a description of the information to be collected is also included as an attachment to this notice.

Dated: May 11, 1995.

Gloria Parker,

Director, Information Resources Group.

Office of Management

Type of Review: Expedited
Title: Epidemiological Study of Office of Educational Research and Improvement (OERI) Employees
Frequency: One time
Affected Public: Individual and households
Reporting Burden:
Responses: 600
Burden Hours: 200
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: Federal employees in OERI are concerned about a continuing increase in the number of diagnosed cancer cases and adverse reproductive outcomes in their workplace since 1988. This study will determine the variation from comparable prevalence and mortality profiles.
Additional Information: Clearance for this information collection is requested for May 17, 1995. An expedited review is requested in order to implement the survey as soon as possible.

[FR Doc. 95–12064 Filed 5–16–95; 8:45 am]

BILLING CODE 4000–01–M

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Group, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by May 19, 1995.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street NW., Room 3208, New Executive Office Building, Washington, D.C. 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue SW., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill, (202) 708–9915. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Resources Group, publishes this notice with the attached proposed information collection request prior to submission of this request to OMB. This notice contains the following information: (1) Type of review requested, e.g., expedited; (2) Title; (3) Abstract; (4) Additional Information; (5) Frequency of collection; (6) Affected public; and (7) Reporting and/or Recordkeeping burden. Because an expedited review has been requested, a description of the information to be collected is also included as an attachment to this notice.

Dated: May 11, 1995.

Gloria Parker,

Director, Information Resources Group.

Office of Bilingual and Minority Languages Affairs

Type of Review: Expedited
Title: Application for Cooperative Agreement Under the Bilingual Education Program: Benchmark Evaluation Study
Frequency: One Time
Affected Public: Not-for-profit institutions; State, Local or Tribal Governments
Reporting Burden:
Responses: 15
Burden Hours: 1,800
Recordkeeping Burden:
Recordkeeprs: 0
Burden Hours: 0
Abstract: The Department needs and uses this information to make cooperative agreements. The respondents are institutions of higher education (IHEs), nonprofit organizations (NPOs), and State and local educational agencies (SEAs and LEAs). The respondents are required to provide this information in applying for this cooperative agreement award.
Additional Information: Clearance for this information collection is requested for May 19, 1995. An expedited review is requested in order to make grant awards before the end of the fiscal year.

Office of Elementary and Secondary Education

Type of Review: Expedited
Title: LEAs' and SEAs' Collection, Review, and Reporting on Title I Assessments and School Improvement Under Title I, Part A, Section 1116 of the Improving America's Schools Act of 1994 (IASA)
Frequency: Annually
Affected Public: State, Local or Tribal Governments
Reporting Burden:
Responses: 14,111
Burden Hours: 564,440
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: Under IASA, Title I, Part A, Section 1116(a) LEAs are required, and under Section 1116(a)(1) (A) and (B) SEAs are required, to collect, disaggregate and report specific data on the performance of schools and individual students and on the formal process of school improvement.
Additional Information: Clearance for this information collection is requested for May 19, 1995. An expedited review is requested in order for the SEAs to implement the requirement before the start of the new year.

Office of Elementary and Second Education

Type of Review: Expedited
Title: Information Collection and Reporting Required for Local School District Plans and Applications to State Education Agencies for Subgrants Under Title I, Part A of the Improving America's Schools Act of 1994 (IASA)
Frequency: Annually
Affected Public: State, Local or Tribal Governments
Reporting Burden:
Responses: 14,199
Burden Hours: 289,816
Recordkeeping Burden;
Recordkeepers: 0
Burden Hours: 0
Abstract: LEAs, as a condition for receiving funds under IASA, Title I, Part A, must prepare and submit to their SEA, for approval, the plan required by Section 1112 describing their student assessments, plans for staff development, their poverty criteria for selecting school attendance areas, identification of participating children, school programs and other information needed to determine their adherence to the statute.
Additional Information: Clearance for this information collection is requested for May 19, 1995. An expedited review is requested in order for the SEAs to implement the requirement before the start of the new year.

[FR Doc. 95–12065 Filed 5–16–95; 8:45 am]

BILLING CODE 4000–01–M

[CFDA No.: 84.246J]

Rehabilitation Short-Term Training—Training Impartial Hearing Officers on Provisions of the Rehabilitation Act; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1995

Purpose of Program: The purpose of the Rehabilitation Short-Term Training program is to provide Federal support for developing and conducting special seminars, institutes, workshops, and technical instruction in areas of special significance to the delivery of vocational, medical, social, and psychological rehabilitation services.

Eligible Applicants: Public and private nonprofit agencies and

organizations, including institutions of higher education, are eligible for assistance under this program.

Supplementary Information: On December 5, 1994, the Secretary published in the **Federal Register** a notice inviting applications for Training Impartial Hearing Officers on Provisions of the Rehabilitation Act (59 FR 62510). Two applications were submitted, and neither application was found acceptable. The Secretary believes that, by increasing the estimated award from $145,000 to $200,000 per year for each of three years in the project period, improved applications will be submitted. Also, unsuccessful applicants from the December competition have been provided with peer review comments so that they may strengthen their proposals.

Deadline for Transmittal of Applications: June 30, 1995.

Deadline for Intergovernmental Review: August 30, 1995.

Applications Available: May 19, 1995.

Available Funds: $200,000.

Estimated Range of Awards: $190,000–$210,000.

Estimated Average Size of Awards: $200,000.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) the regulations for this program in 34 CFR part 390.

Priority: The priority in the notice of final priorities for this program, as published December 5, 1994, in the **Federal Register** (59 FR 62508), applies to this competition. For the purpose of this notice, the Secretary designates the priority as absolute for FY 1995. Under an absolute priority the Secretary funds only applications that meet the priority (34 CFR 75.105(c)(3)). A copy of the applicable priority will be included in the application package.

For Applications or Information Contact: Beverly Steburg, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3329, Switzer Building, Washington, D.C. 20202–2649. Telephone: (202) 205–9817. Individuals who use a telecommunications device for the deaf may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 29 U.S.C. 774.

Dated: May 11, 1995.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 95–12067 Filed 5–16–95; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Golden Field Office; Notice of Federal Assistance Award to Utility Photovoltaic Group

AGENCY: Department of Energy.

ACTION: Notice of Financial Assistance Award in Response to an Unsolicited Financial Assistance Application; Initiating PV Commercialization Through TEAM–UP, DE–FC36–93CH10560.

SUMMARY: The U.S. Department of Energy (DOE), pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7, is announcing its intention to grant funding to the Utility PhotoVoltaic Group, which represents interested members of the power production industry, to continue a multi-year program entitled "Technology Experience to Accelerated Markets in Utility Photovoltaics (TEAM–UP)". The objective of this joint effort between DOE and the Utility PhotoVoltaic Group (UPVG), as identified by Congress, is the establishment of an accelerated market for suppliers of photovoltaic systems that encourages investments in larger manufacturing facilities, thus reducing photovoltaic unit costs through economies of scale and creating even broader market potential. The UPVG organization will develop credible PV technical and educational information for utilities, assist utility purchases through market buyer teams, encourage a greater array of potential system applications, and provide the foundation and implementation of the TEAM–UP program. The prime objective of TEAM–UP is achieving a sustainable, domestic PV market and increased manufacturing capability through this joint commercialization effort by the year 2000.

ADDRESSES: Questions regarding this announcement may be addressed to the U.S. Department of Energy, Golden Field Office, 1617 Cole Blvd., Golden, Colorado 80401, Attention: John K. Lewis, Contract Specialist. The telephone number is 303–275–4739. The Contracting Officer for this action is John W. Meeker.

SUPPLEMENTARY INFORMATION: DOE has evaluated, in accordance with the DOE Federal Assistance Regulations, 10 CFR section 600.14, the unsolicited proposal entitled "Initiating PV Commercialization Through TEAM–UP" and recommends that the unsolicited proposal be accepted for support without further competition in accordance with section 600.7 of the Federal Assistance Regulations.

The program involves cost sharing with industry, through the Utility PhotoVoltaic Group (UPVG), for the implementation of the multi-year, 50 MW hardware initiative known as TEAM–UP. The proposed agreement implements TEAM–UP, serving as the mechanism for implementing small-scale industry funded PV applications and grid-connected cost-shared programs, as well as continuing technology transfer and market conditioning activities.

DOE, as directed by Congress, is actively pursuing a program of solar energy technology commercialization in conjunction with an industrial partner acting as the "funding entity". The major program objective being the cost-effective use of photovoltaics (PV) in large-scale, grid-connected applications. The UPVG, consisting of almost one hundred utility members, directly supports the DOE objectives by continuing this multi-year program intended to result in the achievement of PV acceptance and use by electric utilities, power producers, and their customers. The proposed agreement represents an ideal and totally unique mechanism to encourage the use of PV and maintain an industry driven initiative for the implementation of photovoltaics within the utility and power production industry.

The multi-year program involves: Outreach and technology transfer activities to educate the utility industry; market conditioning activities aimed at building a foundation for PV purchase commitments; implementation of grid-connected cost-shared projects through competitive solicitation; and development of the market infrastructure to facilitate utility purchases of small-scale photovoltaic applications.

The six year program plan is presently anticipated to cost approximately $140,000,000 with industry providing 70% funding and DOE contributing 30%. DOE Phase 3 funding is anticipated as $7,021,000 or 48% of the total $14,488,727 cost of implementing up to 10 MW of grid-connected photovoltaic applications and 2 MW of small-scale photovoltaic applications. This notice is published for public comment at least fourteen calendar days prior to making an award.

Issued in Golden, Colorado, on May 4, 1995.

John W. Meeker,

Chief, Procurement, GO.

[FR Doc. 95–12036 Filed 5–16–95; 8:45 am]

BILLING CODE 6450–01–P

Draft Environmental Impact Statement for Waste Management at the Savannah River Site, Aiken, South Carolina

AGENCY: Department of Energy (DOE).

ACTION: Revision to one alternative in the Savannah River Site Waste Management Draft Environmental Impact Statement (DOE/EIS–0217D).

SUMMARY: DOE issued the Savannah River Site Waste Management Draft Environmental Impact Statement (EIS) on January 20, 1995. The EIS evaluates alternative approaches to and environmental impacts of managing wastes at the Savannah River Site (SRS). The EIS examines alternatives for managing five types of waste (liquid high-level radioactive, low-level radioactive, hazardous, mixed (radioactive and hazardous combined), and transuranic) during the next decade and establishes a baseline for assessing options for waste management beyond that time. DOE extended the initial 45-day public comment period to March 31, 1995, in response to a request from the SRC's Citizens Advisory Board.

Throughout the comment period, DOE continued to consider many of the issues addressed in the draft EIS. As a result of these considerations, DOE has decided to change the treatment of low-level waste proposed in the "moderate treatment" alternative. The change concerns the location of, but not the technology used in, the treatment of about 40% of the expected volume of low-level waste at the SRS. This change would reduce disposal vault capacity requirements by providing: (1) Immediate utilization of commercial volume reduction capacity in lieu of construction of an onsite compactor, (2) more detailed and effective sorting, and (3) offsite waste treatment during maintenance periods of onsite treatment facilities.

In the draft EIS, the "moderate treatment" alternative included onsite incineration, supercompaction, or direct disposal of low-level waste. In the final EIS, this alternative would include: (1) Onsite incineration or direct disposal of low-level waste, and (2) supercompaction, size reduction (e.g., sorting, shredding, and melting), and incineration at an offsite commercial treatment facility. In the event of offsite treatment, all residues would be returned to the SRS for further treatment or disposal.

DOE is modifying this alternative in the final EIS because at present the Department does not consider construction of an onsite supercompactor to be a reasonable component of the "moderate treatment" alternative. As licensed offsite supercompaction services are currently available, it would not be cost effective for DOE to build a supercompactor at the SRS. The modified alternative allows DOE to conserve space in its existing disposal vaults and to defer the costs of building additional vaults.

DOE intends to continue with the present schedule for issuing the final EIS because the impacts of the treatment technologies that would be used were already evaluated as onsite options in the draft EIS. The impacts of transportation to commercial treatment facilities and these facilities' capacity will be evaluated in the final EIS. DOE does not consider this change in the "moderate treatment" alternative to be sufficiently significant to reissue the draft EIS. Minor modifications will also be made to each alternative to account for updates to the waste volume forecasts.

DOE would solicit proposals from commercial facilities for reducing the volume of low-level radioactive waste in the future, and would require the facilities to supply information that DOE would use to prepare an additional environmental review as required by Title 10 Code of Federal Regulation (CFR) § 1021.216.

ADDRESSES: DOE will accept comments on the above modifications through June 12, 1995. Any comments on the revision or requests for further information should be directed to: A.B. Gould, Jr., NEPA Compliance Officer, U.S. Department of Energy, Savannah River Operations Office, P.O. Box 5031, Aiken, South Carolina 29804–5031, Attention "WMEIS", e-mail: nepa@barms036.b-r.com, or by telephone or facsimile through the Information Line (800) 242–8269.

FOR FURTHER INFORMATION CONTACT: For general information on DOE's National Environmental Policy Act (NEPA) process, please contact: Ms. Carol Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. Telephone: (202) 586–4600 or leave a message at (800) 472–2756.

Jill E. Lytle,

Deputy Assistant Secretary for Waste Management, Environmental Management.

[FR Doc. 95–12044 Filed 5–16–95; 8:45 am]

BILLING CODE 6450–01–M

Draft Programmatic Environmental Impact Statement for the Uranium Mill Tailings Remedial Action Ground Water Project

AGENCY: Department of Energy.

ACTION: Notice of availability.

SUMMARY: The Department of Energy announces the availability of the draft Programmatic Environmental Impact Statement for the Uranium Mill Tailings Remedial Action Ground Water Project. The proposed action is to conduct the Uranium Mill Tailings Remedial Action Ground Water Project using appropriate ground water compliance strategies at the 24 uranium processing sites based on a health and environmental risk-based framework that provides a consistent and flexible approach. The three other alternatives analyzed in the programmatic environmental impact statement are: No action, active remediation to background levels at all processing sites, and passive remediation at all processing sites. Separate site-specific National Environmental Policy Act documentation will be prepared to address site-specific ground water compliance activities.

DATES: The public comment period extends through July 17, 1995. Written comments should be postmarked by that date to ensure consideration in preparation of the final document. Comments postmarked after that date will be considered to the extent practicable. Comments may also be submitted orally or in writing at public hearings to be held at the times, places, and dates listed below.

ADDRESSES: Written comments on the draft programmatic environmental impact statement should be directed to Mr. Rich Sena, Acting Director, Environmental Restoration Division, Department of Energy, Suite 4000, 2155 Louisiana N.E., Albuquerque, New Mexico 87110. Addresses of Department of Energy Public Reading Rooms and public libraries where the draft

document will be available for review are listed below under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Requests for copies of the draft programmatic environmental impact statement and requests for further information concerning this draft document may be directed to Mr. Rich Sena at the address above. Requests for copies of the draft programmatic environmental impact statement or requests for more information may also be made by leaving a message at 1–800–523–6495 (outside New Mexico) and 1–800–423–2539 (within New Mexico). For general information on the procedures followed by the Department of Energy in complying with the requirements of the National Environmental Policy Act, contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, DC 20585, Telephone 1–202–586–4600 or leave a message at 1–800–472–2756.

SUPPLEMENTARY INFORMATION:

Background

Public concern regarding the potential human health and environmental effects from uranium mill tailings led to passage of the Uranium Mill Tailings Radiation Control Act (Public Law 95–604, 42 USC § 7901 et seq.) in 1978, wherein Congress acknowledged the potentially harmful health effects associated with uranium mill tailings at 24 abandoned uranium mill processing sites. Pursuant to the Act, the U.S. Environmental Protection Agency developed standards (40 CFR Part 192) which include exposure limits for surface contamination and concentration limits for ground water, to protect the public and the environment from potential radiological and nonradiological hazards from the abandoned mill processing sites. Final ground water protection standards were published in the **Federal Register** [60 FR 2854 (Jan. 11, 1995)]. The Department of Energy is responsible for performing remedial action to bring the surface and ground water contaminant levels at the abandoned mill processing sites into compliance with these standards. The Department of Energy is accomplishing this function through the Uranium Mill Tailings Remedial Action Project. Remedial action will be conducted with the concurrence of the U.S. Nuclear Regulatory Commission and the full participation of affected States and Indian tribes.

Uranium processing activities at most of the 24 mill processing sites resulted in the formation of contaminated ground water beneath and, in some cases, downgradient of the sites. The purpose of the Uranium Mill Tailings Remedial Action Ground Water Project is to protect human health and the environment by meeting the Environmental Protection Agency standards in areas where ground water has been contaminated with hazardous constituents, such as uranium and nitrate, as a result of former uranium processing activities.

A major first step in the Uranium Mill Tailings Remedial Action Ground Water Project is the preparation of the Ground Water Project programmatic environmental impact statement which assesses the potential programmatic impacts of conducting the Ground Water Project, provides a method for determining the site-specific ground water compliance strategies, and supplies data and information that can be used to tier off site-specific environmental impact analysis documents to eliminate repetition. The proposed action and the alternatives in the document are considered programmatic in that they broadly address the overall plans for conducting the Ground Water Project.

Programmatic Environmental Impact Statement Preparation

The Department of Energy published a Notice of Intent [57 FR 54374, Nov. 18, 1992)] to prepare a programmatic environmental impact statement and commence the scoping process. The public scoping process was completed on April 15, 1993. Public scoping meetings were held in Falls City, Texas; Durango, Colorado; Moenkopi Village, Arizona; Shiprock, Arizona; Tuba City, Arizona; Window Rock, Arizona; Grand Junction, Colorado; Gunnison, Colorado; Rifle, Colorado; Bowman, North Dakota; Lakeview, Oregon; Canonsburg, Pennsylvania; Halchita, Utah; Salt Lake City, Utah; St. Stephen, Wyoming; and Riverton, Wyoming. The Department of Energy received over 500 comments on the proposed scope of the programmatic environmental impact statement which were considered in preparation of the draft programmatic environmental impact statement.

Availability of Copies of the Draft Programmatic Environmental Impact Statement

Copies of the draft programmatic environmental impact statement have been distributed to Federal, State, and local agencies, and to organizations, environmental groups, and individuals known to be interested in or affected by the Ground Water Project. Additional copies of the document may be obtained by contacting the Uranium Mill Tailings Project Office at the address or telephone numbers listed above. Copies of the draft programmatic environmental impact statement and applicable documents referenced in the document are available for inspection at the Department of Energy's reading rooms and at the public libraries in the vicinity of the 24 former uranium processing sites listed below.

Department of Energy Reading Rooms

Freedom of Information Reading Room, Room 1E–190, Department of Energy, Forrestal Building, 1000 Independence Avenue, S.W., Washington, DC 20585

National Atomic Museum Library, Public Document Room, Department of Energy, Albuquerque Operations, Albuquerque, NM 87115

Grand Junction Project Office, Department of Energy, 2597 B 3/4 Road, Grand Junction, CO 81302

Public Libraries

Arizona

Tuba City Public Library, Tuba City, AZ 86045

Navajo Nation Library System, Window Rock, AZ 86515

Kykotsmovi Public Library, Community Development Director, Kykotsmovi, AZ 86039

Colorado

Cortez Public Library, 802 E. Montezuma, Cortez, CO 81321

Denver Public Library, 1357 Broadway, Denver, CO 80203

Rifle Branch Library, Second Street, Rifle, CO 81650

Mesa State College Library, Grand Junction, CO 81502

Dove Creek School Library, Dove Creek, CO 81324

Durango Public Library, Reference Department, Durango, CO 81301

Glenwood Springs Library, 413 9th Street, Glenwood Springs, CO 81601

Gunnison Public Library, 307 N. Wisconsin, Gunnison, CO 81230

Naturita Public Library, 312 W. Second Street, Naturita, CO 81422

Montrose Public Library, 4349 First Street, Montrose, CO 81424

Idaho

Boise Public Library, 715 S. Capitol Bldg., Boise, ID 83805

New Mexico

Navajo Community College Library, Shiprock Branch, Shiprock, NM 87420

Mother Whiteside Memorial Library, 525 W. High Street, Grants, NM 87020

New Mexico State University Library, 1500 3rd St., Grants, NM 87020

University New Mexico Gallup Library, 200 College Road, Gallup, NM 87301

University New Mexico Zimmerman Library, Albuquerque, NM 87131–1466

New Mexico Environmental Department Library, 1190 St. Francis Drive, Santa Fe, NM 87502

North Dakota

Bowman Public Library, 104 Main Street, Bowman, ND 58623

Dickinson Public Library, 139 West 3rd Street, Dickinson, ND 58601

Oregon

Lake County Library, 513 Center Street, Lakeview, OR 97630

Pennsylvania

Canonsburg Public Library, East Pike Street, Canonsburg, PA 15317

People's Library, 2889 Leechburg Road, Lower Burrell, PA 15068

Texas

Falls City Public Library, P.O. Box 325, Falls City, TX 78113

Utah

Bluff Public Library, Bluff, UT 84512

Marriott Library, University of Utah, Salt Lake City, UT 84112

San Juan County Library, 25 West 300 St., Blanding, UT 84511

Grand County Library, 25 S. 1st East, Moab, UT 84532

Green River Library, 85 South Lang St., Green River, UT 84525

Wyoming

Riverton Branch Library, 1330 West Park, Riverton, WY 82501

Wyoming St. Library, Supreme Court Building, 24th & Capitol Street Cheyenne, WY 82002

University of Wyoming Library, University Station, Laramie, WY 82071

Opportunity to Comment

Interested parties are invited to comment on the draft programmatic environmental impact statement. The Department of Energy will consider written and oral comments equally when preparing the final programmatic environmental impact statement. Written comments should be sent to Mr. Rich Sena, UMTRA Team, at the address given above. To be considered in the document, written comments should be postmarked by July 17, 1995; comments postmarked after that date will be considered to the extent practicable.

Public Hearings and Information Meetings

The public is invited to comment on the draft programmatic environmental impact statement to the Department of Energy in person at the scheduled public hearings. The purposes of the hearings are to receive comments on the subjects analyzed in the draft document; to provide information to the public concerning the content and adequacy of the programmatic environmental impact statement; and to respond to public questions on the analyses or the programmatic environmental impact statement process. Hearings will be set up to address these areas. Persons presenting oral comments at the hearings are encouraged to provide the Department of Energy with written copies of their comments.

Conduct of Hearings

Format for the conduct of the hearings will be announced by the presiding officer at the start of the hearings. The Department of Energy personnel conducting the hearings may ask clarifying questions regarding statements made at the hearings. Transcripts of the comments made at the hearings will be made available at Department of Energy reading rooms and public libraries listed above.

Hearing Schedules and Locations

Shiprock, New Mexico, June 7, 1995, Shiprock Chapter House, 7:00–10:00 p.m.

Durango, Colorado, June 8, 1995, Durango City Hall, 7:00–10:00 p.m.

Halchita, Utah, June 13, 1995, Mexican Hat Elementary School, 7:00–10:00 p.m.

Moenkopi, Arizona, June 14, 1995, Moenkopi Community Center, 7:00–10:00 p.m.

Tuba City, Arizona, June 14, 1995, Tuba City Chapter House, 2:00–5:00 p.m.

Grand Junction, Colorado, June 22, 1995, Grand Junction City Hall, 7:00–10:00 p.m.

Gunnison, Colorado, June 21, 1995, Gunnison County Court House, 7:00–10:00 p.m.

Falls City, Texas, June 27, 1995, Falls City Community Center, 7:00–10:00 p.m.

Riverton, Wyoming, June 28, 1995, St. Stephens School, 7:30–10:30 p.m.

Issued in Washington, D.C., on May 10, 1995.

James M. Owendoff,

Acting Deputy Assistant Secretary for Environmental Restoration.

[FR Doc. 95–12041 Filed 5–16–95; 8:45 am]

BILLING CODE 6450–01–P

Privacy Act of 1974; Establishment of a New System of Records

AGENCY: Department of Energy (DOE).

ACTION: Proposed establishment of a new Privacy Act system of records.

SUMMARY: Federal agencies are required by the Privacy Act of 1974 (Pub. L. 93–579, 5 U.S.C. 552a) to publish a notice in the **Federal Register** of a proposed system of records. The Department of Energy (DOE) proposes to establish a new system of records entitled, "DOE–87 Human Radiation Experiments Helpline Records".

DATES: The proposed new system of records will become effective without further notice June 26, 1995, unless comments are received on or before that date that would result in a contrary determination and a notice is published to that effect.

ADDRESSES: Written comments should be directed to the following address: Director, Freedom of Information Act and Privacy Act Division, U.S. Department of Energy, HR–78, 1000 Independence Avenue, SW, Washington, DC 20585. Written comments will be available for inspection at the above address between the hours of 9 a.m and 4 p.m.

FOR FURTHER INFORMATION CONTACT: (1) Ellyn R. Weiss, Director, U.S. Department of Energy, Office of Human Radiation Experiments, 1726 M Street, NW, Washington DC 20036, or (2) GayLa D. Sessoms, Director, Freedom of Information Act and Privacy Act Division, HR–78, 1000 Independence Avenue SW, Washington, DC 20585 (202) 586–5955 or (3) Harold Halpern, Office of General Counsel, GC–80, 1000 Independence Avenue, SW, Washington, DC 20585 (202) 586–7406.

SUPPLEMENTARY INFORMATION: The DOE proposes to establish a new system of records entitled "DOE–87, Human Radiation Experiments Helpline Records". This system will contain records of telephone calls to the DOE or the Interagency Helpline (operated by DOE) and correspondence with or involving the callers. The calls and correspondence were in response to DOE's December, 1993, announcement that it would declassify and publicize information pertaining to Human

Radiation Experiments. That term, which includes certain experiments and environmental releases of radiation, is defined in Executive Order 12891, 59 FR 2935, (January 20, 1994); *see* Appendix A to the accompanying Notice of a Proposed New System of Records. The proposed new system will pertain to members of the public who contacted the DOE or the Interagency Helpline under the belief that they, or their deceased relatives, may have participated as subjects in the experiments or may have been affected by environmental or other releases of radiation resulting from Government activities. These records will be used as a source of information to assist the Advisory Committee on Human Radiation Experiments evaluation of the scientific and ethical aspects of the experiments and releases. These records will also be used to enable information to be gathered from other sources concerning inquirers or their relatives' participation in experiments and releases, in order to provide such information to the inquirers. Records in this system may be referred to agencies other than DOE if it appears that such other agencies may have conducted pertinent experiments or environmental releases or may administer remedial programs.

The text of the system notice is set forth below.

Issued in Washington, DC, this 28 day of April, 1995.

Archer L. Durham,

Assistant Secretary for Human Resources and Administration.

DOE–87

SYSTEM NAME:

Human Radiation Experiments Helpline Records.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

U. S. Department of Energy, Office of Human Radiation Experiments, Washington, DC 20585

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system of records contains records pertaining to persons in the following categories who contacted the DOE or the Interagency Helpline (operated by the DOE), after December 1, 1993, to determine or report their, or their relatives', possible exposure to radiation as a result of Human Radiation Experiments or environmental releases conducted or sponsored by the Government or to report possible exposure to radiation as a result of other Government or non-government activities:

(1) Members of the public;

(2) Former members of the armed forces;

(3) Employees of the DOE, its predecessor agencies, and their contractors and subcontractors;

(4) Persons exposed to radiation as a result of proximity to nuclear facilities or the intentional or accidental release of radiation.

CATEGORIES OF RECORDS IN THE SYSTEM:

Data provided by persons contacting the DOE or the Interagency Helpline after December 1, 1993, to report or inquire about exposure to radiation consists of records of telephone conversations and correspondence. Records in this system also include correspondence between the callers, Members of Congress, attorneys who represent them, and with Federal agencies that conducted pertinent Human Radiation Experiments or environmental releases or administer remedial programs.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; authority incorporated by reference in Title III of the Department of Energy Organization Act at 42 U.S.C. 7151; including 42 U.S.C. 2201(c) and 42 U.S.C. 5813 and 5817.

PURPOSE:

The records will be used by DOE as a source of information to assist the Advisory Committee on Human Radiation Experiments in the evaluation of the Human Radiation Experiments and environmental releases. *See* Executive Order 12891, 59 FR 2935, (January 20, 1994). Additionally, based upon the information reported by the persons that contacted DOE or the Interagency Helpline after December 1, 1993, to inquire about or report participation in the experiments or the effects of the environmental releases, DOE intends to gather pertinent information about the experiments and releases from other sources, in order to provide that information to the inquirers. The DOE will also refer particular cases to other Federal agencies which may have conducted pertinent experiments or releases or may administer remedial programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. To assist the Advisory Committee on Human Radiation Experiments perform its assigned task of evaluating the scientific and ethical aspects of the Human Radiation Experiments and environmental releases, a record from this system of records may be disclosed to that Committee to provide it with information concerning experiments or releases of radiation that were sponsored, financed or conducted by DOE, its predecessors, or other Federal agencies, and their contractors and subcontractors. *See* Executive Order 12891, 59 FR 2935, (January 20, 1994); Appendix A.

2. A record in this system of records may be disclosed as a routine use to a Member of Congress submitting a written request involving the individual when the individual is a constituent of the member and has requested assistance from the member with respect to the subject matter of the record.

3. A record from this system may be disclosed to DOE contractors in performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties, subject to the same limitations applicable to DOE's officers and employees under the Privacy Act, as amended, 5 U.S.C. 552a.

4. A record from this system of records pertaining to a particular Human Radiation Experiment or environmental release may be disclosed to another Federal agency if it appears from the record, or other available information, that the other Federal agency conducted the Human Radiation Experiment or environmental release or that referral to the other Federal agency is appropriate for remedial purposes.

5. A record from this system of records may be disclosed to the Department of Justice when: (a) DOE, any predecessor agency, or any component thereof; (b) any DOE or predecessor agency employee, in an official capacity; (c) the United States Government; (d) any current or former DOE, or predecessor agency, contractor, or any of their employees, is a party to, or has an interest in, litigation and DOE determines that the records are both relevant to and necessary for the litigation; and the use of such records by the Department of Justice is deemed by DOE to be compatible with the purpose for which DOE collected the records.

6. A record from this system of records may be disclosed to a court or adjudicative body in a proceeding when: (a) DOE, any predecessor agency, or any component thereof; (b) any current or former DOE, or predecessor agency, employee in an official capacity, or in an individual capacity where DOE has agreed to represent the employee; (c) the United States Government; or (d) any current or former DOE contractor, or employee of such contractor is a party to, or has an interest in, the proceeding

and DOE determines that the records are both relevant to and necessary for the proceeding and that such use is deemed by DOE to be compatible with the purpose for which DOE collected the records.

7. When a record on its face or in conjunction with other records indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature and whether arising by general program statute or particular program pursuant thereto, the relevant records may be referred as a routine use to the appropriate agency, whether Federal, foreign, state, local or tribal, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto, if DOE determines that the records are both relevant to and necessary for such investigation or prosecution and the use of such records by the appropriate agency is deemed by DOE to be compatible with the purpose for which DOE collected the records.

8. A record from this system of records may be disclosed to the Archivist of the United States, the National Archives and Records Administration or to the General Services Administration for records management conducted under 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on electromagnetic or optical storage media, and paper records.

RETRIEVABILITY:

Telephone calls have been placed in a database from which information is retrieved by the caller's name. Correspondence is retrieved by name of the person to whom the correspondence pertains or of the person submitting the correspondence.

SAFEGUARDS:

Data is kept in secured areas that are locked when not in regular use and buildings with controlled access. Hard copy data are stored in locked files. Appropriate safeguards for electronic information are built into program software as warranted by sensitivity of the data.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with authorities contained in the DOE Order 1324.2 "Records Disposition."

SYSTEM MANAGER(S) AND ADDRESSES:

U.S. Department of Energy Director, Office of Human Radiation Experiments, Washington, DC 20585.

NOTIFICATION PROCEDURES:

Requests by an individual to determine if this system of records contains information about him or her should be directed to the Privacy Act Officer, U.S. Department of Energy, HR–78, Washington, DC 20585, in accordance with the DOE's Privacy Act regulation (10 CFR part 1008, September 16, 1980, 45 FR 61576). Requests should include the individual's current full name and address, the individual's name and address at the time of any possible participation in the Human Radiation Experiments or environmental release as defined in Appendix A, and, if the requester is a current or former employee of a Department contractor, the contractor's name, the individual's employment dates, and the individual's social security number.

RECORD ACCESS PROCEDURES:

Same as notification procedures.

CONTESTING RECORD PROCEDURES:

Same as notification procedures.

RECORD SOURCE CATEGORIES:

Subject individuals, family members, their attorneys, Senators and Representatives.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix A

As defined in Executive Order 12891, Human Radiation Experiments include:

(1) Experiments on individuals involving intentional exposure to ionizing radiation. This category does not include common and routine clinical practices, such as established diagnosis and treatment methods, involving incidental exposures to ionizing radiation;

(2) Experiments involving intentional environmental releases of radiation that (A) were designed to test human health effects of ionizing radiation; or (B) were designed to test the extent of human exposure to ionizing radiation;

(3) The experiment into the atmospheric diffusion of radioactive gases and test of detectability, commonly referred to as the "Green Run test," conducted by the former Atomic Energy Commission and the Air Force in December 1949 in Hanford, Washington;

(4) Two radiation warfare field experiments conducted at the Atomic Energy Commission's Oak Ridge office in 1948 involving gamma radiation released from non-bomb point sources at or near ground level;

(5) Six tests conducted during 1949–1952 of radiation warfare ballistic dispersal devices containing radioactive agents at the U.S. Army's Dugway, Utah, site;

(6) Four atmospheric radiation-tracking tests in 1950 at Los Alamos, New Mexico; and

(7) Other similar human experiments that may later be identified by the Human Radiation Interagency Working Group.

[FR Doc. 95–12042 Filed 5–12–95; 8:45 am]

BILLING CODE 6450–01–P

Privacy Act of 1974; Establishment of a New System of Records

AGENCY: Department of Energy.

ACTION: Proposed establishment of a New Privacy Act system of records.

SUMMARY: Federal agencies are required by the Privacy Act of 1974 (Pub. L. 93–579, 5 U.S.C. 552a) to publish a notice in the **Federal Register** of a proposed system of records. The Department of Energy (DOE) proposes to establish a new system of records entitled, "DOE–86 Human Radiation Experiments Records."

DATES: The proposed new system of records will become effective June 26, 1995 unless comments are received on or before that date that would result in a contrary determination and a notice is published to that effect.

ADDRESSES: Written comments should be directed to the following address: Director, Freedom of Information Act and Privacy Act Division, U.S. Department of Energy, HR–78, 1000 Independence Avenue SW., Washington, DC 20585. Written comments will be available for inspection at the above address between the hours of 9 a.m and 4 p.m.

FOR FURTHER INFORMATION CONTACT: (1) Ellyn R. Weiss, Director, U. S. Department of Energy, Office of Human Radiation Experiments, 1726 M Street NW., Washington DC 20036, or (2) GayLa D. Sessoms, Director, Freedom of Information Act and Privacy Act Division, U.S. Department of Energy, HR–78, 1000 Independence Avenue SW., Washington, DC 20585 (202) 586–5955 or (3) Harold Halpern, Office of General Counsel, GC–80, 1000 Independence Avenue SW, Washington, DC 20585 (202) 586–7406.

SUPPLEMENTARY INFORMATION: The DOE proposes to establish a new system of records entitled "DOE–86 Human Radiation Experiments Records". The records are being compiled by the DOE as part of its effort to gather and publicize information concerning Human Radiation Experiments and certain environmental releases of radiation, as defined in Executive Order 12891, 59 FR 2935 (January 20, 1994).

See Appendix A to the accompanying Notice of a Proposed New System of Records. The records will be used to provide information concerning the experiments and environmental releases to the general public and to individuals who contacted the DOE or the Interagency Helpline (operated by the DOE) that were, or believed that they or their relatives were, subjects of the experiments or affected by the environmental releases. The information will also be used to assist the Advisory Committee on Human Radiation Experiments in its assigned task of evaluating the scientific and ethical aspects of the experiments and proposing remedial measures to the Human Radiation Interagency Working Group. *See* Executive Order 12891.

Information in the system will include records pertaining to the organizing, conducting, financing, results and effects of experiments and environmental radiation releases sponsored or conducted by DOE, its predecessors and their current and former contractors and subcontractors.

The text of the system notice is set forth below.

Issued in Washington, DC, this 28 day of April 1995.

Archer L. Durham,

Assistant Secretary for Human Resources and Administration.

DOE–86

SYSTEM NAME:

Human Radiation Experiments Records.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

U. S. Department of Energy, Office of Human Radiation Experiments, Washington, DC 20585

Coordination and Information Center, 3084 S. Highland St., Las Vegas, Nevada 89109

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The records pertain to persons who participated in the organizing, conducting, and financing of the Human Radiation Experiments and environmental releases of radiation described in Executive Order 12891, 59 FR 2935 (January 20, 1994). *See* Appendix A. The records also pertain to persons who were subjects of the experiments or were affected by the releases. Generally, the records pertain to persons in the following categories:

(1) Former and current employees of the DOE, its predecessor agencies and their contractors and subcontractors;

(2) Members of the public;

(3) Persons exposed to radiation as a result of proximity to nuclear facilities or the intentional or accidental release of radiation.

CATEGORIES OF RECORDS IN THE SYSTEM:

Data consists of records pertaining to the planning, organizing, financing, conducting, effects and results of experiments and environmental releases, gathered from DOE, its predecessor agencies and their contractors and subcontractors. Such records include correspondence, memoranda, published and unpublished reports, notes, logs, proposals, contracts, minutes of meetings of the Atomic Energy Commission and its advisory committees and subcommittees dealing with radiation, correspondence with members of the public, transcripts of interviews of persons associated with the organizing, financing and conducting of the experiments, reports of Congressional hearings; personal notes, diaries and papers, archival collections, interagency memoranda and agreements, consent forms, medical and laboratory reports, transcripts of medical conferences, and newspaper and magazine articles.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; authority incorporated by reference in Title III of the Department of Energy Organization Act at 42 U.S.C. 7151; including 42 U.S.C. 2201(c) and 42 U.S.C. 5813 and 5817.

PURPOSE:

The records will enable DOE to create a central source of data concerning the experiments and releases, and to provide information to the public and to individuals that were subjects of the experiments or affected by the environmental releases. The records will also be used to assist the Advisory Committee on Human Radiation Experiments evaluate the scientific, medical and ethical aspects of the experiments.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. To assist the Advisory Committee on Human Radiation Experiments perform its assigned task of evaluating the scientific and ethical aspects of the Human Radiation Experiments and environmental releases, a record from this system of records may be disclosed to that Committee to provide it with information concerning experiments or releases of radiation that were sponsored, financed or conducted by DOE, its predecessors, or other Federal agencies, and their contractors and subcontractors. *See* Executive Order 12891, 59 FR 2935, (January 20, 1994); Appendix A.

2. A record from this system of records pertaining to a particular Human Radiation Experiment or environmental release may be disclosed to another Federal agency if it appears from the record, or other available information, that the other Federal agency conducted the Human Radiation Experiment or environmental release or that referral to the other Federal agency is appropriate for remedial purposes.

3. A record from this system of records may be disclosed for epidemiological, industrial safety or hygiene studies conducted by DOE's contractors and subcontractors to ascertain or determine: (1) How radiation exposure effects the health and well being of individuals or groups of individuals; and (2) the risks of working with, or being in proximity to, nuclear equipment, devices and facilities and how such risks may be ameliorated.

4. A record from this system of records may be disclosed to the Centers for Disease Control and Prevention, other Federal and state health agencies, and Federal and state agencies involved with industrial or employee safety to be used for epidemiological or industrial safety or hygiene studies to ascertain or determine: (1) How radiation exposure effects the health and well being of individuals or groups of individuals; and (2) the risks of working with, or being in proximity to, nuclear equipment, devices and facilities, and how such risks may be ameliorated.

5. A record from this system of records may be disclosed to the Department of Justice when: (a) The DOE or any component thereof; (b) any DOE employee, or employee of a DOE predecessor agency, in an official capacity; (c) the United States Government; (d) any current or former DOE contractor, or employee of such contractor, is a party to or has an interest in litigation and DOE determines that the records are both relevant and necessary and the use of such records by the Department of Justice is deemed by DOE to be compatible with the purpose for which DOE collected the records.

6. A record from this system of records may be disclosed to a court or adjudicative body in a proceeding when: (a) DOE, any predecessor agency, or any component thereof; (b) any current or former DOE, or predecessor agency, employee in an official capacity, or in an individual capacity where DOE has agreed to represent the employee; (c) the United States Government; or, (d) any current or former DOE contractor, or employee of such contractor is a party to, or has an interest in, the proceeding and the DOE determines that the records are both relevant to and necessary for the proceeding and that such use is deemed by DOE to be compatible with the purpose for which DOE collected the records.

7. When a record on its face or in conjunction with other records indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature and whether arising by general program statute or particular program pursuant thereto, the relevant records may be referred as a routine use to the appropriate agency, whether Federal, foreign, state, local or tribal, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

8. A record in this system of records may be disclosed as a routine use to a Member of Congress submitting a written request involving the individual when the individual is a constituent of the member and has requested assistance from the member with respect to the subject matter of the record.

9. A record from this system of records may be disclosed to the Archivist of the United States, the National Archives and Records Administration or to the General Services Administration for records management conducted under 44 U.S.C. 2904 and 2906.

10. A record from this system may be disclosed to DOE's contractors in performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties, subject to the same limitations applicable to DOE's officers and employees under the Privacy Act.

11. A record from this system of records may be disclosed to officials and contractor personnel of the Agency for Toxic Substances and Disease Registry in carrying out that agency's authorized activities at DOE's facilities pursuant to setion 104(i) of the Comprehensive Environmental Response, Compensation, and Liability Act.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on electromagnetic or optical storage media, and paper records.

RETRIEVABILITY:

These records are entered into a database. Accordingly, retrievability may be by name, or other personal identifier, as dictated by the needs of the particular researcher.

SAFEGUARDS:

Data is kept in secured areas that are locked when not in regular use and buildings with controlled access. Hard copy data are stored in locked files. Appropriate safeguards for electronic information are built into program software as warranted by sensitivity of the data.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with authorities contained in DOE Order 1324.2 "Records Disposition."

SYSTEM MANAGER(S) AND ADDRESSES:

U.S. Department of Energy, Director, Office of Human Radiation Experiments, Washington, DC 20585.

NOTIFICATION PROCEDURES:

Requests by an individual to determine if this system of records contains information about him or her should be directed to the Privacy Act Officer, U.S. Department of Energy, Washington, DC 20585, in accordance with DOE's Privacy Act regulation (10 CFR part 1008, September 16, 1980, 45 FR 61576). Requests should include the individual's current full name and address, the individual's name and address at the time of any specific events of interest to the requester, and, if the requester is a current or former employee of a DOE contractor, the contractor's name, the individual's employment dates, and the individual's social security number.

RECORD ACCESS PROCEDURES:

Same as notification procedures.

CONTESTING RECORD PROCEDURES:

Same as notification procedures.

RECORD SOURCE CATEGORIES:

Persons conducting or otherwise having a role in the organization and financing of experiments or releases, present and former DOE and predecessor agency contractors and subcontractors, physicians, medical records, dosimetry records, subject individuals, DOE and its predecessor agency officials and operating offices.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix A

As defined in Executive Order 12891, 59 FR 2935 (January 20, 1994) Human Radiation Experiments include:

(1) Experiments on individuals involving intentional exposure to ionizing radiation. This category does not include common and routine clinical practices, such as established diagnosis and treatment methods, involving incidental exposures to ionizing radiation;

(2) Experiments involving intentional environmental releases of radiation that (A) were designed to test human health effects of ionizing radiation; or (B) were designed to test the extent of human exposure to ionizing radiation;

(3) The experiment into the atmospheric diffusion of radioactive gases and test of detectability, commonly referred to as the "Green Run test," conducted by the former Atomic Energy Commission and the Air Force in December 1949 in Hanford, Washington;

(4) Two radiation warfare field experiments conducted at the Atomic Energy Commission's Oak Ridge office in 1948 involving gamma radiation released from non-bomb point sources at or near ground level;

(5) Six tests conducted during 1949–1952 of radiation warfare ballistic dispersal devices containing radioactive agents at the U.S. Army's Dugway, Utah, site;

(6) Four atmospheric radiation-tracking tests in 1950 at Los Alamos, New Mexico; and

(7) Other similar human experiments that may later be identified by the Human Radiation Interagency Working Group.

[FR Doc. 95–12043 Filed 5–16–95; 8:45 am]

BILLING CODE 6450–01–P

Energy Information Administration

Notice of Proposed One Year Extension of Forms

SUMMARY: The Energy Information Administration (EIA), as part of its continuing effort to reduce paperwork and respondent burden conducts a presurvey consultation program to provide the general public and other Federal agencies with an opportunity to comment on proposed and/or continuing reporting forms. This program helps to ensure that requested data can be provided in the desired format, reporting burden is minimized, reporting forms are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, EIA is soliciting comments concerning the proposed extension to the Forms EIA–800–804, 807, 810–814, 816, 817, 819M, 819A, 820 and 825, "Petroleum Supply Reporting System."

DATES: Written comments must be submitted on or before June 16, 1995. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of

time allowed by this notice, you should advise the contact listed below of your intention to do so as soon as possible.

ADDRESSES: Send comments to Stacey Ungerleider, Energy Information Administration, EI–421, Forrestal Building, U.S. Department of Energy, Washington, D.C. 20585, (202) 586–5130.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Stacey Ungerleider at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

In order to fulfill its responsibilities under the Federal Energy Administration Act of 1974 (Pub. L. No. 93–275) and the Department of Energy Organization Act (Pub. L. No. 95–91), the Energy Information Administration is obliged to carry out a central, comprehensive, and unified energy data and information program. As part of this program, EIA collects, evaluates, assembles, analyzes, and disseminates data and information related to energy resource reserves, production, demand, and technology, and related economic and statistical information relevant to the adequacy of energy resources to meet demands in the near and longer term future for the Nation's economic and social needs. The Paperwork Reduction Act of 1980, 511, 44 U.S.C. 3501 *et seq.* requires the EIA to conduct these presurvey consultation programs.

The Petroleum Supply Reporting System collects information needed for determining the supply and disposition of crude oil, petroleum products and natural gas liquids. These data are published by the Energy Information Administration in the *Weekly Petroleum Status Report, Winter Fuels Report, Petroleum Supply Monthly* and the *Petroleum Supply Annual.* Respondents to the surveys are producers of oxygenates, operators of petroleum refining facilities, blending plants, bulk terminals, crude oil and product pipelines, natural gas plant facilities, tanker and barge operators and oil importers.

II. Current Actions

EIA will request a one year extension to the existing collections to collect data in 1996.

In anticipation of the 1997 OMB clearance package, the Petroleum Supply Division is conducting a Business Process Re-engineering effort to review the collection, validation and dissemination of petroleum supply data. Changes to these processes will focus on reducing respondent burden and making data more accessible and timely. The changes will begin with the collection of the petroleum supply data in 1997. Requests for comments on these changes will be made in 1996.

III. Request for Comments

Prospective respondents and other interested parties should comment on the actions discussed in item II. The following general guidelines are provided to assist in the preparation of responses. Please indicate to which form(s) your comments apply.

As a potential respondent:

A. Are the instructions and definitions clear and sufficient? If not, which instructions require clarification?

B. Can the data be submitted using the definitions included in the instructions?

C. Can data be submitted in accordance with the response time specified in the instructions?

D. Public reporting burden for this collection is estimated to average per submission: EIA–800—1 hour 10 minutes; EIA–801—40 minutes; EIA–802—40 minutes; EIA–803—25 minutes; EIA–804—1 hour 10 minutes; EIA–807—50 minutes; EIA–810—3 hours 10 minutes; EIA–811—1 hour 40 minutes; EIA–812—2 hours; EIA–813—1 hour 30 minutes; EIA–814—1 hour 5 minutes; EIA–816—40 minutes; EIA–817—1 hour 30 minutes; EIA–818—2 hours; EIA–819M—30 minutes; EIA–819A—1 hour 15 minutes; EIA–820—2 hours; EIA–825—30 minutes. How much time, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information, do you estimate it will require you to complete and submit the required form?

E. What is the estimated cost of completing this form, including the direct and indirect costs associated with the data collection? Direct costs should include all costs, such as administrative costs, directly attributable to providing this information.

F. How can the form be improved?

G. Do you know of any other Federal, State, or local agency that collects similar data? If you do, specify the agency, the data element(s), and the means of collection.

As a potential user:

A. Can you use data at the levels of detail indicated on the form?

B. For what purpose would you use the data? Be specific.

C. How could the form be improved to better meet your specific needs?

D. Are there alternate sources of data and do you use them? What are their deficiencies and/or strengths?

E. For the most part, information is published by EIA in U.S. customary units, e.g., cubic feet of natural gas, short tons of coal, and barrels of oil. Would you prefer to see EIA publish more information in metric units, e.g., cubic meters, metric tons, and kilograms? If yes, please specify what information (e.g., coal production, natural gas consumption, and crude oil imports), the metric unit(s) of measurement preferred, and in which EIA publication(s) you would like to see such information.

EIA is also interested in receiving comments from persons regarding their views on the need for the information contained in the Petroleum Supply Reporting System.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form; they also will become a matter of public record.

Statutory Authorities: Section 2(a) of the Paperwork Reduction Act of 1980 (Pub. L. No. 96–511), which amended Chapter 35 of Title 44 of the United States Code [See 44 U.S.C. 3506(a) and (c)(1)].

Issued in Washington, D.C. May 10, 1995.

Yvonne M. Bishop,

Director, Office of Statistical Standards, Energy Information Administration.

[FR Doc. 95–12040 Filed 5–16–95; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. RP92–237–016]

Alabama-Tennessee Natural Gas Company; Notice of Filing of a Corrected Refund Report

May 11, 1995.

Take notice that on April 4, 1995, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee), tendered for filing a corrected refund report in compliance with ordering paragraph (F) of the Commission's March 20, 1995 order in Docket No. RP92–237–013, *et al.*

Consistent with ordering paragraph (E) of the March 20 order Alabama-Tennessee states that it sent letters on March 27, 1995, offering each of its customers that had an effective Operational Balancing Agreement (OBA) the option of receiving refunds for fuel retainage either in-kind, or as a credit to the customer's OBA account. Alabama-Tennessee further states that it has calculated interest at the rates mandated by Commisison regulations, and has applied the resulting percentage figures to the retained gas volumes for each customer, thereby paying the interesting as volumes.

All parties that have already filed comments or protests regarding the subject corrected refund report need not file in response to this notice.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before May 18, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–12056 Filed 5–16–95; 8:45 am]

BILLING CODE 6717–01–M

Federal Energy Regulatory Commission

[Docket No. GT95–34–000]

Columbia Gas Transmission Corporation; Notice of Refund Report

May 11, 1995.

Take notice that on April 26, 1995, Columbia Gas Transmission Corporation (Columbia) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Capacity Access Program Refund Report. The report indicates that Columbia flowed through to customers that had utilized Columbia's Firm Transportation Capacity on Texas Eastern Transmission Corporation (Docket Nos. RP90–119 and RP88–67) and Texas Gas Transmission Corporation (Docket No. RP90–104) via Columbia's Capacity Access Program, the portion of Texas Eastern and Texas Gas's refund, which was applicable to the quantities transported on Texas Gas and Texas Eastern by each customer under Columbia's Capacity Access Program.

Columbia states that it flowed through these refunds in the form of credits to invoices issued on or around April 10, 1995, which were payable to Columbia on or before April 20, 1995. Interest was included in the amount refunded to each customer, calculated through April 19, 1995, in accordance with Section 154.67(c)(2) of the Commission's Regulations. The total amount credited was $160,179.26.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214. All such motions or protests should be filed on or before May 18, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–12059 Filed 5–16–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM95–5–34–001]

Florida Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

May 11, 1995.

Take notice that on May 10, 1995, Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, Third Revision Volume No. 1, the following tariff sheets:

Substitute 4th Revised Eighth Revised Sheet No. 8A
Substitute 3rd Revised Original Sheet No. 8A.02

On May 1, 1995, FGT filed tariff sheets in Docket No. TM95–5–34–000 to make out-of-cycle adjustments to both the Current Fuel Reimbursement Charge and the Annual Fuel Surcharge (Fuel Filing) proposed to become effective June 1, 1995. Contained in this filing were tariff sheets including 4th Revised Eighth Revised Sheet No. 8A and 3rd Revised Original Sheet No. 8A.02. The revisions to these tariff sheets were redlined from 3rd Revised Eighth Revised Sheet No. 8A and 2nd Revised Original Sheet No. 8A.02, which were also filed on May 1, 1995 in Docket Nos. TM94–4–34–006 and RP95–259–000 and also proposed to become effective on June 1, 1995. Subsequently, FGT has become aware that it inadvertently failed to revise 3rd Revised Eighth Revised Sheet No. 8A and 2nd Revised Original Sheet No. 8A.02 to reflect the elimination of the Annual Unit Take-Or-Pay Surcharge from the maximum usage charges and associated footnotes.

Therefore, concurrent with the instant filing, FGT is filing Substitute 3rd Revised Eighth Revised Sheet No. 8A and Substitute 2nd Revised Original Sheet No. 8A.02 in Docket Nos. TM94–4–34–007 and RP95–259–001 to correct this oversight. In the instant filing, FGT is making conforming changes to the referenced tariff sheets filed herewith.

Any person desiring to protest said filing should file a motion protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426 in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before May 18, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–12051 Filed 5–16–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. TM94–4–34–007 and RP95–259–001]

Florida Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

May 11, 1995.

Take notice that on May 10, 1995, Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, Third Revision Volume No. 1, the following tariff sheets:

Substitute 3rd Revised Eighth Revised Sheet No. 8A
Substitute 2nd Revised Original Sheet No. 8A.02

On May 1, 1995, FGT filed in Docket Nos. TM94–4–34–006 and RP95–259–000 to replace the Annual Unit Take-Or-Pay Surcharge (TOP Surcharge) mechanism by modifying Section 25 of the General Terms and Conditions of FGT's Tariff to reflect that recovery of remaining Southern Fixed Charge balances will be pursuant to arrangements which have been mutually agreed to between FGT and the customers with remaining balances. In the May 1 filing, FGT inadvertently failed to reduce the maximum usage charges to reflect the elimination of the volumetric TOP Surcharge.

FGT states that in the instant filing, FGT is correcting this oversight by

reducing the maximum usage charges and eliminating the associated footnotes from the referenced tariff sheets.

Any person desiring to protest said filing should file a motion protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426 in accordance with § 385.214 of the Commission's Rules and Regulations. All such protests should be filed on or before May 18, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–12052 Filed 5–16–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP92–226–005]

Kern River Gas Transmission; Notice of Proposed Changes in FERC Gas Tariff

May 11, 1995.

Take notice that on May 5, 1995, Kern River Gas Transmission Company (Kern River) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective on May 1, 1995:

Third Revised Sheet No. 5
Third Revised Sheet No. 6
First Revised Sheet No. 125
Original Sheet No. 126
Original Sheet No. 127 through 199

Kern River states that the revised tariff sheets implement the October 19, 1994 Stipulation and Agreement in this proceeding, approved by Commission orders dated January 25, 1995 and April 4, 1995, to reflect the Post-Restructuring Settlement Rates and the changes to Kern River's interruptible transportation revenue crediting provision, as provided for in the Settlement. Kern River requests that the Commission grant any and all waivers necessary to make the revised tariff sheets effective on May 1, 1995.

Kern River states that copies of the filing were served upon Kern River's jurisdictional customers, all affected state commissions, and the parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before May 18, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–12057 Filed 5–16–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–287–000]

Mississippi River Transmission Corporation; Notice of Proposed Changes in FERC Tariff

May 11, 1995.

Take notice that on May 8, 1995, Mississippi River Transmission Corporation (MRT) submitted for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets:

First Revised Sheet No. 163
First Revised Sheet No. 164
First Revised Sheet No. 167
First Revised Sheet No. 168
First Revised Sheet No. 169
First Revised Sheet No. 170

MRT states that the tariff sheets submitted reflect revisions to MRT's capacity release provisions consistent with the Commission's Final Rule in Order No. 577, and that they also reflect other minor revisions to MRT's capacity release tariff provisions, including changing all times for posting and bidding for releases to Central Time.

MRT requests waiver of the notice requirement of Section 154.22 of the Commission's Regulations to permit Sheet Nos. 169 and 170 reflecting Order No. 577 changes to become effective on May 4, 1995, which is the date Order No. 577 became effective. MRT requests an effective date of June 8, 1995 for all other tariff sheets submitted.

MRT states that copies of its tariff filing were mailed to all of its affected customers and the State Commissions of Arkansas, Missouri and Illinois.

Any person desiring to be heard or protest the subject filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214. All such motions and protests should be filed on or before May 18, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–12053 Filed 5–16–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–286–000]

National Fuel Gas Supply Corporation; Notice of Proposed Changes in FERC Gas Tariff

May 11, 1995.

Take Notice that on May 8, 1995, National Fuel Gas Supply Corporation (National), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to be effective June 1, 1995:

First Revised Sheet No. 147
First Revised Sheet No. 154
Second Revised Sheet No. 255
First Revised Sheet No. 256

National states that First Revised Sheet No. 154 is being filed to reflect the Commission's modifications to § 284.243(h) of its capacity release regulations in Order No. 577.

National states that Second Revised Sheet No. 255 and First Revised Sheet No. 256 are being filed to eliminate affiliate transaction data from National's request for service form in accordance with Order No. 566. National further states that First Revised Sheet No. 147 is being filed because the Order No. 566 series of orders made certain sections incorrect.

National states that it is serving copies of the filing to its firm customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 18, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestant parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–12054 Filed 5–16–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER95–824–000]

Puget Sound Power & Light Company; Notice of Filing

May 11, 1995.

Take notice that on April 4, 1995, Puget Sound Power & Light Company tendered for filing an Agreement Providing for Termination of Agreement for Assignment and for Exchange of Power between Puget and Public Utility District No. 1 of Grays Harbor County, Washington (the "District") executed as of March 2, 1995 (the "Exchange Agreement"). A copy of the filing was served upon the District.

Puget states that the Exchange Agreement relates to the exchange and scheduling by Puget and the District of the District's Centralia Project output share, the sale by Puget to the District of reserve capacity, and the provision by Puget of certain associated services, all pursuant to the terms of the Exchange Agreement.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before May 23, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–12060 Filed 5–16–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–654–001]

Texas Eastern Transmission Corporation; Notice of Amended Application

May 11, 1995.

Take notice that on May 9, 1995, Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, Houston, Texas 77056–5310, filed in Docket No. CP94–654–001, an amended application, pursuant to Section 7(c) of the Natural Gas Act (NGA) and Section 157.7 of the Commission's Regulations, for a certificate of public convenience and necessary to construct, own, and operate certain incremental pipeline facilities necessary to render firm transportation service to PECO Energy Company (PECO) and UGI Utilities, Inc. (UGI). Firm transportation service will be provided under Texas Eastern's Part 284, open-access blanket transportation certificate, and the terms and conditions of Texas Eastern's Rate Schedule FT–1. Texas Eastern also requests authorization to charge a NGA Section 7 initial rate that is a separately-stated incremental rate.

Texas Eastern filed its original application on July 12, 1994, and proposed to construct facilities in two phases to provide firm transportation for: Eastern Shore Gas Company (Eastern Shore), PECO, and UGI (Phase I); and South Jersey Natural Gas Company (South Jersey) (Phase II). Eastern Shore, PECO, and South Jersey intended to utilize their capacity to transport volumes of gas from the Riverside Gas Storage Company (Riverside) storage facility, pending in Docket No. CP94–292–000. South Jersey declined to execute a precedent agreement, and Texas Eastern filed its "Notice of Withdrawal" of the Phase II facilities on August 31, 1994. Since that time, Texas Eastern has been notified that Riverside's storage project will not be in service in the 1995–96 winter heating season, as originally contemplated,

As a result, Eastern Shore has withdrawn from the project, and PECO has agreed to a corresponding increase of 2,000 dekatherms per day (Dth/d) in its contract quantity for a total of 29,210 Dth/d to be transported on the incremental facilities proposed to be constructed by Texas Eastern between Uniontown, Pennsylvania and Doylestown, Pennsylvania. PECO has made alternate permanent upstream arrangements for storage service and for the transportation of the gas to Uniontown, Pennsylvania.

There is no change in UGI's proposed firm transportation service, or in the proposed total incremental capacity. The proposed facilities are also unchanged from the original application; except that the 4.05 miles of 36-inch pipeline loop in Greene County, Pennsylvania has been eliminated, and the capacity at the meter and regulating station in Bucks County, Pennsylvania has been increased to 50,000 Dth/d (without physical modification of the original design).

Pursuant to the Amended Application, Texas Eastern proposes to construct: 7.22 miles of 36-inch pipeline replacement in Fayette, Bedford, and Bucks Counties, Pennsylvania; and a new meter and regulating station in Bucks County, Pennsylvania. The estimated total cost of the proposed facilities is $22,019,000. Based upon the proposed cost of the facilities, Texas Eastern proposes an initial incremental monthly reservation charge of $10.896 per Dth/d beginning November 1, 1995.

Any person desiring to be heard or to make any protest with reference to said amended application should on or before May 25, 1995, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. All persons who have heretofore filed need not file again.

Lois D. Cashell,

Secretary.

[FR Doc. 95–12062 Filed 5–16–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–753–001]

United Cities Gas Company; Notice of Application To Amend

May 11, 1995.

Take notice that on May 9, 1995, United Cities Gas Company (United Cities), 5300 Maryland Way, Brentwood, Tennessee 37027, filed in Docket No. CP94–753–001 an application to amend the existing authorization issued in Docket No. CP94–753–000 to substitute Woodward Marketing, L.L.C. (Woodward) for Sonat Marketing Company (Sonat) as the potential lessee of certain storage capacity in the Barnsley Storage Field in Kentucky, as provided by Section 7(c) of the Natural Gas Act, all as more fully set forth in the application to amend which is on file with the Commission and open to public inspection.

United Cities, as owner of the Barnsley Storage Field in Kentucky, indicates that it was issued a limited jurisdiction certificate by order issued September 20, 1994, in Docket No. CP94–753–000 to lease capacity in the storage field to Sonat. United Cities indicates that, by letter dated October 20, 1994, it had accepted the authorization but also notified the Commission that the operations authorized in the order had not yet commenced and may not commence in the future, and that Sonat may choose not to pursue the transaction authorized in the certificate. United Cities states that by letter dated February 1, 1995, Sonat advised that it was not interested in pursuing further the lease arrangement. United Cities also states that by letter dated April 13, 1995, Woodward indicated that it would like to lease the storage capacity under the same conditions previously approved for Sonat. United Cities requests that its authorization be amended to substitute Woodward for Sonat as the potential lessee of the storage capacity. United Cities proposes no other modifications to the authorization.

Any person desiring to be heard or to make any protest with reference to said application to amend should on or before May 26, 1995, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to take but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this petition if no motion to intervene is filed within the time required herein, If the Commission on its own review of the matter finds that a grant of the amended application is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for United Cities to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 95–12061 Filed 5–16–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–190–002]

Williams Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

May 11, 1995.

Take notice that on May 1, 1995, Williams Natural Gas Company (WNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, with a proposed effective date of March 31, 1995:

Substitute Fourth Revised Sheet No. 9
Substitute Third Revised Sheet No. 10

WNG states that this filing is being made in compliance with Commission order issued March 31, 1995 in docket No. RP95–190. Ordering Paragraph (B) of the order directed WNG to file revised tariff sheets within 30 days of the order to reflect revised billings using the applicable jurisdictional percentages to calculate the various *ad valorem* costs represented in this proceeding. WNG is filing Revised Schedule D1, Code 1 and Revised Schedule D1, Code 8, Workpapers 001 and 002 to reflect the change in methodology for computing the jurisdictional percentages in compliance with the order.

WNG states that Attachment 1 shows the calculation of the revised amounts using jurisdictional percentages applicable to the ad valorem tax year. The ad valorem payments were evenly spread over the twelve months to which they apply, since the payments are applicable to the annual period and not to particular months. This change results in a reduction of approximately $97,000 in the direct bill amount.

WNG states that a copy of the filing was served on all participants listed on the service lists maintained by the Commission in the dockets referenced above and on all of WNG's jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before May 18, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–12055 Filed 5–16–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EF95–1021–000, et al.]

Alaska Power Administration, et al., Electric Rate and Corporate Regulation Filings

May 10, 1995.

Take notice that the following filings have been made with the Commission:

1. Alaska Power Administration

[Docket No. EF95–1021–000]

Take notice that on May 3, 1995, the Deputy Secretary of the Department of Energy, by Rate Order No. APA–13, confirmed and approved on an interim basis effective May 1, 1995, Rate Schedules SN-F–5, SN-NF–8, SN-NF–9, and SN-NF–10 applicable to power from Alaska Power Administration's (APA) Snettisham Project. The rate schedules which are being adjusted were previously confirmed and approved by FERC on December 23, 1991, for a period of five years, Docket No. EF92–1021–000.

Current rates in effect are 32.1 mills per kilowatt-hour for firm energy, a variable rate for non-firm energy based on the cost of heating oil, currently 12.1 mills per kilowatthour, and a rate of 27.1 mills per kilowatt-hour for energy used in place of wood burning. APA proposes to increase the rate for firm energy to 34.7 mills per kilowatthour, an increase of 6.1 percent. Rates for non-firm energy would remain the same.

The Department requests the approval of the Commission of the adjusted rates for a period not to exceed five years with the understanding that the rates can be adjusted at an earlier date if needed to comply with the cost recovery criteria. The rate schedules are submitted for confirmation and approval of a final basis pursuant to authority vested in the Commission by Amendment No. 3 to Delegation Order No. 0204–108.

Comment date: May 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. Western Systems Power Pool

[Docket No. ER91–195–020]

Take notice that on May 1, 1995, the Western Systems Power Pool (WSPP) filed certain information as required by Ordering Paragraph (D) of the Commission's June 27, 1991 Order (55 FERC 61,495) and Ordering Paragraph (C) of the Commission's June 1, 1992 Order on Rehearing Denying Request Not to Submit Information, and Granting In Part and Denying in Part Privileged Treatment. WSPP has requested privileged treatment for some of the information filed consistent with the June 1, 1992 order. Copies of WSPP's informational filing are on file with the Commission, and the non-privileged portions are available for public inspection.

3. Direct Electric Inc.

[Docket No. ER94–1161–004]

Take notice that on April 21, 1995, Direct Electric Inc. tendered for filing its quarterly report pursuant to the Commission's order issued on July 18, 1994 in the above-referenced docket, reporting no activity for the quarter ending March 31, 1995.

4. Electrade Corp.

[Docket No. ER94–1478–003]

Take notice that Electrade Corporation (Electrade) on April 27, 1995, tendered for filing its quarterly report in the above-referenced docket. Electrade reports no transactions for the period ending March 31, 1995.

5. Aquila Power Corp.

[Docket No. ER95–216–002]

Take notice that Aquila Power Corporation (Aquila), on April 27, 1995, tendered for filing its quarterly report in the above-referenced docket. Aquila reports no transactions for the period ending March 31, 1995.

6. Wickland Power Services

[Docket No. ER95–300–001]

Take notice that on April 24, 1995, Wickland Power Services tendered for filing a supplement to its initial quarterly report filed on April 10, 1995 in the above-referenced docket.

7. Delmarva Power & Light Co.

[Docket No. ER95–683–000]

Take notice that on May 1, 1995, Delmarva Power & Light Company (Delmarva) of Wilmington, Delaware, filed an amendment to its filing of a twelve-year power supply contract (the Service Agreement) under which Delmarva will provide all requirements service to the Town of Middletown, Delaware (Middletown). Delmarva states that the Service Agreement supersedes Delmarva's Rate Schedule No. 65 under which Middletown currently receives service.

Delmarva originally filed the Service Agreement on a confidential basis. Pursuant to Commission order, Delmarva in its amended filing has refiled the Service Agreement on a nonconfidential basis.

Delmarva, with Middletown's concurrence, requests an effective date of March 1, 1995 for the new Service Agreement. This effective date is specified by terms of the Service Agreement.

The Service Agreement provides for the continuation of the requirements service previously furnished Middletown under Rate Schedule No. 65, but changes certain terms and conditions. The chief differences between the Service Agreement and Rate Schedule No. 65 are that the Service Agreement provides for all requirement service as a change from the partial requirements service Middletown was receiving, establishes a new rate for Middletown which is below the level of the rate currently charged Middletown and provides for future adjustments to the Middletown rate based on changes in the level of Delmarva's retail rates. The Service Agreement has a twelve year term.

Delmarva states that the filing has been posted and has been served upon the affected customer and the Delaware Public Service Commission.

Comment date: May 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. K Power Company, Inc.

[Docket No. ER95–792–000]

Take notice that on April 26, 1995, K Power Company, Inc. tendered for filing an amendment in the above-referenced docket.

Comment date: May 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Idaho Power Company

[Docket No. ER95–795–000]

Take notice that on April 21, 1995, The Washington Water Power Company (WWP) and Sierra Pacific Power Company (Sierra), on behalf of Resources West Energy (RWE), tendered for filing with the Federal Energy Regulatory Commission, a Certificate of Concurrence in the Interim Agreement (Interim Agreement) among Sierra, WWP, and Idaho Power Company as filed by Idaho Power Company in the above referenced docket.

Comment date: May 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Northern Indiana Public Service Company

[Docket No. ER95–842–000]

Take notice that on April 28, 1995, Northern Indiana Public Service Company (Northern) tendered for filing a Revised Exhibit A to the Interchange Agreement Between Northern Indiana Public Service Company and Rainbow Energy Marketing Company.

The Revised Exhibit A to the Interchange Agreement clarifies certain provisions for General Purpose transactions or Negotiated Capacity transactions. Revised Exhibit A clarifies that the rates for energy shall not be less than Northern's out-of-pocket costs, provides a cap on seven consecutive daily purchases of capacity at the weekly capacity purchase rate, provides that the rate for energy associated with purchased power, if any, shall be the cost of such energy to Northern plus one mill and states that third party purchase-resale transactions are not anticipated.

Copies of this filing have been sent to Rainbow Energy Marketing Company and the Indiana Utility Regulatory Commission.

Comment date: May 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. New England Power Co.

[Docket No. ER95–911–000]

Take notice on April 21, 1995, New England Power Company tendered for filing an amendment in the above-referenced docket.

Comment date: May 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. Florida Power & Light Co.

[Docket No. ER95–934–000]

Take notice that on April 21, 1995, Florida Power & Light Company (FPL) tendered for filing proposed Service Agreements with the Kissimmee Utility Authority for transmission service under FPL's Transmission Tariff Nos. 2 and 3.

FPL requests that the proposed Service Agreements be permitted to become effective on May 1, 1995, or as soon thereafter as practicable.

Comment date: May 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

13. Florida Power & Light Co.

[Docket No. ER95–935–000]

Take notice that on April 21, 1995, Florida Power & Light Company (FPL)

tendered for filing proposed Service Agreements with the City of Key West for transmission service under FPL's Transmission Tariff Nos. 2 and 3.

FPL requests that the proposed Service Agreements be permitted to become effective on May 1, 1995, or as soon thereafter as practicable.

Comment date: May 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

14. Florida Power & Light Co.

[Docket No. ER95–936–000]

Take notice that on April 21, 1995, Florida Power & Light Company (FPL) tendered for filing proposed Service Agreements with Florida Power Corporation for transmission service under FPL's Transmission Tariff Nos. 2 and 3.

FPL requests that the proposed Service Agreements be permitted to become effective on April 3, 1995, or as soon thereafter as practicable.

Comment date: May 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

15. Florida Power & Light Co.

[Docket No. ER95–937–000]

Take notice that on April 21, 1995, Florida Power & Light Company (FPL) tendered for filing proposed Service Agreements with the City of Gainesville for transmission service under FPL's Transmission Tariff Nos. 2 and 3.

FPL requests that the proposed Service Agreements be permitted to become effective on April 2, 1995, or as soon thereafter as practicable.

Comment date: May 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

16. Florida Power & Light Co.

[Docket No. ER95–939–000]

Take notice that on April 21, 1995, Florida Power & Light Company (FPL) tendered for filing proposed Service Agreements with the City of Homestead for transmission service under FPL's Transmission Tariff Nos. 2 and 3.

FPL requests that the proposed Service Agreements be permitted to become effective on May 1, 1995, or as soon thereafter as practicable.

Comment date: May 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

17. Delhi Energy Services, Inc.

[Docket No. ER95–940–000]

Take notice that on April 21, 1995, Delhi Energy Services, Inc. (DESI) tendered for filing pursuant to Rule 205, a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1.

DESI intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where DESI sells electric energy, it proposes to make such sales on rates, terms, and conditions to be mutually agreed to with the purchasing party. DESI is not in the business of generating, transmitting, or distributing electric power.

Comment date: May 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

18. Southern Company Services, Inc.

[Docket No. ER95–961–000]

Take notice that on April 27, 1994, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Savannah Electric and Power Company (collectively referred to as Southern Companies) filed a Service Agreement dated as of April 10, 1995 between Alabama Municipal Electric Authority and SCS (as agent for Southern Companies) for service under the Short-Term Non-Firm Transmission Service Tariff of Southern Companies.

Comment date: May 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

19. Tampa Electric Co.

[Docket No. ER95–962–000]

Take notice that on April 27, 1995, Tampa Electric Company (Tampa Electric), tendered for filing revised cost support schedules showing a change in the daily capacity charge for its scheduled short-term firm interchange service provided under interchange contracts with Florida Power Corporation, Florida Power & Light Company, Florida Municipal Power Agency, Fort Pierce Utilities Authority, Jacksonville Electric Authority, Kissimmee Utility Authority, Oglethorpe Power Corporation, Orlando Utilities Commission, Reedy Creek Improvement District, St. Cloud Electric Utilities, Seminole Electric Cooperative, Inc., Utilities Commission of the City of New Smyrna Beach, Utility Board of the City of Key West, and the Cities of Gainesville, Homestead, Lake Worth, Lakeland, Starke, Tallahassee, and Vero Beach, Florida. Tampa Electric also tendered for filing revised caps on the charges for emergency and scheduled short-term firm interchange transactions under the same contracts.

Tampa Electric requests that the revised daily capacity charge and revised caps on charges be made effective as of May 1, 1995, and therefore requests waiver of the Commission's notice requirement.

Tampa Electric states that a copy of the filing has been served upon each of the above-named parties to interchange contracts with Tampa Electric, as well as the Florida and Georgia Public Service Commission.

Comment date: May 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

20. Tampa Electric Co.

[Docket No. ER95–963–000]

Take notice that on April 27, 1995, Tampa Electric Company (Tampa Electric), tendered for filing cost support schedules showing recalculation, based on 1994 data, of the Committed Capacity and Short-Term Power Transmission Service rates under Tampa Electric's agreements to provide qualifying facility transmission service for Mulberry Phosphates, Inc. (Mulberry), Cargill Fertilizer, Inc. (Cargill), and Auburndale Power Partners, Limited Partnership (Auburndale).

Tampa Electric proposes that the recalculated transmission service rates be made effective as of May 1, 1995, and therefore requests waiver of the Commission's notice requirement.

Copies of the filing have been served on Mulberry, Cargill, Auburndale, and the Florida Public Service Commission.

Comment date: May 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

21. CNB/Olympic Gas Services

[Docket No. ER95–964–000]

Take notice that on April 27, 1995, CNB/Olympic Gas Services (CNB/Olympic) tendered for filing pursuant to Rule 205, 18 CFR 385.205, a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1 to be effective June 26, 1995.

CNB/Olympic intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where CNB/Olympic sells electric energy it proposes to make such sales on rates, terms, and conditions to be mutually agreed to with the purchasing party. Neither CNB/Olympic nor any of its affiliates are in the business of generating, transmitting, or distributing electric power.

Rate Schedule No. 1 provides for the sale of energy and capacity at agreed prices. Rate Schedule No. 1 also provides that no sales may be made to affiliates.

Comment date: May 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

22. The Washington Water Power Co.

[Docket No. ER95–966–000]

Take notice that on April 27, 1995, The Washington Water Power Company (WWP), tendered for filing an unsigned offer setting forth principles for the purchase of scheduling and dispatch services from WWP in instances where WWP does not provide any associated transmission or wholesale power service.

WWP requests that the services described be ruled non-jurisdictional when the service is offered to a power marketer who is not purchasing, selling, or transmitting power associated with the scheduling services from or to WWP. WWP states that they are exploring the possibility of providing these services to power marketers, but only if the service is non-jurisdictional such that WWP may limit the service to use of its existing personnel to the extent that they have the time available for that purpose.

Comment date: May 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

23. UNITIL Power Corp.

[Docket No. ER95–967–000]

Take notice that on April 28, 1995, UNITIL Power Corp. tendered for filing pursuant to Schedule II Section H of Supplement No. 1 to Rate Schedule FERC Number 1, the UNITIL System Agreement, the following material:

1. Statement of all sales and billing transactions for the period January 1, 1994 through December 31, 1994 along with the actual costs incurred by UNITIL Power Corp. by FERC account.

2. UNITIL Power Corp. rates billed from January 1, 1994 to December 31, 1994 and supporting rate development.

Comment date: May 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

24. Progas Power, Inc.

[Docket No. ER95–968–000]

Take notice that on April 28, 1995, Progas Power, Inc. (PPI), tendered for filing pursuant to 18 CFR 385.205, a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1.

Comment date: May 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

25. Southern Company Services, Inc.

[Docket No. ER95–969–000]

Take notice that on April 28, 1995, Southern Company Services, Inc., acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively referred to as Southern Companies) filed a package of Transmission Service Tariffs, including Network Integration Service Tariffs and Point to Point Transmission Service Tariffs.

Comment date: May 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

26. Northeast Utilities Service Co.

[Docket No. ER95–979–000]

Take notice that on April 28, 1995, Northeast Utilities Service Company (NUSCO) tendered for filing, on behalf of the Northeast Utilities Service Companies, a change in rate schedule for sales of system power to Westfield Gas and Light Department. NUSCO requests that the charges in rate schedules become effective on May 1, 1995 and that such rate schedule changes supersede the Agreement with respect to firm service dated May 1, 1990 between Holyoke Power and Electric Company and City of Westfield, Gas and Electric Light Department at that time.

NUSCO states that copies of its submission have been mailed or delivered to City of Westfield, Gas and Electric Light Department.

Comment date: May 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

27. Southwestern Public Service Co.

[Docket No. ER95–996–000]

Take notice that Southwestern Public Service Company (Southwestern) on May 1, 1995, tendered for filing a proposed amendment to the Interconnection Agreement with El Paso Electric Company (EPE).

The proposed amendment adds a new service schedule for Firm Unit Replacement Power Service to the Interconnection Agreement. The initial service under this new schedule is for four months beginning May 1, 1995.

Comment date: May 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

28. Wesley W. von Schack

[Docket No. ID–2877–000]

Take notice that on April 21, 1995, Wesley W. von Schack (Applicant) tendered for filing an application under section 305(b) of the Federal Power Act to hold the following positions:

Chairman of the Board and Chief Executive Officer—Duquesne Light Company

Director—Mellon Bank Corporation

Director—Mellon Bank, N.A.

Comment date: May 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

29. Tex-La Electric Cooperative of Texas, Inc.

[Docket No. TX94–4–002]

Take notice that on May 1, 1995, Tex-La Electric Cooperative of Texas, Inc. tendered for filing its compliance filing in the above-referenced docket.

Comment date: May 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–12122 Filed 5–16–95; 8:45 am]

BILLING CODE 6717–01–P

Federal Energy Regulatory Commission

[Docket No. CP95–486–000, et al.]

Natural Gas Pipeline Company of America, et al.; Natural Gas Certificate Filings

May 10, 1995.

Take notice that the following filings have been made with the Commission:

1. Natural Gas Pipeline Company of America

[Docket No. CP95–486–000]

Take notice that on May 5, 1995, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois, 60148, filed in Docket

No. CP95–486–000 an abbreviated application pursuant to Section 7(b) of the Natural Gas Act, as amended, and Sections 157.7 and 157.18 of the Federal Energy Regulatory Commission's (Commission) Regulations thereunder, for permission to abandon an offshore lateral by sale to Stingray Pipeline Company (Stingray), an affiliate, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Natural indicates that in 1975, it constructed 9.57 miles of sixteen-inch pipeline, one dual eight-inch meter, a sixteen-inch platform riser and appurtenant platform facilities that extend from a production platform owned by Kerr-McGee Corporation (Kerr McGee) in West Cameron Block 543, offshore Louisiana, (WC 543), to a subsea interconnection with Stingray in West Cameron Block 565, offshore Louisiana (WC 543 Lateral). Natural states that it constructed these facilities to provide for the receipt of gas that Natural purchased from Kerr McGee in WC 543. It is indicated that Natural also transported and exchanged gas through these facilities for Columbia Gas Transmission Corporation (Columbia), Northern Natural Gas Company (Northern), and Texas Eastern Transmission Corporation (Texas Eastern).

Natural states that in 1991, Kerr McGee informed it that production from WC 543 had ceased and that Kerr McGee was going to abandon its platform. Natural indicates that at Kerr McGee's request Natural then disconnected and abandoned, pursuant to its blanket authority received in Docket No. CP82–402, 2.27 miles of its 9.57 miles of sixteen-inch lateral from Kerr McGee's platform, leaving 7.3 miles of lateral in service which allowed Natural to continue to provide 1) for the transportation and exchange of Texas Eastern's gas produced in West Cameron Block 522, and 2) for the interruptible transportation service, under Part 284 of the Commission's Regulations, for various shippers of gas produced in West Cameron Blocks 518 and 522. Natural avers that it no longer has any gas purchase obligations on the WC 543 Lateral. It is indicated that on April 28, 1995 Natural and Texas Eastern filed a joint application in Docket No. CP95–373–000 to abandon the remaining exchange obligation on the WC 543 Lateral. It is further indicated that the last gas flow activity under interruptible gas transportation agreements occurred in January, 1994.

Natural states that its system will benefit from the sale of the lateral by the elimination of the responsibility and costs of operation, maintenance, and ownership of a facility that Natural no longer needs. Natural indicates that Stingray has offered to pay $250,000 for the WC 543 Lateral and that Stingray will acquire the lateral under its blanket certificate authorization in Docket No. CP91–1505 and pursuant to Section 157.208(a) of the Commission's Regulations.

Natural further indicates that PETSEC Energy, Inc. (PETSEC), an offshore producer, has purchased from Natural the 2.27 miles of sixteen-inch lateral located in WC 543 that Natural previously retired in 1991. Natural avers that PETSEC intends to construct a lateral that will extend from its production platform in West Cameron Block 544 (WC 544) to the existing 2.27 miles of sixteen-inch pipeline in WC 543. Natural states that PETSEC and Stingray have entered into an agreement whereby the gas produced by PETSEC in WC 544 will be delivered to Stingray in WC 543 and transported through the sixteen-inch lateral proposed herein to be abandoned and sold to Stingray, and the transported onshore.

Comment date: May 31, 1995, in accordance with Standard Paragraph F at the end of this notice.

2. Northwest Pipeline Corp.

[Docket No. CP95–487–000]

Take notice that on May 8, 1995, Northwest Pipeline Corporation (Northwest), P.O. Box 58900, Salt Lake City, Utah 84108–0900, filed in Docket No. CP95–487–000 a request pursuant to Sections 157.205, 157.211, and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211, and 157.216) for authorization to replace regulating facilities at its Pinehurst Meter Station in Shoshone County, Idaho used to provide firm transportation service for The Washington Water Power Company (Water Power), under the blanket certificate issued in Docket No. CP82–433–000, pursuant to Sections 7(b) and 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest proposes to replace two obsolete 1-inch regulators and appurtenances at the Pinehurst Meter Station with two new 1-inch regulators with 35 percent trim, with appurtenances. Northwest states that the existing regulators will be scrapped. Northwest indicates that the facility replacement will better accommodate existing firm maximum daily delivery obligations at this delivery point to Water Power. Northwest estimates a construction cost of $28,000 and a removal cost of $1,000.

Northwest advises that the total volumes to be delivered to the customer after the request do not exceed the total volumes authorized prior to the request. Also, Northwest indicates that the proposed facility modification is not prohibited by its existing tariff.

Comment date: June 26, 1995, in accordance with Standard Paragraph G at the end of this notice.

3. Mississippi River Transmission Corp.

[Docket No. CP95–489–000]

Take notice that on May 8, 1995, Mississippi River Transmission Corporation (MRT), 9900 Clayton Road, St. Louis, Missouri 63124, filed in Docket No. CP95–489–000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon a measuring and regulating station and related facilities under MRT's blanket certificate issued in Docket No. CP82–489–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

MRT proposes to abandon approximately 519 feet of 4-inch pipeline and remove its measuring and regulating station and related facilities which have been used to serve Brouk Company in St. Louis, Missouri.

Comment date: June 26, 1995, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, DC. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–12123 Filed 5–16–95; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 11417–001 Alaska]

David Ausman and Associates; Notice of Surrender of Preliminary Permit

May 11, 1995.

Take notice that David Ausman and Associates, Permittee for the Snyder Falls Creek Project No. 11417, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 11417 was issued December 28, 1993, and would have expired November 30, 1996. The project would have been located on Snyder Falls Creek, near Cordova, Alaska.

The Permittee filed the request on May 3, 1995, and the preliminary permit for Project No. 11417 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 95–12058 Filed 5–16–95; 8:45 am]

BILLING CODE 6717–01–M

Western Area Power Administration

Pacific Northwest-Pacific Southwest Intertie Project—Notice of Order Confirming and Approving an Extension of the Existing Step One Firm and Nonfirm Transmission Service Rate

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice is given of Rate Order No. WAPA–69 extending until October 1, 1996, Rate Schedules INT–FT1 and INT–NFT1 for firm and nonfirm transmission service over the Western Area Power Administration (Western) Pacific Northwest-Pacific Southwest Intertie Project (AC Intertie) transmission system.

FOR FURTHER INFORMATION CONTACT: Mr. J. Tyler Carlson, Area Manager, Phoenix Area Office, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005, (602) 352–2521.

SUPPLEMENTARY INFORMATION: By Amendment No. 3 to Delegation Order No. 0204–108, published November 10, 1993 (58 FR 59716), the Secretary of Energy delegated (1) the authority to develop long term power and transmission rates on a nonexclusive basis to the Administrator of Western; (2) the authority to confirm, approve, and place such rates in effect on an interim basis to the Deputy Secretary; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission (FERC). Existing Department Of Energy (DOE) procedures for public participation in rate adjustments (10 CFR Part 903) became effective on September 18, 1985 (50 FR 37837). Pursuant to Delegation Order No. 0204–108, FERC, in the order issued March 24, 1994, in Docket No. EF93–5191–000, confirmed and approved Rate Schedules INT–FT1 and INT–NFT1 for firm and nonfirm transmission service by the AC Intertie administered by Western's Phoenix Area Office (66 FERC ¶ 62,180). The existing step one rate was approved for the period August 1, 1993, through September 30, 1995. The existing step two rate was approved for the period October 1, 1995, through July 31, 1998.

The existing step two rates were to be automatically implemented on October 1, 1995. However, Western will not implement the existing step two rates at this time. A Stipulation Agreement was executed by Western and the customers and filed with FERC on December 28, 1993, agreeing to re-examine the issues from the last rate adjustment. In addition to re-examining these issues, Western is also investigating different rate design alternatives since two new transmission line segments will be energized on January 1, 1996. Western needs additional time for resolution of these issues along with current customer issues. Therefore, Western proposes to extend the existing step one AC Intertie transmission service rates until October 1, 1996. During this time, Western will be holding a series of public meetings with the AC Intertie customers.

The purpose of Rate Order No. WAPA–69 is to extend Rate Schedules INT–FT1 and INT–NFT1 until October 1, 1996, to allow time for the coordination and resolution of these issues and other rate adjustment processes.

Issued in Washington, DC, April 28, 1995.

Bill White,

Deputy Secretary.

Rate Order No. WAPA–69

In the matter of: Western Area Power Administration, Rate Adjustment for Phoenix Area Office AC Intertie Project

Order Confirming and Approving an Extension of the AC Intertie Project Firm and Nonfirm Transmission Service Rate

April 28, 1995.

Transmission rates for the Pacific Northwest-Pacific Southwest Intertie Project (AC Intertie) are established pursuant to the Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*); and the Reclamation Act of 1902 (32 Stat. 388 *et seq.*), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)), and section 8 of the Act of August 31, 1964 (16 U.S.C. 837g), and other acts specifically applicable to the project system involved, were transferred to and vested in the Secretary of Energy (Secretary).

By Amendment No. 3 to Delegation Order No. 0204–108, published November 10, 1993 (58 FR 59716), the Secretary delegated (1) the authority to develop long term power and transmission rates on a nonexclusive basis to the Administrator of Western; (2) the authority to confirm, approve, and place such rates in effect on an interim basis to the Deputy Secretary; and (3) the authority to

confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission (FERC). Existing the Department of Energy (DOE) procedures for public participation in rate adjustments (10 CFR Part 903) became effective on September 18, 1985 (50 FR 37837). This rate extension is issued pursuant to the Delegation Order and the rate extension procedures in 10 CFR Part 903. FERC is not required to confirm and approve this rate extension by reason of 10 CFR Part 903.23(b), which states that existing rates may be extended on a temporary basis by the Deputy Secretary.

Background

Pursuant to Delegation Order No. 0204–108, FERC, in the order issued July 14, 1993, in Docket No. EF93–4151–000, confirmed and approved Rate Schedule INT–FT1 for firm transmission service and INT–NFT1 for nonfirm transmission service in the AC Intertie administered by Western's Phoenix Area Office (PAO). The step one and step two rates were approved for the period from August 1, 1993, through July 31, 1998.

Discussion

On July 14, 1993, the Acting Assistant Secretary of Energy for Energy Efficiency and Renewable Energy of DOE, approved the existing rates on an interim basis for firm and nonfirm transmission service. The existing step one and step two rates for firm and nonfirm transmission service were placed in effect on August 1, 1993. Step one of the firm transmission service rate was approved to be in effect through September 30, 1995, and step two of the existing rates was to become effective on October 1, 1995, and continue through July 31, 1998. The FERC confirmed and approved the rates on a final basis for both firm and nonfirm transmission service on March 24, 1994.

During the last AC Intertie rate adjustment process (WAPA–56), the Colorado River Commission of Nevada, the Arizona Power Authority, the Arizona Subcontractor Group, the Arizona Power Pooling Association, Inc., and Salt River Project Agricultural Improvement and Power District filed Motions to Intervene and Protest FERC's confirmation and approval of the AC Intertie rates described in Rate Order No. WAPA–56, in Docket No. EF93–4191–000. On December 28, 1993, Western filed a Stipulation Agreement signed by Western and these customers in which the intervenors withdrew their protests and Western agreed to re-examine the issues raised as well as commence a new rate adjustment process during fiscal year 1995.

Western proposes to extend the existing step one AC Intertie transmission service rates until October 1, 1996. Western is investigating different rate design alternatives since two new transmission line segments will be energized on January 1, 1996. Western needs additional time for resolution of these issues along with current customer issues. Even though it is anticipated that the firm transmission service rate adjustment will be placed in effect by December 31, 1995, the extension of the existing step one AC Intertie firm and nonfirm transmission service rates is through March 1, 1996, to allow for flexibility in the upcoming rate adjustment process. During this time, Western will be holding a series of public meetings with AC Intertie customers.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary, I hereby confirm and approve for a period effective October 1, 1995, until October 1, 1996, the existing step one Rate Schedules INT–FT1 and INT–NFT1 for firm and nonfirm transmission service over the AC Intertie transmission system.

Issued in Washington, DC, April 28, 1995.

Bill White,

Deputy Secretary.

[FR Doc. 95–12037 Filed 5–16–95; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[PP 3G4263/T672; FRL 4948–7]

Fipronil; Establishment of a Temporary Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established a temporary tolerance for the combined residues of the insecticide fipronil and its metabolites in or on the raw agricultural commodity field corn grain at 0.02 part per million (ppm).

DATES: This temporary tolerance expires March 28, 1996.

FOR FURTHER INFORMATION CONTACT: By mail: Richard Keigwin, Product Manager (PM) 10, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 713, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–7618; e-mail: keigwin.rick@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Rhone-Poulenc AG Company, P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, N.C. 27709, has requested in pesticide petition (PP) 3G4263, the establishment of a temporary tolerance for the combined residues of the insecticide fipronil (5-amino-3-cyano-1-(2,6-dichloro-4-trifluoromethylphenyl)-4-trifluoromethylsulphinyl pyrazole or its metabolites MB 46136 5-amino-3-cyano-1-(2,6-dichloro-4-trifluoromethylphenyl)-4-trifluoromethylsulphonyl pyrazole or MB 45950 5-amino-3-cyano-1-(2,6-dichloro-4-trifluoromethylphenyl)-4-trifluoromethylthiopyrazole in or on the raw agricultural commodity field corn grain at 0.02 part per million (ppm). This temporary tolerance will permit the marketing of the above raw agricultural commodity when treated in accordance with the provisions of the experimental use permit 264–EUP–95, which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (Pub. L. 95–396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that establishment of the temporary tolerance will protect the public health. Therefore, the temporary tolerance has been established on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. Rhone-Poulenc AG Co., must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This tolerance expires March 28, 1996. Residues not in excess of this amounts remaining in or on the raw agricultural commodity after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerance. This tolerance may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirement of section 3 of Executive Order 12866.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Authority: 21 U.S.C. 346a(j).

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 1, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 95–11813 Filed 5–16–95; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1049–DR]

Louisiana; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Louisiana (FEMA–1049–DR), dated May 10, 1995, and related determinations.

EFFECTIVE DATE: May 11, 1995.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster has been changed. The incident period for this disaster is May 8, 1995, and continuing.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Associate Director, Response and Recovery Directorate.

[FR Doc. 95–12119 Filed 5–16–95; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1049–DR]

Louisiana; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Louisiana, FEMA–1049–DR), dated May 10, 1995, and related determinations.

EFFECTIVE DATE: May 11, 1995.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Louisiana dated May 10, 1995, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 10, 1995:

Ascension, Assumption, Jefferson, LaFourche, Orleans, St. Bernard, St. James, St. John, St. Tammany, Tangipahoa, and Terrebonne Parishes for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Associate Director, Response and Recovery Directorate.

[FR Doc. 95–12120 Filed 5–16–95; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 800 North Capitol Street, N.W,, 9th Floor. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in § 560.602 and/or § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 224–200934.

Title: Port of Houston Authority/ Lykes Bros. Steamship Co., Inc. Marine Terminal Agreement

Parties:

Port of Houston Authority ("Port")
Lykes Bros. Steamship Co., Inc. ("Lykes")

Filing Agent: Martha T. Williams, Esquire, Port of Houston Authority, P.O. Box 2562, Houston, TX 77252–2562.

Synopsis: The proposed Agreement authorizes the Port to provide marine terminal services to Lykes at the Port's Barbours Cut Terminal Facility. The term of the Agreement expires September 30, 1996.

Agreement No.: 224–200935.

Title: Port of Houston Authority/ Ryan-Walsh Facility Use Agreement.

Parties:

Port of Houston Authority ("Port")
Ryan-Walsh, Inc. ("Ryan-Walsh")

Filing Agent: Martha T. Williams, Esquire, Port of Houston Authority, P.O. Box 2562, Houston, TX 77252–2562.

Synopsis: The proposed Agreement authorizes Ryan-Walsh to perform freight handling services at the Port's Transit Sheds 21–A and 25–A. The term of the Agreement expires April 30, 1996.

By Order of the Federal Maritime Commission.

Dated: May 11, 1995.

Joseph C. Polking,

Secretary.

[FR Doc. 95–12034 Filed 5–16–95; 8:45 am]

BILLING CODE 6730–01–M

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203–011474–001.

Title: CSAV/CCNI Car Carrier Agreement.

Parties:

Compania Sud Americana de Vapores S.A.
Compania Chilena De Navegacion Interoceanica S.A.

Synopsis: The proposed amendment modifies the Agreement to permit the parties to jointly operate a second pure car carrier. It also extends the term of the Agreement indefinitely.

By Order of the Federal Maritime Commission.

Dated: May 11, 1995.

Joseph C. Polking,

Secretary.

[FR Doc. 95–12035 Filed 5–16–95; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

UB&T Financial Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than June 9, 1995.

A. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. UB&T Financial Corporation, Dallas, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of UB&T Delaware Financial Corporation, Dover, Delaware, and thereby indirectly acquire United Bank & Trust, N.A., Dallas, Texas.

In connection with this application UB&T Delaware Financial Corporation, Dover, Delaware; has applied to become a bank holding company by acquiring 100 percent of the voting shares of United Bank & Trust, N.A., Dallas, Texas.

Board of Governors of the Federal Reserve System, May 11, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–12097 Filed 5–16–95; 8:45 am]

BILLING CODE 6210–01–F

Wachovia Corporation, et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 31, 1995.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Wachovia Corporation, Winston-Salem, North Carolina; to engage *de novo* through its subsidiary, Wachovia Capital Markets, Inc., Winston-Salem, North Carolina, in leasing real and personal property or acting as agent, broker, or adviser in leasing such property, pursuant to § 225.25(b)(5) of the Board's Regulation Y.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. C.S.B., Co., Cozad, Nebraska; to acquire Cozad Interim Savings Bank, Lexington, Nebraska, a *de novo* savings bank, pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 11, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–12098 Filed 5–16–95; 8:45 am]

BILLING CODE 6210–01–F

[Docket No. R–0880]

Privacy Act of 1974; Technical Amendment to Existing Systems of Records

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of technical amendment to existing systems of records.

SUMMARY: In accordance with the Privacy Act of 1974 (Privacy Act), the Board of Governors of the Federal Reserve System (Board) is publishing technical amendments to two existing systems of records. The two systems are called OIG Investigative Records (BGFRS/OIG–1) and OIG Personnel Records (BGFRS/OIG–2). The amendment is necessary to reflect the change in location of the systems.

EFFECTIVE DATE: June 16, 1995.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boutilier, Senior Counsel, Legal Division, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–2418.

SUPPLEMENTARY INFORMATION: The Board's Office of Inspector General (OIG) recently moved its offices as well as its systems of records. Accordingly, it is necessary to amend the existing systems of records maintained by the OIG to reflect this change in location. No other changes are needed at this time.

This is not a "significant change" in the existing system of records, which was published in the **Federal Register** on February 7, 1994 (59 FR 5602); accordingly no report to the Senate, House of Representatives or Office of Management and Budget is necessary under 5 U.S.C. 552a(r). Furthermore, because no change is made to the exemptions claimed for these systems, the technical change is not subject to the informal rulemaking procedures of the Administrative Procedure Act. Accordingly, these changes will become effective on June 16, 1995.

The Board is revising the following data elements in these two systems of records.

BGFRS/OIG–1

SYSTEM NAME:

OIG Investigative Records.

SYSTEM LOCATION:

Office of Inspector General, Board of Governors of the Federal Reserve System, Suite 3000, 1709 New York Avenue NW., Washington, DC 20006.

SYSTEM MANAGER AND ADDRESS:

Brent L Bowen, Inspector General, Mail Stop 300, Board of Governors of the Federal Reserve System, Washington, DC 20051. Office location is Suite 3000, 1709 New York Avenue NW., Washington, DC 20006.

BGFRS/OIG–2

SYSTEM NAME:

OIG Personnel Records.

SYSTEM LOCATION:

Office of Inspector General, Board of Governors of the Federal Reserve System, Suite 3000, 1709 New York Avenue NW., Washington, DC 20006.

SYSTEM MANAGER(S) AND ADDRESS:

Brent L Bowen, Inspector General, Mail Stop 300, Board of Governors of the Federal Reserve System, Washington, DC 20051. Office location is Suite 3000, 1709 New York Avenue NW., Washington, DC 20006.

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority, May 11, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–12086 Filed 5–16–95; 8:45 am]

BILLING CODE 6210–01–P

[Docket No. R–0879]

Privacy Act of 1974; Proposed New Systems of Records

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of new systems of records; request for comments.

SUMMARY: In accordance with the Privacy Act of 1974 (Privacy Act) and Appendix I of OMB Circular No. A–130, the Board of Governors of the Federal Reserve System (Board) is establishing four new systems of records. The new systems are called: Freedom of Information/Privacy Act (FOIA/PA) Case Tracking and Reporting System (BGFRS–23); Telephone Call Detail Records (BGFRS/SS–1); Staff Identification Card File (BGFRS/SS–2); Staff Parking Permit File (BGFRS/SS–3). These systems of records contain information about individuals and the records are retrieved by name or special identifier of the individual. Therefore, the Privacy Act requires notice of the systems to be published in the **Federal Register**.

DATES: Comments must be received on or before July 17, 1995.

ADDRESSES: Comments should refer to Docket No. R–0879, and may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551. Comments also may be delivered to Room B–2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building courtyard on 20th Street NW. (between Constitution Avenue and C Street) at any time. Comments received will be available for inspection in Room MP–500 of the Martin Building between 9 a.m. and 5 p.m., weekdays, except as provided in 12 CFR 261.8 of the Board's Rules Regarding Availability of Information.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boutilier, Senior Counsel, Legal Division, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–2418.

SUPPLEMENTARY INFORMATION: The Board is establishing four new systems of records pursuant to the Privacy Act, entitled: (1) Freedom of Information/ Privacy Act (FOIA/PA) Case Tracking and Reporting System (BGFRS–23); (2) Telephone Call Detail Records (BGFRS/ S–1); (3) Staff Identification Card File (BGFRS/SS–2); (4) Staff Parking Permit File (BGFRS/SS–3).

The system called FOIA/PA Case Tracking and Reporting System will consist of a data base tracking system to assist the Freedom of Information Office in processing requests under the Freedom of Information Act (FOIA) and Privacy Act (PA). This data base will contain the names of requesters under FOIA and PA, dates of requests and responses, names of Board staff working on each request, fee data, and information required to be collected for periodic reports to Congress. In general, this information is publicly available; exceptions may be made for home addresses of individual requesters and for data concerning requests under the Privacy Act, the release of which may cause an unwarranted invasion of personal privacy.

The system called Telephone Call Detail Records will consist of records showing use of the Board's telephones by Board employees, consultants and contractors who have been assigned a telephone number by the Board. The purpose of the system is to determine accountability for telephone usage and to prevent waste or abuse of Board resources. The information will be derived primarily from telephone assignment records and call detail listings. Creation of this system is consistent with the Office of Management and Budget's (OMB) recommendation that agencies create systems of records to maintain telephone call detail records that contain information about individuals and are used to determine accountability for telephone usage. *See*, 52 FR 12990 (April 20, 1987).

The system called Staff Identification Card File will consist primarily of a data base containing information derived from an identification card containing a computer chip. This identification card interacts with the Board's computerized security system to permit and record access to the Board's premises. The identification card also permits an authorized employee to access secured areas at the Board, such as the exercise facility or the computer room, and records such access. The information in the system will be derived primarily from the individual employee, an official who authorizes access to secure areas, and use of the identification card.

The system called Staff Parking Permit File will consist primarily of records containing information derived from applications by Board employees for parking permits for the Board's garages. This information includes the employee's name, address, longevity at the Board, and vehicle identification information. Other information in the system will reflect any actions taken to enforce the Board's Parking Regulations. The purpose of the system is to allocate limited parking space among Board employees and to maintain safety in the use of the garages.

In accordance with 5 U.S.C. 552a(r), a report of these new systems of records is being filed with the President of the Senate, the Speaker of the House of Representatives, and the Director of the Office of Management and Budget. These new systems of records will become effective on July 17, 1995, without further notice, unless the Board publishes a notice to the contrary in the **Federal Register**.

Accordingly, the Board proposes the establishment of the following systems of records.

BGFRS–23

SYSTEM NAME:

Freedom of Information Act/Privacy Act (FOIA/PA) Case Tracking and Reporting System.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Freedom of Information Office, Board of Governors of the Federal Reserve System (Board), 20th Street & Constitution Avenue, NW, Washington, DC 20551.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have submitted requests and individuals whose records are requested by others under the provisions of the Freedom of Information Act (FOIA) and/or the Privacy Act (PA).

CATEGORIES OF RECORDS IN THE SYSTEM:

A computer data base that includes: The log number assigned to the request, the name and address of a requester, the date of the request, the date a response is due, the date of the determination letter, the date responsive documents were mailed to requester, a brief description of the information requested, the names of Board staff to whom the request was assigned for processing, fee data, and other information used for tracking and to compile the FOIA Annual Report and Biennial Privacy Act Report to Congress and other ad hoc reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552 and 552a; 12 CFR parts 261 and 261a.

PURPOSE:

To assist the Board in carrying out its responsibilities under the Freedom of Information Act and Privacy Act.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Information may be provided to another Federal agency, which furnished information responsive to a request, for the purpose of making a decision regarding access or amendment to the responsive information.

(2) Information may be released to the news media and the public, unless it is determined that release of specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

(3) Information may be released to a Member of Congress or congressional staff as is necessary to appropriately respond to congressional inquiries on behalf of constituents.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on computer disks.

RETRIEVABILITY:

Retrieved by name of requester, by log number assigned to the request, by the subject matter of the request, or any other field of information that is collected.

SAFEGUARDS:

Access to records is limited to Board personnel who have need for the records to perform their duties.

RETENTION AND DISPOSAL:

Records are retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Manager, Freedom of Information Office, Mail Stop 132, Board of Governors of the Federal Reserve System, 20th Street & Constitution Avenue, NW., Washington, DC 20551.

NOTIFICATION PROCEDURE:

Inquiries should be sent to the Secretary of the Board, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue Avenue, NW., Washington, DC 20551.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure" above.

RECORD SOURCE CATEGORIES:

The sources of information contained in this system are the individuals making requests, other agencies referring requests for access to or correction of records originating at the Board, and Board employees engaged in processing or making determinations on the requests.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

BGFRS/SS–1

SYSTEM NAME:

Telephone Call Detail Records.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Division of Support Services, Board of Governors of the Federal Reserve System, 20th Street & Constitution Avenue, NW., Washington, DC 20551.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Board employees, consultants and contractors who have been assigned a telephone number by the Board.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records relating to use of Board telephones to place local and long distance calls; records indicating assignment of telephone numbers to individuals covered by the system; and records relating to location of telephones.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 10 and 11 of the Federal Reserve Act, 12 U.S.C. 243 and 248(l).

PURPOSE(S):

To detect and prevent unauthorized usage of the Board's telephones.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in the system may be disclosed, as is necessary:

(1) To a congressional office in response to an inquiry made at the request of the individual to whom the record pertains.

(2) To representatives of the National Archives and Records Administration who are conducting records management inspections.

(3) To a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal proceedings.

(4) To the appropriate federal, state, or local agency or authority responsible for investigating or prosecuting a violation of or for enforcing or implementing a statute, rule, regulation, or order, when the information indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute, or by particular program statute, or by regulation, rule, or order issued pursuant thereto.

(5) To current or former Board employees and other individuals currently or formerly provided telephone services by the Board to determine their individual responsibility for telephone calls.

(6) To respond to a federal agency's request made in connection with the hiring or retention of an employee, the letting of a contract or issuance of a grant, license, or other benefit by the requesting agency, but only to the extent that the information disclosed is relevant and necessary to the requesting agency's decision on the matter.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic information is stored on disk and placed in a fire-proof safe.

RETRIEVABILITY:

Retrieved by name of individual or telephone number or by number(s) dialed.

SAFEGUARDS:

Access control mechanisms restrict access to authorized personnel. Passwords restrict access to sensitive information based upon level of authorization. Audit trails provide an additional level of security. The file used to set passwords is encrypted and may only be accessed by those with the highest level of authorization.

RETENTION AND DISPOSAL:

Backup is done monthly on disk, which are retained for three years. After three years the information on the disks is deleted and the disk re-used for backup. Disks that are no longer usable are destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Support Services, Board of Governors of the Federal Reserve System, 20th Street & Constitution Avenue NW., Washington, DC 20551.

NOTIFICATION PROCEDURE:

Inquiries should be sent to the Secretary of the Board, Board of Governors of the Federal Reserve System, 20th Street & Constitution Avenue NW., Washington, DC 20551. The request must contain the individual's name and the telephone number assigned to the individual by the Board.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure" above.

RECORD SOURCE CATEGORIES:

Telephone assignment records; call detail listings; results of administrative inquiries relating to assignment of responsibility for placement of specific long distance and local calls.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

BGFRS/SS–2

SYSTEM NAME:

Staff Identification Card File.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Division of Support Services, Board of Governors of the Federal Reserve System, 20th Street & Constitution Avenue NW., Washington, DC 20551.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Board employees, consultants and contractors who have been issued a Board identification card.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of a data base that contains an image of a picture of the employee; the employee's name and employee number; and authorization (if applicable) to use the exercise facilities, computer room, Central Stock Room (CSR) or National Security Information Processing Center (NSIPC). The data base records the times of attempted and authorized access to and egress from the Board's buildings using the identification card, use of the exercise facilities, computer room, CSR and NSIPC. Records from the data base may also be maintained in hard copy form.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 10 and 11 of the Federal Reserve Act, 12 U.S.C. 243 and 248(l).

PURPOSE(S):

To maintain security of the Board's premises against unauthorized entry; to record entry to Board premises as well as entry into secured areas by authorized personnel; to record departure from secured areas after regular business hours; to control access to certain areas within Board premises. Routine uses of records maintained in the system, including categories of users and the purposes of such uses: To provide information to:

(1) A Congressional office in response to an inquiry made at the request of the individual to whom the record pertains.

(2) Representatives of the National Archives and Records Administration who are conducting records management inspections.

(3) A court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal proceedings.

(4) Board security staff for security purposes, or to determine whether an individual had entered the Board on a particular day or had exited the Board after regular business hours.

(5) The system manager to determine compliance with the Board's rules regarding car pools and parking permits for the Board's garages.

(6) The Board's Health Unit to determine usage of the exercise facility for purposes of safety, program planning and space allocation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic information is stored on disk or on tape. Hard copy records are secured in a fire proof safe.

RETRIEVABILITY:

Information is retrieved by name of individual issued the identification card, employee number, or card credential number.

SAFEGUARDS:

Security passwords restrict access to authorized personnel. Different levels of access are provided based upon the authorization. The file used to set the passwords is encrypted and may only be accessed by those with the highest level of authorization.

RETENTION AND DISPOSAL:

Backup of log files is done daily. Tape and/or disk backup are done monthly and maintained for a period of two years.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Support Services, Board of Governors of the Federal Reserve System, 20th Street & Constitution Avenue, NW., Washington, DC 20551.

NOTIFICATION PROCEDURE:

Inquiries should be sent to the Secretary of the Board, Board of Governors of the Federal Reserve System, 20th and Constitution Avenue, NW., Washington, DC 20551.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure" above.

RECORD SOURCE CATEGORIES:

Personnel information is obtained from the Board's personnel records and/or from the individual being issued the identification card. Information

regarding entry into and egress from Board premises or secured areas is obtained from use of the card to open the doors. Authorization for access to secured facilities on Board premises is provided by the Board official responsible for that secured facility.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

BGFRS/SS–3

SYSTEM NAME:

Staff Parking Permit File.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Division of Support Services, Board of Governors of the Federal Reserve System, 20th Street & Constitution Avenue, NW., Washington, DC 20551.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Board employees, consultants and contractors who have applied for and/or been issued a parking permit for the Board's garages.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains completed parking application forms (FR 1103), disability parking applications, and contingency parking requests submitted by employees; unusual-work-demand permit, and special contingency parking authorizations submitted by division directors; requests for parking for official visitors and contractors; notifications of lost permits; a listing of permit numbers assigned to car pools, van pools and individual employees; investigations made of compliance with the Board's Parking Regulations; and official actions taken as a result of violation of the Board's Parking Regulations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 10 and 11 of the Federal Reserve Act, 12 U.S.C. 243 and 248(l).

PURPOSE(S):

To allocate usage of the limited number of parking spaces in the Board's garages among Board staff, visitors and contractors; to enforce the Board's Parking Regulations for safe usage of the garages.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) To provide information to a Congressional office in response to an inquiry made at the request of the individual to whom the record pertains.

(2) To investigate possible violations of the Board's Parking Regulations.

(3) To determine eligibility for a parking permit.

(4) To determine eligibility for a public transit subsidy payment.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic information is stored on tape and secured in a fire-proof safe. Hard copies are stored in a locked file cabinet.

RETRIEVABILITY:

Information is retrieved by name of individual, employee identification number, or license tag number.

SAFEGUARDS:

Access control mechanisms restrict access to authorized personnel. Passwords restrict access to sensitive information based upon level of authorization. The file used to set passwords is encrypted.

RETENTION AND DISPOSAL:

Retention of personnel data is maintained until separation from the Board. Backup of files is done daily. Backup tapes and disks are destroyed when no longer needed. Hard copy files are shredded when no longer needed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Support Services, Board of Governors of the Federal Reserve System, 20th Street & Constitution Avenue, NW., Washington, DC 20551.

NOTIFICATION PROCEDURE:

Inquiries should be sent to the Secretary of the Board, Board of Governors of the Federal Reserve System, 20th Street & Constitution Avenue, NW., Washington, DC 20551.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure" above.

RECORD SOURCE CATEGORIES:

Information is obtained from the parking permit applications, authorizations and requests; and from written investigations of possible violations of the Board's Parking Regulations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority, May 11, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–12087 Filed 5–16–95; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 042495, AND 050595

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Allergan, Inc., Allergan Ligand Retinoid Therapeutics, Inc., Allergan Ligand Retinoid Therapeutics, Inc.	95–1404	04/24/95
Daimler-Benz AG, Oshkosh Truck Corporation, Oshkosh Truck Corporation	95–1453	04/25/95
Welsh, Carson, Anderson & Stowe VI, L.P., Res-Care, Inc., Home Care Affiliates, Inc	95–1346	04/26/95

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 042495, AND 050595—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
WMX Technologies, Inc., Advanced Environmental Technical Services, L.L.C., Advanced Environmental Technical Services, L.L.C	95–1341	04/27/95
Robert W. Landmesser, Advanced Environmental Technical Services, L.L.C., Advanced Environmental Technical Services, L.L.C	95–1343	04/27/95
Lafarge Coppee S.A., Cemex S.A. de C.V., National Portland Cement Company	95–1367	04/25/95
Pharmhouse Corp., Woolworth Corporation, F.W. Woolworth Co	95–1452	04/26/95
The News Corporation Limited, Interactive Cable Systems, Inc., Interactive Cable Systems, Inc	95–1455	04/26/95
Imperial Credit Industries, Inc., Oren L. Benton, First Concord Acceptance Corporation	95–1466	04/26/95
Amgen Inc., The Rockefeller University, The Rockefeller University	95–1474	04/26/95
ENSERCH Corporation, Pacific Gas and Electric Company, DALEN Corporation	95–1476	04/26/95
FPL Group, Inc., The Southern Company, Georgia Power Company (Scherer Unit 4)	95–1477	04/26/95
ConAgra, Inc., Knott's Berry Farm Partnership, Kott's Berry Farm Foods, Inc	95–1479	04/26/95
PepsiCo, Inc., Joint Venture LLC, Joint Venture LLC	95–1480	04/26/95
PepsiCo, Inc., Sara Lee Corporation, Sara Lee Assets	95–1481	04/26/95
Tyco International Ltd., Unistrut International Corporation, Unistrut International Corporation	95–1482	04/26/95
Donald F. Flynn, Discovery Zone, Inc., Discovery Zone, Inc	95–1498	04/26/95
Central and South West Corporation, El Paso Electric Company, El Paso Electric Company	95–1503	04/26/95
Selmer Industries, Inc., Steinway Musical Properties, Inc., Steinway Musical Properties, Inc	95–1506	04/26/95
Pacific Physician Services, Inc., Team Health Group, Inc., Team Health Group, Inc	95–1174	05/01/95
Keith Rupert Murdoch, Ronald O. Perelman, WBRC and WGHP Holdings Corporation	95–1472	05/01/95
Thermo Electron Corporation, Clewmark Holdings, Clewmark Holdings	95–1495	05/01/95
Nine West Group Inc., The United States Shoe Corporation, Community Urban Redevelopment of Duck Creek, Inc	95–1340	05/02/95
Granite Construction Incorporated, Gibbons Company, Gibbons Company	95–1382	05/02/95
Tenneco Inc., Adolf Koll, Lux Packaging Ltd. and Universal Asset Leasing Ltd	95–1438	05/02/95
Glenn R. Jones, Cable TV Fund 12-B, Ltd., Cable TV Fund 12-B, Ltd	95–1469	05/02/95
Value Health, Inc., Diagnostek, Inc., Diagnostek, Inc	95–1370	05/03/95
Citation Corporation, Thomas C. Butterbrodt, Berlin Foundry Corporation	95–1496	05/03/95
Ford Motor Company, Figgie international Inc., Figgie Leasing Corporation	95–1504	05/03/95

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, D.C. 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95–12161 Filed 5–16–95; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Agency Information Collection Under OMB Review

Title: Application Requirements for the Low Income Home Energy Assistance Program (LIHEAP) and Model Plan.

OMB No.: 0970–0075.

Description: The information collected from grantees is required by the statue authorizing the Low Income Home Energy Assistance Program. It is used to establish eligibility and gain assurances from grantees on the use of federal funds.

Respondents: State and Tribal governments.

Annual Number of Respondents: 180 sites.

Number of Responses per Respondent: 1.

Total Annual Responses: 180 sites.

Hours per Response: 1.33.

Total Annual Burden Hours: 240.

Additional Information: Copies of the proposed collection may be obtained from Bob Sargis of the Division of Information Resource Management, ACF, by calling (202) 690–7275.

OMB Comment: This application is being submitted with a request for an expedited review and a determination by July 18, 1995. Consideration will be given to comments and suggestions received within 45 days of the publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Ms. Wendy Taylor.

Dated: May 11, 1995.

Roberta Katson,

Acting Director, Office of Information Resource Management.

[FR Doc. 95–12045 Filed 5–16–95; 8:45 am]

BILLING CODE 4184–01–M

Centers for Disease Control and Prevention

[Announcement 541]

Project Grant To Coordinate the National Immunization and Education Action Committee Coalition Notice of Availability of Funds for Fiscal Year 1995

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1995 funds for a project grant to coordinate the Immunization Education and Action Committee (IEAC) and to foster local and State coalitions to improve immunization levels in the preschool age group.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and to improve the quality of life. This announcement is related to the priority area of Immunization and Infectious Diseases. (To order a copy of Healthy People 2000, see the section **Where to Obtain Additional Information.**)

Authority

This program is authorized under the Public Health Service Act, Section 317(k) [42 U.S.C. 247b (k)], as amended.

Smoke-Free Workplace

PHS strongly encourages all grant recipients to provide a smoke-free workplace and to promote the nonuse of all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Eligibility

Only the member groups of the Immunization Education and Action Committee (IEAC) are eligible to apply.

The IEAC is a national coalition of approximately 175 private, non-profit, professional and volunteer organizations and public health agencies. The goal of the IEAC is to reduce vaccine-preventable diseases and deaths among children in the United States by increasing the awareness of health care providers, children's advocacy groups, and the general public about the need for and benefits of immunization.

Availability of Funds

Approximately $300,000 is available in FY 1995 to fund one project grant award. It is expected to begin on or about August 1, 1995, for a 12-month budget period within a project period of up to five years. The funding estimate may vary and is subject to change. Continuation awards within the project period will be made on the basis of satisfactory progress, receipt of an acceptable continuation application, and the availability of funds.

Purpose

The purpose of this project is to:

A. Coordinate the IEAC, a national coalition of public, private, non-profit, professional and voluntary groups, whose goal is to reduce vaccine-preventable diseases and related deaths among infants and young children in the United States by increasing the awareness of physicians and other health care providers, parents, and the general public about the need for and the benefits of immunization.

B. Enhance local demand for vaccination services through the development of information and education materials and facilitation of promotional activities for consumers and health professionals.

C. Facilitate the development of State and local coalitions to increase community awareness of the need for resources for childhood immunization.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for the following activities:

A. Coordinate the activities of the IEAC. Coordination includes, but is not limited to, communicating with or among members of the national coalition; providing orientation and referral of potential new members and participants in the coalition; jointly developing meeting agendas and conducting meetings with CDC and others; and making logistical arrangements for meetings.

B. Develop a strategic plan describing the mission of IEAC and plans for the coordination and enhancement of IEAC activities. This may include establishing committee and subcommittee structure, future membership goals, and special projects.

C. Serve as a lead organization for the development and promotion of local coalitions of informed advocates, organizations, and community leaders to promote immunization services and programs.

D. Work with State and local health agencies and community-based primary care programs (e.g. community health centers) to identify the major immunization problems which require a broad base of community support to achieve resolution.

E. Convene meetings of public and private health care providers, volunteer groups, community-based organizations, consumer advocates, members of the corporate sector, and other organizations to inform them of immunization issues and to solicit and secure their support/contributions to these efforts.

F. Develop and/or disseminate instructional protocols and manuals to enable State/local coalition chapters to train individuals, organizations, and community leaders as advocates of immunization services.

G. Develop a plan to ensure continuation of IEAC activities beyond expiration of grant support.

H. Encourage and participate in the development of pilot projects.

Evaluation Criteria

The applicant will be evaluated according to the following criteria:

A. The quality and potential effectiveness of the applicant's plan for conducting program activities and methods for meeting the stated purpose (20%).

B. The extent to which the applicant demonstrates the ability to work with State and local health agencies, community-based primary health care agencies (e.g., community health centers), and other community-based service organizations, businesses, and others, through established networks and coalitions. (20%)

C. The extent to which the applicant's objectives are specific, realistic, measurable, time-phased, and related to activity requirements (15%).

D. The adequacy of plans to evaluate progress in implementing methods and achieving goals (15%).

E. The extent to which background information and other activities demonstrate that the applicant has the administrative support and accessibility to an adequate number of member organization representatives. This includes written evidence of collaboration describing previous collaborative efforts (10%).

F. An understanding of the importance of child health issues, and the feasibility of accomplishing the desired outcome (10%).

G. The extent to which qualified and experienced personnel are available to carry out the proposed activities (10%).

H. The budget will be evaluated for the extent to which it is reasonable, clearly justified, and consistent with the intended use of funds.

Executive Order 12372

This application is not subject to Intergovernmental Review of Federal Programs as governed by Executive Order 12372.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 93.185.

Application and Submission Deadline

The original and two copies of the application PHS Form 5161–1 (OMB Number 0937–0189) must be submitted to Henry S. Cassell III, Grants Management Officer, Attn: Lisa Tamaroff, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Mailstop E–13, Atlanta, GA 30305, on or before July 5, 1995.

1. Deadline:

Applications shall be considered as meeting the deadline if they are either:

A. Received on or before the deadline date; or

B. Sent on or before the deadline date and received in time for submission for the review process. Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable proof of timely mailing.

2. Late Applications:

Applications which do not meet the criteria in 1.A. or 1.B. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where To Obtain Additional Information

A complete program description, information on application procedures and an application package may be obtained from Lisa Tamaroff, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Pace Ferry Road, NE., Mailstop E–13, Atlanta, GA 30305, telephone (404) 842–6796.

Please refer to Announcement Number 541 when requesting information and submitting an application.

Technical assistance may be obtained from Kenneth Anderson, Project Officer, National Immunization Program, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road NE., Mailstop E–52, Atlanta, GA 30333, telephone (404) 639–8222.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report; Stock No. 017–001- 00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512–1800.

Dated: May 11, 1995.

Joseph R. Carter,

Acting Associate Director for Managementnd Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–12114 Filed 5–16–95; 8:45 am]

BILLING CODE 4163–18–P

[Announcement 552]

National Institute for Occupational Safety and Health, Farm Family Health and Hazard Surveillance Cooperative Agreement Program

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of funds for fiscal year (FY) 1995 cooperative agreements to continue the current program of population-based farm family health and hazard surveys in six States. The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Occupational Safety and Health. (For ordering a copy of Healthy People 2000, see the Section **Where to Obtain Additional Information.**)

Authority

This program is authorized under Section 20(a)(1) (29 U.S.C. 669(a)(1)) of the Occupational Safety and Health Act of 1970 and Section 301(a) (42 U.S.C. 241(a)) of the Public Health Service Act, as amended.

Smoke-Free Workplace

The PHS strongly encourages recipients to provide a smoke-free workplace and promote the nonuse of all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Eligible Applicants

Applications will only be accepted from organizations currently obtaining prevalence and incidence data on the illness, injuries, and exposures to work-place hazards experienced by farmers and farm families (previously funded under CDC Announcement Number 040). The following is a list of those non-profit or public organizations: California Department of Health Services; California Public Health Foundation; Colorado State University; The University of Iowa; University of Kentucky; New York State Department of Health; and The Ohio State University.

Availability of Funds

Approximately $1.9 million is available in FY 1995 to fund up to six awards. It is expected that the average award will be $300,000. The awards are expected to begin on or about September 30, 1995, and will be made for a 12-month budget period within a project period of up to 2 years. Funding estimates may vary and are subject to change.

Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Purpose

In 1990, Congress mandated "* * * a series of surveillance, research, and intervention initiatives that when sustained over a period of time will have a significant and measurable impact on these health effects among rural Americans. The purpose of the recommended surveillance and research efforts is to better assist the CDC and other parties in developing strategies to reduce the unacceptably high injury and disease rates among rural Americans." A "U.S. farm family health and hazard survey" was one of two specific surveillance initiatives called for by Congress "* * * to develop more complete information on agricultural injury and disease problems." The National Institute for Occupational Health (NIOSH), Farm Family Health and Hazard Surveillance (FFHHS), and other Congressionally mandated initiatives became the CDC/NIOSH National Initiative in Agricultural Safety and Health. A total of 2 million dollars was allocated in FY 1990 to the FFHHS.

The NIOSH/FFHHS cooperative agreement program was developed to respond to Congress' concern that agricultural workers and their families experience a disproportionate share of disease and injury associated with the chemical, biological, physical, ergonomic, and psychological hazards of agriculture. Specifically, population-based health and hazard data was unavailable on the incidence and prevalence of disease, injury, or exposure to workplace hazards among farmers and farm families.

The goal of the NIOSH/FFHHS cooperative agreement program is to obtain prevalence and incidence data on the illnesses, injuries, and exposures to work-place hazards experienced by farmers and farm families. The NIOSH/FFHHS has two primary survey objectives. The first objective of the program is to describe the health status of agricultural workers and their families. The second objective of the program is to describe work-related risk factors and conditions of exposure to potentially hazardous agents and events.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for conducting activities under A. (Recipient Activities), and CDC/NIOSH will be responsible for the activities listed under B. (CDC/NIOSH Activities).

A. Recipient Activities

1. Provide periodic updates on health status and hazard surveys.
2. Complete health status and hazard surveys.
3. Conduct independent analyses and disseminate the information through appropriate technical, professional, and other printed media. Disseminate results to the agricultural community, technical and agricultural resource organizations within the State, and through appropriate professional conferences.
4. Provide health status and hazard survey data to CDC/NIOSH as part of an overall analysis of the separate surveys.

B. CDC/NIOSH Activities

1. Provide consultation and/or assistance in the collection and compilation of the survey data. Receive, compile, edit, and manage health and hazard survey data provided to CDC/NIOSH.
2. Coordinate the active involvement of CDC/NIOSH staff in the planning, analysis, and interpretation of the health status and hazard survey data.
3. Consult with recipients that are contributing data or providing technical consultation to CDC/NIOSH on the preparation and dissemination of survey reports.
4. Facilitate preparation and dissemination of survey results through CDC/NIOSH technical reports or other appropriate scientific journals or publications.
5. Provide staff involvement in the analysis, interpretation, and dissemination of the health status and hazard survey data and, in some capacity, in the writing or review of recipient-initiated draft and final reports.

Evaluation Criteria

Applications will be reviewed and evaluated according to the following criteria:

1. Relevance of the proposal to the background, purpose, and objectives of the current program (see **Purpose** Section), and the technical merit and originality of the proposed approach to the problems in the measurement and identification of health conditions and health hazards within agricultural populations (25%);
2. Adequacy and feasibility of the methodology and approach (25%);
3. Prior progress and accomplishments under the NIOSH/FFHHS cooperative agreement program (20%);
4. Training, experience, and competence of the proposed Project Director(s) and staff. The project director must be a recognized scientist and technical expert, and must provide assurances of major time commitments to the project (20%);
5. Suitability of the facilities (10%);
6. Appropriateness and justification of the requested budget relative to the proposed work (not scored).

Executive Order 12372 Review

This program is not subject to Executive Order 12372 review.

Public Health System Reporting Requirements

This program is not subject to Public Health Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number for this project is 13.262.

Other Requirements

Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by this cooperative agreement will be subject to approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations, 45 CFR part 46, regarding the protection of human subjects. Assurance must be provided to demonstrate the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

Application Submission and Deadline

The original and two copies of the application PHS Form 5161–1 (Revised 7/92, OMB Control Number 0937–0189) must be submitted to Henry S. Cassell III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mail Stop E–13, Atlanta, GA 30305, on or before June 28, 1995.

1. Deadline: Applications shall be considered as meeting the deadline if they are either: (a) Received on or before the deadline date; or (b) Sent on or before the deadline date and received in time for submission to the review group. Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks are not acceptable as proof of timely mailing.

2. Late Applications: Applications which do not meet the criteria in 1.(a) or 1.(b) above are considered late and will be returned to the applicant.

Where To Obtain Additional Information

To receive additional written information call (404) 332–4561. You will be asked to leave your name, address, and telephone number and will need to refer to Announcement Number 552. You will receive a complete program description, information on application procedures, and application forms.

If you have questions after reviewing the contents of the documents, business management technical assistance may be obtained from Oppie Byrd, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mail Stop E–13, Atlanta, GA 30305, telephone (404) 842–6546. Programmatic technical assistance may be obtained from John P. Sestito, Assistant Chief, Surveillance Branch, Division of Surveillance, Hazard Evaluations and Field Studies, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC), 4676 Columbia Parkway, Mailstop R–17, Cincinnati, OH 45226, telephone (513) 841–4303.

Please refer to Announcement Number 552 when requesting information and submitting an application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) referenced in the **Introduction** through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512–1800.

Dated: May 10, 1995.

Diane D. Porter,

Acting Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–12110 Filed 5–16–95; 8:45 am]

BILLING CODE 4163–19–P

Health Care Financing Administration

Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB) for Clearance

AGENCY: Health Care Financing Administration, HHS.

The Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to OMB the following proposals for the collection of information in compliance with the Paperwork Reduction Act (Public Law 96–511).

1. *Type of Request:* Reinstatement; *Title of Information Collection:* Medicare/Medicaid Psychiatric Hospital Survey Data; *Form No.:* HCFA–724; *Use:* The collection of these data will assure an accurate data base for program planning and evaluation, and survey team composition for surveys of psychiatric hospitals. All freestanding psychiatric hospitals surveyed will be required to respond; *Respondents:* Federal Government, State, local, or tribal government, not-for-profit, and businesses or other for-profit; *Number of Respondents:* 350; *Total Annual Responses:* 1; *Total Annual Hours Requested:* 175.

2. *Type of Request:* Reinstatement; *Title of Information Collection:* Hospice Request for Certification in the Medicare Program; *Form No.:* HCFA–417; *Use:* The Hospice Request for Certification form is the identification and screening form used to initiate the certification process and to determine if the provider has sufficient personnel to participate in the Medicare program; *Respondents:* Federal Government, State, local, or tribal government, not-for-profit, and businesses or other for-profit; *Number of Respondents:* 1,720; *Total Annual Responses:* 1; *Total Annual Hours Requested:* 430.

Additional Information or Comments: Call the Reports Clearance Office on (410) 966–5536 for copies of the clearance request packages. Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503.

Dora B. Ferguson,

Acting Director, Management Planning and Analysis Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 95–11836 Filed 5–16–95; 8:45 am]

BILLING CODE 4120–03–P

National Institutes of Health (NIH)

Public Health Services; Notice of the Meeting of the National Advisory Eye Council

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Eye Council (NAEC) on June 1, 1995, in Building 31C, Conference Room 8, National Institutes of Health, Bethesda, Maryland.

The NAEC meeting will be open to the public on June 1 from 8:30 a.m. until approximately 11:30 a.m. Following opening remarks by the Director, NEI, there will be presentations by the staff of the Institute and discussions concerning Institute programs and policies. Attendance by the public at the open session will be limited to space available.

In accordance with provisions set forth in Secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and Sec. 10(d) of Public Law 92–463, the meeting of the NAEC will be closed to the public on June 1 from approximately 11:30 a.m. until adjournment at approximately 5:00 p.m. for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published later than fifteen days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

Ms. Lois DeNinno, Committee Management Officer, National Eye Institute, EPS, Suite 350, 6120 Executive Boulevard, MSC–7164, Bethesda, Maryland 20892–7164, (301) 496–5301, will provide a summary of the meeting, roster of committee members, and substantive program information upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. DeNinno in advance of the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.867, Vision Research: National Institutes of Health)

Dated: May 10, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–12083 Filed 5–16–95; 8:45 am]

BILLING CODE 4140–01–M

National Eye Institute; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Name of Committee: Vision Research Review Committee.

Date: June 5, 1995.

Time: 8:00 a.m. until adjournment at approximately 6:00 p.m.

Place: Holiday Inn Bethesda, Delaware Room, 8120 Wisconsin Avenue, Bethesda, MD 20814, (301) 652–2000.

Contact Person: Lois DeNinno, Committee Management Officer, EPS 350, 6120 Executive Blvd. MSC 7164, Bethesda, MD 20892–7164, 301/496–5301.

Purpose/Agenda: To review and evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in sec. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.867, Vision Research; National Institutes of Health, HHS)

Dated: May 10, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–12084 Filed 5–16–95; 8:45 am]

BILLING CODE 4140–01–M

Notice of the Meeting of the National Eye Institute Board of Scientific Counselors

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Eye Institute (NEI), June 5 and 6, 1995 in the NEI Conference Room, Building 31, Room 6A35, National Institutes of Health, Bethesda, Maryland.

This meeting will be open to the public on June 5 from 9 a.m. until approximately 4 p.m. for general remarks by the Director, Intramural Research Program, NEI, on matters concerning the intramural program of the NEI. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sec. 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public on June 5 from approximately 4 p.m. until recess and on June 6 from 8:30 a.m. until adjournment for the review, discussion, and evaluation of individual projects conducted by the Ophthalmic Genetics and Clinical Services Branch. These evaluations and discussions could reveal personal information concerning individuals associated with the projects, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Consequently, this meeting is concerned with matters exempt from mandatory disclosure.

Ms. Lois DeNinno, Committee Management Officer, NEI, EPS/350, Bethesda, Maryland 20892, (301) 496–5301, will provide a summary of the meeting, roster of committee members, and substantive program information upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. DeNinno in advance of the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.867, Vision Research; National Institutes of Health)

Dated: May 10, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–12085 Filed 5–16–95; 8:45 am]

BILLING CODE 4140–01–M

Office of the Secretary

Assistant Secretary for Planning and Evaluation, Notice Inviting Applications for New Awards for Fiscal Year 1995

AGENCY: The Office of the Assistant Secretary for Planning and Evaluation (ASPE) of the Department of Health and Human Services (HHS).

ACTION: Request for applications for a cooperative agreement to establish a Research Center to plan and conduct a broad program of policy research and training of young scholars to describe and analyze national and state policy affecting poor families with children. This research and evaluation program will focus on important and emerging social policy issues associated with the nature, causes, correlates, and effects of income dynamics, poverty, family functioning and child well-being.

SUMMARY: The U.S. is experiencing profound social changes relating to the economic security and functioning of families and the well-being of children. The manner by which government reacts to or precipitates these changes also is in flux. In order to inform the public and policy makers about these social trends and their causes, consequences, and cures DHHS is soliciting applications for a cooperative agreement to a university-based institution. ASPE expects to fund this Research Center for a period of five years. The first year funding is at least $1,500,000. We expect a total funding of approximately $7.5 to $8.0 million over the five year funding period. (See Part I, Available Funds)

Cooperative Agreements are assistance mechanisms and subject to the same administrative requirements as grants; however, they are different from either a grant or a contract. Compared to a grant, they allow more involvement and collaboration by the government in the affairs of project, but provide less direction of project activities than a contract. The Terms of Award are in addition to not in lieu of otherwise applicable guidelines and procedures.

DATES: The closing date for submitting applications under this announcement is September 14, 1995.

ADDRESSES: Send application to Grants Officer, Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, 200 Independence Avenue, SW., Room 405F, Hubert H. Humphrey Building, Washington, DC 20201. Attention: Albert A. Cutino, Grants Officer.

FOR FURTHER INFORMATION CONTACT: Application Instructions and Forms should be requested from and submitted to: Grants Officer, Department of Health and Human Services, ASPE/IO, 200 Independence Avenue, SW., Room 405F, Hubert H. Humphrey Building, Washington, DC 20201, Telephone: (202) 690–8794. Requests for forms and questions (administrative and technical) will be accepted and responded to up to 30 days prior to closing date of receipt of Applications. Technical questions should be directed to Don Oellerich or Matt Stagner, DHHS, Office of Human Services Policy, Telephone: (202) 690–5877 or 690–5653. Questions also may be faxed to (202) 690–5672. Written technical questions should be addressed to Drs. Oellerich or Stagner at the above address. (Application submissions may not be faxed.)

ELIGIBLE APPLICANTS: The Department seeks applications from universities or other post-secondary degree granting entities. (For-profit organizations are advised that no cooperative agreement funds may be paid as profit to any recipient of a grant or subgrant.) Profit is any amount in excess of allowable direct and indirect costs of the grantee.

Part I—Supplementary Information

Legislative Authority

This cooperative agreement is authorized by Section 1110 of the Social Security Act (42 U.S.C. 1310) and awards will be made from funds appropriated under Public Law 103–112 (DHHS Appropriation Act for FY 1996).

Project History and Purpose

This award (cooperative agreement) replaces the current grant with the Institute for Research on Poverty (IRP) at the University of Wisconsin. (A brief description of the current Institute and its activities is attached to the Application Package.) Although the winning applicant will be expected to carry out IRP's strong scholarly traditions and concern for poverty, there are no specific projects that must be continued under this award.

Available Funds

1. The Assistant Secretary has available $1,500,000 to $2,000,000 for the first year of a five-year award of a grant pursuant to this announcement.

2. Applications are to include separate estimates for each of the five years, if they expect funding levels to be substantially different in subsequent years.

3. The amount of funds available for the grant in future years has not been established. Legislative support for continued funding of the Center cannot be guaranteed and funding is subject to future appropriations and approval of the Assistant Secretary. ASPE expects, however, that the Center will be supported during future fiscal years at an annual level of effort commensurate with the initial period.

Although a single award is anticipated, nothing in this announcement restricts the ability of the Assistant Secretary for Planning and Evaluation to make more than one award or to make a scaled-down award.

Period of Performance.

The award pursuant to this announcement will be made on or about December 15, 1995.

Part II—Establishment of a Research Center—Responsibilities of the Awardee and the Federal Government

Awardee Responsibilities

The successful applicant shall develop and conduct a program which appropriately balances research, mentoring young scholars, and dissemination activities directed to understanding the economic security of families and the well-being of children. The program is to focus on tracking and analyzing changes in State and national policies and their influences on child and family outcomes. Specifically, ASPE has identified four priority areas the applicant should address, at a minimum:

A. Strategies to encourage work, self-reliance, parent responsibility, community, and child well-being.

B. The changing labor market and its influence on low income families with children.

C. Non-marital child-bearing and teenage pregnancy.

D. State initiatives to reduce welfare dependency, provide employment and training, make work pay, reduce teenage pregnancy, improve child services, and increase family functioning.

While these are ASPE priorities, applications also may address other important aspects of poverty, for example: the implications of health and disability status for poverty policy; concerns for the well-being of individual adults in poverty, and the interaction between income security programs, like welfare, and service programs such as child care, child development, child welfare services and education.

The overall program will develop and disseminate knowledge about these and related issues. Activities will include tracking, evaluating, and analyzing state and local government initiatives to reduce poverty, encourage economic mobility, and alleviate the ill-effects of low income and inappropriate family functioning. Activities also should examine alternative public and private approaches.

The awardee will perform the following tasks:

1. *Research Program.* The Center will be expected to plan, initiate and maintain a research program of high caliber. It must meet the tests of social science rigor and objectivity. The program will strive for respect from the academic and policy communities (over a broad range of the political spectrum) for its scientific quality, fairness, and policy relevance. This program should include an appropriately balanced agenda of quantitative and qualitative field work, and primary and secondary analyses.

The research program should include supporting the work of members of the Center staff and other affiliated researchers. In addition, it should provide intellectual leadership in the national research community by establishing links with a broad range of other scholars, through visiting and post-doctoral appointments, research assistanceships, and a limited program of nonresident grants, for example.

ASPE anticipates working very closely with the National Institute for Child Health and Human Development (NICHD) to coordinate and possibly fund joint activities also studying children, families, and poverty. The research center funded under this announcement will be expected to participate with other ASPE–NICHD child and family poverty activities; for example, collaborative projects with the existing Family and Child Well-Being Research Network or Population Research Centers. This collaboration is expected to enhance the research in this field extending its breadth, depth, and variety.

The research program should include multi-disciplinary approaches to increase the understanding of the issues beyond what is possible from analysis within the framework of a single discipline. At a minimum, the staff should include competency in economics, sociology, public policy/administration, and other related disciplines.

Furthermore, it also is appropriate, for example, to engage in activities to make advances in research techniques, where they are needed for or related to primary objectives of the Center.

Planning and execution of the research program shall always consider the policy implications of research findings. The Center should link research to public and private efforts to improve the lives of low income families. The research and dissemination will be non-partisan and of value to all levels of policy making—Federal, State, and local government—and the general research community.

A national advisory committee (discussed below) shall periodically review the research agenda to assure its policy relevance, utility, and scope.

2. *Mentoring Young Scholars.* The Center is expected to develop and expand a diverse corps of young scholars/researchers who focus their analytical skills on research and policy issues central to its mission. To assure the quality of its research, dissemination, and training program, and to assure a careful examination of the output of the Center within the academic community, the Center must establish and maintain a formal tie with a university, including links with all appropriate departments within that university. The Center must have a major presence at a single site (university or city); however, innovative arrangements among universities and with individual scholars at other universities are encouraged and also may be proposed. The Center will be expected to financially support the work of graduate research assistants, PhD candidates, Post-Docs, and other research scholars. The application should anticipate that several of the scholars may spend time in residence in Washington, D.C.

3. *Dissemination.* Making knowledge and information available to the academic and policy communities is to be another integral feature of the Center's responsibilities. It will be expected to maintain a dissemination system of periodic newsletters, research papers, and occasional books intended both for the research and policy communities. In addition, the Center will be expected to organize workshops, lectures, seminars, and other ways of sharing current research activities and findings. Applicants are encouraged to propose use of innovative methods of disseminating data and information, such as Internet. Applications should show a sensitivity to the different dissemination stragegies which may be appropriate for different audiences—such as policy makers, practitioners, and academics.

Cooperative Agreement Responsibilities

Center Responsibilities: The awardee has the primary and lead responsibility to define objectives and approaches, and to plan research, conduct studies, analyze data, and publish results, interpretations, and conclusions of its work.

Occasionally, Center staff will be expected to comment on research plans, provide critical commentary on research products, perform statistical policy analyses, and other quick-response activities to support ASPE's research, evaluation, and policy analysis function. (Without compromising academic freedom, Center staff will be expected to comply with special requests for administrative confidentiality in specific sensitive situations.)

HHS will not interfere with nor infringe upon the academic freedom associated with the university setting. The awardee will retain custody of and have primary rights to the data developed under this award, subject to Government rights to access consistent with current HHS and ASPE regulations. The awardee shall make reasonable efforts, however, to provide other researchers appropriate and speedy access to research data from this project and establish public use files of research data developed under this award.

The ASPE Poverty Research Center will be expected to participate in various research and dissemination activities associated with the ASPE and NICHD. For planning purposes, applicants for this award should anticipate expenses to no more than $50,000 annually. Such expenses, for example, might cover commissioning papers or travel to meetings and conferences.

ASPE Responsibilities: ASPE will be involved with the Center in jointly establishing broad research priorities and planning strategies to accomplish the objectives of this announcement. ASPE, or its representatives, will provide the following types of support to the Center:

1. Consultation and technical assistance in planning, operating, and evaluating the Center's program activities.
2. Information about HHS programs, policies, and research priorities.
3. Assistance in collaborating with appropriate State and local governmental officials in the performance of program activities.
4. Assistance in identifying HHS information and technical assistance resources pertinent to the Center's success.
5. Assistance in the transfer of information to appropriate Federal, state, and local entities.
6. Review of Center activities and collegial feedback to ensure that objectives and award conditions are being met. ASPE retains the right, however, to withhold annual renewals to the awardee, if technical performance requirements are not met.

Joint: The awardee and ASPE will appoint an outside advisory committee, funded under this agreement, composed of approximately ten to twelve nationally recognized scholars and practitioners. This committee will be selected to provide assistance in formulating the research agenda and advice on carrying it out. Efforts will be made in selecting this committee to assure a broad range of academic disciplines and political viewpoints. (For example, the current National Advisory Committee is composed of 12 individuals of national reputation. ASPE and the current Institute for Research on Poverty each appoint six members.) This committee will meet once or twice a year rotating between Washington, D.C. and the Center location.

Arbitration Procedures: Both parties are expected to work in a collegial fashion to minimize misunderstandings and disagreements. They should explore every alternative to prevent impasses, including consultation with the National Advisory Committee, but on the rare occasion when agreement between the awardee and ASPE staff cannot be reached on significant programmatic or scientific-technical issues that might arise after the award, an arbitration panel shall be formed. The panel will consist of one person appointed by the awardee, one person appointed by the ASPE, and a third person appointed by these two members. The decision of the arbitration panel, by majority vote will be binding. These special arbitration procedures in no way affect the awardee's right to appeal an adverse action in accordance with HHS regulations at 45 CFR Part 16.

Part III—Application Preparation and Evaluation Criteria

This part contains information on the preparation of an application for submission under this announcement, the forms necessary for submission and the evaluation criteria under which the applications will be reviewed. Potential applicants should read this part carefully in conjunction with the information provided in Part II.

In general, ASPE seeks organizations with demonstrated capacity for providing quality policy research, training of young scholars, and working with state and local governments. Applicants for funding should reflect, in the program narrative section of the application, how they will be able to fulfill the responsibilities and requirements described in the announcement. The application should specify in detail how administrative arrangements will be made to minimize start-up and transition delays. Applications which do not address all three major tasks discussed in Awardee Responsibilities in Part II will not be considered for award.

The applicant must have experience and a demonstrated capacity to work with governmental agencies—Federal, state, or local.

It is anticipated that the applicant will have additional funding and arrangements with other organizations and institutions. The applicant shall make all current and anticipated related funding arrangements explicit in the application.

Content and Organization of Technical Application (see "Components of a complete Application").

The application must begin with the required application forms and a three to five page overview and summary of the application. Staff resumes should be included in a separate appendix. The central core of the application must contain five sections, presented in the following order:

(1) A brief *analysis* of the key trends in individual and family economic security, the prevalence of poverty, family functioning, child well-being, and other primary research themes of the proposed Center. It should then examine the nature, causes, and correlates of one or two of the trends. The analysis should discuss concisely, but comprehensively, important priority research issues and demonstrate the applicant's grasp of the policy and research significance of recent and future social trends. The discussion should emphasize (but not necessarily be limited to) the past twenty years and the remainder of the decade. Examples of the kinds of issues that might be discussed include the effects of social and demographic trends (for example, changes in fertility, marital stability, welfare dependency, migration, and special problems facing children), economic trends (the effects of inflation, changing rates of economic growth, shifts in the location and types of jobs available, skills mismatches between labor supply and demand, the growth of fringe benefits as part of total compensation, economic stabilization policies, etc.) and government programs and policies (e.g., current welfare reform initiatives, employment and training programs, teenage pregnancy prevention projects, and the demand for new or revised programs.)

(2) A *prospectus* for a five year research agenda, outlining the major research themes to be investigated over the next five years. In particular, the prospectus will describe the activities planned for each of the research priority issues outlined in Part II, *Awardee Responsibilities* and other additional priority research topics proposed by the applicant. The prospectus should discuss the kind of research activities that are needed to anticipate future policy debates on important social issues—poverty and child well-being, in particular—and the role of the proposed Research Center in promoting those activities. The prospectus should follow from the historical analysis section. It may, of course, also discuss research areas and issues that were not mentioned in that analysis if the author or authors of the application feel there have been gaps in past research, or that new factors have begun to affect or soon will begin to affect national social policy.

The prospectus shall include detailed descriptions of individual research projects that will be expected in the Center's first year of operation. It also should be specific about long-term research themes and projects. The lines of research described in the prospectus should be concrete enough that project descriptions in subsequent research plan amendments can be viewed as articulating a research theme discussed in the prospectus. An application that simply contains an *ad hoc* categorization of an unstructured set of research projects—as opposed to a set of projects which strike a coherent theme—will be judged unfavorably.

Note: Once a successful applicant has been selected and the national Advisory Committee appointed, they and ASPE will review the research agenda and determine research priorities. The Center will submit to ASPE a revised research plan that summarizes the deliberations and priorities. The research plan will be periodically reviewed and revised as necessary. (The awardee is not expected to participate in joint ASPE–NICHD activities before the spring or summer of 1996.) The application should discuss a proposed research planning process, including involvement of the national advisory committee and other advisors, and participation in the consortium.

The application will be judged on breadth and depth of the applicant's commitment to research of priority research areas, noted above. Evaluation scores also may be enhanced by applicants additions to this research priority list which help flesh out other links between other factors and poverty, family functioning, and child well-being. The entire prospectus will be judged on the likelihood of producing seminal research in the areas of highest priority. In addition, it will be judged on it relevance to government activities to reduce poverty and promote child well-being. Scoring also will consider whether there is a balance between data gathering and data analyses, between quantitative and qualitative research, and among research, dissemination and training of scholars.

This section should also discuss efforts which will assure a smooth transition between the current IRP grant and this project.

(3) A *staffing and organizational proposal* for the Research Center, including an analysis of the types of background needed among staff members, the Center's organizational structure, and linkages with the host university and other organizations. It is in this third section that the application should specify how it will assure a genuinely interdisciplinary approach to research, and where appropriate, the necessary links to university departments, other organizations and scholars engaged in research, and government policy making.

The applicant shall identify the director (or principal investigator) and key senior research staff. Full resumes of proposed staff members shall be included as a separate appendix to the application. The time commitment to the Center and other commitments for each proposed staff member shall be indicated. The kinds of administrative and tenure arrangements, if any, the Center proposes to make should also be discussed in this section. In addition, the author(s) of the application and the role which he or she (they) will play in the proposed Poverty Research Center must be specified.

This section shall discuss the financial arrangements for supporting research assistants, post-docs, affiliates, resident scholars, etc. The discussion should include the expected number and types of young scholars to be supported and the level of support anticipated.

If the application envisions an arrangement of several universities or institutions, this section will describe the specifics about the relationships, including leadership, management, and administration. It should pay particular attention to discussing how a focal point for research, teaching, and scholarship will be maintained given the arrangement proposed.

The application also should discuss the role, selection procedure, and expected contribution of the national advisory committee.

(4) The application will include an organizational summary of past work at the university or institution proposed as the location (or lead) of the Research Center that relates directly or indirectly to the research priorities of this request. This discussion should include more than a listing of the individual projects completed by the individuals who are included in the application. It should provide a sense of institutional commitment to policy research and resolution of the problems facing the nation's families and public institutions. Where specific individuals are proposed for the staff of the Center, it is legitimate to discuss their past research, whether or not it took place at the institution proposed to be the location of the new Research Center or the host university. The application must list in an appendix appropriate recent or current research projects, with a brief research summary, contact person references, and address and telephone number of reference.

This section also should include a discussion of the research staff experience working with government agencies and demonstrate a capacity to provide policy relevant support to these agencies.

(5) A budget summary narrative which links the research, training, and dissemination program to the Center funding level. This section should discuss how the five-year budget supports proposed research, training, and dissemination activities and should link the first year funding to a five year plan. The discussion should include the appropriateness of the level and distribution of funds to the successful completion of the research, training, and dissemination plans. Also, the limited amount of funds available for this award may indicate the desirability of using these funds as partial, core support for the proposed Center and applicant having or seeking additional support from other sources.

The availability, potential availability or hope for other funds (from the host university, other universities, foundations, states, other Federal agencies, etc.) and the uses to which they would be put, should be documented in this section. Applications which show funding from other sources that supplement funds from this grant will be given higher marks than if they have no extra financial support.

Review Process and Funding Information. A panel of at least three independent experts will review and score all applications that are submitted by the deadline date and which meet the screening criteria (all information and documents as required by this Announcement.) The panel will review the applications using the evaluation criteria listed below to score each application. These review results will be the primary element used by the ASPE in making funding decisions.

HHS reserves the option to discuss applications with other Federal or State staff, specialists, experts, and the general public. Comments from these sources, along with those of the reviewers, will be kept from inappropriate disclosure and may be considered in making an award decision.

State Single Point of Contact (E.O. No. 12372). The Department of Health and Human Services has determined that this program is not subject to Executive Order No. 12372, Intergovernmental Review of Federal Programs, because it is a program that is national in scope and the only impact on State and local governments would be through subgrants. Applicants are not required to seek intergovernmental review of their applications within the constraints of E.O. No. 12372.

Deadline for Submission of Applications. The closing date for submission of applications under this announcement is September 14, 1995. Applications must be postmarked or hand-delivered to the application receipt point no later than 4:30 p.m. on September 14, 1995.

Hand-delivered applications will be accepted Monday through Friday prior to and on September 14, 1995 during the hours of 9:00 a.m. to 4:30 p.m. in the lobby of the Hubert H. Humphrey building located at 200 Independence Avenue, SW., in Washington, DC. When hand-delivering an application, call 690–8794 from the lobby for pick-up. A staff person will be available to receive applications.

An application will be considered as meeting the deadline if it is either: (1) Received at, or hand-delivered to, the mailing address on or before September 14, 1995, or (2) postmarked before midnight of the deadline date September 14, 1995 and received in time to be considered during the competitive review process (within two weeks of the deadline date).

When mailing application packages, applicants are strongly advised to obtain a legibly dated receipt from a commercial carrier (such as UPS, Federal Express, etc.), or from the U.S. Postal Service as proof of mailing by the deadline date. If there is a question as to when an application was mailed, applicants will be asked to provide proof of mailing by the deadline date. When proof is not provided, an application will not be considered for funding. Private metered postmarks are not acceptable as proof of timely mailing.

Applications which do not meet the September 14, 1995 deadline are considered late applications and will not be considered or reviewed in the current competition. HHS will send a letter to this effect to each late applicant.

HHS reserves the right to extend the deadline for all applications due to acts of God, such as floods, hurricanes or earthquakes; due to acts of war; if there is widespread disruption of the mail; or if HHS determines a deadline extension to be in the best interest of the Government. However, HHS will not waive or extend the deadline for any applicant unless the deadline is waived or extended for all applicants.

Applications Forms. See section entitled "Components of a Complete Application." All of these documents must accompany the application package.

Length of Application. Applications should be brief and concise as possible, but assure successful communication of the applicant's proposal to the reviewers. In no case shall an application (excluding the resume appendix and other appropriate attachments) be longer than 150 double-spaced pages; it should neither be unduly elaborate nor contain voluminous supporting documentation.

Selection Process and Evaluation Criteria. The evaluation criteria correspond to the outline for the development of the Program Narrative Statement of the application. Although not mandatory, it is strongly recommended that applications be prepared with the format indicated by this outline.

Selection of the successful applicant(s) will be based on the technical and financial criteria laid out in this announcement. Reviewers will determine the strengths and weaknesses of each application in terms of the evaluation criteria listed below, provide comments and assign numerical scores—out of a possible 100 points. The review panel will prepare a summary of all applicant scores and strengths/weaknesses and recommendations and submit it to the ASPE for final decisions on the award.

The point value following each criterion heading indicates the maximum numerical relative weight that each section will be given in the review process. An unacceptable rating on any individual criterion may render the application unacceptable. Consequently, applicants should take care to ensure that all criteria are fully addressed in the applications. Applications will be reviewed as follows:

(a) Quality of the historical analysis. [See Part II, Type of Application Requested, Section 1.] (15 points) Applications will be judged on whether they provide a thoughtful and coherent discussion of economic, social, and demographic trends influencing the family and children. Reviewers will judge applicant's ability to discuss the past, present, and future role of government programs and policies which affect these trends. Applicants should tie the trends and influences discussed to their proposed research agenda.

(b) Quality of the research prospectus. [See Part II, Section 2.] (25 points) Reviewers will judge this section on the basis of whether the research agenda is scientifically sound and policy relevant. They also will consider whether the applicant is likely to make significant/seminal contributions to understanding poverty, families, child outcomes, and what governments can do to make the lives of single adults, children and families more secure, healthier, and open to opportunity. Although the discussion and research proposed must address the major themes of this announcement (low-skills labor market, out-of-wedlock childbearing, strategies to strengthen families and encourage independence, and evaluating state initiatives), applications with additional insightful research proposals also will score higher. Concise plans for research projects in the near term (one or two years) as well as a five-year agenda are important. We will rate applications on their plans to conduct policy relevant research and interact with various levels of government to research and evaluate significant government initiatives and policies. In addition, applicants will be judged on their dissemination plans—including convening conferences and workshops and communicating with a broad audience of academics, policymakers, and practitioners.

(c) Quality of the staffing proposal and proposed organizational arrangements. [See Part II, Sections 3. and 4.] (30 points) Reviewers will judge applicant's director/principal investigator and staff on research experience, demonstrated research skills, administrative skills, public administration experience, and relevant policymaking skills. Ratings may consider references on prior research projects. Director and staff time commitments to the Center also will be a factor in the evaluation. Whether the applicant can maintain a single location for research, teaching, and scholarship is an important consideration. Furthermore, reviewers will rate the applicant's pledge and ability to work in collaboration with other scholars in search of similar goals. Applicants will be judged on the nature and extent of the organizational support to research, mentoring scholars, and dissemination in topical areas related to the Center's central priorities and this request. Reviewers will evaluate the commitment of the university (and proposed institutional unit that will contain the Center) to assess its ability to support all three major Center activities: (1) scholarly, policy relevant research; (2) the mentoring and development of young scholars interested in poverty, families, children, and public policy; and (3) dissemination of research and other information to a broad and disparate set of academic, research, and policy communities. Reviewers also will evaluate the applicant's demonstrated capacity to work with a range of government agencies.

(d) Training and mentoring young scholars. [See part II, Section 3.] (15 points) The applicant evaluation will consider proposed efforts to develop and expand a diverse corps of young scholars and researchers. The ratings will consider the proposed mentoring and support given to graduate research assistants, PhD candidates, Post-Docs, and other research scholars. The evaluation will include an assessment of plans to integrate the training of research scholars and exposing them to policy research activities at ASPE.

(e) Appropriations of the budget to carry out the planned staffing and activities. [See part II, Section 5.] (15 points) Ratings will consider whether: (a) The budget assures an efficient and effective allocation of funds to achieve the objectives of this solicitation and (2) the applicant has additional funding from other sources. When additional funding is contemplated, applicants shall note whether the funding is being donated by the institution, is in-hand from another funding source, or will be applied for from another funding source.

Disposition of Applications

1. *Approval, disapproval, or deferral.* On the basis of the review of an application, the ASPE will either (a) approve the application in whole, as revised, or in part for such amount of funds and subject to such conditions as are deemed necessary or desirable for the initiation and operation of one or more Research Centers; (b) disapprove the application; or (c) defer action on the application for such reasons as lack of funds or a need for further review.

2. *Notification of disposition.* The ASPE will notify the applicants of the disposition of their application. A signed notification of award will be issued to notify the applicant of the approved application.

Components of a Complete Application. A complete application consists of the following items in this order:

1. Application for Federal Assistance (Standard Form 424, Revised 4–88);
2. Budget Information—Non-construction Programs (Standard Form 424A, Revised 4–88);
3. Assurances—Non-construction Programs (Standard Form 424B, Revised, 4–88);
4. Table of Contents;
5. Budget Justification for Section B—Budget Categories;
6. Proof of non-profit status, if appropriate;
7. Copy of the applicant's approved indirect cost rate agreement if necessary;
8. Project Narrative Statement, organized in five sections addressing the following topics:
   (a) Understanding of the Effort,
   (b) Project Approach,
   (c) Staffing Utilization, Staff Background, and Experience,
   (d) Organizational Experience, and
   (e) Budget Narrative;
9. Any appendices/attachments;
10. Certification Regarding Drug-Free Work place;
11. Certification Regarding Debarment, Suspension and Other Responsibility Matters; and
12. Certification and, if necessary, Disclosure Regarding Lobbying;
13. Supplement to Section II—Key Personnel; and
14. Application for Federal Assistance Checklist.

Dated: May 8, 1995.

David T. Ellwood,

Assistant Secretary for Planning and Evaluation.

[FR Doc. 95–12118 Filed 4–16–95; 8:45 am]

BILLING CODE 4151–04–M

Office of the Assistant Secretary for Health

Availability of Funds and Request for Applications for Bilingual/Bicultural Service Demonstration Projects in Minority Health

AGENCY: Office of Minority Health, Office of the Assistant Secretary for Health, PHS, DHHS.

ACTION: Notice of Extension of Application Deadline for Request for Applications.

The Notice of Availability of Funds published Thursday, April 13, 1995, (60 FR 18934) had a due date for application receipt of May 15, 1995. This notice extends the deadline date to May 31, 1995.

ADDRESSES/CONTACTS: Applications must be prepared on Form PHS 5161–1 (Revised July 1992 and approved by OMB under Control Number 09370189). Application kits and technical assistance on budget and business aspects of the application may be obtained from Ms. Carolyn A. Williams, Grants Management Officer, Office of Minority Health, Rockwall II Building, Suite 1000, 5515 Security Lane, Rockville, MD, 20852, (telephone 301/594–0758) or by Internet E-mail cwilliams@oash.ssw.dhhs.gov. Completed applications are to be submitted to the same address.

Technical assistance on the programmatic content for the Bilingual/Bicultural Grants may be obtained from Ms. Nina Darling or Ms. Rizalina Galicinao. They can be reached at the Office of Minority Health, Rockwall II Building, Suite 1000, 5515 Security Lane, Rockville, MD 20852, (telephone 301/594–0769) or by Internet E-mail ndarling@oash.ssw.dhhs.gov or rgalicin@ash.ssw.dhhs.gov.

In addition, OMH Regional Minority Health Consultants (RMHCs) are available to provide technical assistance. a listing of the RMHCs and how they may be contacted is provided in the grant application kit. Applicants also can contact the OMH Resource Center (OMH/RC) at 1–800–444–6472 for health information and generic information on preparing grant applications.

DEADLINE: To receive consideration, grant applications must be received by the Grants Management Officer by May 31, 1995. Applications will be considered as meeting the deadline if they are either: (1) Received at the above address on or before the deadline date, or (2) Sent to the above address on or before the deadline date and received in time for orderly processing. Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing. Applications submitted by facsimile transmission (FAX) WILL *not* be accepted. Applications which do not meet the deadline will be considered late and will be returned to the applicant unread.

Dated: May 8, 1995.

Clay E. Simpson, Jr., Ph.D.

Acting Deputy Assistant Secretary for Minority Health.

[FR Doc. 95–12116 Filed 5–16–95; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–050–1220–00]

Shooting Closure on Public Lands in Fremont County, Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Closure order.

SUMMARY: The BLM Canon City District is closing approximately 1,840 acres of public land in the Garden Park Fossil Area, located in Fremont County, Colorado, to recreational target shooting for the purpose of enhancing public safety. For this closure order, recreational target shooting is defined as the discharge of any weapon for any purpose other than the lawful taking of a game animal recognized by the State of Colorado. Bows and arrows are not included within this definition. Recreational shooters may use other public lands where public safety is not at risk. No person shall violate any Federal, State or local laws pertaining to use, possession or discharge of firearms while on any BLM administered public lands.

EFFECTIVE DATE: May 22, 1955.

ADDRESSES: Copies of the map and details of the closure can be obtained from the Area Manager, BLM Royal Gorge Resource Area, 3170 E. Main Street, Canon City, CO 81212.

FOR FURTHER INFORMATION CONTACT: Diana Williams, Outdoor Recreation Planner, Royal Gorge Resource Area, at the above address or by calling (719) 275–0631.

SUPPLEMENTARY INFORMATION: BLM administers approximately 3,000 acres of public land in the Garden Park Fossil Area, located about 5 miles north of Canon City, CO. The area, especially along Fremont County Road 9, has been popular as a target shooting area due to its proximity to Canon City. Recently, the area's popularity has increased because of the interest in its internationally significant dinosaur fossils and the use of Fremont County Road 90 as part of the Gold Belt Tour Back Country Byway. In addition, there are private lands with residential structures adjacent to the public lands. The closure is necessary to protect recreationists and other users of the public lands, as well as persons and property adjacent to the public lands. BLM addressed these concerns in a public meeting and through a seven-member public committee. This committee developed a proposal to resolve the concerns. This closure order reflects the results of the committee's work. The public lands affected by this closure are located at:

6th Principal Meridian

T. 17 S., R. 70 W.,
Sections 20, 21, 23, 26–29, 33, 34; and
T. 18 S., R 70 W.,
Sections 2–4

A copy of this **Federal Register** notice and a map showing the closed area and those public lands available for recreational target shooting is posted in the Canon City District Office and in the Garden Park Fossil Area.

Authority for this action is found in 43 CFR 8364. Violation of this order is punishable by fine or imprisonment as defined in 18 USC 3571.

Stuart L. Freer,

Acting District Ranger.

[FR Doc. 94–12168 Filed 5–16–94; 8:45 am]

BILLING CODE 4310–JB–M

[MT–921–05–1320–01–P; MTM 83859]

Notice of Coal Lease Application—MTM 83859—Spring Creek Coal Company

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice.

SUMMARY: This is Notice of Spring Creek Coal Company's Coal Lease Application MTM 83859 for certain coal resources within the Powder River Coal Region.

The land included in Coal Lease Application MTM 83859 is located in Big Horn County, Montana, and is described as follows:

T. 8 S., R. 39 E., P.M.M.
Sec. 25: SW¼SW¼
Sec. 26 S½NE¼NE¼SW¼, NW¼NE¼SW¼, N½S½NE¼SW¼, N½N½NW¼SW¼, SE¼NE¼NW¼SW¼, NE¼SE¼NW¼SW¼, N½S½NW¼SE¼
Sec. 27: N½SW¼NE¼, N½SE¼SW¼NE¼, NE¼SW¼SW¼NE¼, S½NW¼SE¼NE¼, S½SE¼NE¼, N½NE¼SE¼NW¼, SE¼NE¼SE¼NW¼, NE¼NE¼NE¼SE¼
T. 8 S., R. 40 E., P.M.M.
Sec. 30: S½NW¼NE¼SW¼, S½NE¼SW¼, NW¼SE¼NW¼SE¼, N½SW¼NW¼SE¼, S½S½N½SE¼, S½SE¼.

The 285.00-acre tract contains an estimated 37.8 million tons of recoverable coal reserves.

The application will be processed in accordance with the provisions of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181, et seq.), and the implementing regulations at 43 CFR 3400. A decision to allow leasing of the coal resources in said tract will result in a competitive lease sale to be held at a time and place to be announced through publication pursuant to 43 CFR 3422.

SUPPLEMENTARY INFORMATION: Spring Creek Coal Company is the lessee and operator of Coal Lease MTM 069782 at the Spring Creek Mine. The entire area included within this lease application lies south of and adjacent to the Spring Creek Mine and is within the Spring Creek Mine permit area.

On September 17, 1992, Spring Creek Coal Company received Federal Coal Exploration License MTM 81096 from the BLM to conduct drilling on lands contained within the Spring Creek coal lease application tract. The drilling program has been completed and the required information has been forwarded to the BLM.

Due to its coal reserve base and configuration, the Spring Creek lease application tract is a logical step to extend the life of the Spring Creek Mine. With the current permitted reserves of coal, the current level of production at the Spring Creek Mine can be maintained for approximately 19 additional years.

The area applied for would be mined as an extension of the Spring Creek Mine and would utilize the same methods as those currently being used. The lease being applied for can extend the life of the mine by about 4 years and enable recovery of coal that might never be mined if not mined as a logical extension of current pits at the Spring Creek Mine.

NOTICE OF AVAILABILITY: The application is available for review between the hours of 9 a.m. and 4 p.m. at the Bureau of Land Management, Montana State Office, 222 North 32nd Street, Billings, Montana 59101, and at the Bureau of Land Management, Miles City District Office, whose address is Garryowen Road, Miles City, Montana 59103, between the hours of 7:45 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Ed Hughes telephone 406–255–2813, Bureau of Land Management, Montana State Office, 222 North 32nd Street, P.O. Box 36800, Billings, Montana 59107–6800.

Dated: May 8, 1995.

Larry E. Hamilton,

State Director.

[FR Doc. 95–12167 Filed 5–16–95; 8:45 am]

BILLING CODE 4310–DN–P

[MT–921–05–1320–01–P; MTM 83997]

Coal Exploration License Application; Notice of Invitation

AGENCY: Bureau of Land Management, Montana State Office, Interior.

ACTION: Notice of Invitation; Coal Exploration License Application MTM 83997.

Members of the public are hereby invited to participate with Spring Creek Coal Company in a program for the exploration of coal deposits owned by the United States of America in the following-described lands located in Big Horn County, Montana:

T. 8 S., R. 39 E., P.M.M.
Sec. 13: SW¼NE¼, NW¼, N½SW¼, SW¼SW¼, N½SE¼, SW¼SE¼
Sec. 14: E½NE¼, NE¼SE¼
Sec. 21: NE¼SW¼, SW¼SE¼
Sec. 23: NE¼NE¼ SE¼NW¼
Sec. 24: NW¼NW¾
Sec. 25: SW¼SW¼
Sec. 35: SE¼NE¼
T. 8 S., R. 40 E., P.M.M.
Sec. 29: SW¼SW¼
Sec. 30: SE¼
Sec. 31: Lots 1, 3, 4, NE¼SW¼
T. 9 S., R. 39 E., P.M.M.
Sec. 1: Lot 1
T. 9 S., R. 40 E., P.M.M.
Sec. 6: Lots 1, 3, 7, S½NE¼, NE¼SW¼, NE¼SE¼.

1,508.32 acres.

Any party electing to participate in this exploration program shall notify, *in writing*, both the State Director, Bureau of Land Management, P.O. Box 36800, Billings, Montana 59107–6800; and Spring Creek Coal Company, P.O. Box 67, Decker, Montana 59025. Such written notice must refer to serial number MTM 83997 and be received no later than 30 calendar days after publication of this Notice in the **Federal Register** or 10 calendar days after the last publication of this Notice in the Sheridan Press, whichever is later. This Notice will be published once a week for 2 consecutive weeks in the Sheridan Press.

The proposed exploration program is fully described and will be conducted pursuant to an exploration plan to be approved by the Bureau of Land Management. The exploration plan, as submitted by Spring Creek Coal Company, is available for public inspection at the Bureau of Land Management, Montana State Office, Granite Tower Building, 222 North 32nd Street, Billings, Montana, during regular business hours (9 a.m. to 4 p.m.) Monday through Friday.

Dated: May 5, 1995.

Larry E. Hamilton,

State Director.

[FR Doc. 95–12074 Filed 5–16–95; 8:45 am]

BILLING CODE 4310–DN–P

[NM–040–1320–01]

Notice of Intent to Amend Oklahoma Resource Management Plan; Oklahoma

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM), Tulsa District, is initiating preparation of a Resource Management Plan Amendment (RMP) and Environmental Assessment (EA) for BLM-managed Federal minerals in Le Flore County, Oklahoma. The Code of Federal Regulations, Title 43, Subpart 1600 (43 CFR 1600) will be followed in the preparation of this plan amendment. The public is invited to participate in this land use plan amendment effort. Written comments or suggested additional issues will be accepted through August 21, 1995. The BLM will hold a public scoping meeting at which time oral comments and suggestions will be accepted. This notice is to solicit coal resource information and indications of other interest and needs pursuant to 43 CFR 3420.1–2, and 3500, for inclusion in the Oklahoma RMP Amendment. Coal companies, other mineral extraction companies, state and local governments, and the general public are encouraged to submit information to the BLM to assist in the determinations of coal development potential and possible conflicts with other resources. If this information is determined to indicate development potential, further consideration for leasing will be given.

DATES: Comments relating to the identification of additional issues, and responses to this call for coal resource information will be accepted through August 21, 1995.

ADDRESSES: Comments and requests to be included on the mailing list should be sent to: Bureau of Land Management, 221 North Service Road, Moore, Oklahoma 73160. Proprietary data should be identified as such to ensure confidentiality.

FOR FURTHER INFORMATION CONTACT: Catherine Wolff-White, Tulsa District BLM, (405) 794–9624.

SUPPLEMENTARY INFORMATION: The proposed Oklahoma RMP amendment will include the Federal coal lease application located in Section 3, T9N in Le Flore County, about 8 miles northwest of Spiro, Oklahoma. The property proposed to be leased, containing approximately 100 acres, is described as follows: NESW, SWSW, NWSESW.

The anticipated issue to be addressed by this RMP amendment effort is coal leasing and development.

We expect the development of this coal resource to be the issue addressed in the RMP amendment. Industry and other interested parties are asked to provide any information that will be useful in meeting the requirements of the Federal Coal Management Program defined in 43 CFR 3420, including application of the coal planning screens and possibly future activity planning such as tract delineation, ranking and selection. Information resulting from this call will be used to determine potential for coal development and likelihood of conflict with other resources within this 100-acre tract and any other tracts that may be determined to have additional interest.

Lands already considered in the Oklahoma Resource Management Plan, adopted in January 1994, need not be addressed.

The issue of Federal coal leasing and development will include:

1. Determining areas acceptable for further coal leasing consideration with standard stipulations;

2. Determining areas acceptable for consideration with special stipulations:

3. Determining areas unacceptable for further coal leasing consideration.

The BLM will apply the coal development potential, unsuitability criteria, multiple use conflict and consultation screens in order to make these determinations.

The type of information needed includes, but is not limited to, the following:

l. Location:

a. Federal coal tracts desired by mining companies should include a narrative description with areas delineated on a map with a scale of not less than ½ inch to the mile.

b. Descriptions of both public and private industry coal users in the general region.

2. Quantity needs (tonnage, dates) for both public and private industry coal users and coal developers.

3. Quality needs (by type and grade) for end users of the coal.

4. Coal reserve drilling data which may pertain to the planning area.

5. Information relating to surface and mineral ownership:

a. Surface owner consents previously granted, whether consent is transferable, surface owner leases with coal companies.

b. Non-federal, or fee coal ownership adjacent to Federal tracts currently leased or mined.

6. Other resource values occurring within the planning area which may conflict with coal development:

a. Describe the resource value, and locate it on a map at least ½ inch delineation.

b. State the reasons the particular resource would conflict with coal development.

Any individual, business entity, or public body may participate in this process by providing coal or other resource information under this call.

This planning issue is presented for public comment and is subject to change based upon such public comment. Comments should be received by close of business August 21, 1995. The planning team will seek public involvement throughout the planning amendment process. A public scoping meeting/open house will be held to provide the public an opportunity to participate in this planning effort.

The public meetings/open houses will start at 7:00 PM and is scheduled for: July 11, 1995 at the Bob Lee Kid Civic Center; 100 Pirate Lane, Poteau, OK.

Complete records of all phases of the planning process will be available for public review and comment at the Bureau of Land Management, Moore office, 221 North Service Road, Moore, Oklahoma.

The final RMP amendment documents will be available upon request.

Dated: May 8, 1995.

Jim Sims,

District Manager.

[FR Doc. 95–12075 Filed 5–16–95; 8:45 am]

BILLING CODE 1610–FB–M

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT–802298

Applicant: National Zoological Park, Washington, D.C.

The applicant requests a permit to import skin biopsy samples and/or samples of blood and semen from cheetah (*Acionyx jubatus*), from Kruger National Park, Republic of South Africa for the purpose of enhancement of the species through scientific research.

PRT–802458

Applicant: Arturo J. Gutierrez, Weston, MA

The applicant requests a permit to import one male bontebok (*Damaliscus pygarcus dorcas*) culled from the captive herd maintained by Mr. F.W.M. Bowker, Jr., Grahamstown, Republic of South Africa, for the purpose of enhancement of the species.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: May 12, 1995.

Caroline Anderson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 95–12105 Filed 5–16–95; 8:45 am]

BILLING CODE 4310–55–P

Receipt of Application(s) for Permit

The following applicant(s) have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, et seq.)

PRT–802451

Applicant: Dr. Steven W. Carothers, SWCA, Inc., Flagstaff, Arizona.

The applicant requests a permit to take the southwestern willow flycatcher (*Empidonax traillii extimus*) and Mexican spotted owl (*Strix occidentalis lucida*) at specific site locations in Arizona, for the purpose of scientific research and enhancement of propagation and survival of the species as prescribed by Service recovery documents.

ADDRESSES: Written data or comments should be submitted to the Assistant Regional Director, Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103, and must be received by the Assistant Regional Director within 30 days for the date of this publication.

Documents and other information submitted with this application are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the above office within 30 days of the date of publication of this notice. (See Addresses above.)

James A. Young,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 95–12112 Filed 5–16–95; 8:45 am]

BILLING CODE 4310–55–M

Availability of Environmental Assessments/Habitat Conservation Plans and Receipt of Applications for Incidental Take Permits for Construction of Single-Family Residences on Lots in Travis County, Texas

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Jim Herbert (Applicant) has applied to the Fish and Wildlife Service (Service) for an incidental take permit pursuant to Section 10(a) of the Endangered Species Act (Act). The Applicant has been assigned permit number PRT–801839. The requested permit, which is for a period of 1 year, would authorize the incidental take of the endangered golden-cheeked warbler (*Dendroica chrysoparia*). The proposed take would occur as a result of the construction of one single-family residence at Westlake Highlands, Austin, Travis County, Texas.

Ralph Nichols Koster (Applicant) has applied to the Fish and Wildlife Service (Service) for an incidental take permit pursuant to Section 10(a) of the Endangered Species Act (Act). The Applicant has been assigned permit number PRT–801381. The requested permit, which is for a period of 1 year, would authorize the incidental take of the endangered golden-cheeked warbler (*Dendroica chrysoparia*). The proposed take would occur as a result of the construction of one single-family residence on Lot 133, Cardinal Hills Subdivision, Unit 3, Travis County, Texas.

Carolyn Pratt (Applicant) has applied to the Fish and Wildlife Service (Service) for an incidental take permit pursuant to Section 10(a) of the Endangered Species Act (Act). The Applicant has been assigned permit number PRT–801373. The requested permit, which is for a period of 5 years, would authorize the incidental take of the endangered golden-cheeked warbler (*Dendroica chrysoparia*). The proposed take would occur as a result of the construction of one single-family residence on Lot 23 (2.73 acres), Cloudy Ridge Road, Windmill Bluff Estates, Austin, Travis County, Texas.

The Service has prepared the Environmental Assessments/Habitat Conservation Plans (EA/HCP) for each of the incidental take applications. A determination of jeopardy to the species or a Finding of No Significant Impact (FONSI) will not be made before 30 days from the date of publication of this notice. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the application should be received by June 16, 1995.

ADDRESSES: Persons wishing to review the applications may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCP's may obtain a copy by contacting Joseph E. Johnston or Alma Barrera, Ecological Services Field Office, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0063). Documents will be available for public inspection by written request, by appointment only, during normal business hours (9:00 to 4:30) U.S. Fish and Wildlife Service, Austin, Texas. Written data or comments concerning the application(s) and EA/HCPs should be submitted to the Acting Field Supervisor, Ecological Field Office, Austin, Texas (see **ADDRESSES** above). Please refer to the applicable permit number when submitting comments.

FOR FURTHER INFORMATION CONTACT: Joseph E. Johnston or Alma Barrera at the above Austin Ecological Service Field Office.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the "taking" of endangered species such as the golden-cheeked warbler. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

APPLICANTS: The applicant (Herbert) plans to construct a single-family residence on Lot A, Westlake Highlands, Section 2–A, Travis County, Texas. This action will eliminate less than one-half acre of land and indirectly impact less than one-half additional acres of golden-cheeked warbler habitat per residence. The applicant proposes to compensate for this incidental take of golden-cheeked warbler habitat by placing $1,500 into the City of Austin Balcones Canyonlands Conservation Fund to acquire/manage lands for the conservation of the golden-cheeked warbler.

The Applicant (Koster), plans to construct a single-family residence on Lot 133 on Flamingo Road, Cardinal Hills Subdivision, Austin, Travis County, Texas. This action will eliminate less than one-half acre of land and indirectly impact less than one-half additional acres of golden-cheeked warbler habitat per residence. The applicant proposes to compensate for this incidental take of golden-cheeked warbler habitat by placing $1,500 into the City of Austin Balcones Canyonlands Conservation Fund to acquire/manage lands for the conservation of the golden-cheeked warbler.

The Applicant (Pratt) plans to construct a single-family residence on Lot 23 on Cloudy Ridge Road, Windmill Bluff Estates, Austin, Travis County, Texas. This action will eliminate less than one half acre of land and indirectly impacts less than one additional acres of golden-cheeked warbler habitat per residence. The applicant proposes to compensate for this incidental take of golden-cheeked warbler habitat by placing $1,500 into the City of Austin Balcones Canyonlands Conservation Fund to acquire/manage lands for the conservation of the golden-cheeked warbler.

Alternatives to each of these actions were rejected because selling or not developing the individual subject properties with federally listed species present was not economically feasible.

Lynn B. Starnes,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 95–12111 Filed 5–16–95; 8:45 am]

BILLING CODE 4510–55–M

National Park Service

General Management Plan and Environmental Impact Statement for Sitka National Historical Park, Sitka, Alaska

ACTION: Notice of intent.

SUMMARY: The National Park Service (NPS) is preparing a general management plan (GMP) and accompanying environmental impact statement (EIS) for Sitka National Historical Park. Although the oldest National Park System unit in Alaska, a GMP has never been prepared for Sitka National Historical Park. The purpose of the EIS is to evaluate the impacts of alternative development and management scenarios proposed for the park in the GMP.

The NPS Gateway Community Planning Initiative selected this GMP/EIS as a pilot project. The initiative is designed to more directly involve communities in planning decisions for National Park System units with close geographic, historic, or cultural ties to the affected communities. Sitka National Historical Park lies entirely within the municipality of Sitka, Alaska.

Three public scoping meetings are scheduled to identify management issues for the park. These will be held on: Tuesday, June 6, 1995 at 7 pm in the auditorium of the Alaska Public Lands Information Center, Anchorage, Alaska; Wednesday, June 7, 1995 at 7 pm in the Hammond Room of Centennial Hall, Juneau, Alaska; and Friday, June 9, 1995 at 7 pm in the Park Visitor Center, Sitka National Historical Park, Sitka, Alaska.

The environmental impact statement will be prepared in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4331 et seq.) and its implementing regulations at 40 CFR Part 1500. The NPS will prepare the EIS in conjunction with preparation of the GMP for Sitka National Historical Park.

Interested groups, organizations, individuals and government agencies are invited to comment on the plan at any time. The draft statement is anticipated to be available for public review in the summer of 1996.

FOR FURTHER INFORMATION CONTACT:

John Linquist, National Park Service, Alaska Regional Office, Division of Planning and Design, 2525 Gambell St., Room 107, Anchorage, Alaska 99503–2892. Telephone (907) 257–2465

or

Kevin Percival, Planning Team Captain, National Park Service, Denver Service Center, Team West, P.O. Box 25287, Denver, Colorado 80225–0287. Telephone (303) 969–2265

or

Gary Gauthier, Park Superintendent, Sitka National Historical Park, P.O. Box 738, Sitka, Alaska, 99835. Telephone (907) 747–6281

Dated: May 5, 1995.

Paul R. Anderson,

Deputy Regional Director, Alaska Region.

[FR Doc. 95–12032 Filed 5–16–95; 8:45 am]

BILLING CODE 4310–70–P

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before May 6, 1995. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127. Written comments should be submitted by June 1, 1995.

Carol D. Shull,

Chief of Registration, National Register.

Arkansas

Garland County

Visitors Chapel AME, 319 Church St., Hot Springs, 95000682

Hot Spring County

Hodges House, AR 7, Bismarck, 95000683

Sebastian County

Oak Cemetery, SE of jct. of Greenwood and Dobson Aves., Fort Smith, 95000665

Washington County

Landscape Features at No. 40 Crossover Rd., 40 Crossover Rd., Fayetteville, 95000666

Georgia

Lowndes County

Brookwood North Historic District, Roughly bounded by Patterson St., Georgia Ave., Oak St., Park Ave., Williams St. and Brookwood Dr., Valdosta,. 95000684

Idaho

Custer County

Niece Brothers' Store, Ace of Diamonds St., Stanley, 95000667

Kansas

Riley County

Elliot, Mattie M, House, 600 Houston St., Manhattan 95000672

Louisiana

Orleans Parish

Parkview Historic District, Roughly bounded by City Park Ave., Bayou St. John, Orleans, Rochbelave, Lafitte and St. Louis, New Orleans, 95000675

Massachusetts

Bristol County

Solider's Memorial Library, Jct. of Park Row and Union St., Mansfield, 95000681

Minnesota

Blue Earth County

Lincoln Park Residential Historic District, Roughly bounded by Shaubut, Record, Pleasant, 2nd, Liberty, Parsons Lock and Bradley Sts. and Grace and Wickersham Cts., Mankaot, 95000671

New Hampshire

Carroll County

Early Settlers Meeting House, Jct. of Granite and Foggs Ridge Rds., Town of Ossippe, Leighton Corner, 95000680

New York

Montgomery County

Guy Park Avenue School, 300 Guy Park Ave., Amsterdam, 95000669

Ontario County

Morgan Hook and Ladder Company, 18–20 Mill St., Naples, 95000668

North Carolina

Davie County

Boxwood Lodge, 132 Becktown Rd., Mocksville vicinity, 95000673

Henderson County

Reese House (Hendersonville MPS) 202 S. Washington St., Hendersonville, 95000676

Jackson County

Camp Merrie-Woode, US N side, 1.6 mi. N of jct. with NC 1120, at end of 1-mi.-long dirt rd., Cashiers vicinity, 95000674

Wade County

US Post Office, Former, 124 W. James St., Mount Olive, 95000670

Rhode Island

Newport County

Fort Hamilton Historic District, Rose Island, Newport, 95000663

Providence County

Freeman Plat Historic District, Roughly bounded by Morris, Sessions, Cole and Everett Aves., Providence, 95000664

Wisconsin

Fond Du Lac County

Ripon College Historic District, Jct. of Seward and Elm Sts., Ripon, 95000679

Waukesah County

Becker and Schafer Store Building, 1002–1004 White Rock Ave., Waukesha, 95000667

[FR Doc. 95–12096 Filed 5–16–95; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–696–698 (Final)]

Magnesium From China, Russia, and Ukraine

Determinations

On the basis of the record [1] developed in the subject investigations, the Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act), that an industry in the United States is materially injured [2] by reason of imports from China, Russia, and Ukraine of pure magnesium,[3] provided for in subheading 8104.11.00 of the Harmonized Tariff Schedule of the United States (HTS), that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV). The Commission further determines that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from China and Russia of alloy magnesium,[4] provided for in subheading 8104.19.00 of the HTS, that have been found by the Department of Commerce to be sold in the United States at LTFV.

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

[2] Chairman Watson, Vice Chairman Nuzum, and Commissioner Crawford dissenting.

[3] Pure magnesium encompasses: (1) Products that contain at least 99.95 percent primary magnesium, by weight (generally referred to as "ultra-pure" magnesium); (2) products containing less than 99.95 percent but not less than 99.8 percent primary magnesium, by weight (generally referred to as "pure" magnesium); and (3) products (generally referred to as "off-specification pure" magnesium) that contain 50 percent or greater, but less than 99.8 percent primary magnesium, by weight, and that do not conform to ASTM specifications for alloy magnesium. "Off-specification pure" magnesium is pure primary magnesium containing magnesium scrap, secondary magnesium, oxidized magnesium or impurities (whether or not intentionally added) that cause the primary magnesium content to fall below 99.8 percent by weight. It generally does not contain, individually or in combination, 1.5 percent or more, by weight, of the following alloying elements: aluminum, manganese, zinc, silicon, thorium, zirconium, and rare earths.

[4] Alloy magnesium contains 50 percent or greater, but less than 99.8 percent, primary magnesium, by weight, and one or more of the following: aluminum, manganese, zinc, silicon, thorium, zirconium, and rare earths, in amounts which, individually or in combination, constitute not less than 1.5 percent of the material, by weight. Products that meet the aforementioned description but do not conform to ASTM specifications for alloy magnesium are not included in the definition of alloy magnesium. In addition to primary magnesium, alloy magnesium may contain magnesium scrap, secondary magnesium, or oxidized magnesium in amounts less than the primary magnesium itself.

Commerce to be sold in the United States at LTFV.

Background

The Commission instituted these investigations effective November 7, 1994, following preliminary determinations by the Department of Commerce that imports of magnesium from China, Russia, and Ukraine were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. § 1673b(b)). Notice of the institution of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of December 7, 1994 (59 FR 63105). The hearing was held in Washington, DC, on March 28, 1995, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on May 5, 1995. The views of the Commission are contained in USITC Publication 2885 (May 1995), entitled "Magnesium from China, Russia, and Ukraine: Investigations Nos. 731–TA–696–698 (Final)."

Issued: May 11, 1995.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–12133 Filed 5–16–95; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 731–TA–699 (Final)]

Stainless Steel Angle From Japan

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Japan of stainless steel angle, provided for in subheading 7222.40.30 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

Background

The Commission instituted this investigation effective November 10, 1994, following a preliminary determination by the Department of Commerce that imports of stainless steel angle from Japan were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. § 1673b(b)). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of December 7 (59 FR 63106). The hearing was held in Washington, DC, on March 30, 1995, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on May 10, 1995. The views of the Commission are contained in USITC Publication 2887 (May 1995), entitled Stainless Steel Angle from Japan: Investigation No. 731–TA–699 (Final).

Issued: May 11, 1995.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–12134 Filed 5–16–95; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980

Notice is hereby given that on April 28, 1995, a proposed Partial Consent Decree in *United States* v. *Abbott Laboratories, et al.*, Civil Action No. 3–95–1308–17, was lodged with the United States District Court for the District of South Carolina. The Complaint, brought pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§ 9606 and 9607, seeks injunctive relief to abate an imminent and substantial endangerment to the public health or welfare or the environment, and recovery of response costs incurred or to be incurred by the United States in connection with the Bluff Road Superfund Site in Richland County, South Carolina (the "Site"). The consent decree, which provides for partial funding of the Remedial Design and Remedial Action ("RD/RA") selected by EPA for the Site, is the final consent decree for the Site and brings to a conclusion the governments efforts to secure cleanup of on-Site contamination by private potentially responsible parties ("PRPs").

Under the terms of this proposed decree, the group of settling PRPs that implemented and completed the Remedial Investigation/Feasibility Study at the Site under an EPA Administrative Order by Consent ("AOC"), will also contribute to the funding of the RD/RA. The terms setting forth the responsibilities of the settling PRPs in this proposed decree incorporate the terms on funding as originally set forth in the AOC. Payments under the proposed decree, combined with funding by other PRPs under a consent decree entered in *U.S.* v. *Allied*, Civ. No. 92–1108–0, on September 28, 1992, represent 99.30% of the total past costs incurred by EPA at the Site, and 100% of future costs to be incurred by EPA in overseeing implementation of the remedy at the Site. The responsibility of implementing the RD/RA lies with other settling PRPs under the *Allied* consent decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530. Comments should refer to the *United States* v. *Abbott Laboratories, et al.*, D.O.J. Ref. 90–7–1–61D.

The proposed Consent Decree may be examined at the Office of the United States Attorney for the District of South Carolina, 1441 Main Street, Ste. 500, Columbia South Carolina, and at the Environmental Enforcement Section Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please enclose a check in the amount of $34.75

(25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel M. Gross,

Acting Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–12076 Filed 5–16–95; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, notice is hereby given that a proposed partial consent decree ("Decree") with Chico Dairy Co. ("Chico") in *United States of America* v. *Chico Dairy Co. and David Marshall*, C.A. No. 1:94CV28 (D.N.W.Va) was lodged on May 3, 1995 with the United States District Court for the Northern District of West Virginia. This proposed Decree will, if entered, settle claims filed against Chico in the above proceeding by the United States, on behalf of the Environmental Protection Agency ("EPA"), pursuant to Section 113 of the Clean Air Act ("CAA"), 42 U.S.C. § 7401 *et seq.*, for violations of the National Emission Standard for Hazardous Air Pollution ("NESHAP") for asbestos. (The United States is not settling its claims against David Marshall, which were brought in the same proceeding for violations of the Asbestos NESHAP.)

The proposed Decree requires Chico to pay a civil penalty of $130,000 and to comply hereafter with the Asbestos NESHAP. The Decree binds Chico to detailed notification procedures, should Chico demolish or renovate (or contract for the demolition or renovation of) any building containing sufficient amounts of asbestos to cause the Asbestos NESHAP to apply. Further, Chico must inspect any building it seeks to demolish or renovate (or have demolished or renovated) to determine the amounts of regulated asbestos material contained therein and permit EPA entry to any such demolition or renovation site. In the event the Asbestos NESHAP should apply to any such demolition or renovation site, Chico is bound to appoint an onsite representative, whose qualifications and duties are set forth in detail in the Decree.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States of America* v. *Chico Dairy Co. and David Marshall*, C.A. No. 1:94CV28 (D.N.W.Va), DOJ Ref. #90–5–2–1–1877. The proposed Decree may be examined at the Office of the United States Attorney for the Northern District of West Virginia, 1125–1141 Chapline Street, Wheeling, West Virginia 26003; the Region III Office of the Environmental Protection Agency, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, 202–624–0892. A copy of the proposed Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $5.25 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–12077 Filed 5–16–95; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on May 2, 1995, a proposed Consent Decree in *United States v. J.B. Waste Oil, Inc.*, Civil No. CV–90–2017, was lodged with the United States District Court for the Eastern District of New York. The proposed Consent Decree settles the United States' claims that the defendant had violated provisions of the Resource Conservation and Recovery Act, 42 U.S.C. § 6921 *et seq.*, governing hazardous waste management, and the regulations promulgated thereunder at 40 CFR Parts 260–279, by improperly handling and marketing hazardous waste and/or off-specification used oil.

Under the terms of the Consent Decree, settling defendant will pay $20,000 in civil penalties, and implement a detailed work plan that contains testing, employee training, and record-keeping requirements.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, U.S. Department of Justice, Washington, D.C. 20530, and should refer to *United States v. J.B. Waste Oil, Inc.*, D.O.J. Ref. 90–7–1–495.

The proposed Consent Decree may be examined at the Region II Office of the United States Environmental Protection Agency, 290 Broadway, New York, NY 10007 and at the Environmental Enforcement Section Document Center, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005 (202 624–0892). A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $7.50 (25 cents per page reproduction cost) made payable to Consent Decree Library.

Joel M. Gross,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–12078 Filed 5–16–95; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed amendment to the consent decree in *United States* v. *Ketchikan Pulp Company*, Civil Action No. A92–587, was lodged on March 21, 1995 with the United States District Court for the District of Alaska. The complaint in this case alleged claims arising out of the discharge of pollutants from Ketchikan Pulp Company's pulp mill into Ward Cove, near Ketchikan, Alaska. The decree provides for payment of a civil penalty, as well as injunctive relief, including remediation of Ward Cove sediments and an environmental audit of the mill. The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed amendment. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Ketchikan Pulp Company*, DOJ Ref. 90–5–1–1–3930.

The proposed amendment may be examined at the office of the United States Attorney, 222 W. 7th Ave., Anchorage, Alaska, the Region 10 Office of the Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy of the consent decree, please enclose a check in the amount of $10.50 (25 cents per page reproduction costs) payable to the "Consent Decree Library". When requesting a copy please refer to *United States* v. *Ketchikan Pulp Company*, DOJ Ref. 90–5–1–1–3930.

Joel Gross,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–12079 Filed 5–16–95; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of May, 1995.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) that a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) that sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–30,787; Bridgestone/Firestone, Inc., Decatur, IL

TA–W–30,786; Sandusky Plastic, Inc., Sandusky, OH

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–30,923; Angel Knitwear, Inc., South Hackensack, NJ

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–30,929; National Micronetics, Inc., Kingston, NY

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–30,806; Enron Corp., Enron Gas Processing Transwestern Pipeline Co, Hobbs, NM

Increased imports did not contribute importantly to worker separations at the firm. In addition, US aggregate import statistics for dry natural gas were not significant prior to the sale of the subject from (1993–1994).

TA–W–30,845; Quantum Chemical Corp, Hanson PLC, Port Arthur, TX

Increased imports did not contribute importantly to worker separations at the firm.

Affirmative Determinations for Worker Adjustment Assistance

TA–W–30,933; T & H Drilling & Development Corp., Odessa, TX

A certification was issued covering all workers separated on or after April 5, 1994.

TA–W–30,784; IBM Corp., Integrated Systems Solutions Corp. Co., Endicott, NY

A certification was issued covering all workers separated on or after February 15, 1995.

TA–W–30,894; Jen Bel, Inc., Youngstown, OH

A certification was issued covering all workers separated on or after March 23, 1994.

TA–W–30,913; Heubein, Inc., Hartford, CT

A certification was issued covering all workers separated on or after March 25, 1994.

TA–W–30,926; Douglas Furniture, Bedford Park, IL

A certification was issued covering all workers separated on or after April 6, 1994.

TA–W–30,878; Russell-Neuman, Inc., Stamford, TX

A certification was issued covering all workers separated on or after March 17, 1994.

TA–W–30,891; Citation Oil & Gas Corp., Hays, KS

A certification was issued covering all workers separated on or after March 3, 1994.

TA–W–30,909; Redpath Apparel Group, Falfurrias, TX

A certification was issued covering all workers separated on or after March 22, 1994.

TA–W–30,879; Cabot Oil and Gas Corp., Houston, TX & Operating at Various Locations in the Following States: A; CO, B; OK, C; PA, D; TX, E; WV, F; WY

A certification was issued covering all workers separated on or after March 23, 1994.

TA–W–30,896; Phillips Petroleum Co., Exploration & Production Group (dba Exploration Div. & North American Production Div), Bartlesville, OK & Operating at Various Locations in the Following States: A; OK, B; KS, C; AR, D; TX, E; LA, F; NM, G; CA, H; AL, I; AK

A certification was issued covering all workers separated on or after March 23, 1994.

TA–W–30,944; Donkenny Apparel, Inc., Elkton Garment Plant, Elkton, VA

A certification was issued covering all workers separated on or after April 10, 1994.

TA–W–30,883; Jaclyn, Inc., West New York NJ

A certification was issued covering all workers separated on or after March 21, 1994.

TA–W–30,932; Thomas & Betts Co., Elizabeth, NJ

A certification was issued covering all workers separated on or after April 12, 1994.

TA–W–30,822; Mosbacker Energy Co., Houston, TX

A certification was issued covering all workers separated on or after February 28, 1994.

TA–W–30,851; Hancock Lumber, Inc., dba Diamond Pacific Milling & Dry Kilns, Inc., Salem, OR

A certification was issued covering all workers separated on or after February 20, 1994.

TA–W–30,914 & A; Dual Marine Drilling Co., Dallas, TX and Broussard, LA

A certification was issued covering all workers separated on or after March 1, 1994.

TA–W–30,870; Philips Components, Saugerties, NY

A certification was issued covering all workers separated on or after March 20, 1994.

TA–W–30,863; Johnson Controls, Inc., Garland, TX

A certification was issued covering all workers separated on or after March 15, 1994.

TA–W–30, 802; Fisher Controls International, Inc., Marshalltown, IA

A certification was issued covering all workers separated on or after February 27, 1994.

TA–W–30, 839; Chris Craft Industrial Products, Inc., Waterford, NY

A certification was issued covering all workers separated on or after March 17, 1994.

TA–W–30, 993; Alsy Lighting, Inc., Ellwood City, PA

A certification was issued covering all workers separated on or after April 25, 1994.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a) Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the months of May, 1995.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(A) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(B) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased.

(C) That the increase in imports contributed importantly to such worker's separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(2) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

None

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–00425; Val Mode Lingerie, Inc., Bridgeton, NJ

A certification was issued covering all workers at Val Mode Lingerie, Inc., Bridgeton, NJ separated on or after March 29, 1994.

NAFTA–TAA–00428; Stetson Cedar Products, Forks, Washington

A certification was issued covering all workers at Stetson Cedar Products, Forks, Washington separated on or after April 10, 1994.

NAFTA–TAA–00419; Power Systems, Inc., Bloomfield, CT

A certification was issued covering all workers at Power Systems, Inc., Bloomfield, CT separated on or after March 30, 1994.

NAFTA–TAA–00412; Polk Audio, Inc., Baltimore, MD

A certification was issued covering all workers at Polk Audio, Inc., Baltimore, MD separated on or after March 27, 1994.

NAFTA–TAA–00414; Gentek Building Products, Inc., Woodbridge, NJ

A certification was issued covering all workers of Gentek Building Products, Inc., Woodbridge, NJ separated on or after March 29, 1994.

NAFTA–TAA–00411; Anchor Hocking Packaging Co., Closure Div., Glassboro, NJ

A certification was issued covering all workers of Anchor Hocking Packaging Co., Closure Div., Glassboro, NJ separated on or after March 20, 1994.

NAFTA–TAA–00416; Cabot Oil & Gas Corp., Houston, TX & Operating in The Following Locations: A; CO, B; OK, C; PA, D; TX, E; WV, F; WY

A certification was issued covering all workers of Cabot Oil & Gas Corp., Houston, TX & operating in various locations, in Colorado, Oklahoma, Pennsylvania, Texas, West Virginia & Wyoming separated on or after March 31, 1994.

NAFTA–TAA–00407; Summit Timber Co., Darrington, WA

A certification was issued covering all workers of Summit Timber Co., Darrington, WA separated on or after March 23, 1994.

NAFTA–TAA–00409; Strattec Security Corp., (Including Persons Leased From Briggs & Stratton Corp) Glendale, WI

A certification was issued covering all workers of Strattec Security Corp., Glendale, WI (including persons formally employed by Briggs and Stratton Corp & leased to the subject firm) separated on or after March 24, 1994.

NAFTA–TAA–00408; Smith Valve Corp., Whitinsville, MA

A certification was issued covering all workers of Smith Valve Corp., Whitinsville, MA separated on or after March 27, 1994.

NAFTA–TAA–00421; Campbell Soup Co., Dry Ramen Soup, Sidney, OH

A certification was issued covering all workers of Campbell Soup Co., Dry Ramen Soup, Sidney, OH separated on or after April 3, 1994.

NAFTA–TAA–00418; McCormick Ridge Co., Copalis Crossing, WA

A certification was issued covering all workers of McCormick Ridge Co., Copalis Crossing, WA separated on or after March 31, 1994.

NAFTA–TAA–00426 & 00426A; Collegeville Imagineering, Zionsville, PA and Norristown, PA

A certification was issued covering all workers of Collegeville Imagineering, Zionsville and Norristown, PA separated on or after April 5, 1994.

NAFTA–TAA–00413; Amphenol Corp., Amphenol Aerospace, Torrance, CA

A certification was issued covering all workers of Amphenol Corp., Amphenol Aerospace Div., Torrance, CA separated on or after March 28, 1994.

I hereby certify that the aforementioned determinations were issued during the months of May, 1995. Copies of these determinations are available for inspection in Room C–4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: May 10, 1995.

Victor J. Trunzo,

Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–12166 Filed 5–16–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,204]

Smith Corona Corporation, Cortland, New York; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

Various field offices in the following states:

TA–W–30,205A	California
TA–W–30,205B	Connecticut
TA–W–30,205C	Florida
TA–W–30,205D	Georgia

TA–W–30,205E	Illinois
TA–W–30,205F	Kentucky
TA–W–30,205G	Maryland
TA–W–30,205H	Michigan
TA–W–30,205I	New Jersey
TA–W–30,205J	New York
TA–W–30,205K	Ohio
TA–W–30,205L	Pennsylvania
TA–W–30,205M	Puerto Rico
TA–W–30,205N	Texas
TA–W–30,205O	Wisconsin

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on October 6, 1994, applicable to all workers of Smith Corona Corporation engaged in employment related to the production of typewriters and word processors in Cortland, New York. The notice was published in the **Federal Register** on October 21, 1994 (59 FR 53211).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The findings show that the support workers (sales, service and administrative) of the subject firm, located in various States, should have been included. The intent of the Department's certification is to include all workers of Smith Corona Corporation who were adversely affected by increased imports.

The amended notice applicable to TA–W–30,205 is hereby issued as follows:

All workers of Smith Corona Corporation, Cortland, New York, and at various field offices in California, Connecticut, Florida, Georgia, Illinois, Kentucky, Maryland, Michigan, New Jersey, New York, Ohio, Pennsylvania, Puerto Rico, Texas, and Wisconsin engaged in employment related to the production of typewriters and word processors who became totally or partially separated from employment on or after October 2, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 9th day of May 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–12135 Filed 5–16–95; 8:45 am]

BILLING CODE 4510–30–M

[NAFTA–00293, 00293A, 00293B]

Wirekraft Industries, Inc. Mishawaka, Indiana; et. al Amended Certification Regarding Eligibility to Apply for NAFTA Transitional Adjustment Assistance

In accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on December 29, 1994, applicable to all workers at the subject firm. The notice was published in the **Federal Register** on January 20, 1995 (60 FR 4196).

The certification was subsequently amended March 17, 1995. The amended notice was published in the **Federal Register** on March 27, 1995 (60 FR 15793).

New information received from the company show that the Wirekraft workers in Lakeville, Indiana also produce wire harnesses.

The intent of the Department's certification is to include all workers who were adversely affected by increased imports.

Accordingly, the Department is amending the certification to include the Wirekraft workers in Lakeville, Indiana.

The amended notice applicable to NAFTA—00293 is hereby issued as follows:

All workers of Wirekraft Industries, Inc., Mishawaka, Indiana and Wirekraft Industries' Burcliff Industries, in Marion, Ohio and Lakeville, Indiana who became totally or partially separated from employment on or after December 8, 1993 are eligible to apply for NAFTA–TAA Section 250 of the Trade Act of 1974.

Signed at Washington, D.C. this 1st day of May 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–12136 Filed 5–16–95; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Request for Possible Candidates for Service on Grant Application Review Panels

The National Endowment for the Arts, an independent agency of the Federal Government, was created by Congress in 1965 to encourage and support American arts and artists. Its mission is (1) to foster the excellence, diversity and vitality of the arts in the United States; and (2) to broaden the availability and appreciation of that excellence, diversity and vitality. It fulfills the this mission both by its leadership activities and by awarding grants to nonprofit arts organizations and agencies and to artists of exceptional talent in all fields.

All applications for funding to the Endowment receive three independent levels of review: advisory panels, National Council on the Arts, and the Chairman. At the first level, the advisory panels, composed of arts experts and knowledgeable lay persons from all over the country, review applications and supporting materials, and make recommendations for funding. At the second level, the Presidentially appointed National Council on the Arts considers and reviews panel recommendations in open meeting. Council rejection of applications is final. At the third level, the Chairman makes the final decision on applications recommended by the Council for support.

The Arts Endowment has a centralized database (Automated Panel Bank System) of information on the expertise and arts experience of both arts experts and knowledgeable lay people who are interested in serving on an advisory panel. We are seeking to expand this pool of potential panelists and to facilitate the aesthetic, geographic, racial and cultural diversity of our panels. The purpose of this notice is to solicit expressions of interest by individuals who have demonstrated expertise and ability in artistic genres or arts-related fields and who desire to serve on an Arts Endowment advisory panel. Persons wishing to recommend themselves or others should request a Panelist Profile Form from the Office of Council and Panel Operations by calling 202–682–5433 or by writing to the following address: Office of Council and Panel Operations, National Endowment for the Arts, Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506–0001. A response to this notice does not guarantee selection for panel service.

DATES: Forms and resumes are being accepted indefinitely.

ADDRESSES: Completed Panelist Profile Forms and resumes should be sent to the address above.

SUPPLEMENTARY INFORMATION: The National Endowment for the Arts convenes more than 100 panels each year to review grant applications in the areas of dance, design arts, expansion arts, folk & traditional arts, presenting, literature, media arts, museums, music, opera-musical theater, theater, visual arts, international exchange, and assistance to state and local arts agencies and arts education programs. In addition to artists, arts administrators, scholars, and other such experts, lay persons with substantial experience in particular artistic disciplines or fields also serve on the

panels. The Endowment's authorizing statute defines lay persons as "individuals who are knowledgeable about the arts but who are not engaged in the arts as a profession and are not members of either artists organizations or arts organizations."

The panels meet at the National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506–0001. Panel members receive an honorarium of $100 a day, per diem up to limits set government-wide, and travel expenses.

Dated: May 11, 1995.

Yvonne M. Sabine,

Director, Council & Panel Operations, National Endowment for the Arts.

[FR Doc. 95–12138 Filed 5–16–95; 8:45 am]

BILLING CODE 7537–01–M

Cooperative Agreement for Technical and Administrative Support for Professional Development Activities

AGENCY: National Endowment for the Arts.

ACTION: Notification of availability.

SUMMARY: The National Endowment for the Arts requests proposals leading to the award of a Cooperative Agreement to provide administrative and technical assistance services that will support professional development activities for the State arts agency arts education coordinators. These activities may include, but are not limited to: Regional and national leadership institutes, coordinator exchanges, consultant assistance, a network newsletter, and other means of disseminating information. Responsibilities will include: Communicating effectively with the coordinators regarding support for professional development assistance; disbursing payments and reimbursements for allowable costs; arranging for meeting facilities; producing and distributing any network publications; and subcontracting with special consultants and others as necessary. Funding is anticipated to be $100,000. Those interested in receiving the Solicitation should reference Program Solicitation PS 95–06 in their written request and include two (2) self-addressed labels. Verbal requests for the Solicitation will not be honored.

DATES: Program Solicitation PS 95–06 is scheduled for release approximately June 8, 1995 with proposals due on July 10, 1995.

ADDRESSES: Requests for the Solicitation should be addressed to National Endowment for the Arts, Contracts Division, Room 217, 1100 Pennsylvania Ave., N.W., Washington, D.C. 20506.

FOR FURTHER INFORMATION CONTACT: William I. Hummel, Contracts Division, National Endowment for the Arts, 1100 Pennsylvania Ave., N.W., Washington, D.C. 20506 (202/682–5482).

William I. Hummel,

Director, Contracts and Procurement Division.

[FR Doc. 95–12081 Filed 5–16–95; 8:45 am]

BILLING CODE 7537–01–M

National Endowment for the Arts; Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Folk & Traditional Arts Advisory Panel (Folks Art Organizations and State Apprenticeships Section) to the National Council on the Arts will be held on June 13–16, 1995. The panel will meet from 9:00 a.m. to 6:30 p.m. on June 13 and 15; from 9:00 a.m. to 10:30 p.m. on June 14; and from 9:00 a.m. to 4:00 p.m. on June 16 in Room 716, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506.

A portion of this meeting will be open to the public from 1:00 p.m. to 2:30 p.m. on June 15 for a discussion of policy issues.

Remaining portions of this meeting from 9:00 a.m. to 6:30 p.m. on June 13; from 9:00 a.m. to 10:30 p.m. on June 14; from 9:00 a.m. to 1:00 p.m. and from 2:30 p.m. to 6:30 p.m. on June 15; and from 9:00 a.m. to 4:00 p.m. on June 16 are for the purpose of panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the Panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington, D.C., 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Committee Management Officer, National Endowment for the Arts, Washington, D.C., 20506, or cáll 202/682–5433.

Dated: May 11, 1995.

Yvonne M. Sabine,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 95–12139 Filed 5–16–95; 8:45 am]

BILLING CODE 7537–01–M

Meetings of Humanities Panel

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506.

FOR FURTHER INFORMATION CONTACT: David C. Fisher, Advisory Committee Management Office, National Endowment for the Humanities, Washington, D.C. 20506; telephone (202) 606–8322. Hearing-impaired individual are advised that information on this matter may be obtained by contracting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; or (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c) (4) and (6) of section 552b of Title 5, United States Code.

1. *Date:* June 1–2, 1995.
Time: 9:00 a.m. to 5:30 p.m.
Room: 430.
Program: This meeting will review applications Special Projects for the Special Competition deadline of April 28, 1995, submitted to the Division of Public Programs, for projects beginning after August, 1995.

2. *Date:* June 5–6, 1995.
Time: 9:00 a.m. to 5:30 p.m.
Room: 430.
Program: This meeting will review applications submitted to Special Projects for the Special Competition deadline of April 28, 1995, for projects beginning after August, 1995.

3. *Date:* June 9, 1995.
Time: 9:00 a.m. to 5:30 p.m.
Room: 430.
Program: This meeting will review applications submitted to Special Projects for the Special Competition deadline of April 28, 1995, for projects beginning after August, 1995.

4. *Date:* June 12, 1995.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review "Nature, Technology, and Human Understanding" applications submitted by state humanities councils to Federal-State Partnership, for projects beginning after November, 1995.

5. *Date:* June 10, 1995.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for projects in Interpretive Research: Basic Research Projects, submitted to the Division of Research Programs, for projects beginning after January 1, 1996.

David C. Fisher,

Advisory Committee Management Officer.

[FR Doc. 95–12050 Filed 5–16–95; 8:45 am]

BILLING CODE 7536–01–M

National Endowment for the Arts; Notice Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Literature Advisory Panel (Fellowships for Translators Section) to the National Council on the Arts will be held on June 20–21, 1995. The panel will meet from 9:00 a.m. to 6:00 p.m. on June 20; and from 9:00 to 5:00 p.m. on June 21 in Room 730, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506.

A portion of this meeting will be open to the public on June 21 from 3:00 p.m. to 5:00 p.m. for a guideline review and policy discussion.

The remaining portions of this meeting from 9:00 a.m. to 6:00 p.m. on June 20 and from 9:00 a.m. to 3:00 p.m. on June 21 are for the purpose of panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the Panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington D.C., 20506 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Committee Management Officer, National Endowment for the Arts, Washington, D.C., 20506, or call 202/682–5433.

Dated: May 11, 1995.

Yvonne M. Sabine,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 95–12140 Filed 5–16–95; 8:45 am]

BILLING CODE 7537–01–M

National Endowment for the Arts; Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Overview/Special Projects Section) to the National Council on the Arts will be held on June 6–8, 1995 from 9:00 a.m. to 6:00 p.m. on June 6; from 9:00 a.m. to 5:30 p.m. on June 7; and from 9:00 a.m. to 5:00 p.m. on June 8 in Room M–14, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506.

Portions of this meeting will be open to the public on June 6 from 4:30 p.m. to 5:00 p.m. for a policy discussion and guidelines review; from 9:00 a.m. to 5:30 p.m. on June 7 for a discussion of the trends, opportunities, and priorities throughout the various music fields; trends in private philanthropy regarding the music fields; and current Music Program funding categories. On June 8, the meeting will be open from 9:00 a.m. to 5:00 p.m. to identify the future priorities of the Music Program; for a discussion of possible changes to the Music Program funding categories based on future priorities and probable reduced funding; and to identify future partnership possibilities.

The remaining sessions of this meeting from 9:00 a.m. to 4:30 p.m. and from 5:00 p.m. to 6:00 p.m. on June 6 are for the purpose of panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the Panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington, D.C., 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Committee Management Officer, National Endowment for the Arts, Washington, D.C., 20506, or call 202/682–5433.

Dated: May 11, 1995.

Yvonne M. Sabine,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 95–12141 Filed 5–16–95; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Collection of Information Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting a notice of information collection that will affect the public. Interested persons are invited to submit comments by June 16, 1995. Copies of materials may be obtained at the NSF address or telephone number shown below.

(A) *Agency Clearance Officer.* Herman G. Fleming, Division of Contracts, Policy, and Oversight, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, or by telephone (703) 306–1243.

Comments may also be submitted to:

(B) *OMB Desk Officer.* Office of Information and Regulatory Affairs, ATTN: Jonathan Winer, Desk Officer, OMB, 722 Jackson Place, Room 3208, NEOB, Washington, DC 20503.

Title: NSF Informal Science Education Survey

Affected Public: Individuals, Business or other for-profit, Not for profit

Respondents/Reporting Burden: 965 respondents: average 40 minutes per response.

Abstract: The National Science Foundation needs this information to assess the impact of its Informal Science Education Program on three diverse populations: grantees, grantee organizations, and individuals who work in the sciences. These data, in aggregate statistical form, serve as a database for a program evaluation.

Dated: May 11, 1995.

Herman G. Fleming,

Reports Clearance Officer.

[FR Doc. 95–12029 Filed 5–16–95; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket 40–3392]

Finding of No Significant Impact and Notice of Opportunity for a Hearing; Renewal of Source Material License Sub–526 AlliedSignal, Inc. Metropolis, Illinois

The U.S. Nuclear Regulatory Commission is considering the renewal of Source Material License SUB–526 for the continued operation of the AlliedSignal, Inc. (Allied), UF_6 conversion facility, located in Metropolis, Illinois.

Summary of the Environmental Assessment

Identification of the Proposed Action

The proposed action is the renewal of Allied's Source Material License SUB–526 for 10 years. With this renewal, the Metropolis facility will continue to convert natural uranium ore concentrates into UF_6 for the commercial nuclear power industry. The production of UF_6 is one phase in the fuel cycle resulting in production of fuel elements for nuclear reactors.

The Need for the Proposed Action

Allied performs a necessary service for the commercial nuclear power industry by converting natural uranium ore concentrates into UF_6. The UF_6 product is then shipped to gaseous diffusion plants for the enrichment of the uranium (U–235) isotope; following enrichment, the uranium is converted into fuel for use in nuclear power reactors. Currently, Allied is the only UF_6 conversion facility operating within the United States. Denial of the license renewal for Allied's Metropolis facility is an alternative available to the NRC, but would require the construction of a new facility at another site.

Environmental Impacts of the Proposed Action

The radiological impacts of the continued operation of the Metropolis facility were assessed by calculating the radiation dose to the maximally exposed individual located at the nearest residence and the collective radiation dose to the local population living within 80 kilometers (50 miles) of the plant site.

Doses From Routine Airborne Releases

Atmospheric releases were determined for three locations at the Metropolis facility: (1) the feed material building, (2) the uranium recovery facility, and (3) the ore sampling plant. Based on information provided in the application, the projected annual average quantity of uranium released from each emission point was estimated. The isotopic distribution of the uranium and the solubility class of the uranium were also determined. Relatively small amounts of thorium-230 and radium-226 are also released from the Metropolis facility. The radiation doses resulting from atmospheric releases were estimated using the XOQDOQ and GENII computer codes. The maximally exposed individual was located at the nearest residence, which was 564 meters (1,850 feet) north northeast of the Metropolis facility. The radiation dose Total Effective Dose Equivalent (TEDE) to the nearest resident is estimated to be 1.5 mrem per year. This estimated radiation dose is less than the limit of 10 mrem per year established by the U.S. Environmental Protection Agency (EPA) in 40 CFR Part 61 for the air pathway and less than the limit of 25 mrem per year established by the EPA in 40 CFR Part 190 for all pathways. It is also less than the 100 mrem per year limit established by the NRC in 10 CFR Part 20. The highest organ dose is to the lungs from insoluble forms of uranium. The estimated lung dose of 9.3 mrem per year is less than the dose limit established in 40 CFR Part 190; the thyroid doses were also an insignificant fraction of the 75 mrem per year thyroid dose limit established in 40 CFR Part 190.

The population surrounding Allied's facility is about 471,410 people, based on 1990 census data. The collective dose to the surrounding population is estimated to be 4.1 person-rem per year. Based on an average background radiation dose of 0.360 rem per year for individuals in the U.S., the same population would receive about 170,000 person-rem per year from background radiation. Thus, the collective radiation dose associated with atmospheric releases from Allied's facility is a very small percentage (0.0024%) of the collective radiation dose from background radiation for these same people.

Doses From Aqueous Releases

The projected annual average quantity of radionuclides released to the Ohio River from the Metropolis facility was estimated using information provided by the applicant. The GENII computer code was used to estimate radiation doses through ingestion, shoreline exposure, and water submersion pathways. The estimated radiation dose (TEDE) to the maximally exposed individual located 8 kilometers (5 miles) downstream of the Metropolis facility is estimated to be 0.0013 mrem per year. This estimated radiation dose is far less than the 100 mrem per year limit established by the NRC in 10 CFR Part 20 and the 25 mrem per year limit established by EPA in 40 CFR Part 190. The estimated radiation dose of 0.0013 mrem per year is also far less than the dose of 4 mrem per year that is the basis for the drinking water standards contained in 40 CFR Part 141.

The estimated collective radiation dose to the population (4,846 people) located in Cairo, Illinois, as a result of liquid releases is estimated to be 0.0030 person-rem per year. Based on an average background radiation dose of 0.360 rem per year for individuals in the U.S., this same population would receive about 1,700 person-rem per year from background radiation; the collective radiation dose associated with liquid releases from Allied's Metropolis facility thus is a small percentage of the collective radiation dose from background.

Accident Evaluation

In the Environmental Assessment, the NRC evaluated a suite of five accident scenarios. Four of the five scenarios evaluated the accidental release of radioactive materials. The intakes and predicted doses for three of the radiological accident scenarios were small with negligible associated health impacts. The fourth radiological accident, rupture of a UF_6 cylinder (liquid), produced a dose of 3.9 rem at the nearest resident. While the potential consequences of such an event would be severe, the likelihood of such an event is low because of design and procedural controls. The fifth accident analyzed, the release of gaseous ammonia, would be expected to produce noticeable, but non-life-threatening effects both onsite and offsite. Given the low likelihood for these accidents, it is concluded that the proposed license renewal will not have a significant impact on the general population.

Alternatives to the Proposed Action

Alternatives to the proposed action include denial of Allied's renewal application. Not granting a license renewal for the facility would cause Allied to cease production of UF_6 at this site. The only benefits to be gained by nonrenewal would be the cessation of the minor environmental impact from operation of the facility. Because Allied's site is the only operating facility to convert uranium ore to UF_6, denial of a license for Allied would result in the transfer of the activity and associated environmental impact to an alternative site.

Agencies and Persons Consulted

The staff utilized the application dated July 11, 1994, and additional information dated September 6, and November 16, 1994. Discussions were held with the Agreement States of Illinois and Kentucky. The Region III inspectors and Allied representatives were also consulted in preparing this document.

Conclusion

The staff concludes that the environmental impacts associated with the proposed license renewal for continued operation of Allied's Metropolis facility are expected to be insignificant.

Finding of No Significant Impact

The NRC has prepared an Environmental Assessment related to the renewal of Source Material License SUB–526. On the basis of the assessment, NRC has concluded that environmental impacts that would be created by the proposed licensing action would not be significant and do not warrant the preparation of an Environmental Impact Statement. Accordingly, it has been determined that a Finding of No Significant Impact is appropriate.

The Environmental Assessment and the documents related to this proposed action are available for public inspection and copying at NRC's Public Document Room at the Gelman Building, 2120 L Street NW, Washington, DC.

Opportunity for a Hearing

Any person whose interest may be affected by the issuance of this renewal may file a request for a hearing. Any request for hearing must be filed with the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, within 30 days of the publication of this notice in the **Federal Register**; be served on the NRC staff (Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852), and on the licensee (AlliedSignal, Inc., Route 45 North, P.O. Box 430, Metropolis, IL 62960); and must comply with the requirements for requesting a hearing set forth in the Commission's regulation, 10 CFR Part 2, Subpart L, "Informal Hearing Procedures for Adjudications in Materials Licensing Proceedings."

These requirements, which the requestor must address in detail, are:

1. The interest of the requestor in the proceeding;

2. How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing;

3. The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstances establishing that the request for hearing is timely, that is, filed within 30 days of the date of this notice.

In addressing how the requestor's interest may be affected by the proceeding, the request should describe the nature of the requestor's right under the Atomic Energy Act of 1954, as amended, to be made a party to the proceeding; the nature and extent of the requestor's property, financial, or other (i.e., health, safety) interest in the proceeding; and the possible effect of any order that may be entered in the proceeding upon the requester's interest.

Dated at Rockville, Maryland, this 11th day of May 1995.

For the Nuclear Regulatory Commission.

Robert C. Pierson,

Chief, Licensing Branch, Division of Fuel Cycle Safety and Safeguards, NMSS.

[FR Doc. 95–12103 Filed 5–16–95; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 72–10 (50–282/306)

Northern States Power Co. Prairie Island Nuclear Generating Plant Independent Spent Fuel Storage Installation; Exemption

I

Northern States Power Company (NSP or the licensee) holds materials license (SNM–2506) for receipt and storage of spent fuel from its Prairie Island Nuclear Generating Plant at an independent spent fuel storage installation (ISFSI) located on the Prairie Island Nuclear Generating Plant site. This facility is located at the licensee's site in Goodhue County, Minnesota.

II

Pursuant to 10 CFR 72.7, the Nuclear Regulatory Commission (NRC) may grant exemptions from the requirements of the regulations in 10 CFR Part 72 as it determines are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest.

Section 72.82(e) of 10 CFR Part 72 requires each licensee to provide a report of preoperational test acceptance criteria and test results to the appropriate NRC Regional Office with a copy to the Director, Office of Nuclear Material Safety and Safeguards, at least 30 days prior to receipt of spent fuel or high level radioactive waste for storage in an ISFSI. The purpose of the 30-day period is to allow the NRC an opportunity to review test results prior to initial operation of the ISFSI.

III

By letter dated January 4, 1995, the licensee requested a schedular exemption pursuant to 10 CFR 72.7 from the requirement of 10 CFR 72.82(e). The licensee committed to submit its report no less than 3 days prior to receipt of spent fuel at its ISFSI.

In July 1993, NSP suspended cask fabrication and site construction activities until the Minnesota State Legislature authorized the ISFSI on May 10, 1994. After authorization, NSP resumed the ISFSI construction and the facility was completed in November 1994. The fist cask was received on January 26, 1995.

The NRC conducted an inspection of the quality assurance records related to the manufacture of the cask at vendor sites, and on October 11, 1994, and January 25, 1995, issued Inspection Reports Nos. 72–0010/94–210 and 72–0010/94–212, respectively, to NSP. On February 23, 1995, and March 8, 1995, NSP responded to the Notice of

Violation in the inspection report and provided additional information. In a letter dated March 21, 1995, NRC found NSP's corrective actions acceptable. Since receipt of the first cask on site, NRC has observed selected portions of the preoperational testing activities and has reviewed associated test procedures and results. In addition, during the weeks of April 17, and April 24, 1995, the NRC conducted a special team inspection of cask fabrication records and preoperational test results at the Prairie Island Nuclear Generating Plant. On April 28, 1995, NRC held an inspection exit meeting, which was open to public attendance, in Red Wing, Minnesota, to discuss its inspection findings and conclusions. NSP submitted the report of preoperational test acceptance criteria and test results required by 10 CFR 72.83(e) to the NRC on April 20, 1995. At the inspection exit meeting held on April 28, 1995, the following five outstanding issues and their resolution were:

Issue (1): Fabrication of the temperature and pressure monitoring equipment was not complete.

Resolution: NRC Resident Inspectors observed completion of installation of fabricated equipment.

Issue (2): NRC review of the unloading procedure was not complete.

Resolution: NRC Resident Inspectors have completed their review and all identified concerns have been acceptably resolved.

Issue (3): NRC review of licensee disposition of weld discrepancies was not complete.

Resolution: NRC staff have completed their review and have accepted the licensee's dispositions.

Issue (4): Resolution of cask hydrostatic testing requirements was not complete.

Resolution: NRC staff have resolved the cask hydrostatic testing requirements. In addition, the licensee performed a 10 CFR 72.48 evaluation to revise the Safety Analysis Report. The Resident Inspectors have reviewed the evaluation and found it acceptable.

Issue (5): NRC review of adequate spent fuel retrievability was not complete.

Resolution: The licensee provided information regarding retrievability in a letter dated May 3, 1995. In a letter to NSP dated May 5, 1995, NRC found NSP's rationale acceptable.

Based on the resolutions described above, the staff has completed its review and is granting the exemption.

An exemption to the requirement of 10 CFR 72.82(e) for a 30-day waiting period would allow NSP to start loading the first cask before May 20, 1995, the end of the 30-day period.

IV

As previously described in the foregoing discussion, and based on its oversight and inspection of NSP's ISFSI preoperational testing activities, the NRC finds that NSP has satisfactorily addressed all of the outstanding safety issues associated with cask loading, handling, and storage. The results of the NRC activities described above confirm there is adequate assurance that the cask can perform its intended safety functions and that NSP has the necessary equipment and procedures in place to safely conduct spent fuel cask handling activities.

Accordingly, the NRC has determined in accordance with 10 CFR 72.7 that this exemption is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest. Therefore, the NRC hereby grants the licensee an exemption from the 30-day waiting period required by 10 CFR 72.82(e) as requested by the licensee's letter of January 4, 1995.

The documents related to this proposed action are available for public inspection and for copying (for a fee) at the NRC Public Document Room, 2120 L Street, NW, Washington, DC 20555, and at the Local Public Document Room located in the Minneapolis Public Library, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Pursuant to 10 CFR 51.32, the NRC has determined that granting this exemption will have no significant impact on the quality of the human environment (60 FR 13477).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 11 day of May 1995.

Donald A. Cool,

Director, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 95–12100 Filed 5–16–95; 8:45 am]

BILLING CODE 7590–01–M

Elimination of Low-Level Radioactive Waste Topical Report Review Program

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of elimination of program.

SUMMARY: This notice is in reference to low-level radioactive waste (LLW) topical reports (TRs) submitted in support of the implementation of 10 CFR Part 61, or compatible Agreement State regulations. The U.S. Nuclear Regulatory Commission's Division of Waste Management (DWM) is currently responsible for the Federal review of these TRs. However, due to higher priorities and limited staff availability, DWM has decided to terminate its LLW TR review program.

ADDRESSES: Documents referred to in this notice may be examined at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC. Copies of technical positions and topical report review procedures may be obtained from the Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, or by calling the contact listed below.

FOR FURTHER INFORMATION CONTACT: Robert J. Lewis, Engineering and Geosciences Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555; telephone (301) 415–6680.

SUPPLEMENTARY INFORMATION: To help ensure a cost effective and orderly implementation of 10 CFR Part 61, and since many licensees utilize similar services from the same firm, the U.S. Nuclear Regulatory Commission issued a **Federal Register** notice (48 FR 40512) encouraging these firms to submit, for NRC review, generic topical reports on these services.

To meet 10 CFR 20.2006(d), 10 CFR 61.55, and 10 CFR 61.56, radioactive waste generators and disposal operators must demonstrate compliance with the waste classification and waste form requirements. One acceptable approach to satisfying these regulations is to reference previously reviewed and approved TRs. A TR is a document submitted by an industry organization (i.e., a vendor) for review by NRC or an Agreement State, outside of specific licensing action. LLW TRs typically include reports on qualification of high-integrity containers, solidification procedures, or computer codes designed to classify waste.

The ultimate acceptability of a particular waste is subject to the disposal restrictions and requirements specified by the waste disposal facility operators and governing Agreement State regulatory agencies. NRC approved LLW TRs are often accepted by a State as an acceptable means of demonstrating compliance with the State equivalent regulations to 10 CFR Part 61. However, due to higher priorities and limited staff availability, DWM has decided to terminate the LLW TR review program. The number of LLW disposal site applications currently under regulatory review and the number of new waste processing technologies do not support the need for a centralized review of generic LLW TRs by NRC.

DWM is currently not accepting new LLW TRs for review. Further, TRs currently under review but not showing progress towards resolution of open issues (e.g., no vendor or NRC action in the last six months) are being placed into "discontinued" status. Existing TRs currently in a "discontinued" or "withdrawn" status will not be reopened, nor will amendments or revisions to "approved" TRs be reviewed. In the future, NRC suggests that vendors contact individual disposal facility operators, or the regulatory agency exercising jurisdiction over that disposal facility, for guidance on the review and acceptance of a specific waste form and classification proposal, such as a topical report.

Dated at Rockville, Maryland, this 11th day of May, 1995.

For the U.S. Nuclear Regulatory Commission.

Michael J. Bell,

Chief, Engineering and Geosciences Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 95–12102 Filed 5–16–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–528, 50–529, 50–530; License Nos. DPR–67, NPF–16, DPR–31, DPR–41]

Florida Power & Light Company (Turkey Point and St. Lucie Nuclear Generating Stations); Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Enforcement, has issued a decision concerning the Petition filed by Mr. Thomas J. Saporito, Jr., (Petitioner) on Marcy 7, 1994. The Petition requested that the NRC: (1) Submit an amicus curiae brief to the Department of Labor (DOL) regarding his complaints numbered 89–ERA–007 and 89–ERA–017 concerning the Petitioner's claim that the licensee retaliated against him for engaging in protected activity during his employment at Turkey Point Nuclear Station in violation of 10 CFR 50.7; (2) institute a show cause proceeding pursuant to 10 CFR 2.202 to modify, suspend or revoke Florida Power & Light Company's licenses authorizing the operation of Turkey Point; and (3) institute a show cause proceeding pursuant to 10 CFR 2.202 and order the licensee to provide the Petitioner with a "make whole" remedy, including but not limited to, immediate reinstatement to his previous position, back wages and front pay with interest, compensatory damages for pain and suffering, and a posting requirement to offset any "chilling effect" Petitioner's discharge may have had upon other employees at the Turkey Point and St. Lucie Stations.

On March 13, 1994, Petitioner supplemented the Petition, reiterating the three requests noted in the preceding paragraph and providing additional information.

On April 7, 1994, Petitioner supplemented the Petition providing a chronology of events that relate to his request for action against FP&L. Petitioner also described what Petitioner believes should be the content of the *amicus curiae* brief to DOL, including the fact that a licensee employee can go directly to NRC with safety concerns, the NRC instructed Petitioner not to divulge his safety concerns to FP&L, that Petitioner's conduct should not be considered insubordinate, and the FP&L engaged in illegal conduct when its Vice President interrogated Petitioner about his safety concerns.

On June 7, 1994, the Petitioner submitted an additional request pursuant to 10 CFR 2.206 which has been incorporated into the above-mentioned request. The June 7 Petition requested: (1) Enforcement action against specific FP&L employees (2) an NRC investigation into the involvement of FP&L employees in the discrimination against the Petitioner with the results of this investigation being forwarded to the Department of Justice, and (3) an investigation into whether the work climate at Turkey Point and St. Lucie nuclear stations makes employees feel free to go to their management and/or the NRC with safety concerns. This June 7 Petition was supplemented on June 28 and 30, 1994.

Based on a review of Petitioner's requests and supplemental submissions, the Licensee's response dated May 20, 1994, and the June 3, 1994 decision by the Secretary of Labor on complaints filed by the Petitioner in these cases, the Director, Office of Enforcement, has denied this Petition. The reasons for the denial are explained in the "Director's Decision under 10 CFR 2.206" (DD–95–07) which is available for public inspection in the Commission's Public Document Room at 2120 L Street, NW., Washington, DC 20555.

A copy of this Decision will be filed with the Secretary for the Commission's review in accordance with 10 CFR 2.206. As provided by this regulation, the Decision will constitute the final action of the Commission 25 days after the date of issuance of the Decision unless the Commission on its own motion institutes a review of the Decision within that time.

Dated at Rockville, Maryland this 11th day of May 1995.

For the Nuclear Regulatory Commission.

James Liberman,

Director, Office of Enforcement.

[FR Doc. 95–12101 Filed 5–16–95; 8:45 am]

BILLING CODE 7590–01–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Application for Search of Census Records (Railroad Retirement Purposes Only).

(2) *Form(s) submitted:* RRB Form G–256.

(3) *OMB Number:* 3220–0106.

(4) *Expiration date of current OMB clearance:* July 31, 1995.

(5) *Type of request:* Revision of a currently approved collection.

(6) *Respondents:* Individuals or households.

(7) *Estimated annual number of respondents:* 150.

(8) *Total annual responses:* 150.

(9) *Total annual reporting hours:* 25.

(10) *Collection description:* Under the Railroad Retirement Act, an application for benefits based on age must be supported by proof of the age claimed. The application obtains proof of an applicant's age from the Bureau of the Census when other evidence is unavailable.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the form and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 and the OMB reviewer, Laura Oliven (202–395–7316), Office of Management and Budget, Room 10230, New Executive

Office Building, Washington, D.C. 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 95–12082 Filed 5–16–95; 8:45 am]

BILLING CODE 7905–01–M

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35], the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Appeal under the Railroad Retirement and Railroad Unemployment Insurance Act.

(2) *Form(s) submitted:* HA–1.

(3) *OMB Number:* 3220–0007.

(4) *Exiration date of current OMB clearance:* July 31, 1995.

(5) *Type of request:* Revision of a currently approved collection.

(6) *Respondents:* Individuals or households.

(7) *Estimated annual number of respondents:* 1,650.

(8) *Total annual responses:* 1,650.

(9) *Total annual reporting hours:* 549.

(10) *Collection description:* Under Section 7(b)(3) of the Railroad Retirement Act and Section 5(c) of the Railroad unemployment Insurance Act, a person aggrieved by a decision on his or her application for an annuity or other benefit has the right to appeal to the RRB. The collection provides the means for the appeal action.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the form and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 and the OMB reviewer, Laura Oliven (202–395–7316), Office of management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 95–12132 Filed 5–16–95; 8:45 am]

BILLING CODE 7905–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2771]

Louisiana; Declaration of Disaster Loan Area

Allen and Avoyelles Parishes and the contiguous Parishes of Beauregard, Catahoula, Concordia, Evangeline, Jefferson Davis, LaSalle, Pointe Coupee, Rapides, St. Landry, Vernon, and West Feliciana in the State of Louisiana constitute a disaster area as a result of damages caused by severe storms and flooding which occurred on April 10–12, 1995. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on July 10, 1995 and for economic injury until the close of business on February 12, 1996 at the address listed below: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Ft. Worth, TX 76155, or other locally announced locations.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 277106 and for economic injury the number is 851000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 10, 1995.

Cassandra M. Pulley,

Acting Administrator.

[FR Doc. 95–12117 Filed 5–16–95; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2772]

New York (and Contiguous Counties in Connecticut and New Jersey); Declaration of Disaster Loan Area

Westchester County and the contiguous counties of Bronx, Putnam, and Rockland in the State of New York; Fairfield County in the State of Connecticut; and Bergen County in the State of New Jersey constitute a disaster area as a result of damages caused by a fire which occurred on April 25 in the City of Mount Vernon. Applications for loans for physical damages as a result of this disaster may be filed until the close of business on July 10, 1995 and for economic injury until the close of business on February 12, 1996 at the address listed below: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd. South, 3rd Floor, Niagara Falls, NY 14303, or other locally announced locations.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125
For Economic Injury	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The numbers assigned to this disaster for physical damage are 277205 for New York; 277305 for Connecticut; and 277405 for New Jersey. For economic injury the numbers are 851100 for New York; 851200 for Connecticut; and 851300 for New Jersey.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: May 10, 1995.

Cassandra M. Pulley,

Acting Administrator.

[FR Doc. 95–12063 Filed 5–16–95; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular (AC) 23–XX–21, Small Airplane Certification Compliance Program

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of Proposed Advisory Circular (AC) 23–XX–21, and request for comments.

SUMMARY: This notice announces the availability of and request for comments on a proposed advisory circular (AC) which provides a compilation of acceptable means of compliance to specifically selected sections of part 23 of the Federal Aviation Regulations (FAR) that have historically been deemed burdensome for small simple airplanes to show compliance. In general terms, a small simple airplane could be defined as non-turbine single engine, unpressurized, and under 4,000 pound maximum weight; however, applicability of these means of compliance remains the responsibility of the certification manager for each specific project. Utilization of these means of compliance does not affect the applicability of any other certification requirements that fall outside the scope of this AC. This material is neither mandatory nor regulatory in nature and does not constitute a regulation.

DATES: Comments must be received on or before July 17, 1995.

ADDRESSES: Send all comments on the proposed AC to: Federal Aviation Administration, Attention: Standards Office, ACE–110, Small Airplane Directorate, Aircraft Certification Service, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Terre Flynn, Regulations and Policy Branch, ACE–111, at the address above, telephone number (816) 426–6941.

SUPPLEMENTARY INFORMATION: Any person may obtain a copy of this proposed AC by contacting the person named above under **FOR FURTHER INFORMATION CONTACT.**

Comments Invited

Interested parties are invited to submit such written data, views, or arguments as they may desire. Commenters must identify the AC and submit comments to the address specified above. All communications received on or before the closing date for comments will be considered by the Standards Staff before issuing the final AC. Comments may be inspected at the Standards Office, ACE–110, Suite 900, 1201 Walnut, Kansas City, Missouri, between the hours of 7:30 a.m. and 4:00 p.m. weekdays, except Federal holidays.

Background

Some industry and aviation organizations expressed concern that the typical means of compliance for some regulations might be more demanding than justified. As a consequence, industry, aviation groups, and the FAA formed a team to investigate the issue. Historical files, Designated Engineering Representatives (DER's), Aircraft Certification Offices (ACO's), and industry were used to determine target regulations and provide known means of compliance. This AC is a compilation of the study results, listing the regulations and attendant means of compliance that offered an improvement in certification efficiency. The listed means of compliance have been found acceptable and historically successful, but they are not the only methods which can be used to show compliance. In some cases, highly sophisticated airplanes may require more accurate or substantial solutions.

Issued in Kansas City, Missouri, on May 9, 1995.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–12158 Filed 5–16–95; 8:45 am]

BILLING CODE 4910–13–M

Second Public Hearing on the Draft Environmental Impact Statement for the Proposed Master Plan Update at Seattle-Tacoma International Airport, Seattle, Washington

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Draft Environmental Impact Statement, Notice of Second Public Hearing.

SUMMARY: The FAA and the Port of Seattle (owner of the airport), as joint lead agencies, announce that a second Public Hearing will be held concerning the proposed Master Plan Update alternatives. The second Public Hearing will be held from 6:00 PM to 10:00 PM on Wednesday, June 14, 1995, at the Calvary Lutheran Church, 2415 S. 320th Street, Federal Way, Washington. The purpose of the Hearing is to consider the economic, social, and environmental effects of the proposed Master Plan Development. The public will be afforded the opportunity to present oral testimony and/or written testimony pertinent to the intent of the hearing. Individuals wishing to testify can obtain a pre-reserved testimony slot by calling the FAA at (206) 431–4993. The first half-hour of each hour of the Hearing will be allocated to pre-reserved testimony. Testimony from a group or agency representative will be limited to 5 minutes. All others will be given 3 minutes. Additional comments should be submitted no later than August 3, 1995, to Mr. Dennis Ossenkop, ANM–611, Federal Aviation Administration, Northwest Mountain Region, Airports Division, 1601 Lind Avenue, S.W., Renton, WA 98055–4056.

Any person desiring to review the Draft Environmental Impact Statement may do so during normal business hours at the following locations:

Federal Aviation Administration, Airports Division Regional Office, Room 540, 1601 Lind Avenue, S.W., Renton, Washington

Port of Seattle, Aviation Planning, Terminal Building, 3rd Floor, Room 301, Sea-Tac Airport, Seattle, Washington

Port of Seattle, Second Floor Bid Counter, Pier 69, 2711 Alaskan Way, Seattle, Washington

Boulevard Park Library, 12015 Roseberg, South, Seattle, Washington

Beacon Hill Library, 2519 15th Ave. South, Seattle, Washington

Burien Library, 14700-6th, S.W., Burien, Washington

Des Moines Library, 21620-11th, South, Des Moines, Washington

Federal Way Library, 34200-1st, South, Federal Way, Washington

Foster Library, 4205 South 142nd, Tukwila, Washington

Seattle Library, 1000-4th Avenue, Seattle, Washington

Tacoma Public Library, 1102 Tacoma Avenue, South, Tacoma, Washington

University of Washington, Suzallo Library, Government Publications, Seattle, Washington

Valley View Library, 17850 Military Road, South, SeaTac, Washington

Issued in Renton, Washington on May 10, 1995.

David A. Field,

Acting Manager, Airports Division, Federal Aviation Administration, Northwest Mountain Region, Renton, Washington.

[FR Doc. 95–12159 Filed 5–16–95; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement: Marietta, Washington County, Ohio

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed bridge replacement project in Marietta, Washington County, Ohio.

FOR FURTHER INFORMATION CONTACT: Mr. Herman Rodrigo, Planning and Program Development Manager, Federal Highway Administration, 200 North High Street, Room 328, Columbus, Ohio 43215, Telephone (614) 469–5877.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Ohio Department of Transportation and the Washington County Engineer will prepare an environmental impact statement (EIS) on a proposal to replace

the Putnam Street Bridge over the Muskingum River in Marietta, Washington County, Ohio. The preferred alternative (Putnam Street to Putnam Avenue alignment) would involve constructing a new bridge of greater vertical and horizontal clearance immediately south of the current two-lane, 786-foot facility and the removal of the existing bridge. Replacement of the existing bridge is considered necessary to provide for the existing and projected traffic demands. The existing Putnam Street Bridge is structurally deficient and is posted for a maximum vehicle weight of three tons. Local truck traffic is presently routed three blocks north to the bridge on Ohio Route 7. Alternatives under consideration include: (1) Taking no action; and alignments connecting (2) Butler Street to Gilman Street; and (3) Putnam Street to Putnam Avenue. Other alignment alternatives and rehabilitation of the existing bridge were considered early on, but are not being carried forward for further evaluation for various reasons.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have an interest in this proposal. A public meeting was held on May 27, 1993. In addition, a public hearing will be held in conjunction with the public availability of the draft EIS. Public notice will be given of the time and place of any further meetings that may be held and the public hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing. Cooperating agency requests have been made to the Coast Guard and Army Corps of Engineers. No formal scoping meeting is planned at this time.

To ensure that the full range of issues related to this proposed action are addressed and all relevant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: May 11, 1995.

Herman Rodrigo,

Planning and Program Development Manager, Columbus, Ohio.

[FR Doc. 95-12115 Filed 5-16-95; 8:45 am]

BILLING CODE 4910-22-M

Research on the Feasibility of Standardized Diagnostic Devices to Aid in the Inspection and Maintenance of Commercial Motor Vehicles; Public Meeting

AGENCY: Federal Highway Administration (FHWA); DOT.

ACTION: Notice of public meeting.

SUMMARY: The FHWA announces a public meeting to present the final results of its contractual research study to assess the feasibility of employing standardized electronic diagnostic devices for use by truck maintenance personnel and roadside safety and emissions inspectors. This meeting will be held for the benefit of representatives of the motor carrier industry, enforcement organizations, trade associations, and other interested persons.

DATES: The public meeting will be held on June 19, 1995, from 10 a.m. to 12 noon.

ADDRESSES: The public meeting will be held in Conference room 2230 of the NASSIF Building, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Stan Hamilton, Federal Highway Administration, Office of Motor Carriers, 400 7th Street SW., room 3103, Washington, DC 20590, telephone (202) 366-0665. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: The FHWA announces a public meeting to provide the results of its two-year assessment of the feasibility of standardized electronic diagnostic devices for commercial motor vehicle maintenance and inspection. Mandated by the Congress in Fiscal Year 1992, this research was performed for the FHWA by the Trucking Research Institute in cooperation with the Texas Transportation Institute. The research reviewed current literature on microelectronic technology that was, or could be, available for heavy-duty vehicle usage, and then proceeded to identify and evaluate sensors for application in diagnostic systems for major vehicle components on heavy trucks. Also evaluated were potential cost-sharing opportunities that would be available from the private sector to assist in the development of standardized diagnostic tools. Commercial motor carriers, original equipment manufacturers, engine manufacturers, components suppliers, diagnostic service tool suppliers, and other involved in the manufacture and use of heavy trucks were interviewed and provided extensive information for this study. Most of the organizations interviewed appeared willing to assist in some fashion in the implementation and testing of the diagnostic systems identified.

Authority: 23 U.S.C. 315; 49 CFR 1.48.

Issued on: May 11, 1995.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 95-12163 Filed 5-16-95; 8:45 am]

BILLING CODE 4910-22-P

Federal Transit Administration

[FHWA/FTA Docket No. 95-9]

Notification of FY 95 Reviews

AGENCIES: Federal Highway Administration (FHWA), Federal Transit Administration (FTA), DOT.

ACTION: Notice; request for comments.

SUMMARY: On April 28, 1994, the FHWA and the FTA Administrators jointly issued guidance to their respective regional administrators on the implementation of the Federal certification of the metropolitan planning process in transportation management area (TMA) planning areas. This notice announces the schedule of FY 1995 reviews as known at this time. The FHWA and the FTA are planning approximately 45 certification and 12 enhanced planning (EPR) reviews for FY 1995. Interested parties are invited to submit comments on the individual planning processes to be reviewed.

DATES: Comments on metropolitan planning processes under review must be received within sixty (60) days of the scheduled site review in order to be considered during the certification review process. Where reviews have already been completed prior to the publication of this notice, parties interested in commenting on these metropolitan planning processes should immediately contact Sheldon Edner (see following paragraph for phone number, address, and further instructions). Where dates are to be announced, a supplemental notice announcing these dates will be issued when the specific dates are confirmed.

FOR FURTHER INFORMATION CONTACT: For FHWA: Mr. Sheldon Edner, Planning Operations Branch (HEP-21), (202) 366-4066 (metropolitan planning) or Mr. Reid Alsop, FHWA Office of the Chief Counsel (HCC-31), (202) 366-1371. For the FTA: Ms. Deborah Burns, Resource Management Division (TGM-21), (202) 366-1637 or Mr. Scott Biehl, FTA Office of the Chief Counsel (TCC-40), (202) 366-4063. Office hours for the FHWA are from 7:45 a.m. to 4:15 p.m., e.t., and for the FTA are from 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

ADDRESSES: Submit written, signed comments to Docket Number 95-9, Federal Highway Administration, Room 4232, HCC-10, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at this address during the hours of 8:30 a.m. to 3:30 p.m., Monday through Friday. Those desiring notification of receipt of comments must enclose a self-addressed, stamped postcard.

SUPPLEMENTARY INFORMATION: Sections 1024, 1025, and 3012 of the Intermodal Surface Transportation Efficiency Act (ISTEA) (Pub. L. 102-240, 105 Stat. 1914, 1955, 1962, and 2098) amended 23 U.S.C. 134 and 135 and section 8 of the Federal Transit Act (now codified at 49 U.S.C. 5303, 5304, and 5305) to require a continuing, comprehensive, and coordinated transportation planning process in metropolitan areas and States. The FHWA and the FTA metropolitan planning regulations implementing these requirements were published on October 28, 1993 (58 FR 58040). The statutes and the planning regulations cited require the FHWA and the FTA to periodically certify that the planning process in metropolitan planning areas designated as transportation management areas complies with the provisions of the ISTEA and its implementing regulations.

General

Public Involvement in Certification Process

The FHWA and the FTA are soliciting public comment on the planning processes of the FY 1995 certification review sites identified below. The agencies are particularly interested in input regarding the strengths and weaknesses of the planning process in light of the requirements identified in 23 CFR 450 Subpart C. Additionally, the views of local officials and the public are welcomed regarding the use of the planning process in transportation investment decisions.

Schedule of FY 1995 Certification Reviews

The following schedule is subject to revision. Changes will be announced in the **Federal Register.** Parties interested in providing comments on the metropolitan transportation planning processes in the identified areas should submit them directly to FHWA/FTA Docket No. 95-9 identified above, clearly identifying the metropolitan area that the comments address. Alternatively, interested parties may choose to provide comments through the individual procedures adopted for each metropolitan area. Information concerning the citizen input process to be utilized for each review may be obtained from the appropriate FHWA division or FTA region office.

Except where the certification review was completed prior to the publication of this notice, comments on metropolitan planning processes under review must be received within 60 days after the scheduled review in order to be considered during the certification review process. The FHWA and the FTA will make every effort to review comments received after this period and address them in their findings as long as final action has not been taken on the certification review. To ensure consideration of comments, commenters should submit their written comments as soon as possible.

Where a review was completed prior to publication of this notice, interested parties wishing to make comments on a particular certification must contact Sheldon Edner within two weeks of the date of publication of this notice. Where dates for a planned certification review have not been established, please contact the appropriate FHWA Division or FTA region office for the dates. The FHWA and the FTA will publish a second notice of scheduled fiscal year 1996 review dates as the remaining review schedules are finalized.

The site visits are intended to provide an opportunity for the FHWA and FTA review team to solicit information from the metropolitan planning organizations (MPO), State DOTs and transit agencies regarding the implementation of the planning process. In addition, the team will solicit input from the public and local officials. Each relevant MPO is being asked to provide public notice, through its regular public notice processes, of the review and the opportunity to provide public input to the review team. Public officials should contact the appropriate MPO to identify processes set up to solicit local government input.

The results of the certification reviews will be made public through the regular MPO public information process at a time to be set by each MPO policy board.

Region/State/TMA	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.
Region ½												
Connecticut:												
New Haven-Meriden	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Hartford-Springfield (MA)	.....	.....	.....	.....	.....	7-9	.....	.....	.....	.....	.....	.....
Massachusetts:												
Boston (EPR* Week of May 15, 1995)	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Lawrence-Haverhill	.....	.....	.....	.....	.....	X	.....	.....	.....	.....	.....	.....
Springfield	.....	.....	.....	10-11	.....	.....	.....	.....	.....	.....	.....	.....
New Hampshire:												
Lawrence-Haverhill	.....	.....	.....	.....	.....	X	.....	.....	.....	.....	.....	.....
New York:												
Buffalo-Niagra Falls	.....	.....	.....	.....	15-17	.....	.....	.....	.....	.....	.....	.....
New York (EPR Week of September 11, 1995)	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Puerto Rico: San Juan	.....	.....	.....	.....	.....	.....	.....	1-5	.....	.....	.....	.....

Region/State/TMA	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.
Region 3												
District of Columbia: DC (EPR Week of December 12, 1994)												
Maryland: Baltimore						27–29						
Pennsylvania:												
Philadelphia (EPR Week of January 17, 1995)												
Scranton/Wilkes Barre								24–26				
Virginia: Hampton Roads									19–21			
Region 4												
Alabama:												X
Birmingham												
Mobile			12–16									
Montgomery											14–19	
Florida:												
Fort Myers					27–3–3							
Melbourne							17–21					
Miami (EPR March 20–23, 1995)												
Pensacola									5–9			
Georgia:												18–22
Atlanta									19–23			
Augusta												
Columbus						27–31						
Kentucky: Lexington											X	
Mississippi: Jackson							24–28					
North Carolina:												
Charlotte					13–17							
Durham										10–14		
South Carolina												
Charleston				23–27								
Greenville												11–15
Tennessee: Memphis								22–25				
Region 5												
Illinois: Rockford									23–25			
Indiana:												X
Fort Wayne												
South Bend											X	
Michigan:												
Detroit		X										
Flint							X					
Ohio:												
Canton							X					
Cleveland (EPR Week of August 7, 1995)												
Columbus				X								
Toledo								X				
Youngstown												X
Wisconsin: Milwaukee								X				
Region 6												
Arkansas: Little Rock											10–13	
Louisiana: Shreveport											7–10	
Oklahoma: Oklahoma City								X				
Texas:												
Austin				X								
23/26Dallas (EPR Week of June 12, 1995)												
Houston					27–3							
Region 7												
Iowa: Davenport								2–4				
Missouri: St. Louis (EPR September, 1995)												
Region 8												
Colorado: Denver				31–2								
Utah: Salt Lake					X							

Region/State/TMA	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.
Region 9												
California:												
Fresno									14–15			
Los Angeles												12–14
Stockton										13–14		
Hawaii: Honolulu (EPR January 9–12, 1995)												
Region 10												
Oregon: Portland									19–21			
Washington:												
Seattle (EPR Week of May 8–12, 1995)												
Vancouver									19–21			

Note: "X" indicates month of certification review; dates are specified where they are scheduled.
*Enhanced Planning Reviews (EPR) generally are scheduled for approximately 3-4 days during a given week.

Guidance and Responsibility

The FHWA and the FTA published guidance on the certification of planning processes (59 FR 42873). The guidance indicated that the primary responsibility for the certification process rested with the respective regional offices of the FHWA and the FTA. The preparatory work and analysis would be conducted by the appropriate division office of the FHWA or regional office of FTA, as a prelude to a site visit by representatives of both agencies to the metropolitan planning area to be certified. During the site visit, the FHWA and FTA representatives would, in addition to meeting with representatives of the MPO, State DOTs, and transit agencies serving the metropolitan planning area, also provide an opportunity to meet with citizens and elected local officials of the principal local governments in the area. The purpose of these meetings is to afford the officials and citizens an opportunity to provide input to the certification decision in terms of the performance of the planning process.

As indicated above, the MPO and/or State DOT or transit operator may make arrangements for these meetings through their normal procedures. Other alternatives are acceptable based on arrangements between the Federal agencies and the appropriate transportation planning agencies. Officials and citizens wishing to obtain information regarding the process of providing input should contact the MPO for the metropolitan planning areas identified above. Alternatively, the Transportation Planner or Planning and Research Engineer for the appropriate Division office of the FHWA also can provide this information. Each FHWA Division office is located in or near the capitol of each State.

Authority: 23 U.S.C. 315; 49 CFR 1.48; Pub. L. 102–240, Sections 1024, 1025 and 3012; 105 Stat. 1914, 1955, 1962, and 2098.

Issued on: May 10, 1995.

Gordon J. Linton,
Administrator, Federal Transit Administration.

Rodney E. Slater,
Administrator, Federal Highway Administration.

[FR Doc. 95–12164 Filed 5–16–95; 8:45 am]

BILLING CODE 4910–22–P

Federal Transit Administration

Environmental Impact Statement: Peninsula Commute Service San Francisco Downtown Extension (PCS–DTX) Project in the San Francisco Bay Area, California

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS).

SUMMARY: The Federal Transit Administration (FTA), in cooperation with the Penninsula Corridor Joint Powers Board (PCJPB), is resuming preparation of an Environmental Impact Statement for the PCS-DTX in accordance with the National Environmental Policy Act (NEPA). The PCJPB will ensure that the EIS also satisfies the requirements of the California Environmental Quality Act (CEQA). The NEPA Lead Agency will be FTA. The CEQA Lead Agency will be the PCJPB.

The Peninsula Commute Service, commonly referred to as CalTrain, is the commuter rail system that serves the San Francisco Peninsula between Gilroy and the existing terminal station in San Francisco located at Fourth and Townsend Streets. The present location of the terminal is not considered desirable from a transportation, land use, or public policy perspective. The prosposed project would extend CalTrain to a new station closer to downtown San Francisco.

The project was determined by the Bay Area Partnership, a body of transportation officials representing different modes, regulatory agencies and federal agencies, to belong in the category of projects "requiring a Major Investment Study (MIS) but may be satisfied by prior studies". The consultation group convened to discuss MIS requirements for this project agreed that past corridor studies such as PENTAP, SCR 74, BART/SFO AA/DEIS, and the MTC/JPBCalTrain Downtown Extension/System Upgrades Study satisfy MIS requirements and that the project could advance into preliminary engineering and environmental documentation.

DATES: Written comments on the alternatives and impacts to be considered must be postmarked no later than June 15, 1995, and send to PCJPB at the address below. Two public informational meetings will be held June 21, 1995 at 10 AM-noon and 5:30 PM-7:30 PM in Auditorium B, Golden Gate University, 536 Mission Street, San Francisco 94105. These meetings will mark the resumption of environmental studies and preparation of the EIS/EIR (see **SUPPLEMENTARY INFORMATION** below).

ADDRESSES: Written comments should be sent to Ms. Marie Pang, Environmental Manager, PCS-DTX Project, Peninsula Corridor JPB, P.O. Box 3006, San Carlos, CA 94070–1306. Phone: (415) 508–6338.

FOR FURTHER INFORMATION CONTACT:

Mr. Robert Hom, Director, Program Development, FTA Region IX, 201 Mission Street, San Francisco, CA 94105. Phone: (415) 744–3116.

SUPPLEMENTARY INFORMATION:

I. Scoping

A Notice of Intent to prepare an EIS was previously published in the **Federal Register** on January 18, 1989. The Scoping Process began with two public scoping meetings on February 15, 1989. An Administrative Draft EIS was prepared in 1991 but was not circulated due to lack of local funding commitments for the project.

The project was held in abeyance until March, 1993, when the PCJPB conducted four public meetings to solicit public input on key project issues, including which alternatives deserved further consideration. As a result, the PCJPB, jointly with the Metropolitan Transportation Commission (MTC), conducted a study to develop fundable extension alternatives and system upgrades that could be recommended by the PCJPB for inclusion in the MTC's financially constrained Regional Transportation Plan (RTP). The study evaluated nine alternatives and the results were reviewed in public meetings. In March, 1994, the PCJPB designated Alternative 8B (extension of CalTrain to an underground terminal at Beale and Market Streets) of that study as the Locally Preferred Alternative (LPA) for inclusion in the RTP. This alternative was subsequently included in the 1994 RTP adopted by MTC after extensive public review. The PCJPB is now resuming environmental studies for the preparation of a Draft EIS/EIR for public review and comment.

The public informational meetings will announce resumption of environmental studies. The environmental process will be outlined, and the public will be invited to become involved in this process through the Public Participation/Consensus Building Program that will be implemented for this project. The public will be invited to comment on all aspects of the project, including alignments, station design, and the environmental, social and economic impacts to be analyzed. The public will also be notified of future informational meetings and workshops as the studies progress.

II. Description of Study Area

The Peninsula Commute Service traverses three counties (San Francisco, San Mateo, and Santa Clara) from San Francisco to Gilroy for a distance of approximately 77 miles. However, most of the proposed project is located in the City of San Francisco, in an area generally bounded by Market Street, the Embarcadero, China Basin Channel, Sixteenth Street, Seventh Street, Bryant Street and Second Street. The primary east-west corridors are along Brannan, Townsend and King Streets; primary north-south corridors are along Beale Street and Colin P. Kelly/Essex Streets (to the Transbay Terminal). The proposed station location is at Beale and Market Streets; however, the existing Transbay Transit Terminal location will also be evaluated in the envent the LPA location proves infeasible.

III. Alternatives

Three alternatives with sub-options emerged from the evaluation and public involvement processes conducted previously. These alternatives will be evaluated in the DEIS/DEIR as follows:

- Alternative 1—No Build. The San Francisco station would remain at 4th and Townsend.
- Alternative 2 (The Proposed Project [LPA])—CalTrain would be extended to a station at Beale and Market Streets with the following routing and fuel options:

Option A—CalTrain would be routed on the surface along Townsend Street to 4th Street, underground via cut and cover under public streets from 4th Street to Market and Beale Streets. King and Brannan Streets, would be considered should Townsend Street prove infeasible. Full system electrification is included in this option.

Option B—Same as Option A, except existing locomotives with diesel power would be used or would be converted to liquified natural gas.

Option C—Same as Option A, except that a direct mined or bored tunnel alignment would be used from approximately 3rd Street to approximately Harrison and Beale Streets under private properties in the South Beach Area.

- Alternative 3—CalTrain would be extended to a station at the existing Transbay Transit Terminal location. The PCS would be routed on the surface along Townsend Street, underground via cut and cover and/or mined tunnel to Folsom/Essex Streets and from there to a new or rehabilitated Transbay Transit Terminal. King or Brannan Streets would be considered should Townsend prove infeasible. Full system electrification is included in this alternative.

IV. Probable Effects

Impacts proposed for analysis include changes in the physical environment (air quality, noise, water quality, geology, visual); changes in the social environment (land use, business disruptions, and neighborhoods); changes in traffic and pedestrian circulation; impacts on parklands and historic sites; changes in transit service and partonage; associated changes in highway congestion; capital, operating and maintenance costs; and financial implications. Impacts will be identified both for the construction period and for the long term operation of the alternatives. The proposed evaluation criteria include transportation, environmental, social, economic and financial measures as required by current Federal (NEPA) and State (CEQA) environmental laws and current Council on Environmental Quality (CEQ) and FTA guidelines. Mitigating measures will be explored for adverse impacts that are identified.

Issued on: May 12, 1995.

Stewart F. Taylor,

Region IX Administrator.

[FR Doc. 95–12165 Filed 5–6–95; 8:45 am]

BILLING CODE 4910–57–M

Maritime Administration

[Docket S–920]

Kadampanattu Corp.; Notice of Application for Temporary Written Consent Pursuant to Section 506 of the Merchant Marine Act, 1936, as Amended, for the Temporary Transfer of the M/V STRONG/AMERICAN to the Domestic Trade

Notice is hereby given that Allen Freight Trailer Bridge (ATFB), by letter of April 25, 1995, requested written consent pursuant to section 506 of the Merchant Marine Act, 1936, as amended (Act), to temporarily transfer during the year commencing October 31, 1995, the construction-differential subsidy (CDS) built, M/V STRONG/AMERICAN, exclusively to the domestic trade for a period not to exceed six months in any year period. The M/V STRONG/AMERICAN is an integrated tug barge unit, built in the United States with the aid of CDS, and owned by Kadampanattu Corp., an affiliate of ATFB.

ATFB states that it operates a weekly RO/RO barge service between Jacksonville, Florida, and San Juan, Puerto Rico, utilizing two RO/RO barges owned by Kadampanattu Corp., the JAX-SAN JUAN BRIDGE and SAN JUAN-JAX BRIDGE. Each of these barges will require regulatory drydocking and repairs prior to February 28, 1996.

AFTB explains that the M/V STRONG/AMERICAN has a capacity equivalent of 56 percent of the RO/RO barges to be drydocked. The STRONG/AMERICAN will require drydocking at considerable expense before it can be placed in service, and without the requested waiver, such funds will not be expended. AFTB explains that the waiver sought herein would allow AFTB the necessary flexibility to complete drydocking and repairs to the RO/RO barges without disrupting the weekly service which is currently provided to the shipping public.

Any person, firm, or corporation having any interest in the application for section 506 consent and desiring to submit comments concerning Kadampanattu Corp.'s request must by 5:00 p.m. on May 30, 1995, file written comments in triplicate, to the Secretary, Maritime Administration, Room 7210, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. The Maritime Administration, as a matter of discretion, will consider any comments submitted and take such action as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.800 Construction-Differential Subsidies [CDS])

By order of the Maritime Administrator.

Dated: May 11, 1995.

Murray A. Bloom,

Acting Secretary, Maritime Administration.

[FR Doc. 95–12093 Filed 5–16–95; 8:45 am]

BILLING CODE 4910–81–M

National Highway Traffic Safety Administration

[Docket No. 95–39; Notice 1]

Volkswagen of America, Inc.; Receipt of Application for Decision of Inconsequential Noncompliance

Volkswagen of America, Inc. (VWoA) of Auburn Hills, Michigan, has determined that some of its vehicles fail to comply with the power window requirements of 49 CFR 571.118, Federal Motor Vehicle Safety Standard (FMVSS) No. 118, "Power-Operated Window, Partition, and Roof Panel Systems," and has filed an appropriate report pursuant to 49 CFR Part 573, "Defect and Noncompliance Reports." VWoA has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—"Motor Vehicle Safety" on the basis that the noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

Paragraph S4(e) in FMVSS No. 118 states that power operated windows may be closed only "during the interval between the time the locking device which controls the activation of the vehicle's engine is turned off and the opening of either of a two-door vehicle's doors or, in the case of a vehicle with more than two doors, the opening of its front doors."

During the period of September 1, 1992 through March 5, 1995, VWoA manufactured approximately 1,200 1995 GTI vehicles and 18,795 1993–1995 Jetta III vehicles that do not comply with the power window requirements of FMVSS No. 118. The power windows in the subject vehicles can be operated when the ignition key is in the "off" position and the passenger side front door has been opened. The windows should not be able to be operated in this scenario.

VWoA supports its application for inconsequential noncompliance with the following:

The purpose of the requirement in S4(e) of FMVSS 118 specifying that the power window system not be functional if the ignition key is in the "off" position and one of the front doors have been opened, is to reduce the possibility of unsupervised children operating the power windows in the vehicle. S4(e) is based upon the assumption that before one of the front doors has been opened, an adult remains in the vehicle to supervise and protect children from the safety risks associated with the operation of the power window system. S4(e) further assumes that after one of the front vehicle doors has been opened, no adult remains in the vehicle and thereby creates a risk that children remaining in the vehicle may injure themselves by activating operational power windows without supervision. S4(e) seeks to eliminate that risk.

In the case of the affected vehicles, the power windows cease to be operable if the driver door is opened, but remain operational for a period of 10 minutes after the passenger side front door has been opened. The rationale supporting the 10 minute period is to allow the driver to close any open windows even though he may already have turned off the ignition and the passenger may have opened to door and exited the vehicle. It is a convenience feature permitted by law in Europe and offered by Volkswagen to the market in Europe as a convenience feature.

The power-operated roof panel systems cannot be operated after the ignition key has been turned off.

VWoA believes that its European configuration inadvertently built into certain vehicles delivered in the United States does not affect their safety in a discernible way. VWoA believes that as long as the driver door of the vehicle has not been opened, a person of driving age inevitably remains in the vehicle because the exiting of the driver on the passenger side front door is extremely difficult and therefore unlikely. The affected vehicles are equipped with bucket seats and a center transmission console which cause the movement of the driver to the passenger side of the vehicle without contortion to be difficult and virtually impossible. Also, it makes no sense to suggest that a driver would exit the vehicle on the passenger side of a vehicle with bucket seats and [a] floor mounted transmission lever when he can conveniently open the driver's door for exit.

VWoA has received no customer compliants or claims relating to the ability of the windows to operate after the passenger door has been opened.

It should also be noted that the Volkswagen Owner's Manual contains an express warning against leaving children unattended in a vehicle and against misuse of the ignition key. The warning reads as follows:

WARNING

Do not leave children unattended in the vehicle especially with access to vehicle keys. Unsupervised use of the keys can result in starting of the engine and use of vehicle systems such as the power windows and power sunroof, which could result in serious personal injury.

As explained, the probability of unsupervised children being exposed to injury from power-operated window systems during the 10 minute interval after the ignition key has been turned off and the passenger sidé front door is opened and before the driver side front door is opened, is non-existent and that therefore this noncompliance is inconsequential to motor vehicle safety.

VWoA requests that this [application] be granted so that an unnecessary and costly consumer recall action [can] be avoided. VWoA expects a particularly low owner response to such a recall, if it were undertaken, because the ability to operate the power windows after the front passenger side door has been opened would likely be viewed by the owner to offer a valuable convenience feature without any apparent safety disadvantage.

Interested persons are invited to submit written data, views, and arguments on the application of VWoA, described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, D.C., 20590. It is requested but not required that six copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: June 16, 1995.

(15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: May 11, 1995.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 95–12090 Filed 5–16–95; 8:45 am]

BILLING CODE 4910–59–M

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Exemptions

AGENCY: Reserach and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before June 16, 1995.

ADDRESS COMMENTS TO: Docket Unit, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Unit, Room 8426, Nassif Building, 400 7th Street, SW., Washington, DC.

NEW EXEMPTIONS

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
11449–N ...	Kleen Brite Lab., Inc., Rochester, NY.	49 CFR 174.67(i)(j)	To authorize chlorine filled rail cars to remain attached to connectors without the physical presence of an unloader. (modes 1, 2, 3)
11450–N ...	Coast Gas Inc., Bakersfield, CA.	49 CFR 173.315(a)	To authorize the transportation in commerce of corrosive liquefied petroleum gases in internally coated MC 331 cargo tanks. (mode 1)
11451–N ...	Gabriel Chemicals Inc., Houston, TX.	49 CFR 180.407	To authorize DOT–412 cargo tank inspection every five years when used in chlorosulfonic acid service. (mode 1)
11453–N ...	Heatec, Inc., Chattanooga, TN.	49 CFR 173.32c(g)(1)	To authorize the transportation in commerce of a flammable liquid in non-DOT specification steel portable tanks permanently fitted within an ISO frame. (modes 1, 2, 3)
11454–N ...	Hodgdon Powder Co., Inc., Shawnee Mission, KS.	49 CFR 173.71	To authorize the transportation in commerce of smokeless powder reclassified in Division 4.1 not to exceed 100 pounds to be shipped by cargo vessel. (mode 3)
11457–N ...	Entergy Services, Inc., Beaumont, TX.	49 CFR 174.67(i)&(j)	To authorize chlorine filled tank cars to remain connected to fittings without the physical presence of an unloader. (mode 2)
11458–N ...	Bristol-Myers Squibb Co., et al, Cranbury, NJ.	49 CFR 172.203(a), 173.150(b), 173.152(b), 173.154(b), 173.155(b), 173.306 (a) & (h), Part 107, Subpart B, Appendix B, Part 107, Subpart B, Appendix B.	To authorize the transportation in commerce of consumer commodities eligible for reclassification as ORM–D in pallet-sized display packs that exceed the gross weight limit for limited quantities packages. (mode 1)
11459–N ...	Quality Containment Co., Owensboro, KY.	49 CFR 173.34, 173.302, 173.304	To authorize the manufacture, mark and sale of a recovery cylinder for use in transporting damaged sulfur dioxide cylinders. (mode 1)

This notice of receipt of applications for new exemptions is published in accordance with Part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on May 11, 1995.

J. Suzanne Hedgepeth,

Chief, Exemption Programs, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 95–12091 Filed 5–16–95; 8:45 am]

BILLING CODE 4910–60–M

Office of Hazardous Materials Safety; Notice of Applications for Modification of Exemptions or Applications To Become a Party to an Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for modification of exemptions or applications to become a party to an exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modifications of exemptions (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix "M" denote a modification request. Application numbers with the suffix "P" denote a party to request. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before June 1, 1995.

ADDRESS COMMENTS TO: Dockets Unit, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Unit, Room 8426, Nassif Building, 400 7th Street SW, Washington, DC.

Application No.	Applicant	Renewal of exemption
3216–M	DuPont de Nemours & Co., Inc., Wilmington, DE (See Footnote 1)	3216
7765–M	Carleton Technologies Inc., Orchard Park, NY (See Footnote 2).	7765
7774–M	Pipe Recovery Systems, Inc., Houston, TX (See Footnote 3)	7774
9184–M	The Carbide/Graphite Group, Inc., Louisville, KY (See Footnote 4)	9184
9778–M	Western Atlas International, Houston, TX (See Footnote 5)	9778
11059–M ..	U.S. Department of the Interior, Amarillo, TX (See Footnote 6)	11059
11441–M ..	Radian Corporation, Research Triangle Park, NC (See Footnote 7)	11441

[1] To modify exemption to provide for shipment of a mixture of two fluorinated hydrocarbons classed in Division 2.2 in DOT-specification 110A2000W and 110A3000W tanks.

[2] To modify exemption to provide for cargo vessel as an additional mode of transportation for use in transporting nonrefillable, non-DOT specification cylinders containing Division 2.2 material.

[3] To modify exemption to provide for additional size non-DOT cylinders for shipment of bromine trifluoride.

[4] To modify exemption to provide for reusable bulk bags for use in transporting calcium carbide and substances which in contact with water emit flammable gases, solid n.o.s. in truckload or carload lots only.

[5] To modify exemption to provide for additional packaging methods for shipment of sulfur hexafluoride, classed as nonflammable gas, in non-DOT specification tanks and tubes, used in oil well logging service.

[6] To modify exemption to authorize highway as an additional mode of transportation for shipment of DOT-Specification 107A compressed gas cylinders containing helium, classed in Division 2.2.

[7] To modify exemption to provide for highway and rail as additional modes of transportation.

Application	Applicant	Parties to exemption
3216–P	Solkatronic Chemicals, Fairfield, NJ	3216
6691–P	C S Gases, Inc., Buffalo, NY	6691
7616–P	The Indiana Rail Road Company, Indianapolis, IN	7616
7774–P	Arrow Electric Line, Inc., LaFayette, LA	7774
7835–P	Environmental Products & Services, Inc., Syracuse, NY	7835
8445–P	Specialty Systems Hazardous Waste, Inc., Indianapolis, IN	8445
8554–P	Intermountain IRECO, Inc., Gillette, WY	8554
8915–P	Liquid Carbonic Industries, Oak Brook, IL	8915
9184–P	American Carbide, L.L.C., Newport Beach, CA	9184
9248–P	Total Resources International, Walnut, CA	9248
9275–P	MEM Company, Inc., Northvale, NJ	9275
9723–P	Environmental Options, Inc., Rocky Mount, VA	9723
10232–P ..	Aerosol Systems, Macedonia, OH	10232
10288–P ..	Chevron Chemical Company, Houston, TX	10288
10440–P ..	McDonnell Douglas Aerospace, Mesa, AZ	10440
10441–P ..	Environmental Products & Services, Inc., Syracuse, NY	10441
10688–P ..	Rust's Flying Service, Anchorage, AK	10686
10688–P ..	Ketchum Air Service, Inc., Anchorage, AK	10688
10933–P ..	Aptus, Inc., Lakeville, MN	10933
11043–P ..	Environmental Products & Services, Inc., Syracuse, NY	11043
11055–P ..	Environmental Products & Services, Inc., Syracuse, NY	11055
11055–P ..	Aptus, Inc., Lakeville, MN	11055
11156–P ..	Olson Explosives, Inc., Decorah, IA	11156
11173–P ..	Lockheed Missiles & Space Co., Sunnyvale, CA	11173
11197–P ..	Nalco Chemical Company, Naperville, IL	11197
11197–P ..	Fisher Scientific Company, Pittsburgh, PA	11197
11197–P ..	Betz Laboratories, Inc., Trevose, PA	11197
11197–P ..	Pace International LP, Kirkland, WA	11197
11220–P ..	Environmental Products & Services, Inc., Syracuse, NY	11220
11230–P ..	Intermountain IRECO, Inc., Gillette, WY	11230
11281–P ..	Environmental Products & Services, Inc., Syracuse, NY	11281
11328–P ..	Alaska Pacific Powder Company, Anchorage, AK	11328
11346–P ..	Allegheny Wireline Services, Inc., Weston, WV	11346
11346–P ..	Hitwell Surveys, Inc., Parkersburg, WV	11346

This notice of receipt of applications for modification of exemptions and for party to an exemption is published in accordance with Part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on May 11, 1995.

J. Suzanne Hedgepeth,

Chief, Exemption Programs, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 95–12092 Filed 5–16–95; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

[Notice No. 811]

Appointments of Individuals To Serve as Members of the Performance Review Board (PRB); Senior Executive Service

SUMMARY: Pursuant to 5 U.S.C. 4314(c)(4), this notice announces the appointment of members of the Performance Review Board for the Bureau of Alcohol, Tobacco and Firearms (ATF) for the rating year beginning July 1, 1994, and ending June 30, 1995. This notice effects changes in the membership of the ATF PRB previously appointed April 12, 1989 (54 FR 14730).

The *names* and *titles* of the ATF PRB members are as follows:

Bradley A. Buckles, Acting Chief Counsel, Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury

John A. Dooher, Director, Washington Office, Federal Law Enforcement Training Center, Department of the Treasury

Suellen P. Hamby, Executive Director, Treasury Executive Institute, Department of the Treasury

FOR FURTHER INFORMATION CONTACT: Steve L. Mathis, Personnel Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226; telephone (202) 927–8600.

Signed: May 10, 1995.

John W. Magaw,

Director.

[FR Doc. 95–12046 Filed 5–16–95; 8:45 am]

BILLING CODE 4810–31–M

Internal Revenue Service

Tax on Certain Imported Substances (Hexabromocyclododecane, et al.); Notice of Determinations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This notice announces determinations, under Notice 89–61, that the list of taxable substances in section 4672(a)(3) will be modified to include hexabromocyclododecane and ethylenebistetrabromophthalimide.

EFFECTIVE DATE: This modification is effective October 1, 1993.

FOR FURTHER INFORMATION CONTACT: Ruth Hoffman, Office of Assistant Chief Counsel (Passthroughs and Special Industries), (202) 622–3130 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Under section 4672(a), an importer or exporter of any substance may request that the Secretary determine whether that substance should be listed as a taxable substance. The Secretary shall add the substance to the list of taxable substances in section 4672(a)(3) if the Secretary determines that taxable chemicals constitute more than 50 percent of the weight, or more than 50 percent of the value, of the materials used to produce the substance. This determination is to be made on the basis of the predominant method of production. Notice 89–61, 1989–1 CB 717, sets forth the rules relating to the determination process.

Determination

On May 8, 1995, the Secretary determined that hexabromocyclododecane and ethylenebistetrabromophthalimide should be added to the list of taxable substances in section 4672(a)(3), effective October 1, 1993.

The rate of tax prescribed for hexabromocyclododecane, under section 4671(b)(3), is $4.55 per ton. This is based upon a conversion factor for bromine of 0.747 and a conversion factor for butadiene of 0.253.

The rate of tax prescribed for ethylenebistetrabromophthalimide, under section 4671(b)(3), is $4.51 per ton. This is based upon a conversion factor for bromine of 0.672, a conversion factor for ethylene of 0.029, a conversion factor for xylene of 0.223, a conversion factor for ammonia of 0.036, and a conversion factor for chlorine of 0.075.

The petitioner is Ethyl Corporation, a manufacturer and exporter of these substances. No material comments were received on these petitions. The following information is the basis for the determinations.

Hexabromocyclododecane

HTS number: 2903.59.00.00
CAS number: 3194–55–6

Hexabromocyclododecane is derived from the taxable chemicals bromine and butadiene. Hexabromocyclododecane is a solid produced predominantly by reacting cyclododecatriene with bromine in a solvent system, followed by a neutralization, a centrifugation, a strip, a wash, drying, and grinding (as required).

The stoichiometric material consumption formula for hexabromocyclododecane is:

$3\ Br_2$ (bromine) + $3\ C_4H_6$ (butadiene) ——> $C_{12}H_{18}Br_6$ (hexabromocyclododecane)

Hexabromocyclododecane has been determined to be a taxable substance because a review of its stoichiometric material consumption formula shows that, based on the predominant method of production, taxable chemicals constitute 100 percent by weight of the materials used in its production.

Ethylenebistetrabromophthalimide

HTS number: 2925.19.10.00
CAS number: 32588–76–4

Ethylenebistetrabromophthalimide is derived from the taxable chemicals bromine, ethylene, xylene, ammonia, and chlorine. Ethylenebistetrabromophthalimide is a solid produced predominantly by sulfonating and brominating phthalic anhydride in the presence of oleum and then hydrolyzing the resulting tetrabromophthalic anhydride in the presence of a solvent system and reacting it with ethylene diamine. The resulting ethylenebistetrabromophthalimide is centrifuged, washed, dried/converted, milled, and packaged.

The stoichiometric material consumption formula for ethylenebistetrabromophthalimide is:

$4\ Br_2$ (bromine) + C_2H_4 (ethylene) + $2\ C_8H_{10}$ (o-xylene) + $2\ NH_3$ (ammonia) + Cl_2 (chlorine) + $6\ O_2$ (oxygen) + $8\ SO_3$ (sulfur trioxide) ——> $C_{18}H_4O_4N_2Br_8$ (ethylenebistetrabromophthalimide) + $8\ H_2O$ (water) + $4\ SO_2$ (sulfur dioxide) + $4\ H_2SO_4$ (sulfuric acid) + 2 HCl (hydrochloric acid)

Ethylenebistetrabromophthalimide has been determined to be a taxable substance because a review of its stoichiometric material consumption formula shows that, based on the predominant method of production, taxable chemicals constitute 54.18 percent by weight of the materials used in its production.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 95–12028 Filed 5–16–95; 8:45 am]

BILLING CODE 4830–01–U

Sunshine Act Meetings

Federal Register

Vol. 60, No. 95

Wednesday, May 17, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. § 552b), notice is hereby given of the Defense Nuclear Facilities Safety Board's (Board) meeting, described below, regarding DOE's standard-based safety management program.

TIME AND DATE: May 31, 1995, 9:00 a.m.

PLACE: The Defense Nuclear Facilities Safety Board, Public Hearing Room, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004.

STATUS: Open.

MATTERS TO BE CONSIDERED: 42 U.S.C. § 2286b requires that the Board review and evaluate the content and implementation of standards relating to the design, construction, operation, and decommissioning of defense nuclear facilities of the Department of Energy. Those standards include rules, DOE safety Orders, and other requirements. The Board, acting pursuant to its enabling statute, has issued a series of Recommendations (most notably 90–2, 93–1, and 94–5) designed to foster the development of an effective standards-based nuclear safety program within DOE. The Secretary of Energy has accepted each of these Recommendations. In the meantime, DOE is engaged in a number of initiatives designed to simplify existing safety Orders and the promulgation of new rules. The Secretary of Energy's commitment to implementing Board recommendations calling for an effective standards-based safety program will require careful integration with these recent DOE initiatives. The Board will hold a public meeting to consider the essential elements of a safety management program that is standards-based and to review DOE's progress in developing such a program.

CONTACT PERSON FOR MORE INFORMATION: Kenneth M. Pusateri, General Manager, Defense Nuclear Facilities Safety Board, 625 Indian Avenue, NW, Suite 700, Washington, DC 20004, (800) 788–4016. This is a toll free number.

SUPPLEMENTARY INFORMATION: The Board has a responsibility for oversight of DOE's development of nuclear health and safety requirements as the transition is being made from the use of safety Orders to rules. The Board understands the reasons for development and promulgation of nuclear safety requirements through rulemaking and is concerned that the conversion process not compromise the requirements-based safety program now embodied in the DOE's safety Orders. The Board's most recent effort to ensure that the "good engineering practices" codified in DOE's safety Orders are maintained was expressed in its Recommendation 94–5, dated December 29, 1994. In that Recommendation, the Board noted the results of its review of selected DOE contracts and DOE advisories and stated, among other things, that:

> The provisions [of these DOE contracts and advisories by DOE management] indicate that the integrated use of nuclear safety-related Rules, Orders, standards and guides in defining and executing DOE's safety management program may not be sufficiently well understood by either the M & O contractors or DOE managers. This issue was raised in the Board's letter of May 6, 1994 to the Department of Energy.
>
> Given the situation as described above, the Board believes that further DOE actions are needed to ensure that there is no relaxation of commitments made to achieve compliance with requirements in Orders while proposed rules are undergoing the development process. These actions should also provide for smooth transition of Orders to rules once promulgated.

Recommendation 94–5, in its entirety, is on file in DOE's Pubic Reading Rooms, at the Defense Nuclear Facilities Safety Board's Washington office, and on the Internet through access to the Board's electronic bulletin board at the following address: gopher://gopher.dnfsb.gov:7070. It is also set forth in the **Federal Register** at 60 FR 2089.

In accord with the statute establishing the Board, a public meeting will be conducted to lay the groundwork for a full assessment of how Standards/Requirements Identification Documents (S/RIDs), rules, Orders, and other safety requirements are integrated into an overall safety management program for defense nuclear facilities. To assist the Board and inform the public, individual Board members will present their views, and the Board's staff will brief the Board on related topics, including, but not limited to:

1. Framework and Application of an Integrated Safety Management Program
2. Standards-Based Safety Management Practices at Selected DOE Defense Nuclear Facilities
3. Regulatory Approaches to Standards-Based Safety Management
4. Tailoring Standards-Based Safety Management for R&D Activities

A transcript of this proceeding will be made available by the Board for inspection by the public at the Defense Nuclear Facilities Safety Board's Washington office.

The Board also intends to notice and conduct public hearings pursuant to 42 U.S.C. § 2286b, at a later date, to assess the Department of Energy's (DOE) progress in implementing an effective standards-based safety program for DOE's defense nuclear facilities and to assure that DOE's activities in streamlining DOE's nuclear safety order system and converting to a regulatory program do not eliminate the engineering practices now codified in DOE's safety Orders that are necessary to adequately protect public health and safety.

The Board reserves its right to further schedule and otherwise regulate the course of these meetings and hearings, to recess, reconvene, postpone or adjourn the meeting, and otherwise exercise its power under the Atomic Energy Act of 1954, as amended.

Dated: May 15, 1995.

John T. Conway,

Chairman.

[FR Doc. 95–12279 Filed 5–15–95; 2:36 pm]

BILLING CODE 3670–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 12:00 noon, Monday, May 22, 1995.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposals regarding a Federal Reserve Bank's building requirements.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: May 12, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–12213 Filed 5–15–95; 10:16 am]

BILLING CODE 6210–01–P

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of May 15, 1995.

A closed meeting will be held on Tuesday, May 16, 1995, at 10:00 a.m. Open meetings will be held on Wednesday, May 17, 1995, at 9:00 a.m. and on Friday, May 19, 1995, at 11:00 a.m., in Room 1C30.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Wallman, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Tuesday, May 16, 1995, at 10:00 a.m., will be:

Institution of injunctive actions.
Institution of administrative proceedings of an enforcement nature.
Settlement of injunctive actions.
Formal orders of investigation.
Withdraw settlement of administrative proceedings of an enforcement nature.
Opinions.

The subject matter of the open meeting scheduled for Wednesday, May 17, 1995, at 9:00 a.m., will be:

The Commission will hold a roundtable discussion with members of the Federal Regulation of Securities Committee of the ABA's Business Law Section. The topics discussed may include alternative approaches to an improved safe harbor for forward looking documents; pending legislative proposals that affect the Securities & Exchange Commission; and sales practices for sophisticated investment products and evolving suitability standards. For further information, please contact Jonathan Katz (202) 942–7070.

The subject matter of the open meeting scheduled for Friday, May 19, 1995, at 11:00 a.m., will be:

1. Consideration of whether to propose amendments to the all-holder's/best price provisions of: (i) Rule 13e–4; and (ii) 14d–10 to prohibit a tender offeror from paying a soliciting dealer fee to a security holder with respect to any tender by that holder for its own account. For further information, please contact Gregg Corso or Laurie Green at (202) 942–2920, Division of Corporation Finance; Nancy Sanow or Carlene Kim at (202) 942–0772, Division of Market Regulation.
2. Consideration of whether to approve a National Association of Securities Dealers ("NASD") proposed rule change (SR–NASD–94–62) to amend its Interpretation under Article III, Section 1 of the NASD Rules of Fair Practice to prohibit a Nasdaq market maker from trading ahead of customer limit orders sent to it for execution from another broker-dealer. For further information, please contact Ethan Corey at (202) 942–0174.

At times, changes in Commission priorities require alternations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary (202) 942–7070.

Dated: May 12, 1995.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–12239 Filed 5–15–95; 12:41 pm]

BILLING CODE 8010–01–M

Corrections

Federal Register
Vol. 60, No. 95
Wednesday, May 17, 1995

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

INTERNATIONAL TRADE ADMINISTRATION

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review

Correction

In notice document 95–11531 beginning on page 24831 in the issue of Wednesday, May 10, 1995, make the following correction:

On page 24831, under the heading "Antidumping Duty Proceedings", in the first listing for "Taiwan" in the table, "(A-583-507)" should read "(A-583-008)".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Delays in Processing of Exemption Applications

Correction

In notice document 95–11616 beginning on page 25260 in the issue of Thursday, May 11, 1994, make the following corrections:

On page 25261, in the table, in the first column, Application numbers "10012-N", "10022-N" and "10098-N" should read "11012-N", "11022-N" and "11098-N" respectively.

BILLING CODE 1505-01-D

federal register

Wednesday
May 17, 1995

Part II

Office of Management and Budget

Cost Principles for State, Local and Indian Tribal Governments (Circular A–87); Notice

OFFICE OF MANAGEMENT AND BUDGET

Cost Principles for State, Local and Indian Tribal Governments

AGENCY: Office of Management and Budget.

ACTION: Final Revision to OMB Circular A–87, "Cost Principles for State, Local and Indian Tribal Governments".

SUMMARY: An interagency task force was established to review existing cost principles for Federal awards to State and local governments. The task force studied Inspector General reports and recommendations, solicited suggestions for changes to the Circular from State and local governments, and compared for consistency the provisions of other Office of Management and Budget cost principles covering non-profit organizations and universities. Proposed revisions reflecting the results of those efforts were published on October 12, 1988 (53 FR 40352–40367) and August 19, 1993 (58 FR 44212–44234). The extensive comments received on these proposed revisions, discussions with interested groups, and other related developments were considered in developing this final revision.

DATES: Agencies shall issue codified regulations to implement the provisions of this Circular by September 1, 1995.

ADDRESSES: Office of Management and Budget, Office of Federal Financial Management, Financial Standards and Reporting Branch, Room 6025, New Executive Office Building, Washington, DC 20503. For a copy of the revised Circular, contact Office of Administration, Publications Office, Room 2200, New Executive Office Building, Washington, DC 20503, or telephone (202)395–7332.

FOR FURTHER INFORMATION CONTACT: Non-Federal organizations should contact the organization's cognizant Federal funding agency. Federal agencies should contact Gilbert H. Tran, Financial Standards and Reporting Branch, Office of Federal Financial Management, Office of Management and Budget, telephone: (202)395–3993.

SUPPLEMENTARY INFORMATION:

A. Background

The Office of Management and Budget (OMB) received about 200 comments from governmental units, Federal agencies, professional organizations and others in response to the **Federal Register** notice of August 19, 1993 (58 FR 44212). All comments were considered in developing this final revision.

OMB also considered the National Performance Review's recommendations to reduce paperwork and red tape. Changes were made to the Circular to streamline the cost negotiation process and defer to State and local accounting procedures whenever possible. Also, the policy guides in the Circular were amended to provide that Federal agencies should work with States or localities which wish to test alternative mechanisms for paying costs for administering Federal programs.

Section B presents a summary of the major public comments grouped by subject and a response to each comment. Other changes have been made to increase clarity and readability. Section C addresses procurement issues. Section D discusses the Federal Acquisition Streamlining Act of 1994.

B. Public Comments and Responses

Basic Circular

Comment: The policy subsection states that "no provision for profit or increment above allowable cost is intended." This statement is currently contained in the Circular, but it is different from that contained in other OMB cost principles circulars and is literally incorrect. This seems to say no profit or increment above cost is permitted.

Response: This sentence was changed to conform with the other OMB cost principles circulars. There is no policy change intended by this change.

General Principles for Determining Allowable Costs—Attachment A

Comment: The requirement in the basic guidelines that "a cost may not be assigned to a Federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to a Federal award as an indirect cost" appears to be too expansive and should be clarified.

Response: There is no policy change intended from that in the existing Circular. The wording in the consistency provision was changed to make it clear that all costs incurred for the same purpose in like circumstances are either direct costs only or indirect costs only with respect to final cost objectives (e.g., grants). No final cost objective shall have allocated to it as an indirect cost any cost if other costs incurred for the same purpose, in like circumstances, have been included as a direct cost of that or any other final cost objective. For example, a grantee normally allocates all travel as an indirect cost. For purposes of a new grant proposal, the grantee intends to allocate the travel costs of personnel whose time is accounted for as direct labor directly to the grant. Since travel costs of personnel whose time is accounted for as direct labor working on other grants are costs which are incurred for the same purpose, these costs may no longer be included within indirect cost pools for purposes of allocation to any other grant.

Comment: The Circular lists the market price of comparable goods or services as one test of reasonableness. This statement may cause problems for State agencies that are required to make purchases from State-wide contracts.

Response: OMB recognizes that market fluctuations may result in a State paying higher prices on State-wide contracts. However, significant differences between State prices and market prices should be analyzed. For example, Federal awards should not be paying higher prices for State awards based on geographical preferences.

Comment: The prohibition against shifting costs allocable to a particular Federal award or other cost objective to other Federal awards needs to be clarified. Governmental units should not be precluded from shifting allowable cost in accordance with program agreements.

Response: This section was expanded to recognize that there are instances when it may be appropriate for governmental units to transfer costs from one cost objective to another cost objective.

Comment: It is not logical to require governmental units to allocate indirect costs to all activities including donated services.

Response: The Circular is designed to provide that Federal awards bear their fair share of costs. If non-Federal activities use donated services that require a substantial amount of support costs, it would be inequitable to charge these costs to Federal awards.

Comment: The section on applicable credits needs to be clarified.

Response: The language in this section has been revised to remove inappropriate examples of applicable credits and references to program income which are covered by the grants management common rule.

Selected Items of Cost—Attachment B

Advertising and Public Relations Costs

Comment: Clarify the allowability of certain public relations type costs, such as job fairs and activities to promote ridership on public transportation.

Response: The allowability of these types of costs depends upon the circumstances surrounding the individual case. In determining whether Federal awards should participate in these types of costs, the recipient should consider how similar types of costs are charged, and whether there is a direct benefit to Federal awards resulting from these costs.

Audit Services

Comment: The Circular limits the allowability of audit costs to single audits and does not provide reimbursement for audits of a less comprehensive nature.

Response: This section was revised to allow the costs of other audits.

Automatic Electronic Data Processing

Comment: The requirement for governmental units to amortize the costs associated with the development and testing of automated systems would impose an unreasonable financial and administrative burden on the governmental units.

Response: OMB eliminated the requirement for governmental units to amortize the costs of developing and testing automated systems until a uniform Federal policy covering all types of recipients of Federal awards can be developed.

Compensation for Personnel Services

Comment: The potential paperwork burdens associated with accounting for employee leave payments and accruals could be substantial.

Response: This section was simplified by modifying many of the prescriptive accounting rules for leave.

Comment: Interest cost associated with pension contributions should be allowed if the governmental unit's contributions are delayed.

Response: References to interest payments were deleted. However, language was inserted into the Circular to make it clear that Federal reimbursement of pension cost must be adjusted when the governmental unit's payments to the fund are late. The adjustment should compensate for the additional cost because of the timing of the charges to the Federal Government and the governmental unit's contribution to the pension fund.

Comment: Governmental units should not be required to use separate cost allocation procedures for classes of employees that experience different actuarial gains and losses (e.g., police and fire departments).

Response: This requirement was deleted from the Circular.

Comment: The requirement that a governmental unit obtain Federal approval for changing its method for determining pension and post-retirement health benefit costs should be deleted.

Response: This requirement was deleted. Pension costs and post-retirement health benefit costs determined in accordance with Generally Accepted Accounting Principles (GAAP) and the provisions of the Circular will be allowable. For contracts covered under Cost Accounting Standards (CAS), CAS 412 and 413 promulgated by the Cost Accounting Standards Board shall establish the allocability of pension costs.

Comment: The current principles applicable to support of personnel costs have worked well and require no change.

Response: OMB believes additional guidance is necessary. Federal agencies have found that the absence of sufficient guidance on documentation to support salaries charged to Federal awards has caused numerous audit findings and resulted in endless wasted hours of negotiation between Federal agencies and governmental units. Based on the comments received, OMB made a number of changes to the requirements in this section of the Circular to clarify and simplify Federal requirements for documenting salaries charged to Federal awards.

Defense and Prosecution of Criminal and Civil Proceedings, and Claims

Comment: OMB proposed to substantially amend the provisions on the allowability of legal and related expenses. In the 1981 version of the Circular, this provision is found at Attachment B, section 16 (46 FR 9552). In the latest proposal, the proposed revisions were at Attachment B, section 14 (58 FR 44222).

State and local governments contended that the proposed revisions on the allowability of legal and related expenses would be unfair and would deny them due process.

State and local governments also objected to the specific proposed revisions dealing with legal proceedings based on the Major Fraud Act and the Federal Acquisition Regulation (48 CFR 31.205–47) in Attachment B, sections 14.a. through f. State and local governments contended that those provisions are ambiguous, inconsistent and overly broad. In addition, these commenters argued that the provisions were designed for commercial contractors and should not be applied to grants.

Response: After reviewing the comments on the proposed revisions, OMB decided not to amend the current provision on the allowability of legal and related expenses. In the revised Circular, this provision is now found at section 14.b.

In this revision, OMB has added a provision at section 14.a. This provision, which was in the proposal, simply restates the currently-applicable, statutory restrictions in 10 U.S.C. 2324(k).

Depreciation and Use Allowances

Comment: It is unclear if a use charge can be charged while an asset is in service.

Response: The Circular now provides that a reasonable use allowance may be negotiated for fully depreciated assets; therefore, OMB believes a reasonable use allowance could be negotiated for an asset for as long as the asset is in service.

Comment: It is not clear whether accelerated depreciation is allowed.

Response: The preferred method of depreciation is the straight line method. However, other methods may be used when there is evidence that an asset will be used up faster in the earlier portion of its useful life.

Comment: The estimated useful lives of equipment and buildings used to compute use allowances should be shortened.

Response: No changes were made. Governmental units have the option of claiming depreciation which is usually based on the actual life of the asset.

Comment: It is not clear why classes of assets needed to be determined on a State-wide, local-wide, or Tribal-wide basis.

Response: This section was amended to say classes of assets shall be determined on the same bases used for the governmental unit's financial statements.

Equipment and Other Capital Expenditures

Comment: The capitalization level for equipment seems to be arbitrarily low. The criterion of $25,000, which is recognized by the Department of Health and Human Services (HHS), might be more appropriate.

Response: The $5000 criterion is in line with capitalization levels used by government contractors and others. The HHS criterion is limited to equipment used on a few very large programs where equipment purchases are a very small percentage of total program costs. For CAS-covered contracts subject to "full coverage", the threshold for equipment is $1500 as established under CAS 404.

Comment: Clarify the term "article" as used in the definition of equipment. The Circular defines equipment "as

being an article of nonexpendable property."

Response: The definition of "capital expenditure" was added to further define the term "equipment." However, if further guidance is needed in this area, governmental units should follow their own accounting practices when defining equipment.

Comment: It is not clear what is meant by "The total acquisition costs are not allowable as indirect costs during the period acquired."

Response: This section was clarified. It now says that capital expenditures which are not authorized to be charged directly to an award may be recovered through use allowances or depreciation.

Comment: The impact of depreciation as proposed in the Circular would shift costs to the governmental unit, not make any provision for the time value of money, increase administrative costs to track resulting depreciation schedules, and erode the partner relationship between Federal agencies and governmental units.

Response: The accounting treatment for depreciation as prescribed by the Circular is based on GAAP. Further, the provisions ensure that the Federal Government pays its fair share of costs, including interest on financing.

Fund Raising and Investment Management Costs

Comment: It is not clear whether costs related to raising funds from employees within an organization for charitable activities, such as the United Way, would be allowable since the Circular disallows fund raising costs.

Response: Generally, the prohibition on fund raising activities covered by the Circular is for those activities where the governmental unit raises funds for its own use. Incidental fund raising from an organization's own employees for charitable organizations, such as the United Way, is considered part of normal operating expenses and, therefore, allowable.

Gains and Losses on Disposition of Depreciable Property and Other Capital Assets and Substantial Relocation of Federal Programs

Comment: The provisions which would require governmental units to reimburse the Federal Government when Federal awards were relocated from facilities where the Federal Government participated in the financing is inappropriate.

Response: This section was amended. It now requires governmental units to obtain prior approval from the cognizant agency for substantial relocations of Federal awards from buildings for which the Federal Government participated in the financing.

Insurance and Indemnification

Comment: It is not apparent why provisions for liabilities, which do not become payable for more than one year after a self insurance provision is made, are limited to the discounted value of the liability.

Response: This requirement is designed to cover only those cases where the amount of the liability is firm or reasonably certain. This provision helps to avoid excessive reserve balances for the current fiscal year. It limits current year premiums to the present value of the future (known or reasonably certain) liability. When that future liability becomes due, prior years premiums plus earnings (i.e., interest or investment income) from those premiums will be available to satisfy that debt.

Comment: The Circular states that self-insurance reserves must be based on sound actuarial principles using the most likely assumptions. This seems to be an attempt to limit sound actuarial principles.

Response: This language was not intended to restrict sound actuarial principles. The language was changed to clarify that sound actuarial assumptions should recognize actual past, as well as probable future, events when determining premiums and reserve levels.

Interest

Comment: Interest expense should be allowable not only for building modifications, as provided in the 1981 revision of Circular A–87, but also for acquisitions of equipment made prior to the issuance date of the revised Circular. The proposed provision is objectionable because it would require dual records and impose an unreasonable and unnecessary administrative burden on State and local governments.

Response: The provision was rewritten to allow interest expense paid or incurred on or after the revised Circular's effective date to be charged to Federal awards for existing as well as newly-acquired equipment.

Historically, OMB has not allowed interest on debt issued prior to the effective date of an interest policy revision (pre-revision debt). In 1980, OMB allowed State and local governments interest on debt issued to acquire buildings, but not on pre-revision debt (45 FR 27363). In 1982, in a revision to Circular A–21, "Cost Principles for Educational Institutions," OMB allowed interest on debt issued to acquire buildings and equipment, but not on pre-revision debt (47 FR 33658). In 1994, in a proposed revision to Circular A–122, "Cost Principles for Non-Profit Organizations," OMB proposed to allow interest debt issued to acquire buildings and equipment, but not on pre-revision debt (59 FR 49091).

In view of the fact that pre-revision debt was incurred with full knowledge of the cost policy that was in effect at that time, OMB does not believe that grantees should expect the Federal Government to allow interest on this debt without such a decision being cost-justified from the Federal Government's perspective. OMB believes the Federal Government should only allow interest on pre-revision debt when the cost of maintaining dual records on pre-revision and post-revision assets and related debt (all or a portion of these recordkeeping costs are chargeable to the Federal programs as administrative costs) is less than the interest cost on pre-revision debt.

With respect to debt incurred to purchase buildings, OMB believes that the cost of maintaining dual records is cost-justified in view of the limited number of buildings and debt issues for which separate records would have to be maintained, and the substantial interest cost associated with long term debt used to finance buildings. Thus, as OMB has previously explained, "[a]pplying the new rules to old buildings would appear to provide a windfall recovery, and might drive up overhead costs of federally assisted programs" (47 FR 33658, also see 45 FR 27363).

Equipment acquired by State and local governments (except computers), while substantial in terms of the number of pieces, is relatively nominal in cost and has a relatively short life span. As a result, the outstanding interest on debt issued to finance this equipment is relatively nominal. Moreover, State and local governments would still bear the major share of the financing costs, even if pre-revision debt were allowable. By contrast, the cost of maintaining dual records for a large number of items and related debt would likely be substantial. Given the different balance between administrative and interest costs, OMB has decided that, in this instance, the administrative costs associated with maintaining separate records to track pre-revision and post-revision debt is not cost-justifiable from the Federal Government's perspective.

The basis for the allowance of pre-revision debt for equipment of State and local governments is consistent with the basis for OMB's treatment of such debt for educational institutions (in 1982) and OMB's proposed treatment of such debt for non-profit organizations (in 1994). The cost of equipment acquired by educational institutions and non-profit organizations through debt financing can be significant (e.g., over $650,000 for x-ray crystallography equipment, $348,000 for a vantage flow cytometer for high speed cell analysis, and $265,000 for an electron microscope). Equipment of this type and related debt has a longer life, and in turn, significantly higher interest cost. Moreover, as with buildings, there are only a limited number of pieces of such equipment, which reduces the administrative costs of dual records. Given the amount of interest involved in the financing of these assets compared with the relatively nominal administrative burden associated with maintaining dual records, OMB believes the cost of maintaining dual records is justifiable.

Comment: The requirement for a governmental unit to document, as part of its decisionmaking process, that capital leasing is the most economical option does not belong in Circular A–87.

Response: The requirement for lease analysis as part of the governmental unit's decisionmaking process and its proper documentation is addressed in the Grants Management Common Rule under Section ____.36(b)(4). This requirement is not addressed in Circular A–87.

Comment: Governmental units would not recover their full costs because of provisions in the Circular which provide that a credit is due the Federal Government when Federal payments for interest, depreciation, use charges and other contributions for building use exceed the interest and principal payments made by the government (positive cash flow).

Response: OMB deleted the provisions in the Circular which would require credits under the conditions described above. However, governmental units will be required to negotiate the amount of allowable interest whenever cash payments (interest, use allowances, depreciation and contributions) exceed governmental unit cash payments and other governmental unit contributions. OMB will study this matter further to ensure fair and equitable policies are established for the States and the Federal Government.

Memberships, Subscriptions, and Professional Activities

Comment: Membership costs in some civic and community organizations should be allowable when the purpose is to promote services provided by the Federal award.

Response: The language has been revised to allow memberships in civic and community organizations as a direct cost with the prior approval of the Federal awarding agency.

Professional Service Costs

Comment: Simplify the section on professional service costs by eliminating the factors to consider in determining the allowability of professional service costs.

Response: Eight subsections listing the factors were deleted.

Proposal Costs

Comment: It is not clear why proposal costs should normally be treated as indirect costs and allocated to all activities. Such costs should be treated as direct costs if they can be identified with a specific award.

Response: OMB added a provision to allow governmental units to charge proposal costs directly to a Federal award with the prior approval of the Federal awarding agency.

Taxes

Comment: If OMB adopts the proposed revision affecting sales tax reimbursement, the revision should become effective at some later date to allow time to change State and local laws.

Response: OMB agrees that there should be a phase-in period. The Circular allows governmental units three years to phase-in the change.

Comment: If the sales tax proposal were adopted, it would become a burden to separately account for State sales taxes paid on Federal grant purchases.

Response: The Circular allows reasonable approximations to be used where the identification of the actual amount of unallowed taxes would require an inordinate amount of effort.

Comment: State sales taxes should be allowable when a governmental unit is in a position that makes exclusion administratively impossible, i.e., when employees in travel status must pay sales taxes upon receipt of goods and services.

Response: States should attempt a reasonable approximation.

Comment: Some State and local governments and Indian Tribal governments would lose substantial amounts of revenue if sales taxes were not chargeable to purchases made in connection with federally-funded programs.

Response: The intention of the tax provision is to address State or local government taxes, or changes in tax policy, that disproportionately affect a federally-funded program. Under the Circular, such taxes are unallowable. (As explained in the next comment-and-response, where a Federal statute prescribes a different treatment for taxes, that statute controls.)

For example, a tax would disproportionately affect a Federal program if the tax were defined or applied so that it was imposed only in connection with that program, or only in connection with Federal programs generally. Another example would be if a sales tax were imposed on a good or service that in practice is used solely or disproportionately in connection with Federal programs. These examples are for illustration, and are not meant to be exclusive. Whether a particular tax, or change in tax policy, would disproportionately affect a Federal program will have to be determined based on a review of the tax and the Federal programs in question.

When a governmental unit pays a tax to itself, that self-assessed tax is not a true cost to the governmental unit. Especially where a self-assessed tax disproportionately affects a Federal program, it is not appropriate for the governmental unit to be able to characterize that tax as a "cost" of its participation in the Federal program. If such disproportionate, self-assessed taxes were treated as allowable, even though they disproportionately affect Federal programs, governmental units could define or apply taxes in such a way that their net impact would largely be to increase the Federal Government's contribution, rather than to raise revenues from the taxpayer. To the extent that making such taxes unallowable would result in a loss of Federal assistance awards, the Circular allows three years for governmental units to phase-out any existing taxes that disproportionately affect Federal programs. (For the larger formula grant programs, the disallowance of such taxes would not result in any loss of Federal assistance awards; the funds which are now used to pay self-assessed taxes could be used to further the objectives of the Federal assistance.)

Comment: The proposed revision on sales taxes is directly contrary to the legislative intent of Public Law 102–234, "Medicaid Voluntary Contributions and Provider Specific Tax Amendments of 1991." The proposal should be revised to preclude its application to broad-based health care related taxes paid by public entities.

Response: The Circular would not take precedence over a statute. If any statute specifically prescribes policies

and specific requirements that differ from the Circular, the statute will govern.

Comment: State sales taxes collected by another level of government should be exempt from the provisions of the Circular.

Response: As noted above, the Circular's disallowance is directed at self-assessed taxes. Thus, if a local government receives an award directly from the Federal Government, and pays a State sales tax on purchases made in connection with that award, the tax is an allowable cost. (However, as previously noted, the Circular does not restrict the authority of Federal agencies to identify taxes where Federal participation is inappropriate.)

However, if the local government does not receive the award directly from the Federal Government, but instead receives the award indirectly by virtue of a State pass-through, then the sales tax that the local government pays the State is in reality a self-assessed tax, which would be unallowable if the tax disproportionately affects a Federal program.

Comment: It is not clear whether the prohibition on payment of sales taxes applies to out-of-state sales tax.

Response: Since they are not self-assessed, taxes assessed by other States, or political subdivisions of other States, are not unallowable under the Circular. (However, as previously noted, the Circular does not restrict the authority of Federal agencies to identify taxes where Federal participation is inappropriate.)

Travel Costs

Comment: Airfare costs in excess of the lowest available commercial discount fare are unallowable. With today's confusing array of super savers and fare wars, the burden involved in proving the lowest airfare would be considerable.

Response: The travel provisions were changed to say travel costs in excess of the customary standard (coach or equivalent) airfare are unallowable.

State/Local-Wide Central Service Cost Allocation Plans—Attachment C

Comment: Working capital reserves in many cases should not be limited to 60 days cash expenses. Time consuming collections, uneven usage levels, and unanticipated demand for services are some of the reasons for authorizing a larger reserve.

Response: OMB believes the 60 day reserve should provide the flexibility required by most funds to operate from one billing cycle to the next. However, the Circular was amended to provide for a larger reserve in exceptional cases when approved by the cognizant Federal agency.

Comment: The Circular should not restrict governmental units from engaging an accounting firm to prepare an indirect cost proposal and then engaging the same firm to make subsequent audits.

Response: This provision was deleted from the Circular. This issue will be addressed as part of OMB policy changes to other OMB grants management circulars.

Comment: What are the criteria OMB uses for making cognizant assignments and for defining "major governments"?

Response: OMB is in the process of reviewing the cognizant assignments for governmental units. Only governmental units receiving substantial amounts of direct Federal assistance will be assigned a Federal cognizant agency and be required to submit plans to those cognizant agencies. Because the mix of Federal awards has changed so much since the last list was issued, OMB needs to develop a new dollar criterion for defining "major."

Comment: States and other prime grantees should not be required to monitor subrecipient cost allocation plans and/or negotiate sub-recipient indirect costs.

Response: The grants management common rule requires governmental units to monitor subawards to assure compliance with applicable Federal requirements. These requirements include compliance with the cost principles. In those cases where the subrecipient does not receive any Federal awards directly from the Federal Government, Federal agencies would not have any direct responsibility for negotiating indirect costs.

Comment: Attachment C, Section E states that "The documentation requirements in this section may be modified, expanded, or reduced by the cognizant agency on a case-by-case basis." This specific sentence might allow a Federal cognizant agency to unreasonably and unilaterally expand the documentation requirements.

Response: Federal agencies should have the flexibility to obtain additional data, when necessary. However, OMB agrees that this type of request should be the exception rather than the rule.

Comment: Documentation for internal service funds seems excessive since these areas are audited. This documentation is more appropriately included in a State or local government's financial statements and work papers for the fiscal year rather than in the entity's cost allocation plan.

Response: OMB amended this section to require only the largest funds to submit data. If the required data are included in the governmental unit's financial statements, submission of the financial statements to the Federal cognizant agency will meet the requirements of the Circular.

Comment: OMB proposed to add provisions requiring the certification of cost allocation plans and of indirect cost rates (see preamble (58 FR 44218); Attachment C, Section E.4 (58 FR 44229); Attachment D, Section D.3 (58 FR 44230–31); and Attachment E, Section D.3 (58 FR 44233)). States objected to the inclusion of the phrase "under penalty of perjury" in the proposed certification. They contended that the phrase is unnecessary.

Response: OMB has decided to amend the Circular to add the proposed certifications, but OMB has accepted the commenters' suggestion that the phrase "under penalty of perjury" not be included in the certifications. OMB believes that, when the Federal Government is dealing with State and local governments, it is unnecessary to require that the certifying government official sign a certification stating that it is made "under penalty of perjury." State and local officials should not conclude, however, that the omission of the phrase "under penalty of perjury" means that no potential legal liability is associated with a certification's submission. In this regard, note the provision in Federal law imposing criminal penalties for "false, fictitious or fraudulent statements or representations" (18 U.S.C. 1001). The Department of Justice is responsible for enforcing this provision (and other laws regarding false statements and claims). OMB expresses no opinion concerning the potential legal liabilities that are associated with making the certifications in the revised Circular.

Comment: Restricting the authority to reopen Central Service Plans to the Federal cognizant agency is inequitable.

Response: This section was changed to state that agreements may be subject to reopening only if the agreement is subsequently found to violate a statute or the information upon which the plan was negotiated is later found to be materially incomplete or inaccurate.

Comment: GAAP for State and local governments do not require internal service activities to be accounted for and reported in proprietary accounts.

Response: The requirement for internal service activities to be accounted for in proprietary accounts was deleted.

Comment: Remove the requirement that a carry forward adjustment is not permitted for a central service activity that was not included in the approved plan.

Response: The carry forward technique was intended to permit adjustments for differences between actual and estimated costs of services included in a cost allocation plan. It was not intended to shift the entire cost of an activity excluded from the year of the plan to a future year. There may be circumstances where a change to the plan should be considered (e.g., the service did not exist when the plan was established and was initiated during the year covered by the plan). This type of amendment should modify the plan itself and would not be handled through a carry forward adjustment.

Comment: Adjustments of billed services do not provide a workable solution for the larger central services of the States. The dollar limitation of $50,000 for making adjustments through allocated central services is too low.

Response: This section was rewritten to provide governmental units more options and flexibility in making adjustments to Federal awards.

Public Assistance Cost Allocation Plans—Attachment D

Comment: The public assistance cost allocation plans are narrative descriptions of cost allocation procedures rather than allocations of actual costs. The provisions dealing with refunds or adjustments related to unallowable costs and the certification of cost allowability do not appear appropriate.

Response: The certification and the provisions dealing with refunds and adjustments were deleted.

State and Local Indirect Cost Rate Proposals—Attachment E

Comment: The Circular is silent on the time period for use of predetermined rates.

Response: The Circular was amended to encourage the use of indirect cost rates for a period of two to four years.

Comment: Governmental units should notify the Federal Government of any accounting changes that might make it necessary to renegotiate the predetermined rate.

Response: A provision was added to the certification which requires the governmental unit to notify the Federal Government of any accounting changes that would effect the application of the predetermined rate.

C. Procurement Issues

Several procurement issues arose during the Federal Government's internal review process. This section clarifies the procurement issues.

Effective Date for Governmental Units With Predetermined Rates Beyond September 1, 1995

For a governmental unit that already has established indirect cost rates beyond September 1, 1995, the effective date of the revised Circular shall be at the start of the next accounting period beginning on or after September 1, 1995, for which the governmental unit has not yet established a predetermined indirect cost rate.

Depreciation Method(s) for CAS-Covered Contracts

CAS-covered contracts subject to "full coverage" under CASB shall follow the standards promulgated by CASB in the computation of depreciation.

Allowability of Interest Expenses for CAS-Covered Contracts

For contracts subject to CAS 414 (48 CFR 9903.414, cost of money as an element of the cost of capital), and CAS 417 (48 CFR 9903.417, cost of money as an element of the cost of capital assets under construction), the imputed cost of money determined allocable in accordance with CAS 414 and 417 may be claimed as an allowable cost. When cost of money is claimed, interest shall not be an allowable direct or indirect cost under such contracts.

D. Federal Acquisition Streamline Act

The Federal Acquisition Streamlining Act (FASA) of 1994, enacted on October 13, 1994, amended Section 306(e) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 256, Public Law 103–355, Section 2151, 108 Stat. 3309–12), to specify certain items of costs as not allowable under Federal covered contracts. OMB is undertaking a review of these FASA provisions, for the purpose of determining whether the unallowable cost provisions of Circular A–87, and of OMB's other cost principles circulars, should be amended in light of the FASA provisions on unallowable costs. If OMB ultimately concludes that amendments may be appropriate, OMB will issue a proposal seeking public comment on the proposed revisions.

John B. Arthur,

Associate Director for Administration.

Executive Office of The President

Office of Management and Budget

Washington, DC 20503

May 4, 1995.

Circular No. A–87 Revised

To the Heads of Executive Departments and Establishments

From: Alice M. Rivlin, Director

Subject: Cost Principles for State, Local, and Indian Tribal Governments

1. *Purpose.* This Circular establishes principles and standards for determining costs for Federal awards carried out through grants, cost reimbursement contracts, and other agreements with State and local governments and federally-recognized Indian tribal governments (governmental units).

2. *Authority.* This Circular is issued under the authority of the Budget and Accounting Act of 1921, as amended; the Budget and Accounting Procedures Act of 1950, as amended; the Chief Financial Officers Act of 1990; Reorganization Plan No. 2 of 1970; and Executive Order No. 11541 ("Prescribing the Duties of the Office of Management and Budget and the Domestic Policy Council in the Executive Office of the President").

3. *Background.* An interagency task force was established in 1987 to review existing cost principles for Federal awards to State, local, and Indian tribal governments. The task force studied Inspector General reports and recommendations, solicited suggestions for changes to the Circular from governmental units, and compared for consistency the provisions of other OMB cost principles circulars covering non-profit organizations and universities. A proposed revised Circular reflecting the results of those efforts was issued on October 12, 1988, and August 19, 1993. Extensive comments on the proposed revisions, discussions with interest groups, and related developments were considered in developing this revision.

4. *Rescissions.* This Circular rescinds and supersedes Circular A–87, issued January 15, 1981.

5. *Policy.* This Circular establishes principles and standards to provide a uniform approach for determining costs and to promote effective program delivery, efficiency, and better relationships between governmental units and the Federal Government. The principles are for determining allowable costs only. They are not intended to identify the circumstances or to dictate the extent of Federal and governmental unit participation in the financing of a particular Federal award. Provision for profit or other increment above cost is outside the scope of this Circular.

6. *Definitions.* Definitions of key terms used in this Circular are contained in Attachment A, Section B.

7. *Required Action.* Agencies responsible for administering programs that involve cost reimbursement contracts, grants, and other agreements with governmental units shall

issue codified regulations to implement the provisions of this Circular and its Attachments by September 1, 1995.

8. *OMB Responsibilities.* The Office of Management and Budget (OMB) will review agency regulations and implementation of this Circular, and will provide policy interpretations and assistance to insure effective and efficient implementation. Any exceptions will be subject to approval by OMB. Exceptions will only be made in particular cases where adequate justification is presented.

9. *Information Contact.* Further information concerning this Circular may be obtained by contacting the Office of Federal Financial Management, Financial Standards and Reporting Branch, Office of Management and Budget, Washington, DC 20503, telephone 202–395–3993.

10. *Policy Review Date.* OMB Circular A–87 will have a policy review three years from the date of issuance.

11. *Effective Date.* This Circular is effective as follows:

—For costs charged indirectly or otherwise covered by the cost allocation plans described in Attachments C, D and E, this revision shall be applied to cost allocation plans and indirect cost proposals submitted or prepared for a governmental unit's fiscal year that begins on or after September 1, 1995.

—For other costs, this revision shall be applied to all awards or amendments, including continuation or renewal awards, made on or after September 1, 1995.

OMB Circular No. A–87—Cost Principles for State, Local and Indian Tribal Governments

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A. Purpose and Scope

1. *Objectives.* This Attachment establishes principles for determining the allowable costs incurred by State, local, and federally-recognized Indian tribal governments (governmental units) under grants, cost reimbursement contracts, and other agreements with the Federal Government (collectively referred to in this Circular as "Federal awards"). The principles are for the purpose of cost determination and are not intended to identify the circumstances or dictate the extent of Federal or governmental unit participation in the financing of a particular program or project. The principles are designed to provide that Federal awards bear their fair share of cost recognized under these principles except where restricted or prohibited by law. Provision for profit or other increment above cost is outside the scope of this Circular.

2. *Policy guides.*

a. The application of these principles is based on the fundamental premises that:

(1) Governmental units are responsible for the efficient and effective administration of Federal awards through the application of sound management practices.

(2) Governmental units assume responsibility for administering Federal funds in a manner consistent with underlying agreements, program objectives, and the terms and conditions of the Federal award.

(3) Each governmental unit, in recognition of its own unique combination of staff, facilities, and experience, will have the primary responsibility for employing whatever form of organization and management techniques may be necessary to assure proper and efficient administration of Federal awards.

b. Federal agencies should work with States or localities which wish to test alternative mechanisms for paying costs for administering Federal programs. The Office of Management and Budget (OMB) encourages Federal agencies to test fee-for-service alternatives as a replacement for current cost-reimbursement payment methods in response to the National Performance Review's (NPR) recommendation. The NPR recommended the fee-for-service approach to reduce the burden associated with maintaining systems for charging administrative costs to Federal programs and preparing and approving cost allocation plans. This approach should also increase incentives for administrative efficiencies and improve outcomes.

3. *Application.*

a. These principles will be applied by all Federal agencies in determining costs incurred by governmental units under Federal awards (including subawards) except those with (1) Publicly-financed educational institutions subject to OMB Circular A–21, "Cost Principles for Educational Institutions," and (2) programs administered by publicly-owned hospitals and other providers of medical care that are subject to requirements promulgated by the sponsoring Federal agencies. However, this Circular does apply to all central service and department/agency costs that are allocated or billed to those educational institutions, hospitals, and other providers of medical care or services by other State and local government departments and agencies.

b. All subawards are subject to those Federal cost principles applicable to the particular organization concerned. Thus, if a subaward is to a governmental unit (other than a college, university or hospital), this Circular shall apply; if a subaward is to a commercial organization, the cost principles applicable to commercial organizations shall apply; if a subaward is to a college or university, Circular A–21 shall apply; if a subaward is to a hospital, the cost principles used by the Federal awarding agency for awards to hospitals shall apply, subject to the provisions of subsection A.3.a. of this Attachment; if a subaward is to some other non-profit organization, Circular A–122, "Cost Principles for Non-Profit Organizations," shall apply.

c. These principles shall be used as a guide in the pricing of fixed price arrangements where costs are used in determining the appropriate price.

d. Where a Federal contract awarded to a governmental unit incorporates a Cost Accounting Standards (CAS) clause, the requirements of that clause shall apply. In such cases, the governmental unit and the cognizant Federal agency shall establish an appropriate advance agreement on how the governmental unit will comply with applicable CAS requirements when estimating, accumulating and reporting costs under CAS-covered contracts. The agreement shall indicate that OMB Circular A–87 requirements will be applied to other Federal awards. In all cases, only one set of records needs to be maintained by the governmental unit.

B. Definitions

1. "Approval or authorization of the awarding or cognizant Federal agency" means documentation evidencing consent prior to incurring a specific cost. If such costs are specifically identified in a Federal award document, approval of the document constitutes approval of the costs. If the costs are covered by a State/local-wide cost allocation plan or an indirect cost proposal, approval of the plan constitutes the approval.

2. "Award" means grants, cost reimbursement contracts and other agreements between a State, local and Indian tribal government and the Federal Government.

3. "Awarding agency" means (a) with respect to a grant, cooperative agreement, or cost reimbursement contract, the Federal agency, and (b) with respect to a subaward, the party that awarded the subaward.

4. "Central service cost allocation plan" means the documentation identifying, accumulating, and allocating or developing billing rates based on the allowable costs of services provided by a governmental unit on a centralized basis to its departments and agencies. The costs of these services may be allocated or billed to users.

5. "Claim" means a written demand or written assertion by the governmental unit or grantor seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of award terms, or other relief arising under or relating to the award. A voucher, invoice or other routine request for payment that is not a dispute when submitted is not a claim. Appeals, such as those filed by a governmental unit in response to questioned audit costs, are not considered claims until a final management decision is made by the Federal awarding agency.

6. "Cognizant agency" means the Federal agency responsible for reviewing, negotiating, and approving cost allocation plans or indirect cost proposals developed under this Circular on behalf of all Federal agencies. OMB publishes a listing of cognizant agencies.

7. "Common Rule" means the "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments; Final Rule" originally issued at 53 FR 8034–8103 (March 11, 1988). Other common rules will be referred to by their specific titles.

8. "Contract" means a mutually binding legal relationship obligating the seller to furnish the supplies or services (including construction) and the buyer to pay for them. It includes all types of commitments that obligate the government to an expenditure of appropriated funds and that, except as otherwise authorized, are in writing. In addition to bilateral instruments, contracts include (but are not limited to): awards and notices of awards; job orders or task orders issued under basic ordering agreements; letter contracts; orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance; and, bilateral contract modifications. Contracts do not include grants and cooperative agreements covered by 31 U.S.C. 6301 et seq.

9. "Cost" means an amount as determined on a cash, accrual, or other basis acceptable to the Federal awarding or cognizant agency. It does not include transfers to a general or similar fund.

10. "Cost allocation plan" means central service cost allocation plan, public assistance cost allocation plan, and indirect cost rate proposal. Each of these terms are further defined in this section.

11. "Cost objective" means a function, organizational subdivision, contract, grant, or other activity for which cost data are needed and for which costs are incurred.

12. "Federally-recognized Indian tribal government" means the governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community (including any native village as defined in Section 3 of the Alaska Native Claims Settlement Act, 85 Stat. 688) certified by the Secretary of the Interior as eligible for the special programs and services provided through the Bureau of Indian Affairs.

13. "Governmental unit" means the entire State, local, or federally-recognized Indian tribal government, including any component thereof. Components of governmental units may function independently of the governmental unit in accordance with the term of the award.

14. "Grantee department or agency" means the component of a State, local, or federally-recognized Indian tribal government which is responsible for the performance or administration of all or some part of a Federal award.

15. "Indirect cost rate proposal" means the documentation prepared by a governmental unit or component thereof to substantiate its request for the establishment of an indirect cost rate as described in Attachment E of this Circular.

16. "Local government" means a county, municipality, city, town, township, local public authority, school district, special district, intrastate district, council of governments (whether or not incorporated as a non-profit corporation under State law), any other regional or interstate government entity, or any agency or instrumentality of a local government.

17. "Public assistance cost allocation plan" means a narrative description of the procedures that will be used in identifying, measuring and allocating all administrative costs to all of the programs administered or supervised by State public assistance agencies as described in Attachment D of this Circular.

18. "State" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments.

C. Basic Guidelines

1. *Factors affecting allowability of costs.* To be allowable under Federal awards, costs must meet the following general criteria:

a. Be necessary and reasonable for proper and efficient performance and administration of Federal awards.

b. Be allocable to Federal awards under the provisions of this Circular.

c. Be authorized or not prohibited under State or local laws or regulations.

d. Conform to any limitations or exclusions set forth in these principles, Federal laws, terms and conditions of the Federal award, or other governing regulations as to types or amounts of cost items.

e. Be consistent with policies, regulations, and procedures that apply uniformly to both Federal awards and other activities of the governmental unit.

f. Be accorded consistent treatment. A cost may not be assigned to a Federal award as a direct cost if any other cost incurred for the same purpose in like

circumstances has been allocated to the Federal award as an indirect cost.

g. Except as otherwise provided for in this Circular, be determined in accordance with generally accepted accounting principles.

h. Not be included as a cost or used to meet cost sharing or matching requirements of any other Federal award in either the current or a prior period, except as specifically provided by Federal law or regulation.

i. Be the net of all applicable credits.

j. Be adequately documented.

2. *Reasonable costs.* A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. The question of reasonableness is particularly important when governmental units or components are predominately federally-funded. In determining reasonableness of a given cost, consideration shall be given to:

a. Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the governmental unit or the performance of the Federal award.

b. The restraints or requirements imposed by such factors as: sound business practices; arms length bargaining; Federal, State and other laws and regulations; and, terms and conditions of the Federal award.

c. Market prices for comparable goods or services.

d. Whether the individuals concerned acted with prudence in the circumstances considering their responsibilities to the governmental unit, its employees, the public at large, and the Federal Government.

e. Significant deviations from the established practices of the governmental unit which may unjustifiably increase the Federal award's cost.

3. *Allocable costs.*

a. A cost is allocable to a particular cost objective if the goods or services involved are chargeable or assignable to such cost objective in accordance with relative benefits received.

b. All activities which benefit from the governmental unit's indirect cost, including unallowable activities and services donated to the governmental unit by third parties, will receive an appropriate allocation of indirect costs.

c. Any cost allocable to a particular Federal award or cost objective under the principles provided for in this Circular may not be charged to other Federal awards to overcome fund deficiencies, to avoid restrictions imposed by law or terms of the Federal awards, or for other reasons. However, this prohibition would not preclude governmental units from shifting costs that are allowable under two or more awards in accordance with existing program agreements.

d. Where an accumulation of indirect costs will ultimately result in charges to a Federal award, a cost allocation plan will be required as described in Attachments C, D, and E.

4. *Applicable credits.*

a. Applicable credits refer to those receipts or reduction of expenditure-type transactions that offset or reduce expense items allocable to Federal awards as direct or indirect costs. Examples of such transactions are: purchase discounts, rebates or allowances, recoveries or indemnities on losses, insurance refunds or rebates, and adjustments of overpayments or erroneous charges. To the extent that such credits accruing to or received by the governmental unit relate to allowable costs, they shall be credited to the Federal award either as a cost reduction or cash refund, as appropriate.

b. In some instances, the amounts received from the Federal Government to finance activities or service operations of the governmental unit should be treated as applicable credits. Specifically, the concept of netting such credit items (including any amounts used to meet cost sharing or matching requirements) should be recognized in determining the rates or amounts to be charged to Federal awards. (See Attachment B, item 15, "Depreciation and use allowances," for areas of potential application in the matter of Federal financing of activities.)

D. Composition of Cost

1. *Total cost.* The total cost of Federal awards is comprised of the allowable direct cost of the program, plus its allocable portion of allowable indirect costs, less applicable credits.

2. *Classification of costs.* There is no universal rule for classifying certain costs as either direct or indirect under every accounting system. A cost may be direct with respect to some specific service or function, but indirect with respect to the Federal award or other final cost objective. Therefore, it is essential that each item of cost be treated consistently in like circumstances either as a direct or an indirect cost. Guidelines for determining direct and indirect costs charged to Federal awards are provided in the sections that follow.

E. Direct Costs

1. *General.* Direct costs are those that can be identified specifically with a particular final cost objective.

2. *Application.* Typical direct costs chargeable to Federal awards are:

a. Compensation of employees for the time devoted and identified specifically to the performance of those awards.

b. Cost of materials acquired, consumed, or expended specifically for the purpose of those awards.

c. Equipment and other approved capital expenditures.

d. Travel expenses incurred specifically to carry out the award.

3. *Minor items.* Any direct cost of a minor amount may be treated as an indirect cost for reasons of practicality where such accounting treatment for that item of cost is consistently applied to all cost objectives.

F. Indirect Costs

1. *General.* Indirect costs are those: (a) incurred for a common or joint purpose benefiting more than one cost objective, and (b) not readily assignable to the cost objectives specifically benefitted, without effort disproportionate to the results achieved. The term "indirect costs," as used herein, applies to costs of this type originating in the grantee department, as well as those incurred by other departments in supplying goods, services, and facilities. To facilitate equitable distribution of indirect expenses to the cost objectives served, it may be necessary to establish a number of pools of indirect costs within a governmental unit department or in other agencies providing services to a governmental unit department. Indirect cost pools should be distributed to benefitted cost objectives on bases that will produce an equitable result in consideration of relative benefits derived.

2. *Cost allocation plans and indirect cost proposals.* Requirements for development and submission of cost allocation plans and indirect cost rate proposals are contained in Attachments C, D, and E.

3. *Limitation on indirect or administrative costs.*

a. In addition to restrictions contained in this Circular, there may be laws that further limit the amount of administrative or indirect cost allowed.

b. Amounts not recoverable as indirect costs or administrative costs under one Federal award may not be shifted to another Federal award, unless specifically authorized by Federal legislation or regulation.

G. Interagency Services

The cost of services provided by one agency to another within the governmental unit may include allowable direct costs of the service plus a pro rate share of indirect costs. A standard indirect cost allowance equal to ten percent of the direct salary and wage cost of providing the service (excluding overtime, shift premiums, and fringe benefits) may be used in lieu of determining the actual indirect costs of the service. These services do not include centralized services included in central service cost allocation plans as described in Attachment C.

H. Required Certifications

Each cost allocation plan or indirect cost rate proposal required by Attachments C and E must comply with the following:

1. No proposal to establish a cost allocation plan or an indirect cost rate, whether submitted to a Federal cognizant agency or maintained on file by the governmental unit, shall be acceptable unless such costs have been certified by the governmental unit using the Certificate of Cost Allocation Plan or Certificate of Indirect Costs as set forth in Attachments C and E. The certificate must be signed on behalf of the governmental unit by an individual at a level no lower than chief financial officer of the governmental unit that submits the proposal or component covered by the proposal.

2. No cost allocation plan or indirect cost rate shall be approved by the Federal Government unless the plan or rate proposal has been certified. Where it is necessary to establish a cost allocation plan or an indirect cost rate and the governmental unit has not submitted a certified proposal for establishing such a plan or rate in accordance with the requirements, the Federal Government may either disallow all indirect costs or unilaterally establish such a plan or rate. Such a plan or rate may be based upon audited historical data or such other data that have been furnished to the cognizant Federal agency and for which it can be demonstrated that all unallowable costs have been excluded. When a cost allocation plan or indirect cost rate is unilaterally established by the Federal Government because of failure of the governmental unit to submit a certified proposal, the plan or rate established will be set to ensure that potentially unallowable costs will not be reimbursed.

Attachment B—Selected Items of Cost

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12. Contingencies
13. Contributions and donations
14. Defense and prosecution of criminal and civil proceedings, and claims
15. Depreciation and use allowances
16. Disbursing service
17. Employee morale, health, and welfare costs
18. Entertainment
19. Equipment and other capital expenditures
20. Fines and penalties
21. Fund raising and investment management costs
22. Gains and losses on disposition of depreciable property and other capital assets and substantial relocation of Federal programs
23. General government expenses
24. Idle facilities and idle capacity
25. Insurance and indemnification
26. Interest
27. Lobbying
28. Maintenance, operations, and repairs
29. Materials and supplies
30. Memberships, subscriptions, and professional activities
31. Motor pools
32. Pre-award costs
33. Professional service costs
34. Proposal costs
35. Publication and printing costs
36. Rearrangements and alterations
37. Reconversion costs
38. Rental costs
39. Taxes
40. Training
41. Travel costs
42. Underrecovery of costs under Federal agreements

Sections 1 through 42 provide principles to be applied in establishing the allowability or unallowability of certain items of cost. These principles apply whether a cost is treated as direct or indirect. A cost is allowable for Federal reimbursement only to the extent of benefits received by Federal awards and its conformance with the general policies and principles stated in Attachment A to this Circular. Failure to mention a particular item of cost in these sections is not intended to imply that it is either allowable or unallowable; rather, determination of allowability in each case should be based on the treatment or standards provided for similar or related items of cost.

1. *Accounting.* The cost of establishing and maintaining accounting and other information systems is allowable.

2. *Advertising and public relations costs.*

a. The term "advertising costs" means the costs of advertising media and corollary administrative costs. Advertising media include magazines, newspapers, radio and television programs, direct mail, exhibits, and the like.

b. The term "public relations" includes community relations and means those activities dedicated to maintaining the image of the governmental unit or maintaining or promoting understanding and favorable relations with the community or public at large or any segment of the public.

c. Advertising costs are allowable only when incurred for the recruitment of personnel, the procurement of goods and services, the disposal of surplus materials, and any other specific purposes necessary to meet the requirements of the Federal award. Advertising costs associated with the disposal of surplus materials are not allowable where all disposal costs are reimbursed based on a standard rate as specified in the grants management common rule.

d. Public relations costs are allowable when:

(1) Specifically required by the Federal award and then only as a direct cost;

(2) Incurred to communicate with the public and press pertaining to specific activities or accomplishments that result from performance of the Federal award and then only as a direct cost; or

(3) Necessary to conduct general liaison with news media and government public relations officers, to the extent that such activities are limited to communication and liaison necessary to keep the public informed on matters of public concern, such as notices of Federal contract/grant awards, financial matters, etc.

e. Unallowable advertising and public relations costs include the following:

(1) All advertising and public relations costs other than as specified in subsections c. and d.;

(2) Except as otherwise permitted by these cost principles, costs of conventions, meetings, or other events

related to other activities of the governmental unit including:

(a) Costs of displays, demonstrations, and exhibits;

(b) Costs of meeting rooms, hospitality suites, and other special facilities used in conjunction with shows and other special events; and

(c) Salaries and wages of employees engaged in setting up and displaying exhibits, making demonstrations, and providing briefings;

(3) Costs of promotional items and memorabilia, including models, gifts, and souvenirs; and

(4) Costs of advertising and public relations designed solely to promote the governmental unit.

3. *Advisory councils.* Costs incurred by advisory councils or committees are allowable as a direct cost where authorized by the Federal awarding agency or as an indirect cost where allocable to Federal awards.

4. *Alcoholic beverages.* Costs of alcoholic beverages are unallowable.

5. *Audit services.* The costs of audits are allowable provided that the audits were performed in accordance with the Single Audit Act, as implemented by Circular A–128, "Audits of State and Local Governments." Generally, the percentage of costs charged to Federal awards for a single audit shall not exceed the percentage derived by dividing Federal funds expended by total funds expended by the recipient or subrecipient (including program matching funds) during the fiscal year. The percentage may be exceeded only if appropriate documentation demonstrates higher actual costs.

Other audit costs are allowable if specifically approved by the awarding or cognizant agency as a direct cost to an award or included as an indirect cost in a cost allocation plan or rate.

6. *Automatic electronic data processing.* The cost of data processing services is allowable (but see section 19, Equipment and other capital expenditures).

7. *Bad debts.* Any losses arising from uncollectible accounts and other claims, and related costs, are unallowable unless provided for in Federal program award regulations.

8. *Bonding costs.* Costs of bonding employees and officials are allowable to the extent that such bonding is in accordance with sound business practice.

9. *Budgeting.* Costs incurred for the development, preparation, presentation, and execution of budgets are allowable.

10. *Communications.* Costs of telephone, mail, messenger, and similar communication services are allowable.

11. *Compensation for personnel services.*

a. *General.* Compensation for personnel services includes all remuneration, paid currently or accrued, for services rendered during the period of performance under Federal awards, including but not necessarily limited to wages, salaries, and fringe benefits. The costs of such compensation are allowable to the extent that they satisfy the specific requirements of this Circular, and that the total compensation for individual employees:

(1) Is reasonable for the services rendered and conforms to the established policy of the governmental unit consistently applied to both Federal and non-Federal activities;

(2) Follows an appointment made in accordance with a governmental unit's laws and rules and meets merit system or other requirements required by Federal law, where applicable; and

(3) Is determined and supported as provided in subsection h.

b. *Reasonableness.* Compensation for employees engaged in work on Federal awards will be considered reasonable to the extent that it is consistent with that paid for similar work in other activities of the governmental unit. In cases where the kinds of employees required for Federal awards are not found in the other activities of the governmental unit, compensation will be considered reasonable to the extent that it is comparable to that paid for similar work in the labor market in which the employing government competes for the kind of employees involved. Compensation surveys providing data representative of the labor market involved will be an acceptable basis for evaluating reasonableness.

c. *Unallowable costs.* Costs which are unallowable under other sections of these principles shall not be allowable under this section solely on the basis that they constitute personnel compensation.

d. *Fringe benefits.*

(1) Fringe benefits are allowances and services provided by employers to their employees as compensation in addition to regular salaries and wages. Fringe benefits include, but are not limited to, the costs of leave, employee insurance, pensions, and unemployment benefit plans. Except as provided elsewhere in these principles, the costs of fringe benefits are allowable to the extent that the benefits are reasonable and are required by law, governmental unit-employee agreement, or an established policy of the governmental unit.

(2) The cost of fringe benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as for annual leave, sick leave, holidays, court leave, military leave, and other similar benefits, are allowable if: (a) they are provided under established written leave policies; (b) the costs are equitably allocated to all related activities, including Federal awards; and, (c) the accounting basis (cash or accrual) selected for costing each type of leave is consistently followed by the governmental unit.

(3) When a governmental unit uses the cash basis of accounting, the cost of leave is recognized in the period that the leave is taken and paid for. Payments for unused leave when an employee retires or terminates employment are allowable in the year of payment provided they are allocated as a general administrative expense to all activities of the governmental unit or component.

(4) The accrual basis may be only used for those types of leave for which a liability as defined by Generally Accepted Accounting Principles (GAAP) exists when the leave is earned. When a governmental unit uses the accrual basis of accounting, in accordance with GAAP, allowable leave costs are the lesser of the amount accrued or funded.

(5) The cost of fringe benefits in the form of employer contributions or expenses for social security; employee life, health, unemployment, and worker's compensation insurance (except as indicated in section 25, Insurance and indemnification); pension plan costs (see subsection e.); and other similar benefits are allowable, provided such benefits are granted under established written policies. Such benefits, whether treated as indirect costs or as direct costs, shall be allocated to Federal awards and all other activities in a manner consistent with the pattern of benefits attributable to the individuals or group(s) of employees whose salaries and wages are chargeable to such Federal awards and other activities.

e. *Pension plan costs.* Pension plan costs may be computed using a pay-as-you-go method or an acceptable actuarial cost method in accordance with established written policies of the governmental unit.

(1) For pension plans financed on a pay-as-you-go method, allowable costs will be limited to those representing actual payments to retirees or their beneficiaries.

(2) Pension costs calculated using an actuarial cost-based method recognized by GAAP are allowable for a given fiscal year if they are funded for that year within six months after the end of that year. Costs funded after the six month period (or a later period agreed to by the cognizant agency) are allowable in the year funded. The cognizant agency may agree to an extension of the six month period if an appropriate adjustment is made to compensate for the timing of the charges to the Federal Government and related Federal reimbursement and the governmental unit's contribution to the pension fund. Adjustments may be made by cash refund or other equitable procedures to compensate the Federal Government for the time value of Federal reimbursements in excess of contributions to the pension fund.

(3) Amounts funded by the governmental unit in excess of the actuarially determined amount for a fiscal year may be used as the governmental unit's contribution in future periods.

(4) When a governmental unit converts to an acceptable actuarial cost method, as defined by GAAP, and funds pension costs in accordance with this method, the unfunded liability at the time of conversion shall be allowable if amortized over a period of years in accordance with GAAP.

(5) The Federal Government shall receive an equitable share of any previously allowed pension costs (including earnings thereon) which revert or inure to the governmental unit in the form of a refund, withdrawal, or other credit.

f. Post-retirement health benefits. Post-retirement health benefits (PRHB) refers to costs of health insurance or health services not included in a pension plan covered by subsection e. for retirees and their spouses, dependents, and survivors. PRHB costs may be computed using a pay-as-you-go method or an acceptable actuarial cost method in accordance with established written polices of the governmental unit.

(1) For PRHB financed on a pay as-you-go method, allowable costs will be limited to those representing actual payments to retirees or their beneficiaries.

(2) PRHB costs calculated using an actuarial cost method recognized by GAAP are allowable if they are funded for that year within six months after the end of that year. Costs funded after the six month period (or a later period agreed to by the cognizant agency) are allowable in the year funded. The cognizant agency may agree to an extension of the six month period if an appropriate adjustment is made to compensate for the timing of the charges to the Federal Government and related Federal reimbursements and the governmental unit's contributions to the PRHB fund. Adjustments may be made by cash refund, reduction in current year's PRHB costs, or other equitable procedures to compensate the Federal Government for the time value of Federal reimbursements in excess of contributions to the PRHB fund.

(3) Amounts funded in excess of the actuarially determined amount for a fiscal year may be used as the government's contribution in a future period.

(4) When a governmental unit converts to an acceptable actuarial cost method and funds PRHB costs in accordance with this method, the initial unfunded liability attributable to prior years shall be allowable if amortized over a period of years in accordance with GAAP, or, if no such GAAP period exists, over a period negotiated with the cognizant agency.

(5) To be allowable in the current year, the PRHB costs must be paid either to:

(a) An insurer or other benefit provider as current year costs or premiums, or

(b) An insurer or trustee to maintain a trust fund or reserve for the sole purpose of providing post-retirement benefits to retirees and other beneficiaries.

(6) The Federal Government shall receive an equitable share of any amounts of previously allowed post-retirement benefit costs (including earnings thereon) which revert or inure to the governmental unit in the form of a refund, withdrawal, or other credit.

g. *Severance pay.*

(1) Payments in addition to regular salaries and wages made to workers whose employment is being terminated are allowable to the extent that, in each case, they are required by (a) law, (b) employer-employee agreement, or (c) established written policy.

(2) Severance payments (but not accruals) associated with normal turnover are allowable. Such payments shall be allocated to all activities of the governmental unit as an indirect cost.

(3) Abnormal or mass severance pay will be considered on a case-by-case basis and is allowable only if approved by the cognizant Federal agency.

h. *Support of salaries and wages.* These standards regarding time distribution are in addition to the standards for payroll documentation.

(1) Charges to Federal awards for salaries and wages, whether treated as direct or indirect costs, will be based on payrolls documented in accordance with generally accepted practice of the governmental unit and approved by a responsible official(s) of the governmental unit.

(2) No further documentation is required for the salaries and wages of employees who work in a single indirect cost activity.

(3) Where employees are expected to work solely on a single Federal award or cost objective, charges for their salaries and wages will be supported by periodic certifications that the employees worked solely on that program for the period covered by the certification. These certifications will be prepared at least semi-annually and will be signed by the employee or supervisory official having first hand knowledge of the work performed by the employee.

(4) Where employees work on multiple activities or cost objectives, a distribution of their salaries or wages will be supported by personnel activity reports or equivalent documentation which meets the standards in subsection (5) unless a statistical sampling system (see subsection (6)) or other substitute system has been approved by the cognizant Federal agency. Such documentary support will be required where employees work on:

(a) More than one Federal award,

(b) A Federal award and a non-Federal award,

(c) An indirect cost activity and a direct cost activity,

(d) Two or more indirect activities which are allocated using different allocation bases, or

(e) An unallowable activity and a direct or indirect cost activity.

(5) Personnel activity reports or equivalent documentation must meet the following standards:

(a) They must reflect an after-the-fact distribution of the actual activity of each employee,

(b) They must account for the total activity for which each employee is compensated,

(c) They must be prepared at least monthly and must coincide with one or more pay periods, and

(d) They must be signed by the employee.

(e) Budget estimates or other distribution percentages determined before the services are performed do not qualify as support for charges to Federal awards but may be used for interim accounting purposes, provided that:

(i) The governmental unit's system for establishing the estimates produces reasonable approximations of the activity actually performed;

(ii) At least quarterly, comparisons of actual costs to budgeted distributions based on the monthly activity reports are made. Costs charged to Federal

awards to reflect adjustments made as a result of the activity actually performed may be recorded annually if the quarterly comparisons show the differences between budgeted and actual costs are less than ten percent; and

(iii) The budget estimates or other distribution percentages are revised at least quarterly, if necessary, to reflect changed circumstances.

(6) Substitute systems for allocating salaries and wages to Federal awards may be used in place of activity reports. These systems are subject to approval if required by the cognizant agency. Such systems may include, but are not limited to, random moment sampling, case counts, or other quantifiable measures of employee effort.

(a) Substitute systems which use sampling methods (primarily for Aid to Families with Dependent Children (AFDC), Medicaid, and other public assistance programs) must meet acceptable statistical sampling standards including:

(i) The sampling universe must include all of the employees whose salaries and wages are to be allocated based on sample results except as provided in subsection (c);

(ii) The entire time period involved must be covered by the sample; and

(iii) The results must be statistically valid and applied to the period being sampled.

(b) Allocating charges for the sampled employees' supervisors, clerical and support staffs, based on the results of the sampled employees, will be acceptable.

(c) Less than full compliance with the statistical sampling standards noted in subsection (a) may be accepted by the cognizant agency if it concludes that the amounts to be allocated to Federal awards will be minimal, or if it concludes that the system proposed by the governmental unit will result in lower costs to Federal awards than a system which complies with the standards.

(7) Salaries and wages of employees used in meeting cost sharing or matching requirements of Federal awards must be supported in the same manner as those claimed as allowable costs under Federal awards.

i. *Donated services.*

(1) Donated or volunteer services may be furnished to a governmental unit by professional and technical personnel, consultants, and other skilled and unskilled labor. The value of these services is not reimbursable either as a direct or indirect cost. However, the value of donated services may be used to meet cost sharing or matching requirements in accordance with the provisions of the Common Rule.

(2) The value of donated services utilized in the performance of a direct cost activity shall, when material in amount, be considered in the determination of the governmental unit's indirect costs or rate(s) and, accordingly, shall be allocated a proportionate share of applicable indirect costs.

(3) To the extent feasible, donated services will be supported by the same methods used by the governmental unit to support the allocability of regular personnel services.

12. *Contingencies.* Contributions to a contingency reserve or any similar provision made for events the occurrence of which cannot be foretold with certainty as to time, or intensity, or with an assurance of their happening, are unallowable. The term "contingency reserve" excludes self-insurance reserves (see subsection 25.c.), pension plan reserves (see subsection 11.e.), and post-retirement health and other benefit reserves (see subsection 11.f.) computed using acceptable actuarial cost methods.

13. *Contributions and donations.* Contributions and donations, including cash, property, and services, by governmental units to others, regardless of the recipient, are unallowable.

14. *Defense and prosecution of criminal and civil proceedings, and claims.*

a. The following costs are unallowable for contracts covered by 10 U.S.C. 2324(k), "Allowable costs under defense contracts."

(1) Costs incurred in defense of any civil or criminal fraud proceeding or similar proceeding (including filing of false certification brought by the United States where the contractor is found liable or has pleaded nolo contendere to a charge of fraud or similar proceeding (including filing of a false certification).

(2) Costs incurred by a contractor in connection with any criminal, civil or administrative proceedings commenced by the United States or a State to the extent provided in 10 U.S.C. 2324(k).

b. Legal expenses required in the administration of Federal programs are allowable. Legal expenses for prosecution of claims against the Federal Government are unallowable.

15. *Depreciation and use allowances.*

a. Depreciation and use allowances are means of allocating the cost of fixed assets to periods benefitting from asset use. Compensation for the use of fixed assets on hand may be made through depreciation or use allowances. A combination of the two methods may not be used in connection with a single class of fixed assets (e.g., buildings, office equipment, computer equipment, etc.) except as provided in subsection g. Except for enterprise funds and internal service funds that are included as part of a State/local cost allocation plan, classes of assets shall be determined on the same basis used for the government-wide financial statements.

b. The computation of depreciation or use allowances shall be based on the acquisition cost of the assets involved. Where actual cost records have not been maintained, a reasonable estimate of the original acquisition cost may be used. The value of an asset donated to the governmental unit by an unrelated third party shall be its fair market value at the time of donation. Governmental or quasi-governmental organizations located within the same State shall not be considered unrelated third parties for this purpose.

c. The computation of depreciation or use allowances will exclude:

(1) The cost of land;

(2) Any portion of the cost of buildings and equipment borne by or donated by the Federal Government irrespective of where title was originally vested or where it presently resides; and

(3) Any portion of the cost of buildings and equipment contributed by or for the governmental unit, or a related donor organization, in satisfaction of a matching requirement.

d. Where the use allowance method is followed, the use allowance for buildings and improvements (including land improvements, such as paved parking areas, fences, and sidewalks) will be computed at an annual rate not exceeding two percent of acquisition costs. The use allowance for equipment will be computed at an annual rate not exceeding 6⅔ percent of acquisition cost. When the use allowance method is used for buildings, the entire building must be treated as a single asset; the building's components (e.g., plumbing system, heating and air condition, etc.) cannot be segregated from the building's shell. The two percent limitation, however, need not be applied to equipment which is merely attached or fastened to the building but not permanently fixed to it and which is used as furnishings or decorations or for specialized purposes (e.g., dentist chairs and dental treatment units, counters, laboratory benches bolted to the floor, dishwashers, modular furniture, carpeting, etc.). Such equipment will be considered as not being permanently fixed to the building if it can be removed without the destruction of, or need for costly or extensive alterations or repairs, to the building or the equipment. Equipment that meets these criteria will be subject to the 6⅔ percent equipment use allowance limitation.

e. Where the depreciation method is followed, the period of useful service (useful life) established in each case for usable capital assets must take into consideration such factors as type of construction, nature of the equipment used, historical usage patterns, technological developments, and the renewal and replacement policies of the governmental unit followed for the individual items or classes of assets involved. In the absence of clear evidence indicating that the expected consumption of the asset will be significantly greater in the early portions than in the later portions of its useful life, the straight line method of depreciation shall be used. Depreciation methods once used shall not be changed unless approved by the Federal cognizant or awarding agency. When the depreciation method is introduced for application to an asset previously subject to a use allowance, the annual depreciation charge thereon may not exceed the amount that would have resulted had the depreciation method been in effect from the date of acquisition of the asset. The combination of use allowances and depreciation applicable to the asset shall not exceed the total acquisition cost of the asset or fair market value at time of donation.

f. When the depreciation method is used for buildings, a building's shell may be segregated from the major component of the building (e.g., plumbing system, heating, and air conditioning system, etc.) and each major component depreciated over its estimated useful life, or the entire building (i.e., the shell and all components) may be treated as a single asset and depreciated over a single useful life.

g. A reasonable use allowance may be negotiated for any assets that are considered to be fully depreciated, after taking into consideration the amount of depreciation previously charged to the government, the estimated useful life remaining at the time of negotiation, the effect of any increased maintenance charges, decreased efficiency due to age, and any other factors pertinent to the utilization of the asset for the purpose contemplated.

h. Charges for use allowances or depreciation must be supported by adequate property records. Physical inventories must be taken at least once every two years (a statistical sampling approach is acceptable) to ensure that assets exist, and are in use. Governmental units will manage equipment in accordance with State laws and procedures. When the depreciation method is followed, depreciation records indicating the amount of depreciation taken each period must also be maintained.

16. *Disbursing service.* The cost of disbursing funds by the Treasurer or other designated officer is allowable.

17. *Employee morale, health, and welfare costs.* The costs of health or first-aid clinics and/or infirmaries, recreational facilities, employee counseling services, employee information publications, and any related expenses incurred in accordance with a governmental unit's policy are allowable. Income generated from any of these activities will be offset against expenses.

18. *Entertainment.* Costs of entertainment, including amusement, diversion, and social activities and any costs directly associated with such costs (such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities) are unallowable.

19. Equipment and other capital expenditures.

a. As used in this section the following terms have the meanings as set forth below:

(1) "Capital expenditure" means the cost of the asset including the cost to put it in place. Capital expenditure for equipment means the net invoice price of the equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective in transit insurance, freight, and installation may be included in, or excluded from, capital expenditure cost in accordance with the governmental unit's regular accounting practices.

(2) "Equipment" means an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals the lesser of (a) the capitalization level established by the governmental unit for financial statement purposes, or (b) $5000.

(3) "Other capital assets" mean buildings, land, and improvements to buildings or land that materially increase their value or useful life.

b. Capital expenditures which are not charged directly to a Federal award may be recovered through use allowances or depreciation on buildings, capital improvements, and equipment (see section 15). See also section 38 for allowability of rental costs for buildings and equipment.

c. Capital expenditures for equipment, including replacement equipment, other capital assets, and improvements which materially increase the value or useful life of equipment or other capital assets are allowable as a direct cost when approved by the awarding agency. Federal awarding agencies are authorized at their option to waive or delegate this approval requirement.

d. Items of equipment with an acquisition cost of less than $5000 are considered to be supplies and are allowable as direct costs of Federal awards without specific awarding agency approval.

e. The unamortized portion of any equipment written off as a result of a change in capitalization levels may be recovered by (1) continuing to claim the otherwise allowable use allowances or depreciation charges on the equipment or by (2) amortizing the amount to be written off over a period of years negotiated with the cognizant agency.

f. When replacing equipment purchased in whole or in part with Federal funds, the governmental unit may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property.

20. *Fines and penalties.* Fines, penalties, damages, and other settlements resulting from violations (or alleged violations) of, or failure of the governmental unit to comply with, Federal, State, local, or Indian tribal laws and regulations are unallowable except when incurred as a result of compliance with specific provisions of the Federal award or written instructions by the awarding agency authorizing in advance such payments.

21. *Fund raising and investment management costs.*

a. Costs of organized fund raising, including financial campaigns, solicitation of gifts and bequests, and similar expenses incurred to raise capital or obtain contributions are unallowable, regardless of the purpose for which the funds will be used.

b. Costs of investment counsel and staff and similar expenses incurred to enhance income from investments are unallowable. However, such costs associated with investments covering pension, self-insurance, or other funds which include Federal participation allowed by this Circular are allowable.

c. Fund raising and investment activities shall be allocated an appropriate share of indirect costs under the conditions described in subsection C.3.b. of Attachment A.

22. *Gains and losses on disposition of depreciable property and other capital assets and substantial relocation of Federal programs.*

a. (1) Gains and losses on the sale, retirement, or other disposition of depreciable property shall be included in the year in which they occur as credits or charges to the asset cost grouping(s) in which the property was included. The amount of the gain or loss to be included as a credit or charge to the appropriate asset cost grouping(s) shall be the difference between the amount realized on the property and the undepreciated basis of the property.

(2) Gains and losses on the disposition of depreciable property shall not be recognized as a separate credit or charge under the following conditions:

(a) The gain or loss is processed through a depreciation account and is reflected in the depreciation allowable under sections 15 and 19.

(b) The property is given in exchange as part of the purchase price of a similar item and the gain or loss is taken into account in determining the depreciation cost basis of the new item.

(c) A loss results from the failure to maintain permissible insurance, except as otherwise provided in subsection 25.d.

(d) Compensation for the use of the property was provided through use allowances in lieu of depreciation.

b. Substantial relocation of Federal awards from a facility where the Federal Government participated in the financing to another facility prior to the expiration of the useful life of the financed facility requires Federal agency approval. The extent of the relocation, the amount of the Federal participation in the financing, and the depreciation charged to date may require negotiation of space charges for Federal awards.

c. Gains or losses of any nature arising from the sale or exchange of property other than the property covered in subsection a., e.g., land or included in the fair market value used in any adjustment resulting from a relocation of Federal awards covered in subsection b. shall be excluded in computing Federal award costs.

23. *General government expenses.*

a. The general costs of government are unallowable (except as provided in section 41). These include:

(1) Salaries and expenses of the Office of the Governor of a State or the chief executive of a political subdivision or the chief executives of federally-recognized Indian tribal governments;

(2) Salaries and other expenses of State legislatures, tribal councils, or similar local governmental bodies, such as county supervisors, city councils, school boards, etc., whether incurred for purposes of legislation or executive direction;

(3) Cost of the judiciary branch of a government;

(4) Cost of prosecutorial activities unless treated as a direct cost to a specific program when authorized by program regulations (however, this does not preclude the allowability of other legal activities of the Attorney General); and

(5) Other general types of government services normally provided to the general public, such as fire and police, unless provided for as a direct cost in program regulations.

b. For federally-recognized Indian tribal governments and Councils Of Governments (COGs), the portion of salaries and expenses directly attributable to managing and operating Federal programs by the chief executive and his staff is allowable.

24. *Idle facilities and idle capacity.*

a. As used in this section the following terms have the meanings set forth below:

(1) "Facilities" means land and buildings or any portion thereof, equipment individually or collectively, or any other tangible capital asset, wherever located, and whether owned or leased by the governmental unit.

(2) "Idle facilities" means completely unused facilities that are excess to the governmental unit's current needs.

(3) "Idle capacity" means the unused capacity of partially used facilities. It is the difference between (a) that which a facility could achieve under 100 percent operating time on a one-shift basis less operating interruptions resulting from time lost for repairs, setups, unsatisfactory materials, and other normal delays and (b) the extent to which the facility was actually used to meet demands during the accounting period. A multi-shift basis should be used if it can be shown that this amount of usage would normally be expected for the type of facility involved.

(4) "Cost of idle facilities or idle capacity" means costs such as maintenance, repair, housing, rent, and other related costs, e.g., insurance, interest, and depreciation or use allowances.

b. The costs of idle facilities are unallowable except to the extent that:

(1) They are necessary to meet fluctuations in workload; or

(2) Although not necessary to meet fluctuations in workload, they were necessary when acquired and are now idle because of changes in program requirements, efforts to achieve more economical operations, reorganization, termination, or other causes which could not have been reasonably foreseen. Under the exception stated in this subsection, costs of idle facilities are allowable for a reasonable period of time, ordinarily not to exceed one year, depending on the initiative taken to use, lease, or dispose of such facilities.

c. The costs of idle capacity are normal costs of doing business and are a factor in the normal fluctuations of usage or indirect cost rates from period to period. Such costs are allowable, provided that the capacity is reasonably anticipated to be necessary or was originally reasonable and is not subject to reduction or elimination by use on other Federal awards, subletting, renting, or sale, in accordance with sound business, economic, or security practices. Widespread idle capacity throughout an entire facility or among a group of assets having substantially the same function may be considered idle facilities.

25. *Insurance and indemnification.*

a. Costs of insurance required or approved and maintained, pursuant to the Federal award, are allowable.

b. Costs of other insurance in connection with the general conduct of activities are allowable subject to the following limitations:

(1) Types and extent and cost of coverage are in accordance with the governmental unit's policy and sound business practice.

(2) Costs of insurance or of contributions to any reserve covering the risk of loss of, or damage to, Federal Government property are unallowable except to the extent that the awarding agency has specifically required or approved such costs.

c. Actual losses which could have been covered by permissible insurance (through a self-insurance program or otherwise) are unallowable, unless expressly provided for in the Federal award or as described below. However, the Federal Government will participate in actual losses of a self insurance fund that are in excess of reserves. Costs incurred because of losses not covered under nominal deductible insurance coverage provided in keeping with sound management practice, and minor losses not covered by insurance, such as spoilage, breakage, and disappearance of small hand tools, which occur in the ordinary course of operations, are allowable.

d. Contributions to a reserve for certain self-insurance programs including workers compensation, unemployment compensation, and severance pay are allowable subject to the following provisions:

(1) The type of coverage and the extent of coverage and the rates and premiums would have been allowed had insurance (including reinsurance) been purchased to cover the risks.

However, provision for known or reasonably estimated self-insured liabilities, which do not become payable for more than one year after the provision is made, shall not exceed the discounted present value of the liability. The rate used for discounting the liability must be determined by giving consideration to such factors as the governmental unit's settlement rate for those liabilities and its investment rate of return.

(2) Earnings or investment income on reserves must be credited to those reserves.

(3) Contributions to reserves must be based on sound actuarial principles using historical experience and reasonable assumptions. Reserve levels must be analyzed and updated at least biennially for each major risk being insured and take into account any reinsurance, coinsurance, etc. Reserve levels related to employee-related coverages will normally be limited to the value of claims (a) submitted and adjudicated but not paid, (b) submitted but not adjudicated, and (c) incurred but not submitted. Reserve levels in excess of the amounts based on the above must be identified and justified in the cost allocation plan or indirect cost rate proposal.

(4) Accounting records, actuarial studies, and cost allocations (or billings) must recognize any significant differences due to types of insured risk and losses generated by the various insured activities or agencies of the governmental unit. If individual departments or agencies of the governmental unit experience significantly different levels of claims for a particular risk, those differences are to be recognized by the use of separate allocations or other techniques resulting in an equitable allocation.

(5) Whenever funds are transferred from a self-insurance reserve to other accounts (e.g., general fund), refunds shall be made to the Federal Government for its share of funds transferred, including earned or imputed interest from the date of transfer.

e. Actual claims paid to or on behalf of employees or former employees for workers' compensation, unemployment compensation, severance pay, and similar employee benefits (e.g., subsection 11.f. for post retirement health benefits), are allowable in the year of payment provided (1) the governmental unit follows a consistent costing policy and (2) they are allocated as a general administrative expense to all activities of the governmental unit.

f. Insurance refunds shall be credited against insurance costs in the year the refund is received.

g. Indemnification includes securing the governmental unit against liabilities to third persons and other losses not compensated by insurance or otherwise. The Federal Government is obligated to indemnify the governmental unit only to the extent expressly provided for in the Federal award, except as provided in subsection d.

h. Costs of commercial insurance that protects against the costs of the contractor for correction of the contractor's own defects in materials or workmanship are unallowable.

26. *Interest.*

a. Costs incurred for interest on borrowed capital or the use of a governmental unit's own funds, however represented, are unallowable except as specifically provided in subsection b. or authorized by Federal legislation.

b. Financing costs (including interest) paid or incurred on or after the effective date of this Circular associated with the otherwise allowable costs of building acquisition, construction, or fabrication, reconstruction or remodeling completed on or after October 1, 1980 is allowable, subject to the conditions in (1)–(4). Financing costs (including interest) paid or incurred on or after the effective date of this Circular associated with otherwise allowable costs of equipment is allowable, subject to the conditions in (1)–(4).

(1) The financing is provided (from other than tax or user fee sources) by a bona fide third party external to the governmental unit;

(2) The assets are used in support of Federal awards;

(3) Earnings on debt service reserve funds or interest earned on borrowed funds pending payment of the construction or acquisition costs are used to offset the current period's cost or the capitalized interest, as appropriate. Earnings subject to being reported to the Federal Internal Revenue Service under arbitrage requirements are excludable.

(4) Governmental units will negotiate the amount of allowable interest whenever cash payments (interest, depreciation, use allowances, and contributions) exceed the governmental unit's cash payments and other contributions attributable to that portion of real property used for Federal awards.

27. *Lobbying.* The cost of certain influencing activities associated with obtaining grants, contracts, cooperative agreements, or loans is an unallowable cost. Lobbying with respect to certain grants, contracts, cooperative agreements, and loans shall be governed by the common rule, "New Restrictions on Lobbying" published at 55 FR 6736 (February 26, 1990), including definitions, and the Office of Management and Budget "Government-wide Guidance for New Restrictions on Lobbying" and notices published at 54 FR 52306 (December 20, 1989), 55 FR 24540 (June 15, 1990), and 57 FR 1772 (January 15, 1992), respectively.

28. *Maintenance, operations, and repairs.* Unless prohibited by law, the cost of utilities, insurance, security, janitorial services, elevator service, upkeep of grounds, necessary maintenance, normal repairs and alterations, and the like are allowable to the extent that they: (1) keep property (including Federal property, unless otherwise provided for) in an efficient operating condition, (2) do not add to the permanent value of property or appreciably prolong its intended life, and (3) are not otherwise included in rental or other charges for space. Costs which add to the permanent value of property or appreciably prolong its intended life shall be treated as capital expenditures (see sections 15 and 19).

29. *Materials and supplies.* The cost of materials and supplies is allowable. Purchases should be charged at their actual prices after deducting all cash discounts, trade discounts, rebates, and allowances received. Withdrawals from general stores or stockrooms should be charged at cost under any recognized method of pricing, consistently applied. Incoming transportation charges are a proper part of materials and supply costs.

30. *Memberships, subscriptions, and professional activities.*

a. Costs of the governmental unit's memberships in business, technical, and professional organizations are allowable.

b. Costs of the governmental unit's subscriptions to business, professional, and technical periodicals are allowable.

c. Costs of meetings and conferences where the primary purpose is the dissemination of technical information, including meals, transportation, rental of meeting facilities, and other incidental costs are allowable.

d. Costs of membership in civic and community, social organizations are allowable as a direct cost with the approval of the Federal awarding agency.

e. Costs of membership in organizations substantially engaged in lobbying are unallowable.

31. *Motor pools.* The costs of a service organization which provides automobiles to user governmental units at a mileage or fixed rate and/or

provides vehicle maintenance, inspection, and repair services are allowable.

32. *Pre-award costs.* Pre-award costs are those incurred prior to the effective date of the award directly pursuant to the negotiation and in anticipation of the award where such costs are necessary to comply with the proposed delivery schedule or period of performance. Such costs are allowable only to the extent that they would have been allowable if incurred after the date of the award and only with the written approval of the awarding agency.

33. *Professional service costs.*

a. Cost of professional and consultant services rendered by persons or organizations that are members of a particular profession or possess a special skill, whether or not officers or employees of the governmental unit, are allowable, subject to section 14 when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Federal Government.

b. Retainer fees supported by evidence of bona fide services available or rendered are allowable.

34. *Proposal costs.* Costs of preparing proposals for potential Federal awards are allowable. Proposal costs should normally be treated as indirect costs and should be allocated to all activities of the governmental unit utilizing the cost allocation plan and indirect cost rate proposal. However, proposal costs may be charged directly to Federal awards with the prior approval of the Federal awarding agency.

35. *Publication and printing costs.* Publication costs, including the costs of printing (including the processes of composition, plate-making, press work, and binding, and the end products produced by such processes), distribution, promotion, mailing, and general handling are allowable.

36. *Rearrangements and alterations.* Costs incurred for ordinary and normal rearrangement and alteration of facilities are allowable. Special arrangements and alterations costs incurred specifically for a Federal award are allowable with the prior approval of the Federal awarding agency.

37. *Reconversion costs.* Costs incurred in the restoration or rehabilitation of the governmental unit's facilities to approximately the same condition existing immediately prior to commencement of Federal awards, less costs related to normal wear and tear, are allowable.

38. *Rental costs.*

a. Subject to the limitations described in subsections b. through d. of this section, rental costs are allowable to the extent that the rates are reasonable in light of such factors as: rental costs of comparable property, if any; market conditions in the area; alternatives available; and, the type, life expectancy, condition, and value of the property leased.

b. Rental costs under sale and leaseback arrangements are allowable only up to the amount that would be allowed had the governmental unit continued to own the property.

c. Rental costs under less-than-arms-length leases are allowable only up to the amount that would be allowed had title to the property vested in the governmental unit. For this purpose, less-than-arms-length leases include, but are not limited to, those where:

(1) One party to the lease is able to control or substantially influence the actions of the other;

(2) Both parties are parts of the same governmental unit; or

(3) The governmental unit creates an authority or similar entity to acquire and lease the facilities to the governmental unit and other parties.

d. Rental costs under leases which are required to be treated as capital leases under GAAP are allowable only up to the amount that would be allowed had the governmental unit purchased the property on the date the lease agreement was executed. This amount would include expenses such as depreciation or use allowance, maintenance, and insurance. The provisions of Financial Accounting Standards Board Statement 13 shall be used to determine whether a lease is a capital lease. Interest costs related to capital leases are allowable to the extent they meet the criteria in section 26.

39. *Taxes.*

a. Taxes that a governmental unit is legally required to pay are allowable, except for self-assessed taxes that disproportionately affect Federal programs or changes in tax policies that disproportionately affect Federal programs. This provision becomes effective for taxes paid during the governmental unit's first fiscal year that begins on or after January 1, 1998, and applies thereafter.

b. Gasoline taxes, motor vehicle fees, and other taxes that are in effect user fees for benefits provided to the Federal Government are allowable.

c. This provision does not restrict the authority of Federal agencies to identify taxes where Federal participation is inappropriate. Where the identification of the amount of unallowable taxes would require an inordinate amount of effort, the cognizant agency may accept a reasonable approximation thereof.

40. *Training.* The cost of training provided for employee development is allowable.

41. *Travel costs.*

a. *General.* Travel costs are allowable for expenses for transportation, lodging, subsistence, and related items incurred by employees traveling on official business. Such costs may be charged on an actual cost basis, on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two, provided the method used is applied to an entire trip, and results in charges consistent with those normally allowed in like circumstances in non-federally-sponsored activities. Notwithstanding the provisions of section 23, travel costs of officials covered by that section, when specifically related to Federal awards, are allowable with the prior approval of a grantor agency.

b. *Lodging and subsistence.* Costs incurred by employees and officers for travel, including costs of lodging, other subsistence, and incidental expenses, shall be considered reasonable and allowable only to the extent such costs do not exceed charges normally allowed by the governmental unit in its regular operations as a result of the governmental unit's policy. In the absence of a written governmental unit policy regarding travel costs, the rates and amounts established under subchapter I of Chapter 57 of Title 5, United States Code "Travel and Subsistence Expenses; Mileage Allowances," or by the Administrator of General Services, or the President (or his designee) pursuant to any provisions of such subchapter shall be used as guidance for travel under Federal awards (41 U.S.C. 420, "Travel Expenses of Government Contractors").

c. *Commercial air travel.* Airfare costs in excess of the customary standard (coach or equivalent) airfare, are unallowable except when such accommodations would: require circuitous routing, require travel during unreasonable hours, excessively prolong travel, greatly increase the duration of the flight, result in increased cost that would offset transportation savings, or offer accommodations not reasonably adequate for the medical needs of the traveler. Where a governmental unit can reasonably demonstrate to the awarding agency either the nonavailability of customary standard airfare or Federal Government contract airfare for individual trips or, on an overall basis, that it is the governmental unit's practice to make routine use of such airfare, specific determinations of nonavailability will generally not be questioned by the Federal Government, unless a pattern of avoidance is detected. However, in order for airfare costs in excess of the customary standard commercial airfare to be allowable, e.g., use of first-class airfare, the governmental unit must justify and document on a case-by-case basis the applicable condition(s) set forth above.

d. *Air travel by other than commercial carrier.* Cost of travel by governmental unit-owned, -leased, or -chartered aircraft, as used in this section, includes the cost of lease, charter, operation (including personnel costs), maintenance, depreciation, interest, insurance, and other related costs. Costs of travel via governmental unit-owned, -leased, or -chartered aircraft are unallowable to the extent they exceed the cost of allowable commercial air travel, as provided for in subsection c.

42. *Underrecovery of costs under Federal agreements.* Any excess costs over the Federal contribution under one award agreement are unallowable under other award agreements.

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A. General

1. Most governmental units provide certain services, such as motor pools, computer centers, purchasing, accounting, etc., to operating agencies on a centralized basis. Since federally-supported awards are performed within the individual operating agencies, there needs to be a process whereby these central service costs can be identified and assigned to benefitted activities on a reasonable and consistent basis. The central service cost allocation plan provides that process. All costs and other data used to distribute the costs included in the plan should be supported by formal accounting and other records that will support the propriety of the costs assigned to Federal awards.

2. Guidelines and illustrations of central service cost allocation plans are provided in a brochure published by the Department of Health and Human Services entitled "A Guide for State and Local Government Agencies: Cost Principles and Procedures for Establishing Cost Allocation Plans and Indirect Cost Rates for Grants and Contracts with the Federal Government." A copy of this brochure may be obtained from the Superintendent of Documents, U.S. Government Printing Office.

B. Definitions

1. "Billed central services" means central services that are billed to benefitted agencies and/or programs on an individual fee-for-service or similar basis. Typical examples of billed central services include computer services, transportation services, insurance, and fringe benefits.

2. "Allocated central services" means central services that benefit operating agencies but are not billed to the agencies on a fee-for-service or similar basis. These costs are allocated to benefitted agencies on some reasonable basis. Examples of such services might include general accounting, personnel administration, purchasing, etc.

3. "Agency or operating agency" means an organizational unit or sub-division within a governmental unit that is responsible for the performance or administration of awards or activities of the governmental unit.

C. Scope of the Central Service Cost Allocation Plans

The central service cost allocation plan will include all central service costs that will be claimed (either as a billed or an allocated cost) under Federal awards and will be documented as described in section E. Costs of central services omitted from the plan will not be reimbursed.

D. Submission Requirements

1. Each State will submit a plan to the Department of Health and Human Services for each year in which it claims central service costs under Federal awards. The plan should include (a) a projection of the next year's allocated central service cost (based either on actual costs for the most recently completed year or the budget projection for the coming year), and (b) a reconciliation of actual allocated central service costs to the estimated costs used for either the most recently completed year or the year immediately preceding the most recently completed year.

2. Each local government that has been designated as a "major local government" by the Office of Management and Budget (OMB) is also required to submit a plan to its cognizant agency annually. OMB periodically lists major local governments in the **Federal Register**.

3. All other local governments claiming central service costs must develop a plan in accordance with the requirements described in this Circular and maintain the plan and related supporting documentation for audit. These local governments are not required to submit their plans for Federal approval unless they are specifically requested to do so by the cognizant agency. Where a local government only receives funds as a sub-recipient, the primary recipient will be responsible for negotiating indirect cost rates and/or monitoring the sub-recipient's plan.

4. All central service cost allocation plans will be prepared and, when required, submitted within six months prior to the beginning of each of the governmental unit's fiscal years in which it proposes to claim central service costs. Extensions may be granted by the cognizant agency on a case-by-case basis.

E. Documentation Requirements for Submitted Plans

The documentation requirements described in this section may be modified, expanded, or reduced by the cognizant agency on a case-by-case basis. For example, the requirements may be reduced for those central services which have little or no impact on Federal awards. Conversely, if a review of a plan indicates that certain additional information is needed, and will likely be needed in future years, it may be routinely requested in future plan submissions. Items marked with an asterisk (*) should be submitted only once; subsequent plans should merely indicate any changes since the last plan.

1. *General.* All proposed plans must be accompanied by the following: an organization chart sufficiently detailed to show operations including the central service activities of the State/local government whether or not they are shown as benefiting from central service functions; a copy of the Comprehensive Annual Financial Report (or a copy of the Executive Budget if budgeted costs are being proposed) to support the allowable costs of each central service activity included in the plan; and, a

certification (see subsection 4.) that the plan was prepared in accordance with this Circular, contains only allowable costs, and was prepared in a manner that treated similar costs consistently among the various Federal awards and between Federal and non-Federal awards/activities.

2. *Allocated central services.* For each allocated central service, the plan must also include the following: a brief description of the service*, an identification of the unit rendering the service and the operating agencies receiving the service, the items of expense included in the cost of the service, the method used to distribute the cost of the service to benefitted agencies, and a summary schedule showing the allocation of each service to the specific benefitted agencies. If any self-insurance funds or fringe benefits costs are treated as allocated (rather than billed) central services, documentation discussed in subsections 3.b. and c. shall also be included.

3. *Billed services.*

a. *General.* The information described below shall be provided for all billed central services, including internal service funds, self-insurance funds, and fringe benefit funds.

b. *Internal service funds.*

(1) For each internal service fund or similar activity with an operating budget of $5 million or more, the plan shall include: a brief description of each service; a balance sheet for each fund based on individual accounts contained in the governmental unit's accounting system; a revenue/expenses statement, with revenues broken out by source, e.g., regular billings, interest earned, etc.; a listing of all non-operating transfers (as defined by Generally Accepted Accounting Principles (GAAP)) into and out of the fund; a description of the procedures (methodology) used to charge the costs of each service to users, including how billing rates are determined; a schedule of current rates; and, a schedule comparing total revenues (including imputed revenues) generated by the service to the allowable costs of the service, as determined under this Circular, with an explanation of how variances will be handled.

(2) Revenues shall consist of all revenues generated by the service, including unbilled and uncollected revenues. If some users were not billed for the services (or were not billed at the full rate for that class of users), a schedule showing the full imputed revenues associated with these users shall be provided. Expenses shall be broken out by object cost categories (e.g., salaries, supplies, etc.).

c. *Self-insurance funds.* For each self-insurance fund, the plan shall include: the fund balance sheet; a statement of revenue and expenses including a summary of billings and claims paid by agency; a listing of all non-operating transfers into and out of the fund; the type(s) of risk(s) covered by the fund (e.g., automobile liability, workers' compensation, etc.); an explanation of how the level of fund contributions are determined, including a copy of the current actuarial report (with the actuarial assumptions used) if the contributions are determined on an actuarial basis; and, a description of the procedures used to charge or allocate fund contributions to benefitted activities. Reserve levels in excess of claims (1) submitted and adjudicated but not paid, (2) submitted but not adjudicated, and (3) incurred but not submitted must be identified and explained.

d. *Fringe benefits.* For fringe benefit costs, the plan shall include: a listing of fringe benefits provided to covered employees, and the overall annual cost of each type of benefit; current fringe benefit policies*; and procedures used to charge or allocate the costs of the benefits to benefitted activities. In addition, for pension and post-retirement health insurance plans, the following information shall be provided: the governmental unit's funding policies, e.g., legislative bills, trust agreements, or State-mandated contribution rules, if different from actuarially determined rates; the pension plan's costs accrued for the year; the amount funded, and date(s) of funding; a copy of the current actuarial report (including the actuarial assumptions); the plan trustee's report; and, a schedule from the activity showing the value of the interest cost associated with late funding.

4. *Required certification.* Each central service cost allocation plan will be accompanied by a certification in the following form:

Certificate of Cost Allocation Plan

This is to certify that I have reviewed the cost allocation plan submitted herewith and to the best of my knowledge and belief:

(1) All costs included in this proposal [identify date] to establish cost allocations or billings for [identify period covered by plan] are allowable in accordance with the requirements of OMB Circular A–87, "Cost Principles for State and Local Governments," and the Federal award(s) to which they apply. Unallowable costs have been adjusted for in allocating costs as indicated in the cost allocation plan.

(2) All costs included in this proposal are properly allocable to Federal awards on the basis of a beneficial or causal relationship between the expenses incurred and the awards to which they are allocated in accordance with applicable requirements. Further, the same costs that have been treated as indirect costs have not been claimed as direct costs. Similar types of costs have been accounted for consistently.

I declare that the foregoing is true and correct.

Governmental Unit _____

Signature _____

Name of Official _____

Title _____

Date of Execution _____

F. Negotiation and Approval of Central Service Plans

1. All proposed central service cost allocation plans that are required to be submitted will be reviewed, negotiated, and approved by the Federal cognizant agency on a timely basis. The cognizant agency will review the proposal within six months of receipt of the proposal and either negotiate/approve the proposal or advise the governmental unit of the additional documentation needed to support/evaluate the proposed plan or the changes required to make the proposal acceptable. Once an agreement with the governmental unit has been reached, the agreement will be accepted and used by all Federal agencies, unless prohibited or limited by statute. Where a Federal funding agency has reason to believe that special operating factors affecting its awards necessitate special consideration, the funding agency will, prior to the time the plans are negotiated, notify the cognizant agency.

2. The results of each negotiation shall be formalized in a written agreement between the cognizant agency and the governmental unit. This agreement will be subject to re-opening if the agreement is subsequently found to violate a statute or the information upon which the plan was negotiated is later found to be materially incomplete or inaccurate. The results of the negotiation shall be made available to all Federal agencies for their use.

3. Negotiated cost allocation plans based on a proposal later found to have included costs that: (a) are unallowable (i) as specified by law or regulation, (ii) as identified in Attachment B of this Circular, or (iii) by the terms and conditions of Federal awards, or (b) are unallowable because they are clearly not allocable to Federal awards, shall be adjusted, or a refund shall be made at the option of the Federal cognizant agency. These adjustments or refunds are designed to correct the plans and do not constitute a reopening of the negotiation.

G. Other Policies

1. *Billed central service activities.* Each billed central service activity must separately account for all revenues (including imputed revenues) generated by the service, expenses incurred to furnish the service, and profit/loss.

2. *Working capital reserves.* Internal service funds are dependent upon a reasonable level of working capital reserve to operate from one billing cycle to the next. Charges by an internal service activity to provide for the establishment and maintenance of a reasonable level of working capital reserve, in addition to the full recovery of costs, are allowable. A working capital reserve as part of retained earnings of up to 60 days cash expenses for normal operating purposes is considered reasonable. A working capital reserve exceeding 60 days may be approved by the cognizant Federal agency in exceptional cases.

3. *Carry-forward adjustments of allocated central service costs.* Allocated central service costs are usually negotiated and approved for a future fiscal year on a "fixed with carry-forward" basis. Under this procedure, the fixed amounts for the future year covered by agreement are not subject to adjustment for that year. However, when the actual costs of the year involved become known, the differences between the fixed amounts previously approved and the actual costs will be carried forward and used as an adjustment to the fixed amounts established for a later year. This "carry-forward" procedure applies to all central services whose costs were fixed in the approved plan. However, a carry-forward adjustment is not permitted, for a central service activity that was not included in the approved plan, or for unallowable costs that must be reimbursed immediately.

4. *Adjustments of billed central services.* Billing rates used to charge Federal awards shall be based on the estimated costs of providing the services, including an estimate of the allocable central service costs. A comparison of the revenue generated by each billed service (including total revenues whether or not billed or collected) to the actual allowable costs of the service will be made at least annually, and an adjustment will be made for the difference between the revenue and the allowable costs. These adjustments will be made through one of the following adjustment methods: (a) a cash refund to the Federal Government for the Federal share of the adjustment, (b) credits to the amounts charged to the individual programs, (c) adjustments to future billing rates, or (d) adjustments to allocated central service costs. Adjustments to allocated central services will not be permitted where the total amount of the adjustment for a particular service (Federal share and non-Federal) share exceeds $500,000.

5. *Records retention.* All central service cost allocation plans and related documentation used as a basis for claiming costs under Federal awards must be retained for audit in accordance with the records retention requirements contained in the Common Rule.

6. *Appeals.* If a dispute arises in the negotiation of a plan between the cognizant agency and the governmental unit, the dispute shall be resolved in accordance with the appeals procedures of the cognizant agency.

7. *OMB assistance.* To the extent that problems are encountered among the Federal agencies and/or governmental units in connection with the negotiation and approval process, OMB will lend assistance, as required, to resolve such problems in a timely manner.

Attachment D—Public Assistance Cost Allocation Plans

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A. General

Federally-financed programs administered by State public assistance agencies are funded predominately by the Department of Health and Human Services (HHS). In support of its stewardship requirements, HHS has published requirements for the development, documentation, submission, negotiation, and approval of public assistance cost allocation plans in Subpart E of 45 CFR Part 95. All administrative costs (direct and indirect) are normally charged to Federal awards by implementing the public assistance cost allocation plan. This Attachment extends these requirements to all Federal agencies whose programs are administered by a State public assistance agency. Major federally-financed programs typically administered by State public assistance agencies include: Aid to Families with Dependent Children, Medicaid, Food Stamps, Child Support Enforcement, Adoption Assistance and Foster Care, and Social Services Block Grant.

B. Definitions

1. "State public assistance agency" means a State agency administering or supervising the administration of one or more public assistance programs operated by the State as identified in Subpart E of 45 CFR Part 95. For the purpose of this Attachment, these programs include all programs administered by the State public assistance agency.

2. "State public assistance agency costs" means all costs incurred by, or allocable to, the State public assistance agency, except expenditures for financial assistance, medical vendor payments, food stamps, and payments for services and goods provided directly to program recipients.

C. Policy

State public assistance agencies will develop, document and implement, and the Federal Government will review, negotiate, and approve, public assistance cost allocation plans in accordance with Subpart E of 45 CFR Part 95. The plan will include all programs administered by the State public assistance agency. Where a letter of approval or disapproval is transmitted to a State public assistance agency in accordance with Subpart E, the letter will apply to all Federal agencies and programs. The remaining sections of this Attachment (except for the requirement for certification) summarize the provisions of Subpart E of 45 CFR Part 95.

D. Submission, Documentation, and Approval of Public Assistance Cost Allocation Plans

1. State public assistance agencies are required to promptly submit amendments to the cost allocation plan to HHS for review and approval.

2. Under the coordination process outlined in subsection E, affected Federal agencies will review all new plans and plan amendments and provide comments, as appropriate, to HHS. The effective date of the plan or plan amendment will be the first day of the quarter following the submission of the plan or amendment, unless another date is specifically approved by HHS. HHS, as the cognizant agency acting on behalf of all affected Federal agencies, will, as necessary, conduct negotiations with the State public assistance agency and will inform the State agency of the action taken on the plan or plan amendment.

E. Review of Implementation of Approved Plans

1. Since public assistance cost allocation plans are of a narrative

nature, the review during the plan approval process consists of evaluating the appropriateness of the proposed groupings of costs (cost centers) and the related allocation bases. As such, the Federal Government needs some assurance that the cost allocation plan has been implemented as approved. This is accomplished by reviews by the funding agencies, single audits, or audits conducted by the cognizant audit agency.

2. Where inappropriate charges affecting more than one funding agency are identified, the cognizant HHS cost negotiation office will be advised and will take the lead in resolving the issue(s) as provided for in Subpart E of 45 CFR Part 95.

3. If a dispute arises in the negotiation of a plan or from a disallowance involving two or more funding agencies, the dispute shall be resolved in accordance with the appeals procedures set out in 45 CFR Part 75. Disputes involving only one funding agency will be resolved in accordance with the funding agency's appeal process.

4. To the extent that problems are encountered among the Federal agencies and/or governmental units in connection with the negotiation and approval process, the Office of Management and Budget will lend assistance, as required, to resolve such problems in a timely manner.

F. Unallowable Costs

Claims developed under approved cost allocation plans will be based on allowable costs as identified in this Circular. Where unallowable costs have been claimed and reimbursed, they will be refunded to the program that reimbursed the unallowable cost using one of the following methods: (a) a cash refund, (b) offset to a subsequent claim, or (c) credits to the amounts charged to individual awards.

Attachment E—State and Local Indirect Cost Rate Proposals

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A. General

1. Indirect costs are those that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved. After direct costs have been determined and assigned directly to Federal awards and other activities as appropriate, indirect costs are those remaining to be allocated to benefitted cost objectives. A cost may not be allocated to a Federal award as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been assigned to a Federal award as a direct cost.

2. Indirect costs include (a) the indirect costs originating in each department or agency of the governmental unit carrying out Federal awards and (b) the costs of central governmental services distributed through the central service cost allocation plan (as described in Attachment C) and not otherwise treated as direct costs.

3. Indirect costs are normally charged to Federal awards by the use of an indirect cost rate. A separate indirect cost rate(s) is usually necessary for each department or agency of the governmental unit claiming indirect costs under Federal awards. Guidelines and illustrations of indirect cost proposals are provided in a brochure published by the Department of Health and Human Services entitled "A Guide for State and Local Government Agencies: Cost Principles and Procedures for Establishing Cost Allocation Plans and Indirect Cost Rates for Grants and Contracts with the Federal Government." A copy of this brochure may be obtained from the Superintendent of Documents, U.S. Government Printing Office.

4. Because of the diverse characteristics and accounting practices of governmental units, the types of costs which may be classified as indirect costs cannot be specified in all situations. However, typical examples of indirect costs may include certain State/local-wide central service costs, general administration of the grantee department or agency, accounting and personnel services performed within the grantee department or agency, depreciation or use allowances on buildings and equipment, the costs of operating and maintaining facilities, etc.

5. This Attachment does not apply to State public assistance agencies. These agencies should refer instead to Attachment D.

B. Definitions

1. "Indirect cost rate proposal" means the documentation prepared by a governmental unit or subdivision thereof to substantiate its request for the establishment of an indirect cost rate.

2. "Indirect cost rate" is a device for determining in a reasonable manner the proportion of indirect costs each program should bear. It is the ratio (expressed as a percentage) of the indirect costs to a direct cost base.

3. "Indirect cost pool" is the accumulated costs that jointly benefit two or more programs or other cost objectives.

4. "Base" means the accumulated direct costs (normally either total direct salaries and wages or total direct costs exclusive of any extraordinary or distorting expenditures) used to distribute indirect costs to individual Federal awards. The direct cost base selected should result in each award bearing a fair share of the indirect costs in reasonable relation to the benefits received from the costs.

5. "Predetermined rate" means an indirect cost rate, applicable to a specified current or future period, usually the governmental unit's fiscal year. This rate is based on an estimate of the costs to be incurred during the period. Except under very unusual circumstances, a predetermined rate is not subject to adjustment. (Because of legal constraints, predetermined rates are not permitted for Federal contracts; they may, however, be used for grants or cooperative agreements.) Predetermined rates may not be used by governmental units that have not submitted and negotiated the rate with the cognizant agency. In view of the potential advantages offered by this procedure, negotiation of predetermined rates for indirect costs for a period of two to four years should be the norm in those situations where the cost experience and other pertinent facts available are deemed sufficient to enable the parties involved to reach an informed judgment as to the probable

level of indirect costs during the ensuing accounting periods.

6. "Fixed rate" means an indirect cost rate which has the same characteristics as a predetermined rate, except that the difference between the estimated costs and the actual, allowable costs of the period covered by the rate is carried forward as an adjustment to the rate computation of a subsequent period.

7. "Provisional rate" means a temporary indirect cost rate applicable to a specified period which is used for funding, interim reimbursement, and reporting indirect costs on Federal awards pending the establishment of a "final" rate for that period.

8. "Final rate" means an indirect cost rate applicable to a specified past period which is based on the actual allowable costs of the period. A final audited rate is not subject to adjustment.

9. "Base period" for the allocation of indirect costs is the period in which such costs are incurred and accumulated for allocation to activities performed in that period. The base period normally should coincide with the governmental unit's fiscal year, but in any event, shall be so selected as to avoid inequities in the allocation of costs.

C. Allocation of Indirect Costs and Determination of Indirect Cost Rates

1. *General.*

a. Where a governmental unit's department or agency has only one major function, or where all its major functions benefit from the indirect costs to approximately the same degree, the allocation of indirect costs and the computation of an indirect cost rate may be accomplished through simplified allocation procedures as described in subsection 2.

b. Where a governmental unit's department or agency has several major functions which benefit from its indirect costs in varying degrees, the allocation of indirect costs may require the accumulation of such costs into separate cost groupings which then are allocated individually to benefitted functions by means of a base which best measures the relative degree of benefit. The indirect costs allocated to each function are then distributed to individual awards and other activities included in that function by means of an indirect cost rate(s).

c. Specific methods for allocating indirect costs and computing indirect cost rates along with the conditions under which each method should be used are described in subsections 2, 3 and 4.

2. *Simplified method.*

a. Where a grantee agency's major functions benefit from its indirect costs to approximately the same degree, the allocation of indirect costs may be accomplished by (1) classifying the grantee agency's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to individual Federal awards. The rate should be expressed as the percentage which the total amount of allowable indirect costs bears to the base selected. This method should also be used where a governmental unit's department or agency has only one major function encompassing a number of individual projects or activities, and may be used where the level of Federal awards to that department or agency is relatively small.

b. Both the direct costs and the indirect costs shall exclude capital expenditures and unallowable costs. However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

c. The distribution base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution.

3. *Multiple allocation base method.*

a. Where a grantee agency's indirect costs benefit its major functions in varying degrees, such costs shall be accumulated into separate cost groupings. Each grouping shall then be allocated individually to benefitted functions by means of a base which best measures the relative benefits.

b. The cost groupings should be established so as to permit the allocation of each grouping on the basis of benefits provided to the major functions. Each grouping should constitute a pool of expenses that are of like character in terms of the functions they benefit and in terms of the allocation base which best measures the relative benefits provided to each function. The number of separate groupings should be held within practical limits, taking into consideration the materiality of the amounts involved and the degree of precision needed.

c. Actual conditions must be taken into account in selecting the base to be used in allocating the expenses in each grouping to benefitted functions. When an allocation can be made by assignment of a cost grouping directly to the function benefitted, the allocation shall be made in that manner. When the expenses in a grouping are more general in nature, the allocation should be made through the use of a selected base which produces results that are equitable to both the Federal Government and the governmental unit. In general, any cost element or related factor associated with the governmental unit's activities is potentially adaptable for use as an allocation base provided that: (1) it can readily be expressed in terms of dollars or other quantitative measures (total direct costs, direct salaries and wages, staff hours applied, square feet used, hours of usage, number of documents processed, population served, and the like), and (2) it is common to the benefitted functions during the base period.

d. Except where a special indirect cost rate(s) is required in accordance with subsection 4, the separate groupings of indirect costs allocated to each major function shall be aggregated and treated as a common pool for that function. The costs in the common pool shall then be distributed to individual Federal awards included in that function by use of a single indirect cost rate.

e. The distribution base used in computing the indirect cost rate for each function may be (1) total direct costs (excluding capital expenditures and other distorting items such as pass-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution. An indirect cost rate should be developed for each separate indirect cost pool developed. The rate in each case should be stated as the percentage relationship between the particular indirect cost pool and the distribution base identified with that pool.

4. *Special indirect cost rates.*

a. In some instances, a single indirect cost rate for all activities of a grantee department or agency or for each major function of the agency may not be appropriate. It may not take into account those different factors which may substantially affect the indirect costs applicable to a particular program or group of programs. The factors may include the physical location of the work, the level of administrative support required, the nature of the facilities or other resources employed, the organizational arrangements used, or any combination thereof. When a particular award is carried out in an environment which appears to generate a significantly different level of indirect costs, provisions should be made for a separate indirect cost pool applicable to that award. The separate indirect cost

pool should be developed during the course of the regular allocation process, and the separate indirect cost rate resulting therefrom should be used, provided that: (1) the rate differs significantly from the rate which would have been developed under subsections 2. and 3., and (2) the award to which the rate would apply is material in amount.

b. Although this Circular adopts the concept of the full allocation of indirect costs, there are some Federal statutes which restrict the reimbursement of certain indirect costs. Where such restrictions exist, it may be necessary to develop a special rate for the affected award. Where a "restricted rate" is required, the procedure for developing a non-restricted rate will be used except for the additional step of the elimination from the indirect cost pool those costs for which the law prohibits reimbursement.

D. Submission and Documentation of Proposals

1. *Submission of indirect cost rate proposals.*

a. All departments or agencies of the governmental unit desiring to claim indirect costs under Federal awards must prepare an indirect cost rate proposal and related documentation to support those costs. The proposal and related documentation must be retained for audit in accordance with the records retention requirements contained in the Common Rule.

b. A governmental unit for which a cognizant agency assignment has been specifically designated must submit its indirect cost rate proposal to its cognizant agency. The Office of Management and Budget (OMB) will periodically publish lists of governmental units identifying the appropriate Federal cognizant agencies. The cognizant agency for all governmental units or agencies not identified by OMB will be determined based on the Federal agency providing the largest amount of Federal funds. In these cases, a governmental unit must develop an indirect cost proposal in accordance with the requirements of this Circular and maintain the proposal and related supporting documentation for audit. These governmental units are not required to submit their proposals unless they are specifically requested to do so by the cognizant agency. Where a local government only receives funds as a sub-recipient, the primary recipient will be responsible for negotiating and/or monitoring the sub-recipient's plan.

c. Each Indian tribal government desiring reimbursement of indirect costs must submit its indirect cost proposal to the Department of the Interior (its cognizant Federal agency).

d. Indirect cost proposals must be developed (and, when required, submitted) within six months after the close of the governmental unit's fiscal year, unless an exception is approved by the cognizant Federal agency. If the proposed central service cost allocation plan for the same period has not been approved by that time, the indirect cost proposal may be prepared including an amount for central services that is based on the latest federally-approved central service cost allocation plan. The difference between these central service amounts and the amounts ultimately approved will be compensated for by an adjustment in a subsequent period.

2. *Documentation of proposals.* The following shall be included with each indirect cost proposal:

a. The rates proposed, including subsidiary work sheets and other relevant data, cross referenced and reconciled to the financial data noted in subsection b. Allocated central service costs will be supported by the summary table included in the approved central service cost allocation plan. This summary table is not required to be submitted with the indirect cost proposal if the central service cost allocation plan for the same fiscal year has been approved by the cognizant agency and is available to the funding agency.

b. A copy of the financial data (financial statements, comprehensive annual financial report, executive budgets, accounting reports, etc.) upon which the rate is based. Adjustments resulting from the use of unaudited data will be recognized, where appropriate, by the Federal cognizant agency in a subsequent proposal.

c. The approximate amount of direct base costs incurred under Federal awards. These costs should be broken out between salaries and wages and other direct costs.

d. A chart showing the organizational structure of the agency during the period for which the proposal applies, along with a functional statement(s) noting the duties and/or responsibilities of all units that comprise the agency. (Once this is submitted, only revisions need be submitted with subsequent proposals.)

3. *Required certification.* Each indirect cost rate proposal shall be accompanied by a certification in the following form:

Certificate of Indirect Costs

This is to certify that I have reviewed the indirect cost rate proposal submitted herewith and to the best of my knowledge and belief:

(1) All costs included in this proposal [identify date] to establish billing or final indirect costs rates for [identify period covered by rate] are allowable in accordance with the requirements of the Federal award(s) to which they apply and OMB Circular A–87, "Cost Principles for State and Local Governments." Unallowable costs have been adjusted for in allocating costs as indicated in the cost allocation plan.

(2) All costs included in this proposal are properly allocable to Federal awards on the basis of a beneficial or causal relationship between the expenses incurred and the agreements to which they are allocated in accordance with applicable requirements. Further, the same costs that have been treated as indirect costs have not been claimed as direct costs. Similar types of costs have been accounted for consistently and the Federal Government will be notified of any accounting changes that would affect the predetermined rate.

I declare that the foregoing is true and correct.

Governmental Unit _____

Signature _____

Name of Official _____

Title _____

Date of Execution: _____

E. Negotiation and Approval of Rates

1. Indirect cost rates will be reviewed, negotiated, and approved by the cognizant Federal agency on a timely basis. Once a rate has been agreed upon, it will be accepted and used by all Federal agencies unless prohibited or limited by statute. Where a Federal funding agency has reason to believe that special operating factors affecting its awards necessitate special indirect cost rates, the funding agency will, prior to the time the rates are negotiated, notify the cognizant Federal agency.

2. The use of predetermined rates, if allowed, is encouraged where the cognizant agency has reasonable assurance based on past experience and reliable projection of the grantee agency's costs, that the rate is not likely to exceed a rate based on actual costs. Long-term agreements utilizing predetermined rates extending over two or more years are encouraged, where appropriate.

3. The results of each negotiation shall be formalized in a written agreement between the cognizant agency and the governmental unit. This agreement will be subject to re-opening if the agreement is subsequently found to violate a statute, or the information upon which the plan was negotiated is later found to be materially incomplete or inaccurate. The agreed upon rates shall be made available to all Federal agencies for their use.

4. Refunds shall be made if proposals are later found to have included costs that (a) are unallowable (i) as specified by law or regulation, (ii) as identified in Attachment B of this Circular, or (iii) by the terms and conditions of Federal awards, or (b) are unallowable because they are clearly not allocable to Federal awards. These adjustments or refunds will be made regardless of the type of rate negotiated (predetermined, final, fixed, or provisional).

F. Other Policies

1. *Fringe benefit rates.* If overall fringe benefit rates are not approved for the governmental unit as part of the central service cost allocation plan, these rates will be reviewed, negotiated and approved for individual grantee agencies during the indirect cost negotiation process. In these cases, a proposed fringe benefit rate computation should accompany the indirect cost proposal. If fringe benefit rates are not used at the grantee agency level (i.e., the agency specifically identifies fringe benefit costs to individual employees), the governmental unit should so advise the cognizant agency.

2. *Billed services provided by the grantee agency.* In some cases, governmental units provide and bill for services similar to those covered by central service cost allocation plans (e.g., computer centers). Where this occurs, the governmental unit should be guided by the requirements in Attachment C relating to the development of billing rates and documentation requirements, and should advise the cognizant agency of any billed services. Reviews of these types of services (including reviews of costing/billing methodology, profits or losses, etc.) will be made on a case-by-case basis as warranted by the circumstances involved.

3. *Indirect cost allocations not using rates.* In certain situations, a governmental unit, because of the nature of its awards, may be required to develop a cost allocation plan that distributes indirect (and, in some cases, direct) costs to the specific funding sources. In these cases, a narrative cost allocation methodology should be developed, documented, maintained for audit, or submitted, as appropriate, to the cognizant agency for review, negotiation, and approval.

4. *Appeals.* If a dispute arises in a negotiation of an indirect cost rate (or other rate) between the cognizant agency and the governmental unit, the dispute shall be resolved in accordance with the appeals procedures of the cognizant agency.

5. *Collection of unallowable costs and erroneous payments.* Costs specifically identified as unallowable and charged to Federal awards either directly or indirectly will be refunded (including interest chargeable in accordance with applicable Federal agency regulations).

6. *OMB assistance.* To the extent that problems are encountered among the Federal agencies and/or governmental units in connection with the negotiation and approval process, OMB will lend assistance, as required, to resolve such problems in a timely manner.

[FR Doc. 95–11658 Filed 5–16–95; 8:45 am]
BILLING CODE 3110–01–P

federal register

Wednesday
May 17, 1995

Part III

Environmental Protection Agency

40 CFR Part 9, et al.
Acid Rain Program; Final, Proposed and Interim Rules

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9, 72, and 75

[FRL–5203–3]

Acid Rain Program: Permits Regulation General Provisions and Continuous Emission Monitoring Rule Technical Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: Title IV of the Clean Air Act (the Act), as amended by the Clean Air Act Amendments of 1990, authorizes the Environmental Protection Agency (EPA or Agency) to establish the Acid Rain Program. The program sets emissions limitations to reduce acidic deposition and its serious, adverse effects on natural resources, ecosystems, materials, visibility, and public health. On January 11, 1993, the Agency promulgated final rules under title IV. Several parties filed petitions for review of the rules. On April 17, 1995, the EPA and the parties signed a settlement agreement addressing continuous emission monitoring (CEM) issues.

This direct final rule would amend the Continuous Emission Monitoring (CEM) provisions and the General Provisions of the Acid Rain Program for the purpose of making the implementation of the program simpler, streamlined, and more efficient for both the EPA and industry. The rule amendment is being issued as a direct final rule because the corrections are technical in nature and address various implementation issues without major changes in policy. Furthermore, the rule amendments are consistent with the April 17, 1995 settlement agreement. Therefore, EPA believes these amendments are noncontroversial and has provided for the amendments to be effective 60 days after publication in the **Federal Register**.

DATES: *Effective Dates.* This final rule will be effective July 17, 1995. However, if significant adverse comments on portions of the rule are received by June 16, 1995, then the effective date of those provisions will be delayed, EPA will withdraw those portions of the rule, and timely notice will be published in the **Federal Register**. Sections 75.50, 75.51 and 75.52; redesignated section 2.4.3.1 of appendix D of part 75; and sections 4.3.1, 4.3.2, 4.3.3, 4.4.3, 5.3. and 5.4 of appendix F of part 75 are effective through December 31, 1995. The incorporation by reference of certain publications listed in the regulation is approved by the Director of the Federal Register as of July 17, 1995.

Compliance Dates. Information on compliance dates is in the Supplementary Information section of this preamble and in appendix J of part 75.

ADDRESSES: Any written comments must be identified with Docket No. A–94–16, must be identified as comments on the direct final rule and companion proposal, and must be submitted in duplicate to: EPA Air Docket (6102), Environmental Protection Agency, 401 M Street SW, Washington, DC 20460. The docket is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at the address given above. A reasonable fee may be charged for copying. A detailed rationale for the revisions is set forth in the technical support document for the direct final rule, which can be obtained by writing to the Air Docket at the address given above.

FOR FURTHER INFORMATION CONTACT: Margaret Sheppard, Acid Rain Division (6204J), U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460, telephone number (202) 233–9180.

SUPPLEMENTARY INFORMATION: The EPA is revising the CEM provisions as a direct final rule without prior proposal because the Agency views these revisions as noncontroversial and anticipates no significant adverse comments. The EPA is also publishing a companion proposed rule to this direct final rule in this issue of the **Federal Register** in order to take comment on provisions of the direct final rule. If EPA does receive significant adverse comments, EPA will publish a document in the **Federal Register** withdrawing portions of the direct final rule. In addition, EPA is publishing an interim final rule in today's **Federal Register** to address other monitoring issues that may be controversial. The EPA will not institute a second comment period on the proposed rule, on the interim final rule, or on any subsequent final rule. Any parties interested in commenting on these revisions to parts 72 and 75 should do so at this time.

Significant adverse comment will be addressed in a subsequent final rulemaking document. If EPA withdraws portions of the direct final rule, EPA will accept comments for 15 days after publication of the notice of withdrawal in order to receive additional comments on withdrawn portions of the rule. If the effective date is delayed, timely notice will be published in the **Federal Register**.

The owner or operator shall comply with the following requirements from July 17, 1995 through December 31, 1995: for the recordkeeping requirements of subpart F of part 75, by following either §§ 75.50, 75.51 and 75.52 or §§ 75.54, 75.55 and 75.56; for the missing data substitution requirements for carbon dioxide (CO_2) and heat input, by following either §§ 75.35 and 75.36 or sections 4.3.1 through 4.3.3, section 4.4.3 and section 5.3 and 5.4 of appendix F of part 75; and for the missing data substitution requirements for fuel flowmeters by following either section 2.4.3.1 or sections 2.4.3.2 and 2.4.3.3 of appendix D of part 75.

On or after January 1, 1996, the owner or operator shall comply with the following requirements: for the recordkeeping requirements of subpart F of part 75, by meeting the requirements of §§ 75.54, 75.55, and 75.56; and for the missing data substitution requirements for CO_2 concentration, heat input and fuel flowmeters by meeting the requirements of §§ 75.35 and 75.36 and sections 2.4.3.2 through 2.4.3.3 of appendix D of part 75.

The EPA has been engaged in settlement discussions with several parties who challenged certain provisions of the Acid Rain CEM rules promulgated on January 11, 1993. [See *Environmental Defense Fund* v. *Browner*, No. 93–1203 and consolidated cases, "Complex" (D.C. Cir. filed March 12, 1993).] Although the parties have been able to reach agreement on a number of issues, which are addressed in this direct final rulemaking, some additional issues remain outstanding. The outstanding issues, unlike the noncontroversial and routine technical corrections and other amendments addressed by this direct final rule, may not be considered noncontroversial and therefore are being addressed separately in an interim final rule, published elsewhere in this **Federal Register**.

I. Acid Rain Program Background

A. Rulemaking Background

On January 11, 1993, EPA promulgated the "core" regulations that implemented the major provisions of title IV of the Clean Air Act (CAA or the Act), as amended November 15, 1990, including the General Provisions of the Permits Regulation (40 CFR part 72) and the CEM regulation at 40 CFR part 75 authorized under Sections 412 and 821 of the Act. The CEM rule specifies how each affected utility unit must install a system to continuously monitor the

emissions and to collect, record, and report emissions data to ensure that the mandated reductions in sulfur dioxide (SO_2) and nitrogen dioxide (NO_x) emissions are achieved, that opacity and CO_2 emissions are measured, and that SO_2 emissions are accurately measured so that the allowance system functions in an orderly manner. Technical corrections were published on June 23, 1993 and July 30, 1993. An amendment to the certification deadline for NO_x and CO_2 monitoring for oil-fired units and gas-fired units was published on August 18, 1994.

Since the CEM rule was promulgated, the operation of Phase I utility units have essentially completed the first stage of implementation of the rule, having submitted monitoring plans, conducted certification testing, submitted certification applications, and submitted their first quarterly reports. In addition, many Phase II utility units also have begun implementation. During early implementation, many technical issues have been raised, including many minor issues which could be addressed by technical corrections. The preamble discussion that follows outlines the changes that are contained in today's direct final rulemaking that will make these technical corrections.

B. Implementation Background

The EPA held three Acid Rain Implementation Conferences (January 5–6, 1993; January 25–26, 1993; and March 16–17, 1993). In these public meetings, EPA staff presented an overview of the Acid Rain Program and Acid Rain core rules. Some of the changes in today's revised rule resulted from issues raised by the public at these conferences.

In order to respond to a multitude of questions raised by industry, EPA instituted a new "Acid Rain monitoring" section on the Agency's computerized Technology Transfer Network Bulletin Board System (TTNBBS). This bulletin board can be accessed by computer modem at (919) 541–5742. The EPA's Acid Rain Division periodically updates this section of the bulletin board with notices of meetings, interpretations of part 75, policy determinations, and other information relevant to State environmental regulators and the regulated community. In particular, EPA has published three installments of commonly asked questions and their answers in the "Acid Rain CEM (Part 75) Policy Manual" (Docket Item I–D–54). Many of these policy determinations and clarifications of part 75 are incorporated into today's revised rule.

Some standard forms have been revised to be consistent with the changes in this rulemaking. Packages of revised standard forms, with instructions, will contain revised monitoring plan forms, certification forms, and electronic data reporting format, and will be available from EPA in electronic form from the TTNBBS by using computer modem at (919) 541–5742 or on paper by calling the Acid Rain Hotline at (202) 233–9620.

II. Changes to Parts 72 and 75—General Provisions of the Permits Regulation and Continuous Emission Monitoring

Several of the definitions in § 72.2 related to monitoring have been revised. As explained below, EPA edited these definitions and added a few definitions to explain or clarify new or existing terms in part 75.

The changes to part 75 are clarifications intended to ease implementation, and do not constitute major policy changes. The most significant changes in today's revised part 75 concern deadlines for completing certification testing, the procedures for exceptions to the use of CEMS found in appendices D and E, and the provisions for determining the span of NO_x pollutant concentration monitors. The EPA has added to the list of certification testing deadlines to apply to more types of units that might require certification after the statutory deadline for installation of CEMS. In addition, the Agency rewrote major portions of appendices D and E to make them easier to understand and to implement. Changes to appendix E also substantially reduce the time and difficulty of testing required to obtain NO_x emission rate data. Finally, the procedures for determining NO_x span have been revised so that utilities with units having low NO_x emission rates may select a single span representative of the situation at their plant, rather than being required to use both a high scale and a low scale measurement range. A list of compliance dates for the revised recordkeeping requirements and missing data substitution procedures are included in the new appendix J.

The rationale and effect of the revisions to parts 72 and 75 are discussed in detail in a technical support document. This document may be obtained from the EPA Air Docket as Docket Item II–F–2, "Technical Support Document (Attachment A)," in Docket No. A–94–16. In addition, EPA is publishing this document under the CAA Title IV portion of EPA's TTNBBS. This bulletin board can be accessed by computer modem at (919) 541–5742. The topics in the rule revisions discussed in the Technical Support Document are as follows:

I. Glossary of Terms and Abbreviations
II. Acid Rain Program Background
A. Rulemaking Background
B. Implementation Background
III. Changes to Part 72—Permits Regulation General Provisions
A. Fuel-related Definitions
B. Operating Hour Definitions
C. Calibration Gas Definitions
D. Bypass Operating Quarter, Unit Operating Quarter
E. Ozone Nonattainment Area, Ozone Transport Region
F. Other Definitions
IV. Changes to Part 75—Continuous Emission Monitoring
A. General Revisions
B. Changes to Subpart A, General
1. Certification Deadlines
a. Shutdown Units
b. New Stacks or Flue Gas Desulfurization Systems
c. Backup Fuel and Emergency Fuel
d. Newly Affected Units
e. EIA Forms
f. Emissions Accounting Prior to Certification
2. Incorporation by Reference
3. Relative Accuracy and Availability Performance Analysis
C. Changes to Subpart B, Monitoring Provisions
1. Calculation of Average Emissions and Opacity Data
2. Peaking Unit Definition and Applicability of Appendix E
3. SO_2 Monitoring During Combustion of Gas for Units With SO_2 CEMS
4. Monitoring Common Stacks, Bypass Stacks, and Multiple Stacks
a. Common Stack Monitoring
b. Multiple Stacks—NO_xMonitoring
c. Bypass Stack Monitoring
5. Determining Emissions From Qualifying Phase I Technologies
D. Changes to Subpart C, Operation and Maintenance Requirements
1. Certification Procedures for CEMS
a. Initial Certification and Recertification
b. Loss of Certification Procedures
c. Submission and Retesting Deadlines
d. Audit Decertification
e. Monitoring Systems To Be Certified
f. Use of Backup or Portable Monitoring Systems
2. Certification Procedures for Alternative Monitoring Systems
3. Certification Procedures for Excepted Monitoring Systems
E. Changes to Subpart D, Missing Data Procedures
1. Missing Data Procedures for Peaking Units
2. Addition to NO_x and Flow Missing Data Procedures
3. Changes to CO_2 and Heat Input Procedures
4. Missing Data Procedures for Units With Add-on Emission Controls
5. SO_2 Concentration Missing Data During Gas Combustion
F. Changes to Subpart E, Alternative Monitoring Systems

G. Changes to Subpart F, Recordkeeping Requirements
1. Additional Sections 75.54, 75.55 and 75.56
2. Changes to Emission Data Records
3. Certification Records
4. Monitoring Plans
5. Records File
H. Changes to Subpart G, Reporting Requirements
1. Notifications to EPA and State Agencies
2. Information Not Reported to EPA
3. Effective Date of Revised Reporting Requirements
4. Petitions to the Administrator
5. Confidentiality of Data
6. Reporting Addresses
I. Changes to Appendix A, Specifications and Testing Procedures
1. Changes to Span Requirements
a. Span for SO_2 Pollutant Concentration Monitors
b. Span for NO_x Pollutant Concentration Monitors
c. Changes to Span
2. Clarification of Certification Test Procedures
a. Calibration Error Test
b. Cycle Time Test
c. Relative Accuracy Test for NO_x
d. RATAs for CO_2 and O_2
3. Calibration Gases
4. Changes to Appendix B, Quality Assurance and Quality Control Procedures
5. Periodic RATAs for Monitors on Peaking Units and Bypass Stacks
6. Incentive Standard and Out-of-Control for CO_2 Monitors
7. Incentive Standard for NO_x Low Emitters
8. Quality Assurance of Data Following Daily Calibration Error Test
9. Recalibration
10. Calibration Gas for Linearity Checks
J. Changes to Appendix C, Missing Data Statistical Estimation Procedures
1. Changes to Parametric Monitoring Procedure for Missing Data
2. Clarifications of Load-Based Procedure for Missing Flow Rate and NO_x Emission Rate Data
K. Changes to Appendix D, Optional SO_2 Emission Protocol for Gas-fired and Oil-fired Units
1. Gaseous Fuels Other Than Natural Gas
2. SO_2 Emissions From Natural Gas
3. Fuel Flowmeter Installation Requirements
4. Gas Flowmeter Accuracy
5. Fuel Flowmeter Calibration and Quality Assurance Requirements
6. Fuel Sampling for Diesel Fuel
7. Turnaround Time for Fuel Analysis
8. Missing Data Procedures
9. Heat Input
L. Changes to Appendix E, Optional NO_x Emission Estimation Protocol for Gas-fired Peaking Units and Oil-fired Peaking Units
1. Testing by Fuel
2. Heat Input as Unit Operating Load
3. Number of Load Levels
4. Tests by Excess O_2 Level
5. Efficiency Testing
6. Stack Testing Procedures
7. Quality Assurance and Quality Control Parameters
8. Emergency Fuel Provisions
M. Changes to Appendix F, Conversion Procedures
1. Heat Input
2. Diluent Cap Values
3. NO_x and SO_2 Conversion Procedures
N. Changes to Appendix G, Determination of CO_2 Emissions

III. Impact Analyses

A. Paperwork Reduction Act

The information collection requirements in this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and have been assigned control number 2060–0258.

This collection of information has an estimated reporting burden averaging 40 hours per response and an estimated annual recordkeeping burden averaging 160 hours per respondent. These estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The control numbers assigned to collections of information in certain EPA regulations by the OMB have been consolidated under 40 CFR part 9. The EPA finds there is "good cause" under Sections 553(b)(B) and 553(d)(3) of the Administrative Procedure Act to amend the applicable table in 40 CFR part 9 to display the OMB control number for this rule without prior notice and comment. Due to the technical nature of the table, further notice and comment would be unnecessary. For additional information, see 58 FR 18014, April 7, 1993, and 58 FR 27472, May 10, 1993.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch; EPA; 401 M St., SW (Mail Code 2136); Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

B. Executive Order Requirements

1. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, OMB has notified EPA that it considers this a "significant regulatory action" within the meaning of the Executive Order. The EPA has submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

The revisions to part 75 slightly decrease the overall cost of compliance for the regulated community. Therefore, the Agency did not prepare a Regulatory Impact Analysis (RIA). Revisions to appendix D of part 75, "Optional SO_2 Emissions Data Protocol for Gas-Fired and Oil-Fired Units," reduce the frequency of sampling and analysis of diesel fuel, reducing the cost of SO_2 monitoring for units using No. 2 fuel oil as a backup fuel. Revisions to appendix E of part 75, "Optional NO_x Emission Estimation Protocol for Gas-Fired Peaking Units and Oil-Fired Peaking Units," reduce the amount of testing for gas-fired peaking units and oil-fired peaking units using this optional procedure. A small gas-fired or oil-fired peaking unit using appendix D or appendix E would have monitoring costs reduced by 10 to 40 percent from the cost of the promulgated rule of January 11, 1993.

2. Executive Order 12875

Executive Order 12875 generally prohibits Agencies from issuing regulations not required by statute that impose mandates on State, local, and tribal governments unless federal funding is provided for the direct costs of compliance or the Agency, after consultation with the affected entities, justifies the need for an unfunded mandate. Clean Air Act Section 412(a) required EPA to issue regulations specifying requirements for CEMS and alternative monitoring systems, as well as for recordkeeping and reporting of information from such systems. This direct final rule revises the regulation required under Section 412(a) in order to address various issues that have come to light during early implementation and is therefore a statutorily-required regulation. In addition, as discussed above, the revisions to the regulation do not impose additional costs, but rather slightly decrease the overall cost of compliance for the regulated community. Therefore, the revisions meet the requirements of Executive Order 12875.

C. Regulatory Flexibility Act

Pursuant to Section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies on April 28, 1995 that this rule revision will not have a significant economic impact on a substantial number of small entities.

The EPA performed an analysis of the effects upon small utilities of the Acid Rain core rules (58 FR 3649, January 11, 1993), including permitting, allowances, and continuous emission monitoring. The earlier document concluded that significant costs would occur to small utilities as a result of statutory requirements. For example, based upon a worst case for model utilities, total regulatory costs could represent as much as 6 to 7 percent of the average value of electricity produced in the year 2000. About one-third of the 105 small utilities currently affected could face impacts of up to this magnitude.

Today's revisions to part 75 have a beneficial impact on small entities by reducing the burden of complying with the Acid Rain Program monitoring requirements for approximately 800 small utility units. Revisions to appendix D of part 75 reduce the frequency of sampling and analysis of diesel fuel, reducing the cost of SO_2 monitoring for units using diesel fuel (No. 2 fuel oil) as a backup fuel. The EPA estimates that this will reduce the cost of complying with monitoring requirements by 15 percent per year for SO_2 monitoring for units using diesel fuel. Revisions to appendix E of part 75 reduce the amount of testing for gas-fired peaking units and oil-fired peaking units. The EPA estimates that these changes will reduce the cost of appendix E testing by one-third for boilers and by one-tenth for stationary gas turbines and diesel reciprocating engines. A small gas-fired or oil-fired peaking unit monitoring using appendix D or appendix E would have monitoring costs reduced by 10 to 40 percent from the cost of the promulgated rule of January 11, 1993.

D. Unfunded Mandates Act

Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act") (signed into law on March 22, 1995) requires that the Agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year. Section 203 requires the Agency to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule.

Under section 205 of the Unfunded Mandates Act, the Agency must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. The Agency must select from those alternatives the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule, unless the Agency explains why this alternative is not selected or why the selection of this alternative is inconsistent with law.

Because this direct final rule and its associated proposed and interim final rules are estimated to have an impact of less than $100 million in any one year, the Agency has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by the revisions to parts 72 and 75, the Agency is not required to develop a plan with regard to small governments. However, as discussed in this preamble, the rule revisions have the net effect of reducing the burden of part 75 of the Acid Rain regulations on regulated entities, including both investor-owned and State and municipally-owned utilities.

List of Subjects in 40 CFR Parts 9, 72, and 75

Environmental protection, Air pollution control, Carbon dioxide, Continuous emission monitors, Electric utilities, Incorporation by reference, Nitrogen oxides, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: April 28, 1995.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, parts 9, 72, and 75 of title 40, chapter I, of the Code of Federal Regulations are amended as follows:

PART 9—OMB APPROVALS UNDER THE PAPERWORK REDUCTION ACT

1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1321, 1326, 1330, 1344, 1345 (d) and (e), 1361; E.O. 11735, 58 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7767q, 7542, 9601–9657, 11023, 11048.

2. The table in § 9.1 under the heading "Continuous Emission Monitoring" by removing the entries for "§§ 75.50 through 75.53" and by adding entries for "§§ 75.50 through 75.52" and "§§ 75.53 through 75.56" to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR Citation	OMB Control No.
. . . . .	
Continuous Emission Monitoring	
. . . . .	
75.50–75.52	2060–0258
75.53–75.56	2060–0258
. . . . .	

PART 72—PERMITS REGULATION

3. The authority citation for part 72 continues to read as follows:

Authority: 42 U.S.C. 7651, *et seq.*

Subpart A—Acid Rain Program General Provisions

4. Section 72.2 is amended by revising the definitions of "Calibration gas", "Capacity factor", "Diesel fuel", "Gas-fired", "Maximum potential NO_x emission rate", "Monitor operating hour", "Natural gas", "Oil-fired", "Peaking unit", "Quality assured monitoring operating hour", "Stationary gas turbine" and "Unit operating hours", and by adding, in alphabetical order, new definitions for "Backup fuel", "By-pass operating quarter", "Diesel-fired unit", "Emergency fuel", "Excepted monitoring system", "Flue gas desulfurization system", "Gaseous fuel", "Hour before and after", "NIST traceable reference material", "Ozone nonattainment area", "Ozone transport region", "Pipeline natural gas",

"Research gas material", "Unit operating day", and "Unit operating quarter"; and by removing the definition of "zero ambient air material" and adding a definition of "zero air material" to read as follows:

§ 72.2 Definitions.

* * * * *

Backup fuel means a fuel for a unit where: (1) For purposes of the requirements of the monitoring exception of appendix E of part 75 of this chapter, the fuel provides less than 10.0 percent of the heat input to a unit during the three calendar years prior to certification testing for the primary fuel and the fuel provides less than 15.0 percent of the heat input to a unit in each of those three calendar years; or the Administrator approves the fuel as a backup fuel; and (2) For all other purposes under the Acid Rain Program, a fuel that is not the primary fuel (expressed in mmBtu) consumed by an affected unit for the applicable calendar year.

* * * * *

Bypass operating quarter means a calendar quarter during which emissions pass through a stack, duct or flue that bypasses add-on emission controls.

* * * * *

Calibration gas means: (1) a standard reference material; (2) a NIST traceable reference material; (3) a Protocol 1 gas; (4) a research gas material; or (5) zero air material.

Capacity factor means either: (1) the ratio of a unit's actual annual electric output (expressed in MWe-hr) to the unit's nameplate capacity times 8760 hours, or (2) the ratio of a unit's annual heat input (in million British thermal units or equivalent units of measure) to the unit's maximum design heat input (in million British thermal units per hour or equivalent units of measure) times 8,760 hours.

* * * * *

Diesel-fired unit means, for the purposes of part 75 of this chapter, an oil-fired unit that combusts diesel fuel as its fuel oil, where the supplementary fuel, if any, shall be limited to natural gas or gaseous fuels containing no more sulfur than natural gas.

Diesel fuel means a low sulfur fuel oil of grades 1–D or 2–D, as defined by the American Society for Testing and Materials standard ASTM D975–91, "Standard Specification for Diesel Fuel Oils," grades 1–GT or 2–GT, as defined by ASTM D2880–90a, "Standard Specification for Gas Turbine Fuel Oils," or grades 1 or 2, as defined by ASTM D396–90, "Standard Specification for Fuel Oils" (incorporated by reference in § 72.13).

* * * * *

Emergency fuel means either:

(1) For purposes of the requirements for a fuel flowmeter used in an excepted monitoring system under appendix D or E of part 75 of this chapter, the fuel identified by the designated representative in the unit's monitoring plan as the fuel which is combusted only during emergencies where the primary fuel is not available; or

(2) For purposes of the requirement for stack testing for an excepted monitoring system under appendix E of part 75 of this chapter, the fuel identified in the State, local, or Federal permit for a plant and is identified by the designated representative in the unit's monitoring plan as the fuel which is combusted only during emergencies where the primary fuel is not available, as established in a petition under § 75.66 of this chapter.

* * * * *

Excepted monitoring system means a monitoring system that follows the procedures and requirements of appendix D or E of part 75 of this chapter for approved exceptions to the use of continuous emission monitoring systems.

* * * * *

Flue gas desulfurization system means a type of add-on emission control used to remove sulfur dioxide from flue gas, commonly referred to as a "scrubber."

* * * * *

Gaseous fuel means a material that is in the gaseous state at standard atmospheric temperature and pressure conditions and that is combusted to produce heat.

* * * * *

Gas-fired means:

(1) The combustion of:

(i) Natural gas or other gaseous fuel (including coal-derived gaseous fuel), for at least 90.0 percent of the unit's average annual heat input during the previous three calendar years and for at least 85.0 percent of the annual heat input in each of those calendar years; and

(ii) Any fuel other than coal or coal-derived fuel (other than coal-derived gaseous fuel) for the remaining heat input, if any; *provided* that for purposes of part 75 of this chapter, any fuel used other than natural gas, shall be limited to:

(A) Gaseous fuels containing no more sulfur than natural gas; or

(B) Fuel oil.

(2) For purposes of part 75 of this chapter, a unit may initially qualify as gas-fired under the following circumstances:

(i) If the designated representative provides fuel usage data for the unit for the three calendar years immediately prior to submission of the monitoring plan, and if the unit's fuel usage is projected to change on or before January 1, 1995, the designated representative submits a demonstration satisfactory to the Administrator that the unit will qualify as gas-fired under the first sentence of this definition using the years 1995 through 1997 as the three calendar year period; or

(ii) If a unit does not have fuel usage data for one or more of the three calendar years immediately prior to submission of the monitoring plan, the designated representative submits:

(A) The unit's designed fuel usage;

(B) Any fuel usage data, beginning with the unit's first calendar year of commercial operation following 1992;

(C) The unit's projected fuel usage for any remaining future period needed to provide fuel usage data for three consecutive calendar years; and

(D) Demonstration satisfactory to the Administrator that the unit will qualify as gas-fired under the first sentence of this definition using those three consecutive calendar years as the three calendar year period.

* * * * *

Hour before and after means, for purposes of the missing data substitution procedures of part 75 of this chapter, the quality-assured hourly SO_2 or CO_2 concentration, hourly flow rate, or hourly NO_X emission rate recorded by a certified monitor during the unit operating hour immediately before and the unit operating hour immediately after a missing data period.

Maximum potential NO_X emission rate means the emission rate of nitrogen oxides (in lb/mmBtu) calculated in accordance with section 3 of appendix F of part 75 of this chapter, using the maximum potential nitrogen oxides concentration as defined in section 2 of appendix A of part 75 of this chapter, and either the maximum oxygen concentration (in percent O_2) or the minimum carbon dioxide concentration (in percent CO_2) under all operating conditions of the unit except for unit start-up, shutdown, and upsets.

* * * * *

Monitor operating hour means any unit operating hour or portion thereof over which a CEMS, or other monitoring system approved by the Administrator under part 75 of this chapter is operating, regardless of the number of measurements (i.e., data points) collected during the hour or portion of an hour.

* * * * *

Natural gas means a naturally occurring fluid mixture of hydrocarbons (e.g., methane, ethane, or propane) containing 1 grain or less hydrogen sulfide per 100 standard cubic feet, and 20 grains or less total sulfur per 100 standard cubic feet), produced in geological formations beneath the Earth's surface, and maintaining a gaseous state at standard atmospheric temperature and pressure under ordinary conditions.

* * * * *

NIST traceable reference material (NTRM) means a calibration gas mixture tested by and certified by the National Institutes of Standards and Technologies (NIST) to have a certain specified concentration of gases. NTRMs may have different concentrations from those of standard reference materials.

* * * * *

Oil-fired means:

(1) The combustion of:

(i) Fuel oil for more than 10.0 percent of the average annual heat input during the previous three calendar years or for more than 15.0 percent of the annual heat input during any one of those calendar years; and

(ii) Any solid, liquid, or gaseous fuel (including coal-derived gaseous fuel), other than coal or any other coal derived fuel, for the remaining heat input, if any; provided that for purposes of part 75 of this chapter, any fuel used other than fuel oil shall be limited to gaseous fuels containing no more sulfur than natural gas.

(2) For purposes of part 75 of this chapter, a unit that does not have fuel usage data for one or more of the three calendar years immediately prior to submission of the monitoring plan may initially qualify as oil-fired under the following circumstances: the designated representative submits:

(i) Unit design fuel usage,

(ii) The unit's designed fuel usage,

(iii) Any fuel usage data, beginning with the unit's first calendar year of commercial operation following 1992,

(iv) The unit's projected fuel usage for any remaining future period needed to provide fuel usage data for three consecutive calendar years, and

(v) A demonstration satisfactory to the Administrator that the unit will qualify as oil-fired under the first sentence of this definition using those three consecutive calendar years as the three calendar year period.

* * * * *

Ozone nonattainment area means an area designated as a nonattainment area for ozone under subpart C of part 81 of this chapter.

Ozone transport region means the ozone transport region designated under Section 184 of the Act.

* * * * *

Peaking unit means:

(1) A unit that has:

(i) An average capacity factor of no more than 10.0 percent during the previous three calendar years and

(ii) A capacity factor of no more than 20.0 percent in each of those calendar years.

(2) For purposes of part 75 of this chapter, a unit may initially qualify as a peaking unit under the following circumstances:

(i) If the designated representative provides capacity factor data for the unit for the three calendar years immediately prior to submission of the monitoring plan and if the unit's capacity factor is projected to change on or before the certification deadline for NO_X monitoring in § 75.4 of this chapter, the designated representative submits a demonstration satisfactory to the Administrator that the unit will qualify as a peaking unit under the first sentence of this definition using the three calendar years beginning with the year of the certification deadline for NO_X monitoring in § 75.4 of this chapter (either 1995 or 1996) as the three year period; or

(ii) If the unit does not have capacity factor data for any one or more of the three calendar years immediately prior to submission of the monitoring plan, the designated representative submits:

(A) Any capacity factor data, beginning with the unit's first calendar year of commercial operation following the first year of the three calendar years immediately prior to the certification deadline for NO_X monitoring in § 75.4 of this chapter (either 1992 or 1993),

(B) Capacity factor information for the unit for any remaining future period needed to provide capacity factor data for three consecutive calendar years, and

(C) A demonstration satisfactory to the Administrator that the unit will qualify as a peaking unit under the first sentence of this definition using the three consecutive calendar years specified in (2) (ii) (A) and (B) as the three calendar year period.

* * * * *

Pipeline natural gas means natural gas that is provided by a supplier through a pipeline.

* * * * *

Quality-assured monitor operating hour means any unit operating hour or portion thereof over which a certified CEMS, or other monitoring system approved by the Administrator under part 75 of this chapter, is operating:

(1) Within the performance specifications set forth in part 75, appendix A of this chapter and the quality assurance/quality control procedures set forth in part 75, appendix B of this chapter, without unscheduled maintenance, repair, or adjustment; and

(2) In accordance with § 75.10(d), (e), and (f) of this chapter.

* * * * *

Research gas material (RGM) means a calibration gas mixture developed by agreement of a requestor and the National Institutes for Standards and Technologies (NIST) that NIST analyzes and certifies as "NIST traceable." RGMs may have concentrations different from those of standard reference materials.

* * * * *

Stationary gas turbine means a turbine that is not self-propelled and that combusts natural gas, other gaseous fuel with a sulfur content no greater than natural gas, or fuel oil in order to heat inlet combustion air and thereby turn a turbine, in addition to or instead of producing steam or heating water.

* * * * *

Unit operating day means a calendar day in which a unit combusts any fuel.

Unit operating hour means any hour (or fraction of an hour) during which a unit combusts any fuel.

Unit operating quarter means a calendar quarter in which a unit combusts any fuel.

* * * * *

Zero air material means either: (1) a calibration gas certified by the gas vendor not to contain concentrations of either SO_2, NO_X, or total hydrocarbons above 0.1 parts per million (ppm); a concentration of CO above 1 ppm; and a concentration of CO_2 above 400 ppm, or (2) ambient air conditioned and purified by a continuous emission monitoring system for which the continuous emission monitoring system manufacturer or vendor certifies that the particular continuous emission monitoring system model produces conditioned gas that does not contain concentrations of either SO_2 or NO_X above 0.1 ppm or CO_2 above 400 ppm; and that does not contain concentrations of other gases that interfere with instrument readings or cause the instrument to read concentrations of SO_2, NO_X, or CO_2 for a particular continuous emission monitoring system model.

* * * * *

5. Section 72.13 is amended by redesignating paragraphs (a)(8) and

(a)(9) as (a)(9) and (a)(10), and by adding paragraph (a)(8), and by revising newly designated paragraphs (a)(9) and (a)(10) to read as follows:

§ 72.13 Incorporation by reference.

* * * * *

(8) ASTM D2880–90a, Standard Specification for Gas Turbine Fuel Oils, for § 72.2 of this part.

(9) ASTM D4057–88, Standard Practice for Manual Sampling of Petroleum and Petroleum Products, for § 72.7 of this part.

(10) ASTM D4294–90, Standard Test Method for Sulfur in Petroleum Products by Energy-Dispersive X-Ray Fluorescence Spectroscopy, for § 72.7 of this part.

* * * * *

PART 75—CONTINUOUS EMISSIONS MONITORING

6–7. The authority citation for part 75 is revised to read as follows:

Authority: 42 U.S.C. 7601 and 7651, *et seq.*

§ 75.2 [Amended]

8. Section 75.2 is amended by removing paragraph (b)(4).

9. Section 75.4 is amended by revising the last sentence of paragraph (a) introductory text and by revising paragraphs (a)(1), (a)(2), (a)(3), (a)(4), (b), (c), and (d), by redesignating and revising paragraph (e) as paragraph (h) and by adding new paragraphs (e), (f), and (g) to read as follows:

§ 75.4 Compliance dates.

(a) * * * In accordance with § 75.20, the owner or operator of each existing affected unit shall ensure that all monitoring systems required by this part for monitoring SO_2, NO_X, CO_2, opacity, and volumetric flow are installed and all certification tests are completed not later than the following dates (except as provided in paragraphs (d) through (h) of this section):

(1) For a unit listed in Table 1 of § 73.10(a) of this chapter, November 15, 1993.

(2) For a substitution or a compensating unit that is designated under an approved substitution plan or reduced utilization plan pursuant to § 72.41 or § 72.43 of this chapter, or for a unit that is designated an early election unit under an approved NO_X compliance plan pursuant to part 76 of this chapter, that is not conditionally approved and that is effective for 1995, the earlier of the following dates:

(i) January 1, 1995; or

(ii) 90 days after the issuance date of the Acid Rain permit (or date of approval of permit revision) that governs the unit and contains the approved substitution plan, reduced utilization plan, or NO_X compliance plan.

(3) For either a Phase II unit, other than a gas-fired unit or an oil-fired unit, or a substitution or compensating unit that is not a substitution or compensating unit under paragraph (a)(2) of this section: January 1, 1995.

(4) For a gas-fired Phase II unit or an oil-fired Phase II unit, January 1, 1995, except that installation and certification tests for continuous emission monitoring systems for NO_X and CO_2 or excepted monitoring systems for NO_X under appendix E or CO_2 estimation under appendix G of this part shall be completed as follows:

(i) For an oil-fired Phase II unit or a gas-fired Phase II unit located in an ozone nonattainment area or the ozone transport region, not later than July 1, 1995; or

(ii) For an oil-fired Phase II unit or a gas-fired Phase II unit not located in an ozone nonattainment area or the ozone transport region, not later than January 1, 1996.

(5) * * *

(b) In accordance with § 75.20, the owner or operator of each new affected unit shall ensure that all monitoring systems required under this part for monitoring of SO_2, NO_X, CO_2, opacity, and volumetric flow are installed and all certification tests are completed on or before the later of the following dates:

(1) January 1, 1995, except that for a gas-fired unit or oil-fired unit located in an ozone nonattainment area or the ozone transport region, the date for installation and completion of all certification tests for NO_X and CO_2 monitoring systems shall be July 1, 1995 and for a gas-fired unit or an oil-fired unit not located in an ozone nonattainment area or the ozone transport region, the date for installation and completion of all certification tests for NO_X and CO_2 monitoring systems shall be January 1, 1996; or

(2) Not later than 90 days after the date the unit becomes subject to the requirements of the Acid Rain Program, notice of which date shall be provided under subpart G of this part.

(d) In accordance with § 75.20, the owner or operator of an existing unit that is shutdown and is not yet operating by the applicable dates listed in paragraph (a) of this section, shall ensure that all monitoring systems required under this part for monitoring of SO_2, NO_X, CO_2, opacity, and volumetric flow are installed and all certification tests are completed not later than the earlier of 45 unit operating days or 180 calendar days after the date that the unit recommences commercial operation of the affected unit, notice of which date shall be provided under subpart G of this part. The owner or operator shall determine and report SO_2 concentration, NO_X emission rate, CO_2 concentration, and flow data for all unit operating hours after the applicable compliance date in paragraph (a) of this section until all required certification tests are successfully completed using either:

(1) The maximum potential concentration of SO_2, the maximum potential NO_X emission rate, the maximum potential flow rate, as defined in section 2.1 of appendix A of this part, or the maximum CO_2 concentration used to determine the maximum potential concentration of SO_2 in section 2.1.1.1 of appendix A of this part; or

(2) Reference methods under § 75.22(b); or

(3) Another procedure approved by the Administrator pursuant to a petition under § 75.66.

(e) In accordance with § 75.20, if the owner or operator of an existing unit completes construction of a new stack, flue, or flue gas desulfurization system after the applicable deadline in paragraph (a) of this section, then the owner or operator shall ensure that all monitoring systems required under this part for monitoring SO_2, NO_X, CO_2, opacity, and volumetric flow are installed on the new stack or duct and all certification tests are completed not later than 90 calendar days after the date that emissions first exit to the atmosphere through the new stack, flue, or flue gas desulfurization system, notice of which date shall be provided under subpart G of this part. Until emissions first pass through the new stack, flue or flue gas desulfurization system, the unit is subject to the appropriate deadline in paragraph (a) of this section. The owner or operator shall determine and report SO_2 concentration, NO_X emission rate, CO_2 concentration, and flow data for all unit operating hours after emissions first pass through the new stack, flue, or flue gas desulfurization system until all required certification tests are successfully completed using either:

(1) The appropriate value for substitution of missing data upon recertification pursuant to § 75.20(b)(3); or

(2) Reference methods under § 75.22(b) of this part; or

(3) Another procedure approved by the Administrator pursuant to a petition under § 75.66.

(f) In accordance with § 75.20, the owner or operator of a gas-fired or oil-fired peaking unit, if planning to use appendix E of this part, shall ensure that the required certification tests for excepted monitoring systems under appendix E are completed for backup fuel as defined in § 72.2 of this chapter by no later than the later of: 30 unit operating days after the date that the unit first combusted that backup fuel after the certification testing of the primary fuel; or the deadline in paragraph (a) of this section. The owner or operator shall determine and report NO_X emission rate data for all unit operating hours that the backup fuel is combusted after the applicable compliance date in paragraph (a) of this section until all required certification tests are successfully completed using either:

(1) The maximum potential NO_X emission rate; or

(2) Reference methods under § 75.22(b) of this part; or

(3) Another procedure approved by the Administrator pursuant to a petition under § 75.66.

(g) In accordance with § 75.20, whenever the owner or operator of a gas-fired or oil-fired unit uses an excepted monitoring system under appendix D or E of this part and combusts emergency fuel as defined in § 72.2 of this chapter, then the owner or operator shall ensure that a fuel flowmeter measuring emergency fuel is installed and the required certification tests for excepted monitoring systems are completed by no later than 30 unit operating days after the first date after January 1, 1995 that the unit combusts emergency fuel. For all unit operating hours that the unit combusts emergency fuel after January 1, 1995 until the owner or operator installs a flowmeter for emergency fuel and successfully completes all required certification tests, the owner or operator shall determine and report SO_2 mass emission data using either:

(1) The maximum potential fuel flow rate, as described in appendix D of this part, and the maximum sulfur content of the fuel, as described in section 2.1.1.1 of appendix A of this part;

(2) Reference methods under § 75.22(b) of this part; or

(3) Another procedure approved by the Administrator pursuant to a petition under § 75.66.

(h) In accordance with § 75.20, the owner or operator of a unit with a qualifying Phase I technology shall ensure that all certification tests for the inlet and outlet SO_2-diluent continuous emission monitoring systems are completed no later than January 1, 1997 if the unit with a qualifying Phase I technology requires the use of an inlet SO_2-diluent continuous emission monitoring system for the purpose of monitoring SO_2 emissions removal from January 1, 1997 through December 31, 1999.

10. Section 75.5 is amended by revising paragraph (e) and by adding paragraph (f) to read as follows:

§ 75.5 Prohibitions.

* * * * *

(e) No owner or operator of an affected unit shall disrupt the continuous emission monitoring system, any portion thereof, or any other approved emission monitoring method, and thereby avoid monitoring and recording SO_2, NO_X, or CO_2 emissions discharged to the atmosphere, except for periods of recertification, or periods when calibration, quality assurance, or maintenance is performed pursuant to § 75.21 and appendix B of this part.

(f) No owner or operator of an affected unit shall retire or permanently discontinue use of the continuous emission monitoring system, any component thereof, the continuous opacity monitoring system, or any other approved emission monitoring system under this part, except under any one of the following circumstances:

(1) During the period that the unit is covered by an approved retired unit exemption under § 72.8 of this chapter that is in effect; or

(2) The owner or operator is monitoring emissions from the unit with another certified monitoring system that provides emission data for the same pollutant or parameter as the retired or discontinued monitoring system; or

(3) The designated representative submits notification of the date of recertification testing of a replacement monitoring system in accordance with §§ 75.20 and 75.61, and the owner or operator recertifies thereafter a replacement monitoring system in accordance with § 75.20.

11. Section 75.6 is amended by revising paragraphs (a), (b)(1) through (b)(6); by removing paragraphs (b)(7) through (b)(9); and by adding paragraphs (c), (d), and (e) to read as follows:

§ 75.6 Incorporation by reference.

* * * * *

(a) The following materials are available for purchase from the following addresses: American Society for Testing and Material (ASTM), 1916 Race Street, Philadelphia, Pennsylvania 19103; and the University Microfilms International 300 North Zeeb Road, Ann Arbor, Michigan 48106.

(1) ASTM D129–91, Standard Test Method for Sulfur in Petroleum Products (General Bomb Method), for appendices A and D of this part.

(2) ASTM D240–87 (Reapproved 1991), Standard Test Method for Heat of Combustion of Liquid Hydrocarbon Fuels by Bomb Calorimeter, for appendices A, D and F of this part.

(3) ASTM D287–82 (Reapproved 1987), Standard Test Method for API Gravity of Crude Petroleum and Petroleum Products (Hydrometer Method), for appendix D of this part.

(4) ASTM D388–92, Standard Classification of Coals by Rank, incorporation by reference for appendix F of this part.

(5) ASTM D941–88, Standard Test Method for Density and Relative Density (Specific Gravity) of Liquids by Lipkin Bicapillary Pycnometer, for appendix D of this part.

(6) ASTM D1072–90, Standard Test Method for Total Sulfur in Fuel Gases, for appendix D of this part.

(7) ASTM D1217–91, Standard Test Method for Density and Relative Density (Specific Gravity) of Liquids by Bingham Pycnometer, for appendix D of this part.

(8) ASTM D1250–80 (Reapproved 1990), Standard Guide for Petroleum Measurement Tables, for appendix D of this part.

(9) ASTM D1298–85 (Reapproved 1990), Standard Practice for Density, Relative Density (Specific Gravity) or API Gravity of Crude Petroleum and Liquid Petroleum Products by Hydrometer Method, for appendix D of this part.

(10) ASTM D1480–91, Standard Test Method for Density and Relative Density (Specific Gravity) of Viscous Materials by Bingham Pycnometer, for appendix D of this part.

(11) ASTM D1481–91, Standard Test Method for Density and Relative Density (Specific Gravity) of Viscous Materials by Lipkin Bicapillary Pycnometer, for appendix D of this part.

(12) ASTM D1552–90, Standard Test Method for Sulfur in Petroleum Products (High Temperature Method), for appendices A and D of the part.

(13) ASTM D1826–88, Standard Test Method for Calorific (Heating) Value of Gases in Natural Gas Range by Continuous Recording Calorimeter, for appendix F of this part.

(14) ASTM D1945–91, Standard Test Method for Analysis of Natural Gas by Gas Chromatography, for appendices F and G of this part.

(15) ASTM D1946–90, Standard Practice for Analysis of Reformed Gas by Gas Chromatography, for appendices F and G of this part.

(16) ASTM D1989–92, Standard Test Method for Gross Calorific Value of Coal and Coke by Microprocessor Controlled Isoperibol Calorimeters, for appendix F of this part.

(17) ASTM D2013–86, Standard Method of Preparing Coal Samples for Analysis, for § 75.15 and appendix F of this part.

(18) ASTM D2015–91, Standard Test Method for Gross Calorific Value of Coal and Coke by the Adiabatic Bomb Calorimeter, for § 75.15 and appendices A, D and F of this part.

(19) ASTM D2234–89, Standard Test Methods for Collection of a Gross Sample of Coal, for § 75.15 and appendix F of this part.

(20) ASTM D2382–88, Standard Test Method for Heat of Combustion of Hydrocarbon Fuels by Bomb Calorimeter (High-Precision Method), for appendices D and F of this part.

(21) ASTM D2502–87, Standard Test Method for Estimation of Molecular Weight (Relative Molecular Mass) of Petroleum Oils from Viscosity Measurements, for appendix G of this part.

(22) ASTM D2503–82 (Reapproved 1987), Standard Test Method for Molecular Weight (Relative Molecular Mass) of Hydrocarbons by Thermoelectric Measurement of Vapor Pressure, for appendix G of this part.

(23) ASTM D2622–92, Standard Test Method for Sulfur in Petroleum Products by X-Ray Spectrometry, for appendices A and D of this part.

(24) ASTM D3174–89, Standard Test Method for Ash in the Analysis Sample of Coal and Coke From Coal, for appendix G of this part.

(25) ASTM D3176–89, Standard Practice for Ultimate Analysis of Coal and Coke, for appendices A and F of this part.

(26) ASTM D3177–89, Standard Test Methods for Total Sulfur in the Analysis Sample of Coal and Coke, for § 75.15 and appendix A of this part.

(27) ASTM D3178–89, Standard Test Methods for Carbon and Hydrogen in the Analysis Sample of Coal and Coke, for appendix G of this part.

(28) ASTM D3238–90, Standard Test Method for Calculation of Carbon Distribution and Structural Group Analysis of Petroleum Oils by the n-d-M Method, for appendix G of this part.

(29) ASTM D3246–81 (Reapproved 1987), Standard Test Method for Sulfur in Petroleum Gas By Oxidative Microcoulometry, for appendix D of this part.

(30) ASTM D3286–91a, Standard Test Method for Gross Calorific Value of Coal and Coke by the Isoperibol Bomb Calorimeter, for appendix F of this part.

(31) ASTM D3588–91, Standard Practice for Calculating Heat Value, Compressibility Factor, and Relative Density (Specific Gravity) of Gaseous Fuels, for appendix F of this part.

(32) ASTM D4052–91, Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter, for appendix D of this part.

(33) ASTM D4057–88, Standard Practice for Manual Sampling of Petroleum and Petroleum Products, for appendix D of this part.

(34) ASTM D4177–82 (Reapproved 1990), Standard Practice for Automatic Sampling of Petroleum and Petroleum Products, for appendix D of this part.

(35) ASTM D4239–85, Standard Test Methods for Sulfur in the Analysis Sample of Coal and Coke Using High Temperature Tube Furnace Combustion Methods, for § 75.15 and appendix A of this part.

(36) ASTM D4294–90, Standard Test Method for Sulfur in Petroleum Products by Energy-Dispersive X-Ray Fluorescence Spectroscopy, for appendices A and D of this part.

(37) ASTM D4468–85 (Reapproved 1989), Standard Test Method for Total Sulfur in Gaseous Fuels by Hydrogenolysis and Rateometric Colorimetry, for appendix D of this part.

(38) ASTM D4891–89, Standard Test Method for Heating Value of Gases in Natural Gas Range by Stoichiometric Combustion, for appendix F of this part.

(39) ASTM D5291–92, Standard Test Methods for Instrumental Determination of Carbon, Hydrogen, and Nitrogen in Petroleum Products and Lubricants, for appendix G of this part.

(40) ASTM D5504–94, Standard Test Method for Determination of Sulfur Compounds in Natural Gas and Gaseous Fuels by Gas Chromatography and Chemiluminescence, for appendix D of this part.

(b) * * *

(1) ASME MFC–3M–1989 with September 1990 Errata, Measurement of Fluid Flow in Pipes Using Orifice, Nozzle, and Venturi, for § 75.20 and appendix D of this part.

(2) ASME MFC–4M–1986 (Reaffirmed 1990), Measurement of Gas Flow by Turbine Meters, for § 75.20 and appendix D of this part.

(3) ASME-MFC–5M–1985, Measurement of Liquid Flow in Closed Conduits Using Transit-Time Ultrasonic Flowmeters, for § 75.20 and appendix D of this part.

(4) ASME MFC–6M–1987 with June 1987 Errata, Measurement of Fluid Flow in Pipes Using Vortex Flow Meters, for § 75.20 and appendix D of this part.

(5) ASME MFC–7M–1987 (Reaffirmed 1992), Measurement of Gas Flow by Means of Critical Flow Venturi Nozzles, for § 75.20 and appendix D of this part.

(6) ASME MFC–9M–1988 with December 1989 Errata, Measurement of Liquid Flow in Closed Conduits by Weighing Method, for § 75.20 and appendix D of this part.

(c) The following materials are available for purchase from the American National Standards Institute (ANSI), 11 W. 42nd Street, New York NY 10036: ISO 8316: 1987(E) Measurement of Liquid Flow in Closed Conduits—Method by Collection of the Liquid in a Volumetric Tank, for § 75.20 and appendices D and E of this part.

(d) The following materials are available for purchase from the following address: Gas Processors Association (GPA), 6526 East 60th Street, Tulsa, Oklahoma 74145:

(1) GPA Standard 2172–86, Calculation of Gross Heating Value, Relative Density and Compressibility Factor for Natural Gas Mixtures from Compositional Analysis, for appendices D, E, and F of this part.

(2) GPA Standard 2261–90, Analysis for Natural Gas and Similar Gaseous Mixtures by Gas Chromatography, for appendices D, F, and G of this part.

(e) The following materials are available for purchase from the following address: American Gas Association, 1515 Wilson Boulevard, Arlington VA 22209: American Gas Association Report No. 3: Orifice Metering of Natural Gas and Other Related Hydrocarbon Fluids, Part 1: General Equations and Uncertainty Guidelines (October 1990 Edition), Part 2: Specification and Installation Requirements (February 1991 Edition) and Part 3: Natural Gas Applications (August 1992 Edition), for § 75.20 and appendices D and E of this part.

12. Section 75.8 is added to Subpart A to read as follows:

§ 75.8 Relative accuracy and availability analysis.

(a) The Agency will conduct an analysis of monitoring data submitted to EPA under this part between November 15, 1993 and December 31, 1996 to evaluate the appropriateness of the current performance specifications for relative accuracy and availability trigger conditions for missing data substitution for SO_2 and CO_2 pollutant concentration monitors, flow monitors, and NO_X continuous emission monitoring systems.

(b) Prior to July 1, 1997, the Agency will prepare a report evaluating quarterly report data for the period between January 1, 1994 and December 31, 1996 and initial certification test data. Based upon this evaluation, the Administrator will sign for publication in the **Federal Register**, either:

(1) A notice that the Agency has completed its analysis and has determined that retaining the current performance specifications for relative accuracy and availability trigger conditions are appropriate; or

(2) A notice that the Agency will develop a proposed rule, based on the results of the study, proposing alternatives to the current performance specifications for relative accuracy and availability trigger conditions.

(c) If the Administrator signs a notice that the Agency will develop a proposed rule, the Administrator will:

(1) Sign a notice of proposed rulemaking by October 31, 1997; and

(2) Sign a notice of final rulemaking by October 31, 1998.

Subpart B—Monitoring Provisions

13. Section 75.10 is amended by revising paragraphs (a)(1), (a)(2), (a)(3), (d), (e), and (f) to read as follows:

§ 75.10 General operating requirements.

(a) * * *

(1) The owner or operator shall install, certify, operate, and maintain, in accordance with all the requirements of this part, a SO_2 continuous emission monitoring system and a flow monitoring system with the automated data acquisition and handling system for measuring and recording SO_2 concentration (in ppm), volumetric gas flow (in scfh), and SO_2 mass emissions (in lb/hr) discharged to the atmosphere, except as provided in §§ 75.11 and 75.16 and subpart E of this part;

(2) The owner or operator shall install, certify, operate, and maintain, in accordance with all the requirements of this part, a NO_X continuous emission monitoring system (consisting of a NO_X pollutant concentration monitor and an O_2 or CO_2 diluent gas monitor) with the automated data acquisition and handling system for measuring and recording NO_X concentration (in ppm), O_2 or CO_2 concentration (in percent O_2 or CO_2) and NO_X emission rate (in lb/mmBtu) discharged to the atmosphere, except as provided in §§ 75.12 and 75.17 and subpart E of this part. The owner or operator shall account for total NO_X emissions, both NO and NO_2, either by monitoring for both NO and NO_2 or by monitoring for NO only and adjusting the emissions data to account for NO_2;

(3) The owner or operator shall determine CO_2 emissions by using one of the following options, except as provided in § 75.13 and subpart E of this part:

(i) The owner or operator shall install, certify, operate, and maintain, in accordance with all the requirements of this part, a CO_2 continuous emission monitoring system and a flow monitoring system with the automated data acquisition and handling system for measuring and recording CO_2 concentration (in ppm or percent), volumetric gas flow (in scfh), and CO_2 mass emissions (in tons/hr) discharged to the atmosphere;

(ii) The owner or operator shall determine CO_2 emissions based on the measured carbon content of the fuel and the procedures in appendix G of this part to estimate CO_2 emissions (in ton/day) discharged to the atmosphere; or

(iii) The owner or operator shall install, certify, operate, and maintain, in accordance with all the requirements of this part, a flow monitoring system and a CO_2 continuous emission monitoring system using an O_2 concentration monitor in order to determine CO_2 emissions using the procedures in appendix F of this part with the automated data acquisition and handling system for measuring and recording O_2 concentration (in percent), CO_2 concentration (in percent), volumetric gas flow (in scfh), and CO_2 mass emissions (in tons/hr) discharged to the atmosphere; and

* * * * * *

(d) *Primary equipment hourly operating requirements.* The owner or operator shall ensure that all continuous emission and opacity monitoring systems required by this part are in operation and monitoring unit emissions or opacity at all times that the affected unit combusts any fuel except as provided in § 75.11(e) and during periods of calibration, quality assurance, or preventive maintenance, performed pursuant to § 75.21 and appendix B of this part, periods of repair, periods of backups of data from the data acquisition and handling system, or recertification performed pursuant to § 75.20. The owner or operator shall also ensure, subject to the exceptions above in this paragraph, that all continuous opacity monitoring systems required by this part are in operation and monitoring opacity during the time following combustion when fans are still operating, unless fan operation is not required to be included under any other applicable Federal, State, or local regulation, or permit. The owner or operator shall ensure that the following requirements are met:

(1) The owner or operator shall ensure that each continuous emission monitoring system and component thereof is capable of completing a minimum of one cycle of operation (sampling, analyzing, and data recording) for each successive 15-min interval. The owner or operator shall reduce all SO_2 concentrations, volumetric flow, SO_2 mass emissions, SO_2 emission rate in lb/mmBtu (if applicable), CO_2 concentration, O_2 concentration, CO_2 mass emissions (if applicable), NO_X concentration, and NO_X emission rate data collected by the monitors to hourly averages. Hourly averages shall be computed using at least one data point in each fifteen minute quadrant of an hour, where the unit combusted fuel during that quadrant of an hour. Notwithstanding this requirement, an hourly average may be computed from at least two data points separated by a minimum of 15 minutes (where the unit operates for more than one quadrant of an hour) if data are unavailable as a result of the performance of calibration, quality assurance, or preventive maintenance activities pursuant to § 75.21 and appendix B of this part, backups of data from the data acquisition and handling system, or recertification, pursuant to § 75.20. The owner or operator shall use all valid measurements or data points collected during an hour to calculate the hourly averages. All data points collected during an hour shall be, to the extent practicable, evenly spaced over the hour.

(2) The owner or operator shall ensure that each continuous opacity monitoring system is capable of completing a minimum of one cycle of sampling and analyzing for each successive 10-sec

period and one cycle of data recording for each successive 6-min period. The owner or operator shall reduce all opacity data to 6-min averages calculated in accordance with the provisions of part 51, appendix M of this chapter, except where the applicable State implementation plan or operating permit requires a different averaging period, in which case the State requirement shall satisfy this Acid Rain Program requirement.

(3) Failure of an SO_2, CO_2 or O_2 pollutant concentration monitor, flow monitor, or NO_X continuous emission monitoring system, to acquire the minimum number of data points for calculation of an hourly average in paragraph (d)(1) of this section, shall result in the failure to obtain a valid hour of data and the loss of such component data for the entire hour. An hourly average NO_X or SO_2 emission rate in lb/mmBtu is valid only if the minimum number of data points are acquired by both the pollutant concentration monitor (NO_X or SO_2) and the diluent monitor (CO_2 or O_2). Except for SO_2 emission rate data in lb/mmBtu, if a valid hour of data is not obtained, the owner or operator shall estimate and record emission or flow data for the missing hour by means of the automated data acquisition and handling system, in accordance with the applicable procedure for missing data substitution in subpart D of this part.

(e) *Optional backup monitor requirements.* If the owner or operator chooses to use two or more continuous emission monitoring systems, each of which is capable of monitoring the same stack or duct at a specific affected unit, or group of units using a common stack, then the owner or operator shall designate one monitoring system as the primary monitoring system, and shall record this information in the monitoring plan, as provided for in § 75.53. The owner or operator shall designate the other monitoring system(s) as backup monitoring system(s) in the monitoring plan. The backup monitoring system(s) shall be designated as redundant backup monitoring system(s), non-redundant backup monitoring system(s), or reference method backup system(s), as described in § 75.20(d). When the certified primary monitoring system is operating and not out-of-control as defined in § 75.24, only data from the certified primary monitoring system shall be reported as valid, quality-assured data. Thus, data from the backup monitoring system may be reported as valid, quality-assured data only when the backup is operating and not out-of-control as defined in § 75.24 (or in the applicable reference method in appendix A of part 60 of this chapter) and when the certified primary monitoring system is not operating (or is operating but out-of-control). A particular monitor may be designated both as a certified primary monitor for one unit and as a certified redundant backup monitor for another unit.

(f) *Minimum measurement capability requirement.* The owner or operator shall ensure that each continuous emission monitoring system and component thereof is capable of accurately measuring, recording, and reporting data, and shall not incur a full scale exceedance, except as provided in sections 2.1.1.4, 2.1.2.4, and 2.1.4 of appendix A of this part.

* * * * *

14. Section 75.11 is amended by revising paragraphs (c) and (d), redesignating paragraph (e) as paragraph (f), and reserving paragraph (e) to read as follows:

§ 75.11 Specific provisions for monitoring SO_2 emissions (SO_2 and flow monitors).

* * * * *

(c) *Unit with no location for a flow monitor meeting siting requirements.* Where no location exists that satisfies the minimum physical siting criteria in appendix A to this part for installation of a flow monitor in either the stack or the ducts serving an affected unit or installation of a flow monitor in either the stack or ducts is demonstrated to the satisfaction of the Administrator to be technically infeasible, either:

(1) The designated representative shall petition the Administrator for an alternative method for monitoring volumetric flow in accordance with § 75.66; or

(2) The owner or operator shall construct a new stack or modify existing ductwork to accommodate the installation of a flow monitor, and the designated representative shall petition the Administrator for an extension of the required certification date given in § 75.4 and approval of an interim alternative flow monitoring methodology in accordance with § 75.66. The Administrator may grant existing Phase I affected units an extension to January 1, 1995, and existing Phase II affected units an extension to January 1, 1996 for the submission of the certification application for the purpose of constructing a new stack or making substantial modifications to ductwork for installation of a flow monitor; or

(3) The owner or operator shall install a flow monitor in any existing location in the stack or ducts serving the affected unit at which the monitor can achieve the performance specifications of this part.

(d) *Gas-fired units and oil-fired units.* The owner or operator of an affected unit that qualifies as a gas-fired or oil-fired unit, as defined in § 72.2 of this chapter, based on information submitted by the designated representative in the monitoring plan, shall measure and record SO_2 emissions using one of the following methods:

(1) Meet the general operating requirements in § 75.10 for an SO_2 continuous emission monitoring system and flow monitoring system except as provided in paragraph (e) of this section. When the owner or operator uses an SO_2 continuous emission monitoring system and flow monitoring system to monitor SO_2 mass emissions from an affected unit, the owner or operator shall comply with applicable monitoring provisions in paragraph (a) of this section; or

(2) Provide other information satisfactory to the Administrator using the procedure specified in appendix D to this part for estimating hourly SO_2 mass emissions.

(e) [Reserved]

* * * * *

15. Section 75.12 is amended by revising paragraph (c) to read as follows:

§ 75.12 Specific provisions for monitoring NO_X emissions (NO_X and diluent gas monitors).

* * * * *

(c) *Gas-fired peaking units or oil-fired peaking units.* The owner or operator of an affected unit that qualifies as a gas-fired peaking unit or oil-fired peaking unit, as defined in § 72.2 of this chapter, based on information submitted by the designated representative in the monitoring plan shall comply with one of the following:

(1) Meet the general operating requirements in § 75.10 for a NO_X continuous emission monitoring system; or

(2) Provide information satisfactory to the Administrator using the procedure specified in appendix E of this part for estimating hourly NO_X emission rate. However, if in the years after certification of an excepted monitoring system under appendix E of this part, a unit's operations exceed a capacity factor of 20 percent in any calendar year or exceed a capacity factor of 10.0 percent averaged over three years, the owner or operator shall install, certify, and operate a NO_X continuous emission monitoring system no later than December 31 of the following calendar year.

* * * * *

16. Section 75.13 is amended by revising paragraphs (a) and (c) to read as follows:

§ 75.13 Specific provisions for monitoring CO_2 emissions.

(a) *CO_2 continuous emission monitoring system.* If the owner or operator chooses to use the continuous emission monitoring method, then the owner or operator shall meet the general operating requirements in § 75.10 for a CO_2 continuous emission monitoring system and flow monitoring system for each affected unit. The owner or operator shall comply with the applicable provisions specified in § 75.11 (a) through (e) or § 75.16, except that the phrase "SO_2 continuous emission monitoring system" is replaced with "CO_2 continuous emission monitoring system," the term "maximum potential concentration for SO_2" is replaced with "maximum CO_2 concentration," and the phrase "SO_2 mass emissions" is replaced with "CO_2 mass emissions."

* * * * *

(c) *Determination of CO_2 mass emissions using an O_2 monitor according to appendix F.* If the owner or operator chooses to use the appendix F method, then the owner or operator may determine hourly CO_2 concentration and mass emissions with a flow monitoring system, a continuous O_2 concentration monitor, fuel F and F_c factors, and where O_2 concentration is measured on a dry basis, hourly corrections for the moisture content of the flue gases, using the methods and procedures specified in appendix F to this part. For units using a common stack, multiple stack, or by-pass stack, the owner or operator may use the provisions of § 75.16, except that the phrase "SO_2 continuous emission monitoring system" is replaced with "CO_2 continuous emission monitoring system," the term "maximum potential concentration of SO" is replaced with "maximum CO_2 concentration," and the phrase "SO_2 mass emissions" is replaced with "CO_2 mass emissions."

17. Section 75.14 is amended by revising paragraph (c) to read as follows:

§ 75.14 Specific provisions for monitoring opacity.

* * * * *

(c) *Gas-fired units.* The owner or operator of an affected unit that qualifies as gas-fired, as defined in § 72.2 of this chapter, based on information submitted by the designated representative in the monitoring plan is exempt from the opacity monitoring requirements of this part.

* * * * *

18. Section 75.15 is amended by revising paragraphs (a) introductory text, (a)(1), (a)(2), and Equations 5 and 7 in paragraph (b)(1) to read as follows:

§ 75.15 Specific provisions for monitoring SO_2 emissions removal by qualifying Phase I technology.

(a) *Additional monitoring provisions.* In addition to the SO_2 monitoring requirements in § 75.11 or § 75.16, for the purposes of adequately monitoring SO_2 emissions removal by qualifying Phase I technology operated pursuant to § 72.42 of this chapter, the owner or operator shall, except where specified below, use both an inlet SO_2-diluent continuous emission monitoring system and an outlet SO_2-diluent continuous emission monitoring system, consisting of an SO_2 pollutant concentration monitor and a diluent CO_2 or O_2 monitor. (The outlet SO_2-diluent continuous emission monitoring system may consist of the same SO_2 pollutant concentration monitor that is required under § 75.11 or § 75.16 for the measurement of SO_2 emissions discharged to the atmosphere and the diluent monitor used as part of the NO_X continuous emission monitoring system that is required under § 75.12 or § 75.17 for the measurement of NO_X emissions discharged into the atmosphere.) During the period when required to measure emissions removal efficiency, from January 1, 1997 through December 31, 1999, the owner or operator shall meet the general operating requirements in § 75.10 for both the inlet and the outlet SO_2-diluent continuous emission monitoring systems, and in addition, the owner or operator shall comply with the monitoring provisions in this section. On January 1, 2000, the owner or operator may cease operating and/or reporting on the inlet SO_2-diluent continuous emission monitoring system results for the purposes of the Acid Rain Program.

(1) *Pre-combustion technology.* The owner or operator of an affected unit for which a precombustion technology has been employed for the purpose of meeting qualifying Phase I technology requirements shall use sections 4 and 5 of Method 19 in appendix A of part 60 of this chapter to estimate, daily, for the purposes of this part, the percentage SO_2 removal efficiency from such technology, and shall substitute the following ASTM methods for sampling, preparation, and analysis of coal for those cited in Method 19: ASTM D2234–89, Standard Test Method for Collection of a Gross Sample of Coal (Type I, Conditions A, B, or C and systematic spacing), ASTM D2013–86, Standard Method of Preparing Coal Samples for Analysis, ASTM D2015–91, Standard Test Method for Gross Calorific Value of Coal and Coke by the Adiabatic Calorimeter, and ASTM D3177–89, Standard Test Methods for Total Sulfur in the Analysis Sample of Coal and Coke, or ASTM D4239–85, Standard Test Method for Sulfur in the Analysis Sample of Coal and Coke Using High Temperature Tube Furnace Combustion Methods. Each of the preceding ASTM methods is incorporated by reference in § 75.6.

(2) *Combustion technology.* The owner or operator of an affected unit for which a combustion technology has been installed and operated for the purpose of meeting qualifying Phase I technology requirements shall use the coal sampling and analysis procedures in paragraph (a)(1) of this section and Equation 5 in paragraph (b) of this section to estimate the percentage SO_2 removal efficiency from such technology.

* * * * *

(b) * * *

(1) * * *

$$\%R_c = 100\left[1.0 - \frac{E_{co}}{E_{ci}}\right] \qquad \text{(Eq. 5)}$$

where,

E_{co}=Average hourly SO_2 emission rate in lb/mmBtu, measured at the outlet of the combustion emission controls during the calendar year, calculated from Equation 6.

E_{ci}=Average hourly SO_2 emission rate in lb/mmBtu, determined by coal sampling and analysis according to the methods and procedures in paragraph (a)(1) of this section, calculated from Equation 7.

(Eq. 6) * * *

$$E_{ci} = \sum_{j=1}^{p} E_{icj} \qquad \text{(Eq. 7)}$$

where,

E_{icj}=Each average hourly SO_2 emission rate in lb/mmBtu, determined by the coal sampling and analysis methods and procedures in paragraph (a)(1) of this section and calculated using appendix A, Method 19 of part 60 of this chapter, performed once a day.

p=Total unit operation hours during which coal sampling and analysis is performed to determine SO_2 emissions at the inlet to the combustion controls.

* * * * *

19. Section 75.16 is revised to read as follows:

§ 75.16 Special provisions for monitoring emissions from common, by-pass, and multiple stacks for SO_2 emissions and heat input determinations.

(a) *Phase I common stack procedures.* Prior to January 1, 2000, the following procedures shall be used when more than one unit utilize a common stack:

(1) *Only Phase I units or only Phase II units using common stack.* When a Phase I unit uses a common stack with one or more other Phase I units, but no other units, or when a Phase II unit uses a common stack with one or more Phase II units, but no other units, the owner or operator shall either:

(i) Install, certify, operate, and maintain an SO_2 continuous emission monitoring system and flow monitoring system in the duct to the common stack from each affected unit; or

(ii) Install, certify, operate, and maintain an SO_2 continuous emission monitoring system and flow monitoring system in the common stack; and

(A) Combine emissions for the affected units for recordkeeping and compliance purposes; or

(B) Provide information satisfactory to the Administrator on methods for apportioning SO_2 mass emissions measured in the common stack to each of the affected units. The designated representative shall provide the information to the Administrator through a petition submitted under § 75.66. The Administrator may approve such substitute methods for apportioning SO_2 mass emissions measured in a common stack whenever the method ensures complete and accurate accounting of all emissions regulated under this part.

(2) *Phase I unit using common stack with non-Phase I unit(s).* When one or more Phase I units uses a common stack with one or more Phase II or nonaffected units, the owner or operator shall either:

(i) Install, certify, operate, and maintain an SO_2 continuous emission monitoring system and flow monitoring system in the duct to the common stack from each affected unit; or

(ii) Install, certify, operate, and maintain an SO_2 continuous emission monitoring system and flow monitoring system in the common stack; and

(A) Designate any Phase II unit(s) as a substitution or compensating unit(s) accordance with part 72 of this chapter and any nonaffected unit(s) as opt-in units in accordance with part 74 of this chapter and combine emissions for recordkeeping and compliance purposes; or

(B) Install, certify, operate, and maintain an SO_2 continuous emission monitoring system and flow monitoring system in the duct from each Phase II or nonaffected unit; calculate SO_2 mass emissions from the Phase I units as the difference between SO_2 mass emissions measured in the common stack and SO_2 mass emissions measured in the ducts of the Phase II and nonaffected units; record and report the calculated SO_2 mass emissions from the Phase I units; and combine emissions for the Phase I units for compliance purposes; or

(C) Install, certify, operate, and maintain an SO_2 continuous emission monitoring system and flow monitoring system in the duct from each Phase I or nonaffected unit; calculate SO_2 mass emissions from the Phase II units as the difference between SO_2 mass emissions measured in the common stack and SO_2 mass emissions measured in the ducts of the Phase I and nonaffected units; and combine emissions for the Phase II units for recordkeeping and compliance purposes; or

(D) Record the combined emissions from all units as the combined SO_2 mass emissions for the Phase I units for recordkeeping and compliance purposes; or

(E) Provide information satisfactory to the Administrator on methods for apportioning SO_2 mass emissions measured in the common stack to each of the units using the common stack. The designated representative shall provide the information to the Administrator through a petition submitted under § 75.66. The Administrator may approve such substitute methods for apportioning SO_2 mass emissions measured in a common stack whenever the method ensures complete and accurate accounting of all emissions regulated under this part.

(3) *Phase II unit using common stack with non-affected unit(s).* When one or more Phase II units uses a common stack with one or more nonaffected units, the owner or operator shall follow the procedures in paragraph (b)(2) of this section.

(b) *Phase II common stack procedures.* On or after January 1, 2000, the following procedures shall be used when more than one unit uses a common stack:

(1) *Unit utilizing common stack with other affected unit(s).* When a Phase I or Phase II affected unit utilizes a common stack with one or more other Phase I or Phase II affected units, but no nonaffected units, the owner or operator shall either:

(i) Install, certify, operate, and maintain an SO_2 continuous emission monitoring system and flow monitoring system in the duct to the common stack from each affected unit; or

(ii) Install, certify, operate, and maintain an SO_2 continuous emission monitoring system and flow monitoring system in the common stack; and

(A) Combine emissions for the affected units for recordkeeping and compliance purposes; or

(B) Provide information satisfactory to the Administrator on methods for apportioning SO_2 mass emissions measured in the common stack to each of the Phase I and Phase II affected units. The designated representative shall provide the information to the Administrator through a petition submitted under § 75.66. The Administrator may approve such substitute methods for apportioning SO_2 mass emissions measured in a common stack whenever the method ensures complete and accurate accounting of all emissions regulated under this part.

(2) *Unit utilizing common stack with nonaffected unit(s).* When one or more Phase I or Phase II affected units utilizes a common stack with one or more nonaffected units, the owner or operator shall either:

(i) Install, certify, operate, and maintain an SO_2 continuous emission monitoring system and flow monitoring system in the duct to the common stack from each Phase I and Phase II unit; or

(ii) Install, certify, operate, and maintain an SO_2 continuous emission monitoring system and flow monitoring system in the common stack; and

(A) Designate the nonaffected units as opt-in units in accordance with part 74 of this chapter and combine emissions for recordkeeping and compliance purposes; or

(B) Install, certify, operate, and maintain an SO_2 continuous emission monitoring system and flow monitoring system in the duct from each nonaffected unit; determine SO_2 mass emissions from the affected units as the difference between SO_2 mass emissions measured in the common stack and SO_2 mass emissions measured in the ducts of the nonaffected units; and combine emissions for the Phase I and Phase II affected units for recordkeeping and compliance purposes; or

(C) Record the combined emissions from all units as the combined SO_2 mass emissions for the Phase I and Phase II affected units for recordkeeping and compliance purposes; or

(D) Petition through the designated representative and provide information satisfactory to the Administrator on methods for apportioning SO_2 mass emissions measured in the common stack to each of the units using the common stack. The Administrator may approve such demonstrated substitute methods for apportioning SO_2 mass emissions measured in a common stack whenever the demonstration ensures complete and accurate accounting of all emissions regulated under this part.

(c) *Unit with bypass stack.* Whenever any portion of the flue gases from an affected unit can be routed so as to avoid the installed SO_2 continuous emission monitoring system and flow monitoring system, the owner or operator shall either:

(1) Install, certify, operate, and maintain an SO_2 continuous emission monitoring system or flow monitoring system on the bypass flue, duct, or stack gas stream and calculate SO_2 mass emissions for the unit as the sum of the emissions recorded by all required monitoring systems; or

(2) Monitor SO_2 mass emissions on the bypass flue, duct, or stack gas stream using the reference methods in § 75.22(b) for SO_2 and flow and calculate SO_2 mass emissions for the unit as the sum of the emissions recorded by the installed monitoring systems on the main stack and the emissions measured by the reference method monitoring systems; or

(3) Where a Federal, State, or local regulation or permit prohibits operation of the bypass stack or duct or limits operation of the bypass stack or duct to emergency situations resulting from the malfunction of a flue gas desulfurization system record the following values for each hour during which emissions pass through the bypass stack or duct: the maximum potential concentration for SO_2 as determined under section 2 of appendix A of this part, and the hourly volumetric flow value that would be substituted for the flow monitor installed on the main stack or flue under the missing data procedures in subpart D of this part if data from the flow monitor installed on the main stack or flue were missing for the hour. Calculate SO_2 mass emissions for the unit as the sum of the emissions calculated with the substitute values and the emissions recorded by the SO_2 and flow monitoring systems installed on the main stack.

(d) *Unit with multiple stacks or ducts.* When the flue gases from an affected unit utilize two or more ducts feeding into two or more stacks (that may include flue gases from other affected or nonaffected units), or when the flue gases utilize two or more ducts feeding into a single stack and the owner or operator chooses to monitor in the ducts rather than the stack, the owner or operator shall either:

(1) Install, certify, operate, and maintain an SO_2 continuous emission monitoring system and flow monitoring system in each duct feeding into the stack or stacks and determine SO_2 mass emissions from each affected unit as the sum of the SO_2 mass emissions recorded for each duct; or

(2) Install, certify, operate, and maintain an SO_2 continuous emission monitoring system and flow monitoring system in each stack. Determine SO_2 mass emissions from each affected unit as the sum of the SO_2 mass emissions recorded for each stack, except that where another unit also exhausts flue gases to one or more of the stacks, the owner or operator shall also comply with the applicable common stack requirements of this section to determine and record SO_2 mass emissions from the units using that stack.

(e) *Heat input.* The owner or operator of an affected unit using a common stack, bypass stack, or multiple stacks shall account for heat input according to the following:

(1) The owner or operator of an affected unit using a common stack, bypass stack, or multiple stack with a diluent monitor and a flow monitor on each stack may choose to determine the heat input for the affected unit, wherever flow and diluent monitor measurements are used to determine the heat input, using the procedures specified in paragraphs (a) through (d) of this section, except that the terms "SO_2 mass emissions" and "emissions" are replaced with the term "heat input" and the phrase "SO_2 continuous emission monitoring system and flow monitoring system" is replaced with the phrase "a diluent monitor and a flow monitor".

(2) Notwithstanding paragraph (e)(1) of this section, for any common stack where any unit utilizing the common stack has a NO_X emission limitation pursuant to Section 407(b) of the Act, the owner or operator shall not combine heat input for compliance purposes and shall determine heat input for that unit separately.

(3) Notwithstanding paragraph (e)(1) of this section, during the period prior to January 1, 2000, the owner or operator shall not combine heat input for units utilizing a common stack in order to determine heat input for each unit for purposes of § 75.10.

(4) In the event that an owner or operator of a unit with a bypass stack does not install and certify a diluent monitor and flow monitoring system in a bypass stack, the owner or operator shall determine total heat input to the unit for each unit operating hour during which the bypass stack is used according to the missing data provisions for heat input under § 75.36 or the procedures for calculating heat input from fuel sampling and analysis in section 5.5 of appendix F of this part.

20. Section 75.17 is amended by revising paragraph (a)(2)(i)(B), adding paragraph (a)(2)(i)(C), removing paragraph (c), redesignating paragraph (d) as paragraph (c), and revising the newly designated paragraph (c) to read as follows:

§ 75.17 Specific provisions for monitoring emissions from common, by-pass, and multiple stacks for NO_X emission rate.

(a) * * *

(2) * * *

(i) * * *

(B) Each unit will comply with the applicable NO_X emission limitation by averaging its emissions with the other unit(s) utilizing the common stack, pursuant to the emissions averaging plan submitted under part 76 of this chapter; or

(C) Each unit's compliance with the applicable NO_X emission limit will be determined by a method satisfactory to the Administrator for apportioning to each of the units the combined NO_X emission rate (in lb/mmBtu) measured in the common stack, as provided in a petition submitted by the designated representative. The Administrator may approve such demonstrated substitute methods for apportioning NO_X emission rate measured in a common stack whenever the demonstration ensures complete and accurate estimation of all emissions regulated under this part.

* * * * *

(c) *Unit with multiple stacks or bypass stack.* When the flue gases from an affected unit utilize two or more ducts feeding into two or more stacks (that may include flue gases from other affected or nonaffected units), or when flue gases utilize two or more ducts feeding into a single stack and the owner or operator chooses to monitor in the ducts rather than the stack, the owner or operator shall monitor the NO_X emission rate representative of each affected unit. Where another unit also exhausts flue gases to one or more of the stacks where monitoring systems are installed, the owner or operator shall also comply with the applicable common stack monitoring requirements of this section. The owner or operator shall either:

(1) Install, certify, operate, and maintain a NO_X continuous emission monitoring system in each stack or duct and determine the NO_X emission rate for the unit as the Btu-weighted sum of the NO_X emission rates measured in the stacks or ducts using the heat input estimation procedures in appendix F of this part; or

(2) Install, certify, operate, and maintain a NO_X continuous emission monitoring system in one stack or duct

from each affected unit and record the monitored value as the NO_X emission rate for the unit. The owner or operator shall account for NO_X emissions from the unit during all times when the unit combusts fuel.

21. Section 75.18 is amended by revising paragraph (b) to read as follows:

§ 75.18 Specific provisions for monitoring emissions from common and by-pass stacks for opacity.

(a) * * *

(b) *Unit using bypass stack.* Where any portion of the flue gases from an affected unit can be routed so as to bypass the installed continuous opacity monitoring system, the owner or operator shall install, certify, operate, and maintain a certified continuous opacity monitoring system on each bypass stack flue, duct, or stack gas stream unless either:

(1) An applicable Federal, State, or local opacity regulation or permit exempts the unit from a requirement to install a continuous opacity monitoring system in the bypass stack; or

(2) A continuous opacity monitoring system is already installed and certified at the inlet of the add-on emissions controls; or

(3) The owner or operator monitors opacity using Method 9 of appendix A, part 60 of this chapter whenever emissions pass through the bypass stack.

Subpart C—Operation and Maintenance Requirements

22. Section 75.20 is amended by revising paragraphs (a) introductory text, (a)(1), (a)(2), (a)(3), (a)(4) introductory text, (a)(4)(iii), (a)(4)(iv), (a)(5), (b), the last sentence of paragraph (c) introductory text, (c)(1)(v), (c)(2)(ii), (c)(2)(iii), (c)(4), (c)(5) introductory text, (c)(5)(iv), (c)(6)(i), (c)(8), (d), (f) introductory text, (f)(1), the last sentence of paragraph (f)(2), (f)(3) and (g), by adding a new sentence at the end of paragraph (f)(2), and by removing paragraph (c)(9) to read as follows:

§ 75.20 Certification and recertification procedures.

(a) *Initial certification approval process.* The owner or operator shall ensure that each continuous emission or opacity monitoring system required by this part, which includes the automated data acquisition and handling system, and, where applicable, the CO_2 continuous emission monitoring system, meets the initial certification requirements of this section and shall ensure that all applicable certification tests under paragraph (c) of this section are completed by the deadlines specified in § 75.4 and prior to use in the Acid Rain Program. In addition, whenever the owner or operator installs a continuous emission or opacity monitoring system in order to meet the requirements of §§ 75.13 through 75.18 where no continuous emission or opacity monitoring system was previously installed, initial certification is required.

(1) *Notification of initial certification test dates.* The owner or operator or designated representative shall submit a written notice of the dates of initial certification testing at the unit as specified in § 75.60 and § 75.61(a)(1)(i).

(2) *Certification application.* The owner or operator shall apply for certification of each continuous emission or opacity monitoring system used under the Acid Rain Program. The owner or operator shall submit the certification application in accordance with § 75.60 and each complete certification application shall include the information specified in § 75.63.

(3) *Provisional approval of certification applications.* Upon the successful completion of the required certification procedures of this section for each continuous emission or opacity monitoring system or component thereof, each continuous emission or opacity monitoring system or component thereof shall be deemed provisionally certified for use under the Acid Rain Program for a period not to exceed 120 days following receipt by the Administrator of the complete certification application under paragraph (a)(4) of this section; provided that no continuous emission or opacity monitor systems for a combustion source seeking to enter the Opt-in Program in accordance with part 74 of this chapter shall be deemed provisionally certified for use under the Acid Rain Program. Data measured and recorded by a provisionally certified continuous emission or opacity monitoring system or component thereof, in accordance with the requirements of appendix B of this part, will be considered valid quality-assured data (retroactive to the date and time of successful completion of all certification tests), provided that the Administrator does not invalidate the provisional certification by issuing a notice of disapproval within 120 days of receipt of the complete certification application.

(4) *Certification application formal approval process.* The Administrator will issue a written notice of approval or disapproval of the certification application to the owner or operator within 120 days of receipt of the complete certification application. In the event the Administrator does not issue such a written notice within 120 days of receipt, each continuous emission or opacity monitoring system which meets the performance requirements of this part and is included in the certification application will be deemed certified for use under the Acid Rain Program.

* * * * *

(iii) *Disapproval notice.* If the certification application is complete but shows that any continuous emission or opacity monitoring system or component thereof does not meet the performance requirements of this part, the Administrator shall issue a written notice of disapproval of the certification application within 120 days of receipt. By issuing the notice of disapproval, the provisional certification is invalidated by the Administrator, and the data measured and recorded by each uncertified continuous emission or opacity monitoring system or component thereof shall not be considered valid quality-assured data from the date and time of completion of the invalid certification tests until the date and time that the owner or operator completes subsequently approved initial certification tests. The owner or operator shall follow the procedures for loss of certification in paragraph (a)(5) of this section for each continuous emission or opacity monitoring system or component thereof which was disapproved.

(iv) *Audit decertification.* The Administrator may issue a notice of disapproval of the certification status of a continuous emission or opacity monitoring system or component thereof, in accordance with § 75.21.

(5) *Procedures for loss of certification.* When the Administrator issues a notice of disapproval of a certification application or a notice of disapproval of certification status (as specified in paragraph (a)(4) of this section), then:

(i) The owner or operator shall substitute the following values, as applicable, for each hour of unit operation during the period of invalid data specified in paragraph (a)(4)(iii) of this section or in § 75.21: the maximum potential concentration of SO_2 as defined in section 2.1 of appendix A of this part to report SO_2 concentration; the maximum potential NO_X emission rate, as defined in § 72.2 of this chapter to report NO_X emissions, the maximum potential flow rate, as defined in section 2.1 of appendix A of this part to report volumetric flow, or the maximum CO_2 concentration used to determine the maximum potential concentration of SO_2 in section 2.1.1.1 of appendix A of this part to report CO_2 concentration data until such time, date, and hour as the continuous emission monitoring system or component thereof can be adjusted, repaired, or replaced and certification tests successfully completed; and

(ii) The designated representative shall submit a notification of certification retest dates as specified in § 75.61(a)(1)(ii) and a new certification application according to the procedures in paragraph (a)(2) of this section; and

(iii) The owner or operator shall repeat all certification tests or other requirements that were failed by the continuous emission or opacity monitoring system, as indicated in the Administrator's notice of disapproval, no later than 30 unit operating days after the date of issuance of the notice of disapproval.

(b) *Recertification approval process.* Whenever the owner or operator makes a replacement, modification, or change in the certified continuous emission monitoring system or continuous opacity monitoring system (which includes the automated data acquisition and handling system, and, where applicable, the CO_2 continuous emission monitoring system), that significantly affects the ability of the system to measure or record the SO_2 concentration, volumetric gas flow, SO_2 mass emissions, NO_X emission rate, CO_2 concentration, or opacity, or to meet the requirements of § 75.21 or appendix B of this part, the owner or operator shall recertify the continuous emission monitoring system, continuous opacity monitoring system, or component thereof according to the procedures in this paragraph. Examples of changes which require recertification include: replacement of the analytical method, including the analyzer; change in location or orientation of the sampling probe or site; rebuilding of the analyzer or all monitoring system equipment; and replacement of an existing continuous emission monitoring system or continuous opacity monitoring system. In addition, if a continuous emission monitoring system is not operating for more than two calendar years, then the owner or operator shall recertify the continuous emission monitoring system. The Administrator may determine whether a replacement, modification or change in a monitoring system significantly affects the ability of the monitoring system to measure or record the SO_2 concentration, volumetric gas flow, SO_2 mass emissions, NO_X emission rate, CO_2 concentration, or opacity. Furthermore, whenever the owner or operator makes a replacement, modification, or change to the flue gas handling system or the unit operation that significantly changes the flow or concentration profile or opacity of monitored emissions, the owner or operator shall recertify the continuous emission or opacity monitoring system or component thereof according to the procedures in this paragraph. Recertification is not required prior to use of a non-redundant backup continuous emission monitoring system in cases where all of the following conditions have been met: the non-redundant backup continuous emission monitoring system has previously been certified at the same sampling location; all components of the non-redundant backup continuous emission monitoring system have previously been certified; and component monitors of the non-redundant backup continuous emission monitoring system pass a linearity check (for pollutant concentration monitors) or a calibration error test (for flow monitors) prior to their use for monitoring of emissions or flow. In addition, changes resulting from routine or normal corrective maintenance and/or quality assurance activities do not require recertification, nor do software modifications in the automated data acquisition and handling system, where the modification is only for the purpose of generating additional or modified reports for the State Implementation Plan or for reporting requirements under subpart G of this part.

(1) *Tests required.* For recertification testing, the owner or operator shall complete all certification tests in paragraph (c) of this section applicable to the monitoring system, except as approved by the Administrator. Such approval may be obtained by petition under § 75.66 or may be provided in written guidance from the Administrator.

(2) *Notification of recertification test dates.* The owner or operator or designated representative shall submit notice of testing dates for recertification under this paragraph as specified in § 75.61(a)(1)(ii), unless such testing is required as a result of a change in the flue gas handling system, a change in location or orientation of the sampling probe or site, or the planned replacement of a continuous emission or opacity monitoring system or component thereof. In such cases, the owner or operator shall provide notice in accordance with the notice provisions for initial certification testing in § 75.61(a)(1)(i).

(3) *Substitution of missing data.* (i) The owner or operator shall substitute for missing data during the period following the replacement, modification, or change to the monitoring system up to the time of successful completion of all recertification testing according to the standard missing data procedures in §§ 75.33 through 75.36, and shall use the standard missing data substitution procedures for all missing data periods following the recertification, except as provided below.

(ii) If the replacement, modification, or change is such that the data collected by the prior certified monitoring system are no longer representative, such as after a change to the flue gas handling system or unit operation that requires changing the span value to be consistent with Section 2.1 of appendix A of this part, the owner or operator must also substitute the appropriate one of the following values: for a change that results in a significantly higher concentration or flow rate, substitute maximum potential values according to the procedures in paragraph (a)(5) of this section during the period following the replacement, modification, or change up to the time of the successful completion of all recertification testing; or for a change that results in a significantly lower concentration or flow rate, substitute data using the standard missing data procedures during the period following the replacement, modification, or change up to the time of the successful completion of all recertification testing. The owner or operator shall then use the initial missing data procedures in § 75.31 following provisional certification, unless otherwise provided by § 75.34 for units with add-on emission controls.

(4) *Recertification application.* The designated representative shall apply for recertification of a continuous emission or opacity monitoring system used under the Acid Rain Program according to the procedures in paragraph (a)(2) of this section. Each complete recertification application shall include the information specified in § 75.63 of this part.

(5) *Approval/disapproval of request for recertification.* The procedures for provisional certification in paragraph (a)(3) of this section shall apply. The Administrator will issue a written notice of approval or disapproval according to the procedures in paragraph (a)(4) of this section, except that the period for the Administrator's review provided under paragraph (a)(4) of this section shall not exceed 60 days following receipt of the complete recertification application by the Administrator. The missing data substitution procedures under paragraph (b)(3) of this section shall

apply in the event of a loss of recertification.

(c) * * * Except as specified in paragraphs (b)(1), (d) and (e) of this section, the owner or operator shall perform the following tests for initial certification or recertification of continuous emission or opacity monitoring systems or components according to the requirements of appendix A of this part:

(1) * * *

(v) A cycle time test.

(2) * * *

(ii) Relative accuracy test audits at three flue gas velocities; and

(iii) A bias test (at normal operating load).

(3) * * *

(4) The certification test data from an O_2 or a CO_2 diluent gas monitor certified for use in a NO_X continuous emission monitoring system may be submitted to meet the requirements of § 75.20(c)(5).

(5) For each CO_2 pollutant concentration monitor or O_2 monitor which is part of a CO_2 continuous emission monitoring system or is used to monitor heat input and for each SO_2-diluent continuous emission monitoring system:

* * * * *

(iv) A cycle-time test.

(6) * * *

(i) Performance of the tests for certification or recertification, according to the requirements of Performance Specification 1 in appendix B to part 60 of this chapter.

* * * * *

(8) The owner or operator shall provide, or cause to be provided, adequate facilities for certification or recertification testing that include:

(i) Sampling ports adequate for test methods applicable to such facility, such that:

(A) Volumetric flow rate, pollutant concentration, and pollutant emission rates can be accurately determined by applicable test methods and procedures; and

(B) A stack or duct free of cyclonic flow during performance tests is available, as demonstrated by applicable test methods and procedures.

(ii) Basic facilities (e.g., electricity) for sampling and testing equipment.

(d) *Certification/recertification procedures for optional backup continuous emission monitoring systems*—(1) *Redundant backups.* The owner or operator of an optional redundant backup continuous emission monitoring system shall comply with all the requirements for initial certification and recertification according to the procedures specified in paragraphs (a), (b), and (c) of this section. The owner or operator shall operate the redundant backup continuous emission monitoring system during all periods of unit operation, except for periods of calibration, quality assurance, maintenance, or repair. The owner or operator shall perform upon the redundant backup continuous emission monitoring system all quality assurance and quality control procedures specified in appendix B of this part.

(2) *Non-redundant backups.* The owner or operator of an optional non-redundant backup continuous emission monitoring system shall comply with all the requirements for initial certification and recertification according to the procedures specified in paragraphs (a), (b) and (c) of this section for each non-redundant backup continuous emission monitoring system, except that: the owner or operator of a non-redundant backup continuous emission monitoring system may omit the 7-day calibration error test for certification or recertification of an SO_2 pollutant concentration monitor, flow monitor, NO_X pollutant concentration monitor, or diluent gas monitor, provided the non-redundant backup system is not used for reporting on any affected unit for more than 720 hours in any calendar year. In addition, the owner or operator shall ensure that the certified non-redundant backup continuous emission monitoring system passes a linearity check (for pollutant concentration monitors) or a calibration error test (for flow monitors) prior to each use for recording and reporting emissions and complies with the daily and quarterly quality assurance and quality control requirements in appendix B of this part for each day and quarter that the non-redundant backup monitoring system is used to report data. If the owner or operator does not perform semi-annual or annual relative accuracy test audits upon the non-redundant backup continuous emission monitoring system, then the owner or operator shall recertify the non-redundant continuous emission monitoring system once every two calendar years, performing all certification tests applicable under this paragraph. However, if a non-redundant backup system is used for reporting data from any affected unit or common stack for more than 720 hours in any one calendar year, then reported data after the first 720 hours is not valid, quality-assured data unless the owner or operator has ensured that the non-redundant backup monitoring system has also passed the 7-day calibration error test, before data is recorded for any period in excess of 720 hours for that calendar year for that monitoring system.

(3) *Reference method backups.* A monitoring system that is operated as a reference method backup system pursuant to the reference method requirements of Methods 2, 6C, 7E, or 3A in appendix A of part 60 of this chapter need not perform and pass the certification tests required by paragraph (c) of this section prior to its use pursuant to this paragraph.

* * * * *

(f) *Certification/recertification procedures for alternative monitoring systems.* The designated representative representing the owner or operator of each alternative monitoring system approved by the Administrator as equivalent to or better than a continuous emission monitoring system according to the criteria and procedures in subpart E of this part shall apply for certification to the Administrator prior to use of the system under the Acid Rain Program, and shall apply for recertification to the Administrator following a replacement, modification, or change by performing all of the tests under paragraph (c) of this section that can be applied to the alternative monitoring system. The owner or operator of an alternative monitoring system shall comply with the notification and application requirements for certification or recertification according to the procedures specified in paragraphs (f)(1), (f)(2), and (f)(3) of this section.

(1) Each alternative monitoring system shall be certified by the Administrator before it may be authorized for use under the Acid Rain Program.

(i) *Certification testing notification.* The designated representative shall provide certification testing notification according to the procedures in subparagraph (a)(1) of this section prior to conducting certification testing.

(ii) *Monitoring plan.* The designated representative shall submit an initial monitoring plan at least 45 days prior to the first day of certification testing.

(iii) *Certification application.* The designated representative shall submit a certification application for the alternative monitoring system prior to use in the Acid Rain Program. Each complete certification application shall include:

(A) Information and test results for the relative accuracy test and any other applicable tests in paragraph (c) of this section;

(B) A revised monitoring plan; and

(C) Results of the tests for verification of the accuracy of emissions calculations and missing data procedures performed by the automated data acquisition and handling system.

(2) * * * The procedures for provisional certification under paragraph (a)(3) of this section and for a 120-day EPA review period for initial certification under paragraph (a)(4) of this section shall apply to alternative monitoring systems, provided that the Administrator has already approved the petition or petitions required under subpart E of this part. The designated representative shall report no data from an alternative monitoring system in a quarterly report from a period prior to both Administrator approval of the petition or petitions under subpart E of this part and also successful completion of certification testing.

(3) The recertification requirements of paragraph (b) of this section shall apply to alternative monitoring systems, except that the owner or operator shall perform the tests specified under paragraph (f)(1)(iii) of this section.

(g) *Certification procedures for excepted monitoring systems under appendices D and E.* The owner or operator of a gas-fired unit, oil-fired unit, or diesel-fired unit using the optional protocol under appendix D or E of this part shall ensure that an excepted monitoring system under appendix D or E of this part meets the applicable general operating requirements of § 75.10, the applicable requirements of appendices D and E to this part, and the certification requirements of this paragraph.

(1) *Certification testing.* The owner or operator shall use the following procedures for certification of an excepted monitoring system under appendix D or E of this part.

(i) When the optional SO_2 mass emissions estimation procedure in appendix D of this part or the optional NO_X emissions estimation protocol in appendix E of this part is used, the owner or operator shall provide data from a calibration test for each fuel flowmeter according to the appropriate calibration procedures using one of the following standard methods: ASME MFC–3M–1989 with September 1990 Errata, "Measurement of Fluid Flow in Pipes Using Orifice, Nozzle, and Venturi", ASME MFC–4M–1986 (Reaffirmed 1990) "Measurement of Gas Flow by Turbine Meters", ASME MFC–5M–1985 "Measurement of Liquid Flow in Closed Conduits Using Transit-Time Ultrasonic Flowmeters", ASME MFC–6M–1987 with June 1987 Errata, "Measurement of Fluid Flow in Pipes Using Vortex Flow Meters", ASME MFC–7M–1987 (Reaffirmed 1992), "Measurement of Gas Flow by Means of Critical Flow Venturi Nozzles", ASME MFC–9M–1988 with December 1989 Errata, "Measurement of Liquid Flow in Closed Conduits by Weighing Method", ISO 8316: 1987(E) "Measurement of Liquid Flow in Closed Conduits—Method by Collection of the Liquid in a Volumetric Tank", or American Gas Association Report No. 3: Orifice Metering of Natural Gas and Other Related Hydrocarbon Fluids Part 1: General Equations and Uncertainty Guidelines (October 1990 Edition), Part 2: Specification and Installation Requirements (February 1991 Edition) and Part 3: Natural Gas Applications (August 1992 Edition), excluding the modified calculation procedures of Part 3, as required by appendices D and E of this part (all methods incorporated by reference under § 75.6). The Administrator may also approve other procedures that use equipment traceable to National Institute of Standards of Technology (NIST) standards. The designated representative shall document the procedure and the equipment used in the monitoring plan for the unit and in a petition submitted in accordance with § 75.66(c).

(ii) For the automated data acquisition and handling system used under either the optional SO_2 mass emissions estimation procedure in appendix D of this part or the optional NO_X emissions estimation protocol in appendix E of this part, the owner or operator shall perform tests designed to verify:

(A) The proper computation of hourly averages for pollutant concentrations, fuel flow rates, emission rates, heat input, and pollutant mass emissions; and

(B) Proper computation and application of the missing data substitution procedures in appendix D or E of this part.

(iii) When the optional NO_X emissions protocol in appendix E is used, the owner or operator shall complete all initial performance testing under section 2.1 of appendix E.

(2) *Certification testing notification.* The designated representative shall provide initial certification testing notification and periodic retesting notification for an excepted monitoring system under appendix E of this part as specified in § 75.61. The designated representative shall submit recertification testing notification as specified in § 75.61 for quality assurance/quality control-related NO_X emission rate testing under section 2.3 of appendix E of this part for an excepted monitoring system under appendix E of this part. Certification testing notification or periodic retesting notification is not required for testing of a fuel flowmeter or testing for an excepted monitoring system under appendix D of this part.

(3) *Monitoring plan.* The designated representative shall submit an initial monitoring plan in accordance with § 75.62(a).

(4) *Certification application.* The designated representative shall submit a certification application in accordance with §§ 75.60 and 75.63.

(5) *Provisional approval of certification applications.* Upon the successful completion of the required certification procedures for each excepted monitoring system under appendix D or E of this part, each excepted monitoring system under appendix D or E of this part shall be deemed provisionally certified for use under the Acid Rain Program during the period for the Administrator's review. The provisions for the certification application formal approval process in paragraph (a)(4) of this section shall apply. Data measured and recorded by a provisionally certified excepted monitoring system under appendix D or E of this part, will be considered quality-assured data from the date and time of completion of the final certification test, provided that the Administrator does not revoke the provisional certification by issuing a notice of disapproval within 120 days of receipt of the complete certification application in accordance with the provisions in paragraph (a)(4) of this section.

23. Section 75.21 is amended by adding paragraphs (d) and (e) to read as follows:

§ 75.21 Quality assurance and quality control requirements.

* * * * *

(d) *Notification for periodic relative accuracy test audits.* The owner or operator or the designated representative shall submit a written notice of the dates of relative accuracy testing as specified in § 75.61.

(e) *Consequences of audits.* The owner or operator shall invalidate data from a continuous emission monitoring system or continuous opacity monitoring system upon failure of an audit under paragraph (a)(1)(iv) of § 75.20, under appendix B of this part, or any other audit, beginning with the unit operating hour of completion of a failed audit as determined by the Administrator. The owner or operator shall not use invalidated data for reporting emissions or heat input, nor for calculations of monitor data availability.

(1) *Audit decertification.* Whenever both: an audit (including audits required under appendix B of this part)

of a continuous emission or opacity monitoring system or component thereof, including the data acquisition and handling system, and a review of the initial certification application or recertification application, reveal that any continuous emission or opacity monitoring system or component should not have been certified because it did not meet a particular performance specification or other requirement of this part both at the time of the certification application submission and at the time of the audit, the Administrator will issue a notice of disapproval of the certification status of such system or component. By issuing the notice of disapproval, the certification status is revoked, prospectively, by the Administrator. The data measured and recorded by each continuous emission or opacity monitoring system shall not be considered valid quality-assured data from the date of issuance of the notification of the revoked certification status until the date and time that the owner or operator completes subsequently approved certification tests. The owner or operator shall follow the procedures for loss of certification in § 75.20(a)(5) for initial certification or § 75.20(b)(3) for recertification to replace, prospectively, all of the invalid, non-quality-assured data for each disapproved continuous emission or opacity monitoring system.

(2) *Out-of-control period.* Whenever a continuous emission monitoring system or continuous opacity monitoring system fails a periodic quality assurance audit, an audit under § 75.20(a)(1)(iv), a field audit from EPA personnel or other audit, the system is out-of-control. The owner or operator shall follow the procedures for out-of-control periods in § 75.24.

24. Section 75.22 is amended by revising paragraphs (a) introductory text, (a)(5), and (a)(6) and by adding paragraphs (b) and (c) to read as follows:

§ 75.22 Reference test methods.

(a) The owner or operator shall use the following methods included in appendix A to part 60 of this chapter to conduct monitoring system tests for certification or recertification of continuous emission monitoring systems and excepted monitoring systems under appendix E of this part and quality assurance and quality control procedures.

* * * * *

(5) Methods 6, 6A, 6B or 6C, and 7, 7A, 7C, 7D or 7E, as applicable, are the reference methods for determining SO_2 and NO_X pollutant concentrations. (Methods 6A and 6B may also be used to determine SO_2 emission rate in lb/mmBtu. Methods 7, 7A, 7C, 7D, or 7E must be used to measure total NO_X emissions, both NO and NO_2, for purposes of this part. The owner or operator shall not use the exception in section 5.1.2 of Method 7E.)

(6) Method 20 is the reference method for determining NO_X and diluent emissions from stationary gas turbines for testing under appendix E of this part.

(b) The owner or operator may use the following methods in Appendix A of part 60 of this chapter as a reference method backup monitoring system to provide quality-assured monitor data:

(1) Method 3A for determining O_2 or CO_2 concentration;

(2) Method 6C for determining SO_2 concentration;

(3) Method 7E for determining total NO_X concentration (both NO and NO_2); and

(4) Method 2 for determining volumetric flow. The sample point(s) for reference methods shall be located according to the provisions of section 6.5.5 of appendix A of this part.

(c) (1) Performance tests shall be conducted and data reduced in accordance with the test methods and procedures of this part unless the Administrator:

(i) Specifies or approves, in specific cases, the use of a reference method with minor changes in methodology;

(ii) Approves the use of an equivalent method; or

(iii) Approves shorter sampling times and smaller sample volumes when necessitated by process variables or other factors.

(2) Nothing in this paragraph shall be construed to abrogate the Administrator's authority to require testing under Section 114 of the Act.

25. Section 75.23 is revised to read as follows:

§ 75.23 Alternatives to standards incorporated by reference.

(a) The designated representative of a unit may petition the Administrator for an alternative to any standard incorporated by reference and prescribed in this part in accordance with § 75.66(c).

(b) (reserved)

26. Section 75.24 is amended by revising paragraphs (d) and (e) introductory text to read as follows:

§ 75.24 Out-of-control periods.

* * * * *

(d) When the bias test indicates that an SO_2 monitor, volumetric flow monitor, or NO_X continuous emission monitoring system is biased low (i.e., the arithmetic mean of the differences between the reference method value and the monitor or monitoring system measurements in a relative accuracy test audit exceed the bias statistic in section 7 of appendix A to this part), the owner or operator shall adjust the monitor or continuous emission monitoring system to eliminate the cause of bias such that it passes the bias test or calculate and use the bias adjustment factor as specified in section 2.3.3 of appendix B to this part and in accordance with § 75.7.

(e) The owner or operator shall determine if a continuous opacity monitoring system is out-of-control and shall take appropriate corrective actions according to the procedures specified for State Implementation Plans, pursuant to appendix M of part 51 of this chapter. The owner or operator shall comply with the monitor data availability requirements of the State. If the State has no monitor data availability requirements for continuous opacity monitoring systems, then the owner or operator shall comply with the monitor data availability requirements as stated in the data capture provisions of appendix M, part 51 of this chapter.

Subpart D—Missing Data Substitution Procedures

27. Section 75.30 is revised to read as follows:

§ 75.30 General provisions.

(a) Except as provided in § 75.34, the owner or operator shall provide substitute data for each affected unit using a continuous emission monitoring system according to the missing data procedures in this subpart whenever the unit combusts any fuel and:

(1) A valid, quality-assured hour of SO_2 concentration data (in ppm) has not been measured and recorded for an affected unit by a certified SO_2 pollutant concentration monitor, or by an approved alternative monitoring method under subpart E of this part, except as provided in paragraph (d) of this section; or

(2) A valid, quality-assured hour of flow data (in scfh) has not been measured and recorded for an affected unit from a certified flow monitor, or by an approved alternative monitoring system under subpart E of this part; or

(3) A valid, quality-assured hour of NO_X emission rate data (in lb/mmBtu) has not been measured and recorded for an affected unit by a certified NO_X continuous emission monitoring system, or by an approved alternative monitoring system under subpart E of this part; or

(4) A valid, quality-assured hour of CO_2 concentration data (in percent CO_2, or percent O_2 converted to percent CO_2 using the procedures in appendix F of this part) has not been measured and recorded for an affected unit by a certified CO_2 continuous emission monitoring system, or by an approved alternative monitoring method under subpart E of this part.

(b) However, the owner or operator shall have no need to provide substitute data according to the missing data procedures in this subpart if the owner or operator uses SO_2 or CO_2 (or O_2) concentration, flow, or NO_X emission rate data recorded from either a certified redundant or non-redundant backup continuous emission monitor or a backup reference method monitoring system when the certified primary monitor is not operating or out-of-control. A redundant or non-redundant backup continuous emission monitoring system must have been certified according to the procedures in § 75.20 prior to the missing data period. Non-redundant backup continuous emission monitoring system must pass a linearity check (for pollutant concentration monitors) or a calibration error test (for flow monitors) prior to each period of use of the certified backup monitor for recording and reporting emissions. Use of a certified backup monitoring system or backup reference method monitoring system is optional and at the discretion of the owner or operator.

(c) When the certified primary monitor is not operating or out-of-control, then data recorded for an affected unit from a certified backup continuous emission monitor or backup reference method monitoring system are used, as if such data were from the certified primary monitor, to calculate monitor data availability in § 75.32, and to provide the quality-assured data used in the missing data procedures in §§ 75.31 and 75.33, such as the "hour after" value.

(d) [Reserved]

(e) [Reserved]

28. Section 75.31 is amended by revising paragraphs (a), (b) and (c)(3) to read as follows:

§ 75.31 Initial missing data procedures.

(a) During the first 720 quality-assured monitor operating hours following initial certification (i.e., following the date and time of completion of successful certification tests), of the SO_2 and CO_2 (or O_2) pollutant concentration monitor and during the first 2,160 quality-assured monitor operating hours following initial certification of the flow monitor and NO_X continuous emission monitoring system(s), the owner or operator shall provide substitute data

required under this subpart according to the procedures in paragraphs (b) and (c) of this section. The owner or operator of a unit shall use these procedures for no longer than three years (26,280 clock hours) following initial certification.

(b) *SO_2 or CO_2 (or O_2) concentration data.* For each hour of missing SO_2 or CO_2 concentration data (including CO_2 data converted from O_2 data using the procedures in appendix F of this part) or O_2 concentration data used to calculate heat input, the owner or operator shall calculate the substitute data as follows:

(1) Whenever prior quality-assured data exist, the owner or operator shall substitute, by means of the data acquisition and handling system, the average of the hourly SO_2 or CO_2 (or O_2) concentrations recorded for an affected unit by a certified monitor for the unit operating hour immediately before and the unit operating hour immediately after the missing data period for each hour of missing data.

(2) Whenever no prior quality-assured SO_2 or CO_2 (or O_2) concentration data exist, the owner or operator shall substitute the maximum potential concentration for SO_2 or CO_2 (or minimum O_2 concentration, for determination of heat input), as specified in section 2.1 of appendix A of this part, for each hour of missing data.

(c) * * *

(3) Whenever no prior quality-assured flow or NO_X emission rate data exist for the corresponding load range, or any higher load range, the owner or operator shall calculate and substitute the maximum potential flow rate or shall substitute the maximum potential NO_X emission rate, as specified in § 72.2 of this chapter and section 2.1 of appendix A, for each hour of missing data.

29. Section 75.32 is amended by revising paragraphs (a) introductory text, the first sentence of paragraphs (a)(1) and (a)(2) and paragraph (b) to read as follows:

§ 75.32 Determination of monitor data availability for standard missing data procedures.

(a) Following initial certification, upon completion of the first 720 quality-assured monitor operating hours of the SO_2 or CO_2 (or O_2) pollutant concentration monitor or the first 2,160 quality-assured monitor operating hours of the flow monitor or NO_X continuous emission monitoring system, the owner or operator shall calculate and record, by means of the automated data acquisition and handling system, the percent monitor data availability for the SO_2 and CO_2 (or O_2) pollutant concentration monitor, the flow monitor, the NO_X continuous emission monitoring system as follows:

(1) Prior to completion of 8,760 unit operating hours following initial certification, the owner or operator shall, for the purpose of applying the standard missing data procedures of § 75.33, use Equation 8 to calculate, hourly, percent monitor data availability. * * *

(2) Upon completion of 8,760 unit operating hours following initial certification (or, for a unit with less than 8,760 unit operating hours three years (26,280 clock hours) after initial certification, upon completion of three years (26,280 clock hours) following initial certification) and thereafter, the owner or operator shall, for the purpose of applying the standard missing data procedures of § 75.33, use Equation 9 to calculate, hourly, percent monitor data availability. * * *

(3) * * *

(b) The monitor data availability need not be calculated during the missing data period. The owner or operator shall record the percent monitor data availability for the last hour of each missing data period as the monitor availability used to implement the missing data substitution procedures.

30. Section 75.33 is amended by adding a sentence to the end of paragraph (a) and by adding paragraph (c)(5) to read as follows:

§ 75.33 Standard missing data procedures.

(a) * * * The owner or operator of a unit shall substitute for missing data using only quality-assured monitor operating hours of data from the three years (26,280 clock hours) prior to the date and time of the missing data period. * * *

* * * * *

(c) * * *

(5) Whenever no proper quality-assured flow or NO_X emission rate data exist for either the corresponding load range or a higher load range, the owner or operator shall substitute the maximum potential NO_X emission rate or the maximum potential flow rate, as defined in section 2.1 of appendix A of this part.

* * * * *

31. Section 75.35 is added as follows:

§ 75.35 Missing data procedures for CO_2 data.

(a) On or after January 1, 1996, the owner or operator of a unit with a CO_2 continuous emission monitoring system shall substitute for missing CO_2 concentration data using the procedures of this section. Prior to January 1, 1996, the owner or operator of a unit with a

CO_2 continuous emission monitoring system may substitute for missing CO_2 concentration data using the procedures of this section.

(b) During the first 720 quality-assured monitor operating hours following initial certification (i.e., following the date and time of completion of successful certification tests), of the CO_2 continuous emission monitoring system, the owner or operator shall provide substitute data required under this subpart according to the procedures in paragraph (b) of § 75.31.

(c) Upon completion of the first 720 quality-assured monitor operating hours following initial certification of the CO_2 continuous emission monitoring system, the owner or operator shall provide substitute data for CO_2 concentration or CO_2 mass emissions required under this subpart according to the procedures in paragraphs (c)(1), (c)(2), or (c)(3) of this section, including CO_2 data calculated from O_2 measurements using the procedures in appendix F of this part.

(1) Whenever a quality-assured monitoring operating hour of CO_2 concentration data has not been obtained and recorded for a period less than or equal to 72 hours or for a missing data period where the percent monitor data availability for the CO_2 continuous emission monitoring system as of the last unit operating hour of the previous calendar quarter was greater than or equal to 90.0 percent, then the owner or operator shall substitute the average of the recorded CO_2 concentration for the hour before and the hour after the missing data period for each hour in each missing data period.

(2) Whenever no quality-assured CO_2 concentration data are available for a period of 72 consecutive unit operating hours or more, the owner or operator shall begin substituting CO_2 mass emissions calculated using the procedures in appendix G of this part beginning with the seventy-third hour of the missing data period until quality-assured CO_2 concentration data are again available. The owner or operator shall use the CO_2 concentration from the hour before the missing data period to substitute for hours 1 through 72 of the missing data period.

(3) Whenever no quality-assured CO_2 concentration data are available for a period where the percent monitor data availability for the CO_2 continuous emission monitoring system as of the last unit operating hour of the previous calendar quarter was less than 90.0 percent, the owner or operator shall substitute CO_2 mass emissions calculated using the procedures in appendix G of this part for each hour of the missing data period until quality-assured CO_2 concentration data are again available.

32. Section 75.36 is added as follows:

§ 75.36 Missing data procedures for heat input.

(a) On or after January 1, 1996, the owner or operator of a unit monitoring heat input with a CO_2 or O_2 pollutant concentration monitor and a flow monitoring system shall substitute for missing heat input data using the procedures of this section. Prior to January 1, 1996, the owner or operator of a unit monitoring heat input with a CO_2 or O_2 pollutant concentration monitor and a flow monitoring system may substitute for missing heat input data using the procedures of this section.

(b) During the first 720 quality-assured monitor operating hours following initial certification (i.e., following the date and time of completion of successful certification tests), of the CO_2 or O_2 pollutant concentration monitor and during the first 2,160 quality-assured monitoring operating hours following initial certification of the flow monitor, the owner or operator shall provide substitute data for heat input calculated under section 5.2 of appendix F of this part by substituting the CO_2 or O_2 concentration measured or substituted according to paragraph (b) of § 75.31, and by substituting the flow rate measured or substituted according to § 75.31.

(c) Upon completion of the first 720 quality-assured monitor operating hours following initial certification of the CO_2 (or O2) pollutant concentration monitor, the owner or operator shall provide substitute data for CO_2 or O_2 concentration to calculate heat input or shall substitute heat input determined under appendix F of this part according to the procedures in paragraphs (c)(1), (c)(2), or (c)(3) of this section. Upon completion of 2,160 quality-assured monitor operating hours following initial certification of the flow monitor, the owner or operator shall provide substitute data for volumetric flow according to the procedures in § 75.33 in order to calculate heat input, unless required to determine heat input using the fuel sampling procedures in appendix F of this part under paragraphs (c)(1), (c)(2) or (c)(3) of this section.

(1) Whenever a quality-assured monitor operating hour of CO_2 or O_2 concentration data has not been obtained and recorded for a period less than or equal to 72 hours or for a missing data period where the percent monitor data availability for the CO_2 or O_2 pollutant concentration monitor as of the last unit operating hour of the previous calendar quarter was greater than or equal to 90.0 percent, the owner or operator shall substitute the average of the recorded CO_2 or O_2 concentration for the hour before and the hour after the missing data period for each hour in each missing data period to calculate heat input.

(2) Whenever a quality-assured monitor operating hour of CO_2 or O_2 concentration data has not been obtained and recorded for a period of 72 consecutive unit operating hours or more, the owner or operator shall begin substituting heat input calculated using the procedures in section 5.5 of appendix F of this part beginning with the seventy-third hour of the missing data period until quality-assured CO_2 or O_2 concentration data are again available. The owner or operator shall use the CO_2 or O_2 concentration from the hour before the missing data period to substitute for hours 1 through 72 of the missing data period.

(3) Whenever no quality-assured CO_2 or O_2 concentration data are available for a period where the percent monitor data availability for the CO_2 continuous emission monitoring system (or O_2 diluent monitor) as of the last unit operating hour of the previous calendar quarter was less than 90.0 percent, the owner or operator shall substitute heat input calculated using the procedures in section 5.5 of appendix F of this part for each hour of the missing data period until quality-assured CO_2 or O_2 concentration data are again available.

(d) For a unit that has no diluent monitor certified during the period between the certification deadline in § 75.4(a) for flow monitoring systems and the certification deadline in § 75.4(a) for NO_X and CO_2 continuous emission monitoring systems, the owner or operator shall calculate heat input using the procedures in section 5.5 of appendix F of this part until quality-assured data are available from both a flow monitor and a diluent monitor.

Subpart E—Alternative Monitoring Systems

33. Section 75.41 is amended by adding a sentence to the end of paragraph (a)(1), revising paragraphs (b)(1)(i), (b)(2)(iv)(A), (b)(2)(iv)(C), (c)(1)(i), (c)(1)(ii) and (c)(2)(ii) to read as follows:

§ 75.41 Precision criteria.

(a) * * *

(1) * * * For the purposes of this subpart, each reference method run shall be 30 to 60 minutes in duration.

* * * * *

(b) * * *

(1) * * *

(i) Apply the log transformation to each measured value of either the certified continuous emissions monitoring system, certified flow monitor or reference method, using the following equation:

$l_v = \ln ev$ (Eq. 11)

Where:

e_v = Hourly value generated by the certified continuous emissions monitoring system, certified flow monitoring system, or reference method.

* * * * *

(2) * * *

(iv) * * *

(A) The set of measured hourly values, e_v, generated by the certified continuous emissions monitoring system, certified flow monitoring system, or reference method.

* * * * *

(C) The set of hourly differences, $e_v - e_p$, between the hourly values, e_v, generated by the certified continuous emissions monitoring system, certified flow monitoring system, or reference method and the hourly values, e_p, generated by the proposed alternative monitoring system.

* * * * *

(c) * * *

(1) * * *

(i) Calculate the variance of the certified continuous emission monitoring system, certified flow monitor, or reference method as applicable, S_v^2, and the proposed method, S_p^2, using the following equation.

$$S^2 = \frac{\sum_{i=1}^{n}(e_i - e_m)^2}{n-1} \qquad \text{(Eq. 23)}$$

(Eq. 23)

Where:

e_i = Measured values of either the certified continuous emission monitoring system, certified flow monitor, or reference method, as applicable, or proposed method.

e_m = Mean of either the certified continuous emission monitoring system or certified flow monitor, or reference method, as applicable, or proposed method values.

n = Total number of paired samples.

(ii) Determine if the variance of the proposed method is significantly different from that of the certified continuous emission monitoring system, certified flow monitor, or reference method, as applicable, by calculating the F-value using the following equation.

$$F = \frac{S_p^2}{S_v^2} \qquad \text{(Eq. 24)}$$

(Eq. 24)

Compare the experimental F-value with the critical value of F at the 95-percent confidence level with n-1 degrees of freedom. The critical value is obtained from a table for F-distribution. If the calculated F-value is greater than the critical value, the proposed method is unacceptable.

(2) * * *

(ii) Use the following equation to calculate the coefficient of correlation, r, between the emissions data from the alternative monitoring system and the continuous emission monitoring system using all hourly data for which paired values were available from both monitoring systems.

$$r = \frac{\Sigma e_p e_v - (\Sigma e_p)(\Sigma e_v)/n}{\left(\left[\Sigma e_p^2 - (\Sigma e_p)^2/n\right]\left[\Sigma e_v^2 - (\Sigma e_v)^2/n\right]\right)^{1/2}} \qquad \text{(Eq. 27)}$$

(Eq. 27)

Where:

e_p = Hourly value generated by the alternative monitoring system.

e_v = Hourly value generated by the continuous emission monitoring system.

n = Total number of hours for which data were generated for the tests.

* * * * *

34. Section 75.47 is revised to read as follows:

§ 75.47 Criteria for a class of affected units.

(a) The owner or operator of an affected unit that is determined by the Administrator to be representative of a class of affected units may petition the Administrator under § 75.48 for approval of an alternative monitoring system that may be used at any unit in that class based on testing performed only at the representative unit.

(b) The owner or operator of an affected unit representing a class of affected units shall provide the following information to obtain class status:

(1) A description of the affected unit at which the demonstration will be performed and how it appropriately represents the class of affected units; and

(2) A description and listing of the class of affected units, including a listing of all units and data describing all the affected units which will comprise the class; and

(3) A demonstration that the magnitude of emissions for all units which will comprise the class of affected units are *de minimis*.

(c) If the Administrator determines that the emissions from all affected units which will comprise the class of units are *de minimis*, then the Administrator shall publish notice in the **Federal Register** of each request for approval of class status and shall provide a 30-day period for public comment, prior to granting approval.

(d) The designated representative shall provide the information required in § 75.48 based on testing at the representative unit when petitioning for approval of the alternative monitoring system for members of the class. A request for class status under this section may be submitted simultaneously with a petition under § 75.48, or following approval of a petition under § 75.48.

35. Section 75.48 is amended by revising paragraphs (a) introductory text, and (a)(1), and by adding paragraphs (b) and (c) to read as follows:

§ 75.48 Petition for an alternative monitoring system.

(a) The designated representative shall submit the following information in the petition for approval of an alternative monitoring system for an affected unit, or a class of affected units approved pursuant to § 75.47.

(1) Source identification information for the affected unit at which testing was performed.

* * * * *

(b) The Administrator will publish a notice of receipt of each petition for approval of an alternative monitoring

system in the **Federal Register** and, following a public comment period of 30 days, will issue a notice of approval or disapproval of the alternative monitoring system.

(c) No alternative monitoring system approved under this section shall be used under the Acid Rain Program prior to successful completion of all certification tests under § 75.20(f).

Subpart F—Recordkeeping Requirements

36. Section 75.50 is amended by revising paragraph (a) to read as follows:

§ 75.50 General recordkeeping provisions.

(a) *Recordkeeping requirements for affected sources.* The provisions of this section shall remain in effect prior to January 1, 1996. The owner or operator shall meet the requirements of either §§ 75.50 or 75.54 prior to January 1, 1996. On or after January 1, 1996, the owner or operator shall meet the requirements of § 75.54 only.

* * * * *

37. Section 75.51 is amended by adding paragraph (e) to read as follows:

§ 75.51 General recordkeeping provisions for specific situations.

* * * * *

(e) The provisions of this section shall remain in effect prior to January 1, 1996. The owner or operator shall meet the requirements of either §§ 75.51 or 75.55 prior to January 1, 1996. On or after January 1, 1996, the owner or operator shall meet the requirements of § 75.55 only.

38. Section 75.52 is amended by adding paragraph (b) to read as follows:

§ 75.52 Certification, quality assurance and quality control record provisions.

(a) * * *

(b) The provisions of this section shall remain in effect prior to January 1, 1996. The owner or operator shall meet the requirements of either §§ 75.52 or 75.56 prior to January 1, 1996. On or after January 1, 1996, the owner or operator shall meet the requirements of § 75.56 only.

39. Section 75.53 is amended by revising paragraphs (a), (b), (c) introductory text, (c)(1), (c)(2)(ii), (c)(4) introductory text, (c)(4)(ii), (c)(4)(vi), (c)(5)(ii), (c)(6), (c)(7), (c)(8), (c)(9), (d)(1), and (d)(2) and by adding paragraphs (c)(10), and (d)(3) to read as follows:

§ 75.53 Monitoring plan.

(a) *General provisions.* The owner or operator of an affected unit shall prepare and maintain a monitoring plan. Except as provided in paragraph (d) of this section, a monitoring plan shall contain sufficient information on the continuous emission or opacity monitoring systems or excepted monitoring systems under appendix D or E of this part and the use of data derived from these systems to demonstrate that all unit SO_2 emissions, NO_X emissions, CO_2 emissions, and opacity are monitored and reported.

(b) Whenever the owner or operator makes a replacement, modification, or change, either in the certified continuous emission monitoring system or continuous opacity monitoring system or excepted monitoring systems under appendix D or E of this part, including a change in the automated data acquisition and handling system or in the flue gas handling system, that requires recertification, then the owner or operator shall update the monitoring plan.

(c) *Contents of the monitoring plan.* Each monitoring plan shall contain the following:

(1) Precertification information, including, as applicable, the identification of the test strategy, protocol for the relative accuracy test audit, other relevant test information, span calculations, and apportionment strategies under §§ 75.13 through 75.17 of this part.

(2) * * *

(ii) Classification of unit as one of the following: Phase I (including substitution or compensating units), Phase II, new, or nonaffected;

* * * * *

(4) *Monitoring component table.* Identification and description of each monitoring component (including each monitor and its identifiable components such as analyzer and/or probe) in the continuous emission monitoring systems (i.e., SO_2 pollutant concentration monitor, flow monitor, moisture monitor; NO_X pollutant concentration monitor and diluent gas monitor) the continuous opacity monitoring system, or excepted monitoring system (i.e., fuel flowmeter, data acquisition and handling system), including:

* * * * *

(ii) Component/system identification code assigned by the utility to each identifiable monitoring component (such as the analyzer and/or probe). The code shall use a six-digit format, unique to each monitoring component, where the first three digits indicate the number of the component and the second three digits indicate the system to which the component belongs;

* * * * *

(vi) A designation of the system as a primary, redundant backup, non-redundant backup or reference method backup system, as provided for in § 75.10(e).

(5) * * *

(ii) For software components, identification of the provider and a brief description of features;

* * * * *

(6) *Emissions formula table.* A table giving explicit formulas for each reported unit emission parameter, using component/system identification codes to link continuous emission monitoring system or excepted monitoring system observations with reported concentrations, mass emissions, or emission rates, according to the conversions listed in appendix D, E, or F to this part. The formulas must contain all constants and factors required to derive mass emissions or emission rates from component/system code observations, and each emissions formula is identified with a unique three digit code.

(7) *Schematic stack diagrams.* For units monitored by a continuous emission or opacity monitoring system, a schematic diagram identifying entire gas handling system from boiler to stack for all affected units, using identification numbers for units, monitor components, and stacks corresponding to the identification numbers provided in paragraphs (c)(2), (c)(4), (c)(5), and (c)(6) of this section. The schematic diagram must depict stack height and the height of any monitor locations. Comprehensive and/or separate schematic diagrams shall be used to describe groups of units using a common stack.

(8) *Stack and duct engineering diagrams.* For units monitored by a continuous emission or opacity monitoring system, stack and duct engineering diagrams showing the dimensions and location of fans, turning vanes, air preheaters, monitor components, probes, reference method sampling ports and other equipment which affects the monitoring system location, performance or quality control checks.

(9) Inside crosssectional area (ft^2) at flue exit and at flow monitoring location.

(10) *Span and calibration gas.* A table or description identifying maximum potential concentration, maximum expected concentration (if applicable), maximum potential flow rate, maximum potential NO_X emission rate, span value, and full-scale range for each SO_2, NO_X, CO_2, O_2, or flow component monitor. In addition, the table must identify calibration gas levels for the calibration error test and the linearity check, and calculations made to determine each span value.

(d) * * *

(1) For each gas-fired unit or oil-fired unit for which the owner or operator uses the optional protocol in appendix D of this part for estimating SO_2 mass emissions or appendix E of this part for estimating NO_X emission rate (using a fuel flow meter), the designated representative shall include in the monitoring plan:

(i) A description of the fuel flowmeter (and data demonstrating its flow meter accuracy, when available);

(ii) The installation location of each fuel flowmeter;

(iii) The fuel sampling location(s); and

(iv) Procedures used for calibrating each fuel flowmeter.

(2) For each gas-fired peaking unit and oil-fired peaking unit for which the owner or operator uses the optional procedures in appendix E of this part for estimating NO_X emission rate, the designated representative shall include in the monitoring plan:

(i) A protocol containing methods used to perform the baseline or periodic NO_X emission test, and a copy of initial performance test results (when such results are available);

(ii) Unit operating and capacity factor information demonstrating that the unit qualifies as a peaking unit, as defined in § 72.2 of this chapter; and

(iii) Unit operating parameters related to NO_X formation by the unit.

(3) For each gas-fired unit and diesel-fired unit or unit with a wet flue gas pollution control system for which the designated representative claims an opacity monitoring exemption under § 75.14, the designated representative shall include in the monitoring plan information demonstrating that the unit qualifies for the exemption.

40. Section 75.54 is added to read as follows:

§ 75.54 General recordkeeping provisions.

(a) *Recordkeeping requirements for affected sources.* On or after January 1, 1996, the owner or operator shall meet the requirements of this section. The owner or operator of any affected source subject to the requirements of this part shall maintain for each affected unit a file of all measurements, data, reports, and other information required by this part at the source in a form suitable for inspection for at least three (3) years from the date of each record. Unless otherwise provided, throughout this subpart the phrase "for each affected unit" also applies to each group of affected or nonaffected units utilizing a common stack and common monitoring systems, pursuant to §§ 75.13 through 75.18, or utilizing a common pipe header and common fuel flowmeter, pursuant to section 2.1.2 of appendix D of this part. The file shall contain the following information:

(1) The data and information required in paragraphs (b) through (f) of this section, beginning with the earlier of the date of provisional certification, or the deadline in § 75.4(a), (b) or (c);

(2) The supporting data and information used to calculate values required in paragraphs (b) through (f) of this section, excluding the subhourly data points used to compute hourly averages under § 75.10(d), beginning with the earlier of the date of provisional certification, or the deadline in § 75.4(a), (b) or (c);

(3) The data and information required in § 75.55 of this part for specific situations, as applicable, beginning with the earlier of the date of provisional certification, or the deadline in § 75.4(a), (b) or (c);

(4) The certification test data and information required in § 75.56 for tests required under § 75.20, beginning with the date of the first certification test performed, and the quality assurance and quality control data and information required in § 75.56 for tests and the quality assurance/quality control plan required under § 75.21 and appendix B of this part, beginning with the date of provisional certification;

(5) The current monitoring plan as specified in § 75.53, beginning with the initial submission required by § 75.62; and

(6) The quality control plan as described in appendix B to this part, beginning with the date of provisional certification.

(b) *Operating parameter record provisions.* The owner or operator shall record for each hour the following information on unit operating time, heat input, and load separately for each affected unit, and also for each group of units utilizing a common stack and a common monitoring system or utilizing a common pipe header and common fuel flowmeter, except that separate heat input data for each unit shall not be required after January 1, 2000 for any unit, other than an opt-in source, that does not have a NO_X emission limitation under part 76 of this chapter.

(1) Date and hour;

(2) Unit operating time (rounded up to nearest 15 minutes);

(3) Total hourly gross unit load (rounded to nearest MWge) (or steam load in lb/hr at stated temperature and pressure, rounded to the nearest 1000 lb/hr, if elected in the monitoring plan);

(4) Operating load range corresponding to total gross load of 1–10, except for units using a common stack or common pipe header, which may use the number of unit load ranges up to 20 for flow, as specified in the monitoring plan; and

(5) Total heat input (mmBtu, rounded to the nearest tenth).

(c) *SO_2 emission record provisions.* The owner or operator shall record for each hour the information required by this paragraph for each affected unit or group of units using a common stack and common monitoring systems, except as provided under § 75.11(e) or for a gas-fired or oil-fired unit for which the owner or operator is using the optional protocol in appendix D to this part for estimating SO_2 mass emissions:

(1) For SO_2 concentration, as measured and reported from each certified primary monitor, certified back-up monitor, or other approved method of emissions determination:

(i) Component-system identification code as provided for in § 75.53;

(ii) Date and hour;

(iii) Hourly average SO_2 concentration (ppm, rounded to the nearest tenth);

(iv) Hourly average SO_2 concentration (ppm, rounded to the nearest tenth) adjusted for bias, if bias adjustment factor is required as provided for in § 75.24(d);

(v) Percent monitor data availability (recorded to the nearest tenth of a percent) calculated pursuant to § 75.32; and

(vi) Method of determination for hourly average SO_2 concentration using Codes 1–15 in Table 4 of this section.

(2) For flow as measured and reported from each certified primary monitor, certified back-up monitor or other approved method of emissions determination:

(i) Component/system identification code as provided for in § 75.53;

(ii) Date and hour;

(iii) Hourly average volumetric flow rate (in scfh, rounded to the nearest thousand);

(iv) Hourly average volumetric flow rate (in scfh, rounded to the nearest thousand) adjusted for bias, if bias adjustment factor required as provided for in § 75.24(d);

(v) Hourly average moisture content of flue gases (percent, rounded to the nearest tenth) where SO_2 concentration is measured on dry basis;

(vi) Percent monitor data availability (recorded to the nearest tenth of a percent), calculated pursuant to § 75.32; and

(vii) Method of determination for hourly average flow rate using Codes 1–15 in Table 4.

(3) For SO_2 mass emissions as measured and reported from the certified primary monitoring system(s), certified redundant or non-redundant back-up monitoring system(s), or other approved method(s) of emissions determination:

(i) Date and hour;

(ii) Hourly SO_2 mass emissions (lb/hr, rounded to the nearest tenth);

(iii) Hourly SO_2 mass emissions (lb/hr, rounded to the nearest tenth) adjusted for bias, if bias adjustment factor required, as provided for in § 75.24(d); and

(iv) Identification code for emissions formula used to derive hourly SO_2 mass emissions from SO_2 concentration and flow data in paragraphs (c)(1) and (c)(2) of this section as provided for in § 75.53.

TABLE 4.—CODES FOR METHOD OF EMISSIONS AND FLOW DETERMINATION

[Amended]

Code	Hourly emissions/flow measurement or estimation method
1	Certified primary emission/flow monitoring system.
2	Certified back-up emission/flow monitoring system.
3	Approved alternative monitoring system.
4	Reference method: SO_2: Method 6C. Flow: Method 2. NO_X: Method 7E. CO_2 or O_2: Method 3A.
5	For units with add-on SO_2 and/or NO_X emission controls: SO_2 concentration or NO_X emission rate estimate from Agency preapproved parametric monitoring method.
6	Average of the hourly SO_2 concentrations, CO_2 concentrations, flow, or NO_X emission rate for the hour before and the hour following a missing data period.
7	Hourly average SO_2 concentration, CO_2 concentration, flow rate, or NO_X emission rate using initial missing data procedures.
8	90th percentile hourly SO_2 concentration, flow rate, or NO_X emission rate.
9	95th percentile hourly SO_2 concentration, flow rate, or NO_X emission rate.
10	Maximum hourly SO_2 concentration, flow rate, or NO_X emission rate.
11	Hourly average flow rate or NO_X emission rate in corresponding load range.
12	Maximum potential concentration of SO_2, maximum potential flow rate, or maximum potential NO_X emission rate, as determined using section 2.1 of appendix A of this part, or maximum CO_2 concentration.
13	Other data (specify method).
14	Minimum CO_2 concentration of 5.0 percent CO_2 or maximum O_2 concentration of 14.0 percent to be substituted optionally for measured diluent gas concentrations during unit startup, for NO_X emission rate or SO_2 emission rate in lb/mmBtu or for CO_2 concentration.
15	Fuel analysis data from appendix G of this part for CO_2 mass emissions.

TABLE 4.—CODES FOR METHOD OF EMISSIONS AND FLOW DETERMINATION—Continued

[Amended]

(d) *NO_X emission record provisions.* The owner or operator shall record the information required by this paragraph for each affected unit for each hour, except for a gas-fired peaking unit or oil-fired peaking unit for which the owner or operator is using the optional protocol in appendix E to this part for estimating NO_X emission rate. For each NO_X emission rate as measured and reported from the certified primary monitor, certified back-up monitor, or other approved method of emissions determination:

(1) Component/system identification code as provided for in § 75.53;

(2) Date and hour;

(3) Hourly average NO_X concentration (ppm, rounded to the nearest tenth);

(4) Hourly average diluent gas concentration (percent O_2 or percent CO_2, rounded to the nearest tenth);

(5) Hourly average NO_X emission rate (lb/mmBtu, rounded to nearest hundredth);

(6) Hourly average NO_X emission rate (lb/mmBtu, rounded to nearest hundredth) adjusted for bias, if bias adjustment factor is required as provided for in § 75.24(d);

(7) Percent monitoring system data availability, (recorded to the nearest tenth of a percent), calculated pursuant to § 75.32;

(8) Method of determination for hourly average NO_X emission rate using Codes 1–15 in Table 4; and

(9) Identification code for emissions formula used to derive hourly average NO_X emission rate, as provided for in § 75.53.

(e) *CO_2 emission record provisions.* The owner or operator shall record or calculate CO_2 emissions for each affected unit using one of the following methods specified in this section:

(1) If the owner or operator chooses to use a CO_2 continuous emission monitoring system (including an O_2 monitor and flow monitor as specified in appendix F of this part), then the owner or operator shall record for each hour the following information for CO_2 mass emissions, as measured and reported from the certified primary monitor, certified back-up monitor, or other approved method of emissions determination:

(i) Component/system identification code as provided for in § 75.53;

(ii) Date and hour;

(iii) Hourly average CO_2 concentration (in percent, rounded to the nearest tenth);

(iv) Hourly average volumetric flow rate (scfh, rounded to the nearest thousand scfh);

(v) Hourly CO_2 mass emissions (tons/hr, rounded to the nearest tenth);

(vi) Percent monitor data availability (recorded to the nearest tenth of a percent); calculated pursuant to § 75.32;

(vii) Method of determination for hourly CO_2 mass emissions using Codes 1–15 in Table 4; and

(viii) Identification code for emissions formula used to derive average hourly CO_2 mass emissions, as provided for in § 75.53.

(2) As an alternative to § 75.54(e)(1), the owner or operator may use the procedures in § 75.13 and in appendix G to this part, and shall record daily the following information for CO_2 mass emissions:

(i) Date;

(ii) Daily combustion-formed CO_2 mass emissions (tons/day, rounded to the nearest tenth);

(iii) For coal-fired units, flag indicating whether optional procedure to adjust combustion-formed CO_2 mass emissions for carbon retained in flyash has been used and, if so, the adjustment;

(iv) For a unit with a wet flue gas desulfurization system or other controls generating CO_2, daily sorbent-related CO_2 mass emissions (tons/day, rounded to the nearest tenth); and

(v) For a unit with a wet flue gas desulfurization system or other controls generating CO_2, total daily CO_2 mass emissions (tons/day, rounded to the nearest tenth) as sum of combustion-formed emissions and sorbent-related emissions.

(f) *Opacity records.* The owner or operator shall record opacity data as specified by the State or local air pollution control agency. If the State or local air pollution control agency does not specify recordkeeping requirements for opacity, then record the information required by paragraphs (f) (1) through (5) of this section for each affected unit, except as provided for in § 75.14 (b), (c), and (d). The owner or operator shall also keep records of all incidents of opacity monitor downtime during unit operation, including reason(s) for the monitor outage(s) and any corrective action(s) taken for opacity, as measured and reported by the continuous opacity monitoring system:

(1) Component/system identification code;

(2) Date, hour, and minute;

(3) Average opacity of emissions for each six minute averaging period (in percent opacity);

(4) If the average opacity of emissions exceeds the applicable standard, then a code indicating such an exceedance has occurred; and

(5) Percent monitor data availability, recorded to the nearest tenth of a percent, calculated according to the requirements of the procedure recommended for State Implementation Plans in appendix M of part 51 of this chapter.

41. Section 75.55 is added to read as follows:

§ 75.55 General recordkeeping provisions for specific situations.

(a) *Specific SO_2 emission record provisions for units with qualifying Phase I technology.* In addition to the SO_2 emissions information required in § 75.54(c), from January 1, 1997, through December 31, 1999, the owner or operator shall record the applicable information in this paragraph for each affected unit on which SO_2 emission controls have been installed and operated for the purpose of meeting qualifying Phase I technology requirements pursuant to § 72.42 of this chapter and § 75.15.

(1) For units with post-combustion emission controls:

(i) Component/system identification codes for each inlet and outlet SO_2-diluent continuous emission monitoring system;

(ii) Date and hour;

(iii) Hourly average inlet SO_2 emission rate (lb/mmBtu, rounded to nearest hundredth);

(iv) Hourly average outlet SO_2 emission rate (lb/mmBtu, rounded to nearest hundredth);

(v) Percent data availability for both inlet and outlet SO_2-diluent continuous emission monitoring systems (recorded to the nearest tenth of a percent), calculated pursuant to Equation 8 of § 75.32 (for the first 8,760 unit operating hours following initial certification) and Equation 9 of § 75.32, thereafter; and

(vi) Identification code for emissions formula used to derive hourly average inlet and outlet SO_2 mass emissions rates for each affected unit or group of units using a common stack.

(2) For units with combustion and/or pre-combustion emission controls:

(i) Component/system identification codes for each outlet SO_2-diluent continuous emission monitoring system;

(ii) Date and hour;

(iii) Hourly average outlet SO_2 emission rate (lb/mmBtu, rounded to nearest hundredth);

(iv) For units with combustion controls, average daily inlet SO_2 emission rate (lb/mmBtu, rounded to nearest hundredth), determined by coal sampling and analysis procedures in § 75.15; and

(v) For units with pre-combustion controls (i.e., fuel pretreatment), fuel analysis demonstrating the weight, sulfur content, and gross calorific value of the product and raw fuel lots.

(b) [Reserved]

(c) *Specific SO_2 emission record provisions for gas-fired or oil-fired units using optional protocol in appendix D of this part.* In lieu of recording the information in § 75.54(c) of this section, the owner or operator shall record the applicable information in this paragraph for each affected gas-fired or oil-fired unit for which the owner or operator is using the optional protocol in appendix D of this part for estimating SO_2 mass emissions.

(1) For each hour when the unit is combusting oil:

(i) Date and hour;

(ii) Hourly average flow rate of oil with the units in which oil flow is recorded, (gal/hr, lb/hr, m^3/hr, or bbl/hr, rounded to the nearest tenth)(flag value if derived from missing data procedures);

(iii) Sulfur content of oil sample used to determine SO_2 mass emissions, rounded to nearest hundredth for diesel fuel or to the nearest tenth of a percent for other fuel oil (flag value if derived from missing data procedures);

(iv) Method of oil sampling (flow proportional, continuous drip, as delivered or manual);

(v) Mass of oil combusted each hour (lb/hr, rounded to the nearest tenth);

(vi) SO_2 mass emissions from oil (lb/hr, rounded to the nearest tenth);

(vii) For units using volumetric oil flowmeters, density of oil (flag value if derived from missing data procedures);

(viii) Gross calorific value (heat content) of oil, used to determine heat input (Btu/mass unit) (flag value if derived from missing data procedures);

(ix) Hourly heat input rate from oil according to procedures in appendix F of this part (mmBtu/hr, to the nearest tenth); and

(x) Fuel usage time for combustion of oil during the hour, rounded up to the nearest 15 min.

(2) For gas-fired units or oil-fired units using the optional protocol in appendix D of this part of daily manual oil sampling, when the unit is combusting oil, the highest sulfur content recorded from the most recent 30 daily oil samples rounded to nearest tenth of a percent.

(3) For each hour when the unit is combusting gaseous fuel,

(i) Date and hour;

(ii) Hourly heat input rate from gaseous fuel according to procedures in appendix F to this part (mmBtu/hr, rounded to the nearest tenth);

(iii) Sulfur content or SO_2 emission rate, in one of the following formats, in accordance with the appropriate procedure from appendix D of this part:

(A) Sulfur content of gas sample, (rounded to the nearest 0.1 grains/100 scf) (flag value if derived from missing data procedures); or

(B) SO_2 emission rate of 0.0006 lb/mmBtu for pipeline natural gas;

(iv) Hourly flow rate of gaseous fuel, in 100 scfh (flag value if derived from missing data procedures);

(v) Gross calorific value (heat content) of gaseous fuel, used to determine heat input (Btu/scf) (flag value if derived from missing data procedures);

(vi) Heat input rate from gaseous fuel (mmBtu/hr, rounded to the nearest tenth);

(vii) SO_2 mass emissions due to the combustion of gaseous fuels, lb/hr; and

(viii) Fuel usage time for combustion of gaseous fuel during the hour, rounded up to the nearest 15 min.

(4) For each oil sample or sample of diesel fuel:

(i) Date of sampling;

(ii) Sulfur content (percent, rounded to the nearest hundredth for diesel fuel and to the nearest tenth for other fuel oil) (flag value if derived from missing data procedures);

(iii) Gross calorific value or heat content (Btu/lb) (flag value if derived from missing data procedures); and

(iv) Density or specific gravity, if required to convert volume to mass (flag value if derived from missing data procedures).

(5) For each daily sample of gaseous fuel:

(i) Date of sampling;

(ii) Sulfur content (grains/100 scf, rounded to the nearest tenth) (flag value if derived from missing data procedures);

(6) For each monthly sample of gaseous fuel:

(i) Date of sampling;

(ii) Gross calorific value or heat content (Btu/scf) (flag value if derived from missing data procedures).

(d) *Specific NO_X emission record provisions for gas-fired peaking units or*

oil-fired peaking units using optional protocol in appendix E of this part. In lieu of recording the information in paragraph § 75.54(d), the owner or operator shall record the applicable information in this paragraph for each affected gas-fired peaking unit or oil-fired peaking unit for which the owner or operator is using the optional protocol in appendix E of this part for estimating NO_X emission rate.

(1) For each hour when the unit is combusting oil,

(i) Date and hour;

(ii) Hourly average fuel flow rate of oil with the units in which oil flow is recorded (gal/hour, lb/hr or bbl/hour) (flag value if derived from missing data procedures);

(iii) Gross calorific value (heat content) of oil, used to determine heat input (Btu/lb) (flag value if derived from missing data procedures);

(iv) Hourly average NO_X emission rate from combustion of oil (lb/mmBtu);

(v) Heat input rate of oil (mmBtu/hr, rounded to the nearest tenth); and

(vi) Fuel usage time for combustion of oil during the hour, rounded to the nearest 15 min.

(2) For each hour when the unit is combusting gaseous fuel,

(i) Date and hour;

(ii) Hourly average fuel flow rate of gaseous fuel (100 scfh) (flag value if derived from missing data procedures);

(iii) Gross calorific value (heat content) of gaseous fuel, used to determine heat input (Btu/scf) (flag value if derived from missing data procedures);

(iv) Hourly average NO_X emission rate from combustion of gaseous fuel (lb/mmBtu, rounded to nearest hundredth);

(v) Heat input rate from gaseous fuel (mmBtu/hr, rounded to the nearest tenth); and

(vi) Fuel usage time for combustion of gaseous fuel during the hour, rounded to the nearest 15 min.

(3) For each hour when the unit combusts any fuel:

(i) Date and hour;

(ii) Total heat input from all fuels (mmBtu, rounded to the nearest tenth);

(iii) Hourly average NO_X emission rate for the unit for all fuels;

(iv) For stationary gas turbines and diesel or dual-fuel reciprocating engines, hourly averages of operating parameters under section 2.3 of appendix E (flag if value is outside of manufacturer's recommended range);

(v) For boilers, hourly average boiler O_2 reading (percent, rounded to the nearest tenth) (flag if value exceeds by more than 2 percentage points the O_2 level recorded at the same heat input during the previous NO_X emission rate test).

(4) For each fuel sample:

(i) Date of sampling;

(ii) Gross calorific value (heat content) (Btu/lb for oil, Btu/scf for gaseous fuel); and

(iii) Density or specific gravity, if required to convert volume to mass.

(e) [Reserved]

(f) The owner or operator shall meet the requirements of this section on or after January 1, 1996.

42. Section 75.56 is added to read as follows:

§ 75.56 Certification, quality assurance and quality control record provisions.

(a) *Continuous emission or opacity monitoring systems.* The owner or operator shall record the applicable information in this section for each certified monitor or certified monitoring system (including certified backup monitors) measuring and recording emissions or flow from an affected unit.

(1) For each SO_2 or NO_X pollutant concentration monitor, flow monitor, CO_2 monitor, or diluent gas monitor, the owner or operator shall record the following for all daily and 7-day calibration error tests, including any follow-up tests after corrective action:

(i) Component/system identification code;

(ii) Instrument span;

(iii) Date and hour;

(iv) Reference value, (i.e., calibration gas concentration or reference signal value, in ppm or other appropriate units);

(v) Observed value (monitor response during calibration, in ppm or other appropriate units);

(vi) Percent calibration error (rounded to nearest tenth of a percent); and

(vii) For 7-day calibration tests for certification or recertification, a certification from the cylinder gas vendor or CEMS vendor, that calibration gas as defined in § 72.2 and appendix A of this part, were used to conduct calibration error testing; and

(viii) Description of any adjustments, corrective actions, or maintenance following test.

(2) For each flow monitor, the owner or operator shall record the following for all daily interference checks, including any follow-up tests after corrective action:

(i) Code indicating whether monitor passes or fails the interference check; and

(ii) Description of any adjustments, corrective actions, or maintenance following test.

(3) For each SO_2 or NO_X pollutant concentration monitor, CO_2 monitor, or diluent gas monitor, the owner or operator shall record the following for the initial and all subsequent linearity check(s), including any follow-up tests after corrective action:

(i) Component/system identification code;

(ii) Instrument span;

(iii) Date and hour;

(iv) Reference value (i.e., reference gas concentration, in ppm or other appropriate units);

(v) Observed value (average monitor response at each reference gas concentration, in ppm or other appropriate units);

(vi) Percent error at each of three reference gas concentrations (rounded to nearest tenth of a percent); and

(vii) Description of any adjustments, corrective action, or maintenance following test.

(4) For each flow monitor, where applicable, the owner or operator shall record the following for all quarterly leak checks, including any follow-up tests after corrective action:

(i) Code indicating whether monitor passes or fails the quarterly leak check; and

(ii) Description of any adjustments, corrective actions, or maintenance following test.

(5) For each SO_2 pollutant concentration monitor, flow monitor, CO_2 pollutant concentration monitor; NO_X continuous emission monitoring system, SO_2-diluent continuous emission monitoring system, and approved alternative monitoring system, the owner or operator shall record the following information for the initial and all subsequent relative accuracy tests and test audits:

(i) Date and hour;

(ii) Reference method(s) used;

(iii) Individual test run data from the relative accuracy test audit for the SO_2 concentration monitor, flow monitor, CO_2 pollutant concentration monitor, NO_X continuous emission monitoring system, SO_2-diluent continuous emission monitoring system, or approved alternative monitoring systems, including:

(A) Date, hour, and minute of beginning of test run,

(B) Date, hour, and minute of end of test run,

(C) Component/system identification code,

(D) Run number,

(E) Run data for monitor;

(F) Run data for reference method; and

(G) Flag value (0 or 1) indicating whether run has been used in calculating relative accuracy and bias values.

(iv) Calculations and tabulated results, as follows:

(A) Arithmetic mean of the monitoring system measurement values, reference method values, and of their differences, as specified in Equation A–7 in appendix A to this part.

(B) Standard deviation, as specified in Equation A–8 in appendix A to this part.

(C) Confidence coefficient, as specified in Equation A–9 in appendix A to this part.

(D) Relative accuracy test results, as specified in Equation A–10 in appendix A to this part. (For the 3-level flow monitor test only, relative accuracy test results should be recorded at each of three gas velocities. Each of these three gas velocities shall be expressed as a total gross unit load, rounded to the nearest MWe or as steam load, rounded to the nearest thousand lb/hr.)

(E) Bias test results as specified in section 7.6.4 in appendix A to this part.

(F) Bias adjustment factor from Equations A–11 and A–12 in appendix A to this part for any monitoring system or component that failed the bias test and 1.0 for any monitoring system or component that passed the bias test. (For flow monitors only, bias adjustment factors should be recorded at each of three gas velocities).

(v) Description of any adjustment, corrective action, or maintenance following test.

(vi) F-factor value(s) used to convert NO_X pollutant concentration and diluent gas (O_2 or CO_2) concentration measurements into NO_X emission rates (in lb/mmBtu), heat input or CO_2 emissions.

(6) [Reserved]

(7) Results of all trial runs and certification tests and quality assurance activities and measurements (including all reference method field test sheets, charts, records of combined system responses, laboratory analyses, and example calculations) necessary to substantiate compliance with all relevant appendices in this part. This information shall include, but shall not be limited to, the following reference method data:

(i) For each run of each test using Method 2 in appendix A of part 60 of this chapter to determine volumetric flow rate:

(A) Pitot tube coefficient;

(B) Date of pitot tube calibration;

(C) Average square root of velocity head of stack gas (inches of water) for the run;

(D) Average absolute stack gas temperature, °R;

(E) Barometric pressure at test port, inches of mercury;

(F) Stack static pressure, inches of H_2O;

(G) Absolute stack gas pressure, inches of mercury;

(H) Moisture content of stack gas, percent;

(I) Molecular weight of stack gas, wet basis (lb/lb-mole);

(J) Number of reference method measurements during the run; and

(K) Total volumetric flowrate (scfh, wet basis).

(ii) For each test using Method 2 in appendix A of part 60 of this chapter to determine volumetric flow rate:

(A) Information indicating whether or not the location meets requirements of Method 1 in appendix A of part 60 of this chapter;

(B) Information indicating whether or not the equipment passed the leak check after every run included in the relative accuracy test;

(C) Stack inside diameter at test port (ft);

(D) Duct side height and width at test port (ft);

(E) Stack or duct cross-sectional area at test port (ft^2); and

(F) Designation as to the load level of the test.

(iii) For each run of each test using Method 6C, 7E, or 3A in appendix A of part 60 of this chapter to determine SO_2, NO_X, CO_2, or O_2 concentration:

(A) Run start date;

(B) Run start time;

(C) Run end date;

(D) Run end time;

(E) Span of reference method analyzer;

(F) Reference gas concentration (low, mid-, and high gas levels);

(G) Initial and final analyzer calibration response (low, mid- and high gas levels);

(H) Analyzer calibration error (low, mid-, and high gas levels);

(I) Pre-test and post-test analyzer bias (zero and upscale gas levels);

(J) Calibration drift and zero drift of analyzer;

(K) Indication as to which data are from a pretest and which are from a posttest;

(L) Calibration gas level (zero, mid-level, or high); and

(M) Moisture content of stack gas, in percent, if needed to convert to moisture basis of CEMS being tested.

(iv) For each test using Method 6C, 7E, or 3A in appendix A of part 60 of this chapter to determine SO_2, NO_X CO_2, or O_2 concentration:

(A) Pollutant being measured;

(B) Test number;

(C) Date of interference test;

(D) Results of interference test;

(E) Date of NO_2 to NO conversion test (Method 7E only);

(F) Results of NO_2 to NO conversion test (Method 7E only).

(v) For each calibration gas cylinder used to test using Method 6C, 7E, or 3A in appendix A of part 60 of this chapter to determine SO_2, NO_X, CO_2, or O_2 concentration:

(A) Cylinder gas vendor name from certification;

(B) Cylinder number;

(C) Cylinder expiration date;

(D) Pollutant(s) in cylinder; and

(E) Cylinder gas concentration(s).

(b) *Excepted monitoring systems for gas-fired and oil-fired units.* The owner or operator shall record the applicable information in this section for each excepted monitoring system following the requirements of appendix D of this part or appendix E of this part for determining and recording emissions from an affected unit.

(1) For each oil-fired unit or gas-fired unit using the optional procedures of appendix D of this part for determining SO_2 mass emissions and heat input or the optional procedures of appendix E of this part for determining NO_X emission rate, for certification and quality assurance testing of fuel flowmeters:

(i) Date of test,

(ii) Upper range value of the fuel flowmeter,

(iii) Flowmeter measurements during accuracy test,

(iv) Reference flow rates during accuracy test,

(v) Average flowmeter accuracy as a percent of upper range value,

(vi) Fuel flow rate level (low, mid-level, or high); and

(vi) Description of fuel flowmeter calibration specification or procedure (in the certification application, or periodically if a different method is used for annual quality assurance testing).

(2) For gas-fired peaking units or oil-fired peaking units using the optional procedures of appendix E of this part, for each initial performance, periodic, or quality assurance/quality control-related test:

(i) For each run of emissions data;

(A) Run start date and time;

(B) Run end date and time;

(C) Fuel flow (lb/hr, gal/hr, scf/hr, bbl/hr, or m^3/hr);

(D) Gross calorific value (heat content) of fuel (Btu/lb or Btu/scf);

(E) Density of fuel (if needed to convert mass to volume);

(F) Total heat input during the run (mmBtu);

(G) Hourly heat input rate for run (mmBtu/hr);

(H) Response time of the O_2 and NO_X reference method analyzers;

(I) NO_X concentration (ppm);

(J) O_2 concentration (percent O_2);

(K) NO_x emission rate (lb/mmBtu); and

(L) Fuel or fuel combination (by heat input fraction) combusted.

(ii) For each unit load and heat input;

(A) Average NO_x emission rate (lb/mmBtu);

(B) F-factor used in calculations;

(C) Average heat input rate (mmBtu/hr);

(D) Unit operating parametric data related to NO_x formation for that unit type (e.g., excess O_2 level, water/fuel ratio); and

(E) Fuel or fuel combination (by heat input fraction) combusted.

(iii) For each test report;

(A) Graph of NO_x emission rate against heat input rate;

(B) Results of the tests for verification of the accuracy of emissions calculations and missing data procedures performed by the automated data acquisition and handling system, and the calculations used to produce NO_x emission rate data at different heat input conditions; and

(C) Results of all certification tests and quality assurance activities and measurements (including reference method field test sheets, charts, laboratory analyses, example calculations, or other data as appropriate), necessary to substantiate compliance with the requirements of appendix E of this part.

(c) The owner or operator shall meet the requirements of this section on or after January 1, 1996.

Subpart G—Reporting Requirements

43. Section 75.60 is amended by revising paragraphs (b)(1) and (b)(2), and by adding paragraph (c) to read as follows:

§ 75.60 General provisions.

* * * * *

(b) * * *

(1) All initial certification or recertification testing notifications, initial certification or recertification applications, monitoring plans, petitions for alternative monitoring systems, notifications, electronic quarterly reports, and other communications required by this subpart shall be submitted to the Administrator.

(2) Copies of initial certification or recertification testing notifications, certification or recertification applications and monitoring plans shall be submitted to the appropriate Regional office of the U.S. Environmental Protection Agency and appropriate State or local air pollution control agency.

(c) *Confidentiality of data.* The following provisions shall govern the confidentiality of information submitted under this part.

(1) All emission data reported in quarterly reports under § 75.64 shall remain public information.

(2) For information submitted under this part other than emission data submitted in quarterly reports, the designated representative must assert a claim of confidentiality at the time of submission for any information he or she wishes to have treated as confidential business information (CBI) under subpart B of part 2 of this chapter. Failure to assert a claim of confidentiality at the time of submission may result in disclosure of the information by EPA without further notice to the designated representative.

(3) Any claim of confidentiality for information submitted in quarterly reports under § 75.64 must include substantiation of the claim. Failure to provide substantiation may result in disclosure of the information by EPA without further notice.

(4) As provided under subpart B of part 2 of this chapter, EPA may review information submitted to determine whether it is entitled to confidential treatment even when confidentiality claims are initially received. The EPA will contact the designated representative as part of such a review process.

44. Section 75.61 is revised to read as follows:

§ 75.61 Notifications.

(a) *Submission.* The designated representative for an affected unit (or owner or operator, as specified) shall submit notice to the Administrator, to the appropriate EPA Regional Office, and to the applicable State air pollution control agency for the following purposes, as required by this part.

(1) *Initial certification and recertification test notifications.* The owner or operator or designated representative for an affected unit shall submit written notification of initial certification tests, recertification tests, and revised test dates as specified in § 75.20 for continuous emission monitoring systems, for alternative monitoring systems under subpart E of this part, or for excepted monitoring systems under appendix E of this part, except as provided in paragraph (a)(4) of this section and except for testing only of the data acquisition and handling system.

(i) *Notification of initial certification testing.* Initial certification test notifications shall be submitted not later than 45 days prior to the first scheduled day of initial certification testing. Testing may be performed on a date other than that already provided in a notice under this subparagraph as long as notice of the new date is provided either in writing or by telephone or other means at least 7 days prior to the original scheduled test date or the revised test date, whichever is earlier.

(ii) *Notification of certification retesting and recertification testing.* For retesting following a loss of certification under § 75.20(a)(5) or for recertification under § 75.20(b), notice of testing shall be submitted either in writing or by telephone at least 7 days prior to the first scheduled day of testing; except that in emergency situations when testing is required following an uncontrollable failure of equipment that results in lost data, notice shall be sufficient if provided within 2 business days following the date when testing is scheduled. Testing may be performed on a date other than that already provided in a notice under this subparagraph as long as notice of the new date is provided by telephone or other means at least 2 business days prior to the original scheduled test date or the revised test date, whichever is earlier.

(iii) *Repeat of testing without notice.* Notwithstanding the above notice requirements, the owner or operator may elect to repeat a certification test immediately, without advance notification, whenever the owner or operator has determined during the certification testing that a test was failed or that a second test is necessary in order to attain a reduced relative accuracy test frequency.

(2) *New unit, newly affected unit, new stack, or new flue gas desulfurization system operation notification.* The designated representative for an affected unit shall submit written notification: For a new unit or a newly affected unit, of the planned date when a new unit or newly affected unit will commence commercial operation or, for new stack or flue gas desulfurization system, of the planned date when a new stack or flue gas desulfurization system will be completed and emissions will first exit to the atmosphere.

(i) Notification of the planned date shall be submitted not later than 45 days prior to the date the unit commences commercial operation, or not later than 45 days prior to the date when a new stack or flue gas desulfurization system exhausts emissions to the atmosphere.

(ii) If the date when the unit commences commercial operation or the date when the new stack or flue gas desulfurization system exhausts emissions to the atmosphere, whichever is applicable, changes from the planned date, a notification of the actual date shall be submitted not later than 7 days following: The date the unit commences commercial operation or, the date when a new stack or flue gas desulfurization system exhausts emissions to the atmosphere.

(3) *Unit shutdown and recommencement of commercial operation.* The designated representative for an affected unit that will be shutdown on the relevant compliance date in § 75.4(a) and that is relying on the provisions in § 75.4(d) to postpone certification testing shall submit notification of unit shutdown and recommencement of commercial operation as follows:

(i) For planned unit shutdowns, written notification of the planned shutdown date and planned date of recommencement of commercial operation shall be submitted 45 calendar days prior to the deadline in § 75.4(a). For unit shutdowns that are not planned 45 days prior to the deadline in § 75.4(a), written notification of the planned shutdown date and planned date of recommencement of commercial operation shall be submitted no later than 7 days after the date the owner or operator is able to schedule the shutdown date and date of recommencement of commercial operation. If the actual shutdown date or the actual date of recommencement of commercial operation differs from the planned date, written notice of the actual date shall be submitted no later than 7 days following the actual date of shutdown or of recommencement of commercial operation, as applicable;

(ii) For unplanned unit shutdowns, written notification of actual shutdown date and the expected date of recommencement of commercial operation shall be submitted no later than 7 days after the shutdown. If the actual date of recommencement of commercial operation differs from the expected date, written notice of the actual date shall be submitted no later than 7 days following the actual date of recommencement of commercial operation.

(4) *Use of backup fuels for appendix E procedures.* The designated representative for an affected oil-fired or gas-fired peaking unit that is using an excepted monitoring system under appendix E of this part and that is relying on the provisions in § 75.4(f) to postpone testing of a fuel shall submit written notification of that fact no later than 45 days prior to the deadline in § 75.4(a). The designated representative shall also submit a notification that such a fuel has been combusted no later than 7 days after the first date of combustion of any fuel for which testing has not been performed under appendix E after the deadline in § 75.4(a). Such notice shall also include notice that testing under Appendix E either was performed during the initial combustion or notice of the date that testing will be performed.

(5) *Periodic relative accuracy test audits.* The owner or operator or designated representative of an affected unit shall submit written notice of the date of periodic relative accuracy testing performed under appendix B of this part no later than 21 days prior to the first scheduled day of testing. Testing may be performed on a date other than that already provided in a notice under this subparagraph as long as notice of the new date is provided either in writing or by telephone or other means at least 7 days prior to the original scheduled test date or the revised test date, whichever is earlier. Notwithstanding these notice requirements, the owner or operator may elect to repeat a periodic relative accuracy test immediately, without additional notification whenever the owner or operator has determined that a test was failed, or that a second test is necessary in order to attain a reduced relative accuracy test frequency.

(6) *Notice of combustion of emergency fuel under appendix D or E.* The designated representative of an oil-fired unit or gas-fired unit using appendix D or E of this part shall provide notice of the combustion of emergency fuel according to the following:

(i) For an affected oil-fired or gas-fired unit that is using an excepted monitoring system under appendix D or E of this part, where the owner or operator is postponing installation or testing of a fuel flowmeter for emergency fuel under § 75.4(g), the designated representative shall submit written notification of postponement of installation or testing no later than 45 days prior to the deadline in § 75.4(a). The designated representative shall also submit a notification that emergency fuel has been combusted no later than 7 days after the first date of combustion of the emergency fuel after the deadline in § 75.4(a).

(ii) The designated representative of a unit that has received approval of a petition under § 75.66 for exemption from one or more of the requirements of appendix E of this part for certification of an excepted monitoring system under appendix E of this part for a unit combusting emergency fuel shall submit written notice of each period of combustion of the emergency fuel with the next quarterly report submitted under § 75.64 for each calendar quarter in which emergency fuel is combusted, including notice specifying the exact dates and hours during which the emergency fuel was combusted.

(b) The owner or operator or designated representative shall submit notification of certification tests and recertification tests for continuous opacity monitoring systems, as specified in § 75.20(c)(6) to the State or local air pollution control agency.

(c) If the Administrator determines that notification substantially similar to that required in this section is required by any other State or local agency, the owner or operator or designated representative may send the Administrator a copy of that notification to satisfy the requirements of this section, provided the ORISPL unit identification number(s) is denoted.

45. Section 75.62 is amended by revising paragraph (a) and adding paragraph (c) to read as follows:

§ 75.62 Monitoring plan.

(a) *Submission.* The designated representative for an affected unit shall submit the monitoring plan to the Administrator no later than 45 days prior to the first scheduled certification test, other than testing of a fuel flowmeter or an excepted monitoring system under appendix D of this part. The designated representative shall submit the monitoring plan for a Phase II unit using an excepted monitoring system under appendix D of this part to the Administrator no later than November 15, 1994.

* * * * *

(c) *Format.* Each monitoring plan shall be submitted in a format specified by the Administrator, including information in electronic format and on paper.

46. Section 75.63 is revised to read as follows:

§ 75.63 Initial certification or recertification application.

(a) *Submission.* The designated representative for an affected unit or a combustion source seeking to enter the Opt-in Program in accordance with part 74 of this chapter shall submit the application to the Administrator within 45 days after completing all initial certification tests or recertification tests.

(b) *Contents.* Each application for initial certification or recertification shall contain the following information:

(1) A copy of the monitoring plan (or any modifications to the monitoring plan) for the unit, or units, or combustion sources seeking to enter the Opt-in Program in accordance with part

74 of this chapter, if not previously submitted.

(2) The results of the test(s) required by § 75.20, including the type of test conducted, testing date, and field data sheets required by § 75.52 (or § 75.56, no later than January 1, 1996), and including the results of any failed tests that had been repeated pursuant to the requirements in § 75.20.

(3) Results of the tests for verification of the accuracy of emissions and volumetric flow calculations performed by the automated data acquisition and handling system, including a summary of equations used to convert component data to units of the standard and to calculate substitute data for missing data periods, including sample calculations.

(c) *Format.* Each certification application shall be submitted in a format to be specified by the Administrator, including test results in electronic format and field data sheets required by § 75.52 (or § 75.56, no later than January 1, 1996) on paper where the information required under § 75.56(a)(7) shall be submitted on paper.

47. Section 75.64 is amended by revising the first two sentences of paragraph (a) introductory text, by revising paragraphs (a)(5), (b) and (d), by revising the last sentence of paragraph (e) introductory text and by removing paragraphs (e)(1) and (2) to read as follows:

§ 75.64 Quarterly reports.

(a) *Electronic submission.* The designated representative for an affected unit shall electronically report the data and information in paragraphs (a), (b), and (c) of this section to the Administrator quarterly, beginning with the data from the later of: the last (partial) calendar quarter of 1993 (where the calendar quarter data begins at November 15, 1993); or the calendar quarter corresponding to the relevant deadline for certification in § 75.4(a), (b), or (c). For any provisionally-certified monitoring system, some or all of the quarterly data may be invalidated, if the Administrator subsequently issues a notice of disapproval within 120 days of receipt of the complete initial certification application or within 60 days of receipt of the complete recertification application for the monitoring system. * * *

(5) Total heat input (mmBtu) for quarter and cumulative heat input for calendar year.

* * * * *

(b) The designated representative shall affirm that the component/system identification codes and formulas in the quarterly electronic reports, submitted to the Administrator pursuant to § 75.53, represent current operating conditions.

* * * * *

(d) *Electronic format.* Each quarterly report shall be submitted in a format to be specified by the Administrator, including both electronic submission of data and paper submission of compliance certifications.

(e) * * * Each report shall include all measurements and calculations necessary to substantiate that the qualifying technology achieves the overall percentage reduction in SO_2 emissions.

48. Section 75.65 is revised to read as follows:

§ 75.65 Opacity reports.

The owner or operator or designated representative shall report excess emissions of opacity recorded under §§ 75.50(f) or 75.54(f) to the applicable State or local air pollution control agency, in a format specified by the applicable State or local air pollution control agency.

49. Section 75.66 is amended by redesignating paragraphs (a), (b), (c), (d), (e) and (f) as paragraphs (b), (c), (d), (e), (f) and (i), by adding new paragraphs (a), (g), and (h), and by revising newly designated paragraphs (b), (c), and (i), to read as follows:

§ 75.66 Petitions to the Administrator.

(a) *General.* The designated representative for an affected unit subject to the requirements of this part may submit petitions to the Administrator. Any petitions shall be submitted in accordance with the requirements of this section. The designated representative shall comply with the signatory requirements of § 72.21 of this chapter for each submission.

(b) *Alternative flow monitoring method petition.* In cases where no location exists for installation of a flow monitor in either the stack or the ducts serving an affected unit that satisfies the minimum physical siting criteria in appendix A of this part or where installation of a flow monitor in either the stack or duct is demonstrated to the satisfaction of the Administrator to be technically infeasible, the designated representative for the affected unit may petition the Administrator for an alternative method for monitoring volumetric flow. The petition shall, at a minimum, contain the following information:

(1) Identification of the affected unit(s);

(2) Description of why the minimum siting criteria cannot be met within the existing ductwork or stack(s). This description shall include diagrams of the existing ductwork or stack, as well as documentation of any attempts to locate a flow monitor; and

(3) Description of proposed alternative method for monitoring flow.

(c) *Alternative to standards incorporated by reference.* The designated representative for an affected unit may apply to the Administrator for an alternative to any standard incorporated by reference and prescribed in this part. The designated representative shall include the following information in an application:

(1) A description of why the prescribed standard is not being used;

(2) A description and diagram(s) of any equipment and procedures used in the proposed alternative;

(3) Information demonstrating that the proposed alternative produces data acceptable for use in the Acid Rain Program, including accuracy and precision statements, NIST traceability certificates or protocols, or other supporting data, as applicable to the proposed alternative.

* * * * *

(g) *Petitions for emissions or heat input apportionments.* The designated representative of an affected unit shall provide information to describe a method for emissions or heat input apportionment under §§ 75.13, 75.16, 75.17, or appendix D of this part. This petition may be submitted as part of the monitoring plan. Such a petition shall contain, at a minimum, the following information:

(1) A description of the units, including their fuel type, their boiler type, and their categorization as Phase I units, substitution units, compensating units, Phase II units, new units, or non-affected units;

(2) A formula describing how the emissions or heat input are to be apportioned to which units;

(3) A description of the methods and parameters used to apportion the emissions or heat input; and

(4) Any other information necessary to demonstrate that the apportionment method accurately measures emissions or heat input and does not underestimate emissions or heat input from affected units.

(h) *Partial recertification petition.* The designated representative of an affected unit may provide information and petition the Administrator to specify which of the certification tests required by § 75.20 apply for partial recertification of the affected unit. Such a petition shall include the following information:

(1) Identification of the monitoring system(s) being changed;

(2) A description of the changes being made to the system;

(3) An explanation of why the changes are being made; and

(4) A description of the possible effect upon the monitoring system's ability to measure, record, and report emissions.

(i) *Any other petitions to the Administrator under this part.* The designated representative for an affected unit shall include sufficient information for the evaluation of any other petition submitted to the Administrator under this part.

50. Section 75.67 is amended by revising paragraph (a) to read as follows:

§ 75.67 Retired units petitions.

(a) For units that will be permanently retired prior to January 1, 1995, if the designated representative submits a complete petition, as required in § 72.8 of this chapter, to the Administrator prior to the deadline in § 75.4 by which the continuous emission or opacity monitoring systems must complete the required certification tests, the Administrator will issue an exemption from the requirements of this part, including the requirement to install and certify continuous emission monitoring systems.

* * * * *

Appendix A to Part 75—Specifications and Test Procedures

51. Appendix A to part 75, section 1 is amended by revising section 1.1.2, by revising the fourth sentence in section 1.2; and by revising section 1.2.1 and by revising the first sentence of section 1.2.2 to read as follows:

1. Installation and Measurement Location

1.1 * * *

1.1.1 * * *

1.1.2 Path Pollutant Concentration and CO_2 or O_2 Gas Monitors

Locate the measurement path (1) totally within the inner area bounded by a line 1.0 meter from the stack or duct wall, or (2) such that at least 70.0 percent of the path is within the inner 50.0 percent of the stack or duct cross-sectional area, or (3) such that the path is centrally located within any part of the centroidal area.

1.2 Flow Monitors

* * * The EPA recommends (but does not require) performing a flow profile study following the procedures in 40 CFR part 60, appendix A, Method, 1, section 2.5 or 2.4 for each of the three operating or load levels indicated in section 6.5.2 of this appendix to determine the acceptability of the potential flow monitor location and to determine the number and location of flow sampling points required to obtain a representative flow value. * * *

1.2.1 Acceptability of Monitor Location

The installation of a flow monitor is acceptable if either (1) the location satisfies the minimum siting criteria of Method 1 in Appendix A to part 60 of this chapter (i.e., the location is greater than or equal to eight stack or duct diameters downstream and two diameters upstream from a flow disturbance; or, if necessary, two stack or duct diameters downstream and one-half stack or duct diameter upstream from a flow disturbance), or (2) the results of a flow profile study, if performed, are acceptable (i.e., there are no cyclonic (or swirling) or stratified flow conditions), and the flow monitor also satisfies the performance specifications of this part. If the flow monitor is installed in a location that does not satisfy these physical criteria, but nevertheless the monitor achieves the performance specifications of this part, then the location is acceptable, notwithstanding the requirements of this section.

1.2.2 Flow Monitor Certification Date Extension

Whenever the designated representative successfully demonstrates that modifications to the exhaust duct or stack (such as installation of straightening vanes, modifications of ductwork, and the like) are necessary for the flow monitor to meet the performance specifications, the Administrator may approve an interim alternative flow monitoring methodology and an extension to the required certification date for the flow monitor. * * *

* * * * *

52. Appendix A to part 75, section 2 is amended by revising sections 2.1.1; revising the first paragraph of section 2.1.1.1, and by revising sections 2.1.1.2, 2.1.1.4, 2.1.2, 2.1.2.1, 2.1.2.2, 2.1.2.4, 2.1.3 and 2.1.4 to read as follows:

2. Equipment Specifications

2.1 * * *

2.1.1 SO_2 Pollutant Concentration Monitors

Determine, as indicated below, the span value for an SO_2 pollutant concentration monitor so that all expected concentrations can be accurately measured and recorded.

2.1.1.1 Maximum Potential Concentration

The monitor must be capable of accurately measuring up to 125 percent of the maximum potential concentration (MPC) as calculated using Equation A–1a or A–1b. Calculate the maximum potential concentration by using Equation A–1a or A–1b and the maximum percent sulfur and minimum gross calorific value (GCV) for the highest sulfur fuel to be burned, using daily fuel sample data if they are available. If an SO_2 CEMS is already installed, the owner or operator may determine an MPC based upon the maximum concentration observed during the previous 30 unit operating days when using the type of fuel to be burned. For initial certification, base the maximum percent sulfur and minimum GCV on the results of all available fuel sampling and analysis data from the previous 12 months (where such data exists). If the unit has not been operated during that period, use the maximum sulfur content and minimum GCV from the fuel contract for fuel that will be combusted by the unit. Whenever the fuel supply changes such that these maximum sulfur and minimum GCV values may change significantly, base the maximum percent sulfur and minimum GCV on the new fuel with the highest sulfur content. Use the one of the two following methods that results in a higher MPC: (1) Results of samples representative of the new fuel supply, or (2) maximum sulfur and minimum GCV from the fuel contract for fuel that will be combusted by the unit. Whenever performing fuel sampling to determine the MPC, use ASTM Methods ASTM D3177–89, "Standard Test Methods for Total Sulfur in the Analysis Sample of Coal and Coke," ASTM D4239–85, "Standard Test Methods for Sulfur in the Analysis Sample of Coal and Coke Using High Temperature Tube Furnace Combustion Methods," ASTM D4294–90, "Standard Test Method for Sulfur in Petroleum Products by Energy-Dispersive X-Ray Fluorescence Spectroscopy," ASTM D1552–90, "Standard Test Method for Sulfur in Petroleum Products (High Temperature Method)," ASTM D129–91, "Standard Test Method for Sulfur in Petroleum Products (General Bomb Method)," or ASTM D2622–92, "Standard Test Method for Sulfur in Petroleum Products by X-Ray Spectrometry" for sulfur content of solid or liquid fuels, or ASTM D3176–89, "Standard Practice for Ultimate Analysis of Coal and Coke", ASTM D240–87 (Reapproved 1991), "Standard Test Method for Heat of Combustion of Liquid Hydrocarbon Fuels by Bomb Calorimeter", or ASTM D2015–91, "Standard Test Method for Gross Calorific Value of Coal and Coke by the Adiabatic Bomb Calorimeter" for GCV (incorporated by reference under § 75.6). Multiply the maximum potential concentration by 125 percent, and round up the resultant concentration to the nearest multiple of 100 ppm to determine the span value. The span value will be used to determine the concentrations of the calibration gases. Include the full-scale range setting and calculations of the span and MPC in the monitoring plan for the unit. Select the full-scale range of the instrument to be consistent with section 2.1 of this appendix, and to be greater than or equal to the span value. This selected monitor range with a span rounded up from 125 percent of the maximum potential concentration will be the "high-scale" of the SO_2 pollutant concentration monitor.

$$MPC = 11.32 \times 10^6 \left(\frac{\%S}{GCV}\right)\left(\frac{20.9 - \%O_{2w}}{20.9}\right) \quad \text{(Eq. A–1a)}$$

or

$$MPC = 66.93 \times 10^6 \left(\frac{\%S}{GCV}\right)\left(\frac{\%CO_{2w}}{100}\right) \quad \text{(Eq. A–1b)}$$

2.1.1.2 Maximum Expected Concentration

If the majority of SO_2 concentration values are predicted to be less than 25 percent of the full-scale range of the instrument selected under section 2.1.1.1 of this appendix, (e.g., where an SO_2 add-on emission control is used or where fuel with different sulfur contents are blended), use an additional (lower) measurement range. For this second range, use Equation A–2 to calculate the maximum expected concentration (MEC) for units with emission controls. For units blending fuels, calculate the MEC using a best estimate of the highest sulfur content and lowest gross calorific value expected for the blend and inserting these values into Equation A–1. If an SO_2 CEMS is already installed, the owner or operator may calculate an MEC based upon the maximum concentration measured by the CEMS over a thirty-day period, provided that there have been no full-scale exceedances since the range was last selected. Multiply the maximum expected concentration by 125 percent, and round up the resultant concentration to the nearest multiple of 10 ppm to determine the span value for the additional (lower) range. The span value of this additional range will also be used to determine concentrations of the calibration gases for this additional range. Report the full-scale range setting and calculations of the MEC and span in the monitoring plan for the unit. Select the full-scale range of the instrument of this additional (lower) range to be consistent with section 2.1 of this appendix, and to be greater than or equal to the lower range span value. This selected monitor range with a span rounded up from 125 percent of the MEC will be the "low-scale" of the SO_2 pollutant concentration monitor. Units using a low-scale range must also be capable of accurately measuring the anticipated concentrations up to and including 125 percent of the maximum potential concentration. If an existing State, local, or Federal requirement for span of an SO_2 pollutant concentration monitor requires a span other than that required in this section, but less than that required for the high-scale by this appendix, the State, local or Federal span value may be approved, where a satisfactory explanation is included in the monitoring plan.

$$MEC = MPC[(100 - RE)/100] \quad \text{(Eq. A–2)}$$

Where:

MEC = Maximum expected concentration (ppm).

MPC = Maximum potential concentration (ppm), as determined by Eq. A–1a or A–1b.

RE = Expected average design removal efficiency of control equipment (%).

2.1.1.3 * * *

2.1.1.4 Adjustment of Span

Wherever the SO_2 concentration exceeds the maximum potential concentration but does not exceed the full-scale range during more than one clock-hour and the monitor can measure and record the SO_2 concentration accurately, it may be reported for use in the Acid Rain Program. If the concentration exceeds the monitor's ability to measure and record values accurately during a clock hour, and the full-scale exceedance is not during an out-of-control period, report the full-scale value as the SO_2 concentration for that clock hour. If full-scale exceedances occur during more than one clock hour since the last adjustment of the full-scale range setting, adjust the full-scale range setting to prevent future exceedances.

Whenever the fuel supply or emission controls change such that the maximum expected or potential concentration may change significantly, adjust the span and range setting to assure the continued proper operation of the monitoring system. Determine the adjusted span using the procedures in sections 2.1.1.1 or 2.1.1.2 of this appendix. Select the full scale range of the instrument to be greater than or equal to the new span value and to be consistent with the guidelines of section 2.1 of this appendix. Record and report the new full-scale range setting, calculations of the span, MPC, and MEC (if appropriate), and the adjusted span value, in an updated monitoring plan. In addition, record and report the adjusted span as part of the records for the daily calibration error test and linearity check specified by appendix B of this part. Whenever the span value is adjusted, use calibration gas concentrations based on the most recent adjusted span value. Perform a linearity check according to section 6.2 of this appendix whenever making a change to the monitor span or range. Recertification under § 75.20(b) is required whenever a significant change in the monitor's range also requires an internal modification to the monitor (e.g., a change of measurement cell length).

2.1.2 NO_X Pollutant Concentration Monitors

Determine, as indicated below, the span value(s) for the NO_X pollutant concentration monitor so that all expected NO_X concentrations can be determined and recorded accurately including both the maximum expected and potential concentration.

2.1.2.1 Maximum Potential Concentration

The monitor must be capable of accurately measuring up to 125 percent of the maximum potential concentration (MPC) as determined below in this section. Use 800 ppm for coal-fired and 400 ppm for oil- or gas-fired units as the maximum potential concentration of NO_X, unless a more representative MPC is determined by one of the following methods (If an MPC of 1600 ppm for coal-fired units or 480 ppm for oil- or gas-fired units was previously selected under this part, that value may still be used.): (1) NO_X emission test results, (2) historical CEM data over the previous 30 unit operating days; or (3) specific values based on boiler-type and fuel combusted, listed in Table 2–1 or Table 2–2 if other data under (1) or (2) were not available. Multiply the MPC by 125 percent and round up to the nearest multiple of 100 ppm to determine the span value. The span value will be used to determine the concentrations of the calibration gases.

Report the full-scale range setting, and calculations of the MPC, maximum potential NO_X emission rate, and span in the monitoring plan for the unit. Select the full-scale range of the instrument to be consistent with section 2.1 of this appendix, and to be greater than or equal to the span value. This selected monitor range with a span rounded up from 125 percent of the maximum potential concentration will be the "high-scale" of the NO_X pollutant concentration monitor.

If NO_X emission testing is used to determine the maximum potential NO_X concentration, use the following guidelines: Use Method 7E from appendix A of part 60 of this chapter to measure total NO_X concentration. Operate the unit, or group of units sharing a common stack, at the minimum safe and stable load, the normal load, and the maximum load. If the normal load and maximum load are identical, an intermediate level need not be tested. Operate at the highest excess O_2 level expected under normal operating conditions. Make at least three runs with three traverse points of at least 20 minutes duration at each operating condition. Select the highest NO_X concentration from all measured values as the maximum potential concentration for NO_X. If historical CEM data are used to determine the MPC, the data must represent various operating conditions, including the minimum safe and stable load, normal load, and maximum load. Calculate the MPC and span using the highest hourly NO_X concentration in ppm. If no test data or historical CEM data are available, use Table 2–1 or Table 2–2 to estimate the maximum potential concentration based upon boiler type and fuel used.

TABLE 2–1.—MAXIMUM POTENTIAL CONCENTRATION FOR NO_X—COAL-FIRED UNITS

Unit type	Maximum potential concentration for NO_X (ppm)
Tangentially-fired dry bottom and fluidized bed	460
Wall-fired dry bottom, turbo-fired dry bottom, stokers	675
Roof-fired (vertically-fired) dry bottom, cell burners, arch-fired	975
Cyclone, wall-fired wet bottom, wet bottom turbo-fired	1200
Others	As approved by the Administrator.

TABLE 2–2.—MAXIMUM POTENTIAL CONCENTRATION FOR NO_X—GAS- AND OIL-FIRED UNITS

Unit type	Maximum potential concentration for NO_X (ppm)
Tangentially-fired dry bottom	380
Wall-fired dry bottom	500
Roof-fired (vertically-fired) dry bottom, arch-fired	550
Existing combustion turbine or combined cycle turbine	200
New stationary gas turbine/combustion turbine	50
Others	As approved by the Administrator.

2.1.2.2 Maximum Expected Concentration

If the majority of NO_X concentrations are expected to be less than 25 percent of the full-scale range of the instrument selected under section 2.1.2.1 of this appendix (e.g., where a NO_X add-on emission control is used) use a "low-scale" measurement range. For units with add-on emission controls, determine the maximum expected concentration (MEC) of NO_X using Equation A–2, inserting the maximum potential concentration, as determined using the procedures in section 2.1.2.1 of this appendix. Where Equation A–2 is not appropriate, set the MEC, either (1) by measuring the NO_X concentration using the testing procedures in section 2.1.2.1 of this appendix, or (2) by using historical CEM data over the previous 30 unit operating days. Other methods for determining the MEC may be accepted if they are satisfactorily explained in the monitoring plan. If an existing State, local, or Federal requirement for span of an NO_X pollutant concentration monitor requires a span other than that required in this section, but less than that required for the high scale by this appendix, the State, local, or Federal span value may be approved, where a satisfactory explanation is included in the monitoring plan. Calculate the span for the additional (lower) range by multiplying the maximum expected concentration by 125 percent and by rounding up the resultant concentration to the nearest multiple of 10 ppm. The span value of this additional (lower) range will also be used to determine the concentrations of the calibration gases. Include the full-scale range setting and calculations of the MEC and span in the monitoring plan for the unit. Select the full-scale range of the instrument to be consistent with section 2.1 of this appendix, and to be greater or equal to the lower range span value. This selected monitor range with a span rounded up from 125 percent of the maximum expected concentration is the "low-scale" of NO_X pollutant concentration monitors. NO_X pollutant concentration monitors on affected units with NO_X emission controls, or on other units with monitors using a low-scale range, must also be capable of accurately measuring up to 125 percent of the maximum potential concentration. For dual-span NO_X pollutant concentration monitors, determine the concentration of calibration gases based on both span values.

2.1.2.3 * * *

2.1.2.4 Adjustment of Span

Wherever the actual NO_X concentration exceeds the maximum potential concentration but does not exceed the full-scale range for more than one clock-hour and the monitor can measure and record the NO_X concentration values accurately, the NO_X concentration values may be reported for use in the Acid Rain Program. If the concentration exceeds the monitor's ability to measure and record values accurately during a clock hour, and the full-scale exceedance is not during an out-of-control period, report the full-scale value as the NO_X concentration for that clock hour. If full-scale exceedances occur during more than one clock hour since the last adjustment of the full-scale range setting, adjust the full-scale range setting to prevent future exceedances.

Whenever the fuel supply, emission controls, or other process parameters change such that the maximum expected concentration or the maximum potential concentration may change significantly, adjust the NO_X pollutant concentration span and monitor range to assure the continued accuracy of the monitoring system. Determine the adjusted span value using the procedures in sections 2.1.2.1 or 2.1.2.2 of this appendix. Select the new full scale range of the instrument to be greater than or equal to the adjusted span value and to be consistent with the guidelines of section 2.1 of this appendix. Record and report the new full-scale range setting, calculations of the span value, MPC, and MEC (if appropriate), maximum potential NO_X emission rate and the adjusted span value in an updated monitoring plan for the unit. In addition, record and report the adjusted span as part of the records for the daily calibration error test and linearity check required by appendix B of this part. Whenever the span value is adjusted, use calibration gas concentrations based on the most recent adjusted span value. Perform a linearity check according to section 6.2 of this appendix whenever making a change to the monitor span or range. Recertification under § 75.20(b) is required whenever a significant change is made in the monitor's range that requires an internal modification to the monitor (e.g., a change of measurement cell length).

2.1.3 CO_2 and O_2 Monitors

Define the "high scale" span value as 20 percent O_2 or 20 percent CO_2. All O_2 and CO_2 analyzers must have "high-scale" measurement capability. Select the full-scale range of the instrument to be consistent with section 2.1 of this appendix, and to be greater than or equal to the span value. If the O_2 or CO_2 concentrations are expected to be consistently low, a "low scale" measurement range may be used for increased accuracy, provided that it is consistent with section 2.1 of this appendix. Include a span value for the low-scale range in the monitoring plan. Select the calibration gas concentrations as percentages of the span value.

2.1.4 Flow Monitors

Select the full-scale range of the flow monitor so that it is consistent with section 2.1 of this appendix, and can accurately measure all potential volumetric flow rates at the flow monitor installation site. For this purpose, determine the span value of the flow monitor using the following procedure. Calculate the maximum potential velocity (MPV) using Equation A–3a or A–3b or determine the MPV or maximum potential flow rate (MPF) in scfh (wet basis) from velocity traverse testing. If using test values, use the highest velocity measured at or near the maximum unit operating load. Calculate the MPV in units of wet standard fpm. Then, if necessary, convert the MPV to equivalent units of flow rate (e.g., scfh or kscfh) or differential pressure (inches of water), consistent with the measurement units used for the daily calibration error test to calculate the span value. Multiply the MPV (in

equivalent units) by 125 percent, and round up the result to no less than 2 significant figures. Report the full-scale range setting.

$$MPV = \left(\frac{F_d H_f}{A}\right)\left(\frac{20.9}{20.9 - \%O_{2d}}\right)\left[\frac{100}{100 - \%H_2O}\right] \quad \text{(Eq. A–3a)}$$

or

$$MPV = \left(\frac{F_d H_f}{A}\right)\left(\frac{100}{\%CO_{2d}}\right)\left[\frac{100}{100 - \%H_2O}\right] \quad \text{(Eq. A–3b)}$$

Where:

MPV=maximum potential velocity (fpm, standard wet basis),
Fd=dry-basis F factor (dscf/mmBtu) from Table 1, Appendix F of this part,
Fc=carbon-based F factor (scfCO2/mmBtu) from Table 1, Appendix F of this part,
Hf=maximum heat input (mmBtu/minute) for all units, combined, exhausting to the stack or duct where the flow monitor is located,
A=inside cross sectional area (ft2) of the flue at the flow monitor location,
%O2d=maximum oxygen concentration, percent dry basis, under normal operating conditions,
%CO2d=minimum carbon dioxide concentration, percent dry basis, under normal operating conditions,
$\%H_2O$ = maximum percent flue gas moisture content under normal operating conditions.

If the volumetric flow rate exceeds the maximum potential flow calculated from the maximum potential velocity but does not exceed the full scale range during more than one clock hour and the flow monitor can accurately measure and record values, the flow rate may be reported for use in the Acid Rain Program. If the volumetric flow rate exceeds the monitor's ability to measure and record values accurately during a clock hour, and the full-scale exceedance is not during an out-of-control period, report the full-scale value as the flow rate for that clock hour. If full-scale exceedance occurs during more than one hour since the last adjustment of the full-scale range setting, adjust the full-scale range setting to prevent future exceedances. If the fuel supply, process parameters or other conditions change such that the maximum potential velocity may change significantly, adjust the range to assure the continued accuracy of the flow monitor. Calculate an adjusted span using the procedures in this section. Select the full-scale range of the instrument to be greater than or equal to the adjusted span value. Record and report the new full-scale range setting, calculations of the span value, MPV, and MPF, and the adjusted span value in an updated monitoring plan for the unit. Record and report the adjusted span and reference values as parts of the records for the calibration error test required by appendix B of this part. Whenever the span value is adjusted, use reference values for the and calculations of the span value, MPV and MPF in the monitoring plan for the unit.

calibration error test based on the most recent adjusted span value.

Perform a calibration error test according to section 2.1.2 of this appendix whenever making a change to the flow monitor span or range. Recertification under § 75.20(b) is required whenever making a significant change in the flow monitor's range that requires an internal modification to the monitor.

* * * * *

53. Appendix A to part 75, section 3 is amended by revising sections 3.3.3 and 3.5 to read as follows:

3. Performance Specifications

* * * * *

3.3 * * *

3.3.1 * * *

3.3.2 * * *

3.3.3 Relative Accuracy for CO_2 and O_2 Pollutant Concentration Monitors

The relative accuracy for CO_2 and O_2 monitors shall not exceed 10.0 percent. The relative accuracy test results are also acceptable if the mean difference of the CO_2 or O_2 monitor measurements and the corresponding reference method measurement, calculated using Equation A–7 of this appendix, is within 1.0 percent CO_2 or O_2.

* * * * *

3.5 Cycle Time

The cycle time for pollutant concentration monitors, and continuous emission monitoring systems shall not exceed 15 min.

* * * * *

54. Appendix A to part 75, section 4 is amended by adding a third paragraph to read as follows:

4. Data Acquisition and Handling Systems

* * * * *

For an excepted monitoring system under appendix D or E of this part, data acquisition and handling systems shall:

(1) Read and record the full range of fuel flowrate through the upper range value;

(2) Calculate and record intermediate values necessary to obtain emissions, such as mass fuel flowrate and heat input rate;

(3) Calculate and record emissions in units of the standard (lb/hr of SO_2, lb/mmBtu of NO_X);

(4) Predict and record NO_X emission rate using the heat input rate and the NO_X/heat input correlation developed under appendix E of this part;

(5) Calculate and record all missing data substitution values specified in appendix D or E of this part; and

(6) Provide a continuous, permanent record of all measurements and required information as an ASCII flat file capable of transmission via an IBM-compatible personal computer diskette or other electronic media.

* * * * *

55. Appendix A to part 75, section 5 is amended by revising section 5.1.2 and by adding sections 5.1.4, 5.1.5, and 5.1.6 to read as follows:

5. Calibration Gas

5.1 Reference Gases

5.1.1 * * *

5.1.2 NIST Traceable Reference Materials

Contact the Quality Assurance Division (MD 77), Environmental Monitoring System Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711 or the Organic Analytical Research Division of NIST at the above address for Standard Reference Materials for a list of vendors and cylinder gases.

5.1.3 * * *

5.1.4 Research Gas Mixtures

Contact the Quality Assurance Division (MD 77), Environmental Monitoring System Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711 or the Organic Analytical Research Division of NIST at the above address for Standard Reference Materials for a list of vendors and cylinder gases.

5.1.5 Zero Air Material

Use zero air material for calibrating at zero-level concentrations only. Zero air material shall be certified by the gas vendor or instrument manufacturer or vendor not to contain concentrations of SO_2 or NO_X above 0.1 ppm or CO_2 above 400 ppm, and not to contain concentrations of other gases that will interfere with instrument readings or cause the instrument to read concentrations of SO_2, NO_X, or CO_2.

5.1.6 NIST/EPA-approved Certified Reference Materials

Existing certified reference materials as previously certified under EPA's former certified reference material program may be used for the remainder of the cylinder's shelf life.

* * * * *

56. Appendix A to part 75, section 6 is amended by adding a sentence to the end of section 6.1; by revising the first sentence in the second paragraph of section 6.2; and by revising sections 6.5, 6.5.1, 6.5.2, 6.5.5, 6.5.6, 6.5.7, and 6.5.10 to read as follows:

6. Certification Tests and Procedures

6.1 Pretest Preparation

* * * To the extent practicable, test the DAHS software prior to testing the monitoring hardware.

6.2 Linearity Check

* * * * *

Challenge each pollutant concentration or CO_2 or O_2 monitor with NIST/EPA-approved certified reference material, NIST traceable reference material, standard reference material, or Protocol 1 calibration gases certified to be within 2 percent of the concentration specified on the label at the low-, mid-, or high-level concentrations specified in section 5.2 of this appendix.

* * *

* * * * *

6.5 Relative Accuracy and Bias Tests

Perform relative accuracy test audits for each CO_2 and SO_2 pollutant concentration monitor, each O_2 monitor used to calculate heat input or CO_2 concentration, each SO_2-diluent continuous emission monitoring system (lb/mmBtu) used by units with a qualifying Phase I technology for the period during which the units are required to monitor SO_2 emission removal efficiency, from January 1, 1997 through December 31, 1999, flow monitor, and NO_X continuous emission monitoring system. For monitors or monitoring systems with dual ranges, perform the relative accuracy test on one range measuring emissions in the stack at the time of testing. Record monitor or monitoring system output from the data acquisition and handling system. Perform concurrent relative accuracy test audits for each SO_2 pollutant concentration monitor and flow monitor, at least once a year (see section 2.3.1 of appendix B of this part), during the flow monitor test at the normal operating level specified in section 6.5.2 of this appendix. Concurrent relative accuracy test audits may be performed by conducting simultaneous SO_2 and flow relative accuracy test audit runs, or by alternating an SO_2 relative accuracy test audit run with a flow relative accuracy test audit run until all relative accuracy test audit runs are completed. Where two or more probes are in the same proximity, care should be taken to prevent probes from interfering with each other's sampling. For each SO_2 pollutant concentration monitor, each flow monitor, and each NO_X continuous emission monitoring system, calculate bias, as well as relative accuracy, with data from the relative accuracy test audits.

Complete each relative accuracy test audit within a 7-day period while the unit (or units, if more than one unit exhausts into the flue) is combusting the fuel that is normal for that unit. When relative accuracy test audits are performed on continuous emission monitoring systems or component(s) on bypass stacks/ducts, use the fuel normally combusted by the unit (or units, if more than one unit exhausts into the flue) when emissions exhaust through the bypass stack/ducts. Do not perform corrective maintenance, repairs, replacements or adjustments during the relative accuracy test audit other than as required in the operation and maintenance manual.

6.5.1 SO_2, O_2 and CO_2 Pollutant Concentration Monitors and SO_2-Diluent and NO_X Continuous Emission Monitoring Systems

Perform relative accuracy test audits for each SO_2, O_2 or CO_2 pollutant concentration monitor or NO_X continuous emission monitoring system or SO_2-diluent continuous emission monitoring system (lb/mmBtu) used by units with a qualifying Phase I technology for the period during which the units are required to monitor SO_2 emission removal efficiency, from January 1, 1997 through December 31, 1999, at a normal operating level for the unit (or combined units, if common stack).

6.5.2 Flow Monitors

Except for flow monitors on bypass stacks/ducts and peaking units, perform relative accuracy test audits for each flow monitor at three different exhaust gas velocities, expressed in terms of percent of flow monitor span, or different operating or load levels. For a common stack/duct, the three different exhaust gas velocities may be obtained from frequently used unit/load combinations for units exhausting to the common stack. Select the operating levels as follows: (1) A frequently used low operating level selected within the range between the minimum safe and stable operating level and 50 percent load, (2) a frequently used high operating level selected within the range between 80 percent of the maximum operating level and the maximum operating level, and (3) the normal operating level. If the normal operating level is within 10.0 percent of the maximum operating level of either (1) or (2) above, use a level that is evenly spaced between the low and high operating levels used. The maximum operating level shall be equal to the nameplate capacity less any physical or regulatory limitations or other deratings. Calculate flow monitor relative accuracy at each of the three operating levels. If a flow monitor fails the relative accuracy test on any of the three levels of a three-level relative accuracy test audit, the three-level relative accuracy test audit must be repeated. For flow monitors on bypass stacks/ducts and peaking units, the flow monitor relative accuracy test audit is required only at the normal operating level.

6.5.3 * * *

6.5.4 * * *

6.5.5 Reference Method Measurement Location

Select a location for reference method measurements that is (1) accessible; (2) in the same proximity as the monitor or monitoring system location; and (3) meets the requirements of Performance Specification 2 in appendix B of part 60 of this chapter for SO_2 and NO_X continuous emission monitoring systems, Performance Specification 3 in appendix B of part 60 of this chapter for CO_2 or O_2 monitors, or Method 1 (or 1A) in appendix A of part 60 of this chapter for volumetric flow, except as otherwise indicated in this section or as approved by the Administrator.

6.5.6 Reference Method Traverse Point Selection

Select traverse points that (1) ensure acquisition of representative samples of pollutant and diluent concentrations, moisture content, temperature, and flue gas flow rate over the flue cross section; and (2) meet the requirements of Performance Specification 2 in appendix B of part 60 of this chapter (for SO_2 and NO_X), Performance Specification 3 in appendix B of part 60 of this chapter (for O_2 and CO_2), Method 1 (or 1A) (for volumetric flow), Method 3 (for molecular weight), and Method 4 (for moisture determination) in appendix A of part 60 of this chapter.

6.5.7 Sampling Strategy

Conduct the reference method tests so they will yield results representative of the pollutant concentration, emission rate, moisture, temperature, and flue gas flow rate from the unit and can be correlated with the pollutant concentration monitor, CO_2 or O_2 monitor, flow monitor, and SO_2 or NO_X continuous emission monitoring system measurements. Conduct the diluent (O_2 or CO_2) measurements and any moisture measurements that may be needed simultaneously with the pollutant concentration and flue gas flow rate measurements. If an O_2 monitor is used as a CO_2 continuous emission monitoring system, but not as a diluent monitor, measure CO_2 with the reference method. To properly correlate individual SO_2 and CO_2 pollutant concentration monitor data, O_2 monitor data, SO_2 or NO_X continuous emission monitoring system data (in lb/mmBtu), and volumetric flow rate data with the reference method data, mark the beginning and end of each reference method test run (including the exact time of day) on the individual chart recorder(s) or other permanent recording device(s).

6.5.8 * * *

6.5.9 * * *

6.5.10 Reference Methods

The following methods from appendix A to part 60 of this chapter or their approved alternatives are the reference methods for performing relative accuracy test audits: Method 1 or 1A for siting; Method 2 (or 2A, 2C, or 2D) for velocity; Methods 3, 3A, or 3B for O_2 or CO_2; Method 4 for moisture;

Methods 6, 6A, or 6C for SO_2; Methods 7, 7A, 7C, 7D, 7E for NO_X, excluding the exception in section 5.1.2 of Method 7E. When using Method 7E for measuring NO_X concentration, total NO_X, both NO and NO_2, must be measured.

* * * * *

58. Appendix A to part 75, section 7 is amended by revising section 7.2.2; by revising the section heading for section 7.3; and by revising sections 7.6.4 and 7.6.5 to read as follows:

7. Calculations

* * * * *

7.2.2 Flow Monitor Calibration Error

For each reference value, calculate the percentage calibration error based upon span using the following equation:

$$CE = \frac{|R-A|}{S} \times 100 \qquad \text{(Eq. A–6)}$$

where:

CE=Calibration error;

R=Low or high level reference value specified in section 2.2.2.1 of this appendix;

A=Actual flow monitor response to the reference value; and

S=Flow monitor span or equivalent reference value (e.g., pressure pulse or electronic signal).

7.3 Relative Accuracy for SO_2 and CO_2 Pollutant Concentration Monitors, SO_2-Diluent Continuous Emission Monitoring Systems, and Flow Monitors

* * * * *

7.6.4 Bias Test

If the mean difference, d , is greater than the absolute value of the confidence coefficient, |cc|, the monitor or monitoring system has failed to meet the bias test requirement. For flow monitor bias tests, if the mean difference, d, is greater than |cc| at the operating level closest to normal operating level during the 3-level RATA, the monitor has failed to meet the bias test requirement. For flow monitors, apply the bias test at the operating level closest to normal operating level during the 3-level RATA.

7.6.5 Bias Adjustment

If the monitor or monitoring system fails to meet the bias test requirement, adjust the value obtained from the monitor using the following equation:

$$CEM_i^{Adjusted} = CEM_i^{Monitor} \times BAF \qquad \text{(Eq. A–11)}$$

Where:

$CEM_i^{Adjusted}$=Data (measurement) provided by the monitor at time i.

$CEM_i^{Monitor}$=Data value, adjusted for bias, at time i.

BAF=Bias adjustment factor, defined by

$$BAF = 1 + \frac{|\bar{d}|}{CEM} \qquad \text{(Eq. A–12)}$$

Where:

BAF=Bias adjustment factor, calculated to the nearest thousandth.

d=Arithmetic mean of the difference obtained during the failed bias test using Equation A–7.

CEM=Mean of the data values provided by the monitor during the failed bias test.

If the bias test is failed by a flow monitor at the operating level closest to normal on a 3-level relative accuracy test audit, calculate the bias adjustment factor for each of the three operating levels. Apply the largest of the three bias adjustment factors to subsequent flow monitor data using Equation A–11.

Apply this adjustment prospectively to all monitor or monitoring system data from the date and time of the failed bias test until the date and time of a relative accuracy test audit that does not show bias. Use the adjusted values in computing substitution values in the missing data procedure, as specified in subpart D of this part, and in reporting the concentration of SO_2, the flow rate, and the average NO_X emission rate and calculated mass emissions of SO_2 and CO_2 during the quarter and calendar year, as specified in subpart G of this part.

* * * * *

APPENDIX B TO PART 75—QUALITY ASSURANCE AND QUALITY CONTROL PROCEDURES

59. Appendix B to part 75, section 2 is amended by revising sections 2.1.4, 2.2, 2.2.1, 2.2.2, 2.3, 2.3.1, and 2.3.2; and by amending Figure 2 at the end of the appendix to read as follows:

* * * * *

2. Frequency of Testing

2.1 Daily Assessments * * *

2.1.1 * * *

2.1.2 * * *

2.1.3 * * *

2.1.4 Recalibration

The EPA recommends adjusting the calibration, at a minimum, whenever the daily calibration error exceeds the limits of the applicable performance specification for the pollutant concentration monitor, CO_2, or O_2 monitor, or flow monitor in appendix A of this part.

* * * * *

2.2 Quarterly Assessments

For each monitor or continuous emission monitoring system, perform the following assessments during each unit operating quarter, or for monitors or monitoring systems on bypass ducts or bypass stacks, during each bypass operating quarter to be performed not less than once every 2 calendar years. This requirement is effective as of the calendar quarter following the calendar quarter in which the monitor or continuous emission monitoring system is provisionally certified.

2.2.1 Linearity Check

Perform a linearity check for each SO_2 and NO_X pollutant concentration monitor and each CO_2 or O_2 monitor at least once during each unit operating quarter or each bypass operating quarter, in accordance with the procedures in appendix A, section 6.2 of this part. For units using emission controls and other units using a low-scale span value to determine calibration gases, perform a linearity check on both the low- and high-scales. Conduct the linearity checks no less than 2 months apart, to the extent practicable.

2.2.2 Leak Check

For differential pressure flow monitors, perform a leak check of all sample lines (a manual check is acceptable) at least once during each unit operating quarter or each bypass operating quarter. Conduct the leak checks no less than 2 months apart, to the extent practicable.

2.2.3 * * *

2.3 Semiannual and Annual Assessments

For each monitor or continuous emission monitoring system, perform the following assessments once semiannually (within two calendar quarters) or once annually (within four calendar quarters) after the calendar quarter in which the monitor or monitoring system was last tested, as specified below for the type of test and the performance achieved, except as provided below in section 2.3.1 of this appendix for monitors or continuous emission monitoring systems on bypass ducts or stacks or on peaking units. This requirement is effective as of the calendar quarter, unit operating quarter (for peaking units), or bypass operating quarter (for bypass stacks or ducts) following the calendar quarter in which the monitor or continuous emission monitoring system is provisionally certified. A summary chart showing the frequency with which a relative accuracy test audit must be performed, depending on the accuracy achieved, is located at the end of this appendix in Figure 2.

2.3.1 Relative Accuracy Test Audit

Perform relative accuracy test audits semiannually and, to the extent practicable, no less than 4 months apart for each SO_2 or CO_2 pollutant concentration monitor, flow monitor, NO_X continuous emission monitoring system, or SO_2-diluent continuous emission monitoring systems used by units with a Phase I qualifying technology for the period during which the units are required to monitor SO_2 emission removal efficiency, from January 1, 1997 through December 31, 1999, except as provided for monitors or continuous emission monitoring systems on peaking units or bypass stacks or ducts. For monitors on bypass stacks/ducts, perform relative accuracy test audits no less than once every two successive bypass operating quarters, or once every two calendar years, whichever occurs first, in accordance with the procedures in section 6.5 of Appendix A of this part. For monitors on peaking units, perform relative accuracy test audits no less than once every two successive unit operating quarters, or once every two calendar years, whichever occurs first. Audits required under this section shall be performed no less than 4 months apart, to the extent practicable. The audit frequency may be reduced, as specified below for monitors or monitoring systems which qualify for less frequent testing.

For flow monitors, one-level and three-level relative accuracy test audits shall be performed alternately (when a flow RATA is conducted semiannually), such that the three-level relative accuracy test audit is performed at least once annually. The three-level audit shall be performed at the three different operating or load levels specified in appendix A, section 6.5.2 of this part, and the one-level audit shall be performed at the normal operating or load level. Notwithstanding that requirement, relative accuracy test audits need only be performed at the normal operating or load level for monitors and continuous emission monitoring systems on peaking units and bypass stacks/ducts.

Relative accuracy test audits may be performed on an annual basis rather than on a semiannual basis (or for monitors on peaking units and bypass ducts or bypass stacks, no less than (1) once every four successive unit or bypass operating quarters, or (2) every two calendar years, whichever occurs first) under any of the following conditions: (1) The relative accuracy during the previous audit for an SO_2 or CO_2 pollutant concentration monitor (including an O_2 pollutant monitor used to measure CO_2 using the procedures in appendix F of this part), or for a NO_X or SO_2-diluent continuous emissions monitoring system is 7.5 percent or less; (2) prior to January 1, 2000, the relative accuracy during the previous audit for a flow monitor is 10.0 percent or less at each operating level tested; (3) on and after January 1, 2000, the relative accuracy during the previous audit for a flow monitor is 7.5 percent or less at each operating level tested; (4) on low flow (≤10.0 fps) stacks/ducts, when the monitor mean, calculated using Equation A–7 in appendix A of this part is within ±1.5 fps of the reference method mean or achieves a relative accuracy of 7.5 percent (10 percent if prior to January 1, 2000) or less during the previous audit; (5) on low SO_2 emitting units (SO_2 concentrations ≤250.0 ppm, or equivalent lb/mmBtu value for SO_2-diluent continuous emission monitoring systems), when the monitor mean is within ±8.0 ppm (or equivalent in lb/mmBtu for SO_2-diluent continuous emission monitoring systems) of the reference method mean or achieves a relative accuracy of 7.5 percent or less during the previous audit; or (6) on low NO_X emitting units (NO_X emission rate ≤0.20 lb/mmBtu), when the NO_X continuous emission monitoring system achieves a relative accuracy of 7.5 percent or less or when the monitoring system mean, calculated using Equation A–7 in appendix A of this part is within ±0.01 lb/mmBtu of the reference method mean.

A maximum of two relative accuracy test audit trials may be performed for the purpose of achieving the results required to qualify for less frequent relative accuracy test audits. Whenever two trials are performed, the results of the second (later) trial must be used in calculating both the relative accuracy and bias.

2.3.2 Out-of-Control Period

An out-of-control period occurs under any of the following conditions: (1) The relative accuracy of an SO_2, CO_2, or O_2 pollutant concentration monitor or a NO_X or SO_2-diluent continuous emission monitoring system exceeds 10.0 percent; (2) prior to January 1, 2000, the relative accuracy of a flow monitor exceeds 15.0 percent; (3) on and after January 1, 2000, the relative accuracy of a flow monitor exceeds 10.0 percent; (4) for low flow situations (≤10.0 fps), the flow monitor mean value (if applicable) exceeds ±2.0 fps of the reference method mean whenever the relative accuracy is greater than 15.0 percent for Phase I or 10 percent for Phase II; (5) for low SO_2 emitter situations, the monitor mean values exceeds ±15.0 ppm (or ± 0.03 lb/mmBtu for SO_2-diluent continuous emission monitoring systems from January 1, 1997 through December 31, 1999) of the reference method mean whenever the relative accuracy is greater than 10.0 percent; or (6) for low NO_X emitting units (NO_X emission rate ≤0.2 lb/mmBtu), the NO_X continuous emission monitoring system mean values exceed ±0.02 lb/mmBtu of the reference method mean whenever the relative accuracy is greater than 10.0 percent. For SO_2, CO_2, O_2, NO_X emission rate, and flow relative accuracy test audits performed at only one level, the out-of-control period begins with the hour of completion of the failed relative accuracy test audit and ends with the hour of completion of a satisfactory relative accuracy test audit. For a flow relative accuracy test audit at 3 operating levels, the out-of-control period begins with the hour of completion of the first failed relative accuracy test audit at any of the three operating levels, and ends with the hour of completion of a satisfactory three-level relative accuracy test audit.

Failure of the bias test does not result in the system or monitor being out-of-control.

* * * * *

FIGURE 2.—RELATIVE ACCURACY TEST FREQUENCY INCENTIVE SYSTEM

RATA	Semiannually[1] (percent)	Annual[1]
SO_2	RA ≤ 10	RA ≤ 7.5% or ±8.0 ppm.[2]
NO_X	RA ≤ 10	RA ≤ 7.5% or ±0.01 lb/mmBtu.[2]
Flow (Phase I)[3]	RA ≤ 15	RA ≤ 10% or ± 1.5 fps.[2]
Flow (Phase II)[3]	RA ≤ 10	RA ≤ 7.5% or ± 1.5 fps.[2]
CO_2/O_2	RA ≤ 10	RA ≤ 7.5%.

[1] For monitors on bypass stack/duct, bypass operating quarters, not to exceed two calendar years. For monitors on peaking units, unit operating quarters, not to exceed two calendar years.

[2] The difference between monitor and reference method mean values; low emitters or low flow, only.

[3] Conduct 3-load RATAs annually, if requirements to qualify for less frequent testing are met.

Appendix C to Part 75—Missing Data Estimation Procedures

60. Appendix C to part 75, section 1 is amended by revising the section heading and the first paragraph of section 1.2 and by revising the first paragraph of section 1.3 to read as follows:

1. Parametric Monitoring Procedure for Missing SO_2 Concentration or NO_X Emission Rate Data

* * * * *

1.2 Petition Requirements

Continuously monitor, determine, and record hourly averages of the estimated SO_2 or NO_X removal efficiency and of the parameters specified below, at a minimum. The affected facility shall supply additional parametric information where appropriate. Measure the SO_2 concentration or NO_X emission rate, removal efficiency of the add-on emission controls, and the parameters for at least 2160 unit operating hours. Provide information for all expected operating conditions and removal efficiencies. At least 4 evenly spaced data points are required for a valid hourly average, except during periods of calibration, maintenance, or quality assurance activities, during which 2 data points per hour are sufficient. The

Administrator will review all applications on a case-by-case basis.

* * * * * *

1.3 Correlation of Emissions With Parameters

Establish a method for correlating hourly averages of the parameters identified above with the percent removal efficiency of the SO_2 or post-combustion NO_X emission controls under varying unit operating loads. Equations 1–7 in § 75.15 may be used to estimate the percent removal efficiency of the SO_2 emission controls on an hourly basis.

* * * * *

61. Appendix C to part 75, section 2 is amended by revising section 2.2.1, Table C–1, and sections 2.2.3, 2.2.3.1, 2.2.3.5, and 2.2.5 to read as follows:

* * * * *

2. Procedure

2.2.1 For a single unit, establish 10 operating load ranges defined in terms of percent of the maximum hourly gross load of the unit, in gross megawatts (MWge), as shown in Table C–1. For units sharing a common stack monitored with a single flow monitor, the load ranges for flow (but not for NO_X) may be broken down into 20 equally-sized operating load ranges in increments of 5 percent of the combined maximum hourly gross load of all units utilizing the common stack. For a cogenerating unit or other unit at which some portion of the heat input is not used to produce electricity or for a unit for which hourly gross load in MWge is not recorded separately, use the hourly gross steam load of the unit, in pounds of steam per hour at the measured temperature (°F) and pressure (psia) instead of MWge. Indicate a change in the number of load ranges or the units of loads to be used in the precertification section of the monitoring plan.

TABLE C–1.—DEFINITION OF OPERATING LOAD RANGES FOR LOAD-BASED SUBSTITUTION DATA PROCEDURES

Operating load range	Percent of maximum hourly gross load (%)
1	0–10
2	10–20
3	20–30
4	30–40
5	40–50
6	50–60
7	60–70
8	70–80
9	80–90
10	90–100

2.2.2 * * *

2.2.3 Beginning with the first hour of unit operation after installation and certification of the flow monitor or the NO_X continuous emission monitoring system and continuing thereafter, the data acquisition and handling system must be capable of calculating and recording the following information for each unit operating hour of missing flow or NO_X data within each identified load range during the shorter of: (1) the previous 2,160 quality assured monitor operating hours (on a rolling basis), or (2) all previous quality assured monitor operating hours.

2.2.3.1 Average of the hourly flow rates reported by a flow monitor, in scfh.

2.2.3.2 * * *

2.2.3.3 * * *

2.2.3.4 * * *

2.2.3.5 Average of the hourly NO_X emission rate, in lb/mmBtu, reported by a NO_X continuous emission monitoring system.

2.2.3.6 * * *

2.2.3.7 * * *

2.2.3.8 * * *

2.2.4 * * *

2.2.5 When a bias adjustment is necessary for the flow monitor and/or the NO_X continuous emission monitoring system, apply the adjustment factor to all monitor or continuous emission monitoring system data values placed in the load ranges.

2.2.6 * * *

Appendix D to Part 75—Optional SO_2 Emissions Data Protocol for Gas-Fired and Oil-Fired Units

62. Appendix D to part 75, section 1 is amended by revising section 1.1; by removing section 1.2 and revising and redesignating section 1.3 as section 1.2; and by removing section 1.4 to read as follows:

1. Applicability

1.1 This protocol may be used in lieu of continuous SO_2 pollutant concentration and flow monitors for the purpose of determining hourly SO_2 emissions and heat input from: (1) gas-fired units as defined in § 72.2 of this chapter; or (2) oil-fired units as defined in § 72.2 of this chapter. This optional SO_2 emissions data protocol contains procedures for conducting oil sampling and analysis in section 2.2 of this appendix; the procedures for flow proportional oil sampling and the procedures for manual daily oil sampling may be used for any gas-fired unit or oil-fired unit. In addition, this optional SO_2 emissions data protocol contains two procedures for determining SO_2 emissions due to the combustion of gaseous fuels; these two procedures may be used for any gas-fired unit or oil-fired unit.

1.2 Pursuant to the procedures in § 75.20, complete all testing requirements to certify use of this protocol in lieu of a flow monitor and an SO_2 continuous emission monitoring system. Complete all testing requirements no later than the applicable deadline specified in § 75.4. Apply to the Administrator for initial certification to use this protocol no later than 45 days after the completion of all certification tests. Whenever the monitoring method is to be changed, reapply to the Administrator for recertification of the new monitoring method.

63. Appendix D to part 75, section 2 is revised to read as follows:

2. Procedure

2.1 Flowmeter Measurements

For each hour when the unit is combusting fuel, measure and record the flow of fuel combusted by the unit, except as provided for gas in section 2.1.4 of this appendix. Measure the flow of fuel with an in-line fuel flowmeter and automatically record the data with a data acquisition and handling system, except as provided in section 2.1.4 of this appendix.

2.1.1 Measure the flow of each fuel entering and being combusted by the unit. If a portion of the flow is diverted from the unit without being burned, and that diversion occurs downstream of the fuel flowmeter, an additional in-line fuel flowmeter is required to account for the unburned fuel. Record the flow of each fuel combusted by the unit as the difference between the flow measured in the pipe leading to the unit and the flow in the pipe diverting fuel away from the unit.

2.1.2 Install and use fuel flowmeters meeting the requirements of this appendix in a pipe going to each unit, or install and use a fuel flowmeter in a common pipe header (i.e., a pipe carrying fuel for multiple units). If the flowmeter is installed in a common pipe header, do one of the following:

2.1.2.1 Measure the fuel flow in the common pipe and combine SO_2 mass emissions for the affected units for recordkeeping and compliance purposes; or

2.1.2.2 Provide information satisfactory to the Administrator on methods for apportioning SO_2 mass emissions and heat input to each of the affected units demonstrating that the method ensures complete and accurate accounting of all emissions regulated under this part. The information shall be provided to the Administrator through a petition submitted by the designated representative under § 75.66. Satisfactory information includes apportionment using fuel flow measurements, the ratio of load (in MWe) in each unit to the total load for all units receiving fuel from the common pipe header, or the ratio of steam flow (in 1000 lb/hr) at each unit to the total steam flow for all units receiving fuel from the common pipe header.

2.1.3 For a gas-fired unit or an oil-fired unit that continuously or frequently combusts a supplemental fuel for flame stabilization or safety purposes, measure the flow of the supplemental fuel with a fuel flowmeter meeting the requirements of this appendix.

2.1.4 For an oil-fired unit that uses gas solely for start-up or burner ignition or a gas-fired unit that uses oil solely for start-up or burner ignition a flowmeter for the start-up fuel is not required. Estimate the volume of oil combusted for each start-up or ignition, either by using a fuel flowmeter or by using the dimensions of the storage container and measuring the depth of the fuel in the storage container before and after each start-up or ignition. A fuel flowmeter used solely for start-up or ignition fuel is not subject to the calibration requirements of section 2.1.5 and 2.1.6 of this appendix. Gas combusted solely for start-up or burner ignition does not need to be measured separately.

2.1.5 Each fuel flowmeter used to meet the requirements of this protocol shall meet a flowmeter accuracy of ±2.0 percent of the upper range value (i.e, maximum calibrated fuel flow rate), either by design or as calibrated and as measured under laboratory conditions by the manufacturer, by an independent laboratory, or by the owner or operator. The flowmeter accuracy must include all error from all parts of the fuel flowmeter being calibrated based upon the contribution to the error in the flowrate.

2.1.5.1 Use the procedures in the following standards for flowmeter calibration or flowmeter design, as appropriate to the type of flowmeter: ASME MFC–3M–1989 with September 1990 Errata ("Measurement of Fluid Flow in Pipes Using Orifice, Nozzle, and Venturi"), ASME MFC–4M–1986 (Reaffirmed 1990), "Measurement of Gas Flow by Turbine Meters," American Gas Association Report No. 3, "Orifice Metering of Natural Gas and Other Related Hydrocarbon Fluids Part 1: General Equations and Uncertainty Guidelines" (October 1990 Edition), Part 2: "Specification and Installation Requirements" (February 1991 Edition) and Part 3: "Natural Gas Applications" (August 1992 edition), (excluding the modified flow-calculation method in Part 3) ASME MFC–5M–1985 ("Measurement of Liquid Flow in Closed Conduits Using Transit-Time Ultrasonic Flowmeters"), ASME MFC–6M–1987 with June 1987 Errata ("Measurement of Fluid Flow in Pipes Using Vortex Flow Meters"), ASME MFC–7M–1987 (Reaffirmed 1992), "Measurement of Gas Flow by Means of Critical Flow Venturi Nozzles," ISO 8316: 1987(E) "Measurement of Liquid Flow in Closed Conduits—Method by Collection of the Liquid in a Volumetric Tank," or MFC–9M–1988 with December 1989 Errata ("Measurement of Liquid Flow in Closed Conduits by Weighing Method") for all other flow meter types (incorporated by reference under § 75.6 of this part). The Administrator may also approve other procedures that use equipment traceable to National Institute of Standards and Technology (NIST) standards. Document other procedures, the equipment used, and the accuracy of the procedures in the monitoring plan for the unit and a petition submitted by the designated representative under § 75.66(c). If the flowmeter accuracy exceeds ±2.0 percent of the upper range value, the flowmeter does not qualify for use under this part.

2.1.5.2 Alternatively, a fuel flowmeter used for the purposes of this part may be calibrated or recalibrated at least annually (or, for fuel flowmeters measuring emergency fuel, bypass fuel or fuel usage of peaking units, every four calendar quarters when the unit combusts the fuel measured by the fuel flowmeter) by comparing the measured flow of a flowmeter to the measured flow from another flowmeter which has been calibrated or recalibrated during the previous 365 days using a standard listed in section 2.1.5 of this appendix or other procedure approved by the Administrator under § 75.66. Any secondary elements, such as pressure and temperature transmitters, must be calibrated immediately prior to the comparison. Perform the comparison over a period of no more than seven consecutive unit operating days. Compare the average of three fuel flow readings for each meter at each of three different flow levels, corresponding to (1) normal full operating load, (2) normal minimum operating load, and (3) a load point approximately equally spaced between the full and minimum operating loads. Calculate the flowmeter accuracy at each of the three flow levels using the following equation:

$$ACC = \frac{|R-A|}{URV} \times 100 \qquad \text{(Eq. D–1)}$$

Where:

ACC=Flow meter accuracy as a percentage of the upper range value, including all error from all parts of both flowmeters.

R=Average of the three flow measurements of the reference flow meter.

A=Average of the three measurements of the flow meter being tested.

URV=Upper range value of fuel flow meter being tested (i.e. maximum measurable flow).

If the flow meter accuracy exceeds ±2.0 percent of the upper range value at any of the three flow levels, either recalibrate the flow meter until the accuracy is within the performance specification, or replace the flow meter with another one that is within the performance specification. Notwithstanding the requirement for annual calibration of the reference flowmeter, if a reference flowmeter and the flowmeter being tested are within ±1.0 percent of the flowrate of each other during all in-place calibrations in a calendar year, then the reference flowmeter does not need to be calibrated before the next in-place calibration. This exception to calibration requirements for the reference flowmeter may be extended for periods up to five calendar years.

2.1.6 Quality Assurance

2.1.6.1 Recalibrate each fuel flowmeter to a flowmeter accuracy of ±2.0 percent of the upper range value prior to use under this part at least annually (or, for fuel flowmeters measuring emergency fuel, bypass fuel or fuel usage of peaking units, every four calendar quarters when the unit combusts the fuel measured by the fuel flowmeter), or more frequently if required by manufacturer specifications. Perform the recalibration using the procedures in section 2.1.5 of this appendix. For orifice-, nozzle-, and venturi-type flowmeters, also recalibrate the flowmeter the following calendar quarter using the procedures in section 2.1.6.2 of this appendix, whenever the fuel flowmeter accuracy during a calibration or test is greater than ±1.0 percent of the upper range value, or whenever a visual inspection of the orifice, nozzle, or venturi identifies corrosion since the previous visual inspection.

2.1.6.2 For orifice-, nozzle-, and venturi-type flowmeters that are designed according to the standards in section 2.1.5 of this appendix, satisfy the calibration requirements of this appendix by calibrating the differential pressure transmitter or transducer, static pressure transmitter or transducer, and temperature transmitter or transducer, as applicable, using equipment that has a current certificate of traceability to NIST standards. In addition, conduct a visual inspection of the orifice, nozzle, or venturi at least annually.

2.2 Oil Sampling and Analysis

Perform sampling and analysis of as-fired oil to determine the percentage of sulfur by weight in the oil.

2.2.1 When combusting diesel fuel, sample the diesel fuel either (1) every day the unit combusts diesel fuel, or (2) upon receipt of a shipment of diesel fuel.

2.2.1.1 If the diesel fuel is sampled every day, use either the flow proportional method described in section 2.2.3 of this appendix or the daily manual method described in section 2.2.4 of this appendix.

2.2.1.2 If the diesel fuel is sampled upon delivery, calculate SO_2 emissions using the highest sulfur content of any oil supply combusted in the previous 30 days that the unit combusted oil. Diesel fuel sampling and analysis may be performed either by the owner or operator of an affected unit, an outside laboratory, or a fuel supplier, provided that sampling is performed according to ASTM D4057–88, "Standard Practice for Manual Sampling of Petroleum and Petroleum Products" (incorporated by reference under § 75.6 of this part).

2.2.2 Perform oil sampling every day the unit is combusting oil except as provided for diesel fuel. Use either the flow proportional method described in section 2.2.3 of this appendix or the daily manual method described in section 2.2.4 of this appendix.

2.2.3 Conduct flow proportional oil sampling or continuous drip oil sampling in accordance with ASTM D4177–82 (Reapproved 1990), "Standard Practice for Automatic Sampling of Petroleum and Petroleum Products" (incorporated by reference under § 75.6), every day the unit is combusting oil. Extract oil at least once every hour and blend into a daily composite sample. The sample composite period may not exceed 24 hr.

2.2.4 Representative as-fired oil samples may be taken manually every day that the unit combusts oil according to ASTM D4057–88, "Standard Practice for Manual Sampling of Petroleum and Petroleum Products" (incorporated by reference under § 75.6), provided that the highest fuel sulfur content recorded at that unit from the most recent 30 daily samples is used for the purposes of calculating SO_2 emissions under section 3 of this appendix. Use the gross calorific value measured from that day's sample to calculate heat input. If oil supplies with different sulfur contents are combusted on the same day, sample the highest sulfur fuel combusted that day.

Note: For units with pressurized fuel flow lines such as some diesel and dual-fuel reciprocating internal combustion engine units, a manual sample may be taken from the point closest to the unit where it is safe to take a sample (including back to the oil tank), rather than just prior to entry to the boiler or combustion chamber. As-delivered manual samples of diesel fuel need not be as-fired.

2.2.5 Split and label each oil sample. Maintain a portion (at least 200 cc) of each sample throughout the calendar year and in all cases for not less than 90 calendar days

after the end of the calendar year allowance accounting period. Analyze oil samples for percent sulfur content by weight in accordance with ASTM D129–91, "Standard Test Method for Sulfur in Petroleum Products (General Bomb Method)," ASTM D1552–90, "Standard Test Method for Sulfur in Petroleum Products (High Temperature Method)," ASTM D2622–92, "Standard Test Method for Sulfur in Petroleum Products by X-Ray Spectrometry," or ASTM D4294–90, "Standard Test Method for Sulfur in Petroleum Products by Energy-Dispersive X-Ray Fluorescence Spectroscopy" (incorporated by reference under § 75.6).

2.2.6 Where the flowmeter records volumetric flow rather than mass flow, analyze oil samples to determine the density or specific gravity of the oil. Determine the density or specific gravity of the oil sample in accordance with ASTM D287–82 (Reapproved 1991), "Standard Test Method for API Gravity of Crude Petroleum and Petroleum Products (Hydrometer Method)," ASTM D941–88, "Standard Test Method for Density and Relative Density (Specific Gravity) of Liquids by Lipkin Bicapillary Pycnometer," ASTM D1217–91, "Standard Test Method for Density and Relative Density (Specific Gravity) of Liquids by Bingham Pycnometer," ASTM D1481–91, "Standard Test Method for Density and Relative Density (Specific Gravity) of Viscous Materials by Lipkin Bicapillary," ASTM D1480–91, "Standard Test Method for Density and Relative Density (Specific Gravity) of Viscous Materials by Bingham Pycnometer," ASTM D1298–85 (Reapproved 1990), "Standard Practice for Density, Relative Density (Specific Gravity) or API Gravity of Crude Petroleum and Liquid Petroleum Products by Hydrometer Method," or ASTM D4052–91, "Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter" (incorporated by reference under § 75.6).

2.2.7 Analyze oil samples to determine the heat content of the fuel. Determine oil heat content in accordance with ASTM D240–87 (Reapproved 1991), "Standard Test Method for Heat of Combustion of Liquid Hydrocarbon Fuels by Bomb Calorimeter," ASTM D2382–88, "Standard Test Method for Heat or Combustion of Hydrocarbon Fuels by Bomb Calorimeter (High-Precision Method)", or ASTM D2015–91, "Standard Test Method for Gross Calorific Value of Coal and Coke by the Adiabatic Bomb Calorimeter" (incorporated by reference under § 75.6) or any other procedures listed in section 5.5 of appendix F of this part.

2.2.8 Results from the oil sample analysis must be available no later than thirty calendar days after the sample is composited or taken. However, during an audit, the Administrator may require that the results of the analysis be available within 5 business days, or sooner if practicable.

2.3 SO_2 Emissions from Combustion of Gaseous Fuels

Account for the hourly SO_2 mass emissions due to combustion of gaseous fuels for each day when gaseous fuels are combusted by the unit using the procedures in either section 2.3.1 or 2.3.2.

2.3.1 Sample the gaseous fuel daily.

2.3.1.1 Analyze the sulfur content of the gaseous fuel in grain/100 scf using ASTM D1072–90, "Standard Test Method for Total Sulfur in Fuel Gases", ASTM D4468–85 (Reapproved 1989) "Standard Test Method for Total Sulfur in Gaseous Fuels by Hydrogenolysis and Rateometric Colorimetry," ASTM D5504–94 "Standard Test Method for Determination of Sulfur Compounds in Natural Gas and Gaseous Fuels by Gas Chromatography and Chemiluminescence," or ASTM D3246–81 (Reapproved 1987) "Standard Test Method for Sulfur in Petroleum Gas By Oxidative Microcoulometry" (incorporated by reference under § 75.6). The test may be performed by the owner or operator, an outside laboratory, or the gas supplier.

2.3.1.2 Results from the analysis must be available on-site no later than thirty calendar days after the sample is taken.

2.3.1.3 Determine the heat content or gross calorific value for at least one sample each month and use the procedures of section 5.5 of appendix F of this part to determine the heat input for each hour the unit combusted gaseous fuel.

2.3.1.4 Multiply the sulfur content by the hourly metered volume of gas combusted in 100 scf, using Equation D–4 of this appendix.

2.3.2 If the fuel is pipeline natural gas, calculate SO_2 emissions using a default SO_2 emission rate of 0.0006 lb/mmBtu.

2.3.2.1 Use the default SO_2 emission rate of 0.0006 lb/mmBtu and the hourly heat input from pipeline natural gas in mmBtu/hr, as determined using the procedures in section 5.5 of appendix F of this part. Calculate SO_2 emissions using Equation D–5 of this appendix.

2.3.2.2 Provide information on the contractual sulfur content from the pipeline gas supplier in the monitoring plan for the unit, demonstrating that the gas has a hydrogen sulfide content of 1 grain/100 scf or less, and a total sulfur content of 20 grain/100 scf or less.

2.4 Missing Data Procedures.

When data from the procedures of this part are not available, provide substitute data using the following procedures.

2.4.1 When sulfur content or oil density data from the analysis of an oil sample or when sulfur content data from the analysis of a gaseous fuel sample are missing or invalid, substitute, as applicable, the highest measured sulfur content or oil density (if using a volumetric oil flowmeter) recorded during the previous 30 days when the unit burned that fuel. If no previous sulfur content data are available, substitute the maximum potential sulfur content of that fuel.

2.4.2 When gross calorific value data from the analysis of an oil sample are missing or invalid, substitute the highest measured gross calorific value recorded during the previous 30 days that the unit burned oil. When gross calorific value data from the analysis of a monthly gaseous fuel sample are missing or invalid, substitute the highest measured gross calorific value recorded during the previous three months that the unit burned gaseous fuel.

2.4.3 Whenever data are missing from any fuel flowmeter that is part of an excepted monitoring system under appendix D or E of this part, where the fuel flowmeter data are required to determine the amount of fuel combusted by the unit, use the procedures in either section 2.4.3.1 or sections 2.4.3.2 and 2.4.3.3 prior to January 1, 1996 and use the procedures in sections 2.4.3.2 and 2.4.3.3 but do not use the procedures in section 2.4.3.1 on or after January 1, 1996 to account for the flow rate of fuel combusted at the unit for each hour during the missing data period.

2.4.3.1 When data from the fuel flowmeter are missing, substitute for each hour in the missing data period the average hourly oil flow rate measured and recorded by the fuel flowmeter at the closest unit load (in MWe) greater than the load recorded for the missing data period for which oil flow rate data are available during the previous 720 hours during which the unit combusted oil. If no oil flow rate data are available at a load greater than the load recorded during the missing data period, substitute the maximum flow rate that the flowmeter can measure.

2.4.3.2 For hours where only one fuel is combusted, substitute for each hour in the missing data period the average of the hourly fuel flow rate(s) measured and recorded by the fuel flowmeter (or flowmeters, where fuel is recirculated) at the corresponding operating unit load range recorded for each missing hour during the previous 720 hours during which the unit combusted that same fuel only. Establish load ranges for the unit using the procedures of section 2 in appendix C of this part for missing volumetric flow rate data. If no fuel flow rate data are available at the corresponding load range, use data from the next higher load range where data are available. If no fuel flow rate data are available at either the corresponding load range or a higher load range during any hour of the missing data period for that fuel, substitute the maximum potential fuel flow rate. The maximum potential fuel flow rate is the lesser of the following: (1) the maximum fuel flow rate the unit is capable of combusting or (2) the maximum flow rate that the flowmeter can measure.

2.4.3.3 For hours where two or more fuels are combusted, substitute the maximum hourly fuel flow rate measured and recorded by the flowmeter (or flowmeters, where fuel is recirculated) for the fuel for which data are missing at the corresponding load range recorded for each missing hour during the previous 720 hours when the unit combusted that fuel with any other fuel. For hours where no previous recorded fuel flow rate data are available for that fuel during the missing data period, calculate and substitute the maximum potential flow rate of that fuel for the unit as defined in section 2.4.3.2 of this appendix.

2.4.4. In any case where the missing data provisions of this section require substitution of data measured and recorded more than three years (26,280 clock hours) prior to the date and time of the missing data period, use three years (26,280 clock hours) in place of the prescribed lookback period.

* * * * *

64. Appendix D to part 75, section 3 is amended by revising the introductory paragraph; by revising the section heading of section 3.1; by revising the definition of the variable "M_{SO2}" in Equation D–2 in section 3.1.1; by revising section 3.1.2; by revising the section heading of section 3.2; by revising section 3.2.1; and by adding sections 3.3, 3.3.1, 3.3.2, 3.3.3, and 3.4 to read as follows:

3. Calculations

Use the calculation procedures in section 3.1 of this appendix to calculate SO_2 mass emissions. Where an oil flowmeter records volumetric flow, use the calculation procedures in section 3.2 of this appendix to calculate mass flow of oil. Calculate hourly SO_2 mass emissions from gaseous fuel using the procedures in section 3.3 of this appendix. Calculate hourly heat input for oil and for gaseous fuel using the equations in section 5.5 of Appendix F of this part. Calculate total SO_2 mass emissions and heat input as provided under section 3.4 of this appendix.

3.1 SO_2 Mass Emissions Calculation for Oil

3.1.1 * * *

Where:

M_{SO2}=Hourly mass of SO_2 emitted from combustion of oil, lb/hr.

* * * * *

3.1.2 Record the SO_2 mass emissions from oil for each hour that oil is combusted.

3.2 Mass Flow Calculation for Oil Using Volumetric Flow

3.2.1 Where the oil flowmeter records volumetric flow rather than mass flow, calculate and record the oil mass flow for each hourly period using hourly oil flow measurements and the density or specific gravity of the oil sample.

* * * * *

3.3 SO_2 Mass Emissions Calculation for Gaseous Fuels

3.3.1 Use the following equation to calculate the SO_2 emissions using the gas sampling and analysis procedures in section 2.3.1 of this appendix:

$$M_{SO_2g} = \left(\frac{2.0}{7000}\right) \times Q_g \times S_g \qquad \text{(Eq. D–4)}$$

Where:

M_{SO2g}=Hourly mass of SO_2 emitted due to combustion of gaseous fuel, lb/hr.

Q_g=Hourly metered flow or amount of gaseous fuel combusted, 100 scf/hr.

S_g=Sulfur content of gaseous fuel, in grain/100 scf.

2.0=Ratio of lb SO_2/lb S.

7000=Conversion of grains/100 scf to lb/100 scf.

3.3.2 Use the following equation to calculate the SO_2 emissions using the 0.0006 lb/mmBtu emission rate in section 2.3.2 of this appendix:

$$M_{SO_2g} = ER \times HI_g \qquad \text{(Eq. D–5)}$$

Where:

M_{SO2g}=Hourly mass of SO_2 emissions from combustion of pipeline natural gas, lb/hr.

ER=SO_2 emission rate of 0.0006 lb/mmBtu for pipeline natural gas.

HI_g=Hourly heat input of pipeline natural gas, calculated using procedures in appendix F of this part, in mmBtu/hr.

3.3.3 Record the SO_2 mass emissions for each hour when the unit combusts gaseous fuel.

3.4 Records and Reports

Calculate and record quarterly and cumulative SO_2 mass emissions and heat input for each calendar quarter and for the calendar year by summing the hourly values. Calculate and record SO_2 emissions and heat input data using a data acquisition and handling system. Report these data in a standard electronic format specified by the Administrator.

* * * * *

Appendix E to Part 75—Optional NO_X Emissions Estimation Protocol for Gas-Fired Peaking Units and Oil-Fired Peaking Units

65. Appendix E to part 75, section 1 is amended by revising section 1.1; by removing section 1.2, redesignating sections 1.3, 1.3.1 and 1.3.2 as sections 1.2, 1.2.1 and 1.2.2 and revising new sections 1.2, 1.2.1 and 1.2.2 to read as follows:

1. Applicability

1.1 Unit Operation Requirements

This NO_X emissions estimation procedure may be used in lieu of a continuous NO_X emission monitoring system (lb/mmBtu) for determining the average NO_X emission rate and hourly NO_X rate from gas-fired peaking units and oil-fired peaking units as defined in § 72.2 of this chapter. If a unit's operations exceed the levels required to be a peaking unit, install and certify a continuous NO_X emission monitoring system no later than December 31 of the following calendar year. The provisions of § 75.12 apply to excepted monitoring systems under this appendix.

1.2 Certification

1.2.1 Pursuant to the procedures in § 75.20, complete all testing requirements to certify use of this protocol in lieu of a NO_X continuous emission monitoring system no later than the applicable deadline specified in § 75.4. Apply to the Administrator for certification to use this method no later than 45 days after the completion of all certification testing. Whenever the monitoring method is to be changed, reapply to the Administrator for certification of the new monitoring method.

1.2.2 If the owner or operator has already successfully completed certification testing of the unit using the protocol of appendix E of part 75 and submitted a certification application under § 75.20(g) prior to _____ July 17, 1995, the unit's monitoring system does not need to repeat initial certification testing using the revised procedures published _____ May 17, 1995.

* * * * *

66. Appendix E to part 75, section 2 is amended by revising sections 2.1, 2.1.1, 2.1.2, 2.1.2.1, and 2.1.2.2; by removing section 2.1.2.3 and redesignating section 2.1.2.4 as 2.1.2.3; by revising sections 2.1.3, 2.1.3.1, and 2.1.3.2; by revising sections 2.1.4, 2.1.5, 2.1.6, 2.1.6.1, and 2.1.6.2; by revising sections 2.3, 2.3.1 and 2.3.2; by removing sections 2.1.4.1, 2.1.4.2, 2.1.4.3, 2.1.4.4, 2.3.3, 2.3.3.1 and 2.3.3.3; by redesignating section 2.3.3.2 as section 2.3.3 and revising new section 2.3.3; by revising section 2.4.1; by revising section 2.4.2 and adding sections 2.4.3 and 2.4.4; by revising section 2.5 and adding sections 2.5.1, 2.5.2, 2.5.3, 2.5.4, and 2.5.5 to read as follows:

2. Procedure

2.1 Initial Performance Testing

Use the following procedures for: measuring NO_X emission rates at heat input rate levels corresponding to different load levels; measuring heat input rate; and plotting the correlation between heat input rate and NO_X emission rate, in order to determine the emission rate of the unit(s).

2.1.1 Load Selection

Establish at least four approximately equally spaced operating load points, ranging from the maximum operating load to the minimum operating load. Select the maximum and minimum operating load from the operating history of the unit during the most recent two years. (If projections indicate that the unit's maximum or minimum operating load during the next five years will be significantly different from the most recent two years, select the maximum and minimum operating load based on the projected dispatched load of the unit.) For new gas-fired peaking units or new oil-fired peaking units, select the maximum and minimum operating load from the expected maximum and minimum load to be dispatched to the unit in the first five calendar years of operation.

2.1.2 NO_X and O_2 Concentration Measurements

Use the following procedures to measure NO_X and O_2 concentration in order to determine NO_X emission rate.

2.1.2.1 For boilers, select an excess O_2 level for each fuel (and, optionally, for each combination of fuels) to be combusted that is representative for each of the four or more load levels. If a boiler operates using a single, consistent combination of fuels only, the testing may be performed using the combination rather than each fuel. If a fuel is combusted only for the purpose of testing ignition of the burners for a period of five minutes or less per ignition test or for start-up, then the boiler NO_X emission rate does not need to be tested separately for that fuel. Operate the boiler at a normal or conservatively high excess oxygen level in

conjunction with these tests. Measure the NO_X and O_2 at each load point for each fuel or consistent fuel combination (and, optionally, for each combination of fuels) to be combusted. Measure the NO_X and O_2 concentrations according to Method 7E and 3A in appendix A of part 60 of this chapter. Select sampling points as specified in section 5.1, Method 3 in appendix A of part 60 of this chapter. The designated representative for the unit may also petition the Administrator under § 75.66 to use fewer sampling points. Such a petition shall include the proposed alternative sampling procedure and information demonstrating that there is no concentration stratification at the sampling location.

2.1.2.2 For stationary gas turbines, select sampling points and measure the NO_X and O_2 concentrations at each load point for each fuel or consistent combination of fuels (and, optionally, each combination of fuels) according to appendix A, Method 20 of part 60 of this chapter. For diesel or dual fuel reciprocating engines, measure the NO_X and O_2 concentrations according to Method 20, but modify Method 20 by selecting a sampling site to be as close as practical to the exhaust of the engine.

2.1.2.3 Allow the unit to stabilize for a minimum of 15 minutes (or longer if needed for the NO_X and O_2 readings to stabilize) prior to commencing NOx, O_2, and heat input measurements. Determine the average measurement system response time according to section 5.5 of Method 20 in appendix A, part 60 of this chapter. When inserting the probe into the flue gas for the first sampling point in each traverse, sample for at least one minute plus twice the average measurement system response time (or longer, if necessary to obtain a stable reading). For all other sampling points in each traverse, sample for at least one minute plus the average measurement response time (or longer, if necessary to obtain a stable reading). Perform three test runs at each load condition and obtain an arithmetic average of the runs for each load condition. During each test run on a boiler, record the boiler excess oxygen level at 5 minute intervals.

2.1.3 Heat Input

Measure the total heat input (mmBtu) and heat input rate during testing (mmBtu/hr) as follows:

2.1.3.1 When the unit is combusting fuel, measure and record the flow of fuel consumed. Measure the flow of fuel with an in-line flowmeter(s) and automatically record the data. If a portion of the flow is diverted from the unit without being burned, and that diversion occurs downstream of the fuel flowmeter, an in-line flowmeter is required to account for the unburned fuel. Install and calibrate in-line flow meters using the procedures and specifications contained in sections 2.1.2, 2.1.3, 2.1.4, and 2.1.5 of appendix D of this part. Correct any gaseous fuel flow rate measured at actual temperature and pressure to standard conditions of 68°F and 29.92 inches of mercury.

2.1.3.2 For liquid fuels, analyze fuel samples taken according to the requirements of section 2.2 of appendix D of this part to determine the heat content of the fuel. Determine heat content of liquid or gaseous fuel in accordance with the procedures in appendix F of this part. Calculate the heat input rate during testing (mmBtu/hr) associated with each load condition in accordance with Equations F–19 or F–20 in appendix F of this part and total heat input using Equation E–1 of this appendix. Record the heat input rate at each heat input/load point.

2.1.4 Emergency Fuel

The designated representative of a unit that is restricted by its Federal, State or local permit to combusting a particular fuel only during emergencies where the primary fuel is not available may petition the Administrator pursuant to the procedures in § 75.66 for an exemption from the requirements of this appendix for testing the NO_X emission rate during combustion of the emergency fuel. The designated representative shall include in the petition a procedure for determining the NO_X emission rate for the unit when the emergency fuel is combusted, and a demonstration that the permit restricts use of the fuel to emergencies only. The designated representative shall also provide notice under § 75.61(a) for each period when the emergency fuel is combusted.

2.1.5 Tabulation of Results

Tabulate the results of each baseline correlation test for each fuel or, as applicable, combination of fuels, listing: time of test, duration, operating loads, heat input rate (mmBtu/hr), F-factors, excess oxygen levels, and NO_X concentrations (ppm) on a dry basis (at actual excess oxygen level). Convert the NO_X concentrations (ppm) to NO_X emission rates (to the nearest 0.01 lb/mm/Btu) according to Equation F–5 of appendix F of this part or 19–3 in Method 19 of appendix A of part 60 of this chapter, as appropriate. Calculate the NO_X emission rate in lb/mmBtu for each sampling point and determine the arithmetic average NO_X emission rate of each test run. Calculate the arithmetic average of the boiler excess oxygen readings for each test run. Record the arithmetic average of the three test runs as the NO_X emission rate and the boiler excess oxygen level for the heat input/load condition.

2.1.6 Plotting of Results

Plot the tabulated results as an x–y graph for each fuel and (as applicable) combination of fuels combusted according to the following procedures.

2.1.6.1 Plot the heat input rate (mmBtu/hr) as the independent (or x) variable and the NO_X emission rates (lb/mmBtu) as the dependent (or y) variable for each load point. Construct the graph by drawing straight line segments between each load point. Draw a horizontal line to the y-axis from the minimum heat input (load) point.

2.1.6.2 Units that co-fire gas and oil may be tested while firing gas only and oil only instead of testing with each combination of fuels. In this case, construct a graph for each fuel.

2.2 * * *

2.3 Other Quality Assurance/Quality Control-Related NOx Emission Rate Testing

When the operating levels of certain parameters exceed the limits specified below, or where the Administrator issues a notice requesting retesting because the NO_X emission rate data availability for when the unit operates within all quality assurance/quality control parameters in this section since the last test is less than 90.0 percent, as calculated by the Administrator, complete retesting of the NO_X emission rate by the earlier of: (1) 10 unit operating days (as defined in section 2.1 of appendix B of this part) or (2) 180 calendar days after exceeding the limits or after the date of issuance of a notice from the Administrator to re-verify the unit's NO_X emission rate. Submit test results in accordance with § 75.60(a) within 45 days of completing the retesting.

2.3.1 For a stationary gas turbine, obtain a list of at least four operating parameters indicative of the turbine's NO_X formation characteristics, and the recommended ranges for these parameters at each tested load-heat input point, from the gas turbine manufacturer. If the gas turbine uses water or steam injection for NO_X control, the water/fuel or steam/fuel ratio shall be one of these parameters. During the NOx-heat input correlation tests, record the average value of each parameter for each load-heat input to ensure that the parameters are within the manufacturer's recommended range. Redetermine the NO_X emission rate-heat input correlation for each fuel and (optional) combination of fuels after continuously exceeding the manufacturer's recommended range of any of these parameters for one or more successive operating periods totaling more than 16 unit operating hours.

2.3.2 For a diesel or dual-fuel reciprocating engine, obtain a list of at least four operating parameters indicative of the engine's NO_X formation characteristics, and the recommended ranges for these parameters at each tested load-heat input point, from the engine manufacturer. Any operating parameter critical for NO_X control shall be included. During the NO_X heat-input correlation tests, record the average value of each parameter for each load-heat input to ensure that the parameters are within the manufacturer's recommended range. Redetermine the NO_X emission rate-heat input correlation for each fuel and (optional) combination or fuels after continuously exceeding the manufacturer's recommended range of any of these parameters for one or more successive operating periods totaling more than 16 unit operating hours.

2.3.3 For boilers using the procedures in this appendix, the NO_X emission rate heat input correlation for each fuel and (optional) combination of fuels shall be redetermined if the excess oxygen level at any heat input rate (or unit operating load) continuously exceeds by more than 2 percentage points O_2 from the boiler excess oxygen level recorded at the same operating heat input rate during the previous NO_X emission rate test for one or more successive operating periods totaling more than 16 unit operating hours.

2.4 Procedures for Determining Hourly NO_X Emission Rate

2.4.1 Record the time (hr. and min.), load (MWge or steam load in 1000 lb/hr), fuel flow rate and heat input rate (using the procedures in section 2.1.3 of this appendix) for each hour during which the unit combusts fuel. Calculate the total hourly heat input using Equation E–1 of this appendix. Record the heat input rate for each fuel to the nearest 0.1 mmBtu/hr. During partial unit operating hours or during hours where more than one fuel is combusted, heat input must be represented as an hourly rate in mmBtu/hr, as if the fuel were combusted for the entire hour at that rate (and not as the actual, total heat input during that partial hour or hour) in order to ensure proper correlation with the NO_X emission rate graph.

2.4.2 Use the graph of the baseline correlation results (appropriate for the fuel or fuel combination) to determine the NO_X emissions rate (lb/mmBtu) corresponding to the heat input rate (mmBtu/hr). Input this correlation into the data acquisition and handling system for the unit. Linearly interpolate to 0.1 mmBtu/hr heat input rate and 0.01 lb/mmBtu NO_X.

2.4.3 To determine the NO_X emission rate for a unit co-firing fuels that has not been tested for that combination of fuels, interpolate between the NO_X emission rate for each fuel as follows. Determine the heat input rate for the hour (in mmBtu/hr) for each fuel and select the corresponding NO_X emission rate for each fuel on the appropriate graph. (When a fuel is combusted for a partial hour, determine the fuel usage time for each fuel and determine the heat input rate from each fuel as if that fuel were combusted at that rate for the entire hour in order to select the corresponding NO_X emission rate.) Calculate the total heat input to the unit in mmBtu for the hour from all fuel combusted using Equation E–1. Calculate a Btu-weighted average of the emission rates for all fuels using Equation E–2 of this appendix.

2.4.4 For each hour, record the critical quality assurance parameters, as identified in the monitoring plan, and as required by section 2.3 of this appendix.

2.5 Missing Data Procedures

Provide substitute data for each unit electing to use this alternative procedure whenever a valid quality-assured hour of NO_X emission rate data has not been obtained according to the procedures and specifications of this appendix.

2.5.1 Use the procedures of this section whenever any of the quality assurance/quality control parameters exceeds the limits in section 2.3 of this appendix or whenever any of the quality assurance/quality control parameters are not available.

2.5.2 Substitute missing NO_X emission rate data using the highest NO_X emission rate tabulated during the most recent set of baseline correlation tests for the same fuel or, if applicable, combination of fuels.

2.5.3 Maintain a record indicating which data are substitute data and the reasons for the failure to provide a valid quality-assured hour of NO_X emission rate data according to the procedures and specifications of this appendix.

2.5.4 Substitute missing data from a fuel flowmeter using the procedures in section 2.4.3 of appendix D of this part.

2.5.5 Substitute missing data for gross calorific value of fuel using the procedures in section 2.4.2 of appendix D of this part.

* * * * *

67. Appendix E to part 75, section 3 is amended by revising section 3.1; by removing section 3.2, redesignating section 3.3 as 3.2, and revising new section 3.2; by redesignating sections 3.4, 3.4.1, 3.4.2, 3.4.3 as 3.3, 3.3.1, 3.3.2, and 3.3.3; and by removing sections 3.4.4 and 3.5 and adding section 3.3.4 to read as follows:

3. Calculations

3.1 Heat Input

Calculate the total heat input by summing the product of heat input rate and fuel usage time of each fuel, as in the following equation:

$$H_T = HI_{fuel1}\, t_1 + HI_{fuel2}\, t_2 + HI_{fuel3}\, t_3 + \ldots + HI_{lastfuel}\, t_{last} \quad \text{(Eq. E–1)}$$

Where:

H_T = Total heat input of fuel flow or a combination of fuel flows to a unit, mmBtu;

$HI_{fuel\ 1,2,3,\ldots last}$ = Heat input rate from each fuel during fuel usage time, in mmBtu/hr, as determined using equation F–19 or F–20 in section 5.5 of appendix F of this part, mmBtu/hr;

$t_{1,2,3,\ldots last}$ = Fuel usage time for each fuel, rounded up to the nearest .25 hours.

Note: For hours where a fuel is combusted for only part of the hour, use the fuel flow rate or mass flow rate during the fuel usage time, instead of the total fuel flow during the hour, when calculating heat input rate using Equation F–19 or F–20.

3.2 F-factors

Determine the F-factors for each fuel or combination of fuels to be combusted according to section 3.3 of appendix F of this part.

3.3 NO_X Emission Rate

3.3.1 Conversion from Concentration to Emission Rate [Amended]

Convert the NO_X concentrations (ppm) and O_2 concentrations to NO_X emission rates (to the nearest 0.01 lb/mmBtu) according to the appropriate one of the following equations: F–5 in appendix F of this part for dry basis concentration measurements, or 19–3 in Method 19 of appendix A of part 60 of this chapter for wet basis concentration measurements.

3.3.2 Quarterly Average NO_X Emission Rate

Report the quarterly average emission rate (lb/mmBtu) as required in subpart G of this part. Calculate the quarterly average NO_X emission rate according to Equation F–9 in Appendix F of this part.

3.3.3 Annual Average NO_X Emission Rate

Report the average emission rate (lb/mmBtu) for the calendar year as required in subpart G of this part. Calculate the average NO_X emission rate according to equation F–10 in appendix F of this part.

3.3.4 Average NO_X Emission Rate During Co-firing of Fuels [Amended] (Eq. E–2)

Where:

$$E_h = \frac{\sum_{f=1}^{\text{all fuels}} \left(E_f \times HI_f\, t_f\right)}{H_T}$$

E_h=NO_X emission rate for the unit for the hour, lb/mmBtu;

E_f=NO_X emission rate for the unit for a given fuel at heat input rate HI_f, lb/mmBtu;

HI_f=Heat input rate for a given fuel during the fuel usage time, as determined using equation F–19 or F–20 in section 5.5 of appendix F of this part, mmBtu/hr;

H_T=Total heat input for all fuels for the hour from Equation E–1;

t_f=Fuel usage time for each fuel, rounded to the nearest .25 hour.

Note: For hours where a fuel is combusted for only part of the hour, use the fuel flow rate or mass flow rate during the fuel usage time, instead of the total fuel flow or mass flow during the hour, when calculating heat input rate using Equation F–19 or F–20.

* * * * *

68. Appendix E to part 75, section 4 is amended by revising the introductory paragraph and section 4.1 to read as follows:

4. Quality Assurance/Quality Control Plan

Include a section on the NO_X emission rate determination as part of the monitoring quality assurance/quality control plan required under § 75.21 and appendix B of this part for each gas-fired peaking unit and each oil-fired peaking unit. In this section present information including, but not limited to, the following: (1) a copy of all data and results from the initial NO_X emission rate testing, including the values of quality assurance parameters specified in Section 2.3 of this appendix; (2) a copy of all data and results from the most recent NO_X emission rate load correlation testing; (3) a copy of the unit manufacturer's recommended range of quality assurance- and quality control-related operating parameters.

4.1 Submit a copy of the unit manufacturer's recommended range of operating parameter values, and the range of operating parameter values recorded during the previous NO_X emission rate test that determined the unit's NO_X emission rate, along with the unit's revised monitoring plan submitted with the certification application.

* * * * *

Appendix F to Part 75—Conversion Procedures

69. Appendix F to part 75, section 2 is amended by revising section 2.4 to read as follows:

* * * * *

2. Procedures for SO_2 Emissions

* * * * *

2.4 Round all SO_2 mass emissions to the number of decimal places identified in § 75.50(c) or § 75.54(c) of this part (in lb/hr).

* * * * *

70. Appendix F to part 75, section 3 is amended by revising the equation in section 3.2, by adding a sentence to the end of 3.3.4. and by revising sections 3.3.6.1, 3.3.6.2, and 3.4 to read as follows:

3. Procedures for NO_X Emission Rate

* * * * *

3.2 When the NO_X continuous emission monitoring system uses CO_2 as the diluent, use the following conversion procedure:

$$E = K\,C_h\,F_c\,\frac{100}{\%CO_2} \qquad \text{(Eq. F–6)}$$

where:

K, E, Ch, Fc, and $\%CO_2$ are defined in section 3.3 of this appendix.

Where CO_2 and NO_X measurements are performed on a different moisture basis, use the equations in Method 19 in Appendix A of part 60 of this chapter.

* * * * *

3.3.4 * * * A minimum concentration of 5.0 percent CO_2 and a maximum concentration of 14.0 percent O_2 may be substituted for measured diluent gas concentration values during unit start-up.

3.3.5 * * *

3.3.6 * * *

3.3.6.1 H, C, S, N, and O are content by weight of hydrogen, carbon, sulfur, nitrogen, and oxygen (expressed as percent), respectively, as determined on the same basis as the gross calorific value (GCV) by ultimate analysis of the fuel combusted using ASTM D3176–89, "Standard Practice for Ultimate Analysis of Coal and Coke" (solid fuels), ASTM D5291–92, "Standard Test Methods for Instrumental Determination of Carbon, Hydrogen, and Nitrogen in Petroleum Products and Lubricants" (liquid fuels) or computed from results using ASTM D1945–91, "Standard Test Method for Analysis of Natural Gas by Gas Chromatography" or ASTM D1946–90, "Standard Practice for Analysis of Reformed Gas by Gas Chromatography" (gaseous fuels) as applicable. (These methods are incorporated by reference under § 75.6 of this part.)

3.3.6.2 GCV is the gross calorific value (Btu/lb) of the fuel combusted determined by ASTM D2015–91, "Standard Test Method for Gross Calorific Value of Coal and Coke by the Adiabatic Bomb Calorimeter", ASTM D1989–92 "Standard Test Method for Gross Calorific Value of Coal and Coke by Microprocessor Controlled Isoperibol Calorimeters," or ASTM D3286–91a "Standard Test Method for Gross Calorific Value of Coal and Coke by the Isoperibol Bomb Calorimeter" for solid and liquid fuels, and ASTM D240–87 (Reapproved 1991) "Standard Test Method for Heat of Combustion of Liquid Hydrocarbon Fuels by Bomb Calorimeter", or ASTM D2382–88 "Standard Test Method for Heat of Combustion of Hydrocarbon Fuels by Bomb Calorimeter (High-Precision Method)" for oil; and ASTM D3588–91 "Standard Practice for Calculating Heat Value, Compressibility Factor, and Relative Density (Specific Gravity) of Gaseous Fuels," ASTM D4891–89 "Standard Test Method for Heating Value of Gases in Natural Gas Range by Stoichiometric Combustion," GPA Standard 2172 86 "Calculation of Gross Heating Value, Relative Density and Compressibility Factor for Natural Gas Mixtures from Compositional Analysis," GPA Standard 2261–90 "Analysis for Natural Gas and Similar Gaseous Mixtures by Gas Chromatography," or ASTM D1826–88, "Standard Test Method for Calorific (Heating) Value of Gases in Natural Gas Range by Continuous Recording Calorimeter" for gaseous fuels, as applicable. (These methods are incorporated by reference under § 75.6).

3.3.6.3 * * *

3.3.6.4 * * *

3.4 Use the following equations to calculate the average NO_X emission rate for each calendar quarter (Eq. F–9) and the average emission rate for the calendar year (Eq. F–10) in lb/mmBtu.

$$E_q = \sum_{i=1}^{n} \frac{E_i}{n} \qquad \text{(Eq. F–9)}$$

where:

Eq=Quarterly average NO_X emission rate, lb/mmBtu.

Ei=Hourly average Nox emission rate, lb/mmBtu.

n=Number of hourly rates during calendar quarter.

$$E_a = \sum_{i=1}^{n} \frac{E_i}{m} \qquad \text{(Eq. F–10)}$$

where:

E_a=Average NO_X emission rate for the calendar year, lb/mmBtu.

E_i=Hourly average NO_X emission rate, lb/mmBtu.

m=Number of hours for which E_i is available in the calendar year.

3.5 * * *

* * * * *

71. Appendix F to part 75, section 4 is amended by revising the introductory paragraph, by revising the definition of the variable "C_h" in Equation F–11 in section 4.1, by revising sections 4.4.1 and 4.4.2. and by adding two sentences to the beginning of sections 4.3.1, 4.3.2, 4.3.3, and 4.4.3 to read as follows:

4. Procedures for CO_2 Mass Emissions

Use the following procedures to convert continuous emission monitoring system measurements of CO_2 concentration (percentage) and volumetric flow rate (scfh) into CO_2 mass emissions (in tons/day) when the owner or operator uses a CO_2 continuous emission monitoring system (consisting of a CO_2 or O_2 pollutant monitor) and a flow monitoring system to monitor CO_2 emissions from an affected unit.

4.1 * * *

(Eq. F–11)

Where:

* * * * *

C_h=Hourly average CO_2 concentration, stack moisture basis, $\%CO_2$. A minimum concentration of 5.0 percent CO_2 may be substituted for the measured concentration during unit start-up.

* * * * *

4.2 * * *

4.3 * * *

4.3.1 On or after January 1, 1996, use the missing data provisions of § 75.35 and do not use the provisions of this section. Prior to January 1, 1996, use either the provisions of this section or the provisions of § 75.35. * * *

4.3.2 On or after January 1, 1996, use the missing data provisions of § 75.35 and do not use the provisions of this section. Prior to January 1, 1996, use either the provisions of this section or the provisions of § 75.35. * * *

4.3.3 On or after January 1, 1996, use the missing data provisions of § 75.35 and do not use the provisions of this section. Prior to January 1, 1996, use either the provisions of this section or the provisions of § 75.35. * * *

4.4 For an affected unit, when the owner or operator is continuously monitoring O_2 concentration (in percent by volume) of flue gases using an O_2 monitor, use the equations and procedures in section 4.4.1 through 4.4.3 of this appendix to determine hourly CO_2 mass emissions (in tons).

4.4.1 Use appropriate F and F_c factors from section 3.3.5 of this appendix in the following equation to determine hourly average CO_2 concentration of flue gases (in percent by volume).

$$CO_{2d} = 100\,\frac{F_c}{F}\,\frac{20.9 - O_{2d}}{20.9} \qquad \text{(Eq. F–14a)}$$

(Eq. F–14a)

Where:

CO_{2d}=Hourly average CO_2 concentration, percent by volume, dry basis.

F, F_c=F-factor or carbon-based Fc-factor from section 3.3.5 of this appendix.

20.9=Percentage of O_2 in ambient air.

O_{2d}=Hourly average O_2 concentration, percent by volume, dry basis. A maximum concentration of 14.0 percent O2 may be substituted for the measured concentration during unit start-up.

or

(Eq. F–14b)

Where:

CO_{2w}=Hourly average CO_2 concentration, percent by volume, wet basis.

O_{2w}=Hourly average O_2 concentration, percent by volume, wet basis. A maximum concentration of 14.0 percent O_2 may be substituted for the measured concentration during unit start-up.

F, F_c=F-factor or carbon-based F_c-factor from section 3.3.5 of this appendix.

20.9=Percentage of O_2 in ambient air.

$\%H_2O$=Moisture content of gas in the stack, percent.

4.4.2 Determine CO_2 mass emissions (in tons) from hourly average CO_2 concentration (percent by volume) using Equation F–11 and the procedure in section 4.1, where O_2 measurements are on a wet basis, or using the procedures in section 4.2 of this appendix, where O_2 measurements are on a dry basis.

4.4.3 On or after January 1, 1996, use the missing data provisions of § 75.35 and do not use the provisions of this section. Prior to January 1, 1996, either use the provisions of § 75.35 or use the provisions of this section. * * *

* * * * *

72. Appendix F to part 75, section 5 is amended by revising section 5.1 and by revising the definition of the variable "$\%CO_{2w}$" in Equation F–15 in section 5.2.1, by revising the definition of the variable "$\%CO_{2d}$" in Equation F–16 in section 5.2.2, by revising the definition of the variable "$\%O_{2w}$" in Equation F–17 in section 5.2.3, and by revising the definition of the variable "$\%O_{2d}$" in Equation F–18 in section 5.2.4, by revising seciton 5.5.1, by adding two sentences to the beginning of sections 5.3, and 5.4; by revising section 5.5; by revising section 5.5.2; by revising section 5.5.3.1; by revising section 5.5.3.2;by revising section 5.5.3.3; and by adding new sections 5.5.4, 5.5.5, 5.5.6, and 5.5.7 to read as follows:

5. Procedures for Heat Input

* * * * *

5.1 Calculate and record heat input to an affected unit on an hourly basis, except as provided below. The owner or operator may choose to use the provisions specified in § 75.16(e) or in section 2.1.2 of appendix D of this part in conjunction with the procedures provided below to apportion heat input among each unit using the common stack or common pipe header.

5.2 * * *

5.2.1 * * *

(Eq. F–15)

Where:

$\%CO_{2w}$=Hourly concentration of CO_2, percent CO_2 wet basis. A minimum concentration of 5.0 percent CO_2 may be substituted for the measured concentration during unit startup.

5.2.2 * * *

(Eq. F–16)

Where:

$\%CO_{2d}$=Hourly concentration of CO_2, percent CO_2 dry basis. A minimum concentration of 5.0 percent CO_2 may be substituted for the measured concentration during unit startup.

* * * * *

5.2.3 * * *

(Eq. F–17)

Where:

$\%O_{2w}$=Hourly concentration of O_2, percent O_2 wet basis. A maximum concentration of 14.0 percent O_2 may be substituted for the measured concentration during unit startup.

* * * * *

5.2.4 * * *

(Eq. F–18)

Where:

$\%O_{2d}$=Hourly concentration of O_2, percent O_2 dry basis. A maximum concentration of 14.0 percent O_2 may be substituted for the measured concentration during unit startup.

* * * * *

5.3 On or after January 1, 1996, use the missing data provisions of § 75.36 and do not use the provisions of this section. Prior to January 1, 1996, use either the missing data provisions of this section or the provisions of § 75.36. * * *

5.4 On or after January 1, 1996, use the missing data provisions of § 75.36 and do not use the provisions of this section. Prior to January 1, 1996, use either the missing data provisions of this section or the provisions of § 75.36. * * *

5.5 For a gas-fired or oil-fired unit that does not have a flow monitor and is using the procedures specified in appendix D to this part to monitor SO_2 emissions or for any affected unit using a common stack for which the owner or operator chooses to determine heat input by fuel sampling and analysis, use the following procedures to calculate hourly heat input in mmBtu/hr.

5.5.1 When the unit is combusting oil, use the following equation to calculate hourly heat input.

(Eq. F–19)

$$HI_o = M_o\,\frac{GCV_o}{10^6} \qquad \text{(Eq. F–19)}$$

Where:

Hlo=Hourly heat input from oil, mmBtu/hr.

Mo=Mass of oil consumed per hour, as determined using procedures in appendix D of this part, in lb, tons, or kg.

GCVo=Gross calorific value of oil, as measured daily by ASTM D240–87 (Reapproved 1991), ASTM D2015–91, or ASTM D2382–88, Btu/unit mass (incorporated by reference under § 75.6 of this part).

106=Conversion of Btu to mmBtu.

When performing oil sampling and analysis solely for the purpose of the missing data procedures in § 75.36, oil samples for measuring GCV may be taken weekly and the procedures specified in appendix D of this part for determining the mass of oil consumed per hour are optional.

5.5.2 When the unit is combusting gaseous fuels, use the following equation to calculate heat input from gaseous fuels for each hour.

(Eq. F–20)

$$HI_g = \frac{Q_g \times GCV_g}{10{,}000} \qquad \text{(Eq. F–20)}$$

Where:

HI_g=Hourly heat input from gaseous fuel, mmBtu/hour.

Q_g=Metered flow or amount of gaseous fuel combusted during the hour, hundred cubic feet.

GCV_g=Gross calorific value of gaseous fuel, as determined by sampling at least every month the gaseous fuel is combusted, or as verified by the contractual supplier at least once every month the gaseous fuel is combusted using ASTM D1826–88, ASTM D3588–91, ASTM D4891–89, GPA Standard 2172–86 "Calculation of Gross Heating Value, Relative Density and Compressibility Factor for Natural Gas Mixtures from Compositional Analysis," or GPA Standard 2261–90 "Analysis for Natural Gas and Similar Gaseous Mixtures by Gas Chromatography," Btu/cubic foot (incorporated by reference under § 75.6 of this part).

10,000=Conversion factor, (Btu-100 scf)/(mmBtu-scf).

5.5.3 * * *

5.5.3.1 Perform coal sampling daily according to section 5.3.2.2 in Method 19 in appendix A to part 60 of this chapter and use

ASTM Method D2234–89, "Standard Test Methods for Collection of a Gross Sample of Coal," (incorporated by reference under § 75.6) Type I, Conditions A, B, or C and systematic spacing for sampling. (When performing coal sampling solely for the purposes of the missing data procedures in § 75.36, use of ASTM D2234–89 is optional, and coal samples may be taken weekly.)

5.5.3.2 Use ASTM D2013–86, "Standard Method of Preparing Coal Samples for Analysis," for preparation of a daily coal sample and analyze each daily coal sample for gross calorific value using ASTM D2015–91, "Standard Test Method for Gross Calorific Value of Coal and Coke by the Adiabatic Bomb Calorimeter", ASTM 1989–92 "Standard Test Method for Gross Calorific Value of Coal and Coke by Microprocessor Controlled Isoperibol Calorimeters," or ASTM 3286–91a "Standard Test Method for Gross Calorific Value of Coal and Coke by the Isoperibol Bomb Calorimeter." (All ASTM methods are incorporated by reference under § 75.6 of this part.)

On-line coal analysis may also be used if the on-line analytical instrument has been demonstrated to be equivalent to the applicable ASTM methods under §§ 75.23 and 75.66.

5.5.3.3 Calculate the heat input from coal using the following equation:

$$HI_c = M_c \frac{GCV_c}{500} \qquad \text{(Eq. F–21)}$$

(Eq. F–21)
Where:
HIc=Daily heat input from coal, mmBtu/day.
Mc=Mass of coal consumed per day, as measured and recorded in company records, tons.
GCV_c=Gross calorific value of coal sample, as measured by ASTM D3176–89, D1989–92, D3286–91a, or D2015–91, Btu/lb.
500=Conversion of Btu/lb to mmBtu/ton.

5.5.4 For units obtaining heat input values daily instead of hourly, apportion the daily heat input using the fraction of the daily steam load or daily unit operating load used each hour in order to obtain HI_i for use in the above equations. Alternatively, use the hourly mass of coal consumed in equation F–21.

5.5.5 If a daily fuel sampling value for gross calorific value is not available, substitute the maximum gross calorific value measured from the previous 30 daily samples. If a monthly fuel sampling value for gross calorific value is not available, substitute the maximum gross calorific value measured from the previous 3 monthly samples.

5.5.6 If a fuel flow value is not available, use the fuel flowmeter missing data procedures in section 2.4 of appendix D of this part. If a daily coal consumption value is not available, substitute the maximum fuel feed rate during the previous thirty days when the unit burned coal.

5.5.7 Results for samples must be available no later than thirty calendar days after the sample is composited or taken. However, during an audit, the Administrator may require that the results be available in five business days, or sooner if practicable.

* * * * *

73. Appendix F to part 75, section 6 is amended by revising the definitions for Equation F–22 to read as follows:

6. Procedure for Converting Volumetric Flow to STP

* * * * *

(Eq. F–22)
Where:

$$W_{CO_2} = \frac{\left(MW_C + MW_{O_2}\right) \times W_C}{2{,}000\, MW_C} \qquad \text{(Eq. G–1)}$$

F_{STP}=Flue gas volumetric flow rate at standard temperature and pressure, scfh.
F_{Actual}=Flue gas volumetric flow rate at actual temperature and pressure, acfh.
T_{Std}=Standard temperature=528 °R.
T_{Stack}=Flue gas temperature at flow monitor location, °R, where °R=460+°F.
P_{Stack}=The absolute flue gas pressure=barometric pressure at the flow monitor location + flue gas static pressure, inches of mercury.
P_{Std}=Standard pressure=29.92 inches of mercury.

74. Appendix F to part 75 is amended by reserving section 7:

7. [Reserved]

* * * * *

Appendix G to Part 75—Determination of CO_2 Emissions

75. Appendix G to part 75, section 2 is amended by revising sections 2.1, 2.2 and 2.3 to read as follows:

* * * * *

2. Procedures for Estimating CO_2 Emissions From Combustion

* * * * *

2.1 Use the following equation to calculate daily CO_2 mass emissions (in tons/day) from the combustion of fossil fuels. Where fuel flow is measured in a common pipe header (i.e., a pipe carrying fuel for multiple units), the owner or operator may use the procedures in section 2.1.2 of appendix D of this part for combining or apportioning emissions, except that the term "SO_2 mass emissions" is replaced with the term "CO_2 mass emissions."

Where:
Wco2=CO_2 emitted from combustion, tons/day.
MW_c=Molecular weight of carbon (12.0).
MW_{o2}=Molecular weight of oxygen (32.0)
W_C=Carbon burned, lb/day, determined using fuel sampling and analysis and fuel feed rates. Collect at least one fuel sample during each week that the unit combusts coal or oil, one sample per each shipment for diesel fuel, and one fuel sample each month the unit combusts gaseous fuels. Collect coal samples from a location in the fuel handling system that provides a sample representative of the fuel bunkered or consumed during the week. Determine the carbon content of each fuel sampling using one of the following methods: ASTM D3178–89 for coal; ASTM D5291–92 "Standard Test Methods for Instrumental Determination of Carbon, Hydrogen, and Nitrogen in Petroleum Products and Lubricants," ultimate analysis of oil, or computations based upon ASTM D3238–90 and either ASTM D2502–87 or ASTM D2503–82 (Reapproved 1987) for oil; and computations based on ASTM D1945–91 or ASTM D1946–90 for gas. Use daily fuel feed rates from company records for all fuels and the carbon content of the most recent fuel sample under this section to determine tons of carbon per day from combustion of each fuel. (All ASTM methods are incorporated by reference under § 75.6). Where more than one fuel is combusted during a calendar day, calculate total tons of carbon for the day from all fuels.

$$W_{CO_2} = \left(\frac{F_C \times H \times U_f \times MW_{CO_2}}{2000}\right) \qquad \text{(Eq. G–4)}$$

(Eq.G–4)
Where:
WCO2=CO_2 emitted from combustion, tons/hr.
Fc=Carbon-based F-factor, 1,040 scf/mmBtu for natural gas; 1,420 scf/mm/btu for crude, residual, or distillate oil.
H = Hourly heat input in mmBtu, as calculated using the procedures in section 5 of appendix F of this part.
Uf=1/385 scf CO2/lb-mole at 14.7 psia and 68 °F.

* * * * *

76. Appendix G to part 75, section 3 is amended by revising the introductory paragraph; by revising section 3.1.2 before the equation and the definition of the variable "W_{SO2}"; and by adding Equation G–7 and definitions to section 3.1.2 to read as follows:

3. Procedures for Estimating CO_2 Emissions From Sorbent

When the effected unit has a wet flue gas desulfurization system, is a fluidized bed boiler, or uses other emission controls with sorbent injection, use either a CO_2 continuous emission monitoring system or an O_2 monitor and a flow monitor, or use the procedures, methods, and equations in sections 3.1 through 3.2 of this appendix to determine daily CO_2 mass emissions from the sorbent (in tons).

3.1 * * *

3.1.1 * * *

3.1.2 In lieu of using Equation G–5, any owner or operator who operates and maintains a certified SO_2-diluent continuous emission monitoring system (consisting of an SO_2 pollutant concentration monitor and an O_2 or CO_2 diluent gas monitor), for measuring and recording SO_2 emission rate (in lb/mmBtu) at the outlet to the emission controls and who uses the applicable procedures, methods, and equations in § 75.15 of this part to estimate the SO_2 emissions removal efficiency of the emission controls, may use the following equations to estimate daily CO_2 mass emissions from sorbent (in tons).

(Eq. G–6)
where:

* * * * *

W_{SO2}=Sulfur dioxide removed, lb/day, as calculated below using Eq. G–7.

* * * * *

and

$$W_{SO_2} = SO_{2o} \frac{\%R}{(100 - \%R)} \qquad \text{(Eq. G–7)}$$

(Eq. G–7)
where:
WSO_2=Weight of sulfur dioxide removed, lb/day.
SO_{2o}=SO_2 mass emissions monitored at the outlet, lb/day, as calculated using the equations and procedures in section 2 of appendix F of this part.
%R=Overall percentage SO_2 emissions removal efficiency, calculated using Equations 1 through 7 in § 75.15 using daily instead of annual average emission rates.

* * * * *

2.2 For an affected coal-fired unit, the estimate of daily CO_2 mass emissions given by Equation G–1 may be adjusted to account for carbon retained in the ash using the procedures in either section 2.2.1 through 2.2.3 or section 2.2.4 of this appendix.

* * * * *

2.3 In lieu of using the procedures, methods, and equations in section 2.1 of this appendix, the owner or operator of an affected gas-fired unit as defined under § 72.2 of this chapter may use the following equation and records of hourly heat input to estimate hourly CO_2 mass emissions (in tons).

Appendix J to Part 75—Compliance Dates for Revised Recordkeeping Requirements and Missing Data Procedures

77. Appendix J to part 75 is added to read as follows:

1. *Recordkeeping Requirements*

The owner or operator shall meet the recordkeeping requirements of subpart F of this part by following either §§ 75.50, 75.51 and 75.52 or §§ 75.54, 75.55 and 75.56, from July 17, 1995 through December 31, 1995. On or after January 1, 1996, the owner or operator shall meet the recordkeeping requirements of subpart F of this part by

meeting the requirements of §§ 75.54, 75.55, and 75.56.

2. *Missing Data Substitution Procedures*

The owner or operator shall meet the missing data substitution requirements for carbon dioxide (CO_2) and heat input by following either §§ 75.35 and 75.36 or sections 4.3.1 through 4.3.3, section 4.4.3 and sections 5.3 through 5.4 of appendix F of this part from July 17, 1995 through December 31, 1995. The owner or operator shall meet the missing data substitution requirements for fuel flowmeters in appendix D of this part by following either section 2.4.3.1 or sections 2.4.3.2 and 2.4.3.3 of appendix D of this part from July 17, 1995 through December 31, 1995. On or after January 1, 1996, the owner or operator shall meet the missing data substitution requirements for CO_2 concentration, that input and fuel flowmeters by meeting the requirements of §§ 75.35 and 75.36 and sections 2.4.3.2 through 2.4.3.3 of appendix D of this part.

[FR Doc. 95–11498 Filed 5–10–95; 3:40 pm]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 72 and 75

[FRL–5203–8]

Acid Rain Program: Permits Regulation and Continuous Emission Monitoring

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to amend the Continuous Emission Monitoring (CEM) provisions and the Permits Regulation General Provisions of the Acid Rain Program for the purpose of making the implementation of the program more efficient. Elsewhere in this issue of the **Federal Register**, EPA is amending the CEM and General provisions as a direct final rule without prior proposal because the Agency views these revisions as noncontroversial and anticipates no significant adverse comments. A detailed list of the revisions is set forth in the direct final rule. If no significant adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. The EPA believes that these revisions are noncontroversial because these are technical corrections and other amendments that address various implementation issues without major changes in policy. Elsewhere in this issue of the **Federal Register**, EPA has published an interim final rule addressing additional Acid Rain monitoring issues that may be controversial.

DATES: Comments on this proposed rule must be received on or before June 16, 1995.

ADDRESSES: Any written comments on this proposed rule (companion to the direct final rule) must be identified with the Docket No. A–94–16, must be identified as comments on this proposed rule (companion to the direct final rule), and must be submitted in duplicate to: EPA Air Docket (6102), U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460. The docket is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at the address given above. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Margaret Sheppard, Acid Rain Division (6204J), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, telephone number (202) 233–9180.

SUPPLEMENTARY INFORMATION: The EPA believes that these revisions are noncontroversial; however, if EPA does receive significant adverse comments, EPA will publish a document in the **Federal Register** withdrawing the portions of the direct final rule receiving significant adverse comment. All significant adverse comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

For additional information, see the direct final rule published in the Final Rules section of this **Federal Register**.

Dated: April 28, 1995.

Carol M. Browner,

Administrator.

[FR Doc. 95–11496 Filed 5–10–95; 3:41 pm]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 75

[FRL–5203–2]

Acid Rain Program: Continuous Emission Monitoring Rule Technical Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule and request for comments.

SUMMARY: Title IV of the Clean Air Act (the Act), as amended by the Clean Air Act Amendments of 1990, authorizes the Environmental Protection Agency (EPA or Agency) to establish the Acid Rain Program. The program sets emissions limitations to reduce acidic deposition and its serious, adverse effects on natural resources, ecosystems, materials, visibility, and public health. On January 11, 1993, the Agency promulgated final rules under title IV. Several parties filed petitions for review of the rules. On April 17, 1995, the EPA and the parties signed a settlement agreement addressing continuous emission monitoring (CEM) issues.

In this interim final rule, EPA is amending certain provisions of the CEM regulations to allow industry to be in compliance in situations that were not contemplated in the original rulemaking. The interim final rule allows industry additional flexibility to implement new provisions immediately that address these unforeseen situations, reduces the possibility of underestimating emissions, and also allows the public to comment upon these new provisions.

DATES: *Effective Dates.* This interim final rule shall become effective on July 17, 1995. The provisions of §§ 75.11(a), 75.21(a), and 75.32(a)(3); sections 6.3.1, 6.3.2 and 6.4 of appendix A of part 75; and section 2.1 of appendix B of part 75 are suspended temporarily from July 17, 1995 through December 31, 1996. Sections 75.11 (e) and (g), 75.21(f), 75.30 (d) and (e), 75.32(a)(4), 75.55(e), and 75.56(a)(6); Figure 5 and sections 6.3.3, 6.3.4 and 6.4.1 of appendix A of part 75; section 2.1.7 of appendix B of part 75; and section 7 of appendix F of part 75 are temporarily added and are effective from July 17, 1995 through December 31, 1996.

Comment Date. Comments on this interim final rule must be received on or before June 16, 1995.

ADDRESSES: Any written comments on these interim final rule revisions must be identified with the Docket No. A–94–16, must be identified as comments on the interim final rule, and must be submitted in duplicate to: EPA Air Docket (6102), Environmental Protection Agency, 401 M Street SW, Washington, DC 20460. The docket is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at the address given above. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Margaret Sheppard, Acid Rain Division (6204J), U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460, telephone number (202) 233–9180.

SUPPLEMENTARY INFORMATION: All public comments received on the interim final rule will be addressed in a subsequent final rulemaking notice. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this interim final rule should do so at this time.

For additional information about further revisions to the Acid Rain monitoring provisions, see the direct final rule published elsewhere in this **Federal Register**.

The EPA intends to publish a final rulemaking document as a follow-up to this interim final rule prior to January 1, 1997 that will incorporate provisions based upon public comments. At that time, the sections that are added temporarily by this interim final rule would be permanently added by the follow-up final rule. Provisions that are suspended temporarily in this interim final rule would be removed in the follow-up final rule. If EPA were not to publish a follow-up final rule prior to January 1, 1997, the sections temporarily added by the interim final rule would expire and the sections suspended temporarily by the interim final rule would be effective January 1, 1997.

I. Background

Title IV of the Clean Air Act (CAA or the Act), as amended November 15, 1990, requires the Environmental Protection Agency (EPA or Agency) to establish an Acid Rain Program to reduce the adverse effects of acidic deposition. On January 11, 1993, the Agency promulgated final rules implementing the program, including the General Provisions of the Permits Regulation and the CEM rule (58 FR 3590–3766). Technical corrections were published on June 23, 1993 (58 FR 34126) and July 30, 1993 (58 FR 40746–40752). This notice of interim final rulemaking, like the notice of direct final rulemaking published elsewhere in this issue of the **Federal Register**, contains additional technical corrections and other amendments to address various implementation issues that have come to light since the final rule was published on January 11, 1993. The effective date of these interim final amendments will be July 17, 1995.

The EPA has been engaged in settlement discussions with several parties who challenged certain provisions of the Acid Rain CEM rules promulgated on January 11, 1993. [See *Environmental Defense Fund v. Browner*, No. 93–1203 and consolidated cases, "Complex" (D.C. Cir., filed March 12, 1993.] Although the parties have been able to reach agreement on a number of issues, which are addressed in the direct final rule, some additional issues remain outstanding. These outstanding issues, unlike the noncontroversial and routine technical corrections addressed by the direct final rule, may not be considered noncontroversial and therefore are being addressed separately in this interim final rule. The issues addressed by this interim final rule are: (1) A requirement that units with SO_2 CEMS burning gaseous fuels only must use heat input and a default SO_2 emission rate or appendix D methods to determine SO_2 emissions instead of an SO_2 CEMS and a flow monitor [§ 75.11(e)], (2) the procedure for assigning proportional flow rates for emissions through multiple stacks or bypass stacks for purposes of substituting missing data [§ 75.30(e)], (3) the procedure for determining proper operation of units with add-on controls for purposes of substituting missing data (§ 75.34), (4) clarification of provisions in the January 11, 1993 rule that the unit must be operating while performing certain quality assurance procedures (appendix A, sections 6.3.1 and 6.3.2; appendix B, section 2.1 Introductory Text), and (5) the procedures for performing cycle time tests (appendix A, section 6.4).

In order to allow for necessary changes to the data acquisition and handling systems (DAHS) required by the revisions to §§ 75.11(e) and 75.30(e), owners or operators may choose to delay compliance with the revised provisions regarding use of heat input and a default SO_2 emission rate or appendix D methods for units with SO_2 CEMS when burning only gaseous fuels [§ 75.11(e)] or with the procedure for assigning proportional flow rates for emissions through multiple stacks or bypass stacks for purposes of missing data substitution [§ 75.30(e)] until January 1, 1997. The EPA believes that this will give utilities time to comment on these issues and EPA time to respond to these issues in a final rulemaking before the provisions become required. Furthermore, EPA believes an optional delayed compliance date for these revised provisions is warranted because utilities may need time to incorporate these changes into their DAHS, emissions will be monitored under the current regulations until the changeover, and emissions affected by these provisions will be small.

II. EPA Action

Under CAA Section 412(c), not later than January 1, 1995, owners and operators of Acid Rain affected units must install and operate CEMS, quality assure the data, and keep records and reports in accordance with the Acid Rain regulations. Because EPA believes the revisions published in this rule will improve and enhance the implementation of the Acid Rain monitoring program, EPA believes it is necessary that the revisions become effective as soon as possible. Many of the monitoring provisions in part 75 are interrelated and would be difficult to separate from other, related provisions and therefore these technical revisions to the monitoring provisions must be considered as a whole. For these reasons, EPA is publishing the noncontroversial revisions through a direct final rulemaking and is also publishing provisions that may be controversial and on which it may receive comment through this interim final rulemaking. Both the direct final rule and the interim final rule will become effective on the same date. Even though comments may be submitted on these interim final provisions, EPA believes that it is necessary to include the interim final revisions in the revised CEM regulation in order to assure an overall consistent and implementable Acid Rain monitoring program. Therefore, EPA is issuing these amendments to the CEM regulation effective at the same time as the direct final amendments and will take comment on both sets of revisions. Comments on the interim final provisions must be submitted to Air Docket A–94–16, which is also the docket for the direct final rulemaking published elsewhere in this issue of the **Federal Register**, and must be identified as comments on the interim final rule to distinguish them from comments on the direct final provisions. Because the provisions of the direct final rule and interim final rule are interrelated, the docket contains supporting material and relevant information for both rulemakings.

As described in the notice of direct final rulemaking, if EPA receives significant adverse comments on the direct final rule, EPA will withdraw those portions of the direct final rule upon which comments are submitted, address the comments, and subsequently issue a final rule that addresses the withdrawn portions of the direct final rule. Except for certain specified subsections which will cease to be in effect as of January 1, 1997, the interim final rule will remain in effect until EPA publishes a subsequent final rule, following consideration of comments received in response to the notice of proposed rulemaking corresponding to this interim final rule. At the time of that future rulemaking, sections that are temporarily added in today's interim final rule would be permanently added and would replace provisions in the current rule that are temporarily suspended.

The EPA has been addressing many technical issues during early implementation of the Acid Rain monitoring program through issuance of policy statements interpreting the monitoring provisions of the January 11, 1993 rule, as well as by issuance of technical guidance. Many of the clarifying policy statements and technical guidance, which are to a large extent reflected in the direct final rule and interim final rule, are now being used by utilities for implementation guidance. Therefore, EPA believes it would be contrary to the public interest to delay the effectiveness of these monitoring provisions and believes these technical revisions should be effective immediately. Because EPA believes it is necessary to issue the technical corrections to the CEMS regulation as soon as possible and because the revised portions of the monitoring provisions are integrally interrelated, EPA believes it necessary for the full complement of revisions to take effect at the same time. The EPA is therefore invoking the good cause exception under the Administrative Procedure Act (APA) in not providing an opportunity for comment before this interim final rule takes effect.[1] [See 5 U.S.C. 553(b)(B); see also 42 U.S.C. 7607(d)(1).] Under CAA Section 307(d)(1), subsection 307(d) does not apply in the case of a rule for which the agency invokes the good cause exception of 5 U.S.C. 553(b)(B). Therefore, CAA Section 307(d) does not apply to this interim final rule. The EPA believes that notice-and-comment rulemaking prior to the effective date of the interim final rule would be impracticable and contrary to the public interest because of the complex and interrelated nature of the monitoring provisions that make it necessary to revise all of the CEM provisions in a consistent and integrated way in order to avoid inconsistency in monitoring requirements and because of the need to make the technical corrections and amendments available for use by utilities as soon as possible.

[1] As previously noted however, EPA is providing the public with an opportunity to comment on EPA's direct final rule and will withdraw any portions of the direct final rule upon which significant adverse comments are submitted.

III. Rationale

A. SO_2 Monitoring During Combustion of Gas for Units With SO_2 CEMS

Some coal-fired units and oil-fired units also combust pipeline natural gas. Natural gas has a very low sulfur content and will produce extremely low SO_2 concentrations when combusted alone. In order to monitor these low concentrations accurately, a utility would need to use an SO_2 monitor with a range of a few parts per million (ppm). At this range, there are no Protocol 1 gases available for calibrations. Furthermore, it is unlikely that the CEMS would be able to pass the relative accuracy test at such low levels because it is difficult to measure extremely small concentrations precisely with either the reference method or a CEMS. The EPA had concerns about the accuracy of the SO_2 concentration data when measuring natural gas alone, because of the extremely low concentrations and because of the difficulty in performing appropriate quality assurance testing. The EPA decided that it was inappropriate for units to use an SO_2 CEMS to measure emissions from natural gas only. However, a coal-fired, oil-fired, or gas-fired unit could still use an SO_2 CEMS for measuring SO_2 when combusting fuels other than natural gas (or other gaseous fuel with a sulfur content no greater than natural gas) or when combusting a combination of fuels.

In order to address this situation, some industry representatives requested to use the provisions of appendix D of part 75 for determination of SO_2 emissions from natural gas instead of use of an SO_2 CEMS. (See Docket Item II–D–29, Letter from B. Machaver to S. Jewett, November 30, 1993; Docket Item II–D–30, Log of telephone conversation on Questions Concerning 40 CFR Part 75 Regulations for Oil/Gas Fired Title IV Affected Units (Questions provided in November 30, 1993 Memorandum to Susan Jewett), December 7, 1993.) After consideration, EPA agreed that this

would be an acceptable alternative to using the SO_2 CEMS during combustion of low sulfur gaseous fuel, so long as the utility certifies an excepted monitoring system under appendix D of part 75 for the measuring of gas. This requires accuracy testing of a gas flowmeter and testing of the DAHS. Furthermore, the utility must perform the procedures under appendix D, with the same fuel sampling, analysis, and fuel flowmeter quality assurance/quality control (QA/QC) requirements.

Another variant suggested by a utility was to use the default SO_2 emission rate factor of 0.0006 pound per million British thermal units (lb/mmBtu) for pipeline natural gas that EPA previously discussed in a policy statement regarding the "NADB emission rate" in appendix D and the heat input calculated by a flow monitor and a diluent monitor. (See Docket Item II–D–54, Acid Rain CEM (Part 75) Policy Manual; Docket Item II–D–59, Letter from R. LaBorde, Central Louisiana Electric Company to J. Winkler, EPA Region VI Re: Requestion for Clarification, Rodemacher Power Station Unit-1, Rapides Parish, LA, August 3, 1994). After further consideration, EPA agreed that this also is acceptable. (See Docket Item II–D–67, Response to R. LaBorde, CLECO, from J. Hepola, EPA, August 25, 1994.) The owner or operator must certify the system using the flow monitoring system, the diluent monitor, and the DAHS as a system for monitoring SO_2 emissions. These monitors must be tested following the QA/QC requirements of appendix B of part 75. Both of these methods allow utilities to use provisions that are allowed for estimating the low SO_2 emissions due to combustion of gaseous fuels with a low sulfur content under appendix D of part 75. The EPA believes that these methods will allow SO_2 accounting with sufficient accuracy for the low emission rate from combustion of natural gas. These methods are not sufficiently accurate for combustion of oil or coal because of their higher sulfur content. Similarly, during periods of co-firing of oil, coal or other high sulfur fuels, the owner or operator must use the certified SO_2 CEMS.

B. Missing Data Substitution Provisions

1. Missing Data Procedures for Units With Add-On Emission Controls

Many utilities were uncertain of the requirements for substituting and reporting missing data for units with add-on emission controls. For instance, the regulation was not clear as to whether or not parametric data needed to be reported and recorded for these units. Industry also commented that the possible options for substituting missing data were unclear for these units. (See Docket Item II–D–3, Discussion Issues for TU Electric and EPA; Docket Item II–D–4, Draft Meeting Notes for EPA-Texas Utilities Teleconference, December 7, 1992). In response to these concerns, EPA prepared a policy statement to clarify missing data substitution procedures for units with add-on emission controls. (See Docket Item II–D–54, Acid Rain CEM (Part 75) Policy Manual). The EPA has amended part 75 in part to incorporate these interpretations.

The amendments to part 75 allow four ways of substituting for missing data. The default option is to substitute the maximum potential concentration of SO_2 or the maximum potential NO_X emission rate when no information on the emission controls is available. A unit with SO_2 add-on emission controls with an inlet monitor may instead use the maximum SO_2 concentration at the scrubber inlet during the previous 720 quality-assured monitor operating hours. This option may always be used by a source.

Another option is to develop a site-specific correlation to determine the removal efficiency of the control equipment. The designated representative for a unit will petition the Administrator for use of this correlation instead of following standard missing data substitution procedures. The requirements for using this correlation as a missing data substitution method are located in appendix C of part 75. The correlation involves monitoring emission control parameters and electronically reporting this data for each missing data period to EPA each quarter. This correlation method may only be used if the availability or the CEMS at the outlet of the emission controls is 90.0 percent or greater.

A third option is to use the standard missing data procedures and to keep information on the emission controls at the site. The parameters listed in appendix C are a guideline of the types of information that are to be used to verify the add-on emission controls are operating properly. The EPA considers "proper operation" of the control equipment to require that the removal efficiency is equal to or greater than that when monitor data is available, such as during the hours before and after the missing data period. It is not enough to show that the control device simply is operating. The information that a utility should keep relates to site-specific equipment. Part 75 does not require that every single one of those parameters must be kept, nor does it prohibit the use of other information to verify proper operation of the emission controls. Also, these records do not have to be kept electronically. However, the designated representative must report in the monitoring plan for the unit the range of each parameter that indicates proper operation of the add-on emission controls. The EPA or a State air pollution control agency could request to look at the parametric records or to have them reported at any time to verify that the add-on emission controls are maintaining emission reductions and are operating properly, by comparing the data with the range of each parameter reported in the monitoring plan. In addition, a designated representative for a source must certify that the emission controls are properly operating and that the missing data procedures are not systematically underestimating emissions during the quarter where the utility uses the standard missing data procedures. This additional certification is to be reported as part of the designated representative's certification with each quarterly report.

The fourth and final option for supplying missing data is to use the standard missing data procedures as in the third option, and then to petition the Administrator for use of a value more representative of actual emissions than the maximum SO_2 concentration in the previous 720 hours or the maximum NO_X emission rate at the corresponding load range. As in the existing rule, this is only an option when monitor data availability is below 90.0 percent, where the most conservative missing data substitution procedures are required. A designated representative may petition to substitute with a more representative value that does not underestimate emissions if sufficient data exist to demonstrate that the maximum value is an extreme overestimate, based upon periods of improper operation or non-operation of the emission controls. This demonstration requires information such as: CEM data from periods when the add-on emission controls are operating; unit operating load data; parametric data indicating proper operation of the add-on emission controls during the missing data period; and fuel sulfur content. The EPA expects a "representative value" to be no less than the maximum hourly value from when the emission controls were operating during the same lookback period normally used for an SO_2 or NO_X CEMS.

The EPA has also made minor changes to indicate that petitions are submitted by the designated representative, rather than the owner or operator. This is consistent with the designated representative's role as the official contact person for EPA for all submissions.

2. SO_2 Concentration Missing Data During Gas Combustion

A utility noted that for a unit that combusts either natural gas and some oil or natural gas and some coal, SO_2 emissions due to gas combustion are several orders of magnitude smaller than emissions during combustion of either coal or oil (See II–D–16, Letter from David Rengert, Niagara Mohawk Power Corporation to Ann Zownir, EPA, May 21, 1993). Therefore, if an SO_2 CEMS was not providing quality-assured data when the unit was combusting only natural gas, the standard missing data procedures might substitute vastly overestimate SO_2 concentration values from combustion of coal or oil. In addition, if the unit combusts primarily natural gas, these low SO_2 concentration values could potentially underestimate emissions when combusting oil or coal if the 90th percentile and 95th percentile (and possibly even the maximum value) during the previous 720 quality-assured monitor operating hours were substituted using all data collected from all fuels. To address this concern, EPA revised the missing data procedures to separate SO_2 emissions due to combustion of natural gas and other gaseous fuels with a sulfur content no greater than that of natural gas. SO_2 concentration values measured by an SO_2 monitoring system during combustion of natural gas only are not kept as part of the historical data that is used to substitute SO_2 concentration data. These values are not used to provide the average of the hour before and the hour after a missing data period and are not included in percentile calculations. As a result, substituted missing data will reflect the fuel being used during the missing data period.

As was discussed under Section A above, as of January 1, 1997, SO_2 CEMS will no longer be allowed for measuring SO_2 during combustion of natural gas or other gaseous fuels with a sulfur content no greater than that of natural gas because of the difficulty of accurately measuring and quality assurance testing at such low concentrations.

During those times, a utility will either use the heat input from the flow monitor and diluent monitor and the default SO_2 emission rate for pipeline natural gas of 0.0006 lb/mmBtu according to appendix F of part 75, or the fuel flow and daily sulfur content of the gaseous fuel according to appendix D of part 75. The utility should use the following to fill in missing data if a fuel flowmeter, a flow monitor or a diluent monitor is not providing quality-assured data. For units combusting pipeline natural gas using a flow monitor, a diluent monitor and the default SO_2 emission rate, the owner or operator should follow the missing data procedures for heat input found in § 75.36 of subpart D of part 75. For other units using gas sampling and analysis and fuel flowmeters, the owner or operator should substitute using the missing data procedures for sulfur content or fuel flow found in appendix D of part 75.

Note that these revised procedures are not needed if a unit is co-firing a high sulfur fuel along with natural gas or other gaseous fuels with a sulfur content no greater than that of natural gas. In this case, the concentration will come predominantly from the higher-sulfur fuel, generally oil or coal. Thus, during periods of co-firing, the owner or operator should be using the SO_2 CEMS or the missing data procedures in §§ 75.31 or 75.33 for an SO_2 CEMS.

3. Missing Data for Multiple Stacks and Bypass Stacks

The EPA has added a provision to account for missing data substitution of flow data in the case of multiple stacks or bypass stacks in § 75.30(e) of today's interim final rule. First, this revision accounts for the fact that emissions may not flow through a particular stack during an hour when the unit combusts fuel. To account for this, EPA has added a provision to the missing data procedures such that only hours when emissions pass by the monitors on the stack are included as unit operating hours and as quality-assured monitor operating hours in calculations of availability and substitute values.

A second provision accounts for the fact that some units may be able to shift flow between ducts or stacks. If flow from a unit can shift from one stack to another, such as when flue dampers are moved, then the correlation between load for the entire unit and flow rate measured on one stack is no longer accurate. It would be possible to underestimate flow rate and SO_2 mass emissions during use of the missing data procedures for flow, contrary to EPA's intent for these missing data procedures. In order to avoid this situation, EPA has added a provision in today's rule that requires using a substitute value of the maximum flow rate recorded by the flow monitoring system at the corresponding load range during the previous 2,160 hours of quality-assured monitor data when emissions passed through the stack *if* the proportion of flow between stacks has changed during that time. This will avoid potential underestimation that might occur when using an average flow rate in the corresponding load range. As discussed above in this notice, owners or operators may choose to delay compliance with this requirement until January 1, 1997 in order to make changes to their DAHS and to await implementation of these provisions until after EPA has addressed all comments on the interim final rule. In addition, EPA notes that if a utility never changes the flue dampers so that the proportion of flow is constant, then no changes to the standard missing data procedures or to their DAHS are necessary.

C. Certification and Quality Assurance Testing

1. Calibration Error Test

The EPA discovered that some CEMS testers were incorrectly performing the 7-day calibration error test. In the incorrect use of the procedure, the tester checked the calibration error at the zero calibration gas level, made automatic adjustments to the monitor data at that point, checked the calibration error at the high calibration gas level, and then again made adjustments to the data. The EPA clarified that a tester should check the calibration error both at the zero level and the high level before making any adjustments. Both in the preamble to part 75 (January 11, 1993) and in a public issue paper on the 7-day calibration error test, EPA stated that this second interpretation is the correct one. (See Docket Item II–D–27, Issue Paper on Part 75 Calibration Error Testing for Certification, October 8, 1993; Letter from J. White to D. McNeal, and Response to J. White from S. Saile, EPA). The EPA has adopted this interpretation of testing both instrument levels together because instrument errors at the zero and high levels are not always independent of each other. These interim amendments to part 75 clarify this provision.

Another related issue associated with the 7-day calibration error test concerned the kinds of adjustments that could be made. Requirements of the calibration error tests in 40 CFR part 75 and 40 CFR part 60 could be interpreted as requiring either 7 successive daily tests or one cumulative 7-day test. The following statements in the January 11, 1993 rule imply that the 7-day test is cumulative:

Do not make manual adjustments to the monitor setting during the 7-day test. If automatic adjustments are made, conduct the calibration error test in a way that the

magnitude of the adjustments can be determined and recorded. (section 6.3.1 of appendix A.)

However, EPA stated in Section V.G(4)(a) of its January 11, 1993 preamble to part 75 that "the 7-day calibration error test performed during certification is the same 2-point drift test as the daily calibration error test" and referred to 40 CFR part 60, appendix B in Section V.G(4)(b) (58 FR 3641). Industry generally interprets the calibration drift test in 40 CFR part 60 to require 7 separate daily tests, rather than a cumulative test over 7 days. (See Docket Item I–C–3, Jahnke, James A., Excerpt from *Continuous Emission Monitoring*, Van Nostrand Reinhold, New York.) The EPA now clarifies part 75 to state its original intention that the 7-day calibration error test is a series of 7 daily calibration error tests. On each day of the test, the monitor must meet the performance specification of a calibration error no greater than 2.5 percent of span. Because this is a series of tests, a tester may not adjust the monitor or monitor data, either manually or automatically, until the test has been completed at both levels on any given day. However, the tester may make adjustments between daily tests, once the previous day's test results have been recorded.

2. Quality Assurance of Data Following Daily Calibration Error Test

During early implementation EPA began developing a series of policies in order to assist in its evaluation of the acceptability of data received in quarterly reports. Among these policies concerned the acceptability of data when a required daily test is not performed. The Agency initially decided that the absence of information on a test during a calendar day means that emissions data for that day are not considered quality-assured. Section 2.1 of appendix B requires daily assessments, such as calibration error tests and interference checks, to be performed on each calendar day. Based on this requirement, EPA initially interpreted data as invalid for a calendar day from midnight to the time of the next successful daily calibration error test if no test results were reported. (See Docket Items II–D–56, ETS User Bulletin #2 and II–D–50, Electronic Data Reporting Supplementary Instructions, June 29, 1994.)

Some utilities expressed concern that a unit might stop operating during the middle of a day before the regularly scheduled time for performing an automated calibration. (See Docket Item II–D–60, Letter from Gary R. Cline, Pennsylvania Electric Co., to Margaret Sheppard, EPA, August 1, 1994.) Because the testing procedures require the unit to operate during all measurements, the utility would be unable to perform this test and its data would be invalidated beginning at midnight. Some suggestions from utilities included: allowing performance of the test while the unit is off-line, treating the data as quality assured until the time of the next test, and treating the data as quality-assured prospectively for 24 hours from the previous test.

The EPA decided that the approach consistent with the regulatory language that would result in the greatest amount of quality-assured data while still preserving the requirement for a daily test is to retain the calendar day requirement for performing each daily test. However, if a unit stops operating during a calendar day, then data is still considered quality-assured for 24 clock hours from the previous day's test. For example, a unit with monitors that are normally calibrated at 8 a.m. performs the calibration error test at 8 a.m. on January 11. All 24 hours of data from the monitor for January 11 are quality-assured. If the unit suddenly "trips" and stops operating at 6 a.m. on January 12, the data from midnight until 6 a.m. are also considered quality-assured. If the unit starts up again at 3 p.m. but the monitors are not tested between 3 p.m. and midnight, then that block of data is invalidated. As in the January 11, 1993 rule, today's rule still requires a calibration error test to be performed with the unit operating. This is because the readings from the CEMS are affected by temperature and pressure conditions. (See Docket Item II–D–39, Log of telephone conversation between Jon Konings, WEPCo, and M. Sheppard, EPA, on EPA's policy on conducting calibration error test, April 13, 1994.) In order to ensure accurate CEMS measurements for the entire system and to ensure that this test is performed under controlled conditions, EPA requires the daily calibration error tests to be performed while the unit is operating for purposes of quality-assuring the data and testing the CEMS. (See Docket Item II–D–54, Acid Rain CEM (Part 75) Policy Manual.)

3. Unit Operation During Testing

This issue is related to provisions of section 6 of appendix A of part 75 and to the tests performed under appendix B of part 75. Under the January 11, 1993 rule, section 6.1 of appendix A requires that a unit be operated during periods when measurements are made for certification testing. Similarly, section 6.2 indicates that when performing a linearity check, testers are to conduct each test by operating the monitor at its normal (unit) operating temperature and conditions. In this interim rule, EPA further clarifies provisions in the January 11, 1993 rule, providing that the unit must be operating, by adding language to sections 6.3.1, 6.3.2, and 6.4 for the calibration error test and for the cycle time test. These sections are later cited in appendix B. This language addition clarifies EPA's intent that a unit must be operating during all monitor testing, both for initial certification testing and for QA/QC testing.

During the public comment period for the proposed part 75 regulation, some commenters raised this issue. (See Docket A–90–51, Docket Item IV–D–303, Letter from Nicolson, Rober J., Vice President, Fossil & Hydro Operations, Consumers Power Company, Comments on Clean Air Act Amendments—Title IV Part 75 Continuous Emission Monitoring Rule and Docket A–91–69, Item IV–D–66, Letter from Sullivan, J.J., Executive Director, Environmental Programs, PSI Energy, Inc., Comments on the Proposed Acid Rain Program Rule: 40 CFR Part 72, 73, 75 and 77.) Under the new source performance standard for subpart Da of 40 CFR part 60 and under the performance specifications in appendix B of 40 part 60, EPA required a unit to operate for 168 hours in a row in order to perform the 7-day calibration error test for monitors. In part 75, EPA modified this to allow units to operate only during the periods when measurements were performed and by allowing operation on nonconsecutive days. This change was made to account for peaking units, which normally would not operate for every hour of every day. However, EPA still required the unit to be operating during testing so that the test will be performed under the same temperature and pressure conditions as when monitor readings are taken during the program. (See Docket A–90–69, Docket Items V–C–1 and V–C–2, Response to Comment Document.)

The test procedures for linearity checks and for calibration error tests require the entire monitoring system to be tested, rather than just the analyzer. For example, sections 6.2 and 6.3.1 of appendix A requires introducing calibration gas through the gas injection port, which for most systems will be at the probe. The calibration gas must go through as much of the system as possible, including the probe, filters, scrubbers, conditioners, and other monitor components for extractive type monitoring systems, or including all active electronic and optical components for in situ type monitors.

Monitor responses must come from the DAHS. Thus, the test is a test of the complete continuous emission monitoring system. (See Docket Item II–D–68, Memorandum from B. Warren-Hicks, The Cadmus Group to M. Sheppard, EPA, September 6, 1994). In order to make the linearity check and calibration error test a true test of the entire monitoring system, the tests must be performed under the same unit operating conditions that prevail when the monitor reads emissions to include in certification test results and in quarterly emissions reports. The EPA has already stated this policy in question Number 12.17 of its policy guidance manual. (See Docket Item II–D–54, Acid Rain CEM (Part 75) Policy Manual.) Utilities have also commented on the significant effects of temperature and pressure conditions upon monitor readings. (See Docket Items II–D–39, Conversation between J. Konings, WEPCo and M. Sheppard, EPA:ARD, on EPA's policy on conducting calibration error test, April 13, 1994; II–D–40, Meeting Notes from EPA Meeting with J. West of Metropolitan Edison and J. Jahnke of Source Technology Associates, April 18, 1994.).

The procedures of the relative accuracy test and the cycle time test require continuous emission monitoring systems and flow monitors to measure the actual emissions at the stack. Therefore, these tests can only be performed while the unit is operating.

The EPA does not consider test results to be valid if the test is performed while the unit is not operating.

Thus, in this interim rule, EPA clarifies that a unit must be operating when a test is performed in order to provide acceptable results to meet requirements for certification testing or QA/QC testing. This is also consistent in a new provision in section 2.1 of appendix B of part 75. This provision allows data to be considered valid for 24 hours following the last passed calibration error test if a unit stops operating on a calendar day before the utility has performed a calibration error test on that day. However, if a daily calibration error test were failed or if the daily calibration error test were performed while the unit is not operating, the data after that test would not be considered valid.

4. Cycle Time Test

Part 75 included a cycle time/response time test to determine if a CEMS was capable of drawing down and analyzing a sample frequently enough to provide an update at least four times an hour. A tester was required to perform this test on the SO_2 pollutant concentration monitor, the NO_X CEMS (in lb/mmBtu), and the CO_2 pollutant concentration monitor. Some testers found the regulatory procedures unclear as to when a source tester samples stack gas. In addition, EPA staff realized that some CEMS cannot perform the cycle time/response time test simultaneously on the NO_X and diluent gas components of the NO_X CEMS, because NO_X and O_2 cannot be kept in the same bottle for reasons of stability.

As a result of these issues raised during implementation, EPA has revised the cycle time/response time test to be a cycle time test patterned after the response time test in Method 20 of appendix A of 40 CFR part 60. A cycle time test is a test to determine the length of time it takes for a CEM system to draw down a sample of gas, analyze the sample, achieve a stable reading, and record the new concentration. More specifically, the cycle time test determines 95 percent of the length of time for the monitor to go from reading a known concentration of calibration gas to reading actual stack emissions. (The 95-percent margin allows for small amounts of error that will prevent a monitor from reading the labelled value of a calibration gas, even when the monitor reading is stable.) A tester starts by introducing calibration gas until the monitor reading is stable. Next, the tester switches the monitor to reading stack gas emissions. When the monitor response is stable, the tester notes the time. The DAHS records each value that the monitor reads and the time of the reading. Once the DAHS has recorded this stable value, the tester introduces the other calibration gas. The procedure is repeated, so that the monitor returns to a stable reading of stack gas and records it. This revised procedure will allow more time-share monitoring systems to pass the cycle time test than the earlier cycle time/response time test, because the revised test eliminates the time it takes for gas to travel from the calibration gas cylinder to the probe.

Stability is considered to be achieved when the monitor reading changes by less than 5 percent from the average concentration over a 5-minute period, or less than 1 percent of the monitor span over 30 seconds. These values were adapted from the response time test found in Method 20 of appendix A, 40 CFR part 60 for testing of stationary gas turbines. The EPA made the definition of stability more flexible by lengthening the time period for averaging concentration from 2 minutes to 5 minutes, in order to apply to coal-fired boilers, which may experience less stable loads than stationary gas turbines. Based upon results from certification tests at Phase I units, EPA believes that coal-fired units can reliably achieve this definition of stability. (See Docket Item II–D–75, Analysis of Cycle Time/Response Time Data, October 3, 1994.)

The longer of the two times going from calibration gas to stack gas is the cycle time of the component monitor. For a NO_X or SO_2-diluent monitoring system, the cycle time is the longer of the two cycle times for the NO_X or SO_2 pollutant concentration monitor and the diluent monitor. Originally, testers were required to test both component monitors at the same time, which requires injecting both gases simultaneously. Testing the two component monitors separately simplifies performing the cycle time test, since calibration gases do not need to be injected simultaneously. This also resolves the issues raised during certification testing for Phase I units. In addition, the revision provides consistency with existing EPA regulations under 40 CFR part 60.

The EPA has included recordkeeping provisions for this certification test in § 75.56. Furthermore, the rule amendments contain an additional figure at the end of appendix A, to complement the figures for test data and results for other certification tests for CEMS.

IV. Impact Analyses

The impact analyses required by Executive Orders 12866 and 12875 and by the Regulatory Flexibility Act, the Unfunded Mandates Act and the Paperwork Reduction Act are found under the notice of direct final rulemaking in today's **Federal Register**.

The control numbers assigned to collections of information in certain EPA regulations by the OMB have been consolidated under 40 CFR part 9. The EPA finds there is "good cause" under Sections 553(b)(B) and 553(d)(3) of the APA to amend the applicable table in 40 CFR part 9 to display the OMB control number for this rule without prior notice and comment. Due to the technical nature of the table, further notice and comment would be unnecessary. For additional information, see 58 FR 18014, April 7, 1993, and 58 FR 27472, May 10, 1993.

List of Subjects in 40 CFR Parts 75

Environmental protection, Air pollution control, Carbon dioxide, Continuous emission monitors, Electric utilities, Incorporation by reference, Nitrogen oxides, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: April 28, 1995.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, part 75 of title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 75—CONTINUOUS EMISSION MONITORING

1.–3. The authority citation for part 75 is revised to read as follows:

Authority: 42 U.S.C. 7601 and 7651k.

4. Section 75.11 is amended by adding a sentence to the end of paragraph (a) and by adding paragraphs (e) and (g) to read as follows:

§ 75.11 Specific provisions for monitoring SO_2 emissions (SO_2 and flow monitors).

(a) * * * The provisions in this paragraph are suspended from July 17, 1995 through December 31, 1996.

* * * * *

(e) *Units with SO_2 continuous emission monitoring systems during the combustion of gaseous fuel.* On or after January 1, 1997, the owner or operator of a unit with an SO_2 continuous emission monitoring system shall, during any hours in which the unit combusts only pipeline natural gas or gaseous fuel with a sulfur content no greater than natural gas, calculate SO_2 emissions in accordance with the following procedures. Prior to January 1, 1997, the owner or operator of such a unit may calculate SO_2 emissions in accordance with the following procedures.

(1) The owner or operator of a unit with an SO_2 continuous emission monitoring system shall, during any hours in which the unit combusts only pipeline natural gas, calculate SO_2 emissions using one of the following two methods in lieu of operating and recording data from the SO_2 continuous emission monitoring system:

(i) By using the heat input calculated using a certified flow monitoring system and a certified diluent monitor, the default SO_2 emission rate for pipeline natural gas from appendix D of this part, and Equation F–23 in appendix F of this part and by certifying this as a system for monitoring SO_2 mass emissions by identification in the monitoring plan, by tests for the data acquisition and handling system under § 75.20(c), and by meeting all quality control and quality assurance requirements in appendix B of this part for a flow monitor and a diluent monitor; or

(ii) By certifying an excepted monitoring system under appendix D of this part under § 75.20, by following the procedures for determining SO_2 emissions from combustion of gaseous fuels under appendix D of this part, by meeting the recordkeeping requirements of § 75.55, and by meeting all quality control and quality assurance requirements for fuel flowmeters in appendix D of this part.

(2) During any hours in which the unit combusts only gaseous fuel with a sulfur content no greater than natural gas other than pipeline natural gas, the owner or operator shall calculate SO_2 mass emissions by certifying an excepted monitoring system under appendix D of this part under § 75.20, by using the gas sampling and analysis and fuel flow procedures of appendix D of this part, by meeting the recordkeeping requirements of § 75.55, and by meeting all quality control and quality assurance requirements for fuel flowmeters in appendix D of this part.

* * * * *

(g) *Coal-fired units.* The owner or operator shall meet the general operating requirements in § 75.10 for an SO_2 continuous emission monitoring system and a flow monitoring system for each affected coal-fired unit while the unit is combusting coal or any fuel other than natural gas or a gaseous fuel with a sulfur content no greater than natural gas, except as provided in § 75.16 and in subpart E of this part.

5. Section 75.21 is amended by adding a sentence to the end of paragraph (a) and by adding paragraph (f) to read as follows:

§ 75.21 Quality assurance and quality control requirements.

(a) * * * The provisions in this paragraph are suspended from July 17, 1995 through December 31, 1996.

* * * * *

(f) *Continuous emission monitoring systems.* The owner or operator of an affected unit shall operate, calibrate, and maintain each primary and redundant backup continuous emission monitoring system used under the Acid Rain Program according to the quality assurance and quality control procedures in appendix B of this part. The owner or operator of an affected unit shall ensure that each non-redundant backup continuous emission monitoring system used under the Acid Rain Program complies with the daily and quarterly quality assurance and quality control procedures in appendix B of this part for each day and quarter that the system is used to report data. The owner or operator shall perform quality assurance upon a reference method backup monitoring system according to the requirements of Method 2, 6C, 7E, or 3A in appendix A of part 60 of this chapter, instead of the procedures specified in appendix B of this part. Notwithstanding the provisions of appendix B of this part, the owner or operator of a unit with an SO_2 continuous emission monitoring system is not required to perform daily or quarterly assessments under appendix B of this part on any day or in any calendar quarter during which the unit combusts only natural gas or a gaseous fuel with a sulfur content no greater than natural gas. In addition, any calendar quarter during which the unit combusts only natural gas or a gaseous fuel with a sulfur content no greater than natural gas shall be excluded in determining the calendar quarter, bypass operating quarter, or unit operating quarter when the next relative accuracy test audit must be performed for the SO_2 continuous emission monitoring system, provided that a relative accuracy test audit is performed on that system at least once every two calendar years. The owner or operator of a unit using a certified flow monitor and a certified diluent monitor and Equation F–23 to calculate SO_2 emissions shall meet all quality control and quality assurance requirements in appendix B of this part for the flow monitor and the diluent monitor.

6. Section 75.30 is amended by adding paragraphs (d) and (e) to read as follows:

§ 75.30 General provisions.

* * * * *

(d) On or after January 1, 1997, the owner or operator shall comply with the provisions of this paragraph. Prior to January 1, 1997, the owner or operator may comply with the provisions of this paragraph (d) if also complying with the provisions of § 75.11(e).

(1) Whenever a unit with an SO_2 continuous emission monitoring system combusts only pipeline natural gas and the owner or operator is using the procedures in section 7 of appendix F of this part to determine SO_2 mass emissions pursuant to § 75.11(e), the owner or operator shall substitute for missing data from a flow monitoring system, CO_2 diluent monitor or O_2 diluent monitor using the missing data substitution procedures in § 75.36.

(2) Whenever a unit with an SO_2 continuous emission monitoring system combusts gas with a sulfur content no greater than natural gas or pipeline natural gas and the owner or operator is using the gas sampling and analysis and fuel flow procedures in appendix D of this part, to determine SO_2 mass emissions pursuant to § 75.11(e), the owner or operator shall substitute for missing data using the missing data procedures in appendix D of this part.

(3) The owner or operator shall not use historical data from an SO_2 pollutant concentration monitor to account for SO_2 emissions due to combustion of gas during missing data periods. In addition, the owner or operator shall not include hours when the unit combusts only natural gas (or a gaseous fuel with sulfur content no greater than that of natural gas) in the availability calculations in § 75.32, nor in the calculations of substitute data using the procedures of either § 75.31 or § 75.33. For the purpose of the missing data and availability procedures for SO_2 pollutant concentration monitors in §§ 75.31 through 75.33 only, all hours during which the unit combusts only natural gas, or a gaseous fuel with a sulfur content no greater than natural gas, shall be excluded from the definition of "monitor operating hour," "quality-assured monitor operating hour," "unit operating hour," and "unit operating day."

(e) On or after January 1, 1997, the owner or operator shall comply with the provisions of this paragraph. Prior to January 1, 1997, the owner or operator may comply with the provisions of this paragraph.

(1) For monitoring of emissions at a unit with multiple stacks or a bypass stack, include only those hours when emissions are passing through the stack or duct in the definitions of "unit operating hour" and "quality-assured monitor operating hour" for purposes of applying the missing data and availability procedures in §§ 75.31 through 75.36 to the monitoring system on that stack or duct.

(2) If the proportion of flow going to each stack from a unit with multiple stacks or the proportion of flow going to a bypass stack has changed during the previous 2,160 hours when emissions passed through that stack, then record the maximum flow rate recorded by the flow monitoring system at the corresponding load range during the previous 2,160 hours of quality-assured monitor data when emissions passed through that stack, instead of the value calculated using the missing data substitution procedures in § 75.31 or § 75.33.

7. Section 75.32 is amended by adding a sentence to the end of paragraph (a)(3) and adding paragraph (a)(4) to read as follows:

§ 75.32 Determination of monitoring data availability for standard missing data procedure.

(a) * * *

(3) * * * The provisions in this paragraph (a)(3) are suspended from July 17, 1995 through December 31, 1996.

(4) The owner or operator shall include all unit operating hours, and all monitor operating hours for which quality-assured data were recorded by a certified primary monitor, a certified redundant or non-redundant backup monitor, a reference method for that unit, and from an approved alternative monitoring system under subpart E of this part when calculating percent monitor data availability using Equation 8 or 9. The owner or operator shall exclude hours when a unit combusted only natural gas (or gaseous fuel with the same sulfur content as natural gas) from calculations of percent monitor data availability for SO_2 pollutant concentration monitors, as provided in § 75.30(d). No hours from more than three years (26,280 clock hours) earlier shall be used in Equation 8 or 9. When three years from certification have elapsed, replace the words "since certification" or "during previous 8,760 unit operating hours" with "in the previous three years" and replace "8,760" with "total unit operating hours in the previous three years."

* * * * *

8. Section 75.34 is revised to read as follows:

§ 75.34 Units with add-on emission controls.

(a) The owner or operator of an affected unit equipped with add-on SO_2 and/or NO_x emission controls shall use at least one of the following options:

(1) The owner or operator may use the missing data substitution procedures as specified for all affected units in §§ 75.31 through 75.33 for substituting data for each hour where the add-on emission controls are operating within the proper operation range specified in the monitoring plan for the unit. The designated representative shall report the range of add-on emission control operating parameters that indicate proper operation in the unit's monitoring plan and the owner or operator shall record data to verify the proper operation of the SO_2 or NO_x add-on emission controls during each hour, as described in paragraph (d) of this section. In addition, under § 75.64(c) the designated representative shall submit a certified verification of the proper operation of the SO_2 or NO_x add-on emission control for each missing data period at the end of each quarter.

(2) In addition, the designated representative may petition the Administrator under § 75.66 to replace the maximum recorded value in the last 720 quality-assured monitor operating hours with a value corresponding to the maximum controlled emission rate (an emission rate recorded when the add-on emission controls were operating) recorded during the last 720 quality-assured monitor operating hours. For such a petition, the designated representative must demonstrate that the following conditions are met: the monitor data availability, calculated in accordance with § 75.32, for the affected unit is below 90.0 percent and parametric data establish that the add-on emission controls were operating properly (i.e., within the range of operating parameters provided in the monitoring plan) during the time period under petition.

(3) The designated representative may petition the Administrator under § 75.66 for approval of site-specific parametric monitoring procedure(s) for calculating substitute data for missing SO_2 pollutant concentration and NO_x emission rate data in accordance with the requirements of paragraphs (b) and (c) of this section, and appendix C of this part. The owner or operator shall record the data required in appendix C of this part, pursuant to § 75.51(b) until January 1, 1996, or pursuant to § 75.55(b).

(b) For an affected unit equipped with add-on SO_2 emission controls, the designated representative may petition the Administrator to approve a parametric monitoring procedure, as described in appendix C of this part, for calculating substitute SO_2 concentration data for missing data periods. The owner or operator shall use the procedures in § 75.31, § 75.33, or § 75.34(a) for providing substitute data for missing SO_2 concentration data unless a parametric monitoring procedure has been approved by the Administrator.

(1) Where the monitoring data availability is 90.0 percent or more for an outlet SO_2 pollutant concentration monitor, the owner or operator may calculate substitute data using an approved parametric monitoring procedure.

(2) Where the monitor data availability for an outlet SO_2 pollutant concentration monitor is less than 90.0 percent, the owner or operator shall calculate substitute data using the procedures in § 75.34(a) (1) or (2), even if the Administrator has approved a parametric monitoring procedure.

(c) For an affected unit with NO_x add-on emission controls, the designated representative may petition the Administrator to approve a parametric monitoring procedure, as described in appendix C of this part, in order to calculate substitute NO_x emission rate

data for missing data periods. The owner or operator shall use the procedures in § 75.31 or § 75.33 for providing substitute data for missing NO_X emission rate data prior to receiving the Administrator's approval for a parametric monitoring procedure.

(1) Where monitor data availability for a NO_X continuous emission monitoring system is 90.0 percent or more, the owner or operator may calculate substitute data using an approved parametric monitoring procedure.

(2) Where monitor data availability for a NO_X continuous emission monitoring system is less than 90.0 percent, the owner or operator shall calculate substitute data using the procedure in § 75.34(a) (1) or (2), even if the Administrator has approved a parametric monitoring procedure.

(d) The owner or operator shall keep records of information as described in subpart F of this part to verify the proper operation of the SO_2 or NO_X emission controls during all periods of missing data. The owner or operator shall provide these records to the Administrator or to the EPA Regional Office upon request. Whenever such records are not provided or such records do not demonstrate that proper operation of the SO_2 or NO_X add-on emission controls has been maintained in accordance with the range of add-on emission control operating parameters reported in the monitoring plan for the unit, the owner or operator shall substitute the maximum potential NO_X emission rate, as defined in § 72.2 of this chapter, to report the NO_X emission rate, and either the maximum hourly SO_2 concentration recorded by the inlet monitor during the previous 720 quality assured monitor operating hours, if available, or the maximum potential concentration for SO_2, as defined by section 2.1.1.1 of appendix A of this part, to report SO_2 concentration for each hour of missing data until information demonstrating proper operation of the SO_2 or NO_X emission controls is available.

9. Section 75.53 is amended by revising paragraph (d) introductory text and by adding paragraph (d)(4) to read as follows:

§ 75.53 Monitoring plan.

* * * * *

(d) *Contents of monitoring plan for specific situations.* The following additional information shall be included in the monitoring plan for gas-fired or oil-fired units or for units with add-on emission controls:

* * * * *

(4) For each unit with add-on emission controls:

(i) A list of operating parameters for the add-on emission controls, including parameters from the list in § 75.55 appropriate to the particular installation; and

(ii) The range of each operating parameter in the list that indicates the add-on emission controls are properly operating.

* * * * *

10. Section 75.55 is amended by adding paragraphs (b) and (e) to read as follows:

§ 75.55 General recordkeeping provisions for specific situations.

(a) * * *

(b) *Specific parametric data record provisions for calculating substitute emissions data for units with add-on emission controls.* In accordance with § 75.34, the owner or operator of an affected unit with add-on emission controls shall either record the applicable information in paragraph (b)(3) of this section for each hour of missing SO_2 concentration data or NO_X emission rate (in addition to other information), or shall record the information in paragraph (b)(1) of this section for SO_2 or paragraph (b)(2) of this section for NO_X through an automated data acquisition and handling system, as appropriate to the type of add-on emission controls:

(1) For units with add-on SO_2 emission controls petitioning to use or using the optional parametric monitoring procedures in appendix C of this part, for each hour of missing SO_2 concentration or volumetric flow data:

(i) The information required in § 75.54(b) for SO_2 concentration and volumetric flow if either one of these monitors is still operating;

(ii) Date and hour;

(iii) Number of operating scrubber modules;

(iv) Total feedrate of slurry to each operating scrubber module (gal/min);

(v) Pressure differential across each operating scrubber module (inches of water column);

(vi) For a unit with a wet flue gas desulfurization system, an inline measure of absorber pH for each operating scrubber module;

(vii) For a unit with a dry flue gas desulfurization system, the inlet and outlet temperatures across each operating scrubber module;

(viii) For a unit with a wet flue gas desulfurization system, the percent solids in slurry for each scrubber module.

(ix) For a unit with a dry flue gas desulfurization system, the slurry feed rate (gal/min) to the atomizer nozzle;

(x) For a unit with SO_2 add-on emission controls other than wet or dry limestone, corresponding parameters approved by the Administrator;

(xi) Method of determination of SO_2 concentration and volumetric flow, using Codes 1–15 in Table 3 of § 75.54; and

(xii) Inlet and outlet SO_2 concentration values recorded by an SO_2 continuous emission monitoring system and the removal efficiency of the add-on emission controls.

(2) For units with add-on NO_X emission controls petitioning to use or using the optional parametric monitoring procedures in appendix C of this part, for each hour of missing NO_X emission rate data:

(i) Date and hour;

(ii) Inlet air flow rate (acfh, rounded to the nearest thousand);

(iii) Excess O_2 concentration of flue gas at stack outlet (percent, rounded to nearest tenth of a percent);

(iv) Carbon monoxide concentration of flue gas at stack outlet (ppm, rounded to the nearest tenth);

(v) Temperature of flue gas at furnace exit or economizer outlet duct (°F); and

(vi) Other parameters specific to NO_X emission controls (e.g., average hourly reagent feedrate);

(vii) Method of determination of NO_X emission rate using Codes 1–15 in Table 3 of § 75.54; and

(viii) Inlet and outlet NO_X emission rate values recorded by a NO_X continuous emission monitoring system and the removal efficiency of the add-on emission controls.

(3) For units with add-on SO_2 or NO_X emission controls following the provisions of § 75.34(a) (1) or (2), for each hour of missing data record:

(i) Parametric data which demonstrate the proper operation of the add-on emission controls, as described in the monitoring plan for the unit (to be maintained on site, and to be submitted upon request from the Administrator or by an EPA Regional office);

(ii) A flag indicating that the add-on emission controls are operating with all parameters within the ranges specified in the monitoring plan or that the add-on emission controls are not operating properly;

(iii) For units petitioning under § 75.66 for substituting a representative SO_2 concentration during missing data periods, any available inlet and outlet SO_2 concentration values recorded by an SO_2 continuous emission monitoring system; and

(iv) For units petitioning under § 75.66 for substituting a representative NO_X emission rate during missing data periods, any available inlet and outlet NO_X emission rate values recorded by a NO_X continuous emission monitoring system.

* * * * *

(e) *Specific SO_2* emission record provisions during the combustion of gaseous fuel. In accordance with the provisions in § 75.11(e), the owner or operator of a unit with an SO_2 continuous emission monitoring system may record the information in paragraph (c)(3) of this section in lieu of the information in §§ 75.54(c)(1) and 75.54(c)(3), for those hours when only pipeline natural gas or a gaseous fuel with a sulfur content no greater than natural gas is combusted.

* * * * *

11. Section 75.56 is amended by adding paragraph (a)(6) to read as follows:

§ 75.56 Certification, quality assurance and quality control record provisions.

(a) * * *

(6) For each SO_2, NO_X, CO_2, or O_2 pollutant concentration monitor, NOx-diluent continuous emission monitoring system, or SO_2-diluent continuous emission monitoring system, the owner or operator shall record the following information for the cycle time test:

(i) Component/system identification code;

(ii) Date;

(iii) Start and end times;

(iv) Upscale and downscale cycle times for each component;

(v) Stable start monitor value;

(vi) Stable end monitor value;

(vii) Reference value of calibration gas(es);

(viii) Calibration gas level; and

(ix) Cycle time result for the entire system.

* * * * *

12. Section 75.64 is amended by revising paragraphs (a)(1) and (c) to read as follows:

§ 75.64 Quarterly reports.

(a) * * *

(1) The information and hourly data required in §§ 75.50 through 75.52 (or §§ 75.54 through 75.56), no later than the quarterly report due April 30, 1996), excluding:

(i) Descriptions of adjustments, corrective action, and maintenance;

(ii) Information which is incompatible with electronic reporting (e.g., field data sheets, lab analyses, quality control plan);

(iii) Opacity data listed in § 75.50(f) or § 75.54(f);

(iv) For units with SO_2 or NO_X add-on emission controls that do not elect to use the approved site-specific parametric monitoring procedures for calculation of substitute data, the information in § 75.55(b)(3); and

(v) The information recorded under § 75.56(a)(7) for the period prior to January 1, 1996.

* * * * *

(c) *Compliance certification.* The designated representative shall submit a certification in support of each quarterly emissions monitoring report based on reasonable inquiry of those persons with primary responsibility for ensuring that all of the unit's emissions are correctly and fully monitored. The certification shall indicate whether the monitoring data submitted were recorded in accordance with the applicable requirements of this part including the quality control and quality assurance procedures and specifications of this part and its appendices, and any such requirements, procedures and specifications of an applicable excepted or approved alternative monitoring method. In the event of any missing data periods, the certification must describe the measures taken to cure the causes for the missing data periods. For a unit with add-on emission controls, the designated representative shall also include a certification for all hours where data are substituted following the provisions of § 75.34(a)(1), that the add-on emission controls were operating within the range of parameters listed in the monitoring plan, and that the substitute values recorded during the quarter do not systematically underestimate SO_2 or NO_X emissions, pursuant to § 75.34.

* * * * *

13. Section 75.66 is amended by revising paragraphs (e) and (f) to read as follows:

§ 75.66 Petitions to the Administrator.

* * * * *

(e) *Parametric monitoring procedure petitions.* The designated representative for an affected unit may submit a petition to the Administrator, where each petition shall contain the information specified in § 75.51(b) (or § 75.55(b), no later than January 1, 1996) for use of a parametric monitoring method. The Administrator will either:

(1) Publish a notice in the **Federal Register** indicating receipt of a parametric monitoring procedure petition;, or

(2) Notify interested parties of receipt of a parametric monitoring petition.

(f) *Missing data petitions for units with add-on emission controls.* The designated representative for an affected unit may submit a petition to the Administrator for the use of the maximum controlled emission rate, which the Administrator will approve if the petition adequately demonstrates that all the requirements in § 75.34(a)(2) are satisfied. Each petition shall contain the information listed below for the time period (or data gap) during which the affected unit experienced the monitor outage that would otherwise result in the substitution of an uncontrolled maximum value under the standard missing data procedures contained in subpart D of this part:

(1) Data demonstrating that the affected unit's monitor data availability for the time period under petition was less than 90.0 percent;

(2) Data demonstrating that the add-on emission controls were operating properly during the time period under petition (i.e., within the range of operating parameters for the add-on emission controls in the monitoring plan for the unit);

(3) A list of the average hourly values for the previous 720 quality-assured monitor operating hours, highlighting both the maximum recorded value and the value corresponding to the maximum controlled emission rate; and

(4) An explanation and information on operation of the add-on emission controls demonstrating that the selected historical SO_2 concentration or NO_X emission rate does not underestimate the SO_2 concentration or NO_X emission rate during the missing data period.

* * * * *

14. Appendix A to Part 75, Section 6.3 is amended by adding a sentence to the last paragraph of sections 6.3.1 and 6.3.2 and by adding section 6.3.3 to read as follows:

Appendix A—Specifications and Test Procedures

* * * * *

6. Certification Tests and Procedures

* * * * *

6.3.1 * * * The provisions in this section are suspended from July 17, 1995 through December 31, 1996.

6.3.2 * * * The provisions in this section are suspended from July 17, 1995 through December 31, 1996.

6.3.3 Pollutant Concentration Monitor and CO_2 or O_2 Monitor 7-day Calibration Error Test

Measure the calibration error of each pollutant concentration monitor and CO_2 or O_2 monitor while the unit is operating once each day for 7 consecutive operating days according to the following procedures. (In the event that extended unit outages occur after the commencement of the test, the 7 consecutive unit operating days need not be 7 consecutive calendar days.) Units using dual span monitors must perform the calibration error test on both high- and low-scales of the pollutant concentration monitor.

Do not make manual adjustments to the monitor settings until after taking measurements at both zero and high

concentration levels for that day during the 7-day test. If automatic adjustments are made, conduct the calibration error test in a way that the magnitude of the adjustments can be determined and recorded. Record and report test results for each day using the unadjusted concentration or flow rate measured in the calibration error test prior to making any manual adjustment or resetting the calibration.

The calibration error tests should be approximately 24 hours apart (unless the 7-day test is performed over non-consecutive days). Perform calibration error tests at two concentrations: (1) Zero-level and (2) high-level, as specified in section 5.2 of this appendix. In addition, repeat the procedure for SO_2 and NO_X pollutant concentration monitors using the low-scale for units equipped with emission controls or other units with dual span monitors. Use only NIST traceable reference material, standard reference material, NIST/EPA-approved certified reference material, research gas material, Protocol 1 calibration gases certified by the vendor to be within 2 percent of the label value or zero air material for the zero level only.

Introduce the calibration gas at the gas injection port, as specified in section 2.2.1 of this appendix. Operate each monitor in its normal sampling mode. For extractive and dilution type monitors, pass the audit gas through all filters, scrubbers, conditioners, and other monitor components used during normal sampling and through as much of the sampling probe as is practical. For in situ type monitors, perform calibration checking all active electronic and optical components, including the transmitter, receiver, and analyzer. Challenge the pollutant concentration monitors and CO_2 or O_2 monitors once with each gas. Record the monitor response from the data acquisition and handling system. Using Equation A–5 of this appendix, determine the calibration error at each concentration once each day (at 24-hour intervals) for 7 consecutive days according to the procedures given in this section.

Calibration error tests are acceptable for monitor or monitoring system certification if none of these daily calibration error test results exceed the applicable performance specifications in section 3.1 of this appendix.

* * * * *

15. Appendix A to part 75, section 6.3.4 is added to read as follows:

Appendix A—Specifications and Test Procedures

6. Certification Tests and Procedures

* * * * *

6.3.4 Flow Monitor 7-day Calibration Error Test

Measure the calibration error of each flow monitor according to the following procedures.

Introduce the reference signal corresponding to the values specified in section 2.2.2.1 of this appendix to the probe tip (or equivalent), or to the transducer. During the 7-day certification test period, conduct the calibration error test while the unit is operating once each unit operating day (as close to 24-hour intervals as practicable). In the event that extended unit outages occur after the commencement of the test, the 7 consecutive operating days need not be 7 consecutive calendar days. Record the flow monitor responses by means of the data acquisition and handling system. Calculate the calibration error using Equation A–6 of this appendix.

Do not perform any corrective maintenance, repair, or replacement upon the flow monitor during the 7-day certification test period other than that required in the quality assurance/quality control (QA/QC) plan required by appendix B of this part. Do not make adjustments between the zero and high reference level measurements on any day during the 7-day test. If the flow monitor operates within the calibration error performance specification (i.e., less than or equal to 3 percent error each day and requiring no corrective maintenance, repair, or replacement during the 7-day test period) the flow monitor passes the calibration error test portion of the certification test. Record all maintenance activities and the magnitude of any adjustments. Record output readings from the data acquisition and handling system before and after all adjustments. Record and report all calibration error test results using the unadjusted flow rate measured in the calibration error test prior to resetting the calibration. Record all adjustments made during the seven day period at the time the adjustment is made and report them in the certification application.

* * * * *

16. Appendix A to part 75, is amended by adding a sentence to the end of section 6.4 and by adding section 6.4.1 to read as follows:

6. Certification Tests and Procedures

* * * * *

6.4 * * * The provisions in this section 6.4 are suspended from July 17, 1995 through December 31, 1996.

6.4.1 Cycle Time Test

Perform cycle time tests for each pollutant concentration monitor, and continuous emission monitoring system while the unit is operating according to the following procedures.

Use a zero-level and a high-level calibration gas (as defined in section 5.2 of this appendix) alternately. To determine the upscale elapsed time, inject a zero-level concentration calibration gas into the probe tip (or injection port leading to the calibration cell, for in situ systems with no probe). Record the stable starting monitor value and start time. Next, allow the monitor to measure the concentration of flue gas emissions until the response stabilizes. Determine the upscale elapsed time as the time at which 95.0 percent of the step change is achieved between the stable starting gas value and the stable ending monitor value. Record the stable ending monitor value, the end time, and the upscale elapsed time for the monitor using data acquisition and handling system output. Then repeat the procedure, starting by injecting the high-level gas concentration to determine the downscale elapsed time, which is the time at which 95.0 percent of the step change is achieved between the stable starting gas value and the stable ending monitor value. End the downscale test by measuring the concentration of flue gas emissions. Record the stable starting and ending monitor values, the start and end times, and the downscale elapsed time for the monitor using data acquisition and handling system output. A stable value is equivalent to a reading with a change of less than 1 percent of the span value for 30 seconds, or a reading with a change of less than 5 percent from the measured average concentration over 5 minutes.

For monitors or monitoring systems that perform a series of operations (such as purge, sample, and analyze), time the injections of the calibration gases so they will produce the longest possible cycle time. Record the span, the zero and high gas concentrations, the start and end times, the stable starting and ending monitor values, and the upscale and downscale elapsed times. Report the slower of the two elapsed times as the cycle time for the analyzer. (See Figure 5 at the end of this appendix.) For the NO_X continuous emission monitoring system test and SO_2-diluent continuous emission monitoring system test, record and report the longer cycle time of the two component analyzers as the system cycle time.

For time-shared systems, this procedure must be done for all probe locations that will be polled within the same 15-minute period during monitoring system operations. For cycle time results for a time-shared system, add together the longest cycle time obtained from each location. Report the sum of the cycle time at each location plus the time required for all purge cycles (as determined by the CEMS manufacturer) for each location as the cycle time for each and all of those systems. For monitors with dual ranges, perform the test on the range giving the longest cycle time.

Cycle time test results are acceptable for monitor or monitoring system certification if none of the cycle times exceed 15 minutes.

* * * * *

17. Appendix A to part 75 is amended by adding Figure 5 at the end of the appendix to read as follows:

* * * * *

Figure 5—Cycle Time

Date of test _____
Component/system ID#: _____
Analyzer type _____
Serial Number _____
High level gas concentration: _____ ppm/% (circle one)
Zero level gas concentration: _____ ppm/% (circle one)
Analyzer span setting: _____ ppm/% (circle one)
Upscale:
  Stable starting monitor value: _____ ppm/% (circle one)
  Stable ending monitor reading: _____ ppm/% (circle one)
  Elapsed time: _____ seconds
Downscale:
  Stable starting monitor value: _____ ppm/% (circle one)
  Stable ending monitor value: _____ ppm/% (circle one)
  Elapsed time: _____ seconds
Component cycle time= _____ seconds
System cycle time= _____ seconds

* * * * *

18. Appendix B to part 75 is amended by adding a sentence to the end of section 2.1 and by adding section 2.1.7 to read as follows:

Appendix B—Quality Assurance and Quality Control Procedures

* * * * *

2. Frequency of Testing

2.1 * * * The provisions in this section 2.1 are suspended from July 17, 1995 through December 31, 1996.

* * * * *

2.1.7 Daily Assessments

For each monitor or continuous emission monitoring system, perform the following assessments during each day in which the unit combusts any fuel (hereafter referred to as a "unit operating day"), or for a monitor on a bypass stack/duct, during each day that emissions pass through the by-pass stack or duct. If the unit discontinues operation or if use of the by-pass stack or duct is discontinued prior to performance of the calibration error test, data from the monitor or continuous emission monitoring system may be considered quality assured prospectively for 24 consecutive clock hours from the time of successful completion of the previous daily test performed while the unit is operating. These requirements are effective as of the date when the monitor or continuous emission monitoring system completes certification testing.

* * * * *

Appendix F to Part 75—Conversion Procedures

19. Appendix F is amended by adding section 7 to read as follows:

* * * * *

7. Procedures for SO_2 Mass Emissions at Units With SO_2 Continuous Emission Monitoring Systems During the Combustion of Gaseous Fuel

Use the following equation to calculate hourly SO_2 mass emissions as allowed for units with SO_2 continuous emission monitoring systems during the combustion of pipeline natural gas under § 75.11(e). These procedures are optional prior to January 1, 1997 and are required on or after January 1, 1997.

E_h=(0.0006) HI (Eq. F–23)

where,

E_h=Hourly SO_2 mass emissions, lb/hr.
0.0006=Default SO_2 emission rate for pipeline natural gas, lb/mmBtu.
HI=Hourly heat input, as determined using the procedures of section 5.2 of this appendix.

[FR Doc. 95–11497 Filed 5–10–95; 3:42 pm]

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May 17, 1995

Part IV

Department of Labor

Employment and Training Administration

20 CFR Part 641
29 CFR Part 89
Senior Community Service Employment Program; Final Rule

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 641

Office of the Secretary

29 CFR Part 89

RIN 1205–AA29

Senior Community Service Employment Program

AGENCY: Employment and Training Administration and Office of the Secretary, Labor.

ACTION: Final rule.

SUMMARY: The Employment and Training Administration (ETA) of the Department of Labor (DOL) is amending the regulations for the Senior Community Service Employment Program (SCSEP) to implement the Older American Act Amendments of 1984, 1987, and 1992 and to make clarifying changes. This regulation provides administrative and programmatic guidance and requirements for the implementation of the SCSEP.

EFFECTIVE DATE: June 30, 1995

FOR FURTHER INFORMATION CONTACT: Mr. Charles L. Atkinson, Chief, Division of Older Worker Programs. Telephone: (202) 219–4778 (this is not a toll-free number). Copies of this final rule are available in the following formats: electronic file on computer disk and audio tape. They may be obtained at the above office.

SUPPLEMENTARY INFORMATION:

A. Background

As authorized by title V of the Older Americans Act (OAA), as amended (42 U.S.C. 3056, *et seq.*), the Senior Community Service Employment Program (SCSEP) fosters and promotes useful part-time opportunities in community service activities for persons with low incomes who are fifty-five years old or older. The Employment and Training Administration (ETA) of the Department of Labor (DOL or Department) administers the program by means of grant agreements with eligible organizations, such as governmental entities and certain public and private non-profit agencies and organizations. Pursuant to the OAA, the Department in 1973 established the SCSEP.

The SCSEP regulations were last revised in 1976: 29 CFR part 89, 41 FR 9006 (March 2, 1976). The SCSEP legislation has been amended by the following laws since the last revision of the regulation: Pub. L. 95–478, section 105 (October 18, 1978); Pub. L. 97–115, section 12 (December 29, 1981); Pub. L. 98–459, sections 501–05 (October 9, 1984); Pub. L. 100–175, sections 161–66 (December 7, 1987); and Pub. L. 102–375, sections 502–11 (September 30, 1992) and Pub. L. 103–171 (December 2, 1993). On April 26, 1994, the Department published a notice of proposed rule making governing the SCSEP in the **Federal Register** (59 FR 21875) for the purpose of soliciting public comments. The comments made in response to the April 26, 1994, **Federal Register** proposed rule have been considered in drafting this final rule. Also implemented are the 1987 and 1992 amendments contained in Pub. L. 100–175 (December 7, 1987) and Pub. L. 102–375 (September 30, 1992). This document issues the final rule to conform to the OAA and to make technical changes based on the Department's experience in administering the SCSEP.

B. Procedural Matters

This final rule is not classified as a "major rule" under Executive Order 12866 concerning Federal regulations because it is not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete in domestic or export markets. Accordingly, no regulatory impact analysis is required.

The Department of Labor has certified to the Chief Counsel for Advocacy, Small Business Administration, that pursuant to the Regulatory Flexibility Act at 5 U.S.C. 605(b), the final rule would not have a significant economic impact on a substantial number of small entities. No significant economic impact would be imposed on such entities by the final rule.

Paperwork Reduction Act

Pursuant to the Paperwork Reduction Act, information collection requirements which must be imposed as a result of the final rule are being submitted separately to the Office of Management and Budget.

Catalogue of Federal Domestic Assistance Number

This program is listed in the Catalogue of Federal Domestic Assistance at No. 17.235 "Senior Community Service Employment Program."

List of Subjects in 20 CFR Part 641

Allotment, Allocation, Coordination, Dual eligibility, Cooperative relationships, Assessment, Eligibility, Individual development plan, Over-enrollment, Training, and Administrative requirements.

Format of Final Rule

29 CFR part 89 is redesignated as 20 CFR part 641.

Major Changes

A total of twenty-eight comments were received in response to the proposed rule. Sources of comments received by the close of the comment period were as follows: National SCSEP grantees (5); State units on aging (9); area agencies on aging (4); community-based organizations (3); public interest group (1); Federal agencies (2),; and State Job Service (2). In addition, two responses were received after the comment period from county officials, which were also considered.

Based on the comments the Department has received, the majority reflect approval of the regulations; however, one public interest group was displeased with the Department's policy regarding unsubsidized employment. The comments addressed thirty different sections of the regulations with the bulk of the comments addressing nine sections. A number of the comments extended beyond the regulations to pose operational questions. Each of the comments and the respective regulatory sections are addressed below.

§ 641.101 Scope and purpose.

Consistent with changes made in response to comments on § 641.301 of this part regarding the purpose of the program, this section has been reworded to acknowledge that SCSEP provides community service and promotes transition to unsubsidized employment.

§ 641.102 Definitions.

There were a total of fifteen comments that dealt with ten definitions.

There were three identical comments on "authorized position". The thrust of the comments was to request that the regulation include a required annual adjustment by the Department concerning the value of each position. Because Congressional action controls the appropriations levels which, in turn, determine the amount of funds available for authorized positions, this unit cost concern will continue to be dealt with on an administrative basis. Therefore no change is made to this regulatory provision.

There were two similar comments on the "dual eligibility" definition which requested the Department update the proposed regulations by including Section 204(d) of the Job Training Partnership Act (JTPA) so that the regulations will reflect the JTPA amendment to the OAA. The language at § 641.102 is amended to reflect coverage of both sections 203 and 204(d) by adding a citation to Title II–A.

One commenter requested that the Department alter the terminology throughout to use the term "grantee or subgrantee" rather than "recipient or subrecipient". As a result of this comment, the definitions for "recipient and subrecipient" are replaced by the term "grantee or subgrantee" and these terms are used throughout the regulations.

Three commenters requested the Department to revise the definition of "enrollee" in order to: acknowledge the services provided by grantees, overcome potential misunderstandings vis-a-vis JTPA, and address the employee aspect of the enrollee. The Department acknowledges the need to incorporate additional information regarding grantee-performed services so a more accurate picture of the services will be provided. However, the Department does not think that changing the definition will accomplish this objective. Therefore, the goal of more accurately reflecting the services will be addressed administratively via reporting changes, if there is sufficient demand to do so. Suggestions for reporting changes that would more accurately reflect what is being accomplished at the project level are welcomed. The Department has clarified the enrollee/trainee relationship with JTPA through the issuance of an administrative directive. Furthermore, the JTPA regulations now clarify this relationship.

The status of an enrollee as an employee is a complex concern that cannot be addressed easily. While the authorizing legislation is silent on this matter, for the last two years Congressional intent regarding the enrollee role has clearly been expressed in the following appropriations report language: "they [enrollees] are not employees of the U.S. Department of Labor, or State or national sponsors administering the Senior Community Service Program." It is likely that the report language will continue to be used and grantees and subgrantees can cite the reports when corresponding with other Federal and State agencies. However, since the appropriations language applies only to the period of the appropriations, since report language is not binding and since these regulations apply solely to the OAA, the report language cannot bind non-Department of Labor regulatory agencies. No useful propose would be served by incorporating the report language in the regulations. Consistent with the comments received on § 641.310 which recommended the deletion of the word "employment" from the term "community service employment assignment", this word is deleted in the definition of the term "enrollee" to avoid misunderstandings between enrollees and staff.

There was one comment that requested the definition of "host agency" be altered to add the word "exclusively" after the word "used" and before the phrase "as a place for sectarian religious instruction; and substitute the word "training" for "work" site. Neither suggestion is incorporated into the definition since the suggested changes may create further problems of interpretation rather than clarify the definition. The addition of the word "exclusively" as it applies to sectarian religious instruction would extend the definition beyond its present intent and the use of the word "training" instead of "job" site would establish an emphasis beyond community service.

Two commenters requested relief from the requirement to calculate an applicant's income using either the preceding six-month or twelve-month period as it applies to the definition of "low income" because they believe elimination of this requirement would permit the grantee or subgrantee to deal with homeless persons or other emergencies more expediently. The Department believes that such a change would be inconsistent with eligibility determinations for other employment and training programs and create additional linkage problems; therefore, this change is not incorporated. However, as a result of reviewing this definition, it was noted that there was no reference to the family's income. This shortcoming is corrected by adding the phrase "of the family" after the word "income".

There were three comments on the definition of "poor employment prospects" which addressed various aspects of this term. Two of the commenters wanted additional language that would include individuals living in rural and urban areas. Since the proposed definition permitted additional categories to be identified and persons living in isolated areas have special problems in finding employment, this term is amended by adding the phrase, "or residing in socially and economically isolated rural or urban areas where employment opportunities are limited.". The remaining comment pointed out the health problems of older Americans which may prevent them from performing many jobs. It is true that some older Americans do have health problems which would prevent them from being employed, but the objective of the program is to obtain employment for all individuals who are enrolled; therefore, no change is made to establish any limitations.

There was a proposal to add a new definition of "similar public occupations" to address possible misunderstandings on enrollee wages. The addition of such a term may create confusion with the "maintenance of effort" requirements found in § 641.325, rather than solving a possible misunderstanding on enrollee wages. No position should be established which in any way would indicate maintenance of effort violations. Positions established under SCSEP should be designed specifically for the enrollee and not represent ongoing duties that have previously been performed by staff of the host agency.

Finally, there was a recommendation to expand the definition of "residence" to include the word, "address" so as to be able to work with homeless individuals more easily. Although the present definition does not preclude working with the homeless, the phrase "or address" is added to overcome possible limiting interpretations.

§ 641.201 Allocation of funds.

There were two comments regarding language changes to paragraph (c) of this section, which were: (1) To drop the phrase, "and the amount allotted to each project"; and (2) to add the phrase, "or a project sponsor designated by the Department". As a result of these requests, both changes are made. The suggested deletion more correctly states the current practice of not requiring the amount allotted to be identified. The suggestion to add the language on the project sponsor acknowledges the option available to Governors to relinquish the State share of the allocations to national grants.

§ 641.205 Responsibility review.

There were three comments on this section. Two of the comments sought relief from the 90-day requirement for the submission of the final closeout documents in paragraph (c)(5). This requirement is part of the administrative requirements for closeouts applicable to all DOL programs which are contained

at 29 CFR 95.71 or 29 CFR 97.50, as appropriate; therefore, no change is made to this paragraph. However, if additional time is needed to prepare the closeout documents, waivers can be provided administratively. The third comment suggested strengthening this section by adding several new "responsibility" provisions from the Federal Acquisition Regulation which deal with contracts. This is a grant program, and the present set of provisions contained in this section provide sufficient authority to ensure that grantees are responsible entities. Clarifications are provided for paragraphs (a) and (c)(9). The phrase "included in (b) and (c) below" is added to ensure the reader understands that the 13 responsibility tests consist of both paragraphs. The word "have" is deleted along with the "ed" from the word "maintained" in paragraph (c)(9) to maintain parallel sentence structure.

§ 641.207 Negotiation.

The phrase "planned occupational categories of SCSEP" is removed and the phrase "community service" is substituted to overcome any misunderstandings in paragraph (b)(1) about the intent of this paragraph.

§ 641.301 Grant operations.

There was one comment relating to the purpose of the program. The comment recommended expanding the task of the grantees to include the development of appropriate training, as well as work assignments. Since the grantees already explore the training needs of the individual as part of the assessment, this expanded language is unnecessary. The legislatively-mandated purpose of the program is community service. This suggested addition may confuse project operators rather than clarify; therefore, it is not adopted. The word "dual" is substituted for the word "primary" in paragraph (b) to acknowledge that there is more than one program purpose and the phrase, "and to provide useful community service" is deleted since "community service" is already used in the same sentence. As noted in the comments addressed in § 641.310 and acknowledged in the definition of enrollee, the word "employment" is deleted in paragraph (b) to prevent confusion between the enrollees and the staff about whether the enrollee is assigned to a community service position or a job. The phrase "and will promote unsubsidized employment opportunities" is added the last sentence in paragraph (b) consistent with the change to the word "dual" above.

§ 641.302 Grantee responsibilities.

There were a total of eight comments which addressed three separate areas of this section. Four of the comments questioned the need to provide documentation on an individual's eligibility for the program. While this concern is valid, the need to ensure that only eligible persons are served outweighs this concern. The operating guidance on documentation will be widely circulated for comment prior to the implementation of this provision. The remaining four comments sought language clarifications. The commenters asked the DOL to clarify that wages are to be paid for community service. As a result of the request, the word "remit" in the opening paragraph is substituted for the word "provide" and the phrase "for community service assignments and provide" is added while the phrase "skill acquisition or" is deleted. One commenter suggested the regulations directly quote the OAA rather than paraphrasing it in paragraph (a)(3) to clearly state the legislative intent of whom is to be served. For consistency, a portion of the language from section 502(b)(1)(M) of the OAA is quoted rather than paraphrased. Lastly, a commenter suggested that a specific number of monitoring trips be inserted in paragraph (b). Rather than establish a regulatory numerical requirement for monitoring visits for grantees, that concern will continue to be dealt with administratively.

§ 641.303 Cooperative relationships.

In order to avoid any potential confusion regarding local consultations, the specific wording from 502(d)(1) of the OAA is inserted in paragraph (b)(5).

§ 641.304 Recruitment and selection of enrollees.

There were five comments on this section. Three of the commenters asked that the requirement for listing vacancies with the Job Service be altered to a requirement to notify the Job Service of vacancies so there is no confusion about the intent. Another commenter wanted all private sector jobs listed with the Job Service. The remaining commenter did not want to be hindered by having to notify the Job Service. The language is altered by omitting the phrase "listing of vacancies with" and inserting in its place the term, "notifying" and adding the phrase "when vacancies occur" in the first paragraph of this section. This is to notify the Job Service of SCSEP vacancies only when they occur since SCSEP grantees cannot control internal State employment security agencies' procedures to list positions.

§ 641.305 Enrollment eligibility.

There were a total of eleven comments on this section. In addition, in order to clarify eligibility, a change is made to paragraph (a)(2) to clarify that re-enrollment is appropriate when an enrollee leaves the SCSEP or unsubsidized employment through no fault of the enrollee, for example, if the enrollee becomes ill. Two commenters asked that section 204(d)(2)(A) of the JTPA be cited to reflect consistency with the technical amendments to the OAA. As a result of the 1994 technical amendments to the OAA which impact on the JTPA, paragraph (d)(2) of this section is altered to broaden the reference to include a citation to Title II-A of the JTPA so it is clear that it applies to both section 203 and 204(d). Two commenters asked that the regulations acknowledge that the enrollment eligibility requirements could be changed by other Federal laws. Paragraph (c) of this section is altered by adding the phrase "unless required by Federal law". In paragraph (b)(2), one commenter identified an incorrect citation to § 641.103 which is corrected to read § 641.102. Also in paragraph (b)(2), a second sentence is added to permit disabled persons to be considered as a family of one for income eligibility purposes. Two commenters asked that the twelve-month recertification requirement be dropped. It is the Department's intent that re-certifications be conducted every twelve months if an enrollee continues in the program; therefore, the requirement is retained. One commenter expressed concern about the eligibility documentation requirement previously addressed under § 641.302(c), Grantee responsibility, above. As previously indicated, specific administrative requirements will be widely circulated for comment in order to limit, to the extent possible, burdens being placed on grantees. One commenter asked for a clarification on the meaning of the term "permanent address". To overcome any limiting reference, the word "permanent" is removed from the definition for residence, as previously noted.

§ 641.306 Enrollment priorities.

There were five comments relating to this section. Two commenters indicated support for the changes. One commenter pointed out a grammatical error in paragraph (a)(3) which is amended to read "seek" rather than "seeks". There were two requests for clarification of paragraph (a)(3) regarding who may return to the program. In response, individuals may potentially return to the program if they are not at fault in losing their unsubsidized job or if they have become ill and are forced to leave their unsubsidized employment. Paragraph (a)(3) is amended to reflect this clarification with the addition of the phrase, "through no fault of their own". The provision on vacant positions in paragraph (c) is clarified by adding the sentence "[T]he priorities do not apply to the experimental private sector projects." to prevent any misunderstanding about the non-application of enrollment priorities to the experimental project positions that are authorized in § 641.326. Also, the phrase "community service" is added before the word "position" to be consistent with the addition of the new sentence. Also, in this paragraph, the word "and" replaces the word "but" to more clearly state the intent.

§ 641.308 Orientation.

Paragraph (a) of this section is amended by adding language to acknowledge that orientation cannot always be conducted prior to the commencement of a community service assignment. The word "for" replaces the word "to" in paragraph (a) to improve readability. Paragraph (b) is amended by substituting the word "an" for the word "the", and adding the phrase, "similar to the one", for clarity. Paragraph (c) is amended to read "[T]he grantee or subgrantee shall ensure that host agencies provide adequate supervision and adequate orientation and instruction regarding, among, other things, job duties and safe working procedures".

§ 641.309 Assessment and reassessment.

There were six comments on this section requesting clarifications of paragraphs (a), (b), (d), (e), and (g). Paragraph (a) is revised by inserting the phrase, "and community service objectives" in addition to "employment" and "training" to ensure that the community service aspect of the program is highlighted. The phrase "for each individual" is shifted to the end of the sentence so it is clear that it applies to both the assignment and objectives. A new paragraph (b) is added to address the assessment of physical capabilities and the remaining paragraphs are renumbered (c)–(h). An assessment of physical ability is a pre-employment medical inquiry and, therefore, must conform to the prescriptions of Section 504 of the Rehabilitation Act of 1973, as amended (section 504), the Americans with Disabilities Act of 1990 (ADA) and their respective implementing regulations. See, *e.g.*, 29 CFR 32.15, the section of the Department's section 504 regulations that addresses pre-employment inquiries. Prior to the offer of a particular community service assignment, disability-related inquiries may not be made. Generally, the assessment of physical ability is limited to an inquiry as to whether the enrollee is capable, with or without a reasonable accommodation, of performing the functions of the job (essential and/or marginal). Enrollees may also be asked to describe or demonstrate how they would perform these functions. Once a bona fide community service assignment offer has been made, medical inquiries, including medical examinations, may be made. However, these inquiries are subject to section 504 of the Rehabilitation Act, the ADA, and their implementing regulations. For example, with respect to medical examinations, 29 CFR 32.15 provides that the examination must be a routine part of the host agency's selection process for the job in question and must be performed by a physician qualified to make functional assessments. If a particular medical test is a prerequisite to placement into a community service assignment, including a medical test that is required by a local ordinance or State law, it is recommended that it be conducted at the same time as the physical examination described in paragraph (b)(4) of this section.

The former paragraph (b) (now paragraph (c)) is not altered to incorporate suggested language on other appropriate employment and training opportunities since this is a community service program. In the new paragraph (e) (formerly paragraph (d)), the acronym "IDP" replaces the phrase, "service strategy", in order to avoid confusion with the term, "individual service strategy", used under JTPA. Also the phrase "program year" is deleted from the new paragraph (e) and replaced by the phrase "a 12-month period" to overcome situations where an enrollee may be in the program for only brief periods. In the new paragraph (f), (formerly paragraph (e)) the phrase "upon completion of the review" is deleted to ensure that grantees understand that alternative assignments may be permitted at any point while working with an enrollee. The new paragraph (h) (formerly paragraph (g)) is amended by adding language to clarify that the phrase, "recent assessment" means an assessment done within the last year.

§ 641.310 Community service assignments.

There were five comments on this section. Two commenters requested the deletion of the word "employment" from the title, the text of this section and elsewhere in the final rule. The word "employment" is removed from the title and this section, as well as elsewhere in the final rule, to emphasize that the community service assignment does not constitute an enrollee's job. The term "community service assignment" is used throughout the regulation. In a similar manner, the word "placed" is substituted for the word "employed" in paragraph (a)(1) in order to ensure parallel construction. One commenter requested that the phrase "as soon as possible" in § 641.310(a) be deleted since it is not always possible to refer an enrollee to a community service assignment. This provision is retained since this is consistent with the Department's intent that there be no lengthy delays in enrollment after receipt of orientation. Two commenters requested clarifying the provision in § 641.310(a)(1) by stating that project sponsors may provide enrollees with opportunities to assist in the administration of the SCSEP. This change is incorporated into paragraph (a)(1) in lieu of the last two sentences of the paragraph since the revised sentence more accurately communicates Departmental policy. The phrase, "if appropriate according to the IDP" is added to ensure consistency with § 641.308. The last two sentences of paragraph (a)(1) are deleted. The 1300 hour provision in paragraph (b) is also retained. The second sentence in paragraph (b)(2) is moved to become the second sentence in paragraph (b)(3) since both paragraphs refer to periods of less than 20 hours. There were two comments on § 641.310(d). There was one suggestion to permit the use of SCSEP funds for reasonable accommodations. This suggestion is incorporated into § 641.403 since that section deals with allowable costs, but it is recognized that due to limited availability of administrative funds, it may not be practical to do this except in limited situations. There also was a suggestion that § 641.310(d) be amended by inserting a sentence on work place conditions to address ergonomically sound conditions to prevent repetitive motion injuries such as carpal tunnel syndrome. This suggestion is not adopted since the comment is limited primarily to office occupations and the work place is much broader for the title V program. However, a bulletin will be issued on the broader issue of workplace safety and sound ergonomic design concerns as suggested by the commenter.

§ 641.311 Enrollee wages and fringe benefits.

There were eleven comments on this section. Five addressed concerns regarding the use of physical examinations given in order to assess an enrollee's physical ability and need for any supportive service(s). The *assessment* of an enrollee's physical ability and the *physical examination* provided to enrollees as a program benefit are two separate activities. As a result, assessment of an enrollee's physical ability is moved to § 641.309 in order to group all activities on assessment in a single section. Since physical examinations are a fringe benefit, they are addressed in this section. Therefore, paragraph (b)(3) is amended to reflect this change and it is numbered as (i) for the examination and (ii) for the waiver.

Paragraph (b)(3) of this section addresses the physical examination that is provided to enrollees as a fringe benefit. The physical examination must be offered within 60 working days after commencement of the community service assignment instead of before the first day of compensated participation. It is not an eligibility criterion, nor should the results of the examination be taken into consideration when determining a community service assignment. The physician who conducts the examination should only give a copy directly to the enrollee rather than to program staff. An enrollee should not have to request a copy, as suggested by one commenter. One commenter indicated that the impact of the physical examinations upon the administrative budget category needs to be considered. Since the regulation is changed to authorize charging the cost of the physical examination to the enrollee wages and fringe cost category, the regulations provide additional flexibility, rather than limiting flexibility, and no further change is made. Another commenter suggested SCSEP funds could be used to insure reasonable accommodation for participants at the host agency. As indicated above, such expenditures will be deemed allowable, within funding limitations.

The Department was also asked to consider additional regulatory changes that would exempt the SCSEP program from payment of unemployment compensation taxes to States. In addition, the Department was asked to substitute the phrase "host work site" for the word "employer" at § 641.311 (a)(3) and include a new definition at § 641.102 for similar public occupations. Neither of these suggestions are implemented for two reasons. First, with regard to unemployment compensation, these regulations cannot alter the federal or State unemployment compensation laws that regulate this area of concern since such determinations must be made individually by State employment security agencies. (Since the issuance of a directive on the SCSEP by the Unemployment Insurance Service, the underlying question of unemployment compensation legislation has been virtually eliminated). Second, as indicated in response to the comments on definitions, community service assignments for enrollees must be free from any potential charges of non-maintenance of effort which could be inferred by limiting the application of prevailing rates of pay to a single work site of the host work site.

Finally, a typographical error on the word "waiver" is corrected in paragraph (b)(2).

§ 641.312 Enrollee supportive services.

There were ten comments received that dealt with the need to clarify the unallowability of enrollee transportation costs. Two of these expressed a concern, that the unallowability of such costs would be a hardship for host agencies. Another commenter wanted the option to pay transportation costs eliminated since it could serve as a disincentive to enrollees seeking unsubsidized employment. The remaining seven commenters requested a clarification of the regulations to make it clear that SCSEP funds can be used to pay for enrollee travel when they are working in a SCSEP administrative capacity. Since section 502(b)(1)(L) of the OAA only authorizes the payment of necessary transportation costs of eligible individuals which may be incurred in the employment in any project funded under this title, the Department amends § 641.312(5)(ii) to read "[G]rant funds may not be expended to support the transportation costs of host agencies or programs funded other than under title V of the OAA, except where provided by federal law". Because federal appropriations law prevents funds from one grant being used to defray the expenses incurred under a separate grant, this provision clarifies that SCSEP funds cannot be used for certain host-agency travel costs which are to be met under another federal grant or local program. However, enrollee travel to and from the work site, in selected cases, is necessary in isolated settings where no transportation is available and that option is retained. There was one comment received that suggested the regulations should require grantees and subgrantees to make reasonable accommodations for enrollees with disabilities at host agencies. The Department fully supports efforts to accommodate individuals with disabilities. However, in order to protect the limited funds available for this program, the regulation requires that the expenditure be made with "administrative" funds to the extent that funding permits.

§ 641.313 Training.

There were a total of ten comments on this section. As suggested by two commenters, the "prior to and in preparation for actual community service assignment" phrase in paragraph (a) is removed since training before commencement of a community service assignment is not always practical or possible. In addition, paragraph (a) is amended by adding language that states a grantee is to provide "or arrange for training that is specific to an enrollee's community service assignment". Three of the commenters requested an increase in training hours. Paragraph (b) is amended to now provide up to 500 hours of training for enrollees "per grant year" and the word "orientation" is deleted to overcome potential confusion with § 641.308, Orientation. Also, as suggested by a commenter, the original paragraph (c) is deleted since it is a duplication of paragraph (a) and the remaining paragraphs are renumbered to (c)–(h). The new paragraph (f) (formerly paragraph (g)) is prefaced by deleting the phrase, "at no cost to the project" and adding the phrase, "whenever possible" to acknowledge it is not always possible. In addition this paragraph is amended by deleting the phrase, "at no cost to title V" to more clearly state the intent of the OAA. There were two comments dealing with training costs under SCSEP. Since it is not encouraged for grantees and subgrantees to use SCSEP funds for training, due to the limited funding available, paragraph (f) is amended to read that grantees and subgrantees shall seek training "whenever possible at reduced or no costs to title V". Paragraph (g) is amended to remove the "al" from the word "self-development" to improve the readability. Two commenters suggested rewording paragraph (h) to more positively state this provision. The Department agrees with the suggestion and paragraph (h) is amended to read: "Joint programming, including co-enrollment, when appropriate, between title V programs and programs authorized under the Job Training Partnership Act, the Community Services Block Grant Act, or the Carl D. Perkins Act is strongly encouraged".

§ 641.314 Placement into unsubsidized employment.

There were three comments on this section. Two of those comments dealt with an unsubsidized employment goal of the program. The first commenter raised a question about whether the increased emphasis on the unsubsidized employment goal would detract from the original intention of the SCSEP being a community service program. The second commenter suggested that individual goals be established for each grantee depending upon specific local situations. Since the unsubsidized employment goal remains unchanged and continues as a goal, rather than a firm requirement, it is retained as a single measure. The other comment sought a change on enrollee placement "follow-up", set forth in paragraph (d), that would reduce the follow-up time frame to one month from the current 90 days as a means to reinforce successful placement of the former enrollee. This suggestion is an excellent operational procedure and would assist grantees in working with employers by identifying enrollee employment-related problems, as well as areas where the grantee can better assist the employer. Nevertheless, the Department is not including such a numerical requirement in the regulations since a one-month follow-up requirement may not be possible in all instances. Paragraph (b) is revised to insert the word "project's" before the word "annual" to clarify that the goal applies to the total grant period as opposed to a monthly or quarterly requirement. Also, the phrase, "within the project year" is deleted from paragraph (b) to prevent a misinterpretation.

§ 641.315 Maximum duration of enrollment.

There were nine comments on this section with seven supporting this provision. However, one commenter requested that this section be omitted since, in the commenter's opinion, it is contrary to the original goals of the program. The Department thinks that since this section will provide grantees with additional flexibility, it is in the best interest of the program to retain this provision. To prevent misinterpretation, another commenter suggested the following language be added to this section: "Time limits on enrollment shall be reasonable and IDP's shall provide for transition to unsubsidized employment or other assistance before the maximum enrollment duration has expired." This change is incorporated since it is the intent of the regulations to retain a customer focus which should be consistent with the enrollee's IDP.

§ 641.316 Individual development plan-related terminations.

Eight comments were received on this section with seven supporting the provision. The remaining comment expressed concerns about implementation of the IDP requirement that will have to be addressed once the regulations are effective. This comment deals with issues beyond the scope of the regulations which will be addressed in an administrative issuance. As with the other administrative issuances, the Department plans to widely circulate drafts for comment prior to issuing operational guidance.

§ 641.317 Status of enrollees.

Four commenters requested clarification of the employment status of enrollees when they are working at community service assignments. They suggested that in addition to enrollees not being considered federal employees, they should also not be considered employees of the grantees or their subgrantees. As explained earlier, in the definitions section, the Department would like to clarify this through regulations since it would overcome many misunderstandings and would also eliminate the need for administrative interpretations regarding employee/enrollee status by various governmental units. However, without specific language in the program legislation, regulatory guidance binding on other agencies administering other statutes cannot be issued in these regulations. Also, the language used by the appropriations committee for the past two years in the passage of these appropriations bills has the effect of implementing these suggestions on a year-to-year basis. Of course, subsequent authorizing legislation could statutorily clarify employee/enrollee employment status.

§ 641.318 Over-enrollment.

There was one comment received regarding this section. It suggested substituting the word "temporary" for "short-term" to overcome any misunderstandings on the intent of the term. The Department agrees and this section is amended to reflect this clarification. The citation in paragraph (b)(2) is corrected to read section 502(b)(1)(P) instead of 502(b)(1)(O).

§ 641.321 Political activities.

Paragraph (a)(1) is amended by substituting the phrase "they are" for the phrase "enrollee is" since this provision applies to both enrollees and staff, as stated at the beginning of this provision. Paragraph (b)(1) is amended by substituting "Special Counsel (OSC)" for "Personnel Management (OSC)" to clarify which office has current responsibility for interpreting the Hatch Act; the U.S. Office of the Special Counsel (OSC) is located at 1730 M Street, NW., Suite 300, Washington, DC 20036–4505. Paragraph (b)(2) is amended by substituting the word "have" for the phrase, "be submitted for approval to" to overcome any potential misunderstandings about the need to seek individual approvals of the notice to be displayed and provided to the enrollees.

§ 641.323 Nepotism.

There was one comment requesting the Department extend the waiver provision set forth in paragraph (a) to isolated rural areas. The Department thinks that rural areas are similar enough in population density to Native American reservations to justify extending the provision to rural areas; thus, this provision is added to paragraph (a). Also, paragraph (a) is amended by inserting the phrase, "who works" to clarify the person referenced in this paragraph. The phrase, "the total service population is 2,000 or less and is isolated, or where there is a history of dependence on public assistance" is deleted since these factors do not apply directly to the SCSEP program.

§ 641.324 Enrollee and applicant complaint resolution.

There was one comment questioning whether this section applied to host agencies. This section does not apply to host agencies. Because this is not a consideration requiring regulatory guidance, there is no change to the regulations.

§ 641.326 Experimental private sector training projects.

Paragraph (g) is amended by substituting a citation to title II-A of the JTPA for the old citation to section 204(d). Paragraph (h) is amended by adding the word "national" before the word "grantee" to ensure that it is understood that this provision applies only to national grantees; and by deleting the word "formulas" to eliminate any possible misunderstandings on the distribution of the State allocation for experimental private sector training projects. A new paragraph (i) is added to acknowledge that non-federal matching is not required specifically for projects under this section.

§ 641.402 Administrative requirements.

Paragraph (a) is amended by providing the present citation for the Department's administrative requirements. The former citation was

41 CFR part 29–70 and the present citation is 29 CFR part 95.

§ 641.403 Allowable costs.

There were three comments on this section. Two identified incorrect citations. The paragraph addressing "allowable fringe benefits costs" is incorrectly cited as "(d)(3)". This paragraph is amended to reflect that the proper citation is paragraph (e). Under the same paragraph, the term "workers" is substituted for the term "workman's" in order to use the correct term. The remaining comment expresses a concern that listing fringe benefits deemed allowable in paragraph (e) might result in enrollee disincentives to leave the program for unsubsidized employment. The listing does not establish enrollee entitlements. However, it is the Department's judgment that it is more helpful than it is harmful to list the types of allowable fringe benefits; therefore, this listing is retained. Paragraphs (b)(2)(iii) and (4) are amended by deleting the phrase "as not subject to OMB Circular A–122" to eliminate potential misinterpretations of this confusing phrase. A new § 641.403(d)(4) is added to provide that grantee funds may be used to provide physical and programmatic accessibility and reasonable accommodation, as required by section 504 of the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act of 1990.

§ 641.404 Classification of cost.

There were three comments on this section. One commenter questioned permitting enrollees to perform administrative functions, since these are not reflected in the administrative costs. The Department is retaining the provision permitting the use of enrollees to perform administrative functions. It has been a longstanding practice for grantees to maximize the number of enrollees by exposing them to administrative functions. This has been a win-win practice for both the grantee and the enrollees. To acknowledge existing policy, new language is added in § 641.310(a)(1) of the regulations to reflect that the use of enrollees to perform administrative functions is an allowable activity.

Another commenter requested that those training costs incurred to train sub-grantees not be counted against the administrative cost category. Since such expenditures cannot be applied against another cost category, the current provision is retained. The last comment sought inclusion of enrollee training costs as an enrollee wage and fringe benefit. Since the program is focused on community service, enrollee training outside of SCSEP is sought only when appropriate to meet the needs of the enrollee. Paragraph (b) is amended by inserting the phrase, "including hours of" before the word "training" to clarify that this phrase applies to both community service and training. Paragraph (c)(6) is amended to add the phase "such as tuition" to ensure that there is no misunderstanding regarding the use of the word "training", as used under paragraph (b).

§ 641.405 Limitations on federal funds.

The citation in paragraph (a) is corrected to read (b) instead of (6). Also, in this paragraph, the phrase "and periods during which limitation" is deleted since this phrase was intended as transitional language intended to apply to the 1985 draft proposed regulations and does not currently apply. In paragraph (b)(1), the word "grant" is altered to read "project", consistent with the legislative language. The sole comment received was on paragraph (b)(2) of this section. The commenter pointed out that the "75 percent rule" regarding expenditure of funds on enrollee wages and fringe benefits limited the flexibility to utilize resources for the section 502(e) experimental programs. The 75 percent limitation is retained since the basic program objective is to put as much of the funds as possible into the hands of the enrollee rather than divert funds to administrative functions.

§ 641.406 Administrative cost waiver.

The word "and" is substituted for the word "the" in the last sentence of the initial paragraph since there is a series of items. To improve reading of the regulation, the initial three sections are designated as paragraph (a) and the remaining information on waivers is designated as paragraph (b). Therefore, paragraphs (a)-(e) are renumbered as (1)-(5).

§ 641.407 Non-federal share of project costs.

This section is amended to provide the present citation for the calculation of the non-federal share. The regulations now are found at 29 CFR 97.24 or 29 CFR 95.23 instead of 41 CFR 29–70.206 (1984). In addition, this section is revised to assign each item on the list of exceptions to the matching requirement to a separately designated clause. Also the reference to the 502(e) projects is moved to § 641.326(i) so all items on this topic are in a single section.

§ 641.408 Budget changes.

This section is amended to provide the present citation for revision of budget and program plans. The present cite at 29 CFR 95.25, Revision of budget and program plans, is added and the previous cite at *41 CFR 29–70.211 (1984), Modifications and Budget Revisions Procedure*, is deleted.

§ 641.409 Grantee fiscal and performance reporting requirements.

There were two comments on this section. One commenter suggested clarifying language at paragraph (c) in order to acknowledge that several Governors currently provide their State funding to national grantees for operation of the SCSEP program. The Department agrees with this clarification and amends paragraph (c) by adding "or another project sponsor designated by the Department". The second commenter asked if the Cash Transaction Report referred to in paragraph (b)(3) was necessary. Based on a review of other methods for obtaining information for draw downs of funds, the Department thinks that existing reports will suffice. Therefore, this report is discontinued upon the effective date of these regulations. Paragraphs (a) and (b) are amended to provide the new citation for reporting requirements and waivers for late reports are acknowledged, consistent with present practice. The present citations for paragraph (a) can be found at 29 CFR 95.91 and the previous citation of 41 CFR 29–70.209 3 (1984) is deleted. The present citation for paragraph (b) can be found at 29 CFR 95.52 and the previous cites of 41 CFR–29 70.207 2(a) (1984) and 41 CFR 29–70.208 (1984) are deleted.

§ 641.410 Subgrant agreements.

Paragraph (c) is amended to provide the present citation for grantee procurement. The present citation can be found at 29 CFR 95.40 through 95.48 and the previous citation of 41 CFR 29–70.216 (1984) is deleted.

§ 641.411 Program income.

This section is amended to provide the present citation for program income. The present citation can be found at 29 CFR 95.24 and the previous citation of 41 CFR 29–70.205 (1984) is deleted.

§ 641.414 Grant closeout procedures.

This section is amended to provide the present citation for grant closeout procedures. The present citation can be found at 29 CFR 97.50 or 29 CFR 95.71, as appropriate, and the previous citation of CFR part 97 is deleted.

Other

There were other comments that did not fall within any section. They are as follows:

1. Residential Health Positions. It was suggested that priority in the distribution of eligible slots be given to individuals in residential health care facilities. Since there is no legislative basis for providing such a priority, in the interest in local flexibility, we have chosen not to adopt an additional priority.

2. Administrative Costs. It was pointed out by two commenters that the 13.5 percent administrative cost limitation has remained static, while additional administrative responsibilities have been added. Congress recognized the administrative burdens they were creating in the passage of the 1992 amendments. The House report acknowledged that if additional administrative requirements, such as assessment and coordination, forced grantees to seek a waiver from the 13.5 percent level to the 15 percent ceiling, such a request should be accommodated.

3. Paperwork Reduction Act. A question was raised about why the older worker programs cannot use the same administrative forms as other employment and training programs. The regulations mandate the submission of necessary information. However, they do not mandate any particular forms. Since the Department encourages closer cooperation and coordination between programs within a State, such an approach within a State represents a goal the Department supports.

4. Social Security Eligibility. A suggestion was made that SCSEP income should not count in calculating eligibility for Supplemental Security Income under the Social Security program. Since the SCSEP regulations cannot impact on the legislation of other programs, this suggestion is not incorporated into these regulations.

5. Eligibility Criteria. A suggestion was made that the Department's guidelines on the SCSEP program's eligibility criteria need to be updated. The Department concurs with this observation and commits itself to issuing updated guidelines to replace an existing bulletin. Since these criteria are of an administrative nature, they are not incorporated into the regulations.

6. Congressional Intent. One comment was received which questioned the Department's implementation of the 1992 amendments' emphasis on placing individuals in unsubsidized employment. The unsubsidized employment goal of the program has remained the same for the last nine years and these regulations do not alter this goal. Furthermore, the program can only serve a small percentage of all persons who potentially qualify for the program. Without turnover of the enrollees, no additional persons could be served beyond those currently enrolled. On a practical basis, many of those individuals who are served by the program need more than 20 hours a week of employment at the minimum wage to maintain themselves. Therefore, the modest placement goal encouraging projects to seek unsubsidized positions for such participants is retained. This option must be available to serve individuals who require unsubsidized employment.

List of Subjects 20 CFR Part 641

Aged, employment and grant programs—Labor.

20 CFR Part 89

Aged, employment and grant programs—Labor.

Final Rule

Under the Secretary's authority, 5 U.S.C. 301 and Reorganization Plan No. 14 of 1950, 5 U.S.C. appendix, 29 CFR part 89 is redesignated as 20 CFR part 641 and revised to read as follows:

PART 641—SENIOR COMMUNITY SERVICE EMPLOYMENT PROGRAM

Subpart A—Introductory Provisions

641.101 Scope and purpose.
641.102 Definitions.

Subpart B—Grant Planning and Application Procedures

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641.202 Eligibility for title V funds.
641.203 Soliciting applications for title V funds.
641.204 Grant application requirements.
641.205 Responsibility review.
641.206 Grant application review.
641.207 Negotiation.
641.208 Rejection of grant application or project components.
641.209 Award of funds.

Subpart C—Grant Operations

641.301 General.
641.302 Grantee responsibilities.
641.303 Cooperative relationships.
641.304 Recruitment and selection of enrollees.
641.305 Enrollment eligibility.
641.306 Enrollment priorities.
641.307 [Reserved]
641.308 Orientation.
641.309 Assessment and reassessment of enrollees.
641.310 Community service assignments.
641.311 Enrollee wages and fringe benefits.
641.312 Enrollee supportive services.
641.313 Training.
641.314 Placement into unsubsidized employment.
641.315 Maximum duration of enrollment.
641.316 Individual development plan-related terminations.
641.317 Status of enrollees.
641.318 Over-enrollment.
641.319 [Reserved]
641.320 Political patronage.
641.321 Political activities.
641.322 Unionization.
641.323 Nepotism.
641.324 Enrollee and applicant complaint resolution.
641.325 Maintenance of effort.
641.326 Experimental private sector training projects.

Subpart D—Administrative Standards and Procedures for Grantees and Limitations on Federal Funds

641.401 General.
641.402 Administrative requirements.
641.403 Allowable costs.
641.404 Classification of costs.
641.405 Limitations on federal funds.
641.406 Administrative cost waiver.
641.407 Non-federal share of project costs.
641.408 Budget changes.
641.409 Grantee fiscal and performance reporting requirements.
641.410 Subgrant agreements.
641.411 Program income accountability.
641.412 Equipment.
641.413 Audits.
641.414 Grant closeout procedures.
641.415 Department of Labor appeals procedures for grantees.

Subpart E—Interagency Agreements

641.501 Administration.

Subpart F—Assessment and Evaluation

641.601 General.
641.602 Limitation.

Authority: 42 U.S.C. 3056(b)(2).

Subpart A—Introductory Provisions

§ 641.101 Scope and purpose.

Part 641 contains the regulations of the Department of Labor for the Senior Community Service Employment Program (SCSEP) under title V of the OAA. The dual purposes of a SCSEP project are to provide useful part-time community service assignments for persons with low incomes who are 55 years old or older while promoting transition to unsubsidized employment. This part, and other pertinent regulations expressly incorporated by reference, set forth all regulations applicable to the SCSEP.

§ 641.102 Definitions.

The following definitions apply to this part:

OAA means the Older Americans Act of 1965, as amended (42 U.S.C. 3001 *et seq.*).

Area agency on aging means an area agency on aging designated under section 305(a)(2)(A) of the OAA or a

State agency performing the functions of an area agency on aging under section 305(b)(5) of the OAA.

Authorized position means an enrollment opportunity during a program year. The number of authorized positions is derived by dividing the total amount of funds appropriated during a program year by the national average unit cost per enrollee for that program year as determined by the Department. The national average unit cost includes all administration costs, other enrollee costs, and enrollee wage and fringe benefit costs. An allotment of the total dollars for the grantee is divided by the national unit cost to determine the total number of authorized positions for each grant agreement.

Community service means social, health, welfare, and educational services (particularly literacy tutoring); legal assistance, and other counseling services, including tax counseling and assistance and financial counseling; library, recreational, day care and other similar services; conservation, maintenance, or restoration of natural resources; community betterment or beautification; pollution control and environmental quality efforts; weatherization activities; and includes inter-generational projects; but is not limited to the above. It excludes building and highway construction (except that which normally is performed by the project sponsor) and work which primarily benefits private, profitmaking organizations. [Section 507(2) of the OAA.]

Department and *DOL* mean the United States Department of Labor, including its agencies and organizational units.

Disability means a physical or mental impairment of an individual that substantially limits one or more major life activities; a record of such impairment; or being regarded as having such an impairment. [29 CFR parts 32 and 34.]

Dual eligibility means individuals eligible under title V who are enrolled in a joint program established under a written financial or non-financial agreement to jointly operate programs with JTPA are deemed to satisfy the requirements of all JTPA programs funded under Title II–A of the JTPA.

Eligible individual means a person who is 55 years of age, or older, and who has a low income as defined in this section. [Section 507(1) of the OAA.]

Eligible organization means an organization which is legally capable of receiving and using Federal funds under the OAA and entering into a grant or other agreement with the Department to carry out the provisions of title V of the OAA. [Section 502(b)(1) of the OAA.]

Employment and training program(s) means publicly funded efforts designed to offer employment, training and/or placement services which enhance an individual's employability. The term is used in this part to include, but is not limited to, the JTPA or similar legislation and State or local programs of a similar nature.

Enrollee means an individual who is eligible, receives services, and is paid wages for engaging in community service assignments under a project.

Grantee means an eligible organization which has entered into a grant agreement with the Department under this part.

Greatest economic need means the need resulting from an income level at or below the poverty line based on guidelines provided by the Department.

Greatest social need, as defined at section 102(a)(30) of the OAA, means the need caused by noneconomic factors which include:

(1) Physical and mental disabilities;

(2) Language barriers; and

(3) Cultural, social, or geographical isolation, including isolation caused by racial or ethnic status.

Host agency means a public agency or a private non-profit organization, other than a political party or any facility used or to be used as a place for sectarian religious instruction or worship, exempt from taxation under the provisions of section 501(c)(3) of the Internal Revenue Code of 1986, which provides a work site and supervision for an enrollee.

Individual development plan means a plan for an enrollee which shall include an employment goal, achievement objectives, and appropriate sequence of services for the enrollee based on an assessment conducted by the grantee or subgrantee and jointly agreed upon by the enrollee.

JTPA means the Job Training Partnership Act (29 U.S.C. 1501 *et seq.*).

Low income means an income of the family which, during the preceding six months on an annualized basis or the actual income during the preceding 12 months, whichever is more beneficial to the applicant, is not more than 125 percent of the poverty levels established and periodically updated by the U.S. Department of Health and Human Services. In addition, an individual who receives, or is a member of a family which receives, regular cash welfare payments shall be deemed to have a low income for purposes of this part.

Poor employment prospects means the unlikelihood of an otherwise eligible individual obtaining employment without the assistance of this or other employment and training programs. Persons with poor employment prospects include, but are not limited to, those without a substantial employment history, basic skills, English-language proficiency, or displaced homemakers, school dropouts, disabled veterans, homeless or residing in socially and economically isolated rural or urban areas where employment opportunities are limited.

Program year means the one-year period covered by a grant agreement beginning July 1 and ending on June 30.

Project means an undertaking by a grantee or subgrantee, pursuant to a grant agreement between the Department and the grantee, which provides for community service opportunities for eligible individuals and the delivery of associated services.

Reallocation means a redistribution of funds by a grantee.

Reallotment means the redistribution of allotted title V funds by the Department from one State to another State(s) or from one grantee to another grantee.

Residence means an individual's declared dwelling place or address. No requirement pertaining to length of residency prior to enrollment shall be imposed.

SCSEP means the Senior Community Service Employment Program as authorized under title V of the OAA.

State agency on aging means the sole agency designated by the State, in accordance with regulations of the Assistant Secretary on Aging, pursuant to section 305(a)(1) of the OAA.

Subgrantee means the legal entity to which a subgrant is awarded by a grantee and which is accountable to the grantee (or higher tier subgrantee) for the use of the funds provided.

Title V of the OAA means 42 U.S.C. 3056 *et seq.*

Subpart B—Grant Planning and Application Procedures

§ 641.201 Allotment and allocation of title V funds.

(a) *Allotment.* The Secretary shall allot funds for projects in each State in accordance with the distribution requirements contained in section 506(a) of the OAA.

(b) *Within-State apportionment.* The amount allotted for projects within a State shall be apportioned among areas within the State in an equitable manner, taking into consideration:

(1) The proportion which eligible individuals in each such area bears to the total number of such persons, respectively, in that State;

(2) The relative distribution of such individuals residing in rural and urban areas within the State; and

(3) The relative distribution of such individuals who are individuals with the greatest economic need, such individuals who are minority individuals, and such individuals with greatest social need.

(c) *Annual report of funds allocated by state.* The State agency for each State receiving funds or a sponsor designated by the Department shall report at the beginning of each fiscal year on such State's status relative to section 506(c) of the OAA. Each State's report shall include names and geographic locations of all projects receiving title V funds for projects in the State. All grantees and subgrantees operating in a State shall provide information necessary to compile the report. [Section 506(d) of the OAA.]

§ 641.202 Eligibility for title V funds.

Agencies and organizations eligible to receive title V funds shall be those specified in sections 502(b) and 506(a) of the OAA.

§ 641.203 Soliciting applications for title V funds.

The Department may solicit or request organizations to submit applications for funds.

§ 641.204 Grant application requirements.

(a) *Schedules.* The Department shall establish, by administrative directive, schedules for submittal of grant preapplications and applications; the contents of grant applications, including goals and objectives; amounts of grants; and grant budget and narrative formats.

(b) *Intergovernmental reviews.* Grant applicants shall comply with the requirements of the Department's regulation, at 29 CFR part 17, which implements the intergovernmental review of Department programs and activities. A *Preapplication for Federal Assistance* form (SF–424) filed as a result of the intergovernment review system shall contain an attachment which, at a minimum, lists the proposed number of authorized community service positions in each county, or other appropriate jurisdiction within the affected State. Whenever a national organization or other program grantee or subgrantee proposes to conduct projects within a planning and service area in a State, such organization or program grantee is responsible for sharing their applications with area agencies on aging and other SCSEP sponsors in the area prior to the award of the funds in accord with guidelines issued by the Department.

(c) *Subgrants.* A grant applicant planning to award funds by subgrant shall:

(1) Outline the nature and extent of the planned use of such funds; and

(2) Assure that in the event that a subgrant agreement is canceled in whole or in part, the grantee will provide continuity of services to enrollees.

§ 641.205 Responsibility review.

(a) In order to enter into and continue a grant relationship with DOL, an organization (applicant) shall be responsible. To determine responsibility, DOL conducts a preaward review of all grant applicants. As part of this review, DOL applies 13 basic responsibility tests to each applicant, included in paragraphs (b) and (c) of this section.

(b) If a grant applicant fails either of the following two responsibility tests, it shall not be designated as a grantee:

(1) The Department's efforts to recover debts from the applicant (for which three demand letters have been sent) established by final Department action have been unsuccessful, or the applicant has failed to comply with an approved repayment plan.

(2) Fraud or criminal activity has been determined to exist within the organization.

(c) Eleven additional basic responsibility tests are applied to each grant applicant. Failure to meet any one of these tests does not establish that the applicant is not responsible, unless the failure is substantial or persistent. These tests are as follows:

(1) Serious administrative deficiencies have been identified, such as failure to maintain a financial management system as required by Federal regulations.

(2) Willful obstruction of the monitoring process.

(3) Failure to meet performance requirements.

(4) Failure to correct deficiencies brought to the grantee's attention in writing as a result of monitoring activities, reviews, assessments, *etc.*

(5) Failure to submit correct grant closeout documents within 90 days after expiration of the grant, unless an extension has been requested and granted.

(6) Failure to return outstanding cash advances within 90 days of the expiration date of the grant, unless an extension has been requested and granted, or the funds have been authorized to be retained for use on other grants.

(7) Failure to submit correct required reports by established due dates.

(8) Failure to properly report and dispose of government property as instructed by DOL.

(9) Failure to maintain cost controls resulting in excess cash on hand.

(10) Failure to timely comply with the audit requirements of 29 CFR part 96.

(11) Final disallowed costs in excess of five percent of the grant award.

§ 641.206 Grant application review.

(a) The Department shall review each timely grant application submitted by an eligible organization.

(b) In reviewing and considering an application, the Department shall determine the following:

(1) The availability of funds for the proposed grant;

(2) Whether the application is in accordance with the Department's instructions;

(3) Whether the application complies with the requirements of the OAA and this part;

(4) Whether the application offers the best prospect of serving appropriate geographic areas; and

(5) Whether the application demonstrates the effective use of funds.

§ 641.207 Negotiation.

(a) The Department may negotiate with an eligible organization to arrive at a grant agreement if the application generally meets requirements set forth in this part.

(b) The subjects of negotiation may include, but are not limited to, the following:

(1) Project components, including community service assignments and geographic locations of authorized positions;

(2) Subproject(s), if any;

(3) Funding level, including all budget line items; and

(4) Performance goals.

§ 641.208 Rejection of grant application or project components.

(a) The Department may question any proposed project component if it believes that the component will not serve the purposes of the OAA; if negotiation does not produce a mutually acceptable conclusion, it may reject this grant application.

(b) If the Department rejects an application, as set forth in paragraph (a) of this section, the Department may solicit applications from other eligible organizations in order to arrive at a grant agreement.

(c) When an application is not approved, the Department shall notify the applicant within a reasonable time in writing and state the reason(s) for rejection.

(d) Rejection of a proposal or application is a final Departmental action which is not subject to further administrative review. Rejection will not affect future consideration of the applicant for other projects as long as the organization meets the eligibility criteria.

§ 641.209 Award of funds.

When the applicant is a unit of State government or a public or private non-profit organization, the award of funds to a grantee shall be accomplished through the execution of a grant agreement prepared by the Department. When the applicant is a unit of the Federal Government, other than the Department, the award of funds shall be accomplished through an interagency agreement.

Subpart C—Grant Operations

§ 641.301 General.

(a) This subpart establishes basic grant operation standards and procedures to be followed by all organizations receiving title V funds for the purpose of operating SCSEP grant agreements and projects.

(b) The dual purposes of an SCSEP project are to provide useful part-time community service assignments for persons with low incomes who are 55 years old or older while promoting transition to unsubsidized employment. Grantees and subgrantees shall develop appropriate work assignments for eligible individuals which will result in the provision of community services as defined in sections 502(b) and 507(2) of the OAA, and § 641.102 and will promote unsubsidized employment opportunities.

§ 641.302 Grantee responsibilities.

The grantee shall remit to eligible individuals wages, for community service assignments, and provide skill enhancement opportunities, periodic physical examinations, personal and employment-related counseling, assistance in transition to unsubsidized employment where feasible, and other benefits as approved by the Department.

(a) grantees are responsible for:

(1) Following and enforcing the requirements set forth in the OAA and this part;

(2) Implementing and carrying out projects in accordance with the provisions of the grant agreement; and

(3) Assuring that, to the extent feasible, such projects will serve the needs of minority, limited English-speaking, and Indian eligible individuals, and eligible individuals who have the greatest economic need, at least in proportion to their numbers in the State, and take into consideration their rates of poverty and unemployment based on the best available information.

(b) The grantee periodically shall monitor the performance of grant-supported activities to assure that project goals are being achieved and that the requirements of the OAA and this part are being met.

(c) The grantee or subgrantee shall obtain and record the personal information necessary for a proper determination of eligibility for each individual and maintain documentation supporting the eligibility of enrollees.

(d) Each grantee or subgrantee shall make efforts to provide equitable services among substantial segments of the population eligible for participation in SCSEP. Such efforts shall include, but not be limited to: outreach efforts to broaden the composition of the pool of those considered for participation, to include members of both sexes, various race/ethnic groups and individuals with disabilities.

§ 641.303 Cooperative relationships.

(a) Each grantee or subgrantee shall, to the maximum extent feasible, cooperate with other agencies, including agencies conducting programs under the JTPA, to provide services to elderly persons, to persons with low incomes, and with agencies providing employment and training services.

(b) The cooperation described in paragraph (a) of this section shall include, but not be limited to:

(1) Selection of community service assignment occupational categories, work assignments, and host agencies to provide a variety of community service opportunities for enrollees and to produce a variety of federally funded services which respond to the community's total needs and initiatives.

(2) Establishment of cooperative relations with the State agency on aging designated under section 305(a)(1) of the OAA and with area agencies on aging designated under section 305(a)(2) of the OAA for the purpose of obtaining services as authorized under titles III, IV, and VI of the OAA to increase the likelihood of receipt of unsubsidized employment opportunities and supportive services that are available. Existing services provided under the authority of section 321(a) of the OAA shall be used first by grantee or subgrantee.

(3) Establishment of cooperative relations with other employment and training organizations including the State and local JTPA and the Carl D. Perkins Act programs to insure that project enrollees can benefit from such cooperative activities as dual eligibility, shared assessments, training and referral.

(4) Establishment of cooperative relations with State employment security agencies to insure that enrollees are made aware of services available from these agencies.

(c) Whenever a national organization or other program sponsor conducts a project within a planning and service area in a State, such an organization or program sponsor shall conduct such a project in consultation with the area agency on aging of the planning and service area and shall submit to the State agency and the area agency on aging a description of such project to be conducted in the State including the location of the project, 30 days prior to undertaking the project, for review and comment to assure efficient and effective coordination of programs under this part.

§ 641.304 Recruitment and selection of enrollees.

Grantees and subgrantees shall use methods of recruitment and selection (including notifying the State employment security agency when vacancies occur) which will assure that the maximum number of eligible individuals will have an opportunity to participate in the program. Recruitment efforts shall be designed, to the extent feasible, to assure equitable distribution of services to groups described in § 641.302(e). [Section 502(b)(1)(H) of the OAA.]

§ 641.305 Enrollment eligibility.

(a) *General.* Eligibility criteria set forth in this section apply to all SCSEP applicants and enrollees, including the following individuals:

(1) Each individual seeking initial enrollment;

(2) Each individual seeking reenrollment after termination from the SCSEP because of loss of unsubsidized employment through no fault of their own, including illness; and

(3) Each enrollee seeking recertification for continued enrollment.

(b) *Eligibility criteria.* To be eligible for initial enrollment, each individual shall meet the following criteria for age, income, and place of residence:

(1) *Age.* Each individual shall be no less than 55 years of age. No person whose age is 55 years or more shall be determined ineligible because of age, and no upper age limit shall be imposed for initial or continued enrollment. [Section 502 of the OAA.]

(2) *Income.* The income of the family of which the individual is a member

shall not exceed the low-income standards defined in § 641.102 and issued by the Department. In addition, a disabled person may be treated as a "family of one" for income eligibility purposes.

(3) *Residence.* Each individual, upon initial enrollment, shall reside in the State in which the project is authorized.

(c) *No additional eligibility requirement.* Grantees and subgrantees shall not impose any additional condition or requirement for enrollment eligibility unless required by Federal law.

(d) *Dual Eligibility.* Individuals eligible under title V of the OAA who are enrolled in a joint program established under a written financial or non-financial agreement to jointly operate programs with JTPA shall be deemed to satisfy the requirements of JTPA Title II–A.

(e) *Special responsibilities of the grantees and subgrantee(s) relating to eligibility.*

(1) Each grantee or subgrantee shall recertify the income of each enrollee under its grant or subgrant, respectively, once each project year, according to the schedule set forth in the grant agreement and shall maintain documentation to support the recertification. Enrollees found to be ineligible for continued enrollment because of income shall be given, by the grantee or subgrantee, a written notice of termination and shall be terminated 30 days after the notice. No enrollee shall participate in a community service position for more than 12 months without having his or her income recertified.

(2) If, at any time, the grantee or a subgrantee determines that an enrollee was incorrectly declared eligible as a direct result of false information given by that individual, the individual shall be given a written notice explaining the reason or reasons for the determination and shall be terminated immediately.

(3) If, at any time, the grantee or subgrantee determines that an enrollee was incorrectly declared eligible through no fault of the enrollee, the grantee or subgrantee shall give the enrollee immediate written notice explaining the reason or reasons for termination, and the enrollee shall be terminated 30 days after the notice.

(4) When a grantee or subgrantee makes an unfavorable determination on continued eligibility, it shall explain in writing to the enrollee the reason(s) for the determination and shall provide notice of the right of appeal in accordance with the required procedures set forth in § 641.324.

(5) When a grantee or subgrantee terminates an enrollee for cause, it shall inform the enrollee, in writing, of the reason(s) for termination and of the right of appeal in accordance with the required procedures set forth in § 641.324.

(6) When a grantee or subgrantee makes an unfavorable determination of enrollment eligibility pursuant to paragraph (e) (1) or (3) of this section, it should assure that the individual is given a reason for non-enrollment and, when feasible, should refer the individual to other potential sources of assistance.

§ 641.306 Enrollment priorities.

(a) As set forth in sections 502(b)(1)(M) and 507(1) of the OAA, enrollment priorities for filling all positions shall be as follows:

(1) Eligible individuals with the greatest economic need;

(2) Eligible individuals who are 60 years old or older; and

(3) Eligible individuals who seek re-enrollment following termination of an unsubsidized job through no fault of their own or due to illness, provided that re-enrollment is sought within one year of termination.

(b) Within all enrollment priorities, those persons with poor employment prospects shall be given preference.

(c) Enrollment priorities established in this section shall apply to all vacant community service positions, but shall not be interpreted to require the termination of any eligible enrollee. The priorities do not apply to the experimental private sector projects authorized by section 502(e) of the OAA.

§ 641.307 [Reserved]

§ 641.308 Orientation.

(a) *Enrollee.* The grantee or subgrantee shall provide orientation to eligible individuals who are enrolled as soon as practicable after a determination of eligibility. The orientation shall provide, as appropriate, information related to: project objectives; community service assignments; training; supportive services; responsibilities, rights, and duties of the enrollee; permitted and prohibited political activities; plans for transition to unsubsidized employment and a discussion of safe working conditions at the host agencies.

(b) *Host agency.* The grantee or a subgrantee shall provide to those individuals who will supervise enrollees at the host agencies, an orientation similar to the one described in paragraph (a) of this section. This is to assure that enrollees will receive adequate supervision and opportunities for transitioning to the host agency staff or other unsubsidized employment.

(c) *Supervision.* The grantee or subgrantee shall ensure that host agencies provide adequate supervision, adequate orientation and instruction regarding, among other things, job duties and safe working procedures.

§ 641.309 Assessment and reassessment of enrollees.

(a) *General.* The grantee or subgrantee shall assess each enrollee under the grant or subgrant, respectively, to determine the most suitable community service assignment and to identify appropriate employment, training, and community service objectives for each individual. The assessment shall be made in partnership with the new enrollee and should consider the individual's preference of occupational category, work history, skills, interests, talents, physical capabilities, need for supportive services, aptitudes, potential for performing proposed community service assignment duties, and potential for transition to unsubsidized employment.

(b) *Assessment of physical capabilities.* The assessment of each enrollee shall take into consideration his or her physical capabilities. Assessments of physical ability shall be consistent with section 504 of the Rehabilitation Act of 1973, as amended (section 504), and the Americans with Disabilities Act of 1990 (ADA).

(c) *Assignment.* The grantee or subgrantee shall seek a community service assignment which will permit the most effective use of each enrollee's skills, interests, and aptitudes.

(d) *Individual development plans.* The grantee and subgrantee shall use the assessment or reassessment as a basis for developing or amending an individual development plan (IDP). The IDP shall be developed in partnership with the enrollee to reflect the needs of the enrollee as indicated by the assessment, as well as the expressed interests and desires of the enrollee.

(e) *Review of IDP plan.* The grantee and subgrantee shall review the IDP at least once in a 12 month period for the following purposes: to evaluate the progress of each enrollee in meeting the objectives of the IDP; to determine each enrollee's potential for transition to unsubsidized employment; to determine the appropriateness of each enrollee's current community service assignment; and to review progress made toward meeting their training and employment objectives.

(f) *Alternative assignment.* The sponsor may develop an alternative assignment for an enrollee, when feasible, should there be one of the following determinations:

(1) That a different community service assignment will provide greater opportunity for the use of an enrollee's skills and aptitudes;

(2) That an alternative assignment will provide work experience which will enhance the potential for unsubsidized employment; or

(3) That an alternative assignment will otherwise serve the best interests of the enrollee.

(g) *Minimum requirements.* The assessments and reassessments required by this section shall meet minimum requirements issued by the Department on assessment, and subsequent determinations are to be recorded in the enrollee's IDP, to become a part of each enrollee's permanent record.

(h) *Recent assessments.* Assessments of an enrollee, prepared by another employment or training program (such as a program under the JTPA or the Carl D. Perkins Vocational and Applied Technology Act) may be substituted for one prepared by the grantee or subgrantee if the training program prepared the assessment within the last year prior to applying for SCSEP. [section 502(b)(1)(M) of the OAA.]

§ 641.310 Community service assignments.

(a) *Assignment to community service.* After the completion of an enrollee's orientation and initial training, if any, the grantee or subgrantee shall refer the enrollee, as soon as possible, to a useful part-time community service assignment, if appropriate, according to the IDP.

(1) Each enrollee shall be placed in a community service assignment which contributes to the general welfare of the community and provides services related to publicly-owned and operated facilities and projects, or projects sponsored by organizations other than political parties, exempt from taxation under the provisions of section 501(c)(3) of the Internal Revenue Code of 1986. Project sponsors may provide enrollees with opportunities to assist in the administration of the SCSEP.

(2) The enrollee shall not be assigned to work involving the construction, operation, or maintenance of any facility used or to be used as a place for sectarian religious instruction or worship, or to work which primarily benefits private, profit-making organizations. [Sections 502(b)(1)(A), (C), and (D) and 507(2) of the OAA.]

(b) *Hours of community service assignments.*

(1) Each enrollee's community service assignment shall not exceed 1,300 hours during a 12-month period specified in the grantee's agreement. The 1,300 hours includes paid hours of orientation, training, sick leave, and vacation and hours of enrollment provided by all grantees and subgrantees. No enrollee shall be paid for more than 1,300 hours in any 12-month period. [Section 508(a)(2) of the OAA.]

(2) The grantee or subgrantee shall not require an enrollee to participate more than 20 hours during one week; however, hours may be extended with the consent of the enrollee.

(3) The grantee or subgrantee shall not offer an enrollee an average of fewer than 20 hours of paid participation per week. Shorter periods may be authorized by the grant agreement, in writing by the Department, or by written agreement between an enrollee and a grantee or subgrantee. [Section 508(a)(2) of the OAA.]

(4) The grantee or subgrantee shall, to the extent possible, ensure that the enrollee works during normal business hours, if the enrollee so desires.

(c) *Location.* The enrollee shall be employed at work sites in or near the community where the enrollee resides. [Section 502(b)(1)(B) of the OAA.]

(d) *Working conditions for enrollees.* Enrollees shall not be permitted to work in a building or surroundings or under conditions which are unsanitary, hazardous, or dangerous to the enrollees' health or safety. The grantee or subgrantee shall make periodic visits to the enrollees' work site(s) to assure that the working conditions and treatment of the enrollee are consistent with the OAA and this part. [Section 502(b)(1)(J) of the OAA.]

§ 641.311 Enrollee wages and fringe benefits.

(a) *Wages.* Upon engaging in part-time community service assignments, including orientation and training in preparation for community service assignments, each enrollee shall receive wages at a rate no less than the highest applicable rate:

(1) The minimum wage which would be applicable to the enrollee under the Fair Labor Standards Act of 1938;

(2) The State or local minimum wage for the most nearly comparable covered employment; or

(3) The prevailing rates of pay for persons employed in similar public occupations by the same employer.

(b) *Fringe benefits.*

(1) The grantee or subgrantee shall ensure that enrollees receive all fringe benefits required by law.

(2) Within a project or subproject, fringe benefits shall be provided uniformly to all enrollees, unless the Department agrees to waive this provision due to a determination that such a waiver is in the best interests of applicants, enrollees, and the project administration.

(3) *Physical examination.*

(i) Each enrollee shall be offered the opportunity to take a physical examination annually. A physical is a fringe benefit, and is not an eligibility criterion. The examining physician shall provide, to the enrollee only, a written report of the results of the examination. The enrollee may, at his or her option, provide the grantee or subgrantee a copy of the report. The results of the physical examination shall not be taken into consideration in determining placement into a community service assignment.

(ii) An enrollee may refuse the physical examination offered. In such a case, the grantee or subgrantee should document this refusal, through a signed waiver or other means, within 60 work days after commencement of the community service assignment. Thereafter, grantees or subgrantees shall document an enrollee's refusal of the annual physical examination.

(c) *Retirement.* Expenditures of grant funds for contributions into a retirement system or plan are prohibited, unless the grantee has documentation on hand showing that:

(1) The costs are allowable under the appropriate cost principles indicated at § 641.403(b); and

(2) Such contributions bear a reasonable relationship to the cost of providing such benefits to enrollees because:

(i) the benefits vest at the time contributions are made on behalf of the enrollees; or

(ii) the charges to SCSEP funds are for contributions on behalf of enrollees to a "defined benefit" type of plan which do not exceed the amounts reasonably necessary to provide the specified benefit to enrollees, as determined under a separate actuarial determination.

(d) *Workers' compensation.* Where an enrollee is not covered by the State workers' compensation law, the grantee or subgrantee shall provide the enrollee with workers' compensation benefits equal to that provided by law for covered employment. [Section 504(b) of the OAA.]

(e) *Unemployment compensation.* The grantee is authorized to pay the cost of unemployment insurance for covered enrollees, where required by law. [Section 502(b)(1)(O) of the OAA.]

§ 641.312 Enrollee supportive services.

(a) The grantee or subgrantee shall provide supportive services designed to assist the enrollee in participating successfully in community service assignments and, where appropriate, to prepare and assist the enrollee in obtaining unsubsidized employment. To the extent feasible, the grantee or subgrantee shall utilize supportive services available from other titles of the OAA, particularly those administered by area agencies on aging and other funding sources.

(b) Supportive services may include, but need not be limited to, all or some of the following:

(1) Counseling or instruction designed to assist the enrollee to participate successfully in community service assignments or to obtain unsubsidized employment.

(2) Counseling designed to assist the enrollee personally in areas such as health, nutrition, social security benefits, Medicare benefits, and retirement laws.

(3) Incidentals, including, but not limited to: work shoes, badges, uniforms, safety glasses, eyeglasses, and hand tools, may be provided if necessary for successful participation in community service assignments and if not available from other sources.

(4) Periodic meetings on topics of general interest, including matters related to health, job seeking skills, safety, and consumer affairs.

(5) *Enrollee transportation.*

(i) Enrollee transportation may be paid if transportation from other sources at no cost to the project is unavailable and such unavailability is documented. When authorized in the grant agreement, transportation may be provided for enrollees from home to work, to training or to supportive services. [Section 502(b)(1)(L) of the OAA.]

(ii) Grant funds may not be expended to support the transportation costs of host agencies or programs funded by other than title V of the OAA, except where provided by Federal law.

§ 641.313 Training.

(a) The grantee or subgrantee shall provide or arrange for training specific to an enrollee's community service assignment. Training may be provided through lectures, seminars, classroom instruction, individual instruction or other arrangements including, but not limited to, arrangements with employment and training programs. The grantee or the subgrantee is encouraged to obtain such services through locally available resources, including employment and training programs, as defined in § 641.103, and through host agencies, at no cost or reduced cost to the project. [Section 502(b)(1)(I) of the OAA.]

(b) Training shall consist of up to 500 hours per grant year and shall be consistent with the enrollee's IDP. Such training may cover all aspects of training; e.g., skill, job search, etc. Enrollees shall not be enrolled solely for the purpose of receiving job search and job referral services. Waivers for additional hours of training will be considered on an exception basis.

(c) In addition to training in preparation for community service assignments, as described in this section, a grantee or subgrantee is encouraged to arrange for, or directly provide, skills-training opportunities beyond the SCSEP community service training activities which will permit the enrollee to acquire or improve skills, including literacy training, applicable in community service assignment or for unsubsidized employment.

(d) A grantee or subgrantee, to the extent feasible, shall arrange skill-training for the enrollee which is realistic and consistent with his or her IDP. A grantee or subgrantee shall place major emphasis on the training available through on-the-job experience at SCSEP work sites, thereby retaining the community service focus of the SCSEP.

(e) An enrollee engaging in skills-related training, as described in paragraphs (c) and (d) of this section, may be reimbursed for the documented travel costs and room and board necessary to engage in such training. [Section 502(b)(1)(I) of the OAA.]

(f) Whenever possible a grantee or subgrantee shall seek to obtain all training for enrollees reduced or no cost to title V from such sources as the JTPA and the Carl D. Perkins Vocational and Applied Technology Education Act. Where training is not available from other sources, title V funds may be used for training.

(g) Nothing in this section shall be interpreted to prevent or limit an enrollee from engaging in self-development training available from sources other than title V of the OAA during hours other than hours of community service assignment.

(h) Joint programming, including co-enrollment when appropriate, between title V programs and programs authorized by the Job Training Partnership Act, the Community Services Block Grant Act, or the Carl D. Perkins Act is strongly encouraged.

§ 641.314 Placement into unsubsidized employment.

(a) In order to ensure that the maximum number of eligible individuals have an opportunity to participate in community service assignments, the grantee or subgrantee shall employ reasonable means to place each enrollee into unsubsidized employment.

(b) To encourage the placement of the enrollee into an unsubsidized job, the Department has established a goal of placing into unsubsidized employment the number of enrollees which equals at least 20 percent of the project's annual authorized positions. Whenever this goal is not achieved, the grantee shall develop and submit a plan of action for addressing this shortfall.

(c) The grantee or subgrantee may contact private and public employers directly or through the State employment security agencies to develop or identify suitable unsubsidized employment opportunities; and should encourage host agencies to employ enrollees in their regular work forces.

(d) The grantee or subgrantee shall follow-up on each enrollee who is placed into unsubsidized employment and shall document such follow-up at least once within 3 months of unsubsidized placement.

§ 641.315 Maximum duration of enrollment.

A maximum duration of enrollment may be established by the grantee in the grant agreement, when authorized by the Department. Time limits on enrollment shall be reasonable and IDPs shall provide for transition to unsubsidized employment or other assistance before the maximum enrollment duration has expired.

§ 641.316 Individual development plan-related terminations.

When an enrollee refuses to accept a reasonable number of referrals or job offers to unsubsidized employment consistent with his or her IDP and there are no extenuating circumstances, the enrollee may be terminated from the SCSEP. Such a termination shall be consistent with administrative guidelines issued by the Department and the termination shall be subject to the applicable appeal rights and procedures described in § 641.324.

§ 641.317 Status of enrollees.

Enrollees who are employed in any project funded under the OAA are not deemed to be Federal employees as a result of such employment. [Section 504(a) of the OAA.]

§ 641.318 Over-enrollment.

Should attrition or funding adjustments prevent a portion of project funds from being fully utilized, the grantee may use those funds during the period of the agreement to over-enroll additional eligible individuals. The number over-enrolled may not exceed 20 percent of the total number of authorized positions established under the grant agreement without the written approval of the Department. Payments to or on behalf of enrollees in such positions shall not exceed the amount of the unused funds available. Each individual enrolled in such a position shall be informed in writing that the assignment is temporary in nature and may be terminated. The grantee shall first seek to maintain full enrollment in authorized positions and shall seek to schedule all enrollments and terminations to avoid excessive terminations at the end of the grant period.

§ 6541.319 [Reserved]

§ 641.320 Political patronage.

(a) No grantee may select, reject, promote, or terminate an individual based on that individual's political affiliations or beliefs. The selection or advancement of enrollees as a reward for political services, or as a form of political patronage, is prohibited.

(b) There shall be no selection of subgrantees or host agencies based on political affiliation.

§ 641.321 Political activities.

(a) *General.* No project under title V of the OAA or this part may involve political activities.

(1) No enrollee or staff person may be permitted to engage in partisan or nonpartisan political activities during hours for which they are paid with SCSEP funds.

(2) No enrollee or staff person, at any time, may be permitted to engage in partisan-political activities in which such enrollee or staff person represents himself or herself as a spokesperson of the SCSEP program.

(3) No enrollee may be employed or out-stationed in the office of a Member of Congress, a State or local legislator, or on any staff of a legislative committee.

(4) No enrollee may be employed or out-stationed in the immediate office of any elected chief executive officer(s) of a State or unit of general government, except that:

(i) Units of local government may serve as host-agencies for enrollees in such positions, provided that such assignments are nonpolitical; and

(ii) Where assignments are technically in such offices, such assignments actually are program activities not in any way involved in political functions.

(5) No enrollee may be assigned to perform political activities in the offices of other elected officials. However, placement of enrollees in such nonpolitical assignments within the offices of such elected officials is permissible, provided that grantees develop safeguards to ensure that enrollees placed in these assignments are not involved in political activities. These safeguards shall be described in the grant agreement and shall be subject to review and monitoring by the grantee and the Department.

(b) *Hatch Act.*

(1) State and local employees governed by 5 U.S.C. chapter 15 shall comply with the Hatch Act provisions as interpreted and applied by the Office of the Special Counsel.

(2) Each project subject to 5 U.S.C. chapter 15 shall display a notice and shall make available to each person associated with such project a written explanation, clarifying the law with respect to allowable and unallowable political activities under 5 U.S.C. chapter 15 which are applicable to the project and each category of individuals associated with such project. This notice, which shall have the approval of the Department, shall contain the telephone number and address of the DOL Inspector General. [Section 502(b)(1)(P) of the OAA.] Enforcement of the Hatch Act shall be as provided at 5 U.S.C. chapter 15.

§ 641.322 Unionization.

No funds provided under title V of the OAA or this part may be used in any way to assist, promote, or deter union organizing.

§ 641.323 Nepotism.

(a) No grantee or subgrantee may hire, and no host agency may be a work site for a person who works in an administrative capacity, staff position, or community service position funded under title V of the OAA or this part if a member of that person's immediate family is engaged in a decision-making capacity (whether compensated or not) for that project, subproject, grantee, subgrantee or host agency. This provision may be waived by the Department at work sites on Native American reservations and rural areas provided that adequate justification can be documented, such as that no other persons are eligible for participation.

(b) To the extent that an applicable State or local legal requirement regarding nepotism is more restrictive than this provision, that requirement shall be followed.

(c) For purposes of this section:

(1) *Immediate family* means wife, husband, son, daughter, mother, father, brother, sister, son-in-law, daughter-in-law, mother-in-law, father-in-law, brother-in-law, sister-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent, and grandchild.

(2) *Engaged in an administrative capacity* includes those persons who, in the administration of projects, or host agencies, have responsibility for, or authority over those with responsibility for, the selection of enrollees from among eligible applicants.

§ 641.324 Enrollee and applicant complaint resolution.

(a) Each grantee shall establish and describe in the grant agreement procedures for resolving complaints, other than those described by paragraph (c) of this section, arising between the grantee and an enrollee.

(b) Allegations of violations of federal law, other than those described in paragraph (c) of this section, which cannot be resolved within 60 days as a result of the grantee's procedures, may be filed with the Chief, Division of Older Worker Programs, Employment and Training Administration, U.S. Department of Labor, Washington, DC 20210.

(c) Grantees that do not receive any funds under the JTPA shall process complaints of discrimination in accordance with 29 CFR parts 31 and 32. Grantees that receive any funds under JTPA shall process complaints of discrimination in accordance with 29 CFR part 34.

(d) Except for complaints described in paragraphs (b) and (c) of this section, the Department shall limit its review to determining whether the grantee's appeal procedures were followed.

§ 641.325 Maintenance of effort.

(a) Employment of an enrollee funded under title V of the OAA or this part shall be only in addition to budgeted employment which would otherwise be funded by the grantee, subgrantee and the host agency(ies) without assistance under the OAA. [Section 502(b)(1)(F) of the OAA.]

(b) Each project funded under title V of the OAA or this part:

(1) Should result in an increase in employment opportunities in addition to those which would otherwise be available;

(2) Shall not result in the displacement of currently employed workers, including partial displacement such as a reduction in hours of non-overtime work, wages, or employment benefits;

(3) Shall not impair existing contracts for service or result in the substitution of Federal funds for other funds in connection with work that would otherwise be performed;

(4) Shall not substitute project jobs for existing federally-assisted jobs; and

(5) Shall not employ or continue to employ any enrollee to perform work which is the same or substantially the same as that performed by any other person who is on layoff. [Section 502(b)(1)(G) of the OAA.]

§ 641.326 Experimental private sector training projects.

(a) The Department may authorize a grantee to develop an experimental job training project(s) designed to provide second career training and the placement of eligible individuals in employment opportunities with private business concerns. [Section 502(e) of the OAA.]

(b) Experimental project agreements for training may be with States, public agencies, non-profit private organizations, and private business concerns.

(c) The geographic location of these projects shall be determined by the Department to insure an equitable distribution of such projects.

(d) To the extent feasible, experimental projects shall emphasize second-career training, and innovative work modes, including those with reduced physical exertion, and placement into growth industries and jobs reflecting new technologies.

(e) The Department shall establish by administrative guidelines the application schedule, content, format, allocation levels and reporting requirements for experimental projects.

(f) Current title V eligibility standards shall be used for experimental projects unless the Department permits, in writing, the use of another approved income index.

(g) Projects funded under section 502(e) of the OAA shall seek to be coordinated with projects carried out under title II–A of the JTPA to the extent feasible.

(h) National grantees shall distribute funds for experimental projects in accordance with the State allocation in their title V grant.

(i) A grantee may exclude a project, permitted under section 502(e) of the OAA, from meeting the non-federal share requirement set forth in § 641.407; however, this exclusion does not relieve the grantee from the matching requirement, under § 641.407, which applies to the entire grant.

Subpart D—Administrative Standards and Procedures for Grantees and Limitations on Federal Funds

§ 641.401 General.

This subpart establishes limitations on title V funds to be used for community service activities and describes, or incorporates by reference, requirements for the administration of grants by the SCSEP grantee.

§ 641.402 Administrative requirements.

(a) Except as otherwise provided in this part, title V funds shall be administered in accordance with, and subject to, the Department's regulations at 29 CFR parts 31, 32, 34, 93, 96, and 98. In addition, projects and activities administered by State, local or Indian tribal governments are also subject to the Department's administrative requirements regulations at 29 CFR part 97; projects and activities administered by institutions of higher education, hospitals, or other non-profit organizations are subject to the Department's administrative requirements regulations at 29 CFR part 95. Grantees of title V funds shall be subject to any revisions of any implementing regulations cited in this paragraph (a) on the effective date of such revisions.

(b) The administration of interagency agreements set forth in subpart E of this part is not subject to paragraph (a) of this section.

§ 641.403 Allowable costs.

(a) *General.* The allowability of costs shall be determined in accordance with the cost principles indicated in paragraph (b) of this section, except as otherwise provided in this part.

(b) *Applicable Cost Principles.*

(1) The cost principles set forth in paragraphs (b)(1) through (4) of this section apply to the organization incurring the costs:

(i) OMB Circular A–87—State, local or Indian tribal government;

(ii) OMB Circular A–122—Private, non-profit organization other than:

(A) Institutions of higher education;

(B) Hospitals; or

(C) Other organizations named in OMB Circular A–122 (see sections 4.a. (Definitions) and 5 (Exclusions) of OMB Circular A–122);

(iii) OMB Circular A–21—Educational institution; or

(iv) 48 CFR part 31, subpart 31.2—Commercial organization (for-profit organization, other than a hospital or other organizations named in OMB Circular A–122).

(2) The OMB Circulars are available by writing to the Office of Management and Budget, Office of Administration, Publications Unit, Room G–236, New Executive Office Building, Washington, DC 20503, or by calling 202–395–7332.

(c) *Lobbying costs.* In addition to the prohibition contained in 29 CFR part 93 and in accordance with limitations on the use of appropriated funds in Department of Labor Appropriation Acts, title V funds shall not be used to pay any salaries or expenses related to any activity designed to influence legislation or appropriations pending before the Congress of the United States.

(d) *Building repairs and acquisition costs.* No federal grant funds provided to a grantee or subgrantee under title V of the OAA or this part may be expended directly or indirectly for the purchase, erection, or repair of any building except for the labor involved in:

(1) Minor remodeling of a public building necessary to make it suitable for use by project administrators;

(2) Minor repair and rehabilitation of publicly used facilities for the general benefit of the community; and

(3) Minor repair and rehabilitation by enrollees of housing occupied by persons with low incomes who are declared eligible for such services by authorized local agencies.

(4) *Accessibility and Reasonable Accommodation.* Funds may be used to meet a grantee or subgrantee's obligations to provide physical and programmatic accessibility and reasonable accommodation as required by section 504 of the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act of 1990.

(e) *Allowable fringe benefit costs.* The cost of the following fringe benefits are allowable: initial and annual physical assessments, annual leave, sick leave, holidays, health insurance, social security, worker's compensation and any other fringe benefits approved in the grant agreement and permitted by the appropriate Federal cost principles found in OMB Circulars A–87 and A–122, except as limited for retirement costs by § 641.311(c).

§ 641.404 Classification of costs.

All costs must be charged to one of the following three cost categories:

(a) *Administration.* The cost category of Administration shall include, but need not be limited to, the direct and indirect costs of providing:

(1) Administration, management, and direction of a program or project;

(2) Reports on evaluation, management, community benefits, and other aspects of project activity;

(3) Assistance of an advisory council, if any;

(4) Accounting and management information systems;

(5) Training and technical assistance for grantee or subgrantee staff;

(6) Bonding; and

(7) Audits.

(b) *Enrollee wages and fringe benefits.* The cost category of Enrollee Wages and Fringe Benefits shall include wages paid to enrollees for hours of community service assignments, as described in § 641.311, including hours of training related to a community service assignment, and the costs of fringe benefits provided in accordance with § 641.311.

(c) *Other enrollee costs.* The cost category of Other enrollee costs shall include all costs of functions, services, and benefits not categorized as administration or enrollee wages and fringe benefits. Other enrollee costs shall include, but shall not be limited to, the direct and indirect costs of providing:

(1) Recruitment and selection of eligible enrollees as provided in §§ 641.304 and 641.305;

(2) Orientation of enrollees and host agencies as provided in § 641.308;

(3) Assessment of enrollees for participation in community service assignments and evaluation of enrollees for continued participation or transition to unsubsidized employment as provided in § 641.309;

(4) Development of appropriate community service assignments as provided in § 641.310;

(5) Supportive services for enrollees, including transportation, as provided in § 641.312;

(6) Training for enrollees, including tuition; and

(7) Development of unsubsidized employment opportunities for enrollees as provided in § 641.314.

(d) *Cost reductions.* Grantees may lower administration costs or other enrollee costs by assigning enrollees to activities which normally would be charged to either of these cost categories. In such instances, the costs of enrollees' wages and fringe benefits shall be charged to the cost category of enrollee wages and fringe benefits. [Section 502(b)(1)(A) of the OAA.]

§ 641.405 Limitations on federal funds.

(a) The limitations on federal funds set forth in this section shall apply to SCSEP funds allotted to grantees for community service activities. Cost categories, limitations, and periods during which different limitations shall apply are set forth in paragraph (b) of this section.

(b) The cost categories and the limitations which apply to them shall be:

(1) *Administration.* The amount of federal funds expended for the cost of administration during the program year shall be no more than 13.5 percent of the grant. The Department may increase the amount available for the cost of administration to no more than 15 percent of the project in accordance with section 502(c)(3) of the OAA.

(2) *Enrollee wages and fringe benefits.* The amount of federal funds budgeted for enrollee wages and fringe benefits shall be no less than 75 percent of the grant.

§ 641.406 Administrative cost waiver.

(a) Based upon information submitted by a public or private nonprofit agency or organization with which the Department has or proposes to have an agreement, as set forth under section 502(b) of the OAA, the Department may waive § 641.405(b)(1) and increase the amount available for paying the costs of administration to an amount not to exceed 15 percent of the proposed federal costs of the grant. Each waiver shall be in writing. The Department shall administer this section in accordance with section 502(c)(3) (A) and (B) of the OAA.

(b) The waiver may be provided to grantees that demonstrate and document reasonable and necessary:

(1) Major administrative cost increases;

(2) Operational requirements imposed by the Department;

(3) Increased costs associated with unsubsidized placement;

(4) Increased costs of providing specialized services to minority groups; and

(5) The minimum amount necessary to administer the grant relative to the available funds.

§ 641.407 Non-federal share of project costs.

The non-federal share of costs may be in cash or in-kind, or a combination of the two, and shall be calculated in accordance with 29 CFR 97.24 or 29 CFR 95.23, as appropriate. The Department shall pay not more than 90 percent of the cost of any project which is the subject of an agreement entered into under the OAA, except that the Department is authorized to pay all of the costs of any such project which is:

(a) An emergency or disaster project;

(b) A project located in an economically depressed area as determined by the Secretary of Labor in consultation with the Secretary of Commerce and the Director of the Office of Community Services of the Department of Health and Human Services;

(c) A project which is exempted by law; or

(d) A project serving an Indian reservation that can demonstrate it cannot provide adequate non-federal resources. [Sections 502(c) and 502(e) of the OAA.]

§ 641.408 Budget changes.

As an exception to 29 CFR 97.30(c)(1), Budget changes, 29 CFR 95.25, Revision of budget and program plans, the movement of Enrollee wages and fringe benefits to any other budget category shall not be permitted without prior written approval of the awarding agency. The Department shall not approve any budget change which would result in non-compliance with § 641.405(b)(2).

§ 641.409 Grantee fiscal and performance reporting requirements.

(a) In accordance with 29 CFR 97.40 or 29 CFR 95.51, as appropriate, each grantee shall submit a Senior Community Service Employment Program *Quarterly Progress Report* (QPR). This report shall be prepared to coincide with the ending dates for Federal fiscal year quarters and shall be submitted to the Department no later than 30 days after the end of the quarterly reporting period unless a waiver is provided. If the grant period ends on a date other than the last day of a federal fiscal year quarter, the last quarterly report covering the entire grant period shall be submitted no later than 30 days after the ending date unless a waiver is provided. The Department shall provide instructions for the preparation of this report.

(b) In accordance with 29 CFR 97.41 or 29 CFR 95.52, as appropriate, the following financial reporting requirements apply to title V grants:

(1) An SF–269, *Financial Status Report* (FSR), shall be submitted to the Department within 30 days after the ending of each quarter of the program year unless a waiver is provided. A final FSR shall be submitted within 90 days after the end of the grant unless a waiver is provided.

(2) All FSR's shall be prepared on an accrual basis.

(c) In accordance with Departmental instructions, an equitable distribution report of SCSEP positions by all grantees in each State shall be submitted annually by the State agency receiving title V funds or another project sponsor designated by the Department. (Approved under the Office of Management and Budget Control No. 1205–0040)

§ 641.410 Subgrant agreements.

(a) The grantee is responsible for the performance of all activities implemented under subgrant agreements and for compliance by the subgrantee with the OAA and this part.

(b) No subgrant or other subagreement may provide for any expenditure of funds beyond the ending date of the grant agreement.

(c) For purposes of this part, procurement, as described in 29 CFR part 97 and 29 CFR 95.40 through 95.48, does not include the award or administration of subgrant agreements.

§ 641.411 Program income accountability.

Any of the methods described at 29 CFR 97.25 or 29 CFR 95.24, as appropriate, may be used to account for program income.

§ 641.412 Equipment.

Equipment purchased by a State grantee with title V funds prior to July 1, 1989, shall be subject to 29 CFR 97.32.

§ 641.413 Audits.

Each grantee is responsible for complying with the Single Audit Act of 1984 (31 U.S.C. 7501 *et seq.*) and 29 CFR part 96, the Department of Labor regulation which implements Office of Management and Budget Circular A–128, "Audits of State and Local Governments"; or OMB Circular 133, "Audits of Institutions of Higher Education and Other Nonprofit Institutions", as appropriate.

§ 641.414 Grant closeout procedures.

Grantees shall follow the grant closeout procedures at 29 CFR 97.50 or 29 CFR 95.71, as appropriate. As necessary, the Department shall issue supplementary closeout instructions for all title V grantees.

§ 641.415 Department of Labor appeals procedures for grantees.

(a) This section sets forth the procedures by which the grantee may appeal a SCSEP final determination by the Department relating to costs, payments, notices of suspension, and notices of termination other than those resulting from an audit. Appeals of suspensions and terminations for discrimination shall be processed under 29 CFR part 31, 32, or 34, as appropriate.

(b) Appeals from a final disallowance of cost as a result of an audit shall be made pursuant to 29 CFR part 96, subpart 96.6.

(c) Upon a grantee's receipt of the Department's final determination relating to costs (except final disallowance of cost as a result of an audit), payments, suspension or termination, the grantee may appeal the final determination to the Department's Office of Administrative Law Judges, as follows:

(1) Within 21 days of receipt of the Department's final determination, the grantee may transmit by certified mail, return receipt requested, a request for a hearing to the Chief Administrative Law Judge, United States Department of Labor, 800 K Street, NW., room 400 N, Washington, DC 20001 with a copy to the Department official who signed the final determination. The Chief Administrative Law Judge shall designate an administrative law judge to hear the appeal.

(2) The request for hearing shall be accompanied by a copy of the final determination, if issued, and shall state specifically those issues of the determination upon which review is requested. Those provisions of the determination not specified for review, or the entire determination when no hearing has been requested, shall be considered resolved and not subject to further review.

(3) *The Rules of Practice and Procedures for Administrative Hearings Before the Office of Administrative Law Judges*, set forth at 29 CFR part 18, shall govern the conduct of hearings under this section, except that:

(i) The appeal shall not be considered a complaint; and

(ii) Technical rules of evidence, such as the Federal Rules of Evidence and subpart B of 29 CFR part 18, shall not apply to any hearing conducted pursuant to this section. However, rules designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the administrative law judge conducting the hearing. The certified copy of the administrative file transmitted to the administrative law judge by the official issuing the final determination shall be part of the evidentiary record of the case and need not be moved into evidence.

(4) The administrative law judge should render a written decision no later than 90 days after the closing of the record.

(5) The decision of the administrative law judge shall constitute final action by the Secretary of Labor unless, within 21 days after receipt of the decision of the administrative law judge, a party dissatisfied with the decision, or any part thereof, has filed exceptions with the Secretary of Labor specifically identifying the procedures, fact, law, or policy to which exception is taken. Any exception not specifically urged shall be deemed to have been waived. Thereafter, the decision of the administrative law judge shall become the decision of the Secretary unless the Secretary of Labor, within 30 days of such filing, has notified the parties that the case has been accepted for review.

(6) Any case accepted for review by the Secretary of Labor shall be decided within 180 days of such acceptance. If not so decided, the decision of the administrative law judge shall become the final decision of the Secretary of Labor.

Subpart E—Interagency Agreements

§ 641.501 Administration.

(a) Federal establishments other than the Department of Labor which receive and use funds under title V of the OAA or this part shall submit to DOL project fiscal and progress reports as described in § 641.409.

(b) Non-DOL federal establishments which receive and use funds under title V shall maintain the standard records on individual enrollees and enrollee activities, in accordance with this part.

(c) The Department may provide title V funds to another federal agency by a non-expenditure transfer authorization or by payments on an advance or reimbursement basis.

(d) In aspects of project administration other than those described in paragraphs (a) and (b) of this section, federal establishments which receive and use funds under title V of the OAA may use their normal administrative procedures.

Subpart F—Assessment and Evaluation

§ 641.601 General.

The Department shall assess each grantee and subgrantee to determine whether it is carrying out the purposes and provisions of title V of the OAA and this part in accordance with the OAA, this part and the grant or other agreements. The Department also shall evaluate the overall program conducted under title V of the OAA or this part to aid in the administration of the SCSEP. The Department and individuals designated by the Department may make site visits and conduct such other monitoring activities as determined by SCSEP needs.

§ 641.602 Limitation.

In arranging for the assessment of a grantee, or the evaluation of a subgrantee, or the evaluation of the overall program under title V of the OAA or this part, the Department shall not use any individual, institution, or

organization associated with any project under title V of the OAA.

Signed at Washington, DC, this 5th day of May, 1995.

Robert B. Reich,

Secretary of Labor.

[FR Doc. 95–11949 Filed 5–16–95; 8:45 am]

BILLING CODE 4510-30-P

federal register

Wednesday
May 17, 1995

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Part 71

Alteration of the Charlotte Class B Airspace Area; NC; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 92-AWA-6]

RIN 2120-AF02

Alteration of the Charlotte Class B Airspace Area; North Carolina

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule alters the Charlotte, NC, Class B airspace area. The designated lateral and vertical limits of the Charlotte Class B airspace area will continue as they currently exist—a 30-mile radius of Charlotte/Douglas International Airport from the surface or higher to and including 10,000 feet mean sea level (MSL). Some lower vertical limits will change. Several of the subareas in the Class B airspace area are altered and redefined to improve the flow of aviation traffic and enhance safety in the Charlotte area while accommodating the concerns of airspace users.

EFFECTIVE DATE: 0701 UTC July 20, 1995.

FOR FURTHER INFORMATION CONTACT: Patricia P. Crawford, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; Telephone: (202) 267-9255.

SUPPLEMENTARY INFORMATION:

Background

Airspace reclassification, effective September 16, 1993, discontinued the use of the term "Terminal Control Area" (TCA) and replaced it with the designation "Class B Airspace." This change in terminology is reflected in this rule. On May 21, 1970, the FAA published Amendment No. 91-78 to part 91 of Title 14 Code of Federal Regulations (CFR) that provided for the establishment of Class B airspace areas (35 FR 7782).

The Class B airspace area program was developed to reduce the midair collision potential in the congested airspace surrounding airports with high density air traffic by providing an area in which all aircraft will be subject to certain operating rules and equipment requirements. The density of traffic and the type of operations being conducted in the airspace surrounding major terminals increase the probability of midair collisions. In 1970, an extensive study found that the majority of midair collisions occurred between a general aviation (GA) aircraft and an air carrier, military, or another GA aircraft. The basic causal factor common to these conflicts was the mix of uncontrolled aircraft operating under visual flight rules (VFR) and controlled aircraft operating under instrument flight rules (IFR). The establishment of Class B airspace areas provides a method to accommodate the increasing number of IFR and VFR operations. The regulatory requirements of Class B airspace afford the greatest protection for the greatest number of people by providing Air Traffic Control (ATC) with an increased capability to provide aircraft separation service, thereby minimizing the mix of controlled and uncontrolled aircraft. To date, the FAA has established a total of 29 Class B airspace areas.

On June 21, 1988, the FAA published a final rule which required aircraft to have Mode C equipment when operating within 30 nautical miles of any designated Class B airspace area primary airport from the surface up to 10,000 feet MSL, excluding those aircraft not certificated with an engine-driven electrical system, balloons, or gliders (53 FR 23356).

User Group Participation

The alterations adopted by this rule are based on the FAA's analysis of the airspace, a review of the written comments submitted to the docket, and oral comments made by members of the aviation community in public hearings. The proposed changes to the Charlotte Class B airspace area were published in a Notice of Proposed Rulemaking (NPRM) on March 2, 1994 (59 FR 10040).

Discussions of Comments

The FAA received 10 written comments regarding the proposed alteration of the Charlotte Class B airspace area. The FAA has determined that alterations to the Charlotte Class B airspace area, as contained herein, will promote the safe and efficient use of airspace and will meet users concerns. Some of the comments addressed subject areas that were not relevant to this rulemaking; therefore, these comments will not be discussed.

Summarization of Comments By Subject Matter

(1) One commenter, a private/business pilot, wrote concerning the incremental cost for transient aircraft circumnavigating the Charlotte Class B airspace area. The pilot suggested that the FAA was not realistic in estimating the cost imposed on the flying public when proposing to expand the area.

This alteration involves minimal expansion of the existing Charlotte Class B airspace area, and the cost to the flying public is expected to be negligible. To further address the concerns of pilots utilizing the Charlotte Class B airspace area, the FAA coordinated with the local airspace users to develop the Charlotte Visual Flight Rules (VFR) Flyway Planning Chart. The initial edition of the Charlotte VFR Flyway Planning Chart will be published coincidental with this rule action.

(2) The FAA received comments and recommendations from the Aircraft Owners and Pilots Association (AOPA), Air Transport Association (ATA), Experimental Aircraft Association (EAA), Soaring Society of America, Inc. (SSA), JAARS Inc., and other aviation-related businesses and pilots as summarized below:

Commenters suggested that the ceiling of the Charlotte Class B airspace area be lowered to 8,000 feet MSL in lieu of the existing 10,000 feet MSL. EAA wrote, that contrary to FAA's response in NPRM, lowering the ceiling would not cause VFR aircraft to conflict with IFR aircraft transitioning on Victor airway 37. Furthermore, EAA stated that separation standards could be achieved because VFR aircraft would be 500 feet MSL above or below the IFR aircraft. AOPA alleged that the FAA's decision to maintain the ceiling at 10,000 feet MSL is "blatantly discriminatory towards GA." In AOPA's opinion, VFR GA aircraft can not get clearances into the Class B airspace area; rather, they are routed on airways around this airspace increasing both the cost and time of the flight. AOPA further states, that it is also apparent that the FAA's decision to retain the 10,000 foot ceiling did not consider the Traffic Alert and Collision Avoidance System (TCAS) requirements for airlines or the transponder/Mode C requirement for GA. One commenter suggested that there was no rational basis for a ceiling of 10,000 MSL for the airspace.

The FAA can not adopt this recommendation to lower the ceiling of the Charlotte Class B airspace area. The impact of lowering the ceiling of the Charlotte Class B airspace area to 8,000 feet MSL would be to reduce safety in the area between 8,000 feet MSL and 10,000 feet MSL. Within a 20-mile radius of the Charlotte/Douglas International Airport the airspace between 7,000 feet MSL and 10,000 feet MSL is frequently utilized by large numbers of high performance turbojet and turboprop aircraft. Arrivals and departures of these aircraft average 100+ per hour and must be combined with an increasing number of overflights. During the 12-month period, June 25, 1993, to June 24, 1994, the FAA recorded 30,000 IFR and 31,000 VFR overflights with monthly highs of 3,000 and 2,800, respectively, operating in the airspace between 7,000 and 10,000 feet MSL.

During the preliminary phase of this rulemaking the FAA explored several options before considering an alteration to the Charlotte Class B airspace area. The FAA concluded that the existing airspace area is not sufficient to manage the peak volumes of IFR operations experienced in today or in the future. Without this alteration, changes to the existing procedures and significant limitations on the volume of air traffic facilities would be required to support all aircraft. The alternatives to modifying the airspace would have a negative impact on the air traffic system by forcing other facilities to routinely hold aircraft on the ground. Disrupted schedules and additional financial burdens would then be placed on the airspace users. Consequently, the FAA has determined to alter the Charlotte Class B airspace area as provided in this document to improve the flow of aviation traffic and enhance safety.

(3) Comments objecting to the lowering of the floor of Area C to 3,600 and Area D to 4,600 feet MSL from 6,000 feet MSL between 20- to 25-miles north and south of the airport were received. AOPA and EAA stated that it was practical for ATC to keep commercial jets higher then 3,600 feet MSL during descent 25 miles from the airport.

The FAA does not concur with this option. ATC procedures at the airport routinely require that aircraft be sequenced on the final approach courses at and beyond 20 miles. Lowering the Charlotte Class B airspace floor permits turn-on for the simultaneous instrument landing system (ILS) and/or visual approach at 3,600 feet MSL and 4,600 feet MSL between 20 and 25 miles. The FAA has determined that the requirement to intercept a precision approach at or below the glideslope cannot be met without lowering the floor of Areas C and D. Ensuring separation within the 20- to 25-mile arc area of the Charlotte/Douglas International Airport at 3,600 feet MSL and 4,600 feet MSL enhances the safety of flight operating in this area regardless of weather conditions.

(4) One commenter objected to lowering the floor in Area E from 8,000 feet MSL to 6,000 feet MSL between 25 to 30 nautical miles from the airport. Aircraft executing approaches and transitioning through Areas C and D, at 3,600 and 4,600 feet MSL respectively, must utilize Area E. Retaining the floor Area E at 8,000 feet MSL causes aircraft to fly a circuitous route to the final approach course or descend below the floor of the Class B airspace area. The FAA has determined that lowering the floor to 6,000 feet MSL in Area E enhances safety.

(5) One commenter wrote with objections to the proposed design alteration of the Charlotte Class B airspace area. In this pilot's opinion, the present airspace "dart board" design and navigation is simple and straight forward. Currently, the Charlotte Class B airspace area has very high frequency omnidirectional range and distance measuring equipment (VOR/DME) that is easy to identify and consistent with the arrival corridors outlined in the Charlotte/Douglas International Airport standard terminal arrival routes. The commenter said that the new design could only serve to confuse pilots operating in that area.

The FAA made an effort to modify the Charlotte Class B airspace area to accommodate all airspace users. This site-specific design was developed by a working group, consisting of local pilots and airport operators. The FAA has determined that this rule will best accommodate the concerns of airspace users and enhance safety.

(6) Comments were received from EAA and the SSA (on behalf of the members of the Chester Soaring Association). The commenters opposed lowering the floor in the southern half of the area between 20- to 25-miles in the vicinity of the Chester, SC, airport, lowering the floor of the southwest arrival/departure corridors to 6,000 feet MSL, and adding certain triangular shaped areas to the Class B airspace area adjacent to the arrival and departure corridors on the southwest and southeast. These commenters suggested that the Class B airspace area not be amended until actual air traffic growth warrants further change.

The FAA accommodates the glider operations, through a letter of agreement (LOA), as air traffic conditions permit. The FAA has determined that this rule will accommodate the concerns of glider users in a safe and efficient manner. The FAA has found that Charlotte/Douglas International Airport and the associated Class B airspace area has experienced an average of 3½ per cent increase in operations during the past 5 years. The FAA has determined that the growth in air traffic operations coupled with the changing needs of the airspace users warrant the modifications to the Class B airspace area set out in this rule.

(7) ATA and ALPA submitted comments in support of the alteration to the Charlotte Class B airspace area as proposed.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) modifies Class B airspace area around Charlotte/Douglass International Airport. The upper limits of the Charlotte Class B Airspace area remain at 10,000 feet MSL, however, the subareas within the area are modified. The surface area, Area A, is reduced to a 7-nautical mile radius from an 11-nautical mile radius of the Charlotte/Douglas International Airport. Modifying Area A enhances the utilization of the airspace for east-west VFR traffic while providing maximum separation between IFR and VFR traffic. Area B is established between the 7 to 11-nautical mile radius of the airport, to include that airspace from 1,800 feet MSL to but not including 10,000 feet MSL. Area C and Area D are altered extending north and south of the airport, between the 11 to 25-nautical mile radius, and including that airspace from 3,600 and 4,600 feet MSL to but not including 10,000 feet MSL. Areas C and D are designated to accurately reflect the needs of ATC, to support operations for simultaneous ILS and/or visual approach, and to meet the requirement to intercept the precision approach at or below the glideslope. Both Areas E, between the 25 to 30-nautical mile radius, are modified to lower their floors from 8,000 feet MSL to 6,000 feet MSL, to align aircraft on the final approach course and contain aircraft operations within the Class B airspace area. The alteration of the Charlotte Class B airspace area is depicted in the attached chart.

Class B airspace designations are published in Paragraph 3000 of FAA Order 7400.9B, dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class B airspace area listed in this airspace alteration will be published subsequently in the Order. The coordinates for this airspace docket are based on North American Datum 83.

Regulatory Evaluation

This section summarizes the regulatory evaluation prepared by the FAA on the proposed amendments to 14 CFR part 71—to alter the Charlotte Class B Airspace. This summary and the full regulatory evaluation quantify, to the extent practicable, estimated costs to the private sector, consumers, and Federal, State, and local governments as well as anticipated benefits.

The FAA has determined that this rulemaking is not "a significant rulemaking action", as defined by Executive Order 12866 (Regulatory Planning and Review). The anticipated costs and benefits associated with this final rule are summarized below (A detailed discussion of costs and benefits is contained in the full evaluation in the docket for this final rule.).

Operational requirements require that the Class B Airspace area be lowered at 20 and 25 nautical miles from the Charlotte/Douglas International Airport (CLT) to more easily accommodate large turbine-powered aircraft operating in the Class B Airspace area.

The modifications to the Charlotte Class B Airspace area are the result of a study conducted by the FAA. The airspace design reflects user feedback and information obtained during Informal Airspace Meetings held June 17 and 18, 1992, at the North Carolina Air National Guard Facility at Charlotte Douglas International Airport.

Cost Analysis

The final rule will impose little or no administrative costs to the FAA. Additional personnel and equipment are not needed to implement this rule. The FAA's controller workforce will be trained in the aspects and procedures of the Class B Airspace area during regularly scheduled briefing sessions at no additional costs to the FAA.

The Charlotte Terminal Area Chart will require revision to incorporate the addition of a VFR Flyway Planning Chart that facilitates entry into and flight around the Class B Airspace. The FAA will publish the initial Charlotte VFR Flyway Planning Chart coincidental with this rulemaking action, and will continue to incorporate these changes as the terminal area chart is routinely updated. These changes are considered part of the ordinary cost of chart revision, and therefore, the FAA will incur no additional costs. Because pilots should use current charts, they will not incur any additional costs either; as the charts become obsolete, pilots will replace them with charts that depict the modified Class B Airspace.

The final rule will impose little costs to VFR users for several reasons. The FAA expects that Lincolnton, Jaars/Townsend, and Lake Norman airports will be the only public airports affected by the lower floor. To the north of Charlotte, the Class B Airspace area floor will change from 6,000 feet MSL to 4,600 feet MSL (over Lincolnton) and will create a 6,000 foot MSL floor over Lake Norman. To the south of Charlotte, the Jaars/Townsend airport will be affected by the floor of the Class B Airspace area changing from 6,000 feet MSL to 3,600 feet MSL. Pilots currently using this affected airspace may choose to avoid or remain outside of Class B Airspace area by flying below the area floors or circumnavigating the Class B Airspace area. Alternatively, they may choose to participate in the Charlotte Class B Airspace area. Those choosing to avoid the Class B Airspace area by circumnavigation will incur circumnavigation costs, but the added time and cost to circumnavigate is expected to be minimal. Those pilots who continue to operate in this airspace by participating in the Charlotte Class B Airspace area will be required to contact ATC and follow the operational rules requirements of a Class B Airspace area.

Those aircraft operators who wish to avoid the Class B Airspace area face potential circumnavigation costs in those areas where the floor will be lowered north and south of the airport. However, this impact is expected to be offset by those general aviation aircraft that will benefit by the reduced surface area of the Class B Airspace area and the raised floor of the Class B Airspace area east and west of the airport. Therefore, the net total cost impact is expected to be negligible.

Finally, glider operations will continue to be accommodated by the LOA as air traffic conditions permit. These procedures will accommodate the concerns of all airspace users in a safe and efficient manner.

Benefit Analysis

This rule is expected to enhance safety by reducing the risk of midair collisions by increasing the area of Class B airspace around Charlotte, North Carolina.

Due to the proactive nature of these changes, the potential safety benefits are difficult to quantify in monetary terms. Aircraft operations within the present configuration of the Charlotte Class B Airspace area have increased since the initial Class B Airspace area was established. A greater number and mix of high performance aircraft and other aircraft of varying performance characteristics now utilize this airspace. Additionally, the number of these aircraft and those operations are expected to increase in the future.

Fortunately, there have been no midair collisions within the Charlotte Class B Airspace. Without the experience of an actual midair collision, estimating the probability of a potential occurrence in the absence of this rule cannot be reliably determined. Due to the project increase in air traffic, there is a potential safety problem. Without this rule, aviation safety in the Charlotte area will be adversely affected.

Comparison of Costs and Benefits

The precise reduction in the risk of a midair collision avoided by this rule and its monetary values cannot be estimated at the present time. However, system efficiency will be improved and safety enhanced. In view of the negligible costs of the final rule, coupled with benefits in the form of enhanced safety and system efficiency to all aircraft operators, the FAA has determined this rule will be cost-beneficial. As noted above, a regulatory evaluation of this rule, including a Regulatory Flexibility Determination, has been placed in the docket.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) ensures that small entities are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires agencies to review rules that may have a significant economic impact on a substantial number of small entities.

The small entities that the final rule could potentially affect are unscheduled operators of aircraft for hire owning nine or fewer aircraft. These unscheduled air taxi operators will be affected only when they are not operating under VFR. Since these operators fly regularly into airports with established radar approach control services, the FAA believes that unscheduled air taxi operators are already equipped to fly IFR. Because they will fly IFR instead of VFR, the proposed rule will not have a significant economic impact on any of them.

International Trade Impact Assessment

The final rule will neither have an effect on the sale of foreign aviation products or services in the United States, nor will it have an effect on the sale of U.S. products or services in foreign countries. This is because the proposed rule will neither impose costs on aircraft operators nor on U.S. or foreign aircraft manufactures.

Federalism Implications

Thr regulations proposed herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

International Civil Aviation Organization and Joint Aviation Regulations

In keeping with the U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with ICAO Standards and Practices to the maximum extent practicable. The FAA has determined that this rule will not conflict with any international agreements of the United States.

Paperwork Reduction Act

This proposed rule contains no information collection requests requiring approval of the Office of Management and Budget pursuant to the Paperwork Reduction Act (44 U.S.C. 3507 et seq.).

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this regulation is not a "significant regulatory action" under Executive Order 12866. In addition, the FAA certifies that this regulation will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This proposal is not considered significant under DOT Order 2100.5, Policies and Procedures for Simplification, Analysis, and Review of Regulations. This rule is cost effective as evidenced by the cost/benefits review statement included in this Final Rule.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp.; p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 3000—Subpart B-Class B Airspace

* * * * *

ASO NC B Charlotte, NC [Revised]

Charlotte/Douglas International Airport
(Primary Airport)
(Lat. 35°12'52" N., long. 80°56'36" W.).
Charlotte/Douglas VOR/DME
(Lat. 35°11'25" N., long. 80°56'06" W.).
Gastonia Airport
(Lat. 35°12'01" N., long. 81°09'00" W.).

Area A. That airspace extending upward from the surface to and including 10,000 feet MSL within a 7-mile radius of the Charlotte VOR/DME.

Area B. That airspace extending upward from 1,800 feet MSL to and including 10,000 feet MSL between the 7- and 11-mile radius of the Charlotte VOR/DME, excluding that airspace within a 2-mile radius of the Gastonia Airport.

Area C. That airspace extending upward from 3,600 feet MSL to and including 10,000 feet MSL between the 11- and 25-mile radius of the Charlotte VOR/DME, including that airspace within a 2-mile radius of the Gastonia Airport, excluding that airspace within and below Areas D, E, and F hereinafter described.

Area D. That airspace extending upward from 4,600 feet MSL to and including 10,000 feet MSL between the 20- and 25-mile radius northwest of the Charlotte VOR/DME, bounded on the west by U.S. Highway 321, and bounded on the east by the Marshall Steam Plant Rail Spur; and that airspace between the 20- and 25-mile radius southwest of the Charlotte VOR/DME, bounded on the east by U.S. Highway 21, and bounded on the west by a line due south from the Charlotte VOR/DME 218° radial 20-mile fix to the intersection of the 25-mile arc.

Area E. That airspace extending upward from 6,000 feet MSL to and including 10,000 feet MSL beginning at lat. 35°36'30" N., long. 80°57'45" W., extending counterclockwise on the 25-mile arc of the Charlotte VOR/DME to U.S. Highway 321, thence south on U.S. Highway 321 until intercepting the 20-mile arc southwest of the Charlotte VOR/DME, thence counterclockwise on the 20-mile arc to the 218° radial of the Charlotte VOR/DME thence due south to the intersection of the 25-mile arc of the Charlotte VOR/DME, thence due west until intercepting the 218° radial of the Charlotte VOR/DME, thence southwest on the 218° radial to the 30-mile fix, thence clockwise on the 30-mile arc to the 328° radial of the Charlotte VOR/DME, thence direct to the point of beginning, excluding that airspace between the 20- and 30-mile radius of the Charlotte VOR/DME between the 242° radial of the Charlotte VOR/DME clockwise to the 293° radial; and that airspace beginning at lat. 35°36'30" N., long. 80°57'45" W., extending clockwise on the 25-mile arc of the Charlotte VOR/DME to long 80°46'00" W., thence due south to the 20-mile arc northeast of the Charlotte VOR/DME, thence clockwise on the 20-mile arc to the 081° radial of the Charlotte VOR/DME, thence west along the 081° radial of the Charlotte VOR/DME, thence west along the 081° radial to the 11-mile fix from the Charlotte VOR/DME, thence direct to the Charlotte VOR/DME 147° radial 25-mile fix, thence clockwise on the 25-mile arc to the intersection of U.S. Highway 21, thence direct to the Charlotte VOR/DME 147° radial 30-mile fix, thence counterclockwise on the 30-mile arc to the Charlotte VOR/DME 025° radial, thence direct to the point of beginning, excluding that airspace east of U.S. Highway 601 between the Charlotte VOR/DME 062° radial clockwise to the 120° radial.

Area F. That airspace extending upward from 8,000 feet MSL to and including 10,000 feet MSL between the 20- and 25-mile radius of the Charlotte VOR/DME from the 242° radial clockwise to the 293° radial of the Charlotte VOR/DME; and that airspace between the 20- and 25-mile radius from the Charlotte VOR/DME between the 062° radial of the Charlotte VOR/DME clockwise to the 120° radial and seat of U.S. Highway 601.

* * * * *

Issued in Washington, DC, on May 5, 1995.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

Note: This appendix will not appear in the Code of Federal Regulations.

Appendix _____ Charlotte, North Carolina, Class B Airspace.

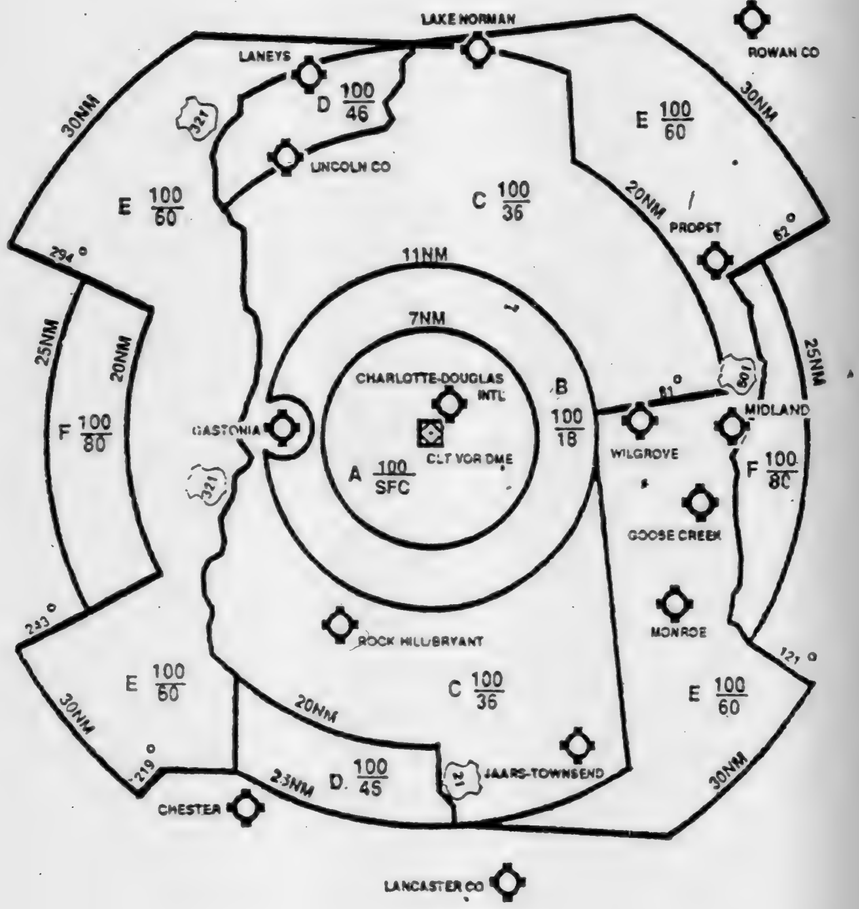
BILLING CODE 4910-13-M

CHARLOTTE, NORTH CAROLINA
CLASS B AIRSPACE AREA

CHARLOTTE/DOUGLAS INTERNATIONAL AIRPORT

FIELD ELEVATION - 749 FEET

(Not to be used for navigation)



Prepared by the
FEDERAL AVIATION ADMINISTRATION
Cartographic Standards Branch
ATP-230

[FR Doc. 95-11925 Filed 5-16-95; 8:45 am]

BILLING CODE 4910-B-C

federal register

Wednesday
May 17, 1995

Part VI

Environmental Protection Agency

40 CFR Part 136

Guidelines Establishing Test Procedures for the Analysis of Pollutants; Total Kjeldahl Nitrogen; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 136

[FRL–5206–6]

Guidelines Establishing Test Procedures for the Analysis of Pollutants; Total Kjeldahl Nitrogen

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and request for comment.

SUMMARY: This proposed amendment would approve the use of three additional test procedures at Part 136 for the determination of Total Kjeldahl Nitrogen (TKN) in wastewater. Use of approved test procedures is required whenever the waste constituent specified is required to be measured for: an NPDES permit application; discharge monitoring reports; state certification; and other requests from the permitting authority for quantitative or qualitative effluent data. Use of approved test procedures is also required for the expression of pollutant amounts, characteristics, or properties in effluent limitations guidelines and standards of performance and pretreatment standards, unless otherwise specifically noted or defined.

DATES: Comments on this proposal will be accepted until June 16, 1995.

ADDRESSES: Send comments to: James E. Longbottom, Environmental Monitoring Systems Laboratory-Cincinnati, U.S. Environmental Protection Agency, Cincinnati, OH 45268–0525. The comments should be labeled as "Guidelines Establishing Test Procedures for the Analyses of Pollutants Under the Clean Water Act—Total Kjeldahl Nitrogen.

The record and all supporting information on this proposal is available to the public for inspection or copying during normal business hours at the Cincinnati Laboratory. The public should contact James E. Longbottom at (513–569–7308) for access. A complete copy of the record and supporting information is also available to the public for inspection and copying at the Water Docket, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. For access to Water Docket materials, call (202) 260–3027 between 9 am and 3:30 pm for an appointment. For information about materials in the docket see **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Mr. James E. Longbottom, Environmental Monitoring Systems Laboratory, Office of Research and Development, U.S. Environmental Protection Agency, Cincinnati, Ohio 45268. Telephone number: (513) 569–7308.

SUPPLEMENTARY INFORMATION:

Docket Materials

Materials in the public docket include the following:

- Copy of the proposed procedures and performance data.
- Technical reviews of the proposed analytical techniques.
- Statistical reviews of the performance data.
- Recommendations for Nationwide Approval from the Director, Environmental Monitoring Systems Laboratory-Cincinnati.

I. Authority

This proposed regulation is issued under authority of sections 301, 304(h) and 501(a) of the Clean Water Act, 33 U.S.C. 1251 *et seq.* (the Federal Water Pollution Control Act Amendments of 1972 as amended) (the "Act"). Section 301 of the Act forbids the discharge of any pollutant into navigable waters unless the discharge complies with a National Pollutant Discharge Elimination System (NPDES) permit, issued under section 402. Section 304(h) of the Act requires the Administrator of the EPA to "promulgate guidelines establishing test procedures for the analysis of pollutants that shall include the factors which must be provided in any certification pursuant to section 401 of this Act or permit application pursuant to section 402 of this Act". Section 501(a) of the Act authorizes the Administrator to "prescribe such regulations as are necessary to carry out his functions under this Act".

II. Regulatory Background

The CWA establishes two principal bases for effluent limitations. First, existing discharges are required to meet technology-based effluent limitations. New source discharges must meet new source performance standards based on the best demonstrated technology-based controls. Second, where necessary, additional requirements are imposed to assure attainment and maintenance of water quality standards established by the States under Section 303 of the CWA. In establishing or reviewing NPDES permit limits, EPA must ensure that permitted discharges will not cause or contribute to a violation of water quality standards, including designated water uses.

For use in permit applications, discharge monitoring reports, and state certification and to ensure compliance with effluent limitations, standards of performance, and pretreatment standards, EPA has promulgated regulations providing nationally-approved testing procedures at 40 CFR Part 136. Test procedures have previously been approved for 262 different parameters. Those procedures apply to the analysis of inorganic (metal, non-metal, mineral) and organic chemical, radiological, bacteriological, nutrient, demand, residue, and physical parameters.

Additionally, some particular industries may discharge pollutants for which test procedures have not been proposed and approved under 40 CFR Part 136. Under 40 CFR Part 122.41 permit writers may impose monitoring requirements and establish test methods for pollutants for which no approved Part 136 method exists. 40 CFR 122.41(j)(4). EPA may also approve additional test procedures when establishing industry-wide technology-based effluent limitations guidelines and standards as described at 40 CFR 401.13.

The procedures for approval of alternate test procedures (ATPs) are described at 40 CFR 136.4 and 136.5. Under these procedures the Administrator may approve alternate test procedures for nationwide use which are developed and proposed by any person. 40 CFR 136.4 (a). Under 136.4 (d), dischargers seeking to use such alternate procedures on a limited basis (e.g. for their own discharge) must apply to the State or Regional EPA office in which the discharge occurs. As specified below, today's proposed rule would approve optional nationwide alternate procedures for the determination of TKN in wastewater test samples.

III. The Total Kjeldahl Nitrogen (TKN) Test Procedures

The Perstorp Analytical Corporation, in accordance with the regulations published at 40 CFR 136.5, applied for nationwide approval of three alternate procedures for the determination of TKN in wastewater.

A. Scope of the Procedures

The applicable ranges for the titrimetric method (PAI–DK01) and colorimetric method (PAI–DK02) are 0.4 to 10 mg/L, when analyzing a 100 mL sample. The applicable range for the gas diffusion method (PAI–DK03) is 0.2 to 10 mg/L when analyzing a 200 µL sample. The method detection limit has been determined to be 0.15 mg/L for the titrimetric and the colorimetric methods and 0.02 mg/L for the gas diffusion method. These methods would not be available for use to determine TKN concentrations greater than 10 mg/L unless one of the following two requirements are met:

a. Dilution of the TKN concentration of a sample to a level less than, or equal to 10 mg/L, before the initiation of the analysis, multiplication of the TKN concentration observed in the digested, diluted sample by the appropriate dilution factor, and demonstration of acceptable accuracy (percent recovery) as required in the Quality Control section of the method.

b. Demonstration of the applicability of a specific scope extension by demonstrating calibration range linearity, laboratory performance, and analyte percent recovery, particularly in fortified samples, as outlined in the Quality Control section.

B. Summary of the Methods

TKN is defined as the sum of free ammonia and organic nitrogen compounds which are converted to ammonium sulfate under the conditions described. The procedures convert nitrogen components of biological origin such as amino acids, proteins and peptides to ammonia but may not convert the nitrogenous compounds of some industrial wastes such as amines, nitro compounds, hydrazones, oximes, semicarbazones and some refractory tertiary amines.

For all three methods, the sample is heated in a block digester with concentrated sulfuric acid, potassium sulfate and copper sulfate and evaporated until the solution becomes colorless or pale yellow. The block-digested sample is cooled and diluted to volume. For the colorimetric and titrimetric methods the cooled, diluted solution is made alkaline with a hydroxide-thiosulfate solution and distilled in an automated distillation system. In the colorimetric method (Method PAI–DK01) the ammonia in the alkaline digestate is measured at 400–425 nm after reaction with Nessler reagent. In Method PAI–DK02, the ammonia is distilled into a boric acid receiving solution and is measured by automated or manual titration with 0.02 N H_2SO_4 to a bromocresol green methyl red indicator endpoint. In the FIA system (Method PAI–DK03), a 200-µL aliquot of the digested and diluted sample is injected into the flow injection manifold. The subsequent addition of NaOH releases the ammonia from the ammonium sulfate originally present in the digested sample. The released ammonia passes through a gas diffusion membrane into an indicator receiving solution which is monitored at 590 nm. The extent of indicator color change is proportional to the concentration of TKN present in the sample.

C. Technical Justification for Proposed Procedures

The recommendations for approval of these procedures are based on the data packages submitted by the applicant, Perstorp Analytical. EPA is proposing to approve the methods based on the method descriptions in EPA's Environmental Monitoring Management Council format, comparative analyses using the proposed and approved procedures, and EPA's technical and statistical reviews of each data package.

Perstorp Analytical provided test data comparing the three proposed procedures with an appropriate approved procedure. All three proposed methods were compared to the approved EPA Ion Selective Electrode Method 351.4; EPA statisticians and chemists conducted independent reviews of the data. The submitted recovery data for both the approved and proposed methods were also compared to the recovery acceptance criteria derived from results for block digester analyses (EPA Method 351.4) in EPA's Performance Evaluation Studies WP 18 through 23.

The Agency has judged the block digester electrode procedure (EPA Method 351.3), utilized as the reference approved method by the applicant to be applicable in the evaluation of the three proposed procedures. EPA's Environmental Monitoring Systems Laboratory in Cincinnati, Ohio (EMSL-Cincinnati), thoroughly reviewed and evaluated the supporting data submitted by Perstorp. The reviews indicated that the analyses afforded comparable recovery and precision in the recommended concentration ranges for TKN. EPA is proposing approval of the TKN procedures and is seeking public comment on the suitability of these three methods as alternate procedures for use in the determination of TKN. The administrative record is on file at EMSL-Cincinnati, 26 W. Martin Luther King Dr., Cincinnati, Ohio 45268. The record is available for public inspection. Descriptions of the proposed procedures are also available from Perstorp Analytical Company, 1256 Stockton, St. Helena, CA 94574.

Based on EMSL-Cincinnati's review, and pursuant to 40 CFR Section 136.5, EPA proposes to approve the Perstorp titrimetric, colorimetric, and FIA gas diffusion methods for TKN as acceptable alternative test procedures for nationwide use. Specifically, the methods exhibit sufficient precision and recovery to establish (1) their acceptability under Part 136 and (2) their comparability to other approved procedures for analysis of TKN. As approved alternate test procedures, these methods are acceptable for use by any person required to test for TKN.

Public comment is requested concerning the suitability of these methods for the determination of TKN in wastewater.

IV. Regulatory Requirements

A. Executive Order 12866

Under Executive Order 12866, EPA must judge whether a regulation is "major" and, therefore, requires a regulatory impact analysis. EPA has determined that this regulation is not major as it will not result in an effect on the economy of $100 million or more, a significant increase in cost or prices, or any of the effects described in the Executive Order. This proposed rule would simply specify alternate analytical methods which may be used by laboratories in measuring concentrations of TKN and, therefore, would have no adverse economic impacts. The Office of Management and Budget (OMB) has waived Executive Order 12866 review of the proposal.

B. Regulatory Flexibility Act

This proposed rulemaking is consistent with the objectives of the Regulatory Flexibility Act (5 U.S.C. 602 et seq.) because it will not have a significant economic impact on a substantial number of small entities. The procedure included in this rule gives all laboratories the flexibility to use these alternate methods or not to use them.

C. Paperwork Reduction Act

This rule contains no requests for information activities and, therefore, no information collection request (ICR) was submitted to OMB for review in compliance with the Paperwork Reduction Act, (44 U.S.C. 3501 et seq.).

List of Subjects in 40 CFR Part 136

Environmental protection, Incorporation by reference, Water pollution control.

Dated: May 8, 1995.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, part 136 of title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 136—[AMENDED]

1. The authority citation for part 136 continues to read as follows:

Authority: Secs. 301, 304(h), 307, and 501(a) Public Law 95–217, Stat. 1566, *et seq.*

(33 U.S.C. 1251 *et seq.*) (the Federal Water Pollution Control Act Amendments of 1972 as amended by the Clean Water Act of 1977).

2. Section 136.3 is proposed to be amended as follows:

a. In Table IB in paragraph (a), by revising entry 31 and by adding notes 39 through 41.

b. By adding paragraphs (b)(35) through (b)(37).

The revision and additions read as follows:

§ 136.3 Identification of test procedures.

(a) * * *

TABLE 1B.—LIST OF APPROVED INORGANIC TEST PROCEDURES

Parameter, units and method	Reference (method number of page)				
	EPA[1,35]	Std. Methods 18th ed.	ASTM	USGS[2]	Other
. . . .					
31. Kjeldahl Nitrogen—Total, (as N), mg/L:					
Digestion and distillation followed by:	351.3	4500–NH_3 B or C.	D3590–89(A)		
Titration	351.3	4500–NH_3 E	3590–89(A)		[39]973.48
Nesslerization	351.3	4500–NH_3 C	3590–89(A)		
Electrode	351.3	4500–NH_3 F or G.			
Automated phenate colorimetric	351.1			[41]–4551–78	
Semi-automated block digester colorimetric	351.2		D3590–89(B)		
Manual or block digester potentiometric	351.4		D3590–89(A)		
Block Digester, followed by:					
Auto distillation and Titration, or					Note 39
Nesslerization					Note 40
Flow injection gas diffusion					Note 41
. . . .					

Table 1B Notes:

[1] "Methods for Chemical Analysis of Water and Wastes", Environmental Protection Agency, Environmental Monitoring Systems Laboratory-Cincinnati (EMSL–CI), EPA–600/4–79–020, Revised March 1983 and 1979 where applicable.

[2] Fishman, M. J., et al, "Methods for Analysis of Inorganic Substances in Water and Fluvial Sediments," U.S. Department of the Interior, Techniques of Water—Resource Investigations of the U.S. Geological Survey, Denver, CO, Revised 1989, unless otherwise stated.

[3] "Official Methods of Analysis of the Association of Official Analytical Chemists," methods manual, 15th ed. (1990).

* * * * *

[6] The approved method is that cited in "Methods for Determination of Inorganic Substances in Water and Fluvial Sediments", USGS TWRI, Book 5, Chapter A1 (1979).

* * * * *

[35] Precision and recovery statements for the atomic absorption direct aspiration and graphite furnace methods, and for the spectrophotometric SDDC method for arsenic are provided in Appendix D of this part titled, "Precision and Recovery Statements for Methods for Measuring Metals".

* * * * *

[39] Nitrogen, Total Kjeldahl, Method PAI–DK01 (Block Digestion, Steam Distillation, Titrimetric Detection), revised 12/22/94, Perstop Analytical.

[40] Nitrogen, Total Kjeldahl, Method PAI–DK02 (Block Digestion, Steam Distillation, Colorimetric Detection), revised 12/22/94, Perstop Analytical.

[41] Nitrogen, Total Kjeldahl, Method PAI–DK03 (Block Digestion, Automated FIA Gas Diffusion), revised 12/22/94, Perstop Analytical.

* * * * *

(b) * * *

References, Sources, Costs, and Table Citations:

* * * * *

[35] "Nitrogen, Total Kjeldahl, Method PAI–DK01 (Block Digestion, Steam Distillation, Titrimetric Detection)", revised 12/22/94, Perstop Analytical. Method available from Perstorp Analytical Corporation, 1256 Stockton, St. Helena, CA 94574. Table 1B, Note 39.

[36] "Nitrogen, Total Kjeldahl, Method PAI–DK02 (Block Digestion, Steam Distillation, Colorimetric Detection)", revised 12/22/94, Perstop Analytical. Method available from Perstorp Analytical Corporation, 1256 Stockton, St. Helena, CA 94574. Table 1B, Note 40.

[37] "Nitrogen, Total Kjeldahl, Method PAI–DK03 (Block Digestion, Automated FIA Gas Diffusion)", revised 12/22/94, Perstop Analytical. Method available from Perstorp Analytical Corporation, 1256 Stockton, St. Helena, CA 94574. Table 1B, Note 41.

* * * * *

[FR Doc. 95–11901 Filed 5–16–95; 8:45 am]

BILLING CODE 6560–60–P

federal register

Wednesday
May 17, 1995

Part VII

Securities and Exchange Commission

17 CFR Part 202 et al.

Prospectus Delivery; Securities Transactions Settlement; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 202, 228, 229, 230, 232, 239, 240, 270, and 274

[Release No. 33–7168; 34–35705; IC–21061; File No. S7–7–95]

RIN 3235–AG40

Prospectus Delivery; Securities Transactions Settlement

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Commission is adopting revisions to its rules and forms and a new rule in order to implement two solutions to prospectus delivery issues arising in connection with the change to T+3 securities transaction settlement. These revisions, among other things, include changes that highlight the location of the risk factor disclosure within the prospectus. In addition, the Commission is eliminating an exemption from T+3 settlement for purchases and sales of securities pursuant to a firm commitment offering, providing a T+4 time frame to firm commitment offerings under certain conditions, and adopting a modified procedure whereby participants in firm commitment offerings may agree to an extended settlement time frame.

EFFECTIVE DATE: The new rule and the revisions to rules and forms are effective June 7, 1995.

FOR FURTHER INFORMATION CONTACT: Anita Klein, Joseph Babits or Michael Mitchell (202) 942–2900, Division of Corporation Finance; and, with regard to questions concerning revisions to the T+3 settlement rule, Jerry W. Carpenter or Christine Sibille, (202) 942–4187, Division of Market Regulation; and, with regard to questions concerning Rule 15c2–8 revisions, Alexander Dill, (202) 942–4892, Division of Market Regulation; and, with regard to questions concerning the application to investment companies, Kathleen Clarke, (202) 942–0721, Division of Investment Mangement, U.S. Securities and Exchange Commission, Washington, DC. 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

On October 6, 1993, the Commission adopted Rule 15c6–1[1] under the Securities Exchange Act of 1934 (the "Exchange Act").[2] That rule is scheduled to become effective on June 7, 1995.[3] Rule 15c6–1 requires that the standard settlement time frame for most broker-dealer trades be three business days after the trade (hereinafter "T + 3"). Rule 15c6–1 provides a limited exemption from T + 3 for the sale or securities for cash pursuant to a firm commitment offering registered under the Securities Act of 1933 (the "Securities Act").[4] Resales of such securities, however, remain within T + 3.

Since the adoption of Rule 15c6–1, members of the brokerage community have suggested that the Commission eliminate this exemption because, among other reasons, the bifurcated settlement cycle created for initial sales and resales of new issues[5] would be disruptive to broker-dealer operations and to the clearance and settlement system.

According to the brokerage community, the primary reason that settlement within T + 3 is not feasible for many new issues is the amount of time it takes to print and deliver prospectuses.[6]

Two proposals to ease prospectus delivery within T + 3 were submitted for Commission consideration. One was submitted by the Securities Industry Association ("SIA") and one was submitted by a group of four investment firms: CS First Boston Corporation, Goldman, Sachs & Co., Lehman Brothers Inc. and Morgan Stanley & Co. Incorporated (the "Four Firms").[7] These proposals recommended markedly different solutions to accomplishing prospectus delivery within T + 3.

On February 21, 1995, the Commission proposed new Rule 434 and amendments to existing rules and forms based upon these two proposals.[8] The Commission sought comment regarding which approach should be implemented, or whether the Commission should implement both approaches and thereby allow market participants a choice as to which to use in any given offering. Twenty-nine comment letters were received in response to the Proposing Release.[9] Most commenters addressing the question of whether to adopt one or both approaches favored the adoption of both of the Commission's approaches.

As described in greater detail below, the Commission is adopting both approaches, largely as proposed, to provide market participants with the flexibility of selecting between alternative methods to expedite prospectus delivery under a T + 3 clearance and settlement system.[10] Because of the concerns expressed by some commenters with respect to the potential for investor confusion, however, the Commission intends to monitor closely disclosure practices that develop under the new rules and will undertake revisions to the rules if necessary to address investor problems.

On February 21, 1995, the Commission also proposed amendments to Rule 15c6–1 to eliminate the current exemption for firm commitment offerings except offerings of asset-backed securities and structured securities, to provide for a T+4 standard settlement period for offerings priced after the close of the markets ("after-market pricings"), and to permit the managing underwriter to establish T+3, T+4, or T+5 as the standard settlement period for an entire offering if certain conditions were met. In general, commenters favored the proposed amendments to Rule 15c6–1. Many commenters, however, objected to the requirements and limitations contained in the T+3, T+4, or T+5 proposal. As described below, the Commission is eliminating the blanket exemption from Rule 15c6–1 for firm commitment offerings, is adopting the T+4 standard for after-market pricings, and is adopting a revised provision authorizing exceptions from T+3 settlement for certain firm commitment offerings.[11]

II. Prospectus Delivery Approaches

A. The Four Firms Approach

The Four Firms proposal was premised on the view that the process of preparing and delivering prospectuses in new issues could be accelerated sufficiently to comply with T+3 if six steps were taken by the Commission to facilitate the printing of a significant portion of the final prospectus prior to pricing. Those six steps, noted below, are being adopted substantially as proposed.[12] Except as otherwise noted, these steps are applicable to any offering.

1. Re-ordering of Prospectuses

As was proposed, the Commission is adopting rule revisions enabling the contents of prospectuses to be re-ordered to expedite the printing process.[13] All portions likely to be subject to change at the time of pricing may be placed together in the beginning of the prospectus after the front cover page in a "pricing-related information" section, or may be wrapped around the remainder of the prospectus just inside the front and back cover pages.[14] While summary and risk factors sections must remain in the forepart of the prospectus, those sections may immediately follow the "pricing-related information" section rather than preceding it. To ensure that investors continue to be able to locate the risk factors section in all offerings with ease, however, rule revisions also provide that the currently required cross reference to that section on the cover page of the prospectus now identify with specificity (e.g. by page number) the location of that section within the prospectus.[15] In addition, rule revisions require that the risk factors section be captioned within the prospectus as "Risk Factors" and clarify that the table of contents required on the back cover of the prospectus must include a reference to the risk factors section and specify the page number on which it begins.[16]

Further, rule revisions provide that specific information currently required on the prospectus cover pages may be placed under an appropriate caption elsewhere in the prospectus.[17] Otherwise, the prospectus cover pages must continue to contain information currently specified by Commission rules.[18]

The "pricing-related information" section may include those portions of a prospectus that may change as a result of pricing, such as use of proceeds, capitalization, pro forma financial information, dilution, selling shareholder information and shares eligible for future sale.[19] The pricing information portion itself may be included in the price-related information section. These adopted rule revisions which allow re-ordering of information within a prospectus for convenience in printing do not alter existing requirements with respect to the filing of post-effective amendments or supplements with the Commission when material changes or additions affect information set forth in the prospectus contained in an effective registration statement. However, other rule revisions discussed below do alter existing requirements.

2. Changes in Offering Size and Estimated Price Range

To prevent delays in printing prospectuses that arise when the size of an offering is changed after the effective date of the registration statement, or the pricing of the securities falls outside the estimated range, the Commission under specified conditions is eliminating or streamlining the filings that result. Although originally contemplated only for Rule 430A offerings, the adopted revisions provide the same flexibility for all registered offerings.

a. Registration of Classes of Securities

In order to minimize the instances in which an increase in the offering size would result in the need to file a new registration statement, rule revisions are being adopted to increase registrants' flexibility with respect to the amount of securities being registered in an offering. Under the revised rules, an issuer is permitted to register securities in an offering by specifying only the title of the class of securities to be registered and the proposed maximum aggregate offering price.[20] Except in the case of

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[1] 17 CFR 240.15c6–1. *See* Exchange Act Release No. 33023 (Oct. 6, 1993) (58 FR 52891).

[2] 15 U.S.C. 78a *et seq.*

[3] *See* Exchange Act Release No. 34952 (Nov. 9, 1994) (59 FR 59137).

[4] 15 U.S.C. 77a *et seq.*

[5] The term "new issues" as used herein refers to both initial public offerings and offerings of additional securities by companies.

[6] Some of these timing difficulties can be expected to be alleviated as markets increasingly rely on non-paper delivery media. In recognition of that development, the staff issued an interpretive letter to facilitate the use of electronic transmission to satisfy prospectus delivery requirements. *Brown & Wood* (Feb. 17, 1995). The Division of Corporation Finance staff, in addition to issuing the *Brown & Wood* letter, is considering generally delivery under the Securities Act of prospectuses through other non-paper media (*e.g.*, audiotapes, videotapes, facsimile, directed electronic mail, and CD ROMs). The staff anticipates submitting to the Commission in the near future recommendations intended both to facilitate compliance with the Securities Act's prospectus delivery requirements and to encourage continued technological developments of non-paper delivery media.

[7] *See* letter from Robin Shelby, CS First Boston Corporation; Goldman, Sachs & Co.; Steven Barkenfield, Lehman Brothers Inc.; and John Ander, Morgan Stanley & Co. Inc. to Anita Klein, Securities and Exchange Commission, dated Jan. 24, 1995 and letter from Goldman, Sachs to Anita Klein, Securities and Exchange Commission, dated Feb. 3, 1995. *See also* letter from Joseph McLaughlin, Brown & Wood, on behalf of the Securities Industry Association, to Anita Klein, Securities and Exchange Commission, dated Feb. 1, 1995. Copies of these proposals are available for inspection and duplication at the Commission's Public Reference Room, 450 Fifth St. NW., Washington, DC 20549, File Number S7–7–95.

[8] *See* Securities Act Release No. 7141 (Feb. 21, 1995) (60 FR 10724) (hereinafter, the "Proposing Release").

[9] These letters of comment and a summary thereof are available for inspection and duplication at the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549, File No. S7–7–95.

[10] As adopted, the approaches will apply specifically to certain investment companies registered under the Investment Company Act of 1940 (15 U.S.C. 60a–1 *et seq.*) (hereinafter, the "Investment Company Act") (*i.e.*, closed-end investment companies and unit investment trusts ("UITs")). *See infra* Sections II.A.8. and II.B.3.d.

[11] With the help of staff of the Commission's Division of Corporation Finance and Office of General Counsel, the Commission's Advisory Committee on the Capital Formation and Regulatory Processes is examining the relative costs and benefits of the Securities Act's transactional registration scheme, including the prospectus delivery requirements. *See* Commission File No. 265–20.

[12] For a discussion of the application of the Four Firms approach to investment companies, *see infra* Section II.A.8.

[13] Certain Commission rules that specify the location of information in the forepart of the prospectus, or in a specified order within the prospectus, are being revised to eliminate certain requirements regarding location. *See* revisions to Items 503(b) and 503(c) of Regulation S–K, 17 CFR 229.503(b) and 229.503(c); Items 503(b) and 503(c) of Regulation S–B, 17 CFR 228.503(b) and 228.503(c); and Securities Industry Guide 4, 17 CFR 229.801(d). Consistent with the proposal, no revision has been made to order and location rules that relate to specific and limited classes of transactions. *See* Items 903(a) and 904(a) of Regulation S–K, 17 CFR 228.903(a) and 229.904(a) (summary of a roll-up transaction, reasonably detailed description of each material risk and effect of the roll-up transaction); Securities Act Industry Guide 5, 17 CFR 229.801(e), (real estate limited partnerships suitability standards). In addition, issuers of limited partnership interests and other real estate investment vehicles must continue to comply with the disclosure guidance set forth in Securities Act Release No. 6900 (June 17, 1991) (56 FR 28979).

[14] Commenters noted that, if prospectuses are printed in a folio manner, moving pricing-related information to the front of the prospectus may not result in earlier printing of the remainder of the prospectus. Thus, the Commission is providing the flexibility to "wrap" the "pricing-related information" section. Of course, whether the price-related information is set forth in the front or wrapped, the information set forth in the prospectus must be presented in a clear, concise and understandable fashion, as required by Rule 421(b) under the Securities Act, 17 CFR 230.421(b). *See also* Rule 421(a) under the Securities Act, 17 CFR 230.421(a), which requires that information in a prospectus be set forth in a fashion so as not to obscure any of the required information or any information necessary to keep the required information from being incomplete or misleading; and Securities Act Release No. 6900 (June 17, 1991) (56 FR 28979).

[15] *See* revisions to Regulation S–K Item 501(c)(4), 17 CFR 229.501(c)(4), and Regulation S–B Item 501(a)(4), 17 CFR 228.501(a)(4). As revised, the rules also require that the cross reference be printed in bold-face roman type at least as high as twelve-point modern type and at least two points leaded.

[16] *See* revisions to Item 503(c)(1), 17 CFR 229.503(c)(1) and 17 CFR 228.503(c)(1); Item 502(g), 17 CFR 229.502(g); Item 502(f), 17 CFR 228.502(f).

[17] *See* revisions to Item 502 (a), (b), (c) and (f) of Regulation S–K, 17 CFR 229.502(a), 229.502(b), 229.502(c) and 229.502(f); revisions to Item 502 (a), (b) and (c) of Regulation S–B, 17 CFR 228.502(a), 229.502(b) and 228.502(c); and revisions to the Instruction following Item 502(f) of Regulation S–B, 17 CFR 228.502(f). These revisions relate to disclosure regarding: The availability of Exchange Act information about the registrant, the nature of reports to be given to security holders, undertakings with respect to information incorporated by reference, and the enforceability of civil liabilities against certain foreign persons.

[18] *See* Item 501(c) of Regulation S–K, 17 CFR 229.501(c) (outside front cover page); Item 502 (d), (e) and (g) of Regulation S–K, 17 CFR 229.502(d), 229.502(e), and 229.502(g) (inside front cover page and outside back cover page); Item 501 of Regulation S–B, 17 CFR 228.501 (outside front cover page); and Item 502 (d), (e) and (f) of Regulation S–B, 17 CFR 228.502(d), 228.502(e) and 228.502(f) (inside front cover page and outside back cover page).

[19] *See* Instruction to Item 503(c) of Regulations S–K and S–B, 17 CFR 229.503(c) and 228.503(c).

[20] *See* revisions to Rule 457(o) under the Securities Act, 17 CFR 230.457(o). The amount of securities to be registered and the proposed

Continued

the unallocated shelf procedure available to Form S–3-eligible companies, the aggregate dollar amount associated with each class of securities offered must be disclosed in the "Calculation of Registration Fee" table. Where issuers register a greater amount of securities than needed in the offering, such additional securities may be carried forward to a subsequent registration statement without incurring an additional registration fee.[21]

b. Increases in Offering Size—Registration of Additional Securities

When the pricing terms of an offering are finalized, it is not unusual for changes to be made in the offering size through adjustments to both price and volume.[22] Where this process requires registration of additional securities, the revised rules and forms permit the filing of an abbreviated registration statement to register the additional amount of securities to be offered and sold.[23] Such an abbreviated registration is available to an issuer that is registering additional securities in an amount and at a price that together represent no more than a 20% increase in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the earlier effective registration statement.[24] Such registration would consist of: The facing page, a statement incorporating by reference the contents of the earlier registration statement relating to the offering, all required consents and opinions, and the signature page. While not required by the rule, the registrant also may include in the new registration statement, instead of in a filing under Rule 424, any price-related information with respect to the offering that was omitted from the earlier registration statement pursuant to Rule 430A.[25] The abbreviated registration statement must be filed prior to the time sales are made and confirmations are sent or given, and will become effective automatically upon filing.[26] As adopted, this abbreviated registration format is available regardless of whether the earlier registration statement was prepared in reliance upon Rule 430A.

In addition to providing an abbreviated registration format for such increases in offering size, rule revisions allow such registration statements to be filed promptly even when pricing occurs after the Commission's business hours.[27] Such a registration statement may be filed with the Commission by persons other than mandated electronic filers by transmitting a single copy of it via facsimile to the Commission's principal office from 5:30 p.m. to 10 p.m.[28] Electronic filers may file such a registration statement from 5:30 p.m. to 10 p.m. by transmitting it through EDGAR.[29] Such filings become automatically effective upon receipt by the Commission of the complete facsimile or EDGAR copy and payment of the filing fee.

To accommodate payment of the filing fee after the close of banking hours, rule revisions provide that payment with respect to such registration statements may be made by: (i) Instructing a bank or wire transfer service to transmit a wire transfer to the Commission of the requisite amount as soon as practicable (but in any event no later than the close of the next business day following the date the registration statement is faxed to the Commission); and (ii) providing specific certifications to the Commission with the abbreviated registration statement.[30] Specifically, the registrant must certify to the Commission that: The registrant (or its agent) has so instructed its bank or a wire transfer service to pay the Commission; that it will not revoke such instructions; and that it has sufficient funds in the relevant account to cover the amount of the filing fee. These instructions may be transmitted on the day of filing the registration statement after the close of business of such bank or wire transfer service, provided that the registrant undertakes to confirm receipt of such instructions by the bank of wire transfer service the following business day.

c. Changes in Offering Size; Deviation From Price Range

Currently, a post-effective amendment is not required to be filed where there is a decrease in volume of securities offered or the actual offering price is outside the disclosed estimated price range, unless such decrease or change would change materially the disclosure included in the registration statement at the time of effectiveness.[31] Under the revised rules, a post-effective amendment does not have to be filed in connection with any registered offering if there is a decrease or increase in the offering size (if such an increase would not require additional securities to be registered) and/or the actual price is outside the estimated price range if, in the aggregate, the new size and price represent no more than a 20% change in the maximum aggregate offering price set forth in the "Calculation of

maximum offering price per unit are no longer required to be set forth in the "Calculation of Registration Fee" table. Of course, an issuer may continue to specify such information therein if it so chooses and relies upon Rule 457(a). Regardless of the method chosen for the "Calculation of Registration Fee" table, however, the registrant continues to be required to specify in the prospectus the amount of securities being offered and, where the registrant is not a reporting company, a bona fide estimate of the range of the maximum offering price. *See* Rule 501(c)(6) of Regulation S–K, 17 CFR 229.501(c)(6) and Rule 501(6) of Regulation S–B, 17 CFR 228.501(6).

[21] *See* revisions to Rule 429, 17 CFR 230.429. Under Rule 429, in a new registration statement filed in the future for another offering of that class of securities, the registrant would indicate in a footnote to the "Calculation of Registration Fee" table that part of the registration fee had been paid previously in connection with an earlier registration statement. The footnote must specify the exact dollar amount of the fee being carried over and the related registration statement file number.

[22] While participants in a registered distribution may only offer the amount of securities registered to be offered, it is possible that indications of interest received in response to such offers may exceed the amount registered to be offered. Sales of securities in excess of the volume initially registered will not result in Section 5 liability if the participants in the distribution did not solicit indications of interest in an amount in excess of that registered and the procedures discussed in this section are followed.

[23] *See* revisions to General instructions of Forms SB–1, SB–2, S–1, S–2, S–3, S–11, F–1, F–2 and F–3.

[24] In the context of an offering from a shelf registration statement, the 20% increase would be measured based upon the amount of securities on the shelf.

[25] Consistent with offerings where a new registration statement is not required to be filed as a result of a change of no more than 20% in the size of the offering, information necessary to update disclosure contained in the earlier registration statement as a result of the increase may be reflected in a form of prospectus filed under Rule 424(b), 17 CFR 230.424(b). *See infra* Section II.A.2.c.

[26] *See* Rule 462(b), 17 CFR 230.462(b). The registration statement is deemed to be a part of the earlier registration statement relating to the offering. *See, e.g.*, General Instruction V. to Form S–1.

[27] *See* revisions to Rule 110, 17 CFR 230.110; Rule 402, 17 CFR 230.402; Rule 455, 17 CFR 230.455; and Rule 472, 17 CFR 230.472; Rule 13, 17 CFR 232.13 and Rule 3a, 17 CFR 202.3a.

[28] Effective June 7, 1995, the telephone number for that facsimile machine is (202) 942–7333 and the telephone number for the staff person that can answer questions regarding such facsimiles between the hours of 5:30 p.m. and 10 p.m. (Eastern Standard Time or Eastern Daylight Savings Time, whichever is currently in effect) is (202) 942–8900. Filings (other than electronic filings through EDGAR) between 5:30 p.m. and 10 p.m. on Forms SB–1 and SB–2 for this purpose must be sent via this facsimile system to the Commission's principal office rather than to the regional or district offices of the Commission.

[29] The new EDGAR form types for purposes of registration statements under Rule 462 are S–1MEF, S–2MEF, S–3MEF, F–1MEF, F–2MEF, F–3MEF, SB–1MEF and SB–2MEF. A post-effective amendment to any of these new form types should be designated as form type POS462B. With respect to other aspects of the adopted proposals and electronic filers, *see also infra* Section IV

[30] *See* revisions to Rule 111, 17 CFR 230.111. This payment certification document accompanying an abbreviated registration statement should be transmitted by electronic filers under EDGAR form type CORRESP.

[31] *See* Securities Act Release No. 6964 (Oct. 22, 1992) (57 FR 48970) for a discussion of the materiality standard as it applies to these changes.

Registration Fee" table in the effective registration statement.[32]

3. Manual Signatures and Incorporation by Reference of Opinions and Consents

Under the proposal, rule revisions would have provided that duplicated or facsimile versions of manual signatures could be included on the signature page in place of the manual signatures currently required in a registration statement to increase the size of the offering. In response to comment, the rule revisions being adopted have been expanded to permit duplicated or facsimile versions of manual signatures in any registration statement or post-effective amendment filed under the Securities Act and any reports filed under the Exchange Act.[33] These revisions will provide the same flexibility to all paper filers that is accorded EDGAR filers. In addition, under the revised rules, signatures on required opinions and consents in such filings also may be duplicated or facsimile versions of manual signatures.[34] In all cases where duplicated or facsimile versions of manual signatures are used, the registrant must maintain the manually signed version in its files for five years after the filing of the related document and provide it to the Commission or the staff upon request.

Rule revisions also allow opinions and consents required in abbreviated registration statements registering an additional 20% to be incorporated by reference to the extent that the opinions and consents contained in the earlier effective registration statement were drafted to apply to any subsequent registration statement filed solely to increase the offering up to a 20% threshold.[35] Where opinions and consents cannot be incorporated, duplicated or facsimile versions of manual signatures may be included in the new opinion or consent required to be filed in the abbreviated registration statement.

4. Rule 430A Pricing Period

As was proposed, the Commission is extending the period during which a prospectus supplement containing pricing and other related information omitted from a registration statement may be filed pursuant to Rule 430A under the Securities Act.[36] The "pricing" period is extended from five to fifteen business days after the effective date of the registration statement or any post-effective amendment thereto. Although originally proposed as an extended ten-business-day period, the adopted fifteen-business-day period should provide additional flexibility for purposes of complying with T+3, without defeating the purpose of that limitation.[37]

Where a Rule 430A offering is not priced within the fifteen-day period, a post-effective amendment updated in all respects that either restarts the pricing period or contains the Rule 430A pricing information (*i.e.* similar to a traditional pricing amendment) must be filed and effective prior to sales. While no changes to this requirement are being made, other rule revisions are being adopted to minimize the delay that could result. Such a post-effective amendment, which must be filed prior to the time sales are made and confirmations are sent, will become effective upon filing if the prospectus contained therein contains no material changes from, or additions to, the prospectus previously filed as part of the effective registration statement other than the price-related information omitted from the registration statement in reliance on Rule 430A.[38] A company filing a post-effective amendment that reflects other material prospectus changes or additions (other than the "20% increase in offering size" changes) would follow current procedures under which the post-effective amendment is subject to selective review and is declared effective.

5. Immediate Takedowns From a Shelf Registration

The Four Firms proposal requested that the Commission permit immediate takedowns after a shelf registration statement becomes effective. As indicated in the Proposing Release, immediate offerings from an effective shelf registration statement currently are permitted. At the time of effectiveness, information in the shelf registration statement is required to the extent it is known or reasonably available to the registrant.[39] Accordingly, if an offering of securities is certain at the time the shelf registration statement becomes effective, the relevant information (*e.g.* description of securities, plan of distribution and use of proceeds) must be disclosed with respect to the securities subject to the immediate takedown and the Rule 430A undertakings should be included (if the issuer wants Rule 430A pricing flexibility).

6. Acceleration of Effectiveness

As was proposed, adopted rule revisions allow requests to accelerate effectiveness of registration statements to be transmitted to the Commission by fax transmission. In addition, rule revisions permit oral requests for acceleration to be made,[40] provided that the Commission previously receives a letter indicating that the registrant and the managing underwriter may make oral requests for acceleration and that they are aware of their obligations under the Securities Act.[41]

In order to facilitate the ability of the Commission staff, pursuant to delegated authority, to reach a determination to accelerate effectiveness based on the public availability of information and

[32] *See* revisions to Instruction to Paragraph (a) of Rule 430A, 17 CFR 230.430A and revisions to Item 512(a)(1)(ii) of Regulations S–K and S–B, 17 CFR 229.512(a)(1)(ii) and 228.512(a)(1)(ii). This revision pertains to changes in offering size that occur at pricing and does not extend to changes made after that time. While no post-effective amendment is required to be filed, issuers continue to be responsible for evaluating the effect of a volume change or price deviation on the accuracy and completeness of disclosure made to investors. When there is a change in offering size or deviation from the price range beyond the 20% threshold, a post-effective amendment would continue to required only if such change or deviation materially changes the previous disclosure. Of course, if an increase beyond the 20% threshold requires registration of additional securities, a new registration statement updated in all respects must be filed.

[33] *See* revisions to Rule 402, 17 CFR 230.402; Rule 12b–11, 17 CFR 240.12b–11; Rule 14d–1, 17 CFR 240.14d–1; and Rule 16a–3, 17 CFR 240.16a–3.

[34] *See* revisions to Rule 402, 17 CFR 230.402; Rule 439, 17 CFR 230.439; Rule 12b–11, 17 CFR 240.12b–11; Rule 14d–1, 17 CFR 240.14d–1; and Rule 16a–3, 17 CFR 2401.6a–3.

[35] *See* Rule 411(c) under the Securities Act, 17 CFR 230.411(c), new Rule 439(b) under the Securities Act, 17 CFR 230.439(b), and changes to General Instructions of Forms SB–1, SB–2, S–1, S–2, S–3, S–11, F–1, F–2 and F–3. In addition, Items 601(b)(24) of Regulations S–K and S–B, 17 CFR 229.601(b)(24) and 17 CFR 228.601(b)(24), are revised so that a power of attorney included in the earlier registration statement relating to the offering also may relate to the short-form registration statement filed to register the additional securities.

[36] *See* revisions to Rule 430A(a)(3), 17 CFR 230.430A(a)(3).

[37] The principal purpose of the original five-day limitation was to prevent delayed offerings being made under Rule 430A by persons that do not meet the criteria for use of shelf registration. *See* Securities Act Release No. 6714 (May 27, 1987) (52 FR 21252).

[38] *See* Rule 462(c), 17 CFR 230.462(c).

[39] *See* Rule 409, 17 CFR 230.409.

[40] *See* Securities Act Rule 461(a), 17 CFR 230.461(a). Both an authorized representative of the registrant and an authorized representative of the managing underwriter will be required to make such request orally. The rule revisions do not adopt a requirement suggested by some commenters that an oral request be followed by transmission to the Commission of a written request, nor are facsimile or duplicate versions required to be followed by transmission to the Commission of the manually signed versions.

[41] *See* Securities Act Rule 461(a), 17 CFR 230.461(a). The liability of persons who sign the registration statement, the underwriters and others under section 11(a) of the Securities Act, 15 U.S.C. 77k(a), is based upon the registration statement at the time it becomes effective.

other factors set forth in section 8(a) of the Securities Act,[42] persons making oral acceleration requests should be prepared to provide orally the prospectus dissemination information that typically is set forth in a written acceleration request. Such information generally includes: The date of the preliminary prospectus distributed, the approximate dates of distribution, the number of prospectus underwriters and dealers to whom the preliminary prospectus was furnished, the number of prospectuses so distributed, and the number of prospectuses distributed to others, identifying them in general terms.[43] In addition, in the case of non-reporting companies, an affirmative statement from the managing underwriter may be requested with regard to whether it has been informed by participating underwriters and dealers that copies of the preliminary prospectus have been or are being distributed to all persons to whom it is then expected to mail confirmations not less than 48 hours prior to the time it is expected to mail such confirmations.[44]

7. T+4 Settlement for Firm Commitment Offerings Priced After the Close of the Market

As discussed elsewhere in this release, the Commission is eliminating the current exemption contained in Rule 15c6–1 for firm commitment offerings, thus bringing those transactions under a T+3 settlement standard. In response to the Four Firms proposal, the Commission proposed an amendment to Rule 15c6–1 that would establish four business days after the trade date ("T+4") as the standard settlement cycle for firm commitment offerings priced after 4:30 p.m. The vast majority of commenters who addressed this proposal expressed support for settlement on a T+4 basis.[45] Several of these commenters reasoned that it is difficult to print and deliver the final prospectus within a T+3 settlement time frame when the securities are priced late in the day. These commenters also opined that the potential systemic and market risks associated with the T+4 provision should be limited because most of the secondary trading in the subject securities will not begin until the opening of the market on the next business day and, therefore, the primary issuance of securities will be available to settle secondary trading in the security.

The T+4 provision in the Four Firms proposal was intended to provide time to deliver prospectuses by settlement. Establishing T+4 as the standard for this category of offerings also will provide certainty and reduce confusion as to the appropriate settlement cycle. Accordingly, the Commission is adopting the amendment for settlement of specific offerings on a T+4 basis with only minor technical corrections.[46]

8. Investment Companies

The Commission requested comment on whether the Four Firms proposal should apply to investment companies. Commenters did not believe that open-end investment companies would require any special provisions to facilitate T+3 settlement because they are engaged in the continuous offerings of securities with pre-printed prospectuses, but endorsed the application of the Four Firms proposal to closed-end investment companies and unit investment trusts ("UITs"). The revisions to Rule 430A (the extension of the pricing period and changes to offering size and price range), to Rule 461(a) (facsimile or oral accelerations of effective dates), and to Rule 15c6–1 (T+4 settlement for firm commitment offerings priced after 4:30 p.m.) by their terms apply to the registration statements of closed-end investment companies and UITs.[47] The Investment Company Act permits UITs, but not closed-end investment companies, to increase the size of an offering by post-effective amendment.[48] Therefore, the Commission is adopting rule and form revisions that will permit closed-end investment companies to take advantage of the short-form registration statement that permits an increase in offering size.[49] Under the rule and form amendments, as adopted, the Commission is not making any changes to re-order investment company prospectuses because the current prospectus requirements appear to provide sufficient flexibility to accommodate expedited printing of prospectuses.

B. The SIA Approach

The second part of the Commission's proposal was based on the proposal submitted by the SIA. The SIA proposal was predicated on the premise that prospectus delivery could be accomplished much more quickly if issuers could convey the Section 10(a) prospectus information in multiple documents delivered to investors at different times, rather than in a traditional, integrated final prospectus prepared through last-minute mass printing, shipping and mailing.

Rule 434 under the Securities Act,[50] which is based upon the SIA approach, is being adopted largely as proposed. Rule 434 permits participants in registered firm commitment underwritten offerings of securities for cash and specified registered offerings for cash made on an agency basis (hereinafter, "eligible offerings") to convey prospectus information in more than one document and allows such documents to be delivered to investors at separate intervals and in varying manners. Rule 434 does not require that a final, integrated prospectus be delivered to investors. In the aggregate, however, all required information will still be disclosed to investors prior to or at the same time as a confirmation is sent, either through physical delivery or, in the case of short-form registered offerings,[51] through physical delivery and delivery by publication.

[42] 15 U.S.C. 77h(a).

[43] *See* Rule 418(a)(7), 17 CFR 230.418(a)(7). *See also* Rule 460, 17 CFR 230.460.

[44] *See* Rule 418(a)(7)(vi), 17 CFR 230.418(a)(7)(vi) and Securities Act Release No. 4968 (Apr. 24, 1969) [34 FR 7235]. Of course, this information is not applicable to delayed shelf offerings.

[45] One commenter argued that a T+4 standard was unnecessary because the override provision in paragraph (a) of Rule 15c6–1, if broadly interpreted, would provide sufficient flexibility to after-market offerings. *See* letter from John Brandow, Davis Polk & Wardwell to Jonathan Katz, Securities and Exchange Commission, dated April 3, 1995. As discussed elsewhere in this release, the Commission is instead adopting a specific overridge provision for firm commitment offerings.

[46] *See* Rule 15c6–1(c), 17 CFR 15c6–1(c). As proposed, this paragraph provided an exemption for securities sold pursuant to a firm commitment offering. This language has been amended to clarify that the exemption applies to contracts for the sale of such securities and that the exemption only applies to sales from the issuer to the underwriter and initial sales by broker-dealers participating in the offering.

[47] As noted previously, the revised rules permit duplicated or facsimile versions of manual signatures in all reports filed under the Exchange Act, as well as registration statements filed under the Securities Act. The Commission is adopting similar revisions for investment companies. *See* revisions to Rule 8b–11, 17 CFR 270.8b–11.

[48] *See* Section 24(e)(1) of the Investment Company Act, 15 U.S.C. 80a–24(e)(1); *see also* Rule 485(b)(1)(i), 17 CFR 270.485(b)(1)(i), which provides for the immediate effectiveness of a post-effective amendment filed by a UIT for the purpose of increasing the amount of securities proposed to be offered under Section 24(e)(1).

[49] Modifications to the registration statement form for closed-end investment companies, Form N–2 (17 CFR 274.11a), provide for the registration of additional securities pursuant to new Rule 462(b). Revisions to (i) paragraph (b) of Rule 483, which sets forth the exhibit requirements for investment company registration statement forms, provide that a power of attorney filed for a registration statement form also relates to a related registration statement form filed pursuant to Rule 462(b), and (ii) paragraph (c) of Rule 483 provide that a consent may be incorporated by reference into a registration statement form filed pursuant to Rule 462(b) from a related registration statement form.

[50] 17 CFR 230.434.

[51] "Short-form" registration is used herein to refer to registration on Commission Forms S–3 or F–3.

1. Non-Short-Form Registered Offerings

As adopted, in eligible offerings not using short-form registration, persons may comply with their prospectus delivery obligations by delivering a preliminary prospectus,[52] a term sheet, if necessary,[53] and a confirmation.[54] The term sheet is required to include all information material to investors with respect to the offering that is not disclosed in the delivered preliminary prospectus or the confirmation.[55]

Neither the process of filing registration statements and amendments thereto, nor the Commission's registration statement review process, is intended to be altered in connection with the adoption of Rule 434.[56] Rule 434 requires that the preliminary prospectus and the term sheet, taken together, not materially differ from the disclosure included in the effective registration statement.[57] The term sheet must be filed with the Commission within two business days after the earlier of pricing or first use.[58] Thus, term sheets generally will not be reviewed prior to use. Except in the case of delayed shelf offerings, the term sheet is deemed to be a party of the registration statement as of the time such registration statement was declared effective.[59] In the case of such delayed offerings, the term sheet is deemed to be a part of the registration statement as of the time the term sheet is filed with the Commission.[60]

Several commenters on the Proposing Release suggested that the Commission require that a second preliminary prospectus (either an updated version or another copy of the version previously circulated) be circulated to investors either with the term sheet or shortly before the term sheet is delivered.[61] Circulation of a second preliminary prospectus is not required by Rule 434 as adopted, but nothing in the Rule precludes offering participants from doing so.

As adopted, Rule 434 is not limited with respect to the amount of time that could elapse between delivery of the preliminary prospectus and the term sheet. Further, the rule does not contain any limitation on the magnitude of changes from the disclosure set forth in the circulated preliminary prospectus that the term sheet may contain. As noted above, however, the Rule is not available for non-short-form registered offerings if the disclosure in the preliminary prospectus and term sheet materially differ from the disclosure contained in the prospectus filed as a part of the effective registration statement.

2. Short-Form Registered Offerings

In Rule 434 eligible offerings using short-form registration, persons may comply with their prospectus delivery obligations by delivering a preliminary or base prospectus,[62] an abbreviated term sheet[63] and a confirmation. An abbreviated term sheet must contain, unless previously disclosed in the circulated preliminary or base prospectus or in the registrant's Exchange Act filings incorporated by reference into the prospectus: (i) The description of securities required by Item 202 of Regulation S–K, or a fair and accurate summary thereof;[64] and (ii) information regarding material changes required by Item 11 of Form S–3or Form F–3.[65] Under new Rule 434, certain offering-specific disclosure included in a traditional final prospectus[66] will be required only in the prospectus supplement filed with the Commission.[67] This information could include, for example, use of proceeds and syndicate and specific plan of distribution information.

Registrants will be required to indicate on the cover page of their registration statement, by checking a box, that reliance on Rule 434 for prospectus delivery is intended. Persons checking the box, however, would not be required to rely on Rule 434 if they later determined to deliver prospectus information otherwise in connection with the offering.

Any term sheet or abbreviated term sheet sent or given in reliance upon Rule 434 must state on the top center of the front cover page that it is a supplement to a prospectus and identify

To be eligible to use short-form registration for a primary offering, an issuer must have a public float of $75 million and must have been reporting with the Commission for one year. *See* General Instructions I.A.3. and I.B.1. to Form S–3 and General Instructions I.A.1. and I.B.1. to Form F–3.

[52] "Preliminary prospectus" is used herein to refer to either a preliminary prospectus used in reliance on Rule 430, 17 CFR 230.430, or a prospect omitting information in reliance on Rule 430A(a), 17 CFR 230.430A(a).

[53] In order to reflect industry nomenclature, "term sheet" is used in this release to refer to the document called a "supplementing memorandum" in the Proposing Release. In addition, "abbreviated term sheet" is now used in place of "abbreviated supplementing memorandum." Regardless of the nomenclature used, these documents constitute supplements to prospectuses subject to completion.

[54] The preliminary prospectus, the term sheet and the confirmation may be delivered together or separately under Rule 434, provided that the former two are sent or given prior to or with the confirmation. *See* Rule 434(b)(1), 17 CFR 230.434(b)(1). *See also* Rule 434(c)(1), 17 CFR 230.434(c)(1) with respect to the preliminary or base prospectus, the abbreviated term sheet and the confirmation. Note that the prospectus delivery obligations pursuant to Rule 15c2–8 under the Exchange Act are independent of those discussed in this section. A term sheet or abbreviated term sheet generally may not be sent or given prior to the preliminary or base prospectus given the limitations set by section 5(b)(1) of the Securities Act and the definition of "prospectus" set forth in section 2(10) of the Securities Act. The Commission will raise no objection where a preliminary or base prospectus being delivered separately is sent or given in a manner reasonably calculated to arrive prior to or at the same time with the term sheet or abbreviated term sheet but the term sheet or abbreviated term sheet nevertheless precedes the preliminary or base prospectus.

[55] *See* Rule 434(b)(3), 17 CFR 230.434(b)(3).

[56] As under current practice, the staff will continue to consider whether recirculation of a prospectus is needed when there are material changes in disclosure arising after the prospectus subject to completion has been given to investors. *See* Rules 460 and 461(b), 17 CFR 230.460 and 230.461(b).

[57] *See* Rule 434(b)(2), 17 CFR 230.434(b)(2). The disclosure in the preliminary prospectus and term sheet would be measured against the disclosure set forth in the registration statement as of its effective date, including omitted Rule 430A price-related information deemed a part thereof by virtue of Rule 430A(b), 17 CFR 230.430A(b).

[58] *See* Rule 424(b)(7), 17 CFR 230.424(b)(7). Each filed copy of a term sheet or abbreviated terms sheet, like other filings under Rule 424, must contain in the upper right corner of its cover page a reference to the part of Rule 424 under which the filing is made (i.e. Rule 424(b)(7)) and the file number of the registration statement to which the prospectus relates. *See* Rule 424(e), 17 CFR 230.424(e).

[59] *See* Rule 434(d), 17 CFR 230.434(d).

[60] *Id.*

[61] *See, e.g.*, letter from John Olson *et al.*, American Bar Association to Jonathan Katz, Securities and Exchange Commission, dated April 14, 1995; letter from Edward Adams, Fredrikson & Byron to Jonathan Katz, Securities and Exchange Commission, dated March 31, 1995; and letter from Steven Machov, Merrill Corporation to Jonathan Katz, Securities and Exchange Commission, dated April 3, 1995.

[62] "Base prospectus" is used herein to refer to a prospectus contained in a registration statement at the time of effectiveness (or as subsequently revised) that omits information that is not yet known concerning an offering pursuant to Rule 415, 17 CFR 230.415.

[63] The abbreviated term sheet is filed with the Commission in accordance with Rule 424(b)(7), 17 CFR 230.424(b)(7). *See* Rule 434(d), 17 CFR 230.434(d), with respect to abbreviated term sheets being deemed a part of the registration statement.

[64] 17 CFR 229.202.

[65] *See* Rule 434(c)(3), 17 CFR 230.434(c)(3).

[66] Offering-specific information required to be filed but permitted not to be delivered physically under Rule 434 short-form registered offerings is set forth in Items 501–510 of Regulation S–K, 17 CFR 229.502.229.510. In addition, a summarized version of the description of securities set forth in Item 202 of Regulation S–K, 17 CFR 229.202, may be delivered physically rather than the full description filed with the Commission.

[67] *See* Rule 434(c)(2), 17 CFR 230.434(c)(2). For example, the final prospectus traditionally delivered to investors in shelf offerings has included information set forth in both the base prospectus and a prospectus supplement. In shelf offerings relying on Rule 434, information in the prospectus supplement will not be delivered physically to investors, except to the extent it is disclosed pursuant to the abbreviated term sheet. The prospectus supplement in such offerings, however, must be filed with the Commission by the time any confirmation is sent or given to investors. *See* Rule 434(c)(2)(ii), 17 CFR 230.434(c)(2)(ii).

that prospectus by issuer name and date. The term sheet or abbreviated term sheet also, in that location, must clearly identify that it is a term sheet or abbreviated term sheet used in reliance on Rule 434, must clearly identify the documents that, when taken together, constitute the section 10(a) prospectus, and must be dated as of the approximate date of its first use.[68]

3. Scope of the Proposed Rule

a. Underwritten Offerings for Cash

Rule 434, as adopted, extends only to offerings where the sole consideration given in exchange for securities is cash. Offerings such as exchange offers and business combinations are not included. As noted in the Proposing Release, in those offerings, the final prospectus is traditionally used to begin the process of soliciting votes or consents to a transaction. Thus, the logistical difficulties of prospectus delivery are not associated with those offerings.

The adopted Rule also does not extend to offerings that are made other than on a firm commitment basis with underwriters, except for offerings of investment grade debt made in connection with a medium-term note ("MTN") program registered with the Commission on either a continuous or delayed shelf basis.[69] Concern has been expressed that exclusion of these MTN securities from the Rule would unnecessarily push such transactions out of the T+3 settlement cycle.[70] Further, while these MTN securities typically are sold through an underwriter on an agency rather than a firm commitment basis, assurance has been given that, once an agreement has been reached between the investor and the MTN program agent, the preparation and delivery of a prospectus occurs in a manner identical to that in a principal transaction.[71]

b. Offerings of Asset-Backed Securities

As adopted, Rule 434 excludes offerings of asset-backed securities ("ABS").[72] Settlement in connection with ABS offerings currently takes place outside of the T+3 time frame, on approximately a T+10 cycle, and is likely to continue to do so. As noted in the Proposing Release, the existing settlement schedule is the result primarily of factors unique to these offerings, which are the same factors that result in such offerings not lending themselves to use of incremental disclosure. Those factors include: (i) The distinctive structuring process for most ABS offerings, which typically extends almost to the time when the security is priced, whereby a variety of structures may be considered as the sponsor attempts to meet investors' needs' (ii) the time needed for identification of the specific pool of collateral which will support the ABS; and (iii) the necessity of creating shortly before sale of the ABS a prospectus supplement of significant length and complexity that details the characteristics of specific pool assets and the transaction's structure, the summarization of which would not serve as an adequate substitute for the complete description in the prospectus supplement.

c. Offerings of Structured Securities

As adopted, Rule 434 also excludes offerings of structured securities.[73] "Structured securities," for purposes of Rule 434, are defined to mean securities whose cash flow characteristics depend upon one or more indices or that have imbedded forwards or options or securities where an investor's investment return and the issuer's payment obligations are contingent on, or highly sensitive to, changes in the value of underlying assets, indices, interest rates or cash flows.[74] This definition was proposed to be included in Rule 15c6–1 but is set forth in Rule 434 instead Rule 15c6–1 as adopted makes no reference to such securities. As noted in the Proposing Release, these securities usually have terms that are highly complex, with many employing one or more indices as a basis for determining the issuer's payment obligations (e.g., coupon, principal, redemption payments). A structured security's value is derived not only from the creditworthiness of its issuer, but also from any underlying assets, indices, interest rates or cash flow upon which the security is predicated. Because of the complexities associated with these securities, investors may not fully understand the investment risks when purchasing structured securities, especially those with complicated structures. A complete description of offering-specific information therefore is of particular importance to investors in making an investment decision, given the market risks resulting from the structure of these securities. Otherwise, as noted in the Proposing Release, the incremental distribution of information under the Rule, when combined with the complex nature of these securities, could result in material disclosure not being readily accessible to investors.

d. Investment Companies

As proposed, Rule 434 would have provided that it would not apply to the offering of any security of any company registered under the Investment Company Act. The Commission requested comment on whether the prospectus delivery modifications in the SIA proposal also should apply to closed-end investment companies and UITs. Commenters endorsed the proposed prospectus delivery method for closed-end investment companies and UITs, and the Commission is adopting revisions that apply new Rule 434 to these investment companies.[75]

4. Conforming Amendments to Rule 14c2–8

a. Rule 15c2–8 Amendments

The Commission is adopting the amendments to Rule 15c2–8[76] as proposed. The amendments expand the use of the terms "preliminary prospectus" and "final prospectus," as currently used in the Rule, to include the terms "prospectus subject to completion" and "Section 10(a) prospectus," respectively, the reflect the terminology of Rule 434. Additionally, the term "sending" is substituted for the term "mailing" to accommodate prospectus delivery by means other than traditional mailing.

Six commenters addressed Rule 15c2–8. None of these commenters objected to the proposed changes, although several of them raised other issues regarding Rule 15c2–8, which are discussed below. The Commission may propose further amendments to Rule 15c2–8 based on its experience with Rule 434, or more generally, to reflect market developments and staff interpretations that have occurred since the Rule was last amended.[77]

b. Rule 15c2–8 Issues Raised by Commenters

In the case of an offering of securities of an issuer that previously has not been required to file reports under section 13(a) and 15(d) of the Exchange Act, Rule 15c2–8(b)[78] requires that a preliminary prospectus be delivered to any person who is expected to receive a confirmation of sale at least 48 hours prior to sending such confirmation.[79] Two commenters noted that because preliminary prospectuses generally are not used in offerings of asset-backed securities, some broker-dealers have adopted the practice of delivering the final prospectus to purchasers at least 48 hours prior to mailing the confirmation of an asset-backed security. These commenters urged the Commission either to modify Rule 15c2–8 to acknowledge this industry practice or to except asset-backed securities from Rule 15c2–8(b). In the Commission's view, delivery of the final prospect is at least 48 hours prior to sending the confirmation will satisfy the requirement of Rule 15c2–8(b) in the case of offerings of asset-backed securities where no preliminary prospectus is used.[80]

With respect to the obligations of a managing underwriter to provide copies of the prospectus to participating broker-dealers, two commenters sought interpretive guidance with respect to the terms "sufficient copies" and "reasonable quantities," as used in Rule 15c2–8 (g) and (h),[81] respectively, in light of the recently issued *Brown & Wood* letter,[82] which permits electronic delivery of prospectuses in certain circumstances.[83] The *Brown & Wood* letter was not intended to modify any obligation that a managing underwriter currently has pursuant to paragraphs (g) or (g) of Rule 15c2–8 to produce, reproduce, or deliver, in such quantities as requested, a preliminary, amended, or final prospectus to broker-dealers participating in the offering. Accordingly, a managing underwriter may discharge its obligations pursuant to Rule 15c2–8 (g) or (h) by delivering a prospectus (or any portion thereof) electronically to a participating broker-dealer, if the recipient broker-dealer expressly consents to delivery in such form.

One commenter suggested revising Rule 15c2–8(b) to require delivery of the preliminary prospectus at least 48 hours, but not more than 60 days, prior to sending the confirmation. Another commenter suggested that the Commission require the managing underwriter to deliver the final prospectus to offering participants by the close of business on T + 2, so that such participants may send the prospectus to investors no later than T + 3. Consistent with the adoption of both the SIA proposal and the Four Firms proposal, the Commission believes that offering participants should have as much flexibility as possible to determine how to comply with their prospectus delivery obligations within T + 3, without the burden of additional restrictions, and therefore has determined not to amend the Rule as suggested at this time. As noted, however, the Commission may propose additional amendments to Rule 15c2–8 based on its experience with Rule 434.

III. Revision of the Rule 15c6–1 Exemption

In the Proposing Release, the Commission proposed to establish A + 3 as the presumptive settlement date for firm commitment offerings by eliminating the exemption from T + 3 settlement for sales for cash in connection with firm commitment offerings.[84] However the Commission proposed to allow managing underwriters flexibility to choose T + 3, T + 4, or T + 5 settlement under specific conditions, including written notice to prospective purchasers and the exchanges prior to pricing.[85] The Commission also proposed exemptions from T + 3 settlement for firm commitment offerings of asset-backed and structured securities. These amendments were proposed to reduce the confusion caused by different settlement cycles for new issue and secondary market trades, while also providing flexibility to settle certain firm commitment offerings beyond T + 3 when the standard settlement cycle cannot be met.

Most commenters supported elimination of the general exclusion for firm commitment offerings. As one commenter noted, establishing a T + 3 settlement standard for these transactions will reduce risk, provide certainty in the form of a written standard, and avoid bifurcation of the settlement cycle.[86] Several commenters cited specific categories of securities requiring settlement cycles longer than T + 3.[87] Most commenters, however, preferred to resolve difficulties in settling offerings through a general override provision rather than specific exemptions of classes of securities.

The majority of comments that addressed the merits of the proposed override provisions expressed support for a specific override provision for firm commitment offerings but objected to the terms of Rule 15c6–1(e) as proposed. Several commenters asserted that the T + 5 maximum settlement period did not provide adequate flexibility for settlement of certain firm commitment offerings. Furthermore, many of the commenters argued that the requirement of written notice to all perspective purchasers on or before pricing was burdensome and should be eliminated.[88] Commenters disagreed

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[68] *See* Rule 434(e), 17 CFR 230.434(e).

[69] *See* Rule 434(a), 17 CFR 230.434(a). These MTN offerings rely on Rule 415(a)(1) (ix) or (x), respectively.

[70] *See* letter from Kevin Moynihan, Merrill Lynch to Jonathan Katz, Securities and Exchange Commission, dated April 7, 1995.

[71] *Id.*

[72] "Asset-backed security" is defined for purposes of Rule 434 the same way it is defined in General Instruction I.B.5. of Form S–3: a security that is primarily serviced by the cashflows of a discrete pool of receivables or other financial assets, either fixed or revolving, that by their terms convert into cash within a finite time period plus any rights or other assets designed to assure the servicing or timely distribution of proceeds to the securityholders. *See* Rule 434(f), 17 CFR 230.434(f).

[73] *See* Rule 434(a), 17 CFR 230.434(a).

[74] *See* Rule 434(h), 17 CFR 230.434(h).

[75] *See* revisions to Rule 497, 17 CFR 230.497, which sets forth fund prospectus filing requirements with the Commission, that require, parallel to the changes to the general prospectus filing requirements in Rule 424, 17 CFR 230.424(b), the filing of prospectuses allowed under Rule 434 on or prior to the date a confirmation is sent or given to an investor.

[76] 17 CFR 240.15c2–8.

[77] Rule 15c2–8(d) was last amended in Exchange Act Release No. 25546 (Apr. 4, 1988) (53 FR 11841).

[78] 17 CFR 240.15c2–8(b).

[79] This requirement is satisfied by delivering a preliminary prospectus that is current at the time of its delivery.

[80] This interpretation of paragraph (b) is consistent with the longstanding staff position that delivery of a final prospectus at least 48 hours prior to sending the confirmation is required in cases where no preliminary prospectus is circulated and the offering is sold solely on the basis of a final prospectus.

[81] 17 CFR 240. 15c2–8 (g) and (h). Paragraph (g) requires a managing underwriter to take reasonable steps to ensure that all broker-dealers participating in an offering are promptly furnished with "sufficient copies, as requested by them" of each preliminary, amended, or final prospectus to enable such participating brokers-dealers to comply with their obligations under Rule 15c2–8 (b), (c), (d), and (e). Similarly, paragraph (h) requires a managing underwriter to take reasonable steps to ensure that any broker-dealer participating in an offering or trading in the registered security is furnished "reasonable quantities of the final prospectus * * * as requested by him" in order to enable to broker-dealer to comply with sections 5(b) (1) and (2) of the Securities Act.

[82] *See supra* footnote 6.

[83] These commenters inquired whether Rule 15c2–8 (g) and (h) would permit a managing underwriter to deliver the pre-printed portion of the prospectus by traditional methods, followed by the remainder (or "wrap" portion), containing only the pricing and other "last minute" disclosure, by electronic transmission. These commenters advised that the recipient broker-dealers would be expected to duplicate the remainder (or "wrap" portion) and assemble the two parts for delivery to investors.

[84] *See* 17 CFR 240.15c6–1(b)(2).

[85] Rule 15c6–1(a) contains a general override provision that permits the parties to a contract to specify an alternate settlement cycle if the agreement is made at the time of the trade. Complying with this provision in the context of a firm commitment offering may be difficult because of the need to obtain the express agreement of all parties participating in the offering.

[86] *See* letter from Brent Taylor, J.P. Morgan Securities, Inc. to Jonathan Katz, Securities and Exchange Commission , dated March 20, 1995.

[87] In addition to asset-backed securities and structured securities, commenters raised settlement concerns in connection with medium term note programs registered under short-form shelf registration, capital market debt transactions, securities exempt from registration under section 3(a)(4) or 3(a)(11) of the Securities Act, and certain transactions involving sweps.

[88] Specifically, several commenters asserted that the settlement period may not be known sufficiently in advance of pricing to provide written

Continued

over the manner in which an alternate settlement date should be established, though most commenters concurred that such authority should not be granted solely to the managing underwriter.

To address the various issues raised by the commenters in connection with the proposed modifications of the exemption for firm commitment offerings, the Commission is amending Rule 15c6–1 to eliminate the exemption for firm commitment offerings and to include a specific override provision [89] which will permit the establishment of an alternate settlement date for the sale of all securities subject to a firm commitment offering upon agreement by the managing underwriter and the issuer of the securities. This override provision does not contain the notice requirements in the proposed override position and does not limit the settlement period to a maximum of T+5. The Commission has decided not to adopt a provision exempting offerings of particular classes of securities. Instead, the Commission believes that an alternate settlement cycle can be established for these offerings through the override provision for firm commitment offerings.

In adopting the proposed amendments to Rule 15c6–1, the Commission seeks to provide flexibility for settlement beyond T+3 for certain firm commitment offerings that require such treatment in light of the special characteristics of the subject securities. The Commission is mindful of the concert that lack of certainty in settlement standards may create confusion in the marketplace. Accordingly, the Commission stresses that the override position is not intended to dilute the presumption in favor of application of the T+3 settlement cycle in connection with firm commitment offerings. Instead, the override provision is intended to be used only in those circumstances when T+3 settlement is not feasible.

Furthermore, the Commission recognizes that it is important that the registered clearing agencies, through which settlement of firm commitment offerings and secondary market trades will occur, receive notice of non-standard settlement dates. The Commission encourages issuers and underwriters to notify promptly the registered clearing agencies of the settlement period of an offering. It may be appropriate for the clearing agencies as self-regulatory organizations under the Exchange Act to modify their rules to require such notice at such times and in such manners as the clearing agencies need to make provision for non-standard settlement cycles. The Commission will monitor the use of the override provision on an ongoing basis.

notice and that such notice is duplicative of the information provided orally and in the confirmation.

[89] See Rule 15c6–1(d), 17 CFR 15c6–1(d). This specific override provision would not extend to offerings of investigation grade debt made in connection with a medium-term note program sold through an underwriter on an agency basis. Such transportation may, however, be accomplished in accordance with the general override provision set forth in Rule 15c6–1(a), 17 CFR 240.15c6–1(a).

IV. EDGAR Usage

After the effective date of these proposals and until the necessary form types are available through the EDGAR system, registrants that are mandated electronic filers should file in paper format those documents relating to the proposals being adopted other than the abbreviated registration form filed pursuant to Rule 462(b).[90] All other documents unrelated to the proposals being adopted must continue to be filed electronically by mandated electronic filers. The necessary form types are expected to be available with the release of a new version of the EDGARLink software in Autumn 1995. Notice will be provided in the SEC Digest, the **Federal Register** and on the EDGAR Bulletin Board when the new EDGAR form types are available.

V. Cost-Benefit Analysis

Five commenters responded to the Commission's request for comments regarding the costs and benefits of the proposed rules. Four of the five commenters expected the cost of printing and shipping of prospectuses to decline as a result of the proposed rules.[91] The other commenter stated that the increased administrative burdens and costs that may be imposed on dealers as a result of multiple or duplicate mailings of various documents could negate the intended benefit of the SIA approach.[92] One commenter, a financial printer, provided empirical data on the proposals. The printer concluded that, in three basic scenarios regarding the printing and delivery of a Form S–1, a reduction in costs ranging from 8% to 88% would be obtainable as a result of the new delivery alternatives available under the proposed. rules.[93] The Commission believes the new rule and amendments provide market participants with additional flexibility that should result in lower transaction costs, while not diminishing investor protection.

[90] Only those documents that are filed pursuant to Rule 424(b)(7), Rule 462(c) and Rule 497(h)(2) may be filed in paper format. *See supra* footnotes 29 and 30 and accompanying text.

[91] See letter from Karl Barnickol, American Society of Corporate Secretaries to Jonathan Katz, Securities and Exchange Commission, dated April 10, 1995; Joel Brenner, Storch & Brenner (on behalf of R.R. Donnelley Financial), to Jonathan G. Katz, Secretary, Securities and Exchange Commission, dated March 31, 1995; W. Scott Jardine, Nikè Securities L.P., to Jonathan Katz, Securities and Exchange Commission, dated March 31, 1995; Larry W. Martin, John Nuveen & Co. Incorporated, to Jonathan Katz, Securities and Exchange Commission, dated March 30, 1995.

[92] See Letter from George Miller, Public Securities Association to Jonathan Katz, Securities and Exchange Commission, dated April 10, 1995.

[93] See letter from Joel Brenner, Storch & Brenner (on behalf of R.R. Donnelley Financial), to Jonathan G. Katz, Secretary, Securities and Exchange Commission, dated March 31, 1995.

VI. Summary of Final Regulatory Flexibility Analysis

The Commission has prepared a Final Regulatory Flexibility Analysis ("FRFA"), pursuant to the requirements of the Regulatory Flexibility Act,[94] regarding the rule and amendments to existing regulations being adopted. The FRFA notes that the new rule and amendments will provide entities with greater flexibility and efficiency with respect to the timing of printing and delivery of prospectus information, thereby facilitating compliance with Rule 15c6–1 under the Exchange Act and access to the public securities markets. As discussed more fully in the analysis, the new rule and amendments to Securities Act regulations should decrease costs associated with fulfilling entities' prospectus delivery obligations under the Securities Act. The amendments to Exchange Act rules and forms are not anticipated to have any significant economic impact on entities. The new rule may impose minimal additional reporting, recordkeeping or compliance requirements, while the amendments do not impose any new reporting, recordkeeping or compliance requirements on any entities. No alternatives to the new rule and amendments consistent with their objectives and the Commission's statutory mandate were found.

The overall effect of the new rule and amendments is to provide entities increased efficiency in raising capital from the public securities markets. The aspects that provide for the incremental delivery of prospectus information will apply to any entity engaged in a public distribution with respect to an eligible offering. The amendments to Securities Act regulations should streamline the registration process and thereby facilitate compliance with prospectus delivery within T+3. The new rule and amendments to Securities Act regulations also will apply to certain investment companies registered under the investment Company Act, i.e. closed-end investment companies and unit investment trusts. The amendments to regulations under section 15(c) of the Exchange Act will reflect the availability of expedited delivery of prospectus information provided by the new rule and amendments to the Securities act regulations.

A copy of the FRFA may be obtained from Michael Mitchell, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 3–3, Washington, DC 20549, (202) 942–2900.

[94] 5 U.S.C. 604 (1988).

VII. Effective Date

The new rule and the revisions to rules and forms are effective June 7, 1995, in accordance with the Administrative Procedures Act, which allows for effectiveness in less than 30 days after publication, *inter alia*, for "a substantive rule which grants or recognizes an exemption or relieves a restriction" and "as provided by the agency for good cause found and published with the rule." 5 U.S.C. 553 (d)(1) and (d)(3). The adopted rule and revisions primarily lessen restrictions of existing rules in that they either provide a more efficient way for offering participants to accomplish prospectus delivery or they streamline the registration and prospectus preparation and printing processes. In addition, the Commission finds there is good cause for the adopted rule and revisions to become effective on June 7, 1995 since they are designed to allow market participants to accomplish prospectus delivery in eligible offerings in a T+3 settlement cycle. Since the T+3 settlement cycle will become effective on June 7, 1995, the adoption of the rule and revisions on that date will ensure that potential market disruption relating to prospectus delivery prior to settlement of such offerings would be avoided. The exemption from Rule 15c6–1 for certain firm commitment offerings also is being eliminated in this time frame because of its potential for market disruption if allowed to go into effect. Any possible negative effect of eliminating that exemption is offset by the adoption of an expanded provision allowing such offerings to settle outside of the Rule 15c6–1 mandated time frame if the participants in the offering so elect.

VIII. Statutory Bases

The new rule and the amendments to the Commission's rules and forms under the Securities Act and amendments to the Commission's rules under the Exchange Act are being adopted pursuant to sections 6, 7, 8, 10 and 19(a) of the Securities Act and sections 3, 4, 10, 12, 13, 14, 15, 16 and 23 of the Exchange Act. The revisions to the Commission's rules and forms under the Investment Company Act are being adopted pursuant to sections 8(b) and 38(a) under the Investment Company Act, as amended.

List of Subjects in 17 CFR Parts 202, 228, 229, 230, 232, 239, 240, 270 and 274

Administrative practice and procedure, Brokers, Investment companies, Reporting and recordkeeping requirements, Securities, Small businesses.

Text of Amendments

In accordance with the foregoing, Title 17, chapter II of the Code of Federal Regulations is amended as follows:

PART 202—[AMENDED]

1. The authority citation for part 202 continues to read in part as follows:

Authority: 15 U.S.C. 77s, 77t, 78d–1, 78u, 78w, 78*ll*(d), 79r, 79t, 77sss, 77uuu, 80a–37, 80a–41, 80b–9, and 80b–11, unless otherwise noted.

* * * * *

2. By revising the seventh sentence of the introductory text of § 202.3a to read as follows:

§ 202.3a Instructions for filing fees.

* * * Filing fees paid pursuant to Section 6(b) of the Securities Act of 1933 or pursuant to Section 307(b) of the Trust Indenture Act of 1939 should be designated as "restricted," except that filing fees paid with respect to registration statements filed pursuant to Rule 462(b) (§ 230.462(b) of this chapter) should be designated as "unrestricted." * * *

PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

3. The authority citation for Part 228 continues to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78*l*, 78m, 78n, 78o, 78w, 78*ll*, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, unless otherwise noted.

4. By revising paragraph (a)(4) of § 228.501 to read as follows:

§ 228.501 (Item 501) Front of registration statement and outside front cover of prospectus.

* * * * *

(a) * * *

(4) Cross reference to, and identify the location within the prospectus of (e.g., by page number or other specific location), the risk factors section of the prospectus, printed in bold-face roman type at least as high as twelve-point modern type and at least two points leaded;

* * * * *

5. By amending § 228.502 by revising the introductory text, removing the heading from paragraph (a)(1) and replacing the "." at the end of paragraph (a)(1) with a ";", adding a heading and introductory text to paragraph (a), adding a sentence at the end of paragraph (b), adding a sentence at the end of paragraph (c), revising paragraph (f) and including the introduction paragraph to read as follows:

§ 228.502 (Item 502) Inside front and outside back cover pages of prospectus.

On the inside front cover page of the prospectus, except as otherwise specified and except that the outside back cover page may be used for paragraphs (e) and (f), disclose the following:

(a) *Available information.* On the inside front cover page of the prospectus or under an appropriate caption elsewhere in the prospectus:

* * * * *

(b) * * * Such disclosure need not be included on the inside front cover page of the prospectus if it is included under an appropriate caption elsewhere in the prospectus.

(c) * * * Such disclosure need not be included on the inside front cover page of the prospectus if it is included under an appropriate caption elsewhere in the prospectus.

* * * * *

(f) *Table of contents.* Include a detailed table of contents showing the various sections or subdivisions of the prospectus, including any risk factors section set forth in the prospectus pursuant to Item 503(c) (§ 228.503(c)), and the page number on which each such section or subdivision begins.

Instruction to Item 502

Canadian issuers should, in addition to the disclosure required by this Item, provide the information required by Item 502(f) of Regulation S–K. Such disclosure need not be included on the inside front cover page of the prospectus if it is included under an appropriate caption elsewhere in the prospectus.

6. By revising paragraph (b) and paragraph (c) of § 228.503 to read as follows:

§ 228.503 (Item 503) Summary information and risk factors.

* * * * *

(b) *Address and telephone number.* Include in the prospectus the complete

mailing address and telephone number of the small business issuer's principal executive offices.

(c) *Risk factors.* (1) Discuss under the caption "Risk Factors" any factors that make the offering speculative or risky. These factors may include no operating history, no recent profit from operations, poor financial position, the kind of business in which the small business issuer is engaged or proposes to engage, or no market for the small business issuer's securities.

(2) The risk factor discussion should immediately follow the summary section. If no summary section is necessary, the risk factor discussion should immediately follow the cover page of the prospectus or, if included, a pricing information section that immediately follows the cover page.

Instruction to Item 503(c). "Pricing information" as used in paragraph (c) of this section shall mean price and price-related information of the type that may be omitted from the prospectus in an effective registration statement in reliance on Rule 430A(a) (§ 230.430A(a) of this chapter) and information disclosed in a prospectus but subject to change as a result of pricing.

7. By adding one sentence to the end of paragraph (a)(1)(ii) of § 228.512 to read as follows:

§ 228.512 (Item 512) Undertakings.

* * * * *

(a) * * *

(1) * * *

(ii) * * * Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) (§ 230.424(b) of this chapter) if, in the aggregate, the changes in volume and price represent no more than a 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement.

* * * * *

8. By amending § 228.601 to revise the third sentence of paragraph (b)(24) to read as follows:

§ 228.601 (Item 601) Exhibits.

* * * * *

(b) * * *

(24) *Power of attorney.* * * * A power of attorney that is filed with the Commission must relate to a specific filing or an amendment, provided, however, that a power of attorney relating to a registration statement under the Securities Act or an amendment thereto also may relate to any registration statement for the same offering that is to be effective upon filing pursuant to Rule 462(b) under the Securities Act (§ 230.462(b) of this chapter).***

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

9. The authority citation for part 229 continues to read in part as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77i, 77k, 77s, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 79e, 79n, 79t, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, unless otherwise noted.

* * * * *

10. The authority citation following § 229.503 is removed.

11. By revising paragraph (c)(4) of § 229.501 to read as follows:

§ 229.501 (Item 501) Forepart of registration statement and outside front cover page of prospectus.

* * * * *

(c) * * *

(4) Cross reference to and identify the location within the prospectus of (e.g., by page number or other specific location), where applicable, the discussion in the prospectus prescribed by Item 503 of Regulation S–K (§ 229.503) of material risks in connection with the purchase of the securities, printed in bold-face roman type at least as high as twelve-point modern type and at least two points leaded;

* * * * *

12. By amending § 229.502 by revising the introductory text, revising the introductory text of paragraph (a), adding a sentence at the end of paragraph (b), adding a sentence at the end of paragraph (c), revising the last sentence of the introductory text of paragraph (f), and revising paragraph (g) to read as follows:

§ 229.502 (Item 502) Inside front and outside back cover pages of prospectus.

The following information, to the extent applicable, shall appear on the inside front cover page of the prospectus, except as otherwise specified and except that the information required by paragraphs (e) and (g) of this Item may be set forth on the outside back cover page.

(a) *Available information.* Registrants subject to the reporting requirements of section 13(a) or 15(d) of the Exchange Act immediately prior to the filing of the registration statement shall, on the inside front cover page of the prospectus or under an appropriate caption elsewhere in the prospectus:

* * * * *

(b) * * * Such disclosure need not be included on the inside front cover page of the prospectus if it is included under an appropriate caption elsewhere in the prospectus.

(c) * * * Such disclosure need not be included on the inside front cover page of the prospectus if it is included under an appropriate caption elsewhere in the prospectus.

* * * * *

(f) * * * Such disclosure need not be included on the inside front cover page of the prospectus if it is included under an appropriate caption elsewhere in the prospectus.

* * * * *

(g) *Table of contents.* Include a reasonably detailed table of contents showing the subject matter of the various sections or subdivisions of the prospectus, including any risk factors section set forth in the prospectus pursuant to Item 503(c) (§ 229.503(c)), and the page number on which each such section or subdivision begins.

13. By revising paragraph (b) and paragraph (c) of § 229.503 to read as follows:

§ 229.503 (Item 503) Summary information, risk factors and ratio of earnings to fixed charges.

* * * * *

(b) *Address and telephone number.* Registrants shall include in the prospectus the complete mailing address, including zip code, and the telephone number, including area code, of their principal executive offices.

(c) *Risk factors.* (1) Registrants, where appropriate, shall set forth under the caption "Risk Factors" a discussion of the principal factors that make the offering speculative or one of high risk; these factors may be due, among other things, to such matters as an absence of an operating history of the registrant, an absence of profitable operations in recent periods, the financial position of the registrant, the nature of the business in which the registrant is engaged or proposes to engage, or, if common equity or securities convertible into or exercisable for common equity are being offered, the absence of a previous market for the registrant's common equity.

(2) The risk factor discussion should immediately follow the summary section. If no summary section is necessary, the risk factor discussion should immediately follow the cover page of the prospectus or, if included a pricing information section that immediately follows the cover page.

Instruction to Item 503(c). "Pricing information" as used in paragraph (c) of this section shall mean price and price-related information of the type that may be omitted from the prospectus in an effective registration statement in reliance on Rule 430A(a) (§ 230.430A(a) of this chapter) and information disclosed in a prospectus but subject to change as a result of pricing.

* * * * *

14. By revising paragraph (a)(1)(ii) of § 229.512 to read as follows:

§ 229.512 (Item 512) Undertakings.

* * * * *

(a) * * *

(1) * * *

(ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) (§ 230.424(b) of this chapter) if, in the aggregate, the changes in volume and price represent no more than 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement.

* * * * *

15. By amending § 229.601 to revise the fourth sentence of paragraph (b)(24) to read as follows:

§ 229.601 (Item 601) Exhibits.

* * * * *

(b) * * *

(24) *Power of attorney.* * * * A power of attorney that is filed with the Commission shall relate to a specific filing or an amendment thereto, provided, however, that a power of attorney relating to a registration statement under the Securities Act or an amendment thereto also may relate to any registration statement for the same offering that is to be effective upon filing pursuant to Rule 462(b) under the Securities Act (§ 230.462(b) of this chapter). * * *

* * * * *

16. Guide 4 (referenced in § 229.801(d)) is amended by removing the first sentence of the Guide.

Note: The text of Guide 4 does not and the amendments will not appear in the Code of Federal Regulations.

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

17. The authority citation for part 230 is revised to read in part as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78d, 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 78t, 80a–8, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

18. The authority citations following §§ 230.429, 230.439 and 230.461 are removed.

19. By amending paragraph (a) of § 230.110 by revising the phrase "paragraphs (b) and (c)" to read "paragraphs (b), (c) and (d)" and adding paragraph (d) to read as follows:

§ 230.110 Business hours of the Commission.

* * * * *

(d) *Filings by facsimile.* Registration statements and post-effective amendments thereto filed by facsimile transmission pursuant to Rule 462(b) (§ 230.462(b)) and Rule 455 (§ 230.455) may be filed with the Commission each day, except Saturdays, Sundays and federal holidays, from 5:30 p.m. to 10 p.m., Eastern Standard Time or Eastern Daylight Savings Time, whichever is currently in effect.

20. By amending § 230.111 by designating the existing text as paragraph (a) and adding paragraph (b) to read as follows:

§ 230.111 Payment of fees.

* * * * *

(b) Notwithstanding paragraph (a) of this section, for registration statements filed pursuant to Rule 462(b) (§ 230.462(b)) and Rule 110(d) (§ 230.110(d)), payment of filing fees for the purposes of this section may be made by:

(1) The registrant or its agent instructing its bank or a wire transfer service to transmit to the Commission the applicable filing fee by a wire transfer of such amount from the issuer's account or its agent's account to the Commission's account at Mellon Bank as soon as practicable but no later than the close of the next business day following the filing of the registration statement; and

(2) The registrant submitting with the registration statement at the time of filing a certification that:

(i) The registrant or its agent has so instructed its bank or a wire transfer service;

(ii) The registrant or its agent will not revoke such instructions; and

(iii) The registrant or its agent has sufficient funds in such account to cover the amount of such filing fee.

Note to paragraph (b): Such instructions may be sent on the date of filing the registration statement after the close of business of such bank or wire transfer service, provided that the registrant undertakes in the certification sent to the Commission with the registration statement that it will confirm receipt of such instructions by the bank or wire transfer service during regular business hours on the following business day.

21. By amending § 230.402 to add paragraphs (d) and (e) to read as follows:

§ 230.402 Number of copies; binding; signatures.

* * * * *

(d) Notwithstanding any other provision of this section, if a registration statement is filed pursuant to Rule 462(b) (§ 230.462(b)) and Rule 110(d) (§ 230.110(d)), one copy of the complete registration statement, including exhibits and all other papers and documents filed as a part thereof shall be filed with the Commission. Such copy should not be bound and may contain facsimile versions of manual signatures in accordance with paragraph (e) of this section.

(e) Duplicated or facsimile versions of manual signatures of persons required to sign any document filed or submitted to the Commission under the Act, shall be considered manual signatures for purposes of the Act and rules and regulations thereunder, provided that, the original manually signed document is retained by the filer for a period of five years and upon request the filer furnishes to the Commission or the staff the original manually signed document.

22. By amending § 230.424 by adding paragraph (b)(7) before the Instruction, by revising the heading "Instruction:" to read "Instruction 1:", and adding Instruction 2 to read as follows:

§ 230.424 Filing of prospectuses; number of copies.

* * * * *

(b) * * *

(7) Ten copies of a term sheet or abbreviated term sheet sent or given in reliance upon Rule 434 under the Act (§ 230.434) shall be filed with the Commission pursuant to this paragraph no later than the second business day following the earlier of the date of determination of the offering price, or the date it is first used after effectiveness in connection with a

public offering or sales, or transmitted by a means reasonably calculated to result in filing with the Commission by that date. In addition to the information required by paragraph (e) of this section, each copy of such term sheet or abbreviated term sheet shall include the information required by Rule 434(e) (§ 230.434(e)).

Instruction 1: * * *

Instruction 2: Notwithstanding paragraphs (b)(1), (b)(2), (b)(4) and (b)(5) of this section, a form of prospectus sent or given in reliance on Rule 434(c) (§ 230.434(c)) with respect to securities registered on Form S–3 or Form F–3 (§ 239.13 or § 239.33 of this chapter), other than an abbreviated term sheet filed pursuant to paragraph (b)(7) of this section, shall be filed with the Commission on or prior to the date on which a confirmation is sent or given.

* * * * *

23. By adding a sentence at the end of paragraph (b) to § 230.429 to read as follows:

§ 230.429 Prospectus relating to several registration statements.

* * * * *

(b) * * * Where a combined prospectus is being used pursuant to paragraph (a) of this section, a note should be added to the "Calculation of Registration Fee" table in the latest registration statement or any amendment thereto, stating the number or amount of securities being carried forward and the amount of the filing fee associated with such securities that was previously paid with the earlier registration statement(s).

24. By amending § 230.430A by removing the word "five" and adding, in each place it appears, the word "fifteen" in paragraph (a)(3) and by adding a sentence at the end of Instruction to paragraph (a) to read as follows:

§ 230.430A Prospectus in a registration statement at the time of effectiveness.

* * * * *

Instruction to paragraph (a): * * * Notwithstanding the foregoing, any increase or decrease in volume (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b)(1) (§ 230.424(b)(1)) or Rule 497(h) (§ 230.497(h)) if, in the aggregate, the changes in volume and price represent no more than a 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement.

* * * * *

25. By adding § 230.434 to read as follows:

§ 230.434 Prospectus delivery requirements in firm commitment underwritten offerings of securities for cash.

(a) Where securities are offered for cash in a firm commitment underwritten offering or investment grade debt securities are offered for cash on an agency basis under a medium term note program, and such securities are neither asset-backed securities nor structured securities, and the conditions described in paragraph (b) or paragraph (c) of this section are satisfied, then:

(1) The prospectus subject to completion and the term sheet described in paragraph (b) of this section, taken together, and the prospectus subject to completion and the abbreviated term sheet described in paragraph (c) of this section, taken together, shall constitute prospectuses that meet the requirements of section 10(a) of the Act (15 U.S.C. 77j(a)) for purposes of section 5(b)(2) of the Act (15 U.S.C. 77e(b)(2)) and section 2(10(a) of the Act (15 U.S.C. 77b(10)(a)); and

(2) The section 10(a) prospectus described in paragraph (a)(1) of this section shall have:

(i) Been sent or given prior to or at the same time that a confirmation is sent or given for purposes of section 2(10)(a) of the Act; and

(ii) Accompanied or preceded the transmission of the securities for purpose of sale or for delivery after sale for purposes of Section 5(b)(2) of the Act.

(b) With respect to offerings of securities that are registered on a form other than Form S–3 or Form F–3 (§ 239.13 or § 239.33 of this chapter), and with respect to offerings of securities by only those investment companies registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) that register their securities on Form N–2 (§ 274.11a–1 of this chapter) or Form S–6 (§ 239.16 of this chapter), the following conditions are satisfied:

(1) A prospectus subject to completion and any term sheet described in paragraph (b)(3) of this section, together or separately, are sent or given prior to or at the same time with the confirmation;

(2) Such prospectus subject to completion and term sheet, together, are not materially different from the prospectus in the registration statement at the time of its effectiveness or an effective post-effective amendment thereto (including, in both, instances, information deemed to be a part of the registration statement at the time of effectiveness pursuant to Rule 430A(b) (§ 230.430A(b)); and

(3) A term sheet under this paragraph (b) shall set forth all information material to investors with respect to the offering that is not disclosed in the prospectus subject to completion or the confirmation.

(c) With respect to offerings of securities registered on Form S–3 or Form F–3 (§ 239.13 or § 239.33 of this chapter), the following conditions are satisfied.

(1) A prospectus subject to completion and the abbreviated term sheet described in paragraph (c)(3) of this section, together or separately, are sent or given prior to or at the same time with the confirmation;

(2) A form of prospectus that:

(i) Discloses information previously omitted from the prospectus filed as part of an effective registration statement in reliance upon Rule 430A (§ 230.430A), to the extend not set forth in the abbreviated term sheet (as described in paragraph (c)(3) of this section), shall be filed pursuant to Rule 424(b) (§ 230.424(b)) on or prior to the date on which a confirmation is sent or given; or

(ii) Discloses the public offering price, description of securities, to the extent not set forth in the abbreviated term sheet (as described in paragraph (c)(3) of this section), and specific method of distribution or similar matters shall be filed pursuant to Rule 424(b) (§ 230.424(b)) on or prior to the date on which a conformation is sent or given; and

(3) The abbreviated term sheet under this paragraph (c) shall set forth, if not previously disclosed in the prospectus subject to completion or the registrant's Exchange Act filings incorporated by reference into the prospectus:

(i) The description of securities required by Item 202 of Regulation S–K (§ 229.202 of this chapter), or a fair and accurate summary thereof; and

(ii) All material changes to the registrant's affairs required to be disclosed pursuant to Item 11 of Form S–3 or Form F–3 (§ 239.13 or § 239.33 of this chapter), as applicable.

(d) Except in the case of offerings pursuant to Rule 415(a)(1)(x), (§ 230.415(a)(1)(x), the information contained in any term sheet or abbreviated term sheet described under this section shall be deemed to be a part of the registration statement as of the time such registration statement was declared effective. In the case of offerings pursuant to Rule 415(a)(1)(x) (§ 230.415(a)(1)(x)), the information contained in any term sheet or abbreviated term sheet described under this section shall be deemed to be a part of the registration statement as of the time such information is filed with the Commission.

Instruction: With respect to the obligation to file any form of prospectus, term sheet, or abbreviated term sheet used in reliance on this section, see Rule 424(b) (§ 230.424(b)) or Rule 497(h) (§ 230.497(h)).

(e) Any term sheet or abbreviated term sheet described under this section shall, in the top center of the cover page thereof, state that such document is a supplement to a prospectus and identify that prospectus by issuer name and date; clearly identify that such document is a term sheet or abbreviated term sheet used in reliance on Rule 434; set forth the approximate date of first use of such document; and clearly identify the documents that, when taken together, constitute the Section 10(a) prospectus.

(f) For purposes of this section, *asset-backed securities* shall mean asset-backed securities as defined in General Instruction I.B.5. of Form S–3 (§ 239.13 of this chapter).

(g) For purposes of this section, *prospectus subject to completion* shall mean any prospectus that is either a preliminary prospectus used in reliance on Rule 430 (§ 230.430), a prospectus omitting information in reliance upon Rule 430A (§ 230.430A), or a prospectus omitting information that is not yet known concerning a delayed offering pursuant to Rule 415(a)(i)(x) (§ 230.415(a)(1)(x)) that is contained in a registration statement at the time of effectiveness or as subsequently revised.

(h) For purposes of this section, *structured securities* shall mean securities whose cash flow characteristics depend upon one or more indices or that have embedded forwards or options or securities where an investor's investment return and the issuer's payment obligations are contingent on, or highly sensitive to, changes in the value of underlying assets, indices, interest rates or cash flows.

(i) For purposes of this section, *investment grade securities* shall mean investment grade securities as defined in General Instruction I.B.2. of Form S–3 or Form F–3 (§ 239.13 or § 239.33 of this chapter).

(j) For the purposes of this section, a firm commitment underwritten offering shall include a firm commitment underwritten offering of securities by a closed-end company or by a unit investment trust registered under the Investment Company Act of 1940.

26. By designating the existing text as paragraph (a) and adding paragraph (b) to § 230.439 to read as follows:

§ 230.439 Consent to use of material incorporated by reference.

(a) * * *

(b) Notwithstanding paragraph (a) of this section, any required consent may be incorporated by reference into a registration statement filed pursuant to Rule 462(b) under the Act (§ 230.462(b)) from a previously filed registration statement relating to that offering, provided that, the consent contained in the previously filed registration statement expressly provides for such incorporation.

27. By revising the second and third sentences of § 230.455 to read as follows:

§ 230.455 Place of filing.

* * * Registration statements on Form SB–1 or SB–2 may be filed with the Commission either at its principal office or at the Commission's regional or district offices as specified in General Instruction A to each of those forms, except that registration statements and post-effective amendments thereto on such forms that are filed pursuant to Rule 462(b) (§ 230.462(b)) and Rule 110(d) (§ 230.110(d)) shall be filed at the Commission's principal office. Such material may be filed by delivery to the Commission through the mails or otherwise; provided, however, that only registration statements and post-effective amendments thereto filed pursuant to Rule 462(b) (§ 230.462(b)) and Rule 110(d) (§ 230.110(d)) may be filed by means of facsimile transmission.

28. By amending § 230.457 to revise paragraph (o) read as follows:

§ 230.457 Computation of fee.

* * * * *

(o) Where an issuer is offering securities, the registration fee may be calculated on the basis of the maximum aggregate offering price of all the securities listed in the "Calculation of Registration Fee" Table. The number of shares or units of securities need not be included in the "Calculation of Registration Fee" Table. If the maximum aggregate offering price increases prior to the effective date of the registration statement, a pre-effective amendment must be filed to increase the maximum dollar value being registered and the additional filing fee shall be paid.

29. By revising the first sentence of paragraph (a) and adding two new sentences immediately after the first sentence of paragraph (a) to § 230.461 to read as follows:

§ 230.461 Acceleration of effective date.

(a) Requests for acceleration of the effective date of a registration statement shall be made by the registrant and the managing underwriters of the proposed issue, or, if there are no managing underwriters, by the principal underwriters of the proposed issue, and shall state the date upon which it is desired that the registration statement shall become effective. Such requests may be made in writing or orally, provided that, if an oral request is to be made, a letter indicating that fact and stating that the registrant and the managing or principal underwriters are aware of their obligations under the Act must accompany the registration statement for a pre-effective amendment thereto) at the time of filing with the Commission. Written requests may be sent to the Commission by facsimile transmission. * * *

* * * * *

30. By revising the section heading, designating the existing text as paragraph (a), and adding paragraphs (b) and (c) to § 230.462 to read as follows:

§ 230.462 Immediate effectiveness of certain registration statements and post-effective amendments.

(a) * * *

(b) A registration statement and any post-effective amendment thereto shall become effective upon filing with the Commission if:

(1) The registration statement is for registering additional securities of the same class(es) as were included in an earlier registration statement for the same offering and declared effective by the Commission;

(2) The new registration statement is filed prior to the time confirmations are sent or given; and

(3) The new registration statement registers additional securities in an amount and at a price that together represent no more than 20% of the maximum aggregate offering price set forth for each class of securities in the "Calculation of Registration Fee" table contained in such earlier registration statement.

(c) If the prospectus contained in a post-effective amendment filed prior to the time confirmations are sent or given contains no substantive changes from or additions to the prospectus previously filed as part of the effective registration statement, other than price-related information omitted from the registration statement in reliance on Rule 430A of the Act (§ 230.430A), such post-effective amendment shall become effective upon filing with the Commission.

31. By amending § 230.472 to add paragraph (e) to read as follows:

§ 230.472 Filing of amendments; number of copies.

* * * * *

(e) Notwithstanding any other provision of this section, if a post-effective amendment is filed pursuant to Rule 462(b) (§ 230.462(b)) and Rule 110(d) (§ 230.110(d)), one copy of the complete post-effective amendment, including exhibits and all other papers and documents filed as a part thereof shall be filed with the Commission. Such copy should not be bound and may contain facsimile versions of manual signatures in accordance with Rule 402(e) (§ 230.402(e)).

32. By amending § 230.483 to add a sentence at the end of paragraph (b) and to designate the existing text of paragraph (c) as paragraph (c)(1) and adding paragraph (c)(2) to read as follows:

§ 230.483 Exhibits for certain registration statements, financial data schedule.

* * * * *

(b) * * * A power of attorney that is filed with the Commission shall relate to a specific filing, an amendment thereto, or a related registration statement that is to be effective upon filing pursuant to Rule 462(b) (§ 230.462(b)) under the Act.

(c)(1) * * *

(2) In a registration statement filed pursuant to Rule 462(b) (§ 230.462(b)) by a closed-end company, any required consent may be incorporated by reference into the registration statement from a previously filed registration statement related to the offering, provided that the consent contained in the previously filed registration statement expressly provides for such incorporation. Any consent filed in a Rule 462(b) (§ 230.462(b)) registration statement may contain duplicated or facsimile versions of required signatures, and such signatures shall be considered manually filed for the purposes of the Act and the rules thereunder.

33. By amending § 230.497 to designate the existing text of paragraph (h) as paragraph (h)(1) and adding paragraph (h)(2) to read as follows:

230.497 Filing of investment company prospectuses—number of copies.

(h) * * *

(2) Ten copies of each term sheet or abbreviated term sheet sent or given in reliance upon Rule 434 (§ 230.434) shall be filed with the Commission no later than the second business day following the earlier of the date of determination of the offering price, or the date it is first used after effectiveness in connection with a public offering or sales, or transmitted by a means reasonably calculated to result in filing with the Commission by that date.

* * * * *

PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILERS

34. The authority citation for Part 232 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77sss(a), 78c(b), 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*(d), 79t(a), 80a–8, 80a–29, 80a–30 and 80a–37.

35. By adding paragraph (a)(3) before the Note to § 232.13 to read as follows:

§ 232.13 Date of filing; adjustment of filing date.

(a) * * *

(3) Notwithstanding paragraph (a)(2) of this section, any registration statement or any post-effective amendment thereto filed pursuant to Rule 462(b) (§ 230.462(b) of this chapter) by direct transmission commending on or before 10 p.m. Eastern Standard Time or Eastern Daylight Savings Time, whichever is currently in effect, shall be deemed filed on the same business day.

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

36. The authority citation for part 239 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*(d), 79e, 79f, 79g, 79j, 79, 79m, 79n, 79q, 79t, 80a–8, 80a–29, 80a–30 and 80a–37, unless otherwise noted.

§ 239.9 [Amended]

* * * * *

37. By amending Form SB–1 (referenced in § 239.9) by adding three check boxes to the cover page immediately before "Calculation of Registration Fee," by adding a Note to appear immediately after the Calculation of Registration Fee table, and by adding paragraph H to General Instructions to read as follows:

Note: The text of Form SB–1 does not and the amendments will not appear in the Code of Federal Regulations.

Form SB–1–Registration Statement Under the Securities Act of 1933

* * * * *

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.[ ]

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.[ ]

If delivery of the prospectus is expected to be made pursuant to Rule 434, please check the following box.[ ]

* * * * *

Calculation of Registration Fee

Note: If the filing fee is calculated pursuant to Rule 457(o) under the Securities Act, only the title of the class of securities to be registered, the proposed maximum aggregate offering price for that class of securities and the amount of registration fee need to appear in the Calculation of Registration Fee table. Any difference between the dollar amount of securities registered for such offerings and the dollar amount of securities sold may be carried forward on a future registration statement pursuant to Rule 429 under the Securities Act.

* * * * *

General Instructions

* * * * *

H. *Registration of additional securities.* With respect to the registration of additional securities for an offering pursuant to Rule 462(b) under the Securities Act, the registrant may file a registration statement consisting only of the following: The facing page; a statement that the contents of the earlier registration statement, identified by file number, are incorporated by reference; required opinions and consents; the signature page; and any price-related information omitted from the earlier registration statement in reliance on Rule 430A that the registrant chooses to include in the new registration statement. The information contained in such a Rule 462(b) registration statement shall be deemed to be a part of the earlier registration statement as of the date of effectiveness of the Rule 462(b) registration statement. Any opinion or consent required in the Rule 462(b) registration statement may be incorporated by reference from the earlier registration statement with respect to the offering, if: (i) Such opinion or consent expressly provides for such incorporation; and (ii) such opinion relates the securities registered pursuant to Rule 462(b). *See* Rule 411(c) and Rule 439(b) under the Securities Act.

* * * * *

§ 239.10 [Amended]

38. By amending Form SB–2 (referenced in § 239.10) by adding three check boxes to the cover page immediately before "Calculation of Registration Fee," by adding two sentences to the end of the Note following the Calculation of Registration Fee table, and by adding paragraph C to General Instructions to read as follows:

Note: The text of Form SB–2 does not and the amendments will not appear in the Code of Federal Regulations.

Form SB–2—Registration Statement Under the Securities Act of 1933

* * * * *

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.[ ]

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.[ ]

If delivery of the prospectus is expected to be made pursuant to Rule 434, please check the following box.[ ]

* * * * *

Calculation of Registration Fee

* * * * *

Note: * * * If the filing fee is calculated pursuant to Rule 457(o) under the Securities Act, only the title of the class of securities to be registered, the proposed maximum aggregate offering price for that class of securities and the amount of registration fee need to appear in the Calculation of Registration Fee table. Any difference between the dollar amount of securities registered for such offerings and the dollar amount of securities sold may be carried forward on a future registration statement pursuant to Rule 429 under the Securities Act.

* * * * *

General Instructions

* * * * *

C. Registration of additional securities. With respect to the registration of additional securities for an offering pursuant to Rule 462(b) under the Securities Act, the registrant may file a registration statement consisting only of the following: The facing page; a statement that the contents of the earlier registration statement, identified by file number, are incorporated by reference; required opinions and consents; the signature page; and any price-related information omitted from the earlier registration statement in reliance on Rule 430A that the registrant chooses to include the new registration statement. The information contained in such a Rule 462(b) registration statement shall be deemed to be a part of the earlier registration statement as of the date of effectiveness of the Rule 462(b) registration statement. Any opinion or consent required in the Rule 462(b) registration statement may be incorporated by reference from the earlier registration statement with respect to the offering, if: (i) Such opinion or consent expressly provides for such incorporation; and (ii) such opinion relates to the securities registered pursuant to Rule 462(b). *See* Rule 411(c) and Rule 439(b) under the Securities Act.

§ 239.11 [Amended]

39. By amending Form S–1 (referenced in § 239.11) by adding three check boxes to the cover page immediately before "Calculation of Registration Fee," and by adding two sentences to the end of the Note following the Calculation of Registration Fee table, and by adding paragraph V. to General Instructions to read as follows:

Note: The text of Form S–1 does not and the amendments will not appear in the Code of Federal Regulations.

Form S–1—Registration Statement Under the Securities Act of 1933

* * * * *

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.[ ]

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. [ ]

If delivery of the prospectus is expected to be made pursuant to rule 434, please check the following box. [ ]

* * * * *

Calculation of Registration Fee

* * * * *

Note: * * * If the filing fee is calculated pursuant to Rule 457(o) under the Securities Act, only the title of the class of securities to be registered, the proposed maximum aggregate offering price for that class of securities and the amount of registration fee need to appear in the Calculation of Registration Fee table. Any difference between the dollar amount of securities registered for such offerings and the dollar amount of securities sold may be carried forward on a future registration statement pursuant to Rule 429 under the Securities Act.

General Instructions

* * * * *

V. Registration of Additional Securities

With respect to the registration of additional securities for an offering pursuant to Rule 462(b) under the Securities Act, the registrant may file a registration statement consisting only of the following: The facing page; a statement that the contents of the earlier registration statement, identified by file number, are incorporated by reference; required opinions and consents; the signature page; and any price-related information ommitted from the earlier registration statement in reliance on Rule 430A that the registrant chooses to include in the new registration statement. The information contained in such a Rule 462(b) registration statement shall be deemed to be a part of the earlier registration statement as of the date of effectiveness of the rule 462(b) registration statement. Any opinion or consent required in the Rule 462(b) registration statement may be incorporated by reference from the earlier registration statement with respect to the offering, if: (i) Such opinion or consent expressly provides for such incorporation; and (ii) such opinion relates to the securities registered pursuant to rule 462(b). *See* Rule 411(c) and rule 439(b) under the Securities Act.

* * * * *

§ 239.12 [Amended]

40. By amending Form S–2 (referenced in § 239.12) by adding three check boxes to the cover page immediately before "Calculation of Registration Fee," by adding two sentences to the end of the Note following the Calculation of Registration Fee table, and by adding paragraph III. to General Instructions to read as follows:

Note: The text of Form S–2 does not and the amendments will not appear in the Code of Federal Regulations.

Form S–2—Registration Statement under the Securities Act of 1933

* * * * *

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.[ ]

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. [ ]

If delivery of the prospectus is expected to be made pursuant to rule 434, please check the following box. [ ]

* * * * *

Calculation of Registration Fee

* * * * *

Note: * * * If the filing fee is calculated pursuant to Rule 457(o) under the Securities Act, only the title of the class of securities to be registered, the proposed maximum aggregate offering price for that class of securities and the amount of registration fee need to appear in the Calculation of Registration Fee table. Any difference between the dollar amount of securities registered for such offering and the dollar amount of securities sold may be carried forward on a future registration statement pursuant to Rule 429 under the Securities Act.

General Instructions

* * * * *

III. Registration of Additional Securities. With respect to the registration of additional securities for an offering pursuant to Rule 462(b) under the Securities Act, the registrant may file a registration statement consisting only of the following: the facing page; a statement that the contents of the earlier registration statement, identified by file number, are incorporated by reference; required opinions and consents; the signature page; and any price-related information

ommitted from the earlier registration statement in reliance on Rule 430A that the registrant chooses to include in the new registration statement. The information contained in such a Rule 462(b) registration statement shall be deemed to be a part of the earlier registration statement as of the date of effectiveness of the Rule 462(b) registration statement. Any opinion or consent required in the Rule 462(b) registration statement may be incorporated by reference from the earlier registration statement with respect to the offering, if: (i) such opinion or consent expressly provides for such incorporation; and (ii) such opinion relates to the securities registered pursuant to Rule 462(b). *See* Rule 411(c) and Rule 439(b) under the Securities Act.

* * * * *

§ 239.13 [Amended]

41. By amending Form S–3 (referenced in § 239.13) by adding three check boxes to the cover page immediately before "Calculation of Registration Fee," by adding three sentences to the end of the Note following the Calculation of Registration Fee table, and by adding paragraph IV. to General Instructions to read as follows:

Note: The text of Form S–3 does not and the amendments will not appear in the Code of Federal Regulations.

Form S–3—Registration Statement Under the Securities Act of 1933

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.[ ]_____

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.[ ]

_____

If delivery of the prospectus is expected to be made pursuant to Rule 434, please check the following box.[ ]

Calculation of Registration Fee

* * * * *

Note: * * * If the filing fee is calculated pursuant to Rule 457(o) under the Securities Act, only the title of the class of securities to be registered, the proposed maximum aggregate offering price for that class of securities and the amount of registration fee need to appear in the "Calculation of Registration FEE" Table ("Fee Table"). Where two or more classes of securities are being registered pursuant to General Instruction II.D, however, the Fee Table need only specify the maximum aggregate offering price for all classes; the Fee Table need not specify by each class the proposed maximum aggregate offering price (See General Instruction II.D). Any difference between the dollar amount of securities registered for such offerings and the dollar amount of securities sold may be carried forward on a future registration statement pursuant to Rule 429 under the Securities Act.

General Instructions

* * * * *

IV. *Registration of additional securities.* With respect to the registration of additional securities for an offering pursuant to Rule 462(b) under the Securities Act, the registrant may file a registration statement consisting only of the following: The facing page; a statement that the contents of the earlier registration statement, identified by file number, are incorporated by reference; required opinions and consents; the signature page; and any price-related information omitted from the earlier registration statement in reliance on Rule 430A that the registrant chooses to include in the new registration statement. The information contained in such a Rule 462(b) registration statement shall be deemed to be a part of the earlier registration statement as of the date of effectiveness of the Rule 462(b) registration statement. Any opinion or consent required in the Rule 462(b) registration statement may be incorporated by reference from the earlier registration statement with respect to the offering, if: (i) Such opinion or consent expressly provides for such incorporation; and (ii) such opinion relates to the securities registered pursuant to Rule 462(b). *See* Rule 411(c) and Rule 439(b) under the Securities Act.

* * * * *

§ 239.18 [Amended]

42. By amending Form S–11 (referenced in § 239.18) by adding paragraph G. to General Instructions, by adding three check boxes to the cover page immediately before "Calculation of Registration Fee" and by adding two sentences to the end of the Note following the Calculation of Registration Fee table to read as follows:

Note: The text of Form S–11 does not and the amendments will not appear in the Code of Federal Regulations.

Form S–11—For Registration Under the Securities Act of 1933 of Securities of Certain Real Estate Companies

General Instructions

* * * * *

G. *Registration of additional securities.* With respect to the registration of additional securities for an offering pursuant to Rule 462(b) under the Securities Act, the registrant may file a registration statement consisting only of the following: The facing page; a statement that the contents of the earlier registration statement, identified by file number, are incorporated by reference; required opinions and consents; the signature page; and any price-related information omitted from the earlier registration statement in reliance on Rule 430A that the registrant chooses to include in the new registration statement. The information contained in such a Rule 462(b) registration statement shall be deemed to be a part of the earlier registration statement as of the date of effectiveness of the Rule 462(b) registration statement. Any opinion or consent required in the rule 462(b) registration statement may be incorporated by reference from the earlier registration statement with respect to the offering, if: (i) Such opinion or consent expressly provides for such incorporation; and (ii) such opinion relates to the securities registered pursuant to Rule 462(b). *See* Rule 411(c) and rule 439(b) under the Securities Act.

* * * * *

Form S–11—Registration Statement under the Securities Act of 1933

* * * * *

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. [ ]_____

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. [ ]

_____

If delivery of the prospectus is expected to be made pursuant to Rule 434, please check the following box. [ ]

* * * * *

Calculation of Registration Fee

* * * * *

Note: * * * If the filing fee is calculated pursuant to Rule 457(o) under the Securities Act, only the title of the class of securities to be registered, the proposed maximum aggregate offering price for that class of securities and the amount of registration fee needed to appear in the Calculation of Registration Fee table. Any difference between the dollar amount of securities registered for such offerings and the dollar amount of securities sold may be carried forward on a future registration statement pursuant to Rule 429 under the Securities Act.

* * * * *

§ 239.31 [Amended]

43. By amending Form F–1 (referenced in § 239.31) by adding three check boxes to the cover page immediately before "Calculation of Registration Fee," by adding two sentences to the end of the Note following the Calculation of Registration Fee table, and by adding paragraph V. to General Instructions to read as follows:

Note: The text of Form F–1 does not and the amendments will not appear in the Code of Federal Regulations

Form F–1—Registration Statement under the Securities Act of 1933

* * * * *

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check

the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. [ ]_____

If this Form is a post-effective amendment filed pursuant to rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. [ ]

_____

If delivery of the prospectus is expected to be made pursuant to Rule 434, please check the following box. [ ]

* * * * *

Calculation of Registration Fee

* * * * *

Note: * * * If the filing fee is calculated pursuant to Rule 457(o) under the Securities Act, only the title of the class of securities to be registered, the proposed maximum aggregate offering price for that class of securities and the amount of registration fee need to appear in the Calculation of Registration Fee table. Any difference between the dollar amount of securities registered for such offerings and the dollar amount of securities sold may be carried forward on a future registration statement pursuant to Rule 429 under the Securities Act.

General Instructions

* * * * *

V. *Registration of additional securities.* With respect to the registration of additional securities for an offering pursuant to Rule 462(b) under the Securities Act, the registrant may file a registration statement consisting only of the following: The facing page; a statement that the contents of the earlier registration statement, identified by file number, are incorporated by reference; required opinions and consents; the signature page; and any price-related information omitted from the earlier registration statement in reliance on Rule 430A that the registrant chooses to include in the new registration statement. The information contained in such a Rule 462(b) registration statement shall be deemed to be a part of the earlier registration statement as of the date of effectiveness of the Rule 462(b) registration statement. Any opinion or consent required in the rule 462(b) registration statement may be incorporated by reference from the earlier registration statement with respect to the offering, if: (i) such opinion or consent expressly provides for such incorporation; and (ii) such opinion relates to the securities registered pursuant to Rule 462(b). *See* Rule 411(c) and Rule 439(b) under the Securities Act.

* * * * *

44. By amending Form F–2 (referenced in § 239.32) by adding three check boxes to the cover page immediately before "Calculation of Registration Fee," by adding two sentences to the end of the Note following the Calculation of Registration Fee table, and by adding paragraph IV. to General Instructions to read as follows:

Note: The text of Form F–2 does not and the amendments will not appear in the Code of Federal Regulations.

Form F–2—Registration Statement under the Securities Act of 1933

* * * * *

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. [ ]_____

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. [ ]

_____

If delivery of the prospectus is expected to be made pursuant to Rule 434, please check the following box. [ ]

* * * * *

Calculation of Registration Fee

* * * * *

Note: * * * If the filing fee is calculated pursuant to Rule 457(o) under the Securities Act, only the title of the class of securities to be registered, the proposed maximum aggregate offering price for that class of securities and the amount of registration fee need to appear in the Calculation of Registration Fee table. Any difference between the dollar amount of securities registered for such offerings and the dollar amount of securities sold may be carried forward on a future registration statement pursuant to Rule 429 under the Securities Act.

General Instructions

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IV. *Registration of additional securities.* With respect to the registration of additional securities for an offering pursuant to Rule 462(b) under the Securities Act, the registrant may file a registration statement consisting only of the following: The facing page; a statement that the contents of the earlier registration statement, identified by file number, are incorporated by reference; required opinions and consents; the signature page; and any price-related information omitted from the earlier registration statement in reliance on Rule 430A that the registrant chooses to include in the new registration statement. The information contained in such a Rule 462(b) registration statement shall be deemed to be a part of the earlier registration statement as of the date of effectiveness of the Rule 462(b) registration statement. Any opinion or consent required in the Rule 462(b) registration statement may be incorporated by reference from the earlier registration statement with respect to the offering, if: (i) Such opinion or consent expressly provides for such incorporation; and (ii) such opinion relates to the securities registered pursuant to Rule 462(b). *See* Rule 411(c) and Rule 439(b) under the Securities Act.

* * * * *

45. By amending Form F–3 (referenced in § 239.33) by adding three check boxes to the cover page immediately before "Calculation of Registration Fee," by adding three sentences to the end of the Note following the Calculation of Registration Fee table, and by adding paragraph IV to General Instructions to read as follows:

Note: The text of Form F–3 does not and the amendments will not appear in the Code of Federal Regulations.

Form F–3—Registration Statement Under the Securities Act of 1933

* * * * *

if this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. [ ]_____

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.[ ]

_____

If delivery of the prospectus is expected to be made pursuant to Rule 434, please check the following box. [ ]

* * * * *

Calculation of Registration Fee

* * * * *

Note: * * * If the filing fee is calculated pursuant to Rule 457(o) under the Securities Act, only the title of the class of securities to be registered, the proposed maximum aggregate offering price for that class of securities and the amount of registration fee need to appear in the "Calculation of Registration Fee" table ("Fee Table"). Where two or more classes of securities are being registered pursuant to General Instruction II.C, however, the Fee Table need only specify the maximum aggregate offering price for all classes; the Fee Table need not specify by each class the proposed maximum aggregate offering price (See General Instruction II.C). Any difference between the dollar amount of securities registered for such offerings and the dollar amount of securities sold may be carried forward on a future registration statement pursuant to Rule 429 under the Securities Act.

General Instructions

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IV. *Registration of additional securities.* With respect to the registration of additional securities for an offering pursuant to Rule 462(b) under the Securities Act, the registrant may file a registration statement consisting only of the following: The facing page; a statement that the contents of the earlier registration statement, identified by file number, are incorporated by reference; required opinions and consents; the signature page; and any price-related information omitted from the earlier registration statement in reliance on Rule 430A that the

registrant chooses to include in the new registration statement. The information contained in such a Rule 462(b) registration statement shall be deemed to be a part of the earlier registration statement as of the date of effectiveness of the Rule 462(b) registration statement. Any opinion or consent required in the Rule 462(b) registration statement may be incorporated by reference from the earlier registration statement with respect to the offering, if: (i) Such opinion or consent expressly provides for such incorporation; and (ii) such opinion relates to the securities registered pursuant to Rule 462(b). *See* Rule 411(c) and Rule 439(b) under the Securities Act.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

46. The authority citation for Part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78w, 78x, 78*ll*(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

47. The authority citation following § 15c2–8 is removed.

48. By amending § 240.12b–11 to add paragraph (d) to read as follows:

§ 240.12b–11 Number of copies; signatures; binding.

* * * * *

(d) Duplicated or facsimile versions of manual signatures of persons required to sign any registration statement pursuant to sections 12(b) and 12(g) of the Act (15 U.S.C. 78*l*(b) and 78*l*(g)), any report or schedule filed pursuant to sections 13 and 15(d) of the Act (15 U.S.C. 78m and 78o(d)), or any amendment or exhibit to such registration statement, report or schedule, that are filed or submitted to the Commission under the Act, shall be considered manual signatures for purposes of the Act and rules and regulations thereunder; provided that, the original signed document is retained by the filer for a period of five years and, upon request, the filer furnishes to the Commission or the staff the original manually signed document.

49. By amending § 240.14d–1 to add paragraph (d) to read as follows:

§ 240.14d–1 Scope of and definitions applicable to Regulations 14D and 14E.

* * * * *

(d) Duplicated or facsimile versions of manual signatures of persons required to sign any document pursuant to Regulation 14D and Regulation 14E that is filed or submitted to the Commission under the Act shall be considered manual signatures for purposes of the Act and rules and regulations thereunder; provided that, the original signed document is retained by the filer for a period of five years and, upon request, the filer furnishes to the Commission or the staff the original manually signed document.

50. Section 240.15c2–8(b) is amended by revising the word "mailing" to read "sending".

51 Section 240.15c2–8(c) is amended by revising the word "mail" to read "send".

52. Section 240.15c2–8(d) is amended by revising the word "mail" to read "send".

53. Section 240.15c2–8 is amended by adding paragraph (j) to read as follows:

§ 240.15c2–8 Delivery of Prospectus

* * * * *

(j) For purposes of this section, the term *preliminary prospectus* shall include the term *prospectus subject to completion* as used in 17 CFR 230.434(a), and the term *final prospectus* shall include the term *Section 10(a) prospectus* as used in 17 CFR 230.434(a).

54. Amend § 240.15c6–1 by revising the phrase "paragraph (b)" in paragraph (a) to read "paragraphs (b), (c), and (d)"; by revising the phrase "Paragraph (a)" in paragraph (b) to read "Paragraphs (a) and (c)"; by removing paragraph (b)(2); by redesignating paragraph (b)(3) as paragraph (b)(2); and by adding paragraphs (c) and (d) to read as follows:

§ 240.15c6–1 Settlement cycle.

* * * * *

(c) Paragraph (a) of this section shall not apply to contracts for the sale for cash of securities that are priced after 4:30 p.m. Eastern time on the date such securities are priced and that are sold by an issuer to an underwriter pursuant to a firm commitment underwritten offering registered under the Securities Act of 1933 or sold to an initial purchaser by a broker-dealer participating in such offering provided that a broker or dealer shall not effect or enter into a contract for the purchase or sale of such securities that provides for payment of funds and delivery of securities later than the fourth business day after the date of the contract unless otherwise expressly agreed to by the parties at the time of the transaction.

(d) For purposes of paragraphs (a) and (c) of this section, the parties to a contract shall be deemed to have expressly agreed to an alternate date for payment of funds and delivery of securities at the time of the transaction for a contract for the sale for cash of securities pursuant to a firm commitment offering if the managing underwriter and the issuer have agreed to such date for all securities sold pursuant to such offering and the parties to the contract have not expressly agreed to another date for payment of funds and delivery of securities at the time of the transaction.

55. By amending § 240.16a–3 to add paragraph (i) to read as follows:

§ 240.16a–3 Reporting transactions and holdings.

* * * * *

(i) Duplicated or facsimile versions of manual signatures of persons required to sign any document pursuant to Section 16 of the Act (15 U.S.C. 78p) that is filed or submitted to the Commission under the Act shall be considered manual signatures for purposes of the Act and rules and regulations thereunder; provided that, the original signed document is retained by the filer for a period of five years and, upon request, the filer furnishes to the Commission or the staff the original manually signed document.

PART 270—GENERAL RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

56. The authority citation for Part 270 continues to read, in part as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–37, 80a–39 unless otherwise noted.

* * * * *

57. By amending § 270.8b–11 to add paragraph (e) to read as follows:

§ 270.8b–11 Number of copies; signatures; binding.

* * * * *

(e) Duplicated or facsimile versions of manual signatures of persons required to sign any registration statement or report, including all amendments and exhibits to such statements or reports, that are filed or submitted to the Commission under the Act, shall be considered manual signatures for the purposes of the Act and the rules and regulations thereunder; provided that, the original signed document is retained by the filer for a period of five years and, upon request, the filer furnishes to the Commission or the staff the original manually signed document.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

58. The authority citation for part 274 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l*, 78m, 78n, 78o(d), 80a–8, 80a–24, and 80a–29, unless otherwise noted.

§§ 239.14 and 274.11a–1 [Amended]

59. By amending Form N–2 (referenced in §§ 239.14 and 274.11a–1) by adding one check box to the cover page immediately before "Calculation of Registration Fee Under the Securities Act of 1933," and by adding two sentences to the end of the first Instruction following the Calculation of Registration Fee Under the Securities Act of 1933 table and by adding paragraph J. to the General Instructions to read as follows:

Note: The text of Form N–2 does not and these amendments will not appear in the Code of Federal Regulations.

Form N–2—Registration Statement Under the Securities Act of 1933

* * * * *

[ ] This Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act and the Securities Act registration statement number of the earlier effective registration statement for the same offering is _____.

Calculation of Registration Fee Under the Securities Act of 1933

* * * * *

Instructions

* * * For offerings made pursuant to Rule 430A under the Securities Act, only the title of the class of securities to be registered, the proposed maximum aggregate offering price for that class of securities and the amount of registration fee need to appear in the Calculation of Registration Fee table. Any difference between the dollar amount of securities registered for such offerings and the dollar amount of securities sold may be carried forward on a future registration statement pursuant to Rule 429 under the Securities Act.

General Instructions

* * * * *

J. *Registration additional securities.* With respect to the registration of additional securities for an offering pursuant to Rule 462(b) under the Securities Act, the registrant may file a registration statement consisting only of the following: The facing page; a statement that the contents of the earlier registration statement, identified by file number, are incorporated by reference; required opinions and consents; the signature page; and any price-related information omitted from the earlier registration statement in reliance on Rule 430A that the registrant chooses to include in the new registration statement. Any opinion or consent required in such a registration statement may be incorporated by reference from the earlier registration statement with respect to the offering, if: (i) Such opinion or consent expressly provides for such incorporation; and (ii) such opinion relates to the securities registered pursuant to Rule 462(b). See Rule 411(c) and Rule 483(c) under the Securities Act.

* * * * *

Dated: May 11, 1995.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–12007 Filed 5–16–95; 8:45 am]

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Wednesday
May 17, 1995

Part VIII

Environmental Protection Agency

40 CFR Part 180
Pesticide Tolerances; Revision of Crop Groups; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-300269A; FRL-4939-9]

RIN 2070-AB78

Pesticide Tolerances; Revision of Crop Groups

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is revising pesticide tolerance crop-grouping regulations to create new crop subgroups, expand existing crop groups by adding new commodities, and revise the representative crops in some groups. EPA expects these revisions to promote greater use of crop grouping for tolerance-setting purposes and to facilitate availability of pesticides for minor crop uses. EPA initiated these regulations.

EFFECTIVE DATE: This regulation becomes effective May 17, 1995.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [OPP-300269A], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing request to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: oppdocket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [OPP-300269A]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in unit VIII. of this document.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt Jamerson, Registration Support Branch, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Sixth Floor, Crystal Station #1, 2800 Jefferson Davis Hwy., Arlington, VA 22202, (703)-308-8783; e-mail: jamerson.hoyt@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The crop grouping regulations currently in 40 CFR 180.34(f) enable the establishment of tolerances for a group of crops based on residue data for certain crops that are representative of the group. EPA issued a proposed rule, published in the **Federal Register** of August 25, 1993 (58 FR 44990), under the provisions of the Federal Food, Drug, and Cosmetic Act (FFDCA), which proposed to revise the crop grouping regulations primarily by adding subgroups to 8 of the 19 existing crop groups. Each subgroup is a smaller and more closely related grouping of the commodities included in the "parent" crop group, and the representative commodities for each subgroup are also a smaller subset of those for the parent group. In addition, EPA proposed to add new commodities to expand some of the existing crop groups, and to revise representative crops for some crop groups to provide petitioners more flexibility in obtaining supporting residue data. EPA also proposed to add an alphabetical listing of commodities with cross-references to the assigned crop groups as an Index to Commodities in the Finding Aids section at the end of title 40 of the Code of Federal Regulations (CFR), parts 150 to 189. This action is intended to promote more extensive use of crop group tolerances as part of the EPA's efforts to improve utilization of existing and new residue data. Written comments were solicited and were received from more than 22 interested parties and groups in response to the proposal. Comments were received from the pesticide industry, State pesticide regulatory authorities, agricultural grower and marketing organizations, and the Interregional Research Project No. 4 (IR-4). All of these comments have been reviewed and are on file with the Agency in the Public Response and Program Resources Branch at the address provided above. All of the comments were supportive of the proposal in concept, but some comments wanted modifications to the proposal. Most comments were substantially satisfied by editorial changes and deletions from or additions to the proposal. Comments of significance and changes to the rule, as previously proposed, are discussed by topic in succeeding units of this preamble.

II. General Revisions

A. Requirements for New Residue Data When There Are Existing Tolerances

A commenter recommended that, where representative crops are removed from some crop groups by this revision, a way should be found to maintain established crop group tolerances without requiring additional residue data. The Agency expects that residue data from the remaining representative commodities should provide sufficient support for the existing crop group tolerances. Also, available data which previously supported the removed representative crop can still be considered in support of the group tolerance, whether or not that commodity is currently included as a representative commodity. However, all existing tolerances will be subject to reassessment as part of the reregistration program.

The crop group most affected by the removal of representative commodities is the previous small fruits and berries crop group which has been amended to become the new berries crop group, with the removal of cranberries, grapes, and strawberries from the group. Cranberries, grapes, and strawberries have been removed from the crop group since their cultural practices and residue chemistry concerns are distinct enough from the other small fruits and berries to have been an impediment to registrants who might have sought a crop group tolerance. Residue data will still be required to support tolerances for any of these three commodities, which have been included in the listing of miscellaneous crops in 40 CFR 180.41(b).

Only one tolerance for the small fruits and berries group has been established since 1983. However, some tolerances were established for a small fruits crop group which existed before the small fruits and berries crop group was established in 1983, and before specific representative commodities were named in the crop grouping regulations. There are also a substantial number of tolerances for pre-1983 crop groups other than small fruits. All of the existing crop group tolerances will continue in effect until the pesticides undergo the reregistration process or a petition is submitted requesting conversion to a new crop group or subgroup. At that time, consideration will be given to setting individual tolerances for any commodities covered by the old crop group tolerance that are not supportable under the new regulations.

B. Addition of Crops

EPA has accepted several suggestions to add certain commodities to the crop groupings, which were proposed in the **Federal Register** of August 25, 1993. Comments requesting additions to the crop groupings and revisions to the crop group tables, as were previously proposed, are discussed in unit III. of this preamble under specific crop group headings.

Future changes to the crop group tables or other portions of § 180.40 or § 180.41 will be subject to notice-and-comment rulemaking procedures, except for technical amendments to the tables, e.g., to update the scientific nomenclature, or to add a new cultivar of a commodity that is already listed. Minor technical amendments to §§ 180.40 and 180.41 will be made by publication of a final rule.

C. Representative Commodities

There are no changes to the representative commodities, as proposed, with the exception of editorial revisions to several crop groupings to clearly identify the commodities for which residue data are required. Several commenters suggested the deletion or substitution of representative commodities for certain crop groupings. These comments and the editorial revisions to the representative commodities are discussed in unit III of this preamble under specific crop group headings.

D. Regional/Common Names for Commodities

In response to a request that efforts should be made to incorporate additional regional commodity names in the crop groupings, a number of common names have been added to the Index to Commodities, with references to the commodity name as it is listed in the crop group. Additional regional/common names will be added to the Index as warranted with references to the commodity as it is named in the crop group tables. In order not to lengthen the crop group tables unnecessarily, new common names will be added only to the Index.

E. Miscellaneous Commodities

Some suggestions were made to list in the commodity index crops not included in a crop grouping. However, the commodity index is intended to complement the crop group tables, rather than be a comprehensive listing of all commodities with tolerances. Some of the ungrouped crops may be considered for inclusion in a crop grouping at a future date, at which time they will be added to the index. Crops that were intentionally not included in any groups were listed previously in § 180.34(f)(7); such miscellaneous commodities are now listed in § 180.41(b).

III. Specific Revisions to Crop Groups

1. **Crop Group 1.** *Root and tuber vegetables group.* In the crop group listing, the designation edible canna (Queensland arrowroot) replaces purple arrowroot, oriental radish replaces Japanese radish, and yam bean has been expanded to include jicama and manioc pea.

In response to a request, chayote root has been added to the root and tuber vegetables group and to subgroups 1-C (tuberous and corm vegetables) and 1-D (tuberous and corm vegetables, except potato).

Chicory, grown for its roots and leaves, has not been expanded to include witloof chicory (or the common names French endive and Belgian endive) because of the likelihood of confusion due to chicory root being included in crop group 1, chicory leaves being included in crop group 2, and endive being included in crop group 4. Cultural practices associated with witloof chicory production also differ from the production of chicory leaves and endive. Witloof chicory is produced from chicory roots, which are transplanted from the field to indoor growth chambers, where the edible compact head of blanched leaves is "forced" from the root.

2. **Crop Group 2.** *Leaves of root and tuber vegetables (human food or animal feed) group.* In the crop group listing, the designation Japanese radish was changed to oriental radish.

A commenter requested that the common names French endive, Belgian endive, and witloof be added to the chicory entry in the leaves of root and tuber vegetables crop group. For the reasons given for crop group 1 above, these common names have not been added to the crop group or to the Index to Commodities.

3. **Crop Group 3.** *Bulb vegetables (Allium spp.) group.* The representative commodities for the bulb vegetables (*Allium spp.*) group are listed clearly as two separate commodities—onion, green and onion, dry bulb—to clarify that residue data are required for both green and dry bulb onions.

4. **Crop Group 4.** *Leafy vegetables (except Brassica vegetables) group.*

The representative commodities for leafy vegetables (except *Brassica* vegetables) group have been editorially modified to clarify that residue data in support of crop group 4 and subgroup 4-A (leafy greens) tolerances are required for both head lettuce and leaf lettuce.

Cardoon (*Cynara cardunculus*) and Chinese celery (*Apium graveolens* var. *secalinum*) have been added to crop group 4 and subgroup 4-B, leaf petioles.

Florence fennel has been expanded to include the name finocchio.

The common or loose-leaf chicory (asparagus chicory, radichetta, or green chicory) was considered but not added to crop group 4 at this time because of the potential confusion with chicory leaves, which are in crop group 2.

5. **Crop Group 5.** *Brassica* (cole) leafy vegetables group. Mizuna and mustard spinach have been added to the crop group and to subgroup 5-B, leafy *Brassica* greens subgroup.

6. **Crop Group 6.** *Legume vegetables (succulent or dried) group.* The representative commodities for subgroup 6-A have been clarified as being succulent cultivars. Adzuki bean, moth bean, mung bean and rice bean have been moved from the bean (*Phaseolus spp.*) listing and are now included with the bean (*Vigna spp.*) to reflect recent taxonomic changes.

Pea (*Pisum spp.*) has been expanded to include sugar snap pea and snow pea. Sugar pea was deleted, since snow pea is the preferred common name.

As requested by a commenter, pigeon pea (*Cajanus* cajan) has been added to subgroup 6-B, succulent shelled pea and bean, of crop group 6, legume vegetables, because it is used extensively in the Caribbean and Central and South American countries as a fresh green pea removed from its pod.

7. **Crop Group 7.** *Foliage of legume vegetables group.* No comments were submitted; no changes have been made.

8. **Crop Group 8.** *Fruiting vegetables (except cucurbits) group.* The representative commodities for fruiting vegetables (except cucurbits) group have been modified to clarify that residue data in support of crop group 8 are required for both bell pepper and a nonbell pepper, as well as for tomatoes. This is not a change in policy; however,

the data requirement was not articulated in the regulation previously.

9. **Crop Group 9.** *Cucurbit vegetables group.* A commenter questioned the listing of cantaloupe, a specific type of muskmelon, as representative commodity for subgroup 9-A; whereas for the parent crop group, any muskmelon is a suitable representative commodity. Muskmelon of any type is considered acceptable for the parent crop group because there are two other representative commodities, a cucumber and a summer squash, to balance out the group. However, as the only representative commodity for the subgroup, cantaloupe would be the best because its finely-ridged rough surface would result in higher surface residues compared to the smooth-skinned melons like the honeydew melon. Therefore, in the final rule, cantaloupe has been retained as the representative commodity for subgroup 9-A.

A commenter requested that EPA reconsider adding a third subgroup "winter squash and pumpkins" under cucurbits or, alternatively, place winter squash and pumpkins with "melons" since they all have inedible rinds. The commenter is concerned that inappropriately high tolerances might be set otherwise, based on residue in summer squash and cucumbers, which could utilize more of the Reference Dose than would be necessary. A review of established tolerances for the proposed subgroup 9-B, squash/cucumber, shows that tolerances for summer squash, cucumber, winter squash, and pumpkins are the same or fall within the 5X limitation for tolerance levels in the same subgroup. Therefore, EPA has retained winter squash and pumpkins in subgroup 9-B.

In response to comments, chayote (*Sechium edule*) fruit has been added to the cucurbit vegetables group and the squash/cucumber subgroup.

10. **Crop Group 10.** *Citrus fruits group.* A commenter recommended that the representative commodities for the citrus fruits group should be reduced to two, to include sweet orange and a choice between lemon and grapefruit rather than both of the latter. An alternative recommendation was to delete grapefruit as a representative commodity on the basis that there is no difference between residues in sweet oranges and those in grapefruit. However, EPA has not reduced the number of representative commodities because of the importance of citrus in the diet; the consumption of combined citrus exceeds that of any commodity in the general population, and for infants the consumption of citrus is second to apples. Therefore, EPA believes it is important to require residue data for three representative commodities (grapefruit, lemon, and sweet orange) in support of tolerances for the citrus fruits group.

11. **Crop Group 11.** *Pome fruits group.* The only change to this group is in the scientific name for apple to reflect current nomenclature.

12. **Crop Group 12.** *Stone fruits group.* A commenter recommended that sweet cherries, rather than sour cherries, should be a representative commodity for the stone fruits group. The commenter explained that, at harvest, sour cherries are always flushed with water while sweet cherries are usually handled dry. Thus, higher pesticide residues would be expected on the sweet cherries, indicating they should be the preferred representative commodity of the two types of cherries. However, EPA prefers to allow the option of either sour or sweet cherries as representative commodity, provided that sour cherries should be analyzed for residues in their unwashed state. In addition, the term "tart cherry" will replace "sour cherry."

A request was made to include pomegranates in the stone fruits group. Since this commodity is not similar to other members of the stone fruits group, it was not included.

Several commenters requested that olives be added to the stone fruits group. A major problem with grouping olives with stone fruits is the need for processing studies to determine the concentration of residues in olive oil. Because residue studies for olives, including processing studies, would be required for a stone fruit group that includes olives, olives would have to be a representative crop, which would reduce the usefulness of the group and negate any benefit to olives from being in the group.

EPA may reevaluate pomegranate and olive as tropical/subtropical fruits, when a tropical/subtropical fruit crop group is researched in the future.

13. **Crop Group 13.** *Berries group.* A commenter requested clarification of the discussion of the bushberry subgroup 13-B in Section III of the proposed rule. The bushberry subgroup includes woody shrubs and bushes that produce fruit in clusters, including the blueberry. Blackberries are included in subgroup 13-A with other caneberries. Youngberry has been added to blackberry since it is a blackberry-raspberry hybrid similar to boysenberry and marionberry, which are included with blackberry.

14. **Crop Group 14.** *Tree nuts group.* Several commenters requested that representative commodities for the tree nuts group should be revised to allow a choice between pecan and English walnut as a representative crop in addition to almond. Previously all three commodities were required representative crops. EPA proposed deletion of English walnuts as a representative commodity to streamline the tree nut crop group data requirements by requesting field residue data for only the minimum number of representative commodities that will enable EPA to adequately evaluate the residue data for establishing a tolerance. Almost all English walnuts are produced in California while pecans, which are the major tree nut crop produced in the U.S., are distributed throughout the U.S., particularly in the southeastern region. Residue data on almonds and pecans are needed to obtain geographically representative residue data for the tree nuts. Almonds and pecans have been retained as the representative crops for this group. However, EPA will be flexible on using residue data already developed for English walnuts and such data will be useful in establishing tolerances for tree nuts or supporting reregistration actions.

Two commenters requested that pistachios be added to the tree nut group, stating that residue data are now available that demonstrate that pesticide residue levels on pistachios are "at levels similar to, if not lower than other nuts in the grouping." Pistachios have been requested and considered for inclusion in the crop group previously, but not included because pistachio shells split and hence would be expected to permit greater residues on the edible portion of the nut than other nut crops. Since the commenters did not submit any comparative field residue data between pistachios and other tree nuts, EPA has not added pistachios to the tree nuts group.

15. **Crop Group 15.** *Cereal grains group.* No comments were submitted, and no changes have been made.

16. **Crop Group 16.** *Forage, fodder and straw of cereal grains group.* No comments were submitted, and no changes have been made.

17. **Crop Group 17.** *Grass forage, fodder, and hay group.* No comments were submitted, and no changes have been made.

18. **Crop Group 18.** *Non-grass animal feeds (forage, fodder, straw and hay) group.* No comments were submitted, and no changes have been made.

19. **Crop Group 19.** *Herbs and spices group.* In response to various comments, a number of commodities have been added to crop group 19 and its subgroups: star anise, annatto seed, black caraway, cardamom, chervil (dried), Chinese chive, culantro, grains of paradise, mustard seed, white pepper, and poppy seed. Common fennel and Florence fennel (seed) have replaced Italian and sweet fennel.

The commodities capsicum (peppers), ginger, paprika, peppermint leaves, sesame seed, spearmint leaves, and turmeric were considered, but not added to, crop group 19 because they are members of other crop groups, they have other processed commodities that would require them to be representative commodities, or their cultural practices and pest problems are too dissimilar.

A commenter requested that there be only one representative commodity in the herb subgroup and one in the spice subgroup, only two for the total crop group, contending that the cost of generating residue data on even two commodities for a subgroup would greatly exceed the sales value of the crops themselves. Another commenter requested that additional herbs and spices be included in the crop group, contending that the EPA-proposed list does not include many spices that meet the definitions of spice issued by the U.S. Food and Drug Administration, the U.S. Department of Agriculture, and the American Spice Trade Association.

EPA cannot further reduce the number of representative commodities at this time because of the great diversity in plant classification between the numerous herbs and spices, the wide variation in cultural practices and pest problems between the various commodities, the wide differences in plant parts that are the raw agricultural commodity, and the lack of comparative field residue trial data for many of the commodities. As the field residue database on herbs and spices becomes more extensive, then the possibility exists for further reducing and/or changing some of the representative commodities, or further subdividing the current subgroups, so that the number of representative commodities might be reduced.

IV. Addition of New Crop Groups

Several commenters requested the addition of new crop groups, as follows: Oil seed crops, to include sunflower, rape, canola, crambe, flax, safflower, jojoba, and Lesquerella; tropical fruits to include banana, mango, papaya, passion fruit, etc.; and subtropical fruits to include avocado, kiwifruit, persimmon, cherimoya, guava, mango, and pomegranate. The development of new crop groups for tropical and subtropical fruits and for oil seed crops is beyond the scope of this rulemaking, but may be considered for future rulemaking.

As indicated in the proposed rule, any future recommended changes to the crop groups or subgroups should be presented in a form which includes all necessary background and supporting information, such as a list of all commodities to be included, accompanied by scientific names, naming all representative commodities and providing a rationale for selecting the particular commodities and representative commodities to be included. EPA welcomes an opportunity to evaluate crop group/subgroup proposals, when they are submitted from interested parties, and/or to work with such parties on the types of information and data necessary to evaluate a new crop group.

V. Other Comments

A commenter suggested defining cotton to include kenaf, said to be a related fiber crop also in the family *Malvaceae*. Adding or amending crop definitions in 40 CFR 180.1(h) is beyond the scope of EPA's current efforts to revise the crop groupings. A request to establish a commodity definition in § 180.1(h) may be submitted to EPA for review as a separate amendment. The amendment should include rationale for change, comparative cultural practices including pest problems, application timing, food/feed uses, and geographical distribution for commodity production, as well as processing food items.

At this time EPA has no plans to set tolerances on a crop group or subgroup basis for pesticide residues in processed food or animal feed commodities, even when the parent raw agricultural commodity is a member of a crop group. Generally the processed forms of commodities are very different from their raw forms and, within a crop group, also different from each other's processed forms, including in terms of expected residues. Also, processed commodities may have incurred pesticide residues from direct or indirect application of pesticides to the processed food as well as application to the raw form from which the processed form is derived. This would present a problem of too much variability in expected residues in the various processed commodities. In addition, some chemicals have a tendency to concentrate as a result of processing whereas others may remain constant or dissipate during processing; this lack of consistency in resulting residues would also make it difficult to set a crop group tolerance to cover several dissimilar processed commodities.

VI. Implementation

Petitions pending at the time this final rule is published will continue to be processed based on the previous regulation, except they will be given the benefit of any appropriate revised or reduced residue data requirements if needed. Likewise, residue studies which are currently underway should not be adversely affected by this new rule.

Residue data requirements imposed by these regulations for a crop group tolerance are substantially the same as those that were imposed by § 180.34(f), except that for a number of crop groups, fewer representative commodities are required or a choice of representative commodities is allowed. For the bulb vegetables group, the tree nuts group, and the herbs and spices group, the number of representative commodities is now fewer than before. For the leaves of root and tuber vegetables group, *Brassica* (cole) leafy vegetables group, and herbs and spices group, there is some choice allowed in terms of representative commodities.

Because of a major change to the former small fruits and berries crop group—deletion of cranberries, grapes, and strawberries as group members and as representative commodities, resulting in the new berries crop group—any petition for a tolerance for the small fruits and berries crop group that is currently pending or submitted within 30 days after publication of this rule will be processed as if it were a petition for tolerances for the berries crop group and the individual commodities cranberries, grapes, and strawberries. No additional fee will be imposed because of this action, although any other amendment to such a petition would be subject to the usual fees.

A pending petition for a crop group tolerance which is found deficient in terms of residue data may be reconsidered by EPA as a petition for one or more related crop subgroup tolerances. EPA's response to the petitioner will indicate whether such subgroup tolerances can be supported. Similarly, crop group tolerances being reassessed for reregistration that are determined not to be supported by the available data will be evaluated to determine whether the data might support one or more related crop subgroup tolerances or one or more individual crop tolerances.

A petition for a crop group or crop subgroup tolerance which relies on existing individual tolerances for all or some of the representative crops for the crop group or subgroup will be subject to reassessment of all available data in support of the individual tolerances to

determine if such data are currently considered adequate to support the crop group or subgroup tolerance.

All existing crop group tolerances will continue in effect until the pesticides undergo the reregistration process or a petition is submitted requesting conversion to a new crop group or subgroup. At that time, consideration will be given to setting individual tolerances for any commodities covered by the old crop group tolerance that are not supportable under the new regulations.

Fees imposed by 40 CFR 180.33(h) for petitions for crop group tolerances will apply to petitions for subgroup tolerances as well. For fee purposes, each request for a crop subgroup tolerance will be considered as if it were a request for a single commodity tolerance.

VII. Index to Commodities

This unit contains an alphabetical index to the crops in all the crop groups, giving the Crop Group number. The index will be included in Title 40 of the Code of Federal Regulations as a finding aid after its publication in the **Federal Register**.

Commodities	Crop Group Number
Achiote (see annatto seed)	19
Achira (see canna, edible)	1
Acorn squash (see squash, winter)	9
Adzuki bean (see bean (*Vigna* spp.))	6
Alfalfa (forage, fodder, straw, hay)	18
Allspice	19
Almond	14
Amaranth	4
Angelica	19
Angola bean (see pigeon pea)	6
Anise (anise seed)	19
Annatto seed	19
Annual marjoram (see marjoram)	19
Apple	11
Apple, balsam (see *Momordica* spp.)	9
Apricot	12
Arracacha	1
Arrowroot	1
Arugula	4
Asian pear (see pear, oriental)	11
Asparagus bean (see bean (*Vigna* spp.))	6
Asparagus lettuce (see celtuce)	4
Aubergine (see eggplant)	8
Australian arrowroot (see canna, edible)	1
Austrian winter pea (see pea (*Pisum* spp.) (field pea))	6
Azuki bean (see bean (*Vigna* spp.) (adzuki bean))	6
Balm	19
Balsam apple (see *Momordica* spp.)	9
Balsam pear (see *Momordica* spp.)	9
Barley	15
Barley (forage, fodder, straw)	16
Basil	19
Bay leaf (see sweet bay)	19
Bean	6
Bean (foliage)	7
Bean, velvet (forage, fodder, straw, hay)	18
Bean, yam	1
Beech nut	14
Beet	1
Beet (foliage)	2
Beetroot (see beet, garden)	1
Bell pepper (see pepper (*Capsicum* spp.))	8
Bingleberry (see blackberry)	13
Birdsfoot trefoil (see trefoil)	18
Bitter cassava	1
Bitter cassava (foliage)	2
Bitter gourd (see balsam pear)	9
Bitter melon (see *Momordica* spp.)	9
Bitter orange (see orange, sour)	10
Black caraway	19
Black cumin (see caraway, black)	19
Black pepper	19
Black raspberry	13
Black salsify	1
Black salsify (foliage)	2
Black satin berry (see blackberry)	13
Black walnut	14
Blackberry	13
Blackeyed pea (see bean (*Vigna* spp.))	6
Blero (see amaranth)	4
Blood orange (see orange, sweet)	10
Blueberry	13
Bok choy (see cabbage, Chinese (bok choy))	5
Bok choy sum (see cabbage, Chinese (bok choy))	5
Bor choi (see mustard spinach)	5
Bor tsai (see mustard spinach)	5
Bottle gourd (see gourd, edible (cucuzza))	9
Borage	19
Borecole (see kale)	5
Borekale (see kale)	5
Boy choy sum (see cabbage, Chinese (bok choy))	5
Boysenberry (see blackberry)	13
Brazil nut	14
Broad bean	6
Broad bean (foliage)	7
Broccoflower (see cauliflower)	5
Broccoli	5
Broccoli raab	5
Brussels sprouts	5
Buckwheat	15
Buckwheat (forage, fodder, straw)	16
Bullace plum (see plum, Damson)	12
Bulrush millet (see millet, pearl)	15
Burdock, edible	1
Burdock, edible (foliage)	2
Burnet	19
Bush nut (see macadamia nut)	14
Butter bean (see bean (*Phaseolus* spp.) (lima bean))	6
Butternut	14
Butternut squash (see squash, winter)	9
Cabbage	5
Cajan pea (see pigeon pea)	6
Calabash gourd (see gourd, edible (cucuzzi))	9
Calabaza (see squash, winter)	9
Calaloo (see amaranth)	4
Calamondin	10
Calilu (see amaranth)	4
Camomile	19
Canna, edible	1
Cantaloupe (see muskmelon)	9
Cape gooseberry (see groundcherry)	8
Caper buds	19
Caraway	19
Cardoni (see cardoon)	4
Cardoon	4
Cardamom	19
Carrot	1
Carrot (foliage)	2
Casaba (see muskmelon)	9
Cashew	14
Cassava, bitter and sweet	1
Cassava, bitter and sweet (foliage)	2
Cassia bark	19
Cassia buds	19
Catjang (see bean (*Vigna* spp.))	6
Catmint (see catnip)	19
Catnip	19
Cauliflower	5
Cavalo broccolo	5
Celeriac	1
Celeriac (foliage)	2
Celery	4
Celery cabbage (see cabbage, Chinese (napa))	5
Celery mustard (see cabbage, Chinese (bok choy))	5
Celery root (see celeriac)	1
Celery seed	19
Celtuce	4
Ceylon spinach (see spinach, vine)	4
Chayote (fruit)	9
Chayote (root)	1
Cherokee blackberry (see blackberry)	13
Cherry, sweet	12
Cherry, tart	12
Chervil	4
Chervil (dried)	19
Chervil, turnip-rooted	1
Chervil, turnip-rooted (foliage)	2
Chesterberry (see blackberry)	13
Chestnut	14
Cheyenne blackberry (see blackberry)	13
Chickasaw plum	12
Chickpea	6
Chickpea (foliage)	7
Chicory	1
Chicory (foliage)	2
Chihili cabbage (see cabbage, Chinese (napa))	5

Commodities	Crop Group Number
Chili pepper (see pepper (*Capsicum* spp.))	8
China pea (see pea (*Pisum* spp.) (snow pea))	6
China star anise (see anise, star)	19
Chinese artichoke	1
Chinese broccoli	5
Chinese cabbage (bok choy)	5
Chinese cabbage (napa)	5
Chinese celery	4
Chinese celery cabbage (see cabbage, Chinese (napa))	5
Chinese chive	19
Chinese cucumber (see *Momordica* spp.)	9
Chinese green mustard (see cabbage, Chinese mustard)	5
Chinese green mustard cabbage (see cabbage, Chinese mustard)	5
Chinese kale (see broccoli, Chinese)	5
Chinese lantern plant (see tomatillo)	8
Chinese leek (see chive, Chinese)	19
Chinese longbean (see bean (*Vigna* spp.))	6
Chinese mustard (see mustard greens)	5
Chinese mustard cabbage	5
Chinese okra (see gourd, edible)	9
Chinese parsley (see coriander)	19
Chinese pea (see pea (*Pisum* spp.) (snow pea))	6
Chinese pear (see pear, oriental)	11
Chinese preserving melon (see Chinese waxgourd)	9
Chinese radish (see radish, oriental)	1
Chinese spinach (see amaranth)	4
Chinese squash (see Chinese waxgourd)	9
Chinese turnip (see radish, Oriental)	1
Chinese waxgourd	9
Chinese white cabbage (see cabbage, Chinese (bok choy))	5
Chinquapin	14
Chironja (see citrus hybrids)	10
Chive	19
Choi sum (see cabbage, Chinese (bok choy))	5
Chopsuey greens (see chrysanthemum, edible-leaved)	4
Choy sum (see cabbage, Chinese cabbage (bok choy))	5
Chrysanthemum, edible-leaved	4
Chrysanthemum, garland	4
Chufa	1
Ciboule (see onion, Welsh)	3
Cilantro (see coriander)	19
Cilantro del monte (see culantro)	19
Cinnamon	19
Citrus citron	10
Citron melon	9
Citrus hybrids (*Citrus* spp.)	10
Clary	19
Clove buds	19
Clover (forage, fodder, straw, hay)	18
Cluster bean (see guar)	6
Cocoyam (see tanier)	1
Cocoyam (foliage)	2
Collards	5
Common bean (see bean (*Phaseolus* spp.) (kidney bean))	6
Common millet (see millet, proso)	15
Common vetch (see vetch)	18
Congo pea (see pigeon pea)	6
Cooking pepper (see pepper (*Capsicum* spp.))	8
Coriander (leaf and seed)	19
Corn	15
Corn (forage, fodder)	16
Corn salad	4
Coryberry (see blackberry)	13
Costmary	19
Courgette (see squash, summer)	9
Cowpea (see bean (*Vigna* spp.))	6
Crabapple	11
Crenshaw melon (see muskmelon)	9
Cress	4
Christophine (see chayote)	9
Crookneck squash (see squash, summer)	9
Crowder pea (see bean (*Vigna* spp.))	6
Crown vetch (forage, fodder, straw, hay)	18
Cucumber	9
Cucuzza (see gourd, edible)	9
Cucuzzi (see gourd, edible)	9
Culantro (leaf)	19
Culantro (seed)	19
Cumin	19
Currant	13
Curry leaf	19
Cush cush yam (see yam, true)	1
Custard marrow (see chayote)	9
Daikon (see radish, oriental)	1
Damson plum	12
Dandelion	4
Darrowberry (see blackberry)	13
Dasheen	1
Dasheen (foliage)	2
Dewberry (see blackberry)	13
Dill seed	19
Dillweed	19
Dirksen thornless berry (see blackberry)	13
Dock	4
Dwarf pea (see pea (*Pisum* spp.))	6
Eddoe (see dasheen)	1
Edible burdock	1
Edible burdock (foliage)	2
Edible canna	1
Edible gourd	9
Edible-leaved chrysanthemum	4
Edible-pod pea (see pea (*Pisum* spp.))	6
Eggplant	8
Elderberry	13
Elephant garlic (see garlic, great-headed)	3
Endive	4
English pea (see pea (*Pisum* spp.))	6
English walnut	14
Escarole (see endive)	4
Estragon (see tarragon)	19
European plum (see prune (fresh))	12
Fava bean (see broad bean)	6
Fennel, common	19
Fennel, Florence	4
Fennel, Florence (seed)	19
Fennel flower (see caraway, black)	19
Fenugreek	19
Field bean (see bean (*Phaseolus* spp.))	6
Field pea (see pea (*Pisum* spp.))	6
Filbert	14
Finocchio (see fennel, Florence)	4
Florence fennel	4
Florence fennel (seed)	19
Flowering bok choy (see cabbage, Chinese (bok choy))	5
Flowering leek (see chive, Chinese)	19
Flowering pak choy (see cabbage, Chinese (bok choy))	5
French bean (see bean (*Phaseolus* spp.) (kidney bean))	6
French parsley (see chervil)	4
Gai choy (see cabbage, Chinese mustard)	5
Gai lon (see broccoli, Chinese)	5
Garbanzo bean (see chickpea)	6
Garden beet	1
Garden beet (foliage)	2
Garden clary (see clary)	19
Garden cress	4
Garden pea (see pea (*Pisum* spp.))	6
Garden purslane	4
Garland chrysanthemum	4
Garlic	3
Garlic chive (see chive, Chinese)	19
Gau choi (see chive, Chinese)	19
Gau tsoi (see chive, Chinese)	19
Gherkin	9
Ginger	1
Ginseng	1
Girasole (see artichoke, Jerusalem)	1
Gobo (see burdock, edible)	1
Golden pershaw melon (see muskmelon)	9
Gooseberry	13
Gooseberry, cape (see groundcherry)	8
Gourd, edible	9
Gow choy (see chive, Chinese)	19
Grain lupin (see bean (*Lupinus* spp.))	6
Grains of paradise	19
Grapefruit	10
Grasses (either green or cured)	17
Great-headed garlic	3

Commodities	Crop Group Number
Greater burdock (see burdock, edible)	1
Green bean (see bean (*Phaseolus* spp.) (snap bean))	6
Green cauliflower (see cauliflower)	5
Green onion (see onion)	3
Green pea (see pea (*Pisum* spp.))	6
Groundcherry	8
Guar	6
Guar (foliage)	7
Guinea grains (see grains of paradise)	19
Guinea yam (see yam, true)	1
Hairy vetch (see vetch)	18
Hazelnut (see filbert)	14
Head lettuce (see lettuce)	4
Hechima (see gourd, edible)	9
Hickory nut	14
Himalayaberry (see blackberry)	13
Honey balls (see muskmelon)	9
Honeydew melon (see muskmelon)	9
Horehound	19
Horseradish	1
Hubbard squash (see squash, winter)	9
Huckleberry	13
Hullberry (see blackberry)	13
Husk tomato (see tomatillo)	8
Hyacinth bean (see lablab bean)	6
Hyotan (see gourd, edible)	9
Hyssop	19
Indian mustard (see mustard greens)	5
Indian rice (see wild rice)	15
Indian saffron (see turmeric)	1
Indian spinach (see spinach, vine)	4
Irish potato (see potato)	1
Italian fennel (see fennel, Florence)	4
Italian fennel (seed) (see fennel, Florence (seed))	19
Jackbean	6
Jackbean (foliage)	7
Japanese artichoke (see artichokes, Chinese)	1
Japanese bunching onion (see onion, Welsh)	3
Japanese chrysanthemum (see chrysanthemum, edible-leaved)	4
Japanese greens (see mizuna)	5
Japanese medlar (see loquat)	11
Japanese mustard (see mizuna)	5
Japanese pear (see oriental pear)	11
Japanese plum	12
Japanese radish (see radish, oriental)	1
Japanese squash (see Chinese waxgourd)	9
Jerusalem artichoke	1
Jicama (see yam bean)	1
Juniper berry	19
Kai choy (see cabbage, Chinese mustard)	5
Kai lan (see broccoli, Chinese)	5
Kale	5
Kalonji (see caraway, black)	19
Kidney bean (see bean (*Phaseolus* spp.))	6
Kintsai (see celery, Chinese)	4
Kohlrabi	5
Komatsuna (see mustard spinach)	5
Kudzu (forage, fodder, straw, hay)	18
Kumquat	10
Kunchoi (see celery, Chinese)	4
Kyona (see cabbage, Chinese mustard)	5
Lablab bean	6
Lablab bean (foliage)	7
Lavacaberry (see blackberry)	13
Lavender	19
Leaf lettuce (see lettuce)	4
Leafy amaranth (see amaranth)	4
Leek	3
Leek, flowering (see chive, Chinese)	19
Lemon	10
Lemon balm (see balm)	19
Lemongrass	19
Lentil	6
Lentil (foliage)	7
Leren	1
Lespedeza (forage, fodder, straw, hay)	18
Lesser Asiatic yam (see yam, true)	1
Lettuce	4
Lima bean (see bean (*Phaseolus* spp.))	6
Lime	10
Lipstick plant (see annatto seed)	19
Lobok (see radish, oriental)	1
Lo pak (see radish, oriental)	1
Loganberry	13
Loquat	11
Lovage (leaf and seed)	19
Lowberry (see blackberry)	13
Lucretiaberry (see blackberry)	13
Lupin (foliage)	7
Lupin (forage, fodder, straw, hay)	18
Lupin (grain) (see bean (*Lupinus* spp.))	6
Lupine (see lupin)	6
Macadamia nut	14
Mace	19
Malabar cardamom (see cardamom)	19
Malabar spinach (see spinach, vine)	4
Mammoth blackberry (see blackberry)	13
Mandarin	10
Mango melon (see muskmelon)	9
Mango squash (see chayote)	9
Manioc (see cassava)	1
Manioc pea (see yam bean)	1
Marigold	19
Marionberry (see blackberry)	13
Marjoram (*Origanum* spp.)	19
Marrow (see squash, summer)	9
Marrow, vegetable (see squash, summer)	9
Marrow, custard (see chayote (fruit))	9
Mayhaw	11
Melegueta pepper (see grains of paradise)	19
Melons	9
Mexican husk tomato (see tomatillo)	8
Mexican parsley (see coriander (cilantro) (leaf)	19
Mexican water chestnut (see yam bean)	1
Mibuna (see mizuna)	5
Milk vetch (forage, fodder, straw, hay)	18
Millet	15
Millet (forage, fodder, straw)	16
Milo (see sorghum)	15
Mizuna	5
Mo qua (see Chinese waxgourd)	9
Momordica spp.	9
Moth bean (see bean (*Vigna* spp.))	6
Multiplier onion (see onion, Welsh)	3
Mung bean (see bean (*Vigna* spp.))	6
Muskmelon	9
Mustard cabbage (see cabbage, Chinese mustard)	5
Mustard greens	5
Mustard seed	19
Mustard spinach	5
Mysore cardamom (see cardamom)	19
Napa cabbage (see cabbage, Chinese (napa))	5
Nashi (see pear, oriental)	11
Nasturtium	19
Navy bean (see bean (*Phaseolus* spp.))	6
Nectarberry (see blackberry)	13
Nectarine	12
New Zealand spinach	4
No-eye pea (see pigeon pea)	6
Nutmeg	19
Oat	15
Oat (forage, fodder, straw)	16
Okra, Chinese (see gourd, edible)	9
Olallieberry (see blackberry)	13
Onion	3
Orach	4
Orange, sour	10
Orange, sweet	10
Oregano (see marjoram)	19
Oregon evergreen berry (see blackberry)	13
Oriental garlic (see chive, Chinese)	19
Oriental pear	11
Oriental radish	1
Oriental radish (foliage)	2
Oyster plant (see salsify)	1
Pak choy (see cabbage, Chinese cabbage (bok choy))	5
Pak tsoi sum (see cabbage, Chinese cabbage (bok choy))	5
Parsley	4
Parsley, Chinese (see coriander)	19
Parsley (dried)	19
Parsley, turnip-rooted	1
Parsnip	1

Commodities	Crop Group Number
Parsnip (foliage)	2
Pea (*Pisum* spp.)	6
Pea (foliage)	7
Peach	12
Pear	11
Pear, balsam (see *Momordica* spp.)	9
Pearl millet	15
Pearl millet (forage, fodder, straw)	16
Pecan	14
Peking cabbage (see cabbage, Chinese (napa))	5
Pennyroyal	19
Pepino	8
Pepper (*Capsicum* spp.)	8
Pepper, black	19
Pepper, white	19
Persian melon (see muskmelon)	9
Persian walnut (see walnut, English)	14
Pe-tsai (see cabbage, Chinese (bok choy))	5
Phenomenalberry (see blackberry)	13
Pigeon pea	6
Pigeon pea (foliage)	7
Pimento (see pepper (*Capsicum* spp.))	8
Pineapple melon (see muskmelon)	9
Pinto bean (see bean (*Phaseolus* spp.))	6
Plum	12
Plumcot	12
Pomelo (see pummelo)	10
Popcorn	15
Popcorn (forage, fodder)	16
Poppy seed	19
Pot marjoram (see marjoram)	19
Potato bean (see yam bean)	1
Potherb mustard (see mizuna)	5
Potato	1
Potato bean (see yam bean)	1
Proso millet	15
Proso millet (forage, fodder, straw)	16
Prune (fresh)	12
Prune plum (see prune (fresh))	12
Pummelo	10
Pumpkin	9
Purple arrowroot (see canna, edible)	1
Purslane, garden	4
Purslane, winter	4
Queensland arrowroot (see canna, edible)	1
Queensland nut (see macadamia nut)	14
Quince	11
Radicchio	4
Radish	1
Radish (foliage)	2
Rangeberry (see blackberry)	13
Rape greens	5
Rapini (see broccoli raab)	5
Raspberry, black	13
Raspberry, red	13
Ravenberry (see blackberry)	13
Recao (see culantro)	19
Recaito (see culantro)	19
Red chicory (see radicchio)	4
Red gram (see pigeon pea)	6
Red raspberry	13
Rhubarb	4
Rice	15
Rice (forage, fodder, straw)	16
Rice bean (see bean (*Vigna* spp.))	6
Rocket salad (see arugula)	4
Roquette (see arugula)	4
Rosemary	19
Rossberry (see blackberry)	13
Rucola (see arugula)	4
Rue	19
Runner bean (see bean (*Phaseolus* spp.))	6
Rutabaga	1
Rutabaga (foliage)	2
Rye	15
Rye (forage, fodder, straw)	16
Saffron	19
Sage	19
Sainfoin (forage, fodder, straw, hay)	18
Salsify	1
Salsify, black (foliage)	2
Sandpear (see pear, oriental)	11
Santa Claus melon (see muskmelon)	9
Satsuma mandarin	10
Savory, summer	19
Savory, winter	19
Seville orange (see orange, sour)	10
Scallop squash (see squash, summer)	9
Shaddock (see pummelo)	10
Shallot	3
Shawnee blackberry (see blackberry)	13
Skirret	1
Small cardamom (see cardamom)	19
Snake melon (see muskmelon)	9
Snap bean (see bean (*Phaseolus* spp.))	6
Snow pea (see pea (*Pisum* spp.))	6
Sorghum	15
Sorghum (forage, fodder, straw)	16
Sorrel (see dock)	4
Sour cherry (see tart cherry)	12
Sour orange	10
Southern pea (see bean (*Vigna* spp.))	6
Southernwood (see wormwood)	19
Soybean	6
Soybean (foliage)	7
Soybean (immature seeds) (edible-pod)	6
Spaghetti squash (see squash, winter)	9
Spanish salsify	1
Spinach	4
Spiny coriander (see culantro)	19
Sprouting broccoli (see broccoli)	5
Squash, summer	9
Squash, winter	9
Star anise	19
Stem turnip (see kohlrabi)	5
Straightneck squash (see squash, summer)	9
String bean (see bean (*Phaseolus* spp.) (snap bean))	6
Sugar beet	1
Sugar beet (foliage)	2
Sugar pea (see pea (*Pisum* spp.) (snow pea))	6
Sugar snap pea (see pea *Pisum* spp.)	6
Sunchoke (see Jerusalem artichoke)	1
Summer savory	19
Summer squash	9
Swede (see rutabaga)	1
Sweet Alice (see anise)	19
Sweet anise (see fennel, Florence)	4
Sweet bay	19
Sweet cassava	1
Sweet cassava (foliage)	2
Sweet cherry	12
Sweet clover (see clover)	18
Sweet corn (see corn)	15
Sweet fennel (see fennel, Florence)	4
Sweet fennel (seed) (see fennel, Florence (seed))	19
Sweet lupin (see bean (*Lupinus* spp.))	6
Sweet marjoram (see marjoram)	19
Sweet orange	10
Sweet pepper (see pepper (*Capsicum* spp.))	8
Sweet potato	1
Sweet potato (foliage)	2
Swiss chard	4
Sword bean	6
Sword bean (foliage)	7
Table beet (see beet, garden)	1
Tampala (see amaranth)	4
Tangelo (see citrus hybrids)	10
Tangerine (see mandarin)	10
Tangor (see citrus hybrids)	10
Tanier	1
Tanier (foliage)	2
Tansy	19
Taro (see dasheen)	1
Tarragon	19
Tart cherry	12
Teosinte	15
Teosinte (forage, fodder, straw)	16
Tepary bean (see bean (*Phaseolus* spp.))	6
Thousand-veined mustard (see mizuna)	5
Thyme	19
Tiger nut (see chufa)	1
Tomatillo	8
Tomato	8
Tree melon (see pepino)	8
Trefoil (forage, fodder, straw, hay)	18
Triticale	15
Triticale (forage, fodder, straw)	16
True cantaloupe (see muskmelon)	9
True yam	1
True yam (foliage)	2
Tsai shim (see cabbage, Chinese (bok choy))	5
Tsoi sim (see cabbage, Chinese (bok choy))	5

Commodities	Crop Group Number
Turmeric	1
Turnip	1
Turnip (foliage)	2
Turnip-rooted chervil	1
Turnip-rooted chervil (foliage)	2
Turnip-rooted parsley	1
Ugli (see pummelo)	10
Upland cress	4
Urd bean (see bean (*Vigna* spp.))	6
U-toy (see cabbage, Chinese (bok choy))	5
Vanilla	19
Vegetable marrow (see squash, summer)	9
Vegetable pear (see chayote)	9
Velvet bean (forage, fodder, straw, hay)	18
Vetch (forage, fodder, straw, hay)	18
Vine spinach	4
Walnut	14
Watermelon	9
Wax bean (see bean (*Phaseolus* spp.))	6
Waxgourd, Chinese	9
Welsh onion	3
Wheat	15
Wheat (forage, fodder, straw)	16
White flowering broccoli (see broccoli, Chinese)	5
White lupin (see bean (*Lupinus* spp.))	6
White pepper	19
White sweet lupin (see bean (*Lupinus* spp.))	6
White potato (see potato)	1
Wild marjoram (see marjoram)	19
Wild rice	15
Wild rice (forage, fodder, straw)	16
Winter cress (see cress, upland)	4
Winter melon (see waxgourd, Chinese)	9
Winter purslane	4
Winter radish (see radish, oriental)	1
Winter savory	19
Winter squash	9
Wintergreen	19
Wong bok (see cabbage, Chinese (napa))	5
Woodruff	19
Wormwood	19
Yam, true	1
Yam, true (foliage)	2
Yam bean	1
Yardlong bean (see bean (*Vigna* spp.))	6
Yellow rocket (see cress, upland)	4
Yellow sweet clover (see clover)	18
Yellow yam (see yam, true)	1
Youngberry (see blackberry)	13
Zucchini (see squash, summer)	9

VIII. Electronic Copies of Objections and Hearing Requests

A record has been established for this rulemaking under docket number [OPP-300269A] (including any objections and hearing requests submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Written objections and hearing requests, identified by the document control number [OPP-300269A], may be submitted to the Hearing Clerk (1900), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

A copy of electronic objections and hearing requests filed with the Hearing Clerk can be sent directly to EPA at:

opp-Docket@epamail.epa.gov

A copy of electronic objections and hearing requests filed with the Hearing Clerk must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all objections and hearing requests submitted directly in writing. The official rulemaking record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

IX. Regulatory Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines "significant" as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also known as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

B. Regulatory Flexibility Act

This regulatory action has been reviewed under the provisions of section 3(a) of the Regulatory Flexibility Act, and EPA has determined that it will not have a significant adverse economic impact on a substantial number of small businesses, small governments, or small organizations.

As this regulatory action is intended to simplify established policy, it is expected that no adverse economic impact will occur on any small entity.

Accordingly, EPA certifies that this regulatory action does not require a separate regulatory flexibility analysis under the Regulatory Flexibility Act.

C. Paperwork Reduction Act

This rule contains no information collection requirements subject to the Paperwork Reduction Act.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedures, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 5, 1995.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.1, by revising paragraph (g), to read as follows:

§ 180.1 Definitions and interpretations.

* * * * *

(g) For the purpose of computing fees as required by § 180.33, each group of related crops listed in § 180.34(e) and each crop group or subgroup listed in § 180.41 is counted as a single raw agricultural commodity in a petition or

request for tolerances or exemption from the requirement of a tolerance.

§ 180.34 [Amended]

3. By amending § 180.34 *Tests on the amount of residue remaining* by removing paragraph (f).

4. By adding new § 180.40, to read as follows:

§ 180.40 Tolerances for crop groups.

(a) Group or subgroup tolerances may be established as a result of:

(1) A petition from a person who has submitted an application for the registration of a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act.

(2) On the initiative of the Administrator.

(3) A petition by an interested person.

(b) The tables in § 180.41 are to be used in conjunction with this section for the establishment of crop group tolerances. Each table in § 180.41 lists a group of raw agricultural commodities that are considered to be related for the purposes of this section. Refer also to § 180.1(h) for a listing of commodities for which established tolerances may be applied to certain other related and similar commodities.

(c) When there is an established or proposed tolerance for all of the representative commodities for a specific group or subgroup of related commodities, a tolerance may be established for all commodities in the associated group or subgroup. Tolerances may be established for a crop group or, alternatively, tolerances may be established for one or more of the subgroups of a crop group.

(d) The representative crops are given as an indication of the minimum residue chemistry data base acceptable to the Agency for the purposes of establishing a group tolerance. The Agency may, at its discretion, allow group tolerances when data on suitable substitutes for the representative crops are available (e.g., limes instead of lemons).

(e) Since a group tolerance reflects maximum residues likely to occur on all individual crops within a group, the proposed or registered patterns of use for all crops in the group or subgroup must be similar before a group tolerance is established. The pattern of use consists of the amount of pesticide applied, the number of times applied, the timing of the first application, the interval between applications, and the interval between the last application and harvest. The pattern of use will also include the type of application; for example, soil or foliar application, or application by ground or aerial equipment.

(f) When the crop grouping contains commodities or byproducts that are utilized for animal feed, any needed tolerance or exemption from a tolerance for the pesticide in meat, milk, poultry and/or eggs must be established before a tolerance will be granted for the group as a whole. The representative crops include all crops in the group that could be processed such that residues may concentrate in processed food and/or feed. Processing data will be required prior to establishment of a group tolerance, and food additive tolerances will not be granted on a group basis.

(g) If maximum residues (tolerances) for the representative crops vary by more than a factor of 5 from the maximum value observed for any crop in the group, a group or subgroup tolerance will ordinarily not be established. In this case individual crop tolerances, rather than group tolerances, will normally be established.

(h) Alternatively, a commodity with a residue level significantly higher or lower than the other commodities in a group may be excluded from the group tolerance (e.g., cereal grains, except corn). In this case an individual tolerance at the appropriate level for the unique commodity would be established, if necessary. The alternative approach of excluding a commodity with a significantly higher or lower residue level will not be used to establish a tolerance for a commodity subgroup. Most subgroups have only two representative commodities; to exclude one such commodity and its related residue data would likely provide insufficient residue information to support the remainder of the subgroup. Residue data from crops additional to those representative crops in a grouping may be required for systemic pesticides.

(i) The commodities included in the groups will be updated periodically either at the initiative of the Agency or at the request of an interested party. Persons interested in updating this section should contact the Registration Division of the Office of Pesticide Programs.

(j) Establishment of a tolerance does not substitute for the additional need to register the pesticide under a companion law, the Federal Insecticide, Fungicide, and Rodenticide Act. The Registration Division of the Office of Pesticide Programs should be contacted concerning procedures for registration of new uses of a pesticide.

5. By adding new § 180.41, to read as follows:

§ 180.41 Crop group tables.

(a) The tables in this section are to be used in conjunction with § 180.40 to establish crop group tolerances.

(b) Commodities not listed are not considered as included in the groups for the purposes of this paragraph, and individual tolerances must be established. Miscellaneous commodities intentionally not included in any group include asparagus, avocado, banana, cranberry, fig, globe artichoke, grape, hops, kiwifruit, mango, mushroom, okra, papaya, pawpaw, peanut, persimmon, pineapple, strawberry, water chestnut, and watercress.

(c) Each group is identified by a group name and consists of a list of representative commodities followed by a list of all commodity members for the group. If the group includes subgroups, each subgroup lists the subgroup name, the representative commodity or commodities, and the member commodities for the subgroup. Subgroups, which are a subset of their associated crop group, are established for some but not all crops groups.

(1) *Crop Group 1:* Root and Tuber Vegetables Group.

(i) *Representative commodities.* Carrot, potato, radish, and sugar beet.

(ii) *Table.* The following Table 1 lists all the commodities included in Crop Group 1 and identifies the related crop subgroups.

TABLE 1—CROP GROUP 1: ROOT AND TUBER VEGETABLES

Commodities	Related crop subgroups
Arracacha (*Arracacia xanthorrhiza*)	1-C, 1-D
Arrowroot (*Maranta arundinacea*)	1-C, 1-D
Artichoke, Chinese (*Stachys affinis*)	1-C, 1-D
Artichoke, Jerusalem (*Helianthus tuberosus*)	1-C, 1-D
Beet, garden (*Beta vulgaris*)	1-A, 1-B
Beet, sugar (*Beta vulgaris*)	1-A

TABLE 1—CROP GROUP 1: ROOT AND TUBER VEGETABLES—Continued

Commodities	Related crop subgroups
Burdock, edible (*Arctium lappa*)	1-A, 1-B
Canna, edible (Queensland arrowroot) (*Canna indica*)	1-C, 1-D
Carrot (*Daucus carota*)	1-A, 1-B
Cassava, bitter and sweet (*Manihot esculenta*)	1-C, 1-D
Celeriac (celery root) (*Apium graveolens* var. *rapaceum*)	1-A, 1-B
Chayote (root) (*Sechium edule*)	1-C, 1-D
Chervil, turnip-rooted (*Chaerophyllum bulbosum*)	1-A, 1-B
Chicory (*Cichorium intybus*)	1-A, 1-B
Chufa (*Cyperus esculentus*)	1-C, 1-D
Dasheen (taro) (*Colocasia esculenta*)	1-C, 1-D
Ginger (*Zingiber officinale*)	1-C, 1-D
Ginseng (*Panax quinquefolius*)	1-A, 1-B
Horseradish (*Armoracia rusticana*)	1-A, 1-B
Leren (*Calathea allouia*)	1-C, 1-D
Parsley, turnip-rooted (*Petroselinum crispum* var. *tuberosum*)	1-A, 1-B
Parsnip (*Pastinaca sativa*)	1-A, 1-B
Potato (*Solanum tuberosum*)	1-C
Radish (*Raphanus sativus*)	1-A, 1-B
Radish, oriental (daikon) (*Raphanus sativus* subvar. *longipinnatus*)	1-A, 1-B
Rutabaga (*Brassica campestris* var. *napobrassica*)	1-A, 1-B
Salsify (oyster plant) (*Tragopogon porrifolius*)	1-A, 1-B
Salsify, black (*Scorzonera hispanica*)	1-A, 1-B
Salsify, Spanish (*Scolymus hispanicus*)	1-A, 1-B
Skirret (*Sium sisarum*)	1-A, 1-B
Sweet potato (*Ipomoea batatas*)	1-C, 1-D
Tanier (cocoyam) (*Xanthosoma sagittifolium*)	1-C, 1-D
Turmeric (*Curcuma longa*)	1-C, 1-D
Turnip (*Brassica rapa* var. *rapa*)	1-A, 1-B
Yam bean (jicama, manoic pea) (*Pachyrhizus* spp.)	1-C, 1-D
Yam, true (*Dioscorea* spp.)	1-C, 1-D

(iii) *Table.* The following Table 2 identifies the crop subgroups for Crop Group 1, specifies the representative commodity(ies) for each subgroup, and lists all the commodities included in each subgroup.

TABLE 2—CROP GROUP 1 SUBGROUP LISTING

Representative commodities	Commodities
Crop Subgroup 1–A. Root vegetables subgroup. Carrot, radish, and sugar beet.	Beet, garden; beet, sugar; burdock, edible; carrot; celeriac; chervil, turnip-rooted; chicory; ginseng; horseradish; parsley, turnip–rooted; parsnip; radish; radish, oriental; rutabaga; salsify; salsify, black; salsify, Spanish; skirret; turnip.
Crop Subgroup 1–B. Root vegetables (except sugar beet) subgroup. Carrot and radish.	Beet, garden; burdock, edible; carrot; celeriac; chervil, turnip–rooted; chicory; ginseng; horseradish; parsley, turnip–rooted; parsnip; radish; radish, oriental; rutabaga; salsify; salsify, black; salsify, Spanish; skirret; turnip.
Crop Subgroup 1–C. Tuberous and corm vegetables subgroup. Potato.	Arracacha; arrowroot; artichoke, Chinese; artichoke, Jerusalem; canna, edible; cassava, bitter and sweet; chayote (root); chufa; dasheen; ginger; leren; potato; sweet potato; tanier; turmeric; yam bean; yam, true.
Crop Subgroup 1–D. Tuberous and corm vegetables (except potato) subgroup. Sweet potato.	Arracacha; arrowroot; artichoke, Chinese; artichoke, Jerusalem; canna, edible; cassava, bitter and sweet; chayote (root); chufa; dasheen; ginger; leren; sweet potato; tanier; turmeric; yam bean; yam, true.

(2) *Crop Group 2.* Leaves of Root and Tuber Vegetables (Human Food or Animal Feed) Group (Human Food or Animal Feed) Group.

(i) *Representative commodities.* Turnip and garden beet or sugar beet.

(ii) *Commodities.* The following is a list of all the commodities included in Crop Group 2:

Crop Group 2: Leaves of Root and Tuber Vegetables (Human Food or Animal Feed) Group—Commodities

Beet, garden (*Beta vulgaris*)
Beet, sugar (*Beta vulgaris*)
Burdock, edible (*Arctium lappa*)
Carrot (*Daucus carota*)
Cassava, bitter and sweet (*Manihot esculenta*)
Celeriac (celery root) (*Apium graveolens* var. *rapaceum*)
Chervil, turnip-rooted (*Chaerophyllum bulbosum*)
Chicory (*Cichorium intybus*)
Dasheen (taro) (*Colocasia esculenta*)
Parsnip (*Pastinaca sativa*)
Radish (*Raphanus sativus*)
Radish, oriental (daikon) (*Raphanus sativus* subvar. *longipinnatus*)
Rutabaga (*Brassica campestris* var. *napobrassica*)
Salsify, black (*Scorzonera hispanica*)
Sweet potato (*Ipomoea batatas*)
Tanier (cocoyam) (*Xanthosoma sagittifolium*)
Turnip (*Brassica rapa* var. *rapa*)
Yam, true (*Dioscorea* spp.)

(3) *Crop Group 3.* Bulb Vegetables (*Allium* spp.) Group.

(i) *Representative commodities.* Onion, green; and onion, dry bulb.

(ii) *Commodities.* The following is a list of all the commodities in Crop Group 3:

Crop Group 3: Bulb Vegetables (Allium spp.) Group—Commodities

Garlic (*Allium sativum*)
Garlic, great-headed (elephant) (*Allium ampeloprasum* var. *ampeloprasum*)
Leek (*Allium ampeloprasum, A. porrum, A. tricoccum*)
Onion, dry bulb and green (*Allium cepa, A. fistulosum*)
Onion, Welch (*Allium fistulosum*)
Shallot (*Allium cepa* var. *cepa*)

(4) *Crop Group 4.* Leafy Vegetables (Except *Brassica* Vegetables) Group.

(i) *Representative commodities.* Celery, head lettuce, leaf lettuce, and spinach (*Spinacia oleracea*).

(ii) *Table.* The following Table 1 lists all the commodities included in Crop Group 4 and identifies the related crop subgroups.

TABLE 1—CROP GROUP 4: LEAFY VEGETABLES (EXCEPT *BRASSICA* VEGETABLES) GROUP

Commodities	Related crop subgroups
Amaranth (leafy amaranth, Chinese spinach, tampala) (*Amaranthus* spp.)	4-A
Arugula (Roquette) (*Eruca sativa*)	4-A
Cardoon (*Cynara cardunculus*)	4-B
Celery (*Apium graveolens* var. *dulce*)	4-B
Celery, Chinese (*Apium graveolens* var. *secalinum*)	4-B
Celtuce (*Lactuca sativa* var. *angustana*)	4-B
Chervil (*Anthriscus cerefolium*)	4-A
Chrysanthemum, edible-leaved (*Chrysanthemum coronarium* var. *coronarium*)	4-A
Chrysanthemum, garland (*Chrysanthemum coronarium* var. *spatiosum*)	4-A
Corn salad (*Valerianella locusta*)	4-A
Cress, garden (*Lepidium sativum*)	4-A
Cress, upland (yellow rocket, winter cress) (*Barbarea vulgaris*)	4-A
Dandelion (*Taraxacum officinale*)	4-A
Dock (sorrel) (*Rumex* spp.)	4-A
Endive (escarole) (*Cichorium endivia*)	4-A
Fennel, Florence (finochio) (*Foeniculum vulgare* Azoricum Group)	4-B
Lettuce, head and leaf (*Lactuca sativa*)	4-A
Orach (*Atriplex hortensis*)	4-A
Parsley (*Petroselinum crispum*)	4-A
Purslane, garden (*Portulaca oleracea*)	4-A
Purslane, winter (*Montia perfoliata*)	4-A
Radicchio (red chicory) (*Cichorium intybus*)	4-A
Rhubarb (*Rheum rhabarberum*)	4-B
Spinach (*Spinacia oleracea*)	4-A
Spinach, New Zealand (*Tetragonia tetragonioides, T. expansa*)	4-A
Spinach, vine (Malabar spinach, Indian spinach) (*Basella alba*)	4-A
Swiss chard (*Beta vulgaris* var. *cicla*)	4-B

(iii) *Table.* The following Table 2 identifies the crop subgroups for Crop Group 4, specifies the representative commodities for each subgroup, and lists all the commodities included in each subgroup.

TABLE 2—CROP GROUP 4 SUBGROUP LISTING

Representative commodities	Commodities
Crop Subgroup 4–A. Leafy greens subgroup. Head lettuce and leaf lettuce, and spinach (*Spinacia oleracea*).	Amaranth; arugula; chervil; chrysanthemum, edible-leaved; chrysanthemum, garland; corn salad; cress, garden; cress, upland; dandelion; dock; endive; lettuce; orach; parsley; purslane, garden; purslane, winter; radicchio (red chicory); spinach; spinach, New Zealand; spinach, vine.
Crop Subgroup 4–B. Leaf petioles subgroup. Celery.	Cardoon; celery; celery, Chinese; celtuce; fennel, Florence; rhubarb; Swiss chard.

(5) *Crop Group 5. Brassica* (Cole) Leafy Vegetables Group.

(i) *Representative commodities.* Broccoli or cauliflower; cabbage; and mustard greens.

(ii) *Table.* The following Table 1 lists all the commodities included in Crop Group 5 and identifies the related crop subgroups.

TABLE 1—CROP GROUP 5: *Brassica* (Cole) Leafy Vegetables

Commodities	Related crop subgroups
Broccoli (*Brassica oleracea* var. *botrytis*)	5-A
Broccoli, Chinese (gai lon) (*Brassica alboglabra*)	5-A
Broccoli raab (rapini) (*Brassica campestris*)	5-B
Brussels sprouts (*Brassica oleracea* var. *gemmifera*)	5-A
Cabbage (*Brassica oleracea*)	5-A
Cabbage, Chinese (bok choy) (*Brassica chinensis*)	5-B
Cabbage, Chinese (napa) (*Brassica pekinensis*)	5-A
Cabbage, Chinese mustard (gai choy) (*Brassica campestris*)	5-A
Cauliflower (*Brassica oleracea* var. *botrytis*)	5-A
Cavalo broccolo (*Brassica oleracea* var. *botrytis*)	5-A
Collards (*Brassica oleracea* var. *acephala*)	5-B
Kale (*Brassica oleracea* var. *acephala*)	5-B
Kohlrabi (*Brassica oleracea* var. *gongylodes*)	5-A
Mizuna (*Brassica rapa* Japonica Group)	5-B
Mustard greens (*Brassica juncea*)	5-B
Mustard spinach (*Brassica rapa* Perviridis Group)	5-B
Rape greens (*Brassica napus*)	5-B

(iii) *Table.* The following Table 2 identifies the crop subgroups for Crop Group 5, specifies the representative commodity(ies) for each subgroup, and lists all the commodities included in each subgroup.

TABLE 2—CROP GROUP 5 SUBGROUP LISTING

Representative commodities	Commodities
Crop Subgroup 5–A. Head and stem *Brassica* subgroup	
Broccoli or cauliflower; and cabbage	Broccoli; broccoli, Chinese; brussels sprouts; cabbage; cabbage, Chinese (napa); cabbage, Chinese mustard; cauliflower; cavalo broccolo; kohlrabi
Crop Subgroup 5-B. Leafy *Brassica* greens subgroup.	
Mustard greens	Broccoli raab; cabbage, Chinese (bok choy); collards; kale; mizuna; mustard greens; mustard spinach; rape greens

(6) *Crop Group 6.* Legume Vegetables (Succulent or Dried) Group.

(i) *Representative commodities.* Bean (*Phaseolus* spp.; one succulent cultivar and one dried cultivar); pea (*Pisum* spp.; one succulent cultivar and one dried cultivar); and soybean.

(ii) *Table.* The following Table 1 lists all the commodities included in Crop Group 6 and identifies the related crop subgroups.

TABLE 1—CROP GROUP 6: LEGUME VEGETABLES (SUCCULENT OR DRIED)

Commodities	Related crop subgroups
Bean (*Lupinus* spp.) (includes grain lupin, sweet lupin, white lupin, and white sweet lupin)	6-C
Bean (*Phaseolus* spp.) (includes field bean, kidney bean, lima bean, navy bean, pinto bean, runner bean, snap bean, tepary bean, wax bean)	6-A, 6-B, 6-C
Bean (*Vigna* spp.) (includes adzuki bean, asparagus bean, blackeyed pea, catjang, Chinese longbean, cowpea, Crowder pea, moth bean, mung bean, rice bean, southern pea, urd bean, yardlong bean)	6-A, 6-B, 6-C
Broad bean (fava bean) (*Vicia faba*)	6-B, 6-C
Chickpea (garbanzo bean) (*Cicer arietinum*)	6-C
Guar (*Cyamopsis tetragonoloba*)	6-C
Jackbean (*Canavalia ensiformis*)	6-A
Lablab bean (hyacinth bean) (*Lablab purpureus*)	6-C
Lentil (*Lens esculenta*)	6-C
Pea (*Pisum* spp.) (includes dwarf pea, edible-pod pea, English pea, field pea, garden pea, green pea, snow pea, sugar snap pea)	6-A, 6-B, 6-C
Pigeon pea (*Cajanus cajan*)	6-A, 6-B, 6-C
Soybean (*Glycine max*)	N/A
Soybean (immature seed) (*Glycine max*)	6-A
Sword bean (*Canavalia gladiata*)	6-A

(iii) *Table.* The following Table 2 identifies the crop subgroups for Crop Group 6, specifies the representative commodities for each subgroup, and lists all the commodities included in each subgroup.

TABLE 2—CROP GROUP 6 SUBGROUP LISTING

Representative commodities	Commodities
Crop Subgroup 6–A. Edible-podded legume vegetables subgroup.	
Any one succulent cultivar of edible-podded bean (*Phaseolus* spp.) and any one succulent cultivar of edible-podded pea (*Pisum* spp.)..	Bean (*Phaseolus* spp.) (includes runner bean, snap bean, wax bean); bean (*Vigna* spp.) (includes asparagus bean, Chinese longbean, moth bean, yardlong bean); jackbean; pea (*Pisum* spp.) (includes dwarf pea, edible-pod pea, snow pea, sugar snap pea); pigeon pea; soybean (immature seed); sword bean.
Crop Subgroup 6-B. Succulent shelled pea and bean subgroup.	
Any succulent shelled cultivar of bean (*Phaseolus* spp.) and garden pea (*Pisum* spp.)..	Bean (*Phaseolus* spp.) (includes lima bean (green)); broad bean (succulent); bean (*Vigna* spp.) (includes blackeyed pea, cowpea, southern pea); pea (*Pisum* spp.) (includes English pea, garden pea, green pea); pigeon pea.
Crop Subgroup 6-C. Dried shelled pea and bean (except soybean) subgroup	
Any one dried cultivar of bean (*Phaseolus* spp.); and any one dried cultivar of pea (*Pisum* spp.).	Dried cultivars of bean (*Lupinus* spp.) (includes grain lupin, sweet lupin, white lupin, and white sweet lupin); (*Phaseolus* spp.) (includes field bean, kidney bean, lima bean (dry), navy bean, pinto bean; tepary bean; bean (*Vigna* spp.) (includes adzuki bean, blackeyed pea, catjang, cowpea, Crowder pea, moth bean, mung bean, rice bean, southern pea, urd bean); broad bean (dry); chickpea; guar; lablab bean; lentil; pea (*Pisum* spp.) (includes field pea); pigeon pea.

(7) *Crop Group 7.* Foliage of Legume Vegetables Group.

(i) *Representative commodities.* Any cultivar of bean (*Phaseolus* spp.), field pea (*Pisum* spp.), and soybean.

(ii) *Table.* The following Table 1 lists the commodities included in Crop Group 7.

TABLE 1—CROP GROUP 7: FOLIAGE OF LEGUME VEGETABLES GROUP

Representative commodities	Commodities
Any cultivar of bean (*Phaseolus* spp.) and field pea (*Pisum* spp.), and soybean (*Glycine max*).	Plant parts of any legume vegetable included in the legume vegetables that will be used as animal feed.

(iii) *Table.* The following Table 2 identifies the crop subgroup for Crop Group 7 and specifies the representative commodities for the subgroup, and lists all the commodities included in the subgroup.

TABLE 2—CROP GROUP 7 SUBGROUP LISTING

Representative commodities	Commodities
Crop Subgroup 7-A. Foliage of legume vegetables (except soybeans) subgroup	
Any cultivar of bean (*Phaseolus* spp.), and field pea (*Pisum* spp.).	Plant parts of any legume vegetable (except soybeans) included in the legume vegetables group that will be used as animal feed.

(8) *Crop Group 8.* Fruiting Vegetables (Except Cucurbits) Group.

(i) *Representative commodities.* Tomato, bell pepper, and one cultivar of non-bell pepper.

(ii) *Commodities.* The following is a list of all the commodities included in Crop Group 8:

Crop Group 8: Fruiting Vegetables (Except Cucurbits)—Commodities

Eggplant (*Solanum melongena*)
Groundcherry (*Physalis* spp.)
Pepino (*Solanum muricatum*)
Pepper (*Capsicum* spp.) (includes bell pepper, chili pepper, cooking pepper, pimento, sweet pepper)
Tomatillo (*Physalis ixocarpa*)
Tomato (*Lycopersicon esculentum*)

(9) *Crop Group 9.* Cucurbit Vegetables Group.

(i) *Representative commodities.* Cucumber, muskmelon, and summer squash.

(ii) *Table.* The following Table 1 lists all the commodities included in Crop Group 9 and identifies the related subgroups.

TABLE 1—CROP GROUP 9: CUCURBIT VEGETABLES

Commodities	Related crop subgroups
Chayote (fruit) (*Sechium edule*)	9-B
Chinese waxgourd (Chinese preserving melon) (*Benincasa hispida*)	9-B
Citron melon (*Citrullus lanatus* var. *citroides*)	9-A
Cucumber (*Cucumis sativus*)	9-B
Gherkin (*Cucumis anguria*)	9-B
Gourd, edible (*Lagenaria* spp.) (includes hyotan, cucuzza); (*Luffa acutangula, L. cylindrica*) (includes hechima, Chinese okra)	9-B
Momordica spp. (includes balsam apple, balsam pear, bitter melon, Chinese cucumber)	9-B
Muskmelon (hybrids and/or cultivars of *Cucumis melo*) (includes true cantaloupe, cantaloupe, casaba, crenshaw melon, golden pershaw melon, honeydew melon, honey balls, mango melon, Persian melon, pineapple melon, Santa Claus melon, and snake melon)	9-A
Pumpkin (*Cucurbita* spp.)	9-B
Squash, summer (*Cucurbita pepo* var. *melopepo*) (includes crookneck squash, scallop squash, straightneck squash, vegetable marrow, zucchini)	9-B
Squash, winter (*Cucurbita maxima*; *C. moschata*) (includes butternut squash, calabaza, hubbard squash); (*C. mixta*; *C. pepo*) (includes acorn squash, spaghetti squash)	9-B
Watermelon (includes hybrids and/or varieties of *Citrullus lanatus*)	9-A

(iii) *Table.* The following Table 2 identifies the crop subgroups for Crop Group 9, specifies the representative commodities for each subgroup, and lists all the commodities included in each subgroup.

TABLE 2—CROP GROUP 9 SUBGROUP LISTING

Representative commodities	Commodities
Crop Subgroup 9-A. Melon subgroup	
Cantaloupes	Citron melon; muskmelon; watermelon
Crop Subgroup 9-B. Squash/cucumber subgroup.	
One cultivar of summer squash and cucumber.	Chayote (fruit); Chinese waxgourd; cucumber; gherkin; gourd, edible; *Momordica* spp.; pumpkin; squash, summer; squash, winter.

(10) *Crop Group 10.* Citrus Fruits (*Citrus* spp., *Fortunella* spp.) Group.

(i) *Representative commodities.* Sweet orange; lemon and grapefruit.

(ii) *Commodities.* The following is a list of all the commodities in Crop Group 10:

Crop Group 10: Citrus Fruits (Citrus spp., Fortunella spp.) Group—Commodities

Calamondin (*Citrus mitis* X *Citrofortunella mitis*)
Citrus citron (*Citrus medica*)
Citrus hybrids (*Citrus* spp.) (includes chironja, tangelo, tangor)
Grapefruit (*Citrus paradisi*)
Kumquat (*Fortunella* spp.)
Lemon (*Citrus jambhiri, Citrus limon*)
Lime (*Citrus aurantiifolia*)
Mandarin (tangerine) (*Citrus reticulata*)
Orange, sour (*Citrus aurantium*)
Orange, sweet (*Citrus sinensis*)
Pummelo (*Citrus grandis, Citrus maxima*)
Satsuma mandarin (*Citrus unshiu*)

(11) *Crop Group 11:* Pome Fruits Group.

(i) *Representative commodities.* Apple and pear.

(ii) *Commodities.* The following is a list of all the commodities included in Crop Group 11:

Crop Group 11: Pome Fruits Group—Commodities

Apple (*Malus domestica*)
Crabapple (*Malus* spp.)
Loquat (*Eriobotrya japonica*)
Mayhaw (*Crataegus aestivalis, C. opaca*, and *C. rufula*)
Pear (*Pyrus communis*)
Pear, oriental (*Pyrus pyrifolia*)
Quince (*Cydonia oblonga*)

(12) *Crop Group 12.* Stone Fruits Group.

(i) *Representative commodities.* Sweet cherry or tart cherry; peach; and plum or fresh prune (*Prunus domestica, Prunus* spp.)

(ii) *Commodities.* The following is a list of all the commodities included in Crop Group 12:

Crop Group 12: Stone Fruits Group—Commodities

Apricot (*Prunus armeniaca*)
Cherry, sweet (*Prunus avium*),
Cherry, tart (*Prunus cerasus*)
Nectarine (*Prunus persica*)
Peach (*Prunus persica*)
Plum (*Prunus domestica, Prunus* spp.)
Plum, Chickasaw (*Prunus angustifolia*)
Plum, Damson (*Prunus domestica* spp. *insititia*)
Plum, Japanese (*Prunus salicina*)
Plumcot (*Prunus. armeniaca X P. domestica*)
Prune (fresh) (*Prunus domestica, Prunus* spp.)

(13) *Crop Group 13.* Berries Group.

(i) *Representative commodities.* Any one blackberry or any one raspberry; and blueberry.

(ii) *Table.* The following Table 1 lists all the commodities included in Crop Group 13 and identifies the related subgroups.

TABLE 1—CROP GROUP 13: BERRIES GROUP

Commodities	Related crop subgroups
Blackberry (*Rubus eubatus*) (including bingleberry, black satin berry, boysenberry, Cherokee blackberry, Chesterberry, Cheyenne blackberry, coryberry, darrowberry, dewberry, Dirksen thornless berry, Himalayaberry, hullberry, Lavacaberry, lowberry, Lucretiaberry, mammoth blackberry, marionberry, nectarberry, olallieberry, Oregon evergreen berry, phenomenalberry, rangeberry, ravenberry, rossberry, Shawnee blackberry, youngberry, and varieties and/or hybrids of these)	13-A
Blueberry (*Vaccinium* spp.)	13-B
Currant (*Ribes* spp.)	13-B
Elderberry (*Sambucus* spp.)	13-B
Gooseberry (*Ribes* spp.)	13-B
Huckleberry (*Gaylussacia* spp.)	13-B
Loganberry (*Rubus loganobaccus*)	13-A
Raspberry, black and red (*Rubus occidentalis, Rubus strigosus, Rubus idaeus*)	13-A

(iii) *Table.* The following Table 2 identifies the crop subgroups for Crop Group 13, specifies the representative commodities for each subgroup, and lists all the commodities included in each subgroup.

TABLE 2—CROP GROUP 13 SUBGROUPS LISTING

Representative commodities	Commodities
Crop Subgroup 13-A. Caneberry (blackberry and raspberry) subgroup.	
Any one blackberry or any one raspberry.	Blackberry; loganberry; red and black raspberry; cultivars and/or hybrids of these.
Crop Subgroup 13-B. Bushberry subgroup..	
Blueberry, highbush.	Blueberry, highbush and lowbush; currant; elderberry; gooseberry; huckleberry.

(14) *Crop Group 14.* Tree Nuts Group.

(i) *Representative commodities.* Almond and pecan.

(ii) *Commodities.* The following is a list of all the commodities included in Crop Group 14:

Crop Group 14: Tree Nuts—Commodities

Almond (*Prunus dulcis*)
Beech nut (*Fagus* spp.)
Brazil nut (*Bertholletia excelsa*)
Butternut (*Juglans cinerea*)
Cashew (*Anacardium occidentale*)
Chestnut (*Castanea* spp.)
Chinquapin (*Castanea pumila*)
Filbert (hazelnut) (*Corylus* spp.)
Hickory nut (*Carya* spp.)
Macadamia nut (bush nut) (*Macadamia* spp.)
Pecan (*Carya illinoensis*)
Walnut, black and English (Persian) (*Juglans* spp.)

(15) *Crop Group 15.* Cereal Grains Group.

(i) *Representative commodities.* Corn (fresh sweet corn and dried field corn), rice, sorghum, and wheat.

(ii) *Commodities.* The following is a list of all the commodities included in Crop Group 15:

Crop Group 15: Cereal Grains—Commodities

Barley (*Hordeum* spp.)
Buckwheat (*Fagopyrum esculentum*)
Corn (*Zea mays*)
Millet, pearl (*Pennisetum glaucum*)
Millet, proso (*Panicum milliaceum*)
Oats (*Avena* spp.)
Popcorn (*Zea mays* var. *everta*)
Rice (*Oryza sativa*)
Rye (*Secale cereale*)
Sorghum (milo) (*Sorghum* spp.)
Teosinte (*Euchlaena mexicana*)
Triticale (*Triticum-Secale* hybrids)
Wheat (*Triticum* spp.)
Wild rice (*Zizania aquatica*)

(16) *Crop Group 16.* Forage, Fodder and Straw of Cereal Grains Group.

(i) *Representative commodities.* Corn, wheat, and any other cereal grain crop.

(ii) *Commodities.* The commodities included in Crop Group 16 are: Forage, fodder, and straw of all commodities included in the group cereal grains group.

(17) *Crop Group 17.* Grass Forage, Fodder, and Hay Group.

(i) *Representative commodities.* Bermuda grass; bluegrass; and bromegrass or fescue.

(ii) *Commodities.* The commodities included in Crop Group 17 are: Any grass, *Gramineae* family (either green or cured) except sugarcane and those included in the cereal grains group, that will be fed to or grazed by livestock, all pasture and range grasses and grasses grown for hay or silage.

(18) *Crop Group 18.* Nongrass Animal Feeds (Forage, Fodder, Straw, and Hay) Group.

(i) *Representative commodities.* Alfalfa and clover (*Trifolium* spp.)

(ii) *Commodities.* The following is a list of all the commodities included in Crop Group 18:

Crop Group 18: Nongrass Animal Feeds (Forage, Fodder, Straw, and Hay) Group—Commodities

Alfalfa (*Medicago sativa* subsp. *sativa*)
Bean, velvet (*Mucuna pruriens* var. *utilis*)
Clover (*Trifolium* spp., *Melilotus* spp.)
Kudzu (*Pueraria lobata*)
Lespedeza (*Lespedeza* spp.)
Lupin (*Lupinus* spp.)
Sainfoin (*Onobrychis viciifolia*);
Trefoil (*Lotus* spp.)
Vetch (*Vicia* spp.)
Vetch, crown (*Coronilla varia*)
Vetch, milk (*Astragalus* spp).

(19) *Crop Group 19.* Herbs and Spices Group.

(i) *Representative commodities.* Basil (fresh and dried); black pepper; chive; and celery seed or dill seed.

(ii) *Table.* The following Table 1 lists all the commodities included in Crop Group 19 and identifies the related subgroups.

TABLE 1—CROP GROUP 19: HERBS AND SPICES GROUP

Commodities	Related crop subgroups
Allspice (*Pimenta dioica*)	19-B
Angelica (*Angelica archangelica*)	19-A
Anise (anise seed) (*Pimpinella anisum*)	19-B
Anise, star (*Illicium verum*)	19-B
Annatto (seed)	19-B
Balm (lemon balm) (*Melissa officinalis*)	19-A
Basil (*Ocimum basilicum*)	19-A
Borage (*Borago officinalis*)	19-A
Burnet (*Sanguisorba minor*)	19-A
Camomile (*Anthemis nobilis*)	19-A
Caper buds (*Capparis spinosa*)	19-B
Caraway (*Carum carvi*)	19-B
Caraway, black (*Nigella sativa*)	19-B
Cardamom (*Elettaria cardamomum*)	19-B
Cassia bark (*Cinnamomum aromaticum*)	19-B
Cassia buds (*Cinnamomum aromaticum*)	19-B
Catnip (*Nepeta cataria*)	19-A
Celery seed (*Apicum graveolens*)	19-B
Chervil (dried) (*Anthriscus cerefolium*)	19-A
Chive (*Allium schoenoprasum*)	19-A
Chive, Chinese (*Allium tuberosum*)	19-A
Cinnamon (*Cinnamomum verum*)	19-B
Clary (*Salvia sclarea*)	19-A
Clove buds (*Eugenia caryophyllata*)	19-B
Coriander (cilantro or Chinese parsley) (leaf) (*Coriandrum sativum*)	19-A
Coriander (cilantro) (seed) (*Coriandrum sativum*)	19-B
Costmary (*Chrysanthemum balsamita*)	19-A
Culantro (leaf) (*Eryngium foetidum*)	19-A
Culantro (seed) (*Eryngium foetidum*)	19-B
Cumin (*Cuminum cyminum*)	19-B
Curry (leaf) (*Murraya koenigii*)	19-A
Dill (dillweed) (*Anethum graveolens*)	19-A
Dill (seed) (*Anethum graveolens*)	19-B
Fennel (common) (*Foeniculum vulgare*)	19-B
Fennel, Florence (seed) (*Foeniculum vulgare* Azoricum Group)	19-B
Fenugreek (*Trigonella foenumgraecum*)	19-B
Grains of paradise (*Aframomum melegueta*)	19-B
Horehound (*Marrubium vulgare*)	19-A
Hyssop (*Hyssopus officinalis*)	19-A
Juniper berry (*Juniperus communis*)	19-B
Lavender (*Lavandula officinalis*)	19-A
Lemongrass (*Cymbopogon citratus*)	19-A
Lovage (leaf) (*Levisticum officinale*)	19-A
Lovage (seed) (*Levisticum officinale*)	19-B
Mace (*Myristica fragrans*)	19-B
Marigold (*Calendula officinalis*)	19-A
Marjoram (*Origanum spp.*) (includes sweet or annual marjoram, wild marjoram or oregano, and pot marjoram)	19-A
Mustard (seed) (*Brassica juncea, B. hirta, B. nigra*)	19-B
Nasturtium (*Tropaeolum majus*)	19-A
Nutmeg (*Myristica fragrans*)	19-B
Parsley (dried) (*Petroselinum crispum*)	19-A
Pennyroyal (*Mentha pulegium*)	19-A
Pepper, black (*Piper nigrum*)	19-B
Pepper, white	19-B
Poppy (seed) (Papaver somniferum)	19-B
Rosemary (*Rosemarinus officinalis*)	19-A
Rue (*Ruta graveolens*)	19-A
Saffron (*Crocus sativus*)	19-B
Sage (*Salvia officinalis*)	19-A
Savory, summer and winter (*Satureja spp.*)	19-A
Sweet bay (bay leaf) (*Laurus nobilis*)	19-A
Tansy (*Tanacetum vulgare*)	19-A
Tarragon (*Artemisia dracunculus*)	19-A
Thyme (*Thymus spp.*)	19-A
Vanilla (*Vanilla planifolia*)	19-B
Wintergreen (*Gaultheria procumbens*)	19-A
Woodruff (*Galium odorata*)	19-A
Wormwood (*Artemisia absinthium*)	19-A

(iii) *Table.* The following Table 2 identifies the crop subgroups for Crop Group 19, specifies the representative commodities for each subgroup, and lists all the commodities included in each subgroup.

TABLE 2—CROP GROUP 19 SUBGROUPS

Representative commodities	Commodities
Crop Subgroup 19-A. Herb subgroup.	
Basil (fresh and dried) and chive.	Angelica; balm; basil; borage; burnet; camomile; catnip; chervil (dried); chive; chive, Chinese, clary; coriander (leaf); costmary; culantro (leaf); curry (leaf); dillweed; horehound; hyssop; lavender; lemongrass; lovage (leaf); marigold; marjoram (*Origanum* spp.); nasturtium; parsley (dried); pennyroyal; rosemary; rue; sage; savory, summer and winter; sweet bay; tansy; tarragon; thyme; wintergreen; woodruff; and wormwood.
Crop Subgroup 19-B. Spice subgroup.	
Black pepper; and celery seed or dill seed.	Allspice; anise (seed); anise, star; annatto (seed); caper (buds); caraway; caraway, black; cardamom; cassia (buds); celery (seed); cinnamon; clove (buds); coriander (seed); culantro (seed); cumin; dill (seed); fennel, common; fennel, Florence (seed); fenugreek; grains of paradise; juniper (berry); lovage (seed); mace; mustard (seed); nutmeg; pepper, black; pepper, white; poppy (seed); saffron; and vanilla.

[FR Doc. 95–12144 Filed 5–16–95; 8:45 am]
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federal register

Wednesday
May 17, 1995

Part IX

The President

Executive Order 12960—Amendments to the Manual For Courts-Martial, United States, 1984

Federal Register
Vol. 60, No. 95
Wednesday, May 17, 1995

Presidential Documents

Title 3—

The President

Executive Order 12960 of May 12, 1995

Amendments to the Manual for Courts-Martial, United States, 1984

By the authority vested in me as President by the Constitution and the laws of the United States of America, including chapter 47 of title 10, United States Code (Uniform Code of Military Justice, 10 U.S.C. 801–946), in order to prescribe amendments to the Manual for Courts-Martial, United States, 1984, prescribed by Executive Order No. 12473, as amended by Executive Order No. 12484, Executive Order No. 12550, Executive Order No. 12586, Executive Order No. 12708, Executive Order No. 12767, Executive Order No. 12888, and Executive Order No. 12936, it is hereby ordered as follows:

Section 1. Part I of the Manual for Courts-Martial, United States, 1984, is amended as follows:

Preamble, paragraph 4, is amended to read as follows:

"4. Structure and application of the Manual for Courts-Martial.

The Manual for Courts-Martial shall consist of this Preamble, the Rules for Courts-Martial, the Military Rules of Evidence, the Punitive Articles, and the Nonjudicial Punishment Procedures (Parts I–V). The Manual shall be applied consistent with the purpose of military law.

The Manual shall be identified as "Manual for Courts-Martial, United States (19xx edition)." Any amendments to the Manual made by Executive Order shall be identified as "19xx Amendments to the Manual for Courts-Martial, United States.""

Sec. 2. Part II of the Manual for Courts-Martial, United States, 1984, is amended to read as follows:

a. R.C.M. 810(d) is amended to read as follows:

"(d) *Sentence limitations.*

(1) *In general.* Sentences at rehearings, new trials, or other trials shall be adjudged within the limitations set forth in R.C.M. 1003. Except as otherwise provided in subsection (d)(2) of this rule, offenses on which a rehearing, new trial, or other trial has been ordered shall not be the basis for an approved sentence in excess of or more severe than the sentence ultimately approved by the convening or higher authority following the previous trial or hearing, unless the sentence prescribed for the offense is mandatory. When a rehearing or sentencing is combined with trial on new charges, the maximum punishment that may be approved by the convening authority shall be the maximum punishment under R.C.M. 1003 for the offenses being reheard as limited above, plus the total maximum punishment under R.C.M. 1003 for any new charges of which the accused has been found guilty. In the case of an "other trial" no sentence limitations apply if the original trial was invalid because a summary or special court-martial improperly tried an offense involving a mandatory punishment or one otherwise considered capital.

(2) *Pretrial agreement.* If, after the earlier court-martial, the sentence was approved in accordance with a pretrial agreement and at the rehearing the accused fails to comply with the pretrial agreement, by failing to enter a plea of guilty or otherwise, the approved sentence resulting at a rehearing of the affected charges and specifications may include any otherwise lawful

punishment not in excess of or more serious than lawfully adjudged at the earlier court-martial."

b. R.C.M. 924(a) is amended to read as follows:

"(a) *Time for reconsideration.* Members may reconsider any finding reached by them before such finding is announced in open session."

c. R.C.M. 924(c) is amended to read as follows:

"(c) *Military judge sitting alone.* In a trial by military judge alone, the military judge may reconsider any finding of guilty at any time before announcement of sentence and may reconsider the issue of the finding of guilty of the elements in a finding of not guilty only by reason of lack of mental responsibility at any time before announcement of sentence or authentication of the record of trial in the case of a complete acquittal."

d. R.C.M. 1003(b)(9) and the accompanying discussion are deleted.

e. R.C.M. 1003(b)(10), (11), and (12) are redesignated as subsections (9), (10), and (11), respectively.

f. R.C.M. 1009 is amended to read as follows:

"(a) *Reconsideration.* Subject to this rule, a sentence may be reconsidered at any time before such sentence is announced in open session of the court.

(b) *Exceptions.*

(1) If the sentence announced in open session was less than the mandatory minimum prescribed for an offense of which the accused has been found guilty, the court that announced the sentence may reconsider such sentence after it has been announced, and may increase the sentence upon reconsideration in accordance with subsection (e) of this rule.

(2) If the sentence announced in open session exceeds the maximum permissible punishment for the offense or the jurisdictional limitation of the court-martial, the sentence may be reconsidered after announcement in accordance with subsection (e) of this rule.

(c) *Clarification of sentence.* A sentence may be clarified at any time prior to action of the convening authority on the case.

(1) *Sentence adjudged by the military judge.* When a sentence adjudged by the military judge is ambiguous, the military judge shall call a session for clarification as soon as practical after the ambiguity is discovered.

(2) *Sentence adjudged by members.* When a sentence adjudged by members is ambiguous, the military judge shall bring the matter to the attention of the members if the matter is discovered before the court-martial is adjourned. If the matter is discovered after adjournment, the military judge may call a session for clarification by the members who adjudged the sentence as soon as practical after the ambiguity is discovered.

(d) *Action by the convening authority.* When a sentence adjudged by the court-martial is ambiguous, the convening authority may return the matter to the court-martial for clarification. When a sentence adjudged by the court-martial is apparently illegal, the convening authority may return the matter to the court-martial for reconsideration or may approve a sentence no more severe than the legal, unambiguous portions of the adjudged sentence.

(e) *Reconsideration procedure.* Any member of the court-martial may propose that a sentence reached by the members be reconsidered.

(1) *Instructions.* When a sentence has been reached by members and reconsideration has been initiated, the military judge shall instruct the members on the procedure for reconsideration.

(2) *Voting.* The members shall vote by secret written ballot in closed session whether to reconsider a sentence already reached by them.

(3) *Number of votes required.*

(A) *With a view to increasing.* Subject to subsection (b) of this rule, members may reconsider a sentence with a view of increasing it only if at least a majority of the members vote for reconsideration.

(B) *With a view to decreasing.* Members may reconsider a sentence with a view to decreasing it only if:

(i) In the case of a sentence which includes death, at least one member votes to reconsider;

(ii) In the case of a sentence which includes confinement for life or more than 10 years, more than one-fourth of the members vote to reconsider; or

(iii) In the case of any other sentence, more than one-third of the members vote to reconsider.

(4) *Successful vote.* If a vote to reconsider a sentence succeeds, the procedures in R.C.M. 1006 shall apply."

g. R.C.M. 1103(b)(3)(L) is deleted.

h. R.C.M. 1103(b)(3)(M) and (N) are redesignated as subsections (L) and (M), respectively.

i. R.C.M. 1103(c)(2) is amended to read as follows:

"(2) *Not involving a bad-conduct discharge.* If the special court-martial resulted in findings of guilty but a bad-conduct discharge was not adjudged, the requirements of subsections (b)(1), (b)(2)(D), and (b)(3)(A)—(F) and (I)—(M) of this rule shall apply."

j. R.C.M. 1104(b)(2) is amended to read as follows:

"(2) *Summary courts-martial.* The summary court-martial record of trial shall be disposed of as provided in R.C.M. 1305(d). Subsection (b)(1)(D) of this rule shall apply if classified information is included in the record of trial of a summary court-martial."

k. R.C.M. 1106(d)(3) is amended by adding a new subsection (B) as follows:

"(B) A recommendation for clemency by the sentencing authority, made in conjunction with the announced sentence;"

l. R.C.M. 1106(d)(3)(B)—(E) are redesignated as subsections (C)—(F), respectively.

m. R.C.M. 1107(d) is amended by adding a new subparagraph (3) as follows:

"(3) *Postponing service of a sentence to confinement.*

(A) In a case in which a court-martial sentences an accused referred to in subsection (B), below, to confinement, the convening authority may postpone service of a sentence to confinement by a court-martial, without the consent of the accused, until after the accused has been permanently released to the armed forces by a state or foreign country.

(B) Subsection (A) applies to an accused who, while in custody of a state or foreign country, is temporarily returned by that state or foreign country to the armed forces for trial by court-martial; and after the court-martial, is returned to that state or foreign country under the authority of a mutual agreement or treaty, as the case may be.

(C) As used in subsection (d)(3), the term "state" means a state of the United States, the District of Columbia, a territory, and a possession of the United States."

n. R.C.M. 1107(d)(3) is redesignated as R.C.M. 1107(d)(4).

o. R.C.M. 1107(e)(1)(C)(iii) is amended to read as follows:

"(iii) *Rehearing on sentence only.* A rehearing on sentence only shall not be referred to a different kind of court-martial from that which made the original findings. If the convening authority determines a rehearing on sentence is impracticable, the convening authority may approve a sentence of no punishment without conducting a rehearing."

p. R.C.M. 1107(f)(2) is amended to read as follows:

"(2) *Modification of initial action.* The convening authority may recall and modify any action taken by that convening authority at any time before it has been published or before the accused has been officially notified. The convening authority also may recall and modify any action at any time prior to forwarding the record for review, as long as the modification does not result in action less favorable to the accused than the earlier action. In addition, in any special court-martial, the convening authority may recall and correct an illegal, erroneous, incomplete, or ambiguous action at any time before completion of review under R.C.M. 1112, as long as the correction does not result in action less favorable to the accused than the earlier action. When so directed by a higher reviewing authority or the Judge Advocate General, the convening authority shall modify any incomplete, ambiguous, void, or inaccurate action noted in review of the record of trial under Article 64, 66, 67, or examination of the record of trial under Article 69. The convening authority shall personally sign any supplementary or corrective action."

q. R.C.M. 1108(b) is amended to read as follows:

"(b) *Who may suspend and remit.* The convening authority may, after approving the sentence, suspend the execution of all or any part of the sentence of a court-martial except for a sentence of death. The general court-martial convening authority over the accused at the time of the court-martial may, when taking the action under R.C.M. 1112(f), suspend or remit any part of the sentence, The Secretary concerned and, when designated by the Secretary concerned, any Under Secretary, Assistant Secretary, Judge Advocate General, or commanding officer may suspend or remit any part or amount of the unexecuted part of any sentence other than a sentence approved by the President. The commander of the accused who has the authority to convene a court-martial of the kind which adjudged the sentence may suspend or remit any part or amount of the unexecuted part of any sentence by summary court-martial or of any sentence by special court-martial which does not include a bad-conduct discharge regardless of whether the person acting has previously approved the sentence. The "unexecuted part of any sentence" includes that part which has been approved and ordered executed but which has not actually been carried out."

r. R.C.M. 1113(d)(2)(A) is amended by adding a new subparagraph (iii) as follows:

"(iii) Periods during which the accused is in custody of civilian or foreign authorities after the convening authority, pursuant to Article 57(e), has postponed the service of a sentence to confinement;"

s. R.C.M. 1113(d)(2)(A)(iii)—(iv) are redesignated 1113(d)(A)(iv)—(v), respectively.

t. R.C.M. 1113(d)(5) is deleted.

u. R.C.M. 1113(d)(6) is redesignated as subsection (5).

v. R.C.M. 1201(b)(3)(A) is amended to read as follows:

"(A) *In general.* Notwithstanding R.C.M. 1209, the Judge Advocate General may, sua sponte or, except when the accused has waived or withdrawn the right to appellate review under R.C.M. 1110, upon application of the accused or a person with authority to act for the accused, vacate or modify, in whole or in part, the findings, sentence, or both of a court-martial that has been finally reviewed, but has not been reviewed either by a Court of Military Review or by the Judge Advocate General under subsection (b)(1) of this rule, on the ground of newly discovered evidence, fraud on the court-martial, lack of jurisdiction over the accused or the offense, error prejudicial to the substantial rights of the accused, or the appropriateness of the sentence."

w. R.C.M. 1305(d) is deleted.

x. R.C.M. 1305(e) is redesignated as subsection (d).

Sec. 3. Part III of the Manual for Courts-Martial, United States, 1984, is amended as follows:

a. M.R.E. 311(g)(2) is amended to read as follows:

"(2) *False statements.* If the defense makes a substantial preliminary showing that a government agent included a false statement knowingly and intentionally or with reckless disregard for the truth in the information presented to the authorizing officer, and if the allegedly false statement is necessary to the finding of probable cause, the defense, upon request, shall be entitled to a hearing. At the hearing, the defense has the burden of establishing by a preponderance of the evidence the allegation of knowing and intentional falsity or reckless disregard for the truth. If the defense meets its burden, the prosecution has the burden of proving by a preponderance of the evidence, with the false information set aside, that the remaining information presented to the authorizing officer is sufficient to establish probable cause. If the prosecution does not meet its burden, the objection or motion shall be granted unless the search is otherwise lawful under these rules."

b. M.R.E. 506(e) and (f) are amended to read as follows:

"(e) *Pretrial session.* At any time after referral of charges and prior to arraignment, any party may move for a session under Article 39(a) to consider matters relating to government information that may arise in connection with the trial. Following such motion, or sua sponte, the military judge promptly shall hold a pretrial session under Article 39(a) to establish the timing of requests for discovery, the provision of notice under subsection (h), and the initiation of the procedure under subsection (i). In addition, the military judge may consider any other matters that relate to government information or that may promote a fair and expeditious trial.

(f) *Action after motion for disclosure of information.* After referral of charges, if the defense moves for disclosure of government information for which a claim of privilege has been made under this rule, the matter shall be reported to the convening authority. The convening authority may:

(1) institute action to obtain the information for use by the military judge in making a determination under subdivision (i);

(2) dismiss the charges;

(3) dismiss the charges or specifications or both to which the information relates; or

(4) take other action as may be required in the interests of justice. If, after a reasonable period of time, the information is not provided to the military judge, the military judge shall dismiss the charges or specifications or both to which the information relates."

c. M.R.E. 506(h) is amended to read as follows:

"(h) *Prohibition against disclosure.* The accused may not disclose any information known or believed to be subject to a claim of privilege under this rule unless the military judge authorizes such disclosure."

d. M.R.E. 506(i) is amended to read as follows:

"(i) *In camera proceedings.*

(1) *Definition.* For purposes of this subsection, an "in camera proceeding" is a session under Article 39(a) from which the public is excluded.

(2) *Motion for in camera proceeding.* Within the time specified by the military judge for the filing of a motion under this rule, the Government may move for an in camera proceeding concerning the use at any proceeding of any government information that may be subject to a claim of privilege. Thereafter, either prior to or during trial, the military judge for good cause shown or otherwise upon a claim of privilege may grant the Government leave to move for an in camera proceeding concerning the use of additional government information.

(3) *Demonstration of public interest nature of the information.* In order to obtain an in camera proceeding under this rule, the Government shall demonstrate, through the submission of affidavits and information for examination only by the military judge, that disclosure of the information reasonably could be expected to cause identifiable damage to the public interest.

(4) *In camera proceeding.*

(A) *Finding of identifiable damage.* Upon finding that the disclosure of some or all of the information submitted by the Government under subsection (i)(3) reasonably could be expected to cause identifiable damage to the public interest, the military judge shall conduct an in camera proceeding.

(B) *Disclosure of the information to the defense.* Subject to subsection (F), below, the Government shall disclose government information for which a claim of privilege has been made to the accused, for the limited purpose of litigating, in camera, the admissibility of the information at trial. The military judge shall enter an appropriate protective order to the accused and all other appropriate trial participants concerning the disclosure of the information according to subsection (g), above. The accused shall not disclose any information provided under this subsection unless, and until, such information has been admitted into evidence by the military judge. In the in camera proceeding, both parties shall have the opportunity to brief and argue the admissibility of the government information at trial.

(C) *Standard.* Government information is subject to disclosure at the court-martial proceeding under this subsection if the party making the request demonstrates a specific need for information containing evidence that is relevant to the guilt or innocence or to punishment of the accused, and is otherwise admissible in the court-martial proceeding.

(D) *Ruling.* No information may be disclosed at the court-martial proceeding or otherwise unless the military judge makes a written determination that the information is subject to disclosure under the standard set forth in subsection (C), above. The military judge will specify in writing any information that he or she determines is subject to disclosure. The record of the in camera proceeding shall be sealed and attached to the record of trial as an appellate exhibit. The accused may seek reconsideration of the determination prior to or during trial.

(E) *Alternatives to full disclosure.* If the military judge makes a determination under this subsection that the information is subject to disclosure, or if the Government elects not to contest the relevance, necessity, and admissibility of the government information, the Government may proffer a statement admitting for purposes of the court-martial any relevant facts such information would tend to prove or may submit a portion or summary to be used in lieu of the information. The military judge shall order that such statement, portion, summary, or some other form of information which the military judge finds to be consistent with the interests of justice, be used by the accused in place of the government information, unless the military judge finds that use of the government information itself is necessary to afford the accused a fair trial.

(F) *Sanctions.* Government information may not be disclosed over the Government's objection. If the Government continues to object to disclosure of the information following rulings by the military judge, the military judge shall issue any order that the interests of justice require. Such an order may include:

(i) striking or precluding all or part of the testimony of a witness;

(ii) declaring a mistrial;

(iii) finding against the Government on any issue as to which the evidence is relevant and necessary to the defense;

(iv) dismissing the charges, with or without prejudice; or

(v) dismissing the charges or specifications or both to which the information relates."

e. A new M.R.E. 506(j) is added as follows:

"(j) *Appeals of orders and rulings.* In a court-martial in which a punitive discharge may be adjudged, the Government may appeal an order or ruling of the military judge that terminates the proceedings with respect to a charge or specification, directs the disclosure of government information, or imposes sanctions for nondisclosure of government information. The Government also may appeal an order or ruling in which the military judge refuses to issue a protective order sought by the United States to prevent the disclosure of government information, or to enforce such an order previously issued by appropriate authority. The Government may not appeal an order or ruling that is, or amounts to, a finding of not guilty with respect to the charge or specification."

f. M.R.E. 506(j) and (k) are redesignated as (k) and (l), respectively.

Sec. 4. Part IV of the Manual for Courts-Martial, United States, 1984, is amended to read as follows:

a. Paragraph 4.c. is amended by adding a new subparagraph (4) as follows:

"(4) *Voluntary abandonment.* It is a defense to an attempt offense that the person voluntarily and completely abandoned the intended crime, solely because of the person's own sense that it was wrong, prior to the completion of the crime. The voluntary abandonment defense is not allowed if the abandonment results, in whole or in part, from other reasons, such as, the person feared detection or apprehension, decided to await a better opportunity for success, was unable to complete the crime, or encountered unanticipated difficulties or unexpected resistance. A person who is entitled to the defense of voluntary abandonment may nonetheless be guilty of a lesser included, completed offense. For example, a person who voluntarily abandoned an attempted armed robbery may nonetheless be guilty of assault with a dangerous weapon."

b. Paragraph 4.c.(4), (5), and (6) are redesignated as subparagraphs (5), (6) and (7), respectively.

c. Paragraph 30a.c(1), is amended to read as follows:

"(1) *Intent.* "Intent or reason to believe" that the information "is to be used to the injury of the United States or to the advantage of a foreign nation" means that the accused acted in bad faith and [delete "or otherwise"] without lawful authority with respect to information that is not lawfully accessible to the public."

d. Paragraph 35 is amended to read as follows:

"35. Article 111—Drunken or reckless operation of a vehicle, aircraft, or vessel

a. *Text.*

"Any person subject to this chapter who—

(1) operates or physically controls any vehicle, aircraft, or vessel in a reckless or wanton manner or while impaired by a substance described in section 912a(b) of this title (Article 112a(b)), or

(2) operates or is in actual physical control of any vehicle, aircraft, or vessel while drunk or when the alcohol concentration in the person's blood or breath is 0.10 grams of alcohol per 100 milliliters of blood or 0.10 grams of alcohol per 210 liters of breath, as shown by chemical analysis, shall be punished as a court-martial may direct."

b. *Elements.*

(1) That the accused was operating or in physical control of a vehicle, aircraft, or vessel; and

(2) That while operating or in physical control of a vehicle, aircraft, or vessel, the accused:

(a) did so in a wanton or reckless manner, or

(b) was drunk or impaired, or

(c) the alcohol concentration in the accused's blood or breath was 0.10 grams of alcohol per 100 milliliters of blood or 0.10 grams of alcohol per 210 liters of breath, or greater, as shown by chemical analysis.

[Note: If injury resulted add the following element]

(3) That the accused thereby caused the vehicle, aircraft, or vessel to injure a person.

c. *Explanation.*

(1) *Vehicle.* See 1 U.S.C. § 4.

(2) *Vessel. See 1* U.S.C. § 3.

(3) *Aircraft.* Any contrivance used or designed for transportation in the air.

(4) *Operates.* Operating a vehicle, aircraft, or vessel includes not only driving or guiding a vehicle, aircraft, or vessel while it is in motion, either in person or through the agency of another, but also setting of its motive power in action or the manipulation of its controls so as to cause the particular vehicle, aircraft, or vessel to move.

(5) *Physical control and actual physical control.* These terms as used in the statute are synonymous. They describe the present capability and power to dominate, direct, or regulate the vehicle, vessel, or aircraft, either in person or through the agency of another, regardless of whether such vehicle, aircraft, or vessel is operated. For example, the intoxicated person seated behind the steering wheel of a vehicle with the keys of the vehicle in or near the ignition but with the engine not turned on could be deemed in actual physical control of that vehicle. However, the person asleep in the back seat with the keys in his or her pocket would not be deemed in actual physical control. Physical control necessarily encompasses operation.

(6) *Drunk or impaired.* "Drunk" and "impaired" mean any intoxication which is sufficient to impair the rational and full exercise of the mental or physical faculties. The term "drunk" is used in relation to intoxication by alcohol. The term "impaired" is used in relation to intoxication by a substance described in Article 112(a), Uniform Code of Military Justice.

(7) *Reckless.* The operation or physical control of a vehicle, vessel, or aircraft is "reckless" when it exhibits a culpable disregard of foreseeable consequences to others from the act or omission involved. Recklessness is not determined solely by reason of the happening of an injury, or the invasion of the rights of another, nor by proof alone of excessive speed or erratic operation, but all these factors may be admissible and relevant as bearing upon the ultimate question: whether, under all the circumstances, the accused's manner of operation or physical control of the vehicle, vessel, or aircraft was of that heedless nature which made it actually or imminently dangerous to the occupants, or to the rights or safety of others. It is operating or physically controlling a vehicle, vessel, or aircraft with such a high degree of negligence that if death were caused, the accused would have committed involuntary manslaughter, at least. The nature of the conditions in which the vehicle, vessel, or aircraft is operated or controlled, the time of day or night, the proximity and number of other vehicles, vessels, or aircraft, and the condition of the vehicle, vessel, or aircraft, are often matters of importance in the proof of an offense charged under this article and, where they are of importance, may properly be alleged.

(8) *Wanton.* "Wanton" includes "reckless", but in describing the operation or physical control of a vehicle, vessel, or aircraft, "wanton" may, in a proper case, connote willfulness, or a disregard of probable consequences, and thus describe a more aggravated offense.

(9) *Causation.* The accused's drunken or reckless driving must be a proximate cause of injury for the accused to be guilty of drunken or reckless driving resulting in personal injury. To be proximate, the accused's actions need not be the sole cause of the injury, nor must they be the immediate cause of the injury; that is, the latest in time and space preceding the injury. A contributing cause is deemed proximate only if it plays a material role in the victim's injury.

(10) *Separate offenses.* While the same course of conduct may constitute violations of both subsections (1) and (2) of the Article, *(e.g.,* both drunken and reckless operation or physical control), this article proscribes the conduct described in both subsections as separate offenses, which may be charged separately. However, as recklessness is a relative matter, evidence of all the surrounding circumstances that made the operation dangerous, whether alleged or not, may be admissible. Thus, on a charge of reckless driving, for example, evidence of drunkenness might be admissible as establishing one aspect of the recklessness, and evidence that the vehicle exceeded a safe speed, at a relevant prior point and time, might be admissible as corroborating other evidence of the specific recklessness charged. Similarly, on a charge of drunken driving, relevant evidence of recklessness might have probative value as corroborating other proof of drunkenness.

d. *Lesser included offense.*

(1) Reckless or wanton or impaired operation or physical control of a vessel. Article 110—improper hazarding of a vessel.

(2) Drunken operation of a vehicle, vessel, or aircraft while drunk or with a blood or breath alcohol concentration in violation of the described per se standard.

(a) Article 110—improper hazarding of a vessel

(b) Article 112—drunk on duty

(c) Article 134—drunk on station

e. *Maximum punishment.*

(1) *Resulting in personal injury.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 18 months.

(2) *No personal injury involved.* Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 6 months.

f. *Sample specification.*

In that ———————— (personal jurisdiction data), did (at/onboard—location) (subject-matter jurisdiction data, if required), on or about ———————— 19————, (in the motor pool area) (near the Officer's Club)(at the intersection of ———— and ————) (while in the Gulf of Mexico)(while in flight over North America) physically control [a vehicle, to wit: (a truck)(a passenger car) (————————)] [an aircraft, to wit: (an AH–64 helicopter)(an F–14A fighter) (a KC–135 tanker) (————————)] [a vessel, to wit: (the aircraft carrier USS ————————) (the Coast Guard Cutter ————————) (————————)], [while drunk] [while impaired by ————————] [while the alcohol concentration in his (blood was 0.10 grams of alcohol per 100 milliliters of blood or greater)(breath was 0.10 grams of alcohol per 210 liters of breath or greater) as shown by chemical analysis] [in a (reckless)(wanton) manner by (attempting to pass another vehicle on a sharp curve)(by ordering that the aircraft be flown below the authorized altitude)] [and did thereby cause said (vehicle) (aircraft)(vessel) to (strike and) (injure ————————)]."

e. Paragraph 43.a.(3) is amended to read as follows:

"(3) is engaged in an act that is inherently dangerous to another and evinces a wanton disregard of human life; or"

f. Paragraph 43.b.(3)(c) is amended to read as follows:

"(c) That this act was inherently dangerous to another and showed a wanton disregard for human life;"

g. Paragraph 43.c.(4)(a) is amended to read as follows:

"(a) *Wanton disregard for human life.* Intentionally engaging in an act inherently dangerous to another—although without an intent to cause the death of or great bodily harm to any particular person, or even with a wish that death will not be caused—may also constitute murder if the

act shows wanton disregard of human life. Such disregard is characterized by heedlessness of the probable consequences of the act or omission, or indifference to the likelihood of death or great bodily harm. Examples include throwing a live grenade toward another or others in jest or flying an aircraft very low over one or more persons to cause alarm."

h. Paragraph 45.a.(a) is amended to read as follows:

"(a) Any person subject to this chapter who commits an act of sexual intercourse by force and without consent, is guilty of rape and shall be punished by death or such other punishment as a court-martial may direct."

i. Paragraph 45.b.(1) is amended to read as follows:

"(a) That the accused committed an act of sexual intercourse; and

(b) That the act of sexual intercourse was done by force and without consent."

j. Paragraph 45.c.(1)(a) and (b) are amended as follows:

"(a) *Nature of offense.* Rape is sexual intercourse by a person, executed by force and without consent of the victim. It may be committed on a victim of any age. Any penetration, however slight, is sufficient to complete the offense.

(b) *Force and lack of consent.* Force and lack of consent are necessary to the offense. Thus, if the victim consents to the act, it is not rape. The lack of consent required, however, is more than mere lack of acquiescence. If a victim in possession of his or her mental faculties fails to make lack of consent reasonably manifest by taking such measures of resistance as are called for by the circumstances, the inference may be drawn that the victim did consent. Consent, however, may not be inferred if resistance would have been futile, where resistance is overcome by threats of death or great bodily harm, or where the victim is unable to resist because of the lack of mental or physical faculties. In such a case there is no consent and the force involved in penetration will suffice. All the surrounding circumstances are to be considered in determining whether a victim gave consent, or whether he or she failed or ceased to resist only because of a reasonable fear of death or grievous bodily harm. If there is actual consent, although obtained by fraud, the act is not rape, but if to the accused's knowledge the victim is of unsound mind or unconscious to an extent rendering him or her incapable of giving consent, the act is rape. Likewise, the acquiescence of a child of such tender years that he or she is incapable of understanding the nature of the act is not consent."

k. Paragraph 89.c. is amended to read as follows:

"(c) *Explanation.* "Indecent" language is that which is grossly offensive to modesty, decency, or propriety, or shocks the moral sense, because of its vulgar, filthy, or disgusting nature, or its tendency to incite lustful thought. Language is indecent if it tends reasonably to corrupt morals or incite libidinous thoughts. The language must violate community standards. See paragraph 87 if the communication was made in the physical presence of a child."

l. The following new paragraph is added after paragraph 103:

"103a. Article 134 (Self-injury without intent to avoid service)

a. *Text.* See paragraph 60.

b. *Elements.*

(1) That the accused intentionally inflicted injury upon himself or herself;

(2) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

[Note: If the offense was committed in time of war or in a hostile fire pay zone, add the following element]

(3) That the offense was committed (in time of war) (in a hostile fire pay zone).

c. *Explanation.*

(1) *Nature of offense.* This offense differs from malingering (*see* paragraph 40) in that for this offense, the accused need not have harbored a design to avoid performance of any work, duty, or service which may properly or normally be expected of one in the military service. This offense is characterized by intentional self-injury under such circumstances as prejudice good order and discipline or discredit the armed forces. It is not required that the accused be unable to perform duties, or that the accused actually be absent from his or her place of duty as a result of the injury. For example, the accused may inflict the injury while on leave or pass. The circumstances and extent of injury, however, are relevant to a determination that the accused's conduct was prejudicial to good order and discipline, or service-discrediting.

(2) *How injury inflicted.* The injury may be inflicted by nonviolent as well as by violent means and may be accomplished by any act or omission that produces, prolongs, or aggravates a sickness or disability. Thus, voluntary starvation that results in a debility is a self-inflicted injury. Similarly, the injury may be inflicted by another at the accused's request.

d. *Lesser included offense.* Article 80—attempts

e. *Maximum punishment.*

(1) *Intentional self-inflicted injury.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 2 years.

(2) *Intentional self-inflicted injury in time of war or in a hostile fire pay zone.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years.

f. *Sample specification.*

In that _____ (personal jurisdiction data), did, (at/on board—location) (in a hostile fire pay zone) on or about _____ 19—, (a time of war,) intentionally injure himself/herself by _____ (nature and circumstances of injury)."

Sec. 5. These amendments shall take effect on June 10, 1995, subject to the following:

a. Nothing in these amendments shall be construed to make punishable any act done or omitted prior to June 10, 1995.

b. The maximum punishment for an offense committed prior to June 10, 1995, shall not exceed the applicable maximum in effect at the time of the commission of such offense.

c. Nothing in these amendments shall be construed to invalidate any nonjudicial punishment proceeding, restraint, investigation, referral of charges, trial in which arraignment occurred, or other action begun prior to June 10, 1995, and any such nonjudicial punishment, restraint, investigation, referral of charges, trial, or other action may proceed in the same manner and with the same effect as if these amendments had not been prescribed.

William J. Clinton

THE WHITE HOUSE,
May 12, 1995.

Billing code 3195–01–P

Changes to the Analysis accompanying the Manual for Courts-Martial, United States, 1984.

1. Changes to Appendix 21, the Analysis accompanying the Rules for Courts-Martial (Part II, MCM, 1984).

a. R.C.M. 203. The Analysis accompanying R.C.M. 203 is amended by inserting the following at the end thereof:

"*1995 Amendment:* The discussion was amended in light of *Solorio v. United States*, 483 U.S. 435 (1987). *O'Callahan v. Parker*, 395 U.S. 258 (1969), held that an offense under the code could not be tried by court-martial unless the offense was "service connected." *Solorio* overruled *O'Callahan*."

b. R.C.M. 307. The Analysis accompanying R.C.M. 307 is amended by inserting the following at the end thereof:

"*1995 Amendment:* The discussion was amended in conformance with a concurrent change to R.C.M. 203, in light of *Solorio v. United States*, 483 U.S. 435 (1987). *O'Callahan v. Parker*, 395 U.S. 258 (1969), held that an offense under the code could not be tried by court-martial unless the offense was "service connected." *Solorio* overruled *O'Callahan*."

c. R.C.M. 810. The Analysis accompanying R.C.M. 810 is amended by inserting the following at the end thereof:

"*1995 Amendment:* Subsection (d) was amended in light of the change to Article 63 effected by the National Defense Authorization Act for Fiscal Year 1993, Pub. L. No. 102–484, 106 Stat. 2315, 2506 (1992). The amendment reflects that subsection (d) sentencing limitations only affect the sentence that may be approved by the convening or higher authority following the rehearing, new trial or other trial. Subsection (d) does not limit the maximum sentence that may be adjudged at the rehearing, new trial, or other trial."

d. R.C.M. 924. The Analysis accompanying R.C.M. 924 is amended by inserting the following at the end thereof:

"*1995 Amendment:* The amendment limits reconsideration of findings by the members to findings reached in closed session but not yet announced in open court and provides for the military judge, in judge alone cases, to reconsider the "guilty finding" of a not guilty only by reason of lack of mental responsibility finding."

e. R.C.M. 1003(b). The Analysis accompanying R.C.M. 1003(b) is amended by inserting the following:

"*1995 Amendment:* Punishment of confinement on bread and water or diminished rations [R.C.M. 1003(d)(9)], as a punishment imposable by a court-martial, was deleted. Confinement on bread and water or diminished rations was originally intended as an immediate, remedial punishment. While this is still the case with nonjudicial punishment (Article 15), it is not effective as a court-martial punishment. Subsections (d)(10) through (d)(12) were redesignated (d)(9) through (d)(11), respectively."

f. R.C.M. 1009. The Analysis accompanying R.C.M. 1009 is amended by inserting the following at the end thereof:

"*1995 Amendment:* This rule was changed to prevent a sentencing authority from reconsidering a sentence announced in open session. Subsection (b) was amended to allow reconsideration if the sentence was less than the mandatory maximum prescribed for the offense or the sentence exceeds the maximum permissible punishment for the offense or the jurisdictional limitation of the court-martial. Subsection (c) is new and provides for the military judge to clarify an announced sentence that is ambiguous. Subsection (d) provides for the convening authority to exercise discretionary authority to return an ambiguous sentence for clarification, or take action consistent with R.C.M. 1107."

g. R.C.M. 1103. The Analysis accompanying R.C.M. 1103 is amended by inserting the following at the end thereof:

"*1995 Amendment:* Punishment of confinement on bread and water or diminished rations [R.C.M. 1003(d)(9)], as a punishment imposable by a court-martial, was deleted. Consequently, the requirement to attach a Medical Certificate to the record of trial [R.C.M. 1103(b)(3)(L)] was deleted. Subsections (3)(M) and (3)(N) were redesignated (3)(L) and (3)(M), respectively."

h. R.C.M. 1105(b)(4). The Analysis accompanying R.C.M. 1105(b) is amended to read as follows:

"*1995 Amendment:* The Discussion accompanying subsection (b)(4) was amended to reflect the new requirement, under R.C.M. 1106(d)(3)(B), that the staff judge advocate or legal advisor inform the convening authority of a recommendation for clemency by the sentencing authority, made in conjunction with the announced sentence."

i. R.C.M. 1106(d)(3). The Analysis accompanying R.C.M. 1106(d) is amended to read as follows:

"*1995 Amendment:* Subsection (d)(3)(B) is new. It requires that the staff judge advocate's or legal advisor's recommendation inform the convening authority of any clemency recommendation made by the sentencing authority in conjunction with the announced sentence, absent a written request by the defense to the contrary. Prior to this amendment, an accused was responsible for informing the convening authority of any such recommendation. The amendment recognizes that any clemency recommendation is so closely related to the sentence that staff judge advocates and legal advisors should be responsible for informing convening authorities of it. The accused remains responsible for informing the convening authority of other recommendations for clemency, including those made by the military judge in a trial with member sentencing and those made by individual members. *See United States v. Clear*, 34 M.J. 129 (C.M.A. 1992); R.C.M. 1105(b)(4). Subsections (d)(3)(B)—(d)(3)(E) are redesignated as (d)(3)(C)—(d)(3)(F), respectively."

j. R.C.M. 1107(d). The Analysis accompanying R.C.M. 1107(d) is amended to read as follows:

"*1995 Amendment:* Subsection (d)(3) is new. It is based on the recently enacted Article 57(e). National Defense Authorization Act for Fiscal Year 1993, Pub. L. No. 102–484, 106 Stat. 2315, 2505 (1992). *See generally* Interstate Agreement on Detainers Act, 18 U.S.C. App. III. It permits a military sentence to be served consecutively, rather than concurrently, with a civilian or foreign sentence. The prior subsection (d)(3) is redesignated (d)(4)."

k. R.C.M. 1107(d)(2). The Analysis accompanying R.C.M. 1107(d)(2) is amended to read as follows:

"*1995 Amendment:* The last sentence in the Discussion accompanying subsection (d)(2) is new. It clarifies that forfeitures adjudged at courts-martial take precedence over all debts owed by the accused. Department of Defense Military Pay and Allowances Entitlement Manual, Volume 7, Part A, paragraph 70507a (12 December 1994)."

l. R.C.M. 1107(e)(1)(C)(iii). The Analysis accompanying R.C.M. 1107(e)(1) is amended to read as follows:

"*1995 Amendment:* The second sentence in R.C.M. 1107(e)(1)(C)(iii) is new. It expressly recognizes that the convening authority may approve a sentence of no punishment if the convening authority determines that a rehearing on sentence is impracticable. This authority has been recognized by the appellate courts. *See e.g., United States v. Monetesinos*, 28 M.J. 38 (C.M.A. 1989); *United States v. Sala*, 30 M.J. 813 (A.C.M.R. 1990)."

m. R.C.M. 1107(f)(2). The Analysis accompanying R.C.M. 1107(f)(2) is amended by inserting the following at its end:

"*1995 Amendment:* The amendment allows a convening authority to recall and modify any action after it has been published or after an accused has been officially notified, but before a record has been forwarded for review, as long as the new action is not less favorable to the accused than the prior action. A convening authority is not limited to taking only corrective action, but may also modify the approved findings or sentence provided the modification is not less favorable to the accused than the earlier action."

n. R.C.M. 1113(d)(2)(A). The Analysis accompanying R.C.M. 1113(d)(2)(A) is amended by inserting the following at the end thereof:

"1995 Amendment: Subsection (d)(2)(A)(iii) is new. It is based on the recently enacted Article 57(e). National Defense Authorization Act for Fiscal Year 1993, Pub. L. No. 102–484, 106 Stat. 2315, 2505 (1992). *See generally* Interstate Agreement on Detainers Act, 18 U.S.C. App. III. It permits a military sentence to be served consecutively, rather than concurrently, with a civilian or foreign sentence. The prior subsections (d)(2)(A)(iii)—(iv) are redesignated (d)(2)(A)(iv)—(v), respectively."

o. R.C.M. 1113(d)(5). The Analysis accompanying R.C.M. 1113(d)(5) is amended by inserting the following at the end thereof:

"1995 Amendment: Subsection (5) was deleted when the punishment of confinement on bread and water or diminished rations [R.C.M. 1113(d)(9)], as a punishment imposable by a court-martial, was deleted. Subsection (6) was redesignated (5)."

p. R.C.M. 1201(b)(1). The Analysis accompanying R.C.M. 1201(b)(1) is amended to read as follows:

"1995 Amendment: The Discussion accompanying subsection (1) was amended to conform with the language of Article 69(a), as enacted by the Military Justice Amendments of 1989, tit. XIII, sec. 1302(a)(2), National Defense Authorization Act for Fiscal Years 1990 and 1991, Pub. L. No. 101–189, 103 Stat. 1352, 1576 (1989)."

2. Changes to Appendix 21, the Analysis accompanying the Punitive Articles (Part IV, MCM, 1984).

a. Paragraph 4c. The Analysis accompanying paragraph 4c is amended to read as follows:

"1995 Amendment: Subparagraph (4) is new. It recognizes voluntary abandonment as an affirmative defense as established by the case law. *See United States v. Byrd,* 24 M.J. 286 (C.M.A. 1987). *See also United States v. Schoof,* 37 M.J. 96, 103–04 (C.M.A. 1993); *United States v. Rios,* 33 M.J. 436, 440–41 (C.M.A. 1991); *United States v. Miller,* 30 M.J. 999 (N.M.C.M.R. 1990); *United States v. Walther,* 30 M.J. 829, 829–33 (N.M.C.M.R. 1990). The prior subparagraphs (4)—(6) have been redesignated (5)—(7), respectively."

b. Paragraph 30a.c. The Analysis accompanying paragraph 30a.c., is amended as follows:

"1995 Amendment: This subparagraph was amended to clarify that the intent element of espionage is not satisfied merely by proving that the accused acted without lawful authority. Article 106a, Uniform Code of Military Justice. The accused must have acted in bad faith. *United States v. Richardson,* 33 M.J. 127 (C.M.A. 1991); *see Gorin v. United States,* 312 U.S. 19, 21 n.1 (1941)."

c. Paragraph 35. The Analysis accompanying paragraph 35 is amended to read as follows:

"1995 Amendment: This paragraph was amended pursuant to the changes to Article 111 included in the National Defense Authorization Act for Fiscal Year 1993, Pub. L. No. 102–484, 106 Stat. 2315, 2506 (1992). New subparagraphs c(2) and (3) were added to include vessels and aircraft, respectively. Paragraph 35 was also amended to make punishable actual physical control of a vehicle, aircraft, or vessel while drunk or impaired, or in a reckless fashion, or while one's blood or breath alcohol concentration is in violation of the described per se standard. A new subparagraph c(5) was added to define the concept of actual physical control. This change allows drunk or impaired individuals who demonstrate the capability and power to operate a vehicle, aircraft, or vessel to be apprehended if in the vehicle, aircraft, or vessel, but not actually operating it at the time.

The amendment also clarifies that culpability extends to the person operating or exercising actual physical control through the agency of another *(e.g.,* the captain of a ship giving orders to a helmsman). The amendment also provides a blood/alcohol blood/breath concentration of 0.10 or greater as a per se standard for illegal intoxication. The change will not, however, preclude prosecution where no chemical test is taken or even where the results of the chemical tests are below the statutory limits, where other evidence of intoxication is available. *See United States v. Gholson,* 319 F. Supp. 499 (E.D. Va. 1970).

A new paragraph c(9) was added to clarify that in order to show that the accused caused personal injury, the government must prove proximate causation and not merely cause-in-fact. *Accord United States v. Lingenfelter,* 30 M.J. 302 (C.M.A. 1990). The definition of "proximate cause" is based on *United States v. Romero,* 1 M.J. 227, 230 (C.M.A. 1975). Previous subparagraph c(2) is renumbered c(4). Previous subparagraphs c(3)–c(5) are renumbered c(6)–c(8), respectively, and previous subparagraph c(6) is renumbered c(10).

Subparagraphs d(1) and (2) are redesignated d(2)(b) and d(2)(c). The new d(2)(a) adds Article 110 (improper hazarding of a vessel) as a lesser included offense of drunken operation or actual physical control of a vessel. The new d(1) adds Article 110 (improper hazarding of a vessel) as a lesser included offense of reckless or wanton or impaired operation or physical control of a vessel."

d. Paragraph 43. The Analysis accompanying paragraph 43 is amended to read as follows:

"1995 Amendment: The word "others" was replaced by the word "another" in Article 118(3) pursuant to the National Defense Authorization Act for Fiscal Year 1993, Pub. L. No. 102–484, 106 Stat. 2315, 2506 (1992). This change addresses the limited language previously used in Article 118(3) as identified in *United States v. Berg,* 30 M.J. 195 (C.M.A. 1990)."

e. Paragraph 45. The Analysis accompanying paragraph 45 is amended to read as follows:

"1995 Amendment: The offense of rape was made gender neutral and the spousal exception was removed under Article 120(a). National Defense Authorization Act for Fiscal Year 1993, Pub. L. No. 102–484, 106 Stat. 2315, 2506 (1992).

Rape may "be punished by death" only if constitutionally permissible. In *Coker v. Georgia,* 322 U.S. 585 (1977), the Court held that the death penalty is "grossly disproportionate and excessive punishment for the rape of an adult woman," and is "therefore forbidden by the Eighth Amendment as cruel and unusual punishment." Id. at 592 (plurality opinion). *Coker,* however, leaves open the question of whether it is permissible to impose the death penalty for the rape of a minor by an adult. *See Coker,* 433 U.S. at 595. *See Leatherwood v. State,* 548 So.2d 389 (Miss. 1989) (death sentence for rape of minor by an adult is not cruel and unusual punishment prohibited by the Eighth Amendment). *But see Buford v. State,* 403 So.2d 943 (Fla. 1981) (sentence of death is grossly disproportionate for sexual assault of a minor by an adult and consequently is forbidden by Eighth Amendment as cruel and unusual punishment)."

f. Paragraph 89. The Analysis accompanying paragraph 89c is amended to read as follows:

"1995 Amendment: The second sentence is new. It incorporates a test for "indecent language" adopted by the Court of Military Appeals in *United States v. French,* 31 M.J. 57, 60 (C.M.A. 1990). The term "tends reasonably" is substituted for the term "calculated to" to avoid the misinterpretation that indecent language is a specific intent offense."

g. Paragraph 103a. Insert the following after the Analysis of paragraph 103:

"103a. Article 134 (Self-injury without intent to avoid service)

c. *Explanation. 1995 Amendment.* This offense is based on paragraph 183a of MCM, U.S. Army, 1949; *United States v. Ramsey,* 35 M.J. 733 (A.C.M.R. 1992), *aff'd,* 40 M.J. 71 (C.M.A. 1994); *United States v. Taylor,* 38 C.M.R. 393 (C.M.A. 1968); *see generally* TJAGSA Practice Note, *Confusion About Malingering and Attempted Suicide,* The Army Lawyer, June 1992, at 38.

e. *Maximum punishment. 1995 Amendment.* The maximum punishment for subsection (1) reflects the serious effect that this offense may have on readiness and morale. The maximum punishment reflects the range of the effects of the injury, both in degree and duration, on the ability of the accused to perform work, duty, or service. The maximum punishment for subsection (1) is equivalent to that for offenses of desertion, missing movement through design, and certain violations of orders. The maximum punishment for subsection (2) is less than the maximum punishment for the offense of malingering under the same circumstances because of the absence of the specific intent to avoid work, duty, or service. The maximum punishment for subsection (2) is equivalent to that for nonaggravated offenses of desertion, willfully disobeying a superior commissioned officer, and nonaggravated malingering by intentional self-inflicted injury.

f. *Sample specification. 1995 Amendment. See* appendix 4, paragraph 177 of MCM, U.S. Army, 1949. Since incapacitation to perform duties is not an element of the offense, language relating to "unfitting himself for the full performance of military service" from the 1949 MCM has been omitted. The phrase "willfully injure" has been changed to read "intentionally injure" to parallel the language contained in the malingering specification under Article 115."

3. Changes to Appendix 22, the Analysis accompanying the Military Rules of Evidence (Part III, MCM, 1984).

a. M.R.E. 311(g)(2). The Analysis accompanying M.R.E. 311(g)(2) is amended by inserting the following at the end thereof:

"1995 Amendment: Subsection (g)(2) was amended to clarify that in order for the defense to prevail on an objection or motion under this rule, it must establish, *inter alia,* that the falsity of the evidence was "knowing and intentional" or in reckless disregard for the truth. *Accord Franks v. Delaware,* 438 U.S. 154 (1978)."

b. M.R.E. 506(e). The Analysis accompanying M.R.E. 506(e) is amended by inserting the following at the end thereof:

"1995 Amendment: It is the intent of the Committee that if classified information arises during a proceeding under Rule 506, the procedures of Rule 505 will be used.

The new subsection (e) was formerly subsection (f). The matters in the former subsection (f) were adopted without change. The former subsection (e) was amended and redesignated as subsection (f) (see below)."

c. M.R.E. 506(f). The Analysis accompanying M.R.E. 506(f) is amended by inserting the following at the end thereof:

"1995 Amendment. See generally Rule 505(f) and its accompanying Analysis. Note that unlike Rule 505(f), however, Rule 506(f) does not require a finding that failure to disclose the information in question "would materially prejudice a substantial right of the accused." Dismissal is not required when the relevant information is not disclosed in a "reasonable period of time."

Subsection (f) was formerly subsection (e). The subsection was amended to cover action after a defense motion for discovery, rather than action after referral of charges. The qualification that the government claim of privilege pertains to information "that apparently contains evidence that is relevant and necessary to an element of the offense or a legally cognizable defense and is otherwise admissible in evidence in a court-martial proceeding" was deleted as unnecessary. Action by the convening authority is required if, after referral, the defense moves for disclosure and the Government claims the information is privileged from disclosure."

d. M.R.E. 506(h). The Analysis accompanying M.R.E. 506(h) is amended by inserting the following at the end thereof:

"1995 Amendment: Subsection (h) was amended to provide that government information may not be disclosed by the accused unless authorized by the military judge."

e. M.R.E. 506(i). The Analysis accompanying M.R.E. 506(i) is amended by inserting the following at the end thereof:

"1995 Amendment: Subsection (i) was amended to clarify the procedure for in camera proceedings. The definition in subsection (i)(1) was amended to conform to the definition of in camera proceedings in M.R.E. 505(i)(1). Subsections (i)(2) and (i)(3) were unchanged. Subsection (i)(4)(B), redesignated as (i)(4)(C), was amended to include admissible evidence relevant to punishment of the accused, consistent with *Brady v. Maryland,* 373 U.S. 83, 87 (1963). Subsection (i)(4)(C) was redesignated as (i)(4)(D), but was otherwise unchanged. The amended procedures provide for full disclosure of the government information in question to the accused for purposes of litigating the admissibility of the information in the protected environment of the in camera proceeding; *i.e.,* the Article 39(a) session is closed to the public and neither side may disclose the information outside the in camera proceeding until the military judge admits the information as evidence in the trial. Under subsection (i)(4)(E), the military judge may authorize alternatives to disclosure, consistent with a military judge's authority concerning classified information under M.R.E. 505. Subsection (i)(4)(F) allows the Government to determine whether the information ultimately will be disclosed to the accused. However, the Government's continued objection to disclosure may be at the price of letting the accused go free, in that subsection (i)(4)(F) adopts the sanctions available to the military judge under M.R.E. 505(i)(4)(E). *See U.S. v. Reynolds,* 345 U.S. 1, 12 (1953)."

f. M.R.E. 506(j). The Analysis accompanying M.R.E. 506(j) is amended by inserting the following at the end thereof:

"1995 Amendment: Subsection (j) was added to recognize the Government's right to appeal certain rulings and orders. *See* R.C.M. 908. The former subsection (j) was redesignated as subsection (k). The subsection speaks only to government appeals; the defense still may seek extraordinary relief through interlocutory appeal of the military judge's orders and rulings. *See generally,* 28 U.S.C. § 1651(a); *Waller v. Swift,* 30 M.J. 139 (C.M.A. 1990); *Dettinger v. United States,* 7 M.J. 216 (C.M.A. 1979)."

g. M.R.E. 506(j) and (k). The Analyses accompanying M.R.E. 506(j) and M.R.E. 506(k) are redesignated as subdivisions (k) and (l), respectively.

Changes to the Discussion Accompanying the Manual for Courts-Martial, United States, 1984.

A. The Discussion accompanying Part I., Preamble, paragraph. 4., is amended by inserting the following at the end thereof:

"The 1995 amendment to paragraph 4 of the Preamble is intended to eliminate the practice of identifying the Manual for Courts-Martial, United States, by a particular year. As long as the Manual was published in its entirety sporadically *(e.g.,* 1917, 1921, 1928, 1949, 1951, 1969 and 1984), with amendments to it published piecemeal, it was logical to identify the Manual by the calendar year of publication, with periodic amendments identified as "Changes" to the Manual. The more frequent publication of a new edition of the Manual, however, means that it is more appropriately identified by the calendar year of edition. Amendments made in a particular calendar year will be identified by publishing the relevant Executive order containing those amendments in its entirety in a Manual appendix."

B. Subsection 2(B)(ii) of the Discussion following R.C.M. 202(a) is amended to read as follows:

"(ii) *Effect of discharge and reenlistment.* For offenses occurring on or after 23 October 1992, under the 1992 Amendment to Article 3(a), a person who reenlists following a discharge may be tried for offenses committed during the earlier term of service. For offenses occurring prior to 23 October 1992, a person who reenlists following a discharge may be tried for offenses committed during the earlier term of service only if the offense was punishable by confinement for five (5) years or more and could not be tried

in the courts of the United States or of a State, a Possession, a Territory or the District of Columbia. However, *see* (iii)(a) below."

C. Subsections 2(B)(iii) and 2(B)(iii)(a) of the Discussion following R.C.M. 202(a) are amended to read as follows:

"(iii) *Exceptions.* There are several exceptions to the general principle that court-martial jurisdiction terminates on discharge or its equivalent.

(*a*) A person who was subject to the code at the time an offense was committed may be tried by court-martial for that offense despite a later discharge or other termination of that status if:

(*1*) For offenses occurring on or after 23 October 1992, the person is, at the time of the court-martial, subject to the code, by reentry into the armed forces or otherwise. See Article 3(a) as amended by the National Defense Authorization Act for Fiscal Year 1993, Pub. L. No. 102–484, 106 Stat. 2315, 2505 (1992);

(*2*) For offenses occurring before 23 October 1992,

(*A*) The offense is one for which a court-martial may adjudge confinement for five (5) or more years;

(*B*) The person cannot be tried in the courts of the United States or of a State, a Possession, a Territory, or the District of Columbia; and

(*C*) The person is, at the time of the court-martial, subject to the code, by reentry into the armed forces or otherwise. *See* Article 3(a) prior to the 1992 amendment."

D. The Discussion following R.C.M. 203 is amended to read as follows:

"(a) *In general.* Courts-martial have power to try any offense under the code except when prohibited from so doing by the Constitution. The rule enunciated in *Solorio v. United States,* 483 U.S. 435 (1987) is that jurisdiction of courts-martial depends solely on the accused's status as a person subject to the Uniform Code of Military Justice, and not on the "service connection" of the offense charged.

(b) *Pleading and proof.* Normally, the inclusion of the accused's rank or grade will be sufficient to plead the service status of the accused. Ordinarily, no allegation of the accused's armed force or unit is necessary for military members on active duty. *See* R.C.M. 307 regarding required specificity of pleadings."

E. Subparagraph (F) of the Discussion following R.C.M. 307(c)(3) is amended to read as follows:

"(F) *Subject-matter jurisdiction allegations.* Pleading the accused's rank or grade along with the proper elements of the offense normally will be sufficient to establish subject-matter jurisdiction."

F. The first two sentences of the Discussion following R.C.M. 810(d)(1) are amended to read as follows:

"In approving a sentence not in excess of one more severe than one approved previously, a convening authority is not limited to approving the same or lesser amount of the same type of punishment formerly approved. An appropriate sentence on a retried or reheard offense should be adjudged without regard to any credit to which the accused may be entitled."

G. The following Discussion is inserted after R.C.M. 902(d)(2):

"Nothing in this rule prohibits the military judge from reasonably limiting the presentation of evidence, the scope of questioning, and argument on the subject so as to ensure that only matters material to the central issue of the military judge's possible disqualification are considered, thereby, preventing the proceedings from becoming a forum for unfounded opinion, speculation or innuendo."

H. The Discussion following R.C.M. 1003(b)(6) is amended to read as follows:

"Restriction does not exempt the person on whom it is imposed from any military duty. Restriction and hard labor without confinement may be adjudged in the same case provided they do not exceed the maximum limits for each. *See* subsection (c)(1)(A)(ii) of this rule. The sentence adjudged should specify the limits of the restriction."

I. The Discussion following R.C.M. 1105(b)(4) is amended by adding the following sentence at the end thereof:

"If the sentencing authority makes a clemency recommendation in conjunction with the announced sentence, see R.C.M. 1106(d)(3)(B)."

J. The following Discussion is inserted after R.C.M. 1106(d)(3)(B):

"The recommendation required by this rule need not include information regarding other recommendations for clemency. *See* R.C.M. 1105(b)(5), which pertains to clemency recommendations that may be submitted by the accused to the convening authority."

K. The Discussion following R.C.M. 1107(d)(1) is amended to read as follows:

"A sentence adjudged by a court-martial may be approved if it was within the jurisdiction of the court-martial to adjudge *(see* R.C.M. 201(f)) and did not exceed the maximum limits prescribed in Part IV and Chapter X of this Part for the offense(s) of which the accused legally has been found guilty.

When mitigating forfeitures, the duration and amounts of forfeiture may be changed as long as the total amount forfeited is not increased and neither the amount nor duration of the forfeiture exceeds the jurisdiction of the court-martial. When mitigating confinement or hard labor without confinement, the convening authority should use the equivalencies at R.C.M. 1003(b)(6) and (7), as appropriate. One form of punishment may be changed to a less severe punishment of a different nature, as long as the changed punishment is one that the court-martial could have adjudged. For example, a bad-conduct discharge adjudged by a special court-martial could be changed to confinement for 6 months (but not vice versa). A pretrial agreement may also affect what punishments may be changed by the convening authority.

See also R.C.M. 810(d) concerning sentence limitations upon a rehearing or new or other trial."

L. The Discussion following R.C.M. 1107(d)(2) is amended by adding the following sentence at the end thereof:

"Since court-martial forfeitures constitute a loss of entitlement of the pay concerned, they take precedence over all debts."

M. The Discussion following R.C.M. 1107(d)(3) is amended to read as follows:

"The convening authority's decision to postpone service of a court-martial sentence to confinement normally should be reflected in the action."

N. The following Discussion is inserted after R.C.M. 1107(f)(2):

"For purposes of this rule, a record is considered to have been forwarded for review when the convening authority has either delivered it in person or has entrusted it for delivery to a third party over whom the convening authority exercises no lawful control (*e.g.,* the United States Postal Service)."

O. The following Discussion is inserted after R.C.M. 1113(d)(2)(A)(iii):

"The convening authority's decision to postpone service of a court-martial sentence to confinement normally should be reflected in the action."

P. The Discussion following R.C.M. 1201(b)(1) is amended to read as follows:

"A case forwarded to a Court of Military Review under this subsection is subject to review by the Court of Military Appeals upon petition by the accused under Article 67(a)(3) or when certified by the Judge Advocate General under Article 67(a)(2)."

Q. The Discussion following R.C.M. 1301(d)(1) is amended to read as follows:

"The maximum penalty which can be adjudged in a summary court-martial is confinement for 30 days, forfeiture of two-thirds pay per month for one month, and reduction to the lowest pay grade. *See* subsection (2) below for additional limits on enlisted persons serving in pay grades above the fourth enlisted pay grade.

A summary court-martial may not suspend all or part of a sentence, although the summary court-martial may recommend to the convening au-

thority that all or part of a sentence be suspended. If a sentence includes both reduction in grade and forfeitures, the maximum forfeiture is calculated at the reduced pay grade. *See also* R.C.M. 1003 concerning other punishments which may be adjudged, the effects of certain types of punishment, and combination of certain types of punishment. The summary court-martial should ascertain the effect of Article 58a in that armed force."

Changes to the Maximum Punishment Chart of the Manual for Courts-Martial, United States, 1984.

Appendix 12, the Maximum Punishment Chart, is amended by adding after Art. 134 (Seizure, destruction, removal, or disposal of property to prevent) the following:

"Self-injury without intent to avoid service In time of war, or while receiving special pay under

37 U.S.C. 310....	DD	5 yrs.	Total
Other.....	DD	2 yrs.	Total"

[FR Doc. 95–12285
Filed 5–15–95; 2:56 pm]
Billing code 5000–04–P

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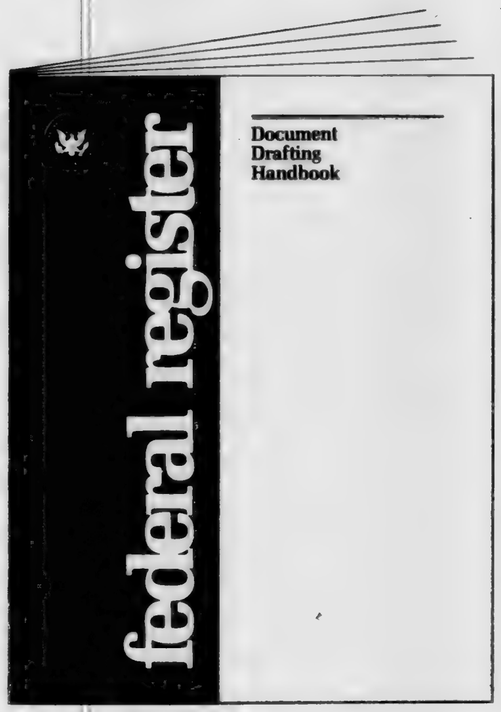
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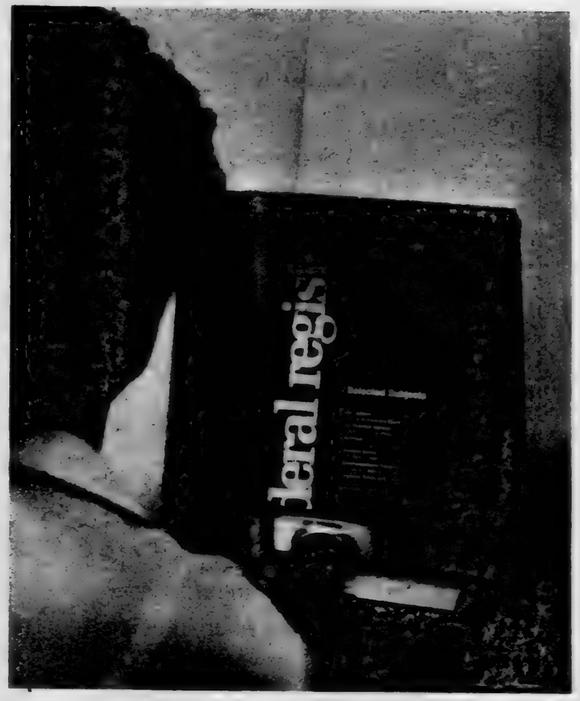
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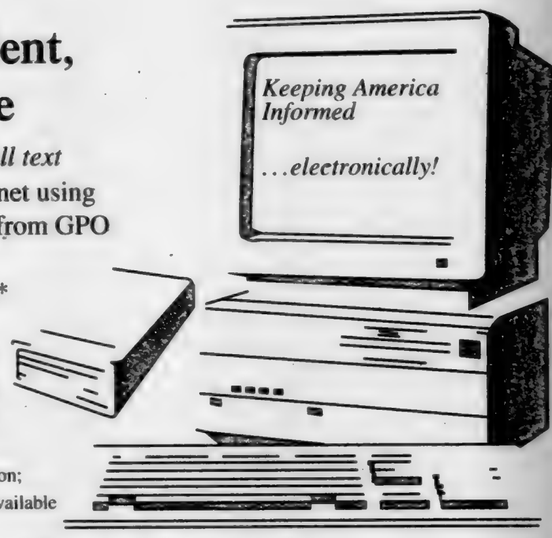
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Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

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Federal Register
Vol. 60, No. 96
Thursday, May 18, 1995

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

RIN 3206- AG31

Federal Employees Health Benefits Program: Limitation on Physician Charges and FEHB Program Payments

AGENCY: Office of Personnel Management.

ACTION: Interim regulation with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing an interim regulation that amends current Federal Employee Health Benefits (FEHB) Program regulations to require that the charges and FEHB fee-for-service plans' benefit payments for certain physician services furnished to retired enrolled individuals do not exceed the limits on charges and payments established under the Medicare fee schedule for physician services. The regulation authorizes the FEHB plans, under the oversight of OPM, to notify the Secretary of Health and Human Services (HHS) of a Medicare participating hospital, physician or supplier who knowingly and willfully fails to accept, on a repeated basis, the Medicare rate as payment in full from an FEHB plan. The regulation also authorizes the FEHB plans, under the oversight of OPM, to notify the Secretary of HHS of a Medicare nonparticipating physician or supplier who knowingly and willfully charges, on a repeated basis, more than the Medicare limiting charge amount (115 percent of the Medicare Nonparticipating Physician Fee Schedule amount).

DATES: This interim regulation is effective May 18, 1995. Comments must be received on or before July 17, 1995.

ADDRESSES: Send written comments to Lucretia F. Myers, Assistant Director for Insurance Programs, Retirement and Insurance Group, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415; or FAX to (202) 606–0633.

FOR FURTHER INFORMATION CONTACT: Robert G. Iadicicco (202) 606–0004.

SUPPLEMENTARY INFORMATION: Section 11003 of the Omnibus Budget Reconciliation Act (OBRA) of 1993, Pub. L. 103–66, amended the FEHB law to limit the charges and FEHB fee-for-service plans' benefit payments for certain physician services (as defined in section 1848(j) of the Social Security Act) received by retired enrolled individuals.

The OBRA of 1993 provision is related to section 7002(f) of OBRA of 1990, Pub. L. 101–508. The OBRA of 1990 provision limited the charges and FEHB fee-for-service plans' benefit payments for certain inpatient hospital services received by retired enrolled individuals. OPM implemented the OBRA of 1990 provision by issuing interim and final regulations in the March 27, 1992, and July 20, 1993, issues of the **Federal Register** (57 FR 10609 and 58 FR 38661). This interim regulation amends the previous regulations.

The interim regulation expands the definition of a retired enrolled individual to include individuals who are not enrolled in Medicare part B.

The interim regulation specifies the physician services covered by the limitation on charges and benefit payments.

The interim regulation establishes how FEHB fee-for-service plans will determine benefit payments for physician services covered by the limitation. The plans will base their payment on the lower of the actual charge of the provider or the amount determined to be equivalent to the Medicare part B payment under the Medicare Participating Physician Fee Schedule for Medicare participating physicians and the Medicare Nonparticipating Physician Fee Schedule for Medicare nonparticipating physicians. Retired enrolled individuals' coinsurance payments will be based on the same amount.

The interim regulation specifies the limits on what providers can collect for both inpatient hospital services and physician services.

OPM has not required fee-for-service plans with an insufficient number of affected enrollees to apply the limits on physician services. We made this determination in keeping with OBRA of 1993's primary objective of reducing expenses.

The interim regulation authorizes the FEHB plans, under the oversight of OPM, to notify the Secretary of Health and Human Services (HHS) or the Secretary's designee when a medical provider knowingly and willfully collects, on a repeated basis, more than the applicable limits for inpatient hospital services or physician services. OPM strongly encourages and supports the efforts of FEHB plans to inform retired enrolled individuals and medical providers of the limits on charges and benefit payments, monitor compliance with the limits, and, if necessary, report repeat violators to the Secretary of HHS, or the Secretary's designee.

Waiver of Notice of Proposed Rulemaking

Pursuant to section 553(b)(3)(B) of title 5 of the U.S. Code, I find that good cause exists for waiving the general notice of proposed rulemaking and making this regulation effective upon publication. The notice is being waived because the limitation on FEHB plans' benefit payments and providers' charges enacted by Pub. L. 103–66 addressed in this regulation was effective with respect to the contract year beginning on January 1, 1995.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they primarily affect the health care coverage of Federal annuitants and former spouses.

E.O. 12866, Regulatory Review

This rule has been reviewed by OMB in accordance with E.O. 12866.

List of Subjects in 5 CFR Part 890

Administrative practice and procedure, Government employees, Health facilities, Health insurance, Health professions, Hostages, Iraq, Kuwait, Lebanon, Reporting and recordkeeping requirements, Retirement.

Office of Personnel Management.

James B. King,

Director.

Accordingly, OPM is amending 5 CFR part 890 as follows:

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

1. The authority citation for part 890 continues to read as follows:

Authority: 5 U.S.C. 8913; § 890.803 also issued under 50 U.S.C. 403p, 22 U.S.C. 4069c and 4069c–1; subpart L also issued under sec. 599C of Pub. L. 101–513, 104 Stat. 2064, as amended.

2. The heading of subpart I is revised to read as follows:

Subpart I—Limit on Inpatient Hospital Charges, Physician Charges, and FEHB Benefit Payments

3. Section 890.901 is revised to read as follows:

§ 890.901 Purpose.

This subpart identifies the individuals whose charges and FEHB benefit payments for inpatient hospital services and/or physician services may be limited and sets forth the circumstances of the limit.

4. Section 890.902 is amended by revising paragraphs (c) and (d) to read as follows:

§ 890.902 Definition.

* * * * *

(c) Is age 65 or older or becomes age 65 while receiving inpatient hospital services or physician services; and

(d) Is not covered by Medicare part A and/or part B.

5. Section 890.903 is revised to read as follows:

§ 890.903 Covered services.

(a) The limitation on the charges and FEHB benefit payments for inpatient hospital services apply to inpatient hospital services which are:

(1) Covered under both Medicare part A and the retired enrolled individual's FEHB plan; and

(2) Supplied to a retired enrolled individual who does not have Medicare part A; and

(3) Provided by hospital providers who have in force participation agreements with the Secretary of Health and Human Services (HHS) consistent with sections 1814(a) and 1866 of the Social Security Act, and receive Medicare part A payments in accordance with the diagnosis related group (DRG) based prospective payment system (PPS).

(b) The limitation on the charges and FEHB benefit payments for physician services apply to physician services, (as defined in section 1848(j) of the Social Security Act), which are:

(1) Covered under both Medicare part B and the retired enrolled individual's FEHB plan; and

(2) Supplied to a retired enrolled individual who does not have Medicare part B.

6. Section 890.904 is amended by designating the current paragraph as paragraph (a), amending newly designated paragraph (a) by adding the words "for inpatient hospital services" after the words "FEHB plan's benefit payment", and by adding paragraph (b) to read as follows:

§ 890.904 Determination of FEHB benefit payment.

* * * * *

(b) The FEHB plan's benefit payment for physician services under this subpart is determined by taking the lower of the following amounts:

(1) The amount determined by the FEHB plan, which is equivalent to the Medicare part B payment under the Medicare Participating Physician Fee Schedule for Medicare participating physicians and the Medicare Nonparticipating Physician Fee Schedule for Medicare nonparticipating physicians (the amount payable before the Medicare deductible and coinsurance are applied); or

(2) The actual billed charges; and

(3) Reducing the lower amount by any FEHB plan deductible, coinsurance, or copayment that is the responsibility of the retired enrolled individual.

7. Section 890.905 is revised to read as follows:

§ 890.905 Limits on inpatient hospital and physician charges.

(a) Hospitals may not collect from FEHB plans and retired enrolled individuals for inpatient hospital services more than the amount determined to be equivalent to the Medicare part A payment under the DRG-based PPS.

(b) Medicare participating providers may not collect for FEHB plans and retired enrolled individuals for physician services more than the amount determined to be equivalent to the Medicare part B payment under the Medicare Participating Physician Fee Schedule.

(c) Medicare nonparticipating providers may not collect from FEHB plans and retired enrolled individuals for physician services more than the amount to be equivalent to the Medicare limiting charge amount.

8. Section 890.906 is redesignated as § 890.909 and a new § 890.906 is added to read as follows:

§ 890.906 Retired enrolled individuals coinsurance payments.

(a) A retired enrolled individual's coinsurance responsibility for inpatient hospital services is calculated in accordance with the plan's contractual benefit structure and is based on the amount determined to be equivalent to the Medicare part A payment under the DRG-based PPS.

(b) A retired enrolled individual's coinsurance responsibility for physician services is calculated in accordance with the plan's contractual benefit structure and is based on the lower of the actual charges or the amount determined to be equivalent to the Medicare part B payment under the Medicare Participating Physician Fee Schedule for Medicare participating physicians and the Medicare Nonparticipating Physician Fee Schedule for Medicare nonparticipating physicians.

9. Section 890.907 is redesignated as § 890.910 and a new § 890.907 is added to read as follows:

§ 890.907 Effective dates.

(a) The limitation specified in this subpart applies to inpatient hospital admissions commencing on or after January 1, 1992.

(b) The limitation specified in this subpart applies to physician services supplied on or after January 1, 1995.

10. Section 890.908 is added to read as follows:

§ 890.908 Notification of HHS.

An FEHB plan, under the oversight of OPM, will notify the Secretary of HHS, or the Secretary's designee, if the plan finds that:

(a) A hospital knowingly and willfully collects, on a repeated basis, more than the amount determined to be equivalent to the Medicare part A payment under the DRG-based PPS.

(b) A Medicare participating physician or supplier knowingly and willfully collects, on a repeated basis, more than the amount determined to be equivalent to the Medicare part B payment under the Medicare Participating Physician Fee Schedule.

(c) A Medicare nonparticipating physician or supplier knowingly and willfully charges, on a repeated basis, more than the amount determined to be equivalent to the Medicare limiting charge amount.

[FR Doc. 95–12169 Filed 5–17–95; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 404

RIN 0563–AB13

Noninsured Crop Disaster Assistance Program

AGENCY: Federal Crop Insurance Corporation.

ACTION: Interim rule.

SUMMARY: The Federal Crop Insurance Corporation ("FCIC") hereby adds a new part 404 to chapter IV of title 7 of the Code of Federal Regulations ("CFR"). The intended effect of this interim rule is to provide a noninsured crop disaster assistance program ("NAP") to protect producers of crops for which insurance is not available. NAP provides a level of protection in most respects comparable to the catastrophic risk protection plan of insurance offered to producers on certain crops.

DATES: This rule is effective January 1, 1995. Written comments, data, and opinions on this rule will be accepted until close of business July 17, 1995 and will be considered when the rule is to be made final.

ADDRESSES: Written comments, data, and opinion on this interim rule should be sent to Diana Moslak, Regulatory and Procedural Development Staff, Federal Crop Insurance Corporation, USDA, Washington, D.C. 20250. Hand or messenger delivery may be made to Suite 500, 2101 L Street, N.W., Washington D.C. Written comments will be available for public inspection and copying in the Office of the Manager, 2101 L Street, N.W., 5th Floor, Washington, D.C., during regular business hours, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: For further information and a copy of the Regulatory Impact Analysis to the Noninsured Crop Disaster Assistance Program, contact Diana Moslak, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250, Telephone (202) 254–8314.

SUPPLEMENTARY INFORMATION: This action has been reviewed under United States Department of Agriculture ("USDA") procedures established by Executive Order 12866 and Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is May 1, 2000.

This rule has been determined to be "significant" for the purposes of Executive Order 12866, and therefore, has been reviewed by the Office of Management and Budget ("OMB").

A Regulatory Impact Analysis has been completed and is available to interested persons at the address listed above. In summary, the analysis finds that crop insurance reform is expected to result in net positive benefits to producers, taxpayers, and society. The impact on individual producers compared to payments under ad hoc disaster programs depends primarily on the farm's actual yield or yield assigned by the FCIC, market prices, and any adjustments for variable marketing or production costs. However, reform is expected to result in less volatility of producers' incomes and decrease the risk of no income due to adverse weather events. Rural communities and farmers will benefit from the advanced knowledge that payments will be made in times of catastrophic yield losses. The Government and taxpayers will benefit from a single disaster protection program and consequently reduced Federal outlays. Although producers will have an added burden to make application and report yields and acreage, the benefits in terms of greater risk protection and reduced potential for program fraud or abuse outweigh the costs.

The provisions set forth in this interim rule will contain information collections that require clearance by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Due to the necessity of implementing the rule immediately, the agency has requested clearance of this information collection from OMB. The public reporting burden for the information collections that would be required for compliance with these regulations is estimated to average 42 minutes per response including the time for reviewing instructions, searching existing data sources, gathering and maintaining data needed, and completing and reviewing the collection of information. Comments on the information collection may be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10202, NEOB, Washington, D.C. 20503. Attention: Desk Officer for USDA.

It has been determined under section 6(a) of Executive Order 12612, Federalism, that this rule does not have sufficient federalism implication to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on states or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

This regulation will not have a significant impact on a substantial number of small entities. Most producers will be able to certify to their historical production levels at the time of application based on existing records, or they may elect to base their initial coverage on transitional or assigned yields. The amount of data collected from applicants will only be that needed to establish an acceptable yield, and determine the number of acres planted, and eligibility of the producer, crop and acreage. The information required and time of collection is statutory. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. § 605) and no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which require intergovernmental consultation with state and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

The Office of the General Counsel has determined that these regulations meet the applicable standards provided in subsections 2(a) and 2(b)(2) of Executive Order 12778. The provisions of this rule will preempt state and local laws to the extent such state and local laws are inconsistent herewith. Before any judicial action may be brought regarding the provisions of this regulation, the National Appeal Division administrative appeal procedures must be exhausted. The provisions of this rule are to be given retroactive effect to January 1, 1995.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

This interim rule implements programs mandated by the amendments to the Federal Crop Insurance Act by the Federal Crop Insurance Reform Act of 1994. Those amendments required that the statutory changes be implemented for the 1995 crop year. Many of the final planting dates or risk periods for crops for which insurance is not available have passed or will soon pass. Planting decisions for 1995 crops have been or will shortly be made and it is necessary that producers, lenders, and suppliers know the parameters and requirements of the program. Disasters in 1995 subject

to the Act may have occurred. Therefore, it is impractical and contrary to the public interest to publish this rule for notice and comment prior to making the rule effective. However, comments are solicited for 60 days after the date of publication in the **Federal Register** and will be considered by FCIC before this rule is made final.

On October 13, 1994, the amendments to the Federal Crop Insurance Act, made by the Federal Crop Insurance Reform Act of 1994, were effective. This regulation will provide the provisions to carry out the noninsured crop disaster assistance program requirements of the Reform Act. The Noninsured Crop Disaster Assistance Program will replace the provisions of the Disaster Payment Program (7 CFR part 1477) and the provisions of the Tree Assistance Program (7 CFR part 1478). By separate rule, the Consolidated Farm Service Agency ("CFSA") will amend these regulations to restrict the crop years of application to those prior to the crop year for which this rule will be effective and later remove those parts.

Background

Upon publication of 7 CFR part 404, this regulation will provide noninsured crop disaster assistance through the USDA and will replace ad hoc disaster assistance. The provisions of the noninsured crop disaster assistance program are as follows:

1. Section 404.9, paragraph (a)—Provides that producers who are eligible to receive NAP payments for crop years 1995 through 1998 will receive coverage against a covered loss greater than fifty percent (50%) of the approved yield for the eligible crop payable at sixty percent (60%) of the average market price for the crop.

2. Section 404.9, paragraph (b)—Provides that producers who are eligible to receive NAP payments after crop year 1998 will receive coverage against a covered loss greater than fifty percent (50%) of the approved yield for the eligible crop payable at fifty-five percent (55%) of the average market price for the crop.

3. Section 404.11, paragraph (a)—Specifies that eligible crops will be commercial crops or other agricultural commodities (except livestock), grown for food or fiber and will also include floricultural, ornamental nursery, Christmas tree crops, turfgrass sod, industrial crops, and aquacultural species.

4. Section 404.13—Specifies the minimum "area" of 320,000 acres or a geographical area with a minimum average value of at least $80 million for all crops produced annually.

5. Section 404.13, paragraph (d)—Allows for an area determination to be ten or more producers of the crop in those eligible areas outside the United States.

6. Section 404.15—Provides that yields will be established by the FCIC for the purposes of providing NAP payments. Yields may be established by using the actual production history of the producer over a prescribed period, or if there is inadequate documentation to calculate the actual production history, generally in accordance with 7 CFR part 400, subpart G. The FCIC will ensure that the NAP payments accurately reflect significant yield variations due to different farming practices, such as between irrigated and non-irrigated acreage.

7. Section 404.15, paragraph (h)—Specifies that producers with contracts for guaranteed payments for production will have their harvested production adjusted upward to reflect the amount of the contract payment.

8. Section 404.15, paragraph (i)—A producer who produces a crop in a county where the acreage of the crop for the county has increased by more than 100 percent over any year in the preceding seven years may not use an assigned yield unless:

(a) The planted acreage of the producer for the crop has been inspected prior to the loss by a third party acceptable to the FCIC; or

(b) The CFSA County Executive Director and the CFSA State Executive Director recommend an exemption to FCIC for approval. FCIC will limit use of assigned yields to one loss year.

9. Section 404.17—Provides for the filing of an annual acreage report by the producer for each eligible crop at the local office to be eligible for NAP payments. For each year, producers must report their current year's acreage and the previous year's crop production history.

10. Section 404.19, paragraphs (a) and (b)—Specifies that to qualify for NAP payments, any loss or prevented planting of the eligible crop must be due to drought, flood, or other natural disaster, as determined by the Secretary. NAP payments will not cover losses due to neglect or malfeasance of the producer, or the failure of the producer to reseed or replant to the same crop in those areas and under such circumstances where it is customary to reseed or replant, or the failure of the producer to follow good farming practices.

11. Section 404.19, paragraph (c)—Specifies that a producer of an eligible crop will not receive NAP payments for loss in production or prevented planting unless the projected average or actual yield for the crop in an area falls below 65 percent of the expected area yield established by FCIC. Once the area eligibility requirement has been satisfied, the total quantity of the eligible crop that the producer is able to harvest on the unit must be less than 50 percent of the approved yield. FCIC will make a payment for the difference between the determined yield and 50 percent of the producer's approved yield. Once the area eligibility requirement has been met, a producer of an eligible crop may receive NAP payments for prevented planting if the producer is prevented from planting more than 35 percent of the acreage. Intended acreage may be verified using records of historical acreage planted to the eligible crop.

12. Section 404.21, paragraph (a)—Provides for notice of damage or loss at the local office within 15 calendar days after the occurrence of the prevented planting or damage to the crop to be eligible for NAP payments. With the exception for the 1995 crop year, in which case, the notice must be filed within the later of 45 days after this rule is published in the **Federal Register** or 15 days after the occurrence of the prevented planting or damage to the crop.

13. Section 404.21, paragraph (b)—Requires the producer to make an application for payment at the local office before the deadline set by FCIC.

14. Section 404.23—Specifies that if the producer is eligible to receive NAP payments and is also eligible to receive benefits for the same loss under other USDA programs, the producer must elect the program from which to receive benefits.

15. Section 404.25—Specifies that the total amount of payments that a person may receive annually under this title will not exceed $100,000. A producer with qualifying gross revenues of $2 million or more may not receive NAP payments.

16. Section 404.27—Specifies that if a producer conceals or misrepresents any material fact, commits fraud, or participates in a scheme or device, the producer will not be eligible to receive any payments applicable to that crop year and could be subject to penalties specified in the Act.

List of Subjects in 7 CFR Part 404

Agricultural commodities, Disaster assistance, Reporting and recordkeeping requirements.

Interim Rule

For the reasons set out in the preamble, a new part 404 is added to chapter IV of title 7 of the CFR, to read as follows:

PART 404—NONINSURED CROP DISASTER ASSISTANCE PROGRAM—REGULATIONS FOR THE 1995 AND SUCCEEDING CROP YEARS

Sec.

404.1 General statement.
404.3 Applicability.
404.5 Administration.
404.7 Definitions.
404.9 Coverage.
404.11 Eligibility.
404.13 Area.
404.15 Yield determinations.
404.17 Acreage report.
404.19 Loss requirements.
404.21 Application for payment and notice of loss.
404.23 Multiple benefits.
404.25 Payment and income limitations.
404.27 Misrepresentation, scheme and device, and fraud.
404.29 Refunds to the corporation.
404.31 Cumulative liability.
404.33 Appeals.
404.35 Exemption from levy.
404.37 Estates, trusts, and minors.
404.39 Death, incompetence, or disappearance.
404.41 OMB control numbers.

Authority: 7 U.S.C. 1506(l).

§ 404.1 General statement.

The Federal Crop Insurance Act, as amended by the Federal Crop Insurance Reform Act of 1994 (the "Act"), requires the Federal Crop Insurance Corporation (FCIC) to implement a noninsured crop disaster assistance program (NAP) to provide eligible producers of eligible crops with protection somewhat comparable to the catastrophic risk protection plan of insurance. NAP is designed to help reduce production risks faced by producers of uninsurable crops. NAP will reduce financial losses that occur when natural disasters cause a loss of production or prevented planting of an eligible crop. Payment eligibility is based on an expected yield for the area and an approved yield for an individual producer unit based on actual production history or a transitional yield, if sufficient actual production records are not available. Production for both the applicable area expected yield and the individual producer approved yield for the unit must fall below specified percentages in order to be eligible for payments under this part.

§ 404.3 Applicability.

The provisions contained in this part are applicable to each eligible producer and each eligible crop and acreage for which catastrophic risk protection coverage is not otherwise available.

§ 404.5 Administration.

(a) The NAP program will be administered under the general supervision of the FCIC, and will be carried out through state and county committees and offices of the CFSA, or other local USDA offices if designated by FCIC.

(b) The state CFSA committee will, in accordance with this part, recommend the geographical size and shape of the area where a natural disaster has occurred, and whether the area eligibility requirement has been satisfied. The recommendation of eligibility will be submitted to FCIC for review and approval or disapproval.

(c) FCIC will determine all yields and prices under this part.

(d) No delegation herein to a state or county CFSA committee will preclude the FCIC Manager from determining any question arising under NAP or from reversing or modifying any determination made by a state or county CFSA committee.

§ 404.7 Definitions.

(a) *Actual production history.* Refer to 7 CFR part 400, subpart G, except that the terms of subpart G will read as follows when referring to NAP:

Insurance terms	NAP terms
Agent	Local office representative.
Claim	Application for payment.
Claim for indemnity	Application for payment.
Indemnity payment	NAP payment.
Insurable acreage	Eligible acreage.
Insurable cause	Natural disaster.
Insurable crop	Eligible crop.
Insurance company	Provider.
Insurance purposes	NAP purposes.
Insured	Eligible producer.
Insured producer	Eligible producer.
Uninsurable acreage	Ineligible acreage.
Uninsurable production.	Ineligible production.
Uninsured cause of loss appraisal.	Assigned production.
Uninsured production	Ineligible production.

(b) *Actual yield.* The yield per acre for a crop year calculated from production records or NAP payments in accordance with 7 CFR part 400, subpart G.

(c) *Adjusted yield.* The transitional yield reduced by the applicable percentage for lack of adequate records in accordance with 7 CFR part 400, subpart G.

(d) *Approved yield.* A yield calculated and approved by the verifier, used to determine any NAP payment in accordance with 7 CFR part 400, subpart G.

(e) *Aquacultural species.* Any species of aquatic organism grown as food for human consumption or fish raised as feed for fish that are consumed by humans, and which is propagated and reared in an aquatic medium by a commercial operator on private property in water in a controlled environment.

(f) *Area.* The geographic region recommended by the state CFSA committee, and approved by FCIC in accordance with § 404.13 of this part, where a natural disaster has occurred which may qualify producers in the geographic area for NAP payments.

(g) *Assigned yield.* A yield assigned for a crop year in the base period if the producer does not file an acceptable production report by the production reporting date in accordance with 7 CFR part 400, subpart G. Assigned yields are used in the same manner as actual yields when calculating APH. An assigned yield may not be used for a production report in a disaster year.

(h) *Average market price.* The price or dollar equivalent on an appropriate basis; i.e., bushel, ton, etc., for an eligible crop established by FCIC for determining NAP payments. Such price will be on a harvested basis without the inclusion of transportation, storage, processing, packing, marketing or other post-harvest expenses and will be based, in part, on historical data.

(i) *CCC.* The Commodity Credit Corporation.

(j) *CFSA.* The Consolidated Farm Service Agency of the United States Department of Agriculture.

(k) *County expected yield.* The eligible crop yield established by FCIC for the county. Such yield information may be obtained from the National Agricultural Statistics Service (NASS), CSREES, credible nongovernmental studies, and yields in similar areas. For planted annual crops, such yield will be based on the acreage planted for harvest.

(l) *Crop year.* The period of time within which the crop is normally grown and designated by the calendar year in which the crop is normally harvested in the area.

(m) *CSREES.* The Cooperative State Research, Education, and Extension Service.

(n) *Eligible crop.* An agricultural commodity including all types and varieties or acreage of a commodity for which insurance is not available under any FCIC insurance program and which is commercially produced for food or fiber as specified in this part. Eligible crop shall also include floricultural, ornamental nursery, Christmas tree, turfgrass sod, industrial crops, and aquacultural species. In the case of a crop that historically has multiple plantings in the same crop year that are planted or are prevented from being

planted on the same or different acreage will be considered different crops for determining NAP payments. This does not apply to a replacement crop.

(o) *Expected area yield.* The eligible crop yield established and approved by FCIC for the geographic area.

(p) *FCIC.* The Federal Crop Insurance Corporation, a wholly owned Government Corporation within the Consolidated Farm Service Agency, United States Department of Agriculture.

(q) *Good farming practices.* The cultural practices generally used in the area for the crop to make normal progress toward maturity and produce at least the individual unit approved yield. The practices are normally those recognized by CSREES as compatible with agronomic and weather conditions in the area.

(r) *Harvested.* A single harvest crop is considered harvested when the producer has, by hand or mechanically, removed the crop from the field. A multiple harvest crop is considered harvested when the producer has, by hand or mechanically, removed at least one harvesting from the field. The crop is considered harvested once it is taken off the field and placed in a truck or other conveyance. (Exceptions: Hay is considered harvested when in the bale, whether removed from the field or not. Grazing is not considered harvesting except for seeded pasture.)

(s) *Livestock.* Any farm or other animal excluding aquacultural species and, including but not limited to domestic avian, ruminant, equine, and swine species grown or maintained for any purpose.

(t) *Local office.* The CFSA office or other USDA office designated by FCIC.

(u) *Master yields.* Approved APH yields, for certain crops and counties as designated by the FCIC, used to determine any NAP payment in accordance with 7 CFR part 400, subpart G.

(v) *Natural disaster.* Means damaging weather, including but not limited to drought, hail, flood, excessive moisture, freeze, tornado, hurricane, or excessive wind, or any combination thereof; or other adverse natural occurrence, including but not limited to earthquake, volcanic eruption, heat, locust infestation; or that directly causes, accelerates, or exacerbates the destruction or deterioration of an eligible crop.

(w) *Operator.* The person who is in general control of the farming operation on the farm during the crop year.

(x) *Person.* A person as defined in 7 CFR part 1497, subpart B.

(y) *Prevented planting.* The inability to plant a crop with proper equipment during the planting period for the crop or commodity. A producer must have been unable to plant the eligible crop due to a natural disaster that prevented most producers in the surrounding area from planting such crop during the same planting period. The natural disaster that caused the prevented planting may occur prior to the planting period for the crop in the area, but must not occur earlier than the planting period for such crop the prior crop year.

(z) *Producer.* A person who, as owner, landlord, tenant, or sharecropper, is entitled to share in the production from the eligible commodity or in the proceeds thereof.

(aa) *Production report.* A written record showing the commodity's annual production and used to determine the producer's yield for NAP purposes. The report contains yield history by unit, if applicable, including planted acreage for annual crops, eligible acreage for perennial crops, and harvested and appraised production for the previous crop years. This report must be supported by verifiable written records, measurement of farm-stored production, or by other records of production approved by FCIC on an individual basis. Information contained in an application for payment is considered a production report for the unit for the crop year for which the application was filed.

(bb) *Qualifying gross revenues* means:

(1) With respect to a person who receives more than 50 percent of such person's gross income from farming, ranching, and forestry operations, the annual gross income for the calendar year from such operations; and

(2) With respect to a person who receives 50 percent or less of such person's gross income from farming, ranching, and forestry operations, the person's total gross income from all sources.

(cc) *Reseeded or replanted crop.* The same crop planted on the same acreage after the first planting of the crop has failed.

(dd) *Replacement crop.* A different crop planted on the same acreage after the failure of the first crop, excluding reseeded or replanted crops.

(ee) *Seeded pasture.* Acreage which is seeded on cropland, as defined in 7 CFR part 719, to an annual crop intended for use as grazing only by domestic animals.

(ff) *Share.* The producer's percentage of interest in the eligible crop as an owner, operator, or tenant at the beginning of the crop year. For the purposes of determining eligibility for NAP payments, the producer's share will not exceed the producer's share at the earlier of the time of loss or the beginning of harvest. Acreage or interest attributed to a spouse, child, or member of the same household may be considered part of the producer's share unless considered a separate person.

(gg) *Transitional NAP yield ("T" Yield).* An estimated yield based on the county expected yield adjusted for individual producers as determined by FCIC. The T-yield will be used in the approved yield calculation process when less than four consecutive crop years of actual or assigned yields are available.

(hh) *Unit.* For the noninsured crop disaster assistance program, all acreage of the eligible crop in the county on the date coverage begins for the crop year:

(1) In which the person has one-hundred percent (100%) crop share; or

(2) Which is owned by one person and operated by another person on a share basis.

(Example: If, in addition to the land the person owns, the person rents land from five landlords, three on a crop share basis and two on a cash basis, the person would be entitled to four units, one unit for each crop share lease and one unit which includes the two cash leases and the land owned by the person.) Land rented for cash, a fixed commodity payment, or any consideration other than a share in the crop on such land will be considered as owned by the lessee. No unit other than that stated herein will be permitted.

§ 404.9 Coverage.

(a) Producers who are eligible to receive NAP payments for crop years 1995 through 1998 will receive coverage against loss in yield greater than fifty percent (50%) of the producer's approved yield for the eligible crop payable at sixty percent (60%) of the established average market price for the crop.

(b) Producers who are eligible to receive NAP payments after crop year 1998 will receive coverage against loss in yield greater than fifty percent (50%) of the producer's approved yield for the eligible crop payable at fifty-five percent (55%) of the established average market price for the crop.

(c) FCIC will adjust the NAP payment rate for crops that are produced with significant and variable expenses that are not incurred because the crop acreage was prevented from being planted or planted but not harvested.

(d) NAP payments will be determined by unit based on the production of all acreage of that crop (planted and eligible prevented from being planted) in the unit.

(e) Each producer's NAP payment will be based on the producer's share of the eligible crop.

§ 404.11 Eligibility.

(a) Eligible crops under this part will be any commercial agricultural crop, commodity, or acreage of a commodity grown for food or fiber for which the catastrophic risk protection plan of insurance is not available in the area under 7 CFR part 402 unless excluded in paragraph (b) of this section. All types and varieties of a crop or commodity will be treated as a single eligible crop. NAP benefits will be made available for:

(1) Any commercial crop grown for human consumption;

(2) Any commercial crop planted and grown for livestock consumption, including but not limited to grain and forage crops and seeded pasture;

(3) Any commercial crop grown for fiber, excluding trees grown for wood, paper, or pulp products;

(4) Any commercially produced aquacultural species;

(5) Floriculture;

(6) Ornamental nursery crops;

(7) Christmas trees;

(8) Turfgrass sod; and

(9) Industrial crops.

(b) NAP payments will not be available for:

(1) Losses of livestock or their by-products;

(2) Any person who has qualifying gross revenues in excess of $2 million;

(3) Any acreage in any area for any crop for which the catastrophic risk protection plan of insurance under 7 CFR part 402 is available or would have been available had the crop been timely planted in accordance with 7 CFR part 402 unless the delay in planting was caused by a natural disaster;

(4) Any person who has violated chapter XII and section 1764 of the Food Security Act of 1985 by being convicted under Federal or state law of planting, cultivating, growing, producing, harvesting or storing a controlled substance in any crop year;

(5) Producing an agricultural commodity in any crop year on a field on which highly erodible land is predominant, unless the person is exempt under the provisions of § 12.5 of this title; or

(6) Producing an agricultural commodity in any crop year on converted wetland, unless the person is exempt under the provisions of § 12.5 of this title.

(c) Any tenant, landlord, or producer on the unit separate from the person determined to be ineligible under this provision will remain eligible for NAP payments for their share of the crop unless such tenant, landlord, or producer on the unit is:

(1) Also convicted of planting, cultivating, growing, producing, harvesting or storing a controlled substance;

(2) Also in violation of chapter XII of the Food Security Act of 1985 and the regulations issued thereunder; or

(3) Otherwise determined by FCIC to be ineligible for NAP payments.

§ 404.13 Area.

For the purposes of this part, all acreage affected by a natural disaster, or any adjustment thereto, will be included in the area recommended by the state CFSA committee and submitted to FCIC for approval, regardless of whether the commodity produced on the affected acreage suffered a loss. The minimum area will be 320,000 acres or a geographical area with not less than an $80 million average value for all crops produced annually. The minimum area will be determined as follows:

(a) The shape of the area will be contiguous and will correspond to the shape of the natural disaster to the maximum extent possible. If the acreage affected by the natural disaster is less than the number of acres needed to meet the area size requirement and does not meet the $80 million value requirement, the state CFSA committee will add acres equally from all surrounding cropland including undamaged acres until the minimum size is met.

(b) If the acreage affected by the natural disaster is not contiguous:

(1) The area will include all acreage that has been affected by the same natural disaster within the area.

(2) The acreage included in the area will be contiguous taking into consideration geological breaks (identifiable variations in topography such as mountain ranges and rivers).

(3) If the distance between affected acreages is so distant that it is not practical to include all of the acreage within the area, the acreage may be divided into separate areas.

(c) The area may not be defined in any manner that arbitrarily includes or excludes producers or cropland.

(d) In lieu of paragraphs (a) and (b) of this section, for eligible areas outside the United States, the area shall include ten or more producers of the crop.

(e) If a part of a contiguous unit is affected by a disaster, the whole contiguous unit will need not be included in the determination of the area. However, the whole unit will be used to determine if the producer suffered a loss.

§ 404.15 Yield determinations.

(a) FCIC will establish expected area yields for eligible crops for each county or area for which the NAP is available, using available information, which may include, but is not limited to, NASS data, CSREES records, credible nongovernment studies, yields in similar areas, and reported APH data.

(b) FCIC may make county yield adjustments taking into consideration different yield variations due to different farming practices in the county such as irrigated and nonirrigated acreage.

(c) In establishing expected area yields for eligible crops:

(1) If the approved area corresponds to a single county, the expected area yield will be the yield established by FCIC for that county, including any adjustments permitted by this section;

(2) If the approved area encompasses portions of or more than one county, the expected area yield will be the weighted average of the yields established by FCIC for those counties in the area, including any adjustments permitted by this section.

(3) FCIC may adjust expected area yields if:

(A) The cultural practices, including the age of the planting or plantings, are different from those used to establish the yield.

(B) The expected area yield established on a state or county level is determined to be incorrect for the area.

(d) FCIC will establish approved yields for purposes of providing assistance under this part. Approved yields for the eligible crop will be based on the producer's actual production history in accordance with the provisions of 7 CFR part 400, subpart G.

(e) The approved yield established for the producer for the year in which the NAP payments are offered will be equal to the average of the consecutive crop year yields reported and certified of that producer for that eligible crop.

(f) If a producer receives an assigned yield for a year of natural disaster, the producer will be ineligible to receive an assigned yield for any subsequent year disaster unless adequate production records for the eligible crop from the previous one or more years are provided to the local office. The producer shall receive a zero yield for those years the producer is ineligible to receive an assigned yield.

(g) FCIC will select certain producers and require those selected to provide adequate records to support the information provided. Producers may also be required to support the yield certification at the time of loss adjustment or on post-audit. Each

certification must be supported by adequate records. Failure to produce adequate records may subject the producer to criminal and civil false claims actions under various Federal statutes as well as refund of any amount received. In addition, sanctions as set out at 7 CFR part 400, subpart R may be imposed for false certification. Adequate records may include:

(1) Commercial receipts, settlement sheets, warehouse ledger sheets, or load summaries if the eligible crop was sold or otherwise disposed of through commercial channels; and

(2) Such documentary evidence as is necessary in order to verify the information provided by the producer if the eligible crop has been sold, fed to livestock, or otherwise disposed of other than through commercial channels such as contemporaneous measurements, truck scale tickets, contemporaneous diaries, etc.

(h) Any producer who has a contract to receive a guaranteed payment for production, as opposed to delivery, of an eligible crop will have the production adjusted upward by the amount of the production corresponding to the amount of the contract payment received.

(i)(1) Producers will not be eligible to receive an assigned yield if the acreage of the crop in a county for the crop year has increased by more than 100 percent over any year in the preceding seven crop years, unless:

(i) The producer provides adequate records of production costs, acres planted, and yield for the crop year for which benefits are being sought.

(ii) If FCIC determines that the records provided under this paragraph are inadequate, FCIC may require proof that the eligible crop could have been marketed at a reasonable price had the crop been harvested.

(2) The provisions of paragraph (i)(1) of this section will not apply if:

(i) The crop has been inspected prior to the occurrence of a loss by a third party acceptable to FCIC; or

(ii) The CFSA County Executive Director, with concurrence of the CFSA State Director, makes a recommendation for an exemption from the requirements and such recommendation is approved by FCIC.

§ 404.17 Acreage report.

(a) Producers must file one or more acreage reports annually at the local office no later than the date specified by the Corporation for each crop the producer will want made eligible for the NAP program. The acreage report may be filed by the farm operator. Any producer will be bound by the acreage report filed by the farm operator unless the producer files a separate acreage report prior to the acreage reporting date.

(b) That acreage report must include:

(1) All acreage in the county of the eligible crop (for each planting in the event of multiple planting) in which the producer has a share;

(2) The producer's share at the time of planting or the beginning of the crop year;

(3) The CFSA farm serial numbers;

(4) The crop and practice;

(5) All persons sharing in the crop (the identity of any person having a substantial beneficial interest in the crop (refer to 7 CFR part 400, subpart Q) and the person's employer identification number or social security number);

(6) The date the crop was planted;

(7) Acreage prevented from being planted; and

(8) Production from the previous crop year. (For example: The producer reported the crop acreage planted in 1995. The producer must then report the 1995 production for that acreage by the 1996 acreage reporting date for the crop.)

(c) A person's failure to submit the required information by the designated acreage reporting dates shall result in the denial of NAP payments. If there is a change of ownership, operation, or share within the farming operation after the acreage reporting date, the local office must be notified not later than thirty calendar days after the change and proof of the change must be provided in order to maintain eligibility for payments under this part.

§ 404.19 Loss requirements.

(a) To qualify for payment under this part, the loss or prevented planting of the eligible crop must be due to drought, flood, or other natural disaster as determined by the Secretary.

(b) NAP assistance will not cover losses due to:

(1) The neglect or malfeasance of the producer;

(2) The failure of the producer to reseed or replant to the same crop in the county where it is customary to reseed or replant;

(3) The failure of the producer to follow good farming practices for the commodity and practice;

(4) Water contained or released by any governmental, public, or private dam or reservoir project;

(5) Failure or breakdown of irrigation equipment or facilities; or

(6) Except for tree crops and perennials, inadequate irrigation resources at the beginning of the crop year.

(c) A producer of an eligible crop will not receive NAP payments unless the projected average or actual yield for the crop, or an equivalent measurement if yield information is not available, in the area falls below sixty-five percent (65%) of the expected area yield. Once this area eligibility requirement has been satisfied:

(1) A reduced yield NAP payment will be made to a producer if the total quantity of the eligible crop that the producer is able to harvest on the unit is less than fifty percent (50%) of the individual unit approved yield for the crop, factored for the share of the producer for the crop. Production from the entire unit will be used to determine the individual loss. The quantity will not be reduced for any quality consideration unless a zero value is established.

(2) A prevented planting NAP payment will be made if the producer is prevented from planting more than thirty-five percent (35%) of the total eligible acreage intended for planting to the eligible crop.

(A) Eligible crop acreage will not exceed 100% of the simple average of the number of acres planted to the crop by the producer in the loss area during the years used to determine the approved yield, unless FCIC has previously agreed in writing to approve acreage exceeding this limit.

(B) The percentage of the acreage that is prevented from being planted will be determined by dividing the producer's prevented planted acreage within the loss area by the producer's total acreage intended to be planted in the loss area. The acreage intended to be planted may be verified using records of historical acreage.

(C) For the purposes of determining eligible acreage for prevented planting payment, all eligible acreage of the crop within the loss area will be reduced by the number of acres of the crop planted within the loss area. In the event one or more crops are eligible for a prevented planting payment in the same crop year, and there is acreage planted to another crop in excess of such crop eligible acreage, such excess acreage will be prorated to the crops eligible for prevented planting on the basis of such crop's eligible acreages.

(D) NAP payments for prevented planting will not be available for:

(i) tree crops and other perennials;

(ii) land which planting history or conservation plans indicate would remain fallow for crop rotation purposes;

(iii) land used for conservation purposes or intended to be or considered to have been left unplanted under any program administered by USDA; or

(iv) land planted with a replacement crop.

§ 404.21 Application for payment and notice of loss.

(a) Any person with a share in the eligible crop who would be entitled to a NAP payment must make application and provide a notice of damage or loss within 15 calendar days after the occurrence of the prevented planting (the end of the planting period) or damage to the crop. For the 1995 crop year only, the notice must be filed within the later of 45 days after this rule is published in the **Federal Register** or 15 days after the occurrence of the prevented planting or damage to the crop. The notice must be filed at the local office serving the area where the producer's unit is located. The farm operator may provide the notice for all producers with an interest in the crop. All producers on a farm will be bound by the operator's filing or failure to file the application for payment unless the individual producers elect to timely file their notice.

(b) Applications for NAP payments must be filed on our form by the applicant with the local office no later than the application deadline.

(1) If the producer chooses not to harvest the crop, all eligible acres and crop units for which the producer intends to make an application for payment must be left intact until the units have been appraised or released by a FCIC loss adjuster.

(2) If the producer harvests the crop, the producer must provide such documentary evidence of crop production as FCIC may require which may include leaving representative samples of the crop for inspection.

(c) Failure to make timely application or to supply the required documentary evidence shall result in the denial of NAP payments.

(d) Benefits under this part may be assigned by the eligible producer only on our form and such assignment is effective only when approved by FCIC. Failure of FCIC to make payment in accordance with such assignment will not give rise to any liability on the part of FCIC to the assignee.

§ 404.23 Multiple benefits.

(a) If a producer is eligible to receive NAP payments under this part and benefits under any other program administered by the Secretary for the same crop loss, the producer must choose whether to receive the other program benefits or NAP payments. The producer is not eligible for both. Such election does not relieve the producer from the requirements of making a production and acreage report.

(b) Applicable programs include, but are not limited to, the Emergency Livestock Feed Assistance Program and any other program determined by FCIC to compensate the producer for the same crop loss.

§ 404.25 Payment and income limitations.

NAP payments made to eligible producers are subject to the following provisions:

(a) For the purpose of making such payments, the term "producer" will be considered to mean the term "person" as determined in accordance with 7 CFR part 1497, subpart B.

(b) No person shall receive payments under this part in excess of $100,000.

(c) A person who has qualifying gross revenues in excess of $2 million for the previous calendar year shall not be eligible to receive NAP payments under this part.

(d) Simple interest on payments to the producer which are delayed will be computed on the net payments ultimately found to be due, from and including the 61st day after the latter of the date the producer signs, dates, and submits a properly completed application for payment on the designated form, the date disputed applications are adjudicated, or the date the area trigger is established for NAP payments. Interest will be paid unless the reason for failure to timely pay is due to the producer's failure to provide information or other material necessary for the computation or payment. The interest rate will be that established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611), and published in the **Federal Register** semiannually on or about January 1 and July 1 of each year and may vary with each publication.

§ 404.27 Misrepresentation, scheme and device, and fraud.

(a) If FCIC determines that any producer has erroneously represented any fact or has adopted, participated in, or benefited from, any scheme or device that has the effect of defeating, or is designed to defeat the purpose of this part, such producer will not be eligible to receive any payments applicable to the crop year for which the scheme or device was adopted.

(b) If any misrepresentation, scheme or device, or practice has been employed for the purpose of causing FCIC to make a payment which FCIC otherwise would not make under this part:

(1) FCIC will withhold all or part of the payment that would otherwise be due.

(2) All amounts paid by FCIC to any such producer, applicable to the crop year in which the offense occurred, must be refunded to FCIC together with interest and other amounts as determined in accordance with this part.

(3) FCIC may impose such other penalties as authorized by section 506(n) of the Federal Crop Insurance Act, as amended or available under 7 CFR part 400, subpart R.

(c) Scheme and device may include, but is not limited to:

(1) Concealing any information having a bearing on the application of the rules of this part;

(2) Submitting false information to the FCIC or any county or state CFSA committee; or

(3) Creating fictitious entities for the purpose of concealing the interest of a person in the farming operation.

§ 404.29 Refunds to the corporation.

(a) In the event that there is a failure to comply with any term, requirement, or condition for payment made in accordance with this part, or the payment was established as a result of erroneous information provided by any person, or was erroneously computed, all such payments or overpayments will be refunded to FCIC on demand, together with interest.

(b) Interest will accrue in accordance with the provisions of 7 CFR 1403.9.

(c) Interest on any amount due the FCIC found to have been received by the producer as a result of fraud, misrepresentation, scheme or device, or presenting a false application for payment will start on the date the producer received the payment.

(d) Recovery of delinquent debts and set off will be in accordance with 7 CFR part 1403.

(e) If FCIC determines it is necessary to contract with a collection agency or to employ an attorney to assist in collection, the producer will pay all the expenses of collection.

(f) All amounts paid will be applied first to the payment of expense of collection, second to the reduction of any penalties which may have been assessed, then to the reduction of accrued interest, then to the reduction of the principal balance.

§ 404.31 Cumulative liability.

(a) The liability of any producer for any payment or refunds, which is determined in accordance with this part to be due to FCIC, will be in addition to any other liability of such producer

under any civil or criminal fraud statute or any other statute or provision of law including, but not limited to, 18 U.S.C. 286, 287, 371, 641, 1001; 1014, and 31 U.S.C. 3729.

(b) All producers receiving payments under this part will be jointly and severally liable to repay any unearned NAP payments.

§ 404.33 Appeals.

The appeal, reconsideration, or review of all determinations made under this part, except the designation of an area for which there is no appeal rights because it is determined a rule of general applicability, must be in accordance with part 780 of this title or the regulations promulgated by the National Appeals Division, whichever is applicable.

§ 404.35 Exemption from levy.

Any payment that is due any person under this part will be made without regard to questions of title under state law and without regard to any attachment, levy, garnishment, or any other legal process against the crop, and the proceeds thereof, which may be asserted by any creditor, except statutory liens of the United States.

§ 404.37 Estates, trusts, and minors.

(a) Program documents executed by persons legally authorized to represent estates or trusts will be accepted only if such person furnishes evidence of the authority to execute such documents.

(b) A minor who is otherwise eligible will be eligible for NAP payments under this part only if such person meets one of the following requirements:

(1) The minor establishes that the right of majority has been conferred on the minor by court proceedings or by statute;

(2) A guardian has been appointed to manage the minor's property and the applicable program documents are executed by the guardian; or

(3) A bond is furnished under which the surety guarantees any loss incurred for which the minor would be liable had the minor been an adult.

§ 404.39 Death, incompetence, or disappearance.

In the case of death, incompetence or disappearance, of any person who is eligible to receive NAP payments in accordance with this part, such payments will be disbursed in accordance with part 707 of this title.

§ 404.41 OMB control numbers.

The provisions set forth in this interim rule contain information collection that require clearance by the Office of Management and Budget ("OMB") under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Previous information collection requirements have been approved under OMB control numbers 0560–0004, 0563–0007, 0563–0016, and 0563–0036. The new information collection requirements have been submitted to OMB for approval under OMB control number 0563–0016 and are not effective until approved by OMB.

Done in Washington, DC, on May 15, 1995.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 95–12292 Filed 5–15–95; 4:29 pm]

BILLING CODE 3410–08–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 212, 245, and 248

[INS No. 1688–95]

RIN 1115–AD89

Waiver of the Two-Year Home Country Physical Presence Requirement for Certain Foreign Medical Graduates

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This rule amends the Immigration and Naturalization Service (Service) regulations by allowing certain foreign medical graduates who entered the United States in J–1 status, or who acquired J–1 status after arrival in the United States, to obtain a waiver of the 2-year home country residence and physical presence requirement under section 212(e)(iii) of the Immigration and Nationality Act (Act) pursuant to a request by a State Department of Public Health, or its equivalent. The waiver is intended to permit these foreign medical graduates to work at a health care facility in an area designated by the Secretary, Health and Human Services (HHS), as having a shortage of health care professionals ("HHS-designated shortage area"). This interim rule also contains provisions which will permit these foreign medical graduates to change their nonimmigrant status in the United States from J–1 exchange visitor to H–1B specialty occupation worker.

DATES: This interim rule is effective May 18, 1995. Written comments must be received on or before July 17, 1995.

ADDRESSES: Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., Room 5307, Washington, DC 20536. To ensure proper handling, please reference INS number 1688–95 on your correspondence. Comments are available for public inspection at this location by calling (202) 514–3048 to arrange an appointment.

FOR FURTHER INFORMATION CONTACT: Sophia Cox, Senior Adjudications Officer, Adjudications Division, Immigration and Naturalization Service, 425 I Street NW., Room 3214, Washington, DC 20536, telephone (202) 514–5014.

SUPPLEMENTARY INFORMATION:

Background

Under section 212(e) of the Act, certain J–1 exchange visitors (and their J–2 dependent spouse and children) are subject to a 2-year home country residence and physical presence requirement (the "2-year requirement"). Exchange visitors (and dependents) who are subject to this requirement must reside and be physically present in their country of nationality or last residence abroad ("home" country) for an aggregate of at least 2 years following departure from the United States. J–1/J–2 exchange visitors who are subject to the 2-year requirement are not allowed to change their nonimmigrant status to, or be admitted to the United States under the H (temporary worker or trainee) or L (intracompany transferee) nonimmigrant categories, or acquire lawful permanent resident status, unless they have complied with this requirement or have been granted a waiver thereof.

The following categories of exchange visitors (and their accompanying spouse and children in dependent J–2 status) are subject to the 2-year requirement: (a) Those whose J–1 program was financed in whole or in part by an agency of the U.S. Government, or by the government of their "home" country; (b) those whose field of specialized knowledge or skill, as indicated on Form IAP–66 (Certificate of Eligibility), is required in their home country; and (c) those who entered the United States in J–1 status (or who acquired J–1 status subsequent to arrival in the United States) to receive graduate medical education or training.

Under section 212(e) of the Act, a waiver of the 2-year requirement may be granted by the Service upon the favorable recommendation of the Director of the United States Information Agency (USIA). Waivers can be obtained on the basis of: (a) Exceptional hardship to the applicant's U.S. citizen or permanent resident spouse or children; (b) persecution on account of race, religion, or political opinion; (c) a "no objection" statement issued by the applicant's "home" country; or (d) a request made to USIA by an interested U.S. Government agency to recommend a waiver to the Service, because the applicant's work is deemed to serve the public interest. By statute, in the case of foreign medical graduates who entered the United States to receive graduate medical education or training (and accompanying J–2 dependents), a "no objection" statement does not constitute a basis for USIA to recommend a waiver to the Service. Therefore, even if a "no objection" statement on behalf of such a foreign medical graduate has been issued, the Service is statutorily required to deny the waiver application, if such a statement forms the only basis for the waiver request.

A substantial number of foreign medical graduates pursue waivers of the 2-year requirement through requests by an interested U.S. Government agency. Prior to the enactment of section 220 of the Immigration and Nationality Technical Corrections Act of 1994 (1994 Technical Corrections Act), Pub. L. 103–416, 108 Stat. 4310, 4319–4320, dated October 25, 1994, only Federal Government agencies were considered to be an "interested United States Government agency" eligible to submit a waiver request to USIA on behalf of a J–1 exchange visitor. Because State governments were not permitted to act as interested government agencies, they were required to solicit the assistance of an appropriate Federal agency. Section 212(e)(iii) of the Act, as amended by section 220(b) of the 1994 Technical Corrections Act, now permits State Departments of Public Health, or their equivalent, to submit waiver requests for foreign medical graduates directly to USIA, provided that certain conditions have been met, as explained below.

As noted, under section 212(e) of the Act, the Service may not approve the applicant's waiver request unless the Director of the USIA has issued a favorable waiver recommendation. If USIA issues a favorable waiver recommendation, it notifies the Service thereof. Section 212(e) of the Act permits, but does not require, the Attorney General to grant the waiver pursuant to a favorable USIA recommendation. On the other hand, if USIA issues an unfavorable waiver recommendation, the Service must deny the waiver application. The Service's decision to deny the application may not be appealed, if the denial is based on lack of a favorable USIA waiver recommendation. Section 212(e) waivers are valid only for those exchange programs indicated in the waiver request. Any subsequent J program extension or program transfer may re-subject the exchange visitor (and his or her dependents) to the 2-year requirement.

Under current procedures, an application form is not required when the waiver application is based on an interested U.S. Government agency request or a no objection statement. Similarly, a form will not be required to apply for a waiver based on a request by a State Department of Public Health. The Service is in the process of developing an omnibus form to be used for all waiver applications, including waivers of the 2-year requirement. It should be noted that the burden rests on the applicant to establish eligibility for a waiver of the 2-year requirement. In certain cases, therefore, the Service may require other documentation from the applicant besides the favorable USIA recommendation to fully assess his or her waiver eligibility.

After the Service approves an application for a waiver of the 2-year requirement, the J–1 exchange visitor may seek H nonimmigrant status in order to engage in temporary employment for the organization or entity named in the waiver application. Foreign medical graduates who wish to work temporarily in the Unites States once a waiver of the 2-year requirement has been granted may seek H–1B classification as a specialty occupation worker. An alien may obtain H–1B status either through the simultaneous filing of an H–1B petition by the prospective employer and a change of status application by the alien, if the alien is in the United States, or through the filing of an H–1B petition alone and the alien subsequently obtaining the visa at a consular post abroad. Change of status applications are governed by section 248 of the Act. To request a change of nonimmigrant status from J–1 to H–1B, a change of status application must be filed simultaneously with the H–1B nonimmigrant visa petition, if the applicant is eligible. Once the H–1B petition and change of status application are approved, the alien will be permitted to remain in the United States and commence temporary employment with the employer or organization named in the approved H–1B petition.

As 8 CFR 248.2(c) currently reads, foreign medical graduates (and their dependents) who entered the United States on J–1 visas (or who acquired J–1 status after admission) to pursue graduate medical education or training are ineligible to apply for change of status under section 248 of the Act, even if a waiver of the 2-year requirement has been granted. This interim regulation revises 8 CFR 248.2(c) to conform with section 220 of the 1994 Technical Corrections Act. Accordingly, this interim regulation provides that foreign medical graduates who received a waiver of the 2-year requirement pursuant to a request by a State Department of Public Health, or its equivalent, may apply for change of status from J–1 to H–1B, if they other wise satisfy the change of status criteria found under section 248 of the Act.

Public Law 103–416

Section 220 of the 1994 Technical Corrections Act, enacted on October 25, 1994, permits the Service to grant a waiver of the 2-year requirement to a limited number of foreign medical graduates who have received a bona fide offer of full-time employment and who agree to practice medicine at a health care facility located in an HHS-designated shortage area. Any foreign medical graduate who is subject to the 2-year requirement, and who meets the eligibility criteria, may apply for a waiver under Pub. L. 103–416, regardless of whether he or she is physically present in the United States.

To be eligible for the waiver, the foreign medical graduate must enter into an employment contract to practice medicine full-time for at least 3 years at a health care facility located in the HHS-designated shortage area, and must agree to commence such employment within 90 days of receipt of the waiver. The Service may grant the waiver only if the Department of Public Health, or its equivalent, of the State where the foreign medical graduate will be employed, submits a formal request to USIA for a waiver recommendation, and USIA submits a favorable waiver recommendation to the Service. Although the State Department of Public Health, or its equivalent, must request the waiver on behalf of the foreign medical graduate, the health care facility at which the foreign medical graduate will work need not actually be owned or operated by the State.

The Service notes that section 220 of Pub. L. 103–416 does not expressly waive the 2-year requirement for the accompanying spouse or children of the foreign medical graduate. Longstanding Service policy, however, permits J–1 exchange visitors to include their J–2 dependent spouse and children in the waiver application. Consequently, a foreign medical graduate seeking a waiver of the 2-year requirement under section 220 of Pub. L. 103–416 shall be

permitted to include his or her accompanying J–2 spouse and children in the waiver application.

Foreign Medical Graduate

In the context of this interim rule, a foreign medical graduate refers specifically to a foreign national who has graduated from a medical school outside of the United States, and who acquired J–1 status to pursue graduate medical education or training in the United States. Foreign medical graduates seeking J–1 classification to pursue graduate medical education or training in the United States are subject to strict requirements set forth in section 212(j)(1) of the Act, and are subject to the 2-year requirement.

State Department of Public Health, or its Equivalent

Section 220 of Pub. L. 103–416 amends section 212(e)(iii) of the Act by permitting State Departments of Public Health (or their equivalent), in addition to U.S. Federal Government agencies, to submit requests for waiver recommendations directly to USIA on behalf of foreign medical graduates. Section 101(a)(36) of the Act defines the term "State" to include the District of Columbia, Puerto Rico, Guam, and the U.S. Virgin Islands, in addition to the 50 states. The same definition will apply to the term "State" in this rule. Further, it is the opinion of the Service that the statutory term "State Department of Public Health, or its equivalent" means the State agency or department that is responsible for public health issues, regardless of what the actual name of that agency or department is under State law.

Restrictions Imposed on the Waiver and the Change of Status Application

Section 214(k) of the Act, as added by section 220 of Pub. L. 103–416, imposes restrictions on waivers of the 2-year requirement for foreign medical graduates, when the application is based on a request by a State Department of Public Health, or its equivalent. By imposing conditions under section 214(k) of the Act, Congress manifested its intent that waivers of the 2-year requirement be granted only under strictly limited and controlled circumstances.

No objection statements. Section 214(k)(1)(A) of the Act provides that "in the case of an alien who is otherwise contractually obligated to return to a foreign country, the government of such country (must) furnish ( ) the Director of the United States Information Agency with a statement in writing that it has no objection to the waiver." The foreign medical graduate seeking the waiver is responsible for ensuring that the "no objection" statement is provided directly to USIA. This additional requirement applies only when the foreign medical graduate seeks a waiver of the 2-year requirement pursuant to a request by a State Department of Public Health (or its equivalent). USIA addresses the question of what constitutes a contractual obligation in the preamble to its interim rule amending 22 CFR 514.44(e)(2), which was published in the **Federal Register** on April 3, 1995, at 60 FR 16785–16788.

Employment contracts. Section 214(k)(1)(B) of the Act provides that the Service may grant a waiver of the 2-year requirement based on a request by a State Department of Public Health only if the foreign medical graduate demonstrates a bona fide offer of full-time employment at a health facility and agrees to begin such employment within 90 days of receipt of the waiver. Section 214(k)(1)(B) of the Act also provides that the foreign medical graduate must agree to continue working at the health care facility named in the employment contract for at least 3 years. Such employment must be in accordance with the provisions of section 214(k)(2) of the Act. The USIA's implementing regulations at 22 CFR 514.44(e)(3)(B) therefore provide that the State Department of Public Health is required to submit the actual contract between the alien and the health care facility at the time the request for the favorable recommendation is made.

HHS-designated shortage areas. Section 214(k)(1)(C) of the Act provides that the foreign medical graduate must agree to practice medicine in accordance with section 214(k)(2) of the Act for at least 3 years "only in the geographic area or areas which are designated by the Secretary of Health and Human Services as having a shortage of health care professionals." Since the Service is bound by HHS' determination of what constitutes a "geographic area or areas * * * having a shortage of health care professionals," the request of a State Department of Public Health (or its equivalent), standing alone, cannot be deemed sufficient to meet his statutory requirement. The waiver application must be accompanied by evidence establishing that the geographic area or areas in which the foreign medical graduate will practice medicine are in HHS-designated shortage areas.

Numerical limitations on waivers under Pub. L. 103–416. Section 214(k)(1)(D) of the Act limits to 20-per-state the number of waivers the Service may grant under Pub. L. 103–416 each fiscal year. Consequently, if the Director of USIA issues a favorable waiver recommendation under Pub. L. 103–416, but the State requesting the waiver already has exhausted its annual waiver allotment, the Service is statutorily required to deny the waiver application. Accordingly, this rule provides that no appeal shall lie where the basis for denial is that the State has already been granted 20 waivers for that fiscal year.

Completion of the required 3-year employment contract as an H–1B nonimmigrant and change of nonimmigrant status from J–1 to H–1B. The restrictions imposed by Congress under section 214(k)(1) and (2) of the Act were intended to ensure that waivers of the 2-year requirement under Pub. L. 103–416 are granted only under strictly limited and controlled circumstances. These restrictions were also intended to ensure that foreign medical graduates who receive such a waiver actually provide health care services to those living HHS-designated shortage ares.

Under section 248(2) of the Act, a foreign medical graduate who came to the United States in J classification or acquired J classification in order to receive graduate medical education or training would normally be prohibited from filing an application for change of status. Section 214(k)(2)(A) of the Act, as added by section 220 of Pub. L. 103–416, however, provides that "notwithstanding section 248(2), the Attorney General may change the status of an alien that qualifies under this subsection and section 212(e) to that of an alien described in section 101(a)(15)(i)(b)." Section 214(k)(2) of the Act, as added by section 220 of Pub. L. 103–416 also states that no foreign medical graduate who has been granted a waiver and a change of nonimmigrant status from J–1 to H–1B, and who has failed to complete the 3-year employment contract with the sponsoring health care facility, shall be eligible to apply for an immigrant visa, for permanent residence, or for change of status to any other nonimmigrant category, until it has been established that he or she has resided and been physically present in his or her home country for an aggregate of 2 years following departure from the United States. Thus, section 212(k)(2) of the Act allows the foreign medical graduate to apply for change of nonimmigrant status from J–1, only to H–1B upon approval of the waiver, and also stipulates that a foreign medical graduate who fails to fulfill the required 3-year employment contract again becomes subject to the 2-year requirement. Taken together, these two provisions indicate that Congress did not intend to permit the foreign medical graduate to proceed from J–1 status directly to lawful permanent resident status upon approval of the waiver.

Based on the above, the Service is of the opinion that, in enacting section 214(k) of the Act, Congress manifested its clear intent to require all foreign medical graduates, including those seeking to adjust their status or immigrate to this country, as well as those immediately changing status from J–1 to H–1B, to fulfill the 3-year employment contract or become subject to the 2-year requirement. To enable the Service to maintain control over the foreign medical graduate's stay in the United States in the manner intended by Congress, this interim rule provides that the foreign medical graduate must actually fulfill the contract with the health care facility named in the waiver application prior to obtaining permanent residence, or any nonimmigrant status other than H–1B. Accordingly, this interim regulation provides that a foreign medical graduate who received a waiver of the 2-year requirement under Pub. L. 103–416 may not apply for a change of status to another nonimmigrant category, for an immigrant visa, or for status as a lawful permanent resident prior to completing the required 3-year employment contract as an H–1B nonimmigrant with the health care facility named in the waiver application.

Eligibility to apply for change of status from J–1 to H–1B. While section 214(k)(2)(A) of the Act allows foreign medical graduates who received a waiver under Pub. L. 103–416 to apply for change of status from J–1 to H–1B (and their dependents from J–2 to H–4), it does not excuse the late filing of the application. Foreign medical graduates who have been granted a waiver of the 2-year requirement under Pub. L. 103–416, must be in valid J status when the change of status application is filed. Service regulations at 8 CFR 214.2(j)(1)(ii) provide that J–1 exchange visitors may be admitted to the United States for the duration of the exchange program, as noted on Form IAP–66, and an additional 30 days for travel. While J–1 exchange visitors are not authorized to work during this 30-day grace period (*see* § 274a.12(b)(11)), they are considered to be "in status" for purposes of applying for change of status under section 248 of the Act.

To prevent the foreign medical graduate from falling out of lawful nonimmigrant status, the Service encourages the State Department of Public Health to allow ample time for processing the waiver and subsequent filing and processing of the H–1B petition and change of status application. Foreign medical graduates who received a waiver under section 220 of Pub. L. 103–416 and whose J nonimmigrant stay has expired, or who have engaged in unauthorized employment, are ineligible to apply for change of status under section 248 of the Act. Such persons would not be precluded, however, from procuring an H–1B visa at a U.S. consular post abroad and seeking readmission to the United States in H–1B status to commence employment with the sponsoring health care facility.

Numerical limitations imposed on the issuance of H–1B visas. Although section 214(k)(2)(A) of the Act eases the change of status restrictions under section 248(2) of the Act, it does not ease the annual numerical limitations imposed on the H–1B specialty worker category under section 214(g)(1)(A) of the Act. Consequently, the Service would not be prohibited from granting a waiver of the 2-year requirement under Pub. L. 103–416, but would be statutorily prohibited from according H–1B status to the foreign medical graduate, if the annual numerical limitations imposed on the issuance of H–1B visas under section 214(g)(1)(A) of the Act have been reached.

Control measures to be implemented by the Service. As noted, waivers of the 2-year requirement pursuant to Pub. L. 103–416 are based on the premise that the foreign medical graduate's work at a health care facility will assist States in coping with health care shortages. To ensure compliance with section 214(k) of the Act, and to ensure that the public receives the intended benefit, the Service will implement the following measures.

The Form I–797 (Notice of Action) (including I–797A and I–797B) currently used to notify the alien of the approved waiver and/or change of status from J–1 to H–1B, if applicable, will explicitly state the terms and conditions of the waiver and change of status. To facilitate issuance of the H–1B visa abroad, or admission as an H–1B nonimmigrant at the port-of-entry in cases where the foreign medical graduate is ineligible or chooses not to apply for change of status, the H–1B approval notice shall indicate that he or she has obtained the necessary waiver under Pub. L. 103–416. Such notification serves two purposes. It ensures that the foreign medical graduate is made fully aware of the terms and conditions of his or her waiver and change of status. It also alerts the Service officer or State Health Department that special conditions have been placed on the alien's nonimmigrant status, thereby enabling the officer to take whatever steps are necessary to ensure that the alien's file is noted accordingly. When the foreign medical graduate's Form I–797 is later presented in support of an application for another benefit, such as an amended H–1B petition, a new H–1B petition for a different employer, or an adjustment of status application, the adjudicating officer will again be alerted to the special conditions that have been placed on the alien's nonimmigrant status. As a result, the Service will be able to verify whether the terms and conditions imposed under section 214(k) of the Act have been satisfied. These control measures are reflected in this interim rule at 8 CFR 212.7(c)(9)(ii).

Inability To Fulfill the Three-Year Employment Contract Due to Extenuating Circumstances

New section 214(k)(1)(B) of the Act grants the Attorney General discretion to excuse early termination of employment upon determining that extenuating circumstances so justify. The statute provides that extenuating circumstances may include the closure of the health care facility or hardship to the alien.

In determining whether to excuse the foreign medical graduate's early termination of employment with the health care facility named in the waiver application, the Service will carefully consider whether, based on all the facts before it, excusing such early termination would be consistent with the purpose of the statute—provision of health care services for at least a 3-year period of time in an HHS-designated shortage area. Closure of the facility, for example, could, under certain circumstances, warrant excusing failure to fulfill the 3-year employment contract, provided that the foreign medical graduate can establish that he or she has procured employment for the balance of the 3-year period with another health care facility in an HHS-designated shortage area. Similarly, an alien who claims that his or her inability to fulfill the 3-year employment contract is due to hardship shall also be required to submit evidence of new employment for another health care facility in an HHS-designated shortage area. A foreign medical graduate who seeks to establish extenuating circumstances on the basis of hardship also must submit evidence that the hardship was caused by unforeseen circumstances beyond his or her control. In short, before the Service will consider excusing the foreign medical graduate's early termination of

the 3-year employment contract with the health care facility named in the waiver application due to extenuating circumstances, the alien must submit an employment contract for the balance of this period with another health care facility in an HHS-designated shortage area. *See* section 214(k)(3) of the Act (the foreign medical graduate may only work in HHS-designated shortage areas during the required 3-year period of employment following approval of the waiver).

Changes in Employment During the Required Three-Year Period Following Approval of the Waiver

Any material change in the alien's H–1B employment must be reported to the Service by filing either an amended H–1B petition indicating any changes in the terms and conditions of the alien's current H–1B employment, or by filing a new petition if the alien seeks to change H–1B employers, in the manner generally required under current regulations at 8 CFR 214.2(h)(2)(i) (D) and (E), and 8 CFR 214.2(h)(11).

An amended H–1B petition for a foreign medical graduate who has been granted a waiver of the 2-year requirement under Pub. L. 103–416 shall be accompanied by evidence that he or she will continue practicing medicine in an HHS-designated shortage area for the health care facility named in the waiver application and in the original H–1B petition.

A foreign medical graduate who has been granted a waiver of the 2-year requirement under Pub. L. 103–416, who has not fulfilled the 3-year employment contract with the health care facility named in the waiver application, and who seeks to change H–1B employers due to extenuating circumstances or hardship is responsible for ensuring that the new health care facility files an H–1B petition. In such cases, the new petition shall be accompanied by a copy of Form I–797 (or I–797A or I–797B, as appropriate) relating to the original H–1B petition and an explanation from the alien, with supporting evidence, establishing that extenuating circumstances or hardship necessitate a change in employment. The new H–1B petition shall also be accompanied by an employment contract showing that the alien will practice medicine at the health care facility for the balance of the required 3-year period, and evidence that the geographic area or areas of intended employment designated in the new H–1B petition are in an HHS-designated shortage area.

The Service may consult with the Secretary of HHS to verify whether the area of intended employment specified in the new H–1B petition is in fact located in an HHS-designated shortage area. Further, in exercising its statutory discretion to excuse an alien's failure to complete the requisite 3-year employment contract, the Service, if it deems appropriate, may consult with USIA, the State Department of Public Health which initiated the waiver request, and the health care facility named in the original waiver application.

If, in the exercise of its discretion, the Service determines that extenuating circumstances or hardship exist, that employment will continue at a health care facility in an HHS-designated shortage area, and that both the new petitioner and the beneficiary have otherwise satisfied the H–1B eligibility criteria enumerated under 8 CFR 214.2(h), the new petition may be approved, and the foreign medical graduate may be permitted to serve the balance of the 3-year employment period at the health care facility named in the new H–1B petition.

Effect of Failure To Abide by the Terms and Conditions of the Waiver Granted Under Pub. L. 103–416

Section 241(a)(1)(C)(i) of the Act provides for the deportation of any alien admitted as a nonimmigrant who fails to: (a) Maintain the nonimmigrant status under which he or she was admitted; (b) fails to maintain the nonimmigrant status to which he or she was changed under section 248 of the Act; or (c) fails to comply with the conditions of any such nonimmigrant status. J–1 foreign medical graduates who do not fulfill the 3-year employment contract for the health care facility named in the waiver application (unless the Attorney General has determined there are extenuating circumstances or hardship to the alien), who do not work in HHS-designated shortage areas, or who change employment without permission from the Service, will be deemed not to be maintaining their nonimmigrant status or complying with the terms and conditions imposed upon the waiver and change of status application, and will therefore be deportable under section 241(a)(1)(C)(i) of the Act.

Application Period

Section 220(c) of Pub. L. 103–416 states that the statutory amendments to section 212(e) of the Act shall apply to aliens admitted to the United states under section 101(a)(15)(J) of the Act, or who acquire J status after admission to the Unites States before, on, or after the date of enactment, and before June 1, 1996. Consistent with Congress' intent to relieve health care shortages in HHS-designated shortage areas, the Service interprets this provision to mean that any foreign medical graduate who entered the United States in J nonimmigrant status, or who acquired J status upon arrival to pursue graduate medical education or training, before June 1, 1996, is eligible to apply for a waiver of the 2-year requirement pursuant to section 220 of Pub. L. 103–416, and for subsequent change of nonimmigrant status to H–1B. Further, if the foreign medical graduate acquired J status before June 1, 1996, in order to pursue graduate medical education or training, he or she will be eligible to request a section 220 waiver, even if the training is completed after June 1, 1996.

Foreign medical graduates who acquire J nonimmigrant status to pursue graduate medical education or training on or after June 1, 1996, however, will not be eligible to apply for benefits under Pub. L. 103–416, even if they wish to practice medicine in an HHS-designated shortage area. Those foreign medical graduates may, however, pursue a non-section 220 waiver under section 212(e) of the Act.

Good Cause Exception

This interim rule is effective on publication in the Federal Register although the Service invites post-promulgation comments and will address any such comments in a final rule. For the following reasons, the Service finds that good cause exists for adopting this rule without the prior notice and comment period ordinarily required by 5 U.S.C. 553. The provisions of Pub. L. 103–416, which provide a great public benefit, are already in effect. Adopting this rule without prior notice and comment allows foreign medical graduates whose J status is about to expire to apply for the waiver as soon as possible, thereby avoiding potential interruption of their lawful status during the normal notice and comment period. The rule also enables State Departments of Public Health to seek immediately the assistance of certain foreign medical graduates to ease local medical care shortages. Adopting this rule as an interim rule therefore benefits both foreign medical graduates and those who live in HHS-designated shortage areas.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605 (b)), has reviewed this regulation and, by approving it, certifies that this interim rule will not have a significant economic impact on a substantial number of small entities because of the following factors. This interim rule will have limited or no effect on small entities, because only 20 waivers are authorized per State annually to foreign medical graduates under Pub. L. 103–416.

Executive Order 12866

This interim rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), regulatory Planning Review, and the Office of Management and Budget has waived its review process under section 3(a)(3)(A).

Exetutive Order 12612

This interim rule will not have substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Section 220 of Pub. L. 103–416 merely enables the States, in addition to Federal Government agencies, to submit waiver requests for foreign medical graduates directly to USIA, while preserving the authority of the Federal Government to grant or deny such waiver requests. The ability of Federal Government agencies to continue submitting waiver requests to USIA is not changed or curtailed in any way by this rule. Therefore, in accordance with Executive Order 12612, it has been determined that this interim rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12606

The Commissioner of the Immigration and Naturalization Service certifies that this interim rule has been assessed in light of the criteria in Executive Order 12606, and has determined that the regulation would enhance family well-being by allowing certain dependent J–2 family members to obtain derivative H–4 status in the United States based on the waiver granted to the principal physician and the principal's change of status from J–1 to H–1B, without the need to travel abroad to procure the nonimmigrant visa and seek re-admission to the United States. Permitting such changes of non-immigrant status allows the principal physician's dependent spouse and children to: (a) Accompany him or her while employed temporarily as an H–1B nonimmigrant; and (b) remain in this country on a permanent basis should he or she subsequently apply for, and be granted approval of, adjustment of status to that of a lawful permanent resident. This rule also enhances family well-being by allowing families in HHS–designated shortage areas to get much needed medical treatment and care.

Paperwork Reduction Act

The information collection requirements contained in this interim rule have been cleared by the Office of Management and Budget Under the provisions of the Paperwork Reduction Act. Clearance numbers for these collections are contained in 8 CFR 299.5, Display of Control Numbers.

List of Subjects

8 CFR Part 212

Administrative practices and procedure, Aliens, Immigration, passports and visa, Reporting and recordkeeping requirements.

8 CFR Part 245

Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 248

Aliens, Reporting and Recordkeeping requirements.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

1. The authority citation for part 212 continues to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1187, 1225, 1226, 1227, 1228, 1252; 8 CFR part 2.

2. In § 212.7, paragraphs (c)(9) and (c)(10) are redesignated as paragraphs (c)(10) and (c)(11), respectively, and a new paragraph (c)(9) and (c)(11), respectively, and a new paragraph (c)(9) is added to read as follows:

§ 212.7 Waiver of certain grounds of excludability.

* * * * *

(c) * * *

(9) *Waivers under Pub. L. 103–416 based on a request by a State Department of Public Health (or equivalent).* In accordance with section 220 of Pub. L. 103–416, an alien admitted to the United States as a nonimmigrant under section 101(a)(15)(J) of the Act, or who acquired status under section 101(a)(15)(J) of the Act after admission to the United States, to participate in an exchange program of graduate medical education or training (as of January 9, 1977), may apply for a waiver of the 2-year home country residence and physical presence requirement (the "2-year requirement") under section 212(e)(iii) of the Act based on a request by a State Department of Pubic Health, or its equivalent. To initiate the application for a waiver under Pub. L. 103–416, the Department of Public Health, or its equivalent, or the State in which the foreign medical graduate seeks to practice medicine, must request the Director of USIA to recommend a waiver to the Service. The waiver may be granted only if the Director of USIA provides the Service with a favorable waiver recommendation. Only the Service, however, may grant or deny the waiver application. If granted, such a waiver shall be subject to the terms and conditions imposed under section 214(k) of the Act. Although the alien is not required to submit a separate waiver application to the Service, the burden rests on the alien to establish eligibility for the waiver. If the Service approves a waiver request made under Pub. L. 103–416, the foreign medical graduate (and accompanying dependents) may apply for change of nonimmigrant status, from J–1 to H–1B and, in the case of dependents of such a foreign medical graduate, from J–2 to H–4. Aliens receiving waivers under section 220 of Pub. L. 103–416 are subject, in all cases, to the provisions of section 214(g)(1)(A) of the Act.

(i) *Eligiblity criteria.* J–1 foreign medical graduates (with accompanying J–2 dependents) are eligible to apply for a waiver of the 2-year requirement under Pub. L. 103–416 based on a request by a State Department of Public Health (or its equivalent) if:

(A) They were admitted to the United States under section 101(a)(15)(J) of the Act, or acquired J nonimmigrant status before June 1, 1996, to pursue graduate medical education or training in the United States.

(B) They have entered into a bona fide, full-time employment contract for 3 years to practice medicine at a health care facility located in an area or areas designated by the Secretary of Health and Human Services as having a shortage of health care professionals ("HHS-designated shortage area");

(C) They agree to commence employment within 90 days of receipt of the waiver under this section and agree to practice medicine for 3 years at the facility named in the waiver application and only in HHS-designated shortage areas. The health care facility named in the waiver application may be operated by:

(1) An agency of the Government of the United States or of the State in which it is located; or

(2) A charitable, educational, or other not-for-profit organization; or

(3) Private medical practitioners.

(D) The Department of Public Health, or its equivalent, in the State where the health care facility is located has requested the Director, USIA, to recommend the waiver, and the Director, USIA, submits a favorable waiver recommendation to the Service; and

(E) Approval of the waiver will not cause the number of waivers granted pursuant to Pub. L. 103–416 and this section to foreign medical graduates who will practice medicine in the same state to exceed 20 during the current fiscal year.

(ii) *Decision on waivers under Pub. L. 103–416 and notification to the alien.*—(A) *Approval.* If the Director of USIA submits a favorable waiver recommendation on behalf of a foreign medical graduate pursuant to Pub. L. 103–416, and the Service grants the waiver, the alien shall be notified of the approval on Form I–797 (or I–797A or I–797B, as appropriate). The approval notice shall clearly state the terms and conditions imposed on the waiver, and the Service's records shall be noted accordingly.

(B) *Denial.* If the Director of USIA issues a favorable waiver recommendation under Pub. L. 103–416 and the Service denies the waiver, the alien shall be notified of the decision and of the right to appeal under 8 CFR part 103. However, no appeal shall lie where the basis for denial is that the number of waivers granted to the State in which the foreign medical graduate will be employed would exceed 20 for that fiscal year.

(iii) *Conditions.* The foreign medical graduate must agree to commence employment for the health care facility specified in the waiver application within 90 days of receipt of the waiver under Pub. L. 103–416. The foreign medical graduate may only fulfill the requisite 3-year employment contract as an H–1B nonimmigrant. A foreign medical graduate who receives a waiver under Pub. L. 103–416 based on a request by a State Department of Public Health (or equivalent), and changes his or her nonimmigrant classification from J–1 to H–1B, may not apply for permanent residence or for any other change of nonimmigrant classification unless he or she has fulfilled the 3-year employment contract with the health care facility and in the specified HHS-designated shortage area named in the waiver application.

(iv) *Failure to fulfill the three-year employment contract due to extenuating circumstances.* A foreign medical graduate who fails to meet the terms and conditions imposed on the waiver under section 214(k) of the Act and this paragraph will once again become subject to the 2-year requirement under section 212(e) of the Act.

Under section 214(k)(1)(B) of the Act, however, the Service, in the exercise of discretion, may excuse early termination of the foreign medical graduate's 3-year period of employment with the health care facility named in the waiver application due to extenuating circumstances. Extenuating circumstances may include, but are not limited to, closure of the health care facility or hardship to the alien. In determining whether to excuse such early termination of employment, the Service shall base its decision on the specific facts of each case. In all cases, the burden of establishing eligibility for a favorable exercise of discretion rests with the foreign medical graduate. Depending on the circumstances, closure of the health care facility named in the waiver application may, but need not, be considered an extenuating circumstance excusing early termination of employment. Under no circumstances will a foreign medical graduate be eligible to apply for change of status to another nonimmigrant category, for an immigrant visa or for status as a lawful permanent resident prior to completing the requisite 3-year period of employment for a health care facility located in an HHS-designated shortage area.

(v) *Required evidence.* A foreign medical graduate who seeks to have early termination of employment excused due to extenuating circumstances shall submit documentary evidence establishing such a claim. In all cases, the foreign medical graduate shall submit an employment contract with another health care facility located in an HHS-designated shortage area for the balance of the required 3-year period of employment. A foreign medical graduate claiming extenuating circumstances based on hardship shall also submit evidence establishing that such hardship was caused by unforeseen circumstances beyond his or her control. A foreign medical graduate claiming extenuating circumstances based on closure of the health care facility named in the waiver application shall also submit evidence that the facility has closed or is about to be closed.

(vi) *Notification requirements.* A J–1 foreign medical graduate who has been granted a waiver of the 2-year requirement pursuant to Pub. L. 103–416, is required to comply with the terms and conditions specified in section 214(k) of the Act and the implementing regulations in this section. If the foreign medical graduate subsequently applies for and receives H–1B status, he or she must also comply with the terms and conditions of that nonimmigrant status. Such compliance shall also include notifying the Service of any material change in the terms and conditions of the H–1B employment, by filing either an amended or a new H–1B petition, as required, under §§ 214.2(h)(2)(i)(D), 214.2(h)(2)(i)(E), and 214.2(h)(11) of this chapter.

(A) *Amended H–1B petitions.* The health care facility named in the waiver application and H–1B petition shall file an amended H–1B petition, as required under § 214.2(h)(2)(i)(E) of this chapter, if there are any material changes in the terms and conditions of the beneficiary's employment or eligibility as specified in the waiver application filed under Pub. L. 103–416 and in the subsequent H–1B petition. In such a case, an amended H–1B petition shall be accompanied by evidence that the alien will continue practicing medicine with the original employer in an HHS-designated shortage area.

(B) *New H–1B petitions.* A health care facility seeking to employ a foreign medical graduate who has been granted a waiver under Pub. L. 103–416 (prior to the time the alien has completed his or her 3-year contract with the facility named in the waiver application and original H–1B petition), shall file a new H–1B petition with the Service, as required under §§ 214.2(h)(2)(i) (D) and (E) of this chapter. Although a new waiver application need not be filed, the new H–1B petition shall be accompanied by the documentary evidence generally required under § 214.2(h) of this chapter, and the following additional documents:

(1) A copy of Form I–797 (and/or I–797A and I–797B) relating to the waiver and nonimmigrant H status granted under Pub. L. 103–416;

(2) An explanation from the foreign medical graduate, with supporting evidence, establishing that extenuating circumstances necessitate a change in employment;

(3) An employment contract establishing that the foreign medical graduate will practice medicine at the health care facility named in the new H–1B petition for the balance of the required 3-year period; and

(4) Evidence that the geographic area or areas of intended employment indicated in the new H–1B petition are in HHS-designated shortage areas.

(C) *Review of amended and new H–1B petitions for foreign medical graduates granted waivers under Pub. L. 103–416 and who seek to have early termination of employment excused due to extenuating circumstances.*—(1) *Amended H–1B petitions.* The waiver granted under Pub. L. 103–416 may be affirmed, and the amended H–1B petition may be approved, if the petitioning health care facility establishes that the foreign medical graduate otherwise remains eligible for H–1B classification and that he or she will continue practicing medicine in an HHS-designated shortage area.

(2) *New H–1B petitions.* The Service shall review a new H–1B petition filed on behalf of a foreign medical graduate who has not yet fulfilled the required 3-year period of employment with the health care facility named in the waiver application and in the original H–1B petition to determine whether extenuating circumstances exist which warrant a change in employment, and whether the waiver granted under Pub. L. 103–416 should be affirmed. In conducting such a review, the Service shall determine whether the foreign medical graduate will continue practicing medicine in an HHS-designated shortage area, and whether the new H–1B petitioner and the foreign medical graduate have satisfied the remaining H–1B eligibility criteria described under section 101(a)(15)(H) of the Act and § 214.2(h) of this chapter. If these criteria have been satisfied, the waiver granted to the foreign medical graduate under Pub. L. 103–416 may be affirmed, and the new H1–B petition may be approved in the exercise of discretion, thereby permitting the foreign medical graduate to serve the balance of the requisite 3-year employment period at the health care facility named in the new H–1B petition.

(D) *Failure to notify the Service of any material changes in employment.* Foreign medical graduates who have been granted a waiver of the 2-year requirement and who have obtained H–1B status under Pub. L. 103–416 but fail to: Properly notify the Service of any material change in the terms and conditions of their H–1B employment, by having their employer file an amended or a new H–1B petition in accordance with this section and § 214.2(h) of this chapter; or establish continued eligibility for the waiver and H–1B status, shall (together with their dependents) again become subject to the 2-year requirement. Such foreign medical graduates and their accompanying H–4 dependents also become subject to deportation under section 241(a)(1)(C)(i) of the Act.

* * * * *

PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

3. The authority citation for part 245 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1255; and 8 CFR part 2.

§ 245.1 [Amended]

4. In § 245.1, paragraph (c)(2) is amended by removing the ";" at the end of the paragraph and replacing it with a "."; and by adding a new sentence at the end of paragraph (c)(2) to read as follows:

§ 245.1 Eligibility.

* * * * *

(c) * * *

(2) * * * An alien who has been granted a waiver under section 212(e)(iii) of the Act based on a request by a State Department of Health (or its equivalent) under Pub. L. 103–416 shall be ineligible to apply for adjustment of status under section 245 of the Act if the terms and conditions specified in section 214(k) of the Act and § 212.7(c)(9) of this chapter have not been met;

* * * * *

PART 248—CHANGE OF NONIMMIGRANT CLASSIFICATION

5. The authority citation for part 248 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1184, 1187, 1258; 8 CFR part 2.

6. In § 248.2, paragraph (c) is amended by removing the "; and" at the end of the paragraph and replacing it with a "."; and by adding two new sentences at the end of paragraph (c) to read as follows:

§ 248.2 Ineligible classes.

* * * * *

(c) * * * This restriction shall not apply when the alien is a foreign medical graduate who was granted a waiver under section 212(e)(iii) of the Act pursuant to a request made by a State Department of Public Health (or its equivalent) under Pub. L. 103–416, and the alien complies with the terms and conditions imposed on the waiver under section 214(k) of the Act and the implementing regulations at § 212.7(c)(9) of this chapter. A foreign medical graduate who was granted a waiver under Pub. L. 103–416 and who does not fulfill the requisite 3-year employment contract or otherwise comply with the terms and conditions imposed on the waiver is ineligible to apply for change of status to any other nonimmigrant classification; and

* * * * *

Dated: April 25, 1995.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 95–12272 Filed 5–17–95; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–82–AD; Amendment 39–9234; AD 95–10–17]

Airworthiness Directives; Lockheed Model L–1011–385 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all Lockheed Model L–1011–385 series airplanes. This action requires inspections to detect cracking or severing of the fuselage frames, and an additional inspection or repair, if necessary. This amendment is prompted by reports indicating that fatigue cracking was found on certain fuselage frames on these airplanes. The actions specified in this AD are intended to prevent reduced structural integrity of the fuselage shell due to the problems associated with fatigue cracking.

DATES: Effective May 23, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 23, 1995.

Comments for inclusion in the Rules Docket must be received on or before July 17, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–82–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Lockheed Aeronautical Systems Support Company (LASSC), Field Support Department, Dept. 693, Zone 0755, 2251 Lake Park Drive, Smyrna, Georgia 30080. This information may be examined at the FAA, Transport Airplane Directorate,

1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Thomas Peters, Aerospace Engineer, Flight Test Branch, ACE–116A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia 30337–2748; telephone (404) 305–7367; fax (404) 305–7348.

SUPPLEMENTARY INFORMATION: The FAA has recently received six reports indicating that cracking was found on certain fuselage frames on Lockheed Model L–1011–385 series airplanes. This cracking occurred at the location where the outer flange of the frame attaches to the water line (WL) 280.6 longeron (the upper stringerless sidewall longeron) on the left- and right-hand sides of the airplane. Such cracking also has been found in multiple frames of a single airplane. On one airplane, two adjacent frames were severed completely; cracks were found in three more adjacent frames on this same airplane. In each of the cracked frames, the cracks emanated from the fastener hole that attaches the frame to the WL 280.6 longeron at the shear slip cutout.

The cracking appears to be fatigue related, primarily as a result of pressurization loads. An engineering analysis indicates that this cracking initiates when the airplane has accumulated between 20,000 and 25,000 total landings. Loads analysis and testing performed during its original certification shows that this airplane model can retain fail-safe load capability with a skin crack extending across two skin bays and one frame severed completely. (To date, no skin cracking has been reported.) Subsequent engineering analysis confirms that the airplane is capable of limit pressurization and fuselage bending loads with two adjacent frames severed completely.

Fatigue cracking in the fuselage frames, if not detected and corrected in a timely manner, could result in reduced structural integrity of the fuselage shell.

The FAA has reviewed and approved Lockheed Alert Service Bulletin 093–53–A271, dated April 25, 1995, including Attachments 1 and 2, which describes procedures for either an external X-ray inspection, or both an internal close visual and an eddy current inspection, to detect cracking or severing of the fuselage frames; and an inspection (using either an eddy current surface scan or a magneto-optic imager) of the adjacent frames and external skin, or repair, if necessary. The alert service bulletin specifies that, for certain airplanes, the inspection area is located between fuselage station (FS) 589 to FS 749 (for the C1 door) and FS 509 to FS 749 (for the C1A door) on the right-hand side of the airplane. (For airplanes on which any cracking or severing is found in the fuselage frames, the alert service bulletin describes procedures for an additional inspection of the fuselage frames between FS 1605 to FS 1745 on the left- and right-hand sides of the airplane.) For certain other airplanes, the alert service bulletin indicates that the inspection area includes all fuselage frames where the frame outer flange attaches to the WL 280.6 longeron (upper stringerless sidewall longeron) on both the left- and right-hand sides of the airplane.

Since an unsafe condition has been identified that is likely to exist or develop on other Lockheed Model L–1011–385 series airplanes of the same type design, this AD is being issued to prevent reduced structural integrity of the fuselage shell. This AD requires either an external X-ray inspection, or both an internal close visual and an eddy current inspection, to detect cracking or severing of the fuselage frames; and an inspection (using either an eddy current surface scan or a magneto-optic imager) of the adjacent frames and external skin, or repair, if necessary. The actions are required to be accomplished in accordance with the alert service bulletin described previously.

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

The required compliance time of 120 days for certain airplanes [reference paragraph (b) of this AD] is usually sufficient to allow for a brief comment period before adoption of a final rule. In this AD, however, the compliance time of 120 days for airplanes that have accumulated 20,000 total landings, but less than 25,000 total landings, was established based on inspections to date of airplanes in this category along with an engineering evaluation of frame crack propagation rates. The FAA established that compliance time in order to provide an acceptable level of safety commensurate with the compliance time of 25 days for airplanes that have accumulated 25,000 or more total landings. In addition, the FAA selected the 120-day compliance time because of a potential short-term problem with availability of sufficient parts for repairing a fuselage frame if any defect is found; a shorter compliance time might have resulted in the unnecessary removal of airplanes from service pending delivery of repair parts. Nevertheless, the FAA has determined that immediate adoption is necessary in this case because of the importance of initiating the required inspections as soon as possible.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this rule to clarify this long-standing requirement.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–NM–82–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–10–17 Lockheed Aeronautical Systems Company: Amendment 39–9234. Docket 95–NM–82–AD.

Applicability: All Model L–1011–385 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the fuselage shell due to fatigue cracking of the fuselage frames, accomplish the following:

(a) Prior to the accumulation of 25,000 total landings, or within 25 days after the effective date of this AD, whichever occurs later: Perform either an external X-ray inspection, or both an internal close visual and an eddy current inspection, to detect cracking or severing of the fuselage frames at all fuselage frames where the frame outer flange attaches to the water line (WL) 280.6 longeron (upper stringerless sidewall longeron) on both the left- and right-hand sides of the airplane, in accordance with Lockheed Alert Service Bulletin 093–53–A271, dated April 25, 1995, including Attachments 1 and 2.

(1) If no cracking or severing is found, no further action is required by paragraph (a) of this AD.

(2) If any cracking or severing is found, prior to further flight, perform an inspection (using either an eddy current surface scan or a magneto-optic imager) to detect cracking of the adjacent frames and external skin, in accordance with the alert service bulletin. Prior to further flight, repair any cracking or severing found during any inspection required by paragraph (a) of this AD, in accordance with the alert service bulletin.

(b) Except as provided by paragraph (c) of this AD, prior to the accumulation of 20,000 total landings, or within 120 days after the effective date of this AD, whichever occurs later: Perform either an external X-ray inspection, or both an internal close visual and an eddy current inspection, to detect cracking or severing of the fuselage frames between fuselage stations (FS) 589 to FS 749 (for the C1 door) and between FS 509 to FS 749 (for the C1A door) on the right-hand side of the airplane, in accordance with Lockheed Alert Service Bulletin 093–53–A271, dated April 25, 1995, including Attachments 1 and 2. If any cracking or severing is found, prior to further flight, perform an inspection to detect cracking of the fuselage frames at FS 1605 to FS 1745 on the left- and right-hand sides of the airplane, in accordance with the alert service bulletin.

(1) If no cracking is found, no further action is required by paragraph (b) of this AD.

(2) If any cracking is found, prior to further flight, perform an inspection (using either an eddy current surface scan or a magneto-optic imager) to detect cracking of the adjacent frames and external skin, in accordance with the alert service bulletin. Prior to further flight, repair any cracking or severing found during any inspection required by paragraph (b) of this AD, in accordance with the alert service bulletin.

(c) Airplanes on which the inspection required by paragraph (a) of this AD is performed within the compliance time specified in paragraph (b) of this AD are not required to accomplish the inspection required by paragraph (b).

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The inspections and repair shall be done in accordance with Lockheed Alert Service Bulletin 093–53–A271, dated April 25, 1995, including Attachments 1 and 2. (NOTE: Attachment 1 is undated.) This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Lockheed Aeronautical Systems Support Company (LASSC), Field Support Department, Dept. 693, Zone 0755, 2251 Lake Park Drive, Smyrna, Georgia 30080. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia; or at the Office of

the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on May 23, 1995.

Issued in Renton, Washington, on May 10, 1995.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–11974 Filed 5–17–95; 8:45 am]

BILLING CODE 4910–13–U

Coast Guard

33 CFR Part 117

[CGD02–95–001]

RIN 2115–AE47

Drawbridge Operation Regulation; Illinois Waterway

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is finalizing operation conditions for the remote operation of the Elgin, Joliet and Eastern Railway (EJ&E) Bridge over the Illinois Waterway at mile 290.1, at Lockport, Illinois. This action was taken at the request of the Elgin, Joliet and Eastern Railway Company. The change to remote operation permits more efficient operation of the railway bridge, while continuing to provide for the reasonable needs of navigation.

EFFECTIVE DATE: May 18, 1995.

ADDRESSES: Unless otherwise indicated, documents referred to in this preamble are available for inspection or copying at the offices of the Commander, Second Coast Guard District, 1222 Spruce Street, St. Louis, MO 63103–2832, Attention: Bridge Administrator, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Roger K. Wiebusch, Bridge Administrator, Second Coast Guard District, (314) 539–3724.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are David H. Sulouff, Project Officer, Bridge Branch and LT S. Moody, Project Attorney, Second Coast Guard District Legal Office.

Regulatory History

On September 1, 1994, the Coast Guard published a proposed rule (59 FR 45252) concerning this amendment. The Commander, Second Coast Guard District, also published the proposal as a Public Notice dated September 20, 1994. Interested parties were given until October 31, 1994 to submit comments. The Coast Guard received comments from the Illinois Department of Conservation and the Illinois River Carriers Association, representing approximately 34 river towing companies. On February 24, 1995, the Coast Guard published an interim rule (60 FR 10315) concerning this amendment with a comment closing date of April 25, 1995. No comments were received in response to this interim rule. A public hearing was not requested and one was not held.

Two minor changes have been made to the final rule from the interim rule. The interim final rule stated that the remote operator made marine broadcasts warning of the drawbridges closure on channel 16. In this final rule, reference to channel 16 was eliminated because the marine broadcast frequencies are designated by FCC regulations and not by the Coast Guard. This final rule also increases the number of broadcasts that the remote operator will make after the drawspan is lowered and locked in the closed to navigation position, from two broadcasts to periodic broadcasts. This change will ensure that vessels approaching the bridge after the drawspan has been lowered will be notified that the draw is closed.

Good cause exists for making this rule effective upon publication. No comments were received during the interim final rule's 60 day comment period. The Coast Guard has monitored the remote operation during the 60 day test period. There were no equipment failures and no reported negative impacts to navigation. This rule allows the bridge to be left open unless rail traffic or maintenance requires its closure. Vessel traffic will benefit from this rule by having the bridge maintained in the open to navigation position. For these reasons the Coast Guard has determined that there is no need to delay implementation of this rule.

Background and Purpose

The Elgin, Joliet and Eastern Railway requested approval from the Coast Guard to change the operation of the EJ&E Bridge over the Illinois waterway at mile 290.1, at Lockport, Illinois, from on-site bridge operation to a remote operating system. This rule change establishes remote operating procedures with associated operating and equipment requirements on EJ&E that will ensure the safe and timely operation of the railroad drawspan.

EJ&E has installed remote operating equipment and a control system, including radar, infrared boat detectors, motion detectors and communications equipment, to facilitate operation of the drawspan from Gary, Indiana. The drawspan can also be operated at the bridge site. The drawspan will be maintained in the open to navigation position except for the passage of rail traffic or maintenance. The equipment indicates any malfunction in the drawspan operation and allows the remote operator to ascertain the position of the drawspan at any time. The marine radio system allows communication between the remote operator and marine traffic at the bridge, on the VHF marine frequencies authorized by the Federal Communications Commission. A radar antenna has been installed on the bridge and the received signal is transmitted by fixed lines to the remote operator. The radar system is designed to scan upstream and downstream of the bridge. Infrared scanners and motion detectors are located in the channel drawspan to detect vessels under the drawspan. If an obstruction is detected beneath the drawspan during the closing cycle, before the drawspan is seated and locked, the drawspan will automatically stop lowering and shall be raised to the fully open position by the remote operator until the channel is clear. Once lowered and locked in the closed to navigation position, the boat detectors will not raise the drawspan.

During the drawspan closing cycle, the bridge operator shall make a radio broadcast indicating drawspan status. At the appropriate times in the cycle, the bridge operator shall announce that the drawspan will close to navigation, that the drawspan is closed to navigation, or that the drawspan has reopened to navigation.

Regulatory Evaluation

This rule is not a significant regulatory action under 3(f) of Executive Order 12866 and does not require an assessment of potential cost and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

After considering comments received, the Coast Guard finds that any impact on small entities, if any, is not substantial. Therefore, the Coast Guard certifies under 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Environmental

The Coast Guard has reviewed the environmental impact of this rule and concluded that under section 2.B.2.g(5), (Promulgation of operating requirements or procedures for drawbridges) of Commandant Instruction M16475.1B, (as revised by 59 FR 38654; July 29, 1994), this rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard amends Part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.395 is revised to read as follows:

§ 117.395 Illinois Waterway.

(a) The draws of the McDonough Street Bridge, mile 287.3; Jefferson Street bridge, mile 287.9; Cass Street bridge, mile 288.1; Jackson Street bridge, mile 288.4; and Ruby Street bridge, mile 288.7; all of Joliet, shall open on signal, except that they need not open from 7:30 a.m. to 8:30 a.m. and from 4:15 p.m. to 5:15 p.m. Monday through Saturday.

(b) The drawspan of the Elgin, Joliet and Eastern Railway bridge, mile 290.1 at Lockport, Illinois, is operated by remote operator located at the Elgin, Joliet & Eastern offices in Gary, Indiana as follows:

(1) The drawspan is normally maintained in the fully open to navigation position displaying green center span navigation lights to indicate that the drawspan is fully open.

(2) The bridge is equipped with the following:

(i) A radiotelephone link direct to the remote operator;

(ii) A radar antenna on top of the drawspan capable of scanning the river, one mile upstream and one mile downstream;

(iii) Infrared boat detectors under the drawspan, to allow the remote bridge operator to detect vessels under the drawspan;

(iv) Electronic motion detectors under the drawspan to allow the remote bridge operator to detect vessel movement under the drawspan;

(v) A siren for sound signals; and

(vi) Red and green center span navigation lights.

(3) The remote bridge operator shall maintain a 24 hour VHF marine radio watch for mariners to establish contact as they approach the bridge to ensure that the drawspan is open or that it remains open until passage of river traffic is complete.

(4) When rail traffic approaches the bridge, and the drawspan is in the open position, the remote bridge operator initiates a one minute warning period before closing the drawspan. During this warning period, the remote operator shall broadcast at least twice, via marine radio, that: "The drawspan of the EJ&E Railroad bridge will be lowered in one minute." A siren on the bridge sounds for 20 seconds, to warn anyone on or under the bridge that the drawspan will be lowered.

(5) If a vessel is approaching the bridge upbound or, departing the Lockport Lock and Dam at mile 291.1, downbound, with intentions of passing through the drawspan, they shall respond to the remote bridge operators' marine radio broadcast, or initiate radio contact, indicating their proximity to the bridge and requesting an opening of the drawspan or that the drawspan remain open until the vessel passes. If any approaching vessel is detected or if a radiotelephone response is received, the remote operator shall not close the drawspan until the vessel or vessels have cleared the bridge.

(6) At the end of the one minute warning period, if no river traffic is approaching or under the drawspan, the remote bridge operator may begin lowering the drawspan. Navigation lights located at the center of the drawspan change from green to red when the drawspan is not in the fully open to navigation position. The drawspan takes approximately 90 seconds to lower.

(7) If the presence of a vessel or other obstruction is discovered approaching or under the drawspan, during the lowering sequence, before the drawspan is fully lowered and locked, the drawspan shall be stopped and raised to the fully open position. When the vessel or obstruction has cleared the drawspan, the remote operator shall confirm that the channel is clear and reinitiate the one minute warning cycle before lowering the drawspan.

(8) If no marine traffic is present the drawspan may be lowered and seated. When the drawspan is lowered and locked in the closed to navigation position, the remote bridge operator periodically broadcasts, via marine radio, that: "The drawspan of the EJ&E Railroad bridge is closed to navigation."

(9) Failure of the radar system, radio telephone system, infrared boat detectors or electronic motion sensors shall prevent lowering the drawspan from the remote location.

(10) when rail traffic has cleared the bridge, the remote bridge operator shall raise the drawspan to the fully open to navigation position. When the drawspan is raised and in the fully open to navigation position, the remote bridge operator broadcasts, at least twice, via marine radio, that: "The drawspan of the EJ&E Railroad bridge is open to navigation." The center drawspan navigation lights change from red to green when the drawspan is fully open to navigation.

Dated: March 15, 1995.

Paul M. Blayney,

Rear Admiral, U.S. Coast Guard, Commander, Second Coast Guard District, St. Louis, MO.

[FR Doc. 95–12281 Filed 5–17–95; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 165

[COTP St. Louis 95–002]

RIN 2115–AA97

Safety Zone; Upper Mississippi River, mile 179.0 to 184.0

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone on the Upper Mississippi River between mile 179.0 and 184.0. This regulation is needed to protect vessels from the hazards associated with operating in high water conditions. This regulation will restrict general navigation in the regulated area

for the safety of vessel traffic and the protection of life and property along the shore.

EFFECTIVE DATES: This regulation is effective on May 4, 1995 and will remain in effect until June 2, 1995, unless terminated sooner by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: LT Robert Siddall, Operations Officer, Captain of the Port, St. Louis, Missouri at (314) 539–3823.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this regulation are LTJG A.B. Cheney, Project Officer, Marine Safety Office, St. Louis, Missouri and LT S.M. Moody, Project Attorney, Second Coast Guard District Legal Office.

Regulatory History

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for this rule and good cause exists for making it effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. Specifically, recent heavy rainfall on already saturated ground in portions of the Upper Mississippi River Basin has caused tributaries and the southern portion of the Upper Mississippi River to approach and exceed flood stages, leaving insufficient time to publish a proposed rulemaking. The Coast Guard deems it to be in the public's interest to issue a rule without waiting for comment period since high water conditions present immediate hazard.

Background and Purpose

The Upper Mississippi River in the vicinity of St. Louis Harbor has seen a rapid rise in the water level and is expected to be above flood stage by May 13, 1995. Recent torrential downpours, predominately in Missouri and southern Illinois, caused a very rapid rise in river stages. Water conditions that cause rapid and sharp rises in river stages also cause treacherous currents in the vicinity of bridges within St. Louis Harbor. These currents make the approach to the bridges more critical since the time to impose course corrections are diminished. Additionally, the high water conditions reduce both the vertical and horizontal clearances available to the navigating tow. Reducing tow lengths and increasing horsepower requirements will offset the effect of the increased current. The circumstances requiring this rule are swift currents and a rapid rise in river level on the Upper Mississippi River at St. Louis, MO. This rule is required for the safety and protection of vessels transiting the safety zone.

Regulatory Evaluation

This regulation is not major under Executive Order 12291 and not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979), it will not have a significant economic impact on a substantial number of small entities, and it contains no collection of information requirements.

The Coast Guard expects the impact of this regulation to be so minimal that a Regulatory Evaluation is unnecessary. The imposed restrictions are anticipated to be of short duration. Captain of the Port, St. Louis, Missouri will monitor river conditions and will authorize entry into the closed area as conditions permit. Changes will be announced by Marine Safety Information Radio Broadcast on VHF Marine Band Radio, Channel 22 (157.1 MHZ). Mariners may also call the Port Operations Officer, Captain of the Port, St. Louis, Missouri at (314) 539–3823 for current information.

Small Entities

The Coast Guard finds that the impact on small entities, if any, is not substantial. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this temporary rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501).

Federalism Assessment

Under the principles and criteria of Executive Order 12612, this rule does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2.g.[5] of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation as an action to protect public safety. A Categorical Exclusion Determination has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (Water), Records and recordkeeping, Security measures, Vessels, Waterways.

Temporary Regulation

In consideration of the foregoing, Subpart C of Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A temporary § 165.T02–028 is added, to read as follows:

§ 165.T02–028 Safety Zone: Upper Mississippi River.

(a) *Location.* The Upper Mississippi River between mile 179.0 and 184.0 is established as a safety zone.

(b) *Effective Dates.* This section is effective on May 4, 1995 and will terminate on June 2, 1995, unless terminated sooner by the Captain of the Port.

(c) *Regulations.* The general regulations under § 165.23 of this part which prohibit vessel entry within the described zone without authority of the Captain of the Port apply. The Captain of the Port, St. Louis, Missouri will authorize entry into and operations within the described zone under certain conditions and limitations as announced by Marine Safety Information Radio Broadcast on VHF Marine Band Radio, Channel 22 (157.1 MHZ).

Dated: May 4, 1995.

S.P. Cooper,

Commander, U.S. Coast Guard, Captain of the Port, St. Louis, Missouri.

[FR Doc. 95–12282 Filed 5–17–95; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[CGD01–95–055]

RIN 2115–AA97

Safety Zone: Ellis Island NECO Awards Gala Fireworks, Upper New York Bay, NY and NJ

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for a fireworks program located in Federal Anchorage 20C in Upper New York Bay, New York. This safety zone will be in effect on May 21, 1995, from 10:15 p.m. until 11:30 p.m. The safety zone will temporarily close all waters of the Upper New York Bay, within a 300 yard radius of the fireworks barges anchored approximately 300 yards east of Liberty Island, New York.

EFFECTIVE DATE: This rule is effective on May 21, 1995, from 10:15 p.m. until 11:30 p.m., unless extended or terminated sooner by the Captain of the Port, New York.

FOR FURTHER INFORMATION CONTACT: Lieutenant (Junior Grade) K. Messenger, Maritime Planning Staff Chief, Coast Guard Group New York (212) 668–7934.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are LTJG K. Messenger, Project Manager, Coast Guard Group New York and LCDR J. Stieb, Project Attorney, First Coast Guard District, Legal Office.

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation and good cause exists for not publishing an NPRM. Due to the date this application was received, there was insufficient time to draft and publish a notice of proposed rulemaking that allows for a reasonable comment period prior to the event. The delay encountered if normal rulemaking procedures were followed would effectively cancel this event. Cancellation of this event is contrary to public interest.

Background and Purpose

On May 1, 1995, Fireworks by Grucci submitted an application to hold a fireworks program in the waters of Upper New York Bay, off of Liberty Island, New York. This fireworks program is being sponsored by the National Ethnic Coalition of Organizations Foundation, Inc., (NECO). This rule establishes a temporary safety zone in all waters of the Upper New York Bay within a 300 yard radius of fireworks barges anchored approximately 300 yards east of Liberty Island, New York, at or near 40°41′17″N latitude, 74°02′25″W longitude. The safety zone will be in effect on May 21, 1995, from 10:15 p.m. until 11:30 p.m., unless extended or terminated sooner by the Captain of the Port, New York. This safety zone precludes all vessels from transiting this portion of the Upper New York Bay and is needed to protect mariners from the hazards associated with fireworks exploding in the area.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This safety zone closes a portion of the Upper New York Bay to all vessel traffic on May 21, 1995, from 10:15 p.m. until 11:30 p.m., unless extended or terminated sooner by the Captain of the Port, New York. Although this regulation prevents traffic from transiting this area, the effect of this rule will not be significant for several reasons. Due to the fact that this safety zone will not impact any navigable channel; that the duration of the event is limited; that the event is at a late hour; and that extensive, advance advisories will be made to the maritime community, the impact of this rule is expected to be so minimal that a Regulatory Evaluation is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under Section 3 of the Small Business Act (15 U.S.C. 632).

For the reasons given in the Regulatory Evaluation, the Coast Guard expects the impact of this rule to be minimal. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501).

Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this rule does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this rule and concluded that under section 2.B.2.e. of Commandant Instruction M16475.1B, revised 59 FR 38654, July 29, 1994, the promulgation of this rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination and Environmental Analysis Checklist are included in the docket. An appropriate environmental analysis of the fireworks program will be conducted in conjunction with the marine event permitting process.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Temporary Regulation

For reasons set out in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A temporary section, § 165.T01–055, is added to read as follows:

§ 165.T01–055 Safety Zone; Ellis Island NECO Awards Gala Fireworks, Upper New York Bay, New York and New Jersey.

(a) *Location.* All waters of Federal Anchorage 20C, Upper New York Bay, within a 300 yard radius of the fireworks barges anchored approximately 300 yards east of Liberty Island, New York, at or near 40°41′17″N latitude, 074°02′25″W longitude. (Datum: NAD 83)

(b) *Effective period.* This section is in effect on May 21, 1995, from 10:15 p.m. until 11:30 p.m., unless extended or terminated sooner by the Captain of the Port, New York.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: May 10, 1995.

T. H. Gilmour,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 95–12283 Filed 5–17–95; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPPTS–50611A; FRL–4953–7]

RIN 2070–AB27

1*H*,3*H*,5*H*-oxazolo [3,4-c] oxazole, Dihydro-7a-methyl-; Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is promulgating a significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for the chemical substance described as 1*H*,3*H*,5*H*-oxazolo [3,4-c] oxazole, dihydro-7a-methyl-, which is the subject of premanufacture notice (PMN) P–91–1324. This rule will require certain persons who intend to manufacture, import, or process this substance for a significant new use to notify EPA at least 90 days before commencing any manufacturing or processing activities for a use designated by this SNUR as a significant new use. The required notice would provide EPA with the opportunity to evaluate the intended use and, if necessary, to prohibit or limit that activity before it can occur.

DATES: The effective date of this rule is July 17, 1995. This rule shall be promulgated for purposes of judicial review at 1 p.m. (e.s.t.) on June 1, 1995.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. EB–543B, 401 M Street, SW., Washington, DC 20460, telephone: (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION:

I. Authority

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule after considering all relevant factors, including those listed in section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, section 5(a)(1)(B) of TSCA requires persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the chemical substance for that use. The mechanism for reporting under this requirement is established under 40 CFR 721.25.

II. Applicability of General Provisions

General provisions for SNURs appear under subpart A of 40 CFR part 721. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the final rule. Rules on user fees appear at 40 CFR part 700. Persons subject to this SNUR would comply with the same notice requirements and EPA regulatory procedures as submitter of PMNs under section 5(a)(1)(A) of TSCA. In particular, these requirements include the information submission requirements of section 5(b) and 5(d)(1), the exemptions authorized by section 5 (h)(1), (2), (3), and (5), and the regulations at 40 CFR part 720. Once EPA receives a SNUR, EPA may take regulatory action under section 5(e), 5(f), 6, or 7 as appropriate to control the activities for which it has received the SNUR. If EPA does not take action, EPA is required under section 5(g) to explain in the **Federal Register** its reasons for not taking action.

Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret section 12(b) appear at 40 CFR part 707. Persons who intend to import a chemical substance identified in a final SNUR are subject to the TSCA section 13 import certification requirements, which are codified at 19 CFR 12.118 through 12.127 and 127.28. Such persons must certify that they are in compliance with the SNUR requirements. The EPA policy in support of the import certification appears at 40 CFR part 707.

III. Background

EPA published a proposed SNUR for the chemical 1*H*,3*H*,5*H*-oxazolo [3,4-c] oxazole, dihydro-7a-methyl- in the **Federal Register** of November 2, 1994 at 59 FR 54874. The background and reasons for the SNUR are set forth in the preamble to the proposed SNUR. The proposed SNUR designated exposure to the PMN substance without ocular protection (chemical goggles or equivalent eye protection) and any predictable or purposeful release of the PMN substance to surface water above 500 parts per billion (ppb) as significant new uses. The Agency received no public comment concerning the proposed SNUR. As a result, EPA is promulgating this final SNUR.

IV. Determination of Proposed Significant New Uses

To determine what would constitute significant new uses of this chemical substance, EPA considered relevant information about the toxicity of the substance, likely exposures/releases associated with possible uses, and the four factors listed in section 5(a)(2) of TSCA.

Section 5(a)(2) of TSCA provides that EPA's determination that a chemical substance is a significant new use must be made after a consideration of all relevant factors including:

A. The projected volume of manufacturing and processing of a chemical substance.

B. The extent to which a use changes the type or form of exposure of human beings or the environment to a chemical substance.

C. The extent to which a use increases the magnitude and duration of exposure of human beings or the environment to a chemical substance.

D. The reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of a chemical substance.

EPA construes the statute to allow consideration of any other relevant factors, in addition to those enumerated in section 5(a)(2)(A) through (D), because it is not an exclusive list.

V. Applicability of SNUR to Uses Occurring Before Effective Date of the Final SNUR

EPA has decided that the intent of section 5(a)(1)(B) is best served by designating a use as a significant new use as of the date of proposal rather than as of the effective date of the final rule. If uses which commence between the proposal date and the effective date of the final rule were considered ongoing, rather than new, any person could defeat the SNUR by initiating a significant new use before the effective date. This would make it difficult for EPA to establish SNUR notice requirements. Thus, persons who begin commercial manufacture, import, or processing of the substance for uses identified in this SNUR after the date of the proposed rule will have to cease any such activity before the effective date of this rule. To resume their activities, such persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires. EPA, not wishing to unnecessarily disrupt the activities of persons who begin commercial manufacture, import, or processing of a significant new use before the effective date of the SNUR, has promulgated provisions to allow such persons to comply with this proposed SNUR before it is promulgated. If a person were to meet the conditions of advance compliance as codified at § 721.45(h), the person would be considered to have met the requirements of the final SNUR for those activities. If persons who begin commercial manufacture, import, or processing of the substance between proposal and the effective date of the final SNUR do not meet the conditions of advance compliance, they must cease that activity before the effective date of the rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

VI. Economic Analysis

EPA has evaluated the potential costs of establishing significant new use notice requirements for potential manufacturers, importers, and processors of the chemical substance subject to this rule. EPA's complete economic analysis is available in the public record for this final rule (OPPTS–50611).

VII. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPPTS–50611) which includes information considered by the Agency in developing this rule. The record includes the following information:

1. The economic analysis of this rule.
2. The environmental test data review support document.
3. Issue Summary Report.
4. The **Federal Register** notice pertaining to this rule.

A public version of the record, without any Confidential Business Information, is available in the TSCA Nonconfidential Information Center (NCIC) from 12 noon to 4 p.m., Monday through Friday, except legal holidays. The TSCA NCIC is located in Rm. NE–B607, 401 M St., SW., Washington, DC.

VIII. Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the Executive Order defines a "significant regulatory action" as an action likely to lead to a rule:

(1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health of safety, or State, local or tribal governments or communities (also referred to as "economically significant").

(2) Creating serious inconsistency or otherwise interfering with an action taken or planned by another agency.

(3) Materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof.

(4) Raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is not "significant" and is therefore not subject to OMB review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that this rule would not have a significant impact on a substantial number of small businesses. EPA has determined that approximately 10 percent of the parties affected by this rule could be small businesses. However, EPA expects to receive few significant new use notices for these substances. Therefore, EPA believes that the number of small businesses affected by this rule will not be substantial, even if all of the SNUR notice submitters were small firms.

C. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by OMB under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), and have been assigned OMB control number 2070–0012.

Public reporting burden for this collection of information is estimated to vary from 30 to 170 hours per response, with an average of 100 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous materials, Reporting and recordkeeping requirements, Significant new uses.

Dated: May 5, 1995.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

Accordingly, 40 CFR part 721 is amended as set forth below:

PART 721—[AMENDED]

1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

2. By adding new § 721.5540 to subpart E to read as follows:

§ 721.5540 1*H*,3*H*,5*H*-oxazolo [3,4-c] oxazole, dihydro-7a-methyl-.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified as 1*H*,3*H*,5*H*-oxazolo [3,4-c] oxazole, dihydro-7a-methyl- (PMN P–91–1324) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(2)(iii) and (a)(3).

(ii) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (where N = 500 ppb).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* The following recordkeeping requirements specified in § 721.125 (a), (b), (c), (d), (e), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

[FR Doc. 95–12142 Filed 5–17–95; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 217 and 227

[Docket No. 950427119–5314–02; I.D. 051195A]

RIN 0648–AH98

Sea Turtle Conservation: Restrictions Applicable to Shrimp Trawling Activities; Modification of Additional Turtle Excluder Device Requirements Within Certain Statistical Zones

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Modification of temporary requirements; request for comments.

SUMMARY: NMFS is modifying the temporary requirements effective April 30, and published on May 3, 1995, to protect sea turtles from shrimp trawling activities in some portions of the Gulf of Mexico. This modification to the temporary requirements is being made to ease a burdensome requirement on shrimp trawlers while still providing protection for sea turtles. The modification partially rescinds the temporary prohibition on the use of try nets by shrimp trawlers in the areas subject to the temporary requirements, unless the try nets are equipped with NMFS-approved TEDs other than soft or bottom-opening TEDs, by allowing try nets with a headrope length of 12 feet (3.6 m) or less and a footrope length of 15 feet (4.5 m) or less to be used without a TED installed. All other requirements, including the boundary of the affected areas remain unchanged.

DATES: This action is effective May 12, 1995 through 11:59 p.m. (local time) on May 29, 1995. Comments on this action must be submitted by June 12, 1995.

ADDRESSES: Comments on this action and requests for a copy of the environmental assessment (EA) prepared for this action should be addressed to the Chief, Endangered Species Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Charles A. Oravetz, 813–570–5312, or Russell Bellmer, 301–713–1401.

SUPPLEMENTARY INFORMATION:

On April 30, 1995 (60 FR 21741; May 3, 1995), temporary requirements were placed on shrimp trawling in nearshore waters along two sections of the Texas and Louisiana coast in order to conserve listed species of sea turtles, especially the severely endangered Kemp's ridley. These requirements were necessitated by the continued high rates of sea turtle strandings occurring along areas of the Texas coast, and the measures implemented were consistent with NMFS' November 14, 1994 Biological Opinion on the shrimp trawl fishery and the NMFS Shrimp Fishery Emergency Response Plan (ERP). The ERP was signed by the Assistant Administrator for Fisheries, NOAA, (AA) on March 14, 1995 and was immediately distributed widely among industry and environmental groups. A notice of availability for the ERP was published on April 21, 1995 (60 FR 19885).

A complete discussion of sea turtle strandings in Texas was contained in the temporary requirements (60 FR 21741; May 3, 1995), and a summary of strandings is provided here. For the 3 consecutive weeks beginning April 9 and ending April 29, strandings in Zone 20 were 3, 3, and 15 turtles per week. Of these 21 turtles, 7 were Kemp's ridleys. In Zone 18 for the same period, 12, 16, and 6 turtles stranded per week. Of these 34 turtles, 28 were Kemp's ridleys. Restrictions to the shrimp fishery went into effect on April 30, 1995, and in the following week strandings fell to 2 turtles, including 1 Kemp's ridley, in Zone 20, but rose to 8 turtles, including 5 Kemp's ridleys in Zone 18. With the exception of Zone 20 during the week following implementation of the restrictions, all these strandings approach or exceed the incidental take levels (ITLs) established for those zones.

The Biological Opinion provides that conservation measures be implemented as mortality levels approach ITLs established in the Incidental Take Statement in order to ensure that shrimping is not likely to jeopardize the continued existence of Kemp's ridley. The Biological Opinion specifically provides that such measures be implemented immediately when sea turtle takings, indicated or documented, reach 75 percent of the established levels. The conservation measures are intended to allow shrimp fishing to continue while reducing the likelihood of further sea turtle strandings. The ERP provides further guidance on the nature and geographic scope of such measures.

A description of the sea turtle stranding events, temporary requirements, and the areas in which they apply are detailed in the temporary requirements (60 FR 21741; May 3, 1995) and are not repeated here.

Pursuant to 50 CFR 227.72(e)(2)(ii)(B)(*1*), try nets of up to 20 feet (6.1 m) in headrope length have been exempted from the TED requirements, because they are only intended for use in brief sampling tows not likely to result in turtle mortality. Turtles are, however, caught in try nets, and either through repeated captures or long tows, try nets can contribute to the mortality of sea turtles. Takes of sea turtles in try nets, including one mortality, have been documented by NMFS, and in the NMFS bycatch observer program from 1992 through 1995, try nets accounted for 43% of the observed turtle captures.

Preliminary Comments

NMFS made the ERP available to all concerned parties for their information and to solicit comments on the ERP. NMFS distributed the ERP widely among shrimp industry and environmental organizations immediately upon the ERP's completion in March, 1995. In addition, formal notice of availability for the ERP was published on April 21, 1995 (60 FR 19885). Furthermore, NMFS widely distributes weekly reports of stranding events and distributed the ERP implementation, in which fishermen were reminded of the specific restrictions that would be implemented if continued, elevated sea turtle strandings occurred. All of the restrictive measures imposed by NMFS in response to elevated sea turtle strandings were identified in the ERP and weekly implementation notices. Nonetheless, while NMFS received general comments regarding the necessity of the ERP, only one comment was received from any segment of the shrimp industry concerning the potential restrictions discussed in the ERP. This commenter objected to the possible restrictions on soft TEDs and asked that NMFS assess alternatives for flap restrictions. The required use of TEDs in try nets was acceptable and the commenter stated that many local fishermen already used TEDs in try nets. Among the general comments, NMFS has also received proposals from several segments of the shrimp fishery which contain alternative means to limit nearshore fishing pressure and resulting levels of turtle capture. NMFS is evaluating these proposals and may revise the ERP to incorporate the alternative conservation measures.

Since the temporary requirements have been implemented, however, NMFS has received numerous comments on this action. These have come primarily by telephone and at a meeting hosted by shrimp industry representatives and attended by the NMFS personnel on May 5, 1995. Although the official comment period for the April 30, 1995 temporary requirements does not end until May 27, 1995, NMFS believes that the overwhelming number of comments regarding a particular aspect of the restrictions warrants immediate agency response.

Many shrimpers have stated that the prohibition on all try nets without TEDs is unreasonable. Try nets are small nets that are intended for very short tows—usually less than 15 minutes—to sample shrimp abundance before or during trawling with the main nets. Shrimp fishermen have complained, however, that NMFS has not provided any alternative to the prohibition that would allow them to monitor their catch rates and catch composition, forcing them to fish inefficiently, to their own detriment and that of turtles. NMFS now believes that the prohibition of all try nets is burdensome and that an alternative exists that will allow fishermen to work efficiently, while reducing the likelihood of turtle entrapment in shrimp trawl gear.

Alternatives for Try Net Use

Under the existing sea turtle conservation regulations, try nets with a headrope length of 20 feet (6.1 m) or less are exempt from the required use of TEDs. A 20–foot (6.1–m) headrope try net can have a fairly wide spread of 15 to 16 feet (4.5 to 4.8 m), and its mouth may open up several feet (approx. 1 m) off the bottom. By attaching extra webbing called a "tongue" or a "bib" to the center of the headrope and attaching an additional towing wire to this bib, the try net's mouth can be made to open even higher. These large try nets are certainly capable of capturing sea turtles. Indeed, a 20–foot (6.1–m) try net is little different from the 25– and 30–foot (7.6– and 9.1–m) headrope length nets that are commonly used as main trawl nets on smaller trawlers, and which are subject to TED requirements. The larger try nets are also capable of retaining larger catches, which may provide an incentive to tow them for longer periods, increasing the possibility of lethally taking a sea turtle. NMFS originally allowed the try net TED exemption based on the presumption that try nets would be fished for no more than 20–30 minutes.

As the size of the try net decreases, so does the potential for adversely affecting sea turtles. A small try net, with a headrope length of 12 feet (3.6 m), would only have a spread of about 8–9 feet (2.4–2.7 m) and would only open 1–2 feet (0.3–0.6 m) high. Such a net would also have a very small tail bag to accumulate shrimp catch, and there would be little incentive to use it longer than necessary to monitor shrimp catch rate. NMFS believes that a try net of this size is less likely to capture a sea turtle, and is unlikely to be fished long enough to kill a turtle if it were captured. This size net, however, would still be large enough for shrimp trawlers to monitor their shrimp catch rates.

In order to provide an alternative that will allow fishermen to sample their shrimp catch rates, while providing sea turtles with needed protection from entrapment in shrimp trawl nets, NMFS is partially rescinding the prohibition on the use of try nets without a top-opening, hard TED installed. The temporary prohibition on the use of try nets, unless equipped with NMFS-approved TEDs other than soft or bottom-opening TEDs, as described in the temporary requirements (60 FR 21741; May 3, 1995) is being modified and still apply to try nets with a headrope length greater than 12 feet (3.6 m) or a footrope length greater than 15 feet (4.5 m). However, try nets with a headrope length of 12 feet (3.6 m) or less and a footrope length of 15 feet (4.5 m) or less may be used without a TED installed. Footrope length is defined in 50 CFR 217.12 as "the distance between the points at which the ends of the footrope are attached to the trawl net, measured along the forwardmost webbing." Headrope length is defined in 50 CFR 217.12 as "the distance between the points at which the ends of the headrope are attached to the trawl net, measured along the forwardmost webbing." Any bibs or tongues added to a net would be included in the measurement and add to overall headrope length.

This modification to the temporary requirement affects only the prohibition relating to try nets. The other prohibitions, the affected area, and the effective dates remain unchanged. For clarity, however, all the restrictions in effect, including the one modification, will be set forth in the requirements section below.

Requirements

This action is authorized by 50 CFR 227.72(e)(6). The definitions in 50 CFR 217.12 are applicable to this action, as well as all relevant provisions in 50 CFR parts 217 and 227. For example, § 227.71(b)(3) provides that it is unlawful to fish for or possess fish or wildlife contrary to a restriction specified or issued under § 227.72(e)(3) or (e)(6).

NMFS hereby notifies owners and operators of shrimp trawlers (as defined in 50 CFR 217.12) that, starting May 12, 1995, and ending 11:59 p.m. (local time) on May 30, 1995, fishing by shrimp trawlers in offshore waters, seaward to 10 nm (18.5 km) from the COLREGS line, along 2 sections of the Texas and Louisiana coast, the first bounded between 27° N. lat. and 28° N. lat. and the second bounded between 95°13′ W. long. and 93°20.5′ W. long., is prohibited unless shrimp trawlers comply with the following restrictions to the exceptions for incidental taking in 50 CFR 227.72(e):

1. Use of soft TEDs described in 50 CFR 227.72(e)(4)(iii) is prohibited.

2. Use of hard TEDs with bottom escape openings and special hard TEDs with bottom escape openings is prohibited. Approved hard TEDs and special hard TEDs must be configured with the slope of the deflector bars upward from forward to aft and with the escape opening at the top of the trawl.

3. Use of try nets with a headrope length greater than 12 ft (3.6 m) or a footrope length greater than 15 ft (4.5 m) is prohibited unless a NMFS-approved top-opening, hard TED or special hard TED is installed when the try nets are rigged for fishing. Try nets with a headrope length 12 ft (3.6 m) or less and a footrope length 15 ft (4.5 m) or less are exempt from the TED use requirement in accordance with the specifications of 50 CFR 227.72(e)(2)(ii)(B)(*1*).

4. Use of a webbing flap that completely covers the escape opening in the trawl is prohibited. Any webbing which is attached to the trawl, forward of the escape opening, must be cut to a length so that the trailing edge of such webbing does not approach to within 2 inches (5.1 cm) of the posterior edge of the TED grid. The requirements for the size of the escape opening are unchanged.

All provisions in 50 CFR 227.72(e), including, but not limited to 50 CFR 227.72(e)(2)(ii)(B)(*1*) (use of try nets), 50 CFR 227.72(e)(4)(iii) (approval of soft TEDs), 50 CFR 227.72(e)(4)(i)(F) (position of escape opening), and 50 CFR 227.72(e)(4)(iv)(C) (webbing flap), that do not conform to these requirements are hereby suspended for the duration of this action.

Owners and operators of shrimp trawlers in the area subject to restrictions that they may be required to carry a NMFS-approved observer aboard such vessel(s) if selected to do so by the Director, Southeast Region, NMFS, (Regional Director) upon written notification sent to either the address specified for the vessel registration or documentation purposes, or otherwise served on the owner or operator of the vessel. Shrimp trawlers must comply with the and conditions specified in such written notification.

Additional Conservation Measures

The AA may withdraw or modify the requirement for specific conservation measures or any restriction on shrimping activities if the AA determines that such action is warranted. Notification of any additional sea turtle conservation measures, including any extension of this 30-day emergency action, will be published in the **Federal Register** pursuant to 50 CFR 227.72(e)(6).

Classification

Because neither section 553 of the Administrative Procedure Act (APA), nor any other law requires that general notice of proposed rulemaking be published for this action, and under

section 603(b) of the Regulatory Flexibility Act, an initial Regulatory Flexibility Analysis is not required.

This action has been determined to be not significant for purposes of E.O. 12866.

Pursuant to section 553(b)(B) of the APA, the AA finds there is good cause to waive prior notice and opportunity to comment on this action. It is unnecessary because this action is in response to comments received on the temporary requirement published May 3, 1995 (60 FR 21741). It is also impracticable and contrary to the public interest because current restrictions placed upon fishermen are unnecessarily burdensome, and any delay in this action imposes additional unnecessary fishing restrictions.

Because this rule relieves a restriction, under section 553(d) of the APA a 30-day delay in effective date is not required.

The AA prepared an EA for the final rule (57 FR 57348, December 4, 1992) requiring TED use in shrimp trawls and establishing the 30-day notice procedures. An EA has been prepared for this action. Copies of the EA and the supplemental EA are available (see **ADDRESSES**).

Dated: May 12, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

[FR Doc. 95–12180 Filed 5–12–95; 3:47 pm]

BILLING CODE 3510–22–F

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50 CFR Part 672

[Docket No. 95020641–5041–01; I.D. 050495A]

Groundfish of the Gulf of Alaska; Vessels Using Hook-and-Line Gear

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the entire Gulf of Alaska (GOA) to directed fishing with hook-and-line gear for all species that compose the "other hook-and-line gear fishery". This action is necessary because the bycatch allowance of Pacific halibut apportioned to the "other hook-and-line gear fishery" in the GOA for the 1995 fishing year has been caught.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), May 18, 1995, until 12 midnight, A.l.t., December 31, 1995.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

In accordance with § 672.20(f)(1)(ii)(A), the 1995 Pacific halibut bycatch allowance apportioned to the "other hook-and-line gear fishery," which is defined at § 672.20(f)(1)(ii)(B)(3), is 290 metric tons (60 FR 12149, March 6, 1995).

The Director, Alaska Region, NMFS, has determined in accordance with § 672.20(f)(3)(ii) that U.S. fishing vessels participating in the "other hook-and-line gear fishery" have caught the entire Pacific halibut bycatch allowance for 1995. Therefore, NMFS is closing the entire GOA to directed fishing with hook-and-line gear for each species and/or species group composing the "other hook-and-line gear fishery".

Directed fishing standards for applicable gear types may be found in the regulations at § 672.20(g).

Classification

This action is taken under 50 CFR 672.20 and is exempt from OMB review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 12, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–12212 Filed 5–17–95; 8:45 am]

BILLING CODE 3510–22–F

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50 CFR Part 675

[Docket No. 950206040–5040–01; I.D. 051595C]

Groundfish of the Bering Sea and Aleutian Islands Area; Sharpchin/Northern Rockfish Species Category in the Aleutian Islands Subarea

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for the sharpchin/northern rockfish species category in the Aleutian Islands subarea (AI) of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the sharpchin/northern rockfish species category total allowable catch (TAC) in the AI.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), May 17, 1995, until 12 midnight, A.l.t., December 31, 1995.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

In accordance with § 675.20(a)(7)(ii) the sharpchin/northern rockfish species category TAC for the AI was established by the final groundfish specifications (60 FR 8479, February 14, 1995) as 4,338 metric tons (mt).

The Director, Alaska Region, NMFS (Regional Director), has determined, in accordance with § 675.20(a)(8), that the sharpchin/northern rockfish species category TAC in the AI soon will be reached. Therefore, the Regional Director has established a directed fishing allowance of 4,038 mt, with consideration that 300 mt will be taken as incidental catch in directed fishing for other species in the AI. The Regional Director has determined that the directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for the sharpchin/northern rockfish species category in the AI.

Directed fishing standards for applicable gear types may be found in the regulations at § 675.20(h).

Classification

This action is taken under 50 CFR 675.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 15, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–12276 Filed 5–15–95; 2:15 pm]

BILLING CODE 3510–22–F

50 CFR Part 675

[Docket No. 950206040–5040–01; I.D. 051595B]

Groundfish of the Bering Sea and Aleutian Islands Area; Greenland Turbot in the Bering Sea Subarea

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for Greenland turbot in the Bering Sea subarea (BS) of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the Greenland turbot total allowable catch (TAC) in that subarea.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), May 15, 1995, until 12 midnight, A.l.t., December 31, 1995.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

In accordance with § 675.20(a)(7)(ii), the Greenland turbot TAC for the BS was established by the notification of 1995 final specifications (60 FR 8479, February 14, 1995) as 3,969 metric tons (mt).

In accordance with § 675.20(a)(8), the Director of the Alaska Region, NMFS (Regional Director), has established a directed fishing allowance of 2,669 mt, with consideration that 1,300 mt will be taken as incidental catch in directed fishing for other species in the BS. The Regional Director has determined that the directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Greenland turbot in the BS.

Directed fishing standards for applicable gear types may be found in the regulations at § 675.20(h).

Classification

This action is taken under § 675.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 15, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–12277 Filed 5–15–95; 2:15 pm]

BILLING CODE 3510–22–F

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50 CFR Part 675

[Docket No. 950206040–5040–01; I.D. 051595A]

Groundfish of the Bering Sea and Aleutian Islands Area; Atka Mackerel in the Western Aleutian District

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for Atka mackerel in the Western Aleutian District of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the final groundfish specification of Atka mackerel in that area.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), May 15, 1995, until 12 midnight, A.l.t., December 31, 1995.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

In accordance with § 675.20(a)(7)(ii) the Atka mackerel total allowable catch (TAC) for the Western Aleutian District was established by the final initial groundfish specifications (60 FR 8479, February 14, 1995) as 14,025 metric tons (mt).

The Director, Alaska Region, NMFS (Regional Director), has determined, in accordance with § 675.20(a)(8), that the Atka mackerel TAC in the Western Aleutian District soon will be reached. Therefore, the Regional Director has established a directed fishing allowance of 13,025 mt after determining that 1,000 mt will be taken as incidental catch in directed fishing for other species in the Western Aleutian District. Consequently, NMFS is prohibiting directed fishing for Atka mackerel in the Western Aleutian District.

Directed fishing standards for applicable gear types may be found in the regulations at § 675.20(h).

Classification

This action is taken under § 675.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 15, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–12278 Filed 5–15–95; 2:15 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 60, No. 96
Thursday, May 18, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 235

[INS No. 1698–95]

RIN 1115–AD98

Preinspection Services for Aircraft, Vessels, and Trains Outside the United States

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend the Immigration and Naturalization Service's (the Service) regulations by expanding the Service's preinspection program to permit preinspection of passengers coming from places other than foreign contiguous territory and adjacent islands. This proposed rule would also permit the preinspection of railroad passengers. These proposed actions will facilitate travel to the United States.

DATES: Written comments must be submitted on or before June 19, 1995.

ADDRESSES: Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., Room 5307, Washington, DC 20536. To ensure proper handling please reference INS number 1698–95 on your correspondence.

FOR FURTHER INFORMATION CONTACT: Una Brien, Assistant Chief Inspector, Office of Inspections, 425 I Street, NW., Room 7228, Washington, DC 20536, telephone (202) 514–2681.

SUPPLEMENTARY INFORMATION:

Preinspection is the procedure whereby the Service conducts, in the host country, inspection of passengers and crewmembers as required by United States immigration and public health laws and regulations for entry into the United States. First established at Toronto, Canada, in 1952, preinspection services are currently provided at 10 different sites. However, current regulations only address preinspection of aircraft and vessels in contiguous territory and adjacent islands (8 CFR part 235.5). This proposed rule would amend current regulations by allowing preinspection in any foreign territory, not just contiguous territory and adjacent islands. This proposed rule also provides for the preinspection of passengers on trains. Since the scope of this rule is primarily administrative in nature, and because these proposed changes will provide a benefit to both the travelling public and the travel industry, the Service would like to implement the program as expeditiously as possible. Therefore, the comment period has been limited to 30 days.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. The Service's inspection and examination of persons in order to determine their admissibility to the United States is required by statute. Preinspection provides inspectional services in foreign airports outside the United States, is instituted at the request of the host government, and is considered a benefit because it facilitates passengers' admission into the United States.

Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order 12612

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12606

The Commissioner of the Immigration and Naturalization Service, certifies that she has assessed this rule in light of the criteria in Executive Order 12606 and has determined that this regulation will not have an impact on family well-being.

List of Subjects in 8 CFR Part 235

Administrative practice and procedures, Air carriers, Aliens, Immigration, Reporting and record keeping requirements.

Accordingly, part 235 of chapter I of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 235—INSPECTION OF PERSONS APPLYING FOR ADMISSION

1. The authority citation for part 235 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1183, 1201, 1224, 1225, 1226, 1227, 1228, 1252.

2. In § 235.5, paragraph (b) is revised to read as follows:

§ 235.5 Preinspection.

* *. * * *

(b) *In Foreign territory.* In the case of any aircraft, vessel, or train proceeding directly, without stopping, from a port or place in foreign territory to a Port-of-Entry in the United States, the examination and inspection of passengers and crew required by the Act and final determination of admissibility may be made immediately prior to such departure at the port or place in foreign territory and shall have the same effect under the Act as though made at the destined Port-of-Entry in the United States.

Dated: April 10, 1995.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 95–12271 Filed 5–17–95; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–71–AD]

Airworthiness Directives; Boeing Model 757 Series Airplanes Equipped with Rolls Royce Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain Boeing Model 757 series airplanes, that would have required inspection of certain fuse pins, and replacement of certain fuse pins with certain other fuse pins. That proposal was prompted by the development of new corrosion-resistant steel fuse pins. This action revises the proposed rule by including requirements for inspections of refinished straight fuse pins, and replacement of cracked refinished straight fuse pins with certain other straight fuse pins. The actions specified by this proposed AD are intended to prevent cracking of the midspar fuse pins, which may lead to separation of the strut and engine from the wing of the airplane.

DATES: Comments must be received by June 9, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–71–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Carrie Sumner, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2778; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–71–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–71–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain Boeing Model 757 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on August 9, 1994 (59 FR 40488). That NPRM would have superseded AD 93–16–08, amendment 39–8665 (58 FR 45041, August 26, 1993), to require inspection of straight fuse pins, replacement of cracked straight fuse pins with either new 15–5PH corrosion-resistant steel fuse pins or like pins, replacement of bulkhead fuse pins with new 15–5PH corrosion-resistant steel fuse pins, and repetitive inspections of newly installed fuse pins. Installation of the new 15–5PH corrosion-resistant steel fuse pins would allow a longer interval for repetitive inspection than was previously provided by AD 93–16–08. That NPRM was prompted by the development of new 15–5PH corrosion-resistant steel fuse pins. Cracking of the midspar fuse pins, if not detected and corrected in a timely manner, could result in separation of the strut and engine from the wing of the airplane.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter requests that the proposal be revised to include repetitive inspections of refinished straight fuse pins. The commenter asserts that these pins should be inspected repetitively until cracking is found, at which time they should be replaced with the new 15–5PH fuse pins. The FAA concurs. The FAA's intent was to continue the requirements of AD 93–16–08 to inspect repetitively currently installed refinished straight fuse pins. However, this requirement was inadvertently excluded; therefore, a new paragraph (b) has been added to this supplemental NPRM.

[All paragraphs subsequent to paragraph (b) have been redesignated in this supplemental NPRM to accommodate the new paragraph (b); see discussion, above.]

One commenter requests that the proposed requirement in paragraph (b) to replace the bulkhead fuse pins within 90 days be extended to 3,000 flight cycles. The commenter notes that there have been no reports of cracking or corrosion on 68 bulkhead fuse pins that had accumulated between 4,500 and 6,000 flight cycles. Further, the commenter states that its suggested 3,000-flight cycle compliance time will not adversely affect safety, since test results indicate that these fuse pins will maintain limit load beyond 5,000 flight cycles after the detection of an initial crack. Additionally, the commenter asserts that the fail-safe capability of the strut on Model 757 series airplanes can withstand full limit load with a total failure (i.e., failure of both shear planes) of the midspar fuse pin. Finally, the commenter points out that the proposed 90-day compliance time is inconsistent with that of a similar AD that requires inspections/replacement of the bulkhead fuse pins on Model 747 series airplanes.

The FAA concurs. The FAA has reviewed the test data submitted by this commenter and has determined that extending the compliance time of paragraph (c) of the supplemental NPRM to 3,000 flight cycles will not

adversely affect safety. The FAA finds that the strut of Model 757 series airplanes has fail-safe capability and can withstand full limit load, even with total failure of a midspar fuse pin.

Since issuance of the proposal, the FAA has found that the proposed repetitive inspection interval of 3,000 flight cycles for inspection of the new 15–5PH fuse pins may not coincide with operators' regularly scheduled maintenance visits. The FAA finds that extending the compliance time by 500 additional flight cycles will not adversely affect safety, and will allow the modification to be performed at a base during regularly scheduled maintenance where special equipment and trained maintenance personnel will be available if necessary. Therefore, paragraphs (a)(2)(ii), (d)(1), and (d)(2)(ii) of the supplemental notice have been revised to specify a repetitive inspection interval of 3,500 flight cycles for inspection of the new 15–5PH corrosion-resistant steel fuse pins. Additionally, the newly added paragraph (b)(2)(iii) of this supplemental NPRM, specifies a repetitive interval of 3,500 flight cycles for inspection of refinished straight fuse pins. [Paragraph (c) of the proposal has been redesignated as paragraph (d) of this supplemental NPRM; see discussion, above.]

Further, since issuance of the proposal, the FAA has found that Boeing Service Bulletin 757–54A0020, Revision 5, dated March 17, 1994 (which is referenced in the proposal as the appropriate source of service information), does not describe procedures for eddy current inspections of the new 15–5PH corrosion-resistant steel fuse pins. However, that service bulletin does describe eddy current inspection procedures for the old style fuse pins, part number 311N5067–1, and the FAA finds that these procedures are also applicable to the new 15–5PH fuse pins. Therefore, paragraphs (a)(2)(ii), (b)(2)(iii), and (d)(2)(ii) of this supplemental NPRM have been revised to reference the procedures described in the service bulletin to perform the eddy current inspections of the new 15–5PH corrosion-resistant steel fuse pins.

The FAA has reviewed and reconsidered the replacement requirements that were proposed in the original NPRM. The FAA finds that confusion may exist concerning whether straight fuse pins may be replaced independently of the other fuse pin on the same strut when only one fuse pin is cracked. It is not the FAA's intent to require replacement of uncracked fuse pins. However, the FAA has determined that it is unacceptable to mix the types of fuse pins on the same strut, since double shear load of the fuse pin depends upon the type of fuse pin. Therefore, a steel fuse pin having part number (P/N) 311N5067–1 may not be installed on the same strut that has a corrosion-resistant steel (CRES) fuse pin having P/N 311N5217–1 installed on that strut. However, each strut must have fuse pins of the same type, which may differ from fuse pins on another strut. A new paragraph (e) has been added to this supplemental notice to clarify the proposed replacement requirement.

The FAA has recently reviewed the figures it has used over the past several years in calculating the economic impact of AD activity. In order to account for various inflationary costs in the airline industry, the FAA has determined that it is necessary to increase the labor rate used in these calculations from $55 per work hour to $60 per work hour. The economic impact information, below, has been revised to reflect this increase in the specified hourly labor rate.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this supplemental notice to clarify this long-standing requirement.

Since these changes expand the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

There are approximately 306 Model 757 series airplanes equipped with Rolls Royce engines of the affected design in the worldwide fleet. The FAA estimates that 119 airplanes of U.S. registry would be affected by this proposed AD.

The inspections that were previously required by AD 93–16–08, and retained in this supplemental proposal take approximately 8 work hours per fuse pin at an average labor rate is $60 per work hour. There are 4 fuse pins per airplane. Based on these figures, the total cost impact of these inspections on U.S. operators is estimated to be $228,480, or $1,920 per airplane, per cycle. However, since the integrity and strength of the new steel fuse pins permit longer inspection intervals, the cost impact for these inspections would actually be lessened because the proposed inspections are not required to be performed as frequently as currently required by AD 93–16–08.

The proposed replacement would take approximately 56 work hours per fuse pin at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no cost to the operator. Based on these figures, the total cost impact of the proposed replacement on U.S. operators is estimated to be $1,599,360, or $13,440 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The FAA recognizes that the obligation to maintain aircraft in an airworthy condition is vital, but sometimes expensive. Because AD's require specific actions to address specific unsafe conditions, they appear to impose costs that would not otherwise be borne by operators. However, because of the general obligation of operators to maintain aircraft in an airworthy condition, this appearance is deceptive. Attributing those costs solely to the issuance of this AD is unrealistic because, in the interest of maintaining safe aircraft, most prudent operators would accomplish the required actions even if they were not required to do so by the AD.

A full cost-benefit analysis has not been accomplished for this proposed AD. As a matter of law, in order to be airworthy, an aircraft must conform to its type design and be in a condition for safe operation. The type design is approved only after the FAA makes a determination that it complies with all applicable airworthiness requirements. In adopting and maintaining those requirements, the FAA has already made the determination that they establish a level of safety that is cost-beneficial. When the FAA, as in this proposed AD, makes a finding of an unsafe condition, this means that this cost-beneficial level of safety is no longer being achieved and that the proposed actions are necessary to restore that level of safety. Because this level of safety has already been determined to be cost-beneficial, a full cost-benefit analysis for this proposed AD would be redundant and unnecessary.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8665 (58 FR 45041, August 26, 1993), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 94–NM–71–AD. Supersedes AD 93–16–08, Amendment 39–8665.

Applicability: Model 757 series airplanes equipped with Rolls Royce engines, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (f) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

Note 2: Inspections accomplished prior to the effective date of this amendment in accordance with the procedures described in Boeing Service Bulletin 757–54A0020, Revision 4, dated May 27, 1993; Revision 3, dated March 26, 1992; or Revision 2, dated October 31, 1991; are considered acceptable for compliance with the applicable inspection specified in this amendment.

To prevent cracking of the midspar fuse pins, which may lead to separation of the strut and engine from the wing of the airplane, accomplish the following:

(a) For airplanes equipped with straight fuse pins, part number (P/N) 311N5067–1: Prior to the accumulation of 5,000 total flight cycles on the straight fuse pin, perform an eddy current inspection to detect cracking in those fuse pins, in accordance with Boeing Service Bulletin 757–54A0020, Revision 5, dated March 17, 1994.

(1) If no cracking is detected, repeat the inspection thereafter at intervals not to exceed 1,500 flight cycles on the straight fuse pin.

(2) If any cracking is detected, prior to further flight, accomplish the requirements of either paragraph (a)(2)(i) or (a)(2)(ii) of this AD.

(i) Replace the cracked straight fuse pin with a new straight fuse pin, P/N 311N5067–1, and prior to the accumulation of 5,000 total flight cycles on the newly installed straight fuse pin, perform an eddy current inspection, in accordance with the service bulletin. Repeat the inspection thereafter at intervals not to exceed 1,500 flight cycles on the newly installed straight fuse pin. Or

(ii) Replace the cracked straight fuse pin with a new 15–5PH fuse pin, P/N 311N5217–1, and prior to the accumulation of 14,000 total flight cycles on the newly installed 15–5PH fuse pin, perform an eddy current inspection to detect cracking in the newly installed pin, in accordance with the procedures described in the service bulletin. Repeat the inspection thereafter at intervals not to exceed 3,500 flight cycles on the newly installed fuse pin.

(b) For airplanes equipped with refinished straight fuse pins, P/N 311N5067–1: Perform an eddy current inspection to detect cracking in those fuse pins at intervals not to exceed 1,500 flight cycles on the refinished fuse pins, in accordance with Boeing Service Bulletin 757–54A0020, Revision 5, dated March 17, 1994.

(1) If no cracking is detected, repeat the inspection thereafter at intervals not to exceed 1,500 flight cycles on the refinished straight fuse pin.

(2) If any cracking is detected, prior to further flight, accomplish the requirements of paragraph (b)(2)(i), (b)(2)(ii), or (b)(2)(iii) of this AD, in accordance with the service bulletin.

(i) Replace the cracked refinished straight fuse pin with a crack-free refinished straight fuse pin, P/N 311N5067–1, and perform an eddy current inspection to detect cracking in the refinished straight fuse pin at intervals not to exceed 1,500 flight cycles, in accordance with the procedures described in the service bulletin. Or

(ii) Replace the cracked refinished straight fuse pin with a new straight fuse pin, P/N 311N5067–1, and prior to the accumulation of 5,000 total flight cycles on the newly installed straight fuse pin, perform an eddy current inspection, in accordance with the service bulletin. Repeat the inspection thereafter at intervals not to exceed 1,500 flight cycles on the newly installed straight fuse pin. Or

(iii) Replace the cracked refinished straight fuse pin with a new 15–5PH fuse pin, P/N 311N5217–1, and prior to the accumulation of 14,000 total flight cycles on the newly installed 15–5PH fuse pin, perform an eddy current inspection to detect cracking in the newly installed pin, in accordance with the procedures described in the service bulletin. Repeat the inspection thereafter at intervals not to exceed 3,500 flight cycles on the newly installed fuse pin.

(c) For airplanes equipped with bulkhead fuse pins, P/N 311N5211–1: Within 3,000 flight cycles after the effective date of this AD, replace the bulkhead fuse pins with 15–5PH fuse pins, P/N 311N5217–1, in accordance with Boeing Service Bulletin 757–54A0020, Revision 5, dated March 17, 1994, and accomplish the requirements of paragraph (d) of this AD.

(d) For airplanes equipped with 15–5PH fuse pins: Prior to the accumulation of 14,000 total flight cycles on the 15–5PH fuse pins, perform an eddy current inspection to detect cracking in those fuse pins, in accordance with the procedures described in Boeing Service Bulletin 757–54A0020, Revision 5, dated March 17, 1994.

(1) If no cracking is detected, repeat the inspection thereafter at intervals not to exceed 3,500 flight cycles on the fuse pin.

(2) If any cracking is detected, accomplish the requirements of paragraphs (d)(2)(i) and (d)(2)(ii) of this AD.

(i) Prior to further flight, replace any cracked 15–5PH fuse pin with a new 15–5PH fuse pin, P/N 311N5217–1, in accordance with the procedures described in the service bulletin. And

(ii) Prior to the accumulation of 14,000 total flight cycles on the newly installed 15–5PH fuse pin, perform an eddy current inspection to detect cracking in the newly installed pin, in accordance with the procedures described in the service bulletin. Repeat the inspection thereafter at intervals not to exceed 3,500 flight cycles on the newly installed fuse pin.

(e) Fuse pins must be of the same type on the same strut. For example, a steel fuse pin

having P/N 311N5067–1 may not be installed on the same strut that has a corrosion-resistant steel (CRES) fuse pin having P/N 311N5217–1 installed on that strut. However, fuse pins on one strut may differ from those on another strut, provided the fuse pins are not of mixed types on the same strut.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(g) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on May 12, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–12207 Filed 5–17–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 95–NM–18–AD]

Airworthiness Directives; Bombardier Model CL–600–1A11 (CL–600), CL–600–2A12 (CL–601), CL–600–2B16 (CL–601–3A and –3R), and CL–600–2B19 (Regional Jet Series 100) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Bombardier Model CL–600–1A11, CL–600–2A12, CL–600–2B16, and CL–600–2B19 series airplanes, that currently requires an inspection to detect cracking in the rudder control quadrant; replacement of any cracked quadrant with a new assembly; and retorquing of the castellated nut, as necessary. This action would require a follow-on inspection of certain rudder control quadrants to detect cracks that start at the inside root radius of the spigot; modification of any cracked quadrant; and eventual modification of certain quadrants. This action also would add airplanes to the applicability of the existing AD. This proposal is prompted by the development of a modification, which, when installed, will positively address the identified unsafe condition. The actions specified by the proposed AD are intended to prevent loss of rudder control due to stress corrosion of the rudder control quadrant.

DATES: Comments must be received by June 19, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–18–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Quebec H3C 3G9, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Franco Pieri, Aerospace Engineer, Airframe Branch, ANE–172, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7526; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–NM–18–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–18–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On November 1, 1993, the FAA issued AD 93–22–04, amendment 39–8729 (58 FR 59161, November 8, 1993), which is applicable to certain Bombardier Model CL–600–1A11 (CL–600), CL–600–2A12 (CL–601), CL–600–2B16 (CL–601–3A and –3R), and CL–600–2B19 (Regional Jet Series 100) series airplanes. That AD requires a one-time ultrasonic or fluorescent penetrant inspection to detect cracking in the rudder control quadrant; replacement of any cracked quadrant with a new assembly; and retorquing of the castellated nut, as necessary. That action was prompted by a report of an in-flight failure of a rudder control quadrant, which resulted from stress corrosion. The requirements of that AD are intended to prevent loss of rudder control.

In the preamble to AD 93–22–04, the FAA indicated that it considered that AD to be interim action, and that further rulemaking action would be considered once final action was identified. Bombardier has now developed a modification that will positively address the unsafe condition described in the AD by providing better resistance of the rudder quadrant against stress corrosion.

Bombardier has issued the following service bulletins, which describe procedures for a one-time ultrasonic inspection of certain rudder control quadrants to detect cracks that start at the inside root radius of the spigot, and modification of any cracked quadrant.

1. Canadair Challenger Service Bulletin No. 600–0637, Revision 1, dated November 15, 1994 (for Model CL–600–1A11 series airplanes);

2. Canadair Challenger Service Bulletin No. 601–0426, Revision 1, dated November 15, 1994 (for Model CL–600–2A12 and –2B16 series airplanes); and

3. Canadair Regional Jet Alert Service Bulletin S.B. A601R–27–011, Revision 'A,' dated September 21, 1993, as revised by Notice of Revision A601R–27–011A–1, dated October 6, 1993, or Notice of Revision A601R–27–011A–2, dated June 14, 1994 (for Model CL–600–2B19 series airplanes).

The first two service bulletins also describe procedures for eventual modification of certain rudder control quadrants. (Bombardier issued Canadair Service Bulletin S.B. 601R–27–015, Revision 'A,' dated October 31, 1994, to specify these procedures for Model CL–600–2B19 series airplanes.) The modification involves removal and disassembly of the quadrant assembly and installation of a modified quadrant assembly.

Transport Canada Aviation, which is the airworthiness authority for Canada, classified these service bulletins as mandatory and issued Canadian airworthiness directive CF–94–23, dated December 1, 1994, in order to assure the continued airworthiness of these airplanes in Canada.

These airplane models are manufactured in Canada and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada Aviation has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada Aviation, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 93–22–04. It would no longer require the inspections currently specified in that AD, but would require instead a one-time ultrasonic inspection of certain rudder control quadrants to detect cracks that start at the inside root radius of the spigot; modification of any cracked quadrant; and eventual modification of certain quadrants. These actions would be required to be accomplished in accordance with the service bulletins described previously.

This proposed AD also would expand the applicability of the existing rule to include additional airplanes that have been identified as subject to the addressed unsafe condition.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this notice to clarify this long-standing requirement.

The FAA estimates that 212 airplanes of U.S. registry would be affected by this proposed AD.

Accomplishment of the proposed inspection would take approximately 4 work hours per airplane, at an average labor rate of $60 per work hour. Based on these figures, the total cost impact of the proposed inspection action on U.S. operators is estimated to be $50,880, or $240 per airplane.

Accomplishment of the proposed modification would take approximately 20 work hours per airplane, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no cost to operators. Based on these figures, the total cost impact of the proposed modification action on U.S. operators is estimated to be $254,400, or $1,200 per airplane.

Based on the figures discussed above, the total cost impact of this proposed rule on U.S. operators is estimated to be $305,280. This total cost impact figure is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish these actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8729 (58 FR 59161, November 8, 1993), and by adding a new airworthiness directive (AD), to read as follows:

Bombardier, Inc. (Formerly Canadair): Docket 95–NM–18–AD. Supersedes AD 93–22–04, Amendment 39–8729.

Applicability: Model CL–600–1A11 (CL–600) series airplanes, serial numbers 1004 through 1085 inclusive; Model CL–600–2A12 (CL–601) series airplanes, serial numbers 3001 through 3066 inclusive; Model CL–600–2B16 (CL–601–3A and –3R) series airplanes, serial numbers 5001 through 5147 inclusive; and CL–600–2B19 (Regional Jet Series 100) series airplanes, serial numbers 7003 through 7038 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification,

alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of rudder control, accomplish the following:

(a) Within 45 days after the effective date of this AD, perform an ultrasonic inspection to detect cracks at the inside root radius of the spigot of the rudder quadrant, part number (P/N) 600–92614–1 (original quadrant) or P/N 600–92614–3 (quadrant modified with undercut), in accordance with the procedures specified in Canadair Challenger Service Bulletin No. 600–0637, Revision 1, dated November 15, 1994 (for Model CL–600–1A11 series airplanes); Canadair Challenger Service Bulletin No. 601–0426, Revision 1, dated November 15, 1994 (for Model CL–600–2A12 and –2B16 series airplanes); or Canadair Regional Jet Alert Service Bulletin S.B. A601R–27–011, Revision 'A,' dated September 21, 1993, as revised by Notice of Revision A601R–27–011A–1, dated October 6, 1993, and Notice of Revision A601R–27–011A–2, dated June 14, 1994 (for Model CL–600–2B19 series airplanes); as applicable. A fluorescent penetrant inspection may be accomplished in lieu of the ultrasonic inspection provided that the rudder control quadrant assembly is removed prior to inspection.

Accomplishment of the modification required by paragraph (b) of this AD eliminates the need for the inspection required by this paragraph, provided that the modification is accomplished within 45 days after the effective date of this AD.

Note 2: Rudder quadrants having P/N's 600–92614–1 and –3 are part of the rudder quadrants having P/N's 600–92619–1 and –5, respectively.

(1) If any crack is detected, prior to further flight, modify the rudder control quadrant in accordance with Canadair Service Bulletin No. 600–0637, Revision 1, dated November 15, 1994 (for Model CL–600–1A11 series airplanes); Canadair Service Bulletin No. 601–0426, Revision 1, dated November 15, 1994 (for Model CL–600–2A12 and –2B16 series airplanes); or Canadair Service Bulletin S.B. A601R–27–015, Revision 'A,' dated October 31, 1994 (for Model CL–600–2B19 series airplanes); as applicable.

(2) If no crack is detected, no further action is required by paragraph (a) of this AD.

(b) Within 6 months after the effective date of this AD, modify the rudder control quadrant, P/N 600–92619–1 or 600–92619–5, in accordance with Canadair Service Bulletin No. 600–0637, Revision 1, dated November 15, 1994 (for Model CL–600–1A11 series airplanes); Canadair Service Bulletin No. 601–0426, Revision 1, dated November 15, 1994 (for Model CL–600–2A12 and –2B16 series airplanes); or Canadair Service Bulletin S.B. A601R–27–015, Revision 'A,' dated October 31, 1994 (for Model CL–600–2B19 series airplanes); as applicable. Accomplishment of this modification eliminates the need for the inspection required by paragraph (a) of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on May 12, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–12208 Filed 5–17–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–NM–129–AD]

Airworthiness Directives; British Aerospace Model BAe 146–100A and –200A Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain British Aerospace Model BAe 146–100A and –200A airplanes. This proposal would require modification of the glareshield and certain electrical equipment of the airplane. This proposal is prompted by a report indicating that, if the lift spoilers fail to deploy on landing, the flight crew may not receive any indication that this situation exists. The actions specified by the proposed AD are intended to ensure that the flight crew is advised when the lift spoilers fail to deploy on landing; such failure could result in the airplane overrunning the end of the runway during landing.

DATES: Comments must be received by June 29, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–129–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Avro International Aerospace, Inc., 22111 Pacific Blvd., Sterling, Virginia 20166. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–129–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–129–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain British Aerospace Model BAe 146–100A and –200A airplanes. The CAA advises that there is a possibility that, if the airplane's lift spoilers fail to deploy on landing, the flight crew may not be made aware of this situation. There currently is no method or warning installed in the flight deck to alert the flight crew that the lift spoilers have failed to deploy on landing. If the lift spoilers fail to deploy when the airplane lands, and the flightcrew is unaware of it, the airplane could overrun the end of the runway.

British Aerospace has issued Service Bulletin SB.27–70–00913A&B, Revision 7, dated March 21, 1994, which describes procedures for modifying the glareshield and certain electrical equipment of the airplane. The modification involves installing an amber warning light in the glareshield that will illuminate if the lift spoilers fail to deploy on landing. The modification also includes installing new wires, a new printed circuit board (PCB), PCB connector and polarizing key in the PCB rack, and a new relay in circuit breaker panel number two. The modification also entails performing a test of the glareshield warning light and an inhibit and fault monitoring operational test of the lift spoiler. Accomplishment of this modification will provide the flight crew with a warning if the lift spoilers fail to deploy on landing. The CAA classified this service bulletin as mandatory in order to assure the continued airworthiness of these airplanes in the United Kingdom.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require modification of the glareshield and certain electrical equipment of the airplane. The actions would be required to be accomplished in accordance with the service bulletin described previously.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this notice to clarify this long-standing requirement.

The FAA estimates that 38 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 21 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $6,000 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $275,880, or $7,260 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace Regional Aircraft Limited, AVRO International Aerospace Division (Formerly British Aerospace, plc; British Aerospace Commercial Aircraft Limited): Docket 94–NM–129–AD.

Applicability: Model BAe 146–100A and –200A airplanes; as listed in British Aerospace Service Bulletin SB.27–70–00913A&B, Revision 7, dated March 21, 1994; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To ensure that the flight crew is advised when the lift spoilers fail to deploy on landing, accomplish the following:

(a) Within 18 months after the effective date of this AD, modify the glareshield and certain electrical equipment of the airplane by installing an amber warning light in the glareshield that will illuminate if the lift spoilers fail to deploy on landing; perform a test of the glareshield warning light; and perform a lift spoiler inhibit and fault monitoring operational test; in accordance with British Aerospace Service Bulletin SB.27–70–00913A&B, Revision 7, dated March 21, 1994.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished. Issued in Renton, Washington, on May 12, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–12209 Filed 5–17–95; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 950

Wyoming Abandoned Mine Land Reclamation (AMLR) Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Wyoming AMLR plan (hereinafter, the "Wyoming plan") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of the addition of new provisions to the Wyoming plan concerning noncoal lien authority and contractor eligibility. The amendment is intended to incorporate the additional flexibility afforded by SMCRA, as amended by the Omnibus Budget Reconciliation Act of 1990, and to improve operational efficiency.

DATES: Written comments must be received by 4:00 p.m., m.d.t., June 19, 1995. If requested, a public hearing on the proposed amendment will be held on June 12, 1995. Requests to present oral testimony at the hearing must be received by 4:00 p.m., m.d.t., on June 2, 1995.

ADDRESSES: Written comments should be mailed or hand delivered to Guy Padgett at the address listed below.

Copies of the Wyoming plan, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Casper Field Office.

Guy Padgett, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 100 East B Street, Room 2128, Casper, Wyoming 82601–1918.

Bill Garland, Department of Environmental Quality, Abandoned Mine Land Division, Herschler Building, Third Floor West, 122 West 25th Street, Cheyenne, Wyoming 82002, Telephone: (307) 777–6145.

FOR FURTHER INFORMATION CONTACT: Guy Padgett, Telephone: (307) 261–5776.

SUPPLEMENTARY INFORMATION:

I. Background on the Wyoming AMLR Plan

On February 14, 1983, the Secretary of the Interior approved the Wyoming plan. Information pertaining to the general background, revisions, and amendments to the initial plan submission, as well as the Secretary's findings, the disposition of comments, and the approval of the Wyoming plan can be found in the February 14, 1983, **Federal Register** (48 FR 6536). Subsequent actions concerning Wyoming's plan and plan amendments can be found at 30 CFR 950.30 and 950.35.

II. Proposed Amendment

By letter dated April 21, 1995 (administrative record No. WY–AML–018–8), Wyoming submitted a proposed amendment to its AMLR plan pursuant to SMCRA. Wyoming submitted the proposed amendment at its own initiative to allow the implementation of two initiatives established under Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508). Wyoming proposes to revise its AMLR plan at Wyoming Statute (W.S.) 35–11–1206 (a) and (b) to (1) authorize liens against privately-owned land adversely affected by past coal or mineral mining practices, (2) limit the amount of any lien to the cost of reclamation work or to the amount determined by the appraisal to be the increase in the fair market value of the land as a result of the restoration, reclamation, abatement, control or prevention of the adverse effects of past coal or noncoal mining practices, whichever is less, (3) allow the landowner to petition the district court for the district in which most of the land is located within 60 days of the filing of the lien to determine the increase in the fair market value of the land, and (4) provide that the amount reported to be the increase in the value of the land, but not exceeding the cost of the reclamation work, shall constitute the amount of the lien. Wyoming also proposes that the revisions to W.S. 35–11–1206 (a) and (b) shall take effect on July 1, 1995.

Wyoming proposes to create W.S. 35–11–1209 to (1) prohibit the issuance of contracts under the AMLR program to any construction contractor or professional services contractor if any surface coal mining and reclamation operation owned or controlled by the contractor or any person who owns or controls the contractor has failed to pay its coal reclamation fees or has other types of violations, (2) provide that the term "ownership or controlling interest" means as defined in the Federal regulations at 30 CFR 773.5, and (3) provide that the Wyoming AMLR program will implement the provisions of this section for all new contracts awarded after April 1, 1995.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 884.15(a) and 884.14(a), OSM is seeking comments on whether the proposed amendment satisfies the applicable plan approval criteria of 30 CFR 884.14. If the amendment is deemed adequate, it will become part of the Wyoming plan.

1. Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Casper Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

2. Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., m.d.t., June 2, 1995. The location and time of the hearing will be arranged with those persons requesting the hearing. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

3. Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the administrative record.

IV. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive order 12866 (Regulatory Planning and Review).

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State AMLR plans and revisions thereof since each such plan is drafted and promulgated by a specific State, not by OSM. Decisions on proposed State AMLR plans and revisions thereof submitted by a State are based on a determination of whether the submittal meets the requirements of Title IV of SMCRA (30 U.S.C. 1231–1243) and the applicable Federal regulations at 30 CFR Parts 884 and 888.

3. National Environmental Policy Act

No environmental impact statement is required for this title since agency decisions on proposed State AMLR plans and revisions thereof are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements established by SMCRA or previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions in the analyses for the corresponding Federal regulations.

List of Subjects in 30 CFR Part 950

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 12, 1995.

John Heider,

Acting Regional Director, Western Regional Coordinating Center.

[FR Doc. 95–12264 Filed 5–17–95; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD 6010.8–R]

RIN 0720–AA29

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Clarification of the CHAMPUS Definition of Experimental

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed rule.

SUMMARY: This rule proposes to clarify the CHAMPUS definition of "experimental" and describes the process that the Office of CHAMPUS follows in determining when an experimental procedure has moved from the status of experimental to the position of nationally accepted medical practice. This clarification is necessary to ensure the CHAMPUS beneficiary and provider population understand the process the Office of CHAMPUS (OCHAMPUS) follows prior to endorsement by CHAMPUS of a new emerging medical technology, drug, or device for which the safety and efficacy have been proven to be comparable or superior to conventional therapies.

DATES: Written public comments must be received on or before July 17, 1995.

ADDRESSES: Forward comments to the Office of the Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Program Development Branch, Aurora, CO 80045–6900.

FOR FURTHER INFORMATION CONTACT: Ruth Smith, Program Development Branch, OCHAMPUS, telephone (303) 361–1181.

SUPPLEMENTARY INFORMATION:

A. Discussion of CHAMPUS Policy

Under statutes governing CHAMPUS including 10 U.S.C. 1079, CHAMPUS payments are prohibited for health care services that are "not medically or psychologically necessary." The purpose of this provision, common in health care payment programs, is to prevent CHAMPUS beneficiaries from being exposed to less than fully developed and tested medical procedures and to avoid the associated risk of unnecessary unproven treatment. CHAMPUS regulations and program policies restrict benefits to those procedures for which the safety and efficacy have been proven to be comparable or superior to conventional therapies. In general, the CHAMPUS regulations and program policies exclude cost-sharing of procedures which are experimental or investigational. The evolution of any medical technology or procedure from experimental status to one of national acceptance is often controversial, with those members of the medical community who are using and promoting the procedure arguing that the procedure has national acceptance. In determining whether a procedure is investigational, CHAMPUS uses the following hierarchy of assessment sources:

1. Outcome-based, Phase III trials published in refereed medical literature.

2. Formal technology assessments from nationally recognized technology assessment groups, such as the:

—Agency for Health Care Policy and Research (AHCPR); the

—Emergency Care Research Institute (ECRI); and the

—Food and Drug Administration (FDA).

3. National medical policy organization positions such as the:

—Medical Advisory Panel of the National Blue Cross/Blue Shield Association.

4. National professional medical associations such as those promulgated by the:

—American College of Obstetricians and Gynecologists.

5. National expert opinion organizations such as the

—Diagnostic and Therapeutic Technology Assessment (DATTA) group of the American Medical Association;

—Health Care Financing Administration Technical Advisory Committee; and the

—Office of CHAMPUS Physician Advisory Panel (representing the Uniformed Services Surgeons General). OCHAMPUS has chosen Phase III clinical trials as the test for measuring the safety and efficacy of evolving medical technology procedures. Clinical trials are organized into three phases according to the extent to which a therapy, procedure, drug or device, has progressed in testing. The phase number affixed to a study does not necessarily correspond to the disease stage of patients enrolled in it. For example, in:

Phase I clinical trials, the therapies, procedures, drugs or devices used in this stage of testing have been extensively studied in laboratory and animal tests and are usually now being given to humans for the first time. The aim is to find out how to give a drug or use a procedure, and to make sure that it does not have harmful side effects. Because the side effects in humans are unknown, only a relatively small number of people are allowed to participate.

Therapies, procedures, drugs or devices, that successfully complete Phase I trials then proceed to Phase II clinical trials. Since the therapies, procedures, drugs, or devices were extensively studied in Phase I clinical trials, side effects of each are generally known and more people are included at this phase. Many of the people involved in Phase II clinical trials still have other treatment options available to them if the trial therapy, procedure, drug, or device is not effective for them.

Next, the therapies, procedures, drugs or devices used in Phase II clinical trials move to Phase III clinical trials if each is continuing to demonstrate safety and effectiveness. In this phase the therapy, procedure, drug or device being tested is compared directly with the nationally accepted standard therapy to determine if one is superior to the other, or if one is more effective for specific types or stages of disease. Since reasonable safety and effectiveness have been shown through Phase I and Phase II, many more patients are used in a Phase III clinical trial. Additionally, the patients participating in a Phase III clinical trial usually have not undergone standard treatment. The patients participating in Phase III clinical trials are started on either standard or experimental therapy so the results can be compared. Additionally, instead of focusing on a single agent, some clinical trials study a new drug used in combination with one or more other compounds or other treatments such as surgery or radiation. These clinical trials usually enroll large numbers of people, and often they produce the most dramatic results.

CHAMPUS policy and benefit structure are never based solely on coverage offered by other third party payers, including Medicare, since each operates under different rules and requirements.

B. Need for the Regulation

This proposed rule does not present new agency policy. Rather, it proposes to reaffirm and clarify existing CHAMPUS policy in the body of the CHAMPUS regulation. We propose this primarily in response to a series of U.S. district court decisions concerning one particular experimental treatment, high dose chemotherapy (HDC) with stem cell rescue (SCR) as a treatment for breast cancer (discussed more below), in which the courts held that the CHAMPUS determination regarding this treatment was not sufficiently established to be accepted by the courts. For example, in *Hawkins* v. *Mail Handlers Benefit Plan and CHAMPUS*, Civil No. 1:94CV6, W.D.N.C. (Jan. 28, 1994), the court ruled on a motion for a preliminary injunction filed by a beneficiary of both the Mail Handlers Benefit Plan and CHAMPUS, seeking a court order overruling the exclusion in both plans of coverage for HDC/SCR as a treatment for breast cancer. The court ruled in favor of the Mail Handlers Benefit Plan, but against CHAMPUS based on judgment that the determination that this procedure was experimental was not clearly established by CHAMPUS and was not supported by the beneficiary's evidence.

Similarly, in *Wheeler* v. *Dynamic Engineering Inc., and CHAMPUS*, No. 4.94CV16, E.D.Va. (April 4, 1994), another case of a beneficiary covered by both an employer plan and CHAMPUS who sought a judgment that both should cover HDC/SCR for breast cancer treatment, the court made a distinction between a new company plan that specifically excluded the procedure and the former company plan and CHAMPUS, both of which did not expressly do so. After determining that the former plan was applicable (based on the date the treatment began), the court ruled that neither the plan nor CHAMPUS could properly exclude coverage of the procedure.

OCHAMPUS has carefully reviewed the evidence on HDC/SCR as a treatment for breast cancer. It is our conclusion that it is experimental treatment because on Phase III trials have proven the safety and efficacy of HDC/SCR to be comparable or superior to conventional therapies for breast cancer (and certain other cancers as well), and because formal technology assessment studies have concluded similarly. The CHAMPUS policy regarding the investigational nature of HDC/SCR for breast cancer is based upon four primary sources:

1. The 1988 study entitled "Public Health Service Reassessment: Autologous Bone Marrow Transplantation" prepared by the Office of Health Technology Assessment, Agency for Health Care Policy and Research (OHTA/AHCPR) of the Public Health Service, and authored by Harry Handelsman, D.O.; and

2. The American Medical Association Diagnostic and Therapeutic Technology Assessment (AMA DATTA) evaluation of January 1990 entitled "Autologous Bone Marrow Transplantation 0 Reassessment" by Elizabeth Brown, M.D.; and

3. The June 1993 study entitled "Autologous Bone Marrow Transplant and Peripheral Blood Stem Cell Rescue for the Treatment of Breast Cancer" copyright by ECRI, 5200 Butler Pike, Plymouth Meeting, PA 19462; and

4. The most recent ECRI assessment of "Autologous Bone Marrow Transplant and Peripheral Blood Stem Cell Rescue for the Treatment of Breast Cancer." Summary information on this assessment was published in Health Technology Trends in June 1994. OCHAMPUS received a copy of essentially the same material in press release form directly from ECRI on June 7, 1994. Based upon the information contained in these press releases, OCHAMPUS has requested the purchase of the completed Health Technology Assessment Report from ECRI, a draft which has already been received.

Since the time the 1988 and 1990 reports mentioned above were initially prepared, OCHAMPUS has performed a continuous review of the refereed medical literature on this topic, and has had numerous confirming discussions with the Office of Health Technology Assessment (OHTA) of the Public Health Service regarding their position. The latest of these discussions confirmed the lack of refereed medical literature that would support CHAMPUS coverage of this procedure for the treatment of breast carcinoma. Therefore, although the initial policy classifying HDC/SCR as investigational under CHAMPUS was based upon literature and technical assessments dating from the 1988–1990 time-frame, OCHAMPUS has continually monitored the development of the literature and the status of ongoing Phase III trials regarding the safety and effectiveness of this form of treatment for breast carcinoma and other carcinomas for which it is not currently authorized as a CHAMPUS benefit. The June 1993 formal assessment by ECRI provides independent reconfirmation of the CHAMPUS position. This independent reconfirmation has been substantially bolstered by the most recent ECRI studies which indicate that "results from the experimental procedure are not any better than published results for conventional therapy to treat breast cancer," and that "the impetus for this (treatment) is more political than scientific * * * (It) is a treatment that's becoming mandated by popular opinion." This most recent information reconfirms, in even stronger terms and with newer studies and literature, the earlier conclusions of previous technology assessments that HDC/SCR is experimental in the treatment of breast cancer. To date there has been no new evidence which would warrant a departure from the original coverage determination to exclude CHAMPUS cost-sharing of this procedure as investigational for the treatment of breast carcinoma. The CHAMPUS position is further supported by the Consensus Conference on Intensive Chemotherapy Plus Hematopoietic Stem Cell Transplantation in Malignacies (Journal of Oncology, Volume 12, Number 1, (January 1994); pages 226–231; (Attachment 5) which states in part:

* * * "Although there is currently insufficient evidence to justify the use of HDC/plus HSC (Hematopoietic Stem Cell) transplantation outside the setting of clinical trial for any stage of breast cancer, there is ample scientific background for vigorous clinical investigation in this important area * * *".

Based on the evidence regarding this procedure, which demonstrates that it is experimental, and the series of recent court rulings declining to follow an exclusion not clearly established in the governing instruments of the program, we believe this rule is necessary to reaffirm and clarify CHAMPUS policy on experimental procedures and to specifically list a number of procedures we have determined are experimental.

C. Provisions of the Proposed Rule

The proposed rule describes the criteria we use to identify the experimental nature of procedures, drugs, devices, includes a partial list, and makes provision for promptly treating a drug, device or procedure as no longer experimental when the scientific evidence supports that view and the resultant. Any change to the partial list will be published as a notice in the **Federal Register**.

In emphasizing refereed medical literature as the primary source of persuasive evidence that a particular procedure's safety and efficacy have been proven to be comparable or superior to conventional therapies for widespread use, we also underscore our support for committed efforts to advance medical research. A number of military medical centers are engaged in such research protocols. In addition, we are beginning a new DoD demonstration project, under the authority of 10 U.S.C. 1092, to authorize payments for experimental treatments provided to CHAMPUS beneficiaries under certain government approved phase III clinical protocols. Initially, the demonstration project will apply to clinical trials under approved National Cancer Institute protocols for high dose chemotherapy with stem cell rescue for breast cancer treatment.

D. Regulatory Procedures

Executive Order 12866 requires certain regulatory assessments for any "significant regulatory action," defined as one which would result in an annual effect on the economy of $100 million or more, or have other substantial impacts.

The Regulatory Flexibility Act (RFA) requires that each federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues regulations which would have significant impact on a substantial number of small entities.

This proposed rule is not a significant regulatory action under Executive Order 12866. This proposed rule will not involve any significant burden on the CHAMPUS beneficiary or provider population. This proposed rule only clarifies the CHAMPUS definition of experimental and describes the process that OCHAMPUS follows in determining for purposes of benefit coverage when an experimental procedure, drug, or device has moved from the status of experimental to the position of nationally accepted medical practice. This proposed rule does not impose information collection requirements on the public under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3511).

This is a proposed rule. Comments from all interested parties are solicited.

List of Subjects in 32 CFR Part 199

Claims, Handicapped, Health insurance, Military personnel.

Accordingly, 32 CFR Part 199 is proposed to be amended as follows:

1. The authority citation for Part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. chapter 55.

2. Section 199.2 is amended in paragraph (b) by revising the definition of "Experimental", removing the Note following the definition of "Experimental" and adding the definitions for "Rare diseases" and "Unlabelled or off labeled drugs" in alphabetical order to read as follows:

§ 199.2 Definitions.

* * * * *

(b) * * *

Experimental. A drug, device, or medical treatment or procedure is experimental or investigational;

(1) If the drug or device cannot be lawfully marketed without approval of the Untied States Food and Drug Administration (FDA) and approval for marketing has not been given at the time the drug or device is furnished to the patient; or

(2) If reliable evidence shows that the drug, device, or medical treatment or procedure is the subject of ongoing Phase I, II, or III clinical trials or is under study to determine its maximum tolerated dose, its toxicity, its safety, its efficacy as compared with the standard means of treatment or diagnosis; or

(3) If reliable evidence shows that the consensus of opinion among experts regarding the drug, device, or medical

treatment or procedure is that further studies or clinical trials are necessary to determine its maximum tolerated dose, its toxicity, its safety, or its efficacy as compared with the standard means of treatment or diagnosis. (See Exclusions and limitations, "Not in accordance with accepted standards, experimental or investigational" in § 199.4 for procedures in determining experimental.)

* * * * *

Rare diseases. CHAMPUS defines a rare disease as one which affects fewer than one in 200,000 Americans.

* * * * *

Unlabelled or off labeled drugs. Medications that are otherwise Food and Drug Administration (FDA) approved for general use in humans. The drug must be medically necessary for the treatment of the condition for which it is administered, according to accepted standards of medical practice.

* * * * *

3. Section 199.4 is amended by revising paragraph (g)(15) as follows:

§ 199.4 Basic program benefits.

* * * * *

(g) *Exclusions and limitations.* * * *

* * * * *

(15) *Not in accordance with accepted standards, experimental, or investigational.* Among the services excluded from CHAMPUS program benefits on the grounds that they are not medically or psychologically necessary are services and supplies not provided in accordance with accepted professional medical standards, or related to essentially experimental or investigational procedures or treatment regimens. (See the definition of "experimental" in § 199.2.)

(i) *General.* For the purpose of determining experimental:

(A) The term reliable evidence shall mean only:

(*1*) Outcome-based, Phase III trials published in refereed medical literature.

(*2*) Published formal technology assessments.

(*3*) The published reports of national professional medical associations.

(*4*) Published national medical policy organization positions.

(*5*) The published reports of national expert opinion organizations.

(B) The order given in the iteration of sources of evidence in paragraph (g)(15)(i)(A) of this section is in the order of the relative weight to be given to any particular source. Only those reports and articles containing scientifically validated data and published in the refereed medical and scientific literature shall be considered as meeting the requirements of reliable evidence. Specifically not included in the meaning of reliable evidence are reports, articles, or statements by providers or groups of providers containing only abstracts, anecdotal evidence or personal professional opinions. Also not included in the meaning of reliable evidence is the fact that a provider or a number of providers have elected to adopt a drug, device, or medical treatment or procedure as their personal treatment or procedure of choice or standard of practice.

(C)(*1*) Use of drugs and medicines and devices not approved by the FDA for commercial marketing, that is, for general use by humans (even though permitted for testing on human beings) is considered experimental. Drugs grandfathered by the Federal Food, Drug and Cosmetic Act of 1938 may be covered under CHAMPUS as if FDA approved. Certain cancer drugs, designated as Group C drugs (approved and distributed by the National Cancer Institute) and Treatment Investigational New Drugs (INDs), cannot be cost-shared under CHAMPUS because they are not approved for commercial marketing by the FDA. However, medical care related to the use of Group C drugs and Treatment INDs can be cost-shared under CHAMPUS when the patient's medical condition warrants their administration and the care is provided in accordance with generally accepted standards of medical practice. In areas outside the United States, standards comparable to those of the FDA are the CHAMPUS objective.

(*2*) CHAMPUS can consider cost-sharing "unlabelled or off label" uses of medications that are otherwise approved by the FDA for general use in humans. Approval for cost-sharing of "off label or unlabelled" indications requires review for medical necessity, and also requires demonstrations from medical literature, national organizations, and/or technology assessment bodies that the "off label or unlabelled" usage of the drug is safe, effective, and a nationally accepted standard of practice in the medical community.

(D) CHAMPUS benefits for a rare disease are reviewed on a case-by-case basis by the Director, OCHAMPUS, or designee. In reviewing the case, the Director, OCHAMPUS, or designee may consult with any or all of the following sources to determine if the proposed therapy is considered safe and effective:

(*1*) Trials published in refereed medical literature.

(*2*) Formal technology assessments.

(*3*) National medical policy organization positions.

(*4*) National professional associations.

(*5*) Regional expert opinion organizations.

(*6*) Individual and small group expert opinion.

(ii) *Care excluded.* This exclusion includes all services directly related to the experimental or investigational procedure. However, CHAMPUS may cost-share services or supplies when there is no logical or causal relationship between the experimental or investigational procedure and the treatment at issue or where such a logical or causal relationship cannot be established with a sufficient degree of certainty. This CHAMPUS cost-sharing is authorized in the following circumstances:

(A) Treatment that is not related to the investigational or experimental procedure; e.g., medically necessary in the absence of the experimental or investigational treatment.

(B) Treatment which is a necessary follow-on to the experimental or investigational procedure but which might have been necessary in the absence of the experimental or investigational treatment.

(iii) *Examples of experimental procedures.* This paragraph consists of a partial list of experimental or investigational procedures. Such procedures are excluded from CHAMPUS program benefits. This list is not all inclusive. Other experimental procedures, as defined in § 199.2, are similarly excluded, although they do not appear on this partial list. With respect to any procedure included on this partial list, if and when the Director, OCHAMPUS determines that based on the standards established in the definition of "experimental" in § 199.2, such procedure is no longer experimental or investigational, the Director will initiate action to remove the procedure from this partial list of experimental procedures. From the date established by the Director as the date the procedure became no longer experimental until the date the regulatory change is made to remove the procedures from the partial list of experimental procedures, the Director, OCHAMPUS will suspend treatment of the procedure as an experimental procedure. Following is the non-inclusive, partial list of experimental procedures, all of which are excluded from CHAMPUS benefits:

(A) Radial keratotomy (refractive keratoplasty).

(B) Cellular therapy.

(C) Histamine therapy.

(D) Stem cell assay, a laboratory procedure which allows a determination to be made of the type and dose of cancer chemotherapy drugs to be used, based on in vitro analysis of their effects on cancer cells taken from an individual.

(E) Topical application of oxygen.

(F) Immunotherapy for malignant disease.

(G) Prolotherapy, joint sclerotherapy, and ligamentous injections with sclerosing agents.

(H) Transcervical block silicone plug.

(I) Whole body hyperthermia in the treatment of cancer.

(J) Portable nocturnal hypoglycemia detectors.

(K) Testosterone pellet implants in the treatment of females.

(L) Estradiol pellet implants.

(M) Epikeratophakia for treatment of aphakia and myopia.

(N) Bladder stimulators.

(O) Ligament replacement with absorbable copolymer carbon fiber scaffold.

(P) Intraoperative radiation therapy.

(Q) Gastric bubble or balloon.

(R) Single and dual photon absorptiometry for the detection and monitoring of osteoporosis.

(S) Dorsal root entry zone (DREZ) thermocoagulation or microcoagulation neurosurgical procedure.

(T) Brain electrical activity mapping (BEAM).

(U) Topographic brain mapping (TBM) procedure.

(V) Ambulatory blood pressure monitoring.

(W) Bilateral carotid body resection to relieve pulmonary symptoms.

(X) Intracavitary administration of cisplatin for malignant disease.

(Y) Cervicography.

(Z) Ambulatory home monitoring—uterine contractions.

(AA) Sperm evaluation, hamster penetration test.

(BB) Transfer factor (TF).

(CC) Continuous ambulatory esophageal pH monitoring (CAEpHM) is considered investigational for patients under age 12 for all indications, and for patients over age 12 for sleep apnea.

(DD) Adrenal-to-brain transplantation for Parkinson's disease.

(EE) Videofluoroscopy evaluation in speech pathology.

(FF) Hemiography.

(GG) Applied kinesiology.

(HH) Hair analysis to identify mineral deficiencies from the chemical composition of the hair. Hair analysis testing may be reimbursed when necessary to determine lead poisoning.

(II) Iridology (links flaws in eye coloration with diseases elsewhere in the body).

(JJ) Small intestinal bypass (jejunoileal bypass) for treatment of morbid obesity.

(KK) Biliopancreatic bypass.

(LL) Gastric wrapping/gastric banding.

(MM) Calcium EAP/calcium orotate and selenium (also known as Nieper therapy)—Involves inpatient care and use of calcium compounds and other non-FDA approved drugs and special diets. Used for cancer, heart disease, diabetes, and multiple sclerosis.

(NN) Percutaneous balloon valvuloplasty for mitral and tricuspid valve stenosis.

(OO) Amniocentesis performed for ISO immunization to the ABO blood antigens.

(PP) Balloon dilatation of the prostate.

(QQ) Helium in radiosurgery.

(RR) Palladium ^{103}Pd) seed brachytherapy.

(SS) Electrostimulation of salivary production in the treatment of xerostomia secondary to Sjorgren's syndrome.

(TT) Interaoperative monitoring of sensory evoked potentials (SEP). To include visually evoked potentials, brainstem auditory evoked response, somatosensory evoked potentials during spinal and orthopedic surgery, and sensory evoked potentials monitoring of the sciatic nerve during total hip replacement. Recording SEPs in unconscious head injured patients to assess the status of the somatosensory system. The use of SEPs to define conceptional or gestational age in preterm infants.

(UU) Autolymphocyte therapy (ALT) (immunotherapy used for treating metastatic kidney cancer patients).

(VV) Radioimmunoguided surgery in the detection of cancer.

(WW) HLA–DNA typing.

(XX) Gait analysis (also known as a walk study or electrodynogram).

(YY) Cryosurgery for liver metastases.

(ZZ) Use of cerebellar stimulators/pacemakers for the treatment of neurologic disorders.

(AAA) Signal-averaged ECG.

(BBB) Intraventricular administration of narcotics.

(CCC) Peri-urethral Teflon injections to manage urinary incontinence.

(DDD) Extraoperative electrocorticography for stimulation and recording in order to determine electrical thresholds of neurons as an indicator of seizure focus.

(EEE) Quantitative computed tomography (QCT) for the detection and monitoring of osteoporosis.

(FFF) Percutaneous transluminal angioplasty in the treatment of obstructive lesions of the carotid, vertebral and cerebral arteries.

(GGG) Endoscopic third ventriculostomy.

(HHH) Holding therapy—Involves holding the patient in an attempt to achieve interpersonal contact, and to improve the patient's ability to concentrate on learning tasks.

(III) In utero fetal surgery.

(JJJ) Light therapy for seasonal depression (also known as seasonal affective disorder (SAD)).

(KKK) Transurethral laser incision of the prostrate (TULIP).

(LLL) Contigen Bard® collagen implant.

(MMM) Dorsal column and deep brain electrical stimulation of treatment of motor function disorder.

(NNN) Chelation therapy, except under specific conditions.

(OOO) All organ transplants *except* heart, heart-lung, lung, kidney, some bone marrow, liver, liver-kidney, corneal, and heart-valve.

(PPP) Implantable infusion pumps, *except* for hepatic artery perfusion chemotherapy for the treatment of primary liver cancer or metastatic colorectal liver cancer.

(QQQ) Services related to the candidiasis hypersensitivity syndrome, yeast syndrome, or gastrointestinal candidiasis (i.e., allergenic extracts of Candida albicans for immunotherapy and/or provocation/neutralization).

(RRR) Treatment of chronic fatigue syndrome.

(SSS) Extracorporeal immunoadsorption using protein A columns for conditions other than acute idiopathic thrombocytopenia purpura.

(TTT) Dynamic posturography (both static and computerized).

(UUU) Laparoscopic myomectomy.

(VVV) Growth factor, including platelet-derived growth factors, for treating non-healing wounds. This includes procuremen®, a platelet-derived wound-healing formula.

(WWW) High dose chemotherapy with stem cell rescue (HDC/SCR) for any of the following malignancies:.

(*1*) Breast cancer.

(*2*) Ovarian cancer.

(*3*) Testicular cancer.

(*4*) Multiple myeloma.

* * * * *

Dated: May 11, 1995.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–12031 Filed 5–17–95; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD09–95–004]

Drawbridge Operation Regulations; Chicago River, IL

AGENCY: Coast Guard, DOT.

ACTION: Notice of establishment of negotiated rulemaking committee and first meeting.

SUMMARY: The Coast Guard establishes a negotiated rulemaking committee to develop regulations governing the operation of Chicago owned drawbridges over the Chicago River in Chicago, Illinois and the passage of recreational vessels under those bridges. The committee is established in accordance with the Negotiated Rulemaking Act of 1990 and the Federal Advisory Committee Act.

DATES: The first meeting of the negotiated rulemaking committee will be held on June 5, 1995 between 9:00 A.M. and 5:00 P.M. Additional meetings will be held on June 14, 1995, June 20, 1995, June 28, 1995 and July 12, 1995, at the same times and place, unless otherwise scheduled by the committee.

ADDRESSES: The committee meetings will be held in room 326, Ralph H. Metcalfe Federal Building, 77 West Jackson Street, Chicago, Illinois, 60604.

FOR FURTHER INFORMATION CONTACT: Carolyn Malone, Ninth District Bridge Branch, Ninth Coast Guard District, 1240 East Ninth Street, room 2083, Cleveland, Ohio, (216) 522–3993 between the hours of 8:00 A.M. and 3:00 P.M. Should the dates, times or location of any subsequent committee meeting change, recorded information will be provided at the above telephone number outside of those hours.

SUPPLEMENTARY INFORMATION: The Coast Guard published a notice of intent (notice) to form a negotiated rulemaking committee on April 10, 1995 (60 FR 18061). The notice discussed the Coast Guard's intention to proceed in accordance with the Negotiated Rulemaking Act of 1990 (Pub. L. 101–648) and establish the Chicago Drawbridge Negotiated Rulemaking Committee (committee) to develop regulations that provide a permanent and acceptable resolution to the issues involved in drawbridge openings for recreational vessels on the Chicago River. Regulations governing the operation of the drawbridges are located at 33 CFR 117.391 and are issued under the authority of 33 U.S.C. 499. The notice also identified interests that would be affected by amendments to the current regulations. The Coast Guard solicited comments on the issues raised in the notice and nominations for membership on the committee. The closing date for comments and nominations was May 8, 1995.

No comments were received on the issues to be considered by the committee. Several nominations for membership were received. Separate discussions were held by the neutral facilitator engaged by the Coast Guard with each of the interests identified in the notice and with others identified during the comment period. As a result, the Coast Guard is establishing the committee and beginning the negotiation process. As required by the Federal Advisory Committee Act (5 U.S.C. App.) (FACA), the committee charter has been approved by the Secretary of Transportation and submitted to the General Services Administration. The following interests are represented on the committee: the City of Chicago, boatyard owners, boaters, commercial interests in Chicago, and the Coast Guard.

The first meeting of the committee will be held in Chicago on June 5, 1995 at the time and location indicated at the beginning of this notice. The purpose of the first meeting is to: (1) Discuss the charter, goals, and mission of the committee; (2) present the issues to be considered by the committee; and (3) approve the organizational protocols by which the committee will operate. At the first session, there will be discussion of the negotiation and rulemaking process and an explanation of the statutory basis for the Coast Guard's drawbridge regulations.

The schedule of additional meetings provided earlier in this notice will be considered by the committee at its first meeting. In order for new regulations to be effective for the Fall 1995 close of the boating season, committee meetings must be concluded by 12 July 1995. Therefore, this schedule may be changed and additional meetings may be held on short notice. Announcements of these meetings will be published in the **Federal Register** if time for meaningful advance notice is available. Information on all meetings of the committee will be available by calling (216) 522–3993 or from the contact person indicated at the beginning of this notice.

Attendance at committee meetings is open to the public, subject to space availability. Persons wishing to present oral statements at a meeting should notify the contact person no later than the day before the meeting. Any member of the public may submit written statements to the committee at any time, also through the contact person.

Dated: May 11, 1995.

Paul J. Pluta,

Captain, United States Coast Guard, Commander, Ninth Coast Guard District, Acting.

[FR Doc. 95–12284 Filed 5–17–95; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[FRL–5206–2]

Inspection and Maintenance Flexibility Amendments

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; extension of public comment period.

SUMMARY: This action extends the comment period to the proposed rule published on April 28, 1995 (60 FR 20934). EPA is extending the comment period to June 1, 1995.

DATES: Written comments on the proposed rule must be received no later than June 1, 1995. A public hearing is scheduled for May 17, 1995 and will be held at Weber's Inn at 3050 Jackson Road, Ann Arbor, Michigan 48103, from 9 a.m. through 5 p.m.

ADDRESSES: Interested parties may submit written comments (in duplicate if possible) to Public Docket No. A–95–08. It is requested that a duplicate copy be submitted to Eugene J. Tierney at the Office of Mobile Sources, National Vehicle and Fuel Emissions Laboratory, 2565 Plymouth Road, Ann Arbor, Michigan, 48105. The docket is located at the Air Docket, Room M–1500 (6102), Waterside Mall SW., Washington, DC 20460. The docket may be inspected between 8:30 a.m. and 12 noon and between 1:30 p.m. until 3:30 p.m. on weekdays. A reasonable fee may be charged for copying docket material.

FOR FURTHER INFORMATION CONTACT: Eugene J. Tierney, Telephone (313) 668–4456.

SUPPLEMENTARY INFORMATION:

Background

EPA announced its intent to amend the I/M Program Requirements in December 1994 and held stakeholders' meetings on January 24, 1995 and January 31, 1995. The proposal creates a second, less stringent enhanced I/M performance standard that could be used in areas that can demonstrate an ability to meet the 1990 Clean Air Act deadlines for Reasonable Further Progress and attainment while implementing an I/M program that falls below the originally promulgated enhanced I/M performance standard. The proposed action would also revise the high enhanced I/M performance standard to include a visual inspection of the positive crankcase ventilation (PCV) valve on all light-duty vehicles and light-duty trucks from model years 1968 to 1971, inclusive, and of the exhaust gas recirculation (EGR) valve on all light-duty vehicles and light-duty trucks from model years 1972 through 1983, inclusive. The proposal also solicits public comment on whether or not EPA should include revised regulatory language in its final rulemaking which change the population cutoff for basic I/M from 50,000 persons to 200,000 persons. Lastly, the proposal would make clarifying amendments to the I/M requirements for areas undergoing redesignation.

Dated: May 10, 1995.

Mary Nichols,

Assistant Administrator for Air and Radiation.

[FR Doc. 95–12175 Filed 5–17–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 95–64, RM–8618]

Radio Broadcasting Services; Talking Rock, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Funseeker's Network, Inc., requesting the allotment of Channel 261A to Talking Rock, Georgia, as that community's first local transmission service. Channel 261A can be allotted to Talking Rock in compliance with the Commission's minimum distance separation requirements with a site restriction of 13.6 kilometers (8.5 miles) north, in order to avoid a short-spacing to the licensed sites of Station WNNX(FM), Channel 259C, Atlanta, Georgia, and Station WUSY(FM), Channel 264C, Cleveland, Tennessee. The coordinates for Channel 261A at Talking Rock are North Latitude 34–37–54 and West Longitude 84–31–24.

DATES: Comments must be filed on or before July 6, 1995, and reply comments on or before July 21, 1995.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: M. Scott Johnson, Lauren S. Drake, Gardner, Carton & Douglas, 1301 K Street, NW, Suite 900, East Tower, Washington, D.C. 20005 (Attorneys for Petitioner).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 95–64, adopted May 8, 1995, and released May 15, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1919 M Street, NW, Room 246, or 2100 M Street, NW, Suite 140, Washington, D.C. 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–12219 Filed 5–17–95; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 95–63, RM–8617]

Radio Broadcasting Services; Rushville, IL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Larry K. and Cathy M. Price, requesting the substitution of Channel 223A for Channel 244A at Rushville, Illinois. Channel 223A can be substituted for Channel 244A at Rushville, Illinois, in compliance with the Commission's minimum distance separation requirements at petitioners licensed site with a site restriction of 8.3 kilometers (5.1 miles) northwest of the community. The proposed coordinates for Channel 223A at Rushville are North Latitude 40–08–20 and West Longitude 90–39–26.

DATES: Comments must be filed on or before July 6, 1995, and reply comments on or before July 21, 1995.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Larry K. and Cathy M. Price, P.O. Box 196, 123 North Liberty Street, Rushville, Illinois 62681 (Petitioners).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 95–63, adopted May 8, 1995, and released May 15, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1919 M Street, NW, Room 246, or 2100 M Street, NW, Suite 140, Washington, D.C. 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–12220 Filed 5–17–95; 8:45 am]

BILLING CODE 6712–01–F

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47 CFR Part 73

[MM Docket No. 95–66; RM–8625]

Radio Broadcasting Services; Dayton, WA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Steven C. Hoffman proposing the allotment of Channel 272A at Dayton, Washington, as the community's second local FM transmission service. Channel 272A can be allotted to Dayton in compliance with the Commission's minimum distance separation requirements with a site restriction of 3.0 kilometers (1.9 miles) southwest to avoid a short-spacings to the construction permit site for Channel 273C3 at Colfax, Washington, and Station KORD(FM), Channel 274C, Richland, Washington. The coordinates for Channel 272A at Dayton are North Latitude 46–17–57 and West Longitude 117–59–52. Since Dayton is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government has been requested.

DATES: Comments must be filed on or before July 6, 1995, and reply comments on or before July 21, 1995.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Steven C. Hoffman, 1420 S. 2nd Street, Dayton, Washington 99328 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 95–66, adopted May 5, 1995, and released May 15, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, D.C. 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–12221 Filed 5–17–95; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AD20

Endangered and Threatened Wildlife and Plants; Proposed Special Rule for the Conservation of the Northern Spotted Owl on Non-Federal Lands

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Reopening of the Comment Period for the Proposed Special Rule.

SUMMARY: On February 17, 1995, the Fish and Wildlife Service (Service) published a proposed special rule, pursuant to section 4(d) of the Endangered Species Act (Act), to replace the blanket prohibitions against incidental take of spotted owls with a narrower, more tailor-made set of standards that reduce prohibitions applicable to timber harvest and related activities on specified non-Federal forest lands in Washington and California. The original deadline for comments on the proposed rule was May 18, 1995. The intent of this notice is to reopen the comment period to July 17, 1995.

DATES: The comment period for written comments is reopened until July 17, 1995.

ADDRESSES: Comments and materials concerning this proposed rule should be sent to Mr. Michael J. Spear, Regional Director, Region 1, U.S. Fish and Wildlife Service, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181.

FOR FURTHER INFORMATION CONTACT: Mr. Curt Smitch, Assistant Regional Director, North Pacific Coast Ecoregion, 3704 Griffin Lane SE, Suite 102, Olympia, Washington 98501 (360/534–9330); or Mr. Gerry Jackson, Deputy Assistant Regional Director, North Pacific Coast Ecoregion, 911 N.E. 11th Avenue, Portland Oregon 97232–4181, (503/231–6159).

SUPPLEMENTARY INFORMATION:

Background

The implementing regulations for threatened wildlife generally incorporate the prohibitions of section 9 of the Endangered Species Act of 1973, as amended (Act), for endangered wildlife, except when a "special rule" promulgated pursuant to section 4(d) of the Act has been issued with respect to a particular threatened species. At the time the northern spotted owl, *Strix occidentalis caurina*, was listed as a threatened species in 1990, the Service did not promulgate a special section 4(d) rule and therefore, all of the section 9 prohibitions, including the "take" prohibitions, became applicable to the species. To replace the blanket prohibitions against take of spotted owls, the Service published a proposed special rule, 50 CFR part 17, on February 17, 1995, (60 FR 9484), in the **Federal Register**, pursuant to section 4(d) of the Act, which proposes a narrower, more tailor-made set of standards that reduce prohibitions applicable to timber harvest and related activities on specified non-Federal forest lands in Washington and California.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Authority: The authority for this action is the Endangered Species Act of 1973, as ammended (16 U.S.C. 1531 *et seq.*)

Dated: May 12, 1995.

Thomas Dwyer,

Acting Regional Director, U.S. Fish and Wildlife Service, Region 1, Portland, Oregon.

[FR Doc. 95–12202 Filed 5–17–95; 8:45 am]

BILLING CODE 4310–55–P

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50 CFR Part 17

RIN 1018–AC96

Endangered and Threatened Wildlife and Plants; Reopening and Extension of Comment Period on Proposed Endangered Status for Four Plants From Vernal Pools and Mesic Areas in Northern California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening and extension of comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service), pursuant to the Endangered Species Act of 1973, as amended (Act), announces a reopening and extension of the comment period on the proposed determination of endangered status for *Lasthenia conjugens* (Contra Costa goldfields), *Navarretia leucocephala* ssp. *pauciflora* (few-flowered navarretia), *Navarretia leucocephala* ssp. *plieantha* (many-flowered navarretia), and *Parvisedum leiocarpum* (Lake County stonecrop). Written comments on the proposed rule will be accepted until June 19, 1995.

DATES: The comment period, which originally closed on February 17, 1995, was extended by request to April 28, 1995. By additional request, the comment period, which closed on April 28, 1995, is reopened and now closes June 19, 1995. Any comments received by the closing date will be considered in the final decision on this proposal.

ADDRESSES: Written comments and materials concerning this proposal should be sent to Field Supervisor, Sacramento Field Office, 2800 Cottage Way, Room E–1803, Sacramento, California 95825–1846. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Betty Warne (see **ADDRESSES** section) or at 916/979–2120.

SUPPLEMENTARY INFORMATION:

Background

These four plant species grow in vernal pools and mesic grasslands and are found variously in Lake, Napa, and Solano Counties. The three remaining populations of *Parvisedum leiocarpum* occur on private lands in Lake County. The Five remaining populations of *Lasthenia conjugens* occur in Napa and Solano Counties. The three remaining populations of *Navarretia leucocephala* ssp. *pauciflora* occur in Napa and Lake Counties. The four remaining populations of *Navarretia leucocephala* ssp *plieantha* occur in Lake County. The four species proposed for listing are imperiled by one or more of the following: Commercial, residential, and agricultural development; hydrological changes in vernal pool and swale habitats; trampling by livestock; road widening; inadequate regulatory protection mechanisms; random stochastic events; off-highway vehicle use; feral pigs; and horseback riding.

On December 19, 1994, (59 FR 65311) the Service published a proposed rule to list *Lasthenia conjugens*, *Navarretia leucocephala* ssp. *pauciflora*, *Navarretia leucocephala* ssp. *plieantha*, and *Parvisedum leiocarpum* as endangered under the Endangered Species Act of 1973, as amended. The comment period on the proposal originally closed on February 17, 1995. To accommodate the public hearing, held on April 6, 1995, the Service extended the public comment period until April 28, 1995 (60 FR 14253, March 16, 1995). In response to an oral request made by Mr. Michael Delbar, Lake County Farm Bureau, on March 27, 1995, the Service reopens and further extends the comment period. This extension allows for the collection of additional data during the 1995 field season on the status and distribution of the proposed plants. Written comments may now be submitted until June 19, 1995, to the Service office in the **ADDRESSES** section.

Author

The primary author of this notice is Betty Warne (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: May 12, 1995.

Thomas Dwyer,

Acting Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 95–12203 Filed 5–17–95; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register

Vol. 60, No. 96

Thursday, May 18, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

May 12, 1995.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) Who will be required or asked to report; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 690–2118.

Revision

- Agricultural Marketing Service

National Research, Promotion, and Consumer Information Programs
Individual or households; Business or other for-profit; 4,617,405 responses; 409,961 hours
Kenneth R. Payne, (202) 720–1115

- National Agricultural Statistic Service

Field Crops Production
Business or other for-profit; Farms; 530,859 responses; 124,767 hours
Larry Gambrell, (202) 720–5778

- Animal and Plant Health Inspection Service

9 CFR Part 166—Swine Health Protection
VS 13–2, VS 13–5, VS 13–16, VS 13–17
Business or other for-profit; Farms; 656 responses; 584 hours
Joseph F. Annelli (301) 734–7767

Extension

- Rural Economic & Community Development

7 CFR 1955–B, Management of Property
Individuals or households; Business or other for-profit; Federal Government; State, Local or Tribal Government; 2,810 responses; 960 hours
Jack Holston, (202) 720–9736

- Forest Service

36 CFR Part 228, Subpart A—Locatable Minerals
FS–2800–5
Individual or households; Business or other for-profit; 2,000 responses; 4,000 hours
Sam Hotchkiss, (202) 205–1535

- Animal and Plant Health Inspection Service

Certificate for Poultry and Hatching Eggs for Export
VS–17–6
Individuals or households; Business or other for-profit; Farms; Federal Government; State, Local or Tribal Government; 21,000 responses; 10,500 hours
Andrea M. Morgan, (301) 734–8383

Reinstatement

- Rural Utilities Service

Accounting Requirements for RUS Telephone Borrowers
Individuals or households; Not-for-profit institutions; 900 responses; 10,800 hours
Robert Purcell, (202) 720–5227

Larry K. Roberson,

Deputy Departmental Clearance Officer.

[FR Doc. 95–12262 Filed 5–17–95; 8:45 am]

BILLING CODE 3410–01–M

Agricultural Research Service

Notice of Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of availability and intent.

SUMMARY: Notice is hereby given that the U.S. Plan Variety Protection Application Serial No. 94–00–265 "Rush Intermediate Wheatgrass," is available for licensing and that the United States Department of Agriculture, Agricultural Research Service, intends to grant an exclusive license to the University of Idaho. A public notice of release for this variety was held on February 14, 1994.

DATES: Comments must be received by no later than August 16, 1995.

ADDRESSES: Send comments to: USDA–ARS–Office of Technology Transfer, Beltsville Agricultural Research Center, Baltimore Boulevard, Building 005, Room 416, BARC–W, Beltsville, Maryland 20705–2350.

FOR FURTHER INFORMATION CONTACT: Andrew Watkins of the Office of Technology Transfer at the Beltsville address given above; telephone: 301/504–6786.

SUPPLEMENTARY INFORMATION: The Federal Government's plant variety protection rights to this variety are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention, for the University of Idaho has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within ninety days from the date of this published Notice, ARS receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

R.M. Parry,

Assistant Administrator.

[FR Doc. 95–12263 Filed 5–17–95; 8:45 am]

BILLING CODE 3410–03–M

Forest Service

Southwest Oregon Provincial Interagency Executive Committee (PIEC), Advisory Committee

AGENCY: Forest Service USDA.

ACTION: Notice of meeting.

SUMMARY: The Southwest Oregon PIEC Advisory Committee will meet on June 1, 1995 at the Coos Bay Red Lion Hotel, 1313 North Bayshore Drive, Coos Bay, Oregon. The meeting will begin at 9:00 a.m. and continue until 4:30 p.m. Agenda items to be covered include: (1) Summary of the Record of Decision for Amendments to Forest Service and Bureau of Land Management Planning Documents Within the Range of the Northern Spotted Owl; (2) Federal agency and public issues that the Advisory Committee may want to consider; (3) Identification of high priority Advisory Committee work; (4) Open public forum. All Southwest Oregon Province Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Chuck Anderson, Province Advisory Committee staff, USDA, Rogue River National Forest, P.O. Box 520, Medford, Oregon 97501, 503–858–2322.

Dated: May 10, 1995.

Jame T. Gladen,

Forest Supervisor.

[FR Doc. 95–12172 Filed 5–17–95; 8:45 am]

BILLING CODE 3410–11–M

Wildcat River Advisory Commission

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Wildcat River Advisory Commission will meet at the Jackson Town Hall in Jackson, New Hampshire, on June 14, 1995. The purpose of the meeting is to continue with the development of a Draft River Management Plan for administration of the designated Wild and Scenic Wildcat River. The Wild and Scenic Rivers Act requires the establishment of an advisory commission to advise the Secretary of Agriculture on administration of the river. The public is encouraged to attend the meeting and may provide written comment on the plan to the commissioners c/o the district office.

DATES: The meeting will be held June 14, 1995, at 7:30 p.m.

ADDRESSES: The meeting will be held at the Jackson Town Hall, Route 16B, Jackson, New Hampshire.

Send written comments to David Pratt III, Saco Ranger District, White Mountain National Forest, 33 Kancamagus Highway, Conway, NH 03818.

FOR FURTHER INFORMATION CONTACT: David Pratt III, Saco Ranger District, (603) 447–5448.

Dated: May 9, 1995.

Charles L. Myers,

Acting Forest Supervisor.

[FR Doc. 95–12222 Filed 5–17–95; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 735]

Approval for Manufacturing Authority (Plastic Food/Beverage Containers) Within Foreign-Trade Zone 9 Honolulu, Hawaii

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

After consideration of the application of the Department of Business, Economic Development & Tourism of the State of Hawaii, grantee of FTZ 9, filed with the Foreign-Trade Zones (FTZ) Board on March 25, 1994, requesting authority on behalf of Pacific Allied Products, Ltd., to manufacture plastic food/beverage containers under zone procedures within FTZ 9 solely for the Hawaiian and export markets, the Board, finding that the requirements of the Foreign-Trade Zones Act and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the activity proposed in the application for a period of 5 years (until July 1, 2000), subject to extension upon review.

Approval is subject to the FTZ Act and the FTZ Board's regulations, including Section 400.28.

Signed at Washington, DC, this 5th day of May 1995.

Susan G. Esserman,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 95–12194 Filed 5–17–95; 8:45 am]

BILLING CODE 3510–DS–P

[Order No. 739]

Revision of Grant of Authority Subzone 124C Star Enterprise (Oil Refinery) Convent, Louisiana

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones (FTZ) Board (the Board) authorized subzone status at the refinery complex of Star Enterprise in Convent, Louisiana, in 1993, subject to three conditions (Subzone 124C, Board Order 667, 59 FR 60, 1/3/94);

Whereas, the South Louisiana Port Commission, grantee of FTZ 124, has requested pursuant to § 400.32(b)(1)(i), a revision (filed 3/27/95, (A(32b1)–2–95; FTZ Doc. 18–95, assigned 5/2/95) of the grant of authority for FTZ Subzone 124C which would make its scope of authority identical to that recently granted for FTZ Subzone 199A at the refinery complex of Amoco Oil Company, Texas City, Texas (Board Order 731, 60 FR 13118, 3/10/95); and,

Whereas, the request has been reviewed and the Assistant Secretary for Import Administration, acting for the Board pursuant to § 400.32(b)(1), concurs in the recommendation of the Executive Secretary, and approves the request;

Now Therefore, the Board hereby orders that, subject to the Act and the Board's regulations, including § 400.28, Board Order 667 is revised to replace the three conditions currently listed in the Order with the following conditions:

1. Foreign status (19 CFR 146.41, 146.42) products consumed as fuel for the refinery shall be subject to the applicable duty rate.

2. Privileged foreign status (19 CFR 146.41) shall be elected on all foreign merchandise admitted to the subzone, except that non-privileged foreign (NPF) status (19 CFR 146.42) may be elected on refinery inputs covered under HTSUS Subheadings # 2709.00.1000–# 2710.00.1050 and # 2710.00.2500 which are used in the production of:

—Petrochemical feedstocks and refinery by-products (FTZ staff report, Appendix B);
—Products for export; and,
—Products eligible for entry under HTSUS # 9808.00.30 and 9808.00.40 (U.S. Government purchases).

3. The authority with regard to the NPF option is initially granted until September 30, 2000, subject to extension.

Signed at Washington, DC, this 9th day of May 1995.

Paul L. Joffe,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 95–12195 Filed 5–17–95; 8:45 am]

BILLING CODE 3510–DS–P

[Order No. 736]

Approval of Manufacturing Activity Columbus Industries, Inc. (Air Filters) Within Foreign-Trade Zone 138 Columbus, Ohio

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Board's regulations require Board approval prior to commencement of new manufacturing/processing activity within existing zone facilities;

Whereas, the Rickenbacker Port Authority, grantee of FTZ 138, has requested authority under § 400.32(b)(1) of the Board's regulations on behalf of Columbus Industries, Inc., to manufacture air filters under zone procedures within FTZ 138, Columbus, Ohio (filed 4/29/94, FTZ Docket A(32b1)–1–94; amended 8/9/94; Doc. 11–95, assigned 3/29/95);

Whereas, pursuant to said provision, the Commerce Department's Assistant Secretary for Import Administration has the authority to act for the Board in making such decisions in situations where the incoming merchandise for the proposed activity is admitted in foreign-privileged status (§ 400.32(b)(1)(iii));

Whereas, the request, as amended, states that Columbus Industries will pay full duties on all merchandise admitted to the zone for its use in the manufacture of products for the domestic market (e.g., no duty exemption will be claimed for scrap and waste); and

Whereas, the FTZ Staff has reviewed the proposal, taking into account the criteria of § 400.31, and the Executive Secretary has recommended approval;

Now, Therefore, the Assistant Secretary for Import Administration, acting for the Board pursuant to § 400.32(b)(1), concurs in the recommendation and hereby approves the request, as amended, subject to the Act and the Board's regulations, including § 400.28, and subject to the further requirement that all merchandise admitted to the zone for the Columbus Industries operation shall be placed in privileged foreign status (19 CFR 146.41).

Signed at Washington, DC, this 5th day of May 1995.

Susan G. Esserman,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 95–12196 Filed 5–17–95; 8:45 am]

BILLING CODE 3510–DS–P

[Dockets 21–95; 22–95]

Foreign-Trade Zone 168—Dallas-Fort Worth, Texas; Foreign-Trade Zone 196—Fort Worth, Texas; Requests for Expanded Manufacturing Authority Nokia Mobile Phones Manufacturing (USA), Inc. (Telecommunications Products)

Applications have been submitted to the Foreign-Trade Zones Board (the Board) by the Foreign-Trade Zone Operating Company of Texas, operator of FTZ 168, and Alliance Corridor, Inc., grantee of FTZ 196, requesting authority on behalf of Nokia Mobile Phones Manufacturing (USA), Inc./Nokia Mobile Phones Trading (USA), Inc. (Nokia), to expand Nokia's authority to manufacture telecommunications products under zone procedures within FTZ 168 and FTZ 196. The applications were submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). They were formally filed on May 8, 1995.

The FTZ Board authorized Nokia to manufacture cellular phones using certain foreign components under zone procedures within FTZ 168 and FTZ 196 in late 1994 (Board Orders 728 and 729, 60 FR 2376, 1/9/95).

Nokia is now seeking authority to manufacture a broader range of telecommunications products at its plants within FTZ 168 and FTZ 196, including mobile/cellular phones, cellular phone systems equipment, office and cellular switching systems, telecommunications network equipment, and related signal and data processing equipment. Many of the components for the finished cellular phones are currently sourced from abroad, including printed circuits, integrated circuits, semiconductors, resistors, capacitors, diodes, crystals, liquid crystal display panels, switches, speakers, antennas, power supplies, transformers, batteries, pagers, leather and plastic cases, rubber and plastic parts, fasteners, iron and steel parts, and packaging materials. Other components that may also be sourced from abroad include signal reception and transmission equipment, sound recording equipment, electric motors, glass envelopes, propylene, cabinets, wire, cable, and computers/components.

Zone procedures would exempt Nokia from Customs duty payments on the foreign components used in export production. On its domestic sales, the company would be able to choose the duty rates that apply to finished products (free-8.7%). The duty rates on components range from duty-free to 15 percent. The applications indicate that savings from zone procedures would help the international competitiveness of Nokia's domestic plants.

In accordance with the Board's regulations, a member of the FTZ Staff has been appointed examiner to investigate the applications and report to the Board.

Public comment on the applications is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is July 17, 1995. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to August 1, 1995).

Copies of the applications and the accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce, District Office, 2050 N. Stemmons Freeway, Suite 170, Dallas, TX 75258

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: May 10, 1995.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 95–12197 Filed 5–17–95; 8:45 am]

BILLING CODE 3510–DS–P

[Order No. 740]

Revision of Grant of Authority, Subzone 116A, Star Enterprise (Oil Refinery); Jefferson/Hardin Counties, Texas

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones (FTZ) Board (the Board) authorized subzone status at the refinery complex of Star Enterprise in Jefferson/Hardin Counties (Port Arthur area), Texas, in 1993, subject to three conditions (Subzone 116A, Board Order 668, 59 FR 61, 1/3/94);

Whereas, the Foreign-Trade of Southeast Texas, grantee of FTZ 116, has requested pursuant to § 400.32(b)(1)(i), a revision (filed 3/27/95, A(32b1)-3–95; FTZ Doc. 19–95, assigned 5/2/95) of the grant of authority for FTZ Subzone 116A which would make its scope of authority identical to that recently granted for FTZ Subzone 199A at the refinery complex of Amoco Oil Company, Texas City, Texas (Board Order 731, 60 FR 13118, 3/10/95); and,

Whereas, the request has been reviewed and the Assistant Secretary for Import Administration, acting for the Board pursuant to § 400.32(b)(1), concurs in the recommendation of the Executive Secretary, and approves the request;

Now Therefore, the Board hereby orders that, subject to the Act and the Board's regulations, including § 400.28, Board Order 668 is revised to replace the three conditions currently listed in the Order with the following conditions:

1. Foreign status (19 CFR 146.41, 146.42) products consumed as fuel for the refinery shall be subject to the applicable duty rate.

2. Privileged foreign status (19 CFR 146.41) shall be elected on all foreign merchandise admitted to the subzone, except that non-privileged foreign (NPF) status (19 CFR 146.42) may be elected on refinery inputs covered under HTSUS Subheadings # 2709.00.1000–# 2710.00.1050 and # 2710.00.2500 which are used in the production of:

—Petrochemical feedstocks and refinery by-products (FTZ staff report, Appendix B);
—Products for export; and,
—Products eligible for entry under HTSUS # 9808.00.30 and 9808.00.40 (U.S. Government purchases).

3. The authority with regard to the NPF option is initially granted until September 30, 2000, subject to extension.

Signed at Washington, DC, this 9th day of May 1995.

Paul L. Joffe,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 95–12198 Filed 5–17–95; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

[C–201–003]

Ceramic Tile From Mexico; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the countervailing duty order on ceramic tile from Mexico. We have preliminarily determined the total bounty or grant to be 0.48 percent *ad valorem* for all companies during the period January 1, 1993, through December 31, 1993. In accordance with 19 CFR 355.7, any rate less than 0.5 percent *ad valorem is de minimis*. If the final results remain the same as these preliminary results of administrative review, we will instruct the U.S. Customs Service to liquidate, without regard to countervailing duties as indicated above.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: May 18, 1995.

FOR FURTHER INFORMATION CONTACT: Gayle Longest or Kelly Parkhill, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On May 10, 1982, the Department published in the **Federal Register** (47 FR 20012) the countervailing duty order on ceramic tile from Mexico. On May 4, 1994, the Department published a notice of "Opportunity to Request Administrative Review" (59 FR 23051) of this duty order. We received a timely request for review from the Government of Mexico (GOM) and Ceramica Regiomontana, S.A., (Ceramica).

On June 15, 1994, we initiated the review, covering the period January 1, 1993, through December 31, 1993 (59 FR 30770). The review covers 40 manufacturers/exporters of the subject merchandise and four programs.

Applicable Statute and Regulations

The Department is conducting this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act). Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provision as they existed on December 31, 1994. However, references to the Department's *Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comments*, 54 FR 23366 (May 31, 1989) (Proposed Regulations), are provided solely for further explanation of the Department's countervailing duty practice. Although the Department has withdrawn the particular rulemaking proceeding pursuant to which the Proposed Regulations were issued, the subject matter of these regulations is being considered in connection with an ongoing rulemaking proceeding which, among other things, is intended to conform the Department's regulations to the Uruguay Round Agreements Act. *See* 60 FR 80 (Jan. 3, 1995).

Partial Revocation

On May 31, 1994, in its request for administrative review, the GOM submitted a request for partial revocation for 14 companies which included only the agreements required under 19 CFR 355.25(b)(3)(iii). On November 14, 1995, in its submission of the questionnaire response, the GOM submitted company and government certifications as required under 19 CFR 355.25(b)(3)(i) and (ii) to complete its request for partial revocation. After examining the record for each of the 14 companies identified in the requests for revocation, the Department has determined that none of them have met the minimum threshold requirements to be considered for revocation under 19 CFR 355.25(a)(3)(i). These companies did not participate in five consecutive administrative reviews in which they were found not to have received any net subsidy, including the review in which they are requesting revocation, and with no intervening period in which a review of the company was not conducted.

Moreover, under 19 CFR 355.25(b)(3), a company must request revocation in writing and, with its request, submit (1) government and company certifications that the company neither applied for nor received any net subsidy during the period of review and will not apply for or receive any net subsidy in the future; and (2) the agreement concerning revocation described in 19 CFR 355.25(a)(3)(iii). (According to 19 CFR 355.25(a)(3)(iii), producers or exporters must agree in writing to their immediate reinstatement in the order, as long as any producer or exporter is subject to the order, if the Secretary concludes that the producer or exporter, subsequent to the revocation, has received any net subsidy on the merchandise.) In this case, although the companies filed the agreements required under 19 CFR 355.25(a)(3)(iii) at the time of the revocation request, they did not submit government and company certifications required under 19 CFR 355.25(b)(3)(i) and (ii) until November 14, 1995, the deadline for submission of the questionnaire response.

All of the requirements for revocation are fully discussed in *Ceramic Tile From Mexico; Preliminary Results of Countervailing Duty Administrative Review and Intent To Revoke in Part Countervailing Duty Order* (58 FR 31505; June 3, 1993) and *Ceramic Tile From Mexico; Final Results of Countervailing Duty Administrative*

Review and Revocation in Part of the Countervailing Duty Order (59 FR 2823; January 19, 1994). For the reasons stated above, these 14 companies did not meet those requirements and are therefore, not eligible for revocation in this administrative review.

Scope of Review

Imports covered by this review are shipments of Mexican ceramic tile, including non-mosaic, glazed, and unglazed ceramic floor and wall tile. During the review period, such merchandise was classifiable under the *Harmonized Tariff Schedule* (HTS) item numbers 6907.10.0000, 6907.90.0000, 6908.10.0000, and 6908.90.0000. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Calculation Methodology for Assessment and Cash Deposit Purposes

We calculated the bounty or grant on a country-wide basis by first calculating the bounty or grant for each company subject to the administrative review. We then weight-averaged the rate received by each company, even those with de minimis and zero rates, using as the weight its share of total Mexican exports to the United States of subject merchandise. We then summed the individual companies' weight-averaged rates to determine the bounty or grant from all programs benefitting exports of subject merchandise to the United States. Since the country-wide rate calculated using this methodology was de minimis, as defined by 19 CFR 355.7, no further calculations were necessary.

Analysis of Programs

I. Programs Conferring Subsidies

A. Programs Previously Found to Confer Subsidies BANCOMEXT Financing for Exporters

Effective January 1, 1990, the Mexican Treasury Department eliminated the Fondo para el Fomento de las Exportaciones de Productos Manufacturados (FOMEX) loan program and transferred the FOMEX trust to the Banco Nacional de Comercio Exterior, S.N.C. (BANCOMEXT). BANCOMEXT offers short-term financing to producers or trading companies engaged in export activities; any company generating foreign currency through exports is eligible for financing under this program. The BANCOMEXT program operates much like its predecessor, FOMEX. BANCOMEXT provides two types of financing, both in U.S. dollars, to exporters: working capital loans (pre-export loans), and loans for export sales (export loans). In addition, BANCOMEXT may provide financing to foreign buyers of Mexican goods and services.

The Department has previously found this program to confer an export subsidy to the extent that the loans are provided at preferential terms (*See Ceramic Tile From Mexico; Preliminary Results of Countervailing Duty Review* (57 FR 5997, February 19, 1992) and *Ceramic Tile From Mexico; Final Results of Countervailing Duty Review* (57 FR 24247, June 8, 1992). In this review the GOM provided no new information or evidence of changed circumstances that would lead the Department to alter that determination.

We found that the annual interest rates BANCOMEXT charged to borrowers for certain loans on which interest payments were due during the review period were lower than commercial rates. The BANCOMEXT dollar-denominated loans under review were granted at annual interest rates ranging from 5.9 percent to 10.0 percent. As discussed in *Certain Steel Products from Mexico; Final Countervailing Duty Determination* (58 FR 37357, July 9, 1993), because loans are funded by BANCOMEXT through commercial banks in dollars and indexed to dollars for repayment, we used a dollar benchmark. As the benchmark for BANCOMEXT pre-export and export dollar-denominated loans granted in 1993, we used the average of the quarterly weighted-average effective interest rates published in the *Federal Reserve Bulletin*, which resulted in an annual benchmark of 7.03 percent in 1993.

We consider the benefits from short-term loans to occur at the time the interest is paid. Because interest on BANCOMEXT pre-export loans is paid at maturity, we calculated benefits based on loans that matured during the review period; these were obtained between August 1992 and October 1993. Interest on BANCOMEXT export loans is paid in advance; we therefore calculated benefits based on BANCOMEXT loans received during the review period.

Three exporters of ceramic tile products used BANCOMEXT pre-export financing and one company used BANCOMEXT export financing. Because we found that the exporters were able to tie their BANCOMEXT loans to specific sales, we measured the benefit only from the BANCOMEXT loans tied to sales of the subject merchandise to the United States. To determine the benefit for each exporter, we multiplied the difference between the interest rate charged to exporters for these loans and the benchmark interest rate by the outstanding principal and then multiplied this amount by the term of the loan divided by 365. We then weight-averaged the benefit received by each company using as the weight its share of total Mexican exports to the United States of the subject merchandise. On this basis, we preliminarily determine the benefit from this program to be 0.0002 percent *ad valorem* for all companies.

PITEX

The Program for Temporary Importation of Products used in the Production of Exports (PITEX) was established by a decree published in the *Diario Oficial* on May 9, 1985, and amended in the *Diario Oficial* on September 19, 1986, and May 3, 1990. The program is jointly administered by the Ministry of Commerce and Industrial Development (SECOFI) and the Customs Administration. Under PITEX, exporters with a proven export record may receive authorization to temporarily import products to be used in the production of exports for up to five years without having to pay the import duties normally imposed on those imports. PITEX allows for the exemption of import duties for the following categories of merchandise used in export production: raw materials, packing materials, fuels and lubricants, machinery used to manufacture products for export, and spare parts and other machinery. The importer must post a bond or other security to guarantee the reexportation of the temporary imports. Because it is only available to exporters, the Department previously found in *Certain Textile Mill Products From Mexico; Final Results of Countervailing Duty Administrative Review* (56 FR 50859, October 9, 1991) and *Ceramic Tile From Mexico; Final Results of Countervailing Duty Administrative Review* (57 FR 24247, June 8, 1992) that PITEX provides countervailable benefits to the extent that it provides duty exemptions on imports of merchandise not physically incorporated into exported products. The GOM provided no new information or evidence of changed circumstances that would lead the Department to alter that determination.

During the review period, four companies used the PITEX program for imports of machinery and spare parts which are not physically incorporated into exported products. To determine the benefit for each exporter, we calculated the duties that should have been paid on the non-physically incorporated items that were imported under the PITEX program during the review period. We then divided that amount by each company's total exports and weight-averaged the benefit received by each company using as the weight its share of total Mexican exports to the United States of the subject merchandise. On this basis, we preliminarily determine the benefit from this program to be 0.47 percent *ad valorem* for all companies.

NAFINSA Long-Term Loans

Two companies received long-term financing from NAFINSA loans (Nacional Finciera Sociedad Anonima). Until December 31, 1988, NAFINSA operated as a first-tier bank, which is defined as a commercial bank that provides financing directly to the public. Since December 31, 1988, NAFINSA has operated as "second-tier" bank granting financing to companies indirectly through the commercial bank, (i.e., first-tier banks). NAFINSA long-term loans have been found to be specific in past proceedings because availability was limited to specific geographical regions of Mexico. *See Bars and Shapes from Mexico Final Affirmative Countervailing Duty Determinations and Countervailing Duty Orders* 49 FR 161 (August 17, 1984). The GOM has provided no new information or evidence of changed circumstances to lead us to conclude that this program is not limited to companies in specific regions. Therefore, we preliminarily determine that NAFINSA long-term loans are specific.

Since the GOM did not provide any information on long-term interest rates, we are using a short-term CPP based rate as our benchmark rate in accordance with our practices as set forth in section 355.49(b)(iii) of the Department's regulations. *See Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comments*, 54 FR 23366, 23384 (May 31, 1989). In past Mexican cases, we have used the *Costo Porcentual Promedio* (CPP), a short-term interest rate, as the basis for our benchmark. We have converted the CPP rate into a benchmark rate using a standard formula that has been used consistantly in past Mexican cases. *See Porcelain-on-Steel Cookingware from Mexico; Final Results of Countervailing Duty Administrative Review*, 57 FR 562 (January 7, 1982). Using this methodology, we calculated an annual average benchmark of 29.79 percent for the peso-denominated loans. A comparison between the benchmark rate and the NAFINSA loan rates indicates that these loans are inconsistent with commercial considerations.

To calculate the benefit, we multiplied the difference between the benchmark rate and the interest rate in effect for the NAFINSA loan by the principal outstanding during the review period. We divided the benefit by the firm's total sales during the review period and then weight-averaged the benefit received by each company using as the weight its share of total Mexican exports to the United States of the subject merchandise. On this basis, we preliminarily determine the benefit from this program to be 0.01 percent *ad valorem* for all companies.

II. Programs Preliminarily Found To Be Not Used

We also examined the following programs and preliminarily determined that exporters of the subject merchandise did not apply for or receive benefits under these programs during the review period:

(A) Other BANCOMEXT preferential financing;
(B) Other Dollar-Denominated Financing Programs;
(C) Fiscal Promotion Certificates (CEPROFI);
(D) Import duty reductions and exemptions;
(E) State tax incentives;
(F) Article 15 Loans;
(G) NAFINSA FONEI-type financing; and
(H) NAFINSA FOGAIN-type financing.

Preliminary Results of Review

For the period January 1, 1993, through December 31, 1993, we preliminarily determined the total bounty or grant to be 0.48 percent *ad valorem* for all companies. In accordance with 19 CFR 355.7, any rate less than 0.5 percent *ad valorem* is *de minimis*.

If the final results remain the same as these preliminary results, the Department intends to instruct the U.S. Customs Service to liquidate, without regard to countervailing duties, all shipments of the subject merchandise from Mexico exported on or after January 1, 1993, and on or before December 31, 1993.

The Department also intends to instruct the U.S. Customs Service to collect a cash deposit of estimated countervailing duties of zero percent of the f.o.b. invoice price on all shipments of the subject merchandise from all companies, entered or withdrawn from warehouse, for consumption on or after the date of publication of the final date of the publication of the final result of this review.

Parties to the proceeding may request disclosure of the calculation methodology and interested parties may request a hearing not later than 10 days after the date of publication of this notice. Pursuant to 19 CFR 355.38(c), interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 355.38(e).

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under § 355.38(c), are due. The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any case or rebuttal brief, or at a hearing. This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: May 10, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–12199 Filed 5–17–95; 8:45 am]

BILLING CODE 3510–DS–P

Export Trade Certificate of Review

ACTION: Notice of Application for an Amendment to an Export Trade Certificate of Review, Application No. 90–5A007.

SUMMARY: The Department of Commerce has received an application to amend an Export Trade Certificate of Review. This notice summarizes the amendment and requests comments relevant to whether the amended Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: W. Dawn Busby, Director, Office of Export Trading Company Affairs, International Trade Administration, 202–482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal

government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the Federal Register identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to determining whether the Certificate should be amended. An original and five (5) copies should be submitted not later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1800H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 90–5A007."

Export Trade Certificate of Review No. 90–00007, was issued to the U.S. Surimi Commission ("USSC") on August 22, 1990 (55 FR 35445, August 30, 1990) and previously amended on December 12, 1990 (55 FR 53031, December 26, 1990); June 11, 1991 (56 FR 27846, June 18, 1991), May 22, 1992 (57 FR 23078, June 1, 1992), and on August 12, 1993 (58 FR 44504, August 23, 1993).

Summary of the Application

Applicant: United States Surimi Commission ("USSC"), 4200 First Interstate Center, Seattle, Washington 98104–4082.

Contact: Paul MacGregor, Legal Counsel, Telephone: 206/624–5950.

Application No.: 90–5A007.

Date Deemed Submitted: May 5, 1995.

Proposed Amendment: USSC seeks to amend its Certificate to:

1. Add the following companies as "Members" within the meaning of § 325.2(1) of the Regulations (15 CFR 325.2(1)): Alaska Trawl Fisheries, Inc., Edmonds, Washington (controlling entity: Daerim Corporation, Seoul, Korea); and Emerald Seafoods, NW. (controlling entity: Emerald Seafoods, NW., Limited Partnership).

2. Add the following product to Export Trade as defined by § 325.2(j) of the Regulations: White fish meal.

Dated: May 15, 1995.

Jude Kearney,

Deputy Assistant Secretary for Service Industries and Finance.

[FR Doc. 95–12275 Filed 5–17–95; 8:45 am]

BILLING CODE 3510–DR–P

Purdue University, Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 95–004. *Applicant:* Purdue University, West Lafayette, IN 47907. *Instrument:* Electron Microscope, Model CM200. *Manufacturer:* Philips, The Netherlands. *Intended Use:* See notice at 60 FR 9662, February 21, 1995. *Order Date:* July 28, 1994.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, was being manufactured in the United States at the time the instrument was ordered. *Reasons:* The foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of the instrument.

Frank W. Creel,

Director, Statutory Import Programs Staff

[FR Doc. 95–12200 Filed 5–17–95; 8:45 am]

BILLING CODE 3510–DS–F

National Oceanic and Atmospheric Administration

[I.D. 040795A]

Endangered and Threatened Wildlife and Plants; Public Hearing

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of additional public hearing.

SUMMARY: On April 18, 1995, NMFS published a notice of availability of a proposed recovery plan for Snake River salmon protected by the Endangered Species Act (ESA). In addition, eleven public hearings were announced. NMFS is announcing one additional public hearing.

DATES: The public hearing is scheduled as follows:

June 21, 1995, 6:30 p.m. to 9:30 p.m., Idaho Falls, ID.

ADDRESSES: The hearing will be held at the following location:

Idaho Falls—Center for Higher Education Bldg., 1776 Science Center Drive, Idaho Falls, ID 83402.

FOR FURTHER INFORMATION CONTACT: Robert Jones, Recovery Plan Coordinator, Environmental and Technical Services Division, NMFS, (503) 230–5400.

Dated: May 11, 1995.

Patricia A. Montanio,

Acting Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–12181 Filed 5–17–95; 8:45 am]

BILLING CODE 3510–22–F

[Docket No. 950508132–5132–01; I.D. 010995D]

Information Relating to Bowhead Whales; U.S. Implementation of Bowhead Whale Strike Quota

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of information; request for comments.

SUMMARY: NOAA is soliciting public comment on the proposed allocation to U.S. natives of the International Whaling Commission (IWC) bowhead whale catch limit.

DATES: Comments must be submitted on or before June 19, 1995.

ADDRESSES: Written comments may be mailed to the Office of International Affairs, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. A list of documents reviewed for this action may be obtained upon request, and the documents examined during the comment period during business hours (9 a.m. to 5 p.m.) at this address.

FOR FURTHER INFORMATION CONTACT: Kim Blankenbeker, 301–713–2276.

SUPPLEMENTARY INFORMATION: NOAA is responsible for implementation and enforcement of the Marine Mammal Protection Act (16 U.S.C. 1361–1407), the Endangered Species Act (16 U.S.C 1531–1543), and the Whaling Convention Act (16 U.S.C. 916–9161). In addition, it provides staff support to the U.S. Commissioner to the IWC and to the IWC Interagency Committee. Consistent with these responsibilities, NOAA develops positions for implementation of the aboriginal/subsistence harvest of bowhead whales under paragraph 13 of the Schedule to the International Convention on the Regulation of Whaling, December 2, 1946, 62 Stat. 1716, T.I.A.S. No. 1849 (entered into force, November 10, 1948).

In order to provide for review and comment by the public of the data upon which the U.S. positions are based, the following information is provided: (1) The IWC catch level available for the U.S. aboriginal/subsistence bowhead whale harvest for 1995–98; (2) a summary of available bowhead scientific information, including estimates of current population level and annual recruitment rates; (3) a summary of information on the nature and extent of aboriginal/subsistence need; (4) the level of aboriginal/subsistence harvest limits that could be implemented domestically; and (5) notice of the availability of those documents reviewed by NOAA and relied on by the Under Secretary of Commerce for Oceans and Atmosphere in making his finding on the range of harvest limits. NOAA is soliciting public comment on the proposed domestic implementation of the IWC bowhead whale catch limit.

1. Catch Level

At the 46th Annual Meeting of the IWC in Puerto Vallarta, Mexico, May 23–27, 1994, the following catch limit was established for aboriginal/subsistence whaling:

> For the years 1995, 1996, 1997, and 1998, the number of bowhead whales landed shall not exceed 204, and the number of bowhead whales struck shall not exceed 68 in 1995, 67 in 1996, 66 in 1997, and 65 in 1998, except that any unused portion of the strike quota for each year shall be carried forward from that year and added to the strike quota of any subsequent years, provided that no more than 10 strikes shall be added to the strike quota for any 1 year.

It was clarified on the floor of the meeting that if 15 of the allowed strikes were not used in 1 year, 10 of those strikes could be carried over to the next year and the remaining 5 strikes could be added to another year.

2. Scientific Information

At the 1994 Annual Meeting of the IWC, an assessment of the status of bowhead whales was completed using a series of relative abundance estimates and an absolute abundance from acoustic and visual survey data collected in 1988. The resulting analysis suggested that the population currently is increasing at 3.1 percent annually (95 percent confidence interval 1.4 percent to 4.7 percent), is at 36 percent of its pre-exploitation abundance (95 percent confidence interval 0.27–0.44), and has a median value for the replacement yield of 199 (95 percent probability interval 97–300). A minimum replacement yield was estimated to be 104 animals per year; 104 is the fifth percentile replacement yield of the replacement yield distribution. Projections of population size under three levels of takes were made, suggesting that the population likely would increase at recent levels of aboriginal catches. Major uncertainties identified included: (1) Completing the analysis of the acoustic survey data from 1993, (2) methods of correcting visual sighting data for distribution away from the sighting location, (3) prior distributions for several input parameters, and (4) the degree of genetic interchange between this stock and other more depleted stocks of bowhead whales.

3. Aboriginal/Subsistence Need

In 1994, in response to a Federal Register document soliciting comments on a proposed U.S. position, the Alaska Eskimo Whaling Commission (AEWC) submitted a recalculation of the aboriginal subsistence and cultural need for 9 whaling villages using estimated populations for 1992 provided by the State Demographer of Alaska. Based on the 1992 estimated populations, the calculated need for bowhead whales in those 9 whaling villages was 50.

At the 1994 Annual Meeting of the IWC, the United States sought IWC recognition that the island of Little Diomede has a subsistence and cultural need to land 1 bowhead whale per year. Together with the 50 bowheads needed for the other whaling villages, the total needed is 51. Assuming a target efficiency rate of 75 percent, this would require a quota of 68 strikes.

In setting a limit of 204 bowhead whales landed for 4 years (an average of 51 animals per year), the United States believes that the IWC implicitly acknowledged the subsistence and cultural need of Little Diomede to land 1 bowhead whale per year.

4. Domestic Harvest Range

The IWC management scheme for aboriginal/subsistence whaling provides (in Schedule paragraph 13(a)(2)):

> For stocks below the maximum sustainable yield (MSY) level but above a certain minimum level, aboriginal/subsistence catches shall be permitted so long as they are set at levels which allow whale stocks to move to the MSY level.

Given the above-stated minimum estimate of replacement yields of 104, an aboriginal/subsistence catch can be permitted in 1995.

Therefore, the catch limits for bowhead whales in 1995 shall be such that no more than a total of 68 bowhead whales are struck. For the years 1995 to 1998 combined, the number of bowhead whales landed shall not exceed 204.

Authority: 16 U.S.C. 916, 1361–1407, 1531–43.

Dated: May 11, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

[FR Doc. 95–12182 Filed 5–17–95; 8:45 am]

BILLING CODE 3510–22–F

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the South Carolina Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the South Carolina meeting to the Commission will convene at 10:00 a.m. and adjourn at 1:00 p.m. on Friday, June 2, 1995, at the Adams Mark Inn, Meeting Room, 1200 Hampton Street (Downtown), Columbia, South Carolina. The purpose of the meeting is to release the report, *Perceptions of Racial Tensions in South Carolina;* discuss civil rights progress and/or problems in the State; and discuss future project plans.

Persons desiring additional information, or planning a presentation to the Committee, should contact Bobby D. Doctor, Director of the Southern Regional Office, 404–730–2476 (TDD 404–730–2481). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 4, 1995.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 95–12223 Filed 5–17–95; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title; Applicable Forms; and OMB Control Number: DoD FAR Supplement, Part 204, Administrative Matters, and Related Clause and Provision at 252.204; DD Forms 2051 and 2051–1; OMB Control Number 0704–0225

Type of Request: Revision

Number of Respondents: 92,120

Responses per Respondent: 1

Annual Responses: 92,120

Average Burden per Response: 43 minutes

Annual Burden Hours: 66,635

Needs and Uses: DoD FAR Supplement, Part 204.404–70(a) prescribes use of the clause at 252.204–7000, which requires contractors to submit a request for approval to release unclassified information outside of the contractor's organization. The information provided by the contractor is reviewed to determine if the specific contract information proposed for release is sensitive or otherwise inappropriate for release for the purposes the contractor has indicated. DoD FAR Supplement 204.603–70 prescribes use of the provision at 252.204–7001, Commercial and Government Entity (CAGE) Code Reporting, which requires a contractor to provide its CAGE code to the Government with submission of its offer, or to advise the Government if it doesn't have a CAGE code, so that one can be provided. The CAGE codes are used by the Government to identify contractors for the purposes of developing computerized acquisition systems or solicitation mailing lists. Use of the CAGE codes permits the Government to exchange data with other contracting activities.

Affected Public: Businesses or other for-profit; Non-profit institutions; Small businesses or organizations

Frequency: On occasion

Respondent's Obligation: Required to obtain or retain a benefit

OMB Desk Officer: Mr. Peter N. Weiss.

Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: May 15, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–12240 Filed 5–17–95; 8:45 am]

BILLING CODE 5000–04–P

Office of the Secretary

Defense Information School Board of Visitors Meeting

AGENCY: Department of Defense, Office of the Assistant to the Secretary of Defense for Public Affairs, American Forces Information Service.

ACTION: Notice of meeting.

SUMMARY: The Defense Information School Board of Visitors will hold its semi-annual meeting at the Defense Information School, Indianapolis, IN. Board members will review issues related to the status of the Defense Information School consolidation and joint-Service training facility under development. The meeting is open to the public.

Dates and Times: June 1, 1995—8:00 a.m. to 11:00 a.m. (first session); 12:15 p.m. to 1:30 p.m. (second session); 1:30 p.m. to 3:55 p.m. (third session); June 2, 1995—8:30 a.m. to 11:15 a.m. (fourth session).

ADDRESSES: All. sessions will be conducted in the main conference room, Defense Information School, Building 400, located on the corner of Wheeler and Rising Roads, Fort Benjamin Harrison, IN.

FOR FURTHER INFORMATION CONTACT: Mr. Wallace N. Guthrie, Jr., Training Directorate, American Forces Information Service, 601 North Fairfax Street, Room 225, Alexandria, VA 22314. Telephone (703) 274–4897.

Dated: May 15, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–12241 Filed 5–17–95; 8:45 am]

BILLING CODE 5000–04–M

Defense Science Board Task Force on Unique Surveillance Technologies

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Unique Surveillance Technologies will meet in closed session on May 24–25, 1995, at the Pentagon, Arlington, Virginia. In order for the Task Force to obtain time sensitive classified briefings, critical to the understanding of the issues, this meeting is scheduled on short notice. In order for the Task Force to obtain time sensitive classified briefings, critical to the understanding of the issues, this meeting is scheduled on short notice.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will review and evaluate Have Gaze and related surveillance technologies and to assess overall technological maturity, technical and operational issues, potential military utility, and appropriate technology investment.

In accordance with Section 10(d) of the Federal Advisory Committee Act, P.L. No. 92-463, as amended (5 U.S.C. App. II, (1988)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. § 552b(c) (1) (1988), and that accordingly this meeting will be closed to the public.

Dated: May 5, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Office, Department of Defense.

[FR Doc. 95–12242 Filed 5–17–95; 8:45 am]

BILLING CODE 5000–04–M

Defense Science Board Task Force on Joint Technology Issues

ACTION: Notice of Advisory Committee meetings.

SUMMARY: The Defense Science Board Task Force on Joint Technology Issues will meet in closed session on May 30 and June 29, 1995 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will work with the JCS Chairman and Vice Chairman in support of the Expanded JROC activities. The Task Force should place special emphasis on the application of technology to enhance the effectiveness of the evolving force structure within tight fiscal constraints and should also place a special focus on issues dealing with operations other than war.

In accordance with Section 10(d) of the Federal Advisory Committee Act, P.L. No. 92–463, as amended (5 U.S.C. App. II, (1988)), it has been determined that these DSB Task Force meetings concern matters listed in 5 U.S.C. § 552b(c)(1) (1988), and that accordingly these meetings will be closed to the public.

Dated: May 15, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–12243 Filed 5–17–95; 8:45 am]

BILLING CODE 5000–04–M

Defense Science Board 1995 Summer Study Task Force on Technology Investments for 21 Century Military Superiority

ACTION: Notice of Advisory Committee meetings.

SUMMARY: The Defense Science Board 1995 Summer Study Task Force on Technology Investments for 21st Century Military Superiority will meet in closed session on August 6–18, 1995 at the Beckman Center, Irvine, California.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will focus on those R&D investments that must be made now so as to assure a technology base in the year 2000 capable of providing U.S. military superiority in the 21st century.

In accordance with Section 10(d) of the Federal Advisory Committee Act, P.L. No. 92–463, as amended (5 U.S.C. App. II, (1988)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. § 552b(c)(1) (1988), and that accordingly this meeting will be closed to the public.

Dated: May 15, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–12244 Filed 5–17–95; 8:45 am]

BILLING CODE 5000–04–M

Department of the Navy

Privacy Act of 1974; Amend Record Systems

AGENCY: Marine Corps, Department of the Navy.

ACTION: Amend record system.

SUMMARY: The U.S. Marine Corps proposes to amend a system of records in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. This notice amends the system of records notice MFD00009, entitled Marine Corps Command Legal Files, last published in the **Federal Register** on February 8, 1995, at 60 FR 7523. The amendment consists of changing the system identifier from MFD00009 to MJA00009.

DATES: The amendment will be effective May 18, 1995.

ADDRESSES: Send comments to the Head, FOIA and Privacy Act Section, Headquarters, U.S. Marine Corps, 2 Navy Annex, Washington, DC 20380–1775.

FOR FURTHER INFORMATION CONTACT: Ms. B. L. Thompson at (703) 614–4008 or DSN 224–4008.

SUPPLEMENTARY INFORMATION: The U.S. Marine Corps record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

This notice amends the system of records notice MFD00009, entitled Marine Corps Command Legal Files, last published in the **Federal Register** on February 8, 1995, at 60 FR 7523. The amendment consists of changing the system identifier from MFD00009 to MJA00009.

Dated: May 8, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–12245 Filed 5–17–95; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF EDUCATION

[CFDA No.: 84.060A]

Indian Education Formula Grants to Local Educational Agencies; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1995

Purpose: Provides grants to support local educational agencies in their efforts to reform elementary and secondary school programs that serve Indian students in order to ensure that such programs are based on challenging State content standards and State student performance standards used for all students, and are designed to assist Indian students to meet those standards.

Eligible Applicants: Local educational agencies (LEAs) and certain schools funded by the Bureau of Indian Affairs, and Indian tribes under certain conditions.

Deadline for Transmittal of Applications: June 23, 1995. Applications not meeting the deadline will not be considered for funding in the initial allocation of awards. Applications not meeting the deadline may be considered for funding if the Secretary determines, under section 9117(d), Part A of Title IX of the 1994 amendments of the Elementary and Secondary Education Act of 1965 (the Act), as amended, that funds are available and that reallocation of those funds to those applicants would best assist in advancing the purposes of the program. However, the amount and date of an individual award, if any, made under section 9117(d) of the Act may not be the same to which the applicant would have been entitled if the application had been submitted on time.

Deadline for Intergovernmental Review: August 23, 1995.

Applications Available: May 12, 1995.

Available Funds: The appropriation for this program for fiscal year 1995 is $59,686,000, which should be sufficient to fund all eligible applicants.

Estimated Range of Awards: $3,000 to $1,300,000.

Estimated Average Size of Awards: $47,000.

Estimated Number of Awards: 1,200.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 75, 77, 79, 80, 81, 82, 85, and 86.

For Applications or Information Contact: The Director, Office of Indian Education, U.S. Department of Education, 600 Independence Avenue, S.W., Portals Building-Room 4300, Washington, D.C. 20202–6335. Telephone: (202) 260–3774. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 between 8 a.m. and 7 p.m., Eastern time.

Program Authority: 20 U.S.C. 7811.

Dated: May 9, 1995.

Thomas W. Payzant,

Assistant Secretary, Office of Elementary and Secondary Education.

[FR Doc. 95–12179 Filed 5–17–95; 8:45 am]

BILLING CODE 4000–01–P

Arbitration Panel Decision Under the Randolph-Sheppard Act

AGENCY: Department of Education.

ACTION: Notice of arbitration panel decision under the Randolph-Sheppard Act.

SUMMARY: Notice is hereby given that on October 20, 1993, an arbitration panel rendered a decision in the matter of *Michael Lawyer* v. *Illinois Department of Rehabilitation Services, (Docket No. R-S/92-14)*. This panel was convened by the Secretary of the U.S. Department of Education pursuant to 20 U.S.C. 107d-2, upon receipt of a complaint filed by petitioner Michael Lawyer.

FOR FURTHER INFORMATION CONTACT: A copy of the full text of the arbitration panel decision may be obtained from George F. Arsnow, U.S. Department of Education, 600 Independence Avenue SW., Room 3230, Switzer Building, Washington, D.C. 20202-2738. Telephone: (202) 205-9317. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205-8298.

SUPPLEMENTARY INFORMATION: Pursuant to the Randolph-Sheppard Act (20 U.S.C. 107d-2(c)), the Secretary publishes a synopsis of arbitration panel decisions affecting the administration of vending facilities on Federal property.

Background

Michael Lawyer, complainant, is a blind vendor licensed by the Illinois Department of Rehabilitation Services (DORS), which is the State licensing agency under the Randolph-Sheppard Act. Mr. Lawyer began operation of the vending facility at the Cook County Hospital on October 1, 1990.

Mr. Lawyer was given a safe to be used to deposit monies from the facility. The safe subsequently broke, and Mr. Lawyer was advised by DORS that they could not furnish another one and that he would have to replace it. The facility had a rolltop safe that was used by other vendors to deposit their monies at the end of their workday. Instead of replacing the broken safe, the complainant began depositing his monies into this rolltop safe if he had a witness to verify the amount of his deposit. If complainant did not have a witness to verify the amount, he took the money home with him and returned it in the morning. Complainant believed this practice was accepted by his lead manager and carried it out on several occasions, without incident. On February 3, 1992, the lead manager issued complainant $500.00 for use as working capital in order to make change. Mr. Lawyer was to return this money to the lead manager at the end of his workday. Instead of returning the money, complainant took it home, where later that evening he was robbed and the money stolen. Mr. Lawyer was hurt during the struggle and had to be hospitalized for his injuries. A police report was filed that same day. Only after returning home from the hospital did he realize that the money had been stolen.

On March 17, 1992, DORS terminated complainant's license for violation of its rules governing facility money. Chapter IV, Sec. 650.100(m), 89 Ill. Adm. Code, states that facility money, product, equipment, or program assets shall not be removed from the facility by the vendor for personal use and that violation shall result in termination of the vendor's license. Mr. Lawyer contested the decision to revoke his license and was provided a Level II hearing on May 27, 1992, pursuant to DORS rules. The hearing officer found that DORS had properly terminated complainant's license. Mr. Lawyer then appealed the DORS decision to the U.S. Department of Education, and a hearing was convened on July 27, 1993.

Arbitration Panel Decision

The panel unanimously found that complainant did not have permission to remove the money in question from the facility and failed to use an available secure place to safeguard the facility assets. A majority of the panel members found that, although the complainant did not maliciously intend to appropriate the money for personal use, once the facility assets were removed from the facility, complainant took full control and possession of the assets for personal use in violation of Chapter IV, Sec. 650.100(m), 89 Ill. Adm. Code. However, one panel member dissented and held that personal use under the regulations means that the funds had to be used for direct personal gain such as purchasing goods or using the funds in a similar personal manner.

In recognizing that the loss of a vendor's license to a legally blind person with limited opportunity for gainful employment is a very severe penalty, the panel recommended that DORS convene another panel to review complainant's employment record to determine if his license should be returned. It also recommended that if DORS elects to return complainant's license, he should repay the $500.00.

The views and opinions expressed by the panel do not necessarily represent the views and opinions of the U.S. Department of Education.

Dated: May 12, 1995.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 95-12178 Filed 5-17-95; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP95-484-000]

ANR Pipeline Co.; Notice of Application

May 12, 1995.

Take notice that on May 4, 1995, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243 filed an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon an exchange service between ANR, formerly Michigan Wisconsin Pipe Line Company and Transwestern Pipeline Company (Transwestern), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

ANR states that, in Docket No. CP79-422, the Commission authorized an exchange between ANR and Transwestern dated August 15, 1978, as amended. It is stated that the service is designated as Rate Schedule X-89 under Original Volume No. 2 of ANR's FERC Gas Tariff, and Rate Schedule X-15 under Original Volume No. 2 of Transwestern's FERC Gas Tariff. ANR states that, in a letter dated June 16, 1993, Transwestern exercised its right to terminate the service. ANR contends that, on November 14, 1994, Transwestern filed an application in Docket No. CP95-70-000 to abandon, inter alia, exchange service with ANR under its Rate Schedule X-15, which corresponds to ANR's Rate Schedule X-89. Accordingly, ANR requests permission to abandon the above described exchange service. It is stated that no facilities are proposed to be abandoned.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 2, 1995, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for ANR to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 95-12188 Filed 5-17-95; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP95-492-000]

Colorado Interstate Gas Co.; Notice of Request Under Blanket Authorization

May 12, 1995.

Take notice that on May 10, 1995, Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP95-492-000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct and operate a new delivery facility for service to Utilicorp United, Inc. (Utilicorp), a local distribution company, in Douglas County, Colorado, under CIG's blanket certificate issued in Docket No. CP83-21-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

CIG proposes to construct approximately 3.3 miles of 6-inch loop line on CIG's existing line in Douglas County for deliveries to Utilicorp to accommodate growth in the Castle Rock, Colorado, area. It is stated that CIG would use the proposed delivery point for the delivery of approximately 3,500 Mcf of gas per day transported for Utilicorp under the terms of its Rate Schedule TF-1. It is stated that the volumes to be delivered would not exceed the volumes presently delivered to Utilicorp. The construction cost is estimated at $468,000. CIG states that it has sufficient capacity to render the proposed service without detriment or disadvantage to its other existing customers and that its tariff does not prohibit the addition of delivery points.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95-12189 Filed 5-17-95; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP95-491-000]

NorAm Gas Transmission Co.; Notice of Request Under Blanket Authorization

May 12, 1995.

Take notice that on May 9, 1995, NorAm Gas Transmission Company (NGT), 1600 Smith Street, Houston, Texas 77002, filed in Docket No CP95-491-000, a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.216) for authorization to abandon and remove an above-ground 2-inch meter station on Line AM-52, Upshur County, Texas, under the blanket certificate issued in Docket Nos. CP82-384-000 and CP82-384-001, pursuant to Section 7(b) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

NGT states that it proposes to abandon and remove the 2-inch meter that provides service to one residential farm tap, a customer of Arkla, a division of NorAm Energy Corp. (Arkla). Arkla has consented in writing to the removal of the 2-inch meter. NGT indicates that the estimated cost to remove the meter is $365 and the funds would be generated internally. NGT says that no customers or service will be abandoned. NGT states that it will continue to operate an existing 2-inch regulator to serve that customer, but Arkla will install its own meter to measure the gas delivered. The volumes to be delivered through the tap will be approximately 1 MMBtu on a peak day and 85 MMBtu annually.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95-12190 Filed 5-17-95; 8:45 am]

BILLING CODE 6717-01-M

FEDERAL MARITIME COMMISSION

Notice of Items Submitted for OMB Review

The Federal Maritime Commission hereby gives notice that the following items have been submitted to OMB for review pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3601, et seq.). Requests for information, including copies of the collection of information and supporting documentation, should be directed to Bruce Dombrowski, Deputy Managing Director, Federal Maritime Commission, 800 North Capitol Street, N.W., Room 1082, Washington, D.C. 20573, telephone number (202) 523-5800. Comments may be submitted to the agency and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, Attention: Desk Officer for the Federal Maritime Commission, within 15 days after the date of the

Federal Register in which this notice appears.

Summary of Items Submitted for OMB Review, 46 CFR 572

FMC requests an extension of clearance for 46 CFR 572, which implements the Shipping Act of 1984 agreement provisions. The Act specifies the mandatory content of certain kinds of agreements, sets forth procedures governing the Commission's disposition of such agreements, and defines the Commission's authorities and responsibilities. The Commission estimates a potential respondent universe of 1,116, which is comprised of 386 effective agreements, 480 carriers, and 250 terminal operators. Annual respondent burden for complying with the regulation is 13,625 manhours; annual recordkeeping requirement is estimated at 2,000 manhours.

Estimated annual cost to the Federal Government is $715,700; estimated annual cost to respondents is $648,170.

46 CFR 560

FMC requests an extension of clearance for 46 CFR 560, which implements the Shipping Act of 1916 agreement provisions. The Act specifies the mandatory content of certain kinds of agreements, sets forth procedures governing the Commission's disposition of such agreements, and defines the Commission's authorities and responsibilities. The Commission estimates a potential respondent universe of 730, which is comprised of 480 common carriers and 250 terminal operators. Based upon past filing practices and historical data, however, it is estimated that this rule will be used by only 10 respondents per year. Annual respondent burden for complying with the regulation is 359.7 manhours; annual recordkeeping requirement is estimated at 24 manhours. Estimated annual cost to the Federal Government is $23,920.00; estimated annual cost to respondents is $13,000.

Form FMC–12

FMC requests an extension of clearance for Form FMC–12, which requires nonattorneys who wish to practice before the Commission to complete the application form. The form is used to evaluate their experience, education, and character in order to maintain a high degree of excellence for practitioners. The Commission estimates an annual respondent universe of 10 nonattorneys, with a total annual respondent burden of 10 manhours. Estimated annual cost to the Federal Government is $770.00; estimated annual cost to respondents is $920.00.

Joseph C. Polking,

Secretary.

[FR Doc. 95–12171 Filed 5–17–95; 8:45 am]

BILLING CODE 6730–01–M

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of Section 3, Public Law 89–777 (46 U.S.C. § 817(e)) and the Federal Maritime Commission's implementing regulations at 46 C.F.R. part 540, as amended:

Cunard Line Limited, 555 Fifth Avenue, New York, N.Y. 10017–2453

Vessel: CROWN DYNASTY

Dated: May 15, 1995.

Joseph C. Polking,

Secretary.

[FR Doc. 95–12254 Filed 5–17–95; 8:45 am]

BILLING CODE 6730–01–M

Security for the Protection of the Public Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Notice of Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of Section 2, Public Law 89–777 (46 U.S.C. § 817(d)) and the Federal Maritime Commission's implementing regulations at 46 C.F.R. part 540, as amended:

Cunard Line Limited and Crown Dynasty Inc., 555 Fifth Avenue, New York, N.Y. 10017–2453.

Vessel: CROWN DYNASTY

Dated: May 15, 1995.

Joseph C. Polking,

Secretary.

[FR Doc. 95–12255 Filed 5–17–95; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Sun Financial Corporation; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than June 12, 1995.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Sun Financial Corporation, Earth City, Missouri; to acquire 100 percent of the voting shares of Farmers Bank of Stover, Stover, Missouri.

Board of Governors of the Federal Reserve System, May 12, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–12214 Filed 5–17–95; 8:45 am]

BILLING CODE 6210–01–F

Swiss Bank Corporation; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 1, 1995.

A. Federal Reserve Bank of New York, (William L. Rutledge, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. Swiss Bank Corporation, New York, New York; to acquire SBC Capital Markets Inc., New York, New York, and thereby indirectly acquire Government Pricing Information System, Inc., New York, New York, and thereby engage in data processing activities, pursuant to § 225.25(5)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 12, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–12215 Filed 5–17–95; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Announcement 565]

Health Services Research in Occupational Safety and Health; Availability of Funds for Fiscal Year 1995

Introduction

The Centers for Disease Control and Prevention (CDC), the National Institute for Occupational Safety and Health (NIOSH), announces the availability of fiscal year (FY) 1995 funds for research projects relating to health services research in the field of occupational safety and health.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2000," a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Occupational Safety and Health. (For ordering a copy of "Healthy People 2000," see section "Where to Obtain Additional Information.")

Authority

This program is authorized under the Occupational Safety and Health Act of 1970, section 20(a) [29 U.S.C. 669(a)] and section 22(e)(7) (29 U.S.C. 671(e)(7)).

Smoke-Free Workplace

PHS strongly encourages all grant recipients to provide a smoke-free workplace and to promote the non-use of all tobacco products, and Pub. L. 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Eligible Applicants

Eligible applicants include domestic and foreign non-profit and for-profit organizations, universities, colleges, research institutions, and other public and private organizations, including State and local governments and small, minority and/or woman-owned businesses.

Availability of Funds

Approximately $1,000,000 is available in FY 1995 to fund approximately five research project grants. It is expected that the average award will be $200,000, ranging from $150,000 to $250,000 in total costs (direct and indirect costs per year). It is expected that the awards will begin on or about September 1, 1995, and will be made for a 12-month budget period within a project period of up to 3 years. Funding estimates may vary and are subject to change.

Continuation awards within the project period will be made on the basis of satisfactory progress and availability of funds.

Purpose

The purpose of this grant program is twofold. One major purpose is to rationally develop an estimated range of total costs and distribution for the national burden of occupational injuries and illnesses by comprehensively applying existing information (See Program Interests A.1., below). The other major purpose is to conduct more focused research into the systems that prevent, manage, and compensate occupational injuries and illnesses, with particular focus on the experience of the injured worker as he/she comes into contact with components of these systems (See Program Interests 2. to 5., below). It is the intent of this program to support broad research endeavors which will lead to improved understanding and appreciation of the magnitude of the aggregate national economic burden associated with occupational injuries and illnesses, as well as to support more focused research projects which will lead to improvements in the delivery of occupational safety and health services and the prevention of work-related injury and illness. Research funded will examine and evaluate quality, outcome and costs of services provided in a variety of settings for healthy and injured workers.

This is the first Request for Assistance (RFA) that NIOSH has issued in the area of Health Services Research. The agency's intention in defining the RFA's objectives broadly is to encourage proposals from applicants with a broad range of research backgrounds, methodological approaches, and institutional affiliations to apply their skills to health services research in occupational health, and to enter into collaborative agreements, and with unions, employers, providers, insurance carriers and other relevant institutions and organizations. NIOSH encourages efforts in which researchers work closely with employers, worker representatives, and relevant government agencies; collaboration with any or all may assist researchers in obtaining access to data, and will increase the likelihood that results of the study will be usable and used by the

parties involved. NIOSH also recognizes, however, that in many situations collaboration may not be possible or advantageous.

Program Interests

a. Content Areas

1. The magnitude and distribution of national costs of occupational injury and illness. The economic and social costs of work-related injury and illness in the United States have not been adequately described or studied. There is programmatic interest in investigations into developing defensible estimates for the national economic burden of occupational injuries and illnesses, as well as into the cost of failure to prevent occupational injury and illness in general, as well as in specific industries and of specific conditions. There is particular interest in developing and applying models to estimate the distribution of these costs.

In most cases involving medical care or lost wages, workers with occupational injuries are entitled to workers compensation benefits. However, little is known of the costs (personal and social, economic and non-economic) of workplace injury and illness cases that do not enter the workers compensation system, or are not completely compensated by that system. Further study is needed to quantify these costs, and to determine how much, if any, of these costs are borne by injured workers, employers, federal agencies, State and local government and private philanthropy.

Little is known about the social and economic consequences of being diagnosed with occupational injury or illness. Are workers with occupational conditions discriminated against or likely to suffer from job loss as a result of their condition? Are they at a disadvantage in the job market? Does being labeled with an occupational condition impact their attitude toward their job or their utilization of the health care system?

2. The prevention and treatment of work-related injury and illness through the delivery of occupational medical services Given the number and costs of these conditions, relatively little is known about the system for delivering medical treatment for these conditions. For both emergency and non-emergency services, there is only limited information on the extent, quality, outcome and costs of services provided by employer-based employee health services, private physicians, independent occupational health clinics, and hospital emergency departments. There is programmatic interest in examining the types, activities, and availability of occupational medicine service providers, and their use by employers of differing sizes and in various industries, including groups of workers who are underserved and in need of occupational health and safety.

Ideally, occupational medical services provide more than the treatment of work-related conditions, but are an integral part of the primary and secondary prevention of occupational injury and illness. It is of interest to examine the involvement and effectiveness of different types of providers of occupational medical services (e.g. in-plant medical departments, urgent care centers, local hospitals and group health plans, independent occupational health clinics) in primary prevention activities and how medical providers interact with other occupational safety and health professionals. Similarly, the role and effectiveness of payers for occupational medical services (employers and workers compensation insurance carriers) in encouraging or discouraging injury and illness prevention is of interest.

An alternative model for the provision of occupational health services to groups of employers in the same industry or region is through managed care organizations funded by capitated payments. These provider groups may be linked to employer-based coverage for non-occupational health conditions (sometimes referred to as 24 hour coverage), or may be focused solely on occupational health concerns. There is programmatic interest in examining and evaluating capitated models for the delivery of occupational health services.

3. The experience of the injured worker in the workers compensation system. There are few studies on the quality, cost, access and outcome of the care received by those workers who successfully enter the compensation system. How successful is the system in meeting its goals? Are the financial benefits provided adequate to replace lost earnings and compensate for work-related disability? Are the medical care services provided claimants appropriate and accessible? (For additional background on these and related questions, see: Shor, GM. "Research and Evaluation in Workers Compensation: An Assessment and An Agenda." *Workers' Compensation Monitor.* 1994,7:18- 24.)

The factors that are associated with a case being recognized as work-related and entering the compensation system are not well understood. In particular, additional information is needed on the incentives of the various actors in the interface of medicine and the workplace (e.g. workers and their families, employers, corporate physicians, personal physicians, group health plans and insurance carriers, attorneys) that encourage or discourage an injured worker from receiving workers compensation benefits. Are there groups of workers (defined by health status, age, gender, occupation, skill, language, legal status or other characteristic) who are more or less likely to enter the workers compensation system, and should additional efforts be made to inform groups of injured workers about their rights to compensation?

In an increasing number of States, employers are permitted to select the injured worker's medical care provider. There have been few studies comparing the experience of injured workers in employer-choice States with those of workers in employee-choice States. How do quality, outcome and costs differ in these States? Are there some subsets of workers (defined by health status, wages, skill or other characteristic) who are better served by one approach or the other?

The number and proportion of work injuries treated under workers compensation managed care is rapidly increasing, but there is virtually no published literature evaluating workers compensation managed care programs. How does managed care in workers compensation compare with fee-for-service provision of care, in terms of quality, outcome and cost? How do differences in managed care organization structure and practices impact quality, outcome and cost? How has the trend toward managed care for non-work-related conditions affected the recognition and treatment of work-related conditions. Does workers compensation managed care generate ethical dilemmas for providers, and if so, how can they be resolved?

It has been suggested that integrating or merging the systems to provide medical services for work-related and non-work-related conditions will result in cost savings, although this has been the subject of some debate. In addition, it is not known how these changes might impact workplace-based prevention of occupational injury and illness, since in theory, the experience rating component of workers compensation premiums provides a market-based incentive to prevent injury and illness (although there is also debate over its actual effectiveness). It is of programmatic interest to examine the effects of (1) integration or merger of these medical care delivery systems; and (2) uncoupling of workers compensation medical benefits from experience rating. Of interest are the impact of these policies on the quality, outcome and cost of care, on indemnity benefits, and on the primary prevention of occupational conditions.

Finally, while it is frequently alleged that fraud is relatively widespread within the workers compensation system, there are few if any studies that address this issue in a rigorous manner. The extent of fraudulent claims and practices is unknown, as are the costs of these activities to workers, employers and the compensation system. Accurate, rigorously-gathered information on the magnitude, costs, and characteristics of workers compensation fraud on the part of claimants, employers, health care providers and carriers are needed in order to better design and target fraud reduction programs.

4. *Development and evaluation of treatment guidelines.* Outcome of treatment of occupational injury and illness, whether or not it is paid for by the workers compensation system, may be measured differently than treatment outcome of non-work-related conditions. In addition to physiological outcome, or outcome as it relates to health status, management and treatment of occupational conditions must consider the impact of the condition and treatment on the worker's post-injury wages and ability of the worker to use their valued skills and knowledge.

Since workers with occupational injury or illness may be index cases for more widespread or prevalent conditions, treatment guidelines should include a primary prevention component. This may involve the provider having contact with the employer, union, or other workers at the workplace from which the index case emerged, and should therefore take into consideration issues of confidentiality and potential discrimination. In developing these guidelines, it is also necessary to address issues of worker education, how information about the nature, prognosis and prevention of the condition is transmitted to the worker.

In the development and evaluation of guidelines for treatment of work-related conditions, consideration should be given to economic and social outcomes in addition to physiologic outcome. To develop and evaluate these guidelines, it may be necessary to consider various ways to conceptualize and measure "return-to-work," beyond merely the end of the period in which an injured worker is not working, and possibly to develop new measures or indices for describing the long-term experience of the injured worker.

5. *Workplace based injury and illness prevention.* Workplace health and safety committees are widely seen as playing an important role in preventing occupational injury and illness. In recent years, several States have enacted legislation mandating these committees. Additional data are needed to evaluate the acceptance of these committees by employers, unions, workers and others; and their functioning and effectiveness. Are they successful in reducing workplace hazards, and, if so, what characteristics contribute to their ability to do so? How successful are other state-mandated hazard prevention programs?

Surveillance programs for injury and illness are widely used as part of larger work related injury and illness prevention programs. There are insufficient data on the effectiveness of these programs, and on the factors that increase these programs' likelihood of success.

Many workers compensation carriers, often through loss-control units, offer hazard prevention consulting services to employers. There is interest in examining the experience of these carriers. In particular, have these programs been evaluated to measure their effectiveness in preventing work-related injury and illness? If so, are there lessons to be drawn for injury and illness prevention in general?

Cost-benefit and cost-effectiveness studies are needed to assess occupational health programs at all levels from direct interventions in the workplace to comprehensive national programs. Such studies should include measuring the impact and costs of Federal or State regulation of workplace hazards. While many economic analyses have been done to project the costs of proposed standards, the actual economic and social impact of regulations that have gone into effect is rarely measured and deserving of study.

B. Methodological Approaches

The purpose of this RFA is to encourage submission of proposals that address some of the questions raised above. Since these questions lend themselves to a variety of quantitative and qualitative methodological approaches, NIOSH encourages applications from researchers in a range of academic disciplines. For example, the development of a comprehensive and defensible estimated range of the national economic burden of occupational injuries and illnesses may involve expertise representing a variety of fields (e.g., health economics, sociology, epidemiology, safety specialists and occupational medicine.) Also, the experience of injured workers in the workers compensation system could be examined quantitatively, using traditional economic or epidemiologic approaches, or could be examined qualitatively, employing techniques generally used by anthropologists or some sociologists. Multi-disciplinary approaches applied to the same issue are encouraged.

NIOSH envisions that some researchers may propose case studies, examining the experience of workers in one industry or workplace, or with a particular work-related condition, while others will propose studies analyzing large sets of data previously collected by compensation systems or carriers, or health insurers. Economic studies might be undertaken of costs of work-related injury, or of regulation, in one industry. In areas where adequate research has already been undertaken, programs that demonstrate the utility of new approaches to injury and illness prevention may be considered.

In many of the areas described, the foundation for analytical research may not exist, and it may be appropriate for researchers to apply for preliminary or descriptive studies that will generate hypotheses for future endeavors. For example, it may be difficult to identify populations of workers with occupational injury or illness who do not enter the workers compensation system. An applicant might propose a preliminary study to determine the number and characteristics of workers who may be work-injured but never applied for compensation by examining one or more provider-based data systems, or by surveying the memberships of one or more community-based organizations.

Research and evaluation methods in occupational health services may also need additional development. An applicant might propose to develop and test a series of quality indicators to be employed in evaluating occupational health services.

Applicants may apply for seed money to develop study protocols and the methodology for future scientific studies to address those questions for which rigorous investigation are needed but that are not easily accomplished. For example, although the application of managed care to workers compensation medical services has undergone a dramatic expansion, few scientific investigations have been conducted on the extent and impact of this growth. A descriptive approach that generates hypotheses might be warranted before proceeding to analytical and evaluation studies.

As noted above, it is an objective of this program to encourage scientists to

apply their skills to health services research in occupational health, and to enter with collaborative agreements with each other, and "stakeholder" institutions and organizations. In particular, NIOSH encourages efforts in which researchers work closely with employers, unions, and relevant government agencies in order to assist researchers in obtaining access to data, and to increase the likelihood that study results will be usable and used by the parties involved.

Inclusion of Minorities and Women in Study Population

Applicants are required to give added attention (where feasible and appropriate) to the inclusion of minorities and/or women study populations for research into the etiology of diseases, research in behavioral and social sciences, clinical studies of treatment and treatment outcomes, research on the dynamics of health care and its impact on disease, and appropriate interventions for disease prevention and health promotion. Exceptions would be studies of diseases which exclusively affect males or where involvement of pregnant women may expose the fetus to undue risks. If minorities and/or women are not included in a given study, a clear rationale for their exclusion must be provided.

Evaluation Criteria

1. General

Upon receipt, applications will be reviewed for completeness and responsiveness by CDC/NIOSH. Incomplete applications will be returned to the applicant without further consideration. If CDC/NIOSH staff finds that the application is not responsive to this announcement, it will be returned without further consideration. If the proposed project involves organizations or persons other than those affiliated with the applicant organization, letters of support and/or cooperation must be included.

2. Peer Review

Applications that are complete and responsive to the announcement will be evaluated for scientific and technical merit by an appropriate peer review group convened by the CDC in accordance with the review criteria stated below. As part of the initial merit review, a process (triage) may be used by the initial review group in which applications will be determined to be competitive or non-competitive based on their scientific merit relative to other applications received in response to this announcement. Applications judged to be competitive will be discussed and be assigned a priority score. Applications determined to be non-competitive will be withdrawn from further consideration and the principal investigator/program director and the official signing for the applicant organization will be promptly notified.

Review criteria for this announcement are as follows:

a. Scientific, technical, or medical significance and originality of proposed research;
b. Appropriateness and adequacy of the experimental approach and methodology proposed to carry out the research;
c. Qualifications and research experience of the Principal Investigator and staff, particularly but not exclusively in the area of the proposed research;
d. Availability of resources necessary to perform the research;
e. Adequacy of plans to include both genders and minorities and their subgroups as appropriate for the scientific goals of the research. Plans for the recruitment and retention of subjects will also be evaluated.

The review group will critically examine the submitted budget and will recommend an appropriate budget and period of support for each scored application.

3. Secondary Review

In the secondary (programmatic importance) review, the following factors will be considered:

a. Results of the initial review;
b. Magnitude of the problem in terms of numbers of workers affected;
c. Severity of the disease or injury in the worker population; and
d. Usefulness to applied technical knowledge in the identification, evaluation, and/or control of occupational safety and health hazards.

4. Funding Decisions

Applicants will compete for available funds with all other approved applications. The following will be considered in making funding decisions:

a. Quality of the proposed project as determined by peer review;
b. Availability of funds; and
c. Program balance among research areas of the announcement.

Executive Order 12372 Review

This program is not subject to the Executive Order 12372 review.

Public Health System Reporting Requirement

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.262.

Other Requirements

Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations, 45 CFR part 46, regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

Application Submission and Deadlines

1. Preapplication Letter of Intent

Although not a prerequisite of application, a non-binding letter of intent-to-apply is requested from potential applicants. The letter should be submitted to the Grants Management Branch, CDC (see "Applications" for the address). It should be postmarked no later than June 19, 1995. The letter should identify the announcement number, name of principal investigator, and specify the priority area to be addressed by the proposed project. The letter of intent does not influence review or funding decisions, but it will enable CDC to plan the review more efficiently, and will ensure that each applicant receives timely and relevant information prior to application submission.

2. Applications

Applicants should use Form PHS–398 (OMB Number 0925–0001) and adhere to the ERRATA Instruction Sheet for Form PHS–398 contained in the application package. The original and five copies of the application must be submitted to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E13, Atlanta, GA 30305 on or before July 14, 1995.

3. Deadlines

A. Applications shall be considered as meeting a deadline if they are either:

1. Received at the above address on or before the deadline date; or
2. Sent on or before the deadline date to the above address, and received in time for the review process. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be accepted as proof of timely mailing.)

B. Applications which do not meet the criteria in 3.A.1. or 3.A.2. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where to Obtain Additional Information

To receive additional written information call (404) 332–4561. You will be asked to leave your name, address and phone number and will need to refer to Announcement 565. You will receive a complete program description, information on application procedures, and application forms.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from Georgia L. Jang, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Mailstop E13, Atlanta, GA 30305, telephone (404) 842–6814.

Programmatic technical assistance may be obtained from Roy M. Fleming, Sc.D., Associate Director for Grants, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Building 1, Room 3053, Mailstop D30, Atlanta, GA 30333, telephone (404) 639–3343.

Please refer to Announcement 565 when requesting information and submitting an application.

Potential applicants may obtain a copy of "Healthy People 2000" (Full Report: Stock No. 017–001–00474–0) or "Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) referenced in the "Introduction" through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512–1800.

Dated: May 12, 1995.

Diane D. Porter,

Acting Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–12201 Filed 5–17–95; 8:45 am]

BILLING CODE 4163–19–P

Food and Drug Administration

[Docket No. 95N–0123]

Drug Export; Revia™ (Naltrexone Hydrochloride (HCl)) 50 Milligrams (mg) Film-Coated Tablets

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Dupont Merck has filed an application requesting approval for the export of the human drug Revia™ (naltrexone HCl) 50 mg film-coated tablets to Germany.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: James E. Hamilton, Center for Drug Evaluation and Research (HFD–310), Food and Drug Administration, 7520 Standish Pl., Rockville, MD 20857, 301–594–3150.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Dupont Merck, Dupont Merck Plaza, Maple Run, Centre Rd., Wilmington, DE 19805, has filed an application requesting approval for the export of the human drug Revia™ (naltrexone HCl) 50 mg film-coated tablets to Germany. The firm holds an approved new drug application for an uncoated tablet, however, this application is for a new film-coated tablet formulation. This product is used as an adjunctive treatment of opioid dependence in detoxified, formerly opioid dependent individuals, and in a proposed indication as an adjunctive treatment for individuals with alcohol dependence undergoing psychosocial treatment programs. The application was received and filed in the Center for Drug Evaluation and Research on April 17, 1995, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by May 30, 1995, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: May 4, 1995.

Gayle R. Dolecek,

Acting Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 95–12177 Filed 5–17–95; 8:45 am]

BILLING CODE 4160–01–F

National Institutes of Health

National Institute of Dental Research; Notice of Meeting of NIDR Board of Scientific Counselors

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the Board of Scientific Counselors, National Institute of Dental Research (NIDR), on June 7–9, 1995, in the Natcher Building, Conference Room A, National Institutes of Health, Bethesda, Maryland. The meeting will be open to the public from 8:55 a.m. to recess on June 8 and from

9:45 a.m. to 11:00 a.m. on June 9 for program and poster presentations. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sec. 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public from 6:00 p.m. until recess on June 7 and from 12:30 p.m. until adjournment on June 9 for the review, discussion, and evaluation of individual programs and projects conducted by the NIDR, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. Brent Jaquet, Director, Office of Planning, Evaluation, and Communications, NIDR, NIH, Building 31, Room 2C34, Bethesda, Maryland 20892 (telephone: (301) 496–6705) will provide summary of the meeting, roster of committee members and substantive program information. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Secretary listed above in advance of the meeting.

Dated: May 11, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–12192 Filed 5–17–95; 8:45 am]

BILLING CODE 4140–01–M

Prospective Grant of Exclusive License: Polysaccharide-Protein Conjugates

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This notice is in accordance with 15 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive world-wide license to practice the invention embodied in U.S. Patent Number 5,204,098 entitled "Polysaccharide-Protein Conjugates" and related foreign patent applications to Connaught Laboratories, Inc., of Swiftwater, Pennsylvania. The patent rights in this invention have been assigned to the United States of America.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. It is anticipated that this license will be limited to the field of typhoid vaccines and typhoid Vi-protein conjugates for the prevention of typhoid fever in humans. This prospective exclusive license may be granted unless within 60 days from the date of this published notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The patent describes conjugates of bacterial capsular polysaccharides and carrier proteins, and methods of synthesis, wherein the polysaccharide and protein are linked through a thio derivative of a carboxyl group found on the polysaccharide. The conjugates are useful as vaccines for prevention of disease caused by infection by the bacterial species from which the capsular polysaccharide is derived.

ADDRESSES: Requests for a copy of this patent, inquiries, comments and other materials relating to the contemplated license should be directed to: Robert Benson, Patent Advisor, Office of Technology Transfer, National Institutes of Health, 6011 Executive Blvd., Box 13, Rockville, MD 20852. Telephone: (301) 496–7056, X267; Facsimile: (301) 402–0220. Applications for a license filed in response to this notice will be treated as objections to the grant of the contemplated license. Only written comments and/or applications for a license which are received by NIH on or before July 17, 1995, will be considered.

Dated: May 5, 1995.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 95–12193 Filed 5–17–95; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–95–3888; FR–3886–N–04]

Homeownership of Single Family Homes Program (HOPE 3); Notice of Fund Availability: Notice of Extension of Application Deadline for Applicants in Oklahoma

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of further extension of deadline.

SUMMARY: This notice provides a further extension of the application submission deadline for the HOPE 3 applicants affected by the destruction of HUD's Office in Oklahoma City, Oklahoma. An extension of this deadline was already published on May 9, 1995, but because of a typographical error, the new deadline was misstated. In addition, because of the destruction of documents due to the Oklahoma City explosion, any applicant that has already submitted an application under the HOPE 3 NOFA to HUD's Office in Oklahoma City should resubmit a copy of its application to the Fort Worth Office, as provided in this notice.

DATES: The application deadline for applicants from Oklahoma will be May 19, 1995, 4:30 Central Time.

FOR FURTHER INFORMATION CONTACT: For applicants in Oklahoma, contact Will Williamson, HOPE 3 Coordinator, phone (817) 885–5887. For general information about this notice, contact Salvatore Sclafani, Program Analyst, Office of Community Planning and Development, Department of Housing and Urban Development, Room 7208, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–1283; or (202) 708–2565 (TDD). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: Because of the destruction of the HUD Office in Oklahoma City, Oklahoma, on April 19, 1995, the Department published a notice in the **Federal Register** (60 FR 24646, May 9, 1995) to extend the deadline for the submission of applications for certain programs, including the HOPE 3 Program. The Notice extended the application deadline for HOPE 3 applicants within the State of Oklahoma from April 25, 1995, to May 8, 1995. Because of a typographical error, the fact that some documents may be unaccounted for due to the destruction of documents in the Oklahoma City explosion, and the time required for applicants to resubmit copies of HOPE 3 applications to the Fort Worth Office, the Department has decided to provide an additional extension of time—to May 19, 1995—for HOPE 3 applicants in the State of Oklahoma. Any applicant under the HOPE 3 NOFA that has already submitted an application to the Oklahoma City office is directed to resubmit its application to HUD's Fort Worth Office, as indicated below in this notice. Photocopies of all of the documentation and materials as originally submitted to the Oklahoma City Office will be acceptable, as long as the applicant also provides proof of submission (e.g., postal or Federal Express receipt). Completed applications may not be submitted by fax.

Applicants in Oklahoma who have questions on the preparation of their applications may contact Will Williamson, HOPE 3 Coordinator in HUD's Texas State Office, phone (817) 885–5887. Except as revised by this notice, all other information and requirements applicable to the HOPE 3 NOFA remains as previously published.

Homeownership of Single Family Homes Program (HOPE 3); Notice of Fund Availability, published February 24, 1995, at 60 FR 10446.

Application Due Date: May 19, 1995, 4:30 Central Time (only for submissions from applicants within Oklahoma; all other applicants remain subject to the original April 25, 1995, deadline)

Submit Application To (only applicants within Oklahoma). HUD Texas State Office, Office of Community Planning and Development, P.O. Box 2905, Fort Worth, TX 76113–2905 ATTN: Will Williamson.

Dated: May 12, 1995.

Andrew Cuomo,

Assistant Secretary for Community Planning and Development.

[FR Doc. 95–12253 Filed 5–17–95; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–933–95–1320–01; COC 54608]

Notice of Coal Lease Offering By Sealed Bid; COC 54608

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of competitive coal lease sale.

SUMMARY: Bureau of Land Management, Colorado State Office, Lakewood, Colorado, hereby gives notice that certain coal resources in the lands hereinafter described in Routt County, Colorado, will be offered for competitive lease by sealed bid in accordance with the provisions of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 et seq.).

DATES: The lease sale will be held at 11 a.m., Friday, June 23, 1995. Sealed bids must be submitted no later than 10 a.m., Friday, June 23, 1995.

ADDRESSES: The lease sale will be held in the Conference Room, Fourth Floor, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado. Sealed bids must be submitted to the Cashier, First Floor, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215.

FOR FURTHER INFORMATION CONTACT: Karen Purvis at (303) 239–3795.

SUPPLEMENTARY INFORMATION: The tract will be leased to the qualified bidder submitting the highest offer, provided that the high bid meets the fair market value determination of the coal resource. The minimum bid for this tract is $100 per acre or fraction thereof. No bid less than $100 per acre or fraction thereof will be considered. The minimum bid is not intended to represent fair market value.

Sealed bids received after the time specified above will not be considered.

In the event identical high sealed bids are received, the tying high bidders will be requested to submit follow-up bids until a high bid is received. All tie-breaking sealed bids must be submitted with 15 minutes following the Sale Official's announcement at the sale that identical high bids have been received.

Fair market value will be determined by the authorized offer after the sale.

COAL OFFERED: The coal resource to be offered is limited to coal recoverable by underground mining methods in the Wadge seam on the Twentymile Tract in the following lands:

Sixth Principal Meridian
T. 5 N., R. 86 W.,
Sec. 21, N½, and SE¼;
Sec. 22, E½E½, and W½;
Sec. 23, all;
Sec. 26, N½, and N½SW¼;
Sec. 27, W½;
Sec. 28, NE¼, and E½NW¼;
Sec. 33, NE¼NE¼,

The land described contains 2,600 acres, more or less.

Total recoverable reserves are estimated to be 24,300,000 tons. The Wadge seam underground minable coal is ranked as high volatile C bituminous coal. The estimated coal quality for the Wadge seam on an as-received bases is as follows:

Btu	11,745 Btu/lb.
Moisture	7.76%
Sulfur Content	0.48%
Ash Content	8.80%

RENTAL AND ROYALTY: The lease issued as a result of this offering will provide for payment of an annual rental of $3.00 per acre or fraction thereof and a royalty payable to the United States of 8 percent of the value of coal mined by underground methods. The value of the coal will be determined in accordance with 30 CFR 206.

NOTICE OF AVAILABILITY: Bidding instruction for the offered tract are included in the Detailed Statement of Coal Lease Sale. Copies of the statement and the proposed coal lease are available upon request in person or by mail from the Colorado State Office at the address given above. The case file is available for inspection in the Public Room, Colorado State Office, during normal business hours at the address given above.

Dated: May 9, 1995.

Karen A. Purvis,

Solid Minerals Team Resource Services.

[FR Doc. 95–12225 Filed 5–17–95; 8:45 am]

BILLING CODE 4310–JB–M

[NM–060–1010–00–P (606]

Southeast New Mexico Playa Lakes Coordinating Committee; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Southeast New Mexico Playa Lakes Coordinating Committee Meeting.

DATES: Thursday, June 22, 1995, beginning at 9:30 a.m.

FOR FURTHER INFORMATION CONTACT: Leslie M. Cone, District Manager, Bureau of Land Management, 1717 West 2nd Street, Roswell, NM 88201, (505) 627–0242.

SUPPLEMENTARY INFORMATION: The agenda will include presentation of proposed changes to the Playa Lakes Investigation Study Plan by the National Biological Service, National Wildlife Health Center, to the Southeast New Mexico Plays Lakes Coordinating Committee, for approval. A progress report of the ongoing study will also be given. The meeting will be held at the Carlsbad Resource Area Office, 620 E. Greene, Carlsbad, New Mexico. Summary minutes will be maintained in the Roswell District Office and will be available for public inspection during regular business hours (7:45 a.m.–4:30 p.m.) within 30 days following the meeting. Copies will be available for the cost of duplication.

Dated: May 11, 1995

Leslie M. Cone,

District Manager.

[FR Doc. 95–12226 Filed 5–17–95; 8:45 am]

BILLING CODE 4310–FB–M

[CA–940–05–1310–03; CACA 25079]

California: Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Public Law 97–451, a petition for reinstatement of oil and gas lease CACA 26079 for lands in Fresno and Monterey Counties, California, was timely filed and was accompanied by all required rentals and royalties accruing from December 1, 1994, the date of Termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $5.00 per acre and 16⅔ percent, respectively. Payment of a $500.00 administrative fee has been made.

Having met all the requirements for reinstatement of the lease as set out in Section 31(d) and (e) of the Mineral Leasing Act of 1920 (30 USC 188), the Bureau of Land Management is proposing to reinstate the lease effective December 1, 1994, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above, and the reimbursement for cost of publication of this notice.

Dated: May 9, 1995.

Leroy M. Mohorich,

Chief, Branch of Energy and Mineral Science and Adjudication.

[FR Doc. 95–12227 Filed 5–17–95; 8:45 am]

BILLING CODE 4310–40–M

[WY–920–41–5700; WYW128222]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

May 8, 1995.

Pursuant to the provisions of 30 U.S.C. 188 (d) and (e), and 43 CFR 3108.2–3 (a) and (b)(1), a petition for reinstatement of oil and gas lease WYW128222 for lands in Johnson County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination. The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW128222 effective January 1, 1995, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Pamela J. Lewis,

Supervisory Land Law Examiner.

[FR Doc. 95–12228 Filed 5–17–95; 8:45 am]

BILLING CODE 4310–22–M

[WY–920–41–5700; WYW118068]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

May 8, 1995.

Pursuant to the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW118068 for lands in Carbon County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination. The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW118068 effective November 1, 1994, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Pamela J. Lewis,

Supervisory Land Law Examiner.

[FR Doc. 95–12229 Filed 5–17–95; 8:45 am]

BILLING CODE 4310–22–M

[WY–920–41–5700; WYW130848]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

May 9, 1995.

Pursuant to the provisions of 30 U.S.C. 188 (d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW130848 for lands in Big Horn County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination. The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW130848 effective November 1, 1994, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Pamela J. Lewis,

Supervisory Land Law Examiner.

[FR Doc. 95–12230 Filed 5–17–95; 8:45 am]

BILLING CODE 4310–22–M

[AZ–024–05–5410–00–A118; AZA–28672]

Notice of Receipt of Conveyance of Mineral Interest Application; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of minerals segregation.

SUMMARY: The private lands described in this notice aggregating approximately 16 acres, are segregated and made unavailable for filings under the general mining laws and the mineral leasing laws to determine their suitability for conveyance of the reserved mineral interest pursuant to section 209 of the Federal Land Policy and Management Act of October 21, 1976. The mineral interest will be conveyed in whole or in part upon favorable mineral examination.

The purpose is to allow consolidation of surface and subsurface of minerals ownership where there are no known mineral values or in those instances where the reservation interferes with or preludes appropriate non-mineral development and such development is a more beneficial use of the land than the mineral development.

FOR FURTHER INFORMATION CONTACT: Vivian Reid, Land Law Examiner, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027 (602) 780–8090. Serial Number AZA–28672.

Gila and Salt River Base and Meridian, Maricopa County, Arizona

T. 14 N., R. 1 W.,
Sec. 21, Only that portion belonging to Yavapai Hills, Inc., located within the SE¼SE¼

Minerals Reservation—All Minerals

Upon publication of this Notice of Segregation in the **Federal Register** as provided in 43 CFR 2720.1–1(b), the mineral interests owned by the United States in the private lands covered by the application shall be segregated to the extent that they will not be subject to appropriation under the mining and mineral leasing laws. The segregative effect of the application shall terminate upon: issuance of a patent or deed of such mineral interest; upon final rejection of the application; or two years from the date of publication of this notice, whichever occurs first.

Dated: May 10, 1995.

David J. Miller,

Associate District Manager.

[FR Doc. 95–12231 Filed 5–17–95; 8:45 am]

BILLING CODE 4310–32–M

[AZ–040–7122–00–5514; AZA 26789]

Notice of Proposed Exchange of Lands in Greenlee, Pima, and Cochise Counties, Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Bureau of Land Management is considering a proposal to exchange land pursuant to Section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716), as amended. The exchange has been proposed by the Phelps Dodge Corporation and is referred to as the Morenci Exchange Project.

The following described public land is being considered for disposal by the United States:

Gila and Salt River Meridian, Arizona

T. 4 S., 28 E.,
Sec. 12, part of MS4256A.
T. 3 S., R., 29 E.,
Sec. 14, W½E½, NW¼; (mineral estate only)
Sec. 15, all;
Sec. 21, SE¼SW¼, SE¼;
Sec. 21, NE¼, NE¼NW¼, W½NW¼; (mineral estate only)
Sec. 22, N½NE¼, SE¼NE¼; S½;
Sec. 22, SW¼NE¼, NW¼; (mineral estate only)
Sec. 23, S½SW¼, SW¼SE¼;
Sec. 23, NE¼; (mineral estate only)
Sec. 26, lots 1, 2, 3 and 5, W½NE¼, SE¼NE¼, NW¼, NE¼SE¼;
Sec. 27, lots 1–5, inclusive, N½NE¼, SE¼NE¼, NW¼NW¼;
Sec. 28, lots 1–6, inclusive, lot 10, N½NE¼, SW¼NE¼, NE¼NW¼, part of SE¼SE¼SW¼;
Sec. 31, lots 1, 4, 5, and 8, W½E½;
Sec. 32, part of MS3098, part of SW¼SW¼SE¼;
Sec. 35, lots 9–12, inclusive, lots 17 and 18.
T. 4 S., R. 29 E.,
Sec. 1, part of lot 4, part of MS4224A;
Sec. 5, lot 11, part of NW¼NW¼NE¼;
Sec. 6, lots 2, 11 and 21, part of MS 3343, part of SW¼SW¼SW¼;
Sec. 7, lots 8, 15, 16, 19, and 20, part MS4256–A, part of NW¼NW¼NW¼, part of NW¼SW¼NW¼;
Sec. 8, lots 4, 6, and part of lot 7;
Sec. 11, lots 8 and 9;
Sec. 12, lots 11, 12 and 14, part of MS 4245–C;
Sec. 17, part of lot 9, part of NW¼SE¼SW¼;
Sec. 18, part of N½;
Sec. 19, part of lots 8, 9 and 10, lots 18–21, inclusive, part of NE¼NE¼SE¼;
Sec. 20, lots 3 and 9, part of lots 4, 8, and 10, part of SW¼NE¼, part of SW¼SW¼NE¼ and SE¼SE¼NW¼, part of S½NW¼NW¼, part of SE¼NE¼SW¼ and SW¼SW¼.
T. 5 S., R. 29 E.,
Sec. 12, lots 2, 3 and 4, N½N½ of lots 5, 6 and 7, N½NW¼, N½N½S½NW¼.

The areas described aggregate approximately 5,061 acres.

Subject to valid existing rights, the public land identified above has been segregated from appropriation under the public land laws, mineral laws, and mineral leasing laws for a period of five years beginning on December 19, 1994.

In exchange the United States will acquire the following described land from Phelps Dodge Corporation:

Gila and Salt River Meridian, Arizona

T. 19 S., R. 18 E.,
Sec. 9, SE¼NE¼;
Sec. 10, SW¼NW¼, SW¼.
T. 14 S., R. 28 E.,
Sec. 3, E½SW¼, SW¼SW¼, SE¼;
Sec. 7, E½E½, NW¼NE¼, W½SE¼;
Sec. 8, S½SW¼;
Sec. 10, NW¼NW¼.
T. 5 S., R. 29 E.,
Sec. 30, SW¼, W½SE¼;
Sec. 31, NW¼NE¼.

The areas described aggregate approximately 1,200.00 acres.

More detailed information concerning the proposed exchange may be obtained from Scott Evans, Project Manager, Safford District Office, 711 14th Avenue, Safford, Arizona 85546, (520) 428–4040 or, William J. Ruddick, Team Leader, Arizona Exchange Team, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027, (602) 780–8090.

Interested parties may submit comments concerning the proposed exchange to the District Manager, Safford District Office at the above Safford address. In order to be considered in the environmental analysis of the proposed exchange, comments must be in writing to the District Manager and be postmarked within 45 days after the initial publication of this notice.

Dated: May 9, 1995.

William T. Civish,

District Manager.

[FR Doc. 95–12232 Filed 5–17–95; 8:45 am]

BILLING CODE 4310–32–M

[NV–930–4210–05; N–59504]

Notice of Realty Action: Modified Classification

AGENCY: Bureau of Land Management.

ACTION: Recreation and Public Purpose Lease/Conveyance.

SUMMARY: By publication of this notice Recreation and Public Purpose Classification N–41568–03 is hereby modified to reflect a change in use of the described lands from a public school to a church. The following described public land in Las Vegas, Clark County, Nevada has been examined and found suitable for lease/conveyance for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.). The Spring Valley Baptist Church proposes to use the land for church facility.

Mount Diablo Meridian, Nevada

T. 21 S., R. 60 E.,
Sec. 17: E½NW¼SE¼NW¼.

Containing 5.00 acres, more or less.

The land is not required for any federal purpose. The lease/conveyance is consistent with current Bureau planning for this area and would be in the public interest. The lease/patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

and will be subject to:

1. An easement 40.00 feet in width along the north boundary and 30.00 foot in width along the east boundary and will include a 20.00 foot spandrel area at the intersection of the two in favor of Clark County for roads, public utilities and flood control purposes.

2. Those rights for electrical and telephone line purposes which have been granted to Nevada Power Company and Sprint Central Telephone Company of Nevada by Permit No. N–58654 the under the Act of October 21, 1976 (43USC1761). Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register,** the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/conveyance under

the Recreation and Public Purposes Act, leasing under the mineral leasing laws and disposals under the mineral material disposal laws. For a period of 45 days from the date of publication of this notice in the **Federal Register**, intereted parties may submit comments regarding the proposed lease/conveyance for classification of the lands to the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126.

CLASSIFICATION COMMENTS: Interested parties may submit comments involving the suitability of the land for a church facility. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

APPLICATION COMMENTS: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM following proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a church facility.

Any adverse comments will be reviewed by the State Director.

In the absence of any adverse comments, the classification of the land described in this Notice will become effective 60 days from the date of publication in the **Federal Register**. The lands will not be offered for lease/conveyance until after the classification becomes effective.

Dated: May 5, 1995.

Michael F. Dwyer,

District Manager, Las Vegas, NV.

[FR Doc. 95–12233 Filed 5–17–95; 8:45 am]

BILLING CODE 4310–HC–M

[ID–942–1420–00]

Idaho: Filing of Plats of Survey; Idaho

The plats of the following described land were officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9:00 a.m., May 10, 1995.

The plat representing the dependent resurvey of portions of the north boundary and subdivisional lines, and the subdivision of section 4, T. 23N., R. 22E., Boise Meridian, Idaho, Group No. 880, was accepted, May 5, 1995.

The plat representing the dependent resurvey of portions of the subdivisional lines, the subdivision of section 33, and a metes-and-bounds survey in section 33, T. 24N., R. 22E., Boise Meridian, Idaho, Group No. 880, was accepted, May 5, 1995.

These surveys were executed to meet certain administrative needs of the Bureau of Land Management.

All inquires concerning the survey of the above described land must be sent to the Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Dated: May 10, 1995.

Mark Smirnov,

Acting Chief Cadastral Surveyor for Idaho.

[FR Doc. 95–12234 Filed 5–17–95; 8:45 am]

BILLING CODE 4310–GG–M

[ES–960–1420–00; ES–047170, Group 152, Wisconsin]

Notice of Filing of Plat of Survey, Stayed

On Thursday, March 23, 1995 there was published in the **Federal Register**, Volume 60, Number 56, on page 15300 a notice entitled "Filing of Plat of Survey; Wisconsin. In said notice was a plat depicting the survey of two islands located in Township 8 North, Range 21 East, Fourth Principal Meridian, Wisconsin, accepted March 13, 1995.

The official filing of the plat is hereby stayed, pending consideration of all protests.

Dated: May 4, 1995.

James F. Gegen,

Acting Chief Cadastral Surveyor.

[FR Doc. 95–12235 Filed 5–17–95; 8:45 am]

BILLING CODE 4310–GJ–M

[CA–931–1430–01; CACA 35558]

Proposed Withdrawal; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw approximately 16,560 acres of lands. This notice closes the lands for up to two years from all the public land and mineral laws except conveyances under sec. 701 of the California Desert Protection Act of 1994 (108 Stat.4471). Existing rights are not affected by this withdrawal. Written comments from the public are solicited, and a public meeting will be held on the proposed withdrawal.

DATES: Comments should be received on or before August 16, 1995.

ADDRESSES: Comments should be sent to the California State Director, BLM (CA–931), 2800 Cottage Way, Room E–2845, Sacramento, California 95825 and Park Superintendent, Mojave Sector, 1051 West Avenue M, #201, Lancaster, CA 93534.

FOR FURTHER INFORMATION CONTACT: Nancy Alex, BLM California State Office, 916–979–2858.

SUPPLEMENTARY INFORMATION: On May 11, 1995, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described lands, subject to valid existing right, from settlement, sale, location or entry under the United States land and mineral laws, with the single exception of conveyances to the State of California pursuant to Sec. 701 of the California Desert Protection Act of 1994 (108 Stat. 4471):

Mount Diablo Meridian, California

T. 29 S., R. 37 E.,

All of the following land lying east of the eastern right-of-way boundary of State Highway 14, noted on federal land status records as Serial Nos. CALA 0135202 and CALA 0160522:

Sec. 1; lots 1 to 4 inclusive, S½N½, and S½;
Sec. 2, lots 1 and 2, SE¼NE¼, E½SW¾, and SE¼;
Sec. 11, E½, and E½W½;
Sec. 12;
Sec. 13;
Sec. 14, lots 1, 2, 3, lots 6 to 16, inclusive;
Sec. 22, lots 8 and 9;
Sec. 23, lots 1 to 16, inclusive;
Sec. 24; lots 1 to 16 inclusive; sec. 25;
Sec. 26, N½, NE¼SW¼, NE¼NW¼SW¼, E½SE¼SW¼, and SE¼;
Sec. 35, E½NE¼, and SW¼NE¼.

T. 29 S., R. 38 E.,

All of the following land lying north of the northern right-of-way boundary of the highway known as the Redrock Randsburg Road:

Sec. 4, lots 1 to 4 inclusive, S½N½, and S½;
Sec. 5, lots 1 to 4, inclusive, S½N½, NE¼NE¼SW¼, W½NE¼SW¼, NW¼SW¼, N½SW¼SW¼, NE¼SE¼, E½NW¼SE¼, NW¼NW¼SE¼, E½SW¼SE¼, and SE¼SE¼;
Sec. 6, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, N½SE¼, SW¼SE¼, N½SE¼SE¼, and SW¼SE¼SE¼;
Sec. 7, lots 1 to 4, inclusive, NW¼NE¼NE¼, NW¼NE¼, W½SW¼NE¼, E½W½, NE¼NE¼SE¼, S½NE¼SE¼, W½NW¼SE¼, SE¼NW¼SE¼, and S½SE¼;
Sec. 8, NE¼, E½NE¼NW¼, S½NW¼, and S½;
Sec. 9;
Sec. 17;
Sec. 18, lots 1 to 4 inclusive, E½, and E½W½;
Sec. 19, lots 1 to 4 inclusive, E½, and E½W½;
Sec. 20;

Sec. 21;
Sec. 28;
Sec. 29, N½, NE¼SW¼, NE¼NW¼SW¼, S½NW¼SW¼, S½SW¼, and SE¼;
Sec. 30, lots 1, 4, and 6, N½NE¼, E½W½SW¼NE¼, E½SW¼NE¼, W½SE¼NE, NE¼NW¼, S½NE¼SW¼, SE¼SW¾, W½NE¼SE¼, SE¼NE¼SE¼, NW¼SE¼, and S½SE¼;
Sec. 31, lots 1 to 4 inclusive, E½, and E½W½;
Sec. 32;
Sec. 33.

T. 30 S., R. 38 E.,

All of the following land lying north of the northern right-of-way boundary of the highway known as the Redrock Randsburg Road:

Sec. 4, lot 2 of NE¼, and E½ lot 2 of NW¼.
Sec. 6, lot 1 of NE¼, lot 1 of NW¼, lot 2 of NE¼, lot 2 of NW¼, lot 1 of SW¼, lot 2 of SW¼, and SE¼.

The area within the withdrawal contains approximately 16,560 acres.

Congress has mandated all the public lands described above be conveyed to the State of California, subject to valid existing rights, for inclusion in Red Rock Canyon State Park (California Desert Protection Act, 108 Stat. 4471, sec. 701.) The purpose of the proposed withdrawal is to protect the park values of this designated area until the lands can be conveyed to the State of California pursuant to the aforementioned act.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the California State Director of the Bureau of Land Management.

A public meeting is required to be held regarding the proposed withdrawal. Upon determination by the authorized officer of the location and date of the meeting, a notice of time and place will be published in the **Federal Register** and in a local newspaper at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300. Records relating to the application are available for examination in the BLM Public Room, 2800 Cottage Way, Sacramento, CA 95825.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date.

The temporary uses which will be permitted during this segregative period are land uses consistent with the California Desert Conservation Area Plan and permitted by the Memorandum of Understanding between the Bureau of Land Management and the California Department of Parks and Recreation. Existing rights are not affected by this action.

David M. McIlnay

Chief, Branch of Lands

[FR Doc. 95–12205 Filed 5–17–95; 8:45 am]

BILLING CODE 4310–40–P

Fish and Wildlife Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for reinstatement approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Service's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Service Clearance Officer and the Office of Management and Budget, Paperwork Reduction Project (1018–0009) Washington, D.C. 20503, telephone 202–395–7340.

Title: Woodcock Wing Collection Envelope

OMB Approval Number: 1018–0009

Abstract: The Migratory Bird Treaty Act authorizes and directs the Secretary of the Interior to determine to what extent migratory game birds may be hunted. For several species of game birds, including the woodcock, this determination is based primarily on biological information gathered through surveys. Survey cooperators provide data on their harvests and hunting activities, and from each bird taken, they submit one wing for certain biological determinations.

Service Form Number: 3–156A.

Frequency: On occasion.

Description of Respondents: Individuals and households.

Completion Time: The overall reporting burden is estimated to average 4 minutes per response with a response rate average of 5 responses per respondent.

Annual Responses: 2,000.

Annual Burden Hours: 670.

Service Clearance Officer: Phyllis H. Cook, 703–358–1943 Mail Stop—224 Arlington Square, U.S. Fish and Wildlife Service, Washington, D.C. 20240.

Dated: April 14, 1995.

John J. Doggett,

Acting Assistant Director—Refuges and Wildlife.

[FR Doc. 95–12224 Filed 5–17–95; 8:45 am]

BILLING CODE 4310–55–M

Endangered and Threatened Species Permit Application

AGENCY: Fish and Wildlife, Interior.

ACTION: Notice of document availability; request for comments.

Availability of an Environmental Assessment and Receipt of an Application for a Permit to Allow Incidental Take of Threatened and Endangered Species by Murray Pacific Corporation on its Mineral Tree Farm in Lewis County, Washington.

SUMMARY: This notice advises the public that Murray Pacific Corporation (Applicant) has applied to the U.S. Fish and Wildlife Service (FWS) for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The Applicant has requested the permit as an amendment to their existing permit (PRT–777837) authorizing incidental take of the northern spotted owl, which was issued on September 24, 1993, and have amended their existing Habitat Conservation Plan (HCP). The application has been assigned permit number PRT–777837. The Applicant has also requested to enter into a consensual agreement with the U.S. National Marine Fisheries Service (NMFS) to address the needs of anadromous salmonids being considered for listing under the Act, and with the FWS to conserve other fish and wildlife species which may be associated with habitats on their Mineral Tree Farm in Lewis County, Washington (Tree Farm). The requested permit would authorize the incidental take of all species presently listed under the Act, that may occur on the Applicant's Tree Farm. The proposed incidental take would occur as a result of timber harvest activities in the various habitat types that occur now, and will occur on the Tree Farm during the term of the proposed permit. The HCP Amendment includes an agreement for the issuance of additional permits for the incidental take of species not presently listed under the Act, but which may become listed during the term of the proposed permit, and which may occur in habitats on the Tree Farm.

The FWS in conjunction with NMFS announce the availability of an Environmental Assessment (EA) for the proposed issuance of the incidental take permit and signing of the agreement. The FWS is taking administrative responsibility for announcing the availability of the aforementioned documents. This notice is provided pursuant to section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the permit application and EA should be received on or before June 19, 1995.

ADDRESSES: Comments regarding the application or EA should be addressed to Mr. Curt Smitch, Assistant Regional Director, U.S. Fish and Wildlife Service, 3773 Martin Way East, Building C—Suite 101, Olympia, Washington 98501. Please refer to permit No. PRT–777837 when submitting comments. Individuals wishing copies of the application or EA for review should immediately contact the above office (360–534–9330).

FOR FURTHER INFORMATION CONTACT: Craig Hansen, U.S. Fish and Wildlife Service, 3773 Martin Way East, Building C- Suite 101, Olympia, WA., 98501; (360) 412–5465. Steve Landino, National Marine Fisheries Service, 3773 Martin Way East, Building C- Suite 101, Olympia, WA., 98501; (360) 412–5469.

SUPPLEMENTARY INFORMATION:

Background

Under section 9 of the Act and its implementing regulations, "taking" of a threatened or endangered species, is prohibited. However, the FWS and NMFS, under limited circumstances, may issue permits to take threatened and endangered wildlife species if such taking is incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for threatened species are in 50 CFR 17.32 and in 50 CFR 17.22 for endangered species.

The Applicant proposes to implement an amendment to their HCP for the northern spotted owl that will allow timber harvest on portions of approximately 55,000 acres of their Tree Farm. The Applicant's proposed timber harvest may result in the take, as defined in the Act and its implementing regulations, of listed species. The HCP and permit would be in effect through the year 2094. The application includes an amended HCP and Implementation Agreement.

The Applicant proposes to mitigate for the incidental take of all listed species by maintaining at least 10 percent of the Tree Farm in non-harvestable reserves for the term of the permit. Reserves would be established during a Watershed Analysis process which the Applicant would complete by 2004. The expected result of Watershed Analysis would place a majority of the reserves in riparian zones. In addition, the Applicant would be committed to a variety of special measures intended to mitigate and minimize impacts to the habitat types which occur on the Tree Farm, and specific State and Federal species of concern including the grizzly bear, gray wolf, bald and golden eagles, goshawk, Larch Mountain salamander, Townsend's big-eared bat, long-legged myotis (bat), and others. The Applicant also proposes to mitigate for impacts to anadromous salmonids through habitat conservation measures for these species.

The EA considers the environmental consequences of 5 alternatives, including the proposed action and no-action alternatives. The proposed action alternative is the issuance of a permit under section 10(a) of the Act that would authorize incidental take of all listed species, and signing of the agreement for currently unlisted species, that may occur in the habitats on the Applicant's Tree Farm. The proposed action would require the Applicant to implement their amended Habitat Conservation Plan. Under the no-action alternative, the Applicant would continue to implement their existing northern spotted owl HCP, and additional incidental take permits would not be issued. The third alternative is to maintain approximately 29 percent of the Tree Farm in reserves generated according to Watershed Analysis prescriptions. The fourth alternative is to maintain reserves on about 17 percent of the Tree Farm, and would allow the Applicant to harvest timber on a limited basis in the outer half of riparian reserves. The fifth alternative would place about 5 percent of the Tree Farm in riparian reserves with additional protection on steep slopes with wet talus habitat, the Applicant would commit to and complete further Watershed Analysis by the year 2004, and the Applicant would retain all live conifer and conifer snags greater than 40 inches in diameter at breast height.

Dated: May 12, 1995.

Thomas Dwyer,

Deputy Regional Director, Region 1, Fish and Wildlife Service, Portland, Oregon.

[FR Doc. 95–12204 Filed 5–17–95; 8:45 am]

BILLING CODE 4310–55–P

National Park Service

National Capital Memorial Commission; Public Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the National Capital Memorial Commission will be held on Tuesday, June 20, 1995, at 1 p.m., at the National Building Museum, Room 312, 5th and F Streets, NW.

The Commission was established by Public Law 99–652, the Commemorative Works Act, for the purpose of preparing and recommending to the Secretary of the Interior, Administrator, General Services Administration, and Members of Congress broad criteria, guidelines, and policies for memorializing persons and events on Federal lands in the National Capital Region (as defined in the National Capital Planning Act of 1952, as amended), through the media of monuments, memorials and statues. It is to examine each memorial proposal for adequacy and appropriateness, make recommendations to the Secretary and Administrator, and to serve as information focal point for those persons seeking to erect memorials on Federal land in the National Capital Region.

The members of the Commission are as follows:

Director, National Park Service
Chairman, National Capital Planning Commission
The Architect of the Capitol
Chairman, American Battle Monuments Commission
Chairman, Commission of Fine Arts
Mayor of the District of Columbia
Administrator, General Services Administration
Secretary of Defense

The purpose of the meeting will be to consider sites for the World War II Memorial. The meeting will be open to the public. Any person may file with the Commission a written statement concerning the matters to be discussed. Persons who wish to file a written statement or testify at the meeting or who want further information concerning the meeting may contact the Commission at 202–619–7097. Minutes of the meeting will be available for public inspection 4 weeks after the meeting at the Office of Land Use Coordination, National Capital Region, 1100 Ohio Drive, SW., Room 201, Washington, D.C., 20242.

Dated: May 11, 1995.

Robert Stanton,

Regional Director, National Capital Region.

[FR Doc. 95–12260 Filed 5–17–95; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–439X]

Dallas Area Rapid Transit—Abandonment Exemption—in Dallas County, TX

Dallas Area Rapid Transit (DART), a political subdivision of the State of Texas, has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a portion of its line of railroad, known as the Garland Line, between milepost 762.26 and milepost 763.0, in the City of Dallas, Dallas County, TX, a distance of .74 miles.[1]

DART has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on June 17, 1995, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29[4] must be filed by May 30, 1995. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by June 7, 1995, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: Kevin M. Sheys, 1020 19th St., N.W., Suite 400, Washington, DC 20036.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

DART has filed an environmental report which addresses the abandonment's effects, if any, on the environmental and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by May 23, 1995. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: May 11, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–12252 Filed 5–17–95; 8:45 am]

BILLING CODE 7035–01–P

[1] DART acquired this line of railroad from the Missouri Pacific Railroad Company (MP) in 1990, with MP retaining trackage rights. MP discontinued its trackage rights through a 1992 relocation of its operations, and later abandoned three miles of trackage (as to which MP had retained ownership) south from the current end of track at milepost 763.0 into Dallas. This right-of-way south of the line is now used as a recreational trail.

[2] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Environmental Analysis in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit the Commission to review and act on the request before the effective date of this exemption.

[3] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[4] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Advisory Committee on Actuarial Examinations; Meeting

Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet in the Conference Room of the Office of Director of Practice, Suite 600, 801 Pennsylvania Avenue NW., Washington, DC, on Thursday and Friday, June 22 and 23, 1995, from 8:30 a.m. to 5:00 p.m. each day.

The purpose of the meeting is to discuss topics and questions which may be recommended for inclusion of future Joint Board examinations in actuarial mathematics and methodology referred to in Title 29 U.S. Code, section 1242(a)(1)(B) and to review the May 1995 Joint Board examinations in order to make recommendations relative thereto, including the minimum acceptable pass score. Topics for inclusion on the syllabus for the Joint Board's examination program for the November 1995 pension actuarial examination and the May 1996 basic actuarial examinations will be discussed. In addition, the possibility of having single true/false questions with a lower weighting than other questions on the Pension Examination will be discussed.

A determination as required by section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) that the portions of the meeting dealing with the discussion of questions which may appear on future Joint Board examinations and review of the May 1995 Joint Board examination fall within the exceptions to the open meeting requirement set forth in Title 5 U.S. Code, section 552(c)(9)(B), and that the public interest requires that such portions be closed to public participation.

The portion of the meeting dealing with the discussion of the other topics will commence at 1:30 p.m. on June 22 and will continue for as long as necessary to complete the discussion, but not beyond 3:00 p.m. This portion of the meeting will be open to the public as space is available. Time permitting, after the close of this discussion by Committee members, interested persons may make statements germane to this subject. Persons wishing to make oral statements are requested to notify the Acting Committee Management Officer in writing prior to the meeting in order to aid in scheduling the time available, and should submit the written text, or, at a minimum, an outline of comments they propose to make orally. Such comments will be limited to ten minutes in length. Any interested person also may file a written statement for consideration by the Joint Board and Committee by sending it to the Acting Committee Management Officer. Notifications and statements should be mailed no later than June 6, 1995 to Mr. Robert I. Brauer, Joint Board for the Enrollment of Actuaries, c/o U.S. Department of the Treasury, Washington, DC 20220.

Dated: May 15, 1995.

Rober I. Brauer,

Acting Advisory Committee Management Officer, Joint Board for the Enrollment of Actuaries.

[FR Doc. 95–12210 Filed 5–17–95; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF JUSTICE

Notice of Lodging a Final Judgment by Consent Pursuant to the Comprehensive Environmental Response Compensation and Liability Act (CERCLA)

Notice is hereby given that on May 11, 1995, a proposed consent decree in *United States* v. *ACF Industries, Inc.*, Civ. A. No. 2.95–0360, was lodged with the United States District Court for the Southern District of West Virginia. The complaint in this action seeks recovery of costs and injunctive relief under Sections 106 and 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99–499, 42 U.S.C. §§ 9606, 9607(a). This action involves the ACF Industries Site near Eleanor, West Virginia, a property which the United States acquired by eminent domain in December 1989.

Under the proposed Consent Decree, AFC Industries Inc. will pay $2,000,000 for costs incurred by the United States in performing certain response actions at the Site. The Decree also requires ACF Industries Inc. to perform certain response actions for the Site.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *ACF Industries, Inc.*, DOJ Reference No. 90–11–2–681.

The proposed consent decree may be examined at the Office of the United States Attorney for the Southern District of West Virginia, 500 Quarrier St., Room 3201, Charleston, West Virginia, offices of the U.S. Army Corps of Engineers Huntington District, 502 Eighth Street, Huntington, West Virginia 25701, and at the Consent Decree Library, 1120 "G" Street, NW, 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed decree may be obtained in person or by mail from the Consent Decree Library at the address listed above. In requesting a copy, please refer to the referenced case and number, and enclose a check in the amount of $16.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Acting Section Chief, Environment Enforcement Section, Environmental and Natural Resources Division.

[FR Doc. 95–12236 Filed 5–17–95; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 95–36; Exemption Application No. D–09798, et al.]

Grant of Individual Exemptions; Amended Profit Sharing Plan and Trust of Walker Products Co., Inc., et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Amended Profit Sharing Plan and Trust of Walker Products Co., Inc. (the P/S Plan)

Located in Lincoln, Kansas

[Prohibited Transaction Exemption 95–36; Exemption App. No. D–09798]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale of certain farm land (the Land) by the P/S Plan to Mr. Lloyd Walker, a 33⅓% shareholder of the P/S Plan sponsor and a party in interest with respect to the P/S Plan, provided that the following conditions are satisfied:

(1) The sale will be a one-time cash transaction;

(2) The P/S Plan will receive the fair market value of the Land as determined at the time of the sale by an independent, qualified appraiser;

(3) The P/S Plan will pay no expenses associated with the sale; and

(4) The terms of this transaction are at least as favorable to the P/S Plan as an arms-length transaction between unrelated parties.

For a complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on March 20, 1995 at 60 FR 14792/14793.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

The Travelers Separate Account "R" (SAR)

Located in Hartford, Connecticut

[Prohibited Transaction Exemption 95–37; App. No. D–09827]

Exemption

The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the past lease (the Lease) of space in an office building located in Cedar Knolls, New Jersey (the Building) from December 22, 1993 until June 24, 1994 by SAR to The Travelers Insurance Company (Travelers), a party in interest with respect to employee benefit plans invested in SAR, provided that the following conditions were satisfied:

(a) All terms and conditions of the Lease were at least as favorable to SAR as those which SAR could have obtained in an arm's-length transaction with an unrelated party at the time the Lease was executed;

(b) The rent paid by Travelers to SAR under the Lease was not less than the fair market rental value of the office space;

(c) LaSalle Partners (LaSalle), acting as a qualified, independent fiduciary for SAR during the time that the Building was owned by SAR, reviewed all terms and conditions of the Lease prior to the transaction, as well as any subsequent modifications to the Lease, and determined that such terms and conditions would be in the best interests of SAR at the time of the transaction;

(d) LaSalle represented the interests of SAR for all purposes under the Lease as a qualified, independent fiduciary for SAR, monitored the performance of the parties under the terms and conditions of the Lease, and took whatever action was necessary to safeguard the interests of SAR with respect to the Lease during the time that the Building was part of SAR's portfolio; and

(e) Travelers pays to all of SAR's contractholders, upon final liquidation of the properties held by SAR, amounts necessary to reimburse SAR for expenses incurred in connection with the tenant improvements made to the office space leased to Travelers prior to the sale of the Building (i.e., $1,363,581), as well as all other amounts required to be paid to SAR's contractholders, pursuant to the terms of the Settlement Agreement arising from *The Travelers Insurance Company* v. *Allied-Signal, Inc. Master Pension Trust, et al.* (Civil No. H–90–870–AHN, USDC D Conn).

EFFECTIVE DATE: This exemption is effective for the period from December 22, 1993 until June 24, 1994.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption (the Proposal) published on January 18, 1995, at 60 FR 3662.

NOTICE TO INTERESTED PERSONS: The applicant represents that some of the employee benefit plans invested in SAR did not receive notice of the pendency of the proposed exemption within the time period specified in the Proposal. The applicant states that these plans were subsequently provided with a separate notice and a copy of the Proposal on or before March 17, 1995. Such plans were advised by the applicant in the separate notice that they had until April 17, 1995 to comment and/or request a hearing on the Proposal. No comments or hearing requests were received by the Department.

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department, telephone (202) 219–8194. (This is not a toll-free number.)

Law Offices of Bryson and Berman, P.A. Employees' Pension Plan and Trust (Pension Plan) and Law Offices of Bryson and Berman, P. A. Employees' Profit Sharing Plan and Trust (P/S Plan, collectively; the Plans)

Located in Miami, Florida

[Prohibited Transaction Exemption 95–38; Exemption App. Nos. D–09884 and D–09885]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale by the two individual accounts (the Accounts) in the Plans of Rodney W. Bryson of two adjacent parcels of vacant land (Lots 3 and 4, collectively; the Lots) to Mr. Rodney Bryson (Mr. Bryson), a trustee of the Plans and a party in interest with respect to the Plans; provided that the following conditions are satisfied:

(a) The sale will be a one-time cash transaction;

(b) The Accounts in this transaction will receive the current fair market value of the Lots established at the time of the sale by an independent qualified appraiser;

(c) The Accounts will pay no expenses associated with the sale; and

(d) The terms of this transaction are at least as favorable to the Accounts as an arms-length transaction between unrelated parties.

For a complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on March 13, 1995 at 60 FR 13472/13473.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, D.C., this 12th day of May, 1995.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 95–12183 Filed 5–17–95; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Astronomical Sciences; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Astronomical Sciences.

Date and Time: June 8 and 9, 1995, 9 am–5 pm

Place: Room 370, National Science Foundation, 4201, Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Jane Russell, Program Director, Division of Astronomical Sciences, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: 703/306–1827.

Purpose of Meeting: To provide advice and recommendations on proposals submitted to the National Science Foundation for financial support.

Agenda: To review and evaluate Global Oscillation Network Group (GONG) proposals.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: May 15, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–12265 Filed 5–17–95; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for Biological Sciences; Committee of Visitors; Meeting

I accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Committee for Biological Sciences; Committee of Visitors.

Date and time: June 7–9, 1995.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 330, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Scott Collins, Division of Environmental Biology, Room 640, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1479.

Purpose of Meeting: To carry out Committee of Visitors (COV) review, including examination of decision on proposals, reviewer comments, and other privileged materials.

Agenda: To provide oversight review of the Ecological Studies Cluster in the Division of Environmental Biology.

Reason for Closing: The meeting is closed to the public because the Committee is reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they are disclosed. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: May 15, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–12266 Filed 5–17–95; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for Computer and Information Science and Engineering; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Computer and Information Science and Engineering.

Date and Time: June 8, 1995; 8:30 a.m. to 5 p.m.; June 9, 1995; 8:30 a.m. to 2:30 p.m.

Place: 4201 Wilson Blvd., Arlington, VA 22230, Room 1235.

Type of Meeting: Open.

Contact Person: Odessa Dyson, Administrative Officer, Office of the Assistant Director, Directorate for Computer and Information Science and Engineering, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1900.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice to the Assistant Director/CISE on issues related to long-range planning, to advise NSF on the impact of policies, programs and activities on the CISE community; and to form ad hoc subcommittees to carry out needed studies and tasks.

Agenda:

(1) Strategic Planning

(2) Committee of Visitors Reporting (COV)

Dated: May 15, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–12267 Filed 5–17–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Design, Manufacture, and Industrial Innovation; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Design, Manufacture, and Industrial Innovation—#1194.

Date and Time: June 6, 1995, 8:30 a.m.–5:00 p.m.

Place: Rooms 330, 340, 530, 580, 565, and 970, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Program Directors: Dr. Pius Egbelu, Operations Research and Production Systems, Dr. Warren DeVries, Manufacturing Machines and Equipment, Dr. Christina Gabriel, Integration Engineering, Dr. George Hazelrigg, Engineering Design, and Dr. Kesh Narayanan, Materials Processing and Manufacturing, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 306–1330.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the NSF for financial support.

Agenda: To review and evaluate unsolicited proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: May 15, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–12268 Filed 5–17–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Electrical and Communications Systems; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meetings.

Name and Committee Code: Special Emphasis Panel in Electrical and Communications Systems (#1196).

Date and Time: June 5, 8, 9, 1995.

Place: Room 675, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Division of Electrical and Communications Systems, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1339.

Purpose of Meetings: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals for the (1) Quantum Electronics, Plasmas, Electromagnetics, (2) Optical Communications Systems, and (3) Solid State and Mircrostructures programs as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: May 15, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–12269 Filed 5–17–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Research, Evaluation and Dissemination; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Research, Evaluation and Dissemination.

Date and Time: June 5, 1995; 8:30 a.m. to 5 p.m.; June 6, 1995; 8:30 a.m. to 5 p.m.; June 7, 1995; 8:30 a.m. to 5 p.m.; June 8, 1995; 8:30 a.m. to 5 p.m.; June 9, 1995; 8:30 a.m. to 5 p.m.

Place: Rooms 320, 370, and 375, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Nora Sabelli, Program Director, 4201 Wilson Boulevard, Room 855, Arlington, VA 22230. Telephone (703) 306–1651.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals and provide advice and recommendations as part of the selection process for proposals submitted to the Networking Infrastructure for Education Program.

Reason for Closing: Because the proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals, the meetings are closed to the public. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Dated: May 15, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–12270 Filed 5–17–95; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–250 and 50–251]

Florida Power and Light Company; Turkey Point Unit Nos. 3 and 4; Notice of Partial Denial of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (NRC) has denied a portion of an amendment request by the Florida Power and Light Company (FPL or the licensee) for an amendment to Facility Operating License Nos. DPR–31 and DPR–41, issued to the licensee for operation of the Turkey Point Plant, Units 3 and 4, located in Dade County, Florida. Notice of Consideration of Issuance of this amendment was published in the **Federal Register** on November 9, 1994 (59 FR 55869).

The purpose of the licensee's amendment request was to revise the Technical Specification (TS) to revise the definition of core alterations, allow the personnel airlocks to be open during core alterations and revise a footnote pertaining to opening of certain valves.

The NRC staff has concluded that the portion of the licensee's request regarding the footnote allowing certain valves to be open during core alterations cannot be granted for the reasons stated in letter dated May 11, 1995. The licensee was notified of the Commission's denial of the proposed change by letter dated May 11, 1995.

By June 19, 1995, the licensee may demand a hearing with respect to the denial described above. Any person affected by this proceeding may file a written petition for leave to intervene.

A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC, 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. A copy of any petitions should also be sent to the office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to J. R. Newman, Esquire, Morgan, Lewis & Bockius, 1800 M Street, NW., Washington, DC 20036, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendments dated October 20, 1994, and (2) the Commission's letter to the licensee dated May 11, 1995. These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Florida International University, University Park, Miami, Florida 33199. A copy of Item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Document Control Desk.

Dated at Rockville, Maryland this 11th day of May, 1994.

For the Nuclear Regulatory Commission.

David B. Matthews,

Director, Project Directorate II–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–12216 Filed 5–17–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 030–22026; License No. 37–20746–01 (Revoked) EA 95–090]

Joseph Paolino and Sons, Inc.; Mt. Laurel, New Jersey; Confirmatory Order

I

Joseph Paolino and Sons, Inc. (Licensee) previously held Byproduct Material License No. 37–20746–01 issued by the Nuclear Regulatory Commission pursuant to 10 CFR Part 30. The license authorized the possession and use of sealed sources containing byproduct material (cesium-137 and americium-241) in portable moisture density gauges, in accordance with the conditions specified therein. The license was issued on September 20, 1984 and was revoked by an Order Revoking License for nonpayment of fees on July 30, 1993.

II

The Order Revoking License directed the Licensee to transfer all licensed material that was in its possession to an authorized recipient. The Licensee failed to transfer the material and on August 18, 1994, the NRC issued a Notice of Violation and Revoked License, which was returned unclaimed and resent by messenger service and signed for by the Licensee on October 6, 1994. On December 14, 1994, the NRC issued a Notice of Violation and Proposed Imposition of Civil Penalty—$3000 and Notification of Consideration of the Imposition of Daily Civil Penalties for unauthorized possession of byproduct material and failure to comply with the Order Revoking License. The Licensee failed to respond to this action and on March 8, 1995, the NRC issued a Notice of Violation and Proposed Imposition of Daily Civil Penalties—$15,000. The Licensee responded and transferred the byproduct material in its possession to an authorized recipient on March 24, 1995. The Licensee did not pay the outstanding civil penalties totaling $18,000.

III

The Notice of Violation and Proposed Imposition of Civil Penalties dated December 14, 1994 and March 8, 1995 are still outstanding. As the parties

desire to resolve all matters pending between them, the Licensee, through its Assistant Secretary, Matthew Paolino, has entered into an agreement with the NRC executed on April 18, 1995. Under the terms of the agreement, the NRC withdraws the civil penalty in the amount of $3,000 proposed by Notice of Violation dated December 14, 1994 and the daily civil penalties in the total amount of $15,000 proposed by Notice of Violation dated March 8, 1995. Under the terms of the agreement, Joseph Paolino and Sons, Inc., Licensee, agrees that for a period of five years from April 18, 1995, (1) neither the Licensee, nor any successor entity, shall apply to the NRC for a license; and (2) neither Joseph Paolino and Sons, Inc. nor a successor entity, shall engage in NRC-licensed activities within the jurisdiction of the NRC for that same period of time.

IV

Accordingly, pursuant to sections 81, 161b, 161i, 186, and 234 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 2.205, and 10 CFR Parts 30, 34, and 150, IT IS HEREBY ORDERED THAT:

1. The NRC withdraws the civil penalty in the amount of $3,000 proposed by Notice of Violation dated December 14, 1994 and the civil penalties in the amount of $15,000 proposed by Notice of Violation dated March 8, 1995.

2. For a period of five years from April 18, 1995:

(a) Neither Joseph Paolino and Sons, Inc., nor any successor entity shall apply to the NRC for a license; and

(b) Neither Joseph Paolino and Sons, Inc., nor any successor entity, shall engage in NRC-licensed activities (including exercising any control over NRC-licensed activities) within the jurisdiction of the NRC for that same period of time.

3. If Joseph Paolino and Sons, Inc., or a successor entity, violates paragraph 2. of this section of the Confirmatory Order, then the remaining unpaid civil penalty amount shall be due and payable by Joseph Paolino and Sons, Inc. or a successor entity, immediately and without further notice.

V

Any person adversely affected by this Confirmatory Order, other than Joseph Paolino and Sons, Inc. or a successor entity, may require a hearing within 20 days of its issuance. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Docketing and Service Section, Washington, D.C. 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406, and to the Licensee. If such a person requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained. In the absence of any request for hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings.

VI

On March 24, 1995, the Licensee transferred the byproduct material to Glasgow, Inc., an authorized recipient and the NRC, Region I, has confirmed that transfer. Accordingly, given the Licensee's failure to pay the annual fee for the License, the Licensee's transfer of the byproduct material, and the Licensee's agreement as described in Section III above, License No. 37–20746–01 is hereby terminated.

Dated at Rockville, Maryland this 9th day of May 1995.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

[FR Doc. 95–12217 Filed 5–17–95; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee; Open Committee Meeting

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on—

Thursday, July 13, 1995
Thursday, July 27, 1995
Thursday, August 10, 1995
Thursday, August 24, 1995
Thursday, September 7, 1995
Thursday, September 21, 1995

The meetings will start at 10:45 a.m. and will be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street, NW, Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chairman, five representatives from labor unions holding exclusive bargaining rights for Federal blue-collar employees, and five representatives from Federal agencies. Entitlement to membership on the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

These schedule meetings will start in open session with both labor and management representatives attending. During the meeting either the labor members of the management members may caucus separately with the Chairman to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of the meeting.

Annually, the Committee publishers for the Office of Personnel Management, the President, and Congress a comprehensive report of pay issues discussed, concluded recommendations, and related activities. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chairman on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on these meetings may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 1340, 1900 E Street, NW., Washington, DC 20415 (202) 606–1500.

Dated: May 12, 1995.

Anthony F. Ingrassia,

Chairman, Federal Prevailing Rate Advisory Committee.

[FR Doc. 95–12273 Filed 5–17–95; 8:45 am]

BILLING CODE 6325–01–M

Federal Prevailing Rate Advisory Committee; Cancellation of Open Committee Meeting

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that the meeting of the Federal Prevailing Rate Advisory Committee scheduled for Thursday, May 25, 1995, has been canceled.

Information on other meetings can be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 1340, 1900 E Street, NW., Washington, DC 20415, (202) 606–1500.

Dated: May 12, 1995.

Anthony F. Ingrassia,

Chairman, Federal Prevailing Rate, Advisory Committee.

[FR Doc. 95–12274 Filed 5–17–95; 8:45 am]

BILLING CODE 6325–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301–93]

Notice of Determination and Request for Public Comment Concerning Proposed Determination of Action Pursuant to Section 301: Barriers to Access to the Auto Parts Replacement Market in Japan

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of determination under section 304(a)(1)(A) of the Trade Act of 1974, as amended (Trade Act) (19 U.S.C. 2414(a)(1)(A)); notice of proposed determination of action to be taken under section 304(a)(1)(B) of the Trade Act and notice of public hearing and request for public comment pursuant to section 304(b) of the Trade Act.

SUMMARY: The United States Trade Representative (USTR) has determined pursuant to section 304(a)(1)(A)(ii) of the Trade Act that certain Acts, policies and practices of Japan that restrict or deny suppliers of U.S. auto parts access to the auto parts replacement and accessories market ("after-market") in Japan are unreasonable and discriminatory and burden or restrict U.S. commerce. The USTR is seeking public comment and will hold a public hearing on June 8 and 9, 1995, regarding the proposed determination pursuant to section 304(a)(1)(B) on the appropriate action under section 301 being considered in response to these acts, policies and practices.

DATES: Written comments on the determination are due by noon, Monday, June 19, 1995. Requests to testify at the hearing must be submitted by noon, Thursday, May 25, 1995. Written testimony is due by noon, Friday, June 2, 1995, and written rebuttals are due by noon, Wednesday, June 21, 1995.

ADDRESSES: Office of the United States Trade Representative, 600 17th Street NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: David Burns, Senior Advisor for Japan, (202) 395–5050, or James Southwick, Assistant General Counsel, (202) 395–7203. Questions about the public hearing, written testimony and written comments should be directed to Sybia Harrison, Staff Assistant to Section 301 Committee, (202) 395–3432.

SUPPLEMENTARY INFORMATION: On October 1, 1994, the USTR initiated an investigation pursuant to section 302(b) of the Trade Act to determine whether specific barriers to access to the after-market for auto parts in Japan are unreasonable or discriminatory and burden or restrict U.S. commerce. By **Federal Register** notice dated October 13, 1994 (59 FR 52034), the USTR requested public comment on the issues raised in the investigation. The comment period was subsequently extended by a **Federal Register** notice dated November 10, 1994 (59 FR 56099).

Officials of the Office of the USTR and other United States agencies have conducted extensive consultations with Japanese government officials concerning these market access barriers, but negotiations have failed to resolve the issues under investigation. Consequently, on May 10, 1995, the USTR pursuant to section 304(a)(1)(A)(ii) of the Trade Act determined that certain acts, policies and practices of Japan that restrict or deny suppliers of U.S. auto parts access to the auto parts replacement and accessories market ("after-market") in Japan are unreasonable and discriminatory and burden or restrict U.S. commerce.

Reasons for Determination

The Japanese market for replacement auto parts is restricted by a complex system that is not reasonable or justifiable. This system channels most repair work to government-certified garages that use very few foreign parts, and the system restricts the development of other garages more likely to carry and use foreign parts. In addition, even minor additions of accessories to motor vehicles require a full vehicle inspection and tax payment, which severely limits opportunities for U.S. automotive accessories suppliers.

The United States pressed Japan for broad reform in the aftermarket. The U.S. proposals did not ask for reduction of safety or environmental standards, but for measures that would allow for substantially more repair work to be performed outside the certified garages, and therefore would open up opportunities for foreign suppliers. The Government of Japan was unwilling to make changes to key elements of the system which restricts opportunities for U.S. and other foreign parts suppliers.

Proposed Determination on Appropriate Action

If the USTR makes an affirmative determination pursuant to section 304(a)(1)(A)(ii) of the Trade Act, pursuant to section 304(a)(1)(B) the USTR also must determine what action, if any, by the United States is appropriate. If the USTR determines that action is appropriate, section 301(b) of the Trade Act directs the USTR to take all appropriate and feasible action to obtain the elimination of the unreasonable or discriminatory act, policy or practice.

Therefore, the USTR proposes to take the following action, pursuant to the authority provided by section 301(c)(1)(B) of the Trade Act:

To impose prohibitive (100 percent *ad valorem*) duties upon luxury-type motor vehicles from Japan. The increased tariffs will apply to the following motor cars and other motor vehicles principally designed for the transport of persons provided for in heading 8703 of the Harmonized Tariff Schedule of the United States (HTS):

(1) Motor vehicles having 4 doors, a wheelbase more than 260 cm (102.4 inches) but not more than 263 cm (103.6 inches), a curb weight more than 1,495 kg (3,295.9 pounds), a height not more than 138 cm (54.3 inches), and a spark-ignition internal combustion reciprocating piston engine with 6 or more cylinders, having a total cylinder capacity exceeding 2,900 cc or a rotary piston engine (provided for in HTS subheadings 8703.23, 8703.24 or 8703.90); and

(2) Motor vehicles having a wheelbase exceeding 266 cm (104.7 inches), a curb weight more than 1,365 kg (3009.3 pounds), a height not more than 145 cm (57 inches), and either a spark-ignition

internal combustion reciprocating piston engine having a total cylinder capacity exceeding 2,900 cc or a rotary piston engine (provided for in HTS subheadings 8703.23, 8703.24 or 8703.90)

The USTR has asked the Customs Service to withhold liquidation of the entries of the goods identified above which are entered, or withdrawn from warehouse for consumption, on or after May 20, 1995. If the proposed duty increases enter into effect, the USTR intends to make these increases effective as of May 20, 1995.

In making this determination, the USTR will consider public comments submitted in accordance with the requirements set forth below.

Public Comment on Proposed Determination; Hearing Participation

In accordance with section 304(b) of the Trade Act, the USTR invites all interested persons to provide written comments on the proposed determination. Comments may address: (1) The appropriateness of subjecting the motor vehicles described above to an increase in duties; (2) the levels at which duties should be set; and (3) the degree to which an increase in duties might have an adverse effect on U.S. consumers. Written comments are due by noon, Monday, June 19, 1995.

The USTR also will consider the written, oral, and rebuttal comments submitted in the context of public hearings held pursuant to section 304(b) of the Trade Act and in accordance with 15 CFR 2006.7 through 2006.9. The hearings will commence at 10 a.m. on Thursday, June 8, 1995, and continue on Friday, June 9, 1995, if necessary. The hearings will be held in Room 100 at the U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

Request to Testify: Interested persons wishing to testify orally at the hearings must provide a written request to do so by noon, Thursday, May 25, 1995, to Sybia Harrison, Staff Assistant to the Section 301 Committee, Office of the U.S. Trade Representative, 600 17th Street NW., Washington, DC 20506. Requests to testify must include the following information: (1) Name, address, telephone number, and firm or affiliation of the person wishing to testify; and (2) a brief summary of the comments to be presented. Requests to testify must conform to the requirements of 15 CFR 2006.8(a). After the Chairman of the Section 301 Committee considers the request to present oral testimony, Ms. Harrison will notify the applicant of the time of his or her testimony. Remarks at the hearing will be limited to 5 minutes.

Written Testimony and Rebuttal Briefs: In addition, persons presenting oral testimony must submit their complete written testimony by noon, Friday, June 2, 1995. In order to assure each party an opportunity to contest the information provided by other parties, USTR will entertain rebuttal briefs filed by any party by noon, Wednesday June 21, 1995. In accordance with 15 CFR 2006.8(c), rebuttal briefs should be strictly limited to demonstrating errors of fact or analysis not pointed out in the briefs or hearing and should be as concise as possible.

Requirements for Submissions: Written comments on the proposed determination, written testimony, and rebuttal briefs must be filed in accordance with thr requirements set forth in 15 CFR 2006.8(b). Comments must state clearly the position taken and describe with particularity the supporting rationale, be in English, and be provided in twenty copies to: Chairman, Section 301 Committee, Attn: Auto Parts Investigation, Room 223, USTR, 600 17th St NW., Washington, DC 20506.

Written comments, testimony, and briefs will be placed in a file (Docket 301–93) open to public inspection pursuant to 15 CFR 2006.13, except confidential business information exempt from public inspection in accordance with 15 CFR 2006.15. Persons wishing to submit confidential business information must certify in writing that such information is confidential in accordance with 15 CFR 2006.15(b), and such information must be clearly marked "Business Confidential" in a contrasting color ink at the top of each page on each of the twenty copies and must be accompanied by a nonconfidential summary of the confidential information. The nonconfidential summary will be placed in the Docket open to public inspection. An appointment to review the docket may be made by calling Brenda Webb (202) 395–6186. The USTR Reading room is open to the public from 10 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday, and is located in: Room 101, Office of the United States Trade Representative, 600 17th Street NW., Washington, DC 20506.

Irving A. Williamson,

Chairman, Section 301 Committee.

[FR Doc. 95–12344 Filed 5–16–95; 8:45 am]

BILLING CODE 3190–01–M

SECURITIES AND EXCHANGE COMMISSION

Requests Under Review by Office of Management and Budget

Agency Clearance Officer: Michael E. Bartell, (202) 942–8800.

Upon written request copy available from: Securities and Exchange Commission, Office of Filings and Information Services, 450 Fifth Street, NW., Washington, D.C. 20549.

Extension

Rule 19d–1; File No. 270–242

Form 10–SB; File No. 270–367

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for OMB approval extensions for the following rule and form:

Rule 19d–1 prescribes the form and content of notices required to be filed with the Commission by self-regulatory organizations for which the Commission is the appropriate regulatory agency concerning all final disciplinary sanctions, denial of membership and participation or association with a member. It is estimated that 25 respondents will incur a total annual burden of 2,500 hours to comply with this rule.

Form 10–SB may be used by small business issuers for registration pursuant to Section 12 (b) or (g) of the Securities Exchange Act of 1934. It is estimated that 65 respondents will file Form 10–SB annually at a total annual burden of 5,980 hours.

Direct general comments to the Clearance Officer for the Securities and Exchange Commission at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with the Commission rules and forms to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and the Clearance Officer for the Securities and Exchange Commission, Office of Management and Budget, Project Number 3235–0206 (Rule 19d–1) and 3235–0419 (Form 10–SB), Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: May 9, 1995.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–12257 Filed 5–17–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35700; File No. SR–MSRB–95–4]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Customer Confirmations

May 10, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 30, 1995, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change (File No. SR–MSRB–95–4) as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Board is filing an amendment to rule G–15(a), on customer confirmations (hereinafter referred to as "the proposed rule change"). The proposed rule change: (1) Will clarify the current customer confirmation requirements by reorganizing the rule and incorporating previous Board interpretations into the language of the rule; (2) will revise certain requirements in areas where the Board believes that more disclosure is necessary; and (3) will include certain other modifications to the current confirmation disclosure requirements.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Board included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] Subsequently, the Board submitted a letter to extend the delay for effectiveness of the rule to 120 days following Commission approval. *See* letter from Marianne I. Dunaitis, Assistant General Counsel, MSRB, to Karl Varner, Staff Attorney, Division of Market Regulation, SEC, dated April 3, 1995.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Rule G–15(a) states various requirements for the format and content of confirmations to customers. As part of the Board's ongoing customer protection review, the Board has reviewed rule G–15(a), and the written disclosures provided to municipal securities customers. The proposed rule change represents one of several Board efforts to ensure that important information is disclosed to customers.

In response to market developments and regulatory concerns, rule G–15(a) has been subject to numerous amendments and Board interpretive notices since it was adopted in 1977. The proposed rule change will revise certain requirements in areas where the Board believes that more disclosure is necessary. The proposed rule change will clarify the current customer confirmation requirements by reorganizing the rule and incorporating previous Board interpretations into the language of the rule to promote better compliance. Other modifications to the rule's requirements also are proposed to simplify and clarify the requirements and to promote better compliance. The proposed rule change also will respond to recent revisions by the SEC to its Rule 10b–10, the confirmation rule applicable to transactions in securities other than municipal securities, and to its proposed Rule 15c2–13, to require certain disclosures to be made on confirmations for transactions in municipal securities.[2]

Reorganization of Current Rule Including Codification of Interpretations

The proposed rule change will clarify rule G–15(a) by reorganizing the rule and incorporating Board interpretations into the rule. Most requirements are subdivided by subject matter into three broad categories that comprise the content of municipal securities confirmations—terms of the transaction, securities identification, and securities description (listing the various features of the security). Under each category, Board rules and interpretations are organized by specific confirmation requirement. For example, under the securities identification section of the proposed rule change, all existing rules and Board interpretive notices specifying how the interest rate should be expressed on the confirmation for various categories of municipal securities transactions have been codified.[3] This reorganization should assist operations personnel in programming automated systems for generating municipal securities confirmations since it will no longer be necessary to review all previous interpretive notices on confirmations to find those that may address the statement of interest rate for a particular type of municipal security.

Revisions in Customer Confirmation Requirements

The proposed rule change will revise some requirements that the Board feels will strengthen the disclosure and customer protection objectives of the rule while updating the requirements of the customer confirmation.

Disclosure if a security is unrated. In November 1994, the SEC approved amendments to its Rule 10b–10 of the Securities Exchange Act, the confirmation rule applicable to transactions in securities other than municipal securities.[4] At the same time, the SEC deferred consideration of proposed Rule 15c2–13 that would have established certain confirmation requirements applicable to transactions in municipal securities. The SEC's amendments to Rule 10b–10 require, among other things, that dealers disclose if a debt security, other than a governmental security, has not been rated by a nationally recognized statistical rating organization. The SEC also had proposed a similar requirement for municipal SEC confirmations in its proposed Rule 15c2–13. The SEC noted that this disclosure is not intended to suggest that an unrated security is inherently riskier than a rated security; instead, this disclosure is intended to alert customers that they may wish to obtain further information or clarification from their dealer. Previously, the Board indicated in its comment letter to the SEC that, if the SEC determined that such information were needed by investors in debt securities, the Board would amend rule G–15 to include this requirement. The proposed rule change will include this provision in rule G–15(a)(i)(C)(3)(f).

Call provisions. Currently, for many bonds, only a designation of "callable" is required by rule G–15(a)(i)(E), along with the following legend provided by

[2] Securities Exchange Act Release No. 34962 (Nov. 10, 1994), 59 FR 59612, *corrected*, Securities Exchange Act Release No. 34962A (Nov. 25, 1994), 59 FR 60555.

[3] Categories include zero coupon securities, variable rate securities, securities with adjustable tender fees, stepped coupon securities, and stripped coupon securities.

[4] Securities Exchange Act Release No. 34962 (Nov. 10, 1994), 59 FR 59612, *corrected*, Securities Exchange Act Release No. 34962A (Nov. 25, 1994), 59 FR 60555.

rule G–15(a)(iii)(F) which can be indicated "in a footnote or otherwise:" "Call features may exist which could affect yield; complete information will be provided upon request." Specifically, rule G–15(a)(i)(I) currently provides that disclosure of the date and price of the first in-whole call is required to be noted on the confirmation only if the security is priced to that call date. In addition, current rule G–15(a)(i)(I) requires that the price or yield calculated for a confirmation must be computed "to the first in-whole call" if this produces a lower price or yield than a calculation of price or yield to maturity. The Board's interpretation of December 10, 1980, *MSRB Manual* at ¶ 3571 describes the type of call features that are considered for purposes of these calculations ("pricing calls").

The proposed rule change, in rule G–15(a)(i)(C)(2)(a), will revise the existing confirmation requirements regarding call features. It requires that the date and price of the next pricing call always be disclosed.[5] It also requires the following notation on the confirmation if any call features exist in addition to the next pricing call—"Additional call features exist that may affect yield; complete information will be provided upon request." The proposed rule change in rule G–15(a)(i)(E) will require this notation to be on the front of the confirmation. This substitutes for the current legend requirement, which typically has resulted in call legends being pre-printed on the back of the confirmation.

The Board believes that disclosure of call features is particularly important to customers and that the pre-printed legend on the back of the confirmation was not always effective in alerting customers to the existence of call features. The proposed rule change will put customers clearly on notice as to the presence of call features on the front of the confirmation, including a specific date and price for the next pricing call (one of the most important elements of call information) and the existence of any other call features in addition to this call.

Revenue bonds and additional obligors. Currently, with regard to revenue bonds, dealers are required under rule G–15(a)(i)(E) to disclose the source of revenue on the confirmation only "if necessary for a materially complete description of the securities." The proposed rule change in rule G–15(a)(i)(C)(1)(a) will require dealers to put the primary revenue source for such bonds on the confirmation (*e.g.*, project name) and deletes the language "if necessary for a materially complete description of the securities." The Board believes that requiring disclosure of the primary revenue source of revenue bonds on the confirmation will help ensure that customers receive important information about such bonds.

Additional obligors. Currently, with regard to additional obligors confirmation disclosure of such information currently is required under rule G–15(a)(i)(E) only "if necessary for a materially complete description of the securities." In such instances, the confirmation must disclose the name of any company or other person in addition to the issuer obligated, directly or indirectly, with respect to debt service or, if there is more than one such obligor, the statement "multiple obligors" may be shown. The proposed rule change in rule G–15(a)(i)(C)(1)(b) will delete the language "if necessary for a materially complete description of the securities;" thus the amendment requires dealers always to identity the additional obligor on the confirmation or indicate "multiple obligors" if there is more than one additional obligor. The Board believes this will simplify and clarify the intent of the rule. The proposed rule change also will clarify that, if a letter of credit is used, the identity of the bank issuing the letter of credit must be noted.

Limited tax. Currently, rule G–15(a)(i)(E) provides that the description of the bonds should specify if they are "limited tax." Traditionally, a limited tax bond is a general obligation bond secured by the pledge of a specified tax (usually the property tax) or category of taxes which is limited as to rate or amount. However, the meaning of this "limited tax" designation has become ambiguous as various states have implemented a variety of tax limitation measures and the Board is unaware of any clear standards that may be used to separate limited and unlimited tax municipal securities. The proposed rule change accordingly will delete the "limited tax" designation requirement.

Dealers acting as agent and receiving "other remuneration". Currently, rule G–15(a)(ii) provides that, in agency transactions, remuneration paid by the customer always must be disclosed, but if a dealer receives "other" remuneration (*i.e.*, remuneration from a source other than the customer), it is sufficient to indicate that other remuneration was received and that details will be furnished to the customer upon written request. The Board has received inquiries whether the "discount" received by a dealer in an inter-dealer transaction undertaken as agent for a customer should be considered as "other remuneration." The proposed rule change in rule G–15(a)(i)(A)(1)(e) will clarify this by stating that in an agency transaction for a customer, if a dealer acquires a bond from another dealer at a discount (*e.g.*, "net" price less concession) and the customer pays the "net" price, the inter-dealer discount or concession received by the dealer cannot be considered "other remuneration," but rather should be considered remuneration received from the customer. Thus, the proposed rule change will clarify that the amount of the "discount" or concession must be disclosed on the confirmation in these agency transactions pursuant to proposed rule G–15(a)(i)(A)(1)(e).

"Ex legal" delivery designation. Currently, rule G–15(a)(iii)(I)(1) requires that the confirmation must note whether a transaction is "ex-legal." This term refers to the absence of a written copy of the legal opinion to be included with the physical delivery of a bond certificate. This provision was adopted when nearly all deliveries of municipal securities were accomplished with physical deliveries of certificates which included a copy of the legal opinion. With the movement away from physical deliveries and the high percentage of book-entry-only securities in the market, the Board believes that this requirement is no longer necessary and the proposed rule change will delete the "ex-legal" delivery designation.

Zero coupon bonds. Currently, rule G–15(a)(v) provides a number of specific confirmation requirements for zero coupon bonds, including disclosure that the interest rate is 0% and, if the securities are callable and available in bearer form, a statement to that effect which can be satisfied by the following legend: "No periodic payments—callable below maturity value without prior notice by mail to holder unless registered." The proposed rule change will retain these requirements.

In addition, the proposed change to rule G–15(a)(i)(A)(6)(h) will require that the amount of any premium paid over accreted value for callable zero coupon bonds be included on confirmations. The accreted value for a zero coupon bond reflects the increase in the security's value as it approaches the maturity date. For zero coupon bonds that are callable, the call price is generally at the accreted value. The Board believes it is important for customers to know that such securities may be affected by an early call and that a premium over the accreted value is being paid in the purchase price. In general, a customer purchasing a typical, interest-paying municipal security understands that a price above "100" indicates a premium price and that, if the security contains any call features, such features should be considered carefully. The importance of reviewing call features, however, is not as apparent with callable zero coupon securities, where a customer may not be aware of the relationship between a potential call price and the accreted value of the security being purchased. Accordingly, the proposed rule change will require dealers to disclose on the confirmation any premium paid over the accreted value for callable zero coupon bonds.

Original issue discount securities. Currently, a dealer must disclose on the confirmation whether securities are sold as "original issue discount" securities pursuant to rule G–15(a)(iii)(H). The proposed change to rule G–15(a)(i)(C)(4)(c) also will require the dealer to disclose the initial public offering price for the original issue discount security. The Board believes that this information is particularly important to customers since it may be needed for tax reasons also may be important if the security is subject to any early call.

First interest payment date (including if not semi-annual). Currently, rule G–15(a)(III)(A) states that the confirmation shall provide, if it affects the price or interest calculation, the first interest payment date if other than semi-annual. This provision is ambiguous as to whether the first interest payment date must be included on the confirmation in all instances in which there is no regular semi-annual interest payment, or only if the first payment date is necessary for purposes of calculation of final monies. The proposed change to rule G–15(a)(i)(A)(6)(g) will clarify that the first interest payment date is required on the confirmation only in those cases in which it is necessary for the calculation of final money. If would, for example, not be required for transactions in the issue occurring after the first interest payment date.[6]

Yield information. Currently, there is not a specific exemption for statement of yield on transactions in defaulted bonds, bonds that prepay principal and variable rate securities that are not sold on basis of yield to put. The proposed change to rule G–15(a)(i)(A)(5)(d) will include specific exemptions for these types of transactions.

Disclosure regarding CMOs. The SEC's amendment to its Rule 10b–10 provides that the dealer must include a statement on the confirmation indicating that the actual yield of non-municipal collateralized mortgage obligations ("CMOs") may vary according to the rate at which the underlying receivables or other financial assets are prepaid, and a statement of the fact that information concerning the factors that affect yield (including, at a minimum, estimated yield, weighted average life, and the prepayment assumptions underlying yield) will be furnished upon the written request of a customer. The proposed change to rule G–15(a)(i)(D)(2) will include a similar provision regarding municipal CMOs.

Modifications and Clarifications to Confirmation Format

Multi-transaction data should not be aggregated on one confirmation. Currently, rule G–15(a) provides that, at or before the completion of a transaction in municipal securities, dealers must provide the customer with a written confirmation of the transaction. The current rule does not specifically indicate that customers should receive a separate confirmation for each transaction. The Board previously has stated that, if a customer purchased from a dealer several different securities of one issuer, it would be inappropriate for the dealer to aggregate on the confirmation the accrued interest for all the bonds acquired or to aggregate yield data and disclose the "yield to the average life" rather than providing yield to maturity information for each bond acquired.[7] The proposed change to G–15(a)(ii) will clarify that a separate confirmation should be provided for each municipal securities transaction whenever several transactions are done at one time.

Clarification of confirmation format. The proposed rule change will require that all disclosure, with certain exceptions, be clearly and specifically indicated on the front of the confirmation. To address concerns about the "crowding" of information on the front side of the confirmation, the proposed rule change will allow certain requirements to be met by statements on the back of the confirmation, namely: (1) The required legend for zero coupon bonds; (2) the requirement that permits a dealer in agency transactions, rather than naming the person from whom the securities were purchased or to whom the securities were sold, to include a statement that this information will be furnished upon the written request of the customer; and (3) the requirement that permits a dealer, rather than indicating the time of execution, to include a statement that the time of execution will be furnished upon the written request of the customer. In addition, consistent with the SEC's amendment to Rule 10b–10, the amendment will not require the disclosure statement for transactions in municipal collateralized mortgage obligations required in proposed rule change G–15(a)(i)(D)(2) to be on the front of the confirmation.

(b) The Board believes the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act, which provides that the Board's rules shall.

Be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

The Board believes that the proposed rule change will protect investors and the public interest because it clarifies the current customer confirmation requirements by reorganizing the rule and incorporating previous Board interpretations into the language of the rule and it revises certain requirements in areas where the Board believes more disclosure is necessary.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change, which will have an equal impact on dealers, will have any impact on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

June 1994 Request for Comments

In June 1994, as part of the Board's ongoing customer protection review, the Board requested comments on the proposed rule change, which was designed to clarify the current customer confirmation requirements by reorganizing the rule and incorporating previous Board interpretations into the language of the rule, and which also revised certain requirements where the Board

[5] The proposed rule change in rule G–15(a)(vi)(F) defines "pricing call" as a call feature that represents "an in-whole call" of the type that may be used by the issuer without restriction in a refunding. Consistent with the current rule, pricing calls do not include catastrophe calls, that is, calls which occur as a result of events specified in the bond indenture which are beyond the control of the issuer or calls that may operate to call part of an outstanding issue. *See* Interpretation of Nov. 7, 1977, published in *MSRB Manual* (CCH) at ¶ 3571.10.

[6] Of course, the proposed change to rule G–15(a)(i)(C)(2)(e), consistent with current rule G–15(a)(iii)(I), provides if securities pay interest on other than semi-annual basis, a statement of the basis on which interest is paid.

[7] MSRB Interpretation of July 27, 1981, *MSRB Manual* (CCH) ¶¶ 3571.35 and 3571.41.

believed more disclosure was necessary.[8] The draft amendments published for comment were substantially similar to the proposed rule change.[9]

The Board received 12 comment letters from the following:

Automatic Data Processing ("ADP I")
Beta Systems ("BETA")
JB Hanauer & Co. ("Hanauer")
Edward D. Jones & Co. ("Jones")
Kenny S&P Information Services ("Kenny")
Liberty Bank and Trust Co. ("Liberty")
Pershing
Public Securities Association ("PSA")
Rauscher Pierce Refsnes, Inc. ("Rauscher")
Regional Municipal Operations Association ("RMOA")
Securities Industry Software Corp./ Division of ADP ("ADP II")
Sweeney Cartwright & Co. ("Sweeney")

In general, the codification and reorganization of the rule received favorable comment, but some commentators raised concerns with certain provisions.

Comments Received

Call provisions. The draft amendment proposed to alter call disclosure on the confirmation in several ways. It would have required that the date and price of the first refunding call always be disclosed. It would have deleted the legend that generally is pre-printed on the back of the confirmation. Instead, if there were any call features in addition to the first refunding call, it would have required that disclosure be made on the front of the confirmation that "special call features exist."

Several commentators commented on the Board's proposal to improve the disclosure of call features on the customer confirmation. With regard to the proposed disclosure of the first in-whole call, two commentators believed that such disclosure would be beneficial to investors. Another commentator, however, suggested that the Board may wish to modify the draft language to require the date and price of the "next" pricing call, instead of the "first pricing call, because after the first pricing call has passed, the "next" pricing call should be noted on the confirmation. The proposed rule change will incorporate this suggestion.

Some commentators supported the replacement of the current legend "Call features may exist which could affect yield; complete information will be provided upon request," that generally is contained on the back of the confirmation, with the notation on the front of the confirmation that "special call features exist," because they believed that an affirmative statement as to the presence of other call features would be beneficial to investors. In this regard, one commentator suggested the draft legend could be clarified by noting "other call features exist" instead of "special call features exist."

Other commentators, however, expressed concern because they believed that dealers, if their knowledge of a bond is incomplete, should be able to use the current legend. Another commentator supported deletion of the current legend, but opposed placing an affirmative notation regarding the presence of call features on the front of the confirmation because of the practical difficulties in obtaining call information. However, with regard to the availability of information regarding the presence of these call features, a number of commentators indicated that sufficient data regarding call features is available to support the disclosures being proposed.

The Board continues to believe that disclosure of call features is important to customers and that it is appropriate to improve existing disclosure by requiring an affirmative notation on the front of the confirmation if there are any calls in addition to the first in-whole pricing call. Dealers should have information regarding the presence of call features before they sell municipal securities to their customers and such information appears to be readily available for most municipal securities. Thus, the proposed rule change will delete the current legend that permits dealers to indicate generally in a pre-printed format that other call features may exist.

After reviewing the wide variety of comments on this aspect of the draft amendment, the Board changed the notation "Special call features exist" to "Additional call features exist that may affect yield" to better reflect the potential types of calls that might exist. The Board believes that this statement will best reflect the potential types of calls that might exist. Additionally, the Board added the second half of the existing legend "complete information will be provided upon request" to the notation to ensure that customers recognize that they can request additional information regarding call features.

Revenue bonds. Five commentators opposed the provision of the draft amendment to require that the revenue source for revenue bonds always be disclosed. In general, these commentators noted difficulties describing the revenue source for certain bonds, particularly those with complex sources of revenue or those that have a lengthy list of revenue sources or too complex a funding scheme to allow for full disclosure on a confirmation. Because of confirmation space concerns, one commentator suggested that only the most significant sources of revenue be disclosed on the confirmation. With regard to the availability of information regarding revenue sources, two commentators, however, noted that the project or company name which identifies the revenue source currently is available.

In response to commentators' concerns about the practical difficulties in listing numerous revenue sources, the proposed rule change will require dealers to put only the primary revenue source for revenue bonds on the confirmation (*e.g.*, project name). The Board believes that this information is available and would be helpful to customers.

Limited tax. Several commentators commented on the proposal to delete the "limited tax" designation. One supported the deletion of the limited tax designation because it believed that investors should refer to the official statement as a source of such information. However, other commentators questioned whether deletion of this provision would further the Board's objective of improving disclosure to customers. Two such commentators recognized that the meaning of "limited tax" is ambiguous in today's markets, but nevertheless suggested the "limited tax" should be retained because they believed the "limited tax" designation is useful information.

The proposed rule change will delete the "limited tax" designation because the Board believes that its meaning has become so ambiguous and so subject to differing views as to its applicability that is of doubtful use to investors. The Board notes, however, that deletion of this provision does not affect a dealer's obligation to disclose all material facts to the customer at the time of the transaction. If a general obligation bond has a limitation on taxes that is material to the investment decision, dealers must ensure that their customers are aware of the relevant facts, at or before the time of the transaction.

Dealers acting as agent and receiving "other remuneration". Four commentators commented on the proposal to clarify when it would be sufficient for a dealer to indicate that it received "other remuneration" in a transaction and that details will be furnished to the customer upon written request. In general, commentators supported the proposal, but some commentators suggested that the Board provide clarification regarding this provision.

The proposed rule change will clarify when it is appropriate to disclose "other remuneration" on the confirmation by providing that in an agency transaction if a dealer acquires a bond from another dealer at discount and the customer pays the "net" price, the inter-dealer discount cannot be considered "other remuneration" but rather should be considered remuneration received from the customer and disclosed pursuant to proposed rule G–15(a)(i)(A)(6)(f). The Board believes that the clarification included in the proposed rule change should ensure that dealers only disclose "other remuneration" in those situations where such a designation is appropriate.

"Ex legal" delivery designation. Two commentators supported the proposed deletion of the current requirement that the confirmation indicate if a bond certificate is physically delivered without a legal opinion attached. Another commentator recognized that, with the movement away from the delivery of certificates, this provision is seldom noted on a confirmation. Nevertheless, this commentator believed this provision should be retained.

The Board believes that, with the general movement away from the physical delivery of certificates, it is no longer appropriate for the confirmation rule to focus on the physical delivery of a legal opinion. Since the concept of "ex legal" has no applicability except in cases involving physical delivery of certificates, the Board believe that, as part of the update of the customer confirmation rule, this provision should be deleted. Of course, even with the deletion of this requirement, given facts and circumstances of a specific transaction, if it was material that a municipal security was delivered without a legal opinion, this fact would have to be disclosed to the customer at or before the execution of the transaction as part of a dealer's duties under rule G–17.

Zero coupon bonds. Numerous commentators commented on the proposed disclosure requirements for zero coupon bonds. One commentator supported the proposed rule change to require disclosure of any premium over accreted value even though it would require additional programming for dealers. Several other commentators, however, opposed the disclosure of any premium over accreted value for transactions in zero coupon bonds. Two commentators believed it would be difficult to obtain this information and another commentator noted that some reprogramming would be required to include this information on the confirmation. One commentator suggested that the Board may wish to consider requiring that the rate of accretion for a zero coupon bond be disclosed on the confirmation because this would be more important to investors than being informed of any premium they paid over accreted value.

The Board originally proposed that the premium over accreted value be disclosed for all zero coupon bonds, but the amendment only requires that this premium be disclosed for zero coupon bonds that are callable. As discussed above, the accreted value of zero coupon bonds reflects the increase in the security's value as it approaches the redemption date, and if the bond is called prior to maturity it generally would be called at a price reflecting that value. The Board believes that requiring dealers to disclose any premium over the accreted value for callable zero coupon bonds is necessary so that customers are provided with sufficient information to assess the transaction. The Board believes that although informing customers of the rate of accretion could be helpful if supplemented with appropriate time of trade disclosure regarding the current accreted value of the bonds, the most appropriate mechanism to ensure that customers understand these possible risks associated with callable zero coupon bonds is to require the bond's accreted value on the confirmation.

Another commentator suggested that the Board consider a different approach because it believed that a discount or premium to the accreted value of a bond is equally important for any callable original issue discount bond ("OID"). This commentator suggested the following statement on confirmations relating to transactions in original issue discount bonds which are callable in part at an accreted value: "If a premium was paid, a lower yield may result from early call." Although the Board does not believe this legend is appropriate for OID municipal securities, the Board does believe that additional information is necessary for such securities, and, as discussed above, the proposed rule change will require that the initial public offering price be disclosed for OID issues.

Additional obligors. Five commentators commented on the provision to require that dealers always be required to disclose information regarding additional obligors. In general, these commentators opposed requiring dealers to provide complete information regarding obligors. One commentator believed that the existence of obligors should be disclosed on the confirmation, but customers should rely on credit ratings to judge the risk factors represented by such obligors because they believe it could be difficult to obtain such information. This commentator also suggested that banks or other providers of letters of credit should be disclosed on the confirmation. Another commentator suggested the official statement should be used as a source if an investor has questions regarding obligors.

The Board believes that it is always important for customers to understand if there are any obligors in addition to the issuer and the Board believes this information should always be placed on the confirmation rather than making customers review official statements. The Board, however, recognizes that it could be difficult in certain instances for dealers to include on the confirmation complete information regarding obligors, if there are numerous obligors. The proposed rule change accordingly will permit dealers in such instances to note "multiple obligors" on the confirmation.

Multi-transaction data should not be aggregated on one confirmation. In general, commentators supported this clarification as the believed it will be beneficial for customers to have a separate confirmation for each transaction if they acquire several municipal securities. One commentator, however, suggested that, if a customer executes multiple transactions, the dealer should be able to send a single document that would provide all required information, except that certain information such as purchase/sale and settlement data would not have to be listed for each transaction. The Board does not believe that it is too burdensome for dealers to ensure that the confirmation data for each transaction is complete. Accordingly, the proposed rule change will require a separate confirmation for each transaction.

New sections to clarify confirmation format. The draft amendment as published proposed that all confirmation requirements, except the

[8] The Board also requested comment on broader issues associated with disclosure to customers and the role of the customer confirmation in providing such disclosure. The Board is not, however, proposing rulemaking in these areas at the present time.

[9] After reviewing comments received, the Board decided not to include in the proposed rule change certain provisions that were included in the draft rule. For example, the Board decided to retain disclosure on the confirmation if municipal securities are available only in book-entry form. The Board also determined not to require that the dated date always be included on the confirmation or that the confirmation indicate if a municipal security was issued without a legal opinion.

zero coupon legend, be clearly and specifically noted on the front of the confirmation. Several commentators supported this format because they believed that disclosing more provisions on the front of the confirmation rather than pre-printed on the back, would be beneficial to customers.

One commentator, however, suggested that dealers be permitted to continue to put two notations on the back of the confirmation. First, for agency transactions, rule G–15(a)(ii)(A) currently provides that the dealer shall indicate on the confirmation either the name of the person from whom the securities were purchased or to whom the securities were sold for the customer or a statement that this information will be furnished upon written request of the customer. Second, rule G–15(a)(i)(G) currently provides that a dealer shall indicate on the confirmation the time of execution or a statement that the time of execution will be furnished upon written request of the customer. The amendment incorporates these suggestions because, in view of concerns regarding confirmation crowding, the Board does not believe these statements are so crucial to a typical customer that it is necessary to include these statements on the front of the confirmation. In addition, consistent with the SEC's amendment to Rule 10b–10, the amendment will not require that the statement regarding factors affecting the yield for municipal CMOs be placed on the front of the confirmation.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

The Board requests that the Commission delay effectiveness of the proposed rule change until 120 days after approval by the Commission is published in the **Federal Register** to ensure that firms' confirmation practices are in compliance.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the MSRB. All submissions should refer to File No. SR–MSRB–95–4 and should be submitted by June 8, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–12185 Filed 5–17–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35709; File No. 10–101]

Self-Regulatory Organizations; Notice of Filing of Application for Registration as a National Securities Exchange by the United States Stock Exchange, Inc., and Amendment No. 1 Thereto

May 11, 1995.

Pursuant to Section 19(a) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(a), notice is hereby given that on March 28, 1995, the United States Stock Exchange, Inc. ("USSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") an application for registration as a national securities exchange. On April 25, 1995, the USSE filed Amendment No. 1 to the Application for Registration.[1] The Commission is publishing this notice to solicit comments on the application from interested persons.

The USSE initially intends to trade the most active issues that meet the proposed Exchange's listing requirements and are now eligible for trading on national securities exchanges, as well as those companies that choose to list on the Exchange. The proposed Exchange would operate through an electronic securities communication and execution facility (the "System"). Because there would be no physical trading floor, members of the Exchange ("Members") would enter orders through System terminals, *i.e.*, computer interfaces that have communications capability with the System and are directly linked to the System. The proposed System would combine the display of limit orders and current quotation/last sale information with a matching and execution facility for like-priced orders. Additionally, the System would enable Dealers (*i.e.*, members who meet certain financial and market-making obligations) to perform brokerage and market-making functions on the Exchange, while allowing the Dealers to retain and execute their internal order flow by preferencing the public agency orders for which they act as agent.

The USSE would have Type A Members that are broker-dealers in securities, and one Type B Members that would be the Chicago Stock Exchange, Inc. The Board of Directors would be composed of eight directors elected by the Type A Members (the "Class A Directors") and two directors elected by the Type B Members (the "Class B Directors"). Four of the eight directors elected by the Type A Members would be public directors ("Class A Public Directors"), and four would be representatives of Type A member firms.

You are invited to submit written data, views and arguments concerning the application by June 19, 1995. Such written data, views and arguments will be considered by the Commission in granting registration or instituting proceedings to determine whether registration should be denied. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Reference should be made to File No. 10–101.

The USSE's submission explains the operation of the proposed Exchange and its membership structure in more detail. Copies of the submission, all subsequent amendments, all written statements with respect to the application that are filed with the Commission, and all written communications relating to the application between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549.

[1] *See* letter from David Rusoff, Foley & Lardner, to Sharon Lawson, SEC, dated April 19, 1995.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–12186 Filed 5–17–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35712; File No. SR–NASD–95–18]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to Corporate Financing Underwriting Terms and Arrangements

May 12, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 3, 1995, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items, I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is herewith filing a proposed rule change to Article III, Section 44 of the Rules of Fair Practice. Proposed new language is italicized; proposed deletions are in brackets.

THE CORPORATE FINANCING RULE

Underwriting Terms and Arrangements

Sec. 44

* * * * *

(c) Underwriting Compensation and Arrangements

* * * * *

(6) Unreasonable Terms and Arrangements

* * * * *

(B) Without limiting the foregoing, the following terms and arrangements, when proposed in connection with the distribution of a public offering of securities, shall be unfair and unreasonable:

(i)–(x) (Unchanged)

(xi) for a member or person associated with a member to accept, directly or indirectly, any non-cash sales incentive item including, but not limited to, travel bonuses, prizes and awards, from an issuer or affiliate thereof in excess of [$50] *$100* per person per issuer annually. Notwithstanding the foregoing, a member may provide non-cash sales incentive items to its associated persons provided that no issuer, or an affiliate thereof, including specifically an affiliate of the member, directly or indirectly participates in or contributes to providing such non-cash sales incentive; or

(xii) (Unchanged)

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Subsection 44(c)(6)(B)(xi) of the Corporate Financing Rule (the "Rule") currently prohibits NASD members from receiving non-cash sales incentives from an issuer or its affiliates valued in excess of $50 per person per issuer annually. Such non-cash sales incentives are typically de minimis in nature, such as small souvenir or gift items, provided by issuers to a member or associated persons of a member. The NASD is proposing an amendment to the Rule to raise the permissible level of non-cash sales incentives to $100 per person, annually.

The NASD believes that a dollar amount of $100 is still relatively low and will neither compromise the intent, nor reduce the ability, of the rule to prevent fraudulent acts and practices that might arise in connection with the giving of gifts or payments by issuers and their affiliates as non-cash compensation to members or persons associated with members.

Additionally, the amendment would make the value-limitation provisions of the Rule consistent with similar provisions in Article III, Sections 10 and 34 of the Rules of Fair Practice, with proposed amendments to Sections 26 and 29 now pending SEC approval, and with Rule 350(a) of the New York Stock Exchange ("NYSE"). The amendment to the Rule would provide regulatory consistency and simplify compliance for member firms that are also members of the NYSE.

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[1] which require that the rules of the association be designed to prevent fraudulent and manipulative acts and promote just and equitable principles of trade in that the proposed rule change allows for an increase in the dollar limit to a level that is still reasonably de minimis and provides for regulatory consistency with other rules of the NASD and the NYSE.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Security, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in

[1] 15 U.S.C. 78*o-3*.

the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by June 8, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–12258 Filed 5–17–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35710; File No. SR–Phlx–95–14]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Extension of Market Marker Margin Treatment to Certain Market Marker Orders Entered From Off the Trading Floor

May 12, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 1, 1995, Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange subsequently filed Amendment No. 1 on April 3, 1995.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange, pursuant to Rule 19b–4 of the Act, proposes to amend Phlx Rule 1014, Commentary .01, to extend market maker margin treatment to opening orders entered by Phlx Registered Options Traders ("ROTs") from off the Exchange floor, provided that the greater of 1,000 contracts or 80% of ROT's total transactions on the Exchange in a calendar quarter are executed in person, and not through the use of orders. Phlx ROTs would also be required to execute at least 75% of their quarterly contract volume in assigned options.[4] In addition, the proposal requires that all off-floor orders for which an ROT receives market maker treatment be consistent with such ROT's duty to maintain fair and orderly markets, and, in general, be effected for the purposes of hedging, reducing risk of, or rebalancing open positions of the ROT.

Corresponding amendments to five Floor Procedure Advices ("Advices"), which are administered pursuant to the Exchange's minor rule violation enforcement and reporting plan,[5] are also proposed: B–3, Trading Requirements; B–4, Phlx ROTs Entering Orders from On-Floor and Off-Floor for Execution of the Exchange; B–8, Use of Floor Brokers; B–12, Phlx ROTs and Specialist Entering Orders for Execution on Other Exchanges in Multiply Traded Options; and C–3, Handling Orders of Phlx ROTs and Other Registered Options Market Makers.

First, a new paragraph (b) to Advice B–3, with a separate fine schedule for violations, would contain the heightened trading requirement to receive limited market maker margin treatment for off-floor orders. Violations of Advice B–3(b) would not be subject to a minor rule plan citation and fine, but would be reviewed directly by the Exchange's Business Conduct Committee pursuant to Phlx Rule 960 governing disciplinary proceedings.

In addition, an exception from the general prohibition against placing off-floor orders in market maker accounts would be added to Advice B–4 to permit the proposed treatment for off-floor orders. In order to incorporate this proposal into the Floor Procedure Advice handbook, Advice B–4 would generally parallel the proposed provision in Commentary .01. In addition, Advice B–4 would require an ROT to disclose to a Floor Broker, among other things, that he is entering an off-floor order for his market maker account. Entering an off-floor order in violation of the proposed new paragraph in Advice B–4 would be subject to full disciplinary proceedings and reviewed by the Exchange's Business Conduct Committee.

Advice B–8 is proposed to be amended by limiting its application to the use of floor brokers while an ROT is on the trading floor. Otherwise, an ROT entering an order from off-floor could not comply with the requirement to initial the order ticket.

Advice B–12 governs Phlx traders entering orders in multiply traded options onto another exchange, currently requiring such orders to be entered while the trader is on the Phlx floor. Because off-floor orders for a market maker account will become permissible, Advice B–12 is proposed to be amended to permit the entry of off-floor orders for execution on another exchange in multiply traded options. Such orders, entered pursuant to Rule 1014, Commentary .01, must otherwise comply with the requirements of Advice B–12, including "clearing the Phlx crowd."

Lastly, Advice C–3 would be amended to require Floor Brokers to mark an order ticket with the letter "P" if an ROT indicates that an off-floor order is to be entered into his market maker account. Fines for violations of Advice C–3 would be administered pursuant to the Exchange's minor rule plan. This proposal would apply to ROTs on both the options floor (equity options and index options) as well as the foreign currency options floor. The text of the proposed rule change is available at the Office of the Secretary, the Exchange, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Section (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Generally, a trade for the account of a specialist or ROT receives market maker, or good faith, margin,[6] as well as favorable capital treatment,[7] due to the affirmative and negative market making obligations[8] imposed on such floor traders by Exchange and Commission rules. Further, Rule 1014, Commentary .01 states that ROTs are considered "specialists" for the purposes of the Act and the rules thereunder, which includes capital and margin rules, respecting option transactions initiated and effected by the ROT on the floor in the capacity of an ROT. Accordingly, transactions initiated on-floor by Phlx ROTs receive this favorable margin treatment. Off-floor opening[9] market maker transactions currently may not qualify for favorable margin treatment under Exchange rules, even if such orders are entered to adjust or hedge the risk of an ROT's positions resulting from on-floor market making activity.

The purpose of the proposed rule change is to extend market maker margin treatment to certain off-floor orders in all Phlx options. A new provision in Rule 1014, Commentary .01 is required, as well as amendments to various advices impacted by the proposal.

The Exchange believes that because an ROT cannot effectively adjust his positions, or hedge and otherwise reduce the risk of his opening transactions, from off the Phlx trading floor without incurring a significant economic penalty, such ROTs must either be physically present on the Exchange floor or face significant risks of adverse market movements when they must necessarily be absent from the trading floor.[10] Because of these costs and risks, the Exchange believes that Phlx ROTs may be prevented from effectively discharging their market making obligations and may be exposed to unacceptable levels of risk.

Accordingly, the proposed rule change is intended to accommodate the occasional needs of ROTs to adjust or hedge positions in their market maker accounts at times when they are not physically present on the trading floor. The Phlx believes the proposed rule change does so without diluting the requirement that such ROT's trading activity must nevertheless fulfill their market making obligations, including contributing to the maintenance of a fair and orderly market on the Exchange.

Phlx Rule 1014, Commentary .03 and Floor Procedure Advice ("Advice") B–3 currently require ROTs to effect at least 50% of their quarterly contract volume in assigned options. Further, ROTs are required to execute in person and not through the use of orders the greater of 1,000 contracts or 50% of their quarterly contract volume, pursuant to Advice B–3 and Rule 1014(b), Commentary .13. At this time, the Exchange is proposing to amend Rule 1014 to allow ROTs who meet a more stringent in-person, and in-assigned options requirement to receive market maker margin and capital treatment for opening off-floor orders. This proposal does not affect the above-referenced requirement that, notwithstanding an ROT's desire to qualify for favorable margin treatment for off-floor trading, an ROT remains obligated pursuant to Advice B–3 to trade (1) in-person, and not through the use of orders, the greater of 1,000 contracts or 50% of their total transactions each quarter, and (2) at least 50% of their quarterly contract volume in assigned options.

Under the proposal, Phlx ROTs would receive market maker margin treatment for orders entered from off-floor in limited circumstances. Such ROTs would be required to execute in person, and not through the use of orders, the greater of 1,000 contracts or 80% of such ROT's total transactions that quarter. In addition, such off-floor orders must be effected for the purpose of hedging, reducing risk of, rebalancing or liquidating open positions of the ROT. Phlx ROTs would also be required to execute at least 75% of his quarterly contract volume in assigned options.[11] The Exchange notes that ROTs who fail to comply with the proposed requirements in Rule 1014, Commentary .01, shall be subject to disciplinary proceedings under Phlx Rule 960.

In addition to the proposed amendment to Commentary .01 of Rule 1014, the Exchange proposes to amend five Phlx floor procedure advices to cover such off-floor market maker orders. First, new paragraph (b) of Advice B–3 would effectuate the proposed provisions of Commentary .01 by referencing the heightened trading requirement in order to receive favorable margin treatment for off-floor orders. Accordingly, entering an off-floor order for a market maker account without compliance with the "1,000 contracts or 80%" requirement shall result in a Rule 960 disciplinary proceeding, which is separate from any violation of Advice B–3(a), which is administered pursuant to the Exchange's minor rule plan.

Second, Advice B–4 is proposed to be amended to create an exception to the prohibition against entering off-floor orders into a market maker account. Generally, Advice B–4 would restate the provisions of Commentary .01 to Rule 1014 that an ROT who has executed the greater of 1,000 contracts or 80% of his total transactions in a calendar quarter in person may enter opening transactions from off the floor on limited occasions for his market maker account if such transactions are for the purpose of hedging, reducing risk of, rebalancing, or liquidating open positions.

Third, by amending the title of Advice B–8, the Phlx intends to limit its effect to situations where an ROT uses a Floor Broker while the ROT is on the Phlx Floor. Because ROTs cannot currently enter off-floor opening orders into a market maker account, the language of this advice presumes that the ROT is on the floor, and, hence, able to comply with the requirements of initialing the order ticket. Because this proposal would permit entering opening orders from off-floor and because an ROT who is off-floor cannot initial and time stamp a ticket, Advice B–8 would now expressly apply, as reflected in the new title, only to on-floor situations. Nevertheless, the requirement that an ROT state whether an order is opening or closing appears in Advice B–4, and the Floor Broker must time stamp the order pursuant to Advice C–2. Thus, off-floor orders should be appropriately designated and handled, despite the inapplicability of Advice B–8.

Fourth, Advice B–12 is proposed to be amended to clarify the margin treatment of orders sent to another exchange in a multiply traded option. Although such orders must currently be initiated from the Phlx floor and must clear the Phlx crowd, the proposed changes would permit off-floor orders to be sent to another exchange. Such orders must nevertheless clear the Phlx crowd. The purpose of this change is to treat orders in multiply traded options, whether

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange proposes to require Phlx ROTs to execute at least 75% of their quarterly trades in-assigned options for purposes of receiving market maker margin treatment for off-floor orders. The Exchange originally proposed to require an ROT to trade at least 50% of his quarterly contract volume in-assigned options. In addition, Amendment No. 1 states that Phlx proposes to delete the fine schedules under the minor rule plan originally proposed to address violations of the heightened trading requirements, because violations of this program are to be reviewed directly by the Business Conduct Committee and are not to be treated as minor rule plan violations. Finally, Phlx proposes to clarify that the phrase "may exempt one or more classes of options from this calculation" in Commentary .01 to Phlx Rule 1014, is intended to mean that certain options may not be eligible for off-floor market maker treatment, consistent with the approved provisions of the other exchanges. *See* Letter from Gerald O'Connell, First Vice President, Phlx, to Michael Walinskas, Branch Chief, Office of Market Supervision ("OMS"), Division of Market Regulation ("Market Regulation"), Commission , dated March 29, 1995 ("Amendment No. 1").

[4] *See* Amendment No. 1, *supra* note 3.

[5] The Phlx's minor rule violation enforcement and reporting plan ("minor rule plan"), codified in Phlx Rule 970, contains floor procedure advices with accompanying fine schedules. Rule 19d–1(c)(2) authorizes national securities exchanges to adopt minor rule violation plans for summary discipline and abbreviated reporting; Rule 19d–1(c)(1) requires prompt filing with the Commission of any final disciplinary actions. However, minor rule violations not exceeding $2,500 are deemed not final, thereby permitting periodic, as opposed to immediate reporting. Although the Exchange is proposing to amend several advices, only Advice C–3 will contain a minor rule plan fine; hence, the Exchange hereby proposes to amend its minor rule plan by incorporating the proposed changes to Advice C–3.

[6] Regulation T of the Federal Reserve Board, Section 220.12.

[7] SEC Rule 15c3–1(b)(1).

[8] *See e.g.*, Phlx Rule 1014 (a) and (c).

[9] Closing transactions do not give rise to issues of margin and capital treatment, because such positions merely reduce or eliminate existing positions.

[10] Certain off-floor orders may be considered on-floor orders. *See* Phlx Rule 1014, Commentary .08.

[11] *See* Amendment No. 1, *supra* note 3.

originating from on or off-floor, the same way for margin purposes, extending limited market maker treatment.

Lastly, Advice C–3 is proposed to be amended to incorporate this extension of specialist margin treatment into the advice enumerating Floor Broker responsibilities. Specifically, Floor Brokers would be required to mark floor tickets where an ROT has indicated that the order is for his market maker account with the letter "P". A fine for violations would be administered pursuant to the Exchange's minor rule plan. The Exchange believes that this should assist its surveillance efforts respecting market maker margin for off-floor orders.

The Phlx believes that the proposed rule change is consistent with Section 6 of the Act in general, and in particular, with Section 6(b)(5), in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest. Specifically, the Phlx believes that the proposal should increase the extent to which ROT trades contribute to liquidity and to the maintenance of the fair and orderly market on the Exchange by providing for a greater degree of in-person trading by ROTs and by enabling such ROTs to better manage the risk of their market making activities. Likewise, the Phlx believes that the corresponding amendments to Phlx advices are intended to incorporate specialist margin treatment for off-floor orders into the provisions governing trading requirements, ROTs entering orders, and Floor Broker responsibilities, consistent with Section 6(b)(5).

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Phlx consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–95–14 and should be submitted by June 8, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

[FR Doc. 95–12259 Filed 5–17–95; 8:45 am]

BILLING CODE 8010–01–M

[File No. 1–11254]

Issuer Delisting; Notice of Application to Withdraw From Listing and Registration; (Vermont Pure Holdings, Ltd., Common Stock, $.001 Par Value)

May 12, 1995.

Vermont Pure Holdings, Ltd. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security ("Security") from listing and registration on the Boston Stock Exchange, Inc. ("BSE").

The reasons alleged in the application for withdrawing this Security from listing and registration on the Boston Stock Exchange, Inc. ("BSE").

The reasons alleged in the application for withdrawing this Security from listing and registration include the following:

According to the Company, the Company originally decided to list the Security on the BSE in connection with the initial public offering by the Company of the Security. The decision to list on the BSE at that time was based on the Company's desire to expedite the formation of an active public market for the Security. However, the Board of Directors has determined that the Company should now withdraw its Security from listing on the BSE. This decision is based on the limited and sporadic trading activity of the Security on the BSE since the date the Security was first listed. The Company's primary trading market has been and continues to be the Nasdaq SmallCap Market. The Company believes that the benefits of remaining listed on the BSE do not outweigh the costs involved in maintaining such listing, since the Nasdaq SmallCap Market represents the primary trading market for the Security.

Any interested person may, on or before June 5, 1995 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–12187 Filed 5–17–95; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 2209]

United States International Telecommunications Advisory Committee; Standardization Sector (ITAC–T) Study Group; Meeting Notice

The Department of State announces that the United States International Telecommunications Advisory Committee Standardization Sector (ITAC–T) Study Group (formerly the USNC) will meet on June 6, 1995, 9:30 a.m. to 3 p.m., room 1207 at the U.S. Department of State, 2201 C Street, N.W., Washington, D.C. 20520.

This meeting of ITAC–T Study Group will include the following agenda items:

1. Report of Utlaut's ad hoc group on Consortia communication with ITU–T Study Groups;
2. Ad Hoc group report for TSAG preparations;
3. Report of Fishman's TSAG correspondence group; and
4. Update of U.S. guidelines for preparatory process.

All of the issues relate to the upcoming 18–22 September 1995 Telecommunications Standardization Advisory Group Meeting.

Members of the General Public may attend the meetings and join in the discussions, subject to the instructions of the chair. Admittance of public members will be limited to the seating available. In this regard, entrance to the Department of State is controlled. If you are not presently named on the mailing list of the Telecommunications Standardization Sector Study Group, and wish to attend please call 202–647–0201 not later than 5 days before the scheduled meetings. Enter from the "C" Street Main Lobby. One of the following valid photo ID's will be required for admittance: U.S. driver's license with picture, U.S. passport, U.S. government ID (company ID's are no longer accepted by Diplomatic Security).

Dated: May 10, 1995.

Earl S. Barbely,

Chairman, U.S. ITAC for Telecommunication Standardization.

[FR Doc. 95–12237 Filed 5–17–95; 8:45 am]

BILLING CODE 4710–45–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 95–042]

Commercial Fishing Industry Vessel Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Request for applications.

SUMMARY: The U.S. Coast Guard is seeking applicants for appointment to membership on the Commercial Fishing Industry Vessel Advisory Committee. The Committee acts in an advisory capacity to the Secretary of Transportation and the Commandant of the Coast Guard on matters related to the safety of commercial fishing industry vessels.

DATES: Applications should be received no later than July 31, 1995.

ADDRESSES: Persons interested in applying should request an application from Commandant (G–MVI–4), Room 1405, U.S. Coast Guard Headquarters, 2100 Second St., S.W., Washington, D.C. 20593–0001.

FOR FURTHER INFORMATION CONTACT: LCDR Mark D. Bobal, Executive Director, Commercial Fishing Industry Vessel Advisory Committee, (202) 267–2307 or fax (202) 267–1069.

SUPPLEMENTARY INFORMATION: As required by the Commercial Fishing Industry Vessel Safety Act of 1988, the Coast Guard established the Commercial Fishing Industry Vessel Advisory Committee (Committee) to provide advice to the Coast Guard on issues related to the safety of commercial fishing vessels regulated under chapter 45 of Title 46, United States Code which includes uninspected fishing vessels, fish processing vessels or fish tender vessels. The Committee consists of 17 members as follows: Ten members from the commercial fishing industry who reflect a regional and representational balance and have experience in the operation of vessels to which chapter 45 of Title 46, United States Code applies, or as a crew member or processing line worker on an uninspected fish processing vessel; one member representing naval architects or marine surveyors; one member representing manufacturers of equipment for vessels to which chapter 45 applies; one member representing education or training professionals related to fishing vessel, fish processing vessel, or fish tender vessel safety, or professional qualifications; one member representing underwriters that insure vessels to which chapter 45 applies; and three members representing the general public, including whenever possible, an independent expert or consultant in maritime safety and a member of a national organization composed of persons representing owners of vessels to which chapter 45 applies and persons representing the marine insurance industry.

Applications will be considered for five expiring terms in the following categories: (a) Commercial Fishing Industry (three positions); (b) Equipment Manufacturers (one position); and (c) General Public (one position). The membership term is three years. A limited portion of the membership may serve consecutive terms.

To achieve the balance of membership required by the Federal Advisory Committee Act, the Coast Guard is especially interested in receiving applications from minorities and women. The members of the Committee serve without compensation from the Federal Government, although travel reimbursement and per diem are provided. The Committee normally meets in different seaport cities nationwide, with subcommittee meetings for specific issues on an as-required basis.

Persons selected as "general public" members are required to complete a Confidential Financial Disclosure Report, SF 450, on an annual basis. The purpose of the report is to determine compliance with conflict of interest laws. This report will not be disclosed to any requesting person unless release is authorized by law, such as in response to a subpoena filed in an administrative or court proceeding.

Dated: May 10, 1995.

G.N. Naccara,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 95–12286 Filed 5–17–95; 8:45 am]

BILLING CODE 4910–14–M

[CGD 95–038]

Towing Safety Advisory Committee; Request for Applications

AGENCY: Coast Guard, DOT.

ACTION: Notice.

SUMMARY: The U.S. Coast Guard is seeking applicants for appointment to membership on the Towing Safety Advisory Committee (TSAC).

DATES: Completed applications and resumes must be received by July 14, 1995. Application forms may be obtained by contacting the Assistant Executive Director at the address below.

ADDRESSES: To request an application either call (202) 267–2997 and give your name and mailing address or write to Commandant (G–MTH–4), U.S. Coast Guard, 2100 Second Street, SW., Room 1304 Washington, DC 20593–0001.

FOR FURTHER INFORMATION CONTACT: LTJG Patrick J. DeShon, Assistant Executive Director, TSAC, Commandant (G–MTH–4), U.S. Coast Guard, 2100 Second Street, SW., Room 1304, Washington, DC 20593–0001, (202) 267–2997.

SUPPLEMENTARY INFORMATION: This Committee is a 16 member Federal Advisory Committee that advises the Secretary of Transportation on matters related to shallow-draft inland and coastal waterway navigation and towing safety. The Committee will meet at least twice a year in Washington, DC or another location selected by the U.S. Coast Guard.

The applications will be considered for nine expiring terms as follows: Three

members from the barge and towing industry, reflecting a geographical balance; one member from the offshore mineral and oil supply vessel industry; one member from port districts, authorities or terminal operators; one member from maritime labor; one member from shipping; and two members from the general public.

Those persons applying for a position representing the general public will be required to complete a Confidential Financial Disclosure Report (CFDR) for identification of existing financial conflicts and will not be considered without a CFDR on file. Applicants to the public positions should identify themselves when requesting applications to ensure that a CFDR is forwarded with the other application materials. The completed report must be submitted with their applications and resubmitted each year thereafter if appointed.

To achieve the balance of membership required by the Federal Advisory Committee Act, the U.S. Coast Guard is especially interested in receiving applications from minorities, and women.

Those persons who have submitted previous applications must reapply as no applications received prior to this solicitation will be considered.

Dated: May 10, 1995.

G.N. Naccara,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 95–12287 Filed 5–17–95; 8:45 am]

BILLING CODE 4910–14–M

Federal Highway Administration

Environmental Impact Statement: City of Kelso, Washington

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a bridge replacement project in Kelso, Washington.

FOR FURTHER INFORMATION CONTACT: Gene Fong, Division Administrator, Federal Highway Administration, 711 South Capitol Way, Suite 501, Olympia, WA 98501, telephone: (360) 753–9413; or Gerald Smith, Regional Administrator, Southwest Region, Washington State Department of Transportation, 4200 Main Street, P.O. Box 1709, Vancouver, WA 98668, Telephone (360) 905–2001; or Bob Gregory, Public Works Director, City of Kelso, 312 Allen Street, P.O. Box A, Kelso, WA 98626, telephone (360) 423–6590.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Washington State Department of Transportation and the City of Kelso, will prepare an environmental impact statement (EIS) on a proposal to replace the structurally deficient Allen Street Bridge and improve the Allen Street corridor between SR 5 on the east and Cowlitz Way/SR 4 on the west. The corridor serves the Kelso-Longview community in Cowlitz County.

The project will consist of the replacement of the existing bridge with one 4-lane bridge or two 2-lane bridges, as necessary to satisfy the projected demand and to address existing and anticipated traffic circulation problems. The approach roadways will be widened, if necessary, to accommodate the projected traffic. The bridge and the approaches in the vicinity of the bridge will be raised to separate provide grades separation at the railroad tracks.

This project is considered necessary to increase capacity, improve traffic safety, and address structural and geometric inadequacies of the existing bridge. The Allen Street Bridge now carries up to 25,000 vehicles per day, which is above the usual capacity of a two-lane bridge. It is projected to carry 31,000 vehicles per day in 2015, the design year. It currently performs at a Level of Service (LOS) F during the afternoon peak hour; It would perform at an LOS F, with average speed decreasing to 10 mph in 2015. Just east of the bridge, Allen Street crosses the Burlington Northern Railroad tracks. The high traffic volumes, combined with frequent trains through the area creates the potential for severe accidents at the railroad crossing. Also, the accident rate (3.42 accidents/million vehicle miles) in this section of road is more than double the corresponding rate for State highways in southwest Washington. The bridge is only 24 feet in width with two 12-foot lanes and no shoulders and has a weight limit of 10 tons, which does not meet the standards for this type of facility and traffic conditions.

Alterntives currently under consideration include a No Build alternative, and two build alternatives that would replace the existing bridge and span the railroad tracks. The build alternatives include (1) A one-way couplet system with a two-lane eastbound bridge along the Catline/Vine Street corridor and a two-lane westbound bridge along the Main/Allen Street corridor: (2) A single four-lane bridge with two lanes each direction along the Main/Allen Street corridor. Both build alternatives propose roadway improvements at both of the bridge(s) necessary to provide lane continuity with the new structures.

The following areas of environmental and socio-economic concern have been identified and will be addressed in the environmental document: water quality, air quality, highway noise, visual quality, historic properties, parklands and recreational facilities, land use, anadromous fish species, relocations, economic development, and access to businesses and to a multi-modal terminal. Other issues identified during the scoping and public involvement processes will also be addressed.

Announcements describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies. These will also be sent to Indian Tribes, private organizations, and citizens who are known to have interest in this proposal. A scoping meeting will be held in Kelso in late spring of 1995. In addition, other public meetings will be held prior to the release of the Draft EIS on the project. In addition, a public hearing will be held after the release of the Draft EIS to receive public and agency comments on the EIS. Public notice will be given of the time and place of these future meetings and the hearing. The Draft EIS will be available for public and agency review prior to the public hearing.

It is important that the full range of issues related to this proposed action be addressed and that all significant issues be identified. To ensure this, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address and phone number provided abeve.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: May 8, 1995.

José M. Miranda,

Environmental Program Manager, Olympia, Washington.

[FR Doc. 95–12238 Filed 5–17–95; 8:45 am]

BILLING CODE 4910–22–M

[FHWA Docket No. 95–15]

National Scenic Byways Program

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of FHWA interim policy.

SUMMARY: In response to the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) mandate to establish a national scenic byways program, the FHWA announces its interim policy for the National Scenic Byways Program. This interim policy sets forth the criteria for the designation of roads as National Scenic Byways or All-American Roads based upon their scenic, historic, recreational, cultural, archeological, and/or natural intrinsic qualities.

DATES: Comments must be received on or before July 17, 1995.

ADDRESSES: Submit written, signed comments to FHWA Docket No. 95–15, Federal Highway Administration Room 4232, HCC–10, Office of the Chief Counsel, 400 Seventh Street, SW., Washington, D.C. 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., e.t., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Eugene Johnson, Intermodal Division, Office of Environment and Planning, HEP–50, (202) 366–2071; or Mr. Robert Black, Attorney, Office of Chief Counsel, HCC–31, (202) 366–1359. The address is Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: Beginning as early as 1966, the FHWA has participated in several studies relating to establishing national scenic byways programs. The most recent study was completed in 1991 and was conducted in response to a request in the 1990 Department of Transportation Appropriations Act. This study included recommendations for establishing a national scenic byways program, including recommended techniques for maintaining and enhancing the scenic, recreational, and historic qualities associated with each byway. The ISTEA incorporated many of the recommendations from this study and called for the establishment of a national scenic byways program. Section 1047 of the ISTEA, Pub. L. 102–240, 105 Stat. 1914, set up an advisory committee to assist the Secretary of Transportation in establishing a national scenic byways program. The advisory committee was composed of seventeen members: the designee of the Administrator of the FHWA; appointees from the U. S. Forest Service, the National Park Service, the Bureau of Land Management, the Bureau of Indian Affairs, and the U.S. Travel and Tourism Administration of the Department of Commerce; and individuals representing the interests of the recreational users of scenic byways, conservationists, the tourism industry, historic preservationists, highway users, State and local highway and transportation officials, the motoring public, scenic preservationists, the outdoor advertising industry, and the planning professions. The advisory committee was charged with developing minimum criteria for designating highways as scenic byways or all-American roads for purposes of a national scenic byways system. After meeting four times, the advisory committee produced a report that made recommendations on all the facets of a national scenic byway program. The National Scenic Byway Program outlined in this notice follows those recommendations.

The FHWA has awarded grants to States for scenic byway projects under the interim scenic byways program established by ISTEA. The grant funds for the interim program ran out in fiscal year 1994. This notice specifies the type of projects eligible for funding and lists the funding priority for providing grants to the States under the National Scenic Byways Program.

Through this notice, the FHWA is establishing the interim policy for the National Scenic Byways Program. This interim policy sets forth the criteria for the designation of roads as National Scenic Byways or All-American Roads based upon their scenic, historic, recreational, cultural, archeological, and/or natural intrinsic qualities. To be designated as a National Scenic Byway, a road must significantly meet criteria for at least one of the above six intrinsic qualities. For the All-American Roads designation, criteria must be met for multiple intrinsic qualities. Anyone may nominate a road for National Scenic Byway or All-American Road status, but the nomination must be submitted through a State's identified scenic byway agency and include a corridor management plan designed to protect the unique qualities of a scenic byway. The FHWA solicits comments on any part of the policy.

The National Scenic Byways Policy is as follows:

1. Applicability

The policy and procedures of this document apply to any State or Federal agency electing to participate in the National Scenic Byways Program by seeking to have a road or highway designated as a National Scenic Byway or an All-American Road and for any State seeking funds for eligible scenic byways projects. Participation in the national program shall be entirely voluntary.

2. Definitions

a. *Corridor* means the road or highway right-of-way and the adjacent area that is visible from and extending along the highway. The distance the corridor extends from the highway could vary with the different intrinsic qualities.

b. *Corridor Management Plan* means a written document that specifies the actions, procedures, controls, operational practices, and administrative strategies to maintain the scenic, historic, recreational, cultural, archeological, and natural qualities of the scenic byway.

c. *Federal Agency* means the U.S. Forest Service, Bureau of Land Management, National Park Service, and the Bureau of Indian Affairs, and their scenic byways programs.

d. *Federal Agency Scenic Byway* means a road or highway located on lands under Federal ownership which has been officially designated by the responsible Federal agency as a scenic byway for its scenic, historic, recreational, cultural, archeological, or natural qualities.

e. *Intrinsic Quality* means scenic, historic, recreational, cultural, archeological, or natural features that are considered representative, unique, irreplaceable, or distinctly characteristic of an area.

f. *Local Commitment* means assurance provided by communities along the scenic byway that they will undertake actions, such as zoning and other protective measures, to preserve the scenic, historic, recreational, cultural, archeological, and natural integrity of the scenic byway and the adjacent area as identified in the corridor management plan.

g. *Regional Significance* means characteristics that are representative of a geographic area encompassing two or more States.

h. *Scenic Byways Agency* means the Board, Commission, Bureau, Department, Office, etc., that has the responsibility for administering the State's scenic byways program activities. Unless otherwise designated, FHWA will assume that the State Scenic Byways Agency is the State Department of Transportation or State highway agency as recognized in the

administration of title 23, United States Code.

i. *Scenic Byway* means a public road having special scenic, historic, recreational, cultural, archeological, and/or natural qualities that have been recognized as such through legislation or some other official declaration. The terms "road" and "highway" are synonymous. They are not meant to define higher or lower functional classifications or wider or narrower cross-sections. Moreover, the terms State Scenic Byway, National Scenic Byway, or All-American Road refer not only to the road or highway itself but also to the corridor through which it passes.

j. *State Scenic Byway* means a road or highway under State, Federal, or local ownership that has been designated by the State through legislation or some other official declaration for its scenic, historic, recreational, cultural, archeological, or natural qualities. An Official Declaration is an action taken by a Governor or that of an individual, board, committee, or political subdivision acting with granted authority on behalf of the State.

3. Requirements

a. Any highway or road submitted for designation under the National Scenic Byways Program by State or Federal agencies should be designated as a State scenic byway. However, roads that meet all criteria and requirements for National designation but not State or Federal agencies' designation criteria may be considered for national designation on a case-by-case basis. Any road nominated for the National Scenic Byway or All-American Road designation will be considered to be a designated State scenic byway.

b. A road or highway must safely and conveniently accommodate two-wheel-drive automobiles with standard clearances to be considered for designation as a National Scenic Byway or an All-American Road.

c. Roads or highways considered for National Scenic Byways and All-American Roads designations should accommodate, wherever feasible, bicycle and pedestrian travel.

d. To be considered for the All-American Roads designation, roads or highways should safely accommodate conventional tour buses.

e. A scenic byways corridor management plan, prepared in accordance with Paragraph 9 of this policy, must be submitted in order for any road or highway to be considered for the National Scenic Byway of All-American Road designation.

f. For All-American Roads, there must be a demonstration of the extent to which enforcement mechanisms are being implemented by communities along the highway in accordance with the corridor management plan.

g. Before a road or highway is nominated for designation as an All-American Road, user facilities (e.g. overlooks, food services, etc.) should be available for travelers.

h. An important criteria for both National Scenic Byways and All-American Roads is continuity. Neither should have too many gaps but rather should be as continuous as possible and should minimize intrusions on the visitor's experience.

4. Nomination Process

a. A nomination process will be used as the means by which roads or highways may be recognized for their intrinsic qualities and designated as National Scenic Byways or as All-American Roads. All nominations for National Scenic Byways or All-American Roads must be submitted by the State Scenic Byways Agency (SSBA) to the FHWA. The States will receive written notification of the time period for submitting nominations for designation consideration.

b. Nominations may originate from any local government, including Indian tribal governments, or any private group or individual.

c. Nominations to the program of byways on public lands may originate from the U.S. Forest Service, the National Park Service, the Bureau of Land Management, or the Bureau of Indian Affairs, but must also come through the SSBA, with the State's concurrence.

d. A two-step process may be used for nominations originating with local sponsors to help alleviate unnecessary documentation, time, and expense.

The first step is for local sponsors to submit to the SSBA the documentation necessary for the State to determine if the scenic byway possesses intrinsic qualities sufficient to merit its nomination as a National Scenic Byway or an All-American Road.

The second step is for the remainder of the nomination package to be submitted once the State has determined that the byway is appropriate for nomination.

e. A corridor management plan, prepared in accordance with Paragraph 9 of this policy, must be included as part of all nominations made to the FHWA for National Scenic Byways or All-American Roads designations. The corridor management plan is not required for the preliminary intrinsic quality evaluation identified above in paragraph 4d.

f. A single application may be used by a State to seek the designation of a nominated highway as either a National Scenic Byway, an All-American Road, or as both. A highway nominated for, but failing to meet, the requirements for All-American Road designation will automatically be considered for designation as a National Scenic Byway unless the State requests otherwise.

5. Designation Process

a. Designations of National Scenic Byways and All-American Roads shall be made by the Secretary of Transportation after consultation with the Departments of the Interior, Agriculture, and Commerce, as appropriate.

b. A panel consisting of six to eight experts, designated by FHWA and reflecting a cross-section of the scenic byways community of interests (including experts on intrinsic qualities, tourism, and economic development), may assist in the review of highways nominated as National Scenic Byways and All-American Roads.

6. Designation Criteria

a. National Scenic Byways Criteria

To be designated as a National Scenic Byway, a road or highway must significantly meet at least one of the six scenic byways intrinsic qualities discussed below.

The characteristics associated with the intrinsic qualities are those that are distinct and most representative of the region. The significance of the features contributing to the distinctive characteristics of the corridor's intrinsic quality are recognized throughout the region.

b. All-American Road Criteria

In order to be designated as an All-American Road, the road or highway must meet the criteria for at least two of the intrinsic qualities. The road or highway must also be considered a destination unto itself. To be recognized as such, it must provide an exceptional traveling experience that is so recognized by travelers that they would make a drive along the highway a primary reason for their trip.

The characteristics associated with the intrinsic qualities are those which best represent the nation and which may contain one-of-a-kind features that do not exist elsewhere. The significance of the features contributing to the distinctive characteristics of the corridor's intrinsic quality are recognized nationally.

7. Intrinsic Qualities

The six intrinsic qualities are:

a. *Scenic Quality* is the heightened visual experience derived from the view of natural and manmade elements of the visual environment of the scenic byway corridor. The characteristics of the landscape are strikingly distinct and offer a pleasing and most memorable visual experience. All elements of the landscape—landform, water, vegetation, and manmade development—contribute to the quality of the corridor's visual environment. Everything present is in harmony and shares in the intrinsic qualities.

b. *Natural Quality* applies to those features in the visual environment that are in a relatively undisturbed state. These features predate the arrival of human populations and may include geological formations, fossils, landform, water bodies, vegetation, and wildlife. There may be evidence of human activity, but the natural features reveal minimal disturbances.

c. *Historic Quality* encompasses legacies of the past that are distinctly associated with physical elements of the landscape, whether natural or manmade, that are of such historic significance that they educate the viewer and stir an appreciation for the past. The historic elements reflect the actions of people and may include buildings, settlement patterns, and other examples of human activity. Historic features can be inventoried, mapped, and interpreted. They possess integrity of location, design, setting, material, workmanship, feeling, and association.

d. *Cultural Quality* is evidence and expressions of the customs or traditions of a distinct group of people. Cultural features including, but not limited to, crafts, music, dance, rituals, festivals, speech, food, special events, vernacular architecture, etc., are currently practiced. The cultural qualities of the corridor could highlight one or more significant communities and/or ethnic traditions.

e. *Archeological Quality* involves those characteristics of the scenic byways corridor that are physical evidence of historic or prehistoric human life or activity that are visible and capable of being inventoried and interpreted. The scenic byway corridor's archeological interest, as identified through ruins, artifacts, structural remains, and other physical evidence have scientific significance that educate the viewer and stir an appreciation for the past.

f. *Recreational Quality* involves outdoor recreational activities directly association with and dependent upon the natural and cultural elements of the corridor's landscape. The recreational activities provide opportunities for active and passive recreational experiences. They include, but are not limited to, downhill skiing, rafting, boating, fishing, and hiking. Driving the road itself may qualify as a pleasurable recreational experience. The recreational activities may be seasonal, but the quality and importance of the recreational activities as seasonal operations must be well recognized.

8. De-Designation Process

a. The Secretary of Transportation may de-designate any roads or highways designated as National Scenic Byways or All-American Roads if they no longer possess the intrinsic qualities nor meet the criteria which supported their designation.

b. A road or highway will be considered for de-designation when it is determined that the local and/or State commitments described in a corridor management plan have not been met sufficiently to retain an adequate level of intrinsic quality to merit designation.

c. When a byway has been designated for more than one intrinsic quality, the diminishment of any one of the qualities could result in de-designation of the byway as a National Scenic Byway or All-American Road.

d. It shall be the State's responsibility to assure that the intrinsic qualities of the National Scenic Byways and All-American Roads are being properly maintained in accordance with the corridor management plan.

e. When it is determined that the intrinsic qualities of a National Scenic Byway or All-American Road have not been maintained sufficiently to retain its designation, the State and/or Federal agency will be notified of such finding and allowed 90 days for corrective actions before the Secretary may begin formal de-designation.

9. Corridor Management Plans

a. A corridor management plan, developed with community involvement, must be prepared for the scenic byway corridor proposed for national designation. It should provide for the conservation and enhancement of the byway's intrinsic qualities as well as the promotion of tourism and economic development. The plan should provide an effective management strategy to balance these concerns while providing for the users' enjoyment of the byway. The corridor management plan is very important to the designation process, as it provides an understanding of how a road or highway possesses characteristics vital for designation as a National Scenic Byway or an All-American Road. The corridor management plan must include at least the following:

(1) A map identifying the corridor boundaries and the location of intrinsic qualities and different land uses within the corridor.

(2) An assessment of such intrinsic qualities and of their context.

(3) A strategy for maintaining and enhancing those intrinsic qualities. The level of protection for different parts of a National Scenic Byway or All-American Road can vary, with the highest level of protection afforded those parts which most reflect their intrinsic values. All nationally recognized scenic byways should, however, be maintained with particularly high standards, not only for travelers' safety and comfort, but also for preserving the highest levels of visual integrity and attractiveness.

(4) A schedule and a listing of all agency, group, and individual responsibilities in the implementation of the corridor management plan, and a description of enforcement and review mechanisms, including a schedule for the continuing review of how well those responsibilities are being met.

(5) A strategy describing how existing development might be enhanced and new development might be accommodated while still preserving the intrinsic qualities of the corridor. This can be done through design review, and such land management techniques as zoning, easements, and economic incentives.

(6) A plan to assure on-going public participation in the implementation of corridor management objectives.

(7) A general review of the road's or highway's safety and accident record to identify any correctable faults in highway design, maintenance, or operation.

(8) A plan to accommodate commerce while maintaining a safe and efficient level of highway service, including convenient user facilities.

(9) A demonstration that intrusions on the visitor experience have been minimized to the extent feasible, and a plan for making improvements to enhance that experience.

(10) A demonstration of compliance with all existing local, State, and Federal laws on the control of outdoor advertising.

(11) A signage plan that demonstrates how the State will insure and make the number and placement of signs more supportive of the visitor experience.

(12) A narrative describing how the National Scenic Byway will be positioned for marketing.

(13) A discussion of design standards relating to any proposed modification of the roadway. This discussion should include an evaluation of how the proposed changes may affect on the intrinsic qualities of the byway corridor.

(14) A description of plans to interpret the significant resources of the scenic byway.

b. In addition to the information identified in Paragraph 9a above, corridor management plans for All-American Roads must include:

(1) A narrative on how the All-American Road would be promoted, interpreted, and marketed in order to attract travelers, especially those from other countries. The agencies responsible for these activities should be identified.

(2) A plan to encourage the accommodation of increased tourism, if this is projected. Some demonstration that the roadway, lodging and dining facilities, roadside rest areas, and other tourist necessities will be adequate for the number of visitors induced by the byway's designation as an All-American Road.

(3) A plan for addressing multi-lingual information needs.

Further, there must be a demonstration of the extent to which enforcement mechanisms are being implemented in accordance with the corridor management plan.

10. Funding

a. Funds are available to the States through a grant application process to undertake eligible projects, as identified below in Paragraph 10c, for the purpose of:

(1) Planning, designing, and developing State scenic byways programs, including the development of corridor management plans.

(2) Developing State and Federal agencies' designated scenic byways to make them eligible for designation as National Scenic Byways or All-American Roads.

(3) Enhancing or improving designated National Scenic Byways or All-American Roads.

b. The State highway agency (SHA) shall be responsible for the submission of grant requests to the FHWA. If the SHA is not the identified scenic byways agency, all grant requests must be forwarded from that agency to the SHA for submission to FHWA.

c. Eligible Projects

The following project activities are eligible for scenic byways grants:

(1) *Planning, design, and development of State scenic byway programs.*

This scenic byways activity would normally apply to those States that are about to establish or they are in the early development of their scenic byways programs. All related project activities must yield information and/or provide related work that would impact on the Statewide scenic byways program.

(2) *Making safety improvements to a highway designated as a scenic byway to the extent such improvements are necessary to accommodate increased traffic and changes in the types of vehicles using the highway, due to such designation.*

Safety improvements are restricted to the highway that has been designated as a scenic byway and must be the direct result of increased traffic and/or changes in the types of vehicles using the highway. The safety improvements are only considered eligible when they arise as a result of designation of the highway as a scenic byway. Any safety deficiencies that existed prior to designation of the highway as a scenic byway are not eligible for funding considerations.

(3) *Construction along the scenic byway of facilities for the use of pedestrians and bicyclists, rest areas, turnouts, highway shoulder improvements, passing lanes, overlooks, and interpretive facilities.*

All the related facilities in this category must be constructed within or immediately adjacent to the right-of-way of the scenic byway. The facilities must also be directly related to the scenic byway.

(4) *Improvements to the scenic byway that will enhance access to an area for the purpose of recreation, including water-related recreation.*

All eligible projects in this category must be construction alterations that are made to the scenic byway to enhance existing access to recreational areas. Improvements are generally confined to the right-of-way of the scenic byway. However, the acquisition of additional right-of-way along the byway is permitted when warranted to accommodate access improvements to the byway.

(5) *Protecting historical, archeological, and cultural resources in areas adjacent to the highways.*

Resource protection applies only to those properties that contribute to the qualities for which the highway has been designated as a scenic byway. The properties must be located directly adjacent to the scenic byway. Resource protection includes use restrictions that are in the form of easements. However, the purchase of the resource can be considered eligible only after it has been determined that all other protection measures are unsuccessful. Protection of a resource does not include rehabilitation or renovation of a property.

(6) *Developing and providing tourist information to the public, including interpretive information about the scenic byway.*

All information must be associated with the State's scenic byways. It may provide information relating to the State's total network of scenic byways or it may address a specific byway's intrinsic qualities and/or related user amenities. All interpretive information should familiarize the tourists with the qualities that are important to the highway's designation as a scenic byway. Tourist information can be in the form of signs, brochures, pamphlets, tapes, and maps. Product advertising is not permitted on tourist information that has been developed with grant funds received under the scenic byways program.

d. No grant shall be awarded for any otherwise eligible project that would not protect the scenic, historic, cultural, natural, and archeological integrity of the highway and adjacent area.

11. Scenic Byways and the Prohibition of Outdoor Advertising

As provided at 23 U.S.C. 131(s), if a State has a State scenic byway program, the State may not allow the erection of new signs not in conformance with 23 U.S.C. 131(c) along any highway on the Interstate System or Federal-aid primary system which before, on, or after December 18, 1991, has been designated as a scenic byway under the State's scenic byway program. This prohibition would also apply to Interstate System and Federal-aid primary system highways that are designated scenic byways under the National Scenic Byways Program and All-American Roads Program, whether or not they are designated as State scenic byways.

(Sec. 1047, Pub. L. 102–240, 105 Stat. 1914, 1948, 1996; 23 U.S.C. 131(s); 23 U.S.C. 315; 49 CFR 1.48)

Issued on: May 11, 1995.

Rodney E. Slater,

Administrator, Federal Highway Administration.

[FR Doc. 95–12211 Filed 5–17–95; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

May 12, 1995

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Financial Management Service (FMS)

OMB Number: 1510–0055
Form Number: SF 5805
Type of Review: Extension
Title: Request for Funds
Description: Information is required to fund respondents who are recipients of Federal Grants and program benefits. The respondents consist of State and local government agencies, municipalities, universities, and health organizations. The information is used solely to direct requested funds to the respondent's accounts at its financial institutions.
Respondents: Federal Government, Business or other for-profit, State, Local or Tribal Governments
Estimated Number of Respondents: 160
Estimated Burden Hours Per Response: 15 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 9,600 hours
Clearance Officer: Jacqueline R. Perry, (301) 344–8577, Financial Management Service, 3361–L 75th Avenue, Landover, MD 20785
OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 95–12246 Filed 5–17–95; 8:45 am]

BILLING CODE 4810–35–P

Public Information Collection Requirements Submitted to OMB for Review

May 11, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512–0042
Form Number: ATF F 7 (5310.12)
Type of Review: Extension
Title: Application for License, Under 18 U.S.C. Chapter 44, Firearms
Description: This form is used by the public when applying for a Federal firearms license for activities as a dealer, importer, manufacturer, or collector. The information requested on the form establishes eligibility for the license.
Respondents: Individuals or households, Business or other for-profit
Estimated Number of Respondents: 35,000
Estimated Burden Hours Per Respondent: 1 hour, 15 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 43,750 hours
OMB Number: 1512–0043
Form Number: ATF F 8 (5310.11), Part II
Type of Review: Extension
Title: Application for Renewal of Firearms License
Description: This form is filed by the licensee desiring to renew a Federal firearms license beyond the expiration date. It is used to identify the applicant to locate the business premises, type of business conducted, and to determine the eligibility of the applicant.
Respondents: Individuals or households, Business or other for-profit
Estimated Number of Respondents: 83,000
Estimated Burden Hours Per Respondent: 20 minutes
Frequency of Response: Other
Estimated Total Reporting Burden: 27,390 hours
OMB Number: 1512–0519
Form Number: ATF F 5300.34
Type of Review: Extension
Title: Questionnaire For Responsible Persons
Description: This form is used by the public when applying for a Federal firearms license as a dealer, importer, or manufacturer. The information requested on the form establishes eligibility for the license used. The form is also used when responsible persons are added to an existing license.
Respondents: Individuals or households
Estimated Number of Respondents: 30,000
Estimated Burden Hours Per Respondent: 30 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 15,000 hours
Clearance Officer: Robert N. Hogarth, (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, N.W., Washington, DC 20226
OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503

Lois K. Holland

Departmental Reports Management Officer.

[FR Doc. 95–12247 Filed 5–17–95; 8:45 am]

BILLING CODE 4810–31–P

Public Information Collection Requirements Submitted to OMB for Review

May 9, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

U.S. Customs Service (CUS)

OMB Number: 1515–0009
Form Number: CF 3495
Type of Review: Extension
Title: Application for Exportation Under Special Bond
Description: Customs Form 3495 is used by importers for articles which may be entered temporarily into the U.S. and are free of duty under bond and which are exported within one year from date of importation.
Respondents: Business or other for-profit
Estimated Number of Respondents: 500
Estimated Burden Hours Per Respondent: 8 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 2,000 hours
Clearance Officer: Laverne Williams, (202) 927–0229, U.S. Customs Service, Printing and Records Management Branch, Room 6216, 1301 Constitution Avenue, N.W., Washington, DC 20229

OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 95–12248 Filed 5–17–95; 8:45 am]

BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review

May 11, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0927
Form Number: IRS Form 8390
Type of Review: Revision
Title: Information Return for Determination of Life Insurance Company Earnings Rate Under Section 809
Description: Life insurance companies are required to provide data so the Secretary of the Treasury can compute the: (1) stock earnings rate of the 50 largest stock companies; and (2) average mutual earnings rate. These factors are used to compute the differential earnings rate which will determine the tax liability for mutual life insurance companies.
Respondents: Business or other for-profit
Estimated Number of Respondents/ Recordkeepers: 150
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—56 hours, 41 minutes
Learning about the law or the form—3 hours, 28 minutes
Preparing and sending the form to the IRS—4 hours, 34 minutes
Frequency of Response: Annually
Estimated Total Reporting Burden: 9,706 hours
Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 95–12249 Filed 5–17–95; 8:45 am]

BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review

May 11, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220. Special Request: In order to conduct the focus group study described below in a timely manner, the Department of Treasury is requesting Office of Management and Budget (OMB) review and approval of this information collection by May 24, 1995. To obtain a copy of this survey, please write to the IRS Clearance Officer at the address listed below.

Internal Revenue Service (IRS)

OMB Number: 1545–1432
Project Number: PC:V 95–005–G
Type of Review: Revision
Title: Info/California Kiosks Focus Group Study
Description: The IRS currently has six (6) applications residing on kiosks in the state of California. The state effort is known as Info/California and will involve approximately 100 kiosks distributed around the state by the end of May, 1995. The IRS applications are currently information only; however, interactive applications are planned as well. Info/California is serving as a testbed for our research effort in this arena. Results from this project will be useful to guide our participation in the National Kiosk Network project (part of the National Performance Review).
Respondents: Individuals or households
Estimated Number of Respondents: 60
Estimated Burden Hours Per Respondent:
Interview—2 hours
Travel time—1 hour
Frequency of Response: Other
Estimated Total Reporting Burden: 210 hours
Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 95–12250 Filed 5–17–95; 8:45 am]

BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review

May 12, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0010
Form Number: IRS Form W–4
Type of Review: Extension
Title: Employee's Withholding Allowance Certificate
Description: Employees file this form to tell employers (1) the number of withholding allowances claimed, (2) dollar amount they want the withholding increased each pay period, and (3) if they are entitled to claim exemption from withholding. Employers use this information to figure the correct tax to withhold from the employee's wages.
Respondents: Individuals or households, Business or other for-profit, Not-for-profit institutions, Federal Government, State, Local or Tribal Government
Estimated Number of Respondents/ Recordkeepers: 54,209,079
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—46 min.
Learning about the law or the form—10 min.
Preparing the form—69 min.
Frequency of Response: On occasion

Estimated Total Reporting/ Recordkeeping Burden: 112,754,884 hours
OMB Number: 1545–0051
Form Number: IRS Form 990–C
Type of Review: Extension
Title: Farmers' Cooperative Association Income Tax Return
Description: Form 990–C is used by farmers' cooperatives to report the tax imposed by section 1381. IRS uses the information to determine whether the tax is being properly reported.
Respondents: Business or other for-profit, Farms
Estimated Number of Respondents/ Recordkeepers: 5,600
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—77 hr., 15 min.
Learning about the law or the form—24 hr., 52 min.
Preparing the form—42 hr., 7 min.
Copying, assembling, and sending the form to the IRS—4 hr., 17 min.
Frequency of Response: Annually
Estimated Total Reporting/ Recordkeeping Burden: 831,656 hours
OMB Number: 1545–0129
Form Number: IRS Form 1120–POL
Type of Review: Extension
Title: U.S. Income Tax Return for Certain Political Organizations
Description: Certain political organizations file Form 1120–POL to report the tax imposed by section 527. The form is used to designate a principal business campaign committee that is subject to a lower rate of tax under section 527(h). IRS uses Form 1120–POL to determine if the proper tax was paid.
Respondents: Not-for-profit institutions
Estimated Number of Respondents/ Recordkeepers: 6,527
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—15 hr., 32 min.
Learning about the law or the form—6 hr., 23 min.
Preparing the form—15 hr., 18 min.
Copy, assembling, and sending the form to the IRS—2 hr., 25 min.
Frequency of Response: Annually
Estimated Total Reporting/ Recordkeeping Burden: 258,730 hours
OMB Number: 1545–0144
Form Number: IRS Form 2438
Type of Review: Extension
Title: Regulated Investment Company undistributed Capital Gains Tax Return
Description: Form 2438 is used by regulated investment companies to figure capital gains tax on undistributed capital gains designated under Internal Revenue Code (IRC) section 852(b)(3)(D). IRS uses this information to determine the correct tax.
Respondents: Business or other for-profit
Estimated Number of Respondents/ Recordkeepers: 100
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—7 hr., 39 min.
Learning about the law or the form—35 min.
Preparing and sending the form to the IRS—45 min.
Frequency of Response: Annually
Estimated Total Reporting/ Recordkeeping Burden: 899 hours
OMB Number: 1545–0160
Form Number: IRS Form 3520–A
Type of Review: Extension
Title: Annual Return of Foreign Trust with U.S. Beneficiaries
Description: Section 6048(c) requires that foreign trusts with at least one U.S. beneficiary must file an annual information return on Form 3520–A. The form is used to report the income and deductions of the foreign trust. IRS uses Form 3520–A to determine if the U.S. owner of the trust has included the net income of the trust in its gross income.
Respondents: Individuals or households, Business or other for-profit
Estimated Number of Respondents/ Recordkeepers: 500
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—29 hr., 25 min.
Learning about the law or the form—53 min.
Preparing and sending the form to the IRS—1 hr., 25 min.
Frequency of Response: Annually
Estimated Total Reporting/ Recordkeeping Burden: 15,860 hours
OMB Number: 1545–0187
Form Number: IRS Form 4835
Type of Review: Extension
Title: Farm Rental Income and Expenses
Description: This form is used by landowners (or sub-lessors) to report farm income based on crops or livestock produced by the tenant when the landowner (or sub-lessor) does not materially participate in the operation or management of the farm. This form is attached to Form 1040 and the data is used to determine whether the proper amount of rental income has been reported.
Respondents: Individuals or households, Farms
Estimated Number of Respondents/ Recordkeepers: 407,719
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—2 hr., 57 min.
Learning about the law or the form—4 min.
Preparing the form—1 hr., 2 min.
Copying, assembling, and sending the form to the IRS—20 min.
Frequency of Response: Annually
Estimated Total Reporting/ Recordkeeping Burden: 1,789,886 hours
OMB Number: 1545–0390
Form Number: IRS Form 5306
Type of Review: Extension
Title: Application for Approval of Prototype or Employer Sponsored Individual Retirement Account
Description: This application is used by employers who want to establish an individual retirement account trust to be used by their employees. The application is also used by persons who want to establish approved prototype individual retirement accounts or annuities. The data collected is used to determine if plans may be approved.
Respondents: Business or other for-profit
Estimated Number of Respondents/ Recordkeepers: 600
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—11 hr., 58 min.
Learning about the law or the form—18 min.
Preparing and sending the form to the IRS—30 min.
Frequency of Response: On occasion
Estimated Total Reporting/ Recordkeeping Burden: 7,662 hours
OMB Number: 1545–0890
Form Number: IRS Form 1120–A
Type of Review: Extension
Title: U.S. Corporation Short-Form Income Tax Return
Description: Form 1120–A is used by small corporations, those with less than $500,000 of income and assets, to compute their taxable income and tax liability. The IRS uses Form 1120–A to determine whether corporations have correctly computed their tax liability.
Respondents: Business or other for-profit, Farms
Estimated Number of Respondents/ Recordkeepers: 285,777
Estimated Burden Hours Per Respondent/Recordkeeper:

Form	Recordkeeping	Learning about the law or the form	Preparing the form	Copying, assembling, and sending, the form to the IRS
1120	71 hours, 16 minutes .	41 hours, 8 minutes ...	72 hours, 2 minutes ...	8 hours, 2 minutes.
1120–A	43 hours, 3 minutes ...	23 hours, 44 minutes .	41 hours, 18 minutes .	4 hours, 34 minutes.
Sched. D (1120)	6 hours, 56 minutes ...	3 hours, 31 minutes ...	5 hours, 39 minutes ...	0 hours, 32 minutes.
Sched. H (1120)	5 hours, 59 minutes ...	0 hours, 35 minutes ...	0 hours, 43 minutes ...	0 hours, 0 minutes.
Sched. PH (11[illegible]	15 hours, 19 minutes .	6 hours, 6 minutes	8 hours, 29 minutes ...	0 hours, 32 minutes.

Frequency of Response: Annually
Estimated Total Reporting/ Recordkeeping Burden: 32,192,779 hours
OMB Number: 1545–0967
Form Number: IRS Form 8453–F
Type of Review: Extension
Title: U.S. Estate or Trust Income Tax Declaration and Signature for Electronic and Magnetic Media Filing
Description: This form is used to secure taxpayer signatures and declarations in conjunction with electronic and magnetic media filing of trust and fiduciary income tax returns. This form, together with the electronic and magnetic media transmission, will comprise the taxpayer's income tax return (1041).
Respondents: Individuals or households, Business of other for-profit
Estimated Number of Respondents/ Recordkeepers: 1,000
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—7 min.
Learning about the law or the form—4 min.
Preparing the form—18 min.
Copying, assembling, and sending the form to the IRS—20 min.
Frequency of Response: Annually
Estimated Total Reporting/ Recordkeeping Burden: 810 hours
OMB Number: 1545–1033
Form Number: IRS Form 8453–E
Type of Review: Extension
Title: Employee Benefit Plan Declaration and Signature for Electronic/ Magnetic Media Filing
Description: This form will be used to secure taxpayer signatures and declarations in conjunction with the Electronic Filing of Forms 5500, 5500–C/R, and 5500EZ. These forms, together with the electronic transmission, will comprise the annual information returns.
Respondents: Individuals or households, Business or other for-profit
Estimated Number of Respondents/ Recordkeepers: 50,000
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—7 min.
Learning about the law or the form—5 min.
Preparing the form—22 min.
Copying, assembling, and sending the form to the IRS—20 min.
Frequency of Response: Annually
Estimated Total Reporting Burden: 45,000 hours
OMB Number: 1545–1255
Regulation ID Number: INTL–0870–89 NPRM
Type of Review: Extension
Title: Earnings Stripping Under Section 163(j)
Description: Certain taxpayers are allowed to write off the fixed basis of the stock of an acquired corporation rather than use the adjusted basis of the assets of the acquired corporation.
Respondents: Business or other for-profit
Estimated Number of Respondents: 1
Estimated Burden Hours Per Respondent: 1 hour
Frequency of Response: Annually
Estimated Total Reporting Burden: 1 hour
OMB Number: 1545–1424
Form Number: IRS Form 1099–C
Type of Review: Extension
Title: Cancellation of Debt
Description: Form 1099–C is used for reporting canceled debt, as required by section 6050P of the Internal Revenue Code. It is used to verify that debtors are correctly reporting their income.
Respondents: Business or other for-profit, Not-for-profit institutions, Federal Government
Estimated Number of Respondents: 1,000,000
Estimated Burden Hours Per Respondent/Recordkeeper: 11 minutes
Frequency of Response: Annually
Estimated Total Reporting Burden: 950,000 hours
Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 95–12251 Filed 5–17–95; 8:45 am]
BILLING CODE 4830–01–P

Internal Revenue Service

Tax on Certain Imported Substances (Acrylic Fiber (93% Acrylonitrile, 7% Vinyl Acetate)); Rejection of Petition

AGENCY: Internal Revenue Service (IRS), Treasury.
ACTION: Notice.

SUMMARY: This notice announces the rejection, under Notice 89–61, of a petition requesting that acrylic fiber (93% acrylonitrile, 7% vinyl acetate) be added to the list of taxable substances in section 4672(a)(3).

FOR FURTHER INFORMATION CONTACT: Ruth Hoffman, Office of Assistant Chief Counsel (Passthroughs and Special Industries), (202) 622–3130 (not a toll-free number).

SUPPLEMENTARY INFORMATION: On April 14, 1992, a Notice of Receipt of Petitions was published in the **Federal Register** (57 FR 12956) announcing the receipt of a petition submitted by Monsanto Company requesting that acrylic fiber (93% acrylonitrile, 7% vinyl acetate) be added to the list of taxable substances in section 4672(a)(3). Notice 89–61, 1989–1 CB 717, provides that the term *substance* excludes textile fibers and therefore acrylic fiber is not a substance for which a petition may be accepted. Accordingly, the petition is rejected.

Dale D. Goode,
Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).
[FR Doc. 95–12176 Filed 5–17–95; 8:45 am]
BILLING CODE 4830–01–U

UNITED STATES INFORMATION AGENCY

College and University Affiliations Program (CUAP): Application Notice for Fiscal Year 1996

ACTION: Notice; Request for proposals.

SUMMARY: The Office of Academic Programs of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for an assistance award program. Accredited, post-secondary educational institutions meeting the provisions described in IRS regulation 26 CFR 1.501(c)(3)–1 may apply to develop a partnership with foreign institution(s) of higher education in the arts, humanities, and social sciences. Proposed projects must be eligible in terms of country(ies)/regions and academic disciplines or themes as described in the section entitled "Guidelines" below. Participating institutions exchange faculty and staff for a combination of teaching, lecturing, curriculum development, faculty development, collaborative research, and outreach for periods of one month or longer.

The program awards grants up to $120,000 for a three-year period to defray the cost of travel and per diem with an allowance for educational materials and project administration. Subject to the availability of funding, a minimum of two grants will be awarded for each of the six geographic regions described below (Africa; American Republics; East Asia and Pacific; East/ Central Europe and the New Independent States; North Africa, Near East, and South Asia; and Western Europe). The award of grants for North American trilateral projects (described below) will be subject to the final program budget.

Overall grant making and funding authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program cited above is provided through the Fulbright-Hays Act.

Projects must conform with Agency requirements and guidelines outlined in the Solicitation Package. USIA Projects are subject to the availability of funds.

ANNOUNCEMENT NAME AND NUMBER: All communications with USIA concerning this announcement should refer to the College and University Affiliations Program and reference number E/ASU–96–01.

DEADLINE FOR PROPOSALS: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on Thursday, November 9, 1995. Faxed documents will not be accepted, nor will documents postmarked on November 9, 1995, but received on a later date. It is the responsibility of each applicant to ensure compliance with the deadline.

Approximate program dates: Grants should begin on or about July 1, 1996.
Duration: July 1, 1996–June 30, 1999.

FOR FURTHER INFORMATION CONTACT: Office of Academic Programs; Advising, Teaching, and Specialized Programs Division; College and University Affiliations Program (CUAP), (E/ASU), Room 349, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547, phone: (202) 619–5289, fax: (202) 401–1433, e-mail: affiliat@usia.gov, to request a Solicitation Package, which includes more detailed award criteria; all application forms; and guidelines for preparing proposals, including specific criteria for preparation of the proposal budget. Please specify USIA Program Officer Ms. Sue Borja on all inquiries and correspondence. Prospective applicants should read the complete **Federal Register** announcement before addressing inquiries to the College and University Affiliations Program staff or submitting their proposals. Once the RFP deadline has passed, the College and University Affiliations Program staff may not discuss this competition in any way with applicants until the Bureau proposal review process has been completed.

ADDRESSES: Applicants must follow all instructions given in the Solicitation Package. The original and 10 copies of the complete application should be sent to: U.S. Information Agency, Ref.: E/ ASU–96–01, Office of Grants Management, E/XE, Room 336, 301 4th St., SW., Washington, DC 20547.

Applicants must also submit to E/XE the "Executive Summary", "Proposal", and "Budget" sections (in no more than three files) of each proposal on a 3½" diskette, formatted for DOS. This material should be provided in ASCII text (DOS) format with a maximum line length of 65 characters. USIA will transmit these files electronically to USIS posts overseas for their review, with the goal of reducing processing time for grants to a minimum. Please also ensure that the disc is free of viruses.

SUPPLEMENTARY INFORMATION: Pursuant to the Bureau's authorizing legislation, programs must maintain a nonpolitical character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including but not limited to race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle.

The Agency encourages proposals from eligible Historically Black Colleges and Universities, the members of the Hispanic Association of Colleges and Universities, and other institutions in the U.S. with at least 25% minority (Native American or Native Alaskan; Asian American or Pacific Islander; African American or Black Non-Hispanic; or Hispanic) student enrollment.

Overview

Objectives

The CUAP's *short-term goal* is to provide partial funding of linkages between U.S. and foreign institutions of higher education featuring faculty and staff exchanges for the purpose of teaching, lecturing, faculty development, curriculum development, collaborative research, and outreach.

The program's *long-term goals* are to:

(1) Advance mutual understanding between the U.S. and other countries or regions by supporting linkages which provide true reciprocity and significant mutual benefit.

(2) Diversify and expand international educational exchanges by:

- Ensuring a widespread geographic distribution of grants throughout the U.S. and abroad;
- Targeting academic disciplines and countries/regions which are not otherwise significantly represented in privately funded exchanges;
- Increasing the participation of two-year/community colleges, small four-year schools, and schools with significant (over 25%) minority student enrollments; and
- Complementing the individual lectureships, research and graduate study fellowships, and training programs available under Fulbright and other Agency auspices.

(3) Foster post-secondary institutional academic development by supporting linkages which promise to develop expertise and advance scholarship and teaching.

(4) Encourage U.S. government/private sector cooperation by supporting linkages which provide significant cost sharing from both the U.S. and foreign partner(s).

(5) Encourage long-term impact on all partner institutions by supporting linkages which promise sustainability beyond the three-year grant term.

(6) Further U.S. foreign policy objectives by supporting linkages which correspond to the Agency's geographic and thematic programming priorities.

Guidelines

The ideal and most competitive proposal is reciprocal with mutual goals and benefits for all partner institutions. While the goals and benefits should be mutual, they do not need to be identical for each partner institution or precisely balanced among partner institutions. One-way, technical assistance projects are not acceptable.

The ideal and most competitive proposal includes a series of year-round, faculty and staff exchange visits involving a well-reasoned combination of teaching, lecturing, faculty development, curriculum development, collaborative research, and outreach. These activities must address and support stated project goals, develop expertise, and advance scholarship and teaching. These activities may vary in emphasis within the project. For example, collaborative research may play a lesser role than curriculum development. Library support and development should be included if deemed critical to the success and sustainability of the project.

Exchange visits must be for a minimum of one month, with the exception of planning visits, which may be for a shorter period. A competitive proposal includes a minimum of one, quarter or semester-long visit each year from each of the U.S. and the foreign partner(s). Projects with multiple visits one quarter or semester in length will be more competitive. Visits by the U.S. and foreign project coordinators as well as other key exchanges should be identified and justified in the proposal narrative.

An ideal project builds upon previous contacts and interaction between the proposed partners, such as individual faculty or student exchanges, to help ensure a solid foundation for the linkage. Acceptable proposals must either establish new institutional affiliations or innovate existing partnerships and must not merely extend projects previously funded by the College and University Affiliations Program (formerly the "University Affiliations Program"), other USIA or U.S. government linkage programs, or other, similar linkage programs. Proposals for feasibility studies to plan affiliations will not be considered.

An ideal and most competitive proposal provides significant institutional support and cost sharing from both the U.S. and foreign institution(s) and promises sustainability beyond the grant term.

The U.S. institution(s) should collaborate with the foreign partner(s) in planning and preparation. When planning the project, U.S. and foreign institutions are strongly encouraged to consult with the Cultural Affairs Officer (CAO) or Public Affairs Officer (PAO) at the appropriate U.S. Information Service (USIS) office at the U.S. Embassy or U.S. Consulate and with the Fulbright Commission, where one exists, in the appropriate country.

U.S. Partner and Participant Eligibility

In the U.S., participation in the program is open to accredited two- and four-year colleges and universities, including graduate schools. Applications from consortia of U.S. colleges and universities are eligible. The lead U.S. institution is responsible for submitting the application and each application from a consortium must be submitted by a member institution with stated authority to represent the consortium. Participants representing the U.S. institution who are traveling under USIA grant funds must be U.S. citizens.

Foreign Partner and Participant Eligibility

Overseas, participation is open to recognized, degree-granting institutions of post-secondary education and internationally recognized and highly regarded independent research institutes. Participants representing the foreign institutions must be citizens, nationals, or permanent residents of the country of the foreign partner and be qualified to hold a valid passport. In the case of a partnership with an institution in one of the New Independent States (NIS), foreign participants with citizenship in any of the NIS are eligible.

Ineligibility

A proposal will be deemed technically ineligible if:

(1) It does not fully adhere to the guidelines established herein and in the Solicitation Package;

(2) It is not received by the deadline;

(3) The length of the proposed project is less than three years;

(4) It is not submitted by the U.S. partner;

(5) One of the partner institutions is ineligible;

(6) The foreign geographic location is ineligible;

(7) The project involves a partnership with more than one country with the exception of trilateral projects under the APEC theme within East Asia and North America (U.S./Canada/Mexico) trilateral projects;

(8) The academic discipline/theme is ineligible.

(9) The budget exceeds $120,000 for the three-year project.

Eligible Countries/Regions and Academic Disciplines

The competition is limited to selected countries/regions and certain academic disciplines or themes which represent USIA's geographic and thematic priorities for the College and University Affiliations Program.

A proposal may include more than one eligible academic discipline or theme but should be justified in the proposal narrative. Please note: American studies includes the fields of American History and Civilization, Literature, Social Sciences, and Art.

The program invites proposals for bilateral projects only, involving the U.S. and one foreign country with the following exceptions:

- Proposals submitted for trilateral projects under the APEC (Asia Pacific Economic Cooperation) theme described below under the East Asia and Pacific section.
- Proposals submitted for trilateral projects linking U.S., Canadian, and Mexican institution(s) described below under the North American trilateral exchanges section.

Africa (AF)

Eligibility is open to the following sub-Saharan African countries: Cameroon, Ethiopia, Ghana, Malawi, Mozambique, Namibia, Senegal, South Africa, Zambia, Zimbabwe, and Uganda. Eligible academic disciplines are the social sciences and humanities and those disciplines which focus on the themes of rule of law and democratic institution building: law, political science/government/public policy/public administration, economics/business, journalism/communications, and education.

American Republics (AR)

Eligibility is open to the following countries and academic disciplines: Bolivia, El Salvador, Guatemala, Guyana, Haiti, Honduras, Nicaragua, Panama, Paraguay, Suriname, and Trinidad. Eligible academic disciplines are American studies, historic/cultural heritage preservation, public administration, environmental studies, and sustainable development.

East Asia and Pacific (EA)

Eligibility is open to the following countries and academic disciplines: Hong Kong (American studies, area studies, humanities, and social sciences), Mongolia (American studies, political science, and social sciences); Papua New Guinea (education, environmental studies, and social sciences); and Thailand (American studies, economics, and sustainable development).

APEC (Asia Pacific Economic Cooperation) Exchanges

Trilateral projects linking an institution in the U.S. with institutions in two other APEC member economies in the East Asia and Pacific region are also eligible. The eligible APEC members are: Australia, Brunei, China, Hong Kong, Indonesia, Japan, Korea, Malaysia, New Zealand, Papua New Guinea, The Philippines, Singapore, Thailand, and Chinese Taipei.

Trilateral APEC proposals must address issues concerned with regional economic growth and development that envision a community of Asia Pacific economies. Proposals must have a regional emphasis that focuses on one or more of the following academic disciplines: economics (emphasis on international economics/trade and investment flows), business administration (emphasis on marketing and international business), and the environment (emphasis on sustained growth and the environment).

East/Central Europe and the New Independent States (EEN)

Eligibility is open to the following countries and academic disciplines: Romania (American studies, environmental studies, urban planning, civic education); Russia excluding institutions in Moscow and St. Petersburg (American studies, environmental studies, educational administration, public administration, library science); Ukraine (law, American studies, environmental studies, library science); Belarus (agricultural economics, environmental studies, educational administration, information sciences); Uzbekistan (public administration, environmental studies, agricultural economics); and Moldova (public administration, market economics, law).

North Africa, Near East, and South Asia (NEA)

Eligibility is open to the following countries/regions and academic disciplines: Jordan (Civic Administration), Syria (Social Sciences), Pakistan (American/area studies), and the West Bank/Gaza (public administration).

Western Europe (WEU)

Eligibility is limited to institutions located in the following geographically or culturally distinct regions in Western Europe: eastern Germany, Northern Ireland, the Basque region of Spain, northern Greece (Macedonia), and southwest Turkey (Izmir). Eligible academic disciplines are American studies and political science.

North America Trilateral Exchanges

Eligibility is open to trilateral projects linking institution(s) in the U.S. with institution(s) in Canada and Mexico. Eligible academic disciplines are the arts, humanities, comparative education and culture, business, trade, economics, and environmental studies.

Visa Requirements

Programs must comply with J–1 exchange visitor visa regulations. Please refer to program specific guidelines in the Solicitation Package (POGI) for further details.

Tax Requirements

Administration of the program must be in compliance with reporting and withholding regulations for federal, state, and local taxes as applicable. Recipient organizations should demonstrate tax regulation adherence in the proposal narrative and budget.

Health Insurance Requirements

The grant recipient is responsible for enrolling exchange participants in a health and accident insurance plan that meets the basic requirements of the J–1 Visa. Insurance costs for only the foreign exchange participants are an allowable expense under this program. Please refer to program specific guidelines in the Solicitation Package (POGI) for further details.

Travel

The assistance award recipient must arrange all travel through their own travel agent.

Proposed Budget

No funding award will exceed a total of $120,000 for the three-year grant term. Support for direct administrative costs associated with grant activities will not exceed 20% of the total grant amount. All indirect costs are unallowable.

Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

Applicants must submit a comprehensive, line-item budget for the entire project. There must be a summary budget as well as a breakdown, by year, reflecting both the administrative budget and the program budget. Please refer to the Solicitation Package (POGI) for complete formatting instructions rather than the generic budget format detailed in the Proposal Submission Instructions (PSI).

Allowable Costs

(1) International, economy-class airfare for participants. Travel must be on U.S. flag carriers wherever such routes exist.

(2) Domestic, economy-class travel to other academic institutions, libraries for research, and conferences while in the host country, which are directly related to the project.

(3) Per diem for lodging, meals, and incidentals.

(4) Educational materials, excluding computer hardware, not to exceed $12,000 for three years.

(5) One planning trip for one participant per partner institution.

(6) Health insurance for foreign participants only, while on project-related travel to the U.S. Please note: Health insurance is compulsory for all U.S. and foreign participants.

Unallowable Costs

(1) Expenses for student exchanges.

(2) Travel and per diem for dependents.

(3) Any costs for non-U.S. citizens or nationals from U.S. institutions, or citizens of other than the host country representing foreign institutions (except for the New Independent States as stated in the eligibility section above).

(4) Indirect costs.

Please refer to the Solicitation Package for complete budget guidelines.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. Eligible proposals will be forwarded to outside academic panels and Agency officers for advisory review. All eligible proposals will be reviewed by the Agency contracts office. proposals will also be reviewed by the appropriate regional

office, i.e., the USIA Office of African Affairs (AF), Office of American Republics Affairs (AR), Office of East Asian and Pacific Affairs (EA), Office of East European and Canadian Affairs (WEU) and the Office of North African, Near Eastern, and South Asian Affairs (NEA) and relevant USIA posts overseas, where appropriate. Proposals may also be reviewed by the Office of the General Counsel or by other Agency elements. Funding decisions are at the discretion of the USIA Associate Director for Educational and cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the USIA contracts officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in proposal evaluation:

Academic Review Criteria

Proposals are reviewed by independent academic peer panels, with geographic and disciplinary expertise, which make comments and recommendations to the Agency based on the following criteria:

(1) Reasonable and feasible project objectives which are clearly related to the project plan and activities.

(2) Appropriate and feasible project plans and a detailed schedule which must include a well-reasoned combination of useful and appropriate teaching, lecturing, faculty development, curriculum development, collaborative research, and outreach. Activities should be clearly related to the project objectives, but not necessarily equally emphasized within the proposal.

(3) Inclusion of exchange visits of a length which will further the project goals and activities. Visits of one month or less are kept to a minimum (except planning visits); visits of one academic quarter or semester are strongly preferred.

(4) Promise of the development of expertise and the advancement of scholarship and teaching in the eligible academic disciplines or themes.

(5) Quality of exchange participants' academic credentials, skills, and experience relative to the goals and activities of the project plan (e.g., language skills).

(6) Institutional resources adequate and appropriate to achieve the project's goals. Relevant factors are: the match between partners; the financial and political stability of the institutions; and availability of a critical mass of faculty willing and able to participate.

(7) Evidence of strong institutional commitment by all participating institutions, including demonstration of relevant and successful prior interactions between institutions and an indication of collaborative proposal planning.

(8) Evidence of a strong commitment to internationalization by participating institutions (i.e., developing other international projects and/or building upon past international activities).

(9) An effective evaluation plan which defines and articulates a list of anticipated outcomes clearly related to the project goals and activities and procedures for on-going monitoring ad mid-term corrective action.

Agency Review Criteria

(1) Clear indication that the proposal seeks to establish a truly reciprocal and mutually beneficial institutional affiliation overseas or to innovate an existing affiliation. The benefits do not have to be the same for each partner or precisely balanced, but must be essentially mutual.

(2) Positive assessment of program need, feasibility, and potential impact by the relevant USIA post overseas.

(3) Academic quality, reflected in the academic review panel's comments and recommendations.

(4) Institutional and geographic diversity of the U.S. and overseas institutions (i.e., racial, ethnic, and gender composition of student enrollments; small underrepresented institutions, two-year/community colleges, and institutions in underrepresented geographic locations).

(5) The promise of sustainability and long-term impact which should be reflected in a plan for continued, non-U.S. government support and follow-on activities.

(6) Cost effectiveness (i.e., competitive cost sharing, sufficient number of participant exchanges relative to the project goals and plan).

(7) Institutional track record and ability. The Agency will consider the past performance of prior recipients and the demonstrated potential of new applicants.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The needs of the program may require the award to be reduced, revised, or increased. Final awards cannot be made until funds have been fully appropriated by Congress and allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about July 1, 1996. Awards will be subject to periodic reporting and evaluation requirements.

Dated: May 11, 1995.

Dell Pendergrast,

Deputy Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 95–12174 Filed 5–17–95; 8:45 am]

BILLING CODE 8230–01–M

Advisory Commission on Public Diplomacy Meeting

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: A meeting of the U.S. Advisory Commission on Public Diplomacy will be held on May 17 at the national Foreign Affairs Training Center for 10 a.m.–12:15 p.m. The Commission will be given an overview of the National Foreign Affairs Training Center by Acting Deputy Director Barry Wells. At 11 a.m. the Commission will hold a panel discussion on Public Diplomacy Training. The panelists are Mr. Berry Wells, Acting Deputy Director, National Foreign Affairs Training Center; Mr. Gregory Lagana, Director, Training Division, USIA; and Ms. Diana Weston, Chair, Task Force in Public Affairs Training, Department of State.

FOR FURTHER INFORMATION CONTACT: Please call Betty Hayes, (202) 619–4468, if you are interested in attending the meeting.

Dated: May 12, 1995.

Rose Royal,

Management Analyst, Federal Register Liaison.

[FR Doc. 95–12173 Filed 5–17–95; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register

Vol.60, No. 96

Thursday, May 18, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, May 23, 1995 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEM TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Wednesday, May 24, 1995 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, D.C. (Ninth Floor).

STATUS: This meeting will be open to the Public.

ITEM TO BE DISCUSSED:

Future Meetings.

Correction and Approval of Minutes.

Presidential Primary and General Election Regulations: Draft Final Rules and Explanation and Justification (continued from meeting of May 17, 1995).

Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 219–4155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 95–12336 Filed 5–16–95; 11:05 am]

BILLING CODE 6715–01–M

Corrections

Federal Register
Vol. 60, No. 96
Thursday, May 18, 1995

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

FEDERAL MARITIME COMMISSION

Cancellation of Tariffs of Common Carriers by Water in the Foreign Commerce of the United States for Failure to File Anti-Rebate Certifications

Correction

In notice document 95–11833 beginning on page 25910 in the issue of Monday, May 15, 1995, the heading for Attachment B was inadvertently omitted and should appear as follows:

On page 25912, in the second column, from the bottom of the page the following heading should appear between the tenth and eleventh lines:

Attachment B: Common Carriers by Water and Licensed Ocean Freight Forwarders in the Foreign Commerce of the United States That Have Complied With Requirements of 46 CFR Part 582, Have Canceled Their Tariffs or Have had Their Freight Forwarder Licenses Revoked

BILLING CODE 1505–01–D

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Correction

In notice document 95–11914 appearing on page 25940 in the issue of Monday, May 15, 1995, in the first paragraph, in the next to last line, "December 56, 1995," should read "December 5, 1995,".

BILLING CODE 1505–01–D

federal register

Thursday
May 18, 1995

Part II

Department of Health and Human Services

Administration for Children and Families

45 CFR Part 1385 et al.
Developmental Disabilities Program; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Parts 1385, 1386, 1387 and 1388

RIN 0970–AB11

Developmental Disabilities Program

AGENCY: Administration on Developmental Disabilities, Administration for Children and Families, HHS.

ACTION: Notice of proposed rulemaking

SUMMARY: This rule proposes clarifications and new requirements to implement changes made by the Developmental Disabilities Assistance and Bill of Rights Act Amendments of 1990 and the Developmental Disabilities Assistance and Bill of Rights Act Amendments of 1994.

DATES: To ensure consideration comments must be submitted on or before July 17, 1995.

ADDRESSES: Please address comments to: Commissioner, Administration on Developmental Disabilities, Room 329–D (Regulations), Hubert H. Humphrey Building, 200 Independence Avenue SW, Washington, DC 20201.

It would be helpful if agencies and organizations submitted copies in duplicate. Two weeks after the close of the comment period, comments and letters will be available for public inspection in Room 309–D, Hubert H. Humphrey Building, 200 Independence Avenue SW, Washington, DC 20201, Monday through Friday, 8 a.m. to 4 p.m., telephone (202) 690–5841.

FOR FURTHER INFORMATION CONTACT: John P. Doyle, Director, Administration and Planning Staff, Administration on Developmental Disabilities, Telephone: (202) 690–5504 (Voice), (202) 690–6415 (TDD). These are not toll-free numbers. This document will be made available in accessible formats upon request.

SUPPLEMENTARY INFORMATION:

I. Program History

In 1963, the Mental Retardation Facilities and Construction Act (Pub. L. 88–164) was enacted to plan activities and construct facilities to provide services to persons with mental retardation. This legislation was subsequently amended by the Developmental Disabilities Services and Facilities Construction Amendments of 1970 (Pub. L. 91–517) which constituted the first Congressional effort to address the needs of a group of persons with disabilities designated as developmental disabilities. The 1970 Amendments defined developmental disabilities to include individuals with mental retardation, cerebral palsy, epilepsy and other neurological conditions closely related to mental retardation which originated prior to age 18 and constituted a substantial disability. It also created State Planning Councils to advocate for, plan, monitor and evaluate services for persons with developmental disabilities; and authorized grants for constructing, administering and operating University Affiliated Facilities. The legislation authorizing the Developmental Disabilities program has been revised periodically. The major changes of note included the following:

(1) The 1975 Amendments (Pub. L. 94–103) deleted the construction authority, authorized studies to determine the feasibility of having University Affiliated Facilities establish Satellite Centers, established the Protection and Advocacy System and added a section on "Rights of the Developmentally Disabled;"

(2) The 1978 Amendments (Pub. L. 95–602) included a functional definition of developmental disabilities;

(3) The Developmental Disabilities Amendments of 1984 (Pub. L. 98–527) added a new emphasis regarding the purpose of the program, to assist States to assure that persons with developmental disabilities receive the care, treatment and other services necessary to enable them to achieve their maximum potential through increased independence, productivity and integration into the community; and

(4) The 1987 Amendments (Pub. L. 100–146) established an annual report to Congress on the Developmental Disabilities program. The Administration on Developmental Disabilities (ADD) compiles this report using information received from the State Planning Councils, the Protection and Advocacy Systems, the University Affiliated Programs and grantees of the Projects of National Significance. Also included in the 1987 Amendments was a special 1990 Report to Congress on the scope and effectiveness of services provided to persons with developmental disabilities by State agencies and an analysis of consumer satisfaction. The State Planning Councils prepared the State Reports to ADD and this information was used as a basis for the Report to Congress.

The Developmental Disabilities Assistance and Bill of Rights Act Amendments of 1990, Pub. L. 101–496, (the Act), extended authorization of appropriations for programs under the Act through Fiscal Year 1993 and made revisions that:

(1) Add to the purpose of the Act the commitment toward enabling all people with developmental disabilities, including those with severe disabilities, to achieve interdependence and inclusion into society;

(2) Strengthen the independence of State Protection and Advocacy systems;

(3) Establish core awards for University Affiliated Programs training projects; and

(4) Broaden the purpose of Projects of National Significance to include supportive living and quality of life opportunities.

The Developmental Disabilities Assistance and Bill of Rights Act Amendments of 1994, Pub. L. 103–230, (the Act), extends authorization of appropriations for programs under the Act through Fiscal Year 1996 and made revisions that:

(1) Include findings that emphasize respect for individual dignity, personal preferences, and cultural differences in the provision of services, supports and other assistance, and recognize that individuals with developmental disabilities and their families are the primary decision-makers regarding services, supports, and other assistance they receive;

(2) Ensure that racial and ethnic individuals from diverse backgrounds are fully included at all levels and in all activities authorized under this Act. This includes language regarding unserved and underserved populations and "culturally competent" services, supports and other assistance;

(3) Require State Developmental Disabilities Council activities to promote systemic change, capacity building and advocacy;

(4) Clarify the responsibilities of the State Developmental Disabilities Council and the Designated State Agency;

(5) Require the Protection and Advocacy System (P&A) to hire and maintain sufficient numbers and types of qualified staff to carry out the P&A's function;

(6) Protect the confidentiality of client records;

(7) Require development of new program standards for University Affiliated Programs; and

(8) Direct the Secretary to support grants to conduct an investigation on the expansion of part B programs (State Developmental Disabilities Councils) to individuals with severe disabilities other than developmental disabilities.

II. Developmental Disabilities Program

A. Federal Assistance to State Developmental Disabilities Councils

Formula grants are made to each State to support State Developmental Disabilities Councils. The responsibilities of the Councils are to promote, through systemic change, capacity building and advocacy activities; the development of a consumer and family-centered, comprehensive system; and, a coordinated array of services, supports and other assistance. These activities are designed to achieve independence, productivity, integration and inclusion into the community for individuals with developmental disabilities.

B. Protection and Advocacy of the Rights of Individuals With Developmental Disabilities

Formula grants are made to States for the establishment of a system to protect and advocate for the rights of individuals with developmental disabilities. This system must have the authority to pursue legal, administrative and other appropriate remedies to ensure the protection of the rights of individuals with developmental disabilities who are receiving, or who are eligible to receive, treatment or habilitation services.

C. University Affiliated Programs

Grants are made to universities, or to public or nonprofit entities associated with a college or university, to establish University Affiliated Programs (UAPs). Activities of University Affiliated Programs are to be conducted in a culturally competent manner and include: Interdisciplinary pre-service preparation of students and fellows; community service activities which include community training and technical assistance; and the dissemination of subsequent information and research findings.

D. Projects of National Significance

This program provides funding through grants and contracts to public or nonprofit private entities for projects which support national initiatives. Such initiatives include the collection of necessary data; provision of technical assistance to State Developmental Disabilities Councils, protection and advocacy systems and university affiliated programs; and support to other nationally significant activities, such as employment and housing.

III. Discussion of Proposed Regulations

Overall, the proposed regulations have been developed to establish new requirements based on the changes made by two reauthorizations: (1) The Developmental Disabilities Assistance and Bill of Rights Act Amendments of 1990 (Pub. L. 101–496) and (2) the Developmental Disabilities Assistance and Bill of Rights Act Amendments of 1994 (Pub. L. 103–230).

Key proposed provisions are as follows:

A. Section 1386.20, Designated State Protection and Advocacy System, the current rule has been revised to address requirements concerning the redesignation of the Protection and Advocacy System (1990 Amendments);

B. Section 1386.21, Requirements of the Protection and Advocacy System, the regulations regarding confidentiality of client records has been revised pursuant to section 142(j) (1994 Amendments);

C. Section 1386.23, Periodic reports: Protection and Advocacy System, regulatory language is being proposed to address the statutory requirement for an annual statement of objectives and priorities and a statement of the rationale used to establish such objectives (1990 Amendments);

D. Section 1386.30, State plan requirements, the regulation regarding State Developmental Disabilities Council responsibilities has been revised to address new requirements regarding the development of the State plan and the hiring and supervision of staff (1994 Amendments);

E. The current regulatory language for part 1388 has been revised to include new program standards for University Affiliated Programs (UAPs) (1994 Amendments);

A section-by-section discussion of the changes we are proposing follows:

PART 1385—REQUIREMENTS APPLICABLE TO THE DEVELOPMENTAL DISABILITIES PROGRAM

In § 1385.1, General, the changes being proposed are to replace the reference to Basic State Grant with a reference to Federal Assistance to the State Developmental Disabilities Councils and to change the Protection and Advocacy System reference to "individuals" rather than "persons" with developmental disabilities.

In § 1385.3 Definitions, editorial changes are being proposed to incorporate the reference to the Administration for Children and Families rather than the Office of Human Development Services. This action is required because the Administration on Developmental Disabilities was made a part of the Administration for Children and Families. A notice was published in the **Federal Register** on April 18, 1991 (See 56 FR 15885). We are also proposing to include a definition of "Protection and Advocacy System" to mean the organization or agency designated in a State to administer and operate a protection and advocacy program for individuals with developmental disabilities under part C of the Developmental Disabilities Assistance and Bill of Rights Act, as amended by Pub. L. 103–230 (42 U.S.C. 6041, 6042); and advocacy programs under the Protection and Advocacy for Mentally Ill Individuals Act 1986 (PAIMI Act), as amended (42 U.S.C. 10801 et seq.); the Protection and Advocacy of Individual Rights Program (PAIR), (29 U.S.C. 794e); and the Technology-Related Assistance for Individuals with Disabilities Act of 1988, as amended (29 U.S.C. 2212(e)). Protection and Advocacy System also may be designated by the Governor of a State to conduct the Client Assistance Program (CAP) authorized by section 112 of the Rehabilitation Act of 1973, as amended, (29 U.S.C. 732). Finally, the Protection and Advocacy System may provide advocacy services under other Federally funded programs.

Section 1385.4 is amended to re-word "persons with developmental disabilities" to "individuals with developmental disabilities" in the title and paragraphs (a), (b), and (c). The statutory citation in paragraph's (b) and (c) have been updated to conform with the 1994 Amendments.

The regulations of § 1385.5 Recovery of Federal funds used for construction of facilities and § 1385.7 Waivers have been removed and those sections have been reserved. Such action has been done because section 105, Recovery, has been removed from the Act (1994 Amendments). As indicated in the Senate Report, number 103–120, pages 25 and 26, section 105, Recovery, has been deleted because the Committee understood that all facilities for which part B or part D funds had been used towards construction costs, have been completed for more than 20 years making this section no longer relevant.

We are proposing to revise § 1385.6 by using the term "individuals with disabilities" (1994 Amendments). This term is meant to be consistent with "handicapped person" as defined under 45 CFR 84.3(j). We are also proposing to include language which clarifies grantee responsibilities regarding affirmative action pursuant to section 109 of the Act (42 U.S.C. 6008) and to reference the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*) with respect to

employment of individuals with disabilities.

In § 1385.8, Formula for determining allotments, editorial changes are being proposed, which includes the deletion of the concept of Basic State program which is no longer applicable under the Act. Paragraph (c) is being revised to update references (1994 amendments).

In § 1385.9 (a) and (b), Grants administration requirements, an editorial change is being proposed to update the term Special Project to Projects of National Significance (1987 Amendments). Paragraph (d) addresses the issue of the Department keeping information about individual clients confidential when making audits and examinations and taking excerpts and transcripts of records of grantees and subgrantees. This paragraph is being revised to include a reference to part 92—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments for grants awarded to State Developmental Disabilities Councils, University Affiliated Programs and Projects of National Significance and to remove the reference to the Protection and Advocacy System. We are then proposing a new paragraph (e) to address the new requirement of section 142(j) and the language of Senate Report 120, 103rd Cong., 1st Sess., page 39 (1993). The Report indicated * * *" that for any audit, report or evaluation required under this Act, the Secretary shall not require the P&A system to "disclose the identity of, or any personally identifiable information related to, any individual requesting assistance under such program." This requirement is consistent with the Rehabilitation Act Amendments of 1992 which contains similar language pertaining to the confidentiality of client records during Federal reviews of P&A systems. The Committee does not intend to limit the monitoring responsibilities of the Administration on Developmental Disabilities to assure that P&A systems are in compliance with the Act." In paragraph (e)(1) the regulation indicates that for any audit, report or evaluation required under the Act, the Secretary shall not require the Protection and Advocacy system to "disclose the identity of, or any personally identifiable information related to, any individual requesting assistance under such program." In paragraph (e)(2) the proposed regulation indicates that if an audit, monitoring review, evaluation, or other investigation by the Department produces evidence that the system has violated the Act or the regulations, the system will bear the burden of proving its compliance. The System's inability to establish compliance because of the confidentiality of records will not relieve it of this responsibility. The eligible system may elect to obtain a release from all individuals requesting or receiving services at the time of intake or application. The release shall state that only information directly related to client and case eligibility will be subject to disclosure to officials of the Department.

ADD is particularly interested in receiving comments on the regulations being proposed in paragraph (e)(2).

PART 1385—FORMULA GRANT PROGRAMS

In part 1386, subpart A—Basic requirements, we are proposing in § 1386.1, General, that the reference to the Basic State grant program be deleted because there is no statutory basis for this language and the reference to the State Developmental Disabilities Councils be included in its place. We are proposing additional language in § 1386.2(b)(1), Obligation of funds, that would implement an expanded definition of obligation given in section 125(c) of the Act (42 U.S.C. 6025(c)), as amended (1994 Amendments), regarding State Interagency Agreements. We are proposing several technical changes to paragraphs (c)(1) and (2). In paragraph (1), we are proposing to replace the phrase Protection and Advocacy "office" to Protection and Advocacy "System" and reference "individuals" with developmental disabilities rather than "persons" with developmental disabilities. In paragraph (2), we are proposing to reword the phrase "developmentally disabled persons" to "individuals with developmental disabilities" (1994 Amendments); to replace the reference to Basic State Grants with the legislative language for Part B—Federal Assistance to State Developmental Disabilities Councils (1994 Amendments); and reword the last sentence for consistency with the regulatory language contained in § 1386.2(a) regarding the Federal fiscal year.

In part 1386, subpart B, the heading has been revised to read "State System for Protection and Advocacy of the Rights of Individuals with Developmental Disabilities." This revision clarifies how this program is referenced. Accordingly, we are proposing editorial changes in the regulations to reflect this change.

We are proposing a new § 1386.19, Definitions, to include definitions for subpart B, § 1386.20 and § 1386.21. ADD is proposing a definition of "designating official" to clarify who has the responsibility in the State to designate the Protection and Advocacy System under section 142 of the Act (§ 1386.20(a)). Addition of this definition will permit us to simplify the wording of several provisions relating to protection and advocacy agencies. We are then proposing the following definitions of terms used in the proposed regulations in § 1386.21(c)(1) and (3), (§ 142(a)(2)(B)) and (§ 142(a)(2)(I)): "full investigations" means the access to clients, public and private facilities and entities and their staff, and the records regarding the operation of the institution that is necessary for a reasonable person to make an informed decision about whether the alleged or suspected abuse is taking place or has taken place; "probable cause" means a reasonable ground for belief that an individual or group of individuals with developmental disabilities may now be subject to or have been subject to abuse or neglect; and "record of an individual with a developmental disability" includes reports prepared or received by any staff of a facility rendering care or treatment, or reports prepared by an agency or staff person charged with investigating reports of incidents of abuse or neglect, injury or death occurring at such facility that describes incidents of abuse, neglect, injury, or death occurring at such facility and the steps taken to investigate such incidents, and discharge planning records.

For reasons of consistency, we are proposing to revise the heading of § 1386.20 to read, Designated State Protection and Advocacy System rather than Designated State Protection and Advocacy Office.

We are proposing a change in § 1386.20(a) to include the proposed term "designating official" as defined in § 1386.19.

We also are proposing to revise § 1386.20(d) to address the procedure to be followed in order for a State to designate a new agency to administer and operate the Protection and Advocacy system pursuant to section 142(a)(4) of the Act, (42 U.S.C. 6042(a)(4)). State Protection and Advocacy agencies are responsible for administering and operating State advocacy systems. These systems must be independent of State public and private service systems, provide information and referral, and have the authority to pursue legal, administrative and other appropriate remedies to ensure the protection of the rights of individuals with developmental disabilities and individuals with mental illness. (See sections 102(2), 103 and 105 of the Protection and Advocacy for Mentally Ill Individuals Act of 1986, as amended (42 U.S.C. 10802(2), 10803 and 10805). "The term 'eligible system' means the system established in a State to protect and advocate the rights of persons with developmental disabilities under part C of the Developmental Disabilities Assistance and Bill of Rights Act." Therefore, the Protection and Advocacy System provides services to both individuals with developmental disabilities and to individuals with mental illness. The purpose of these proposed requirements is to ensure that a Protection and Advocacy System is only redesignated to a new agency for reasons which constitute good cause. The action giving rise to good cause should be of a substantial nature.

Redesignation for good cause may include, but is not limited to, eliminating longstanding or pervasive inefficiency. However, merely technical or minor shortcomings will not support such a finding. Further, in order to qualify as good cause, the allegation must be made in good faith, which means that it was not made for the purpose of frustrating the accomplishment of the goals of the Act, these regulations, the Protection and Advocacy for Mentally Ill Individuals Act (42 U.S.C. 10801 et seq.), the Protection and Advocacy of Individual Rights Program (29 U.S.C. 794(e), the Technology-Related Assistance for Individuals With Disabilities Act of 1988, as amended (29 U.S.C. 2212(e)), and any other Federal advocacy program that is administered by the State Protection and Advocacy System. The Administration on Developmental Disabilities encourages Governors and Protection and Advocacy agencies to consult with one another and seek resolution before involving the public. In § 1386.20(d)(1), we are proposing to provide current Protection and Advocacy agencies and the public a period of no less than 45 days concurrently to respond to notices given of the intention to redesignate the Protection and Advocacy agency. In developing the regulations we are proposing timeframes for notices which are considered timely and are similar to those used in other activities required by Federal regulations. We are also proposing to revise the requirements for contents of the public notice provided for in paragraph (d)(2) by requiring that it include the following new or revised requirements:

(1) The Federal requirements for the Protection and Advocacy System for individuals with developmental disabilities (section 142 of the Act); and, where applicable, the requirements of the Protection and Advocacy for Individuals with Mental Illness Act of 1986, as amended (42 U.S.C. 10805 and 10821); the Protection and Advocacy of Individual Rights Program (29 U.S.C. 794(e) and the Client Assistance Program (29 U.S.C. 732), of the Rehabilitation Act of 1973, as amended; the Technology-Related Assistance for Individuals With Disabilities Act of 1988, as amended by Pub.L. 103–218 (Protection and Advocacy contracts and grants); or any other Federal advocacy program that is administered by the State Protection and Advocacy System;

(2) The goals and function of the State's Protection and Advocacy System including the current Statement of Objectives and Priorities;

(3) The name and address of the agency currently designated to administer and operate the Protection and Advocacy System; and an indication of whether the agency also operates other Federal advocacy programs;

(4) A description of the current Protection and Advocacy agency and the system it administers and operates including, as applicable, descriptions of other Federal advocacy programs it operates;

(5) A clear and detailed explanation of the good cause for the proposed redesignation;

(6) A statement suggesting that interested persons may wish to write the current State Protection and Advocacy agency to obtain a copy of its response to the notice initiating the redesignation. Copies shall be provided in accessible formats to individuals with disabilities upon request;

(7) The name of the new agency proposed to administer and operate the Protection and Advocacy System under the Developmental Disabilities program. This agency will be eligible to administer other Federal advocacy programs;

(8) A description of the system which the new agency would administer and operate, including a description of all other Federal advocacy programs the agency would operate; and

(9) The timetable for assumption of operations by the new agency and the estimated costs of any transfer and start-up operations.

We are proposing that the public notice must include information on the requirements for all other Federal Protection and Advocacy Programs which are currently administered by the P&A agency and are subject to redesignation as well as the Protection and Advocacy System for individuals with developmental disabilities. The rationale for this requirement is that a redesignation of the Protection and Advocacy agency for individuals with developmental disabilities under section 142 of the Act also has an impact on other Federal Protection and Advocacy Programs. Federal legislation makes the State's designated Protection and Advocacy agency for individuals with developmental disabilities eligible to receive funding for operating the other Federal advocacy programs listed above. Redesignation of the Developmental Disabilities agency may result in the redesignation of the other programs. Therefore, the regulation seeks to insure that individuals with other disabilities, their families and representatives have an opportunity to make informed comments on the proposed redesignation. The other new requirements for the notice are being included so that members of the public can become fully informed about the reasons for and consequences of the redesignation.

In paragraph (d)(3) we are requiring that copies of the notice of proposed redesignation must be made generally available to individuals with developmental disabilities and individuals with mental illness who live in residential institutions through posting or some other means. The need for notice is to ensure that individuals who reside in institutional settings also are informed of the reasons for and the consequences of the proposed redesignation. The notice could be accomplished by mailing a copy of the original notice to such facilities and requesting that it be made available to residents through posting. This notice also could be sent to other advocacy groups for individuals with disabilities in the State. This new requirement is based on the intimate connection between the Protection and Advocacy program serving individuals with developmental disabilities and the Protection and Advocacy program serving individuals with mental illness. Also, we are proposing in paragraph (d)(3) that the public notice must be in a format accessible to individuals with developmental disabilities or their representatives, e.g., tape, diskette (section 142(a)(4)(B) of the Act).

In paragraph (d)(4), we are proposing that after the expiration of the 45-day public comment period required by paragraph (d)(1), the designating official must conduct a public hearing on the redesignation proposal. After consideration of all public and agency comments, the designating official must give notice of the final decision to the currently designated agency and the public through the same means used

under paragraph (d)(3). If the notice to the currently designated agency states that the redesignation will take place, it must also inform the agency of its right to appeal this decision to the Assistant Secretary, Administration for Children and Families. The redesignation shall not be effective until 10 working days after notifying the current Protection and Advocacy agency or, if the agency appeals, until the Assistant Secretary has considered the appeal.

We are proposing new requirements in § 1386.20(e) to address the procedures by which a Protection and Advocacy agency which has been redesignated may appeal the designation to the Assistant Secretary. The Assistant Secretary will consult with administrators of Federal advocacy programs that will be directly affected by the proposed redesignation in making a final decision on the appeal, including the Center for Mental Health Services, the Rehabilitation Services Administration, the National Institute on Disability and Research, and any other Federal agencies which administer advocacy programs that will be directly affected by the proposed redesignation.

The Administration on Developmental Disabilities is particularly interested in receiving comments on this area.

In § 1386.21(a) we are proposing to update the reference from the Basic Support Program to the State Developmental Disabilities Council. In paragraphs (b) (1) and (2) we are proposing to revise the regulations to incorporate the prohibition of compelled disclosure of information in client records pursuant to section 142(j) of the Act, as amended (1994 Amendments). This includes a reference to Federal law in the final sentence of paragraph (b)(1) that is consistent with the intent of the existing regulation, which is to allow parents or legal guardians access to a client's record except when such access is legally prohibited.

We are proposing regulations in a new paragraph (c)(1) to indicate that the Protection and Advocacy System must have access to records of an individual with a developmental disability as provided by section 142(a)(2)(I) of the Act and the authority necessary to conduct full investigations of abuse and neglect on the Protection and Advocacy System's determination of probable cause or if the incidents are reported to the System as provided by section 142(a)(2)(B).

Questions have arisen over whether P&As are required to have authority to obtain records of individuals who are no longer living. The required authority for access to records of persons with developmental disabilities is described in section 142(a)(2)(I). This provision includes a requirement for authority to access records of persons who, by reason of mental or physical condition, are unable to authorize the System's access to such records, and are without a legal guardian or conservator, or for whom the legal representative is the State; and about whom the System has had a report of abuse or neglect or as the result of monitoring or other activities has probable cause to believe such individual has been subject to abuse or neglect. Section 142(f) defines "record" to include reports of deaths occurring in a facility prepared by an agency or staff person charged with investigating the event. Based on these provisions, ADD is proposing to reference, in paragraph (c)(1) the P&A's authority to access records of persons with developmental disabilities who are no longer living.

ADD understands that P&As undertake investigations of incidents of abuse and neglect based on media reports, general investigations, inspection reports or other credible information regarding abuse and neglect. P&As also may use information gained through telephone calls or informal complaints by residents, staff, relatives or friends. The proposed regulations are intended to confirm the authority of P&As to rely on such information as grounds for investigations of incidents of abuse and neglect either because they are reports of incidents, or because they constitute "probable cause." Some facilities have claimed that P&As must make individual-specific findings of probable cause before they may investigate. The definition of probable cause includes "the reported existence of conditions or problems that are usually associated with abuse and neglect."

In paragraph (c)(2) we are proposing Protection and Advocacy Systems must have trained staff to conduct full investigations of suspected instances of abuse and neglect or if the incidents are reported to the System. In paragraph (c)(3) we are proposing to require that Protection and Advocacy Systems have authority to have access at reasonable times and locations to residents of any private or public facility that is providing services, support, and other assistance to such residents. This requirement is based on section 142(a)(2)(H) of the statute. In addition, the proposed paragraph (c)(3) requires that Protection and Advocacy Systems have authority to access at reasonable times and locations staff of private or public facilities when investigating incidents of abuse and neglect. This requirement is based upon section 142(a)(2)(B). ADD views the authority for access to staff of facilities as a necessary part of the authority to investigate incidents of abuse and neglect.

Also, the Administration on Developmental Disabilities wants to address the concerns raised by P&As that their authority continues to be challenged in the areas of access to records and determining probable cause tied to abuse and neglect cases. The statutory definition of "record," which appears at section 142(f) and is reiterated in the proposed § 1386.19, encompasses the records a facility would have on an individual with a developmental disability, and reports which were prepared by investigators in connection with incidents of abuse or neglect. We believe this definition must be interpreted liberally in order to ensure proper exercise of the authority to investigate incidents of abuse and neglect which P&As must have under section 142(a)(2)(B). ADD also believes that it is critical to this investigative function that Systems be given access to records promptly. Undue delay can prevent a System from intervening to prevent further abuse or neglect.

The Act and the proposed regulations refer to the authority of P&As to determine probable cause in connection with investigation of incidents of abuse and neglect. The Agency is concerned that in the exercise of their required authority under section 142(a)(2)(B) to investigate incidents based on probable cause that P&As not be unduly hampered. The Act does not require a judicial or other third party determination of whether probable cause exists. In the ordinary situation, a belief by P&A staff that an individual may be subject to or has been subject to abuse or neglect should be sufficient to establish probable cause. In order to clarify the meaning of probable cause, we have proposed a definition in § 1396.19.

In paragraph (c)(4), we are proposing that the Protection and Advocacy Systems must be authorized to keep confidential the names and identity of individuals who furnish information that forms the basis for a determination that probable cause exists. We believe that disclosure of this information would compromise the effectiveness and integrity of the investigation and could expose sources and already vulnerable clients to retaliation. Moreover, such disclosure would likely provide a disincentive to other potential informants to come forward in the future.

The Administration on Developmental Disabilities recognizes that the requirement in the proposed regulation for access to private institutions may be problematic, especially relating to existing State law and rights of access to records and privacy issues. Therefore, we are particularly interested in receiving comments on the possible impact of these provisions on Protection and Advocacy Systems, State Governments and private institutions.

A new paragraph (d) is being added which addresses the issue of a Protection and Advocacy System restricting the use of appropriate remedies on behalf of individuals with developmental disabilities through litigation or legal action pursuant to section 142(a)(2)(A)(i) and (h)(1) of the Act (1994 Amendments). We are adding a new paragraph (e) to address section 142(a)(2)(J) of the Act regarding hiring freezes, reductions in force, or prohibitions on staff travel. For paragraph (f) we are proposing that a Protection and Advocacy System may exercise their authority under State law where the authority exceeds the authority required by the Developmental Disabilities Act. However, the Protection and Advocacy System must have at least the authority required under the Act, and may have additional authority granted by the State.

Section 1386.22 is being added to establish a new section for the Protection and Advocacy Systems regarding Public Notice of Federal Onsite Review pursuant to section 142(k) of the 1994 Amendments. Prior to any Federal review of the State program, a 30 day notice and an opportunity for public comment must be provided. As this activity is an on-going administrative function, such notice will not be given through the **Federal Register**.

In § 1386.23, Periodic reports: Protection and Advocacy System, we are proposing to revise the title from "system" to "agency". Also, we are deleting the current language contained in paragraph (a) regarding assurances of compliance as such records are on file. Paragraph (a) now proposes regulations regarding the submission of the Protection and Advocacy annual report. We are proposing that the report submitted by the Protection and Advocacy agency be submitted by January 1 of each year in a format designated by the Secretary to ensure uniform reporting on the activities and accomplishments carried out under the system during the previous year for the Report to Congress. An Information Collection Request for Reinstatement will be submitted to OMB. In § 1386.23(b) editorial changes are being proposed regarding the financial report to incorporate a reference to the Administration for Children and Families rather than the Office of Human Development Services. This Information Collection is an approved OMB document. We are proposing to include new requirements in paragraphs (c) and (d) to address the annual statement of objectives and priorities of the Protection and Advocacy system pursuant to section 142(a)(2)(C) of the Act (42 U.S.C. 6042(a)(2)(C)) and section 107(b) of the Act (42 U.S.C. 6006(b)). ADD will be submitting an Information Collection Request to OMB. ADD is particularly interested in receiving comments on the public review and comment process for this report because we want to make sure that individuals with developmental disabilities and their families influence the development and are aware of the Protection and Advocacy priorities so they know what they can expect from the Protection and Advocacy System.

In § 1386.24 Non-allowable costs for the Protection and Advocacy System, we are revising paragraph (a) to replace "persons" with developmental disabilities to "individuals" with developmental disabilities in (a)(1) and renumbering current paragraph (b) as (a)(2). We are proposing a new paragraph (b) on attorneys fees being considered as program income and as such, must be used to further the objectives of the program pursuant to section 142(h)(2) of the Act (1990 and 1994 Amendments).

The Administration on Developmental Disabilities encourages a Protection and Advocacy System to use program standards for self-evaluations and peer consultations to identify the need for technical assistance or other quality enhancement intervention. Performance standards include all applicable statutory and regulatory requirements as well as standards of quality developed in collaboration with a committee of representatives of State Protection and Advocacy Systems.

In part 1386, subpart C will read—State Plan for Assisting in the Development of a Comprehensive System of Services and Supports for Individuals with Developmental Disabilities. We are proposing to revise the title to more accurately reflect how the provision of service related activities and supports are tied to the State Plan (1994 Amendments).

In § 1386.30, State plan requirements, we are proposing to revise and include new regulatory language to clarify the respective roles and responsibilities of the State Developmental Disabilities Council and the Designated State Agency. Pursuant to section 124(c)(3) of the Act (42 U.S.C. 6024(c)(3)), we are proposing language in § 1386.30(a) to require that the development and submission of the State plan is the responsibility of the State Developmental Disabilities Council and that the State Developmental Disabilities Council will consult with the Designated State Agency before submitting the State plan to ensure that the State plan is not in conflict with applicable State laws. Paragraph (a) also indicates that the designated State agency shall provide assurances and support services to the Council pursuant to section 124(d)(3)(A) (42 U.S.C. 6024(c)(3)) of the Act.

We are proposing to revise paragraph (c)(1) to delete the language "administration of the plan" and indicate that the State plan must identify the program unit(s) within the Designated State Agency responsible for providing assurances and fiscal and other support services. We are then proposing in paragraph (c)(3) to include language that the State Plan must address how the Developmental Disabilities network in the State (i.e., Developmental Disabilities Councils; Protection and Advocacy System and University Affiliated Program(s)) is working with the disabilities community to bring about broad systems change to benefit individuals with developmental disabilities, and, where applicable, the ways in which individuals with other disabilities may benefit as well. The current State Plan guideline has OMB approval. ADD will prepare an Information Collection Request to OMB based on the new requirements of the 1994 Amendments. We are proposing to include new regulatory language in § 1386.30(e) to address section 124(c)(4)(A)—Demonstration of New Approaches (1994 Amendments). The State Plan may provide for funding of projects to demonstrate new approaches to enhance the independence, productivity, and integration and inclusion into the community of individuals with developmental disabilities. Such projects are not to exceed three years in duration and may include assistance in developing strategies for securing funds for continuation of the project from sources other than funds received under the Act. This requirement is based on our experience in administering the Developmental Disabilities Program. We are then proposing to rename current paragraphs (e) to (f) in § 1386.30. We are

removing the regulation on individual habilitation plan pursuant to the 1994 Amendments and moving human rights (current (e)(3) to the new (f)(2)). We are proposing a new paragraph (3) to address the accessibility of buildings used in connection with activities assisted under the Plan to ensure that individuals with disabilities are able to participate in the work of the Council. In § 1386.30(f)(4) we are proposing new language to address the responsibility of the State Developmental Disabilities Council regarding budgeting, staff hiring and supervision and staff assignment pursuant to section 124(c) (8), (9), and (10)) of the Act (42 U.S.C. 6024(c) (8), (9), and (10)). Of particular note, we are clarifying that the intended meaning of the phrase in the statute, "consistent with state law" means that the hiring of State Developmental Disabilities Council staff must be done in accordance with State personnel policies and procedures, except that a State shall not apply hiring freezes, reduction in force, prohibitions on staff travel, or other policies, to the extent that such policies would impact staff or functions funded with Federal funds and would prevent the Council from carrying out its functions under the Act.

In § 1386.31, Plan submittal and approval, we are proposing to add a new paragraph (a) in response to section 122(d)(1) of the Act (1994 Amendments) on a public review and comment process on the State Plan. We subsequently renumbered the current paragraphs and revised paragraph (b) to reference a "final State Plan" or "amendment(s)" to incorporate the public comment process.

In § 1386.32, Periodic Reports: Basic State grants, we are proposing to revise the title to read § 1386.32 Periodic reports: Federal assistance to State Developmental Disabilities Councils (1994 Amendments). In § 1386.32(a) an editorial change is being made to reference the Administration for Children and Families. ADD will submit an Information Collection Reinstatement Request to OMB for this requirement. In § 1386.32(b) we are proposing to revise the regulatory language to reference the Annual Program Performance Report (annual report requirements pursuant to section 107(a) of the Act (42 U.S.C. 6006(a)), thus requiring a format designated by the Secretary. Use of a uniform format will facilitate Council reporting, ADD data collection and analysis, and preparation of the Secretary's Annual Report to Congress. ADD will prepare an Information Collection Reinstatement Request to OMB for this requirement.

In § 1386.33, Protection of employee's interests, we are revising paragraph (a) to update the statutory references to section 122(c)(5)(K) of the Act (1994 Amendments) and to replace the phrase "alternative community living arrangements" to "community living activities." In a new § 1386.34, entitled "Designated State Agency", we propose regulations in response to section 124(d)(2)(D) of the Act (1994 Amendments) on the redesignation of the Designated State Agency and the right to appeal by non-State agency members of the State Developmental Disabilities Council to the Assistant Secretary. (The Secretary has delegated the authority to hear such appeals to the Assistant Secretary for Children and Families.) We are proposing an editorial change to the heading of § 1386.35 to read, "Allowable and non-allowable costs for Federal assistance to State Developmental Disabilities Councils" and an editorial change to paragraph (b)(1) to change the word "persons" to "individuals". We are then proposing to add a new paragraph (d) to clarify implementation of the non-Federal share requirements. We are also proposing an editorial change to the heading of § 1386.36 to read, "Final disapproval of the State plan or plan amendments" and in paragraph (e) an editorial change is being proposed to incorporate the reference to the Assistant Secretary for Children and Families rather than the Assistant Secretary for Human Development Services. Finally, we are proposing a new § 1386.37, Public Notice of Federal Onsite Review for the State Developmental Disabilities Councils. This requirement complements § 1386.22, Public Notice of Federal Onsite Review for the Protection and Advocacy Systems. ADD wants to ensure that individuals with developmental disabilities are aware and have an opportunity to comment on the actions of the Council. Prior to a Federal review of the State program a 30 day notice and an opportunity for public comment must be provided. As this activity is an on-going administrative function, the notice is not being given through the **Federal Register**.

The Administration on Developmental Disabilities encourages State Developmental Disabilities Councils to use program standards in self-evaluations and peer consultations to identify the need for technical assistance or other quality enhancement intervention. Performance standards include all applicable statutory and regulatory requirements as well as standards of quality developed in collaboration with a committee of representatives of State Developmental Disabilities Councils.

In part 1386, subpart D—Practice and Procedure for Hearings Pertaining to States' Conformity and Compliance with Developmental Disabilities State Plans, Reports and Federal Requirements, we are proposing an editorial change in § 1386.80 Definitions, to incorporate the reference to the Administration for Children and Families rather than the Office of Human Development Services; clarify that the term "Presiding officer" means anyone designated by the Assistant Secretary to conduct any hearing held under this subpart; and include a definition of the term "payment or allotment" for subpart D. The term "payment or allotment" is being introduced into the regulations in order to ensure uniformity in the terminology used in subpart D to refer to assistance provided to States under Part B or C of the Act. In § 1386.85, Filing and service of papers, in paragraph (a) the phrase "HDS Hearing Clerk" is being replaced with "designated individual" to incorporate Administration for Children and Families procedures. As part of the notice of hearing, the Assistant Secretary will designate an individual to receive all papers filed in connection with a proceeding under subpart D.

In § 1386.90, Notice of hearing or opportunity for hearing, we are making editorial changes which include: the full reference to the State Developmental Disabilities Council; changing the Protection and Advocacy Office to the Protection and Advocacy System; and reference the designated official rather than official for the Protection and Advocacy System. In § 1386.92, Place, we are including language on accessibility regarding the place of the hearing. In § 1386.93, Issues at hearing, we are making an editorial change to paragraph (c)(2)(i) by deleting the (i). Also, the reference to "the report of the description of the State protection and advocacy system" in paragraphs (c)(2) and (d) are being deleted because the Act no longer requires such a report. In paragraph (c)(2), we are substituting references to "the activities of the State's protection and advocacy system" and providing that a "document explaining changes in the activities of the State's Protection and Advocacy System on which the State and the Assistant Secretary have settled must be sent to the parties." In paragraph (d), we are clarifying the reference to the State plan under part B of the Act and adding a reference to the activities of the State's Protection and Advocacy System.

In § 1386.94, Request to participate in hearing, the following changes are being proposed in paragraphs (a), (b)(2) and (c)(1). The full reference of the State Developmental Disabilities Council is being included along with updating the language to reference the Protection and Advocacy program as a "System" rather than an "Office." The wording "HDS Hearing Clerk" is being replaced with "designated individual." We are proposing editorial changes in § 1386.101, Authority of presiding officer, in paragraphs (a)(11) and (c). Also, we are updating the references in § 1386.111 Decisions following hearing, paragraphs (c) and (d) and § 1386.112 Effective date of decision by the Assistant Secretary, paragraphs (a) and (b) to reflect amendments to the Act and to make other editorial changes. The references to "report for the State Protection and Advocacy system" are being deleted because the Act no longer requires such a report. In its place we are substituting references to "the activities of the State's Protection and Advocacy System" in §§ 1386.111(c)(1) and 1386.112(b). The terms "Federal financial participation," "the State's total allotment," "further payments," "payments," "allotment" and "Federal funds" in § 1386.111(c) and § 1386.112 (a) and (b) are being replaced by the term "payment or allotment" which will be defined in the proposed revision of § 1386.80. In § 1386.111(c)(1), we are changing the reference to "sections 122, 127 and 142" to "sections 122, 127 or 142." This change is necessary because the provision applies to hearings held under any of the three provisions and not only to hearings held under all three provisions. In § 1386.111(c)(2), we are substituting a reference to section 127 for the current reference to section 135, which has been removed from the Act. We are also substituting a reference to section 129 for the current reference in § 1386.111(d) to section 138.

In § 1386.112(a), we are substituting a reference to section 122 for the reference to section 135, which has been removed from the Act. Section 122 is the correct reference because the provision covers hearings relating to the conformity of State plans with Federal requirements. In § 1386.112(b), we are substituting references to sections 127 and 142 for the current references to sections 113 and 133, which have been removed from the Act. Section 127 is the correct reference because the provision covers hearings relating to the State's compliance with the requirements of the State plan.

PART 1387—PROJECTS OF NATIONAL SIGNIFICANCE

We are proposing to revise regulatory language in Part 1387—Projects of National Significance, § 1387.1, General requirements. In paragraph (a), we propose to change the phrase "the developmentally disabled," to "individuals with developmental disabilities" as indicated in the 1994 Amendments. Regarding the announcement on proposed priorities, paragraph (b) requires a statutory update (1994 Amendments). In paragraph (d), we are proposing language to more clearly define the type of project ADD would consider for funding with this limited amount of discretionary money. We are proposing that Projects of National Significance, other than technical assistance and data collection, must be exemplary and innovative models and have potential for replication at the local level as well as nationally, or otherwise meet the goals of Part E of the Act.

PART 1388—UNIVERSITY AFFILIATED PROGRAMS

We are proposing to revise regulatory language in Part 1388—The University Affiliated Programs by updating the standards (section 153(b) of the Act—1994 Amendments). The current standards for UAPs were published in the **Federal Register** on November 20, 1987. As stated in the Conference Report on S. 1284, the description of the purpose and scope of UAPs has been revised to incorporate updated concepts about these university-based programs. "The description of UAPs recognizes the fact that UAPs are located in, or affiliated with universities, and, as such, provide an important foundation for higher education's response to the needs of individuals with developmental disabilities and their families. UAPs contribute to and reflect the overall mission of their host universities, and seek to ensure that the activities, resources, and expertise of the university are responsive to individuals with developmental disabilities and their families, advocacy organizations, and service systems and providers." Therefore, ADD is proposing to revise the standards to reflect this new description of UAPs (section 151 of the Act—Purpose and Scope of Activities, 1994 Amendments). The standards will continue to "reflect the special needs of all individuals with developmental disabilities who are of various ages" as required in section 153(b).

The proposed program criteria are the basic requirements that a UAP must meet if it is to receive a grant under this program. They relate to: (1) The mission of the UAP; (2) the governance and administration of the program; (3) preparation of personnel; (4) services and supports regarding community training and technical assistance (direct services-optional); and (5) dissemination of information and research findings. For each area, there is an introductory statement found at paragraph (a) and the program criteria begin with paragraph (b). Compliance with the program criteria is a prerequisite for the minimum funding level of a university affiliated program. However, compliance with the program criteria does not, by itself, constitute an assurance of funding. The Administration on Developmental Disabilities is particularly interested in receiving comments on the proposed program criteria.

Also, the Administration on Developmental Disabilities will be issuing draft Guidelines, at a later date, to provide examples of Indicators of Conformance with the Program Criteria. These indicators would illustrate the types of measures which could be used to demonstrate that the program criteria have been achieved. The Administration on Developmental Disabilities plans to use the indicators of conformance as a technical assistance/partnership model with University Affiliated Programs to further program outcomes.

We are proposing to revise § 1388.1 Definitions, to indicate what is now meant by "program criteria" and are deleting the definitions for "qualitative criteria" and "measurements of program outcome". In addition, we are defining other terms as used in part 1388. For example, "accessible", "capacity building" and "collaboration". Section 1388.2 Program criteria—purpose remains unchanged. We are deleting all the current regulatory language of § 1388.3 Program criteria—administration, § 1388.5 Program criteria—training, § 1388.6 Program criteria—technical assistance, and § 1388.7 Program criteria—information dissemination. Of particular note, regarding the dissemination of information, we are proposing that materials disseminated by the UAP must be available in formats accessible to individuals with a wide range of disabilities, e.g., audiotape and computer disk. We are proposing changes to the current regulations found in § 1388.4 Program criteria—services. Section 1388.6 Program criteria—services and supports, paragraph (c), will now cover Direct Services. These regulations are optional because the requirement that UAP's provide direct

services is now optional pursuant to section 151 of the Act (1994 Amendments). As the 1994 Amendments deleted the authority for Satellite Centers, § 1388.8 Use of program criteria for Satellite Centers is being deleted and reserved. Finally, we are revising the current regulations, § 1388.9 Peer Review to incorporate changes from the 1994 Amendments (section 153(f)(2)). Paragraph (a) describes the purpose of the peer review. The reference to Satellite Centers has been deleted and the provision of including on-site visits or inspection as necessary has been included. Paragraph (b) has been revised to simply state that applications for funding opportunities under part D, Section 152 of the Act, must be evaluated through the peer review process. In paragraph (c), language is being revised regarding the composition of the panel which is to be composed of non-Federal individuals who, by experience and training, are highly qualified to assess the comparative quality of applications for assistance.

Impact Analysis

Executive Order 12866

Executive Order 12866 requires that regulations be reviewed to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this rule is consistent with these priorities and principles. An assessment of the costs and benefits of available regulatory alternatives (including not regulating) demonstrated that the approach taken in the regulation is the most cost-effective and least burdensome while still achieving the regulatory objectives.

The NPRM proposes to amend current regulation to implement changes made by the Developmental Disabilities Assistance and Bill of Rights Act Amendments of 1990 (Pub. L. 101–496 and by the 1994 Amendments (Pub. L. 103–230). The regulations propose to provide guidance on redesignation of the Protection and Advocacy System and the appeal process; include regulations on the Protection and Advocacy annual statement of objectives; address State Developmental Disabilities Council responsibilities and those of the Designated State Agency; set new program standards for the University Affiliated Program; and make other clarifying, technical, and conforming changes.

We estimate that these regulations will not result in additional costs to the Federal government, the States, universities and any other organizations to which they may apply.

Regulatory Flexibility Act of 1980

Consistent with the Regulatory Flexibility Act (5 U.S.C. Ch.6), we try to anticipate and reduce the impact of rules and paperwork requirements on small businesses. For each rule with a "significant economic impact on a substantial number of small entities", we prepare an analysis describing the rule's impact on small entities. The primary impact of these regulations is on the States, which are not "small entities" within the meaning of the Act. However, they will affect small private institutions providing services to individuals with developmental disabilities. This impact will be minimal in that the institutions will simply be subject to review at no cost when a complaint is made against them. For these reasons, the Secretary certifies that these rules will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1980, Pub.L. 96–511, all Departments are required to submit to the Office of Management and Budget (OMB) for review and approval any reporting or recordkeeping requirement contained in a proposed or final rule.

This proposed rule contains a new information collection requirement at § 1386.23(c), an annual statement of objectives and priorities of the Protection and Advocacy system pursuant to section 142(a)(2)(C) of the Act (42 U.S.C. 6042(a)(2)(C)). As required, ADD will submit this new information collection requirement to OMB for review. The other sections (listed below) which are being amended in this proposed rule contain information collection requirements, some are already approved by OMB, while others will require reinstatement to OMB due to requirements from the 1994 Amendments. Organizations and individuals desiring to submit comments on the new information collection requirement should direct them to the agency official designated for this purpose whose name appears in this preamble, and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building (Room 3002), Washington, DC 20503. ATTN: Desk Officer for HHS/ACF.

REPORTING AND RECORDKEEPING REQUIREMENTS IN PART 1386 OF THE NPRM

Sec. No.	Impact	OMB No.	Annual number of respondents	Annual burden hours
1386.23(a) ..	Existing (OMB approval expired, re-approval to be requested)	0980–0160	56	2,240
1386.23(b) ..	Existing	0348–0039	56	112
1386.23(c) ..	New	N/A	56	2,800
1386.30(c) ..	Existing	0980–0162	56	5,600
1386.32(a) ..	Existing (OMB approval expired, re-approval to be requested)	0980–0212	672	2,912
1386.32(b) ..	Existing (OMB approval expired, re-approval to be requested)	0980–0172	55	4,400

There will be no specified format for the submittal of the State plan and assurances required in § 1386.30. States may select any format they wish as long as they meet the requirements in the Act and these regulations.

Recordkeeping and Reporting requirements for Part 1387 and part 1388 will be satisfied with the submission of an acceptable grant application. The discretionary programs, Projects of National Significance (part 1387) and University Affiliated Programs (part 1388) use the OMB approved Standard Form 424 series, Application for Federal Assistance and Budget Information.

List of Subjects

45 CFR Part 1385

Disabled, Grant programs/education, Grant programs/social programs, Reporting and recordkeeping requirements.

45 CFR Part 1386

Disabled, Administrative practice and procedure, Grant programs/education, Grant programs/social programs, Reporting and recordkeeping requirements.

45 CFR Part 1387

Disabled, Grant programs/education, Grant programs/social programs.

45 CFR Part 1388

Colleges and universities, Grant programs/education, Grant programs/social programs, satellite center, university affiliated program.

(Catalog of Federal Domestic Assistance Program, Nos. 93.630 Developmental Disabilities Basic Support and 93.631 Developmental Disabilities—Projects of National Significance, and 93.632 Developmental Disabilities—University Affiliated Program)

Approved: April 25, 1995.

Mary Jo Bane,

Assistant Secretary for Children and Families.

For the reasons set forth in the preamble, subchapter I, chapter XIII, of title 45 of the Code of Federal Regulations is proposed to be amended as follows:

SUBCHAPTER I—THE ADMINISTRATION ON DEVELOPMENTAL DISABILITIES, DEVELOPMENTAL DISABILITIES PROGRAM

PART 1385—REQUIREMENTS APPLICABLE TO THE DEVELOPMENTAL DISABILITIES PROGRAM

1. The authority citation for part 1385 continues to read as follows:

Authority: 42 U.S.C. 6000 et seq.

2. Section 1385.1 is amended by revising paragraphs (a) and (b) and republishing the introductory text to read as follows:

§ 1385.1 General.

Except as specified in § 1385.4, the requirements in this part are applicable to the following programs and projects:

(a) Federal Assistance to State Developmental Disabilities Councils;

(b) Protection and Advocacy of the Rights of Individuals with Developmental Disabilities;

* * * * *

3. Section 1385.3 is amended by revising the definitions of ADD and Commissioner and adding alphabetically a definition for ACF, and Protection and Advocacy System, to read as follows:

§ 1385.3 Definitions.

* * * * *

ACF means the Administration for Children and Families within the Department of Health and Human Services.

* * * * *

ADD means the Administration on Developmental Disabilities, within the Administration for Children and Families.

Commissioner means the Commissioner of the Administration on Developmental Disabilities, Administration for Children and Families, Department of Health and Human Services or his or her designee.

* * * * *

Protection and Advocacy System means the organization or agency designated in a State to administer and operate a protection and advocacy program for individuals with developmental disabilities under part C of the Developmental Disabilities Assistance and Bill of Rights Act, as amended by Pub. L. 103–230 (42 U.S.C. 6041, 6042); and advocacy programs under the Protection and Advocacy for Mentally Ill Individuals Act of 1986 (PAIMI Act), as amended, (42 U.S.C. 10801 et seq.) the Protection and Advocacy of Individual Rights Program (PAIR), (29 U.S.C. 794(e); and the Technology-Related Assistance for Individuals With Disabilities Act of 1988, as amended (29 U.S.C. 2212(e)). Protection and Advocacy System also may be designated by the Governor of a State to conduct the Client Assistance Program (CAP) authorized by section 112 of the Rehabilitation Act of 1973, as amended, (29 U.S.C. 732). Finally, the Protection and Advocacy System may provide advocacy services under other Federal programs.

* * * * *

4. Section 1385.4 is revised to read as follows:

§ 1385.4 Rights of individuals with developmental disabilities.

(a) Section 110 of the Act, Rights of Individuals with Developmental Disabilities (42 U.S.C. 6009) is applicable to the programs authorized under the Act, except for the Protection and Advocacy System.

(b) In order to comply with section 122(c)(5)(G) of the Act (42 U.S.C. 6022(c)(5)(G)), regarding the rights of individuals with developmental disabilities, the State must meet the requirements of 45 CFR 1386.30(e)(3).

(c) Applications from university affiliated programs or for projects of national significance grants must also contain an assurance that the human rights of individuals assisted by these programs will be protected consistent with section 110 (see section 153(c)(3) and section 162(c)(3) of the Act).

§ 1385.5 [Removed and reserved]

5. Section 1385.5, *Recovery of Federal funds used for construction of facilities* is removed and reserved.

6. Section 1385.6 is revised to read as follows:

§ 1385.6 Employment of individuals with disabilities.

Each grantee which receives Federal funding under the Act must meet the requirements of section 109 of the Act (42 U.S.C. 6008) regarding affirmative action. The grantee must take affirmative action to employ and advance in employment and otherwise treat qualified individuals with disabilities without discrimination based upon their physical or mental disability in all employment practices such as the following: Employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. This obligation is in addition to the requirements of 45 CFR part 84, subpart B, prohibiting discrimination in employment practices on the basis of disability in programs receiving assistance from the Department. Recipients of funds under the Act also may be bound by the provisions of the Americans with Disabilities Act (Pub. L. 101–336, 42 U.S.C. 12101 et seq.) with respect to employment of individuals with disabilities. Failure to comply with section 109 of the Act may result in loss of Federal funds under the Act. If a compliance action is taken, the State will be given reasonable notice and an opportunity for a hearing as provided in subpart D of 45 CFR part 1386.

§ 1385.7 [Removed and reserved]

7. Section 1385.7 *Waivers*, is removed and reserved.

8. Section 1385.8 is amended by revising the introductory text to read as follows:

§ 1385.8 Formula for determining allotments.

The Commissioner will allocate funds appropriated under the Act for the State Developmental Disabilities Councils and the Protection and Advocacy Systems on the following basis:

* * * * *

9. Section 1385.9 is amended by revising the first sentence of paragraph (a); revising paragraphs (b), (c), and (d) and adding a new paragraph (e) to read as follows:

§ 1385.9 Grants administration requirements.

(a) The following parts of title 45 CFR apply to grants funded under parts 1386

and 1388 of this chapter and to grants for Projects of National Significance under section 162 of the Act (42 U.S.C. 6082).

* * * * *

(b) The Departmental Appeals Board also has jurisdiction over appeals by grantees which have received grants under the University Affiliated program or for Projects of National Significance. The scope of the Board's jurisdiction concerning these appeals is described in 45 CFR part 16.

(c) The Departmental Appeals Board also has jurisdiction to decide appeals brought by the States concerning any disallowances taken by the Commissioner with respect to specific expenditures incurred by the States or by contractors or subgrantees of States. This jurisdiction relates to funds provided under the two formula programs—part B of the Act—Federal Assistance to State Developmental Disabilities Councils and part C of the Act—Protection and Advocacy of the Rights of Individuals with Developmental Disabilities. Appeals filed by States shall be decided in accordance with 45 CFR part 16.

(d) In making audits, examinations, excerpts and transcripts of records for the State Developmental Disabilities Councils, the University Affiliated programs, and the Projects of National Significance grantees and subgrantees, as provided for in 45 CFR part 74 and part 92, the Department will keep information about individual clients confidential to the extent permitted by law and regulations.

(e) (1) In making any periodic audit, report, or evaluation of the performance of the Protection and Advocacy System, the Secretary does not require the Protection and Advocacy System to disclose the identity of, or any other personally identifiable information related to, any individual requesting assistance under the program.

(2) However, notwithstanding paragraph (e)(1) of this section, if an audit, monitoring review, evaluation, or other investigation by the Department produces evidence that the System has violated the Act or the regulations, the System will bear the burden of proving its compliance. The System's inability to establish compliance because of the confidentiality of records will not relieve it of this responsibility. The eligible system may elect to obtain a release from all individuals requesting or receiving services at the time of intake or application. The release shall state that only information directly related to client and case eligibility will be subject to disclosure to officials of the Department.

PART 1386—FORMULA GRANT PROGRAMS

10. The authority citation for part 1386 continues to read as follows:

Authority: 42 U.S.C. 6000 et seq.

Subpart A—Basic Requirements

11. Section 1386.1 is revised to read as follows:

§ 1386.1 General.

All rules under this subpart are applicable to both the State Developmental Disabilities Councils and the Protection and Advocacy System.

12. Section 1386.2 is amended by revising paragraphs (b)(1) and (c) to read as follows:

§ 1386.2 Obligation of funds.

* * * * *

(b) (1) A State incurs an obligation for acquisition of personal property or for the performance of work on the date it makes a binding, legally enforceable, written commitment, or when the State Developmental Disabilities Council enters into an Interagency Agreement with an agency of State government for acquisition of personal property or for the performance of work.

* * * * *

(c) (1) The Protection and Advocacy System may elect to treat entry of an appearance in judicial and administrative proceedings on behalf of an individual with a developmental disability as a basis for obligating funds for the litigation costs. The amount of the funds obligated must not exceed a reasonable estimate of the costs, and the way the estimate was calculated must be documented.

(2) For the purpose of this paragraph, litigation costs means expenses for court costs, depositions, expert witness fees, travel in connection with a case and similar costs and costs resulting from litigation in which the agency has represented an individual with developmental disabilities (e.g. monitoring court orders, consent decrees), but not for salaries of employees of the Protection and Advocacy System. All funds made available for Federal Assistance to State Developmental Disabilities Councils and to the Protection and Advocacy System obligated under this paragraph are subject to the requirement of paragraph (a) of this section. These funds, if reobligated, may be reobligated only within a two year period beginning with the first day of the Federal fiscal year in which the funds were originally awarded.

§ 1386.4 [Removed and reserved]

13. Section 1386.4, *Eligibility for services* is removed and reserved.

14. The heading of subpart B is revised to read as follows:

Subpart B—State System for Protection and Advocacy of the Rights of Individuals With Developmental Disabilities

15. A new § 1386.19 is added to include definitions as follows:

§ 1386.19 Definitions.

As used in §§ 1386.20 and 1386.21 of this part the following definitions apply:

Designating official means the Governor, or other State official, who is empowered by the Governor or State legislature to designate the State official or public or private agency to be accountable for the proper use of funds by the State Protection and Advocacy System.

Full investigations means the access to clients, public and private facilities and entities and their staff, and the records regarding the operation of the institution that is necessary for a reasonable person to make an informed decision about whether the alleged or suspected abuse is taking place or has taken place.

Probable cause means a reasonable ground for belief that an individual or group of individuals with developmental disabilities may now be subject to or have been subject to abuse or neglect. The reported existence of conditions or problems that are usually associated with abuse and neglect will be Probable Cause.

Record of an individual with a developmental disability includes reports prepared or received by any staff of a facility rendering care or treatment, or reports prepared by an agency or staff person charged with investigating reports of incidents of abuse or neglect, injury or death occurring at such facility that describes incidents of abuse, neglect, injury, or death occurring at such facility and the steps taken to investigate such incidents, and discharge planning records.

16. Section 1386.20 is amended by revising the heading; revising paragraphs (a), (d), and (e); and adding a new paragraph (f) to read as follows:

§ 1386.20 Designated State Protection and Advocacy System.

(a) The designating official must designate the State official or public or private agency to be accountable for the proper use of funds and conduct of the State Protection and Advocacy System.

* * * * *

(d)(1) Prior to any redesignation of the agency which administers and operates the State Protection and Advocacy System, the designating official must give notice of the intention to make the redesignation to the agency currently administering and operating the State Protection and Advocacy System by registered or certified mail. The designating official must also publish a public notice of the proposed action. The agency and the public shall have a reasonable period of time, but not less than 45 days to respond to the notice.

(2) The public notice must include:

(i) The Federal requirements for the Protection and Advocacy system for individuals with developmental disabilities (section 142 of the Act); and, where applicable, the requirements of the Protection and Advocacy for Individuals with Mental Illness Act of 1986, as amended, (42 U.S.C. 10805 and 10821); the Protection and Advocacy of Individual Rights Program (29 U.S.C. 794(e) and the Client Assistance Program (29 U.S.C. 732), of the Rehabilitation Act of 1973, as amended; the Technology-Related Assistance for Individuals Act of 1988, as amended by Pub.L. 103–218 (Protection and Advocacy contracts and grants); or any other Federal advocacy program that is administered by the State Protection and Advocacy System.

(ii) The goals and function of the State's Protection and Advocacy System including the current Statement of Objectives and Priorities;

(iii) The name and address of the agency currently designated to administer and operate the Protection and Advocacy System; and an indication of whether the agency also operates other Federal advocacy programs;

(iv) A description of the current Protection and Advocacy agency and the system it administers and operates including, as applicable, descriptions of other Federal advocacy programs it operates;

(v) A clear and detailed explanation of the good cause for the proposed redesignation;

(vi) A statement suggesting that interested persons may wish to write the current State Protection and Advocacy agency at the address provided in paragraph (d)(2)(iii) of this section to obtain a copy of its response to the notice required by paragraph (d)(1) of this section. Copies shall be provided in accessible formats to individuals with disabilities upon request.

(vii) The name of the new agency proposed to administer and operate the Protection and Advocacy System under the Developmental Disabilities program. This agency will be eligible to administer other Federal advocacy programs.

(viii) A description of the system which the new agency would administer and operate, including a description of all other Federal advocacy programs the agency would operate; and

(ix) The timetable for assumption of operations by the new agency and the estimated costs of any transfer and start-up operations.

(3) The public notice, as required by paragraph (d)(1) of this section, must be in a format accessible to individuals with developmental disabilities or their representatives, e.g., tape, diskette. The designating official or entity must provide for publication of the notice of the proposed redesignation using the State register, State-wide newspapers, public service announcements on radio and television, or any other legally equivalent process. Copies of the notice must be made generally available to individuals with developmental disabilities and mental illness who live in residential facilities through posting or some other means.

(4) After the expiration of the public comment period required in paragraph (d)(1) of this section, the designating official must conduct a public hearing on the redesignation proposal. After consideration of all public and agency comments, the designating official or entity must give notice of the final decision to the currently designated agency and the public through the same means used under paragraph (d)(3) of this section. If the notice to the currently designated agency states that the redesignation will take place, it also must inform the agency of its right to appeal this decision to the Assistant Secretary, Administration for Children and Families. The redesignation shall not be effective until 10 working days after notifying the current Protection and Advocacy agency or, if the agency appeals, until the Assistant Secretary has considered the appeal.

(e)(1) Following notification pursuant to paragraph (d)(4) of this section, the Protection and Advocacy agency which is the subject of such action may appeal the redesignation to the Assistant Secretary. To do so, the Protection and Advocacy agency must submit an appeal in writing to the Assistant Secretary within 10 working days of receiving official notification under paragraph (d)(4) of this section, with a separate copy sent by registered or certified mail to the designating official or entity which made the decision concerning redesignation.

(2) In the event that the agency subject to redesignation does exercise its right to appeal under paragraph (e)(1) of this section, the designating official or entity must give public notice of the Assistant Secretary's final decision regarding the appeal through the same means utilized under paragraph (d)(3) of this section within 10 days of receipt of the Assistant Secretary's final decision under paragraph (e)(6) of this section.

(3) The designating official or entity within 10 working days from the receipt of a copy of the appeal must provide written comments to the Assistant Secretary (with a copy sent by registered or certified mail to the Protection and Advocacy agency appealing under paragraph (e)(1) of this section), or withdraw the redesignation. The comments must include a summary of the public comments received in response to the public notice concerning the proposed redesignation under paragraph (d)(2) of this section, the results of the hearing provided for under paragraph (d)(4) of this section, and may provide any additional relevant information.

(4) In the event that the designating official withdraws the redesignation while under appeal pursuant to paragraph (e)(1) of this section, the designating official must notify the Assistant Secretary, and the current agency, and must give public notice of his or her decision through the same means utilized under paragraph (d)(3) of this section.

(5) As part of their submission under paragraph (e)(1) or (e)(3) of this section, either party may request, and the Assistant Secretary may grant, an opportunity for an informal meeting with the Assistant Secretary at which representatives of both parties will present their views on the issues in the appeal. The meeting will be held within 20 working days of the submission of written comments by the designating official or entity under paragraph (e)(2) of this section. The Assistant Secretary will promptly notify the parties of the date and place of the meeting.

(6) Within 30 days of the informal meeting under paragraph (e)(5) of this section, or, if there is no informal meeting under paragraph (e)(5) of this section, within 30 days of the submission under paragraph (e)(3) of this section, the Assistant Secretary will issue to the parties a final written decision on whether the redesignation was for good cause. Redesignation for good cause may include, but is not limited to, eliminating longstanding or pervasive inefficiency and correcting unacceptable performance. The Assistant Secretary will consult with

Federal advocacy programs that will be directly affected by the proposed redesignation in making a final decision on the appeal.

(f)(1) Within 30 days after the redesignation becomes effective under paragraph (d)(4) of this section, the designating official must submit an assurance to the Assistant Secretary that the newly designated Protection and Advocacy agency meets the requirements of the statute and the regulations.

(2) In the event that the Protection and Advocacy agency subject to redesignation does not exercise its rights to appeal within the period provided under paragraph (e)(1) of this section, the designating official must provide to the Assistant Secretary documentation that the agency was redesignated for good cause. Such documentation must clearly demonstrate that the Protection and Advocacy agency subject to redesignation was not redesignated for any actions or activities which were carried out under section 142 of the Act, these regulations or any other Federal advocacy program's legislation or regulations.

17. Section 1386.21 is revised to read as follows:

§ 1386.21 Requirements of the Protection and Advocacy System.

(a) In order for a State to receive Federal financial participation for Protection and Advocacy activities under this subpart, as well as the State Developmental Disabilities Council activities (subpart C), the Protection and Advocacy System must meet the requirements of section 142 of the Act (42 U.S.C. 6042) and that system must be operational.

(b) The client's record is the property of the Protection and Advocacy agency which must protect it from loss, damage, tampering, or use by unauthorized individuals. The Protection and Advocacy agency must:

(1) Keep confidential all information contained in a client's records, which includes, but is not limited to, information contained in an automated data bank. For purposes of any periodic audit, report, or evaluation required under the Act, the Secretary shall not require a program to disclose the identify of, or any other personally identifiable information related to, any individual requesting assistance under such program. This regulation does not limit access by parents or legal guardians of minors unless prohibited by State or Federal law, court order or the rules of attorney-client privilege;

(2) Have written policies governing access to, storage of, duplication of, and release of information from the client's record; and

(3) Obtain written consent from the client, if competent, or his or her guardian, before it releases information to individuals not otherwise authorized to receive it.

(c) (1) A Protection and Advocacy System must have access to records of an individual with a developmental disability, including a person who is no longer living, as provided by section 142(a)(2)(I) of the Act and the authority necessary to conduct full investigations of abuse and neglect on the Protection and Advocacy System's determination of probable cause or if the incidents are reported to the System.

(2) A Protection and Advocacy System must have trained staff to conduct full investigations of abuse and neglect upon the System's determination of probable cause or if the incidents are reported to the System.

(3) Protection and Advocacy Systems must have authority to have access at reasonable times and locations to residents of any private or public facility that is providing services, supports, and other assistance to such residents as provided in section 142(a)(2)(H) of the Act. Systems must also have authority to have access at reasonable times and locations to staff of private or public facilities when investigating incidents of abuse and neglect under the authority required in section 142(a)(2)(B).

(4) Protection and Advocacy systems must be authorized to keep confidential the names and identity of individuals who report incidents of abuse and neglect and individuals who furnish information that forms the basis for a determination that probable cause exists.

(d) A Protection and Advocacy System shall not implement a policy or practice restricting the remedies which may be sought on the behalf of individuals with developmental disabilities or compromising the authority of the Protection and Advocacy System to pursue such remedies through litigation, legal action or other forms of advocacy.

(e) A State shall not apply hiring freezes, reductions in force, prohibitions on staff travel, or other policies, to the extent that such policies would impact staff or functions funded with Federal funds and would prevent the system from carrying out its mandate under the Act.

(f) A Protection and Advocacy System may exercise its authority under State law where the authority exceeds the authority required by the Developmental Disabilities Assistance and Bill of Rights Act, as amended. However, State law must not diminish the required authority of the Protection and Advocacy System.

18. Section 1386.22 is added to read as follows:

§ 1386.22 Public notice of Federal onsite review.

Prior to any Federal review of the State program, a 30 day notice and an opportunity for public comment must be provided. Reasonable effort shall be made by the appropriate Regional Office to seek comments through notification to major disability advocacy groups, the State Bar, other disability law resources, the State Developmental Disabilities Council and the University Affiliated Program, for example, through newsletters and publications of those organizations. The findings of public comments may be consolidated if sufficiently similar issues are raised and they shall be included in the report of the onsite visit.

19. Section 1386.23 is revised to read as follows:

§ 1386.23 Periodic reports: Protection and Advocacy System.

(a) By January 1 of each year the Protection and Advocacy System shall submit an Annual Program Performance Report as required in section 107(b) of the Act, in a format designated by the Secretary.

(b) Financial status reports must be submitted by the Protection and Advocacy Agency according to a frequency interval specified by the Administration for Children and Families. In no case will such reports be required more frequently than quarterly.

(c) By August 15 of each year, the Protection and Advocacy System shall submit an Annual Statement of Objectives and Priorities for the coming fiscal year as required under section 142(a)(2)(C) of the Act. It shall include:

(1) The rationale for the Statement;

(2) A budget for the System's operations for the next fiscal year;

(3) Documentation of the process and outcome of soliciting public input as described in paragraph (d) of this section;

(4) An explanation of how public comments were reflected either in the Statement of Objectives and Priorities or were not reflected, and if not, why;

(5) A description of how the Protection and Advocacy System operates and how it coordinates the Protection and Advocacy program for individuals with developmental disabilities with the following Federal Advocacy programs: Protection and Advocacy of Individual Rights program (PAIR) and Client Assistance Program, (CAP), (Rehabilitation Act), the Long Term Care Ombudsman program (Older Americans Act), the Protection and Advocacy System for Mentally Ill Individuals program (PAIMI), (Protection and Advocacy for the Mentally Ill Act), Assistive Technology Protection and Advocacy Projects (Technology-Related Assistance for Individuals with Disabilities Technical Assistance Act) and State Developmental Disabilities Council and UAP advocacy activities. This description must address the System's intake process, internal and external referrals of eligible clients, duplication and overlap of services and eligibility, streamlining of advocacy services, collaboration and sharing of information on service needs and development of Statements of Objectives and Priorities for the various advocacy programs; and

(6) A description of the procedures used for informing individuals with developmental disabilities, their families, disability organizations, the State Bar Association, other disability law resources and the public of the Protection and Advocacy's priorities and services including use of referrals to other sources of legal advocacy.

(d) Each fiscal year, the Protection and Advocacy Agency shall:

(1) Obtain formal public input on its Statement of Objectives and Priorities;

(2) At a minimum, publish a proposed Statement of Objectives and Priorities for the next fiscal year in a publication of general distribution and make it accessible to individuals with developmental disabilities and their representatives, allowing at least 45 days from the date of publication for comment;

(3) Provide to the State Developmental Disabilities Council and the University Affiliated Program a copy of the proposed Statement of Objectives and Priorities for comments concurrently with the public notice;

(4) Address any comments received through the public input and any input received from the State Developmental Disabilities Council and the University Affiliated Program in the final Statement submitted to the Department; and

(5) Address how the State developmental disabilities network (the Protection and Advocacy System; State Developmental Disabilities Council; and the University Affiliated Program) will collaborate with each other and with public and private entities outside the developmental disabilities network.

(Information collection requirements regarding the report referenced in paragraph (a) will require an Information Collection Re-approval Request to be prepared by ADD. Previous Office of Management and Budget control number was 0980–0160. The requirements under paragraph (b) are approved under control number 0348–0039 by the Office of Management and Budget. Information collection requirements contained in paragraph (c) are new requirements pursuant to section 142(a)(2)(C) and section 107(b) of the Act. This information will require Office of Management and Budget approval).

20. Section 1386.24 is amended by revising paragraph (a), redesignating paragraph (b) as (a)(2); and adding a new paragraph (b) to read as follows:

§ 1386.24 Non-allowable costs for the Protection and Advocacy System.

(a) Federal financial participation is not allowable for:

(1) Costs incurred for activities on behalf of individuals with developmental disabilities to solve problems not directly related to their disabilities and which are faced by the general populace; and

(2) * * *

(b) Attorneys fees are considered program income pursuant to Part 74—Administration of Grants and Part 92—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments and must be added to the funds committed to the program and used to further the objectives of the program. This requirement shall apply to all attorneys fees, including those received after the project period in which they were earned.

21. The heading of subpart C is revised to read as follows:

Subpart C—State Plan for Assisting in the Development of a Comprehensive System of Services and Supports for Individuals With Developmental Disabilities

22. Section 1386.30 is amended by revising paragraphs (a) and (c)(1); redesignating paragraph (e) as (f); revising newly redesignated paragraphs (f) (2), (3), and (4); and adding new paragraphs (c)(3) and (e) to read as follows:

§ 1386.30 State Plan requirements.

(a) In order to receive Federal financial assistance under this subpart, each State Developmental Disabilities Council must prepare and must submit to the Secretary and have in effect a State Plan which meets the requirements of sections 122 and 124 of the Act (42 U.S.C. 6022 and 6024) and these regulations. The development of the State Plan and applicable annual amendments, is the responsibility of the State Developmental Disabilities Council. The State Developmental Disabilities Council will provide opportunities for public input during planning and development of the State Plan. In addition, the State Developmental Disabilities Council will consult with the Designated State Agency before the State Plan is submitted to the Secretary to ensure that the State Plan is not in conflict with applicable State laws. The Designated State Agency shall provide support services as requested by and negotiated with the Council.

* * * * *

(c) * * *

(1) Identify the program unit(s) within the Designated State Agency responsible for providing assurances and fiscal and other support services.

* * * * *

(3) Describe how the Developmental Disabilities network in the State (i.e., Developmental Disabilities Council, Protection and Advocacy System, and University Affiliated programs(s)) is working with the disabilities community to bring about broad systems change to benefit individuals with developmental disabilities, and, where applicable, the ways in which individuals with other disabilities may benefit as well.

* * * * *

(e) The State Plan may provide for funding of projects to demonstrate new approaches to enhance the independence, productivity, and integration and inclusion into the community of individuals with developmental disabilities. Such projects are not to exceed three years in duration and may include assistance in developing strategies for securing funds for continuation of the project from sources other than funds received under the Act.

(f) The State Plan must contain assurances that:

* * * * *

(2) The human rights of individuals with developmental disabilities will be protected consistent with section 110 of the Act (42 U.S.C. 6009).

(3) Buildings used in connection with activities assisted under the Plan must meet all applicable provisions of Federal and State laws pertaining to accessibility, fire, health and safety standards.

(4) The State Developmental Disabilities Council shall follow the requirements of section 124(c)(8), (9) and (10) regarding budgeting, staff hiring and supervision and staff assignment. Budget expenditures must be consistent with applicable State laws

and policies regarding grants and contracts and proper accounting and bookkeeping practices and procedures. In relation to staff hiring, the clause "consistent with State law" means that the hiring of State Developmental Disabilities Council staff must be done in accordance with State personnel policies and procedures, except that a State shall not apply hiring freezes, reductions in force, prohibitions on staff travel, or other policies, to the extent that such policies would impact staff or functions funded with Federal funds and would prevent the Council from carrying out its functions under the Act.

(Information collection requirements contained in paragraph (a) are approved by the Office of Management and Budget under control number 0980–0162. ADD will prepare an Information Collection Request to OMB based on the new requirements of the 1994 Amendments.)

23. Section 1386.31 is amended by redesignating the current paragraphs (a), (b), (c), and (d) as (b), (c), (d) and (e); adding a new paragraph (a); and revising the newly redesignated paragraph (b) as follows:

§ 1386.31 State Plan submittal and approval.

(a) The public review process for the State Plan required by Section 122(d)(1) of the Act shall include at least:

(1) Issuance of a public notice, announcing from the Governor or the Governor's designee, the availability of the proposed State Plan or State Plan amendment. The notice shall be published in formats accessible to individuals with disabilities (e.g., tape, diskette) and the general public, and shall provide a 45 day period for public review and comment.

(2) Provisions for addressing and incorporating significant comments or suggestions about the proposed State Plan. Councils will consider and respond to suggestions which call for elimination, substitution, or addition of a Plan goal or objective. Councils will also respond to questions or comments about the use of Federal funds or other resources.

(3) Upon completion of the tasks required by paragraphs (a) (1) and (2) of this section and submission of a State Plan to the Regional Office, issuance of a second public notice, also in formats accessible to individuals with disabilities (e.g., tape, diskette) and the general public, on the availability of the State Plan or Plan amendments. Councils may use the second public notice as the vehicle for responding to questions or comments referred to in paragraph (a)(2) of this section.

(b) The final State Plan and, where applicable, State Plan amendments, must be submitted to the appropriate Regional office of the Department 45 days prior to the fiscal year for which it is applicable. Unless State law provides differently, the State Plan and amendments or related documents must be approved by the Governor or the Governor's designee as may be required by any applicable Federal issuance.

* * * * *

24. Section 1386.32 is revised to read as follows:

§ 1386.32 Periodic reports: Federal assistance to State Developmental Disabilities Councils.

(a) The Governor or the appropriate State financial officer must submit financial status reports on the programs funded under this subpart according to a frequency interval which will be specified by the Administration for Children and Families. In no case will such reports be required more frequently than quarterly.

(b) By January 1 of each year an Annual Program Performance Report must be submitted, as required in section 107(a) of the Act (42 U.S.C. 6006a), in a format designated by the Secretary.

(Information collection requirements contained in paragraphs (a) and (b) have expired and will require an Information Collection Re-approval Request to be prepared by ADD. Previous Office of Management and Budget control number for paragraph (a) was 0980–0212 and for paragraph (b) was 0980–0172. The Information Collection Request for Re-approval concerning the reports will be modified pursuant to the 1994 Amendments).

25. Section 1386.33 is amended by revising paragraph (a) as follows:

§ 1386.33 Protection of employee's interests.

(a) Based on section 122(c)(5)(K) of the Act (42 U.S.C. 6022(c)(5)(K), the State plan must provide for fair and equitable arrangements to protect the interest of all institutional employees affected by actions under the plan to provide community living activities. Specific arrangements for the protection of affected employees must be developed through negotiations between the appropriate State authorities and employees or their representatives. Fair and equitable arrangements must include procedures that provide for the impartial resolution of disputes between the State and an employee concerning the interpretation, application, and enforcement of protection arrangements. The State must inform employees of the State's decision to provide for community living activities.

* * * * *

26. Section 1386.34 is added to read as follows:

§ 1386.34 Designated State Agency.

(a) If the State Developmental Disabilities Council requests a review by the Governor (or legislature) of the Designated State Agency, the Council must provide documentation of the reason for change and recommend a preferred Designated State Agency.

(b) After the review is completed, a majority of the non-State agency members of the Council may appeal to the Assistant Secretary for a review of the designation of the designated State agency if the Council's independence as an advocate is not assured because of the actions or inactions of the designated State agency.

(c) The following steps apply to the appeal of the Governor's (or legislature's) determination of the Designated State Agency.

(1) Prior to an appeal to the Assistant Secretary, Administration for Children and Families, the State Developmental Disabilities Council, at the request of the non-State Agency members, must give a 30 day written notice, by certified mail, to the Governor (or legislature) of the majority of non-State members' intention to appeal the designation of the Designated State Agency.

(2) The appeal must clearly identify the grounds for the claim that the Council's independence as an advocate is not assured because of the actions or inactions of the designated State agency.

(3) Upon receipt of the appeal from the State Developmental Disabilities Council, the Assistant Secretary will notify the State Developmental Disabilities Council and the Governor (or legislature), by certified mail, that the appeal has been received and will be acted upon within 60 days. The Governor (or legislature) shall within 10 working days from the receipt of the Assistant Secretary's notification provide written comments to the Assistant Secretary (with a copy sent by registered or certified mail to the Council) on the claims in the Council's appeal. Either party may request, and the Assistant Secretary may grant, an opportunity for an informal meeting with the Assistant Secretary at which representatives of both parties will present their views on the issues in the appeal. The meeting will be held within 20 working days of the submission of written comments by the Governor (or legislature). The Assistant Secretary will promptly notify the parties of the date and place of the meeting.

(4) The Assistant Secretary will review the issue(s) and provide a final written decision within 60 days following receipt of the State Developmental Disabilities Council's appeal. If the determination is made that the Designated State Agency should be redesignated, the Governor (or legislature) must provide written assurance of compliance within 45 days from receipt of the decision.

(5) During any time of this appeals process the State Developmental Disabilities Council may withdraw such request if resolution has been reached with the Governor (or legislature) on the designation of the Designated State Agency. The Governor (or legislature) must notify the Assistant Secretary in writing of such an occurrence.

27. Section 1386.35 is amended by revising the heading and paragraph (b)(1) and adding new paragraphs (d), (e), and (f) to read as follows:

§ 1386.35 Allowable and non-allowable costs for Federal assistance to State Developmental Disabilities Councils.

* * * * *

(b) * * *

(1) Costs incurred by institutions or other residential or non-residential programs which do not comply with the Congressional findings with respect to the rights of individuals with developmental disabilities in section 110 of the Act (42 U.S.C. 6009).

* * * * *

(d) For purposes of determining aggregate minimum State share of expenditures, there are three categories of expenditures:

(1) Expenditures for priority area projects carried out directly by the Council and Council staff, as described in section 125A(a)(2) of the Act, requiring no non-Federal aggregate participation;

(2) Expenditures for priority area projects in poverty areas but not carried out directly by the Council and Council staff, as described in section 125A(a)(1) of the Act, requiring a minimum of 10 percent non-Federal aggregate participation; and

(3) All other expenditures, requiring a minimum of 25 percent non-Federal aggregate participation.

(e) As a consequence of paragraph (d) of this section, the minimum aggregate non-Federal expenditure required under the Act is calculated as the sum of:

(1) One-ninth of Federal expenditures for projects in poverty areas, such projects not being directly carried out by the Council and Council staff; and

(2) Plus one-third of all other Federal expenditures except those supporting priority area activities directly carried out by the Council and Council staff.

(f) The non-Federal expenditures must support activities authorized by the Act and approved by the Council, but may include non-Federal support for implementation activities pursuant to section 125A(a)(2) of the Act, as well as functions of the designated State agency.

28. Section 1386.36 is amended by revising the section heading and paragraph (e) to read as follows:

§ 1386.36 Final disapproval of the State plan or plan amendments.

* * * * *

(e) A State has filed its request for a hearing with the Assistant Secretary within 21 days of the receipt of the decision. The request for a hearing must be sent by certified mail to the Assistant Secretary. The date of mailing the request is considered the date of filing if it is supported by independent evidence of mailing, otherwise the date of receipt shall be considered the date of filing.

29. Section 1386.37 is added to read as follows:

§ 1387.37 Public notice of Federal onsite review.

Prior to any Federal review of the State Developmental Disabilities Council, a 30 day notice and an opportunity for comment will be provided. Reasonable effort will be made by the appropriate Regional Office to seek comments through notification to major disability groups, the State Protection and Advocacy agency and the University Affiliated Program, for example, through newsletters and publications of those organizations. The findings of public comments may be consolidated if sufficiently similar issues are raised and they will be included in the report of the onsite visit.

Subpart D—Practice and Procedure for Hearings Pertaining to States' Conformity and Compliance With Developmental Disabilities State Plans, Reports and Federal Requirements

30. Section 1386.80 is revised to read as follows:

§ 1386.80 Definitions.

For purposes of this subpart:

Assistant Secretary means the Assistant Secretary for Children and Families (ACF) or a presiding officer.

ADD means Administration on Developmental Disabilities, Administration for Children and Families.

Presiding officer means anyone designated by the Assistant Secretary to conduct any hearing held under this subpart. The term includes the Assistant Secretary if the Assistant Secretary presides over the hearing.

Payment or Allotment means an amount provided under Part B or C of the Developmental Disabilities Assistance and Bill of Rights Act. This term includes Federal funds provided under the Act irrespective of whether the State must match the Federal portion of the expenditure. This term shall include funds previously covered by the terms "Federal financial participation," "the State's total allotment," "further payments," "payments," "allotment" and "Federal funds."

31. Section 1386.85 is amended by revising paragraph (a) to read as follows:

§ 1386.85 Filing and service of papers.

(a) All papers in the proceedings must be filed with the designated individual in an original and two copies. Only the originals of exhibits and transcripts of testimony need be filed.

* * * * *

32. Section 1386.90 is revised to read as follows:

§ 1386.90 Notice of hearing or opportunity for hearing.

Proceedings are commenced by mailing a notice of hearing or opportunity for hearing from the Assistant Secretary to the State Developmental Disabilities Council and the Designated State Agency, or to the State Protection and Advocacy System or designated official. The notice must state the time and place for the hearing, and the issues which will be considered. The notice must be published in the **Federal Register**.

33. Section 1386.92 is revised to read as follows:

§ 1386.92 Place.

The hearing must be held on a date and at a time and place determined by the Assistant Secretary with due regard for convenience, and necessity of the parties or their representatives. The site of the hearing shall be accessible to individuals with disabilities.

34. Section 1386.93 is amended by revising paragraphs (c)(2) and (d) to read as follows:

§ 1386.93 Issues at hearing.

* * * * *

(c) * * *

(2) Prior to the removal of an issue, in whole or in part, from a hearing involving issues relating to the conformity with Federal requirements under Part B of the Act, of the State plan or the activities of the State's Protection

and Advocacy System, the Assistant Secretary must provide all parties other than the Department and the State (see § 1386.94(b)) with the statement of his or her intention to remove an issue from the hearings and the reasons for that decision. A copy of the proposed State plan provision or document explaining changes in the activities of the State's protection and advocacy system on which the State and the Assistant Secretary have settled must be sent to the parties. The parties must have an opportunity to submit in writing within 15 days their views as to, or any information bearing upon, the merits of the proposed provision and the merits of the reasons for removing the issue from the hearing.

(d) In hearings involving questions of noncompliance of a State's operation of its program under Part B of the Act with the State plan or with Federal requirements or compliance of the State's Protection and Advocacy System with Federal requirements, the same procedure set forth in paragraph (c)(2) of this section must be followed with respect to any report or evidence resulting in a conclusion by the Assistant Secretary that a State has achieved compliance.

* * * * *

35. Section 1386.94 is amended by revising paragraphs (a), (b)(2), and (c) to read as follows:

§ 1386.94 Request to participate in hearing.

(a) The Department, the State, the State Developmental Disabilities Council, the Designated State Agency, and the State Protection and Advocacy System, as appropriate, are parties to the hearing without making a specific request to participate.

(b) * * *

(2) Any individual or group wishing to participate as a party must file a petition with the designated individual within 15 days after notice of the hearing has been published in the **Federal Register**, and must serve a copy on each party of record at that time in accordance with § 1386.85(b). The petition must concisely state:

(i) Petitioner's interest in the proceeding;

(ii) Who will appear for petitioner;

(iii) The issues the petitioner wishes to address; and

(iv) Whether the petitioner intends to present witnesses.

* * * * *

(c)(1) Any interested person or organization wishing to participate as amicus curiae must file a petition with the designated individual before the commencement of the hearing. The petition must concisely state:

(i) The petitioner's interest in the hearing;

(ii) Who will represent the petitioner, and

(iii) The issues on which the petitioner intends to present argument.

(2) The presiding officer may grant the petition if he or she finds that the petitioner has a legitimate interest in the proceedings, that such participation will not unduly delay the outcome and may contribute materially to the proper disposition of the issues.

(3) An amicus curiae may present a brief oral statement at the hearing at the point in the proceedings specified by the presiding officer. It may submit a written statement of position to the presiding officer prior to the beginning of a hearing and must serve a copy on each party. It also may submit a brief or written statement at such time as the parties submit briefs and must serve a copy on each party.

36. Section 1386.101 is amended by revising paragraphs (a)(11) and (c) to read as follows:

§ 1386.101 Authority of presiding officer.

(a) * * *

(11) If the presiding officer is a person other than the Assistant Secretary, he or she shall certify the entire record, including recommended findings and proposed decision, to the Assistant Secretary;

* * * * *

(c) If the presiding officer is a person other than the Assistant Secretary, his or her authority is to render a recommended decision with respect to program requirements which are to be considered at the hearing. In case of any noncompliance, he or she shall recommend whether payments or allotments should be withheld with respect to the entire State plan or the activities of the State's Protection and Advocacy System, or whether the payments or allotments should be withheld only with respect to those parts of the program affected by such noncompliance.

37. Section 1386.111 is amended by revising paragraphs (c) and (d) to read as follows:

§ 1386.111 Decisions following hearing.

* * * * *

(c) If the Assistant Secretary concludes:

(1) In the case of a hearing pursuant to sections 122, 127, or 142 of the Act, that a State plan or the activities of the State's Protection and Advocacy System does not comply with Federal requirements, he or she shall also specify whether the State's payment or allotment for the fiscal year will not be authorized for the State or whether, in the exercise of his or her discretion, the payment or allotment will be limited to the parts of the State plan or the activities of the State's Protection and Advocacy System not affected by the noncompliance.

(2) In the case of a hearing pursuant to section 127 of the Act that the State is not complying with the requirements of the State plan, he or she must also specify whether the State's payment or allotment will not be made available to the State or whether, in the exercise of his or her discretion, the payment or allotment will be limited to the parts of the State plan not affected by such noncompliance. The Assistant Secretary may ask the parties for recommendations or briefs or may hold conferences of the parties on these questions.

(d) The decision of the Assistant Secretary under this section is the final decision of the Secretary and constitutes "final agency action" within the meaning of 5 U.S.C. 704 and the "Secretary's action" within the meaning of section 129 of the Act (42 U.S.C. 6029). The Assistant Secretary's decision must be promptly served on all parties and amici.

38. Section 1386.112 is amended by revising paragraphs (a) and (b) to read as follows:

§ 1386.112 Effective date of decision by the Assistant Secretary.

(a) If, in the case of a hearing pursuant to section 122 of the Act, the Assistant Secretary concludes that a State plan does not comply with Federal requirements, and the decision provides that the payment or allotment will be authorized but limited to parts of the State plan not affected by such noncompliance, the decision must specify the effective date for the authorization of the payment or allotment.

(b) In the case of a hearing pursuant to sections 127 or 142 of the Act, if the Assistant Secretary concludes that the State is not complying with the requirements of the State plan or the activities of the State's Protection and Advocacy System do not comply with Federal requirements, the decision that further payments or allotments will not be made to the State, or will be limited to the parts of the State plan or activities of the State's Protection and Advocacy System not affected, must specify the effective date for withholding payments of allotments.

* * * * *

PART 1387—PROJECTS OF NATIONAL SIGNIFICANCE

39. The authority citation for part 1387 continues to read as follows:

Authority: 42 U.S.C. 6000 *et seq.*

40. Section 1387.1 is being amended by revising paragraphs (a), (b), and (d) to read as follows:

§ 1387.1 General requirements.

(a) All projects funded under this part must be of national significance and serve or relate to individuals with developmental disabilities to comply with section 162 of the Act.

(b) Based on section 162(d), proposed priorities for grants and contracts will be published in the **Federal Register** and a 60 day period for public comments will be allowed.

* * * * *

(d) Projects of National Significance, other than technical assistance and data collection grants, must be exemplary and innovative models and have potential for replication at the local level as well as nationally or otherwise meet the goals of part E of the Act.

41. Part 1388 is revised to read as follows:

PART 1388—THE UNIVERSITY AFFILIATED PROGRAMS

Sec.

1388.1 Definitions.
1388.2 Program criteria—purpose.
1388.3 Program criteria—mission.
1388.4 Program criteria—governance and administration.
1388.5 Program criteria—preparation of personnel.
1388.6 Program criteria—services and supports.
1388.7 Program criteria—dissemination.
1388.8 [Reserved].
1388.9 Peer review.

Authority: 42 U.S.C. 6063 *et seq.*

§ 1388.1 Definitions.

For purposes of this part:

Accessible means UAPs are characterized by their program and physical accommodation and their demonstrated commitment to the goals of the Americans with Disabilities Act.

Capacity Building means that UAPs utilize a variety of approaches to strengthen their university and their local, State, regional and National communities. These approaches include, but are not limited to such activities as: (1) Enriching program depth and breadth, for example, recruiting the dental school to participate in the UAP; (2) acquiring additional resources, for example, grants, space, and volunteer manpower; and (3) carrying out systems changes, for example, promoting community-based programming for persons with developmental disabilities across all ages.

Collaboration means that the UAP cooperates with a wide range of persons, systems, and agencies, whether they utilize services of the UAP or are involved in UAP planning and programs. These entities include individuals with developmental disabilities and family members, as well as the Developmental Disabilities Network, advocacy and other disability groups, university components, generic and specialized human service agencies, State agencies and citizen and community groups. An example of this cooperation is the Consumer Advisory Committee, a required element in each UAP.

Culturally competent manner means provision of services, supports, or other assistance in a manner that is responsive to the beliefs, interpersonal styles, attitudes, language and behaviors of individuals who are receiving services, and that has the greatest likelihood of ensuring their maximum participation in the program.

Diverse network means that although each UAP has the same mandates under the Act, the expression of these common mandates differs across programs. Each UAP must implement these mandates within the context of their host university, their location within the university, the needs of the local and State community, the cultural composition of their State, their resources and funding sources, and their institutional history. These factors converge to create a network of unique and distinct programs, bound together by common mandates but enriched by diverse composition.

Interdisciplinary training means the use of individuals from different professional specialties for UAP training and service delivery.

Lifespan approach means that UAP activities address the needs of individuals with disabilities who are of various ages.

Mandated core functions means the UAP must perform: (1) Interdisciplinary preservice preparation; (2) community service activities (community training and technical assistance); and (3) activities related to dissemination of information and research findings.

Program criteria means a statement of the Department's expectation regarding the direction and desired outcome of the University Affiliated Program's operation.

State-of-the-art means that UAP activities are of high quality (using the latest technology), worthy of replication (consistent with available resources), and systemically evaluated.

§ 1388.2 Program criteria—purpose.

The program criteria will be used to assess the quality of the University Affiliated Programs (UAP). The overall purpose of the program criteria is to assure the promotion of independence, productivity, integration and inclusion of individuals with developmental disabilities. Compliance with the program criteria is a prerequisite for a UAP to receive the minimum funding level of a UAP. However, compliance with the program criteria does not, by itself, assure funding.

§ 1388.3 Program criteria—mission.

(a) *Introduction to mission*: The purpose and scope of UAP activities must be consistent with the Act as amended and include the provision of training, service, technical assistance and dissemination of information in a culturally competent manner. UAPs must include in their activities the underserved, and provide for meaningful participation of individuals from diverse racial and ethnic backgrounds. UAP principles and operations must be consistent with the UAP's mission statement. (The concept of "diverse network" as defined in § 1388.1 of this part applies to paragraphs (b), (f), (g), and (h) of this section.)

(b) The UAP must develop a written mission statement that reflects its values and the goals of the university in which it is located. The UAP's goals, objectives and activities must be consistent with the mission statement.

(c) The UAP's mission and programs must reflect a life span approach, incorporate an interdisciplinary approach and include the active participation of individuals with developmental disabilities and their families.

(d) The UAP programs must address the needs of individuals with developmental disabilities, including individuals with developmental disabilities who are unserved or underserved, in institutions, and on waiting lists.

(e) The UAP's goals, objectives, and activities must incorporate and demonstrate culturally competent services and practices, which are in response to local culture and needs.

(f) The UAP's mission must reflect its unique role as a bridge between university programs, individuals with developmental disabilities and their families, service agencies and the larger community.

(g) The UAP's goals, objectives, and activities must use capacity building strategies to address State needs.

(h) The UAP's goals, objectives, and activities must reflect interagency collaborations and strategies to effect systemic change within the university and in State and local communities and service systems.

§ 1388.4 Program criteria—governance and administration.

(a) Introduction to governance and administration: The UAP must be associated with, or an integral part of, a university. (The concept of "diverse network" as defined in § 1388.1 of this part applies to paragraphs (b), (c), (d), (i), and (l) of this section.)

(b) The UAP must have a written agreement or charter with the university that specifies the UAP designation as an official university component, the relationships between the UAP and other university components, the university commitment to the UAP, and the UAP commitment to the university.

(c) Within the university, the UAP must maintain the autonomy and organizational structure required to carry out the UAP mission and provide for the mandated activities.

(d) The UAP must be responsible to report directly to a University administrator who will represent the interests of the UAP within the University.

(e) The University must demonstrate its support for the UAP through the commitment of financial and other resources.

(f) UAP senior professional staff must hold faculty appointments in appropriate academic departments of the host or an affiliated university, consistent with university policy.

(g) UAP faculty and staff must represent the broad range of disciplines and backgrounds necessary to implement the full inclusion of individuals with developmental disabilities in all aspects of society, consonant with the spirit of the Americans with Disabilities Act, (ADA).

(h) The UAP must meet the requirements of section 109 of the Act (42 U.S.C. 6008) regarding affirmative action. The UAP must take affirmative action to employ and advance in employment and otherwise treat qualified individuals with disabilities without discrimination based upon their physical or mental disability in all employment practices.

(i) The management practices of the UAP, as well as the organizational structure, must promote the role of the UAP as a bridge between the University and the community. The UAP must actively participate in community networks and include a range of collaborating partners.

(j) The UAP's Consumer Advisory Committee must meet regularly. The membership of the Consumer Advisory Committee must reflect the racial and ethnic diversity of the State or community in which the UAP is located. The deliberations of the Consumer Advisory Committee must be reflected in UAP policies and programs.

(k) The UAP must maintain collaborative relationships with the State Developmental Disabilities Council and the Protection and Advocacy System. In addition, the UAP must be a member of the State Developmental Disabilities Council and participate in Council meetings and activities, as prescribed by the Act.

(l) The UAP must maintain collaborative relationships and be an active participant with the UAP network and individuals, organizations, State agencies and Universities.

(m) The UAP must demonstrate the ability to leverage resources.

(n) The UAP must have adequate space to carry out the mandated activities.

(o) The UAP physical facility and all program initiatives conducted by the UAP must be accessible to individuals with disabilities as provided for by Section 504 of the Rehabilitation Act and Titles II and III of the Americans with Disabilities Act.

(p) The UAP must integrate the mandated core functions into its activities and programs and must have a written plan for each core function area.

(q) The UAP must have in place a long range strategic planning capability to enable the UAP to respond to emergent and future developments in the field.

(r) The UAP must utilize state-of-the-art methods, including the active participation of individuals, families and other consumers of programs and services to evaluate programs. The UAP must refine and strengthen its programs based on evaluation findings.

§ 1388.5 Program criteria—preparation of personnel.

(a) Introduction to preparation of personnel: UAP interdisciplinary training programs at the preservice level prepare personnel concerned with developmental disabilities.

(b) Interdisciplinary training programs must be based on identified personnel preparation needs centered around a conceptual framework with identified outcomes.

(c) The interdisciplinary training process, as defined by the UAP, must reflect a mix of students from diverse academic disciplines/academic programs and cultures that reflect the diversity of the community. Faculty represent a variety of backgrounds and specialties, including individuals with disabilities and family members, and a variety of learning experiences, as well as reflecting the cultural diversity of the community. Trainees must receive credit as appropriate for participation in UAP training programs.

(d) Preservice training must be integrated into all aspects of the UAP, including community training and technical assistance, direct services (if provided), and dissemination.

(e) Trainees must be prepared to serve in a variety of roles, including advocacy and systems change. The UAP must encourage graduates to work in varied situations, settings, or jobs.

(f) The UAP must influence University curricula to prepare personnel who, in their future career in a broad range of social and community roles, will contribute to the accommodation and inclusion of individuals with developmental disabilities, as mandated in the Americans with Disabilities Act.

(g) The UAP core curriculum must incorporate cultural diversity and demonstrate cultural competence. Trainees must be prepared to address the needs of individuals with developmental disabilities and their families in a culturally competent manner.

§ 1388.6 Program criteria—services and supports.

(a) Introduction to services and supports: The UAP engages in a variety of system interventions and may also engage in a variety of individual interventions.

(b) UAP community training and technical assistance activities must use capacity building strategies to strengthen the capability of communities, systems and service providers.

(c) Direct Services (Optional)

(1) A UAP must integrate direct services and projects into community settings. These services may be provided in a service delivery site or training setting within the community including the university. Direct service projects may involve interdisciplinary student trainees, professionals from various disciplines, service providers, families and/or administrators. Direct services must be extended, as appropriate, to include adult and elderly individuals with developmental disabilities.

(2) Services and projects provided in community-integrated settings are to be:

(i) Scheduled at times and in places that are consistent with routine activities within the local community; and

(ii) Interact with and involve community members, agencies, and organizations.

(3) The bases for the services or project development must be:

(i) A local or universal need that reflects critical problems in the field of developmental disabilities; or

(ii) An emerging, critical problem that reflects current trends or anticipated developments in the field of developmental disabilities.

(4) State-of-the-art and innovative practices include:

(i) Services and project concepts and practices that facilitate and demonstrate independence for the individual, community integration, productivity, and human rights;

(ii) Practices that are economical, accepted by various disciplines, and highly beneficial to individuals with developmental disabilities, and that are integrated within services and projects;

(iii) Innovative cost-effective concepts and practices that are evaluated according to accepted practices of scientific evaluation;

(iv) Research methods that are used to test hypotheses, validate procedures, and field test projects; and

(v) Direct service and project practices and models that are evaluated, packaged for replication and disseminated through the information dissemination component.

§ 1388.7 Program criteria—dissemination.

(a) Introduction to dissemination: The UAP disseminates information and research findings, including the empirical validation of activities related to training, services and supports, and contributes to the development of new knowledge.

(b) The UAP must be identified to the community as a resource for information, produce a variety of products to promote public awareness and visibility of the UAP, and facilitate replication of best practices.

(c) Specific target audiences must be identified for dissemination activities and include individuals with developmental disabilities, family members, service providers, administrators, policy makers, university faculty, researchers, and the general public.

(d) UAP dissemination activities must be responsive to community requests for information and must utilize a variety of networks, including State Developmental Disabilities Councils, Protection and Advocacy Systems, other University Affiliated Programs, and State service systems to disseminate information to target audiences.

(e) The process of developing and evaluating materials must utilize the input of individuals with developmental disabilities and their families.

(f) The values of the UAP must be reflected in the language and images used in UAP products.

(g) Dissemination products must reflect the cultural diversity of the community.

(h) Materials disseminated by the UAP must be available in formats accessible to individuals with a wide range of disabilities, and appropriate target audiences.

§ 1388.8 [Reserved]

§ 1388.9 Peer review.

(a) The purpose of the peer review process is to provide the Commissioner, ADD, with technical and qualitative evaluation of UAP applications, including on-site visits or inspections as necessary.

(b) Applications for funding opportunities under Part D, section 152 of the Act, must be evaluated through the peer review process.

(c) Panels must be composed of non-Federal individuals who, by experience and training, are highly qualified to assess the comparative quality of applications for assistance.

[FR Doc. 95–11910 Filed 5–17–95; 8:45 am]
BILLING CODE 4184–01–P

federal register

Thursday
May 18, 1995

Part III

Department of Transportation

Research and Special Programs Administration

49 CFR Part 171, et al.

United Nations Recommendations, International Maritime Dangerous Goods Code, and International Civil Aviation Organization's Technical Instructions; Implementation; Final Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 172, 173 and 178

[Docket HM–215A; Amdt. Nos. 171–132, 172–140, 173–242, and 178–107]

RIN 2137–AC42

Implementation of the United Nations Recommendations, International Maritime Dangerous Goods Code, and International Civil Aviation Organization's Technical Instructions

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule; editorial revisions and response to petitions for reconsideration.

SUMMARY: On December 29, 1994, RSPA published a final rule which amended the Hazardous Materials Regulations to maintain alignment with corresponding provisions of international standards. Recent changes to the International Maritime Dangerous Goods Code (IMDG Code), the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions or ICAO TI), and the United Nations Recommendations on the Transport of Dangerous Goods (UN Recommendations) necessitated amendments to domestic regulations to provide consistency with international transport requirements and to facilitate the transport of hazardous materials in international commerce. This final rule corrects errors in that final rule and responds to petitions for reconsideration.

DATES: *Effective:* This final rule is effective October 1, 1995. The effective date for the final rule published under Docket HM–215A on December 29, 1994 (59 FR 67390) remains October 1, 1995.

Compliance: However, compliance with the regulations is authorized from January 1, 1995.

FOR FURTHER INFORMATION CONTACT: Beth Romo or John Gale, Office of Hazardous Materials Standards (202) 366–4488, Hazardous Materials Safety, 400 Seventh Street SW., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION: On December 29, 1994 (59 FR 67390), RSPA published a final rule under Docket HM–215A to maintain alignment with corresponding provisions in international standards, based on recent changes to the International standards. Since publication of the final rule, RSPA has received seven petitions for reconsideration, as well as other correspondence identifying errors. This document incorporates editorial and technical revisions to the final rule based on the merit of petitions and other revisions that RSPA has determined are necessary to correct or clarify the final rule.

Section-by-Section Review

Part 171

Section 171.14. This section was rewritten in the final rule to remove certain obsolete compliance dates for Docket HM–181 requirements and to add new transition dates for provisions adopted under Docket HM–215A. In paragraph (a)(2)(i), which delays compliance with new placard specifications until October 1, 2001, the phrases "placards specified in the December 21, 1990 final rule" and "for highway transportation only" were inadvertently omitted. RSPA did not intend to exclude placards specified in the December 21, 1990 final rule, nor to expand the scope of this transition provision to other modes; therefore, the phrases "or placards specified in the December 21, 1990 final rule" and "for highway transportation only" are reinstated in paragraph (a)(2).

Paragraph (b) introductory text, paragraph (b)(1) and paragraph (b)(2) are revised to clarify that amendments contained in this document supersede changes made in the December 29, 1994 final rule. RSPA has received numerous inquiries concerning the effective date for compliance with the latest requirements in the ICAO Technical Instructions and the IMDG Code. A Competent Authority Approval was issued on December 29, 1994, which authorizes shipments entering the U.S. by air or vessel to comply with either the 1993–1994 or 1995–1996 ICAO TI and either Amendment 26 or Amendment 27 of the IMDG Code until October 1, 1995. For export shipments, each destination country should be consulted for delayed implementation dates.

Part 172

Section 172.101: The Hazardous Materials Table. In the Hazardous Materials Table (HMT), several editorial changes are made in response to petitions for reconsideration and agency initiatives. The entry in the HMT for "Benzaldehyde" is revised by placing a "+" in the first column which fixes the hazard class for this material at Class 9. The entry "n-Butyl isocyanate" is revised to correctly identify the material as a Hazard Zone B inhalation hazard material. Aircraft quantity limitations for "Cyanogen bromide" are revised for consistency with the ICAO TI. The "D" in the first column for PETN is removed. Special Provision 45 is removed from "Methyl Trichloroacetate" and correctly assigned to the entry "Methacrylic acid, inhibited". The entry for "Maneb, stabilized *or* Maneb preparations, stabilized" is revised by correctly referencing Special Provision 54 in Column (7).

RSPA received one petition for reconsideration and numerous inquiries requesting that the shipping name "Azodicarbonamide" be added to the HMT. Clarification on the applicability of the HMR to certain formulations of azodicarbonamide also was requested. This shipping name was proposed but, based on the merit of comments, was not adopted in the final rule. In the final rule, RSPA stated that this entry was "superfluous" in light of the new classification scheme for self-reactive materials. However, the petitioner correctly pointed out that this is not consistent with international standards and, without this proper shipping name, packagings containing this material which are imported into the U.S. would need to be remarked before being reshipped. Therefore, RSPA is adding the shipping name "Azodicarbonamide" to the HMT. In addition, based on this petition for reconsideration, RSPA is adding Special Provision 38, which incorporates the requirements of Special Provision 215 of the UN Recommendations for azodicarbonamide. This special provision clarifies that azodicarbonamide with a Self-accelerated decomposition temperature (SADT) of 75° C or greater is not a self-reactive material.

The entries for certain pesticides described as having a "*flash point less than 23 degrees C*" are revised by removing Packing Group III provisions. Based on packing group criteria provided in § 173.121, Packing Group III materials in Class 3 cannot have a flash point less than 23 degrees C; therefore, Packing Group III provisions are unnecessary.

Several entries are revised by adding, removing, or revising special provisions in Column (7). For the entries, "Jet perforating guns, charged oil well, without detonator," classed in Divisions 1.1D and 1.4D, Special Provision 55 is added. To provide consistency with revised § 173.185, Special Provisions 18 and A12 assigned to "Lithium batteries, contained in equipment" are removed from that entry and Special Provision 29 is revised. In addition, quantity limitations for passenger and cargo only aircraft are adjusted to reflect these revisions.

Appendix B to § 172.101. In the List of Marine Pollutants as revised in the final rule, the severe marine pollutant designation "PP" is removed for the entry for "Diethylbenzenes (mixed isomers)" and is added for the entry "Copper metal powders".

Section 172.102. As discussed above, based on a petition for reconsideration, RSPA is adding Special Provision 38, which incorporates the requirements of Special Provision 215 of the UN Recommendations for azodicarbonamide. This special provision clarifies that azodicarbonamide with an SADT of 75° C or greater is not a self-reactive material. Also as discussed above, RSPA is removing Special Provisions 18 and A12 and revising Special Provision 29 for lithium batteries. In addition, RSPA is correcting Special Provision 35 to clarify that if a material assigned this special provision does not meet Division 6.1, but does meet another hazard class, it is subject to the HMR. This is consistent with international standards. Special Provision 51 is revised to indicate the quantity limitations of propellant for the different divisions for model rocket motors, and Special Provisions 55 and 56 are added to clarify that jet perforating guns with detonators must be approved and must incorporate a safety device.

Section 172.204. The certification in paragraph (a)(2) is revised to reflect the exact language contained in international standards.

Section 172.402. A footnote to the subsidiary labeling table in paragraph (a)(2) is revised to clarify that only a Class 3 Packing Group III material with a flash point at or above 38° C (100° F) being transported by highway or rail is excepted from the requirement to apply a subsidiary Class 3 label.

Part 173

Section 173.23. A new paragraph (g) is added to allow the continued use of non-bulk packagings conforming to the pre-HM–215A requirements of Subparts L and M of Part 178. This will permit authorized packagings marked with minimum, rather than nominal, thickness and not permanently marked on the bottom to remain in service.

Section 173.24. Newly adopted provisions in paragraphs (c)(1) and (d)(2), authorizing the use of UN standard packagings manufactured outside the U.S., are revised to clarify that these packagings are not subject to the specification requirements in Part 178.

Section 173.28. The requirement to mark packagings with the month leakproofness testing was performed is removed in paragraph (b)(2)(ii). This is consistent with the reconditioning marking requirement in § 178.503(c)(1)(iii), revised in the final rule to require only marking the year of reconditioning.

In the final rule, in the footnote to the table in paragraph (b)(4), RSPA adopted minimum thicknesses of 0.80 mm and 1.10 mm as the required minimum thicknesses of the steel in the side and head, respectively, of a drum. The Association of Container Reconditioners (ACR) petitioned RSPA to restore the minimum thickness requirements to 0.82 mm (0.032 inch) and 1.09 mm (0.043 inch), which were the minimum thickness requirements adopted in the December 1990 final rule under Docket HM–181. The ACR expressed concern that a 1995 or later drum bearing a "0.80" thickness marking could be a drum for which the minimum thickness is 0.8 mm but more likely could be a drum marked as nominal 0.8 mm for which the minimum thickness is actually 0.73 mm. In such a case, the drum marked as nominal 0.8 mm could not be reused or reconditioned. Conversely, the Steel Shipping Container Institute (SSCI) asked RSPA to revise the footnote to indicate a minimum thickness of 0.73 mm (0.029 inch) body and 1.01 mm (0.040 inch) head, which is the minimum for a nominal thickness of 0.80 mm and 1.10 mm, respectively. SSCI believes that use of nominal thickness would allow for consistent use of UN markings as a guide to reconditioning.

After studying both petitions, as well as the history of this footnote, RSPA has concluded that what were believed to be inconsequential differences in rounding techniques have led to the current situation. In adopting the footnote to the table in the December 1990 final rule, RSPA intended to allow drums with minimum head and body thicknesses corresponding to the minimum thicknesses for 18 and 20 gauge steel. This decision was based on the merit of comments to Notice 87–4 [May 5, 1987; 52 FR 16482] contending that steel drums used in the U.S. with 18 gauge body and 20 gauge heads have proven to be adequate for transportation and reuse. (The Notice proposed a 1.0 mm minimum thickness for both body and head for reuse.) RSPA did not intend to authorize significantly thinner drums by rounding the minimum thickness from 0.82 to 0.8 mm and understands the problems that may result from drums marked "0.8."

RSPA is not prepared to reduce the required minimum thickness to 0.73 mm, as SSCI suggested, because there is no assurance that drums with such a thickness can be reused safely. Based on the merits of comments, RSPA believes that a minimum body thickness of 0.82 mm and a minimum head thickness of 1.09 mm are the most appropriate minimum thicknesses to maintain the desired level of safety, and the footnote is revised accordingly. Because the metric measurement is the regulatory standard and the U.S. customary measurement is provided for information only, RSPA is removing the equivalent measurements in inches in the footnote to preclude further confusion. To determine an equivalent measurement in U.S. customary units, a conversion table is provided in § 171.10.

Three petitioners asked RSPA to reconsider the exception for certain plastic drums from leakproofness testing before each reuse. The Society of Plastics Industry (SPI) claimed that by adopting this provision in the final rule without specifically proposing an exception for plastic drums in the NPRM, RSPA had not provided adequate notice and opportunity to comment. Another petitioner, the Association of Container Reconditioners, also noted that adoption of the exception from leakproofness testing before reuse for certain plastic drums was "improper, having been without required notice under the Administrative Procedure Act."

Section 553(b)(3) of the Administrative Procedures Act (APA) states that:

> General notice of proposed rule making shall be published in the **Federal Register** * * *. The notice shall include— * * * (3) either the terms or substance of the proposed rule or a description of the subjects and issues involved.

5 U.S.C. 553(b)(3).

Section 553(c) requires that after notice has been given as required under section 553(b)(3):

> * * * the agency shall give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments * * *.

5 U.S.C. 553(c).

Petitioners argued that the final rule extending the exception from leakproofness testing to plastic drums differed so substantially from the proposed amendment regarding leakproofness testing that they essentially were denied notice and an opportunity to comment, as required under section 553 (b)(3) and (c). However, in the Notice of Proposed

Rulemaking (NPRM) published on July 18, 1994 (59 FR 36488), RSPA stated

> Based on the merits of a petition for rulemaking (P–1133), a new paragraph [178.37](b)(7) would be added to waive retesting requirements for certain packagings used in limited operations prior to each reuse * * *. RSPA is proposing similar provisions in new paragraph (b)(7) for certain packagings to be reused without leakproof testing. Packagings would be limited to stainless steel, monel, or nickel drums (*or other packagings approved by the Associate Administrator for Hazardous Materials Safety*) * * *. *Other packagings could qualify only if approved by the Associate Administrator for Hazardous Materials Safety.*

(Emphasis added.)

Based on this statement, 34 commenters requested that the agency extend the exception from leakproofness testing to plastic drums as well as those made of stainless steel, monel or nickel.

Although section 553(b)(3) requires that a Notice of Proposed Rulemaking (NPRM) contain "either the terms or substance of the proposed rule or a description of the subjects and issues involved," it does not require an agency to publish in advance every precise proposal which it may ultimately adopt as a rule. *Daniel International Corporation* v. *Occupational Safety and Health Review Commission and the Secretary of Labor*, 656 F.2d 925 (4th Cir. 1981) citing *Spartan Radiocasting Co.* v. *F.C.C.*, 619 F.2d 314 (4th Cir. 1980) and *California Citizens Band Association* v. *U.S.*, 375 F.2d 43 (9th Cir. 1967), cert. denied, 389 U.S. 844, 88 S. Ct. 96 (1967). This is particularly true when proposals are adopted in response to comments from participants in the rulemaking proceeding, as is the case in this instance. The "requirement of submission of a proposed rule for comment does not automatically generate a new opportunity for comment merely because the rule promulgated differs from the rule proposed, partly at least in response to submissions." *Daniel International Corporation v. Occupational Safety and Health Review Commission and the Secretary of Labor*, 656 F.2d at 932, citing *International Harvester Co.* v. *Ruckelshaus*, 478 F.2d 615, 632 (D.C. Cir. 1973). "A contrary rule would lead to the absurdity that an agency could learn from comments on its proposals only at the peril of starting a new procedural round of commentary." *Id.* at 932, citing *International Harvester* at 632, n. 51.

As in *Daniel International*, the change in RSPA's requirement was made in response to comments to the NPRM. And, although the NPRM that was the subject of *Daniel International* did not indicate that a change in application of the standard at issue was contemplated, the court nevertheless found that the filing of numerous comments on the issue suggested that the notice was adequate. The court noted that to hold otherwise would penalize the agency for benefitting from comments received and further bureaucratize the process. *Id.* at 932. In this instance, RSPA specifically stated twice that it would consider extending the leakproofness testing exception to other packagings upon request. These statements were sufficient to generate 34 comments requesting that RSPA extend the leakproofness testing exception to plastic drums. Therefore, the NPRM gave sufficient notice and an opportunity to comment on the issue of exceptions for leakproofness testing.

In its petition, in addition to the claim that RSPA violated the APA, SPI charged that adoption of this exception "could be viewed as an arbitrary and capricious abandonment of RSPA's public safety responsibility." However, in a petition for reconsideration to HM–181 submitted in 1991 by the Plastic Drum Institute (PDI), a division of SPI, the PDI noted that "plastic drums, for example, do not have a seamed type of construction that can contribute to seepage types of leakage." Furthermore, a comment to the proposed HM–181 rule cited a PDI report stating that "in 1986, the release from these (Specification 34 plastic) drums was less than .003% of the total drum shipments. Of the total gallons lost, the amount was less than .0005% of the total volume shipped." Therefore, RSPA does not agree that plastic drums that have demonstrated a very low frequency of leakage without leakproofness testing before each reuse should be subject to such testing. SPI's petition for reconsideration is, therefore, denied.

RSPA has received numerous requests to clarify provisions in the exception from leakproofness testing before reuse of certain metal and plastic drums. Of particular concern is the phrase "distribution chain controlled by the offeror" in paragraph (b)(7)(iii). The exception is intended to apply only to a drum which is in dedicated service; i.e., the drum is refilled with the same material or a material compatible with that previously contained in the drum, only the original filler may refill the drum before offering it for transportation, and the drum may only be transported in a transport vehicle or freight container that does not contain any material offered by anyone other than the filler of the drums. The drums may be transported to an unspecified number of destinations, as long as they are not refilled by anyone other than the original filler. Otherwise, they must be leakproofness tested before they are refilled. Paragraph (b)(7) is revised to clarify the intent of the exception.

Section 173.62. One petitioner requested that RSPA reconsider the decision not to adopt a domestic shipping description for jet perforating guns, with detonator. The petitioner had requested that the description be added to the final rule. RSPA rejected the request stating "US006 only allows detonators to be transported with, not in, detonators." The petitioner, however, noted that in the NPRM published under Docket HM–166X [August 7, 1991; 56 FR 37505] RSPA stated it was revising packing method US006 to permit the transport of jet perforating guns with detonators attached. RSPA stands corrected. The HMR currently does allow, with safety features, the transport of jet perforating guns with detonators attached when approved in accordance with § 173.56. Therefore, RSPA is adding domestic shipping descriptions (Divisions 1.1D and 1.4D) for jet perforating guns with detonators attached. RSPA is adding special provisions to these description to clarify that the device must be approved in accordance with § 173.56 and it must incorporate a safety device. RSPA also is clarifying the shipping descriptions for jet perforating guns without detonators by adding a special provision that makes it clear that this item must be approved in accordance with § 173.56. In addition, in the paragraph (c) Table of Packing Methods, packing method E–142 is revised to correctly reference appropriate packaging requirements and exceptions.

Section 173.150. Paragraph (d)(2) is revised for clarity and consistency with international provisions which except from regulation alcoholic beverages in *inner* packagings having a capacity of five liters or less. The final rule authorized "packagings" of five liters or less, but did not specify "inner packagings". This error is corrected in this document.

Section 173.185. Paragraphs (e)(6), (h)(1), and (j) are revised to clarify certain provisions adopted under the final rule. Paragraph (e)(6) is revised to indicate that the limit of 500 g of lithium or lithium alloy in strong inner packagings is for each inner packaging. Paragraph (h)(1), which addresses cells and batteries for disposal, clarifies that the 12 g limit per cell applies to the cell when new. Paragraph (j) is revised to emphasize that provisions for transport for testing purposes do not apply to lithium cells and batteries contained in equipment.

Sections 173.224 and 173.225. Several editorial changes are made to the Self-Reactive Materials Table in § 173.224 and the Organic Peroxide Table in § 173.225, based on petitions for reconsideration and agency initiative.

Section 173.306. Based on a provision in the UN Recommendations, RSPA proposed and incorporated a hot water bath test for aerosol containers in paragraph (a)(3)(v). By adopting provisions identical to those contained in the UN Recommendations, RSPA failed to remove wording referring to certain non-specification plastic aerosol containers. The final rule made no revisions to paragraphs (a)(3) and (a)(3)(ii), which specify only metal containers. Based on a request to clarify these provisions, RSPA is amending paragraph (a)(3)(v) to remove all references to plastic containers.

Part 178

Section 178.503. In paragraph (e)(3), the example of a UN marking for reconditioned packagings is revised to indicate that only the last two digits of the year the packaging was reconditioned are required as part of the marking.

Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered to be a significant regulatory action under section 3(f) of Executive Order 12866 and was not reviewed by the Office of Management and Budget. The rule is not considered significant under the Regulatory Policies and Procedures of the Department of Transportation [44 FR 11034]. The original regulatory evaluation of the final rule was reexamined but was not modified because the changes made under this rule will result in minimal economic impact on industry.

B. Executive Order 12612

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 ("Federalism"). Federal law expressly preempts State, local, and Indian tribe requirements applicable to the transportation of hazardous material that cover certain covered subjects and are not substantively the same as Federal requirements. 49 U.S.C. 5125(b)(1). These subjects are:

(A) The designation, description, and classification of hazardous materials;

(B) The packing, repacking, handling, labeling, marking, and placarding of hazardous material;

(C) The preparation, execution, and use of shipping documents pertaining to hazardous material and requirements respecting the number, content, and placement of such documents;

(D) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; and

(E) The design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous material.

This final rule concerns classification, packaging, labeling, marking, shipping documentation, and manufacture of packaging for hazardous material. Therefore, this final rule preempts State, local, or Indian tribe requirements that are not substantively the same as Federal requirements on these subjects.

Section 5125(b)(2) of title 49 U.S.C. provides that when DOT issues a regulation concerning any of the covered subjects, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. That effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. RSPA has determined that the effective date of Federal preemption for these requirements will be October 1, 1995. Thus, RSPA lacks discretion in this area, and preparation of a federalism assessment is not warranted.

C. Regulatory Flexibility Act

This rule revises certain provisions incorporated into the Hazardous Materials Regulations based on changes introduced in the seventh and eighth revised editions of the UN Recommendations, the 1993–1994 and 1995–1996 ICAO Technical Instructions, and Amendments 26 and 27 to the IMDG Code. It applies to offerors and carriers of hazardous materials and facilitates the transportation of hazardous materials in international commerce by providing consistency with international requirements. Therefore, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

D. Paperwork Reduction Act

The requirements for information collection have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act 0f 1980 (Pub. L. 96–511) under OMB control number 2137–0034 for shipping papers and 2137–0557 for approvals.

E. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 172

Hazardous materials transportation, Hazardous waste, Labels, Markings, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 178

Hazardous materials transportation, Motor vehicles safety, Packaging and containers, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR parts 171, 172, 173 and 178 are amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for Part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

2. In § 171.14, as revised at 59 FR 67407, on December 29, 1994, a new sentence is added after the first sentence of paragraph (b) introductory text to read as follows:

§ 171.14 Transitional provisions for implementing requirements based on the UN Recommendations.

* * * * *

(b) * * * A final rule published in the **Federal Register** on May 18, 1995, effective October 1, 1995, further amended the December 29, 1994 final rule. * * *

* * * * *

§ 171.14 [Amended]

3. In addition, in § 171.14, as revised at 59 FR 67407, the following changes are made:

a. In paragraph (a)(2)(ii), the wording "September 30, 1991, may be used in place of " is revised to read "September 30, 1991 or placards specified in the December 21, 1990 final rule may be used, for highway transportation only, in place of".

b. In paragraph (b) introductory text, at the end of the last sentence, the wording "as amended in the final rule published in the **Federal Register** on May 18, 1995 is added.

c. In paragraph (b)(1), the wording "December 29, 1994, final rule" is revised to read "December 29, 1994 final rule, as amended in the May 18, 1995 final rule".

d. In paragraph (b)(2) introductory text, the wording "by the December 29, 1994, rule," is revised to read "by the December 29, 1994 rule, as amended by the May 18, 1995 rule,".

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

4. The authority citation for part 172 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

5. In § 172.101, as amended at 59 FR 67408, the Hazardous Materials Table is amended by removing or adding in alphabetical order the following entries to read as follows:

§ 172.101 Purpose and use of hazardous materials table.

* * * * *

SECTION 172.101.—HAZARDOUS MATERIALS TABLE

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§ 173.***) Exceptions	(8) Packaging authorizations (§ 173.***) Non-bulk packaging	(8) Packaging authorizations (§ 173.***) Bulk packaging	(9) Quantity limitations Passenger aircraft or rail car	(9) Quantity limitations Cargo aircraft only	(10) Vessel stowage requirements Vessel stowage	(10) Vessel stowage requirements Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Arsenical pesticides, liquid, flammable, toxic, *flash point less than 23 degrees C.*												
	[REMOVE]			III	FLAMMABLE LIQUID, KEEP AWAY FROM FOOD.	B1	150	203	242	60 L	220 L	B	40
	Benzoic derivative pesticides, liquid, flammable, toxic, *flash point less than 23 degrees C.*												
	[REMOVE]			III	FLAMMABLE LIQUID, KEEP AWAY FROM FOOD.	B1	150	203	242	60 L	220 L	B	40

SECTION 172.101.—HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§ 173.***) Exceptions	(8) Packaging authorizations (§ 173.***) Non-bulk packaging	(8) Packaging authorizations (§ 173.***) Bulk packaging	(9) Quantity limitations Passenger aircraft or rail car	(9) Quantity limitations Cargo aircraft only	(10) Vessel stowage requirements Vessel stowage	(10) Vessel stowage requirements Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Bipyridilium pesticides, liquid, flammable, toxic, *flash point less than 23 degrees C.*												
	[REMOVE]			III	FLAMMABLE LIQUID, KEEP AWAY FROM FOOD.	B1	150	203	242	60 L	220 L	B	40
	Carbamate pesticides, liquid, flammable, toxic, *flash point less than 23 degrees C.*												
	[REMOVE]			III	FLAMMABLE LIQUID, KEEP AWAY FROM FOOD.	B1	150	203	242	60 L	220 L	B	40
	Copper based pesticides, liquid, flammable, toxic, *flash point less than 23 degrees C.*												
	[REMOVE]			III	FLAMMABLE LIQUID, KEEP AWAY FROM FOOD.	B1	150	203	242	60 L	220 L	B	40
	Dithiocarbamate pesticides, liquid, flammable, toxic, *flash point less than 23 degrees C.*												
	[REMOVE]												

SECTION 172.101.—HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Exceptions	Non-bulk packaging	Bulk packaging	Passenger aircraft or rail-car	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	.....	.....	.....	III	FLAMMABLE LIQUID, KEEP AWAY FROM FOOD.	B1	150	203	242	60 L	220 L	B	40
	Mercury based pesticides, liquid, flammable, toxic, *flash point less than 23 degrees C.*												
	[REMOVE]												
	.....	.....	.....	III	FLAMMABLE LIQUID, KEEP AWAY FROM FOOD.	B1	150	203	242	60 L	220 L	B	40
	Organochlorine pesticides liquid, flammable, toxic, *flash point less than 23 degrees C.*												
	[REMOVE]												
	.....	.....	.....	III	FLAMMABLE LIQUID, KEEP AWAY FROM FOOD.	B1	150	203	242	60 L	220 L	A	
	Organophosphorous pesticides, liquid, flammable, toxic, *flash point less than 23 degrees C.*												
	[REMOVE]												
	.....	.....	.....	III	FLAMMABLE LIQUID, KEEP AWAY FROM FOOD.	B1	150	203	242	60 L	220 L	A	

SECTION 172.101.—HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Exceptions	Non-bulk packaging	Bulk packaging	Passenger aircraft or rail-car	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Pesticides, liquid, flammable, toxic, (flash point less than 23 degrees C).												
	[REMOVE]												
	.....	.....	.....	III	FLAMMABLE LIQUID, KEEP AWAY FROM FOOD.	B1	150	203	242	60 L	220 L	B	
	Phenoxy pesticides, liquid, flammable, toxic, *flash point less than 23 degrees C.*												
	[REMOVE]												
	.....	.....	.....	III	FLAMMABLE LIQUID, KEEP AWAY FROM FOOD.	B1	150	203	242	60 L	220 L	A	
	Phenyl urea pesticides, liquid, flammable, toxic, *flash point less than 23 degrees C.*												
	[REMOVE]												
	.....	.....	.....	III	FLAMMABLE LIQUID, KEEP AWAY FROM FOOD.	B1	150	203	242	60 L	220 L	A	
	Phthalimide derivative pesticides, liquid, flammable, toxic, *flash point less than 23 degrees C.*												
	[REMOVE]												

SECTION 172.101.—HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§ 173.***) Exceptions	Non-bulk packaging	Bulk packaging	(9) Quantity limitations Passenger aircraft or rail car	Cargo aircraft only	(10) Vessel stowage requirements Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	.....	.....	.....	III	FLAMMABLE LIQUID, KEEP AWAY FROM FOOD.	B1	150	203	242	60 L	220 L	A	
	Substituted nitrophenol pesticides, liquid, flammable, toxic, *flash point less than 23 degrees C.*												
	[REMOVE]												
	.....	.....	.....	III	FLAMMABLE LIQUID, KEEP AWAY FROM FOOD.	B1	150	203	242	60 L	220 L	A	
	[ADD]												
	Azodicarbonamide.	4.1	UN3242	II	FLAMMABLE SOLID.	38	151	212	240	Forbidden.	Forbidden.	D	12, 61, 74
D	Jet perforating guns, charged oil well, with detonator.	1.1D	NA0124	II	EXPLOSIVE 1.1D.	D55, 56	None	62	None	Forbidden.	Forbidden.	A	24E
D	Jet perforating guns, charged oil well, with detonator.	1.4D	NA0494	II	EXPLOSIVE 1.4D.	55, 56.	None	62	None	Forbidden	Forbidden	B	

§ 172.101 [Amended]

6. In addition, in § 172.101, in the Hazardous Materials Table, as amended at 59 FR 67408, the following changes are made:

a. For the entry "Benzaldehyde", in Column (1), a "+" is added.

b. For the entry "n-Butyl isocyanate", in Column (7), Special Provisions "1", "B30", "B72" and "T44" are removed and Special Provisions "2", "B32", "B74" and "T45" are added in their place; and in Column (8B), the reference "226" is revised to read "227".

c. For the entry "Cotton", in Column (4), the identification number "NA1365" is added.

d. For the entry "Cotton, wet", in Column (4), the identification number "UN1365" is added.

e. For the entry "Coumarin derivative pesticides, liquid, toxic, flammable, *flashpoint less than 23 degrees C*", the wording "*flashpoint less than*" is revised to read "*flash point not less than*".

f. For the entry "Cyanogen bromide", in Column (9A), the wording "Forbidden" is revised to read "1 kg", and in Column (9B) the wording "Forbidden" is revised to read "15 kg".

g. For the entry "Isopentane, *see* n-Pentane", in Column (2), the wording "n-Pentane" is revised to read "Pentane".

h. For the entry "Jet perforating guns, charged *oil well, without detonator*", Special Provision "55" is added in Column (7), and for the entry "Jet perforating guns, charged, *oil well, without detonator*", Special Provision "55," is added in Column (7) before "114".

i. For the entry "Lithium batteries, contained in equipment", in Column (7), Special Provisions "18" and "A12" are removed; in Column (9A) the word "Forbidden" is removed and the wording "5 kg" is added in its place; and in Column (9B), the wording "See A12" is removed and the wording "5 kg" is added in its place.

j. For the entry "Lithium battery", in Column (9A), the wording "Forbidden" is removed and the wording "5 kg" is added in its place.

k. For the entry "Maneb stabilized or Maneb preparations, stabilized *against self-heating*" in Column (7), Special Provision "53" is revised to read "54".

l. For the entry "Methacrylic acid, inhibited", in Column (7), Special Provision "45," is added before "T8".

m. For the entry "Methyl trichloroacetate", in Column (7), Special Provision "45," is removed.

n. For the entry "Pentaerythrite tetranitrate, wetted *or* Pentaerythritol tetranitrate, wetted, *or* PETN, wetted *with not less than 25 percent water, by mass*, or Pentaerythrite tetranitrate, *or* Pentaerythritol tetranitrate *or* PETN, desensitized *with not less than 25 percent phlegmatizer by mass*" the "D" in Column (1) is removed.

Appendix B to § 172.101 [Amended]

7. In Appendix B to § 172.101, as amended at 59 FR 67485, in the List of Marine Pollutants, the following changes are made:

a. For the entry "Copper metal powder", in Column (1), "PP" is added.

b. For the entry "Diethylbenzenes (mixed isomers)", in Column (1), "PP" is removed.

8. In § 172.102, in paragraph (c)(1), Special Provision 18 is removed, Special Provision 29 is revised, Special Provision 51, as added at 59 FR 67485, is revised, and Special Provisions 38, 55 and 56 are added; and in paragraph (c)(2), Special Provision A12 is removed, to read as follows:

§ 172.102 Special provisions.

* * * * *

(c) * * *

(1) * * *

Code/Special Provisions

* * * * *

29 Lithium cells and batteries and equipment containing or packed with lithium cells and batteries which do not comply with the provisions of § 173.185 of this subchapter may be transported only if they are approved by the Associate Administrator for Hazardous Materials Safety.

* * * * *

38 If this material shows a violent effect in laboratory tests involving heating under confinement, the labeling requirements of Special Provision 53 apply, and the material must be packaged in accordance with packing method OP6B in § 173.225 of this subchapter. If the SADT is higher than 75° C, the technically pure substance and formulations derived from it are not self-reactive materials.

* * * * *

51 This description applies to items previously described as "Toy propellant devices, Class C" and includes reloadable kits. Model rocket motors containing 30 grams or less propellant are classed as Division 1.4S and items containing more than 30 grams of propellant but not more than 62.5 grams of propellant are classed as Division 1.4C.

* * * * *

55 This device must be approved in accordance with § 173.56 of this subchapter by the Associate Administrator for Hazardous Materials Safety.

56 A means to interrupt and prevent detonation of the detonator from initiating the detonating cord must be installed between each electric detonator and the detonating cord ends of the jet perforating guns before the charged jet perforating guns are offered for transportation.

* * * * *

§ 172.102 [Amended]

9. In addition, in § 172.102(c)(1), as amended at 59 FR 67485, Special Provision 35 is amended by removing the wording "are not subject to the requirements of this subchapter" and adding in its place "do not meet the definition of Division 6.1".

10. In § 172.204, paragraph (a)(2) is revised to read as follows:

§ 172.204 Shipper's certification.

(a) * * *

(2) "I hereby declare that the contents of this consignment are fully and accurately described above by the proper shipping name, and are classified, packaged, marked and labelled/placarded, and are in all respects in proper condition for transport according to applicable international and national governmental regulations."

* * * * *

§ 172.402 [Amended]

11. In § 172.402, as amended at 59 FR 67490, in paragraph (a)(2), in the footnotes following the table, the footnote identified as "*" is revised to read "Required for all modes, except for a material with a flash point at or above 38° C (100°F) transported by rail or highway".

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

12. The authority citation for Part 173 continues to read as follows:

Authority: 49 App. U.S.C. 5101–5127; 49 CFR 1.53.

13. In § 173.23, a new paragraph (g) is added to read as follows:

§ 173.23 Previously authorized packaging.

* * * * *

(g) A non-bulk packaging manufactured, tested, marked, and certified on or before September 30, 1996, in accordance with the applicable provisions of subparts L and M of part 178 of this subchapter in effect on September 30, 1995, may be used as authorized by this subchapter if the packaging conforms to all requirements applicable at the time of manufacture. In addition, such a packaging may be reused as authorized by § 173.28 without a nominal thickness marking, if it conforms to the minimum thickness criteria prescribed in § 173.28(b)(4).

§ 173.24 [Amended]

14. In § 173.24, as amended at 59 FR 67491, the following changes are made:

a. In paragraph (c)(1), the wording "(including U.N. standard packagings manufactured in the United States)" is revised to read "(but not including UN standard packagings manufactured outside the United States)".

b. In paragraph (d)(2) introductory text, the wording "used as an authorized packaging" is revised to read "used and is considered to be an authorized packaging".

15. In § 173.28, as amended at 59 FR 67491, paragraph (b)(7)((iii) is redesignated as paragraph (b)(7)(iv), a new paragraph (b)(7)(iii) is added and paragraph (b)(7) introductory text, paragraph (b)(7)(i) and paragraph (b)(7)(ii) are revised, to read as follows:

§ 173.28 Reuse, reconditioning and remanufacture of packagings.

* * * * *

(b) * * *

(7) Notwithstanding the provisions of paragraph (b)(2) of this section, a packaging otherwise authorized for reuse may be reused without being leakproofness tested with air provided the packaging—

(i) Is refilled with a material which is compatible with the previous lading:

(ii) Is refilled and offered for transportation by the original filler;

(iii) Is transported in a transport vehicle or freight container under the exclusive use of the refiller of the packaging; and

* * * * *

§ 173.28 [Amended]

16. In addition, in § 173.28, the following changes are made:

a. In paragraph (b)(2)(ii), in the first sentence, the wording "month and" is removed.

b. In paragraph (b)(4), as revised at 59 FR 67491, in Footnote 1 following the table, the wording "0.80 mm (0.03 inch) body and 1.10 mm (0.043 inch) heads" is revised to read "0.82 mm body and 1.09 mm head".

17. In § 173.62, in paragraph (b), the Explosives Table is amended by adding the following entry in appropriate alpha-numerical sequence to read as follows:

§ 173.62 Specific packaging requirements.

* * * * *

(b) * * *

EXPLOSIVES TABLE

Identification No.	Packing methods
[ADD]. NA0494	US006

* * * * *

§ 173.62 [Amended]

17a. In addition, in § 173.62, as amended at 59 FR 67492, in paragraph (c) "Table of Packing Methods", for the entry "E–142", in Column (4), "40, D11, D39" is revised to read "41, D9, D11".

§ 173.150 [Amended]

18. In § 173.150, as amended at 59 FR 67508, in paragraph (d)(2), the wording "a packaging of five liters" is revised to read "an inner packaging of five liters".

§ 173.185 [Amended]

19. In § 173.185, as revised at 59 FR 67509, the following changes are made:

a. In paragraph (e)(6), at the end of the first sentence, after the word "alloy", the wording "per inner packaging" is added.

b. In paragraph (h)((1), after the word "Cells", the wording ", when new," is added.

c. In paragraph (j), in the first sentence, after the wording "testing purposes," the wording "when not contained in equipment," is added.

20. In § 173.224, as revised at 59 FR 67511, at the end of the paragraph (b) table, a new Note 3 is added to read as follows:

§ 173.224 Packaging and control and emergency temperatures for self-reactive materials.

* * * * *

(b) * * *

Self-Reactives Materials Table

* * * * *

Notes:

* * * * *

3. The emergency and control temperatures must be determined in accordance with § 173.21(f).

§ 173.224 [Amended]

21. In addition, in § 173.224, as revised at 59 FR 67511, in the table in paragraph (b), the following changes are made:

a. For the entries "Azodicarbonamide formulation type B", "Azodicarbonamide formulation type C" and "Azodicarbonamide formulation type D", in Column (7), "3" is added.

b. For the entry "2,2¹=Azodi(isobutyronitrile)", in Column (1), "2,2¹" is revised to read "2,2'", and in Column (6), the emergency temperature "45" is revised to read "+45".

c. For the entry "2,2¹=Azodi(2-methylbutyronitrile)", in Column (1), "2,2¹" is revised to read "2,2'".

d. For the entries "1,1=Azodi(hexahydrobenzonitrile)", "Benzene-1,3-disulphohydrazide, as a paste", "Benzene sulphohydrazide", "4-(Benzyl(ethyl)amino)-3-ethoxybenzenediazonium zinc chloride", and "3=Chloro-4=Diethylamino-benzenediazonium zinc chloride", in Column (2), the identification number "3236" is revised to read "3226" each place it appears.

e. For the entry "4-Methylbenzenesulphonylhydrazide", in Column (2), the identification number "3226" is removed and replaced with the identification number "3236".

f. In the Notes following the paragraph (b) table, in Note 2, the wording "substance type C" is revised to read "substance type B".

§ 173.225 [Amended]

22. In § 173.225, as amended at 59 FR 67513, in the Organic Peroxides Table in paragraph (b), the following changes are made:

a. For the first entry for "tert-Butyl monoperoxymaleate *as a paste*", ID Number "UN3108", in Column (8), Note "21" is removed.

b. For the second entry for "tert-Butyl monoperoxymaleate *as a paste*", in Column (2), the ID Number "UN3010" is removed and replaced with the ID Number "UN3110", and in Column (8), Note "21" is removed and replaced with Note "7".

c. In the entry for "tert-Butyl peroxydiethylacetate *and* tert-Butyl peroxybenzoate", in Column (6), the entry "OP7" is revised to read "OP7A", and the "A" in Column (7a) is removed.

d. For the entry "tert-Butyl peroxyneodecanoate *as a paste*" the phrase "*as a paste*" is removed and replaced with the phrase "*as a stable dispersion in water*" and, in Column (8), Note "21" is removed and the entry is placed in alphabetical order.

e. For the entry "tert-Butyl peroxyneodecanoate *as a paste (frozen)*", in Column (8), Note "21" is removed.

f. For the second entry for "p-Menthyl hydroperoxide", in column (4a), the concentration percent "≤44" is revised to read ">44".

g. In Note 1, at the end of the table, after "is authorized", the wording "for liquids and OP8B is authorized for solids" is added.

h. In Note 9, reference to the section "§ 173.225(e)(3)(c)(ii)" is removed and replaced with reference to "§ 173.225(e)(3)(ii)".

i. In Footnote 12, the words "type C," are removed and replaced with the words "type B,".

§ 173.306 [Amended]

23. In § 173.306, as amended at 59 FR 67517, on December 29, 1994, in paragraph (a)(3)(v), the following changes are made:

a. In the second sentence, the wording "or if the containers are made of plastic material which softens at this test temperature," is removed.

b. In the last sentence, the wording "except that a plastic container may be deformed through softening provided that it does not leak." is removed and the comma following the word "occur" is replaced with a period.

PART 178—SPECIFICATIONS FOR PACKAGINGS

24. The authority citation for part 178 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 178.503 [Amended]

25. In § 178.503, as amended at 59 FR 67520, on December 29, 1994, in paragraph (e)(3), the illustration is revised as follows:

BILLING CODE 4910–60–P



1A1/Y1.4/150/92 USA/RB/93 RL

BILLING CODE 4910–60–C

Issued in Washington, DC on May 10, 1995, under authority delegated in 49 CFR part 1.

Ana Sol Gutiérrez,

Deputy Administrator, Research and Special Programs Administration.

[FR Doc. 95–11971 Filed 5–17–95; 8:45 am]

BILLING CODE 4910–60–P

federal register

Thursday
May 18, 1995

Part IV

Department of the Interior

Bureau of Indian Affairs

Receipt of Petition for Federal Acknowledgment of Existence as an Indian Tribe: Mattaponi Tribe; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[K00360-95-35420]

Receipt of Petition for Federal Acknowledgment of Existence as an Indian Tribe

This is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 83.9(a) (formerly 25 CFR 54.9(a)) notice is hereby given that the Mattaponi Tribe (Mattaponi Indian Reservation), Route 2, Box 310, West Point, Virginia 23181, has filed a petition for acknowledgment by the Secretary of the Interior that the group exists as an Indian tribe. The petition was received by the Bureau of Indian Affairs (BIA) on April 4, 1995, and was signed by members of the group's governing body.

This is a notice of receipt of petition and does not constitute notice that the petition is under active consideration. Notice of active consideration will be sent by mail to the petitioner and other interested parties at the appropriate time.

Under Section 83.9(a) (formerly 54.8(d) of the Federal regulations), interested parties may submit factual and/or legal arguments in support of or in opposition to the group's petition. Any information submitted will be made available on the same basis as other information in the BIA's files. Such submissions will be provided to the petitioner upon receipt by the BIA. The petitioner will be provided an opportunity to respond to such submissions prior to a final determination regarding the petitioner's status.

The petition may be examined, by appointment, in the Department of the Interior, Bureau of Indian Affairs, Branch of Acknowledgment and Research, Room 1362–MIB, 1849 C Street, N.W., Washington, D.C. 20240, Phone: (202) 208–3592.

Dated: May 3, 1995.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 95–12289 Filed 5–17–95; 8:45 am]

BILLING CODE 4310–02–P

federal register

Thursday
May 18, 1995

Part V

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of correction.

SUMMARY: In notice document 95–9820 beginning on page 19822 in the issue of Thursday, April 20, 1995, make the following correction:

On Page 19822, in the second column, in the third line from the bottom should read "Between the Upper Skagit Indian Tribe and the State of Washington executed on January 26, 1995."

DATES: This action was effective as of publication date of April 20, 1995.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, D.C. 20240, (202) 219–4068.

Dated: May 8, 1995.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 95–12288 Filed 5–17–95; 8:45 am]

BILLING CODE 4310–02–P

federal register

Thursday
May 18, 1995

Part VI

Department of Labor

Employment and Training Administration

Department of Education

Office of Vocational and Adult Education; School-to-Work Opportunities Act; State Implementation Grants; Notice

DEPARTMENT OF LABOR

Employment and Training Administration

DEPARTMENT OF EDUCATION

Office of Vocational and Adult Education; School-to-Work Opportunities Act; State Implementation Grants

AGENCIES: Department of Labor and Department of Education.

ACTION: Notice Inviting Applications for New Awards for Fiscal Year (FY) 1995 and Notice of final selection criteria and a definition of administrative costs for School-to-Work Opportunities State Implementation Grants (State Implementation Grants) to be made in fiscal year 1995 and in succeeding years.

SUMMARY: The Departments of Labor and Education jointly invite applications for new awards in FY 1995. The Departments also announce final selection criteria to be used in evaluating applications submitted under the State Implementation Grants competition in FY 1995 and in succeeding years, authorized under section 212 of the School-to-Work Opportunities Act of 1994 (the Act). State Implementation Grants will enable States to implement their plans for statewide School-to-Work Opportunities systems. Such systems will offer young Americans access to programs designed to prepare them for a first job in high-skill, high-wage careers, and for further education and training. The Departments also announce a definition for the term "administrative costs" that will apply to State Implementation Grants funded under the Act.

DATES: The closing date for receipt of applications is June 19, 1995.

SUPPLEMENTARY INFORMATION:

Background

The Departments of Labor and Education are reserving funds appropriated for FY 1995 under the Act (Pub. L. 103–329) for a competition for State Implementation Grants authorized under section 212 of the Act.

This notice contains a definition of the term "administrative costs" and the selection criteria that will be used in evaluating applications submitted in response to this year's competition.

Invitation for Application for New Awards

Purpose of Program: These funds will serve as "venture capital" to allow States to build comprehensive School-to-Work Opportunities systems which provide all youth with high-quality education that integrates school-based learning, work-based learning and connecting activities, prepares young Americans for success in high-skill, high-wage careers, and increases their opportunities for further education and training.

Eligible Applicants: All States that did not receive a State Implementation Grant in FY 1994, the District of Columbia, and Puerto Rico are eligible for Implementation Grants under this competition. In accordance with the School-to-Work Opportunities Act, the Governor must submit the application on behalf of the State.

Deadline for Transmittal of Applications: The closing date for receipt of applications is June 19, 1995, at 2 p.m. (Eastern Time). Telefacsimile (FAX) applications will not be honored.

Availability of Applications: Application packages will be mailed directly to both the Governor and the State School-to-Work Development Grant contact of each eligible applicant, as listed above. Applications will be mailed to applicants, via overnight mail, within one day of the publication of this notice in the **Federal Register**. Any other party interested in receiving a copy of the application package should contact: School-to-Work Office, 400 Virginia Avenue, S.W., Room 100–C, Washington, D.C. 20024. Telephone: (202) 401–6222.

Available Funds: Approximately $86,000,000 (funding for the first twelve months).

Estimated Range of Awards: The Departments expect the minimum award to be approximately $1.5 million and the maximum award to be approximately $20 million. The Departments wish to emphasize that, in accordance with sections 212, 213, 214, and 216 of the Act, the actual amount of each award made under this competition will depend on such factors as the scope and quality of the State plan and application, the number of projected participants in programs operating within each State's School-to-Work Opportunities system, and the State's youth population. Therefore, the Departments strongly encourage applicants to consider these factors, the estimated average grant award amount, and the amount of awards made to the first eight Implementation States in deciding what funds to request. Applicants are discouraged from requesting significantly more funds than States with similar numbers of school-age youth received last year without a strong programmatic basis for doing so. (Information on last year's awards is contained in the application package.)

Estimated Average Size of Awards: $4.5 million.

Estimated Number of Awards: Up to 20.

Note: The Departments are not bound by any estimates in this notice.

Project Period: Up to 5 years (5 twelve-month grant periods).

Applicable Regulations: 29 CFR Parts 33, 93, 95, 96, 97, 98. The selection criteria and definition published in this notice, as well as the instructions contained in the application package and the eligibility and other requirements specified in the Act, apply to this competition.

For Additional Information Contact: Ms. Laura Cesario, U.S. Department of Labor, Employment and Training Administration, Division of Acquisition and Assistance, 200 Constitution Avenue NW., Room S–4203, Washington, D.C. 20210. Telephone: (202) 219–7300, extension 21 (this is not a toll-free number). Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Reference: SGA # DAA—007.

Implementation Grant Competition

Analysis of Comments and Changes

On March 10, 1995, the Departments of Labor and Education published a notice of proposed selection criteria and a proposed definition of the term "administrative costs" for this competition and competitions in succeeding years in the **Federal Register** (60 FR 13312–13315). In response to the invitation to comment, 55 parties submitted comments. An analysis of the comments received in response to the publication of that notice and of the changes made to the selection criteria and definition since publication of the notice of proposed criteria and proposed definition is published as an appendix to this notice.

School-to-Work Opportunities State Implementation Grants

Definition

All definitions in the Act apply to School-to-Work Opportunities systems funded under this and future State Implementation Grant competitions. Since the Act does not contain a definition of the term "administrative costs" as used in section 217 of the Act, the Departments will apply the following definition to this and future competitions for State Implementation Grants:

The term "administrative costs" means the activities of a State or local partnership that are necessary for the proper and efficient performance of its duties under the School-to-Work Opportunities Act and that are not directly related to the provision of services to participants or otherwise allocable to the system's allowable activities listed in section 215(b)(4) and section 215(c) of the Act. Administrative costs may be either personnel costs or non-personnel costs, and direct or indirect. Costs of administration shall include, but not be limited, to:

A. Costs of salaries, wages, and related costs of the grantee's staff engaged in:

- Overall system management, system coordination, and general administrative functions;
- Preparing program plans, budgets, and schedules, as well as applicable amendments;
- Monitoring of local initiatives, pilot projects, subrecipients, and related systems and processes;
- Procurement activities, including the award of specific subgrants, contracts, and purchase orders;
- Developing systems and procedures, including management information systems, for assuring compliance with the requirements under the Act;
- Preparing reports and other documents related to the Act; and
- Coordinating the resolution of audit findings.

B. Costs for goods and services required for administration of the system;

C. Costs of system-wide management functions; and

D. Travel costs incurred for official business in carrying out grant management or administrative activities.

Selection Criteria

Under the School-to-Work Opportunities Implementation Grant competition, the Departments will use the following selection criteria in evaluating applications and will utilize a two-phase review process. In the first phase, review teams, including peers, will evaluate applications using the selection criteria and the associated point values. In the second phase, review teams, including peers, will visit high-ranking States to gain additional information and further assess State plans. The following selection criteria will apply to both review phases. The Departments will base final funding decisions on information obtained during the site visits, the ranking of applications as a result of the first-phase review, and such other factors as replicability, sustainability, innovation, and geographic balance and diversity of program approaches.

Selection Criterion 1: Comprehensive Statewide System

Points: 35.

Considerations: In applying this criterion, reviewers will consider:

A. *20 points.* The extent to which the State has designed a comprehensive statewide School-to-Work Opportunities plan that—

- Includes effective strategies for integrating school-based and work-based learning, integrating academic and vocational education, and establishing linkages between secondary and postsecondary education;
- Is likely to produce systemic change in the way youth are educated and prepared for work and for further education, across all geographic areas of the State, including urban and rural areas, within a reasonable period of time.
- Includes strategic plans for effectively aligning other statewide priorities, such as education reform, economic development, and workforce development into a comprehensive system that includes the School-to-Work Opportunities system and support its implementation at all levels—State, regional and local;
- Ensures that all students will have a range of options, including options for higher education, additional training and employment in high-skill, high-wage jobs; and
- Ensures coordination and integration with existing local education and training programs and resources, including those School-to-Work Opportunities systems established through local partnership grants and Urban/Rural Opportunities grants funded under Title III of the School-to-Work Opportunities Act, and related Federal, State, and local programs.

B. *15 points.* The extent to which the State plan demonstrates the State's capability to achieve the statutory requirements and to effectively put in place the system components in Title I of the School-to-Work Opportunities Act, including—

- The work-based learning component that includes the statutory mandatory activities and that contributes to the transformation of workplaces into active learning components of the education system through an array of learning experiences, such as mentoring, job-shadowing, unpaid work experiences, school-sponsored enterprises, supported work experiences, and paid work experiences;
- The school-based learning component that will provide students with high level academic skills consistent with academic standards that the State establishes for all students, including, where applicable, standards established under the Goals 2000: Educate America Act;
- A connecting activities component to provide a functional link between students' school and work activities and employers and educators; and
- A plan for an effective process for assessing students' skills and knowledge required in career majors, and the process for issuing portable skill certificates that are benchmarked to high quality standards such as those the State establishes under the Goals 2000: Educate America Act, and for periodically assessing and collecting information on student outcomes, as well as a realistic strategy and timetable for implementing the process.

Selection Criterion 2: Commitment of Employers and Other Interested Parties

Points: 15.

Considerations: In applying this criterion, reviewers will consider:

- The extent to which the State has obtained the active involvement of employers and other interested parties listed in section 213(d)(5) of the Act, such as locally elected officials, secondary schools and postsecondary educational institutions (or related agencies), business associations, industrial extension centers, employees, labor organizations or associations of such organizations, teachers, related services personnel, students, parents, community-based organizations, rehabilitation agencies and organizations, registered apprenticeship agencies, local vocational educational agencies, vocational student organizations, State or regional cooperative education associations, and human service agencies, as well as State legislators.
- Whether the State plan demonstrates an effective and convincing strategy for continuing the involvement of employers and other interested parties in the statewide system, such as the parties listed in section 213(d)(5) of the Act, as well as State legislators.
- The extent to which the State plan proposes to include private sector representatives as joint partners with educators in the oversight and governance of the overall School-to-Work Opportunities system.

• The extent to which the State has developed strategies to provide a range of opportunities for employers to participate in the design and implementation of the School-to-Work Opportunities system, including membership on councils and partnerships; assistance in setting standards, designing curricula and determining outcomes; providing worksite experience for teachers; helping to recruit other employers; and providing worksite learning activities for students, such as mentoring, job-shadowing, unpaid work experiences, supported work experiences, and paid work experiences.

Selection Criterion 3: Participation of All Students

Points: 15.

Considerations: In applying this criterion, reviewers will refer to the definition of the term "all students" in section 4(2) of the Act and consider:

• The extent to which the State will implement effective strategies and systems: to provide all students with equal access to the full range of program components specified in sections 102 through 104 of the Act and related activities such as recruitment, enrollment and placement activities; and to ensure that all students have meaningful opportunities to participate in School-to-Work Opportunities programs.

• Whether the plan identifies potential barriers to the participation of any students, and the degree to which the plan proposes effective ways of overcoming these barriers.

• The degree to which the State has developed realistic goals and methods for assisting young women to participate in School-to-Work Opportunities programs leading to employment in high-performance, high-paying jobs, including nontraditional jobs and has developed realistic goals to ensure an environment free from racial and sexual harassment.

• The feasibility and effectiveness of the State's strategy for serving students from rural communities with low population densities.

• The State's methods for ensuring safe and healthy work environments for students, including strategies for encouraging schools to provide students with general awareness training in occupational safety and health as part of the school-based learning component, and for encouraging employers to provide risk-specific training as part of the work-based learning component.

Note: Experience with the FY 1994 School-to-Work Opportunities State Implementation Grant applications has shown that many applicants do not give adequate attention to designing programs that will serve school dropouts and programs that will serve students with disabilities. Therefore, the Departments would like to remind applicants that reviewers will consider whether an application includes strategies to specifically identify the barriers to participation of dropouts and students with disabilities and proposes specific methods for effectively overcoming such barriers and for integrating academic and vocational learning, integrating work-based learning and school-based learning, and linking secondary and postsecondary education for dropouts and students with disabilities. Applicants are reminded that JTPA Title II funds may be used to design and provide services to students who meet the appropriate JTPA eligibility criteria.

Selection Criterion 4: Stimulating and Supporting Local School-to-Work Opportunities Systems

Points: 15.

Considerations: In applying this criterion, reviewers will consider:

• The effectiveness of the State's plan for ensuring that local partnerships include employers, representatives of local educational agencies and local postsecondary educational institutions (including representatives of area vocational education schools, where applicable), local educators (such as teachers, counselors, or administrators), representatives of labor organizations or nonmanagerial employee representatives, and students, and others such as those included in section 4(11)(B).

• The extent to which the State assists local entities to form and sustain effective local partnerships serving communities in all parts of the State.

• Whether the plan includes an effective strategy for addressing the specific labor market needs of localities that will be implementing School-to-Work Opportunities systems.

• The effectiveness of the State's strategy for building the capacity of local partnerships to design and implement local School-to-Work Opportunities systems that meet the requirements of the Act.

• The extent to which the State will provide a variety of assistance to local partnerships, as well as the effectiveness of the strategies proposed for providing this assistance, including such services as: Developing model curricula and innovative instructional methodologies, expanding and improving career and academic counseling services, and assistance in the use of technology-based instructional techniques.

• The effectiveness of the State's strategy for providing staff development to teachers, employers, mentors, counselors, related services personnel, and others who are critical to successful implementation of School-to-Work Opportunities systems for all youth.

• The ability of the State to provide constructive assistance to local partnerships in identifying critical and emerging industries and occupational clusters.

Selection Criterion 5: Resources

Points: 10.

Considerations: In applying this criterion, reviewers will consider:

• The amount and variety of other Federal, State, and local resources the State will commit to implementing its School-to-Work Opportunities plan, as well as the specific use of these funds, including funds for JTPA Summer and Year-Round Youth programs and Perkins Act programs.

• The feasibility and effectiveness of the State's long-term strategy for using other resources, including private sector resources, to maintain the statewide system when Federal resources under the School-to-Work Opportunities Act are no longer available.

• The extent to which the State is able to limit administrative costs in order to maximize the funds spent on the delivery of services to students, as required in section 214(b)(3)(B) of the Act, while ensuring the efficient administration of the School-to-Work Opportunities system.

Criterion 6: Management Plan

Points: 10.

Considerations: In applying this criterion, reviewers will consider:

• The adequacy of the management structure that the State proposes for the School-to-Work Opportunities system.

• The extent to which the State's management plan anticipates barriers to implementation and proposes effective methods for addressing barriers as they arise.

• Whether the application includes an evaluation plan containing feasible, measurable goals for the School-to-Work Opportunities system, based on performance measures contained in section 402(a) of the Act.

• The extent to which the evaluation plan includes an effective method for collecting information relevant to the State's progress in meeting its goals, and is likely to assist the State to meet its School-to-Work Opportunities system objectives, to gauge the success of the system in achieving those objectives, to continuously improve the system's effectiveness, and to contribute to the review of results across all States.

• Whether the plan includes a feasible workplan for the School-to-Work Opportunities system that includes major planned objectives over a five-year period.

Additional Priority Points

As required by section 214(a)(1) and (a)(2) of the Act, the Departments will give priority to applications that demonstrate the highest level of concurrence among State partners with the State plan, and to applications that require paid, high quality work-based learning experiences as an integral part of the School-to-Work Opportunities system by assigning additional points—above the 100 points described in the criteria—as follows:

1. *Highest Levels of Concurrence—5 Points*

Up to 5 points will be awarded to applications that can—

• Fully demonstrate that each of the State partners listed in section 213(b)(4) concurs with the State School-to-Work Opportunities plan, and that the State partners' concurrence is backed by a commitment of time and resources to implement the plan.

2. *Paid, High-Quality Work-Based Learning—10 Points*

Up to 10 points will be awarded to applications that demonstrate that the State—

• Has developed effective plans for requiring, to the maximum extent feasible, paid, high-quality work experience as an integral part of the State's School-to-Work Opportunities system, and for offering the paid, high-quality work experiences to the largest number of participating students as is feasible; and

• Has established methods for ensuring consistently high quality work-based learning experiences across the State.

Program Authority: 20 U.S.C. 6101 *et seq.*

Dated: May 15, 1995.

Doug Ross,

Assistant Secretary for Employment and Training, Department of Labor.

Augusta Kappner,

Assistant Secretary for Vocational and Adult Education, Department of Education.

Appendix—Analysis of Comments and Changes

Definition of Administrative Costs

Comment: Three commenters suggested that public relations and evaluation were functions so central to the States' ability to implement systemic change that they should be excluded from the definition of administrative costs. One of the commenters also recommended excluding monitoring and developing systems for assuring compliance, for the same reason. One of these commenters suggested that first-year costs to establish these activities might be excluded, while maintaining the activities in future years could be charged to administrative costs.

Discussion: The Departments agree that marketing (referred to as "public relations" in the notice of proposed selection criteria) and evaluation are key State system-building functions. Developing and maintaining a comprehensive statewide system will require change on the part of a great many organizations and individuals and the development of extensive partnerships at the State and local levels. Communicating the need for such change and challenging different groups to get involved—marketing—is an activity that is essential to achieving a School-to-Work Opportunities system. In addition, the evaluation function is especially critical because of the need for an ongoing process of measuring system effectiveness. The Departments believe, however, that monitoring and establishing compliance systems are activities more appropriately charged to the administrative cost category. The Departments expect that States will be providing extensive assistance to local partnerships to build their capacity to develop and implement local School-to-Work systems that meet the requirements of Title I. This process of forming and sustaining partnerships, which is addressed under Criterion 4, should be designed to help prevent compliance problems.

Changes: The activities related to marketing and evaluation against stated objectives have been deleted from the list of activities that must be included in the administrative cost category.

Restructuring Criteria

Comment: One commenter suggested restructuring the six criteria around the two major responsibilities of a State under School-to-Work Opportunities: (1) Developing and guiding a comprehensive statewide system; and (2) supporting the local School-to-Work Opportunities system. This commenter also recommended that the areas for which additional points could be awarded ("Highest Levels of Concurrence" and "Paid, High-Quality Work Experience") should, instead, be incorporated into one of the other criteria.

Discussion: The Departments agree that distributing the criteria around the two major responsibilities identified might be a useful alternative way to structure the criteria. However, other than repositioning the bullets, the recommendation did not include changing or deleting any of the bullets. In addition, the Departments do not agree that the areas for which additional points may be awarded could be incorporated into one of the selection criteria. Section 214 of the School-to-Work Opportunities Act of 1994 (the Act) requires that priority be given to applications that demonstrate the highest levels of concurrence among State partners and to applications that require paid, high-quality work experience. Subsuming these areas within other selection criteria is not consistent with the priority required by the Act. On balance, the Departments are confident that the current structure of the selection criteria adequately reflects the elements of a comprehensive State School-to-Work Opportunities system.

Changes: None.

Selection Criterion 1: Comprehensive Statewide System (A)

Postsecondary Involvement

Comment: One commenter stated that the criteria did not address possible duplication of effort between School-to-Work Opportunities systems and programs established in public educational institutions, such as local community colleges. This commenter was concerned that localities might limit community college involvement, while favoring programs funded under the Department of Labor's Job Training Partnership Act. The commenter stated that the notice should include points for applications that promote the participation of local postsecondary institutions and community colleges, and also "should address local secondary school participation."

Discussion: The School-to-Work initiative is designed to unify categorical programs into coherent and comprehensive systems, and the Departments believe that the law and the notice adequately address duplication of effort. Coordination with, and integration of existing programs, including those in place in community colleges, is a key feature of School-to-Work Opportunities systems. An approved State plan must include strategies for effectively linking secondary and postsecondary education and the plan must describe coordination with programs funded under a range of authorities, including the Adult Education Act, the Perkins Act, the Elementary and Secondary Education Act (ESEA), and the Higher Education Act (see section 213(d)(6) of the Act). State partnerships must include State agency officials responsible for postsecondary education, and the notice awards priority points to applications that demonstrate partners' full concurrence with the School-to-Work Opportunities plan. Under Criterion 2: "Commitment of Employers and Other Interested Parties," applicants must describe the State's efforts to obtain and maintain the substantive participation of a range of stakeholders. In response to several comments, Criterion 2 has been changed to explicitly list the examples of interested parties as given in section 213(d)(5) of the Act, including secondary schools and postsecondary educational institutions, so that applicants are reminded of the range of organizations that might contribute to the effectiveness of the School-to-Work Opportunities system. Also in response to comments, Selection Criterion 4: "Stimulating and Supporting Local School-to-Work Opportunities Systems" now lists the required members of local partnerships as given in the Act, including local educational agencies and local postsecondary institutions, and applications must show how the State will assist communities in developing effective local partnerships. Given these specifications, the final notice makes it more explicit that only applications that demonstrate the genuine involvement of local secondary schools, community colleges, and other postsecondary institutions in their School-to-Work systems, will be competitive. While the Departments support State and

local flexibility in deciding which networks form the most appropriate base from which to expand School-to-Work Opportunities systems, the Departments also believe it is highly unlikely that an effective system can be built with only limited, selective participation of the stakeholders mentioned in the Act. In response to the comment about the need to address local secondary school participation, the Departments wish to stress that any application that under Criterion 1 B fails to present a convincing plan for institutional change in secondary schools statewide, will not be competitive.

Changes: None.

Preparation for Entry Into Four-Year Colleges

Comment: One commenter was concerned that comprehensive School-to-Work Opportunities systems would be associated with vocational education; the commenter believed vocational education is negatively viewed as yielding few academic skills, limiting postsecondary options, and limiting access to careers that require postsecondary education. The commenter believed that Criterion 1 should require reviewers to consider the extent to which plans ensure that all students graduating from secondary school will be "eligible" to enter four-year colleges.

Discussion: School-to-Work Opportunities systems must prepare learners for a range of education, employment and training options, as discussed throughout the Act and highlighted in the notice of proposed selection criteria in the first, second and fourth bullets of Criterion 1. School-to-Work aims at developing a lifelong continuum of learning and work experience, rather than targeting a specific type of institution or course of study. The Departments agree with the commenter on the need to emphasize to parents, students, and other stakeholders that School-to-Work Opportunities systems will not limit, but rather enhance, all students' capacity to master concepts and successfully enter and complete four-year degree programs. Since they utilize new methods of teaching, learning, assessing and demonstrating student achievement, School-to-Work Opportunities systems will also require flexibility and support from employers and four-year institutions for new methods of measuring student performance, such as skill certificates and portfolios. Although the Departments do not believe that a specific reference to "eligibility" for four-year colleges is necessary, they wish to stress that the success of student transitions will depend in part on the commitment of employers and postsecondary institutions to develop and accept new measures of student performance resulting from educational reform.

Changes: None.

K-Adult Continuum

Comment: One commenter suggested that language be added to support a State School-to-Work Opportunities plan that addresses all students, from K-Adult.

Discussion: The Departments believe that the criteria, as written, address life-long learning in many respects. Reviewers will evaluate the extent to which a State's implementation plan integrates education and training programs and resources, including those which serve adults, such as postsecondary, continuing education, existing worker training and registered apprenticeship programs. Also, the Departments expect that a State's partnership will include a range of entities (see sections 213(b)(4) and 213(d)(5) of the Act), many of which relate directly to adult learners and workers. Finally, the most comprehensive plans for education reform will be strongly tied to related statewide initiatives such as economic development and workforce development, with School-to-Work as the framework for a K-Life continuum. Therefore, the Departments anticipate that the most competitive applications will address life-long learning implicitly in the implementation plan, or will achieve this integration in the long term.

Changes None.

Focus on Communities With High Concentrations of Poor and Disadvantaged Youth

Comment: One commenter suggested that the second bullet of Criterion 1 A, which refers to the State's plan for systemic change, include specific mention of communities with high concentrations of poor and disadvantaged youth.

Discussion: The Departments believe that Criterion 1 A, by considering the extent to which the School-to-Work Opportunities system is likely to encompass and produce change in all areas statewide, addresses the inclusion of communities with high concentrations of poor and disadvantaged youth. Applications that do not outline convincing strategies and timelines for achieving comprehensive statewide coverage will be less competitive than those that do. In addition, the second bullet in the now-revised Criterion 4 places further weight on the State's plan to actively assist local partnerships in expanding the system to reach communities in all parts of the State. Reviewers will evaluate whether there are gaps in the strategy for implementing the School-to-Work Opportunities system throughout the State and score the application accordingly.

Changes: None.

Apprenticeship Training

Comment: One commenter expressed the view that apprenticeship training be included in Criterion 1 A with education reform, economic development, and workforce development, as statewide priorities in the establishment of a comprehensive system. The commenter also believed that the work-based learning component in Criterion 1 B should include, as a potential learning experience, early entry into apprenticeship training.

Discussion: In Criterion 1, "education reform," "economic development," and "workforce development" are broad terms that are intended to include a variety of programs and activities that may be part of a State's strategic priorities. The Departments believe that apprenticeship training is likely to be a key component in many comprehensive workforce development strategies; however, they do not want to suggest that any specific program must be part of a State's workforce development initiative. In regard to the suggestion that early entry into apprenticeship training be included in the bullet on work-based learning on Criterion 1 B, the Departments agree that early entry into an apprenticeship program can be an appropriate objective for a School-to-Work Opportunities program. Section 215(b) (4) (K) of the Act includes, as an allowable activity for local partnerships receiving subgrants from States, the creation or expansion of school-to-apprenticeship programs in cooperation with registered apprenticeship agencies and apprenticeship sponsors. However, the extent to which apprenticeship training is utilized as a work-based learning experience in a statewide system is most suitably determined by the State.

Changes: None.

System Change for Youth With Disabilities

Comment: Several commenters recommended requiring special plans to demonstrate how School-to-Work Opportunities programs will be coordinated with "systems change grants" and other related activities under the Individuals with Disabilities Education Act (IDEA). In order to ensure participation by youth with disabilities, these commenters suggested that Criterion 1 A be revised to specifically reference IDEA transition projects or Systems Change for Youth with Disabilities.

Discussion: Achieving comprehensive reform will require States to coordinate and integrate a great number and variety of State initiatives having related goals. The Departments agree that the lessons learned from initiatives and programs that are related to School-to-Work should be incorporated into the State's comprehensive plan. The fifth bullet under Criterion 1 A is intended to encourage States to review the many related Federal, State and local programs and initiatives and develop strategies for creating mutually supportive strategies.

Changes: None.

Selection Criterion 1: Comprehensive Statewide System (B)

Emphasis on Coordination With Goals 2000

Comment: Several commenters expressed concern about the relationship between School-to-Work and the Goals 2000: Educate America Act. The commenters emphasized the voluntary nature of States' participation in Goals 2000 activities, and believed that the notice linked academic and skills standards too closely to these activities rather than focusing more broadly on statewide education reform initiatives. Conversely, one commenter stated that the criteria did not highlight strongly enough the importance of the State's role in developing curricula and instructional methodologies consistent with academic and skill standards such as those established under Goals 2000, nor in ensuring that students achieve these standards. One commenter noted that the use of the past tense in referring to standards "established" under Goals 2000 implies that States have submitted standards for certification by The National Education Standards and Improvement Council. (The Council is provided for under Goals 2000, but has not been formed.) One commenter believed that the Goals 2000 standards apply only to traditional academic subject areas, disregarding core standards and performance measures for vocational and technical education already being developed by States under the Perkins Act, and separating academic performance from performance related to workforce-development. This commenter stated that a reference in Criterion 2 to employer involvement in the development of standards was the only linkage to the performance-based system being built under the Perkins Act.

Discussion: The Departments wish to clarify that participation in activities under both Goals 2000 and School-to-Work is strictly voluntary, and that participation in Goals 2000 is in no way a condition for receiving a School-to-Work Opportunities Implementation Grant. However, in the case of States that have chosen to participate in Goals 2000, the Departments will consider whether plans developed under School-to-Work and Goals 2000 are coordinated and mutually reinforcing. A major focus of Criterion 1 is the need to integrate School-to-Work into the State's overall agenda for education reform or restructuring. The Departments intend to emphasize the need for high, statewide standards against which to develop curriculum, measure the quality of integrated school-based and work-based learning and instruction, assess learner performance, and certify proficiency. The notice refers to standards developed under Goals 2000 as an example of such State-developed and validated measures. In response to the comment that Goals 2000, and, by association, this notice, disregards significant work already undertaken through the Perkins Act, the Departments would point out that under Goals 2000, participating States must coordinate their improvement plans both with any School-to-Work efforts and with strategies to integrate academic and vocational instruction as outlined in the Perkins Act. (See Goals 2000, section 306(j) and (1).) The School-to-Work Opportunities Act defines the integrated work-based and school-based components as incorporating, to the extent possible, all aspects of the industry, and providing academic, vocational, technical and production skills as well as general workplace competencies (see sections 4(1), 101 and 102 of the Act). Whether education reform and standards development occur independent from, or in relation to, the Goals 2000 initiative, it is important that the School-to-Work Opportunities plan unfold in the context of a systematic vision for improving education in the State.

Changes: None.

Need To Include Sections of the Act in the Notice

Comment: One commenter believed that the criteria should more exactly reiterate definitions and key components contained in the Act in section 4 ("Definitions") and Title I, sections 101–104 ("General Program Requirements" and basic program components), with specific points assigned for elements such a those described in section 213 (d) ("State Plan") of the Act. The commenter also suggested that the Departments restore language, included in the Act but omitted from the final bullet of Criterion 1 B, linking career majors to the assessment and certification of skills. In the opinion of the commenter, the exclusion of this reference from the criterion altered the meaning of this section.

Discussion: While the Departments concur with the commenter on the importance of these provisions, they do not believe it is necessary to restate in the notice most of the legislative language emphasized by the commenter, or that it is necessary to assign points for every statutory requirement. The notice advises States that applications must meet all the requirements of the Act, reiterates that all definitions in the Act apply to systems funded under the State Implementation Grant competitions, and emphasizes, under Criterion 1, the need for State plans to demonstrate consistency with all statutory requirements and with all system components in Title I of the Act. Therefore, the Departments strongly encourage applicants to refer to the Act as well as the criteria in developing School-to-Work Opportunities plans which reflect the full intent of the law. The Departments wish to assure the commenter that panelists reviewing the applications are selected for their understanding of the School-to-Work Opportunities Act, are required to participate in a carefully designed orientation, and must score applications based on the criteria, in conjunction with the requirements of the Act. The Departments agree with the commenter that the bullet relating to assessment and certification of skills would be strengthened and clarified by including a reference to career majors, as given in section 213(d)(16) of the Act.

Changes: The final bullet in Criterion 1 B now includes the language of section 213(d)(16) of the Act regarding the State's process for assessing skills and knowledge required in career majors.

Distribution of Points

Comment: One commenter questioned the distribution of points in this section, and believed that Criterion 1 B, under Comprehensive Statewide System, should receive more weight than 15 out of 100 points. Another commenter recommended that the points assigned to Criterion 3, "Participation of All Students," be increased from 15 to 20.

Discussion: In response to this comment, the Departments gave careful consideration to the distribution of points among the selection criteria, and have concluded that the distribution provided for in the notice results in the most appropriate balance among the criteria.

Changes: None.

Supported Work

Comment: One commenter recommended adding supported work activities or experiences to several criteria to highlight what can be done at the work site to assist students with disabilities.

Discussion: The Departments agree that supported work activities, that provide individualized support to assist persons with severe disabilities in becoming equal participants in the competitive labor force, can be appropriate elements of the work-based learning component.

Changes: in Criterion 1 B, the phrase "supported work activities" has been added to the list of learning experiences that may be included in work-based learning. In addition, in Criterion 2, the term "supported work experiences" has been added to the list of opportunities for employers' participation.

Selection Criterion 2: Commitment of Employers and Other Interested Parties

Key Stakeholders

Comment: Many commenters were concerned that by not specifically referencing organized labor as a party that should be actively involved in the development of the State system, as employers and State legislators are referenced, labor's contribution to the School-to-Work Opportunities initiative would be diminished. Various commenters also indicated that teachers, vocational rehabilitation agencies, JTPA service providers, community-based organizations, private non-profits, parents, and/or consumers should be explicitly identified as key stakeholders in the State system since the inclusion of these entities is as vital to the development of the system as that of employers.

Discussion: While the proposed criterion referenced section 213(d)(5) of the Act, which, in turn, explicitly lists the parties the State may involve in the creation of a statewide School-to-Work Opportunities system, the Departments agree that it would be helpful to identify expressly in the first bullet of Criterion 2 all of the parties referred to in section 213(d)(5). In this way, the criterion does not appear to exclude any of the entities that have significant contributions to make to the establishment of a comprehensive School-to-Work Opportunities system. Although the Departments believe that labor organizations have unique contributions to make to the design and implementation of School-to-Work Opportunities systems, Criterion 2 retains State flexibility to determine the involvement of specific interested parties listed in section 213(d)(5) of the Act. The Departments concur with the rationale expressed by several commenters that developing high-quality work-based learning experience requires the commitment of front-line workers as well as top-level managers and CEOs. Applicants are encouraged to utilize labor organizations and other key parties toward this aim.

Changes: Selection Criterion 2 has been changed to recognize all the entities listed in section 213(d)(5) of the Act.

Involvement of Teachers

Comment: One commenter believed that the involvement of teachers should be augmented beyond being listed among "other interested parties." This commenter recommended that teachers be designated as required sponsors of any grant application. This commenter, as well as one other, believed that applicants that articulate

convincing strategies to ensure effective and sustained teacher involvement at both the State and local levels should receive additional points.

Discussion: The Departments strongly encourage State teams to involve teachers at every stage of system development and implementation. A School-to-Work Opportunities system that does not effectively incorporate the needs, beliefs, and capabilities of classroom educators will not be able to reach the comprehensiveness required of system implementation. Additionally, strategies for building upon the current practices within a State will not be realistic or complete without the input of teachers. Although the Departments believe that teachers have unique contributions to make to the design and implementation of School-to-Work Opportunities systems, Criterion 2 retains State flexibility to determine the involvement of specific interested parties listed in section 213(d)(5) of the Act. Also, consistent with section 213(b)(4) of the Act, the Departments do not believe it is appropriate to mandate teacher sponsorship of the grant application. Finally, it is noteworthy that the importance of teachers' participation in School-to-Work Opportunities systems is further conveyed by the specific reference to teachers within the definition of "local partnership," in section 4(11)(A) of the Act. That section provides that local partnerships must include, among others, "local educators (such as teachers, counselors, or administrators) * * *"

Changes: As stated above, Criterion 2 now includes reference to each entity listed in section 213(d)(5) of the Act. Selection Criterion 4 has been changed to add, as its first bullet, the ability of the State to ensure that local partnerships include all of the entities listed in section 4(11)(A) of the Act.

Consultation With Organized Labor

Comment: Several commenters supported the addition of a requirement that the State directly consult with the State AFL–CIO in order to coordinate organized labor involvement at both the State and local levels. Many commenters supported this concept by requesting that the Departments require States to define a particular role for organized labor, tie this requirement to Criterion 2, and assign points to the requirement. Lastly, one commenter believed that it would be appropriate to include a special note requesting that States develop distinctive strategies to utilize organized labor.

Discussion: The Departments agree that organized labor is a key contributor to the development and implementation of comprehensive School-to-Work Opportunities systems. As many commenters suggested, labor organizations have significant contributions to make in a variety of aspects of such systems—from designating workplace mentors and helping to ensure safe work environments to the establishment of realistic skill standards. The Act thoroughly delineates who must collaborate in the development of a statewide system, as stated in section 213(b)(4) of the Act, which includes representatives of the private sector, as well as the other interested parties who are encouraged to be involved, as stated in section 213(d)(5) of the Act which includes "labor organizations or associations of such organizations." The Departments do not believe that it is appropriate to mandate additional requirements beyond those contained in the Act or to define a role for any stakeholder group; however, strong applications will be those that represent the greatest amount of collaboration among stakeholders. Applicants are reminded that labor organizations or nonmenagerial employee representatives are required members of local partnerships in the School-to-Work Opportunities system, and, in response to another comment, Criterion 4 now identifies all required members of local partnerships.

Changes: None.

Bureau of Apprenticeship and Training Involvement

Comment: One commenter suggested that States designate a Federal Bureau of Apprenticeship and Training (BAT) representative as a State partner in order to avoid any duplication of effort between established apprenticeship programs and School-to-Work activities being developed as a result of the Act. The commenter referenced the Act's specificity with regard to non-duplication of effort.

Discussion: Section 213(d)(5) of the Act, referenced in Criterion 2, includes registered apprenticeship agencies as entities that States may actively and continually involve in the development and implementation of statewide systems. The term "registered apprenticeship agency" is defined under section 4(13) of the Act to mean "the Bureau of Apprenticeship and Training in the Department of Labor or a State apprenticeship agency recognized and approved by the Bureau of Apprenticeship and Training as the appropriate body for State registration or approval of local apprenticeship programs and agreements for Federal purposes." Since Criterion 2 has been changed to identify all entities listed in section 213(d)(5) of the Act, and since the Act includes the Bureau of Apprenticeship and Training in its definition of "registered apprenticeship agency," the Departments believe that the criteria adequately allow for the inclusion of the Bureau of Apprenticeship and Training in State system-building activities.

Changes: None.

Selection Criterion 3: Participation of All Students

Participation of Target Groups

Comment: Many commenters suggested ways to emphasize the participation of a particular target group or groups included in the definition of "all students." Some commenters recommended requiring specific strategies or plans for one or more of the target groups. Some believed that the "Note" on students with disabilities and dropouts was helpful, but that the concept of developing strategies for students with disabilities and school dropouts would be strengthened if it were added as a separate consideration in Criterion 3. One commenter wanted to add a "Note" reminding applicants of the importance of nontraditional employment for women in School-to-Work and asking for identification of barriers and methods for overcoming them. One commenter suggested an alternative method for addressing the participation of all students. The commenter was concerned that assigning 15 points to a criterion that included all types of students might permit continuation of historical exclusionary practices because applicants could provide strong strategies for some students, but not include others and still be awarded high marks on this criterion.

While most of the comments relating to participation of target groups recommended requiring specific strategies for a particular target group, one commenter did not want to focus on any special group. This commenter believed that the strength of the School-to-Work Opportunities Act is that it is designed for all students, and that the system itself is the solution for different groups.

Recommendations for where in the notice changes should be made included Criteria 1, 3 and 4. Although most commenters wanted States to be required to provide more specific attention to a particular group in Criterion 3, several suggested adding language to the fourth bullet in Criterion 1A in order to correct past histories of exclusion or to help raise State awareness that the range of options should be available to a specific target group or groups. One commenter recommended adding language to Criterion 4 that would encourage States to help local systems use technology-based instructional techniques for students with disabilities. Another commenter recommended replacing Criterion 3 with what was referred to as a "threshold criterion."

Discussion: Criterion 3 requires a State to describe its strategies for effectively ensuring opportunities for all students to participate, and to identify ways of overcoming barriers to the participation of any students. The additional considerations in this criterion for young women and for students from rural communities with low population densities reflect the required content of the State plan, as described in section 213(d) of the Act. Balancing the design of a system that serves all students with the need for targeted strategies for some students is one of the most difficult aspects of implementing the School-to-Work Opportunities initiative. Like the Act, Criterion 3 refrains from requiring applicants to design specific programs for each specific group of students. Rather, the focus is on building a system for all students. The Departments agree that to receive the maximum points on Criterion 3 applicants must not neglect the needs of any students, and must convincingly describe how the State's School-to-Work Opportunities system will provide the same options and produce the same results for all participating students, while recognizing that groups of students have different needs and, therefore, that specific strategies may be required for the target groups listed in the definition of "all students." Applications that fail to address the critical needs of each category of student and fail to develop effective strategies based on identified student needs will not be as competitive as applications that have comprehensive and effective strategies for all students. To be competitive, States that have not fully established all components of the strategies devised for all students, should have at least a timetable for putting all aspects of their strategies in place within a reasonable period of time. Finally, the Departments do not agree that Criterion 3 should be replaced with a threshold criterion or an eligibility requirement or that either of these would be consistent with the Act.

Changes: A reference to the definition of "all students" in section 4 of the Act has been added to Criterion 3 in order to remind applicants of the scope of the term.

Define "All Students"

Comments: Several commenters suggested that a definition of the term "all students" be added in the Definitions section of the Notice or that the specific student categories be defined. The commenters believed that the notice of final priority and selection criteria for the FY 1994 competition was clearer about the definition and that the significance of the requirement for "all students" needed to be emphasized.

Discussion: The final competition for State Implementation Grants in 1994 was announced prior to passage of the School-to-Work Opportunities Act. Consequently, it was necessary last year to provide more detailed information and definitions in the Notice—anticipating the School-to-Work Opportunities legislation—while ensuring consistency with Cooperative Demonstration authority of the Carl D. Perkins Vocational and Applied Technology Education Act, under which the FY 1994 State Implementation Grant awards were funded. For this second round of competitions, all definitions and requirements of the Act apply. However, the Departments agree that it would be helpful to remind applicants that the definition of the term "all students" applies to this competition.

Changes: A reference to the definition of "all students" in section 4(2) of the Act has been included in Criterion 3.

Equal Access

Comment: Two commenters recommended that Criterion 3 be expanded to include language requiring equal access to program components for all students. One of these commenters also recommended that Criterion 3 should require equitable representation of all students and equal access at the inception of the grant. The equal access language in Title I of the Act was considered by the commenter to be the cornerstone to ensuring participation of all students.

Discussion: Section 101 of the Act defines the general program requirements for all School-to-Work Opportunities systems and requires that they "provide students with equal access to the full range of such program components (including both school-based and work-based learning components) and related activities, such as recruitment, enrollment, and placement activities, except that nothing in the Act shall be construed to provide any individual with an entitlement to services under this Act." As noted elsewhere in this Appendix, applicants were reminded in the notice of proposed selection criteria, and will be reminded in the final application package, that applications must meet all requirements of the Act. However, the Departments agree that the requirement for equal access is so central to the purpose of School-to-Work Opportunities, that applicants should be reminded that programs must provide equal access to the full range of program components to all students.

In regard to the comment suggesting that equal access be required from the inception of the grant, the Departments believe that some States may have an effective plan for a comprehensive School-to-Work Opportunities system even if all components of their plans, including their strategy for ensuring equal access to the full range of School-to-Work Opportunities program components, would not be fully operational at the beginning of the Implementation Grant period. However, in order to be competitive, a State should be able to: (1) Demonstrate an effective strategy for assisting all students to take advantage of the opportunities to fully participate in a School-to-Work Opportunities program that meets the requirements of Title I, and (2) describe the timetable for fully implementing the strategy.

Changes: Language from section 101(5) of the Act relating to equal access has been added to Criterion 3.

Monitoring

Comment: Several commenters recommended that State be asked to provide specific detail on how they plan to monitor the safe and healthy work environments that are required under section 601 of the Act. Some of these same commenters believed that joint labor-management safety committees and the State AFL–CIO should be consulted in designing the monitoring mechanisms.

Discussion: Under Criterion 3, reviewers will consider the State's methods for ensuring safe and healthy work environments for students. Many activities may be a part of a State's strategy for ensuring that students are provided safe and healthy work environments, including risk assessment, assignment of responsibility for safety, and monitoring. However, although the Departments do not believe it is appropriate for them to define the components of the strategy that all States must use to ensure safe and healthy work environments, the bullet has been modified to clarify that State strategies should include both school-based and work-based components.

Furthermore, while the Departments agree that labor-management safety committees would be in an excellent position to provide assistance in designing monitoring mechanisms, the School-to-Work Opportunities Act provides States with flexibility to develop and implement School-to-Work Opportunities systems that best fit the needs of the State, while meeting the requirements of the Act. Who is involved in designing pieces of the State's system will be determined by the State and local partners.

Changes: The final bullet of Criterion 3 has been modified to encourage safety training to be included in both the school-based and work-based components.

Work Environment Free From Harassment

Comment: One commenter recommended that States be required to explain how they will ensure that student work environments are free from racial and sexual harassment.

Discussion: The Departments agree that providing environments for students that are free from racial and sexual harassment is an important aspect of School-to-Work. Section 213(d)(14) of the Act directs States to describe the State's goals and methods for addressing the issues of participation in School-to-Work programs by young women. That section also requires States to describe their "goals to ensure an environment free from racial and sexual harassment." The purpose of publishing the "Notice of proposed selection criteria" was to provide an opportunity for comment on the criteria that reviewers would use in evaluating applications; it was not to repeat the entire contents of the State plans, as defined in section 213(d). However, the Departments agree with the commenter on the importance of the efforts of States and local partnerships to ensure that students are provided with work environments, free from racial and sexual harassment.

Changes: The phrase from section 213(d)(14) of the Act, "and has developed realistic goals to ensure an environment free from racial and sexual harassment," has been added to the third bullet under Criterion 3.

Focus on Communities With High Concentrations of Poor and Disadvantaged Youth

Comment: One commenter suggested that the section that deals with the State's strategy for serving students from rural communities with low population densities include a specific reference to communities with high concentrations of poor and disadvantaged youth.

Discussion: Since Criterion 3 considers the extent to which the School-to-Work Opportunities system is designed to reach all students, the Departments believe the notice adequately addresses the inclusion of such communities in the State's plan for implementing systemic change across all geographic areas of the State. Disadvantaged students are specifically noted in the Act's definition of "all students." (See section 4(2).) Applications that do not outline convincing strategies for including all students in the School-to-Work Opportunities system will be less competitive than those that do.

Changes: None.

Alternative Assessments

Comment: Several commenters noted the importance of providing flexibility in assessment processes. Some of these commenters suggested adding considerations to Criterion 3 that encourage the development of alternative assessment techniques and alternative methods of meeting skill benchmarks that do not penalize students for a deficit related to the assessment technique being utilized.

Discussion: The Act provides flexibility for States to design School-to-Work Opportunities systems that respond to the unique needs and opportunities of each

State. The State plan that is part of the application for a State implementation grant must include a description of the State's processes for assessing skills and knowledge required in career majors and for awarding skill certificates. In addition, under Criterion 3, reviewers will assess the extent to which the applicant has identified barriers to the participation of any students.

Changes: None.

Selection Criterion 4: Stimulating and Supporting Local School-to-Work Opportunities Systems

Stakeholder Involvement at the Local Level

Comment: Two commenters suggested that States be asked to describe their efforts to involve organized labor at the local level, including recommended strategies for local areas to address labor market needs and build the capacity of their local partnerships by involving labor organizations during the early stages of initiative development. An additional commenter asked that States be required to ensure that local partnerships include students and community-based organizations in the development of local School-to-Work Opportunities systems.

Discussion: Section 4(11)(A) of the Act states that local partnerships must include: employers, representatives of local educational agencies and local postsecondary educational agencies (including representatives of area vocational education schools, where applicable), local educators (such as teachers, counselors, or administrators), representatives of labor organizations or nonmanagerial employee representatives, and students. In addition, section 215(c)(2) of the Act lists conducting "outreach activities to promote and support collaboration, in School-to-Work Opportunities programs, by businesses, labor organizations, and other organizations" as an activity in which the State may become involved in carrying out the statewide School-to-Work Opportunities system. Bearing these points in mind, the Departments believe that the most competitive State applications will contain strategies for local areas that promote high levels of local partnership collaboration and that can effectively demonstrate an awareness of a local partnership's capability for inclusion of all parties necessary for local initiative implementation and correlation to the statewide system.

Changes: Selection Criterion 4 now includes, as its first bullet, the ability of the State to ensure that local partnerships include all of the entities listed in section 4(11)(A) of the Act.

Staff Development

Comment: Two commenters requested that staff development be included in Criterion 4. One commenter focused on requiring States to set aside resources and develop a long-term plan for providing staff development activities to all staff members within secondary schools. The other commenter indicated that State applications should be assessed based upon their efforts to provide training for teachers, employers, mentors, counselors, and other staff that includes specialized training directed toward preparing women, minorities, and individuals with disabilities for jobs in high-skill, high-wage industries.

Discussion: The Departments agree with both commenters and believe that the most competitive State applications will include strategies for providing staff development for all who are involved in the provision of School-to-Work activities for youth. Section 213(d)(7) of the Act expressly requires that States articulate strategies for training teachers, employers, mentors, counselors, related services personnel, and others, including specialized training to prepare staff to effectively support special student populations such as women, minorities, and individuals with disabilities. Two other sections in the Act, section 104 (with regard to the connecting activities component) and section 215(b)(4) (with regard to allowable activities under State subgrants), underscore the training of teachers, mentors, and others as vital components of any School-to-Work Opportunities initiative. Since the Act so strongly emphasizes the critical importance of staff development in the implementation of statewide systems, and further emphasizes the need for staff development at the local level, the Departments are adding explicit language that compels reviewers to consider the extent to which states have provided for staff development for all staff involved in the provision of School-to-Work activities for youth.

Changes: Selection Criterion 4 now includes an additional bullet that considers the effectiveness of the State's strategy for providing staff development to those who are critical to successful implementation of School-to-Work Opportunities systems for all youth.

Criterion 6: Management Plan

Evaluation

Comment: Several commenters were concerned that an evaluation plan was not specifically required in State applications. The commenters indicated that the presence of a concrete plan for research and evaluation would help gauge a State's ability to measure the success of, and to continuously improve, its School-to-Work Opportunities system. Several commenters pointed out that the resulting information could be used to systematically assess the impact of School-to-Work systems, avoid duplication, identify issues, challenges and best practices, and provide models for replication. One commenter recommended that grantees collect data on the number of exiting participants who are gaining employment and/or entering and completing post-secondary education or training. One commenter stated that performance measures are more than a management issue, and should be considered under Criteria 1 and 4.

Discussion: The Departments believe that States should have the flexibility to design evaluations appropriate to State needs and goals, but they agree on the importance of a plan that presents how a State will collect and analyze information related to the performance measures in section 402 of the Act, as well as any other factors the State deems necessary. Since the Departments are required to conduct an evaluation of all systems funded under the Act, information on the impact of School-to-Work will be gathered. (See sections 401–404.) The Departments believe that the notice sufficiently emphasizes the significance of performance measures. However, the Departments agree with the commenters that Criterion 6 should relate performance measures and data collection methods to a systematic evaluation plan. Reviewers will consider first, whether such a plan is in place, second, the extent to which it is likely to meet State objectives, third, the extent to which it will be used to gauge the success of, and continuously improve, the State's School-to-Work system, and fourth, the extent to which the State's evaluation plan is likely to contribute to the review of results across all States.

Changes: Criterion 6 has been changed to add the words "evaluation plan" as the vehicle for including measurable goals, and to include in the bullet the ability of the evaluation plan to meet State objectives, continuously improve the State system, and contribute to the review of results across all States.

Addressing Potential Barriers

Comment: One commenter proposed involving organized labor to address the potential barrier of providing all students with work-based learning experiences. The commenter believed that the early inclusion of "member employers of organized labor" would ensure full participation of students in the School-to-Work Opportunities initiative.

Discussion: The Departments encourage States to involve representatives of organized labor and others in addressing such potential barriers as providing all students with work-based learning experiences. As stated in reference to Criterion 2, the Departments have agreed to identify each of the entities listed in section 213(d)(5) of the Act as stakeholders important to the implementation of the statewide School-to-Work Opportunities system. The Departments encourage the utilization of each of these entities, including organized labor, in identifying and addressing potential barriers to student participation and view the change to Criterion 2 as addressing this commenter's concerns as well.

Changes: None.

Additional Priority Points [1]—Highest Levels of Concurrence

Highest Levels of Concurrence

Comment: Three commenters made recommendations for change to the section of the Notice on additional priority points for Highest Levels of Concurrence. One commenter requested that, in addition to awarding priority points for concurrence of the State partners, a penalty for nonconcurrence should be applied. Another commenter believed that five additional priority points for this criterion was not appropriate because the basis for assigning the additional points was not clear, and it would be difficult for reviewers to differentiate between perceived and actual collaboration. Another commenter believed that this section should be revised to encourage States to utilize staff who are qualified to deliver services to special population groups.

Discussion: In response to the first comment, the Departments note that reviewers may add a maximum of 5 points for applications that demonstrate that all State partners listed in section 213(b)(4) concur with the plan and have committed time and resources to implementing it. Applications that do not fully demonstrate such concurrence will receive less than 5 points, which is, in effect, a penalty for nonconcurrence, as the commenter suggested. Regarding the second suggestion, the Departments note that the basis for awarding 5 additional points for "Highest Levels of Concurrence" is adequately described. To assist reviewers in differentiating between perceived collaboration and actual collaboration, applicants must show how the concurrence of each partner is actualized through a commitment of time and resources. Regarding the third suggestion, section 214(a) of the Act specifies that priority is to be given for concurrence with the State plan by those organizations listed in section 213(b)(4) that are required to collaborate in the development of the application. This section of the Act is a recognition that system-wide change cannot occur unless the State officials with the authority and resources for related education and training programs fully commit to system-wide change. How effectively local School-to-Work Opportunities programs or activities are *delivered* is a consideration in several other criteria, including Criteria 3, 4, and 6.

Changes: None.

Additional Priority Points [2]—Paid, High Quality Work-Based Learning

Difficulty of Rural States in Meeting Priority

Comment: Several commenters were concerned that this section would favor urban, industrialized States over rural non-industrialized States because the former have greater numbers of employers able to provide paid work experiences. While one commenter agreed with placing some emphasis on paid, high-quality work-based learning, most of these commenters pointed out that rural States have limited access to employers due to factors such as geographic isolation, predominance of small businesses, and a smaller base of non-hazardous industry. Two commenters noted that the Act describes paid work experience as a preferred, but not mandatory, activity of School-to-Work Opportunities systems, indicating that a ten-point priority for this factor exceeds the intent of the law. Other commenters noted that many rural School-to-Work Opportunities systems will rely mainly on school-sponsored enterprises, school-based simulations and unpaid work-based learning, and that students also benefit from these experiences. One commenter suggested that more information be provided in this section on what constitutes high-quality work-based learning. One commenter suggested that points be reduced under this section, and additional points be awarded for rural School-to-Work strategies under Criterion 3.

Discussion: The Departments are committed to a fair and equitable review of all applications, and recognize that, in order to be successful, a School-to-Work Opportunities system must take into account the unique needs and conditions of the State by which it has been designed. The Departments agree that unpaid work experiences and alternatives such as school-sponsored enterprises are highly valuable in providing students with the opportunity to gain and apply skills. This priority does not require paid work experience for every student, but emphasizes paid work experience in the work-based learning component, and rewards applications which demonstrate innovative strategies and high levels of effort in this area. The Departments wish to clarify that this section will not place rural States at a disadvantage, since points awarded will reflect comprehensiveness in developing the work-based learning component and attempting to maximize paid work experiences, rather than the relative number of students involved in paid work experiences. Reviewers rank each State's application against the criteria, not against other applications. In assigning points under this priority, reviewers will consider the quality of an individual State's plan given what is feasible for that State, as described in the application. Therefore, the extent to which an application presents what is possible and appropriate for the State, as well as the State's level of effort in obtaining paid work experiences and/or designing high-quality alternatives which are accessible systemwide, will determine the number of points awarded. Rural States that present this information thoroughly and convincingly may score higher in this section than urban States that do not demonstrate initiative in developing the work-based component. While the Departments encourage applicants to review section 103(a) of the Act for a definition of high-quality work-based learning, they do not believe this definition needs to be restated in the priority.

Changes: None.

Invitation to Comment

30 Day Submission

Comment: Several commenters opposed the Departments' decision to require States to submit their applications within 30 days of the publication of the notice of final selection criteria. Generally, these commenters believed that 60 days, rather than the proposed 30 days, would allow enough time for States to involve and obtain support from all of the necessary stakeholders in the submission of the State application. Three commenters added that the proposed submission time prevents full consultation with regional or local stakeholders located throughout the State (particularly large States). Commenters further noted that the proposed 30 day submittal deadline limits the ability of State educational agencies and others who may have dissenting comments to provide them, disregards the fact that May is a difficult time to obtain comments from classroom teachers, and would nonetheless be unsuccessful in granting awards prior to the beginning of the 1995 school year.

Discussion: While the Departments understand the requests by some States for additional time to submit their applications, they strongly maintain that, as stated in the notice of proposed criteria, the 30 day submittal time is sufficient for States that are prepared for comprehensive system implementation. Furthermore, the involvement of necessary stakeholders in the endorsement of the State application's key components should either already be established or be well underway and would not likely be increased with the addition of 30 days. Lastly, the establishment of the Departments' *State Planning Guide for a Comprehensive System*, distributed shortly after the publication of the proposed criteria, provided States with an opportunity to evaluate their current progress and assess the status of all system components.

Changes: None.

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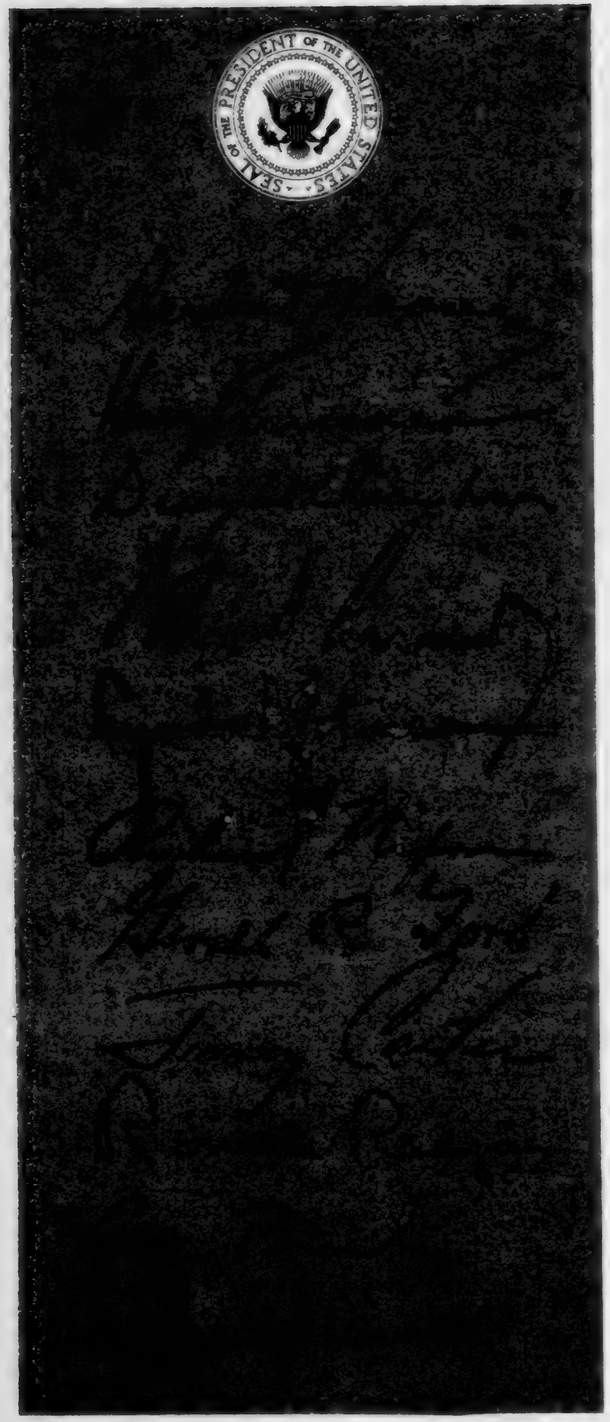
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5–19–95
Vol. 60

No. 97

federal register

Friday
May 19, 1995

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5–19–95
Vol. 60 No. 97
Pages 26823–26976

federal register

Friday
May 19, 1995

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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 52

[FV–94–326]

United States Standards for Grades of Canned Peas

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to final regulations published in the **Federal Register** on October 18, 1994. The regulations concern certain provisions contained in U.S. grade standards for canned peas.

EFFECTIVE DATE: May 19, 1995.

FOR FURTHER INFORMATION CONTACT:
Mr. James R. Rodeheaver, Processed Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Room 0709 South Building, Washington, D.C. 20090–6456, Telephone (202) 720–4693.

SUPPLEMENTARY INFORMATION:

Background

In the final regulations, Section 52.2283, (b)(1) currently reads, "Good appearance means that the peas are practically uniform in color and are reasonably free of insignificant blemishes." In this sentence, the word "practically" needs to be revised to read "reasonably." Also, we are removing and reserving sections 52.2292 and 52.2293.

Need for Correction

As published, the final regulations contain errors which may prove to be misleading and are in need of clarification.

List of Subjects in 7 CFR Part 52

Food grades and standards, Food labeling, Frozen foods, Fruit juices, Fruits, Reporting and recordkeeping requirements, Vegetables.

PART 52—PROCESSED FRUITS AND VEGETABLES, PROCESSED PRODUCTS THEREOF, AND CERTAIN OTHER PROCESSED FOOD PRODUCTS

Accordingly, 7 CFR Part 52 is corrected by making the following correcting amendments:

1. The authority citation for Part 52 is revised to read as follows:

Authority: 7 U.S.C. 1622, 1624.

§ 52.2283 [Corrected]

2. In § 52.2283, paragraph (b)(1), first sentence, the word "practically" is revised to read "reasonably."

§ 52.2292 Through § 52.2293 [Remove and Reserve]

3. Sections 52.2292 and 52.2293 are removed and reserved.

Dated: May 10, 1995.

Eric M. Forman,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–12319 Filed 5–18–95; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 29

[Docket No. 94–ASW–3; Special Condition 29–ASW–15]

Special Condition: Bell Helicopter Textron Model 222U Helicopter, Electronic Flight Instrument System

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final special condition.

SUMMARY: This special condition is issued for the Bell Helicopter Textron, Inc., Model 222U helicopter modified by Heli-Dyne Systems, Inc. This helicopter will have a novel or unusual design feature associated with the Electronic Flight Instrument System. This special condition contains additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the airworthiness standards.

EFFECTIVE DATE: May 19, 1995.

FOR FURTHER INFORMATION CONTACT:
Mr. Robert McCallister, FAA, Rotorcraft Directorate, Policy and Procedures Group, Forth Worth, Texas 76193–0110; telephone (817) 222–5121.

SUPPLEMENTARY INFORMATION:

Background

On May 16, 1994, Heli-Dyne Systems, Inc., Hurst, Texas, applied for a Supplemental Type Certificate for installation of an Electronic Flight Instrument System in the Bell Helicopter Textron (BHTI) Model 222U helicopter. This model helicopter is a 10 passenger, 2 engine, 8,250 pound (Category B) or 7,850 pound (Category A) transport category helicopter.

Type Certification Basis

The certification basis established for the BHTI Model 222U helicopter includes: 14 CFR 21.29 and part 29 of the Federal Aviation Regulations (FAR) effective February 1, 1965 (Transport Categories A and B), Amendments 29–1 through 29–9; Amendment 29–11; § 29.997 of Amendment 29–10; § 29.927(b)(2) of Amendment 29–17; §§ 29.801, 29.25(c) 29.865, 29.1557(c), and 29.1555(c) of Amendment 29.12; §§ 29.1, 29.79, 29.1517, and 29.1587 of Amendment 29–21; Criteria for Helicopter Instrument Flight Rule (IFR) certification dated December 15, 1978; Exemption No. 2789, § 29.811(h)(1) (following Amendment 24, effective December 6, 1984, § 29.811(h)(1) became § 29.811(f)(1)); and Exemption No. 4395, § 29.855 (a) and portions of § 29.855(d).

If the Administrator finds that the applicable airworthiness regulations do not contain adequate or appropriate safety standards for these helicopters because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.101(b)(2).

Novel or Unusual Design Feature

The BHTI Model 222U helicopter, at the time of the application for modification by Heli-Dyne Systems, Inc., was identified as incorporating one and possibly more electrical, electronic, or combination of electrical and electronic (electrical/electronic) systems that will perform functions critical to the continued safe flight and landing of the helicopter. The electronic flight instrument system performs the attitude display function. The display of attitude, altitude, and airspeed is critical to the continued safe flight and landing of the helicopters for IFR operations in Instrument Meteorological Conditions.

If it is determined that these helicopters will incorporate other electrical/electronic systems performing critical functions, those systems also will be required to comply with the requirements of this special condition.

Discussion of Comments

Notice of Proposed Special Condition No. SC–94–3–SW was published in the **Federal Register** on December 27, 1994 (59 FR 66489). No comments were received. Therefore, the special condition is adopted as proposed.

Conclusion

This action affects only certain unusual or novel design features on one model of helicopter. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the affected helicopter.

List of Subjects in 14 CFR Part 29

Aircraft, Air transportation, Aviation safety, Rotorcraft, Safety.

The authority citation for this special condition is as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2); 42 U.S.C. 1857f–10, 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g).

The Special Condition

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special condition is issued as part of the type certification basis for the Bell Helicopter Textron Model 222U helicopter:

Protection for Electrical and Electronic Systems From High Intensity Radiated Fields

Each system that performs critical functions must be designed and installed to ensure that the operation and operational capabilities of these critical functions are not adversely affected when the helicopters are exposed to high intensity radiated fields external to the helicopters.

Issued in Fort Worth, Texas, on May 10, 1995.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service, ASW–100.

[FR Doc. 95–12386 Filed 5–18–95; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 95–NM–69–AD; Amendment 39–9208; AD 95–09–05]

Airworthiness Directives; British Aerospace Model Avro 146–RJ Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects a typographical error that appeared in the applicability statement of the above-captioned airworthiness directive (AD) that was published in the **Federal Register** on April 28, 1995 (60 FR 20887). The typographical error in the applicability statement of the AD resulted in a reference to an incorrect part number.

DATES: Effective May 15, 1995.

The incorporation by reference of certain publications listed in the regulations was previously approved by the Director of the Federal Register as of April 28, 1995 (60 FR 20887).

FOR FURTHER INFORMATION CONTACT: Kirk Baker, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5345; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION: Airworthiness Directive (AD) 95–09–05, amendment 39–9208, applicable to certain British Aerospace Model Avro 146–RJ series airplanes equipped with a certain Honeywell Standard Windshear Detection and Recovery Guidance System (WSS), was published in the **Federal Register** on April 28, 1995 (60 FR 20887). As published, that AD contained a typographical error in the applicability statement: the applicability statement indicated that the airplanes subject to the requirements of the AD were those equipped with Honeywell WSS having part number (P/N) 4048300–902; however the correct P/N is 4068300–902.

This document corrects the reference to the P/N cited in the applicability statement of AD 95–09–05, to read as follows:

"Applicability: Model Avro 146–RJ70A, –RJ85A, and –RJ100A airplanes; equipped with Honeywell Standard Windshear Detection and Recovery Guidance System (WSS), part number 4068300–902; certificated in any category."

Since no other part of the regulatory information has been changed, the final rule is not being republished.

The effective date remains May 15, 1995.

Issued in Renton, Washington, on May 12, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–12206 Filed 5–18–95; 8:45 am]

BILLING CODE 4910–13–U

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1000

Commission Organization and Functions

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Commission is amending its statement of organization and functions to reflect the transfer of the telecommunications function from the Directorate for Administration to the Office of Information Systems, and the renaming of the Office of Compliance and Enforcement to the Office of Compliance.

EFFECTIVE DATE: May 19, 1995.

FOR FURTHER INFORMATION CONTACT: Joseph F. Rosenthal, Office of the General Counsel, Consumer Product Safety Commission, Washington, D.C. 20207, telephone 301–504–0980.

SUPPLEMENTARY INFORMATION: The sections describing the Directorate for Administration and the Office of Information Services have been amended to reflect the transfer of the telecommunications function from the Directorate for Administration to the Office of Information Services.

Since this rule relates solely to internal agency management, pursuant to 5 U.S.C. 553(b), notice and other public procedures are not required and it is effective immediately on the specified effective date. Further, this action is not a rule as defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612 and, thus, is exempt from the provisions of the Act.

List of Subjects in 16 CFR Part 1000

Organization and functions (government agencies).

Accordingly, 16 CFR part 1000 is amended as follows:

PART 1000—[AMENDED]

1. The authority citation for part 1000 continues to read as follows:

Authority: 5 U.S.C. 552(a).

2. Section 1000.12 is revised to read as follows:

§ 1000.12 Organizational structure.

The Consumer Product Safety Commission is composed of the principal units listed in this section.

(a) The following units report directly to the Chairman of the Commission:

(1) Office of the General Counsel;
(2) Office of Congressional Relations;
(3) Office of the Secretary;
(4) Office of the Inspector General;
(5) Office of Equal Employment Opportunity and Minority Enterprise;
(6) Office of the Executive Director.

(b) The following units report directly to the Executive Director of the Commission:

(1) Office of the Budget;
(2) Office of Hazard Identification and Reduction;
(3) Office of Information and Public Affairs;
(4) Office of Compliance;
(5) Office of Planning and Evaluation;
(6) Office of Human Resources Management;
(7) Office of Information Services;
(8) Directorate for Administration;
(9) Directorate for Field Operations.

(c) The following units report directly to the Assistant Executive Director for Hazard Identification and Reduction:

(1) Directorate for Epidemiology;
(2) Directorate for Economic Analysis;
(3) Directorate for Health Sciences;
(4) Directorate for Engineering Sciences;
(5) Directorate for Laboratory Sciences.

3. The heading of section 1000.24 is revised to read as follows:

§ 1000.24 Office of Compliance.

* * * * *

4. Section 1000.26 is revised to read as follows:

§ 1000.26 Office of Information Services.

The Office of Information Services, which is managed by the Assistant Executive Director for Information Services, is responsible for general policy, controlling and conducting managerial activities and operations relating to the collection, use, and dissemination of information by the agency. The Office manages the Commission's information system that supports all its program activities. The Office provides automated data processing and operational support for data collection, information retrieval, report generation, electronic mail, and statistical and mathematical operations of the agency. The Office maintains the agency's local area networks and develops and supports other network applications. The Office develops plans for improving agency operations through the use of information technology. The Office's functional responsibilities include planning, organizing, and directing information resources management (including records management and related requirements), and the managing of the agency's management directives system. The Office manages the Commission's telecommunications services including the agency's toll-free Hotline by which the public reports hazardous consumer products and receives information about product recalls and product hazards. It also oversees operation of the Commission's Internet and fax-on-demand services.

5. Section 1000.32 is revised to read as follows:

§ 1000.32 Directorate for Administration.

The Directorate for Administration, which is managed by the Associate Executive Director for Administration, is responsible for formulating general administrative policies supporting the Commission in the areas of financial management, procurement, and general administrative support services including property and space management, physical security, printing, and warehousing. The Directorate is responsible for the payment, accounting, and reporting of all expenditures within the Commission and for operating and maintaining the Commission's accounting system and subsidiary Management Information System which allocates staff work time and costs to programs and projects.

§§ 1000.7, 1000.19 and 1000.24 [Amended]

6. Part 1000 is further amended by removing the term "Compliance and Enforcement" each time it appears and inserting the term "Compliance" in its place, in the following locations:

a. Section 1000.7(b) (two times).
b. Section 1000.19.
c. Section 1000.24 (two times).

Dated: May 15, 1995.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 95–12280 Filed 5–18–95; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 5

Delegations of Authority and Organization

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations for delegations of authority covering the certification of true documents and use of the Department seal in order to update this authority to reflect recent changes to organizational structures within FDA.

EFFECTIVE DATE: May 19, 1995.

FOR FURTHER INFORMATION CONTACT: L'Tonya Barnes, Division of Management Systems and Policy (HFA–340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4976.

SUPPLEMENTARY INFORMATION: FDA is amending the regulations in § 5.22 *Certification of true copies and use of Department seal* (21 CFR 5.22) in order to update this authority to reflect recent changes to organizational structures within FDA. Revisions and deletions have been made to reflect current titles. Also, the following additions have been made to bring the list of officials up-to-date: the Deputy Commissioners; the Director, Division of Management Operations, and Chief, Administrative Management Branch, Office of Resource Management, Office of Regulatory Affairs (ORA); the Director, FDA History Staff, ORA; the Director, Office of Policy, Planning, and Strategic Initiatives, Center for Food Safety and Applied Nutrition (CFSAN); the Director, Office of Management Systems, CFSAN; the Director, Office of Cosmetics and Colors, CFSAN; the Director, Office of Plant and Dairy Foods and Beverages, CFSAN; the Director, Office of Seafood, CFSAN; the Director, Office of Special Nutritionals, CFSAN; the Director, Office of Special Research Skills, CFSAN; the Director, Office of Constituent Operations, CFSAN; the Director, Office of Field Programs, CFSAN; the Director, Office of Premarket Approval, CFSAN; the Director, Office of Scientific Analysis and Support, CFSAN; and the Director, National Forensic Chemistry Center.

Further redelegation of the authority delegated is not authorized at this time. Authority delegated to a position by title may be exercised by a person officially

designated to serve in such position in an acting capacity or on a temporary basis.

List of Subjects in 21 CFR Part 5

Authority delegations (Government agencies), Imports, Organization and functions (Government agencies).

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 5 is amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for 21 CFR part 5 continues to read as follows:

Authority: 5 U.S.C. 504, 552, App. 2; 7 U.S.C. 138a, 2271; 15 U.S.C. 638, 1261–1282, 3701–3711a; secs. 2–12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451–1461); 21 U.S.C. 41–50, 61–63, 141–149, 467f, 679(b), 801–886, 1031–1309; secs. 201–903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–394); 35 U.S.C. 156; secs. 301, 302, 303, 307, 310, 311, 351, 352, 354, 361, 362, 1701–1706; 2101, 2125, 2127, 2128 of the Public Health Service Act (42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 263b, 264, 265, 300u–300u–5, 300aa–1, 300aa–25, 300aa–27, 300aa–28); 42 U.S.C. 1395y, 3246b, 4332, 4831(a), 10007–10008; E.O. 11490, 11921, and 12591; secs. 312, 313, 314 of the National Childhood Vaccine Injury Act of 1986, Pub. L. 99–660 (42 U.S.C. 300aa–1 note).

2. Section 5.22 is amended by revising paragraphs (a)(1) through (a)(13) and by adding new paragraph (a)(14), by revising paragraphs (b)(1) and (b)(2), and by adding new paragraph (b)(3) to read as follows:

§ 5.22 Certification of true copies and use of Department seal.

(a) * * *

(1) The Deputy Commissioners.

(2) The Associate and Deputy Associate Commissioners.

(3)(i) The Director, Office of Executive Operations.

(ii) The Director, Executive Secretariat.

(iii) The Director, Program Management Staff.

(4) The Executive Assistant to the Commissioner, Office of the Commissioner.

(5)(i) The Director and Deputy Director, Office of Enforcement, Office of Regulatory Affairs (ORA).

(ii) The Director and Deputy Director, Office of Regional Operations, ORA.

(iii) The Director and Deputy Director, Office of Resource Management, ORA.

(iv) The Director, Division of Management Operations, and Chief, Administrative Management Branch, Office of Resource Management, ORA.

(v) The Director, FDA History Staff, ORA.

(6)(i) The Director, Division of Management Systems and Policy, Office of Management (OM).

(ii) The Chief, Dockets Management Branch, Division of Management Systems and Policy, OM.

(7) The Director, Freedom of Information Staff, Office of Public Affairs.

(8)(i) The Director and Deputy Directors, Center for Biologics Evaluation and Research (CBER).

(ii) The Director, Office of Management, CBER.

(iii) The Directors and Deputy Directors of the Office of Compliance, CBER.

(iv) The Director of Congressional and Public Affairs Staff, Office of the Center Director, CBER.

(v) The Chief, Surveillance and Policy Branch and Consumer Safety Officers, Office of Compliance, CBER.

(9)(i) The Director and Deputy Directors, Center for Food Safety and Applied Nutrition (CFSAN).

(ii) The Director, Office of Policy, Planning, and Strategic Initiatives, CFSAN.

(iii) The Director, Office of Management Systems, CFSAN.

(iv) The Director, Office of Cosmetics and Colors, CFSAN.

(v) The Director, Office of Plant and Dairy Foods Beverages, CFSAN.

(vi) The Director, Office of Seafood, CFSAN.

(vii) The Director, Office of Special Nutritional, CFSAN.

(viii) The Director, Office of Special Research Skills, CFSAN.

(ix) The Director, Office of Constituent Operations, CFSAN.

(x) The Director, Office of Field Programs, CFSAN.

(xi) The Director, Office of Premarket Approval, CFSAN.

(xii) The Director, Office of Scientific Analysis and Support, CFSAN.

(10)(i) The Director and Deputy Director, Center for Devices and Radiological Health (CDRH).

(ii) The Director, Office of Management Services, CDRH.

(iii) The Director and Deputy Director, Office of Compliance, CDRH.

(iv) The Director and Deputy Director, Division of Compliance Programs, CDRH.

(v) The Director and Deputy Director, Office of Standards and Regulations, CDRH.

(11)(i) The Director and Deputy Directors, Center for Veterinary Medicine (CVM).

(ii) The Director and Deputy Director, Office of Management, CVM.

(iii) The Director and Deputy Director, Office of Surveillance and Compliance, CVM.

(iv) The Director, Division of Compliance, Office of Surveillance and Compliance, CVM.

(v) The Chief, Case Guidance Branch, Division of Compliance, Office of Surveillance and Compliance, CVM.

(12)(i) The Director and Deputy Director, National Center for Toxicological Research (NCTR).

(ii) The Director, Office of Research Support, NCTR.

(13)(i) The Director and Deputy Director, Center for Drug Evaluation and Research (CDER).

(ii) The Directors and Deputy Directors of the Offices of Management, Epidemiology and Biostatistics, Compliance, Drug Evaluation I, Drug Evaluation II, Research Resources, Generic Drugs, and Over-the-Counter Drug Evaluation, CDER.

(iii) The Chief and Freedom of Information Officers, Freedom of Information Staff, Office of Management, CDER.

(iv) The Director, Division of Management and Budget, Office of Management, CDER.

(v) The Directors of the Divisions of Drug Labeling Compliance, Drug Quality Evaluation, Manufacturing and Product Quality, and Scientific Investigations, Office of Compliance, CDER.

(14)(i) Regional Food and Drug Directors.

(ii) District Directors.

(iii) The Director, St. Louis Branch.

(iv) The Director, New York Laboratory Division, Northeast Region.

(v) The Director, Southeast Regional Laboratory, Southeast Region.

(vi) The Director, National Forensic Chemistry Center.

(b) * * *

(1) Deputy Commissioners.

(2) The Associate and Deputy Associate Commissioners.

(3) The Director, Office of Human Resources Management, Office of Management.

* * * * *

Dated: May 9, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–12398 Filed 5–18–95; 8:45 am]

BILLING CODE 4160–01–F

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21 CFR Part 520

Oral Dosage Form New Animal Drugs; Chlortetracycline Soluble Powder Concentrate

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by the American Cyanamid Co. The supplemental NADA provides for the safe and effective use of chlortetracycline bisulfate (CTC bisulfate) soluble powder concentrate in the drinking water of chickens and turkeys for control of certain bacterial diseases susceptible to CTC, in the drinking water of swine, and as a drench in cattle for control and treatment of certain bacterial diseases susceptible to CTC. The approved supplemental NADA reflects compliance with findings of the National Academy of Sciences/National Research Council (NAS/NRC), Drug Efficacy Study Group's (DESI) evaluation of related drug products' effectiveness and FDA's conclusions concerning that evaluation.

EFFECTIVE DATE: May 19, 1995.

FOR FURTHER INFORMATION CONTACT: Dianne T. McRae, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1623.

SUPPLEMENTARY INFORMATION: American Cyanamid Co., Berdan Ave., Wayne, NJ 07470, is the sponsor of NADA 55–020 which provides for use of Aureomycin® CTC (bisulfate) Soluble Powder Concentrate (available in 1/4 and 10 pound packets) containing CTC bisulfate equivalent to 102.4 grams of CTC hydrochloride (CTC HCl) per pound. The drug product is used to medicate the drinking water of chickens, turkeys, swine, calves, beef cattle, and nonlactating dairy cattle in accordance with § 520.445b(d)(4) (21 CFR 520.445b(d)(4)). The NADA was originally approved on June 7, 1963.

American Cyanamid Co. filed a supplement to NADA 55–020 revising the product labeling to conform to that approved for the firm's supplemental NADA's 65–071 (Aureomycin® (CTC HCl) Soluble Powder) and 65–440 (Aureomycin® (CTC HCl) Soluble Powder Concentrate). Approval of those supplemental NADA's was published in the **Federal Register** of August 3, 1994 (59 FR 39438). The approval reflects compliance of the products' labeling with NAS/NRC findings and FDA's concurrence with those findings.

The NAS/NRC evaluation is concerned only with the drugs' effectiveness and safety to the treated animal. It does not take into account the safety for food use of food derived from drug-treated animals. Nothing herein will constitute a bar to further proceedings with respect to questions of safety of the drug or its metabolites in food products derived from treated animals.

Supplemental NADA 55–020 is approved as of April 6, 1995, and the regulations are amended by revising § 520.445b(d)(4) to reflect the approval. The basis for this approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), this approval for food producing animals does not qualify for marketing exclusivity because the supplemental application does not contain reports of new clinical or field investigations (other than bioequivalence or residue studies) and new human food safety studies (other than bioequivalence or residue studies) essential to the approval and conducted or sponsored by the applicant.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. Section 520.445b is amended by revising paragraph (d)(4) introductory text to read as follows:

§ 520.445b Chlortetracycline powder (chlortetracycline hydrochloride or chlortetracycline bisulfate).

* * * * *

(d) * * *

(4) The following uses of chlortetracycline hydrochloride or chlortetracycline bisulfate in drinking water or drench were reviewed by the National Academy of Sciences/National Research Council (NAS/NRC) and found effective:

* * * * * * *

Dated: May 4, 1995.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 95–12291 Filed 5–18–95; 8:45 am]

BILLING CODE 4160–01–F

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1258

RIN 3095–AA63

Reproduction Services; Fee Schedule

AGENCY: National Archives and Records Administration (NARA).

ACTION: Final rule; confirmation of interim final rule.

SUMMARY: The National Archives and Records Administration (NARA) is adopting as a final rule the interim final rule on NARA reproduction fees. The interim rule corrected addresses and removed certain photographic reproductions and fees from the published fee schedule. This rule will affect Federal agencies and members of the public who order reproductions from NARA.

EFFECTIVE DATE: The effective date of this rule is March 6, 1995.

FOR FURTHER INFORMATION CONTACT: Mary Ann Hadyka or Nancy Allard on (301)713–6730.

SUPPLEMENTARY INFORMATION: On January 30, 1995, NARA issued an interim final rule. The effective date of the interim final rule was March 6, 1995. No comments were received during the 60-day comment period provided by the interim rule. Therefore, we are confirming in this final rule the correction of addresses and removal of published fees for certain reproductions in 36 CFR part 1258.

This rule is not a significant regulatory action for purposes of Executive Order 12866 of September 30,

1993 and has not been reviewed by the Office of Management and Budget. As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on small entities.

List of Subjects in 36 CFR Part 1258

Archives and records.

PART 1258—FEES

Accordingly, the interim final rule amending 36 CFR part 1258 which was published at 60 FR 5579 on January 30, 1995, is adopted as a final rule without change.

Dated: May 11, 1995.

Trudy Huskamp Peterson,

Acting Archivist of the United States.

[FR Doc. 95–12323 Filed 5–18–95; 8:45 am]

BILLING CODE 7515–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 264, 265, 270, and 271

[FRL–5206–9]

RIN 2060–AB94

Hazardous Waste Treatment, Storage, and Disposal Facilities and Hazardous Waste Generators; Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of postponed effective date.

SUMMARY: This document postpones the effective date of the final rule on Hazardous Waste Treatment, Storage, and Disposal Facilities and Hazardous Waste Generators; Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers until December 6, 1995.

EFFECTIVE DATE: The final rule will be effective as of December 6, 1995. The EPA specified in the final rule a schedule that established the compliance dates by which different requirements of the rule must be met. These compliance dates and requirements are explained further in the final rule (59 FR 62896, December 6, 1994) under **SUPPLEMENTARY INFORMATION.** This document only changes the June 5, 1995 effective date to December 6, 1995; all other compliance dates for the final rule remain as published in the final rule (59 FR 62896, December 6, 1994.)

ADDRESSES: Docket. The supporting information used for the final rule is available for public inspection and copying in the RCRA docket. The RCRA docket numbers pertaining to the final rule are F–91–CESP–FFFFF, F–92–CESA–FFFFF, F–94–CESF–FFFFF, and F–94–CE2A–FFFFF. The docket is available for inspection at the EPA RCRA Docket Office (5305), Room 2616, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: For information about this postponement contact the RCRA Hotline at (800) 424–9346 toll-free, or (703) 920–9810.

SUPPLEMENTARY INFORMATION: This document announces the postponement of the effective date for the final Air Emission Standards published under the Resource Conservation and Recovery Act. These final standards were published on December 6, 1994 (59 FR 62896) and were originally scheduled to become effective as of June 5, 1995. Since promulgation, the EPA has become aware that certain provisions of the final standards may require clarification, and plans to publish a subsequent **Federal Register** document to clarify such provisions. This process may result in compliance options that facilities do not now realize are available. To ensure that all options are clear to affected facilities, and to ensure that all affected facilities have time to make any such alterations in their compliance plan prior to the effective date of the standards, EPA is postponing the effective date of the final rule for six months. The EPA considers a postponement of six months to be adequate time to allow for affected facilities to make any such necessary adjustments. The EPA also believes that it would be inequitable not to postpone the effective date in light of the possibility of increased compliance flexibility, so that a modest postponement is justified. See 5 U.S.C. 705 ("when an agency finds that justice so requires, it may postpone the effective date of action taken by it, pending judicial review"). Therefore, the effective date of the final rule will be postponed until December 6, 1995. The final rule text affected by this change is amended as follows.

List of Subjects

40 CFR Part 264

Environmental protection, Air pollution control, Hazardous waste, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds.

40 CFR Part 265

Air pollution control, Hazardous waste, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds, Water supply.

40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indians-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: May 8, 1995.

Mary D. Nichols,

Assistant Administrator Office of Air and Radiation.

For the reasons set out in the preamble, title 40, chapter I, parts 264, 265, and 271 of the Code of Federal Regulations are amended as follows:

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

1. The authority citation for part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924 and 6925.

Subpart CC—Air Emission Standards for Tanks, Surface Impoundments, and Containers

2. Section 264.1080 is amended by revising paragraphs (b)(1) and (c) to read as follows:

§ 264.1080 Applicability.

* * * * *

(b) * * *

(1) A waste management unit that holds hazardous waste placed in the unit before December 6, 1995, and in which no hazardous waste is added to the unit on or after this date.

* * * * *

(c) For the owner and operator of a facility subject to this subpart and who received a final permit under RCRA section 3005 prior to December 6, 1995, the requirements of this subpart shall be incorporated into the permit when the permit is reissued in accordance with the requirements of § 124.15 of this chapter or reviewed in accordance with the requirements of § 270.50(d) of this chapter. Until such date when the owner and operator receives a final permit incorporating the requirements of this subpart, the owner and operator is subject to the requirements of 40 CFR part 265 subpart CC.

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

3. The authority citation for part 265 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, 6925, and 6935.

Subpart CC—Air Emission Standards for Tanks, Surface Impoundments, and Containers

4. Section 265.1080 is amended by revising paragraph (b)(1) and paragraph (c) introductory text to read as follows:

§ 265.1080 Applicability.

* * * * *

(b) * * *

(1) A waste management unit that holds hazardous waste placed in the unit before December 6, 1995, and in which no hazardous waste is added to the unit on or after this date.

* * * * *

(c) For the owner and operator of a facility subject to this subpart who has received a final permit under RCRA section 3005 prior to December 6, 1995, the following requirements apply:

* * * * *

5. Section 265.1082 is amended by revising paragraphs (a) introductory text, paragraph (a)(1), (a)(2), introductory text, (a)(2)(iii), and (a)(2)(iv) to read as follows:

§ 265.1082 Schedule for implementation of air emission standards.

(a) Owners or operators of facilities existing on December 6, 1995, and subject to subparts I, J, and K of this part shall meet the following requirements:

(1) Install and begin operation of all control equipment required by this subpart by December 6, 1995, except as provided for in paragraph (a)(2) of this section.

(2) When control equipment required by this subpart cannot be installed and in operation by December 6, 1995, the owner or operator shall:

(i) * * *

(ii) * * *

(iii) For facilities subject to the recordkeeping requirements of § 265.73 of this part, the owner or operator shall enter the implementation schedule specified in paragraph (a)(2)(ii) of this section in the operating record no later than December 6, 1995.

(iv) For facilities not subject to § 265.73 of this part, the owner or operator shall enter the implementation schedule specified in paragraph (a)(2)(ii) of this section in a permanent, readily available file located at the facility no later than December 6, 1995.

* * * * *

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

6. The authority citation for part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), and 6926.

Subpart A—Requirements for Final Authorization

7. Section 271.1(j) is amended by adding the promulgation date, **Federal Register** reference, and effective date to the following entry in Table 1 to read as follows:

§ 271.1 Purpose and scope.

* * * * *

(j) * * *

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of regulation	Federal Register reference	Effective date
.	.	.	.
Dec. 6, 1994	Air Emission Standards for Tanks, Surface Impoundments, and Containers ...	59 FR 62896–62953	Dec. 6, 1995.

8. Section 271.1(j) is amended by revising the effective date and adding the **Federal Register** reference to the following entry in Table 2 to read as follows:

§ 271.1 Purpose and scope.

* * * * *

(j) * * *

TABLE 2.—SELF-IMPLEMENTING PROVISIONS OF THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Effective date	Self-implementing provision	RCRA citation	Federal Register reference
.	.	.	.
Dec. 6, 1995	Air Emission Standards for Tanks, Surface Impoundments, and Containers	3004(n)	59 FR 62896–62953.

[FR Doc. 95–12367 Filed 5–18–95; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Parts 1355 and 1356

RIN 0970–AB38

Statewide Automated Child Welfare Information Systems

AGENCY: Office of Information Systems Management (OISM), ACF, HHS.

ACTION: Final rule.

SUMMARY: These final rules implement section 13713 of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66). Under section 13713, funding is made available for the planning, design, development and installation of statewide automated child welfare information systems. Such systems must be comprehensive in that they must meet the requirements for an Adoption and Foster Care Analysis and Reporting

System (AFCARS) required by section 479(b)(2) of the Social Security Act (the Act) and implementing regulations; to the extent practicable, be capable of interfacing with State child abuse and neglect automated systems; to the extent practicable, be capable of interfacing with, and retrieving information from the State automated system for determining eligibility for title IV–A assistance; and, be determined by the Secretary to be likely to provide more efficient, economical, and effective administration of the programs carried out under State plans approved under title IV–B or IV–E of the Act.

Enhanced Federal funding at the 75 percent matching rate is provided for such activities as well as for the cost of hardware components effective October 1, 1993. This funding rate is eliminated under the statute after September 30, 1996, at which time a Federal matching rate of 50 percent is available. Also effective October 1, 1993, Federal financial participation at the 50 percent matching rate is available for the operation of such systems.

EFFECTIVE DATE: May 19, 1995.

FOR FURTHER INFORMATION CONTACT: Naomi Marr (202) 401–6960.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

This rule contains information collection activities which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

In accordance with the Paperwork Reduction Act of 1980, the Department resubmitted for OMB clearance the APD process, described in this document, under which States may apply for and obtain Federal financial participation in their ADP acquisitions. This reporting requirement was previously approved under OMB control number 0990–0174.

The reporting burden over and above what the States already do for the current APD approval process is estimated to average 10 hours for the initial submission of an APD. This includes time for reviewing instructions, and collecting and reporting the needed information in the APD.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing burden, to the Administration for Children and Families, 370 L'Enfant Promenade, SW, Washington, DC, 20447 and the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503, Attn: Desk Officer for ACF.

Statutory Authority

These regulations are published under the authority of several provisions of the Social Security Act (the Act), as amended by Pub. L. 103–66. Section 474(a)(3) of the Act contains new requirements providing funding for statewide automated child welfare information systems to carry out the State's programs under parts IV–B and IV–E of the Act. Under section 474(a)(3)(C), Federal financial participation at the 75 percent matching rate is available from October 1, 1993 through September 30, 1996 (after which time the rate is reduced to 50 percent), for the planning, design, development and installation of statewide automated child welfare information systems (including the full amount of expenditures for hardware components for such systems) to the extent that such systems—

(i) Meet the requirements imposed by regulations promulgated pursuant to section 479(b)(2);

(ii) To the extent practicable, are capable of interfacing with the State data collection system that collects information relating to child abuse and neglect;

(iii) To the extent practicable, have the capability of interfacing with, and retrieving information from, the State data collection system that collects information relating to the eligibility of individuals under part IV–A (for the purposes of facilitating verification of eligibility of foster children); and

(iv) Are determined by the Secretary to be likely to provide more efficient, economical and effective administration of the programs carried out under a State's plans approved under part IV–B or IV–E of the Act.

Under section 474(a)(3)(D), Federal financial participation at the 50 percent matching rate is available for the operation of the systems described above.

Section 474(e) provides that the Secretary treat as necessary for the proper and efficient administration of the State plan, all expenditures of a State necessary to plan, design, develop, install, and operate the information retrieval system under section 474(a)(3)(C), without regard to whether the systems may be used with respect to foster or adoptive children other than those on behalf of whom foster care maintenance payments or adoption assistance payments may be made under part IV–E of the Act.

These regulations are also published under the general authority of section 1102 of the Act which requires the Secretary to publish regulations that may be necessary for the efficient administration of the functions for which she is responsible under the Act.

Background

The title IV–E Foster Care and Adoption Assistance program provides Federal funds to States for the care of eligible dependent, abused or neglected children who must be placed in foster care, and for adoption assistance payments for certain children with special needs. The title IV–B, subpart 1 program provides Federal funds for service programs for children and their families aimed at strengthening families and preventing the unnecessary separation of children from their families; assuring adequate care by the State of children who are away from their homes; providing services to return children when separation occurs; and placing children for adoption or other permanent placement when restoration to the family is not possible or appropriate.

The title IV–B, subpart 2 program is a capped entitlement for family preservation and family support services. Family preservation services are targeted to families that are already in crisis and children who are at risk of being placed in foster care and include intensive interventions to help families weather crises, provide for reunification of families by returning home foster care children whenever possible, and by arranging for the adoption of or permanent and appropriate living arrangements for those children who cannot return home. Family support services are designed to help increase the strength and stability of families and include programs to improve and reinforce parenting skills and to provide respite care for care providers and drop-in centers for families.

In recognition of the critical need for effective statewide automated capability to support these programs in a comprehensive fashion, section 13713 of Pub. L. 103–66 amends the funding provisions under section 474 of the Act to provide for the development and operation of comprehensive information systems to assist in the administration of title IV–B and IV–E programs. To encourage States to act quickly to develop efficient comprehensive statewide automated information systems, Congress limited the availability of Federal funding at the 75 percent matching rate for statewide automated child welfare information systems (SACWIS) to Fiscal Years 1994, 1995 and 1996.

When implemented, these information systems will result in more efficient and effective practices in administering child welfare programs which in turn will ultimately result in improved service delivery. Readily available information and automated procedures to assist in case assessments and plans will allow States to be more proactive in program administration and to focus efforts on preventive services and measures rather than constantly reacting to crisis. With a single statewide automated information system, States will realize more efficient and effective processes and procedures.

An interim final rule providing the requirements for States wishing to pursue enhanced funding for the development of statewide automated child welfare information systems was published in the **Federal Register** December 22, 1993 (58 FR 67939). We received 22 letters of public comment regarding the interim final rule from State agencies and other interested parties. Specific comments and responses follow the discussion of regulatory provisions. These comments did not generate any changes to the regulatory provisions outlined in the interim final rule.

Regulatory Provisions

The requirements for the automation of comprehensive child welfare services are included under 45 CFR part 1355, which provides the general requirements for Foster Care Maintenance Payments, Adoption Assistance and Child Welfare Services. The purpose of these regulations, as provided under § 1355.50, is to set forth the requirements and procedures States must meet in order to receive Federal financial participation authorized under the Budget Reconciliation Act of 1993 for the planning, design, development, installation and operation of statewide automated child welfare information systems.

Funding authority for statewide automated child welfare information systems (SACWIS), is provided at § 1355.52 to effect the statutory provisions under section 474(a)(3)(C) of the Social Security Act authorizing funding for comprehensive child welfare systems.

Paragraph (a) provides the basic requirements a State must meet in order to be eligible for Federal financial participation at a 75 percent matching rate for fiscal years 1994, 1995 and 1996 and at a 50 percent matching rate thereafter for expenditures related to the planning, design, development and installation of a statewide automated child welfare information system.

First, under § 1355.52(a)(1), the SACWIS must provide for the collection and electronic reporting of data required under section 479(b) of the Act and the implementing regulations under § 1355.40. Under section 479(b) of the Act, States must establish and implement adoption and foster care reporting systems designed to collect uniform, reliable information on children who are under the responsibility of the State title IV–B/IV–E agency for placement and care.

Under paragraph (a)(2), the SACWIS must, to the extent practicable, provide for an interface with the State's data collection system for child abuse and neglect. The phrase "to the extent practicable" as used in this paragraph is statutory and reflects in part the voluntary nature of the National Child Abuse and Neglect Data Systems (NCANDS) established under Pub. L. 100–294, the Child Abuse Prevention, Adoption and Family Services Act of 1988, as well as the inherent requirement that such interface be cost beneficial to the title IV–B/IV–E programs. (For more information on the term "practicable" as used throughout this rule, refer to ACF–OISM–AT–95–001.)

As provided in the interim final rule, we would expect that most States would integrate the automation of child abuse and neglect activities as part of their SACWIS because of the direct association between child protection and child welfare services. While the language of the statute speaks of interfacing with child abuse and neglect data systems, we understand that in many States these data are already a part of a larger child welfare system and/or States will be considering the integration of such data as part of an overall comprehensive information/client system. Accordingly, the statewide automated child welfare information systems development effort may include automated procedures which will provide the State with the capability to meet the National Child Abuse and Neglect Data System requirements.

While we believe that such interface/integration is vital, in accordance with the statute any State which can clearly demonstrate through the submission of documentation with the advanced planning document (APD) that such integration or interface is not practicable because no automated statewide database exists to complete the interface or because of cost constraints would not be required to include this provision in the SACWIS as a condition of approval. In the latter case, the documentation should establish that the costs to develop and operate an automated interface with the existing system will exceed the combined costs of manual inquiry, verification and information exchange with the existing system, and duplicate data entry and maintenance in the SACWIS.

Similarly, paragraph (a)(3) requires that the SACWIS, to the extent practicable, provide for interface with and retrieval of information from the State automated information system that collects information relating to eligibility of individuals under title IV–A of the Act. Interface with, and access to, the data maintained by State IV–A systems is of vital importance for gathering information about clients or other relevant persons and because eligibility for foster care maintenance payments as well as adoption assistance are based in part, on a child's eligibility under the AFDC program. However, as provided in greater detail under the discussion of § 1355.53 below, this requirement need not be met if a State clearly demonstrates through the submission of documentation with the APD, as indicated under § 1355.52(a)(2), that electronic interface and data retrieval is not practicable because of limitations in the design of the IV–A system or because of cost constraints.

Finally, paragraph (a)(4) requires that the SACWIS provide for more efficient, economical and effective administration of the programs carried out under State plans approved under title IV–B and title IV–E.

As used here, efficient, economical and effective means that: the system must improve program management and administration by addressing all program services and case processing requirements by meeting the requirements of § 1355.53; the design must appropriately apply computer technology; the project must not require duplicative application system development or software maintenance; the procurement must provide for maximum free and open competition; and the costs must be reasonable, appropriate and beneficial.

Paragraph (b) provides that Federal financial participation provided under paragraph (a) is also available for the full amount of expenditures for hardware components. The matching rate provided is 75 percent with respect to Fiscal Years 1994, 1995 and 1996, and 50 percent thereafter. The general requirements applicable to the treatment of hardware expenditures under part 95 apply to all such expenditures.

Paragraph (c) provides that Federal financial participation at the 50 percent matching rate is available for the operating costs of statewide automated

child welfare information systems described under paragraph (a).

The conditions for funding systems under § 1355.52 are provided at § 1355.53. Functional guidelines providing details of these requirements were recently issued in the form of an action transmittal (ACF–OISM–AT–95–001).

Under paragraph (a), as a condition of funding, the SACWIS must be designed, developed (or an existing State system enhanced), and installed in accordance with an approved advance planning document (APD). The APD must provide for an efficient and effective design which, when implemented, will produce a comprehensive system which will improve the program management and administration of the State plans for titles IV–B and IV–E. Comprehensive means that the SACWIS must, to the extent feasible and appropriate, introduce, monitor and account for all the factors of child welfare services, foster care and adoption assistance, family preservation and support services, and independent living services, as provided under paragraph (b).

Paragraphs (b)(1) through (b)(8) provide, in accordance with section 474(a)(3)(C)(iv) of the Act, the functional requirements determined by the Secretary to be likely to provide more efficient, economical and effective administration of the programs carried out under State plans approved under part IV–B and IV–E of the Act. First, under paragraph (b)(1) the system must provide the State automated support to meet the Adoption and Foster Care reporting requirements through the collection, maintenance, integrity checking and electronic transmission of the data elements specified by the Adoption and Foster Care Analysis and Reporting System (AFCARS) requirements mandated under section 479(b) of the Act and § 1355.40 of this chapter.

Paragraph (b)(2) includes the requirements for system interface or integration necessary for the coordination of services with other Federally assisted programs and for the elimination of paperwork and duplication of data collection and data entry. Under this paragraph the SACWIS must provide for electronic data exchange with State systems for: (A) Title IV–A, (B) National Child Abuse and Neglect Data Systems (NCANDS), (C) title XIX, and (D) title IV–D, unless the State demonstrates that such interface or integration would not be practicable because of systems limitations or cost constraints.

With respect to the electronic exchange with the NCANDS and IV–A systems, these are statutory conditions of funding which must be met to the extent practicable. As indicated previously, we have defined "practicable" to mean that the interface requirement need not be met if the responding program system is not capable of an exchange (and the State does not wish to pursue such capability) or where cost constraints render such an interface infeasible as demonstrated by the State through the submission of documentation, in the APD, that the development and operation of such an exchange would exceed the costs of manual inquiry, verification and information exchange as well as the cost of duplicate data entry and maintenance.

Similarly, the electronic data exchange with the title XIX system is required unless the State Medicaid system does not have the capacity for such an interface or the State clearly demonstrates through the submittal of documentation that such an exchange would not otherwise be practicable because of cost constraints. The requirement for an interface with the State's child support enforcement system, unless demonstrated to be impracticable, duplicates the systems requirements under the title IV–D program, requiring statewide child support enforcement systems to provide electronic data exchange with the title IV–E program, to assure that benefits and services are provided in an integrated manner and that the State is able to collect support from the responsible parent.

Paragraph (b)(3) requires that the SACWIS enable the State to meet the provisions of section 422 of the Act by providing for the automated collection, maintenance, management and reporting of necessary information. Section 422 of the Act requires that each child in foster care under the responsibility of the State agency be afforded specific protections related to case planning, case reviews and dispositional hearings.

Accordingly, under paragraph (b)(3) the SACWIS must have automated procedures and processes to assist the State in meeting the 422 requirements. At a minimum, these automated procedures would include collection, maintenance, management and reporting of information on all children in foster care under the responsibility of the State, including statewide data from which the demographic characteristics, location and goals for foster children can be determined.

Under paragraph (b)(4), the SACWIS must provide for the collection and management of information necessary to facilitate the delivery of client services, the acceptance and referral of clients, client registration, and the evaluation of the need for services, including child welfare services under title IV–B subparts 1 and 2, family preservation and family support services, family reunification and permanent placement. This provision speaks to intake and assessment activities which include processing referrals for services, conducting investigations and determining the need for services.

Under paragraph (b)(5), the SACWIS must collect and manage information necessary to determine eligibility for the foster care program, the adoption assistance program, and the independent living program.

Paragraph (b)(6) requires that the SACWIS support necessary case assessment activities. Under this requirement, the system must have automated procedures to assist in evaluating the client's needs.

Under paragraph (b)(7), the SACWIS must assist the State in monitoring case plan development, review and management, including eligibility determinations and redeterminations.

Under this requirement the system must provide for service provision and case management which entails determining eligibility and supporting the caseworker's determination of whether continued service is warranted, the authorization and issuance of appropriate payments, the preparation of service plans, determining whether the agency can provide services, authorizing services and managing the delivery of services.

Finally, under paragraph (b)(8), the confidentiality and security of the information and the system must be ensured.

Paragraph (c) provides other program functions which may be included at State option in the SACWIS design under paragraph (a) of this section. We believe that the vast majority of States would want to incorporate these functions in their SACWIS development or enhancement activities but we are sensitive to the need for State flexibility to determine their own optimal level of automation and thus these elements are optional.

Under paragraph (c)(1), the SACWIS may provide management and tracking capability to assist the State in resource management, including automated procedures to assist in managing service providers, facilities, contracts and recruitment activities associated with foster care and adoptive families.

Under paragraph (c)(2) the SACWIS may provide for tracking and maintenance of legal and court information, and preparation of appropriate notifications to relevant parties.

Under paragraph (c)(3) the SACWIS may provide automated capability to assist in the administration and management of staff and workloads. This functionality would provide for a sensible and practical balance between the workload and workforce and provide a methodology for management to prioritize resource allocation and workload decisions.

Under paragraph (c)(4) of this section, the SACWIS may assist the State in tracking and management of licensing verification activities.

Paragraph (c)(5) provides that the SACWIS may support the State in priority setting and risk assessment or risk analysis activities. Such automated support could include an expert systems module, or rule-based automation to assist in consistent caseworker analysis and to aid in decision-making to the extent the APD justifies that such automation is both technologically and programmatically feasible as well as cost effective.

Paragraph (d), provides that the SACWIS design may at State option provide for interface with other automated information systems, including, but not limited to: accounting and licensing systems, court and juvenile justice systems, vital statistics and education, as appropriate. Such interface or integration would create a link to obtain and verify client information that is maintained in other systems to ensure appropriate delivery of services such as information on school attendance and performance. Other linkages could include resource directories and license payment systems.

Under paragraph (e), if the cost benefit analysis submitted as part of the APD indicates that full adherence to paragraph (c) and (d), would not be cost beneficial (e.g., relative to the State caseload or level of automation), final approval of the APD may be withheld pending reassessment of the State's specific automation needs and, as necessary, adjustment of the APD to reflect a level of automation which is cost beneficial. This paragraph is intended to make clear that any optional functionality to be undertaken by a State is subject to the same requirement for cost effectiveness as required of all other functional elements.

Paragraph (f) provides that a statewide automated child welfare information system may be designed, developed and installed on a phased basis, in order to allow States to implement AFCARS requirements expeditiously as long as the approved APD includes the State's plan for full implementation of a comprehensive system which meets all functional and data requirements as specified in paragraphs (a) and (b) of this section, and a design which provides for a comprehensive system and which will support these enhancements on a phased basis.

Finally, paragraph (g) requires that the system perform quality assurance functions to provide for the review of case files for accuracy, completeness and compliance with Federal requirements and State standards.

Requirements for submittal of advance planning documents are provided at § 1355.54. Under § 1355.54, Submittal of advance planning documents, the State title IV–E agency must submit an APD for a statewide automated child welfare information system, signed by the appropriate State official, in accordance with procedures specified by 45 CFR part 95, subpart F. The conditions for FFP at the applicable rates for the costs of automatic data processing incurred under an approved State plan for titles IV–A, IV–B and IV–E of the Act (among others) are contained in 45 CFR part 95, subpart F.

ACF review and assessment of statewide automated child welfare information systems is provided under § 1355.55 of this regulation. Under paragraph (a), ACF will, on a continuing basis, review, assess and inspect the planning, design, development, installation and operation of the SACWIS to determine the extent to which such systems: (1) Meet § 1355.53 of this chapter, (2) meet the goals and objectives stated in the approved APD, (3) meet the schedule, budget, and other conditions of the approved APD, and (4) comply with the automated data processing services and acquisitions procedures and requirements of 45 CFR part 95, subpart F.

Under § 1355.56, Failure to meet the conditions of the approved APD, information on the consequences and actions resulting from a State's failure to meet the conditions of the approved APD is provided. Under paragraph (a) of § 1355.56, if ACF finds that the State fails to meet any of the conditions cited in § 1355.53, or to substantially comply with the criteria, requirements and other undertakings prescribed by the approved APD, approval of the APD may be suspended.

Paragraph (b) provides events which shall take place should suspension of the APD occur. Under paragraph (b)(1), if the approval of an APD is suspended during the planning, design, development, installation, or operation of the SACWIS the State will be given written notice of the suspension stating: (A) The reason for the suspension, (B) the date of the suspension, (C) whether the suspended system complies with Part 95 criteria for 50 percent FFP, and (D) the actions required by the State for future enhanced funding.

Under paragraph (b)(2), the suspension will be effective as of the date the State failed to comply with the approved APD. Paragraph (b)(3) further provides that the suspension shall remain in effect until ACF determines that such system complies with prescribed criteria, requirements, and other undertakings for future Federal funding. Should a State cease development of an approved system, either by voluntary withdrawal or as a result of Federal suspension, paragraph (b)(4) provides that all Federal incentive funds invested to date that exceed the normal administrative FFP rate (50 percent) will be subject to recoupment.

The issue of cost allocation is addressed under § 1355.57. Under paragraph (a), all expenditures of a State to plan, design, develop, install, and operate the data collection and information retrieval system described in § 1355.53 of this chapter shall be treated as necessary for the proper and efficient administration of the State plan under title IV–E, without regard to whether the system may be used with respect to children other than those on behalf of whom foster care maintenance payments or adoption assistance payments may be made under the State plan.

Paragraph (b) provides that cost allocation and distribution for the planning, design, development, installation and operation must be in accordance with Part 95.631 and section 479(e) of the Act, if the SACWIS includes functions, processing, information collection and management, equipment or services that are not directly related to the administration of the programs carried out under the State plans approved under titles IV–B or IV–E.

A conforming provision is provided under § 1356.60, Fiscal requirements (title IV–E), in paragraph (e), Federal matching funds for SACWIS. This paragraph merely reiterates the statutory provision that all expenditures related to an approved APD under § 1355.52, will be treated as necessary for the proper and efficient administration of the State plan, without regard to whether the system is used with respect to foster or adoptive children other than those on behalf of whom foster care

maintenance or adoption assistance payments are made under title IV–E.

Response To Comments

We received a total of 22 comments on the interim final rule published in the **Federal Register** December 22, 1993, (58 FR 67939) from State agencies and other interested parties.

Specific comments and our responses follow.

General Comments

Comment: Commenters were extremely supportive of the interim final rules. They were pleased with the flexibility provided and noted that the rules incorporate the diversity of child welfare programs into a realistic automation plan. One commenter however was concerned about the limited comment period provided.

Response: We believe that the partnership strategy employed in developing these rules fostered a positive dialogue between the Federal government and States and led to the development of a better rulemaking document which provides States with the tools they need to improve IV–B/IV–E effectiveness. As indicated in the preamble to the interim final rule, in developing these rules we relied heavily on information from existing State efforts to establish systems and the efforts of a State and Federal child welfare system workgroup.

So that the States could begin development and avoid the risk that the rules would change, we restricted the comment period to 30 days in an effort to quickly identify whether there were any fundamental problems or concerns with the terms of the interim rules which would have necessitated a major change in direction in the final rule. We felt this was critical because of the relatively short window of opportunity related to the availability of enhanced funding.

Requirements for FFP

Comment: One commenter questioned the criteria used to distinguish between development and operation and asked how implementation costs will be funded. Another commenter asked at what point a system is considered operational for the purpose of claiming expenditures at the regular rate, particularly under a phased approach.

Response: Enhanced funding is available for the planning, design development and installation of a SACWIS, while operational costs are funded at the regular administrative match rate. We view implementation costs as part of design, development and installation of the system. The State's ability to claim enhanced funding ceases when the system (or portion of the SACWIS, in a phased development effort) has successfully passed a pilot test and is used to support child welfare activities in an automated fashion in any geographical area. However, a State may continue to claim enhanced funding for costs associated with the planning, design, development and installation of a subsequent phase of the total project, as well as allowable installation costs (e.g., conversion and training activities) for parts of the State that have not yet been converted to the new system.

As provided in ACF–OISM–AT–95–001, the operational stage of the SACWIS is the point at which the system is used for automated processing. The implementation APD covers the design, development and installation of the SACWIS. It should also be noted that hardware costs are eligible for 75 percent matching within the window provided by statute regardless of the operational status of the system.

HHS and the Food and Consumer Service (formerly the Food and Nutrition Service) published changes to our information technology policies regarding the depreciation or expensing of data processing equipment (Action Transmittal AT–94–5, dated July 22, 1994). Equipment having a useful life of more than one year and a unit acquisition cost of less than $5,000 may now be expensed for the quarter in which it is purchased. These recent policy changes should allow States to expense a large portion of the hardware necessary for SACWIS; however, there will still remain hardware with a unit acquisition cost of greater than $5,000. For equipment that falls into this category, the State must either depreciate or charge use allowance for the cost of the equipment over its useful life, and in accordance with statewide accounting practice.

For more information, see 45 CFR part 95, subpart F, "Automated Data Processing Equipment and Services; Conditions for Federal Financial Participation (FFP)."

Comment: One commenter asked what effect the rules will have on current and future claims at the 50 percent matching rate for systems enhancements that may not meet these requirements. Another commenter asked whether the effective date limitation means that the entire system must be accepted prior to September 30, 1996 for enhanced funding to be available.

Response: In response to the first commenter, these rules apply only to systems funded at the enhanced matching rate provided in the 1993 legislation. However, any system initially funded under these rules would continue to be subject to these requirements even after the start of FY 1997 when the enhanced funding allowance expires.

With respect to the second comment, the system need not be fully operational by September 30, 1996 to receive enhanced funding. As provided in ACF–OISM–95–001, the three-year window for claiming enhanced funding does not mean that the project must be completed prior to the expiration of the availability of enhanced funding. However, even though the project may not be complete within this time, the statute is clear that expenditures after this date are no longer eligible for enhanced funding.

Comment: A number of commenters expressed concern that the three year window for enhanced funding is too short, especially for States which are starting with primitive systems or which require the consent of the State legislature. Others were concerned with the limitation in light of their immediate need to meet the AFCARS requirements.

Response: The three-year time limit on the availability of enhanced funding for statewide automated child welfare information systems is contained in statute and we have no statutory authority to extend the availability of this funding rate. With respect to the second point, however, we understand that States may have difficulty in dedicating the necessary time and resources to meet the AFCARS and SACWIS requirements concurrently and for this reason the rule provides a phase-in strategy to allow the AFCARS requirements of the system to be pursued first.

As provided in ACF–OISM–AT–95–001, a phased approach might allow the roll-out of a system on a phased basis under which workers could begin to use some of the planned functionality of the system, such as enhanced data collection capability which would enable compliance with the AFCARS reporting requirements, while additional modules or components are not yet available.

Functional Requirements

Comment: One commenter asked whether guidance will be offered to assure that States have a clear understanding of the systems requirements.

Response: Since issuance of the interim final rule, general guidance on systems requirements and functionality has been provided to the States in several forums, such as the semi-annual ACF User Group Meeting, various ACF sponsored State technical advisory groups, System and Child Welfare related conferences, State and Federal Child Welfare Collaboratives, and issuance of a draft and final version of a child welfare related action transmittal (ACF–OISM–AT–95–001). As indicated in the interim final rule, we stand ready to assist in the planning, design, development and installation of a SACWIS upon request.

Comment: One commenter was concerned that the requirements are too client focused, rather than family focused, stating that in a system growing out of concern for family preservation, there needs to be greater attention to the identification of the strengths and needs of the family.

Response: We disagree with the commenter and believe that the SACWIS design envisioned under this rule supports the family. These projects are intended to be more than information systems but rather comprehensive tools to make service delivery more responsive to the needs of families and communities. It is our strong expectation, which we had hoped to convey in the interim final rule, that States will take advantage of this opportunity to move the child welfare service system into a direction which would lead to a more coordinated, flexible system, built on and linked to existing community services and support able to serve children and their families in a more effective way.

A. Interfaces

Comment: One commenter asked about the availability of FFP for systems modifications to enable the interface and data exchange requirements with SACWIS to be met. Another requested additional clarification as to what must be addressed in an interface component. Still another asked if the cost of an interface is placed completely on the State's child welfare agency and questioned the role of the agencies with jurisdiction over IV–A, Medicaid and IV–D?

Response: As provided in ACF–OISM–AT–95–001, FFP is available for the IV–B/IV–E portion of the interface. FFP is not available for the cost of automating the respondent agency. Because we have no legislative authority to pay for the reciprocating end of any interface, any modifications to another existing system to support an interface with a SACWIS (optional or required) must be funded by the program that supports the system to which this interface is being established.

To the extent that such programs are automated, the SACWIS would be required to establish an interface. Where these entities are not automated, no automated interface is possible, and the State will not need to fulfill this requirement. Further, as provided in the above cited action transmittal, FFP is not available to develop functionality in a SACWIS when it duplicates functionality which already exists in other State system(s) to which an interface is required.

The purpose of these requirements is to provide integrated services to clients through more accurate, timely and effective exchange of information.

Comment: One commenter asked that we provide clarification on cost allocation procedures between programs sharing data for purposes of the interface requirements.

Response: As indicated above, FFP is not available to develop functionality when it duplicates functions which already exist in another State system. If a function supports but does not exclusively or primarily benefit the program under title IV–E or IV–B, the cost must be allocated among all benefitting programs. To illustrate, our action transmittal provided the example of factors pertaining to the determination of eligibility for an income maintenance program such as AFDC. While the determination of eligibility for such benefits is clearly linked to the provision of services to children and families under title IV–E and IV–B, it is not reasonable to allocate the cost of developing eligibility subsystems or modules to title IV–E as the primary program benefitting from such automation. In these cases, the cost must be allocated between title IV–E and the other benefitting eligibility processes.

The issue of cost allocation is addressed in more detail in response to comments later in the preamble and in ACF–OISM–AT–95–001.

Comment: One commenter requested clarification of the requirement for interface with the IV–A (AFDC) and IV–D (child support enforcement) programs.

Response: We believe each of the interfaces referenced by the commenter are important to SACWIS development in that they are intricately related to the title IV–E program. Title IV–A eligibility is a determining factor in title IV–E eligibility. Further, the requirement for an interface where practicable between the SACWIS and the State's IV–A system is mandated in statute. The title IV–D interface requirement replicates a functional requirement of a certified IV–D system. Interface between the child support agency and the SACWIS may be extremely beneficial to the goals of both programs in that it may assist in the collection of increased child support on behalf of children receiving child welfare services and could assist in the unification and permanent placement of children with formerly noncustodial parents.

As with the requirements for interface with the State Medicaid agency and the State child abuse and neglect system, we believe an electronic interface will be far more effective in service delivery than redundant data entry to multiple systems.

B. Case Assessment Activities

Comment: One commenter was concerned that the approach to services is not sufficiently individual and stated that an adequate SACWIS needs to support a sophisticated and highly individualized approach to the provision of services.

Response: Automation is intended to *assist* workers' needs in effective service delivery, not supersede their judgment. We wholeheartedly agree that individual assessment is critical but believe that the system can support and inform the caseworker by ensuring that the right questions are asked and addressed.

C. Confidentiality and Security

Comment: One commenter was particularly concerned about the requirement that the State agency responsible for the APD be accountable for the confidentiality of the SACWIS and raised related concerns regarding access to information and the cross-training of agency workers. Concern was raised by another commenter that the rule does not mention confidentiality which the commenter considers to be an important aspect of any required cross-agency interface. Still another questioned how confidentiality of information can be assured in an interface system and what rules the agency with jurisdiction over IV–A, IV–D and Medicaid have for treatment?

Response: These regulations require under § 1355.53, that at a minimum the SACWIS must ensure the confidentiality and security of the information and the system. Under this requirement, States are expected to build systems which provide necessary safeguards which would, for example, enable them to share information, when such sharing is legal and appropriate, without identifying the source, or which would enable them to limit access to specific data elements.

Each of the programs subject to an interface expectation is also subject to

specific statutory confidentiality requirements which the system must provide. However, Federal statute and regulations allow, and in many cases require, designated State agencies to disclose confidential information to other State agencies for the purpose of administering other Federal programs. Thus, confidentiality rules should not be an obstacle to the development of an effective interface with the systems used to administer the title IV–A, IV–D and XIX programs.

For more information on the issue of confidentiality, see our action transmittal, ACF–OISM–AT–95–001.

Optional Functionality

Comment: One commenter expressed hope that the final regulations will speak to the importance of incorporating outcome measure data collection within the comprehensive system development and that data collection specifically related to capturing training information for State staff be provided as an optional feature.

Response: We agree that data collection to support outcome measures are important to comprehensive systems design and believe that we have provided States with flexibility to incorporate these measures in their SACWIS. Data collection necessary to support outcome measures are integral to meeting the AFCARS requirements and are also embraced under § 1355.53(g), which requires that the system perform Quality Assurance functions for the review of casefiles for accuracy, completeness and compliance with Federal requirements as well as State standards. This would include generation of summary management reports and exception reports related to services needed and provided.

With respect to the second point, under § 1355.53(c)(1), the system may perform functions related to resource management which would include information captured for training purposes.

Comment: One commenter asked whether the provision at § 1355.53(c)(3) includes *systems* administration or administration of staff and workload and asked for clarification of whether costs associated with systems administration are eligible for enhanced funding and then regular funding for operational costs.

Response: Under § 1355.53(c)(3) the SACWIS may provide automated capability to assist in the administration and management of *staff and workloads.* This would provide a methodology for management to prioritize resource allocation and workload decisions to support program staff. It is not intended to provide systems administrative support.

Comment: One commenter asked for clarification of whether the allowance at § 1355.53(c)(5), i.e., that the system may provide for risk analysis, was the same as risk assessment.

Response: Yes, as used under § 1355.53(c)(5) risk analysis is the same as risk assessment.

Comment: Also regarding risk analysis, one commenter expressed concern that ACF may be suggesting that commercially-available off-the-shelf (COTS) technology is limited in use to the area mentioned in the regulation and encouraged ACF to restate the position on this technology and its use so it is clear that they are not restricting it in some manner or endorsing any particular system approach. The commenter further questioned ACF's reference to "rule based" automation and noted that COTS technology is far preferable to the customized rule based software modules which have been embedded in other human service systems.

Response: It was not our intent to suggest that commercially available off the shelf technology (COTS) is either limited in its use or inferior to customized rule based technology. However, we are not aware of a COTS package available today that will meet the case management, service delivery and automated support needed to qualify as a SACWIS. A State may build or transfer a customized application software which is enabled by a COTS software development tool.

Comment: One commenter questioned whether the intent of § 1355.53(e) was to provide that if one of the optional functions under paragraph (c) and (d) is not cost beneficial, final approval of the APD may be withheld.

Response: Paragraphs (c) and (d) of § 1355.53 are optional levels of system functionality which States have discretion to adopt, and for which enhanced funding may be provided, if such functionality will be efficient and effective. However, if a State decides to include any or all of these elements in their SACWIS design, the APD would have to indicate that their inclusion would not negatively affect the cost-effectiveness of the system. The fact that they are optional functions does not eliminate the requirement that the system design prove to be cost beneficial. For example, if in a given State inclusion of one or more of these elements resulted in over-automation for demographic reasons, that is, automated to a level beyond the State's needs and thus was not cost beneficial, approval of the APD would be withheld until the area of over-automation was dropped.

If it is shown through the cost benefit assessment that it is more cost-effective not to automate to the degree provided under the optional functionality, approval of the APD may be withheld.

Comment: We were asked by one commenter to state that the "mays" of the system are purely optional. This commenter also remarked that States should not have to justify why these functions are not included in their APD.

Response: We would reiterate that the functionality included under paragraphs (c) and (d) of § 1355.53 are State options as indicated in the preamble. If a State chooses not to include these elements in their SACWIS design, no justification is necessary in the APD. However, as provided under paragraph (e), if any of these items is included, the State must indicate in the APD that such element(s) will be cost beneficial.

Comment: One commenter asked for clarification regarding what functions can reside within a statewide payment system and what is *required* for the SACWIS.

Response: We are not limiting the use or functions of statewide payment systems under this regulation. States have flexibility to continue to use such systems as long as the IV–B/IV–E related information necessary to meet these regulations is accessible through communication or link with the SACWIS. In this case, enhanced funding may be claimed for the interface to the existing statewide payment system. However, any modifications to a separate system must be allocated to all benefitting programs affected by such modification. Any costs allocable to title IV–B or IV–E for such modifications will only be matched at the regular funding rate.

Comment: One commenter questioned whether it would be possible to modify the APD at a later date to include optional interfaces.

Response: Yes, under § 1355.53(d), the system may interface with other automated information systems. This could be included under the original APD or as an amendment to the APD, as long as the State can show, in accordance with paragraph (e), that such an interface would be cost beneficial.

Comment: One commenter stated appreciation for the section in the rules that addresses optional systems functions, acknowledging that not all States will be in a position to develop systems so far reaching.

Response: Our intent was to outline the level of functionality we thought appropriate for the vast majority of States while recognizing the need for maximum State flexibility.

Comment: We were asked by one commenter to clarify whether the need for a cost benefit analysis in the APD process could be waived.

Response: The need for a cost benefit analysis in the APD cannot be waived. Cost benefit analyses are a required portion of all APDs, necessary to determine efficiency, effectiveness and economy of system design. As noted in the preamble to the interim final rule, OBRA '93, in authorizing enhanced funding for automated information systems for family and children's programs, specifically requires for the first time that the Secretary include economic considerations along with the traditional statutory provisions for systems implementation of "efficiency and effectiveness" in determining whether a system should be funded. In accordance with existing requirements at 45 CFR Part 95, before a project is approved the State must present a cost benefit analysis as part of an APD. We have issued technical assistance in this area in the form of a publication entitled *Feasibility, Alternatives, and Cost/Benefit Analysis Guide.* Following our initial publication, we issued additional guidance entitled *Companion Guide Cost/Benefit Analysis Illustrated.* Both of these documents are available through ACF.

Sound management practices require that a State perform a cost/benefit analysis of any proposed undertaking which would result in the expenditure of a large amount of funds.

Comment: One commenter suggested that it might be helpful to revise the language in § 1355.53(e) to provide "any function described under paragraph (c) and (d) included in the APD by the State will require cost justification or final approval of the APD may be withheld."

Response: Under paragraph (e), if a State chooses to include optional functionality in its system design, such functions are subject to all cost benefit tests required of any other functional specification. If a State cannot design a system including such optional functionality in a manner that proves cost beneficial in the APD, approval of the APD may be withheld until such time as the system is designed in such a manner that it is cost beneficial.

While the language suggested by the commenter is acceptable, since we did not receive a substantial number of questions on this issue, we are not revising the language from that provided in the interim final rule.

Comment: Paragraph (f) of § 1355.53 provides that a statewide automated child welfare information system may be designed, developed and installed on a phased basis, in order to allow States to implement AFCARS requirements expeditiously, in accordance with section 479(b) of the Act, as long as the APD includes the State's plan for full implementation of a comprehensive system which meets all functional requirements and a system design which will support these enhancements on a phased basis. According to a commenter, it is not clear in the case of a State which has included mandatory components and optional components whether they only have to meet the mandatory components addressed in the APD to keep from jeopardizing their enhanced match.

Several commenters indicated that they were pleased with the phased approach. One of these requested clarification on enhanced funding allowed for the development of non-required features.

Response: With respect to the first comment, if a State initially anticipates developing a system on a phased basis which includes mandatory and optional functionality and later decides not to pursue the optional elements, they would not jeopardize the enhanced funding. In such a case, we would simply adjust funding approvals to reflect changes for the cost of the optional elements which were dropped from the systems effort. Corresponding changes will be required in the cost-benefit analysis for the project to reflect the anticipated differences in cost-effectiveness resulting from the change in systems functionality. However, we expect such situations to be rare and that APDs will realistically provide what the State can do.

With respect to the latter comment, optional elements are eligible for enhanced funding as long as other general requirements for enhanced funding are met.

Comment: One commenter expressed the view that the term quality assurance functions has no singular or clear meaning in the child welfare or social services arena and stated that States should not be expected to perform functions beyond their current staffing and legislative mandates and scope.

Another commenter indicated that this provision might be troubling because it sounds like the system would need to include almost the entire casefile in order to perform the functions necessary to assure compliance with Federal requirements and State standards. The commenter questioned this mandate since it was not in statute.

Other commenters requested clarification of why the quality assurance function is needed and said the definition should include whether it is related to data integrity for AFCARS or rather review of a casefile to assure compliance with program policy requirements. One commenter asked for further guidance on the requirements for quality assurance functions to provide for review of casefiles.

Response: While not specifically mandated by statute, we believe the requirement for quality assurance capability is necessary to meet the statutory requirements of efficiency, economy and effectiveness. Since a State's SACWIS is intended to be the source of child welfare information, it is essential that the State have in place a process to ensure the quality and completeness of the data. As provided in our action transmittal (ACF–OISM–AT–95–001), it is essential that the system incorporate quality assurance measures, processes and functions to ensure completeness, accuracy and consistency of critical data and to support sound management practices. The requirement is intended to ensure that all current and historical information and data maintained by the system are kept in logical sequence, and accessible in a timely manner to monitor operation and assess performance. With respect to the commenter's concern about the need for the system to maintain the State's entire casefile, we would remind the commenter that such a requirement is inherent in the statutory requirement that the system meet the SACWIS case management and AFCARS requirements, to the extent that these requirements comprise the most significant data elements included in the casefile.

Further guidance on meeting the requirements for quality assurance are detailed in our action transmittal referenced above.

Comment: One commenter stated that quality assurance functions are focused on agency process rather than outcomes for children and families and expressed concern that while good attention is given to documenting service delivery only minimal attention is given to outcome measures. The commenter was concerned that an adequate SACWIS must not only address the scope of services but their effectiveness.

Response: We encourage States to use their SACWIS as a means for measuring the effectiveness of service delivery. Furthermore, we believe that the language is flexible enough to allow States to address outcome measures as part of their SACWIS effort. However, effective outcome measures of service delivery do not ensure the accuracy and

completeness of data, and while we encourage State to use the flexibility allowed, it is essential that the system incorporate quality assurance measures to ensure the completeness, accuracy and consistency of critical data.

Comment: One commenter stated a desire to see a statement in the optional section that allows the Secretary to approve other enhancements to the child welfare automated systems not mentioned in this section but which will result in a comprehensive system.

Response: Additional functionality beyond what is defined in § 1355.53 of the regulation may be funded at the enhanced rate as long as the State can demonstrate that it will provide more efficient, economical and effective administration of the programs under title IV–B and IV–E. To be eligible, added functionality may not duplicate functionality included in an existing system to which an interface is required and the APD must address the cost benefit of the optional functionality requested for approval by the State.

APD Submission

Comment: One respondent asked how States which have already submitted an APD expressing the intent to seek funding for a comprehensive system should submit claims now for the enhanced funding.

Response: Such States would submit requests using existing form IV–E–12, State Quarterly Report of Expenditures and Estimates, and following existing procedures for requesting program funding under title IV–E. Procedures for submitting APDs are specified by 45 CFR part 95, subpart F.

Comment: Two commenters expressed agreement with the transfer policy provided in the interim final rule. However, another requested that systems transfer be addressed in the final rule. Still another suggested that system transfer may not be the best solution.

Response: As stated in the preamble to the interim final rule, our intent in publishing these rules is to provide States necessary flexibility to develop systems fitting their individual needs. Under part 95 requirements, a State must conduct an alternative analysis to consider both the enhancement of any existing systems and the transfer of a system to determine the most cost effective approach. However, as noted in the interim final rule, we recognize that at this time, there is only limited State experience in comprehensive child welfare systems development. Because of the limited scope of current comprehensive child welfare systems, a flexible approach has been adopted in considering justifications for not transferring existing systems.

Comment: Two commenters expressed interest in pursuing any technical assistance which ACF can provide. Another commenter questioned how technical assistance can be provided when ACF Regional Office staff have no travel money.

Response: Budget limitations often necessitate difficult decisions concerning allocation of resources, including decisions which may serve to limit the availability of on-site technical assistance. However, we do not believe that technical assistance must necessarily be on-site to be effective. In fact, we are hopeful that our action transmittal and our involvement in national users meeting and conferences have alleviated much of the need for on-site assistance. Furthermore, ACF has awarded a contract to assist in the development of a Child Welfare prototype system. As part of that contract, we will sponsor several national and regional conferences to share information and provide technical assistance to States. Central and Regional Office staff stand ready to provide States with help upon request.

Comment: One commenter asked whether, in the interest of saving time, if it is possible to share APD work being done by various other States and whether the Federal government will facilitate sharing. Another expressed interest in efforts to develop a consortia of States with similar commitments to permit more rapid and efficient development of systems which have greater capability to produce information of quality.

Response: We have and will continue to share system related documents, such as APDs, RFPs and other design documents, as they become available. These materials are available to the public upon request. We have distributed information to various States, child welfare related foundations, vendors and other public interest groups. We have entered into partnerships with States to coordinate the joint design of child welfare information systems. We have established different State Technical Advisory groups to identify the best approaches for sharing information. We have participated in regional and national system and child welfare conference and we will continue to encourage the sharing of State experience at the ACF Users Group meetings.

Review and Assessment and Part 95 Requirements

Comment: One commenter stated that depreciation of equipment is a major concern. For many States the three year window could conceivably be very narrow for the planning, design and development phases, especially under a phased-in approach and for States just entering the planning phase and asked that this be addressed in the guidance provided under an action transmittal.

Others stated that the depreciation period should be over the same period as the availability of enhanced funding, i.e., equipment should be depreciated over a three year period instead of a five year time span.

These commenters point out that the regulation appears to conflict with the statute which states that payments to States "including 75 percent of the full amount of expenditures for hardware components for such system" and suggested that since enhanced funding is available for only 3 years, the rule should reflect an exception to the 5-year depreciation schedule requirements.

On a related issue, commenters thought that language on financing of hardware appears to be the same as depreciation and suggested that expensing be instituted.

Response: As provided in our action transmittal, recent policy changes delineated at ACF–AT–94–5, dated July 22, 1994, may allow States to expense a large portion of the hardware necessary for SACWIS. For additional information, see ACF–OISM–AT–95–001.

However, the statute explicitly eliminates enhanced funding for system activities as of October 1, 1996. We have no authority to adjust this statutory date or to revise the Department's requirements for capitalization and depreciation of equipment in this final rule. The controlling requirements for depreciation are found in 45 CFR part 95, subparts F and G.

Comment: One commenter recommended that a clear timeframe for review and assessment of the systems be provided to allow States to view the process as cooperative, supportive and one that allows regular feedback, technical support and a mechanism for State accountability.

Response: As indicated previously, technical assistance is available to ensure that the process for APD review and approval and subsequent system approval is as cooperative and supportive as possible. Unlike the case with other State systems, the review process established does not entail a certification requirement in order to allow maximum flexibility.

Comment: With respect to the submittal of Advance Planning Document Updates, one commenter noted that meeting the timeframe for submitting an APD may be problematic due to new Federal requirements, identification of proposed project changes and the internal State review process.

Similarly, another commenter expressed concern that the timeframe will be difficult for some States to meet and encouraged ACF to actively seek out States to which this section applied to ensure they understand the importance of meeting this critical deadline.

Response: The regulations at 45 CFR 95.605(3)(b), indicate that a State must submit an As Needed APD Update when significant changes are expected to a project. We have identified and worked with the States affected by this requirement and have either granted final or conditional approval of their APD Updates. None of the concerned States were adversely affected by this requirement.

Comment: On a miscellaneous issue, one commenter noted that paragraph (b) has been reserved under 45 CFR 95.641 or 45 CFR 1355.55 and questioned this.

Response: The issue raised by the commenter merely speaks to a regulatory drafting requirement. Under regulatory drafting rules it is inappropriate to refer to a paragraph designated as "(a)" without referencing a "(b)" cite. There are no plans to add to this section.

Failure to Meet the Condition of the Approved APD

Comment: One commenter thought that it was unclear whether recoupment of enhanced FFP applies only to those components of the APD that are required under 45 CFR 1355.53. States could develop an APD that proposes to develop an automated system that included some permissive components, develop required components and then fail to get sufficient funding to complete the permissive components. States should not be penalized for revising the APD downward as long as they meet the minimum requirements.

Response: While we would hope that States would ensure that their plans are realistic prior to submittal, States would not be penalized in cases where optional automation plans were dropped, unless such changes negatively affected either the cost-effectiveness of the system or the State's ability to complete the project successfully. In such cases, if a State pulled back on discretionary items, we would simply recalculate funding to make the necessary adjustments.

Comment: Another commenter noted that § 1355.56 provides that failure to meet the conditions of these regulations may result in an approved APD being suspended while at the same time recognizing that penalties are provided for failure to comply with the AFCARS regulations. The commenter was concerned that this could put States in the position of being unable to meet AFCARS because of a loss of SACWIS funding.

Response: We would like to clarify that the loss of funding discussed with respect to § 1355.56 refers only to enhanced funding for SACWIS and good systems planning would ensure that no State is put in the position of losing this funding.

We agree that there is a strong interrelationship between AFCARS implementation and SACWIS development and for this reason have allowed States to implement their SACWIS on a phased based to ensure that AFCARS requirements are met expeditiously.

Cost allocation

Comment: One commenter expressed interest that we acknowledge that systems transfer from another State may not be the best solution, but shared development (and funding) program to program in the State be encouraged.

Another asked that we provide more detail on cost allocation.

Response: We agree that systems transfer from another State may not be the best solution in SACWIS design and, as indicated in the preamble to the interim final rule, plan to be flexible in our consideration of State analysis provided in the APD for not going this route in SACWIS development.

For information regarding the effect of shared development on cost allocation or for detailed specification of the cost allocation requirement, please see our action transmittal, ACF–OISM–AT–95–001.

Regulatory Impact Analysis

Executive Order 12866 requires that regulations be reviewed to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this rule is consistent with these priorities and principles. An assessment of the costs and benefits of available regulatory alternatives (including not regulating) demonstrated that the approach taken in the regulation is the most cost-effective and least burdensome while still achieving the regulatory objectives.

Regulatory Flexibility Analysis

Consistent with the Regulatory Flexibility Act (Pub. L. 96–354) which requires the Federal government to anticipate and reduce the impact of rules and paperwork requirements on small businesses and other small entities, the Secretary certifies that this rule has no significant effect on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required.

List of Subjects

45 CFR Part 1355

Adoption and foster care, Child welfare, Data collection, Definitions grant programs—Social programs

45 CFR Part 1356

Adoption and foster Care, Administrative costs, Child welfare, Fiscal requirements (title IV–E), Grant programs—social programs, Statewide information systems

(Catalog of Federal Domestic Assistance Program No. 13.658, Foster Care Maintenance, 13.659, Adoption Assistance and 13.645, Child Welfare Services—State Grants)

Approved: April 5, 1995.

Mary Jo Bane,

Assistant Secretary for Children and Families.

Accordingly, the interim rule amending 45 CFR Parts 1355 and 1356 which was published at 58 FR 67939 on December 22, 1993, is adopted as a final rule with the following change:

PART 1355—GENERAL

1. The authority citation for Part 1355 continues to read as follows:

Authority: 42 U.S.C. 620 et seq., 42 U.S.C. 670 et seq.; 42 U.S.C. 1301 and 1302.

§ 1355.53 [Amended]

2. Section 1355.53(b)(3) is amended by replacing the reference to "section 427" in the first line with a reference to "section 422."

[FR Doc. 95–11909 Filed 5–18–95; 8:45 am]

BILLING CODE 4184–01–P

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1039

[Ex Parte No. 346 (Sub-No. 35)]

Rail General Exemption Authority—Exemption of Ferrous Recyclables

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: Pursuant to its authority, the Commission is exempting from regulation the transportation by rail of iron and steel scrap (STCC No. 40–211) and steel shipping containers (STCC No. 34–912). These commodities are added to the list of exempt commodities, as set forth below.

EFFECTIVE DATE: June 18, 1995.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5610. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: On August 24, 1994, at 59 FR 43528, we requested comments on a proposal by the Association of American Railroads (AAR) and the Institute of Scrap Recycling Industries, Inc. (ISRI) (collectively, petitioners), to exempt from regulation under 49 U.S.C. 10505 the rail transportation of certain ferrous recyclables. After receiving and analyzing the comments filed in this proceeding, we now partially approve petitioners' proposal. We exempt iron and steel scrap (STCC No. 40–211) and steel shipping containers (STCC No. 34–912) from regulation, but decline at this time to exempt blast furnace, open hearth, rolling mill, or coke oven products, NEC (STCC No. 33–119).

We reaffirm our initial finding that the exemption will not significantly affect either the quality of the human environment or the conservation of energy resources.

We also reaffirm our initial finding that the exemption will not have a significant economic impact on a substantial number of small entities.

For further information, see the Commission's printed decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Interstate Commerce Commission Building, 1201 Constitution Avenue, NW., Room 2229, Washington, DC 20423. Telephone (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

List of Subjects in 49 CFR Part 1039

Intermodal transportation, Manufactured commodities, Railroads.

Decided: April 28, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioners Simmons and McDonald.

Vernon A. Williams,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, part 1039 of the Code of Federal Regulations is amended as follows:

PART 1039—EXEMPTIONS

1. The authority citation for part 1039 continues to read as follows:

Authority: 49 U.S.C. 10321 and 10505; and 5 U.S.C. 553.

2. In § 1039.11, paragraph (a), the following new entries are added at the end of the table to read as follows:

§ 1039.11 Miscellaneous commodities exemptions.

(a) * * *

STCC No.	STCC tariff	Commodity
*	* * *	* *
34 912	6001–W, eff. 1–1–95..	Steel shipping containers.
40 211	.....do	Iron and steel scrap.
*	* * * * *	

[FR Doc. 95–12336 Filed 5–18–95; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 301

[Docket No. 950106003–5070–02; I.D. 051595G]

Pacific Halibut Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Inseason action; vessel clearance procedures.

SUMMARY: The Assistant Administrator for Fisheries, NOAA, on behalf of the International Pacific Halibut Commission (IPHC), publishes this inseason action pursuant to IPHC regulations approved by the U.S. Government to govern the Pacific halibut fishery. This action is intended to enhance the conservation of the Pacific halibut stock in order to help sustain it at an adequate level in the northern Pacific Ocean and Bering Sea.

EFFECTIVE DATE: March 15, 1995, through December 31, 1995.

FOR FURTHER INFORMATION CONTACT: Stephen Pennoyer, 907–586–7221; William W. Stelle, Jr., 206–526–6140; or Donald McCaughran, 206–634–1838.

SUPPLEMENTARY INFORMATION: The IPHC, under the Convention between the United States of America and Canada for the preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (signed at Ottawa, Ontario, on March 2, 1953), as amended by a Protocol Amending the Convention (signed at Washington, DC, on March 29 1979), has issued this inseason action pursuant to IPHC regulations governing the Pacific halibut fishery. The regulations have been approved by NMFS (60 FR 14651, March 20, 1995). On behalf of the IPHC, this inseason action is published in the **Federal Register** to provide additional notice of its effectiveness, and to inform persons subject to the inseason action of the restrictions and requirements established therein.

Inseason Action

1995 Bering Sea Halibut Vessel Clearance Procedures

All halibut vessels fishing in Area 4A must obtain a vessel clearance from a designated fish processor either in Akutan or Dutch Harbor both prior to fishing, and prior to unloading.

All halibut vessels fishing in Area 4B must obtain a vessel clearance from Atka Pride Seafoods in Nazan Bay on Atka Island, both prior to fishing and prior to unloading and/or departure from Area 4B. The vessel operator must obtain the clearance required prior to fishing, in person. The clearance required after fishing may be obtained in person, or via VHF radio (call on VHF channel 6) as long as the person granting the clearance can visually confirm the identity of the vessel. Vessels that fish only in Area 4B and land their entire annual halibut catch at a port within Area 4B are exempt from the vessel clearance requirements.

All halibut vessels fishing in Area 4C and 4D must obtain a vessel clearance prior to fishing from a designated fish processor in either Akutan or Dutch Harbor. The vessel clearance required prior to unloading must be obtained at St. George or St. Paul, either in person, or via VHF radio as long as the person granting the clearance can visually confirm the identity of the vessel. Clearance at St. George can be obtained from the harbor master (call on VHF channel 16). Clearance at St. Paul can be obtained from either Trident Seafoods (call on VHF channel 73) or from Unisea (call on VHF channel 74). Vessels that only fish in Area 4C and land their total annual halibut catch at a port within Area 4C are exempt from the vessel clearance requirements. Vessels that fish only in Area 4D and 4E, and land their total annual halibut catch at a port within Areas 4D, 4E, or the Bering Sea closed area, are also exempt from the vessel clearance requirements.

Vessel clearances can only be obtained between 0600 hours and 1800 hours, local time. No halibut may be on board the vessel at the time of obtaining the clearance required prior to fishing in Area 4.

The clearance form for all vessel clearances obtained in person must be signed by the vessel operator. The clearance form for all vessel clearances obtained by VHF radio must be signed by the issuing officer.

Dated: May 15, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–12387 Filed 5–18–95; 8:45 am]

BILLING CODE 3510–22–F

50 CFR Part 651

[Docket No. 950410096–5135–02; I.D. 050595B]

RIN 0648–AH66

Northeast Multispecies Fishery; Exemption Supplement to Framework 9

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to modify the regulations implementing the Northeast Multispecies Fishery Management Plan (FMP). This rule allows a small mesh fishery exemption within specific areas and during specific times in the Gulf of Maine/Georges Bank (GOM/GB) Small Mesh Exemption Area and the retention and landing of skate by vessels fishing in the New York and Connecticut State Waters Winter Flounder Small Mesh Exemption Program. The Acting Director, Northeast Region, NMFS (Regional Director), has determined that these fisheries meet the exemption qualification requirements specified in § 651.20 (a)(7) and (c)(5). This rule also makes two corrections to the multispecies regulations.

EFFECTIVE DATE: May 15, 1995.

ADDRESSES: Copies of Amendment 5 to the FMP, its regulatory impact review (RIR) and the initial regulatory flexibility analysis contained within the RIR, its final supplemental environmental impact statement, and Framework Adjustment 9 and its supporting analyses are available upon request from Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906–1097.

FOR FURTHER INFORMATION CONTACT: Susan A. Murphy, NMFS, Fishery Policy Analyst, 508–281–9252.

SUPPLEMENTARY INFORMATION: NMFS implemented an emergency interim rule on December 12, 1994 (59 FR 63926), to implement immediate protective measures to reduce fishing effort on groundfish stocks, primarily cod, haddock, and yellowtail flounder, while a more comprehensive plan amendment (Amendment 7) designed to rebuild these stocks is developed.

On the recommendation of the New England Fishery Management Council (Council), this emergency action was extended, effective March 13, 1995, through June 10, 1995 (60 FR 13078, March 10, 1995). Because the development and implementation of proposed Amendment 7 is not expected until 1996, the measures contained in the emergency action, with some modifications, were implemented on a permanent basis in Framework Adjustment 9 to the FMP (60 FR 19364, April 18, 1995). The framework action, effective April 13, 1995, superseded the emergency action. Additional measures in Framework 9, which required approval by the Office of Management and Budget under the Paperwork Reduction Act, were made effective on April 28, 1995 (60 FR 21994, May 4, 1995).

Under Framework Adjustment 9, any fishery utilizing mesh smaller than the regulated mesh size is disallowed, except for fisheries that have been determined to have a catch of less than 5 percent, by weight, of regulated species. With the implementation of Framework Adjustment 9, the Regional Director determined that several species met the 5 percent requirement and are, therefore, currently allowed under § 651.20 (a)(3), (a)(4), (c)(3), and (d)(3).

Section 651.20 (a)(7), (c)(5), and (d)(4) authorizes the Regional Director to add or delete species exemptions in the respective regulated mesh areas based on the determination that the fishery in which the species are caught meets the 5 percent criteria--after consideration of the gear used, area where the fishery occurs, and other relevant factors. Recently, several small mesh exemption proposals were submitted to the Regional Director for consideration. Of these requests, the Regional Director has a reasonable basis to determine that a seasonal small mesh fishery of specified species in two of the small mesh exemption areas proposed in the GOM/GB regulated mesh area, and an allowance for the take of one additional species, skate, in New York and Connecticut state waters in the State Waters Winter Flounder Exemption Program, will not exceed the 5 percent bycatch allowance of regulated species.

When fishing in the two exempted subareas within the GOM/GB regulated mesh area with small mesh during the respective time frames specified, vessels may fish for the following exempted species: Butterfish, dogfish, herring, mackerel, ocean pout, scup, squid, silver hake (whiting), and red hake. Vessels fishing for the exempted species identified above may also possess and retain the following species as incidental take, with the restrictions noted: Longhorn sculpin, monkfish, and monkfish parts up to 10 percent by weight of all other species on board; and American lobster up to 10 percent by weight of all other species on board or 200 lobsters, whichever is less.

The fishing season is from July 15 through November 15 when fishing under the exemption in Small Mesh Area 1; and from January 1 though June 30 when fishing under the exemption in Small Mesh Area 2. These dates were selected based on the proposal request and were justified by an analysis of sea sampling data, commercial landings, and research vessel survey data that indicated the 5 percent criteria was met concerning the level of bycatch.

This rule also allows the possession and retention of skate as incidental take when fishing in New York and Connecticut state waters under the State Waters Winter Flounder Exemption Program.

Further, this rule makes a correction by adding squid to the exempted species list in the Mid-Atlantic region. Squid had been determined to meet the 5 percent criteria and was included as an exempted species with the implementation of the emergency interim rule (59 FR 63926, December 12, 1994), but had been inadvertently omitted in a subsequent rulemaking. This rule corrects this omission by adding squid to this list under § 651.20(d)(3).

Finally, this rule corrects the provisions exempting, under certain conditions, purse seine and mid-water trawl gear from the minimum mesh size requirements as specified under § 651.20 (e) and (f), to allow this exemption in all of the regulated mesh areas, but to require letters of authorization only in the GOM/GB and Stellwagen Bank/Jeffreys Ledge (SB/JL) regulated mesh area.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds there is good cause to waive prior notice and opportunity for comment under 5 U.S.C.

553(b)(B). Provisions under Framework Adjustment 9 give the Regional Director authority to add or delete small mesh species based on the percentage of regulated species caught. Public meetings held by the Council to discuss the management measures of Framework 9 provided full prior notice and opportunity for public comment to be made and considered, making additional opportunity for public comment unnecessary.

Because implementation of this rule relieves a restriction, there is no need to delay for 30 days the effectiveness of this regulation, 5 U.S.C. 553(d)(1).

This final rule has been determined to be not significant for purposes of E.O. 12866.

List of Subjects in 50 CFR Part 651

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: May 15, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 651 is amended as follows:

PART 651—NORTHEAST MULTISPECIES FISHERY

1. The authority citation for part 651 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 651.9, paragraphs (e)(14) and (e)(15) are revised to read as follows:

§ 651.9 Prohibitions.

* * * * *

(e) * * *

(14) Fish with, use, or have available for immediate use within the area described in § 651.20(a)(1) nets of mesh whose size is smaller than the minimum mesh size specified in § 651.20(a)(2), except as provided in § 651.20 (a)(3) through (a)(6), (a)(8), (e), (f), and (j), or unless the vessel qualifies for the exception specified in paragraph (e)(1)(ii) of this section.

(15) Fail to comply with the requirements as specified in § 651.20(a)(8).

* * * * *

3. In § 651.20, paragraphs (a)(2), (a)(6)(i), (d)(3)(i), (e), (f), and (j)(8) are revised, and paragraph (a)(8) is added to read as follows:

§ 651.20 Regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(a) * * *

(2) *Mesh-size restrictions.* Except as provided in paragraphs (a)(3) through (6), (a)(8), (e), (f), and (j) of this section, the minimum mesh size for any trawl net, sink gillnet, Scottish seine, or midwater trawl, on a vessel, or used by a vessel fishing in the GOM/GB regulated mesh area, shall be 6 inches (15.24 cm) diamond or square mesh throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq. ft (0.84 m^2)), or to vessels that have not been issued a Federal multispecies permit and that are fishing exclusively in state waters.

* * * * *

(6) *Transiting.* (i) Vessels fishing under the Small Mesh Exemption program and the small mesh subareas, Small Mesh Area 1/Small Mesh Area 2, specified in paragraphs (a)(3) and (a)(8) of this section may transit through the SB/JL juvenile protection area defined in paragraph (a)(5) of this section with nets on board that do not conform to the requirements specified in paragraph (a)(2) or (a)(5) of this section, provided that the nets are stowed in accordance with the provisions of paragraph (c)(4) of this section;

* * * * *

(8) *Small Mesh Area 1/Small Mesh Area 2.* Fisheries using nets of mesh smaller than the minimum size specified in paragraph (a)(2) of this section in subareas described as Small Mesh Area 1 and Small Mesh Area 2 of the Small Mesh Exemption Area as specified under paragraph (a)(3) of this section, and defined in this paragraph (a)(8), have been found to meet the exemption qualification requirements specified in paragraph (a)(7) of this section. Therefore, vessels subject to the mesh restrictions specified in paragraph (a)(2) of this section may fish with or possess nets of mesh smaller than the minimum size specified in paragraph (a)(2) of this section in these areas, if the vessel complies with the restrictions specified in paragraphs (a)(8)(i) through (iii) of this section. These subareas are defined by straight lines connecting the following points in the order stated (see Figure 5 to part 651):

SMALL MESH AREA 1

Point	Latitude	Longitude	Approximate Loran C bearings
SM1	43°03′ N.	70°27′ W.	13600 25910
SM2	42°57′ N.	70°22′ W.	13600 25840
SM3	42°47′ N.	70°32′ W.	13720 25840
SM4	42°45′ N.	70°29′ W.	13710 25810
SM5	42°43′ N.	70°32′ W.	3-mile line 25810
SM6	42°44′ N.	70°39′ W.	13780 3-mile line
SM7	42°49′ N.	70°43′ W.	13780 25910
SM8	42°50′ N.	70°41′ W.	13760 25910
SM9	42°53′ N.	70°43′ W.	13760 25935
SM10	42°55′ N.	70°40′ W.	25935 3-mile line
SM11	42°59′ N.	70°32′ W.	3-mile line 25910
SM1	43°03′ N.	70°27′ W.	13600 25910

SMALL MESH AREA 2

Point	Latitude	Longitude	Approximate Loran C bearings
SM13	43°20.3′ N.	69°59.4′ W.	13320 44480
SM14	43°25.9′ N.	69°45.6′ W.	13200 44480
SM15	42°49.5′ N.	69°40′ W.	13387.5 44298
SM16	42°41.5′ N.	69°40′ W.	13430 44260

SMALL MESH AREA 2—Continued

Point	Latitude	Longitude	Approximate Loran C bearings
SM17	42°34.9′ N.	70°00′ W.	13587 44260
SM13	43°20.3′ N.	69°59.4′ W.	13320 44480

(i) The fishing season is from July 15 through November 15 when fishing under the exemption in

(ii) The fishing season is from January 1 through June 30 when fishing under the exemption in

(iii) *Possession limit exemptions*—(A) *Exempted species.* Vessels may not fish for, possess on board, or land any species of fish other than: Butterfish, dogfish, herring, mackerel, ocean pout, scup, squid, silver hake (whiting) and red hake, except as provided under paragraph (a)(8)(iii)(B) of this section.

(B) *Allowable bycatch.* Vessels fishing for the exempted species identified in paragraph (a)(8)(iii)(A) of this section may also possess and retain the following species, with the restrictions noted, as allowable bycatch species: Longhorn sculpin (*Myoxocephalus octodecimspinosus*); monkfish and monkfish parts up to 10 percent by weight of all other species on board; and American lobster up to 10 percent by weight of all other species on board or two hundred lobsters, whichever is less.

* * * * *

(d) * * *

(3) *Exemptions*—(i) *Species exempt.* Butterfish, dogfish, herring, mackerel, ocean pout, scup, shrimp, squid, summer flounder, silver hake (whiting), weakfish, and scallops fished for in, or harvested from, the Mid-Atlantic regulated mesh area have been found to meet the exemption qualification requirements specified in paragraph (d)(4) of this section. Therefore, vessels subject to the mesh restrictions specified in paragraph (d)(2) of this section may fish for, harvest, possess or land any of the above mentioned species with nets of mesh smaller than the minimum size specified in paragraph (d)(2) of this section in the Mid-Atlantic regulated mesh area, provided such vessels comply with the requirements specified in paragraph (d)(3)(ii) of this section.

* * * * *

(e) *Midwater trawl gear exemption.* Fishing may take place throughout the fishing year with midwater trawl gear of mesh size less than the regulated size, provided that:

(1) Midwater trawl gear is used exclusively;

(2) When fishing under this exemption in the GOM/GB and SB/JL areas, vessels must have on board an authorizing letter issued by the Regional Director;

(3) The vessel only fishes for, possesses, or lands Atlantic herring, blueback herring, mackerel, or squid in areas south of 42°20′ N. lat., and Atlantic herring, blueback herring, or mackerel in areas north of 42°20′ N. lat;

(4) The vessel does not fish for, possess, or land multispecies finfish.

(f) *Purse seine gear exemption.* Fishing may take place throughout the fishing year with purse seine gear of mesh size less than the regulated size, provided that:

(1) Purse seine gear is used exclusively;

(2) When fishing under this exemption in the GOM/GB and SB/JL areas, vessels must have on board an authorizing letter issued by the Regional Director;

(3) The vessel only fishes for, possesses, or lands Atlantic herring, blueback herring, mackerel, or menhaden;

(4) The vessel does not fish for, possess, or land multispecies finfish.

* * * * *

(j) * * *

(8) The vessel does not fish for, possess, or land any species of fish other than winter flounder and the exempted small mesh species specified under paragraphs (a)(3)(i), (a)(8)(iii), (c)(3), and (d)(3) of this section when fishing in the areas specified under paragraphs (a)(3), (a)(8), (c)(1), and (d)(1) of this section, respectively. Vessels fishing under this exemption in New York and Connecticut state waters may also possess and retain skate as incidental take in this fishery; and

* * * * *

4. Figure 5 to part 651 is added to part 651 to read as follows:

BILLING CODE 3510-22-W

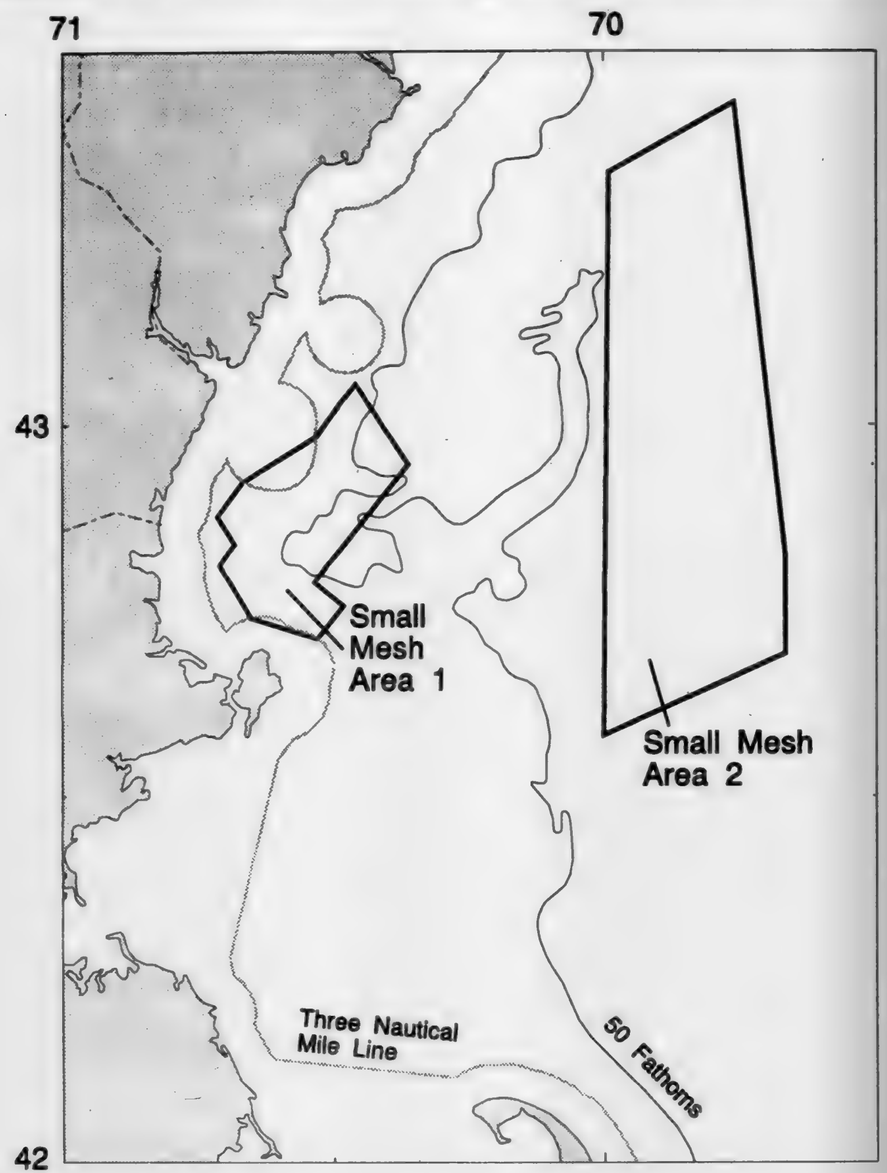


FIGURE 5 to part 651

[FR Doc. 95–12320 Filed 5–15–95; 4:42 pm]
BILLING CODE 3510–22–C

50 CFR Part 675

[Docket No. 950206040–5040–01; I.D. 051595D]

Groundfish of the Bering Sea and Aleutian Islands Area; Greenland Turbot in the Aleutian Islands Subarea

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for Greenland turbot in the Aleutian Islands subarea (AI) of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the Greenland turbot total allowable catch (TAC) in that subarea.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), May 19, 1995, until 12 midnight, A.l.t., December 31, 1995.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

In accordance with § 675.20(a)(7)(ii), the Greenland turbot TAC for the AI was established by the 1995 final specifications (60 FR 8479, February 14, 1995) as 1,981 metric tons (mt).

In accordance with § 675.20(a)(8), the Director of the Alaska Region, NMFS (Regional Director), has established a directed fishing allowance of 681 mt, with consideration that 1,300 mt will be taken as incidental catch in directed fishing for other species in the AI. The Regional Director has determined that the directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Greenland turbot in the AI.

Directed fishing standards for applicable gear types may be found in the regulations at § 675.20(h).

Classification

This action is taken under § 675.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 15, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–12388 Filed 5–18–95; 8:45 am]
BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 60, No. 97
Friday, May 19, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–ANE–08]

Airworthiness Directives; AlliedSignal Engines (Formerly Textron Lycoming) Models LTS101–650B1, –750B1, –650C, and –750C Turboshaft Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to AlliedSignal Engines (formerly Textron Lycoming) Models LTS101–650B1, –750B1, –650C, and –750C turboshaft engines. This proposal would require installation of an improved power turbine (PT) rotor and electronic PT rotor overspeed controller as a terminating action to the currently required inspections of AD 88–14–01. This proposal is prompted by reports of additional bearing failures since publication of AD 88–14–01, including one additional uncontained PT disk failure. The actions specified by the proposed AD are intended to prevent PT overspeed and uncontained engine failure.

DATES: Comments must be received by July 18, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–ANE–08, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from AlliedSignal Inc., 550 Main Street, Stratford, CT 06497. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Eugene Triozzi, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7148, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–ANE–08." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–ANE–08, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

On May 26, 1988, the Federal Aviation Administration (FAA) issued airworthiness directive (AD) 88–14–01, Amendment 39–5952 (53 FR 25317, July 6, 1988), to require initial and repetitive inspections of the engine lubrication and bearing systems on AlliedSignal Engines (formerly Textron Lycoming) LTS101 series turboshaft engines. That action was prompted by reports of four uncontained power turbine (PT) disk failures. Subsequent investigation revealed that the PT disk failures were caused by bearing failures resulting in PT shaft disengagement from the gear train drive, unloading the PT and causing rotor overspeed. Two other PT disk failures involved No. 4 bearing failure, followed by power pinion gear teeth failure, thereby unloading the PT and causing PT rotor overspeed. This condition, if not corrected, could result in PT overspeed and uncontained engine failure.

Since the issuance of that AD, the FAA has received reports of additional bearing failures with resultant loss of PT rotor location, including one additional uncontained PT disk failure. In order to minimize the possibility of an uncontained engine failure, the manufacturer has developed an improved PT rotor with retention capability and an improved electronic PT rotor overspeed controller. These improvements are only available for AlliedSignal Engines Models LTS101–650B1, –750B1, –650C, and –750C turboshaft engines, installed on Bell Helicopter Textron 222 series and Messerschmitt-Bolkow-Blohm (MBB) BK117 series helicopters. Installation of these improved components constitutes terminating action to the inspections required by AD 88–14–01 only to these certain engine models installed on these certain helicopters.

On October 28, 1994, AlliedSignal Inc. purchased the turbine engine product line of Textron Lycoming.

The FAA has reviewed and approved the technical contents of the following Textron Lycoming Service Bulletins (SB), that describe installing an improved PT rotor with retention capability and an electronic PT rotor overspeed controller:

Engine model	PT rotor	Electronic overspeed
LTS101–650B	LTS101B–72–50–0122, Revision 4, dated June 17, 1991.	LTS101B–73–10–0127, Revision 2, dated August 14, 1992.
LTS101–750B1	LTS101B–72–50–0116, Revision 6, dated August 14, 1992.	LTS101B–73–10–0127, Revision 2 dated August 14, 1992.
LTS101–650C and –750 Series.	LTS101C–72–50–0119, Revision 2, dated June 17, 1991.	LTS101C–73–10–0129, Revision 3, dated August 14, 1992.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require installation of an improved PT rotor with retention capability and an electronic PT rotor overspeed controller at the next shop visit when the PT rotor is removed after the effective date of this AD, but prior to December 31, 1997, as a terminating action to the currently required inspections of AD 88–14–01. The FAA has determined, based on the availability of parts, that by that date affected engines would have at least one scheduled shop visit to install the improved components. In addition, by that date operators would have at least one scheduled opportunity to install components of the electronic overspeed controller in affected aircraft. The actions would be required to be accomplished in accordance with the service bulletins described previously.

There are approximately 950 engines of the affected design in the worldwide fleet. The FAA estimates that 95 engines installed on aircraft of U.S. registry would be affected by the requirement to install the PT rotor with improved retention, that it would take approximately 10 work hours per engine to accomplish the proposed action, and that the average labor rate is $60 per work hour. Required parts cost for the PT rotor installation would be $44,400 per engine. Based on these figures, the cost impact of installing the PT rotor with improved retention is estimated to be $4,275,000.

In addition, the FAA estimates that 576 engines installed on aircraft of U.S. registry would be affected by the requirement to install the electronic PT rotor overspeed controller, that it would take approximately 3 work hours per engine to accomplish the proposed action, and that the average labor rate is $60 per work hour. Required parts cost for the electronic PT rotor overspeed controller installation would be $5,825. Based on these figures, the cost impact of installing the electronic PT rotor overspeed controller would be $3,458,880. Therefore, the total cost impact of all the actions of the proposed AD on U.S. operators is estimated to be $7,733,880.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

AlliedSignal Engines: Docket No. 95–ANE–08.

Applicability: AlliedSignal Engines (formerly Textron Lycoming) Model LTS101–650B1, –750B1, –650C, and –750C turboshaft engines installed on Bell Helicopter Textron 222 series and Messerschmitt-Bolkow-Blohm (MBB) BK117 series helicopters.

Note: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any engine from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent power turbine (PT) overspeed and uncontained engine failure, accomplish the following:

(a) Install the improved PT rotor with retention capability at the next shop visit when the PT rotor is removed after the effective date of this AD, but prior to December 31, 1997, in accordance with the following Textron Lycoming Service Bulletins (SB):

Engine model	SB No.	Rev.	Date
LTS101–650B1	LTS101B–72–50–0122	4	June 17, 1991.
LTS101–750B1	LTS101B–72–50–0116	6	August 14, 1992.
LTS101–650C and –750C Series	LTS101C–72–50–0119	2	June 17, 1991.

(b) Install the improved electronic PT rotor overspeed controller concurrently with the PT rotor installation required by paragraph (a) of this AD in accordance with the following Textron Lycoming SB:

Engine model	SB No.	Rev.	Date
LTS101–650B1	LTS101–73–10–0127	2	August 14, 1992.
LTS101–750B1	LTS101–73–10–0127	2	August 14, 1992.
LTS101–650C and –750C Series	LTS101–73–10–0129	3	August 14, 1992.

(c) Installation of the improved PT rotor with retention capability and the improved electronic PT rotor overspeed controller in accordance with paragraphs (a) and (b) of this AD constitutes terminating action to the inspection requirements of AD 88–14–01.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on May 15, 1995.

James C. Jones,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service,

[FR Doc. 95–12330 Filed 5–18–95; 8:45 am]

BILLING CODE 4910–13–P

Office of the Secretary

14 CFR Part 221

[Docket No. 50355; Notice No. 95–5]

RIN 2105–AC23

Electronic Filing of International Airline Passenger Rules Tariffs

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Transportation proposes to amend its regulations governing the filing of airline tariffs. Under the proposed rule, carriers would be authorized to electronically file the rules governing passenger fares and their conditions of service, subject to certain format requirements necessary to enable the Department to work with differing filing systems. The Department's regulations have permitted the electronic filing of passenger fares since 1989. The Department is proposing this action at the request of tariff publishing agents in order to extend the efficiencies of electronic data transmission and processing to the filing of rules tariffs. Filers could, however, continue to file fare rules on paper if they preferred.

DATES: Comments should be received no later than June 19, 1995.

ADDRESSES: Five (5) copies of any comments should be sent to the Documentary Services Division, C–55, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590–0002, and should refer to this docket. To receive acknowledgment of comments, include a stamped, self-addressed postcard which the Docket Clerk will return stamped with time and date.

FOR FURTHER INFORMATION CONTACT: Mr. John H. Kiser, Pricing and Multilateral Affairs Division, Department of Transportation, at the address above. Telephone: (202) 366–2435.

SUPPLEMENTARY INFORMATION:

Background

On January 19, 1989, the Department published a final rule that allows international passenger fares tariffs (fares and associated data) to be filed electronically, as an alternative to the filing of paper tariffs.[1] 54 FR 2087, January 19, 1989. The rule, contained in subpart W of part 221, established a number of criteria that have to be met for carriers or their agents to make such filings, including a signed agreement or agreements providing for the maintenance and security of the on-line tariff database. Approval by the Department of an application containing various hardware and software service commitments, as well as the filer's proposed format, is also required.

The 1989 rule was issued in response to an emergency petition for rulemaking by the Airline Tariff Publishing Company (ATPCO), requesting an expedited amendment to part 221 to permit the electronic filing of international passenger fares on an experimental basis. The Notice of Proposed Rulemaking was issued on July 8, 1988, at 53 FR 25615. Although ATPCO and other commenters then urged that the rule be broadened to include all international tariffs, the Department determined to address the filing of passenger fare rules and cargo tariffs in subsequent proceedings, citing the need for expedition as well as the need for a period of operational experience to determine whether the filing criteria and procedures set forth in Subpart W adequately meet regulatory needs.

ATPCO, a publishing agent owned by and representing a number of U.S. and foreign airlines, was initially the only entity that applied for authority to make electronic fare filings under the rule. It began test filings in July 1989, and in December 1989 it received final approval from the Department to commence official electronic filings. On November 28, 1990, ATPCO filed a petition for rulemaking in Docket 47288, requesting the amendment of part 221 to permit the alternative electronic filing of all international tariffs. The petition included suggested regulatory changes to accommodate the filing of passenger and cargo rules, and cargo rates.

In February 1992, the Department permitted ATPCO to begin filing electronic passenger rules on an unofficial test basis. The official rules, however, continue to be filed on paper.

By a Notice of Proposed Rulemaking issued October 15, 1992, in Docket 48385, 57 FR 47303, the Department proposed extensive revisions to part 221 to permit the electronic filing of all international tariffs. Following a comment period and a public meeting, the proposal was withdrawn for further study of various technical issues, and the proceeding was terminated. 58 FR 12350, March 4, 1993.

Requests for Further Action

Since the termination of the 1992 rulemaking, ATPCO has informally urged the Department to take whatever actions may be necessary to develop the capability for the acceptance and processing of all tariffs electronically.

In addition, another entity has demonstrated interest in filing international tariffs electronically with the Department. The Societé Internationale de Telecommunications Aéronautiques (SITA), a tariff publishing service which developed an electronic tariff filing system for use in Europe and elsewhere, has demonstrated its ProFile system to the Department's staff and is making modifications to accommodate U.S. requirements and procedures. On June 21, 1994, SITA submitted an application under § 221.260 for the necessary Department approvals to permit it to begin electronic filing of international passenger tariffs, encompassing fares and rules to the extent authorized by the Department. The application included a signed agreement for the maintenance and security of the on-line tariff database, as well as certain other information and undertakings required by section 221. SITA is working with the staff to resolve any remaining areas of nonconformity. We expect SITA to begin filing passenger fares and rules on an unofficial test basis in the near future, and we will then act on its application to file official tariffs based on experience with the test filings.

[1] Associated data include arbitraries, footnotes, routing numbers and fare class explanations. *See* 14 CFR 221.4 and 221.283.

Proposal

The Department proposes to amend § 221.251 of subpart W of its tariff filing regulations, 14 CFR part 221, to authorize the electronic filing by all airlines and tariff publishing agents of any or all rules relating to the provision of passenger services. Like the filing of passenger fares already authorized, this alternative to the traditional paper format and procedures set forth in part 221 is permissive in nature, and would be governed by the provisions of subpart W. If amended as proposed, subpart W would authorize the electronic filing of all tariff material relating to passenger services that airlines are required to file with the Department, although the existing requirements for final approval of a particular tariff filing system and its associated formats, set forth in subpart W, must be complied with before the Department will accept authorized electronic filings as official tariffs.

The Department is also proposing to amend § 221.283 of subpart W to add certain minimum tariff format requirements to provide a basic framework for the processing of tariff rules, which differ from fare filings in many technical respects. The existing format requirements set forth in § 221.283(b)(8), developed largely for the processing of fares and associated data, would not be changed but would be described as specifically applicable to the filing of fares. The new format requirements for the filing of passenger fare rules would be set forth in a new § 221.283(b)(9). Consequential amendments would be made to provisions regarding maintenance of historical data (paragraph (c) of § 221.283, and § 221.260(b)(7)).

Basis for the Proposal

Since the adoption of the present provisions of subpart W in 1989, and the beginning of test processing of unofficial electronic passenger fare rules in 1992, both ATPCO and SITA have developed and/or refined their software to provide comprehensive formats for the electronic filing of specific passenger fare rules as well as fares.[2] While neither system has been formally approved for official filing of electronic rules tariffs, we believe that sufficient progress has been made for us to remove the legal impediment in § 221.251(a) to considering such approvals. Similarly, there may be other entities interested in testing competing filing systems, for whom the authority to offer a fuller range of filing services could be a marketing benefit.

The industry currently files about 42,000 official tariff rule pages per year, in nearly 9,000 submissions. Nearly all of these rule changes are filed for effect on less than bilateral/statutory notice with an accompanying Special Tariff Permission Application (STPA). The carriers are thus filing each rule provision on paper twice, once with the STPA and once as the formal tariff submission.

Under the proposed amendments, a single electronic filing could replace two paper filings for most rules, significantly reducing the industry's submission, printing, and dissemination costs. Similarly, the Department's review, filing, and archival costs will be substantially reduced.

The Department's staff has utilized its experience with existing paper and electronic filing systems to identify those specific tariff rule provisions that we currently believe are necessary for providing sufficient information and for the effective processing and use of electronic rules formats developed by any filing agent. The provisions would not necessarily have to be presented in the same order as listed in proposed § 221.283(b)(9), but each rule would have to include at least all of the listed provisions.[3] Most individual format issues have been and will continue to be resolved through consultations between the Department and individual filing agents, as provided in § 221.260(b)(1) of the current regulations. However, the Department recognizes the need to propose further amendments to part 221 to deal comprehensively with general format and procedural issues, as well as with the question of the appropriate filing fees to be charged in the future, as soon as adequate data and experience are available. In the interim, we believe that the limited action being proposed here is warranted because it will facilitate increased speed and efficiency in the tariff filing process with direct cost savings to the carriers, the traveling public, and the taxpayer; it will help provide carriers, for the first time, with a choice of electronic filing agents and services; and it will provide valuable experience that will facilitate the drafting of a more comprehensive rule.

Three format issues warrant additional discussion here. First, we note that our proposed format criteria do not yet provide for the filing of so-called "general" fare rules and "unpublished fare" rules. General fare rules typically include provisions applicable to all passengers, relating to general conditions of carriage such as liability, baggage, fare construction, and refunds. Unpublished fare rules typically establish discounts for certain classes of traffic not limited to specific markets, e.g., children and infants, agents, tour conductors, emigrants and cargo attendants. Electronic formats for filing general and unpublished fare rules are still under development.

Second, we propose not to accept "Intentionally Left Blank" as a category entry in an electronic fare rule, nor would we accept the complete omission of a rule category to serve as a default to a general rule.[4] These practices, which have been a source of confusion in the paper filing environment, would become increasingly confusing in an environment where the fare rules are filed electronically but the general rules are still filed on paper. Where carriers wish to default to a general rule for a particular condition, we propose to require that electronic rules contain a specific entry for each category in the rule. The entry could be either a specific reference to the relevant general rule or specific conditions extracted from the general rule.

And third, in the test electronic rules we have received thus far, carriers have been including some extraneous material that is not properly part of a tariff and of which we take no regulatory notice, e.g., provisions concerning ticket and booking codes and annotations, wait listing procedures, and reservation record requirements. We recognize that carriers submit such material to their filing agents along with associated fare and rule changes for non-regulatory

[2] A "specific fare rule" is one that applies exclusively to a particular fare type, for which specific fare levels are filed in each city-pair market where the fare applies.

[3] Under this proposal, we would consider each provision of an electronic tariff rule to be a "record" for purposes of assessing filing fees under 14 CFR 389.20(b) and 389.25(b).

[4] Where a particular provision is intentionally left blank in a rule, no such provision applies to the fare covered by the rule. For example, where the "group requirements" section is left blank, it means there are no group requirements.

purposes, such as notifying computer reservations systems of the carriers' technical procedures. However, this extraneous material will not be approved by the Department, and its inclusion in official electronic rules will only cause confusion. We, therefore, propose to preclude such material in official electronic tariff filings.

The proposed amendment to § 221.251, as drafted, does not encompass the filing of cargo rates and rules tariffs. By a Notice of Proposed Rulemaking issued October 24, 1994, in Docket 49827, the Department proposed a blanket exemption for all carriers from the statutory and regulatory duty to file international property (cargo) tariffs with the Department. If the proposed rule is adopted, carriers will soon cease filing cargo rate and rules tariffs in any format. To the extent that a filing requirement might be retained, electronic format issues can be addressed at a later date.

The amendments proposed here would leave in place the procedural and technical requirements of subpart W, which each electronic filer must satisfy before official electronic rule filings may be accepted. In addition to those listed in § 221.260, for example, are provisions such as those in § 221.500 regarding the submission of machine-readable copies of records existing when electronic filing is implemented, and the cancellation of records from the paper tariff. As noted above, § 221.260 includes the requirement that the Department approve the precise format used by each electronic filer before official filings can be made. This is normally done by letter once a period of successful test filings has been accomplished and the Department is satisfied that the filing system meets regulatory needs. However, subpart W also imposes continuing performance requirements, violations of which could lead to enforcement action or even withdrawal of electronic filing privileges.

Finally, we would note that the success of electronic rules filing will depend on scrupulous adherence to the Department's regulatory requirements by both carriers and their filing agents. The Department's staff will be closely monitoring performance in this regard, and will work with parties to ensure the utility and integrity of the electronic tariff system.

The Department is providing less than the usual 60 days for comment because the proposal is merely offering an alternative method of compliance.

Regulatory Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

The Office of Management and Budget (OMB) has determined that this proposal is not a significant regulatory action under Executive Order 12866 and, therefore, not subject to OMB review. The Department has determined that the proposal is not significant under the Department's Regulatory Policies and Procedures (44 FR 11034, Feb. 26, 1979). The proposal would, if adopted, reduce the paperwork burden for all U.S. and foreign air carriers now filing their passenger rules tariffs on paper. The Department expects the economic impact of the proposal, however, to be modest. The proposal would not result in any required additional costs to carriers or the public. It would simply provide an alternative method of meeting the statutory tariff-filing requirements. The potential estimated savings are discussed below.

Executive Order 12612

This proposal has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 ("Federalism"), and the Department has determined the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

I certify that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities. The tariff filing requirements apply to scheduled service air carriers. The vast majority of the air carriers filing international ("foreign") passenger rules tariffs are large operators with revenues in excess of several million dollars each year. Small air carriers operating aircraft with 60 seats or less and 18,000 pounds payload or less that offer on-demand air- taxd service are not required to file such tariffs.

Paperwork Reduction Act

With respect to the Paperwork Reduction Act, this proposal would replace two paper filings for most rules with a single electronic filing. Thus, while this proposal will significantly reduce the paperwork burden on industry and government, it does not eliminate information collection requirements that require the approval of the Office of Management and Budget pursuant to the Act.

If the proposed amendments to existing regulations are implemented, the Department estimates that filing of passenger tariff rule pages in paper format would be reduced by about ninety percent, with the remaining ten percent continuing to be filed in paper form. A total of about 42,000 passenger tariff rule pages and about 6,400 Passenger Special Tariff Permission Applications (STPA's) were filed in 1994. At a filing fee of $2 a rule page and $12 a passenger STPA, we estimate the carriers could save as much as $145,000 annually in filing fees paid to the Department. In addition, ATPCO charges the carriers $35.00 for each filed tariff page and up to $30.00 for each STPA. On this basis, we estimate that implementation of the proposal could save carriers an additional $1,500,000 in associated fees paid to ATPCO, producing potential total savings to the carriers in excess of $1,600,000 per year.

While not estimated, we expect that costs of governmental review, filing and archiving of paper tariff rule filings will be similarly reduced.

The reporting and recordkeeping requirement associated with this rule are being submitted to OMB for approval in accordance with 44 U.S.C. chapter 35 under OMB NO. 2105–AC23; Administration: Department of Transportation; TITLE: Electronic Filing of Passenger Service Rules Tariffs; NEED FOR INFORMATION: Authorizes the electronic filing of rules governing the provision of passenger services; PROPOSED USE OF INFORMATION: Authorization is based on the request of tariff publishing agents to extend the efficiencies of electronic data transmission and processing to the filing of rules tariffs; FREQUENCY: An initial passenger tariff rule filing is required of each respondent; changes are voluntary, whenever an air carrier elects; BURDEN ESTIMATE: 5.34 hours for an STPA or a passenger rule page; RESPONDENTS: 45; FORM(S) 48,400 pages or applications per annum; AVERAGE BURDEN HOURS PER RESPONDENT: 5530 hours.

For further information on paperwork reduction contact: The Information Requirements Division, M–34, Office of the Secretary of Transportation, 400 Seventh Street, SW., Washington, DC. 20590, (202) 366–4735 or DOT Desk Officer, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, D.C. 20503.

Regulation Identifier Number

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 14 CFR Part 221

Agents, Air carriers, Foreign air carriers, Tariffs.

This rule is being issued under authority delegated in 49 CFR 1.56(j)(2)(ii). For the reasons set forth in the preamble, 14 CFR Part 221 would be amended to read as follows:

PARTS 221—TARIFFS

Subpart W—Electronically Filed Tariffs

1. The authority citation for part 221 would continue to read as follows:

Authority: 49 USC 40101, 40109, 40113, 46101, 46102, Chapter 411, Chapter 413, Chapter 415, and Subchapter I of Chapter 417, unless otherwise noted.

2. Section 221.251 Applicability of the subpart is amended by revising Paragraph (a) to read as follows:

§ 221.251 Applicability of subpart.

(a) Any carrier, consistent with the provisions of this subpart, and this part 221 generally, may file its international passenger fares tariffs and international passenger rules tariffs electronically in machine-readable form as an alternative to the filing of printed paper tariffs as provided for elsewhere in this part 221. This subpart applies to all carriers and tariff publishing agents and may be used by either if the carrier or agent complies with the provisions of this subpart W. Any carrier or agent that files electronically under this subpart must transmit to the Department the remainder of the tariff in a form consistent with this part 221, subparts A–V on the same day that the electronic tariff would be deemed received under § 221.270(b).

* * * * *

3. Paragraph (b)(7) of § 221.260, *Requirements for filing,* is revised to read as follows:

§ 221.260 Requirements for filing.

* * * * *

(b) * * *

(7) The filer shall maintain all fares and rules with the Department and all Departmental approvals, disapprovals and other actions, as well as all Departmental notations concerning such approvals, disapprovals or other actions, in the on-line tariff database for a period of two (2) years after the fare or rule becomes inactive. After this period of time, the carrier or agent shall provide the Department, free of charge, with a copy of the inactive data on a machine-readable tape or other mutually acceptable electronic medium.

* * * * *

4. Paragraph (b)(8) of § 221.283, *The filing of tariffs and amendments to tariffs,* is amended by revising the introductory text, and by adding a new paragraph (b)(9) to read as follows:

§ 221.283 The filing of tariffs and amendments to tariffs.

* * * * *

(b)* * *

(8) Fares tariff, or proposed changes to the fares tariffs, including:

* * * * *

(9) Rules tariff, or proposed changes to the rules tariffs, including:

(i) Title: General description of fare rule type(s) and geographic area(s) under the rule;

(ii) Application: Specific description of fare class(es), geographic area(s), type of transportation (one way, round- trip, etc.);

(iii) Period of Validity: Specific description of permissible travel dates and any restrictions on when travel is not permitted;

(iv) Reservations/ticketing: Specific description of reservation and ticketing provisions, including any advance reservation/ ticketing requirements, provisions for payment (including prepaid tickets), and charges for any changes;

(v) Capacity Control: Specific description of any limitation on the number of passengers, available seats, or tickets;

(vi) Combinations: Specific description of permitted/restricted fare combinations;

(vii) Length of Stay: Specific description of minimum/maximum number of days before the passenger may/must begin return travel;

(viii) Stopovers: Specific description of permissible conditions, restrictions, or charges on stopovers;

(ix) Routing: Specific description of routing provisions, including transfer provisions, whether on-line or inter-line;

(x) Discounts: Specific description of any limitations, special conditions, and discounts on status fares, e.g. children or infants, senior citizens, tour conductors, or travel agents, and any other discounts;

(xi) Cancellation and Refunds: Specific description of any special conditions, charges, or credits due for cancellation or changes to reservations, or for request for refund of purchased tickets;

(xii) Group Requirements: Specific description of group size, travel conditions, group eligibility, and documentation;

(xiii) Tour Requirements: Specific description of tour requirements, including minimum price, and any stay or accommodation provisions;

(xiv) Sales Restrictions: Specific description of any restrictions on the sale of tickets;

(xv) Rerouting: Specific description of rerouting provisions, whether on-line or inter-line, including any applicable charges; and

(xvi) Miscellaneous provisions: Any other applicable conditions.

5. Paragraph (c) of § 221.283 is amended by redesignating existing paragraphs (c) (8) through (15) as paragraphs (c) (9) through (16), respectively, and by adding a new paragraph (c) (8) to read as follows:

§ 221.283 The filing of tariffs and amendments to tariffs.

* * * * *

(c) * * *

(8) Rule text;

* * * * *

Issued in Washington DC, on May 15, 1995.

Patrick V. Murphy

Acting Assistant Secretary for Aviation and International Affairs.

[FR Doc. 95–12372 Filed 5–18–95; 8:45 am]

BILLING CODE 4915–62–P

INTERNATIONAL TRADE COMMISSION

19 CFR Part 201

Rules of General Application

AGENCY: U.S. International Trade Commission.

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: The Commission is proposing to amend Part 201 of the Commission's Rules of Practice and Procedure (the "Commission's Rules") to clarify those sections of the Commission's Rules dealing with the Freedom of Information Act (FOIA) and Privacy Act Officers' initial denial authority. This proposed amendment will also reflect the Inspector General's authority, under both the Inspector General Act of 1978, as amended, (the "IG Act") and under Section 552a(b) of the Privacy Act to disclose Privacy Act information to contractor personnel who function as federal employees.

DATES: Comments on the proposed rules will be considered if received on or before June 19, 1995.

ADDRESSES: A signed original and 14 copies of each set of comments, along

with a cover letter addressed to Donna R. Koehnke, Secretary, should be sent to the U.S. International Trade Commission, Room 112, 500 E Street SW, Washington, DC 20436.

FOR FURTHER INFORMATION CONTACT: Hilaire R. Henthorne, Esq., Counsel to the Inspector General, Office of Inspector General, U.S. International Trade Commission, telephone 202–205–2210. Hearing impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: Section 335 of the Tariff Act of 1930 (19 U.S.C. 1335) authorizes the Commission to adopt such reasonable procedures and rules and regulations as it deems necessary to carry out its functions and duties. This amendment will bring the Commission's Rules into conformity with Section 6 of the IG Act (5 U.S.C. app. 3) and with Section 552a(b) of the Privacy Act of 1974, as amended (5 U.S.C. 552a(b)).

Section 6 of the IG Act authorizes Inspectors General to "enter into contracts and other arrangements for audits, studies, analyses, and other services with * * * private persons * * *." *See* 5 U.S.C. app. 3. When contractor personnel are employed to perform the authorized functions of an Office of Inspector General, and are, in the judgment of the Inspector General, performing such functions, they serve in the capacity of government employees. *See generally Coakley* v. *United States Dep't of Transportation*, No. 93–1420, slip op. at 3 (D.D.C. Apr. 7, 1994); and *Hulett* v. *Dep't of the Navy*, No. TH 85–310–C, slip op. at 3–4 (S.D. Ind. Oct. 26, 1987); *aff'd* 866 F.2d 432 (7th Cir. 1988) (table cite), *cert. denied*, 490 U.S. 1068 (1989). Section 552a(b) of the Privacy Act stipulates that Privacy Act disclosures are permissible when made to "employees of the agency * * * who have a need for the record in the performance of their duties * * *." *See* 5 U.S.C. § 552a(b).

Section 552a(c) of the Privacy Act specifically exempts disclosure to government employees from the Privacy Act's recordkeeping requirement. Thus, this amendment to the Commission's Rules clarifies the three categories of disclosure that are exempt, under the Privacy Act, from the recordkeeping provisions: (1) Disclosures made to officers and employees of the Commission who have a need for the information in the performance of their duties; (2) disclosures made to contractor personnel, pursuant to the IG Act or any other law, when such personnel are performing the functions of government employees; and (3) other contractor personnel who, in the judgment of the Director of Personnel, are acting as Commission employees.

Commission rules ordinarily are promulgated in accordance with the rulemaking provisions of section 553 of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) (APA). Under the APA, rulemaking entails the following steps: (1) publication of a notice of proposed rulemaking; (2) solicitation of public comment on the proposed rules; (3) Commission review of such comments prior to developing final rules; and (4) publication of the final rules thirty days prior to their effective date. *See* 5 U.S.C. 553. This notice of proposed rulemaking is the first step in that procedure.

The Commission has determined that this proposed amendment does not meet the criteria described in section 3f of Executive Order (EO) 12866 (58 FR 51735, Oct. 4, 1993) and does not constitute a "significant regulatory action" for purposes of the EO. In accordance with the Regulatory Flexibility Act (5 U.S.C. § 601 note), the Commission hereby certifies pursuant to 5 U.S.C. § 605(b) that the proposed amendment set forth in this notice is not likely to have a significant economic impact on a substantial number of small business entities. This conclusion is premised on the fact that the proposed amendment merely conforms to existing IG Act and Privacy Act provisions. Thus, it is not expected to have any significant economic impact.

Proposed Changes to 19 CFR Part 201

1. Section 201.2(b)–(j) is revised to include a definition of the term "Inspector General" and redesignate existing definitions as follows:

§ 201.2 Definitions.

(b) *Inspector General* means the Inspector General of the Commission;

(c) *Tariff Act* means the Tariff Act of 1930, 19 U.S.C. 1202–1677j;

(d) *Trade Expansion Act* means the Trade Expansion Act of 1962, 19 U.S.C. 1801–1991;

(e) *Trade Act* means the Trade Act of 1974, 19 U.S.C. 2101–2487;

(f) *Trade Agreements Act* means the Trade Agreements Act of 1979, Public Law 96–39, 93 Stat. 144;

(g) *Rule* means a section of the Commission Rules of Practice and Procedure (19 CFR chapter II);

(h) *Secretary* means the Secretary of the Commission;

(i) Except for adjudicative investigations under subchapter C of this chapter, *party* means any person who has filed a complaint or petition on the basis of which an investigation has been instituted, or any person whose entry of appearance has been accepted pursuant to § 201.11 (a) or (c). Mere participation in an investigation without an accepted entry appearance does not confer party status.

(j) *Person* means an individual, partnership, corporation, association, or public or private organization.

2. Paragraph (a) of § 201.18 is revised to read as follows:

§ 201.18 Denial of requests, appeals from denial.

(a) Written requests for inspection or copying of records shall be denied only by the Secretary or Acting Secretary, or, for records maintained by the Office of Inspector General, the Inspector General. Denials of written requests shall be in writing, shall specify the reason therefor, and shall advise the person requesting of the right to appeal to the Commission. Oral requests may be dealt with orally, but if the requester is dissatisfied he shall be asked to put the request in writing.

3. Paragraph (d) of § 201.24 is revised to read as follows:

§ 201.24 Procedures for requests pertaining to individual records in a records system.

(d) The Director of Personnel, or, the Inspector General, if such records are maintained by the Inspector General, shall ascertain whether the systems of records maintained by the Commission contain records pertaining to the individual, and whether access will be granted. Thereupon the Director of Personnel shall:

(1) Notify the individual whether or not the requested record is contained in any system of records maintained by the Commission; and

(2) Notify the individual of the procedures as prescribed in §§ 201.25 and 201.26 of these regulations by which the individual may gain access to those records maintained by the Commission which pertain to him or her. Access to the records will be provided within 30 days (excluding Saturdays, Sundays, and legal public holidays).

4. Paragraph (b) of § 201.28 is revised to read as follows:

§ 201.28 Request for correction or amendment of record.

(b) Not later than 10 days (Saturdays, Sundays and Federal legal public holidays excluded) after the date of receipt of a Privacy Act request for amendment of records, the Director of Personnel shall acknowledge such receipt in writing. Such a request for amendment will be granted or denied by the Director of Personnel or, for records maintained by the Inspector General, the Inspector General. If the request is granted, the Director of Personnel, or, the Inspector General, for records maintained by the Inspector General, shall promptly make any correction of any portion of the record which the individual believes is not accurate, relevant, timely, or complete. If, however, the request is denied, the Director of Personnel shall inform the individual of the refusal to amend the record in accordance with the individual's request and give the reason(s) for the refusal. In cases where the Director of Personnel or the Inspector General has refused to amend in accordance with an individual's request, he or she also shall advise the individual of the procedures under § 201.29 of these regulations for the individual to request a review of that refusal by the full Commission or by an officer designated by the Commission.

5. Paragraphs (a) through (d) of § 201.29 are revised to read as follows:

§ 201.29 Commission review of request for correction or amendment to record.

(a) The individual who disagrees with the refusal of the Director of Personnel or the Inspector General to amend the record may request a review of the refusal by the Commission. All requests for review of refusals to amend records should be addressed to the Chairman, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436, and shall clearly indicate both on the envelope and in the letter that it is a Privacy Act review request.

(b) Not later than 30 days (Saturdays, Sundays, and Federal legal public holidays excluded) from the date on which the Commission receives a request for review of the Director of Personnel's or the Inspector General's refusal to amend the record, the Commission shall complete such a review and make a final determination thereof unless, for good cause shown, the Commission extends the 30-day period.

(c) After the individual's request to amend his or her records has been reviewed by the Commission, if the Commission agrees with the Director of Personnel's or the Inspector General's refusal to amend the record in accordance with the individual's request, the Commission shall: (1) Notify the individual in writing of the Commission's decision; (2) advise the individual that he or she has the right to file a concise statement of disagreement with the Commission which sets forth his or her reasons for disagreement with the refusal of the Commission to amend the records; and (3) notify the individual of his or her legal right to judicial review of the Commission's final determination.

(d) In any disclosure, containing information about which the individual has filed a statement of disagreement, the Director of Personnel, or, for records maintained by the Inspector General, the Inspector General, shall clearly note any portion of the record which is disputed and shall provide copies of the statement and, if the Commission deems it appropriate, copies of a concise statement of the reasons of the Commission for not making the amendments requested, to persons or other agencies to whom the disputed record has been disclosed.

6. Paragraph (b) of § 201.30 is revised to read as follows:

§ 201.30 Commission disclosure of record to person other than the individual to whom it pertains.

(b) Except for disclosures either to officers and employees of the Commission, or, to contractor employees who, in the Inspector General's or the Director of Personnel's judgment, are acting as federal employees, who have a need for the record in the performance of their duties, and any disclosure required by 5 U.S.C. § 552, the Director of Personnel shall keep an accurate accounting of: (1) The date, nature, and purpose of each disclosure of a record to any person or to another agency under paragraph (a) of this section; and (2) the name or address of the person or agency to whom the disclosure is made.

Issued: May 15, 1995.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–12360 Filed 5–18–95; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 146

[Docket No. 94N–0452]

RIN 0905–AC48

Canned Fruit Nectars; Proposal to Revoke the Stayed Standard of Identity; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule, correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a proposed rule that appeared in the **Federal Register** of April 21, 1995 (60 FR 19866). The document proposed to revoke the standard of identity for canned fruit nectars. The document was published with an inadvertent error in the preamble section. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Nannie H. Rainey, Center for Food Safety and Applied Nutrition (HFS–158), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5099.

In FR Doc. 95–9949, appearing on page 19866 in the **Federal Register** of Friday, April 21, 1995, the following correction is made:

1. On page 19867, in the third column, under "**IV. Request for Comments**", line 2, "June 20" is corrected to read "July 5".

Dated: May 10, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–12294 Filed 5–18–95; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 201

[Docket No. 92N–0311]

Topical Drug Products Containing Benzoyl Peroxide; Required Labeling; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending to July 17, 1995, the comment period for the proposed rule to include additional labeling (warning and directions) for all topically-applied acne treatment drug products containing benzoyl peroxide, which appeared in the **Federal Register** of February 17, 1995 (60 FR 9554). FDA is taking this action in response to a request to extend the comment period.

DATES: Written comments by July 17, 1995.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD–810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 17, 1995 (60 FR 9554), FDA issued a proposed rule to include additional labeling (warning and directions) for all topically-applied acne treatment drug products containing benzoyl peroxide. Interested persons were given until May 18, 1995, to submit written comments on the proposal.

In response to the proposal, the Nonprescription Drug Manufacturers Association (NDMA) requested a 2-month extension of the comment period. NDMA states that the request was on behalf of member companies who manufacture and distribute over-the-counter (OTC) acne drug products containing benzoyl peroxide. NDMA indicated that it intended to comment on FDA's proposal to require additional labeling on acne drug products at the request of its Benzoyl Peroxide Study Group. NDMA stated that it needed more time to document fully questions about certain facts included in the proposal. NDMA added that the precedent-breaking nature of the agency's proposal demanded careful scrutiny and thoughtful consideration and that coordination of the Benzoyl Peroxide Study Group's efforts in these regards was time-consuming.

FDA has carefully considered the request and acknowledges the uniqueness of the proposal. The agency believes that additional time for comment is in the public interest and will be of assistance in establishing labeling that will help consumers safely use drug products containing benzoyl peroxide for the treatment of acne. Accordingly, the comment period is extended to July 17, 1995.

Interested persons may, on or before July 17, 1995, submit to the Dockets Management Branch (address above) written comments regarding the proposal. Three copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 16, 1995.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 95–12399 Filed 5–18–95; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 896

[Docket No. 83N–0193]

RIN 0905–AD83

Performance Standard for the Infant Apnea Monitor; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending to August 21, 1995, the comment period on the proposed rule that published in the **Federal Register** of February 21, 1995 (60 FR 9762). The document proposed to establish a mandatory performance standard for infant apnea monitors, which are a subset of breathing frequency monitors, also called neonatal apnea monitors. The infant apnea monitor is a system intended for use on infants to detect cessation of breathing. This action is based on a request from industry.

DATES: Written comments by August 21, 1995.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: James J. McCue, Center for Devices and Radiological Health (HFZ–84), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–4765.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 21, 1995 (60 FR 9762), FDA published a proposed rule to establish a mandatory performance standard for infant apnea monitors, which are a subset of breathing frequency monitors, also called neonatal apnea monitors. The infant apnea monitor is a system intended for use on infants to detect cessation of breathing. FDA believes that a performance standard is necessary to ensure that infant apnea monitors accurately and reliably detect the absence of effective respiration and provide an alarm in such cases.

Interested persons were invited to comment by May 22, 1995. FDA received one request from industry to extend the comment period for 90 days. The request stated that this timeframe would allow sufficient time to gather the necessary data to develop effective comments.

FDA is extending the comment period for 90 days to ensure adequate time for preparation of comments. Accordingly, FDA finds under section 520(d) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360j(d)) that there is good cause for such an extension.

Interested persons may, on or before August 21, 1995, submit to the Dockets Management Branch (address above) written comments regarding this notice. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 10, 1995.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 95–12293 Filed 5–18–95; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[PS–013–88]

RIN 1545–AL57

Certain Publicly Traded Partnerships Treated as Corporations; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains corrections to the notice of proposed rulemaking and notice of public hearing (PS–013–88) which was published in the **Federal Register** on Tuesday, May 2, 1995 (60 FR 21475), relating to the classification of certain publicly traded partnerships as corporations.

FOR FURTHER INFORMATION CONTACT: Christopher T. Kelley, (202) 622–3080, (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking and notice of public hearing that is the subject of these corrections proposes to add § 1.7704–1 to the Income Tax Regulations relating to the definition of a publicly traded partnership under section 7704(b) of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking and notice of public hearing (PS–013–88) contains errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking and notice of public hearing (PS–013–88), which was the subject of FR Doc. 95–10765, is corrected as follows:

1. On page 21476, column 1, under the caption **DATES:**, last line, the language "July 31, 1995" is corrected to read "July 10, 1995".

2. On page 21478, column 3, in the preamble under the paragraph heading "Comments and Public Hearing", paragraph 4, lines 3 through 5, the language "written comments and an outline of the topics to be discussed (a signed original and eight (8) copies) by July 31, 1995." is corrected to read "written comments (a signed original and eight (8) copies) by July 31, 1995. The outline of topics to be discussed at the hearing must be received by July 10, 1995.".

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 95–12363 Filed 5–18–95; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

West Virginia Program Amendment

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Notice of availability and opportunity for public comment.

SUMMARY: OSM is making available for public review and comment its draft decision document on a proposed amendment to the West Virginia permanent regulatory program (hereinafter referred to as the West Virginia program). The amendment concerns revisions to State law and regulations governing the Special Reclamation Fund and bonding requirements for surface coal mining operations. OSM has evaluated the proposed changes and made tentative findings on whether they can be approved as part of the West Virginia program. Where necessary, OSM proposed required amendments to bring the program into compliance with the Surface Mining Control and Reclamation Act of 1977 (SMCRA). OSM is inviting public comment on the proposed amendment and the tentative findings contained in the draft decision document. A public meeting is also scheduled.

DATES: Written comments must be received on or before 4 p.m., E.D.T. on June 5, 1995. A public meeting will be held at 1 p.m., E.D.T. on May 30, 1995, at the Holiday Inn, Heart-Of-Town, Washington and Broad Streets, Charleston, West Virginia.

ADDRESSES: Written comments should be mailed or hand delivered to James C. Blankenship, Jr., Director, Charleston Field Office at the address listed below.

Copies of the proposed amendment and draft decision document, the West Virginia program, and the administrative record on the West Virginia program are available for public review and copying at the address below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment and draft decision document by contacting OSM's Charleston Field Office.

James C. Blankenship, Jr., Director, Charleston Field Office, Office of Surface Mining Reclamation and Enforcement, 1027 Virginia Street East, Charleston, West Virginia 25301, Telephone: (304) 347–7158

West Virginia Division of Environmental Protection, 10 McJunkin Road, Nitro, West Virginia 25143, Telephone: (304) 759–0515.

In addition, copies of the proposed amendment and draft decision document are available for inspection during regular business hours at the following locations:

Office of Surface Mining Reclamation and Enforcement, Morgantown Area Office, 75 High Street, Room 229, P.O. Box 886, Morgantown, West Virginia 26507, Telephone: (304) 291–4004

Office of Surface Mining Reclamation and Enforcement, Beckley Area Office, 323 Harper Park Drive, Suite 3, Beckley, West Virginia 25801, Telephone: (304) 255–5265

Office of Surface Mining Reclamation and Enforcement, Logan Area Office, 313 Hudgins Street, 2nd Floor, P.O. Box 506, Logan, West Virginia 25601, Telephone: (304) 752–2851.

FOR FURTHER INFORMATION CONTACT: Mr. James C. Blankenship, Jr., Director, Charleston Field Office; Telephone: (304) 347–7158.

SUPPLEMENTARY INFORMATION:

I. Background on the West Virginia Program

SMCRA was passed in 1977 to address the growing environmental and safety problems associated with coal mining. Under SMCRA, OSM works with States to ensure that coal mines are operated in a manner that protects citizens and the environment during mining, that the land is restored to beneficial use following mining, and that the effects of past mining at abandoned coal mines are mitigated.

Many coal-producing States, including West Virginia, have sought and obtained approval from the Secretary of the Interior to carry out SMCRA's requirements within their borders. In becoming the primary enforcers of SMCRA, these "primacy" states accept a shared responsibility with OSM to achieve the goals of the Act. Such States join with OSM in a shared commitment to the protection of citizens—our primary customers—from abusive mining practices, to be responsive to their concerns, and to allow them full access to information needed to evaluate the effects of mining on their health, safety, general welfare, and property. This commitment also recognizes the need for clear, fair, and consistently applied policies that are not unnecessarily burdensome to the coal industry—producers of an important source of our Nation's energy.

Under SMCRA, OSM sets minimum regulatory and reclamation standards. Each primacy State ensures that coal mines are operated and reclaimed in accordance with the standards in its approved State program. The States serve as the front-line authorities for implementation and enforcement of SMCRA, while OSM maintains a State performance evaluation role and provides funding and technical assistance to States to carry out their approved programs. OSM also is responsible for taking direct enforcement action in a primacy State, if needed, to protect the public in cases of imminent harm or, following appropriate notice to the State, when a State acts in an arbitrary and capricious manner in not taking needed enforcement actions required under tits approved regulatory program.

Currently there are 24 primacy states that administer and enforce regulatory programs under SMCRA. These states may amend their programs, with OSM approval, at any time so long as they remain no less effective than Federal regulatory requirements. In addition, whenever SMCRA or implementing Federal regulations are revised, OSM is

required to notify the States of the changes so that they can revise their programs accordingly to remain no less effective than the Federal requirements.

A major goal of SMCRA is to ensure adequate reclamation of all areas disturbed by surface coal mining operations. To accomplish this, mining is allowed to proceed only after an operator has filed a performance bond of sufficient amount to ensure completion or reclamation. In the event of bond forfeiture, the regulator authority uses the performance bond money to contract for the necessary reclamation work. SMCRA also allows for the adoption of an alternative bonding system (ABS) so long as it achieves the purposes and objectives of the conventional bonding system described above. Under an ABS, rather than posting full-cost reclamation bonds, an operator is allowed to participate in a bond pool which is to provide sufficient revenue at any time to complete reclamation in the event of bond forfeiture.

As part of their approved programs, primacy States have adopted procedures consistent with Federal bonding requirements. The Secretary conditionally approved West Virginia's ABS on January 21, 1981 (46 FR 5326). After receipt of a required actuarial study, the Secretary fully approved the State's ABS on March 1, 1983 (48 FR 8448), by finding it consistent with section 509(c) of SMCRA.

Background information on the West Virginia program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the January 21, 1981, **Federal Register** (46 FR 5915). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 948.10, 948.12, 948.13, 948.15, and 948.16.

II. Discussion of the Proposed Amendment

On October 1, 1991, OSM notified West Virginia that it needed to amend its ABS to be in compliance with sections 509(c) , 519(b) and 519(c) of SMCRA (Administrative Record No. 878). OSM's annual reviews of the West Virginia program had found that the State's ABS no longer met the requirements for such systems because, as of June 30, 1990, liabilities exceeded assets by $6.2 million dollars. OSM also informed the State that its ABS must provide for the abatement or treatment of polluted water flowing from permanent program bond forfeiture sites unless its approved program included some other form of financial guarantee to provide for water treatment. The proposed amendment now under consideration was submitted to OSM in response to this letter and concurrent State initiatives to address bonding and water quality problems.

In a series of three letters dated June 28, 1993, and July 30, 1993 (Administrative Record Nos. WV–888, WV–889 and WV–893), the West Virginia Division of Environmental Protection (WVDEP) submitted an amendment to its approved permanent regulatory program that included numerous revisions to the West Virginia Surface Coal Mining and Reclamation Act (WVSCMRA § 22A–3–1 *et seq.*) and the West Virginia Surface Mining Reclamation Regulations (CSR § 38–2–1 *et seq.*). OSM grouped the proposed revisions that concern bonding into one amendment which is the subject of this notice. The proposed amendment will:

- Allow for the selection and prioritization of bond forfeiture sites to be reclaimed;
- Limit administrative expenditures from the Special Reclamation Fund to an amount not to exceed 10 percent of the total annual assets in the Fund;
- Raise the special reclamation tax from one cent to three cents per ton and provide for the collection of the tax whenever liabilities exceed assets;
- Limit the amount of money that can be used for water treatment to 25 percent of the annual amount of the fees collected;
- Require site-specific bonds that reflect the potential cost of reclamation but do not exceed $5,000 per acre;
- Require penal bonds instead of performance bonds; and
- Require bond forfeiture sites to be reclaimed in accordance with the approved reclamation plan or modifications thereof.

By letter dated April 1, 1994, OSM informed the WVDEP of probable deficiencies in the proposed amendment (Administrative Record No. WV–916). The WVDEP and OSM met on April 25, May 5, June 20, and August 5, 1994, to resolve these issues. During this time, WVDEP and OSM exchanged technical studies, policy statements, legal opinions, and explanations to clarify positions and where possible reach agreement. On August 30, 1994, OSM sent WVDEP a letter stating the tentative resolutions of the issues listed in the April 1, 1994, letter. These documents and a summary of the meetings are in Administrative Record Nos. WV–916 through 933.

OSM announced receipt of the proposed amendment in the August 12, 1993, **Federal Register** (58 FR 42903) and invited public comment on its adequacy. Following this initial comment period, WVDEP revised the amendment on March 12, 1994, and September 1, 1994 (Administrative Record Nos. WV–933 and WV–937). OSM reopened the comment period on August 31, 1994, and September 29, 1994, and held public meetings in Charleston, West Virginia on September 7, 1993, and October 27, 1994 (Administrative Record No. WV–958).

III. Public Comment Procedures

OSM is reopening the comment period on the West Virginia program amendment to provide the public an opportunity to review OSM's draft decision document and to comment prior to making a final decision. OSM is seeking comments on whether the proposed amendment satisfies the applicable program criteria of 30 CFR 732.15. Additional public comment is requested on how OSM and WVDEP should address the following:

1. State records show that as of June 30, 1994, there was a backlog of 243 bond forfeiture sites totalling 10,996 acres that had not been completely reclaimed. Total liabilities of the Special Reclamation Fund exceeded total assets by 22.2 million dollars. This estimate does not include the cost of treating water at bond forfeiture sites. How can this backlog in reclamation work be completed in a timely manner and how should the Special Reclamation Fund be made financially sound?

2. The WVDEP identified 89 bond forfeiture sites that were producing approximately 10 percent of the acid mine drainage in the State. WVDEP estimated that it would cost two to four million dollars annually to treat this water to meet Federal and State effluent limitations and water quality standards. What is the best approach to dealing with acid mine drainage from these and future bond forfeiture sites?

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the OSM Charleston Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Meeting

Persons requesting to speak at the meeting should contact the individual listed under **FOR FURTHER INFORMATION CONTACT.** Submission of written statements in advance of the meeting will allow OSM to study the remarks and ask questions of the speakers.

The meeting will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The meeting will end after all persons who wish to speak have spoken.

Any disabled individual who has need for a special accommodation to attend the public meeting should contact the individual listed under **FOR FURTHER INFORMATION CONTACT.**

IV. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 502 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA [30 U.S.C. 1292(d)] provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

List of Subjects in 30 CFR Part 948

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 12, 1995.

Richard J. Seibel,

Acting Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 95–12362 Filed 5–18–95; 8:45 am]

BILLING CODE 4310–05–M

National Park Service

36 CFR Part 7

Cape Cod National Seashore Off-Road Vehicle Use Negotiated Rulemaking Committee

AGENCY: National Park Service, Interior.

ACTION: Notice of Intent to Establish a Negotiated Rulemaking Committee.

SUMMARY: As required by section 3 of the Negotiated Rulemaking Act of 1990, 5 U.S.C. section 564, the National Park Service (NPS) is giving notice of its intent to establish a Negotiated Rulemaking Committee to negotiate and develop a proposed rule revising off-road vehicle use regulations at Cape Cod National Seashore. NPS has determined that the establishment of this Committee is in the public interest and supports the NPS in performing its duties and responsibilities under the National Park Service Organic Act, 16 U.S.C. 1 *et seq.*, and the Endangered Species Act, 16 U.S.C. 1531 *et seq.* Copies of the Committee's charter will be filed with the appropriate committees of Congress and with the Library of Congress in accordance with section 9(c) of the Federal Advisory Committee Act (FACA), 5 U.S.C. Appx.

DATES: NPS invites any interested person to comment on the proposal to create this Committee. In addition, NPS invites persons who believe that they will be significantly affected by the proposed rule and who believe their interests will not be adequately represented by the persons identified in this Notice, to apply for, or nominate another person for membership on the Committee. Each application must contain the information described in the "Application for Membership" section below. Applications or nominations for membership on the Committee should be submitted on or before June 19, 1995.

ADDRESSES: Comments and applications should be submitted to: Andrew T. Ringgold, Superintendent, Cape Cod National Seashore, South Wellfleet, MA 02663. Comments and applications received will be available for inspection at the address listed above from 8:00 a.m. to 4:30 p.m. EST, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Andrew T. Ringgold, Superintendent, Cape Cod National Seashore, at the address listed above, or by telephone at (508) 349–3785, ext. 202.

SUPPLEMENTARY INFORMATION: The Committee's function will be to negotiate and develop a proposed rule to revise regulations that govern off-road vehicle use at Cape Cod National Seashore. It will attempt, via face-to-face negotiations, to reach consensus on concepts and language to use as the basis for a proposed rule to be published by the NPS in the **Federal Register** that would revise existing regulations codified at 36 CFR 7.67(a). The existing regulations have not been effective in resolving longstanding and controversial resource management and public use conflicts at the Seashore. With the participation of knowledgeable, affected parties, NPS expects to develop a practical approach to addressing these management and public use issues involving the protection of beach environments, their associated floral and faunal communities, and the public's desire for access to beach areas by motorized vehicle for fishing and other recreational activities.

Scope of the Proposed Rule: Within the constraints of NPS statutory responsibilities to preserve natural and cultural resources and to provide for their enjoyment, the Committee will evaluate and address key issues including, but not limited to, the designation of specific off-road vehicle routes and areas, the periods of the year and times of day during which off-road vehicles may be operated, and other

conditions that govern the operation of off-road vehicles at Cape Cod National Seashore. It is anticipated that the Committee will develop proposed regulations in all of the above-referenced areas.

List of Interests Significantly Affected: The NPS has identified a number of interests who are likely to be affected significantly by the rule. Those parties are conservation and environmental organizations, recreational fishing organizations, off-road vehicle organizations, local town governments, commercial interests, and Federal, State and regional land use management and wildlife management agencies. Other parties who believe they are likely to be affected significantly by the Rule may apply for membership on the Committee pursuant to the "Application for Membership" section below.

Proposed Agenda and Schedule for Publication of Proposed Rule: Members of the Committee, with the assistance of a neutral facilitator, will determine the agenda for the Committee's work. The NPS expects to publish a proposed rule in the **Federal Register** before September 30, 1995.

Records of Meetings: In accordance with the requirements of the Federal Advisory Committee Act, 5 U.S.C. Appx. 1988, the NPS will keep a record of all Committee meetings.

Administrative Support: To the extent authorized by law, the NPS will fund the costs of the Committee and provide administrative support and technical assistance for the activities of the Committee. The NPS will also provide staff expertise in resource management and operations to facilitate the Committee's work.

Committee Membership: The Negotiated Rulemaking Act limits negotiated rulemaking committee membership to 25 members. NPS proposes the following membership for the Cape Cod National Seashore Off-Road Vehicle Use Negotiated Rulemaking Committee:

1. The interests of the Department of the Interior will be represented by the following two members:
   a. National Park Service—Andrew T. Ringgold
   b. U.S. Fish & Wildlife Service—Sussi von Oettingen
2. The interests of Environmental and Conservation organizations will be represented by the following four members:
   a. Association for the Preservation of Cape Cod—Susan Nickerson
   b. Conservation Law Foundation—Emily Bateson
   c. Massachusetts Audubon Society—John Clarke
   d. Sierra Club—David Dow
3. The interests of recreation/public use organizations will be represented by the following four members:
   a. Cape Cod Salties—Louis MacKeil
   b. Citizens Concerned for Seacoast Management—Ignatius Piazza
   c. Highland Fish and Game Club—Arthur Parker
   d. Massachusetts Beach Buggy Association—Ron Hebb—(508–881–6807)
4. The interests of the Commonwealth of Massachusetts will be represented by the following three members:
   a. Massachusetts Coastal Zone Management Agency—Pamela Rubinoff
   b. Massachusetts Department of Environmental Protection—Elizabeth Kouloharis
   c. Massachusetts Division of Fisheries and Wildlife—Thomas French
5. Regional planning, land use, tourism and economic development interests will be represented by two members:
   a. Cape Cod Chamber of Commerce—Michael Frucci
   b. Cape Cod Commission—Armando Carbonell
6. The interests of local town governments and residents will be represented by 6 members:
   a. Provincetown—Irene Rabinowitz
   b. Truro—Robert Martin
   c. Wellfleet—Robert Costa
   d. Eastham—Henry Lind
   e. Orleans—Paul Fulcher
   f. Chatham—Wayne Love.

Application for Membership: Persons who believe they will be significantly affected by proposals to revise off-road vehicle use regulations at Cape Cod National Seashore and who believe that interests will not be adequately represented by any person identified in the "Committee Membership" section above, may apply for, or nominate another person for membership on the Cape Cod National Seashore Off-road Vehicle Use Negotiated Rulemaking Committee. In order to be considered complete, each application or nomination must include:

1. The name of the applicant or nominee and a description of the interest(s) such person will represent;
2. Evidence that the applicant or nominee is authorized to represent parties related to the interest(s) the person proposed to represent;
3. A written commitment that the applicant or nominee will actively participate in good faith in the development of the proposed rule; and
4. The reasons that the proposed members of the committee identified above do not represent the interests of the person submitting the application or nomination.

To be considered, the application must be complete and received by the close of business on June 19, 1995 at the location indicated in the "Address" section above. NPS will give full consideration to all applications and nominations timely submitted. The decision whether or not to add a person to the Cape Cod National Seashore Off-Road Vehicle Use Negotiated Rulemaking Committee will be based on NPS's determination whether an interest of that person will be significantly affected by the proposed rule, whether that interest is already adequately represented on the Committee, and if not, whether the applicant or nominee would adequately represent it.

Certification

I hereby certify that the administrative establishment of the Cape Cod National Seashore Off-Road Vehicle Use Negotiated Rulemaking Advisory Committee is necessary and in the public interest in connection with the performance of duties imposed on the Department of the Interior by the Act of August 25, 1916, 16 U.S.C. 1 *et seq.* and other statutes relating to the administration of the National Park System.

Dated: March 9, 1995.

Bruce Babbitt,

Secretary of the Interior.

[FR Doc. 95–12374 Filed 5–18–95; 8:45 am]

BILLING CODE 4310–70–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL12–42–7001; FRL–5208–5]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; extension of the public comment period.

SUMMARY: The United States Environmental Protection Agency (USEPA) promulgated the Chicago ozone Federal Implementation Plan (FIP) on June 29, 1990. Included in USEPA's FIP was a requirement that staple manufacturing facilities such as Duo-Fast Corporation's Franklin Park, Illinois facility be subject to specific emission limits. On November 27, 1990, Duo-Fast filed a petition for reconsideration with USEPA in which it contended that USEPA failed to respond to Duo-Fast's March 2, 1990, comments in response to USEPA's December 27, 1990, proposed promulgation of the Chicago FIP. On November 19, 1994 (59 FR 59739), USEPA published a proposed rule on this reconsideration which offered the opportunity for a public hearing. A public hearing was held on the November 19, 1994, proposed rule on March 8, 1995, and the public comment period was reopened February 3, 1995 (60 FR 6687) and remained open until April 7, 1995 (30 days after the public hearing). At the request of Duo-Fast, USEPA is granting a further ninety day extension of the public comment period until July 6, 1995.

DATES: The public comment period is reopened from May 19, 1995 until July 6, 1995.

ADDRESSES: Written comments on the proposed rule should be addressed to: J. Elmer Bortzer, Chief, Regulation Development Section (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Comments should be strictly limited to the subject matter of the November 18, 1994 proposed rule.

FOR FURTHER INFORMATION CONTACT: Steven Rosenthal, Regulation Development Branch, 18th Floor Southwest, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6052.

Dated: May 9, 1995.

David A. Ullrich,

Acting Regional Administrator.

[FR Doc. 95–12303 Filed 5–18–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 281

[FRL–5208–8]

Connecticut, Approval of State Underground Storage Tank Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of tentative determination to approve the State of Connecticut's Underground Storage Tank Program, Public Hearing and Public Comment Period.

SUMMARY: The State of Connecticut has applied for final approval of its underground storage tank (UST) program under Subtitle I of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 9004 *et seq.* The Environmental Protection Agency (EPA) has reviewed Connecticut's application and has made the tentative decision that Connecticut's underground storage tank program satisfies all of the requirements necessary to qualify for final program approval. EPA intends to grant final approval to Connecticut to operate its program in lieu of the Federal program. Connecticut's application for final approval is available for public review and comment and a public hearing will be held to solicit comments on the application, if requested.

DATES: All written comments on Connecticut's state program approval application must be postmarked no later than June 21, 1995. EPA will then respond to written comments where issues are raised concerning EPA's tentative program approval.

A public hearing is scheduled for June 21, 1995. The hearing will begin at 10:00 a.m. and will continue until the end of testimony or 1:00 p.m., whichever is later. Connecticut will participate in any public hearing held by EPA on this subject. Requests to present oral comments at the hearing must be received at EPA by June 14, 1995.

EPA reserves the right to cancel the public hearing if significant public interest in a hearing is not communicated to EPA, in writing, and postmarked by June 14, 1995.

EPA will determine after June 14, 1995 whether there is significant interest to hold a public hearing. In the event the public hearing is cancelled, persons requesting to present oral comments will be timely notified of the cancellation.

ADDRESSES: Written comments should be mailed to Andrea Beland, Underground Storage Tank Program, HPU–7, U.S. EPA, Region I, JFK Federal Building, Boston, Massachusetts 02203, Phone: (617) 573–9604.

The public hearing will be held at the State Capitol Building, Old Judiciary Hearing Room, 210 Capitol Ave., Hartford, Connecticut.

Copies of Connecticut's final approval application are available between 8:30 a.m.–4:00 p.m., Monday through Friday, at the following locations for review and copying:

Connecticut Department of Environmental Protection, Waste Management Bureau, 79 Elm Street, Hartford, Connecticut 06106, Phone: (203) 424–3374; (Attn.: Kelly McShea);

U.S. EPA Headquarters, Library, Room 211A, 401 M Street, Washington, D.C. 20460, Phone: (202) 382–5926;

U.S. EPA, Region I Library, 1 Congress Street, 11th Floor, Boston, Massachusetts 02203, Phone: (617) 565–3300.

FOR FURTHER INFORMATION CONTACT: Andrea Beland, HPU–7, Underground Storage Tank Program, U.S. EPA, Region I, JFK Federal Building, Boston, Massachusetts 02203, Phone: (617) 573–9604. Comments should be sent to this address.

SUPPLEMENTARY INFORMATION:

A. Background

Section 9004 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 9004, authorizes EPA to approve State underground storage tank programs to operate in lieu of the Federal underground storage tank (UST) program. Program approval is granted by EPA, if the Agency finds that the State program:

(1) Is "no less stringent" than the Federal program in all eight elements found at 40 CFR 281;

(2) Includes the notification requirements found at Section 9004(a)(8), 42 U.S.C. 6991c(a)(8); and

(3) Provides for adequate enforcement of compliance with UST standards at Section 9004(a), 42 U.S.C. 6991c(a).

B. Connecticut

In February of 1991, the State of Connecticut submitted a draft UST application to EPA for program approval. The Connecticut Department of Environmental Protection (CT DEP) prepared and submitted the application, because it is responsible for the underground storage tank regulatory program and the leaking underground storage tank corrective action program.

The CT DEP, working with EPA, amended its UST rules, to meet the "no less stringent" federal requirements. Consistent with Connecticut's laws, the State provided public notice and an opportunity to comment on the amended regulations, Connecticut DEP held public hearings on May 22, 1992 and on September 29, 1992. The proposed regulations were rejected without prejudice by Connecticut's Legislative Regulation Review Committee (LRRC) most recently in April of 1994. However, CT DEP corrected the regulations and the LRRC approved them. The regulations then became effective on July 28, 1994, but were not fully enforceable until they were published on September 27, 1994.

In accordance with the requirements of 40 CFR 281.50(b), Connecticut published a public notice on April 14, 1992 and August 25, 1992, announcing a public hearing to be held on May 22, 1992 and September 29, 1992, respectively and requesting comments on Connecticut's intention to seek program approval. On December 28, 1994, EPA received a Final Application for program approval.

EPA reviewed Connecticut's application and tentatively determined that the state's program meets all of the

requirements necessary to qualify for final program approval. Consequently, EPA intends to grant final approval to Connecticut to operate its UST program in lieu of the Federal UST program.

Based on a detailed review of Connecticut's application for UST program approval, EPA has determined that the Connecticut Department of Environmental Protection has developed standards and criteria for the design, installation, operation, maintenance, and monitoring of underground storage tanks to prevent UST related ground and surface water contamination, under the authority of the Connecticut General Statue Section 22a–449(d) and Regulations of Connecticut State Agency ("R.C.S.A.") Sections 22a–449(d)–101 through 113.

Connecticut General Law provides:

(1) Authority to promulgate UST regulations for controlling underground storage facilities containing petroleum and hazardous substances;

(2) Authority to impose civil penalties for violations of any statutory or regulatory requirement;

(3) Authority to conduct compliance monitoring inspections and other enforcement activities;

(4) Authority to promulgate UST notification requirements for owners and operators of underground storage tanks; and

(5) Authority for the response to, clean up, and corrective actions of petroleum or hazardous substance releases.

C. Public Hearing and Comments

In accordance with Section 9004 of RCRA, 42 U.S.C. 6991c and 40 CFR 281.50(e), if sufficient public interest is received by June 14, 1995, EPA will hold a public hearing on its tentative decision on June 21, 1995 from 10:00 a.m.–1:00 p.m. in the State Capitol Building, Old Judiciary Room, 210 Capitol Ave., Hartford, Connecticut.

The public may also submit written comments on EPA's tentative determination. Written comments must be postmarked by May 31, 1995 as to allow EPA and the state a reasonable opportunity to research and prepare responses. Copies of Connecticut's application are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this notice.

EPA will consider all public comments on its tentative determination received during the public comment period and at the hearing. Issues raised by those comments may be the basis for a decision to deny final approval to Connecticut. EPA expects to make a final decision on whether or not to approve Connecticut's program within sixty (60) days after the date of the public hearing and will give notice of it in the **Federal Register**. The notice will include a summary of the reasons for the final determination and a response to all significant comments.

Compliance With Executive Order 122866

The Office of Management and Budget has exempted this rule from the requirement of Section 6 of Executive Order 122866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. The approval of Connecticut's UST program effectively suspends the applicability of the Federal UST regulations, thereby eliminating duplicative requirements for owners and operators of underground storage tanks in the State of Connecticut. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 281

Environmental protection, Hazardous substances, Incorporation by reference, Intergovernmental relations, State program approval, Underground storage tanks, Water pollution control.

Authority: This notice is issued under the authority of Section 9004 of the Solid Waste Disposal Act as amended, 42 U.S.C 6991c.

Dated: May 6, 1995.

John P. DeVillars,

Regional Administrator.

[FR Doc. 95–12302 Filed 5–18–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[WT Docket No. 95–69, FCC 95–202]

Auctionable Services

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Notice of Proposed Rulemaking contains proposed rules pertaining to fees for certain services and products provided to specific persons and entities participating in future Federal Communications Commission auctions. In particular, the proposal establishes fees for Commission proprietary remote software packages, on-line communications service charges, and bidder's information packages in connection with auctionable services. The Commission, in establishing the proposed fees, implements the Independent Offices Appropriations Act. The Commission's proposal would receiver the Federal Government's cost from any bidders utilizing Commission-provided services.

DATES: Written comments must be submitted by May 31, 1995, and written reply comments must be submitted by June 6, 1995.

ADDRESSES: Send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Interested parties who do not wish to participate formally in this proceeding may file informal comments at the same address.

FOR FURTHER INFORMATION CONTACT: Bert Weintraub, Wireless Telecommunications Bureau, (202) 418–1316.

SUPPLEMENTARY INFORMATION: In previous Federal Communications Commission (hereafter, "Commission" or "FCC") auctions, bidders have paid auction contractors of the Commission fees consisting of the contractors' costs and a reasonable profit for remote bidding software and an on-line access charge. The Independent Offices Appropriations Act ("IOAA"), codified at 31 U.S.C. § 9701, permit fees and charges for Government services and things of value and authorizes agencies to prescribe regulations establishing charges for products and services provided by the agency. The Office of Management and Budget ("OMB") has issued policy guidance on fees via Circular A–25 for agencies to recover expenses. The OMB published a revised revision of the Circular in the **Federal Register**, 58 FR 38142 (July 15, 1993), which provided updated policy guidance on user fees. Pursuant to this revision, the imposition of fees for Government-provided products and services conferring benefits on identifiable recipients over and above those benefits received by the general public are encouraged. Under the OMB Circular, agencies, in establishing fees, are to select between "full cost" or "market price."

On August 10, 1993, the Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103–66, 107 Stat. 312, added a new section 309(j) to the Communications Act of 1934, 47 U.S.C. § 309(j). This amendment to the Communications Act authorized the Commission to use competitive bidding

procedures to choose from among two or more mutually exclusive applications for initial licenses for use of the radio spectrum. Pursuant to this authority, the Commission has conducted three simultaneous multiple round auctions for Personal Communications Service ("PCS") licenses (*i.e.*, the Nationwide Narrowband PCS auction, held from July 25 through July 29, 1994; the Regional Narrowband PCS auction, held October 26, through November 8, 1994; and the Broadband A and B block PCS auction, held December 5, 1994, through March 13, 1995). In each PCS auction, bids were placed electronically using a computer bidding system designed and developed by the FCC in conjunction with its auction contractors.

The Commission and its auction contractors incurred significant costs in developing the on-site electronic bidding systems used in the PCS auctions and the remote electronic bidding system used in two of the PCS auctions. The Commission recovered its developments costs for the electronic bidding system for the first three auctions from the proceeds of those actions. Additionally, the FCC's auction contractor was allowed to charge bidders electing to use on-line remote bidding system a $200.00 fee for the proprietary remote bidding software package and an on-line access charge. The FCC has determined, based on its auction experience, that remote electronic bidding provides bidders with an important and valuable service as it enables them to place and withdraw bids, access auction round results and other FCC announcements during the auction from their offices using their personal computer. Thus, bidders are not required to be physically present at the auction site for the duration of the auction. Because the Commission will provide these services directly to bidders, the Commission proposes to recover the Federal Government's costs by charging bidders a fee for the remote electronic bidding software and an on-line access charge via a 900 telephone service ("900 service"). Bidders will continue to have the option of placing their bids telephonically from remote locations via an 800 telephone service at no charge. Round results information is also available to remote access bidders over the Internet and the Commission's Bulletin Board at no charge.

The significant costs and expenses incurred by the Federal Government in developing the remote electronic auction system have included infrastructure design and implementation, software development, software testing, and administrative and personnel costs associated with this process. The Commission has developed its own remote on-line bidding system to be offered as a convenience to bidders in future auctions, enabling bidders to participate in auctions from their offices using their personal computers, submit and review applications, and access auction round results information from remote locations using a 900 service. The Notice of Proposed Rulemaking ("NPRM") proposes to recover the costs to the Government by charging bidders who elect to bid electronically from remote locations a fee for the remote bidding software and for remote access to the bidding system via the 900 service. The Commission's remote electronic bidding system will enable bidders to participate in Commission auctions, review applications, and access auction round results information from remote locations using a Wide Area Network to connect with the bidding system via a 900 telephone service. The proposed rule would recover future costs from bidders who directly benefit from the services and products offered by the Commission in conjunction with holding the auctions. Imposing such fees on bidders who actually use the remote electronic bidding system is the fairest and most equitable manner for the Government to recover its costs in developing, maintaining, enhancing, and upgrading the remote bidding system.

In proposing the fees, the Commission has followed OMB guidance and relevant court cases in calculating the costs of the 900 service, remote access bidding software, and bidder's information packages, utilizing "market price" instead of "full cost" because it is simpler, more practical, more efficient, and more readily ascertainable. As a result, based upon market surveys for 900 service, remote access bidding software, and bidder's information packages, the NPRM proposes the following fees: $4.00 per minute for 900 service; $200.00 per package for remote bidding software, one free bidder's information package and $16.00 for each additional bidder's information package requested by that same person or entity.

The proposed fee of $4.00 per minute for 900 service is based on the FCC's survey of the charges for similar on-line services. The services surveyed were mainly on-line reference and research services operating in the open market with sufficient competition to establish a market-based price. FCC sampling revealed that prices currently range from $4.05 per minute to $4.42 per minute (plus monthly account maintenance fees). Even though the average price for this type of services $4.23 per minute, $4.00 per minute is proposed. The proposed $200.00 fee for the remote access bidding software packages was based upon the open market prices for similar software packages. FCC research indicated that the most comparable software package currently available is $200.00 per package and offered by only one supplier. Due to highly specialized nature of the remote access software, the Commission could not identify other comparable software packages for which it could obtain additional market price information. The proposed $16.00 fee for each additional bidder's information package was developed by comparing the average cost of producing bidder's information packages in the open market amount commercial printing firms. The previous prices ranged from $13.50 to $18.50 (both figures include postage), and $16.00 is the average of this range. Payment procedures to collect the fees are proposed as follows: the fee for the 900 service will appear as a charge on the user's monthly telephone bill; the fees for the software packages and bidder's information packages will be collected by the Commission's auction contractor. Funds received from the sale of auction materials, software, or services, pursuant to the IOAA, must go directly to the U.S. Treasury.

This action is taken pursuant to Sections 4(i), 7(a), 302, 303(c), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 157(a), 302, 303(c), 303(f), 303(g), and 303(r).

List of Subjects in 47 CFR Part 1

Administrative practice and procedure.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–12462 Filed 5–18–95; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 20

[GN Docket No. 93–252, FCC 95–155]

Regulatory Treatment of Mobile Services

AGENCY: Federal Communications Commission.

ACTION: Further notice of proposed rulemaking.

SUMMARY: The Commission adopted a *Third Further Notice of Proposed Rulemaking* proposing to amend its 45

MHz spectrum cap for cellular telephone service, Specialized Mobile Radio (SMR) service, and broadband Personal Communications Service (PCS). While the spectrum cap currently applies only to licensees in these services who are classified as Commercial Mobile Radio Service (CMRS) providers, the Commission proposes to extend the cap to all cellular, SMR, and broadband PCS providers regardless of their regulatory classification. The *Third Further Notice of Proposed Rulemaking* also seeks comment on applying the spectrum cap to those "grandfathered" SMR licensees who continue to be regulated as Private Mobile Radio Service (PMRS) providers until August 10, 1996. The intended effect of the proposed rule for cellular, SMR and PCS providers is to ensure regulatory symmetry in the regulation of competing commercial mobile radio services.

DATES: Comments are to be filed on or before June 5, 1995. Reply Comments are to be filed on or before June 26, 1995.

ADDRESSES: Comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Lisa Warner, (202) 418–0620, Wireless Telecommunications Bureau.

SUPPLEMENTARY INFORMATION: This is a synopsis of the *Third Further Notice of Proposed Rulemaking*, adopted April 10, 1995, and released May 5, 1995. The complete text of this *Further Notice of Proposed Rulemaking* is available for inspection and copying during normal business hours in the FCC Dockets Branch, Room 239, 1919 M Street NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Service, at (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Synopsis of the Third Further Notice of Proposed Rulemaking

Adopted: April 10, 1995.

Released: May 5, 1995.

1. The Commission initially proposed the spectrum cap in the *Further Notice of Proposed Rulemaking*, GN Docket No. 93–252, 59 Fed. Reg. 28,042 (May 31, 1994), in this proceeding. The Commission framed the spectrum cap issue in terms of CMRS spectrum, and did not address the aggregation of PMRS spectrum. On August 9, 1994, in the *Third Report and Order* in this proceeding, GN Docket No. 93–252, 59 Fed. Reg. 59945 (Nov. 21, 1994), the Commission applied the spectrum cap only to cellular, SMR, and broadband PCS services. The cap only applied to cellular, SMR, and broadband PCS licensees whose activities are regulated as CMRS.

2. The Commission notes in the *Third Further Notice of Proposed Rulemaking* that there is potential for a licensee to reduce the number of competitors by aggregating spectrum regardless of whether the licensee is providing CMRS or PMRS. Moreover, the services provided by PMRS providers may well be viewed as competitive alternatives to CMRS by customers; thus, excluding them from the cap could provide PMRS providers with an unfair competitive advantage over CMRS providers. In addition, even if most cellular, SMR, and broadband PCS providers provide CMRS services, as is likely to be the case, determining the precise amount of CMRS spectrum that should be attributed for spectrum cap purposes is likely to be difficult, particularly in the case of PCS, SMR, and possibly cellular licensees who provide both CMRS and PMRS offerings under a single authorization.

3. For all of these reasons, the Commission proposes that the 45 MHz spectrum cap be revised to apply to cellular, SMR, and broadband PCS licensees regardless of regulatory classification. The Commission believes that such a revision will greatly simplify the application of the cap and will provide greater certainty regarding its effect to cellular, SMR, and broadband PCS applicants and licensees.

Initial Regulatory Flexibility Analysis

4. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the policies and rules proposed in this Further Notice of Proposed Rulemaking. Written public comments are requested on the IRFA.

5. *Reason for Action:* This rule making proceeding was initiated to secure comment on proposals for revising the 45 MHz spectrum cap for cellular telephone service, SMR, and PCS. The spectrum cap currently applies to CMRS providers. The Commission proposes to extend the cap to all cellular, SMR, and broadband PCS providers regardless of their regulatory classification. The proposals advanced in the *Third Further Notice of Proposed Rulemaking* are designed to implement Congress's goal of regulatory symmetry in the regulation of competing commercial mobile radio services as described in Section 3(n) and 332 of the Communications Act, 47 U.S.C. §§ 153(n), 332, as amended.

6. *Objective*: The Commission proposed to adopt a rule for cellular, SMR and PCS providers that is intended to ensure regulatory symmetry in the regulation of competing commercial mobile radio services.

7. *Legal Basis*: The proposed action is authorized under Sections 3(n), 4(i), 332(a), 332(c) and 332(d) of the Communications Act of 1934, 47 U.S.C. §§ 153(n), 154(i), 332(a), 332(c) and 332(d), as amended.

8. *Reporting, Recordkeeping, and Other Compliance Requirements*: Under the proposal contained in the *Third Further Notice of Proposed Rulemaking* there are no additional reporting or recordkeeping requirements.

9. *Federal Rules Which Overlap, Duplicate or Conflict With These Rules*: None.

10. *Description, Potential Impact, and Number of Small Entities Involved*: The *Third Further Notice of Proposed Rulemaking* does not potentially affect small entities. After evaluating comments filed in response to the *Third Further Notice of Proposed Rulemaking*, the Commission will examine further the impact of all rule changes on small entities and set forth its findings in the Final Regulatory Flexibility Analysis.

11. *IFRA Comments*: The Commission requests written public comment on the foregoing Initial Regulatory Flexibility Analysis. Comments must have a separate and distinct heading designating them as responses to IRFA and must be filed by the deadlines provided above.

Ex Parte Rules—Non-Restricted Proceeding

12. This is a non-restricted notice and comment rule-making proceeding. *Ex Parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. *See generally* 47 C.F.R. Sections 1.1202, 1.1203, and 1.1206(a).

List of Subjects in 47 CFR Part 20

Commercial mobile radio services.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–12299 Filed 5–18–95; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 424

[I.D. 050895C]

Endangered and Threatened Species; Notice of Public Hearing On Proposed Status for the Klamath Mountains Province Steelhead

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public hearings; request for public comments and extension of the public comment period.

SUMMARY: NMFS is announcing dates and locations for public meetings concerning the proposed listing of natural steelhead (*Oncorhynchus mykiss*) populations occurring between Cape Blanco, OR, and the Klamath River Basin, CA (referred to as the Klamath Mountains Province), as threatened under the Endangered Species Act (ESA). Hearings on the proposed listing will provide the opportunity for the public to give comments and will permit an exchange of information and opinion among interested parties. In addition, this notice serves to extend the public comment period an additional 60 days until July 14, 1995.

DATES: The hearings on the proposed listing will be held as follows:

1. June 21, 1995, 6:30 p.m. to 9:30 p.m., Medford, OR
2. June 22, 1995, 6:30 p.m. to 9:30 p.m., Gold Beach, OR
3. June 27, 1995, 7:00 p.m. to 9:30 p.m., Crescent City, CA

ADDRESSES: Send written comments to Garth Griffin, Environmental and Technical Services Division, NMFS, Northwest Region, 525 NE Oregon St, Suite 500, Portland, OR 97232–2737. The hearings on the proposed listing will be held at the following locations:

1. Medford—Medford City Hall—City Council Chambers, 411 W. 8th Street, Medford, OR
2. Gold Beach—Gold Beach City Hall—City Council Chambers, 510 S. Ellensburg Avenue, Gold Beach, OR
3. Crescent City—Crescent City Community Cultural Center—Atrium Room, 1001 Front Street, Crescent City, CA

FOR FURTHER INFORMATION CONTACT: Garth Griffin; 503–231–2005; R. Craig Wingert, 310–980–4021; or Marta Nammack, 301–713–2322.

SUPPLEMENTARY INFORMATION: On March 16, 1995, NMFS issued a proposed rule (60 FR 14253) to list natural steelhead (*Oncorhynchus mykiss*) populations occurring between Cape Blanco, OR, and the Klamath River Basin, CA, as threatened under the ESA. The Department of Commerce's ESA implementing regulations state that the Secretary of Commerce shall promptly hold at least one public hearing if any person so requests within 45 days of publication of a proposed regulation to list...a species (50 CFR 424.16 (c)(3)).

The public will have an opportunity to provide oral or written testimony at the public hearings. Written comments on the proposed rule may also be sent to Garth Griffin (see **ADDRESSES**). These hearings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Garth Griffin (see **ADDRESSES**).

Dated: May 16, 1995.

Russell J. Bellmer,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–12391 Filed 5–18–95; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 60, No. 97
Friday, May 19, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. FV–95–301]

Advisory Committee for Fresh Products Shipping Point Inspection Program

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of intent to establish; request for nominations and comments.

SUMMARY: The U.S. Department of Agriculture (USDA) proposes to establish the advisory committee for the Fresh Products Branch Shipping Point Inspection Program. The purpose of the Committee is to review the Fresh Products Shipping Point Inspection Program, and confer with Department officials regarding its administration, operations, and funding. This document seeks nominations of individuals to be considered for selection as Committee members. Comments are requested on categories of membership and duties of the committee.

DATES: Written nominations must be received on or before June 19, 1995.

ADDRESSES: Nominations should be sent to Mr. Larry B. Lace, Chief, Fresh Products Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2056 South Building, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Larry B. Lace, (202) 720–5870.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Secretary of Agriculture intends to establish the Advisory Committee for the Fresh Products Shipping Point Inspection Program, hereafter referred to as Committee. The purpose of the Committee is to review the Fresh Products Shipping Point Inspection Program and confer with Department officials regarding its administration, operations, and funding. On the basis of its review, the Committee shall develop recommendations for consideration by the Secretary of Agriculture with regard to the desired level of services, staffing levels, user fee rates, collection of such fees for the Fresh Products Shipping Point Inspection Program, and other such matters as it may deem advisable or which the Secretary of Agriculture, the Agricultural Marketing Service (AMS) Administrator, or AMS Fruit and Vegetable Division Director may request.

The Secretary of Agriculture has determined that the work of the Committee is in the public interest in view of the cooperative agreements for implementing the Fresh Products Shipping Point Inspection Program with all 50 States and Puerto Rico.

The Administrator of the Agricultural Marketing Service (AMS), will be Chairperson of the Committee. The Deputy Director of the Fruit and Vegetable Division, AMS, will be Vice-Chairperson. In the absence of the Chairperson, the Vice-Chairperson will act in his/her stead. The Chief of the Fresh Products Branch, Fruit and Vegetable Division, AMS, will serve as the Committee's Executive Secretary. Staff support essential to the execution of the Committee's responsibilities shall be provided by AMS, Fruit and Vegetable Division.

Committee members shall be appointed by the Secretary of Agriculture and shall serve for the entire term of the Committee. The Committee shall be comprised of twenty (20) members; five (5) representatives of State cooperators and fifteen (15) members representing balanced interests of the fruit and vegetable industry, including but not limited to growers, shippers, receivers, processors, and other interested parties. One alternate member for every two regular Committee members shall also be appointed.

The Secretary of Agriculture invites those individuals, organizations, and groups affiliated with the fruit, vegetable, or nut industries, to nominate individuals for membership on the Committee. Nominations should describe and document the proposed member's qualifications for membership to the Committee. The Secretary seeks a diverse group of members representing a broad spectrum of persons interested in the Fresh Products Shipping Point Inspection Program.

Individuals receiving nominations will be contacted and biographical information must be completed and returned to the USDA within five (5) working days of its receipt, to expedite the clearance process that is required before selection by the Secretary of Agriculture.

Equal opportunity practices will be followed in all appointments to the Committee in accordance with USDA policies. To ensure that the recommendations of the Committee have taken into account the needs of the diverse groups served by the Department, membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

Dated: March 30, 1994.

Wardell C. Townsend, Jr.,

Assistant Secretary for Administration.

[FR Doc. 94–12364 Filed 5–18–94; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Fishing Capacity Reduction Demonstration Program.

Agency Form Number(s): None Assigned.

OMB Approval Number: None.

Type of Request: New Collection.

Burden: 1,210 hours.

Number of Respondents: 1,050.

Avg. Hours Per Response: Ranges between 1 and 16 hours depending on the information requirement.

Needs and Uses: The Fishing Capacity Reduction Demonstration Program is a $2 million demonstration program which seeks to reduce permanently the fishing capacity within the northeast groundfish fishery through the removal of full–time vessels and permits from the multispeciies fishery. Applicants must provide information on vesssel ownership, catch history, financial information, and a bid for the amount for which Federal fishing permits will be surrendered. NOAA will use the information to select the vessels to be removed. A vessel selected to participate must be scrapped by the owner.

Affected Public: Individuals, businesses or other for–profit organizations.

Frequency: One time.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Don Arbuckle, (202) 482–7340.

Copies of the above information collection proposal can be obtained by calling or writing Gerald Tache, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, D.C. 20503.

Dated: May 15, 1995

Gerald Tache,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 95–12333 Filed 5–18–95; 8:45 am]

BILLING CODE 3510–CW–F

Foreign-Trade Zones Board

[Docket A(32b1)–7–95]

Foreign-Trade Zone 155—Calhoun County, Texas, Request for Export Manufacturing Authority, ABB Randall Corporation (Gas Plant Modules)

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Calhoun-Victoria FTZ, Inc., grantee of FTZ 155, pursuant to § 400.32(b)(1) of the Board's regulations (15 CFR part 400), requesting authority on behalf of ABB Randall Corporation (ABB Randall) to manufacture gas plant modules for export under zone procedures within FTZ 155. It was formally filed on May 8, 1995.

The authority would be used for the fabrication of nine gas plant modules for shipment abroad as part of an overseas plant construction contract involving ABB Randall which will be completed by the end of 1996. Certain components (about 80% of total) would be sourced from abroad, including: flat rolled steel and steel alloy products, steel and steel alloy bars/rods and angles/shapes, reservoirs/vessels/tanks (iron or steel), steel, copper and aluminum wire, steel, copper and aluminum pipe/tubing, pumps, electric power motors and generators, electrical signaling devices, and electrical machines.

Because all of the modules would be exported, zone procedures would exempt ABB Randall from Customs duty payments on the foreign materials.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period of their receipt is June 19, 1995. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to July 3, 1995.

A copy of the application and the accompanying exhibits will be available for public inspection at the following location: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th Street & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: May 12, 1995.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 95–12396 Filed 5–18–95; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

[A–201–802]

Gray Portland Cement and Clinker From Mexico; Final Results Of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: The review period is August 1, 1992, through July 31, 1993. This review covers one manufacturer/exporter, CEMEX, S.A. (CEMEX). On June 3, 1994, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on gray portland cement and clinker from Mexico. We gave interested parties an opportunity to comment.

For our final results, we have determined that CEMEX failed to cooperate with the Department. As a result, we have assigned CEMEX a margin based upon best information available (BIA), in accordance with section 776(c) of the Tariff Act of 1930, as amended (the Act). When a company refuses to cooperate with the Department or otherwise significantly impedes the proceedings, we use as BIA the higher of (a) the highest of the rates found for any firm for the same class or kind of merchandise in the same country of origin in the less-than-fair-value (LTFV) investigation or prior administrative review, or (b) the highest rate found in this review for any firm for the same class or kind of merchandise in the same country of origin. For purposes of the instant review, this margin is the highest rate found for any firm in the LTFV investigation, *i.e.*, CEMEX's margin, as amended pursuant to litigation (61.85 percent). The "All Others" rate for this order is 61.35 percent.

EFFECTIVE DATE: May 19, 1995.

FOR FURTHER INFORMATION CONTACT: Robert James or John Kugelman, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–5253.

SUPPLEMENTARY INFORMATION:

Background

On June 3, 1994, the Department published in the **Federal Register** (59 FR 28844) the preliminary results of its administrative review of the antidumping duty order on gray portland cement and clinker from Mexico (55 FR 35371, August 30, 1990). The Department has now completed this review in accordance with section 751 of the Act.

Scope of Review

The products covered by this review include gray portland cement and clinker. Gray portland cement is a hydraulic cement and the primary component of concrete. Clinker, an intermediate material product produced when manufacturing cement, has no use other than being ground into finished cement. Gray portland cement is currently classifiable under the Harmonized Tariff Schedule (HTS) item number 2523.29, and cement clinker is currently classifiable under HTS item number 2523.10. Gray portland cement has also been entered under HTS item number 2523.90 as "other hydraulic cements." The HTS subheadings are provided for convenience and U.S. Customs Service purposes only. Our written description of the scope remains dispositive.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. We received written comments from the Ad Hoc Committee of AZ–NM–TX–FL Producers of Gray Portland Cement and the National Cement Company of California (petitioners) and CEMEX on July 5, 1994. We received written rebuttal comments from petitioners and CEMEX on July 11, 1994. On July 18, 1994, we held a public hearing.

Comment 1: CEMEX insists that the Department, in accordance with a July 1992 panel report from the Antidumping Code Committee of the General Agreement on Tariffs and Trade (1947 GATT), must revoke the antidumping duty order *ab initio*, due to what CEMEX contends was the Department's failure to properly establish petitioners' standing in the original LTFV investigation. CEMEX argues that the U.S. statute is silent on the degree of support required to warrant initiation of a LTFV investigation. In cases where the U.S. statute does not specifically address an issue, CEMEX argues, the law must be interpreted in a manner which will not conflict with U.S. obligations under international agreements. According to CEMEX, the Department failed to affirmatively ascertain that the petition, filed on behalf of a regional industry, was supported by "all or almost all" of that regional industry. As a result, CEMEX argues, initiation of the LTFV investigation was improper and, thus, the investigation and all subsequent proceedings following from the investigation are void and must be rescinded. Only then, CEMEX maintains, will the actions of the administering authority in the United States (*i.e.*, the Department) be brought into compliance with the findings of the GATT panel report.

Petitioners argue that U.S. courts have established that the provisions of the GATT Antidumping Code cannot be interpreted to supersede domestic law. Citing the Court of Appeals for the Federal Circuit (Federal Circuit) decision in *Suramerica de Aleaciones Laminadas, C.A.* v. *United States*, 966 F.2d 660 (Fed. Cir. 1992) (*Suramerica*), petitioners assert that U.S. law takes precedence over the conclusions of a GATT panel report. The Federal Circuit further held, petitioners maintain, that it is the duty of Congress, and not the courts, to reconcile any conflicts between U.S. law and the GATT Antidumping Code. Petitioners note that, in *Suramerica*, the dispute also centered on the Department's manner of addressing standing in a LTFV investigation. The Federal Circuit, petitioners maintain, "summarily rejected" the respondents' request to revoke the order. Further, petitioners argue, the Fifth Circuit Court, in *Mississippi Poultry Association, Inc.* v. *Madigan*, 992 F.2d 1359 (5th Cir. 1993), specifically concluded that the Department's interpretation of standing takes precedence, even if such interpretation "is virtually certain to create a violation of the GATT."

Finally, petitioners aver that the GATT panel report is not binding upon the United States, as the panel's conclusions have not been adopted by the GATT Antidumping Code Committee. Petitioners claim that until such time as this report is adopted, the panel report creates no legally binding obligation upon the United States under international agreements.

Department's Position: We agree with petitioners that unadopted GATT panel reports create no obligation upon the United States. In the present case, the Government of the United States has not agreed to the adoption of the GATT panel report regarding Mexican cement and clinker on both legal and procedural grounds, and the Antidumping Code Committee has not, in fact, adopted this report. In the investigations of pure and alloy magnesium from Canada and Norway, respondents also cited an unadopted GATT panel report on seamless stainless steel hollow products from Sweden. This panel report faulted the Department's interpretation of the expression "on behalf of an industry," which is found at section 732(b) of the Act. *See Pure and Alloy Magnesium from Canada: Final Affirmative Determination*, 57 FR 30940 (July 13, 1992), and *Pure and Alloy Magnesium from Norway: Final Negative Determination*, 57 FR 30944 (July 13, 1992). In those cases, the Department rejected any applicability of the unadopted GATT panel report.

We also agree with petitioners that U.S. law, which the Department followed when initiating the LTFV investigation, takes precedence over the GATT Antidumping Code. This position has been supported by the Federal Circuit which concluded that "the GATT does not trump domestic legislation; if the statutory provisions at issue here are inconsistent with the GATT, it is a matter for Congress and not this court to remedy." *Suramerica*, 966 F.2d at 667–668. Rather, as the CIT stated in *Timken Company* v. *United States*, 14 CIT 753 (CIT 1990), "any guidance the ITA gleans from the [GATT] Code is clearly hortatory and not mandatory."

Furthermore, the Department has no authority to rescind its initiation of the LTFV investigation. Under sections 514(b) and 516A(c)(1) of the Act, a LTFV determination regarding initiation becomes final and binding unless a court challenge to that determination is timely initiated under 516A. Even if judicial review of a determination is timely sought, the Department's determination continues to control until there is a resulting court decision "not in harmony with that determination." *See* 19 U.S.C. 1516a(c)(1). In this case, no one challenged the Department's determination on standing before the CIT. Therefore, that determination is final and binding on all persons, including the Department.

With respect to the statute's purported "silence," we note that the 1947 GATT, as well as the Agreement on Implementation of Article VI of the GATT (the AD Code), is silent as to the degree of support required for a petition filed in a regional industry case. Likewise, in considering the proper interpretation of the requirement that a petition be filed "by or on behalf of" an industry, the AD Code provides no express guidance as to how compliance with this criterion is to be ascertained. Thus, even if the Act is silent on these issues, our interpretation of the statute could not conflict with the AD Code.

We also reject any suggestion that our practice of presuming the support of the domestic industry, absent an affirmative showing to the contrary, conflicts with U.S. law. In fact, numerous decisions by the U.S. Court of International Trade (CIT) have upheld the Department's practice. *See, e.g., Citrosuco Paulista* v. *United States*, 704 F. Supp. 1074 (CIT 1988); *Comeau Seafoods* v. *United States*, 724 F. Supp. 1407 (CIT 1989).

For these reasons, we have concluded that (i) the GATT panel report does not govern the Department's conduct of this administrative review, and (ii) our determination in this regard is in accordance with law.

Comment 2: CEMEX argues that the Department erred in applying BIA in this review, as the data on sales of Types II and V cement, as well as data on constructed value for Types II and V cement submitted by CEMEX, were sufficient for the Department to accurately calculate margins in the instant review. CEMEX claims that the Department's conclusion in its preliminary results that data on sales of Type I cement were "essential" to determining if home market sales of Types II and V cement were within the ordinary course of trade (see below) was without foundation and, therefore, did not warrant use of total BIA. CEMEX contends that the Department's sole basis for applying BIA was CEMEX's refusal to supply the Type I information, and not because the Department had insufficient information to determine whether CEMEX's Type II and Type V sales were made in the ordinary course of trade. CEMEX further maintains that, "absent a legally sufficient excuse for resorting to comparisons of similar merchandise," the Department is required to use sales of identical merchandise as a basis for foreign market value (FMV). In this case, CEMEX argues, use of BIA would only be appropriate if the Department had reviewed the information in the record and found that the sales of identical merchandise were outside the ordinary course of trade. Since, according to CEMEX, it had provided adequate information to support its claim that its sales of identical merchandise were within the ordinary course of trade, the Department should have used those sales. Instead, CEMEX claims, the Department simply disregarded all information on sales of identical merchandise provided by CEMEX and resorted to BIA.

CEMEX insists that its sales of Type II and Type V cement were made in the ordinary course of trade and, thus, are the appropriate sales for comparison purposes. Further, CEMEX maintains that no evidence on the record of the instant review rebuts this contention. CEMEX argues that it provided sufficient data regarding each of the five criteria cited by the Department in support of its conclusion in the second review that CEMEX's Type II and V sales were outside the ordinary course of trade. These factors were summarized as: (a) Shipping arrangements; (b) profitability of sales; (c) marketing reasons, other than profit; (d) volume of sales; and (e) historical sales trends.

Thus, in the instant review, according to CEMEX, the Department had no need for information on home market sales of Type I cement in order to determine that sales of Types II and V were made in the ordinary course of trade. CEMEX maintains the Department never rendered a decision in its ordinary-course-of-trade investigation and, therefore, never demonstrated its need for sales data on Type I cement. CEMEX claims that the administrative burden and cost of submitting sales data on "similar" merchandise, *i.e.*, Type I cement, is not justified in this case, since CEMEX was able to supply sufficient data on sales of identical merchandise.

Petitioners suggest, in turn, that CEMEX, through its refusal to supply the requested data on Type I sales, is attempting to "wrest control" of this review from the Department by deciding unilaterally what information the Department is entitled to receive. It is not incumbent upon the Department, continue petitioners, to demonstrate to respondents' satisfaction the relevance of any given information sought. Yet, petitioners suggest, this is precisely the standard CEMEX is attempting to impose in this review. Petitioners maintain that CEMEX would turn the Department's administrative review into "the equivalent of a federal court discovery dispute, where the respondent is free to object to substantial portions of the questionnaire on relevance and other grounds." See Petitioners' Rebuttal Brief, July 11, 1994, pages 2 and 8.

Petitioners maintain that the Department had good cause to request Type I sales data, as this information would be vital in conducting an investigation of whether CEMEX's sales of Type II and Type V during the period of review were or were not within the ordinary course of trade. Petitioners argue that full and complete responses to the Department's information requests are necessary; otherwise, petitioners aver, the Department would be forced to operate "in a vacuum" in making any ordinary-course-of-trade determination. Finally, petitioners contend that contrary to CEMEX's claims, the record of this review for the 1992–1993 period is not sufficient to demonstrate that CEMEX's Type II and Type V sales were within the ordinary course of trade. Petitioners note that in the 1991–1992 review, the entire ordinary-course-of-trade issue hinged on a comparison of CEMEX's treatment of home market Type II and Type V cement sales with its treatment of home market Type I sales.

Department's Position: We agree with petitioners that it is not incumbent upon the Department to demonstrate to CEMEX's satisfaction the relevance of any given information sought. In the conduct of an administrative review, the Department is routinely confronted with voluminous data and various possible interpretations of these data. It would be impossible to state with complete confidence, at the outset of a proceeding, precisely what information will eventually be deemed relevant in arriving at the final results of a review. This presumes a level of prescience neither the Department nor respondents themselves can legitimately claim. Therefore, the Department must frame its requests for information after considering all the facts at its disposal at the time the information requests are made. At times, subsequent requests for information may be issued as the Department interprets the data that it has received. Generally, however, the statutory and regulatory deadlines of antidumping proceedings often do not allow the Department to use such a staggered approach; this is especially true where the subsequently requested data would be voluminous or itself capable of various reasonable interpretations which might require further clarification.

While the Department is by no means obligated to state the specific reasons for requesting information prior to its submission by a respondent, in the instant review, the Department did, in fact, explicitly state its grounds for insisting on Type I home market sales data. On three separate occasions in this review, we requested the necessary data on Type I cement sales. In our questionnaire, under "Home Market Sales," we asked CEMEX to report "all sales of the subject merchandise," *i.e.*, Types I, II and V cement. *See* the Department's questionnaire, dated October 14, 1993, at pages 10 and 14A, which is on file in the Central Records Unit, Room B–099 of the Main Commerce Building. CEMEX requested clarification of its reporting requirements, which we provided in a letter dated November 29, 1993. We explained that, as we had been unable to use home market sales data on Type II and Type V cement for comparison purposes in the prior review, the Department would require home market Type I sales data in the third review. *See* Letter from Division Director/OADC to CEMEX dated November 29, 1993. Later, in our supplemental questionnaire, we reiterated our need for Type I sales data, stating "[t]hese sales are relevant to your claims that home market sales of Type II and Type V cement are within the ordinary course of trade." *See* Letter from Division Director/OADC to CEMEX dated February 4, 1994, Section V.A.

We also explained at length in a decision memorandum dated April 18, 1994, and then in our preliminary results of review, why information on home market Type I sales was crucial to determining if CEMEX's home market sales of Type II and Type V cement had been made in the ordinary course of trade. *See* Decision memorandum to Joseph A. Spetrini dated April 18, 1994, Use of BIA in the Third Administrative Review; *see also Preliminary Results of Antidumping Duty Administrative Review: Gray Portland Cement and Clinker from Mexico*, 59 FR 28844 (June 3, 1994).

We had previously determined, in the course of the prior review, that

CEMEX's sales of Type II and Type V cement in the home market had been made outside the ordinary course of trade (after comparing these sales to sales of Type I cement); therefore, we were unable to use CEMEX's Type II and Type V sales data for comparison purposes. In the instant review, we requested data on sales of such (Types II and V cement) and similar (Type I) merchandise in order to conduct the same type of analysis that we conducted in the prior review, and to determine whether CEMEX's home market sales of Type II and Type V cement during the instant period of review had been made in the ordinary course of trade. CEMEX refused to comply with the Department's repeated requests for Type I sales data. CEMEX did not suggest that it was unable to provide this information; rather, CEMEX asserted that the information was not relevant, and chose not to comply.

Although CEMEX has argued that it is not required to provide its Type I sales data, it is well established that a respondent does not have the right to direct the Department's investigation. As the CIT concluded in *Ansaldo Componenti, S.p.A.* v. *U.S.*, 628 F. Supp. 198 (CIT 1986), "[i]t is Commerce, and not the respondent, that determines what information is to be provided for an administrative review."

Moreover, the unreported Type I sales data are essential to our analysis. As CEMEX notes in its case brief, "[i]n cases where (the Department) has excluded certain sales for being outside the ordinary course of trade, the administrative record established that the subject sales were either unrepresentative of sales in general, or were made under unusual circumstances *relative to other sales in the home market.*" *See* CEMEX Case Brief, July 5, 1994 at 5 (emphasis added). Our analysis in the 1991–1992 review used the specific information pertaining to these "other sales in the home market" (*i.e.*, sales of Type I) as a basis for comparison to the Type II and V sales in question. In the present case, we are unable to ascertain conclusively whether or not CEMEX's sales of Type II and Type V cement were within the ordinary course of trade precisely because CEMEX denied us the requisite information regarding sales of Type I cement to arrive at such a decision.

The Department's regulations, at § 353.37(a)(1), state that the Department will use BIA whenever the Secretary "[d]oes not receive a complete, accurate and timely response to the Secretary's request for factual information." 19 CFR 353.37(a)(1) (1994). This same section continues by stating that when "an interested party refuses to provide factual information * * * or otherwise impedes the proceeding, the Secretary may take that into account in determining what is the best information available." 19 CFR 353.37(b). As CEMEX refused to submit information essential to our analysis of whether certain sales were made in the ordinary course of trade, CEMEX significantly impeded the conduct of this administrative review. For these reasons, we have assigned CEMEX a first-tier, or uncooperative, BIA margin.

We also disagree with CEMEX's argument that the record evidence of this review establishes that its Type II and Type V cement sales were in the ordinary course of trade. In the 1991–1992 review, after analyzing various data on Type I, Type II and Type V cement, we found, first, that over 95 percent of all cement shipments fell within a radius of 150 miles; CEMEX's shipments of Type II and Type V cements were over far greater distances, and, unlike its sales of other cement products, CEMEX absorbed much of the added freight costs for sales of Types II and V. Second, the profitability of sales of Type II and Type V cement was likewise unusual in that these sales generated lower profits than did home market sales of other types of cement. Third, we also found in the 1991–1992 review that CEMEX's home market sales of Type II and Type V cement had a promotional quality which was lacking in its other cement sales, in that CEMEX's Type II and V home market sales were made in large measure to enhance CEMEX's corporate image. Fourth, Type II and Type V cement accounted for a "minuscule" percentage of CEMEX's total cement sales, as these products represent specialty cements sold to a "niche" market. Finally, with regard to historical sales trends, we found that CEMEX did not market Type II and Type V cement in the home market, despite the existence of a small domestic demand, until it began production for export to the United States (circa mid-1980s).

When viewed in their totality, these facts led the Department to conclude that CEMEX's home market sales of Types II and V cement during the 1991–1992 review period had been made outside the ordinary course of trade. *See* Decision memorandum to Joseph A. Spetrini, dated April 18, 1994; *see also*, Memorandum from Holly A. Kuga to Joseph A. Spetrini, August 31, 1993, a public version of which is on file in Room B–099 of the Main Commerce Building. This determination was recently upheld by the CIT in a decision issued on April 24, 1995. *CEMEX, S.A.* v. *United States*, Slip Op. 95–72 at 14 (CIT 1995) (*CEMEX*).

In the present review, CEMEX argues that the existence of a home market demand for Types II and V cement, irrespective of CEMEX's business practices, indicates that CEMEX's sales were within the ordinary course of trade. *See, e.g.*, CEMEX Case Brief at 12 through 13. Therefore, CEMEX concludes, most of the factors that the Department analyzed on the ordinary-course-of trade issue in the 1991–1992 review are not relevant or probative.

However, CEMEX proceeds to address each of these five factors. While CEMEX admits that sales profitability is unusually low for its Type II and Type V sales, it dismisses the relevance of this factor when considered in isolation. CEMEX also maintains that relative sales volume alone should not be determinative as to whether or not sales are within the ordinary course of trade. *See* Supplemental Questionnaire Response, February 28, 1994 (Supplemental Response) at 12 through 13. In addition, CEMEX contends that in this analysis, the Department should examine differences in terms of sale, not shipping distances. The sole change from the 1991–1992 review that CEMEX claims is that it now "bears *all* transportation costs on c.i.f. delivered sales" in the home market, whereas in the 1991–1992 review, these costs were fully absorbed on sales of Type II and Type V cement, and partially passed on to the customer on Type I sales. *See* Supplemental Response at 8 (original emphasis).

We remain unconvinced that the mere existence of a home market demand for Types II and V cement, in and of itself, demonstrates that CEMEX's sales of these products were within the ordinary course of trade. Despite its ninety-year history of cement sales in Mexico, CEMEX made no attempt to address this specialty cement demand until the mid-1980's when it began producing Types II and V cement for export. Further, in any examination involving ordinary-course-of-trade issues, as the CIT recently stated in the *CEMEX* case, "[d]etermining whether home market sales are in the ordinary course of trade requires evaluating not just 'one factor taken in isolation but rather * * * all the circumstances particular to the sales in question.'" Slip Op. 95–72 at 6 (quoting *Murata Mfg. Co.* v. *United States*, 820 F. Supp. 603, 607 (CIT 1993). Our decision in this case, therefore, turns on the totality of circumstances relating to the Type II and V sales in question and the fact that CEMEX withheld the information necessary to evaluate fully whether those sales are outside the ordinary course of trade.

Contrary to CEMEX's assertion regarding the irrelevance of the factors cited by the Department in the 1991–1992 review, we note that an examination of these factors supports the conclusion that CEMEX's home market sales of these specialty products "were made under unusual circumstances relative to other sales in the home market." The evidence available to the Department regarding CEMEX's sales of Types II and V cement suggests that the circumstances which prevailed at the time of the Department's decision in the 1991–1992 review still obtain.

In particular, CEMEX continues to sell "minuscule" quantities of these specialty cement products compared to its total production of all cement products. CEMEX realizes a low profit on these sales. CEMEX also concedes the promotional nature of its Type II and Type V sales, stating that its sales of Type II and Type V cement are made in the hope that customers "may decide to source all their cement needs * * * from the same company that sources their specialty cement needs." *See* Supplemental Response at 12. In addition, CEMEX continues to ship these "niche" products over great distances, incurring high freight expenses. CEMEX's contention that it now absorbs all freight expenses on delivered sales does not alter the Department's conclusions with respect to this issue. The fact that CEMEX incurs high freight costs for Types II and V cement is evidence of the aberrational quality of CEMEX's home market sales of these products. Finally, it should be noted that the factors relied upon by the Department in this review were upheld by the CIT in the *CEMEX* case, which concerned the final results of the second administrative review. Slip Op. 95–72 at 6–14.

The available evidence appears to support the conclusion that sales of Types II and V cement in the home market are aberrational, as noted above. However, the Department has not been able to reach a definitive conclusion on this point due to respondent's failure to supply the requested information on home market Type I sales, which is vital to determining whether any of these factors have changed. Absent some benchmark (i.e., home market sales of similar merchandise, such as Type I cement) against which to measure the Type II and Type V sales in question, the Department is unable to determine whether Type II and Type V sales in this review period were made within the ordinary course of trade. Therefore, as CEMEX's actions prevented the Department from making this determination, our resort to BIA is justified.

Further, even if the Department had been able, using the information supplied by CEMEX in this review, to determine that the Types II and V cement sales were outside the ordinary course of trade, we would still have needed the Type I data to conduct our antidumping duty analysis. This is another reason why CEMEX's failure to report these data supports the Department's conclusion that it needed to use adverse BIA in this case.

Comment 3: Petitioners insist that in the event the Department reverses its preliminary BIA decision altogether, and opts to use CEMEX's submissions of Type II and Type V sales data, the Department must follow the decision of the Federal Circuit in *Ad Hoc Committee of AZ-NM-TX-FL Producers* v. *United States*, 13 F.3d 398 (Fed. Cir. 1994), and treat pre-sale home market transportation costs as indirect expenses in calculating FMV.

Department's Position: As we have not reversed our preliminary decision with regard to BIA, the treatment of pre-sale home market transportation costs is not at issue in this review.

Comment 4: Petitioners contend that the Department's application in the present review of its "two-tier" system of BIA, set forth in *Antifriction Bearings And Parts Thereof from France, et al.*, 57 FR 28360 (June 24, 1992), is misguided. Petitioners insist that use of first-tier BIA, reserved for those respondents deemed by the Department to have substantially impeded a proceeding, will result in CEMEX receiving a lower margin than would be the case had CEMEX fully cooperated in the instant review by providing the data requested on home market sales of Type I cement. Rather, petitioners continue, the Department must choose as BIA a rate which will (a) induce a non-cooperative respondent to provide complete and timely responses in any future proceeding; and (b) not leave a respondent "in a better position, as a result of its noncompliance, than it would have had it provided the Department with complete, accurate and timely data." Petitioners' Case Brief, July 5, 1994, at 3 and 4, quoting *Silicon Metal from Argentina; Final Results of Administrative Review*, 58 FR 65336 (December 14, 1993). Petitioners argue that the Department is not required to "blindly" follow its two-tier methodology; the selection of BIA "is made on a case-by-case basis." Petitioners' Case Brief at 3, citing *Silicon Metal from Argentina, and Cold-Rolled Stainless Steel Sheet from Germany; Final Results of Administrative Review*, 59 FR 15888 (April 5, 1994), *aff'd Krupp Stahl, A.G.* v. *United States*, 822 F. Supp. 789 (CIT 1993). Petitioners suggest that use of first-tier, or non-cooperative, BIA would, in effect, "reward" CEMEX for obstructing the present administrative review. Petitioners suggest that CEMEX calculated its margin using its Type I sales data, and compared this margin to its non-cooperative BIA margin. According to petitioners, CEMEX then made a deliberate and rational decision not to comply with the Department's requests for information, as this information would result in a margin substantially higher than its preliminary BIA rate of 60.33 percent (CEMEX's rate in the original LTFV investigation, as amended pursuant to litigation). In an effort to support this claim, petitioners use selective data on sales of Types II and V cement taken from CEMEX's questionnaire responses submitted in the instant review to arrive at a margin higher than the Department's preliminary BIA rate. See Petitioners' Case Brief, July 5, 1994 at 4, 5 and Appendix 2.

Petitioners offer three alternatives to the Department's first-tier BIA for determining CEMEX's margin in these final results. First, citing *Silicon Metal from Argentina*, 58 FR 65338 (December 14, 1993), and the *Krupp Stahl* case, petitioners urge the Department to use as BIA the highest margin from the petition, which they claim would be 111 percent. The resulting higher margin, argue petitioners, would have the added effect of inducing CEMEX to fully comply in future administrative reviews.

As a second alternative, petitioners suggest basing FMV on information obtained from a CEMEX press release, submitted by petitioners, regarding average 1992 and 1993 sales prices. United States price (USP) would be based on CEMEX's questionnaire response and subsequent submissions on the record of the present review for its sales of Type II and Type V cement in the United States.

As a final alternative, petitioners suggest that the BIA rate should be the highest rate calculated on remand from the original investigation, or the first or second administrative reviews. Petitioners aver that the Department, in its final results of redetermination in the second remand of the LTFV investigation in *Ad Hoc Committee* v. *U.S.*, Court No. 90–10–00508, filed on May 12, 1994, established a rate of 61.85 percent for CEMEX as its margin in the

original investigation. This rate, petitioners insist, should be selected as BIA in the instant review, should the Department reject either of petitioners' first two alternatives. Petitioners further contend that should the Department, pursuant to a remand in either the first or second administrative reviews, establish a rate higher than the 61.85 percent rate on remand in the LTFV investigation, this higher rate should then supersede the rate from the investigation.

CEMEX counters that there is no basis for the Department to depart from its standard two-tier methodology in selecting BIA. CEMEX notes that this two-tier methodology has been approved by the Federal Circuit in *Allied-Signal Company v. United States*, 996 F.2d 1185 (Fed. Cir. 1993). CEMEX contends that the two cases cited by petitioners as precedent for using a more "punitive" BIA rate are not analogous to the instant review, as in both prior cases, the highest rates would have resulted in little or no change in the margins of the non-cooperative respondents. Further, argues CEMEX, the Department in a more recent case elected *not* to depart from its two-tier methodology. *See Iron Construction Castings from Canada; Final Results of Administrative Review*, 59 FR 25603 (May 17, 1994). In that case, CEMEX maintains, first-tier BIA would result in a significant increase over any individual rate then in effect, and the Department correctly decided that the first-tier BIA rate "is adverse and will achieve the objective of encouraging complete responses in future reviews." Id. at 25605. CEMEX maintains that a similar situation obtains in the instant review.

Department's Position: We disagree, in part, with petitioners. We do not believe that the revised BIA margin of 61.85 percent is insufficient to induce cooperation in a future proceeding. We do not see how such a markedly adverse change in CEMEX's margin—from a margin of 42.74 percent (the rate calculated in the second review) to 61.85 percent—would constitute "rewarding" a non-compliant respondent.

We also agree with CEMEX that the parallels to the *Silicon Metal* and *Krupp Stahl* cases may be overdrawn. In both cases, first-tier BIA would have resulted in the uncooperative respondent receiving precisely the same margin then in effect for that company. In *Silicon Metal*, the Department resorted to constructed value based, in part, on data submitted by petitioners as first-tier BIA. In *Krupp Stahl*, the Department chose a higher margin from the preliminary LTFV determination for its BIA rate. The final results in the latter case were upheld by the CIT. In the instant review, we note that CEMEX's margin would not revert to the same margin previously in effect, but would increase substantially.

For these reasons, we see no grounds for departing from our established first-tier BIA methodology of selecting the highest margin found for any firm either in the LTFV investigation or in a subsequent review.

As the Department has not altered its decision to apply first-tier BIA in this case, the alternative choices for BIA posited by petitioners must be rejected.

Comment 5: Petitioners argue that the Department should have completed its investigation of sales below the cost of production, which it initiated on February 4, 1994. Petitioners suggest that when the Department preliminarily determined to apply BIA, the sales-below-cost investigation was merely dropped. Petitioners also fault the Department for failing to conduct a "fictitious market" investigation based on petitioners' March 30, 1994 request.

Department's Position: Since the Department has applied total BIA to CEMEX, there is no need for the Department to expend the time and analytical resources necessary to complete a cost investigation which will not be used in calculating CEMEX's margin. Likewise, an examination of petitioners' fictitious market allegation is no longer justified, as the Department has decided to use total BIA.

Comment 6: Petitioners suggest that the Department should change the "All Others" rate in this third review to reflect the Department's results of redetermination on the second remand resulting from *Ad Hoc Committee v. U.S.*, Court No. 90–10–00508. The Department filed its redetermination results on May 12, 1994. Petitioners note that the "All Others" rate increased from 59.91 percent to 61.35 percent; this new rate, petitioners maintain, should be put in place with the final results for this third review.

Department's Position: The Department will adjust the "All Others" rate to reflect the CIT's affirmation of our remand redetermination in the LTFV investigation (*Ad Hoc Committee of AZ-TX-NM-FL Producers of Gray Portland Cement v. United States*, Slip Op. 94–152 (CIT September 26, 1994)). Therefore, effective with the date of publication of these final results, the "All Others" rate will be 61.35 percent.

Final Results of Review

As a result of our review, we determine the weighted-average dumping margin for CEMEX, S.A. for the period August 1, 1992, through July 31, 1993, to be 61.85 percent. The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service. Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be the rate listed above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; (4) the cash deposit rate for all other manufacturers or exporters will be 61.35 percent. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of the APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: May 12, 1995.

Paul L. Joffe,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 95–12395 Filed 5–18–95; 8:45 am]

BILLING CODE 3510–DS–P

Notice of Scope Rulings

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Scope Rulings and Anticircumvention Inquiries.

SUMMARY: The Department of Commerce (the Department) hereby publishes a list of scope rulings and anticircumvention inquiries completed between January 1, 1995, and March 31, 1995. In conjunction with this list, the Department is also publishing a list of pending requests for scope clarifications and anticircumvention inquiries. The Department intends to publish future lists within 30 days of the end of each quarter.

EFFECTIVE DATE: May 19, 1995.

FOR FURTHER INFORMATION CONTACT: Ronald M. Trentham, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; telephone: (202) 482–3931.

Background

The Department's regulations (19 CFR 353.29(d)(8) and 355.29(d)(8)) provide that on a quarterly basis the Secretary will publish in the **Federal Register** a list of scope rulings completed within the last three months.

This notice lists scope rulings and anticircumvention inquiries completed between January 1, 1995, and March 31, 1995, and pending scope clarification and anticircumvention inquiry requests. The Department intends to publish in July 1995 a notice of scope rulings and anticircumvention inquiries completed between April 1, 1995, and June 30, 1995, as well as pending scope clarification and anticircumvention inquiry requests.

The following lists provide the country, case reference number, requester(s), and a brief description of either the ruling or product subject to the request.

I. Scope Rulings Completed Between January 1, 1995, and March 31, 1995

Country: Canada

A–201–805 *Steel Jacks from Canada*

Seeburn, a division of Ventra Group, Inc.—Seeburn's automobile tire jacks are outside the scope of the finding. 2/3/95.

Country: People's Republic of China

A–570–504 *Petroleum Wax Candles*

Two's Company—Red and gold angel taper candle is outside the scope of the order. Decorated pillar candles are within the scope of the order. 1/13/95.

Springwater Cookie and Confections—Feather twist candles are within the scope of the order. 2/14/95.

Watkins Inc.— Holiday pillar candles are within the scope of the order. 2/14/95.

A–570–001 *Potassium Permanganate*

Aerostat Inc.—Plastic ignitor spheres are outside the scope of the order. 1/13/95

Country: Japan

A–588–405 *Cellular Mobile Telephones and Subassemblies*

JRC International—Model PTR–829 portable cellular telephone is outside the scope of the order. 1/3/95.

JRC International—Model PTR–870 portable cellular telephone is outside the scope of the order. 1/3/95.

NEC Corporation and NEC America, Inc.—Models MP5A1D1 and MP5A1D2 portable cellular telephones are outside the scope of the order. 1/3/95.

Matsushita Communication Industrial Corporation of America—Panasonic models EB–3560 and EB–3561 portable cellular telephones are outside the scope of the order. 1/3/95.

A–588–014 *Tuners*

Fujitsu Ten Corporation of America—Fujitsu's ETV front ends are outside the scope of the finding. 1/20/95.

Alpine Electronics—Tuning element printed circuit boards (PCBs) are outside the scope of the finding. 2/3/95.

A–588–604 *Tapered Roller Bearings and Parts Thereof*

Koyo Seiko—Certain forgings are within the scope of the order. 2/2/95.

II. Anticircumvention Rulings Completed Between January 1, 1995, and March 31, 1995

Country: Mexico

A–201–806 *Steel Wire Rope*

Committee of Domestic Steel Wire and Specialty Cable Manufacturers—Affirmative determination of circumvention of the order by importing steel wire strand into the United States where it is wound into steel wire rope. 2/28/95.

III. Scope Inquiries Terminated Between January 1, 1995 and March 31, 1995

Country: India

A–533–809 *Forged Stainless Steel Flanges from India*

Improved Piping Products, Inc.—Clarification to determine whether "convoluted" flanges are within the scope of the order. Scope inquiry terminated on 1/31/95.

Country: Japan

A–588–804 *Cylindrical Roller Bearings*

Aerodyne Dallas—Clarification to determine whether outer races and balls, produced in the United States and assembled in Japan after the machining process, are within the scope of the order. Scope inquiry terminated on 2/22/95.

A–588–028 *Roller Chain, Other than Bicycle*

Allied-Apical Co.—Clarification to determine whether a specified replacement part for a tenter is within the scope of the finding. Scope inquiry terminated on 2/3/95.

Iwatani International Corporation of America—Clarification to determine whether certain chain imported by Iwatani is within the scope of the finding. Scope inquiry terminated at Iwatani's request on 2/17/95.

IV. Anticircumvention Inquiries Terminated Between January 1, 1995 and March 31, 1995

None.

V. Pending Scope Clarification Requests as of March 31, 1995

Country: Canada

A–122–823 *Certain Cut-to-Length Carbon Steel Plate*

Sidbec-Dosco Inc., and Canberra Industries—Clarification to determine whether hot-rolled carbon steel plate is within the scope of the order.

A–122–006 *Steel Jacks from Canada*

Whiting Equipment Canada Inc.—Clarification to determine whether Whiting's rail vehicle electric jacks are outside the scope of the finding.

Country: Mexico

A–201–805 *Circular Welded Non-Alloy Steel Pipe*

Allied Tube & Conduit Corp., American Tube Co., Century Tube

Corp., CSI Tubular Productions, Inc., Laclede Steel Co., LTV Tubular Productions Co., Sawhill Tubular Division, Sharon Tube Co., Tex-Tube Division, Western Tube & Conduit Corp., Wheatland Tube Co.—Clarification to determine whether pipe produced to API 5L line pipe specifications or to both ASTM A–53 standard pipe specification and the API 5L line pipe specification (dual-certified pipe), when intended for use as standard pipe or when actually used as standard pipe, is within the scope of the order. Affirmative preliminary scope ruling issued on January 13, 1994.

Tubacero International Corporation—Clarification to determine whether circular welded carbon steel piping, 16 inches in outside diameter with 3/8 inch wall thickness, for use in extremely heavy load bearing applications, is within the scope of the order.

A–201–802 *Gray Portland Cement and Cement Clinker*

Cementos de Chihuahua S.A. de C.V. and Mexcement, Inc.—Clarification to determine whether masonry cement is within the scope of the order.

Country: Brazil

A–351–809 *Circular Welded Non-Alloy Steel Pipe*

Allied Tube & Conduit Corp., American Tube Co., Century Tube Corp., CSI Tubular Productions, Inc., Laclede Steel Co., LTV Tubular Productions Co., Sawhill Tubular Division, Sharon Tube Co., Tex-Tube Division, Western Tube & Conduit Corp., Wheatland Tube Co.—Clarification to determine whether pipe produced to API 5L line pipe specifications or to both ASTM A–53 standard pipe specification and the API 5L line pipe specification (dual-certified pipe), when intended for use as standard pipe or when actually used as standard pipe, is within the scope of the order. Affirmative preliminary scope ruling issued on January 13, 1994.

A–351–503 *Iron Construction Castings*

C–351–504 Southland Marketing—Clarification to determine whether certain cast iron grates and frames are within the scope of the order.

Country: France

A–427–078 *Sugar*

Boiron-Borneman, Inc.—Clarification to determine whether manufactured homepathic sugar pellets are within the scope of the finding.

Country: Italy

A–475–401 *Certain Brass Fire Protection Products*

Giacomini, S.p.A.—Clarification to determine whether pressure control (or regulating valves), Models A201, A202, A203, and A204 and leader line siamese (Model A99) are within the scope of the order.

Country: Turkey

A–489–501 *Welded Carbon Steel Standard Pipe and Tube Products*

Allied Tube and Conduit Corporation, Wheatland Tube Company, Laclede Steel Company, Sharon Tube Company, and Sawhill Tubular Division of Armco, Inc.—Clarification to determine whether pipe and tube which meet the order's physical specifications, when intended for or actually used as standard pipe and tube, is included within the scope of the order.

Country: People's Republic of China

A–570–504 *Petroleum Wax Candles*

KMart Corporation—Clarification to determine whether novelty pillar Halloween and novelty pillar Christmas candles are within the scope of the order.

Concept Marketing—Clarification to determine whether Concept's Safe-2–Lite candle is within the scope of the order.

Boomster Imports Inc.—Clarification to determine whether Boomster's three-inch cube candles are within the scope of the order.

Sun It Corporation (Sun)—Clarification to determine whether Sun candles, model 271ND (Flag Lites), model 259NDA (Porch Torch) and model 281N (Gigantic fruit), are within the scope of the order.

Mervyn's—Clarification to determine whether article no. 20172 in the shape of a cube is within the scope of the order.

A–570–502 *Iron Construction Castings*

Jack's International—Clarification to determine whether certain cast iron area drains are within the scope of the order.

A–570–804 *Sparklers*

Fritz Companies Inc.—Clarification to determine whether 14 inch Morning Glorys are within the scope of the order.

A–570–808 *Chrome-Plated Lug Nuts*

Consolidated International Automotive, Inc.—Clarification to determine whether certain nickel-plated lug nuts are within the scope of the order.

Country: Korea

A–580–809 *Circular Welded Non-Alloy Steel Pipe*

Allied Tube & Conduit Corp., American Tube Co., Century Tube Corp., CSI Tubular Productions, Inc., Laclede Steel Co., LTV Tubular Productions Co., Sawhill Tubular Division, Sharon Tube Co., Tex-Tube Division, Western Tube & Conduit Corp., Wheatland Tube Co.—Clarification to determine whether pipe produced to API 5L line pipe specifications or to both ASTM A–53 standard pipe specification and the API 5L line pipe specification (dual-certified pipe), when intended for use as standard pipe or when actually used as standard pipe, is within the scope of the order. Affirmative preliminary scope ruling issued on January 13, 1994.

A–580–811 *Steel Wire Rope*

TSK Korea and Hi-Lex Corp.—Clarification to determine whether certain motion control cables are within the scope of the order.

A–580–812 *Dynamic Random Access Memory Semiconductors of One Megabit and above (DRAMs)*

Kingston Technology Corporation—Clarification to determine whether certain single in-line memory and other boards manufactured in the United States from DRAMs produced in Korea, and reimported into the United States as defective products or as inventory rotation are within the scope of the order.

Country: Japan

A–588–802 *3½" Microdisks*

TDK Inc., TDK Electronics Co.—Clarification to determine whether certain web roll media are within the scope of the order.

A–588–804 *Antifriction Bearings (Other Than Tapered Roller Bearings), and Parts Thereof*

Dana Corporation—Clarification to determine whether an automotive component known variously as a center bracket assembly, center bearing assembly, support bracket, or shaft support bearing, is within the scope of the order.

Nakanishi Manufacturing Corp.—Clarification to determine whether a stamped steel washer with a zinc phosphate and adhesive coating which is used in the manufacture of a ball bearing seal is within the scope of the order.

A–588–405 *Cellular Mobile Telephones and Subassemblies*

TDK Corporation of America—Clarification to determine whether Duplexers, Voltage Control Oscillators, and Isolators are within the scope of the order.

Fujitsu Ltd., Fujitsu America, Inc., and Fujitsu Network Transmission Systems, Inc.—Clarification to determine whether models F80P–173, 3625 and 3635 portable cellular telephones are within the scope of the order.

A–588–823 *Professional Electric Cutting Tools*

Makita Inc., Makita U.S.A.—Clarification to determine whether Planer-Jointer model 2030SC is within the scope of the order.

Makita Inc., Makita U.S.A.—Clarification to determine whether Chain Morticer model 7104L is within the scope of the order.

A–588–055 *Acrylic Sheet*

Sumitomo Chemical America, Inc.—Clarification to determine whether acrylic sheet with light scattering properties is within the scope of the finding.

A–588–809 *Small Business Telephone Systems and Subassemblies and Parts Thereof*

Iwatsu America, Inc. and Iwatsu Electric Co.—Clarification to determine whether certain circuit cards are within the scope of the order.

Country: Venezuela

A–307–805 *Circular Welded Non-Alloy Steel Pipe*

Self-initiation. Clarification to determine whether pipe produced to API 5L line pipe specifications or to both ASTM A–53 standard pipe specification and the API 5L line pipe specification (dual-certified pipe), when intended for use as standard pipe or when actually used as standard pipe, is within the scope of the order. Affirmative preliminary scope ruling issued on January 13, 1994.

Country: Argentina

C–357–803 *Leather*

Petitioners—Clarification to determine whether upper bovine leather without hair on, not whole, prepared after tanning is within the scope of the countervailing duty order. Affirmative preliminary scope ruling issued on January 27, 1995.

Country: Sweden

A–401–040 *Stainless Steel Plate*

Armco, Inc., G.O. Carlson, Allegheny Ludlum Corp., and Washington Steel Corp.—Clarification to determine whether Stavax, Ramax, and 904L are within the scope of the finding. Affirmative preliminary scope ruling issued on November 16, 1994.

Country: Germany

A–428–801 *Antifriction Bearings (other than Tapered Roller Bearings) and Parts Thereof*

Consolidated Saw Mill International (CSMI) Inc.—Clarification to determine whether certain Cambio bearings contained in its sawmill debarker are within the scope of the order. Affirmative preliminary ruling issued on December 16, 1994.

Marquart Switches—Clarification to determine whether certain steel balls are within the scope of the order.

Country: Taiwan

A–583–810 *Chrome-Plated Lug Nuts*

Consolidated International Automotive, Inc.—Clarification to determine whether certain nickel-plated lug nuts are within the scope of the order.

A–583–603 *Stainless Steel Cookware*

Max Burton Enterprises, Inc.—Clarification to determine whether the Max Burton StoveTop Smoker is within the scope of the order.

Sheason Co., Inc.—Clarification to determine whether the "Momy Bear Auto Cooker" is within the scope of the order.

A–583–508 *Porcelain-on-Steel Cookware*

Blair Corp.—Clarification to determine whether product number 271911, eight-quart stock pot and product number 271921, twelve-quart stock pot are within the scope of the order.

Blair Corp.—Clarification to determine whether product number 1001, seven piece cookware set is within the scope of the order.

A–583–816 *Certain Stainless Steel Butt-Weld Pipe Fittings*

Top Line Process Equipment Corporation—Clarification to determine whether various stainless steel tube fittings with non-welded end-connections, and other products, are within the scope of the order.

VI. Pending Anticircumvention Inquiry Requests as of December 31, 1994

Country: Japan

A–588–602 *Carbon Steel Butt-Weld Pipe Fittings*

U.S. Fittings Group—Anticircumvention inquiry to determine whether a producer of carbon steel butt-weld pipe fittings in Japan is circumventing the antidumping duty order by shipping parts to Thailand for processing and importing the finished product into the United States.

Country: Germany

A–428–811 *Hot-Rolled Lead and Bismuth Carbon Steel Products*

Inland Steel Bar Company and USS Kolbe Steel Company—Anticircumvention inquiry to determine whether a producer of steel in Germany is circumventing the antidumping duty order by shipping leaded steel billets to its wholly-owned subsidiary in the Netherlands, hot-rolling the billets into bars and rods, and then exporting them to the United States.

Interested parties are invited to comment on the accuracy of the list of pending scope clarification requests. Any comments should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230.

Dated: May 10, 1995.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 95–12394 Filed 5–18–95; 8:45 am]

BILLING CODE 3510–DS–P

Minority Business Development Agency

Business Development Center Applications: Brooklyn, New York

AGENCY: Minority Business Development Agency.

ACTION: Amendment.

SUMMARY: On page 24839, in the issue dated Wednesday, May 10, 1995, solicitation to operate the Brooklyn Minority Business Development Center is amended to include: PRE-AWARD CONFERENCE: June 2, 1995, at 10:00 a.m., at 26 Federal Plaza, Room 3305, New York, New York.

FOR FURTHER INFORMATION AND AN APPLICATION PACKAGE, CONTACT: Heyward Davenport, Regional Director at (212) 264–3262.

The closing date for applications is June 19, 1995.

Proper identification is required for entrance into any Federal building.

11.800 Minority Business Development Center
(Catalog of Federal Domestic Assistance)

May 15, 1995.

Frances B. Douglas,

Alternate Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 95–12334 Filed 5–18–95; 8:45 am]

BILLING CODE 3510–21–M

National Oceanic and Atmospheric Administration

[I.D. 042095D]

South Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of change of public meeting date.

SUMMARY: The date for the meeting of the South Atlantic Fishery Management Council's (Council) Rock Shrimp Ad-Hoc Advisory Panel (AP) meeting has changed.

FOR FURTHER INFORMATION CONTACT: Sharon Coste, South Atlantic Fishery Management Council; One Southpark Circle, Suite 306; Charleston, SC 29407–4699; telephone: (803) 571–4366; fax: (803) 769–4520.

SUPPLEMENTARY INFORMATION: The Council's Rock Shrimp Ad-Hoc AP meeting, originally scheduled for June 1 and 2, and published May 5, 1995 (60 FR 22051), has been changed to June 2, 1995, from 8:30 a.m. until 1:00 p.m., at the same location.

All other information as printed in the previous publication remains unchanged.

Dated: May 15, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–12389 Filed 5–18–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 051295A]

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold a joint meeting of its Crustaceans Plan Team, the Hawaiian members of its Crustaceans Advisory Panel, and representatives of the lobster industry, on June 28–29, 1995, from 8:00 a.m. to 5:00 p.m. each day.

ADDRESSES: Council address: Western Pacific Fishery Management Council; 1164 Bishop Street, Suite 1405; Honolulu, HI 96813.

The meeting will be held in Room 306 of the Executive Centre, 1088 Bishop Street, Honolulu, HI.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: 808–522–8220.

SUPPLEMENTARY INFORMATION: The group will discuss and may make recommendations to the Council on the following agenda items:

1. 1995 Northwestern Hawaiian Islands (NWHI) quota and experimental fishing permit(s);

2. Status of NWHI lobster stocks;

3. Lobster management review - summary of meeting held in October 1994;

4. Alternative management program for NWHI lobster fishery; a. Quota setting procedures

b. Minimum size and discard mortality

c. Individual fishermen's quotas

5. Other business.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808–522–8220 (voice) or 808–522–8226 (fax), at least 5 days prior to the meeting date.

Dated: May 15, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–12390 Filed 5–18–95; 8:45 am]

BILLING CODE 3510–22–F

National Institute of Standards and Technology

Announcing a Meeting of Computer System Security and Privacy Advisory Board

AGENCY: National Institute of Standards and Technology.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the Computer System Security and Privacy Advisory Board will meet Wednesday, June 7, and Thursday, June 8, 1995, from 9:00 a.m. to 5:00 p.m. The Advisory Board was established by the Computer Security Act of 1987 (P.L. 100–235) to advise the Secretary of Commerce and the Director of NIST on security and privacy issues pertaining to Federal computer systems. All sessions will be open to the public.

DATES: The meeting will be held on June 7 and 8, 1995, from 9:00 a.m. to 5:00 p.m.

ADDRESSES: The meeting will take place at National Institute of Standards and Technology, Clopper Road and Quince Orchard Road, Gaithersburg, MD 20899.

AGENDA:

—Welcome and Update
—Overview of Meeting
—Perspectives on Information Security
—Privacy Issues Update
—Common Criteria Update
—GITS Security Status
—Draft OMB Appendix III Update
—Security Policy Board Update
—PKI Steering Committee Activities
—SI–PMO Action Plan Briefing
—Public Participation
—Pending Board Business
—Close.

PUBLIC PARTICIPATION: The Board agenda will include a period of time, not to exceed thirty minutes, for oral comments and questions from the public. Each speaker will be limited to five minutes. Members of the public who are interested in speaking are asked to contact the Board Secretariat at the telephone number indicated below. In addition, written statements are invited and may be submitted to the Board at any time. Written statements should be directed to the Computer Systems Laboratory, Building 225, Room B154, National Institute of Standards and Technology, Gaithersburg, MD 20899. It would be appreciated if fifteen copies of written material could be submitted for distribution to the Board by June 2, 1995. Approximately 20 seats will be available of the public and media.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Roback, Board Secretariat, Computer Systems Laboratory, National Institute of Standards and Technology, Building 225, Room B154, Gaithersburg, MD 20899, telephone: (301) 975–3240.

Dated: May 15, 1995.

Raymond G. Kammer,

Deputy Director.

[FR Doc. 95–12375 Filed 5–18–95; 8:45 am]

BILLING CODE 3510–CN–M

Judges Panel of the Malcolm Baldrige National Quality Award

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that there will be a closed meeting of the Judges Panel of the Malcolm Baldrige National Quality Award on Thursday, June 15, 1995. The Judges Panel is composed of nine members prominent in the field of quality management and appointed by the Secretary of Commerce. The purpose of this meeting is to begin the review process of the 1995 Award applicants' data and selection of applicants for consensus. The applications under review contain trade secrets and proprietary commercial information submitted to the Government in confidence.

DATES: The meeting will convene June 15, 1995, at 8:30 a.m. and adjourn at 4 p.m. on June 15, 1995. The entire meeting will be closed.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Administration Building, Gaithersburg, Maryland 20899.

FOR FURTHER INFORMATION CONTACT: Dr. Curt W. Reimann, Director for Quality Programs, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975–2036.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on March 3, 1994, that the meeting of the Panel of Judges will be closed pursuant to Section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, as amended by Section 5(c) of the Government in the Sunshine Act, P.L. 94–409. The meeting, which involves examination of records and discussion of Award applicant data, may be closed to the public in accordance with Section 552b(c)(4) of Title 5, United States Code, since the meeting is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential.

Dated: May 12, 1995.

Samuel Kramer,

Associate Director.

[FR Doc. 95–12376 Filed 5–18–95; 8:45 am]

BILLING CODE 3510–13–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to the Procurement List.

SUMMARY: This action adds to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: June 19, 1995.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On March 17, 1995, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (60 F.R. 14427) of proposed addition to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the service, fair market price, and impact of the addition on the current or most recent contractors, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the service.

3. The action will result in authorizing small entities to furnish the service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List.

Accordingly, the following service is hereby added to the Procurement List: Recycling Service, Naval Surface Warfare Center, Crane, Indiana.

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 95–12356 Filed 5–18–95; 8:45 am]

BILLING CODE 6820–33–P

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: June 19, 1995.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the services.

3. The action will result in authorizing small entities to furnish the services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Administrative Services for the following locations:
Fleet and Industrial Supply Center, San Diego, California
Fleet and Industrial Supply Center, Long Beach, California
NPA: Gateway Sheltered Industries, San Diego, California
Janitorial/Custodial for the following locations:
Federal Building, 525 Water Street, Port Huron, Michigan
Social Security Administration Building, 142 Auburn Street, Pontiac, Michigan
NPA: New Horizons of Oakland County, Inc. Pontiac, Michigan.

Beverly L. Milkman,
Executive Director.
[FR Doc. 95–12357 Filed 5–18–95; 8:45 am]
BILLING CODE 6820–33–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title: Evaluation of the Department of Defense/Department of Education Career Academies
Type of Request: New collection
Number of Respondents: 1,691
Responses per Respondent: 1.71
Annual Responses: 2,891
Average Burden per Response: .475 hours
Annual Burden Hours: 1,373
Needs and Uses: In March 1993, the Junior Reserve Officers Training Corps (JROTC) Career Academy Program was established for at-risk students, as part of the President's Defense Reinvestment and Conversion Initiative. The information collected hereby, will be utilized to evaluate the effectiveness of this new program. It will examine the academies' impact on student behavior and attitude toward school, as well as work/vocational training, using data in school records and annual student surveys. This collection will provide vital information with which to determine the efficacy and merit of the JROTC Career Academy Program, an important part of the Department of Defense Civil-Military Cooperative Action Program established in accordance with Public Law 102–484.
Affected Public: Individuals or households; State or local governments; small businesses or organizations
Frequency: Annually
Respondent's Obligation: Voluntary
OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: May 15, 1995.

Patricia L. Toppings,
Alternate OSD Federal Register Liaison Officer, Department of Defense.
[FR Doc. 95–12352 Filed 5–18–95; 8:45 am]
BILLING CODE 5000–04–P

Defense Base Closure and Realignment Commission Investigative Hearings Schedule

AGENCY: Defense Base Closure and Realignment Commission (a Presidentially appointed commission *separate from and independent of DoD*).

ACTION: Notice of additional regional investigative hearings.

SUMMARY: Pursuant to Public Law 101–510, as amended, the Defense Base Closure and Realignment Commission announces an additional series of regional investigative hearings to be held throughout the United States. The purpose of these hearings is for the Commission to receive testimony from communities hosting military installations that the Commission added on May 10, 1995, for consideration as potential candidates for closure or realignment. The regional hearing dates, cities, and associated defense activities follow:

May 25 (Location: San Francisco, CA)

Regional hearing for testimony regarding the following installations:
Supervisor of Shipbuilding, Conversion, and Repair, San Francisco, CA
Engineering Field Activity West, Naval Facilities Command, San Bruno, CA
McClellan Air Force Base, CA
Oakland Army Base, CA
Fleet and Industrial Supply Center, Oakland, CA
NAWC, Point Mugu, CA
Naval Warfare Assessment Detachment, Corona, CA
Hill Air Force Base, UT
Public Works Center, Guam

May 31 (Location: Chicago, IL)

Regional hearing for testimony regarding the following installations:
Grand Forks Air Force Base, ND
Minneapolis-Saint Paul International Airport, Air Reserve Station, MN
Chicago-O'Hare International Airport, Air Reserve Station, IL
Youngstown-Warren Municipal Airport, Air Reserve Station, OH
General Mitchell International Airport, Air Reserve Station, WI

June 3 (Location: Boston, MA)

Regional hearing for testimony regarding the following installations:
Tobyhanna Army Deport, PA
Defense Distribution Deport, Tobbyhanna
Letterkenny Army Deport, PA
Portsmouth Naval Shipyard, ME
Fort Holabird, MD
Niagara Falls International Airport, Air Reserve Station, NY

June 9 (Location: Atlanta, GA)

Regional hearing for testimony regarding the following installations:
Space and Strategic Defense Command, AL
Naval Air Station, Atlanta, GA
Robins Air Force Base, GA
Columbus Air Force Base, MS
Homestead Air Force Base, FL

June 10 (Location: Dallas, TX)

Regional hearing for testimony regarding the following installations:
Vance Air Force Base, OK
Tinker Air Force Base, OK
Kelly Air Force Base, TX
Carswell Air Force Base, TX
Laughlin Air Force Base, TX.

Each hearing will begin at 8:30 a.m. and will be open to the public. The exact location of each hearing is not known at this time. Please call the Commission for hearing locations approximately one week prior to each hearing date.

FOR FURTHER INFORMATION CONTACT: Mr. Wade Nelson, Director of communications, at (703) 696–0540.

SUPPLEMENTARY INFORMATION: The Commission will publish changes to the above schedule in the Federal Register. Please call the Commission point of contact to confirm dates, times, and locations prior to each event. Individuals needing special assistance should contact the Commission in advance of each event to facilitate their requirements.

Dated: May 15, 1995.

Patricia L. Toppings,
Alternate OSD Federal Register Liaison Officer, Department of Defense.
[FR Doc. 95–12353 Filed 5–18–95; 8:45 am]
BILLING CODE 5000–04–M

Meeting of the Commission on Roles and Missions of the Armed Forces

AGENCY: Department of Defense, Commission on Roles and Missions of the Armed Forces.

ACTION: Notice.

SUMMARY: Notice is hereby given of a forthcoming meeting of the Commission on Roles and Missions of the Armed Forces.

The Commission will meet in open session from 2:00 p.m. until 4:00 p.m. The purpose of the meeting will be to conduct a press conference to publicly announce the Commission's recommendations and findings.

DATES: May 24, 1995, 2:00 p.m. until 4:00 p.m.

ADDRESSES: Willard Inter-Continental Hotel, Franklin Pierce Room, 1401 Pennsylvania Avenue, Washington, DC

FOR FURTHER INFORMATION CONTACT: Commander Gregg Hartung, Director for Public Affairs, Commission on Roles and Missions, 1100 Wilson Boulevard, Suite 1200F, Arlington, Virginia 22209; telephone (703) 696–4250.

SUPPLEMENTARY INFORMATION: Extraordinary circumstances created by coordination difficulties compel notice of this meeting to be posted in less than the 15-day requirement.

Dated: May 15, 1995.

L.M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

Patricia L. Toppings,
Alternate OSD Federal Register Liaison Officer, Department of Defense.
[FR Doc. 95–12354 Filed 5–18–95; 8:45 am]
BILLING CODE 5000–04–M

Defense Intelligence Agency, Scientific Advisory Board Closed Meeting

AGENCY: Department of Defense, Defense Intelligence Agency.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of Subsection (d) of Section 10 of Public Law 92–463, as amended by Section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the DIA Scientific Advisory Board has been scheduled as follows:

DATES: June 20–21, 1995 (830 to 400).

ADDRESSES: The Defense Intelligence Agency, Bolling AFB, Washington, DC 20340–5100.

FOR FURTHER INFORMATION CONTACT: Dr. W.S. Williamson, Executive Secretary, DIA Scientific Advisory Board, Washington, DC 20340–1328 (202) 373–4930.

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(I), Title 5 of the U.S. Code and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA, on related scientific and technical matters.

Dated: May 15, 1995.

Patricia L. Toppings,
Alternate OSD Federal Register Liaison Officer, Department of Defense.
[FR Doc. 95–12355 Filed 5–18–95; 8:45 am]
BILLING CODE 5000–04–M

Department of the Army

Final Environmental Impact Statement To Assess the Impacts of Disposal of Fort Devens Property and Potential Reuses of the Property and the Socioeconomic Impacts of the Closure of Fort Devens on the Local Communities

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: In compliance with the National Environmental Policy Act and the President's Council on Environmental Quality, the Army has prepared a Final Environmental Impact Statement (FEIS) for disposal of excess property at Fort Devens, Massachusetts. The FEIS also analyzes impacts on a range of potential reuse alternatives.

Copies of the FEIS have been forwarded to various federal agencies, state and local agencies, and predetermined interested organizations and individuals.

DATES: This FEIS will be available to the public for 30 days, after which the Army will prepare a Record of Decision for the Army action.

ADDRESSES: Copies of the Final Environmental Impact Statement can be obtained by writing or calling Ms. Susan E. Brown, New England Division, U.S. Army Corps of Engineers, 424 Trapelo Road, Waltham, MA 02254–9149, telephone (617) 647–8536. Ms. Brown can also be reached by telefax at (617) 647–8560.

Dated: May 11, 1995.

Richard E. Newsome,
Acting Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health) OASA (IL&E).
[FR Doc. 95–12191 Filed 5–18–95; 8:45 am]
BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

[CFDA NO: 84.252]

Urban Community Service Program

Notice inviting applications for new awards for fiscal year (FY) 1995.

Purpose of Program: This program provides grants to urban academic institutions to work with private and civic organizations to devise and implement solutions to pressing and severe problems in their urban communities. The program furthers the National Education Goal of assuring that every American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship, by affording students in urban universities an opportunity to learn more about the problems in their communities and participate in developing solutions to these problems.

Eligible Applicants: Only institutions that have been previously notified that they have met the program's eligibility criteria and have been designated as urban grant institutions by the Secretary are eligible to apply for this year's competition. The deadline for submitting a designation request to compete for fiscal 1995 grants was March 1, 1995; and eligible institutions were notified by letter dated April 12, 1995. The Secretary will not accept additional designation requests until after this year's competition.

Deadline for Transmittal of Applications: June 30, 1995.
Deadline for Intergovernmental Review: August 29, 1995.
Applications Available: May 11, 1995.
Available Funds: $10,380,000.
Estimated Range of Awards: $200,000—$350,000.
Estimated Average Size of Awards: $300,000 per budget period.
Estimated Number of Awards: 34.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to five years in duration.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 82, 85, and 86; and (b) The Urban Community Service Program regulations in 34 CFR Part 636.

Priority: Under 34 CFR 75.105(c)(3) and 20 U.S.C. 1136b(b), the Secretary gives an absolute preference to applications that propose to conduct joint projects supported by other local, State, and Federal programs. The amount of funds to be reserved for this priority will be established after determining the number of high quality applications received.

In addition, the priority in the notice of final priority for this program, as published in the **Federal Register** on March 8, 1995 (57 FR 12750), applies to this competition.

For Applications or Information Contact: Sarah E. Babson, U.S. Department of Education, 600 Independence Avenue, S.W., Portals Building; Suite C–80, Washington, D.C. 20202–5329. You are encouraged to fax your request for an application to (202) 260–7615. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 20 U.S.C. 1136–1136h.

Dated: May 12, 1995.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 95–12301 Filed 5–18–95; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Federal Energy Management and Planning Programs; Energy Savings Performance Qualified Contractor List

AGENCY: Department of Energy.

ACTION: Notice of availability.

SUMMARY: The Department of Energy has issued the final rule on "Methods and Procedures for Energy Savings Performance Contracting" as required by section 801 of the National Energy Conservation Policy Act (42 U.S.C. 8287) (60 FR 18326, April 10, 1995). Pursuant to 42 U.S.C. 8287(b)(2) and 10 CFR § 436.32, the Department has developed a qualification questionnaire and established a list of firms qualified to performed energy savings services. This notice is to inform Federal agencies that the Department of Energy list of qualified firms is in place and may be used to select firms for energy savings performance contracts. The qualifications questionnaire developed by the Department is available if an agency elects to prepare its own list of qualified firms pursuant to 10 CFR § 436.32(c). Agencies may request copies of the list of qualified firms or the qualifications questionnaire by calling the Federal Energy Management Program Help Desk at 800–566–2877.

FOR FURTHER INFORMATION CONTACT: Joan G. Stone, EE–92, Office of Federal Energy Management Programs, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–5772.

Dated: May 10, 1995.

Mark B. Ginsberg,

Director, Office of Federal Energy Management Programs.

[FR Doc. 95–12378 Filed 5–18–95; 8:45 am]

BILLING CODE 6450–01–M

Office of Energy Research

Energy Research Financial Assistance Program Notice 95–09: Outstanding Junior Investigator Program

AGENCY: U. S. Department of Energy (DOE).

ACTION: Notice inviting grant applications.

SUMMARY: The Division of High Energy Physics of the Office of Energy Research (OER), U.S. Department of Energy, hereby announces its interest in receiving grant applications for support under its Outstanding Junior Investigator (OJI) Program. Proposals should be from non-tenured academic faculty investigators who are currently involved in experimental and theoretical high energy physics or accelerator physics research, and should be submitted through a U.S. academic institution. The purpose of this program is to support the development of the individual research programs of outstanding scientists early in their careers. Awards made under this program will help to maintain the vitality of university research and assure continued excellence in the teaching of physics. It is expected that DOE will issue five to ten grant awards for OJI research projects during the fiscal year, depending on the number of meritorious applications and the availability of appropriated Fiscal Year 1996 funds.

DATES: To permit timely consideration for award in Fiscal Year 1996, formal applications submitted in response to this notice should be received no later than 4:30 EST November 1, 1995.

ADDRESSES: Completed formal applications referencing Program Notice 95–09 should be forwarded to: U.S. Department of Energy, Office of Energy Research, Grants and Contracts Division, ER–64 (GTN), 19901 Germantown Road, Germantown, Maryland 20874–1290, ATTN: Program Notice 95–09. The same address must be used when submitting applications by U.S. Postal Service Express, any commercial mail delivery service, or when handcarried by the applicant.

FOR FURTHER INFORMATION CONTACT: Dr. Jeffrey Mandula, Division of High Energy Physics, ER–221 (GTN), U.S. Department of Energy, 19901 Germantown Road, Germantown, Maryland 20874–1290. Telephone: (301) 903–4829.

SUPPLEMENTARY INFORMATION: The Outstanding Junior Investigator program was started in 1978 by the Department of Energy's Office of Energy Research. A principal goal of this program is to identify exceptionally talented new high energy physicists early in their careers and assist and facilitate the development of their research programs. In accordance with 10 CFR 600.7(b)(1), eligibility for awards under this notice is restricted to non-tenured academic investigators who are conducting experimental or theoretical high energy physics or accelerator physics research at an established U.S. academic institution. Since its debut, the program has initiated support for between five and ten new Outstanding Junior Investigators each year. The program has been very successful and makes an important contribution to the vigor of the High Energy Physics program. Applicants should request support under this notice for normal research project costs as required to conduct their proposed research activities.

General information about development and submission of applications, eligibility, limitations, evaluations and selection processes, and other policies and procedures are contained in the Application Guide for the Office of Energy Research Financial Assistance Program and 10 CFR Part 605. The DOE expects to make five to ten grant awards in Fiscal Year 1996 to meet the objectives of this program. It is anticipated that approximately $370,000 will be available in Fiscal Year 1996 subject to availability of appropriated funds. In the past, awards have averaged $50,000 per year, with the number of awards determined by the number of excellent applications and the total funds available for this program. The application guide is available from the U.S. Department of Energy, Division of High Energy Physics, Office of Energy Research, ER–221, 19901 Germantown Road, Germantown, Maryland 20874–1290. Telephone requests may be made by calling (301) 903–4829.

The Catalog of Federal Domestic Assistance Number for this program is 81.049 and the solicitation control number is ERFAP 10 CFR Part 605.

Issued in Washington, DC on May 4, 1995.

D.D. Mayhew,

Associate Director, Office of Resource Management, Office of Energy Research.

[FR Doc. 95–12377 Filed 5–18–95; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. EG95–45–000, et al.]

Burney Forest Products, et al.; Electric Rate and Corporate Regulation Filings

May 11, 1995.

Take notice that the following filings have been made with the Commission:

1. Burney Forest Products

[Docket No. EG95–45–000]

On April 28, 1995, Burney Forest Products, A Joint Venture (BFP), 35586–C, Highway 299 East, Burney California 96013, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

BFP is a general partnership consisting of California Bio Resources II, Inc., Forest Products, L.P., and DCTC-Burney, Inc. BFP owns and operates a 34.23 MVA small power production facility located approximately 2.0 miles west of the community of Burney, in Shasta County, California. This facility, which is the subject of this application, consists of two boilers and one steam turbine generator. The primary energy source is currently biomass in the form of wood waste.

BFP states that it will be engaged directly and exclusively in the business of owning and operating all or part of an eligible facility (under Section 32(a)(1) of the Public Utility Holding Company Act) and selling electric energy at wholesale.

Comment date: June 1, 1995, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. CNG Power Services Corporation

[Docket No. ER94–1554–003]

Take notice that on April 28, 1995, CNG Power Services Corporation tendered for filing a summary of activity for the quarter ending March 31, 1995.

3. Northwest Regional Transmission Association

[Docket No. ER95–19–000]

Take notice that on April 14, 1995, Portland General Electric Company (PGE) tendered for filing on behalf of itself, Puget Sound Power & Light Company, City of Tacoma Department of Public Utilities, Western Montana Generation and Transmission Cooperative, Inc., Pacific Northwest Generating Cooperative, and Tenaska Power Services (together, the Filing Parties) letters of support for the Governing Agreement of the Northwest Regional Transmission (NRTA), the Agreement of the Northwest Power Pool (NWPP), the NWPP membership list, and the executed signature pages of parties to the NRTA Governing Agreement. PGE asks that the Commission accept the NRTA Governing Agreement for filing as amended.

Comment date: May 25, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. Pacific Gas and Electric Company

[Docket No. ER95–980–000]

Take notice that on May 1, 1995, Pacific Gas and Electric Company (PG&E), tendered for filing a Network Integration Service Transmission tariff and a Point-to-Point Transmission Service tariff.

PG&E proposes that these tariffs, as may be subject to refund or otherwise, become effective on July 1, 1995. PG&E is requesting any necessary waivers.

Copies of this filing have been served upon the California Public Utilities Commission, and other interested parties.

Comment date: May 25, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. PacifiCorp

[Docket No. ER95–981–000]

Take notice that on May 1, 1995, PacifiCorp tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, a Power Exchange Agreement dated April 25, 1995, between PacifiCorp and the City of Redding (Redding).

Copies of this filing were supplied to Redding, the Washington Utilities and Transportation Commission, the Public Utility Commission of Oregon and the Public Utilities Commission of the State of California.

Comment date: May 25, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. The Washington Water Power Company

[Docket No. ER95–982–000]

Take notice that on May 1, 1995, The Washington Water Power Company (WWP), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.12, an Agreement for the sale of firm capacity and associated energy to the Inland Power and Light Company for an initial period of ten years.

Comment date: May 25, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Northeast Utilities Service Company

[Docket No. ER95–983–000]

Take notice that on May 1, 1995, Northeast Utilities Service Company (NUSCO), on behalf of the Northeast Utilities System Companies filed an amendment to a Service Agreement for firm transmission service to MASSPOWER under NUSCO's Tariff No. 1. The amendment provides only for a change in a delivery point for a short period of time.

NUSCO states that copies of its submission have been mailed or delivered to MASSPOWER.

Comment date: May 25, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Northeast Utilities Service Company

[Docket No. ER95–984–000]

Take notice that on May 1, 1995, Northeast Utilities Service Company (NUSCO), tendered for filing a Service Agreement and a certificate of Concurrence with the UNITIL Power Corp (UPC) under the NU System Companies System Power Sales/ Exchange Tariff No. 6.

NUSCO states that a copy of this filing has been mailed to UPC.

NUSCO requests that the Service Agreement become effective May 1, 1995.

Comment date: May 25, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Northeast Utilities Service Company

[Docket No. ER95–985–000]

Take notice that on May 1, 1995, Northeast Utilities Service Company (NUSCO), tendered for filing a Service Agreement and a Certificate of Concurrence with the Fitchburg Gas and Electric Light Company (FG&E) under the NU System Companies' System Power Sales/Exchange Tariff No. 6.

NUSCO states that a copy of this filing has been mailed to FG&E.

NUSCO requests that the Service Agreement become effective on May 1, 1995.

Comment date: May 25, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Consolidated Edison Company of New York, Inc.

[Docket No. ER95–986–000]

Take notice that on May 1, 1995, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a Supplement to its Rate Schedule FERC No. 66 an agreement to provide transmission service for the Power Authority of the State of New York (the Authority). The Supplement provides for an increase in the monthly transmission charge from $1.12 to $1.18 per kilowatt per month for transmission of power and energy sold by the Authority to Grumman Corporation, thus increasing annual revenues under the Rate Schedule by a total of $6,079.68 requested that the increase take effect on July 1, 1995.

Con Edison states that a copy of this filing has been served by mail upon the Authority.

Comment date: May 25, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. Consolidated Edison Company of New York, Inc.

[Docket No. ER95–987–000]

Take notice that on May 1, 1995, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a Supplement to Con Edison Rate Schedule FERC No. 94 for transmission service for the Long Island Lighting Company (LILCO). The Rate Schedule provides for transmission of power and energy from the New York Power Authority's Blenheim-Gilboa station. The Supplement provides for an increase in annual revenues under the Rate Schedule of $38,872.50. Con Edison has requested that this increase take effect on july 1, 1995.

Con Edison states that a copy of this filing has been served by mail upon LILCO.

Comment date: May 25, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. Consolidated Edison Company of New York, Inc.

[Docket No. ER95–988–000]

Take notice that on May 1, 1995, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a Supplement to its Rate Schedule FERC No. 117, an agreement to provide transmission and interconnection service to Long Island Lighting Company (LILCO). The Supplement provides for an increase in annual revenues under the Rate Schedule by a total of $166,174.05 for transmission service from $36.55 and $79.18 per MW per day to $38.46 and $81.31 per MW per day. Con Edison has requested that this increase take effect on july 1, 1995.

Con Edison states that a copy of this filing has been served by mail upon LILCO.

Comment date: May 25, 1995, in accordance with Standard Paragraph E at the end of this notice.

13. Consolidated Edison Company of New York, Inc.

[Docket No. ER95–989–000]

Take notice that on May 1, 1995, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a Supplement to its Rate Schedule FERC No. 102, an agreement to provide transmission service for the New York Power Authority (the Authority). The Supplement provides for an increase in the monthly transmission charge from $1.12 to $1.18 per kilowatt per month for transmission of power and energy sold by the Authority to its Economic Development Power customers on Long Island, thus increasing annual revenues under the Rate Schedules by a total of $13,882.32. The Supplement also increases the monthly charge for an alternative transmission service from $2.41 to $2.51 per kilowatt per month. Con Edison has requested that the increase take effect on July 1, 1995.

Con Edison states that a copy of this filing has been served by mail upon the Authority.

Comment date: May 25, 1995, in accordance with Standard Paragraph E at the end of this notice.

15. Consolidated Edison Company of New York, Inc.

[Docket No. ER95–991–000]

Take notice that on May 1, 1995, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a Supplement to its Rate Schedule FERC No. 78, an agreement to provide transmission service for the Power Authority of the State of New York (the Authority). The Supplement provides for an increase in the monthly transmission charge from $1.12 to $1.18 per kilowatt per month for transmission of power and energy sold by the Authority to the municipal distribution agencies of Nassau and Suffolk Counties, thus increasing annual revenues under the Rate Schedule by a total of $5,138.64. Con Edison has requested that the increase take effect on July 1, 1995.

Con Edison states that a copy of this filing has been served by mail upon the Authority.

Comment date: May 25, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–12335 Filed 5–18–95; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 516–176 South Carolina]

South Carolina Electric and Gas Company; Notice of Availability of Environmental Assessment

May 15, 1995.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's Regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47910), the Office of Hydropower Licensing (OHL) has reviewed the application for the lease of 117 acres of project lands for the development of a county park (Saluda Shoals Park) on the Saluda River below the dam at Lake Murray. The park would provide multi-use, land-based recreation facilities and would be operated by the Irmo-Chapin Recreation Commission.

The staff of OHL's Division of Project Compliance and Administration has prepared an Environmental Assessment (EA) for the proposed action. In the EA, the staff concludes that the licensee's proposals would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Reference and Information Center, Room 3308, of the Commission's Offices at 941 North Capitol Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 95–12309 Filed 5–18–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–494–000]

NorAm Gas Transmission Company; Notice of Request Under Blanket Authorization

May 15, 1995.

Take notice that on May 11, 1995, NorAm Gas Transmission Company (NGT), 1600 Smith Street, Houston, Texas 77002, filed in Docket No. CP95–494–000 a request pursuant to Section 157.205 of the Commission's Regulations to construct and operate a new delivery point to Arkla, a division of NorAm Energy Corp., to serve a rural residential customer in Coal County, Oklahoma under NGT's blanket certificate issued in Docket No. CP82–384–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

NGT proposes to construct one 1-inch tap, valve setting and 1-inch regulator on NGT's Line 638 in Coal County, Oklahoma. NGT states that Arkla would install a meter and second cut regulator to provide service to a rural residential customer. The estimated volumes to be delivered through this tap are approximately 85 MMBtu of natural gas per year and 1 MMBtu of natural gas per day, it is indicated. NGT states that NGT would transport natural gas service to Arkla within Arkla's entitlements under NGT's tariffs. NGT states that the establishment of this delivery point is not prohibited by NGT's existing tariff and NGT has sufficient capacity to accomplish deliveries at this new delivery point without detriment or disadvantage to NGT's other customers. NGT states that the estimated cost to install these facilities is $1,800, which would be reimbursed by Arkla.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–12310 Filed 5–18–95; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 3188–000]

Joseph M. Keating; Notice of Filing

May 15, 1995.

Please take notice that on October 18, 1988, Mr. Tom Camp, a member of the Commission's staff from Washington, DC, prepared a video tape of the project site for the proposed Pyramid Creek Project in the El Dorado National Forest, California. The video tape has been filed by the staff as a part of the record in the above-captioned proceeding. The tape was made on a clear day and depicts the reaches of Pyramid Creek along which project facilities would be located, remains of certain facilities of a now inoperable hydroelectric project at the same site, some of the geologic features of the area, U.S. Highway 50 where it runs past the proposed project site, an the surrounding landscape.

The video tape is available for viewing upon request by contacting the Commission's Public Reference Room in 941 North Capitol Street, N.E., Washington, D.C. 20426, telephone (202) 208–1371.

Lois D. Cashell,

Secretary.

[FR Doc. 95–12308 Filed 5–18–95; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[5207–7]

Proposed Settlement; Acid Rain Core Rules Litigation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Settlement; Request for Public Comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act ("Act"), notice is hereby given of a proposed fourth partial settlement of *Environmental Defense Fund* v. *Carol M. Browner, et al.*, No. 93–1203 (and consolidated cases) (D.C. Cir.)

The case involves challenges by several parties to the acid rain core rules published in the **Federal Register** on January 11, 1993, at 58 FR 3590 (January 11, 1993). The proposed settlement relates to the monitoring issues raised by the petitioners in the case and provides for a number of revisions to 40 CFR part 75.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement from persons who were not named as parties to the litigation in question. EPA or the Department of Justice may withhold or withdraw consent to the proposed settlement if the comments disclose facts or circumstances that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Copies of the settlement are available from Phyllis Cochran, Air and Radiation Division (2344), Office of

General Counsel, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, (202) 260–7606. Written comments should be sent to Patricia A. Embrey at the above address and must be submitted on or before June 19, 1995.

Dated: April 27, 1995.

Scott C. Fulton,

Acting General Counsel.

[FR Doc. 95–12368 Filed 5–18–95; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–4723–2]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared April 10, 1995 Through April 14, 1995 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities AT (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 14, 1995 (72 FR 19047).

Draft EISs

ERP No. D–BLM–K08018–CA Rating EC2, Alturas 345 Kilovolt (KV) Electric Power Transmission Line Project, Construction, Operation and Maintenance, Right-of-Way Grant Approval, Special-Use-Permit and COE Section 404 Permit, Susanville District, Modoc, Lassen and Sierra Counties, CA and Washoe County, NV.

Summary: EPA expressed environmental concerns regarding air quality conformity issues, biological resources, and project description information. In addition, further mitigation for cultural resources impacts are recommended.

ERP No. D–COE–E35083–NC Rating EO2, Buckhorn Reservoir Expansion, Construction of a Dam to Impound Water on the Contentnea Creek, COE Section 404 Permit, City of Wilson, Wilson County, NC.

Summary: EPA expressed environmental objections over the potential loss of 1,300 acres of wetlands, and questioned whether the proposed mitigation for the losses was appropriate. In addition, EPA expressed concerns over maintenance of water quality at the proposed reservoir.

ERP No. D–COE–G36146–LA Rating LO, Amite River and Tributaries Flood Control Project, Implementation, East Baton Rouge Parish Watershed, Florida Parishes, LA.

Summary: EPA expressed lack of objections to the proposed project, and supported the identified mitigation measures.

ERP No. D–DOE–E06015–SC Rating EC1, Savannah River Site Interim Management of Nuclear Materials, Implementation, Aiken and Barnwell Counties, SC.

Summary: EPA expressed environmental concern regarding the discussion of waste minimization, pollution prevention and spent nuclear fuel. EPA recommended additional information on these issues be included in the final document.

Final EISs

ERP No. F–USA–E11034–NC, Military Ocean Terminal Navigation Basins and Entrance Channels Improvements, Implementation, Sunny Point, Brunswick and New Hanover Counties, NC.

Summary: EPA expressed environmental concerns about whether potential adverse impacts to water quality/biological resources resulting from the deepened navigation features have been adequately addressed.

Dated: May 16, 1995.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 95–12393 Filed 5–18–95; 8:45 am]

BILLING CODE 6560–50–U

[ER–FRL–4723–1]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260–5076 OR (202) 260–5075.

Weekly receipt of Environmental Impact Statements Filed May 08, 1995 Through May 12, 1995 Pursuant to 40 CFR 1506.9.

EIS No. 950189, Draft Supplement, COE, NC, Texasgulf Open Pit Mine Continuation, Construction and Operation, Additional Information Concerning Alternative E for Wetland Avoidance/Minimization, Permit, Approval, Pamlico River, Aurora, Beaufort County, NC, Due: July 03, 1995, Contact: Hugh Heine (910) 251–4070.

EIS No. 950190, Draft EIS, TVA, TN, Upper Tennessee River Navigation Improvement Project, Rehabilitation and/or Construction,, Ckickamauga Dam—Navigation Lock Structural Improvement Alternative, Funding, NPDES Permit, Coast Guard Bridge Permit and COE Section 404 Permits, Tennessee River, Hamilton County, TN, Due: July 03, 1995, Contact: Linda B. Oxendine (615) 632–3440.

EIS No. 950191, Draft EIS, BLM, OR, Lake Abert Area Designation as an Area of Critical Environmental Concerns (ACEC), High Desert Management Framework Amendment Plan, Right-of-Way Grant and Drilling Permit, Valley Falls, Lake County, OR, Due: August 16, 1995, Contact: Scott Florence (503) 947–2177.

EIS No. 950192, Draft EIS, FHW, WV, Merrick Creek Connector Improvements Project, between US 60 to WV–2 also a New Interchange at I–64, Funding and COE Section 404 Permit, Cabell County, WV, Due: July 07, 1995, Contact: Bobby W. Blackmon (304) 347–5928.

EIS No. 950193, Draft Supplement, COE, TX, Galveston Bay Area Navigation Improvements, Houston Ship and Galveston Channels, Additional Information, Funding and Implementation, Galveston and Harris Counties, TX, Due: July 03, 1995, Contact: Richard Medina (409) 766–3044.

EIS No. 950194, Draft EIS, DOA, AS, Aua Watershed Plan, Flood Prevention and Watershed Protection, Funding, COE Section 404 Permit and Right-of-Way Grant, Tutuila Island, Ma'oputasi County, AS, Due: July 22, 1995, Contact: Joan B. Perry (671) 472–7490.

EIS No. 950195, Draft EIS, AFS, MT, Beaver Woods Vegetation Management Project, Implementation, Bitter National Forest, West Fork Ranger District, Ravalli County, MT, Due: July 03, 1995, Contact: Nora Rasure (406) 821–3269.

EIS No. 950196, Legislative Draft E, AFS, OR, Dutch Flat Creek, Killamacue Creek and Rock Creek Wild and Scenic River Study, Designation or Nondesignation, National Wild and Scenic River System, Wallowa-Whitman National Forest, American Rivers, Baker County, OR, Due: August 07, 1995, Contact: Steve Davis (503) 523–1316.

EIS No. 950197, Draft EIS, CGD, NY, NJ, Staten Island Bridges Program—Modernization and Capacity Enhancement Project, Construction and Operation, Funding, Right-of-Way Grant, COE Section 404 Permit and NPDES Permit, Staten Island, NY and Elizabeth, NJ, Due: July 14, 1995, Contact: Evelyn Smart (212) 668–7995.

EIS No. 950198, Final Supplement, COE, IN, Little Calumet River Multipurpose Project, Additional Information, Flood Control and Flood Protection, Lake and Porter Counties, IN, Due: June 19, 1995, Contact: Phillip B. Moy (312) 886–0451.

EIS No. 950199, Draft EIS, AFS, MT, Murphy Timber Sales, Harvesting Timber, Road Construction and Prescribed Burning, Kootena National Forest, Fortine Ranger District, Lincoln County, MT, Due: July 03, 1995, Contact: Joleen Dunham (406) 882–4451.

EIS No. 950200, Draft Supplement, UAF, NH, ME, Pease Air Force (AFS) Disposal and Reuse, Updated Information, Implementation, Portsmouth, Newington, Greenland, Rye, Dover Durham, Madburg, Rochester, NH and Kittery, Eliot and Berwicks, ME, Due: July 03, 1995, Contact: Jonathan Forthing (210) 536–3787.

EIS No. 950201, Final EIS, UAF, MA, Fort Devens Army Installation Disposal and Reuse, Implementation, Worcester and Middlesex Counties, MA, Due: June 19, 1995, Contact: Susan E. Brown (617) 647–8536.

EIS No. 950202, Final EIS, FHW, NC, Greensboro Western Urban Loop Transportation Improvement, from Lawndale Drive near Cottage Place to I–85 South near Holden Road, Funding, Right-of-Way Acquisition, and COE Section 404 Permit, Guilford County, NC, Due: June 19, 1995, Contact: Nicholas L. Graf (919) 856–4350.

Amended Notices

EIS No. 950149, Draft EIS, IBR, AZ, Tucson Aqueduct System Reliability Investigation (TASRI), Central Arizona Project, Surface Storage Reservoir Construction, COE Section 404 Permit, Gila River, City of Tucson, Pima County, AZ , Due: July 14, 1995, Contact: Bruce D. Ellis (602) 870–6767.

Published FR 04–28–95—Review period extended.

Dated: May 16, 1995.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 95–12392 Filed 5–18–95; 8:45 am]

BILLING CODE 6560–50–U

[FRL–5208–9]

Open Meeting of the Federal Facilities Environmental Restoration Dialogue Committee

AGENCY: Environmental Protection Agency.

ACTION: FACA Committee Meeting—Federal Facilities Environmental Restoration Dialogue Committee.

SUMMARY: As required by section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), we are giving notice of the next meeting of the Federal Facilities Environmental Restoration Dialogue Committee. The meeting is open to the public without advance registration.

The purpose of the meeting is to discuss issues related to improving the Federal facilities environmental restoration process.

DATES: The meeting will be held on June 6, 1995, from 9 a.m. until 5 p.m. and on June 7, 1995, from 9 a.m. until 4 p.m.

ADDRESSES: The meeting will be held at the Sheraton City Centre, 1143 New Hampshire Ave, NW., Washington D.C.

FOR FURTHER INFORMATION CONTACT: Persons needing further information on the meeting or on the Federal Facilities Environmental Restoration Dialogue Committee should contact Sven-Erik Kaiser, Federal Facilities Restoration and Reuse Office (5101), U.S. Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460, (202) 260–5138.

Dated: May 15, 1995.

Sven-Erik Kaiser,

Designated Federal Official.

[FR Doc. 95–12369 Filed 5–18–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5208–7]

Aqua-Tech Environmental, Inc., Greer, South Carolina; Notice of Proposed De Minimis Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed de minimis settlement.

SUMMARY: Under Section 122(g)(4) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Environmental Protection Agency (EPA) has offered approximately 135 de minimis parties who sent gas cylinders to the Aqua-Tech Environmental, Inc. Site (SITE) an opportunity to enter into an Administrative Order on Consent (AOC) to settle claims for past and future response costs at the Site. EPA will consider public comments on the proposed settlement for thirty (30) calendar days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate. Copies of the proposed settlement and a list of proposed settling de minimis parties are available from: Ms. Paula V. Batchelor, U.S. Environmental Protection Agency, Region IV, Waste Programs Branch, Waste Management Division, 345 Courtland Street, N.E., Atlanta, Georgia 30365, 404/347–5059, ext. 6169.

Written comments may be submitted to the person above within thirty (30) calendar days of the date of publication.

Dated: May 4, 1995.

H. Kirk Lucius,

Acting Director, Waste Management Division.

[FR Doc. 95–12304 Filed 5–18–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5205–6]

Flint River Bridge Drum Site; Cost Recovery Agreement for Removal Action

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed cost recovery agreement for removal action.

SUMMARY: Under § 122(g) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the United States Environmental Protection Agency (EPA) has agreed to settle claims for response costs at the Flint River Bridge Drum Site, Gurley and Madison Counties, Alabama with one party: Owens-Corning Fiberglass Corporation. EPA will consider public comments on the proposed settlement for thirty (30) days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper or inadequate. Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, Cost Recovery Section, Waste Programs Branch, Waste Management Division, U.S. EPA, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365, 404/347–5059 X6169.

Written comments may be submitted to the person above by thirty days from the date of publication.

Dated: May 11, 1995.

James Miller,

Acting Chief, Waste Programs Branch, Waste Management Division.

[FR Doc. 95–12305 Filed 5–18–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5208–5]

Tennessee Gas Pipeline Company; Notice of Proposed Settlement, Correction

AGENCY: Environmental Protection Agency.

ACTION: Correction to notice of proposed settlement.

SUMMARY: In the document beginning on page 21210 in the issue of May 1, 1995, the Environmental Protection Agency (EPA) gave notice of a proposed settlement under Section 122(h) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) with potentially responsible parties relating to the Tennessee Gas Pipeline Company (erroneously named "Tennessee Gas and Pipeline" in the notice document) sites located along the Gulf Coast of Texas, Louisiana, and Mississippi and extending along three routes to markets in the midwestern and northeastern United States (Site). That notice is hereby corrected to clarify the scope of matters in that proposed settlement on which EPA will consider public comments, as required under CERCLA Section 122(i). EPA has offered to settle with potentially responsible parties with respect to their liability under CERCLA for response costs related to the Site and incurred and paid by the United States, and will consider public comments for (30) days exclusively on that cost recovery component of the proposed settlement. EPA may withdraw from or modify the cost recovery component of the proposed settlement should such comments disclose facts or considerations which indicate that the cost recovery component is inappropriate, improper, or inadequate. Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, Waste Management Division, U.S. EPA, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365, 404/347–5059 x6169.

Written comments may be submitted to Ms. Batchelor within 30 days of publication of this correction.

Dated: May 4, 1995.

H. Kirk Lucius,

Chief, Waste Programs Branch, Waste Management Division.

[FR Doc. 95–12306 Filed 5–18–95; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1049–DR]

Louisiana; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Louisiana (FEMA–1049–DR), dated May 10, 1995, and related determinations.

EFFECTIVE DATE: May 10, 1995.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated May 10, 1995, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

> I have determined that the damage in certain areas of the State of Louisiana, resulting from severe storms, tornadoes and flooding on May 8–9, 1995 is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (the Stafford Act). I, therefore, declare that such a major disaster exists in the State of Louisiana.
>
> In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.
>
> You are authorized to provide Individual Assistance. Public Assistance may be added at a later date, if requested and warranted. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. If warranted, for the first 72 hours, you are authorized to fund direct Federal assistance at 100 percent of the total eligible costs. You or your designee may extend the time period for this direct Federal assistance funding, if necessary.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint G. Clay Hollister of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Louisiana to have been affected adversely by this declared major disaster:

St. Charles Parish for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 94–12358 Filed 5–18–94; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1049–DR]

(Louisiana); Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Louisiana (FEMA–1049–DR), dated May 10, 1995 and related determinations.

EFFECTIVE DATE: May 13, 1995.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Louisiana dated May 10, 1995, is hereby amended to include Public Assistance for the following areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 10, 1995:

Jefferson, Orleans, and St. Charles Parishes for Public Assistance (already designated for Individual Assistance).

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Associate Director, Response and Recovery Directorate.

[FR Doc. 95–1235 Filed 5–18–95; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Revocations

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR 510.

License number: 1153
Name: Nettles & Company, Inc.
Address: 601 Busse Highway, Elk Grove, IL 60007
Date Revoked: March 29, 1995
Reason: Failed to furnish a valid surety bond.

License Number: 281
Name: H.G. Ollendorff, Inc.
Address: c/o Martin P. Ochs, 501 Fifth Ave., NY, NY 10017
Date Revoked: March 30, 1995
Reason: Failed to furnish a valid surety bond.

License Number: 697
Name: Transport Masters International Inc.
Address: 20 Pershing Pl., Cresskill, NJ 07626
Date Revoked: April 14, 1995
Reason: Surrendered license voluntarily.

License Number: 229
Name: Milton Snedeker Corporation
Address: P.O. Box 1118, Valley Stream, NY 11582–1118
Date Revoked: April 19, 1995
Reason: Failed to furnish a valid surety bond.

License Number: 3477
Name: Walker International Transportation, Inc.
Address: 182–16 147th Ave., #201, Jamaica, NY 11413
Date Revoked: April 22, 1995
Reason: Failed to furnish a valid surety bond.

License Number: 3210
Name: Dateline Forwarding Service, Inc.
Address: 415 E. Grand Ave., Unit B, San Francisco, CA 94080
Date Revoked: April 23, 1993
Reason: Failed to furnish a valid surety bond.

License Number: 2683
Name: Intersped, Inc.
Address: 39 Beacon Street, Port Reading, NJ 07064
Date Revoked: April 25, 1995
Reason: Failed to furnish a valid surety bond.

Bryant L. VanBrakle,

Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 95–12307 Filed 5–18–95; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Allied Irish Banks, p.l.c.; Notice to Engage in Nonbanking Activities

This notice corrects a notice (FR Doc. 95-6868) published on page 14,942 of the issue for Tuesday, March 21, 1995. The entry for Allied Irish Banks, p.l.c., Dublin, Ireland (Allied), is revised to include providing, through AIB Investment Managers Limited, Dublin, Ireland (Company), discretionary portfolio management services by purchasing and selling foreign exchange, foreign exchange-related instruments, and certain futures and options on futures on financial commodities for customer accounts. Company would conduct the proposed activities throughout the world.

Allied states that Company would not trade for its own account, but only for the accounts of customers, and would only provide the proposed services to institutional customers, as defined in § 225.2(g) of the Board's Regulation Y. Allied maintains that the Board previously has determined by regulation that providing foreign exchange-related discretionary portfolio management services is closely related to banking. 12 CFR 225.25(b)(17). Allied has stated that Company's foreign exchange-related advisory activities would comply with the limitations contained in § 225.25(b)(17) of the Board's Regulation Y. Allied also maintains that the Board previously has determined that providing discretionary portfolio management services in connection with the purchase and sale of futures and options on futures on financial commodities is closely related to banking. *See Banque Nationale de Paris*, 81 Federal Reserve Bulletin 386 (1995) (BNP). Allied has stated that unlike the proposal approved by the Board in BNP, Company would purchase and sell over-the-counter instruments on behalf of managed accounts. In order to address potential conflicts of interest and other potential adverse effects, Allied has committed that Company would observe the standards of care and conduct applicable to fiduciaries.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than June 22, 1995. Any request for a hearing on this notice must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This notice may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Richmond.

Board of Governors of the Federal Reserve System, May 15, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–12348 Filed 5–18–95; 8:45 am]

BILLING CODE 6210–01–F

Fifth Third Bancorp, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than June 13, 1995.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Fifth Third Bancorp, Cincinnati, Ohio; to acquire 100 percent of the voting shares of Bank of Naples, Naples, Florida.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Matenve, Ltd., Miami, Florida; to become a bank holding company by acquiring 25.97 percent of the voting shares of Ocean Bankshares, Inc., Miami, Florida, and thereby indirectly acquire Ocean Bank, Miami, Florida.

C. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. The Berens Corporation, Houston, Texas, and Berens Delaware, Inc., Wilmington, Delaware; to become a bank holding companies by acquiring 100 percent of the voting shares of First National Bank of Dayton, Houston, Texas.

In connection with this application The Berens Corporation, Houston,

Texas, also has applied to acquire First National Bank of Dayton, Dayton, Texas.

Board of Governors of the Federal Reserve System, May 15, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–12349 Filed 5–18–95; 8:45 am]

BILLING CODE 6210–01–F

401(k)Plan and ESOP of United States Trust Company of New York; Change in Bank Control Notice

Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than June 2, 1995.

A. Federal Reserve Bank of New York (William L. Rutledge, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. 401(k)Plan and ESOP of United States Trust Company of New York, New York, New York; to acquire 24.9 percent of the voting shares of New USTC Holdings Corporation, New York, New York, and thereby indirectly acquire New U.S. Trust Company of New York, New York, New York; U.S. Trust Company of California, Los Angeles, California; U.S. Trust Company of Texas, Dallas, Texas; and U.S. Trust Company of Florida Savings Bank, Palm Beach, Florida.

Board of Governors of the Federal Reserve System, May 15, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–12350 Filed 5–18–95; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Nominations of Clinical Practice Guideline Topics

The Agency for Health Care Policy and Research (AHCPR) is inviting recommendations of health topics, with supporting rationale, for consideration by AHCPR in selecting topics for development of clinical practice guidelines. The process AHCPR employs in establishing priorities and selecting topics for guidelines, based on statutory criteria, is described below.

Background

The Agency for Health Care Policy and Research (AHCPR) is charged, under Title IX of the Public Health Service Act (PHS Act), with enhancing the quality, appropriateness, and effectiveness of health care services, and access to such services. The AHCPR accomplishes its goals through the establishment of a broad base of scientific research and through the promotion of improvements in clinical practice and in the organization, financing, and delivery of health care services. (42 U.S.C. 299–299c–6 and 1320b–12.)

As part of its charge, under section 912 of the PHS Act, the Administrator of AHCPR arranges for the development, periodic review, and updating of clinically relevant guidelines that may be used by physicians, other health care practitioners, providers, educators, and health care consumers to assist in determining how diseases, disorders, and other health conditions can most effectively and appropriately be prevented, diagnosed, treated, and clinically managed. (See 42 U.S.C. 299b–1(a).)

The guidelines are required to:

1. Be based on the best available research and professional judgment;
2. Be presented in formats appropriate for use by physicians, other health care practitioners, providers, medical educators, medical review organizations, and consumers;
3. Be presented in treatment-specific or condition-specific forms appropriate for use in clinical practice, educational programs, and review of quality and appropriateness of medical care;
4. Include information on the risks and benefits of alternative strategies for prevention, diagnosis, treatment, and management of the particular health condition(s); and
5. Include information on the costs of alternative strategies for prevention, diagnosis, treatment, and management of the particular health condition(s), where cost information is available and reliable.

Section 914(a) of the PHS Act (42 U.S.C. 299b–3(a)) identifies factors to be considered in establishing priorities for guidelines, including the extent to which the guidelines would:

1. Improve methods for disease prevention;
2. Improve methods of diagnosis, treatment, and clinical management for the benefit of a significant number of individuals;
3. Reduce clinically significant variations among clinicians in the particular services and procedures utilized in making diagnoses and providing treatments; and
4. Reduce clinically significant variations in the outcomes of health care services and procedures.

Section 914 also provides that the methodology may include the considerations under section 904 of the PHS Act, relevant to establishing priorities for technology assessments, and other considerations determined by the Administrator to be appropriate.

The criteria for determining priorities for technology assessments include: The prevalence of a particular health condition; variations in current practice; the economic burden posed by the prevention, diagnosis, treatment, and clinical management of a health condition, including the impact on publicly funded programs; aggregate cost of the use of the technology(ies) involved; the morbidity and mortality associated with the health condition; and the potential to improve health outcomes or affect costs associated with the prevention, diagnosis, or treatment of the condition.

Consistent with several Title IX provisions, such as sections 912(e) and 914(a)(2)(B) of the PHS Act, and with section 1142 of the Social Security Act, the Administrator assures that the needs and priorities of the Medicare program are reflected appropriately in the agenda and priorities for development of guidelines. In the future, the Administrator will also give special consideration to topics which are not likely to be addressed by the private sector, and to those which are likely to be implemented by organized systems of care.

In response to section 914(a)(2)(C), which requires the Administrator to publish a methodology for establishing priorities for guideline topics and a **Federal Register** notice of topics under consideration annually, a notice was published on September 1993, entitled "Criteria for Selection of Clinical Practice Guidelines and Topics under Consideration for Development of Clinical Practice Guidelines" (58 FR 49308). This solicitation of topics is a further step in determining priorities for future guideline development.

Process for Selection of Guideline Topics

The AHCPR's method for setting priorities and selecting guideline topics consists of the process outlined below:

1. Inviting suggestions for guideline topics with supporting information through published notice in the **Federal Register** and from HCFA, PHS agencies, professional organizations, managed care organizations, and professional review and other health care organizations;
2. Determining what consensus statements, practice parameters, and evidence-based guidelines have been recently developed or are under development by other organizations in order to avoid unnecessary duplication of effort;
3. Studying the topics proposed and the supporting documentation to determine compliance with AHCPR criteria and legislative requirements;
4. Determining compliance with the legislation by assessing, among other factors, the adequacy of the available scientific evidence; the prevalence and cost of the particular topic/condition, with particular concern for the Medicare and Medicaid populations; the potential for improvement in health outcomes; the potential for reducing clinically significant and unexplained variations in the prevention, diagnosis, treatment, management, and outcomes of health services; and the potential for improvement of methods of prevention;
5. Seeking advice of public and private sector experts on setting priorities for proposed topics;
6. Determining resource availability from AHCPR and other sources to develop the priority guidelines for the current and upcoming fiscal years; and
7. Considering recommendations from the National Advisory Council on Health Care Policy, Research, and Evaluation.

Clinical Practice Guidelines Completed and Under Development

The following guidelines have been released and disseminated:

1. Acute Pain Management: Operative or Medical Procedures and Trauma
2. Urinary Incontinence in Adults
3. Pressure Ulcers in Adults: Prediction and Prevention
4. Cataract in Adults: Management of Functional Impairment
5. Depression in Primary Care: Volume I: Detection and Diagnosis, and Volume II: Treatment of Major Depression
6. Sickle Cell Disease: Screening, Diagnosis, Management, and Counseling in Newborns and Infants
7. Evaluation and Management of Early HIV Infection
8. Benign Prostatic Hyperplasia: Diagnosis and Treatment
9. Management of Cancer Pain
10. Unstable Angina: Diagnosis and Management
11. Heart Failure: Evaluation and Care of Patients with Left Ventricular Systolic Dysfunction
12. Otitis Media With Effusion in Young Children
13. Treatment of Pressure Ulcers in Adults
14. Acute Low Back Problems in Adults
15. Quality Determinants of Mammography

The following guidelines and one guideline update are under development:

1. Post Stroke Rehabilitation
2. Cardiac Rehabilitation
3. Recognition and Initial Assessment of Alzheimer's and Related Dementias
4. Smoking Prevention and Cessation
5. Screening for Colorectal Cancer
6. Chronic Pain: Headache
7. Urinary Incontinence in Adults (Update)

Nominations of new guideline topics with supporting rationale, including specific evidence and other data, must be received by July 18, 1995 at the following address: Douglas B. Kamerow, M.D., M.P.H., Director, Office of the Forum for Quality and Effectiveness in Health Care, Agency for Health Care Policy and Research, 6000 Executive Boulevard, Suite 310, Rockville, Maryland 20852.

Dated: May 15, 1995.

Clifton R. Gaus,

Administrator.

[FR Doc. 95–12397 Filed 5–18–95; 8:45 am]

BILLING CODE 4160–90–M

Centers for Disease Control and Prevention

National Institute for Occupational Safety and Health

[Announcement 554]

Enhancing Young Workers' Occupational Health and Safety Through Community Education Efforts

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1995 funds for a cooperative agreement program for enhancing young workers' occupational health and safety through community education efforts. The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Occupational Health and Safety. (For ordering a copy of Healthy People 2000, see the Section Where to Obtain Additional Information.)

Authority

This program is authorized under Section 21(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 670(a)).

Smoke-Free Workplace

The PHS strongly encourages all grant recipients to provide a smoke-free workplace and promote the nonuse of all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Eligible Applicants

Applications may be submitted by public and private, non-profit and for-profit organizations and governments and their agencies. Thus, universities, colleges, research institutions, hospitals, other public and private organizations, agencies whose principal interest is the welfare of youth, State and local governments or their bona fide agents, federally recognized Indian tribal governments, Indian tribes or Indian tribal organizations and small, minority-and/or women-owned businesses are eligible to apply.

Availability of Funds

Approximately $200,000 is available in FY 1995 to fund one to two awards. It is expected that the award(s) will begin on or about September 30, 1995, and that the award(s) will be made for a 12-month budget period within a project period up to 2 years. Funding estimates may vary and are subject to change.

Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Purpose

This award will assist in the development of an intervention to raise the awareness of occupational health and safety issues relevant to young workers throughout a community. The objectives are: a) to recruit both a community and a school district within that community to participate in a demonstration project on young worker health and safety issues; b) with community and school cooperation, develop education and information strategies for adults and for adolescents; c) implement those strategies as a demonstration project; and d) evaluate the implementation and develop guides for other communities to establish and sustain similar efforts. Experience from the project should also allow health program planners to develop a process model that can be used to extend the intervention to broader geographic areas.

Program Requirements

In conducting activities to achieve the purposes of this program, the recipient will be responsible for conducting activities under A. (Recipient Activities), and CDC/NIOSH will be responsible for conducting activities under B. (CDC/NIOSH Activities).

A. Recipient Activities

1. Plan and implement a demonstration education program within a cooperating community and one (or more) school systems in that community.

2. Advisory Panel. Establish within the community a project-advisory panel that includes representatives from the community and from the school system. The Panel would be responsible for overseeing and coordinating the organization and application of all community resources to the project. The cooperating entity must use the advisory panel to augment its own resources for program activities. An existing community committee may be used if that committee: a) already has substantial representation from the recruitment list developed as part of Item 1, above; b) has both school district and community representation; and c) agrees to serve in an advisory capacity to the project. The advisory panel will work with the recipient of this cooperative agreement but will not direct the activities of the organizations directly involved in the cooperative agreement.

Output for This Requirement

Minutes of all meetings of the advisory panel.

3. Needs Assessment. Collect relevant data concerning the population of young workers in the community and the school system using quantitative and qualitative data collection methods. Examples of quantitative data are local employment data for both the community and the student body, adolescent work permit information, and characterization of the local business community that uses young workers. Qualitative data includes in depth interviews and/or focus groups with students, employers, parents, teachers, public health officials and others. Such interviews should result in a community portrait of the typical young worker (and his or her employer) in terms of knowledge, attitudes, and behaviors related to occupational safety and health. Examples of knowledge areas for inquiry must include young worker morbidity and mortality, common hazards, employees' and employers' legal rights and responsibilities, and other methods of hazard control. Examples of attitudes to be measured are occupational safety and health concern, perceived susceptibility to injury, and perceived social norms for safety and health behaviors. Examples of behaviors are (for employers) training and supervision of young workers, (for the young workers) adherence to safety and health training and use of personal protective equipment. Information should also be collected from cooperating community groups as to what would help each group contribute to the reduction of occupationally-related injury and illness among working youth in the community. This information must be used in the education activities described next.

Output for This Requirement

Using the data collected in this activity, the recipient must prepare a summary describing young worker employment in the community, knowledge of and attitudes toward young worker occupational safety and health among adults and youth, and education needs on this issue for both students and adults in the community. The report must include an analysis of the implications of the data for the educational interventions.

4. Develop, Demonstrate, and Evaluate Adult Awareness Strategies. Using the needs assessment report from the last requirement, the recipient must develop, demonstrate, and evaluate customized activities whose objectives are to raise the awareness of young worker safety and health issues among parents, teachers, employers, public health workers, union leaders and other opinion leaders in the community. Examples of such activities are presentations to and public information campaigns for community groups, business groups, and education groups such as parent/teacher organizations and parent/teacher associations. Special attention must be devoted to assisting employers in developing administrative structures and actions that will prevent young worker illness and injury. For example, the recipient might assist in develop training materials for young workers at a particular company. This would qualify as assistance to adults if it builds the capacity of the company's personnel to develop such materials. Teachers in the cooperating school must be another important target audience because some of them must play a role in the curriculum development for students, described in the following requirement. Every activity undertaken under this step must be evaluated using either behavioral observation, pencil and paper self-report, and/or records methods. Changes in knowledge of young worker health and safety issues, attitudes toward these issues, and behaviors to protect young workers are the outcomes of interest.

Outputs for This Requirement

(a) A record of strategies developed.

(b) A record of where, when, and how strategies were used.

(c) Copies of visual aids and other educational materials used.

(d) Evaluation protocols, evaluation data collection instruments, and evaluation data analysis results.

5. Develop, Demonstrate, and Evaluate Student Education Strategies. Using the "needs assessment report" from requirement three, the recipient must develop, demonstrate, and evaluate customized activities whose objectives are to raise the awareness of young worker safety and health issues among high school students in the cooperating school. Participation of school faculty (motivated by activities under requirement four, above) in this process is very important. Curriculum materials and classroom activities should be planned and implemented not necessarily comprehensively across the curriculum, but selectively, based on the interest and commitment of specific faculty who are willing to incorporate work-related safety and health education in their courses and to support evaluation efforts. Strategies may also (or alternatively) be used in students' extracurricular activities (e.g., journalism, performing arts, law clubs, debate societies) if there is faculty participation in the implementation of those strategies. Every activity undertaken under this step must be evaluated using either behavioral observation, pencil and paper self-report, or records methods. Changes in knowledge of young worker health and safety issues, attitudes toward these issues, and behaviors to protect young workers (either self- protection or informing others) are the outcomes of interest.

Output for This Requirement

(a) A record of strategies developed under this requirement.

(b) A record of where, when, and how the strategies were used.

(c) Copies of visual aids and other educational materials used.

(d) Evaluation protocols, evaluation data collection instruments, and evaluation data analysis results.

6. Summary Activities. Design and execute an evaluation plan for the entire project that will occur concurrently with the project. It must assess community-level, school-level, employer-level, and individual-level outcomes. It must feature the evaluations specified as outputs from requirements four and five, but it must also assess overall impacts of the program. Outcome measures such as pre- and post-intervention knowledge of and attitudes toward occupational health and safety issues among target audiences listed above, workplace behaviors of both young workers and their employers, and emergency room visits for occupationally-related injuries to youth are examples of what might be used to help assess the project's effectiveness. The evaluation must draw conclusions from the evaluation data and make recommendations for: (a) efforts to sustain the awareness of young worker safety and health issues in the demonstration community and school, (b) pilot efforts in other communities, and (c) efforts to enlarge this community education effort to regional, State, and national levels. The overall evaluation must include copies of all outputs from the previous requirements (1–5). It must also include a model for community-based efforts to stimulate an awareness of young workers' safety and health issues and a "how to" guide for communities who might undertake similar efforts. Disseminate these results to participants and other interested parties.

Outputs of This Requirement

(a) An overall evaluation of the program that details evaluation protocols, data collection activities, analysis and interpretation of data, and recommendations for sustaining and enlarging the program.

(b) A guide for other communities and school systems to use to start and maintain a similar program.

(c) Recommendations for dissemination of the evaluation document and the "how-to" guide.

7. The recipient must collaborate with CDC in the planning of how best to extend the work of this project.

B. CDC/NIOSH Activities

1. Provide technical assistance and consultation, through site visits and correspondence, in areas of identifying needs, and program development and implementation.

2. Provide limited scientific and technical consultation in the modification of curriculum materials and their subsequent review.

3. Provide limited graphic design, audio production, video production, multimedia production, and other creative services where possible to assist the activities of the project.

4. Provide existing educational or informational materials where appropriate and needed, as supplies permit.

5. Provide technical assistance in the evaluation of the results and efficacy of the process used in this project.

6. Assist in the dissemination of the results of this project to other interested groups.

7. Participate in the planning of the extension of the work of this project to broader geographic areas.

Evaluation Criteria

Applications will be reviewed and evaluated according to the following criteria (maximum 100 total points):

1. Background and Need (10%)

The extent to which the applicant presents data justifying need for the program in terms of magnitude of the related injury problem, and identifies suitable target populations. The extent to which a description of current and previous related experiences:

(a) Is inclusive in terms of young worker health education interventions and their evaluation; and

(b) Demonstrates capacity to conduct the program.

2. Goals and Specific Time-Framed Objectives (15%)

The extent to which the applicant has included goals and objectives which are relevant to the purpose of the proposal and feasible to be accomplished during the project period and the extent to which these are specific and measurable. The extent to which the objectives are specific, time-framed, and measurable. The extent to which the applicant documents an intention to undertake additional activities to either sustain or enlarge this activity should additional funds become available.

3. Methods (30%)

The extent to which the applicant provides a detailed description of proposed activities which are likely to achieve each objective and overall program goals and which includes designation of responsibility for each action undertaken. The extent to which the applicant provides a reasonable and complete schedule for implementing all activities. The extent to which roles of each unit, organization, or agency are described, and coordination and supervision of staff, organizations, and agencies involved in activities are apparent. The extent to which documentation of program organizational location is clear, and shows a coordinated relationship among components forming the applicant's intervention program. The extent to which position descriptions, *curriculum vitae*, and lines of command are appropriate to accomplishment of program goals and objectives. The extent to which concurrences with the applicant's plans are specific and documented.

4. Evaluation (30%)

The extent to which the proposed evaluation system is detailed and will document program process, effectiveness (of strategies employed on intermediate outcomes), and impacts (of strategies and intermediate outcomes on broader outcome measures). The extent to which the applicant demonstrates potential data sources for evaluation purposes, and documents staff availability, expertise, and capacity to perform the evaluation. The extent to which a feasible plan for reporting evaluation results for programmatic decisions is included.

5. Collaboration (15%)

The extent to which relationships between the program and other organizations, agencies, and health department units that will relate to the program or conduct related activities are clear, complete, and provide for complimentary or supplementary working interactions. The extent to which coalition membership and roles are documented and appropriate to the program. The extent to which the relationship with local community entities are activity-specific and show evidence of specific support.

6. Budget and Justification (Not Scored)

The extent to which the applicant provides a detailed budget and narrative justification consistent with stated objectives and planned program activities. The budget information will be reviewed to determine if it is reasonable, clearly justified, and consistent with the intended use of funds.

Executive Order 12372 Review

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order (E.O.) 12372. E.O. 12372 sets up a system for State and local government review of proposed Federal assistance applications. Applicants (other than federally recognized Indian tribal governments) should contact their state Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC for each affected State. Indian tribes are strongly encouraged to request tribal government review of the proposed application. A current list of SPOCs is included in the application kit.

If SPOCs or tribal governments have any State process recommendations on applications submitted to CDC, they should send them to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Atlanta, GA 30305, no later than 60 days after the application deadline date. The Program Announcement Number and Program Title should be referenced on the document. The granting agency does not guarantee to "accommodate or explain" State or tribal process recommendations it receives after that date.

Public Health System Reporting Requirements

This program is subject to the Public Health System Reporting Requirements. Under these requirements, all community-based non-governmental applicants must prepare and submit the items identified below to the head of the appropriate State and/or local health agency(s) in the program area(s) that may be impacted by the proposed project no later than the receipt date of the Federal application. The appropriate State and/or local health agency is determined by the applicant. The following information must be provided:

1. A copy of the face page of the application (SF 424).

2. A summary of the project that should be titled "Public Health System Impact Statement" (PHSIS), not exceeding one page, and include the following:

a. A description of the population to be served;

b. A summary of the services to be provided; and

c. A description of the coordination plans with the appropriate State and/or local health agencies.

If the State and/or local health official should desire a copy of the entire application, it may be obtained from the State SPOC or directly from the applicant.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.263.

Other Requirements

Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by the cooperative agreement will be subject to approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations, 45 CFR Part 46, regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

In addition to other applicable committees, Indian Health Service (IHS) institutional review committees also must review the project if any component of IHS will be involved or will support the research. If any American Indian community is involved, its tribal government must also approve that portion of the project applicable to it.

Application Submission and Deadline

The original and two copies of the PHS Form 5161–1 (Revised 7/92, OMB Number 0937–0189) must be submitted to Henry Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), Mailstop E–13, 255 East Paces Ferry Road, NE., Room 300, Atlanta, GA 30305, on or before July 5, 1995.

1. Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. Late Applications: Applications which do not meet the criteria in 1.(a) or 1.(b) above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where To Obtain Additional Information

To receive additional written information, call (404) 332–4561. You will be asked to leave your name, address, and telephone number and will need to refer to Announcement 554. You will receive a complete program description, information on application procedures, and application forms.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from Oppie Byrd, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), Mailstop E–13, 255 East Paces Ferry Road, NE., Room 300, Atlanta, GA 30305, telephone (404) 842–6546.

Programmatic technical assistance may be obtained from Ray Sinclair, Television Production Specialist, DTMD, National Institute for Occupational Safety and Health, MS C–3, Centers for Disease Control and Prevention (CDC), 4676 Columbia Parkway, Cincinnati, OH 45226, telephone (513) 533–8172.

Please refer to Announcement 554 when requesting information and submitting an application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) referenced in the Introduction through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512–1800.

Dated: May 15, 1995.

Diane D. Porter,

Acting Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC).

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[FR Doc. 95–12325 Filed 5–18–95; 8:45 am]

BILLING CODE 4163–18–P

Hospital Infection Control Practices Advisory Committee: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Hospital Infection Control Practices Advisory Committee.

Times and Dates: 8:30 a.m.–5 p.m., June 12, 1995. 8:30 a.m.–4 p.m., June 13, 1995.

Place: CDC, Auditorium A, 1600 Clifton Road, NE, Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available.

Purpose: The committee is charged with providing advice and guidance to the Secretary, the Assistant Secretary for Health, the Director, CDC, and the Director, National Center for Infectious Diseases (NCID), regarding the practice of hospital infection control and strategies for surveillance, prevention, and control of nosocomial infections in U.S. hospitals and updating of guidelines and other policy statements regarding prevention of nosocomial infections.

Matters to be Discussed: The agenda will include review and discussion of public comments regarding the draft Guideline for Isolation Precautions in Hospitals, review of the status of the draft Guideline for the Prevention of Nosocomial Intravascular Device-Related Infections, review of the status of the proposed first draft of the Guideline for Infection Control in Hospital Personnel, and an update on CDC activities of interest to the committee. Agenda items are subject to change as priorities dictate.

Contract Person for More Information: Marsha A. Jones, Associate Director for Management, Hospital Infections Programs, NCID, CDC, 1600 Clifton Road, NE, Mailstop A–07, Atlanta, Georgia 30333, telephone 404/639–6402.

Dated: May 12, 1995.

Julia M. Fuller,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–12326 Filed 5–18–95; 8:45 am]

BILLING CODE 4163–18–M

National Committee on Vital and Health Statistics: Meeting

Pursuant to Pub. L. 92–463, the National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC), announces the following committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS).

Times and Dates: 1 p.m.–5 p.m., June 14, 1995. 9 a.m.–5 p.m., June 15, 1995. 9 a.m.–3 p.m., June 16, 1995.

Place: Room 703A, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, DC 20201.

Status: Open.

Purpose: The purpose of this meeting is for the committee to consider reports from each NCVHS subcommittee; to receive reports from offices of the Department of Health and Human Services; to receive a report from the Center for Health Policy Studies on a working compendium of core health data sets currently in use or proposed for use for person level and event level in the United States; to discuss the Unified Medical Language System developed by the National Library of Medicine; and to address new business as appropriate.

Contact Person for More Information: Substantive program information as well as summaries of the meeting an a roster of committee members may be obtained from Gail F. Fisher, Ph.D, Executive Secretary, NCVHS, NCHS, CDC, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone 301/436–7050.

Dated: May 12, 1995.

Julia M. Fuller,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–12327 Filed 5–18–94; 8:45 am]

BILLING CODE 4163–18–M

Food and Drug Administration

[Docket No. 94F–0431]

Asahi Chemical Industry Co., Ltd.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Asahi Chemical Industry Co., Ltd., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of two grades of dimethylpolysiloxane with viscosities of 100 centistokes and 50 centistokes, intended for use as release agents in the manufacture of thermoplastic elastomers.

DATES: Written comments on the petitioner's environmental assessment by June 19, 1995.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Julius Smith, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3091.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 3B4396) has been filed by Asahi Chemical Industry Co., Ltd., Hibiya-Mitsui Bldg., 1–2, Yuraku-cho 1–Chome, Chiyoda-ku, Tokyo, T100, Japan. The petition proposes to amend the food additive regulations to provide for the safe use of two grades of dimethylpolysiloxane with viscosities of 100 centistokes and 50 centistokes, intended for use as release agents in the manufacture of thermoplastic elastomers.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental

assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before June 19, 1995, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: May 9, 1995.

George H. Pauli,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 95–12296 Filed 5–18–95; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 95N–0127]

Roussel Corp., et al.; Withdrawal of Approval of 16 Abbreviated New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of 16 abbreviated new drug applications (ANDA's). The holders of the ANDA's notified the agency in writing that the drug products were no longer marketed and requested that the approval of the applications be withdrawn.

EFFECTIVE DATE: June 19, 1995.

FOR FURTHER INFORMATION CONTACT: Lola E. Batson, Center for Drug Evaluation and Research (HFD–360), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1038.

SUPPLEMENTARY INFORMATION: The holders of the ANDA's listed in the table in this document have informed FDA that these drug products are no longer marketed and have requested that FDA withdraw approval of the applications. The applicants have also, by their request, waived their opportunity for a hearing.

ANDA no.	Drug	Applicant
62–830	Sterile Cefazolin Sodium, U.S.P. (bulk)	Roussel Corp., 95 Chestnut Ridge Rd., P.O. Box 30, Montvale, NJ 07645.
70–662	Diazepam Injection, U.S.P., 5 milligrams (mg)/milliliter (mL)	Fujisawa Pharmaceutical Co., Parkway North Center, Three Parkway North, Deerfield, IL 60015–2548.
80–517	Prednisolone Sodium Phosphate Injection, U.S.P., 20 mg/mL	Steris Laboratories, Inc., 620 North 51st Ave., Phoenix, AZ 85043–4705.
80–702	Vitamin A Palmitate Capsules, EQ 50,000 Units Base	Banner Pharmacaps, Inc., 1111 Jefferson Ave., Elizabeth, NJ 07207.
83–531	Dimenhydrinate Injection, U.S.P., 50 mg/mL	Steris Laboratories, Inc.
83–593	Chlorpheniramine Maleate Injection, U.S.P., 10 mg/mL	Do.
83–948	Vitamin A Palmitate Capsules, EQ 50,000 Units Base	Banner Pharmacaps, Inc.
83–973	Vitamin A Capsules, 50,000 U.S.P. Units	Do.
85–591	Chlorpromazine Hydrochloride Injection, U.S.P., 25 mg/mL	Steris Laboratories, Inc.
86–419	Testosterone Injection, U.S.P., 50 mg/mL	Do.
86–420	Testosterone Injection, U.S.P., 25 mg/mL	Do.
86–468	Procainamide Hydrochloride Extended-release Tablets, U.S.P., 250 mg.	Parke-Davis, Division of Warner-Lambert Co., 2800 Plymouth Rd., Ann Arbor, MI 48105.
86–844	Acetic Acid Otic Solution with Hydrocortisone, 2%/1%	Procter & Gamble Pharmaceuticals, 11370 Reed Hartman Hwy. Cincinnati, OH 45241–2422.
86–845	Acetic Acid Otic Solution, U.S.P., 2%	Do.
87–274	Hydroxyzine Hydrochloride Injection, U.S.P., 25 mg/mL and 50 mg/mL.	Steris Laboratories, Inc.
88–642	Diethylpropion Hydrochloride Tablets, U.S.P., 25 mg	Lemmon Co., 650 Cathill Rd., Sellersville, PA 18960.

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) and under authority delegated to the Director, Center for Drug Evaluation and Research (21 CFR 5.82), approval of the ANDA's listed above, and all amendments and supplements thereto, is hereby withdrawn, effective June 19, 1995.

Dated: April 18, 1995.

Murray M. Lumpkin,

Deputy Director, Center for Drug Evaluation and Research.

[FR Doc. 95–12295 Filed 5–18–95; 8:45 am]

BILLING CODE 4160–01–F

Public Health Service

Agency Forms Undergoing Paperwork Reduction Act Review

Each Friday the Public Health Service (PHS) publishes a list of information collection requests under review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the PHS Reports Clearance Office on (202) 690–7100.

The following requests have been submitted for review since the list was last published on May 12.

1. Studies of Adverse Reproductive Outcomes in Female Occupational Groups—New—The reproductive health of a group of female workers exposed to a particular environmental chemical agent will be compared to the reproductive health of a group of working women with no occupational exposure to known or suspected reproductive toxicants. Respondents: Individuals or households; Business or other for-profit. Send comments to Shannah Koss, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503.

	No. of respondents	No. of responses per respondent	Avg. burden/response
Women	6,200	1	2.85 hours.
Physicians.	1,200	1	.5 hour.

Estimated Annual Burden: 18,250 hours.

2. Infant Feeding Study Puberty Follow-up—0925–0381—Extension, no change—Children from a previous study of health effects of PCBs and DDE are being restudied to determine whether PCBs or DDE affect growth or pubertal development. Information is being collected annually from 431 children and their parents to determine whether there is public health concern about these chemicals in children. Respondents: Individuals or households; Number of Respondents: 862; Number of Responses per Respondent: 1.1; Average Burden per Response: 0.23 hour; Estimated Annual Burden: 219 hours. Send comments to James Scanlon, Office of the Assistant Secretary for Health, Room 737–F, Humphrey Building, 200 Independence Ave., SW,, Washington, DC 20201.

3. FDA Recall Regulations—0910–0249—Extension, no change—Recall guidelines set forth procedures to be used by manufacturers and distributors or other responsible persons in notifying or alerting health professionals or other persons of an unreasonable risk of substantial harm to the public's health and describe the procedures used or required by FDA in the recall process. Respondents: Business or other for-profit. Send comments to Shannah Koss, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503.

	No. of respondents	No. of responses/respondents	Avg. burden/response
21 CFR 7.42.	1,294	1	1.8 hours.
21 CFR 7.46/ 7.49.	1,294	1	4 hours.
21 CFR 7.53.	1,294	1	36 hours.
21 CFR 7.55(b).	1,294	1	2 hours.

Estimated Annual Burden: 56,677 hours.

Written Comments and recommendations concerning the proposed information collections should be sent within 30 days of this notice directly to the individual designated.

Dated: May 12, 1995.

James Scanlon,

Director, Data Policy Staff, Office of the Assistant Secretary for Health and PHS Report Clearance Officer.

[FR Doc. 95–12256 Filed 5–18–95; 8:45 am]

BILLING CODE 4160–01–M

Substance Abuse and Mental Health Services Administration

Advisory Committee for Women's Services; Meeting

Pursuant to Pub.L. 92–463, notice is hereby given of the meeting of the Advisory Committee for Women's Services of the Substance Abuse and Mental Health Services Administration (SAMHSA).

The meeting of the Advisory Committee for Women's Services will include a discussion of policy and program issues relating to women's substance abuse and mental health service needs at SAMHSA, including the SAMHSA FY 1996 budget, the SAMHSA Strategic Plan, and on-going women's activities within SAMHSA's Center for Substance Abuse Prevention, Center for Substance Abuse Treatment and Center for Mental Health Services.

A summary of the meeting and/or a roster of committee members may be obtained from: Jennifer B. Fiedelholtz, Executive Secretary, Advisory Committee for Women's Services, Office for Women's Services, Substance Abuse and Mental Health Services Administration, Parklawn Building, Room 13–99, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–5184.

Substantive information may be obtained from the contact whose name and telephone number is listed below.

Committee Name: Advisory Committee for Women's Services.

Meeting Date: June 12–13, 1995.

Place: Conference Room B, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Open: 8:30 a.m. to 5 p.m.

Contact: Jennifer B. Fiedelholtz, Room 13–99, Parklawn Building, Telephone (301) 443–5184.

Dated: May 15, 1995.

Jeri Lipov,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 95–12331 Filed 5–18–95; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–95–1917; FR–3778–N–37]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact David Pollack, room 7256, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1234; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to David Pollack at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: Department of the Interior: Lola D. Knight, Property Management Specialist, Department of the Interior, 1849 C Street NW., Mail Stop 552–MIB, Washington, DC 20240; General Services Administration: Norman C. Miller, Acting Assistant Commissioner, General Services Administration, Federal Property Resources Services, 18th and F Street NW., Washington, DC 20405; U.S. Army: Elaine Sims, CECPW–FP, U.S. Army Center for Public Works, 7701 Telegraph Road, Alexandria, VA 22310–3862; (703) 355–3475; Corps of Engineers: Bob Swieconek, Headquarters, Army Corps of Engineers, Attention: CERE–MC, Room 4224, 20 Massachusetts Avenue NW., Washington, DC 20314–1000; (202) 272–1720; U.S. Navy: John J. Kane, Deputy Division Director, Dept. of Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332–2300; (703) 325–0474; (These are not toll-free numbers).

Dated: May 12, 1995.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 05/19/95

Suitable/Available Properties

Buildings (by State)

California

NPS Residence #723
Rancheria Flat Road
El Portal Co: Mariposa CA 95318–
Landholding Agency: Interior
Property Number: 619520026
Status: Excess
Comment: 2210 sq. ft., one story wooden frame residence, off-site use only

Illinois

Defunct Radio Station Site
(Govt Tract B–135), Chain of Rocks Canal Co: Madison IL 62040–
Landholding Agency: COE
Property Number: 319520002
Status: Excess
Comment: 5 bldgs. (48×17, 8×10, 15×18, 6×6, 12×14), need extensive repairs, off-site use only

Kentucky

Bldg. 3104
Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219520001
Status: Unutilized
Comment: 1250 sq. ft., one story, off-site use only, most recent use—storage

Massachusetts

17 Single Family Residences
Navy Family Housing, Westover AFB
Chicopee Co: Hampden MA 01022–
Landholding Agency: GSA
Property Number: 549520002
Status: Excess
Comment: various sq. ft., good condition, utilities systems modification

99 Duplex Residences
Navy Family Housing, Westover AFB
Chicopee Co: Hampden MA 01022–
Landholding Agency: GSA
Property Number: 549520003
Status: Excess
Comment: various sq. ft., good condition, utilities systems modification

20 Fourplex Residences
Navy Family Housing, Westover AFB
Chicopee Co: Hampden MA 01022–
Landholding Agency: GSA
Property Number: 549520004
Status: Excess
Comment: various sq. ft., good condition, utilities systems modification

Minnesota

Frame Dwelling—Lake Traverse
Rural Rt. 2
Wheaton Co: Traverse MN 56296–9630
Landholding Agency: COE
Property Number: 319520001
Status: Excess
Comment: 1453 sq. ft., 2-story residence, off-site use only

Virginia

Bristol U.S. Army Reserve Ctr.
100 Piedmont Avenue
Bristol Co: Washington VA 24201–
Landholding Agency: Army
Property Number: 219440317
Status: Unutilized
Comment: 13,460 sq. ft., 2-story plus basement, brick structure, presence of asbestos, needs some rehab.

Unsuitable Properties

Buildings (by State)

California

Bldg. 4147, Downey House
Tract 01–40
Wawona Co: Mariposa CA 95389–
Landholding Agency: Interior
Property Number: 619520024
Status: Unutilized
Reason: Extensive deterioration

Yosemite Village Gas Station/Photo Center
Yosemite Co: Mariposa CA 95389–
Landholding Agency: Interior
Property Number: 619520025
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 31030, 31031 & 31034
Naval Air Weapons Station
China Lake Co: San Bernardino CA 93555–1001
Landholding Agency: Navy
Property Number: 779520015
Status: Excess
Reason: Secured Area Within 2000 ft. of flammable or explosive material

Pennsylvania

NPS Tract #362–09 (6 Bldgs)
Former Lehmer Farm
Marysville Co: Perry PA 17053–
Location: Off Route 850
Landholding Agency: Interior
Property Number: 619520023
Status: Excess
Reason: Extensive deterioration

Land (by State)

Mississippi

Mississippi State Rsch Center
Starkville Co: Oktibbeha MS 39762–
Landholding Agency: GSA
Property Number: 549520010
Status: Excess
Reason: Other
Comment: no legal access GSA Number: 4–A–MS–550

Land—Grenada Lake Dam & Reservoir Project
Co: Yalobusha MS
Location: 5 miles southeast of Coffeeville, MS on State Highway 330
Landholding Agency: GSA
Property Number: 549520011
Status: Excess
Reason: Floodway
GSA Number: 4–D–MS–548

[FR Doc. 95–12184 Filed 5–18–95; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–600–04–4110–02 24 1a]

Call for Nominations on Resource Advisory Councils

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to solicit nominations from the public for Bureau of Land Management (BLM) Resource Advisory Councils. These councils provide advice and recommendations to BLM on management of the public lands.

The Federal Land Policy and Management Act (FLPMA) directs the Secretary of the Interior to involve the public in planning and issues related to management of lands administered by BLM. Section 309 of FLPMA directs the Secretary to select 10 to 15 member citizen-based advisory councils that are established and authorized consistent with the requirements of the Federal Advisory Committee Act (FACA). As required by the FACA, Resource Advisory Council members appointed to the council will reflect a balanced membership representative of the various interests concerned with the management of the public lands and users of the public lands. These include:

- Holders of federal grazing permits, representatives of energy and mining development, timber industry, off-road vehicle use and developed recreation;
- Representatives of environmental and resource conservation organizations, archeological and historic interests, and wild horse and burro groups;
- Representatives of State and local government, Native American tribes, academicians involved in natural sciences, and the public at large.

Individuals may nominate themselves or others. Nominees must be residents of the State or States in which the council has jurisdiction. Nominees will be evaluated based on their education, training, and experience of the issues and knowledge of the geographical area of the Council. Nominees should have demonstrated a commitment to collaborative resource decisionmaking. At least one member of each Resource Advisory Council must be an elected official of general purpose government serving the people within the geographic area for which an advisory council is established. All nominations must be accompanied by letters of reference from represented interests or organizations, a completed background information nomination form, as well as any other information that speaks to the nominee's qualifications.

Resource Advisory Councils will forward advice on public land planning and management issues to the BLM.

BLM State offices will issue press releases providing additional instructions for nominations such as the number and type of councils per State. Nominations for Resource Advisory Councils should be sent to the External Affairs Offices of the appropriate BLM State Offices listed below.

Alaska, 222 W. 7th Avenue #13, Anchorage, Alaska 99513–5076
Arizona, 3707 North 7th Street, Phoenix, Arizona 85014–5080
California, 2800 Cottage Way E–2841, Sacramento, California 95825–1889
Colorado, 2850 Youngfield Street, Lakewood, Colorado 80215–7076
Idaho, 3380 Americana Terrace, Boise, Idaho 83706
Montana, 222 N. 32nd Street, PO Box 36800, Billings, Montana 59107–6800
Nevada, 850 Harvard Way, PO Box 12000, Reno, Nevada 89520–0006
New Mexico, 1474 Rodeo Drive, PO Box 27115, Santa Fe, New Mexico 87502–0115
Oregon/Washington, 1300 N.E. 44th Avenue, PO Box 2965, Portland, Oregon 97208–2965
Utah, 324 South State Street, CFS Finan. Ctr. Bldg., Suite 301, Salt Lake City, Utah 84111–2303
Wyoming, 2515 Warren Avenue, PO Box 1828, Cheyenne, Wyoming 82003

DATES: All nominations should be received by the appropriate BLM State Office by June 23, 1995.

FOR FURTHER INFORMATION CONTACT: Chris Wood, U.S. Department of the Interior, Bureau of Land Management, Room 5558, Washington, DC 20240, 202/208–7013 or Dave Darby, Bureau of Land Management, Montana State Office, 222 N. 32nd Street, PO Box 36800, Billings, Montana 59107–6800, 406/255–2728.

Bruce Babbitt,

Secretary of the Interior.

Resource Advisory Council—Background Information Nomination Form

Name of council(s) to be considered for:

_____

_____

Nominee's Full Name:

_____

Business Address:

_____

_____

Home Address:

_____

_____

Business Phone: ( ) _____

Home Phone: ( ) _____

Occupation/Title:

_____

Education (colleges, degrees, major fields of study):

_____

_____

_____

Career highlights: Significant related experience, civic and professional activities, elected offices (if term expires, prior advisory committee experience or career achievements related to the interest to be represented). Attach additional pages as necessary.

Qualifications

Education, training and/or experience:

_____

_____

_____

Experience or knowledge of the council's geographic area of jurisdiction:

_____

_____

_____

Experience in working with disparate groups to achieve collaborative solutions (e.g., civic organizations, planning commissions, school boards):

_____

_____

_____

_____

Area of Interest To Be Represented

- Holder of Federal grazing permit/lease, transportation/rights-of-way, developed outdoor recreation, off-highway vehicle user, commercial recreation activity, commercial timber industry, energy/mineral development;
- National/regional environmental organization, resource conservation group, dispersed recreational activity, archeological or historical interest, national/regional wild horse/burro groups; and
- Holder of State/county/local elected office, State agency employee in field of

natural resources/land/water, Indian tribes, academicians of natural resource/science, public-at-large.

Attach letters of reference from interests or organizations to be represented (required).

Nominated by: Name, address, and phone number:

Privacy Act Statement

The authority to request this information is contained in 5 U.S.C. 301, the Federal Advisory Committee Act, and Part 1784 of Title 43, Code of Federal Regulations. It is used by the appointing officer to determine education, training, and experience related to possible service on an advisory council of the Bureau of Land Management. If you are appointed as an advisor, the information will be retained by the appointing official as long as you serve. Otherwise, it will be destroyed or returned (if requested) within 60 days following announcement of the council appointments. Completion of this form is voluntary. However, failure to complete any or all items will inhibit fair evaluation of your qualifications, and could result in you (or your nominee) not receiving full consideration for appointment.

Dated: May 16, 1995.

Bruce Babbitt.

[FR Doc. 95–12366 Filed 5–18–95; 8:45 am]

BILLING CODE 4210–84–P

[AZ–025–05–1430–01; AZA 241, AZA 17944, AZA 17945, AZA 27967, AZAR 034355]

Arizona: Termination of Classification and Opening of Lands to Entry in Mohave County, Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This Notice will open 67.86 acres to location and entry under the public land laws and general mining laws.

EFFECTIVE DATE: June 19, 1995.

FOR FURTHER INFORMATION CONTACT: Bill Wadsworth, or Joyce Bailey, Realty Specialists, Kingman Resource Area, 2475 Beverly Avenue, Kingman, Arizona 86401–3629, telephone (520) 757–3161.

SUPPLEMENTARY INFORMATION: The following described lands were classified on various dates under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The classifications are no longer needed:

AZA 241. Gila and Salt River Meridian, Arizona

T. 16 N., R. 13 W.,
Sec. 28, W½NE¼NE¼NE¼, SE¼NE¼NE¼NE¼, SE¼NE¼NE¼.
Containing 17.5 acres.

AZA 17944. Gila and Salt River Meridian, Arizona,

T. 25 N., R. 19 W.,
Sec. 10, NW¼SW¼NW¼.
Containing 10 acres.

AZA 17945. Gila and Salt River Meridian, Arizona,

T. 25 N., R. 19 W.,
Sec. 10, that portion of SE¼SW¼NW¼ lying North of Pierce Ferry Road.
Containing 7.54 acres.

AZA 27967. Gila and Salt River Meridian, Arizona,

T. 25 N., R. 19 W.,
Sec. 10, W½SW¼SW¼.
Containing 20 acres.

AZAR 034355. Gila and Salt River Meridian, Arizona,

T. 23 N., R. 18 W.,
Sec. 4, lot 17.
Containing 12.82 acres.

At 9 a.m. on June 19, 1995, the classification on the lands described above will be terminated and the land will be open to location and entry under the United States mining laws and public land laws.

Dated: May 4, 1995.

Mary Jo Yoas,

Chief, Lands and Minerals Operations.

[FR Doc. 95–12346 Filed 5–19–95; 8:45 am]

BILLING CODE 4310–32–P

[NV–942–05–1420–00]

Filing of Plats of Survey; Nevada

AGENCY: Bureau of Land Management Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested State and local government officials of the filing of Plats of Survey in Nevada.

EFFECTIVE DATE: Filing is effective at 10:00 a.m. on the dates indicated below.

FOR FURTHER INFORMATION CONTACT: John S. Parrish, Chief, Branch of Cadastral Survey, Bureau of Land Management (BLM), Nevada State Office, 850 Harvard Way, P.O. Box 12000, Reno, Nevada 89520, 702–785–6541.

SUPPLEMENTARY INFORMATION: The Plats of Survey of the following described lands will be officially filed at the Nevada State Office, Reno, Nevada on July 10, 1995.

The plat representing the survey of a portion of the subdivisional lines, the subdivision of section 4, and the metes-and-bounds survey of a portion of the southerly right-of-way of U.S. Highway No. 50, T. 16 N., R. 34 E., Mount Diablo Meridian, Group No. 712, Nevada, was accepted April 5, 1995.

The plat, in three sheets, representing the dependent resurvey of the Third Standard Parallel North, through a portion of Range 33 East, and the survey of a portion of the east boundary, a portion of the subdivisional lines, and the subdivision of certain sections, Township 15 North, Range 33 East, Mount Diablo Meridian, Nevada, Group No. 714, was accepted April 27, 1995.

The plat, in three sheets, representing the dependent resurvey of the Third Standard Parallel North, through a portion of Range 34 East, and the survey of a portion of the subdivisional lines, and the subdivision of certain sections, Township 15 North, Range 34 East, Mount Diablo Meridian, Nevada, Group No. 714, was accepted April 27, 1995.

The plat representing the dependent resurvey of a portion of the subdivisional lines and the subdivision of sections 32 and 33, Township 16 North, Range 33 East, Mount Diablo Meridian, Nevada, Group No. 714, was accepted April 27, 1995.

These surveys were executed to meet certain administrative needs of the U.S. Navy.

Subject to valid existing rights, the provisions of existing withdrawals and classifications, the requirements of applicable laws, and other segregations of record, those portions of the lands listed above that are original survey are open to application, petition, and disposal, including application under the mineral leasing laws. All such valid applications received on or prior to July 10, 1995, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in order of filing.

The above-listed surveys are now the basic record for describing the lands for all authorized purposes. These surveys will be placed in the open files in the BLM Nevada State Office and will be available to the public as a matter of information. Copies of the surveys and related field notes may be furnished to the public upon payment of the appropriate fees.

Dated: May 10, 1995.

Robert H. Thompson,

Acting Chief Cadastral Surveyor, Nevada.

[FR Doc. 95–12321 Filed 5–18–95; 8:45 am]

BILLING CODE 4310–HC–P

Fish and Wildlife Service

Convention on International Trade in Endangered Species (CITES) Notification; Recommendations From CITES Secretariat Regarding Prohibitions of Trade in Certain Animal Species From Several Countries

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Information No. 24.

SUMMARY: This is a schedule III notice. This notice supersedes paragraph J of Notice of Information Number 23 published in the **Federal Register** on December 7, 1994 (59 FR 63101), and adds import restrictions to those addressed in Notice of Information Number 23. Wildlife subject to this notice is subject to detention, refusal of clearance or seizure, and forfeiture if imported into the United States. Violators may also be subject to criminal or civil prosecution.

On January 20, 1995, the CITES Secretariat issued Notification to the Parties No. 833 urging Parties to suspend imports of certain animal species from the following twelve countries: Argentina, Azerbaijan, China, Indonesia, Latvia, Lithuania, Madagascar, Peru, Republic of Moldova, Solomon Islands, Ukraine, and the United Republic of Tanzania. That Notification superseded Notification to the Parties No. 800, which was implemented by the Fish and Wildlife Service (Service) in Notice of Information 23. Several of the import suspensions in Notification to the Parties No. 833 were identical to Notification to the Parties No. 800, three were in addition, and one suspension was removed. The restrictions on imports of *Rana tigerina* and *Rana hexadactyla* from India, announced in Notice of Information No. 23, paragraph D, continue in effect even though India is no longer addressed by the Standing Committee recommendations on significant trade in Appendix II species. The Secretariat has indicated that India prohibits the harvesting and export of these species. It recommends that the parties continue to prohibit the import of such species from India. This notice fully implements those changes.

Notification was based on a decision made by the CITES Standing Committee during a meeting held in November, 1994, which asked CITES Party countries to suspend imports in certain animal species from the affected countries, and was in addition to decisions made by the Standing Committee in its meeting on April 21, 1994 (published in the **Federal Register** on December 7, 1994). All of these actions were authorized by CITES Resolution Conference 8.9, adopted at the Eighth Meeting of the Conference of the Parties in Kyoto, Japan, in 1992, which established a procedure for developing remedial actions and calling for implementation by party countries through import suspensions, if voluntary compliance by exporting countries is not satisfactory, and were strongly endorsed in discussions at the Ninth Meeting of the Conference of the Parties in Fort Lauderdale, Florida, in November, 1994.

DATES: This notice is effective on May 19, 1995, and will be effective until further notice. The new import measures announced in this notice shall apply to shipments of wildlife which have a date of export fifteen (15) days after the effective date of this Notice. The import restrictions in Notice of Information No. 23, other than the one lifted herein, remain in effect.

ADDRESSES: Dr. Susan S. Lieberman, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Dr., room 420C, Arlington, VA 22203, regarding Notifications to the Parties, or Frank S. Shoemaker Jr., Special Agent in Charge, Investigations, U.S. Fish and Wildlife Service, Division of Law Enforcement, 4401 N. Fairfax Drive., room 500, Arlington, VA 22203, for enforcement actions.

FOR FURTHER INFORMATION CONTACT: Dr. Susan S. Lieberman, U.S. Fish and Wildlife Service, Office of Management Authority, telephone (703)358–2093, regarding Notifications to the Parties, or Frank S. Shoemaker Jr., Special Agent in Charge, Investigations, U.S. Fish and Wildlife Service, Division of Law Enforcement, telephone (703) 358–1949, for enforcement actions.

SUPPLEMENTARY INFORMATION: Article IV, paragraph 2(a) of the CITES treaty allows commercial and noncommercial trade in species listed in CITES Appendix II. Export permits for such trade may be issued only if a designated Management Authority of the country has determined that the specimens were legally acquired, and if a designated Scientific Authority of that country has advised the Management Authority that the export will not be detrimental to the survival of the species. Article IV, paragraph 3 goes on to require that exports of Appendix II species be limited in any way necessary to ensure that the population level of a species is consistent with that species' role in its ecosystem and that the population level of that species be maintained well above the level where it might qualify for inclusion in Appendix I.

Over the past decade, the CITES party countries have become increasingly concerned that certain Appendix II species are subject to particularly high volumes of trade without sufficient biological data for Scientific Authorities to make the necessary judgments that exports are not detrimental to the species, as required by Article IV. In 1983, CITES parties adopted a resolution at the Fourth Conference of the Parties in Gaborone, Botswana, acknowledging that many parties are not effectively implementing Article IV and thus risk losing the benefits of continued availability of these resources. This resolution, Conf. 4.7, established a project to identify Appendix II species involved in significant levels of international trade, and to develop and negotiate with exporting and importing countries whatever measures were necessary to bring trade down to levels consistent with Article IV.

In 1987, at the Sixth Conference of the Parties in Ottawa, Canada, parties charged the newly established CITES Animals Committee with the task of establishing a list of Appendix II species being significantly affected by trade, reviewing all available information, and formulating remedial measures for these species. The CITES Secretariat coordinated or contracted for studies to develop lists of mammal, bird, and reptile species and collect relevant information about these species, in cooperation with the World Conservation Union (formerly the International Union for the Conservation of Nature and Natural Resources). The Service cooperated with and provided financial support for a number of these studies.

At the Eighth Conference of the Parties in 1992, in Kyoto, Japan, CITES parties adopted a resolution developed by the CITES Animals Committee which recognized that substantial trade in wild-caught animals was still going on contrary to the provisions of Article IV, and that necessary remedial measures were not being properly implemented. This resolution, Conf. 8.9, established a formal process for the Animals Committee to develop remedial measures, including "zero quotas" (that is, temporary trade bans) when appropriate; for the Secretariat to communicate these recommendations to the exporting countries; and, where exporting countries do not satisfactorily implement the measures, for the CITES Standing Committee to call on parties to suspend imports of these species from the offending countries until they are in compliance. All of these actions were strongly endorsed in committee and

plenary discussions at the Ninth Meeting of the Conference of the Parties in Fort Lauderdale, Florida, in November, 1994.

During meetings of the Animals Committee between the Eighth and Ninth Meetings of the Conference of the Parties, attended by representatives of the Service, remedial measures were developed and subsequently communicated to exporting countries by the Secretariat. The Standing Committee reviewed reports from the Secretariat of compliance and noncompliance with these remedial measures during three meetings in 1993 and 1994. The Service represented the United States in these meetings, with the Department of State. During the Standing Committee meetings in Geneva, Switzerland, in March, 1994, and Fort Lauderdale, Florida, in November, 1994, the Standing Committee directed the Secretariat to issue a formal notice calling for a suspension of trade in particular Appendix II species from certain CITES parties.

Accordingly, on April 21, 1994, the Secretariat issued Notification to the Parties number 800, calling for a suspension of imports of certain species from twelve countries. Implementation of these restrictions was necessary to stop trade considered to be detrimental to the survival of the species and thus in contravention of the requirements of CITES Article IV. CITES parties failing to implement these trade suspensions would be contributing to the decline of the affected species, and would be subject to formal citation in the CITES Infractions Report and possible censure by the CITES Conference of the Parties.

Pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531–1544), the U.S. Fish and Wildlife Service is granted the authority to detain, refuse clearance of, or seize any fish or wildlife or plants that are imported into the United States in violation of CITES. Regulations contained in 50 CFR 14.53(c) indicate that refusal of clearance of imported wildlife is warranted if there are reasonable grounds to believe that documentation for the clearance of such wildlife is not valid. Similarly, regulations contained in 50 CFR 23.12(a)(2) require that all imports of Appendix II wildlife into the United States be accompanied by a valid foreign export permit or re-export certificate, unless an exemption applies. The Service agrees with Notification to the Parties numbers 800 and 833 and believes that any permits issued for the indicated species by the affected countries are not valid because required findings of "non-detriment" and/or lawful acquisition have not been credibly demonstrated by the exporting countries in light of the significant trade level in particular Appendix II species.

Notification to the Parties number 833 incorporates all of the recommendations of Notification to the Parties number 800, with the following changes: (1) The trade suspension for ball pythons from Togo is lifted; (2) the trade suspension for the United Republic of Tanzania is amended to include six additional species; (3) a trade suspension is implemented for several species from Madagascar; and (4) a trade suspension is implemented for two butterfly species from Solomon Islands.

The subjects of this notice are as follows:

A. Subject

Togo: ban on imports of specimens of ball python (*Python regius*).

Source of Foreign Law Information

CITES Secretariat Notification to the Parties No. 833, issued on January 20, 1995, calls on Parties to lift the suspension of imports of *Python regius* specimens from Togo.

Action by the Fish and Wildlife Service

Since the publication of Notice of Information No. 23 (59 FR 63101), the Secretariat has received information from the Management Authority of Togo relating to its implementation of the recommendations of the Animals Committee on significant levels of trade in *Python regius*. The Secretariat is satisfied that Togo has initiated the action necessary to implement these recommendations. Therefore, the Standing Committee's recommendation to the Parties to suspend imports of specimens of *Python regius* is hereby withdrawn, and shipments of specimens of *Python regius* may be imported into the United States, directly or indirectly, from Togo, as long as all applicable CITES requirements and Service import requirements are met.

B. Subject

United Republic of Tanzania: ban on imports of specimens of Brown-headed Parrot (*Poicephalus cryptoxanthus*), Brown Parrot (*Poicephalus meyeri*), Red-bellied Parrot (*Poicephalus rufiventris*), Fischer's Turaco (*Tauraco fischeri*), Leopard tortoise (*Geochelone pardalis*), and Sand boa (*Eryx colubrinus*).

This is a Schedule III Notice

Wildlife subject to this notice is subject to detention, refusal of clearance, or seizure and forfeiture if imported into the United States.

Source of Foreign Law Information

CITES Secretariat Notification to the Parties No. 833, issued on January 20, 1995, calls on Parties to suspend imports of Brown-headed Parrot (*Poicephalus cryptoxanthus*), Brown Parrot (*Poicephalus meyeri*), Red-bellied Parrot (*Poicephalus rufiventris*), Fischer's Turaco (*Tauraco fischeri*), Leopard tortoise (*Geochelone pardalis*), and Sand boa (*Eryx colubrinus*) specimens from the United Republic of Tanzania.

Action by the Fish and Wildlife Service

Based on information received, the United Republic of Tanzania has not satisfactorily implemented the recommendations of the CITES Standing Committee. Specifically, the Management Authority of the United Republic of Tanzania must advise the CITES Secretariat of the following: The biological basis for determining that exports of specimens of *Poicephalus cryptoxanthus, Poicephalus meyeri, Poicephalus rufiventris, Geochelone pardalis,* and *Eryx colubrinus* will not be detrimental to the survival of the species; the establishment and level of an annual export quota for *Tauraco fischeri;* the legal protection status of Geochelone pardalis; and the status of wild populations of *Eryx colubrinus* in the United Republic of Tanzania. Therefore, in accordance with the responsibility of the United States under CITES, and effective immediately and until further notice from the U.S. Fish and Wildlife Service, no shipments of specimens of Brown-headed Parrot (*Poicephalus cryptoxanthus*), Brown Parrot (*Poicephalus meyeri*), Red-bellied Parrot (*Poicephalus rufiventris*), Fischer's Turaco (*Tauraco fischeri*), Leopard tortoise (*Geochelone pardalis*), and Sand boa (*Eryx colubrinus*) may be imported into the United States, directly or indirectly, from the United Republic of Tanzania, unless an exemption in CITES Article VII applies. This is in addition to the import prohibitions of Notice of Information No. 23, paragraph L, (59 FR 63101, 63104–05). Furthermore, the Wild Bird Conservation Act of 1992 already prohibits the importation of specimens of Brown-headed Parrot (*Poicephalus cryptoxanthus*), Brown Parrot (*Poicephalus meyeri*), Red-bellied Parrot (*Poicephalus rufiventris*), and Fischer's Turaco (*Tauraco fischeri*) without the required permits being issued by the Service.

C. Subject

Madagascar: ban on imports of specimens of Vasa Parrot (*Coracopsis vasa*), Chameleons (*Chamaeleo spp.*)(except *Chamaeleo lateralis, Chamaeleo oustaleti, Chamaeleo pardalis* and *Chamaeleo verrucosus*), and Day geckos (*Phelsuma* spp.)(except *Phelsuma laticauda, Phelsuma lineata, Phelsuma madagascariensis,* and *Phelsuma quadriocellata*).

This is a Schedule III Notice

Wildlife subject to this notice is subject to detention, refusal of clearance or seizure, and forfeiture if imported into the United States.

Source of Foreign Law Information

CITES Secretariat Notification to the Parties No. 833, issued on January 20, 1995, calls on Parties to suspend imports of Vasa Parrot (*Coracopsis vasa*), Chameleons (*Chamaeleo* sp.)(except *Chamaeleo lateralis, Chamaeleo oustaleti, Chamaeleo pardalis* and *Chamaeleo verrucosus*), and Day geckos (*Phelsuma* sp.)(except *Phelsuma laticauda, Phelsuma lineata, Phelsuma madagascariensis,* and *Phelsuma quadriocellata*) specimens from Madagascar.

Action by the Fish and Wildlife Service

Based on information received, Madagascar has not satisfactorily implemented the recommendations of the CITES Standing Committee. Specifically, the Management Authority of Madagascar must advise the CITES Secretariat of the following: The biological basis for determining that exports of *Coracopsis vasa, Chamaeleo* sp. (except *Chamaeleo lateralis, Chamaeleo oustaleti, Chamaeleo pardalis,* and *Chamaeleo verrucosus*), and *Phelsuma* sp. (except *Phelsuma laticauda, Phelsuma lineata, Phelsuma madagascariensis,* and *Phelsuma quadriocellata*) will not be detrimental to the survival of the species; the suspension of exports of *Chamaeleo* sp. and *Phelsuma* sp. (except those species previously indicated) pending the establishment of scientifically-based sustainable harvest quotas; evidence that CITES implementation is improving by regular submission of copies of export permits issued; evidence to indicate that export permits will only be issued that indicate the species involved in a given consignment; and evidence to confirm the implementation of a system to verify the identification of specimens of *Chamaeleo* sp. and *Phelsuma* sp. in consignments before they are exported. Therefore, in accordance with the responsibility of the United States under CITES, and effective immediately and until further notice from the U.S. Fish and Wildlife Service, no shipments of specimens of Vasa Parrot (*Coracopsis vasa*), Chameleons (*Chamaeleo* sp.)(except *Chamaeleo lateralis, Chamaeleo oustaleti, Chamaeleo pardalis* and *Chamaeleo verrucosus*), and Day geckos (*Phelsuma* spp.)(except *Phelsuma laticauda, Phelsuma lineata, Phelsuma madagascariensis,* and *Phelsuma quadriocellata*) may be imported into the United States, directly or indirectly, from Madagascar, unless an exemption in CITES Article VII applies. In addition, the Wild Bird Conservation Act of 1992 already prohibits the importation of specimens of Vasa Parrot (*Coracopsis vasa*) without the required permits being issued by the Service.

D. Subject

Solomon Islands: ban on imports of specimens of Bird Wing Butterflies (*Ornithoptera urvillianus*) and (*Ornithoptera victoriae*)

This is a Schedule III Notice

Wildlife subject to this notice is subject to detention, refusal of clearance or seizure, and forfeiture if imported into the United States.

Source of Foreign Law Information

CITES Secretariat Notification to the Parties No. 833, issued on January 20, 1995, calls on Parties to suspend imports of Bird Wing Butterfly (*Ornithoptera urvillianus*) and (*Ornithoptera victoriae*) specimens from the Solomon Islands.

Action by the Fish and Wildlife Service

Based on information received, the Solomon Islands has not satisfactorily implemented the recommendations of the CITES Standing Committee. Specifically, the Management Authority of the Solomon Islands must advise the CITES Secretariat of the following: the biological basis for determining that exports of *Ornithoptera urvillianus* and *Ornithoptera victoriae* will not be detrimental to the survival of the species. Therefore, in accordance with the responsibility of the United States under CITES, and effective immediately and until further notice from the U.S. Fish and Wildlife Service, no shipments of specimens of Bird Wing Butterflies (*Ornithoptera urvillianus*) and (*Ornithoptera victoriae*) may be imported into the United States, directly or indirectly, from the Solomon Islands, unless an exemption in CITES Article VII applies.

Dated: May 15, 1995.

George T. Frampton,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 95–12371 Filed 5–18–95; 8:45 am]

BILLING CODE 4310–55–P

Minerals Management Service

Outer Continental Shelf, Central and Western Gulf of Mexico Oil and Gas Lease Sales 157 and 161

AGENCY: Minerals Management Service, Interior.

ACTION: Availability of the proposed notices of sale.

Gulf of Mexico Outer Continental Shelf (OCS); Notice of Availability of the Proposed Notice of Sale for proposed Oil and Gas Lease Sales 157 in the Central Gulf of Mexico, and proposed Oil and Gas Lease Sale 161 in the Western Gulf of Mexico. This Notice of Availability is published pursuant to 30 CFR 256.29(c), as a matter of information to the public.

With regard to oil and gas leasing on the OCS, the Secretary of the Interior, pursuant to section 19 of the OCS Lands Act, as amended, provides the affected States the opportunity to review the proposed Notice of Sale.

The proposed Notices of Sale of proposed Sales 157 and 161 may be obtained by written request to the Public Information Unit, Gulf of Mexico Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, or by telephone at (504) 736–2519.

The final Notices of Sale will be published in the **Federal Register** at least 30 days prior to the date of the bid opening.

Bid opening is scheduled for early 1996 for proposed Sale 157, and mid-1996 for proposed Sale 161.

Dated: May 2, 1995.

Cynthia Quarterman,

Director, Minerals Management Service.

[FR Doc. 95–12345 Filed 5–18–95; 8:45 am]

BILLING CODE 4310–MR–M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–365–366 (Preliminary) and 731–TA–734–735 (Preliminary)]

Certain Pasta From Italy and Turkey

AGENCY: International Trade Commission.

ACTION: Institution and scheduling of preliminary countervailing duty and antidumping investigations.

SUMMARY: The Commission hereby gives notice of the institution of preliminary countervailing duty investigation Nos. 701–TA–365–366 (Preliminary) and preliminary antidumping investigation Nos. 731–TA–734–735 (Preliminary) under sections 703(a) and 733(a), respectively, of the Tariff Act of 1930, as amended by section 212(b) of the Uruguay Round Agreements Act (URAA), Pub. L. 103–465, 108 Stat. 4809 (1994) (19 U.S.C. 1671b(a) and 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Italy or Turkey of certain pasta,[1] provided for in subheading 1902.19.20 of the Harmonized Tariff Schedule of the United States, that are alleged to be subsidized by the Governments of Italy and Turkey and are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to sections 702(c)(1)(B) and 732(c)(1)(B), the Commission must complete preliminary countervailing duty and antidumping investigations in 45 days, or in this case by June 26, 1995. The Commission's views are due at the Department of Commerce within 5 business days thereafter, or by July 3, 1995.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207), as amended.

EFFECTIVE DATE: May 12, 1995.

FOR FURTHER INFORMATION CONTACT: Debra Baker (202–205–3180), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. Information can also be obtained by calling the Office of Investigations' remote bulletin board system for personal computers at 202–205–1895 (N,8,1).

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted in response to a petition filed on May 12, 1995, by counsel for Borden, Inc., Columbus, OH; Hershey Foods Corp, Hershey, PA; and Gooch Foods, Inc. (Archer Daniels Midland Co.), Lincoln, NE.

Participation in the Investigations and Public Service List

Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven (7) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these preliminary investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made not later than seven (7) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on June 2, 1995, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Debra Baker (202–205–3180) not later than May 30, 1995, to arrange for their appearance. Parties in support of the imposition of countervailing and antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submissions

As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before June 7, 1995, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three (3) days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 01.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII, as amended by the URAA. This notice is published pursuant to § 207.12 of the Commission's rules.

Issued: May 16, 1995.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–12361 Filed 5–18–95; 8:45 am]

BILLING CODE 7020–02–F

[1] Certain pasta consists of non-egg dry pasta for retail sale, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastases, vitamins, coloring and flavorings, and up to two percent egg white. For purposes of these investigations, retail sales are defined as pasta sold in retail channels, typically in packages of five pounds or less in fiberboard or cardboard cartons or polyethylene or polypropylene bags, of varying dimensions. Excluded from these investigations are non-egg dry pasta sold to the industrial and food service markets. Also excluded from the scope of these investigations are fresh, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white.

INTERSTATE COMMERCE COMMISSION

Notice of Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office: J.C. Licht Company, 45 North Brandon Drive, Glendale Heights, Illinois 60139.
2. Wholly owned subsidiaries which will participate in the operations, and State(s) of incorporation: GMK Ltd., GMK Ltd. is an Illinois corporation.

Vernon A. Williams,

Secretary.

[FR Doc. 95–12339 Filed 5–18–95; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–410 (Sub-No. 2)]

Austin Railroad Co., d/b/a Austin & Northwestern Railroad—Discontinuance of Service—Between Smoot and Giddings, in Travis, Bastrop, and Lee Counties, TX

The Commission has found that the public convenience and necessity permit Austin Railroad Co., d/b/a Austin & Northwestern Railroad (AUNW), to discontinue service over 53.5 miles of rail line extending between Smoot at milepost 53.5 and Giddings at milepost 0.0, in Travis, Bastrop, and Lee Counties, TX, subject to the employee protective conditions imposed in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

A certificate will be issued authorizing discontinuance of service unless within 15 days after this publication the Commission finds that: (1) a financially responsible person has offered financial assistance (through subsidy) to enable the rail service to continue; and (2) it is likely that the assistance would fully compensate AUNW.

Any offers of financial assistance must be filed with: (1) the Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Avenue, N.W., Washington, DC 20423; and (2) AUNW's representative, Michael W. Blaszak, Austin & Northwestern Railroad, 211 South Leitch Avenue, LaGrange, IL 60525–2162, no later than 10 days from the date of publication of this notice. The following notation must be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Office of Proceedings, AB–OFA." Any offer previously made must be remade within the 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5610. [TDD for the hearing impaired: (202) 927–5721.]

Decided: May 12, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioners Simmons and McDonald.

Vernon A. Williams,

Secretary.

[FR Doc. 95–12340 Filed 5–18–95; 8:45 am]

BILLING CODE 7035–01–P

[Docket No. AB–307 (Sub-No. 2X)]

Wyoming and Colorado Railroad Company, Inc.—Abandonment Exemption—Jackson County, CO

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission, pursuant to 49 U.S.C. 10505, exempts from the prior approval requirements of 49 U.S.C. 10903–04 the abandonment by Wyoming and Colorado Railroad Company, Inc. of a 27.03-mile segment of the Coalmont Branch between milepost 67.47, at the Colorado/Wyoming State line, and the end of the line at milepost 94.5, near Walden, in Jackson County, CO, subject to standard labor protective conditions, an historical condition, and environmental conditions.

DATES: Provided no formal expression of intent to file a financial assistance offer has been received, this exemption will be effective on June 18, 1995. Formal expressions of intent to file financial assistance offers[1] under 49 CFR 1152.27(c)(2) must be filed by May 30, 1995. Petitions to stay must be filed by June 5, 1995. Requests for a public use condition must be filed by June 8, 1995. Petitions to reopen must be filed by June 13, 1995.

ADDRESSES: Send pleadings referring to Docket No. AB–307 (Sub-No. 2X) to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Avenue NW., Washington, DC 20423; and (2) Petitioner's representative: Karl Morell, Suite 1035, 1101 Pennsylvania Avenue NW., Washington, D.C. 20004.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Interstate Commerce Commission Building, 1201 Constitution Avenue NW., Room 2229, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Decided: May 12, 1995.

By the Commission, Chairman McDonald, Vice Chairman Morgan, and Commissioners Simmons and Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 95–12341 Filed 5–18–95; 8:45 am]

BILLING CODE 7035–01–P

[1] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that

section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

Withdrawn General Wage Determination Decision

This is to advise all interested parties that the Department of Labor is withdrawing, from the date of this notice, General Wage Determination No. OH950033 Dated Feb. 10, 1995.

Agencies with construction projects pending, to which this wage decision would have been applicable, should utilize Wage Decision OH950024. Contracts for which bids have been opened shall not be affected by this notice. Also, consistent with 29 CFR 1.6(c)(2)(i)(A), when the opening of bids is less than ten (10) days from the date of this notice, this action shall be effective unless the agency finds that there is insufficient time to notify bidders of the change and the finding is documented in the contract file.

Modification to General Wage Determinations Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

New York
NY950013 (Feb. 10, 1995)

Volume II

District of Columbia
DC950001 (Feb. 10, 1995)
Maryland
MD950016 (Feb. 10, 1995)
MD950017 (Feb. 10, 1995)
MD950034 (Feb. 10, 1995)
MD950048 (Feb. 10, 1995)
Pennsylvania
PA950004 (Feb. 10, 1995)
PA950006 (Feb. 10, 1995)
Virginia
VA950003 (Feb. 10, 1995)
VA950009 (Feb. 10, 1995)
VA950015 (Feb. 10, 1995)
VA950017 (Feb. 10, 1995)
VA950018 (Feb. 10, 1995)
VA950021 (Feb. 10, 1995)
VA950025 (Feb. 10, 1995)
VA950046 (Feb. 10, 1995)
VA950048 (Feb. 10, 1995)
VA950052 (Feb. 10, 1995)
VA950054 (Feb. 10, 1995)
VA950080 (Feb. 10, 1995)
VA950081 (Feb. 10, 1995)
VA950084 (Feb. 10, 1995)
VA950085 (Feb. 10, 1995)
VA950104 (Feb. 10, 1995)
VA950105 (Feb. 10, 1995)
VA950108 (Feb. 10, 1995)
VA950113 (Feb. 10, 1995)

Volume III

Florida
FL950015 (Feb. 10, 1995)
Tennessee
TN950018 (Feb. 10, 1995)
TN950038 (Feb. 10, 1995)
TN950039 (Feb. 10, 1995)

Volume IV

Indiana
IN950001 (Feb. 10, 1995)
IN950002 (Feb. 10, 1995)
IN950003 (Feb. 10, 1995)
IN950004 (Feb. 10, 1995)
IN950005 (Feb. 10, 1995)
IN950043 (Mar. 31, 1995)
Michigan
MI950004 (Feb. 10, 1995)
MI950049 (Feb. 10, 1995)
Minnesota
MN950005 (Feb. 10, 1995)
MN950007 (Feb. 10, 1995)
MN950008 (Feb. 10, 1995)
MN950058 (Feb. 10, 1995)
MN950061 (Feb. 10, 1995)
Ohio
OH950001 (Feb. 10, 1995)
OH950002 (Feb. 10, 1995)
OH950003 (Feb. 10, 1995)
OH950009 (Feb. 10, 1995)
OH950024 (Feb. 10, 1995)
OH950026 (Feb. 10, 1995)
OH950027 (Feb. 10, 1995)
OH950029 (Feb. 10, 1995)
OH950032 (Feb. 10, 1995)
OH950034 (Feb. 10, 1995)

Volume V

Iowa
IA950004 (Feb. 10, 1995)
IA950024 (Feb. 10, 1995)
New Mexico
NM950001 (Feb. 10, 1995)
NM950004 (Feb. 10, 1995)
Texas
TX950018 (Feb. 10, 1995)
TX950033 (Feb. 10, 1995)
TX950037 (Feb. 10, 1995)
TX950054 (Feb. 10, 1995)
TX950057 (Feb. 10, 1995)
TX950069 (Feb. 10, 1995)
TX950096 (Feb. 10, 1995)

Volume VI

California
CA950002 (Feb. 10, 1995)
CA950004 (Feb. 10, 1995)
CA950027 (Feb. 10, 1995)
CA950028 (Apr. 7, 1995)
Washington
WA950009 (Feb. 10, 1995)
Wyoming
WY950009 (Feb. 10, 1995)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which included all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, D.C. this 12th day of May 1995.

Alan L. Moss,

Director, Division of Wage Determination.

[FR Doc. 95–12162 Filed 5–18–95; 8:45 am]

BILLING CODE 4510–27–M

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Black Gem Mining, Inc.

[Docket No. M–95–63–C]

Black Gem Mining, Inc., P.O. Box 1257, Pikeville, Kentucky 41502 has filed a petition to modify the application of 30 CFR 75.1710 (canopies or cabs) to its No. 3 Mine (I.D. No. 15–12303) located in Floyd County, Kentucky. The petitioner proposes to operate its No. 2 (482 S & S Scoop) without a canopy due to 28 feet of substandard conditions and a height of approximately 28 inches to 32 inches. The petitioner states that the mine is located in the Elkhorn No. 3 seam and the height of the seam is very irregular, ranging from 28 inches to 96 inches; that the scoop's primary function is for cleaning and dusting, hauling timbers, brattice blocks, and for keeping the return airways free from obstructions on the No. 1 and No. 2 entry; and that periodically, because of the design of the solid state controls on the scoop, the scoop must be used out of its primary function due to dampness that occurs when not operated frequently rendering the scoop inoperable. The petitioner asserts that application of the standard would result in a diminution of safety to the equipment operator.

2. Shady Lane Coal Corporation

[Docket No. M–95–64–C]

Shady Lane Coal Corporation, P.O. Box 776, Grundy, Virginia 24614 has filed a petition to modify the application of 30 CFR 77.214(a) (refuse piles; general) to its Mine No. 4 (I.D. No. 44–06651) located in Buchanan County, Virginia. The petitioner requests a modification of the standard to allow construction of a refuse fill in an area containing abandoned mine openings. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

3. Genwal Resources, Inc.

[Docket No. M–95–65–C]

Genwal Resources, Inc., P.O. Box 1201, Huntington, Utah 84528 has filed a petition to modify the application of 30 CFR 75.804(a) (underground high-voltage cables) to its Crandall Canyon Mine (I.D. No. 42–01715) located in Emery County, Utah. The petitioner requests a modification of the standard to permit the use of Anaconda Type SHD+GC, Pirelli Type SHD–CENTER–GC, and Tiger Brand Type SHD–CGC flame-resistant cables with a flexible No. 16 (A.W.G.) ground check conductor for the ground continuity check circuit. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

4. Shell Energy Company, Inc.

[Docket No. M–95–66–C]

Shell Energy Company, Inc., P.O. Box 423, Fairmont, West Virginia 26554 has filed a petition to modify the application of 30 CFR 75.364(b)(2) (weekly examination) to its Stacy-Meranda Mine (I.D. No. 46–08086) located in Harrison County, West Virginia. Due to hazardous roof conditions in the No. 3 return air course from 130 feet into the pitt mouth to the No. 7 crosscut, traveling the affected area in its entirety would be unsafe. The petitioner proposes to establish monitor points "A" and "B" to test for methane and quantity of air in the affected area; to have a certified person examine each monitor point on a weekly basis and record the results in a record book kept on the surface available for inspection by interested persons; to record daily examinations of the water gauge at the main fan in a record book kept on the surface; to cease mining if a 10 percent change occurs in the water gauge on the active section until corrective action has been made; to cease mining if a 10 percent decrease in the quantity of air is measured at either monitor point "A" or "B" in the active section until corrective action has been made; and to cease mining if an increase of .05 per centum of methane is detected at either monitor point in the active section until corrective action has been made. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

5. Hunt Midwest Mining, Inc., Licausi Services Company, Holland Corporation, Amerigold Corporation, Missouri Rock, Inc., and Parkville Stone Company

[Docket No. M–95–07–M]

Hunt Midwest Mining, Inc., Route 13, 4th Street & Randolph Road, Randolph, Missouri 64161 has filed a petition to modify the application of 30 CFR 49.8 (training for mine rescue teams) to its Randolph Mine (I.D. No. 23–00154) located in Clay County, Missouri. The petitioner is requesting this modification for The Kansas City Mine Rescue Teams and states that the following underground mining companies would also be affected by this modification: Lacausi Services Company, Carefree Quarries (I.D. No. 23–00007) located in Jackson County, Missouri; Holland Corporation, Mine No. 1 (I.D. No. 14–00761) located in Johnson County, Kansas; Amerigold Corporation, Inland Quarries (I.D. No. 14–00159) located in Wyandotte County, Kansas; Missouri Rock, Inc., Missouri Rock, Inc. Mine (I.D. No. 23–01981) located in Clay County, Missouri; and Parkville Stone Company, Parkville Stone Mine (I.D. No. 23–01883) located in Platte County, Missouri. The petitioner requests a modification to allow training requirements to be met at different time frames. The petitioner proposes to conduct training three hours under oxygen four times annually for twelve hours instead of two hours every other month for the same annual hours; and to hold training six times annually with equipment checks monthly, and to reserve two sessions for annual physicals and first aid training. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

Request for Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June 19, 1995. Copies of these petitions are available for inspection at that address.

Dated: May 11, 1995.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 95–12347 Filed 5–18–95; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 USC 3303a(a).

DATES: Request for copies must be received in writing on or before July 3, 1995. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESSES: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, College Park, MD 20740. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in the parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending:

1. Department of the Air Force (N1–AFU–95–6). Routine records of closing bases.
2. Department of Commerce, International Trade Administration (N1–489–94–1). Records of the Industrial Trade Staff.
3. Department of Housing and Urban Development (N1–207–94–4). Revision of schedule for Community Planning and Development records.
4. Department of Justice (N1–60–95–3). Autopen request file.
5. Department of State, Bureau of Intelligence and Research (N1–59–95–9). Routine, facilitative, and duplicative records relating to reporting and research.
6. Department of State, Bureau of Economic and Business Affairs (N1–59–94–22, –23, and –24). Routine, facilitative, and duplicative records relating to international finance and development affairs.
7. Department of State, Bureau of Economic and Business Affairs ((N1–59–94–29, –34, and –35). Routine, facilitative, and duplicative records relating to energy, sanctions, and commodities.
8. Department of the Treasury, Office of Thrift Supervision (N1–195–95–1). Records of the Office of the Chairman, Federal Home Loan Bank Board, determined during archival processing to lack sufficient archival value to warrant permanent retention by the National Archives.
9. Animal Plant Health Inspection Service (N1–463–95–1). Routine administrative files relating to pilot and aircraft certifications.
10. Animal Plant Health Inspection Service (N1–463–95–2). Copies of patent applications.
11. Defense Contract Audit Agency ((N1–372–95–2). Agency Management Information System reports.
12. Defense Nuclear Agency (N1–374–95–2). Base operations support contractor records of non-program facilitative and routine base maintenance functions at Johnston Atoll.
13. Defense Nuclear Agency (N1–375–95–4). Routine physical security inspection reports.
14. Federal Communications Commission (N1–173–94–1). Radio frequency device authorizations.
15. Federal Communications Commission (N1–173–94–2). Revision of Licensing Division records schedule.
16. National Reconnaissance Office (N1–525–95–1). Comprehensive records disposition schedule which provides for disposal of routine and facilitative records. Records that document overall policies, plans, procedures, and significant activities are permanent.
17. Social Security Administration (N1–47–95–1, –2, –3). Reduction in retention period for Supplemental Security Income Claims Folders, Disability Insurance Claims Folders, and Retirement and Survivors Claims Folders.
18. Office of the Secretary of Defense (N1–330–95–4). Reduction in retention period of certain laboratory records previously scheduled as temporary.
19. National Aeronautics and Space Administration (N1–255–95–1). Unidentifiable flight engineering test data, 1961–1972.

Dated: May 11, 1995.

Trudy Huskamp Peterson,

Acting Archivist of the United States.

[FR Doc. 95–12324 Filed 5–18–95; 8:45 am]

BILLING CODE 7515–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Mathematical Sciences

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: Special Emphasis Panel in Mathematical Sciences.

Date and time: June 3, 1995, 8:30 am to 5:00 pm.

Place: Office of the Conference Board of the Mathematical Sciences, 1529 Eighteenth Street N.W., Washington, DC 20036.

Type of Meeting: Closed.

Contact Person: Dr. Keith Crank, Program Officer, Room 1025, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1885.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate NSF–CBMS Regional Research Conferences in Mathematical Sciences proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: May 15, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–12297 Filed 5–18–95; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8027]

Sequoyah Fuels Corporation

[License No. SUB–1010]

Receipt of Petition for Director's Decision Under 10 CFR 2.206

Notice is hereby given that by the "Native Americans for a Clean Environment's Petition for an Order Requiring Sequoyah Fuels Corporation to File a Final Site Characterization Plan and for an Order Forbidding Transfer of SFC Property Prior to Obtaining a License Amendment," dated March 11, 1995, the Native Americans for a Clean Environment (NACE or Petitioner) request that the Nuclear Regulatory Commission take action with regard to Sequoyah Fuels Corporation (SFC or Licensee).

Petitioner requests that the NRC: (1) Reverse the NRC staff's decision to permit SFC to proceed with site characterization without submitting a revised Final Site Characterization Plan (SCP) by issuing an order requiring SFC to submit a revised Final SCP, or at the minimum a Confirmatory Action Letter requiring SFC to submit a Final SCP by a date certain; (2) issue an order forbidding SFC, Sequoyah Fuels International, Sequoyah Holding Corporation, or any other associated corporation that holds title to property under License SUB–1010, from transferring any interest in any of its property before SFC applies for and receives a license amendment permitting such a transfer; (3) before issuing any such license amendment, find reasonable assurance that any entity acquiring an interest in the SFC property fully understands the nature of the liabilities and responsibilities it is undertaking for cleanup and long-term care of the site and that it has the financial capability to carry out those responsibilities; and (4) obtain or perform a title search of all property used in connection with the SFC license in order to clarify the identity and ownership of all property subject to License SUB–1010.

As the bases for its requests, Petitioner states that: (1) Given the serious deficiencies found by the staff in its review of the SFC Draft SCP, the NRC staff illegally and improperly excused SFC from its obligation to submit a final SCP, in violation of the Timeliness in Decommissioning Rule, the NRC's Action Plan to Ensure Timely Cleanup of SDMP Sites, the NRC's December 29, 1992, Demand for Information to SFC, the Memorandum of Understanding between the NRC and the Environmental Protection Agency, and commitments by the NRC to NACE that SFC would be required to demonstrate how it would sample all potentially contaminated areas in a site characterization plan; (2) SFC is presenting a "Trust Indenture" to several towns and the county of Sequoyah for the creation of an industrial park; (3) the Trust Indenture depicts the 1400 acres of land subject to License SUB–1010 as the candidate area for the industrial park, but neither the Trust Indenture nor the associated documents refers to actual or potential contamination of the site due to groundwater migration from the contaminated processing area, of effluent streams and ditches, or of the Carlisle School, the need to obtain a license amendment before transferring this property, the transferee's potential liability for cleanup of the property, or that SFC has been ordered by NRC and EPA to characterize the extent of contamination on this property; (4) the 1400 acres subject to the Trust Indenture surrounds the 85-acre processing area SFC has identified as the major focus of its site characterization and cleanup effort; and (5) SFC has made conflicting representations regarding the size of the "facility" or "site" to the NRC and in the Trust Indenture.

The Petition is being evaluated pursuant to 10 CFR 2.206 of the Commission's regulations. The Petition has been referred to the Director of the Office of Nuclear Material Safety and Safeguards. As provided by § 2.206, appropriate action will be taken on this Petition within a reasonable time.

A copy of the Petition is available for inspection at the Commission's Public Document Room at 2120 L Street NW., Washington, DC 20555.

Dated at Rockville, Maryland this 10th day of May, 1995.

For the Nuclear Regulatory Commission.

Carl J. Paperiello,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 95–12342 Filed 5–18–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–277 and 50–278]

Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing

In the matter of Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, Atlantic City Electric Company, Peach Bottom Atomic Power Station, Units 2 and 3.

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR–44 and DPR–56, issued to the Philadelphia Electric Company (PECO, the licensee), for operation of the Peach Bottom Atomic Power Station, Units 2 and 3 (Peach Bottom, PBAPS), located in York County, Pennsylvania.

The proposed amendment, requested by the licensee in a letter dated September 29, 1994, as supplemented by letters dated March 3, 1995 and March 30, 1995, would represent a full conversion from the current Technical Specifications (TS) to a set of TS based on NUREG–1433, "Standard Technical Specifications, General Electric Plants, BWR/4," Revision O, September 1992. NUREG–1433 has been developed through working groups composed of both NRC staff members and the BWR/4 owners and has been endorsed by the staff as part of an industry-wide initiative to standardize and improve TS. As part of this submittal, the licensee has applied the criteria contained in the Commission's Final Policy Statement on Technical Specification Improvements for Nuclear Power Reactors of July 22, 1993 to the current Peach Bottom Technical Specifications, and, using NUREG–1433 as a basis, developed a proposed set of improved TS for PBAPS.

The licensee has categorized the proposed changes to the existing TS into four general groupings. These groupings are characterized as administrative changes, relocated changes, more

restrictive changes, and less restrictive changes.

Administrative changes are those that involve restructuring, interpretation and complex rearranging of requirements and other changes not substantially revising an existing requirement. The reformatting, renumbering and rewording process reflects the attributes of NUREG–1433 and do not involve technical changes to the existing TS. Such changes are administrative in nature and do not impact initiators of analyzed events or assumed mitigation of accident or transient events.

Relocated changes are those involving relocation of requirements and surveillances for structures, systems, components or variables that do not meet the criteria for inclusion in TS. The licensees applications on the screening criteria is described in that portion of their September 29, 1994 application titled "Application of Selection Criteria to the Peach Bottom Atomic Power Station TS." The affected structures, systems, components or variables are not assumed to be initiators of analyzed events and are not assumed to mitigate accident or transient events. The requirements and surveillances for these affected structures, systems, components or variables will be relocated from the TS to administratively controlled documents. Changes made to these documents will be made pursuant to 10 CFR 50.59 or other appropriate control mechanisms. In addition, the affected structures, systems, components or variables are addressed in existing surveillance procedures which are also subject to 10 CFR 50.59. These proposed changes will not impose or eliminate any requirements.

More restrictive changes are those involving more stringent requirements for operation of the facility. These more stringent requirements do not result in operation that will alter assumptions relative to mitigation of an accident or transient event. The more restrictive requirements will not alter the operation of process variables, structures, systems and components described in the safety analyses.

Less restrictive changes are those where existing requirements are relaxed or eliminated, or new flexibility is provided.

In addition to the changes described above, the licensee proposed certain changes to the existing technical specifications that deviated from the standard technical specifications in NUREG–1433. Each of these additional proposed changes is described below.

The licensee proposed required actions in the event the standby liquid control system boron solution concentration exceeds 9.82% weight (proposed specification 3.1.7, Condition A). Under this condition, the licensee proposed to verify that the concentration and temperature of the boron in solution is within certain limits within 8 hours. NUREG–1433 requires restoration of boron concentration within limits within 72 hours.

The licensee proposed to relocate response time testing requirements for the reactor protection system out of the technical specifications to plant procedures. Existing Peach Bottom technical specifications and NUREG–1433 have response time testing requirements for the reactor protection system.

The licensee proposed a reactor core isolation cooling compartment and steam line area high temperature instrument calibration frequency of once per 24 months (proposed surveillance requirement 3.3.6.1.5). This is less restrictive than the existing technical specifications and it is a deviation from NUREG–1433, which would impose a calibration frequency of once per 92 days.

The licensee proposed several relaxations of the current technical specification requirements for loss of AC power instrumentation. The licensee proposed a 30-day completion time for actions associated with an inoperable degraded voltage-high function and a degraded voltage-non-LOCA function (proposed specification 3.3.8.1, Action B.2). In addition, the licensee proposed a 2-hour delay for actions required for inoperable loss of power channels provided the automatic emergency diesel generator initiation and automation bus transfer functions that remain are for the remaining emergency buses (proposed Note 2 to surveillance requirement Table 3.3.8.1). The licensee also proposed to delete channel calibration surveillance requirements for the emergency bus loss of voltage function (proposed specification Table 3.3.8.1–1). The proposed changes are less restrictive than the existing Peach Bottom technical specification and are deviations from the requirements in NUREG–1433.

The licensee proposed to modify existing requirements for the containment atmospheric dilution system nitrogen storage tank levels (proposed surveillance requirement 3.6.1.3.1). The licensee proposed to change the required level from 2500 gallons to 16 inches of water. This is less restrictive than the existing Peach Bottom technical specifications and is a deviation from the requirements of NUREG–1433 because NUREG–1433 does not have requirements for containment atmospheric dilution system nitrogen storage tank levels.

The licensee proposed to extend the suppression pool spray header air test from once per 5 years to once per 10 years (proposed surveillance requirement 3.6.2.4.2). NUREG–1433 implements a flow test to verify the spray header is unobstructed.

The licensee proposed a 14-day completion time to restore single inoperable emergency cooling tower fan (proposed specification 3.7.3, Condition A). The existing technical specification do not have specific requirements for a single inoperable fan. NUREG–1433 does not have requirements for the emergency cooling tower.

The licensee proposed required actions for the DC electrical distribution system. The existing technical specifications for one Peach Bottom unit do not have explicit action requirements associated with the inoperability of DC systems in the opposite unit. The proposed specifications include action requirements associated with the inoperability of DC systems in the opposite Peach Bottom unit because the DC systems are shared between the two Peach Bottom units. The licensee proposed a 7-day completion time to restore the DC subsystem if the opposite unit DC subsystem is inoperable due to performance of a battery service or discharge test (proposed specification 3.8.4, Condition A). The licensee also proposed a 12-hour completion time to restore the DC subsystem if the opposite unit DC subsystem is rendered inoperable for reasons other than performance of a battery service or discharge test (proposed specification 3.8.4, Condition B). NUREG–1443 does not contain requirements associated with the DC subsystems of shared units.

The licensee proposed an extended surveillance frequency for the DC systems batteries if the battery was on a equalizing charge during the previous one day (proposed surveillance requirements 3.8.4.1 and 3.8.6.1). The existing Peach Bottom specifications and NUREG–1433 do not allow for this extension.

The licensee proposed to allow the Senior Manager of Operations to have previously held a senior reactor operator license (proposed specification 5.2.2.f). The existing Peach Bottom specifications and NUREG–1433 require the Senior Manager of Operations to hold a senior reactor operator license.

The licensee proposed requirements for the control of high radiation areas (proposed specification 5.7). The proposed specifications are based on

revisions to 10 CFR part 20. The proposed specifications are modifications of existing Peach Bottom specifications and NUREG–1433 requirements.

The licensee proposed changes to the existing environmental technical specifications (proposed Appendix B to the facility operating license). The proposed changes reformat and renumber existing Appendix B requirements into changes consistent with the specifications in Appendix A. NUREG–1433 does not address Appendix B environmental specifications.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By June 19, 1995, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Request for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the State Library of Pennsylvania, (REGIONAL DEPOSITORY) Government Publications Section, Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the result of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in providing the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitation in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to John F. Stolz, Director, Project Directorate I–2: petitioner's name and telephone number, date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to James W. Durham, Senior Vice President and General Counsel, PECO Energy Company, 2301 Market Street, Philadelphia, Pennsylvania, 19101, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer, or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated September 29, 1994, as supplemented by letters dated March 3, 1995 and March 30, 1995, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the State Library of Pennsylvania, (Regional Depository) Government Publications Section, Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Dated at Rockville, Maryland, this 12th day of May 1995.

For the Nuclear Regulatory Commission.
David H. Moran,
Acting Director, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.
[FR Doc. 95–12343 Filed 5–18–95; 8:45 am]
BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–35716; File No. SR–BSE–95–07]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Boston Stock Exchange, Inc., Relating to its Competing Specialist Pilot Program

May 15, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on May 5, 1995, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. On May 9, 1995, the BSE filed Amendment No. 1 with the Commission.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The BSE seeks to extend the current pilot program for competing specialists on its floor until October 2, 1995.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend the current pilot program for competing specialists until October 2, 1995. The program currently provides for up to three competing specialists in a stock on the floor of the Exchange. The pilot program provides for both a regular specialist and a competing specialist(s) in a stock, whereas currently there is only one specialist in that stock. Orders can be directed to either specialist based on each customer's independent decision,[4] but all orders in that stock will be executed in accordance with strict time priority. Once all limits at a price level are depleted, each specialist is responsible for the market orders directed to them specifically.

All limit orders entrusted to each competing specialist and the regular specialist will be represented and executed strictly according to time priority as to receipt of the order in the BEACON System. Thus incoming market and marketable limit orders will automatically execute against limit orders on the books according to the order in which the limit orders were received in the system.[5] The regular specialist will be responsible for updating quotations; thus all competitors must communicate their markets to the regular specialist and be responsible for their portion of the published bid and/or offer. Openings and reopenings shall be coordinated through the regular specialist to ensure they are unitary. All ITS activity must be cleared through the regular specialist and only the regular specialist can input quotations to reflect the Boston market. Thus to all other markets in the National Market System, there will be only one Boston market. Trading halts will also be coordinated through the regular specialist and any trading halt will apply to all competitors in a stock.

The Exchange has adopted procedures to provide guidelines for the pilot program participants and for the Exchange in its administration of the program.[6] Any new competitive situation will be reviewed by the Exchange for the duration of the pilot program. Reports of specialists' dealings have been reviewed on a daily basis since the inception of the program and periodic reports have been provided to the Commission for review. In addition, the program was fully integrated into the Exchange's specialist performance evaluation program beginning in December 1994.

Certain technical changes necessitated by the proposed pilot program have been made to Chapter XV § 6 regarding the specialist's book to permit the competing specialist to see a summary of bids and offers at each price level in the subject stock.[7] This will enable all competitors in a stock to know the combined market in that stock.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act in that it furthers the objectives to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the BSE. All submissions should refer to File No. SR–BSE–95–07 and should be submitted by [insert date 21 days of publication].

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the BSE's proposal to extend its preferencing pilot program to October 2, 1995 is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act[8] in that it will promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and a national market system. The pilot is extended under the same conditions set out in the original pilot approval order.[9]

The Commission notes that pursuant to its original pilot approval order, the BSE was required to submit quarterly data reports and a report analyzing such data.[10] The BSE has submitted data to the Commission. In addition, the Commission has received extensive commentary on the Cincinnati Stock Exchange's ("CSE") request for permanent approval of its preferencing pilot[11] that present issues similar to those raised by the BSE pilot. In sum, the Commission is reviewing the comments and data submitted thus far, and believes that due to the complexity of the issues, and significant amount of data, the preferencing pilot should be extended to provide the Commission with adequate time to more thoroughly evaluate the data and the issues involved in the filing for permanent approval.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that accelerated approval of the proposal is appropriate in order to avoid an unnecessary interruption to the pilot while allowing the Commission to continue to evaluate the data.

It is therefore ordered, pursuant to Section 19(b)(2)[12] that the proposed rule change is hereby approved, and the competing specialist pilot is extended through October 2, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 95–12312 Filed 5–18–95; 8:45 am]
BILLING CODE 8010–01–M

SECURITY AND EXCHANGE COMMISSION

[Release No. 34–35717; File No. SR–CSE–95–06]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Cincinnati Stock Exchange, Inc. Relating to the Preferencing of Public Agency Market and Marketable Limit Orders by Approved Dealers and Other Proprietary Members

May 15, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 1, 1995, the Cincinnati Stock Exchange, Inc. ("CSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Cincinnati Stock Exchange, Inc. ("CSE" or "Exchange") hereby proposes to extend the CSE's pilot program regarding preferencing until October 2, 1995. The pilot was initially approved by the Commission on February 7, 1991 and is currently extended until May 18, 1995. (Securities Exchange Act Release No. 28866).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the rule filing is to extend the existing pilot program of the Exchange relating to the preferencing of public agency market and marketable limit orders by approved dealers and other proprietary members until October 2, 1995. The Commission originally approved the pilot on February 7, 1991, (Securities Exchange Act Release No. 28866, 56 FR 5854 (Feb. 13, 1991)). The Commission has subsequently extended the pilot several times. (Securities Exchange Act Release Nos. 29524 (Aug. 5, 1991), 56 FR 38160; 30353 (Feb. 7, 1992), 57 FR 5918; 31011 (Aug. 7, 1992), 57 FR 38704; 32280 (May 7, 1993), 58 FR 28422; 33975 (April 28, 1994), 59 FR 23243 and 34493 (Aug. 5, 1994)). The Commission staff has requested the Exchange seek a limited extension until the October date.

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[1] 15 U.S.C. 78s(b)(1) (1988).
[2] 17 CFR 240.19b–4 (1994).
[3] *See* letter from Karen Aluise, BSE, to Glen Barrentine, SEC, dated May 9, 1995. In Amendment No. 1 the BSE removed its request to expand the pilot program by the number of securities, as well as the number of specialists per issue. The limitations imposed in the original approval order will remain through the extension (maximum of three specialists per stock; each specialist can compete in a maximum of 20 stocks). Thus, during the pilot program, the total number of stocks subject to competition will not exceed 360.
[4] Non-specifically directed orders would be routed to the regular specialist.
[5] The BEACON System will view all of the limits on the various books as one centralized book for purposes of order execution.
[6] *See* Securities Exchange Act Release No. 34078 (May 18, 1994), 59 FR 27082 (May 25, 1994); BSE Rules Ch. XV §§ 18 and 6(iii).
[7] The Commission notes that this change was made in the initial pilot and will carry forward through the extension being approved herein.
[8] 15 U.S.C. 78f(b)(5) (1988).
[9] The BSE competing specialist program is limited by the following: (1) a competing specialist may preference up to a maximum of 20 stocks; (2) the number of competitors in any given stock is limited to three (one regular specialist and two competing specialists); (3) no payment for order flow; and (4) no index arbitrage. The Commission also notes that prior to the original approval order the BSE represented that, during the pilot program, the total number of stocks subject to competition will not exceed 360. *See* Securities Exchange Act Release No. 34078 (May 18, 1994), 59 FR 27082 (May 25, 1994).
[10] *See* Securities Exchange Act Release No. 34078 (May 18, 1994), 59 FR 27082 (May 25, 1995).
[11] *See*, File No. SR–CSE–95–03, Securities Exchange Act Release No. 35448 (March 7, 1995), 60 FR 13493 (March 13, 1995). The comments received on this proposal are available from the CSE or the Commission. (*See* Section III, *supra*.)
[12] 15 U.S.C. 78s(b)(2) (1988).
[13] 17 CFR 200.30–3(a)(12) (1994).
[1] 15 U.S.C. 78s(b)(1) (1988).
[2] 17 CFR 240.19b–4 (1994).

2. Statutory Basis

The exchange believes that the proposed rule change is consistent with Sections 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it will promote just and equitable principles of trade and remove impediments to and perfect the mechanisms of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CSE does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The CSE solicited comments on the filing from other Intermarket Trading System participants. None were received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CSE. All submissions should refer to File No. SR–CSE–95–06 and should be submitted by [insert date 21 days from date of publication].

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the CSE's proposal to extend its preferencing pilot program to October 2, 1995 is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act[3] in that it will promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and a national market system. The pilot is extended under the same conditions set out in the prior pilot approval orders.[4]

The pilot modifies CSE's priority rules in order to permit one designated dealer to step ahead of another, at the same or better price, when trading with its own customer order. Public orders in the CSE book continue to have priority over all preferencing interest.

The Commission notes that pursuant to its most recent pilot extension approval order, the CSE was required to submit quarterly data reports and a report analyzing such data.[5] The CSE has submitted data to the Commission. In addition, the Commission has received extensive commentary on the CSE's request for permanent approval of its preferencing pilot, noticed for comment on March 13, 1995.[6] The Commission is currently reviewing the comments and data submitted thus far, and believes that due to the complexity of the issues, the extensive comment letters, and the significant amount of data, the preferencing pilot should be extended to provide the Commission with adequate time to more thoroughly evaluate the data and the issues involved in the filing for permanent approval.

The Commission finds good cause for approving the proposed rule change prior the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that accelerated approval of the proposal is appropriate in order to avoid an unnecessary interruption to the existing pilot, while allowing the Commission to continue to evaluate the data and comments submitted in response to the solicitation of comments published in March.

It is therefore ordered, pursuant to Section 19(b)(2)[7] that the proposed rule change is hereby approved, and the preferencing pilot is extended through October 2, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–12313 Filed 5–18–95; 8:45 am]

BILLING CODE 8010–01–M

[3] 15 U.S.C. 78f(b)(5) (1988).

[4] The CSE preferencing program is limited by the following: (1) A designated dealer may preference up to a maximum of 350 stocks; (2) no payment for order flow; (3) no index arbitage. *See* letter from Fredrick Moss, Chairman of the Board of Trustees, CSE, to Richard G. Ketchum, Director, Division of Market Regulation, Commission, dated November 14, 1990.

[5] *See* Securities Exchange Act Release No. 34493 (Aug. 5, 1994), 59 FR 41531 (Aug. 12, 1995).

[6] *See,* File No. SR–CSE–95–03, Securities Exchange Act Release No. 35448 (March 7, 1995), 60 FR 13493 (March 13, 1995). The comments received on this proposal are available from the CSE or the Commission. (*See* Section III, *supra.*)

[7] 15 U.S.C. 78s(b)(2) (1988).

[8] 17 CFR 200.30–3(a)(12) (1994).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–35715; File No. S7–27–93]

Consolidated Tape Association; Order Granting Approval of Seventeenth Substantive Amendment to the Restated Consolidated Tape Association Plan and Twenty-First Substantive Amendment to the Consolidated Quotation Plan

May 12, 1995.

I. Introduction

On March 9, 1995, the Consolidated Tape Association ("CTA") and consolidated Quotation ("CQ") Plan Participants filed with the Securities and Exchange Commission ("Commission" or "SEC") amendments to the Restated CTA Plan and CQ Plan pursuant to Rule 11Aa3–2 of the Securities Exchange Act of 1934 ("Act"). Notice of the filing appeared in the **Federal Register** on April 3, 1994.[1] No comment letters were received in response to the Notice. For the reasons discussed below, the Commission has determined to approve the filing.

II. Description

The amendments change the procedure for allocating high speed line access fee revenues between "Network A" and "Network B" under each plan. Under the new procedure,[2] the participants will apply "relative message usage percentages" to the allocation of high speed line revenues between networks retroactively, beginning with the period commencing January 1, 1994.

The amendments also eliminate the requirements that the participants set the high speed line access fee at a level designed to recover the costs of making the high speed line available, and set indirect high speed line access fees at a level that equals one-half of the direct access fees. The actual fees currently in effect, however, are not changed.

Prior to this amendment, the participants, under each plan, imposed on subscribers, vendors, computer input users and others one combined high speed line access fee for access to both Network A and Network B market data. These amendments will change the current fee structure and replace it with a more appropriate and equitable measure that reflects each network's relative usage of the plans' systems.

Additionally, these amendments will eliminate the current requirements to: (a) Set high speed line access fees at levels that allow the participants to recover the operating expenses that the Processor incurs in making the high speed line available, and (b) set indirect high speed line access fees at a level that equals one-half of the direct access fees. Those requirements were established over twenty years ago. Today's digital data feed and other technologies make high speed lines cheaper and easier to access necessitating a change in the manner in which the participants determine high speed line access fees. The actual fees, however, will not be amended at this time.

III. Discussion

The Commission has determined that the CTA/CQ Plan amendments are consistent with the Act. Rule 11Aa3–2(c)(2) under the Act provides, *inter alia,* that the Commission approve an amendment to an effective National Market System plan if it finds that the amendment is necessary or appropriate in the public interest, for the protection of investors and maintenance of fair and orderly markets, to remove impediments to and perfect the mechanisms of a National Market System, or otherwise in furtherance of the purposes of the Act. In making such a determination, the Commission must examine Section 11A of the Act and Rule 11Aa3–2(b)(5), promulgated thereunder. Rule 11Aa3–2(b)(5)(ii) provides that every national market system plan, or any amendment thereto, shall provide a description of the method by which any fees or charges collected on behalf of all of the participants in connection with access to, or use of, any facility contemplated by the plan or amendment will be determined and imposed (including any provision for distribution of any net proceeds from such fees or charges to the participants) and the amount of such fees or charges.

The CTA and CQ Plan Participants have properly described the determination, imposition and distribution of the fees and charges that are the subject of the proposed amendments. Furthermore, the amendments will remove impediments to and perfect the mechanisms of a National Market System by instituting a more equitable line access fee that reflects actual usage, and by removing certain requirements concerning the calculation of line access fees that are no longer appropriate in light of technological advances. Accordingly, the Commission finds that the adoption of the delineated changes for allocating high speed line access fees for both Plans, and the elimination of the above discussed requirements concerning the recovery of costs for making high speed line available, to be consistent with the Act and the Rules thereunder.

IV. Conclusion

For the reasons discussed above, the Commission finds that the proposed amendments to the CTA and CQ Plans are consistent with the Act, particularly Rules 11Aa3–2(c)(2) and 11Aa3–2(b)(5)(ii) thereunder.

It is therefore ordered, pursuant to Section 11A of the Act, that the amendments to the CTA and CQ Plans be, and hereby are, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–12311 Filed 5–18–95; 8:45 am]

BILLING CODE 8010–01–M

[1] Securities Exchange Act Release No. 35543 (March 28, 1995), 60 FR 16901.

[2] A description of the new procedure was included in the Notice of Filing of Amendment (*see,* note 1, *supra*), and is incorporated by reference herein.

[3] 17 CFR 200.30–3(a)(27).

[Release No. 35–26290]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

May 12, 1995.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by June 5, 1995 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

CINergy Corp. et al. (70–8587)

CINergy Corp. ("CINergy"), 139 East Fourth Street, Cincinnati, Ohio 45202, a registered holding company, and certain of its subsidiaries, including CG&E Resource Marketing, Inc. ("Resource Marketing"), 139 East Fourth Street, Cincinnati, Ohio 45202, filed an application-declaration under sections 2(a)(8), 6, 7, 9(a), 10, 12(b), 12(f) and 13 of the Public Utility Holding Company Act of 1935, as amended ("Act"), and rules 40, 43, 45, 53, 54, and 80–95 thereunder. The Commission issued a notice of the filing on April 14, 1995 (HCAR No. 26273).

Resource Marketing holds a one-third general partnership interest in U.S. Energy Partners, a gas marketing partnership with Public Service Electric & Gas Company. CINergy states that it does not "control" U.S. Energy Partners or possess a "controlling influence" over its management or policies. In addition to the matters discussed in the notice referred to above, CINergy also seeks in this filing an order of the Commission declaring that U.S. Energy Partners is not a "subsidiary company" of CINergy within the meaning of section 2(a)(8) of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–12314 Filed 5–18–95; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 21065; 811–7300]

May 12, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Third Avenue Series Funds, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring it has ceased to be an investment company.

FILING DATE: The application was filed on March 10, 1995, and an amendment thereto on May 5, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 6, 1995, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 767 Third Avenue, New York, New York 10017–2023.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 942–0584, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end, diversified management investment company, organized as a corporation under the laws of Maryland. On December 11, 1992, applicant registered under the Act and filed a registration statement under the Securities Act of 1933. Applicant's initial registration statement was not declared effective and applicant did not proceed with the registration statement.

2. Applicant has no assets, liabilities, or shareholders.

3. Applicant has fewer than one hundred persons who are beneficial owners of its shares and is not making and does not presently propose to make an initial public offering of its securities.

4. Applicant is not a party to any litigation or administrative proceeding. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding-up of its affairs. After the SEC issues an order declaring that applicant has ceased to be an investment company, applicant intends to file Articles of Dissolution with the Maryland Department of Assessments and Taxation in Baltimore, Maryland.

For the SEC, by the Division of Investment Management, under delegated Authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–12315 Filed 5–18–95; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 21064; 811–5692]

Value Line U.S. Government Securities Money Market Fund; Notice of Application

May 12, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Value Line U.S. Government Securities Money Market Fund.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring it has ceased to be an investment company.

FILING DATE: The application was filed on April 3, 1995, and an amendment thereto on May 3, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 6, 1995, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 220 East 42nd Street, New York, New York 10017.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 942–0584, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end, diversified management investment company, organized as a business trust under the laws of the Commonwealth of Massachusetts. On November 18, 1988, applicant registered under the Act and filed a registration statement under the Securities Act of 1933. Applicant's registration statement was aborted on October 19, 1992, and applicant has made no public offering of its shares.

2. Applicant never issued any securities. Applicant has no shareholders, liabilities or assets. Applicant is not a party to any litigation or administrative proceeding.

3. Applicant is not now engaged, nor does it propose to engage in any business activities.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–12318 Filed 5–18–95; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 21067; 811–6339]

Value Line International Fund; Notice of Application

May 12, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Value Line International Fund.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring it has ceased to be an investment company.

FILING DATE: The application was filed on April 3, 1995, and an amendment thereto on May 3, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 6, 1995, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 220 East 42nd Street, New York, New York 10017.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 942–0584, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end, diversified management investment company, organized under the laws of the State of Maryland. On November 18, 1988, applicant registered under the Act and, on June 24, 1991, filed a registration statement under the Securities Act of 1933. Applicant's registration statement was aborted on October 19, 1992, and applicant has made no public offering of its shares.

2. Applicant never issued any securities. Applicant has no shareholders, liabilities or assets. Applicant is not a party to any litigation or administrative proceeding.

3. Applicant is not now engaged, nor does it propose to engage in any business activities.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–12317 Filed 5–18–95; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 21066; 811–5691]

Value Line Intermediate Bond Fund; Notice of Application

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Value Line Intermediate Bond Fund.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring it has ceased to be an investment company.

FILING DATE: The application was filed on April 3, 1995, and an amendment thereto on May 3, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 6, 1995, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, 220 East 42nd Street, New York, New York 10017.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 942–0584, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end, diversified management investment company, organized as a business trust under the laws of the Commonwealth of Massachusetts. On November 18, 1988, applicant registered under the Act and filed a registration statement under the Securities Act of 1933. Applicant's registration statement was aborted on October 19, 1992, and applicant has made no public offering of its shares.

2. Applicant never issued any securities. Applicant has no shareholders, liabilities or assets. Applicant is not a party to any litigation or administrative proceeding.

3. Applicant is not now engaged, nor does it propose to engage in any business activities.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–12316 Filed 5–18–95; 8:45 am]

BILLING CODE 8010–01–M

TENNESSEE VALLEY AUTHORITY

Limestone 500-kV Substation and Transmission Line

AGENCY: Tennessee Valley Authority.

ACTION: Notice of no practicable alternative to impacting wetlands.

SUMMARY: The Tennessee Valley Authority (TVA) proposes to initially construct three transmission lines connecting to TVA's new 500-kV substation (under construction) at a site in eastern Limestone County, Alabama. An environmental assessment, in accordance with the National Environmental Policy Act, is being prepared. This proposal will result in the disturbance of about 11.8 acres of wetlands as a result of handclearing. No structures would be placed in the wetlands. Consistent with the Executive Order 11990 "Protection of Wetlands" and TVA's Wetlands Procedure, it has been determined that no practicable alternative exists. TVA is requesting public comment on the impact to wetlands.

DATES: TVA will consider all relevant comments received by June 2, 1995 before a final decision is made on the proposal.

ADDRESSES: Any comments on this proposal should be addressed to Dale Wilhelm, National Environmental Policy Act Liaison, Tennessee Valley Authority, 400 West Summit Hill Drive, Knoxville, Tennessee 37902.

FOR FURTHER INFORMATION CONTACT: For additional information on this action, call Hugh S. Barger, Transmission and Power Supply, Tennessee Valley Authority at (615) 751–3131.

SUPPLEMENTARY INFORMATION: TVA supplies power over its bulk 500-kV system to north central Alabama through its Madison and Trinity 500-kV substations. Twice in the past 16 years the Madison substation has been virtually isolated from large portions of the transmission network when the Huntsville area transmission system was devastated by tornadoes. However, available bulk power system backup prevented lengthy widespread blackouts..

System contingency studies show that by the summer of 1996 isolation or failure of the 500-kV transformer bank at Madison during peak demand would result in a loss of electric service over a wide area. Additionally, by the summer of 1997, loss of the 500-kV transformer bank at Trinity would result in the loss of service to sections of the area served by this substation. Other

elements of the existing transmission system could not prevent these single-contingency losses.

TVA will finish constructing a new 500-kV substation by the summer of 1996 on a site in eastern Limestone county, Alabama. Initially three transmission lines would be connected into the new substation:

1. The existing Browns Ferry-Madison No. 2 500-kV Transmission Line would be looped about 500 feet into the substation. The existing 500-kV line crosses the proposed substation site and no new right-of-way will be required.
2. The existing Athens-North Huntsville 161-kV Transmission Line would also be looped into the new substation by building a new double-circuit transmission line about 4.5 miles on 100 feet of new right-of-way adjacent to an existing transmission line corridor and 0.4 miles on new right-of-way 100 feet wide (58.9 total acres). An additional 1.5 miles would be underbuilt on rebuilt 500-kV towers in the Browns Ferry-Madison and Trinity-Maury 500-kV lines. No new right-of-way would be required in these sections.
3. A new 161-kV transmission line would be built from the Limestone substation to the Jetport, Alabama, substation in Madison County, a distance of about 9 miles. Approximately 4 miles of the line would be new construction of 5 miles of the existing General Motors-Jetport 161-kV line as a single steel pole, double-circuit 161-kV line on existing right-of-way.

Construction of the proposed transmission lines would result in right-of-way clearing and vegetation removal affecting approximately 11.8 acres of wetlands. No structures would be placed within the wetlands. Following construction. vegetation on these wetland rights-of-way would be managed so as to impede normal successional patterns. This successional intervention on forested wetlands could worsen impacts of previous clearing. Other wetland values an functions unrelated to forest canopy vegetation would remain intact through use of Best Management Practices (BMPs) for construction and maintenance.

The proposed transmission line routes have been selected to avoid wetlands as much as practical. Crossings of the Moss Spring and Beaverdam Swamp are unavoidable and account for most of the wetland acreage to be impacted.

Wetland impacts would be further minimized through application of the following BMPs for clearing, construction, and maintenance, on these forested wetlands. These BMPs would include:

1. Identified wetlands, streams, and drainways would not be modified so as to alter natural hydrological patterns.
2. Naturally occurring hydric soils would not be disturbed or modified in any way that would alter their hydrological properties.
3. Right-of-way clearing within forested wetlands would be accomplished by hand where possible and would be restricted to the minimal width necessary to allow for construction and operation of the proposed line.
4. If heavy equipment is required to accomplish right-of-way clearing within forested wetlands, lay-down pads would be used to remove vegetation and string transmission line cable.
5. Sediment control fencing would be placed downslope from construction activity to trap sediment and prevent its migration into waterways or water bodies.
6. Within wetland areas or along streams, stumps would not be uprooted or removed.
7. Future right-of-way maintenance within identified wetlands would be conducted during traditionally dry seasons and would avoid the use of heavy equipment. Chemical maintenance would only be done using chemicals labeled by the Environmental Protection Agency for wetlands use.

Dated: May 12, 1995.

Jon M. Loney,

Manager, Environmental Management.

[FR Doc. 95–12322 Filed 5–18–95; 8:45 am]

BILLING CODE 8120–01–M

DEPARTMENT OF TRANSPORTATION

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended May 12, 1995

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 50335
Date filed: May 8, 1995
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 5, 1995
Description: Application of Bay Air Cargo, S.A., pursuant to Section 402 of the Act and Subpart Q of the Regulations, applies for a foreign air carrier permit authorizing it to engage in charter foreign air transportation of property and mail between Brazil and the United States.

Docket Number: 50336
Date filed: May 8, 1995
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 5, 1995
Description: Application of Northwest Airlines, Inc., pursuant to 49 U.S.C. Section 41102 and Subpart Q of the Regulations, applies for a certificate of public convenience and necessity authorizing Northwest to provide scheduled foreign air transportation of persons, property and mail between (a) Boston, Massachusetts and Delhi, India, via Amsterdam, the Netherlands, and (b) Boston, and Bombay, India, via Amsterdam.

Docket Number: 50341
Date filed: May 9, 1995
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 6, 1995
Description: Application of Air Malta Company Limited, pursuant to 49 U.S.C. Section 41302 and Subpart Q of the Regulations, requests an issuance of a foreign air carrier permit to allow Air Malta to provide scheduled and charter foreign air transportation of passengers, property (including cargo), and mail between Malta and a point or points in the United States, commencing on or about October 1, 1995.

Docket Number: 50348
Date filed: May 12, 1995
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 9, 1995
Description: Application of American Airlines, Inc. pursuant to 49 U.S.C. 41102 and 14 CFR Part 377, and Subpart Q of the Regulations, applies for renewal of authority to provide foreign air transportation of persons, property, and mail between a point or points in the United States and Manchester, England, on Segment 5 of its certificate of public convenience and necessity for Route 137, as amended by Order 90–10–11, October 11, 1990.

Docket Number: 50349
Date filed: May 12, 1995
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May 9, 1995
Description: Application of American Airlines, Inc., pursuant to 49 U.S.C. 41102, and Subpart Q of the Regulations, applies for renewal of its certificate of public convenience and necessity for Route 583 (San Jose, California-Tokyo, Japan), initially issued by Order 90–10–15, October 12, 1990.

Docket Number: 50350
Date filed: May 12, 1995
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 9, 1995
Description: Application of Wolf International Airlines, Inc., pursuant to 49 U.S.C. Sections 41101 and 41102 and Subpart Q of the Regulations, applies for the issuance of a certificate authorizing it to engage in scheduled interstate air transportation of persons, property, and mail.

Docket Number: 50351
Date filed: May 12, 1995
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 9, 1995
Description: Application of Wolf International Airlines, Inc., pursuant to 49 U.S.C. Section 41101 and Section 41102, and Subpart Q of the Regulations, applies for the issuance of a certificate authorizing it to engage in scheduled foreign air transportation of persons, property, and mail.

Paulette V. Twine,

Chief, Documentary Services Division.

[FR Doc. 95–12373 Filed 5–18–95; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

[Summary Notice No. PE–95–21]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before June 8, 1995.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue SW., Washington, D.C. 20591.

Comments may also be sent electronically to the following internet address: nprmcmts@mail.hq.faa.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. D. Michael Smith, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–7470.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on May 15, 1995.

Michael Chase,

Acting Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 28090
Petitioner: Mr. Steven Eugene Walz
Sections of the FAR Affected: 14 CFR 45.22(c) and 45.29(h)
Description of Relief Sought: To permit Mr. Walz to operate his aircraft, registration number N331KW, through an Air Defense Identification Zone (ADIZ) or Distant Early Warning Identification Zone (DEWIZ) without displaying on that aircraft temporary or permanent nationality and registration marks at least 12 inches high.

Docket No.: 28076
Petitioner: Mr. Grant C. Merrill
Sections of the FAR Affected: 14 CFR 121.383(c)
Description of Relief Sought: To permit Mr. Merrill to act as a pilot in operations conducted under part 121 of the FAR after reaching his 60th birthday.

Docket No.: 28130
Petitioner: Mr. Donald E. Urbain
Sections of the FAR Affected: 14 CFR 121.383(c)
Description of Relief Sought: To permit Mr. Urbain to serve as a pilot in air carrier operations under part 121 of the FAR after reaching his 60th birthday.

Docket No.: 28141
Petitioner: Mr. Rhett Micheletti
Sections of the FAR Affected: 14 CFR 103.1(b)
Description of Relief Sought: To permit Mr. Micheletti to operate a single occupancy powered or unpowered paraglider for the purpose of commercial advertising, by flying with advertisements that are imprinted on the paraglider's wing surface by the paraglider manufacturer and/or by towing one banner at a time with advertisements printed on it.

Docket No.: 28145
Petitioner: Pacific Island Aviation, Inc.
Sections of the FAR Affected: 14 CFR 43.3
Description of Relief Sought: To allow pilots employed by Pacific Island Aviation, Inc., to remove and replace passenger seats in its aircraft used in part 135 operations, or to supervise noncertificated ground personnel in performing those tasks.

Docket No.: 28165
Petitioner: Mr. Herbert H. Hamilton
Sections of the FAR Affected: 14 CFR 121.383(c)
Description of Relief Sought: To permit Mr. Hamilton to act as a pilot in operations conducted under part 121 of the FAR after reaching his 60th birthday.

Docket No.: 28171
Petitioner: Mr. William G. Brown
Sections of the FAR Affected: 14 CFR 121.383(c)
Description of Relief Sought: To permit Mr. Brown to act as pilot in operations conducted under part 121 of the FAR after reaching his 60th birthday.

Docket No.: 28175
Petitioner: Mr. Robert H. Tice
Sections of the FAR Affected: 14 CFR 121.383(c)
Description of Relief Sought: To permit Mr. Tice to act as a pilot in operations conducted under part 121 of the FAR after reaching his 60th birthday.

Docket No.: 28194
Petitioner: Timberland Logging Forest Products, Inc., d.b.a., Timberland Logging
Sections of the FAR Affected: 14 CFR 135.29
Description of Relief Sought: To permit Timberland Logging Forest Products, Inc. (TLFP), d.b.a. Timberland Logging, to add the name "Mercy Flights" and the medical "star of life" emblem to the side of aircraft operating under TLFP's current operations specifications.

Dispositions of Petitions

Docket No.: 24413
Petitioner: Tiger
Sections of the FAR Affected: 14, CFR 61.55(b)(2); 61.56(c)(1); 61.57 (c) and (d); 61.58(c) (1) and (d); 61.63(c) (2) and (d)(2) and (3); 61.65(c), and (e)(2) and (3), and (g);

61.67(d)(2); 61.157(d) (1) and (2) and (e)(1) and (2); 61.191(c); and appendix A, part 61

Description of Relief Sought/Disposition: To permit Tiger to use FAA-approved simulators to meet certain flight experience requirements of part 61 of the FAR. *Grant, April 26, 1995, Exemption No. 6073*

Docket No.: 27180
Petitioner: EVA Airways Corporation
Sections of the FAR Affected: 14 CFR 61.77 (a) and (b) and 63.23 (a) and (b)
Description of Relief Sought/Disposition: To extend Exemption No. 5646, which permits the issuance of U.S. special purpose pilot and flight engineer certificates to EVA airmen without meeting the requirements that they hold a current foreign certificate or license issued by a foreign contracting State to the Convention on International Civil Aviation, provided that the airmen hold appropriate certificates issued by the Taiwan Civil Aviation Authority. The amendment includes the addition of five aircraft to the list of aircraft that may be operated under this exemption. *Grant, April 28, 1995, Exemption No. 5646A*

Docket No.: 27213
Petitioner: /Flight Services Group, Inc.
Sections of the FAR Affected: 14 CFR 135.165(a) (1) and (6) and (b)(6) and (7)
Description of Relief Sought/Disposition: To extend Exemption No. 5674, which permits Flight Services Group, Inc., to operate certain airplanes equipped with one high-frequency (HF) communication system in extended overwater operations. *Grant, April 20, 1995, Exemption No. 5674A*

Docket No.: 27222
Petitioner: Executive Fliteways, Inc.
Sections of the FAR Affected: 14 CFR 135.165(b) (6) and (7)
Description of Relief Sought/Disposition: To extend Exemption No. 5675, as amended, which permits Executive Fliteways, Inc., to operate certain airplanes equipped with one high-frequency (HF) communication system in extended overwater operations. *Grant, April 20, 1995, Exemption No. 5675B*

Docket No.: 28183
Petitioner: United Airlines
Sections of the FAR Affected: 14 CFR 121.291(e)
Description of Relief Sought/Disposition: To permit United Airlines to conduct the ditching demonstration required to introduce the Boeing 777 (B–777) aircraft into service without the construction of stands or platforms at each emergency exit to simulate the waterline and to deploy only one slideraft rather than each liferaft. *Partial Grant, April 27, 1995, Exemption No. 6075*

Good Cause

Docket No.: 18881
Petitioner: International Aerobatic Club
Sections of the FAR Affected: 14 CFR 91.151(a)(1)
Description of Relief Sought: To permit the International Aerobatic Club (IAC), and members of IAC when participating in IAC-sponsored competitions, to continue to begin a flight in an airplane under visual flight rule conditions, during the day, when there is enough fuel to be able to fly to the first point of intended landing and to be able to fly, thereafter, for at least 20 minutes, subject to certain conditions and limitations.

Docket No.: 22469
Petitioner: Parks College of Saint Louis University
Sections of the FAR Affected: 14 CFR appendices A, C, D, and F, part 141
Description of Relief Sought: To extend Exemption 3495, as amended, which allows Parks College of Saint Louis University to continue to train its students to a performance standard in lieu of minimum flight experience requirements, subject to certain conditions and limitations.

Docket No.: 24237
Petitioner: Department of the Air Force
Sections of the FAR Affected: 14 CFR 91.177
Description of Relief Sought: To extend and amend Exemption 4371, as amended, which allows the Department of the Air Force (USAF) to operate under instrument flight rules (IFR) at an altitude lower than the limits prescribed in § 91.177(a)(2), and in closer proximity to the highest obstacle than the limits prescribed in § 91.177(a)(2). The current exemption also allows the USAF to conduct operations under IFR in uncontrolled airspace below 18,000 feet above mean sea level at any altitude, and for any direction of flight, under certain conditions and limitations. the amendment, if granted, would permit the USAF to allow aircraft involved in these operations to use Global Positioning System and Self-Contained Navigation System equipment, as well as reduce from 48 hours to 6 hours the time a Notice to Airmen issuance is required before conducting operations under this exemption.

Docket No.: 27330
Petitioner: Crow Executive Air, Inc.
Sections of the FAR Affected: 14 CFR 43.3(g)
Description of Relief Sought: To extend Exemption 5731, which allowed pilots employed by Crow Executive Air, Inc. (CEA), to remove and/or replace the cabin seats on aircraft used in operations conducted by CEA under part 135 of the FAR.

Docket No.: 27989
Petitioner: Bidzy Ta Hot Aana Corp., d.b.a., Tanana Air Service
Sections of the FAR Affected: 14 CFR 43.3(g)
Description of Relief Sought: To permit appropriately trained pilots employed by Tanana Air Service to remove and/or replace the passenger seats of aircraft used in operations conducted by Tanana Air Service under part 135 of the FAR.

[FR Doc. 95–12379 Filed 5–18–95; 8:45 am]
BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee Meeting on Training and Qualifications

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Aviation Rulemaking Advisory Committee to discuss training and qualifications issues.

DATES: The meeting will be held on June 1, 1995 at noon.

ADDRESSES: The meeting will be held at the FAA Headquarters building, Room 302, 800 Independence Avenue SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT:
Ms. Judi Citrenbaum, Office of Rulemaking, (ARM–100) 800 Independence Avenue SW., Washington, DC 20591. Telephone: (202) 267–9689.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee (ARAC) to discuss training and qualifications issues. This meeting will be held on June 1, 1995, at noon, in Room 302 of the FAA Headquarters building in Washington, DC. The agenda for this meeting will include a progress report from the Aircraft Dispatcher Working Group. In addition, ARAC will report on its task to evaluate and recommend a course of action regarding comments received on the Operator Flight Attendant English Language Advance Notice of Proposed Rulemaking, published in the **Federal Register** on April 18, 1994 (59 FR 18456).

Attendance is open to the interested public but may be limited to the space available. The public must make arrangements in advance to present oral statements at the meeting or may present statements to the committee at any time. In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting. Arrangements may be made by contracting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on May 15, 1995.

Thomas Toula,
Assistant Executive Director for Training and Qualifications, Aviation Rulemaking Advisory Committee.

[FR Doc. 95–12385 Filed 5–18–95; 8:45 am]
BILLING CODE 4910–13–M

Flight Service Station at Sheridan, Wyoming; Closing

Notice is hereby given that on or about June 7, 1995, the flight service station at Sheridan, Wyoming, will be closed. Services to the aviation public formerly provided by this facility will be provided by the automated flight service station in Casper, Wyoming. This information will be reflected in the FAA Organization Statement the next time it is issued. Sec. 313(a) of Federal Aviation Act of 1958, as amended, 72 Stat. 752; 49 U.S.C. App. 1354(a).

Issued in Seattle, Washington, on May 5, 1994.

Frederick M. Isaac,
Regional Administrator, Northwest Mountain Region.

[FR Doc. 95–12383 Filed 5–18–95; 8:45 am]
BILLING CODE 4910–13–M

Flight Service Station at Sitka, Alaska; Change in Facility Operation

Notice is hereby given that on or about May 20, 1995, the Sitka, Alaska, Flight Service Station (FSS) hours will change permanently from operating 24 hours a day to operating from 6:00 a.m. to 9:45 p.m. daily. Services to the general aviation public provided by this facility will be provided by the Automated Flight Service Station at Juneau, Alaska, during the hours the Sitka FSS is closed. This information will be reflected in the FAA Organization Statement the next time it is reissued. Sec. 313(a) of the Federal Aviation Act of 1958, as amended, 72 Stat. 752; 49 U.S.C. App. 1354(a).

Issued in Anchorage, Alaska, on May 3, 1995.

Jacqueline L. Smith,
Regional Administrator, Alaskan Region.

[FR Doc. 95–12382 Filed 5–18–95; 8:45 am]
BILLING CODE 4910–13–M

Flight Service Station at Worland, Wyoming; Closing

Notice is hereby given that on or about June 21, 1995, the flight service station at Worland, Wyoming, will be closed. Services to the aviation public formerly provided by this facility will be provided by the automated flight service station in Casper, Wyoming. This information will be reflected in the FAA Organization Statement the next time it is issued. Sec. 313(a) of Federal Aviation Act of 1958, as amended, 72 Stat. 752; 49 U.S.C. App. 1354(a).

Issued in Seattle, Washington, on May 15, 1995.

Frederick M. Isaac,
Regional Administrator, Northwest Mountain Region.

[FR Doc. 95–12384 Filed 5–18–95; 8:45 am]
BILLING CODE 4910–13–M

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In April 1995, there were six applications approved. Additionally, nine approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of 49 U.S.C. 40117 (Pub. L. 103–272) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: Department of Port Administration, Pago Pago, American Samoa.
Application Number: 95–01–C–00–PPG.
Application Type: Impose and use PFC revenue.
PFC Level: $3.00.
Total Approved Net PFC Revenue: $1,236,306.
Charge Effective Date: July 1, 1995.
Estimated Charge Expiration Date: June 1, 2000.
Class of Air Carriers Not Required to Collect PFC's: None
Brief Description of Project Approved for Collection and Use: Baggage Improvements.
Brief Description of Project Approved in Part for Collection and Use: Terminal improvements.
Determination: Approved in part. The Department of Port Authority requested PFC funding for the entire project, however, a portion of the terminal, approximately 15 percent is not PFC eligible. The approved amount is limited to the amount required to reroof the eligible portions of the terminals.
Decision Date: April 6, 1995.
FOR FURTHER INFORMATION CONTACT: David Welhouse, Honolulu Airports District Office, (808) 541–1243.

Public Agency: City of Lynchburg, Virginia.
Application Number: 95–01–C–00–LYH.
Application Type: Impose and use PFC revenue.
PFC Level: $3.00.
Total Approved Net PFC Revenue: $752,416.
Estimated Charge Effective Date: July 1, 1995.
Estimated Charge Expiration Date: December 1, 1998.
Class of Air Carriers Not Required to Collect PFC's: Air taxi operators.
Determination: Approved. Based on information submitted in the City of Lynchburg's application, the FAA has determined the proposed class accounts for less than 1 percent of Lynchburg Regional Airport's total annual enplanements.
Brief Description of Projects Approved for Collection and Use:
Purchase new aircraft rescue and firefighting (ARFF) vehicle,
Design and replace airfield signage,
Design and land acquisition for runway 17/35 approaches improvement,
Prepare airport master plan,
Federal Aviation Regulation [FAR] 107.14 airfield security-design,
FAR 107.14 airfield security-final phase,
Runway 17/35 approach-construction,
Purchase handicap lift device,
Rehabilitate runway 3/21 runway lights,
Land acquisition for noise mitigation,
Land acquisition—Part 77,
Easements—Part 77,
Overlay runway 17/35,
Purchase snow sweeper unit.
Brief Description of Projects Approved for Collection Only:
Purchase snow blower,
Construct snow equipment and maintenance building.
Decision Date: April 14, 1995.
FOR FURTHER INFORMATION CONTACT: Arthur Winder, Washington Airports District Office, (703) 285–2300.

Public Agency: Yakima Air Terminal Board (Board's), Yakima, Washington.
Application Number: 95–03–C–00–YKM.
Application Type: Impose and use PFC revenue.
PFC Level: $3.00.
Total Approved Net PFC Revenue: $220,000.
Charge Effective Date: June 1, 1995.
Estimated Charge Expiration Date: July 1, 1996.
Class of Air Carriers Not Required to Collect PFC's: Air taxi/commercial operators exclusively filing FAA Form 1800–31.
Determination: Approved. Based on information submitted in the Board's application, the FAA has determined the proposed class accounts for less than 1 percent of Yakima Air

Terminal's total annual enplanements.
Brief Description of Project Approved for Collection and Use: Runway 9/27 rehabilitation project.
Decision Date: April 19, 1995.
FOR FURTHER INFORMATION CONTACT: Paul Johnson, Seattle Airports District Office, (206) 227–2655.

Public Agency: Lexington Fayette Urban County Airport Board (Board) Lexington, Kentucky.
Application Number: 95–02–C–00–LEX.
Application Type: Impose and use PFC revenue.
PFC Level: $3.00
Total Approved Net PFC Revenue: $1,339,287.
Charge Effective Date: May 1, 2005.
Estimated Charge Expiration Date: September 1, 2005.
Class of Air Carriers Not Required to Collect PFC's: Air carriers operating under Part 135 or Part 298, on an on-demand, nonscheduled basis, and not selling tickets to individual passengers.
Determination: Approved. Based on information submitted in the Board's application, the FAA has determined that the proposed class accounts for less than 1 percent of Blue Grass Airport's total annual enplanements.
Brief Description of Project Approved for Collection and Use: Regional ARFF training facility.
Brief Description of Project Approved for Use: Implement noise abatement program—phase I, Purchase lift device, Americans with Disabilities Act, phase II.
Decision Date: April 21, 1995.
FOR FURTHER INFORMATION CONTACT: Cynthia K. Wills, Memphis, Airports District Office, (901) 544–3495.

Public Agency: Pitkin County Board of County Commissioners (Board), Aspen Colorado.
Application Number: 93–01–C–00–ASE.
Application Type: Impose and use PFC revenue.
PFC Level: $3.00
Total Approved Net PFC Revenue: $1,533,541.
Charge Effective Date: July 1, 1995.
Estimated Charge Expiration Date: February 1, 1998.
Class of Air Carriers Not Required to Collect PFC's: Air taxi/commercial operators exclusively filing FAA Form 1800–31.
Determination: Approved. Based on information submitted in the Board's application, the FAA has determined that the proposed class accounts for less than 1 percent of Aspen-Pitkin County Airport's total annual enplanements.
Brief Description of Projects Approved for Collection and Use: Relocate State Highway 82, Overlay runway 15/33.
Decision Date: April 28, 1995.
FOR FURTHER INFORMATION CONTACT: Brad Davis, Denver Airports District Office, (303) 286–5526.

Public Agency: City of Austin (City), Austin, Texas.
Application: 95–04–C–00–AUS.
Application Type: Impose and use PFC revenue.
PFC Level: $3.00
Total Approved Net PFC Revenue: $333,232,479.
Charge Effective Date: July 1, 1995.
Estimated Charge Expiration Date: July 1, 2020.
Class of Air Carriers Not Required to Collect PFC's: On demand air taxi/commercial operators that (1) do not enplane or deplane at Robert Mueller Municipal Airport's (AUS) or subsequently, Austin Bergstrom International Airport's (ABIA) main terminal building or (2) enplane fewer than 500 passengers per year at AUS, or subsequently, ABIA.
Determination: Approved. Based on information submitted in the City's application, the FAA has determined that the proposed class accounts for less than 1 percent of AUS's actual or ABIA's forecasted total annual enplancements.
Brief Description of Projects Approved for Collection and Use:
New airport passenger terminal complex,
New airport landside facilities.
Brief Description of Project Approved, in Part, for Collection and Use: New airport airfield facilities.
Determination: Approved, in part. This project is generally Airport Improvement Program eligible in accordance with paragraphs 510, 520, 521, 523, 524, 530, 532, 534, and 535 of FAA Order 5100.38A. However, the 9,000-foot by 150-foot widely spaced parallel runway requested by the City was determined to not be an economically justified alternative over a closely spaced 9,000-foot runway alternative offered by the air carriers during consultation, in accordance with established benefit-cost criteria. The 7,000-foot by 150-foot runway approved is economically justified and provides sufficient capacity to meet the runway requirements for opening day at ABIA. The FAA is not approving the imposition or use of PFC revenue for the additional 2,000 feet of runway. In light of the 12,250-foot length available on existing runway 17R/35L, the operational requirement for a new 9,000-foot runway has not been demonstrated. This approval is based on the City's representation that it expects to use locally generated aviation funds to construct the additional 2,000 feet of runway and complete the 9,000-foot length it originally proposed in its application.
Decision Date: April 28, 1995.
FOR FURTHER INFORMATION CONTACT: Ben Guttery, Southwest Airports Division, (817) 222–5614.

AMENDMENTS TO PFC APPROVALS

Amendment number, city, state	Amendment approved date	Amended approved net PFC revenue	Original approved net PFC revenue	Original estimated charge expiration date	Amended estimated charge expiration date
93–01–C–01–DAB Daytona Beach, FL	10/05/94	13,020,901	7,967,835	11/01/99	02/01/04
93–01–C–01–JAN Jackson, MS	03/03/95	6,237,459	1,918,855	04/01/95	10/01/99
92–01–C–01–SJU San Juan, Puerto Rico	03/24/95	49,768,000	46,200,066	02/01/97	10/01/96
93–01–C–02–MSY New Orleans, LA	04/13/95	193,889,875	193,640,386	04/01/00	01/01/08
94–01–C–01–AVL Asheville, NC	04/14/95	5,645,771	4,909,314	11/01/00	06/01/01
93–02–C–01–GPT Gulfport, MS	04/17/95	654,952	607,817	12/01/93	01/01/96
92–01–C–03–GPT Gulfport, MS	04/17/95	1,201,341	1,079,995	01/01/96	01/01/96
93–01–C–01–GSG Columbus, GA	04/18/95	1,132,288	534,633	06/01/95	07/01/97
93–01–C–00–FNL Fort Collins, CO	04/24/95	200,518	207,857	06/01/96	10/1/95

Issued in Washington, D.C. on May 12, 1995.
Sheryl Scarborough,
Acting Manager, Passenger Facility Charge Branch.
[FR Doc. 95–12380 Filed 5–18–95; 8:45 am]
BILLING CODE 4910–13–M

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Waco, Texas

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Waco Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before June 19, 1995.
ADDRESSES: Comments on this application may be mailed or delivered in triplicate copies to the FAA at the following address: Mr. Ben Guttery, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Staff, ASW–610D, Forth Worth, Texas 76193–0610.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Walter C. Schrupp, Director of Aviation, Waco Regional Airport at the following address: Walter C. Schrupp, Director of Aviation, Waco Regional Airport, Route 10, Box 173T, Waco, Texas 76708.

Air carriers and foreign air carriers may submit copies of the written comments previously provided to the Airport under Section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Ben Guttery, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Staff, ASW–610D, Forth Worth, Texas 76193–0610, (817) 222–5614.

The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Waco Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On May 5, 1995, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Airport was substantially complete within the requirements of Section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than August 22, 1995.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00
Proposed charge effective date: November 1, 1995
Proposed charge expiration date: June 30, 2000
Total estimated PFC revenue: $615,742.00
Brief description of proposed project(s):

Projects to Impose and Use PFC'S

Planning Studies, Airfield Safety Improvements, Terminal Safety Improvements, and Acquire ARFF Vehicle.
Proposed class or classes of air carriers to be exempted from collecting PFC's: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Staff, ASW–610D, 2601 Meacham Blvd., Forth Worth, Texas 76137–4298.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at Waco Regional Airport.

Issued in Forth Worth, Texas on May 5, 1995.
Faye S. Nedderman,
Acting Manager, Airports Division.
[FR Doc. 95–12381 Filed 5–18–95; 8:45 am]
BILLING CODE 4910–13–P

National Highway Traffic Safety Administration

Safety Performance Standards, Research and Safety Assurance Programs Meetings

AGENCY: National Highway Traffic Safety Administration.
ACTION: Notice of public meetings.

SUMMARY: This notice announces public meetings at which NHTSA will answer questions from the public and the automobile industry regarding the agency's safety performance standards, safety assurance and other programs; and, subject to President Clinton's prior announcement of the federal regulatory reform initiative results, NHTSA will also discuss its decisions concerning motor vehicle regulatory reform. In addition, NHTSA will hold a separate public meeting to describe and discuss specific research and development projects.

DATES: The Agency's regular, quarterly public meeting relating to the agency's safety performance standards, safety assurance and other programs will be held on June 28, 1995 beginning at 9:30 a.m. and ending at approximately 12:30 p.m. Assuming a prior announcement by President Clinton, NHTSA will also discuss its motor vehicle regulatory reform initiatives and its response to public comments on this subject. This latter discussion will be held immediately after the regular quarterly meeting, either during the 9:30 a.m. to 12:30 p.m. period if time allows, or else beginning after lunch at 1:30 p.m. For the regular, quarterly public meeting, questions relating to the agency's safety performance standards, safety assurance and other programs must be submitted in writing by June 19, 1995 to the address shown below. If sufficient time is available, questions received after the June 19 date may be answered at the meeting. The individual, group or company submitting a question(s) does not have to be present for the question(s) to be answered. A consolidated list of the questions submitted by June 19, 1995 and the issues to be discussed will be mailed to interested persons by June 22, 1995 and will also be available at the meeting.

Also, the agency will hold a second public meeting on June 27, devoted exclusively to a presentation of research and development programs. The meeting will begin at 1:30 p.m. and end at approximately 5:00 p.m. This meeting is described more fully in a separate announcement.

ADDRESSES: Questions for the June 28, NHTSA Technical Industry Meeting, relating to the agency's safety performance standards and safety assurance programs should be submitted to Barry Felrice, Associate Administrator for Safety Performance Standards, NPS–01, National Highway Traffic Safety Administration, Room 5401, 400 Seventh Street, SW., Washington, DC 20590. The meeting will be held at the Ramada Inn, near the Detroit Metro Airport, 8270 Wickham Road, Romulus, MI 48174.

SUPPLEMENTARY INFORMATION: NHTSA will hold this regular, quarterly meeting to answer questions from the public and the regulated industries regarding the agency's safety performance standards, safety assurance and other programs. Since the agency is holding a separate meeting on its research and development programs, any questions on those issues will only be answered at the afternoon meeting to be held on June 27, 1995 and should be submitted to the Research and Development Office. However, questions on aspects of the agency's research and development activities that relate to ongoing regulatory actions should be submitted, as in the past, to the agency's Safety Performance Standards Office.

The motor vehicle regulatory reform meeting is a follow-up to NHTSA's March 29, 1995 meeting on regulatory reform held in conjunction with the agency's previous quarterly technical meeting, and to the agency's April 4, 1995 meeting in Washington, D.C., at which NHTSA sought information from the public on regulatory reform actions the agency should take related to its motor vehicle regulations. These were in conjunction with President Clinton's call for a new approach to the way Government regulates the private sector, and his request that Executive Branch agencies report to him by June 1, 1995 on ways to improve the regulatory process. To follow the President's expected announcement of the results of this initiative, NHTSA will discuss how the agency has handled the public comments and the anticipated next actions to implement its motor vehicle regulatory reform decisions.

The regular, quarterly, meeting to be held on June 28th will be at the Ramada Inn near the Detroit Metro Airport, 8270 Wickham Road, Romulus, MI 48174. The purpose of this meeting is to focus on those phases of NHTSA activities which are technical, interpretative or procedural in nature. A transcript will be available for public inspection in the NHTSA Technical Reference Section in Washington, DC, within four weeks after the meeting. Copies of the transcript will then be available at ten cents a page (length has varied from 100 to 150 pages) upon request to NHTSA Technical Reference Section, Room 5108, 400 Seventh Street, SW., Washington, DC 20590. The Technical Reference Section is open to the public from 9:30 a.m. to 4 p.m.

NHTSA will provide auxiliary aids to participants as necessary, during the NHTSA Technical Industry Meeting, NHTSA Regulatory Reform Meeting, and the NHTSA Industry Research and Development Meeting. Any person desiring assistance of "auxiliary aids" (e.g., sign-language interpreter, telecommunications devices for deaf persons (TDDs), readers, taped texts, brailled materials, or large print materials and/or a magnifying device), please contact Barbara Carnes on (202) 366–1810, by COB June 19, 1995 for the June 28, 1995 meetings or Barbara Coleman (202) 366–1537 by COB June 19, 1995 for the June 27, 1995 meeting.

Issued: May 15, 1995.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 95–12300 Filed 5–18–95; 8:45 am]

BILLING CODE 4910–59–M

UNITED STATES INFORMATION AGENCY

Administration of the 1996 U.S. Based Training Program for Overseas Educational Advisers

ACTION: Notice—request for proposals.

SUMMARY: The Advising and Student Services Branch of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for an assistance award. The proposal, which can be submitted by public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(C)(3)–1, should describe the design of two training programs for USIA-affiliated mid-level overseas educational advisers to be held in late spring and fall of 1996. The training programs' objectives are to strengthen and develop the skills of more experienced overseas educational advisers so that they can train beginning advisers and advance the field of educational advising in their home countries. A successful training program should provide in-depth exposure to the mechanics of international study on a U.S. university campus (admissions and international office), advances in technology (internet), and outreach strategies, (fundraising and management of volunteers). Each session should last three weeks, with a beginning week in Washington, DC or other suitable city for workshops, research opportunities and discussions; a one-week-to ten-day internship at a U.S. college or university campus for an in-depth exposure to international student admission and advising; and approximately one week or less at either the National NAFSA: Association of International Educators Conference in late May or one of the regional NAFSA conferences in the fall. Further clarification is provided in the application package. USIA anticipates awarding up to $205,000 to one organization to administer this program.

Background and Program Rationale

The presence of international students and scholars on U.S. campuses contributes significantly to the academic quality and financial well-being of American higher education. In recognition of this, The United States Information Agency, maintains a network of educational advising centers overseas where objective information about study options and the application process to U.S. higher education is available to all prospective students, scholars, parents, governments ministries, and other interested individuals. These centers are staffed by educational advisers who must stay up to date with current trends in U.S. higher education, as well as remain knowledgeable about developments in technology, materials available, and management skills relevant to running busy centers.

Program Participants

USIA will select participants for the training sessions from the corps of educational advisers who are part of the network of USIA-affiliated advising centers overseas and who, based on seniority and previous job experience, are considered "mid-level" advisers. For the purposes of this RFP, mid-level advisers are defined as those who have mastered the following skills: (1) Knowledge of the U.S. and home country educational systems; (2) familiarity with the application process for U.S. higher education and training; (3) skills in advising and cross-cultural communication skills; (4) a basic understanding of the management theories and practices as they relate to educational advising.

Training Program Format

The training program is intended for two separate groups of ten participants each and should contain sessions in Washington DC or other suitable city, an internship or other form of meaningful professional visit at a U.S. academic institution(s), and active attendance, to include at least one presentation, at either the national NAFSA: Association of International Educators conference or one of its regional fall conferences.

The separate training programs should resemble each other in structure but have a different focus, thereby taking advantage of opportunities available at different times of the year. For instance, the spring session might concentrate on cultural adjustment (pre-departure/re-entry issues) faced by

international students, whereas the fall session might focus on admissions issues. These are suggestions; USIA invites organizations to submit creative and flexible program plans which can be tailored to participants' individual needs. Nevertheless, the following components must be covered in each training course:

Discussion of the current state of U.S. higher education and how it affects the work of the educational adviser; individual consultations with U.S. exchange organizations depending on participant's area of expertise; accreditation and degree equivalency issues; internet training; hands-on campus exposure to admissions and international student advising issues in the U.S.; exploration of alternate sources of support for educational advising, including fundraising techniques and managing volunteers. Please refer to program specific guidelines (POGI) and the "Training and Professional Development" report in the Solicitation Package for further details.

Proposed Budget

Applicants must submit a comprehensive budget for the entire program (both sessions). For clarification, applicants should provide separate sub-budgets for each training component. There must be a summary budget as well as a breakdown reflecting both the administrative budget and the program budget based on the guidance in the Solicitation Package. USIA's grant assistance, up to $205,000 in total, is expected to constitute only a portion of the total project funding. Cost sharing is required and the proposal should list other anticipated sources of support. Organizations with fewer than four years of experience in conducting international exchange programs will not be eligible.

Allowable costs for the program include the following:

(1) Salaries and fringe benefits; travel and per diem;

(2) Other direct costs, inclusive of rent, utilities, etc.;

(3) Indirect expenses, auditing costs;

(4) Participant program costs; i.e. international/domestic travel, per diem, conference attendance, resource materials. Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will be reviewed by the Agency contracts office, as well as the USIA Area Offices and the USIS posts overseas, where appropriate. Proposals may also be reviewed by the Office of the General Counsel or by other Agency elements. Funding decisions are at the discretion of the USIA Associate Director for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the USIA grants officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Quality of the program idea:* Proposals should demonstrate comprehensive understanding of current issues in international educational exchange and show clearly how the proposed course of study will give advisers the expertise to run efficient and effective advising centers. Training ideas should be innovative, interesting and engage the participants actively at all sessions of the program.

2. *Program planning:* Proposals should contain a detailed agenda and syllabus, clearly showing how sessions will achieve program objectives. Proposals should demonstrate convincingly that the organization has the staff capacity and expertise to plan this complex set of training sessions. Agenda and plan should adhere to the program overview and guidelines described above.

3. *Multiplier effect/impact:* The training program should put participants in tough with U.S. experts and international educators so that the maximum amount of information can be shared and professional linkages established.

5. *Support of diversity:* The proposal should demonstrate how the participants will be exposed to the widest possible range of views and approaches to U.S. higher education. Attention should be paid to selecting the campuses for internships to represent different kinds of schools from various regions of the U.S.

6. *Institutional capacity:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

7. *Institution's record/ability:* Proposals should demonstrate an institutional record of designing and running effective training programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts. The Agency will consider the past performance of prior recipients and the demonstrated potential of new applicants.

8. *Project evaluation:* Proposals should include a plan to evaluate the activity's success, including participant evaluation forms, both as the activities unfold and at the end of the program. Award-receiving organizations/institutions will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is less frequent.

9. *Cost-effectiveness:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

10. *Cost-sharing:* Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

Authorization

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrting the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and other countries of the world."

Programs and projects must conform with Agency requirements and guidelines outlined in the Solicitation Package. USIA projects and programs are subject to the availability of funds.

Announcement Name and Number

All communications with USIA concerning this announcement should refer to the above title and reference number E/ASA–96–01.

Deadline for Proposals

All copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on Friday, July 28, 1995. Faxed documents will not be accepted, nor will documents postmarked July 28, but received at a

later date. It is the responsibility of each applicant to ensure that proposals are received by the above deadline. Grants should begin November 1, 1995 and run through December 31, 1996, with a starting date of May 1996 for the first training program.

FOR FURTHER INFORMATION CONTACT: Advising and Student Services, E/ASA, Room 349, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547, Tel: (202) 619–5434, Fax: (202) 401–1433. E-mail: ahatteme@usia.gov. Potential applicants are encouraged to contact the program office and confirm understanding of the terms of this Request for Proposals before requesting a Solicitation Package, which includes more detailed award criteria; all application forms; and guidelines for preparing proposals, including specific criteria for preparation of the proposal budget; a report/concept paper on training for educational advisers. The report should be used for general guidance only; in places where the recommendations of the report conflict with the RFP, it shall be the definitive document. (Note: the report/concept paper is available only upon specific request to E/ASA). Please specify USIA Program Officer Alexandra Hattemer on all inquiries and correspondence. Interested applicants should read the complete **Federal Register** announcement before addressing inquiries to E/ASA or submitting their proposals. Once the RFP deadline has passed, E/ASA may not discuss this competition in any way with applicants until the Bureau proposal review process has been completed.

ADDRESSES: Applicants must follow all instructions given in the Solicitation Package. The original and eight copies of the complete application should be sent to: U.S. Information Agency, Ref.: E/ASA–96–01, Office of Grants Management, E/XE, Room 336, 301 4th Street, SW., Washington, DC 20547.

SUPPLEMENTARY INFORMATION: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including but not limited to race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The needs of the program may require the award to be reduced, revised, or increased. Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about November 1, 1995. Awards made will be subject to periodic reporting and evaluation requirements.

Dated: May 12, 1995.

Dell Pendergrast,

Deputy Associate Director, Educational and Cultural Affairs.

[FR Doc. 95–12351 Filed 5–18–95; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee for Cooperative Studies, Health Services, and Rehabilitation Research and Development Subcommittee on Scientific Review and Evaluation for Health Services Research and Development Service, Notice of Meeting

The Department of Veteran Affairs, Veterans Health Administration, gives notice under Pub. L. 92–463, that a meeting of the Advisory Committee for Cooperative Studies, Health Services, and Rehabilitation Research and Development Subcommittee on Scientific Review and Evaluation for Health Services Research and Development will be held at The Madison Hotel, 15th and M Streets, Northwest, Washington, D.C., June 13 through June 15, 1995. Session One on June 13, 1995, is scheduled to begin at 11:00 a.m. and end at 12:30 p.m. (EST). The purpose of the meeting is to review a cooperative study entitled "A Comprehensive System for Quality Improvement in Ambulatory Care." The study will be reviewed for scientific and technical merit and recommendations regarding its funding are prepared for the Associate Chief Medical Director for Research and Development. Session Two on June 13, 1995, is scheduled to begin at 5:30 p.m. and end at 7:00 p.m. (EST). The sessions scheduled for June 14 and 15 are scheduled to begin at 8:00 a.m. and end at 5:00 p.m. (EST). The purpose of the meeting is to review research and development applications concerned with the measurement and evaluation of health care systems and with testing new methods of health care delivery and management. Applications are reviewed for scientific and technical merit and recommendations regarding their funding are prepared for the Associate Chief Medical Director for Research and Development.

Session One will be open to the public (to the seating capacity of the room) at the start of the June 13 Cooperative Studies in Health Sciences meeting for approximately one-half hour to cover administrative matters and to discuss the general status of the program. Session Two will be open to the public (to the seating capacity of the room) at the start of the June 13 Investigator Initiated Research meeting for approximately one hour to cover administrative matters and to discuss the general status of the program. The closed portion of the two meetings involves discussion, examination, reference to, and oral review of staff and consultant critiques of research protocols, and similar documents. During this portion of the meeting, discussion and recommendations will deal with qualifications of personnel conducting the studies, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, as well as research information, the premature disclosure of which would be likely to frustrate significantly implementation of proposed agency action regarding such research projects. As provided by the subsection 10(d) of Pub. L. 92–463, as amended by Pub. L. 94–409, closing portions of these meetings is in accordance with 5 U.S.C. 552b(c)(6) and (9)(B).

Due to the limited seating capacity of the room, those who plan to attend the open sessions should contact Mr. Bill Judy, Review Program Manager (12B3), Health Services Research and Development Service, Department of Veterans Affairs, 810 Vermont Avenue, NW, (Techworld), Washington, DC, 20420 (phone: 202–523–7425) at least five days before the meeting.

Dated: May 11, 1995.

By Direction of the Secretary:

Heyward Bannister,

Committee Management Officer.

[FR Doc. 95–12298 Filed 5–18–95; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 60, No. 97
Friday, May 19, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

NATIONAL CREDIT UNION ADMINISTRATION

TIME AND DATE: 10:30 a.m., Wednesday, May 24, 1995.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, Virginia 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meetings.
2. Administrative Action under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (8) and (9)(A)(ii).
3. Administrative Actions under Section 205 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (703) 518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 95–12480 Filed 5–17–95; 3:05 pm]

BILLING CODE 7535–01–M

federal register

Friday
May 19, 1995

Part II

Federal Trade Commission

16 CFR Part 309

Labeling Requirements for Alternative Fuels and Alternative Fueled Vehicles; Final Rule

FEDERAL TRADE COMMISSION

16 CFR Part 309

RIN 3084–AA57

Labeling Requirements for Alternative Fuels and Alternative Fueled Vehicles

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: Section 406(a) of the Energy Policy Act of 1992 ("EPA 92") directs the Federal Trade Commission ("Commission") to establish uniform labeling requirements, to the greatest extent practicable, for alternative fuels and alternative fueled vehicles. On November 18, 1994, the Commission published a supplemental notice of proposed rulemaking in the **Federal Register** announcing the substance of proposed labeling requirements and sought written comment on its proposal. In this notice the Commission announces its final labeling requirements, and explains why it has modified certain requirements from those proposed.

EFFECTIVE DATE: Subpart A and Subpart B of 16 CFR Part 309 are effective on August 21, 1995. Subpart C of 16 CFR Part 309 is effective on November 20, 1995. The incorporation by reference of certain publications listed in subpart B of 16 CFR Part 309 is approved by the Director of the Federal Register as of August 21, 1995. The incorporation by reference of certain publications listed in subpart C of 16 CFR Part 309 is approved by the Director of the Federal Register as of November 20, 1995.

FOR FURTHER INFORMATION CONTACT: Jeffrey E. Feinstein, Attorney, 202/326–2372, or Neil J. Blickman, Attorney, 202/326–3038, Division of Enforcement, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

Statement of Basis and Purpose

I. Introduction

EPA 92 [1] establishes a comprehensive national energy strategy designed to increase U.S. energy security and improve the economy in cost effective and environmentally beneficial ways.[2] It seeks to reduce the dependence of the United States on oil imports; promote energy efficiency; reduce the use of petroleum-based fuels in motor vehicles; and provide new energy options. Other programs in titles III, IV, V, and VI of EPA 92 promote the development of alternative fuels [3] and alternative fueled vehicles ("AFVs").[4]

Two provisions in title IV of EPA 92 require that information on alternative fuels and AFVs be made available to consumers. In one provision, section 406(a) of EPA 92 directs the Commission to issue a rule establishing uniform labeling requirements, to the greatest extent practicable, for alternative fuels and alternative fueled vehicles.[5] The Act does not specify what information should be displayed on these labels. Instead, it provides generally that the rule must require disclosure of "appropriate," "useful," and "timely" cost and benefit information on "simple" labels.[6] The purpose of the labeling requirements is to enable consumers to make reasonable choices and comparisons. In formulating the rule, the Commission must consider the problems associated with developing and publishing the required information, taking into account lead time, costs, frequency of changes in costs and benefits that may occur, and other relevant factors. Where appropriate, the labels required by section 406(a) are to be consolidated with other labels providing information to consumers. EPA 92 requires the Commission to update its labeling requirements "periodically to reflect the most recent available information." [7]

A second and complementary provision directs the Secretary of Energy ("DOE") to develop an information package for consumers.[8] Specifically, section 405 of EPA 92 requires DOE to produce and make available an information package for consumers to help them choose among alternative fuels and AFVs.[9] DOE's information package must provide "relevant and objective" information addressing "motor vehicle characteristics and fuel characteristics as compared to gasoline" (including environmental performance, energy efficiency, domestic content, cost, maintenance requirements, reliability, and safety), information about the conversion of conventional motor vehicles to AFVs, and "such other information as the Secretary [of DOE] determines is reasonable and necessary to help promote the use of alternative fuels in motor vehicles." [10]

This is the Commission's second rulemaking concerning labeling requirements for alternative fuels. In a separate proceeding also required by EPA 92,[11] the Commission extended the requirements of its former Octane Rule [12] (renamed the "Fuel Rating Rule") beyond gasoline to include *liquid* alternative fuels.[13] As a result, retailers of such fuels are now required, among other things, to post labels identifying the commonly used name of the fuel and the amount, expressed as a minimum percentage by volume, of the fuel's principal component.[14]

II. Public Participation

EPA 92 required the Commission, in formulating its labeling requirements, to "obtain the views of affected industries, consumer organizations, Federal and State agencies, and others." [15] It also required the Commission to issue a Notice of Proposed Rulemaking ("NPR") in consultation with DOE, the Administrator of the Environmental Protection Agency ("EPA"), and the Secretary of Transportation ("DOT") within eighteen months after October 24, 1992 (the statute's enactment date).[16] To comply with those requirements, the Commission received information from the public relating to this proceeding from five sources: written comments filed in response to an Advanced Notice of Proposed Rulemaking ("ANPR") published on December 10, 1993,[17] written comments filed in response to an NPR published on May 9, 1994,[18] testimony during a Public Workshop-Conference ("Workshop") held on July 20, 1994, supplemental written comments filed after the Workshop, and written comments filed in response to a Supplemental Notice of Proposed Rulemaking ("SNPR") published on November 18, 1994.[19] All such information (i.e., the written comments and Workshop transcript) was placed on the public record of this proceeding. The discussion below includes information from all five sources, as well as documents placed on the public record by the Commission's staff.[20] The Commission considered all these materials in developing this final labeling rule.

A. The Commission's ANPR

In its ANPR, the Commission sought written comment on basic issues raised by section 406(a)'s mandate. Accordingly, it requested comment on issues relating to which fuels and vehicles should be covered by the labeling requirements (i.e., the proposed rule's scope), and what information should be required to be displayed on labels (i.e., the proposed rule's disclosures).[21] The Commission also sought comment on how the labeling requirements should be updated, and the extent to which the labels should be consolidated with other labels providing information to consumers. In response, the Commission received 28 written comments addressing these issues. The comments were summarized in the Commission's NPR.[22]

B. The Commission's NPR

The Commission considered written comments responding to the ANPR in developing its initial labeling proposal, which was published in the **Federal Register** as the Commission's NPR. The NPR announced the substance of proposed labeling requirements and a proposed rule implementing section 406(a)'s mandate. In that NPR, the Commission invited interested persons to submit written comments on any issue of fact, law or policy that might have bearing upon the proposed labeling requirements. In response, the Commission received 37 written comments addressing the Commission's proposal. The comments responding to the NPR were summarized in the Commission's SNPR.

C. Public Workshop-Conference

The Commission announced in the NPR that its staff would conduct a Workshop to afford staff and interested parties an opportunity to discuss issues raised in the rulemaking proceeding.[23] The Workshop was not intended to achieve a consensus of opinion among participants or between participants and Commission staff with respect to any issue. Instead, its purpose was to examine publicly areas of significant controversy or divergent opinions that were raised in the written comments.

Twenty-one interested parties timely submitted written requests to participate in the Workshop.[24] Twenty of those parties filed written comments as required,[25] and all twenty were invited to participate. Two parties (Chrysler and Greenpeace) subsequently elected not to attend, and, as a result, individuals representing eighteen interested parties participated at the Workshop.[26] The Workshop was held on July 20, 1994, at the Commission's headquarters and was conducted as announced in the NPR.[27]

D. Post-Workshop Comments

In its NPR, the Commission announced that Workshop participants would be permitted one week to file supplemental written comments addressing concerns raised during the Workshop.[28] Eight participants elected to file such comments.[29] The Commission also announced that after reviewing written comments received in response to the NPR, the Workshop transcript, and the post-Workshop comments, it would publish an SNPR. The SNPR would propose the text of a labeling rule and allow the public an opportunity to comment on the revised labeling proposal.

E. Supplemental Notice of Proposed Rulemaking

The Commission considered written comments on the public record, the Workshop transcript,[30] and staff submissions in developing a revised labeling proposal, which was published in the **Federal Register** as the Commission's SNPR. The SNPR announced modifications to the Commission's initial labeling proposal and the specific language of a proposed labeling rule. The Commission invited interested persons to submit written

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[1] Pub. L. 102–486, 106 Stat. 2776 (1992).

[2] H. Rep. No. 102–474(I), 102d Cong., 2d Sess. 132, *reprinted in* 1992 U.S.C.C.A.N. at 1954, 1955.

[3] "Alternative fuels" are defined as:

[M]ethanol, denatured ethanol, and other alcohols; mixtures containing 85 percent or more (or such other percentage, but not less than 70 percent, as determined by the Secretary [of Energy], by rule, to provide for requirements relating to cold start, safety, or vehicle functions) by volume of methanol, denatured ethanol, and other alcohols with gasoline or other fuels; natural gas; liquefied petroleum gas; hydrogen; coal-derived liquid fuels; fuels (other than alcohol) derived from biological materials; electricity (including electricity from solar energy); and any other fuel the Secretary determines, by rule, is substantially not petroleum and would yield substantial energy security benefits and substantial environmental benefits[.]

42 U.S.C. 13211(2) (Supp. IV 1993).

[4] An "alternative fueled vehicle" is "a dedicated vehicle or a dual fueled vehicle[.]" 42 U.S.C. 13211(3). Each term is further defined in 42 U.S.C. 13211 (6) and (8).

[5] Section 406(a) is codified at 42 U.S.C. 13232(a) (Supp. IV 1993).

[6] 42 U.S.C. 13232(a).

[7] *Id.*

[8] 42 U.S.C. 13231. DOE is also required to provide technical assistance to the Commission in developing labeling requirements, and coordinate such technical assistance with its development of a consumer information package. 42 U.S.C. 13232(b).

[9] 42 U.S.C. 13231. The information package required by this section was intended "to enable [consumers] to understand and to help them choose among alternative fuels and AFVs." H. Rep. No. 102–474(I), 102d Cong., 2d Sess. 185, *reprinted in* 1992 U.S.C.C.A.N. at 1954, 2008.

[10] 42 U.S.C. 13231. EPA 92 also directs the DOE Secretary to create an additional public education program targeted specifically to the Federal government. Under that mandate, the DOE Secretary, "in cooperation with the Administrator of General Services," must "promote programs and educate officials and employees of Federal agencies on the merits of [AFVs]." 42 U.S.C. 13214(a). That section further requires that the DOE Secretary "shall provide and disseminate information to Federal agencies on," *inter alia*, "the range and performance capabilities of [AFVs]." *Id.*

[11] 15 U.S.C. 2821–2823.

[12] Octane Posting and Certification, 16 CFR Part 306.

[13] 16 CFR 306.0(i)(2) (1994). In that proceeding, the Commission had no authority to extend the rule's requirements beyond liquid alternative fuels. 15 U.S.C. 2821 (Supp. IV 1993).

[14] 16 CFR 306.0(j)(2) (1994). The Fuel Rating Rule became effective October 25, 1993. 58 FR 41356, 41356, Aug. 3, 1993.

[15] 42 U.S.C. 13232(a).

[16] *Id.* Commission staff consulted with staff from DOE, EPA, and DOT's National Highway Traffic Safety Administration while developing its initial and supplemental labeling proposals.

[17] 58 FR 64914.

[18] 59 FR 24014.

[19] 59 FR 59666.

[20] Commission's Rulemaking Record No. R311002. Comments submitted in response to the SNPR are coded either "I" (indicating that they were filed by nongovernmental parties) or "J" (indicating that they were filed by governmental agencies). Written comments submitted in response to prior **Federal Register** notices are coded either "D" or "E" (in response to the ANPR) or "G" or "H" (in response to the NPR). Written requests to participate in the Workshop are coded "A." The Workshop transcript is filed in category "L." Information placed on the public record by Commission staff is coded "B."

In this notice, comments are cited by identifying the commenter (by abbreviation), the comment number, and the relevant page number(s), e.g., "RFA, I–3, 1–3." Supplemental comments filed after the Workshop are designated as (Supp.), e.g., "RFA (Supp.), G–5, 1." Discussion in the Workshop is cited by identifying the party, a reference to the transcript, and the relevant page number(s), e.g., "EPA (Tr.), 184." Staff submissions are cited by identifying the document number, relevant page number(s), and document date, e.g., "B–13, 3, Jan. 25, 1994."

[21] 58 FR 64914, 64915.

[22] 59 FR 24015–24017.

[23] 59 FR 24014, 24020.

[24] AAMA, A–2 (on behalf of AAMA, Chrysler, Ford, and GM); AGA/NGVC, A–8; AMI, A–10; API, A–12; Boston Edison, A–16; CAS, A–14; DOE, A–1; Eckert Seamans Cherin & Mellott, A–17 (on behalf of unidentified clients in the automotive industry); EMA, A–3 (request submitted by Neal Gerber & Eisenberg); ETC, A–11 (request submitted by Van Ness Feldman); EPA, A–9; Fixible, A–6; Greenpeace, A–18; NACAA, A–7; NAFA, A–13 (request submitted by Kent & O'Connor, Inc.); NPGA, A–5 (on behalf of NPGA and Phillips 66); RFA, A–4 (request submitted by Downstream Alternatives, Inc.); UCS, A–15.

[25] The law firm Eckert Seamans Cherin & Mellott did not file a written comment.

[26] Lois E. Bennett, GM; Timothy D. Davis, Columbia Gas (representing AGA/NGVC); Robert Graham and Peter Morman, CAS; Marcel L. Halberstadt, AAMA; Nancy L. Homeister, Ford; Evan W. Johnson, MC-MD (representing NACAA); Martin S. Karl, Boston Edison; Allen R. Larson, Esq., Larson and Curry (representing Boston Edison); Paul McArdle, DOE; Denise McCourt, API; Patrick O'Connor, Kent & O'Connor (representing NAFA); Larry D. Osgood, Phillips 66 Propane Company (representing NPGA); Robert E. Reynolds, Downstream Alternatives, Inc. (representing RFA); Glyn Short, AMI; Lisa A. Stegink, Esq., Neal Gerber & Eisenberg (representing EMA); Jaime C. Steve, UCS; Lance Watt, Fixible; Ellen S. Young, Esq., Van Ness Feldman (representing ETC); Kenneth L. Zerafa, EPA. Philip J. Harter, Esq., served as the Workshop's moderator.

[27] The NPR announced that the Workshop would take place over two days, but the participants concluded discussing the agenda staff had prepared in one day. As a result, the Workshop's second day was cancelled. (Tr.), 238.

[28] 59 FR 24014, 24023.

[29] AAMA, AGA/NGVC, Boston Edison, CAS, EMA, Fixible, NPGA, and RFA.

[30] Two commenters endorsed the Commission's reliance on the Workshop transcript in its preparation of the SNPR. *See* API, I–15, cover letter at 3 ("We believe the issues expressed in the July [Workshop] were fairly addressed by the FTC in its [SNPR]."); RFA, I–3, 2 ("We believe that the changes reflected in the revised final rule were justified based on written comments and the information covered at the public workshop.").

comments until December 19, 1994, addressing any issue they believed might bear upon the proposed rule. As described below, the Commission received 24 written comments in response to its SNPR from vehicle manufacturers,[31] fuel producers,[32] governmental entities,[33] a consumer organization,[34] organizations representing affected interests,[35] and other interested individuals.[36]

III. Labeling Requirements Proposed in the SNPR

A. Comment Suggestions Beyond Commission's Authority Under EPA 92

As noted previously, section 406(a) directs the Commission to establish labeling requirements for alternative fuels and AFVs disclosing cost and benefit information. Because this rulemaking proceeding is mandated by statute, the Commission's authority is limited to what is authorized by EPA 92. During this proceeding, however, several commenters suggested regulatory options that are beyond the Commission's statutory authority because they involve matters other than labeling requirements, alternative fuels or AFVs, and cost and benefit information.

For example, several commenters suggested that the Commission require AFV dealers to have copies of the DOE brochure available for consumer inspection and use.[37] These commenters believed that the Commission could model such a requirement on an existing EPA regulation directing automobile dealers to make available free copies of EPA's Gas Mileage Guide (a booklet comparing the fuel economy of similarly-sized new automobiles).[38] Such a requirement does not appear to be reasonably within section 406(a)'s scope, which is limited to uniform *labeling* requirements. In any event, the Commission notes that EPA's regulation was promulgated pursuant to a specific Congressional directive that EPA require dealers to provide such information to consumers.[39] In the absence of a similar Congressional directive, the Commission believes that such a requirement may be beyond its authority under EPA 92.[40]

For similar reasons, the Commission has also concluded that requiring any of the following may exceed its authority under EPA 92: (1) labeling for conventional fueled vehicles; [41] (2) that information on AFV labels be provided to consumers (in a non-label format) at the time an AFV is offered for sale; [42] (3) that "all pertinent information" (e.g., fuel hazards, tank capacity, refueling or recharging time, and cruising range) be disclosed in vehicle owners' manuals; [43] and (4) that a "simple card" describing factors consumers should consider before acquiring an AFV be placed within new and used vehicles.[44]

B. Labeling Requirements for Alternative Fuels

1. Scope of the Labeling Requirements

In the SNPR, the Commission proposed that the scope of its labeling requirements extend to three non-liquid alternative fuels: compressed natural gas ("CNG"), hydrogen gas ("hydrogen") and electricity.[45] One comment addressed this aspect of the Commission's proposal.[46] For safety reasons, that comment recommended that the Commission limit the scope of the rule to alternative fuels that have been tested and approved for use by EPA.[47] The Commission notes that EPA 92 specifically defines the term "alternative fuel" to include the three fuels at issue; [48] and because they are readily available, DOE identifies them and encourages their use in its literature.[49] Furthermore, other than emission certification procedures, EPA has no procedures for certifying fuels as being safe for use.

The Commission's SNPR proposal was limited to *non-liquid* fuels because the Commission's Fuel Rating Rule contains labeling requirements for *liquid* alternative fuels. Further, the Commission proposed requirements for the non-liquid fuels that are similar to the Fuel Rating Rule's requirements for liquid alternative fuels. Although that rule serves a somewhat different purpose,[50] the Commission believes that harmonizing labeling requirements, when practicable, is appropriate. Thus, the Commission's SNPR proposal had the effect of imposing labeling requirements on non-liquid alternative fuels that are similar to those that currently exist for liquid alternative fuels.

After considering the record, the Commission has determined that the scope of the rule shall be limited to the non-liquid alternative fuels CNG, hydrogen and electricity.[51] This will result in equal, uniform, fuel-neutral labeling requirements for all alternative fuels that are currently used or contemplated for use as automotive fuels. Further, in accordance with section 406(a)'s directive to review the rule "periodically to reflect the most recent available information," [52] the Commission will supplement the list of covered fuels if and when DOE designates new non-liquid fuels as alternative fuels.[53]

2. Label Disclosures for Non-liquid Alternative Fuels

a. *SNPR proposals.* In the SNPR, the Commission proposed that retailers selling CNG, hydrogen and electricity to consumers post standard labels identifying the commonly used names of those fuels on public fuel dispensers (including electric dispensers used to recharge batteries in electric vehicles).[54] The labels would be placed conspicuously in full view of consumers (i.e., ultimate purchasers) and as near as reasonably practical to the fuel's unit price disclosure. No comments were submitted regarding this facet of the SNPR proposal. The Commission, therefore, has determined to adopt these requirements in the final rule for the reasons stated in the SNPR.[55]

With respect to CNG and hydrogen, the Commission also proposed requiring disclosure of the fuel's principal component and permitting disclosure of other components,[56] expressed as minimum molecular percentages ("minimum mole percent").[57] These proposals are analogous to provisions in the Fuel Rating Rule pertaining to liquid alternative fuels.[58] In the SNPR, the Commission tentatively concluded that its proposal to require disclosure of the minimum methane content of CNG would assist consumers in purchasing CNG that satisfies requirements specified by engine manufacturers to meet performance and emissions certification levels.[59] The Commission also concluded that its proposal would be consistent with the Fuel Rating Rule's requirements for liquid alternative fuels,[60] and would assist consumers in identifying the proper fuel for their vehicles. The Commission further noted that because CNG exists with too low a methane content to be used as a transportation fuel,[61] requiring disclosure of the minimum methane content would help ensure that CNG that is not suitable for use as a transportation fuel is not inadvertently sold for that purpose. Although CNG sold as a transportation fuel must always meet minimum vehicle needs, information about minimum methane content could help assure consumers that the CNG they are purchasing will meet their engines' needs.[62]

The Commission also recognized that electricity used for recharging electric vehicle ("EV") batteries might need to be subject to different labeling disclosures.[63] Accordingly, for electricity, the SNPR proposed requiring that labels on public electric vehicle fuel dispensing systems include the commonly used name of the fuel, kilowatt capacity, voltage, current (either AC or DC), amperage and type of charger (either conductive or inductive).[64] In the SNPR, the Commission tentatively concluded that such disclosures were the minimum operating parameters that would be necessary to protect consumers operating the equipment, the vehicles whose batteries would be charged, as well as the charging equipment.[65]

Sixteen comments addressed the issues raised in the SNPR. Five comments generally supported the Commission's proposals in their entirety because if adopted, the proposals would provide appropriate and useful information to consumers attempting to make alternative fuel purchasing decisions.[66] The remaining eleven comments are discussed in the following section and in section III(B)(3) *infra*.

b. *Comments on SNPR concerning CNG.* Two comments questioned whether the Commission's SNPR proposal to require disclosure of the minimum methane content of CNG would be helpful to consumers in the absence of standards requiring a minimum methane content for CNG vehicle fuel.[67] The Commission believes

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[31] Ford Motor Company ("Ford"), I–4; Electro Automotive ("Electro Auto"), I–7; Toyota Motor Corporation ("Toyota"), I–11; Chrysler Corporation ("Chrysler"), I–13.

[32] Mobil Oil Corporation ("Mobil"), I–2; Unocal Corporation ("Unocal"), I–5; Commercial Electronics NGV Systems Division ("Comm Elec"), I–8; Boston Edison and Edison Electric Institute (submitted by Larson and Curry) ("Boston Edison/EEI"), I–14.

[33] U.S. Department of Energy ("DOE"), J–1; City of Chicago, Illinois ("Chicago"), J–2; California Air Resources Board ("CARB"), J–3; U.S. Department of Energy, Energy Information Administration, Energy End Use and Integrated Statistics Division ("EIA/EEU-ISD"), J–4; U.S. Department of Transportation, National Highway Traffic Safety Administration ("DOT/NHTSA"), J–5.

[34] Center for Auto Safety ("CAS"), I–12.

[35] Renewable Fuels Association (submitted by Downstream Alternatives, Inc.) ("RFA"), I–3; Engine Manufacturers Association (submitted by Neal Gerber & Eisenberg) ("EMA"), I–6; Electric Transportation Coalition (submitted by Van Ness Feldman) ("ETC"), I–9; National Association of Fleet Administrators, Inc. ("NAFA"), I–10; American Petroleum Institute ("API"), I–15; American Automobile Manufacturers Association ("AAMA"), I–16; American Gas Association and Natural Gas Vehicle Coalition ("AGA/NGVC"), I–18; Natural Gas Vehicle Producers Association ("NGVPA"), I–19.

[36] E. A. Mechtly, Ph.D., Engineering Educator, University of Illinois ("Mechtly"), I–1; Louis F. Sokol, CAMS, Metrification Consultant ("Sokol"), I–17.

[37] ETC, G–24, 6; NAFA, G–20, 3–5; NPGA (Tr.), 188–89. CAS suggested that the Commission require AFV dealers and conversion companies to provide copies of the DOE package to consumers, and that consumers acknowledge receipt by signing a designated sales document. CAS, G–17, 7; (Tr.), 174; (Supp.), G–17, 4. *See also* CAS, I–12, 1 (FTC should "encourage availability" of DOE brochure at AFV dealerships). CAS also proposed that the AFV label advise consumers that a free copy of the DOE brochure is available from the dealer. CAS (Supp.), G–17, 4. ETC also suggested, however, that dealers would find it in their interest to have the DOE brochures available to consumers. ETC (Tr.), 168.

[38] 40 CFR 600.401–77 to 600.407–77 (1993).

[39] *See* 15 U.S.C. 2006(b)(2) ("The EPA Administrator * * * shall prescribe rules requiring dealers to make available to prospective purchasers [fuel economy information] compiled by the EPA Administrator under paragraph (1).").

[40] The Commission notes, however, that a DOE official at the Workshop stated that DOE would consider distributing copies of the information package to AFV dealerships. DOE (Tr.), 227–28. In its comment, RFA wrote to "encourage some formal review process" of that brochure by industry. RFA, I–3, 2.

[41] AGA/NGVC, G–6, 11 (requiring disclosures only for AFVs could unnecessarily raise consumer concerns about these products).

[42] NAFA, I–10, 2; G–20, 2 ("For example, when a representative of a conversion company meets with a consumer to offer to convert a vehicle, the representative would provide the consumer with the appropriate information in a format similar to the vehicle label."). NAFA based this suggestion on its concern that consumers would not always be able to inspect labels prior to acquisition. *Id.*

[43] NACAA, H–6, 2. The Commission also believes that one suggestion (that it develop an information bulletin discussing pertinent considerations), while not beyond its authority, may not be necessary because of DOE's mandate to complete the same task. CEC, H–8, 1–2, 6; NAFA, G–20, 3. In any event, the Commission normally issues consumer education materials after new rules are issued, and that will be considered when this proceeding is completed.

[44] AAMA, I–16, 6.

[45] These are the only non-liquid fuels defined as "alternative fuels" in EPA 92. 42 U.S.C. 13211(2) (Supp. IV 1993).

[46] Five other comments generally supported all aspects of the Commission's alternative fuels labeling proposal without addressing this specific issue. Boston Edison/EEI, I–14, 4; Chicago, J–2, 2–3; DOE, J–1, 2; EIA/EEU–ISD, J–4, 1; RFA, I–3, 2. In addition, comments on an earlier Commission proposal similarly supported limiting the scope of this proceeding to non-liquid alternative fuels. API, G–25, 1–3; CEC, H–8, 1–6; Mobil, G–2, 1–3; NAFA, G–20, 1; NPGA, G–18, 2–3; Phillips 66, G–15, 1; RFA (Supp.), G–5, 1; SIGMA, G–23, 1; Sun, G–1, 1.

[47] Chicago, J–2, 2–3.

[48] 42 U.S.C. 13211(2) (Supp. IV 1993).

[49] U.S. Dep't of Energy, Taking An Alternative Route, B–33.

[50] The purpose of the EPA 92 amendments to Title II of the Petroleum Marketing Practices Act, 15 U.S.C. 2821–2825, was to give purchasers information they need to choose the correct type or grade of fuel for their vehicles. 58 FR 41356. Section 406(a)'s purpose is to provide consumers with appropriate cost and benefit information to enable them to make informed choices among alternative fuels and AFVs. 59 FR 59666.

[51] *See* 59 FR 59666, 59669–59670 for a general description of the qualities of the alternative fuels covered by the final rule.

[52] 42 U.S.C. 13232(a) (Supp. IV 1993).

[53] The Secretary of the Department of Energy has the responsibility to designate, by rule, new fuels as alternative fuels. 42 U.S.C. 13211(2) (Supp. IV 1993).

[54] *See* proposed rule §§ 309.1(q) and 309.15, 59 FR 59666, 59704, 59706.

[55] 59 FR 59666, 59671–59672.

[56] CNG vehicle fuel is composed primarily of methane with small percentages of ethane, propane, butane, nitrogen, helium, carbon dioxide and hydrogen sulfide. Hydrogen vehicle fuel is composed primarily of hydrogen, with very small percentages of water, oxygen, and nitrogen.

[57] Under the international system of units, "the mole is the amount of substance of a system which contains as many elementary entities as there are atoms in 0.012 kilogram of carbon 12. When the mole is used, the elementary entities must be specified and may be atoms, molecules, ions, electrons, other particles, or specified groups of such particles." "The International System of Units (SI)," NIST Special Publication 330 (1991 edition), August 1991, U.S. Department of Commerce, National Institute of Standards and Technology (hereinafter "NIST Publication 330"), B–43, 4–5.

[58] 16 CFR 306.10(b)(1) and 306.10(f) (1994).

[59] 59 FR 59666, 59671. *See* AAMA (Tr.), 37, 62 (label should identify the fuel), 81 (at this time a minimum methane content disclosure is appropriate); Flxible (Tr.), 74, (Supp.), G–12, 2 (dispensers for CNG should be labeled with the minimum methane content due to the requirements dictated by some engine manufacturers to meet performance and emissions certification levels); RFA, G–5, 3; Sun, G–1, 1.

[60] 59 FR 59666, 59671. *See* API, G–25, 1–3 (until a private, voluntary, consensus standards organization develops specifications for alternative fuels, additional disclosure requirements are inappropriate; expand Fuel Rating Rule to cover non-liquid alternative fuels to encourage fuel-neutral regulatory scheme; and labeling of principal component may provide useful information to consumers); EIA/EEU–ISD, H–2, 1 (expressed general support for the proposed rule); Mobil, G–2, 1–3 (the proposed label is consistent with the Fuel Rating Rule, and no other disclosures should be required); NAFA, G–20, 1 (endorses a uniform labeling requirement for alternative fuels); NPGA, G–18, 2–3 (extremely important that all alternative fuels be subject to essentially identical requirements, and the Commission's proposal is sufficient under the statutory requirements), (Tr.) 48–49 (issue is how to get the consumer to the correct pump, and in that respect, the orange labels for liquid alternative fuels do an effective job); Phillips 66, G–15, 1; RFA, G–5, 2–3 (the benefit of providing additional information beyond that proposed is not well established), (Tr.), 28, 31, 38, (Supp.), G–5, 1 (the current labeling requirements for alternative fuels under the Fuel Rating Rule are adequate and the same labeling requirements should be extended to gaseous fuels); SIGMA, G–23, 1 (supports the proposed requirements and urges the Commission to adopt the proposed rule without change); Sun, G–1, 1–2 (agrees with the Commission's proposal to extend the Fuel Rating Rule labeling requirements to non-liquid alternative fuels thereby placing equal regulatory requirements on all alternative fuels).

[61] *See* Flxible (Tr.), 74–77.

[62] 59 FR 59666, 59671.

[63] Unlike the other alternative fuels, the electricity used to recharge the batteries that power electric vehicles is not dispensed from a conventional fuel pump. It is dispensed from an electrical dispenser or recharging station and produces different physical effects depending on the type of dispenser or charging equipment through which it is dispensed. Therefore, the Commission recognized that electricity used as a vehicle fuel might have to be rated in accordance with the characteristics of the specific electrical dispenser or recharging station.

[64] *See* proposed rule §§ 309.1(q)(2) and 309.15, 59 FR 59666, 59704, 59706.

[65] The specific bases for the Commission's SNPR proposal are discussed in more detail at 59 FR 59666, 59671–59672.

[66] Boston Edison/EEI, I–14, 4; Chicago, J–2, 2–3; DOE, J–1, 2; EIA/EEU–ISD, J–4, 1; RFA, I–3, 2.

[67] API, I–15, 2; Mobil, I–2, 3.

that consensus standards specifying a minimum methane content for CNG as a vehicle fuel would be helpful, but recognizes that they do not presently exist. The Commission's proposed labeling approach for CNG and hydrogen provides a basic measure of fuel quality and, used in conjunction with the owner's manual containing the vehicle manufacturer's fuel recommendations, it provides consumers with the information necessary to select the fuel on which their vehicle has been designed to perform.[68]

Accordingly, the Commission has determined that the fuel rating for CNG and hydrogen must include the commonly used name of the fuel and the amount, expressed as a minimum molecular percentage, of the principal component of the fuel. The label also may include a disclosure of other components as minimum molecular percentages, if desired.[69] This rating approach will provide consumers with information necessary to make informed fuel purchasing decisions. It also will provide fuel producers and marketers with the flexibility to develop and blend fuels appropriate for location and climate, consistent with United States Environmental Protection Agency and original equipment manufacturer requirements. The Commission's action, therefore, will assist in the development and use of non-liquid alternative fuels and alternative fueled vehicles.

c. *Comments on SNPR concerning electricity.* The Commission proposed in the SNPR that the electric recharging station label disclose the voltage at which electrical power is supplied by the electric charging equipment, the maximum current in amperes that can be delivered, whether the charging equipment supplies alternating or direct current, whether the unit is a conductive charger (a plug on a cord) or an inductive charger (a paddle in a port system), and the kilowatt capacity of the charging equipment to tell consumers how quickly their vehicles can recharge. Three comments specifically related to these proposals. One comment questioned the need for a kilowatt capacity disclosure since consumers could derive it from the proposed voltage/amperage disclosure for electricity dispensers. The comment also recommended that when two charging methods are available from the same electricity dispenser (e.g., 240 vac/40 amps and 120 vac/15 amps) the Commission should require that both methods be disclosed.[70]

An explicit kilowatt capacity disclosure is an important dispenser parameter that is useful in assisting consumers to determine immediately how quickly their vehicles' batteries will recharge. Although the Commission acknowledges that kilowatt capacity can be calculated from the voltage/amperage disclosure, the kilowatt capacity disclosure obviates the need for engaging in mathematical calculations at the dispenser. The Commission has decided to address the issue of the availability of multiple charging methods from the same dispenser by requiring in the final rule that they both be disclosed, as recommended by the comment, but on separate labels on the dispenser.[71]

Another comment recommended that the Commission's amperage disclosure on the label be expressed as an "A" instead of by the word "amps," as proposed.[72] The Commission has concluded, however, that use of the word "amps" on the label, because it is more descriptive than an "A," may make consumers more familiar with the electricity refueling infrastructure and, therefore, be more useful in assisting consumers to locate the correct electricity dispenser. Finally, one comment suggested that the efficiency of electric vehicle chargers is a parameter that perhaps should eventually appear on charger labels once standardized test procedures are developed to determine efficiency.[73] The Commission notes that electric vehicle chargers are not 100 percent efficient. Some energy is lost to heat in the process of converting the energy that is supplied to the charger to a form that is usable by the vehicle battery. The Commission will monitor the development of standardized test procedures to determine electric vehicle charger efficiency, and consider including this factor when more information becomes available.

Accordingly, after considering the comments on its SNPR proposal, the Commission has determined that labels on public electric vehicle fuel dispensing systems shall include the commonly used name of the fuel (e.g., electricity), kilowatt capacity, voltage, current (either AC or DC), amperage and type of charger (either conductive or inductive).[74] Such disclosures will assist consumers in locating electric fuel dispensers that are compatible with their vehicles, and in determining how much time it will take for their vehicles' batteries to recharge.

d. *Summary.* In summary, the requirements for CNG, hydrogen and electricity will provide consumers with the most important pieces of information needed when refueling: fuel type and composition (or, for electricity, other relevant parameters). Although in the absence of such requirements sellers could be expected to identify the fuels sold, they may not do so in a standardized format that assists consumers in identifying the proper fuel quickly. Furthermore, it is uncertain absent these requirements whether sellers would provide information regarding the precise composition of the fuels, or relevant parameters of the EV fuel dispenser.

3. Label Disclosures Considered but not Adopted in Final Rule

In addition, the Commission concludes that other information on the fuel dispenser concerning alternative fuels is unlikely to be useful in most instances. For consumers with dedicated AFVs (i.e., vehicles capable of operating on only one fuel), the selection process between competing fuels is concluded once an AFV is acquired. Consumers driving dual or flexible fueled vehicles (i.e., vehicles capable of being powered both by a conventional and an alternative fuel) will be limited to purchasing fuels meeting their engines' requirements. Thus, providing consumers with other information designed to permit comparisons among various types of alternative fuels is best done prior to the time the vehicle is acquired.

Further, excluding less important information avoids information overload. In contrast to vehicle purchases, fuel purchases typically occur in a quick transaction. In a report to Congress assessing the need for a uniform national label on fuel pumps, the Commission noted that time constraints may affect how consumers read, understand, and use information.[75] Indeed, "studies show that less accurate information processing occurs under time constraints; test subjects focus on fewer pieces of information and unduly emphasize negative information."[76] Simplicity therefore is an even greater consideration in the labeling of fuels than in the labeling of AFVs.

In formulating its labeling requirements, the Commission sought to reconcile several competing concerns. As noted previously, EPA 92 directs the Commission to develop uniform labels disclosing appropriate cost and benefit information. However, in determining what information is appropriate, the Commission must consider the problems associated with developing and publishing such information on simple labels. Given this context, and after considering the comments, the Commission considered and rejected in the SNPR several alternative disclosures for dispenser labels suggested by various comments. The SNPR generated additional comments, however, as discussed below. An analysis of these comments has not persuaded the Commission to require any of the previously rejected disclosures.

a. *Octane rating.* In the SNPR, the Commission rejected a proposal that it require the posting of octane ratings for non-liquid alternative fuels. Three comments were submitted in response to that tentative determination in the SNPR. To prevent commercial, heavy-duty vehicle and fleet operators from misfueling and experiencing related problems, EMA recommended that the Commission require the posting of octane ratings for all non-liquid alternative fuels.[77] Due to the variability in the fuel quality of natural gas, Commercial Electronics recommended that the Commission require disclosure of CNG's octane rating.[78] API, however, stated that the non-liquid alternative fuel dispenser labels should not include octane ratings.[79]

After considering the comments submitted, the Commission has determined not to require the posting of octane ratings for CNG and hydrogen. To the extent that commercial fleet operators have their own fueling facilities, they can specify a required octane rating and insist in contracts with their suppliers that they determine such rating by an agreed method for the fuel purchased. Commercial operators might also obtain such information if, for example, it were posted voluntarily on fuel dispensers. Generally, however, as explained in the SNPR, the Commission concludes that octane ratings for alternative fuels are high enough to avoid engine knock problems in vehicles presently designed to use alternative fuels, and such ratings do not provide significant information relevant to vehicle performance of alternative fueled vehicles.[80] In addition, the octane ratings of a given type of alternative fuel would not vary significantly.[81] Further, there might be practical problems in implementing a reliable octane certification and posting program for alternative liquid automotive fuels, because of the lack of a standardized test method, such as an ASTM-approved test method for determining octane ratings of such fuels.[82]

There also are significant disadvantages to requiring octane posting and certification for alternative fuels. In particular, the Commission is reluctant to require a disclosure that might mislead consumers about the benefits of alternative fuels, the octane ratings of which exceed those of gasoline. Further, it might foster consumer misperceptions that higher octane necessarily signifies higher quality and better performance. Such a disclosure also might cause consumers to believe that gasoline and alternative fuels are interchangeable, or that different alternative fuels are interchangeable with one another.

b. *Comparative information based upon BTUs or gasoline-gallon-equivalents.* In the SNPR, the Commission considered but rejected proposals that the Commission require the use of alternative fuel labels that either: (1) advise consumers of the price of an alternative fuel and the quantity of the alternative fuel dispensed in terms of gasoline-gallon-equivalent ("GGE") units based on the energy contents of the alternative fuels, or (2) identify the heating value or energy content of a fuel expressed in British thermal units ("BTUs"). In response to the SNPR, the two comments addressing this issue supported the Commission's position, recommending that the Commission not adopt a labeling approach that would require disclosure of comparative information based upon BTUs or gasoline-gallon-equivalents.[83] Accordingly, for the reasons stated in the SNPR, the Commission is not requiring such disclosures on fuel dispenser labels.[84]

c. *Performance effects (cruising range).* In the SNPR, the Commission considered and rejected a proposal that the Commission require fuel dispenser labels to advise consumers that the cruising range of a vehicle when running on an alternative fuel will be less than when the vehicle is running on gasoline, due to the alternative fuel's lower energy content. In response to the SNPR, the one comment addressing this issue supported the Commission's position, opposing a requirement that dispenser labels include performance effects of the non-liquid alternative fuel.[85] Accordingly, for the reasons stated in the SNPR, the Commission is not requiring disclosure of performance effects as an element of fuel dispenser labels.[86]

However, the Commission recognizes that information relating to cruising range would be useful to consumers when choosing a vehicle or deciding whether to convert an existing vehicle to an alternative fuel. Therefore, the Commission has determined that information relating to cruising range would be appropriate on labels it is requiring for covered AFVs, as discussed in section III(C) *infra*.

d. *Compliance with material specifications.* In the SNPR, the Commission rejected a proposal that it require that dispenser labels indicate whether the fuel meets the alternative fuel specifications defined by the California Air Resources Board in

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[68] Although at present CNG vehicles apparently are designed to run on the broad range of methane content in available vehicle CNG, in the future manufacturers may design vehicles favoring specific, higher methane contents.

[69] *See* final rule §§ 309.1(q)(1) and 309.15 *infra*.

[70] Toyota, I–11, 2.

[71] *See* proposed rule § 309.15, 59 FR 59666, 59706, and final rule § 309.15 *infra*.

[72] Sokol, I–17, 1.

[73] CARB, J–3, 1.

[74] *See* final rule §§ 309.1(q)(2) and 309.15 *infra*.

[75] Federal Trade Commission, Study of a Uniform National Label for Devices That Dispense Automotive Fuels to Consumers (1993), at 29.

[76] *Id.*, at 29 n.152.

[77] EMA, I–6, 2–4.

[78] Comm Elec, I–8, 2–7.

[79] API, I–15, 1.

[80] 59 FR 59666, 59673. *See* AGA/NGVC, I–18, Attachment at 8 (The antiknock performance of natural gas is best for pure methane or methane/inert gas mixtures, and declines somewhat with increasing concentrations of non-methane hydrocarbons. This effect is not usually significant for the typical range of pipeline gas composition, but may become important [in the future] in high-compression engines burning unprocessed gas or propane-air mixtures).

[81] AGA/NGVC, G–6, 5–6 (octane levels for natural gas are not likely to vary at different retailers); and Phillips 66/NPGA (Tr.), 49–50.

[82] AGA/NGVC, I–18, Attachment at 8 (no standard octane testing methods exist for natural gas); Phillips 66/NPGA (Tr.), 49–50 (there are no standards for determining the octane ratings of CNG or hydrogen).

[83] API, I–15, 1; Mobil, I–2, 2 (In summary, comparative type cost data are not conducive to fuel labeling. Labels that provide consumer information already exist today in the form of pricing information that enables consumers to make choices and comparisons as required by section 406 of EPA 92. The National Conference on Weights and Measures is currently in the process of setting the measurement standard for alternative fuels. A uniform unit of measure, such as the gasoline equivalent gallon, will provide consumers additional economic information helpful in making informed purchasing decisions).

[84] 59 FR 59666, 59673–59674 (e.g., GGE disclosures are not conducive to keeping the fuel label simple, as required by EPA 92; this information is more an equipment metering issue that is more properly addressed by weights and measures organizations; the energy content of a fuel, as measured by its BTU rating, does not always accurately reflect actual fuel economy).

[85] API, I–15, 1.

[86] 59 FR 59666, 59674 (e.g., cruising range is not necessarily less when operating on an alternative fuel; a general statement on a fuel dispenser label relating to cruising range would not provide sufficient comparative information to consumers to enable them to make reasonable purchasing choices and comparisons between fuels of the same type).

1993.[87] In rejecting the proposal, the Commission stated, in part, that California's specifications were not developed by a consensus process, were developed for California's particular needs and, therefore, may not be practical for the rest of the country.[88] In the SNPR, the Commission also rejected a proposal that CNG dispenser labels indicate whether the fuel meets the Society of Automotive Engineers' ("SAE") "recommended practice" for CNG called J1616. In rejecting that proposal, the Commission stated that recommended practice SAE J1616 was issued as a guide to address the composition of natural gas used as an automotive fuel, not as a standard for CNG. The guide states it anticipates that a CNG standard will evolve, but emphasizes that experience and more technical knowledge are needed.[89]

Three comments responded to those determinations in the SNPR. These comments stated that inasmuch as consistent fuel quality is required to ensure proper vehicle operation, including emissions control, the Commission should require that dispenser labels indicate compliance or non-compliance with fuel quality specifications and refueling equipment standards, with specific references to each, when they are developed for CNG and hydrogen.[90] A disclosure based on accepted and approved fuel specifications and standards could provide meaningful comparative information to consumers relating to the quality of the fuel they are purchasing. However, the aforementioned comments appear to confirm that adequate, generally accepted standards and specifications suitable for nationwide use do not presently exist for most alternative fuels, and specifically do not exist for CNG or hydrogen. Therefore, the Commission has determined not to require that fuel dispenser labels guarantee the delivery of fuels meeting certain specifications.

The Commission, however, continues to favor the development of specifications and standards that define alternative fuels by a consensus standards-setting organization, such as ASTM, or by a government agency with appropriate engineering and technical expertise to set such specifications and standards for nationwide use. This type of standards development would include participation by affected parties such as alternative fuel producers and providers, engine manufacturers, regulators, consumers, and organizations or government agencies with pertinent technical expertise. It also would provide a mechanism for evaluating proposed test methods and procedures necessary to determine compliance with the standards. The Commission will monitor the development of alternative fuel standards and consider including them as an element of the dispenser labels when more information becomes available.

e. *Environmental benefits (emissions).* In the SNPR, the Commission considered and rejected a proposal that the Commission require fuel dispenser labels to generally advise consumers of the environmental benefits of alternative fuels.[91] In response to the SNPR, the one comment addressing this issue supported the Commission's position.[92] Accordingly, for the reasons stated in the SNPR, the Commission is not requiring that fuel dispenser labels indicate the environmental benefits of alternative fuels.[93]

However, the Commission recognizes that information relating to emissions and the environmental benefits of alternative fuels would be useful to consumers when choosing an alternatively fueled vehicle or deciding whether to convert an existing vehicle to an alternative fuel. Therefore, the Commission has determined that information relating to emissions would be appropriate on the labels it is requiring for covered AFVs, as discussed in section III(C) *infra*.

f. *Pressure.* In the SNPR, the Commission considered and rejected a proposal that the Commission require CNG dispenser labels to display the fueling pressure, either 2,400, 3,000 or 3,600 P.S.I. (pounds per square inch), and the nozzle type to indicate whether dispenser fueling pressure is compatible with CNG vehicle tank storage pressure.[94] The two comments on the Commission's SNPR proposal addressing this issue recommended that the Commission require that CNG dispenser labels indicate the nozzle type and corresponding fill pressure of the CNG dispenser, to avoid consumer inconvenience at the CNG fueling site.[95]

The Commission agrees that fueling pressure is useful information. The industry, however, already has taken independent steps to address this issue. Specifically, the industry has developed standards for pressure coding dispenser/vehicle CNG connectors so that consumers will not be able to overfuel a low pressure vehicle from a high pressure dispenser.[96] Further, the use of standard CNG vehicle fueling connectors complying with the ANSI/AGA NGV1 specification is required at public dispensing points by National Fire Protection Association safety standard 52 ("NFPA 52"), which is a fire code adopted by most, if not all, states.[97] Accordingly, the Commission has determined that requiring the disclosure of fueling pressure and nozzle type on CNG dispenser labels is unnecessary at this time.

g. *Safety warnings.* In the SNPR, the Commission considered but rejected proposing safety warnings as an element of the alternative fuel labels.[98] The one comment on the Commission's SNPR proposal addressing this issue recommended that the Commission require that non-liquid alternative fuel dispenser labels include information about the fuel's potential hazards and limitations on use.[99]

The Commission notes that safety standards for operation of motor vehicle fuel-dispensing stations are covered by the Uniform Fire Code.[100] Further, to some extent, the fuel labeling requirements, particularly those for electric vehicle ("EV") public dispenser systems, implicitly consider safety issues for refueling by directing consumers to the proper fuel dispenser. Beyond this (and fire code requirements that are already in place), consumers may find safety information about various fuels more pertinent when purchasing an AFV than when refueling. Thus, the Commission is not persuaded that including a safety warning statement on a fuel dispenser label would help consumers make reasonable fuel choices and comparisons. The Commission has determined that rather than require that safety disclosures appear on fuel dispenser labels, it will require a reference to DOE's consumer information brochure and DOT/NHTSA's Vehicle Safety Hotline on labels for covered AFVs, as discussed in section III(C) *infra*. The DOT/NHTSA Hotline acts as a clearinghouse and can refer consumers to other sources where, for example, information can be obtained about how to safely refuel CNG vehicles. Further, the Commission anticipates that a marketer's refueling instructions, whether appearing in an AFV owner's manual or on the fuel dispenser, will discuss or incorporate relevant safety measures. However, if in the future information demonstrates a need for the Commission to require safety-related disclosures on the dispenser labels, the Commission can revisit this issue.

h. *Refueling instructions.* In the SNPR, the Commission considered but rejected proposing refueling instructions as an element of the fuel dispenser labels. No comments were submitted regarding this tentative determination. Therefore, for the reasons stated in the SNPR, the Commission has determined not to require such disclosures.[101]

i. *Wobbe number.* In the SNPR, the Commission considered but rejected proposing the Wobbe number as an element of the CNG dispenser label. The one comment addressing this issue recommended that the Commission require that CNG fuel dispenser labels include the fuel's Wobbe number, a measure of its air-fuel metering properties.[102] Although AGA/NGVC recommended that the Commission require disclosure of the Wobbe number, it also pointed out that all gas pipelines and utilities monitor and control closely the Wobbe number of natural gas. For gas distributed in most of the United States, AGA/NGVC stated that the Wobbe number typically is maintained between 1320 and 1360, well within the range recommended for natural gas vehicle fuel by SAE J1616 (1300–1420).[103]

After considering AGA/NGVC's comment, the Commission is not persuaded that the purported benefits to consumers of including the Wobbe number on CNG labels are sufficiently significant to justify requiring its disclosure. Depending on the fuel metering technology, variations in the Wobbe number may slightly affect engine performance and emissions. The effect of variations in the Wobbe number for gaseous-fueled vehicles is similar to the effect of variations in the fuel energy content of gasoline in conventional vehicles. Further, modern spark-ignition engines are able to compensate for reasonable variations in the Wobbe number, just as they compensate for variations in gasoline energy content due to refining differences or use of alcohol blends.[104] Wobbe numbers for natural gas vehicle fuels also appear to be high enough to avoid engine problems in vehicles presently designed to use CNG. While the Wobbe number may be important to engine manufacturers and fuel producers as an important element of a fuel specification, it would not appear to provide consumers with significant additional information relevant to vehicle performance. Accordingly, the Commission has determined not to require disclosure of the Wobbe number on CNG dispenser labels.

4. Additional Requirements of Final Rule

a. *Label size and format.* In the SNPR, the Commission proposed that labels for non-liquid alternative fuels follow the same standardized size and format requirements as those for liquid alternative fuels under the Fuel Rating Rule.[105] Labels required by the Fuel Rating Rule are 3 inches wide by 2½ inches long, with process black type on an orange background.[106] Although section 406(a) does not specify size and format standards for alternative fuel labels, it directs the Commission "to establish uniform labeling requirements, to the greatest extent practicable." It also specifies that "[r]equired labeling under the rule shall be simple and, where appropriate, consolidated with other labels providing information to the consumer."[107]

Two comments addressed this proposal. Both supported the Commission's proposal because it promoted consistency in the labeling of all alternative fuels.[108] Accordingly, the Commission has determined to require that labels for non-liquid alternative fuels follow the same standardized size and format requirements as those for liquid alternative fuels under the Fuel Rating Rule.[109] Further, to keep the labels uniform and simple, the Commission is not requiring any label consolidation.

b. *Substantiation, certification, and recordkeeping requirements.* In the SNPR, to ensure the accuracy of the required dispenser labels, the Commission proposed substantiation, certification, and recordkeeping requirements for importers, producers, refiners and distributors of gaseous alternative fuels, and manufacturers and distributors of electric vehicle fuel dispensing systems. The Commission also proposed substantiation and recordkeeping requirements for retail sellers of the three non-liquid alternative vehicle fuels.[110] The Commission based its SNPR proposal on its conclusion that the requirements are justified because they are rationally related to the establishment of "uniform labeling requirements" that provide important information to consumers.[111] As described below, several comments addressed two aspects of the Commission's proposal. The comments related to who should bear the burden for substantiating the fuel rating for CNG, and whether a particular ASTM

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[87] See Specifications for Compressed Natural Gas, Title 13, California Code of Regulations, section 2292.5 (1993), B–41; Specifications for Hydrogen, Title 13, California Code of Regulations, section 2292.7 (1993), B–42.

[88] 59 FR 59666, 59674.

[89] Society of Automotive Engineers, "Recommended Practice for Compressed Natural Gas Vehicle Fuel," SAE J1616, B–40, 16.

[90] AAMA, I–16, 7–8; EMA, I–6, 2–4; NGVPA, I–19, 1.

[91] AMI, G–3, 2; Phillips 66/NPGA (Tr.), 51.

[92] API, I–15, 1.

[93] 59 FR 59666, 59675 (e.g., a statement on a fuel dispenser label advising consumers of the environmental benefits of alternative fuels would not provide sufficient information to assist consumers in making choices and comparisons between fuels of the same type).

[94] 59 FR 59666, 59675. See Flxible (Supp.), G–12, 2; Thomas BB, G–10, 1; Phillips 66/NPGA (Tr.), 51; AGA/NGVC (Tr.), 103–104.

[95] AAMA, I–16, 8; NGVPA, I–19, 1.

[96] See ANSI/AGA NGV1–1994 American National Standard For Compressed Natural Gas Vehicle (NGV) Fueling Connection Devices, attached to AGA/NGVC's comment, G–6.

[97] ANSI/NFPA 52 Compressed Natural Gas (CNG) Vehicular Fuel Systems, 1992, B–39. See also Stookey, *An Analysis of the 1994 Uniform Fire Code Requirements for CNG Fuel Stations*, Nat. Gas Fuels, June 1994, B–48, 27–30.

[98] 59 FR 59666, 59675.

[99] EMA, I–6, 3.

[100] For example, in July 1993, the voting membership of the Uniform Fire Code ("UFC") and Uniform Fire Code Standards adopted new regulations for the design, construction and operation of CNG motor vehicle fuel-dispensing stations. The UFC voting membership is a democratic code development organization that includes fire and building officials, design professionals, equipment manufacturers and trade organizations. The UFC's minimum requirements are primarily based on the requirements of NFPA 52, "Standard for CNG Vehicular Fueling Systems," 1992 edition. The Uniform Fire Code Standards are a model code that establishes requirements for building and site fire protection, the safe storage and use of hazardous materials, and the fire safety and fire protection designs of the Uniform Building Code. Article 52 of the 1994 UFC addresses the design, construction, commissioning and operation of all motor vehicle fuel-dispensing stations. See Stookey, *An Analysis of the 1994 Uniform Fire Code Requirements for CNG Fuel Stations*, Nat. Gas Fuels, June 1994, B–48, 27.

[101] 59 FR 59666, 59675 (e.g., this information can be expected to be provided voluntarily).

[102] AGA/NGVC, I–18, 8–11.

[103] *Id.* AGA/NGVC had previously opposed a Wobbe number disclosure, stating it would be so difficult to explain that consumers would not find it useful (AGA/NGVC (Tr.), 43).

[104] AGA/NGVC, I–18, Attachment at 5.

[105] See proposed rule § 309.17, 59 FR 59666, 59706–59707. Several comments received during this proceeding had recommended that labels for non-liquid alternative fuels follow the same size and format requirements as those for liquid alternative fuels under the Fuel Rating Rule. The reasons given for keeping the requirements the same were: to promote consistency, fairness and equity, and to keep information simple so that consumers can easily understand the labels (AGA/NGVC, G–6, 8; API, G–25, 4; Mobil, G–2, 4; NPGA, G–18, 4; RFA, G–5, 4; SIGMA, G–23, 1; Sun, G–1, 2; Thomas BB, G–10, 2).

[106] 16 CFR 306.12 (1994).

[107] In the NPR, the Commission proposed and rejected the idea of consolidating the non-liquid alternative fuel labels with other mandatory labels (59 FR 24014, 24018). The one comment addressing this issue agreed that consolidation would appear to provide no benefit and would only lead to public confusion (TVA, H–5, 1).

[108] API, I–15, 4; Mobil, I–2, 5.

[109] See 59 FR 59666, 59676. See also final rule § 309.17 *infra*.

[110] See proposed rule §§ 309.10–309.16, 59 FR 59666, 59704–59706.

[111] See 59 FR 59666, 59676–59679.

test method for determining the minimum molecular percent of CNG should be required. Because there were no comments on the other facets of the substantiation, certification and recordkeeping provisions proposed in the SNPR, the Commission has determined to issue them as proposed. These requirements are explained below.

In the SNPR the Commission proposed, in part, that *importers, producers* and *refiners* of natural gas comply with the proposed rule's CNG fuel rating determination, certification and recordkeeping requirements, which includes determining and certifying the minimum percentage of methane in natural gas.[112] The Commission based its proposal on its conclusion that it would be impractical, and probably more expensive to the consumer, to require *retail* sellers to test each delivery of a gaseous fuel. In making disclosures to consumers, retail sellers of alternative fuels, therefore, could rely on the accuracy of the information provided to them from gaseous fuel importers, producers, refiners and distributors.

Three comments recommended that the Commission not impose such requirements on importers and producers of natural gas because the requirements would be overly burdensome, and do not reflect current industry practice in the distribution of natural gas.[113] According to the comments, producers of natural gas currently adhere to a heating value specification as required by their customers (i.e., local natural gas distribution companies and/or natural gas utilities). Most producers currently do not test for or certify the methane content of the natural gas they sell. Furthermore, the comments state that this information would be of little value at the retail level because natural gas distributors (i.e., utilities) purchase natural gas from a multitude of producers, blend it together, test it, and distribute it for home and industry use, as well as for retail sale.[114]

Two of the comments recommended that the Commission require natural gas *distributors/utilities* to comply with the fuel rating determination, certification and recordkeeping requirements that the Commission proposed for natural gas importers and producers.[115] On the other hand, AGA/NGVC recommended that the fuel rating determination and recordkeeping requirements be imposed only on CNG *retailers* since they market the fuel to consumers. AGA/NGVC contended that if a retailer cannot verify the fuel rating, it can insist in contracts with its suppliers that they determine the fuel rating. Thus, companies interested in profiting from selling natural gas to retailers will view the testing as the cost of doing business and will decide whether to perform the test. AGA/NGVC also stated, though, that in some cases local utilities *will* be heavily involved in the marketing and selling of natural gas transportation fuel. In those instances, AGA/NGVC recommends that the Commission require such *distributors* to determine and certify the fuel rating of the natural gas they supply.[116] Unocal commented that the Commission should permit natural gas retailers to rely on their suppliers (*distributors/utilities*) for fuel rating certifications to substantiate the information displayed on the CNG dispenser labels.[117]

In response, the Commission notes that information about the methane content of natural gas would be useful to distributors who blend natural gas and transfer it as natural gas vehicle fuel, because they could use such information in determining and thereafter certifying its fuel rating.[118] The Commission notes further that, in most cases, it is necessary to upgrade natural gas to pipeline specifications in a gas processing plant before injecting it into the transportation and distribution network. In order to assure consistent combustion behavior, major natural gas pipelines generally impose specifications on the composition of the gas they will accept for transport. These specifications typically limit the percentage of propane, butane, and higher hydrocarbons, and stipulate acceptable ranges for the heating value, and the Wobbe number.[119] For example, water and hydrogen sulfide must be removed to prevent corrosion damage to the pipeline network, and excess amounts of higher hydrocarbons must be removed to prevent them from condensing under the high pressures in the gas transmission network. Thus, although natural gas producers may not have to adhere to a specific minimum methane pipeline specification, the methane content of the gas likely would fall within a fairly narrow range.

After considering the comments on its SNPR proposal, the Commission concludes that substantiation, certification, and recordkeeping requirements for importers, producers, refiners and distributors of gaseous alternative vehicle fuels, and manufacturers and distributors of electric vehicle fuel dispensing systems, and substantiation and recordkeeping requirements for retail sellers of non-liquid alternative vehicle fuels (including electricity) are necessary to ensure that the information posted on labels on retail fuel dispensers is accurate. The Commission is not persuaded that retail sellers of CNG are in a position to be held exclusively responsible for determining the accuracy of the fuel rating to be disclosed on the CNG dispenser labels. The Commission believes that the rule's requirements are consistent with current industry practice of conforming natural gas to minimum specifications for transport. But, the Commission believes that the comments from Unocal, API and AGA/NGVC could be addressed by further clarifying that the Commission's rule does not apply to producers of natural gas for residential, commercial and industrial purposes. Thus, the rule's fuel rating determination, certification and recordkeeping requirements apply to producers of natural gas only when transferred for use as a vehicle fuel. In this regard, the Commission expects that natural gas producers may wish to take reasonably prudent precautions to ensure that their customers understand the limited use for which the gas is being transferred, if they determine that the rule does not apply to them.

(1) Substantiation. The Commission's rule requires labeling disclosures of the type of non-liquid alternative vehicle fuel (including electricity), and of the minimum molecular percent (a more accurate description than volume of the content of a gas) of the principal component of each gaseous alternative vehicle fuel and of specific, limited information about the output of the electric vehicle fuel dispenser system. In accordance with the Commission's advertising substantiation doctrine, which requires sellers to have a reasonable basis to support material, objective claims,[120] the Commission is requiring that importers, producers, and refiners of non-liquid alternative vehicle fuel (other than electricity) have a reasonable basis, consisting of competent and reliable evidence, that substantiates the minimum molecular percent of the principal component that retailers must disclose on fuel dispenser labels. The rule further states that importers and producers may use private facilities for fuel rating determinations. This would be important to producers who do not have testing equipment of their own.[121] These requirements are consistent with the substantiation requirements of the Fuel Rating Rule,[122] which were mandated by the Petroleum Marketing Practices Act.[123]

For the minimum molecular percent content of hydrogen (the principal component) in hydrogen gas, the Commission proposed requiring that the reasonable basis be tests conducted according to ASTM D 1946–90. For the minimum molecular percent content of methane (the principal component) in CNG, the Commission proposed requiring that the reasonable basis be tests conducted according to ASTM D 1945–91. Three comments addressed the CNG testing issue. One comment supported requiring the use of ASTM D 1945–91.[124] AGA/NGVC opposed requiring the use of a specific test method. Instead, that comment suggested that the Commission afford sellers of CNG the flexibility to demonstrate that they possessed a reasonable basis consisting of competent and reliable evidence for their determination of the minimum methane content of CNG.[125] Commercial Electronics commented that other test methods are being developed to measure CNG fuel quality.[126]

After considering the record, the Commission concludes that it is important that sellers base objective disclosures on uniform measurements when recognized and accepted test methods are available. The aforementioned ASTM documents include test procedures, developed through the ASTM consensus process, to determine the chemical composition of hydrogen and CNG, respectively, including the molecular percent of hydrogen in hydrogen gas and methane in CNG. Because ASTM has issued test procedures to measure the minimum molecular percent of the principal components of hydrogen and CNG, the Commission is requiring use of the ASTM test procedures to substantiate those disclosures.[127]

For the minimum molecular percent content of any other component that importers, producers, or refiners wish to certify, the rule does not specify the test procedure that must be used, but only that they have a reasonable basis, consisting of competent and reliable evidence, to substantiate the claim. The Commission's approach to requiring substantiation without specifying a particular test method for components other than the principal component, allows sellers to rely on existing industry test procedures if they are reasonable and yield accurate results. For example, the California specifications list specific ASTM procedures to be used to determine the molecular percent of various components of CNG and hydrogen, in addition to the methane content of CNG and the hydrogen content of hydrogen gas. Because the Commission has not specified additional components that might be disclosed, it has no basis on the record to specify test procedures that must be used to measure them. The Commission, therefore, will accept, but not require, use of the ASTM test procedures cited in the California specifications as the required reasonable basis for voluntary disclosure of additional components of CNG and hydrogen that are included in those specifications.[128]

The rule also does not require that importers, producers, or refiners meet particular material specifications or standards for the common name they use to describe the non-liquid alternative vehicle fuel (other than electricity) they distribute, but that they have a reasonable basis, consisting of competent and reliable evidence, to substantiate the fuel rating they determine and certify to others.

Although the Commission has decided not to require that non-liquid alternative vehicle fuels conform to any specific material specification, the Commission's requirement that marketers disclose the principal component of each fuel should encourage the industry to develop uniform material specifications or standards for these fuels in consensus organizations to ensure the uniform quality of the fuels in the marketplace. The development of material specifications or standards for non-liquid (gaseous) alternative vehicle fuels should help facilitate acceptance of these fuels.

Similarly, manufacturers of electric vehicle fuel dispenser systems are required to have a reasonable basis, consisting of competent and reliable evidence, to substantiate the information retail sellers must post on labels on the electric vehicle fuel dispensers. For public electric vehicle fuel dispensing systems, the information the Commission requires to be disclosed can be determined using standard measuring devices or procedures. Therefore, accurate measurements made using standard electric industry procedures that are recognized as competent and reliable are sufficient to serve as the required reasonable basis.

Distributors and retail sellers may be able to rely on the fuel rating certifications they receive, as discussed *infra*, so their substantiation burden will be minimal. Distributors and retailers need not make the actual determinations unless they alter the fuel before selling it.[129]

(2) Certification. The Commission is requiring that importers, producers, refiners, and distributors of non-liquid alternative fuels (other than electricity), and that manufacturers and distributors of electric vehicle fuel dispensing systems certify to others to whom they distribute the information that retailers must post on fuel dispensers.[130] Importers, producers, and refiners of non-liquid alternative fuels (other than electricity) are required to certify to distributors their determination of the minimum molecular percent of the fuel's major component, and of any additional component they wish to disclose. Manufacturers of electric vehicle fuel dispensing systems are required to certify to distributors and/or retailers the information retailers are required to disclose on labels on fuel dispensers. Distributors of non-liquid alternative fuels (other than electricity) and of electric vehicle fuel dispensing

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[112] *See* proposed rule §§ 309.10, 309.11, 309.12, 59 FR 59666, 59704–59705.

[113] AGA/NGVC, I–18, 3–6; API, I–15, 1–5; Unocal, I–5, 2.

[114] *Id.*

[115] API, I–15, 4; Unocal, I–5, 2.

[116] AGA/NGVC, I–18, 4–6.

[117] Unocal, I–5, 2.

[118] *See* proposed rule § 309.13, 59 FR 59666, 59705.

[119] AGA/NGVC, I–18, Attachment at 3–4.

[120] *See Thompson Medical Co.*, 104 F.T.C. 648, 839 (1984) (Appendix), *aff'd*, 791 F.2d 189 (D.C. Cir. 1986), *cert. denied*, 479 U.S. 1086 (1987).

[121] *See* final rule § 309.10 *infra*.

[122] 16 CFR 306.5(b) (1994).

[123] 15 U.S.C. 2822.

[124] API, I–15, 4.

[125] AGA/NGVC, I–18, 7 (affording such flexibility would avoid unnecessary future actions by the Commission to amend its rule each time a new test procedure is developed).

[126] Comm Elec, I–8, 7.

[127] The Fuel Rating Rule did not require that specific ASTM test methods be used to satisfy the Rule's reasonable basis standard for liquid alternative fuels because existing ASTM test methods were undergoing verification review to determine whether they would be appropriate for use in establishing standards for the liquid alternative fuels. Further, the Commission was informed that other test methods were being developed that might serve equally well as part of a liquid alternative fuel standard. On the other hand, the Commission understands that the ASTM test methods it is requiring as a reasonable basis for determining the minimum molecular percentages of the principal components of CNG and hydrogen have been ASTM test methods for many years and have been recognized as competent and reliable procedures. Further, the Commission understands that no other test methods that could be used to make these determinations have been proposed to the California Air Resources Board or are under development by any standards-setting organizations. If additional test methods are developed in the future, the Commission will consider whether to include them among the required test methods.

[128] See further references to California's specifications in section III(B)(3)(d) *supra*.

[129] *See* final rule §§ 309.13(c), 309.15(c) *infra*.

[130] *See* final rule §§ 309.11, 309.13 *infra*.

systems are required to certify to retailers consistent with the certification they received.[131]

Importers, producers, and refiners of non-liquid alternative vehicle fuel (other than electricity) may make the certification in either of two ways:

(a) By including with each transfer a delivery ticket or other paper (such as an invoice, bill of lading, bill of sale, terminal ticket, delivery ticket or any other written proof of transfer). The delivery ticket or other paper must contain at least the importer's, producer's, or refiner's name, the name of the person to whom the non-liquid alternative fuel is transferred, the date of the transfer, the common name of the fuel and the minimum molecular percent of the fuel's major component, and of any additional component the importer, producer or refiner wishes to disclose.

(b) By giving the person to whom the fuel is transferred a letter or written statement, including the date, the importer's, producer's or refiner's name, the name of the person to whom the fuel is transferred, the common name of the fuel, and the minimum molecular percent of the fuel's major component, and of any additional component the importer, producer or refiner wishes to disclose. The letter or written statement is effective until the importer, producer, or refiner transfers non-liquid alternative vehicle fuel with a lower percentage of the major component, or of any other component claimed. At that time, the importer, producer, or refiner will have to certify the new information about the fuel with a new notice.[132]

Distributors of non-liquid alternative vehicle fuel (other than electricity) are required to make the certification in each transfer to anyone who is not a consumer. Distributors may make the required certification in either of two ways:

(a) By using a delivery ticket or other paper with each transfer, as outlined for importers, producers and refiners in item (a), above.

(b) By using a letter of certification, as outlined for importers, producers, and refiners in item (b), above.[133]

Manufacturers of electric vehicle fuel dispensing systems are required to make the certification in each transfer of such systems to anyone who is not a consumer. Manufacturers may do so in either of two ways:

(a) By including a delivery ticket or other paper with each transfer of an EV fuel dispensing system. It may be an invoice, bill of lading, bill of sale, delivery ticket, or any other written proof of transfer. It is required to contain at least the manufacturer's name, the name of the person to whom the EV fuel dispensing system is transferred, the date of the transfer, the model number or other identifier of the EV fuel dispensing system, and the information required to be disclosed on the retail fuel dispenser label.

(b) By placing clearly and conspicuously on the EV fuel dispensing system a permanent legible marking or permanently attached label that discloses the manufacturer's name, the model number or other identifier of the EV fuel dispensing system, and the information required to be disclosed on the retail fuel dispenser label. Such marking or label is required to be located where it can be seen after installation of the EV fuel dispensing system. The marking or label is deemed "legible," in terms of placement, if it is located in close proximity to the manufacturer's identification marking. This marking or label is required to be in addition to, and not as a substitute for, the label required to be posted on the public EV fuel dispenser at the point of retail sale.[134]

Distributors of electric vehicle fuel dispensing systems are required to make the certification in each transfer to anyone who is not a consumer. Distributors may do so in either of two ways:

(a) By using a delivery ticket or other paper with each transfer, as outlined for manufacturers of electric vehicle fuel dispensing systems in item (a) above.

(b) By using the permanent marking or label permanently attached to the system by the manufacturer, as outlined for manufacturers of electric vehicle fuel dispensing systems in item (b) above.[135]

These requirements are consistent with the certification requirements for sellers of liquid alternative fuels under the Fuel Rating Rule.[136]

(3) Recordkeeping. The Commission is requiring that importers, producers, and refiners of non-liquid alternative fuels (other than electricity) maintain records of the tests performed by or for them, or other data, that they rely upon as their required reasonable basis for their certifications.[137] The Commission likewise is requiring that manufacturers of electric vehicle fuel dispensing systems maintain records of the tests or measurements performed by or for them, or of other data or records, that they rely upon as their required reasonable basis for their certifications.[138] The Commission also requires that distributors and retailers of non-liquid alternative fuels (other than electricity) maintain records consisting of the certifications they receive from importers, producers, refiners, or distributors of non-liquid alternative fuels (other than electricity), and that distributors of electric vehicle fuel dispensing systems and retailers of electricity maintain records consisting of the certifications they receive from manufacturers or distributors of the systems.[139] The rule requires that these records be kept for one year. These requirements are consistent with those for sellers of liquid alternative fuels under the Fuel Rating Rule.[140]

c. *Effective date.* Section 406(a) of EPA 92 requires the Commission to issue its final labeling rules within one year of the NPR's publication, but does not specify when the rules shall become effective. In the SNPR, the Commission proposed making the non-liquid alternative fuels labeling requirements effective 90 days after publication of a final rule in the **Federal Register**.[141] In developing its SNPR proposal, the Commission considered how best to balance consumers' needs for comparative information with industry's need for a reasonable period of time to come into compliance.[142] The one comment on this issue supported the proposed effective date.[143] The Commission, therefore, has determined to make the non-liquid alternative fuels labeling requirements effective 90 days after publication of a final rule in the **Federal Register**.[144]

d. *Periodic updating of labels.* In the SNPR, the Commission proposed no specific timetable for future reviews of the final labeling rules, although it recognized that section 406(a) of EPA 92 requires the Commission to update its labeling requirements "periodically." The Commission determined not to specify a timetable after analyzing comments encouraging it to review the rule as consensus specifications are developed for alternative fuels, as new alternative fuels enter the marketplace and as technology develops.[145] The Commission received no comments addressing this aspect of its SNPR proposal.

Based on other comments in this proceeding, and recognizing that it cannot predict when new relevant developments may occur, the Commission has determined not to establish a specific timetable for future reviews of the final rule. As required by section 406(a) of EPA 92, the Commission intends to conduct reviews to update the rule periodically, as needed, to take into consideration relevant developments, such as when DOE designates new non-liquid alternative fuels. The rule, however, will be reviewed at least once every ten years pursuant to the Commission's ongoing regulatory review project.

C. Labeling Requirements for AFVs

Twenty-one of the 24 comments received in response to the SNPR addressed some aspect of the Commission's proposed labeling requirements for AFVs. These comments addressed either the scope of the proposed labeling requirements (i.e., which vehicles would be covered by the labeling requirements) or the proposed rule's disclosures (i.e., what information would be required to be displayed on labels and how that information would be displayed).[146] Those comments, and the Commission's modifications to the proposed rule in response to those comments, are discussed below.

1. Scope of the AFV Labeling Requirement

In its SNPR, the Commission proposed that the scope of its AFV labeling requirements be based upon, or derived from, existing pertinent federal regulations. Eleven comments addressed this aspect of the AFV labeling requirements. Six other comments indicated general support for the Commission's labeling proposal, but did not address this specific issue.[147] The remaining five addressed one or more issues pertaining to the scope of the AFV labeling requirements, as discussed below.

a. *Covered AFVs.* In the SNPR, the Commission considered whether its labeling requirements should apply to all AFVs, as that term is defined in EPA 92, or whether they should apply to only certain vehicles. As defined by that statute, an AFV is either "a dedicated vehicle or a dual fueled vehicle."[148] As further defined, a "dedicated vehicle" means an automobile (or other self-propelled vehicle), designed for transporting persons or property on a street or highway, that operates solely on alternative fuel.[149] Similarly, a "dual fueled vehicle" is an automobile (or other self-propelled vehicle), designed for transporting persons or property on a street or highway, that is capable of operating on alternative fuel and on gasoline or diesel fuel.[150] As such, the statutory scope of an "AFV" is quite wide and includes tour buses, transit buses, heavy-duty commercial trucks, and large motor homes.

After considering the practicality and appropriateness of including all AFVs within the scope of its labeling requirements, the Commission proposed in the SNPR to exclude AFVs with gross vehicle weight ratings ("GVWR"[151]) over 8,500 lbs. The SNPR included a definition of "covered vehicles" (i.e., in substance, AFVs under 8,500 lbs. GVWR), in the proposed rule.[152] The Commission derived that definition from EPA 92's definition of the term "light duty motor vehicles," a term given special significance by that statute.[153] EPA 92's definition of that term references two vehicle classifications used by the Clean Air Act (light duty trucks or light duty vehicles) "of less than or equal to 8,500 pounds [GVWR]."[154] The Clean Air Act[155] in turn refers to existing EPA definitions of both vehicle classifications.[156] Thus, the proposed definition of "covered vehicle" basically encompassed the same category of vehicle referenced in EPA 92's fleet acquisition requirements.

Three comments specifically addressed this issue. AAMA[157] and EMA supported excluding AFVs over 8,500 lbs. GVWR from the scope of the AFV labeling requirements.[158] However, these comments also suggested that one element of the SNPR's definition of "covered vehicle" be modified to exclude vehicles configured "with special features enabling off-street or

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[131] *See* final rule § 309.13 *infra*. If distributors blend fuels, § 309.13(c) of the rule requires them to substantiate the minimum percentage of the principal component according to the requirements of § 309.10, and certify that information to their non-consumer customers.

[132] *See* final rule § 309.11 *infra*.

[133] See final rule § 309.13 *infra*.

[134] *See* final rule § 309.11 *infra*.

[135] *See* final rule § 309.13 *infra*.

[136] 16 CFR 306.6, 306.8 (1994).

[137] *See* final rule § 309.12 *infra*.

[138] *Id*.

[139] *See* final rule §§ 309.14, 309.16 *infra*.

[140] 16 CFR 306.7, 306.9, 306.11 (1994).

[141] The effective date of the final amendments adding liquid alternative fuels to the Fuel Rating Rule was less than 90 days after publication of the final rules in the **Federal Register**. The final rules were published on August 3, 1993. They became effective on October 25, 1993, as required by EPA 92. 58 FR 41356.

[142] The Commission based the SNPR proposal on an analysis of several comments stating that the proposed 90-day time period gave sufficient time for covered parties to comply with the proposed requirements. One comment contended, however, that at least six months was necessary. 59 FR 59666, 59679.

[143] Mobil, I–2, 6.

[144] *See* 59 FR 59666, 59679. In contrast, the effective date for the AFV labeling requirements is 180 days after publication in the **Federal Register**. *See* discussion in section III(C)(5) *infra*.

[145] *See* discussion of comments of API, CEC, and TVA in the SNPR, 59 FR 59666, 59679.

[146] Two of the three other comments were limited to encouraging metric disclosures on AFV labels. *See* Mechtly, I–1, Sokol, I–17, discussed *infra* section VI. The third comment was limited to the SNPR's proposal as it related to alternative fuels. Unocal, I–5.

[147] AGA/NGVC, I–18, 2, 3; Boston Edison/EEI, I–14, 4; Comm Elec, I–8, 8; EIA/EEU–ISD, I–4, 1; NAFA, I–10, 1, 2; RFA, I–3, 1–2.

[148] 42 U.S.C. 13211(3) (Supp. IV 1993).

[149] *See* 42 U.S.C. 13211(6) (Supp. IV 1993) (a "dedicated vehicle" is either a "dedicated automobile," as defined in 15 U.S.C. 2013(b)(1)(C) (Supp. IV 1993), or a "motor vehicle," as defined in 42 U.S.C. 7550(2), other than an automobile, that operates solely on alternative fuel).

[150] *See* 42 U.S.C. 13211(8) (Supp. IV 1993) (a "dual fueled vehicle" is either a "dual fueled automobile," as defined in 15 U.S.C. 2013(b)(1)(D) (Supp. IV 1993), or a "motor vehicle," as defined in 42 U.S.C. 7550(2), other than an automobile, that is capable of operating on alternative fuel and on gasoline or diesel fuel).

[151] EPA defines GVWR as a vehicle's actual weight (including all standard and optional equipment and fuel) plus 300 pounds. *See* 40 CFR 86.082–2 (1993) (defining "GVWR," "loaded vehicle weight," and "vehicle curb weight").

[152] *See* proposed rule § 309.1(f) (defining "covered vehicle"), 59 FR 59666, 59703. The term "covered vehicle" was derived from the Energy Policy and Conservation Act's ("EPCA") use of the term "covered product." *See* 42 U.S.C. 6291(a)(2), 6292(a) (statute's scope defined in terms of enumerated consumer products); 16 CFR 305.2, 305.3 (1994) (same for Commission's Appliance Labeling Rule implementing EPCA).

[153] Three of EPA 92's five "major" alternative-fuel provisions impose minimum vehicle-acquisition requirements on designated entities (i.e., the Federal government; alternative fuel providers; and other non-Federal fleets). H. Rep. No. 102–474(I), 102d Cong., 2d Sess. 137, *reprinted in* 1992 U.S.C.C.A.N. 1954, 1960. For alternative fuel providers and other non-Federal fleets, the vehicles covered by those mandates are "light duty motor vehicles." *See* 42 U.S.C. 13251 (Supp. IV 1993) (mandatory acquisition requirement for alternative fuel providers); 42 U.S.C. 13257 (Supp. IV 1993) (contingent acquisition requirement for other non-Federal fleet operators).

The Federal fleet is required to acquire "light duty [AFVs]," a term not defined in EPA 92, instead of "light duty motor vehicles." *See* 42 U.S.C. 13212 (Supp. IV 1993) (mandatory acquisition requirement for Federal government). Neither the statute nor its legislative history suggests that those terms have different meanings and the discrepancy may have been inadvertent. In any event, it appears that the intent was to tailor the Federal fleet's acquisition requirement to certain AFVs.

[154] 42 U.S.C. 13211(11) (Supp. IV 1993) ("The term 'light duty motor vehicle' means a light duty truck or light duty vehicle, as such terms are defined under section 216(7) of the Clean Air Act (42 U.S.C. 7550(7)), of less than or equal to 8,500 pounds [GVWR].").

[155] 42 U.S.C. 7550(7) (the terms "light duty truck" and "light duty vehicle" "have the meaning provided in regulations promulgated by the [EPA] Administrator and in effect as of the enactment of the Clean Air Act Amendments of 1990").

[156] A light duty truck is defined as "[a]ny motor vehicle rated at 8,500 pounds GVWR or less which as (sic) a vehicle curb weight of 6,000 pounds or less and which has a basic vehicle frontal area of 45 square feet or less, which is (1) Designed primarily for purposes of transportation of property or is a derivation of such a vehicle, or (2) Designed primarily for transportation of persons and has a capacity of more than 12 persons, or (3) Available with special features enabling off-street or off-highway operation and use." 40 CFR 86.082–2 (1993). A light duty vehicle is defined as "a passenger car or passenger car derivative capable of seating 12 passengers or less." *Id*.

[157] Three comments fully supported AAMA's comment. Chrysler, I–13,n1; Ford, I–4, 2; NGVPA, I–19, 1.

[158] AAMA, I–16, cover letter at 1; EMA, I–6, 1–2.

off-highway operation and use." [159] It appears that this suggestion may have been based upon their belief that consumers considering such vehicles would not likely make choices and comparisons based upon simple labels. The City of Chicago, however, generally supported including all AFVs within the scope of the AFV labeling requirements without specifically addressing the Commission's proposal.[160]

After considering the record, the Commission has determined to issue its SNPR proposal as to this subject with one modification. As noted previously, the Commission must issue uniform labeling requirements for AFVs only "to the greatest extent practicable." [161] Labeling requirements for all such vehicles might help educate consumers about the general availability of AFVs of all sizes. However, the Commission has concluded that consumers considering vehicles over 8,500 lbs. GVWR would not likely make choices and comparisons based on the cost-benefit information contained in a simple label.[162] The Commission also considered including all AFVs (regardless of weight) and developing different label formats tailored to the apparently different needs of light and heavy-duty AFV consumers. This did not appear to be practical because heavier vehicles are typically custom ordered. While these evaluations may change in the future, for now at least it seems likely that for consumers considering such vehicles, disclosures in a labeling format may not be appropriate, useful, or timely. The Commission also notes that EPA's fuel economy requirements (disclosing fuel economy information in window stickers) do not apply to vehicles over 8,500 lbs. GVWR.[163] As a result, the Commission has determined that, at the present time, AFVs over 8,500 lbs. GVWR will not be included within the scope of its AFV labeling requirements.

For similar reasons, the Commission has also determined that it should modify its definition of "covered vehicle" by excluding from its scope "off-street" or "off-highway" vehicles. Such vehicles would more likely be acquired for specialized commercial uses, instead of general commercial or individual use. The Commission also notes that EPA's fuel economy requirements (disclosing fuel economy information in window stickers) do not apply to such vehicles.[164] As such, the Commission believes that consumers considering such vehicles would not likely make choices and comparisons based on the cost-benefit information contained in a simple label. Accordingly, such vehicles are excluded from the AFV labeling requirements.

b. *AFV Manufacturers and Conversion Companies.* Another facet of the proposal regarding covered AFVs involved conversions (i.e., existing conventional-fuel vehicles reconfigured to permit operation on alternative fuel) and what entity would be responsible for compliance. In developing the proposed rule, the Commission took particular note of recently-issued EPA regulations addressing this subject. Those regulations implemented a provision of the 1990 Clean Air Act Amendments ("CAAA") deeming that "person[s] who convert conventional vehicles to clean-fuel vehicles" are "manufacturers," and thus responsible for complying with some or all of EPA's certification, production, line testing, in-use testing, warranty, and recall requirements.[165] In the preamble announcing those regulations, EPA noted that two entities could be considered the "person who converts": the person who *installs* the conversion kit (i.e., the hardware converting the vehicle to alternative fuel), or the person who *manufactures* the conversion kit.[166] After considering the advantages and disadvantages of assigning liability to either entity, EPA concluded that assigning liability strictly to either entity was not appropriate. Instead, it determined it should assign liability based on which party was in the best position to be familiar with pertinent vehicle-performance characteristics.

Interpreting its own regulations, EPA determined that the entity best suited to comply with these requirements was the entity (kit installer, manufacturer, or other) who had applied for and received a certificate of conformity that the vehicle meets appropriate EPA emission standards.[167] Based on public comment received during that proceeding, EPA anticipated that in most cases the kit manufacturer would be the certifying party because this entity would be in the best position to perform the required certification testing.[168] Accordingly, EPA further expected that its regulations would encourage certifiers to develop oversight programs and enter into indemnification agreements with installers to insure that installations were performed properly.[169]

In considering the issue of AFV conversions, the Commission noted that section 406 does not address the issue of AFV conversions. The Commission's intent in considering this topic was to address what the Commission understood was a significant segment of the AFV industry. DOE has noted that: "Because of the limited availability and selection of [OEM] vehicles, conversions are providing a transition to the time when automakers produce more [AFVs] for public sale." [170]

The demand for AFVs is being driven, at least in part, by the acquisition requirements for centrally fueled fleets contained in the 1990 CAAA.[171] Those requirements "may be met through the conversion of existing or new gasoline or diesel-powered vehicles to clean-fuel vehicles." [172] Parties affected by those mandates, as well as others interested in achieving the clean-air benefits of driving AFVs, may have an incentive to

[159] *See* proposed rule § 309.1(f)(2)(iii), 59 FR 59666, 59703; AAMA, I–16, cover letter at 1; EMA, I–6, 2.

[160] Chicago, J–2, 2. AAMA and Mobil also made the general observation that definitions in the AFV labeling requirements should be consistent with other regulatory plans. AAMA, I–16, 7 ("The definitions used in the regulation must be consistent with those used by other regulatory agencies."); Mobil, I–2, 8 ("As long as the definition in this rule is coordinated with DOE, then this rulemaking will be consistent with forthcoming EPAct rules from DOE."). AAMA further commented that "common definitions would also be useful." AAMA, I–16, 7. It did not specify, however, how the FTC should determine where "common definitions," as opposed to definitions used by other agencies, would be more appropriate.

[161] 42 U.S.C. 13232(a) (Supp. IV 1993).

[162] EMA, G–21, 2, 3–4, 7, (Tr.), 123. EMA cited examples where the considerations relevant to ordering a heavy-duty AFV were summarized in an OEM's 25-page sales brochure and a 400-page truck data book. EMA (Supp.), G–21, 2–3. *See also* AAMA, G–7, 3–4, (Tr.), 124 (purchasing decision "will already have been made long before [purchaser] walks into the showroom and sees the label"); Fixible (Supp.), G–12, 1–3 (window stickers should be for vehicles purchased for personal use and from dealer lots, i.e., under 8,500 lbs. GVWR), (Tr.), 134 (rule should be limited to passenger-type vehicles). Chrysler and Ford supported AAMA's position that these vehicles should be excluded from the scope of the Commission's AFV labeling requirements. Chrysler, G–13, 1; Ford, G–14, 1.

[163] EPA (Tr.), 122; 40 CFR 600.002–85(4)(iii) (1993).

[164] *See* 40 CFR 600.002–85(4) (defining "automobile").

[165] 42 U.S.C. 7587(c); Emission Standards for Clean-Fuel Vehicles and Engines, Requirements for Clean-Fuel Vehicle Conversions, and California Pilot Test Program ("Fleet Standards Rule"), 59 FR 50042, 50061–50062, Sept. 30, 1994.

[166] Fleet Standards Rule, 59 FR 50042, 50061.

[167] Fleet Standards Rule, 59 FR 50042, 50062.

[168] Fleet Standards Rule, 59 FR 50042, 50061–50062.

[169] Fleet Standards Rule, 59 FR 50042, 50061–50062, 50064. Given the nature of their liability, EPA noted that "[k]it manufacturers would be wholly within their rights to require such indemnification agreements before allowing installers to install their kit." Fleet Standards Rule, 59 FR 50042, 50062.

[170] B–3, inside front cover.

[171] The CAAA's acquisition requirements are in addition to similar requirements, described *infra* section III(C)(1)(c), imposed by EPA 92.

[172] 42 U.S.C. 7587(a).

convert existing vehicles to alternative fuel. The Commission therefore believed that it should address this issue in this proceeding to the greatest extent practicable, and thereby help consumers compare different alternative fuels and conversion systems.

Accordingly, in the SNPR, the Commission proposed that the entity responsible for complying with the labeling requirements for new covered vehicles [173] would be the vehicle's "manufacturer." The proposed rule defined "manufacturer" as "the person who obtains a certificate of conformity that the vehicle complies with the standards and requirements of [EPA's emission and clean-fuel vehicle regulations]." [174] Under the proposed rule, manufacturers of new covered vehicles would be required to affix (or cause to be affixed) new vehicle labels on each such vehicle prior to its being offered for acquisition by consumers.[175] If, however, an "aftermarket conversion system" (i.e., a conversion kit) [176] is installed on a vehicle by a person other than the manufacturer prior to being acquired by a consumer, the manufacturer would be responsible for providing that person with the objective information regarding that vehicle required by the proposed rule.[177]

The Commission's intent in formulating these definitions was to distinguish between two different categories of conversions based on whether a vehicle was converted to alternative fuel before or after it is delivered to the first consumer. Conversions performed *before* a vehicle is delivered to a first consumer bear similarities to OEM AFVs because in both circumstances the vehicles are configured to alternative fuel before delivery to the first consumer. In the SNPR, the Commission tentatively determined that consumers considering these converted AFVs would thus have equal need for comparative information as consumers considering other "new" vehicles.[178] It therefore proposed to include such conversions within the scope of its AFV labeling requirements.

As to the second category, the Commission proposed that companies performing conversions *after* the vehicle is delivered to a consumer (so called "aftermarket conversions") should be excluded from the AFV labeling requirements because those consumers would have already been educated about the costs and benefits of alternative fuels.[179] The Commission based that proposal on its determination that consumers considering conversion of existing vehicles would not benefit from a "labeling" requirement, and that the circumstances surrounding such conversions may make such a requirement impractical or unnecessary.[180] For example, the Commission understood that some consumers convert their vehicles themselves without utilizing the services of a conversion installation company. Further, companies performing conversions, at a consumer's request, would have nothing to label until the consumer had already decided to do a conversion, and labeling the vehicle post-conversion would not be helpful,[181] as consumers presumably already have evaluated alternative fuels in deciding to have their vehicle converted. Finally, requiring conversion companies to disclose objective information as to comparative factors will likely be problematic because such information can vary with the vehicle's condition.[182]

In any event, the Commission noted that DOE has addressed conversions of existing vehicles in its consumer information brochure.[183] Some of the information contained in that brochure is general (e.g., electric vehicle conversions "are available in larger metropolitan areas. Contact OEM dealer for qualified converter and warranty information"),[184] while some is more specific and objective. For example, the brochure notes that converting an existing conventional-fueled vehicle to CNG "costs about $2,700 to $5,000 per vehicle." [185] Given the apparent impracticalities surrounding a requirement for aftermarket alternative-fuel conversions, and the availability of pertinent information in DOE's brochure, the Commission proposed excluding from its AFV labeling requirements situations where conventional fueled vehicles are converted to alternative fuel after being acquired by consumers.[186]

Four comments addressed this issue. AAMA and Mobil generally observed that definitions in the AFV labeling requirements should be consistent with other regulatory plans.[187] Regarding the substance of the Commission's proposal, Electro Auto generally supported exempting aftermarket conversions while the City of Chicago opposed such an exemption because it believed that future buyers of AFVs should have access to the same information as buyers of original equipment.[188] Comments previously filed agreed that all vehicles designed and assembled by OEMS to operate on alternative fuel should be included within the scope of the Commission's AFV labeling requirements.[189]

After considering the record, the Commission has determined to adopt the SNPR proposal regarding which conversions are covered without modification. Because harmonizing regulatory approaches, when practicable, is appropriate and desirable, the Commission has based its approach to determining which entities are responsible for complying with its AFV labeling requirements on EPA's regulations addressing the same issue. The Commission has determined to designate the certifier as being responsible for compliance with these requirements because that entity will be in the best position to know the vehicle's performance attributes. The Commission also expects that certifiers will take steps to insure compliance with this revised labeling proposal by installers, such as developing oversight programs and entering into

[173] AFV labeling requirements for used covered vehicles are discussed *infra* section III(C)(1)(d).

[174] Proposed rule § 309.1(r), 59 FR 59666, 59704.

[175] Proposed rule § 309.20(a)(1), 59 FR 59666, 59707.

[176] *See* proposed rule § 309.1(b) (defining "aftermarket conversion system"), 59 FR 59666, 59707. This definition was derived from a recently-issued EPA definition of the same term. *See* 59 FR 48472, 48490, to be codified at 40 CFR 85.502(c).

[177] *See* proposed rule § 309.20(a)(2), 59 FR 59666, 59707. Specific data proposed to be disclosed on labels for new covered AFVs is discussed *infra* section III(C)(2)(a).

[178] See AGA/NGVC (Supp.), G–6 ("We agree with the FTC and others that vehicles that are converted prior to being delivered to the first time buyer should be labeled in the same fashion as other 'new' vehicles."); ETC, G–24, 4 ("All vehicles that are considered 'new' vehicles, regardless of whether they are sold by an original equipment manufacturer or a converter or upfitter, should be subject to the labeling requirement."). Commenters responding to the Commission's ANPR were in similar agreement. *See* 59 FR 24014, 24016 nn. 53, 54 and accompanying text.

[179] AGA/NGVC (Supp.), G–6, 3–4, (Tr.), 231–232; ETC, G–24, 4.

[180] DOE, E–10, 3–4 ("It would be more difficult, and perhaps unnecessary, for in-use vehicles (already owned and operated) that are converted to use alternative fuels during their vehicle life to meet the AFV labeling requirements.").

[181] Further, as noted, requiring disclosure other than in a labeling format may be beyond the scope of the Commission's authority under EPA 92. *See supra* section III(A).

[182] EPA (Tr.), 220.

[183] EPA 92 requires that DOE's information package "include information with respect to the conversion of conventional motor vehicles to [AFVs]." 42 U.S.C. 13231 (Supp. IV 1993).

[184] B–3, 16.

[185] B–3, 23.

[186] *See* proposed rule § 309.20(a)(2) (limiting labeling requirements for new covered vehicles to conversion systems installed "prior to such vehicle's being acquired by a consumer"), 59 FR 59666, 59707.

[187] AAMA, I–16, 7; Mobil, I–2, 8.

[188] Chicago, J–2, 1, 2, 3; Electro Auto, I–7, 1.

[189] *See, e.g.*, Boston Edison (Supp.), G–26, 13; ETC, G–24, 4.

indemnification agreements with installers to insure that accurate labels are posted as required.

c. Acquisitions by consumers. In the SNPR, the Commission proposed that its labeling requirements apply to covered vehicles offered for "acquisition" to consumers.[190] The intent of this proposal was to include purchases and long-term leasing arrangements within the scope of the AFV labeling requirements. The Commission also proposed to define the term "consumer" to include individuals, corporations, partnerships, associations, States, municipalities, political subdivisions of States, and agencies, departments, or instrumentalities of the United States.[191] Responding to this aspect of the Commission's proposal, AAMA and Mobil generally observed that definitions in the AFV labeling requirements should be consistent with other regulatory plans.[192]

After considering the record, the Commission has determined to issue its SNPR proposal as to this subject without modification. As to the definition of "consumer," the proposed definition of this term was derived from section 302(e) of the 1990 Clean Air Act Amendments[193] and EPA's regulation implementing that section, 40 CFR § 88.302–94 (1993). The Commission believes that this definition properly includes within its scope all affected interests.

As to leasing arrangements, because Congressional mandates will require consumers to "acquire" AFVs,[194] the Commission has determined that its AFV labeling requirements should include such arrangements to the greatest extent practicable to further EPA 92's legislative purpose. In determining what is practicable, the Commission believes that consumers entering into leasing arrangements may have different information needs depending upon the length of the arrangement. For example, consumers entering into long-term leasing arrangements often do so for commercial purposes, and make leasing choices based on evaluating factors pertinent to a commercial acquisition. These persons likely would need the same vehicle information as purchasers and should be covered by the rule. Consumers entering into short-term arrangements (e.g., weekend rentals to the general public for non-commercial purposes) may or may not have similar or equal need for pertinent information, but it seems unlikely that consumers entering into short-term leasing arrangements would make decisions based upon information disclosed in a label. In any event, they may not view the vehicle until after it has been leased. As a result, the labels would not help consumers make choices and comparisons. Accordingly, the Commission has determined that including short-term leasing arrangements in the final rule is not necessary.

The final rule defines an acquisition as including either of the following: (1) acquiring the beneficial title to a covered vehicle; or (2) acquiring a covered vehicle for transportation purposes pursuant to a contract or similar arrangement for a period of 120 days or more.[195] This definition was derived from a recent EPA regulation implementing aspects of the 1990 Clean Air Act Amendments,[196] which used the 120 day period as the dividing line between short and long-term leases. In the preamble announcing that regulation, EPA determined that the 120 day period is slightly longer than a calendar season and that leases of less than that period were therefore short-term and temporary.[197] The Commission finds that the 120 day period reflects a reasonable demarcation between short- and long-term rentals, and therefore has adopted EPA's determination.

d. Used AFVs. In the SNPR, the Commission tentatively determined that both new and used AFVs should be included within the scope of its labeling requirements, but that they should be subject to different requirements. The proposed rule defined the terms "new covered vehicle" and "used covered vehicle" and established labeling requirements as to each classification.[198] Under the proposed rule, a new covered vehicle was defined as a covered vehicle which has not yet been acquired by a consumer,[199] while a used covered vehicle was defined (in substance) as a covered vehicle which previously has been acquired by a consumer.[200] The proposed rule also defined the terms "new vehicle dealer"[201] and "used vehicle dealer."[202]

Because requiring the disclosure of comparative information on used AFVs was deemed problematic,[203] the proposed rule established two labeling formats (i.e., new vehicle labels[204] and used vehicle labels[205]) disclosing different types of information for new and used covered AFVs.[206] For example, because some cost-benefit information is included on temporary window stickers (e.g., EPA's fuel economy rating) or in vehicle owner's manuals, a used AFV dealer may not always possess such information. In any event, some comparative information (e.g., EPA's fuel economy rating) could vary significantly with the vehicle's condition.[207] Requiring disclosure of information based on the vehicle's condition when new could therefore create a risk of misleading consumers.[208] To address one problem inherent in such a disclosure (i.e., the unavailability of pertinent information), the Commission has considered requiring that disclosures be displayed on permanent vehicle labeling.[209] However, this option would not surmount the more basic problem that objective information may no longer accurately reflect the vehicle's present condition

[190] *See* proposed rule §§ 309.20(a)(1) (new covered vehicles), 309.21(a) (used covered vehicles), 59 FR 59666, 59707.

[191] *See* proposed rule § 309.1(d) (defining "consumer"), 59 FR 59666, 59703.

[192] AAMA, I–16, 7; Mobil, I–2, 8.

[193] 42 U.S.C. 7602(e) (defining "person").

[194] For example, EPA 92 requires that, "The Federal Government shall acquire at least 5,000 light duty [AFVs] in fiscal year 1993." 42 U.S.C. 13212(a)(1)(A) (Supp. IV 1993).

[195] *See* proposed rule § 309.1(a) (defining "acquisition"), 59 FR 59666, 59703.

[196] Clean Fuel Fleet Program; Definitions and General Provisions, 58 FR 64679, 64689–64690, Dec. 9, 1993 (defining the phrase "owned or operated, leased or otherwise controlled by such person" as used in section 241(5) of the 1990 Clean Air Act Amendments, 42 U.S.C. 7581(5)).

[197] 58 FR 64679, 64689, 64690 (excluding leases under 120 days from Clean Fuel Fleet Program).

[198] *See* proposed rule §§ 309.20 ("Labeling requirements for new covered vehicles"), 309.21 ("Labeling requirements for used covered vehicles"), 59 FR 59666, 59707.

[199] *See* proposed rule § 309.1(t) (defining "new covered vehicle"), 59 FR 59666, 59704.

[200] *See* proposed rule § 309.1(dd) (defining "used covered vehicle"), 59 FR 59666, 59704. This definition was derived from the Commission's definition of the term "used vehicle" in its Used Car Rule, 16 CFR 455.1(d)(2) (1994).

[201] *See* proposed rule § 309.1(u), 59 FR 59666, 59704. This definition was derived from EPA's definition of the term "dealer," the entity responsible for maintaining fuel economy labels on new automobiles. *See* 40 CFR 600.002–93(a)(18) (1993) (defining "dealer"). Under EPA's regulations, consumers selling used automobiles are not required to post or maintain fuel economy labels. In this final rule, the Commission similarly intends that individual consumers not be required to comply with the AFV labeling requirements.

[202] *See* proposed rule § 309.1(ee), 59 FR 59666, 59704. This definition was derived from the Commission's definition of "dealer" in its Used Car Rule, 16 CFR 455.1(d)(3) (1994).

[203] ETC, G–24, 4; RFA (Tr.), 217.

[204] *See* proposed rule § 309.1(v) (defining "new vehicle labels"), 59 FR 59666, 59704.

[205] *See* proposed rule § 309.1(ff) (defining "used vehicle labels"), 59 FR 59666, 59704.

[206] *See* proposed rule §§ 309.20(e) (new covered vehicles) and 309.21(e) (used covered vehicles), 59 FR 59666, 59707.

[207] EPA (Tr.), 220.

[208] *Id.*

[209] Chicago, J–2, 2 (permanent labeling on all AFVs would help state and local governments enforce regulations pertaining to preferential parking and other transportation control measures).

(and thus would not form a valid basis upon which to make reasonable choices and comparisons).[210]

Three comments addressed this issue. AAMA supported including used vehicles within the scope of the AFV labeling requirements.[211] Electro Auto stated that they should be excluded.[212] Mobil stated that definitions in the AFV labeling requirements should be consistent with other regulatory plans.[213]

After considering the record, the Commission determined to issue its SNPR proposal as to this subject without modification. The Commission notes that EPA 92's definition of AFV makes no distinction between new and used vehicles.[214] In addition, the record indicated that consumers would likely have the same need for information, and would consider the same factors, whether they were contemplating a new or used AFV acquisition.[215] At the Workshop, two participants also stated that used AFVs should be included in this proceeding at the present time because used AFVs are (or will soon be) offered for sale to consumers.[216] Thus, the Commission has concluded that including such vehicles within the scope of its AFV labeling requirements is appropriate. As described more fully below, labeling for used covered AFVs does not require, however, disclosure of objective performance data.

[210] While consumers may expect that used vehicles will have different performance attributes than new cars, if the Commission required disclosure of specific data on standard labels (based on the vehicle's condition when new), it might create the impression with some consumers that these disclosures may still be valid.

[211] AAMA, I–16, 7. That comment, however, proposed a different format for used vehicle labels.

[212] Electro Auto, I–7, 1. Electro Auto's objection may have been based on a misapprehension that labels for used AFVs would require disclosure of performance attributes specific to that vehicle. The SNPR did not propose such disclosures.

[213] Mobil, I–2 8 ("As long as the definition in this rule is coordinated with DOE, then this rulemaking will be consistent with forthcoming EPAct rules from DOE.").

[214] *See* 42 U.S.C. 13211(3) (Supp. IV 1993) (defining "AFV").

[215] AMI (Tr.), 136, 218; Boston Edison, G–26, 10; ETC, G–24, 4; NAFA, G–20, 5, (Tr.), 222; PCC, G–22, 2; RFA, G–5, 5, (Tr.), 217.

[216] *See* AMI (Tr.), 218 ("[T]his is a real problem now. There are nearly 10,000 [flexible] fuel vehicles in California alone, and * * * several hundred are being offered for sale now to private consumers."). *See also* NAFA (Tr.), 222:

I think one of the things you have to be concerned about looking down the road with alternative fuels is that if there is not a resale market for these vehicles, the program will wither and die * * * So we don't have a procedure to provide information to that second purchaser. And they have questions about alternative fuels. And they don't know how to go about getting a brochure like this * * * If you don't create the resale market, then the first market doesn't really develop.

2. Disclosures on AFV Labeling

As discussed below, 21 of the 24 commenters addressed the substance of the Commission's proposed AFV labeling requirements (i.e., the information to be disclosed on AFV labels).[217] Pursuant to EPA 92's mandate, the Commission developed this aspect of the final rule based on two sets of considerations. First, the Commission determined the type of information consumers would find most appropriate, useful, and timely in making AFV choices and comparisons. For example, the Commission stated in the SNPR that consumers would require disclosure of more comparative information when considering an AFV purchase than when refueling.[218] As a result, the Commission proposed that AFV labels disclose more comprehensive cost-benefit information to consumers than labels for alternative fuels. The Commission also stated that because few consumers have extensive experience with AFVs, its labeling proposal should be designed to be useful to a general consumer audience.[219] Finally, the Commission concluded that, because DOE was required to prepare and distribute an information package for consumers, there was less need to attempt to present complex information in the constrained format of an AFV label.

After determining what would likely be appropriate, useful, and timely to consumers, the Commission analyzed the problems associated with developing and publishing such cost-benefit information. For example, the Commission considered the extent to which balanced, accurate information for pertinent comparative factors could be conveyed on the "simple" label envisioned by Congress. It also considered whether appropriate technical standards existed to compare some factors, and whether providing the same information required on labels by other government agencies (in different formats) could confuse consumers.

After evaluating those issues, the Commission proposed in the SNPR an AFV label disclosing a combination of information in a three-part format,[220] concluding this would be most useful to consumers making choices and comparisons. The first part would disclose objective information pertaining to each particular AFV, while the second and third parts would disclose information pertaining to AFVs in general. This final rule is the result of the Commission's analysis of all pertinent considerations, the rulemaking record and recent developments. As described in more detail below, the Commission continues to find that a combination of objective and descriptive information will best meet consumers' needs for comparative cost-benefit information. The Commission also concludes that this format will best address the problems associated with developing and publishing such information.

[217] Unocal, I–5, addressed the proposal for labeling of alternative fuels. Two other comments (Mechtly, I–1, and Sokol, I–17) addressed metric issues. *See* section VI *infra*.

[218] 59 FR 59666, 59684. All nine commenters addressing that issue supported the Commission's assessment. AAMA (Tr.), 37–38; AMI, G–3, 1; Boston Edison (Tr.), 84; CEC, H–8, 1; ETC (Tr.), 42; NAFA (Tr.), 53; NPGA (Tr.), 50, 51; RFA, G–5, 4; Sun, G–1, 2.

[219] Chicago, J–2, 1 (AFV labeling requirement should target all consumers).

[220] 59 FR 24014, 24019–24020.

a. *Specific data disclosures.* In the SNPR the Commission proposed that labels for new covered AFVs disclose two types of objective information particular to each AFV: cruising range and EPA certification level.[221] Seven comments addressed the appropriateness of including objective information to consumers as to those factors. Boston Edison/EEI and DOE supported disclosures as to both factors.[222] API stated that a disclosure for cruising range would be a useful measure for consumer comparisons.[223] Mobil appeared to support requiring disclosure of cruising range, but stated that EPA certification levels were generally not relevant to EPA 92.[224] Chrysler supported requiring disclosure of EPA certification levels, but appeared to oppose disclosure of vehicle cruising range.[225] Ford stated that "most of the information meeting [EPA 92's mandate] is already included on existing motor vehicle labels."[226] AAMA stated that it "support[ed] the intent of the FTC proposal" and that "the specific information proposed is appropriate with respect to costs and benefits, so as to reasonably enable the consumer to make choices and comparisons."[227]

[221] Labels for used covered AFVs would not disclose objective information particular to each vehicle. *See* 59 FR 59666, 59688 n.312, 59690 n.358.

[222] Boston Edison/EEI, I–14, 4, 5–6 (both are useful to consumers); DOE, J–1, 2.

[223] API, I–15, 2. API's comment did not address the Commission's proposal to require disclosure of EPA certification level.

[224] Mobil, I–2, cover letter at 3, 9–11.

[225] Chrysler, I–13, 1.

[226] Ford, I–4, 1.

[227] AAMA, I–16, 1. AAMA did not, however, support the "manner by which this information is [displayed]." *Id.* For used covered vehicles, AAMA stated that labels should "contain only the information necessary to indicate that the vehicle operates on alternative fuels and to list the fuels that can be used in the vehicle." AAMA, I–16, 1.

Continued

The Commission's SNPR proposal as to both disclosures, and the comments addressing those issues, are described in more detail below.

(1) Cruising range. In the SNPR, the Commission proposed that cruising range should be disclosed on labels for new covered AFVs.[228] Under the Commission's revised proposal, cruising range would be displayed on AFV labels in two formats. The first labeling format would be for dedicated covered AFVs (i.e., covered AFVs designed to operate solely on alternative fuel).[229] Labels for these vehicles would disclose the manufacturer's "estimated cruising range" for that vehicle (i.e., the manufacturer's reasonable estimate of the number of miles a covered vehicle will travel between refueling or recharging), expressed as a lower estimate and an upper estimate.[230]

The second labeling format would be for dual-fueled covered AFVs (i.e., vehicles capable of being powered both by an alternative fuel and a conventional fuel).[231] Labels for these vehicles would disclose two sets of values: the manufacturer's reasonable estimate of (a) the minimum and maximum number of miles the vehicle will travel between refuelings or rechargings when operated exclusively on alternative fuel, and (b) the minimum and maximum number of miles the vehicle will travel between refuelings or rechargings when operated exclusively on conventional fuel.[232] Because the disclosure would relate solely to the manufacturer's estimated (and not actual) cruising range, both label formats would include a statement advising consumers that their actual cruising range will vary with options, driving conditions, driving habits and the AFV's condition.[233]

Cruising range values would be expressed in whole numbers and calculated in one of three ways. For vehicles required to comply with EPA's fuel economy labeling provisions,[234] cruising range values would be calculated by reference to the vehicle's estimated fuel economy rating.[235] For example, the lower range value would be determined by multiplying the vehicle's estimated city fuel economy by its fuel tank or battery capacity, then rounding to the next lower integer value.[236] Conversely, the upper range value would be determined by multiplying the vehicle's estimated highway fuel economy by its fuel tank capacity, then rounding to the next higher integer value.[237]

As noted previously, EPA is required to include AFVs powered by all alternative fuels within its fuel-economy labeling program, but has not yet announced a timetable for doing so.[238] During the transition to that next phase, the Commission therefore proposed a different approach for vehicles not yet required to comply with EPA's fuel-economy labeling provisions. For EVs, the Commission noted that the Society of Automotive Engineers ("SAE"), a consensus standard-setting organization, has issued a "Recommended Practice" establishing uniform procedures to calculate cruising range for EVs ("SAE J1634").[239] The Commission believed that reliance on uniform standards would facilitate comparability.[240] Accordingly, the proposed rule requires that cruising range values for EV's be calculated in accordance with that standard.[241]

For other vehicles not yet required to be labeled with EPA's fuel economy stickers, the Commission knew of no comparable consensus procedure that could yield cruising range values in the proposed "minimum-maximum" format. As a result, the Commission did not propose that manufacturers use a specific standard to determine cruising range. In similar situations (i.e., where the Commission has required the disclosure of specific information, but no consensus standards exist to measure such information), the Commission has required that manufacturers have a "reasonable basis" for such disclosures.[242] Accordingly, for those vehicles, the Commission proposed that manufacturers be required to possess a reasonable basis, consisting of competent and reliable evidence, of the minimum and maximum number of miles the vehicle will travel between refuelings or rechargings.[243]

The SNPR also stated that during this transition (i.e., while EPA is developing fuel-economy labeling requirements), the Commission would consider whether any new consensus test methods for determining cruising range constitute a reasonable basis.[244] The Commission expected that industry compliance with this AFV labeling rule, in conjunction with the need to avoid uncertainty about whether particular test methods or calculations constitute a reasonable basis, will encourage development of standardized test methods and specifications. This, in turn, could facilitate widespread acceptance of AFVs.

Fourteen comments addressed requiring disclosure of cruising range as proposed in the SNPR. Five of the fourteen comments supported the Commission's proposal because of its usefulness to consumers in making

As noted previously, three comments fully supported AAMA's comment. Chrysler, I–13, 1; Ford, I–4, 2; NGVPA, I–19, 1.

[228] The Commission did not propose requiring disclosure of this information on labels for used covered AFVs because that information could vary significantly with a vehicle's condition. Requiring disclosure of cruising range information on used vehicles could therefore mislead consumers.

[229] *See* proposed rule § 309.1(g) (defining "dedicated"), 59 FR 59666, 59703.

[230] *See* proposed rules §§ 309.1(o) (defining "estimated cruising range"), 309.20(e)(2)(i) (requiring disclosure of estimated cruising range for dedicated vehicles), 59 FR 59666, 59704, 59707.

[231] *See* proposed rule § 309.1(i) (defining "dual fueled"), 59 FR 59666, 59704.

[232] *See* proposed rule § 309.20(e)(2)(ii) (requiring disclosure of estimated cruising range for dual-fueled vehicles), 59 FR 59666, 59707.

[233] EPA's fuel economy labels contain a similar statement. *See* 40 CFR 600.307–86(a)(3)(ii)(A) (1993) ("Actual mileage will vary with options, driving conditions, driving habits, and [vehicle's/truck's] condition."). *See* SNPR Figures 4 and 5, 59 FR 59666, 59710–59711.

[234] *See* 40 CFR part 600 (1993) ("Fuel economy of motor vehicles").

[235] Numerous commenters suggested that cruising range values could be so calculated. *See, e.g.*, AAMA (Supp.), G–7, 3 ("Combining MPG with tank capacity can give the customer a reasonable estimation of driving range."); AMI (Tr.), 141; CAS (Supp.), G–17, 1–2; EPA (Tr.), 144; RFA (Tr.), 148.

[236] *See* proposed rule § 309.22(a)(1)(i), 59 FR 59666, 59708.

[237] *See* proposed rule § 309.22(a)(1)(ii), 59 FR 59666, 59708.

[238] 59 FR 39638, 39639 (announcing fuel-economy test labeling requirements for methanol and CNG vehicles). One comment suggested that the Commission encourage EPA to develop further fuel economy regulations. ETC, I–9, 1. The Commission does not believe that is necessary because EPA is under a legal obligation to issue such regulations.

[239] SAE's "Electric Vehicle Energy Consumption and Range Test Procedure," J1634, was issued in May 1993. B–33. This procedure is based in part on EPA's pertinent test procedures. B–33, 1, 9–10. Boston Edison stated that fuel economy "can be [calculated] in a manner that is procedurally identical to gasoline vehicles" by relying on SAE J1634. Boston Edison (Supp.), G–26, 5.

[240] 59 FR 59666, 59688.

[241] *See* proposed rules §§ 309.22(a)(2) (for dedicated vehicles), 309.22(b)(2) (for dual-fueled vehicles), 59 FR 59666, 59706.

[242] *See, e.g.*, Fuel Rating Rule, 16 CFR 306.5(b) (1994) ("To determine automotive fuel ratings for alternative liquid automotive fuels, you must possess a reasonable basis, consisting of competent and reliable evidence, for the percentage by volume of the principal component of the [fuel] that you must disclose."); Care Labeling Rule, 16 CFR 423.6(c)(1)–(6) (1994) ("reasonable basis" based on "reliable evidence"); R-value Rule, 16 CFR 460.19(a) (1994) ("If you say or imply in your ads, labels, or other promotional materials that insulation can cut fuel bills or fuel use, you must have a reasonable basis for the claim.").

[243] *See* proposed rules §§ 309.22(a)(3) (for dedicated vehicles), 309.22(b)(3) (for dual-fueled vehicles), 59 FR 59666, 59708.

[244] The Commission encourages DOE, as part of its "technical assistance," to direct the development of such transition specifications. *See* 42 U.S.C. 13232(b) (Supp. IV 1993) (DOE "shall provide technical assistance" to the Commission and coordinate that assistance with its development of a consumer information brochure).

choices and comparisons.[245] For example, survey data cited by Boston Edison/EEI "indicated that the distance that an electric car can travel is the highest ranking concern of consumers."[246] Similarly, CAS supported requiring disclosure of this "extremely useful" information and NAFA stated that fleet managers "have identified cruising range as one of the most important factors when making a decision to purchase AFVs."[247]

Three of the fourteen comments made suggestions directed at specific issues without specifically supporting or opposing the Commission's SNPR proposal.[248] For example, API noted that cruising range was "a useful measure for consumer comparison" but suggested that the information be expressed in terms of fuel tank capacity "and miles per gallon or gallon equivalent."[249] The final two of those three comments were directed at the Commission's proposal regarding how cruising range would be calculated for EVs. Toyota supported the Commission's proposal to base calculation of cruising range values for EVs on SAE J1634, but stated that procedure did not yield an upper and lower limit of the vehicle's range.[250]

CARB stated that it "has a number of concerns" with SAE J1634, including that it may allow for inflated range estimates and that its treatment of EVs equipped with air conditioning was not sufficiently precise.[251]

Comments from domestic automakers supported the Commission's determination that cruising range would be "useful"[252] and "important"[253] information for consumers. However, those commenters strongly opposed requiring a disclosure as to that factor because cruising range "cannot, at this time, be provided in a manner which would be useful to the consumer."[254] The automakers based their opposition on their belief that sufficient "standards and adjustment factors" had not yet been developed to account for differences in AFV technology.[255]

For example, according to AAMA, without standard fuel specifications,[256] EPA test procedures, and a definition of fuel tank capacity for all AFVs, a range of estimates would result based on varying assumptions which would in turn generate inconsistent and unhelpful estimates of vehicle range.[257] The expected use of AFVs by fleet operators, with different in-use driving cycles and vehicle maintenance practices than those used in EPA's fuel economy determinations, "can [also] significantly affect range."[258] And "inconsistencies and confusion" exist between range estimates for flexible fuel vehicles (i.e., AFVs capable of operating on an alternative and conventional fuel in a single fuel tank) and bi-fuel vehicles (i.e., AFVs equipped with separate fuel tanks for alternative and conventional fuels).[259]

AAMA suggested that additional problems exist regarding calculating fuel economy values for EVs. For example, the SAE J1634 procedure for calculating EV fuel-economy values currently measures only a combined metro-highway fuel economy and is thus "inadequate for these calculations."[260] That Recommended Procedure also does not apply to hybrid EVs (i.e., vehicles capable of operating on electricity and conventional fuels at the same time).[261] Battery capacity for EVs also "may vary with usage, age, temperature * * * and other factors."[262] Accordingly, "[f]urther experience with these vehicles is necessary to provide an adequate prediction of the range that a consumer may achieve in-use."[263] More generally, AAMA concluded that

> [A]ny requirement that manufacturers calculate and label vehicles with range estimates must resolve the above issues, or least be deferred until these issues can be resolved * * * These estimates not only fail to provide valuable information to customers, but may also result in failure to meet customer expectations leading to customer dissatisfaction with [AFVs].[264]

After considering the record relating to the threshold issue (i.e., whether cruising range should be disclosed on AFV labels), the Commission has concluded that such information is appropriate and will help consumers make reasonable choices and comparisons.[265] It is also one of the most important facts consumers need regarding whether and which AFV to acquire; as AAMA noted: "This information (i.e., range) is vital for the consumer when deciding between various alternative fuels * * *."[266] Because cruising ranges for AFVs can differ significantly from cruising ranges for conventional fuel vehicles, with which consumers are most familiar, consumers also have a practical need for cruising range disclosures on AFV labels. As a Workshop participant stated,

> [I]f I was leaving on a 50 or 60-mile trip and my cruising range could be as low as 30, I'd like to know that. So I

[245] Five other comments generally supported the Commission's AFV labeling requirements without addressing this issue. AGA/NGVC, I–18, 2, 3; Chicago, J–4, 1; Comm Elec, I–8, 8; EIA/EEU–ISD, J–4, 1; RFA, I–3, 1–2.

[246] Boston Edison/EEI, I–14, 4.

[247] CAS, I–12, 1; NAFA, I–10, 2. DOE and Mobil also supported a disclosure of this information. DOE, J–1, 2; Mobil, I–2, 9–10, cover letter at 1.

NAFA further suggested that the Commission specify that no information "be presented at the time an AFV is offered for sale that conflicts with information provided on the AFV label, such as cruising range." NAFA, I–10, 2. The Commission expects that requiring disclosure of cruising range information could encourage affected manufacturers and dealers generally to provide additional information to meet consumers' expectations and needs. *See* AGA/NGVC, G–6, 12 ("[F]uel retailers, vehicle manufacturers and trade associations can target and educate specialty markets and their consumers."); Boston Edison, D–11, 13 ("[O]ver time, market forces will create incentives for sellers to identify and respond to consumer demands for information, much as gasoline sellers supplement the information that they are required to provide under the Commission's Octane Rule."). The Commission concludes that it is not necessary to address this issue here, because section 5 of the FTC Act (15 U.S.C. 45) authorizes the Commission to seek corrective action if, after investigation, it has reason to believe that advertising or marketing falls within the scope of conduct declared unlawful by the statute.

[248] A fourth comment, from DOT/NHTSA, noted that NHTSA recently proposed gallon equivalent measurements for five gaseous fuels: CNG, LNG, LPG, Hydrogen, and Hythane. DOT/NHTSA, J–5, 1.

[249] API, I–15, 5.

[250] Toyota, I–11, 2. As a result, Toyota recommended that the Commission require that "The range shall be actual driving range determined in accordance with test methods set forth in the latest SAE J1634 "Electric Vehicle Energy Consumption and [R]ange Procedure." *Id.* at 3.

[251] CARB, J–3, 2.

[252] AAMA, I–16, 2.

[253] Electro Auto, I–7, 2.

[254] Ford, I–4, 2. *See also* AAMA, I–16, 2 ("[W]e have been unable to adequately develop a value which would be consistent across fuels and manufacturers or useful to customers at this time."); Electro Auto, I–7, 2 (range is "a difficult number to pin down with any consistency"); ETC, I–9, 2 (Commission should defer requiring disclosure "until industry-wide accepted methodologies for range measurement are available").

[255] AAMA, I–16, 6 ("The disclosure of vehicle range should not be provided until the standards and adjustment factors, as described above, can be developed.").

[256] The lack of commercial fuel specifications "results in highly variable fuel energy content which could greatly affect in-use driving range." AAMA, Att. II at 1.

[257] AAMA, I–16, 2, 3, Att. II at 1, 2. Chrysler, however, supported disclosure of fuel tank capacity and noted that that information was "currently provided." Chrysler, I–13, 1, 2.

[258] AAMA, I–16, 3.

[259] *Id.*

[260] AAMA, I–16, Att. II at 1. AAMA notes, however, that the SAE procedure is "currently being modified to measure city and highway energy consumption," and that the new procedure will be approved "some time in 1995." *Id.*

[261] AAMA, I–16, Att. II at 2.

[262] *Id.*

[263] *Id.*

[264] AAMA, I–16, 3.

[265] *See, e.g.*, CAS (Tr.), 156 (range gives consumers "the ability to compare in the showroom a very visible number that you can go from car to car to car and compare."); (Supp.), G–17, 1.

[266] AAMA, G–7, 2. *See also* AMI (Tr.), 141 (range is one of the most important factors); NAFA (Tr.), 147 (same); Boston Edison (Supp.), G–26, 9; (Tr.), 142 (range is most important concern of people considering an EV purchase).

think I would like to know the low end of it even if there is a broad, you know, number that's not very well defined. I think it's still beneficial to know what the minimum, certainly the minimums are, because you have to be able to make it to the next fueling point.[267]

Displaying cruising-range values in a meaningful way to consumers also is feasible. Statements accompanying the cruising range values identify the disclosure as being a "manufacturer's estimate," and advise consumers that actual cruising range "will vary with options, driving conditions, driving habits and the vehicle's condition." Consumers are further cautioned that the labels are for comparison purposes and "may not reflect actual driving range." A disclosure displayed in this format is not likely to pose problems to consumers accustomed to estimates.[268]

The Commission has also determined that calculating cruising range values is feasible, as shown by the prominence with which this factor appears in marketing and advertising claims promoting AFV use.[269] For example, Chrysler, GM and Ford have all made cruising range claims regarding their EVs in congressional testimony,[270] promotional material[271] and product specification sheets.[272] Chrysler and GM also address cruising range in owner's manuals for the 1994 Dodge Spirit[273] and 1993 Chevrolet Lumina.[274] Peugeot has made similar claims in its promotional material.[275] Companies converting cars to run on electricity[276] and electricity utilities[277] are also making cruising range claims for EVs. Similar claims are also being made for AFVs powered in whole or in part by CNG,[278] hydrogen,[279] LPG,[280] and methanol.[281] Accordingly the Commission has determined to issue its SNPR proposal regarding methods for calculating cruising range values (but with four modifications described below) because those methods generate comparable cruising-range estimates.

For example, calculating such estimates for vehicles required to comply with EPA's fuel-economy regulations should not be a problem, because the data yielding the estimates (the vehicle's fuel economy estimate and fuel tank capacity) are readily determinable.[282] For those vehicles, the estimates would simply be derived by multiplying two known values.[283] Similarly, the Commission has concluded that relying on SAE's J1634 Recommended Practice is appropriate for calculating cruising range values for EVs. The J1634 test establishes "*uniform* procedures for testing electric battery-powered vehicles * * * [using] *standard* tests which will allow for determination of * * * [cruising] range."[284] The Commission also notes that DOE has proposed requiring the use of SAE J1634 to determine equivalent petroleum-based fuel economies of EVs.[285] Thus, for those vehicles, the final rule requires that cruising range be calculated using SAE J1634.

As noted, however, the Commission has modified the proposed rule in four ways in response to the comments. First, the proposed rule is modified by including a definition of fuel tank capacity for vehicles powered by gaseous and liquid fuels.[286] This modification will promote consistency of cruising range estimates where the calculations are based on fuel economy and tank capacity data. The final rule thus includes a definition for "vehicle

[267] RFA (Tr.), 149. *See also* RFA (Tr.), 153, (Supp.), G–5, 2 ("[G]iven the sparsity and distance between alternative fuel refueling stations, vehicle owners need to be aware of approximate range.").

[268] AMI (Tr.), 155 (consumers understand that "basic information" on the label is not going to be precise).

[269] The Commission described these claims and their prevalence in detail in the SNPR. 59 FR 59666, 59687–59688. Automakers responding to the SNPR did not address this issue.

[270] For example, at a May 11, 1993, congressional hearing, representatives from Chrysler, Ford, and GM all made cruising range claims for their EVs. *See Status of Domestic Electric Vehicle Development*, 103d Cong., 1st Sess. (1993) (statement of Doran K. Samples, Program Management Executive of the Electric Minivan Project, Chrysler, at 52, 56; Roberta J. Nichols, Electric Vehicle External Strategy Manager, Ford, at 60, 64, 66; and Kenneth R. Baker, Vice President, GM, at 76).

[271] *See* GM, Progress Report, B–5, front, Spring/Summer 1993 (GM's Impact 4 EV has "a driving range of 70 miles in the city and 90 miles in normal highway driving."); GM, *GM's "Impact" Show Car and New Pre-Production Electric Vehicle Lead the 104th Tournament of Roses*, B–6, at 2, Dec. 29, 1992 ("The Impact and the pre-production car . . . have a useful range of 100 miles . . ."); GM, *General Motors Electric Vehicles Fit Most Drivers' Lifestyles*, B–7, at 1, Oct. 20, 1992 ("GM's 'Impact' prototype has a highway range of 100 miles.").

[272] Chrysler 1994 Dodge Caravan/Plymouth Voyager, B–8, back, May 7, 1993; Chrysler 1994 Dodge Caravan/Plymouth Voyager, B–9, back, Aug. 31, 1992; Ford Ecostar, B–10, back panel, undated; GM Impact 3, B–11, back, undated; GM Impact, B–12, back, undated ("It has a practical range of 80 miles per charge.").

[273] AAMA (Supp.), G–7, 1994 Dodge Spirit Owner's Manual at 105 ("Cruising Range: M–85 produces less energy when burned than gasoline. Therefore, cruising ranges and miles per gallon (MPG) will be considerably less when using M–85. Cruising ranges will increase as the content of gasoline in the fuel tank increases.").

[274] AAMA (Supp.), G–17, 1993 Chevrolet Lumina Owner's Manual—Ethanol Supplement, at 4 ("When using an E–85 mixture of fuel, your Lumina has a range of 250–300 miles (400–480 km)."); 1992 Chevrolet Lumina Owner's Manual—Methanol Supplement, at 5 ("When using an M–85 mixture of fuel, your Lumina has a range of 200–250 miles (320–400 km).").

[275] PSA Peugeot Citroen, *Electric Vehicles*, B–13, at 3–5, 1992 (Peugeot 106 has range of 90–160 km; Citela has range of 210 km @ 40 kph and 110 km city, and car continuously displays remaining range; Peugeot 405 Station Wagon has battery range of 72 km at 40 kph and highway range of 750 km at 100 kph).

[276] Dreisbach ElectroMotive, Inc., *API Demi Motorola Saturn*, B–14, front, undated (range from 140 to 518 miles depending on battery configuration); Electro Automotive, *Electro Automotive Makes Electric Cars Easy With The Voltsrabbit(tm) Kit*, B–15, front, undated (range: 60–80 miles); Solar Car Corporation, *Specifications for Chevy S–10 and GMC S–15 Pickup Truck (converted to run on electricity)*, B–16, front, Aug. 1, 1992 ("Normal Daily Range—50 to 80 miles, depending on terrain, speed and driving conditions.").

[277] Arizona Public Service Company, *Electric Vehicle Program*, B–17, at first upper panel, undated ("Today's batteries give Evs a range of 30 to 100 miles on a single charge."); Electric Power Research Institute, *Electric Vehicle Infrastructure: How Far Will My Electric Vehicle Take Me?*, B–18, front, 1992 ("[T]oday's EV models . . . offer a driving range of 60 to 100 miles. . . ."); Virginia Power, *The Electric Vehicle: Clean, Quiet and Efficient* (CO 923–VA/EE 93084), B–19, front, undated (Solectria Force has range of 70–90 miles); Potomac Electric Power Company, *Questions and Answers About the Solectria Force*, B–20, front, Dec. 1992 (Solectria Force has driving range of "60 miles if the batteries are fully charged . . . The effective range of the Force using current off-the-shelf battery technology is approximately 35 to 40 miles on a charge.").

[278] Blue Bird Body Company, Product Specifications for NGV School Buses (models TC/2000 FE and TC/2000 RE), B–21, at 3, 1992 ("Vehicle range—300 miles with 6 tanks, 150 miles with 3 tanks"); Ford, Crown Victoria dedicated CNG, B–22, front, March 3, 1993 ("The driving range for these demonstration units is approximately 200 miles.").

[279] Mazda, *Mazda Takes Action To Address Global Environmental Concerns*, B–23, at 3, July 27, 1993 ("With a full tank of hydrogen, the Mazda HR-X has a range of up to 125 miles.").

[280] Clean Fuels Task Force of Western Liquid Gas Association, *LPG: An Alternate Clean Air Motor Fuel With Significant Environmental and Economic Advantages*, B–24, 7, May 1992 ("LPG offers the best range per gallon of the four non-gasoline clean fuels."); NPGA, *LP-Gas Is Moving America's Fleets*, B–25, 6, 1991 (chart comparing driving ranges for "identical vehicles, optimized for their specific fuel.").

[281] Ford, Taurus passenger car FFV (using gasoline or M85), B–26, front, March 4, 1993 ("Highway driving range is approximately 350 miles when using M85."); Ford, *Ford Announces Production of 1993 Taurus FFV*, B–27, at 1, Dec. 16, 1992 ("By increasing the size of the fuel tank to 20.7 gallons, the driving range of the Taurus FFV when fueled with M85 is similar to a non-FFV Taurus."); Ford, Econoline van and Club Wagon FFV (using gasoline and M85), B–28, front, March 4, 1993 ("The highway driving range is approximately 400 miles when using M85.").

[282] Chrysler, I–13, 1, 2 (fuel tank capacity and fuel economy values are "currently provided").

[283] *See, e.g.*, Ford, G–14, 1–2, (Tr.), 145 (consumers could use fuel tank capacity and EPA's fuel economy estimates to determine approximate cruising range).

[284] B–33, 1 (emphasis added). *See also* B–33, 10 ("The purpose of this test is to determine the overall range of an electric vehicle when operated on a dynamometer over repeated driving cycles.").

[285] 59 FR 5336, Feb. 4, 1994.

[286] Standard procedures regarding battery capacity for EVs are contained in SAE J1634.

fuel tank capacity" derived from a DOT definition of the same term.[287] Second, the final rule requires that cruising range values for EVs be disclosed in the format generated by the SAE Recommended Practice (i.e., in a single "combined" city-highway range). As a result, cruising ranges for these vehicles will be displayed as a single figure (e.g., "450 miles") instead of in a minimum-maximum format (e.g., "400–500 miles").[288]

Third, because the SAE J1634 test procedures do not apply to hybrid EVs, that Recommended Practice will not generate cruising range values for those vehicles. Accordingly, the Commission has modified the definition of "electric vehicle" to clarify that only vehicles powered exclusively by electricity are required to calculate cruising range values by reference to SAE J1634.[289] For hybrid EVs, then, cruising range values would be calculated by reference to the "reasonable basis" test.

Finally, the SNPR's treatment of bi-fuel vehicles is modified to reflect the fact that those vehicles have two tanks holding separate fuels, operating on one fuel or the other.[290] With two separate tanks, the effective cruising range for such vehicles could be the sum of the cruising range for either fuel. Accordingly, the statement accompanying that disclosure will advise consumers that, "The total possible cruising range of this vehicle is the sum of the alternative fuel range and the conventional fuel range."

The proposed rule also included a provision requiring that manufacturers maintain records for three years demonstrating compliance with the proposed rule.[291] While EPA 92 does not expressly address this issue, the Commission believed that a reasonable recordkeeping requirement is necessary to ensure the accuracy of disclosures made pursuant to these labeling requirements. No comments addressed this issue. The Commission has concluded that the recordkeeping provision is simple, easy to comply with, and allows it to verify compliance. Accordingly, the Commission has not modified that requirement in the final rule.

(2) Environmental impact. In the SNPR, the Commission proposed that labels for new covered AFVs disclose information regarding a vehicle's environmental performance, expressed in terms of the EPA emissions standard to which the vehicle had been certified.[292] For vehicles which had not been so certified, manufacturers would place a mark in the box indicating that fact.[293] For those vehicles which had been certified as meeting an emissions standard, manufacturers would place a mark in the appropriate box indicating that fact, and then indicate on a graphic the standard to which the vehicle had been certified. The graphic would depict seven EPA emissions standards. Prior to being offered for acquisition to consumers, manufacturers of such vehicles would identify the emissions certification standard on that graphic by placing a caret above the applicable standard. The label would also contain a statement advising consumers that, "The overall environmental impact of driving this vehicle includes many factors not measured by these standards."

Ten comments addressed this aspect of the Commission's SNPR proposal.[294] Four comments supported including this information on new AFV labels because the information was "an important factor"[295] for consumers and the proposed graphic conveys this "critical information to consumers in a highly effective manner."[296] One advantage of this disclosure was that consumers would not "be dependent on marketing claims and other assertions that a vehicle [was] 'cleaner' or that the vehicle 'meets all the requirements of the Clean Air Act.'"[297] The written disclosure accompanying the graphic also "should provide consumers with sufficient information to understand the limits of the information conveyed by the graphic."[298]

Two comments supported the concept of disclosing a vehicle's emissions certification standard but suggested that the information be displayed in a different format. AGA/NGVC suggested that the statement accompanying the disclosure state that, "The overall environmental impact of driving [any] vehicle includes many factors not [currently] measured by [existing vehicle emission] standards."[299] (The modifications are shown in brackets.) That comment further suggested that the graphic for this factor identify the standard to which the conventionally-fueled version of that vehicle was certified.[300] Chrysler specifically supported labeling AFVs with each vehicle's emissions certification standard, but generally opposed the Commission's proposed labeling format.[301]

Four other comments opposed requiring this disclosure on AFV labels. Mobil stated that emissions standards have no relevance in EPA 92, that fleet operators (who *are* concerned about emissions certifications) do not rely on window stickers in making purchasing decisions, and that the "vast majority" of the general public "are not aware of the differing classifications" and are not required to acquire AFVs. "Therefore, labeling of the vehicle emissions certification will not provide any meaningful information to the majority of consumers."[302]

Three comments from automakers similarly opposed requiring this disclosure.[303] AAMA suggested that this disclosure be deferred until EPA had established certification standards for all alternative fuels and AFVs.[304] Electro

[287] *See* Final Rule § 309.1(gg).

[288] The Commission understands that a revision to SAE J1634 under consideration by SAE would yield cruising range values in a minimum-maximum format. The Commission will monitor SAE's review of this revision and consider changes to this Final Rule as appropriate.

[289] *See* Final Rule § 309.1(k).

[290] Flexible fuel vehicles (i.e., vehicles with one tank capable of operating on either fuel, or any mixture of the two, at the same time) are not affected by this modification. As noted previously, the Commission proposed that labels for dual fueled vehicles disclose two sets of cruising range estimates: one representing the vehicle's cruising range when operating exclusively on alternative fuel and one representing cruising range when the vehicle operates exclusively on conventional fuel. As a result, the SNPR's proposal accurately conveys the effective cruising range for these single tank AFVs.

[291] *See* proposed rule § 309.23, 59 FR 59666, 59706.

[292] 59 FR 59666, 59690. *See* text accompanying notes 320–322.

[293] EPA has not yet issued emission standards and certification test procedures for certain fuels (e.g., electricity and hydrogen).

[294] Four other comments indicated general support for the Commission's labeling proposal but did not address this specific issue. Chicago, J–2, 1; Comm Elec, I–8, 8; EIA/EEU–ISD, J–4, 1; RFA, I–3, 1–2.

[295] NAFA, I–10, 3.

[296] Boston Edison/EEI, I–14, 5. *See also* NAFA, I–10, 3 (proposed format is "simple," "easy for manufacturers to provide," "appropriate," and will help consumers), CAS, I–12, 1 (graphic will provide consumers with at least a minimum of environmental information, but should also identify rating for comparable gasoline-fueled vehicle). DOE also specifically supported a disclosure as to this factor. DOE, J–1, 2.

[297] NAFA, I–10, 3.

[298] Boston Edison/EEI, I–14, 6. A similar disclosure on EPA's fuel economy labels "appears to be effective in conveying to consumers that the rating provides a basis of comparison, not a guarantee of performance." *Id.*

[299] AGA/NGVC, I–18, 3, 4. The Commission had proposed that that statement read as follows: "The overall environmental impact of driving this vehicle includes many factors not measured by these standards."

[300] AGA/NGVC, I–18, 3, 4.

[301] Chrysler, I–13, 1, 2.

[302] Mobil, I–2, cover letter at 3, 10.

[303] Two comments from automakers, however, raised no objection to this disclosure. ETC, I–9 (membership includes domestic automakers); Toyota, I–11.

[304] AAMA, I–16, 3, 6. In the alternative, AAMA suggested that the Commission not require disclosure of this information under its labeling

Continued

Auto stated that AFVs should not be required to meet more stringent labeling standards than conventional fueled vehicles and that "complete environmental impact data" is "impractical for a simple consumer label" and "misleading."[305] Ford stated that the proposed disclosures "cannot, at this time, be provided in a manner which would be useful to the consumer."[306]

The SNPR also proposed that manufacturers be required to maintain records for three years demonstrating compliance with the proposed rule.[307] The Commission tentatively had concluded that such a provision was a reasonable means to ensure compliance with this provision. No comments addressed this issue.

After considering the record, the Commission has now concluded that requiring disclosure of EPA certification standards is appropriate and would be useful to consumers. Incorporating environmental considerations into national energy policy was a key goal of EPA 92, and "improv[ing] our environment" was a "principal purpose" of that statute.[308] EPA 92 also gives special attention to the fact that the environmental performance of alternative fuels differs, and that those differences need to be explained to consumers.[309]

The record also indicates that comparative information regarding alternative fuels will be helpful for consumers considering AFV acquisitions. Numerous comments identified information about environmental performance as being important to consumers considering AFV acquisitions.[310] DOE's information brochure does not compare the environmental performance of different alternative fuels. Instead, the brochure states: "Generally speaking, all alternative fuels produce lower amounts of air toxics and ozone-forming emissions than does gasoline."[311] The Commission notes that environmental performance (as measured by emissions standards) is cited by AFV manufacturers and other interested parties in specification sheets and other promotional material in a manner not easily amenable to comparisons.[312]

Disclosure of information regarding environmental impact in a simple label format is also feasible. For several years, EPA has promulgated emissions classification standards as part of its Federal Motor Vehicle Control Program, which establishes pollution limits for "criteria air pollutants" (i.e., hydrocarbons ("HC"),[313] carbon monoxide ("CO"),[314] nitrogen oxides ("NOx"),[315] and particulate matter ("PM")).[316] The standards apply to new motor vehicles manufactured in specified model years. After manufacturers submit appropriate test reports and data, the EPA Administrator issues a "certificate of conformity" to those vehicle manufacturers demonstrating compliance with the applicable emissions standards.[317]

Pursuant to its authority under the 1990 Clean Air Act Amendments,[318] EPA began issuing stricter emissions standards for each model year as a way of reducing levels of the criteria air pollutants. One set establishes five new standards as part of a "clean-fuel vehicles" program.[319] To qualify as a clean-fuel vehicle, a vehicle must meet one of five sets of increasingly stringent standards. These standards are denominated, in increasing order of stringency, TLEV ("Transitional Low Emission Vehicle"), LEV ("Low Emission Vehicle"), ULEV ("Ultra Low Emission Vehicle"), ILEV ("Inherently Low Emission Vehicle"), and ZEV ("Zero Emission Vehicle").[320] Standards for "clean-fuel vehicles" are mandated for use, at present, in two EPA programs: the California Pilot Test program and Clean Fuel Fleet Program.[321] EPA staff has informed the Commission, however, that it expects that vehicles meeting these standards will not be restricted to these programs (e.g., some state programs require acquisition of clean fuel vehicles).

In the SNPR, the Commission noted that consumers could make comparisons among vehicles by reference to EPA's classification system. Specifically, because AFVs will be certified to a specific classification, certification levels provide a simple way of comparing different AFVs.[322] The information also could be useful and important to some consumers likely to consider AFV acquisitions (e.g., fleet operators and environmentally-concerned consumers).[323] Requiring disclosure of objective data allows

requirements, and instead defer to EPA. AAMA, I–16, 6.

[305] Electro Auto, I–7, 2. This comment apparently misapprehended the Commission's proposal as requiring disclosure of "complete environmental impact data."

[306] Ford, I–4, 2. This comment did not further address or explain why this information should not be required to be disclosed.

[307] *See* proposed rule § 309.23, 59 FR 59666, 59705.

[308] H. Rep. No. 102–474(I), 102d Cong., 2d Sess. 133, *reprinted in* 1992 U.S.C.C.A.N. 1954, 1956. The drafters also sought, *inter alia*, "to promote cleaner alternative automotive fuels." *Id.*

[309] For example, the drafters of EPA 92 noted that all alternative fuels "have different strengths, weaknesses, prices, *emissions*, and regional niches * * *." H. Rep. No. 102–474(I), 102d Cong., 2d Sess. 136, *reprinted in* 1992 U.S.C.C.A.N. 1953, 1959 (emphasis added). Environmental performance also is listed first in the list of factors to be addressed by DOE's information package. 42 U.S.C. 13231 (Supp. IV 1993).

[310] *See* 59 FR 24014, 24016–24017 n.62, 79, 91, 98 and accompanying text (responding to ANPR).

[311] B–3, 15. That statement is repeated in the section devoted to each of the featured fuels.

[312] *See, e.g.*, Chrysler, Plymouth Acclaim and Dodge Spirit FFV (no model year listed), B–29, back, undated ("[R]educes smog-forming emissions by at least 30 percent, and in many cases by as much as 50 percent, compared to gasoline run counterparts. In addition, toxic emissions can be reduced by as much as 50 percent."); Chrysler, Chrysler Corporation's [CNG] Vans & Wagons (no model year listed), B–30, inside front cover, undated ("Dodge [CNG] Vehicles will meet or beat all applicable emission standards up to and including California's requirements for Ultra Low Emission Vehicles (ULEV). CNG fueled Dodge vans and wagons produce significantly less emissions of nonmethane hydrocarbons, carbon monoxide and oxides of nitrogen than similar gasoline powered vehicles."); Ford, Taurus passenger car FFV, B–26, front, March 4, 1993 ("Emission Levels: Compared to gasoline vehicles, an ozone benefit of 30% is projected for an FFV when operating on M85.").

See also Clean Fuels Task Force of Western Liquid Gas Association, LPG: An Alternate Clean Air Motor Fuel With Significant Environmental and Economic Advantages, B–24, 2, May 1992 ("Use of LPG as a motor fuel virtually ELIMINATES PARTICULATES, the gasoline and diesel carbon residue that makes up 25 percent of the 'brown cloud.' * * * An [EPA] test of a LPG-fueled Ford V8 full size sedan showed hydrocarbon emissions 29 percent cleaner than the accepted standard. Nitrogen oxides were down 57 percent, and carbon monoxide emissions 93% better than the then Federal standard.").

[313] In sunlight, HC combines with nitrogen oxides to form ozone (a major component of smog). According to EPA, "[o]zone irritates the eyes, damages the lungs, and aggravates respiratory problems. It is our most widespread and intractable urban air pollution problem. A number of exhaust hydrocarbons are also toxic, with the potential to cause cancer." B–31, 2.

[314] CO "reduces the flow of oxygen in the bloodstream and is particularly dangerous to persons with heart disease." *Id.*

[315] NO_x are "precursors to the formation of smog." *Id.*

[316] PM is a general term for soot, dust, smoke, and other tiny bits of solid material released into the air. It can cause eye, nose, and throat irritation and other health problems. B–32, 22.

[317] *See, e.g.*, 40 CFR 86.091–30 (1993) (certification procedures for 1991 model year).

[318] Pub. L. 101–549, 104 Stat. 2399 (1990).

[319] *See* 40 CFR Part 88 (1993) ("Clean-Fuel Vehicles").

[320] According to EPA, a vehicle certified as meeting the requirements of both the ULEV and ILEV standards have lower combined exhaust and evaporative emissions than an ILEV certified vehicle.

[321] The California Pilot Test Program requires that vehicle manufacturers in California produce and sell specified minimum numbers of clean fuel vehicles. The Clean Fuel Fleet Program requires that a percentage of new vehicles acquired by certain fleet owners located in covered areas meet "clean-fuel fleet vehicle emission standards." Fleet Standards Rule, 59 FR 50042, Sept. 30, 1994.

[322] Boston Edison (Supp.), G–17, 8; CAS (Supp.), G–17, 2; NAFA (Tr.), 186–87.

[323] CAS (Supp.), G–17, 2; DOE (Tr.), 172; NAFA (Tr.), 170–71.

consumers to evaluate competitive advertising and marketing claims regarding an AFV's environmental performance.[324] Finally, the recordkeeping provision is simple, easy to comply with, and allows the Commission to verify compliance with the Rule.

For the reasons described above, the Commission has determined to issue its SNPR proposal as to this subject, but with two modifications. First, the final rule specifies that if a vehicle has not been certified as meeting an EPA emissions standard, manufacturers must indicate that fact by placing a mark where appropriate on the label formats.[325] Second, the Commission agrees with AGA/NGVC's comment proposing a modification of the statement accompanying the graphic to more precisely reflect the limitations of the disclosure. Accordingly, the final rule requires that the disclosure state that, "The overall environmental impact of driving any vehicle includes many factors not currently measured by existing vehicle emissions standards."

The Commission also has concluded that one other suggestion (i.e., requiring disclosure of the emissions standard to which the conventionally-fueled version of a vehicle was certified) may not be practicable. All vehicles (conventional and AFVs) are designed and configured to be powered by specific fuels.[326] As a result, the performance characteristics of vehicles configured to be powered by one fuel may differ from vehicles bearing the same model name but configured to be powered by a different fuel. Comparisons between such vehicles may therefore be misleading.

b. *Specific data disclosures considered but not proposed.* As noted previously, EPA 92 directs the Commission to issue labeling requirements only "to the greatest extent practicable," taking into account the problems associated with developing and publishing such information and the simple label format. Accordingly, in developing this final rule, the Commission assessed the practicality of requiring disclosure of information pertaining to all the factors cited in the comments. As to the following factors, the Commission has determined that the level of detail necessary to convey balanced, accurate, objective information to consumers (i.e., by reference to some rating or empirical value) cannot be contained on the "simple" label envisioned by Congress. Information overload considerations,[327] the lack of standards upon which to base required disclosures, and the easy availability of such information through other sources, led the Commission to reject including additional factors on the label.

(1) Operating costs. For example, earlier in the proceeding CAS proposed that the Commission require that operating costs be disclosed on AFV labels so that consumers will be aware "if operating costs of an AFV will be significantly different than a comparable conventional vehicle."[328] Under its proposal, the AFV labels would state, "Operating costs of this vehicle are expected to be at least 25% higher (or lower) than gasoline powered vehicles in its size class."[329] Because expressing this information objectively (e.g., "operating this AFV costs 18 cents/mile") or comparatively (e.g., "operating this AFV costs 10% more than a comparable conventional-fueled vehicle") could help consumers make reasonable choices and comparisons, in preparing its SNPR proposal the Commission considered whether balanced, accurate information about that factor could be contained on a simple label.

After considering the record, however, the Commission determined that requiring disclosure of specific data as to this factor is not practicable at this time.[330] The Commission received no additional comments supporting a disclosure as to this factor, and finds no basis to modify its prior determination. Accordingly, as described in section III(C)(2)(c)(1), *infra*, the Commission concludes that for purposes of this labeling rule, it is appropriate to advise consumers to consider costs when evaluating AFVs, without providing specific data on this factor.

(2) Domestic content of the fuel. Because information on the domestic content of fuel might be of interest to some consumers interested in the societal benefit of promoting domestic industries, the Commission has considered the propriety of requiring disclosure of such information on AFV labels. Several commenters suggested that the AFV label indicate the extent to which the alternative fuel powering a particular AFV was produced domestically.[331] Such a disclosure would help promote energy independence and energy security, key goals underlying EPA 92.[332] Others opposed such a disclosure because it would not be practicable.[333]

After considering the record, the Commission has determined that it is not practicable to require disclosure of objective information as to this factor on the AFV label. The Commission is aware of no consensus standards for estimating the domestic content of transportation fuels[334] and government reports addressing this topic do not cover all alternative fuels.[335] In any event, the Commission concludes that a disclosure as to this factor, even if practicable, is not feasible because of the constraints of the label format.[336] The Commission notes, however, that DOE's information brochure includes a general discussion of domestic content for each of the featured fuels. For example, the brochure states that ethanol's domestic content is "[c]urrently as high as 100% for pure ethanol, depending on world market

[324] CAS (Supp.), G–17, 2; NAFA, G–20, 4–5. A disclosure as to this factor also will not subject AFVs to an unfair labeling standard (as compared to conventional fueled vehicles) because, as AAMA notes, "[e]missions certification information is available for all vehicles." AAMA (Supp.), G–7, 1. *See also* AAMA (Supp.), G–7, 2 (same).

[325] The proposed label formats and SNPR text made this point clear, but the proposed rule language may have allowed for an erroneous interpretation. *See, e.g.*, AAMA, I–16, 3 (opposing this disclosure in part based on belief that the Commission's proposal would require disclosures based on "reasonable assessments" in the absence of EPA standards).

[326] *See, e.g.*, Mobil, D–16, 3 ("The fuel and vehicle are a system. Benefits that may be portrayed as being associated with a particular vehicle are really a function of the combination of the fuel and the vehicle.").

[327] AAMA (Tr.), 164–65 ("[W]e feel there is an enormous amount of information that a consumer has to know about . . . [AFVs] including electric vehicles, and if any attempt is made to put every factor on the label it's going to end up information overload and do nothing but confuse the consumer."); Ford (Tr.), 175–76 (sticker is not appropriate place to provide detailed information; consumers need information before they get to the dealership).

[328] CAS, G–17, 3, (Tr.), 166, (Supp.), 3. EPA's fuel economy label discloses the vehicle's annual fuel costs, but that figure does not include other operating costs. EPA (Tr.), 166.

[329] Id.

[330] 59 FR 59666, 59691–59692.

[331] Boston Edison, I–14, 7; (Supp.), G–26, 9–11, 12; (Tr.), 202; RFA, G–5, 5; UCS (Tr.), 201–2, 208.

[332] H. Rep. No. 102–474(1), 102d Cong., 2d Sess. 132.

[333] AMI (Tr.), 206; API (Tr.), 201; NPGA (Tr.), 203.

[334] NPGA (Tr.), 203.

[335] Boston Edison stated DOE's Energy Information Administration ("EIA") publishes the data necessary to determine the domestic content of motor vehicle fuel. Boston Edison (Supp.), G–26, 11. EIA's reports, however, do not cover all the alternative fuels. See Boston Edison (Supp.), Exhibit 4 (no data for ethanol, methanol, hydrogen, or LPG).

[336] RFA generally supported a disclosure as to this factor but noted at the Workshop that:

I question whether or not we want that to be [on] a label on the vehicle because I think we've added enough stuff now that it's really a scroll * * * But perhaps maybe the reference to the brochure and then maybe the DOE since they would have access to the EIA information readily available, maybe it should go into the information brochure. . . I think it would be too difficult to keep it up in the context of a label.

RFA (Tr.), 207–08.

price."[337] Accordingly, as described in section III(C)(2)(c)(1), *infra*, the Commission concludes that consumers should be advised to consider this factor when evaluating AFVs, but that labels should not include specific data on this factor.

(3) Fuel economy/energy efficiency. In developing this final rule the Commission has considered whether requiring disclosure of fuel economy or energy efficiency information would be useful to consumers.[338] However, EPA, which is responsible for compiling fuel economy information for the federal fuel-economy labeling program, has plans to establish labeling requirements for AFVs powered by all alternative fuels.[339] Therefore, the Commission concludes that requiring fuel economy information on its labels would be duplicative, and possibly confusing. It has thus determined that such information should not be disclosed on its AFV labels.

(4) Appropriate fuel, fuel availability, fuel grade, and refueling time. The Commission received comments suggesting that disclosure of other information (e.g., appropriate fuel for the vehicle,[340] fuel availability,[341] fuel grade,[342] and refueling time[343]) should be required on AFV labels. The Commission notes that the fuel to be used in the vehicle will be easily ascertainable (either from EPA's fuel economy labels or information voluntarily supplied by AFV manufacturers). However, some consumers may not be familiar with the availability of AFVs powered by different alternative fuels. Accordingly, the Commission finds that while requiring disclosure of fuel type is not necessary for AFV labels, as described in section III(C)(2)(c)(1), *infra*, consumers should be advised to consider this factor when evaluating AFVs. As to the remaining factors, the Commission believes that disclosures are impractical because all useful information simply cannot fit in a simple label. The Commission also is not aware of a standard methodology or established practice for calculating any of those factors, and no commenter addressed that subject.

The Commission notes, however, that fuel availability and refueling methods, two topics proposed by comments for the labels (including refueling time for electricity and CNG) are addressed in the DOE brochure.[344] Accordingly, as described in section III(C)(2)(c)(1), *infra*, the Commission concludes that consumers should be advised, as a general matter, to consider those factors when evaluating AFVs. In addition, because the Commission has determined that consumers need basic comparative information while refueling, the principal component of alternative fuels is required to be disclosed by the Commission's Fuel Rating Rule[345] and this final rule.

c. Descriptive Disclosures on AFV Labeling. In the SNPR, the Commission proposed that the specific data disclosures on labels for new covered vehicles (i.e., cruising range and EPA certification level) be supplemented with general, descriptive information pertinent to all consumers considering an AFV purchase.[346] These descriptive disclosures would comprise the second and third parts of the AFV label.[347] The second part of the AFV label would contain a list of factors consumers should consider before acquiring an AFV. The third part would advise consumers of toll-free telephone numbers they could call to obtain further pertinent information from the federal government. The Commission's proposals as to these two parts, and the comments addressing those proposals, are described below.

(1) List of comparative factors. The Commission believed that requiring a list of factors consumers could use to consider and compare AFVs would encourage AFV manufacturers, conversion companies, and dealers to provide additional information to meet consumers' expectations and needs.[348] The Commission also believed that a list of comparative factors could help consumers evaluate information disclosed on other labels, in advertising, and from other sources. Accordingly, the SNPR proposed that labels for new covered vehicles contain a section under a standard heading, stating, "Before selecting an Alternative Fuel Vehicle (AFV) make sure you consider:." The labels would then list the following five factors consumers should consider before purchasing an AFV: fuel type (i.e., the fuel or fuels that power the vehicle); operating costs; performance/convenience (i.e., cold start capability, refueling/recharging time, acceleration rates, and refueling methods); fuel availability; and energy security/domestic content of fuel.[349]

Each factor would be supplemented with a brief explanation of how it is relevant to an AFV purchase. For example, for fuel type, the label would contain a statement that consumers should be aware of which fuel(s) powers that particular AFV. For operating costs, the label would state that fuel and maintenance costs for AFVs differ from gasoline or diesel-fueled vehicles and can vary considerably. A similar format was proposed for the three other comparative purchasing factors (i.e., performance/convenience,[350] fuel availability,[351] energy security/domestic content of fuel.[352]

The Commission proposed a nearly identical format for used covered vehicles. For those labels, the SNPR proposed that the labels contain the same standard heading followed by a list of factors. Four of the factors on that list would be displayed identically to the list for new covered vehicles.[353] The description of one factor (performance/convenience) would be modified slightly, by adding a reference to cruising range differences between

[337] B–3, 18.

[338] In its initial comment Boston Edison stated that energy efficiency could be expressed as "efficiency per BTU" or "efficiency per mile," but did not otherwise define a basis for these disclosures. Boston Edison, G–26, 3–4. *See also* Boston Edison (Supp.), G–26, 5–7. Although not stated, it appears that this suggestion was limited to labeling for electric vehicles. At the Workshop, CAS supported a disclosure for this factor, CAS (Tr.), 194, but later indicated that it was satisfied that EPA fuel economy labels will give consumers sufficient information on the comparative energy efficiency of competing vehicles during driving. CAS (Supp.), G–17, 3.

[339] EPA, H–4, 1, 3.

[340] API, G–25, 5.

[341] CAS, G–17, 3. AGA/NGVC stated that the AGA's manual of available CNG fueling stations should be "referenced," but did not indicate whether that should be on the AFV label or in the DOE brochure. AGA/NGVC (Tr.), 195. The Commission notes that the DOE brochure lists AGA and NGVC as sources for additional information about CNG-powered AFVs. *See* B–3, 23.

[342] MC-MD, H–7, 2. *See also* NACAA (Tr.), 196 (to the extent there are different grades, "we don't know all the fuels out there").

[343] DOE, H–10, 6; (Tr.), 172–73.

[344] See B–3, 16 (electricity), 18 (ethanol), 20 (methanol), 22 (CNG), 24 (propane).

[345] *See* 16 CFR 306.10(a) (1994) (requiring retailers to post automotive fuel ratings).

[346] 59 FR 59666, 59693–59695.

[347] Labels for used covered vehicles, which would not require disclosure of specific data disclosures, would simply disclose the descriptive information.

[348] 59 FR 59666, 59693.

[349] 59 FR 59666, 59694.

[350] For performance/convenience, the labels would state that vehicles powered by different fuels differ in their cold-start capabilities (i.e., ability to start a cold engine), refueling and/or recharging time (i.e., how long it takes to refill the vehicle's tank to full capacity), acceleration rates, and refueling methods.

[351] For fuel availability, the labels would advise consumers to determine whether refueling and/or recharging facilities that meet their driving needs have been developed for this vehicle and will be readily available in their area.

[352] For energy security/domestic content of fuel, the labels would state that alternative fuels can reduce U.S. reliance on imported oil, especially if all of the fuel's components are produced in this country. Consumers are then advised to consider whether the fuel powering this vehicle is typically produced domestically or is imported.

[353] Fuel type, operating costs, fuel availability, and energy security/domestic content of fuel.

different fuels.[354] This reference was added to account for the fact that labels for used covered vehicles would not disclose the vehicle's cruising range. Finally, a new factor—environmental impact—was added to the list to account for the fact that labels for used covered vehicles would not disclose any objective information as to that factor. The description for this factor would advise consumers that all vehicles (conventional and AFVs) affect the environment directly (e.g., tailpipe emissions) and indirectly (e.g., how the fuel is produced and brought to market). Consumers would then be advised to compare the environmental costs of driving an AFV with a gasoline-powered vehicle.

Four comments offered general comments regarding this aspect of the Commission's proposal.[355] Three comments opposed including a standard list of factors on AFV labels. AAMA stated that requiring disclosure of the list exceeded the Commission's statutory mandate (because the information "is neither cost nor benefit information"), is redundant with information required to be disclosed by DOE, and may discourage consumers interested in AFVs because of its "cautionary tone."[356] Two other comments characterized the list as "unnecessary, [and] uninformative"[357] and of "minimal value."[358] Mobil, however, supported including the "fairly comprehensive" list of factors because it provided a framework for evaluating issues relevant to AFVs in general.[359]

Other comments were directed to specific factors on the comparative list. For example, four comments addressed the factor concerning energy security/domestic content of fuel. API stated that the proposed language "may be stronger than the FTC can continue to defend" because future alternative-energy demands may not be met by domestic sources.[360] One comment suggested that this factor be replaced with a specific data disclosure on the subject, based on data supplied by EIA.[361] Mobil suggested that the factor's description be revised so that consumers were advised that information as to this subject was available from EIA.[362] DOE, however, supported the Commission's proposal regarding this topic.[363] In addition, CAS suggested that the explanation regarding two of the factors on the list—fuel availability and operating costs—should state specifically that further information as to those factors is available from DOE.[364]

After considering the record, the Commission has determined to issue its SNPR proposal as to this subject with one modification. As to the threshold issue of whether AFV labels should include a list of comparative factors, the Commission notes that the standard list of factors for comparisons proposed in the NPR (and again in the SNPR) does not, by itself, disclose comparative cost-benefit information. Thus, in developing this final rule the Commission has considered whether including such a list on AFV labels would constitute "appropriate information with respect to costs and benefits" (as that phrase is used in section 406(a)), and would be useful to consumers in undertaking a cost-benefit analysis regarding whether to acquire an AFV or what type of AFV. As noted, numerous commenters indicated that this approach would provide consumers with useful information. In addition, the Commission cannot, as a practical matter, require disclosure of comparative information as to every relevant factor given the constraints of a simple label format. Accordingly, the Commission has concluded that the AFV labels should contain a standard list of factors consumers should consider before acquiring an AFV.[365]

The Commission has concluded, however, that one factor on the list—energy security/domestic content—should be modified to reflect concerns raised in the comments. As noted previously, the final rule does not require an objective disclosure as to domestic content because it cannot feasibly be displayed on a label.[366] The Commission further agrees that the effective meaning of the "domestic" content of fuels will likely change as a result of international free-trade agreements such as the North American Free Trade Agreement. As a result, identifying the country of origin of a given fuel will not always be useful information to consumers.

In its place, the final rule defines this factor in terms of consumers' interest in ensuring long-term fuel availability at a reasonable price from secure source countries. Accordingly, that factor is denominated "energy security/renewability" in the final rule, and the explanatory statement advises consumers, "Consider where and how the fuel powering this vehicle is typically produced." Labeling for used covered vehicles will follow an identical format.

The final rule retains the remaining factors because all will likely be important for consumers to consider before purchasing an AFV.[367] Information about the AFV's fuel type will be available directly from the dealer; and the other factors are addressed in DOE's information brochure.[368] The Commission has considered but decided against modifying the explanations for fuel availability and operating costs (to state explicitly that further information is

[354] On this label, consumers would be advised that vehicles powered by different fuels differ in terms of their cruising range (i.e., how many miles the vehicle will go on a full supply of fuel).

[355] Six other comments generally supported the entirety of the Commission's SNPR proposal. AGA/NGVC, I–16, 2, 3; Chicago, J–2, 1; Comm Elec, I–8, 8; EIA/EEU–ISD, J–4, 1; NAFA, I–10, 1, 2; RFA, I–3, 1–2.

[356] AAMA, I–16, 2, 6. As noted previously, three comments fully supported AAMA's comment. Chrysler, I–13, 1; Ford, I–4, 2; NGVPA, I–19, 1.

[357] Chrysler, I–13, 1, 2.

[358] Boston Edison/EEI, I–14, 6–7.

[359] Mobil, I–2, 11, cover letter at 1.

[360] API, I–15, cover letter at 2. API also stated that references to domestic products should agree with the treatment given that topic under EPA 92 and the North American Free Trade Agreement, under which "domestic products are defined much more broadly." *Id.* at 3.

[361] Boston Edison/EEI, I–14, 7. This comment acknowledged, however, that EIA does not publish appropriate data for all alternative fuels. In those circumstances, Boston Edison/EEI suggested that the labels simply note that "information is not yet available for those fuels." *Id.*

[362] Mobil, I–2 (cover letter at 2–3, 7–8) ("Check with [EIA] or request a copy of their Annual Energy Outlook to determine what percentage of the fuel powering this vehicle is from domestic or foreign sources.").

[363] DOE, J–1, 2.

[364] CAS, I–12, 2 (E.g., "For information on operating costs, contact DOE at the number listed below.). Electro Auto also addressed the operating costs factor; this comment may have misapprehended the SNPR as proposing that actual operating costs be disclosed on AFV labels. Electro Auto, I–7, 2 (supports requiring disclosure of comprehensive operating costs for AFVs only if conventional vehicles are required to disclose comparable information).

[365] The Commission reached a similar conclusion when it issued warranty labeling requirements for used motor vehicles. Those requirements are designed to help consumers evaluate and compare warranty coverage and counteract dealer misrepresentations. In that proceeding, the Commission determined that requiring disclosure of a standard list of major defects that can occur in used motor vehicles could convey useful information to consumers. *See* Used Motor Vehicle Trade Regulation Rule, Statement of Basis and Purpose, 49 FR 45692, 45706, Nov. 19, 1984 (list of major defects that can occur in used motor vehicles provides consumers with a framework for evaluating and comparing warranty coverage and counteracts dealer misrepresentations).

[366] *See supra* section III(C)(2)(b)(2).

[367] *See* 59 FR 24014, 24016 nn.68, 70, 75, 79 and 24017 nn.83, 87, 89, 97, 101, 102, 106 and accompanying text (ANPR commenters identifying those factors as being important to consumers).

[368] EPA fuel-economy labels also disclose information regarding fuel type and operating costs. But those labels are not yet required for AFVs powered by all alternative fuels. 59 FR 39638, 39639.

available from DOE) because it believes that the label's format already adequately conveys that information.

(2) Referral to other sources of information. In the SNPR, the Commission tentatively determined that a precise reference to DOE's consumer information brochure and NHTSA's vehicle safety hotline was appropriate on labeling for new and used covered AFVs. Accordingly, the Commission proposed that label formats for new and used covered vehicles include standard statements informing consumers that they can obtain (1) copies of a free consumer-information brochure and general information about AFVs by calling the toll-free telephone number for DOE's National Alternative Fuels Hotline, and (2) vehicle safety information by calling the toll-free telephone number for DOT/NHTSA's Auto Safety Hotline.[369]

Five comments addressed this issue.[370] Chrysler opposed requiring disclosure of referral information based on its belief that the labels should disclose information pertinent to specific AFVs.[371] The remaining four comments supported reference to one or both of the toll-free hotlines.[372]

The referral statement proposed in the SNPR does not, by itself, disclose objective cost-benefit information. In developing this final rule, the Commission has thus considered whether including the proposed statement on AFV labels would help consumers make reasonable choices and comparisons. The Commission also considered whether including such a statement was feasible, given the constraints of a simple label format.

After considering the record, the Commission concludes that including a standard statement referring consumers to pertinent sources of government information is consistent with section 406(a)'s legislative purpose. As noted, comments indicated that a referral to objective information sources would be useful to consumers. In addition, while EPA 92 directed DOE to "produce and make available" an information package, the statute does not require AFV manufacturers or dealers to provide consumers with copies of the information package or to notify them of its availability.[373] To address that apparent omission, AFV labels would contain a statement informing consumers that further information about AFVs is available from DOE. The labels also would inform consumers that information about another pertinent factor—vehicle safety—is available from the federal agency responsible for regulating the safe performance of motor vehicles.[374]

Given the nature of the disclosure, the Commission believes that consumers considering either new or used AFVs would find it equally relevant. Accordingly, the Commission has determined that label formats for new and used covered vehicles will include references to DOE's National Alternative Fuels Hotline and DOT/NHTSA's Auto Safety Hotline, as proposed in the SNPR.

3. Consolidation

As noted previously, EPA 92 requires the Commission to consolidate its AFV labels with other labels providing information to consumers "where appropriate." In developing the SNPR, the Commission thus considered whether the information the Commission will require for AFVs could be incorporated into existing labels (e.g., EPA's fuel economy label or the Commission's used car Buyers Guide), or whether existing label information could be incorporated into its AFV labels. For both options, the Commission noted that consolidation could help consumers by collecting pertinent information in a central location. Industries affected by the labeling requirements could also benefit by possibly reducing their compliance costs. However, disturbing labeling formats with which consumers are familiar could create confusion. Attempting to fit additional disclosures into existing labels also raises the possibility that the label will overload consumers with excessive amounts of information. Accordingly, the Commission tentatively concluded that consolidating the information proposed to be disclosed with other labels providing information to consumers was not appropriate.

Three comments addressed the Commission's SNPR proposal as to consolidation.[375] Mobil stated that this issue could best be answered by vehicle manufacturers.[376] Comments from AAMA and Chrysler opposed the Commission's proposal. Chrysler stated that manufacturers should have flexibility to determine how best to label vehicles to provide the required information, either by issuing a separate label or combining it with another label as appropriate for the vehicle being labeled.[377] AAMA supported the Commission's proposal not to consolidate the new disclosures on EPA's fuel economy label, but stated that manufacturers "must be given the flexibility to incorporate the additional information required by the FTC on existing labels."[378]

After considering the record, the Commission has determined that consolidating new AFV disclosures with other labels providing information to the consumer is not appropriate. Consolidation as required by EPA 92 could be undertaken in one of two ways: incorporating existing disclosures into new AFV labels, or new AFV disclosures into existing labels. As to the first category, the Commission notes that no comment responding to the SNPR supported such incorporation. The Commission also believes that providing the information already displayed on other labels on its AFV labels (in a different format) could confuse consumers and is therefore unnecessary.

As to the second category, consolidating information required by the Commission into existing labels would not be appropriate because those labels do not have sufficient extra space to accommodate new AFV disclosures. For example, EPA stated that new AFV information could not reasonably be incorporated into its fuel economy label because that label already is

[369] *See* Figure 6 (new covered vehicles) and 8 (used covered vehicles), 59 FR 59666, 59712, 59714.

[370] Two other comments made general reference to this issue. AAMA did not address the issue in its written comment but included the referral information in its proposed AFV label. AAMA, I–16, Att. III. In an earlier comment filed in this proceeding, AAMA indicated support for labels which disclosed "instructions on where to obtain additional information (e.g., DOE's [information brochure])." AAMA, G–7, 1. RFA's comment was to "encourage some formal review process of the DOE brochure" by industry. RFA, I–3, 2.

[371] Chrysler, I–13, 1. Chrysler also stated generally that the information proposed for the back side of the AFV labels was "unnecessary, uninformative, and due to its location, unreadable under many circumstances." *Id.* at 2.

[372] Boston Edison/EEI, I–14, 7 ("provides consumers with valuable information directly pertinent to purchasing decisions"); DOE, J–1, 2 (supports reference to DOE's Hotline and information brochure); DOT/NHTSA, J–5, 2 (supports reference to NHTSA's vehicle safety hotline); Mobil, I–2, 11 (supports generally and wants DOE brochure to be "peer and technically reviewed" before publication of updates and revisions).

[373] 42 U.S.C. 13231 (Supp. IV 1993).

[374] DOT/NHTSA, H–1, 1.

[375] Seven other comments indicated general support with the Commission's AFV labeling proposal without addressing this particular issue. AGA/NGVC, I–18, 2, 3; Boston Edison, I–14, 4; Chicago, J–2, 1; Comm Elec, I–8, 8; EIA/EEU–ISD, J–4, 1; NAFA, I–10, 1, 2; RFA, I–3, 1–2.

[376] Mobil, I–2, 12.

[377] Chrysler, I–13, 1, 2.

[378] AAMA, I–16, 2, 5.

"crowded."[379] As discussed below,[380] the Commission also believes that allowing manufacturers the option of determining where the required disclosures would be displayed is similarly not appropriate.

4. Label Size and Format

In the SNPR, the Commission proposed that AFV labels be reduced from the size proposed in the NPR and measure 7 inches wide by 5½ inches high.[381] The Commission further proposed that information required to be disclosed by its AFV labeling requirements be displayed on a visible window surface in three label formats. The first label format would be for new covered AFVs designed to operate solely on alternative fuel. Figures 4 and 6 in the SNPR illustrated samples of this format; figure 4 (containing objective information particular to that vehicle) would appear on the front of the label, and figure 6 (containing general information) would appear on the back.

The second label format would be for new covered vehicles capable of operating on alternative fuel and on conventional fuel. Figures 5 and 6 of the SNPR illustrated samples of this format; figure 5 (containing objective information particular to that vehicle) would appear on the front, and figure 6 again would appear on the back. The third label format would be for used covered AFVs. Figures 7 and 8 of the SNPR illustrated samples of this format; figure 7 would appear on the front, and figure 8 would appear on the back.

The proposed rule also addressed general format issues common to all three labeling formats. For example, headlines and text for all labels were standard as illustrated in the sample labels.[382] In addition, no marks or information other than that specified in the proposed labeling requirements would appear on any of the labels.[383]

Six comments addressed the Commission's SNPR proposal regarding AFV label size and format.[384] Comments from Boston Edison/EEI and CAS supported the proposed label's display of information concerning cruising range and EPA certification standard.[385] Comments from the City of Chicago did not address the specifics of the Commission's proposal, but instead suggested that cost-benefit labels be permanently affixed to AFVs.[386]

The remaining three comments from some domestic automakers, however, objected to the size and format of the proposed AFV labels. For example, AAMA opposed a standard label format and stated that manufacturers should have the option of placing new required information on existing labels.[387] AAMA also stated that the proposed format was "unintentionally misleading" because it "yielded the impression * * * that the characteristics described are the most important to consider when purchasing an AFV."[388] In addition, AAMA stated that the proposed label formats lacked sufficient extra space,[389] were too large,[390] and should be limited to one side.[391]

As noted, required labeling under the Commission's AFV labeling requirements must be "simple." Accordingly, in developing this final rule the Commission has assessed how best to meet consumers' information needs, and the practical constraints of vehicle labeling. To that end, the Commission has considered whether allowing manufacturers the option of determining where the required disclosures would be displayed would promote simple labeling useful to consumers.

The Commission notes that consumers generally have little familiarity with competing alternative-fuel options or AFV technology, or how those options and technology compare with conventional fuels or vehicles. The Commission also notes that consumers need pertinent information to help them make comparisons between the competing fuel options and technologies. The Commission therefore believes that consumers would best be served if the information to be disclosed is displayed on labels in a standard, uniform format. The Commission also believes that the proposed label formats disclose information in a fair and balanced manner.[392]

After considering the record, however, the Commission has determined that it should modify two aspects of its SNPR proposal to address practical concerns raised by the domestic automakers. First, the final rule removes the SNPR requirement that AFV labels be posted on visible "window" surfaces. As a result, conspicuous posting of the label on any visible surface constitutes compliance with the final rule. Second, the final rule removes the requirement that AFV labels appear in a two-sided format. Under this revision, the labels can either be displayed immediately adjacent to each other (on two sheets), or in the two-sided format proposed in the SNPR, at the discretion of the manufacturer.

5. Effective Date

In the SNPR the Commission proposed that its AFV labeling requirements be effective ninety days after publication of a final rule in the **Federal Register**, and sought comment on that proposed effective date.[393] AAMA and Chrysler addressed this issue, and both contended that

[379] EPA (Tr.), 211 ("Everybody saw how crowded this (i.e., the EPA label) already was. I guess it depends on what type of information ultimately ends up whether we would have difficulties with consolidating the EPA's label. But we're looking at information overload right now."). DOE, in a comment responding to the Commission's ANPR, stated further that, "Survey work has indicated that the fuel economy label already contains too much information * * *". DOE, E–10, 4.

[380] *See infra* section III(C)(4).

[381] *See* proposed rule §§ 309.20(b) (for new covered vehicles), 309.21(b) (for used covered vehicles), 59 FR 59666, 59707.

[382] See proposed rule §§ 309.20(e) (for new covered vehicles), 309.21(e) (for used covered vehicles), 59 FR 59666, 59707.

[383] See proposed rule §§ 309.20(b) (for new covered vehicles), 309.21(b) (for used covered vehicles), 59 FR 59666, 59707.

[384] Six additional comments indicated general support for the Commission's labeling proposal but did not address this specific issue. AGA/NGVC, I–18, 2, 3; Comm Elec, I–8, 8; EIA/EEU–ISD, J–4, 1; Mobil, I–2, cover letter at 2; 6; NAFA, I–10, 1, 2; RFA, I–3, 1–2. Mobil also stated that this issue could best be answered by vehicle manufacturers, and Toyota misapprehended the Commission's SNPR proposal as requiring the posting of alternative fuels labeling on vehicles. Mobil, I–2, 12; Toyota, I–11, 1.

[385] Boston Edison/EEI, I–14, 6 ("The graphic chosen by the Commission to display emission standard certifications conveys this critical information to consumers in a highly effective manner."); CAS, I–12, 1 ("The proposed label format [for cruising range] will adequately convey this important information to consumers.").

[386] Chicago, J–2, 2, 3 (permanent labeling will promote AFVs and alternative fuels, provide public education and increase public awareness, and assist in implementing traffic control programs for AFVs such as preferential parking).

[387] AAMA, I–16, cover letter at 1. *See also* Chrysler, I–13, 1, 2 (manufacturers should have flexibility to determine whether to issue a separate label or combine it with another).

[388] AAMA, I–16, 2. *See also* Ford, I–4, 2 (proposed format overemphasizes importance of the required information as decision criteria).

[389] AAMA, I–16, 4 ("Due to the layout and large font, the label does not have extra space. If additional information were required in the future, the label would have to be reformatted to accommodate added text. This would be costly and require lead time.").

[390] AAMA, I–16, 4 ("[M]anufacturers are faced with several existing and forthcoming labeling requirements. On many vehicles, they are simply running out of room to place new labels, especially one of the size proposed by FTC."). See also Ford, I–4, 2 (the proposed size promotes information overload, because "it establishes yet another label on an already crowded vehicle which the consumer must read to gather pertinent information.").

[391] AAMA, I–16, 4, 5, 6 (two-sided label will be difficult to read, and consumers will quickly forget phone numbers on the back if they do not copy them down). *See also* Ford, I–4, 2 (opposes two-sided label).

[392] In fact, comments from the groups representing the natural gas and ethanol industries supported the proposed label formats. AGA/NGVC, I–18, 2, 3; RFA, I–3, 1–2.

[393] 59 FR 59666, 59697.

manufacturers would require additional lead time to comply with the new labeling requirements.[394] AAMA explained that the Commission's labeling requirements would require manufacturers to design, order, produce, deliver, and integrate new labels into the vehicle production process. For new covered vehicles, the system would also need to accommodate internal coding and tracking data, to account for the fact that the labels would disclose information specific to each vehicle. AAMA also stated that the two-sided format for those labels created even greater complications with printing and application.[395] As a result, ninety days did not allow adequate time for compliance. AAMA suggested that the AFV labeling requirements be effective at least 180 days after publication "if manufacturers are given the option to use existing labels. Otherwise, we recommend that the FTC allow at least 9 months lead time."[396] Chrysler stated that it would need 180 days to implement the introduction of a new label.[397]

EPA 92 does not address when the Commission's AFV labeling requirements must be effective. In developing this final rule the Commission has thus considered how best to balance consumers' needs for comparative information with industry's need for a reasonable period of time to come into compliance. For consumers considering those vehicles, the Commission notes that some consumers may need comparative information shortly after this notice's publication date, because EPA 92's fleet acquisition mandates begin with fiscal year 1996 for the federal fleet[398] and model year 1996 for alternative fuel providers.[399] However, it is not clear that these consumers (i.e., the ones most likely to be affected by a longer effective date) would make purchasing decisions based on a vehicle label: the federal government, because of its purchasing power, and the fuel providers, because of their own experience and expertise.

The Commission also notes that for used covered AFVs, the final rule requires disclosure of standard information in a uniform format.[400] Implementation of that requirement would thus simply require obtaining copies of the required label format and arranging for posting on affected vehicles. Because the market for used vehicles powered by alternative fuels is not extensive at this time, allowing sellers additional time to comply with the labeling requirements will not result in undue hardship to consumers.

After considering the comments, the Commission concludes that the proposed effective date (i.e., ninety days after publication in the **Federal Register**) will not provide AFV manufacturers and dealers with sufficient time to prepare to comply with the new labeling requirements. Instead, the final rule requires compliance within 180 days after publication in the **Federal Register**, a period that is reasonable and consistent with EPA 92's legislative program. The final rule, however, does not preclude AFV manufacturers and dealers and used AFV sellers from posting the required labels before the rule's effective date. Further, consumers will be able to obtain information about AFVs from DOE before (as well as after) these labels are required.

6. Updating AFV Labeling Requirements

As noted previously, EPA 92 directs the Commission to update its labeling requirements "periodically" (a duration not otherwise defined in the statute) "to reflect the most recent available information."[401] This requirement contrasts with EPA 92's direction to DOE to update its consumer information package "annually."[402] In the SNPR, the Commission proposed to keep apprised of pertinent technological advances, monitor the extent to which other governmental agencies impose labeling requirements, and then update its AFV labeling requirements as appropriate.[403]

Three comments addressed this issue.[404] Boston Edison/EEI "strongly support[ed]" the Commission's proposal because regular updates on a fixed schedule "might result in an arbitrary maintenance of problematic or outmoded rule provisions."[405] Mobil generally supported the Commission's proposal "as long as the prerogative is not abused through excessive use."[406] AAMA suggested that the Commission's label formats were "relatively inflexible" and, as a result, "the Administrator[407] should have the discretional authority to be able to approve alternative labeling formats, upon the request of automotive manufacturers, without required additional rulemaking."[408]

After considering the record, the Commission has determined that it should update its AFV labeling requirements as proposed in the SNPR. Given the irregular pace of technological development and regulatory activity, the Commission finds that a flexible approach will best meet consumers' needs. For example, although the Commission understands that EPA will promulgate rules that require fuel economy labeling for vehicles powered by LPG, hydrogen, electricity and other alternative fuels,[409] the Commission cannot predict when those standards will be adopted. At a minimum, a review of the Rule will be conducted once every ten years, pursuant to the Commission's ongoing program to review all its rules and guides at least once every ten years. Accordingly, the final rule will be updated as appropriate based on the Commission's ongoing review of all pertinent developments.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA") requires agencies to prepare a regulatory flexibility analysis when publishing a proposed rule unless the proposed rule, if promulgated, would not have a "significant economic impact on a substantial number of small entities."[410] In the SNPR, to ensure the accuracy of the required dispenser labels, the Commission proposed substantiation, certification, and recordkeeping requirements for importers, producers, refiners and distributors of gaseous alternative fuels, and manufacturers and distributors of electric vehicle fuel dispensing systems. The Commission also proposed substantiation, recordkeeping and disclosure requirements for retail sellers of the three non-liquid alternative vehicle fuels. In addition, the Commission proposed requiring that AFV manufacturers determine and disclose on labels certain product-specific information, and maintain records to substantiate the two product-specific disclosures that must be included on labels.

The Commission preliminarily concluded that the proposed rule, if enacted, would have a minimal effect on all business entities within the affected industries, regardless of their size. Available information suggested that approximately 1,000 companies import, produce, refine, distribute, or retail CNG to consumers. Further, only approximately 50 companies manufacture or distribute electric vehicle fuel dispensing systems, and no more than 250 retail companies sell electricity to consumers through such systems for the purpose of recharging electric vehicle batteries. Information the Commission possessed also indicated that relatively few companies currently manufacture, convert, or sell AFVs. Except for those companies that sell non-liquid alternative fuel (including electricity) to consumers, the Commission stated that most of the aforementioned industry members, including those that manufacture or sell AFVs, are not "small entities" as that term is defined in section 601 of the RFA[411] and in the regulations of the Small Business Administration.[412]

The Commission also stated that although there may be some "small entities" among retail sellers of non-liquid alternative fuels (including electricity), the labeling rules proposed would likely have only a minimal impact on these small entities. Any such impact would likely consist of minimal additional recordkeeping and of retailers placing labels on fuel dispensers (to the extent this is not done by distributors for their retailer customers). The impact on small entities, therefore, appeared to be *de minimis* and not significant.

In light of these factors, in the SNPR the Commission certified under the RFA that the rule proposed would not, if promulgated, have a significant impact on a substantial number of small entities, and, therefore, that a regulatory analysis was not necessary.[413] To ensure the accuracy of this certification, however, the Commission requested comments on whether the proposed rule would have a significant impact on a substantial number of small entities, including specific information on the number of entities in each category that would be covered by the proposed rule, the number of these companies that are "small entities," and the average annual burden for each entity.

No comments specifically addressed this aspect of the Commission's SNPR proposal. The Commission, however, received three comments that tangentially addressed this issue. These comments stated that the requirements that producers and importers of natural gas comply with the proposed rule's CNG fuel rating determination, certification and recordkeeping requirements, which includes determining and certifying the minimum percentage of methane in natural gas, would be overly burdensome. These comments stated that most producers currently do not sell natural gas vehicle fuel, and, therefore, do not test for or certify the methane content of the natural gas they sell.[414]

The statements by Unocal, API and AGA/NGVC do not persuade the Commission that the requirements it has adopted will impose a significant economic impact on a substantial number of small entities. First, none of the comments cited specific cost or burden estimates or submitted supporting data concerning the specific burden on any parties. Second, the burden of determining and certifying fuel ratings falls on producers of natural gas only if the fuel is transferred for use as a vehicle fuel. Further, no commenters submitted information to contradict the Commission's belief, which was stated in the SNPR, that most of these industry members are not "small entities," as that term is defined either in section 601 of the RFA or applicable regulations of the Small Business Administration.[415] In addition, the rule adopted by the Commission does not require natural gas producers to conduct tests themselves to determine the fuel rating of natural gas. For example, they may use private facilities for fuel rating determinations, thus obviating the need to have testing equipment of their own. The rule also does not require producers to certify the fuel rating of CNG with each transfer of the fuel. The rule permits producers to give the person to whom the fuel is transferred a letter or written statement, including the fuel rating. The letter or written statement is effective until the producer transfers non-liquid alternative vehicle fuel (other than electricity) with a lower percentage of the major component, or of any other component claimed. Therefore, the Commission believes that the fuel rating determination and certification requirements it has adopted will minimize burdens on even small businesses.

On the basis of all the information now before it, the Commission has determined that the rule will not have a significant impact on a substantial number of small entities. Consequently, the Commission concludes that a regulatory flexibility analysis is not required. In light of the above, the Commission certifies, under section 605 of the RFA,[416] that the rule it has adopted will not have a significant impact on a substantial number of small entities.

IV. Regulatory Review

The Commission has implemented a program to review all of its current and proposed rules and guides. One purpose of the review is to minimize the economic impact of new regulatory actions. As part of that overall regulatory review, the Commission solicited comments in the SNPR on questions concerning benefits and significant burdens and costs of the proposed rule and alternatives to the proposals that would increase benefits to purchasers and minimize the costs and other burdens to firms subject to the rule's requirements. Only one comment raised an issue not previously covered in other parts of this notice. Specifically, RFA urged the Commission to preclude localities from creating more stringent labeling requirements for alternative fuels so that alternative fuel labeling will be consistent nationwide and consumer confusion could be avoided.[417]

The Commission is not persuaded that any reduction in consumer confusion that could result from the narrow standard suggested by RFA would outweigh the benefits of the preemption standard proposed in the

[394] A third commenter stated that this issue could best be answered by vehicle manufacturers. Mobil, I–2, 12–13. Eight other comments indicated general support for the Commission's AFV labeling proposal without addressing this issue. AGA/NGVC, I–18, 2,3; Boston Edison, I–14, 1; Chicago, J–2, 1; Comm Elec, I–8, 8; EIA/EEU–ISD, J–4, 1; Mobil, I–2, cover letter at 2; 6; NAFA, I–10, 1, 2; RFA, I–3, 1–2.

[395] AAMA, I–16, 3–4, 6.

[396] AAMA, I–16, 6.

[397] Chrysler, I–13, 2.

[398] 42 U.S.C. 13212 (Supp. IV 1993).

[399] 42 U.S.C. 13251 (Supp. IV 1993). Acquisition requirements for private fleet operators begin in model year 1999. 42 U.S.C. 13257 (Supp. IV 1993).

[400] *See* Final Rule § 309.203(e) (content of labels for used covered vehicles).

[401] 42 U.S.C. 13232(a) (Supp. IV 1993).

[402] 42 U.S.C. 13231 (Supp. IV 1993).

[403] 59 FR 59666, 59697.

[404] Six other comments generally supported the Commission's AFV labeling proposal without addressing this issue. AGA/NGVC, I–18, 2, 3; Chicago, J–2, 1; Comm Elec, I–8, 8; EIA/EEU-ISD, I–4, 1; NAFA, I–10, 1, 2; RFA, I–3, 1–2.

[405] Boston Edison/EEI, I–14, 8. They also suggested that the Commission monitor the standards upon which its disclosures are based, to "avoid inadvertent reliance upon inappropriate or outmoded performance criteria." Id. at 3.

[406] Mobil, I–2, 13. Mobil noted that frequent label changes during a single model year "may cause confusion . . . and detract from the rule's intended purpose of informing the consumer. Truly pertinent and important information should be the only reason for a label change more frequently than one time per model year." Id.

[407] This appears to be a reference to EPA's management structure. The Commission is an independent administrative agency composed of five members appointed by the President and confirmed by the Senate for terms of seven years. 16 CFR 0.1 (1994). It has no "Administrator."

[408] AAMA, I–16, 4.

[409] 59 FR 39638, 39639.

[410] 5 U.S.C. 603(a), 605(b).

[411] 5 U.S.C. 601(6).

[412] 13 CFR Part 121 (1994).

[413] This analysis and conclusion was consistent with Commission's analysis and conclusion in its Statement of Basis and Purpose ("SBP") for the liquid alternative fuels amendments to the Fuel Rating Rule. In that SBP, the Commission certified that the Fuel Rating Rule's similar requirements would not have a significant impact. 58 FR 41356, 41369–41370.

[414] AGA/NGVC, I–18, 3–6; API, I–15, 1–5; Unocal, I–5, 2.

[415] 59 FR 59666, 59698.

[416] 5 U.S.C. 605(b).

[417] RFA, I–3, 2.

SNPR. This proposed standard would allow state and local jurisdictions the latitude to establish and enforce regulations that best suit the needs of their particular regions, provided the regulations do not frustrate the purposes of the rule. The Commission, therefore, is adopting the proposed preemption standard, which is substantially the same standard it has used in other Commission rules. Under this standard, the rule supersedes only state and local laws and regulations that would be inconsistent with the requirements of the rule in a manner that would frustrate its purposes.[418]

V. Paperwork Reduction Act

The Paperwork Reduction Act ("PRA"),[419] and regulations of the Office of Management and Budget ("OMB")[420] implementing the PRA, require agencies to obtain clearance for regulations that involve the "collection of information," which includes both reporting and recordkeeping requirements. In the SNPR, consistent with the Fuel Rating Rule's requirements for sellers of liquid alternative fuels, the Commission proposed requiring that producers, importers, refiners, and distributors of CNG and hydrogen, retailers of CNG, hydrogen and electricity, and manufacturers and distributors of electric vehicle fuel dispensing systems maintain records to substantiate the product-specific disclosures that would be required on fuel dispenser labels. In addition, the Commission proposed requiring that AFV manufacturers maintain records to substantiate two product-specific disclosures that would be required on AFV labels.

The proposed recordkeeping requirements are "collections of information" as defined by the OMB regulations implementing the PRA. The proposed requirements, therefore, were submitted to OMB for review under the PRA. In the SNPR, the Commission stated it believed that the proposed recordkeeping requirements, if enacted, would impose a minimal annual "collection of information" burden on each covered party within the affected industries.

The Commission also stated that it expected certifications for non-liquid alternative fuels (other than electricity) will be noted on documents (shipping receipts, etc.) already in use, or will be accomplished with a one-time letter of certification, consistent with current procedures for gasoline and liquid alternative fuel suppliers covered by the Fuel Rating Rule. Producers, importers, refiners, and distributors of non-liquid alternative fuels (other than electricity), and retailers of non-liquid alternative fuels (including electricity) need merely file and retain these certifications as the required recordkeeping.

Further, the Commission stated it expected that manufacturers of electric vehicle fuel dispensing systems will permanently mark the required disclosures on the equipment or systems, or will note that information on documents (shipping receipts, etc.) already in use. Manufacturers need merely file and retain records demonstrating substantiation for the proposed labeling disclosures. Distributors and retailers need merely file the documents provided to them by the manufacturers or distributors. If the systems are permanently marked by the manufacturers, distributors and retailers may rely on the permanent markings as the required recordkeeping.

In the SNPR, the Commission stated it believed that the burden per covered industry member that the Commission estimated for the Fuel Rating Rule also was appropriate in this proceeding. In the liquid alternative fuel amendments to the Fuel Rating Rule, the Commission estimated that the information collection burden associated with that rule's recordkeeping requirements was six minutes per year per industry member.[421] This estimate was small because the records at issue were likely to be retained by the industry during the normal course of business, and the "burden," for OMB purposes, is defined to exclude effort that would be expended in any event.[422] Based on these figures, the Commission estimated that the total yearly information collection burden of the proposed rule on these industry members would be 130 hours (six minutes per year times 1,300 industry members).

In the SNPR, the Commission also proposed requiring that AFV manufacturers maintain records to substantiate the tailpipe emission standard to which the vehicle has been certified pursuant to applicable EPA regulations,[423] and their estimates of each vehicle's cruising range. Pursuant to the proposed rule, manufacturers would calculate cruising range values in one of three ways. For vehicles required to comply with EPA's fuel-economy labeling provisions, cruising range would be calculated using the vehicle's estimated fuel-economy rating in conjunction with the fuel tank capacity of the vehicle.[424] For electric vehicles, cruising range would be calculated in accordance with the Society of Automotive Engineers' "Recommended Practice," J1634. For other vehicles not yet required to be labeled with EPA's fuel economy stickers, the Commission proposed that manufacturers possess a reasonable basis, consisting of competent and reliable evidence, for the cruising range values disclosed. The Commission estimated that the information collection burden associated with the proposed recordkeeping requirements for AFV manufacturers would be thirty minutes per year per manufacturer. This was an average burden estimate developed after considering that the overall burden associated with complying with the rule's recordkeeping requirements would be much greater, for example, for AFV manufacturers who must disclose cruising range figures on vehicles not yet required to be labeled with EPA fuel economy stickers.

Although under the proposed rule manufacturers would be required to determine cruising ranges and emission standards for different models of vehicles, the burden estimate (i.e., thirty minutes) also was small because the Commission believed the records at issue were likely to be developed and retained by the industry during the normal course of business. The Commission estimated that approximately 58 industry members would be covered by the proposed rule's cruising range and emission standard recordkeeping requirements. This estimate of the number of affected industry members was based on similar estimates EPA made in connection with its emission standards recordkeeping requirements contained in a final rule establishing two clean-fuel vehicle programs.[425] Based on these figures, the Commission estimated that the current total yearly burden of the proposed rule on the 58 industry members would be 29 hours (thirty minutes per year times 58 industry members).

Consequently, the Commission estimated that the total burden associated with complying with the Rule's recordkeeping requirements for AFVs and non-liquid alternative fuels (including electricity) would be a total of approximately 159 hours per year for all affected industry members. To ensure the accuracy of these burden estimates, however, the Commission solicited comment on the paperwork burden that the proposed requirements may impose to ensure that no additional burden had been overlooked.

No comments addressed the paperwork burden projections the Commission made in the SNPR. Nevertheless, the Commission considered reducing slightly the overall regulatory burden of complying with the rule by eliminating AFV manufacturers' recordkeeping requirements associated with substantiating tailpipe emission standards based on verifiable EPA certifications, and cruising range values based, in part, on verifiable EPA estimated fuel-economy ratings. The information collection requirements the Commission is adopting for such AFV manufacturers, however, includes maintenance of records only, not reporting requirements. Further, AFV manufacturers must have the aforementioned information (the EPA certifications for emissions and the EPA estimated fuel economy ratings) to substantiate the disclosures they must make under the Commission's labeling rules. The Commission expects that manufacturers normally will maintain records showing this information in the normal course of prudent business practice. Minimal additional burden, therefore, is created by a requirement in the Commission's rule that these substantiating records be maintained, and eliminating these recordkeeping requirements would not significantly reduce the overall regulatory burden on AFV manufacturers. On balance, therefore, the Commission sees no reason to revise its projections of burden per year per covered industry member, or modify the recordkeeping requirements in the proposed rule.

Because the aforementioned requirements would involve the "collection of information" as defined by the regulations of OMB, the Commission was required to submit the proposed requirements to OMB for clearance, 5 CFR 1320.13, and did so as part of this proceeding. OMB approved the request, and assigned control number 3084–0094 to the information collection requirements.[426] This approval will expire on November 30, 1997, unless it has been extended before that date.

VI. Metric Usage

The metric measurement system is the preferred system of weights and measures for United States trade and commerce.[427] Federal law requires federal agencies to use the metric measurement system in all procurements, grants and other business-related activities (including rulemakings), except to the extent that such use is impractical or likely to cause significant inefficiencies or loss of markets to U.S. firms.[428] In the SNPR, the Commission identified the proposal that AFV labels disclose cruising range in miles[429] as having a potential for the use of metric terms. The Commission thus sought comment on whether to require metric or dual (i.e., metric and non-metric) units for this disclosure.

Two comments addressed this aspect of the Commission's SNPR proposal, and both urged the Commission to require metric and non-metric units for the cruising range disclosure.[430] The Commission is not persuaded, however, that requiring metric equivalents on AFV labels would be appropriate at this time. The Commission's AFV labels were designed to be consistent with EPA's fuel economy labels, which do not utilize metric disclosures. Further, according to section 406(a) of EPA 92, the Commission's required labels must be simple. Given the amount of information the Commission's AFV labels will contain, the Commission does not believe that it would be practical to require metric equivalents at this time. The marginal increase in the public's understanding of the metric system that might result from disclosure of metric equivalents does not appear to offset the practicality problems and potential for confusion that the additional metric terms would create. The Commission, therefore, is not requiring disclosure of cruising range in metric (i.e., kilometers) as well as inch-pound measurements (i.e., miles).

List of Subjects in 16 CFR Part 309

Alternative fuel, Alternative fueled vehicle, Energy conservation, Incorporation by reference, Labeling, Reporting and recordkeeping, Trade practices.

VII. Text of Rule

Accordingly, the Commission amends 16 CFR Chapter I by adding a new part 309 to Subchapter C to read as follows:

PART 309—LABELING REQUIREMENTS FOR ALTERNATIVE FUELS AND ALTERNATIVE FUELED VEHICLES

Subpart A—General

Sec.
309.1 Definitions.
309.2 What this part does.
309.3 Stayed or invalid portions.
309.4 Preemption.

Subpart B—Requirements for Alternative Fuels

Duties of Importers, Producers, and Refiners of Non-Liquid Alternative Vehicle Fuels (other than electricity) and of Manufacturers of Electric Vehicle Fuel Dispensing Systems

309.10 Alternative vehicle fuel rating.
309.11 Certification.
309.12 Recordkeeping.

Duties of Distributors of Non-Liquid Alternative Vehicle Fuels (other than electricity) and of Electric Vehicle Fuel Dispensing Systems

309.13 Certification.
309.14 Recordkeeping.

Duties of Retailers

309.15 Posting of non-liquid alternative vehicle fuel rating.
309.16 Recordkeeping.

Label Specifications

309.17 Labels.

Subpart C—Requirements for Alternative Fueled Vehicles

309.20 Labeling requirements for new covered vehicles.
309.21 Labeling requirements for used covered vehicles.
309.22 Determining estimated cruising range.
309.23 Recordkeeping.

Appendix A—Figures for Part 309

Authority: 42 U.S.C. 13232(a).

Subpart A—General

§ 309.1 Definitions.

As used in subparts B and C of this part:

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[418] *See* final rule § 309.104 *infra*. This preemption standard is different from the standard in the Fuel Rating Rule. Under § 306.4 of the Fuel Rating Rule, "no State or any political subdivision thereof may adopt or continue in effect, except as provided in subsection (b), any provision of law or regulation with respect to such act or omission, unless such provision of such law or regulation is the same as the applicable provision of this title." 16 CFR 306.4 (1994). The preemption provision in the Fuel Rating Rule is specified by § 204 of the Petroleum Marketing Practices Act, 15 U.S.C. 2824. There is no similar provision that applies to this rule.

[419] 44 U.S.C. 3501–3520.

[420] 5 CFR 1320.7(c).

[421] 58 FR 41356, 41370–41371.

[422] Section 1320.7(b)(1) of the regulations implementing the PRA, 5 CFR 1320.7(b)(1) (1994), states:

> The time and financial resources necessary to comply with a collection of information that would be incurred by persons in the normal course of their activities (e.g., in compiling and maintaining business records) will be excluded from the "burden" if the agency demonstrates that the reporting or recordkeeping activities needed to comply are usual and customary.

[423] 40 CFR Parts 86 and 88 (1994).

[424] 40 CFR Part 600 (1994).

[425] The information collection requirements in EPA's rule were submitted to OMB by EPA and discussed in ICR No. 1694. Fleet Standards Rule, 59 FR 50042, 50072, Sept. 30, 1994. Under EPA's Clean Fuel Fleet Program, a percentage of new vehicles acquired by certain fleet owners located in covered areas will be required to meet clean-fuel fleet vehicle emission standards. The California Pilot Test Program requires manufacturers to sell light-duty clean-fuel vehicles in California.

[426] Notice of OMB Action to the FTC (Dec. 30, 1994).

[427] 15 U.S.C. 205b. *See also* Exec. Order No. 12,770, 56 FR 35801, July 21, 1991 (implementing section 205b).

[428] *Id.*

[429] *See* proposed rule §§ 309.20, 309.22, 59 FR 59666, 59707–59708.

[430] Mechtly, I–1, 1; Sokol, I–17, 1.

(a) *Acquisition* includes either of the following:

(1) Acquiring the beneficial title to a covered vehicle; or

(2) Acquiring a covered vehicle for transportation purposes pursuant to a contract or similar arrangement for a period of 120 days or more.

(b) *Aftermarket conversion system* means any combination of hardware which allows a vehicle or engine to operate on a fuel other than the fuel which the vehicle or engine was originally certified to use.

(c) *Alternative fuel* means

(1) Methanol, denatured ethanol, and other alcohols;

(2) Mixtures containing 85 percent or more by volume of methanol, denatured ethanol, and/or other alcohols (or such other percentage, but not less than 70 percent, as determined by the Secretary, by rule, to provide for requirements relating to cold start, safety, or vehicle functions), with gasoline or other fuels;

(3) Natural gas;

(4) Liquefied petroleum gas;

(5) Hydrogen;

(6) Coal-derived liquid fuels;

(7) Fuels (other than alcohol) derived from biological materials;

(8) Electricity (including electricity from solar energy); and

(9) Any other fuel the Secretary determines, by rule, is substantially not petroleum and would yield substantial energy security benefits and substantial environmental benefits.

(d)(1) *Consumer* in subpart C means an individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency, department, or instrumentality of the United States.

(2) *Consumer or ultimate purchaser* in subpart B means, with respect to any non-liquid alternative vehicle fuel (including electricity), the first person who purchases such fuel for purposes other than resale.

(e) *Conventional fuel* means gasoline or diesel fuel.

(f) *Covered vehicle* means either of the following:

(1) A dedicated or dual fueled passenger car (or passenger car derivative) capable of seating 12 passengers or less; or

(2) A dedicated or dual fueled motor vehicle (other than a passenger car or passenger car derivative) with a gross vehicle weight rating less than 8,500 pounds which has a vehicle curb weight of less than 6,000 pounds and which has a basic vehicle frontal area of less than 45 square feet, which is:

(i) Designed primarily for purposes of transportation of property or is a derivation of such a vehicle; or

(ii) Designed primarily for transportation of persons and has a capacity of more than 12 persons.

(g) *Dedicated* means designed to operate solely on alternative fuel.

(h) *Distributor* means any person, except a common carrier, who receives non-liquid alternative vehicle fuel (other than electricity) and distributes such fuel to another person other than the consumer. It also means any person, except a common carrier, who receives an electric vehicle fuel dispensing system and distributes such system to a retailer.

(i) *Dual fueled* means capable of operating on alternative fuel and capable of operating on conventional fuel.

(j) *Electric charging system equipment* means equipment that includes an electric battery charger and is used for dispensing electricity to consumers for the purpose of recharging batteries in an electric vehicle.

(k) *Electric vehicle* ("EV") means a vehicle designed to operate exclusively on electricity stored in a rechargeable battery, multiple batteries, or battery pack.

(l) *Electric vehicle fuel dispensing system* means electric charging system equipment or an electrical energy dispensing system.

(m) *Electrical energy dispensing system* means equipment that does not include an electric charger and is used for dispensing electricity to consumers for the purpose of recharging batteries in an electric vehicle that contains an on-board electric battery charger.

(n) *Emission certification standard* means the emission standard to which a covered vehicle has been certified pursuant to 40 CFR parts 86 and 88.

(o) *Estimated cruising range* for non-EVs means a manufacturer's reasonable estimate of the number of miles a new covered vehicle will travel between refueling, expressed as a lower estimate (i.e., minimum estimated cruising range) and an upper estimate (i.e., maximum estimated cruising range), as determined by § 309.22. Estimated cruising range for EVs means a manufacturer's reasonable estimate of the number of miles a new covered EV will travel between recharging, expressed as a single estimate, as determined by § 309.22.

(p) *Fuel dispenser* means:

(1) For non-liquid alternative vehicle fuels (other than electricity), the dispenser through which a retailer sells the fuel to consumers.

(2) For electric vehicle fuel dispensing systems, the dispenser through which a retailer dispenses electricity to consumers for the purpose of recharging batteries in an electric vehicle.

(q) *Fuel rating* means:

(1) For non-liquid alternative vehicle fuels (other than electricity), including, but not limited to, compressed natural gas and hydrogen gas, the commonly used name of the fuel with a disclosure of the amount, expressed as a minimum molecular percentage, of the principal component of the fuel. A disclosure of other components, expressed as a minimum molecular percentage, may be included, if desired.

(2) For electric vehicle fuel dispensing systems, a common identifier (such as, but not limited to, "electricity," "electric charging system," "electric charging station") with a disclosure of the system's kilowatt ("kW") capacity, voltage, whether the voltage is alternating current ("ac") or direct current ("dc"), amperage, and whether the system is conductive or inductive.

(r) *Manufacturer* means the person who obtains a certificate of conformity that the vehicle complies with the standards and requirements of 40 CFR parts 86 and 88.

(s) *Manufacturer of an electric vehicle fuel dispensing system* means any person who manufactures or assembles an electric vehicle fuel dispensing system that is distributed specifically for use by retailers in dispensing electricity to consumers for the purpose of recharging batteries in an electric vehicle.

(t) *New covered vehicle* means a covered vehicle which has not been acquired by a consumer.

(u) *New vehicle dealer* means a person who is engaged in the sale or leasing of new covered vehicles.

(v) *New vehicle label* means a window sticker containing the information required by § 309.20(e).

(w) *Non-liquid alternative fueled vehicle* means a vehicle capable of operating on a non-liquid alternative vehicle fuel.

(x) *Non-liquid alternative vehicle fuel* means alternative fuel used for the purpose of powering a non-liquid alternative fueled vehicle, including, but not limited to, compressed natural gas ("CNG"), hydrogen gas ("hydrogen"), electricity, and any other non-liquid vehicle fuel the Secretary determines, by rule, is substantially not petroleum and would yield substantial energy benefits and substantial environmental benefits.

(y) *Person* means an individual, partnership, corporation, or any other business organization.

(z) *Producer* means any person who purchases component elements and combines them to produce and market non-liquid alternative vehicle fuel (other than electricity).

(aa) *Refiner* means any person engaged in the production or importation of non-liquid alternative vehicle fuel (other than electricity).

(bb) *Retailer* means any person who offers for sale, sells, or distributes non-liquid alternative vehicle fuel (including electricity) to consumers.

(cc) *Secretary* means the Secretary of the United States Department of Energy.

(dd) *Used covered vehicle* means a covered vehicle which has been acquired by a consumer, but does not include any vehicle sold only for scrap or parts (title documents surrendered to the State and a salvage certificate issued).

(ee) *Used vehicle dealer* means a person engaged in the sale or leasing of used covered vehicles who has sold or leased five or more used covered vehicles in the previous twelve months, but does not include a bank or financial institution, a business selling or leasing used covered vehicles to an employee of that business, or a lessor selling or leasing a leased vehicle by or to that vehicle's lessee or to an employee of the lessee.

(ff) *Used vehicle label* means a window sticker containing the information required by § 309.21(e).

(gg) *Vehicle fuel tank capacity* means the tank's usable capacity (i.e., the volume of fuel that can be pumped into the tank through the filler pipe with the vehicle on a level surface and with the unusable capacity already in the tank). The term does not include unusable capacity (i.e., the volume of fuel left at the bottom of the tank when the vehicle's fuel pump can no longer draw fuel from the tank), the vapor volume of the tank (i.e., the space above the fuel tank filler neck), or the volume of the fuel tank filler neck.

§ 309.2 What this part does.

This part establishes labeling requirements for non-liquid alternative vehicle fuels, and for certain vehicles powered in whole or in part by alternative fuels.

§ 309.3 Stayed or invalid portions.

If any portion of this part is stayed or held invalid, the rest of it will stay in force.

§ 309.4 Preemption.

Inconsistent state and local regulations are preempted to the extent they would frustrate the purposes of this part.

Subpart B—Requirements for Alternative Fuels

Duties of Importers, Producers, and Refiners of Non-Liquid Alternative Vehicle Fuels (other than electricity) and of Manufacturers of Electric Vehicle Fuel Dispensing Systems

§ 309.10 Alternative vehicle fuel rating.

(a) If you are an importer, producer, or refiner of non-liquid alternative vehicle fuel (other than electricity), you must determine the fuel rating of all non-liquid alternative vehicle fuel (other than electricity) before you transfer it. You can do that yourself or through a testing lab. To determine fuel ratings, you must possess a reasonable basis, consisting of competent and reliable evidence, for the minimum percentage of the principal component of the non-liquid alternative vehicle fuel (other than electricity) that you must disclose, and for the minimum percentages of other components that you choose to disclose. For the purposes of this section, fuel ratings for the minimum percentage of the principal component of compressed natural gas are to be determined in accordance with test methods set forth in American Society for Testing and Materials ("ASTM") D 1945–91, "Standard Test Method for Analysis of Natural Gas by Gas Chromatography." For the purposes of this section, fuel ratings for the minimum percentage of the principal component of hydrogen gas are to be determined in accordance with test methods set forth in ASTM D 1946–90, "Standard Practice for Analysis of Reformed Gas by Gas Chromatography." This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies of D 1945–91 and D 1946–90 may be obtained from the American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103, or may be inspected at the Federal Trade Commission, Public Reference Room, room 130, 600 Pennsylvania Avenue, NW, Washington, DC, or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(b) If you are a manufacturer of electric vehicle fuel dispensing systems, you must determine the fuel rating of the electric charge delivered by the electric vehicle fuel dispensing system before you transfer such systems. To determine the fuel rating of the electric vehicle fuel dispensing system, you must possess a reasonable basis, consisting of competent and reliable evidence, for the following output information you must disclose: kilowatt ("kW") capacity, voltage, whether the voltage is alternating current ("ac") or direct current ("dc"), amperage, and whether the system is conductive or inductive.

§ 309.11 Certification.

(a) For non-liquid alternative vehicle fuel (other than electricity), in each transfer you make to anyone who is not a consumer, you must certify the fuel rating of the non-liquid alternative vehicle fuel (other than electricity) consistent with your determination. You can do this in either of two ways:

(1) Include a delivery ticket or other paper with each transfer of non-liquid alternative vehicle fuel (other than electricity). It may be an invoice, bill of lading, bill of sale, terminal ticket, delivery ticket, or any other written proof of transfer. It must contain at least these four items:

(i) Your name;

(ii) The name of the person to whom the non-liquid alternative vehicle fuel (other than electricity) is transferred;

(iii) The date of the transfer; and

(iv) The fuel rating.

(2) Give the person a letter or written statement. This letter must include the date, your name, the other person's name, and the fuel rating of any non-liquid alternative vehicle fuel (other than electricity) you will transfer to that person from the date of the letter onwards. This letter of certification will be good until you transfer non-liquid alternative vehicle fuel (other than electricity) with a lower percentage of the principal component, or of any other component disclosed in the certification. When this happens, you must certify the fuel rating of the new non-liquid alternative vehicle fuel (other than electricity) either with a delivery ticket or by sending a new letter of certification.

(b) For electric vehicle fuel dispensing systems, in each transfer you make to anyone who is not a consumer, you must certify the fuel rating of the electric vehicle fuel dispensing system consistent with your determination. You can do this in either of two ways:

(1) Include a delivery ticket or other paper with each transfer of an electric vehicle fuel dispensing system. It may be an invoice, bill of lading, bill of sale, delivery ticket, or any other written proof of transfer. It must contain at least these five items:

(i) Your name;

(ii) The name of the person to whom the electric vehicle fuel dispensing system is transferred;

(iii) The date of the transfer;

(iv) The model number, serial number, or other identifier of the

electric vehicle fuel dispensing system; and

(v) The fuel rating.

(2) Make the required certification by placing clearly and conspicuously on the electric vehicle fuel dispensing system a permanent legible marking or permanently attached label that discloses the manufacturer's name, the model number, serial number, or other identifier of the system, and the fuel rating. Such marking or label must be located where it can be seen after installation of the system. The marking or label will be deemed "legible," in terms of placement, if it is located in close proximity to the manufacturer's identification marking. This marking or label must be in addition to, and not a substitute for, the label required to be posted on the electric vehicle fuel dispensing system by the retailer.

(c) When you transfer non-liquid alternative vehicle fuel (other than electricity), or an electric vehicle fuel dispensing system, to a common carrier, you must certify the fuel rating of the non-liquid alternative vehicle fuel (other than electricity) or electric vehicle fuel dispensing system to the common carrier, either by letter or on the delivery ticket or other paper, or by a permanent marking or label attached to the electric vehicle fuel dispensing system by the manufacturer.

§ 309.12 Recordkeeping.

You must keep for one year records of how you determined fuel ratings. The records must be available for inspection by Federal Trade Commission staff members, or by people authorized by FTC.

Duties of Distributors of Non-Liquid Alternative Vehicle Fuels (other than electricity) and of Electric Vehicle Fuel Dispensing Systems

§ 309.13 Certification.

(a) If you are a distributor of non-liquid alternative vehicle fuel (other than electricity), you must certify the fuel rating of the fuel in each transfer you make to anyone who is not a consumer. You may certify either by using a delivery ticket or other paper with each transfer of fuel, as outlined in § 309.11(a)(1), or by using a letter of certification, as outlined in § 309.11(a)(2).

(b) If you are a distributor of electric vehicle fuel dispensing systems, you must certify the fuel rating of the system in each transfer you make to anyone who is not a consumer. You may certify by using a delivery ticket or other paper with each transfer, as outlined in § 309.11(b)(1), or by using the permanent marking or permanent label attached to the system by the manufacturer, as outlined in § 309.11(b)(2).

(c) If you do not blend non-liquid alternative vehicle fuels (other than electricity), you must certify consistent with the fuel rating certified to you. If you blend non-liquid alternative vehicle fuel (other than electricity), you must possess a reasonable basis, consisting of competent and reliable evidence, as required by § 309.10(a), for the fuel rating that you certify for the blend.

(d) When you transfer non-liquid alternative vehicle fuel (other than electricity), or an electric vehicle fuel dispensing system, to a common carrier, you must certify the fuel rating of the non-liquid alternative vehicle fuel (other than electricity) or electric vehicle fuel dispensing system to the common carrier, either by letter or on the delivery ticket or other paper, or by a permanent marking or label attached to the electric vehicle fuel dispensing system by the manufacturer. When you receive non-liquid alternative vehicle fuel (other than electricity), or an electric vehicle fuel dispensing system, from a common carrier, you also must receive from the common carrier a certification of the fuel rating of the non-liquid alternative vehicle fuel (other than electricity) or electric vehicle fuel dispensing system, either by letter or on the delivery ticket or other paper, or by a permanent marking or label attached to the electric vehicle fuel dispensing system by the manufacturer.

§ 309.14 Recordkeeping.

You must keep for one year any delivery tickets, letters of certification, or other paper on which you based your fuel rating certifications for non-liquid alternative vehicle fuels (other than electricity) and for electric vehicle fuel dispensing systems. You also must keep for one year records of any fuel rating determinations you made according to § 309.10. If you rely for your certification on a permanent marking or permanent label attached to the electric vehicle fuel dispensing system by the manufacturer, you must not remove or deface the permanent marking or label. The records must be available for inspection by Federal Trade Commission staff members, or by persons authorized by FTC.

Duties of Retailers

§ 309.15 Posting of non-liquid alternative vehicle fuel rating.

(a) If you are a retailer who offers for sale or sells non-liquid alternative vehicle fuel (other than electricity) to consumers, you must post the fuel rating of each non-liquid alternative vehicle fuel. If you are a retailer who offers for sale or sells electricity to consumers through an electric vehicle fuel dispensing system, you must post the fuel rating of the electric vehicle fuel dispensing system you use. You must do this by putting at least one label on the face of each fuel dispenser through which you sell non-liquid alternative vehicle fuel. If you are selling two or more kinds of non-liquid alternative vehicle fuels with different fuel ratings from a single fuel dispenser, you must put separate labels for each kind of non-liquid alternative vehicle fuel on the face of the fuel dispenser.

(b)(1) The label, or labels, must be placed conspicuously on the fuel dispenser so as to be in full view of consumers and as near as reasonably practical to the price per unit of the non-liquid alternative vehicle fuel.

(2) You may petition for an exemption from the placement requirements by writing the Secretary of the Federal Trade Commission, Washington, DC 20580. You must state the reasons that you want the exemption.

(c) If you do not blend non-liquid alternative vehicle fuels (other than electricity), you must post consistent with the fuel rating certified to you. If you blend non-liquid alternative vehicle fuel (other than electricity), you must possess a reasonable basis, consisting of competent and reliable evidence, as required by § 309.10(a), for the fuel rating that you post for the blend.

(d)(1) You must maintain and replace labels as needed to make sure consumers can easily see and read them.

(2) If the labels you have are destroyed or are unusable or unreadable for some unexpected reason, you may satisfy this part by posting a temporary label as much like the required label as possible. You must still get and post the required label without delay.

(e) The following examples of fuel rating disclosures for CNG and hydrogen are meant to serve as illustrations of compliance with this part, but do not limit the rule's coverage to only the mentioned non-liquid alternative vehicle fuels (other than electricity):

(1) "CNG"
"Minimum"
"XXX%"
"Methane"
(2) "Hydrogen"
"Minimum"
"XXX%"
"Hydrogen"

(f) The following example of fuel rating disclosures for electric vehicle fuel dispensing systems is meant to serve as an illustration of compliance with this part:

"Electricity"
"XX kW"
"XXX vac/XX amps"
"Inductive"

(g) When you receive non-liquid alternative vehicle fuel (other than electricity), or an electric vehicle fuel dispensing system, from a common carrier, you also must receive from the common carrier a certification of the fuel rating of the non-liquid alternative vehicle fuel (other than electricity) or electric vehicle fuel dispensing system, either by letter or on the delivery ticket or other paper, or by a permanent marking or label attached to the electric vehicle fuel dispensing system by the manufacturer.

§ 309.16 Recordkeeping.

You must keep for one year any delivery tickets, letters of certification, or other paper on which you based your posting of fuel ratings for non-liquid alternative vehicle fuels. You also must keep for one year records of any fuel rating determinations you made according to § 309.10. If you rely for your posting on a permanent marking or permanent label attached to the electric vehicle fuel dispensing system by the manufacturer, you must not remove or deface the permanent marking or label. The required records, other than the permanent marking or label on the electric vehicle fuel dispensing system, may be kept at the retail outlet or at a reasonably close location. The records, including the permanent marking or label on each electric vehicle fuel dispensing system, must be available for inspection by Federal Trade Commission staff members or by persons authorized by FTC.

Label Specifications

§ 309.17 Labels.

All labels must meet the following specifications:

(a) Layout:

(1) Non-liquid alternative vehicle fuel (other than electricity) labels with disclosure of principal component only. The label is 3" (7.62 cm) wide x 2½" (6.35 cm) long. "Helvetica black" type is used throughout. All type is centered. The band at the top of the label contains the name of the fuel. This band should measure 1" (2.54 cm) deep. Spacing of the fuel name is ¼" (.64 cm) from the top of the label and 3/16" (.48 cm) from the bottom of the black band, centered horizontally within the black band. The first line of type beneath the black band is ⅛" (.32 cm) from the bottom of the black band. All type below the black band is centered horizontally, with ⅛" (.32 cm) between lines. The bottom line of type is 3/16" (.48 cm) from the bottom of the label. All type should fall no closer than 3/16" (.48 cm) from the side edges of the label. If you wish to change the format of this single component label, you must petition the Federal Trade Commission. You can do this by writing to the Secretary of the Federal Trade Commission, Washington, DC 20580. You must state the size and contents of the label that you wish to use, and the reasons that you want to use it.

(2) Non-liquid alternative vehicle fuel (other than electricity) labels with disclosure of two components. The label is 3" (7.62 cm) wide x 2½" (6.35 cm) long. "Helvetica black" type is used throughout. All type is centered. The band at the top of the label contains the name of the fuel. This band should measure 1" (2.54 cm) deep. Spacing of the fuel name is ¼" (.64 cm) from the top of the label and 3/16" (.48 cm) from the bottom of the black band, centered horizontally within the black band. The first line of type beneath the black band is 3/16" (.48 cm) from the bottom of the black band. All type below the black band is centered horizontally, with ⅛" (.32 cm) between lines. The bottom line of type is ¼" (.64 cm) from the bottom of the label. All type should fall no closer than 3/16" (.48 cm) from the side edges of the label. If you wish to change the format of this two component label, you must petition the Federal Trade Commission. You can do this by writing to the Secretary of the Federal Trade Commission, Washington, DC 20580. You must state the size and contents of the label that you wish to use, and the reasons that you want to use it.

(3) Electric vehicle fuel dispensing system labels. The label is 3" (7.62 cm) wide x 2½" (6.35 cm) long. "Helvetica black" type is used throughout. All type is centered. The band at the top of the label contains the common identifier of the fuel. This band should measure 1" (2.54 cm) deep. Spacing of the common identifier is ¼" (.64 cm) from the top of the label and 3/16" (.48 cm) from the bottom of the black band, centered horizontally within the black band. The first line of type beneath the black band is 3/16" (.48 cm) from the bottom of the black band. All type below the black band is centered horizontally, with ⅛" (.32 cm) between lines. The bottom line of type is ¼" (.64 cm) from the bottom of the label. All type should fall no closer than 3/16" (.48 cm) from the side edges of the label.

(b) Type size and setting:

(1) Labels for non-liquid alternative vehicle fuels (other than electricity) with disclosure of principal component only. All type should be set in upper case (all caps) "Helvetica Black" throughout. Helvetica Black is available in a variety of computer desk-top and photo-typesetting systems. Its name may vary, but the type must conform in style and thickness to the sample provided here. The spacing between letters and words should be set as "normal." The type for the fuel name is 50 point (½" (1.27 cm) cap height) knocked out of a 1" (2.54 cm) deep band. The type for the words "MINIMUM" and the principal component is 24 pt. (¼" (.64 cm) cap height). The type for percentage is 36 pt. (⅜" (.96 cm) cap height).

(2) Labels for non-liquid alternative vehicle fuels (other than electricity) with disclosure of two components. All type should be set in upper case (all caps) "Helvetica Black" throughout. Helvetica Black is available in a variety of computer desk-top and photo-typesetting systems. Its name may vary, but the type must conform in style and thickness to the sample provided here. The spacing between letters and words should be set as "normal." The type for the fuel name is 50 point (½" 1.27 cm) cap height) knocked out of a 1" (2.54 cm) deep band. All other type is 24 pt. (¼" (.64 cm) cap height).

(3) Labels for electric vehicle fuel dispensing systems. All type should be set in upper case (all caps) "Helvetica Black" throughout. Helvetica Black is available in a variety of computer desk-top and photo-typesetting systems. Its name may vary, but the type must conform in style and thickness to the sample provided here. The spacing between letters and words should be set as "normal." The type for the common identifier is 50 point (½" 1.27 cm) cap height) knocked out of a 1" (2.54 cm) deep band. All other type is 24 pt. (¼" (.64 cm) cap height).

(c) Colors: The background color on the labels for all non-liquid alternative vehicle fuels (including electricity), and the color of the knock-out type within the black band, is Orange: PMS 1495. All other type is process black. All borders are process black. All colors must be non-fade.

(d) Contents. Examples of the contents are shown in Figures 1 through 3. The proper fuel rating for each non-liquid alternative vehicle fuel (including electricity) must be shown. No marks or information other than that called for by this part may appear on the labels.

(e) Special label protection. All labels must be capable of withstanding extremes of weather conditions for a period of at least one year. They must be resistant to vehicle fuel, oil, grease, solvents, detergents, and water.

(f) Illustrations of labels. Labels must meet the specifications in this section and look like Figures 1 through 3 of Appendix A, except the black print should be on the appropriately colored background.

Subpart C—Requirements for Alternative Fueled Vehicles

§ 309.20 Labeling requirements for new covered vehicles.

(a) Affixing and maintaining labels

(1) Before offering a new covered vehicle for acquisition to consumers, manufacturers shall affix or cause to be affixed, and new vehicle dealers shall maintain or cause to be maintained, a new vehicle label on a visible surface of each such vehicle.

(2) If an aftermarket conversion system is installed on a vehicle by a person other than the manufacturer prior to such vehicle's being acquired by a consumer, the manufacturer shall provide that person with the vehicle's estimated cruising range (as determined by § 309.22(a) for dedicated vehicles and §.309.22(b) for dual fueled vehicles) and emission certification standard and ensure that new vehicle labels are affixed to such vehicles as required by paragraph (a) of this section.

(b) Layout. Figures 4 through 6 of Appendix A are prototype labels that demonstrate the proper layout. All positioning, spacing, type size, and line widths shall be similar to and consistent with the prototype labels. Labels required by this section are two-sided and rectangular in shape measuring 7 inches (17.5 cm) wide and 5–1/2 inches (13.75 cm) long. Figure 4 of Appendix A represents the prototype for the front side of the labels for dedicated vehicles. Figures 5 and 5.1 of Appendix A represent the prototype of the front side of the labels for dual-fueled vehicles; Figure 5 of Appendix A represents the prototype for vehicles with one fuel tank and Figure 5.1 of Appendix A represents the prototype for vehicles with two fuel tanks. Figure 6 of Appendix A represents the prototype of the back side of the labels for both dedicated and dual-fueled vehicles. Manufacturers may, at their discretion, display the appropriate front label format and back label format immediately adjacent to each other on the same visible surface. No marks or information other than that specified in this subpart shall appear on this label.

(c) Type size and setting. The Helvetica Condensed and Helvetica family typefaces or equivalent shall be used exclusively on the label. Specific type sizes and faces to be used are indicated on the prototype labels (Figures 4, 5, 5.1, and 6 of Appendix A). No hyphenation should be used in setting headline or text copy. Positioning and spacing should follow the prototypes closely.

(d) Colors and Paper Stock. All labels shall be printed in process black ink on Hammermill Offset Opaque Vellum/ S.70 Sky Blue (or equivalent) paper. Follow label prototypes for percentages of screen tints in Exhaust Emissions chart.

(e) Content

(1) Headlines and text, as illustrated in Figures 4, 5, 5.1, and 6 of Appendix A, are standard for all labels.

(2) Estimated cruising range. (i) For dedicated vehicles, determined in accordance with § 309.22(a).

(ii) For dual fueled vehicles, determined in accordance with § 309.22(b).

(3) Emission certification standard.

(i) For vehicles not certified as meeting an EPA emissions standard, indicated by placing a mark in the appropriate box indicating that fact.

(ii) For vehicles certified as meeting an EPA emissions standard, indicated by placing a mark in the appropriate box indicating that fact and by placing a caret above the standard to which that vehicle has been certified.

§ 309.21 Labeling requirements for used covered vehicles.

(a) Affixing and maintaining labels. Before offering a used covered vehicle for acquisition to consumers, used vehicle dealers shall affix and maintain, or cause to be affixed and maintained, a used vehicle label on a visible surface of each such vehicle.

(b) Layout. Figures 7 and 8 of Appendix A are prototype labels that demonstrate the proper layout. All positioning, spacing, type size, and line widths should be similar to and consistent with the prototype labels. Labels required by this section are two-sided and rectangular in shape measuring 7 inches (17.5 cm) in width and 5–1/2 inches (13.75 cm) in height. Figure 7 represents the prototype of the front side of the labels for used covered vehicles. Figure 8 represents the back side of the labels for used covered vehicles. Manufacturers may, at their discretion, display the appropriate front label format and back label format immediately adjacent to each other on the same visible surface. No marks or information other than that specified in this subpart shall appear on this label.

(c) Type size and setting. The Helvetica Condensed and Helvetica family typefaces or equivalent shall be used exclusively on the label. Specific type sizes and faces to be used are indicated on the prototype labels (Figures 7 and 8 of Appendix A). No hyphenation should be used in setting headline or text copy. Positioning and spacing should follow the prototypes closely.

(d) Colors and Paper Stock. All labels shall be printed in process black ink on Hammermill Offset Opaque Vellum/ S.70 Sky Blue (or equivalent) paper.

(e) Contents. Headlines and text, as illustrated in Figures 7 and 8 of Appendix A, are standard for all labels.

§ 309.22 Determining estimated cruising range.

(a) Dedicated vehicles.

(1) Estimated cruising range values for dedicated vehicles required to comply with the provisions of 40 CFR Part 600 are to be calculated in accordance with the following:

(i) The lower range value shall be determined by multiplying the vehicle's estimated city fuel-economy by its fuel tank capacity, then rounding to the next lower integer value.

(ii) The upper range value shall be determined by multiplying the vehicle's estimated highway fuel-economy by its fuel tank capacity, then rounding to the next higher integer value.

(2) Estimated cruising range for an EV is the actual vehicle range determined in accordance with test methods set forth in Society of Automotive Engineers ("SAE") Surface Vehicle Recommended Practice SAE J1634–1993–05–20, "Electric Vehicle Energy Consumption and Range Test Procedure." This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies of SAE J1634–1993–05–20 may be obtained from the Society of Automotive Engineers, 400 Commonwealth Drive, Warrendale, PA, 15096–0001, or may be inspected at the Federal Trade Commission, Public Reference Room, room 130, 600 Pennsylvania Avenue, NW, Washington, DC, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(3) To determine the estimated cruising range values for dedicated vehicles not required to comply with the provisions of 40 CFR Part 600 (other than electric vehicles), you must possess a reasonable basis, consisting of competent and reliable evidence that substantiates the minimum and maximum number of miles the vehicle will travel between refuelings or rechargings that is claimed.

(b) Dual-fueled vehicles.

(1) Estimated cruising range values for dual-fueled vehicles required to comply with the provisions of 40 CFR Part 600 are to be calculated in accordance with the following:

(i) The lower range value for the vehicle while operating exclusively on alternative fuel shall be determined by multiplying the vehicle's estimated city fuel-economy by its alternative-fuel tank capacity, then rounding to the next lower integer value.

(ii) The upper range value for the vehicle while operating exclusively on alternative fuel shall be determined by multiplying the vehicle's estimated highway fuel-economy by its alternative-fuel tank capacity, then rounding to the next higher integer value.

(iii) The lower range value for the vehicle while operating exclusively on conventional fuel shall be determined by multiplying the vehicle's estimated city fuel-economy by its conventional-fuel tank capacity, then rounding to the next lower integer value.

(iv) The upper range value for the vehicle while operating exclusively on conventional fuel shall be determined by multiplying the vehicle's estimated highway fuel-economy by its conventional-fuel tank capacity, then rounding to the next higher integer value.

(2) [Reserved]

(3) To determine the estimated cruising range values for dual-fueled vehicles not required to comply with the provisions of 40 CFR part 600 (other than electric vehicles), you must possess a reasonable basis, consisting of competent and reliable evidence, of:

(i) The minimum and maximum number of miles the vehicle will travel between refuelings or rechargings when operated exclusively on alternative fuel, and

(ii) The minimum and maximum number of miles the vehicle will travel between refuelings or rechargings when operated exclusively on conventional fuel.

§ 309.23 Recordkeeping.

Manufacturers required to comply this subpart shall establish, maintain, and retain copies of all data, reports, records, and procedures used to meet the requirements of this subpart for three years after the end of the model year to which they relate. They must be available for inspection by Federal Trade Commission staff members, or by people authorized by the Federal Trade Commission.

BILLING CODE 6750-01-P

Appendix A—Figures for Part 309

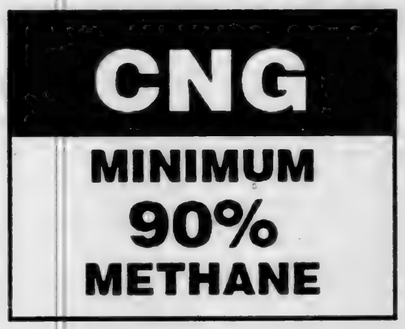


Figure 1

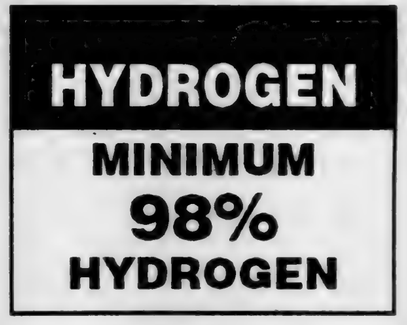


Figure 2

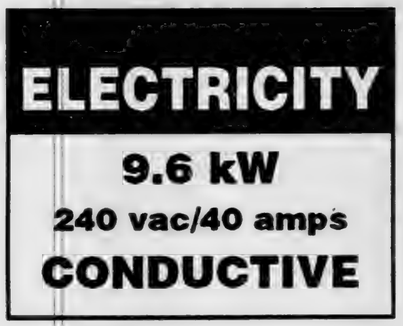


Figure 3

AFV Buyers Guide

Compare the Cruising Range and Emissions of this Vehicle with Others Before You Buy.

Manufacturer's Estimated Cruising Range

440-520

Miles on one tank or charge

Actual cruising range will vary with options, driving conditions, driving habits, and the vehicle's condition.

Emissions

- ❑ **This vehicle has not been certified as meeting an EPA emissions standard.**
- ❑ **This vehicle meets the EPA emissions standard noted below.**

▼

More Emissions	Tier I	TLEV	LEV	ULEV	ILEV	ULEV+ ILEV	ZEV	Fewer Emissions

The overall environmental impact of driving any vehicle includes many factors not currently measured by existing vehicle emissions standards.

Please read back for important information.

Figure 4

AFV Buyers Guide

Compare the Cruising Range and Emissions of this Vehicle with Others Before You Buy.

Manufacturer's Estimated Cruising Range

400-480	**440-520**
Miles on one tank or charge exclusively on alternative fuel	**Miles on one tank exclusively on gasoline/diesel**

Actual cruising range will vary with options, driving conditions, driving habits, and the vehicle's condition.

Emissions

- ❑ **This vehicle has not been certified as meeting an EPA emissions standard.**
- ❑ **This vehicle meets the EPA emissions standard noted below.**

▼

More Emissions	Tier I	TLEV	LEV	ULEV		ULEV+ ILEV	ZEV	Fewer Emissions

The overall environmental impact of driving any vehicle includes many factors not currently measured by existing vehicle emissions standards.

Please read back for important information.

Figure 5

AFV Buyers Guide

Compare the Cruising Range and Emissions of this Vehicle with Others Before You Buy.

Manufacturer's Estimated Cruising Range

400-480	440-520
Miles on one tank or charge exclusively on alternative fuel	**Miles on one tank exclusively on gasoline/diesel**

The total possible cruising range of this vehicle is the sum of the alternative fuel range and the conventional fuel range. Actual cruising range will vary with options, driving conditions, driving habits, and the vehicle's condition.

Emissions

- ❑ **This vehicle has not been certified as meeting an EPA emissions standard.**
- ❑ **This vehicle meets the EPA emissions standard noted below.**

▼

More Emissions								Fewer Emissions
	Tier 1	TLEV	LEV	**ULEV**	ILEV	ULEV+ ILEV	ZEV	

The overall environmental impact of driving any vehicle includes many factors not currently measured by existing vehicle emissions standards.

Please read back for important information.

Figure 5.1

Before selecting an Alternative Fueled Vehicle (AFV) make sure you consider:

- ☑ **FUEL TYPE:** Know which fuel(s) power this vehicle.
- ☑ **OPERATING COSTS:** Fuel and maintenance costs for AFVs differ from gasoline or diesel-fueled vehicles and can vary considerably.
- ☑ **PERFORMANCE/CONVENIENCE:** Vehicles powered by different fuels differ in their cold-start capabilities (i.e., ability to start a cold engine), refueling and/or recharging time (i.e., how long it takes to refill the vehicle's tank to full capacity), acceleration rates, and refueling methods.
- ☑ **FUEL AVAILABILITY:** Determine whether refueling and/or recharging facilities that meet your driving needs have been developed for this vehicle and will be readily available in your area.
- ☑ **ENERGY SECURITY/RENEWABILITY:** Consider where and how the fuel powering this vehicle is typically produced.

Additional Information

DEPARTMENT OF ENERGY (DOE)
For more information about AFVs, contact DOE's National Alternative Fuels Hotline, **1-800-423-1DOE**, and ask for its free brochure.

NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION (NHTSA)
For more information about vehicle safety, contact NHTSA's Auto Safety Hotline, **1-800-424-9393**.

The information on this label is required by the Federal Trade Commission, 16 CFR Part 309.

Figure 6

AFV Buyers Guide

Before selecting an Alternative Fueled Vehicle (AFV) make sure you consider:

- ☑ **FUEL TYPE:** Know which fuel(s) power this vehicle.
- ☑ **OPERATING COSTS:** Fuel and maintenance costs for AFVs differ from gasoline or diesel-fueled vehicles and can vary considerably.
- ☑ **ENVIRONMENTAL IMPACT:** All vehicles (conventional and AFVs) affect the environment directly (e.g., tailpipe emissions) and indirectly (e.g., how the fuel is produced and brought to market). Compare the environmental costs of driving an AFV with a gasoline-powered vehicle.
- ☑ **PERFORMANCE/CONVENIENCE:** Vehicles powered by different fuels differ in terms of the cruising range (i.e., how many miles the vehicle will go on a full supply of fuel), cold start capabilities (i.e., ability to start a cold engine), refueling and/or recharging time (i.e., how long it takes to refill the vehicle's tank to full capacity), acceleration rates, and refueling methods.
- ☑ **FUEL AVAILABILITY:** Determine whether refueling and/or recharging facilities that meet your driving needs have been developed for this vehicle and will be readily available in your area.
- ☑ **ENERGY SECURITY/RENEWABILITY:** Consider where and how the fuel powering this vehicle is typically produced.

Please read back for important information.

Figure 7

Additional Information

DEPARTMENT OF ENERGY (DOE)

For more information about AFVs, contact DOE's National Alternative Fuels Hotline, **1-800-423-1DOE,** and ask for its free brochure.

NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION (NHTSA)

For more information about vehicle safety, contact NHTSA's Auto Safety Hotline, **1-800-424-9393.**

The information on this label is required by the Federal Trade Commission, 16 CFR Part 309.

Figure 8

BILLING CODE 6750-01-C

By direction of the Commission, Chairman Pitofsky not participating, and Commissioner Azcuenaga concurring in part and dissenting in part.

Donald S. Clark,

Secretary.

Statement of Commissioner Mary L. Azcuenaga Concurring in Part and Dissenting in Part

Label Requirements for Alternative Fuels, Matter No. R311002

Today, the Commission issues a final rule pursuant to the Energy Policy Act of 1992 ("EPA 92") that imposes certification, substantiation, and recordkeeping requirements in connection with the labeling of non-liquid alternative fuels and alternative fueled vehicles. EPA 92, however, only directs the Commission to prescribe "labeling requirements," 42 U.S.C. § 13232(a); it does not indicate that Congress also intended to give the Commission the authority to impose certification, substantiation, and recordkeeping requirements. The legislative history of EPA 92 also fails to show that Congress intended to give the Commission such authority. Although certification, substantiation, and recordkeeping requirements may all be beneficial, in the absence of any statutory language or legislative history indicating that Congress intended to give the Commission latitude to impose such requirements, I believe that the Commission has no authority to do so. I therefore dissent from the final rule to the extent that it imposes certification, substantiation, and recordkeeping requirements in connection with the labeling of non-liquid alternative fuels and alternative fueled vehicles.

[FR Doc. 95-12160 Filed 5-18-95; 8:45 am]

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federal register

Friday
May 19, 1995

Part III

Department of Labor

Office of the Secretary Employment and Training Administration

20 CFR Part 655, et al.

Amendment of Filing and Service Requirements in Proceedings Before the Office of Administrative Law Judges; Final Rule

DEPARTMENT OF LABOR

Office of the Secretary

Employment and Training Administration

20 CFR Part 655

29 CFR Parts 18 and 24

Amendment of Filing and Service Requirements in Proceedings Before the Office of Administrative Law Judges

AGENCY: Office of the Secretary, Labor.

ACTION: Final rule.

SUMMARY: This document completes the interim rulemaking published on August 15, 1994. This final rule amends regulations governing the filing and service of documents in proceedings before the Department of Labor's Office of Administrative Law Judges generally, and in one instance, the Regional Administrator's service of a notice of denial of temporary labor certification. The amendments modify regulations which heretofore required filing or service by mailgram or telegram, substituting therefore the option to file or serve those documents by facsimile (fax), telegram or other means normally assuring next day delivery. The amendments also provide guidelines for the filing and service of documents by facsimile, limiting such filings to instances when they are explicitly permitted by statute or regulation, or by the presiding administrative law judge. Finally, the amendments eliminate the routine filing of documents relating to discovery, limiting such filings to instances when there is a reason for their submission.

EFFECTIVE DATE: May 19, 1995.

FOR FURTHER INFORMATION CONTACT: John M. Vittone, Deputy Chief Administrative Law Judge, Office of Administrative Law Judges. Telephone: (202) 633–0341.

SUPPLEMENTARY INFORMATION:

Background

The Department issued these regulations in interim final form on August 15, 1994, and asked for comments from the public and concerned parties. In the only one month comment period that followed, the Office of Administrative Law Judges received no comments.

The interim final rule is hereby being adopted as a final rule, with only one change which we perceive to be an improvement. Specifically, the rule governing service and filing of documents is modified to make service of representatives conform to practice in the United States District Courts, where, if a party is represented by an attorney, only the attorney is served unless direct service on the party is ordered by the court. See Federal Rules of Civil Procedure 5(b).

Technical Comments

The only change to the interim final rule is in 29 CFR 18.3. Subparagraph 18.3(a) is modified by inserting after the heading "Generally.", the following: "Except as otherwise provided by these rules, copies of all documents shall be served on all parties of record." Subparagraph 18.3(b) is modified by revising the heading "By parties." to read "How made; by parties." In addition, subparagraph 18.3(b) is modified by deleting from the interim final rule the sentence "Service of all documents shall be made upon all parties, and when a party is represented by an attorney or other representative, service also shall be made upon the attorney or representative." That sentence is replaced by the following: "Whenever under these rules service by a party is required to be made upon a party represented by an attorney or other representative the service shall be made upon the attorney or other representative unless service upon the party is ordered by the presiding administrative law judge."

Procedural Matters

This is not a significant regulatory action as defined by Executive Order 12866. Previously, on August 8, 1994, the undersigned certified to the Small Business Administration that this rule, if promulgated, would not have a significant economic impact upon a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The rule does not contain any information collection or record keeping requirements as defined in the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

Effective Date

This document will become effective upon publication pursuant to 5 U.S.C. 553(d). The undersigned has determined that good cause exists for waiving the customary requirement for delay in the effective date of a final rule for 30 days following its publication. This determination is based upon the fact that the underlying interim rule in this matter has been in effect since September 14, 1994. Accordingly, there is no need for postponement of the effective date.

List of Subjects

20 CFR Part 655

Administrative practice and procedure, Aliens, Employment, Migrant labor.

29 CFR Part 18

Administrative practice and procedure.

29 CFR Part 24

Employment, Environmental protection.

Accordingly, the interim final rule amending 20 CFR 655 and 29 CFR Part 18 and 24, which was published at 59 CFR 41874 on August 15, 1994, is adopted as a final rule with the following change:

TITLE 29—LABOR

PART 18—RULES OF PRACTICE AND PROCEDURE FOR ADMINISTRATIVE HEARINGS BEFORE THE OFFICE OF ADMINISTRATIVE LAW JUDGES

1. The authority citation for Part 18 continues to read as follows:

Authority: 5 U.S.C. 301; 5 U.S.C. 551–553; 5 U.S.C. 581; E.O. 12778; 57 FR 7292.

2. Section 18.3 is amended by revising paragraphs (a) and (b) to read as follows:

§ 18.3 Service and filing of documents.

(a) *Generally.* Except as otherwise provided in this part, copies of all documents shall be served on all parties of record. All documents should clearly designate the docket number, if any, and short title of the matter. If the matter involves a program administered by the Office of Workers' Compensation Programs (OWCP), the document should contain the OWCP number in addition to the docket number. All documents to be filed shall be delivered or mailed to the Chief Docket Clerk, Office of Administrative Law Judges (OALJ), 800 K Street, NW., Suite 400, Washington, DC 20001–8002, or to the OALJ Regional Office to which the proceeding may have been transferred for hearing. Each document filed shall be clear and legible.

(b) *How made; by parties.* All documents shall be filed with the Office of Administrative Law Judges, except that notices of deposition, depositions, interrogatories, requests for admissions, and answers and responses thereto, shall not be so filed unless the presiding judge so orders, the document is being offered into evidence, the document is submitted in support of a motion or a response to a motion, filing is required by a specialized rule, or there is some other compelling reason for its submission. Whenever under this part service by a party is required to be made upon a party represented by an attorney or other representative the service shall be made upon the attorney or other representative unless service upon the party is ordered by the presiding administrative law judge. Service of any document upon any party may be made by personal delivery or by mailing a copy to the last known address. The person serving the document shall certify to the manner and date of service.

* * * * *

Signed at Washington, DC, this 15th day of May 1995.

Robert Reich,

Secretary of Labor.

[FR Doc. 95–12365 Filed 5–18–95; 8:45 am]

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federal register

Friday
May 19, 1995

Part IV

The President

Proclamation 6801—Labor History Month, 1995

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Vol. 60, No. 97
Friday, May 19, 1995

Presidential Documents

Title 3—

The President

Proclamation 6801 of May 17, 1995

Labor History Month, 1995

By the President of the United States of America

A Proclamation

Among the most insistent themes in the history of American democracy has been the determination of our workers to find dignity in their work and meaning in their citizenship. The labor movement has long given voice to these aspirations. American trade unionists have fought for and achieved benefits for all of us by strengthening citizens' roles in the workplace and by expanding their participation in the political lives of their communities.

Gone is the time when the average American worker made about ten dollars for a 60-hour week, and more than 2 million children worked similarly long hours for even less pay. The national labor movement has helped ensure safe working conditions, regular hours, decent living wages, and paid holidays and vacations. And in 1993 we moved a step further, affording hard-working Americans the right to emergency family leave.

Workers have been leaders in the efforts to establish the 8-hour day, the 40-hour week, security in unemployment and old age, protection for the sick and injured and for children, equal employment opportunity, and health and safety standards. And the labor movement has strived to make public education available for every child. American workers have helped to make this progress possible, and our country is immeasurably stronger because of it.

As we observe Labor History Month this year, we understand that our work is not yet finished. Today's global marketplace demands that we establish and strengthen partnerships between employers and unions, cooperate to achieve safe, high-performance work environments, improve the skills of American workers and the competitiveness of American businesses, and further enhance human dignity in the workplace. The challenges we face are many, but the history of our accomplishments assures us that the future looks bright indeed.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim May 1995, as "Labor History Month." I call upon the people of the United States to observe this period with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this seventeenth day of May, in the year of our Lord nineteen hundred and ninety-five, and of the Independence of the United States of America the two hundred and nineteenth.

William J. Clinton

[FR Doc. 95–12533
Filed 5–17–95; 4:33 pm]
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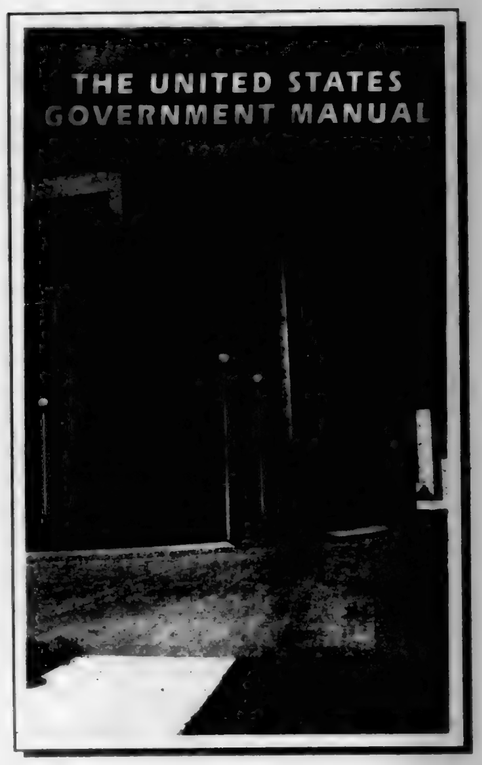
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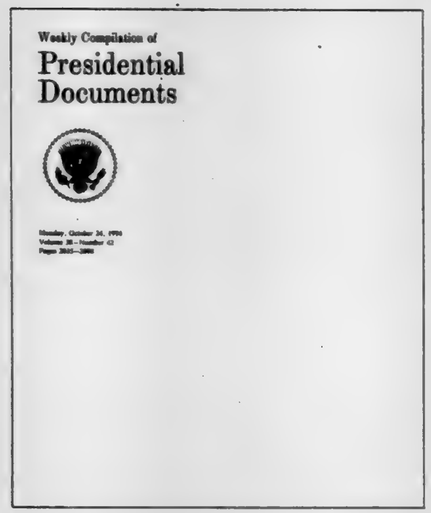
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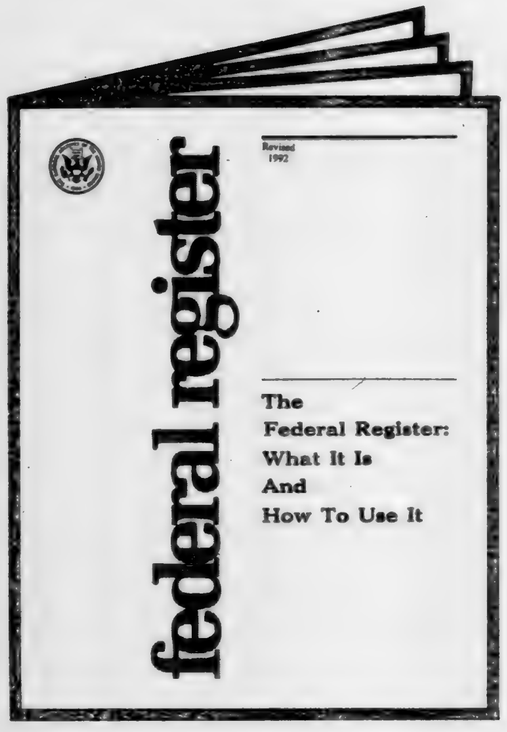
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5–22–95
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 630

RIN 3206–AG43

Absence and Leave; Sick Leave for Adoption

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing final regulations to permit employees to use sick leave for purposes related to adoption of a child.

EFFECTIVE DATE: June 21, 1995.

FOR FURTHER INFORMATION CONTACT:
Sharon Herzberg, (202) 606–2858.

SUPPLEMENTARY INFORMATION: On December 2, 1994, the Office of Personnel Management (OPM) published interim regulations (59 FR 62272) implementing section 629(b) of Public Law 103–329, the Treasury, Postal Service and General Government Appropriations Act for fiscal year 1995, September 30, 1994. Section 629(b) amended 5 U.S.C. 6307 to permit employees to use sick leave for purposes related to the adoption of a child. Section 629(b) also directed OPM to prescribe regulations to allow an employee to substitute sick leave retroactively for all or any portion of annual leave used by an employee for adoption-related purposes between September 30, 1991, and September 30, 1994.

The 60-day comment period ended on January 31, 1995. OPM received comments from six individuals and two organizations that supported adoptive families. Following is a summary of the comments.

Use of Sick Leave for Bonding With the Child

All commenters supported the use of sick leave for adoption-related purposes. One commenter applauded OPM's philosophy of not attempting to specify all of the circumstances in which the use of sick leave for adoption-related activities would be appropriate and opposed any greater specificity in the final rule. However, many other commenters were concerned about the limitations on using sick leave for bonding with the adopted child. The commenters believed that adoptive parents should be provided the same maternity benefits as those accorded birth parents.

Three commenters noted that it is important to the health and well-being of an adoptive child to allow adoptive parents a period of absence from work after the child arrives in the home to assist the adopted child in acclimating to new surroundings and adjusting to new family members. The commenters believe this is particularly important when the adopted child is not a newborn, has not previously bonded with an adult, and is going through a period of tremendous confusion and upheaval.

One commenter stated that by permitting sick leave to be used only for periods during which an adoptive parent is ordered or required by the adoption agency or by a court to be absent from work to care for the adopted child sends a message to adoptive parents and their children that they are different and should be accorded disparate treatment. An organization stated that adoption agencies are turning away from requiring an adoptive parent to be home to care for a newly adopted child, recognizing that this imposes a hardship on the family and restricts the pool of eligible families for children waiting for adoption. However, the organization further stated that although adoption agencies recognize that it may be impossible to require new adoptive parents to stay home, they encourage them to do so.

Some of the commenters believe adoptive mothers are treated in a discriminatory manner because they are not entitled to maternity leave as are biological mothers. One commenter stated that it is routine practice for the birth mother to be granted weeks or months of "maternity" sick leave without requiring strict medical justification. The commenter noted that requiring an adoptive parent to justify each court, agency, or social-worker visit imposes a stricter standard. One commenter suggested that OPM should recognize the reality of maternity leave for biological mothers—i.e., while sick leave would appear to be granted for the welfare of the mother, it is in fact used for the welfare of the child. Another commenter believed the absence of a provision to afford sick leave to birth fathers, and by extension to adoptive fathers, for maternity/bonding purposes is discriminatory and should be corrected.

Contrary to the belief of most of the commenters, Federal employees, including birth mothers, do not have an automatic entitlement to "maternity leave." Sick leave is granted to a birth mother only for the period of incapacitation as a result of physical or mental illness, injury, pregnancy, childbirth, or medical examinations or treatments. Agencies may grant sick leave only when supported by evidence that is administratively acceptable. When determined necessary, an agency may require medical certification. The birth mother must use annual leave and/or leave without pay for absences from work beyond the period of incapacitation—e.g., for care of the newborn, bonding with the child, and other childcare responsibilities.

The birth father is allowed up to 13 days of sick leave each leave year to provide care for a family member under OPM's final sick leave regulations published in **Federal Register** on December 2, 1994 (59 FR 62266). OPM's regulations are consistent with the Federal Employees Family Friendly Leave Act (Public Law 103–388, October 22, 1994). The birth father may use sick leave to care for the birth mother during pregnancy and recovery from childbirth. This may include accompanying the birth mother to doctor's appointments, attending to the birth mother in the hospital or other health care facility, or caring for the birth mother during the period of incapacitation. Again, the agency may grant sick leave only when supported by evidence that is administratively acceptable, including medical certification when required.

Adoptive parents may request sick leave for adoption-related purposes including, but not limited to,

appointments with adoption agencies, social workers, and attorneys; court proceedings; required travel; and for any periods during which an adoptive parent is ordered or required by the adoption agency or by a court to be absent from work to care for the adopted child. Agencies may require employees to provide evidence that is administratively acceptable to the agency in support of a request for sick leave for adoption-related purposes.

There is no provision in law or regulation to permit the use of sick leave by birth parents or adoptive parents who voluntarily choose to be absent from work to bond with a birth or adopted child. In addition, we believe granting sick leave to an adoptive mother for bonding purposes for a period of the time equal to that received by a birth mother for incapacitation as a result of childbirth would discriminate against adoptive fathers. The adoptive mother would receive a greater entitlement to use sick leave for bonding purposes than would an adoptive father. We believe the administration of the sick leave program in no way discriminates against either birth or adoptive parents. The Equal Employment Opportunity Commission found OPM's interim regulations on sick leave for adoption to be "consistent with Federal equal employment opportunity law and policy."

Another commenter declared that OPM's interim rule is inconsistent with the intent of the Family and Medical Leave Act of 1993 (FMLA). The commenter believes the FMLA intends for adoption and childbirth to be treated in the same manner and that employees should receive the same amount of leave for these purposes.

The FMLA provides an employee with a total of up to 12 workweeks of *unpaid* leave during any 12-month period for the birth of a son or daughter; the adoption/foster care of a son or daughter; or the serious health condition of the employee or his or her spouse, son, daughter, or parent. By law, an employee may elect to substitute paid leave for unpaid leave under the FMLA, but such substitution must be consistent with current laws and regulations. OPM believes the regulations are consistent with the FMLA in that employees are entitled to 12 weeks of unpaid leave for either the birth or adoption of a child. If the employee chooses to substitute paid sick leave for unpaid leave under the FMLA, he or she may do so, but only in those situations where the use of sick leave would otherwise be permitted by law or regulation.

A commenter maintained that since the law (5 U.S.C. 6307) permits agencies to advance a maximum of 30 days of sick leave for purposes relating to the adoption of a child, Congress intended adoptive parents to have entitlement to 6 weeks (30 days) of sick leave for adoption and bonding. However, the legislative history of the 1-year experimental program created by Public Law 101–509 to test the feasibility of granting sick leave for adoption-related purposes does not support the contention that Congress intended an entitlement to sick leave for bonding purposes. Congress did recognize the time-consuming aspects of adoption and wished to make sick leave available for adoption-related purposes. Representative Frank Wolf, sponsor of the program, spoke of eliminating "an impediment to adoption faced by Federal workers—the fact that current Federal leave policies require adoptive parents to take annual leave, their vacation time, when arranging an adoption. This measure would simply put adoptive parents in the Federal work force on an equal footing with biological parents, who are currently allowed to take sick leave for prenatal doctor visits." (See Congressional Record, Extension of Remarks, May 24, 1990, page E1757.) There is no indication that Congress intended to entitle adoptive parents to more paid leave than is available to birth parents.

We recognize the importance of and need for bonding time for both birth and adoptive parents and their new children. However, we continue to believe annual leave and leave without pay are the appropriate means to secure time with the newborn or newly-adopted child. In addition, agencies have the authority to advance annual leave to employees. The new entitlement to use sick leave to fulfill the legal and administrative requirements for adoption will allow an adoptive parent to conserve his or her annual leave and ensure the availability of annual leave for the period of bonding with the child. In addition, the FMLA provides 12 weeks of leave without pay for childbirth or adoption and can be used alone or in conjunction with annual and sick leave, where appropriate, to provide adequate time off for both birth and adoptive parents. OPM believes no change is necessary in the interim regulations.

Retroactive Substitution of Sick Leave for Annual Leave

As required by section 629(b) of Public Law 103–329, OPM's interim regulations permit an employee to substitute sick leave retroactively for all or any portion of any annual leave used by the employee for adoption-related purposes between September 30, 1991, and September 30, 1994. One commenter believed permitting an employee to substitute sick leave retroactively for annual leave used for purposes of adoption unfairly penalized birth fathers because birth fathers cannot substitute sick leave retroactively for annual leave used for the birth of a child.

The Federal Employees Family Friendly Leave Act and OPM's final sick leave regulations permit most Federal employees to use a total of up to 104 hours (13 days) of sick leave each leave year to give care or otherwise attend to a family member or to make arrangements for or attend the funeral of a family member. There are no provisions in law or regulation permitting the retroactive substitution of sick leave for annual leave used for these purposes. In contrast, the retroactive substitution of sick leave for annual leave taken for adoption-related purposes is an entitlement under section 629(b) of Public Law 103–329.

Another commenter suggested that when the substitution of sick leave for annual leave results in an annual leave balance that exceeds the maximum annual leave ceiling allowed for carryover into the next leave year, OPM should allow an employee 3 years to use the excess annual leave. OPM addressed this issue in the "Supplementary Information" accompanying the interim regulations. The agency and employee should be aware of an employee's obligation to schedule and use excess annual leave before the end of the year. Forfeited annual leave may not be restored unless the employee meets the conditions specified in 5 U.S.C. 6304(d). We caution employees to apply for the substitution of sick leave for annual leave used for adoption-related purposes early enough in the leave year to allow sufficient time to schedule and use the credited annual leave before the end of the leave year. We believe no change is necessary in the regulations.

The same commenter recommended that OPM indicate what is a "reasonable" period of time for an agency to comply with the employee's request for substitution. The commenter suggested a period of 6 weeks. The amount of time needed to comply with an employee's request for retroactive substitution will vary depending on the number of applications received and the quality of the documentation/evidence submitted that specifies the period(s) and amount(s) of annual leave that were used. OPM extended the time period by 1 year, to September 30, 1996, for an employee to submit a written application to have his or her leave accounts adjusted. We believe this will make it possible for all affected employees to benefit from this provision. Therefore, OPM has not revised the regulation in this regard.

Miscellaneous Leave Administration Amendments

On December 2, 1994, OPM issued final sick leave regulations to permit most Federal employees to use a total of up to 104 hours of sick leave each leave year to provide care for a family member or to make arrangements for or attend the funeral of a family member. An employee may use up to 40 hours of his or her accrued sick leave for these purposes without regard to the amount of leave remaining in his or her sick leave account. An employee may use up to 64 additional hours of sick leave if he or she maintains a balance of at least 80 hours in his or her sick leave account.

OPM received many telephone inquiries concerning whether agencies may advance sick leave for the purpose of satisfying the 80-hour sick leave balance requirement. Although this matter was addressed briefly in the "Supplementary Information" accompanying the final regulations, we are using this opportunity to further clarify the regulation at 5 CFR 630.401(c).

The 40 hours of sick leave that may be used for family care or bereavement purposes may be advanced. Agencies may not advance sick leave so that an employee may meet the requirement to maintain a balance of 80 hours of sick leave in his or her account or to use additional sick leave for these purposes. The intent of the statutory 80-hour minimum sick leave balance requirement is that an employee should retain at least 80 hours of accrued sick leave in his or her account for use in the event of the employee's own incapacitation for duty—i.e., without the necessity of requesting advanced leave or shared leave. To advance an additional amount of sick leave (beyond the 40 hours every employee is entitled to use for family care or bereavement purposes) would circumvent the intent of the law. Therefore, we are amending section 630.401(c) to state that leave may not be advanced for the purpose of meeting the requirement to retain a minimum sick leave balance or using additional sick leave for family care or bereavement purposes.

OPM is also using this opportunity to make a technical correction in 5 CFR 630.201, Definitions. In the interim regulations to incorporate certain incentive awards and pay and leave administration rules contained in the provisionally retained Federal Personnel Manual material published in the **Federal Register** on December 28, 1994 (59 FR 66629), the numbering of paragraphs (7) through (9) of 5 CFR 630.201(b) was incorrect. The numbering of paragraphs (7) through (9) has been corrected as follows: (7) *Medical certificate;* (8) *Uncommon tour of duty;* and (9) *United States.*

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal employees and agencies.

List of Subjects in 5 CFR Part 630

Government employees.

U.S. Office of Personnel Management.

James B. King,

Director.

Accordingly, OPM is amending part 630 of title 5 of the Code of Federal Regulations as follows:

PART 630—ABSENCE AND LEAVE

1. The authority citation for part 630 continues to read as follows:

Authority: 5 U.S.C. 6311; § 630.301 also issued under Public Law 103–356 (108 Stat. 3410); § 630.303 also issued under 5 U.S.C. 6133(a); §§ 630.306 and 630.308 also issued under 5 U.S.C. 6403(d)(3), Public Law 103–337 (108 Stat. 2663); subpart D also issued under Public Law 103–329 (108 Stat. 2423); § 630.501 and subpart F also issued under E.O. 11228, 30 FR 7739, June 16, 1965, 3 CFR 1974 Comp., p. 163; subpart G also issued under 5 U.S.C. 6305; subpart H issued under 5 U.S.C. 6326; subpart I also issued under 5 U.S.C. 6332 and Public Laws 100–566 (102 Stat. 2834) and 103–103 (107 Stat. 1022); subpart J also issued under 5 U.S.C. 6362 and Public Laws 100–566 and 103–103; subpart K also issued under Public Law 102–25 (105 Stat. 92); and subpart L also issued under 5 U.S.C. 6387 and Public Laws 103–3 (107 Stat. 23).

Subpart D—Sick Leave

§ 630.201 [Amended]

2. Section 630.201 is amended by redesignating the first paragraph (b)(8) as paragraph (b)(9), paragraph (b)(7) as new paragraph (b)(8), and the existing second paragraph (b)(8) as paragraph (b)(7).

3. In § 630.401, paragraph (c) is revised to read as follows:

§ 630.401 Grant of sick leave.

* * * * *

(c) To be granted any sick leave for the purposes described in paragraphs (a)(3) or (4) of this section during any leave year in an amount exceeding a total of 40 hours (or, in the case of a part-time employee or an employee with an uncommon tour of duty, the average number of hours in the employee's scheduled tour of duty each week), the employee concerned shall retain in his or her sick leave account a balance of at least 80 hours (or, in the case of a part-time employee or an employee with an uncommon tour of duty, an amount equal to twice the average number of hours in the employee's scheduled tour of duty each week). No sick leave may be advanced under 5 U.S.C. 6307(d) for the purpose of meeting the requirement to retain a minimum sick leave balance or for using additional sick leave for the purposes described in paragraphs (a)(3) and (4) of this section when such use would otherwise cause the employee's sick leave balance to fall below the minimum required.

* * * * *

Subpart I—Voluntary Leave Transfer Program

§ 630.907 [Amended]

3. In § 630.907 paragraph (c) introductory text, remove the words "of chapter I"; in paragraph (d)(2), remove the second occurrence of the word "by" and add in its place the word "to".

Subpart J—Voluntary Leave Bank Program

§ 630.1101 [Amended]

4. In § 630.1011 paragraph (b)(2), remove the word "affect" and add in its place the word "effect".

5. In addition to the amendments set forth above, in 5 CFR part 630, subparts I and J, remove the words "or work" in the following places:

§§ 630.905, 630.907, 630.1007, 630.1008 [Amended]

(a) Section 630.905 (b) and (c);

(b) Section 630.907(a)(1), (a)(2), and (d)(1);

(c) Section 630.1007 (b) and (c); and

(d) Section 630.1008(a)(1), (a)(2), and (d)(1).

[FR Doc. 95–12411 Filed 5–19–95; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Rural Housing and Community Development Service

Rural Business and Cooperative Development Service

Rural Utilities Service

Consolidated Farm Service Agency

7 CFR Part 1980

RIN 0575–AB15

Rural Housing Loans

AGENCIES: Rural Housing and Community Development Service, Rural Business and Cooperative Development Service, Rural Utilities Service, and Consolidated Farm Service Agency; USDA.

ACTION: Final rule.

SUMMARY: The Rural Housing and Community Development Service (RHCDS) amends its Guaranteed Rural Housing Loans regulation. This action is taken to address issues which arose during the implementation phase of the program. The intended effect of this action is to make the program more acceptable to lenders and the secondary market for mortgage loans, to remove RHCDS internal administrative procedures from the **Federal Register**, and to make minor adjustments and corrections as a result of the Agency's experience in implementing the program.

EFFECTIVE DATE: June 21, 1995.

FOR FURTHER INFORMATION CONTACT: Michael S. Feinberg, Senior Loan Specialist, Rural Housing and Community Development Service, USDA, Room 5334–S, South Agriculture Building, 14th and Independence SW., Washington, DC 20250, telephone (202) 720–1474.

SUPPLEMENTARY INFORMATION:

Classification

This rule has been determined to be significant/economically significant and was reviewed by Office of Management and Budget under Executive Order 12866.

Paperwork Reduction Act

The information collection and recordkeeping requirements contained in this regulation have been previously approved by the Office of Management and Budget (OMB), except for § 1980.351, which will not become effective until approved by OMB, in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35). The assigned OMB control number is 0575–0078. Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer of USDA, Washington, D.C. 20503. Please send a copy of your comments to Jack Holston, Agency Clearance Officer, USDA, RECD, Ag Box 0743, Washington, DC 20250. (OMB# 0575–0078)

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of RHCDS that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

Intergovernmental Consultation

For the reason set forth in the final rule related Notice to 7 CFR part 3015, subpart V, 48 FR 29115, June 24, 1983, this program/activity is excluded from the scope of Executive Order (EO) 12372 which requires intergovernmental consultation with State and local officials.

Civil Justice Reform

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. In accordance with this rule: (1) all state and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings in accordance with the regulations of the agency at 7 CFR part 1900 subpart B or those regulations published by the Department of Agriculture to implement the provisions of the National Appeals Division as mandated by the Department of Agriculture Reorganization Act of 1994, whichever is applicable, must be exhausted before bringing suit in court challenging action taken under this rule unless those regulations specifically allow bringing suit at an earlier time.

Programs Affected

This program is listed in the Catalog of Federal Domestic Assistance under 10.410, Very Low to Moderate Income Housing Loans.

Discussion

On September 3, 1993, Farmers Home Administration (FmHA) published a proposed rule with request for comments for the Guaranteed Rural Housing (GRH) program. We received forty-two comments. Comments were from Agency employees or employee groups, lenders, secondary market sources, and various interest groups.

The Federal Crop Insurance Reform and Department of Agriculture Act of 1994, Public Law No. 103–354, signed into law on October 13, 1994, resulted in the restructuring of the Department of Agriculture's Rural Housing programs, formerly carried out by FmHA, which are now assigned to RHCDS. This change is reflected in this regulation.

The Agency discussed the need to make the program more compatible with existing mortgage lending programs. Many of the comments addressed this issue. Some of the respondents felt that the Agency should make the program more like conventional loans. Others advocated the use of other Federal mortgage programs as a guide. We tried to keep the better features of both conventional and Government programs to make the Guaranteed Rural Housing Program as easy for lenders to use as possible. RHCDS believes the easier it is for lenders to participate, the more borrowers can be served with the program.

This regulation omits the detailed internal agency administrative instruction used by the field offices to administer the program. In the past, RHCDS program regulations and FmHA Instructions have been the same. Agency policy is to publish any regulation which confers a benefit or imposes an obligation on the public. It is also agency policy to publish any regulation which contains information necessary for members of the public to understand their responsibilities. The Agency does not intend to publish a regulation that omits or evades issues which are subject to public comment or would be of interest to the public. Any substantive changes in the regulation will continue to be published in the **Federal Register**. Each RHCDS field office has a copy of the FmHA Instruction and a copy is available upon written request to RHCDS.

Some respondents, mostly RHCDS employees, focused on the lack of detailed administrative instructions. The Agency continues to publish its FmHA Instruction, discussed above, which contains information on carrying out administrative details.

In previous publications of this regulation, RHCDS incorporated the forms used in the program into the **Federal Register**. RHCDS no longer publishes the forms. We incorporated the substantive materials from the forms into the regulation.

We discuss other significant changes below in general order of appearance in

the regulation, not based on order of importance.

RHCDS added several new definitions based on the comments. New definitions include: Agency, Co-applicant, Net proceeds, and Qualifying income.

One respondent suggested a section for abbreviations and acronyms which we added. The preamble for the Proposed Rule erroneously stated that the definition for "Existing Dwelling" was deleted. The definition for "Existing Dwelling" provides that an existing dwelling is one "which has been occupied for one year as a primary residence." Several respondents suggested that RHCDS revise the standard. They proposed that an existing dwelling is one that has been completed for more than 12 months as evidenced by a certificate of occupancy. RHCDS agrees and adopts this change.

Several respondents pointed out that the program does not provide for dwellings under construction before the lender receives an application for a guaranteed housing loan. This includes speculative dwellings as well as dwellings built by builders not familiar with the RHCDS program. This results in a burden on builders and home-buyers who would have to wait until the dwelling is more than 12 months old before receiving a loan. RHCDS addresses this in its direct program by limiting the amount of the loan to 90 percent of the appraised value. Based on the comments, we incorporated this same provision into the Guaranteed Rural Housing program.

One respondent indicated a need for clarification of "first time homebuyer." The authorizing legislation provides for granting preference to first time homebuyers. If there are two requests for commitments ready for approval but there is a shortage of funds, RHCDS gives preference to the first time homebuyer over another applicant.

One respondent noted that the Proposed Rule omitted a provision that allowed sale of the loan directly to Fannie Mae and Freddie Mac. This has been corrected.

One respondent encouraged RHCDS to improve the accessibility of housing counseling in rural areas. RHCDS has solicited interested parties for implementation of a demonstration counseling program (see **Federal Register** Vol. 59, No. 31, page 7240 dated February 15, 1994). Loan applicants will be required to attend and complete the housing counseling if it is available in the area.

Several respondents indicated that the various provisions for lender reviews were confusing. RHCDS removed the review requirements that were duplicative.

RHCDS had revised the section on loan purposes in the Proposed Rule. Several respondents requested restoration of certain specific items such as storm cellars, energy saving measures, etc. RHCDS did not intend to exclude storm cellars, energy saving measures, etc. as long as they are part of the dwelling acquisition. This has been clarified.

Several respondents complained about the prohibition on refinancing in section 1980.311(a). They argued refinancing could assist some homeowners in retaining their dwellings. Some respondents suggested guaranteed loans could help in the graduation of direct loans. The authorizing legislation limits the program to assistance for housing acquisition only. There is no authority for refinancing. In addition, the demand for guaranteed housing dollars exceeds available funds.

RHCDS proposed a prohibition on dwellings with in-ground swimming pools. Several respondents argued that some areas of the country have existing housing stock that is modest in cost even though there is a pool. The respondents commented that the value of the dwelling is often not significantly affected by the pool. They argued exclusion of pools would preclude financing many otherwise eligible dwellings. RHCDS continues to believe that it is not appropriate to finance dwellings with in-ground pools. No change is made.

RHCDS has had a long standing policy of financing in areas only where the streets and roads are maintained by a public entity. We proposed to permit financing where the streets and roads are maintained by a Homeowner Association in projects which have been approved or accepted by HUD, VA, Fannie Mae, or Freddie Mac. One respondent observed that the issue of project acceptance is better placed in a different paragraph. RHCDS agrees and we revised and restructured this portion of the regulation.

We received several comments on the proposal to replace the provision that limits the site to one acre. RHCDS proposed that the value of the site cannot exceed 30 percent of the total value of the property. One respondent felt the proposed change was not as clear as the 1 acre rule. Some respondents believed the 30 percent rule may cause problems in high cost areas. One respondent indicated that the one acre rule is easier to explain and understand. Another respondent suggested the 30 percent rule is an unnecessary regulatory burden. Most of the comments, however, favored the proposal. Many people felt that the one acre rule was overly restrictive in many areas of the country. RHCDS believes the issue of high cost areas is adequately addressed by the provision that the 30% limitation does not apply when the site cannot be subdivided into two or more sites. The intent of the rule is to assure financing is limited to rural residences and to avoid financing income producing properties. Other lenders use a similar provision.

RHCDS required completion of all development work before issuance of the guarantee. Several respondents observed that RHCDS has no provision for issuance of the guarantee when there is a delay in completion of required development work due to inclement weather. This requires lenders to delay closing until completion of the development work and places undue burden on both the purchaser and the seller. The respondents suggested RHCDS adopt a provision allowing the use of escrow accounts in situations where necessary repair work is delayed due to weather. RHCDS agrees that this would reduce the regulatory burden for its customers.

Many respondents expressed interest in section 1980.317 which implements Executive Order 11246. Respondents took particular interest in the equal opportunity and nondiscrimination inspection and reporting requirements. A number of the respondents argued that these requirements should not apply to guaranteed loans in as much as there is no direct federal financing involved. Some respondents argued that since construction draws are not allowed, RHCDS is not a party in the construction process. While RHCDS is not directly involved in the construction financing, there likely would be no construction contract without the RHCDS guarantee. Executive Order 11246 applies when there is a construction contract of more than $10,000 between the borrower and the builder.

Several comments addressed flood zones. RHCDS has long had a policy of not financing dwellings located within a flood plain unless it could be demonstrated that there was no alternative. This policy is derived from Executive Order 11988, Flood Plain Management. Practical alternatives are addressed through the environmental review process. In addition, the Agency requires that the first floor elevation to be above the 100 year flood line. These are not changes to RHCDS policy or to the GRH program. This revision simply incorporates the language from other

Agency regulations into this regulation for consistency.

RHCDS had proposed to amend section 1980.324(b) on late charges to make the maximum fee a lender could charge for late payments an unpublished administrative provision. One respondent indicated that the maximum late charge should be available for public comment. This section is revised to provide that the late charge cannot exceed the late charge as prescribed by either HUD or by Fannie Mae. This will allow both HUD and conventional lenders to participate in the program making it available to as many borrowers as possible.

RHCDS proposed to limit the age of the appraisal to not more than 3 months from the date of submission to RHCDS. Several respondents felt this did not allow enough time in some circumstances and proposed a 6 month time frame. RHCDS agrees and the change is adopted.

RHCDS had proposed to implement an environmental checklist intended to help the Agency determine the need for a site visit for environmental reasons. The checklist was to be similar to HUD Form 54891, "Appraiser/Review Appraiser Checklist." Of the seven comments on this subject, only two were favorable. Two respondents advised that HUD no longer uses the form in most circumstances (See 58 Fed. Reg. 41328–41339, August 3, 1993). One respondent reported that they had difficulty locating appraisers who were familiar with the form. Another respondent had little problem locating several appraisers familiar with it. One of the respondents represented an organization of professional real estate appraisers. This respondent indicated the proposed form would require appraisers to respond to questions which they were not trained or qualified to identify. RHCDS has determined it will not adopt the use of the HUD form at this time. The Agency plans to review this issue further for possible future implementation.

RHCDS proposed discontinuing the use of replacement cost in appraisals of dwellings which are more than a year old. One respondent felt that the appraisers should provide the depreciated value of the dwelling and the value of the site for determining insurance and site values. RHCDS believes that these are loan underwriting issues which should be left to the lender. The revisions are adopted as originally proposed.

Several comments were received regarding RHCDS appraisal reviews. Since the performance of the appraisal review is an internal matter, RHCDS is removing the language from the **Federal Register** regarding appraisal reviews.

Section 1980.340(c) provides that the "Lender and borrower are responsible for seeing that loan purposes are accomplished and loan funds are properly utilized." One respondent felt that the Agency is holding the borrower responsible for matters that require a high degree of technical expertise. RHCDS disagrees. The Government does not perform these functions on behalf of the borrower or the lender. Lenders and borrowers must take the necessary actions to protect their interest.

One respondent took exception with RHCDS's inspection requirements for new and existing dwellings. The respondent indicated that it was not typical to obtain inspections beyond that done by or recommended by the appraiser. The respondent also complained that RHCDS did not provide guidance on minimum qualifications a qualified inspector must meet. Some respondents suggested that only a final inspection need be obtained for new dwellings along with a certification that the dwelling was built according to the plans and specifications and that the appraiser address the inspection issue for existing dwellings. RHCDS continues to believe it is important to have the dwelling inspected. In many instances, the inspection can be performed by the appraiser. The Agency expects that lenders will use the same standards that any reasonable person would use to obtain an inspection of their own dwelling. The regulation is clarified on this point.

Several respondents expressed interest in the requirements for existing dwellings. Section 1980.341(b) made reference to the general requirements of the Agency's Guide 2 to subpart A of part 1924. The respondents indicated a need for clearer guidance. RHCDS agrees and we have revised this section to incorporate the HUD guidelines for existing properties. Many residential appraisers and inspectors are familiar with the HUD guidelines and this will make it easier for lenders to use the program.

Section 1980.345 provides the eligibility requirements an applicant must meet at the time of "loan approval." Program eligibility is limited to moderate income households. One respondent questioned whether loan approval referred to approval by the lender or RHCDS. This is pertinent because an applicant that exceeds the moderate income limits is not eligible for the program. The point in time at which income is determined could result in different decisions. Another respondent suggested using loan closing as a point of reference instead of loan approval. RHCDS believes this would cause undue burden to borrowers, sellers, and lenders by rendering ineligible loans in which considerable processing time and expense has been incurred. It is important to note the distinction between RHCDS approval and lender approval. The lender approves the loan. RHCDS approves issuance of a loan guarantee. The regulation is revised to bring out this distinction and approval will clearly reference issuance of the commitment for a loan guarantee.

One respondent suggested that RHCDS adopt the income limits used in the Fannie Mae Community Home Buyers Program. The respondent complained that it is burdensome to work with income limits that vary by family size. Fannie Mae limits are simpler to work with, however, many families otherwise eligible would be excluded since the current method provides higher limits for larger family sizes. This provision remains unchanged.

One respondent recommended that RHCDS change the ratio term "Monthly Obligation to Income (MOTI)" to "Total Debt Ratio." "Total Debt" is the terminology used in the industry. RHCDS agrees.

The proposal to consider the cost of job related expenses in the total debt ratio generated nine comments. Three respondents opposed the addition of this provision. One clearly favored including child care as an expense. There were two suggestions for clarification and one recommendation for further study of the issue. RHCDS had proposed this revision in order to make its program more consistent with other Federal program. It has been learned that other agencies are reviewing this requirement. Based on its experience with this program to date, RHCDS has not had cause to believe its current handling of job related expenses has led to losses that otherwise would not have occurred. The Agency has opted for further study of the issue.

Several respondents suggested adding two percent to the qualifying ratios for dwellings that meet the 1992 Model Energy Code (CABO 92 MEC). After careful consideration, the Agency is not adopting this change. The reason is that the Agency's thermal standards which were already in place meet or exceed the Model Energy Code. Adoption of the Model Code standards will not enhance the repayment ability of an RHCDS borrower.

Three respondents suggested the Agency provide guidance on the consideration of contingent liabilities.

Contingent liabilities include debts from a previous marriage and debts assigned to the former spouse in a divorce decree. The lack of guidance is burdensome and inefficient for borrowers and lenders. RHCDS added this guidance.

Another respondent expressed concern about the difference between eligible income and qualifying income. Authorizing legislation limits program eligibility to those borrowers with a moderate income. In making this determination, RHCDS looks at income that many lenders typically would not rely on for repayment ability. We clarified the difference between "eligible" and "qualifying" income. RHCDS uses "eligible" income to determine the borrower's eligibility for the program. Eligibility is based on current income. The lender uses "qualifying" income in loan underwriting. "Qualifying" income provides the basis for repayment ability. For example, income from a part time job the applicant has held for less than 6 months is eligible income. Unless the applicant has a history of similar income, it may not be dependable enough to consider for repayment ability.

RHCDS had proposed allowing the lender to waive the qualifying ratios when there are compensating factors. One respondent suggested that this approach could be workable but would require considerable RHCDS training and oversight. Another respondent suggested the Agency have the lender request an Agency determination for the waiver. Another respondent suggested that "waiver" of the ratios implies that lenders may not have to consider income adequacy. RHCDS agrees with all of these comments. We made revisions so the lender may request RHCDS concurrence in allowing a higher ratio.

Several respondents discussed loan underwriting standards for credit history. Two respondents disagreed with the RHCDS standard which provides that any debt written off by the creditor within the last 36 months is adverse credit. They argued that sometimes a debt is written off by the creditor but the borrower continues to pay. The respondents stated this is not adverse credit. RHCDS considers any credit history blemish to be adverse credit. There are, however, circumstances in which the borrower can reasonably explain adverse credit. When adverse credit is beyond the applicant's control, the lender may consider this in making a final determination.

Several respondents alluded to a 36-month "waiting period" in the case of a bankruptcy. There is no "waiting period" in the regulations. In fact, RHCDS regulations do not directly address bankruptcy as being adverse credit. There is a provision that bankruptcy older than 36 months should not be considered in evaluating credit history.

One respondent commented on the eligibility issue of home ownership. An applicant that already owns an adequate dwelling is not eligible. Sometimes a family moves from one area to another and they are unable to sell their former residence. The respondent suggested a provision that the applicant could meet the ownership requirement as long as he or she does not own a dwelling in the local commuting area. We have revised the regulation to incorporate the clarification requested.

Another respondent suggested a revision on the provision for other credit. The issue is whether the qualification for another Federal or state program would preclude eligibility for the program or not. We have revised the regulation to incorporate the clarification requested.

Several respondents suggested changing the determination of annual income to include a 24 month history instead of a 12 month history and including straight line depreciation in determining income. Annual and adjusted income, by law, have the same meanings given by section 3(b)(4) and 3(b)(5) of the United States Housing Act of 1937. The regulation already provides for the consideration of depreciation as allowed by the Internal Revenue Service.

One respondent pointed out that income from the employment of minors is not included in annual income but the regulation calls for its use in determining repayment ability. The respondent suggested elimination of the provision for counting a minor's income. Although the minor cannot be a party to the note, the lender may consider this additional household income as a possible compensating factor.

RHCDS had proposed to reserve the authority to issue commitments subject to the availability of funds. RHCDS recognizes the loan making process can range from several weeks to several months. RHCDS receives no notification of a pending application until the Lender submits a request for a loan guarantee. Since RHCDS's funding authority is based on annual appropriations, there could be loans in process which the Agency cannot fund. RHCDS received eight comments on the proposal to issue commitments subject to funding. Seven of these opposed the proposal. Several respondents argued that the proposal would represent an unacceptable risk to the secondary market and to lenders. One respondent stated that commitments without funding would weaken the validity of the conditional commitment. Most of the respondents suggested an alternative method such as the creation of a register for loan applications. This would enable the Agency to track the application pipeline and assure lenders of the availability of funds. Section 1980.351 implements a funding reservation system.

Section 1980.353(c) clarifies that the loan must be underwritten by the lender before it is submitted to RHCDS. Previous language called for lender submission of a feasibility analysis. This change in terminology was made based on comments received both from RHCDS employees and lenders.

One respondent suggested that the request for a conditional commitment should include copies of the income verifications and the purchase agreement or construction contract. We added these to the list of required documentation.

Several respondents made suggestions regarding requirements for verification of the borrower's income. One suggestion was to clarify that the verification must be valid at that time of issuance of the Conditional Commitment. Several respondents suggested that RHCDS permit the use of an authorization for release of information instead of the borrower signing the verification form directly. This would allow the lender to increase their efficiency. Another suggestion encourages the use of secondary means of income verification. For example, many lenders obtain a copy of the 3 most recent paycheck stubs for employed borrowers to compare with the information in the employer verification. These suggestions have been adopted.

There were four comments on lender submission of a copy of the loan docket. Each of the respondents asked for an explanation of what a "loan docket" consists of. Two of the respondents suggested that RHCDS should already have copies of the information it needs and that the requirement may be redundant. One respondent suggested that RHCDS should ask only for items which are necessary to determine that the closing conditions were met. RHCDS agrees and so revised the regulation.

Two respondents asked that the provision regarding additional loans be removed or revised. One respondent stated the prohibition prevents the lender from making a home

improvement loan but leaves other lenders free to make the same loan. RHCDS agrees with the respondents and deleted this provision.

Two comments addressed assumptions and transfers. One respondent was concerned that since transfers were permitted but not required, a lender might unfairly place a borrower in jeopardy by refusing to permit a transfer. The other respondent felt transfers should be allowed at market value or for the outstanding debt, whichever is less. The same respondent proposed release of liability for the transferor. The Housing Act of 1949, as amended, prohibits the release of liability. For this reason, RHCDS determined that the loan transfers cannot be for less than outstanding debt. Sale of the dwelling without assumption of the loan is not prohibited. RHCDS wanted to permit the lender the flexibility to use the transfer as a servicing tool if the lender determined that was the best course of action. No change is made to this section.

One respondent noted there is nothing in the regulation addressing an unapproved transfer. A provision has been added to clarify this.

One respondent challenged RHCDS because moratoria are not included. The respondent referenced section 505 of the Housing Act of 1949, as amended. RHCDS notes that the Act authorizes the use of this servicing tool but does not require it. RHCDS encourages lenders to "make every effort to assist borrowers who are cooperative and willing to make a good faith effort * * *." The lender is authorized to make temporary revisions to the repayment schedule.

There were two comments on protective advances. One respondent suggested that the $500 threshold was too low. The other respondent argued that prior approval may not be appropriate since protective advances are by definition of an emergency nature. The respondent suggested that RHCDS encourage lenders to obtain prior approval to assure the expense is included in the loss claim. This protects RHCDS while providing flexibility to the lender.

One respondent suggested that RHCDS approval of a plan to continue with a delinquent borrower may result in delays. These delays could forestall successful implementation of the plan. RHCDS agrees with the comment and section 1980.374(d)(1) is so revised. However, the Agency may reject any plan that does not protect the Government's interest.

One respondent indicated that it was almost always cost effective to accept a Deed-in-lieu rather than foreclose. The respondent suggested that RHCDS permit the lender discretion to accept a Deed-in-Lieu of foreclosure without prior approval. RHCDS agrees and this change is adopted.

Several comments were received on the revised loss payment provisions. Three respondents indicated that the time frame for filing the loss claim was not long enough. Two respondents suggested 45 working days is more consistent with industry practice. RHCDS finds a 45-working day time frame is awkward to work with and allows 9 weeks or longer for the lender to process the claim. The other respondent indicated that Fannie Mae allows its servicers 30 calendar days to file claims for private mortgage insurance. RHCDS believes that 30 calendar days is reasonable time to file a claim and this revision is adopted.

There were two favorable comments on the proposal to allow a 6 month period for the lender to liquidate acquired property. One respondent indicated that the 6 month period was not long enough and might encourage a "fire" sale to liquidate the property. The respondent suggested a 12 month period with a minimum established upset sale price. Another respondent questioned the need for a plan for disposition of the property. The respondent indicated that the preparation of the plan is a burden for both the lender and RHCDS without financial benefit. The purpose of the plan is to protect the Agency against the possibility of a "fire" sale. The respondent stated that the regulation is very general as to the content of the plan and contains no financial guidance with respect to how much RHCDS will allow for various cost items. The respondent also complained that there is no indication whether RHCDS will accept aggregate costs in excess of the percentage formula allowance currently used. The same respondent felt it is not clear when the plan is to be filed. The intent of the Agency is to protect itself from unreasonable losses. RHCDS does not impose specific cost allowances for various liquidation expenses. The Agency looks to see whether the costs claimed by the lender are legitimate, necessary, and reasonable for the area. There are no allowances for aggregate costs over the percentage formula. Examples and details will be available through the lender handbook.

Two comments related to the date of the RHCDS interest assistance payment. The language was adjusted to clarify when the interest assistance payment would be made. A proposal to provide for the payment on the first of the month instead of the fifteenth was not adopted.

One respondent suggested that interest assistance should be made available as a loss mitigation strategy. We believe the commenter intended this as a loan servicing tool to grant interest assistance to borrowers who experience decreases in income. Interest assistance funds are subject to appropriations. This means that interest assistance can be made available only for loans guaranteed from funds with an interest assistance appropriation. This comment is not implemented.

Four comments dealt with Mortgage Credit Certificates and funded buy-down accounts. Two respondents suggested the value of a Mortgage Credit Certificate should be subtracted from the borrowers obligations rather than added to income. The respondents mentioned this is consistent with the method used by "the general lending community." They argued this would remove a source of confusion for borrowers and lenders. RHCDS acknowledges that some conventional lenders have adopted this approach. However, the method proposed by RHCDS is consistent with other Federal mortgage lending agencies. The income tax credit increases disposable income. The tax credit does not reduce the borrower's liabilities. No change is made on Mortgage Credit Certificates. However, after consideration, RHCDS determined that funded buy-down accounts would be implemented; however, RHCDS concurrence would be required similar to that concurrence required for higher ratios.

We received two comments on appeals. Both respondents suggested a revision to the language so borrowers and lenders could appeal separately. One respondent expressed concern that the lender is not likely to join the borrower in an appeal. RHCDS's position is that the loans are the lender's loans. There is no point in the borrower appealing a decision without the lender's willingness to make the loan after the appeal. It is not necessary that the lender and borrower each fully participate in the appeal process. Only that both parties join in requesting the appeal. One respondent implied that the appeal process should allow the applicant/borrower to appeal lender decisions. This is not consistent with the Agency's position.

List of Subjects in 7 CFR Part 1980

Home improvement, Loan programs—Housing and community development, Mortgage insurance, Mortgages, Rural areas.

Therefore, Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

PART 1980—GENERAL

1. The authority citation for part 1980 continues to read as follows:

Authority: 7 U.S.C. 1989, 42 U.S.C. 1480, 5 U.S.C. 301, 7 CFR 2.23, 7 CFR 2.70.

2. Subpart D of part 1980 is revised to read as follows:

Subpart D—Rural Housing Loans

Sec.

1980.301 Introduction.
1980.302 Definitions and abbreviations.
1980.303–1980.307 [Reserved]
1980.308 Full faith and credit.
1980.309 Lender participation in guaranteed RH loans.
1980.310 Loan purposes.
1980.311 Loan limitations and special provisions.
1980.312 Rural area designation.
1980.313 Site and building requirements.
1980.314 Loans on leasehold interests.
1980.315 Escrow accounts for exterior development
1980.316 Environmental requirements.
1980.317 Equal opportunity and nondiscrimination requirements in use, occupancy, rental, or sale of housing.
1980.318 Flood and mudslide hazard area precautions.
1980.319 Other Federal, State, and local requirements.
1980.320 Interest rate.
1980.321 Terms of loan repayment.
1980.322 Loan guarantee limits.
1980.323 Guarantee fee.
1980.324 Charges and fees by Lender.
1980.325 Transactions which will not be guaranteed.
1980.326–1980.329 [Reserved]
1980.330 Applicant equity requirements.
1980.331 Collateral.
1980.332 [Reserved]
1980.333 Promissory notes and security instruments.
1980.334 Appraisal of property serving as collateral.
1980.335–1980.339 [Reserved]
1980.340 Acquisition, construction, and development.
1980.341 Inspections of construction and compliance reviews.
1980.342–1980.344 [Reserved]
1980.345 Applicant eligibility requirements for a guaranteed loan.
1980.346 Other eligibility criteria.
1980.347 Annual income.
1980.348 Adjusted annual income.
1980.349–1980.350 [Reserved]
1980.351 Requests for reservation of funds.
1980.352 [Reserved]
1980.353 Filing and processing applications.
1980.354 [Reserved]
1980.355 Review of requirements.
1980.356–1980.359 [Reserved]
1980.360 Conditions precedent to issuance of the loan note guarantee.
1980.361 Issuance of loan note guarantee.
1980.362 [Reserved]
1980.363 Review of loan closing.
1980.364–1980.365 [Reserved]
1980.366 Transfer and assumption.
1980.367 Unauthorized sale or transfer of the property.
1980.368–1980.369 [Reserved]
1980.370 Loan servicing.
1980.371 Defaults by the borrower.
1980.372 Protective advances.
1980.373 [Reserved]
1980.374 Liquidation.
1980.375 Reinstatement of the borrower's account.
1980.376 Loss payments.
1980.377 Future recovery.
1980.378–1980.389 [Reserved]
1980.390 Interest assistance.
1980.391 Equity sharing.
1980.392 Mortgage Credit Certificates (MCCs) and Funded Buydown Accounts.
1980.393–1980.396 [Reserved]
1980.397 Exception authority.
1980.398 Unauthorized assistance and other deficiencies.
1980.399 Appeals.
1980.400 [Reserved]

Subpart D—Rural Housing Loans

§ 1980.301 Introduction.

(a) *Policy.* This subpart contains regulations for single family Rural Housing (RH) loan guarantees by the Rural Housing and Community Development Service (RHCDS) and applies to lenders, borrowers, and other parties involved in making, guaranteeing, servicing, holding or liquidating such loans. Any processing or servicing activity conducted pursuant to this subpart involving authorized assistance to RHCDS employees, members of their families, known close relatives, or business or close personal associates is subject to the provisions of subpart D of part 1900. Applicants for this assistance are required to identify any known relationship or association with an RHCDS employee.

(b) *Program objective.* The basic objective of the guaranteed RH loan program is to assist eligible households in obtaining adequate but modest, decent, safe, and sanitary dwellings and related facilities for their own use in rural areas by guaranteeing sound RH loans which otherwise would not be made without a guarantee. Guarantees issued under this subpart are limited to loans to applicants with incomes that do not exceed income limits as provided in exhibit C of FmHA Instruction 1980–D (available in any RHCDS office).

(c) [Reserved]

(d) *Nondiscrimination.* Loan guarantees and services provided under this subpart are subject to various civil rights statutes. Assistance shall not be denied to any person or applicant based on race, sex, national origin, color, familial status, religion, age, or physical or mental disability (the applicant must possess the capacity to enter into a legal contract for services). The Consumer Protection Act provides that the applicant may not be denied assistance based on receipt of income from public assistance or because the applicant has, in good faith, exercised any right provided under the Act.

§ 1980.302 Definitions and abbreviations.

(a) The following definitions are applicable to RH loans:

Agency. Rural Housing and Community Development Service (RHCDS).

Applicant. The party applying to a Lender for a loan.

Approval official. An RHCDS employee with delegated loan approval authority under subpart A of part 1901 consistent with the amount and type of loan considered.

Borrower. Collectively, all parties who applied for and received a specific guaranteed loan from an eligible Lender.

Coapplicant. An adult member of the household who joins the applicant in applying to a lender for a loan.

Conditional commitment. RHCDS's notice to the Lender that the material it has submitted is approved subject to the completion of all conditions and requirements set forth in the notice

Development standard. The current edition of any of the model building, plumbing, mechanical, and electrical codes listed in exhibit E to subpart A of part 1924 applicable to single family residential construction or other similar codes adopted by RHCDS for use in the state.

Disabled person. A person who is unable to engage in any substantially gainful activity by reason of any medically determinable physical or mental impairment expected to result in death or which has lasted or is expected to last for a continuous period of not less than 12 months. The disability is expected to be of long or indefinite duration; substantially impede the person's ability to live independently; and is of such a nature that the person's ability to live independently could be improved by more suitable housing conditions. In the case of an individual who has attained the age of 55 and is blind, disability is defined as inability by reason of such blindness to engage in substantially gainful activity requiring skills or abilities comparable to those of any gainful activity in which the individual has previously engaged with some regularity over a substantial period of time. Receipt of veteran's benefits for disability, whether service-oriented or otherwise, does not automatically establish disability. A disabled person also includes a person with a developmental disability. A developmental disability means a severe, chronic disability of a person which:

(1) Is attributable to a mental or physical impairment or a combination of mental and physical impairments;
(2) Is manifested before the person attains age 22;
(3) Is likely to continue indefinitely;
(4) Results in substantial functional limitations in one or more of the following areas of major life activity:
(i) Self-care,
(ii) Receptive and expressive language,
(iii) Learning,
(iv) Mobility,
(v) Self-direction,
(vi) Capacity for independent living, and
(vii) Economic self-sufficiency; and
(5) Reflects the person's need for a combination and sequence of special care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated.

Displaced homemaker. An individual who is an adult; has not worked full-time full-year (2,080 hours) in the labor force for a number of years but has during such years worked primarily without remuneration to care for the home and family; and is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment.

Elderly family. An elderly family consists of one of the following:
(1) A person who is the head, spouse, or sole member of a household and who is 62 years of age or older, or who is disabled and is the applicant/borrower or the coapplicant/coborrower; or
(2) Two or more unrelated elderly (age 62 or older), disabled persons who are living together, at least one of whom is the applicant/borrower or coapplicant/coborrower; or
(3) In the case of a family where a deceased borrower/coborrower or spouse was at least 62 years old or disabled, the surviving household members shall continue to be classified as an "elderly family" for the purpose of determining adjusted income even though the surviving members may not meet the definition of elderly family on their own, provided:
(i) They occupied the dwelling with the deceased family member at the time of his/her death; and
(ii) If one of the surviving members is the spouse of the deceased family member, the surviving family shall be classified as an elderly family only until the remarriage of the surviving spouse; and
(iii) At the time of death, the dwelling of the deceased family member was financed under title V of the Housing Act of 1949, as amended.

Eligible lender. A Lender meeting the criteria outlined in § 1980.309 who has requested and received RHCDS approval for participation in the program.

Existing dwelling. A dwelling which has been completed for more than 1 year as evidenced by an occupancy permit or a similar document.

Extended family. A family unit comprised of adult relatives who live together with the other members of the household, for reasons of physical dependency, economics, and/or social custom, who, under other circumstances, could maintain separate households. A typical example is parents living with their adult children.

Federal National Mortgage Association (Fannie Mae) rate. The rate authorized in exhibit B of FmHA Instruction 440.1 (available in any RHCDS office).

Finance Office. The office which maintains RHCDS's financial records.

First-time homebuyer. Any individual who (and whose spouse) has had no present ownership in a principal residence during the 3 year period ending on the date of purchase of the property acquired with a guaranteed loan under this subpart. A first-time homebuyer includes displaced homemakers and single parents even though they might have owned, or resided in, a dwelling with a spouse. This definition is used to determine RHCDS processing priority in accordance with § 1980.353.

Guaranteed loan. A loan made, held, and serviced by a Lender for which RHCDS has entered into an agreement with the Lender in accordance with this subpart.

Household or family. The applicant, coapplicant, and all other persons who will make the applicant's dwelling their primary residence for all or part of the next 12 months. The temporary absence of a child from the home due to placement in foster care shall not be taken into account in considering family composition and size. Foster children placed in the borrower's home and live-in aides shall not be counted as members of the household.

Interest assistance. Loan assistance payments made by RHCDS to the Lender on behalf of the borrower.

Lender. The organization making, holding, and/or servicing the loan which is guaranteed under the provisions of this subpart. The Lender is also the party requesting the guarantee. The Lender includes an entity purchasing an RHCDS guaranteed loan. A purchasing Lender acquires all the privileges, duties, and responsibilities of the originating Lender. The Lender is primarily responsible for originating, underwriting, servicing, and, where necessary, liquidating the loan and disposing of the property in a manner consistent with maximizing the Government's interest.

Lender agreement. The signed master agreement between RHCDS and the Lender setting forth the Lender's loan responsibilities for loan processing and servicing guaranteed RH loans.

Lender record change. The Lender's notice to RHCDS of a change of Lender or a change of servicer.

Liquidation. Liquidation of the loan occurs when the Lender acquires title to the security, a third party buys the property at the foreclosure sale, or the borrower sells the property to a third party in order to avoid or cure a default situation with the prior approval of the Lender and RHCDS. In states providing a redemption period, the Lender does not typically acquire title until after expiration of the redemption period.

Liquidation expense. The Lender's cost of liquidation including those costs that do not qualify as a protective advance.

Loan note guarantee. The signed commitment issued by RHCDS setting forth the terms and conditions of the guarantee.

Manufactured home. A structure built to the Federal Manufactured Home Construction and Safety Standards and RHCDS thermal requirements.

Master interest assistance agreement. The agreement among RHCDS, the borrower, and the Lender which provides the basis for payment of interest assistance and shared equity.

Minor. A person under 18 years of age. Neither the applicant, coapplicant, or spouse may be counted as a minor. Foster children placed in the borrower's home are not counted as minors for the purpose of determination of annual or adjusted income.

Net family assets. Include:
(1) The value of equity in real property, savings, individual retirement accounts (IRA), demand deposits, and the market value of stocks, bonds, and other forms of capital investments, but exclude:
(i) Interests in Indian Trust land,
(ii) The value of the dwelling and a minimum adequate site,
(iii) Cash on hand which will be used to reduce the amount of the loan,
(iv) The value of necessary items of personal property such as furniture and automobiles and the debts against them,
(v) The assets that are a part of the business, trade, or farming operation in the case of any member of the household who is actively engaged in such operation, and
(vi) The value of a trust fund that has been established and the trust is not revocable by, or under the control of, any member of the household, so long as the funds continue to be held in trust.
(2) The value of any business or household assets disposed of by a member of the household for less than fair market value (including disposition in trust, but not in a foreclosure or bankruptcy sale) during the 2 years preceding the date of application, in excess of the consideration received therefore. In the case of a disposition as part of a separation or divorce settlement, the disposition shall not be considered to be less than fair market value if the household member receives important consideration not measurable in dollar terms.

Net proceeds. The proceeds remaining from the property after it is sold or its net value as determined in accordance with this subpart. The determination of net proceeds depends upon whether the property is sold or acquired by the Lender. Net proceeds may be determined using the appraised value and subtracting authorized deductions when the Lender acquires the property.

Protective advance. Advances made by the Lender when the borrower is in liquidation or otherwise in default to protect or preserve the security from loss or destruction.

Qualifying income. The amount of the applicant's income which the lender determines is adequate and dependable enough to consider for repayment ability. This figure may be different from the adjusted income which is used for RHCDS program eligibility. Qualifying income is typically less than adjusted income unless the applicant has income from the sources listed in § 1980.347(e).

Rural area. An area meeting the requirements of § 1980.312. Rural areas are designated on maps available in the RHCDS office servicing that area.

Single parent. An individual who is unmarried or legally separated from a spouse and has custody or joint custody of one or more minor children or is pregnant.

State Director. Director of RHCDS programs within a state office area.

Veteran. A veteran is a person who has been discharged or released from the active forces of the United States Army, Navy, Air Force, Marine Corps, or Coast Guard under conditions other than dishonorable discharge including "clemency discharges" and who served on active duty in such forces:
(1) From April 6, 1917, through March 31, 1921;
(2) From December 7, 1941, through December 31, 1946;
(3) From June 27, 1950, through January 31, 1955; or
(4) For more than 180 days, any part of which occurred after January 31, 1955, but on or before May 7, 1975.

(b) The following abbreviations are applicable to this subpart:
Fannie Mae—Federal National Mortgage Association.
FCS—Farm Credit Service.
FHA—Federal Housing Administration.
Freddie Mac—Federal Home Loan Mortgage Corporation.
Ginnie Mae—Government National Mortgage Association.
HUD—Department of Housing and Urban Development.
IRS—Internal Revenue Service.
MCCs—Mortgage Credit Certificates.
PITI—Principal, Interest, Taxes, and Insurance.
RHCDS—Rural Housing and Community Development Service.
URAR—Uniform Residential Appraisal Report.
VA—Department of Veterans Affairs.

§§ 1980.303–1980.307 [Reserved]

§ 1980.308 Full faith and credit.

The loan note guarantee constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which the Lender has actual knowledge at the time it becomes such Lender or which the Lender participates in or condones. Misrepresentation includes negligent misrepresentation. A note which provides for the payment of interest on interest shall not be guaranteed. Any guarantee or assignment of a guarantee attached to or relating to a note which provides for the payment of interest on interest is void. Notwithstanding the prohibition of interest on interest, interest may be capitalized in connection with reamortization over the remaining term with written concurrence of RHCDS. The loan note guarantee will be unenforceable to the extent any loss is occasioned by violation of usury laws, negligent servicing, or failure to obtain the required security regardless of the time at which RHCDS acquires knowledge of the foregoing. Negligent servicing is defined as servicing that is inconsistent with this subpart and includes the failure to perform those services which a reasonably prudent Lender would perform in servicing its own loan portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act, but also not acting in a timely manner or acting contrary to the manner in which a reasonably prudent Lender would act up to the time of loan maturity or until a final loss is paid. Any losses occasioned will be unenforceable to the extent that loan funds are used for purposes other than those authorized in this subpart. When the Lender conducts liquidation in an expeditious manner, in accordance with the provisions of § 1980.374, the loan note guarantee shall cover interest until the claim is paid within the limit of the guarantee.

§ 1980.309 Lender participation in guaranteed RH loans.

(a) *Qualification.* The following Lenders are eligible to participate in the RHCDS guaranteed RH loan program upon presentation of evidence of said approval and execution of the RHCDS Lender Agreement.
(1) Any state housing agency;
(2) Any Lender approved by HUD as a supervised or nonsupervised mortgagee for submission of one to four family housing applications for Federal Housing Mortgage Insurance or as an issuer of Ginnie Mae mortgage backed securities;
(3) Any Lender approved as a supervised or nonsupervised mortgagee for the VA;
(4) Any Lender approved by Fannie Mae for participation in one to four family mortgage loans;
(5) Any Lender approved by Freddie Mac for participation in one to four family mortgage loans;
(6) An FCS institution with direct lending authority; and
(7) Any Lender participating in other RHCDS, Rural Business and Cooperative Development Service, Rural Utilities Service, and/or Consolidated Farm Service Agency guaranteed loan programs.

(b) *Lender approval.* A Lender listed in paragraph (a) of this section must request a determination of eligibility in order to participate as an originating Lender in the program. Requests may be made to the state office serving the state jurisdiction or to the National office when multiple state jurisdictions are involved.
(1) The Lender must provide the following information to RHCDS:
(i) Evidence of approval, as appropriate, for the criteria under paragraph (a) of this section, which the Lender meets.
(ii) The Lender's Tax Identification Number.
(iii) The name of an official of the Lender who will serve as a contact for RHCDS regarding the Lender's guaranteed loans.
(iv) A list of names, titles, and responsibilities of the Lender's principal officers.
(v) An outline of the Lender's internal loan criteria for issues of credit history

and repayment ability and a copy of the Lender's quality control plan for monitoring production and servicing activities.

(vi) An executed certification regarding debarment, suspension, or other matters—primary covered transactions. The certification will be obtained using a form prescribed by RHCDS.

(2) The Lender must agree to:

(i) Obtain and keep itself informed of all program regulations and guidelines including all amendments and revisions of program requirements and policies.

(ii) Process and service RHCDS guaranteed loans in accordance with Agency regulations.

(iii) Permit RHCDS employees or its designated representatives to examine or audit all records and accounts related to any RHCDS loan guarantee.

(iv) Be responsible for the servicing of the loan, or if the loan is to be sold, sell only to an entity which meets the provisions of paragraph (a) of this section.

(v) Use forms which have been approved by FHA, Fannie Mae, Freddie Mac, or, for FCS Lenders, use the appropriate FCS forms.

(vi) Maintain its approval if qualification as an RHCDS Lender was based on approval by HUD, VA, Fannie Mae, or Freddie Mac including maintaining the minimum allowable net capital, acceptable levels of liquidity, and any required fidelity bonding and/or mortgage servicing errors and omissions policies required by HUD, VA, Fannie Mae, or Freddie Mac, as appropriate.

(vii) Operate its facilities in a prudent and business-like manner.

(viii) Assure that its staff is well trained and experienced in loan origination and/or loan servicing functions, as necessary, to assure the capability of performing all of the necessary origination and servicing functions.

(ix) Notify RHCDS in writing if the Lender:

(A) Ceases to meet any financial requirements of the entity under which the Lender qualified for RHCDS eligibility;

(B) Becomes insolvent;

(C) Has filed for bankruptcy protection, has been forced into involuntary bankruptcy, or has requested an assignment for the benefit of creditors;

(D) Has taken any action to cease operations or discontinue servicing or liquidating any or all of its portfolio of RHCDS guaranteed loans;

(E) Has any change in the Lender name, location, address, or corporate structure;

(F) Has become delinquent on any Federal debt or has been debarred, suspended, or sanctioned by any Federal agency or in accordance with any applicable state licensing or certification requirements.

(c) [Reserved]

(d) *Handling applications for Lender eligibility.* Upon determination of a Lender's eligibility to originate loans, RHCDS and the Lender will execute the RHCDS Lender Agreement. The Lender Agreement establishes the Lender's authorization for participation in the program as an originator, servicer, or holder of RHCDS single family mortgage loans. The Lender Agreement shall be in effect until terminated by either the Agency or the Lender in accordance with the terms of the Lender Agreement and this subpart.

(e) *Lender sale of guaranteed loans.* Loans guaranteed under this subpart may be sold only to entities which meet the qualifications in paragraphs (a) and (b) of this section or directly to Fannie Mae or Freddie Mac. Such entities are referred to as a Lender and are to be treated as a Lender for all purposes under this subpart. The selling Lender shall provide the original loan note guarantee to the purchasing Lender. The selling Lender is responsible for reporting the sale of any loan to RHCDS within 30 days using a reporting form provided by RHCDS. The purchasing Lender must execute a Lender Agreement or have a valid Lender Agreement on file with RHCDS. The purchasing Lender shall succeed to all rights, title, and interest of the Lender under the loan note guarantee. Any necessary or convenient assignments or other instruments relating to the loan and any other actions necessary or convenient to perfect or record such transaction are the responsibility of the purchasing Lender. The purchasing Lender assumes the obligations of, and will be bound by and will comply with, all covenants, agreements, terms, and conditions contained in any note, security instrument, loan note guarantee, and of any outstanding agreements in connection with such loan purchased. The purchasing Lender shall be subject to any defenses, claims, or setoffs that RHCDS would have against the Lender if the Lender had continued to hold the loan.

(f) *Lender responsibility.* The Lender will be responsible for the processing, servicing, and liquidation (if necessary) of the loan. The Lender may use agents, correspondents, branches, financial experts, or other institutions in carrying out its responsibilities. Lenders are fully responsible for their own actions and the actions of those acting on the Lender's behalf.

(1) *Processing.* The Lender must abide by limitations on loan purposes, loan limitations, interest rates, and terms set forth in this subpart. The Lender will obtain, complete, and submit to RHCDS the items required in § 1980.353(c). The Lender may utilize the services of a non-RHCDS approved lender for originating residential loans. The RHCDS approved lender is responsible for the loan underwriting and for obtaining the RHCDS conditional commitment. The agent may close the loan in its name provided the loan is immediately transferred to the approved lender to whom the guarantee will be issued.

(2) *Servicing.* Lenders are fully responsible for servicing and protecting the security for all guaranteed loans. When servicing is carried out by a third party, the Lender will inform RHCDS of the name and address of the servicer.

(3) *Liquidation.* The Lender will complete any liquidation of loans guaranteed under the provisions of the Lender Agreement. Loss claims will be submitted on the RHCDS Loss Report form. The loss report will be accompanied by supporting information to outline disposition of all security pledged to secure the loan. The Lender shall also effect collection of the debt from other assets of the borrower to the extent practicable.

(4) *Counseling.* Lenders are encouraged to offer or provide for home ownership counseling. Lenders may require first-time homebuyers to undergo such counseling if it is reasonably available in the local area. When home ownership counseling is provided or sponsored by RHCDS or another Federal agency in the local area, the Lender must require the borrower to successfully complete the course.

(g) *Monitoring a Lender's processing and servicing of loans.* If RHCDS determines that the Lender is not fulfilling the obligations of the Lender Agreement or that the Lender fails to maintain the required criteria, the Lender will be notified in writing of the deficiencies and allowed a maximum of 30 days to correct them. If the Lender fails to make the required corrections, RHCDS will proceed as provided in paragraph (h) of this section.

(1) *Loan processing review for new Lenders.* RHCDS may review loans developed by an eligible Lender to assure compliance with, and understanding of, Agency regulations.

(2) [Reserved]

(3) [Reserved]

(h) *Termination of Lender eligibility.* The Lender remains eligible as long as the Lender meets the criteria in paragraph (a) of this section unless that Lender's status is revoked by RHCDS or by another Federal agency. RHCDS shall revoke the eligible Lender status of any Lender who fails to comply with requirements of paragraph (b) or (e) of this section. Status may also be revoked if the Lender violates the terms of the Lender Agreement, fails to properly service any guaranteed loan, or fails to adequately protect the interests of the Lender and the Government. If the Lender is determined to be no longer eligible, the Lender will continue to service any outstanding loans guaranteed under this subpart which are held by the Lender or RHCDS may require the Lender to transfer the servicing of the loan. In addition to revocation of eligible Lender status, the Lender may be debarred by RHCDS.

§ 1980.310 Loan purposes.

The purpose of a loan guaranteed under this subpart must be to acquire a completed dwelling and related facilities to be used by the applicant as a primary residence. The loan may be to purchase a new dwelling or an existing dwelling. The guaranteed loan may be for "take out" financing for a loan to construct a new dwelling or improve an existing dwelling when the construction financing is arranged in connection with the loan package. The loan may include funds for the purchase and installation of necessary appliances, energy saving measures, and storm cellars. Incidental expenses for tax monitoring services, architectural, appraisal, survey, environmental, and other technical services may be included. Subject to § 1980.311, eligible loan purposes also include:

(a) Necessary related facilities such as a garage, storage shed, walks, driveway, and water and/or sewage facilities including reasonable connection fees for utilities which the buyer is required to pay.

(b) Special design features or equipment necessary to accommodate a physically disabled member of the household.

(c) The cost of establishing an escrow account for real estate taxes and/or insurance premiums.

(d) Title clearance, title insurance, and loan closing; stock in a cooperative lending agency necessary to obtain the loan; and, for low-income applicants only, loan discount points to reduce the note interest rate from the rate authorized in § 1980.320 not exceeding the amount typical for the area.

(e) Provide funds for seller equity and/or essential repairs when an existing guaranteed loan is to be assumed simultaneously.

§ 1980.311 Loan limitations and special provisions.

(a) *Prohibited loan purposes.* Conditional commitments will not be issued if loan funds are to be used for:

(1) Payment of construction draws.

(2) The purchase of furniture or other personal property except for essential equipment and materials authorized in accordance with § 1980.310.

(3) Refinancing RHCDS debts, debts owed the Lender (other than construction/development, financing incurred in conjunction with the proposed loan), or debts on a manufactured home.

(4) Purchase or improvement of income-producing land, or buildings to be used principally for income-producing purposes, or buildings not essential for RH purposes, or to buy or build buildings which are largely or in part specifically designed to accommodate a business or income-producing enterprise.

(5) Payment of fees, charges, or commissions, such as finder's fees for packaging the applications or placement fees for the referral of a prospective applicant to RHCDS.

(6) Improving the entry of a homestead entryman or desert entryman prior to receipt of patent.

(7) Purchase a dwelling with an in-ground swimming pool.

(b) *Limitations.* The principal purpose of the loan, except for a subsequent loan to an existing borrower, must be to buy or build a dwelling. The loan may include additional funds in accordance with § 1980.310. The amount of the loan may not exceed the maximum dollar limitation of section 203(b)(2) of the National Housing Act (12 U.S.C. 1702).

(1) A loan for the acquisition of a newly constructed dwelling that meets the requirements of § 1980.341(b) of this subpart may be made for up to 100 percent of the appraised value or the cost of acquisition and any necessary development including those purposes in § 1980.310, whichever is less.

(2) A loan for the acquisition of an existing dwelling and development, if any, in conjunction with the acquisition of an existing dwelling may be made for up to 100 percent of the appraised value or the cost of acquisition and necessary development including those purposes in § 1980.310, whichever is less.

(3) A loan for the acquisition of a newly constructed dwelling (a dwelling that does not meet the definition for an existing dwelling) that does not meet the requirements of § 1980.341(b) is limited to 90 percent of the present market value.

(c) *Subdivisions.* Housing units may be financed in existing subdivisions approved by local, regional, state, or Federal government agencies before issuance of a conditional commitment. The subdivision must meet the requirements of § 1901.203. An existing subdivision is one in which the local government has accepted the subdivision plan, its principal developments and right-of-ways, the construction of streets, water and water/waste disposal systems, and utilities; is at a point which precludes any major changes; and provisions are in place for continuous maintenance of the streets and the water and water/waste disposal systems. A dwelling served by a homeowners association (HOA) may be accepted when the project has been approved or accepted by HUD, VA, Fannie Mae, or Freddie Mac.

§ 1980.312 Rural area designation.

A rural area is an area which is identified as rural by RHCDS in accordance with § 1944.10. Current county maps showing ineligible areas are available in RHCDS field offices.

§ 1980.313 Site and building requirements.

(a) *Rural area.* The property on which the loan is made must be located in a designated rural area as identified in § 1980.312. A nonfarm tract to be purchased or improved with loan funds must not be closely associated with farm service buildings.

(b) *Access.* The property must be contiguous to and have direct access from a street, road, or driveway. Streets and roads must be hard surface or all-weather surface.

(c) *Water and water/waste disposal system.* A nonfarm tract on which a loan is to be made must have an adequate water and water/waste disposal system and other related facilities. Water and water/waste disposal systems serving the site must be approved by a state or local government agency. When the site is served by a privately owned and centrally operated water and water/waste disposal system, the system must meet the design requirements of the State Department of Health or comparable reviewing and regulatory agency. Written verification must be obtained from the regulatory agency that the private water and water/waste system complies with the Safe Drinking Water Act (42 U.S.C. 300F *et seq.*), and the Clean Water Act (33 U.S.C. 1251 *et seq.*), respectively. A system owned and/or operated by a private party must have a binding agreement which allows interested third parties, such as the Lender, to enforce the obligation of the operator to provide satisfactory service at reasonable rates.

(d) [Reserved]

(e) *Modest house.* Dwellings financed must provide decent, safe, and sanitary housing and be modest in cost. A dwelling that can be purchased with a loan not exceeding the maximum dollar limitation of section 203(b)(2) of the National Housing Act (12 U.S.C. 1702) is considered modest. Generally, the value of the site must not exceed 30 percent of the total value of the property. When the value of the site is typical for the area, as evidenced by the appraisal, and the site cannot be subdivided into two or more sites, the 30 percent limitation may be exceeded.

(f) *Thermal standards.* Dwellings financed shall meet the standards outlined in exhibit D of subpart A of part 1924 except for an existing dwelling, if documentation is provided to establish that the actual cost of heating and cooling is not significantly greater than those costs for a dwelling that meets RHCDS's thermal standards. If the dwelling is excepted, only the perimeter of the house at the band beam and the heat ducts in unheated basements or crawlspace must be insulated.

(g) *Existing dwelling.* An existing dwelling financed must be cost effective to the applicant including reasonable costs of utilities and maintenance for the area. Loan guarantees may be made on an existing manufactured home when it meets the provisions of paragraph (i)(2)(i) of this section.

(h) *Repairs.* Any dwelling financed with an RHCDS guarantee must be structurally sound, functionally adequate, and placed in good repair prior to issuance of the Loan Note Guarantee except as provided in § 1980.315.

(i) *Manufactured homes.* New units that meet the requirements of exhibit J of subpart A of part 1924 and purchased through RHCDS approved dealer-contractors may be considered for a guaranteed loan under this subpart. The Lender may obtain a list of RHCDS approved models and dealer-contractors from any RHCDS office in the area served.

(1) Loans may be guaranteed for the following purposes when the security covers both the unit and the lot:

(i) A new unit and related site development work on a site owned or purchased by the applicant which meets the requirements and limitations of this section or a leasehold meeting the provisions of § 1980.314.

(ii) Transportation and set-up costs for a new unit.

(2) Loans may not be guaranteed for:

(i) An existing unit and site unless it is already financed with a Section 502 RH direct or guaranteed loan, is being sold from RHCDS inventory, or is being sold from the Lender's inventory provided the Lender acquired possession of the unit through a loan guaranteed under this subpart.

(ii) The purchase of a site without also financing the unit.

(iii) Existing debts owed by the applicant/borrower.

(iv) A unit without an affixed certification label indicating the unit was constructed in accordance with the Federal Manufactured Home Construction and Safety Standards.

(v) Alteration or remodeling of the unit when the initial loan is made.

(vi) Furniture, including movable articles of personal property such as drapes, beds, bedding, chairs, sofas, lamps, tables, televisions, radios, stereo sets, and similar items. Items such as wall-to-wall carpeting, refrigerators, ovens, ranges, clothes washers or dryers, heating or cooling equipment, or similar items may be financed.

(vii) Any unit not constructed to the RHCDS thermal standards as identified by an affixed label for the winter degree day zone where the unit will be located.

§ 1980.314 Loans on leasehold interests.

A loan may be guaranteed if made on a leasehold owned or being acquired by the applicant when the Lender determines that long-term leasing of homesites is a well established practice and such leaseholds are freely marketable in the area provided the Lender determines and certifies to RHCDS that:

(a) *Unable to obtain fee title.* The applicant is unable to obtain fee title to the property.

(b) *Unexpired term.* The lease has an unexpired term (term plus option to renew) of at least 40 years from the date of approval.

§ 1980.315 Escrow accounts for exterior development.

When proposed exterior development work cannot be completed because of weather and the work remaining to be done does not affect the livability of the dwelling, an escrow account *for exterior development only* may be established by the originating lender if the following conditions are met:

(a) A signed contract and bid schedule is in effect for the proposed exterior development work.

(b) The contract for development work must provide for completion within 120 days.

(c) The Lender agrees to obtain a final inspection report and advise RHCDS when the work has been completed.

(d) The escrow account must be funded in an amount sufficient to assure the completion of the remaining work. This figure should be 150 percent of the cost of completion but may be higher if the Lender determines a higher amount is needed.

§ 1980.316 Environmental requirements.

The requirements of subpart G of part 1940 apply to loan guarantees made under this subpart. Lenders and applicants must cooperate with RHCDS in the completion of these requirements. Lenders must become familiar with these requirements so that they can advise applicants and reduce the probability of unacceptable applications being submitted to RHCDS. RHCDS may require that Lenders and/or applicants obtain information for completing environmental assessments when necessary. The RHCDS approval official will utilize adequate, reliable information in completion of environmental review. Sources of information include, but are not limited to, the State Natural Resource Management Guide (available in any RHCDS office) and, as necessary, the technical expertise available within the Agency as well as other agencies and organizations to assist in the completion of the environmental review.

§ 1980.317 Equal opportunity and nondiscrimination requirements in use, occupancy, rental, or sale of housing.

(a) *Compliance.* Loans guaranteed under this subpart are subject to the provisions of various civil rights statutes. RHCDS and the Lender may not discriminate against any person in making guaranteed housing loans available, or impose different terms and conditions for the availability of these loans based on a person's race, color, familial status, religion, sex, age, physical or mental disability, or national origin, provided the applicant possesses the capacity to enter into a legal contract for services. These requirements will be discussed with the applicant, builder, developer, and other parties involved as early in the negotiations as possible.

(b) *Reporting.* If there is indication of noncompliance with these requirements, the matter will be reported by the borrower, Lender, or RHCDS personnel to the Administrator or the Director, Equal Opportunity Staff. Complaints and compliance will be handled by RHCDS in accordance with subpart E of part 1901.

(c) *Forms and requirements.* In accordance with Executive Order 11246, the following equal opportunity and nondiscrimination forms and requirements are applicable when the loan guarantee involves a construction contract between the borrower and the contractor that is more than $10,000. The Lender is responsible for seeing that the requirements of paragraphs (c)(1) through (c)(5) of this section are met:

(1) *Equal Opportunity Agreement.* Before loan closing, each borrower whose loan involves a construction contract of more than $10,000 must execute the RHCDS Equal Opportunity Agreement or the equivalent HUD form.

(2) *Construction contract or subcontract in excess of $10,000.* If the contract or a subcontract exceeds $10,000:

(i) The contractor or subcontractor must submit the Agency Compliance Statement before or as a part of the bid or negotiation.

(ii) An Equal Opportunity Clause must be part of each contract and subcontract.

(iii) With notification of the contract award, the contractor must receive the Agency Notice to Contractors and Applicants signed by RHCDS, with an attached Equal Employment Opportunity poster. Posters in Spanish must be provided and displayed where a significant portion of the population is Spanish speaking.

(iv) Under Executive Order 11246 and Executive Order 11375, the contractor or subcontractor, subject to the requirements of paragraph (c)(5) of this section, is prohibited from discriminating because of race, color, religion, sex, or national origin to ensure equality of opportunity in all aspects of employment.

(3) *One hundred or more employees and construction contract or subcontract exceeds $10,000.* If the contractor or subcontractor has 100 or more employees and the contract or subcontract is for more than $10,000, in addition to the requirements of paragraph (c)(2) of this section, a report must be filed annually on or before March 31. Failure to file timely, complete, and accurate reports constitutes noncompliance with the Equal Opportunity Clause. Report forms are distributed by the Joint Reporting Committee and any questions on this form should be addressed by the contractor or subcontractor to the Joint Reporting Committee, 1800 G Street, NW., Washington, D.C. 20006.

(4) *Fifty or more employees and construction contract or subcontract exceeds $50,000.* If the contract or subcontract is more than $50,000 and the contractor or subcontractor has 50 or more employees, in addition to the requirements of paragraph (c)(2) of this section, each such contractor or subcontractor must be informed that the contractor or subcontractor must develop a written affirmative action compliance program for each of the contractor's or subcontractor's establishments and put it on file in each of the personnel offices within 120 days of the commencement of the contract or subcontract.

(5) [Reserved]

(6) *Employee complaints.* Any employee of or applicant for employment with such contractors or subcontractors may file a written complaint of discrimination with RHCDS.

(i) A written complaint of alleged discrimination must be signed by the complainant and should include the following information:

(A) The name and address (including telephone number, if any) of the complainant.

(B) The name and address of the person committing the alleged discrimination.

(C) A description of the acts considered to be discriminatory.

(D) Any other pertinent information that will assist in the investigation and resolution of the complaint.

(ii) Such complaint must be filed not later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by RHCDS for good cause shown by the complainant.

§ 1980.318 Flood or mudslide hazard area precautions.

RHCDS policy is to discourage lending in designated flood and mudslide hazard areas. Loan guarantees shall not be issued in designated flood/mudslide hazard areas unless there is no practical alternative.

(a) *Dwelling location.* Dwellings and building improvements located in special flood or mudslide hazard areas, as designated by the Federal Emergency Management Agency (FEMA) may be financed under this subpart only if:

(1) The community, as a result of such designation by FEMA as a special flood or mudslide prone area, has an approved flood plain area management plan.

(2) The dwelling location and construction plans and specifications for new buildings or improvements to existing buildings comply with an approved flood plain area management plan (see paragraph (a)(1) of this section).

(3) Potential environmental impacts and feasible alternatives have been fully considered by RHCDS in accordance with the requirements of subpart G of part 1940.

(4) The first floor elevation is above the 100 year flood zone elevation.

(b) *Flood insurance.* If the dwelling is located in a special flood or mudslide hazard area, flood insurance must be purchased by the borrower prior to loan closing and maintained thereafter. See subpart B of part 1806 (FmHA Instruction 426.2).

§ 1980.319 Other Federal, State, and local requirements.

In addition to the specific requirements of this subpart, on all proposals financed with an RHCDS guarantee, Lenders and/or applicants must coordinate with all appropriate Federal, state, and local agencies. Applicants and/or Lenders will be required to comply with any Federal, state, or local laws, regulatory commission rules, ordinances, and regulations which exist at the time the loan guarantee is issued which affect the dwelling including, but not limited to:

(a) Borrowing money and giving security therefore;

(b) Land use zoning;

(c) Health, safety, and sanitation standards; and

(d) Protection of the environment and consumer affairs.

§ 1980.320 Interest rate.

The interest rate must not exceed the established applicable usury rate. Loans guaranteed under this subpart must bear a fixed interest rate over the life of the loan. The rate shall be agreed upon by the borrower and the Lender and must not be more than the lender's published rate for VA first mortgage loans with no discount points or the current Fannie Mae rate as defined in § 1980.302(a), whichever is higher. The lender must document the rate and the date it was determined.

§ 1980.321 Terms of loan repayment.

(a) *Note.* Principal and interest shall be due and payable monthly.

(b) *Term.* The term for final maturity shall be not less than 30 years from the date of the note and not more than 30 years from the date of the first scheduled payment.

§ 1980.322 Loan guarantee limits.

The amount of the loan guarantee is 90 percent of the principal amount of the loan.

(a) The maximum loss payment under the guarantee of Single Family Housing loans is the lesser of:

(1) Any loss of an amount equal to 90 percent of the principal amount actually advanced to the borrower, or

(2) Any loss sustained by the Lender of an amount up to 35 percent of the principal amount actually advanced to the borrower, plus 85 percent of any additional loss sustained by the Lender of an amount up to the remaining 65

percent of the principal amount actually advanced to the borrower.

(b) Loss includes only:

(1) Principal and interest evidenced by the guaranteed loan note;

(2) Any loan subsidy due and owing; and

(3) Any principal and interest indebtedness on RHCDS approved protective advances for protection and preservation of security.

(c) Interest (including any subsidy) shall be covered by the loan note guarantee to the date of the final loss settlement when the Lender conducts liquidation in an expeditious manner in accordance with the provisions of § 1980.376.

§ 1980.323 Guarantee fee.

The Lender will pay a nonrefundable fee which may be passed on to the borrower. The amount of the fee is determined by multiplying the figure in exhibit K of FmHA Instruction 440.1 (available in any RHCDS office) times 90 percent of the principal amount of the loan.

§ 1980.324 Charges and fees by Lender.

(a) *Routine charges and fees.* The Lender may establish the charges and fees for the loan, provided they are the same as those charged other applicants for similar types of transactions.

(b) *Late payment charges.* Late payment charges will not be covered by the guarantee. Such charges may not be added to the principal and interest due under any guaranteed note. Late charges may be made only if:

(1) *Maximum amount.* The maximum amount does not exceed the percentage of the payment due as prescribed by HUD or Fannie Mae or Freddie Mac.

(2) *Routine.* They are routinely made by the Lender in similar types of loan transactions.

(3) *Payments received.* Payments have not been received within the customary time frame allowed by the Lender. The term "payment received" means that the payment in cash, check, money order, or similar medium has been received by the Lender at its main office, branch office, or other designated place of payment.

(4) *Calculating charges.* The Lender does not change the rate or method of calculating the late payment charges to increase charges while the loan note guarantee is in effect.

(5) *Interest-assisted loans.* The Lender will not penalize or charge any fee to the borrower when the only delinquency is a loan subsidy payment, which the Lender is entitled to but has not received.

§ 1980.325 Transactions which will not be guaranteed.

(a) *Lease payments.* Payments made on a lease will not be guaranteed.

(b) *Loans made by other Federal agencies.* Loans made by other Federal agencies will not be guaranteed. This does not preclude guarantees of loans made by an FCS institution with direct lending authority. This also does not preclude loans made by state or local government agencies assisted by a Federal agency.

§§ 1980.326–1980.329 [Reserved]

§ 1980.330 Applicant equity requirements.

A loan to purchase a new or existing dwelling may be made up to the appraised market value of the security.

§ 1980.331 Collateral.

(a) *General.* The entire loan must be secured by a first lien on the property being financed (second lien when the loan is for a subsequent loan to an existing borrower or there is a transfer and assumption of an existing loan) and the Lender will maintain this lien priority. The Lender is responsible for assurance that proper and adequate security interest is obtained, maintained in existence, and of record to protect the interests of the Lender and RHCDS.

(b) *Third party liens, suits pending, etc.* Among other things in obtaining the required security, it is necessary to ascertain that there are no adverse claims or liens against the property or the borrower, and that there are no suits pending or anticipated that would affect the property or the borrower.

(c) *All collateral must secure the entire loan.* The Lender will not take separate collateral, including but not limited to mortgage insurance, to secure that portion of the loss not covered by the guarantee.

§ 1980.332 [Reserved]

§ 1980.333 Promissory notes and security instruments.

(a) *Loan instruments.* The Lender may use its own forms for promissory notes, real estate mortgages, including deeds of trust and similar instruments, and security agreements provided there are no provisions that are in conflict or otherwise inconsistent with the provisions of § 1980.309(b)(2)(v). The Lender is responsible for determining that the security instruments are adequate and are properly maintained of record.

(b) *Interest assistance instruments.* When the loan guarantee is authorized from interest assisted funds, RHCDS will provide the Lender with the necessary forms and security instruments related to the interest assistance. The Lender will complete the Master Interest Assistance Agreement, assure that the closing agent properly records a junior mortgage or deed of trust which grants RHCDS a lien on the property in order to protect RHCDS's equity share subject only to the first mortgage or deed of trust to the Lender or other authorized prior lien, and forward the agreements and recorded instruments to RHCDS.

§ 1980.334 Appraisal of property serving as collateral.

An appraisal of all property serving as security for the proposed loan will be completed and submitted to RHCDS for review with the request for loan guarantee. The Lender may pass the cost of the appraisal on to the borrower. The appraisal must have been completed within 6 months of the date the request for a conditional commitment is submitted to RHCDS.

(a) *Qualified appraiser.* The Lender will use an appraiser that is properly licensed or certified, as appropriate, to make residential real estate appraisals in accordance with the criteria set forth by the Appraiser Qualification Board (AQB) of the Appraisal Foundation regardless of the amount of the loan. Appraisers may not discriminate against any person in making or performing appraisal services because of race, color, familial status, religion, sex, age, disability, or national origin.

(b) *Appraisal report.* Residential appraisals will be completed using the sales comparison (market) and cost approach to market value.

(1) *URAR.* The appraiser will use the most recent revision of the URAR.

(i) The "Estimated Reproduction Cost-New of Improvements" section of the form must be completed when the dwelling is less than 1 year old.

(ii) Not less than three comparable sales, which are not more than 12 months old, will be used unless the appraiser provides documentation that such comparables are not available in the area. Comparable sales should be located as close as possible to the subject dwelling. When the need arises to use a comparable sale that is a considerable distance from the subject, the appraiser must use his or her knowledge of the area and apply good judgment in selecting comparable sales that are the best indicators of value for the subject property.

(2) *Supporting documentation.* A narrative explanation supporting unusual adjustments must be attached to the appraisal.

(3) *Photographs.* The appraisal report must include photographs which clearly provide front, rear, and street scene views of the subject property, and a front view for each comparable sale used in the completion of the appraisal.

(c) *RHCDS acceptance.* The Lender will be required to correct or complete any appraisal returned by RHCDS for corrective action.

§§ 1980.335–1980.339 [Reserved]

§ 1980.340 Acquisition, construction, and development.

(a) *Acquisition of property.* The Lender is responsible for seeing that the property to be acquired with loan funds is acquired as planned and that the required security interest is obtained.

(b) *New construction.* A new dwelling financed with a guaranteed loan must:

(1) Have been built in accordance with building plans and specifications that contain approved building code certifications (eligible certifiers are listed in § 1924.5(f)(1)(iii)).

(2) Conform to RHCDS thermal standards (exhibit D of subpart A of part 1924).

(i) The builder may certify conformance with RHCDS thermal standards contained in paragraph IV A of exhibit D of subpart A of part 1924.

(ii) A qualified, registered architect or a qualified, registered engineer must certify conformance with RHCDS thermal standards contained in paragraph IV C of exhibit D of subpart A of part 1924.

(c) *Development.* The Lender and borrower are responsible for seeing that the loan purposes are accomplished and loan funds are properly utilized. This includes, but is not limited to, seeing that:

(1) The applicable development standards are adhered to;

(2) Drawings and specifications are certified and complied with;

(3) Adequate water, electric, heating, waste disposal, and other necessary utilities and facilities are obtained;

(4) Equal opportunity and nondiscrimination requirements are met, (see § 1980.317); and

(5) A builder's warranty is issued when new construction, repair, or rehabilitation is involved, which provides for at least 1 year's warranty from the date of completion or acceptance of the work.

§ 1980.341 Inspections of construction and compliance reviews.

(a) *Qualified inspectors.* Inspections will be made during construction by a construction inspector deemed qualified and approved by the Lender. A qualified inspector is one that a reasonable person would hire to perform an inspection of his/her own dwelling.

(b) *Inspections.* Inspections shall be done by a party the Lender determines to be qualified, such as a HUD approved fee inspector. The sale agreement shall identify which party (i.e., purchaser or seller) is responsible to obtain and pay for required inspections and certifications. In connection with inspections involving construction contracts, equal opportunity and nondiscrimination compliance reviews must be made as required by § 1980.317.

(1) For existing dwellings, inspections must be made to determine that the dwelling:

(i) Meets the current requirements of HUD Handbooks 4150.1 and 4905.1 (available from the HUD Ordering Desk 1–800–767–7468).

(ii) Meets the thermal standards per § 1980.313(f).

(2) For a newly constructed dwelling, when construction is planned, the Lender must see that the following inspections are made in addition to any additional inspections the Lender deems appropriate:

(i) When footings and foundations are ready to be poured but prior to back-filling.

(ii) When shell is closed in but plumbing, electrical, and mechanical work are still exposed.

(iii) When construction is completed prior to occupancy.

(iv) Inspections under paragraphs (b)(2) (i) and (ii) of this section are not required when the builder supplies an insured 10 year warranty plan acceptable under the requirements of exhibit L of subpart A of part 1924.

(c) *Water and water/waste disposal.* The Lender will see that the water and water/waste disposal systems have been approved by a state or local government agency.

§§ 1980.342–1980.344 [Reserved]

§ 1980.345 Applicant eligibility requirements for a guaranteed loan.

Applicants who meet the requirements of this section are eligible for a loan guaranteed under this subpart. Applicants desiring loan assistance as provided in this subpart must file loan applications with a Lender that meets the requirements set forth in § 1980.309. The Lender may accept applications filed through its agents, correspondents, branches, or other institutions. The Lender must have at least one personal interview with the applicant to verify the information on the application and to obtain a complete picture of the applicant's financial situation.

(a) *Eligible income.* The applicant's adjusted annual income determined in accordance with § 1980.348 may not exceed the applicable income limit contained in exhibit C of FmHA Instruction 1980–D (available in any RHCDS office) at the time of issuance of the conditional commitment. Adjusted annual income is used to determine eligibility for the RHCDS loan guarantee.

(b) *Adequate and dependable income.* The applicant (and coapplicant, if applicable) has adequate and dependably available income. The applicant's history of income and the history of the typical annual income of others in the area with similar types of employment will be considered in determining whether the applicant's income is adequate and dependable.

(1) A farm or nonfarm business loss must be considered in determining repayment ability.

(2) A loss may not be used to offset other income in order to qualify for or increase the amount of RHCDS assistance.

(c) *Determining repayment ability.* In considering whether the applicant has adequate repayment ability, the Lender must calculate a total debt ratio. The applicant's total debt ratio is calculated by dividing the applicant's monthly obligations by gross monthly income.

(1) Monthly obligation consists of the principal, interest, taxes, and insurance (PITI) for the proposed loan (less any interest assistance under this program or any other assistance from a state or county sponsored program when such payments are made directly to the Lender on the applicant's behalf), homeowner and other assessments, and the applicant's long term obligations. Long term obligations include those obligations such as alimony, child support, and other obligations with a remaining repayment period of more than 6 months and other shorter term debts that are considered to have a significant impact on repayment ability.

(i) *Cosigned obligations.* Debts which have been cosigned by the applicant for another party must be considered unless the applicant provides evidence (usually canceled checks of the co-obligor or other third party) that it has not been necessary for the applicant to make any payments over the past 12 months.

(ii) *Liability on a previous mortgage.* When the applicant has disposed of a property through a sale, trade, or transfer without a release of liability, the debt must be considered unless the applicant provides evidence (usually canceled checks of the new owners) that the new owners have successfully made all payments over the past 12 months.

(2) Income, for the purpose of determining the total debt ratio,

includes the total qualifying income of the applicant, coapplicant, and any other member of the household who will be a party to the note.

(i) An applicant's qualifying income may be different than the "adjusted annual income" which is used to determine program eligibility. In considering qualifying income, the Lender must determine whether there is a historical basis to conclude that the income is likely to continue. Typically, income of less than 24 months duration should not be included in qualifying income. If the applicant is obligated to pay child care costs, the amount of any Federal tax credit for which the applicant is eligible may be added to the applicant's qualifying income.

(ii) In considering income that is not subject to Federal income tax, the amount of tax savings attributable to the nontaxable income may be added for use with the repayment ratios. Adjustments for other than the applicable tax rate are not authorized. The Lender must verify that the income is not subject to Federal income tax and that the income (and its nontax status) is likely to continue. The Lender must fully document and support any adjustment made.

(3) The applicant meets RHCDS requirements for repayment ability when the applicant's total debt ratio is less than or equal to 41 percent and the ratio of the proposed PITI to income does not exceed 29 percent.

(4) Applicants who do not meet the requirements of this section will be considered ineligible unless another adult in the household has adequate income and wishes to join in the application as a coapplicant. The combined incomes and debts then may be considered in determining repayment ability.

(5) If the applicant's total debt ratio and/or PITI ratio exceed the maximum authorized ratio, the Lender may request RHCDS concurrence in allowing a higher ratio based on compensating factors. Acceptable compensating factors include but are not limited to the applicant having a history over the previous 12 month period of devoting a similar percentage of income to housing expense to that of the proposed loan, or accumulating savings which, when added to the applicant's housing expense and shows a capacity to make payments on the proposed loan. A low total debt ratio, by itself, does not compensate for a high PITI.

(d) *Credit history.* The applicant must have a credit history which indicates a reasonable ability and willingness to meet obligations as they become due.

(1) Any or all of the following are indicators of an unacceptable credit history unless the cause of the problem was beyond the applicant's control and the criteria in paragraph (d)(3) of this section are met:

(i) Incidents of more than one debt payment being more than 30 days late if the incidents have occurred within the last 12 months. This includes more than one late payment on a single account.

(ii) Loss of security due to a foreclosure if the foreclosure has occurred within the last 36 months.

(iii) Outstanding tax liens or delinquent Government debts with no satisfactory arrangements for payments, no matter what their age as long as they are currently delinquent and/or due and payable.

(iv) A court-created or affirmed obligation (judgment) caused by non-payment that is currently outstanding or has been outstanding within the last 12 months.

(v) Two or more rent payments paid 30 days or more past due within the last 3 years.

(vi) Accounts which have been converted to collections within the last 12 months (utility bills, hospital bills, etc.).

(vii) Collection accounts outstanding, with no satisfactory arrangements for payments, no matter what their age as long as they are currently delinquent and/or due and payable.

(viii) Any debts written off within the last 36 months.

(2) The following will not indicate an unacceptable credit history:

(i) "No history" of credit transactions by the applicant.

(ii) A bankruptcy in which applicant was discharged more than 36 months before application.

(iii) A satisfied judgment or foreclosure with no loss of security which was completed more than 12 months before the date of application.

(3) The Lender may consider mitigating circumstances to establish the borrower's intent for good credit when the applicant provides documentation that:

(i) The circumstances were of a temporary nature, were beyond the applicant's control, and have been removed (e.g., loss of job; delay or reduction in government benefits or other loss of income; increased expenses due to illness, death, etc.); or

(ii) The adverse action or delinquency was the result of a refusal to make full payment because of defective goods or services or as a result of some other justifiable dispute relating to the goods or services purchased or contracted for.

(e) *Previous RHCDS loan.* RHCDS shall determine whether the applicant has had a previous RHCDS debt which was settled, or is subject to settlement, or whether RHCDS otherwise suffered a loss on a loan to the applicant. If RHCDS suffered any loss related to a previous loan, a loan guarantee shall not be issued unless RHCDS determines the RHCDS loss was beyond the applicant's control, and any identifiable reasons for the loss no longer exist.

(f) *Other Federal debts.* The loan approval official will check HUD's Credit Alert Interactive Voice Response System (CAIVRS) to determine if the applicant is delinquent on a Federal debt. The Lender will clearly document both its CAIVRS identifying number and the borrower and coborrower's CAIVRS access code near the signature line on the mortgage application form. No decision to deny credit can be based solely on the results of the CAIVRS inquiry. If CAIVRS identifies a delinquent Federal debt, the Lender will immediately suspend processing of the application. The applicant will be notified that processing has been suspended and will be asked to contact the appropriate Federal agency, at the telephone number provided by CAIVRS, to resolve the delinquency. When the applicant provides the Lender with official documentation that the delinquency has been paid in full or otherwise resolved, processing of the application will be continued. An outstanding judgment obtained by the United States in a Federal court (other than the United States Tax Court), which has been recorded, shall cause the applicant to be ineligible to receive a loan guarantee until the judgment is paid in full or otherwise satisfied. RHCDS loan guarantee funds may not be used to satisfy the judgment. If the judgment remains unsatisfied or if the applicant is delinquent on a Federal debt and is unable to resolve the delinquency, the Lender will reject the applicant.

§ 1980.346 Other eligibility criteria.

The applicant must:

(a) Be a person who does not own a dwelling in the local commuting area or owns a dwelling which is not structurally sound, functionally adequate;

(b) Be without sufficient resources to provide the necessary housing and be unable to secure the necessary conventional credit without an RHCDS guarantee upon terms and conditions which the applicant could reasonably be expected to fulfill.

(c) Be a natural person (individual) who resides as a citizen in any of the 50 States, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Marianas, Federated States of Micronesia, and the Republics of the Marshall Islands and Palau, or a noncitizen who resides in one of the foregoing areas after being legally admitted to the U.S. for permanent residence or on indefinite parole.

(d) Possess legal capacity to incur the loan obligation and have reached the legal age of majority in the state or have had the disability of minority removed by court action.

(e) Have the potential ability to personally occupy the home on a permanent basis. Because of the probability of their moving after graduation, full-time students will not be granted loans unless:

(1) The applicant intends to make the home his or her permanent residence and there are reasonable prospects that employment will be available in the area after graduation, and

(2) An adult member of the household will be available to make inspections if the home is being constructed.

§ 1980.347 Annual income.

Annual income determinations will be thoroughly documented in the Lender's casefile. Historical data based on the past 12 months or previous fiscal year may be used if a determination cannot logically be made. Annual income to be considered includes:

(a) Current verified income, either part-time or full-time, received by any applicant/borrower and all adult members of the household, including any coapplicant/coborrower.

(b) If any other adult member of the household is not presently employed but there is a recent history of such employment, that person's income will be considered unless the applicant/borrower and the person involved sign a statement that the person is not presently employed and does not intend to resume employment in the foreseeable future, or if interest assistance is involved, during the term of the Interest Assistance Agreement.

(c) Income from such sources as seasonal type work of less than 12 months duration, commissions, overtime, bonuses, and unemployment compensation must be computed as the estimated annual amount of such income for the upcoming 12 months. Consideration should be given to whether the income is dependable based on verification by the employer and the applicant's history of such income over the previous 24 months.

(d) The following *are* included in annual income:

(1) The gross amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips, bonuses, and other compensation for personal services of all adult members of the household.

(2) The *net* income from operation of a farm, business, or profession. Consider the following:

(i) Expenditures for business or farm expansion and payments of principal on capital indebtedness shall not be used as deductions in determining income. A deduction is allowed in the manner prescribed by IRS regulations only for interest paid in amortizing capital indebtedness.

(ii) Farm and nonfarm business losses are considered "zero" in determining annual income.

(iii) A deduction, based on straight line depreciation, is allowed in the manner prescribed by IRS regulations for the exhaustion, wear and tear, and obsolescence of depreciable property used in the operation of a trade, farm, or business by a member of the household. The deduction must be based on an itemized schedule showing the amount of straight line depreciation that could be claimed for Federal income tax purposes.

(iv) Any withdrawal of cash or assets from the operation of a farm, business, or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by a member of the household.

(v) A deduction for verified business expenses, such as for lodging, meals, or fuel, for overnight business trips made by salaried employees, such as long-distance truck drivers, who must meet these expenses without reimbursement.

(3) Interest, dividends, and other net income of any kind from real or personal property, including:

(i) The share received by adult members of the household from income distributed from a trust fund.

(ii) Any withdrawal of cash or assets from an investment except to the extent the withdrawal is reimbursement of cash or assets invested by a member of the household.

(iii) Where the household has net family assets, as defined in § 1980.302(a), in excess of $5,000, the greater of the actual income derived from all net family assets or a percentage of the value of such assets based on the current passbook savings rate.

(4) The full amount of periodic payments received from social security (including social security received by adults on behalf of minors or by minors intended for their own support), annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts.

(5) Payments in lieu of earnings; such as unemployment, disability and worker's compensation, and severance pay.

(6) Public assistance except as indicated in paragraph (e)(2) of this section.

(7) Periodic allowances, such as:

(i) Alimony and/or child support awarded in a divorce decree or separation agreement, unless the payments are not received and a reasonable effort has been made to collect them through the official entity responsible for enforcing such payments and they are not received as ordered; or

(ii) Recurring monetary gifts or contributions from someone who is not a member of the household.

(8) Any amount of educational grants or scholarships or VA benefits available for subsistence after deducting expenses for tuition, fees, books, and equipment.

(9) All regular pay, special pay (except for persons exposed to hostile fire), and allowances of a member of the armed forces who is the applicant/borrower or coapplicant/coborrower, whether or not that family member lives in the unit.

(10) The income of an applicant's spouse, unless the spouse has been living apart from the applicant for at least 3 months (for reasons other than military or work assignment), or court proceedings for divorce or legal separation have been commenced.

(e) The following are not included in annual income but may be considered in determining repayment ability:

(1) Income from employment of minors (including foster children) under 18 years of age. The applicant and spouse are not considered minors.

(2) The value of the allotment provided to an eligible household under the Food Stamp Act of 1977.

(3) Payments received for the care of foster children.

(4) Casual, sporadic, or irregular cash gifts.

(5) Lump-sum additions to family assets such as inheritances; capital gains; insurance payments from health, accident, hazard, or worker's compensation policies; and settlements for personal or property losses (except as provided in paragraph (d)(5) of this section).

(6) Amounts which are granted specifically for, or in reimbursement of, the cost of medical expenses.

(7) Amounts of education scholarships paid directly to the student or to the educational institution and

amounts paid by the Government to a veteran for use in meeting the costs of tuition, fees, books, and equipment. Any amounts of such scholarships or veteran's payments, which are not used for the aforementioned purposes and are available for subsistence, are considered to be income. Student loans are not considered income.

(8) The hazardous duty pay to a service person applicant/borrower or spouse away from home and exposed to hostile fire.

(9) Any funds that a Federal statute specifies must not be used as the basis for denying or reducing Federal financial assistance or benefits. (Listed in exhibit F of FmHA Instruction 1980–D, available in any RHCDS office.)

(f) Income of live-in aides who are not relatives of the applicant or members of the household will not be counted in calculating annual income and will not be considered in determination of repayment ability.

§ 1980.348 Adjusted annual income.

Adjusted annual income is annual income as determined in § 1980.347 less the following:

(a) A deduction of $480 for each member of the family residing in the household, other than the applicant, spouse, or coapplicant, who is:

(1) Under 18 years of age;

(2) Eighteen years of age or older and is disabled as defined in § 1980.302(a); or

(3) A full-time student aged 18 or older.

(b) A deduction of $400 for any elderly family as defined in § 1980.302(a).

(c) A deduction for the care of minors 12 years of age or under, to the extent necessary to enable a member of the applicant/borrower's family to be gainfully employed or to further his or her education. The deduction will be based only on monies reasonably anticipated to be paid for care services and, if caused by employment, must not exceed the amount of income received from such employment. Payments for these services may not be made to persons whom the applicant/borrower is entitled to claim as dependents for income tax purposes. Full justification for such deduction must be recorded in detail in the loan docket.

(d) A deduction of the amount by which the aggregate of the following expenses of the household exceeds 3 percent of gross annual income:

(1) Medical expenses for any elderly family (as defined in § 1980.302(a)). This includes medical expenses for any household member the applicant/borrower anticipates incurring over the ensuing 12 months and which are not covered by insurance (e.g., dental expenses, prescription medicines, medical insurance premiums, eyeglasses, hearing aids and batteries, home nursing care, monthly payments on accumulated major medical bills, and full-time nursing or institutional care which cannot be provided in the home for a member of the household); and

(2) Reasonable attendant care and auxiliary apparatus expenses for each disabled member of any household to the extent necessary to enable any member of such household (including such disabled member) to be employed.

§§ 1980.349—1980.350 [Reserved]

§ 1980.351 Requests for reservation of funds.

Upon receipt of a viable loan application and prior to loan underwriting, the Lender may request a reservation of loan guarantee funds for the loan application. The request should be made as follows:

(a) The Lender must have a complete application on file that clearly indicates the borrower has sufficient qualifying income and an adequate credit history.

(b) The reservation shall be valid for 60 days. The Lender must submit a request for a loan guarantee on or before the expiration date of the reservation. *Substitutions of borrowers or dwellings are not authorized.*

(c) Reservations may be granted only when adequate funding authority is available. Reservations are subject to the availability of funds. Reservations will not exceed 90 percent of the funds available during that quarter.

(d) [Reserved]

(e) All reservations will expire at the end of 60 days or no later than the pooling date published in subpart L of part 1940 whichever occurs first.

(f) [Reserved]

§ 1980.352 [Reserved]

§ 1980.353 Filing and processing applications.

(a) *Loan priorities.* Complete applications will be considered by RHCDS in the order received from Lenders authorized to participate in the program except as provided in paragraph (b) of this section.

(b) *Preference.* Preference is considered when there is a shortage of funds and there is more than one request for a conditional commitment or reservation of funds ready for approval. Applications for guarantees on loans to first-time homebuyers or veterans, their spouses, or children of deceased servicemen who died during one of the periods described in the definition of "Veteran" in § 1980.302(a) will be given preference by RHCDS. Displaced homemakers and single parents are first-time homebuyers even though they previously owned or resided in a dwelling with a spouse.

(c) *Applications.* If, upon completion of the loan underwriting process of an application, the Lender concludes that the application can be considered for an RHCDS guarantee, the Lender will provide written documentation addressing each of the loan eligibility requirements of this subpart and the basis for the conclusion in the applicant's file. The Lender will submit a request for the guarantee using a Form FmHA 1980–21, "Request for Single Family Housing Loan Guarantee." The form should contain or be supplemented with all of the following information:

(1) Name, address, telephone number, social security number, age, citizenship status of the applicant, and number of persons in the household.

(2) Amount of loan request and proposed use of loan funds.

(3) Name, address, contact person, and telephone number of the proposed Lender.

(4) Anticipated loan rates and terms, the date and amount of the Fannie Mae or VA rate used to determine the interest rate, and the Lender's certification that the proposed rate is in compliance with § 1980.320.

(5) Statement from the Lender that it will not make the loan as requested by the applicant without the proposed guarantee and that the applicant has been advised in writing that the applicant is subject to criminal action if he or she knowingly and willfully gives false information to obtain a federally guaranteed loan.

(6) If the applicant is not a United States citizen, evidence of being legally admitted for permanent residence or indefinite parole.

(7) The applicant's sex, race, and veteran status and whether applicant is a first-time homebuyer.

(8) An appraisal report including information about the dwelling location with respect to neighborhood and community services and facilities, business and industrial enterprises, and streets or roads serving the housing.

(9) Credit report obtained by the Lender.

(10) An equal opportunity agreement supplied by RHCDS for construction contracts costing more than $10,000.

(11) Evidence of compliance with the Privacy Act of 1974.

(12) Lender's loan underwriting (repayment ability, creditworthiness, and security value).

(13) A certification from the borrower regarding debarment, suspension, ineligibility, and voluntary exclusion from Federal programs using a form supplied by RHCDS.

(14) A statement signed by the borrower acknowledging that the borrower understands that RHCDS approval of the guarantee is required and is subject to the availability of funds.

(15) A copy of a valid verification of income for each adult member of the household.

(16) A copy of the purchase agreement or bid for construction contract.

(d) [Reserved]

(e) *Verifying information provided.* Written documentation from third parties is the preferred method of verifying information. Verifications must pass directly from the source of information to the Lender and shall not pass through the hands of a third party or applicant.

(1) *Income verification.* Employment verifications and other income verifications obtained in accordance with this paragraph are valid for 120 days (180 days for proposed new construction). Income verifications must be valid at the time the conditional commitment is issued.

(i) An RHCDS approved form or the equivalent HUD/FHA/VA or Fannie Mae form will be used to verify employment income of the loan applicant except when the applicant is self-employed. The form will be signed by the applicant or borrower or accompanied by an authorization for a release of information form signed by the applicant or borrower and sent directly to the employer by the Lender. The Lender should also obtain copies of the three most recent paycheck stubs. The information in the employer verification should be compared to the information in the paycheck stubs for consistency.

(ii) Income information that cannot be obtained by use of this form will be obtained in writing from third parties to the extent possible.

(iii) Alimony and/or child support payments will be verified by obtaining a copy of the divorce decree or other legal document indicating the amount of the payments. When the applicant states that less than the amount awarded is received, the Lender will request documentation from the official entity through which payments are received or other third party able to provide the verification when payment is not made through an official entity indicating the amounts and dates of payments to the applicant during the previous 12 months.

(iv) When it is not feasible to verify income in paragraph (e)(1)(iii) of this section through third parties, the Lender is authorized to accept an affidavit from the applicant stating the effort made to collect the amount awarded and the amounts and dates of payments received during the previous 12 months.

(v) Applicants and borrowers deriving their income from a farming or business enterprise will provide current documentation of the income and expenses of the operation. In addition, historic information from the previous fiscal year must be presented.

(vi) Social Security, pension, and disability income may be verified by obtaining a copy of the most recent award or benefit letter prepared and signed by the authorizing agency. This verification will be considered valid only for 1 year from the date of the award or benefit letter.

(2) *Verification of disability.* An RHCDS supplied form will be used to verify disability in cases where State Review Board or Social Security records are not available. Receipt of veteran's benefits for disability, whether service-oriented or otherwise, does not automatically establish disability.

(3) *Verification of alien status.* Aliens are required to present documentation of their status. Section 1944.9 outlines the acceptable forms of documentation.

(4) *Verification of credit history and current debt.* The Lender shall determine all liabilities of all parties responsible for repayment of the proposed loan. Credit reporting information must pass directly between the Lender and the credit reporting agency or source.

(i) Mortgage credit reports shall be used to determine creditworthiness unless the applicant resides in a remote rural area and conclusive or sufficient information would not be available. Information relative to judgments, garnishments, foreclosures, and bankruptcies must be obtained when a credit report is not obtained.

(ii) The credit report must be the most recent revision of the Residential Mortgage Credit Report form and meet the standards prescribed by Fannie Mae, Freddie Mac, HUD, VA, or RHCDS.

§ 1980.354 [Reserved]

§ 1980.355 Review of requirements.

Upon the Lender's review of the conditional commitment, the Lender may determine whether to accept the conditions outlined in it.

(a) *Accepting conditions.* Immediately after reviewing the conditions and requirements in the conditional commitment and the options listed on the back of the form, the Lender may proceed with loan closing. If the conditions cannot be met, the Lender and borrower may propose alternate conditions to RHCDS.

(b) *Canceling commitment.* If the Lender indicates in the acceptance or rejection of conditions that it desires to obtain a loan note guarantee and subsequently decides prior to loan closing that it no longer wants a loan note guarantee, the Lender should immediately advise the RHCDS approval official.

§§ 1980.356—1980.358 [Reserved]

§ 1980.360 Conditions precedent to issuance of the loan note guarantee.

(a) *Lender certification.* The Lender must certify to RHCDS that:

(1) No major changes have been made in the Lender's loan conditions and requirements since the issuance of the conditional commitment, except those approved in writing by RHCDS. In the event the interest rate has not been fixed at the time the conditional commitment is issued, and the interest rate increases between the time of issuance of the conditional commitment and loan closing, the Lender should note the change when submitting the package to RHCDS for loan guarantee. If either or both of the underwriting ratios are exceeded as a result of the interest rate increase, the Lender should list the compensating factors that demonstrate that sufficient repayment ability still exists.

(2) All planned property acquisition has been completed and:

(i) All development has been completed; or

(ii) An escrow account has been established in accordance with § 1980.315.

(3) Required insurance coverage is in effect and an escrow account has been established for the payment of taxes and insurance.

(4) Truth-in-lending requirements have been met.

(5) All equal employment opportunity and nondiscrimination requirements have been met.

(6) The loan has been properly closed by a party skilled and experienced in conducting loan closings and the required security instruments, including any required shared equity instruments, have been obtained and recorded in the appropriate office in a timely and accurate manner.

(7) The borrower has a marketable (clean and defensible) title to the property then owned by the borrower,

subject to the instrument securing the loan to be guaranteed, and any other exceptions approved in writing by RHCDS.

(8) Lien priorities are consistent with the requirements of the conditional commitment.

(9) The loan proceeds have been disbursed for purposes and in amounts consistent with the conditional commitment.

(10) There has been no adverse change in the borrower's situation since the conditional commitment was issued by RHCDS.

(11) All other requirements of the conditional commitment have been met.

(b) *Inspections.* The Lender will certify to RHCDS that inspections in accordance with § 1980.341 have been completed.

(c) *Lender agreement.* There must be a valid lender agreement on file.

(d) *Lender file.* The Lender will maintain a file for each guaranteed RH loan containing originals or copies, as appropriate, of all documents pertaining to that loan.

§ 1980.361 Issuance of loan note guarantee.

(a) When the Lender has certified that all requirements have been met, delivered a completed Loan Closing Report, and paid the guarantee fee, the RHCDS approval official will concurrently execute the loan note guarantee. The original will be provided to the Lender and be attached to the note.

(b) [Reserved]

(c) [Reserved]

§ 1980.362 [Reserved]

§ 1980.363 Review of loan closing.

The Lender must provide RHCDS with documentation that all of the closing conditions have been met within 10 days of issuance of the loan note guarantee. The Lender is responsible for deficiencies regardless of whether RHCDS discovers them in the loan closing review and/or notifies the Lender at that time. RHCDS reviews do not constitute any waiver of fraud, misrepresentation, or failure of judgment by the Lender.

§§ 1980.364–1980.365 [Reserved]

§ 1980.366 Transfer and assumption.

(a) *General.* Lenders may, but are not required to, permit a transfer to an eligible applicant. A transfer and assumption must be approved by RHCDS in writing. Transfers without assumption are not authorized. Transfers and assumptions under this subpart are subject to the RHCDS guarantee fee.

(b) *Eligible transferee.* An eligible transferee is one who meets the eligibility requirements of this subpart and includes situations involving transfers of housing in an area that has ceased to be rural. Loans made and guaranteed under this subpart prior to March 29, 1989, may be transferred to an applicant meeting all eligibility requirements of this subpart except the applicant's adjusted annual income may exceed the maximum income for the area by not more than 10 percent.

(c) *Determinations by the Lender.* Before the transfer and assumption can be approved with the guarantee remaining in force, the Lender must determine that all of the following conditions can be met:

(1) The transferee is an eligible applicant.

(2) The transferee will assume the total remaining debt and acquire all of the property securing the guaranteed loan balance.

(3) The transfer and assumption would not be made without the continuation of the loan guarantee.

(4) The market value of the security being acquired by the transferee is at least equal to the secured indebtedness against it.

(5) The priority of the existing lien securing the guaranteed loan will be maintained or improved.

(6) Proper hazard insurance will be obtained.

(7) The transfer and assumption can be properly closed and the conveyance instruments will be filed, registered, or recorded, as appropriate.

(8) The transferor acknowledges continued liability for the debt in writing.

(d) *Changes in the promissory note or security instrument.* If the assumption will result in changes in the repayment schedule or the interest rate, the changes must be approved by the present debtors since they will remain liable for the debt. Any changes in rates and terms must not exceed rates and terms allowed for new loans under this subpart and cannot exceed the interest rate on the initial loan. The debt must not exceed the amount remaining due on the original loan. The term of the loan may cover a period of up to 30 years from the date of transfer and assumption. The Lender's request for approval to RHCDS will be accompanied by:

(1) An explanation of the reasons for the proposed change in the rates and terms.

(2) A statement that the Lender's determinations required by paragraph (c) of this section can be made.

(e) *Release of liability.* The Lender may not release the transferor of liability.

(f) *Forms and case numbers.* The assumption may be made on the Lender's assumption agreement form. The assumption agreement must contain the RHCDS case numbers of the transferor and the transferee.

(g) *Lender's application to RHCDS.* The Lender must submit the items outlined in § 1980.353(e) of this subpart to RHCDS, in addition to items required in this section.

(h) *Notations and notices.* The Lender must notify RHCDS whether the loan and security can be properly assumed and transferred. The Lender shall assure that the conveyance instruments are properly filed, registered, or recorded, as appropriate. Upon completion of the transfer and assumption, the Lender must provide RHCDS a copy of the transfer and assumption agreement. The Lender may present the loan note guarantee to RHCDS if it desires RHCDS to note the transfer and assumption on the loan note guarantee. If a new note is obtained, it will also be attached to the loan note guarantee.

(i) *Interest assistance.* The original borrower's Master Interest Assistance Agreement may be transferred to an eligible transferee. Equity sharing, if any, owed by the transferor must be determined and collected at the time the loan is assumed and title to the property is transferred. See § 1980.391.

(j) *Closing the transfer and assumption.* As soon as the Lender has obtained RHCDS approval, the Lender may proceed with closing the transaction. The closing must include, but need not be limited to, the proper execution and delivery of the conveyance and assumption documents, compliance with any legal requirements, and actions necessary to perfect the transfer and the required lien priority.

(k) *Loan note guarantee.* The existing loan note guarantee will continue to be in effect. RHCDS will note the transfer and assumption on the original loan note guarantee by completing the Assumption Agreement block by inserting the name of the assuming party.

(l) *Material furnished to RHCDS after closing.* Immediately after closing, the Lender must furnish to RHCDS:

(1) A conformed copy of the executed assumption agreement.

(2) A statement showing:

(i) Any changes made in the provisions of the promissory note or security instruments.

(ii) That all conditions and requirements of paragraph (b) of this section have been met.

(iii) That the required insertions have been made per paragraph (h) of this section.

(m) *Notification of Lender.* The RHCDS approval official will review the proposed transfer and assumption and notify the Lender of the decision in writing. The request for transfer and assumption will be treated as an application for guaranteed loan assistance and will be handled in accordance with § 1980.353. The Lender may proceed with the transfer and assumption upon obtaining RHCDS approval.

§ 1980.367 Unauthorized sale or transfer of the property.

RHCDS consent is required to continue with the RHCDS guarantee in the event of a sale or transfer of the property in accordance with § 1980.366. If the property is transferred without RHCDS consent, the Lender must take one of the following actions:

(a) Obtain RHCDS consent if the conditions of § 1980.366 can be met;

(b) Satisfy the RHCDS guarantee and continue with the loan without the loan note guarantee; or

(c) Notify the borrower and the transferee of the default and service the loan in accordance with § 1980.371.

§§ 1980.368–1980.369 [Reserved]

§ 1980.370 Loan servicing.

RHCDS encourages Lenders to provide borrowers with the maximum opportunity to become successful homeowners. Lenders should provide sufficient servicing and counseling to meet the objectives of the loan. Loan servicing should be approached as a preventive action rather than a curative action. Prompt followup by the Lender on delinquent payments and early recognition and solution of problems are keys to resolving many delinquent loan cases. The Lender shall perform those services which a reasonable and prudent Lender would perform in servicing its own portfolio of loans that are not guaranteed.

(a) *Normal loan servicing.* The Lender is responsible for servicing the loan under the Lender Agreement and this subpart even if the Lender has engaged a third party to service the loan on its behalf. Normal servicing includes:

(1) Receiving all payments as they fall due and proper application of payments to principal and interest and escrow accounts for taxes (including special assessments) and insurance.

(2) Establishment and maintenance of an escrow account to pay real estate taxes and assessments and required hazard and flood insurance on the security. All escrow accounts must be fully insured by the Federal Deposit Insurance Corporation (FDIC). The Lender is responsible for maintaining escrow funds in a reasonable and prudent manner and for assuring that real estate taxes and assessments and required hazard and flood insurance are paid in a timely manner even if it requires advancing the Lender's own funds. The monthly payment may be adjusted when it is not adequate to meet established charges of the escrow account for the coming year. Escrow funds may be used only for the purpose for which they were collected.

(3) Obtaining compliance with the covenants, loan agreement (if any), security instruments, and any supplemental agreements and notifying the borrower in writing of any violations.

(b) *Other servicing requirements.* Other servicing requirements include taking actions to offset the effects of liens, probate proceedings, and other legal actions. The Lender's responsibility includes assuring that:

(1) Insurance loss payments, condemnation awards, or similar proceeds are applied on debts in accordance with lien priorities on which the guarantee was based, or to rebuild or otherwise acquire needed replacement collateral.

(2) The borrower complies with laws and ordinances applicable to the loan and the collateral.

(3) The borrower is not released of liability for the loan except as provided in Agency regulations.

(c) *Servicing options.* The Lender should make every effort to assist borrowers who are cooperative and willing to make a good faith effort to cure the delinquency. The Lender should consider the borrower's financial condition in attempting to work out repayment agreements. The Lender may revise the payment schedule of the loan on a temporary basis with the written concurrence of the borrower. Changes in the loan repayment such as reamortization of the unpaid balance within the remaining term of the loan may be done with prior written RHCDS concurrence. Reamortization shall not change the amount of the loan guarantee.

(d) *Lender reporting to RHCDS.* Reports on Lender servicing case loads and performance are required as follows:

(1) *Monthly report.* The Lender must prepare and submit a report in a manner prescribed by RHCDS identifying each borrower with a loan that is more than 30 days delinquent.

(2) *Annual report.* The Lender will submit an annual report indicating the status of each borrower account as of December 31 using the format prescribed by RHCDS.

(e) [Reserved]

§ 1980.371 Defaults by the borrower.

Default occurs when the borrower fails to perform under any covenant of the mortgage or Deed of Trust and the failure continues for 30 days. The Lender will negotiate in good faith in an attempt to resolve any problem. The borrower must be given a reasonable opportunity to bring the account current before any foreclosure proceedings are started.

(a) The Lender must make a reasonable attempt to contact the borrower if the payment is not received by the 20th day after it is due.

(b) The Lender must make a reasonable attempt to arrange and hold an interview with the borrower for the purpose of resolving the delinquent account before the loan becomes 60 days delinquent. Reasonable effort consists of not less than one letter sent to the borrower at the property address via certified mail or similar method which the borrower refuses to accept or fails to respond.

(c) If the Lender is unable to make contact with the borrower, the Lender must determine whether the property has been abandoned and the value of the security is in jeopardy before the account becomes two payments delinquent.

(d) When the loan becomes three payments delinquent, the Lender must report borrower delinquencies to credit repositories and make a decision with regard to liquidation of the account. The Lender may proceed with liquidation of the account unless there are extenuating circumstances.

§ 1980.372 Protective advances.

Protective advances must constitute an indebtedness of the borrower to the Lender and be secured by the security instrument. Protective advances are advances made for expenses of an emergency nature necessary to preserve or protect the physical security. Attorney fees are not a protective advance. The Lender will not make protective advances in lieu of an additional loan. In order to assure that a protective advance over $500 will be included in the loss payment, Lenders are encouraged to obtain prior RHCDS approval.

§ 1980.373 [Reserved]

§ 1980.374 Liquidation.

If the Lender concludes the liquidation of a guaranteed loan account is necessary because of one or more defaults or third party actions that the borrower cannot or will not cure or eliminate within a reasonable period of time, the Lender will notify RHCDS of the decision to liquidate. Initiation of foreclosure begins with the first public action required by law such as filing a complaint or petition, recording a notice of default, or publication of a notice of sale. Foreclosure must be initiated within 90 days of the date the decision to liquidate is made unless the foreclosure has been delayed by law. When there is a legal delay (such as bankruptcy), foreclosure must be started within 60 days after it becomes possible to do so.

(a) *Expeditious liquidation.* Once the decision to liquidate has been made, the Lender must proceed in an expeditious manner. Lenders must exercise due diligence in completing the foreclosure process. Lenders are expected to complete foreclosure within the time frames that are reasonable for the state in which the property is located.

(b) *Maximum collection.* The Lender is expected to make the maximum collection possible on the indebtedness. The Lender will consider the possibility of recovery of any deficiency apart from the acquisition or sale of collateral. The Lender will submit a recommendation on such recovery considering the borrower's assets and ability to pay, prospects of future recovery, the costs of pursuing such recovery, recommendation for obtaining a judgment, and the collectability of a judgment in view of the borrower's assets.

(c) *Allowable liquidation costs.* Certain reasonable liquidation costs (costs similar to those charged for like services in the area) will be allowed during the liquidation process. No in-house expenses of the Lender will be allowed including, but not limited to, employee salaries, staff lawyers, travel, and overhead. Liquidation costs are deducted from the gross sales proceeds of the collateral when the Lender has conducted the liquidation.

(d) *Servicing plan.* The Lender must submit a servicing plan to RHCDS when the account is 90 days delinquent and a method other than foreclosure is recommended to resolve delinquency. RHCDS encourages Lenders and delinquent borrowers to explore an acceptable alternative to foreclosure to reduce loss and expenses of foreclosure. Although prior approval is not required in all cases, the Agency may reject a plan that does not protect the Government's interest.

(1) *Continuation with the borrower.* The Lender may continue with the borrower when a clear and realistic plan to eliminate the delinquency is presented. The Lender must fully document the borrower's prospects of success and make this information available to RHCDS upon request.

(2) *Voluntary liquidation.* RHCDS may accept the Lender's plan to use voluntary liquidation when the plan clearly addresses the responsibilities of the parties, the Lender maintains oversight of the progress of the sale, the property is listed for sale at a price in line with its market value (if there is not already a bona fide purchaser for the dwelling), and the expected cost to the Government is the same as or less than the cost of foreclosure.

(3) *Deed-in-lieu of foreclosure.* The Lender may take a deed-in-lieu of foreclosure from the borrower when it will not result in a cost to the Government in excess of that expected for foreclosure.

(4) *Other methods.* RHCDS may accept a proposal submitted by the Lender that is not specifically addressed in but is consistent with the provisions of this subpart if the Lender fully documents how the proposal will result in a savings to the Government.

(e) *Handling shared equity.* Interest assistance payments made under § 1980.390 of this subpart will not be subject to shared equity if the loan is liquidated in accordance with the Lender Agreement unless:

(1) The property is sold at or prior to foreclosure for an amount exceeding the Lender's unpaid balance and costs of foreclosure, or

(2) A junior lienholder takes over the Lender's loan.

§ 1980.375 Reinstatement of the borrower's account.

The Lender may reinstate an account when all delinquent payments and any funds that were advanced to pay authorized expenses are paid or as required under state law. When the Lender wishes to consider other offers by the borrower to bring the account current, the Lender must obtain RHCDS concurrence.

§ 1980.376 Loss payments.

Settlement of the guarantee will be processed in accordance with this section.

(a) *Loss payment.* Loss payments will be made within 60 days of the Lender's properly filed claim. The Lender must submit its loss claim within 30 calendar days of loan liquidation. The claim may include interest on the unpaid principal accrued to final loss settlement. RHCDS will pay interest within the limits of the guarantee to the date the claim is paid when the Lender promptly and properly files the claim.

(1) *Determination of loss payment.* To calculate the loss payment, first determine the unpaid debt by adding the unpaid principal and interest on the loan and the unpaid balance for principal and interest on authorized protective advances. The net proceeds from the property will be first applied to the unpaid debt. Any other proceeds recovered by the Lender from other sources shall also be applied to the total unpaid debt. Determination of net proceeds will be different depending on which of the following circumstances are involved.

(i) If, at liquidation, title to the property is conveyed to a bona fide third-party purchaser, then final loss payment will be based on the net sales proceeds received for the property.

(ii) If, at liquidation, title to the property is conveyed to the Lender, then the Lender must prepare and submit a property disposition plan to RHCDS for RHCDS concurrence. The plan will address the Lender's proposed method for sale of the property, the estimated value and minimum sale price, itemized estimated costs of the sale, and any other information that could impact the amount of loss on the loan. The Lender is allowed up to 6 months from the date the property is acquired to sell the property. Upon the Lender's written request, RHCDS will authorize one extension not to exceed 30 days to close the sale of a purchase offer accepted near the end of the 6-month period. Net proceeds will be based on the net proceeds received for the property when the sale is conducted in accordance with the plan as approved by RHCDS. If no sale offer is accepted within the 6-month period, then the RHCDS approval official will obtain and use a liquidation value appraisal of the property. When an appraisal is obtained, the amount of the net proceeds from the security is then determined by subtracting a cost factor, which is found in exhibit D of FmHA Instruction 1980–D (available in any RHCDS office), from the current market value.

(iii) If a deficiency judgment is obtained, the Lender must enforce the judgment against the borrower before loss settlement if the current situation provides a reasonable prospect of recovery. A loss payment will be made when the Lender holds a deficiency judgment but there are not current prospects of collection, even if there may be in the future.

(2) *Payment procedure.* RHCDS will pay losses on the loan according to the terms of the loan note guarantee unless RHCDS has determined there is cause for reduction of the loss amount. See § 1980.377 for future recovery by the Lender.

(i) If there is no dispute between RHCDS and the Lender regarding the amount of the loss and the Lender's eligibility for payment of loss, RHCDS will pay the loss within the limits of the guarantee.

(ii) If RHCDS and the Lender do not agree on the amount of the loss, or RHCDS has determined that part of the loss is not payable to the Lender under the terms of the loan note guarantee, RHCDS will pay the undisputed portion. The disputed portion of the claim will be treated as an adverse decision and the Lender may appeal.

(iii) When RHCDS has cause to believe that Lender fraud or other lender actions negating the guarantee exist, no loss payment may be made unless the situation is resolved.

(3) The RHCDS approval official will conduct an audit of the account and review the loan in its entirety to determine why the loan failed and whether any reason exists for reducing or denying the loss claim. This information will be documented in the RHCDS casefile.

(4) If a Lender's loss claim is denied or reduced, the RHCDS approval official will notify the Lender of all of the reasons for the action within 10 days of the decision and the Lender may appeal in accordance with § 1980.399 and subpart B of part 1900.

(5) The RHCDS approval official is authorized to approve loss payments in amounts of up to 50 percent of his/her delegated loan approval authority in accordance with exhibit D of FmHA Instruction 1901–A (available in any RHCDS office).

(b) *Denial or reduction of loss claims.* The RHCDS approval official will fully document any loss claim which is denied or reduced including an analysis of how the amount of the reduction was determined. A connection must be made between the Lender's action or failure to act and the loss amount on the loan. The amount of loss occasioned by such action will be established. This information will be made available to the Lender upon request. A Lender's loss claim may be denied or reduced by RHCDS when:

(1) The Lender has committed fraud. (Denial of claim.)

(2) The Lender claims items not authorized under RHCDS regulations. (Reduced by amount of unauthorized claim.)

(3) The Lender violated usury laws. (Reduction for amount of loss caused by the violation.)

(4) The Lender failed to obtain required security or maintain the security position. (Reduction for loss attributed to failure.)

(5) Loan funds were used for unauthorized purposes. (Reduction by unauthorized amount.)

(6) The Lender was negligent in loan servicing. Negligent servicing is a failure to perform those services which a reasonably prudent Lender would perform in servicing its own portfolio of loans that are not guaranteed. The term includes a failure to act, a failure to act in a timely manner, or acting in a manner contrary to that in which a reasonably prudent Lender would act. (Reduction for loss amount attributable to Lender negligence.) Examples of negligent servicing include:

(i) A failure to contact the borrower in a timely manner when the borrower's account goes into default.

(ii) A failure to pay real estate taxes or hazard insurance when due.

(iii) A failure to notify RHCDS within required time limits when the borrower defaults on the loan.

(iv) A failure to request loan subsidy when the borrower was eligible for loan subsidy and loan subsidy was available (subsidized loans only).

(v) A failure to protect security during the liquidation phase.

(7) The Lender delayed filing the loss claim. (Reduction in claim for interest accrued because the claim was not filed.)

§ 1980.377 Future recovery.

The proceeds of any amounts recovered shall be shared in proportion to the amount of loss borne between RHCDS and the Lender. Although the Lender's actual loss may be different than the amount on which loss settlement was based, the proportion of recovery sharing must be based on the loss percentage upon which the loss payment calculation was based.

§§ 1980.378–1980.389 [Reserved]

§ 1980.390 Interest assistance.

In order to assist low-income borrowers in the repayment of the loan, RHCDS is authorized to provide interest assistance payments subject to the availability of funds. Regardless of what date a borrower's loan payment is due each month, interest assistance payments will be made by RHCDS directly to the Lender on or before the 15th day of the month in which the borrower's payment is due.

(a) *Policy.* It is the policy of RHCDS to grant interest assistance on guaranteed loans to low-income borrowers to assist them in obtaining and retaining decent, safe, and sanitary dwellings and related facilities as long as the borrower remains eligible for payments when funds are available for interest assistance. Interest assistance must be established for the borrower at the time the loan guarantee is authorized.

(b) *Processing interest assistance agreements.* The Lender will process the interest assistance agreement and submit it to RHCDS for approval.

(1) RHCDS will reimburse the Lender in the amounts authorized in exhibit D of FmHA Instruction 1980–D (available in any RHCDS office) for the cost of processing the agreement. The fee will be paid upon receipt of a valid agreement which has been coded as requiring a processing fee payment. The processing fee is payable when:

(i) A new agreement is made with the borrower except at the time of loan closing.

(ii) The borrower had an agreement for the previous year and a new agreement is made for the current year.

(iii) The borrower is eligible for but not presently on interest assistance and enters into a new interest assistance agreement.

(iv) The borrower has a change in circumstances which requires a revision to the current agreement. When the change in circumstances results in an agreement with less than 90 days remaining, the agreement for the subsequent year will be prepared at the same time. This action is considered one agreement.

(2) A processing fee will not be paid when the revision to an existing agreement is required due to an error on the part of the Lender or the borrower.

(c) *Amount of interest assistance.* (1) The amount of interest assistance granted will be the difference between the monthly installment due on the promissory note eligible for interest assistance and the amount the borrower would pay if the note were amortized at the rate corresponding to the borrower's income range as outlined in the master interest assistance agreement.

(2) The basis for the amount of interest assistance for each loan is determined by the amount of interest assistance authorized to the Agency as shown in exhibit D of FmHA Instruction 1980–D (available in any RHCDS office) and the note interest rate.

(3) A borrower receiving a loan in a high cost area will be granted an additional 1 percent interest assistance in order to assist the borrower up to the

maximum rate in exhibit D of FmHA Instruction 1980–D (available in any RHCDS office).

(i) The Administrator may designate an area as a high cost area for interest assistance purposes. Such designation may be granted when the State Director makes a written request for it and provides documentation that low-income borrowers in the area could not afford to purchase a dwelling under the interest assistance table in exhibit D of FmHA Instruction 1980–D (available in any RHCDS office). The area must also be designated by HUD as a high cost area. The amount of additional interest assistance for high cost areas is 1 percent; however, in no case will more interest assistance be granted than the amount necessary to reach the lowest floor rate in exhibit D of FmHA Instruction 1980–D (available in any RHCDS office).

(ii) The change in a designation to (or from) a high cost area will not affect existing loans. An individual's loan eligibility for high cost designation is determined at the time of issuance of the conditional commitment for loan guarantee.

(d) *Shared equity.* Prior to loan closing, the Lender will advise the applicant that interest assistance is subject to equity sharing.

(e) *Eligibility.* To be eligible for interest assistance, a borrower must personally occupy the dwelling and must meet the following additional requirements:

(1) *Initial loans.* Interest assistance may be granted at the time the loan note guarantee is issued, or an assumption is processed in accordance with § 1980.366, when:

(i) The borrower's adjusted income at the time of loan guarantee approval did not exceed the applicable low-income limit, the loan guarantee was funded from interest assisted guaranteed loan funds, and a master interest assistance agreement was completed at closing if the borrower is ever to receive interest assistance.

(ii) The borrower's net family assets do not exceed the maximum allowable amount as per exhibit D of FmHA Instruction 1980–D (available in any RHCDS office) unless an exception is authorized. The calculation of net family assets will exclude the value of the dwelling and a minimum adequate dwelling site, cash on hand which will be used to reduce the amount of the loan, and household goods and personal automobiles and the debts against them. The Lender may request an exception at the time the initial application is submitted to RHCDS for a loan guarantee. For the purpose of determining whether an exception is justified, consideration will be given to the nature of the assets upon which a borrower is currently dependent for a livelihood or which could be used to reduce or eliminate the need for interest assistance.

(iii) The loan was approved as a subsidized guaranteed loan on or after April 17, 1991.

(iv) The amount of interest assistance will be $20 or more per month in accordance with the provisions of paragraph (c)(1) of this section. Interest assistance in amounts of less than $20 per month will not be granted.

(2) *Existing loans.* Interest assistance may be granted at any time after loan closing if:

(i) The requirements of paragraphs (e)(1)(i), (e)(1)(iii), and (e)(1)(iv) of this section are met.

(ii) The borrower's adjusted annual income does not exceed the low-income limit.

(iii) The borrower requests interest assistance through the Lender or the Lender determines that interest assistance is needed to enable the borrower to repay the loan.

(iv) The Lender processes the interest assistance agreement and submits it to RHCDS for approval.

(f) *Processing interest assistance.* The Lender will process interest assistance agreements in accordance with this section. The interest assistance agreement will be executed by the Lender and borrower and forwarded to RHCDS for approval.

(1) *Amount of interest assistance.* The amount of interest assistance for which a borrower is eligible will be determined by use of the interest assistance agreement as outlined in paragraph (c) of this section.

(i) *Determination of income.* The Lender is responsible for determining the borrower's annual and adjusted annual income as outlined in §§ 1980.347 and 1980.348 of this subpart. Income of all persons occupying the dwelling will be verified in accordance with § 1980.347 of this subpart.

(ii) *Effective period.* Annual interest assistance agreements will be for a 12-month period.

(2) *Interest assistance agreements.* The master interest assistance agreement will be executed for each qualifying loan at loan closing provided funds are available for interest assistance at the time the guarantee is issued. This agreement establishes the conditions and maximum amounts of interest assistance for the life of the loan. Each year, an annual interest assistance agreement will be used to determine the amount of interest assistance for the coming 12 months.

(i) The Lender will determine the borrower's adjusted annual income, document the calculations, and complete the interest assistance agreement form.

(ii) The borrower will review the interest assistance agreement form and sign the form signifying that all information is correct as shown.

(iii) If the information contained on the interest assistance agreement appears correct, RHCDS will approve the agreement and make monthly payments to the Lender on behalf of the borrower.

(iv) When the borrower's income is within the low-income limits but the provisions of paragraphs (e)(1)(ii) or (e)(1)(iv) of this section preclude granting interest assistance, the master interest assistance agreement must be executed if the borrower desires to be considered for interest assistance at a later date due to a change in circumstances.

(g) *Interest assistance modification.* A change in the borrower's circumstances after the effective date of the Annual Interest Assistance Agreement will be handled as follows:

(1) *RHCDS required modifications before expiration.* The borrower is responsible for reporting any increases in income exceeding $100 per month to the Lender. The Lender is not responsible for monitoring the borrower's income. The Lender must process a revised interest assistance agreement when a reported increase in the borrower's income results in the need for less interest assistance in accordance with paragraph (c) of this section.

(2) *Additional interest assistance before expiration.* The borrower may request and the Lender may process a modification of the interest assistance agreement and submit the modified agreement to RHCDS when:

(i) The borrower's adjusted annual income decreases by more than $100 per month;

(ii) The interest assistance calculation per paragraph (c) of this section indicates that the borrower is eligible for an additional $20 interest assistance per month; and

(iii) There are interest assistance funds available if the amount needed by the borrower exceeds the initial floor rate established at the time the loan was closed per paragraph (c) of this section.

(3) *Other changes in the borrower's circumstances.* When one coborrower has left the dwelling, interest assistance based on the remaining coborrower's income may be extended if:

(i) The remaining coborrower is occupying the dwelling, owns a legal interest in the property, and is liable for the debt;

(ii) The remaining coborrower certifies as to who lives in the house;

(iii) Separation is not due only to work assignment or military orders; and

(iv) The remaining coborrower is informed and agrees that should the coborrower begin to live in the dwelling, that coborrower's income will then be counted toward annual income and interest assistance may be reduced or canceled.

(4) *Effect of modification.* An interest assistance agreement modified as per paragraph (g)(1), (g)(2), or (g)(3) of this section is valid for the remainder of the agreement period.

(5) *Correction of interest assistance agreement.* When an error by RHCDS or the Lender resulted in too little interest assistance being granted, a corrected agreement will be prepared effective the date of the error if the error results in granting $20 or more per month less interest assistance than the borrower was eligible to receive. The Lender must return any overpayment made by the borrower unless an agreement is reached to apply the funds to the loan as an extra payment.

(h) *Eligibility review.* Borrowers receiving interest assistance will be reviewed annually within 30 to 60 days prior to the anniversary date of the loan. All existing agreements must be reviewed and processed for the upcoming 12 months during the review period. Interest assistance will not be renewed if the amount that the borrower qualifies for is less than $20 per month.

(1) The Lender will obtain written verification of the income of each borrower and all adult members of the borrower's household and conduct the review.

(i) *Borrower responsibility.* The borrower will:

(A) Report the income of each adult member of the household to the Lender;

(B) Assure that each household member has provided sufficient information on that person's income for the Lender to conduct the review; and

(C) Cooperate in the Lender's efforts to verify income.

(ii) [Reserved]

(2) *Processing interest assistance renewals not reviewed during the review period.* The Lender may process interest assistance renewals not completed during the review period as follows:

(i) The amount of interest assistance will be based on the borrower's current annual income.

(ii) The effective date will be:

(A) The expiration period of the previous interest assistance agreement if the RHCDS approval official determines failure to renew was the fault of RHCDS or the Lender.

(B) The next payment due date following approval in all other cases.

(3) *Interest assistance form.* Interest assistance payments will not be made after the expiration date unless RHCDS receives and approves a new interest assistance agreement form.

(i) *Cancellation of interest assistance.*

(1) An existing interest assistance agreement will be canceled under the following circumstances:

(i) When the borrower has never occupied the dwelling, the interest assistance will be canceled as of the date of issuance of the guarantee. The Lender will refund all interest assistance payments to RHCDS.

(ii) The cancellation will be effective on the date on which the earliest action occurs which causes the cancellation or the date the Lender became aware of the situation if the date cannot be determined when:

(A) The borrower ceases to occupy, sells, or conveys title to the dwelling.

(B) The borrower has received improper interest assistance and a corrected agreement will not be submitted.

(C) The borrower has had an increase in income and is no longer eligible for interest assistance.

(D) The security is acquired by the Lender.

(E) The Lender formally declares the loan to be in default and accelerates the loan.

(2) [Reserved]

(j) *Overpayment.* When the Lender becomes aware of circumstances that have resulted in an overpayment of interest assistance for any reason, except as provided in paragraph (k) of this section, the following actions will be taken:

(1) The Lender will immediately notify RHCDS.

(2) The borrower will be notified and the interest assistance agreement will be corrected.

(3) A repayment agreement acceptable to RHCDS will be reached.

(k) *Unauthorized use of loan funds.* When RHCDS becomes aware that the Lender allowed loan funds to be used for unauthorized purposes, interest assistance paid on said amounts will be promptly repaid by the Lender. The Lender may work out a repayment agreement with the borrower but is expected to make every effort to minimize the adverse impact on the borrower's repayment ability.

(l) *Appeals.* All applicants/borrowers and Lenders may appeal adverse determinations in accordance with § 1980.399 when RHCDS denies, reduces, cancels, or refuses to renew interest assistance.

(m) *Reinstatement of interest assistance.* The RHCDS approval official may authorize reinstatement of the borrower's interest assistance if it was canceled because the loan was accelerated and if the acceleration was withdrawn with RHCDS approval.

§ 1980.391 Equity sharing.

The policy of RHCDS is to collect all or a portion of interest assistance granted on a guaranteed RH loan when any of the events described in paragraph (a) of this section occur, if any equity exists in the security.

(a) *Determining the amount of shared equity.* The RHCDS approval official will calculate shared equity when a borrower's account is settled by payment-in-full (including refinancing) of the outstanding indebtedness, the transfer of title, or when the borrower ceases to occupy the property. The calculation of shared equity when the account is in liquidation will be handled in accordance with § 1980.374(e).

(1) *How to calculate.* The amount of shared equity will be based on the amount of interest assistance granted on the loan, the appreciation in property value between the closing date of the loan and the date the account is satisfied or acquired by the Lender via liquidation action, the period of time the loan is outstanding, the amount of original equity the borrower has in the property, and the value of capital improvements to the property. Shared equity will be the lesser of the interest assistance granted or the amount of value appreciation available for shared equity. Value appreciation available for shared equity means the market value of the property less all debts secured by prior liens, sales expenses, any original borrower equity, principal reduction, and value added by any capital improvements.

(i) *Market value.* Market value of the property as of the date the loan is to be paid in full or the date the borrower ceases to occupy and will be documented by one of the following:

(A) A sales contract which reasonably represents the fair market value based on the Lender's and RHCDS approval official's knowledge of the property and the area.

(B) Lender's appraisal when the loan will be refinanced provided the appraisal reasonably represents the fair market value.

(C) If the items listed in either paragraph (a)(1)(i)(A) or (a)(1)(i)(B) of this section are not available, another

current appraisal, if readily available, when the appraiser meets the qualifications of § 1980.334.

(D) When the account is being paid off from insurance proceeds, the most recent appraisal available if the Lender or RHCDS can document that it represents an accurate indication of the value at the time the dwelling was damaged or destroyed. If not, the best information available will be used to determine the market value. The RHCDS approval official will interview the borrower to determine the extent of improvements, if any, and the general condition of the property at the time of loss. The amount of the insurance payment is generally a good indication of value; however, tax records or comparable sales will be considered.

(E) RHCDS appraisal, with prior approval of the State Director.

(ii) *Prior liens.* Prior liens refers to the amount of liens that are prior to the Lender's liens and include, but may not be limited to, prior mortgages, and real estate taxes and assessments levied against the property.

(iii) *Sale/refinancing expenses.* Sale/refinancing expenses include, but are not limited to, expenses commonly associated with the sale or refinancing of real estate that are not reimbursed, such as sales commissions, advertising costs, recording fees, pro rata taxes, points based on the current interest rate, appraisal fees, transfer tax, deed preparation fee, loan origination fee, etc. In refinancing situations, only those expenses necessary to finance the amount of the current RHCDS debt are allowed. Shared equity may be calculated using estimated expenses if actual expenses cannot be obtained and the RHCDS approval official is satisfied with the estimated amount and the prorating of the expenses are accurate for this transaction.

(iv) *Original borrower equity.* Original equity consists of a contribution by the borrower that reduces the amount of the loan below the market value. The contribution may be in the form of cash and/or value of the lot if the home was constructed on the borrower's property.

(v) *Capital improvements.* Capital improvements will be considered to the extent that they do not exceed market value contribution as indicated by a sales comparison analysis. Generally, the value added by improvements will be the difference in market value at the time of sale and market value without capital improvements. Cost of the improvement will not be considered, only contribution to value. Maintenance cost and replacement of short-lived depreciable items are normal expenses associated with home ownership and are not considered capital improvements.

(2) *Other considerations.* (i) *Overpayments of interest assistance.* When RHCDS has overpaid interest assistance and the overpaid amounts remain uncollected at the time shared equity is calculated, the overpaid amount will be added to shared equity.

(ii) *Multiple loans.* When a borrower has more than one loan and elects to pay only some of the loans, shared equity will not be calculated unless the remaining loan is not subject to shared equity. Shared equity will be calculated when the account is paid in full taking into consideration all of the interest assistance granted on the account.

(b) *Miscellaneous provisions—(1) Changes in terms.* Shared equity will not be calculated when an account is reamortized.

(2) *Junior liens.* Junior liens are not considered in the shared equity calculation. In the event a junior lienholder forecloses, the RHCDS approval official will calculate shared equity before providing the lienholder with a pay-off figure, which is in addition to any amounts still due the Lender on the loan in the same manner as paragraph (a) of this section.

(c) *Affordable housing proposals.* Shared equity under an affordable housing innovation (such as limited equity or a state or county sponsored shared equity) will be calculated in accordance with this subpart unless prior written approval is obtained from RHCDS. Proposals that deviate from this subpart must be reviewed and approved in the National office prior to issuance of the loan note guarantee.

§ 1980.392 Mortgage Credit Certificates (MCCs) and Funded Buydown Accounts.

(a) *MCCs.* MCCs are authorized under the Tax Reform Act of 1986 and allow the borrower to receive a Federal tax credit for a percentage of their mortgage interest payment. They may be used by RHCDS guaranteed RH borrowers to improve their repayment ability for the loan. MCCs impact on the borrower's tax liability. MCCs may be used with interest assisted loans when the amount of the tax credit is based on the amount of interest actually paid by the borrower. MCCs are subject to shared equity of a portion of any "gain" realized on the property when sold within 10 years after purchase. If the loan is also an RHCDS interest assisted loan, RHCDS shall receive priority for shared equity repayment. Income taxes are complex issues; RHCDS employees and Lenders are not expected to be able to identify all issues impacting the borrower's taxes. Lenders should encourage borrowers to consult with a tax advisor.

(1) When the Lender is participating in an MCC program the amount of the tax credit is considered as an additional resource available for repayment of the loan when the credit is taken on a monthly basis from withholding.

(2) The Lender will submit a copy of the MCC and a copy of the applicant's Form IRS W–4, "Employee's Withholding Allowance Certificate," along with the other materials for the loan guarantee request. The amount of tax credit is limited to the applicant's maximum tax liability.

(i) The MCC must show the rate of credit allowed.

(ii) The Form IRS W–4 must reflect that the borrower is taking the tax credit on a monthly basis.

(iii) The Lender will certify that the borrower has completed and processed all of the necessary documents to obtain the tax credit in accordance with this section.

(b) *Funded buydown accounts.* A funded buydown account is a prepaid arrangement between a builder or a seller and a Lender that is designed to improve applicant's repayment ability. Funded buydown accounts are permitted when the Lender obtains prior RHCDS concurrence. RHCDS will consider buydown accounts when there are compensating factors which indicate the borrower's ability to meet the expected increases in loan payment. The seller, Lender or other third party must place funds in an escrow account with monthly releases scheduled directly to the Lender to reduce the borrower's monthly payment during the early years of the loan. The maximum reduction which may be considered is 2 percent below the note rate, even though the actual buydown may be for more. Reductions in buydown assistance may not result in an increase in the interest rate paid by the borrower of more than 1 percent per year. The borrower shall not be required to repay escrowed buydown funds. Funds must be escrowed with a state or federally supervised Lender. Funded buydown accounts must be fully funded for the buydown period. Buydown periods must be at least 12 months for each 1 percent of the buydown.

§§ 1980.393–1980.396 [Reserved]

§ 1980.397 Exception authority.

The Administrator may, in individual cases, make an exception to any requirement or provision of this subpart or address any omission of this subpart which is not inconsistent with the authorizing statute or other applicable law if the Administrator determines that application of the requirement, or provision, or failure to take action in the case of an omission would adversely affect the Government's financial interest. The Administrator will exercise this authority upon request of the State Director with the recommendation of the Assistant Administrator for Housing. Requests for exception must be made in writing accompanied by the borrower's casefile in cases involving specific borrowers and supported with documentation to explain the adverse effect, propose alternative courses of action, and to show how the adverse effect will be eliminated or minimized if the exception is granted.

§ 1980.398 Unauthorized assistance and other deficiencies.

(a) *Unauthorized assistance.* Unauthorized assistance includes, but is not limited to, issuance of a loan note guarantee when the borrower was not eligible for the loan or the borrower was eligible but the loan was not made for authorized purposes. Unauthorized assistance in the form of interest assistance is discussed in § 1980.390.

(b) *Initial determination of unauthorized assistance.* The reasons for unauthorized assistance being received by the Lender may include:

(1) Submission of false or inaccurate information by the Lender;

(2) Submission of false or inaccurate information by the borrower;

(3) Error by RHCDS personnel; or

(4) Error by the Lender.

(c) [Reserved]

(d) [Reserved]

(e) *Categories of unauthorized assistance.*

(1) *Minor deficiency.* A minor deficiency is one that does not change the eligibility of the borrower, the eligibility of the property, or amount of the loan. Such incidents will be brought to the Lender's attention in writing. Examples of minor deficiencies include improperly completed builder certifications, use of an outdated credit report, or use of an outdated income verification. Minor deficiencies also include those significant deficiencies when the Lender is willing and able to correct the problem such as obtaining flood insurance for a dwelling located in a flood hazard area and assuring the escrow amount is sufficient.

(2) *Significant deficiency.* A significant deficiency is one that creates a significant risk of loss to the Government, or involves acceptance of a borrower or property not permitted by Agency regulations. Such cases may result in probation or withdrawal of the Lender's approval for program participation. Examples of significant deficiencies include gross miscalculation of income, acceptance of property that is severely deficient of the required standards, missing builder certifications, and construction changes that materially affect value without proper change orders.

(3) *Fraud or misrepresentation.* A deficiency that involves an action by the Lender to misrepresent either the financial capacity of the borrower or the condition of the property being financed may, in addition to any criminal and civil penalties, result in a withdrawal of RHCDS approval, or debarment. Examples of this type of deficiency include falsified Verifications of Employment, false certifications, reporting a delinquent loan as being current, and omitting conditions relating to the health and safety of a property.

(f) *Borrower noncompliance.* When the borrower receives unauthorized assistance due to an error or oversight, the Lender may continue with the guaranteed loan. More serious violations will be viewed on a case-by-case basis by the National office.

(g) *RHCDS error oversight.* When the borrower receives unauthorized assistance solely due to an error or oversight by RHCDS, the Lender may continue with the guaranteed loan.

§ 1980.399 Appeals.

The borrower and the Lender respectively can appeal an RHCDS administrative decision that directly and adversely impacts them. Decisions made by the Lender are not covered by this paragraph even if RHCDS concurrence is required before the Lender can proceed. Appeals will be conducted in accordance with the rules of the National Appeals Division, USDA.

(a) *Appealable decisions.* (1) The borrower and the Lender must jointly execute the written request for an alleged adverse decision made by RHCDS. The Lender need not be an active participant in the appeal process.

(2) The Lender only may appeal cases where RHCDS has denied or reduced the amount of a loss payment to the Lender.

(b) *Nonappealable decisions.* (1) The Lender's decision as to whether to make a loan is not subject to appeal.

(2) The Lender's decision to deny servicing relief is not subject to appeal.

(3) The Lender's decision to accelerate the account is not subject to appeal.

§ 1980.400 [Reserved]

Dated: March 22, 1995.

Michael V. Dunn,

Acting Under Secretary for Rural Economic and Community Development.

[FR Doc. 95–11943 Filed 5–19–95; 8:45 am]

BILLING CODE 3410–07–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–193–AD; Amendment 39–9231; AD 95–10–14]

Airworthiness Directives; Airbus Model A300, A310, and A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Airbus Model A300, A310, and A300–600 series airplanes, that requires repetitive mechanical and electrical inspections to detect chafing of electrical wiring; and repair or replacement of discrepant parts, and repositioning the looms. This amendment is prompted by reports of wire chafing in the forward avionic compartment. The actions specified by this AD are intended to prevent such chafing, which may lead to a short in the electrical circuits at the 104VU panel; this condition could result in unwanted depressurization, loss of wing de-icing, and loss of in-flight engine restart capability.

DATES: Effective June 21, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 21, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Stephen Slotte, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Airbus Model A300, A310, and A300–600 series airplanes was published in the **Federal Register** on January 4, 1995 (60 FR 384). That action proposed to require repetitive mechanical and electrical inspections to detect discrepancies; and repair or replacement of discrepant parts, and repositioning the looms.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Two commenters support the proposed rule.

One commenter requests that the proposal be revised to include removal of the avionics bay ladder as an optional terminating action for the repetitive inspections. The commenter states that removing the avionics bay ladder will prevent future chafing. The commenter states that it has removed the avionics bay ladder in accordance with the Airplane Maintenance Manual and will request an alternative method of compliance. The FAA does not concur with the commenter's request to revise the final rule. The FAA does not consider it appropriate to include various provisions in an AD applicable to a single operator's unique configuration of an affected airplane. Paragraph (b) of this AD provides for the approval of an alternative method of compliance to address these types of unique configurations.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

This is considered to be interim action. The manufacturer has advised that it currently is developing a modification that will positively address the unsafe condition addressed by this AD. Once this modification is developed, approved, and available, the FAA may consider additional rulemaking.

The FAA estimates that 69 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $4,140, or $60 per airplane, per inspection cycle.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–10–14 Airbus Industrie: Amendment 39–9231. Docket 94–NM–193–AD.

Applicability: All Model A300, A310, and A300–600 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent unwanted depressurization, loss of wing de-icing, and loss of in-flight engine restart capability, accomplish the following:

(a) Within 600 flight hours or 6 months after the effective date of this AD, whichever occurs first, accomplish paragraphs (a)(1) and (a)(2) of this AD.

(1) Perform mechanical inspections to detect discrepancies, in accordance with paragraph 4.2.1. of Airbus All Operators Telex AOT 24–05, Revision 1, dated June 7, 1994. Repeat the inspection thereafter at intervals not to exceed 1,050 flight hours. If any discrepancy is detected, prior to further flight, repair or replace discrepant parts, and perform an electrical inspection in accordance with the AOT.

(2) Perform an electrical inspection to detect discrepancies, in accordance with paragraph 4.2.2. of Airbus All Operators Telex AOT 24–05, Revision 1, dated June 7, 1994. Repeat the inspection thereafter at intervals not to exceed 18 months. If any discrepancy is detected, prior to further flight, repair or replace discrepant parts, and reposition the looms, in accordance with the AOT.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The inspections, repair, and replacement shall be done in accordance with Airbus All Operators Telex AOT 24–05, Revision 1, dated June 7, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on June 21, 1995.

Issued in Renton, Washington, on May 9, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–11907 Filed 5–19–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–NM–146–AD; Amendment 39–9229; AD 95–10–12]

Airworthiness Directives; Airbus Model A320–111, –211, and –212 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A320–111, –211, and –212 series airplanes, that requires modification of the junction box and connector backshells of a certain electrical harness assembly. This amendment is prompted by a report indicating that traces of fungus and corrosion have been found on the electrical harness junction box of the thrust reverser. The actions specified by this AD are intended to prevent such corrosion, which could result in multiple faults in the thrust reverser position indication, and subsequent uncontrolled reduction of engine power.

DATES: Effective June 21, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 21, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Stephen Slotte, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A320–111, –211, and –212 series airplanes was published in the **Federal Register** on December 27, 1994 (59 FR 66493). That action proposed to require modification of the junction box and connector backshells of the electrical harness assembly of the thrust reverser.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments received.

Both commenters support the proposed rule.

Since issuance of the notice, Airbus has issued Service Bulletin A320–71–1011, Revision 1, dated June 27, 1994. This service bulletin is essentially identical to the original issue, but contains certain editoral changes. The FAA has revised the final rule to include reference to this revision of the service bulletin as an alternative source of service information.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 50 airplanes of U.S. registry will be affected by this AD, that it will take approximately 24 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will be supplied by ROHR, Inc. (the manufacturer of the junction box, connector backshells, and the electrical harness assembly) at no cost to the operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $72,000, or $1,440 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–10–12 Airbus Industrie: Amendment 39–9229. Docket 94–NM–146–AD.

Applicability: Model A320–111, –211, and –212 series airplanes powered by CFM 56–5A engines equipped with an electrical harness assembly having part number (P/N) 238W0908–513; on which Airbus Modification 23693 (reference Airbus Service Bulletin A320–71–1011) has not been installed; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority

provided in paragraph (b) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously. To prevent multiple faults in the thrust reverser position indication, and subsequent uncontrolled reduction of engine power, accomplish the following:

(a) Within 3,000 flight hours after the effective date of this AD, modify the junction box, connector backshells, and the electrical harness assembly of the thrust reverser, in accordance with Airbus Service Bulletin A320–71–1011, dated November 17, 1993, or Revision 1, dated June 27, 1994.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The modification shall be done in accordance with Airbus Service Bulletin A320–71–1011, dated November 17, 1993; or in accordance with Airbus Service Bulletin A320–71–1011, Revision 1, dated June 27, 1994, which contains the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
1, 4–6	1	June 27, 1994.
2, 3, 7–11	Original .	Nov. 17, 1993.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on June 21, 1995.

Issued in Renton, Washington, on May 9, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–11908 Filed 5–19–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–NM–187–AD; Amendment 39–9233; AD 95–10–16]

Airworthiness Directives; Boeing Model 747 Series Airplanes Equipped with Pratt & Whitney Model JT9D Series Engines (Excluding Model JT9D–70 Engines)

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, that requires modification of the nacelle strut and wing structure, inspections and checks to detect discrepancies, and correction of discrepancies. This amendment is prompted by the development of a modification of the strut and wing structure that improves the damage tolerance capability and durability of the strut-to-wing attachments, and reduces reliance on inspections of those attachments. The actions specified by this AD are intended to prevent failure of the strut and subsequent loss of the engine.

DATES: Effective June 21, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 21, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2776; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 747 series airplanes was published in the **Federal Register** on December 21, 1994 (59 FR 65733). That action proposed to require modification of the nacelle strut and wing structure, inspections and checks to detect discrepancies in the adjacent structure, and correction of discrepancies.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Revision of Descriptive Language

One commenter notes that the description of the unsafe condition that appeared in the Discussion section of the preamble to the notice refers to "the structural fail-safe capability of the strut-to-wing attachment." The commenter states that this description is inaccurate, since it implies that the strut-to-wing attachment is inadequate. The commenter suggests that a more accurate description would be "damage tolerance capability of the strut-to-wing attachment." The FAA acknowledges that the commenter's wording is more accurate. The pertinent wording this preamble to the final rule has been revised to reflect this change. Furthermore, the FAA considers the new structure of the strut as meeting the damage tolerance requirements of amendment 45 of section 25.571, "Damage—tolerance and fatigue evaluation of structure" of the Federal Aviation Regulations (14 CFR 25.571, amendment 45), which provides an even higher level of safety than simply fail-safe requirements.

One commenter provides further information to describe the purpose of the proposed modification of the nacelle strut and wing structure. This commenter suggests that the rule should specify that the modification not only significantly improves the load-carrying and durability of the strut-to-wing attachments, but "reduces the reliance on non-routine inspections," as well. The FAA concurs with this suggestion and has revised the Summary section of the preamble to this final rule to include wording relevant to this aspect.

One commenter provides clarification of the description in the Explanation of Service Information section of the preamble to the proposal. That section of the preamble described the various terminating actions specified in the service bulletins listed in paragraph I.C., Table 2, Prior or Concurrent Service

Bulletins," on page 13 of Boeing Alert Service Bulletin 747–54A2159, dated November 3, 1994 (which was referenced in the notice as the appropriate source of service information). The commenter notes that it is replacement of the "diagonal brace strut lower spar fitting" which is specified as a terminating action in that listing. The notice, however, incompletely described that particular terminating action as the replacement of "the diagonal brace strut and wing and attachment fittings." The FAA acknowledges that the commenter provides a more complete description of that terminating action. However, since the Explanation of Service Information section is not restated in this rule, no change to the final rule is necessary.

Clarification of Note 1

One commenter requests that **Note 1** of the proposal be clarified since it is too vague to determine exactly when FAA approval of alternative methods of compliance (AMOC) is necessary. The FAA concurs. Although every effort is made to keep the language simple and clear, it is apparent that some additional explanation is necessary to clarify the intent of **Note 1**. Performance of the requirements of this final rule is "affected" if an operator is unable to perform those requirements in the manner described in this AD. For example, if an AD requires a visual inspection in accordance with a certain service bulletin, and the operator cannot perform that inspection because of the placement of a repair doubler over the structure to be inspected, then "performance of the AD is affected."

In addition, performance of the requirements is "affected" if it is physically possible to perform the requirements, but the results achieved are different from those specified in the AD. For example, if the AD requires a non-destructive test (NDT) inspection in accordance with a certain service bulletin, and the operator is able to move the NDT probe over the specified area in the specified manner, but the results are either meaningless or inaccurate because of a repair doubler placed over that area, then "performance of the AD is affected."

While **Note 1** itself is not capable of addressing every possible situation, "affected" is normally an easy standard to apply: either it is possible to perform the requirements as specified in the AD and achieve the specified results, or it is not possible. Therefore, if the requirements of this AD cannot be performed, then operators must submit a request for an approval of an AMOC from the FAA, in accordance with the provision of paragraph (d) of this final rule.

Accomplishment of any modification requirement of an AD, such as the modification of the nacelle strut and wing structure required by this final rule, does not "affect performance of the AD;" it *is* performance of the AD. Every AD includes a provision, with which operators are familiar, that states, "Compliance required as indicated, unless accomplished previously." If an operator performs such a requirement before the AD is issued, the FAA is confident that the operator will recognize that it has already complied with the AD and no further action (including obtaining approval of an AMOC) is required. This is consistent with current law and practice, which **Note 1** is not intended to change.

Compliance Time for Modification

One commenter requests that the compliance times of proposed paragraph (a), which requires modification of the nacelle strut and wing structure, be extended by 4 months. The commenter notes that a 4-month extension of the compliance times would coincide with the times recommended in the referenced Boeing Alert Service Bulletin 747–54A2159 for that modification. Furthermore, the commenter states that the referenced alert service bulletin contains numerous errors, and a 4-month extension would allow the manufacturer sufficient time to publish a revision to that alert service bulletin to correct those errors.

The FAA does not concur with the commenter's request. In developing an appropriate compliance time for this action, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but the manufacturer's recommendation as to an appropriate compliance time, the availability of required parts, and the practical aspect of installing the required modification within a maximum interval of time allowable for all affected airplanes to continue to operate without compromising safety. Further, the FAA took into account the 3-year and 5-year compliance times recommended by the manufacturer, as well as the number of days required for the rulemaking process; in consideration of these factors, the FAA finds that 32 months and 56 months after the effective date of this final rule will fall approximately at the same time for compliance as recommended by the manufacturer. Furthermore, the FAA does not consider that delaying this action until after the release of the manufacturer's planned revision to the alert service bulletin is warranted, since the changes in the revised alert service bulletin are mostly minor and clarifying in nature and do not affect the procedures to accomplish the modification of the nacelle strut and wing structure.

However, under the provisions of paragraph (d) of the final rule, any operator may submit requests for adjustments to the compliance time along with data demonstrating that such requests will not compromise safety. In evaluating such requests for adjustments to the compliance time, the FAA will closely examine the operator's explanation of why an extension is needed. The FAA will also consider the operator's good faith attempt at complying within the compliance times contained in this final rule, which can be demonstrated by accomplishing the modification on a significant percentage of the airplanes in the operator's fleet prior to submitting a request for adjustments to the compliance times. The FAA will take into consideration the number of airplanes in the operator's fleet on which the modification has been accomplished and the number of unmodified airplanes remaining in the operator's fleet. Additionally, the operator may be asked to submit a schedule for accomplishing the modification on the airplanes remaining in its fleet.

Calculation of Age of Affected Airplanes

Several commenters request that the age of the airplanes be measured as of the date of issuance of Boeing Alert Service Bulletin 747–54A2159, rather than as of the effective date of the AD, as proposed in paragraphs (a)(1) and (a)(2). Some of these commenters state that this change would coincide with the thresholds recommended in that alert service bulletin. One of these commenters notes that this change would move three of the airplanes in its fleet from the applicability provisions of paragraph (a)(2) (which would allow it 32 months) to paragraph (a)(1) (which would allow it the maximum amount of time of 56 months) to accomplish the modification of the nacelle strut and wing structure.

The FAA concurs. As discussed above, the FAA's intent was to align the compliance times as closely as possible with those recommended by the manufacturer in the referenced alert service bulletin. Therefore, paragraphs (a)(1) and (a)(2) of the final rule have been revised to specify that the age of the airplane is to be measured as of November 3, 1994, which is the date of issuance of the alert service bulletin.

Service Bulletins Listed in Note 2

Several commenters request that **Note 2**, which follows proposed paragraph (a)(2)(i), be revised either to exclude or to add service bulletins to the list of bulletins that describe modifications that must be accomplished in order to gain the maximum time allowable (56 months) in which to accomplish the modification of the nacelle strut and wing structure. One of these commenters requests that the list be revised to exclude all Boeing service bulletins, with the exception of the following two:

1. Boeing Alert Service Bulletin 747–54A2155, dated September 23, 1993, which specifies inspection of the midspar fittings; and

2. Boeing Alert Service Bulletin 747–54A2152, Revision 2, dated September 16, 1993, which specifies installation of (third generation fuse pins) upper link diagonal brace and midspar fuse pins [required by AD 93–17–07, amendment 39–8678 (58 FR 45827, August 31, 1993)].

This commenter states that, if the other service bulletins are excluded from the list, safety would not be compromised since various repetitive inspections already are required by numerous other AD's that are intended to ensure the structural integrity of the strut-to-wing attachments and the fail-safe capability of the strut structure.

The FAA does not concur. As stated in the preamble to the proposal, one of the purposes of this rulemaking action is to reduce reliance on inspections of the strut-to-wing attachments. The FAA has determined that long term continued operational safety will be better assured by actual modification of the airframe to remove the source of the problem, rather than by repetitive inspections. Long term inspections may not be providing the degree of safety assurance necessary for the transport airplane fleet. This, coupled with a better understanding of the human factors associated with numerous repetitive inspections, has led the FAA to consider placing less emphasis on special procedures and more emphasis on design improvements. The modification requirement of this final rule is in consonance with these considerations.

Modification of Engine Mounts

Two commenters request that the list of service bulletins be revised to exclude Boeing Alert Service Bulletin 747–71A2269, Revision 1, dated July 7, 1994, which describes procedures for modification of the engine mounts. These commenters state that modification of the engine mounts is an entirely separate subject that is not related to the unsafe condition addressed by the proposed rule. One of these commenters believes that modification of the engine mounts is addressed more appropriately in AD 94–10–05.

The FAA does not concur. The FAA finds that the unsafe conditions addressed in both AD 94–10–05 [amendment 39–8912 (59 FR 25288, May 16, 1994)] and this AD are closely related. AD 94–10–05 requires replacement of the existing nut with a new castellated nut, and references Boeing Alert Service Bulletin 747–71A2269 as the appropriate source of service information. That AD addresses migration of the bolts out of the engine lug joint, which may lead to loss of the engine from the strut. Therefore, the FAA has determined that accomplishing the requirements of AD 94–10–05, prior to accomplishing the requirements of this final rule, reduces reliance on repetitive inspections, and decreases the likelihood of the engine separating from the airplane.

Replacement of Diagonal Braces

Certain commenters request that the list of service bulletins be revised to exclude Boeing Service Bulletin 747–54–2123, which describes procedures for replacement of the diagonal braces. One of these commenters notes that it has found no significant discrepancies on any of the airplanes in its fleet while performing the inspections of this area that are required by AD 90–20–20. Therefore, this commenter contends that replacement of the diagonal braces prior to accomplishment of the proposed modification of nacelle strut and wing structure is unnecessary if the brace lugs have been modified in accordance with Boeing Service Bulletin 747–54–2126 and the diagonal braces have been inspected in accordance with Boeing Service Bulletin 747–54–2123.

Further, these commenters contend that temporarily replacing the diagonal braces is cost-prohibitive: one of these commenters estimates the cost at $50,000 per airplane, while the other commenter estimates the cost at $60,000 per airplane. These commenters also point out that these costs are unreasonable, especially in light of the fact that the diagonal braces must be replaced once more as part of the proposed modification of the nacelle strut and wing structure.

Additionally, one of these commenters suggests that there is potential for a parts availability problem if all operators choose to replace these diagonal braces. Consequently, these commenters request the removal of Boeing Service Bulletin 747–54–2123 from the list of service bulletins.

The FAA does not concur. In addressing these particular comments, the FAA points out that there are three types of diagonal braces currently available:

1. "Type 1 Braces" have been addressed previously by two AD's:

—AD 89–07–15, amendment 39–6167 (54 FR 11693, March 22, 1989), references Boeing Service Bulletin 747–54–2126. That AD requires the lugs of Type 1 Braces to ultrasonically inspected every 1,000 flight cycles. That AD was prompted by reports of cracking in the lugs that had initiated at corrosion pits in the lug bores and was propagated by fatigue. Terminating action for those inspections consists of removing bushings, oversizing of the hole to eliminate corrosion, and installing high interference fit bushings. There have been reports of 11 cracked braces found during the inspections required by this AD.

—AD 90–20–20, amendment 39–6725 (55 FR 37859, September 14, 1990), references Boeing Service Bulletin 747–54–2123. That AD requires Type 1 Braces to be either visually inspected every 1,000 flight cycles, or ultrasonically inspected every 3,000 flight cycles; any cracked brace is required to be replaced with either a serviceable Type 1 Brace or a "Type 2 Brace" (see below). That AD was prompted by the finding of a completely separated brace in service. Separation was attributed to circumferential cracks initiating from a tool mark in the brace's inner surface. (There also has been one additional report of a crack found, but separation did not occur.) Terminating action for these inspections consists of replacing Type 1 Braces with "Type 2 Braces."

2. "Type 2 Braces" are not susceptible to the cracking conditions of the brace's inner surface (as was found on the Type 1 Braces) because of their revised internal and external surface finish. Additionally, during production, the lugs associated with these Type 2 Braces were modified in accordance with the terminating action specified in AD 89–07–15; with this modification, the ultrasonic inspections required by that AD are not necessary on this type of brace.

3. "Type 3 Braces" are those that are required to be installed as part of the full strut modification program on which this AD is based. These braces are optimal because they have increased strength and are not susceptible to the type of cracking found in Type 1 Braces.

The FAA points out that this final rule provides operators 32 months in which to accomplish the full strut modification if Type 1 Braces are currently installed. Likewise, this final rule provides operators 56 months in which to accomplish the full strut modification if Type 2 Braces are currently installed, or if Type 2 Braces are installed within 32 months (and the additional modifications specified in the service bulletins listed in **Note 2** are accomplished, as well).

Optimally, the FAA would prefer that all affected airplanes be modified within 32 months. However, when developing the compliance time for this AD, the FAA recognized the high costs (down time) that would be imposed on operators when accomplishing the full strut modification program. In so doing, the FAA looked for ways to lessen that economic burden, while still ensuring that a higher level of safety would exist than that currently provided. Based on analyses following relevant accidents involving failure of the strut-to-wing attachment and subsequent separation of the engine from the airplane during flight, the FAA determined that the Type 1 Brace, with its extensive history of service difficulties, is not adequate for long term assurance of safety. Even with repetitive inspections, these Type 1 Braces have inadequate damage tolerance. In light of this and the catastrophic consequences of fatigue cracking and/or corrosion in the strut-to-wing attachments, the FAA has determined that Type 1 Braces must be removed from the fleet sooner than the other braces that have a better service record.

As for the costs of replacement of the braces, the FAA finds that the figures quoted by the commenters need clarification. The manufacturer has provided the following figures relative to costs:

—Installation of Type 2 Braces requires from 88 to 116 work hours per airplane, at an average labor rate of $60 per work hour. The cost of each brace is, at most, $13,282 (in 1990 dollars) per brace; there are 4 braces on each airplane. Using these figures, the cost to install four Type 2 Braces on an airplane would be, at most, $53,128 in parts and $6,960 in labor charges.

—Parts and labor costs for the installation of Type 3 Braces, as part of the full strut modification kit, will be absorbed by the manufacturer.

Regardless of these costs, the FAA has determined that the safety benefit justifiably outweighs the economic cost of replacing diagonal braces. Further, the replacement of the Type 1 Brace with a Type 2 Brace is required only if the operator wants the longer compliance time of 56 months for accomplishing the full strut modification. This extended compliance time lessens the economic impact on operators in terms of the costs of special scheduling and down time. The FAA notes that certain operators have already accomplished the full strut modification; these operators have found it to be more cost effective to do so, since they incur no charges for parts. A full discussion of the cost impact of this rule on U.S. operators is discussed later in this preamble.

As for the availability of parts, the manufacturer has advised that there would be a problem with parts availability only if many of the affected operators elected to install the Type 2 Braces as an interim measure. However, as a matter of fact, both the manufacturer and the FAA expect that many operators will not elect to do this, but will opt to install the full strut modification, which includes the Type 3 Brace. The manufacturer has indicated that there are ample numbers of the full strut modification kits available.

Rework of Midspar Fitting Lugs

One commenter requests that the list of service bulletins be revised to add Boeing Service Bulletin 747–54–2100 as an alternative to Boeing Alert Service Bulletin 747–54A2152 (original or Revision 1). The commenter believes that procedures for rework of the midspar fitting lugs, which is described Service Bulletin 747–54–2100, is equivalent to that specified in Service Bulletin 747–54A2152.

The FAA does not concur, since it does not find that the two procedures described in the referenced service bulletins are equivalent. For example, the rework procedure described in Boeing Service Bulletin 747–54–2100 does not include an "insurance" cut that is included in the rework procedure described in Boeing Alert Service Bulletin 747–54A2152 (original issue and Revision 1). Further, Revision 2 of Boeing Alert Service Bulletin 747–54A2152 has refined the procedure even further: this revision [which is referenced in paragraphs (a)(2)(iii) and (a)(2)(iv) of the final rule] describes a magnetic particle inspection to detect cracking of the midspar fitting lugs. Consequently, the FAA finds the procedures described in Revision 2 of Boeing Alert Service Bulletin 747–54A2152 to be significantly better in detecting and removing undetected cracks than those described in the earlier versions of that alert service bulletin or in Boeing Service Bulletin 747–54–2100.

Clarification of Requirements for Modified Airplanes

One commenter requests that the requirements of proposed paragraph (a)(2)(i) be clarified. The commenter notes that Boeing Service Bulletin 747–54–2062, Revision 5, which is referenced in the list of modifications under **Note 2** of the proposal, must be accomplished to obtain the maximum amount of time allowable (56 months) in which to accomplish the proposed modification of the nacelle strut and wing structure. (These modifications are described in the service bulletins listed in paragraph I.D., "Compliance," on page 17 of Boeing Alert Service Bulletin 747–54A2159, dated November 3, 1994.) However, the commenter notes that Revision 7 of that service bulletin, which is referenced in the list of terminating actions for the proposed rule, must be accomplished prior to or concurrently with the proposed modification of the nacelle strut and wing structure. (These terminating actions are described in the service bulletins listed in paragraph I.C., Table 2, "Prior or Concurrent Service Bulletins;" on page 13 of Boeing Alert Service Bulletin 747–54A2159, dated November 3, 1994.)

The FAA concurs that clarification is warranted. Although **Note 2** following paragraph (a)(2)(i) clearly states that subsequent revisions of the service bulletins "are acceptable and preferred for accomplishment of the modifications," a footnote has been added to the final rule following that list to point out specifically that additional actions described in a subsequent revision of that service bulletin are required to be accomplished prior to or concurrently with the modification of the nacelle strut and wing structure, required by paragraph (a) of the final rule.

Shortening the Compliance Times of Other Related AD's

One commenter considers it inappropriate to use the proposed rule to shorten the 4,000-landing compliance time of AD 87–04–13 R1, amendment 39–5546 (52 FR 3421, February 4, 1987). That AD requires repetitive ultrasonic inspections of the fastener holes of the midspar fittings. The commenter states that, if the 1,000-landing compliance time specified in proposed paragraphs (a)(2)(ii)(B) and (a)(2)(iv)(B) is appropriate to accomplish the requirements of the proposal, then it

should also be appropriate for accomplishing the inspection requirements of AD 87–04–13 R1.

Similarly, the commenter states that it is equally inappropriate to use the proposal to shorten the 5,000-landing compliance time of AD 93–17–07. That AD requires repetitive ultrasonic inspections of the inboard midspar fitting lugs and references Boeing Alert Service Bulletin 747–54A2152 (original issue or Revision 1) as the appropriate source of service information. The commenter states that if the 2,500-landing compliance time specified in proposed paragraphs (a)(2)(iii)(B) and (a)(2)(iv)(C) is appropriate to accomplish the requirements of the proposal, then it should also be appropriate for accomplishing the requirements of AD 93–17–07. The commenter believes that the appropriate means to effect a change to the compliance times of AD 87–04–13 R1 and AD 93–17–07 should be by revising those AD's.

The FAA concurs with the commenter's observations.

As for AD 87–04–13 R1, the FAA will consider re-examining its compliance time to determine if a revision to it is appropriate. However, any revision to that AD would be proposed as a separate rulemaking action. Further, in re-examining the compliance times of proposed paragraphs (a)(2)(ii)(B), (a)(2)(iii)(B), (a)(2)(iv)(B), and (a)(2)(iv)(C), the FAA finds that operators may not be afforded the opportunity to obtain the maximum amount of time allowable to accomplish the modification of the nacelle strut and wing structure if the "shortened" compliance times of AD 87–04–13 R1 (from 4,000 landings to 1,000 landings) and AD 93–17–07 (from 5,000 landings or 5 years to 2,500 landings or 3 years) have already been exceeded. Therefore, the FAA has revised those paragraphs of the final rule to include a "grace period."

As for AD 93–17–07, **Note 4** of this final rule explains that the compliance time of 2,500 landings or 3 years since rework of the lugs, whichever occurs earlier, coincides with the compliance time recommended in Revision 2 of Boeing Alert Service Bulletin 747–54A2152, dated September 15, 1993, which the FAA has approved as an alternative method of compliance for accomplishment of the requirements of AD 93–17–07. However, the FAA will consider re-examining the compliance time of AD 93–17–07 to determine if further rulemaking is warranted. In the interim, the compliance time of paragraphs (a)(2)(iii)(B) and (a)(2)(iv)(C) of this final rule will remain unchanged. Any revision to the compliance time of AD 93–17–07, if deemed necessary, must be proposed in a separate rulemaking action.

Inspection Interval for the Inboard Midspar Fitting Lugs

One commenter requests that proposed paragraph (a)(2)(iii)(B) be revised to require the reduced 2,500-cycle compliance time only for the ultrasonic inspection of the inboard midspar fitting lugs. This change would make this requirement consistent with that of AD 93–17–07, amendment 39–8678 (58 FR 45827, August 31, 1993). This commenter also notes that outboard struts do not have spring beams.

The FAA concurs. Further, the FAA finds that this change is also applicable to paragraph (a)(2)(iv)(C) of the final rule. Therefore, paragraphs (a)(2)(iii)(B) and (a)(2)(iv)(C) of the final rule have been revised accordingly.

Correction of Typographical Error in Note 6

Three commenters request that a typographical error that appeared in **Note 6** [which follows proposed paragraph (a)(2)(v)] be corrected. The commenters note that the Table in **Note 6** erroneously referred to Boeing Alert Service Bulletin 747–54A2159. The correct reference should have been Boeing Alert Service Bulletin 747–54A2152, as it correctly appeared in paragraphs (a)(2)(iii) and (a)(2)(iv) of the proposal. The FAA concurs and has made the correction accordingly. Additionally, the FAA has reformatted the Table in **Note 6** for purposes of clarification: the column headed "Revision Level" has been removed, and the revision level of the service bulletin has been inserted adjacent to the service bulletin number itself.

Requirements Redundant to Part 121

One commenter requests that proposed paragraph (b) be deleted since the proposed inspection and repair of components (referenced in Notes 8, 9, and 10 of the Accomplishment Instructions on page 150 of Boeing Alert Service Bulletin 747–54A2159, dated November 3, 1994) are redundant to the requirements of part 121 of the Federal Aviation Regulations (14 CFR 121). Furthermore, the commenter believes that the proposed torque check of the fasteners of the diagonal brace fittings (referenced in Note 11 of the alert service bulletin) should be incorporated as part of the Accomplishment Instructions of the Boeing Alert Service Bulletin 747–54A2159, rather than as merely a Note in the Accomplishment Instructions.

The FAA does not concur with the commenter that the requirements of paragraph (b) should be deleted from the final rule. According to section 39.1 of the Federal Aviation Regulations (14 CFR 39.1), the issuance of an AD is based on the finding that an unsafe condition exists or is likely to develop in aircraft of a particular type design. Further, it is within the FAA's authority to issue an AD to require actions to address unsafe conditions that are not otherwise being addressed (or addressed adequately) by normal maintenance procedures. The FAA points out that fatigue cracking and corrosion in the strut-to-wing attachments have resulted in several incidents and catastrophic accidents. Although 14 CFR 121 addresses damage found on components during other maintenance activities, the FAA has determined that the catastrophic consequences of the unsafe condition are such that reiterating the necessity of performing inspections and repairs when any damage or corrosion is found while performing the modification of the nacelle strut and wing structure is warranted and necessary. The AD is the appropriate vehicle for mandating such actions.

AD's Terminated by This Final Rule

One commenter notes that the AD's listed in proposed paragraph (c) as those that are terminated once the actions of the proposal are accomplished, differs from those listed in Table 1 of Boeing Alert Service Bulletin 747–54A2159.

The FAA concurs that a difference does exist. However, several of the AD's included in the listing contained in the Boeing alert service bulletin have been superseded by new AD's. The FAA points out that, when an AD is superseded, it is deleted from the system, and as such, no longer exists, since it has been replaced with a "new" AD that has a new (different) AD number and amendment number. The FAA considers that referencing nonexistent AD's would serve no meaningful purpose, and may result in some confusion for affected operators. Consequently, no change to paragraph (c) of the final rule is necessary.

Clarification of Cost Estimate Information

Two commenters request that the cost estimate be revised to include the cost of out-of-service time for each aircraft during the time that the modification is accomplished, and the additional fuel costs that would be incurred due to the additional weight added to each aircraft by the modification hardware.

The FAA does not concur that a revision is necessary. The appropriate number of hours required to accomplish the required actions, specified as between 7,700 and 8,892 work hours in the economic impact information, below, was developed with data provided by the manufacturer. This number represents the time required to gain access, remove parts, inspect, modify, install, and close up. The cost analysis in AD rulemaking actions typically does not include out-of-service time for each aircraft or additional fuel costs, as was suggested by the commenter. These costs would be impossible to calculate accurately due the differences in out-of-service time for each operator. Furthermore, the increase in fuel costs due to the weight added by the modification, would vary greatly from operator to operator, depending upon airplane utilization.

The Air Transport Association of America (ATA) requests that the FAA include costs "beyond just parts and labor costs" when calculating the estimated costs to accomplish the proposed actions. The ATA points out that the FAA should consider such costs to avoid requiring actions that the ATA considers inconsequential.

The FAA does not concur. Contrary to the ATA's assertion, in establishing the requirements of all AD's, the FAA does consider cost impact to operators beyond the estimates of parts and labor costs contained in AD preambles. For example, where safety considerations allow, the FAA attempts to impose compliance times that generally coincide with operators' maintenance schedules. However, because operators' schedules vary substantially, the FAA is unable to accommodate every operator's optimal scheduling in each AD. Each AD does allow individual operators to obtain approval for extensions of compliance times, based on a showing that the extension will not affect safety adversely. Therefore, the FAA does not consider it appropriate to attribute to the AD, the costs associated with the type of special scheduling that might otherwise be required.

Furthermore, because the FAA generally attempts to impose compliance times that coincide with operators' scheduled maintenance, the FAA considers it inappropriate to attribute the costs associated with aircraft "downtime" to the cost of the AD, because, normally, compliance with the AD will not necessitate any additional downtime beyond that of a regularly scheduled maintenance hold. Even if, in some cases, additional downtime is necessary for some airplanes, the FAA does not possess sufficient information to evaluate the number of airplanes that may be so affected or the amount of additional downtime that may be required. Therefore, attempting to estimate such costs would be futile.

The FAA points out that this AD is an excellent example of the fact that costs to operators are fully considered beginning at the earliest possible stages of AD development. In this case, the service bulletin that is referenced in this final rule was developed by Boeing only after extensive and detailed consultations with large numbers of operators of Model 747's. The compliance times and various optional means of compliance presented in this AD are based on those consultations, and were developed in order to minimize the economic impacts on operators to the extent possible consistent with the service bulletin's and this AD's safety objectives. Therefore, the costs that the ATA asserts were not considered by the FAA have, in fact, been a major consideration throughout this AD process; the fact that the FAA has not attempted to quantify speculative costs does not diminish the extent of this consideration.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 600 Model 747 series airplanes equipped with Pratt & Whitney Model JT9D series engines (excluding Model JT9D–70 engines) of the affected design in the worldwide fleet. The FAA estimates that 146 airplanes of U.S. registry will be affected by this AD.

The full strut modification required by this AD may take as many as 7,700 to 8,892 work hours to accomplish, depending upon the configuration of the airplane. The manufacturer will incur the cost of labor, on a pro-rated basis, with 20 years being the expected life of these airplanes. The total cost impact of this AD on U.S. operators is based on the median age for the fleet of Model 747 series airplanes equipped with Pratt & Whitney Model JT9D series engines, which is estimated to be 15 years. The average labor rate is estimated to be $60 per work hour. Required parts will be supplied by the manufacturer at no cost to the operator. Based on these figures, the cost impact of this proposal on U.S. operators is estimated to be between $50,589,000 ($346,500 per airplane) and $58,420,440 ($400,140 per airplane).

This cost impact figure does not reflect the cost of the terminating actions described in the service bulletins listed in paragraph I.C., Table 2, "Prior or Concurrent Service Bulletins," on page 13 of Boeing Alert Service Bulletin 747–54A2159, dated November 3, 1994, that are required to be accomplished prior to or concurrently with the modification of the nacelle strut and wing structure. Since some operators may have accomplished certain modifications on some or all of the airplanes in its fleet, while other operators may not have accomplished any of the modifications on any of the airplanes in its fleet, the FAA is unable to provide a reasonable estimate of the cost of accomplishing the terminating actions described in the service bulletins listed in Table 2 of the Boeing alert service bulletin.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. However, the FAA is aware that some operators have already installed the strut modification that is required by this AD; therefore, the future economic cost impact of this rule on U.S. operators is reduced by that amount.

The FAA recognizes that the obligation to maintain aircraft in an airworthy condition is vital, but sometimes expensive. Because AD's require specific actions to address specific unsafe conditions, they appear to impose costs that would not otherwise be borne by operators. However, because of the general obligation of operators to maintain aircraft in an airworthy condition, this appearance is deceptive. Attributing those costs solely to the issuance of this AD is unrealistic because, in the interest of maintaining safe aircraft, prudent operators would accomplish the required actions even if they were not required to do so by the AD.

A full cost-benefit analysis has not been accomplished for this AD. As a matter of law, in order to be airworthy, an aircraft must conform to its type design and be in a condition for safe operation. The type design is approved only after the FAA makes a determination that it complies with all applicable airworthiness requirements. In adopting and maintaining those requirements, the FAA has already made the determination that they establish a level of safety that is cost-

beneficial. When the FAA, as in this proposed AD, makes a finding of an unsafe condition, this means that the original cost-beneficial level of safety is no longer being achieved and that the required actions are necessary to restore that level of safety. Because this level of safety has already been determined to be cost-beneficial, a full cost-benefit analysis for this AD would be redundant and unnecessary.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–10–16 Boeing: Amendment 39–9233. Docket 94–NM–187–AD.

Applicability: Model 747 series airplanes having line positions 001 through 814 inclusive, equipped with Pratt & Whitney Model JT9D series engines (excluding Model JT9D–70 engines), certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the strut and subsequent loss of the engine, accomplish the following:

(a) Accomplish the modification of the nacelle strut and wing structure in accordance with Boeing Alert Service Bulletin 747–54A2159, dated November 3, 1994, at the time specified in either paragraph (a)(1) or (a)(2) of this AD, as applicable. All of the terminating actions described in the service bulletins listed in paragraph I.C., Table 2, "Prior or Concurrent Service Bulletins," on page 13 of Boeing Alert Service Bulletin 747–54A2159, dated November 3, 1994, must be accomplished in accordance with those service bulletins prior to or concurrently with the accomplishment of the modification of the nacelle strut and wing structure required by this paragraph.

(1) For airplanes that are younger than 15 years as of November 3, 1994, within 56 months after the effective date of this AD, accomplish the modification.

(2) For airplanes that are 15 years or older as of November 3, 1994, accomplish the modification, and other required actions, at the time specified in paragraph (a)(2)(i), (a)(2)(ii), (a)(2)(iii), (a)(2)(iv), or (a)(2)(v) of this AD, as applicable.

(i) For airplanes on which all of the modifications described in the service bulletins referenced by paragraph I.D., "Compliance," on page 17 of Boeing Alert Service Bulletin 747–54A2159, dated November 3, 1994, have been accomplished: Within 56 months after the effective date of this AD, accomplish the modification of the nacelle strut and wing structure and perform the inspections of the adjacent structure that has not been replaced by the modification.

Note 2: Paragraph I.D., "Compliance," on page 17 of Boeing Alert Service Bulletin 747–54A2159, dated November 3, 1994, references the following Boeing service bulletins. Subsequent revisions of the following service bulletins are acceptable and preferred for accomplishment of the modifications described therein:

Service bulletin No.	Revision level	Date
747–54–2027	1	February 23, 1973.
747–54–2030	Initial release.	February 23, 1973.
*747–54–2062.	5	June 1, 1984.
747–54A2069	6	October 22, 1982.
747–54–2118	Initial release.	July 25, 1986.
747–54–2123	1	March 1, 1990.
747–54A2151	Initial release.	October 6, 1992.
747–54A2152	2	September 16, 1993.
747–54A2155	Initial release.	September 23, 1993.
747–57A2235	Initial release.	June 27, 1986.
747–71A2269	1	July 7, 1994.

*AD 79–17–07, amendment 39–3533, requires inspection of the strut-to-diagonal brace fittings, which may be terminated by replacing the aluminum fittings with steel fittings in accordance with Revision 1 (or subsequent revisions) of Boeing Service Bulletin 747–54–2062. Revision 7 of this service bulletin (referenced in paragraph I.C., Table 2, "Prior or Concurrent Service Bulletins," on page 13 of Boeing Alert Service Bulletin 747–54A2159, dated November 3, 1994) specifies the replacement of aluminum fittings with steel fittings and sealing the gap between the steel fitting and the closure web.

(ii) For airplanes on which all of the modifications described in the service bulletins referenced by paragraph I.D., "Compliance," on page 17 of Boeing Alert Service Bulletin 747–54A2159, dated November 3, 1994, have been accomplished, excluding the modification described in Boeing Service Bulletin 747–54–2118, dated July 25, 1986:

(A) Within 56 months after the effective date of this AD, accomplish the modification of the nacelle strut and wing structure and perform the inspections of the adjacent structure that has not been replaced by the modification.

(B) Repeat the ultrasonic inspections to detect cracking of the aft-most two fastener holes in both strut midspar fittings on the inboard and outboard nacelle struts, as required by AD 87–04–13 R1, amendment 39–5546, within 4,000 landings following the immediately preceding inspection performed in accordance with AD 87–04–13 R1 or within 1,000 landings after the effective date of this AD, whichever occurs earlier, in accordance with Boeing Service Bulletin 747–54–2118, dated July 25, 1986, until the modification of the nacelle strut and wing structure is accomplished in accordance with Boeing Alert Service Bulletin 747–54A2159, dated November 3, 1994. Repeat this inspection thereafter at intervals not to exceed 1,000 landings.

Note 3: These inspections of the fastener holes are required by AD 87–04–13 R1, amendment 39–5546, at 4,000-landing intervals. Accomplishment of the inspections of the fastener holes, as required by this paragraph at 1,000-landing intervals, constitutes compliance with paragraph A. of AD 87–04–13 R1.

(iii) For airplanes on which all of the modifications described in the service bulletins referenced by paragraph I.D., "Compliance," on page 17 of Boeing Alert Service Bulletin 747–54A2159, dated November 3, 1994, have been accomplished; except that rework of the midspar fitting lugs was accomplished in accordance with Boeing Alert Service Bulletin 747–54A2152, dated December 23, 1992, or Revision 1, dated July 15, 1993, instead of Revision 2, dated September 16, 1993:

(A) Within 56 months after the effective date of this AD, accomplish the modification of the nacelle strut and wing structure and perform the inspections of the adjacent structure that has not been replaced by the modification.

(B) Prior to the accumulation of 3 years since rework of the inboard lugs, or within 6 months after the effective date of this AD, whichever occurs later, perform an ultrasonic inspection to detect cracking of the midspar fitting lugs of the inboard struts, in accordance with Boeing Alert Service Bulletin 747–54A2152, Revision 2, dated September 16, 1993. Repeat this inspection thereafter as required by AD 93–17–07.

Note 4: This ultrasonic inspection is required by AD 93–17–07, amendment 39–8678, to be performed prior to the accumulation of 5,000 landings or 5 years since accomplishment of the rework of the lugs, whichever occurs earlier, in accordance with Boeing Alert Service Bulletin 747–54A2152, dated December 23, 1992, or Revision 1, dated July 15, 1993. Repetitive inspections are required by that AD at intervals not to exceed 500 landings for inboard struts and 1,000 landings for outboard struts. Since the issuance of that AD, the FAA has approved Revision 2 of Boeing Alert Service Bulletin 747–54A2152, dated September 16, 1993, as an alternative method of compliance for accomplishment of these ultrasonic inspections and rework of the lugs. Revision 2 of the alert service bulletin recommends that inboard lugs that have been reworked in accordance with the original issue or Revision 1 of the alert service bulletin be inspected prior to the accumulation of 2,500 landings or 3 years since accomplishment of the rework of the lugs, whichever occurs earlier. Therefore, accomplishment of ultrasonic inspections prior to the accumulation of 2,500 landings or 3 years since accomplishment of rework of the lugs, whichever occurs earlier, and thereafter as required by AD 93–17–07, constitutes compliance with paragraph (a)(2)(i)(A) of AD 93–17–07 for the inboard lugs.

(iv) For airplanes on which all of the modifications described in the service bulletins referenced by paragraph I.D., "Compliance," on page 17 of Boeing Alert Service Bulletin 747–54A2152, dated November 3, 1994, have been accomplished; except that rework of the midspar fitting lugs was accomplished in accordance with the Boeing Alert Service Bulletin 747–54A2152, dated December 23, 1992, or Revision 1, dated July 15, 1993, instead of Revision 2, dated September 16, 1993; and excluding the modification described in Boeing Service Bulletin 747–54–2118, dated July 25, 1986:

(A) Within 56 months after the effective date of this AD, accomplish the modification of the nacelle strut and wing structure and perform the inspections of the adjacent structure that has not been replaced by the modification.

(B) Repeat the ultrasonic inspections to detect cracking of the aft-most two fastener holes in both strut midspar fittings on the inboard and outboard nacelle struts, as required by AD 87–04–13 R1, within 4,000 landings following the immediately preceding inspection performed in accordance with AD 87–04–13 R1, or within 1,000 landings after the effective date of this AD, whichever occurs earlier, in accordance with Boeing Service Bulletin 747–54–2118, dated July 25, 1986, until the modification of the nacelle strut and wing structure is accomplished in accordance with Boeing Alert Service Bulletin 747–54A2159, dated November 3, 1994. Repeat this inspection thereafter at intervals not to exceed 1,000 landings.

(C) Prior to the accumulation of 3 years since rework of the inboard lugs, or within 6 months after the effective date of this AD, whichever occurs later, perform an ultrasonic inspection to detect cracking of the midspar fitting lugs of the inboard struts, and repeat the inspection thereafter as required by AD 93–17–07, until the modification of the nacelle strut and wing structure is accomplished in accordance with Boeing Alert Service Bulletin 747–54A2159, dated November 3, 1994.

Note 5: Notes 3 and 4 are also applicable to this paragraph.

(v) For all other airplanes not subject to the requirements of paragraph (a)(2)(i), (a)(2)(ii), (a)(2)(iii), or (a)(2)(iv) of this AD: Within 32 months after the effective date of this AD, accomplish the modification of the nacelle strut and wing structure and perform the inspections of the adjacent structure that has not been replaced by the modification.

Note 6: The following table graphically illustrates the applicability and compliance times for accomplishing the modification of the nacelle strut and wing structure as required by paragraph (a)(2) of this AD.

Paragraph	Accomplishment of service bulletins	Compliance time (months)
(i)	All in paragraph I.D.	56
(ii)	All except 747–54–2118.	56
(iii)	All except 747–54A2152, Revision 2.	56
(iv)	All except 747–54–2118 and 747–54A2152, Revision 2.	56
(v)	(*)	32

*Paragraph (a)(2)(v) of this AD is applicable to all airplanes, other than those addressed in paragraphs (a)(2)(i), (a)(2)(ii), (a)(2)(iii), and (a)(2)(iv) of this AD. As such, these airplanes may have accomplished some or none of the service bulletins listed in paragraph I.D. of Boeing Alert Service Bulletin 747–54A2159, dated November 3, 1994.

(b) Perform the inspections and checks specified in paragraph III, NOTES 8, 9, 10, and 11 of the Accomplishment Instructions on pages 149 and 150 of Boeing Alert Service Bulletin 747–54A2159, dated November 3, 1994, concurrently with the modification of the nacelle strut and wing structure required by paragraph (a) of this AD. Prior to further flight, correct any discrepancies found, in accordance with the alert service bulletin.

(c) Accomplishment of the modification of the nacelle strut and wing structure in accordance with Boeing Alert Service Bulletin 747–54A2159, dated November 3, 1994, constitutes terminating action for the inspections required by the following AD's:

AD No.	Amendment No.	Federal Register citation	Date of publication
94–17–17	39–9012	59 FR 44903	August 31, 1994.
94–10–05	39–8912	59 FR 25268	May 16, 1994.
93–17–07	39–8678	58 FR 45827	August 31, 1993.
93–03–14	39–8518	58 FR 14513	March 18, 1993.
92–24–51	39–8439	57 FR 60118	December 18, 1992.
92–07–11	39–8207	57 FR 10415	March 26, 1992.
90–20–20	39–6725	55 FR 37859	September 14, 1990.
90–17–18	39–6702	55 FR 33279	August 15, 1990.
89–07–15	39–6167	54 FR 11693	March 22, 1989.
87–04–13 R1	39–5546	54 FR 3421	February 4, 1987.

AD No.	Amendment No.	Federal Register citation	Date of publication
86-08-03	39-5289	51 FR 12836	April 16, 1986.
86-07-06	39-5270	51 FR 10821	March 31, 1986.
86-05-11	39-5255	51 FR 8479	March 12, 1986.
86-23-01	39-5450	51 FR 37712	October 24, 1986.
82-22-02	39-4476	47 FR 46842	October 21, 1982.
80-08-02	39-3738	45 FR 24450	April 10, 1980.
79-17-07	39-3533	44 FR 50033	August 27, 1979.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 7: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The modification, inspections, checks, and correction of discrepancies shall be done in accordance with Boeing Alert Service Bulletin 747-54A2159, dated November 3, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on June 21, 1995.

Issued in Renton, Washington, on May 10, 1995.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95-11968 Filed 5-19-95; 8:45 am]

BILLING CODE 4910-13-U

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14 CFR Part 39

[Docket No. 94-NM-163-AD; Amendment 39-9232; AD 95-10-15]

Airworthiness Directives; British Aerospace Model BAe 146-100A, -200A, -300A and Model Avro 146-RJ70A, -RJ85A, and -RJ100A Airplanes Equipped With Certain Air Cruisers Evacuation Slides

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace Model BAe 146-100A, -200A, -300A and Model Avro 146-RJ70A, -RJ85A, and -RJ100A airplanes, that requires repetitive inspections to verify proper deployment of the evacuation slide at each door position, and various follow-on actions to correct discrepancies. This amendment is prompted by a report that, during operational checks of evacuation slides on in-service airplanes, the inflation valves failed to deploy the evacuation slide properly. The actions specified by this AD are intended to prevent failure of the evacuation slide to deploy automatically on demand, which would necessitate the flightcrew to manually deploy the slide; this situation could delay or impede the evacuation of passengers during an emergency.

DATES: Effective June 21, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 21, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from British Aerospace Holdings, Inc., Avro International Aerospace Division, P.O. Box 16039, Dulles International Airport, Washington DC 20041-6039; and Air Cruisers Company, P.O. Box 180, Belmar, New Jersey 07719-0180. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2148; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain British Aerospace Model BAe 146-100A, -200A, -300A and Model Avro 146-RJ70A, -RJ85A, and -RJ100A airplanes was published in the **Federal Register** on November 7, 1994 (59 FR 55382). That action proposed to require repetitive inspections to verify proper deployment of the evacuation slide at each door position, and various follow-on actions to correct discrepancies. That action also proposed to require modification of the inflation valve of the evacuation slide, which would terminate the repetitive inspection requirements.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter questions the need for the rule since the major U.S. operators of the affected airplanes have accomplished the proposed actions. The commenter also states that for over two years there have been no reports of in-service deployment or inflation problems in the field, since the issuance of Air Cruisers Service Bulletin S.B. 201-25-17, dated June 4, 1992, referenced in the proposal as the appropriate source of service information. However, the commenter notes that, during an evacuation demonstration, an isolated incident did occur in which the inflation valve did not inflate automatically.

From these comments, the FAA infers that the commenter is requesting that the rule be withdrawn. The FAA does not concur. The FAA has received no documentation to indicate that all affected U.S. operators have accomplished the actions required by this AD. Even if that were the case, issuance of this AD is necessary to ensure that the required actions are accomplished on any British Aerospace Model BAe 146-100A, -200A, -300A and Model Avro 146-RJ70A, -RJ85A, and -RJ100A airplanes that may be imported and added to the U.S. Register in the future. Although the FAA recognizes that there have been no cases of failure of the slides in service, the potential for such failures does exist with regard to these airplanes. This AD action addresses that potential unsafe condition.

This same commenter states that the manufacturer of the inflation valve, Air Cruisers Company, has not agreed to provide the valves at no cost to the operators, as was indicated in the preamble to the notice. The commenter states that the improved inflation valves will cost approximately $600 each. The FAA has verified with the manufacturer that the required parts will cost $600 per valve. The economic impact information, below, has been revised to include the price of required parts.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been added to this final rule to clarify this long standing requirement.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that this change will neither significantly increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 41 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3.5 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $600 per valve (4 valves per airplane). Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $107,010 or $2,610 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95-10-15 British Aerospace Regional Aircraft Limited, AVRO International Aerospace Division (Formerly British Aerospace, plc; British Aerospace Commercial Aircraft Limited): Amendment 39-9232. Docket 94-NM-163-AD.

Applicability: Model British Aerospace BAe 146-100A, -200A, -300A and Model Avro 146-RJ70A, -RJ85A, and -RJ100A airplanes; equipped with Air Cruisers Company evacuation slides, as listed in British Aerospace Service Bulletin S.B. 25-328, Revision 2, dated July 10, 1993; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the evacuation slide to deploy automatically, which necessitates the flight crew to manually deploy the slide and subsequently could delay or impede the evacuation of passengers during an emergency, accomplish the following:

(a) Within 3 months after the effective date of this AD, perform an inspection to verify proper deployment of the evacuation slide at each door position, in accordance with British Aerospace Service Bulletin S.B. 25-328, Revision 2, dated July 10, 1993.

(1) If the slide deploys properly, repeat the inspection thereafter at intervals not to exceed 6 months.

(2) If any slide fails to deploy properly, prior to further flight, conduct the actions specified in paragraphs 2.A.3 through 2.A.6 of the Accomplishment Instructions of the service bulletin.

(b) Within 8 months after the effective date of this AD, modify the inflation valves of the evacuation slide, in accordance with Air Cruisers Company Service Bulletin S.B. 201-25-17, dated June 4, 1992. Accomplishment of this modification constitutes terminating action for the repetitive inspection requirements of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The modification shall be done in accordance with Air Cruisers Company Service Bulletin S.B. 201-25-17, dated June 4, 1992. The inspection shall be done in accordance with British Aerospace Service

Bulletin S.B. 25–328, Revision 2, dated July 10, 1993, which contains the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
1	2	July 10, 1993.
2	1	Sept. 24, 1992.
3,4	Original .	Aug. 21, 1992.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace Holding, Inc., Avro International Aerospace Division, P.O. Box 16039, Dulles International Airport, Washington DC 20041–6039. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on June 21, 1995.

Issued in Renton, Washington, on May 9, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–11905 Filed 5–19–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–NM–150–AD; Amendment 39–9236; AD 95–11–02]

Airworthiness Directives; McDonnell Douglas Model DC–10 and Model MD–11 Series Airplanes and Model KC–10A (Military) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all McDonnell Douglas Model DC–10 series airplanes and Model KC–10A (military) airplanes and certain Model MD–11 series airplanes, that currently requires inspections to detect defects in the upper and lower lock links on the nose landing gear (NLG), and rework or replacement of any defective link with a serviceable link. The actions specified by that AD are intended to prevent collapse of the NLG. This amendment requires accomplishment of a certain inspection that constitutes terminating action for the currently required inspections.

DATES: Effective June 21, 1995. The incorporation by reference of McDonnell Douglas DC–10 Alert Service Bulletin A32–238, dated July 15, 1994, and McDonnell Douglas MC–11 Alert Service Bulletin A32–47, dated July 15, 1994, listed in the regulations was approved previously by the Director of the Federal Register as of September 15, 1994 (59 FR 44900, August 31, 1994).

ADDRESSES: The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: For Model DC–10 series airplanes and Model KC–10A (military) airplanes: Maureen Moreland, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5238; fax (310) 627–5210.

For Model MD–11 series airplanes: Wahib Mina, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5324; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 94–18–07, amendment 39–9020 (59 FR 44900, August 31, 1994), which is applicable to all McDonnell Douglas Model DC–10 series airplanes and Model KC–10A (military) airplanes and certain Model MD–11 series airplanes, was published in the **Federal Register** on December 8, 1994 (59 FR 63278). The action proposed to continue to require inspections to determine the serial numbers and to detect defects in the upper and lower lock links on the nose landing gear (NLG), and rework of any defective lock link, or replacement of any defective lock link with a serviceable lock link. The action also proposed to require an off-aircraft fluorescent penetrant inspection to detect defects in the upper and lower lock links on the NLG, and rework or replacement of any defective link.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposed rule.

The Air Transport Association (ATA) of America supports the proposed rule. However, on behalf of its members, the ATA requests that AD 94–18–07 be revised, rather than superseded, to reduce the administrative time required to incorporate the AD into maintenance records and to avoid unnecessarily complicated recordkeeping. The FAA does not concur. The FAA's current policy is that, whenever a "substantive change" is made to an existing AD that imposes any new burden, the AD must be superseded, rather than revised. "Substantive changes" are those made to any instruction or reference that affects the substance of the AD, and includes part numbers, service bulletin and manual references, compliance times, applicability, methods of compliance, corrective action, inspection requirements, and effective dates. In the case of this AD rulemaking action, the changes being made to the existing AD are considered substantive. This superseding AD is assigned a new amendment number and new AD number; the previous amendment is deleted from the system. This procedure facilitates the efforts of the Principal Maintenance Inspectors in tracking AD's and ensuring that the affected operators have incorporated the latest changes into their maintenance programs.

With regard to paperwork changes required by affected operators, section 121.380(a)(2)(v) of the Federal Aviation Regulations [14 CFR 121.380(a)(2)(v)], "Maintenance recording requirements," requires that persons holding an operating certificate and operating under part 121 of the Federal Aviation Regulations (14 CFR part 121) must keep records "indicating the current status of applicable airworthiness directives, including the method of compliance." Whether an existing AD is superseded or revised, the new AD is assigned a new AD number: a superseding AD is assigned a new 6-digit AD number; a revising AD retains the original 6-digit AD number, but an "R1" is added to it. In either case, the new AD is identified by its "new" AD number, not by the "old" AD number. In light of this, affected operators updating their maintenance records to indicate the current AD status would have to record a new AD number in all cases, regardless of whether the AD is a superseding or a revising AD. Further, operators are always given credit for

work previously performed in accordance with the existing AD by means of the phrase in the compliance section of the AD that states, "Required * * * unless accomplished previously."

Two ATA members state that the proposed rule is unnecessary since AD 94–18–07 is sufficient to ensure the continued airworthiness of the affected airplanes. The FAA infers that commenters request that the proposed rule be withdrawn. The FAA does not concur. As discussed in the preamble of the proposal, since fluorescent penetrant inspections (FPI) of the links were accomplished improperly during manufacturing, defects in the lock links may exist. After manufacture of a lock link, its material is etched and an FPI is performed to detect forging defects. FPI's accomplished on the affected lock links were performed without accomplishing the etching process.

AD 94–18–07 was issued as "interim action," and requires eddy current inspections only of the areas of the links that are considered to be at a higher risk for the existence of forging flaws. That AD provided for an optional terminating action for the eddy current inspections by accomplishing an FPI. The FAA determined that an FPI must be accomplished to inspect the entire link in the manner that was intended during manufacture to ensure that no forging flaws exist. The compliance time for accomplishment of the FPI was sufficiently long so that notice and time for public comment were feasible. Therefore, the FAA specified in AD 94–18–07 that it was considering additional rulemaking to require accomplishment of the FPI. This action contains that requirement.

The FAA has revised paragraph (e)(2) of the final rule to specify, in part, that serviceable lock links are those that have been inspected in accordance with paragraph (d) of this AD. The paragraph reference was inadvertently specified incorrectly in the proposed rule as "paragraphs (a) and (b)."

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 534 Model DC–10 and Model MD–11 series airplanes and Model KC–10A (military) airplanes of the affected design in the worldwide fleet. The FAA estimates that 310 airplanes of U.S. registry will be affected by this AD.

The inspections that were required previously by AD 94–18–07, and retained in this AD, take approximately 4.5 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the total cost impact of the inspection requirements of AD 94–18–07 on U.S. operators is estimated to be $83,700, or $270 per airplane, per inspection cycle.

The fluorescent penetrant inspection required by this AD will take approximately 8 work hours per airplane to accomplish at an average labor rate of $60 per work hour. Based on these figures, the total cost impact of the fluorescent penetrant inspection requirement of this AD on U.S. operators is estimated to be $148,400, or $480 per airplane.

Accomplishment of the fluorescent penetrant inspection required by this AD terminates the repetitive inspection requirement that had been imposed previously by AD 94–18–07. Therefore, accomplishment of that fluorescent penetrant inspection will result in a reduction in costs to affected operators of $83,700 per inspection cycle that will no longer be required.

The number of required work hours for each requirement of this AD, as indicated above, is presented as if the accomplishment of the actions were to be conducted as "stand alone" actions. However, in actual practice, these actions, for the most part, will be accomplished coincidentally or in combination with normally scheduled airplane inspections and other maintenance program tasks. Therefore, the actual number of necessary additional work hours will be minimal in many instances. Additionally, any costs associated with special airplane scheduling will be minimal.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9020 (59 FR 44900, August 31, 1994), and by adding a new airworthiness directive (AD), amendment 39- , to read as follows:

95–11–02 McDonnell Douglas: Amendment 39–9236. Docket 94–NM–150–AD. Supersedes AD 94–18–07, Amendment 39–9020.

Applicability: All Model DC–10 series airplanes and Model KC–10A (military) airplanes; and Model MD–11 series airplanes, as listed in McDonnell Douglas MD–11 Alert Service Bulletin A32–47, dated July 15, 1994; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (h) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

Note 2: Visual inspections of the lock links, as required by paragraph (a) of this AD, and eddy current inspections of the lock links, as

required by paragraph (b)(1) of this AD, that have been accomplished prior to the effective date of this AD in accordance with McDonnell Douglas DC–10 Alert Service Bulletin A32–237, dated April 11, 1994; or McDonnell Douglas MD–11 Alert Service Bulletin A32–44, dated March 22, 1994, or Revision 1, dated June 16, 1994; as applicable; are considered acceptable for compliance with the applicable action specified in this amendment.

To prevent collapse of the nose landing gear (NLG), accomplish the following:

(a) Within 30 days after September 15, 1994 (the effective date of AD 94–18–07, amendment 39–9020), perform a visual inspection to determine the serial number of the upper lock links, part number ACG7396–1, and the lower lock links, part number ACG7237–1, on the NLG, in accordance with McDonnell Douglas DC–10 Alert Service Bulletin A32–238, dated July 15, 1994; or McDonnell Douglas MD–11 Alert Service Bulletin A32–47, dated July 15, 1994; as applicable.

(b) If the serial number of the lock link coincides with any of the suspect serial numbers listed in McDonnell Douglas DC–10 Alert Service Bulletin A32–238, dated July 15, 1994; or McDonnell Douglas MD–11 Alert Service Bulletin A32–47, dated July 15, 1994; as applicable; accomplish paragraphs (b)(1) and (b)(2) of this AD in accordance with the alert service bulletin.

(1) Prior to further flight, perform an eddy current inspection to detect defects in the lock link in accordance with Phase I ("Eddy Current Inspection—On Aircraft") of the Accomplishment Instructions of the applicable alert service bulletin.

(2) Perform an expanded eddy current inspection to detect defects in the lock link, in accordance with Phase II ("Expanded Eddy Current Inspection—Off Aircraft") of the Accomplishment Instructions of the applicable alert service bulletin at the time specified in paragraph (b)(2)(i) or (b)(2)(ii) of this AD, as applicable.

(i) For Model DC–10 series airplanes and Model KC–10A airplanes: Inspect prior to the accumulation of 450 landings after September 15, 1994 (the effective date of AD 94–18–07, amendment 39–9020), and thereafter at intervals not to exceed 450 landings until the inspection required by paragraph (d) of this AD is accomplished.

(ii) For Model MD–11 series airplanes: Inspect prior to the accumulation of 330 landings after September 15, 1994 (the effective date of AD 94–18–07, amendment 39–9020), and thereafter at intervals not to exceed 330 landings until the inspection required by paragraph (d) of this AD is accomplished.

(c) If any defect is found during any inspection required by paragraph (b) of this AD, prior to further flight, accomplish either paragraph (c)(1) or (c)(2) of this AD in accordance with McDonnell Douglas DC–10 Alert Service Bulletin A32–238, dated July 15, 1994; or McDonnell Douglas MD–11 Alert Service Bulletin A32–47, dated July 15, 1994; as applicable.

(1) Rework the lock link; or

(2) Replace the defective lock link with a serviceable lock link that has been inspected in accordance with paragraphs (a) and (b) of this AD and, if the lock link was found to contain any defect, that has been reworked in accordance with paragraph (c)(1) of this AD.

(d) Within 15 months after the effective date of this AD, perform a fluorescent penetrant inspection to detect defects of the lock links, in accordance with Phase III ("Fluorescent Penetrant Inspection—Off Aircraft") of the Accomplishment Instructions of McDonnell Douglas DC–10 Alert Service Bulletin A32–238, dated July 15, 1994; or McDonnell Douglas MD–11 Alert Service Bulletin A32–47, dated July 15, 1994; as applicable. Accomplishment of this inspection constitutes terminating action for the inspections required by paragraph (b) of this AD.

(e) If any defect is found during an inspection performed in accordance with paragraph (d) of this AD, prior to further flight, accomplish either paragraph (e)(1) or (e)(2) of this AD in accordance with McDonnell Douglas DC–10 Alert Service Bulletin A32–238, dated July 15, 1994; or McDonnell Douglas MD–11 Alert Service Bulletin A32–47, dated July 15, 1994; as applicable.

(1) Rework the lock link; or

(2) Replace the defective lock link with a serviceable lock link that has been inspected in accordance with paragraphs (a) and (b) of this AD and, if the lock link was found to contain any defect, that has been reworked in accordance with paragraph (e)(1) of this AD.

(f) As of September 15, 1994 (the effective date of AD 94–18–07, amendment 39–9020), no person shall install an upper lock link, part number ACG7396–1, or a lower lock link, part number ACG7237–1, on the NLG of any airplane unless that lock link has been inspected in accordance with paragraphs (a) and (b) of this AD and reworked, as necessary, in accordance with paragraph (c)(1) or (e)(1) of this AD.

(g) Within 30 days after any defect is found during any inspection required by this AD, submit a report of inspection findings to the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California 90712; fax (310) 627–5210. The report must include a description of the defect found, the part number of the defective lock link, the serial number of the defective lock link, the number of landings on the defective lock link, and the serial number of the airplane. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) and have been assigned OMB Control Number 2120–0056.

(h) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(i) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(j) The actions shall be done in accordance with McDonnell Douglas DC–10 Alert Service Bulletin A32–238, dated July 15, 1994; and McDonnell Douglas MD–11 Alert Service Bulletin A32–47, dated July 15, 1994; as applicable. The incorporation by reference of these documents was approved previously by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of September 15, 1994 (59 FR 44900, August 31, 1994). Copies may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

(k) This amendment becomes effective on June 21, 1995.

Issued in Renton, Washington, on May 16, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–12445 Filed 5–19–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–ANE–21; Amendment 39–9227; AD 95–10–10]

Airworthiness Directives; Pratt & Whitney JT8D Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Pratt & Whitney (PW) JT8D series turbofan engines, that currently requires initial and repetitive inspections of certain front compressor fan hubs and shotpeening of the forward and aft rim to web radius. This amendment requires a reduction in the initial inspection interval for front compressor fan hubs installed in all positions of all applicable aircraft, establish a compliance end-date, and clarify the wording of the compliance requirements. This amendment is prompted by a report of a front compressor fan hub fracture installed in a Boeing 737 aircraft that resulted in the release of fan blades and portions of the hub outer rim. The actions specified by this AD are intended to prevent fracture of the front compressor fan hub, which can result in an uncontained engine failure and damage to the aircraft.

DATES: Effective July 21, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 21, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from Pratt & Whitney, Technical Publications Department, M/S 132–30, 400 Main Street, East Hartford, CT, 06108. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington DC.

FOR FURTHER INFORMATION CONTACT: Mark A. Rumizen, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA, 01803–5299; telephone (617) 238–7137 , fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 93–14–14, Amendment 39–8638 (58 FR 39644, July 26, 1993) which is applicable to PW JT8D series turbofan engines, was published in the **Federal Register** on November 21, 1994 (59 FR 59973). That action proposed to reduce the initial inspection interval to require front compressor fan hubs installed in all positions of all applicable aircraft be inspected at the next shop visit, and to establish a compliance end date of December 31, 1999, or 6000 total part cycles (TPC) after the effective date of this AD for the initial inspection. That action also proposed to clarify the wording of paragraph (b)(4) to emphasize that the repetitive inspection is required at the next opportunity when the front compressor fan hub is accessible at the detail level in the shop only after accumulating 2500 additional cycles in service (CIS) since the last inspection. The actions would be required to be accomplished in accordance with Pratt & Whitney (PW) Alert Service Bulletin (ASB) No. A6104, Revision 3, dated June 16, 1994.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter states that the reporting requirements of the AD be removed. The FAA does not concur. This corrective action program was based on a risk analysis that assumed a frequency of inspection relative to fleet usage. The reporting requirements of the AD allow this frequency of inspections to be monitored to ensure it is consistent with the assumptions, thereby confirming that the corrective action program is appropriate for maintaining the forecasted risk level.

One commenter supports the amendment as proposed.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 2165 engines of the affected design in the worldwide fleet. The FAA estimates that 1475 engines installed on aircraft of U.S. registry and 690 domestic uninstalled engines will be affected by this AD, that it will take approximately 12 work hours per engine to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,428,900.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–8638 (58 FR 39644, July 26, 1993) and by adding a new airworthiness directive, Amendment 39–9227, to read as follows:

95–10–10 Pratt & Whitney: Amendment 39–9227. Docket 94–ANE–21. Supersedes AD 93–14–14, Amendment 39–8638.

Applicability: Pratt & Whitney (PW) Model JT8D–9, –9A, –11, –15, –15A, –17, –17A, –17R, and –17AR turbofan engines.

Note: This Airworthiness Directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (h) to request approval from the Federal Aviation Administration (FAA). This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any engine from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent fracture of the front compressor fan hub, which can result in an uncontained engine failure and damage to the aircraft, accomplish the following:

(a) For front compressor fan hubs installed in engines in the No. 2 position on Boeing 727 aircraft on or after the effective date of this AD, inspect and shotpeen the front compressor fan hub in accordance with Appendix A, Appendix B, and Attachment 1 (NDIP–764) of PW Alert Service Bulletin (ASB) No. A6104, Revision 3, dated June 16, 1994, as follows:

(1) Initially inspect the front compressor fan hub as follows:

Total part cycles (TPC) on the effective date of this AD	Initial inspection interval
Over 18,001 TPC	Inspect at the next shop visit, or within 300 cycles in service (CIS) after the effective date of this AD, whichever occurs first.
16,501 to 18,000 TPC	Inspect at the next shop visit, or within 500 CIS after the effective date of this AD, whichever occurs first.
15,001 to 16,500 TPC	Inspect at the next shop visit, or within 750 CIS after the effective date of this AD, whichever occurs first.
13,501 to 15,000 TPC	Inspect at the next shop visit, or within 1,000 CIS after the effective date of this AD, whichever occurs first.
10,501 to 13,500 TPC	Inspect at the next shop visit, or within 1,500 CIS after the effective date of this AD, whichever occurs first.
Less than 10,501 TPC	Inspect at the next shop visit but not to exceed 12,000 TPC, or by the compliance end-date, whichever occurs first.

(2) Engines removed from the No. 2 position on Boeing 727 aircraft and reinstalled in aircraft or positions other than the No. 2 position on Boeing 727 aircraft after the effective date of this AD must adhere to the initial inspection interval specified in paragraph (a)(1) of this AD. Inspect and shotpeen front compressor fan hubs on these repositioned engines in accordance with paragraph (a)(1) of this AD.

(3) Remove front compressor fan hubs from service if cracks are found during the inspection process and replace with a serviceable hub.

(4) Shotpeen the front compressor fan hubs that pass the inspections required by paragraph (a)(1) of this AD, in accordance with Appendix B of PW ASB No. A6104, Revision 3, dated June 16, 1994, prior to returning the hub to service.

(5) Thereafter, inspect, shotpeen, and remove from service, if necessary, front compressor fan hubs that are reinstalled in the No. 2 position of Boeing 727 aircraft, in accordance with Appendix A, Appendix B, and Attachment 1 (NDIP–764), as applicable, of PW ASB No. A6104, Revision 3, dated June 16, 1994, as follows:

(i) For hubs that were last inspected and shotpeened with greater than 12,000 TPC upon inspection, inspect and shotpeen at the first shop visit after 2,500 CIS since last inspection, but prior to the accumulation of 8,000 CIS since last inspection.

(ii) For hubs that were last inspected and shotpeened with less than or equal to 12,000 TPC upon inspection, inspect and shotpeen at the first shop visit after 2,500 CIS since last inspection, or prior to accumulating 12,000 TPC, whichever occurs later, but not to exceed 8,000 CIS since last inspection.

(6) Engines removed from the No. 2 position on Boeing 727 aircraft and reinstalled in aircraft or positions other than the No. 2 position on Boeing 727 aircraft after the effective date of this AD must be inspected as follows:

(i) For the next inspection, inspect in accordance with paragraph (a)(5) of this AD; and

(ii) thereafter, inspect and shotpeen in accordance with paragraph (b)(4) of this AD.

(b) For front compressor fan hubs installed in engines that are installed in aircraft or positions other than the No. 2 position on Boeing 727 aircraft on or after the effective date of this AD, inspect and shotpeen the front compressor fan hubs in accordance with Appendix A, Appendix B, and Attachment 1 (NDIP–764) of PW ASB No. A6104, Revision 3, dated June 16, 1994, as follows:

(1) Initially inspect the front compressor fan hub at the next shop visit after the effective date of this AD, but not later than the compliance end-date.

(2) Remove front compressor fan hubs from service if cracks are found during the inspection process and replace with a serviceable hub.

(3) Shotpeen the front compressor fan hubs that pass the inspection requirements specified in paragraph (b)(1) of this AD, in accordance with Appendix B of PW ASB No. A6104, Revision 3, dated June 16, 1994, prior to returning the hub to service.

(4) Thereafter, upon accumulating 2,500 addition CIS since the last inspection, inspect, shotpeen, and remove from service, if necessary, front compressor fan hubs that are not reinstalled in the No. 2 position on Boeing 727 aircraft, in accordance with Appendix A, Appendix B, and Attachment 1 (NDIP–764) of PW ASB No. A6104, Revision 3, dated June 16, 1994, when the front compressor fan hub is accessible at the detail level in the shop.

(5) Thereafter, inspect, shotpeen, and remove from service, if necessary, front compressor fan hubs that are reinstalled in the No. 2 position of Boeing 727 aircraft after the effective date of this AD in accordance with paragraph (a)(5) of this AD.

(c) Inspect and shotpeen front compressor fan hubs that were inspected and shotpeened in accordance with Appendix A, Appendix B, and Attachment 1 (NDIP–764) of PW ASB No. 6104, dated December 21, 1992, PW ASB No. 6104, Revision 1, dated May 21, 1993, or PW ASB No. 6104, Revision 2, date June 18, 1993, prior to the effective date of this AD in accordance with paragraphs (a)(5) or (b)(4) of this AD, as applicable.

(d) For the purpose of this AD, the compliance end-date referenced in paragraphs (a)(1) and (b)(1) of this AD is defined as December 31, 1999, or 6,000 TPC after the effective date of this AD, whichever occurs later.

(e) For the purpose of this AD, a shop visit is defined as an engine removal for engine maintenance that cannot be performed while installed in the aircraft, and that entails separation of pairs of mating (lettered) engine flanges or the removal of a compressor disk, hub, or spool, or removal of a turbine disk.

(f) For the purpose of this AD, accessibility of a front compressor fan hub at the detail level in the shop is defined as engine maintenance that entails separation of the front compressor fan hub from the front compressor and removal of the fan blades.

(g) Report the front compressor fan hub part number, total time, and total cycles in service for each hub that passes the inspections defined in this AD, within 60 days after the inspection, to the Manager, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, FAA, 12 New England Executive Park, Burlington, Massachusetts, 01803–5299; fax (617) 238–7199. For any hub that is found cracked, submit the information requested in paragraph B of Part 4, of the Accomplishment Instructions of PW ASB No. 6104, Revision 3, dated June 16, 1994, within 60 days after the inspection to the Manager, Engine Certification Office, at the address identified above. The reporting requirements of this AD terminate one year after the effective date of this AD. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provision of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520) and have been assigned OMB Control Number 2120–0056.

(h) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(i) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

(j) The modification and repair shall be done in accordance with the following service document:

Document No.	Pages	Revision	Date
PW ASB No. A6104 including Appendix A, and Appendix B	2, 6	1	May 21, 1993.
	1, 3, 4, 5, 7–12	3	June 16, 1994.
Total pages: 12			
PW ASB No. A6104 with Attachment 1 NDIP–764	1–14		Dec. 8, 1992.
Total pages: 14			

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Pratt & Whitney, Materials Engineering. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(k) This amendment becomes effective on July 21, 1995.

Issued in Burlington, Massachusetts on May 11, 1995.

James C. Jones,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 95–12328 Filed 5–18–95; 8:45 am]

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14 CFR Part 39

[Docket No. 94–ANE–08; Amendment 39–9235; AD 95–11–01]

Airworthiness Directives; Turbomeca Arriel 1 Series Turboshaft Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to Turbomeca Arriel 1 series turboshaft engines, that currently requires repetitive checks for engine rubbing noise during gas generator shutdown, and for free rotation of the gas generator by rotating the compressor manually after the last flight of the day. This amendment continues to require these checks, but eliminates the reference to the Turbomeca service bulletin, allows the pilot to perform all the checks required in this AD, clarifies the inspection interval requirement for daily checks, and specifies terminating action for the repetitive checks required by this AD. In addition, this AD allows the check for engine rubbing noise to be performed during engine motoring, and specifies that the engine turbine (T4) temperature must be below 150 degrees Centigrade when performing the check for free rotation. This amendment is prompted by comments submitted by operators of the affected engines in response to the existing AD and the availability of an improved design 2nd stage nozzle guide vane. The actions specified by this AD are intended to prevent engine failure due to rubbing of the 2nd stage turbine disk on the 2nd stage turbine nozzle guide vane, which could result in complete engine failure and damage to the aircraft.

DATES: Effective June 21, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 21, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from Turbomeca 64511 Bordes Cedex - France. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA 01803–5299; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Glorianne Messemer, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7132, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 93–23–09, Amendment 39–8745 (58 FR 63061, November 30, 1993), which is applicable to Turbomeca Arriel 1 series turboshaft engines, was published in the **Federal Register** on September 6, 1994 (59 FR 46005). That notice of proposed rulemaking (NPRM) proposed to continue to require repetitive checks for engine rubbing noise during gas generator shutdown, and for free rotation of the gas generator by rotating the compressor manually at a daily interval until installation of the improved 2nd stage nozzle guide vane. That NPRM proposed to allow pilots to perform all the required checks. Performing these checks does not require special training beyond that already incurred by pilots of the aircraft having affected engines, or the use of tools or special measuring equipment, or reference to technical data. Accordingly, the FAA has determined that pilots may perform all the checks required by that NPRM as an exception to Section 43.3 of the Federal Aviation Regulations (14 CFR 43.3) regarding the performance of maintenance.

In addition, the NPRM proposed to allow the check for engine rubbing noise to be performed during engine motoring, and specifies that the engine turbine (T4) temperature must be below 150 degrees Centigrade when performing the check for free rotation. Also, the NPRM proposed to require installation of modification TU 202, which incorporates an improved 2nd stage nozzle guide vane manufactured from a new material that is more resistant to fatigue cracking, at the next engine overhaul after the effective date of the NPRM, but not later than December 31, 1999, as terminating action for the repetitive checks. This calendar end-date is based upon parts availability. The installation would be performed in accordance with Turbomeca Service Bulletin No. 292 72 0150, dated April 10, 1992.

This engine model is manufactured in France and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement in effect at the time of type certification. The Direction Generale de L'Aviation Civile (DGAC), which is the airworthiness authority for France, has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter (the manufacturer) states that Arriel engine models 1A, 1A1, 1A2, 1C, 1C1, and 1C2 should be removed from the AD's applicability since these models are all installed in twin-engine helicopters. The FAA does not concur. The engine design characteristics that produce the unsafe condition are common to the Arriel 1 engine models specified in the applicability section of the proposed rule, and therefore must remain in the AD to correct for the unsafe condition.

The commenter also states that the compliance end-date for installation of the terminating action should be extended from December 31, 1999, to December 31, 2002, to facilitate logistical support of the improved hardware. The FAA concurs and has revised the compliance section of this final rule accordingly.

The commenter also states that modification TU 197 should be designated in addition to TU 202 as terminating action for the inspection requirements of this AD. Modification TU 197 is an improved 2nd stage nozzle guide vane introduced to correct for the unsafe condition that is installed on production engines, whereas TU 202, which is a similar design improvement, was introduced for in-service engines. The FAA concurs and has revised the compliance section of this final rule accordingly.

Since publication of the NPRM, the FAA has increased its estimate of labor cost from $55 to $60 per work hour to better reflect current maintenance labor rates. The FAA has revised the economic analysis of this final rule.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will not increase the scope of the AD.

The FAA estimates that 160 engines installed on aircraft of U.S. registry will be affected by this AD, that it will take approximately 0.2 work hours per engine to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $8,000 per engine. Based on an assumed utilization rate and an assumed modification rate, the total cost impact of the AD on U.S. operators over the five year compliance period is estimated to be $3,105,440.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**. List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–8745 (58 FR 63061, November 30, 1993) and by adding a new airworthiness directive, Amendment 39–9235, to read as follows:

95–11–01 Turbomeca: Amendment 39–9235. Docket 94–ANE–08. Supersedes AD 93–23–09, Amendment 39–8745.

Applicability: Turbomeca Arriel turboshaft engines Models 1B that do have modification TU 76 but do not have modification TU 197 or TU 202; Arriel Models 1D and 1D1 that do not have modification TU 197 or TU 202; Arriel Models 1A, 1A1, 1A2 that have had modification TU 76 but do not have modification TU 197 or TU 202; and Arriel Models 1C, 1C1, and 1C2 that do not have modification TU 197 or TU 202. These engines are installed on but not limited to Aerospatiale Models AS350B, SA365, and AS565 helicopters.

Note: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (f) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any engine from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent engine failure due to rubbing of the 2nd stage turbine disk on the 2nd stage turbine nozzle guide vane, which could result in engine failure and damage to the aircraft, accomplish the following:

(a) For Turbomeca Arriel turboshaft engines Models 1B that have modification TU 76 but do not have modification TU 197 or TU 202; and Arriel Models 1D and 1D1 that do not have modification TU 197 or TU 202; accomplish the following:

(1) Perform a daily check for unusual engine rubbing noises during gas generator shutdown or as engine gas generator speed decreases after completion of engine motoring.

(2) Perform a daily check for free rotation of the gas generator, when T4 temperature is below 150 degrees Centigrade, by rotating the compressor manually.

(3) While checking for free rotation of the gas generator, perform a check for engine rubbing noise.

(b) For Turbomeca Arriel turboshaft engines Models 1A, 1A1, 1A2 that have modification TU 76 but do not have modification TU 197 or TU 202; and Arriel Models 1C, 1C1, and 1C2 that do not have modification TU 197 or TU 202; accomplish the following:

(1) Within 50 hours time in service (TIS) after the effective date of this AD, perform a check for unusual engine rubbing noise during gas generator shutdown or as engine gas generator speed decreases after completion of engine motoring.

(2) Thereafter, at intervals not to exceed 50 hours TIS since the last check, perform a check for unusual engine rubbing noise during gas generator shutdown or as engine gas generator speed decreases after completion of engine motoring.

(3) Perform a daily check for free rotation of the gas generator when T4 temperature is below 150 degrees C, by rotating the compressor manually.

(4) While checking for free rotation of the gas generator, perform a check for engine rubbing noise.

(c) If any engine rubbing noise is detected during the checks required by paragraphs (a) and (b) of this AD, prior to further flight replace gas generator module M03 with a serviceable module.

(d) Install the improved 2nd stage nozzle guide vane, modification TU 202 or TU 197, at the next engine overhaul after the effective date of this AD, but not later than December 31, 2002, in accordance with Turbomeca Service Bulletin (SB) 292 72 0150, dated April 10, 1992, or in accordance with SB 292 72 0153, dated February 22, 1993, respectively. Installation of this hardware constitutes terminating action to the checks required by this AD.

(e) The checks required by paragraphs (a) and (b) of this AD may be performed by the pilot holding at least a private pilot certificate as an exception to the requirements of part 43 of the Federal Aviation Regulations (14 CFR part 43). The checks must be recorded in accordance with Sections 43.9 and 91.417(a)(2)(v) of the Federal Aviation Regulations (14 CFR 43.9 and 14 CFR 91.417(a)(2)(v)), and the records must be maintained as required by the applicable Federal Aviation Regulation.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note: Information concerning the existence of approved alternative method of compliance with this AD, if any, may be obtained from the Engine Certification Office.

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

(h) The actions required by this AD shall be done in accordance with the following Turbomeca SB's:

Document No.	Pages	Date
292 72 0150	1–4	April 10, 1992.
Total pages: 4.		
292 72 0153	1–5	February 22, 1993.
Total pages: 5.		

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Turbomeca 64511 Bordes Cedex--France. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(i) This amendment becomes effective on June 21, 1995. Issued in Burlington, Massachusetts, on May 15, 1995.

James C. Jones,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 95–12329 Filed 5–18–95; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy has determined that USS CARNEY (DDG 64) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special functions as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: May 2, 1995.

FOR FURTHER INFORMATION CONTACT: Commander K.P. McMahon, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332–2400, Telephone number: (703) 325–9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS CARNEY (DDG 64) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with the following specific provision of 72 COLREGS without interfering with its special function as a naval ship: Annex I, paragraph 3(a), pertaining to the location of the forward masthead light in the forward quarter of the ship, and the horizontal distance between the forward and after masthead lights; Annex I, paragraph 2(f)(i), pertaining to the placement of the masthead light or lights above and clear of all other lights and obstructions; and Annex I, paragraph 3(c), pertaining to placement of task lights not less than 2 meters from the fore and aft centerline of the ship in the athwartship direction. The Deputy Assistant Judge Advocate General (Admiralty) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (Water), and Vessels.

Accordingly, 32 CFR Part 706 is amended as follows:

PART 706—[AMENDED]

1. The authority citation for 32 CFR Part 706 continues to read as follows:

Authority: 33 U.S.C. 1605.

2. Table Four of § 706.2 is amended by:

a. Adding the following vessel to Paragraph 15:

Vessel	Number	Horizontal distance from the fore and aft centerline of the vessel in the athwartship direction
USS CARNEY	DDG 64	1.90 meters.

b. Adding the following vessel to Paragraph 16:

Vessel	Number	Obstruction angle relative ship's headings
USS CARNEY	DDG 64	1.05.06 thru 112.50°.

3. Table Five of § 706.2 is amended by adding the following vessel:

TABLE FIVE

Vessel	No.	Masthead lights not over all other lights and obstructions. annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. annex I, sec. 3(a)	Percentage horizontal separation attained
USS CARNEY	DDG 64	X	X	X	20.4

Dated: May 2, 1995.

K.P. McMahon,

CDR, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty).

[FR Doc. 95–12475 Filed 5–19–95; 8:45 am]

BILLING CODE 3810–FF–P

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy has determined that USS SAIPAN (LHA 2) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special functions as an amphibious support ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: March 22, 1995.

FOR FURTHER INFORMATION CONTACT: Commander K.P. McMahon, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332–2400, Telephone number: (703) 325–9744.

SUPPLEMENTARY INFORMATION: Purusant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS SAIPAN (LHA 2) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with the following specific provisions of 72 COLREGS without interfering with its special function as an amphibious support ship: Annex I, paragraph 3(a) pertaining to the horizontal distance between the forward and after masthead lights; Rule 21(a) pertaining to placement of masthead lights over the fore and aft centerline of the vessel; Annex I, paragraph 2(g) pertaining to the placement of sidelights above the hull of the vessel; Annex I, paragraph 3(b) pertaining to placement of the sidelights in front of the forward masthead light. The Deputy Assistant Judge Advocate General (Admiralty) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (Water), Vessels.

Accordingly, 32 CFR Part 706 is amended as follows:

PART 706—[AMENDED]

1. The authority citation for 32 CFR Part 706 continues to read as follows:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

2. Table Two of § 706.2 is amended by revising the entry for USS SAIPAN to read as follows:

TABLE TWO

Vessel	Number	Masthead lights, distance to stbd of keel in meters; Rule 21(a)	Forward anchor light, distance below flight dk in meters; §2(K), Annex I	Forward anchor light, number of; Rule 30(a)(i)	AFT anchor light, distance below flight dk in meters; Rule 21(e), Rule 30(a)(ii)	AFT anchor light, number of; Rule 30(a)(ii)	Side lights, distance below flight dk in meters; §2(g), Annex I	Side lights, distance forward of forward masthead light in meters; §3(b), Annex I	Side lights, distance inboard of ship's sides in meters; §3(b), Annex I
USS SAIPAN	LHA–2	10.1	.....	1	.....	1	2.8	72.1	.....

3. Table Five of § 706.2 is amended by revising the entry for USS SAIPAN to read as follows:

TABLE FIVE

Vessel	Number	Masthead lights not over all other lights and obstructions. annex 1, sec. 2(f)	Forward masthead light not in forward quarter of ship. annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. annex I, sec. 3(a)	Percentage horizontal separation attained
USS SAIPAN	LHA 2	.....	.....	.....	10.2

Dated: March 22, 1995.

Approved:

K.P. McMahon,

CDR, JAGC, U.S. Navy Deputy Assistant Judge Advocate General (Admiralty).

[FR Doc. 95–12476 Filed 5–19–95; 8:45am]

BILLING CODE 3810–FF–M

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy has determined that USS CURTIS WILBUR (DDG 54) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special functions as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: May 1, 1995.

FOR FURTHER INFORMATION CONTACT: Commander K. P. McMahon, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332–2400, Telephone number: (703) 325–9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS CURTIS WILBUR (DDG 54) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with the following specific provision of 72 COLREGS without interfering with its special function as a naval ship: Annex I, section 3(a) pertaining to the location of the forward masthead light in the forward quarter of the vessel, and the horizontal distance between the forward and after masthead lights; and, Annex I, section 2(f)(i) pertaining to placement of the masthead light or lights above and clear of all other lights and obstructions. The Deputy Assistant Judge Advocate General (Admiralty) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (Water), and Vessels.

Accordingly, 32 CFR Part 706 is amended as follows:

PART 706—[AMENDED]

1. The authority citation for 32 CFR Part 706 continues to read as follows:

Authority: 33 U.S.C. 1605.

2. Table Four of section 706.2 is amended by revising the entry for USS CURTIS WILBUR in Paragraph 16 to read as follows:

Vessel	Number	Obstruction angle relative ship's headings
USS CURTIS WILBUR.	DDG 54	102.61 thru 112.50°.

3. Table Five of § 706.2 is amended by revising the entry for USS CURTIS WILBUR to read as follows:

TABLE FIVE

Vessel	No.	Masthead lights not over all other lights and obstructions. annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. annex I, sec. 3(a)	Percentage horizontal separation attained
USS CURTIS WILBUR	DDG 54	X	X	X	20.4

Dated: May 1, 1995.

Approved:

K. P. McMahon,

CDR, JAGC, U.S. Navy Deputy Assistant Judge Advocate General (Admiralty).

[FR Doc. 95–12477 Filed 5–19–95; 8:45 am]

BILLING CODE 3810–FF–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[CA–64–1–6997; FRL–5202–4]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; State of California, Approval of the Maintenance Plan for the San Francisco Bay Area and Redesignation of the San Francisco Bay Area to Attainment; Approval of Emissions Inventory; Approval of NO_X Exemption Petition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is approving a redesignation request and maintenance plan for the San Francisco Bay Area as a revision to California's State Implementation Plan (SIP) for ozone. In addition, EPA is approving the 1990 base year emissions inventory and a petition requesting an exemption from the section 182(f) nitrogen oxides (NO_X) requirements for the area.

On April 13, 1994, EPA notified the State of California that EPA had made a finding of incompleteness for required programs under the Clean Air Act (CAA or the Act). The EPA's redesignation of the San Francisco Bay Area to attainment and approval of the 1990 emissions inventory abrogates those requirements for the area. Therefore, the sanctions and federal implementation plan clocks begun by those findings are stopped at the time of this redesignation.

EFFECTIVE DATE: This final rule will become effective on June 21, 1995.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations:

Plans Development Section (A–2–2), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

California Air Resources Board, 2020 L Street, Sacramento, CA 94814.

FOR FURTHER INFORMATION CONTACT: Wallace Woo, Chief, Plans Development Section, Air & Toxics Division, U.S. Environmental Protection Agency, Region IX, at (415) 744–1207.

SUPPLEMENTARY INFORMATION:

Background

A. Ozone Redesignation Request and Maintenance Plan

The San Francisco Bay Area ozone nonattainment area has attained the National Ambient Air Quality Standard (NAAQS) for ozone based on three years of quality assured ambient air quality data, for the period 1990–1992. Therefore, in accordance with the CAA, as amended in 1990, and to ensure continued attainment of the standard for at least 10 years, the State of California has submitted an ozone maintenance plan which projects continued attainment of the ozone NAAQS in the San Francisco Bay Area.

The maintenance plan submitted for the San Francisco Bay Area meets all applicable requirements of the CAA. The San Francisco Bay Area submittal complies with section 175A of the Act which sets forth maintenance plan requirements for areas seeking redesignation from nonattainment to attainment. The plan demonstrates attainment of the NAAQS for at least 10 years after the area is redesignated.

Eight years after the redesignation, the state commits to submit a revised maintenance plan which demonstrates attainment for the ten year period following the initial ten year period. In the event of a NAAQS violation, the maintenance plan contains contingency measures adequate to ensure prompt correction of the air quality problem.

The state submittal being approved today contains a redesignation request in which the state demonstrates that the area has fulfilled the redesignation requirements of the CAA pursuant to section 107(d)(3)(E), a NO_X exemption petition pursuant to section 182(f), and a 1990 emissions inventory of ozone precursors pursuant to section 182(a) for the area.

On September 28, 1994 (59 FR 49361–49370), EPA published a notice of proposed rulemaking (NPRM) for the State of California SIP. The NPRM proposed that the San Francisco Bay Area be redesignated from nonattainment to attainment for ozone and that the maintenance plan submitted by the State of California as a revision to the California SIP be approved contingent upon EPA taking final rulemaking action to approve various SIP deficiencies for the San Francisco Bay Area (including volatile organic compound (VOC) reasonable available control technology (RACT) corrections, emission statement rule, NSR corrections) and California's submittal of the ozone maintenance plan amendments to the contingency plan and the 1990 base year emissions inventory. In addition, the NPRM proposed approval of a NO_X waiver petition and 1990 base year emissions inventory.

Since that time, the EPA has taken final rulemaking action to approve both the volatile organic compound (VOC) reasonable available control technology (RACT) rules which resolve the deficiencies and the emission statement rule. Below is the list of rules that the EPA has approved since the time of proposed rulemaking on the redesignation. These approvals remove one of the conditions for redesignation of the San Francisco Bay Area.

Rule No.	Rule title	Notice of final rulemaking
8–1	General Provisions	60 FR 15062, March 22, 1995.
8–2	Miscellaneous Operations	60 FR 15062, March 22, 1995.
8–4	General Solvent and Surface Coating Operations	60 FR 15092, March 22, 1995.
8–7	Gasoline Dispensing Facilities	60 FR 15062, March 22, 1995.
8–8	Wastewater (Oil-Water) Separators	59 FR 43328, August 29, 1994.
8–11	Metal Container Closure and Coil Coating	59 FR 63721, December 9, 1994.
8–12	Paper, Fabric, and Film Coating	60 FR 15062, March 22, 1995.
8–13	Light and Medium Duty Motor Vehicle Assembly Plants	NFRM signed March 29, 1995—publication pending.
8–14	Surface Coating of Large Appliance and Metal Furniture	NFRM signed March 29, 1995—publication pending.
8–15	Emulsified and Liquid Asphalts	60 FR 15062, March 22, 1995.
8–16	Solvent Cleaning Operations	59 FR 63721, December 9, 1994.

Rule No.	Rule title	Notice of final rulemaking
8–19	Surface Coating of Miscellaneous Metal Parts and Products	60 FR 16799, April 3, 1995.
8–20	Graphic Arts Printing and Coating Operations	60 FR 15062, March 22, 1995.
8–22	Valves and Flanges at Chemical Plants	60 FR 8949, February 16, 1995.
8–23	Coating of Flat Wood Paneling and Wood Flat Stock	NFRM signed March 29, 1995—publication pending.
8–24	Pharmaceutical and Cosmetic Manufacturing Operations	60 FR 15062, March 22, 1995.
8–25	Pump and Compressor Seals at Petroleum Refineries, Chemical Plants, Bulk Plants, and Bulk Terminals.	60 FR 12451, March 7, 1995.
8–28	Pressure Relief Valves at Petroleum Refineries and Chemical Plants	59 FR 63721, December 9, 1994.
8–29	Aerospace Assembly and Component Coating Operations	60 FR 16799, April 3, 1995.
8–30	Semiconductor Manufacturing Operations	60 FR 15062, March 22, 1995.
8–31	Surface Coating of Plastic Parts and Products	60 FR 15062, March 22, 1995.
8–32	Wood Product Coatings	60 FR 15062, March 22, 1995.
8–33	Gasoline Bulk Terminals and Gasoline Delivery Vehicles	60 FR 16799, April 3, 1995.
8–34	Solid Waste Disposal Sites	60 FR 15062, March 22, 1995.
8–35	Coating, Ink, and Adhesive Manufacturing	60 FR 15062, March 22, 1995.
8–38	Flexible and Rigid Disk Manufacturing	60 FR 16799, April 3, 1995.
8–39	Gasoline Bulk Plants and Gasoline Delivery Vehicles	60 FR 16799, April 3, 1995.
8–40	Aeration of Contaminated Soil	60 FR 15062, March 22, 1995.
8–41	Vegetable Oil Manufacturing Operations	60 FR 15062, March 22, 1995.
8–42	Large Commercial Bakeries	60 FR 12451, March 7, 1995.
8–43	Surface Coating of Marine Vessel	NFRM signed March 29, 1995—publication pending.
8–45	Motor Vehicle and Mobile Equipment Coating Operations	60 FR 15062, March 22, 1995.
8–47	Air Stripping and Soil Vapor Extraction Operations	NFRM signed March 29, 1995—publication pending.
8–50	Polyester Resin Operations	60 FR 12451, March 7, 1995.
2–1	Emission Statement Rule	60 FR 16799, April 3, 1995.

In addition, the State of California has submitted the amendments to the maintenance plan necessary for final approval, including the revised 1990 base year emissions inventory and amendments to the contingency plan. The ozone maintenance plan amendments include a commitment by the Governor to implement the improvements to the basic inspection and maintenance (I/M) program by the end of 1995 as an early contingency measure and a revised contingency process. The reductions from these I/M improvements were not included in the maintenance plan emission inventory projections. In the event of a violation during the maintenance period, the Bay Area Air Quality Management District (BAAQMD) will meet with the EPA within 30 days of the violation to discuss which of the adopted NO_X RACT rules are appropriate to submit into the SIP as fully adopted and implemented contingency provisions. The list of NO_X controls include six rules which are scheduled for implementation through 2001. The improvements to the basic I/M program and the NO_X RACT controls supersede the original contingency plan submitted in November 1993. The original submittal included a commitment to implement an enhanced I/M program in the event of a violation during the maintenance period. However, the final enabling legislation for enhanced I/M in California prohibited areas not explicitly required to implement enhanced I/M by the CAA from opting into the centralized portion of the program. Therefore, the BAAQMD revised the contingency plan as described above.

Below is the list of NO_X RACT contingency measures submitted by CARB as part of the contingency plan.

BAAQMD NO_X RULES AS CONTINGENCY MEASURES

Title regulation 9	Adopted	Implementation year(s)	NO_X reductions (TPD)
NO_X and CO from Industrial, Institutional and Commercial Boilers, Steam Generators (rule 7).	9/16/92	1/1/96	14.9
NO_2 and CO_2 Emissions from Stationary Internal Combustion Engines (rule 8)	1/20/93	1/1/97	8.3
NO_X from Stationary Gas Turbines (rule 9)	5/5/93	1/1/97	7.0
Refinery Boilers, Steam Generators and Process Heaters (rule 10)	1/5/94	5/31/95 (sources already meet RACT standards).	N/A
NO_X and CO from Utility Electric Power Generating Boilers (rule 11)	2/16/94	5/31/95	1–2.6
NO_X from Glass Melting Furnaces (rule 12)	1/19/94	1/1/97–1/1/2001	1.2

In early 1994, new State laws (SB 198, AB 2018, SB 521, SB 629) were passed to improve the current decentralized I/M program. The improvements will begin implementation in 1995 and include: increased cost waiver limits for all models to $450; addition of functional tests for the evaporative control system; remote sensing or other roadside testing to discover gross polluters; centralized computer system reporting; improved quality assurance and enforcement; and improved technician training and certification. In addition, loaded-mode testing will either be a required program element (to be determined by the California Bureau of Automotive Repair), or will be implemented on request in the San Francisco Bay Area within one year of successful demonstration in areas of the State implementing enhanced I/M programs. Below is a chart which

estimates the emission reductions from these improvements by the year 2000.

EMISSION REDUCTION ESTIMATES FROM I/M PROGRAM IMPROVEMENTS BY 2000

	HC (percent)	CO (percent)	NO_x (percent)
Current Program	16.6	25.3	10.4
Improved Decentralized	22.1	30.0–34.6	15.0–22.2

Regarding the new source review (NSR) requirement, an EPA policy memo dated October 14, 1994 from Mary Nichols, Assistant Administrator for Air and Radiation, to the Division Directors entitled, "Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment," amended earlier guidance[1] which required areas requesting redesignation to attainment after November 15, 1992 to have a fully approved NSR rule prior to final redesignation. In light of the new policy set forth in the October 14, 1994 Memorandum, the EPA is no longer obligated to approve the San Francisco Bay Area's NSR rule as a condition for final approval of the redesignation request. However, the State of California submitted an amended NSR rule for the San Francisco Bay Area on January 4, 1995, and the emission projections contained in BAAQMD's maintenance plan are predicated on continuation of NSR permitting. The BAAQMD must continue NSR permitting until such time as it receives delegation of the PSD program for VOC. Upon delegation of the PSD program for VOC, the NSR permitting program can be moved to the contingency portion of the maintenance plan, provided that BAAQMD's ability to show maintenance of the standard is not affected.

B. Section 182(f) NO_x RACT Waiver Petition

The EPA is finalizing the approval of a petition submitted by the Bay Area AQMD requesting that EPA grant an exemption from the section 182(f) requirements to control major stationary sources of oxides of nitrogen (NO_x) emissions. The exemption petition is based on ambient monitoring data and demonstrates that additional NO_x reductions in the Bay Area would not contribute to attainment of the NAAQS for ozone.

EPA has evaluated the exemption petition for consistency with the requirements of the CAA, EPA regulations, and EPA interpretation of these requirements as expressed in the various EPA policy guidance documents.[2] EPA believes that the petition satisfies the applicable EPA requirements and, in accordance with the requirements of the CAA, has determined that additional NO_x reductions from major stationary sources in the San Francisco Bay Area would not contribute to attainment of the national ambient air quality standard (NAAQS) for ozone. EPA is finalizing this action to exempt the San Francisco Bay Area from implementing the NO_x requirements for RACT, NSR, and the applicable general conformity and I/M requirements[3] of the CAA. Because the San Francisco Bay Area is being redesignated to attainment of the ozone standard through this action, the transportation conformity requirements will consist of meeting the NO_x budget established in the maintenance plan.[4]

The EPA believes that all section 182(f) exemptions that are approved should be approved only on a contingent basis. As described in the EPA's NO_x Supplement to the General Preamble (57 FR 55628, November 25, 1992) and further guidance issued by EPA,[5] section 182(f) exemptions are granted on a contingent basis and last for only as long as the area's monitoring data continue to demonstrate attainment. The San Francisco Bay Area is required to continue to operate an appropriate air quality monitoring network, in accordance with 40 CFR part 58, to verify the attainment status of the area.

If a violation of the ozone standard occurs after the San Francisco Bay Area is redesignated to attainment of the ozone NAAQS, the NO_x requirements are to be implemented as contingency measures as provided in the maintenance plan.

C. 1990 Base Year Emissions Inventory

In the NPRM, the EPA proposed approval of a revised 1990 base year emissions inventory as requested by the state in a letter dated July 21, 1994. In this letter, the state requested that EPA approve a revised 1990 emissions inventory and projections as part of the maintenance plan. As discussed in the NPRM, below is a summary of the 1990 VOC and NO_x emission inventory and projections through the year 2005. The projections show that the area will continue to demonstrate attainment of the ozone NAAQS with current control measures (adopted through December 31, 1992).

VOC EMISSION INVENTORY SUMMARY*

[Tons Per Day]

	1990	1995	2000	2005
Point	78	73	75	77
Area	173	154	141	141
Mobile On-Road	300	204	142	104
Mobile Non-Road	81	85	82	84
Anthropogenic.				
Total	631	515	440	406
Biogenics	300	300	300	300
Total	931	815	740	706

NO_x EMISSION INVENTORY SUMMARY*

[Tons Per Day]

	1990	1995	2000	2005
Point	131	130	141	146
Area	15	16	17	18
Mobile On-Road	251	194	166	158
Mobile Non-Road	159	164	176	185
Total	557	504	499	508

*Entries are rounded to the nearest whole number, totals may not equal to sum of column entries.

[1] Memorandum entitled, "Procedures for Processing Requests to Redesignate Areas to Attainment," from John Calcagni, Director, Air Quality Management Division, to Regional Air Division Directors.

Memorandum entitled, "SIP Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and CO NAAQS On or After November 15, 1992," from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, to Regional Air Division Directors.

[2] See "Guidance for Determining the Applicability of Nitrogen Oxides Requirements Under Section 182(f)", issued by EPA's Office of Air Quality Planning and Standards, December 1993 and EPA's NO_x Supplement to the General Preamble, 57 FR 55628, November 25, 1992.

[3] See "Scope of Nitrogen Oxides (NO_x) Exemptions," from G.T. Helms, Group Leader, Ozone/Carbon Monoxide Programs Branch (MD–15), to the Air Branch Chiefs, January 12, 1995; "I/M Requirements in NO_x RACT Exempt Areas", from Mary T. Smith, Acting Director, Office of Mobile Sources, to the Air Division Directors, October 14, 1994.

[4] EPA's approval of the Bay Area's maintenance plan begins the maintenance period as defined in the transportation conformity regulation at 40 CFR Part 51.392. During the maintenance period, the Bay Area must meet the requirements of parts 51.428 and 51.430 of the transportation conformity regulation. These sections specify that the transportation plan and transportation improvement program (TIP) must be consistent with the motor vehicle emissions budgets in the applicable implementation plan, which in this case, is the maintenance plan. The requirement of parts 51.436 and 51.438 that plans and TIPs satisfy the "build/no build" test, or demonstrate that the plan and TIPs contribute to emissions reductions, no longer apply during the maintenance period.

[5] See "Section 182(f) Nitrogen Oxides (NO_x) Exemptions—Revised Process and Criteria", issued by John S. Seitz, Director, Office of Air Quality Planning and Standards (MD–10), May 27, 1994.

II. Public Comment/EPA Response

The EPA received 17 letters commenting on the proposal. Four letters expressed strong support for the redesignation based on the tremendous progress the San Francisco Bay Area has made over the past 30 years by attaining the ozone NAAQS. Nine letters expressed concern and/or opposition to the redesignation because of the transport of pollution from the San Francisco Bay Area to neighboring areas, and three letters voiced opposition to the redesignation for reasons other than transport. Finally, one letter addressed the section 182(f) NO_x RACT waiver petition only. Below is a summary of the comments received and the EPA's response.

A. EPA Response to Comments: Redesignation Request and Maintenance Plan

Comment 1

Several commenters stated that Congress intended EPA to deal with interstate transport only, as noted in section 176A of the Clean Air Act (CAA), and that the regulation of intrastate transport is outside of EPA jurisdiction and not a criteria for redesignation. Other comments stated that the California Clean Air Act (CCAA) adequately addresses interbasin transport. Furthermore, transport is a complicated issue, and the existing data is not sufficiently accurate to provide better solutions at this time. Finally, in some cases, the San Francisco Bay Area is the recipient of pollution from other air basins during certain meteorological conditions when air flow tends to be from inland areas and the San Joaquin Valley can model attainment without additional measures from the San Francisco Bay Area. The San Francisco Bay Area should not be unfairly singled out for scrutiny of intrastate transport, especially when the CCAA provides a workable process.

EPA Response

As outlined in the General Preamble to Title I of the CAA (57 FR 13528, April 16, 1992), the CAA assigns responsibility to the states for developing and submitting attainment demonstrations which show that the standard will be attained by the applicable attainment dates for areas where the demonstration of attainment is complicated by transport between two areas of different classifications. However, EPA needs to be assured that the attainment plans adequately address transport so as to ensure attainment for all areas within a state by the applicable attainment deadlines.

CARB has submitted attainment demonstration plans for all areas in California, including the Sacramento and San Joaquin Valley nonattainment areas.[6] This submittal included modeling of a large part of California, including Sacramento and the San Francisco Bay Area, as well as the San Joaquin Valley. EPA will review those plans and address the adequacy of the submittals through the federal rulemaking process.

While the State has the initial responsibility for dealing with intrastate transport issues, such issues are the subject of the Clean Air Act and within EPA's jurisdiction. For example, section 110(a)(2)(A) imposes the same obligation on areas to ensure that emissions will not interfere with attainment in downwind intrastate areas that section 110(a)(2)(D) imposes with respect to downwind interstate areas. At the present time, however, the information available to EPA concerning potential transport effects due to emissions from the San Francisco Bay Area is not sufficient to warrant action on the part of EPA or otherwise affect EPA's action regarding the San Francisco Bay Area's redesignation. While the preliminary studies conducted to date indicate that there is transport of emissions from the San Francisco Bay Area to nearby areas,[7] EPA believes that the state and local agencies can adequately address the issue initially. If, however, EPA determines that there are transport problems that warrant action on its part, EPA has the authority to issue a SIP call under sections 110(k)(5) and 110(a)(2)(A) to require the State to deal with those problems.

Comment 2

Several commenters expressed concern or opposition to the redesignation due to the issue of transported emissions from the San Francisco Bay Area to surrounding areas. Several commenters felt that the proposed action to redesignate the San Francisco Bay Area was made despite an accurate assessment of the impact of its emissions on attainment in neighboring areas, including the San Joaquin Valley and Sacramento Area, and requested that EPA delay final action to redesignate the San Francisco Bay Area until an accurate assessment and mitigation of transported pollution to neighboring areas can be made. Several commenters suggested that EPA coordinate a meeting with the state, the affected downwind air pollution control agencies, and the BAAQMD to resolve the transport issue.

EPA Response

As noted in the response to Comment 1, the information available concerning transport from the San Francisco Bay Area is preliminary in nature and EPA does not believe that it should affect EPA's action on this redesignation. Moreover, should EPA consider it necessary and appropriate to take action in the future, EPA has the authority under sections 110(a)(2)(A) and 110(k)(5) to deal with any such transport issues.

However, to respond to the transport concerns and several suggestions that EPA coordinate a meeting with the state and local air pollution control agencies affected by transport from the San Francisco Bay Area, EPA met with the California Air Resources Board (CARB), the BAAQMD and the affected downwind air pollution control agencies on February 2, 1995 to discuss transport from the San Francisco Bay Area to neighboring areas. The affected downwind air pollution control agencies include the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD), the Sacramento Metropolitan Air Quality Management District (SMAQMD), the Yolo-Solano Air Pollution Control District (YSAPCD), the Placer County Air Pollution Control District (PCAPCD), the El Dorado County Air Pollution Control District (ECAPCD), and the Feather River Air Quality Management District (FRAQMD).

This group, the newly formed Interbasin Transport Group (ITG), discussed strategies for dealing with transport from the San Francisco Bay Area to downwind areas. The ITG consists of a main policy body of Air Directors from EPA, CARB, BAAQMD, and affected downwind air pollution control agencies, and a technical subcommittee, consisting of modeling experts, which will discuss the ongoing transport studies in California. The technical subcommittee will develop a needs assessment for gathering additional information on transport and report ongoing modeling results to the policy body at regularly scheduled meetings. Decisions on how to deal with transport will be made collectively by the policy body of the ITG.

At the first ITG meeting on February 2, 1995, the BAAQMD presented an

[6] With respect to the Sacramento attainment plan, CARB submitted a voluntary "bump-up" request from a serious to a severe classification pursuant to section 181. The request for "bump-up" for the Sacramento nonattainment area will be dealt with in a separate **Federal Register** notice.

[7] As one commenter pointed out, the statewide modeling effort to date indicates that pollutant transport from Sacramento to the San Francisco Bay Area also occurs.

overview of the maintenance plan controls which include aggressive stationary source and mobile source controls adopted at the local, state and federal level as of December 31, 1992. With these control measures in place, the VOC emission trend declines through the year 2005, and the NO_X emissions do not exceed the 1990 attainment year emissions inventory (the emissions "cap").

At the end of the first ITG meeting, after consultation with the group, EPA indicated its belief that any issues regarding transport from the San Francisco Bay Area to neighboring areas should be dealt with separately from the redesignation as new technical information becomes available. The group committed to investigate additional short and long term measures for the San Francisco Bay Area to be implemented to further mitigate any downwind transport effects. The establishment of the ITG provides an avenue to deal effectively with the transport issue after the redesignation as new information becomes available.

Since the first meeting of the ITG, the Greater Sacramento Area Air Pollution Control Districts (APCDs) revised their original comments submitted during the public comment period on the proposed redesignation. Specifically, the Sacramento Area APCDs' letter of December 15, 1994 urged EPA to delay final action on the redesignation until transport was addressed. In a more recent letter[8] to EPA, the Sacramento area now agrees that the transport issue can be dealt with separately from the federal redesignation process and concurs with EPA's proposal to redesignate the San Francisco Bay Area from nonattainment to attainment.

Many of the comments were based on a recently released CARB study, "Preliminary Assessment of Transport on San Joaquin Valley Ozone," which discusses recent simulations to assess the impact of transported emissions in the San Joaquin Valley. The results discussed in the report are based on an extreme scenario in which anthropogenic emissions for the San Francisco Bay Area and the Sacramento area are set to zero. (In other words, the modeling simulation assumes that there are no VOC or NO_X anthropogenic emissions in the San Francisco Bay Area or the Sacramento Area. This exercise enables one to estimate the proportion of locally generated ozone versus transported pollution into the Valley.) The report indicates that there would be a decrease in ozone measurements of 27% in the Northern San Joaquin Valley, 10% in the Central San Joaquin Valley and 7% in the Southern San Joaquin Valley. The modeling study indicates that the Northern San Joaquin Valley is most affected by transported emissions. However, the attainment plan submitted for the San Joaquin Valley which relies on this modeling study purports to show that the San Joaquin Valley models attainment by the applicable deadline. In addition, monitoring data for the northern portion of the San Joaquin Valley shows that this site has collected air quality data which demonstrates attainment of the ozone NAAQS.

The report indicates that the Central and Southern San Joaquin Valley ozone concentrations would be reduced by 10% and 7%, respectively, if anthropogenic (generated by man) emissions were set to zero for the San Francisco Bay Area and Sacramento. Given that the Sacramento Area and the San Joaquin Valley will continue to adopt and implement aggressive new controls in response to the Federal and California Clean Air Acts and the San Francisco Bay Area will continue to adopt and implement new controls in response to the California Clean Air Act, the amount of emissions transported and locally generated emissions will continue to decrease to the Central and Southern San Joaquin Valley in the near future.

The formation of the ITG and the commitment from all affected agencies to work together to resolve potential transport issues, in conjunction with the California ozone plans submitted on November 15, 1994 which purport to demonstrate attainment of the ozone NAAQS for the Sacramento Area and the San Joaquin Valley by the applicable attainment deadlines, indicates that any intrastate transport issues should be effectively handled at the state level initially. EPA is committed to the goals of the ITG and will continue to participate in the group to offer support and review the adequacy of any new state or local agency strategy for dealing with transport.

With respect to the handling of transport issues at the state level, EPA notes that the California Clean Air Act (CCAA), adopted by the State of California in 1988, contains provisions which are designed to reduce the amount of pollution transport between nonattainment areas within the state. Specifically, areas which are the origin of transported pollutants, such as the San Francisco Bay Area, must include sufficient emission control measures in the state attainment plan (the "clean air plan") to mitigate the impact of pollution sources within their jurisdictions on ozone concentrations downwind. In the San Francisco Bay Area, these requirements include VOC and NO_X best available retrofit control technology (BARCT) for source categories that collectively amount to 75% of the 1987 actual hydrocarbon (HC) emissions inventory for stationary sources and 75% of 1987 actual NO_X emission inventory for permitted stationary sources no later than January 1, 1994. The BARCT controls, in most cases, exceed the federal RACT requirements. If these recently adopted controls were calculated into the projections in the maintenance plan, the NO_X emission trend would decrease through the year 2005. In addition, the San Francisco Bay Area is required to continue to implement a stringent NSR permitting program for new stationary sources. The CCAA requires that areas design attainment plans that include these controls and ensure attainment of the more stringent California Ambient Air Quality Standard (CAAQS) for ozone (0.09 ppm) by the earliest practicable date. According to CARB, the BAAQMD has fully complied with the CCAA's transport mitigation requirements and is continuing to adopt and implement all feasible control measures in its effort to attain the more stringent CAAQS of 0.09 ppm.

Although the BAAQMD has requested to be exempt from the NO_X RACT requirements of the Federal Clean Air Act, the BAAQMD had proceeded to adopt NO_X best available retrofit control technology (BARCT) and stringent New Source Review (NSR) regulations to comply with the transport mitigation requirements of the CCAA. Therefore, the maintenance plan controls and additional controls adopted in response to the CCAA ensure that any transport of pollutants from the San Francisco Bay Area to neighboring areas, whatever its current magnitude, will continue to decrease throughout the maintenance period.

In addition, the CCAA requires CARB to compile a report which assesses transport within the State every three years. Using several data analysis techniques, CARB determines the level of pollutant transport between various California air basins. These assessments are used in the process of requiring BARCT as described above, and also in the ozone planning process to assign responsibility for pollution reductions. CARB leads this effort and meets with the local air pollution control agencies on a regular basis to discuss the ongoing analysis.

[8] In a letter dated February 27, 1995, Kenneth Selover, Air Pollution Control Officer from the Yolo-Solano APCD representing the Greater Sacramento Area APCD, states that the concerns expressed in the comment letter dated December 15, 1994 in response to EPA's proposal to redesignate the San Francisco Bay Area from nonattainment to attainment, were based on a lack of understanding of the BAAQMD's proposed program to further mitigate NO_X and other emissions in response to the CCAA. In the December 15, 1994 letter, the Sacramento APCDs requested an extension of the public comment period until the issue of transport was addressed. The Sacramento area now agrees that the transport issue can be dealt with separately from the federal redesignation process, and the redesignation should proceed.

Comment 3

Since the San Francisco Bay Area will not be subject to additional emission reduction requirements, the public health of the citizens of San Joaquin Valley will continue to be at risk when EPA redesignates the San Francisco Bay Area.

EPA Response

As discussed above, although the San Francisco Bay Area is not subject to additional emission reduction requirements for the federal CAA (since the area can demonstrate maintenance of the NAAQS for the 10 year maintenance period without additional controls), the area will continue to adopt and implement aggressive VOC and NO_X controls to further reduce ozone and meet the more stringent CAAQS for ozone. In addition, the emission inventory projections contained in the maintenance plan, which include controls adopted through December 1992, show a decrease in VOC emissions and show that NO_X emissions are not expected to increase over the 1990 attainment levels through 2005 (the 10 year maintenance plan horizon). Therefore, any transported pollution to the San Joaquin Valley from the San Francisco Bay Area will continue to decrease in the future. Finally, CARB submitted an ozone plan which purports to demonstrate attainment of the ozone standard in the San Joaquin Valley by 1999, the statutory deadline for attainment under the CAA.

Comment 4

Several commenters note that San Joaquin Valley and Sacramento industries, businesses, and citizens are subject to more onerous control requirements, such as more stringent NSR requirements and enhanced I/M, in order to compensate for transported pollution. This creates an economic disparity between the regions and penalizes the citizens in the downwind areas. Arbitrary air pollution control boundaries should not be used to create economic disparity among regions in the state.

EPA Response

The classification system under the CAA is based on actual monitored air pollution values during 1987 through 1989 for each nonattainment area. The CAA requires specific controls for each classification, with increasingly stringent control requirements for more seriously polluted areas. The air quality data recorded in the San Joaquin Valley and the Sacramento Area was more serious than the air quality monitored in the San Francisco Bay Area during the same time period. The Sacramento Area and the San Joaquin Valley air quality monitoring data collected during 1987–1989 warranted a "serious" classification,[9] whereas the monitoring in the San Francisco Bay Area warranted a "moderate" classification. Based on the statewide modeling effort to date, it appears that both the Sacramento Area and the San Joaquin Valley are responsible for the vast majority of the ozone pollution monitored in their areas. Therefore, EPA cannot concur that there is evidence indicating that the higher classifications warranted by the air quality monitoring in the Sacramento area and the San Joaquin Valley are due solely to transport.

The ozone episode (a single, short period of high ozone readings) that was modeled for the Sacramento ozone plan submittal occurred in August 1990 and had a small amount of transport from outside the area, but was essentially a locally-generated episode. This is important because it means that there are days when, with little or no transported emissions, Sacramento generates enough ozone pollution to exceed the standard. Because this episode was used as the basis for determining emission control levels, sources in the Sacramento area will be controlled to levels which will address their own effect on ozone, rather than transport from the San Francisco Bay Area. An episode from July 1990 which included more transported emissions did not perform well when the model was applied to it and was therefore not included in the Sacramento Area's attainment demonstration. However, this episode did indicate that the emission reductions from Sacramento sources needed for attainment are no greater than those indicated by the August 1990 episode, which was predominately local emissions. Therefore, Sacramento and San Joaquin Valley businesses and citizens are not subject to more onerous controls to compensate for transported pollutants from the San Francisco Bay Area.

As noted above, the BAAQMD will continue to adopt and implement aggressive VOC and NO_X controls to comply with the CCAA which go beyond the control measures included in the maintenance plan and its emission reduction projections (controls adopted through December 1992). With respect to the NSR requirement, although the San Francisco Bay Area will no longer be required to continue federal NSR permitting after redesignation (as soon as a federally delegated PSD program is in place), the BAAQMD has fully complied with the transport mitigation requirements of the CCAA which include NSR requirements.

The air pollution control boundaries were not drawn arbitrarily or to create economic disparities within the state, but rather reflect the natural geographic air basins that exist in Northern California. In response to the CAA adopted in November 1990, EPA consulted with, and deferred to the State of California on the air pollution control boundaries within the State. Section 107(d)(1)(4)(iv) of the CAA requires that the entire metropolitan statistical area (MSA) or consolidated metropolitan statistical area (CMSA) be used for ozone or carbon monoxide nonattainment areas classified as serious or above. The boundaries of the Sacramento Area and the San Joaquin Valley reflect the MSA/CMSA designations. Since promulgation of the current air pollution boundaries in November 1991, EPA has not received any petitions to re-draw the boundaries in California.

According to the CAA, areas are required to attain the NAAQS as expeditiously as practicable but no later than the applicable attainment deadline. Since CARB submitted an ozone attainment plan to EPA on November 15, 1994 which purports to demonstrate attainment of the NAAQS for the San Joaquin Valley and Sacramento area by the applicable deadline, the state expects the ozone NAAQS in the San Joaquin Valley and Sacramento Area to be attained by the timelines required by the CAA.

Comment 5

Several commenters noted that the proposed action to redesignate the San Francisco Bay Area was made despite an adequate assessment of the impact of its emissions on attainment in neighboring areas (Sacramento and San Joaquin Valley). One commenter specifically noted that for the

[9] Since that time, CARB has submitted a "bump-up" request for the Sacramento area from serious to severe. EPA will act on this request in a separate **Federal Register** notice.

Sacramento Federal Implementation Plan (FIP) modeling, only one episode has been modeled. More specifically, they noted that NO_X emissions transported into Sacramento from the San Francisco Bay Area increase the severity and likelihood of ozone episodes and add to the attainment burden for the area. (See discussion in EPA Response to Comment 4)

EPA Response

As discussed above, EPA and the ITG will deal with transport issues separately from the redesignation. EPA is aware of the ongoing statewide modeling effort, the SARMAP study, and will continue to participate in those meetings to evaluate the latest modeling information. EPA is committed to addressing the latest transport studies and being involved in the ITG to work with state and local governments to resolve any transport issues.

It should be noted that the SARMAP modeling study, portions of which were submitted to EPA in the San Joaquin Valley ozone plan, looked at an August 1990 episode for Sacramento which includes transport from neighboring areas. The results of this episode show that the emission reductions required for attainment in the Sacramento area are no greater than those indicated by the July 1990 episode, which includes mostly local emissions.

Comment 6

One commenter made several suggestions of items that EPA should require prior to redesignation. These include: 1. the completion of the technical studies on Sacramento modeling case, including the August ozone episode, using SARMAP. The outcome should be assignment of emission reductions to the San Francisco Bay Area; 2. the BAAQMD should install and maintain monitors to measure ozone and NO_X aloft to transport corridors to Sacramento and the San Joaquin Valley; 3. the BAAQMD should implement the voluntary "Spare the Air" program on days when ozone forecast predicts a violation, or near violation, in Sacramento; 4. the BAAQMD should contribute to any program efforts that are developed for the Sacramento air basins to slow travel on highway I–80 during periods when Sacramento is at risk of violating federal ozone standards; 5. EPA should coordinate a joint federal/state/local effort to assess equity issues in control of transported pollution, and consider requiring stationary source, fleet rule and off-road NO_X control equivalent to Sacramento rules within portions of the San Francisco Bay Area likely to transport to the Sacramento area.

EPA Response

As discussed above, EPA will continue to meet with the affected downwind air pollution control districts at regularly scheduled ITG meetings and any transport issues will be dealt with separately from the redesignation process. Specifically, CARB is continuing to look at episodes in August 1990, and additional monitors are being installed to look at pollution transport between the areas. All of the suggestions listed above will be examined by the group at upcoming meetings, and the technical subcommittee of the ITG will look into the modeling suggestions and new technical data on an ongoing basis.

Comment 7

One commenter opposed the redesignation unless transport is assessed because the San Joaquin Valley, which is affected by pollution transported from the San Francisco Bay Area and Sacramento, may be unable to make a conformity determination for the area. It is difficult to explain this situation to the public and elected officials when modeling results show that Stanislaus County would be in attainment if transport was addressed.

EPA Response

As discussed above, the issue of transport will be addressed separately from the redesignation process. However, it should be noted that the emission trend for the San Francisco Bay Area for VOC continually decreases over the 10 year maintenance period and NO_X emissions do not exceed the 1990 attainment year level (the emissions "cap"). If the NO_X BARCT controls adopted by the BAAQMD were included in the maintenance plan, the NO_X emissions would also show a continual decrease over the 10 year maintenance period. Therefore, any transport impacts from the San Francisco Bay Area on other areas will continue to diminish in the future. It should be noted that CARB submitted an ozone attainment demonstration plan for the San Joaquin Valley which purports to reach attainment by the serious area deadline, 1999.

Comment 8

One commenter asserted that there are no monitoring stations for air emissions in the West Oakland area which is comprised of a community of predominately low income and color and is near one of the busiest highway intersections in the country. Census track analysis shows a high incidence of cancer in this area. American Lung Association studies show that the acceptable levels for particulates in the Clean Air Act are not protective of human health. In addition, benzene levels may be above the EPA acceptable 10^{-4} cancer risk level. The redesignation sends the wrong message to the community and policy makers and will not encourage public transit use. The redesignation is based on insufficient data since the monitoring network does not address "hotspots".

EPA Response

The proposal which EPA is finalizing today redesignates the area to attainment only for ozone. This action does not relate to emissions of particulate matter or benzene. This decision is based on clean air quality data for ozone recorded at the monitoring network since 1990. The BAAQMD currently monitors for ozone in the Oakland MSA.

With regard to particulate matter, the San Francisco Bay Area is currently designated as "unclassifiable" for PM–10 (particulate matter with an aerodynamic diameter of ten microns or less). However, EPA will continue to evaluate the PM–10 monitoring data in the air basin and redesignate the area to nonattainment if warranted. EPA is also working with the BAAQMD to locate an additional PM–10 monitor in the San Francisco Bay Area. In addition, at the national level, EPA is currently reassessing the existing particulate matter NAAQS,[10] and the Agency may be promulgating a new particulate matter NAAQS in the near future.

With regard to benzene, there is no NAAQS for this pollutant. Rather, benzene is one of 189 hazardous air pollutants listed in Section 112 of the CAA. Emissions of benzene are regulated at the source where they are emitted, rather than through an ambient air quality standard, such as that for ozone. The National Emission Standard for Hazardous Air Pollutants (NESHAP) for benzene, 40 CFR Part 61, Subpart FF, is an example of such a regulation.

With respect to public transit use, the federally approved SIP contains transportation control measures which encourage public transit use. In addition, all of the relevant local agencies continue to have a strong commitment to promoting the use of public transit.

The term "hotspots" usually is used to refer to hazardous air pollutants or other air pollutants with localized effects. While there can be areas of high concentrations of ozone, generally ozone is formed over the course of several hours over a large area when NO_X and VOCs react in the presence of sunlight. With regard to ozone, the BAAQMD's monitoring network meets the federal requirements and the data collected from this network is sufficient for redesignation.

[10] Under court order, EPA must complete its review of the particulate matter NAAQS by January 31, 1997. *American Lung Association* v. *Browner*, U.S. District Court for the District of Arizona, October 6, 1994 (CIV–93–643–TUC–ACM).

Comment 9

With respect to NO_X emissions, one commenter asserts that the maintenance plan shows that the area can continue to meet the ozone standard even with increasing NO_X emissions after 2000. Furthermore, BAAQMD projects that NO_X emissions under their jurisdiction will increase 18 tons per day (TPD) between 1990 and 2005. Even though non-jurisdictional sources make up for this increase, BAAQMD should adopt control measures to reduce jurisdictional NO_X emissions by 18 TPD by 2005. This is particularly important since the San Joaquin Valley ozone formation is predominately affected by the level of NO_X emissions.

EPA Response

The maintenance plan does not show an overall increase in NO_X emissions during the maintenance period. Through the year 2005, the level of NO_X emissions remains at or below the 1990 attainment level NO_X carrying capacity. In addition, it should be noted that the NO_X projections in the maintenance plan do not include the NO_X BARCT controls adopted by BAAQMD in response to the transport mitigation requirements of the CCAA. If those controls were included, the NO_X projections would show a continuous decrease through the year 2005. Specifically, the BAAQMD adopted NO_X BARCT controls by 1995 which will be fully implemented by 2002. With these control measures in place, the NO_X emission projections decrease the emission trend by an additional 74 TPD in 2005 beyond the current trend line contained in the maintenance plan.

Comment 10

One commenter stated that the area evaluated for attainment and maintenance of the federal ozone standard for the San Francisco Bay Area, as required in 40 CFR 50.9, should include data from the monitoring locations in the portion of adjacent air basins immediately downwind of the San Francisco Bay Area air basin. These adjacent areas have experienced ozone concentrations above the federal standard as a direct consequence of emissions from the San Francisco Bay Area with little or no contribution from local emissions and may experience similar events in the future. In addition, the September 1, 1993 Memorandum from Mary Nichols states that EPA intends to apply to intrastate transport the provision of section 110(a)(2)(D)(i)(1), which requires each state's SIP prohibit emissions which will contribute significantly to nonattainment. There are little or no local emissions between these monitoring sites and the upwind San Francisco Bay Area. It appears EPA has expressed a policy which could prohibit the approval of the San Francisco Bay Area SIP unless violations caused in adjacent air basins are addressed.

EPA Response

To qualify for redesignation in accordance with section 107(d)(3)(E), an area must demonstrate, among other things, that the ambient air quality monitoring data in the area meets the NAAQS. The San Francisco Bay Area has satisfied this requirement by submitting five consecutive years of monitoring data which show no violations of the ozone NAAQS. As discussed above, EPA is fully aware of the potential transport issues and is committed to working with the State and local air pollution control agencies to resolve any issues through the ITG. EPA has the authority to deal with intrastate transport issues under the Clean Air Act, but the information presently available does not warrant action by EPA at this time.

Comment 11

One commenter stated that the 1990 VOC and NO_X "carrying capacity" levels in the maintenance plan should be made federally enforceable. The measures identified as contingencies should be incorporated into the SIP to mitigate any possible emission reduction shortfall.

EPA Response

The 1990 VOC and NO_X emission inventory and emission projections through 2005 are based on control measures adopted through December 31, 1992 at the federal, state, and local level and approved into the SIP. Those emissions levels are already supported by federally enforceable requirements. The NO_X measures and improvements to the I/M program identified in the contingency plan are not included in the maintenance plan projections.

As expressed previously in an EPA policy[11] pursuant to section 182(f) of the CAA, EPA may allow areas which have demonstrated attainment of the ozone NAAQS without having implemented NO_X controls to be exempt from the federal NO_X RACT requirements. However, the maintenance plan includes NO_X controls as contingency measures which will be submitted for incorporation into the SIP in the event of a violation during the maintenance period.

Comment 12

One commenter stated that EPA should consider whether the urban area for maintenance planning should be extended beyond the air basin boundaries to the full extent of the urbanized area since related growth of the adjacent urban areas growth is directly controlled by policies implemented within the San Francisco Bay Area. EPA should ensure that redesignation does not cause ozone levels above the federal standard in the San Francisco Bay Area or adjacent air basins. This requires that all emission increases caused by urban growth and industrialization must be matched by equivalent deceases. EPA should ensure that the approval includes provisions which protect the adjacent air basins and federally protected forests and national parks. Protection should include requirements to maintain an extensive system of air monitors to detect high ozone levels, and maintaining emission levels for all ozone precursors at or below the level which does not cause ozone levels above the federal standard in the San Francisco Bay Area and adjacent air basins.

EPA Response

After the passage of the CAA in 1990, EPA consulted with the State of California regarding the appropriate boundaries for nonattainment areas within the State. The current boundary of the San Francisco Bay Area reflects the State's recommended boundary for the area. Section 107(d)(4)(A)(iv) of the CAA requires that the boundaries for areas classified as serious and above include entire metropolitan statistical areas (MSAs) or consolidated metropolitan statistical areas (CMSAs). Transport will be addressed as discussed previously.

As discussed previously, with respect to the comment concerning emissions

[11] "Section 182(f) Nitrogen Oxides (NO_X) Exemption—Revised Process and Criteria," from John S. Seitz, Director, Office of Air Quality Planning and Standards, to the Regional Division Directors, May 27, 1994.

increases during the maintenance period, the maintenance plan for the San Francisco Bay Area projects that future emissions for VOC decrease throughout the maintenance period and NO_X emissions do not increase over the attainment levels. The San Francisco Bay Area must maintain its current ozone monitoring network as part of the maintenance plan. The suggestion that the San Francisco Bay Area install monitors to detect high ozone levels (or precursor pollutants at high elevations) will be considered by the ITG.

With regard to protection of air quality in national parks and forests, the prevention of significant deterioration (PSD) provisions contained in Part C of the CAA are specifically designed to protect air quality in "clean air" areas, and particularly in pristine areas such as national parks. These requirements provide sufficient protection for such areas and it is not necessary to include additional requirements as a condition of redesignation.

Comment 13

One commenter opposes the redesignation because it suggests that the air quality no longer poses a threat to public health. In addition, EPA research has shown that there is no safe level for ozone. In addition, a federal declaration of attainment conflicts with California's goal of a stricter ozone standard.

EPA Response

EPA's action to redesignate the San Francisco Bay Area means that the air quality in the region meets the federal NAAQS (health-based standard) for ozone, and does not address other air pollutants. The EPA is currently in the process of re-evaluating the ozone NAAQS and expects to make a final decision in mid-1997. Until any change is made, EPA is bound to implement the provisions of the Act as they relate to the current standard, including those relating to designations and redesignations.

With respect to the California ozone standard and California Clean Air Act, EPA's action to redesignate the San Francisco Bay Area to attainment for the federal ozone standard does not impede California or the BAAQMD from striving for a stricter ozone standard. EPA's action to redesignate the area to attainment for the federal ozone standard recognizes the tremendous progress made so far and does not prohibit the area from adopting additional control measures to control ozone. Nor does it preclude EPA from requiring emission reductions from sources in the San Francisco Bay Area should EPA ultimately determine that such reductions are needed.

Comment 14

One commenter asserted that attainment levels had been recorded only because of particular meteorological conditions which lead to the transport of pollutants to nearby air basins. In addition, any current air quality benefit will be wiped out by the BAAQMD's own calculation of increased motor vehicle traffic in the future.

EPA Response

According to section 107(d)(3)(E)(iii), the Administrator must determine that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from the implementation of measures in the applicable plan and applicable federal regulations. Between 1987 and 1990, the SIP control measures account for an approximate 69 TPD decrease in VOC emissions. In addition, the maintenance plan analyzed trend data for summer temperatures and vehicle miles traveled and employment during the 1990–1992 timeframe to determine if the improvement in air quality was due to meteorological circumstances or a downturn in the economy. The analysis showed that neither exceptionally cool temperatures nor a downturn in the economy were responsible for the area meeting the federal ozone standard, but rather the emission reductions and improved air quality were the result of permanent measures in the SIP. EPA has accepted this analysis. It should be noted that the San Francisco Bay Area has actually measured "clean" air quality data for ozone for five consecutive years.

With respect to transport, CARB released preliminary results from a modeling study which show that emissions from the San Francisco Bay Area and the Sacramento Area do impact ozone concentrations in the San Joaquin Valley (see discussion above). However, for the reasons described above, EPA cannot concur that the San Francisco Bay Area has met the ozone NAAQS because of transport of emissions to nearby air basins. In addition, as discussed above, future control regulations that are being adopted by the BAAQMD will further reduce any transported emissions to nearby air basins in the future.

The projections in the maintenance plan do show that vehicle miles travelled (VMT) will continue to increase in the future. However, emission projections through 2000 show an overall reduction in ozone precursor emissions from mobile sources due to the retirement of older vehicles and the increase in proportion of new, cleaner vehicles.

Comment 15

One commenter asserted that the BAAQMD's transportation control measure plan in the Clean Air Plan will increase vehicle miles traveled.

EPA Response

The transportation control measure (TCM) plan in the Bay Area Clean Air Plan has not been submitted to become part of the SIP, but rather fulfills the requirements under the California Clean Air Act. EPA has not reviewed this plan since it is not part of the control strategy used to demonstrate attainment or maintenance of the federal ozone standard.

B. EPA Response to Comments: Section 182(f) NO_X Waiver Petition

In August 1994, three environmental groups submitted joint comments on the proposed approvals of NO_X exemptions for the Ohio and Michigan ozone nonattainment areas. The comments address EPA's general policy regarding NO_X exemptions and apply to all actions EPA takes regarding section 182(f) NO_X exemptions. These comments as well as those received specifically addressing the BAAQMD proposed NO_X RACT exemption are addressed below.

NO_X Waiver Comment 1

The commenters argued that NO_X exemptions are provided for in two separate parts of the CAA, section 182(b)(1) and section 182(f). Because the NO_X exemption tests in subsections 182(b)(1) and 182(f)(1) include language indicating that action on such requests should take place "when [EPA] approves a plan or plan revision," these commenters conclude that all NO_X exemption determinations by the EPA, including exemption actions taken under the petition process established by subsection 182(f)(3), must occur during consideration of an approvable attainment or maintenance plan, unless the area has been redesignated as attainment. These commenters also argue that even if the petition procedures of subsection 182(f)(3) may be used to relieve areas of certain NO_X requirements, exemptions from the NO_X conformity requirements must follow the process provided in subsection 182(b)(1), since this is the only provision explicitly referenced by section 176(c), the CAA's conformity provisions.

EPA Response

Section 182(f) contains very few details regarding the administrative procedure for acting on NO_X exemption requests. The absence of specific guidelines by Congress leaves EPA with discretion to establish reasonable procedures, consistent with the requirements of the Administrative Procedure Act (APA).

The EPA disagrees with the commenters regarding the process for considering exemption requests under section 182(f), and instead believes that subsections 182(f)(1) and 182(f)(3) provide independent procedures by which the EPA may act on NO_X exemption requests. The language in subsection 182(f)(1), which indicates that the EPA should act on NO_X exemptions in conjunction with action on a plan or plan revision, does not appear in subsection 182(f)(3). And, while subsection 182(f)(3) references subsection 182(f)(1), the EPA believes that this reference encompasses only the substantive tests in paragraph (1) [and, by extension, paragraph (2)], not the procedural requirement that the EPA act on exemptions only when acting on SIPs. Additionally, paragraph (3) provides that "person[s]" (which section 302(e) of the CAA defines to include States) may petition for NO_X exemptions "at any time," and requires the EPA to make its determination within six months of the petition's submission. These key differences lead EPA to believe that Congress intended the exemption petition process of paragraph (3) to be distinct and more expeditious than the longer plan revision process intended under paragraph (1).

With respect to major stationary sources, section 182(f) requires States to adopt NO_X NSR and RACT rules, unless exempted. These rules were generally due to be submitted to EPA by November 15, 1992. Thus, in order to avoid the CAA sanctions, areas seeking a NO_X exemption would have needed to submit their exemption request for EPA review and rulemaking action several months before November 15, 1992. In contrast, the CAA specifies that the attainment demonstrations are not due until November 1993 or 1994 (and EPA may take 12–18 months to approve or disapprove the demonstration). For marginal ozone nonattainment areas (subject to NO_X NSR), no attainment demonstration is called for in the CAA. For maintenance plans, the CAA does not specify a deadline for submittal of maintenance demonstrations. Clearly, the CAA envisions the submittal of and EPA action on exemption requests, in some cases, prior to submittal of attainment or maintenance demonstrations.

The CAA requires conformity to the applicable SIP with regard to federally-supported NO_X generating activities in relevant nonattainment and maintenance areas. However, EPA's conformity rules explicitly provide that these NO_X requirements would not apply if EPA grants an exemption under section 182(f). In response to the comment that section 182(b)(1) should be the appropriate vehicle for dealing with exemptions from the NO_X requirements of the conformity rule, EPA notes that this issue has previously been raised in a formal petition for reconsideration of EPA's final transportation conformity rule and in litigation pending before the U.S. Court of Appeals for the District of Columbia Circuit on the substance of both the transportation and general conformity rules. The issue, thus, is under consideration within EPA, but at this time remains unresolved. Additionally, subsection 182(f)(3) requires that NO_X exemption petition determinations be made by the EPA within six months. The EPA has stated in previous guidance that it intends to meet this statutory deadline as long as doing so is consistent with the Administrative Procedures Act. The EPA, therefore, believes that until a resolution of this issue is achieved, the applicable rules governing this issue are those that appear in EPA's final conformity regulations, and EPA remains bound by their existing terms.

NO_X Waiver Comment 2

The commenters stated that the modeling required by EPA guidance is insufficient to establish that NO_X reductions would not contribute to attainment since only one level of NO_X control, i.e., "substantial" reductions, is required to be analyzed. They further explained that an area must submit an approvable attainment plan before EPA can know whether NO_X reductions will aid or undermine attainment.

EPA Response

The EPA does not believe that this comment is applicable to the San Francisco Bay Area exemption because the demonstration is based on three years of ambient monitoring data and not modeling.

NO_X Waiver Comment 3

The commenters provided a comment that three years of "clean" data fail to demonstrate that NO_X reductions would not contribute to attainment, and that EPA's policy erroneously equates the absence of a violation for one three-year period with "attainment".

EPA Response

The EPA has separate criteria for determining if an area should be redesignated to attainment under section 107 of the CAA. The section 107 criteria are more comprehensive than the CAA requires with respect to NO_X exemptions under section 182(f).

Under section 182(f)(1)(A), an exemption from the NO_X requirements may be granted for nonattainment areas outside an ozone transport region if EPA determines that "additional reductions of [NO_X] would not contribute to attainment" of the ozone NAAQS in those areas. In some cases, an ozone nonattainment area might attain the ozone standard, as demonstrated by 3 years of adequate monitoring data, without having implemented the section 182(f) NO_X provisions over that 3-year period. The EPA believes that, in cases where a nonattainment area is demonstrating attainment with 3 consecutive years of air quality monitoring data without having implemented the section 182(f) NO_X provisions, it is clear that the section 182(f) test is met since "additional reductions of [NO_X] would not contribute to attainment" of the NAAQS in that area. The EPA's approval of the exemption, if warranted, would be granted on a contingent basis (i.e., the exemption would last for only as long as the area's monitoring data continue to demonstrate attainment).

NO_X Waiver Comment 4

Some commenters provided a comment on all section 182(f) actions that a waiver of NO_X controls is unlawful if such a waiver will impede attainment and maintenance of the ozone standard in separate downwind areas.

Some stated specifically that NO_X emissions from the Bay Area are likely to exacerbate ozone nonattainment downwind in the Sacramento Basin and the San Joaquin Valley, and that until transport of ozone precursors from the San Francisco Bay Area to the Sacramento Basin and the San Joaquin Valley are addressed, granting an exemption from the NO_X requirements is not consistent with the requirements of the Clean Air Act.

The commenters further added that transport of NO_X emissions from the San Francisco Bay Area adds to the attainment burden of the Sacramento Basin, and results in substantially different air quality rules in the two regions which translates into economic inequities and unfair economic

penalties to the Sacramento area community. Also, insufficient technical studies have been conducted to assess multi-basin transport regarding the San Francisco Bay Area and the Sacramento Basin, without which, redesignation and the NO_X exemption should not be granted.

The commenters contend that EPA's policy could prohibit approval of the SIP for the BAAQMD unless violations in adjacent air basins are addressed. Therefore, because of previous ozone concentrations monitored above the Federal standard in the San Joaquin Valley which were a consequence of San Francisco Bay Area emissions, areas evaluated for attainment, maintenance, and exemptions should include data from monitoring locations in adjacent air basins downwind of the San Francisco Bay Area. In addition, until all data, including recent data showing the Northern portion of the San Joaquin Valley would be in attainment of the Federal ozone standard in the absence of transported pollutants from the San Francisco Bay Area, which identifies the San Francisco Bay Area as a transport couple with the San Joaquin Valley is adequately assessed to define the effects of San Francisco Bay Area emissions on the ozone attainment status of the San Joaquin Valley, a NO_X RACT exemption should not be approved.

EPA Response

As a result of these comments and comments received regarding ozone transport in NO_X exemption requests for other areas in the United States, EPA has reevaluated its position on this issue and decided to revise the previously issued guidance.[12] As described below, EPA intends to use its authority under section 110(a)(2)(D) to require a State to reduce NO_X emissions from stationary and/or mobile sources where there is evidence, such as photochemical grid modeling, showing that NO_X emissions would contribute significantly to nonattainment in, or interfere with maintenance by, any other State. This action would be independent of any action taken by EPA on a NO_X exemption request for stationary sources under section 182(f). That is, EPA action to grant or deny a NO_X exemption request under section 182(f) would not shield that area from EPA action to require NO_X emission reductions, if necessary, under section 110(a)(2)(D).

Modeling analyses are underway in many areas for the purpose of demonstrating attainment in the 1994 SIP revisions. Recent modeling data suggest that certain ozone nonattainment areas may benefit from reductions in NO_X emissions far upwind of the nonattainment area. For example, the northeast corridor and the Lake Michigan areas are considering attainment strategies which rely in part on NO_X emission reductions hundreds of kilometers upwind. The EPA is working with the States and other organizations to design and complete studies which consider upwind sources and quantify their impacts. As the studies progress, EPA will continue to work with the States and other organizations to develop mutually acceptable attainment strategies.

At the same time as these large scale modeling analyses are being conducted, certain nonattainment areas in the modeling domain have requested exemptions from NO_X requirements under section 182(f). Some areas requesting an exemption may be upwind of and impact upon downwind nonattainment areas. EPA intends to address the transport issue through section 110(a)(2)(D) based on a domain-wide modeling analysis.

Under section 182(f) of the Act, an exemption from the NO_X requirements may be granted for nonattainment areas outside an ozone transport region if EPA determines that "additional reductions of [NO_X] would not contribute to attainment of the national ambient air quality standard for ozone in the area."[13] As described in section 4.3 of the December 16, 1993 guidance document, EPA believes that the term "area" means the "nonattainment area" and that EPA's determination is limited to consideration of the effects in a single nonattainment area due to NO_X emissions reductions from sources in the same nonattainment area.

Section 4.3 of the guidance goes on to encourage, but not require, States/petitioners to include consideration of the entire modeling domain, since the effects of an attainment strategy may extend beyond the designated nonattainment area. Specifically, the guidance encourages States to "consider imposition of the NO_X requirements if needed to avoid adverse impacts in downwind areas, either intra- or inter-State. States need to consider such impacts since they are ultimately responsible for achieving attainment in all portions of their State (see generally section 110) and for ensuring that emissions originating in their State do not contribute significantly to nonattainment in, or interfere with maintenance by, any other State [see section 110(a)(2)(D)(i)(I)]."

In contrast, section 4.4 of the guidance states that the section 182(f) demonstration would not be approved if there is evidence, such as photochemical grid modeling, showing that the NO_X exemption would interfere with attainment or maintenance in downwind areas. The guidance goes on to explain that section 110(a)(2)(D) [not section 182(f)] prohibits such impacts.

Consistent with the guidance in section 4.3, EPA believes that the section 110(a)(2)(D) and 182(f) provisions must be considered independently, and hence is withdrawing the guidance presently contained in section 4.4. Thus, if there is evidence that NO_X emissions in an upwind area would interfere with attainment or maintenance in a downwind area, that action should be separately addressed by the State(s) or, if necessary, by EPA in a section 110(a)(2)(D) action. In addition, a section 182(f) exemption request should be independently considered by EPA. In some cases, then, EPA may grant an exemption from across-the-board NO_X RACT controls under section 182(f) and, in a separate action, require NO_X controls from stationary and/or mobile sources under section 110(a)(2)(D). It should be noted that the controls required under section 110(a)(2)(D) may be more or less stringent than RACT, depending upon the circumstances.

NO_X Waiver Comment 5

Comments were received regarding exemption of areas from the NO_X requirements of the conformity rules. The commenters argue that such exemptions waive only the requirements of section 182(b)(1) to contribute to specific annual reductions, not the requirement that conformity SIPs contain information showing the maximum amount of motor vehicle NO_X emissions allowed under the transportation conformity rules and, similarly, the maximum allowable amounts of any such NO_X emissions under the general conformity rules. The commenters admit that, in prior guidance, EPA has acknowledged the need to amend a drafting error in the existing transportation conformity rules to ensure consistency with motor vehicle emissions budgets for NO_X, but want EPA in actions on NO_X exemptions to explicitly affirm this obligation and to also avoid granting waivers until a budget controlling future NO_X increases is in place.

EPA Response

With respect to conformity, EPA's conformity rules[14,15] provide a NO_X waiver if an area receives a section 182(f) exemption. In its "Conformity; General Preamble for Exemption from Nitrogen Oxides Provisions", 59 FR 31238, 31241 (June 17, 1994), EPA reiterated its view that in order to conform, nonattainment and maintenance areas must demonstrate that the transportation plan and transportation improvement plan (TIP) are consistent with the motor vehicle emissions budget for NO_X even where a conformity NO_X waiver has been granted. Due to a drafting error, that view is not reflected in the current transportation conformity rules. As the commenters correctly note, EPA states in the June 17th notice that it intends to remedy the problem by amending the conformity rule. Although that notice specifically mentions only requiring consistency with the approved maintenance plan's NO_X motor vehicle emissions budget, EPA also intends to require consistency with the attainment demonstration's NO_X motor vehicle emissions budget. However, EPA is not granting an exemption from the transportation conformity requirements under section 182(f) in this action for the Bay Area. Rather, EPA's approval of the Bay Area's redesignation and maintenance plan begins the maintenance period, and an area's transportation plans and TIPs must be consistent with the motor vehicle emissions budget in the maintenance plan. The requirements of the transportation conformity regulation that plans and TIPs satisfy the "build/no build" test and achieve emissions reductions, does not apply to areas redesignated and operating under a maintenance status.

NO_X Waiver Comment 6

Some commenters argue that the CAA does not authorize any waiver of the NO_X reduction requirements until conclusive evidence exists that such reductions are counter-productive.

EPA Response

The EPA does not agree with this comment since it ignores Congressional intent as evidenced by the plain language of section 182(f), the structure of the Title I ozone subpart as a whole, and relevant legislative history. By contrast, in developing and implementing its NO_X exemption policies, EPA has sought an approach that reasonably accords with Congress' intent. Section 182(f), in addition to imposing control requirements on major stationary sources of NO_X similar to those that apply for such sources of VOC, also provides for an exemption (or limitation) from application of these requirements if, under one of several tests, EPA determines that in certain areas NO_X reductions would generally not be beneficial. In subsection 182(f)(1), Congress explicitly conditioned action on NO_X exemptions on the results of an ozone precursor study required under section 185B. Because of the possibility that reducing NO_X in a particular area may either not contribute to ozone attainment or may cause the ozone problem to worsen, Congress included attenuating language, not just in section 182(f) but throughout the Title I ozone subpart, to avoid requiring NO_X reductions where it would be nonbeneficial or counterproductive. In describing these various ozone provisions (including section 182(f)), the House Conference Committee Report states in pertinent part: "[T]he Committee included a separate NO_X/VOC study provision in section [185B] to serve as the basis for the various findings contemplated in the NO_X provisions. The Committee does not intend NO_X reduction for reduction's sake, but rather as a measure scaled to the value of NO_X reductions for achieving attainment in the particular ozone nonattainment area." H.R. Rep. No. 490, 101st Cong., 2d Sess. 257–258 (1990). As noted in response to an earlier comment by these same commenters, the command in subsection 182(f)(1) that EPA "shall consider" the 185B report taken together with the timeframe the Act provides both for completion of the report and for acting on NO_X exemption petitions clearly demonstrate that Congress believed the information in the completed section 185B report would provide a sufficient basis for EPA to act on NO_X exemption requests, even absent the additional information that would be included in affected areas' attainment or maintenance demonstrations. However, while there is no specific requirement in the Act that EPA actions granting NO_X exemption requests must await "conclusive evidence", as the commenters argue, there is also nothing in the Act to prevent EPA from revisiting an approved NO_X exemption if warranted due to better ambient information.

In addition, the EPA believes (as described in EPA's December 1993 guidance) that section 182(f)(1) of the CAA provides that the new NO_X requirements shall not apply (or may be limited to the extent necessary to avoid excess reductions) if the Administrator determines that any one of the following tests is met:

(1) In any area, the net air quality benefits are greater in the absence of NO_X reductions from the sources concerned;

(2) In nonattainment areas not within an ozone transport region, additional NO_X reductions would not contribute to ozone attainment in the area; or

(3) In nonattainment areas within an ozone transport region, additional NO_X reductions would not produce net ozone air quality benefits in the transport region.

Based on the plain language of section 182(f), EPA believes that each test provides an independent basis for receiving a full or limited NO_X exemption.

Only the first test listed above is based on a showing that NO_X reductions are "counter-productive." If one of the tests is met (even if another test is failed), the section 182(f) NO_X requirements would not apply or, under the excess reductions provision, a portion of these requirements would not apply.

III. EPA Final Action

In this final action, EPA is approving the San Francisco Bay Area ozone maintenance plan because it meets the requirements of section 175A. In addition, the Agency is redesignating the San Francisco Bay Area to attainment for ozone because the State of California has demonstrated compliance with the requirements of section 107(d)(3)(E) for redesignation. Finally, EPA is approving the NO_X waiver petition and 1990 emissions inventory for the San Francisco Bay Area.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each

[12] See "Section 182(f) Nitrogen Oxides (NO_X) Exemptions—Revised Process and Criteria", issued February 8, 1995 by John S. Seitz, Director of EPA's Office of Air Quality Planning and Standards.

[13] There are 3 NO_X exemption tests specified in section 182(f). Of these, 2 are applicable for areas outside an ozone transport region; the "contribute to attainment" test described above, and the "net air quality benefits" test. EPA must determine, under the latter test, that the net benefits to air quality in an area "are greater in the absence of NO_X reductions" from relevant sources. Based on the plain language of section 182(f), EPA believes that each test provides an independent basis for receiving a full or limited NO_X exemption. Consequently, as stated in section 1.4 of the December 16, 1993 EPA guidance, "[w]here any one of the tests is met (even if another test is failed), the section 182(f) NO_X requirements would not apply or, under the excess reductions provision, a portion of these requirements would not apply."

[14] "Criteria and Procedures for Determining Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Funded or Approved under Title 23 U.S.C. of the Federal Transit Act," November 24, 1993 (58 FR 62188).

[15] "Determining Conformity of General Federal Actions to State or Federal Implementation Plans; Final Rule," November 30, 1993 (58 FR 63214).

request for revision shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements. The ozone SIP is designed to satisfy the requirements of Part D of the CAA and to provide for attainment and maintenance of the ozone NAAQS. This final redesignation should not be interpreted as authorizing the State of California to delete, alter, or rescind any of the VOC or NO_X emission limitations and restrictions contained in the approved ozone SIP. Changes to the ozone SIP VOC RACT regulations rendering them less stringent than those contained in the EPA approved plan cannot be made unless a revised plan for attainment and maintenance is submitted and approved by EPA. Unauthorized relaxations, deletions, and changes could result in both a finding of nonimplementation (section 173(b) of the CAA) and in a SIP deficiency call made pursuant to section 110(a)(2)(H) of the CAA.

This action has been classified as a Table 2 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 14, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The OMB has exempted this regulatory action from the requirements of section 6 of Executive Order 128866.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Redesignation of an area to attainment under section 107(d)(3)(E) of the CAA, approval of a section 182(f) exemption, and approval of an emissions inventory do not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any regulatory requirements on sources. The Administrator certifies that the approval of the redesignation request will not affect a substantial number of small entities.

Under Sections 202, 203 and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of the state implementation plan or plan revisions approved in this action, the State and any affected local or tribal governments have elected to adopt the program provided for under section 175A and 182(a)(1) of the Clean Air Act. Also, EPA's final action approving the section 182(f) NO_X waiver petition relieves requirements otherwise imposed under the CAA and, hence does not impose any federal intergovernmental mandate, as defined in section 101 of the Unfunded Mandates Act. The rules and commitments approved in this action may bind State, local and tribal governments to perform certain actions and also may ultimately lead to the private sector being required to perform certain duties. To the extent that the rules and commitments being approved by this action will impose or lead to the imposition of any mandate upon the State, local or tribal governments either as the owner or operator of a source or as a regulator, or would impose or lead to the imposition of any mandate upon the private sector, EPA's action will impose no new requirements; such sources are already subject to these requirements under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. Therefore, EPA has determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

Under section 307(b)(1) of the Act, 42 U.S.C. 7607(b)(1), petitions for judicial review of this action must be filed in the United States Courts of Appeals for the appropriate circuit by July 21, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (See section 307(b)(2) of the Act, 42 U.S.C. 7607(b)(2).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, and Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 81

Air pollution control, National Parks, Wilderness Areas.

Dated: April 24, 1995.

Felicia Marcus,

Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Parts 52 and 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(205)(i)(B) and (212) to read as follows:

§ 52.220 Identification of Plan.

* * * * *

(c) * * *

(205) * * *

(i) * * *

(B) Bay Area Air Quality Management District.

(*1*) Amendments to the San Francisco Bay Area Redesignation Request and Maintenance Plan for the National Ozone Standard and 1990 Emissions Inventory adopted on September 7, 1994 by the Bay Area Air Quality Management District, October 5, 1994 by the Metropolitan Transportation Commission, and August 24, 1994 by the Association of Bay Area Governments.

* * * * *

(212) Ozone redesignation request for the Bay Area Air Quality Management District submitted on November 5, 1993, by the Governor's designee.

(i) Incorporation by reference.

(A) Redesignation request for the San Francisco Bay Area and the Ozone Maintenance Plan for the National Ozone Standard adopted on September 1, 1993 by the Bay Area Air Quality Management District, September 22, 1993 by the Metropolitan Transportation Commission, and September 16, 1993 by the Association of Bay Area Governments.

* * * * *

PART 81—[AMENDED]

Subpart B—Designation of Air Quality Control Regions

3. In section 81.305, the table for "California—Ozone" is amended by revising the entry "San Francisco Bay Area" to read as follows:

§ 81.305 California.

* * * * *

CALIFORNIA—OZONE

Designated area	Designation		Classification	
	Date[1]	Type	Date	Type
San Francisco–Bay Area:				
Alameda County	June 21, 1995	Attainment.		
Contra Costa County	.....	.....do.		
Marin County	.....	.....do.		
Napa County	.....	.....do.		
San Francisco County	.....	.....do.		
San Clara County	.....	.....do.		
San Mateo County	.....	.....do.		
Solano County (part)	.....	.....do.		
That portion of the county that lies south and west of the line described that follows: Description of boundary in Solano County between San Francisco and Sacramento: Beginning at the intersection at the westerly boundary of Solano County and the ¼ section line running east and west through the center of Section 34; T.6 N., R. 2 W., M.D.B.&M., thence east along said ½ section line to the east boundary of Section 36, T. 6 N., R. 2 W., thence south ½ mile and east 2.0 miles, more or less, along the west and south boundary of Los Putos Rancho to the northwest corner of Section 4, T. 5 N., R. 1 W, thence east along a line common to T. 5 N., and T. 6 N. to the northeast corner of Section 3, T. 5 N., R. 1 E., thence south along section lines to the southeast corner of Section 10 T. 3 N., R. 1 E., thence east along section lines to the south ¼ corner of Section 8 T. 3 N., R. 2 E., thence east to the boundary between Solano and Sacramento Counties.	.....	.....do.		
Sonoma County (part)	.....	.....do.		

[1] The date is November 15, 1990 unless otherwise noted.

[FR Doc. 95–12407 Filed 5–19–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR PART 300

[FRL–5209–3]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Final Rule: Notice of Deletion of United States Army Fort Lewis Landfill No. 5 from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) announces the deletion of United States Army Fort Lewis Landfill No. 5, located in Pierce County, Washington from the National Priorities List (NPL). The NPL is Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. EPA and the State of Washington Department of Ecology have determined the Site poses no significant threat to public health or the environment and, therefore, no further remedial measures pursuant to CERCLA are appropriate.

EFFECTIVE DATE: May 22, 1995.

FOR FURTHER INFORMATION CONTACT: Mary Jane Nearman, Site Manager, U.S. Environmental Protection Agency, Region 10, 1200 6th Avenue, HW–124, Seattle, WA 98101, (206) 553–6642.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is: United States Army Fort Lewis Landfill No. 5, Pierce County, Washington.

A Notice of Intent to Delete for this site was published March 27, 1995. (60 FR 15737). The closing date for comments on the Notice of Intent to Delete was April 26, 1995. EPA received no comments.

EPA identifies sites which appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. Any site deleted from the NPL remains eligible for remedial actions in the unlikely event that conditions at the site warrant such action in the future. NCP Section 300.425(e)(3). Deletion of a site from the NPL does not affect responsible party liability or impede Agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and record keeping requirements, Superfund, Water pollution control, and Water supply.

Dated: May 12, 1995.

Gerald A. Emison,

Regional Administrator, Region 10.

For the reasons set out in the preamble, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for Part 300 continues to read as follows:

Authority: 42 U.S.C. 9601-9657; 33 U.S.C. 1321(c)(2); E.O. 12777, 56 FR 54757, 3 CFR 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Appendix B—[Amended]

2. Table 2 of Appendix B to part 300 is amended by removing the site for United States Army Fort Lewis Landfill No. 5, Pierce County, Washington.

[FR Doc. 95–12473 Filed 5–19–95; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 94–145; RM–8556]

Radio Broadcasting Services; Sageville, IA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of The Sageville Shopper, allots Channel 291A to Sageville, IA, as the community's first local FM service. *See* 59 FR 65749, published December 21, 1994. Channel 291A can be allotted to Sageville in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates 42–35–42 North Latitude and 90–43–18 West Longitude.

With this action, this proceeding is terminated.

DATES: Effective July 3, 1995. The window period for filing applications will open on July 3, 1995, and close on August 3, 1995.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 94–145, adopted May 10, 1995, and released May 17, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, D.C. 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Iowa, is amended by adding Sageville, Channel 291A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–12456 Filed 5–19–95; 8:45 am]
BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 94–133; RM–8539]

Radio Broadcasting Services; Wewoka, OK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Jean and Jerry Spencer, allots Channel 284A to Wewoka, Oklahoma, as the community's first local FM service. *See* 59 FR 60011, published November 22, 1994. Channel 284A can be allotted to Wewoka in compliance with the Commission's minimum distance separation requirements with a site restriction of 11 kilometers (6.8 miles) southwest, at coordinates 35–04–52 North Latitude and 96–34–07 West Longitude, to avoid short-spacings to Stations KMYZ-FM, Channel 283C1, Pryor, OK, KREK, Channel 285A, Bristow, OK, and KTMC-FM, Channel 285A, McAlester, OK. With this action, this proceeding is terminated.

DATES: Effective July 3, 1995. The window period for filing applications will open on July 3, 1995, and close on August 3, 1995.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 94–133, adopted May 10, 1995, and released May 17, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, D.C. 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by adding Wewoka, Channel 284A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–12457 Filed 5–19–95; 8:45 am]
BILLING CODE 6712–01–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 678

[I.D. 051595H]

Atlantic Shark Fisheries; Large Coastal Shark Species

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the commercial fishery for large coastal sharks conducted by vessels with a Federal Atlantic Shark permit in the Western North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea. This action is necessary to prevent exceeding the semiannual quota of 1285 metric tons (mt) for the period January 1 through June 30, 1995.

EFFECTIVE DATE: The closure is effective from 11:30 P.M. local time May 31, 1995, through June 30, 1995.

FOR FURTHER INFORMATION CONTACT: C. Michael Bailey, 301–713–2347; Kevin B. Foster, 508–281–9260; or Michael Justen 813–570–5305.

SUPPLEMENTARY INFORMATION: The Atlantic shark fishery is managed by NMFS according to the Fishery Management Plan (FMP) for Atlantic Sharks prepared by NMFS under

authority of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*). Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR part 678.

Section 678.23(b)(1) of the regulations provides for two semiannual quotas of large coastal sharks to be harvested from Atlantic, Caribbean, and Gulf of Mexico waters by commercial fishermen. The first semiannual quota of 1,285 mt is available for harvest from January 1 through June 30, 1995.

The Assistant Administrator for Fisheries, NOAA (AA), is required under § 678.24 to monitor the catch and landing statistics and, on the basis of these statistics, to determine when the catch of Atlantic, Caribbean, and Gulf of Mexico sharks will equal any quota under § 678.23(b)(1). When shark harvests reach, or are projected to reach, a quota established under § 678.23(b)(1), the AA is further required under § 678.24 to close the fishery.

The AA has determined, based on the reported catch and other relevant factors, that the semiannual quota for the period January 1 through June 30, 1995, for large coastal sharks, in or from the Western North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, will be attained by May 31, 1995. During this closure, for vessels issued a permit under § 678.4, retention of large coastal sharks from the management unit is prohibited, unless the vessel is operating as a charter vessel or headboat, in which case, the vessel limit per trip is four large coastal sharks. Also, the sale, purchase, trade, or barter or attempted sale, purchase, trade, or barter of carcasses and/or fins of large coastal sharks harvested by a person aboard a vessel that has been issued a permit under § 678.4(a)(4), is prohibited, except for those that were harvested, offloaded, and sold, traded, or bartered prior to May 31, 1995, and were held in storage by a dealer or processor.

Vessels that have been issued a Federal permit under § 678.4 are reminded that as a condition of permit issuance, the vessel may not retain a large coastal shark during the closure, except as provided by § 678.24(a)(2). Fishing for pelagic and small coastal sharks may continue. The recreational fishery is not affected by this closure.

Classification

This action is taken under 50 CFR part 678 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. *et seq.*

Dated: May 16, 1995.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–12478 Filed 5–19–95; 8:45 am]
BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 60, No. 98
Monday, May 22, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 11

National Appeals Division Rules of Procedure

AGENCY: Office of the Secretary, National Appeals Division, USDA.

ACTION: Proposed rule.

SUMMARY: The National Appeals Division (NAD) in the Office of the Secretary proposes to add a new rule to implement Title II, Subtitle H, of the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 by setting forth procedures for program participant appeals of adverse decisions by United States Department of Agriculture (USDA) agency officials to the National Appeals Division (NAD). This action also defines those appeals over which NAD has jurisdiction.

DATES: Written comments via letter, facsimile, or Internet are invited from interested individuals and organizations and must be received on or before June 21, 1995.

ADDRESSES: Comments should be sent to L. Benjamin Young, Jr., Office of the General Counsel, Research and Operations Division, AgBox 1415, United States Department of Agriculture, Washington, D.C. 20250–1415; fax number: 202/720–5837; Internet: hqdomain.lawpo.young@sies.wsc.ag.gov.

FOR FURTHER INFORMATION CONTACT: L. Benjamin Young, Jr. at the above address or 202/690–1979.

SUPPLEMENTARY INFORMATION:

Classification

This proposed rule has been reviewed under E.O. 12866, and it has been determined that it is not a "significant regulatory action" rule because it will not have an annual effect on the economy of $100 million or more or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. This rule will not create any serious inconsistencies or otherwise interfere with actions taken or planned by another agency. It will not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof, and does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in E.O. 12866.

Regulatory Flexibility Act

The Department certifies that this proposed rule will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Pub. L. 96–534, as amended (5 U.S.C. 601, *et seq.*).

Background and Purpose

On December 27, 1994 (see 59 FR 66,517), the Secretary of Agriculture noticed that the NAD was established pursuant to Title II, Subtitle H of Pub. L. 103–354, the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994. NAD was assigned responsibility for all administrative appeals formerly performed by the National Appeals Division of the former Agricultural Stabilization and Conservation Service and by the National Appeals Staff of the former Farmers Home Administration, appeals arising from decisions of the Federal Crop Insurance Corporation and the former Soil Conservation Service, appeals arising from decisions of the successor agencies to the foregoing agencies established by the Secretary, and such other administrative appeals arising from decisions of agencies and offices of USDA as may in the future be assigned by the Secretary. Conforming changes to the regulations of the affected agencies will be published with the final rule.

This proposed part sets forth the jurisdiction of the NAD and the procedures appellants and agencies must follow upon appeal of adverse decisions by covered USDA program "participants" as defined in detail in the proposed part.

The proposed part defines "adverse decisions" to include denial of equitable relief to a program participant by an officer, employee, or committee of an agency or the failure of an officer, employee, or committee of an agency to issue a decision or otherwise act on the request or right of the participant, but to exclude decisions over which the Agriculture Board of Contract Appeals would have jurisdiction. "Agency" includes the Consolidated Farm Service Agency, the Commodity Credit Corporation, the Farmers Home Administration, the Federal Crop Insurance Corporation, the Rural Business and Cooperative Development Service, the Rural Development Administration, the Rural Housing and Community Development Service, the Natural Resources and Conservation Service, a State, county, or area committee established under section 8(b)(5) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)(5)), any successor agency to the above-named agencies, and any other agency or office of the Department that the Secretary may designate. Designation of other agencies or offices by the Secretary shall be accomplished by virtue of a delegation of authority to NAD by the Secretary, or by future amendment of these rules by the Secretary.

These rules would apply to any adverse decision issued by any agency on or after October 20, 1994, and to any appeals or requests pending before an agency, including any predecessor agency, prior to October 20, 1994.

The proposed part would be applicable to adverse decisions with respect to: (1) Denial of participation in any program of an agency; (2) compliance with program requirements; and (3) the making or amount of payments or other program benefits to a participant in any program of an agency.

The proposed part preserves participants' rights to avail themselves of certain informal agency review processes prior to instituting an appeal under the proposed part.

The proposed part states that the Administrative Procedure Act, the Equal Access to Justice Act, and the Federal Rules of Evidence do not apply to proceedings under the proposed part.

The proposed part provides filing requirements and deadlines, evidentiary hearing procedures for appeals of adverse decisions (including rules applicable to the issuance of subpoenas), procedures for NAD Director review of an agency determination that a decision is not appealable, and procedures for NAD Director review of hearing officer determinations.

The proposed part provides for judicial review of final determinations of NAD.

List of Subjects in 7 CFR Part 11

Administrative practice and procedure, Agriculture, Agricultural commodities, Crop insurance, Ex parte communications, Farmers, Federal aid programs, Loan programs, Price support programs, Soil conservation.

For the reasons set out in the preamble, Title 7, Subtitle A, of the Code of Federal Regulations is amended by adding Part 11 to read as follows:

PART 11—NATIONAL APPEALS DIVISION RULES OF PROCEDURE

Sec.

11.1 Definitions.
11.2 General statement.
11.3 Applicability.
11.4 Inapplicability of other laws and regulations.
11.5 Informal agency hearings and exhaustion.
11.6 Right of participants to Division hearing or Director review of agency determination of appealability.
11.7 Division hearings.
11.8 Director review of determinations of Hearing Officers.
11.9 Bases for determinations.
11.10 Effective date and implementation of final determinations of the Division.
11.11 Judicial review.
11.12 Filing of appeals and computation of time.

Authority: 5 U.S.C. 301; Title II, Subtitle H, Pub. L. 103–354, 108 Stat. 3228 (7 U.S.C. 6991); Reorganization Plan No. 2 of 1953 (5 U.S.C. App.).

§ 11.1 Definitions.

For purposes of this part:

Adverse decision means an administrative decision made by an officer, employee, or committee of an agency that is adverse to a participant. The term includes a denial of equitable relief by an agency or the failure of an agency to issue a decision or otherwise act on the request or right of the participant within timeframes specified by agency program regulations. The term does not include a decision over which the Board of Contract Appeals has jurisdiction.

Agency means:

(1) The Consolidated Farm Service Agency;
(2) The Commodity Credit Corporation;
(3) The Farmers Home Administration;
(4) The Federal Crop Insurance Corporation;
(5) The Rural Business and Cooperative Development Service;
(6) The Rural Development Administration;
(7) The Rural Housing and Community Development Service;
(8) The Natural Resources Conservation Service;
(9) A State, county, or area committee established under section 8(b)(5) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)(5)); and
(10) Any successor agency to the above-named agencies, and any other agency or office of the Department which the Secretary may designate.

Agency record means all the materials maintained by an agency related to an adverse decision which are submitted to the Division by an agency for consideration in connection with an appeal under this part , but shall not include records or information not directly related to the adverse decision at issue. All materials contained in the agency record submitted to the Division shall be deemed admitted as evidence for purposes of a hearing or a record review under § 11.7.

Agency representative means any person, whether or not an attorney, who is authorized to represent the agency in an administrative appeal under this part.

Appeal means a written request by a participant asking for review by the National Appeals Division of an adverse decision under this part.

Appellant means any participant who appeals an adverse decision in accordance with this part. Unless separately set forth in this part, the term "appellant" includes an authorized representative.

Authorized representative means any person, whether or not an attorney, who is authorized in writing by a participant, consistent with § 11.6(a), to act for the participant in an administrative appeal under this part. The authorized representative may act on behalf of the participant except when the provisions of this part require action by the participant or appellant personally.

Case record means all the materials maintained by the Secretary related to an adverse decision. The case record includes both the agency record and the hearing record.

Days means calendar days unless otherwise specified.

Department means the United States Department of Agriculture.

Director means the Director of the Division or a designee of the Director.

Division means the National Appeals Division established by this part.

Equitable relief means relief which is authorized under section 326 of the Food and Agriculture Act of 1962 (7 U.S.C. 1339a) and other laws administered by the agency.

Ex parte communication means an oral or written communication not contained in the hearing record with respect to which reasonable prior notice to all parties is not given, but it shall not include requests for status reports on any matter or proceeding connected with the appeal involved.

Hearing except with respect to § 11.5, means a proceeding before the Division to afford a participant the opportunity to present testimony or documentary evidence or both in order to have a previous determination reversed and to show why an adverse determination was not proper.

Hearing Officer means an individual employed by the Division who conducts the hearing and determines appeals of adverse decisions by any agency.

Hearing record means all documents, evidence, and other materials generated in relation to a hearing under § 11.7.

Implement means the taking of action by an agency of the Department in order fully and promptly to effectuate a final determination of the Division.

Participant means any individual or entity whose right to participate in or receive a payment, loan, loan guarantee, or other benefit in accordance with any program of an agency to which these regulations apply is affected by a decision of such agency, including a decision by a reinsured company which is authorized by the Federal Crop Insurance Corporation to issue insurance policies. The term does not include:

(1) Participants in programs subject to adjudicatory proceedings under the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary under Various Statues, 7 CFR Part 1, Subpart H;

(2) Participants in programs governed by Federal contracting laws and regulations (appealable under other rules and to other forums, including to the Department's Board of Contract Appeals under 7 CFR part 24);

(3) Appellants from decisions to deny the release of information sought by members of the public under the Freedom of Information Act (appealable under 7 CFR Part 1, Subpart A);

(4) Participants in suspension and debarment disputes, including, but not limited to, those falling within the scope of 7 CFR Parts 1407 and 3017;

(5) Participants in export programs administered by the Commodity Credit Corporation;

(6) Reinsured companies engaged in disputes with the Federal Crop Insurance Corporation;

(7) Tenants prosecuting grievances or appeals pursuant to the provisions of 7 CFR Part 1944, Subpart L, under the multi-family housing program carried out by the Rural Housing and Community Development Service;

(8) Persons having personnel, equal employment opportunity, and other similar disputes with any agency or office of the Department which arise out of the employment relationship;

(9) Persons pursuing claims against the United States arising under the Federal Tort Claims Act, 28 U.S.C. 2671 *et seq.*, or the Military Personnel and Civilian Employees Claims Act of 1964, 31 U.S.C. 3721; or

(10) Program participants pursuing claims under the nondiscrimination regulations at 7 CFR parts 15, 15a, 15b, and 15e.

Record review means an appeal considered by the Hearing Officer in which the Hearing Officer's determination is based on the agency record and other information submitted by the appellant and the agency, including information submitted by affidavit or declaration.

Secretary means the Secretary of Agriculture.

§ 11.2 General statement.

This part sets forth procedures for proceedings before the National Appeals Division within the Department. The Division is an organization within the Department which is independent from all other agencies and offices of the Department, including Department officials at the state and local level. The Director of the Division reports directly to the Secretary of Agriculture. The authority of the Hearing Officers and the Director of the Division, and the administrative appeal procedures which must be followed by program participants who desire to appeal an adverse decision and by the agency which issued the adverse decision, are included in this part.

§ 11.3 Applicability.

(a) *Subject matter.* The regulations contained in this part are applicable to adverse decisions made by an agency, including, for example, those with respect to:

(1) Denial of participation in, or receipt of benefits under, any program of an agency;

(2) Compliance with program requirements; and

(3) The making or amount of payments of other program benefits to a participant in any program of an agency.

(b) *Effective date.* This part is applicable to:

(1) Any adverse decision issued by any agency on or after October 20, 1994; and

(2) All appeals or requests for reconsideration which were pending before any agency, including any predecessor agency abolished by the Secretary pursuant to the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994, Pub. L. 103–354, 108 Stat. 3178, prior to October 20, 1994.

§ 11.4 Inapplicability of other laws and regulations.

The provisions of the Administrative Procedure Act, as amended, 5 U.S.C. 551, *et seq.*, are not applicable to proceedings under this part. The Equal Access to Justice Act, as amended, 5 U.S.C. 504, does not apply to these proceedings. The Federal Rules of Evidence, 28 U.S.C. App., shall not apply to these proceedings.

§ 11.5 Informal agency hearings and exhaustion.

(a) *Required exhaustion of informal hearing options.* No administrative decision issued at the field service office level by an officer or employee of the Consolidated Farm Service Agency, or by any employee of a county or area committee established under section 8(b)(5) of the Soil Conservation and Domestic Allotment Act, 16 U.S.C. 590h(b)(5), shall be considered to be an adverse decision for purposes of the provisions of this part until a program participant has perfected an informal appeal to and received a decision thereon from the county or area committee with responsibility for the administrative decision at issue, and any program participant shall be required to exhaust his or her right to informal review by such county or area committee prior to seeking review by the Division under the provisions of this part.

(b) *Optional informal hearings.* If an officer or employee of an agency of the Department makes an adverse decision, at the request of the participant the agency shall hold an informal hearing on or conduct an informal review of the decision. A participant is encouraged to utilize an agency's informal review process initially, and may do so without prejudice to the participant's right subsequently to appeal the agency's decision to the Division. A participant shall also have the right to utilize any available alternative dispute resolution or mediation program, including any mediation program available under title V of the Agriculture Credit Act of 1987, 7 U.S.C. 5101 *et seq.*, in order to seek an informal review of any adverse decision prior to any appeal of such decision to the Division in accordance with this part.

§ 11.6 Right of participants to division hearing or Director review of agency determination of appealability.

(a) *Right of participants.* A participant has the right to appeal an adverse decision to the Division for an evidentiary hearing by a Hearing Officer consistent with § 11.7. If an officer, employee, or committee of an agency determines that an agency decision is not applicable, the participant may request a review of that determination by the Director pursuant to paragraph (b) of this section. If a participant is represented by an unauthorized representative, the authorized representative must file a declaration with NAD, executed in accordance with 28 U.S.C. 1746, stating that the participant has duly authorized the declarant in writing to represent the participant for purposes of a specified adverse decision or decisions, and attach a copy of the written authorization to the declaration.

(b) *Director review of agency determination of appealability.* (1) Not later than 30 days after the date on which a participant receives a determination from an agency that an agency decision is not appealable, the participant must submit a written request to the Director to review the determination in order to be entitled to such review by the Director.

(2) The Director will conduct a review of a determination that an agency decision is not appealable using any information the Director determines is necessary. Based on such review, the Director will issue a final determination notice that upholds or reverses the determination of the agency. This final determination is not appealable. If the Director will notify the participant and the agency of that decision and inform the participant of his or her right to proceed with an appeal.

(3) The Director may delegate his or her authority to conduct a review under this subsection to any Deputy or Associate Directors of the Division. In any case in which such review is conducted by a Deputy or Associate Director under authority delegated by the Director, the Deputy or Associate Director's determination shall be considered to be the determination of the Director and shall be final and not appealable.

(c) *Appeals of adverse decisions.* (1) To be entitled to a hearing under § 11.7, a participant personally must request such hearing not later than 30 days after the date on which the participant first received notice of the adverse decision. In the case of the failure of an agency to act on the request or right of a recipient, a participant personally must request such hearing not later than 30 days after the participant knew or should have known that the agency had not acted within the timeframes specified by agency program regulations, or, where such regulations specify no timeframes, not later than 30 days after the participant reasonably should have known of the agency's failure to act.

(2) A request for a hearing shall be in writing and personally signed by the participant, and shall include a copy of the adverse decision to be reviewed, if available, along with a brief statement of the participant's reasons for believing that the decision, or the agency's failure to act, was wrong. Instead of a hearing, the participant may request a record review.

§ 11.7 Division hearings.

(a) *General rules.* (1) The Director, the Hearing Officer, and the appellant shall have access to the agency record or any adverse decision appealed to the Division for a hearing.

(2) The Director and Hearing Officer shall have the authority to administer oaths and affirmations, and to require, by subpoena, the attendance of witnesses and the production of evidence.

(i) A subpoena requiring the production of evidence may be requested and issued at any time while the case is pending before the Division.

(ii) An appellant or an agency, acting through any appropriate official, may request issuance of a subpoena requiring the attendance of a witness by submitting such a request in writing at least 14 days before the scheduled date of a hearing.

(iii) A subpoena shall be issued only if the Director or a Hearing Officer determines that:

(A) For a subpoena of documents, the appellant or the agency has established that production of documentary evidence is necessary and is reasonably calculated to lead to information which would affect the final determination or is necessary to fully present the case before the Division; or

(B) For a subpoena of a witness, the appellant or the agency has established that either a representative of the Department or a private individual possesses information that is pertinent and necessary for disclosure of all relevant facts which could impact the final determination, that the information cannot be obtained except through testimony of the person, and that the testimony cannot be obtained absent issuance of a subpoena.

(iv) The party requesting issuance of a subpoena shall arrange for service. Service of a subpoena upon a person named therein may be made by registered or certified mail, or in person. Personal service shall be made by personal delivery of a copy of the subpoena to the person named therein by any person who is not a party and who is not less than 18 years of age. Proof of service shall be made by filing with the Hearing Officer or Director who issued the subpoena a statement of the data and manner of service and of the names of the persons served, certified by the person who made the service in person or by return receipts for certified or registered mail.

(v) The party at whose instance a subpoena is issued shall be responsible for the payment of any travel and subsistence costs incurred by the witness in connection with his or her appearance and any fees of a person who serves the subpoena in person. The Department shall pay the costs associated with the appearance of Department employees regardless of the party requesting the subpoena. The failure to make payment of such charges on demand may be deemed by the Hearing Officer or Director as sufficient ground for striking the testimony of the witness and the evidence the witness has produced.

(vi) If a person refuses to obey a subpoena, the Director, acting through the Office of General Counsel of the Department and the Department of the Justice, may apply to the United States District Court in the jurisdiction where that person resides to have the subpoena enforced as provided in the Federal Rules of Civil Procedure (28 U.S.C. App.).

(3) Testimony required by subpoena pursuant to paragraph (a)(2) of this section may, at the discretion of the Director or a Hearing Officer, be presented at the hearing either in person or telephonically.

(4) *Ex parte* communication. (i)(A) At no time between the filing of an appeal and the issuance of a final determination by the Director shall the Hearing Officer or the Director engage in *ex parte* communications regarding the merits of the appeal with any person having any interest in the appeal pending before the Division, including any person in an advocacy or investigative capacity. This prohibition does not apply to:

(*1*) Discussion of procedural matters related to an appeal; or

(*2*) Discussions of the merits of the appeal with such a person by the Hearing Officer or the Director where all parties to the appeal have been given notice and an opportunity to participate.

(B) In the case of a communication described in paragraph (a)(4)(i)(A)(*2*) of this section, a memorandum of any such discussion shall be included in the hearing record.

(ii) No interested person shall make or knowingly cause to be made to the Hearing Officer or the Director an *ex parte* communications relevant to the merits of the appeal.

(iii) If the Hearing Officer or Director receives an *ex parte* communication in violation of this section, the one who receives the communication shall place in the hearing record:

(A) All such written communications;

(B) Memoranda stating the substance of all such oral communications; and

(C) All written responses to such communications, and memoranda stating the substance of any oral responses thereto, made by the Hearing Officer or Director.

(iv) Upon receipt of a communication knowingly made or knowingly caused to be made by a party in violation of this section the Hearing Officer or Director may, to the extent consistent with the interests of justice and the policy of the underlying program, require the party to show cause why such party's claim or interest in the appeal should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation.

(b) *Hearing procedures applicable to both record review and hearings.* (1) Upon the filing of an appeal under this part of an adverse decision by any agency, the agency promptly shall provide the Division with a copy of the agency record. If requested by the appellant prior to the hearing, a copy of such agency record shall be provided promptly to the appellant by the agency.

(2) The Director shall assign the appeal to a Hearing Officer and shall notify the appellant and agency of such assignment. The notice also shall advise the appellant and the agency of the documents required to be submitted under paragraph (c)(2), of this section and notify the appellant of the option of having a hearing by telephone.

(3) The Hearing Officer will receive evidence into the hearing record without regard to whether the evidence was known to the agency officer, employee, or committee making the adverse decision at the time the adverse decision was made.

(c) *Procedures applicable only to hearings.* (1) Upon a timely request for a hearing under § 11.61(c), an appellant

has the right to have a hearing by the Division on any adverse decision within 45 days after the date of receipt of the request for the hearing by the Division.

(2) The Hearing Officer shall set a deadline for submission of the following documents not less than 28 days prior to the hearing:

(i) By the appellant:

(A) A short statement of why the decision is wrong;

(B) A copy of our list of documents the appellant anticipates introducing at the hearing; and

(C) A list of anticipated witnesses, or instead, brief descriptions of the evidence the appellant's witnesses will offer.

(ii) By the agency:

(A) A copy of the adverse decision challenged by the appellant;

(B) A written explanation of the agency's position, including the regulatory or statutory basis therefor;

(C) A copy of or list of documents the agency anticipates introducing at the hearing; and

(D) A list of anticipated witnesses, or instead, brief descriptions of the evidence the appellant's witnesses will offer.

(3) Not less than 21 days prior to the hearing, the Division must provide the appellant, the authorized representative, and the agency a notice of hearing identifying the time, date, and place of the hearing. The hearing will be held in the State of residence of the appellant, as determined by the Hearing Officer, or at a location that is otherwise convenient to the appellant and the Division. The notice also shall notify the appellant of the right to obtain a transcript of the hearing and the procedures for obtaining such transcript.

(4) Conduct of the hearing. (i) A hearing before a Hearing Officer will be in person unless the appellant agrees to a hearing by telephone.

(ii) The hearing will be conducted by the Hearing Officer in the manner determined by the Division most likely to obtain the facts relevant to the matter or matters at issue. The Hearing Officer will allow the presentation of evidence at the hearing without regard to whether the evidence was known to the agency officer, employee, or committee making the adverse decision at the time the adverse decision was made. The Hearing Officer may confine the presentation of facts and evidence to pertinent matters and exclude irrelevant, immaterial, or unduly repetitious evidence, information, or questions. The Hearing Officer may request or permit individuals other than those appearing on behalf of the appellant to present information or evidence at such hearing. The appellant shall have the opportunity to present oral and documentary evidence, oral testimony of witnesses, and arguments in support of the appellant's appeal; controvert evidence relied on by the agency; and question all witnesses. When appropriate, agency witnesses requested by the appellant will be made available at the hearing. Any evidence may be received by the Hearing Officer without regard to whether that evidence could be admitted in judicial proceedings.

(iii)(A) Official recording of the hearing in the form of a verbatim transcript may be made if:

(*1*) The appellant or the agency requests the Hearing Officer to arrange for such a transcript at least 14 days prior to the hearing and agrees to pay the expenses of the transcription service; or

(*2*) The Director determines that such a transcript is appropriate.

(B) In cases in which the appellant requests the transcript, the Hearing Officer will provide the appellant and the authorized representative with the name of the transcription service and an estimate of the cost of such service. After receiving an estimate of such cost, the appellant may withdraw the request for transcription services prior to the hearing, but, in such cases, the appellant will be responsible for all costs to the Division associated with the cancellation of such service. Unofficial recording of a hearing by a voice recorder or the use of an unauthorized transcription service may be permitted but such recording shall not be an official recording of the hearing and will not be made part of either the hearing record or the case record.

(5) Absence of parties. (i) If at the time scheduled for the hearing either the appellant or the agency representative is absent, and no appearance is made on behalf of such absent party, or no arrangements have been made for rescheduling the hearing, the Hearing Officer has the option to cancel the hearing, in which case the Hearing Officer will:

(A) Treat the appeal as a record review and issue a determination based on the agency record as submitted by the agency and the hearing record developed prior to the hearing date;

(B) Accept evidence into the hearing record submitted by other persons present at the hearing, and then issue a determination; or

(C) Dismiss the appeal.

(ii) In appropriate cases, the Hearing Officer will add any additional evidence to the hearing record, provide a copy of such evidence to the absent party or parties, and allow the absent party or parties 10 days to provide a response to such additional evidence for inclusion in the hearing record.

(6) Post-hearing procedure. The Hearing Officer will leave the hearing record open after the hearing for 10 days, or for such other period of time as the Hearing Officer shall establish, to allow the submission of information by the appellant or the agency, to the extent necessary to respond to new facts, information, arguments, or evidence presented or raised at the hearing. Any such new information will be added by the Hearing Officer to the hearing record and sent to the other party or parties by the submitter of the information. The Hearing Officer, in his or her discretion, may permit the other party or parties to respond to this post-hearing submission.

(d) *Interlocutory review.* Interlocutory review by the Director of rulings of a Hearing Officer are not permitted under the procedures of this part.

(e) *Burden of proof.* The appellant has the burden of proving that the adverse decision of the agency was erroneous by a preponderance of the evidence.

(f) *Timing of issuance of determination.* The Hearing Officer will issue a notice of the determination on the appeal to the appellant, personally, the authorized representative, and the agency not later than 30 days after a hearing or the closing date of the hearing record in cases in which the Hearing Officer receives additional evidence from the agency or appellant after a hearing. In the case of a record review, the Hearing Officer will issue a notice of determination within 45 days of receipt of the appellant's request for a record review. Upon the Hearing Officer's request, the Director may establish an earlier or later deadline. If the determination is not appealed to the Director for review under § 11.8, the notice provided by the Hearing Officer shall be considered to be an notice of a final determination under this part.

§ 11.8 Director review of determinations of Hearing Officers.

(a) *Requests for Director review.* (1) Not later than 30 days after the date on which an appellant receives the determination of a Hearing Officer under § 11.7, the appellant must submit a written request, signed personally by the appellant, to the Director to review the determination in order to be entitled to such review by the Director.

(2) Not later than 15 business days after the date on which an agency receives the determination of a Hearing Officer under § 11.7, the head of the agency may make a written request that the Director review the determination. Any such request may be made by the head of an agency only, or by a person acting in such capacity, but not by any subordinate officer of such agency.

(b) *Notification of parties.* The Director promptly shall notify all parties of receipt of a request for review.

(c) *Determination of Director.* (1) The Director will conduct a review of the determination of the Hearing Officer using the agency record, the hearing record, the request for review, and such other arguments or information as may be accepted by the Director. Based on such review, the Director will issue a final determination notice that upholds, reverses, or modifies the determination of the Hearing Officer. The Director's determination upon review of a Hearing Officer's decision shall be considered to be the final determination under this part and shall not be appealable. However, if the Director determines that the hearing record is inadequate, the Director may remind all or a portion of the determination to the Hearing Officer for further proceedings to complete the hearing record or, at the option of the Director, to hold a new hearing.

(2) The Director will complete the review and either issue a final determination or remand the determination not later than—

(i) 10 business days after receipt of the request for review, in the case of a request by the head of an agency; or

(ii) 30 business days after receipt of the request for review, in the case of a request by an appellant.

(3) In any case or any category of cases, the Director may delegate his or her authority to conduct a review under this section to any Deputy or Associate Directors of the Division. In any case in which such review is conducted by a Deputy or Associate Director under authority delegated by the Director, the Deputy or Associate Director's determination shall be considered to be the determination of the Director under this part and shall be final and not appealable.

(d) *Equitable relief.* In reaching a decision on an appeal, the Director shall have the authority to grant equitable relief under this part in the same manner and to the same extent as such authority is provided an agency under applicable laws and regulations.

§ 11.9 Bases for determinations.

(a) The Hearing Officers and the Director are not bound by previous findings of facts by the agency in making a determination.

(b) In making a determination on the appeal, Hearing Officers and the Director shall ensure that the decision is consistent with the laws and regulations of the agency, and with the generally applicable interpretations of such laws and regulations.

(c) All determinations of the Hearing Officers and the Director must be based on information from the case record, laws applicable to the matter at issue, and applicable regulations published in the **Federal Register** and in effect on the date of the adverse decision or the date on which the acts that gave rise to the adverse decision occurred, whichever date is appropriate under the applicable agency program laws and regulations.

§ 11.10 Effective date and implementation of final determinations of the Division.

(a) On the return of a case to an agency pursuant to the final determination of the Division, the head of the agency shall implement the final determination not later than 30 days after the effective date of the notice of the final determination.

(b) A final determination will be effective as of the date of filing of an application, the date of the transaction or event in question, or the date of the original adverse decision, whichever is applicable under the applicable agency program statutes or regulations.

§ 11.11 Judicial review.

(a) A final determination of the Division shall be reviewable and enforceable by any United States District Court of competent jurisdiction in accordance with chapter 7 of title 5, United States Code.

(b) An appellant may not seek judicial review of any agency adverse decision appealable under this part without receiving a final determination from the Division pursuant to the procedures of this part.

§ 11.12 Filing of appeals and computation of time.

(a) An appeal, a request for Director review, or any other document will be considered "filed" when delivered in writing to the Division, when postmarked, or when a complete facsimile copy is received by the Division.

(b) Whenever the final date for any requirement of this part falls on a Saturday, Sunday, Federal holiday, or other day on which the Division is not open for the transaction of business during normal working hours, the time for filing will be extended to the close of business on the next working day.

(c) The time for filing an appeal, a request for Director review, or any other document, with the Division expires at 5:00 p.m. Eastern Standard Time or Eastern Daylight Savings time as applicable on the last day on which such filing may be made.

Done at Washington, D.C., this 12 day of May, 1995.

Dan Glickman,

Secretary of Agriculture.

[FR Doc. 95–12261 Filed 5–19–95; 8:45 am]

BILLING CODE 3410–01–M

Animal and Plant Health Inspection Service

9 CFR Part 3

[Docket No. 93–076–3]

Marine Mammal Negotiated Rulemaking Advisory Committee; Establishment

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of intent to establish a committee.

SUMMARY: The Department of Agriculture announces its intent to establish an advisory committee to develop a recommended rulemaking proposal to revise the regulations governing the handling, care, treatment, and transportation of marine mammals in captivity. This committee, called the Marine Mammal Negotiated Rulemaking Advisory Committee, will be comprised of representatives with a definable stake in the outcome of the proposed rule.

DATES: Consideration will be given only to comments received on or before June 21, 1995.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 93–076–3, Animal and Plant Health Inspection Service, Policy and Programs Development, Regulatory Analysis and Development, 4700 River Road Unit 118, Riverdale, MD 20737–1228. Please state that your comments refer to Docket No. 93–076–3. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Barbara Kohn, Senior Staff Veterinarian, Animal and Plant Health Inspection Service, Regulatory Enforcement and Animal Care, Animal Care, 4700 River Road Unit 84, Riverdale, MD 20737–1228, (301) 734–8699.

SUPPLEMENTARY INFORMATION:

Background

We are announcing our intent to establish an advisory committee to develop a recommended rulemaking proposal to revise the regulations governing the handling, care, treatment and transportation of marine mammals in captivity.

Under the Animal Welfare Act (the Act) (7 U.S.C. 2131 *et seq.*), the Secretary of Agriculture is authorized to promulgate standards and other requirements governing the human handling, housing, care, treatment, and transportation of certain animals by dealers, research facilities, exhibitors, and carriers and intermediate handlers. Regulations established under the Act are contained in 9 CFR parts 1, 2, an 3.

Under the Act, the Department established regulations in 1979 for the human handling, care, treatment, and transportation of marine mammals used for research or exhibition purposes. These standards were amended in 1984. During the 9 years since the standards were amended, advances have been made, new information has been developed, and new concepts have been implemented with regard to the housing and care of marine mammals.

On July 23, 1993, we published in the **Federal Register** (58 FR 39458, Docket No. 93–076–1) an advance notice of proposed rulemaking that solicited comments on appropriate revisions or additions to the standards for the humane care and transportation of marine mammals used for exhibition or research.

The comments we received in response to our advance notice suggest that it would be highly desirable to involve all interested parties in developing appropriate regulatory standards. We believe consensus among interested parties is attainable and that we should proceed with negotiated rulemaking in developing such standards

Negotiated Rulemaking

Negotiated rulemaking is a consensus-based approach to the promulgation of agency rules. It is considered to be an effective tool for developing regulatory solutions to problems that affect diverse, and often competing, interests among the regulated public. By participating in this effort, interested parties have more direct input into the substance of a proposed rule than they would through the usual form of notice-and-comment rulemaking, where a regulatory agency works more independently to develop a proposed rule. In negotiated rulemaking, the participating parties agree to work together until consensus is reached on the content of the proposed rule, which is then published for public comment. In this manner, negotiated rulemaking enables an agency to avoid many of the obstacles that might be raised in a usual notice-and-comment proposed rulemaking, and expedites the promulgation and implementation of a final rule.

We therefore intend to establish a Marine Mammal Negotiated Rulemaking Advisory Committee (Committee), chartered under the Federal Advisory Committee Act (Pub. L. 92–463). The Committee will advise the Department on the content of regulations to revise and update the standards for the handling, care, treatment, and transportation of marine mammals in captivity.

The establishment of this Committee is necessary and in the public interest in connection with the duties and responsibilities of the Administrator of the Animal and Plant Health Inspection Service (APHIS) in ensuring the humane care of marine mammals held in captivity by researchers and exhibitors. These duties and responsibilities include the promulgation of regulations. The Committee is intended to serve as a public forum in which interested parties can discuss and resolve the issues involved in developing revised standards for the care of marine mammals in captivity. We believe that this process will allow APHIS to develop effective regulations for the care of these animals.

Key Issues for Negotiation

We anticipate that the Committee will need to address the following issues in formulating a proposal:

* Space requirements;
* Transportation of marine mammals;
* "Swim-with-the-dolphins" programs;
* Noise levels;
* Water temperatures;
* Recordkeeping requirements;
* Water quality parameters to be monitored;
* Separation/isolation;
* Feeding;
* Training; and
* Stranding: When does rehabilitation end and captivity begin?

Guidelines

The following guidelines will apply to this negotiated rulemaking, subject to appropriate changes made as a result of comments received on this notice or as determined necessary during the negotiation process:

1. *Facilitator.* APHIS will use a facilitator. The facilitator, a neutral third party, will not be involved in the substantive development of the regulation. The facilitator's role will be to chair negotiating sessions, to act as a mediator, to help the negotiations proceed smoothly, and to help the participants define and reach consensus.

2. *Good faith negotiation.* Because participants must be willing to negotiate in good faith, each organization must authorize a senior official to represent its interest and to negotiate on its behalf. The issue of keeping or holding animals in captivity will not be addressed by the Committee. The Committee will address only issues relating to the care and maintenance of captive marine mammals.

3. *Administrative support and meetings.* APHIS will provide staff support for the Committee. Meetings will be held in the Washington, DC, metropolitan area.

4. *Consensus.* The goal of the negotiating process is consensus. Generally, consensus means that each interest concurs in the result.

5. *Record of meeting.* In accordance with the Federal Advisory Committee Act, APHIS will keep a record of all Committee meetings. The record will be placed in the administrative record for this rulemaking, and be made available for public inspection upon request. meetings will be open to the public.

6. *Committee procedures.* Under the general guidance and direction of the facilitator and subject to applicable legal requirements, the members of the Committee will establish detailed procedures for the conduct of their Committee meetings.

7. *Schedule.* The time and location of Committee meetings will be announced in the **Federal Register**.

8. *Participants.* The Committee will consist of no more than 25 members and a facilitator. Participation by more than 25 persons could make it difficult to conduct effective negotiations. One purpose of this notice is to help determine whether regulations concerning the care of marine mammals in captivity would substantially affect interests not adequately represented by the proposed participants listed in this notice. We do not believe that each potentially affected organization or individual must have its own representative on the Committee. However, we firmly believe that each interest must be adequately represented. Equal opportunity practices, consistent with U.S. Department of Agriculture policies, will be followed in all appointments to the Committee.

APHIS has tentatively identified the following interests and parties as potential participants on the Marine Mammal Negotiated Rulemaking Advisory Committee:

Representing Facility Owners and Managers

American Zoo and Aquarium Association

Alliance of Marine Mammal Parks

International Association of Amusement Parks and Attractions

Marine Mammal Coalition

United States Navy

Related Industry Groups

Coalition of Animal Welfare Institute, Society for Animal Protective Legislation, and numerous other organizations

Center for Marine Conservation

Humane Society of the United States

Representing Those Who Work with Captive Marine Mammals in Various Capacities

American Association of Zoo Veterinarians

International Association for Aquatic Animal Medicine

International Marine Animal Trainers Association

Society for Marine Mammology

Federal Government

Marine Mammal Commission

Animal and Plant Health Inspection Service, USDA

Comments on this tentative list of participants are invited, as are suggestions for other potential participants. Please keep in mind that it is not necessary that every concerned organization be represented, as long as every significant interest is represented. Negotiation sessions will be open to the public. individuals and organizations without designated representatives on the Committee may attend sessions and communicate informally with members of the Committee.

Done in Washington, DC, this 17th day of March.

Wardell C. Townsend,

Assistant Secretary for Administration.

[FR Doc. 95–12434 Filed 5–19–95; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

Energy Efficiency Standards Test Procedures, Labeling, and Certification Reporting for Certain Commercial and Industrial Electric Motors

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of public meeting.

SUMMARY: The Department of Energy (DOE) will hold an informal public meeting to discuss issues and gather information related to energy efficiency standards, test procedures, labeling, and compliance certification for 1 through 200 horsepower electric motors that are manufactured alone or as a component of another piece of equipment. All persons are hereby given notice of the opportunity to attend this public meeting and to submit written statements.

DATES: The public meeting will be held on Friday, June 2, 1995. Written statements, in quadruplicate, must be received by June 30, 1995.

ADDRESSES: Written statements should be labeled "Test Procedures and Efficiency Certification for Electric Motors," and submitted to: Ms. Sandy Cooper, Office of Energy Efficiency and Renewable Energy, Mail Station EE–431, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. Telephone: (202) 586–7574; Telefax: (202) 586–4617.

The meeting will begin at 9:30 a.m., and will be held at the U.S. Department of Energy, Forrestal Building, Room 1E–245, 1000 Independence Avenue SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Anthony Balducci, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–431, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–8459

James Raba, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–431, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–8654

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–72, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9507.

SUPPLEMENTARY INFORMATION:

1. Authority

Part 3 of Title IV of the National Energy Conservation Policy Act of 1978 (NECPA), Pub. L. 95–619, amends the Energy Policy and Conservation Act of 1975 (EPCA) to add "Energy Efficiency of Industrial Equipment," which includes electric motors. The most recent amendment to EPCA, the Energy Policy Act of 1992 (EPAct), Pub. L. 102–486, promulgates definitions related to electric motors in section 122(a), 106 Stat. 2807, test procedures for motor efficiency in section 122(b), 106 Stat. 2809, labeling for electric motors in section 122(c), 106 Stat. 2809, standards for nominal full-load efficiency in section 122(d), 106 Stat. 2814, and certification of compliance by manufacturers in section 122(e), 106 Stat. 2817.

Section 122(a)(3) of the EPAct (EPCA, section 340(13)(A), 42 U.S.C. 6311 (13)(A)), defines "electric motor" as any motor which is "general purpose T-frame, single-speed, foot-mounting, polyphase squirrel-cage induction of the National Electrical Manufacturers Association (NEMA) Designs A and B, continuous-rated, operating on 230/460 volts and constant 60 Hertz line power, as defined in NEMA Standards Publication MG1–1987." Section 122(d) of the EPAct (EPCA, section 342(b)(1), 42 U.S.C. section 6313(b)(1)), prescribes standards for electric motors that are 1 through 200 horsepower, and "manufactured (alone or as a component of another piece of equipment)," except for "definite purpose motors, special purpose motors, and those motors exempted by the Secretary."

Section 122(b)(1) of the EPAct (EPCA, section 343(a)(5)(A), 42 U.S.C. 6314 (a)(5)(A)), requires that testing procedures for motor efficiency shall be the test procedures specified in NEMA Standards Publication MG1–1987, and the Institute of Electrical and Electronics Engineers (IEEE) Standard 112 Test Method B for motor efficiency, as in effect on October 24, 1992. Section 122(b)(1), EPCA section 343(a)(5)(B) and (C), provide for amendment of the testing procedures if the test procedures in the NEMA and IEEE standards are revised.

Section 122(c)(4) of the EPAct (EPCA, section 344(d), 42 U.S.C. 6315(d)) directs the Secretary, after consultation with the Federal Trade Commission, see EPCA section 344(f), 42 U.S.C. 6315(f), to prescribe rules requiring motor

labeling to indicate energy efficiency on the permanent nameplate, to display that motor energy efficiency prominently in catalogs and other marketing materials, and to include other markings to facilitate enforcement of the energy efficiency standards.

Section 122(e)(2) of the EPAct (EPCA, section 345(c), 42 U.S.C. 6316(c)) requires manufacturers to certify compliance with energy efficiency standards through an independent testing or certification program nationally recognized in the United States.

2. Background

The Department of Energy is drafting a proposed rule to implement the EPAct requirements for motors. However, the language of the EPAct raises several issues regarding definitions, testing, labeling, and certification.

The purpose of the public meeting is to discuss these issues, gather information, and seek early resolution.

3. Discussion

The Department is interested in receiving information and statements to help resolve the following issues:

a. Definitions.

(1) *Metric equivalents.* Section 122(d) of the EPAct (EPCA, section 342(b)(1), 42 U.S.C. 6313(b)(1)) lists standards for electric motor nominal full-load efficiency ratings corresponding to horsepower and number of poles. Additionally, section 205b. of the Metric Conversion Act of 1975, Pub. L. 94–168, 15 U.S.C. 205b., states "the declared policy of the United States—(1) to designate the metric system of measurement as the preferred system of weights and measures for United States trade and commerce; (2) to require that each Federal agency, by a date certain and to the extent economically feasible by the end of the fiscal year 1992, use the metric system of measurement in its procurements, grants, and other business-related activities, except to the extent that such use is impractical or is likely to cause significant inefficiencies or loss of markets to United States firms, such as when foreign competitors are producing competing products in non-metric units." This policy is promulgated in Executive Order 12770 of July 25, 1991, "Metric Usage in Federal Government Programs." 56 FR 35801–03 (July 29, 1991). The Department seeks advice on how to implement these statutes with respect to motors under the EPAct. Specifically, should the energy efficiency rules identify kilowatt ratings equivalent to corresponding horsepower ratings, and other electrical and mechanical equivalents? If so how?

(2) *Basic model.* The Code of Federal Regulations (CFR), in 10 CFR Part 430 § 430.2, provides a definition for the term "basic model" in regard to the appliance program: "Basic model means all units of a given type of covered product (or class thereof) manufactured by one manufacturer and—* * * (as to dishwashers, for example) which have electrical characteristics that are essentially identical, and which do not have any differing physical or functional characteristics that affect energy consumption." Basic model is a term used to describe a product or item of equipment whose performance, design, mechanical, and functional characteristics are essentially the same. Components of similar design may be substituted in a basic model without requiring additional testing if the represented measures of energy consumption continue to satisfy applicable provisions for sampling and testing. In the case of electric motors, a manufacturer may produce one basic model and thousands more of other model numbers that are essentially the same, all based on variations in design features that do not affect energy efficiency.

The Department is considering defining the term "basic model" in its coverage of electric motors to mean all units of a given type of covered equipment (or class thereof) manufactured by a single manufacturer, and, with respect to electric motors, having the same rating, electrical design characteristics that are essentially identical, and no differing mechanical or functional characteristics that affect energy consumption or efficiency. The Department solicits the views of interested parties as to whether the Department should adopt such a definition.

(3) *Definite purpose motor.* Under section 122(d) of the EPAct (EPCA section 342(b)(1), 42 U.S.C. 6313(b)(1)), the energy efficiency standards for electric motors do not apply to "definite purpose motors." Section 122(a)(3) of the EPAct (EPCA § 340(13)(B), 42 U.S.C. § 6311(13)(B)) defines a "definite purpose motor" as "any motor designed in standard ratings with standard operating characteristics or standard mechanical construction for use under service conditions other than usual, or for use on a particular type of application which cannot be used in most general purpose applications." However, the EPAct does not define the term "service conditions other than usual." Therefore, the Department is considering developing a definition for this term that will take into consideration adverse environmental and operating conditions, such as exposure to abrasive or combustible dusts, chemical fumes, nuclear radiation, salt-laden air, abnormal shock or vibration, unbalanced supply voltage, power system not grounded, frequent starting, frequent short circuits, and so forth. The Department seeks advice in developing a definition for "service conditions other than usual."

b. *Testing.*

(1) *Canadian Standards Association Standard C390.* Section 122(b)(1) of the EPAct (EPCA, section 343(a)(5)(A), 42 U.S.C. 6314(a)(5)(A)) states that "the test procedures shall be the test procedures specified in NEMA Standards Publication MG1–1987 and IEEE Standard 112 Test Method B for motor efficiency, as in effect on the date of the enactment of the Energy Policy Act of 1992." Subsequently, the NEMA Standards Publication MG1–1987 was revised and superseded by MG1–1993 on November 19, 1992, and published in October 1993 as MG1–1993. A further amendment, Revision 1 to MG1–1993, was added on December 7, 1993.

The EPAct (42 U.S.C. 6314(a)(5)(B) and (C)) provides for amending the established test procedures if the test procedures in NEMA Standards Publication MG1–1987 and IEEE Standard 112 Test Method B are amended. MG1–1993 with Revision 1, section MG1–12.58.1 states: "Efficiency and losses shall be determined in accordance with IEEE Std 112 or Canadian Standards Association Standard C390." In considering whether to amend the motor efficiency test procedures specified in NEMA Standards Publication MG1–1987 in order to require the motor efficiency test procedures specified in NEMA Standards Publication MG1–1993 with Revision 1, the Department hereby solicits information on the affect of the additional reference to Canadian Standards Association Standard C390.

(2) *Testing sampling plan.* Section 122(d) of the EPAct (EPCA, section 342(b), 42 U.S.C. 6313(b)) requires each electric motor to have a certain "nominal full load efficiency," which is defined in section 122(a)(3) of the EPAct (EPCA section 340(13)(H), 42 U.S.C. 6311(13)(H)) as the average efficiency of a population of motors of duplicate design as determined in accordance with NEMA Standards Publication MG1–1987. NEMA Standards Publications MG1–1987 and MG1–1993 with Revision 1 both provide for the determination of nominal full load efficiencies that are to represent the average efficiency of a large population of motors of duplicate design, and a corresponding minimum efficiency that any motor must equal or exceed to be rated at the corresponding nominal efficiency. The DOE contemplates establishing a testing sampling plan to reasonably ensure that the results from testing a few motors will establish the average efficiency of the large population of motors of duplicate design. This could be done by requiring the testing of a sufficient number of motors of a particular model, selected at random, so that an estimate at the 95 percent statistical confidence level can be made both that the motors of this model offered for sale have both a mean efficiency equal to or greater than the nominal efficiency given in NEMA Standards Publication MG1–1993 Revision 1 for this rating, and also that at least 99 percent of these motors of this same particular model have efficiencies equal to or greater than the minimum efficiency associated with the nominal efficiency given for this motor in the NEMA Standards Publication MG1–1993 Revision 1. The Department seeks advice on what type of sampling plan should be adopted.

(3) *Alternative method of efficiency determination.* In the case where a manufacturer produces hundreds of different basic models of electric motors, it may be neither technically feasible, nor economically justifiable to test all basic models for compliance. For such situations, the Department is considering the use of predictive mathematical calculations and statistical methodologies developed from scientific and engineering analyses that are substantiated by actual test data in order to calculate the efficiency, i.e. total power losses, for some basic models of electric motors. Such "alternative efficiency determination methods," engineering or statistical analyses, would require support by actual testing of some minimum number of basic models and would incorporate computer simulations, modeling, or other mathematical evaluations of performance data. The alternate efficiency determination method to verify compliance for motors is similar to the method used in the appliance program, 10 CFR part 430, § 430.24(m)(2)(ii), that permits manufacturers of central air conditioners to verify compliance by use of an "alternative rating method."

The Department solicits views on both the feasibility of testing all models of motors, as well as appropriate alternative methods for determining efficiency in the event it is not feasible to test all models.

c. *Labeling.* Section 122(c)(4) of the EPAct (EPCA, section 344(d), 42 U.S.C. 6315(d)) requires the following: (1) "Not later than 12 months after the Secretary establishes test procedures for electric motors * * * the Secretary shall prescribe labeling rules * * * taking into consideration NEMA Standards Publication MG1–1987;" and (2) such labeling rules shall "(1) indicate the energy efficiency of the motor on the permanent nameplate attached to such motor; (2) prominently display the energy efficiency of the motor in equipment catalogs and other material used to market the equipment; and (3) include such other markings as the Secretary determines necessary, solely to facilitate enforcement of the standards."

Based upon these EPAct requirements, the Department is considering the required use of a distinct logo, such as lower case letters "ee" within a circle, to identify motors that are manufactured as energy-efficient and in compliance with the EPAct. Such a logo would be permanently marked on the motor nameplate to facilitate enforcement, be prominently displayed on packaging, in shipping documents, in customs and commercial documents, and other materials. The Department is also considering a requirement of permanent markings on the motor nameplate of both the nominal efficiency and the minimum efficiency associated with that nominal efficiency, and of prominent displays of both the nominal and minimum efficiency values in catalogs to assist purchasers in making purchasing decisions.

In addition, section 122(c)(4) of the EPAct (EPCA, section 344(c), 42 U.S.C. 6315(c)) authorized additional required displays of information about electric motor energy efficiency that are likely to assist purchasers in making purchasing decisions, including instructions for maintenance, use, or repair of the motor, and information on energy use. Thus, the Department is also considering use of a label(s) or marking(s) that bear(s) the following statement(s): (1) "This motor complies with energy efficiency requirements in the Energy Policy Act of 1992 at the time of original manufacture, [DATE]." or "Efficiency complies with EPACT at time of manufacture, [DATE]."; (2) "Consult the manufacturer for maintenance, use, or repair." or "Repair only in factory authorized shop."; and (3) "Estimated kilowatts used after 2000 hours continuous operation according to manufacturer's ratings: _____", or "Est. annual kW used: _____". (Annual would be defined as "2000 hours continuous operation according to manufacturer's ratings.")

The Department seeks advice on whether such label(s) or marking(s) would assist purchasers, and on the content, design, size, location, and attachment of such label(s) or marking(s).

d. *Certification.* Section 122(e)(2) of the EPAct (EPCA section 345(c), 42 U.S.C. 6316(c)) requires "manufacturers to certify, through an independent testing or certification program nationally recognized in the United States, that such motor meets the applicable (nominal full-load efficiency standard)."

(1) *Compliance.* The Department is considering implementation of the EPAct requirement for "manufacturers to certify" by means of a compliance statement and certification report that each basic model of energy efficient electric motor meets the requirements of the EPAct. This is similar to 10 CFR 430.62(a), which sets forth the appliance program procedures to be followed for certification by requiring each manufacturer to "certify by means of a compliance statement and certification report that each basic model meets the requirements of that standard." A manufacturer's compliance statement and certification report for each basic model of energy efficient electric motor would be based, at least in part, upon actual testing or an alternative efficiency determination method. The Department solicits the views of interested parties on such a requirement.

(2) *Independent testing and certification.* The Department is also considering how to interpret and implement the EPAct requirement for "manufacturers to certify, through an independent testing or certification program nationally recognized in the United States, that such motor meets the applicable (nominal full-load efficiency standard)." Such testing or certification programs could be operated by commercial laboratories, government laboratories, and trade associations. The Department seeks information as to the identity, nature, and capabilities of any nationally recognized program(s) for the testing and certification of motors. The Department is aware that the Association of Home Appliance Manufacturers conducts a program to verify manufacturers' certifications of the total refrigerated volume of refrigerators and the energy efficiency values of room air conditioners; that the Gas Appliance Manufacturers Association conducts a testing program to verify manufacturers' certifications of the energy efficiency of water heaters, furnaces, room heaters, and boilers; and

that the Air Conditioning and Refrigeration Institute conducts a testing program to verify manufacturers' certifications of the energy efficiency and other performance criteria of residential and commercial air conditioning and heat pump systems. The Department seeks information on any similar existing programs that certify or verify the performance characteristics of motors. In addition, the Department seeks information as to whether foreign commercial laboratories, foreign government laboratories, or trade associations operate such programs.

The Department also seeks advice concerning two other possible issues under 122(e) of the EPAct (EPCA section 345(c), 42 U.S.C. 6316(c)). First, questions may arise as to what constitutes "an independent testing or certification program [that is] nationally recognized." The Department seeks input as to the criteria by which an organization should be considered competent (1) to conduct the specific tests or calibrations for motors according to the required test procedures, and (2) to operate a certification program. One possibility is that the Department could consider a motor testing or certification program to be "nationally recognized" if the program were accredited by the National Institute of Standards and Technology/National Voluntary Laboratory Accreditation Program (NIST/NVLAP). The Department seeks views on such an approach, including the question of whether a foreign program recognized by NIST/NVLAP should be considered "nationally recognized in the United States." Second, the Department seeks views as to whether manufacturers are permitted to self-test or self-certify the energy efficiency of their own motors, and, if so, under what circumstances.

e. *Identification of other issues.* The Department will seek to resolve the above issues in developing a proposed rule. In addition, there may be other issues that the Department will need to address. The purpose of the meeting is to identify all of these various issues and to begin dialogue with interested parties to help resolve them.

4. Public Meeting Procedure

The meeting will be conducted in an informal, conference style. A court reporter will be present to record the minutes of the meeting. There shall be no discussion of proprietary information, costs or prices, market shares, or other commercial matters regulated by antitrust law. After the meeting and period for written statements, the Department will consider the views presented in formulating a Notice of Proposed Rulemaking regarding energy efficient motors.

Issued in Washington, DC, May 16, 1995.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 95–12492 Filed 5–19–95; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–13–AD]

Airworthiness Directives; Boeing Model 767 Series Airplanes Equipped With BFGoodrich Off-Wing Ramp/Slide Evacuation Systems

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 767 series airplanes. This proposal would require modification of the off-wing ramp/slide evacuation systems. This proposal is prompted by reports of punctured tubes on certain BFGoodrich off-wing ramp/slide evacuation systems installed on these airplanes. The actions specified by the proposed AD are intended to prevent such tube punctures, which could delay or impede the evacuation of passengers during an emergency.

DATES: Comments must be received by July 17, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No 95–NM–13–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207; and BFGoodrich Company, Aircraft Evacuation Systems, Sustaining Engineering, Dept. 7916, Phoenix, Arizona 85040. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Andrew Gfrerer, Aerospace Engineer, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5338; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–NM–13–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–13–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports of punctured tubes on BFGoodrich off-wing ramp/slide evacuation systems, having part numbers (P/N) 101630, 101655, and 101656, installed on certain Boeing Model 767 series airplanes. There have been several incidents in which the ramp/slides have been damaged or punctured during inflation of the ramp/slide. Investigation revealed that the tubes were punctured when the ramp/slides became trapped in the spoiler gap or were caught on the inboard edge of the flap during inflation. Puncture of the tubes on an off-wing ramp/slide evacuation system, if not corrected, could cause portions of the slide to deflate and, thus, delay or impede the evacuation of passengers during an emergency.

The FAA has reviewed and approved Boeing Service Bulletin 767–25–0218, dated December 15, 1994, which describes procedures for modication of the off-wing ramp/slide evacuation systems. This modification involves replacement of nuts on the bearings on the packboards with new nuts.

The FAA has also reviewed and approved BFGoodrich Service Bulletin 101630/655/656–25–269, dated October 28, 1994, which describes procedures for modication of the off-wing ramp/slide evacuation systems. This modification involves replacement of velcro retainers with improved retainers, installation of a cover panel on the bottom of the inflatable, and installation of a chafe panel between the upper and lower tubes near the transfer tube.

Accomplishment of the modifications described in these two service bulletins will improve the resistance to a tube puncture when the ramp/slide impinges on the spoiler gap and inboard flap edge during inflation.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require modication of the off-wing ramp/slide evacuation systems. The actions would be required to be accomplished in accordance with the service bulletins described previously.

Operators should note that the applicability of this proposed rule affects Boeing Model 767 series airplanes that are equipped with certain BFGoodrich evacuation systems. The FAA's general policy is that, when an unsafe condition results from the installation of an appliance or other item that is installed in only one particular make and model of aircraft, the AD is issued so that it is applicable to the aircraft, rather than the item. The reason for this is simple: Making the AD applicable to the airplane model on which the item is installed ensures that operators of those airplanes will be notified directly of the unsafe condition and the action required to correct it. While it is assumed that an operator will know the models of airplanes that it operates, there is a potential that the operator will not know or be aware of specific items that are installed on its airplanes. It is for this reason that this proposed AD would be applicable to Model 767's rather than to the BFGoodrich evacuation system. Additionally, calling out the airplane model as the subject of the AD prevents "unknowing non-compliance" on the part of the operator.

The FAA recognizes that there are situations when an unsafe condition exists in an item that is installed in many different aircraft. In those cases, the FAA considers it impractical to issue AD's against each aircraft; in fact, many times, the exact models and numbers of aircraft on which the item is installed may not be known. Therefore, in those situations, the AD is issued so that it is applicable to the item; furthermore, those AD's usually indicate that the item is known to be installed on, but not limited to, various aircraft models.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this notice to clarify this long-standing requirement.

There are approximately 992 BFGoodrich off-wing ramp/slide evacuation systems installed on 496 Model 767 series airplanes (2 evacuation systems per airplane) of the affected design in the worldwide fleet. The FAA estimates that 376 BFGoodrich off-wing ramp/slide evacuation systems installed on 188 Model 767 series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 9 work hours per evacuation system to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $200 per evacuation system. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $278,240, or $740 per evacuation system.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 95–NM–13–AD.

Applicability: Model 767 series airplanes, equipped with BFGoodrich off-wing ramp/slide evacuation systems having part number (P/N) 101630, 101655, or 101656; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent tube puncture of the ramp/slide evacuation system, which could delay or impede the evacuation of passengers during an emergency, accomplish the following:

(a) Within 36 months after the effective date of this AD, modify the off-wing ramp/slide evacuation systems in accordance with Boeing Service Bulletin 767–25–0218, dated December 15, 1994, and BFGoodrich Service Bulletin 101630/655/656–25–269, dated October 28, 1994.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on May 16, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–12442 Filed 5–19–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 95–NM–51–AD]

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–120 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain EMBRAER Model EMB–120 series airplanes. This proposal would require removal of the upper channel fairings and their shims; and rework of the riveting holes, the aileron sealing canvas (aerodynamic seals), and the protective covers of the trim tab hinge fittings of the aileron and elevator. This proposal is prompted by reports of binding of the aileron due to water freezing between the upper channel fairings and the surface of the leading edge of the aileron. The actions specified by the proposed AD are intended to prevent water from freezing between the upper channel fairings and the surface of the leading edge on the aileron, which could result in binding of the aileron and subsequent reduced controllability of the airplane.

DATES: Comments must be received by July 3, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–51–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia.

FOR FURTHER INFORMATION CONTACT: Linda Haynes, Aerospace Engineer, Propulsion Branch, ACE–117A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia 30337–2748; telephone (404) 305–7377; fax (404) 305–7348.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments; in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–NM–51–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–51–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Departamento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, recently notified the FAA that an unsafe condition may exist on certain EMBRAER Model EMB–120 series airplanes. The DAC advises that it has received reports of binding of the aileron on Model EMB–120 series airplanes. In these instances, movement of the aileron was possible, but difficult. All of the airplanes involved were equipped with upper channel fairings (Kevlar strips) on the aileron. Investigation revealed that, when the upper channel fairings are wet and come in contact with a surface of the leading edge of the aileron that is also wet, water can freeze between the two parts. This condition, if not corrected, could result in binding of the aileron and subsequent reduced controllability of the airplane.

EMBRAER has issued Service Bulletin No. 120–57–0021, Change 1, dated September 10, 1993, which describes procedures for removal of the upper channel fairings and their shims; and rework of the riveting holes, the aileron sealing canvas (aerodynamic seals), and the protective covers of the trim tab hinge fittings of the aileron and elevator. Rework of the aileron sealing canvas involves increasing the gaps between the aileron sealing canvas and the wing fittings, and enlarging the drain hole on the protective covers of the trim tab hinge fittings of the aileron and the elevator. Removal of the fairings and their shims will allow more water to enter the region of the aileron sealing canvas (aerodynamic seals). The DAC classified this service bulletin as mandatory in order to assure the continued airworthiness of these airplanes in Brazil.

This airplane model is manufactured in Brazil and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require removal of the upper channel fairings and their shims; and rework of the riveting holes, the aileron sealing canvas (aerodynamic seals), and the protective covers of the trim tab hinge fittings of the aileron and elevator. The actions would be required to be accomplished in accordance with the service bulletin described previously.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this notice to clarify this long-standing requirement.

The FAA estimates that 263 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 10 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. The cost for required parts would be negligible. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $157,800, or $600 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Embraer: Docket 95–NM–51–AD.

Applicability: Model EMB–120 series airplanes; as listed in EMBRAER Service Bulletin No. 120–57–0021, Change 1, dated September 10, 1993; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent binding of the aileron and subsequent reduced controllability of the airplane, accomplish the following:

(a) Within 3,000 hours time-in-service after the effective date of this AD, remove the upper channel fairings and their shims; and rework the riveting holes, the aileron sealing canvas (aerodynamic seals), and the protective covers of the trim tab hinge fittings of the aileron and elevator; in accordance with EMBRAER Service Bulletin No. 120–57–0021, Change 1, dated September 10, 1993.

(b) As of the effective date of this AD, no person shall install any aileron sealing canvas having part number (P/N) 120–08130–001, 120–08131–001, or 120–08132–001, on any airplane unless that canvas has been reworked in accordance with EMBRAER Service Bulletin No. 120–57–0021, Change 1, dated September 10, 1993.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on May 16, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–12441 Filed 5–19–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 93–ANE–57]

Airworthiness Directives; International Aero Engines AG Model V2500–A1 Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: This action withdraws a notice of proposed rulemaking (NPRM) that proposed a new airworthiness directive (AD), applicable to International Aero Engines AG Model V2500–A1 engines. That action would have required the installation of damping wires and anti-fret coating on high pressure compressor disks and blades. Since the issuance of the NPRM, the FAA has determined that the probability of an unsafe condition is extremely remote, and that all affected engines in service have been modified as proposed. Accordingly, the proposed rule is withdrawn.

FOR FURTHER INFORMATION CONTACT: Marc Bouthillier, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7135, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add a new airworthiness directive (AD), applicable to International Aero Engines AG (IAE) Model V2500–A1 engines, was published in the **Federal Register** on December 1, 1993 (58 FR 63307). The proposed rule would have required the installation of damping wires and an anti-fret coating to high pressure compressor (HPC) disks and blades. That action was prompted by seven occurrences of HPC stage 7 and 8 blade failures. The proposed actions were intended to prevent HPC blade failures, which could result in engine inflight shutdowns.

Since the issuance of that notice of proposed rulemaking (NPRM), the FAA has conducted additional airworthiness assessment of the described problem, and has determined that the probability of a hazardous or unsafe condition is extremely remote. This assessment was conducted in accordance with the guidelines of a continued airworthiness assessment methodology process currently in use.

In addition, the FAA has determined that all affected engines have been modified as proposed. Accordingly, the proposed rule is hereby withdrawn.

Withdrawal of this notice of proposed rulemaking constitutes only such action, and does not preclude the agency from issuing another notice in the future, nor does it commit the agency to any course of action in the future.

Since this action only withdraws a notice of proposed rulemaking, it is neither a proposed nor a final rule and therefore, is not covered under Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Withdrawal

Accordingly, the notice of proposed rulemaking, Docket 93–ANE–57, published in the **Federal Register** on December 1, 1993, (58 FR 63307), is withdrawn.

Issued in Burlington, Massachusetts, on May 15, 1995.

James C. Jones,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 95–12439 Filed 5–19–95; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 10 and 966

[Docket No. R–95–1772; FR–3819–P–01]

RIN 2501–AB92

Public Housing Lease and Grievance Procedures

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: HUD is proposing to amend its regulations governing eviction from public and Indian housing. If HUD determines that local law requires a pre-eviction due process hearing in court (known as a "due process determination"), a tenant is not entitled to a hearing by the housing authority before eviction for drug-related or other criminal activity. This proposed rule would clarify that HUD is not required to use notice and comment rulemaking procedures for issuance of a due process determination.

DATES: Comments due date: July 21, 1995.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Office of General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Communications should refer to the above docket number and title and to the specific sections in the regulation. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Sherone Ivey, Acting Director, Occupancy Division, Room 4206, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; Telephone numbers (202) 708–0744; (202) 708–0850 (TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

I. Issuance of Due Process Determination

This proposed rule would clarify that HUD is not required to use HUD's notice and comment rulemaking procedures when HUD determines that the law of a jurisdiction requires a due process court hearing before eviction of a public housing tenant.

Under 42 U.S.C. 1437d(k), a housing authority is generally required to provide a tenant with the opportunity for an administrative hearing before the commencement of eviction proceedings in the local landlord-tenant courts. However, the statute and the implementing HUD regulations at 24 CFR part 966 permit the housing authority to bypass the administrative hearing for evictions involving a tenant engaged in certain criminal activity.

Specifically, 24 CFR 966.51 requires that the eviction involve "any drug-related criminal activity" or "[a]ny criminal activity that threatens the health, safety or right to peaceful enjoyment of the premises" of the public housing residents and employees. Furthermore, HUD must first determine that the law of the jurisdiction requires a pre-eviction court hearing that provides the basic elements of due process as further defined by 24 CFR 966.53(c). This determination is known as a "due process determination." (24 CFR 966.51(2)(i)).

HUD has voluntarily chosen to provide for public participation in rulemaking for HUD programs and functions. Under 24 CFR part 10, HUD invites public comment on the proposed rules it publishes in the **Federal Register**. In HUD's view, the issuance of a particular due process determination is not a rule, and is not subject to part 10's notice and comment rulemaking requirements. HUD's due process determinations are not discretionary "policy" determinations permitting public housing authorities to bypass the grievance process; rather, a due process determination is an application of an existing regulation to the law of a specific jurisdiction. In accordance with HUD's function as defined by federal law, HUD determines whether the State or local law governing local eviction procedures are consistent with the elements of due process as further defined in § 966.53(c).

Up to this time, all HUD due process determinations have been issued by letter to the governor of each affected State. The HUD determinations were not published as regulations through notice and comment rulemaking under part 10 because HUD did not view them to be rules within the meaning of part 10. However, in its recent decision in *Yesler Terrace Community Council* v. *Cisneros*, the Ninth Circuit held that the due process determination for the State of Washington was a rule under part 10, and that the part 10 notice and comment rulemaking procedures therefore applied.

Although the decision in the *Yesler* case only concerns due process determinations for the State of Washington, HUD recognizes that Ninth Circuit courts are bound by the precedent established by this case. For this reason, public housing authorities in the States comprising the Ninth Circuit cannot rely on the HUD due process determinations issued for those States.

In addition, even for jurisdictions outside the Ninth Circuit, the decision in the *Yesler* case will inevitably lead to dispute and litigation as to the ability of public housing authorities to bypass the administrative grievance process pursuant to a HUD due process determination. In and out of the Ninth Circuit therefore, the *Yesler* decision will inevitably impede the efforts of housing authorities to speedily evict tenants engaged in serious criminal activities.

To remedy this serious situation, HUD proposes to amend 24 CFR part 10 to state unambiguously and explicitly that the part 10 notice and comment rulemaking procedures do not apply to a public housing due process determination. Since the *Yesler* decision was explicitly based on the court's reading of the HUD part 10 regulation, the proposed rule would remove the legal and practical uncertainties proceeding from this decision.

In addition, this rule would amend HUD's public housing lease and grievance regulations to confirm that HUD is not required to utilize part 10's notice and comment procedures for the issuance of due process determinations. This proposed rule would also provide that for guidance of the public, HUD will publish in the **Federal Register** a notice listing the judicial eviction procedures for which HUD has issued a due process determination. HUD will make available for public inspection and copying, a copy of the legal analysis on which the due process determinations are based.

II. Eviction by Administrative Action

The rule currently provides that the PHA may evict the tenant "only by bringing a court action" (24 CFR 966.4(l)(4)). HUD proposes to amend the rule by providing that the PHA may also elect to evict the tenant by bringing an administrative action. The PHA may evict without bringing a court action if the law of the jurisdiction permits eviction by administrative action, after a due process administrative hearing, but does not require a court determination of the rights and liabilities of the parties. (Proposed 24 CFR 966.4(l)(4)(ii)).

This amendment is intended to avoid the necessity for duplicative administrative and judicial hearings where State or local law allows a PHA to evict a tenant after a due process administrative hearing, but does not require a court hearing or court process to carry out the eviction. The proposed rule would provide that in order to evict without bringing a court action, the PHA must afford the tenant the opportunity for a pre-eviction hearing in accordance with the PHA grievance procedure. The right to a hearing under the grievance procedure as defined by Federal statute and regulation grants a tenant the opportunity for a due process administrative hearing.

The Department is informed that under Hawaii State law, the Hawaii Housing Authority may evict a tenant after providing a due process administrative hearing. Hawaii State law does not require the Authority to bring a judicial action for eviction of a tenant. However, under HUD's current rule, the Authority may "only" evict the tenant by bringing a judicial action. Thus the Authority must both provide the opportunity for an administrative hearing in accordance with Hawaii law, and then bring a separate judicial action for eviction of the tenant in accordance with the HUD rule.

HUD's current rule was intended to assure that public housing tenants may not be evicted without the opportunity for a fair and full hearing, and to preclude "self-help" eviction by the PHA landlord, without the opportunity for such a hearing. HUD believes that the administrative hearing required by Hawaii law, and the law of any other State with analogous procedures, can protect the due process rights of the tenant. Consequently, the Department is amending the regulation to permit eviction without judicial action to determine the rights of the parties. Such eviction is only allowed as permitted by local law, and where the PHA provides the opportunity for a pre-eviction hearing under the PHA grievance procedures.

III. Regulatory Reinvention

Consistent with Executive Order 12866, and President Clinton's memorandum of March 4, 1995 to all Federal Departments and Agencies on the subject of Regulatory Reinvention, the Department is reviewing all its regulations to determine whether certain regulations can be eliminated, streamlined or consolidated with other regulations. As part of this review, this proposed rule, at the final rule stage, may undergo revisions in accordance with the President's regulatory reform initiatives. In addition to comments on the substance of these regulations, the Department welcomes comments on how this proposed rule may be made more understandable and less burdensome.

IV. Other Matters

A. Impact on the Environment

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20(k) of the HUD regulations, the policies contained and procedures contained in this proposed rule relate only to HUD administrative procedures and, therefore, are categorically excluded from the requirements of the National Environmental Policy Act.

B. Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this proposed rule would not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal

government and the States, or on the distribution of power and responsibilities among the various levels of government.

The policies contained in this proposed rule merely require that HUD determine whether pre-eviction court hearings required by the local jurisdiction provide the basic elements of due process as further defined by HUD regulation. Those housing authorities situated in jurisdictions for which HUD has made such a due process determination are permitted to bypass HUD-mandated administrative hearings and to rely exclusively on the local courts.

This proposed rule would provide that HUD is not required to use 24 CFR part 10's notice and comment procedures for the issuance of due process determinations. This proposed rule would effect no changes in the current relationships between the Federal government, the States and their political subdivisions.

C. Impact on the Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this proposed rule will not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under this order. No significant change in existing HUD policies or programs will result from promulgation of this proposed rule, as those policies and programs relate to family concerns.

D. Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605 (b)) has reviewed and approved this proposed rule, and in so doing certifies that this proposed rule will not have a significant impact on a substantial number of small entities. This proposed rule would merely provide for HUD's issuance of due process determinations without public notice and comment, and would not have any meaningful economic impact on any entity.

E. Regulatory Agenda

This proposed rule was listed as item 1370 in HUD's Semiannual Agenda of Regulations published on May 8, 1995 (60 FR 23368, 23375) in accordance with Executive Order 12866 and the Regulatory Flexibility Act.

F. Executive Order 12866

This proposed rule was reviewed by the Office of Management and Budget under Executive Order 12866, Regulatory Planning and Review. Any changes made to the proposed rule as a result of that review are clearly identified in the docket file, which is available for public inspection in the Office of the Department's Rules Docket Clerk, Room 10276, 451 Seventh St., S.W., Washington, DC, 20410.

List of Subjects

24 CFR Part 10

Administrative practice and procedure.

24 CFR Part 966

Grant programs—housing and community development, Public housing.

Accordingly, 24 CFR parts 10 and 966 are proposed to be amended as follows:

PART 10—RULEMAKING: POLICY AND PROCEDURES

1. The authority citation for part 10 would be revised to read as follows:

Authority: 42 U.S.C. 3535(d).

2. Section 10.3 would be amended by adding a new paragraph (c) to read as follows:

§ 10.3 Applicability.

* * * * *

(c) This part is not applicable to a determination by HUD under 24 CFR part 966 (public housing) or 24 CFR part 905 (Indian housing) that the law of a jurisdiction requires that, prior to eviction, a tenant be given a hearing in court which provides the basic elements of due process ("due process determination").

PART 966—LEASE AND GRIEVANCE PROCEDURES

3. The authority citation for part 966 would be revised to read as follows:

Authority: 42 U.S.C. 1437a, 1437d, 1437d(k), (1), and (n), and 3535(d).

4. In § 966.4, paragraph (l)(4) would be revised, to read as follows:

§ 966.4 Lease requirements.

* * * * *

(l) * * *

(4) *How tenant is evicted.* The PHA may evict the tenant from the unit either:

(i) By bringing a court action, or;

(ii) By bringing an administrative action if law of the jurisdiction permits eviction by administrative action, after a due process administrative hearing, and without a court determination of the rights and liabilities of the parties. In order to evict without bringing a court action, the PHA must afford the tenant the opportunity for a pre-eviction hearing in accordance with the PHA grievance procedure.

* * * * *

5. In § 966.51, paragraph (a)(2) would be amended by redesignating paragraph (a)(2)(ii) as paragraph (a)(2)(iv) and by adding new paragraphs (a)(2)(ii) and (a)(2)(iii), to read as follows:

§ 966.51 Applicability.

(a) * * *

(2) * * *

(ii) The issuance of a due process determination by HUD is not subject to 24 CFR part 10, and HUD is not required to use notice and comment rulemaking procedures in considering or issuing a due process determination.

(iii) For guidance of the public, HUD will publish in the **Federal Register** a notice listing the judicial eviction procedures for which HUD has issued a due process determination. HUD will make available for public inspection and copying a copy of the legal analysis on which the determinations are based.

* * * * *

Dated: February 14, 1995.

Henry G. Cisneros,

Secretary.

[FR Doc. 95–12461 Filed 5–19–95; 8:45 am]

BILLING CODE 4210–32–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 812]

RIN 1512–AA07

Puget Sound Viticultural Area (94F–019P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF), has received a petition for the establishment of a viticultural area in the State of Washington to be known as "Puget Sound." This proposal is the result of a petition submitted by Gerard and Jo Ann Bentryn, Owners-Winemakers of Bainbridge Island Vineyards.

DATES: Written comments must be received by July 6, 1995.

ADDRESSES: Send written comments to: Chief, Wine, Beer and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091–0221 (Attn: Notice No. 812). Copies of the petition, the proposed regulations, the appropriate maps, and written comments will be available for public inspection during normal business hours at: ATF Public Reading Room, Office of Public Affairs and Disclosure, Room 6480, 650 Massachusetts Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: David W. Brokaw, Wine, Beer and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8230.

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF–53 (43 FR 37672, 54624) revising regulations in 27 CFR Part 4. These regulations allow the establishment of definitive viticultural areas. The regulations allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements. On October 2, 1979, ATF published Treasury Decision ATF–60 [44 56692] which added a new Part 9 to 27 CFR, providing for the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

Section 4.25a(e)(1), Title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographic features, the boundaries of which have been delineated in Subpart C of Part 9.

Section 4.25a(e)(2), Title 27, CFR, outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include:

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical characteristics (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (US.G.S.) maps of the largest applicable scale, and;

(e) A copy (or copies) of the appropriate U.S.G.S. map(s) with the proposed boundaries prominently marked.

Petition

ATF has received a petition from Gerard and Jo Ann Bentryn of Bainbridge Island Vineyards & Winery in Bainbridge Island, Washington, proposing to establish a new viticultural area within the State of Washington to be known as "Puget Sound." Puget Sound (or the "Sound") is an inlet of the Pacific Ocean in northwestern Washington, extending about 100 miles south from Admiralty Inlet and Juan de Fuca Strait to Olympia. The proposed viticultural area lies within the land basin surrounding the Sound. Eight letters of support from wineries and vineyards located within the proposed area were included with the petition. These letters of support were from: Mount Baker Vineyards, Whidbey Island Winery, Lopez Island Vineyards Inc., E.B. Foote Winery, Blue Apple Vineyard, Molly's Vineyard, Coolen Wine Cellar, and Johnson Creek Winery/Alice's Restaurant.

The proposed Puget Sound viticultural area is located in the northwestern portion of Washington State. The entire Puget Sound watershed contains 13,100 square miles of land, 150 square miles of fresh water, and 2,500 square miles of saltwater. The proposed Puget Sound viticultural area contains approximately 55% of the watershed's land area and water or 7,150 square miles of land and 1,500 square miles of water for a total area of 8,650 square miles. It has a maximum length of 190 miles from north to south and 60 miles from east to west, although it is most often less than 45 miles wide.

Evidence That the Name of the Area is Locally or Nationally Known

The name "Puget Sound" was established in 1791 by Captain George Vancouver when he named, explored, and mapped the area while in service to the British Admiralty. His maps and those of subsequent explorers, settlers and government agencies show the Puget Sound area with the countryside drained by rivers flowing into Puget Sound. Numerous references exist indicating the general use of the name "Puget Sound" to refer to the petitioned area. The petitioners included copies of title pages of various publications, guide and tour book references, public telephone book listings, and Federal and State agency maps, to illustrate the use of the name. They also submitted an excerpt from, "Touring the Washington Wine Country," 1993, published by the Washington Wine Commission. This publication discusses grape growing in western Washington and states that, "[t]he expansive Puget Sound basin offers a temperate climate that rarely suffers from prolonged freezing weather in the winter and quite often enjoys a long and warm summer growing season."

Historical or Current Evidence That the Boundaries of the Viticultural Area Are as Specified in the Petition

The proposed viticultural area is located on the land mass surrounding Puget Sound and know as the Puget Sound basin. The petitioners explained that there are no exacting and commonly understood boundaries for the basin. The basin boundaries, for example, can extend up to the crests of the Olympic and Cascade mountain ranges to include the entire watershed. However, individuals in western Washington State commonly refer to the lowland areas surrounding the Sound as the Puget Sound basin. It is these lowland areas that the petitioners feel are suited for viticulture.

The petitioners stated that, "Puget Sound has boulders determined absolutely by the forces of nature, and recognized by common cultural use. We merely used those public roads that most closely fit within those natural boundaries of terminal moraine [accumulation of boundaries, stones, or other debris carried and deposited at the edges of the farthest reaches of a glacier's advance], rainfall lines (isohyets), and temperature to draw enforceable borders." [definition added] The petitioners also state that, "[t]he proposed viticultural area is smaller than the basin because not all of the basin is suitable for viticulture. Areas with elevations greater than 600 feet are generally too wet or too cold in this region so they have been excluded."

Evidence Relating to the Geographical Features (Climate, Soil, Elevation, Physical Features, etc.) Which Distinguish Viticultural Features of the Proposed Area From Surrounding Areas

Climate

The climate of Puget Sound is well differentiated from that of surrounding areas. The Olympic Mountains to the west and the Cascade Mountains to the east protect the region from the cool wet influence of the Pacific Ocean and the extreme summer and winter temperatures of eastern Washington. The Strait of Juan de Fuca and associated waterways separate Puget Sound from the cooler summer areas to the north. Foothills to the south of the proposed Puget Sound viticultural area are the limit of the area influenced by the moderating effect of the waters of the Sound. Both summer and winter

temperatures are significantly cooler in the hills and mountains to the west, south, and east.

The western, eastern and southern boundaries of the proposed Puget Sound viticultural area closely follow the line formed by a growing season of 180 days and the 60 inch isohyet of annual precipitation. All areas within the proposed viticultural area below 600 feet in elevation have a 180 day or longer growing season with 60 inches or less of annual rainfall, and 15 inches or less of rainfall in the months of April to October (inclusive).

Areas outside of, but adjacent to, the proposed viticultural area to the west, south, and east have a growing season of generally less than 180 days, with more than 60 inches of annual rainfall, and more than 15 inches of rainfall in the months of April to October (inclusive). Examples of weather recording stations surrounding the Puget Sound region are as follows: To the west is Forks, with a growing season of 175 days and an annual precipitation of 118 inches (38 inches April to October). To the southeast is Paradise Ranger Station (Mount Rainier National Park), with a growing season of 50 days and an annual precipitation of 106 inches (39 inches April to October). To the east is Diablo Dam with a growing season of 170 days and an annual precipitation of 72 inches (23 inches from April to October). To the northeast is Heather Meadows Recreational Area (Mt. Baker National Forest) with a growing season of 150 days and an annual precipitation of 110 inches (44 inches from April to October).

The northerly border of the proposed viticultural area closely conforms to the temperature boundary of areas experiencing a mean high temperature in the warmest month (July) of 72 degrees Fahrenheit or greater. Cool air from the Pacific Ocean moves east through the Strait of Juan de Fuca during the growing season limiting the reliable ripening of winegrapes in the areas west of the Elwha River and outside the line formed by the western boundaries of Clallam, San Juan, and Whatcom Counties and the northern boundary of Whatcom County.

Example of areas to the northwest of the proposed viticultural area with mean high temperatures in the warmest month which are lower than 72 degrees Fahrenheit are: Forks, Washington, 71 degrees F; Clallum Bay, Washington, 67 degrees F; Victoria, British Columbia, 68 degrees F; and Sidney, British Columbia, 67 degrees F.

Degree Days

Total degree days as measured by the scale developed by Winkler and Amerine of the University of California (Davis) range between 1300 at the northern border, to 2200 in the south. Typical readings are: Friday Harbor 1380, Blaine 1480, Sequim 1310, Port Townsend 1480, Mt. Vernon 1530, Coupeville 1360, Monroe 1820, Bothell 1520, Kent 1940, Seattle (U of W) 2160, Bremerton 1810, Vashon 1730, Grapeview 2010, Puyallup 1770, Tacoma 1940, and Olympia 2160. There is a significant temperature variation from north to south. According to the petitioner, this temperature variation is within a range that will allow the same types of grapes to be grown throughout the proposed area.

Rainfall

Rainfall in the proposed Puget Sound viticultural area is substantially less than in surrounding areas. It ranges from 17 inches annually in the north to 60 inches in the south. Typical amounts are: Friday Harbor 28″, Blaine 35″, Sequim 17″, Port Townsend 18″, Mt. Vernon 32″, Coupeville 18″, Monroe 47″, Bothell 40″, Kent 38″, Seattle (U of W) 35″, Bremerton 39″, Vashon 47″, Grapeview 53″, Puyallup 41″, Tacoma 37″, and Olympia 52″. Growing season rainfall ranges from 8 inches in the north to 15 inches in the south. Outside of the proposed boundaries, the rainfall ranges from 70 to 220 inches annually.

Overall, the proposed Puget Sound viticultural area can be characterized as having a growing season of over 180 days, annual degree day averages between 1300 and 2200, and annual rainfall of 60 inches or less.

Soils

Soils in the proposed Puget Sound viticultural area are completely unlike those of the surrounding upland areas in that they are the result of the advance and withdrawal of the Vashon glaciation. This most recent glaciation (10,000 years ago) coincided at its limits with the eastern, southern, and southwestern boundaries of the proposed viticultural area. The resultant soils are primarily silty to sandy topsoils with scattered small to moderate rounded stones. This is typical of post glacial soils in lowland areas. Areas outside the proposed viticultural area to the west, south and east, were not covered by ice during the Vashon glaciation. Consequently, soils in surrounding areas have entirely different origins and genesis. The primary impact on viticultural conditions by the glaciation of the proposed Puget Sound viticultural area was the development of a semi-permeable cemented subsoil at depths generally from one to ten feet. This subsoil was created by the pressure of one to three thousand feet of overlying ice. The subsoil acts as a storage vehicle for winter rains and allows deep rooted vines to survive the late-summer soil water deficit without irrigation. The surrounding areas which were not glaciated do not share this comparative advantage. The semi-permeable cemented subsoil is the most significant soil factor relative to viticulture in the area.

Topography and Geographical Features

The Puget Sound basin is a large lowland surrounding bodies of salt water called in government reports "Puget Sound" or "Puget Sound and Adjacent Waters." These waters comprise Puget Sound, a long, wide ocean inlet. The basin is cut by many rivers flowing into the Sound. Low rolling hills formed by the deposit and erosion of advancing and retreating glaciers are cut by ravines and stream channels. The dominating natural features are the sound itself and the surrounding mountains. The Olympic mountain range forms the western boundary of the Puget Sound basin. These mountains intercept moist maritime Pacific air and account for the relatively low annual precipitation. The Cascade mountain range forms the eastern boundary of the Puget Sound basin. These mountains protect the basin from the extremely cold winters and hot summers of eastern Washington. Elevations in the basin are primarily between sea-level and 1,000 feet. Isolated hills of up to 4,000 feet occur primarily in the northeast but none of the existing vineyards is above 600 feet in elevation.

Viticulture

The petitioners state that neither vinifera nor labrusca vines are native to the area; however, they are now grown throughout the basin. In 1872, Lambert Evans established a vineyard on Stretch Island in southern Puget Sound. He sold the fruit in Seattle. In the 1890's a viticulturalist from the east coast named Adam Eckert brought new grape varieties and planted more vineyards on the island. The first bonded winery in Washington State was established there in 1933 by Charles Somers. Known as the St. Charles Winery, it reached a capacity of 100,000 gallons. Viticulture spread throughout the Puget Sound basin as evidenced by the annual reports of the Washington State Department of Agriculture. These primarily labrusca plantings were gradually supplanted in most of the basin by vinifera plantings from the 1950's to the present. The Washington State Department of Agriculture report entitled, "Washington Agriculture," 1960, reported 2 small areas of grape cultivation outside of Yakima Valley; one of them being "in western Washington in Kitsap county. There along the shores of Puget Sound, grapes have grown satisfactorily for many years." The 1993 publication, "Touring the Washington Wine Country," which is published by the Washington Wine Commission states that, "Small vineyards flourish on Puget Sound's islands . . ." There are now over 50 acres of vineyards in the basin and 25 bonded wineries.

Proposed Boundaries

The boundaries of the proposed Puget Sound viticultural area may be found on four 1:250,000 scale U.S.G.S. maps titled: Hoquiam, Washington (1974); Seattle, Washington (1974); Wenatchee, Washington (1971); Victoria, B.C., Can., Wash., U.S. (1974); one 1:25,000 scale map titled: Auburn, Washington (1983); and three 1:24,000 scale maps titled: Buckley, Washington (1993); Cumberland, Washington (1993); and Enumclaw, Washington (1993).

Public Participation—Written Comments

ATF requests comments from all interested persons. Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so. However, assurance of consideration can only be given to comments received on or before the closing date.

ATF will not recognize any submitted material as confidential and comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comments. The name of the person submitting a comment is not exempt from disclosure.

Comments may be submitted by facsimile transmission to (202) 927–8602, provided the comments: (1) are legible; (2) are 8½″ × 11″ in size, (3) contain a written signature, and (4) are three pages or less in length. This limitation is necessary to assure reasonable access to the equipment. Comments sent by FAX in excess of three pages will not be accepted. Receipt of FAX transmittals will not be acknowledged. Facsimile transmitted comments will be treated as originals.

Any person who desires an opportunity to comment orally at a public hearing on the proposed regulation should submit his or her request, in writing, to the Director within the 45-day comment period. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96–511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 C.F.R. Part 1320, do not apply to this notice because no requirement to collect information is proposed.

Regulatory Flexibility Act

It is hereby certified that this proposed regulation will not have a significant impact on a substantial number of small entities. The establishment of a viticultural area is neither an endorsement nor approval by ATF of the quality of wine produced in the area, but rather an identification of an area that is distinct from surrounding areas. ATF believes that the establishment of viticultural areas merely allows wineries to more accurately describe the origin of their wines to consumers, and helps consumers identify the wines they purchase. Thus, any benefit derived from the use of a viticultural area name is the result of the proprietor's own efforts and consumer acceptance of wines from that region.

Accordingly, a regulatory flexibility analysis is not required because the proposal, if promulgated as a final rule, is not expected (1) to have significant secondary, or incidental effects on a substantial number of small entities; or (2) to impose, or otherwise cause a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Executive Order 12866

It has been determined that this proposed regulation is not a significant regulatory action as defined by Executive Order 12866. Accordingly, this proposal is not subject to the analysis required by this executive order.

Drafting Information

The principal author of this document is David W. Brokaw, Wine, Beer, and Spirits Regulations Branch, Bureau of Alcohol, Tobacco, and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practices and procedures, Consumer protection, Viticultural areas, and Wine

Authority and Issuance

Title 27, Code of Federal Regulations, Part 9, American Viticultural Areas, is proposed to be amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The authority citation for Part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

Par. 2. Subpart C is amended by adding § 9.151 to read as follows:

§ 9.151 Puget Sound.

(a) *Name.* The name of the viticultural area described in this section is "Puget Sound."

(b) *Approved maps.* The appropriate maps for determining the boundary of the Puget Sound viticultural area are four 1:250,000 scale U.S.G.S. topographical maps, one 1:25,000 scale topographic map, and three 1:24,000 scale topographic maps. They are titled:

(1) Hoquiam, Washington, 1958 revised 1974 (1:250,000).

(2) Seattle, Washington, 1958 revised 1974 (1:250,000).

(3) Wenatchee, Washington, 1957 revised 1971 (1:250,000).

(4) Victoria, B.C., Can., Wash., U.S., 1957 revised 1974 (1:250,000).

(5) Auburn, Washington, 1983 (1:25,000).

(6) Buckley, Washington, 1993 (1:24,000).

(7) Cumberland, Washington, 1993 (1:24,000).

(8) Enumclaw, Washington, 1993 (1:24,000).

(c) *Boundary.* The Puget Sound viticultural area is located in the State of Washington. The boundaries of the Puget Sound viticultural area, using landmarks and points of reference found on appropriate U.S.G.S. maps, follow.

(1) Beginning where the Whatcom county line comes closest to an unnamed secondary road (referred to in the petition as Silver Lake Road) on the U.S.G.S. map "Victoria," T41N/R6E;

(2) Then south along Silver Lake Road approximately 5.5 miles to its intersection with State Highway 542, T39N/R5E;

(3) Then west and then southwest along State Highway 542 approximately 11 miles to its intersection with State Highway 9, T38N/R5E;

(4) Then south along State Highway 9 approximately 44 miles to its intersection with an unnamed secondary road (referred to in the petition as Burn Road) at the town of Arlington, T31N/R5E;

(5) Then south, southeast along Burn Road approximately 11 miles to its intersection with State Highway 92, T30N/R6E;

(6) Then south along State Highway 92 approximately 3 miles to its intersection with an unnamed light duty road (referred to in the petition as Machias Hartford Road), T29N/R6E;

(7) Then south along Machias Hartford Road approximately 4 miles to its intersection with an unnamed secondary road (referred to in the petition as Lake Roesiger Road), on the U.S.G.S. map "Wenatchee," T29N/R7E;

(8) Then east along Lake Roesiger Road approximately 3.5 miles to its intersection with an unnamed secondary road (referred to in the petition as Woods Creek Road), T29N/R7E;

(9) Then south along Woods Creek Road approximately 10.5 miles to its intersection with U.S. Highway 2 in the town of Monroe, T27N/R7E;

(10) Then west along U.S. Highway 2 approximately ½ mile to its intersection with State Highway 203, T27N/R6E;

(11) Then south along State Highway 203 approximately 24 miles to its intersection with an unnamed secondary road (referred to in the petition as Preston-Fall City Road), at the town of Fall City, T24N/R7E;

(12) Then southwest along Preston-Fall City Road approximately 4 miles to its intersection with Interstate Highway 90 at the town of Preston, T24N/R7E;

(13) Then east along Interstate Highway 90 approximately 3 miles to its intersection with State Highway 18, T23N/R7E;

(14) Then southwest along State Highway 18 approximately 7 miles to its intersection with an unnamed secondary road (referred to in the petition as 276th Avenue SE), T23N/R6E;

(15) Then south along 276th Avenue SE approximately 5 miles to its intersection with State Highway 516 at the town of Georgetown, T22N/R6E;

(16) Then west along State Highway 516 approximately 2 miles to its intersection with State Highway 169 at the town of Summit on the U.S.G.S. map, "Seattle," (shown in greater detail on the U.S.G.S. map, "Auburn"), T22N/R6E;

(17) Then south along State Highway 169 approximately 11.5 miles to its intersection with State Highway 410 at the town of Enumclaw on the U.S.G.S. map, "Wenatchee," (shown in greater detail on the U.S.G.S. map, "Enumclaw"), T20N/R6E;

(18) Then southwest approximately 5 miles along State Highway 410 until its intersection with State Highway 165 on the U.S.G.S. map, "Seattle," (shown in greater detail on the U.S.G.S. map, "Buckley"), T19N/R6E;

(19) Then southwest on State Highway 165 until its intersection with State Highway 162 at the town of Cascade Junction on the U.S.G.S. map, "Seattle" (shown in greater detail on the U.S.G.S. Map, "Buckley"), T19N/R6E;

(20) Then southwest along State Highway 162 approximately 8 miles to its intersection with an unnamed secondary road (referred to in the petition as Orville Road E.), T19N/R5E;

(21) Then south along Orville Road E., approximately 8 miles to its intersection with the CMSTP&P railroad at the town of Kapowsin, on the U.S.G.S. map, "Hoquiam," T17N/R5E;

(22) Then south along the CMSTP&P railroad approximately 17 miles to where it crosses the Pierce County line at the town of Elbe, T15N/R5E;

(23) Then west along the Pierce County line approximately 1 mile to the eastern tip of Thurston County, T15N/R5E;

(24) Then west along the Thurston County line approximately 38 miles to where it crosses Interstate Highway 5, T15N/R2W;

(25) Then north along Interstate Highway 5 approximately 18 miles to its intersection with U.S. Highway 101 at the town of Tumwater on the U.S.G.S. map "Seattle," T18N/R2W;

(26) Then northwest along U.S. Highway 101 approximately 18 miles to its intersection with State Highway 3 at the town of Shelton, T20N/R3W;

(27) Then northeast along State Highway 3 approximately 24 miles to where it crosses the Kitsap County line, T23N/R1W;

(28) Then north along the Kitsap County line approximately 3 miles to the point where it turns west, T23N/R1W;

(29) Then west along the Kitsap County line approximately 11 miles to the point where it turns north, T23N/R3W;

(30) Then continuing west across Hood Canal approximately 1 mile to join with U.S. Highway 101 just south of the mouth of an unnamed creek (referred to in the petition as Jorsted Creek), T23N/R3W;

(31) Then north along U.S. Highway 101 approximately 40 miles to the point where it turns west at the town of Gardiner on the U.S.G.S. map "Victoria," T30N/R2W;

(32) Then west along U.S. Highway 101 approximately 32 miles to where it crosses the Elwha River, T30N/R7W;

(33) Then north along the Elwha River approximately 6 miles to its mouth, T31N/R7W;

(34) Then continuing north across the Strait of Juan de Fuca approximately 5 miles to the Clallam County line, T32N/R7W;

(35) Then northeast along the Clallam County line approximately 14 miles to the southwestern tip of San Juan County, T32N/R4W;

(36) Then northeast along the San Juan County line approximately 51 miles to the northern tip of San Juan County, T38N/R3W;

(37) Then northwest along the Whatcom County line approximately 19 miles to the western tip of Whatcom County, T41N/R5W;

(38) Then east along the Whatcom County line approximately 58 miles to the beginning.

Signed: May 3, 1995.

Daniel R. Black,

Acting Director.

[FR Doc. 95–12410 Filed 5–19–95; 8:45 am]

BILLING CODE 4816–31–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[IN001; FRL–5209–6]

Clean Air Act Proposed Interim Approval of Operating Permits Program; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed interim approval.

SUMMARY: The EPA proposes interim approval of the operating permits program submitted by Indiana for the purpose of complying with Federal requirements which mandate that States develop, and submit to EPA, programs for issuing operating permits to all major stationary sources, and to certain other sources.

DATES: Comments on this proposed action must be received in writing by June 21, 1995. Comments should be addressed to the contact indicated below.

ADDRESSES: Copies of the State's submittal and other supporting information used in developing the proposed interim approval are available for inspection during normal business hours at the following location: EPA Region 5, 77 West Jackson Boulevard, AR–18J, Chicago, Illinois 60604. Please contact Sam Portanova at (312) 886–3189 to arrange a time if inspection of the submittal is desired.

FOR FURTHER INFORMATION CONTACT: Sam Portanova, AR–18J, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–3189.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

As required under Title V of the Clean Air Act ("the Act") as amended (1990), EPA has promulgated regulations which define the minimum elements of an approvable State operating permits program and the corresponding standards and procedures by which the EPA will approve, oversee, and withdraw approval of State operating permits programs (see 57 FR 32250 (July 21, 1992)). These regulations are codified at 40 Code of Federal Regulations (CFR) part 70. Title V requires States to develop, and submit to EPA, programs for issuing these operating permits to all major stationary sources and to certain other sources.

The Act requires that States develop and submit these programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within 1 year after receiving the submittal. 40 CFR 70.4(e)(2), however, allows the Administrator to extend the review period of a State's submittal if the State's submission is materially altered during the 1-year review period. This additional review period may not extend beyond 1 year following receipt of the revised submission.

The EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a period of up to 2 years. If EPA has not fully approved a program by 2 years after the November 15, 1993, date, or by the end of an interim program, it must establish and implement a Federal program.

II. Proposed Action and Implications

A. Analysis of State Submission

The EPA is proposing to grant interim approval to the operating permits program submitted by Indiana on August 10, 1994. Indiana's program substantially meets the requirements of part 70; however, certain issues must be addressed in the State's submittal before EPA can grant full approval. This notice will outline the corrections necessary for full approval.

For more detailed information on the analysis of the State's submission, please refer to the part 70 Operating Permits Program Review Checklist and technical support document (TSD) included with the docket of this interim approval.

1. Support Materials

An August 5, 1994, letter from Kathy Prosser, Commissioner of the Indiana Department of Environmental Management (IDEM), to Valdas V. Adamkus, Regional Administrator of EPA Region 5, accompanying the State's submittal, names the IDEM as the state agency responsible for the administration of Indiana's Title V operating permit program throughout the entire state.

The Indiana Title V submittal contains all the elements required by 40 CFR 70.4(b). Also included in the State's submittal is a narrative description of the State's program summarizing how the State will meet the requirements of part 70 and a legal opinion from Pamela Carter, Attorney General of the State of Indiana, certifying that the legal authority exists for the State to administer and enforce the Title V program.

The State's Title V program regulations are found in the Indiana Administrative Code (IAC) under 326 IAC 2–7. Although the Indiana Title V submittal contains regulations other than 326 IAC 2–7, this notice is only taking action on 326 IAC 2–7. Supporting legislative authority is found in the Indiana Code (IC) under IC 4–21, IC 5–14, IC 13–1, IC 13–6, and IC 13–7.

2. Regulations and Program Implementation

a. Applicability

The Indiana program meets the requirements of 40 CFR 70.2 and 70.3 for applicability in 326 IAC 2–7–2. Please refer to the TSD, included with the docket of this interim approval, for more information regarding the language in 326 IAC 2–7–2.

b. Permit Applications

The Indiana program, in 326 IAC 2–7–4, substantially meets the requirements of 40 CFR 70.5 for permit applications. The Indiana program submittal also includes complete permit application forms.

A deficiency in the State's permit application requirements exists, however, concerning insignificant activities, which are defined in 326 IAC 2–7–1(20). The following are the insignificant activity threshold levels for the Indiana program:

5 pounds per hour (lb/hr) or 25 pounds per day (lb/day) of particulate matter (PM);
10 lb/hr or 50 lb/day of sulfur dioxide (SO_2);
5 lb/hr or 25 lb/day of nitrogen oxides (NO_X);
3 lb/hr or 15 lb/day of volatile organic compounds (VOC);
25 lb/day of carbon monoxide (CO);
0.6 tons per year (tpy) or 3.29 lb/day of lead or lead compounds measured as elemental lead.

A source must meet both emission levels (i.e., lb/hr and lb/day) to qualify for the exemption. These levels equal a maximum potential of 2.74 tpy of VOC, 4.56 tpy of CO, NO_X, and PM, and 9.13 tpy of SO_2. In addition, 326 IAC 2–1–1(b)(1)(H) exempts modifications to major sources of hazardous air pollutants (HAP) which will increase allowable emissions by less than 4 tpy for one HAP or 10 tpy of any combination of HAPs from the Title V program.

EPA is granting full approval to the VOC, CO, NO_X, and PM insignificant activity levels. EPA is granting interim approval to the SO_2 and HAP insignificant activity levels. If EPA's concerns for the SO_2 and HAP levels are addressed in the State's final regulations before final action on this notice, then EPA can fully approve Indiana's SO_2 and HAP insignificant activities. Alternatively, if the State does not address EPA's concerns before final action on this notice, then EPA's final action will include an interim approval on this issue. The rationale for the interim approval status is provided in the TSD included with the docket of this interim approval.

c. Permit Issuance, Renewal, Reopenings and Revisions

The Indiana program meets the requirements of 40 CFR 70.7 and 70.8 for permit issuance, renewal, reopenings, and public participation and the requirements of 40 CFR 70.4(b)(12) for operational flexibility. Please refer to the TSD, included with the docket of this interim approval, for more information regarding the language in 326 IAC 2–7–11 for administrative permit amendments.

An interim approval issue exists, however, with respect to the State's threshold levels for group processing of permits. The Indiana program's threshold level for minor permit modification (MPM) group processing eligibility is not as stringent as the part 70 threshold level. According to 326 IAC 2–7–12(c)(1)(B), Indiana's thresholds are:

PM = 5 lb/hr or 25 lb/day (4.56 tpy)
SO_2 = 10 lb/hr or 50 lb/day (9.13 tpy)
NO_X = 5 lb/hr or 25 lb/day (4.56 tpy)
VOC = 3 lb/hr or 15 lb/day (2.74 tpy)

CO = 25 lb/hr or 125 lb/day (22.81 tpy)
Lead = 0.6 tpy
HAP = 4 tpy of one HAP/10 tpy of any combination of HAPs

40 CFR 70.7(e)(3)(i) states that the threshold for allowing group processing of permit modifications are modifications that collectively emit: 10 percent of the emissions allowed by the permit for the unit for which the change is requested; or 20 percent of the applicable definition of major source; or 5 tons per year; whichever is least. EPA is proposing interim approval for the Indiana threshold levels. To obtain full approval, Indiana must establish a group processing threshold consistent with 40 CFR 70.7(e)(3)(i) or demonstrate that an alternative threshold would alleviate severe administrative burden and would result in trivial environmental impact. If EPA's concerns are addressed by a change in the State's final regulations or by a State demonstration before final action on this notice, then EPA can fully approve the State's group processing threshold levels. Alternatively, if the State does not address EPA's concerns before final action on this notice, then EPA's final action will include an interim approval on this issue.

d. Permit Content

Another major component of Indiana's program concerns the contents of a Title V permit. The program substantially meets the requirements of 40 CFR 70.6. A Title V permit will incorporate applicable requirements of existing State Implementation Plans (SIP), as well as any future applicable requirements promulgated by EPA. Authority exists in 326 IAC 2–7–13 to develop general permits covering numerous similar sources, except for sources subject to the Acid Rain Program. These general permits are targeted for future development.

326 IAC 2–7–5(1)(F) states that emission limitations applicable to start-up, shutdown and emergency bypasses shall be addressed on a case-by-case basis in the permit. Sources that request these limitations must do so in their Title V permit application. In response to EPA's concern that such a provision could be interpreted to enable the State to issue a permit which would violate a SIP requirement, Indiana has provided assurance that it will issue only those permits that comply with all applicable requirements of the Indiana SIP. See letter of April 28, 1995, from Kathy Prosser, Commissioner of the Indiana Department of Environmental Management, to Valdas Adamkus, Regional Administrator, EPA, Region 5.

Another component of permit content is the length of time in which a source must notify the permitting authority to report a deviation from a permit condition. Part 70 of the operating permits regulations requires prompt reporting of deviations from the permit requirements. 40 CFR 70.6(a)(3)(iii)(B) requires the permitting authority to define "prompt" in relation to the degree and type of deviation likely to occur and the applicable requirements. Although the permit program regulations should define "prompt" for purposes of administrative efficiency and clarity, an acceptable alternative is to define the term in each individual permit. Prompt reporting, however, must be more frequent than the semiannual reporting requirement, given this is a distinct reporting obligation under 40 CFR 70.6(a)(3)(iii)(A). Indiana addresses the issue of prompt reporting in 326 IAC 2–7–5(3)(C)(ii). Because Indiana did not actually define "prompt," EPA may veto permits that do not contain sufficiently prompt reporting requirements for deviations. EPA and Indiana will address the appropriate definition of "prompt" in the Implementation Agreement that will be developed for the Indiana program.

e. Public and EPA Comment Periods

326 IAC 2–7–18 provides for the public comment period for a draft permit and the EPA review of a proposed permit to occur concurrently. EPA will receive a copy of a draft permit when it is issued for a 30-day comment period for the public and affected States.

If comments are received, but the State does not change the permit, the State will notify EPA and send to EPA a signed copy of the draft permit that will then be the proposed permit. EPA has up to 15 days after the receipt of the proposed permit to notify the State if it wishes to have a full 45-day review period for the proposed permit. Otherwise, EPA's comment period ends 45 days after it first receives the draft permit. Please refer to the TSD, included with the docket of this interim approval, for more information regarding Indiana's public comment procedures.

f. Enforcement

The Indiana program meets the enforcement authority requirements of 40 CFR 70.11. The Indiana statute addresses these requirements in IC 13–7–5, 13–7–11, 13–7–12, and 13–7–13. The Indiana Attorney General's legal opinion certifies that the Indiana statue adequately meets the requirements of 40 CFR 70.11.

3. Permit Fee Demonstration

According to 326 IAC 2–7–19, Indiana will charge part 70 sources a $1500 flat fee plus $33 per ton of actual emissions of each regulated pollutant. If the source emits over 100 tpy of both VOC and NO_X and is located in Lake or Porter County, it shall not pay more than $200,000 in Title V fees. All other sources shall not pay more than $150,000. Sources will have to pay 50 percent of this amount in 1994 and 75 percent of this amount in 1995. The dollar amounts will be adjusted by the Consumer Price Index beginning in 1996. Indiana has demonstrated in the Title V program submittal that its fee schedule will collect adequate fees to satisfy the EPA presumptive minimum amount beginning in 1996.

Indiana's fee schedule for 1995 will be $24.75 per ton of emissions plus a $1,125 flat fee per source. This is below the EPA presumptive minimum fee amount. Indiana's program, however, will be in effect for only a portion of 1995 and Indiana has demonstrated that it will provide enough of the 1995 fee schedule for the post-program approval period to meet the EPA presumptive minimum amount. Please refer to the TSD, included with the docket of this interim approval, for more information regarding the State's fee demonstration.

4. Provisions Implementing the Requirements of Other Titles of the Act

a. Authority and/or Commitments for Section 112 Implementation

Indiana has demonstrated in its Title V program submittal adequate legal authority to implement and enforce all section 112 requirements through Title V permits. This legal authority is contained in Indiana's enabling legislation and in regulatory provisions defining "applicable requirements" and stating that the permit must incorporate all applicable requirements. EPA has determined that this legal authority is sufficient to allow Indiana to issue permits that assure compliance with all section 112 requirements.

The EPA is accepting the above legal authority as an adequate demonstration that Indiana is able to carry out all section 112 activities relative to Title V sources. For further rationale on this interpretation, please refer to the TSD accompanying this rulemaking and the April 13, 1993, guidance memorandum titled "Title V Program Approval Criteria for section 112 activities," signed by John Seitz, Director of the Office of Air Quality Planning and Standards.

b. Implementation of section 112(g) Upon Program Approval

As a condition of approval of the Title V program, Indiana is required to implement section 112(g) of the Act. Indiana has promulgated a "MACT Rule" in 326 IAC 2–1–3.3. The purpose of this regulation is to provide Indiana the necessary mechanism to implement section 112(g). 326 IAC 2–1–3.3(e) states that permit conditions necessary to implement the provisions of 326 IAC 2–1–3.3 shall be established in 326 IAC 2–1–3. 326 IAC 2–1–3 is the Indiana NSR construction permit regulation, which has been approved into the Indiana SIP. 326 IAC 2–1–3.3 applies to new or reconstructed sources emitting greater than 10 tpy of a HAP or 25 tpy of any combination of HAPs. The regulation also applies to modifications to HAP sources which emit 4 tpy of one HAP or 10 tpy of any combination of HAPs.

According to the **Federal Register** notice published on February 14, 1995, 60 FR 8333, the requirements of section 112(g) will not become effective until after EPA has promulgated a regulation addressing that provision. The **Federal Register** notice sets forth in detail the rationale for this interpretation. At the time of Indiana's program submittal and EPA's subsequent review period, EPA has not promulgated a federal regulation containing the specific requirements of section 112(g).

The section 112(g) interpretive notice explains that EPA is still considering whether the effective date of section 112(g) should be delayed beyond the date of promulgation of the Federal regulation so as to allow States time to adopt regulations implementing the Federal regulation, and that EPA will provide for any such additional delay in the final section 112(g) rulemaking. Unless and until EPA provides for such an additional postponement of section 112(g), Indiana must be able to implement section 112(g) during the period between promulgation of the Federal section 112(g) regulation and adoption of implementing State regulations. Imposition of case-by-case determinations of maximum achievable control technology (MACT) or offsets under section 112(g) will require the use of a mechanism for establishing federally enforceable restrictions on a source-specific basis.

For this reason, EPA is proposing approval of Indiana's MACT regulation (326 IAC 2–1–3.3) under the authority of Title V and part 70 solely for the purpose of implementing section 112(g) during the transition period between promulgation of the section 112(g) regulation and adoption by Indiana of regulations implementing the provisions of section 112(g). However, since the approval is for the single purpose of providing a mechanism to implement section 112(g) during the transition period, the approval itself will be without effect if EPA decides in the final section 112(g) regulation that sources are not subject to the requirements of the regulation until State regulations are adopted. The EPA is limiting the duration of this proposal to 18 months following promulgation by EPA of the section 112(g) regulation. Once promulgated by EPA, the 112(g) regulation will serve as the mechanism for establishing federally enforceable case-by-case MACT emission limits for HAPs. EPA is interpreting Indiana's legal authority and commitment (Enclosure H, page 33 of the Indiana program submittal) to mean that, upon promulgation of the section 112(g) regulation, the State will expeditiously adopt regulations consistent with the provisions of 112(g).

Although section 112(l) generally provides authority for approval of State air toxics programs, Title V and section 112(g) provide authority for this limited approval because of the direct linkage between implementation of section 112(g) and Title V. The scope of this approval is narrowly limited to section 112(g) and does not confer or imply approval for purposes of section 110 or any other provision under the Act.

c. Program for Delegation of Section 112 Standards as Promulgated

The requirements for a Title V program approval, specified in 40 CFR 70.4(b), also encompass section 112(l)(5) requirements for approval of a State program for delegation of section 112(d), (f), or (h) standards as promulgated by EPA as they apply to part 70 sources. Section 112(l)(5) requires that the State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, the EPA is proposing to grant approval, under section 112(l)(5) and 40 CFR 63.91, of Indiana's program for receiving delegation of section 112(d), (f), or (h) standards that are unchanged from the Federal standards as promulgated. This program approval applies to both existing and future standards, but is limited to sources covered by the part 70 program.

Indiana has informed EPA that it intends to accept delegation of section 112(d), (f), or (h) standards through rule adoption. The details of this delegation mechanism will be set forth in a Memorandum of Agreement between Indiana and EPA expected to be completed prior to approval of Indiana's section 112(l) program for delegations.

d. Limiting HAP Emissions Through a FESOP Program

At the time of the publication of this **Federal Register** notice, USEPA has not approved a FESOP regulation which would establish federally enforceable limits on sources' potential to emit. If USEPA approves the Indiana FESOP regulation, Indiana will have the ability to place federally enforceable limits on HAPs in addition to criteria pollutants. The federal enforceability of HAP limits will be addressed in any future SIP approving the FESOP program.

e. Title IV

Indiana's program contains adequate authority to issue permits which reflect the requirements of Title IV and its implementing regulations. 326 IAC 21–1–1 incorporates by reference 40 CFR parts 72, 75, 76, 77, and 78. Indiana's program submittal contains a commitment to revise its regulations as necessary to accommodate federal revisions and additions to Title IV and the Acid Rain regulations once they are promulgated.

B. Options for Approval/Disapproval and Implications

The EPA is proposing to grant interim approval to the operating permits program submitted by Indiana on August 10, 1994. If this interim approval is promulgated, the State must make the following changes to receive full approval: (1) The State must amend its insignificant activities levels for SO_2 and HAPs to levels which assure that large sources are included in Title V review and (2) the State must revise its emissions threshold level for MPM group processing eligibility to be consistent with the 40 CFR 70.7(e)(3)(i)(B) threshold level or the State may demonstrate that an alternative to the 40 CFR 70.7(e)(3)(i)(B) level is acceptable. Indiana's program is not fully approvable because of the deficiencies mentioned above. The program, however, substantially meets the requirements of part 70 because Indiana's regulations and legislation comply with all other part 70 requirements. If EPA's concerns on the issues mentioned above are addressed before final action on this notice, then EPA can fully approve Indiana's program. Alternatively, if the State does not address EPA's concerns on these issues before final action on this notice, then EPA's final action will remain an interim approval of the Indiana program.

This interim approval, which may not be renewed, extends for a period of up to 2 years. During the interim approval period, the State is protected from sanctions for failure to have a program, and EPA is not obligated to promulgate a Federal permits program in the State. Permits issued under a program with interim approval have full standing with respect to part 70, and the 1-year time period for submittal of permit applications by subject sources begins upon interim approval, as does the 3-year time period for processing the initial permit applications. Because the interim approval automatically expires 2 years after promulgation of a final interim approval, the State may submit its interim corrections at any time. However, the State may not submit its corrections any later than 18 months after promulgation of final interim approval. The EPA will then have 6 months to promulgate a final action.

C. Federal Oversight and Sanctions

Where EPA grants interim approval, it would extend for 2 years following the effective date of final interim approval, and could not be renewed. During the interim approval period, the State would not be subject to sanctions and EPA would not be obligated to promulgate, administer, and enforce a Federal permits program for the State. Permits issued under a program with interim approval have full standing with respect to part 70, and the 1-year time period for submittal of permit applications by subject sources begins upon the effective date of interim approval as does the 3-year time period for processing the initial permit applications.

State failure to timely correct the deficiencies which are the basis for an interim approval or EPA disapproval of a submitted corrective program will start an 18-month clock for the mandatory imposition of section 179(b) sanctions. Each of these occasions starts a separate sanctions clock and time is not accumulated from one clock to another. Section 179(b) of the Act mandates the impositions of the following sanctions: (1) 2 to 1 emission offsets for new construction in nonattainment areas and (2) restriction on federal funding of highway projects. The offset sanction would be imposed 18 months after a sanctions clock is started and the highway sanction would be imposed 6 months after the offset sanction.

Following final interim approval, if the State failed to submit a complete corrective program for full approval by 6 months before expiration of the interim approval, EPA would start the sanctions clock. If the State then failed to submit a corrective program that EPA found complete before the expiration of that 18-month period, EPA would be required to apply the first section 179(b) sanction, which would remain in effect until EPA determined that the State had submitted a complete corrective program. Moreover, if the Administrator found a lack of good faith on the part of the State, both sanctions under section 179(b) would apply after the expiration of the 18-month period until the Administrator determined that the State had come into compliance. In any case, if, 6 months after the application of the first sanction, the State still had not submitted a corrective program that EPA found complete, the second sanction would be required.

If, following final interim approval, EPA were to disapprove the State's complete corrective program, EPA would be required to apply the first section 179(b) sanction on the date 18 months after the effective date of the disapproval, unless, prior to that date, the State had submitted a revised program and EPA had determined that it corrected the deficiencies that prompted the disapproval. Moreover, if the Administrator found a lack of good faith on the part of the State, both sanctions under section 179(b) would apply after the expiration of the 18-month period until the Administrator determined that the State had come into compliance, In all cases, if, 6 months after EPA applied the first sanction, the State had not submitted a revised program that EPA had determined corrected the deficiencies that prompted disapproval, the second sanction would be required.

In addition, discretionary sanctions may be applied where warranted any time after the end of an interim approval period if a State has not timely submitted a complete corrective program or EPA had disapproved a submitted corrective program. Moreover, if EPA has not granted full approval to a State program by the expiration of an interim approval and that expiration occurs after November 15, 1995, EPA must promulgate, administer and enforce a Federal permits program for that State upon interim approval expiration.

III. Administrative Requirements

A. Request for Public Comments

The EPA is requesting comments on all aspects of this proposed interim approval. Copies of the State's submittal and other information relied upon for the proposed interim approval are contained in a docket maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this proposed rulemaking. The principal purposes of the docket are:

(1) To allow interested parties a means to identify and locate documents so that they can effectively participate in the rulemaking process, and

(2) To serve as the record in case of judicial review. The EPA will consider any comments received by June 21, 1995.

B. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this action from Executive Order 12866 review.

C. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final regulation on small entities. 5 U.S.C. sections 603 and 604. Alternatively, EPA may certify that the regulation will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Operating permits program approvals under section 502 of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal operating permits program approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the Act, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of State action.

The Act forbids EPA to base its actions concerning operating permits programs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S. Ct 1976); 42 U.S.C. 7410(a)(2).

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local or tribal governments in the aggregate; or to the private sector of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the proposed approval action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, and Reporting and recordkeeping requirements.

Authority: 42 U.S.C. sections 7401–7671q.

Dated: May 9, 1995.

David A. Ullrich,

Acting Regional Administrator.

[FR Doc. 95–12474 Filed 5–19–95; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF ENERGY

48 CFR Part 970

RIN 1991–AA63

Acquisition Regulation; Technology Transfer Activities of Department of Energy (DOE) Management and Operating Contractors

AGENCY: Department of Energy.

ACTION: Proposed rule.

SUMMARY: The Department of Energy (DOE) today proposes an amendment to codify DOE's implementation of its technology transfer mission for DOE laboratories (including weapon production facilities) operated by management and operating contractors. The National Competitiveness Technology Transfer Act of 1989 required that technology transfer be established as a mission of each Government-owned laboratory operated under contract by a non-Federal entity. The National Defense Authorization Act for Fiscal Year 1994 expanded the Stevenson-Wydler Technology Innovation Act of 1980 definition of laboratory to include weapon production facilities of the Department of Energy that are operated for national security purposes and are engaged in the production, maintenance, testing, or dismantlement of a nuclear weapon or its components. DOE is proposing to amend the Department of Energy Acquisition Regulation to specify that each new award for or renewal of an existing management and operating contract for the operation of a DOE laboratory or weapon production facility shall have technology transfer as a mission.

DATES: Written comments must be received by July 21, 1995.

ADDRESSES: Comments should be addressed to: Howard K. Mitchell, Policy Analyst, Office of Policy (HR–51), Office of the Deputy Assistant Secretary for Procurement and Assistance Management, Washington, D.C., 20585, (202) 586–8190.

FOR FURTHER INFORMATION CONTACT: Howard K. Mitchell, (202) 586–8190.

SUPPLEMENTARY INFORMATION:

I. Background
II. Section by Section Analysis of the Proposed Rule
III. Procedural Requirements
A. Regulatory Review Under Executive Order 12866
B. Review Under Executive Order 12612
C. Review Under Executive Order 12778
D. Review Under the Regulatory Flexibility Act
E. Review Under the Paperwork Reduction Act
F. Review Under the National Environmental Policy Act (NEPA)
IV. Public Comments
V. Public Hearing

I. Background

Under Section 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254), the Secretary of Energy is authorized to prescribe such procedural rules and regulations as may be deemed necessary or appropriate to accomplish the functions vested in the position. Accordingly, the Department of Energy Acquisition Regulation was promulgated with an effective date of April 1, 1984, (49 FR 11922, March 28, 1984), 48 CFR chapter 9. With this rule, DOE is proposing an addition amending part 970 of the Department of Energy Acquisition Regulation to codify DOE's implementation of its technology transfer mission for DOE laboratories and weapon production facilities operated by management and operating contractors.

Technology advancement is a key component in the growth of the United States industrial economy, and a strong industrial base is an essential element of national security. Further, there is a continuing need to enhance United States competitiveness in both domestic and international markets. DOE laboratories and weapon production facilities, operated by DOE management and operating contractors, have developed outstanding capabilities in a wide variety of advanced technologies and are staffed with scientists, engineers, technicians and other personnel associated with those technologies. The deployment of these resources to work with the private sector through cooperative efforts, consistent with the laboratory's or facility's program mission assignments, can make a substantial contribution to the competitive posture of United States industry.

In recognition of such capabilities, Congress enacted the National Competitiveness Technology Transfer Act of 1989. This Act extended to Government-owned contractor-operated laboratories the same authority to enter into cooperative research and development agreements (CRADAs) which the Federal Technology Transfer Act of 1986 had given to Government-owned Government-operated laboratories and also provided for the protection from dissemination of certain types of information generated under CRADAs. Section 3133(d) of the Act required, by April 30, 1990, each agency which had contracted with a non-Federal entity to operate a Government-owned laboratory to propose for inclusion in that laboratory's operating contract, appropriate contract provisions to implement the requirements of the Act. The National Competitiveness Technology Transfer Act of 1989, as amended by Sections 3134 and 3160 of the National Defense Authorization Act for Fiscal Year 1994, established technology transfer as a mission for Government-owned, contractor-operated laboratories as well as for weapon production facilities. It also authorized such laboratories and weapon facilities to negotiate and award CRADAs with other Federal agencies, State and local governments, industrial organizations, public and private foundations, nonprofit organizations and other persons for the purposes of transferring technology and conducting research and development. Additionally, Sec. 3133(a)(7) of the Act allows certain types of information generated under CRADAs to be protected from disclosure under the Freedom of Information Act for a period of up to five years.

The promulgation and use of a final version of a technology transfer contract clause for DOE laboratories and weapon production facilities operated by

management and operating contractors, which is proposed in this rulemaking, will minimize unnecessary differences in policies and procedural requirements among various laboratories and weapon production facilities. This is expected to benefit the prospective CRADA or other industrial participants by improving both the speed and certainty of the technology transfer process.

The clause requires that the availability of technology transfer opportunities be well publicized with enough general detail to quickly attract private sector participants with the capabilities to fully exploit the technology's commercial applications while benefitting the U.S. economy. It requires that all aspects of the technology transfer program are handled to avoid real or perceived conflict of interest and that commercially valuable data, including marketing and financial data, are appropriately handled and protected. As required by the Act, the proposed rule requires that all new awards for or extensions of existing DOE laboratory or weapon production facility management and operating contracts will have technology transfer as a laboratory or facility mission.

II. Section-by-Section Analysis

A detailed list of additions and changes follows.

1. The authority citation for part 970 is revised to add a reference to the authorities provided by the National Competitiveness Technology Transfer Act of 1989, as amended by Sections 3134 and 3160 of Public Law 103–160.

2. The clause for a laboratory or weapon production facility management and operating contract is added as a new section 970.5204–X, Technology Transfer Mission.

3. A new subpart 970.73, Technology Transfer, and a new section thereunder, 970.7310, General, are added to summarize the DOE technology transfer mission and its conduct in DOE owned-facilities. Two additional new sections, 970.7320, Policy, and 970.7330, Contract Clause, are added to describe the circumstances when technology transfer is to be made a contract requirement of a management and operating contract for the operation of a laboratory or weapon production facility and the clause reference to be used in a solicitation and contract award.

III. Procedural Requirements

A. Regulatory Review Under Executive Order 12866

Today's regulatory action has been determined not to be a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," (58 FR 51735, October 4, 1993). Accordingly, today's action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs.

B. Review Under Executive Order 12612

Executive Order 12612 (52 FR 41285, October 30, 1987) requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the national government and the States, or in the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action.

Today's proposed rule, when finalized, will revise certain policy and procedural requirements. However, DOE has determined that none of the revisions will have a substantial direct effect on the institutional interests or traditional functions of the States.

C. Review Under Executive Order 12778

Section 2 of Executive Order 12778 instructs each agency to adhere to certain requirements in promulgating new regulations and reviewing existing regulations. These requirements, set forth in sections 2(a) and (b)(2), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards for affected conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation: specifies clearly any preemptive effect, effect on existing Federal law or regulation, and retroactive effect; describes any administrative proceedings to be available prior to judicial review and any provisions for the exhaustion of such administrative proceedings; and defines key terms. DOE certifies that today's proposal meets the requirements of sections 2(a) and (b) of Executive Order 12778.

D. Review Under the Regulatory Flexibility Act

This proposed rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96–354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. This proposed rule will have no impact on interest rates, tax policies or liabilities, the cost of goods or services, or other direct economic factors. It will also not have any indirect economic consequences, such as changed construction rates. DOE certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

E. Review Under the Paperwork Reduction Act

No new information collection or recordkeeping requirements are imposed by this proposed rulemaking. Accordingly, no OMB clearance is required under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

F. Review Under the National Environmental Policy Act (NEPA)

DOE has concluded that promulgation of this rule falls into a class of actions (categorical exclusion A5) that are categorically excluded from NEPA review because they would not individually or cumulatively have significant impact on the human environment, as determined by the Department's regulations (10 CFR Part 1021, Subpart D) implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321, 4331–4335, 4341–4347 (1976)). Therefore, this rule does not require an environmental impact statement or an environmental assessment pursuant to NEPA.

IV. Public Comments

Interested persons are invited to participate by submitting data, views, or arguments with respect to the proposed Department of Energy Acquisition Regulation amendments set forth in this notice. Three copies of written comments should be submitted to the address indicated in the **ADDRESSES** section of this notice. All comments received will be available for public inspection in the DOE Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. All written comments received by the date indicated in the **DATES** section of this notice and all other relevant information in the record will be carefully assessed and fully considered prior to publication of the proposed amendment as a final rule. Any information considered to be confidential must be so identified and submitted in writing, one copy only. DOE reserves the right to determine the confidential status of the information and to treat it according to our determination (See 10 CFR 1004.11).

V. Public Hearing

The Department has concluded that this proposed rule does not involve a substantial issue of fact or law and that the proposed rule should not have substantial impact on the nation's economy or a large number of individuals or businesses. Therefore, pursuant to Pub. L. 95–91, the DOE Organization Act, and the Administrative Procedure Act (5 U.S.C. 553), the Department does not plan to hold a public hearing on this proposed rule.

List of Subjects in 48 CFR Part 970

Government procurement.

Issued in Washington, DC on May 17, 1995.

Richard H. Hopf,

Deputy Assistant Secretary for Procurement and Assistance Management.

For the reasons set forth in the preamble 48 CFR Part 970 is proposed to be amended as set forth below:

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

1. The authority citation for Part 970 is revised to read as follows:

Authority: Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), Sec. 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254), Sec. 201 of the Federal Civilian Employee and Contractor Travel Expenses Act of 1985 (41 U.S.C. 420), Sec. 1534 of the Department of Defense Authorization Act, 1986, Pub. L. 99–145 (42 U.S.C. 7256a), as amended; and Sec. 3131, 3132, 3133, and 3157 of the National Competitiveness Technology Transfer Act of 1989, Pub. L. 101–189 (15 U.S.C. 3710 et seq.), and as amended by Sec. 3134 and 3160 of Pub. L. 103–160.

2. Section 970.5204–X, Technology Transfer Mission, is added to read as follows:

970.5204–X Technology transfer mission.

As prescribed in subpart 970.73, insert the following clause:

Technology Transfer Mission (Xxx, 1995)

This clause has as its purpose implementation of the National Competitiveness Technology Transfer Act of 1989 (Sections 3131, 3132, 3133, and 3157 of Pub. L. 101–189 and as amended by Pub. L. 103–160, Sections 3134 and 3160). The Contractor shall conduct technology transfer activities with a purpose of providing benefit from Federal research to U.S. industrial competitiveness.

(a) *Authority.* (1) In order to ensure the full use of the results of research and development efforts of, and the capabilities of, the Laboratory, technology transfer, including Cooperative Research and Development Agreements (CRADAs), is established as a mission of the Laboratory consistent with the policy, principles and purposes of Sections 11(a)(1) and 12(g) of the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3710a); Section 3132(b) of Pub. L. 101–189, Sections 3134 and 3160 of P.L. 103–160, and of Chapter 38 of the Patent Laws (35 U.S.C. 200 et seq.); Section 152 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2182); Section 9 of the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5908); and Executive Order 12591 of April 10, 1987.

(2) In pursuing the technology transfer mission, the Contractor is authorized to conduct activities including but not limited to: identifying and protecting Intellectual Property made, created or acquired at or by the Laboratory; negotiating licensing agreements and assignments for Intellectual Property made, created or acquired at or by the Laboratory that the Contractor controls or owns; bailments; negotiating all aspects of and entering into CRADAs; providing technical consulting and personnel exchanges; conducting science education activities and reimbursable Work for Others (WFO); providing information exchanges; and making available laboratory or weapon production user facilities. It is fully expected that the Contractor shall use all of the mechanisms available to it to accomplish this technology transfer mission, including, but not limited to, CRADAs, user facilities, WFO, science education activities, consulting, personnel, assignments, and licensing in accordance with this clause.

(b) *Definitions.* (1) *Contractor's Laboratory Director* means the individual who has supervision over all or substantially all of the Contractor's operations at the Laboratory.

(2) *Intellectual Property* means patents, trademarks, copyrights, mask works, protected CRADA information, and other forms of comparable property rights protected by Federal Law and other foreign counterparts.

(3) *Cooperative Research and Development Agreement (CRADA)* means any agreement entered into between the Contractor as operator of the Laboratory, and one or more parties including at least one non-Federal party under which the Government, through its laboratory, provides personnel, services, facilities, equipment, intellectual property, or other resources with or without reimbursement (but not funds to non-Federal parties) and the non-Federal parties provide funds, personnel, services, facilities, equipment, intellectual property, or other resources toward the conduct of specified research or development efforts which are consistent with the missions of the Laboratory; except that such term does not include a procurement contract, grant, or cooperative agreement as those terms are used in sections 6303, 6304, and 6305 of Title 31 of the United States Code.

(4) *Joint Work Statement (JWS)* means a proposal for a CRADA prepared by the Contractor, signed by the Contractor's Laboratory Director or designee which describes the following:

(i) Purpose;

(ii) Scope of Work which delineates the rights and responsibilities of the Government, the Contractor and Third Parties, one of which must be a non-Federal party;

(iii) Schedule for the work; and

(iv) Cost and resource contributions of the parties associated with the work and the schedule.

(5) *Assignment* means any agreement by which the Contractor transfers ownership of Laboratory Intellectual Property, subject to the Government's retained rights.

(6) *Laboratory Biological Materials* means biological materials capable of replication or reproduction, such as plasmids, deoxyribonucleic acid molecules, ribonucleic acid molecules, living organisms of any sort and their progeny, including viruses, prokaryote and eukaryote cell lines, transgenic plants and animals, and any derivatives or modifications thereof or products produced through their use or associated biological products, made under this contract by Laboratory employees or through the use of Laboratory research facilities.

(7) *Bailment* means any agreement in which the Contractor permits the commercial or non-commercial transfer of custody, access or use of Laboratory Biological Materials for a specified purpose of technology transfer or research and development, including without limitation evaluation, and without transferring ownership to the bailee.

(c) *Allowable Costs.* (1) The Contractor shall establish and carry out its technology transfer efforts through appropriate organizational elements consistent with the requirements for an Office of Research and Technology Applications (ORTA) pursuant to paragraphs (b) and (c) of Section 11 of the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3710). The costs associated with the conduct of technology transfer through the ORTA including activities associated with obtaining, maintaining, licensing, and assigning Intellectual Property rights, increasing the potential for the transfer of technology, and the widespread notice of technology transfer opportunities, shall be deemed allowable provided that such costs meet the other requirements of the allowable costs provisions of this Contract. In addition to any separately designated funds, these costs in any fiscal year shall not exceed an amount equal to 0.5 percent of the operating funds included in the Federal research and development budget (including Work For Others) of the Laboratory for that fiscal year without written approval of the Contracting Officer.

(2) The Contractor's participation in litigation to enforce or defend Intellectual Property claims incurred in its technology transfer efforts shall be as provided in the clause entitled "Litigation and Claims" of this Contract.

(d) *Conflicts of Interest—Technology Transfer.* The Contractor shall have implementing procedures that seek to avoid employee and organizational conflicts of interest, or the appearance of conflicts of interest, in the conduct of its technology

transfer activities. Such implementing procedures shall be provided to the Contracting Officer for review and approval within sixty (60) days after execution of this contract. The Contracting Officer shall have thirty (30) days thereafter to approve or require specific changes to such procedures. Such implementing procedures shall include procedures to:

(1) Inform employees of and require conformance with standards of conduct and integrity in connection with the CRADA activity in accordance with the provisions of paragraph (n)(5) of this clause;

(2) Review and approve employee activities so as to avoid conflicts of interest arising from commercial utilization activities relating to Contractor-developed Intellectual Property;

(3) Conduct work performed using royalties so as to avoid interference with or adverse effects on ongoing DOE projects and programs;

(4) Conduct activities relating to commercial utilization of Contractor-developed Intellectual Property so as to avoid interference with or adverse effects on user facility or WFO activities of the Contractor;

(5) Conduct DOE-funded projects and programs so as to avoid the appearance of conflicts of interest or actual conflicts of interest with non-Government funded work;

(6) Notify the Contracting Officer with respect to any new work to be performed or proposed to be performed under the Contract for DOE or other Federal agencies where the new work or proposal involves Intellectual Property in which the Contractor has obtained or intends to request or elect title;

(7) Except as provided elsewhere in this Contract, obtain the approval of the Contracting Officer for any licensing of or assignment of title to Intellectual Property rights by the Contractor to any business or corporate affiliate of the Contractor;

(8) Obtain the approval of the Contracting Officer prior to any assignment, exclusive licensing, or option for exclusive licensing, of Intellectual Property to any person who has been a Laboratory employee within the previous two years or to the company in which he or she is a principal; and

(9) Notify non-Federal sponsors of WFO activities, or non-Federal users of user facilities, of any relevant Intellectual Property interest of the Contractor prior to execution of WFOs or user agreements.

(10) Notify DOE prior to evaluating a proposal submitted by a third party or DOE, when the subject matter of the proposal involves an elected or waived subject invention or one in which the Contractor intends to elect to retain title.

(e) *Fairness of Opportunity.* In conducting its technology transfer activities, the Contractor shall prepare procedures and take all reasonable measures to ensure widespread notice of availability of technologies suited for transfer and opportunities for exclusive licensing and joint research arrangements. The requirement to widely disseminate the availability of technology transfer opportunities does not apply to a specific application originated outside of the Laboratory and by entities other than the Contractor.

(f) *U.S. Industrial Competitiveness.* (1) In the interest of enhancing U.S. Industrial Competitiveness, the Contractor shall, in its licensing and assignments of Intellectual Property, give preference in such a manner as to enhance the accrual of economic and technological benefits to the U.S. domestic economy. The Contractor shall consider the following factors in all of its licensing and assignment decisions:

(i) Whether any resulting design and development will be performed in the United States and whether resulting products, embodying parts, including components thereof, will be substantially manufactured in the United States; or

(ii) (A) Whether the proposed licensee or assignee has a business unit located in the United States and whether significant economic and technical benefits will flow to the United States as a result of the license or assignment agreement; and

(B) In licensing any entity subject to the control of a foreign company or government, whether such foreign government permits United States agencies, organizations or other persons to enter into cooperative research and development agreements and licensing agreements, and has policies to protect United States Intellectual Property rights.

(2) If the Contractor determines that neither of the conditions in paragraphs (f)(1) (i) or (ii) of this clause are likely to be fulfilled, the Contractor, prior to entering into such an agreement, must obtain the approval of the Contracting Officer. The Contracting Officer shall act on any such requests for approval within thirty (30) days.

(3) The Contractor agrees to be bound by the provisions of 35 U.S.C. 204.

(g) *Indemnity—Product Liability.* In entering into written technology transfer agreements, including but not limited to, research and development agreements, licenses, assignments and CRADAs, the Contractor agrees to include in such agreements a requirement that the U.S. Government and the Contractor, except for any negligent acts or omissions of the Contractor, be indemnified for all damages, costs, and expenses, including attorneys' fees, arising from personal injury or property damage occurring as a result of the making, using or selling of a product, process or service by or on behalf of the Participant, its assignees or licensees which was derived from the work performed under the agreement. The Contractor shall identify and obtain the approval of the Contracting Officer for any proposed exceptions to this requirement such as where State or local law expressly prohibit the Participant from providing indemnification or where the research results will be placed in the public domain.

(h) *Disposition of Income.* (1) Royalties or other income earned or retained by the Contractor as a result of performance of authorized technology transfer activities herein shall be used by the Contractor for scientific research, development, technology transfer, and education at the Laboratory, consistent with the research and development mission and objectives of the Laboratory and subject to Section 12(b)(5) of the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3710a(b)(5)) and Chapter 38 of the Patent Laws (35 U.S.C. 200 et seq.) as amended through the effective date of this contract award or modification. If the amounts of such royalties and income received during any fiscal year exceed 5 percent of the Laboratory's budget for that fiscal year, 75 percent of such excess amounts shall be paid to the Treasury of the United States, and the remaining amount of such excess shall be used by the Contractor for the purposes as described above in this paragraph. Any inventions arising out of such scientific research and development activities shall be deemed to be "Subject Inventions" under the Contract.

(2) The Contractor shall include as a part of its annual Laboratory Institutional Plan or other such annual document a plan setting out those uses to which royalties and other income received as a result of performance of authorized technology transfer activities herein will be applied at the Laboratory, and at the end of the year, provide a separate accounting for how the funds were actually used. Under no circumstances shall these royalties and income be used for an illegal augmentation of funds furnished by the U.S. Government.

(3) The Contractor shall establish subject to the approval of the Contracting Officer a policy for making awards or sharing of royalties with Contractor employees, other coinventors and coauthors, including Federal employee coinventors when deemed appropriate by the Contracting Officer.

(i) *Transfer to Successor Contractor* In the event of termination or upon the expiration of this Contract, any unexpended balance of income received for use at the Laboratory shall be transferred, at the Contracting Officer's request, to a successor contractor, or in the absence of a successor contractor, to such other entity as designated by the Contracting Officer. The Contractor shall transfer title, as one package, to the extent the Contractor retains title, in all patents and patent applications, licenses, accounts containing royalty revenues from such license agreements, including equity positions in third party entities, and other Intellectual Property rights which arose at the Laboratory, to the successor contractor or to the Government as directed by the Contracting Officer.

(j) *Technology Transfer Affecting the National Security.* (1) The Contractor shall notify and obtain the approval of the Contracting Officer, prior to entering into any technology transfer arrangement, when such technology or any part of such technology is classified or sensitive under Section 148 of the Atomic Energy Act (42 U.S.C. 2168). Such notification shall include sufficient information to enable DOE to determine the extent that commercialization of such technology would enhance or diminish security interests of the United States, or diminish communications within DOE's nuclear weapon production complex. DOE shall use its best efforts to complete its determination within sixty (60) days of the Contractor's notification, and provision of any supporting information, and DOE shall promptly notify the Contractor as to whether the technology is transferable.

(2) The Contractor shall include in all of its technology transfer agreements with third parties, including, but not limited to, CRADAs, licensing agreements and assignments, notice to such third parties that the export of goods and/or Technical Data from the United States may require some form of export control license or other authority from the U.S. Government and that failure to obtain such export control license may result in criminal liability under U.S. laws.

(3) For other than fundamental research as defined in National Security Decision Directive 189, the Contractor is responsible to conduct internal export control reviews and assure that technology is transferred in accordance with applicable law.

(k) *Records.* The Contractor shall maintain records of its technology transfer activities in a manner and to the extent satisfactory to the DOE and specifically including, but not limited to, the licensing agreements, assignments and the records required to implement the requirements of paragraphs (e), (f), and (h) of this clause and shall provide reports to the Contracting Officer to enable DOE to maintain the reporting requirements of Section 12(c)(6) of the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3710a(c)(6)). Such reports shall be made annually in a format to be agreed upon between the Contractor and DOE and in such a format which will serve to adequately inform DOE of the Contractor's technology transfer activities while protecting any data not subject to disclosure under the Rights in Technical Data clause and paragraph (n) of this clause. Such records shall be made available in accordance with the clauses of this Contract pertaining to inspection, audit and examination of records.

(l) *Reports to Congress.* To facilitate DOE's reporting to Congress, the Contractor is required to submit annually to DOE a technology transfer plan for conducting its technology transfer function for the upcoming year, including plans for securing Intellectual Property rights in Laboratory innovations with commercial promise and plans for managing such innovations so as to benefit the competitiveness of United States industry. This plan shall be provided to the Contracting Officer on or before October 1st of each year.

(m) *Oversight and Appraisal.* The Contractor is responsible for developing and implementing effective internal controls for all technology transfer activities consistent with the audit and record requirements of this Contract. Laboratory Contractor performance in implementing the technology transfer mission and the effectiveness of the Contractor's procedures will be evaluated by the Contracting Officer as part of the annual appraisal process, with input from the cognizant Secretarial Officer or program office.

(n) *Technology Transfer Through Cooperative Research and Development Agreements.* Upon approval of the Contracting Officer and as provided in a DOE approved Joint Work Statement (JWS), the Laboratory Director or his designee may enter into CRADAs on behalf of the DOE subject to the requirements set forth herein.

(1) *Review and Approval of CRADAs.* (i) Except as otherwise directed in writing by the Contracting Officer, each JWS shall be submitted to the Contracting Officer for approval. The Contractor's Laboratory Director or designee shall provide a program mission impact statement and shall include an impact statement regarding related Intellectual Property rights known by the Contractor to be owned by the Government to assist the Contracting Officer in his approval determination.

(ii) The Contractor shall also include (specific to the proposed CRADA), a statement of compliance with the Fairness of Opportunity requirements of paragraph (e) of this clause.

(iii) Within ninety (90) days after submission of a JWS, the Contracting Officer shall approve, disapprove or request modification to the JWS. If a modification is required, the Contracting Officer shall approve or disapprove any resubmission of the JWS within thirty (30) days of its resubmission, or ninety (90) days from the date of the original submission, whichever is later. The Contracting Officer shall provide a written explanation to the Contractor's Laboratory Director or designee of any disapproval or requirement for modification of a JWS.

(iv) Upon approval of a JWS, the Contractor's Laboratory Director or designee may submit a CRADA, based upon the approved JWS, to the Contracting Officer. The Contracting Officer, within thirty (30) days of receipt of the CRADA, shall approve or request modification of the CRADA. If the Contracting Officer requests a modification of the CRADA, an explanation of such request shall be provided to the Laboratory Director or designee.

(v) Except as otherwise directed in writing by the Contracting Officer, the Contractor shall not enter into, or begin work under, a CRADA until approval of the CRADA has been granted by the Contracting Officer. The Contractor may submit its proposed CRADA to the Contracting Officer at the time of submitting its proposed JWS or any time thereafter. However, the Contracting Officer is not obligated to respond under paragraph (n)(1)(iv) of this clause until within thirty (30) days after approval of the JWS or thirty (30) days after submittal of the CRADA, whichever is later.

(2) *Selection of Participants* The Contractor's Laboratory Director or designee in deciding what CRADA to enter into shall:

(i) Give special consideration to small business firms, and consortia involving small business firms;

(ii) Give preference to business units located in the United States which agree that products or processes embodying Intellectual Property will be substantially manufactured or practiced in the United States and, in the case of any industrial organization or other person subject to the control of a foreign company or government, take into consideration whether or not such foreign government permits United States agencies, organizations, or other persons to enter into cooperative research and development agreements and licensing agreements;

(iii) Provide Fairness of Opportunity in accordance with the requirements of paragraph (e) of this clause; and

(iv) Give consideration to the Conflicts of Interest requirements of paragraph (d) of this clause.

(3) *Withholding of Data*

(i) Data that is first produced as a result of research and development activities conducted under a CRADA and that would be a trade secret or commercial or financial data that would be privileged or confidential, if such data had been obtained from a non-Federal third party, may be protected from disclosure under the Freedom of Information Act as provided in the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3710a(c)(7)) for a period as agreed in the CRADA of up to five (5) years from the time the data is first produced. The DOE shall cooperate with the Contractor in protecting such data.

(ii) Unless otherwise expressly approved by the Contracting Officer in advance for a specific CRADA, the Contractor agrees, at the request of the Contracting Officer, to transmit such data to other DOE facilities for use by DOE or its Contractors by or on behalf of the Government. When data protected pursuant to paragraph (n)(3)(i) of this clause is so transferred, the Contractor shall clearly mark the data with a legend setting out the restrictions against private use and further dissemination, along with the expiration date of such restrictions.

(iii) In addition to its authority to license Intellectual Property, the Contractor may enter into licensing agreements with third parties for data developed by the Contractor under a CRADA subject to other provisions of this Contract. However, the Contractor shall neither use the protection against dissemination nor the licensing of data as an alternative to the submittal of invention disclosures which include data protected pursuant to paragraph (n)(3)(i) of this clause.

(4) *Work For Others and User Facility Programs.* (i) WFO and User Facility Agreements (UFAs) are not CRADAs and will be available for use by the Contractor in addition to CRADAs for achieving utilization of employee expertise and unique facilities for maximizing technology transfer. The Contractor agrees to inform prospective CRADA participants, which are intending to substantially pay full cost recovery for the effort under a proposed CRADA, of the availability of alternative forms of agreements, i.e., WFO and UFA, and of the Class Patent Waiver provisions associated therewith.

(ii) Where the Contractor believes that the transfer of technology to the U. S. domestic economy will benefit from, or other equity considerations dictate, an arrangement other than the Class Waiver of patent rights to the sponsor in WFO and UFAs, a request may be made to the Contracting Officer for an exception to the Class Waivers.

(iii) Rights to inventions made under agreements other than funding agreements with third parties shall be governed by the appropriate provisions incorporated, with DOE approval, in such agreements, and the provisions in such agreements take precedence over any disposition of rights

contained in this Contract. Disposition of rights under any such agreement shall be in accordance with any DOE class waiver (including Work for Others and User Class Waivers) or individually negotiated waiver which applies to the agreement.

(5) *Conflicts of Interest.* (i) Except as provided in paragraph (n)(5)(iii) of this clause, the Contractor shall assure that no employee of the Contractor shall have a substantial role (including an advisory role) in the preparation, negotiation, or approval of a CRADA, if, to such employee's knowledge:

(A) Such employee, or the spouse, child, parent, sibling, or partner of such employee, or an organization (other than the Contractor) in which such employee serves as an officer, director, trustee, partner, or employee—

(*1*) Holds financial interest in any entity, other than the Contractor, that has a substantial interest in the preparation, negotiation, or approval of the CRADA;

(*2*) Receives a gift or gratuity from any entity, other than the Contractor, that has a substantial interest in the preparation, negotiation, or approval of the CRADA; or

(B) A financial interest in any entity, other than the Contractor, that has a substantial interest in the preparation, negotiation, or approval of the CRADA, is held by any person or organization with whom such employee is negotiating or has any arrangement concerning prospective employment.

(ii) The Contractor shall require that each employee of the Contractor who has a substantial role (including an advisory role) in the preparation, negotiation, or approval of a CRADA certify through the Contractor to the Contracting Officer that the circumstances described in paragraph (n)(5)(i) of this clause do not apply to that employee.

(iii) The requirements of paragraphs (n)(5)(i) and (n)(5)(ii) of this clause shall not apply in a case where the Contracting Officer is advised by the Contractor in advance of the participation of an employee described in those paragraphs in the preparation, negotiation or approval of a CRADA of the nature of and extent of any financial interest described in paragraph (n)(5)(i) of this clause, and the Contracting Officer determines that such financial interest is not so substantial as to be considered likely to affect the integrity of the Contractor employee's participation in the process of preparing, negotiating, or approving the CRADA.

(o) *Technology Transfer in Other Cost-Sharing Agreements.* In conducting research and development activities in cost-shared agreements not covered by paragraph (n) of this clause, the Contractor, with prior written permission of the Contracting Officer, may provide for the withholding of data produced thereunder in accordance with the applicable provisions of paragraph (n)(3) of this clause.

(End of clause)

Alternate I (Xxx 1995). As prescribed in 970.7330(b), add the following definition under paragraph (b) and new paragraph (p):

(b)(8) *Privately funded technology transfer* means the prosecuting, maintaining, licensing, and marketing of inventions which are not owned by the Government (and not related to CRADAs) when such activities are conducted entirely without the use of Government funds.

(p) Nothing in paragraphs (c) Allowable Costs, (e) Fairness of Opportunity, (f) U.S. Industrial Competitiveness, (g) Indemnity—Product Liability, (h) Disposition of Income, and (i) Transfer to Successor Contractor above are intended to apply to the contractor's privately funded technology transfer activities if such privately funded activities are addressed elsewhere in the contract.

Alternate II (Xxx 1995). As prescribed in 970.7330(c), the phrase "weapon production facility" may be substituted wherever the word "laboratory" appears in the clause.

3. A new subpart 970.73, Technology Transfer, consisting of sections 970.7310, 970.7320, and 970.7330, is added to read as follows:

Subpart 970.73 Technology Transfer

Secs.
970.7310 General.
970.7320 Policy.
970.7330 Contract Clause.

Subpart 970.73—Technology Transfer

970.7310 General.

This subpart prescribes policies and procedures for implementing the National Competitiveness Technology Transfer Act of 1989. The Act required that technology transfer be established as a mission of each Government-owned laboratory operated under contract by a non-Federal entity. The National Defense Authorization Act for Fiscal Year 1994 expanded the definition of laboratory to include weapon production facilities that are operated for national security purposes and are engaged in the production, maintenance, testing, or dismantlement of a nuclear weapon or its components.

970.7320 Policy.

All new awards for or extensions of existing DOE laboratory or weapon production facility management and operating contracts shall have technology transfer, including authorization to award Cooperative Research and Development Agreements (CRADAs), as a laboratory or facility mission under Section 11(a)(1) of the Stevenson-Wydler Technology Innovation Act of 1980, as amended. A management and operating contractor for a facility not deemed to be a laboratory or weapon production facility may be authorized on a case-by-case basis to support the DOE technology transfer mission including, but not limited to, participating in CRADAs awarded by DOE laboratories and weapon production facilities.

970.7330 Contract clause.

(a) The contracting officer shall insert the clause at 970.5204–X, Technology transfer mission, in each solicitation for a new or an extension of an existing laboratory or weapon production facility management and operating contract.

(b) If the contractor is a nonprofit organization or small business eligible under 35 U.S.C. 200 *et seq.*, to receive title to any inventions under the contract and proposes to fund at private expense the maintaining, licensing, and marketing of the inventions, the contracting officer shall use the basic clause with its Alternate I.

(c) The contracting officer may substitute the Alternate II phrase "weapon production facility" wherever the word "laboratory" appears in the clause where the facility is operated for national security purposes and engaged in the production, maintenance, testing, or dismantlement of a nuclear weapon or its components.

[FR Doc. 95–12849 Filed 5–19–95; 8:45 am]
BILLING CODE 6450–01–P

Notices

Federal Register
Vol. 60, No. 98
Monday, May 22, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Charlie Tyson Project; Idaho Panhandle National Forests, St. Maries Ranger District, Benewah County, Idaho

AGENCY: Forest Service, USDA.

ACTION: Correction of the May 10, 1995—Notice of Intent, 60 FR 24829.

A Notice of Intent to prepare an Environmental Impact Statement (EIS) for the Charlie Tyson Projects was inadvertently published on May 10, 1995 (60 FR 24829). This is an error; this notice was published on March 31, 1994 (Vol. 59, No. 62, 15153) and since that time the Draft has been published and the Ranger district is now (May 15, 1995) in the process of mailing out the Final EIS and Record of Decision.

Dated: May 16, 1995.

Bradley J. Burmark,

Acting District Ranger.

[FR Doc. 95–12504 Filed 5–19–95; 8:45 am]
BILLING CODE 3410–11–M

Blue Mountains Natural Resources Institute (BMNRI), Board of Directors

AGENCY: Pacific Northwest Research Station, USDA.

ACTION: Notice of meeting.

SUMMARY: The Blue Mountains Natural Resources Institute Board of Directors will meet on June 8, 1995 at Eastern Oregon State College, Hoke Hall, Room 309, 1410 L Avenue in La Grande, Oregon. The meeting will begin at 9:00 a.m. and continue until 5:00 p.m. Agenda items to be covered include: (1) Review status as a Federal Advisory Committee; (2) presentation of Federal Advisory Committee Act guidelines and responsibilities; (3) report of research and outreach activities; (4) review mission and goals of the BMNRI and discuss how to most effectively reach these goals; and (5) open public forum. All Blue Mountains Natural Resources Institute Board Meetings are open to the public. Interested citizens are encouraged to attend. Members of the public who wish to make a brief oral presentation at the meeting should contact John Tanaka, BMNRI, 1401 Gekeler Lane, La Grande, OR 97850, 503–963–7122, no later than 5:00 p.m. June 7, 1995 to have time reserved on the agenda.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to John Tanaka, Deputy Director, Blue Mountains Natural Resources Institute, 1401 Gekeler Lane, La Grande, Oregon 97850, 503–963–7122.

Dated: May 11, 1995.

Gary Daterman,

Program Manager.

[FR Doc. 95–12408 Filed 5–19–95; 8:45 am]
BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Export Administration

[Docket Number AB1–89]

Final Decision and Order Affirming in Part Order of the Administrative Law Judge

In the Matter of: Town & Country Plastic, Inc., Respondent.

Before me for decision is the appeal of the Office of Antiboycott Compliance (OAC) from the decision and order of the Administrative Law Judge (ALJ). The ALJ dismissed as unproven OAC's charge that Town & Country Plastics, Inc. (T&C), violated § 769.2(d)(1)(iv) of the Export Administration Regulations (15 CFR 769.2(d)(1)(iv)) (the "Regulations").

I. Jurisdictional Issues

T&C questions my jurisdiction to entertain the appeal, alleging that the appeal was not timely filed and properly served. After having reviewed the administrative record, I have concluded that I have jurisdiction to entertain the appeal and that the decision of the ALJ should be affirmed in part, as set forth below.

a. Timeliness

The threshold question is whether OAC's appeal was timely filed and properly served. Section 788.22(b) of the Regulations (15 CFR 788.22(b)) requires the filing of appeals within 30 days of the date on which the order appealed from was served. Applying this rule literally in this case, the appeal should have been filed on or before October 21, 1990, which happened to be a Sunday. T&C correctly points out that there is nothing in the rules explicitly extending the time for filing documents when the last day falls on a Sunday. On the other hand, OAC refers to the Federal Rules of Civil Procedure where Rule 6 provides that, when the last day allowed for filing a document falls on a Sunday, the document may be filed up until the close of business on the next business day. OAC did file its appeal on Monday, October 22, 1990.

I have concluded that the procedural rules relating to antiboycott appeals should be construed in conjunction with the Federal Rules of Civil Procedure. Accordingly, I find that the appeal was timely filed.

b. Service

T&C also argues that OAC failed to serve the appeal in accordance with the rules. In support of its argument, T&C points out that Section 788.6(a) of the Regulations (15 CFR 788.6(a)) requires that all papers served in the administrative proceedings shall be simultaneously served on other parties. While OAC appended a certificate of service to its appeal stating that it had caused a copy of the appeal to be mailed to T&C on October 22, 1990, the envelope in which the appeal was received by T&C was postmarked October 23, 1990, one day later than the last day the appeal could be filed. OAC responds that on October 22, 1990, it did cause the appeal to be mailed in accordance with customary departmental mailing procedures in which all mailings first go to the Department's centralized mailing room, and it cannot control when a mailing will be actually postmarked by the Post Office.

I have concluded that OAC did serve the appeal in a timely fashion. In my opinion, it is sufficient that the appeal was mailed in accordance with standard departmental mailing procedures on the day when the service was required to be accomplished.

II. Furnishing Information

This brings me to the substantive issues. T&C is charged with one violation of Section 769.2(d)(1)(iv) of the Regulations which provides:

> No United States person may furnish or knowingly agree to furnish information concerning his or any other person's past, present, or proposed business relationships with any other person who is known or believed to be restricted from having any business relationship with or in a boycotting country.

In order to establish that T&C violated the Regulations as alleged, OAC must establish that T&C: (1) Is a United States person, (2) who, in connection with its activities in United States commerce, (3) provided information concerning its business relationships with another person known or believed to be restricted from having any business relationship with or in a boycotting country, and (4) with intent to comply with, further, or support an unsanctioned foreign boycott.

The ALJ found that OAC established the first two elements and neither party contests those findings. (Initial Decision and Order, at 15–6.) Accordingly, I affirm that portion of the ALJ's finding.

However, the ALJ found that OAC had not met its burden with regard to elements three and four listed above. This Final Decision and Order addresses the latter two issues.

The record shows that T&C sold some tanks late in 1984 to a distributor in the United States. The distributor thereafter exported the tanks to Saudi Arabia, but there is nothing in the record to indicate that T&C knew that the tanks were to be ultimately exported to Saudi Arabia at the time of the sale to the distributor.

The distributor wrote to T&C in early 1986 advising that its client was experiencing difficulty in clearing T&C tanks through Saudi Arabian customs because of confusion resulting from the similarity between T&C's name and another name, Town and Country York, Inc. (TCY). The letter read in part as follows:

> A little more than one year ago we purchased some tanks from you.
>
> Our client is having trouble clearing these goods as the Customs Department of Saudi Arabia is confusing your name with another company. The other company's name is Town & Country York, Inc.
>
> Would you be good enough, if possible, to send us a letter certifying that Town and [sic] [1] Country Plastics, Inc. is not the same as Town and Country York, Inc., if this is the case.

Agency Exhibit 1.

[1] (The *sic* refers to the use of "and" in the correspondence instead of the ampersand which appears in Respondent's corporate name.

T&C responded to the distributor as follows:

> Town & Country Plastics, Incorporated is not associated or related to a company by the name of Town and Country York, Incorporated. Our company is sometimes confused with other companies. We hope this confusion is resolved for you.

Agency Exhibit 2, Hearing Transcript ("Transcript"), at 18–9.

It is this response that OAC charges constitutes a violation of the regulation.

a. Intent element

Both the statutory and regulatory language established intent as an element of the violation charged.

Section 8(a)(1) of the Export Administration Act provides in part:

> [T]he President shall issue regulations prohibiting any United States person, with respect to his activities in the interstate or foreign commerce of the United States, from taking or knowingly agreeing to take any of the following actions with intent to comply with, further, or support any boycott fostered or imposed by a foreign country against a country which is friendly to the United States.* * *

50 U.S.C. app. § 2407.

The regulations provided in pertinent part:

* * * * *

> (2) A United States person has the intent to comply with, further, or support an unsanctioned foreign boycott when such a boycott is at least one of the reasons for that person's decision to take a particular prohibited action. So long as that is at least one of the reasons for that person's action, a violation occurs regardless of whether the prohibited action is also taken for non-boycott reasons. Stated differently, the fact that such action was taken for legitimate business reasons does not remove that action from the scope of this part if compliance with an unsanctioned foreign boycott was also a reason for the action.
>
> (3) Intent is a necessary element of any violation of this part. It is not sufficient that one take action that is specifically prohibited by this part. It is essential that one take such action with intent to comply with, further, or support a foreign boycott. Accordingly, a person who inadvertently, without boycott intent, takes a prohibited action, does not commit any violation.
>
> (4) Intent in this context means the reason or purpose for one's behavior. It does not mean that one has to agree with the boycott in question or desire that it succeed or that it be furthered or supported. But it does mean that the reason why a particular action was taken must be established.
>
> * * * * *
>
> (7) In seeking to determine whether the requisite intent exists, all available evidence will be examined.

Section 769.1(e), 15 CFR 769(e).

To demonstrate evidence of intent, OAC relies on T&C's distributor's letter plus T&C's prior experience in 1984 with respect to a different transaction.

In May of 1984, T&C received an express package from the Saudi Arabia Israel Boycott Office. The transmittal letter therein explained that the accompanying "boycott questionnaire" was received from "Saudi Arabian Customs Authorities." The top left corner of the "questionnaire" shows that it was issued from the Saudi Regional Israel Boycott Office. (Transcript, at 89–92; Agency Exhibit 5.)

Concerning that incident, T&C's president testified that he was offended by the questionnaire and that, not knowing the applicable Regulations, went to considerable effort to learn what action should be taken. Upon determining the correct procedure, T&C filed a Report of Request for Restrictive Trade Practice or Boycott, Form ITA–621P with OAC. (Initial Decision, at 8–9; Transcript, at 94–95; Agency Exhibit 5.) (Transcript, at 37–8.)

OAC asserts that T&C's experience rendered it sufficiently aware of the antiboycott provisions of the Regulations that T&C would or should have recognized a boycott request thereafter. T&C answers that it did not respond to the 1984 inquiry; that it reported the request to OAC on its own initiative, and that it and the 1986 incident do not relate in any fashion to one another. (Transcript, at 38.)

The legislative history provides some guidance regarding analysis of the circumstances or context in which a request is received:

> Intent to comply with a boycott could be presumed, subject to rebuttal, where from all the circumstances it is reasonably clear that the information is sought for boycott enforcement purposes * * *. On the other hand where the information is sought in a context which does not make it reasonably clear that the purpose is boycott related, no illegal intent should be presumed.

S. Rep. No. 95–104, 95th Cong., 1st Sess. 40 (1978), quoted in *Briggs & Stratton* v. *Baldrige*, 539 F.Supp. 1307, 1313–1314 (E.D. Wis. 1982), *aff'd*, 728 F.2d 915 (7th Cir.) *cert. denied*, 469 U.S. 826 (1984).

Initial Decision and Order, at 14–15.

Referring to the regulatory language, OAC has consistently argued throughout this proceeding that boycott-related intent does not have to be the only or principal reason behind an allegedly prohibited response. A showing that the boycott played some part in T&C's decision to provide the response is enough, according to OAC. While I agree with that interpretation of the regulatory language and believe it to be an appropriate standard or measure of proof, I concur with the ALJ in this case that additional evidence is necessary to show that the response in issue was provided with the intent to comply with, further, or support an unsanctioned foreign boycott.

The evidentiary record in this case shows that it is not reasonably clear that T&C's purpose in responding was boycott related. The legislative history excerpted above notes that, in such circumstances, illegal intent should not be inferred or presumed. OAC's witness testified that the fact that the inquiry originated from Saudi Arabian Customs would in his experience suggest that the inquiry was probably boycott related, but he could not testify from personal knowledge that the specific inquiry in question was, in fact, boycott related. (Transcript at 13–16.)

By contrast, T&C's witness testified that the inquiry was simply viewed as a routine name clarification request, and it did not occur to T&C that the inquiry might be boycott-related.

(Transcript, at 96–98, 106–7.)

> There is the fact, as I mentioned earlier, that there were literally dozens of requests that we get each year that people calling up wanting to know if we are Town and Country Diner, Town and Country Realty, Town and Country Hairdressers, whether we are Town and Country Chevrolet. It is spelled in different ways. Sometimes it is T-o-w-n-e. At one time we had a competitor in the tank business who was our main supplier who had the name of County Plastics. There was some confusion to that being somewhat similar to Town and Country Plastics.

Transcript, at 107.

In resolving the question of whether T&C acted with the requisite intent in favor of T&C, the ALJ relied heavily on the credibility of the T&C testimony. While not absolutely binding on me, the ALJ's findings regarding credibility are entitled to great weight. *Todd Pacific Shipyards* v. *Director, OWCP*, 913 F.2d 1426, 1432 (9th Cir. 1990); *Carrier Corp.* v. *N.L.R.B.*, 768 F. 2d 778, 782 (6th Cir. 1985). *See, Universal Camera Corp.* v. *N.L.R.B.*, 340 U.S. 474 (1951).

The Administrative Law Judge distinguished the two incidents, noting:

> [T]he present case differs significantly from the events in 1984. In 1984, the inquiry was issued from the Saudi Regional Israel Boycott Office, a division of the Saudi Customs (Agency Ex. 5). *Both the office of origin and the content of the questionnaire affirmatively indicated a boycott relationship.* By comparison, the 1986 inquiry referred only to the Saudi Arabia Customs Service and *the single inquiry referenced only a confusion of names.* The evidence presented by Respondent establishes that such confusion was routine because of the frequency of the Town & Country prefix in the title of many businesses. At the hearing many pages from the nearby New York telephone directory were introduced which show a great proliferation of the name "Town & Country" among businesses, and Respondent Mr. Mermel testified of frequent confusion by mail and telephone respecting the name (Emphasis added).

Initial Decision and Order, at 12–13.

T&C's witness testified that he was concerned with preserving the company's trademark in circumstances where companies constantly confuse T&C with similarly named entities. He stated that he specifically thought the reference to Saudi Customs had something to do with billing for duties, as he frequently encountered similar problems with the U.S. Customs Service. He averred that he would never have answered the inquiry had he suspected it to be boycott-related, as demonstrated by his conduct in reporting the 1984 incident that clearly was boycott-related to the Department of Commerce and in *not answering the inquiry.* The witness also testified concerning profound personal and family reasons for not wanting to do anything to comply with such unsanctioned boycott.

(Transcript, at 92–98; Initial Decision, at 8–10.)

OAC has failed to advance reasons sufficient for discounting the credibility attributed to the T&C testimony by the ALJ.

Accordingly, I AFFIRM the ALJ's finding that OAC did not meet its burden of proof on the intent element.

b. Knowledge Element

The ALJ also based his decision on a separate finding that OAC had failed to meet its burden of proof on another element of the violation charged. Specifically, the ALJ found that OAC failed to meet its burden of proof regarding a showing that T&C knew or believed that TCY was restricted from having any business relationship in a boycotting country, hereafter referred to as the "knowledge element". OAC argues that the ALJ misconstrued the nature of the proof required on the knowledge element.

Having decided that the ALJ should be affirmed on account of his decision relative to the intent element, however, it is unnecessary to resolve the controversy regarding the knowledge element. Accordingly, I have decided not to address that issue in this case. Should a later case turn on that issue, however, this office will not treat the ALJ's decision in this case as a precedent and will resolve the issue on the merits as presented in any later case.

Based on review of the administrative record and for the reasons stated above, the order of the ALJ dismissing the charge against T&C is hereby affirmed in part.

Dated: May 16, 1995.

William A. Reinsch,

Under Secretary for Export Administration.

[FR Doc. 95–12497 Filed 5–19–95; 8:45 am]

BILLING CODE 3510–DT–M

Foreign-Trade Zones Board

[Docket 23–95]

Proposed Foreign-Trade Zone—Ocala/Marion County, Florida; Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Economic Development Council, Inc. (of Ocala/Marion County) (a Florida non-profit corporation), to establish a general-purpose foreign-trade zone at sites in Ocala and Marion County, Florida. Designation of the Ocala Regional Airport as a Customs user fee airport is being requested under a separate application to the U.S. Customs Service. The FTZ application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on May 15, 1995. The applicant is authorized to make the proposal under Section 288.36, Florida Statutes Annotated (1993).

The proposed zone would consist of 5 sites (3,634 acres) in Ocala/Marion County: *Site 1* (Ocala Regional Airport complex—1,532 acres)—1770 SW 60th Avenue, Ocala; *Site 2* (Ocala Airport Commerce Center—92 acres)—intersection of SW 60th Avenue and Highway 40, Ocala; *Site 3* (Oaks Industrial Center—225 acres)—Highway 40, 1 mile west of I–75, Ocala; *Site 4* (Dunnellon/Marion County Airport and Commerce Center—1,706 acres)—15072 SW 111th St, Dunnellon, Marion County; and, Site 5 (Silver Springs Shores Industrial Park—79 acres)—County Road 464, Marion County. Site 1 is owned and operated by the City of Ocala. Sites 2, 3 and 5 are privately owned, and Site 4 is owned and operated by the Marion County Commission.

The application contains evidence of the need for zone services in the Ocala/Marion County area. Several firms have indicated an interest in using zone procedures for warehousing/distribution of such items as laboratory equipment, water meters, flow measuring instruments, furniture and electronic products. Specific manufacturing approvals are not being sought at this

time. Requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

As part of the investigation, the Commerce examiner will hold a public hearing on June 15, 1995 at 9:00 a.m., City Council Chambers, Second Floor of City Hall, 151 SE Osceola Avenue, Ocala, Florida.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is July 21, 1995. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to [75 days from date of publication]).

A copy of the application and accompanying exhibits will be available during this time for public inspection at the following locations:

Ocala Regional Library, Reference Section, 15 SE Osceola Avenue, Ocala, Florida 34471.

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: May 15, 1995.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 95–12498 Filed 5–19–95; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

[A–485–804, A–791–803]

Initiation of Antidumping Duty Investigations: Circular Welded Non-Alloy Steel Pipe From Romania and South Africa

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 22, 1995.

FOR FURTHER INFORMATION CONTACT: John Beck at (202) 482–3464 or Jennifer Stagner at (202) 482–1673, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230.

INITIATION OF INVESTIGATIONS:

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA).

The Petitions

On April 26, 1995, the Department of Commerce (the Department) received two petitions filed in proper form by Allied Tube and Conduit Corporation, Sawhill Tubular Division, LTV Steel Tubular Products Company, Sharon Tube Company, Laclede Steel Company, Wheatland Tube Company, and Century Tube Corporation (the petitioners), seven U.S. producers of circular welded non-alloy steel pipe. A supplement to the petitions was filed on May 8, 1995.

In accordance with section 732(b) of the Act, the petitioners allege that imports of circular welded non-alloy steel pipe from Romania and South Africa are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring, or threatening material injury to, a U.S. industry.

The petitioners state that they have standing to file the petitions because they are interested parties, as defined under section 771(9)(C) of the Act.

Determination of Industry Support for the Petitions

Section 732(c)(4)(A) of the Act requires the Department to determine, prior to the initiation of an investigation, that a minimum percentage of the domestic industry supports an antidumping petition. A petition meets these minimum requirements if (1) the domestic producers or workers who support the petition account for at least 25 percent of the total production of the domestic like product; and (2) the domestic producers or workers who support the petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition.

A review of the production data provided in the petitions and other information readily available to the Department indicates that the petitioners account for more than 25 percent of the total production of the domestic like product and for more than 50 percent of that produced by companies expressing support for, or opposition to, the petitions. The Department received no expressions of opposition to the petitions from any interested party. Accordingly, the Department determines that these petitions are supported by the domestic industry.

Scope of the Investigations

For purposes of these investigations, circular welded non-alloy steel pipes (standard pipes) are all pipes and tubes, of circular cross-section, not more than 406.4 mm (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, galvanized, or painted), end finish (plain end, bevelled end, threaded, or threaded and coupled), or industry specification (ASTM, proprietary, or other) used in, or intended for use in, standard or structural pipe applications.

The scope specifically includes, but is not limited to, all pipe produced to the ASTM A–53, ASTM A–120, ASTM A–135, ASTM A–795, and BS–1387 specifications. It also includes any pipe multiple-stencilled or multiple-certified to one of the above-listed specifications and to any other specification such as API–5L and API–5L X–42 specifications. Pipe produced to proprietary specifications, the API–5L, the API–5L X–42, or to any other non-listed specification is included within the scope of these investigations if used or intended for use in a standard pipe application, regardless of the *Harmonized Tariff Schedule of the United States* (*HTSUS*) category into which it was classified.

Standard pipe uses include the low-pressure conveyance of water, steam, natural gas, air, and other liquids and gases in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipe may carry liquids at elevated temperatures but may not be subject to the application of external heat. Standard or structural pipe uses also include load-bearing applications in construction and residential and industrial fence systems. Standard pipe uses also include shells for the production of finished conduit and pipe used for the production of scaffolding.

These investigations do not cover: API line pipe that is used in oil or gas pipelines; mechanical tubing, whether or not cold-drawn, that enters the United States classified under *HTSUS* 7306.30.10 or 7306.30.50; tube and pipe hollows for redrawing that enter the United States classified under *HTSUS* 7306.30.50.35; and finished electrical conduit that enters the United States classified under *HTSUS* 7306.30.50.28. The investigation does cover conduit shells that enter the United States classified under *HTSUS* 7306.30.50 including *HTSUS* 7306.30.50.28.

The scope of these investigations also covers pipe used for the production of scaffolding, but does not cover finished scaffolding. Pipe produced to the API specifications for oil country tubular goods (API 5CT) is not covered by the scope of these investigations, unless also certified to a listed standard pipe specification and used or intended for use in a standard pipe application.

The merchandise under investigation is currently classifiable under items 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90 of the *HTSUS*. Although the *HTSUS* subheadings are provided for convenience and customs purposes, our written description of the scope of these investigations is dispositive.

Although the Department is including end-use language in the scope for purposes of initiation, the Department intends to further consider its appropriateness. The Department currently is conducting a scope inquiry with respect to the antidumping duty orders on certain circular welded non-alloy steel pipe from Brazil, the Republic of Korea, Mexico, and Venezuela (see Preliminary Affirmative Determination of Scope Inquiry on Antidumping Duty Orders on Certain Circular Welded Non-Alloy Steel Pipe From Brazil, the Republic of Korea, Mexico, and Venezuela (59 FR 1929, January 13, 1994)). The final determination of that scope inquiry will affect the scope determination in these investigations.

The Department invites comments from interested parties addressing "end-use" as a scope criterion. Parties interested in commenting on the scope of these investigations should submit their comments no later than close of business June 30, 1995. Rebuttal comments will be accepted no later than close of business July 7, 1995.

Export Price and Normal Value

Romania

The petitioners based export price on the reported customs value for circular welded non-alloy steel pipe imported into the United States from Romania during the fourth quarter of 1994. This information was specific to standard pipe and not to a basket category of merchandise. The petitioners made adjustments to the price for foreign inland freight.

The petitioners assert that Romania is a non-market economy (NME) within the meaning of section 771(18) of the Act. Accordingly, the normal value of the product should be based on the producers' factors of production, valued in a surrogate market economy country. In previous investigations, the Department has determined that Romania is an NME, and section 771(18)(C)(i) of the Act provides that the presumption of NME status continues for the initiation of this investigation. See, e.g., Final Determination of Sales at Less Than Fair Value: Circular Welded Non-Alloy Steel Pipe from Romania 57 FR 42957 (September 17, 1992) (Standard Pipe from Romania). In the course of this investigation, all parties will have the opportunity to provide relevant information related to the issues of Romania's NME status and the granting of separate rates to individual exporters. See, e.g., Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the PRC 59 FR 22585 (May 2, 1994).

In accordance with section 773(c)(3) of the Act, the petitioners based the Romanian producers' factors of production (*e.g.*, raw materials, labor, energy) on adjusted data from the public version of the information on the record in Standard Pipe from Romania. For the valuation of certain factors (steel coil, labor, electricity, water, and methane), the petitioners used surrogate information from Colombia pursuant to section 773(c)(4) of the Act. The petitioners contend that Colombia is the most appropriate surrogate country because it is similar to Romania in terms of per-capita gross national product trends and population levels and is a significant producer of steel pipe.

To value certain other minor factors, the petitioners used information from Thailand because they could not obtain information from Colombia. The petitioners used public surrogate information from Thailand that was used in Standard Pipe from Romania because this information was reasonably available to them. Where necessary, these values were adjusted for inflation.

Based on a comparison of the export price to normal value, the calculated dumping margin based on public information is 39.58 percent.

South Africa

The petitioners based export price on the reported customs value for circular welded non-alloy steel pipe imported into the United States from South Africa during the fourth quarter of 1994. This information was specific to standard pipe and not to a basket category of merchandise. The petitioners made no adjustments for foreign movement charges and other selling expenses.

The petitioners based normal value on actual home market price quotations from a South African distributor provided by a market researcher. The petitioners converted the unit price quotes in South African rand to U.S. dollars using the average exchange rate for the fourth quarter of 1994 and then adjusted the dollar unit price, where appropriate, for standard and early payment discounts.

Based on comparisons of export price to normal value, the calculated dumping margins for circular welded non-alloy steel pipe from South Africa range from 107.87 percent to 127.81 percent.

Fair Value Comparisons

Based on the data provided by the petitioners, there is reason to believe that imports of circular welded non-alloy steel pipe from Romania and South Africa are being, or likely to be, sold at less than fair value. If it becomes necessary at a later date to consider these petitions as a source of facts available under section 776 of the Act, we may review further the calculations.

Initiation of Investigations

We have examined the petitions on circular welded non-alloy steel pipe and have found that they meet the requirements of section 732 of the Act, including the requirements concerning allegations of the material injury or threat of material injury to the domestic producers of a domestic like product by reason of the complained-of imports, allegedly sold at less than fair value. Therefore, we are initiating antidumping duty investigations to determine whether imports of circular welded non-alloy steel pipe from Romania and South Africa are being, or are likely to be, sold in the United States at less than fair value. Unless extended, we will make our preliminary determinations by October 5, 1995.

Distribution of Copies of the Petitions

In accordance with section 732(b)(3)(A) of the Act, copies of the public versions of the petitions have been provided to the representatives of the governments of Romania and South Africa. We will attempt to provide copies of the public versions of the petitions to all the exporters named in the petitions.

International Trade Commission (ITC) Notification

We have notified the ITC of our initiations, as required by section 732(d) of the Act.

Preliminary Determination by the ITC

The ITC will determine by June 12, 1995, whether there is a reasonable indication that imports of circular welded non-alloy steel pipe from Romania and South Africa are causing material injury, or threatening to cause material injury, to a U.S. industry. A negative ITC determination on either investigation will result in the respective investigation being terminated; otherwise, these investigations will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act.

Susan G. Esserman,

Assistant Secretary for Import Administration.

Dated: May 16, 1995.

[FR Doc. 95–12499 Filed 5–19–95; 8:45 am]

BILLING CODE 3510–DS–P

[C–557–806]

Extruded Rubber Thread From Malaysia; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the countervailing duty order on extruded rubber thread from Malaysia. We preliminarily determine the net bounty or grant to be 1.00 percent *ad valorem* for all manufacturers and exporters of Malaysian extruded rubber thread for the period January 1, 1993 through December 31, 1993. If the final results remain the same as these preliminary results of administrative review, we will instruct the U.S. Customs Service to assess countervailing duties as indicated above. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: May 22, 1995.

FOR FURTHER INFORMATION CONTACT: Judy Kornfeld or Richard Herring; Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On August 25, 1992, the Department published in the **Federal Register** (57 FR 38472) the countervailing duty order on extruded rubber thread from Malaysia. On August 3, 1994, the Department published a notice of "Opportunity to Request an Administrative Review" (59 FR 39543) of this countervailing duty order. We received a timely request for review from respondents Heveafil Sdn. Bhd.(Heveafil), Filmax Sdn. Bhd.(Filmax), Rubberflex Sdn. Bhd.(Rubberflex), Filati Lastex Elastofibre Sdn. Bhd.(Filati), and Rubfil Sdn. Bhd.(Rubfil).

We initiated the review, covering the period January 1, 1993 through December 31, 1993, on September 16, 1994 (59 FR 47609). The review covers 5 manufacturers/exporters of the subject merchandise and 12 programs.

Applicable Statute and Regulations

The Department is conducting this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act). Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994. However, references to the Department's Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comments, 54 FR 23366 (May 31, 1989) (*Proposed Regulations*), are provided solely for further explanation of the Department's countervailing duty practice. Although the Department has withdrawn the particular rulemaking proceeding pursuant to which the Proposed Regulations were issued, the subject matter of these regulations is being considered in connection with an ongoing rulemaking proceeding which, among other things, is intended to conform the Department's regulations to the Uruguay Round Agreements Act. See 60 FR 80 (Jan. 3, 1995).

Scope of Review

Imports covered by this review are shipments of extruded rubber thread from Malaysia. Extruded rubber thread is defined as vulcanized rubber thread obtained by extrusion of stable or concentrated natural rubber latex of any cross sectional shape, measuring from 0.18 mm, which is 0.007 inch or 140 gauge, to 1.42 mm, which is 0.056 inch or 18 gauge, in diameter. Such merchandise was classifiable under item number 4007.00.00 of the Harmonized Tariff Schedule (HTS). The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

Calculation Methodology for Assessment and Deposit Purposes

We calculated the net bounty or grant on a country-wide basis by first calculating the bounty or grant rate for each company subject to the administrative review. We then weight-averaged the rate received by each company, including those with *de minimis* and zero rates, using as the weight its share of total Malaysian exports to the United States of subject merchandise. We then summed the individual companies' weighted-average rates to determine the bounty or grant rate from all programs benefitting exports of subject merchandise to the United States.

Since the country-wide rate calculated using this methodology was above *de minimis*, as defined by 19 CFR 355.7 (1994), we proceeded to the next step and examined the net bounty or grant rate calculated for each company to determine whether individual company rates differed significantly from the weighted-average country-wide rate, pursuant to 19 CFR 355.22(d)(3). In calculating the individual company rates described above, only one rate was calculated for Heaveafil and Filmax because Heveafil and Filmax are related parties.

None of the companies had net bounty or grant rates which were significantly different pursuant to 19 CFR 355.22(d)(3). Therefore, all companies are assigned the country-wide rate.

Analysis of Programs

I. Programs Conferring Subsidies

A. Export Credit Refinancing (ECR) Program

The ECR program was established in order to promote: (1) Exports of manufactured goods and agricultural food products that have significant value-added and high local content, (2) greater domestic linkages in export industries, and (3) easy access to credit facilities. In order to accomplish this, the Bank Negara Malaysia, the central bank of Malaysia, provides order-based and pre- and post-shipment financing of exports through commercial banks for periods of up to 120 and 180 days, respectively, and certificate of performance (CP)-based pre-shipment financing. Order-based financing is provided for specific sales to specific markets. CP-based financing is a line of credit based on the previous 12 months' export performance, and cannot be tied to specific sales in specific markets.

The Department determined that this program was countervailable in Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Extruded Rubber Thread From Malaysia (57 FR 38472; August 25, 1992) (Malaysian Rubber Thread Final Determination) and Extruded Rubber Thread From Malaysia; Final Results of Countervailing Duty Administrative Review (60 FR 17515; April 6, 1995) (Final Results of First Review) because receipt of loans under this program was contingent upon export performance and the loans were provided at preferential interest rates. Heveafil, Filmax and Rubberflex used pre-shipment ECR loans. Filati and Rubfil used post-shipment ECR loans.

In order to determine whether these loans were provided at preferential rates, we compared the interest rate charged to a benchmark interest rate. As a benchmark for short-term loans, it is our practice to select the predominant source of short-term financing in the country as our benchmark for short-term loans. See section 355.44(b)(3) of the Department's Proposed Regulations. In Malaysia, term loans and overdrafts offered by commercial banks are the most predominant form of short-term financing. The average interest rates for these types of financing, however, are not individually available. Therefore, we have used as our benchmark for ECR loans the average commercial bank lending rate as an estimate of these predominant short-term lending rates. This rate is referred to by banks as the base lending rate (BLR). Commercial banks then add a 1 to 2 percent spread to the BLR. Therefore, to determine the commercial benchmark, we used the average of the commercial BLR rates as published by Bank Negara, the central bank of Malaysia, plus an average spread of 1.5 percent. (*See* Final Results of First Review.)

Based on a comparison of the ECR rates and the benchmark rate, we find that ECR loans continue to be provided at preferential interest rates. To calculate the benefit from ECR loans on which interest was paid in 1993, we used our short-term loan methodology which has been applied consistently in previous determinations and the previous administrative review in this case. (See Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Butt-Weld Pipe Fittings from Thailand (55 FR 1695; January 18, 1990); the Malaysian Rubber Thread Final Determination (57 FR 38474; August 27, 1992); and the Final Results of First Review (60 FR 17515; April 6, 1995). See also section 355.44(b)(3) of the Proposed Regulations. Because the post-shipment ECR loans were shipment-specific, we included in our calculations only those loans used to finance exports of extruded rubber thread to the United States. Because the pre-shipment loans were not shipment-specific, we included all loans on which interest was paid during the review period.

To calculate the benefit, we compared the amount of interest actually paid on these loans during the review period with the amount that would have been paid at the benchmark rate of 10.53 percent. The difference between those amounts is the benefit. We then divided total interest savings by total exports, in the case of pre-shipment loans, because they applied to all exports, or by exports to the United States, in the case of post-shipment loans, because they applied to specific shipments of exports to the United States. On this basis, we preliminarily determine the net bounty or grant from pre-shipment loans to be 0.45 percent for all manufacturers or exporters, and from post-shipment loans, we preliminarily determine the rate to be 0.27 percent for all manufacturers and exporters in Malaysia of extruded rubber thread.

B. Pioneer Status

Pioneer status is a tax incentive offered to promote investment in the manufacturing, tourist, and agricultural sectors. Pioneer status was first introduced under the Pioneer Industries (Relief from Income Tax) Ordinance, 1958. This ordinance was replaced by the Investment Incentives Act (IIA) in 1968, which was subsequently replaced by the Promotion of Investment Act (PIA) of 1986. Under the IIA and the PIA, the Minister of International Trade and Industry may determine products or activities to be pioneer products or activities.

Companies petition for pioneer status for products or activities that have already been approved and listed as pioneer products. Once a company receives pioneer status, its profits from the designated product or activity are exempt from the corporate income tax and the dividend tax for a period of five years, with the possibility of an extension for an additional five years. The five-year extension was abolished effective October 1, 1991. Furthermore, the computation of capital allowances, which are normally deducted against the adjusted taxable income, is postponed to the post-tax holiday period.

In evaluating a project for pioneer status, the Malaysian Industrial Development Authority (MIDA) will consider whether:

(1) The product is being produced on a commercial scale suitable to the economic requirement or development of the country,

(2) There are prospects for further development, and

(3) The product or activity meets the national and strategic requirements of Malaysia.

Specifically, MIDA officials consider 12 essential criteria to evaluate whether a particular company should receive pioneer status. Two of these 12 criteria specifically address the export potential of the proposed product or activity. Nevertheless, companies that produce only for the domestic market may also receive pioneer status. Furthermore, some companies may be rejected even though their export potential is high. Under certain conditions, however, companies must agree to an export commitment (i.e., they must agree to export a certain percentage of their production) to receive pioneer status. Furthermore, an export requirement may sometimes be applied to certain industries after it is determined that the domestic market is saturated and will no longer support additional producers.

Considering the implications of this criterion, the Department views the pioneer program as a two-faceted program. The first facet comprises those instances where one or more of the 12 criteria applies, including favorable prospects for export, but where the export criteria do not carry preponderant weight. The Department found this facet of the program not countervailable in the *Malaysian Rubber Thread Final Determination*.

In cases where pioneer status is conferred on a company because it has been determined that the domestic market is saturated and will no longer support additional producers and because that company agrees to export a certain percentage of its production, the program conveys an export subsidy, regardless of the other "neutral" criteria the company is required to meet. This is because the company is clearly being approved due to the fact it will export and because receipt of benefits becomes contingent on export performance. In the investigation of this case (see Malaysian Rubber Thread Final Determination), we determined that pioneer status was granted to Rubberflex based on its obligation to export. Therefore, we found the program countervailable with respect to that company. *See also* Final Results of First Review. Rubberflex continues to hold pioneer status and claimed pioneer income during this review period.

Filmax, Filati, and Rubfil also held pioneer status. However, these companies experienced a tax loss during the period of review and, therefore, did not benefit from this program.

To calculate the benefit, we determined the tax savings from this program during the review period and divided that by total exports. On this basis, we determine the net bounty or grant from this program to be 0.28 percent *ad valorem* during the reveiw period.

II. Programs Preliminarily Determined Not To Be Used

We also examined the following programs and preliminarily determine that the exporters of extruded rubber thread did not use them with respect to exports of the subject merchandise to the United States during the review period:

- Investment Tax Allowance.
- Abatement of Five Percent of Taxable Income Due to Location in a Promoted Industrial Area.
- Allowance of a Percentage of Net Taxable Income Based on the f.o.b. Value of Export Sales.
- Double Deduction of Export Credit Insurance Payments.
- Abatement of Taxable Income of Five Percent of Adjusted Income of Companies Due to Capital Participation and Employment Policy Adherence.
- Preferential Financing for Bumiputras.
- Abatement of Income Tax Based on the Ratio of Export Sales to Total Sales.
- Industrial Building Allowance.
- Double Deduction for Export Promotion Expenses.

III. Program Preliminarily Found to be Terminated Abatement of Five Percent of the Value of Indigenous Malaysian Materials Used in Exports

This program was terminated effective January 1, 1993, and provided no residual benefits to manufacturers and exporters in Malaysia of extruded rubber thread. *See Final Results of First Review.*

Preliminary Results of Review

For the period January 1, 1993, through December 31, 1993, we preliminarily determine that the net bounty or grant to be 1.00 percent *ad valorem.*

If the final results of this review remain the same as these preliminary results, the Department intends to instruct the U.S. Customs Service to assess countervailing duties at 1.00 percent of the f.o.b. invoice price on shipments of the subject merchandise exported on or after January 1, 1993, and on or before December 31, 1993.

The Department also intends to instruct the Customs Service to collect a cash deposit of estimated countervailing duties of 1.00 percent for all firms on shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

Parties to this proceeding may request disclosure of the calculation methodology and interested parties may request a hearing not later than 10 days after date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 355.38(e).

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under section 355.38(c), are due.

The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: May 15, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–12500 Filed 5–19–95; 8:45 am]

BILLING CODE 3510–DS–P

[C–614–503]

Lamb Meat From New Zealand; Final Results of Countervailing Duty Administrative Review and Revocation of Countervailing Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative review and revocation of countervailing duty order.

SUMMARY: On March 1, 1995, the Department of Commerce (the Department) published in the **Federal Register** its preliminary results of administrative review of the countervailing duty order on lamb meat from New Zealand for the period April 1, 1992, through March 31, 1993. We have completed this review and determine the net subsidy to be 0.0013 percent *ad valorem* for all companies. In accordance with 19 CFR 355.7, any rate less than 0.5 percent *ad valorem* is *de minimis.* We will instruct the U.S. Customs Service to liquidate, without regard to countervailing duties, all shipments of this merchandise as indicated above. In addition, because the requirements for revocation of the order have been met by the Government of New Zealand (GONZ) pursuant to 19 CFR 355.25(a)(1), the Department is revoking the countervailing duty order.

EFFECTIVE DATE: May 22, 1995.

FOR FURTHER INFORMATION CONTACT: Gayle Longest or Kelly Parkhill at the Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On March 1, 1995, the Department published in the **Federal Register** (60 FR 11072) the preliminary results of its administrative review of the countervailing duty order on lamb meat from New Zealand and intent to revoke the countervailing duty order. We invited interested parties to comment on the preliminary results and intent to revoke. We received no comments.

The review covered the period April 1, 1992, through March 31, 1993. The review involved 9 companies and the following programs which we verified have been terminated:

(1) Livestock Incentive Scheme (LIS)
(2) Regional Development Suspensory Loan Scheme (RDSL)
(3) Expert Assistance Grant Scheme (EAGS)
(4) The Export Market Development Taxation Incentive (EMDTI)
(5) Export Suspensory Loan Scheme (ESLS)
(6) Export Programme Grant Scheme (EPGS / Export Programme Suspensory Loan Scheme (EPSLS)

Scope of Review

Imports covered by this review are shipments of lamb meat, other than prepared, preserved, or processed, from New Zealand. This merchandise is currently classifiable under item numbers 0204.10.0000, 0204.22.2000, 0204.23.2000, 0204.30.0000, 0204.42.2000, and 0204.43.2000 of the Harmonized Tariff Schedule (HTS). The HTS numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Revocation of the Countervailing Duty Order

According to 19 CFR 355.25(b), a government meets the minimum threshold requirement for revocation of an order if, in requesting the third consecutive administrative review of the order, the government submits a certification that the government has abolished all subsidy programs for the subject merchandise for a period of three consecutive years, and that the government will not reinstate the abolished programs or substitute other countervailable programs. Under 19 CFR 355.25(a)(1)(i), the Department must have also found that there was no net subsidy for the subject merchandise in the two consecutive administrative reviews prior to the year in which the government requests revocation, and in the third consecutive administrative review, the Department must also determine that there is no net subsidy. If the foregoing threshold requirements are met, and the Department determines in the review during which revocation has been requested that the government has eliminated all subsidies on the subject merchandise for the third consecutive year, and is not likely to substitute or replace formerly countervailable programs with new subsidies, then the Department will revoke the order.

Based upon certification by the GONZ, as well as the Department's administrative determinations, we have determined that the GONZ has abolished all subsidy programs for lamb meat for a period of three consecutive years. In addition, the GONZ has certified that it will not reinstate the abolished programs or substitute other countervailable programs. We therefore determine that there is no likelihood that the GONZ will substitute or replace formerly countervailable programs with new subsidies. Accordingly, we are revoking the countervailing duty order.

Calculation Methodology for Assessment and Cash Deposit Purposes

We calculated the bounty or grant from the LIS, (the only terminated program with residual benefits), on a country-wide basis by treating the loan amounts forgiven in prior years as grants and allocated those amounts over five years, the average useful life of breeding stock. This methodology is described in § 355.49(g) of *Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comments* (51 FR 23366, 233385; May 31, 1989). Because the 1988 grant under this program was allocated over five years, we find that a benefit was conferred during the review period; however, this is the last year of the five-year benefit stream and no further benefits will be provided under these LIS loans. The discount rate chosen was the average interest rate on overdrafts during the year in which the loans were forgiven.

The methodology and discount rate are the same used in previous administrative reviews (*see* e.g. *Lamb Meat from New Zealand; Preliminary Results of Countervailing Duty Administrative Review* (56 FR 27243; June 13, 1991) and *Lamb Meat from New Zealand; Final Results of Countervailing Duty Administrative Review* (56 FR 38423; August 13, 1991). We added the value of the benefits from the grants and multiplied the results by a factor determined to represent the value of lamb meat as a percentage of the total value of all livestock production. We then divided that result by the total value of lamb meat production during the review period. The country-wide rate calculated using this methodology was *de minimis*, as defined by 19 CFR § 355.7.

Final Results of Review

For the period April 1, 1992, through March 31, 1993, we determine the net subsidy to be 0.0013 percent *ad valorem* for all companies. In accordance with 19 CFR § 355.7, any rate less than 0.5 percent *ad valorem* is *de minimis.*

Therefore, the Department will instruct the U.S. Customs Service to liquidate, without regard to countervailing duties, all shipments of this merchandise exported on or after April 1, 1992, and before March 31, 1993; in addition, the Department will instruct the U.S. Customs Service to refund with interest any deposits of estimated duties on such entries.

We have determined that the GONZ has met the requirements for revocation of the countervailing duty order pursuant to 19 CFR § 355.25(a)(1) and 19 CFR § 355.25(b)(1). Therefore, the Department will instruct the U.S. Customs Service to terminate suspension of liquidation on entries of the subject merchandise and to liquidate, without regard to countervailing duties, such merchandise exported on or after April 1, 1993, the first day after the period reviewed herein. We will also instruct the Customs Service to refund any deposits of estimated duties on such entries.

Administrative Protective Order (APO)

This notice serves as the only reminder to parties subject to APO of their responsibilities concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)), 19 CFR 355.22, and 19 CFR 355.25.

Dated: May 15, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–1250 Filed 5–19–95; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

[Docket Number 950503125–5125–01]

RIN 0648–XX19

Announcement of Opportunities for Research Funding in the National Estuarine Research Reserve System for Fiscal Year 1996

AGENCY: Sanctuaries and Reserves Division (SRD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice.

SUMMARY: The Sanctuaries and Reserves Division of the Office of Ocean and Coastal Resource Management is soliciting proposals for funding research within the National Estuarine Research Reserve System. The focus of funding for the upcoming annual grant period is the restoration of estuarine and estuarine-like ecosystems. This notice sets forth funding priorities, selection criteria, and procedures for proposal submission.

DATES: All pre-proposals must be postmarked no later than July 14, 1995. Notification regarding the disposition of the pre-proposals will be issued on or about September 1, 1995. Final proposals must be postmarked no later than November 1, 1995.

ADDRESSES: Dr. Dwight Trueblood, Research Coordinator, Sanctuaries and Reserves Division, NOAA/Office of

Ocean and Coastal Resource Management, 1305 East-West Highway, N/ORM2, SSMC4, 12th Floor, Silver Spring, MD 20910, Attn: FY96 NERRS Research. Phone: 301–713–3145 ext. 174 Fax: 301–713–0404. See Appendix I for National Estuarine Research Reserve addresses.

FOR FURTHER INFORMATION CONTACT: For further information on research opportunities under the National Estuarine Research Reserve System, contact the on-site personnel listed in Appendix I or the Research Coordinator of the Sanctuaries and Reserves Division (see Addresses above).

SUPPLEMENTARY INFORMATION:

I. Authority and Background

Section 315 of the Coastal Zone Management Act of 1972, as amended (CZMA), 16 U.S.C. 1461, establishes the National Estuarine Research Reserve System (NERRS). 16 U.S.C. 1461(e)(1)(B) authorizes the Secretary of Commerce to make grants to any coastal state or public or private person for purposes of supporting research and monitoring within a national estuarine reserve that are consistent with the research guidelines developed under subsection (c). This program is listed in the Catalog of Federal Domestic Assistance (CFDA) under "Coastal Zone Management Estuarine Research Reserve," Number 11.420.

II. Information on Established National Estuarine Research Reserves

The NERRS consists of estuarine areas of the United States which are designated, developed, and managed for research and educational purposes. Each National Estuarine Research Reserve (Reserve) within the NERRS is chosen to reflect regional differences and to include a variety of ecosystem types in accordance with the classification scheme of the national program as presented in 15 CFR part 921.

Each Reserve is suited to support a wide range of beneficial uses of ecological, economic, recreational, and aesthetic value which are dependent upon maintenance of a healthy ecosystem. Each site provides habitat for a wide range of ecologically and commercially important species of fish, shellfish, birds, and other aquatic and terrestrial wildlife. Each Reserve has been designed to ensure its effectiveness as a conservation unit and as a site for long-term research and monitoring. As part of a national system, the Reserves collectively provide an excellent opportunity to address research questions and estuarine management issues of national significance. For a detailed description of the sites, contact individual site Managers and/or Research Coordinators. The on-site contacts and addresses of the National Estuarine Research Reserves are provide in Appendix I.

III. Availability of Funds

Funds are expected to be available on a competitive basis to any public or private university, qualified public or private institution, individual, or coastal state (including Great Lakes States, Puerto Rico, Virgin Islands, Guam, American Samoa, and the Northern Marianas Islands) to conduct research within National Estuarine Research Reserves. Because NOAA has substantial involvement in the research, NEERS research funds are normally awarded through a cooperative agreement. NOAA may be involved in the project in the following manner:

The Sanctuaries and Reserves Division (SRD), Office of Ocean and Coastal Resource Management, reserves the right to immediately halt activity on this project if it becomes obvious that the project is not fulfilling the mission of the National Estuarine Research Reserve System goals. While day-to-day management is the responsibility of the Principal Investigators, frequent guidance and direction is provided by the Federal Government for the successful conduct of this project. Non-compliance with a Federally approved management plan may result in immediate halting of the project.

SRD generally will review and approve each stage of work before the next begins to assure quality scientific progression and results that will produce viable information on which to form valid, productive coastal management decisions.

Managers, Research Coordinators, and all other staff at NERRS sites are ineligible to submit competitive research proposals under this Announcement. In FY92 through FY95, SRD provided funding in the amount of approximately $700,000, each year, for research in the NERRS. The approximate range of annual funding per successful project in recent years has been between $40,000 and $70,000. In FY96, it is expected that approximately $300,000 will be available for funding new one-year projects at similar levels. Federal funds requested must be matched by the applicant by at least 30% of the TOTAL cost, not the Federal share, of the project. For example, if the total project cost is $10,000, the Federal share is $7,000, the non-Federal match is $3,000.

The required match must be with cash or the value of goods and services directly benefiting the project in accordance with 15 CFR part 24, "Uniform Administrative Requirements for Grants and Cooperative Agreements with State and Local Governments," and OMB Circular A–110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations." It is anticipated that projects receiving funding under this announcement will begin in the spring/summer of 1996. Earliest anticipated start date is May 1, 1996.

IV. Purpose and Priorities

Research funds are used to support management-related projects that will: Enhance scientific understanding of Reserve environments; provide information needed by Reserve Managers and coastal zone decision makers; and improve public awareness of estuaries and estuarine management issues. Research projects may be oriented to specific Reserves; however, projects that involve or benefit more than one Reserve in the national system will be given higher priority.

The primary research objective for the NERRS is *the study of the causes and effects of natural and anthropogenically-induced change in the ecology of estuarine and estuarine-like ecosystems.* All research funded through SRD should be designed to provide information of significant value to the development and implementation of resource management policy governing the U.S. coastal zone, for which NOAA's Office of Ocean and Coastal Resource Management has management and regulatory responsibilities. Beginning in FY93, SRD established a series of two-year research priority categories to serve as foci for the SRD competitive research program. The FY95–96 research priority, which is the subject of this notice, is habitat restoration.

Research proposals for FY 96 should be designed to answer some aspect(s) of the following broad management-oriented question: *What are the most appropriate methods, experimental designs, models and/or evaluative criteria for restoring estuarine and estuarine-like ecosystems?* While this theme is the primary funding priority for SRD in FY95/96, consideration may also be given to projects of special merit that address other significant coastal management issues (e.g., non-profit source pollution) on a regional or national scale. The availability of funding for such projects of special merit will, however, be extremely limited, and will be determined after the primary research priority has been addressed.

Research proposals submitted in response to this announcement must: Address coastal management issues identified as having regional or national significance; relate them to the National Research Priority described in this announcement; and be conducted (at least partially) within one or more designated NERRS sites. In general, research projects are funded for a duration of either one or two years. Multiple year projects will always be initiated in the first year of a two-year priority; one-year projects may be submitted in either year of a two-year priority. Therefore, proposals submitted under this announcement for FY96 funding must be of one-year duration.

The research topic and the Reserve must be carefully chosen to ensure that the resource management issues of primary concern to the Reserve and the NERRS are addressed. Thus, it is critical that all prospective researchers contact the appropriate Reserve manager or research coordinator (see Appendix I) before submitting a proposal responding to this announcement.

V. Guidelines for Proposal Preparation, Proposal Review and Evaluation, and Reporting Requirements

Applicants for SRD research funds must follow the guidelines presented herein when preparing pre-proposals and proposals for research in Reserves. Pre-proposals and proposals not following these guidelines will be returned to the applicant without further review.

Proposals for research in the NERRS are solicited annually for award the following fiscal year. Proposal due dates and other pertinent information are contained in this announcement of research opportunities. All proposals sent to SRD must cite and reference this **Federal Register** notice (i.e., docket number). *Proposers must submit an original and two (2) copies of each proposal and all supporting documents (curricula vitae, literature referenced, etc.).*

Each proposal will be reviewed only as a one-year project. *Applicants whose pre-proposals are approved for further review must submit an original and two (2) copies of their full proposals as well.*

A. Pre-proposals

Pre-proposals are required and will be used by SRD to evaluate the applicability of the research plan with regard to the goals of this announcement. Pre-proposals may not exceed *six (6) double-spaced pages* (in a font no smaller than 12-point courier) including the abstract, introduction, objectives, statement of hypothesis, brief methods description, and discussion of anticipated results and benefits. A discussion of coordination with other research in progress or proposed is encouraged. Each pre-proposal must include a cover page which clearly identifies: The principal investigator(s) name(s), address(es) and telephone number(s); proposal title; name of institution providing matching funds, amount of Federal funds requested and amount of match; requested start date (month); site(s) where research is to be conducted; and whether the project is special merit (i.e., other than habitat restoration). Curricula vitae (not to exceed 4 pages each) for each researcher and a detailed budget showing matching funds must be included. The 6 double-spaced page limit does not include budget and budget description, cover page, curriculum vitae, literature cited section, or any tables or figures. No Federal forms need be submitted with a pre-proposal. The pre-proposal and additional sections should be submitted to Dr. Dwight Trueblood at the address provided in the Addresses section. Receipt of all pre-proposals will be acknowledged and a copy sent to the appropriate Reserve staff. All pre-proposals will be reviewed by SRD research staff, the SRD Headquarters Regional Managers staff, and the relevant Reserve Manager, Research Coordinator, and their research advisory committees, where applicable. Pre-proposals will be rated using the criteria listed in section C below, "Proposal Review and Evaluation." Applicants whose research projects are selected for further consideration will be requested to submit a full proposal. Applicants whose projects are eliminated at this point will be notified.

Incomplete pre-proposals will be returned to the Principal Investigator without further review.

B. Full Proposals

Full proposals may be submitted only by those individuals requested to do so following review of pre-proposals. Unsolicited full proposals will be returned without review. One (1) original and two (2) copies of the proposal *(Including all forms, curricula vitae, etc.)* must be submitted to the same address as the preposals. The proposal may not exceed *30 double-spaced pages*, (in a font no smaller than 12-point courier) excluding Federal forms, table of contents, title page, literature cited, curricula vitae, budget, and figures and tables. *Incomplete proposals will be returned without further review.*

An Application Kit will be sent to those individuals who are requested to submit full proposals. This kit will include all required Federal forms, with instructions, as well as SRD guidelines for content and format of the full proposal.

C. Proposal Review and Evaluation

Pre-proposals will be reviewed as outlined in Section A, "Pre-proposals," above. All full proposals will be reviewed by: SRD research staff; outside peer reviews who are acknowledged experts in the particular field represented by the proposal; and an outside panel of experts. Each full proposal is also forwarded to the appropriate SRD Regional, State Coastal Zone Management, and Reserve staffs for comments. Verbatim copies of all peer reviews, excluding the name of the reviewer, will be sent to the applicant. Applicants will have two weeks to address and rebut peer reviews. These rebuttals will be considered by SRD when final funding decisions are made. All recommendations for funding by SRD must be approved by the NOAA Grants Management Division before awards are made.

In order to provide for the fair and equitable selection of the most meritorious research projects for support, SRD has established specific criteria for their review and evaluation. These criteria will be applied to all research proposal in accordance with the SRD Research Priorities set forth in this announcement. The criteria used in both pre-proposal and full proposal review process are listed below, together with the elements that constitute each criterion and their relative weights (in parentheses):

1. *Scientific Merit (40%).* This criterion is used to evaluate whether the objectives of the proposal are: Important to the field; consistent with the stated national research priorities; and likely to improve the scientific understanding of estuarine processes within the Reserve(s) as well as in other similar estuaries.

2. *Technical Approach (40%).* This criterion is used to assess: The technical feasibility of the proposed effort; the reasonableness of the hypotheses; the degree to which the proposed timeline is realistics; the appropriateness and scientific validity of the proposed analytical methods; the degree to which the proposal demonstrates an understanding of the Reserve environment and management needs; the current state of knowledge in the particular field of research interest; and the total research requirements.

3. *Qualifications of P.I. and Key Personnel (10%).* This criterion relates to the experience and past performance

of the principal investigator and key personnel, their familiarity with the geographic area of the proposed study, and their publication record.

4. *Institutional Support and Capabilities (5%).* This criterion relates to the extent of *the applicant institution's* support for and commitment to the proposed research and what facilities, equipment, and other resources are available to the principal investigator and key personnel *from his/her institution* for use in accomplishing the proposed work.

5. *Budget (5%).* This criterion is used to determine whether the budget is a realistic and reasonable for accomplishing the proposed tasks.

The external science panel will review and rank the proposals based solely on the technical criteria above. The panel will submit its rankings to SRD. In making final funding decisions among qualified proposals ranked highly by the above technical criteria, SRD will also take into consideration the following programmatic policy factors:

Utility to Reserve Management and to Regional Coastal Management Issues. This criterion is used to assess the likelihood that results of this research will support the management of the affected Reserve(s) and will enhance wise coastal resource management within the region(s) of study.

Relevance to National Research Priorities and Utility to National Coastal Management Issues. This criterion is used to assess the relationship between the objectives of the proposed project and the National Research Priorities established by NOAA, and to assess the likelihood that results of this research will be important to national coastal management issues across the NERR System and coastal states.

Consequently, proposals ranked highest on technical criteria will not necessarily receive funding from SRD. Final funding decisions will be made by the Chief of the Sanctuaries and Reserves Division, based upon review panel rankings and programmatic considerations.

VI. Other Requirements

Recipients and subrecipients are subject to all Federal laws and Federal and DOC policies, regulations, and procedures applicable to Federal financial assistance awards.

All non-profit and for-profit applicants are subject to a name-check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honesty or financial integrity.

No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either: (1) The delinquent account is paid in full; (2) A negotiated repayment schedule is established and at least one payment is received; or (3) Other arrangements satisfactory to the Department of Commerce are made.

Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding. In addition, any recipients who are past due for submitting acceptable final reports under any previous SRD-funded research will be ineligible to be considered for new awards until final reports are received, reviewed and deemed acceptable by SRD.

A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

If an application is selected for funding, the Department of Commerce (DOC) has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of DOC. However, funding priority will be given to the second year of multi-year proposals upon satisfactory completion of the first year of research.

Applications under this program are subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matter; Drug-Free Workplace Requirements and Lobbying,"and the following explanations are hereby provided:

1. Nonprocurement Debarment and Suspension. Prospective participants (as defined at 15 CFR part 26, section 105) are subject to 15 CFR part 26, "Nonprocurement Debarment and Suspension," and the related section of the certification form prescribed above applies;

2. Drug-Free Workplace. Grantees (as defined at 15 CFR part 26, Section 605) are subject to 15 CFR part 26, subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies;

3. Anti-Lobbying. Persons (as defined at 15 CFR part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on the use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form which applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

4. Anti-Lobbying Disclosures. Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR Part 28, Appendix B.

5. Lower Tier Certifications. Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions and Lobbying," and disclosure form SF–LLL "Disclosure of Lobbying Activities." The original form CD–512 is intended for the use of recipients. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

Buy American-Made Equipment or Products: Applicants are hereby notified that any equipment or products authorized to be purchased with funding provided under this program should be American-made to the extent feasible.

Indirect Costs: The total dollar amount of the indirect costs proposed in an application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award or 100 percent of the total proposed direct costs dollar amount in the application, whichever is less.

Preaward Activities: If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal or written assurance that may have been received, there is no obligation on the part of DOC to cover preaward costs.

VII. Classification

This notice has been determined to be "not significant" for purposes of E.O. 12866.

This action is categorically excluded from the requirement to prepare an environmental assessment by NOAA Administrative Order 216–6.

This notice does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

This notice contains a collection of information requirement subject to the Paperwork Reduction Act. The collection of this information has been approved by the Office of Management and Budget, OMB Control Number 0648–0121.

(Federal Domestic Assistance Catalog Number 11.420 Coastal Zone Management Estuarine Research Reserves)

Dated: April 27, 1995.

W. Stanley Wilson,

Assistant Administrator, Ocean Services and Coastal Zone Management.

Appendix I. NERRS On-Site Staff

Alabama

Mr. L.G. Adams, Acting Manager, Weeks Bay National Estuarine Research Service, 10936–B, U.S. Highway 98, Fairhope, AL 36532, (334) 928–9792

California

Mr. Steve Kimple, Manager, Dr. Andrew DeVogelaere, Research Coordinator, Elkhorn Slough National Estuarine Research Reserve, 1700 Elkhorn Road, Watsonville, CA 95076, (408) 728–2822

Ms. Joanne Kerbavaz, Manager, Tijuana River National Estuarine Research Reserve, 301 Caspian Way, Imperial Beach, CA 92032, (619) 575–3613

Delaware

Ms. Sarah Cooksey, Manager, Dr. Bill Meredith, Research Coordinator, Delaware NERR, Department of Natural Resources and Environmental Control, Division of Parks and Recreation, P.O. Box 1401, Dover, DE 19903, (302) 739–3451 (Cooksey), (302) 739–3493 (Meredith)

Florida

Mr. Woodard Miley II, Manager, Mr. Lee Edmiston, Research Coordinator, Apalachicola River National Estuarine Research Reserve, 261 7th Street, Apalachicola, FL 32320, (904) 653–8063

Mr. Gary Lytton, Manager, Mr. Todd Hopkins, Research Coordinator, Rookery Bay National Estuarine Research Reserve, 10 Shell Island Road, Naples, FL 33942, (813) 775–8845

Georgia

Mr. Buddy Sullivan, Manager, Dr. Stuart Stevens, Research Coordinator, Sapelo Island National Estuarine Research Reserve, Department of National Resources, P.O. Box 15, Sapelo Island, GA 31327, (912) 485–2251 (Sullivan), (912) 264–7218 (Stevens)

Hawaii

Mr. William Stormont, Manager, Waimanu Valley National Estuarine Research Reserve, Department of Land and Natural Resources, Division of Forestry and Wildlife, 1151 Punchbowl Street, Honolulu, HI 96813, (808) 587–0051

Note: The State of Hawaii has requested that Waimanu Valley NERR be formally removed from the NERRS. This may affect future research resources and opportunities at this site.

Maine

Mr. James List, Manager, Dr. Michele Dionne, Research Coordinator, Wells National Estuarine Research Reserve, RR #2, Box 806, Wells, ME 04090, (207) 646–1555

Maryland

Ms. Mary Ellen Dore, Manager, Mr. David Nemazie, Research Coordinator, Chesapeake Bay National Estuarine Research Reserve in Maryland, Dept. of Natural Resources, Tawes State Office Building, B–3, 580 Taylor Avenue, Annapolis, MD 21401, (410) 974–3382 (Dore), (410) 228–9250 (Nemazie)

Massachusetts

Ms. Christine Gault, Manager, Dr. Richard Crawford, Research Coordinator, Waquoit Bay National Estuarine Research Reserve, Dept. of Environmental Management, P.O. Box 3092, Waquoit, MA 02536, (508) 457–0495

New Hampshire

Mr. Peter Wellenberger, Manager, Great Bay National Estuarine Research Reserve, New Hampshire Fish and Game Department, 37 Concord Road, Durham, NH 03824, (603) 868–1095

New York

Ms. Elizabeth Blair, Manager, Mr. Chuck Nieder, Research Coordinator, Hudson River National Estuarine Research Reserve, New York State Department of Environmental Conservation, c/o Bard College Field Station, Annandale-on-Hudson, NY 12504, (914) 758–5193

North Carolina

Dr. John Taggart, Manager, Dr. Steve Ross, Research Coordinator, North Carolina National Estuarine Research Reserve, University of North Carolina at Wilmington, 7205 Wrightsville Avenue, Wilmington, NC 28403, (910) 256–3721 (Taggart), (910) 395–3905 (Ross)

Ohio

Mr. Eugene Wright, Manager, Dr. David Klarer, Research Coordinator, Old Woman Creek National Estuarine Research Reserve, 2514 Cleveland Road, East, Huron, OH 44839, (419) 433–4601

Oregon

Mr. Michael Graybill, Manager, Dr. Steve Rumrill, Research Coordinator, South Slough National Estuarine Research Reserve, P.O. Box 5417, Charleston, OR 97420, (503) 888–5558

Puerto Rico

Ms. Carmen Gonzalez, Manager, Jobos Bay National Estuarine Research Reserve, Dept. of Natural Resources, Call Box B, Aguirre, PR 00704, (809) 853–4617

Rhode Island

Mr. Al Beck, Manager, Narragansett Bay National Estuarine Research Reserve, Dept. of Environmental Management, Box 151, Prudence Island, RI 02872, (401) 683–5061

South Carolina

Mr. Michael D. McKenzie, Manager, Dr. Elizabeth Wenner, Research Coordinator, Ashepoo-Combahee-Edisto (ACE) Basin, South Carolina Wildlife and Marine Resources Department, P.O. Box 12559, Charleston, SC 29412, (803) 762–5052 (McKenzie), (803) 736–5050 (Wenner)

Dr. Dennis Allen, Manager, Dr. Joe Schubauer-Berigan, Research Coordinator, North Inlet-Winyah Bay, Baruch Marine Field Laboratory, P.O. Box 1630, Georgetown, SC 29442, (803) 546–3623

Virginia

Dr. Maurice P. Lynch, Manager, Dr. Jeffrey Shields, Research Coordinator, Chesapeake Bay National Estuarine Research Reserve in Virginia, Virginia Institute of Marine Science, College of William and Mary, P.O. Box 1347, Gloucester Point, VA 23062, (804) 642–7135

Washington

Mr. Terry Stevens, Manager, Dr. Douglas Bulthuis, Research Coordinator, Padilla Bay National Estuarine Research Reserve, 1043 Bayview-Edison Road, Mt. Vernon, WA 98273, (360) 428–1558

[FR Doc. 95–12510 Filed 5–19–95; 8:45 am]

BILLING CODE 3510–08–M

[I.D. 051595L]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit 956 (P45S), modification 1 to permit 911 (P560), modification 1 to permit 946 (P770#68), and an amendment to permit 914 (P770#67).

SUMMARY: Notice is hereby given that NMFS has issued a permit, modifications to permits, and an amendment to a permit authorizing takes of listed species for the purpose of scientific research, subject to certain conditions set forth therein, to the Northwest Biological Science Center of the National Biological Service (NBS), Oregon State University (OSU), and the Coastal Zone and Estuarine Studies Division (CZESD) of the Northwest Fisheries Science Center, NMFS.

ADDRESSES: The applications and related documents are available for

review in the following offices, by appointment:

Office of Protected Resources, F/PR8, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301-713-1401); and

Environmental and Technical Services Division, F/NWO3, NMFS, 525 NE Oregon Street, Portland, OR 97232–4169 (503–230–5400).

SUPPLEMENTARY INFORMATION: Permit 956, modification 1 to permit 911, modification 1 to permit 946, and the amendment of permit 914 were issued under the authority of section 10 of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and the NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217–222).

Notice was published on March 20, 1995 (60 FR 14735) that an application had been filed by NBS (P45S) for a permit to take listed species. NBS requested authorization to take juvenile, listed, artificially-propagated, Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*) as part of a study designed to provide managers with data on the distribution, abundance, movement, and habitat use of the anadromous fish that migrate through Lower Granite Reservoir. The study will provide detailed information on the response of migrating smolts to environmental changes that attend proposed reservoir drawdown and other river regulation scenarios. Project objectives and sampling plans will accomodate listed species recovery needs and constraints. Permit 956 was issued to NBS on May 8, 1995. The duration of the permit is 4 years and it expires on September 30, 1999.

Notice was published on January 30, 1995 (60 FR 5624) that an application had been filed by OSU (P560) for modification 1 to permit 911. Permit 911 authorizes a take of juvenile, listed, Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*) associated with a study that is investigating the potential effects of climate change on thermal complexity and biotic integrity of streams, with emphasis on the seasonal intrusion of non-native coolwater and warmwater fish species into the historic habitats of native salmonids. The research will document seasonal thermal habitat utilization of indigenous and non-native fishes, interactions between and within species, and model the effects of climate change on groundwater-influenced thermal habitats. OSU requested an increase in the 1995 take authorized in permit 911 because they encountered larger juvenile fish densities in 1994 than were expected. Modification 1 to permit 911 was issued on May 10, 1995. Modification 1 is valid for the duration of the permit, which expires on September 30, 1995.

On May 12, 1995, modification 1 to permit 946 was issued to CZESD (P770#68). Permit 946 authorizes a take of adult and juvenile Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*), juvenile Snake River fall chinook salmon (*Oncorhynchus tshawytscha*), and juvenile Snake River sockeye salmon (*Oncorhynchus nerka*) associated with six studies. The studies are investigating the migration timing and relative survival of transported and inriver juvenile chinook salmon migrating down the Columbia and Snake Rivers to the ocean and the effectiveness of fish guidance devices and other bypass system components being considered for installation at four Snake and Columbia River hydroelectric dams for the purpose of improving anadromous fish passage past these dams during juvenile outmigration.

CZESD requested an increase in the take of juvenile, listed, naturally-produced, spring/summer chinook salmon for 1995 only. CZESD requested the modification because the number of wild fish in the 1995 juvenile outmigration appears to be higher than expected. This could be due to a greater overwinter survival of parr. However, it is apparent that a high percentage of hatchery fish (possibly 20 percent or more) are indistinquishable from, and are being recorded as, wild fish during the research due to poor or missing fin clips. Modification 1 to Permit 946 is valid for 1995 only. Permit 946 expires on December 31, 1999.

On May 11, 1995, an amendment to permit 914 was issued to CZESD (P770#67). Permit 914 authorizes a take of juvenile, listed, naturally-produced and artificially-propagated Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*) and juvenile, listed, Snake River fall chinook salmon (*Oncorhynchus tshawytscha*) associated with a study investigating the incidence of gas bubble disease in selected aquatic biota of the Columbia River Basin during episodes of high spill volumes at Ice Harbor Dam on the Snake River and Bonneville Dam on the Columbia River in the Pacific Northwest.

NMFS issued an amendment to Permit 914 to allow the Columbia River Inter-tribal Fish Commission (CRITFC) to act as an agent of CZESD in performing the research activities for which a take of listed species is authorized by the permit. In addition, the amendment allows the collection of listed fish at Lower Monumental Reservoir on the Snake River in Washington. The amendment will be valid until a separate ESA section 10 permit is issued to CRITFC, which is expected to occur in June 1995. Permit 914 expires on December 31, 1998.

Issuance of these permit actions, as required by the ESA, was based on a finding that such actions: (1) Were applied for in good faith, (2) will not operate to the disadvantage of the listed species that are the subject of the permits, and (3) are consistent with the purposes and policies set forth in section 2 of the ESA and the NMFS regulations governing listed species permits.

Dated: May 16,1995.

Russell J. Bellmer,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–12451 Filed 5–19–95; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Department of the Air Force

Intent To Grant a Limited Exclusive Patent License

Pursuant to the provisions of Part 404 of Title 37, Code of Federal Regulations, which implements Public Law 96–517, the Department of the Air Force announces its intention to grant Specialty Cable Corporation, a corporation of the State of Connecticut, a limited exclusive license under United States Patent No. 5,304,739 filed in the name of Reja B. Klug et al. for a "High Energy Coaxial Cable For Use In Pulsed High Energy Systems".

The license described above will be granted unless an objection thereto, together with a request for an opportunity to be heard, if desired, is received in writing by the addressee set forth below within sixty (60) days from the date of publication of this Notice. Copies of the patent application(s) may be obtained, on request, from the same addressee.

All communications concerning this Notice should be sent to: Mr. Samuel B. Smith, Jr., Chief, Intellectual Property Branch, Commercial Litigation Division, Air Force Legal Services Agency, AFLSA/JACNP, 1501 Wilson Blvd. Suite 805, Arlington, VA 22209–2403, Telephone No. (703) 696–9050.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 95–12482 Filed 5–19–95; 8:45 am]

BILLING CODE 3910–01–M

Department of the Army

Army Science Board; Notice of Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 5 and 6 June 1995.

Time of Meeting: 1200–1700, 5 June 1995; 0800–1700, 6 June 1995.

Place: Atlanta, GA.

Agenda: The Army Science Board's Logistics and Sustainability Subgroup will meet for discussions focused on current doctrine, missions, functions, force structures and modules, and technologies reference "Army Logistical Support to Operations Other Than War." These meetings will be closed to the public in accordance with Section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of these meetings. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board,

[FR Doc. 95–12483 Filed 5–19–95; 8:45 am]

BILLING CODE 3710–08–M

Corps of Engineers

To Prepare a Supplemental Environmental Impact Statement (SEIS) For the Proposed Rio Grande Floodway, San Acacia to Bosque del Apache, Socorro County, New Mexico

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent to prepare a Supplemental Environmental Impact Statement (SEIS).

SUMMARY:

1. Proposed Action

The purpose of the study is to reevaluate the plan of flood protection authorized by the Flood Control Act of 1948 (Public Law 858) for the proposed Rio Grande Floodway, San Acacia to Bosque del Apache, Socorro County, New Mexico, in light of newly listed endangered species and changes in levee design parameters. The proposed action is to provide increased flood protection from San Acacia to Elephant Butte Reservoir, New Mexico. The proposed action is to replace the existing west bank embankment along the Rio Grande with a structurally competent levee capable of containing high volume, short duration flows up to the design discharge of 51,000 cubic feet per second (cfs) decreasing to 39,000 cfs at the downstream project terminus, as well as low volume, long duration flows. Coincident objectives are the preservation, conservation, and enhancement of biological, recreational, social, cultural and aesthetic values.

2. Alternatives Considered

Alternatives developed and evaluated during previous studies consisted of levee reconstruction (50-, 100-, and 200-year flood frequency levels and the Standard Project Flood), flood and sediment control dams, local levees, watershed land treatment, floodproofing and zoning, intermittent levee replacement, and no action.

This reevaluation involves evaluation of project effects on newly listed endangered species and changes in levee design parameters to accommodate low volume, long duration floods in addition to the previous design for high volume, short duration floods, and possible changes in levee alignment.

3. Public Involvement Process

Coordination is ongoing with both public and private entities having jurisdiction or an interest in land and resources in the middle Rio Grande valley of New Mexico. These entities include the general public, local governments, the U.S. Bureau of Reclamation, the U.S. Fish and Wildlife Service, the New Mexico Department of Game and Fish, and the Interstate Stream Commission. A fully coordinated final environmental impact statement (EIS) addressing the previous recommendation to construct flood and sediment control dams on the Rio Puerco and Rio Salado was filed with the Council on Environmental Quality in 1977. An early public meeting was held in the city of Socorro in 1979. A supplemental EIS evaluating the effects of the alternative to rehabilitate the existing levee system was filed with the Council on Environmental Quality in 1992. Coordination will continue throughout development of the SEIS through scoping letters, meetings and field visits, and if requested, scoping meetings. All interested parties including Federal, state, and public entities will be invited to submit comments on the draft SEIS when it is circulated for review.

The planning effort is being coordinated with the U.S. Bureau of Reclamation (Bureau) as a cooperating agency in the NEPA process. The Bureau was authorized to develop and implement a comprehensive plan for flood control and water conservation under the Flood Control Acts of 1948 and 1950. The plan includes river channel maintenance activities throughout the middle Rio Grande and construction of the Low Flow Conveyance Channel (LFCC) from San Acacia to Elephant Butte Reservoir, designed to transmit river flows through a critical water-loss area. The proposed levee rehabilitation project parallels the LFCC for most of the project area. Close coordination between the Corps and the Bureau will be maintained throughout project planning.

The planning effort is also being coordinated with the U.S. Fish and Wildlife Service pursuant to the requirements of the Fish and Wildlife Coordination Act of 1972 and the Endangered Species Act of 1973, as amended. Consultation with the Advisory Council on Historic Preservation and the New Mexico State Historic Preservation Officer is ongoing pursuant to the National Historic Preservation Act of 1966.

4. Significant Issues to be Analyzed

Significant issues to be analyzed in the development of the SEIS include the effect of the recommended plan on endangered species, floodplain development, water quality, riparian biological systems, wildlife refuge objectives, endangered species, social welfare, human safety, cultural resources, and aesthetic qualities. Development and implementation of mitigation measures will be undertaken for any unavoidable effects

5. Public Review

The estimated date that the draft Limited Reevaluation Report will be completed and the draft SEIS circulated for public review is February, 1996.

6. Further Information

Questions or comments regarding the study and the supplemental EIS may be directed to: Denise Smith, USAED, Albuquerque, P.O. Box 1580, Albuquerque, New Mexico 87103, Phone: (505) 766–6569.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 95–12485 Filed 5–19–95; 8:45 am]

BILLING CODE 3710–KK–M

Availability of Vint Hill Farms Station

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of availability.

SUMMARY: The Department of the Army, in accordance with the Base Closure

Community Redevelopment and Homeless Assistance Act of 1994, announces that the property listed below, at Vint Hill Farms Station Military Reservation, located approximately eight miles north of Warrenton, just east of Route 29 on Route 215, has been determined surplus. While most of the property is scheduled to be vacated by September 30, 1997, some of the property may become available sooner. This is the opportunity for state and local governments, representatives of the homeless, and other interested parties to submit their notices of interest.

DATES: Proposals for using the property should be submitted as soon as possible.

FOR FURTHER INFORMATION CONTACT: Mr. Owen Bludau, Executive Director, Vint Hill Task Force, 26B John Marshall Street, Warrenton, Virginia 22186, telephone: 703–347–6965, Fax 703–349–2304.

SUPPLEMENTARY INFORMATION: The Task Force will coordinate the various interests in the property and develop a reuse plan and strategy for it. A summary of the property is as follows:

94 Family Housing Facilities.
6 Temporary Lodging Facilities.
27 Community Support Facilities.
56 Administrative Support Facilities.
4 Training/Education Facilities.
7 Communications Facilities.
2 Medical Facilities.
18 Recreation Facilities.
57 Storage Facilities.
12 Maintenance Facilities.
33 Utility Support Facilities.
Recreational land, which includes tennis and handball courts, pools, softball fields, helipad, playground, skeet field, and shuffleboards.
Approximately 1,279,952 SF of Building Space
Approximately 700 acres of land, 435 acres of which are undeveloped.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 95–12484 Filed 5–19–95; 8:45 am]

BILLING CODE 3715–41–M

Department of the Navy

CNO Executive Panel; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel will meet June 6-7, 1995, from 9:00 a.m. to 4:00 p.m., on each day at 4401 Ford Avenue, Alexandria, Virginia. This session will be closed to the public.

The purpose of this meeting is to conduct executive level discussions about the task force final report. The matters being discussed constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact: Timothy J. Galpin, Assistant for CNO Executive Panel Management, 4401 Ford Avenue, Suite 601, Alexandria, VA 22302-0268, Phone: (703) 756-1205.

Dated: May 9, 1995

M. D. Schetszle,

LT, JAGC, USN, Alternate Federal Register Liaison Officer.

[FR Doc. 95–12412 Filed 5–19–95; 8:45 am]

BILLING CODE 3810–FF–F

CNO Executive Panel; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel will meet June 20-21, 1995, from 9:00 a.m. to 4:00 p.m. on each day. The meeting will be held at the Applied Physics Laboratory, JHU, Johns Hopkins Road, Laurel, MD. These sessions will be closed to the public.

The purpose of this meeting is to conduct discussions on strategies for an uncertain future to include information warfare, reserve structure and mobilization, and the changing strategic environment. Additionally, the panel members will discuss and synthesize recommendations and conclusions which will appear in the final report. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact: Timothy J. Galpin, Assistant for CNO Executive Panel Management, 4401 Ford Avenue, Suite 601, Alexandria, VA 22302-0268, Phone: (703) 756-1205.

Dated: May 15, 1995

L. R. McNees,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 95–12438 Filed 5–19–95; 8:45 am]

BILLING CODE 3810–FF–F

CNO Executive Panel; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel will meet June 13, 1995, from 2:00 p.m. to 3:30 p.m., in Room 4E630, The Pentagon, Arlington, Virginia. This session will be closed to the public.

The purpose of this meeting is to conduct executive level discussions about the task force final report. The matters being discussed constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact: Timothy J. Galpin, Assistant for CNO Executive Panel Management, 4401 Ford Avenue, Suite 601, Alexandria, VA 22302-0268, Phone: (703) 756-1205.

Dated: May 15, 1995

L. R. McNees,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 95–12437 Filed 5–19–95; 8:45 am]

BILLING CODE 3810–FF–F

DEPARTMENT OF EDUCATION

National Board of the Fund for the Improvement of Postsecondary Education; Meeting

AGENCY: National Board of the Fund for the Improvement of Postsecondary Education, Education.

ACTION: Notice of partially closed meeting.

SUMMARY: This notice sets forth the proposed agenda of a forthcoming meeting of the National Board of the Fund for the Improvement of Postsecondary Education. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act.

DATES AND TIMES: June 9, 1995, from 9 a.m. to 11:30 a.m. (closed); and from 11:30 a.m. to 5 p.m. (open).

ADDRESSES: Quality Hotel-Capitol Hill, 415 New Jersey Avenue, NW., Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Charles Karelis, Director, Fund for the Improvement of Postsecondary Education (FIPSE), 7th & D Streets SW., Washington, DC 20202. Telephone: (202) 708–5750.

SUPPLEMENTARY INFORMATION: The National Board of the Fund for the Improvement of Postsecondary Education (National Board) is established under Section 1003 of the Higher Education Act of 1965, as amended (20 U.S.C. 1135a–1). The National Board of the Fund is authorized to recommend to the Director of FIPSE and the Assistant Secretary for Postsecondary Education priorities for funding and approval or disapproval of grants submitted to FIPSE.

On June 9, 1995, from 11:30 a.m. to 5:00 p.m. the Board will meet in open session. The proposed agenda for the open portion of the meeting will include a review of the Comprehensive Program priorities, an update on FIPSE targeted competitions, an update on FIPSE's FY 1996 budget, and a review and discussion of priorities introduced at the Leadership Conference held in February, 1995.

On June 9, 1995, from 9:00 a.m. to 11:30 a.m., the meeting will be closed to the public for the purpose of reviewing and recommending grant applications submitted to the Comprehensive Program and the Innovative Projects for Community Service Program. This portion of the meeting will be closed under the authority of Section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C.A. Appendix 2) and under exemptions (4) and (6) of the Government in the Sunshine Act (Public Law 94–409, 5 U.S.C. 552b(c) (4) and (6)). The review and discussions of the applications and the qualifications of proposed staff to work on these grants are likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential, and to disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session.

A summary of the activities at the closed session and related matters which are informative to the public consistent with the policy of Title 5 U.S.C. 552b will be available to the public within fourteen days of the meeting.

Records are kept of all Board proceedings, and are available for public inspection at the Office of the Fund for the Improvement of Postsecondary Education, Room 3100, Regional Office Building #3, 7th & D Streets SW., Washington, DC 20202 from the hours of 8 a.m. to 4:30 p.m.

Dated: May 16, 1995.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 95–12454 Filed 5–19–95; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Intent To Prepare an Environmental Assessment of Decommissioning the Strategic Petroleum Reserve Weeks Island Facility, Iberia Parish, Louisiana

AGENCY: Strategic Petroleum Reserve (SPR), Department of Energy (DOE).

ACTION: Notice of intent to prepare an environmental assessment and to conduct public scoping.

SUMMARY: The Department of Energy (DOE) has determined that, pursuant to the National Environmental Policy Act (NEPA), an Environmental Assessment (EA) should be prepared to assess the potential environmental consequences of decommissioning the Strategic Petroleum Reserve (SPR) Weeks Island Facility in Iberia Parish, Louisiana. A groundwater leak has compromised the containment integrity of the facility, which currently stores 73 million barrels of crude oil underground in a salt dome. In December 1994, DOE concluded that the integrity of the Weeks Island mine cannot be assured and that it is unsuitable for continued crude oil storage. The agency plans to move Weeks Island's crude oil inventory to other SPR storage sites in Louisiana and Texas beginning in October 1995 and then decommission the facility, completing in June 1999. The range of proposed decommissioning actions and associated environmental issues that have been identified are described below. DOE is requesting comments, suggestions, and any information that interested parties may have that would assist the agency in identifying additional alternatives and environmental issues to consider in the EA.

DATES: A public meeting will be held in New Iberia, Louisiana on Thursday, June 8, 1995, at 7 p.m. Speakers may pre-register in writing, by telephone or by facsimile by close of business June 1, 1995. Written comments must be received by June 21, 1995.

ADDRESSES: The meeting will be held at the New Iberia Senior High School auditorium, 1301 East Admiral Doyle Drive, New Iberia, Louisiana. Inquiries, written comments and suggestions, and requests to speak at the scoping meeting, to review the draft EA when it becomes available, and/or to receive the approved EA should be labeled "Weeks Island EA" and submitted to Ms. Durinda L. Robinson, Office of Public Affairs (FE–445.2), Department of Energy, 900 Commerce Road East, New Orleans, Louisiana 70123. Requests to speak will also be accepted by telephone at (504) 734–4312 between the hours of 8:00 a.m. and 4:00 p.m. CDT, Monday through Friday, except Federal holidays, or by facsimile, (504) 734–4427.

A transcript of the meeting will be prepared and will be made available for inspection at the following locations:

- New Iberia Public Library, 445 E. Main Street, New Iberia, Louisiana 70560 (ATTN: Ms. Vicki Chrisman)
- Dupre Library, 302 East St. Mary Blvd., U. of Southwestern Louisiana, Lafayette, Louisiana 70504 (ATTN: Ms. Sandy Himel)
- New Orleans Public Library, Louisiana Division, 219 Loyola Avenue, New Orleans, Louisiana 70140
- DynMcDermott Petroleum Operations Co., Technical Library, 800 Commerce Rd. W., Suite 102, New Orleans, Louisiana 70123 (ATTN: Ms. Cindi Nelson)
- Freedom of Information Reading Room, Department of Energy, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585

FOR FURTHER INFORMATION ON THE DOE NEPA PROCESS, CONTACT: Ms. Carol Borgstrom, Director, Office of NEPA Policy and Assistance (EH–4.2), Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585, telephone (202) 586–4600 or toll-free (800) 472–2756.

SUPPLEMENTARY INFORMATION:

Background

The SPR Weeks Island Facility is in Iberia Parish, Louisiana, about 15 miles south of the city of New Iberia. It is a conventional room-and-pillar salt mine in a salt dome that was converted by DOE for the long-term storage of crude oil. It was filled to capacity with 73 million barrels of oil and has been in a standby mode since 1982. The mine and surface property were acquired from the

Morton Salt Company who continues to mine salt adjacent to DOE on the salt dome.

In May 1992, a sinkhole was discovered which was vertically aligned above the southeast boundary of the upper level of the storage chamber. The sinkhole was backfilled with sand and monitored through 1993. An intensive geotechnical investigation was conducted through 1994 which confirmed that a subsurface crevasse extends into the salt formation and that groundwater was leaking into the mine.

In December 1994, DOE concluded that the integrity of the Weeks Island mine cannot be assured and that it is unsuitable for continued crude oil storage. DOE decided to move the oil to other SPR sites in Texas and Louisiana and decommission the facility. As an interim measure, DOE has implemented a groundwater control program which includes freezing the ground around the sinkhole to interdict groundwater flow into the crevasse. In February 1995, DOE determined that in accordance with NEPA and with 10 CFR 1021, DOE NEPA Implementing Procedures, an EA of the decommissioning actions should be prepared to determine whether a Finding of No Significant Impact is supported or an Environmental Impact Statement will be required.

Preliminary Description of Alternatives

1. Proposed Action

The proposed action consists of stabilizing the storage chambers by filling them with brine, sealing off the underground facilities, and decommissioning (i.e., removing from SPR service) the onsite surface facilities and the 36-inch-diameter 67-mile crude oil pipeline to DOE's St. James Terminal in St. James Parish, Louisiana. Project completion is scheduled for June 1999.

• Underground Facilities

DOE would flood the storage chamber, drifts (i.e., connecting tunnels), and manifold room with brine. The Markel mine, an adjacent abandoned Morton salt works which is accessible from Weeks Island mine, would also be flooded unless it is decided to maintain it for inspection of the seal separating Weeks Island from Morton's active mine. The production and service shafts, vent hole, and both fill holes would be plugged in accordance with State regulations. If it is decided to keep the Markel mine accessible for inspections, the production shaft would be kept open for access.

Three alternatives are being considered for obtaining the 80 million barrels of brine that are needed. One alternative is to produce brine by leaching existing DOE salt caverns at the SPR Bayou Choctaw Facility in Iberville Parish, Louisiana, 13 miles southwest of Baton Rouge. The brine would be transported via DOE's 36-inch-diameter, 37-mile crude oil pipeline from Bayou Choctaw to St. James Terminal, thence by DOE's crude oil pipeline from St. James to Weeks Island. Weeks Island brine fill at 200,000 barrels per day would take about 13 months with an additional two months required for oil skimming and recovery.

An alternative that will be assessed is a services contract to produce brine from a new well on Morton property on Weeks Island salt dome. Water for leaching would be obtained from the adjacent Intracoastal Waterway. Construction and operation of temporary water and brine pipelines of up to nominally one mile each would be required. The third alternative is to award a competitive contract for brine from another source. This alternative is unassessable because of its undefined character. If DOE intends to pursue this alternative further, NEPA compliance would be addressed separately under the competitive procurement provisions of 10 CFR 1021.216.

• Surface Facilities

It was suggested at a March 2, 1995, public meeting in New Iberia that the site be donated for salt dome geological research with a special interest in "post closure" uses for Louisiana's coastal salt domes where subsidence and other geophysical concerns have occurred subsequent to mineral extraction. The alternative to a DOE-directed donation of the property would be to transfer it to the General Services Administration (GSA). Improvements that could be transferred to GSA include paved roads and parking lots, central plant fencing, fire protection and sanitation systems, and central plant buildings with their associated electrical distribution systems, such as the administration building, control center, laboratory, warehouse, pumphouses, and guard house.

Usable equipment, spare parts and materials would be transferred to other SPR sites. All mechanical and electrical process systems and equipment for crude oil handling would be removed and transferred to other DOE facilities or salvaged. Associated piping, cable, and conduit above and below grade within the fenced perimeter and oily water handling systems would be removed and disposed at an approved facility. Buildings associated with the shafts would be demolished. Surface decommissioning operations are estimated to require 27 months.

• Crude Oil Pipeline

At least part of the Weeks Island-to-St. James crude oil pipeline potentially has value as either a private or a common carrier pipeline because of its interconnection with the commercial crude oil distribution network. If DOE could not sell it, the pipeline would be abandoned in place in accordance with Federal and State regulations.

2. The No Action Alternative

The no action alternative will be assessed to provide a baseline for comparison with the environmental effects of the proposed action. Under the no action alternative, the mine would not be refilled with oil, brine, or other fluid and no other stabilizing actions would be taken. Efforts to control groundwater flow would continue. To the extent that these fail to stop the leak, the mine would be allowed to fill naturally. Actions would be taken as necessary to maintain the mine at acceptable pressure. DOE would staff and maintain the surface facilities in a standby state in perpetuity.

Identification of Environmental Issues

DOE has identified the issues listed below as topics to be addressed in the EA. Public scoping may identify additional issues.

1. Risk of long-term oil contamination of Vermilion Bay and the Gulf of Mexico that could impact the human environment.
2. Risk of contaminating groundwater adjacent to the Gulf of Mexico with residual oil after the mine is filled with brine.
3. Risk of surface subsidence on Morton Salt Company's adjacent mining operations.
4. Brine spill risk in sensitive environments, especially in the Atchafalaya floodway.
5. Potential impacts on the protected Louisiana black bear.

A November 1994 study concluded that the ultimate loss of the site's approximately 100 permanent jobs would have a negligible socioeconomic impact on the region. DOE has not identified any involvement of the project with floodplains or wetlands. As the site is located within the Louisiana Coastal Zone, a determination of consistency with the Louisiana Coastal Resources Program may be required.

Public Scoping Meeting and Invitation To Comment

In the spirit of improving the quality of the agency's decisions, DOE believes that, for the circumstances of this proposed action, it is appropriate to enhance public participation in the EA process with a public scoping meeting. DOE invites written and oral comments on the scope from all interested parties. Preregistration to speak and written comments should be submitted according to the instructions provided above under **DATES** and **ADDRESSES**. Written and oral comments will be given equal weight in defining the scope of the EA.

A separate registration is required for each speaker. Registrants should confirm the time they are scheduled to speak at the registration desk at the meeting. Persons who have not preregistered may register at the door and will be accommodated on a first-come, first-served basis to the extent time allows. To ensure that as many persons as possible have the opportunity to speak, five minutes will be allotted to each.

Basic procedures for conducting the meeting will be announced by the presiding officer at the start of the meeting. A brief presentation will be made by DOE officials on the proposed action and the EA process. The meeting will not be an evidentiary hearing; there will be no cross-examination of speakers. However, DOE officials conducting the meeting will be permitted to ask clarifying questions of statements made at the meeting.

Issued in Washington, D.C. on May 17, 1995.

Patricia Fry Godley,

Assistant Secretary for Fossil Energy.

[FR Doc. 95–12490 Filed 5–19–95; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. ER95–713–000, et al.]

American Electric Power Service Corporation, et al., Electric Rate and Corporate Regulation Filings

May 12, 1995.

Take notice that the following filings have been made with the Commission:

1. American Electric Power Service Corporation

[Docket No. ER95–713–000]

Take notice that on May 5, 1995, the American Electric Power Service Corporation (AEPSC) amended its filing in the above-referenced Docket to modify the method by which AEPCS will determinate the cost of emission allowances.

A copy of the filing was served upon the parties affected by the amendment and the affected state regulatory commissions.

Comment date: May 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. Southern California Edison Company

[Docket Nos. ER95–830–000 ER95–831–000 ER95–832–000]

Take notice that on April 28, 1995, Southern California Edison Company tendered for filing a supplement to its initial filing in the above three dockets.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: May 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. New England Power Company

[Docket No. ER95–992–000]

Take notice that on May 1, 1995, New England Power Company, tendered for filing a transmission contract for service to Louis Dreyfus Electric Power Inc.

Comment date: May 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. Florida Power & Light Company

[Docket No. ER95–993–000]

Take notice that on May 1, 1995, Florida Power & Light Company (FPL), tendered for filing proposed Service Agreement with the Reedy Creek Improvement District for transmission service under FPL's Transmission Tariff Nos. 2 and 3.

FPL requests that the proposed Service Agreements be permitted to become effective on April 1, 1995, or as soon thereafter as practicable.

FPL states that this filing is in accordance with Part 35 of the Commission's Regulations.

Comment date: May 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Florida Power & Light Company

[Docket No. ER95–994–000]

Take notice that on May 1, 1995, Florida Power & Light Company (FPL), tendered for filing proposed Service Agreements with the City of Lake Worth for transmission service under FPL's Transmission Tariff Nos. 2 and 3.

FPL requests that the proposed Service Agreements be permitted to become effective on May 1, 1995, or as soon thereafter as practicable.

FPL states that this filing is in accordance with Part 35 of the Commission's Regulations.

Comment date: May 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Florida Power & Light Company

[Docket No. ER95–995–000]

Take notice that on May 1, 1995, Florida Power & Light Company (FPL), tendered for filing proposed Service Agreements with the Jacksonville Electric Authority for transmission service under FPL's Transmission Tariff Nos. 2 and 3.

FPL requests that the proposed Service Agreements be permitted to become effective on April 4, 1995, or as soon thereafter as practicable.

FPL states that this filing is in accordance with Part 35 of the Commission's Regulations.

Comment date: May 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Southern California Edison Company

[Docket No. ER95–999–000]

Take notice that on May 1, 1995, Southern California Edison Company (Edison), tendered for filing the following Supplemental Agreement (Supplemental Agreement) to the 1990 Integrated Operations Agreement (IOA) with the City of Riverside (Riverside), FERC Rate Schedule No. 250, and associated Firm Transmission Service Agreement

Supplemental Agreement Between Southern California Edison Company and City of Riverside for the Integration of The Washington Water Power—Riverside Power Sale Agreement

Edison-Riverside, Washington Water Power, Firm Transmission Service Agreement

The Supplemental Agreement and FTS Agreement set forth the terms and conditions by which Edison will integrate Riverside's Washington Water Power resource and provide bi-directional firm transmission service.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: May 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be

taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–12417 Filed 5–19–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. ER95–734–000, et al.]

Portland General Electric Company, et al., Electric Rate and Corporate Regulation Filings

May 15, 1995.

Take notice that the following filings have been made with the Commission:

1. Portland General Electric Company

[Docket No. ER95–734–000]

Take notice that on May 9, 1995, Portland General Electric Company (PGE), tendered for filing an amendment to its filing in this docket.

Comment date: May 30, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. Louisville Gas and Electric Company

[Docket No. ER95–997–000]

Take notice that on May 1, 1995, Louisville Gas and Electric Company (Louisville), tendered for filing new Power Sales Service, Rate PSS.

The Power Sales Service allows customers to reserve firm or non-firm power and associated energy.

A copy of the filing was served upon the Kentucky Public Service Commission.

Comment date: May 30, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. IES Utilities Inc.

[Docket No. ER95–998–000]

Take notice that on May 1, 1995, IES Utilities Inc. (IES) respectfully requests that, pursuant to its authority under § 35.15 of its regulations, the Commission waive the notice requirement to allow an effective date of December 31, 1994, to terminate the Iowa Southern Utilities Company FERC Electric Tariff, Original Volume 1 including cancellation of specified service agreements, and allow a proposed effective date of January 1, 1995, to add specified IES service agreements. Section 35.15 provides: "For good cause shown, the Commission may by order provide that the notice of cancellation or termination shall be effective as of a date prior to the date of filing or prior to the date the filing would become effective in accordance with these rules." In support of its request, the following good cause is shown: The cancellation of the Iowa Southern Utilities Company FERC Electric Tariff, Original Volume 1, does not modify the IES tariff. The rate schedules themselves remain unaffected. It results in the addition of new IES service agreements which are hereby filed.

Wherefore, IES Utilities Inc. respectfully requests that the Commission waive the notice requirements of § 35.15 of the Commission's Regulations and that the proposed effective dates of December 31, 1994, for the cancellation of the Iowa Southern Utilities Company FERC Electric Tariff Original Volume 1, and January 1, 1995, for the effective date of the new IES Utilities service agreements be authorized.

Comment date: May 30, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. Consolidated Edison Company of New York, Inc.

[Docket No. ER95–1000–000]

Take notice that on May 1, 1995, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a Supplement to its Rate Schedule FERC No. 105, an agreement to provide transmission service for Orange and Rockland Utilities, Inc. (O&R). The Supplement provides for an increase in the monthly transmission charge from $1.03 to $1.04 per kilowatt per month thus increasing annual revenues under the Rate Schedule by a total of $1200. Con Edison requests that this increase take effect on July 1, 1995.

Con Edison states that a copy of this filing has been served by mail upon O&R.

Comment date: May 30, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Louisville Gas and Electric Company

[Docket No. ER95–1002–000]

Take notice that on May 1, 1995, Louisville Gas and Electric Company, tendered for filing a copy of a service agreement between Louisville Gas and Electric Company and Carolina Power and Light Company under Rate GSS.

Comment date: May 30, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Oklahoma Gas and Electric Company

[Docket No. ER95–1003–000]

Take notice that on May 2, 1995, Oklahoma Gas and Electric Company (OG&E), tendered for filing a proposed Letter Agreement with City Water and Light Plant of the City of Jonesboro, Arkansas (Jonesboro) for the sale of capacity and energy.

Copies of this filing have been sent to Jonesboro, the Oklahoma Corporation Commission, and the Arkansas Public Service Commission.

Comment date: May 30, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. The Montana Power Company

[Docket No. ER95–1004–000]

Take notice that on May 2, 1995, The Montana Power Company (Montana), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.12 a "Phase Shifter and Operation Agreement Between The Montana Power Company and PacifiCorp". Montana requests that the Commission accept the Agreement for filing.

A copy of the filing was served upon PacifiCorp and Western Area Power Administration.

Comment date: May 30, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. UtiliCorp United Inc.

[Docket No. ER95–1005–000]

Take notice that on May 2, 1995, UtiliCorp United Inc., tendered for filing on behalf of its operating division, Missouri Public Service, a Service Agreement under its Power Sales Tariff, FERC Electric Tariff Original Volume No. 10, with Rainbow Energy Marketing Corporation. The Service Agreement provides for the sale of capacity and energy by Missouri Public Service to Rainbow Energy Marketing Corporation pursuant to the tariff, and for the sale of capacity and energy by Rainbow Energy Marketing Corporation to Missouri Public Service pursuant to Rainbow Energy Marketing Corporation's Rate Schedule No. 1.

UtiliCorp also has tendered for filing a Certificate of Concurrence by Rainbow Energy Marketing Corporation.

UtiliCorp requests waiver of the Commission's Regulations to permit the Service Agreement to become effective in accordance with its terms.

Comment date: May 30, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Entergy Services, Inc.

[Docket No. ER95–1006–000]

Take notice that on May 2, 1995, Entergy Services, Inc. (Entergy Services), acting as agent for Arkansas Power & Light Company, Gulf States Utilities Company, Louisiana Power & Light Company, Mississippi Power & Light Company, and New Orleans Public Service Inc. (collectively the Entergy Operating Companies), tendered for filing a Letter Agreement for the sale of limited firm capacity and energy to Alabama Electric Cooperative, Inc. (AECI) pursuant to Service Schedule LF—Limited Firm Capacity and Energy of the Interchange Agreement between Mississippi Power & Light Company and AECI. Entergy Services requests waiver of the notice requirements to permit an effective date of June 1, 1995.

Comment date: May 30, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Logan Generating Company, L.P.

[Docket No. ER95–1007–000]

Take notice that on May 2, 1995, Logan Generating Company, L.P. (Logan), tendered for filing with the Federal Energy Regulatory Commission, pursuant to 18 CFR 385.205, 35.12 of the Commission's Regulations an Application for Blanket Approval of Rate Schedule for Future Power Sales of Market-Based Rates and Confirmation of Previously Granted Waivers and Preapprovals of Certain Commission Regulations for Logan's Initial Rate Schedule FERC No. 2.

Logan intends to sell up to 25 MW of capacity and/or energy, from Logan's cogeneration facility located in Logan Township, New Jersey, not committed under power purchase agreements. Under Rate Schedule FERC No. 2, Logan intends to sell such capacity and/or energy at rates, terms and conditions to be mutually agreed upon with the purchasing party.

Comment date: May 30, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. PECO Energy Company

[Docket No. ER95–1008–000]

Take notice that on May 3, 1995, PECO Energy Company (PECO), filed a service agreement under its Borderline Interchange Agreement with Metropolitan Edison Company which is on file as Rate Schedule FERC No. 69.

PECO requests an effective date of February 28, 1995.

PECO has served copies of the filing on the Pennsylvania Public Utility Commission.

Comment date: May 30, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. Fitchburg Gas and Electric Light Company

[Docket No. ER95–1009–000]

Take notice that on May 3, 1995, Fitchburg Gas and Electric Light Company (Fitchburg), filed with the Commission a service agreement between Fitchburg and Massachusetts Municipal Wholesale Electric Company (MMWEC) for the sale of 7.5 MW (seasonal maximum claimed capability) of capacity and associated energy from Fitchburg #7. This is a service agreement under Fitchburg's FERC Electric Tariff, Original Volume No. 2, which was accepted for filing by the Commission in Docket No. ER92–88–000 on September 30, 1992. Fitchburg requests that service commence as of May 1, 1995. A notice of cancellation was also filed.

Fitchburg states that copies of the filing were served on MMWEC and the Massachusetts Department of Public Utilities.

Comment date: May 30, 1995, in accordance with Standard Paragraph E at the end of this notice.

13. New York State Electric & Gas Corporation

[Docket No. ER95–1010–000]

Take notice that on May 3, 1995, New York State Electric & Gas Corporation (NYSEG), tendered for filing pursuant to § 35.12 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR 35.12, as an initial rate schedule, an agreement with Heartland Energy Services, Inc. (Heartland). The agreement provides a mechanism pursuant to which the parties can enter into separately scheduled transactions under which NYSEG will sell to Heartland and Heartland will purchase from NYSEG either capacity and associated energy only as the parties may mutually agree.

NYSEG requests that the agreement become effective on May 4, 1995, so that the parties may, if mutually agreeable, enter into separately scheduled transactions under the agreement. NYSEG has requested waiver of the notice requirements for good cause shown.

NYSEG served copies of the filing upon the New York State Public Service Commission and Heartland.

Comment date: May 30, 1995, in accordance with Standard Paragraph E at the end of this notice.

14. Entergy Power, Inc.

[Docket No. ER95–1011–000]

Take notice that on May 3, 1995, Entergy Power, Inc. (EPI), tendered for filing a Purchase and Sale Agreement with NorAm Energy Services, Inc.

EPI requests an effective date for the Agreement that is one (1) day after the date of filing, and respectfully requests waiver of the Commission notice requirements in § 35.11 of the Commission's Regulations.

Comment date: May 30, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–12418 Filed 5–19–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP95–488–000, et al.]

Columbia Gas Transmission Corporation, et al.; Natural Gas Certificate Filings

May 11, 1995.

Take notice that the following filings have been made with the Commission:

1. Columbia Gas Transmission Corp.

[Docket No. CP95–488–000]

Take notice that on May 5, 1995, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. CP95–488–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct a delivery point in Loudon County, Virginia, under Columbia's blanket certificate issued in Docket No. CP83–76–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Columbia proposes to construct a delivery point in Loudon County, Virginia, to Washington Gas for firm service of a maximum of 48 Dth/d and an estimated annual quantity of 3,250 Dth. The cost of $53,263, will be reimbursed by Washington Gas. No impact to existing customers is anticipated, according to Columbia.

Comment date: June 26, 1995, in accordance with Standard Paragraph G at the end of this notice.

2. Transcontinental Gas Pipe Line Corp.

[Docket No. CP95–490–000]

Take notice that on May 8, 1995, Transcontinental Gas Pipe Line Corporation (TGPL), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP95–490–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon an interruptible service to Elizabethtown Gas Company, which was authorized in Docket No. CP73–4, all as more fully set forth in the application on file with the Commission and open to public inspection.

TGPL proposes to abandon an interruptible service to Elizabethtown Gas Company, under its Rate Schedule X–67, because it is no longer utilized. It is stated that if future service is desired such transportation would be done under TGPL's Rate Schedule IT and Part 284 of the Regulations.

Comment date: June 1, 1995, in accordance with Standard Paragraph F at the end of this notice.

3. El Paso Natural Gas Co.

[Docket No. CP95–475–000]

Take notice that on May 2, 1995, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed an application pursuant to Section 7(b) of the Natural Gas Act for an order permitting the abandonment of certain of its gathering system facilities located in Offshore Texas by conveyance to El Paso Field Services Company (Field Services), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

El Paso owns a percentage in four lateral line facilities and certain production area compression facilities located in the Offshore Texas Area and connect to High Island Offshore System (HIOS). El Paso states that it intends, effective January 1, 1996, to complete a major corporate restructuring through which all of El Paso's gathering, treating, and processing functions will be transferred to Field Services.

El Paso states that the proposed facilities to be transferred are already functionalized in the production function for rate and accounting purposes and therefore, constitute nonjurisdictional gathering facilities. Additionally, El Paso states that it no longer owns any reserves in the Offshore Texas area and it no longer has any obligation to any producer to purchase supplies of natural gas from that area. El Paso states that all contracts have been terminated.

Comment date: June 1, 1995, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a request. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–12419 Filed 5–19–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–291–000]

Algonquin Gas Transmission Co.; Notice of Proposed Changes in FERC Gas Tariff

May 16, 1995.

Take notice that on May 12, 1995, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following revised tariff sheets, effective June 11, 1995:

Original Sheet No. 93A
Third Revised Sheet No. 700
First Revised Sheet No. 701
First Revised Sheet No. 702
Third Revised Sheet No. 703

Algonquin states that the purpose of this filing is to reflect a revision in the take-or-pay allocation methodology of National Fuel Gas Supply Corporation (National Fuel), and to flow through $989,803.46 of take-or-pay charges billed to Algonquin by National Fuel.

Algonquin further states that copies of this filing were mailed to all affected customers of Algonquin and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with 18 CFR Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before May 23, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–12420 Filed 5–19–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ES95–8–001]

Central Louisiana Electric Company, Inc; Notice of Amended Application

May 16, 1995.

Take notice that on May 15, 1995, Central Louisiana Electric Company, Inc. (CLECO) filed an amendment to its application in Docket No. ES95–8–000, under Section 204 of the Federal Power Act. By letter order dated November 29, 1994 (69 FERC ¶ 62,173), CLECO was authorized to issue not more than $123 million of short-term indebtedness during the period January 1, 1995 through December 31, 1996, with final maturities not later than one year from the date of issuance. CLECO requests that the authorization issued in Docket No. ES95–8–000 be amended to authorize CLECO to issue and incur short-term indebtedness aggregating not more than $123 million principal amount outstanding at any one time, in connection with commercial paper issuances and commercial bank borrowings, and to enter into a new revolving credit agreement.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before May 24, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–12421 Filed 5–19–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–292–000]

Columbia Gas Transmission Corp.; Notice of Proposed Changes in FERC Gas Tariff

May 16, 1995.

Take notice that on May 12, 1995, Columbia Gas Transmission Corporation (Columbia) submitted for filing with the Commission pursuant to Section 154.1(a) of the Commission's regulations the following tariff sheets (Rate Schedules X–132 and X–133) to its FERC Gas Tariff, Original Volume No. 2, effective as follows:

To Be Effective November 1, 1993

First Revised Sheet Nos. 1567 through 1601

To Be Effective January 1, 1994

Second Revised Sheet No. 1570
Second Revised Sheet No. 1590

Columbia states that it provides service from its Chesapeake LNG facility to three customers pursuant to Rate Schedules X–131, X–132 and X–133. Columbia states that changes were made to the subject X-Rate Schedules effective November 1, 1993, as a result of Columbia's compliance with and implementation of Order No. 636 effective November 1, 1993. All parties to the subject revised X-Rate Schedules have been performing pursuant to their terms since November 1, 1993, the effective date Columbia's implementation of Order No. 636. Second Revised Sheet Nos. 1570 and 1590 reflect a minor rate reduction effective January 1, 1994, as part of Columbia's compliance with Order No. 636. Columbia is submitting Rate Schedules X–132 and X–133 at this time since they have been executed, and states that it will submit Rate Schedule X–131 when executed by the customer.

Columbia also notes that some of Rate Schedule X–132's delivery points were eliminated as a result of Columbia's assigning upstream capacity in its Order No. 636 restructuring, and requests a waiver of compliance with any Commission requirements in part 157 of its regulations with respect to that specific amendment to Rate Schedule X–132.

Columbia states that copies of its filing have been mailed to each of its Original Volume No. 2 tariff holders, firm customers and interested State Commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before May 23, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–12422 Filed 5–19–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT95–38–000]

Florida Gas Transmission Co.; Notice of Proposed Changes in FERC Gas Tariff

May 16, 1995.

Take notice that on May 12, 1995, Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 3, the following tariff sheet:

First Revised Sheet No. 15

On May 12, 1995, FGT filed the above tariff sheet in Docket No. GT95–38–000 to reflect the cancellation of Rate Schedule E–3 which was an emergency exchange agreement by and between FGT and Texas Eastern Transmission Company pursuant to an order issued by the Federal Power Commission in Docket No. CP65–124. The proposed effective date of the First Revised Sheet No. 15 is May 10, 1995. Pursuant to an order issued by the Federal Power Commission on December 27, 1973, in Docket No. CP74–56, the exchange agreement dated September 1, 1964 under Rate Schedule E–3 was canceled and superseded by a new exchange agreement dated May 24, 1973 under Rate Schedule E–9.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 23, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–12423 Filed 5–19–95;8:45am]

BILLING CODE 6717–01–M

[Docket No. GT95–39–000]

Florida Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

May 16, 1995.

Take notice that on May 12, 1995, Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 3, the following tariff sheet:

First Revised Sheet No. 26

On May 12, 1995, FGT filed the above tariff sheet in Docket No. GT95–39–000 to reflect the cancellation of Rate Schedule X–3 under which FGT used to transport natural gas, on an interruptible basis, for Sun Oil Company pursuant to an order issued by the Federal Power Commission in Docket No. CP61–18. The proposed effective date of the First Revised Sheet No. 26 is May 10, 1995. Pursuant to an order issued by the Federal Power Commission on August 26, 1974, in Docket No. CP74–259, FGT received authorization, among other things, to abandon service under a transportation agreement dated May 30, 1959, designated as Rate Schedule X–3.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426 in accordance with Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 23, 1995. protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–12424 Filed 5–19–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–295–000]

Koch Gateway Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

May 16, 1995.

Take notice that on May 12, 1995, Koch Gateway Pipeline Company (Koch Gateway) tendered for filing to become part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets to be effective June 12, 1995:

First Revised Sheet No. 30
Original Sheet No. 31
Original Sheet No. 32
Original Sheet No. 33
First Revised Sheet No. 3904

Koch Gateway states that this filing is submitted as a limited application pursuant to Section 4 of the Natural Gas Act, 15 U.S.C. 717c (1988), and the Rules and Regulations of the Federal Energy Regulatory Commission (Commission), and in accordance with the provisions of Section 32.4 of the General Terms and Conditions of Koch Gateway's FERC Gas Tariff, Fifth Revised Volume No. 1.

Koch Gateway states that the above tariff sheets will permit the recovery of Koch Gateway's Account No. 191 costs resulting from the suspension of Koch Gateway's Purchased Gas Adjustment mechanism ("PGA") on November 1, 1991. As a result of Koch Gateway's restructuring of its services pursuant to Order No. 636, Koch Gateway has not reinstituted the PGA mechanism. Koch Gateway states that the total amount to be directly billed is $5,953,755.

Koch Gateway also states that copies of its filing are being served upon those former sales customers which utilized that service during the twelve-month period ending October 31, 1991, or their authorized agents, and the applicable state regulatory agencies.

Any person desiring to be heard or to protect said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 N. Capitol Street, NW., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's regulations. All such motions or protests should be filed on or before May 23, 1995. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–12425 Filed 5–19–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–290–000]

Mid Louisiana Gas Company; Notice of Compliance Filing

May 16, 1995.

Take notice that on May 12, 1995, Mid Louisiana Gas Company (Mid Louisiana) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, which Mid Louisiana requests be made effective May 12, 1995, are:

First Revised Sheet No. 88
First Revised Sheet No. 92
First Revised Sheet No. 94
First Revised Sheet No. 95
First Revised Sheet No. 97
First Revised Sheet No. 98

Mid Louisiana states that these tariff sheets revise Section 4 of the General Terms and Conditions of its tariff to conform with Order No. 577 capacity release provisions by: (1) Extending to one calendar month the exception from the advance posting and bidding requirement applicable to released capacity; (2) adding tariff language to require a 28-day hiatus during which customers that release capacity at less than the maximum rate are prohibited from re-releasing that capacity to the same replacement customer at less than the maximum tariff rate; and (3) adding tariff language so that Mid Louisiana's tariff will comport with the Commission's regulations that address bidding for prearranged releases for one calendar month or less at a rate less than the maximum rate.

Pursuant to Section 154.51 of the Commission's Regulations, Mid Louisiana respectfully requests waiver of the notice requirement of Section 154.22 of said Regulations to permit the tendered tariff sheets to become effective May 12, 1995 as submitted.

Mid Louisiana states that copies of its filing were served upon its jurisdictional customers and appropriate state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 23, 1995. Protests

will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this compliance filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–12426 Filed 5–19–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT95–37–000]

Mississippi River Transmission Corp.; Notice of Proposed Flowthrough of Account No. 858 Refund

May 16, 1995.

Take notice that on May 10, 1995, Mississippi River Transmission Corporation (MRT) submitted worksheets reflecting the proposed flowthrough of an Account No. 858 refund received by MRT from Natural Gas Pipeline Company of America.

MRT states that subject to the receipt of Commission approval it proposes to refund by check on June 30, 1995 each customer's respective portion of the refund including interest through June 29, 1995.

MRT states that a copy of this filing is being mailed to each of MRT's former jurisdictional sales customers and the state commissions of Arkansas, Illinois and Missouri.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before May 23, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–12427 Filed 5–19–95;8:45am]

BILLING CODE 6717–01–M

[Docket No. RP95–31–000]

National Fuel Gas Supply Corporation; Notice of Informal Settlement Conference

May 16, 1995.

Take notice that an informal settlement conference will be convened in these proceedings on May 26, 1995 at 9:30 a.m. at the offices of the Federal Energy Regulatory Commission, 810 First Street, NW., Washington, DC, 20426, for the purpose of exploring the possible settlement of the issues in this proceeding.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Marc G. Denkinger (202) 208–2215 or Arnold H. Meltz (202) 208–2161.

Lois D. Cashell,

Secretary.

[FR Doc. 95–12429 Filed 5–19–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–367–000]

National Fuel Gas Supply Corporation; Notice of Informal Settlement Conference

May 16, 1995.

Take notice that an informal settlement conference will be convened in these proceedings on May 26, 1995 at 2:00 p.m. at the offices of the Federal Energy Regulatory Commission, 810 First Street, N.E., Washington, D.C., 20426, for the purpose of exploring the possible settlement of the issues in this proceeding.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Marc G. Denkinger (202) 208–2215 or Arnold H. Meltz (202) 208–2161.

Lois D. Cashell,

Secretary.

[FR Doc. 95–12428 Filed 5–19–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–294–000]

Northern Border Pipeline Co.; Notice of Proposed Changes in FERC Gas Tariff

May 16, 1995.

Take notice that on May 12, 1995, Northern Border Pipeline Company (Northern Border) tendered for filing to become part of Northern Border Pipeline Company's FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets:

First Revised Sheet Number 104
First Revised Sheet Number 124
Fourth Revised Sheet Number 156
Fifth Revised Sheet Number 157
First Revised Sheet Number 277
Second Revised Sheet Number 294
First Revised Sheet Number 436
Fourth Revised Sheet Number 500
Sixth Revised Sheet Number 501

Northern Border states that the purpose of this filing is to (i) revise the Maximum Rate and Minimum Revenue Credit under Rate Schedule IT–1; (ii) allow a Rate Schedule T–1 Shipper to extend its Service Agreement to a term of ten or more years at anytime prior to receipt of termination notice; (iii) comply with the Commission's Final Rule in Docket No. RM95–5–000, Order No. 577 for calendar month or less capacity releases; and (iv) reflect housekeeping changes.

Northern Border states that none of the herein proposed changes result in a change in Northern Border's total revenue requirement due to its cost of service form of tariff.

Northern Border proposes to decrease the Maximum Rate from 4.174 cents per 100 Dekatherm-Miles to 4.074 cents per 100 Dekatherm-Miles and to increase the Minimum Revenue Credit from 2.316 cents per 100 Dekatherm-Miles to 2.335 cents per 100 Dekatherm-Miles. The revised Maximum Rate and Minimum Revenue Credit are being filed in accordance with Northern Border's Tariff provisions under Rate Schedule IT–1.

Northern Border requests that the above listed tariff sheets be made effective July 1, 1995.

Northern Border further states that copies of this filing have been sent to all of Northern Border's contracted shippers.

Any person desiring to be heard or to protest said filing should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before May 23,

1995. Protests will be considered but not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–12430 Filed 5–19–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–293–000]

Northern Natural Gas Co; Notice of Proposed Changes in FERC Gas Tariff

May 16, 1995.

Take notice that on May 12, 1995, Northern Natural Gas Company (Northern), tendered for filing to become part of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, proposed to be effective May 12, 1995:

Second Revised Sheet No. 286
Second Revised Sheet No. 287
First Revised Sheet No. 288

Northern is filing revised tariff sheets to comply with the Commission's Final Rule on Order No. 577. "Release of Firm Capacity on Interstate Natural Gas Pipeline", issued on March 29, 1995 in Docket No. RM95–5–000.

Northern further states that copies of the filing have been mailed to each of its customers, interested State Commissions and other parties.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C., 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such petitions or protests must be filed on or before May 23, 1995. Protests will be considered by the Commission in determining the appropriate proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–12431 Filed 5–19–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–288–000]

Pacific Gas Transmission Co.; Notice of Proposed Changes to FERC Gas Tariff

May 16, 1995.

Take notice that on May 11, 1995, Pacific Gas Transmission Company (PGT) tendered for filing certain revised tariff sheets to be a part of its FERC Gas Tariff, First Revised Volume No. 1–A and requested that they be made effective May 15, 1995.

PGT states that the tariff sheets which it is submitting conform the Capacity Release provisions of its Transportation General Terms and Conditions to the capacity release provisions in Order No. 577.

PGT further states it has served a copy of this filing upon all interested state regulatory agencies and PGT's jurisdictional customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before May 23, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–12432 Filed 5–19–95; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2009–003, North Carolina]

Virginia Electric and Power Company; Amendment to Application

May 16, 1995.

On May 12, 1995, the Virginia Electric and Power Company, licensee for the Gaston and Roanoke Rapids Project, filed an amendment to its application for Nonproject Use of Project Lands and Water. The original application, filed on February 20, 1991, proposed to allow the City of Virginia Beach, Virginia to construct a water intake structure on lake Gaston in order to convey up to 60 mgd of water to a water supply reservoir in Norfolk, Virginia. The City of Virginia Beach would access the water from this reservoir.

On July 1, 1994, the Commission staff issued a Notice of Intent to Prepare an Environmental Impact Statement and to Conduct Scoping Meetings. On January 27, 1995, the Commission staff issued a Draft Environmental Impact Statement (DEIS) for public review and comment. The DEIS noted that before the Commission makes a decision on the proposal it would take into account all concerns relevant to the public interest, and that the Final Environmental Impact Statement (FEIS) would be part of the record from which the Commission makes its decision.

Attached to the amendment to the application filed on May 12, 1995, is a settlement agreement entered into by the State of North Carolina and the City of Virginia Beach, dated April 28, 1995. In the amendment, the applicant requests that the Commission: (1) Analyze those provisions of the agreement which relate to the withdrawal of water from Project No. 2009 and the use of such water, as well as the other portions of the agreement which may affect the Commission's environmental analysis of the pending application, and reflect those provisions in the Commission's environmental analysis: and (2) approve the application as modified by the amendment based on a finding that operation of the project in accordance with the application, as modified, and the terms of the agreement would be in the public interest. The provisions of the settlement agreement related to the withdrawal of water from Lake Gaston contain certain limitations to that withdrawal under defined circumstances. The amendment to the application further notes that, "Nothing in this Amended Application or in the Settlement should be construed as requesting that the Commission approve water withdrawals in excess of 60 mgd."

Federal, state, and local resource agencies, and other interested groups and individuals are requested to forward to the Commission, any comments or information that they believe will assist the Commission in conducting an accurate and thorough analysis of the amendment to application.

Comments and information must be submitted in writing and received no later than June 12, 1995. Reply comments must be filed in writing and received no later than June 22, 1995. Written comments, information, and reply comments should be sent to: Secretary, Federal Energy Regulatory Commission, Mail Code: HL–21.1, 825 North Capitol Street NE., Washington, DC 20426.

Any questions concerning the procedural aspects of the amendment to application for the Nonproject Use of Project Lands and Water at the Gaston and Roanoke Rapids Project should be directed to Steve Edmondson at (202) 219–2653.

Lois D. Cashell,

Secretary.

[FR Doc. 95–12464 Filed 5–20–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–289–000]

Williston Basin Interstate Pipeline Co.; Notice of Proposed Changes in FERC Gas Tariff

May 16, 1955.

Take notice that on May 11, 1995 Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1 revised tariff sheets.

Williston Basin states that the revised tariff sheets are being submitted to revise its Rate Schedule ST–1 to implement a two part rate structure, with a one part straight-fixed-variable (SFV) designed reservation rate applicable to the Maximum Daily Delivery Quantity (MDDQ) for service under Rate Schedule ST–1. In addition, Williston Basin states it has revised the Gas Supply Realignment Tariff provisions included as Section 39 of the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1, to bill the Rate Schedule ST–1 shipper the GSR cost surcharge applicable to Rate Schedule FT–1 shippers and to remove Subsections 39.3.3.1.2 and 39.3.3.2.2 pertaining to the determination and reconciliation of the Rate Schedule ST–1 reservation charge surcharge, respectively.

Williston Basin has requested that the Commission accept this filing to become effective June 13, 1995.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before May 23, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–12433 Filed 5–19–95; 8:45 am]

BILLING CODE 6717–01–M

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of March 20 through March 24, 1995]

Date	Name and location of applicant	Cas No.	Type of submission
3/20/95	Hudson Oil Company, Kansas City, Kansas	VEF–0011	Implementation of Special Refund Procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR, Part 205, Subpart V, in connection with the July 7, 1985 Remedial Order issued to Hudson Oil Company.
3/23/95	Gratex Corp./Compton Corp., Dallas, Texas	VEF–0012	Implementation of Special Refund Procedures. If Granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR, Part 205, Subpart V, in connection with the April 27, 1984 Remedial Order issued to Gratex Corp./Compton Corp.
3/24/95	Flasher Farmers Union Oil Co., Flasher, North Dakota.	RR272–199	Request for Modification/Recission in the Crude Oil Refund Proceeding. If Granted: The March 9, 1995 Dismissal, Case No. RF272–92082, issued to Flasher Farmers Union Oil Co. would be modified regarding the firm's application for refund submitted in the Crude Oil refund proceeding.

Date received	Name of refund proceeding/name of refund application	Case No.
3/20/95	Crude Oil Refund Applications.	R6272–37 thru R6272–43.

[FR Doc. 95–12493 Filed 5–19–95; 8:45 am]

BILLING CODE 6450–01–P

Office of Hearings and Appeals

Notice of Cases Filed During the Week of March 20 Through March 24, 1995

During the Week of March 20 through March 24, 1995, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

May 15, 1995.

George B. Breznay,

Director, Office of Hearings and Appeals.

During the Notice of Cases Filed Week of March 27 through March 31, 1995

During the Week of March 27 through March 31, 1995, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the

procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

Dated: May 15, 1995.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of March 27 through March 31, 1995]

Date	Name and Location of Applicant	Case No.	Type of Submission
3/27/95	Idaho Operations Office Idaho Falls, Idaho	VSO–0026	Request for Hearing Under 10 C.F.R., Part 710. If granted: An individual whose security clearance was suspended by the Idaho Operations Office would receive a hearing under 10 C.F.R. Part 710.
3/27/95	State of California, Sacramento, California	RM23–288	Request for Modification/Rescission in the Charter Oil Company Second Stage Refund Proceeding. If granted: The March 12, 1990 Decision and Order, Case No. RQ23–546, issued to the State of California would be modified regarding the state's application for refund submitted in the Charter Oil Company second stage refund proceeding.
3/28/95	Boyd Jolley Company, Shelley, Idaho	VEE–0006	Exception to the Reporting Requirements. If granted: Boyd Jolley Company would not be required to file Form EIA–782B, Resellers/Retailer's Monthly Petroleum Products Sales Report.
3/30/95	Capital Transport Co., Inc., McComb, Mississippi.	RR272–198	Request for Modification/Rescission in in the Crude Oil Refund Proceeding. If granted: The March 6, 1995 Dismissal, Case No. RF272–97066, issued to Capital Transport Co., Inc. would be modified regarding the firm's application for refund submitted in the Crude Oil refund proceeding.
3/30/95	Rocky Flats Field Office, Golden, Colorado	VSO–0027	Request for Hearing under 10 C.F.R Part 710. If granted: An individual whose security clearance was suspended by the Rocky Flats Field Office would receive a hearing under 10 C.F.R. Part 710.

Refund Applications

Date received	Name of refund proceeding/name of refund application	Case No.
3/27/95–3/31/95	Crude Oil	RG272–44 through RG272–73
3/27/95–3/31/95	Texaco	RF321–21062 through RF321–21064.

[FR Doc. 95–12494 Filed 5–19–95; 8:45 am]

BILLING CODE 6450–01–P

Notice of Issuance of Decisions and Orders During the Week of April 17 Through April 21, 1995

During the week of April 17 through April 21, 1995 the decisions and orders summarized below were issued with respect to applications for relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Refund Applications

Amoco Corporation, 4/21/95, RF272–92462

The DOE issued a Decision and Order concerning one Application for Refund in the Subpart V crude oil overcharge refund proceeding. The refund application was filed by Amoco Corporation. The DOE determined that Amoco was not entitled to a refund since it had filed a Refiners Escrow Settlement Claim Form and Waiver. In that filing, Amoco requested a Stripper Well refund from the Refiners escrow, thereby waiving its right to a Subpart V crude oil refund. Accordingly, the Application for Refund was denied.

Central Hudson Gas & Electric Corp., 4/21/95, RF272–92494

The DOE issued a Decision and Order concerning one Application for Refund in the Subpart V crude oil overcharge refund proceeding. The refund application was filed by Central Hudson Gas & Electric Corporation. The DOE determined that Central Hudson was not entitled to a refund since it had filed a Utilities Escrow Settlement Claim Form and Waiver. In that filing, Central Hudson requested a Stripper Well refund from the Utilities escrow, thereby waiving its right to a Subpart V crude oil refund. Accordingly, the Application for Refund was denied.

Empire Gas Corporation/Gulf Coast Petroleum, Inc., 4/18/95, RR335–64

Gulf Coast Petroleum, Inc. submitted an Application for Refund in the Empire Gas Corporation refund proceeding. The DOE found that Gulf Coast had proved that it was injured with respect to its Empire propane purchases during May 1979 through January 1981. Accordingly, the DOE granted Gulf Coast a principal refund of $15,509 for this product and accrued interest of $11,075. The total refund granted to Gulf Coast was $26,584. This Decision also resolved the last pending application in the Empire refund proceeding. The DOE determined that no further claims would be accepted in this proceeding as of the date of this Decision and Order and any unclaimed funds remaining in the Empire escrow account would be made available for indirect restitution pursuant to the Petroleum Overcharge Distribution and Restitution Act of 1986, 15 U.S.C.A. § 4501.

Texaco Inc./International Paper Company, 4/21/95, RR321–176

The DOE issued a Decision and Order granting the Motion for Reconsideration filed by International Paper Company (IP), an end-user of Texaco Inc. products. In an earlier Decision, the DOE had granted the Application for Refund filed in the Texaco Inc. refund proceeding by IP for purchases of 6,846,812 gallons of motor gasoline. In its Motion for Reconsideration, IP requested that it be granted an additional refund for purchases of 99,278,000 gallons of residual fuel oil by one of its paper mills. Based on the compelling reasons that the DOE had not originally investigated IP's statement on its application that it was applying for purchases of # 6 (residual) fuel oil and because IP quickly filed a sufficiently documented Motion for Reconsideration, the DOE exercised its discretion to consider IP's Motion. IP's gallonage claim was found to be well documented, and where necessary, conservatively estimated. Accordingly, IP's Motion for Reconsideration was granted for an additional $159,703 refund.

Texaco Inc., La Villa Service Station, Eladio Rivera, Gasolinera Melendez, Inc., Jesus Ramirez Ramirez, Villas de Navarra Service Station, 4/18/95, RF321–21016, RF321–21028, RF321–21029, RF321–21034, 4/18/95, RF321–21035

The DOE issued a Decision and Order regarding five Applications for Refund filed in the Texaco Inc. refund proceeding by retailers located in Puerto Rico. Each of the applications was postmarked and received more than four months after the February 28, 1994 final deadline for filing applications in the Texaco proceeding. Four of the applicants requested that their applications be accepted because they did not have notice of the Texaco proceeding until after the February 28 deadline. Additionally, one of these applicants further asserted that retailers in Puerto Rico had not been effectively informed about the proceeding and that neither Texaco nor the DOE made an effort to notify Puerto Rican retailers about the proceeding. Consequentiy, this applicant argued that equity required the DOE to process its late application. The DOE found that some notice had been given in Puerto Rico and noted that, in consideration of the lack of Texaco's notification to potential Puerto Rican applicants, the DOE previously had agreed to accept for possible consideration all Texaco applications submitted from Puerto Rico in the month of March 1994. The DOE found that the extreme length of time which the Texaco proceeding has lasted and the need for finality outweighed the claimed inequity. Consequently, the DOE found that none of the applicants had presented an equitable consideration or compelling reason to excuse its lateness in filing its application. Accordingly, the applications were dismissed.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Gulf Oil Corporation/American Hoechst Corp	RF300–19970	04/21/95
Hoechst Celanese Chemical Grp	RF300–21699	
Gulf Oil Corporation/Dick's Sacramento Gulf Rentals et al	RF300–21300	04/21/95
Gulf Oil Corporation/Livingston Gulf	RF300–21826	04/21/95
Gulf Oil Corporation/Simmons Pole & Piling	RR300–262	04/21/95
Texaco Inc./Vanguard Petroleum Corp	RF321–13015	04/18/95

Dismissals

The following submissions were dismissed:

Name	Case No.
Agway Petroleum Corp	RF345–30
American Freight System, Inc	RF321–20215
Apac-Tennessee, Inc	RF272–98242
Boston Gas Company	RF321–20357
Camellia Food Stores, Inc	RF272–98866
Carl's Texaco	RF321–20353
Coyier's Texaco	RF321–20356
East Store Material	RF321–20279
Ernie's Texaco	RF321–20354
Marvin V. Templeton & Sons, Inc	RF321–20262
Morgan Adhesives Company	RF321–20358
Par-Co Drilling, Inc	RF272–95983
Paraco Gas Corp	RF321–20588
Schwan's Sales Enterprises, Inc	RF321–20366
Tap Air Portugal	RF272–92485
Tungsten Products Corp	RF272–92490
Van Dusen Airport Service Company	RF272–92151

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: May 15, 1995.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 95–12495 Filed 5–19–95; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–59345; FRL–4957–2]

Certain Chemicals; Approval of a Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated this application as TME–95–4. The test marketing conditions are described below.

DATES: This notice becomes effective May 10, 1995. Written comments will be received until June 6, 1995.

ADDRESSES: Written comments, identified by the docket number [OPPT–59345] and the specific TME number should be sent to: TSCA nonconfidential center (NCIC), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. NEB–607 (7407), 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: ncic@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by [OPPT–59345]. No CBI should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Shirley Howard, New Chemicals Branch, Chemical Control Division (7405), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–447, 401 M St., SW., Washington, D.C. 20460, (202) 260–3780.

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

EPA hereby approves TME–95–4. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and within the time period and restrictions specified below, will not present an unreasonable risk of injury to health or the environment. Production volume, use, and the number of customers must not exceed that specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

Inadvertently, notice of receipt of the application was not published. Therefore, an opportunity to submit comments is being offered at this time. EPA may modify or revoke the test marketing exemption if comments are received which cast significant doubt on its finding that the test marketing activities will not present an unreasonable risk of injury.

The following additional restrictions apply to TME–95–4. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME. In addition, the Company shall maintain the following records until five years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. The applicant must maintain records of the quantity of the TME substance produced and the date of manufacture.
2. The applicant must maintain records of dates of the shipments to each customer and the quantities supplied in each shipment.
3. The applicant must maintain copies of the bill of lading that accompanies each shipment of the TME substance.

T–95–4

Date of Receipt: March 29, 1995. The extended comment period will close (insert date 15 days after date of publication in the **Federal Register**).

Applicant: Reichhold Chemicals, Inc.

Chemical: (G) Polyurethane adhesives.

Use: (G) Industrial Adhesive.

Production Volume: Confidential.

Number of Customers: Confidential.

Test Marketing Period: One year, commencing on first day of commercial manufacture.

Risk Assessment: EPA identified no significant environmental concerns for the test market substance. EPA identified potential lung toxicity and oncogenicity from the TME substance, however exposures will be mitigated by the substances low vapor pressure and by adequate ventilation. Therefore, the test market activities will not present any unreasonable risk of injury to human health and the environment.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present an unreasonable risk of injury to health or the environment.

A record has been established for this notice under docket number [OPPT–59345] (including comments and data submitted electronically as described above). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as confidential business information (CBI), is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center, Rm. NEB–607, 401 M St., SW., Washington, D.C. 20460.

Electronic comments can be sent directly to EPA at:
ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

List of Subjects

Enviornmental protection, Test marketing exemptions.

Dated: May 10, 1995.

Paul J. Campanella,

Chief, New Chemicals Branch, Office of Pollution Prevention and Toxics.

[FR Doc. 95–12472 Filed 5–19–95; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL RESERVE SYSTEM

Financial Trust Corp.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 5, 1995.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. Financial Trust Corp., Carlisle, Pennsylvania; to acquire Financial Trust Services Company, Carlisle, Pennsylvania, and thereby engage in trust activities, pursuant to § 225.25(b)(3) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 16, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–12446 Filed 5–19–95; 8:45 am]

BILLING CODE 6210–01–F

Fulton Financial Corporation; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than June 15, 1995.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. Fulton Financial Corporation, Lancaster, Pennsylvania; to merge with Delaware National Bankshares Corp., Georgetown, Delaware, and thereby indirectly acquire Delaware National Bank, Georgetown, Pennsylvania.

Board of Governors of the Federal Reserve System, May 16, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–12447 Filed 5–19–95; 8:45 am]

BILLING CODE 6210–01–F

Shirley A. Reynolds, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 5, 1995.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Shirley A. Reynolds, Huntington, West Virginia; Marshall T. Reynolds, Huntington, West Virginia; Robert L. Shell, Jr., Barboursville, West Virginia; Robert H. Beymer, Huntington, West Virginia; Barbara W. Beymer, Huntington, West Virginia; Deborah P. Wright, Flatwoods, Kentucky; Thomas W. Wright, Flatwoods, Kentucky; and Jeanne D. Hubbard, Huntington, West Virginia; all to acquire a total of 71.3 percent of the voting shares of Abigail Adams National Bancorp, Inc., Washington, D.C., and thereby indirectly acquire The Adams National Bank, Washington, D.C.

Board of Governors of the Federal Reserve System, May 16, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–12488 Filed 5–19–95; 8:45 am]

BILLING CODE 6210–01–F

Sierra Tahoe Bancorp; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of

Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 5, 1995.

A. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Sierra Tahoe Bancorp, Truckee, California; to engage *de novo* through its subsidiary, Sierra Tahoe Bancorp, Truckee, California, in acquiring, making, or servicing loans or other extensions of credit, pursuant to § 225.25(b)(1) of the Board's Regulation Y. These activities will be conducted throughout the States of California and Nevada.

Board of Governors of the Federal Reserve System, May 16, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–12449 Filed 5–19–95; 8:45 am]

BILLING CODE 6210–01–F

Valley National Bank; De Novo Corporation to do Business Under Section 25A of the Federal Reserve Act

An application has been submitted for the Board's approval of the organization of a corporation to do business under section 25A of the Federal Reserve Act (Edge Corporation) 12 U.S.C. § 611 *et seq.* The Edge Corporation will operate as a subsidiary of the applicant, Valley National Bank, Passaic, New Jersey. The factors that are to be considered in acting on the application are set forth in the Board's Regulation K (12 CFR 211.4).

The application may by inspected at the Federal Reserve Bank of New York or at the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identify specifically any questions of fact that are in dispute, and summarize the evidence that would be presented at a hearing.

Comments regarding the application must be received by the Reserve Bank indicated or at the offices of the Board of Governors not later than June 20, 1995.

A. Federal Reserve Bank of New York (William L. Rutledge, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. Valley National Bank, Passaic, New Jersey; to establish VNB International Services, Inc., Wayne, New Jersey, a *de novo* Edge Corporation, pursuant to § 25A of the Federal Reserve Act.

Board of Governors of the Federal Reserve System, May 16, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–12450 Filed 5–19–95; 8:45 am]

BILLING CODE 6210–01–F

GENERAL SERVICES ADMINISTRATION

Public Buildings Service

Notice of Availability, Environmental Assessment, Port of Entry, Located at Point Roberts, Whatcom County, Washington

The General Services Administration (GSA) hereby gives notice an Environmental Assessment (EA) has been prepared in accordance with the National Environmental Policy Act (NEPA) of 1969, as amended. The EA was prepared for the proposed expansion of the Port of Entry located in Point Roberts, Whatcom County, Washington.

Written comments on the proposed action, impacts, and mitigation measures may be submitted to GSA's EIS subconsultant, ABAM Consulting Engineers, at the following address: 33301 Ninth Avenue South, Federal Way, Washington 98003–6395 during the 30-day public comment period, which begins on May 19, 1995 and concludes on June 19, 1995. It is anticipated a Finding of No Significant Impact (FONSI) for this project will be prepared, signed, and become final after completion of the public comment period, provided no information leading to a contrary finding is received or is made available during the 30-day comment period.

For further information contact Donna M. Meyer, Regional Environmental Program Officer, General Services Administration, Public Buildings Service (10PT), 400 15th Street SW., Auburn, Washington 98001–6599. Telephone: (206) 931–7675.

Dated: May 12, 1995.

L. Jay Pearson,

Regional Administrator (10A).

[FR Doc. 95–12486 Filed 5–19–95; 8:45 am]

BILLING CODE 6820–23–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Local Agency Data on Use of Multiple Services

AGENCY: Office of the Assistant Secretary for Planning and Evaluation.

ACTION: Request for applications to build and analyze a research data base from local agency data on client use of multiple health and human services.

SUMMARY: The Department seeks applications to build and analyze a research data base on multiple health and human services. The primary goal of the proposed grant is to assist a local multi-service agency in (1) creating, from existing separate data files, a longitudinal data set tracking client use of several health and human service programs over time and (2) analyzing that data set. It is anticipated that one grant of $50,000 for 12 months will be awarded. The Department's award must be matched by the grantee with $50,000 from non-Federal sources.

CLOSING DATE: The closing date for submitting an application is July 21, 1995.

FOR FURTHER INFORMATION CONTACT: Application instructions and forms should be requested from and submitted to: Grants Officer, Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, 200 Independence Avenue, S.W., Room 405F, Hubert H. Humphrey Building, Washington, D.C., 20201, Phone (202) 690–8794. Requests for forms and technical questions will be accepted and responded to up to 15 days prior to the closing date of receipt of applications. Technical questions should be directed to Matthew Stagner, DHHS, ASPE, Telephone, 202–690–5653. Questions may also be faxed to 202–690–5514. Written technical questions should be addressed to Dr. Stagner at the above address. Application submissions may not be faxed.

ELIGIBLE APPLICANTS: The Department seeks applications from local non-profit health and social services providers. For-profit organizations are advised that no funds may be paid as profit to any recipient of a grant or sub-grant. Profit is any amount in excess of allowable direct and indirect costs of the grantee.

SUPPLEMENTARY INFORMATION:

Part I

Legislative Authority

This grant is authorized by Section 1110 of the Social Security Act (42 U.S.C. 1310) and awards will be made from funds appropriated under Public Law 103–112 (DHHS Appropriation Act for FY 1995).

Available Funds

HHS intends to award one grant from this announcement. $50,000 has been set aside for one grant to be awarded in FY 1995. Funds will be obligated fully at the time of award. This grant will require a 1 to 1 match of private or local funding to federal funding. To receive $50,000 of federal funds, an organization must demonstrate that it has access to $50,000 of private or local funding for this project. Nothing in this application should be construed as committing the Assistant Secretary to make an award. The selection of the grantee will be determined by the Assistant Secretary on the basis of the availability of funds and the criteria outlined in this announcement.

Part II. Purpose

Health and human services policy makers increasingly recognize that many clients use multiple types of services, either at a point in time or over the course of their lives. The timing of services in a client's "service career," the ordering of services, and the overlap of service receipt have many implications for policy and practice. In particular, it is important to understand how use of one services leads clients to another service and to understand how programs should work together when a client is involved with many programs simultaneously. Services of interest to the Department include AFDC, Medicaid, job training, child care, food and nutrition programs, foster care, Head Start, counseling, and other social services.

Several issues make it extremely difficult to understand patterns of service provision across programs or over time. These include the fragmentation of service provision, the varying quantity and quality of data available within each service stream, and the difficulty of tracking the same client across different service providers.

The increasing sophistication and comprehensiveness of human services computer systems now make it possible to use administrative data to improve our understanding of multiple service use. There are at least two ways to begin to use such administrative data. First, researchers are merging data bases from many service streams at the state or county level. After identifying where each client appears in each data base, researchers join the data bases, making it possible to follow each client's experiences in different service systems. Such data bases can show pathways from one service to another and "careers" of multiple service use over time.

Second, it is possible to use data from local agencies that serve as the coordinators of services. In some communities, these agencies may be newly formed service "collaboratives." In other communities, they may be older umbrella agencies like settlement houses. Though obviously limited in its generalizability, developing data on comprehensive services from a single local agency overcomes many of the problems in building state-wide or county-wide data bases. In particular, the single administrative unit decreases the need to obtain multiple clearances and to work with multiple computer systems.

As the cross-cutting policy research agency at HHS, ASPE has a long history of interest in multiple service use by health and human services clients. ASPE has supported the development of several state-level data bases for policy research. This grant award seeks to create a similar, smaller integrated data base at a single multi-service local agency. Applicants must be local comprehensive services agencies that provide multiple services to a large, diverse client base. Services of interest to the Department include AFDC, Medicaid, job training, child care, food and nutrition programs, foster care, Head Start, counseling, and other social services. The agency must have a comprehensive computer system that contains data on individual's use of services, including the timing, length, type, and cost of services.

It is anticipated that one grant will be awarded as a result of this announcement. The Department hopes to contribute to an on-going project in which the grantee is building and analyzing a computerized data file that tracks a large number of health and human service clients through multiple service programs over time. Applicants should demonstrate their access to data that describe client participation (by individual) in many health and human services programs; their capacity to work with this data; the steps they plan to take to combine these data into a single file for policy and practice research; and the analysis they hope to perform using that data. Key issues include the ordering of services, the timing of transitions from one service to another, and the use of multiple services simultaneously.

After building this data base and conducting preliminary analysis, the grantee will prepare a final report describing the procedures they used to build the data base, findings about multiple service use, barriers encountered in developing the data base, and other relevant information. A primary audience for this report is other local comprehensive services data bases. The report should assist other agencies that are attempting to build and analyze such data bases.

Part III. Application Preparation and Evaluation Criteria

This section contains information on the preparation of applications for submission under this announcement, on the forms necessary for submission, and on the evaluation criteria under which the applications will be reviewed. Potential applicants should read this section carefully in conjunction with the information provided above. The application must contain the required Federal forms, title page, table of contents, and the sections listed below. All pages of the narrative should be numbered.

The application must include the following elements:

1. Abstract: a one-page summary of the proposed project.

2. Goals and objectives of the project: an overview that describes the project, what will be accomplished, what the applicant, the Department, and the field will learn from the successful completion of the project.

3. Corporate capacity and qualifications: Applicants must demonstrate access to computerized records within a single agency that cover a wide range of social services and a large number of clients. Services of interest to the Department include

AFDC, Medicaid, job training, child care, food and nutrition programs, foster care, Head Start, counseling, and other social services.

Applicants must demonstrate access to computer hardware and software for storing and analyzing these computerized records. They must also demonstrate that they have staff capable of merging multiple data files and conducting analysis on the resulting data set. Applicants should also describe the type of agency, its organizational structure, and it meets the qualifications outlined in this announcement. Finally, applicants must demonstrate access to $50,000 in matching funds from private or local sources.

4. Experience, qualifications, and use of staff: Applicants must list primary staff and the activities they will perform on this project. Curriculum Vitae or job descriptions for key staff must be appended. This section must show that the organization—and the particular staff assigned—has a good track record in the use of administrative data. If the applicant plans to contract for outside staff for this project, the relationship and commitment of these people to the applicant organization must be demonstrated.

5. Initial Workplan: Applicants must describe the activities they plan to undertake and outline their rationale for undertaking those activities. This plan should describe the data files that will be used, the steps that will be taken to create a single data file for analysis, and the planned analysis of that data file. The role of key staff in each step of the work plan should be presented.

6. Budget: Applicants must submit a request for federal funds using Standard Form 424A. In addition, they must include a detailed breakdown of all Federal line items along with a brief narrative description or justification for these line items. This section must demonstrate the availability of $50,000 in matching funds from local or private sources. This detailed breakdown should separate items for which Federal funds are requested from items to be provided by other sources, with those other sources identified.

Review Process and Funding Information

A panel of at least three experts will review and score all applications that are submitted by the deadline date and that meet the screening criteria (all information and documents as required by this Announcement.) The panel will review the applications using the evaluation criteria listed below to score each application. These review results will be the primary element used by the Assistant Secretary in making funding decisions. The Department reserves the option to discuss applications with other Federal agencies, specialists, experts, states, and the general public. Comments from these sources, along with those of the reviewers, may be considered in making an award decision.

State Single Point of Contact (E.O. No. 12372)

DHHS has determined that this program is not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs." Applicants are not required to seek intergovernmental review of their applications within the constraints of E.O. 12372.

Deadline for Submission of Applications

The closing date for submittal of applications under this announcement is July 21, 1995. Applications must be postmarked or hand delivered to the application receipt point no later than 4:30 p.m. on July 21, 1995. Hand-delivered applications will be accepted Monday through Friday, excluding Federal holidays during the working hours of 9:00 a.m. to 4:30 p.m. in the lobby of the Hubert H. Humphrey building located at 200 Independence Avenue, SW. in Washington, DC. When hand-delivering an application, call (202) 690–8794 from the lobby for pick up. A staff person will be available to receive applications. Faxed applications will not be accepted.

An application will be considered as meeting the deadline if it is either: (1) received at, or hand-delivered to, the mailing address on or before July 21, 1995, or (2) postmarked before midnight July 21, 1995 and received in time to be considered during the competitive review process (within two weeks of the deadline date).

When mailing applications, applicants are strongly advised to obtain a legibly dated receipt from a commercial carrier (such as UPS, Federal Express; etc.) or from the U.S. Postal Service as proof of mailing by the deadline date. If there is a question as to when an application was mailed, applicants will be asked to provide proof of mailing by the deadline date. When proof is not provided, an application will not be considered for funding. Private metered postmarks are not acceptable as proof of timely mailing.

Applications which do not meet the deadline are considered late applications and will not be considered or reviewed in the current competition. DHHS will send a letter to this effect to each late applicant.

DHHS reserves the right to extend the deadline for all proposals due to natural disasters, such as floods, hurricanes, or earthquakes, or if there is a widespread disruption of the mail, or if DHHS determines a deadline extension to be in the best interest of the government. However, DHHS will not waive or extend the deadline for any applicant unless the deadline is waived or extended for all applicants.

Application Forms

See section entitled "Components of a Complete Application." All of these documents must accompany the application package.

Length of Application

Applications should be as brief as possible but should assure successful communications of the applicant's proposal to the reviewers. In no case shall an application (excluding the resumes, appendix and other appropriate attachments) be longer than 15 single spaced pages. Applications should be neither unduly elaborate nor contain voluminous supporting documentation.

Selection Process and Evaluation Criteria

Selection of the successful applicant will be based on the criteria laid out in this announcement. Reviews will determine the strengths and weaknesses of each application in terms of the evaluation criteria listed below, will provide comments, and will assign numerical scores. The review panel will prepare a summary of all applicant scores and strengths/weaknesses and recommendations and will submit it to the Assistant Secretary for the final decision on the award.

The point value following each criterion heading indicates the maximum numerical weight that each section will be given in the review process. An unacceptable rating on any individual criterion may render the application unacceptable. Consequently, applicants should take care to ensure that all criteria are fully addressed in the applications.

Three (3) copies of each application are required. Applicants are encouraged to send an additional *seven (7) copies* of their application to ease processing, but applicants will not be penalized if these extra copies are not included.

Applications will be judged according to the criteria set forth below:

A. *Goals, Objectives, and Need for Assistance.* (10 points)

Are the goals and objectives of the project presented clearly and do they reflect the type of project sought by this announcement?

B. Project Design and Approach. (40 points)

Is there documented access to multiple data sets describing individual experiences in the services of interest (e.g., AFDC, Medicaid, job training, child care, foster care, Head Start, counseling, and other social services)? How long is the time frame covered by each data set? How detailed are the records of service receipt (e.g., type of activity, length of activity, cost of activity)? How large and diverse is the population covered in each data set? Is there a clear and achievable plan for creating a single data set that will allow the tracking of individuals through multiple services over time? Are there interesting questions about health and human services policy and practice that will be explored after the data set is created?

C. *Organization and Staffing.* (40 points)

Does the organization demonstrate the in-house capacity to conduct the project? Does the organization demonstrate access to and experience with computerized records for multiple services? Does the organization and staff demonstrate a track record of successful use of administrative data? Do the staff have documented experience working with multiple data sets involving several types of health and human services? Are the number and type of staff positions sufficient to achieve project objectives?

How many different types of health and human services does the organization provide? For how many of these services is their individual-level data on service receipt? Does the organization have computer hardware, computer software, and computing staff able to work with large data sets? Does the organization demonstrate an ability to manage a complex data-merging project, including analysis of such data? Does the organization demonstrate connections to key audiences for dissemination?

D. *Budget and budget narrative* (10 points)

Is the proposed budget reasonable and sufficient to ensure implementation of the project? Does the organization demonstrate access to $50,000 from non-Federal sources to match the Federal grant?

Disposition of Applications

1. *Approval, disapproval, or deferral.* On the basis of the review of the application, the Assistant Secretary will either (a) approve the application as a whole or in part; (b) disapprove the application; or (c) defer action on the application for such reasons as lack of funds or a need for further review.

2. *Notification of disposition.* The Assistant Secretary will notify the applicants of the disposition of their applications. If approved, a signed notification of the award will be sent to the business office named in the ASPE checklist.

Components of a Complete Application

A complete application consists of the following items in this order:

1. Application for Federal Assistance (Standard Form 424, Revised 4–88);
2. Budget Information—Non-construction Programs (Standard Form 424A, Revised 4–88);
3. Assurances—Non-construction Programs (Standard Form 424B, Revised 4–88);
4. Table of Contents;
5. Budget Justification for Section B Budget Categories;
6. Proof of Non-profit Status, if appropriate;
7. Copy of the applicant's Approved Indirect Cost Rate Agreement, if necessary;
8. Project Narrative Statement, organized in four sections addressing the following topics:
   a. Abstract
   b. Goals and objectives of the project
   c. Corporate capacity and qualifications
   d. Experience, qualifications, and use of staff
   e. Initial Workplan
   f. Budget and Budget Narrative
9. Any appendices or attachments;
10. Certification Regarding Drug-Free Workplace;
11. Certification Regarding Debarment, Suspension, or other Responsibility Matters;
12. Certification and, if necessary, Disclosure Regarding Lobbying;
13. Supplement to Section II—Key Personnel;
14. Application for Federal Assistance Checklist.

Dated: May 12, 1995.

David T. Ellwood,

Assistant Secretary for Planning and Evaluation.

[FR Doc. 95–12463 Filed 5–19–95; 8:45 am]

BILLING CODE 4154–04

Health Resources and Services Administration

Final Review Criteria for Grants for Geriatric Education Centers for Fiscal Year 1995

The Health Resources and Services Administration (HRSA) announces the final review criteria for Grants for Geriatric Education Centers for FY 1995 under the authority of section 777(a) of the Public Health Service Act, as amended by the Health Professions Education Extension Amendments of 1992, Public Law 102–408, dated October 13, 1992.

Purpose

Grants may be awarded to support the development of collaborative arrangements involving several health professions schools and health care facilities. These arrangements, called Geriatric Education Centers (GECs), are established to facilitate training of health professional faculty, students, and practitioners in the diagnosis, treatment, and prevention of disease, disability, and other health problems of the aged. Health professionals include allopathic physicians, osteopathic physicians, dentists, optometrists, podiatrists, pharmacists, nurses, nurse practitioners, physician assistants, chiropractors, clinical psychologists, health administrators, and allied health professionals.

Projects supported under these grants must offer training involving four or more health professions, one of which must be allopathic or osteopathic medicine. Projects must address one or more of the statutory purposes listed below:

(a) Improve the training of health professionals in geriatrics;
(b) Develop and disseminate curricula relating to the treatment of the health problems of elderly individuals;
(c) Expand and strengthen instruction in methods of such treatment;
(d) Support the training and retraining of faculty to provide such instruction;
(e) Support continuing education of health professionals and allied health professionals who provide such treatment; and
(f) Establish new affiliations with nursing homes, chronic and acute disease hospitals, ambulatory care centers, and senior centers in order to provide students with clinical training in geriatric medicine.

Eligibility

Section 777(a) of the PHS Act authorizes the award of grants to accredited health professions schools as

defined by section 799(1), or programs for the training of physician assistants as defined by section 799(3), or schools of allied health as defined in section 799(4), or schools of nursing as defined by section 853(2).

Applicants must be located in the United States, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, the Republic of Palau, the Republic of the Marshall Islands, or the Federated States of Micronesia.

A notice was published in the **Federal Register** at 60 FR 2396 on January 9, 1995 which proposed two new review criteria for Grants for Geriatric Education Centers. No comments were received within the 30 day comment period. Therefore, the review criteria remain as proposed.

Review Criteria

The following review criteria are established in 42 CFR part 57, subpart OO:

(1) The degree to which the proposed project adequately provides for the project requirements;

(2) The extent to which the rationale and specific objectives of the project are based upon a needs assessment of the status of geriatrics training in the institutions to be assisted and/or the geographic area to be served;

(3) The ability of the project to achieve the project objectives within the proposed geographic area;

(4) The adequacy of educational facilities and clinical training settings to accomplish objectives;

(5) The adequacy of organizational arrangements involving professional schools and other organizations necessary to carry out the project;

(6) The adequacy of the qualifications and experience in geriatrics of the project director, staff and faculty;

(7) The administrative and managerial ability of the applicant to carry out the proposed project in a cost-effective manner, and;

(8) The potential of the project to continue on a self-sustaining basis.

In addition, the following review criteria are hereby finalized:

(9) If applicable, the extent to which there is evidence that the institutions jointly have planned and jointly will conduct the proposed consortial activities.

(10) The potential of the project to recruit and/or retain minority faculty members and trainees for participation in long term and/or short term training experiences.

If additional information is needed, please contact: Lt. Commander Judith Arndt, Geriatric Initiatives Branch, Division of Associated, Dental, and Public Health Professions, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8–103, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–6887.

This program, Grants for Geriatric Education Centers, is listed at 93.969 in the Catalog of Federal Domestic Assistance. It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100). This program is not subject to the Public Health System Reporting Requirements.

Dated: May 16, 1995.

Ciro V. Sumaya,

Administrator.

[FR Doc. 95–12455 Filed 5–19–95; 8:45 am]

BILLING CODE 4160–15–P

National Vaccine Injury Compensation Program; List of Petitions Received

AGENCY: Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The Public Health Service (PHS) is publishing this notice of petitions received under the National Vaccine Injury Compensation Program ("the Program"), as required by section 2112(b)(2) of the PHS Act, as amended. While the Secretary of Health and Human Services is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Court of Federal Claims is charged by statute with responsibility for considering and acting upon the petitions.

FOR FURTHER INFORMATION CONTACT: For information about requirements for filing petitions, and the Program generally, contact the Clerk, United States Court of Federal Claims, 717 Madison Place, N.W., Washington, D.C. 20005, (202) 219–9657. For information on the Public Health Service's role in the Program, contact the Director, National Vaccine Injury Compensation Program, 5600 Fishers Lane, Room 8A35, Rockville, MD 20857, (301) 443–6593.

SUPPLEMENTARY INFORMATION: The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of title XXI of the PHS Act, 42 U.S.C. 300aa-10 *et seq*, provides that those seeking compensation are to file a petition with the U.S. Court of Federal Claims and to serve a copy of the petition on the Secretary of Health and Human Services, who is named as the respondent in each proceeding. The Secretary has delegated his responsibility under the Program to PHS. The Court is directed by statute to appoint special masters who take evidence, conduct hearings as appropriate, and make initial decisions as to eligibility for, and amount of, compensation.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table (the Table) set forth at section 2114 of the PHS Act. This Table lists for each covered childhood vaccine the conditions which will lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the Table and for conditions that are manifested after the time periods specified in the Table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa-12(b)(2), requires that the Secretary publish in the **Federal Register** a notice of each petition filed. Set forth below is a partial list of petitions received by PHS on January 31, 1991 through November 20, 1991.

Section 2112(b)(2) also provides that the special master "shall afford all interested persons an opportunity to submit relevant, written information" relating to the following:

1. The existence of evidence "that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition," and

2. Any allegation in a petition that the petitioner either:

(a) "Sustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Table but which was caused by" one of the vaccines referred to in the Table, or

(b) "Sustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine" referred to in the Table.

This notice will also serve as the special master's invitation to all interested persons to submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the U.S. Court of Federal Claims at the address listed above (under the heading "For Further Information Contact"), with a copy to PHS addressed to Director, Bureau of Health Professions, 5600 Fishers Lane, Room 8–05, Rockville, MD 20857. The Court's caption (Petitioner's Name v. Secretary of Health and Human Services) and the docket number assigned to the petition should be used as the caption for the written submission.

Chapter 35 of title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

List of Petitions

1. Audrey Cairns on behalf of Nicholas Cairns, Duluth, Minnesota, Claims Court Number 91–0796 V
2. Donald Mahramas on behalf of Theodore Mahramas, Pittsburgh, Pennsylvania, Claims Court Number 91–0797 V
3. Keith Ralston on behalf of Amber Ralston, Deceased, Biloxi, Mississippi, Claims Court Number 91–0798 V
4. John Papinko, Chicago, Illinois, Claims Court Number 91–0799 V
5. Frank Casne on behalf of Carrie Casne, Deceased, Pittsburgh, Pennsylvania, Claims Court Number 91–0800 V
6. James Lynch on behalf of Christine Lynch, Nyack, New York, Claims Court Number 91–0801 V
7. Anthony Spitalere on behalf of Thomas Spitalere, Andover, Massachusetts, Claims Court Number 91–0802 V
8. Marita Rogers on behalf of Carrie Heibiesar, Sacramento, California, Claims Court Number 91–0803 V
9. Ernesto and LeeAnn Hardcastle on behalf of Sarah Hardcastle, Salt Lake City, Utah, Claims Court Number 91–0804 V
10. Gregory Brown on behalf of Jordan Brown, Ramsey, New Jersey, Claims Court Number 91–0805 V
11. C. J. Cardwell on behalf of Nathaniel Cardwell, Deceased, Lubbock, Texas, Claims Court Number 91–0806 V
12. Rodney Scott, Sr. on behalf of Rodney Scott Jr., Dayton, Ohio, Claims Court Number 91–0807 V
13. Amelia Bunner on behalf of Nancy Bunner, Geneva, Ohio, Claims Court Number 91–0808 V
14. Edward Downey on behalf of Patricia Downey, Deceased, Erie, Pennsylvania, Claims Court Number 91–0809 V
15. Donald Farmer, Knoxville, Tennessee, Claims Court Number 91–0810 V
16. Joseph Lorber on behalf of Matthew Lorber, Nanuet, New York, Claims Court Number 91–0811 V
17. Vanessa Gordon, Philadelphia, Pennsylvania, Claims Court Number 91–0812 V
18. Cherryl Moore on behalf of Reginald Moore, Mobile, Alabama, Claims Court Number 91–0813 V
19. Raylene Brecheisen on behalf of Stephanie Blackburn Ottawa, Kansas, Claims Court Number 91–0814 V
20. Mary Jo Carpentier on behalf of Jerome Eddlemon, Murfreesboro, Tennessee, Claims Court Number 91–0815 V
21. Albert Foland on behalf of Roxanne Foland, Alamosa, Colorado, Claims Court Number 91–0816 V
22. Joynce Cain on behalf of Eric Cain, Deceased, Albuquerque, New Mexico, Claims Court Number 91–0817 V
23. Troy Bailes, Dayton, Ohio, Claims Court Number 91–0818 V
24. Hoyt B. Hazal on behalf of Hoyt R. Hazal, Abilene, Texas, Claims Court Number 91–0819 V
25. Erika Nelson, Galesburg, Illinois, Claims Court Number 91–0820 V
26. Henry Collins on behalf of Henry Wayne Collins, Bartlesville, Oklahoma, Claims Court Number 91–0821 V
27. Timothy Bartlett on behalf of Andrea Bartlett, Grand Island, Nebraska, Claims Court Number 91–0822 V
28. Cheryl Nyholm, Duluth, Minnesota, Claims Court Number 91–0823 V
29. Gary Bartholomae on behalf of Evie Bartholomae, Naperville, Illinois, Claims Court Number 91–0824 V
30. Jerry Martchinske on behalf of Kenny Martchinske, Faulkton, South Dakota, Claims Court Number 91–0825 V
31. Cynthia Szczepanski on behalf of Katherine Szczepanski, Elyria, Ohio, Claims Court Number 91–0826 V
32. Thomas and Phillis Jazdzewski on behalf of Thomas Jazdzewski, Jr., Chicago, Illinois, Claims Court Number 91–0828 V
33. Samuel Garcia, Saginaw, Michigan, Claims Court Number 91–0829 V
34. Marilyn Petrenko, Parma, Ohio, Claims Court Number 91–0830 V
35. Leonard Youngbear on behalf of Ira Whitebreast, Marshalltown, Iowa, Claims Court Number 91–0831 V
36. David Lindey, Erie, Pennsylvania, Claims Court Number 91–0832 V
37. Clifford Smith on behalf of Andrew Smith, Deceased, Dimmitt, Texas, Claims Court Number 91–0833 V
38. Reyes Sanchez on behalf of Olga Sanchez, San Antonio, Texas, Claims Court Number 91–0834 V
39. Pamela Pavelka on behalf of Brandon Pavelka, Dayton, Ohio, Claims Court Number 91–0835 V
40. Rhea Salzberg on behalf of Andrea Salzberg, Stafford, Connecticut, Claims Court Number 91–0836 V
41. Kimberly Spence on behalf of Justin Spence, Mansfield, Ohio, Claims Court Number 91–0837 V
42. Richard A. and Marlin Bullock on behalf of Richard S. Bullock, Fort Necessity, Louisiana, Claims Court Number 91–0838 V
43. Martha Bainer on behalf of Robert McNabb, Deceased, Columbus, Ohio, Claims Court Number 91–0839 V
44. John and Beverly Glade on behalf of Christopher Glade, Texarkana, Texas, Claims Court Number 91–0840 V
45. Barbara Thill on behalf of Jessica Thill, Deceased, Klamath Falls, Oregon, Claims Court Number 91–0841 V
46. Maureen Scott on behalf of Tracy Scott, Bethany, Connecticut, Claims Court Number 91–0843 V
47. Tammy Early on behalf of Erica Early, Deceased, Owensboro, Kentucky, Claims Court Number 91–0845 V
48. Kristine Yani on behalf of Thomas Hafner, Long Island, New York, Claims Court Number 91–0846 V
49. Hale and Rebecca Case on behalf of Matthew Case, Charleston, West Virginia, Claims Court Number 91–0847 V
50. James and Laura Banta on behalf of Sara Banta, Ogden, Utah, Claims Court Number 91–0848 V
51. Phillip and Magaly Wenzofsky on behalf of Leah Wenzofsky, West Palm Beach, Florida, Claims Court Number 91–0849 V
52. Diane Franco on behalf of Jesse Gardner, Santa Rosa, California, Claims Court Number 91–0850 V
53. Ave Edpao on behalf of Christian Edpao, Deceased, Los Angeles, California, Claims Court Number 91–0851 V
54. Alan Torres, St. Louis, Missouri, Claims Court Number 91–0852 V
55. Linda F. Mayle, Canton, Ohio, Claims Court Number 91–0853 V
56. Terry Burden on behalf of Amber Burden, Deceased, Madisonville, Kentucky, Claims Court Number 91–0854 V
57. Suzanne Neal on behalf of Elizabeth Neal, Thousand Oaks, California, Claims Court Number 91–0855 V
58. Shellia Davis on behalf of Jodie Davis, Deceased, Louisville,

Kentucky, Claims Court Number 91–0856 V
59. Robert Carr on behalf of Karen Carr, Gainesville, Georgia, Claims Court Number 91–0857 V
60. Gumersinda Toledo on behalf of Gerardo Toledo, Paterson, New Jersey, Claims Court Number 91–0858 V
61. Sammy and Susan Young on behalf of Denise Young, Deceased, Newland, North Carolina, Claims Court Number 91–0859 V
62. Wayne Springer on behalf of Craig Springer, Gaithersburg, Maryland, Claims Court Number 91–0860 V
63. Rhonda Esco, Abbeville, South Carolina, Claims Court Number 91–0861 V
64. David Kennedy, Hazleton, Pennsylvania, Claims Court Number 91–0862 V
65. Diane Cuthbertson, Clayton, Missouri, Claims Court Number 91–0863 V
66. Gerald and Saundra Balsdon on behalf of Stacy Balsdon, Evansville, Indiana, Claims Court Number 91–0864 V
67. Terry Lynn Higgins, Madisonville, Kentucky, Claims Court Number 91–0865 V
68. Alexander Schmidt on behalf of Christian Schmidt, El Paso, Texas, Claims Court Number 91–0866 V
69. Dawn and Raul Armenta on behalf of Amanda Armenta, Deceased, San Dimas, California, Claims Court Number 91–0867 V
70. William Carter, Davis, Oklahoma, Claims Court Number 91–0868 V
71. Michael Shackelford, Fort Campbell, Kentucky, Claims Court Number 91–0880 V
72. Susan Dipaci, Nanuet, New York, Claims Court Number 91–0881 V
73. Richard Thiesen on behalf of Michael Thiesen, Albany, New York, Claims Court Number 91–0882 V
74. William Bradle, Rosemead, California, Claims Court Number 91–0883 V
75. Teri O'Dell on behalf of Kyla O'Dell, Muskogee, Oklahoma, Claims Court Number 91–0884 V
76. Allen Black on behalf of Timothy Black, Memphis, Tennessee, Claims Court Number 91–0885 V
77. Paul Pope on behalf of April Pope, Hartsville, South Carolina, Claims Court Number 91–0886 V
78. Cathy Smith on behalf of Carolyn Smith, Houghton, New York, Claims Court Number 91–0890 V
79. Bobby and Ernestine Pruitt on behalf of Justin Pruitt, Deceased, Williamson County, Tennessee, Claims Court Number 91–0891 V
80. John and Mary Lindley on behalf of Thomas Lindley, Covington, Tennessee, Claims Court Number 91–0893 V
81. Colleen Pfefferle, Cincinnati, Ohio, Claims Court Number 91–0894 V
82. Fermin Vasquez, Mayaguez, Puerto Rico, Claims Court Number 91–0895 V
83. John and Martha Johnson on behalf of Jackie Johnson, Covington, Tennessee, Claims Court Number 91–0896 V
84. James and Martha Motta on behalf of Thomas Motta, Deceased, Redmond, Washington, Claims Court Number 91–0899 V
85. John Paul Cotterman on behalf of John Cotterman, Deceased, Wapakoneta, Ohio, Claims Court Number 91–0904 V
86. Trina Gonzales on behalf of Christopher Gonzales, Deceased, Renton, Washington, Claims Court Number 91–0905 V
87. John and Daphine Smith on behalf of John Smith, Bessemer, Alabama, Claims Court Number 91–0906 V
88. Rand Craft on behalf of William Craft, Elk City, Oklahoma, Claims Court Number 91–0907 V
89. Joseph Krofchick on behalf of Amanda Krofchick, Fort Leonard Wood, Missouri, Claims Court Number 91–0912 V
90. Wilson Wagner on behalf of Darrell Wagner, Monterey, California, Claims Court Number 91–0914 V
91. Stella Pousha on behalf of Michael Pousha, Milwaukee, Wisconsin, Claims Court Number 91–0915 V
92. Darcel Massard, Washington, D.C., Claims Court Number 91–0916 V
93. Richie Bryant on behalf of Justin Bryant, Madison, Indiana, Claims Court Number 91–0917 V
94. Larry Gray on behalf of Christopher Gray, West Covina, California, Claims Court Number 91–0942 V
95. Sandra Brown, Chicago, Illinois, Claims Court Number 91–0948 V
96. Annette Pasek on behalf of Michael Pasek, Deceased, Manchester, Connecticut, Claims Court Number 91–0950 V
97. Maxine Rivera on behalf of Maria Alvarado, Murray, Utah, Claims Court Number 91–0960 V
98. Shabazz Cushmeer on behalf of Muhammed Cushmeer, Deceased, Little Rock, Arkansas, Claims Court Number 91–0966 V
99. Stephen Cole on behalf of Joshua Cole, Deceased, Bradner, Ohio, Claims Court Number 91–0971 V
100. J. Mark and Deborah Sowers on behalf of Melissa Sowers, Richmond, Virginia, Claims Court Number 91–0972 V
101. Lena Harvey on behalf of Delmonte Benallie, Deceased, Shiprock, New Mexico, Claims Court Number 91–0973 V
102. Reginald Davis on behalf of Leguisha Davis, Birmingham, Alabama, Claims Court Number 91–0975 V
103. Wanda Sanchez-Flores on behalf of Jonathan Otero, Manati, Puerto Rico, Claims Court Number 91–0979 V
104. John S. Franklin, Jr., Memphis, Tennessee, Claims Court Number 91–0987 V
105. John Cucuras on behalf of Nichole Cucuras, Mansfield, Ohio, Claims Court Number 91–0994 V
106. Francis Schriefer on behalf of Stephanie Schriefer, Long Island, New York, Claims Court Number 91–1004 V
107. Roscoe Brown, Jr. on behalf of Roscoe Brown, III, Deceased, New Orleans, Louisiana, Claims Court Number 91–1036 V
108. Robert McAllister on behalf of Dana McAllister, Mineola, New York, Claims Court Number 91–1037,
109. Johnny Hernandez on behalf of Johnny Hernandez, Jr., Abilene, Texas, Claims Court Number 91–1043 V
110. Nazar Aramian on behalf of Ani Aramian, Deceased, Fountain Valley, California, Claims Court Number 91–1046 V
111. Wayne Conley, Sr. on behalf of Wayne Conley, Jr., Deceased, Bluefield, West Virginia, Claims Court Number 91–1050 V
112. Michael Jones on behalf of Shad Jones, Brigham City, Utah, Claims Court Number 91–1053 V
113. Roger Kearney on behalf of Bryan Kearney, Deceased, Hibbing, Minnesota, Claims Court Number 91–1054 V
114. Verna May, Sacramento, California, Claims Court Number 91–1057 V
115. Anthony Euken, Virginia Beach, Virginia, Claims Court Number 91–1059 V
116. Julie West on behalf of Anthony Price, Louisa, Kentucky, Claims Court Number 91–1060 V
117. Katherine Gordon, Canton, Michigan, Claims Court Number 91–1061 V 1
118. Deborah Cobb on behalf of Kevin Cobb, North Little Rock, Arkansas, Claims Court Number 91–1062 V
119. Jeffrey and Natasha Bryant on behalf of Ryan Bryant, Arkansas City, Kansas, Claims Court Number 91–1080 V
120. Dawn Myers, Harlingen, Texas, Claims Court Number 91–1083 V
121. Allan and Linda Radika on behalf of Levi Radika, Hibbing, Minnesota, Claims Court Number 91–1084 V
122. Paul and Lisa Lykins on behalf of Alexandra Lykins, Aiken, South Carolina, Claims Court Number 91–1089 V
123. Raymond Salcido on behalf of Megan Salcido, Deceased, Yucaipa, California, Claims Court Number 91–1092 V
124. Brian Donner on behalf of Shauna Donner, White Earth, Minnesota, Claims Court Number 91–1095 V
125. Douglas and Melissa Stewart on behalf of Allen Stewart, Brandon, Florida, Claims Court Number 91–1096 V
126. Patricia Everett on behalf of Michelle Everett, Arlington, Texas, Claims Court Number 91–1115 V
127. Monty Bertelli on behalf of Matthew Bertelli, Deceased, Topeka, Kansas, Claims Court Number 91–1122 V
128. Mary Vessels on behalf of Jimmy Vessels, Deceased, Elizabethtown, Kentucky, Claims Court Number 91–1129 V
129. Sergia Vijil, Deceased, Miami, Florida, Claims Court Number 91–1132 V
130. John Church on behalf of Justin Church, Pineville, West Virginia, Claims Court Number 91–1134 V
131. Houshang Salimian on behalf of Bijan Salimian, Deceased, La Habra, California, Claims Court Number 91–1140 V
132. Jack Sorensen on behalf of Robert Sorensen, Deceased, San Diego, California, Claims Court Number 91–1161 V
133. Ronald McGhee on behalf of Brandy McGhee, Fredericksburg, Virginia, Claims Court Number 91–1162 V
134. Todd Becker on behalf of Elisabeth Becker, Deceased, Norfolk, Virginia, Claims Court Number 91–1172 V
135. Scott and Peggy Casto on behalf of Sam Casto, Deceased, Portland, Oregon, Claims Court Number 91–1178 V
136. Paula Hervey on behalf of Sharina Hervey, Deceased, Tulsa, Oklahoma, Claims Court Number 91–1180 V
137. Pauline Strong on behalf of Christina Strong, Hazard, Kentucky, Claims Court Number 91–1187 V
138. Mary Cooper on behalf of Bradley Cooper, Deceased, Garrettsville, Ohio, Claims Court Number 91–1213 V
139. Antonio Gutierrez on behalf of Mark Gutierrez, Elgin, Illinois, Claims Court Number 91–1219 V
140. Donna Hammond, Pensacola, Florida, Claims Court Number 91–1238 V
141. David Knievel on behalf of Rachel Knievel, Waco, Texas, Claims Court Number 91–1240 V
142. Elizabeth Simonds on behalf of Kathryn Simonds, Deceased, Yardley, Pennsylvania, Claims Court Number 91–1246 V
143. Anita Rojas Junction, Texas, Claims Court Number 91–1256 V
144. Michal Silbermintz on behalf of Galit Silbermintz, Bayside, New York, Claims Court Number 91–1268 V
145. John Bushell on behalf of Kenneth Bushell, Carmel, New York, Claims Court Number 91–1270 V
146. Hillory Bodden on behalf of Ashley Bodden, Deceased, Miami, Florida, Claims Court Number 91–1298 V
147. Marie Bernard on behalf of Timothy Bernard, Bucksport, Maine, Claims Court Number 91–1301 V
148. Michael Harman, Wantagh, New York, Claims Court Number 91–1326 V
149. Tammy Wells on behalf of Stephanie Wells, Oak Lawn, Illinois, Claims Court Number 91–1330 V
150. Stacy McLean on behalf of Melody Holmes, Fairbanks, Alaska, Claims Court Number 91–1343 V
151. Richard and Julia Jordan on behalf of Matthew Jordan, Richmond, Indiana, Claims Court Number 91–1344 V
152. Collette Cogliandro on behalf of Anna Joy Cogliandro, Norfolk, Virginia, Claims Court Number 91–1345 V
153. Susan Watson on behalf of Thomas Watson, Brandon, Florida, Claims Court Number 91–1354 V
154. Kristie Hart on behalf of Jeremiah Hart, Big Spring, Texas, Claims Court Number 91–1360 V
155. Andrew Englert on behalf of Marilyn Englert, Ballinger, Texas, Claims Court Number 91–1370 V
156. Hellen Jack, Los Angeles, California, Claims Court Number 91–1374 V
157. Francis Hoult on behalf of Benjamin Hoult, Rockville, Maryland, Claims Court Number 91–1377 V
158. Antonio Lopez on behalf of Laura Lopez, Deceased, Houston, Texas, Claims Court Number 91–1391 V
159. Peggy Pruitt on behalf of Stephen Pruitt, Knox County, Tennessee, Claims Court Number 91–1413 V
160. Jesse Levy on behalf of Andrew Levy, Grapevine, Texas, Claims Court Number 91–1416 V
161. Marilyn Bostick on behalf of Walter Bostick, Bay City, Michigan, Claims Court Number 91–1417 V
162. Bonita and Carl Wallace on behalf of Shanice Young, Deceased, Buffalo, New York, Claims Court Number 91–1430 V
163. Doris Youngblood on behalf of Matthew Youngblood, Washington, D.C., Claims Court Number 91–1442 V
164. David Simon on behalf of Wayne Simon, Jordan, Minnesota, Claims Court Number 91–1444 V
165. Pha and Tang Her on behalf of Bee Her, Deceased, Ramsey, Minnesota, Claims Court Number 91–1447 V
166. Linda Smith on behalf of Jefferson Smith, Deceased, Boulder, Colorado, Claims Court Number 91–1461 V
167. Leona Jones on behalf of Phillip Murphy, San Antonio, Texas, Claims Court Number 91–1476 V
168. Lisa Patrin, St. Paul, Minnesota, Claims Court Number 91–1477 V
169. Lisa Carlson on behalf of Michael Carlson, Phoenix, Arizona, Claims Court Number 91–1486 V
170. Vivian Haskell on behalf of Ashley Haskell, Deceased, Chesapeake, Virginia, Claims Court Number 91–1487 V
171. Sharon Webb on behalf of Arius Webb, Deceased, Flint, Michigan, Claims Court Number 91–1488 V
172. Clayton Blair on behalf of Jeremiah Blair, Cookeville, Tennessee, Claims Court Number 91–1503 V
173. Michael Pickett on behalf of Griffin Pickett, Des Moines, Iowa, Claims Court Number 91–1507 V
174. Kimberly Love on behalf of Brandon James, Deceased, Detroit, Michigan, Claims Court Number 91–1514 V
175. Terry Harris on behalf of Brandon Harris, Deceased, Silverton, Oregon, Claims Court Number 91–1519 V
176. Tammy Jordan on behalf of Christopher Jordan, Seneca, South Carolina, Claims Court Number 91–1524 V
177. Troy Smith on behalf of Nicholas Smith, Deceased, Traverse City, Michigan, Claims Court Number 91–1525 V
178. Gregory Harkins on behalf of Matthew D. Harkins, Tucson, Arizona, Claims Court Number 91–1526 V
179. Marlynne Little, Mesa, Arizona, Claims Court Number 91–1527 V
180. John Hossack on behalf of Jeffrey Hossack, Deceased, Folsom, California, Claims Court Number 91–1528 V
181. Teresa Jordan on behalf of Rebecca Jordan, Longview, Texas, Claims Court Number 91–1533 V
182. Susie Lee on behalf of Stephanie Lee, College Point, New York, Claims Court Number 91–1538 V
183. Beth Gustafson, Robbinsdale, Minnesota, Claims Court Number 91–1539 V
184. Robert McCabe on behalf of David McCabe, Jacksonville, Florida, Claims Court Number 91–1540 V
185. Peggy Potts on behalf of Jennifer Potts, Waverly, Ohio, Claims Court Number 91–1545 V
186. Robert Nichols on behalf of Daniel Nichols, Charleston, West Virginia, Claims Court Number 91–1547 V

187. Debra Klein on behalf of Gary Klein, Jr., Deceased, Glen Carbon, Illinois, Claims Court Number 91–1548 V
188. Velma Cullinane on behalf of Kyle Cullinane, Deceased, Boston, Massachusetts, Claims Court Number 91–1554 V
189. Marc Plavin on behalf of Rachel Reiss-Plavin, Lexington, Kentucky, Claims Court Number 91–1555 V
190. Martha Steenbruggen on behalf of Dana Steenbrugen, Reading, Massachusetts, Claims Court Number 91–1557 V
191. Michele Moore on behalf of Jonathan Amorella-Moore, Reading, Massachusetts, Claims Court Number 91–1558 V
192. Michael Stephens on behalf of Matthew Stephens, Houston, Texas, Claims Court Number 91–1565 V
193. Ida Rasmussen, Westland, Michigan, Claims Court Number 91–1566 V
194. Donella Raspberry on behalf of Shanelle Eastling, Deceased, Baldwin, Michigan, Claims Court Number 91–1567 V
195. Pradeep Nayyar on behalf of Geeta Nayyar, Old Bridge, New Jersey, Claims Court Number 91–1583 V
196. Rodney Jones, Chicago, Illinois, Claims Court Number 91–1590
197. Lori Barton on behalf of Dustin Barton, Albuquerque, New Mexico, Claims Court Number 91–1594
198. Michele Bartl on behalf of Caitlyn Bartl, Foley, Alabama, Claims Court Number 91–1595
199. Donna DeFazio, Staten Island, New York, Claims Court Number 91–1597
200. Barbara Toebe on behalf of Anne Toebe, Paoli, Pennsylvania, Claims Court Number 91–1623.

Dated: May 16, 1995.

Ciro V. Sumaya,

Administrator.

[FR Doc. 95–12453 Filed 5–19–95; 8:45 am]

BILLING CODE 4160–15–P

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Meeting: AIDS Research Advisory Committee, NIAID

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the AIDS Research Advisory Committee, National Institute of Allergy and Infectious Diseases, on June 6–7, 1995, in the Grand Ballroom of the Gaithersburg Hilton Hotel, 620 Perry Parkway, Gaithersburg, Maryland.

The entire meeting will be open to the public from 8 a.m. until recess on June 6, and from 8 a.m. until adjournment on June 7. The AIDS Research Advisory Committee (ARAC) advises and makes recommendations to the Director, National Institute of Allergy and Infectious Diseases, on all aspects of research on HIV and AIDS related to the mission of the Division of AIDS (DAIDS).

The Committee will provide advice on scientific priorities, policy, and program balance at the Division level. The Committee will review the progress and productivity of ongoing efforts, and identify critical gaps/obstacles to progress. Attendance by the public will be limited to space available.

Ms. Anne P. Claysmith, Executive Secretary, AIDS Research Advisory Committee, DAIDS, NIAID, NIH, Solar Building, Room 2B06, telephone 301–402–0755, will provide a summary of the meeting and a roster of committee members upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Claysmith in advance of the meeting.

(Catalog of Federal Domestic Assistance Program Nos. 93.855, Immunology, Allergic and Immunologic Diseases Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health.)

Dated: May 15, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–12403 Filed 5–19–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Child Health and Human Development; Notice of Meetings

Pursuant to Pub. L. 92–463, notice is hereby given of meetings of the review committees of the National Institute of Child Health and Human Development for June 1995.

Purpose/Agenda: To review and evaluate grant applications.

These meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Population Research Committee.

Scientific Review Administrator: Dr. A.T. Gregoire, 6100 Executive Boulevard—Rm. 5E03, Telephone: 301–496–1696.

Date of Meeting: June 8–9, 1995.

Place of Meeting: Holiday Inn—Bethesda, 8120 Wisconsin Avenue, Bethesda, Maryland 20814, Georgia Room.

Time: June 8–8:00 am–5:00 p.m. June 9–8:00 am–adjournment.

Name of Committee: Maternal and Child Health Research Committee.

Scientific Review Administrator: Dr. Gopal Bhatnagar, 6100 Executive Boulevard—Rm. 5E03, Telephone: 301–496–1485.

Date of Meeting: June 12–13, 1995.

Place of Meeting: Holiday Inn—Gaithersburg, #2 Montgomery Village Avenue, Gaithersburg, Maryland 20879.

Time: June 12–8:00 am–5:00 p.m. June 13–8:00 am–adjournment.

Name of Committee: Mental Retardation Research Committee.

Scientific Review Administrator: Dr. Norman Chang, 6100 Executive Boulvard—Rm. 5E03, Telephone: 301–496–1485.

Date of Meeting: June 23–24, 1995.

Place of Meeting: Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, Maryland 20852.

Time: June 23–8:00 am–5:00 p.m. June 24–8:00 am–adjournment.

(Catalog of Federal Domestic Assistance Program No. 93.864, Population Research and No. 93.865, Research for Mothers and Children, National Institutes of Health.)

Dated: May 15, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–12404 Filed 5–19–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute of General Medical Sciences; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings:

Purpose: To review grant applications.

Committee Name: National Institute of General Medical Sciences, Cellular and Molecular Basis of Disease Review Committee.

Date: June 7.

Time: 8:30 a.m.—5 p.m.

Place: 45 Center Drive, Conference Room B, Bethesda, MD 20892–62000.

Contact Person: Dr. Carole Latker, Scientific Review Administrator, NIGMS, 45 Center Drive, Room 1AS–13K, Bethesda, MD 20892–62000.

Committee Name: National Institute of General Medical Sciences, Pharmacological Sciences Review Committee.

Date: June 7.

Time: 8:30 a.m.—5 p.m.

Place: 45 Center Drive, Conference Room G1 and G2, Bethesda, MD 20892–6200.

Contact Person: Dr. Irene Glowinski, Scientific Review Administrator, NIGMS, 45 Center Drive, Room 1 AS–13J, Bethesda, MD 20892–6200.

Committee Name: National Institute of General Medical Sciences, Genetic Basis of Disease Review Committee.

Date: June 12.

Time: 8:30 a.m.—adjournment.

Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Dr. Arthur Zachary, Scientific Review Administrator, NIGMS, 45 Center Drive, Room 1AS–13H, Bethesda, MD 20892–6200.

These meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552(c)(6), Title 5, U.S.C. The discussions of these applications could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the first meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.821, Biophysics and Physiological Sciences; 93.859, Pharmacological Sciences; 93.862 Genetics Research; 93.863, Cellular and Molecular Basis of Disease Research; 93.880, Minority Access Research Careers [MARC]; and 93.375, Minority Biomedical Research Support [MBRS].

Dated: May 15, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–12400 Filed 5–19–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the meetings of the National Institute of Mental Health:

Agenda/Purpose: To review and evaluate grant applications.

Committee Name: National Institute of Mental Health Initial Review Group, Clinical Centers and Special Projects Review Committee.

Date: June 5–9, 1995.

Time: 7:00 p.m.

Place: Ramada Inn Rockville, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Phyllis L. Zusman, Grant Technical Assistant, Parklawn Building, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–1340.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: June 19, 1995.

Time: 2:00 p.m.

Place: Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Regina M. Thomas, Grant Technical Assistant, Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–6470.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: June 20, 1995.

Time: 1:30 p.m.

Place: Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Rehana A. Chowdhury, Grant Technical Assistant, Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–6470.

Agenda/Purpose: To review for final approval recent views of selected intramural research projects.

Committee Name: Board of Scientific Counselors, National Institute of Mental Health.

Date: June 13–14, 1995.

Time: 9:00 a.m.

Place: Building 36, Room 1B07, National Institute of Health, 9000 Rockville Pike, Bethesda, MD 20892.

Contact Person: Jack D. Maser, Ph.D., Executive Secretary, Building 10, Room 4N224, 9000 Rockville Pike, Bethesda, MD 20982, Telephone: 301, 496–4183.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. These applications, research project reviews, and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and projects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meetings due to the urgent need to meeting timing limitations imposed by the review cycle.

(Catalog of Federal Domestic Assistance Program Numbers 93.126, Small Business Innovation Research; 93.176, ADAMHA Small Instrumentation Program Grants; 93.242, Mental Health Research Grants; 93.281, Mental Research Scientist Development Award and Research Scientist Development Award for Clinicians; 93.282, Mental Health Research Service Awards for Research Training; and 93.921, ADAMHA Science Education Partnership Award.)

Dated: May 15, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–12401 Filed 5–19–95; 8:45 am]

BILLING CODE 4140–01–M

Ad Hoc Review Committee for the Recombinant DNA Advisory Committee; Notice of Meeting

Notice is hereby given of a meeting of the Ad Hoc Review Committee for the Recombinant DNA Advisory Committee on June 19, 1995, at the National Institutes of Health, Building 31C, 6th Floor, Conference Room 8, 9000 Rockville Pike, Bethesda, Maryland 20892, starting at approximately 9 a.m. to adjournment at approximately 5 p.m. The meeting will be open to the public to discuss three major topics for review: (1) Domain and mandate of the Recombinant DNA Advisory Committee; (2) composition of the Recombinant DNA Advisory Committee; and (3) Recombinant DNA Advisory Committee's review of human gene transfer protocols. Attendance by the public will be limited to space available. Members of the public wishing to speak at this meeting may be given such opportunity at the discretion of the Chair.

Dr. Nelson A. Wivel, Director, Office of Recombinant DNA Activities, Suite 323, National Institutes of Health, 6006 Executive Boulevard, MSC 7052, Bethesda, Maryland 20892–7052, Phone (301) 496–9838, FAX (301) 496–9839, will provide materials to be discussed at this meetings, roster of committee members and substantive program information. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dr. Wivel in advance of the meeting. A summary of the meeting will be available at a later date.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number of title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

Dated: May 15, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–12402 Filed 5–19–95; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Treatment and Center for Substance Abuse Prevention; Notice of Meetings

Pursuant of Public Law 92–463, notice is hereby given of the meetings of the Center for Substance Abuse Treatment (CSAT) National Advisory Council and the Center for Substance Abuse Prevention (CSAP) Drug Testing Advisory Board in June 1995.

The meeting of the CSAT National Advisory Council will include a discussion of Center policy issues and current administrative, legislative, and program developments. The Council will also conduct a review of grant applications and procurement plans; therefore a portion of this meeting will be closed to the public as determined by the Administrator, SAMHSA, in accordance with 5 U.S.C. 552b(c)(3) and (6) and 5 U.S.C. app. 2 10(d). Attendance by the public at the open portion of the meeting will be limited to space available.

A summary of the meeting and roster of council members may be obtained from: Ms. D. Winstead, Committee Management Specialist, CSAT, Rockwall II Building, Suite 840, 5600 Fishers Lane, Rockville, Maryland 20857; (301) 443–8448.

Substantive program information may be obtained from the contact whose name and telephone number is listed below.

Committee Name: Center for Substance Abuse Treatment, National Advisory Council.

Meeting Dates: June 26 and 27, 1995.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chase Room, Chevy Chase, Maryland 20815.

Open: June 26, 8:30 a.m.–2:00 p.m., June 27, 8:30 a.m.–3:00 p.m.

Closed: June 26, 2:00 p.m.–4:30 p.m.

Contact: Marjorie Cashion, Rockwall II Building, Suite 840; Telephone (301) 443–3821.

The meeting of the Drug Testing Advisory Board will include discussion of announcements and reports of administrative, legislative, and program developments. It will also include reviews of sensitive National Laboratory Certification Program (NLCP) internal operating procedures and program development issues. Therefore, a portion of this meeting will be closed to the public as determined by the Administrator, SAMHSA, in accordance with 5 U.S.C. 552b(c)(2),(4), and (6) and 5 U.S.C. App 2 10(d).

A summary of this meeting and roster of committee members may be obtained from: Ms. Vera Hunter, Acting Committee Management Officer, CSAP, Rockwall II Building, Suite 7A–140, 5600 Fishers Lane, Rockville, MD 20857; Telephone: (301) 443–9540.

Substantive program information may be obtained from the contact whose name, room number and telephone number is listed below.

Committee Name: Drug Testing Advisory Board.

Meeting Dates: June 29, 1995.

Place: Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, Maryland 20857.

Open: June 29, 8:30 a.m.–11:00 a.m.

Closed: June 29, 11:00 a.m.-Adjournment.

Contact: Donna M. Bush, Ph.D.; Parklawn Building, Room 13A–54; Telephone (301) 443–6014.

Dated: May 16, 1995.

Jeri Lipov,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 95–12452 Filed 5–19–95; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

[Docket No. FR–3911–N–01]

Mortgagee Review Board Administrative Actions

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: In compliance with Section 202(c) of the National Housing Act, notice is hereby given of the cause and description of administrative actions taken by HUD's Mortgagee Review Board against HUD-approved mortgagees.

FOR FURTHER INFORMATION CONTACT: William Heyman, Director, Office of Lender Activities and Land Sales Registration, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–1515. The Telecommunication Device for the Deaf (TDD) number is (202) 708–4594. (These are not toll-free numbers).

SUPPLEMENTARY INFORMATION: Section 202(c)(5) of the National Housing Act (added by Section 142 of the Department of Housing and Urban Development Reform Act of 1989 (Pub.L. 101–235), approved December 15, 1989) requires that HUD "publish in the **Federal Register** a description of and the cause for administrative action against a HUD-approved mortgagee" by the Department's Mortgagee Review Board. In compliance with the requirements of Section 202(c)(5), notice is hereby given of administrative actions that have been taken by the Mortgagee Review Board from January 1, 1995 through March 31, 1995.

1. Randall Mortgage, Inc., Maitland, Florida

Action: Proposed Settlement Agreement that includes indemnification to the Department for any claim losses in connection with seven improperly originated loans; payment to the Department of a civil money penalty in the amount of $2,500; and corrective action by the company to assure compliance with HUD–FHA requirements.

Cause: A HUD monitoring review that disclosed violations of HUD–FHA requirements that included: Failure to maintain an adequate Quality Control Plan for the origination of HUD–FHA insured mortgages; failure to verify borrowers' source of funds used for downpayment; failure to ensure that borrowers made the minimum required investment in the property; requiring a borrower to deposit excess escrow funds at closing; inadequate or lack of face-to-face interviews with borrowers; and failure to properly complete HUD Form 92900 Applications.

2. West Star Financial Corporation, Centennial Park, Arizona

Action: Settlement Agreement that includes payment to the Department of a civil money penalty in the amount of $35,000; indemnification for any claim loss in connection with an improperly originated loan; corrective action to assure compliance with HUD–FHA requirements; and submission of a report to the Board compiled by an independent Certified Public Accountant at the end of a six-month period with respect to the company's compliance with HUD–FHA requirements.

Cause: A HUD monitoring review which disclosed violations of HUD–FHA loan servicing and origination requirements that included: Failure to maintain an adequate Quality Control Plan for the servicing and origination of HUD–FHA insured mortgages; failure to maintain staff trained in HUD–FHA requirements; failure to properly service delinquent mortgages; failure to properly administer the assignment program; failure to comply with property inspection, preservation and protection requirements; failure to refund excess escrow funds to mortgagors; failure to establish controls to ensure timely mortgagor escrow payments; failure to remit accurate mortgage insurance premiums; failure to enter into reasonable forebearance agreements; failure to meet the reporting requirements of the Single Family Default Monitoring System; failure to timely remit One-Time Mortgage Insurance Premiums; payment of loan origination fees not proportionate to the value of work performed; and failure to ensure that borrowed funds were not used to close a HUD–FHA insured mortgage.

3. F.C. Chadwick Financial, Cerritos, California

Action: A Settlement Agreement that includes indemnification to the Department for any claim losses in connection with six improperly originated Title I loans; and corrective action to assure compliance by the company with HUD–FHA Title I program requirements.

Cause: A HUD monitoring review that cited violations by the company of HUD–FHA Title I property improvement loan program requirements which included: Operating an unapproved branch office; payment of ineligible referral fees; failure to verify the source of borrowers' initial payment; and failure to meet program requirements for the promissory note.

4. First Financial Funding Group, Mission Viejo, California

Action: Settlement Agreement that includes indemnification to the Department for any claim losses in connection with five improperly originated Title I loans; payment to the Department of a civil money penalty in the amount of $1,000; and corrective action to assure compliance with HUD–FHA Title I program requirements.

Cause: A HUD monitoring review that cited violations by the company of HUD–FHA Title I property improvement loan program requirements that included: Failure to document the source of funds required for the borrowers' initial payment; failure to ensure that borrowers provided detailed descriptions of work improvements; and failure to comply with HUD–FHA reporting requirements under the Home Mortgage Disclosure Act (HMDA).

5. Magna Financial Corporation, Irvine, California

Action: Proposed Settlement Agreement that includes indemnification to the Department for any claim losses in connection with five improperly originated Title I loans; payment to the Department of a civil money penalty in the amount of $1,000; and corrective action to assure compliance with HUD–FHA requirements.

Cause: A HUD monitoring review that disclosed violations by the company of HUD–FHA Title I property improvement loan program requirements that included: Failure to verify borrowers' source of funds required for initial payment; failure to property verify borrower's income; requiring a minimum loan amount; failure to meet program requirements for the promissory note; failure to ensure that detailed descriptions of improvements were provided by borrowers; and failure to comply with HUD–FHA reporting requirements under the Home Mortgage Disclosure Act (HMDA).

6. Greystone Servicing Corporation, Inc., New York, New York

Action: Proposed Settlement Agreement that includes a payment to the Department and assurance by the company of compliance with the requirements of the Government National Mortgage Association (GNMA).

Cause: Violation of GNMA requirements resulting from the improper termination of 57 GNMA mortgage-backed securities pools.

7. Whitehall Funding, Inc., Davenport, Iowa

Action: Proposed Settlement Agreement that includes a payment to the Department and assurance by the company of compliance with the requirements of the Government National Mortgage Association (GNMA).

Cause: Violation of GNMA requirements resulting from the improper termination of 13 GNMA mortgage-backed securities pools.

8. Washington Credit Union, Lynwood, Washington

Action: Proposed Settlement Agreement that includes the payment of a civil money penalty to the Department in the amount of $10,000; indemnification for one improperly originated Title I loan; and corrective action to assure compliance with HUD–FHA Title I program requirements.

Cause: A HUD monitoring review that disclosed violations of HUD–FHA Title I property improvement loan program requirements that included: Failure to comply with HUD–FHA reporting requirements under the Home Mortgage Disclosure Act (HMDA); failure to comply with dealer approval requirements; failure to report to HUD–FHA borrowers' uncompleted property improvements; failure to resolve a borrower complaint against a dealer; and failure to verify a borrower's source of funds for the required initial payment.

9. Indigo Mortgage Services, Inc., Santa Ana, California

Action: Withdrawal of HUD–FHA mortgagee approval.

Cause: Failure by the company to comply with the terms and conditions of a Settlement Agreement with the Department and to indemnify HUD in the amount of $49,724 for its claim loss in connection with an improperly originated HUD–FHA insured mortgage.

10. Beacon Mortgage Company, Dallas, Texas

Action: Letter of Reprimand and proposed civil money penalty in the amount of $2,000.

Cause: Failure by the company to comply with HUD–FHA requirements and to submit to the Department physical inspection reports with respect to two HUD–FHA insured multifamily projects.

11. Mortgage Systems, Inc., d/b/a Associated Mortgage Bankers, Las Vegas, Nevada

Action: Withdrawal of HUD–FHA mortgagee approval and proposed civil money penalty in the amount of $75,000.

Cause: A HUD monitoring review that cited the company for violations of HUD–FHA program requirements which included: Failure to comply with conditions of probation previously imposed by the Board; failure to implement an adequate Quality control Plan; failure to remit mortgage insurance premiums within l5 days after loan closing; failure to submit closed loans for endorsement within 60 days after loan closing; failure to meet annual recertification requirements regarding amount of liquid assets; submission of false information; failure to document the borrower's source of funds for downpayment and closing costs; failure to correctly calculate the borrower's income for loan approval; failure to ensure that the borrower made the minimum required investment; use of mortgage brokers to originate loans and payment of "kickbacks" to such brokers; non-compliance with HUD's conflict-of-interest prohibited payments provisions; failure to conduct face-to-face interviews; and allowing loan correspondents to improperly close loans in the name of the company.

Dated: May 16, 1995.
Nicolas P. Retsinas,
Assistant Secretary for Housing-Federal Housing Commissioner.
[FR Doc. 95–12460 Filed 5–19–95; 8:45 am]
BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–350–09–1430–00]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made to the Bureau Clearance Office and to the Office of Management and Budget, Paperwork Reduction Project (1004–0009), Washington, D.C. 20503, telephone number 202–395–7340.

Title: Land Use Application and Permit
OMB Approval Number: (1004–0009)
Abstract: The regulations at 43 CFR 2920 provide for non-Federal use of bureau administered land via lease or permit. Uses include agriculture, trade or manufacturing concerns and business uses such as outdoor recreation concession. BLM will determine the validity of uses proposed by private individuals and other qualified proponents from information provided by the proponent on the Land Use Application and Permit form
Bureau Form Number: 2920–1
Frequency: Once
Description of Respondents: Individuals, State and local government entities, and other qualified proponents apply for use of Bureau administered land via lease or permit
Estimated Completion Time: 9.60 hours
Annual Responses: 620
Annual Burden Hours: 5955
Bureau Clearance Officer: Wendy Spencer 303–236–6642

Dated: April 15, 1995.
W. Hord Tipton,
Assistant Director, Resource Use and Protection.
[FR Doc. 95–12415 Filed 5–19–95; 8:45 am]
BILLING CODE 4310–84–M

[WO–350–09–1430–00]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made to the Bureau Clearance Officer and to the Office of Management and Budget, Interior Department Desk Officer, Washington, D.C. 20503, telephone number 202–395–7340.

Title: Application for Transportation and Utility Systems and Facilities on Federal Lands, P.L. 96–487 (Also applicable for 43 CFR 2800 and 2880)
OMB Approval Number: (1004–0060)
Abstract: Respondents supply information as to their identity and address and the nature, location and potential impacts of the proposed facility. The information enables the using agency to identify and communicate with the applicant and to locate and evaluate the effect of the proposed facility on the environment and other land uses
Bureau Form Number: SF–299
Frequency: On occasion
Description of Respondents: Applicants for rights-of-way on Federal lands
Estimated Completion Time: 2 hours
Annual Responses: 4,300
Annual Burden Hours: 8,600
Bureau Clearance Officer: Wendy Spencer 303–236–6642

Dated: May 1, 1995.
W. Hord Tipton,
Assistant Director, Resource Use and Protection.
[FR Doc. 95–12414 Filed 5–19–95; 8:45 am]
BILLING CODE 4310–84–M

[NV–930–1430–01; N–59025]

Notice of Realty Action: Lease/conveyance for Recreation and Public Purposes

AGENCY: Bureau of Land Management.
ACTION: Recreation and public purpose lease/conveyance.

SUMMARY: The following described public land in Las Vegas, Clark County, Nevada has been examined and found suitable for lease/conveyance for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.). The City of Las Vegas proposes to use the land for public park to include a soccer complex.

Mount Diablo Meridian, Nevada

T. 20 S., R. 60 E., M.D.M.
Sec. 10: S½S½NW¼NE¼NW¼, S½SW¼NE¼NE¼NW¼, SE¼NE¼NE¼NW¼, SE¼NE¼NE¼NW¼, S½NE¼NW¼, SE¼NW¼, NE¼SW¼.
Containing 106.250 acres, more or less.

The land is not required for any federal purpose. The lease/conveyance is consistent with current Bureau planning for this area and would be in the public interest. The lease/patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

and will be subject to:

1. An easement 40.00 feet in width along the east boundary for Tenaya Way, and an easement 30.00 feet in width along the south boundary for Buckskin Avenue, and a 40.00 foot easement along the south boundary of the SE¼NW¼ for Gowan Road, and a 40.00 foot easement along the north boundary of the NE¼SW¼ for Gowan Road, and a 30.00 easement along the west boundary of the NE¼SW¼ of Section 10 for Pioneer Way, in favor of the City of Las Vegas for roads, public utilities and flood control purposes.

2. Those rights for flood detention basin purposes which have been granted to the City of Las Vegas by Permit No. N–37220 the under the Act of October 21, 1976 (47USC1761).

3. Those rights for water well purposes which have been granted to the Las Vegas Valley Water District by Permit No. N–53362–D and N–53362–E the under the Act of October 21, 1976 (43USC1761).

4. Those rights for electrical line purposes which have been granted to Nevada Power Company by Permit No. N–54757 the under the Act of October 21, 1976 (43USC1761).

5. Those rights for telephone line purposes which have been granted to Sprint Central Telephone of Nevada by Permit No. N–56449 the under the Act of October 21, 1976 (43USC1761).

6. Those rights for telephone line purposes which have been granted to Sprint Central Telephone of Nevada by Permit No. NEV–067254 the under the Act of March 4, 1911 (43USC961.

7. Those rights for communication line purposes which have been granted to Sprint Central Telephone of Nevada by Permit No. N–7342 the under the Act of February 15, 1901 (43USC959).

8. Those rights for substation and transmission line purposes which have been granted to Nevada Power Company by Permit No. NEV–061618 the under the Act of October 21, 1976 (43USC1761).

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/conveyance under the Recreation and Public Purposes Act, leasing under the mineral leasing laws and disposals under the mineral material disposal laws. For a period of 45 days from the date of publication of this notice in the **Federal Register** interested parties may submit comments regarding the proposed lease/conveyance for classification of the lands to the District Manager, Las Vegas District, P. O. Box 26569, Las Vegas, Nevada 89126.

Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a public park.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification of the land described in this Notice will become effective 60 days from the date of publication in the **Federal Register**. The lands will not be offered for lease/conveyance until after the classification becomes effective.

Dated: May 5, 1995.
Marvin D. Morgan,
District Manager, Las Vegas, NV.
[FR Doc. 95–12416 Filed 5–19–95; 8:45 am]
BILLING CODE 4310–HC–M

Fish and Wildlife Service

Availability of Draft Environmental Impact Statement on the Establishment of the Silvio O. Conte National Fish and Wildlife Refuge Within the Four-State Connecticut River Watershed of New England

AGENCY: Fish and Wildlife Service, Interior.
ACTION: Notice.

SUMMARY: The U.S. Fish and Wildlife Service (Service) has prepared, for public review and comment, a Draft Environmental Impact Statement (DEIS) on establishing the Silvio O. Conte National Fish and Wildlife Refuge (refuge) in the Connecticut River watershed of Connecticut, Massachusetts, Vermont and New Hampshire. The DEIS describes a No Action alternative, the Service's Proposed Action, and three other alternatives for establishing the refuge and the environmental consequences of implementing each alternative. This notice is being furnished pursuant to the National Environmental Policy Act (NEPA) regulations (40 CFR 1503.1) to invite comment on the DEIS from other federal and state agencies and the public.

PUBLIC MEETINGS AND HEARINGS: During the public review period, a series of afternoon walk-in informational sessions and evening public meetings and hearings will be held in 16 different locations throughout the four-state Connecticut River watershed. Meetings will be held in four locations in Massachusetts the week of June 6, 1995; in four locations in Connecticut the week of June 12, 1995; in four locations in southern Vermont and New Hampshire the week of June 19, 1995; and in four locations in northern Vermont and New Hampshire the week of June 26, 1995. The dates, times and locations of these meetings will be announced in local and regional newspapers, through public service announcements in other media, and through direct mailings. Written and oral comments will be accepted at all walk-in informational sessions and public meetings, or hearings.

FOR FURTHER INFORMATION CONTACT: Larry Bandolin, Project Leader, U.S. Fish and Wildlife Service, 38 Avenue A, Turners Falls, Massachusetts 01376. Telephone (413) 863–0209 or Fax (413) 863–3070.

PUBLIC COMMENT PERIOD: In order to be considered in the preparation of the Final EIS, all comments should be received no later than July 31, 1995.

SUPPLEMENTARY INFORMATION: The DEIS was prepared to fulfill the requirements of the Silvio O. Conte National Fish and Wildlife Refuge Act of 1991 (Act), Section 105. The Act's long-term purposes for establishing a new refuge in the Connecticut River watershed are to: (1) conserve, protect, and enhance the Connecticut River watershed populations of Atlantic salmon, American shad, river herring, shortnose sturgeon, bald eagles, peregrine falcons, osprey, black ducks, and other native species of plants, fish, and wildlife; (2) conserve, protect, and enhance the natural diversity and abundance of plant, fish, and wildlife species and the ecosystems upon which these species depend within the refuge; (3) protect species listed as endangered or threatened, or identified as candidates for listing, pursuant to the Endangered Species Act of 1973, as amended; (4) restore and maintain the chemical, physical, and biological integrity of wetlands and other waters within the refuge; (5) fulfill the international treaty obligations of the United States relating to fish and wildlife and wetlands, and (6) provide opportunities for scientific research, environmental education, and fish and wildlife-oriented recreation and access to the extent compatible with the other purposes stated in this section. The DEIS describes five alternative ways to help fulfill these purposes. It also discusses the process used to develop them and the environmental consequences of implementing each one. The first alternative (No Action) would involve no new conservation efforts in the watershed on the part of the Service. A second alternative (Private Lands Work and Education) relies on the voluntary restoration and enhancement of private lands through the Service's Partners for Wildlife Program. A third alternative (Private Lands Work, Education and Partnerships) relies on the voluntary restoration and enhancement of private lands, developing partnerships, providing technical assistance and establishing a cost-sharing grants program—through the Service's Challenge Cost Share Program—to help other conservation interests carry out their land protection programs. A fourth alternative (Private Lands Work, Education, Partnerships and Land Protection—The Service's Proposed Action) is similar to the third

alternative, except that the Service would also acquire lands to protect threatened or endangered, rare and uncommon species and communities. Under the fifth alternative (Private Lands Work, Education and Land Protection) the Service would establish a more traditional national fish and wildlife refuge. All issues and concerns identified by the public during scoping were considered and the most significant analyzed in detail. The potential effects of each alternative on agriculture and forestry, biological resources, local economies, environmental education, public use and access, and water use and quality are also described. Copies of the DEIS have been sent to all federal and state agencies, organizations and individuals who requested copies, as well as all libraries within the watershed. A summary of the DEIS has been sent to all other organizations and individuals on the project mailing list. A limited number of copies of both documents are available upon request from the project office in Turners Falls, Massachusetts. No final decision will be made until such time as the public has had the opportunity to review and comment on the DEIS. It is estimated that a Final Environmental Impact Statement will be available by September, 1995.

Cathy Short,

Acting Regional Director.

[FR Doc. 95–12413 Filed 5–19–95; 8:45 am]

BILLING CODE 4310–55–M

Minerals Management Service

Electronic Data Interchange (EDI) in the Royalty Management Program

May 16, 1995.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of availability and training.

SUMMARY: The Minerals Management Service (MMS) is making Electronic Data Interchange (EDI) technology available to minerals royalty payors on a voluntary basis. Implementation of EDI is also intended to help achieve the objectives of the Vice President's National Performance Review.

FOR FURTHER INFORMATION CONTACT: General EDI Information—Contact Mr. Ron Hatton, Systems Management Division, Minerals Management Service, Royalty Management Program, P. O. Box 25165 MS–3140, Denver, Colorado, 80225–0165, telephone numbers 1–800–619–4593 or (303) 275–7050, FAX number (303) 275–7099. EDI Orientation Training Information—Contact Ms. Barbara Matthews, Systems Management Division, Minerals Management Service, Royalty Management Program, P. O. Box 25165 MS–3140, Denver, Colorado, 80225–0165, telephone numbers 1–800–619–4593 or (303) 275–7036, FAX number (303) 275–7099. EDI Technical Training Information—Contact Mr. Tim Allard, Systems Management Division, Minerals Management Service, Royalty Management Program, P. O. Box 25165 MS–3140, Denver, Colorado, 80225–0165, telephone numbers 1–800–619–4593 or (303) 275–7007, FAX number (303) 275–7099.

SUPPLEMENTARY INFORMATION: MMS is publishing this Notice in response to a **Federal Register** notice, "Offshore Minerals Management and Royalty Management Electronic Data Interchange Projects" (55 FR 38166, September 17, 1990), and the Executive Order No. 12862, "Setting Customer Service Standards" (September 14, 1993).

MMS defines EDI as "the intercompany electronic transmission of business transactions in a standard format." EDI allows royalty payors to use electronic technologies to submit records required under the regulations in Title 30 of the Code of Federal Regulations (CFR). MMS will perform most EDI activity in Denver, Colorado. However, the MMS Outer Continental Shelf (OCS) offices also have a limited EDI capacity for well test data.

MMS will provide approved customers with choices in both sources of service and the means of delivery. Sources of service include Electronic Data Interchange, E-Mail, Magnetic Tape, various Diskette formats and public electronic carriers. Security procedures to protect confidential or proprietary information are provided for in the Electronic Commerce Agreement (ECA).

EDI technology benefits both royalty payors and MMS because it allows for paperless reporting, automated receipt, fewer data errors, and cost savings. Because EDI mutually benefits royalty payors and MMS, MMS' objective is to use EDI wherever feasible as a means of conducting business. All industries MMS regulates may voluntarily participate in the electronic data submission. In some instances, records required by Title 30 of the CFR may need to be retained in paper form and their associated conventional methods of signing may need to be preserved. MMS will specify in future rulemakings which records must be maintained in paper form. Information packets regarding EDI are available by contacting Mr. Ron Hatton at MMS.

Orientation and Training

MMS is offering orientation and technical training at no cost to companies and interested parties that intend to implement EDI with the Minerals Management Service/Royalty Management Program (MMS/RMP). MMS will conduct orientation sessions on request and discuss MMS EDI activities, capabilities and implementation planning and schedules. MMS will conduct a technical training session in Lakewood, Colorado, on June 21, 1995. The technical training session is primarily for technical specialists responsible for EDI and will target the translation of data from the company's application system to reports required by MMS. The training will discuss EDI implementation with MMS/RMP and will be oriented to technical considerations which are essential for successful implementation. The specific transaction sets and reports to be discussed at the technical training session are:

1. Royalty Regulatory Reports, Data Transaction Set 185 for Form MMS–2014;
2. Product Transfer and Resale Report, Data Transaction Set 867 for Forms MMS–3160 and OGOR; and
3. Payment Order/Remittance Advice, Data Transaction Set 820 for electronic payment of royalties, rents, bonuses, penalties, interest, and assessments.

If you are interested in this training session, please reply to Mr. Tim Allard no later than May 31, 1995, using one of the following methods:

1. Call directly at (303) 275–7007;
2. Call the Electronic Commerce Information number 1–800–619–4593;
3. FAX your training request to (303) 275–7099;
4. Respond by E-Mail using Internet address: Timothy—C.—Allard@SMTP.MMS.GOV
5. Respond by E-Mail using X.400 address: /C=US/A=ATTMAIL/P=GOV+MMS/S=Allard/G=Timothy/I=C.

Participants will receive confirmation two weeks in advance of the training and instructions as to exact location and times.

MMS/RMP is also considering conducting similar technical training sessions outside of the Denver area if there is sufficient interest. If you are interested in this training, but are unable to attend the session scheduled in Lakewood, please contact Mr. Tim Allard at MMS to request alternative dates and locations. Future training dates and locations will be published in the **Federal Register**.

Dated: May 16, 1995.

Donald T. Sant,

Acting Associate Director for Royalty Management.

[FR Doc. 95–12487 Filed 5–19–95; 8:45 am]

BILLING CODE 4310–MR–P

Bureau of Reclamation

Quarterly Status Report of Water Service and Repayment Contract Negotiations

AGENCY: Bureau of Reclamation, Interior.

AGENCY: Notice.

SUMMARY: Notice is hereby given of proposed contractual actions that are modified, completed, discontinued, or new since the last publication of this notice on February 1, 1995. The February 1, 1995, notice should be used as a reference point to identify changes. The number in parenthesis corresponds to the number in the February 1, 1995, notice. This notice is one means in which the public is informed about contractual actions for capital recovery and management of project resources and facilities. Additional Bureau of Reclamation (Reclamation) announcements of individual contract actions may be published in the **Federal Register** and in newspapers of general circulation in the areas determined by Reclamation to be affected by the proposed action. Announcements may be in the form of news releases, legal notices, official letters, memorandums, or other forms of written material. Meetings, workshops, and/or hearings may also be used, as appropriate, to provide local publicity. The public participation procedures do not apply to proposed contracts for sale of surplus or interim irrigation water for a term of 1 year or less. Either of the contracting parties may invite the public to observe any contract proceedings. All public participation procedures will be coordinated with those involved in complying with the National Environmental Policy Act.

ADDRESSES: The identity of the approving officer and other information pertaining to a specific contract proposal may be obtained by calling or writing the appropriate regional office at the address and telephone number given for each region in the supplementary information.

FOR FURTHER INFORMATION CONTACT: Alonzo Knapp, Manager, Reclamation Law, Contracts, and Repayment Office, Bureau of Reclamation, PO Box 25007, Denver, Colorado 80225–0007; telephone 303–236–1061 extension 224.

SUPPLEMENTARY INFORMATION: Pursuant to section 226 of the Reclamation Reform Act of 1982 (96 Stat. 1273) and 43 CFR 426.20 of the rules and regulations published in 52 FR 11954, Apr. 13, 1987, Reclamation will publish notice of proposed or amendatory contract actions for any contract for the delivery of project water for authorized uses in newspapers of general circulation in the affected area at least 60 days prior to contract execution. Pursuant to the "Final Revised Public Participation Procedures" for water resource-related contract negotiations, published in 47 FR 7763, Feb. 22, 1982, a tabulation is provided of all proposed contractual actions in each of the five Reclamation regions. Each proposed action is, or is expected to be, in some stage of the contract negotiation process in 1995. When contract negotiations are completed, and prior to execution, each proposed contract form must be approved by the Secretary of the Interior or, pursuant to delegated or redelegated authority, the Commissioner of Reclamation or one of the regional directors. In some instances, congressional review and approval of a report, water rate, or other terms and conditions of the contract may be involved.

Public participation in and receipt of comments on contract proposals will be facilitated by adherence to the following procedures:

1. Only persons authorized to act on behalf of the contracting entities may negotiate the terms and conditions of a specific contract proposal.
2. Advance notice of meetings or hearings will be furnished to those parties that have made a timely written request for such notice to the appropriate regional or project office of Reclamation.
3. Written correspondence regarding proposed contracts may be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act (80 Stat. 383), as amended.
4. Written comments on a proposed contract or contract action must be submitted to the appropriate regional officials at the locations and within the time limits set forth in the advance public notices.
5. All written comments received and testimony presented at any public hearings will be reviewed and summarized by the appropriate regional office for use by the contract approving authority.
6. Copies of specific proposed contracts may be obtained from the appropriate regional director or his designated public contact as they become available for review and comments.
7. In the event modifications are made in the form of a proposed contract, the appropriate regional director shall determine whether republication of the notice and/or extension of the comment period is necessary.

Factors considered in making such a determination shall include, but are not limited to: (i) The significance of the modification, and (ii) the degree of public interest which has been expressed over the course of the negotiations. As a minimum, the regional director shall furnish revised contracts to all parties who request the contract in response to the initial public notice.

Acronym Definitions Used Herein

(BCP)—Boulder Canyon Project
(CAP)—Central Arizona Project
(CUP)—Central Utah Project
(CVP)—Central Valley Project
(CRSP)—Colorado River Storage Project
(D&MC)—Drainage and Minor Construction
(FR)—Federal Register
(IDD)—Irrigation and Drainage District
(ID)—Irrigation District
(M&I)—Municipal and Industrial
(O&M)—Operation and Maintenance
(P–SMBP)—Pick-Sloan Missouri Basin Program
(R&B)—Rehabilitation and Betterment
(SRPA)—Small Reclamation Projects Act
(WCUA)—Water Conservation and Utilization Act
(WD)—Water District

The following contract actions are either new, modified, discontinued, or completed in the Bureau of Reclamation since the February 1, 1995, **Federal Register** notice.

Pacific Northwest Region: Bureau of Reclamation, 1150 North Curtis Road, Boise, Idaho 83706–1234, telephone 208–378–5346.

1. Contract Actions Modified.

(18) Hermiston, Stanfield, Westland, and West Extension Irrigation Districts, Umatilla Project, Oregon: Temporary contracts to provide water service for 1995 to lands lying outside of their boundaries.

2. New Contract Actions.

(19) Stanfield and Westland Irrigation Districts, Umatilla Project, Oregon: Repayment contract for reimbursable cost of dam safety repairs to McKay Dam.

(20) Pumpkin Ridge Golf Course, Tualatin Project, Oregon: Water service contract for provision of approximately 340 acre-feet of water for M&I use.

Mid-Pacific Region: Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825–1898, telephone 916–978–5030.

1. Contract Actions Modified.

(2) Irrigation water districts, individual irrigators, M&I and miscellaneous water users, Mid-Pacific Region projects other than CVP: Temporary (interim) water service contracts for available project water for irrigation, M&I, or fish and wildlife purposes providing up to 10,000 acre-feet of water annually for terms up to 5 years; temporary Warren Act contracts for use of project facilities for terms up to 1 year; long-term contracts for similar service for up to 1,000 acre-feet annually. *Note:* Copies of the standard forms of temporary water service contracts for the various types of service are available upon written request from the regional director at the address shown above.

(3) Contractors from the American River Division, Buchanan Division, Cross Valley Canal, Delta Division, Friant Division, Hidden Division, Sacramento River Division, Shasta Division, and Trinity River Division, CVP, California: Renewal of existing long-term water service contracts with contractors whose contracts expire between 1995 and 1998; water quantities for these contracts total in excess of 1.7M acre-feet. These contract actions will be accomplished through interim renewal contracts pursuant to Pub. L. 102–575.

(5) Truckee Carson ID, Newlands Project, Nevada: New repayment contract for the unpaid construction cost repayment obligation from the original contract and for the operation and maintenance of project facilities. The United States terminated the original contract, and this was upheld by the U.S. District Court in Nevada on August 17, 1983.

(10) El Dorado County Water Agency, San Juan WD, and Sacramento County Water Agency, CVP, California: M&I water service contract to supplement existing water supply: 15,000 acre-feet for El Dorado County Water Agency, 13,000 acre-feet for San Juan WD, and 22,000 acre-feet for Sacramento County Water Agency, authorized by Pub. L. 101–514.

(17) Monterey County Water Resources Agency, Castroville Irrigation Water Supply Project, SRPA, California: Loan repayment contract in the amount of $32,600,000 to construct an irrigation distribution system to convey reclaimed water for agricultural purposes and to reduce seawater intrusion in the ground-water aquifers.

(22) San Juan WD and the Placer County Water Agency, CVP, California: Renewal of existing long-term wheeling contract allowing the Agency to use CVP facilities to deliver its water to the District for use on District land within Placer County. This will be a Warren Act contract.

2. Contract Actions Completed.

(7) City of Redding, CVP, California: Amendment to Contract No. 14–06–5272A to add a point of diversion at the turnout, Spring Creek Power Conduit, to facilitate proposed water treatment plant for Buckeye service area. This amendment will also conform the contract to current Reclamation policies, including the water ratesetting policy and Pub. L. 102–575. ACTION: Amendatory Contract No. 14–06–200–5272A executed November 22, 1994.

(11) Sacramento Area Flood Control Agency, CVP, California: Agreement for the Folsom Dam and Reservoir reoperation. ACTION: Contract executed on March 22, 1995.

(14) Widren WD, CVP, California: Amend water service contract No. 14–06–200–8018 to include M&I use and conform to Pub. L. 102–575. ACTION: Interim Renewal contract executed on February 27, 1995, that included M&I use.

(15) Del Puerto WD, CVP, California: Assignment of eleven Delta-Mendota Canal water service contracts to Del Puerto WD for administrative and operational purposes. Changes in water district name. ACTION: Assignment executed on February 13, 1995.

3. Contract Actions Discontinued.

(21) United Water Conservation District, SRPA, California: District can prepay the loan at a discounted rate pursuant to Pub. L. 102–575. ACTION: District did not pursue prepayment option provided in Pub. L. 102–575. Prepayment option has expired.

(24) Glide WD, CVP, California: Assignment of Tehama WD's water service contract to Glide WD. ACTION: Request withdrawn. Tehama WD dissolved.

(25) Glide WD and Orland-Artois WD, CVP, California: Assignment of Elder Creek WD water service contract to Glide WD and Orland-Artois WD. ACTION: Request withdrawn. Elder Creek WD chose not to renew its water service contract. Their water service contract expired on February 28, 1995.

4. New Contract Actions.

(27) Santa Barbara County Water Agency: Repayment contract for Safety of Dams work on Bradbury Dam.

(28) Central Valley Project Service Area, California: Temporary water purchase agreements for acquisition of 20,000 to 200,000 acre-feet of water for fish and wildlife purposes as authorized by the Central Valley Project Improvement Act for terms of up to 3 years.

Lower Colorado Region: Bureau of Reclamation, PO Box 61470 (Nevada Highway and Park Street), Boulder City,Nevada 89006–1470, telephone 702–293–8536.

1. Contract Actions Completed.

(16) Elsinore Valley Municipal WD, Temescal Valley Project, SRPA, CA. Action: Contract executed.

2. Contract Actions Discontinued.

(21) City of Yuma , BCP, AZ: Amendment to Contract No. 14–06–W–106, for additional points of diversion. Action: Points of diversion will not be within City of Yuma.

3. New Contract Actions.

(41) Department of the Navy, Niland, CA: Contract for delivery of up to 23 acre-feet per year of California unused apportionment water for domestic use.

(42) Windsor Beach State Park, Lake Havasu City, AZ: Contract for 130 acre-feet entitlement to Colorado River domestic water.

Upper Colorado Region: Bureau of Reclamation, PO Box 11568, (125 South State Street), Salt Lake City, Utah 84147, telephone 801–524–5435.

No change in contract activities.

Great Plains Region: Bureau of Reclamation, PO Box 36900, Federal Building, 316 North 26th Street, Billings, Montana 59107–6900, telephone 406–657–6413.

1. Contract Actions Modified.

(13) Lakeview Irrigation District, Shoshone Project, Wyoming: New long-term water service contract for up to 3,200 acre-feet of firm water supply annually and up to 11,800 acre-feet of interim water from Buffalo Bill Reservoir. Pursuant to Section 9(e) of the Reclamation Project Act of 1939 (Pub. L. 260).

(22) Mountain Park Master Conservancy District, Mountain Park Project, Oklahoma: Pursuant to Title IV of Pub. L. 103–434, amend the District's contract to reallocate the project costs to reflect the environmental activities authorized by Title IV and provide for a discounted prepayment of the reimbursable costs allocated for its M&I water supply.

Dated: May 15, 1995.

Wayne O. Deason,

Assistant Director, Program Analysis.

[FR Doc. 95–12440 Filed 5–19–95; 8:45 am]

BILLING CODE 4310–94–P

Office of Surface Mining Reclamation and Enforcement

Abandoned Mine Land Reclamation Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of intent.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is requesting comments as to whether the Abandoned Mine Land (AML) Reclamation Program Final Guidelines, published March 6, 1980 (45 FR 14810–19), should be revised, and if so, what specific revisions need to be included.

DATES: *Written Comments:* OSM will accept written comments on the proposed rule until 5 p.m. Eastern time on July 21, 1995.

ADDRESSES: *Written Comments:* Hand deliver to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 660, 800 North Capitol Street NW., Washington, DC; or mail to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 10–SIB, 1951 Constitution Avenue NW., Washington, DC 20240.

Comments may also be sent through the Internet to OSM's Administrative Record, Internet address: OSMRules@OSMRE.GOV. Copies of any messages received electronically will be filed with the Administrative Record.

FOR FURTHER INFORMATION CONTACT: Norman Hess, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue NW., Washington, DC 20240; Telephone: 202–208–2949 or 208–5365.

SUPPLEMENTARY INFORMATION: In 1980, OSM published AML Reclamation Program Final Guidelines (45 FR 14810, March 6, 1980) for reclamation programs and projects. These guidelines were intended to assist States, Indian tribes and OSM in interpreting and applying the general reclamation requirements for individual programs and projects contained in the Surface Mining Control and Reclamation Act (SMCRA) and the AML program regulations. These guidelines were designed to promote uniformity in programs and projects that are carried out by different entities assigned the responsibility for administering AML programs and to provide a common basis for the conduct of program and project evaluation activities.

The 1980 guidelines currently contain several outdated citations and other provisions due to legislative revisions to Title IV of SMCRA as well as policies adopted by OSM since 1980. Therefore, OSM is considering whether to revise the guidelines, and if so, what specific revisions and updates to incorporate. Toward this end, OSM requests all interested parties and organizations to provide any relevant comments related to this contemplated revision.

All comments will be analyzed and considered by the agency in making the determination of whether to revise the existing guidelines. If a decision is made to proceed with revision of the guidelines, appropriate comments will be incorporated into the revised guidelines to the fullest extent possible.

Dated: May 15, 1995.

Robert J. Uram,

Director.

[FR Doc. 95–12436 Filed 5–19–95; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF LABOR

Labor Advisory Committee for Trade; Negotiations and Trade Policy; Meeting Notice

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463 as amended), notice is hereby given of a meeting of the Labor Advisory Committee for Trade Negotiations and Trade Policy.

Date, time and place: June 16, 1995, 10:00 am—12:00 noon, U.S. Department of Labor, Room N–4437 C&D, 200 Constitution Ave. NW., Washington, D.C. 20210.

Purpose: The meeting will include a review and discussion of current issues which influence U.S. trade policy. Potential U.S. negotiating objectives and bargaining positions in current and anticipated trade negotiations will be discussed. Pursuant to section 9(B) of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(B) it has been determined that the meeting will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions. Accordingly, the meeting will be closed to the public.

For further information, contact: Fernand Lavallee, Director, Trade Advisory Group, Phone: (202) 219–4752.

Signed at Washington, D.C. this 17 day of May, 1995.

Joaquin Otero,

Deputy Under Secretary, International Affairs.

[FR Doc. 95–12503 Filed 5–19–95; 8:45 am]

BILLING CODE 4510–28–M

Pension and Welfare Benefits Administration

[Application No. D–09878, et al.]

Proposed Exemptions; Tenneco, Inc. Health Care Plan

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice

shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Tenneco, Inc. Health Care Plan (the Plan) Located in Houston, Texas

[Application No. D–09878]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2), and 407(a) of the Act shall not apply to the proposed contribution to the Plan of common stock (the Stock) of Tenneco, Inc. (Tenneco) by Tenneco or any of its subsidiaries, provided the following conditions are satisfied: (a) The Plan will dispose of the Stock received within 2 business days of receipt, either by sale on the open market or by sale to Tenneco; (b) any sale of the Stock from the Plan to Tenneco will comply with conditions (1) and (2) of section 408(e) of the Act; and (c) Tenneco will pay any and all transactional costs for any sales by the Plan on the open market.

Summary of Facts and Representations

1. Tenneco is a Fortune 50 company, the Stock of which is traded on the New York Stock Exchange (the NYSE). The major businesses of Tenneco include the transportation and sale of natural gas, the manufacture and sale of farm and construction equipment, and the manufacture and sale of automotive exhaust system parts. Tenneco is a Delaware corporation which has its principal office in Houston, Texas.

2. The Plan is a voluntary employees' beneficiary association as described in section 501(c)(9) of the Code. The Plan pays for medical and dental benefits for employees and former employees of Tenneco and its participating domestic subsidiaries. The Plan has never accumulated reserves; benefits are paid by Tenneco through the Plan on a pay-as-you-go basis.

3. In 1992, Tenneco created the Tenneco Inc. Stock Employee Compensation Trust (the SECT). The SECT is not subject to the Act. The purpose of the SECT is to hold Stock which may be used to defray compensation and benefit obligations of Tenneco and its subsidiaries, including medical and dental benefits. The applicant represents that shares of Stock available under the SECT exceed the number of shares that Tenneco had anticipated would be needed for compensation and benefit purposes. The applicant represents that, for reasons of Delaware corporate law, the SECT may not sell more than 10% of the shares of Stock originally held by it. However, this limit applies only to sales, and there is no limit to the amount of Stock in the SECT which may be used for compensation and benefit purposes. The applicant represents that if the Stock is contributed to the Plan which, in turn, sells the Stock to Tenneco or on the open market, such transactions do not cause a violation of the 10% limit imposed on the SECT.

4. Tenneco proposes to contribute Stock from the SECT to the Plan. Upon such contribution, the Plan will immediately sell the Stock on the open market or to Tenneco. The applicant represents that the Plan will dispose of the Stock received within 2 business days of receipt. In fact, it is Tenneco's intention that the Plan will dispose of the Stock as soon as possible, which the applicant anticipates will generally be a matter of hours or perhaps overnight after receipt.

5. If the Plan sells the Stock to Tenneco, the applicant represents that the sale will be at a sale price equal to the price prevailing on the NYSE at the time of the sale to Tenneco. If the Plan sells the Stock on the open market, Tenneco will pay any and all transactional costs associated with such sales. The Plan will use the cash it receives for the Stock to pay medical and dental benefits under the Plan. This transaction may be done as often as needed to pay benefits. The applicant represents that it anticipates using approximately 691,000 shares of Stock for Plan expenses in 1995. It is anticipated that contributions would be made by the SECT to the Plan either weekly or bi-weekly, based upon projected expenses. In 1994, the average daily volume of trading of Tenneco Stock was approximately 540,000 shares per day. Because the number of shares of Stock involved in the proposed transaction is small compared to the general trading volume of Tenneco shares, the applicant represents that it anticipates there should be no effect on the market price of the Stock as a result of the proposed transaction.

6. The applicant represents that any sale of Stock by the Plan to Tenneco will comply with conditions (1) and (2) of Act section 408(e), because the sale will be for adequate consideration, and no commissions will be charged in connection with the sale. However, the applicant represents that the exemption proposed herein is needed for the subject transaction because the Stock being contributed to the Plan will constitute more than 10% of the Plan's assets in violation of sections 406(a)(2) and 407(a) of the Act. Tenneco represents that it could contribute a small amount of cash to the Plan and make a succession of small contributions of Stock by the SECT immediately followed by sales thereof in such a manner that the Stock would never represent more than 10% of the assets of the Plan. The applicant believes that this would be in compliance with Act section 407(a). However, such a procedure would be burdensome, and it would be advantageous for Tenneco to be able to make contributions of Stock to the Plan under the safeguards proposed without regard to the 10% limit of section 407(a) of the Act.

7. In summary, the applicant represents that the proposed exemption satisfies the criteria contained in section 408(a) of the Act because: (a) The Plan will dispose of the Stock received within 2 business days of receipt either by sale on the open market or to Tenneco; (b) any sale of Stock by the Plan to Tenneco will comply with conditions (1) and (2) of section 408(e) of the Act; and (c) Tenneco will pay any and all transactional costs for any sales by the Plan on the open market.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Construction Laborers Pension Trust for Southern California (the Trust) Located in El Monte, California

[Exemption Application No. D–09932]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply, effective December 22, 1989, to the leasing (the Lease) of space in a commercial office building (the Property) owned by 4401 Santa Anita Corporation (the Corporation), a corporation that is wholly-owned by the Trust, to American Benefit Plan Administrators, Inc. (ABPA), a party in interest with respect to the Trust.

This proposed exemption is conditioned on the following requirements: (1) The terms of all such leasing arrangements have been, and will remain, at least as favorable to the Trust as those obtainable in an arm's length transaction with an unrelated party; (2) an independent, qualified fiduciary determined, at the Lease's inception, that it was in the best interests of the Trust and its participants and beneficiaries; (3) An independent, qualified fiduciary has monitored and will continue to monitor the Lease for the Trust and the terms and conditions of the exemption; and (4) the rental charged by, and paid to, the Corporation under the Lease has been, and will continue to be, the fair market rental value of the premises as determined by an independent, qualified appraiser.

EFFECTIVE DATE: If granted, this proposed exemption will be effective December 22, 1989.

Summary of Facts and Representations

1. The Trust is a multiemployer plan that covers employees of construction contractors in Southern California. Such contractors include developers, builders, construction managers and owner-builders. The Trust is jointly-administered by sixteen trustees (the Trustees), eight of whom are appointed by multiemployer trade associations representing employers contributing to the Trust and eight of whom are designated by the Southern California District Council of Laborers (the Union). Since 1989, various investment managers have had investment discretion over the assets of the Trust.

2. As of December 31, 1990, the Trust had approximately 20,000 participants and total assets of $671,079,119. The Trust is one of four affiliated Laborer Trusts for Southern California (the Laborer Trusts). The other affiliated Laborer Trusts include the Laborer's Health and Welfare Trust for Southern California, the Construction Laborer's Vacation Trust for Southern California (the Vacation Trust), and the Laborer's Training and Retraining Trust for Southern California.

3. In an effort to relocate the Trusts' operations, Mitchell Hutchins Institutional Investors, Inc. (MHII), as investment manager, executed a purchase and sale agreement, on behalf of the Trust, with an unrelated party to acquire the Property in 1989.[1] The Trust's purchase of the Property coincided with the expiration of several leases of potential tenants, including various parties-in-interest. These potential tenants/parties-in-interest consisted of ABPA, which serves as the Trust's plan administrator, the Collection Office of the Laborers' Trust Funds for Southern California (the Collection Office) and the Union.[2] Prospective additional tenants included the Joint Apprenticeship Committee of the Laborers Training and Retraining Trust for Southern California (the Apprenticeship Committee), an operation newly-created through collective bargaining in 1988 and set to begin operations in 1989, and the Center for Contract Compliance (the Center), a jointly-trusteed, labor-management cooperation committee established through collective bargaining in 1988 for the purpose of monitoring employer compliance with the prevailing wage laws for public works in Southern California. The Trustees overlap to some extent with the trustees of the other trusts.

4. The Property, located within the Airport Business Park at 4399 and 4401 Santa Anita Avenue in El Monte, California, consists of two identical, 32,196 square foot, wood and steel frame office buildings and the underlying land. John J. Archer, ASA, a independent real estate appraiser located in Pasadena, California, appraised the Property prior to its purchase (the Appraisal). Mr. Archer has been involved in appraising all types of residential, commercial and industrial properties since 1953. Mr. Archer also placed the fair market value of the Property, as of February 9, 1989, at $6,800,000. In determining the fair market value of the Property, Mr. Archer gave considerable weight to the income approach of valuation due to the fact that the Property is income producing real estate. Mr. Archer also placed the fair market rental value of the Property for a net lease at $1.15 per square foot per month. At the time of the Appraisal, the Property did not have finished interior rental space.

5. Upon its acquisition, the Property became an asset of the Corporation, which is wholly-owned by the Trust. Due to the unfinished interior of the rental space, the officers of the Corporation, each of whom has extensive experience in the construction industry, interviewed potential construction managers and retained Gibeon, Inc., an unrelated party, to oversee and assist the Corporation in the build-out of the Property.

6. In early 1989, John S. Miller, Jr., Eva Marie Herhusky and John Berry (the Negotiators), all of Los Angeles, California, represented the Corporation in a series of negotiations with ABPA concerning the Lease. ABPA's space needs were primarily related to its servicing of the administrative needs of the Trust. However, its personnel also administer certain other client trusts in the Los Angeles area and its computer facility services all of its clientele nationwide.

7. Prior to the Lease negotiations, ABPA had been actively soliciting new space for its operations and had settled upon space in the Equitable Plaza (Equitable Plaza) on mid-Wilshire in Los Angeles. ABPA's professional leasing agent had negotiated the terms and conditions of a ten-year gross lease on an arm's length basis with the owner of Equitable Plaza to the point that a letter of intent was ready for execution. Such terms and conditions included the rental of approximately 41,000 to 42,000 square feet at a rate of $21.60 per square foot per annum for the first five years (or $1.80 per square foot per month) and $24.00 per square foot per annum for the final five years (or $2.00 per square foot per month) with tenant improvements provided by the landlord at $35.00 per square foot. Additionally, the landlord offered to provide twenty-four months free rent from the commencement of the lease. This proposed lease required ABPA to share

[1] The Department expresses no opinion in this proposed exemption as to whether plan fiduciaries violated any of the fiduciary responsibility provisions of Part 4 of Title I of the Act in acquiring and holding the Property.

[2] The Collection Office is a combined delinquency collection operation of the Laborer Trusts. Even though the Collection Office is operated under the auspices of the Vacation Trust, it is, in all respects, a shared administrative operation with the Laborer Trusts participating in its costs and management on a pro-rata basis.

in any increases in the actual operating costs of the building on a pro-rata basis.

8. In the Lease negotiations, ABPA, on one hand, was attempting at a minimum to match the lease terms it had negotiated with Equitable Plaza. ABPA contended that it should receive better terms from the Corporation because the Equitable Plaza, a 35-story Los Angeles high rise, was a higher quality, more valuable leasehold for ABPA than a leasehold in the Airport Business Park, a low-rise facility in a residential suburb outside Los Angeles. The Negotiators, on the other hand, were attempting to obtain a lease that was at "market rates" for the area in which the Airport Business Park is located.

9. In negotiating the terms of the Lease, the Negotiators relied on the Appraisal and two reports prepared by Mr. Archer which discussed the general concessions and improvements which landlords would typically offer to prospective tenants in order to secure a lease. Such reports included detailed discussions of the common practice of offering free rent for a period of time, the payment of utilities, tenant improvement allowances and probable normal expenses. By letter dated April 12, 1989, Mr. Archer opines that a typical owner of a new office building which was of good quality would expend $20 to $22 per square foot to finish out the building for tenant occupancy depending generally on the size of the area finished at one time. The applicants represent that this $20 to $22 per square foot cost estimate represents the expenditure that landlords would typically invest out of their own pockets without increasing their normal "market rate of rent" to a given tenant. The applicants further represent that once this number is exceeded, the landlord is likely to increase the normal rate of rent in order to recoup the higher costs of preparing the space.

By letter dated September 14, 1989, Mr. Archer estimates that the total operating and fixed expenses per annum would be $401,400 or $6.51 per square foot per annum (or 54.3 cents per square foot per month). Mr. Archer prepared such estimate based upon data for suburban office buildings from 50,000 to 100,000 square feet from the 1989 Building Office Management Association (BOMA) Experience Exchange Report, a compilation of office building data and surveys done for BOMA's members.

10. The Negotiators represent that, during the Lease negotiations, they used the tenant improvement allowance estimate of $20 to $22 per square foot as a bench mark to determine whether the rate of rent negotiated was at least equal to the market rate of rent for similar buildings in similar areas. In addition, ABPA was negotiating for a full service, gross lease, a lease in which all operating and fixed expenses are paid by the landlord and passed through to the tenants in the form of a higher rate of rent per square foot. In order to ensure that the increased cost to the Corporation had been passed on to ABPA through an appropriately higher rate of rent, the Negotiators used the $6.51 per square foot per annum estimate as a basis to calculate the annual cost of the total operating and fixed expenses for which the Corporation would be assuming responsibility. The applicant represents that eventually the Lease terms and conditions were finalized at market levels.[3]

Once this was accomplished, similar lease proposals were made to the Collection Office, the District Council, the Apprenticeship Committee and the Center.[4]

11. The primary provisions of the Lease include the rental of approximately 43,246 square feet at a rate of $2.045 per square foot per month for a term of ten years (or $24.54 per square foot per annum). As a full service gross lease, the landlord remains responsible for all fixed and operating expenses. However, the terms of Lease provide that ABPA is required to share in any increases in the actual operating costs of the Property on a pro-rata basis. In addition, the Lease provides that if the Trust and ABPA cancel their administrative contract at the end of the fifth year of the Lease or thereafter, either party has the right to terminate the Lease with six months written notice. Upon such termination, ABPA is to reimburse the Corporation for the unamortized value of ABPA's special improvements but such amount is not to exceed the lesser of $500,000 or one-half of the unamortized value of ABPA specific improvements.

The Lease does not provide for a tenant improvement allowance; however, the Corporation is required to construct all tenant improvements, including the tenant-specific improvements. The cost of such improvements is included in the Lease payments at a capitalization rate of 9.5 percent over the term of the Lease or 23.5 cents per square foot per month (or $2.82 per square foot per annum).

12. Prior to 1988 and through May 1990, MHII served as the independent, qualified fiduciary for the Trust with respect to the Lease (MHII's Fiduciary Period). By letter dated December 30, 1993, C. Gary Morris, Vice President of MHII, represents that MHII was an investment manager with the meaning of Section 3(38) of the Act. Mr. Morris represents that both he and MHII were unrelated to, and independent of, ABPA during MHII's Fiduciary Period. Mr. Morris states that MHII understood and acknowledged its duties, responsibilities, and liabilities in acting as a fiduciary with respect to the Trust.

Mr. Morris represents that MHII was familiar with the terms of the Lease and all of the documents and relevant information in connection with the Lease, including the Appraisal. Mr. Morris states that the terms of the Lease compared favorably with the terms of similar transactions between unrelated parties and was an arm's length transaction as evidenced by the Appraisal.

MHII reviewed the investment portfolio of the Trust as well as its diversification and liquidity needs. Based on this analysis, Mr. Morris represents that MHII believed that the Lease was in the best interests of the Trust and its participants and beneficiaries. Mr. Morris states MHII considered the Lease as an appropriate and desirable investment for the Trust, based on the Lease's rate of return, the stability of the tenant, the character and diversification of the Trust's other assets, and the projected liquidity needs of the Trust.

MHII was responsible for monitoring the Lease throughout MHII's Fiduciary Period and was willing to take any appropriate action necessary to protect the interests of the Trust and its participants and beneficiaries.

From July 1990 to July 1991, Am Cal served as the independent, qualified fiduciary for the Trust with respect to the Lease (Am Cal's Fiduciary Period). By letter dated April 1, 1993, James Mc Kenna, Executive Vice President of American Realty Advisors, represents that prior to 1992, that he was the president and a director of Am Cal, an independent real estate investment advisory service. Mr. Mc Kenna further represents that Am Cal was an investment manager with the meaning of Section 3(38) of the Act. Mr. Mc Kenna represents that both he and Am Cal were unrelated to, and independent of, ABPA during Am Cal's Fiduciary Period. Mr. Mc Kenna states that Am Cal understood and acknowledged its duties, responsibilities and liabilities in acting as a fiduciary with respect to the Trust.

Mr. Mc Kenna represents that once Am Cal became the investment manager for the Trust, it reviewed all the assets and investments of the Trust which included the Lease. Am Cal engaged Crane Realty Services (Crane), local commercial property manager, who further reviewed the terms of the Lease and other leases on the Property. Crane advised Mr. Mc Kenna that all of the leases of the Property, including the Lease, were "at market." Additionally, Am Cal discussed the Property, the Lease and the other leases with the Negotiators to ascertain how the Property had been acquired and built out and how the Lease terms and conditions had been negotiated. In addition, Am Cal reviewed the Appraisal and the two reports prepared by Mr. Archer.

After obtaining the above information, Mr. Mc Kenna represents that Am Cal reviewed the terms of the Lease and all of the documents and relevant information in connection with the Lease. Mr. Mc Kenna states that the terms of the Lease compared favorably with the terms of similar transactions between unrelated parties and would be an arm's length transaction as evidenced by the information provided by Crane, the Negotiators, Am Cal's knowledge of commercial leasing conditions in Los Angeles County, the Appraisal and the two reports prepared by Mr. Archer.

Am Cal reviewed the investment portfolio of the Trust and considered the diversification of the Trust's assets as well as the liquidity needs of the Trust. Based on this analysis, Mr. Mc Kenna represents that Am Cal determined that the Lease was in the best interests of the Trust and its participants and beneficiaries. Mr. Mc Kenna states that Am Cal considered the Lease an appropriate and desirable investment for the Trust, based on the Lease's rate of return, the stability of the tenant, the character and diversification of the Trust's other assets, and the projected liquidity needs of the Trust. Mr. Mc Kenna represents that Am Cal, with the aide of Crane, monitored the Lease throughout Am Cal's Fiduciary Period.

During Am Cal's Fiduciary Period, Mr. Archer, by letter dated October 15, 1991, reviewed the Lease and the draft report on the factors considered in the Lease negotiations for Am Cal. Taking into consideration not only the rental, but other terms of the Lease which would typically be found in a lease entered into by unrelated parties in arm's length negotiations, Mr. Archer opined that the Lease was at fair market rent as of December of 1989, the commencement of the Lease. Mr. Archer stated that although he did not directly participate in the negotiation of the Lease or any of its particular terms, he did provide advice to Mr. Berry and Mr. Miller concerning the calculation of rent under a gross rental lease and on customary provisions and practices in office space leases.

Since July 1991, TDA, Inc. (TDA) has served as the independent, qualified fiduciary for the Trust with respect to the Lease. By letter dated November 11, 1992, Wayne Turner, a principal in TDA, represents that TDA is an investment manager with the meaning of Section 3(38) of the Act. Mr. Turner represents that both he and TDA are unrelated to, and independent of, ABPA. Mr. Turner states that TDA understands and acknowledges its duties, responsibilities and liabilities in acting as a fiduciary with respect to the Trust.

Mr. Turner represents that TDA has reviewed the terms of the Lease and all of the documents and relevant information in connection with the Lease. Mr. Turner states that the terms of the Lease compare favorably with the terms of similar transactions between unrelated parties and is an arm's length transaction as evidenced by the negotiations.

TDA has reviewed the current investment portfolio of the Trust as well as its diversification and liquidity needs. Based on this analysis, Mr. Turner represents that TDA believes that the Lease is in the best interests of the Trust and its participants and beneficiaries. Mr. Turner states that TDA considers the Lease to be an appropriate and desirable investment for the Trust.

Mr. Turner represents that TDA has monitored and will continue to monitor the Lease throughout its entire duration and will take any appropriate action necessary to protect the interests of the Trust and its participants and beneficiaries.

13. In summary, it is represented that the Lease transaction satisfies the statutory criteria for an exemption under section 408(a) of the Act because: (a) The terms of the Lease have been, and will remain, at least as favorable to the Trust as those obtainable in an arm's length transaction with an unrelated party; (b) MHII, as independent, qualified fiduciary believed, prior to its commencement, that the Lease was in the best interests of the Trust and its participants and beneficiaries; (c) MHII, Am Cal, and TDA as independent, qualified fiduciaries have monitored and TDA will monitor the Lease on behalf of the Trust as well as the terms and the conditions of the exemption at all times; and (d) the rental charge by the Corporation under the Lease has and continues to be based upon the fair market rental value of the premises as determined by an independent, qualified appraiser.

FOR FURTHER INFORMATION CONTACT: Kathryn Parr of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

United Food and Commercial Workers Union Local 789 and St. Paul Food Employers Health Care Plan (the Plan) Located in Bloomington, Minnesota

[Application No. L–09933]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of section 406(a) of the Act shall not apply to the proposed purchase of prescription drugs, at discount prices, by Plan participants and beneficiaries, from Supervalu Pharmacies, Inc. (SPI) and Cub Foods (Cub), parties in interest with respect to the Plan, provided the following conditions are satisfied: (a) The terms of the transaction are at least as favorable to the Plan as those the Plan could obtain in a similar transaction with an unrelated party; (b) any decision by the Plan to enter into agreements governing the subject purchases will be made by Plan fiduciaries independent of SPI and Cub; and (c) at least 50% of the preferred providers participating in the Preferred Pharmacy Network (PPN) which will be selling prescription drugs to the Plan's participants and beneficiaries will be unrelated to SPI and Cub.

Summary of Facts and Representations

1. The Plan is a multiemployer welfare benefit plan which has been in existence since 1966. The Plan was

[3] The Department notes that no relief is proposed herein for the provision of services by ABPA to the Trust. The provision of services would be exempt from the prohibitions of section 406(a) provided the conditions of section 408(b)(2) are met. In this regard, the Department notes that the Trust renegotiated its administrative services contract with ABPA at approximately the same time as the negotiation of the Lease. The Department further wishes to point out that the proposal limits relief to the Lease transaction. Thus, no relief is proposed for any transaction that is part of a broader agreement, arrangement or understanding involving the Lease in which a fiduciary caused plan assets to be used in a manner designed to benefit a party in interest.

[4] The applicant represents that Prohibited Transaction Exemption (PTE) 76–1 and PTE 77–10 provide relief from 406 (a) and (b)(2) for leasing of office space from multiemployer plans to a participating employee organization, a participating employer or employer association, or another multiemployer plan with common trustees. The Department expresses no opinion in this proposed exemption on whether the leasing of such office space satisfies the terms and conditions of such exemptions.

established to provide health and welfare benefits including life, sickness, accident and other benefits for participants and their beneficiaries. The Plan is directed by a joint board of trustees composed of five individuals selected to represent the United Food and Commercial Workers Union Local 789 (the Union) and five individuals selected to represent the retail food employers. The Plan currently has approximately 3,135 participants and beneficiaries, and $2,209,380 in total assets.

2. SPI is a wholly owned subsidiary of Supervalu, Inc. (Supervalu), a large retail grocer in Minnesota. Cub, another wholly owned subsidiary of Supervalu, is also a large retail grocer with stores located primarily throughout the Twin City Metropolitan Area. SPI's are located in Cub stores. The applicant represents that Supervalu and Cub are both parties in interest to the Plan because they make contributions to the Plan on behalf of their employees that are participants in the Plan.

3. Under the Plan, participants have two alternative ways to receive the prescription drug benefit. One, a participant may have a prescription filled at an out-of-network pharmacy, pay the pharmacy's charge for the prescription at the time of dispensing, and submit a reimbursement claim to the Plan Administrator. The Plan would then reimburse the participant in full for the pharmacy's charge for the prescription, less the $5.00 participant co-payment. Two, a participant may have a prescription filled at a pharmacy within a preferred network, and pay only the $5.00 co-payment. The pharmacy then submits the claim for the remaining agreed-upon cost for the prescription directly to the Plan Administrator.

4. Effective January 1, 1994, the trustees of the Plan implemented the Plan's first prescription drug PPN in order to manage prescription drug price and utilization, manage related costs, provide ready participant access to courteous and reliable pharmacy services and professional advice, and to minimize or eliminate eligibility policing problems. The first Preferred Provider Agreement (the Agreement), the result of arm's-length negotiations, is between the Plan and Snyder Drug Stores, Inc. (Snyder). Snyder is not a party in interest with respect to the Plan.

5. Under the Agreement, Snyder agrees to provide prescription drugs to the Plan participants and their beneficiaries consistent with the Plan document and the Agreement at a specified reduced cost in exchange for the potential to realize an expanded customer base due to its status as a preferred pharmacy with respect to the Plan. The material elements of the Agreement are as follows:

(1) Snyder agrees to dispense covered prescription drugs, using generic drugs when available, within prescribed dosage units for one dispensing fee;

(2) The agreed upon dispensing fee is:

(a) The lesser of:

(i) The Usual and Customary charge for such prescription drug, or

(ii) The sum of the Drug Acquisition Cost plus the Professional Dispensing Fee.

The Drug Acquisition Cost for each prescription drug provided by the Pharmacy to an Eligible Person shall be defined to be the lesser of the following amounts:

(a) 90% of the AWP (average wholesale price) for such prescription drug; or

(b) The lowest stated maximum allowable cost (MAC) for such prescription drug on the most recently published pharmaceutical industry maximum allowable cost list, however, in no event will the MAC price exceed the Federal Upper Limits (as published by the Federal Government under the Federal Medical Entitlement Program).

The Professional Dispensing Fee shall equal $2.45 for each dispensing of a prescription drug in accordance with the Plan and the Agreement.

(3) Neither the Plan nor the participant is liable for the cost of any prescription drug dispensed contrary to the Agreement;

(4) Snyder will provide eligibility identification cards, maintain a current computerized eligibility list, and verify eligibility prior to dispensation;

(5) The Plan receives 67½ percent of formulary rebates received by Snyder based on the dispensing of each manufacturer's formulary drugs under the Plan and the Agreement. The Plan also receives quarterly formulary reports of formulary drugs dispensed and rebates received;

(6) The Plan has the right to inspect Snyder's records to audit claims and formulary rebates;

(7) Snyder must provide monthly prescription drug utilization reports; and

(8) The Plan has the right to terminate the Agreement upon a maximum of 60 days written notice.

6. The Plan's trustees have also negotiated an identical Agreement with SPI, thereby significantly expanding the PPN by including the pharmacies located in Cub stores. The terms of the SPI Agreement are identical to those of the Snyder Agreement. The applicant represents that the fees are determined by a combination of amounts objectively established by reference to industry resources and beyond the control or manipulation of SPI.

7. The applicant represents that the Plan wishes to enter the Agreement with SPI to maximize the benefits that can be provided to participants and their beneficiaries. Reducing the cost paid by the Plan for prescription drugs will enable the Plan to maintain its current level of benefits to the participants and their beneficiaries. Expanding the PPN to include SPI, thereby increasing the utilization of the PPN, will enable the Plan to obtain additional discounts on prescriptions currently dispensed out-of-network. The Plan will be able to receive even greater savings due to the negotiated fees rather than the usual and customary billing of out-of-network pharmacies. The applicant represents that it is projected that the Plan will realize an additional 14% reduction of its prescription drug expenses over last year by the addition of SPI to the PPN. The requested exemption is also in the interest of the Plan because preferred pharmacies will be more conveniently located as a result of the expanded PPN.

8. The applicant represents that the PPN will be at least 50% composed of preferred providers that are not affiliated with Supervalu or Cub. In addition, the applicant represents that one of the current trustees of the Plan, Mr. Markwell, is an employee of Cub. The applicant further represents that to address the potential conflict of interest, Mr. Markwell has in the past and will continue in the future, to recuse himself from all discussions and/or votes that relate to the operation or maintenance of the PPN. Thus, all Plan decisions with respect to the PPN, including any decision to enter into the Agreement with SPI, will be made by Plan fiduciaries unrelated to Supervalu or Cub.

9. In summary, the applicant represents that the proposed transaction satisfies the criteria contained in section 408(a) of the Act for the following reasons: (a) The terms of the transaction are at least as favorable to the Plan as those the Plan could obtain in an arm's-length transaction with an unrelated party; (b) any decision made by the Plan with respect to the Agreement with SPI will be made by Plan fiduciaries independent of SPI and Cub; and (c) at least 50% of the preferred providers participating in the PPN which will be selling prescription drugs to the Plan's participants and beneficiaries will be unrelated to SPI and Cub.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

The General Motors Hourly-Rate Employees' Pension Plan (the GM Hourly Plan); The General Motors Retirement Program for Salaried Employees (the GM Salaried Plan); The Saturn Individual Retirement Plan for Represented Team Members (the SIRP); The Saturn Personal Choices Retirement Plan for Non-Represented Team Members (the SPCRP;) and The Employees' Retirement Plan for GMAC Corporation (the GMAC Plan; all Five Plans Collectively, the GM Plans); The AT&T Pension Plan; and the AT&T Management Pension Plan (the AT&T Management Plan; Together, the AT&T Plans; all Seven Plans Collectively, the Plans) Located in Detroit, Michigan (the GM Plans), and in New York, New York (the AT&T Plans)

[Application Nos. D–09964 through D–09968]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to (1) the proposed granting to The Industrial Bank of Japan, Limited, New York Branch (IBJ), as the representative of lenders (the Lenders) participating in a credit facility (the Facility), of security interests in limited partnership interests in The Morgan Stanley Real Estate Fund II, L.P. (the Partnership) owned by the Plans with respect to which some of the Lenders are parties in interest; and (2) the proposed agreements by the Plans to honor capital calls made by IBJ in lieu of the Partnership's general partner; provided that (a) the proposed grants and agreements are on terms no less favorable to the Plans than those which the Plans could obtain in arm's-length transactions with unrelated parties; and (b) the decisions on behalf of each Plan to invest in the Partnership and to execute such grants and agreements in favor of IBJ are made by a fiduciary which is not included among, and is independent of, the Lenders and IBJ.

Summary of Facts and Representations

1. The Partnership is a Delaware limited partnership the general partner of which is MSREF II, L.P. (the General Partner), a Delaware limited partnership the general partner of which is MSREF II, Inc., a wholly owned subsidiary of Morgan Stanley Group, Inc. or one or more of its affiliates. The Partnership is organized under an agreement (the Agreement) dated December 29, 1994. The Partnership has a term expiring on December 31, 2004, subject to extension by the General Partner for up to three successive one-year terms. The Partnership has been organized to make investments, including leveraged equity investments, in undervalued or inappropriately capitalized real estate assets and portfolios, and corporate real estate. Proceeds from the sale or refinancing of properties generally will not be reinvested, but will be distributed to the limited partners, so that the Partnership will be self-liquidating.

2. After execution of the Agreement, the General Partner sought capital commitments through private placement and has obtained, as a result, irrevocable, unconditional capital commitments in excess of $350,000,000 from 18 purchasers of limited partnership units (the Limited Partners). The Agreement requires Limited Partners to make capital contributions upon receipt of notice from the General Partner. Under the Agreement, the General Partner may make a call for cash contributions, also known as a "drawdown", up to the total amount of the Limited Partner's capital commitment upon 15 days notice, with some limitations. The Partners' capital commitments are structured as irrevocable, unconditional and binding commitments to contribute equity when capital calls are made by the General Partner. The obligation of each Limited Partner to contribute the full amount of its capital commitment is secured by a security interest granted to the Partnership in the Limited Partner's partnership interest.

3. In the ordinary course of its business operations, it is contemplated that the Partnership will incur indebtedness in connection with many of its investments. This on-going need for credit will be provided by the Facility, a three-year arrangement for $300 million in revolving credit which will enable the Partnership to consummate investments quickly without the delay of separate arrangements for interim or permanent financing for each investment. The Facility is funded by the Lenders, represented by IBJ, which is also a participating Lender. IBJ serves as administrative agent for the Facility. The Facility is a non-recourse obligation of the Partnership which matures November 18, 1998 and which is secured by a security interest in the Limited Partners' capital commitments, the General Partner's right to make drawdowns and the Partnership's lien and security interest in each Limited Partner's partnership interest. As additional security, the Facility will require each Limited Partner to execute an agreement (the Security Agreement) granting to IBJ, for the benefit of each Lender, a security interest and lien in the Limited Partner's partnership interest, and covenanting with IBJ, for the benefit of the Lenders, that such Limited Partner will unconditionally honor any drawdown made by IBJ in accordance with the Agreement in lieu of the General Partner to the full extent of the Limited Partner's unfunded capital commitment.

4. The trusts which hold assets of the Plans (the Trusts) own limited partnership interests as Limited Partners in the Partnership. Some of the Lenders may be parties in interest with respect to some of the Plans in the Trusts by virtue of such Lenders' (or their affiliates') provisions of fiduciary services to such Plans with respect to Trust assets other than the Partnership interests. IBJ is requesting an exemption to permit the Trusts to enter into the Security Agreements under the terms and conditions described herein. The Plans and the other Limited Partners with the largest interests in the Partnership and the extent of their respective capital commitments to the Partnership are described as follows:

(a) The GM Hourly Plan, a defined benefit plan with 599,262 participants as of September 30, 1993, and assets with a total value of approximately 21.6 billion dollars on that date. Assets of the GM Hourly Plan are held in the Third Plaza Trust (the TP Trust), of which Mellon Bank, N.A. is the trustee. Assets of the SIRP (a defined benefit plan with 7,178 participants as of September 30, 1993), the SPCRP (a defined benefit plan with 1,435 participants as of September 30, 1993), and the GMAC Plan (a defined benefit plan with 2,761 participants as of June 21, 1994), are also held in the TP Trust. The TP Trust has undertaken a total capital commitment of $75,000,000 to the Partnership.

(b) The GM Salaried Plan, a defined benefit pension plan with 223,262 participants as of September 30, 1993, and assets with a total value of approximately 20.8 billion dollars as of

that date. Assets of the GM Salaried Plan are held in the Fourth Plaza Trust (the FP Trust), of which Mellon Bank, N.A. is the trustee. The FP Trust has undertaken a total capital commitment of $75,000,000 to the Partnership. The fiduciary responsible for authorizing and overseeing the GM Plans' investment in the Partnership and, subsequently, for monitoring such investment, is the General Motors Investment Management Corporation.

(c) The AT&T Pension Plan, a defined benefit pension plan with 261,788 participants as of December 31, 1993, and with assets of approximately 18.21 billion dollars as of that date, and the AT&T Management Plan, with 180,452 participants as of December 31, 1993 and with assets of approximately 20.03 billion dollars as of that date. Assets of the AT&T Plans are held in the AT&T Master Pension Trust (the AT&T Trust), of which State Street Bank and Trust Company is the trustee. The AT&T Trust has undertaken a total capital commitment of $150,000,000 to the Partnership. The fiduciary responsible for reviewing and authorizing the investment in the Partnership by the AT&T Plans is David Feldman, Corporate Vice President, American Telephone & Telegraph Company Investment Management Organization.

(d) Limited Partners which are not ERISA-covered plans include:

(i) Wells Fargo & Company, which has undertaken a total capital commitment of $15,000,000.

(ii) Allstate Insurance Company, which has undertaken a total capital commitment of $40,000,000.

(iii) Morstar Realty, N.V., which has undertaken a total capital commitment of $15,000,000.

5. IBJ represents that the Partnership has obtained an opinion of counsel that the Partnership will constitute an "operating company" under the Department's plan asset regulations [29 CFR 2510.3–101(c)] if the Partnership is operated in accordance with the Agreement and the offering memorandum (the Offering) distributed in connection with the private placement of the limited partnership interests.[5]

6. IBJ represents that the Security Agreement constitutes a form of credit security which is customary among financing arrangements for real estate limited partnerships, wherein the financing institutions do not obtain security interests in the real property assets of the partnership. IBJ also represents that the obligatory execution of the Security Agreement by the Limited Partners for the benefit of the Lenders was fully disclosed in the Offering as a requisite condition of investment in the Partnership during the private placement of the limited partnership interests. IBJ represents that the only direct relationship between any of the Limited Partners and any of the Lenders is the execution of the Security Agreements. All other aspects of the transaction, including the negotiation of all terms of the Facility, are exclusively between the Lenders and the Partnership. IBJ represents that the proposed executions of the Security Agreements will not affect the abilities of the Trusts to withdraw from investment and participation in the Partnership. The only Plan assets to be affected by the proposed transaction are each Plan's limited partnership interests in the Partnership and the related Plan obligations as Limited Partners to respond to drawdowns up to the total amount of each Plan's capital commitment to the Partnership.

7. IBJ represents that neither it nor any Lender acts or has acted in any fiduciary capacity with respect to any Trust's investment in the Partnership and that IBJ is independent of and unrelated to those fiduciaries (the Trust Fiduciaries) responsible for authorizing and overseeing the Trusts' investments in the Partnership. Each Trust Fiduciary represents independently that its authorization of Trust investment in the Partnership was free of any influence, authority or control by the Lenders. The Trust Fiduciaries represent that the Trust's investments in and capital commitments to the Partnership were made with the knowledge that each Limited Partner would be required subsequently to grant a security interest in the Partnership to the Lenders and to honor drawdowns made on behalf of the Lenders without recourse to any defenses against the General Partner. Each Trust Fiduciary individually represents that it is independent of and unrelated to IBJ and the Lenders and that the investment by the Trust for which that Trust Fiduciary is responsible continues to constitute a favorable investment for the Plans participating in that Trust and that the execution of the Security Agreement is in the best interests and protective of the participants and beneficiaries of such Plans.

8. In summary, the applicants represent that the proposed transactions satisfy the criteria of section 408(a) of the Act for the following reasons: (1) The Plans' investments in the Partnership were authorized and are overseen by the Trust Fiduciaries, which are independent of the Lenders; (2) None of the Lenders have any influence, authority or control with respect to the Plans' investments in the Partnership or the Plans' executions of the Security Agreements; and (3) The Trust Fiduciaries invested in the Partnership on behalf of the Plans with the knowledge that the Security Agreements are required of all Limited Partners investing in the Partnership.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Eaton Corporation Share Purchase and Investment Plan (the Plan) Located in Cleveland, Ohio

[Application No. D–09978]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to: (1) The proposed extension of credit by Eaton Corporation (Eaton) to the Plan in the form of loans (the Loans) with respect to certain guaranteed investment contracts (collectively, the GICs); and (2) the repayment (the Repayments) by the Plan of all or a portion of amounts advanced to the Plan by Eaton on the terms described in the agreement governing such Loans, provided: (a) All terms of such transactions are no less favorable to the Plan than those which the Plan could obtain in arm's-length transactions with unrelated parties; (b) no interest or other expenses will be incurred by the Plan in connection with the Loans; (c) the Loans would be made only when, and to the extent needed, to avoid penalties that would otherwise be incurred if the liquidation of one or more of the GICs is required, as determined by the Corporate Compensation Committee (the Plan Committee); (d) Repayments will be made only from payments made to the Plan as the GICs mature (the GIC Proceeds); (e) the Repayments will not exceed the total amount of the Loans; and (f) the Repayments will be waived to the extent that the Loans exceed the GIC Proceeds.

[5] The Department expresses no opinion herein as to whether the Partnership will constitute an operating company under the regulations at 29 CFR 2510.3–101.

EFFECTIVE DATE: If this proposed exemption is granted, it will be effective July 5, 1995.

Summary of Facts and Representations

1. Eaton, an Ohio corporation headquartered in Cleveland, is the Plan sponsor. The Plan is a defined contribution plan that had approximately 23,500 participants and assets of $731,839,175 as of December 30, 1993. The participants of the Plan are employees of Eaton or its subsidiaries. Contributions to the Plan are made by Eaton and by participants. Participant contributions are made pursuant to before-tax salary reduction agreements and/or after-tax payroll deduction agreements. Effective July 5, 1989, the portion of the Plan that is attributable to Eaton contributions is designed to be invested primarily in Eaton securities and constitutes an employee stock ownership plan (ESOP) within the meaning of Act section 407(d)(6). The Plan Committee is responsible for the general administration of the Plan, and the Plan's Investment Committee (the Investment Committee) has the exclusive authority to select the Plan's investment options and the underlying investment vehicles.

2. The Plan allows individual investment direction for that portion of participants' accounts which derives from participant contributions. Participants may direct the investment of that portion of their accounts into one or more of several investment funds maintained by the Plan. Currently, the funds available include the Fixed Income Fund, the Aggressive Growth Fund, the Balanced Fund, the Equity Fund, the International Fund, the Stock Index Fund and the Eaton Common Shares Fund (which invests primarily in Eaton securities). Participants may transfer their account balances among the investment funds once every 30 days. The Fixed Income Fund has its assets invested primarily in guaranteed investment contracts with insurance companies. The remainder of the Fixed Income Fund's assets are invested in government securities and corporate debt instruments. As of December 30, 1993, the Fixed Income Fund had assets of $127,881,436 and comprised 17.47% of the total assets of the Plan. Key Trust Company of Ohio, N.A. (Key Trust) currently serves as the trustee holding all assets of the Plan. Key Trust has been appointed by the Investment Committee as the Investment Manager of the Fixed Income Fund and the Stock Index Fund.

3. Among the guaranteed investment contracts currently held by the Fixed Income Fund are the GICs, which can be described as follows:

(a) Effective January 20, 1994, the Plan purchased Guaranteed Investment Contract No. GA 322 GIC (GIC–1) from Life Insurance Company of Georgia. The Plan purchased GIC–1 for $5 million. GIC–1 provides an annual guaranteed interest rate of 5.0% and matures on January 20, 1998.

(b) Effective November 20, 1992, the Plan purchased Guaranteed Investment Contract No. GA 299 GIC (GIC–2) from Life Insurance Company of Georgia. The Plan purchased GIC–2 for $10 million. GIC–2 provides an annual guaranteed interest rate of 6.15% and matures on November 20, 1996.

(c) Effective February 18, 1992, the Plan purchased Guaranteed Investment Contract No. GA–5265 (GIC–3) from Allstate Life Insurance Company. The Plan purchased GIC–3 for $10 million. GIC–3 provides an annual guaranteed interest rate of 7.65% and matures on April 1, 1997.

(d) Effective August 13, 1990, the Plan purchased Guaranteed Investment Contract No. GB 10020 (GIC–4) from Massachusetts Mutual Life Insurance Company. The Plan purchased GIC–4 for $20 million. GIC–4 provides an annual guaranteed interest rate of 9.37% and matures on August 16, 1995.

The GICs are valued at $47,605,741 and constitute 37.23% of the Fixed Income Fund's $127,881,436 of assets.[6] At maturity, the current accumulated book value of the GICs (Accumulated Book Value), defined as the initial deposit, plus interest at the contract rate, less any withdrawals during the term of the GIC, is to be paid to the Plan. All of the four GICs provide for a penalty upon early withdrawal. Of the Fixed Income Fund's assets, $55,267,367 (43.22%) are invested in other guaranteed investment contracts which do not impose penalties for early withdrawal.

4. Eaton has determined that Plan participants should be provided expanded investment options under the Plan. Eaton plans to allow each participant to transfer all or a portion of his/her account balance subject to participant direction into a new money market fund, the Money Market Fixed Income Fund, to be selected by the Investment Committee. The addition of this fund not only will provide participants with an alternative to the Fixed Income Fund, but will provide a mechanism for easing the transfer of account balances into and out of other funds available under the Plan. There is concern, however, that participants may be subject to adverse financial consequences if the amount of Plan assets transferred from the Fixed Income Fund exceeds the availability of assets in that Fund that can be liquidated without penalty. If that situation arises, the Plan would be forced to liquidate one or more of the GICs prior to maturity, thus triggering financial penalties and causing potential losses to Plan participants.

5. Accordingly, Eaton proposes to advance funds to the Plan up to the Accumulated Book Value of the GICs, as of July 5, 1995 (see rep. 7, below), plus additional interest at the contract rate that accrues through the date of any Loans that Eaton makes to the Plan. The Plan proposes to accept such Loans in order to enable participants to transfer their account balances currently invested in the Fixed Income Fund into the Money Market Fund, or any other fund, without incurring a penalty for premature liquidation of one or more of the GICs. The Loans would be non-interest bearing and would be available under a line of credit running from Eaton to the Plan. The Loans would be made only when, and to the extent, needed to avoid penalties that would otherwise be incurred if the liquidation of one or more of the GICs is required, as determined by the Plan Committee. The Plan will agree to repay the Loans to Eaton, without interest, only from the GIC Proceeds. No collateral would be required or given, and no other Plan assets would be used to make the Repayments.

6. To the extent that Eaton and the Plan ultimately recoup less than the amount of the Loans, Repayment would be waived. If GIC Proceeds remain after full Repayment of the Loans following maturity of the affected GICs, those amounts will be allocated on a proportional basis to any participant who then has an account in the Plan.

7. The Investment Committee proposes to add the Money Market Fund effective July 5, 1995, and accordingly expects to receive a significant quantity of participant requests to transfer into that fund as of that date. The Loans may therefore be required as of July 5, 1995 to avoid adverse financial consequences to participants if the demand for transfers out of the Fixed Income Fund for the period commencing July 5, 1995 and ending January 20, 1998 (when the last GIC matures) exceeds the Fixed

[6] These valuation figures were calculated using the contract value of the GICs, i.e., contributions made under the GICs plus interest at the contracts' stated rates, less Plan expenses directly attributable to the holding of the GICs. The figures were taken from the December 30, 1993 audited financial statements and therefore do not include the value of GIC–1, which was purchased effective January 20, 1994.

Income Fund's access to unrestricted assets. Thus, Eaton has requested that the exemption proposed herein be made effective July 5, 1995.

8. In summary, the applicant represents that the proposed transactions satisfy the criteria contained in section 408(a) of the Act because: (a) All terms of the transactions will be no less favorable to the Plan than those obtainable in arm's-length terms with unrelated parties; (b) the Plan will pay no interest or other expenses in connection with the Loans; (c) the Loans will enable Plan participants to transfer their account balances out of the Fixed Income Fund without incurring penalties for premature liquidation of the GICs; (d) Repayments will be made only from GIC Proceeds; (e) the Repayments will not exceed the total amount of the Loans; and (f) the Repayments will be made waived to the extent that the Loans exceed the GIC Proceeds.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Rothschild, Incorporated (Rothschild) Located in New York, New York

[Application No. D–09993]

Proposed Exemption

I. Transactions

A. The restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to the following transactions involving trusts and certificates evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and an employee benefit plan when the sponsor, servicer, trustee or insurer of a trust, the underwriter of the certificates representing an interest in the trust, or an obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.A. (1) or (2).

Notwithstanding the foregoing, section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 for the acquisition or holding of a certificate on behalf of an Excluded Plan by any person who has discretionary authority or renders investment advice with respect to the assets of that Excluded Plan.[7]

B. The restrictions of sections 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1)(E) of the Code shall not apply to:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the certificates is (a) an obligor with respect to 5 percent or less of the fair market value of obligations or receivables contained in the trust, or (b) an affiliate of a person described in (a); if:

(i) The plan is not an Excluded Plan;

(ii) solely in the case of an acquisition of certificates in connection with the initial issuance of the certificates, at least 50 percent of each class of certificates in which plans have invested is acquired by persons independent of the members of the Restricted Group and at least 50 percent of the aggregate interest in the trust is acquired by persons independent of the Restricted Group;

(iii) a plan's investment in each class of certificates does not exceed 25 percent of all of the certificates of that class outstanding at the time of the acquisition; and

(iv) immediately after the acquisition of the certificates, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice are invested in certificates representing an interest in a trust containing assets sold or serviced by the same entity.[8] For purposes of this paragraph B.(1)(iv) only, an entity will not be considered to service assets contained in a trust if it is merely a subservicer of that trust;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates, provided that the conditions set forth in paragraphs B.(1) (i), (iii) and (iv) are met; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.B. (1) or (2).

C. The restrictions of sections 406(a), 406(b) and 407(a) of the Act, and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of a trust, provided:

(1) Such transactions are carried out in accordance with the terms of a binding pooling and servicing arrangement; and

(2) The pooling and servicing agreement is provided to, or described in all material respects in the prospectus or private placement memorandum provided to, investing plans before they purchase certificates issued by the trust.[9]

Notwithstanding the foregoing, section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act or from the taxes imposed by reason of section 4975(c) of the Code for the receipt of a fee by a servicer of the trust from a person other than the trustee or sponsor, unless such fee constitutes a "qualified administrative fee" as defined in section III.S.

D. The restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by sections 4975 (a) and (b) of the Code by reason of sections 4975(c)(1) (A) through (D) of the Code, shall not apply to any transactions to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider described in section 3(14) (F), (G), (H) or (I) of the Act or section 4975(e)(2) (F), (G), (H) or (I) of the Code), solely because of the plan's ownership of certificates.

II. General Conditions

A. The relief provided under Part I is available only if the following conditions are met:

(1) The acquisition of certificates by a plan is on terms (including the certificate price) that are at least as favorable to the plan as they would be in an arm's-length transaction with an unrelated party;

(2) The rights and interests evidenced by the certificates are not subordinated to the rights and interests evidenced by other certificates of the same trust;

(3) The certificates acquired by the plan have received a rating at the time of such acquisition that is in one of the three highest generic rating categories from either Standard & Poor's Corporation (S&P's), Moody's Investors Service, Inc. (Moody's), Duff & Phelps Inc. (D&P) or Fitch Investors Service, Inc. (Fitch);

(4) The trustee is not an affiliate of any member of the Restricted Group. However, the trustee shall not be considered to be an affiliate of a servicer solely because the trustee has succeeded to the rights and responsibilities of the servicer pursuant to the terms of a pooling and servicing agreement providing for such succession upon the occurrence of one or more events of default by the servicer;

(5) The sum of all payments made to and retained by the underwriters in connection with the distribution or placement of certificates represents not more than reasonable compensation for underwriting or placing the certificates; the sum of all payments made to and retained by the sponsor pursuant to the assignment of obligations (or interests therein) to the trust represents not more than the fair market value of such obligations (or interests); and the sum of all payments made to and retained by the servicer represents not more than reasonable compensation for the servicer's services under the pooling and servicing agreement and reimbursement of the servicer's reasonable expenses in connection therewith; and

(6) The plan investing in such certificates is an "accredited investor" as defined in Rule 501(a)(1) of Regulation D of the Securities and Exchange Commission under the Securities Act of 1933.

B. Neither any underwriter, sponsor, trustee, servicer, insurer, or any obligor, unless it or any of its affiliates has discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire certificates, shall be denied the relief provided under Part I, if the provision of subsection II.A.(6) above is not satisfied with respect to acquisition or holding by a plan of such certificates, provided that (1) such condition is disclosed in the prospectus or private placement memorandum; and (2) in the case of a private placement of certificates, the trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's certificates) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees will be required to make a written representation regarding compliance with the condition set forth in subsection II.A.(6) above.

III. Definitions

For purposes of this exemption:

A. "Certificate" means:

(1) a certificate—

(a) that represents a beneficial ownership interest in the assets of a trust; and

(b) that entitles the holder to pass-through payments of principal, interest, and/or other payments made with respect to the assets of such trust; or.

(2) a certificate denominated as a debt instrument—

(a) that represents an interest in a Real Estate Mortgage Investment Conduit (REMIC) within the meaning of section 860D(a) of the Internal Revenue Code of 1986; and

(b) that is issued by and is an obligation of a trust;

with respect to certificates defined in (1) and (2) above for which Rothschild or any of its affiliates is either (i) the sole underwriter or the manager or co-manager of the underwriting syndicate, or (ii) a selling or placement agent.

For purposes of this exemption, references to "certificates representing an interest in a trust" include certificates denominated as debt which are issued by a trust.

B. "Trust" means an investment pool, the corpus of which is held in trust and consists solely of:

(1) Either

(a) Secured consumer receivables that bear interest or are purchased at a discount (including, but not limited to, home equity loans and obligations secured by shares issued by a cooperative housing association);

(b) Secured credit instruments that bear interest or are purchased at a discount in transactions by or between business entities (including, but not limited to, qualified equipment notes secured by leases, as defined in section III.T.);

(c) Obligations that bear interest or are purchased at a discount and which are secured by single-family residential, multi-family residential and commercial real property (including obligations secured by leasehold interests on commercial real property);

(d) Obligations that bear interest or are purchased at a discount and which are secured by motor vehicles or equipment, or qualified motor vehicle leases (as defined in section III.U.);

(e) "Guaranteed governmental mortgage pool certificates," as defined in 29 CFR 2510.3–101(i)(2);

(f) Fractional undivided interests in any of the obligations described in clauses (a)-(e) of this section B.(1);

(2) Property which had secured any of the obligations described in subsection B.(1);

(3) Undistributed cash or temporary investments made therewith maturing no later than the next date on which distributions are to made to certificateholders; and

(4) Rights of the trustee under the pooling and servicing agreement, and rights under any insurance policies, third-party guarantees, contracts of suretyship and other credit support arrangements with respect to any obligations described in subsection B.(1).

Notwithstanding the foregoing, the term "trust" does not include any investment pool unless: (i) The investment pool consists only of assets of the type which have been included in other investment pools, (ii) certificates evidencing interests in such other investment pools have been rated in one of the three highest generic rating categories by S&P's, Moody's, D & P, or Fitch for at least one year prior to the plan's acquisition of certificates pursuant to this exemption, and (iii) certificates evidencing interests in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of certificates pursuant to this exemption.

C. "Underwriter" means:

(1) Rothschild;

(2) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with Rothschild; or

(3) Any member of an underwriting syndicate or selling group of which Rothschild or a person described in (2) is a manager or co-manager with respect to the certificates.

D. "Sponsor" means the entity that organizes a trust by depositing obligations therein in exchange for certificates.

E. "Master Servicer" means the entity that is a party to the pooling and servicing agreement relating to trust assets and is fully responsible for servicing, directly or through subservicers, the assets of the trust.

[7] Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) and regulation 29 CFR 2510.3–21(c).

[8] For purposes of this exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

[9] In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the certificates were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions.

F. "Subservicer" means an entity which, under the supervision of and on behalf of the master servicer, services loans contained in the trust, but is not a party to the pooling and servicing agreement.

G. "Servicer" means any entity which services loans contained in the trust, including the master servicer and any subservicer.

H. "Trustee" means the trustee of the trust, and in the case of certificates which are denominated as debt instruments, also means the trustee of the indenture trust.

I. "Insurer" means the insurer or guarantor of, or provider of other credit support for, a trust. Notwithstanding the foregoing, a person is not an insurer solely because it holds securities representing an interest in a trust which are of a class subordinated to certificates representing an interest in the same trust.

J. "Obligor" means any person, other than the insurer, that is obligated to make payments with respect to any obligation or receivable included in the trust. Where a trust contains qualified motor vehicle leases or qualified equipment notes secured by leases, "obligor" shall also include any owner of property subject to any lease included in the trust, or subject to any lease securing an obligation included in the trust.

K. "Excluded Plan" means any plan with respect to which any member of the Restricted Group is a "plan sponsor" within the meaning of section 3(16)(B) of the Act.

L. "Restricted Group" with respect to a class of certificates means:

(1) Each underwriter;

(2) Each insurer;

(3) The sponsor;

(4) The trustee;

(5) Each servicer;

(6) Any obligor with respect to obligations or receivables included in the trust constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the trust, determined on the date of the initial issuance of certificates by the trust; or

(7) any affiliate of a person described in (1)-(6) above.

M. "Affiliate" of another person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner.

N. "Control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

O. A person will be "independent" of another person only if:

(1) Such person is not an affiliate of that other person; and

(2) The other person, or an affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to any assets of such person.

P. "Sale" includes the entrance into a forward delivery commitment (as defined in section Q below), provided:

(1) The terms of the forward delivery commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's length transaction with an unrelated party;

(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the forward delivery commitment; and

(3) At the time of the delivery, all conditions of this exemption applicable to sales are met.

Q. "Forward delivery commitment" means a contract for the purchase or sale of one or more certificates to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the certificates) and optional contracts (which give one party the right but not the obligation to deliver certificates to, or demand delivery of certificates from, the other party).

R. "Reasonable compensation" has the same meaning as that term is defined in 29 CFR 2550.408c-2.

S. "Qualified Administrative Fee" means a fee which meets the following criteria:

(1) The fee is triggered by an act or failure to act by the obligor other than the normal timely payment of amounts owing in respect of the obligations;

(2) The servicer may not charge the fee absent the act or failure to act referred to in (1);

(3) The ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the pooling and servicing agreement; and

(4) The amount paid to investors in the trust will not be reduced by the amount of any such fee waived by the servicer.

T. "Qualified Equipment Note Secured By A Lease" means an equipment note:

(1) Which is secured by equipment which is leased;

(2) Which is secured by the obligation of the lessee to pay rent under the equipment lease; and

(3) With respect to which the trust's security interest in the equipment is at least as protective of the rights of the trust as would be the case if the equipment note were secured only by the equipment and not the lease.

U. "Qualified Motor Vehicle Lease" means a lease of a motor vehicle where:

(1) The trust holds a security interest in the lease;

(2) The trust holds a security interest in the leased motor vehicle; and

(3) The trust's security interest in the leased motor vehicle is at least as protective of the trust's rights as would be the case if the trust consisted of motor vehicle installment loan contracts.

V. "Pooling and Servicing Agreement" means the agreement or agreements among a sponsor, a servicer and the trustee establishing a trust. In the case of certificates which are denominated as debt instruments, "Pooling and Servicing Agreement" also includes the indenture entered into by the trustee of the trust issuing such certificates and the indenture trustee.

Summary of Facts and Representations

1. Rothschild and its affiliates provide a broad range of financial services, including mergers and acquisitions, restructuring, asset management and a variety of specialist financial services for both domestic and international clients. Rothschild conducts operations from its executive office in New York City. The applicant represents that several of Rothschild's officers have had extensive experience in the fields of mortgage-backed and asset-backed securities.

When acting as lead managing underwriter or placement agent, Rothschild will conduct extensive due diligence with respect to each offering of certificates. In general, Rothschild's due diligence efforts will concern four basic areas: first, the originator's or unrelated lender's underwriting policies and procedures for originating or purchasing receivables; second, the validity and enforceability of the secured claim or lien on the underlying collateral as represented by the receivable; third, the originator's or unrelated lender's recordkeeping systems; and fourth, the originator's or unrelated lender's documents kept on file with respect to each receivable.

In general, Rothschild's procedures are as follows: Rothschild conducts an extensive examination of the originator or unrelated lender's underwriting practices to ensure that they conform with stated policies and procedures, and that there are periodic reviews of those practices by the originator's or unrelated lender's auditors. Rothschild's examination includes a review of written materials and interviews with the officers in charge of administrating the underwriting policies and procedures. Rothschild and/or its attorneys will also review the legal documentation creating the security interest in each underlying collateral asset. Rothschild's analysts will examine the originator's or unrelated lenders recordkeeping systems to verify, among other things, its capabilities with respect to the collection of amounts due and payable for the receivables sold to investors. In most cases, Rothschild also examines receivable files, selected at random, to verify that files are complete and the dates in the file conform to the recordkeeping systems.

Trust Assets

2. Rothschild seeks exemptive relief to permit plans to invest in pass-through certificates representing undivided interests in the following categories of trusts: (1) single and multi-family residential or commercial mortgage investment trusts;[10] (2) motor vehicle receivable investment trusts; (3) consumer or commercial receivables investment trusts; and (4) guaranteed governmental mortgage pool certificate investment trusts.[11]

3. Commercial mortgage investment trusts may include mortgages on ground leases of real property. Commercial mortgages are frequently secured by ground leases on the underlying property, rather than by fee simple interests. The separation of the fee simple interest and the ground lease interest is generally done for tax reasons. Properly structured, the pledge of the ground lease to secure a mortgage provides a lender with the same level of security as would be provided by a pledge of the related fee simple interest. The terms of the ground leases pledged to secure leasehold mortgages will in all cases be at least ten years longer than the term of such mortgages.[12]

Trust Structure

4. Each trust is established under a pooling and servicing agreement between a sponsor, a servicer and a trustee. The sponsor or servicer of a trust selects assets to be included in the trust. These assets are receivables which may have been originated by a sponsor or servicer of the trust, an affiliate of the sponsor or servicer, or by an unrelated lender and subsequently acquired by the trust sponsor or servicer.

On or prior to the closing date, the sponsor acquires legal title to all assets selected for the trust, establishes the trust and designates an independent entity as trustee. On the closing date, the sponsor conveys to the trust legal title to the assets, and the trustee issues certificates representing fractional undivided interests in the trust assets. Rothschild, alone or together with other broker-dealers, acts as underwriter or placement agent with respect to the sale of the certificates. The majority of the public offerings of certificates made to date have been underwritten on an agency basis. However, Rothschild may in the future become involved in public offerings of certificates underwritten on either a firm commitment or a best efforts basis. In addition, Rothschild anticipates that it may privately place certificates on both a firm commitment and an agency basis. Rothschild may also act as the lead underwriter for a syndicate of securities underwriters. Rothschild may also act as the servicer or seller to the trust of the receivables or the trust sponsor.

Certificateholders are entitled to receive monthly, quarterly or semi-annually installments of principal and/or interest, or lease payments due on the receivables, adjusted, in the case of payments of interest, to a specified rate—the pass-through rate—which may be fixed or variable.

When installments or payments are made on a semi-annual basis, funds are not permitted to be commingled with the servicer's assets for longer than would be permitted for a monthly-pay security. A segregated account is established in the name of the trustee (on behalf of certificateholders) to hold funds received between distribution dates. The account is under the sole control of the trustee, who invests the account's assets in short-term securities which have received a rating comparable to the rating assigned to the certificates. In some cases, the servicer may be permitted to make a single deposit into the account once a month. When the servicer makes such monthly deposits, payments received from obligors by the servicer may be commingled with the servicer's assets during the month prior to deposit. Usually, the period of time between receipt of funds by the servicer and deposit of these funds in a segregated account does not exceed one month. Furthermore, in those cases where distributions are made semi-annually, the servicer will furnish a report on the operation of the trust to the trustee on a monthly basis. At or about the time this report is delivered to the trustee, it will be made available to certificateholders and delivered to or made available to each rating agency that has rated the certificates.

5. Some of the certificates will be multi-class certificates. Rothschild requests exemptive relief for two types of multi-class certificates: "Strip" certificates and "fast-pay/slow-pay" certificates. Strip certificates are a type of security in which the stream of interest payments on receivables is split from the flow of principal payments and separate classes of certificates are established, each representing rights to disproportionate payments of principal and interest.[13]

"Fast-pay/slow-pay" certificates involve the issuance of classes of certificates having different stated maturities or the same maturities with different payment schedules. In certain transactions of this type, interest and/or principal payments received on the underlying receivables are distributed first to the class of certificates having the earliest stated maturity of principal,

[10] The Department notes that PTE 83-1 [48 FR 895, January 7, 1983], a class exemption for mortgage pool investment trusts, would generally apply to trusts containing single-family residential mortgages, provided that the applicable conditions of PTE 83-1 are met. Rothschild requests relief for single-family residential mortgages in this exemption because it would prefer one exemption for all trusts of similar structure. However, Rothschild has stated that it may still avail itself of the exemptive relief provided by PTE 83-1.

[11] Guaranteed governmental mortgage pool certificates are mortgage-backed securities with respect to which interest and principal payable is guaranteed by the Government National Mortgage Association (GNMA), the Federal Home Loan Mortgage Corporation (FHLMC), or the Federal National Mortgage Association (FNMA). The Department's regulation relating to the definition of plan assets (29 CFR 2510.3-101(i)) provides that where a plan acquires a guaranteed governmental mortgage pool certificate, the plan's assets include the certificate and all of its rights with respect to such certificate under applicable law, but do not, solely by reason of the plan's holding of such certificate, include any of the mortgages underlying such certificate. The applicant is requesting exemptive relief for trusts containing guaranteed governmental mortgage pool certificates because the certificates in the trusts may be plan assets.

[12] Trust assets may also include obligations that are secured by leasehold interests on residential real property. See PTE 90-32 involving Prudential-Bache Securities, Inc. (55 FR 23147, June 6, 1990 at 23150).

[13] It is the Department's understanding that where a plan invests in REMIC "residual" interest certificates to which this exemption applies, some of the income received by the plan as a result of such investment may be considered unrelated business taxable income to the plan, which is subject to income tax under the Code. The Department emphasizes that the prudence requirement of section 404(a)(1)(B) of the Act would require plan fiduciaries to carefully consider this and other tax consequences prior to causing plan assets to be invested in certificates pursuant to this exemption.

and/or earlier payment schedule, and only when that class of certificates has been paid in full (or has received a specified amount) will distributions be made with respect to the second class of certificates. Distributions on certificates having later stated maturities will proceed in like manner until all the certificateholders have been paid in full. The only difference between this multi-class pass-through arrangement and a single-class pass-through arrangement is the order in which distributions are made to certificateholders. In each case, certificateholders will have a beneficial ownership interest in the underlying assets. In neither case will the rights of a plan purchasing a certificate be subordinated to the rights of another certificateholder in the event of default on any of the underlying obligations. In particular, if the amount available for distribution to certificateholders is less than the amount required to be so distributed, all senior certificateholders then entitled to receive distributions will share in the amount distributed on a pro rata basis.[14]

6. For tax reasons, the trust must be maintained as an essentially passive entity. Therefore, both the sponsor's discretion and the servicer's discretion with respect to assets included in a trust are severely limited. Pooling and servicing agreements provide for the substitution of receivables by the sponsor only in the event of defects in documentation discovered within a short time after the issuance of trust certificates. Any receivable so substituted is required to have characteristics substantially similar to the replaced receivable and will be at least as creditworthy as the replaced receivable.

In some cases, the affected receivable would be repurchased, with the purchase price applied as a payment on the affected receivable and passed through to certificateholders.

Parties to Transactions

7. The *originator* of a receivable is the entity that initially lends money to a borrower (obligor), such as a homeowner or automobile purchaser, or leases property to the lessee. The originator may either retain a receivable in its portfolio or sell it to a purchaser, such as a trust sponsor.

Originators of receivables included in the trusts will be entities that originate receivables in the ordinary course of their business, including finance companies for whom such origination constitutes the bulk of their operations, financial institutions for whom such origination constitutes a substantial part of their operations, and any kind of manufacturer, merchant, or service enterprise for whom such origination is an incidental part of its operations. Each trust may contain assets of one or more originators. The originator of the receivables may also function as the trust sponsor or servicer.

8. The *sponsor* will be one of three entities: (i) A special-purpose corporation unaffiliated with the servicer, (ii) a special-purpose or other corporation affiliated with the servicer, or (iii) the servicer itself. Where the sponsor is not also the servicer, the sponsor's role will generally be limited to acquiring the receivables to be included in the trust, establishing the trust, designating the trustee, and assigning the receivables to the trust.

9. The *trustee* of a trust is the legal owner of the obligations in the trust. The trustee is also a party to or beneficiary of all the documents and instruments deposited in the trust, and as such is responsible for enforcing all the rights created thereby in favor of certificateholders.

The trustee will be an independent entity, and therefore will be unrelated to Rothschild, the trust sponsor or the servicer. Rothschild represents that the trustee will be a substantial financial institution or trust company experienced in trust activities. The trustee receives a fee for its services, which will be paid by the servicer, sponsor or the trust as specified in the pooling and servicing agreement. The method of compensating the trustee which is specified in the pooling and servicing agreement will be disclosed in the prospectus or private placement memorandum relating to the offering of the certificates.

10. The *servicer* of a trust administers the receivables on behalf of the certificateholders. The servicer's functions typically involve, among other things, notifying borrowers of amounts due on receivables, maintaining records of payments received on receivables and instituting foreclosure or similar proceedings in the event of default. In cases where a pool of receivables has been purchased from a number of different originators and deposited in a trust, it is common for the receivables to be "subserviced" by their respective originators and for a single entity to "master service" the pool of receivables on behalf of the owners of the related series of certificates. Where this arrangement is adopted, a receivable continues to be serviced from the perspective of the borrower by the local subservicer, while the investor's perspective is that the entire pool of receivables is serviced by a single, central master servicer who collects payments from the local subservicers and passes them through to certificateholders.

In some cases, the originator and servicer of receivables to be included in a trust and the sponsor of the trust (though they themselves may be related) will be unrelated to Rothschild. In other cases, however, affiliates of Rothschild may originate or service receivables included in a trust, or may sponsor a trust.

Certificate Price, Pass-Through Rate and Fees

11. Where the sponsor of a trust is not the originator of receivables included in a trust, the sponsor generally purchases the receivables in the secondary market, either directly from the originator or from another secondary market participant. The price the sponsor pays for a receivable is determined by competitive market forces, taking into account payment terms, interest rate, quality, and forecasts as to future interest rates.

As compensation for the receivables transferred to the trust, the sponsor receives certificates representing the entire beneficial interest in the trust, or the cash proceeds of the sale of such certificates. If the sponsor receives certificates from the trust, the sponsor sells all or a portion of these certificates for cash to investors or securities underwriters. In some transactions, the sponsor or an affiliate may retain a portion of the certificates for its own account. In addition, in some transactions the originator may sell receivables to a trust for cash. At the time of the sale, the trustee would sell certificates to the public or to underwriters and use the cash proceeds of the sale to pay the originator for receivables sold to the trust. The transfer of the receivables to the trust by the sponsor, the sale of certificates to investors, and the receipt of the cash proceeds by the sponsor generally take place simultaneously.

12. The price of the certificates, both in the initial offering and in the secondary market, is affected by market forces, including investor demand, the pass-through interest rate on the certificates in relation to the rate payable on investments of similar types and quality, expectations as to the effect on yield resulting from prepayment of underlying receivables, and expectations as to the likelihood of timely payment.

The pass-through rate for certificates is equal to the interest rate on receivables included in the trust minus a specified servicing fee.[15] This rate is generally determined by the same market forces that determine the price of a certificate. The price of a certificate and its pass-through, or coupon, rate together determine the yield to investors. If an investor purchases a certificate at less than par, that discount augments the stated pass-through rate; conversely, a certificate purchased at a premium yields less than the stated coupon.

13. As compensation for performing its servicing duties, the servicer (who may also be the sponsor, and receive fees for acting in that capacity) will retain the difference between payments received on the receivables in the trust and payments payable (at the pass-through rate) to certificateholders, except that in some cases a portion of the payments on receivables may be paid to a third party, such as a fee paid to a provider of credit support. The servicer may receive additional compensation by having the use of the amounts paid on the receivables between the time they are received by the servicer and the time they are due to the trust (which time is set forth in the pooling and servicing agreement). The servicer may be required to pay the administrative expenses of servicing the trust, including the trustee's fee, out of its servicing compensation, or it may be reimbursed for all or a portion of its expenses by the trust.

The servicer is also compensated to the extent it may provide credit enhancement to the trust or otherwise arrange to obtain credit support from another party. This "credit support fee" may be aggregated with other servicing fees, and is either paid out of the interest income received on the receivables in excess of the pass-through rate or paid in a lump sum at the time the trust is established.

14. The servicer may be entitled to retain certain administrative fees paid by a third party, usually the obligor. These administrative fees fall into three categories: (a) Prepayment fees; (b) late payment and payment extension fees; and (c) fees and charges associated with foreclosure or repossession, or other conversion of a secured position into cash proceeds, upon default of an obligation.

Compensation payable to the servicer will be set forth or referred to in the pooling and servicing agreement and described in reasonable detail in the prospectus or private placement memorandum relating to the certificates.

15. Payments on receivables may be made by obligors to the servicer at various times during the period preceding any date on which pass-through payments to the trust are due. In some cases, the pooling and servicing agreement may permit the servicer to place these payments in non-interest bearing accounts maintained with itself or to commingle such payments with its own funds prior to the distribution dates. In these cases, the servicer would be entitled to the benefit derived from the use of the funds between the date of payment on a receivable and the pass-through date. Commingled payments may not be protected from the creditors of the servicer in the event of the servicer's bankruptcy or receivership. In those instances when payments on receivables are held in non-interest bearing accounts or are commingled with the servicer's own funds, the servicer is required to deposit these payments by a date specified in the pooling and servicing agreement into an account from which the trustee makes payments to certificateholders.

16. Rothschild and any other participating underwriter will receive a fee in connection with the securities underwriting or private placement of certificates. In a firm commitment underwriting, this fee would normally consist of the difference between what Rothschild receives for the certificates that it distributes and what it pays the sponsor for those certificates. In a private placement, the fee may also take the form of an agency commission paid by the sponsor. Such fees are negotiated at arm's-length with the sponsor, originator or unrelated lender and are affected by fees in comparable offerings.

Purchase of Receivables by the Servicer

17. The applicant represents that as the principal amount of the receivables in a trust is reduced by payments, the cost of administering the trust generally increases, making the servicing of the trust prohibitively expensive at some point. Consequently, the pooling and servicing agreement generally provides that the servicer may purchase the receivables remaining in the trust when the aggregate unpaid balance payable on the receivables is reduced to a specified percentage (usually 5 to 10 percent) of the initial aggregate unpaid balance.

The purchase price of a receivable is specified in the pooling and servicing agreement and will be at least equal to: (1) The unpaid principal balance on the receivable plus accrued interest, less any unreimbursed advances of principal made by the servicer; or (2) the greater of (a) the amount in (1) or (b) the fair market value of such obligations in the case of a REMIC, or the fair market value of the certificates in the case of a trust that is not a REMIC.

Certificate Ratings

18. The certificates will have received one of the three highest ratings available from either S&P's, Moody's, D&P or Fitch. Insurance or other credit support (such as surety bonds, letters of credit, guarantees, or the creation of a class of certificates with subordinated cash flow) will be obtained by the trust sponsor to the extent necessary for the certificates to attain the desired rating. The amount of this credit support is set by the rating agencies at a level that is a multiple of the worst historical net credit loss experience for the type of obligations included in the issuing trust.

Provision of Credit Support

19. In some cases, the master servicer, or an affiliate of the master servicer, may provide credit support to the trust (i.e. act as an insurer). In these cases, the master servicer, in its capacity as servicer, will first advance funds to the full extent that it determines that such advances will be recoverable (a) out of late payments by the obligors, (b) out of liquidation proceeds, (c) from the credit support provider (which may be itself) or, (d) in the case of a trust that issues subordinated certificates, from amounts otherwise distributable to holders of subordinated certificates, and the master servicer will advance such funds in a timely manner. When the servicer is the provider of the credit support and provides its own funds to cover defaulted payments, it will do so either on the initiative of the trustee, or on its own initiative on behalf of the trustee, but in either event it will provide such funds to cover payments to the full extent of its obligations under the credit support mechanism. In some cases, however, the master servicer may not be obligated to advance funds but instead would be called upon to provide funds to cover defaulted payments to the full extent of its obligations as insurer. However, a master servicer typically can recover advances either from the provider of credit support or from future payments on the affected assets.

If the master servicer fails to advance funds, fails to call upon the credit support mechanism to provide funds to cover delinquent payments, or otherwise fails in its duties, the trustee would be required and would be able to

[14] If a trust issues subordinated certificates, holders of such subordinated certificates may not share in the amount distributed on a pro rata basis with the senior certificateholders. The Department notes that the exemption does not provide relief for plan investment in such subordinated certificates.

[15] The pass-through rate on certificates representing interests in trusts holding leases is determined by breaking down lease payments into "principal" and "interest" components based on an implicit interest rate.

enforce the certificateholders' rights, as both a party to the pooling and servicing agreement and the owner of the trust estate, including rights under the credit support mechanism. Therefore, the trustee, who is independent of the servicer, will have the ultimate right to enforce the credit support arrangement.

When a master servicer advances funds, the amount so advanced is recoverable by the servicer out of future payments on receivables held by the trust to the extent not covered by credit support. However, where the master servicer provides credit support to the trust, there are protections in place to guard against a delay in calling upon the credit support to take advantage of the fact that the credit support declines proportionally with the decrease in the principal amount of the obligations in the trust as payments on receivables are passed through to investors. These safeguards include:

(a) There is often a disincentive to postponing credit losses because the sooner repossession or foreclosure activities are commenced, the more value that can be realized on the security for the obligation;

(b) The master servicer has servicing guidelines which include a general policy as to the allowable delinquency period after which an obligation ordinarily will be deemed uncollectible. The pooling and servicing agreement will require the master servicer to follow its normal servicing guidelines and will set forth the master servicer's general policy as to the period of time after which delinquent obligations ordinarily will be considered uncollectible;

(c) As frequently as payments are due on the receivables included in the trust (monthly, quarterly or semi-annually, as set forth in the pooling and servicing agreement), the master servicer is required to report to the independent trustee the amount of all past-due payments and the amount of all servicer advances, along with other current information as to collections on the receivables and draws upon the credit support. Further, the master servicer is required to deliver to the trustee annually a certificate of an executive officer of the master servicer stating that a review of the servicing activities has been made under such officer's supervision, and either stating that the master servicer has fulfilled all of its obligations under the pooling and servicing agreement or, if the master servicer has defaulted under any of its obligations, specifying any such default. The master servicer's reports are reviewed at least annually by independent accountants to ensure that the master servicer is following its normal servicing standards and that the master servicer's reports conform to the master servicer's internal accounting records. The results of the independent accountants' review are delivered to the trustee; and

(d) The credit support has a "floor" dollar amount that protects investors against the possibility that a large number of credit losses might occur towards the end of the life of the trust, whether due to servicer advances or any other cause. Once the floor amount has been reached, the servicer lacks an incentive to postpone the recognition of credit losses because the credit support amount thereafter is subject to reduction only for actual draws. From the time that the floor amount is effective until the end of the life of the trust, there are no proportionate reductions in the credit support amount caused by reductions in the pool principal balance. Indeed, since the floor is a fixed dollar amount, the amount of credit support ordinarily increases as a percentage of the pool principal balance during the period that the floor is in effect.

Disclosure

20. In connection with the original issuance of certificates, the prospectus or private placement memorandum will be furnished to investing plans. The prospectus or private placement memorandum will contain information material to a fiduciary's decision to invest in the certificates, including:

(a) Information concerning the payment terms of the certificates, the rating of the certificates, and any material risk factors with respect to the certificates;

(b) A description of the trust as a legal entity and a description of how the trust was formed by the seller/servicer or other sponsor of the transaction;

(c) Identification of the independent trustee for the trust;

(d) A description of the receivables contained in the trust, including the types of receivables, the diversification of the receivables, their principal terms, and their material legal aspects;

(e) A description of the sponsor and servicer;

(f) A description of the pooling and servicing agreement, including a description of the seller's principal representations and warranties as to the trust assets and the trustee's remedy for any breach thereof; a description of the procedures for collection of payments on receivables and for making distributions to investors, and a description of the accounts into which such payments are deposited and from which such distributions are made; identification of the servicing compensation and any fees for credit enhancement that are deducted from payments on receivables before distributions are made to investors; a description of periodic statements provided to the trustee, and provided to or made available to investors by the trustee; and a description of the events that constitute events of default under the pooling and servicing contract and a description of the trustee's and the investors' remedies incident thereto;

(g) A description of the credit support;

(h) A general discussion of the principal federal income tax consequences of the purchase, ownership and disposition of the pass-through securities by a typical investor;

(i) A description of the underwriters' plan for distributing the pass-through securities to investors; and

(j) Information about the scope and nature of the secondary market, if any, for the certificates.

21. Reports indicating the amount of payments of principal and interest are provided to certificateholders at least as frequently as distributions are made to certificateholders. Certificateholders will also be provided with periodic information statements setting forth material information concerning the underlying assets, including, where applicable, information as to the amount and number of delinquent and defaulted loans or receivables.

22. In the case of a trust that offers and sells certificates in a registered public offering, the trustee, the servicer or the sponsor will file such periodic reports as may be required to be filed under the Securities Exchange Act of 1934. Although some trusts that offer certificates in a public offering will file quarterly reports on Form 10–Q and Annual Reports on Form 10–K, many trusts obtain, by application to the Securities and Exchange Commission, a complete exemption from the requirement to file quarterly reports on Form 10–Q and a modification of the disclosure requirements for annual reports on Form 10–K. If such an exemption is obtained, these trusts normally would continue to have the obligation to file current reports on Form 8–K to report material developments concerning the trust and the certificates. While the Securities and Exchange Commission's interpretation of the periodic reporting requirements is subject to change, periodic reports concerning a trust will be filed to the extent required under the Securities Exchange Act of 1934.

23. At or about the time distributions are made to certificateholders, a report will be delivered to the trustee as to the status of the trust and its assets, including underlying obligations. Such report will typically contain information regarding the trust's assets, payments received or collected by the servicer, the amount of prepayments, delinquencies, servicer advances, defaults and foreclosures, the amount of any payments made pursuant to any credit support, and the amount of compensation payable to the servicer. Such report also will be delivered to or made available to the rating agency or agencies that have rated the trust's certificates.

In addition, promptly after each distribution date, certificateholders will receive a statement prepared by the servicer, paying agent or trustee summarizing information regarding the trust and its assets. Such statement will include information regarding the trust and its assets, including underlying receivables. Such statement will typically contain information regarding payments and prepayments, delinquencies, the remaining amount of the guaranty or other credit support and a breakdown of payments between principal and interest.

Secondary Market Transactions

24. It is Rothschild's normal policy to facilitate sales, including, without limitation, sales made in accordance with Rule 144A under the Securities Act of 1933, by investors who purchase certificates if Rothschild has acted as agent or principal in the original private placement of the certificates and if such investors request Rothschild's assistance. In the case of a trust that offers and sells certificates in a registered public offering, it is anticipated that Rothschild would generally attempt to make a market for securities for which it is lead or co-managing underwriter.

Discussion of Proposed Exemption

I. Differences Between Proposed Exemption and Class Exemption PTE 83–1

The exemptive relief proposed herein is similar to that provided in PTE 81–7 [46 FR 7520, January 23, 1981], Class Exemption for Certain Transactions Involving Mortgage Pool Investment Trusts, amended and restated as PTE 83–1 [48 FR 895, January 7, 1983].

PTE 83–1 applies to mortgage pool investment trusts consisting of interest-bearing obligations secured by first or second mortgages or deeds of trust on single-family residential property. The exemption provides relief from sections 406(a) and 407 for the sale, exchange or transfer in the initial issuance of mortgage pool certificates between the trust sponsor and a plan, when the sponsor, trustee or insurer of the trust is a party-in-interest with respect to the plan, and the continued holding of such certificates, provided that the conditions set forth in the exemption are met. PTE 83–1 also provides exemptive relief from section 406 (b)(1) and (b)(2) of the Act for the above-described transactions when the sponsor, trustee or insurer of the trust is a fiduciary with respect to the plan assets invested in such certificates, provided that additional conditions set forth in the exemption are met. In particular, section 406(b) relief is conditioned upon the approval of the transaction by an independent fiduciary. Moreover, the total value of certificates purchased by a plan must not exceed 25 percent of the amount of the issue, and at least 50 percent of the aggregate amount of the issue must be acquired by persons independent of the trust sponsor, trustee or insurer. Finally, PTE 83–1 provides conditional exemptive relief from section 406 (a) and (b) of the Act for transactions in connection with the servicing and operation of the mortgage trust.

Under PTE 83–1, exemptive relief for the above transactions is conditioned upon the sponsor and the trustee of the mortgage trust maintaining a system for insuring or otherwise protecting the pooled mortgage loans and the property securing such loans, and for indemnifying certificateholders against reductions in pass-through payments due to defaults in loan payments or property damage. This system must provide such protection and indemnification up to an amount not less than the greater of one percent of the aggregate principal balance of all trust mortgages or the principal balance of the largest mortgage.

The exemptive relief proposed herein differs from that provided by PTE 83–1 in the following major respects: (1) The proposed exemption provides individual exemptive relief rather than class relief; (2) The proposed exemption covers transactions involving trusts containing a broader range of assets than single-family residential mortgages; (3) Instead of requiring a system for insuring the pooled receivables, the proposed exemption conditions relief upon the certificates having received one of the three highest ratings available from S&P's, Moody's, D&P or Fitch (insurance or other credit support would be obtained only to the extent necessary for the certificates to attain the desired rating); and (4) The proposed exemption provides more limited section 406(b) and section 407 relief for sales transactions.

II. Ratings of Certificates

After consideration of the representations of the applicant and information provided by S&P's, Moody's, D&P and Fitch, the Department has decided to condition exemptive relief upon the certificates having attained a rating in one of the three highest generic rating categories from S&P's, Moody's, D&P or Fitch. The Department believes that the rating condition will permit the applicant flexibility in structuring trusts containing a variety of mortgages and other receivables while ensuring that the interests of plans investing in certificates are protected. The Department also believes that the ratings are indicative of the relative safety of investments in trusts containing secured receivables. The Department is conditioning the proposed exemptive relief upon each particular type of asset-backed security having been rated in one of the three highest rating categories for at least one year and having been sold to investors other than plans for at least one year.[16]

III. Limited Section 406(b) and Section 407(a) Relief for Sales

Rothschild represents that in some cases a trust sponsor, trustee, servicer, insurer, and obligor with respect to receivables contained in a trust, or an underwriter of certificates may be a pre-existing party in interest with respect to an investing plan.[17] In these cases, a direct or indirect sale of certificates by that party in interest to the plan would be a prohibited sale or exchange of property under section 406(a)(1)(A) of

[16] In referring to different "types" of asset-backed securities, the Department means certificates representing interests in trusts containing different "types" of receivables, such as single family residential mortgages, multi-family residential mortgages, commercial mortgages, home equity loans, auto loan receivables, installment obligations for consumer durables secured by purchase money security interests, etc. The Department intends this condition to require that certificates in which a plan invests are of the type that have been rated (in one of the three highest generic rating categories by S&P's, D&P, Fitch or Moody's) and purchased by investors other than plans for at least one year prior to the plan's investment pursuant to the proposed exemption. In this regard, the Department does not intend to require that the particular assets contained in a trust must have been "seasoned" (e.g., originated at least one year prior to the plan's investment in the trust).

[17] In this regard, we note that the exemptive relief proposed herein is limited to certificates with respect to which Rothschild or any of its affiliates is either (a) the sole underwriter or manager or co-manager of the underwriting syndicate, or (b) a selling or placement agent.

the Act.[18] Likewise; issues are raised under section 406(a)(1)(D) of the Act where a plan fiduciary causes a plan to purchase certificates where trust funds will be used to benefit a party in interest.

Additionally, Rothschild represents that a trust sponsor, servicer, trustee, insurer, and obligor with respect to receivables contained in a trust, or an underwriter of certificates representing an interest in a trust may be a fiduciary with respect to an investing plan. Rothschild represents that the exercise of fiduciary authority by any of these parties to cause the plan to invest in certificates representing an interest in the trust would violate section 406(b)(1), and in some cases section 406(b)(2), of the Act.

Moreover, Rothschild represents that to the extent there is a plan asset "look through" to the underlying assets of a trust, the investment in certificates by a plan covering employees of an obligor under receivables contained in a trust may be prohibited by sections 406(a) and 407(a) of the Act.

After consideration of the issues involved, the Department has determined to provide the limited sections 406(b) and 407(a) relief as specified in the proposed exemption.

NOTICE TO INTERESTED PERSONS: The applicant represents that because those potentially interested participants and beneficiaries cannot all be identified, the only practical means of notifying such participants and beneficiaries of this proposed exemption is by the publication of this notice in the **Federal Register**. Comments and requests for a hearing must be received by the Department not later than 30 days from the date of publication of this notice of proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Gary Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 17th day of May, 1995.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 95–12502 Filed 5–19–95; 8:45 am]

BILLING CODE 4510–29–P

[18] The applicant represents that where a trust sponsor is an affiliate of Rothschild, sales to plans by the sponsor may be exempt under PTE 75–1, Part II (relating to purchases and sales of securities by broker-dealers and their affiliates), if Rothschild is not a fiduciary with respect to plan assets to be invested in certificates.

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–267]

Environmental Assessment and Finding of No Significant Impact; Public Service Company of Colorado Fort St. Vrain Nuclear Generating Station

The Nuclear Regulatory Commission (the NRC) is considering the issuance of an exemption from the requirements of 10 CFR 50.54(w) to maintain onsite property insurance to the Public Service Company of Colorado (PSC or the licensee) for the Fort St. Vrain Nuclear Generating Station (FSV) pursuant to the requirements of 10 CFR 50.12.

Environmental assessment

Identification of Proposed Action

The exemption will delete the requirements of 10 CFR 50.54(w) for the licensee to maintain onsite property insurance. FSV is permanently shut down and all the fuel assemblies are currently stored in an independent spent fuel storage installation (ISFSI), and the ISFSI is licensed under 10 CFR Part 72. In addition, decommissioning of FSV is approximately 65 percent complete, and PSC estimates that the facility license will be terminated and the facility released for unrestricted use in 1996.

The Need for the Proposed Action

The exemption is needed to eliminate the requirements of 10 CFR 50.54(w), which are appropriate for an operating plant but are not needed at the shutdown FSV. Granting the proposed exemption would reduce unnecessary costs for PSC.

Environmental Impact of the Proposed Action

The proposed action to eliminate the requirements for the licensee to have in effect and to continue to maintain onsite property insurance will have no environmental impact because FSV is permanently shut down, defueled, and 65 percent decommissioned. Thus, the risk of an accident requiring reactor stabilization or extensive decontamination does not exist at FSV. In addition, for the worst-case accident at FSV, the radiological release from the accident is a whole-body dose to an individual of 8.30 mrem. This dose is considerably less than 1 percent of the U.S. Environmental Protection Agency's "Protective Action Guidelines" dose of 1000 mrem that requires protective action.

The requested exemption would not authorize construction or operation, would not authorize a change in licensed activities, and would not effect changes in the permitted types or amounts of radiological effluent. With regard to potential nonradiological impacts, the NRC concludes that no measurable radiological or nonradiological impacts are associated with the exemption.

Alternatives to the Proposed Action

Because the NRC concluded that there are no significant environmental effects that would result from the proposed action, alternatives need not be evaluated.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for FSV.

Agencies and Persons Consulted

The license initiated this exemption, and the NRC staff is reviewing its request. The State of Colorado was notified of the proposed exemption. State Officials had no comments on the exemption.

Finding of No Significant Impact

NRC has determined not to prepare an environmental impact statement for the proposed exemption.

Based on this environmental assessment, the staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details on this action, see the licensee's application dated February 16, 1995, which is available for public inspection at the NRC's Public Document Room, 2120 L Street, NW, Washington, DC 20037, and at the local public document room at the Weld Library District.—Downtown Branch, 919 7th Street, Greeley, CO 80631.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 12th day of May, 1995.

Michael F. Weber,

Chief, Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management, Office of Nuclear material Safety and Safeguards.

[FR Doc. 95–12471 Filed 5–19–95; 8:45 am]

BILLING CODE 7590–01–M

Proposed Generic Communication Testing of Safety-Related Logic Circuits

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of opportunity for public comment.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to issue a generic letter concerning problems with the testing of safety-related logic circuits. This draft generic letter requests addresses to review surveillance procedures to determine whether any of the procedures fail to test all required portions of the logic circuitry and, if any problems are found, to correct the problems. The NRC is seeking comment from interested parties regarding both the technical and regulatory aspects of the proposed generic letter presented under the Supplementary Information heading. This proposed generic letter and supporting documentation were discussed in meeting number 272 of the Committee to Review Generic Requirements (CRGR) on April 25, 1995. The relevant information that was sent to the CRGR to support their review of the proposed generic letter will be made available in the NRC Public Document Room. The NRC will consider comments received from interested parties in the final evaluation of the proposed generic letter. The NRC's final evaluation will include a review of the technical position and, when appropriate, an analysis of the value/impact on licensees. Should this generic letter be issued by the NRC, it will become available for public inspection in the Public Document Rooms.

The staff recognizes that during implementation of the requested actions in the proposed generic letter, licensees may identify conditions in violation of their technical specifications or other NRC requirements. Consequently, the staff is considering the possibility of exercising enforcement discretion under certain circumstances during the period of implementation of the requested actions in order to encourage licensees to perform effective reviews.

DATES: Comment period expires on July 21, 1995. Comments submitted after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except for comments received on or before this date.

ADDRESSES: Submit written comments to Chief, Rules Review and Directives Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Written comments may also be delivered to 11545 Rockville Pike, Rockville, Maryland, from 7:30 am to 4:15 pm, Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, 2120 L Street, NW., (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Hukam Garg, (301) 415–2929.

SUPPLEMENTARY INFORMATION:

NRC Generic Letter No. 95–XX: Testing of Safety-Related Logic Circuits

Addresses

All holders of operating licenses or construction permits for nuclear power reactors.

Purpose

The U.S. Nuclear Regulatory Commission (NRC) is issuing this generic letter to: (1) notify addressees about problems with testing of safety-related logic circuits, (2) request that all addresses implement the actions described herein, and (3) require that all addressees submit a written response to this generic letter regarding implementation of the requested actions.

Background

The Nuclear Regulatory Commission staff had previously issued the following information notices (INs) regarding problems with testing of safety-related logic circuits: IN 88–83, "Inadequate Testing of Relay Contacts in Safety-Related Logic Circuits," dated October 19, 1988; IN 91–13, "Inadequate Testing of Emergency Diesel Generators (EDGs)," dated March 4, 1991; IN 92–40, "Inadequate Testing of Emergency Bus Undervoltage Logic Circuitry," dated May 27, 1992; IN 93–15, "Failure to Verify the Continuity of Shunt Trip Attachment Contacts in Manual Safety Injection and Reactor Trip Switches," dated February 18, 1993; and IN 93–38, "Inadequate Testing of Engineered Safety Features Actuation Systems," dated May 24, 1993. Despite these notices, recent events have occurred similar to those described in the INs which indicate that licensees have not taken sufficient action to correct previously identified problems in logic circuit surveillance testing. On March 7, 1995, NRC issued IN 95–15, "Inadequate Logic Testing of Safety-Related Circuits," which informed licensees about these recent events at Cooper Nuclear Station, Fermi 2, Waterford 3, Grand Gulf Nuclear Station, and Arkansas Nuclear One, Unit 1 and Unit 2.

Description of Circumstances

The NRC has documented a significant number of instances involving problems with logic testing of safety-related circuits in the information notices described above. These information notices discuss events at various pressurized water and boiling water reactors. The examples of problems with logic testing cover a wide range of systems including safety injection system actuation, containment spray system actuation, residual heat removal system actuation, diesel generator load sequencing, and rector protection system actuation. In most cases, the affected logic circuits functioned properly when testing in accordance with technical specification

(TS) requirements was performed. The NRC has taken enforcement action in many of these cases since they resulted in violations. The details of these instances are included in the information notices cited above. An example of the details associated with this issue at Fermi Station are repeated here.

On July 15, 1994, during a routine review of surveillance procedures required by the Fermi Unit 2 TS, the licensee (Detroit Edison Company) discovered that neither the procedures used for testing the load shedding of the 4160 volt Residual heat Removal (RHR) pumps nor the related instrumentation and control (I&C) logic functional test procedure provided for the full testing of the RHR pump start logic. Also, the test procedures did not include verification that the switchgear breaker would not close with an undervoltage signal present at the bus.

After investigating further, the licensee discovered additional deficiencies in the undervoltage functional test surveillance procedures including the logic functional test surveillance procedures for the three other engineered safety buses. Also, the surveillance test overlap did not include sufficient overlap of the logic circuit to cover the degraded voltage trip input to the non-interruptible air supply system isolation logic, the degraded voltage trip input to the bus feeder breaker position, and the alternative automatic closure circuits for the EDG output breakers. The licensee further determined that the 480 volt load shed logic had not been fully tested.

On September 9, 1994, the licensee identified additional surveillance deficiencies and expanded the investigation of its surveillance procedures for EDGs and I&C overlap testing. During this investigation, the licensee determined that (1) multiple pathways for starting an EDG through the emergency core cooling system (ECCS) logic were not being tested, (2) emergency equipment cooling water (EECW) actuation from the load sequencer was not being differentiated from EECW actuation on reactor building closed cooling water low pressure, and (3) test acceptance criteria permitted performance outside of the TS limits.

On November 30, 1994, the licensee identified several other test deficiencies in its surveillance procedures. These deficiencies were related to the core spray system, RHR system, reactor protection system, safety relief valves, alternate rod insertion and main steam isolation valve leadage control system logic, remote shutdown panel, primary containment manual isolation valves, and alternate shutdown panel transfer switches.

To address the above deficiencies, the licensee has taken the following correction actions: (1) Reviewed deficient procedures and performed required surveillance to establish operability, (2) reviewed similar procedures to identify other deficiencies. The licensee has taken the following corrective actions: (1) reviewed deficient procedures and performed required surveillance to establish operability, (2) reviewed similar procedures to identify other deficiencies, (3) created electrical overlap drawings, and (4) trained authors and technical reviewers of procedures to be fully aware of logic surveillance requirements. The NRC staff issued a notice of violation to Detroit Edison Company concerning the above issue (NRC Inspection Report No. 50–341/94–12).

Discussion

A number of NRC regulations document the requirements to test safety-related systems to ensure that they will function as designed when called upon. For example, Title 10 of the Code of Federal Regulations (10 CFR), Section 50.36, "Technical Specifications," paragraph (c)(3) states that, "surveillance requirements are requirements relating to test, calibration or inspection to assure that the necessary quality of systems and components is maintained, that facility operation will be within the safety limits, and that the limiting conditions of operation will be met." surveillance requirements to assure continued operability of safety related logic circuits have been included in the plant-specific technical specifications for all operating nuclear power plants

Other documents that provide a basis for these requirements include:

- 10 CFR 50.55a, "Codes and Standards," paragraph (h) which includes reference to Institute of Electrical and Electronic Engineers (IEEE) Standard 279, "Criteria for Protection Systems for Nuclear Power Generating Stations"
- Appendix A to 10 CFR 50, General Design Criterion (GDC) 21, 'Protection System for Reliability and Testability"
- Appendix A to 10 CFR 50, General Design Criterion (GDC) 18, "Inspection and Testing of Electric Power Systems"
- Appendix B to 10 CFR 50, Criterion XI, "Test Control"
- Regulatory Guide (RG) 1.118, "Periodic Testing of Electric Power and Protection Systems"
- RG 1.32, "Criteria for Safety-Related Electric Power Systems for Nuclear Power Plants"

As noted above, the NRC staff has issued a number of information notices (identified in the "Background" section) that document identified deficiencies in actuation logic surveillance test programs. However, because of the number of more recently identified similar deficiencies, the NRC staff has determined that licensees may not have yet adequately addressed this issue and further action is necessary.

The NRC staff finds that the failure to adequately test safety-related actuation logic circuitry is safety significant in that inoperable essential electric components required for automatic actuation of post-accident mitigation systems may be undetected for extended periods. This is particularly true for the reactor protection system, whose unavailability is shown in probabilistic risk assessments to be a dominant contributor to potential core damage scenarios. Undetected reactor protection system availability/reliability degradation is also a potentially significant contributor to overall risk. Unavailability of those circuits associated with automatic emergency core cooling system (ECCS) actuation, especially in a loss-of-offsite-power situation, is a lesser contributor to overall risk but is important in ensuring post-accident recovery in accordance with licensing bases. Failure to automatically actuate safety systems also places the additional burden on the operators of having to manually actuate required functions and thus increases the chance for operator error.

The NRC staff notes that even in cases where surveillance testing of the logic circuits has not been complete, it is likely that only very small portions of the circuit have been omitted from the test. Further, the NRC staff is not aware of instances of specifically identified surveillance inadequacies that resulted in the unavailability of the safety system when called on during an event. Nevertheless, as indicated above, the NRC staff finds that compliance with the plant-specific technical specifications is essential in order to maintain the validity of the assumptions in the licensing basis accident analyses. On the basis of the recent events, previously issued INs, complexity of the logic, and contribution to the core damage frequency, the NRC staff has further determined that licensees should review their surveillance procedures for the reactor protection system, EDG load shedding and sequencing, and actuation logic for the engineered safety features systems to ensure that complete testing is being performed as required by the technical specifications.

Requested Actions

The NRC staff requests that all holders of operating licenses for nuclear power reactors take the following actions:

(1) Compare electrical schematic drawings and logic diagrams for the reactor protection system, EDG load shedding and sequencing and actuation logic for the engineered safety features systems against technical specification surveillance test procedures to ensure that all portions of the logic circuitry, including the parallel logic, interlocks, bypasses and inhibit circuits, are adequately covered in the surveillance procedures. This review should also include relay contacts, control switches, and other relevant electrical components within these systems, utilized in the logic circuits.

(2) Modify the surveillance procedures as necessary for complete testing to comply with the technical specifications. Additionally, the licensee may request an amendment to the technical specifications if relief from certain testing requirements can be justified.

It is requested the completion of these actions not go beyond the first refueling outage commencing 90 days after the issuance of this generic letter.

Note: Some licensees may have already performed the requested reviews and taken appropriate corrective actions. These licensees do not need to perform any additional review unless modifications have been made to the logic circuits for these systems. In these cases the modifications should be reviewed.

Required Response

All addressees, including those who have already completed the requested actions, are required to submit a written response to this generic letter as follows:

(1) Within 60 days of the date of this generic letter, a written response indicating whether or not the addressee will implement the actions requested above. If the addressee intends to implement the requested actions, submit a schedule for completing implementation. If an addressee chooses not to take the requested actions, submit a description of any proposed alternative course of action, the schedule for completing the alternative course of action (if applicable), and the safety basis for determining the acceptability of the planned alternative course of action.

(2) Within 30 days of completion of the requested actions, a response confirming completion.

Backfit Discussion

The actions requested in this generic letter are considered backfits in accordance with NRC procedures. Because established regulatory requirements exist but were not satisfied, these backfits are necessary to bring the addressees into compliance with existing requirements. Therefore, on the basis of 10 CFR 50.109(a)(4)(i), a full backfit analysis was not performed.

An evaluation was performed in accordance with NRC procedures, including a statement of the objectives of and reasons for the requested actions and the basis for invoking the compliance exception. Response to question ix in the CRGR review package contains this evaluation.

Dated at Rockville, Maryland, this 15th day of May, 1995.

For the Nuclear Regulatory Commission.

Brian K. Grimes,

Director, Division of Project Support, Office of Nuclear Reactor Regulation.

[FR Doc. 95–12468 Filed 5–19–95; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Meeting Agenda

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on June 8–10, 1995, in Conference Room T2B3, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the **Federal Register** on Wednesday, December 28, 1994 (59 FR 66977).

Thursday, June 8, 1995

8:30 a.m.–8:45 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting and comment briefly regarding items of current interest. During this session, the Committee will discuss priorities for preparation of ACRS reports.

8:45 a.m.–9:15 a.m.: Preparation for Meeting with the Commissioners (Open)—The Committee will discuss topics scheduled for the meeting with the Commissioners.

9:30 a.m.–11:00 a.m.: Meeting with the Commissioners (Open)—The Committee will meet with the Commissioners, in the Commissioner's Conference Room, One White Flint North, to discuss items of mutual interest.

11:15 a.m.–12:00 noon: Ethics Training (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC Office of the General Counsel regarding the provisions of the Ethics regulations which apply to Special Government Employees.

1:00 p.m.–3:00 p.m.: Proposed Final PRA Policy Statement (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the proposed Final PRA Policy Statement. Also representatives of the Nuclear Energy Institute (NEI) will brief the Committee regarding the NEI/EPRI Probabilistic Safety Assessment (PSA) Application Guide.

3:15 p.m.–4:45 p.m.: Proposed Final Rule on Reactor Vessel Annealing (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the proposed final rule on reactor vessel annealing.

Representatives of the industry will participate, as appropriate.

5:00 p.m.–6:30 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on matters considered during this meeting.

Friday, June 9, 1995

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting.

8:35 a.m.–9:45 a.m.: Status of Issues Associated with the AP600 Design Certification Review (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the status of issues associated with the AP600 design certification review.

Representatives of the industry will participate, as appropriate.

9:45 a.m.–10:45 a.m.: Policy and Technical Issues for Passive Plant Designs (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding policy and technical issues for passive plant designs.

Representatives of the industry will participate, as appropriate.

11:00 a.m.–12:30 p.m.: Prioritization of Generic Safety Issues (GSIs) (Open)—The Committee will hold discussions with representatives of the NRC staff regarding the comments from cognizant subcommittee chairman on the priority rankings proposed by the Staff for a group of GSIs, and also the schedule for prioritizing the remaining GSIs.

1:30 p.m.–2:30 p.m.: Fire-Protection Related Issues (Open/Closed)—The Committee will hear presentations by

and hold discussions with representatives of the NRC staff and the Nuclear Energy Institute (NEI) regarding several fire-protection related issues, including the NEI petition for rulemaking to amend portions of 10 CFR 50.48, "Fire Protection", status of the staff's Fire Protection Action Plan, adequacy of fire barrier penetration seals, and the fire event at the Narora nuclear plant in India.

A portion of this session may be closed to discuss information provided in confidence by a foreign source.

2:30 p.m.–3:15 p.m.: Report of the Planning and Procedures Subcommittee (Open/Closed)—The Committee will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business and internal organizational and personnel matters relating to the ACRS staff members.

A portion of this session may be closed to discuss matters that relate solely to internal personnel rules and practices of this Advisory Committee, and matters the release of which would constitute a clearly unwarranted invasion of personal privacy.

3:15 p.m.–3:30 p.m.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss responses expected from the NRC Executive Director for Operations to ACRS comments and recommendations included in recent ACRS reports.

3:45 p.m.–4:30 p.m.: Future ACRS Activities (Open)—The Committee will select topics for consideration during future ACRS meetings.

4:30 p.m.–6:30 p.m.: Preparation of ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports on matters considered during this meeting.

Saturday, June 10, 1995

8:30 a.m.–11:30 a.m.: Preparation of ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports on matters considered during this meeting.

11:30 a.m.–12:30 p.m.: Strategic Planning (Open)—The Committee will discuss items that are of importance to the NRC which should receive additional emphasis in its future deliberations.

12:30 p.m.–12:45 p.m.: New Research Needs (Open)—The Committee will discuss new research needs, if any, identified during this meeting.

12:45 p.m.–1:00 p.m.: Miscellaneous (Open)—The Committee will discuss miscellaneous matters related to the conduct of Committee activities.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 5, 1994 (59 FR 50780). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during the open portions of the meeting, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS Executive Director, Dr. John T. Larkins, at least five days before the meeting if possible, so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the ACRS Executive Director prior to the meeting. In view of the possibility that the schedule for ACRS Meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

In accordance with Subsection 10(d) Public Law 92–463, I have determined that it is necessary to close portions of this meeting noted above to discuss information that involves the internal personnel rules and practices of this Advisory Committee per 5 U.S.C. 552b(c)(2); to discuss information the release of which would constitute a clearly unwarranted invasion of personal privacy per 5 U.S.C. 552(c)(6); and to discuss information provided in confidence by a foreign source per 5 U.S.C. 552b(c)(4).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the ACRS Executive Director, Dr. John T. Larkins (telephone 301–415–7361), between 7:30 a.m. and 4:15 p.m. edt.

Dated: May 18, 1995.

John C. Hoyle,

Acting Advisory Committee Management Officer.

[FR Doc. 95–12467 Filed 5–19–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–313]

Arkansas Nuclear One, Unit 1; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. 50–313, issued to Entergy Operations Inc. (the licensee), for operation of Arkansas Nuclear One, Unit 1 (ANO–1) located in Pope County Arkansas.

The proposed amendment would modify the operability requirements related to the reactor building (containment) emergency cooling system. Following failure of one of four reactor building cooling fans, the licensee reconfigured the reactor building cooling air and water flows to ensure that the system could cool the reactor building after a design basis loss of coolant accident. The licensee requested an exigent Technical Specification (TS) change to include the reconfigured reactor building cooling system in the TS as an authorized configuration. NRC granted enforcement discretion on May 12, 1995 to allow the facility to continue operation while this exigent TS is processed.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1: Involves a significant increase in the probability or consequences of an accident previously evaluated.

The Reactor Building Emergency Cooling system is not an initiator of any accident described in the ANO–1 Safety Analysis Report. The engineering evaluation discussed above verifies that the green train of the Reactor Building Emergency Cooling system remains operable and capable of performing its design function under all postulated accident conditions. Therefore, the probability or consequences of any previously evaluated accident is not increased.

Criterion 2: Create the possibility of a new or different kind of accident from any accident previously evaluated.

The subject request does not create the possibility of a new or different kind of accident from any previously evaluated since the green train of the Reactor Building Emergency Cooling system remains operable and because the reactor building coolers and their associated surveillances are not related to the creation of accidents.

Criterion 3: Involve a significant reduction in a margin of safety.

The subject request does not involve a significant reduction in a margin of safety since both trains of the Reactor Building Emergency Cooling system remain operable. The current configuration represents a reduction in available flow; however, this is not considered significant since required heat removal capability is still maintained.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 15 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 15-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 15-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By June 21, 1995, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interest persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a

hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to [APPROPRIATE PD]: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, D.C. 20005–3502, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated May 15, 1995, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room, located at the Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Dated at Rockville, Maryland, this 16th day of May 1995.

For the Nuclear Regulatory Commission.

George Kalman,

Senior Project Manager, Project Directorate IV–1, Division of Reactor Projects—III/IV Office of Nuclear Reactor Regulation.

[FR Doc. 95–12470 Filed 5–19–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No.: 70–00033]

Notice of Receipt of Amendment Request for Decommissioning the Texas Instruments, Inc., Site in Attleboro, Massachusetts and Opportunity for a Hearing

SUMMARY: This is a notice to inform the public that the U.S. Nuclear Regulatory Commission is considering issuance of an amendment to Special Nuclear Material License No. SNM–23, issued to Texas Instruments, Inc. for possession of special nuclear material and decommissioning of the licensee's site in Attleboro, Massachusetts. Successful implementation of the amendment would lead to completion of decommissioning, termination of the license, and release of the Attleboro site for unrestricted use.

DATES: The NRC hereby provides notice of an opportunity for a hearing on the license amendment under the provisions of 10 CFR Part 2, Subpart L, "Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings." Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with § 2.1205(c). A request for a hearing must be filed within thirty (30) days of the date of publication of this **Federal Register** notice.

ADDRESSES: Written comments on the amendment request should be sent to USNRC, Region I, Attn: Mark Roberts, Senior Health Physicist, 475 Allendale Road, King of Prussia, Pennsylvania 19406 and should refer to Control No. 121534. Hand deliver comments to 475 Allendale Road, King of Prussia, PA 19406 between 7:45 a.m. and 4:15 p.m. on Federal workdays.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor in the proceeding;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(g);

(3) The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(c).

In accordance with 10 CFR 2.1205(e), each request for a hearing must also be served, by delivering it personally or by mail, to:

(1) The applicant, Texas Instruments, Inc., 34 Forest Street, Attleboro, Massachusetts 02703, Attention: Michael Elliott; and

(2) The NRC staff, by delivery to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852 or by mail addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Mark Roberts, Division of Radiation Safety and Safeguards, Region I, 475 Allendale Road, King of Prussia, PA 19406, Telephone: (610) 337–5094.

SUPPLEMENTARY INFORMATION: The licensee (Texas Instruments, Inc.) requested an amendment, by letter dated December 19, 1994, to approve the Supplement to the 1992 Remediation Plan (the Supplement) submitted with the letter. Texas Instruments, Inc. has been remediating portions of the Attleboro facility since it terminated active operations with licensed material in 1981. The NRC staff has reviewed and approved various remediation activities throughout that time, most recently the 1992 Remediation Plan for the Building 12 Burial Area on August 26, 1992. The request before the NRC at this time is to approve the Supplement which, if properly implemented and completed, will lead to release of the Attleboro site for unrestricted use and termination of the license.

The staff of the NRC's Region I Division of Radiation Safety and Safeguards has reviewed the adequacy of the amendment request and has asked the licensee to provide additional information and commitments. However, the staff expects the commitments to be forthcoming and that satisfactory information will be supplied. Therefore, the NRC staff anticipates approval of the Supplement based on receipt and review of the additional information.

NRC is inviting public comment on the amendment request prior to acting on the request. NRC considers public involvement more meaningful at this stage prior to authorizing final decommissioning activities at the site than if it were offered immediately prior to license termination and after completion of decommissioning.

For further details with respect to this action, the application for amendment request is available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555 or at NRC's Region I offices located at 475 Allendale Road, King of Prussia, PA 19406. Persons desiring to review documents at the Region I Office, should call Ms. Sheryl Villar at (610) 337–5239 several days in advance to assure that the documents will be readily available for review.

Dated at Rockville, Maryland this 11th day of May, 1995.

For the Nuclear Regulatory Commission.

Michael F. Weber,

Chief, Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 95–12469 Filed 5–19–95; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Panel Meeting on Fracture Flow and Transport in Arid Regions

Pursuant to its authority under section 5051 of Public Law 100–203, the Nuclear Waste Policy Amendments Act of 1987, the Nuclear Waste Technical Review Board's (the Board) Panel on Hydrogeology & Geochemistry will hold a meeting June 26 and 27, 1995. The meeting, which is open to the public, will be held at the Holiday Inn Crowne Plaza, San Francisco Airport, 600 Airport Boulevard, Burlingame, California 94010; (Tel) 415–340–8500; (Fax) 415–340–0599.

The meeting will begin at 1:00 p.m. and recess at 6:30 p.m. on Monday, June 26, it will reconvene at 8:00 a.m., on Tuesday, June 27, and adjourn at approximately 1:00 p.m.

On the first day, the panel will hear presentations on waste isolation in arid regions; focus will be on the common features that the control subsurface flow and transport in this type of environment. On the second day, the panel will hear what critical data is needed to characterize and model flow and transport in fractured unsaturated rocks, whether these data can be obtained in a reasonable amount of time, and what their limitations might be. A round-table discussion then will explore the impact of fast flow pathways on site suitability issues, including computations for ground-water travel time and total system performance assessment.

As with all the Board's meetings, time will be set aside on the agenda for comments and questions from the public. To ensure that everyone wishing to speak is offered time to do so, the board encourages those who have comments to sign the Public Comment Register which will be located at the sign-in table each day of the meeting. Written comments for the record also may be submitted to the board staff at the sign-in table.

The Nuclear Waste Technical Review Board was created by Congress in the Nuclear Waste Policy Amendments Act of 1987 to evaluate the technical and scientific validity of activities undertaken by the DOE in its program to manage the disposal of the nation's high-level radioactive waste and spent nuclear fuel. In that same legislation, Congress directed the DOE to characterize a site at Yucca Mountain, Nevada, for its suitability as a potential location for a permanent repository for the disposal of that waste.

Transcripts of the meeting will be available on computer disk on a library-loan basis in paper format from Davonya Barnes, Board staff, beginning August 22, 1995. For further information, contact Frank Randall, External Affairs, Nuclear Waste Technical Review Board, 1100 Wilson Boulevard, Suite 910, Arlington, Virginia 22209; (703) 235–4473.

Dated: May 17, 1995.

William Barnard,

Executive Director, Nuclear Waste Technical Review Board.

[FR Doc. 95–12481 Filed 5–19–95; 8:45 am]

BILLING CODE 6820–AM

POSTAL RATE COMMISSION

[Order No. 1056 and Docket No. A95–11]

Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. § 404(b)(5)

Issued May 16, 1995.

Before Commissioners: Edward J. Gleiman, Chairman; W. H. "Trey" LeBlanc III, Vice-Chairman; George W. Haley; H. Edward Quick, Jr.; Wayne A. Schley; *In the Matter of:* South Westerlo, New York 12163 (Raye C. Saddlemire, Petitioner

Docket Number: A95–11

Name of Affected Post Office: South Westerlo, New York 12163

Name(s) of Petitioner(s): Raye C. Saddlemire

Type of Determination: Closing

Date of Filing of Appeal Papers: May 11, 1995

Categories of Issues Apparently Raised:

1. Effect on postal services [39 U.S.C. 404(b)(2)(C)].
2. Effect on the community [39 U.S.C. 404(b)(2)(A)].

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above. Or, the Commission may find that the Postal Service's determination disposes of one or more of those issues.

The Postal Reorganization Act requires that the Commission issue its decision within 120 days from the date this appeal was filed (39 U.S.C. 404 (b)(5)). In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service to submit memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request and the Postal Service shall serve a copy of its memoranda on the petitioners. The Postal Service may incorporate by reference in its briefs or motions, any arguments presented in memoranda it previously filed in this docket. If necessary, the Commission also may ask petitioners or the Postal Service for more information.

The Commission Orders:

(a) The Postal Service shall file the record in this appeal by May 26, 1995.

(b) The Secretary of the Postal Rate Commission shall publish this Notice and Order and Procedural Schedule in the **Federal Register**.

By the Commission.

Margaret P. Crenshaw,

Secretary.

Appendix

May 11, 1995—Filing of Appeal letter

May 16, 1995—Commission Notice and Order of Filing of Appeal

June 5, 1995—Last day of filing of petitions to intervene [*see* 39 CFR 3001.111(b)]

June 15, 1995—Petitioner's Participant Statement or Initial Brief [*see* 39 CFR 3001.115(a) and (b)]

July 5, 1995—Postal Service's Answering Brief [*see* 39 CFR 3001.115(c)]

July 20, 1995—Petitioner's Reply Brief should Petitioner choose to file one [*see* 39 CFR 3001.115(d)]

July 27, 1995—Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [see 39 C.F.R. 3001.116]

September 8, 1995— Expiration of the Commission's 120-day decisional schedule [*see* 39 U.S.C. § 404(b)(5)]

[FR Doc. 95–12496 Filed 5–19–95; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–35721; File No. SR–NASD–95–7]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to a Query-Based Vendor Fee for Distribution of Certain Market Information

May 16, 1995.

I. Introduction

On February 3, 1995, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder.[2] The NASD seeks to establish a fee of $.01/query for delivery on a non-continuous basis of certain market information. The fee will take effect within 90 days of this order and will be incorporated into Schedule D to the NASD By-Laws, Part VIII, Section C.

Notice of the proposed rule change appeared in the **Federal Register** on February 27, 1995.[3] No comments were received in response to the Commission release. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

In its filing with the Commission, the NASD indicated that the purpose of this rule change is to establish a single fee for members and vendors wishing to provide basic, real-time market data to low volume users. Specifically, the service will provide real-time inside bid/ask and last sale information for securities included in The Nasdaq Stock Market ("Nasdaq"), various Nasdaq indices, and similar quotation and transaction information on over-the-counter ("OTC") equity securities.[4]

The NASD submitted this proposal in response to requests from several member firms seeking to provide retail customers with a cost-effective alternative to calling their brokers for current market information.[5] Typically, these investors are not interested in subscribing to a costly service offered by a commercial vendor which frequently includes analytic information, ticker displays, and dynamically-updated quotation and transaction information. With the information to be available through this new service, individual investors will be able better to monitor the value of a portfolio, track intra-day activity in a given stock to facilitate an investment decision, or observe a market trend based on periodic queries for the current level of a popular stock index.

The service covered by this proposal will be limited to "snapshots" of real-time information furnished in response to a discrete query by the end user; this information will not be dynamically updated. The end user, therefore, will have to make individual queries to obtain, for example, the most current quotation/last sale information on his/her portfolio of securities at various times during the trading day. This characteristic differentiates the instant service from most vendor offerings, which provide a continuous broadcast of real-time information with dynamic updating to authorized display devices. On the other hand, this new service will not require the end user to purchase expensive dedicated hardware to obtain the information.

The firm or vendor providing access to the service to end users will be responsible for monitoring query traffic and remitting the appropriate amount to NSMI. Vendors will provide the service pursuant to a contract with NSMI, under which NSMI will be permitted to conduct periodic audits to ensure payment of all monies due.

III. Discussion

The Commission believes that the NASD's proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, therefore, has determined to approve the rule change. Specifically, the Commission believes that the proposed rule change is consistent with the requirements of Sections 11A(a)(1)[6] and 15A(b)(5)[7] of the Act. Section 11A(a)(1) contains the Congressional findings and objectives respecting a national market system. Among other things, the Congress advocated the application of new technologies to effect the widespread dissemination of quotation and transaction information to investors. Section 15A(b)(5) requires the equitable allocation of reasonable dues, fees, or other charges among persons using any facility or system which the NASD operates or controls.

The proposed service and related fee are designed to accommodate the information needs of individual investors, particularly small investors who do not require the breadth of market data and analytic information that institutional investors and market makers typically require. Using a standard personal computer or other telecommunications device, individual investors will now be able to access from their broker or a commercial vendor real-time market information regarding Nasdaq and OTC equity securities. Accordingly, the Commission finds that this new service will further the objectives of Section 11A of the Act by employing the latest technology to provide widespread dissemination of inside bid/ask and last sale information to investors.

Further, this service will allow firms and vendors to provide individual investors cost-effective access to market data without requiring users to acquire expensive hardware. Currently, non-professionals must rely on stale market data or pay a subscriber fee of $4/month/interrogation device for receipt of inside bid/ask and last sale prices[8] *plus* the cost of vendor supplied equipment. The NASD's experience is that these costs tend to discourage subscription by low-volume users. The Commission believes that the $.01/query fee is an equitable allocation of a reasonable fee and that it will be affordable to individual investors. The Commission, therefore, finds that the proposal is consistent with the Section 15A(b)(5) of the Act.

IV. Conclusion

For the reasons stated above, the Commission finds that the proposed rule change is consistent with the requirements of the Act.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change SR–NASD–95–7 be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–12459 Filed 5–19–95; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[3] Securities Exchange Act Release No. 35393 (Feb. 17, 1995), 60 FR 10625 (Feb. 27, 1995).

[4] The computer facilities that support the operations of Nasdaq are owned and operated by The Nasdaq Stock Market, Inc. ("NSMI"), a wholly-owned subsidiary of the NASD. Among other things, NSMI is responsible for the collection, processing, and the distribution of real-time quotation and transaction data originated by broker-dealer participants in Nasdaq and the OTC Bulletin Board ("OTCBB") service.

[5] While this service is designed primarily in response to requests of member firms, any commercial data vendors that might wish to offer this type of service will also be accommodated.

[6] 15 U.S.C. 78k–1(a)(1).

[7] *Id.* § 78o–3(b)(5).

[8] *NASD Manual*, Schedules to the By-Laws, Schedule D, Part VIII, Sec. A(8)(a), (CCH ¶ 1850).

[9] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[License No. 02/72–0560]

LEG Partners SBIC, L.P.; Notice of Issuance of a Small Business Investment Company License

On Friday, December 16, 1994, a notice was published in the **Federal Register** (Vol. 59, No. 241, FR 65115) stating that an application had been filed by LEG Partners SBIC, L.P., at 230 Park Avenue, 21st Floor, New York, NY 10169, with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1994)) for a license to operate as a small business investment company.

Interested parties were given until close of business Monday, January 2, 1995 to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 02/72–0560 on April 6, 1995, to LEG Partners SBIC, L.P. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: May 16, 1995.

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 95–12479 Filed 5–19–95; 8:45 am]

BILLING CODE 8025–01–M

[License No. 08/78–0150]

North Dakota Small Business Investment Company, L.P.; Issuance of a Small Business Investment Company License

On January 24, 1995, a notice was published in the **Federal Register** (60 FR 4653) stating that an application had been filed by North Dakota Small Business Investment Company, 502 First Avenue North, P.O. Box 1389, Fargo, North Dakota 58107, with the Small Business Administration (SBA) pursuant to Section 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1994)) for a license to operate as a small business investment company.

Interested parties were given until close of business February 8, 1995 to submit their comments to SBA. No negative comments were received.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 08/78–0150 on May 9, 1995, to North Dakota Small Business Investment Company, L.P. to operate as a small business investment company.

The Licensee has initial private capital of $5.1 million, and Mr. David R. Schroder will manage the fund. No individual investor will own more than 10% of the licensee.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: May 16, 1995.

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 95–12435 Filed 5–19–95; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 95–44]

Retraction of revocation Notice

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General Notice.

SUMMARY: The following Customs broker license number was erroneously included in a list of revoked Customs brokers licenses in the Monday March 27, 1995, **Federal Register** Vol. 60, No 58.

Tory Erickson—12605

License 12605, issued in the Los Angeles Customs district, remains a valid license.

Dated: May 16, 1995.

Philip Metzger,

Director, Trade Compliance.

[FR Doc. 95–12465 Filed 5–19–95; 8:45 am]

BILLING CODE 4820–02–P

[T.D. 95–43]

Retraction of Revocation Notice

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: The following Customs broker license number was erroneously included in a list of revoked Customs brokers licenses in the Friday, April 28, 1995, **Federal Register** Vol. 60, No. 82.

Regina M. Farnin—11771

License 11771, issued in the Los Angeles Customs district, remains a valid license.

Dated: May 16, 1995.

Philip Metzger,

Director, Trade Compliance.

[FR Doc. 95–12466 Filed 5–19–95; 8:45 am]

BILLING CODE 4820–02–P

TENNESSEE VALLEY AUTHORITY

Environmental Impact Statement: Coal Receiving Systems—Kingston Fossil Plant

AGENCY: Tennessee Valley Authority.

ACTION: Notice of intent.

SUMMARY: The Tennessee Valley Authority (TVA) will prepare an Environmental Impact Statement (EIS) for a proposed coal receiving system at its Kingston Fossil Plant located at the confluence of the Clinch and Emory Rivers near Kingston in east Tennessee. Coal is currently delivered to Harrisman, Tennessee by both Norfolk Southern and CSX railroads and then is transferred to a Norfolk Southern rail line for shipment to the plant. This two-line transfer increases TVA's fuel transportation costs. As a result, TVA is exploring alternative ways to deliver fuels to the plant site. These alternatives include overland conveying systems (both straight-line and flexible) and a new rail spur.

DATES: Comments on the scope of the EIS must be received on or before June 30, 1995. TVA anticipates holding a public meeting in Kingston or Harriman in June to discuss the project and obtain comments on the scope of the EIS. The time and location of this meeting will be announced in local news media.

ADDRESSES: Written comments should be sent to Dale Wilhelm, National Environmental Policy Act Liaison, Tennessee Valley Authority, WT 8C, 400 West Summit Hill Drive, Knoxville, Tennessee 37902–1499.

FOR FURTHER INFORMATION CONTACT: David Robinson, Fossil Fuels, Tennessee Valley Authority, 1101

market Street, LP 5H, Chattanooga, Tennessee 37402–2801, telephone (615) 751–2502.

SUPPLEMENTARY INFORMATION: TVA currently receives four million tons of coal per year via rail shipment to its Kingston Fossil plant located at the confluence of the Clinch and Emory rivers in east Tennessee near the towns of Kingston and Harriman. Coal is shipped to Harriman, Tennessee by both Norfolk Southern and CSX, and is then transported over a short Norfolk Southern spur to a TVA-owned line and into the rail car storage yard at the Kingston plant. The costs associated with this additional transfer and transport over a short spur line have encouraged TVA to assess other methods of transporting the coal into the plant. Transportation system and economic studies resulted in the identification of several alternative solutions to this situation. All the feasible solutions involved the construction of a new transportation system to move coal from Harriman to the plant site.

Preliminary field evaluations have indicated that reasonable alternatives to provide this coal transport access include the use of a straight-line conveyor, a flexible conveyor, or a new rail spur terminating at the coal stockpiles. TVA will also consider the "no action" alternative which would be a continuation of shipments over the Norfolk Southern spur from Harriman. Alternatives that are considered uneconomical or infeasible include use of barges, and a slurry pipeline. These latter alternatives would not be further assessed.

Alternative transportation system routes that have initially been identified originate primarily northeast of Harriman, parallel the Emory River for about a mile before dropping almost straight south to the plant site. TVA invites the public to comment on the initial routing alternatives and to suggest other possible alternatives.

Proposed Issues to Be Addressed

The EIS will discuss the proposed need for the project and describe the existing environmental, cultural, and recreational resources. It will describe TVA's siting and location process for the transport system and associated facilities and potential impacts on the above resources resulting from construction, operation, and maintenance. Specifically TVA will evaluate potential impacts to vegetation, wildlife, aquatic ecology, endangered and threatened species, wetlands and wetland wildlife, aesthetics and visual resources, land use, and noise associated with construction and operation of the system. These factors and others identified during the scoping process as well as engineering and economic considerations will be used to select the preferred alternative for coal transport into the plant from the CSX line.

Scoping Process

The scoping process will include interagency and public scoping. The public is invited to submit written comments on the scope of this analysis by June 30 and/or attend the public meeting that will be announced in area news media prior to the meeting. Federal and state agencies to be included in the interagency scoping are: U.S. Army Corps of Engineers; the U.S. Coast Guard, the U.S. Fish and Wildlife Service; and various State of Tennessee agencies including the Tennessee Wildlife Resources Agency, the Department of Environment and Conservation, and the Tennessee Historical Commission, among others.

Based on the scoping comments, TVA will develop a range of alternatives to be assessed in the EIS. Following analysis of the environmental consequences of each alternative, TVA will prepare a draft EIS for public review and comment. Notice of availability of the draft EIS will be announced, comments on the draft solicited, and information about possible future public meetings will be published at a future date. TVA expects to release a final EIS in mid 1996.

Dated: May 12, 1995.

Kathryn J. Jackson,

Senior Vice President/Resource Group.

[FR Doc. 95–12488 Filed 5–19–95; 8:45 am]

BILLING CODE 8120–01–M

Sunshine Act Meetings

Federal Register

Vol. 60, No. 98

Monday, May 22, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, June 2, 1995.

PLACE: 2033 K St., N.W., Washington, D.C. 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 95–12610 Filed 5–18–95; 3:00 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, June 9, 1995.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 95–12611 Filed 5–18–95; 3:00 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, June 16, 1995.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 95–12612 Filed 5–18–95; 3:00 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, June 23, 1995.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 95–12613 Filed 5–18–95; 3:00 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, June 30, 1995.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 95–12614 Filed 5–18–95; 3:00 pm]

BILLING CODE 6351–01–M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 60 Fed. Reg. 24967 May 10, 1995.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:00 P.M. (Eastern Time) May 22, 1995.

CHANGE IN THE MEETING: The closed session has been cancelled.

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer on (202) 663–4070.

Dated: May 17, 1995.

Frances M. Hart,

Executive Officer, Executive Secretariat.

[FR Doc. 95–12546 Filed 5–18–95; 11:26 am]

BILLING CODE 6750–06–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Thursday, May 25, 1995.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed acquisition of automated data processing equipment within the Federal Reserve System.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: May 18, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–12539 Filed 5–18–95; 10:28 am]

BILLING CODE 6210–01–P

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Notice of Vote to Close Meeting

By telephone vote on May 16–17, 1995, a majority of the members contacted and voting, the Board of Governors voted to add to the agenda of its June 5, 1995, meeting, closed to public observation, consideration of new international mail rates and services. (See 60 FR 24673, May 9, 1995).

The Board determined that pursuant to section 552b(c)(3) of Title 5, United States Code, and section 7.3(c) of Title 39, Code of Federal Regulations, this portion of the meeting is exempt from the open meeting requirement of the Government in the Sunshine Act [5 U.S.C. 552b(b)] because it is likely to disclose information which is specifically exempted from disclosure by section 410(c)(2) of title 39, United States Code.

The Board further determined that the public interest does not require that the Board's discussion of these matters be open to the public.

In accordance with section 552b(f)(1) of Title 5, United States Code, and section 7.6(a) of title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in her opinion the meeting may properly be closed to public observation pursuant to section

552b(c)(3) of Title 5, and section 410(c)(2) of title 39, United States Code; and section 7.3(c) of Title 39, Code of Federal Regulations.

Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268–4800.

David F. Harris,

Secretary.

[FR Doc. 95–12609 Filed 5–18–95; 3:00 pm]

BILLING CODE 7710–12–M

TENNESSEE VALLEY AUTHORITY (MEETING NO. 1476)

TIME AND DATE: 9 a.m. (EDT), May 24, 1995.

PLACE: TVA Knoxville Office Complex, 400 West Summit Hill Drive, Knoxville, Tennessee.

STATUS: Open.

Agenda

Approval of minutes of meeting held on April 19, 1995.

Action Items

New Business

C—Energy

C1. Certification of financial assurance for decommissioning letter to the Nuclear Regulatory Commission, as required by Federal regulations, prior to TVA receiving an operating license for Watts Bar Nuclear Plant Unit 1.

C2. Public auction of Red Bird Coal Reserve Lease to allow for the mining and removal of all seams above and including the No. 8 seam underlying approximately 784 acres of the Red Bird Coal Reserves, Tract No. XEKCR–16L, in Bell and Harlan Counties, Kentucky, and delegation of authority to the Vice President, Fuel Supply and Engineering, or his designee, to administer the terms of the lease.

E—Real Property

E1. Public auction sale of a portion of Ocoee No. 1 Access Railroad right-of-way property (Tract Nos. OCR–57 through OCR–74) in Polk County, Tennessee.

E2. Grant of a permanent easement for sewerline and sewage pump station affecting approximately 0.43 acre of land on Chickamauga Lake (Tract No. XTCR–185PS) in Hamilton County, Tennessee.

E3. Grant of Permanent easement to Arab Water Works Board for a raw water pump station affecting approximately 0.008 acre of land on Guntersville Lake (Tract No. XTGR–144PS) in Marshall County, Alabama.

E4. Land exchange by the United States Department of Agriculture, Forest Service, involving 1.47 acres of former TVA land on Hiwassee Lake (a portion of Tract No. XTFBR–1) in Cherokee County, North Carolina, for 9.45 acres of private land of equal value.

E5. Abandonment of easements over Tract Nos. CGL–2 through CCL–10, a portion of Tract No. CGL–11, and CGL–12 through CGL–44 on the Cleveland-Georgia State Line Transmission Line right-of-way in Bradley County, Tennessee.

E6. Abandonment of an easement over a portion of Parcel M on the Norris-Knoxville Transmission Line easement in Anderson County, Tennessee.

E7. Relocation of an easement affecting approximately 9.21 acres of TVA's Elk Mills-Mountain City 69–kV transmission line right of way (Tract Nos. MCT–79, –80, and portions of MCT–78 and –81) in Johnson City, Tennessee.

E8. Public auction sale of a portion of the East Cleveland Ocoee No. 1 69-kV transmission line property (Tract No. XOR–11) in Bradley County, Tennessee.

F—Unclassified

F1. Filing of condemnation cases.

F2. Grant of an exclusive license under Patent No. 4,885,021 to Jimmie L. Elrod, with rights to sublicense, of a process for manufacturing an improved urea product.

Information Items

1. Revision to the style of the power contract with the City of Knoxville.

2. Filing of a condemnation case.

3. New investment manager and proposed new Investment Management Agreement between the Tennessee Valley Authority Retirement System and Western Asset Management Company.

4. Grant of easement to the City of Franklin, Tennessee for a road right-of-way.

5. Supplement to Contract No. 91NNP–44970C with Raytheon Constructors, Incorporated, and Contract No. TV–82466V with Raytheon Engineers & Constructors (Ebasco Division), to continue completion support for Watts Bar Unit 1.

FOR MORE INFORMATION CONTACT: Please call TVA Public Relations at (615) 632–6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 898–2999.

Dated: May 17, 1995.

William L. Osteen,

Associate General Counsel and Assistant Secretary.

[FR Doc. 95–12542 Filed 5–18–95; 8:45 am]

BILLING CODE 8125–08–M

federal register

Monday
May 22, 1995

Part II

Department of Agriculture

Forest Service

Hydropower Applications

DEPARTMENT OF AGRICULTURE

Forest Service

RIN 0596–AA47

Hydropower Applications

AGENCY: Forest Service, USDA.

ACTION: Notice of proposed policy and procedures; request for public comment.

SUMMARY: The Forest Service proposes to revise current policy and procedures, implemented in February 1987, concerning administration of hydropower authorizations and the processing of proposals for hydropower projects affecting National Forest System lands. This notice contains the proposed revision, clarifies the current policy, and modifies procedures. These revisions are necessary to make agency policy and procedures consistent with regulatory changes by the Federal Energy Regulatory Commission (FERC) and to address issues raised in appeals related to authorizing hydropower projects. This proposed revision also includes revised fee structures that developers would pay for hydropower projects on National Forest System lands exempted from FERC licensing. The fees were revised to ensure that the United States receives fair market value for the use of National Forest System lands for hydropower development. Public comment is invited.

DATES: Comments must be received in writing on or before July 21, 1995.

ADDRESSES: Send written comments to Director of Lands (2770), 4th Floor, South Wing, Auditors Building, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090.

The public may inspect comments received on this proposed policy in the Office of the Director of Lands, 4th Floor, South Wing, Auditors Building, 201 14th Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4:30 p.m. Those wishing to inspect comments are encouraged to call ahead (202–205–1367) to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Questions about this proposal or requests for the entire Forest Service Handbook 2709.15, Hydropower Handbook, should be addressed to J. Kenneth Myers, Assistant Director, Realty Management Group, Lands Staff 202–205–1248.

SUPPLEMENTARY INFORMATION:

Background and Need for Policy

Presently, there are more than 240 non-Federal hydropower projects on National Forest System lands that are either licensed or exempted from licensing by the Federal Energy Regulatory Commission (FERC). Hydropower developers must receive authorization from both FERC and the Forest Service to construct and operate projects on National Forest System lands. The Forest Service is authorized under the Federal Power Act (16 U.S.C. 791 *et seq.*) to set mandatory terms and conditions in a FERC license necessary to protect National Forest System resources. The Forest Service also has authority under the Federal Land Policy and Management Act (FLPMA) (43 U.S.C. 1701) to issue special use authorizations for the occupancy and use of National Forest System lands for hydropower purposes. Both the Forest Service and FERC must review applications for proposed hydropower projects for adequacy and prepare environmental analyses under the National Environmental Policy Act (42 U.S.C. 4371 *et seq.*).

Hyrdopower development proposals affecting National Forest System lands nearly quadrupled in 1981 as a result of legislation promoting the construction of energy projects utilizing renewable resources, namely, the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 260) and the Energy Security Act of 1980 (Pub. L. 96–294; 42 U.S.C. 8855). In 1984, the Supreme Court in *Escondido Mutual Water Co.* v. *Lojolla Band of Mission Indians*, 466 U.S. 765 (1984) (hereafter "Escondido ruling"), clarified the role of the Secretary of Agriculture in the licensing of hydropower projects on National Forest System lands. The Escondido ruling makes it clear that when National Forest System lands are to be occupied by a hydropower project, the Secretary may impose conditions on a FERC license necessary for the adequate protection and utilization of the National Forest. This affirmation of the Secretary's authority was incorporated into a February 1987 revision of Forest Service Manual Chapter 2770, which sets our broad direction to Forest Service managers on how to respond to applications for FERC licenses. Simultaneously, the agency issued a new Handbook (FSH 2709.15) in February 1987 to provide field direction on hydropower licenses and permits.

In August 1989, the forest Service initiated a process to identify the topics or aspects of the agency's hydropower project direction that need revision.

Numerous modifications to existing policy and procedures were identified during the process. As a result, the agency is proposing a revision of all hydropower direction in the Manual and Handbook. A discussion of the important modifications follows. Because of the length of the Handbook, only the proposed Manual direction and the following parts of the Handbook are set forth at the end of this **Federal Register** notice: (1) The Forest Service conditions for a FERC license, (2) special use authorization provisions for licensed projects, (3) direction on charging fees to hydropower developers, and (4) direction on rehabilitating dams in wilderness areas. Those interested in reviewing a copy of the entire Handbook may obtain a copy by calling the **FOR FURTHER INFORMATION CONTACT** listed in the beginning of this notice.

Modifications to Existing Policy and Procedures

1. Recognition of Hydropower as an Appropriate Use of National Forest System Lands

Current Forest Service policy recognizes hydropower as an appropriate use of National Forest Service land but the policy is not clearly stated.

In the proposed Manual revision, this agency policy is rewritten and clarified. These changes appear in the draft Forest Service Manual (FSM) in sections FMS 2770.2 and 2770.3. In summary, (1) energy is a recognized use of National Forest System lands; (2) hydropower is a valuable energy resource and a legitimate use of National Forest System lands; (3) sites with hydropower development potential are unique and rare; (4) the Forest Service will favorably consider hydropower development that does not conflict with other important uses or allocations of National Forest System resources; and (5) potential hydropower use should be carefully considered in the forest planning process.

2. Resource Balance

The Forest Service must balance energy development with protection and use of National Forest System resources. Furthermore, the agency strives to mitigate adverse environmental impacts whenever possible. The Forest Service often sets instream flow requirements and requires other measures necessary for the adequate protection and utilization of National Forest System resources. Consistent with the Escondido ruling, FERC is precluded from requiring a less stringent instream flow than the Forest Service's required flow even if their information indicates less stringent flows are justified and in the public interest.

Consistent with its responsibility to administer National Forest System lands

in the public interest, the Forest Service reviews and considers recommendations of other agencies, as well as the licensee, in developing its position. The agency, however, will not simply include recommendations of other agencies as part of its mandatory conditions. Independent analysis of all recommendations by the Forest Service is necessary to put in perspective the project's impact against the Forest Service's general responsibility to protect all National Forest System resources. The Manual direction is being revised to reflect the Forest Service's obligation to balance resource needs in arriving at decisions related to hydropower development. The proposed revisions appear in the proposed Manual in FSM 2770.3 and 2773.2.

3. Relicensing Policy

The Manual lacks specific Forest Service policy relicensing hydropower projects and the role of the agency.

Under the proposed revision, the Forest Service would use the authority under section 4(e) of the Federal Power Act to condition the license of a project being relicensed. The responsibility has been affirmed by FERC. The proposed policy would recognize that such projects have been part of the environment for 50 years or more and that the Forest Service should not attempt, by virtue of its conditioning authority, to recreate the pre-license environment. However, the agency would mitigate unacceptable impacts to resources. The proposed changes appear in the Manual in FSM 2776.

4. Unlicensed Projects

The Forest Service does not have a policy regarding unlicensed hydropower projects. Before 1976, the Federal Power Commission (now FERC) allowed the Forest Service to authorize by a special use authorization minor hydropower projects. This authority was withdrawn in 1976; however, several unlicensed projects still exit on National Forest System lands. The agency proposes policy and guidance regarding the special use authorizations for unlicensed projects which would encourage their owners to obtain appropriate authorization for FERC. This proposed change appears in the Manual in FSM 2772.24. The agency shall not authorize amendments to these projects unless they first comply with FERC's regulations.

5. Cooperative Forest Service/FERC Environmental Assessments

Until recently, the Forest Service and FERC prepared separate environmental assessments but prepared environmental impact statements as cooperating agencies. The Forest Service has recently adopted an environmental analysis process that is generally conducted cooperatively with FERC. The new process is explained in the proposed Manual in FSM 2773.

6. Recreation Plans and Development

The Forest Service proposes to clarify direction regarding recreation development and other recreation mitigation and enhancement needs associated with hydropower project development.

A new Manual section (FSM 2774) has been developed, in accordance with section 4(e) of the Federal Power Act, addressing recreation development at hydropower projects. This proposed section clarifies the licensee's full responsibility for the recreation needs resulting from project development and operation. And, even though the Forest Service could operate recreation facilities at a hydropower project according to a written agreement with the licensee, the licensee would remain financially responsible for the operation, as well as for the construction, maintenance, and replacement of the recreation facilities. Several items related to recreation plan development, operation, liability, and user fees may be the subject of voluntary and consensual agreement between the Forest Service and the licensee. These items may include, but are not limited to, licensee responsibility for construction, operation, maintenance, and replacement of recreation facilities on National Forest System lands, collection of fees to offset Forest Service operating costs, and the need for recreation planning for lands beyond the area directly influenced by the project.

7. Wild and Scenic Rivers

The Forest Service proposes to update the direction relating to hydropower development affecting designated and potential Wild and Scenic Rivers. The authority for this direction is section 7 of the Wild and Scenic Rivers Act (16 U.S.C. 1271–1287). The Forest Service proposes to prepare eligibility determinations for rivers not in the Wild and Scenic Rivers System that are affected by a hydropower proposal. Such determinations shall be prepared in a timely manner, usually accompanying the initial 4(e) report. Rivers found eligible for inclusion through this process would then be studied by the Forest Service for suitability. This Wild and Scenic River suitability study would be completed within 18 months or in conjunction with the environmental document for the hydropower project. While not legally bound to do so, it has been FERC's practice to refrain from acting upon the license application until completion of the suitability study if the Forest Service makes timely determinations. Under the proposed policy, for rivers found suitable under this process, the Forest Service shall forward recommendations for Wild and Scenic River designation to the Secretary of Agriculture for review and submission to Congress. Once a suitability determination is made and for a period not to exceed three years after Congress has received the formal recommendation for Wild and Scenic River designation from the Secretary, the Forest Service shall use its authority under section 4(e) of the Federal Power Act to protect a suitable river from impacts that would "invade or unreasonably diminish the values" which make it eligible and suitable for inclusion in the Wild and Scenic Rivers System. If Congress fails to take action to protect the proposed river within three years, the Forest Service shall manage the river as a multiple-use resource and resume consideration of the original hydropower proposal. The proposed changes appear in the Manual in FSM 2775.1

For Congressionally designated rivers and designated study rivers, the Manual has been updated to clarify the procedures for section 7 determinations pursuant to the Wild and Scenic Rivers Act. The updated direction is in the Manual in FSM 2775.1

8. Term of the Special Use Authorization.

Current Forest Service direction for a special use authorization of a hydropower project exempted from the FERC licensing requirements does not address the amortization or financing period of the project.

The Forest Service proposes to revise its direction for special use authorizations for exempt projects to require the issuing officer to consider the amortization and financing periods of a project in determining the term of the special use authorization. The proposed change appears in the Manual in FSM 2772.4.

9. Fees

A proposed Forest Service policy on hydropower fees for licensed projects was published in the **Federal Register** in 1984 (49 FR, p. 23902, June 8, 1984). Due to the length of time since that notice, the agency is again seeking comments on a revised fee structure

proposed in section 65.3 of the Handbook.

a. Fees for Projects Exempt from Licensing

In 1987, the Forest Service implemented policy that set fair market value for use of National Forest System lands by hydropower projects exempted from licensing by FERC at three percent of the gross power sales from the project. This was based upon a market survey of land rental fees charged for hydropower use on private land. Upon administrative appeal, that policy was rescinded pending public notice and opportunity to comment. This notice seeks that involvement. In the interim, the Forest Service has been charging fair market value for the use of National Forest System lands, as determined by appraisal. Fees for the few projects that receive an exemption from licensing from FERC are contained in section 65.3 of the Handbook.

b. Fees for Licensed Projects

To date, Forest Service policy has been that it has the authority to collect fees for hydropower projects licensed by FERC. The Forest Service, however, presently waives the collection of fees for these projects since FERC already collects fees for the use of National Forest System land; although the fees collected by FERC for run-of-the-river projects (projects that operate whereby instantaneous inflow to the project equals instantaneous outflow) are often far below the market value of the use of those lands for power purposes.

The Forest Service proposes that, for licensed projects, fees shall not be charged because to do so may be inconsistent with the Federal Power Act (16 U.S.C. 803(e)) (FSH 2709.15, sec. 65.2).This position is consistent with the Federal Land Policy and Management Act (43 U.S.C. 1702(a)(9)) which does not require the collection of fees where another statute, in this case the Federal Power Act, also provides for fee collection.

10. New Mandatory 4(e) License Conditions

The Forest Service is proposing to update and revise those conditions required to be incorporated in all licenses issued by FERC for projects occupying National Forest System lands. These conditions would be applied to all proposed projects that would occupy National Forest System lands. Once these conditions have gone through the public notice process and are included in the final Handbook, they will not be subject to appeal under Department of Agriculture administrative appeal regulations at 36 CFR 215 and 251. The proposed revisions of mandatory license conditions appear in the draft Handbook in section 55.6, exhibit 01.

11. New Special Use Authorization Provisions

The Forest Service proposes to revise the special use authorization conditions for hydropower projects (FSH 2709.15, sec. 77, ex. 01). These revisions are based on issues raised in appeals related to the open-ended nature of special use authorization conditions. Those provisions identified as mandatory will no longer be subject to appeal if they are incorporated into the final notice of policy.

12. Other License and Special Use Authorization Conditions

Other proposed conditions which may be used or adapted for use for a proposed project have also been developed in standardized form (Form FS 2700–4g) and are proposed in the Handbook. These conditions may be applied to projects as site-specific needs dictate. Their application is appealable, since the authorized Forest Officer has the discretion to require them. These conditions can be found in the Handbook in section 55.6, exhibit 01, and in section 77, exhibit 01.

13. Open-ended Nature of the Special-use Authorization

Under existing procedures, the licensee of a FERC-licensed hydropower project on National Forest System lands obtains a special use authorization from the Forest Service after FERC issues a license. (The FERC license contains an explicit clause to this effect as a condition of the license.) This procedure places the licensee in the awkward position of accepting a license without knowing what conditions the special use authorization may impose on the project's operation.

The Forest Service proposes to revise the Handbook procedures to limit the use of open-ended Forest Service conditions in the license (issued by FERC) and in the special use authorization issued by the Forest Service (Form FS–2700–4g); instead, the Forest Service would provide prospective licensees with a special use authorization prior to, and contingent upon, issuance of a license. This reversal of the special use authorization process will ensure that licensees will know ahead of time the requirements and costs associated with the special use authorization throughout the term of the license. In order to guard against modification in the design or operation of the project subsequent to issuance of the special use authorization, the special use authorization would contain a provision which states that it is to become effective only if the project is licensed substantially as it was proposed during the time the Forest Service was developing the conditions for the special use authorization. These changes would require modification of the Forest Service special use authorization (FSH 2709.15, sec. 77, ex. 01, Form FS–2700–4g) and of the FERC license conditions currently required by the Forest Service (FSH 2709.15, sec. 55.6, ex. 01, condition 101).

14. Revocation of the Special Use Authorization

Current policy provides for revocation of a hydropower project special use authorization based on breach of the terms or conditions therein or for reasons to further the public interest.

Since FERC already has procedures in place which permit revocation of the license upon a public interest determination, the Forest Service believes that revocation of a special use permit on the basis of the public interest is redundant and adds unnecessary uncertainty to operations under the license. Therefore the Forest Service proposes to eliminate public interest as a basis for revocation of the special use authorization. The proposed change appears in the Handbook in section 77, exhibit 01, condition V.B.

15. Modification of the Special Use Authorization

At any time during the license term, which varies from 30 to 50 years, FERC may reopen and amend the license if it is in the public interest. Furthermore, FERC must review the project as a new proposal when the licensee applies for a license renewal when the license term ends. Currently, FERC licenses contain a mandatory condition under section 4(e) of the Federal Power Act that allows the Forest Service to unilaterally change the terms of special use authorizations for hydropower projects after 30 years, subject to loosely defined guidelines.

Forest Service special use regulations (36 CFR 251) provide for revision of special use authorization conditions at specified intervals to reflect changing times and conditions if the term of the special use authorization exceeds 30 years.

Based on its review, the agency proposes to provide for revision of conditions in hydropower project special use authorization only if the project is amended or when the license terminates and the relicensing process is initiated. In those cases where the Forest Service determines that special use authorization revision is necessary and appropriate prior to license termination or project amendment, the agency proposes to petition FERC to reopen the license. If FERC grants a Forest Service petition, FERC will be able to balance the need to amend the license against the hardship such amendment would cause the licensee. The Forest Service believes this system is more equitable than the current unilateral right of the agency to periodically change a special use authorization if its term is greater than 30 years. Under this proposal, the Forest Service would no longer require a section 4(e) condition for reopening the FERC license at intervals. This proposed change appears in the draft Handbook in section 77, exhibit 01, condition I.D.

16. Continuation of the Special Use Authorization During Annual Licenses

The current Forest Service special use authorization does not provide for any interim authorization between termination of the original license and issuance of a new license through the relicensing process. During this period, a hydropower project operates on an annual license, which generally is granted and renewed by FERC as a matter of course until relicensing is completed.

The Forest Service proposes to modify the terms and conditions of the special use authorization for hydropower projects to provide that it remains in force for a particular project during relicensing as long as (1) FERC issues annual licenses and (2) there is not a critical need to immediately modify the authorization to provide for protection and management of National Forest System resources before the issuance of a new license and special use authorization. The proposed change appears in the draft Handbook in section 77, exhibit 01, condition II.A.

17. Improvement Relocation

The current special use authorization for hydropower projects requires the licensee to move hydropower and appurtenant facilities, if necessary, to accommodate future government access needs. This provision subjects the license to uncertainty regarding project costs. Accordingly, the Forest Service proposes to modify this provision slightly. Rather than speaking solely to relocation of facilities, the proposed direction would recognize that modification of hydropower facilities also may be appropriate under certain circumstances. The special use authorization also would make explicit that this provision would apply only in furtherance of Federal Government purposes. In other words, the licensee would not incur additional costs to accommodate other forest users absent a Federal need. Instead, other forest users would have to pay for facility relocation or modification expenses resulting from their actions or needs. The proposed change appears in the Handbook in section 77, exhibit 01, condition III.I.

18. Nonexclusive Use of National Forest System Lands

The Forest Service may permit other uses of National Forest System lands within FERC-licensed project boundaries which do not materially interfere with the hydropower project. To this end, the special use authorization expressly prohibits exclusive use of National Forest System lands for project purposes and authorizes other nonconflicting uses on lands within a FERC-licensed project boundary. On the other hand, FERC typically authorizes licensees to exclude other uses from lands within the project boundary and holds the licensee responsible for accidents occurring therein. Due to this inconsistency between the Forest Service and FERC requirements concerning exclusive use of project lands, licensees contend that they may be held liable in tort claims for injuries occurring on project lands by users over which they had no knowledge or control.

The agency agrees that the licensee should not be held liable for injuries or damage caused by the actions of another Forest Service permittee if the licensee had no knowledge of or control over the other permittee. The Forest Service does not believe it is in the interest of sound management of National Forest System lands to change its policy of authorizing nonconflicting uses within the licensed boundary; however, the agency does believe it is appropriate to revise the standard terms and conditions of the special use authorization for licensed or relicensed projects to permit the exclusion of the public from certain areas within the project boundaries for safety reasons. This proposed revision appears in the draft Handbook in section 77, exhibit 01, as condition I.G.

19. Plan Approvals, Amendments, and Approval Authority

Current license and special use authorization provisions reserve to the Forest Service authority to approve project construction, design and mitigation plans. Based on this authority there is the potential for delays and additional costs resulting from (1) required Forest Service approval of plans, (2) Forest Service authority to modify plans, (3) Forest Service authority to require amendments to the project, (4) Forest Service authority to suspend construction operations for noncompliance with the terms of the special use authorization, and (5) Forest Service final approval authority. There is some question regarding the extent to which the Forest Service can exercise control over a FERC license through this reserved authority.

In order to provide the licensee greater certainty regarding project operation, the Forest Service proposes to modify its standard 4(e) license condition that currently allows the Forest Service to impose changes in the operation and location of project facilities once a project has been licensed and issued a special use authorization. The intent of this proposal is to limit the discretion of the Forest Service by requiring Forest Service consistency in the agency's review and approval of project plans. For example, if the Forest Service had initially approved the concept of a powerhouse on the south side of a stream, it should not require the licensee to move the powerhouse to the north side during review of the final plan absent compelling information (justifying the change) not available during the initial review.

The proposed license conditions also provide for expedited higher level resolution of disputes regarding Forest Service approval of plans and Forest Service imposed suspensions. While the Forest Service will consult with FERC and the licensee on such disputes to the extent possible, it ultimately is and will remain the Forest Service's responsibility to make the final determination when licensee actions affect surface resources on National Forest System lands. Note that FERC has responsibility for dam safety and overall public safety, and therefore the Forest Service should not interfere with FERC's responsibilities in these areas. These changes appear in the Handbook in section 55.6, exhibit 01, conditions 102, 105, and 106.

20. Annual Review of Project

A standard license condition used by the Forest Service requires the licensee to meet annually with the Forest Service and review the project with a subsequent report to FERC. In order to reduce the amount of paperwork and reviews and to increase flexibility, the Forest Service proposes to modify the condition to require a meeting only every 5 years or for a period mutually agreeable to the Forest Service and the

licensee. The proposed change is in the draft Handbook in section 55.6, exhibit 01, condition 104.

21. Project Rehabilitation in Wilderness

The existing Manual and Handbook do not address hydropower project maintenance and rehabilitation in units of the National Wilderness Preservation System. These projects were in place before the establishment of the wilderness area. Direction would be incorporated in the Hydropower Handbook with this proposed revision. Maintenance and rehabilitation of hydropower projects in wilderness is necessary for safety and other reasons but it would be achieved subject to the provisions and intent of the Wilderness Act (16 U.S.C. 1131–1136). Decisions on access to the project would consider, among other things, the type of rehabilitation, the most reasonable and efficient method to conduct such work, the manner in which the original project was constructed, and ways in which to minimize the impact on wilderness values. Due to the restrictions imposed by the Wilderness Act, project rehabilitation must often be done by primitive means and will be more costly than similar project maintenance and rehabilitation outside designated wilderness. Nevertheless, necessary project rehabilitation would be allowed. The proposed revision is in the handbook, section 64.7.

Environmental Impact

This proposed policy would establish direction to Forest Service employees on the review, authorization, and administration of hydropower proposals on National Forest System lands. The environmental impacts of proposed projects will be addressed in environmental documents specific to each proposed project. Section 31.1b of Forest Service Handbook 1909.15 (57 FR 43180, Sept. 18, 1992) excludes from documentation in an environmental assessment or impact statement "rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions." The agency's preliminary assessment is that this policy falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or environmental impact statement. A final determination will be made upon adoption of the final policy.

Controlling Paperwork Burdens on the Public

This policy does not contain any recordkeeping or reporting requirements or other information collection requirements as defined in 5 CFR 1320 and, therefore, imposes no paperwork burden on the public. Accordingly, the review provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507) do not apply. The Forest Service uses information provided to FERC as a basis for reviewing hydropower project impacts on National Forest System lands. Any further additional information is covered by the Forest Service's special use regulations (36 CFR part 251).

Regulatory Impact

This proposed policy has been reviewed under USDA procedures and Executive Order 12866 on Regulatory Planning and Review. It has been determined that this is not a significant rule. The policy will not have an annual effect of $100 million or more on the economy nor adversely affect productivity, competition, jobs, the environment, public health or safety, nor State or local governments. This rule will not interfere with an action taken or planned by another agency nor raise new legal or policy issues. Finally, this action will not alter the budgetary impact of entitlements, grants, use fees, or loan programs or the rights and obligations of recipients of such programs. Accordingly, this proposed policy is not subject to OMB review under Executive Order 12866.

Moreover, this proposed policy has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and it has been determined that this action will not have a significant economic impact on a substantial number of small entities as defined by that Act. In short, little or no effect on the National economy will result from this policy, since this action consists primarily of technical and administrative changes to existing policy and procedures. In fact, it may reduce costs to the Government and users of the National Forest System.

Takings Executive Order

This proposed policy has been analyzed in accordance with the principles and criteria contained in Executive Order 12630, and it has been determined that this proposed policy does not pose the risk of taking of Constitutionally protected private property.

First, special use authorizations are not private property compensable under the Fifth Amendment if taken by the Government. The special use authorization is a benefit or privilege bestowed on a private individual to use National Forest System lands. In the event that special use authorizations are found to have certain contractual rights associated with them, those rights are consensual in nature and require the prior informed consent of the parties to form the agreement. Such consensual agreements generally do not result in takings claims against the Government. Finally, the proposed policy does not purport to modify the existing special use authorizations. Instead, only special use authorizations that will be issued after the date this guidance is adopted will be subject to the revisions and clarification described herein.

Comments Invited

The proposed policy and procedures for hydropower uses of National Forest System lands would replace existing policy and procedures contained in the Forest Service Manual (FSM 2770) and Forest Service Handbook (FSH 2709.15). The text of the Manual and sections of the Handbook containing the Forest Service standard license 4(e) conditions and the Forest Service special use authorization conditions for licensed projects are set out at the end of this notice. Single copies of the entire Handbook are available free of charge upon request to the **FURTHER INFORMATION CONTACT** listed at the beginning of this notice. The Forest Service invites written comments and will analyze and consider those comments in the development of the final notice of policy which will be published in the **Federal Register**.

Dated: May 15, 1995.

David G. Unger,

Associate Chief.

Proposed Manual Revision

Note: The Forest Service organizes its directive system by alpha-numeric codes and subject headings. Only those sections of the Forest Service Manual and Handbook that are the subject of this notice are set out here. The audience of this direction is Forest Service employees charged with reviewing, processing, and approving hydropower proposals on National Forest System lands.

Title 2700—Land Uses Management

Chapter 2770—Federal Power Act Projects

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Title 2700—Land Uses Management

Chaper 2770—Federal Power Act Projects

This chapter covers the review of proposals for hydropower projects; the use of authority granted by section 4(e) of the Federal Power Act (16 U.S.C. 797(e)) to set conditions in licenses for hydropower projects issued by the Federal Energy Regulatory Commission (FERC) for the protection and utilization of National Forest System lands; the granting of special-use authorizations for hydroelectric projects; and the granting of special-use authorizations for primary transmission lines subject to licensing by FERC that are partly or wholly on National Forest System land. The chapter also covers the relationship of the Forest Service and FERC during project planning, construction, and operation.

2770.1—Authority

See FSM 2701.1 for statutory authorities that govern the general issuance and administration of special use authorizations on National Forest System lands. The following statutes and regulations specifically govern the issuance and administration of hydropower projects on National Forest System lands:

1. *The Federal Power Act of August 26, 1935 (49 stat. 847; 16 U.S.C. 797).* This act grants the Forest Service the authority to require conditions in a Federal Energy Regulatory Commission (FERC) license for a hydropower project on National Forest System lands.

2. *The Wild and Scenic Rivers Act of October 2, 1968 (82 Stat. 906; 16 U.S.C. 1271–1287).* This act, specifically in sections 7(a), 7(b) and 5(d), sets forth Forest Service responsibilities for determining acceptability for projects that impact designated and study wild and scenic rivers. Section 7 gives the Secretary of Agriculture the authority to determine whether a proposed project would be on or directly affect a wild and scenic river or would degrade or unreasonably diminish the values for which the river was designated. Under section 5(d), the Forest Service is authorized to study rivers for suitability for designation as wild and scenic.

3. *Title V. Section 501, Federal Land Policy and Management Act of October 21, 1976, as amended (90 Stat. 2743; 43 U.S.C. 1761–1771).* Title V of the Federal Land Policy and Management Act (FLPMA) authorizes the Secretary of Agriculture to issue, renew, or grant permits or easements to occupy, use, or traverse National Forest System lands for the generation, transmission, and distribution of electric power. Under section 501, as amended by the Energy Policy Act of October 24, 1992 (106 Stat. 2776; 42 U.S.C. 13201), permits or easements are not required for the continued operation of projects licensed by FERC or exempted as of October 24, 1992, unless additional project area or the project had received a permit or easement under section 501 of FLPMA at some time in the past.

4. *Title 36, Code of Federal Regulations, Part 297, Subpart A.* This regulation provides direction concerning projects affecting wild and scenic rivers administered in whole or in part by the Secretary of Agriculture.

2770.2—Objectives

1. To facilitate hydropower production where it is compatible with the purposes for which a National Forest was created or acquired.

2. To ensure that planning, construction, and operation of hydropower projects are performed in a manner that provides adequate protection and utilization of National Forest System lands and resources.

3. To ensure that Forest Service planning and the evaluation of the hydropower proposals recognize the rarity of sites which are suitable for potential hydropower development because of a unique combination of resources and circumstances.

2770.3—Policy

1. Hydropower development is an appropriate use of National Forest System land, unless one or more of the following circumstances exist:

a. Hydropower development is inconsistent with and would interfere with the purposes for which the affected area was created or acquired as determined by the following: The Organic Administration Act, the Multiple Use-Sustained Yield Act, subsequent acts making special designations within the National Forest System, and legislation or Presidential proclamation specifically establishing a National Forest.

b. Hydropower development is inconsistent with the management direction in the Forest land and resource management plan, and significant adverse effects on the

management and utilization of National Forest System resources cannot be mitigated sufficiently to achieve plan consistency with the Forest plan.

c. The project is not in the public interest (FSM 2771.25)

2. Weight energy resource development with the protection and utilization of other National Forest resources when determining what mitigation is necessary to provide the best balance of protection and utilization of those resources.

3. Cooperate and coordinate activities in the development of the Nation's energy resources for hydropower with the Federal Energy Regulatory Commission (FERF); Federal, State, and local resource agencies; tribal governments; coordinating bodies, such as the Northwest Power Planning Council; and potential developers.

2770.4—Responsibility

2770.41—Chief

1. For projects proposed in designated wilderness areas or other special areas which require Presidential approval:

a. The Chief reserves authority to approve reports and sign correspondence that make recommendations to the Secretary for approval of projects when the Forest Service considers them to be in the public interest, and

b. The Chief may deny approval for projects when the Forest Service considers them not to be in the public interest (FSM 1923 and FSM 2323).

2. The Chief also reserves the authority to approve a Forest Service recommendation to FERC that the Federal Government take over a project whose license period is ending (FSM 2771.33).

2770.42—Director of Lands, Washington Office

Except for the authority reserved to the Chief (FSM 2770.41), the Director of Lands, Washington Office has authority and responsibility to:

1. Approve reports and sign correspondence to the Federal Energy Regulatory Commission (FERC) relating to activities under the Federal Power Act, as amended.

2. Represent the Department of Agriculture in contacts with FERC at the National level in matters relating to hydropower projects (FSM 1043).

3. Coordinate the review of matters pertaining to hydropower projects with other agencies of the Department.

4. Control the assignment of Forest Service personnel as witnesses in FERC hearings, secure Office of the General Counsel review, and approve testimony prior to its being filed with FERC.

5. Review prior to signature, any Regional Forester decision for hydropower project proposals involving section 7 of the Wild and Scenic Rivers Act. (See review and routing procedures in FSH 2709.15, sec. 24.41)

6. Review prior to signature, any Regional Forester decision involving section 4(e) of the Federal Power Act, except when the Director specifically waived such a review because the Regional Forester has staff sufficiently experienced in hydropower procedures. (See review and routing procedures in FSH 2709.15, sec. 52.2)

7. Approve recommendations to FERC for the Federal Government to take over hydropower project facilities (FSM 2771.33).

2770.43—Regional Forester

The Regional Forester has authority and responsibility to:

1. Subject to the delegations of authority to the Washington Office Director of Lands in FSM 2770.42, paragraphs 5 and 6, approve reports and signed correspondence to FERC on behalf of the Secretary of Agriculture relating to licensing activities under the Federal Power Act, as amended, including reports under section 4(e) of the Federal Power Act, except as noted in the following paragraph 8. This authority may not be redelegated.

2. Establish Region-wide quidelines for analysis and administration of hydropower projects on National Forest System lands.

3. Coordinate with FERC staff as necessary.

4. Maintain an information base for use in managing Federal Power Act project activities.

5. Respond to FERC on behalf of the Secretary of Agriculture on applications for licenses. Coordinate review of applications for FERC licenses, field investigations, and preparation of 4(e) reports.

6. Respond to FERC on behalf of the Secretary of Agriculture on applications for preliminary permits and exemptions.

7. Establish procedures for contacting licensees or special-use holders at least 5 years prior to the expiration of their license or special-use authorization to ascertain their intentions concerning continuation of the project.

8. For projects proposed in wilderness areas or other areas which require Presidential approval:

a. Prepare, for the Chief's review, the environmental impact statement (EIS) necessary for the Secretary to make recommendations to the President concerning such projects.

b. Approve reports recommending to the Chief approval of projects when the Forest Service considers them to be in the public interest.

c. Approve reports and sign correspondence for denial of approval when the Forest Service considers projects not to be in the public interest.

The authority to sign the recommendation to the Chief or to deny approval for a project may not be redelegated.

9. Subject to the delegation of authority to the Washington Office Director of Lands (FSM 2770.42, para. 5 and 6) approve reports and sign correspondence to FERC on behalf of the Secretary of Agriculture relating to decisions made under section 7 of the Wild and Scenic Rivers Act for hydropower projects.

10. As appropriate, authorize Forest Supervisors to correspond directly with FERC on all administrative and construction matters during construction and operation of a project.

11. Issue special-use authorizations for hydropower projects that have been licensed or exempted from licensing by FERC. The authority to issue special-use authorizations for these projects may be redelegated to the Forest Supervisor, but the authority may not be redelegated by the Forest Supervisor to lower level officials.

2770.6—Federal Energy Regulatory Commission (FERC) Responsibility and Authority

Forest Service officers must coordinate actions regarding hydropower matters with the Federal Energy Regulatory Commission (FERC). Review the information regarding FERC in FSH 2709.15, chapter 10.

2771.—Forest Service Involvement With FERC on Hydropower Projects

For a summary of the typical steps involved in the hydropower approval and administration process, see FSH 2709.15, sec. 28.

2771.1—Response to Applications

2771.11—Response to License Applications

Use the 4(e) report (FSM 2771.2) to state the official position of the Secretary regarding the licensing of specific projects affecting National Forest System land and resources (FSH 2709.15, ch. 50). Where appropriate, include comments on the effects of the project on the programs of the Department of Agriculture. Also, see FSM 2774.5 for coordination with license applicants on recreation project plans.

2771.12—Response to Preliminary Permit Applications

The Regional Forester must provide comments to FERC on potential problems, concerns, and conditions for applications for preliminary permits on projects affecting National Forest System lands and resources. Do not prepare a 4(e) report for a preliminary permit; submit these comments through correspondence.

2771.13—Response to Exemption Applications

The Regional Forester shall identify potential problems and provide comments and recommendations to FERC on applications for exemptions. Incorporate standard and special conditions required on exemptions in the special-use authorization. Do not prepare 4(e) report for an exemption; submit these comments through correspondence.

2771.2—Requirements

2771.21—Section 4(e) Reports

Respond to a Federal Energy Regulatory Commission (FERC) notice that an application for license is ready for environmental analysis with a report pursuant to section 4(e) of the Federal Power Act (hereafter called a 4(e) report) for any project that would occupy National Forest System land. An original and 8 copies of the 4(e) report must be provided to FERC within 60 days of the FERC notice. FERC's regulations allow FERC to consider 4(e) conditions filed after the 60-day deadline as recommendations rather than mandatory conditions. The exception is when FERC grants the Forest Service an extension of time because of extenuating circumstances or because the Forest Service and FERC are conducting a cooperative environmental analysis under the National Environmental Policy Act (NEPA). In these cases the Forest Service must provide preliminary 4(e) reports within the 60-day timeframe and final 4(e) conditions within 45 days after the cooperative NEPA analysis is completed (FSH 2709.15, sec. 13.32).

Regional Foresters shall transmit draft 4(e) reports (preliminary and final) to the Washington Office Director of Lands for procedural review prior to the Regional Forester's decision and transmittal to FERC in conformance with the review and routing procedures in FSH 2709.15, section 52.2. However, if the Washington Office Director of Lands notifies the Regional Forester that such reviews are not necessary because of sufficient Regional staff experience in hydropower matters, the Regional Forester may send 4(e) reports to FERC without Washington Office review. The Regional Forester shall send copies of the signed 4(e) reports to the Washington Office Director of Lands.

The 4(e) report should provide FERC with:

1. A statement of the conclusion as to the project's consistency or interference with the purposes for which the National Forest was created or acquired, and as appropriate, advice on whether the project is in the public interest (FSM 2771.24 and 2771.25 and FSH 2709.15, sec. 27).

2. Appropriate comments regarding the project application for license.

3. Conditions (FSM 2771.22) to be included in the FERC license necessary for the adequate protection and utilization of the National Forest System lands and resources (FSH 2709.15, ch. 50).

4. The appropriate environmental documentation and documentation of decision in support of the conditions that the Forest Service will require in the license 4(e) conditions) and in the special-use authorization (FSH 2709.15, ch. 30).

5. A copy of the special-use authorization that will be issued if the project is licensed (FSH 2709.15, sec. 77). See FSH 2709.15, chapter 50, for instructions on responding to FERC under various situations.

2771.22—Section 4(e) Conditions

For a project which would occupy National Forest System lands, the Forest Service may impose conditions through the 4(e) report the FERC must make part of any license it issues for the project. Such conditions must be reasonable and necessary for the adequate protection and utilization of National Forest System lands and resources.

Do not impose the recommendations of other agencies as 4(e) conditions without an independent analysis by the Forest Service so that they become Forest Service conditions. Generally, limit 4(e) license conditions to those measures that have substantial effects on the economics or siting of the project. Other conditions of a more routine nature relating to project impacts on National Forest Systems lands may be imposed through the special-use authorization (FSM 2772.3). (See FSH 2709.15, sec. 21.4, for limits on the scope of 4(e) conditions for amendments to a license see also FSH 2709.15, sec. 52.23, 55.1, and 55.6). Chapter 70 of the Handbook contains direction on the forms to complete for various special-use permits for hydropower projects. (See FSH 2709.15, sec. 77, ex. 01 through 04).

2771.23—Projects Exempted From Licensing

An exemption from licensing (FSH 2709.15, sec. 12) by FERC does not grant or imply a grant to any land-use rights to the exemptee. Advise FERC of substantial concerns regarding potential effects of exempt project proposals on National Forest resources. Make an independent determination of whether to authorize such projects (FSM 2772.2).

2771.24—National Forest Purposes

FERC may not license projects which it finds would be inconsistent and that would interfere with the purposes for which the National Forest was created or acquired (section 4(e) of the Federal Power Act). Those purposes are defined in the Organic Administration Act of 1897 (16 U.S.C. 473 et. seq.) and expanded by the Multiple-Use Sustained-Yield Act of 1960 (16 U.S.C. 528 et. seq.) and subsequent acts (FSM 2701.1). In addition, some National Forest enabling legislation or proclamations state specific purposes. Since Congress has the authority to change or expand the National Forests, those purposes do not have to have been stated at the time the National Forest was originally reserved or acquired to be "purposes for which they were created or acquired." Specific legislation (the Wilderness Act for example; 16 U.S.C. 1131–1136) and specific designations (Research Natural Areas for example) also determine the purposes for which portions of the National Forests are created or acquired.

Through the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1601 *et seq*; as amended by the National Forest Management Act of 1976), Congress requires land and resources management planning to determine management direction for the National Forests. Such plans must be consistent with the purposes for which those lands were created or acquired. Therefore, also use the Forest land and resource management plan in determining the consistency of a project with the purposes for which the National Forest was created or acquired. Fully disclose to FERC in the 4(e) report, a recommendation concerning the nature and extent of any significant inconsistency or interference the project would cause for those purposes. FERC makes the decision whether to authorize the project through licensing. In so doing, FERC makes the actual determination regarding whether the project is inconsistent with or would interfere with the purposes for which the National Forest was created or acquired.

2771.25—Recommendation That Project is Not Public Interest

The Forest Service is not responsible for determining or recommending whether a hydropower project (with an application for license) is in the public interest. Consider making such a recommendation to FERC if the available information supports such a conclusion. Make sure the 4(e) report fully explains the nature and extent of reasons for the Forest Service recommendation. Use the Forest land and resource management plan as a basis for evaluating the needs of the public.

FERC makes the actual determination of whether the project is in the public interest under section 10(a) of the Federal Power Act.

2771.3—Coordination

2771.31—Other Actions Within Project Boundaries

Do not initiate non-project related resource management activities or authorize use by others on lands covered by a hydropower project use authorization or license unless it is determined that such activities or uses will not adversely affect project operations and will not conflict with the terms and conditions of the project special-use authorization or license. Also, prior to granting special-use authorizations to third parties, the authorized officer must review with the Federal Energy Regulatory Commission (FERC) and the affected licensee proposed non-project uses within the boundaries of licensed projects.

2771.32—Project Surrender, Termination, or Abandonment

FERC is responsible for procedures for termination, surrender, and abandonment of licensed projects (18 CFR Part 6). See FSM 2772.5 for termination requirements for Forest Service special-use authorizations (36 CFR 251.60).

2771.33—Federal Takeover of Project Facilities With Expired License

Federal takeover of a project whose license period is ending is a rarely used process which requires Congressional action. If warranted, the Forest Service may file a recommendation with FERC that the United States exercise its right to take over a hydropower project no earlier than five years before the license expires and no later than the end of the comment period for a notice of an application for a new license, a nonpower license, or an exemption. The Forest Service rarely would propose to the Federal Energy Regulatory Commission (FERC) that the United States take over a project. The Chief must approve a Forest Service recommendation for the Federal Government to take over project facilities. If a project is taken over, the Federal Government must compensate the licensee for the net investment. See Title 18, Code of Federal Regulations, Part 16, Subpart C, sections 16.14 through 16.17, for procedures for recommending to FERC for Federal takeover of a project. See FSM 2716.4 for direction regarding Forest Service takeover of unlicensed projects by default, surrender, abandonment, and so forth.

2771.4—Federal Power Act and Powersite Withdrawals

(For further direction see FSH 2709.15, sec. 21.8.)

2771.41—Exchange Within Federal Power Act and Powersite Withdrawals

Lands withdrawn for power purposes within licensed project boundaries are available for disposal through exchange or other means only after:

1. FERC vacates or amends the withdrawal, and thus opens (restores) the lands for exchange and other related actions, or

2. FERC makes a determination that the lands may be conveyed subject to a reservation in the patent or deed under section 24 of the Federal Power Act.

2771.42—Retraction of Licensed Project Boundaries and Withdrawals

When a project boundary contains National Forest System lands that are in excess of what is needed for the project, the authorized officer should formally request that the licensee and FERC retract the boundary; then, request FERC to vacate (terminate) the withdrawal of these excess lands.

When withdrawn lands are associated with an inactive project (that is, one not currently authorized or being considered by FERC for some type of action), request FERC to vacate the withdrawal.

2772—Special-Use Authorizations

FSH 2709.11, Special Uses Handbook, provides direction on the authorization and administration of special uses on National Forest System land. Chapters 60 and 70 of FSH 2709.15, Hydropower Handbook, provide detailed instructions for special-use authorizations related to hydropower projects on the following forms: Form FS–2700–4e, Special-Use Permit Exempted or Unlicensed Hydropower Project; Form FS–2700–4g, Special-Use Permit, Licensed Hydropower Project; and Form FS–2700–4f, Special-Use Permit, Hydropower Investigation.

2772.1—Applications

Applicants for Federal Energy Regulatory Commission (FERC) licenses, preliminary permits, and exemptions from licensing must also apply to the Forest Service for authorization when projects involve National Forest System land (36 CFR 251 Part B; FSM 2772.25). Authorizing officers should encourage applicants to file applications for special use authorizations with the Forest Service concurrently with filing a FERC license or exemption application.

2772.2—Authorization of Projects

Project special-use authorizations shall become effective only after the project is licensed or exempted from licensing by FERC.

2772.21—Authorization of Licensed Projects

Issue special-use authorizations for all hydropower projects licensed by FERC in accordance with FSM 2772.25. If the Forest Service determines that a project (whose proponent is seeking a license) should not be constructed on National Forest System land, then the Forest Service must advise FERC, before the licensing decision is made, that the project is inconsistent or would interfere with National Forest purposes or that it would not be in the public interest. Promptly notify the Washington Office Director of Lands is issuance of a special-use authorization to a project licensed by FERC might violate a law or cause unacceptable damage to National Forest System resources before preparing a section 4(e) report.

2772.22—Denial of Special-Use Authorization to Licensed Project

Licensed projects may not be denied a special-use authorization (FSM 2772.21)

2772.23—Authorization of Projects Under Preliminary Permits

The Forest Service may issue investigative special use permits to authorize studies to be carried out by prospective applicants that have received a FERC preliminary permit. An investigative special-use permit (FS–2700–4f) may be issued to allow investigation of potential projects. This type of permit must contain conditions necessary for resource protection commensurate with the scope of investigation (FSH 2709.15, sec. 62.11 and 74)

2772.24—Authorization of Projects Exempt From Licensing

For a project exempted from licensing by FERC, the Forest Service may issue a special-use authorization (Form FS–2700–4e) if it determines the project is an appropriate use of National Forest System lands and is in the public interest. (See FSH 2709.15, sec. 53.2, for additional information on exemptions.)

2772.25—Requirement To Have Special-use Authorization

Pursuant to the Federal Land Policy and Management Act (FLPMA) of October 21, 1976, the holder of a FERC license or a hydropower project proponent who is exempt from licensing also must obtain a Forest Service special-use authorization. This requirement to have a special-use authorization applies to original licenses (first license for project) and new licenses issued as a result of relicensing. However, pursuant to the Energy Policy Act of 1992 (42 U.S.C. 13201), a special use authorization is not required for the continued operation of licensed or exempted projects that had not received a authorization under section 501 of FLPMA at any time prior to the passage of the Act unless FERC determines that additional National Forest System lands would be affected. Before passage of FLPMA, FERC licensees were not required to have a Forest Service special-use authorization. See FSH 2709.15, section 63.1, for direction regarding the reasonable and orderly phase-in of FLPMA requirements in regard to licensed and relicensed projects.

A special-use authorization is also required for the use of National Forest System lands affected by a material license amendment, even if the current license was issued prior to passage of FLPMA. See FSH 2709.15, section 63.1 for direction regarding the reasonable and orderly phase-in of FLPMA requirements in regard to amendments of license.

2772.3—Conditions

Special-use authorizations for licensed projects (Form FS–2700–4g) shall authorize the occupancy and use of National Forest System lands. In addition to the mandatory standard provisions (FSH 2709.15 sec. 72), the special-use authorization shall include those conditions and requirements which are necessary for comprehensive and compatible use of land, water, and hydropower resources consistent with the purposes for which the National Forests are managed (FSM 2772.5, and FSH 2709.15, sec. 62.13 and 72). These conditions, however, should not duplicate what is already required in the FERC license.

1. In the Forest Service special-use authorization for a FERC-licensed project (Form FS–2700–4g), do not include conditions and requirements that:

a. Substantially affect power production capability (through limits on water use or through high costs), or

b. Substantially affect facility siting.

Such requirements are to be imposed through conditions in the section 4(e) report (FSM 2771.21).

2. The limitations on conditions in special use authorizations in the preceding paragraph 1 do not apply to:

a. A Federally owned dam under the jurisdiction of the Forest Service, or

b. A project exempted from licensing by FERC.

Special-use authorizations for projects exempted from licensing (Forms FS–2700–4e) by FERC must also include conditions to protect the public interest normally covered by the FERC license (FSH 2709.15, sec. 12, 62.12, and 73).

An investigation special-use permit (Form (FS–2700–4f) may be issued to allow investigation of potential projects. This type of permit must contain conditions necessary for resource protection commensurate with the scope of investigation (FSH 2709.15, sec. 62.11 and 74).

2772.4—Term

For FERC-licensed projects, issue a special-use authorization (Form FS–2700–4g) for the same term as the license. For projects exempted from licensing by FERC, the authorized Forest Service officer shall determine the term of the permit (Form FS–2700–4e), up to 30 years. Temporary facilities and investigations may be authorized for up to 3 years (Form FS–2700–4f) (FSH 2709.15, sec. 62.1).

2772.5—Revocation or Suspension of Special-Use Authorization

A special-use authorization for a FERC-licensed project (Form FS–2700–4g) has a term matching that of the license and normally is not revoked unless and until the license terminates. However, a special-use authorization for a licensed project may be revoked or suspended for breach of its conditions, if negotiations to remedy the breach in consultation with FERC such as those outlined in FSH 2709.15, section 64, fail to obtain the compliance of the holder (see also FSM 2771.32). Special-use authorizations for FERC-exempted projects may be revoked in accordance with 36 CFR 251.60.

2772.6—Special Use Authorization Fees

See FSH 2709.15, section 65 for policy on charging fees for:

1. Investigation permits,

2. Licensed project authorizations, and

3. Exempted project authorizations.

2773—Environmental Analysis

2773.1—Environmental Analysis and Documentation

(FSM 1950, FSH 1909.15, FSH 2709.15, ch. 30.) If an environmental impact statement (EIS) is to be prepared, FERC usually will be the lead Federal agency. Line officers should request FERC to designate the Forest Service as a cooperating agency when National Forest System lands are affected. When an environmental assessment (EA) is to be prepared, the Forest Service and FERC will usually perform a cooperative environmental analysis and prepare a cooperative EA.

2773.11—Licensed Projects

The Federal Energy Regulatory Commission (FERC) is responsible for National Environmental Policy Act (NEPA) compliance for projects licensed by FERC. The Forest Service is responsible for NEPA compliance on decisions regarding the determination of the conditions imposed through the 4(e) report (FSM 2771.21); and special-use permit conditions necessary for the protection and utilization of National Forest System lands; and compatibility decisions under Section 7 of the Wild and Scenic Rivers Act.

2773.12—Projects Exempted From Licensing

When National Forest System lands are involved, the Forest Service is responsible for NEPA compliance for projects exempt from licensing by FERC.

2773.2—Mitigation

Determine the effects of the project as proposed and the effects of identified alternatives. Devise alternatives which provide for mitigation of adverse resource impacts. Analyze alternatives and their associated resource protection measures, and balance resource protection needs and resource utilization needs.

1. Identify measures necessary for the adequate protection and utilization of the National Forest and

a. Include the measures in the 4(e) report which will then be incorporated into the license; as appropriate, require implementation plans as a 4(e) condition or as a condition of the special-use authorization to provide site-specific details for applying those measures on the ground; and/or

b. Include them as appropriate in the special-use authorization.

2. The effects of a project should be known before authorization is granted through the license or special-use authorization. Therefore, determine resource protection measures in the environmental analysis before authorization. The license or special-use authorization may require plans to implement the mitigation measures, but in general, the plans would not be used to determine the impacts (FSH 2709.15, sec. 55.23).

3. Required mitigation measures must be reasonable and necessary for the adequate protection and utilization of the National Forest and should be designed to prevent unnecessary impacts to forest resources. As noted in FSM 2271.22, do not require, through 4(e) conditions, measures that do not meet that standard.

4. Tradeoffs in uses of the National Forest can be evaluated and certain enhancement measures may be required through 4(e) conditions for the adequate protection and utilization of the National Forest. For example, in allowing an important hydropower development, a resource or use (such as dispersed recreation) may be severely impacted or eliminated from the affected area—an unmitigated impact. Through evaluation of the project, another related resource or use (such as developed recreation) may be enhanced by actions or developments (such as campgrounds) the licensee could provide. Such enhancements may be required through section 4(e) conditions as offsetting the impacts of the development. Carefully negotiate such enhancements with the potential licensee to obtain agreement if possible. In cases where it may be difficult to substantiate project impacts with the need for enhancement, be aware that such measures may be challenged by the potential licensee for their imposition as 4(e) conditions. Seek the advice of the Washington Office Lands Staff before requiring offsetting enhancement without the potential licensee's consent.

5. Developing offsite resources as mitigation for resources lost by development in the project area is acceptable as called for by a balanced evaluation of the effects of the project. However, it is not necessary that resource losses be mitigated by such offsite replacement. Determine whether offsite replacement is appropriate based on the evaluation of effects of the project and the balancing of the hydropower needs with resource needs; consider whether potentially lost resources are unique or in short supply; and determine the feasibility of replacing the resources. See FSM 2276.1, for offsite mitigation direction regarding projects in relicensing.

2774—Recreation Uses at Hydropower Projects

(See also FSM 2314 for additional direction.)

2774.1—Licensee Responsibility

Licensees and exemptees are responsible for providing recreation and interpretive facilities to mitigate (FSM 2773.2) the recreation pressures induced by the construction and operation of the hydropower facilities. That induced recreation need is often the result of reservoir construction or stream flow alterations that create a water attraction or new access to existing roads (such as by snow removal). These attractions may invite the recreating public to existing locations in increased numbers, to new places, and to places or at times not previously used.

Require developers of hydropower facilities that induce or displace recreational use of the National Forest to provide facilities and otherwise mitigate those increases and losses in recreation use in an appropriate manner, consistent with the Forest land and resource management plan. Specify necessary facilities and mitigation measures as conditions in the 4(e) report submitted to FERC (FSH 2709.15, ch. 50). Forest Service requirements for recreation facilities and mitigation measures must be reasonable and necessary for the adequate protection and utilization of the National Forest and its resources (Federal Power Act, sec. 4(e); 16 U.S.C. 797(e)).

Hold the licensee or exemptee responsible for construction, operation, maintenance, and replacement of recreation facilities that accommodate project-induced use or mitigate impacts from projects constructed through licenses or exemption issued by the Federal Energy Regulatory Commission (FERC). Do not relieve the licensee of the obligation to provide those facilities and to cover the costs for facility operation, maintenance, and replacement.

See FSH 2709.15, section 24.2, for additional direction on Forest Service and licensee responsibilities; in particular, see section 24.22 regarding displaced recreation uses.

2774.2—Facility Operation, Maintenance, and Replacement

Control licensee's construction, operation, maintenance, and replacement of recreation facilities on National Forest System lands through the project special-use authorization (FSM 2772, FSH 2709.15, ch. 60).

Negotiation is the preferred method of determining which party should assume operation and maintenance of licensee-constructed project recreation facilities (FSM 2774.2). If negotiations fail, the Forest Service may require the licensee to turn over operation and maintenance of these facilities on National Forest System lands to the Forest Service as long as the standards of FSH 2709.15, section 24.31 are met.

When it is desirable for the Forest Service to operate the recreation facilities (FSH 2709.15, sec. 24.3), negotiate a memorandum of understanding (FSH 2709.15, sec. 42.2) with the licensee for such operation at the licensee's expense. Ownership of facilities is not necessary for the Forest Service to operate facilities through a memorandum of understanding or license conditions. Use a collection agreement to allow the licensee to make payments for Forest Service operation, maintenance, and replacement of facilities.

Licensees may be allowed to operate Forest Service-owned facilities through the authority of the Granger-Thye Act (16 U.S.C. 580(d); see FSM 2711.7). The licensee may improve National Forest facilities and the facilities operated by the licensee under authorization of the Forest Service project special-use authorization by adding appropriate conditions from the standard Granger-Thye permit (FSM 2713.12a).

Negotiate shared financial responsibility with the licensee when facilities are constructed which accommodate both project induced recreation and non-project induced recreation.

See FSH 2709.15, section 24.3, for additional direction on determining who is responsible for operating, maintaining, and replacing recreation facilities.

Generally, do not accept ownership of recreation facilities constructed by the licensee. Such acceptance may make the Forest Service responsible for operation and maintenance of the facility, as well as replacement. If the licensee desires to transfer ownership to the Forest Service, ensure that the transfer agreement specifies the licensee's continuing responsibility, including replacement of facilities as appropriate. In addition, make sure that project-induced facilities remain within the project boundary so that they remain within the jurisdiction of the FERC license.

2774.3—Campgrounds

Campgrounds constructed on National Forest System lands, regardless of who builds, operates, or maintains them, are to be identified and managed as National Forest campgrounds. They are subject to Forest Service standards and to National programs, such as the "Golden Age and Golden Access Passports."

Monitor literature produced by the licensee to ensure that campgrounds are identified as National Forest campgrounds and as licensed and/or operated by the licensee as required by a condition of the special use authorization or FERC license.

2774.4—Signs

Recreation facility signs must be from the Forest Service family of signs for campgrounds (FSM 7160 and FSH 7109.11). Give visible and equal credit in such signs to the licensee for its role in the campground development, construction, and operation, as appropriate. The licensee is responsible for the cost of such signs.

Interpretive signs for the project are the responsibility of the licensee, except to the extent they interpret the Forest Service mission or activities.

Coordinate with FERC and the licensee with regard to placement and design of signs required by FERC for the project.

2774.5—Project Recreation Plan

As part of the application for a FERC license, a project applicant normally prepares a project recreation plan to address future recreation needs associated with the project. The Forest Service should work with a license applicant to ensure that the applicant's plan adequately anticipates and plans for future recreation needs. In the plan, develop and include criteria or measurable events that will trigger future additional facility needs.

Do not use open-ended special-use authorization or 4(e) conditions for the FERC license to require unspecified future recreation developments; however, provide flexibility for modifying the project recreation plan if unanticipated needs for different recreation developments arise in the future. Keep in mind that costs for any future modifications must be within the total cost of the future recreation expansion required in the license.

2774.6—Recreation Planning During Relicensing

Recreation guidelines for relicensing existing FERC-licensed projects are the same as for original licenses. Needs induced by the project are the responsibility of the licensee, regardless of when those needs were originally induced or who is currently meeting those needs.

The Forest Service has constructed many recreation facilities in the past to accommodate recreation induced by FERC-licensed projects when the licensee would not construct the facilities. During relicensing, use appropriate 4(e) conditions (FSH 2709.15, ch. 50) to require the licensee to assume appropriate financial responsibility for those facilities constructed by the Forest Service, unless the Forest Service has reasons to retain this responsibility (see also related direction in FSM 2774.2 and FSH 2709.15, sec. 24.15).

2775—Special Management Areas

2775.1—Projects Proposed in Wild and Scenic Rivers Areas

Rivers and study rivers designated for protection under sections 3 or 5(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1271 *et seq.*) may not be used for hydropower projects on or directly affecting such rivers. Hydropower projects not on or directly affecting a designated wild and scenic river, but having some indirect affects on the river, may be permitted only where they do not invade or unreasonably diminish the existing wild and scenic river values (this provision also affects rivers designated for study under section 5(a) of the Wild and Scenic River Act).

By law, the Secretary of Agriculture must make the determination of whether a project is "on or directly affecting" the designated river or would "invade or unreasonably diminish the values for which the river was designated," in accordance with section 7 of the Wild and Scenic Rivers Act. This is called a section 7 determination. This authority has been delegated to the Regional Forester, who must make this determination prior to issuance of an exemption or license by FERC on rivers administered by the Department of Agriculture. See FSM 2354.04 and 2770.4 for the delegation of authority for making this determination. For further direction on wild and scenic rivers, see FSH 2709.15, sec. 25; 36 CFR Part 297; and FSH 1909.12, ch. 8.

2775.11—Projects Proposed on All Other Waterways

The proposed use of rivers on National Forest System lands for hydropower projects must be consistent with the requirements of section 5(d) of the wild and Scenic Rivers Act which Authorizes the Forest Service to study the Suitability of rivers for wild and scenic protection through the forest planning process. Therefore, the Regional Forester must ensure that eligibility determinations have been completed for all National Forest rivers proposed for use by hydropower projects by the time of the interim 4(e) report (FSH 2709.15, sec. 25; FSM 2354). If the river is not eligible for inclusion in the Wild and Scenic Rivers System, note that fact in the interim 4(e) report to FERC. If the river is eligible for inclusion in the Wild and Scenic Rivers system, ask FERC to delay the licensing decision until the suitability determination for inclusion in the Wild and Scenic Rivers System has been completed as outlined in FSH 2709.15, section 25.3. This requirement to complete eligibility requirements and, if the river is eligible, to complete suitability determinations applies to rivers identified on the Nation-wide Rivers Inventory and to rivers identified for consideration through Forest land and resource management plans (FSM 1924).

2775.12—Wild and Scenic Rivers on Lands in Conservation Units in Alaska

Dams and hydropower plants on a designated wild and scenic river in Alaska would not be an appropriate use and could not be licensed by FERC if they are "on or directly affecting" the river (Wild and Scenic Rivers Act, sec. 7, and sec. 1107 of the Alaska National Interest Lands Conservation Act (ANILCA; 94 Stat. 2464; 16 U.S.C. 3167)). A transportation or utility system, including linear facilities associated with a hydropower project, may use lands within the boundaries of a designated river in Alaska National Forests when the following conditions are met (16 U.S.C. 3167(b)):

1. Facilities do not interfere with or impede the streamflow of and transportation on the river.

2. The transportation or utility system (linear facilities, such as pipelines, ditches, tunnels and powerlines; 16 U.S.C. 3162(4)) is located and constructed in an environmentally sound manner.

2775.2—Projects Proposed in Designated Wilderness Areas.

(FSM 2320), and FSH 2709.15, sec. 26.) A new hydropower project may occupy land in a wilderness only if the President approves (16 U.S.C. 1133(d)(4)). The Secretary of Agriculture is responsible for a recommendation to the President to approve a hydroelectric use in a designated wilderness. The Chief is responsible for the recommendation to the Secretary to approve such a hydroelectric use. The Regional Forester is responsible for evaluating such a proposal. The

Secretary, Chief, or Regional Forester (FSM 2770.4) may determine that a proposal is not in the public interest and dismiss the project proposal.

Even though the Forest Service is responsible for initiating a recommendation for a project in wilderness, the Federal Energy Regulatory Commission (FERC) is responsible for the environmental impact statement (EIS) needed to evaluate proposed licensing of the project (FSM 2773). Such an EIS generally is prepared with the cooperation of the Forest Service through the Regional Forester.

If the Chief determines that a proposed project in wilderness is in the public interest, the Chief transmits the EIS, along with the recommendation, to the Department of Agriculture for the Secretary's recommendation to the President for a decision. If the President approves the project and the associated use of the wilderness, the Regional Forester must submit a 4(e) report to FERC consistent with that decision.

A special-use authorization (Form FS–2700–4f) for study of a potential hydropower development and other non-ground-disturbing activities in a wilderness may be issued without Presidential approval (FSM 2772.3, and FSH 2709.15, sec. 62.11 and 74).

Existing facilities in wilderness areas that have been properly authorized by a FERC license continue to be authorized by that license. See FSH 2709.15, section 64.7, for further guidance on administering existing projects in the wilderness.

2775.3—Project Proposed in Roadless Study Areas

Roadless study areas include legislatively unreleased Roadless Area Review and Evaluation II (RARE II) areas, further planning areas, and Congressionally mandated wilderness study areas (FSM 1923 and FSM 2320).

When roadless study lands are included in an application for license for a proposed hydropower project, advise FERC through an interim 4(e) report (or other appropriate correspondence) of the study and pending land allocation decision. Recommend that FERC:

1. Reject the application for license and advise the applicant to reapply if the lands in question are allocated to non-wilderness uses that would not conflict with hydropower development, or

2. Delay the licensing decision until the land allocation decision is made, preferably through the Forest land and resource management plan. If the land use decision must be made before the forest land and resource management plan can be implemented, conduct a suitable analysis in compliance with the National Environmental Policy Act (FSM 1920; FSH 1909.12 and 1909.15).

Generally, grant investigation special-use authorizations (Form FS–2700–4f) in these areas only for study and other non-ground-disturbing activities.

2775.4—Projects Proposed in Research Natural Areas

Most surface hydropower facilities would be incompatible with the purposes of a research natural area (FSM 4063). However, the research natural area management plan may allow for hydropower or similar uses; in this case, evaluate a proposed project and respond to FERC in a 4(e) report. Coordinate advice to FERC and the issuance of any special-use authorizing actions within the research natural area with the Research Station Director.

1. If a proposed hydropower project is incompatible with the purposes of the research natural area, then:

a. In response to a notice of application to FERC for license, or in the 4(e) report, inform FERC that such surface uses would be incompatible with the purposes of the research natural area.

b. Do not issue a special-use authorization for a project exempted from licensing by FERC when the project includes surface lands within a research natural area boundary.

2. When the Station Director believes that the hydropower values that would be forgone are of greater public benefit than keeping the research natural area fully protected, the Station Director may request, with Regional Forester concurrence, that the Chief reconsider or modify the designation order establishing the research natural area (see direction on authority of Station Directors in FSM 4062).

3. In general, do not issue an investigation special-use authorization (Form FS–2700–4f) to a project proposing to use lands of a research natural area; however, a non-ground disturbing investigation special-use authorization may be issued in situations such as:

a. The research natural area's management plan allows actions which include or are similar to those proposed by the hydropower project;

b. There would be no direct or indirect modification to the ecological processes of the research natural area; for example, a tunnel under the research natural area might not adversely affect the area; or

c. The Station Director anticipates that a proposed hydropower development may have significant public benefits.

2775.41—Projects Proposed in Candidate Research Natural Areas

When candidate research natural area lands are included in an application for license for a proposed hydropower project, advise FERC of the study and pending land allocation decision. Recommend that FERC:

1. Reject the application for license and advise the applicant to reapply if these lands are allocated to non-research natural area uses that would not conflict with hydropower development, or

2. Delay the licensing decision until the land allocation decision is made, preferably through the Forest land and resource management plan. If the land use decision must be made before the land and resource management plan can be implemented, conduct a suitable analysis in compliance with the National Environmental Policy Act (FSM 1920; FSH 1909.12 and 1090.15).

Issue investigation special-use authorizations (Form FS–2700-4f) for candidate research natural areas where no ground disturbance will take place. Coordinate the issuance of any special-use authorizing actions within the candidate research natural area with the Research Station Director.

2775.5—Projects Proposed in Other Special Areas

1. Other special areas may be established by the Forest land and resource management plan or unit plan for which the Forest Service may determine that a proposed hydropower development would not be compatible. Special interest areas established by the Forest Service may include:

a. Scenic, geological, botanical, zoological, and paleontological areas (FSM 2360.2).

b. Cultural resources areas (FSM 2361).

c. National scenic or historic trails (FSM 2353.4).

d. Other special land allocations established through the forest land and resource management plan or other procedure where hydropower development would be incompatible.

2. Other special land allocations may have been established by legislation, such as national recreation areas, where hydropower development may be incompatible.

3. When hydropower use would be incompatible with the management and purposes for establishing the special area, take the following actions:

a. In response to a notice of application to FERC for license, inform FERC in the 4(e) report that such use would be incompatible with National Forest purposes of the special management area (FSH 2709.15, sec. 26.4).

b. In response to an application for special-use authorization for a project exempted from licensing by FERC, do not issue a special-use authorization for such a project that includes lands within the special management area.

4. When project impacts can be adequately mitigated to protect the management and purposes for establishing the special management area, impose appropriate conditions on the license and special-use authorization through the 4(e) report or through the special-use authorization alone for a project exempted from licensing.

2775.51—Projects Proposed in Study Special Areas

When study special management area lands are included in an application for license for a proposed hydropower project, advise FERC of the study and pending land allocation decision. Recommend that FERC:

1. Reject the application for license and advise the application to reapply if the lands in question are allocated to non-special area uses that would not conflict with hydropower development, or

2. Delay the licensing decision until the land allocation decision is made, preferably through the Forest land and resource management plan. If the land use decision must be made before the Forest land and resource plan can be implemented, conduct a suitable analysis in compliance with the National Environmental Policy Act (FSM 1920; FSH 1909.15).

Issue investigation special-use authorizations (Forms FS–2700–4f) for study special areas, and as appropriate, carefully regulate potential ground disturbance.

2775.6—Projects Proposed in State-Designated Special Areas

The States may designate special areas, such as State wild and scenic rivers, wild trout streams, and State game refuges, which may include National Forest System land. State laws may prohibit State permits for hydropower projects on these special areas, but these laws are not binding on Federally authorized projects. However, in the spirit of cooperation, give such State laws and areas very careful analysis when considering hydropower projects. Under section 4(e) of the Federal Power Act, the Forest Service is not authorized to:

1. Impose conditions on the license to ensure protection of the State's designated special areas; or

2. Impose conditions on the license to protect other State interests not directly a result of the need for "adequate protection and utilization of the National Forest."

However, the Forest Service and the State may request that FERC provide protections which promote the interest of the state-designated area.

2775.7—Projects Proposed in National Monuments

FERC is prohibited from licensing a project that would occupy lands of a national monument administered by the Forest Service or other Federal agency (41 Stat. 1353; 16 U.S.C. 797(a)); such action would require an act of Congress.

2776—Relicensing

In general, follow the same procedures for projects whose owners are applying for a new license under relicensing procedures as used for those for projects whose applicants are applying for an original license. The procedural differences apply mainly to the project owners, not the Forest Service (sec. 15 of the Federal Power Act, 16 U.S.C. 808; 18 CFR Part 16, subpart B, sec. 16.8 through 16.13).

2776.1—Section 4(e) Conditions in Relicensing

The Forest Service may specify 4(e) conditions in a new license issued by FERC under relicensing procedures. Such conditions must be reasonable and necessary for the adequate protection and utilization of the National Forest as it exists at the time of relicensing.

Existing projects provide public benefits and have been in place long enough to be the "normal" situation where they exist. Therefore avoid disruption of these projects and carefully evaluate the need for change. However, it is essential to require reasonable measures to protect the environment. For example, it may be reasonable to provide fish passage over a dam, but not to restore a stream fishery that was converted to a lake fishery. Do not seek in relicensing offsite replacement of resources lost during the original licensing decision.

Generally, limit the resource protection measures to those which the project could afford to provide and still operate; avoid as much as possible actions that would cause projects to operate in a marginal economic condition.

2776.2—Removal of Project

If special circumstances indicate a project that is under consideration for relicensing should be removed, recommend in a 4(e) report to FERC that no new license be issued and that the area be restored. Do not use the conditioning authority under section 4(e) of the Federal Power Act to force removal of a project. See FSM 2771.33, for direction regarding Federal takeover of a project.

Proposed Handbook Revision

Following are the sections of the Hydropower Handbook (FSH 2709.15) cited in this **Federal Register** notice. For a copy of the entire Handbook, call the **FOR FURTHER INFORMATION CONTACT** listed at the beginning of the notice. This Handbook provides detailed direction to Forest Service personnel for evaluating hydropower project proposals and for coordinating with the Federal Energy Regulatory Commission (FERC). See FSM 2770 for policy and overall direction on Forest Service hydropower matters.

64.7—Administration of Projects in Wilderness Areas

Facilities in wilderness areas that have been properly authorized by a FERC license will continue to be authorized by that license. When FERC relicenses a project, the Forest Service issues a companion special-use authorization (Form FS–2700–4g), usually under the Federal Land Policy and Management Act (FLPMA) (FSM 2770.1). Since FLPMA authority cannot be used for facilities in a wilderness, use the Organic Act (16 U.S.C. 551) for the Forest Service authorization of that portion of the project in the wilderness.

These hydropower projects are considered as valid existing rights and administered as such under section 4(c) of the Wilderness Act of September 3, 1964 (16 U.S.C. 1133(c); FSM 2775.2).

Existing special use authorizations may be modified for maintenance and reconstruction work on projects in wilderness areas. Any modifications to such facilities must be made in conformance with the requirements of the license and any special-use authorization, and section 4(c) of the Wilderness Act, except that modifications to increase storage capacity or similar improvements must receive Presidential approval (sec. 4(d)(4) of the Wilderness Act).

Hydropower dams in wilderness areas must meet the requirements of Federal and State law, including the Wilderness Act, the Dam Safety Act (33 U.S.C. 467a–367n), the Federal Power Act, the

law and regulation that provides for the special use authorization, and the terms of the authorization. The Wilderness Act provides for the maintenance of existing dams and related facilities in wilderness areas if they are valid existing rights.

Maintenance can include work that will improve the safety of the dam, such as enlarging the spillway or increasing the freeboard on the dam. In some instances the installation of a water measuring device may be added when required by State law and when there is no suitable location available outside of the wilderness area.

FSM 2320 provides direction for evaluating proposed improvements and reconstruction of facilities, including access alternatives to the dam or water conveyance system. Consideration of proposals for work on dams and related access should be made on a case-by-case basis using the NEPA process (FSM 1950), balancing wilderness values with licensee rights and public safety. Historic methods of access and economics also should be considered in the analysis.

Hydropower projects licensed by FERC do not qualify for an easement under the Act of October 27, 1986 (Pub. L. 99–5545, the "Ditch Bill"; FSM 2770.1) which amended parts of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1761(c)).

65—Special-Use Authorization Fees

Fees may be charged for investigation special use permits (Form FS–2700–4f), as well as for project special use authorizations.

65.1—Investigation Permit Fee

Unless the market conditions indicate that a higher fee is appropriate, charge $200.00 for the term of a hydropower investigation permit (Form FS–2700–4f).

65.2—Licensed Project Authorization Fee

Waive the fee for this type of authorization since FERC already charges fees for the use of National Forest System land.

The holder shall pay a fee, as described in section 65.31, for areas outside the license boundary that are under temporary permit.

65.3—Exempted Project Authorization Fee

65.31—Fee for Construction Period (Minimum Operation Fee)

Charge the annual minimum fee of 10 percent of the land value of the area under permit for periods when power is not being sold. At the option of the Regional Forester, determine such land value by appraisal or other sound business practices. The holder shall pay the minimum fee in advance at the beginning of each year. Calculate the fee for temporary permits issued for temporary areas outside the main permit area at 10 percent, annually, of the land value of the area under those permits.

65.32—Operation Fee

Unless local market conditions indicate otherwise, the holder shall pay a fee of 3 percent of the gross power sales from the start of project operation until the end of the fifth year. From the start of the sixth year to the end of the tenth year, the holder shall pay a fee of 5 percent of the gross power sales. The fee from the start of the eleventh year until the end of the term of the authorization may increase up to 10 percent. Determine the final rate through a reevaluation of the market, during the tenth year.

The holder pays the minimum operation fee (sec. 65.31) in advance each year and that amount is credited toward the operation fee. The holder does not start paying the quarterly operation fees each year until the year's accumulated operation exceeds the minimum operation fee. The holder pays the operation fee quarterly, within 45 days of the end of each quarter, unless the average annual fee is less than $2,000 (in which case the holder pays at the end of the year).

65.33—Fee Adjustment of Mixed Ownership

Adjust the operation fee when the Federal Government land under permit is less than 90 percent of the total linear distance actually occupied by the project excluding access roads and transmission lines. Make the adjustment by measuring slope-distance length of the project from the outlet of the lowest powerhouse tailrace to the upstream edge of the impoundment created by the diversion. The percentage of that length that is on Government land is the percentage of the total fee that is due the Government. For example, if the government owns 800 feet of a 1,000-foot-long project, the initial operation fee would be 80 percent of 3 percent of the gross power sales or 2.4 percent of the gross power sales.

If there is more than one diversion, include the additional lengths of those other diversions from the point of intersection with those already measured in the total length.

65.34—Transmission Line Fee

The holder shall pay a separate fee for the area under permit for the transmission line portion of the project if such a line is the only facility under permit or if the transmission line exceeds 2,500 feet on National Forest System land to the point of interconnection with an existing transmission line. A separate special use authorization for a transmission line greater than 2,500 feet is not necessary, but may be used at the discretion of the authorizing officer; that is, the authorizing officer has the discretion to charge an additional fee for the transmission line within the hydropower permit, instead of issuing a separate transmission line permit for lines over 2,500 feet. Determine fees by the procedures for transmission line fees (see also sec. 62.24).

65.35—Conduit Exemption Fee

While conduit exemptions cannot be issued for projects that occupy Federal lands, FERC grants exemptions to such projects as long as the powerhouse is not on Federal lands and there is no new construction on Federal lands; for example when the powerhouse would be on non-Federal lands and the existing water pipeline or ditch on Federal lands does not need modification.

Regardless of FERC's action, treat the project in its entirety when calculating fees. Consistent with section 65.33, measure the linear distance of the water system from the powerhouse to the upper end of the diversion or to the next powerhouse, if any. The percentage of that length that is on National Forest System land is the percentage of the total fee that would be charged.

BILLING CODE 3410–11–M

HYDROPOWER HANDBOOK

Section 55.6 - Exhibit 01

Forest Service Standard 4(e) License Conditions

Enclosure II

LICENSE CONDITIONS NECESSARY FOR PROTECTION AND UTILIZATION OF THE <NAME> NATIONAL FOREST IN CONNECTION WITH THE APPLICATION FOR LICENSE PROJECT NO. <No.>

I. GENERAL

License articles contained in the Commission's Standard Form L-<no.> issued by Order No. 540, dated October 31, 1975, cover those general requirements that the Secretary of Agriculture, acting by and through the Forest Service, considers necessary for adequate protection and utilization of the land and related resources of the _____ National Forest under the purposes for which the _____ National Forest is administered. For the purposes of section 4(e) of the Federal Power Act (16 U.S.C. 797(e)), the purposes for which National Forest System lands were created or acquired are the protection and utilization of those resources enumerated in the Organic Administration Act of 1897 (30 Stat. 11), the Multiple-Use Sustained Yield Act of 1960 (74 Stat. 215), the National Forest Management Act of 1976 (90 Stat. 2949), and any other law specifically establishing a unit of the National Forest System or prescribing the management thereof (such as the Wilderness Act or Wild and Scenic Rivers Act), as such laws may be amended from time to time, and as implemented by regulations and approved Forest Plans prepared in accordance with the National Forest Management Act. Energy production (hydropower) is one of those resources (96 Stat. 2957). Therefore, pursuant to section 4(e) of the Federal Power Act, the following conditions covering specific requirements for protection and utilization of National Forest System lands shall also be included in any license issued.

II. MANDATORY PROVISIONS APPLICABLE TO ALL PROJECTS OCCUPYING NATIONAL FOREST SYSTEM LANDS

Condition No. 101 - Requirement To Obtain a Forest Service Special-Use Authorization.

The licensee shall comply with the special-use authorization which the licensee shall obtain from the Forest Service for the occupancy and use of National Forest System lands. The licensee shall obtain the executed authorization before beginning land disturbing, land clearing, or spoil producing activities on National Forest System lands or within one year of license issuance if no construction or reconstruction was proposed in the application for license or new license.

The Licensee may commence land-disturbing activities authorized by the License and special-use authorization no sooner than 60 days following the date the licensee files the Forest Service special-use authorization or endorsement regarding such authorization with the Commission, unless the Commission prescribes a different commencement schedule.

National Forest System lands within the project boundaries shall be managed by the Forest Service under the laws, rules, and regulations applicable to the National Forest System. The terms and conditions of the Forest Service special-use authorization are enforceable by the Forest Service under the laws, rules, and regulations applicable to the National Forest System. The violation of such terms and conditions also shall be subject to applicable sanctions and enforcement procedures of the Commission at the request of the Forest Service. In the event that there is a conflict between any provisions of the license and Forest Service special-use authorization, the special-use authorization shall prevail to the extent that the Forest Service, in consultation with the Commission, deems necessary to protect and utilize National Forest System resources.

Condition No. 102 - Forest Service Approval of Final Design

Before any ground-disturbing actions occur on National Forest System land, the Licensee shall obtain the written approval of the Forest Service for all final plans not previously approved by the Forest Service or which were not part of the approved project license exhibits (if such exhibits were given to the Forest Service for review). For the purposes of this license, (1) final plans are only those plans which show project facilities in complete and accurate detail in relation to the ground surface, which are accompanied by on-the-ground staking of the project facilities, and which have been reviewed and approved in writing by the Forest Service, and (2) the only final plans included are those relating to ground disturbance and to facility locations and appearance, which the Forest Service identifies as affecting the protection and utilization of the National Forest System lands. As part of the written approval for plans not previously approved, the Forest Service may require, within the scope of the licensed project and initial approvals of the Forest Service, adjustments in final plans with regard to facility locations and appearance to preclude or mitigate impacts and to assure that the project is compatible with on-the-ground conditions.

The Forest Service shall have up to 60 days from the date of plan(s) submittal to exercise approval authority. If the Forest Service is unable to proceed with consideration of such plans due to adverse weather or other reasons beyond the control of the Forest Service, the Forest Service shall promptly inform the licensee and the Commission of the problems, and the running of the 60-day period shall be delayed until the problems are resolved.

Condition No. 103 - Approval of Changes After Initial Construction

In addition to any Commission approval or license provisions to make changes to the project, the licensee shall obtain written approval from the Forest Service prior to making any changes in the location of any constructed project features or facilities, or any changes in the uses of Forest Service administered lands and waters, or any departure from the requirements of any approved exhibits filed with the Commission. Following receipt of such approval from the Forest Service, and not less than 60 days prior to initiating any such changes or departure, the Licensee shall file a report with the Commission describing the changes, the reasons for the changes, and showing the approval of the Forest Service for such changes. The Licensee shall file an exact copy of this report with the Forest Service at the same time it is filed with the Commission.

This article does not relieve the Licensee from the requirement for amendment or other requirements of Article 2 or Article 3 of this License. Any changes made pursuant to Articles 2 of 3 of the license shall be also subject to any new terms and conditions that the Secretary of Agriculture may impose in accordance with Section 4(e) of the Federal Power Act.

Condition No. 104 - Consultation

Every five years, beginning the fifth year following the anniversary date of the license, or on a schedule mutually agreed to by the Licensee and the Forest Service, the Licensee shall consult with the Forest Service with regard to project operations, including measures needed to ensure the adequate protection and utilization of the area of the National Forest affected by the project. If a dispute arises regarding needed measures, the Licensee shall, within 60 days following such consultation, file a letter with the Commission documenting the consultation, including any recommendations made by the Forest Service. The Commission reserves the right, after notice and opportunity for hearing, to require changes in the project and its operation that may be necessary to accomplish the adequate protection and utilization of the portion of National Forest System Lands occupied and affected by the project or to accomplish other identified natural resource protection.

Condition No. 105 - Dispute Resolution for Plan Approval

With respect to any plan required by this license to be approved by the Forest Service, if the Forest Service does not act within 60 days of submission of a proposed plan to the Forest Service by the licensee, the proposed plan shall be deemed disapproved.

The licensee may request, in writing, the Regional Forester to review any plan that is disapproved or deemed disapproved by the Forest Service. If the Regional Forester fails to issue a

determination regarding the request for review within 30 days of receiving the licensee's notice of request for review, the disapproval shall be deemed to have been sustained by the Regional Forester.

If the Regional Forester sustains the disapproval, the licensee may request, in writing, review of the decision by the Chief Service, as though the disapproval appealed was an original decision of the Regional Forester.

Condition No. 106 - Dispute Resolution for 4(e) Condition / Special-Use Authorization Administration

In order to expedite the review of disputed Forest Service orders or directions given during construction, the following procedures are to be used.

a. Any orders or directions, made during construction of the project can be immediately referred to the Forest Supervisor for resolution. If the Forest Supervisor fails to act within 5 working-days of written notice by the licensee of its concerns, the original order or directions of the Forest Service shall be deemed to be sustained.

If the licensee disagrees with the decision of the Forest Supervisor, it may request in writing that the appropriate Regional Forester review the decision of the Forest Supervisor. If the Regional Forester fails to act on such request within 15 working-days of receipt, the decision of the Forest Supervisor shall be deemed to be sustained by the Regional Forester.

If the licensee disagrees with the decision made by the Regional Forester, or as deemed made by the Regional Forester, it may request in writing that the Chief review the decision under the applicable administrative appeal procedures of the Forest Service as though the decision was an original decision of the Regional Forester.

b. Any orders or directions given during operation of the project will be resolved using the appeal regulations applicable to holders of special-use authorizations from the Forest Service.

Condition No. 107 - Cultural Resource Protection

The licensee shall not initiate any work, other than that specifically authorized in this license, before (1) consulting with the Forest Service and the appropriate State Historic Preservation Officer (SHPO), (2) conducting a cultural resources survey of these areas, and (3) filing for Commission approval a cultural resources management plan to avoid or mitigate impacts to any significant archeological or historic sites identified during the survey. The survey and plan shall be based on the recommendations of the SHPO and shall be

conducted and prepared by a qualified cultural resources specialist. If the licensee discovers any previously unidentified archeological or historic sites during the course of constructing or developing project works or other facilities at the project, the licensee shall stop all land-clearing, land-disturbing, or spoil-producing activities in the vicinity of the sites, and shall also consult with the SHPO and file for Commission approval a cultural resources management plan to avoid or mitigate impacts to significant resources, prepared by a qualified cultural resources management specialist.

The survey and the plan shall be documented in a report which shall contain the following: (1) a description of each discovered site, indicating whether it is listed or eligible to be listed on the National Register of Historic Places; (2) a description of the potential effect on each discovered site; (3) proposed measures for avoiding or mitigating the effects; (4) documentation of the nature and extent of consultation; and (5) a schedule for mitigating effects and conducting additional studies. The Commission may require changes to the plan or the report.

The licensee shall not begin land-clearing, land-disturbing, or spoil-producing activities, other than those specifically authorized in this license, or resume such activities in the vicinity of a site discovered during construction, until informed by the Commission that the requirements of this article have been fulfilled.

III. ADDITIONAL PROVISIONS

Condition No. 110 - Instream Flow Requirement

During the construction and operation of the facilities authorized by this license, the licensee shall maintain the following instantaneous instream flows or the natural flow, whichever is less, immediately below the diversion in the <Name of Stream>.

<date> through <date> <no.> cubic feet per second (cfs)
<date> through <date> <no.> cfs
<date> through <date> <no.> cfs

The Licensee may temporarily modify instream flows if required by operating emergencies beyond the control of the Licensee. The Licensee may also modify instream flows for short periods upon written consent of the Forest Service.

[OPTIONAL - USE THIS PARAGRAPH AS NECESSARY.]

After notice to and concurrence by the Forest Service, the Licensee shall release down the channel a flushing flow acceptable to the Forest Service in <name of creek> for <no.> consecutive days during the peak runoff period to maintain channel competence and to aggregate and flush the gravel.

[USE THIS PARAGRAPH ONLY IF STANDARD CONDITION 180 IS USED.]
These interim instream flow requirements shall remain in effect until the date that the approved adjusted instream flows provided for in Article 180 are implemented.

Condition No. 111 - Guaranteed Priority Flow Bypass Device and Gaging

The Licensee shall construct, operate, and maintain a guaranteed priority streamflow device, approved by the Forest Service, as part of the diversion/intake structure. Instream flows required by condition 110 shall be automatically released through this device, before any flow can be diverted into the conduit. At least 90 days prior to beginning construction of the diversion structure, the licensee shall file for Commission approval functional design drawings and an implementation schedule for the guaranteed priority streamflow device. Upon Commission approval, the licensee shall implement the schedule. The guaranteed priority streamflow device shall be shown on the as-built drawings filed with the Commission.

The licensee, after consulting with the appropriate State agency, the Forest Service, and the United States Geological Survey, shall develop plans to install and monitor a water measurement control section with an continuous recording gage to demonstrate compliance with the requirements of condition 110 and this article. The licensee shall file with the Commission, at least 90 days prior to the installation of the water measurement control section, plans approved by the Forest Service for the water measurement control section and gaging. The Commission may require changes to the plans.

The licensee shall provide stage-discharge information to the Forest Service prior to commencement of operation of the project. Within 60 days of request, the licensee shall provide the Forest Service with updated stage-discharge charts and/or with a report of streamflow information collected at the water measurement control section and any other applicable stream gage records. The water measurement control section and gage shall be shown on the as-built drawings filed with the Commission.

Condition No. 112 - Fish Screens

Prior to diversion of any flows into the conduit, the licensee shall install and maintain a fish screen device on the intake structure of the diversion to prevent entrainment of fish into the conduit and penstock system. A positive fish screen at the diversion intake structure designed for an approach velocity of ____ feet per second, a channel velocity at least twice the approach velocity, and a smooth transition to a fish bypass pipe at the down stream end of the screen structure shall be incorporated into the diversion.

At least 90 days prior to the installation of the diversion structure, the licensee shall file for Commission approval, Forest Service-approved functional design drawings for the

design of the screen and related devices. The Commission may require modifications to the designs. The screen and related devices shall be shown on the as-built drawings filed with the Commission.

Condition No. 113 - Fish and Wildlife Mitigation Plan

At least 90 days prior to land-clearing, land-disturbing, or spoil-producing activities, the licensee shall file for Commission approval, a fish and wildlife mitigation plan approved by the Forest Service. The plan must be consistent with the standards and guidelines for affected management areas in the _____ National Land and Resource Management Plan. The mitigation plan must include the following.

a. _____
b. _____
c. _____

This plan must identify requirements for construction and mitigation measures to meet Forest Service fish and wildlife habitat objectives and standards. The plan also must include dates for accomplishing these objectives and standards and must identify needs for and timing of any additional studies called for in the license.

Any comments of the <in consultation with FERC, fill in involved agencies, such as US Fish and Wildlife Service, National Marine Fisheries Service, and the State Fish and Wildlife agency> shall be filed with the plan. The Commission may require changes to the plan to ensure adequate protection of the environmental, scenic, and cultural values of the project area. Upon Commission approval, the licensee shall implement the plan.

Condition No. 114 - Sensitive Species Plan

At least 90 days prior to land-clearing, land-disturbing, or spoil-producing activities, the licensee shall file for Commission approval, a sensitive species plan approved by the Forest Service for the protection of _____ located in the project area. The plan must be consistent with the standards and guidelines for affected management areas in the _____ National Land and Resource Management Plan. The mitigation plan must include the following.

a. _____
b. _____
c. _____
d. _____

This plan must identify requirements for construction, operation, and maintenance measures to meet Forest Service objectives and standards as identified in the _____ Forest plan on file with the Commission. A biological evaluation will

be required prior to project construction for each sensitive species.

Any comments of the <in consultation with FERC, fill in involved agencies, such as US Fish and Wildlife Service, National Marine Fisheries Service, and the State Fish and Wildlife agency> shall be filed with the plan. The Commission may require changes to the plan to ensure adequate protection of the environmental, scenic, and cultural values of the project area. Upon Commission approval, the licensee shall implement the plan.

Condition No. 115 - Threatened and Endangered Species Plan

At least 90 days prior to land-clearing, land-disturbing, or spoil-producing activities, the licensee shall file for Commission approval, a plan approved by the Forest Service and U.S. Fish and Wildlife Service, for the protection of _____ _____ located in the project area. The plan must be consistent with the standards and guidelines for affected management areas in the _____ National Land and Resource Management Plan. The mitigation plan must include the following.

a. _____
b. _____
c. _____
d. _____

This plan must identify requirements for construction, operation, and maintenance measures to meet Forest Service and U.S. Fish and Wildlife Service objectives and standards for the recovery of the affected species. A biological evaluation will be required prior to project construction for the affected species.

Any comments of the <in consultation with FERC, fill in involved agencies, such as US Fish and Wildlife Service, National Marine Fisheries Service, and the State Fish and Wildlife agency> shall be filed with the plan. The Commission may require changes to the plan to ensure adequate protection of the environmental, scenic, and cultural values of the project area. Upon Commission approval, the licensee shall implement the plan.

Condition No. 116 - Erosion Control Measures Plan

At least 90 days prior to starting any land-clearing, land-disturbing, or spoil-producing activities, the licensee shall file for Commission approval, a plan approved by the Forest Service to control erosion, stream sedimentation, dust, and soil mass movement consistent with the standards and guidelines for affected management areas in the _____ National Land and Resource Management Plan. Upon Commission approval, the licensee shall implement the plan.

The plan shall be based on actual-site geological, soil, and groundwater conditions and shall include: (1) a description of the actual-site conditions; (2) detailed descriptions, design drawings, and specific topographic locations of all control measures; (3) measures to divert runofff away from disturbed land surfaces; (4) measures to collect and filter runoff over disturbed land surfaces, including sediment ponds at the diversion and powerhouse sites; (5) revegetating disturbed areas outside of the roadbed; (6) measures to dissipate energy and prevent erosion at the tailrace; (7) _____ _____ _____ _____ _____; (8) _____ _____ _____ _____ _____ _____; and (9) a monitoring and maintenance schedule. The Commission may require changes to the plan to ensure adequate protection of the environmental, scenic, and cultural values of the project area.

This plan must identify requirements for construction, operation, and maintenance measures to meet Forest Service erosion control objectives and standards.

Condition No. 117 - Visual Resource Protection

At least 90 days prior to starting any land-clearing, land-disturbing, or spoil-producing activities, the licensee shall file for Commission approval, a plan approved by the Forest Service for the design and construction of the project facilities in order to preserve or enhance the visual quality of the project area, consistent with the standards and guidelines for affected management areas in the _____ National Forest Plan. Upon Commission approval, the licensee shall implement the plan. The Commission may require changes to the plan to ensure adequate protection of the environmental, scenic, and cultural values of the project area.

The plan must address facility configurations and alignments, architectural theme, building materials, color, conservation of vegetation, landscaping, signs, and screening. Project facilities to be covered by this plan include, among other things, clearings, diversion structures, penstocks, pipes, ditches, powerhouses, other buildings, transmission lines and corridors, recreation facilities, and access roads.

In particular, the plan must at least include the following: (1) the powerhouse and associated facilities such as security fences, tailrace, equipment storage, access and parking, and communication equipment; (2) diversion structure and associated facilities such as access and parking, power sources for sensing and monitoring equipment, and inlet controls; (3) power transmission line; and (4) pipelines and ditches; and (5) recreation facilities.

Mitigation measures shall include, but are not limited to, (1) surface treatments with colors that will be in harmony with the surrounding landscape, (2) use of non-specular conductors for the transmission lines, (3) use of native plant species to

screen facilities from view, (4) reshaping and revegetating disturbed areas to blend with surrounding visual characteristics, (5) locating transmission facilities to minimize visual impacts, (6) _____ _____ _____ _____; (7) _____ _____ _____; (8) _____ _____ _____ _____.

Condition No. 118 - Project Recreation Plan

At least 90 days prior to starting any land-clearing, land-disturbing, or spoil-producing activities, or as agreed to by the Forest Service, the Licensee shall file for Commission approval, a plan approved by the Forest Service for implementing measures to mitigate project-induced recreation and provide for other recreation needs over the life of the project, consistent with the standards and guidelines for affected management areas in the _____ National Land and Resource Management Plan. The recreation plan must include sited plans for the following.

a. _____
b. _____
c. _____
d. _____

Upon Commission approval, the licensee shall implement the plan. The Commission may require changes to the plan to ensure adequate protection of the environmental, scenic, and cultural values of the project area.

Condition No. 119 - Diversion Operation Plan

At least 90 days prior to starting any land-clearing, land-disturbing, or spoil-producing activities, the licensee shall file for Commission approval, a plan approved by the Forest Service for the operation and maintenance of the diversion, consistent with the standards and guidelines for affected management areas in the _____ National Forest Plan.

The plan must address at least the following: (1) water storage, (2) methods for sediment flushing, (3) methods for removal and disposal of sediment, (4) procedures for flood conditions, (5) methods of erosion prevention in the diversion area and spillway channel, (6) trash and debris removal, (7) _____ _____ _____, (8) _____ _____ _____, and (9) an implementation schedule and maintenance program.

Upon Commission approval, the licensee shall implement the plan. The Commission may require changes to the plan to ensure adequate protection of the environmental, scenic, and cultural values of the project area.

Condition No. 120 - Storage Reservoir Operation Plan

At least 90 days prior to starting any land-clearing,

land-disturbing, or spoil-producing activities, the licensee shall file for Commission approval, a plan approved by the Forest Service for the operation and maintenance of the reservoir, consistent with the standards and guidelines for affected management areas in the _____ National Land and Resource Management Plan.

The plan must address at least the following: (1) water storage and releases, including storage limitations (if any), dates and/or criteria for filling and release; (2) procedures for flood conditions; (3) erosion prevention in the reservoir area and spillway channel; (4) trash and debris removal; (5) _____; (6) _____ _____ _____ _____; (7) _____ _____; and an implementation schedule and maintenance program. Provided, however, that regardless of Forest Service approval or denial, the Commission may overrule the Forest Service and/or the approved storage reservoir operating plan if the Commission finds that measures required or provided for will interfere with dam safety or other public safety needs.

Upon Commission approval, the licensee shall implement the plan. The Commission may also require changes to the plan to ensure adequate protection of the environmental, scenic, and cultural values of the project area.

Condition No. 121 - Transmission Line Burial

The Licensee shall bury the transmission line along ___ <alignment> ____. The location and depth of burial of the line are subject to approval by the Forest Service.

Condition No. 122 - Pipeline Road Crossing

The licensee shall construct __<number>__ road crossings over the pipeline/penstock at locations designated by the Forest Service. Such crossings must be designed to meet Forest Service road standards for trucks (describe standards).

Condition No. 123 - General Access Over Pipeline

In order to protect general access, the pipeline/penstock, where buried, shall be buried at a depth to allow heavy equipment to cross-over the conduit and to allow removal of timber by aerial or ground methods.

Condition No. 124 - Coordination With Timber Sale Purchaser

The project area may be under contract to the purchaser of the __<name>__ timber sale. Before starting construction or removing any timber in the project area, the Licensee shall develop an agreement with that timber sale purchaser if the sale has not been closed. The agreement must stipulate the joint use of roads and the method of disposal for timber within the project boundary and under the existing sale contract. The

agreement must be approved by the Forest Service before timber removal may begin. Removal of timber in addition to that already sold to the purchaser, must be authorized by amendment to the purchaser's contract or by a separate timber sale contract sold to the Licensee or another party.

Condition No. 125 - Borrow Pit Requirements

Borrow pits and other excavations are restricted to locations below the high waterline and limited to the location and quantities specified in the approved plans and specifications. The licensee shall make no additional excavations without advance written approval of the Forest Service. After removal of the desired material, the licensee shall grade and shape all excavations as agreed to by the Forest Service.

Condition No. 126 - Winterization

The licensee shall take necessary measures to ensure that a suitable conveyance or channel is adequate to pass the inflow design flood for spring runoff and to prevent erosion or siltation due to the construction.

IV. REGIONAL STANDARD PROVISIONS

Conditions 140 - 159

V. PROJECT SPECIFIC PROVISIONS

Conditions 160 - 179

VI. OTHER SPECIAL PROVISIONS

Condition No. 180 - Instream Flow Modification Study
[THIS CONDITION SHOULD RARELY BE USED. USE ONLY IN CONJUNCTION WITH CONDITION NO. 110. USE ONLY IF LICENSEE REQUESTS FURTHER OPPORTUNITY TO STUDY STREAMFLOW RELEASES.].

At least 90 days prior to starting any land-clearing, land-disturbing, or spoil-producing activities, the licensee shall file for Commission approval, a plan approved by the Forest Service for the study of instream flows, consistent with the standards and guidelines for affected management areas in the _____ National Land and Resource Management Plan. Upon Commission approval, the licensee shall commence the study. The Commission may require changes to the study plan to ensure adequate assessment and protection of the environmental, scenic, and cultural values of the area.

This study must address: (a) the effects of diverting different quantities of water on downstream aquatic and terrestrial habitats; (b) the water requirements of aquatic organisms in the areas affected by diversions, including existing organisms and those that may be introduced; (c) the

effects of project discharges on stream morphology and stability; (d) measures that will ensure the protection and enhancement of water quality and animal and vegetative habitats in the streams and environs; (e) requirements for recreation and aesthetics; and (f) recommendations for instream flow requirements and flow regimes that will achieve the identified measures of protection and enhancement.

Within 6 months following completion of the study, the Licensee shall file the study results with the Commission.

As a result of the study, when and if the licensee and Forest Service agree to changes in the streamflows specified in article 110, the licensee may file with the Commission, a revised article 110 showing the new proposed instream flow requirements. Such filing shall clearly document Regional Forester specific agreement to the new streamflow requirements.

The licensee may not implement the revised instream flow requirements, until approved by the Forest Service, and until the Commission, issues an order approving the revised instream flow requirements.

Condition No. 181 - Sensitive Plant and Habitat Plan

At least 90 days prior to starting any land-clearing, land-disturbing, or spoil-producing activities, the licensee shall file for Commission approval, a Sensitive Plant Habitat Plan approved by the Forest Service and consistent with the standards and guidelines for affected management areas in the _____ National Land and Resource Management Plan. The plan shall be prepared in consultation with the Forest Service and any other affected State or Federal agency. Upon Commission approval, the licensee shall implement the plan. The Commission may require changes to the study plan to ensure adequate assessment and protection of the environmental, scenic, and cultural values of the project area.

This plan shall identify requirements for construction, operation, and maintenance measures to meet Forest Service sensitive plant and habitat objectives and standards as identified in the _____ Land and Resource Management Plan on file with the Commission. The plan shall include a schedule for accomplishing these objectives and standards and shall identify any needs for additional studies. Due to the unknown nature of the project's impacts on the sensitive plant species _____ _____, some of the studies (possibly requiring a year or more) may need to be completed prior to construction, because of the required mitigation measure's effects on the viability of the total project.

The Licensee shall prepare a monitoring plan to determine the effectiveness of the mitigations on sensitive plants. If monitoring indicates to the Forest Service that changes in project structures or operations are necessary to maintain

sensitive species, the Licensee may be required by the Forest Service to file with the Commission a schedule, approved by the Forest Service, for implementing specific changes in project structures or operations.

Condition No. 182 - Slope Stability Protection Plan
[INSTRUCTIONS: THIS CONDITION IS SELDOM NECESSARY; CONDITION 116 SHOULD BE ADEQUATE.]

At least 90 days prior to starting any land-clearing, land-disturbing, or spoil-producing activities, the licensee shall file for Commission approval, a slope stability protection plan approved by the Forest Service and consistent with the standards and guidelines for affected management areas in the _____ National Land and Resource Management Plan. Upon Commission approval, the licensee shall implement the plan. The Commission may require changes to the plan to ensure adequate protection of the environmental, scenic, and cultural values of the project area.

The plan will include a detailed geotechnical design report of all project elements, particularly for facilities in potential geologic hazard areas. The geotechnical design report shall address specific areas and identify the specifications and requirements for construction, operation, and maintenance to meet Forest Service standards.

Condition No. 183 - Restrictions on Access by Road

Road access to _____ will not be permitted. Access will be by pedestrian/two-wheel vehicle with no greater than a 4-foot wide trail. Construction of the powerhouse and penstock will utilize a fully-suspended cable system or helicopter. The cable system will operate within confinement of the penstock corridor. Engineering and design of the cable system must have Forest Service approval.

Condition No. 184 - Easement Acquisition

Prior to selling power produced by this project, the Licensee shall acquire, without contribution or compensation by the United States, easements in the name of the United States for the location of and public access to those portions of the _____ trail, trailhead, parking lot, and picnic facilities _____ to be constructed in accordance with the Licensee's approved Recreation Plan that are not located on National Forest System land. The licensee shall obtain Forest Service approval of the easement language and evidence of unencumbered title to the easements prepared by a certified title examiner prior to execution of the easements.

Condition No. 185 - Traffic Management and Public Safety

At least 90 days prior to starting any land-clearing,

land-disturbing, or spoil-producing activities, the licensee shall file for Commission approval, a plan approved by the Forest Service for traffic management and public safety associated with construction in the roadbed. The plan must be consistent with the standards and guidelines for affected management areas in the _____ National Land and Resource Management Plan. Upon Commission approval, the licensee shall implement the plan. The Commission may require changes to the plan to ensure adequate protection of the environmental, scenic, and cultural values of the project area. The plan shall provide for (1) suspension of penstock construction during the winter ski season from _____ to _____ __; during the big-game rifle hunt in _____ of each year (including a short pre- and post-season period); during summer recreation season weekends and holidays from _____ to _____; and (2) safe passage of public traffic during permitted construction periods, with traffic delays not to exceed 1 hour.

Condition No. 186 - Siting of Facilities

The facilities covered by this license shall be located generally as described in the License Application, except (1) as may be described below, (2) as modified by the terms of this license, or (3) as ordered by the Commission for the protection of the environmental, scenic, and cultural values of the project area.

a. _____
b. _____
c. _____

Condition No. 187 - Plan Implementation.

The licensee shall implement the _____ plan filed _____, which is approved and made part of the license. The plan, consisting of pages _____ through _____ and drawings _____ and _____, provides measures for _____.

Section 77 - Exhibit 01

FS-2700-4g (07/93)
OMB No. 0596-0082
(Expires: 6/30/96)

U.S. DEPARTMENT OF AGRICULTURE Forest Service	Holder No. _ _ _ _-_ _	Issue Date _ _/_ _/_ _	Expir. Date _ _/_ _/_ _
	Type Site(s) _ _ _ _ _ _	Authority _ _ _	Auth. Type _ _ _ _
SPECIAL-USE PERMIT FOR LICENSED HYDROPOWER PROJECT	Region/Forest/District _ _/ _ _ / _ _		State/County _ _/ _ _ _
Act of October 21, 1976 (P.L. 94-579) 36 CFR 251.50 et seq. (Ref. FSM 2770)	Cong. Dist. _ _	Latitude _ _-_ _-_ _	Longitude _ _ _-_ _-_ _

_____ of _____
(Holder Name) (Billing Address - 1)

_____ _____ _____ _____
(Billing Address - 2) (City) (State) (Zip Code)

(hereinafter called the Holder) is hereby authorized to use or occupy National Forest System lands, to use subject to the conditions set out below, on the _____ National Forest <<or _____ unit of the National Forest System. OPTIONAL>>

This permit covers <<# OF ACRES>> acres and/or <<# OF MILES OR WIDTH IN FEET X LENGTH IN FEET OF USE AUTHORIZED>> and is described as (e.g. NW1/4 NW1/4, Section 26, T24N, R16E, W.M.; Tract 419-A; MS 309 ID; etc.) as shown on the location map attached to and made a part of this permit, and is issued for the purpose of: _____

_____

_____

The above described or defined area shall be referred to herein as the "permit area".

TERMS AND CONDITIONS

I. AUTHORITY AND GENERAL TERMS OF THE PERMIT

A. Authority. This permit is issued pursuant to the authorities enumerated at Title 36, Code of Federal Regulations, Section 251 Subpart B, as amended. This permit, and the activities or use authorized, shall be subject to the terms and conditions of the Secretary's regulations and any subsequent amendment to them.

B. Authorized Officer. The authorized officer is the Forest Supervisor or a delegated subordinate officer.

C. Permit. This permit is an authorization for the use of federally owned land and does not grant any permanent, possessory interest in real property, nor shall this permit constitute a contract for purposes of the Contract Disputes Act of 1978 (41 U.S.C. 611). Loss of the privileges granted by this permit by revocation, termination, or suspension is not compensable to the holder.

D. Permit Amendment, Licensed Project. (K44) The Regional Forester may review the terms and conditions of this permit upon any modification of project facilities affecting National Forest System lands and requiring an amendment to the license for this project. At such time, the Regional Forester may incorporate in the permit such new terms, conditions, and stipulations as existing or prospective conditions may warrant; provided, that such new terms, conditions, or stipulations shall not unreasonably reduce the use herein authorized and are consistent with the license issued by the Federal Energy Regulatory Commission. Changes in this permit needed because of modifications not requiring an amendment to the license for this project shall be limited to those items and resources affected by the modification.

E. Existing Rights. This permit is subject to all valid rights of third parties. The United States is not liable to the special use authorization holder for the exercise of any such right.

F. Nonexclusive Use. Unless expressly provided in additional terms, this permit is not exclusive. The Forest Service reserves the right to use or allow others to use any part of the permit area for any purpose, provided such use does not interfere with public safety or the rights and privileges hereby authorized or authorized under the Federal Power Act.

G. Public Access and Use. (X19) Unless specifically limited under additional terms to this permit, the holder agrees to allow the public free and unrestricted access to and use of the permit area at all times for all lawful purposes. To facilitate public use of the permit area, all existing roads or roads as may be constructed by the holder shall remain open to the public, except for roads as may be closed by joint agreement of the holder and the authorized officer.

H. Forest Service Right of Entry and Inspection. The Forest Service shall have free and unrestricted access at all times, including the right to enter into all buildings, dwellings, and other facilities to ensure compliance with the terms and conditions of this permit. In addition, the Forest Service may enter the authorized facilities for any purpose or reason consistent with any right or obligation of the United States under any law or regulation.

I. Assignability. This permit is transferable as provided for under condition II. H. of this permit; 36 CFR 251.59.

J. Permit Limitations. Nothing in this permit allows or implies permission to build or maintain any structure or facility, or to conduct any activity unless specifically provided for in this permit. Any use not specifically identified in this permit must be approved by the authorized officer in the form of a new permit or permit amendment.

K. Water Rights. This permit does not confer to the holder any ownership of or right to the use of water.

II. TENURE AND ISSUANCE OF A NEW PERMIT

A. Termination at the End of the Authorized Period, Licensed Project. (K32) Unless canceled or terminated by the authorized officer, the term of this permit shall be concurrent with Federal Energy Regulatory Commission license for this project and this permit shall become void on the termination date shown in the ENDORSEMENT section at the end of this permit; provided, however, that this permit will be automatically extended during annual license extensions granted under the Federal Power Act while the Federal Energy Regulatory Commission is considering the granting of a new license unless the authorized officer determines and provides the holder with written notice that such automatic extensions are to be denied and the reasons for the denial.

B. Conditions for Issuance of a New Permit. At the expiration or termination of an existing permit, a new permit may be issued to the holder of the previous permit or to a new holder subject to the following conditions:

1. The authorized use is compatible with the land use allocation in the Forest Land and Resource Management Plan.

2. The permit area is being used for the purposes previously authorized.

3. The permit area is being operated and maintained in accordance with the provisions of the permit.

4. The holder has shown previous good faith compliance with the terms and conditions of all prior or other existing permits, and has not engaged in any activity or transaction contrary to Federal contracts, permits, laws, or regulation.

C. Discretion of Forest Service, Licensed. (K48) Notwithstanding any provisions of any prior or other permit, the authorized officer may prescribe new terms, conditions, and stipulations when a new permit is issued.

III. RESPONSIBILITIES OF THE HOLDER

A. Plans. (K47) Consistent with Article 102 of the Federal Energy Regulatory Commission license for this project, all proposals for construction, reconstruction, substantial change, or alteration shall be submitted by the holder for approval to the authorized officer issuing this permit. This includes all final plans affecting surface resources and any changes to approved plans, or to plans in the approved project license, related to the location or appearance of project features and temporary facilities, that are identified by the Forest Service as affecting the protection and utilization of National Forest System lands. The proposed action may commence only after the authorized officer has approved, in writing, the plans, specifications, and written construction stipulations, which stipulations shall become part of this permit for the period of time deemed necessary by the authorized officer. The authorized officer shall have up to 60 days from the date

of plan or change submittal to exercise approval authority. If the authorized officer is unable to proceed with consideration of such plans or changes due to adverse weather or reasons beyond the control of the Forest Service, the authorized officer shall promptly inform the licensee of the problems, and the running of the 60-day period shall be delayed until the problems are resolved.

B. Maintenance. The holder shall maintain the improvements and permit area to standards of repair, orderliness, neatness, sanitation, and safety acceptable to the authorized officer, and consistent with applicable Federal, State, and local health and safety and other requirements. For example, trash, debris, unusable machinery, etc., will be disposed of separately; other materials will be stacked, stored neatly, or within buildings. Disposal will be at an approved existing location, except as otherwise agreed to by the authorized officer.

C. Hazard Analysis. (K33) The holder has a continuing responsibility to identify and abate hazardous conditions on the permit area which could affect the improvements or pose a risk of injury to individuals. Avalanches, rising waters, high winds, falling limbs or trees, and other hazards are natural phenomena in the forest that present risks to the holder's property that the holder hereby assumes. The holder is responsible for inspecting its site, right-of-way, and the immediate adjoining area for dangerous conditions and, after securing permission from the Forest Service, is responsible for removing such hazards. However, if a hazard poses a substantial immediate danger to life or property, the holder may remove the hazard in accordance with a Forest Service approved plan for such emergency actions, while immediately notifying the authorized forest officer.

D. Safety. (K13) The holder shall carry out all operations in a skillful manner, having due regard for the safety of employees and the public, and in accordance with applicable Occupational Safety and Health Administration and Environmental Protection Agency regulations shall safeguard unsafe areas. The holder shall regularly inspect its facilities as directed by 18 CFR Part 12 regulations, meet all the requirements of those regulations, and provide further effective safety measures as needed for safety protection.

E. Compliance with Laws, Regulations, and other Legal Requirements. The holder, in exercising the uses authorized by this permit, will assume responsibility for compliance with the regulations of the Department of Agriculture and all Federal, State, county, and municipal laws, ordinances, or regulations which are applicable to the area or operations covered by this permit. The obligations of the holder under this permit are not contingent upon any duty of the Forest Service to inspect the premises. A failure by the Forest Service, or other governmental officials, to inspect is not a defense to noncompliance with any of the terms and conditions of this permit.

F. Fire Prevention and Suppression. The holder shall take all reasonable precautions to prevent and suppress forest fires. Open fires are prohibited except with written permit from the authorized officer or the authorized officer's agent.

G. Change of Address. The holder shall immediately notify the authorized officer of a change in address.

H. Change in Ownership of the Authorized Improvements. This permit is transferable to the extent necessary to conform with of the license. The holder shall immediately notify the authorized officer when a change in ownership of the improvements is pending. Notification by the present holder and potential owner shall be executed using Form FS-2700-3, Special Use Application and Report, or Form FS-2700-3a, Request for Termination of and Application for Special-Use Permit. Upon receipt of the proper documentation, the authorized officer may issue a permit to the new owner of the improvements.

I. Relocation of Improvements. (K29) The holder accepts this permit with the express understanding that should future location of government improvements or road rights-of-way require the relocation or adjustment of the holder's linear-type improvements (such as transmission lines, penstocks, pipelines, ditches, or roads) or other actions to accommodate the Federal Government's need for reasonable protection and use of public property, the holder shall, as mutually agreed by the government and the holder and at the holder's expense, accomplish such relocation, adjustment, or other actions, within 180 days following written request to take such action, or on a schedule approved by the Forest Service in writing.

J. Pollution. (K19) The holder shall discharge no waste or byproduct if it contains any substances in concentrations that would result in violation of Federal or State laws, including water quality standards set forth at the time of licensing by the State; would impair present or future beneficial uses of water; would cause pollution, nuisance, or contamination; or would otherwise unreasonably degrade the quality of any lands or waters. During the construction and operation of the project, the holder shall protect project water quality by using the best management practices established by the Forest Service and the State.

K. Esthetics. (K6) In its actions, the holder shall conserve the scenic and esthetic values of the area under this permit consistent with the uses granted herein during construction, operation, and maintenance of the project improvements.

L. Signs. (K11) The holder shall erect no signs or advertising devices on the area covered by this permit without prior approval of the Forest Service as to location, design, size, color, and message. The holder shall maintain or renew erected signs as necessary to neat and presentable standards. The holder shall coordinate the placement of signs required by the license or the Commission with the authorized forest officer. All signs for holder-provided project recreation facilities shall be constructed to Forest Service specifications (i.e., from the Forest Service "family of signs") and shall give equal representation to the holder and the Forest Service.

M. Pesticides. (K23) Pesticides may not be used to control undesirable woody and herbaceous vegetation, aquatic plants, insects, rodents, trash fish, etc., without the prior written approval of the Forest Service. The holder shall submit a request for approval of planned uses of

pesticides. The report must cover annual planned use and be updated as required by the Forest Service. The holder shall provide information essential for review in the form specified. Exceptions to this schedule may be allowed only when unexpected outbreaks of pests require control measures that were not anticipated at the time the report was submitted. In such an instance, an emergency request and approval may be made.

On National Forest System lands, the holder shall use only those materials registered by the U. S. Environmental Protection Agency for the specific purpose planned. The holder must strictly follow label instructions in the preparation and application of pesticides and disposal of excess materials and containers.

IV. LIABILITY

A. Risk of Loss. The holder assumes all risk of loss of the property. Loss to the property may result from, but is not limited to, theft, vandalism, fire, avalanches, rising waters, winds, falling limbs or trees, and acts of God. If the authorized improvements are destroyed or substantially damaged, the authorized officer shall conduct an analysis to determine whether the improvements can be safely occupied in the future and whether rebuilding should be allowed.

B. Damage to Property of the United States. The holder has an affirmative duty to protect from damage the land and property of the United States. Damage includes, but is not limited to, fire suppression costs and all costs associated with or resulting from the release or threatened release of a hazardous substance occurring during or as a result of the holder's activities on the property.

1. The holder shall pay the United States for damages occurring under the terms of this permit or under any law or regulation applicable to the National Forests, whether caused by the holder, or by any agents or employees of the holder. The holder shall be liable for all injury, loss, or damage, including fire suppression or cleanup of hazardous wastes, associated with the holder's use or occupancy without regard to the holder's negligence. Compensation shall include, but is not limited to, the value of resources damaged or destroyed, the costs of restoration, cleanup, or other mitigation, fire suppression or other types of abatement costs, and all administrative, legal and other costs in connection therewith.

2. With respect to roads, the holder shall be liable for damages to all roads and trails of the United States open to public use caused by the holder's use to the same extent as provided under condition IV. B. The holder shall fully repair all damage to National Forest roads and trails caused by the holder in the exercise of the privileges granted by this permit.

C. Indemnification and Liability of the United States. The holder shall comply with all applicable federal, state, and local laws and regulations, including but not limited to the Federal Water Pollution Control Act, 33 U.S.C. 1251, the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq., and the Comprehensive Environmental Response, Control, and Liability Act, 42 U.S.C. 9601 et seq. The holder shall

indemnify, defend, and hold the United States harmless for any violations incurred under any such laws and regulations or for any judgments, claims, or demands assessed against the United States as a result of or associated with the holder's activities past, present, or future. The holder's indemnification of the United States shall include any damage to life or property arising from the holder's occupancy or use of Federal lands. The United States has no duty to inspect the permit area or to warn of hazards and, if the United States does inspect the permit area, it shall incur no additional duty nor any liability for hazards not identified or discovered through such inspections.

D. Damage - High Hazard Clause. (K10) The holder is hereby made liable for all injury, loss, or damage, including but not limited to fire suppression costs, directly or indirectly resulting from or caused by the holder's use and occupancy of the area covered by the permit, regardless of whether the holder is negligent or otherwise at fault, provided that the maximum liability without fault shall not exceed $1,000,000 for any one occurrence, and provided further that the holder shall not be liable when such injury, loss, or damage results wholly, or in part, from a negligent act of the United States, or from an act of a third party not involving the facilities of the holder.

Determination of liability for injury, loss, or damage, including fire suppression costs, in excess of the specified maximum, shall be according to the laws governing ordinary negligence.

[INSTRUCTIONS: Use for project with an above-ground powerline, above-ground or moderate to high risk pipeline, dam (other than small diversion dam), exposed transformers, or powerhouse subject to vandalism.]

V. TERMINATION, REVOCATION, AND SUSPENSION

A. General. For purposes of this permit, "termination", "revocation", and "suspension" refer to the cessation of uses and privileges under the permit.

"Termination" refers to the cessation of the permit under its own terms without the necessity for any decision or action by the authorized officer. Termination occurs automatically when, by the terms of the permit, a fixed or agreed upon condition, event, or time occurs. For example, the permit terminates at expiration. Terminations are not appealable.

"Revocation" refers to an action by the authorized officer to end the permit because of noncompliance with any of the prescribed terms. Revocations are appealable.

"Suspension" refers to a revocation which is temporary and the privileges may be restored upon the occurrence of prescribed actions or conditions. Suspensions are appealable.

B. Revocation or Suspension. (K49) The Forest Service may suspend or revoke this permit in whole or part for:

1. Noncompliance with Federal, State, or local laws and regulations.

2. Noncompliance with the terms and conditions of this permit.

3. Abandonment or other failure of the holder to otherwise exercise the privileges granted.

C. Opportunity to Take Corrective Action. Prior to revocation or suspension for cause pursuant to condition V. B., the authorized officer shall give the holder written notice of the grounds for each action and a reasonable time, not to exceed 90 days, to complete the corrective action prescribed by the authorized officer.

D. Removal of Improvements. Upon abandonment, revocation, termination, or expiration of this authorization, the holder shall remove within a reasonable time prescribed by the authorized officer all structures and improvements, except those owned by the United States and shall restore the site. If the holder fails to remove all structures or improvements within the prescribed period, they shall become the property of the United States and may be sold, destroyed or otherwise disposed of without any liability to the United States. However, the holder shall remain liable for all cost associated with their removal, including costs of sale and impoundment, cleanup, and restoration of the site.

E. Revocation of License. (K53) Revocation of the license for the project covered by this permit by the Federal Energy Regulatory Commission may result in revocation of this permit by the Regional Forester.

VI. OTHER PROVISIONS

A. Members of Congress. No Member of or Delegate to Congress or Resident Commissioner shall benefit from this permit either directly or indirectly, except when the authorized use provides a general benefit to a corporation.

B. Nondiscrimination. (K42) In connection with the performance of work under this permit, including construction, maintenance, and operation of the facility, the holder shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, or handicap in accordance with the Civil Rights Act of 1964, as amended.

C. Appeals and Remedies. Any discretionary decisions or determinations by the authorized officer are subject to the appeal regulations at 36 CFR 251, Subpart C, or revisions thereto.

D. Removal and Planting of Vegetation. This permit does not authorize the cutting of timber or other vegetation. Trees or shrubbery may be removed or destroyed only after the authorized officer, or authorized officer's agent, has approved, and has marked or otherwise designated that which may be removed or destroyed. Timber cut or destroyed shall be paid for by the holder as follows: Merchantable timber at appraised

value and young-growth timber below merchantable size at current damage appraisal value, provided that the Forest Service reserves the right to dispose of the merchantable timber to others than the holder at no stumpage cost to the holder. Trees, shrubs, and other plants may be planted in such manner and in such places about the premises as may be approved by the authorized officer.

E. Plans, Part of Permit, Licensed. (K51) The holder shall prepare the following plans in consultation with Forest Service and other appropriate agencies.

a. <plan names>
b. _____
c. _____

The holder shall submit these plans for Forest Service approval 90 days prior to any new construction or reconstruction; or within one year of issuance of the Federal Energy Regulatory Commission license, if no construction or reconstruction was proposed in an application for license or new license. The holder shall obtain written Forest Service approval for said plan(s) before beginning any on-the-ground construction and shall strictly follow the provisions of the approved plans and any terms of their approval (stipulations). Said plans shall be attached hereto and marked as Exhibits <letters> , respectively.
[INSTRUCTIONS: Optional use; see section 66 for types of operation plans to consider.]

F. Road Use by Government. (K38) The United States shall have unrestricted use of the said right-of-way and any road constructed thereon for all purposes deemed necessary or desirable in connection with the protection, administration, management, and utilization of Federal lands or resources and shall have the exclusive right to extend rights and privileges for use of the right-of-way and road thereon to States and local subdivisions thereof, as well as to other users, including members of the public, except contractors, agents, and employees of the holder; provided, that the agency having jurisdiction shall control such use so as not unreasonably to interfere with use of the road by the holder or cause the holder to bear a share of the cost of maintenance greater than the holder's use bears to all use of the road.

[INSTRUCTIONS: The Forest Service has this authority regardless of this clause. However, to be clear, use this clause when any power project roads will become part of the forest development road system and when the crest of a dam will function as a roadway. Also use this clause if a subsequent road easement may be issued to the county.]

G. Recreation Facility Construction, Operation, Maintenance, and Replacement. (K45) Consistent with the project recreation plan as approved by the Forest Service, the holder shall construct, operate, maintain, and replace (as necessary) the following recreation facilities on National Forest System lands in accordance with Forest Service specifications:

a. _____
b. _____

c. _____

The holder shall prepare a detailed site plan and applicable construction specifications for each proposed facility on National Forest System land and obtain the approval of the Forest Service before beginning construction on that site. The site plan shall be consistent with the Forest Service design narrative, which contains the site objectives and constraints. In constructing, operating, maintaining, or replacing authorized recreation facilities, the holder shall comply with the site plan and its approved provisions and with all other terms of this permit and with those construction stipulations made part of this permit to allow construction activities.

Upon mutual agreement, the holder may enter into a collection agreement with the Forest Service to have the Forest Service construct, operate, maintain, or replace recreation facilities or services. Work performed by the Forest Service shall be at the holder's expense, to the extent appropriate to the holder's financial responsibility.

[INSTRUCTIONS: Use this condition when recreation construction is contemplated.]

H. Superior Clauses. In the event of any conflict between any of the preceding printed clauses or any provision thereof and any of the following clauses or any provision thereof, the preceding printed clauses shall control.
<ADD HERE ANY CLAUSES MANDATORY FOR THE KIND OF USE AUTHORIZED OR NEEDED TO ADDRESS LOCAL CONDITIONS>

In Witness Whereof, the parties hereto have caused this permit to be duly executed only upon licensing by the Federal Energy Regulatory Commission and subsequent endorsement below. Signed this _____ day of _____ 19___.

Holder	USDA - Forest Service
by_____	by_____
<Name>	<Name>
<Title>	Forest Supervisor
<Company>	<Name> National Forest

- -

Public reporting burden for this collection of information, if requested, is estimated to average 1 hour per response for annual financial information; average 1 hour per response to prepare or update operation and/or maintenance plan; average 1 hour per response for inspection reports; and an average of 1 hour for each request that may include such things as reports, logs, facility and user information, sublease information, and other similar miscellaneous information requests. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Room 404-W, Washington D.C. 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB # 0596-0082), Washington, D.C. 20503.

ENDORSEMENT: In accordance with the condition of execution above, this permit is in full force and effect as of this ____ day of _____ 19__. This permit shall terminate on <date of license termination> unless otherwise terminated under the provisions of condition V. or extended under the provisions of condition II. of this permit.

by_____

<Name>
Forest Supervisor
_____ National Forest

CONSTRUCTION STIPULATIONS

The Stipulations, made as of the <day> day of <month>, 19<year>, by and between <holder>, hereinafter referred to as the holder, and U.S. Department of Agriculture, Forest Service, acting by and through its authorized officer, hereinafter referred to as the Forest Service.

Whereas the holder has been issued a special-use permit dated <date> for the use and occupancy of National Forest land for the use (and maintenance) of a hydropower project, and, whereas, such permit requires that all construction conform with approved plans, specifications, and stipulations.

Now, therefore, the holder hereby agrees to the following terms and conditions, and the Forest Service hereby authorizes the construction to proceed in accordance with these terms and conditions.

CS-1. Fire Plan Part of Authorization (K1)

A project fire plan describing the holder's responsibilities for prevention and suppression of fires, developed by the holder, and subject to Forest Service approval, shall become part of this authorization, as Exhibit <letter> and attached hereto. The holder shall obtain Forest Service approval for said plan before beginning any on-the-ground construction and shall strictly follow the provisions of the approved plan and any terms of its approval (stipulations).

CS-2. Designation of Construction Manager (K2)

The holder shall designate a construction manager for project construction. This individual shall be qualified to represent the holder and shall be present or have a qualified acting representative present at all times while project construction activities are taking place. This individual shall be the person who receives the on-the-ground approvals and directions from the designated Forest Service representative(s).

CS-3. Construction Inspections by Holder--Licensed Project (K3)

The holder shall perform daily (or on a schedule otherwise agreed to by the Forest Service in writing) inspections of holder's operations while they are proceeding. The holder shall document these inspections (informal writing sufficient) and shall deliver such documentation to the Forest Service on a weekly basis. The inspections must specifically include fire plan compliance, public safety, and environmental protection. The holder shall act immediately to correct any items found to need correction.

CS-4. Protection of Wildlife and Plant Species (K5)

If threatened, endangered, or sensitive (as defined in the Forest Service manual) wildlife and plant species are found

during use under this authorization, the holder shall notify the Forest Service and shall take immediate measures to protect said species as directed by the Forest Service.

CS-5. Surveys, Land Corners (K7)

The holder shall protect, in place, all public land survey monuments, private property corners, and forest boundary markers. In the event that any such land markers or monuments are destroyed in the exercise of the privileges authorized by this authorization, depending on the type of monument destroyed, the holder shall reestablish or reference same in accordance with (1) the procedures outlined in the "Manual of Instructions for the Survey of the Public Land of the United States," (2) the specifications of the County Surveyor, or (3) the specifications of the Forest Service. Further, the holder shall ensure that any such official survey records affected are amended as provided by law.

CS-6. Traffic Safety (K8)

When construction is in progress adjacent to or on Forest Service controlled roads open to public travel, the holder shall furnish, install, and maintain temporary traffic controls to provide the public with adequate warning and protection from hazardous or potentially hazardous conditions associated with the holder's operations. Devices must be appropriate to current conditions and must be covered or removed when not needed. Except as otherwise agreed, flagmen and devices must be as specified in the "Manual on Uniform Traffic Control Devices for Streets and Highways" (MUTCD).

CS-7. Site Development Schedule (K14)

As a part of this authorization, the holder shall, in consultation with the Forest Service, prepare a schedule for the progressive development of the permitted site and installation of facilities. Such a schedule shall be prepared 60 days prior to any activity the Forest Service considers to be of a ground disturbing nature on National Forest System lands, and shall set forth an itemized priority list of planned improvements and the planned dates for start-up and completion. This schedule shall be made a part of this authorization. The holder may modify the scheduled date for installation of any improvement authorized, provided the holder notifies the Forest Service of the change; and provided further, that the holder completes all previously scheduled priority resource protection measures by their scheduled due dates.

The holder shall submit all construction plans describing the location and appearance of project features and ground disturbing activities to the Forest Service for approval a minimum of 45 days before anticipated start of construction. These construction plans must have the approval with signature of a registered professional engineer of the appropriate

specialty, and must have the approval of the Forest Service prior to the use of these plans in constructing this project. These plans shall then become part of this authorization as Exhibit <letter>, to be attached hereto.

The holder shall ensure that construction bid invitations are in compliance with this authorization and with all applicable environmental protection standards.

In the actual layout on-the-ground, the holder shall use accurate mapping based on an adequate survey of the land, including the location of special areas such as water courses.

The holder shall furnish to officers of the United States such information as may be required concerning the construction, operation, and maintenance of the project, and any alteration thereof.

When asked by the Forest Service, the holder shall provide for an on-the-ground review with the Forest Service of the plans for any area of concern to the Forest Service at least 7 days prior to beginning construction on that area.

CS-8. Bonds, Performance (K18)

As a further guarantee of the faithful performance of the provisions of this permit and these stipulations, the holder agrees to deliver and maintain a surety bond in the amount of <written number> dollars ($<number>) before land-disturbing activities begin. Before undertaking additional construction or alteration work not provided for at the time the bond amount was set or when the improvements are to be removed and the area restored, the holder shall deliver and maintain a surety bond in an amount set by the Forest Service, which amount shall not be in excess of the estimated loss the Government would suffer upon default in performance of this work. Should the sureties or the bonds delivered under this authorization become unsatisfactory to the Forest Service, the holder shall, within thirty (30) days of demand, furnish a new bond with surety, solvent and satisfactory to the Forest Service.

In lieu of surety bond, and as directed by the Forest Service, the holder may deposit into a Federal depository, and maintain therein, cash in the amounts provided for above, or negotiable securities of the United States having a market value at time of deposit of not less than the dollar amounts provided above.

The Forest Service shall release the holder's surety bond, or return deposits in lieu of bond, thirty (30) days after certification by the Forest Service that installations under the construction and resource protection plans required by this authorization are complete, and upon the holder furnishing proof satisfactory to the Forest Service that all claims for labor and material on said installations have been paid by the

holder or released and satisfied. The holder agrees that all moneys deposited under this authorization may, upon failure on holder's part to fulfill all and singular the requirements herein set forth or made a part hereof, be retained by the United States to be applied to the satisfaction of holder's obligations assumed under the authorization and construction stipulations, without prejudice whatever to any other rights and remedies of the United States.

CS-9. Erosion Control, Topsoil, Revegetation (K20)

The holder shall be responsible for the prevention and control of soil erosion, caused either directly or indirectly by construction or operation of the project, and shall provide preventive and control measures as required by the Forest Service.

The holder shall strip topsoil from construction areas and deposit it in storage piles apart from other excavated material. After removing the desired amount of material, the holder shall evenly spread the stored topsoil over exposed subsoil in appropriate areas to the extent practicable, and shall revegetate the area disturbed.

To the extent practicable on National Forest System lands, the holder shall establish a vegetative cover on all cut and fill slopes, borrow areas, and other disturbed areas capable of growing a vegetative cover of grasses or other suitable vegetation, as required by the Forest Service. The holder shall seed or plant at a time of the year, in a manner, and with species that the Forest Service considers offer the best chance of success. The holder shall repeat such seeding and planting regularly as conditions allow, until such areas are accepted in writing by the Forest Service as satisfactorily revegetated and stabilized.

The holder shall install erosion control measures for adverse weather conditions by ___<date>_____, each year and keep them current with the operation until the Forest Service notifies the holder that the adverse conditions of that season are over.

CS-10. Suspension/Revocation (K27)

The Forest Service may temporarily suspend construction/reconstruction and/or revoke the special-use permit upon breach of any of the conditions herein.

CS-11. Use of Explosives (K37)

a. Where the Forest Service determines that a fire hazard exists, the holder shall use only electronic detonators for blasting, except near high-voltage powerlines. The Forest Service may allow specific exceptions when in the public interest.

b. When using explosives, the holder shall comply with all applicable Occupational Safety and Health Administration (OSHA) Construction Safety Orders to prevent endangerment of life or property and shall comply with the requirements of the Forest Service. The holder shall be responsible for any and all damages resulting from the use of explosives and shall adopt precautions to prevent damage to surrounding objects. The holder shall furnish and erect special signs as directed by applicable OSHA Construction Safety Orders to warn the public of the holder's blasting operations. The holder shall place and maintain such signs so they are clearly evident to the public during all critical periods of the blasting operations, and shall ensure that they include a warning statement to have radio transmitters turned off.

c. The holder shall store all explosives in a secure manner, and shall mark all such storage places in compliance with applicable OSHA Construction Safety Orders and State and local laws and ordinances. In general, do not locate such storage facilities closer than 1,000 feet to a road or any building or camping area.

d. When using explosives, the holder shall adopt precautions to prevent damage to landscape features and other surrounding objects. When directed by the authorized officer, the holder shall leave trees within an within within an area designated to be cleared as a protective screen for surrounding vegetation during blasting operations. The holder shall remove and dispose of trees so left when blasting is complete. When necessary necessary, and at any point of special danger, the holder shall use suitable mats or some other approved method to smother blasts.

CS-12. Unattended Construction Equipment (K39)

The holder shall not place construction equipment on National Forest land prior to actual use or allow it to remain on National Forest land subsequent to actual use. However, the holder shall be allowed reasonable latitude in move-in, move-out, and usually will be allowed to leave equipment in Forest Service-approved areas between consecutive seasons of actual use. After use, the holder shall remove equipment from National Forest System land unless a permit is issued for equipment storage.

CS-13. Soil and Water Protection Implementation Plan Part of Authorization (K46)

The holder shall prepare a plan(s), in consultation with Forest Service and other appropriate agencies, for implementing measures for mitigating impacts to soil and water resources. Such plan(s), consistent with the Forest Service plan for the area and mitigation measures identified in the

environmental analysis for the project, shall include measures for:

a. Control of erosion, stream sedimentation, dust, and soil mass movement, particularly to implement the provisions of condition CS-11 of these stipulations.

b. Treatment and disposal of solid waste and waste water generated during construction of the project.

c. Storage of oil and hazardous substances, and spill prevention and cleanup.

d. Storage and/or disposal of excess construction and tunnel spoils and slide material.

e. Development and restoration of borrow areas.

f. Monitoring water quality during construction and rehabilitation periods.

The holder shall submit this plan(s) for Forest Service approval 90 days prior to any new construction or reconstruction. The holder shall obtain Forest Service approval for said plan(s) before beginning any on-the-ground construction and shall strictly follow the provisions of the approved plan(s) and any terms of its approval (stipulations). Said plan(s) shall be attached hereto and marked as Exhibit(s) _____.

CS-14. Plans, Part of Permit, Licensed (K51)

The holder shall prepare the following plans in consultation with Forest Service and other appropriate agencies.

a. <plan names>
b. _____
c. _____
d. _____

The holder shall submit these plans for Forest Service approval 90 days prior to any new construction or reconstruction; or within one year of issuance of the Federal Energy Regulatory Commission license, if no construction or construction or reconstruction was proposed in an application for license or new license. The holder shall obtain Forest Service approval for such plans before beginning any on-the-ground construction and shall strictly follow the provisions of the approved plans and any terms of their approval (stipulations). Said plans shall be attached hereto and marked as Exhibits <letters>, respectively.

[INSTRUCTIONS: Optional use; see section 66 for types of construction plans to consider.]

CS-15. Cultural Resource Discoveries (X17 edit)

If, prior to or during excavation work, items of potential cultural, historical, archeological, or paleontological value are reported or discovered, or a known deposit of such items is disturbed, the holder shall immediately cease excavation in the area so affected. The holder shall then notify the Forest Service and shall not resume excavation until it receives written approval from the authorized officer.

If necessary for the adequate protection and preservation of the site and its artifacts, the Forest Service may require the holder to provide for the recovery, excavation, and preservation of the site and its artifacts at the holder's expense. At the option of the Forest Service, this authorization may be terminated at no liability by the United States when such revocation is deemed necessary or desirable to preserve or protect archaeological, paleontological, or historic sites and artifacts.

In Witness Whereof, the parties hereto have caused these stipulations to be duly executed on this _____ day of _____ 19___.

Holder	USDA - Forest Service
by_____	by_____
<Name>	<Name>
<Title>	Forest Supervisor
<Company>	<Name> National Forest
_____	_____
	(date)

[FR Doc. 95–12337 Filed 5–19–95; 8:45 am]
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federal register

Monday
May 22, 1995

Part III

Department of Justice

Office of Juvenile Justice and Delinquency Prevention

Coordinating Council on Juvenile Justice and Delinquency Prevention Meeting; Notice

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

Meeting of the Coordinating Council on Juvenile Justice and Delinquency Prevention

May 11, 1995.

AGENCY: U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention.

ACTION: Notice of meeting.

SUPPLEMENTARY INFORMATION: A meeting of the Coordinating Council on Juvenile Justice and Delinquency Prevention will take place in the District of Columbia, beginning at 1:00 p.m. on Wednesday, June 21, 1995, and ending at 4:00 p.m. on June 21, 1995. This advisory committee, chartered as the Coordinating Council on Juvenile Justice and Delinquency Prevention, will meet at the United States Department of Justice, located at 10th and Constitution Avenue, N.W., Conference Room 5111, Washington, D.C. 20530. The Coordinating Council, established pursuant to section 3(2)(A) of the Federal Advisory Committee Act (5 U.S.C. App. 2), will meet to carry out its advisory functions under section 206 of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended. This meeting will be open to the public. The public is advised that it must enter the building via the Constitution Avenue Visitors' Center. For security reasons, members of the public who are attending the meeting must contact the Office of Juvenile Justice and Delinquency Prevention (OJJDP) by close of business June 14, 1995. The point of contact at OJJDP is Lutricia Key who can be reached at (202) 307–5911. The public is further advised that a pictured identification is required to enter the building.

Shay Bilchik,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 95–12409 Filed 5–19–95; 8:45 am]

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federal register

Monday
May 22, 1995

Part IV

Department of Health and Human Services

National Institutes of Health

Recombinant DNA Advisory Committee: Notice of Meeting; Recombinant DNA Research: Proposed Actions Under the Guidelines; Notices

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Recombinant DNA Advisory Committee; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the Recombinant DNA Advisory Committee on June 8–9, 1995. The meeting will be held at the National Institutes of Health, Building 31C, 6th Floor, Conference Room 6, 9000 Rockville Pike, Bethesda, Maryland 20892, starting on June 8, 1995, at approximately 9 a.m., and will recess at approximately 6 p.m. The meeting will reconvene on June 9, 1995, at approximately 8:30 a.m. and will adjourn at approximately 5 p.m. The meeting will be open to the public to discuss Proposed Actions under the NIH Guidelines for Research Involving Recombinant DNA Molecules (59 FR 34496) and other matters to be considered by the Committee. The Proposed Actions to be discussed will follow this notice of meeting. Attendance by the public will be limited to space available. Members of the public wishing to speak at this meeting may be given such opportunity at the discretion of the Chair.

Dr. Nelson A. Wivel, Director, Office of Recombinant DNA Activities, National Institutes of Health, MSC 7052, 6006 Executive Boulevard, Suite 323, Bethesda, Maryland 20892–7052, Phone (301) 496–9838, FAX (301) 496–9839, will provide materials to be discussed at this meeting, roster of committee members, and substantive program information. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dr. Wivel in advance of the meeting. A summary of the meeting will be available at a later date.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

Dated: May 15, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–12406 Filed 5–19–95; 8:45 am]

BILLING CODE 4140–01–M

Recombinant DNA Research: Proposed Actions Under the Guidelines

AGENCY: National Institutes of Health (NIH), PHS, DHHS.

ACTION: Notice of Proposed Actions Under the NIH Guidelines for Research Involving Recombinant DNA Molecules (59 FR 34496).

SUMMARY: This notice sets forth proposed actions to be taken under the NIH Guidelines for Research Involving Recombinant DNA Molecules (59 FR 34496). Interested parties are invited to submit comments concerning these proposals. These proposals will be considered by the Recombinant DNA Advisory Committee at its meeting on June 8–9, 1995. After consideration of these proposals and comments by the Recombinant DNA Advisory Committee, the Director of the National Institutes of Health will issue decisions in accordance with the NIH Guidelines.

DATES: Comments received by June 1, 1995, will be reproduced and distributed to the Recombinant DNA Advisory Committee for consideration at its June 8–9, 1995, meeting.

ADDRESSES: Written comments and recommendations should be submitted to Dr. Nelson A. Wivel, Director, Office of Recombinant DNA Activities, National Institutes of Health, MSC 7052, 6006 Executive Boulevard, Suite 323, Bethesda, Maryland 20892–7052, or sent by FAX to 301–496–9839.

All comments received in timely response to this notice will be considered and will be available for public inspection in the above office on weekdays between the hours of 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Background documentation and additional information can be obtained from the Office of Recombinant DNA Activities, National Institutes of Health, MSC 7052, 6006 Executive Boulevard, Suite 323, Bethesda, Maryland 20892–7052, Phone 301–496–9838, FAX to 301–496–9839.

SUPPLEMENTARY INFORMATION: The NIH will consider the following actions under the NIH Guidelines for Research Involving Recombinant DNA Molecules:

I. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Transfer Protocol/Drs. Curiel and Alvarez

In a letter dated January 5, 1995, Drs. David T. Curiel and Ronald D. Alvarez of the University of Alabama, Birmingham, Alabama, submitted a human gene transfer protocol entitled: A Phase I Study of Recombinant Adenovirus Vector-Mediated Delivery of an Anti-erbB–2 Single-Chain (sFv) Antibody Gene for Previously Treated Ovarian and Extraovarian Cancer Patients to the Recombinant DNA Advisory Committee for formal review and approval at its March 6–7, 1995, meeting. Due to reviewers' comments before the March 1995 meeting, the protocol was not forwarded to the committee.

In a letter dated April 12, 1995, Drs. David T. Curiel and Ronald D. Alvarez of the University of Alabama, Birmingham, Alabama, submitted a revised protocol to the Recombinant DNA Advisory Committee for formal review and approval at its June 8–9, 1995, meeting.

II. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Transfer Protocol/Dr. Curiel

In a letter dated April 13, 1994, Dr. David Curiel of the University of Alabama, Birmingham, Alabama, submitted the human gene transfer protocol entitled: Phase I Trial of a Polynucleotide Vaccine to Human Carcinoembryonic Antigen in Patients with Metastatic Colorectal Cancer to the Recombinant DNA Advisory Committee for formal review and approval at its June 9–10, 1994, meeting. During the June 1994 meeting, the committee approved the protocol by a vote of 10 in favor, 4 opposed, and no abstentions. Approval was contingent on the review and approval by the primary reviewers of a revised Informed Consent document (as approved by the Institutional Review Board). On June 29, Dr. Curiel submitted an Institutional Review Board approved Informed Consent Document. The primary reviewers approved the revised Informed Consent Document. On September 17, 1994, Dr. Nelson Wivel, Office of Recombinant DNA Activities, National Institutes of Health, informed Dr. Curiel that Dr. Harold Varmus, Director, National Institutes of Health, concluded that the protocol should be reviewed again by the committee when additional preclinical data are available.

In a letter dated April 12, 1995, Dr. David T. Curiel of the University of Alabama, Birmingham, Alabama, submitted a revised protocol to the Recombinant DNA Advisory Committee for formal review and approval at its June 8–9, 1995, meeting.

III. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Transfer Protocol/Drs. Paulson and Lyerly

In a letter dated March 31, 1995, Drs. David F. Paulson and H. Kim Lyerly of Duke University Medical Center, Durham, North Carolina, submitted a human gene transfer protocol entitled: A Phase I Study of Autologous Human Interleukin-2 Gene Modified Tumor Cells in Patients with Locally Advanced or Metastatic Prostate Cancer to the Recombinant DNA Advisory Committee for formal review and approval.

IV. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Transfer Protocol/Drs. Berchuck and Lyerly

In a letter dated April 10, 1995, Drs. Andres Berchuck and H. Kim Lyerly of Duke University Medical Center, Durham, North Carolina, submitted a human gene transfer protocol entitled: A Phase I Study of Autologous Human Interleukin 2 (IL–2) Gene Modified Tumor Cells in Patients with Refractory Metastatic Ovarian Cancer to the Recombinant DNA Advisory Committee for formal review and approval.

V. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Transfer Protocol/Drs. Steiner and Holt

On April 13, 1995, Drs. Mitchell S. Steiner and Jeffrey T. Holt of Vanderbilt University School of Medicine, Nashville, Tennessee, submitted a human gene transfer protocol entitled: Gene Therapy for the Treatment of Advanced Prostate Cancer by In Vivo Transduction with Prostate-Targeted Vectors Expressing Antisense c-myc RNA to the Recombinant DNA Advisory Committee for formal review and approval.

VI. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Transfer Protocol/Dr. McIvor

In a letter dated April 12, 1995, Dr. R. Scott McIvor of the Institute of Human Genetics, University of Minnesota, Minneapolis, Minnesota, submitted a human gene transfer protocol entitled: Gene Therapy for Purine Nucleoside Phosphorylase Deficiency to the Recombinant DNA Advisory Committee for formal review and approval.

VII. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Transfer Protocol/Drs. Scardino, Thompson, Woo

In a letter dated April 11, 1995, Drs. Peter T. Scardino, Timothy C. Thompson, and Savio L.C. Woo of Baylor College of Medicine, Houston, Texas, submitted a human gene transfer protocol entitled: Phase I Study of Adenoviral Vector Delivery of the HSV-tk Gene and the Intravenous Administration of Ganciclovir in Men with Local Recurrence of Prostate Cancer After Radiation Therapy to the Recombinant DNA Advisory Committee for formal review and approval.

VIII. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Transfer Protocol/Dr. Whitley

In a letter dated April 12, 1995, Dr. Chester B. Whitley of the Institute of Human Genetics, University of Minnesota, Minneapolis, Minnesota, submitted a human gene transfer protocol entitled: Gene Therapy for Scheie Keratopathy to the Recombinant DNA Advisory Committee for formal review and approval.

IX. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Transfer Protocol/Drs. Munshi and Barlogie

In a letter dated April 13, 1995, Drs. Nikhil C. Munshi and Bart Barlogie of the University of Arkansas, Little Rock, Arkansas, submitted a human gene transfer protocol entitled: Thymidine Kinase (TK) Transduced Donor Leukocyte Infusions as a Treatment for Patients with Relapsed or Persistent Multiple Myeloma after T-cell Depleted Allogeneic Bone Marrow Transplant to the Recombinant DNA Advisory Committee for formal review and approval.

X. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Transfer Protocol/Drs. Fox and Urba

In a letter dated April 12, 1995, Drs. Bernard A. Fox and Walter J. Urba of Chiles Research Institute, Providence Portland Medical Center, Portland, Oregon, submitted a human gene transfer protocol entitled: Adoptive Cellular Therapy of Cancer Combining Direct HLA–B7/β2–Microglobulin Gene Transfer with Autologous Tumor Vaccination for the Generation of Vaccine-Primed Anti-CD3 Activated Lymphocytes to the Recombinant DNA Advisory Committee for formal review and approval.

XI. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Transfer Protocol/Dr. Hwu

In a letter dated April 12, 1995, Dr. Patrick Hwu of the National Institutes of Health, Bethesda, Maryland, submitted a human gene transfer protocol entitled: Treatment of Patients with Advanced Epithelial Ovarian Cancer using Anti-CD3 stimulated Peripheral Blood Lymphocytes Transduced with a Gene Encoding a Chimeric T-cell Receptor Reactive with Folate Binding Protein to the Recombinant DNA Advisory Committee for formal review and approval.

XII. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Transfer Protocol/Dr. Marasco

In a letter dated April 12, 1995, Dr. Wayne A. Marasco of the Dana-Farber Cancer Institute, Boston, Massachusetts, submitted a human gene transfer protocol entitled: Intracellular Antibodies Against HIV–1 Envelope Protein for AIDS Gene Therapy to the Recombinant DNA Advisory Committee for formal review and approval.

XIII. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Transfer Protocol/Dr. Verfaillie

In a letter dated April 12, 1995, Dr. Catherine Verfaillie of the University of Minnesota, Minneapolis, Minnesota, submitted a human gene transfer protocol entitled: Autologous Marrow Transplantation for Chronic Myelogenous Leukemia Using Stem Cells Obtained After In Vivo Chemotherapy Cytokine Priming to the Recombinant DNA Advisory Committee for formal review and approval.

XIV. Proposed Amendments to Appendix B of the NIH Guidelines Regarding Updating the Classification of Microorganisms/Fleming

In a letter dated June 24, 1993, Dr. Diane Fleming, President of the Mid-Atlantic Biological Safety Association requested updating Appendix B, Classification of Microorganisms on the Basis of Hazard. The Mid-Atlantic Biological Safety Association submitted an updated list of the classification of microorganisms for the Committee to

review which included the latest taxonomy and agent risk group classifications as defined by the Centers for Disease Control and Prevention. This request was published for public comment in the **Federal Register** (August 18, 1994, 58 FR 44098).

During the September 9–10, 1993, meeting, the Recombinant DNA Advisory Committee recommended by consensus that the current classification of etiological agents described in the Biosafety in Microbiological and Biomedical Laboratories, 3rd edition, May 1993, U.S. Department of Health and Human Services, should be endorsed by the Committee. The Committee retains the option to adopt any modification to the CDC listing. The Committee recommended that the revised Appendix B, Classification of Microorganisms on the Basis of Hazard, submitted by Dr. Fleming should not be adopted until the Committee received letters of concurrence from both the Centers for Disease Control and Prevention and the NIH Division of Safety.

In a telephone call on October 20, 1994, Dr. Fleming stated that Appendix B, Classification of Microorganisms on the Basis of Hazard, would be reviewed by experts from the Centers for Disease Control and Prevention and the American Society for Microbiology. The revised Appendix B was submitted to the Recombinant DNA Advisory Committee December 1–2, 1994, meeting for review and discussion. During the December 1994 meeting, the Committee recommended publishing the revised Appendix B in the **Federal Register** for public comment, with further review of this proposal and possible approval during the March 6–7, 1995, meeting.

During the March 6–7, 1995 meeting, the Recombinant DNA Advisory Committee deferred approval of the proposed amendments to Appendix B pending additional revisions to the remaining appendices of the NIH Guidelines that are required to adequately accommodate the revised Appendix B. The motion for deferral included a recommendation that a subcommittee consisting of Dr. Straus, Office of Recombinant DNA Activities staff, and *ad hoc* experts would meet for one day to develop the required modifications. The motion passed by a vote of 17 in favor, 0 opposed, and no abstentions.

The Appendix B Subcommittee met on May 5, 1995. The proposed Appendix B reads as follows:

Appendix B. Points to Consider in the Assessment of Risk for Research and Production Involving Human Etiologic Agents and Oncogenic Viruses

Note: Appendix B includes only those biological agents known to infect humans. Information regarding restricted animal and plant pathogens is available from: U.S. Department of Agriculture, Animal and Plant Health Inspection Service, Veterinary Services, Import-Export Products Staff, Room 756, Federal Building, 6505 Belcrest Road, Hyattsville, Maryland 20782; Phone: (301) 436–7830; Fax: (301) 436–8226.

Appendix B reflects the current state of knowledge and should be considered as guidance for establishing an initial, qualitative assessment regarding the safe handling of specific etiologic agents and oncogenic viruses and is not intended to replace a thorough assessment of the potential risk associated with such agents. Although Appendix B is considered to be comprehensive, this information should not be considered all-inclusive. A Task Force of the American Society of Microbiologists (ASM) will conduct an annual review of Appendix B and its recommendations will be presented to the Recombinant DNA Advisory Committee (RAC) as proposed amendments to the NIH Guidelines. The nomenclature reflects conformity with the most recent international agreements on taxonomy and nomenclature of agents at this time.

Appendix B–I. Qualitative Risk Assessment

Appendix B should be considered in conjunction with Appendices G and K in making an initial determination regarding the appropriate level of physical containment necessary to ensure the safe conduct of research or production. Appendix G specifies physical containment for standard laboratory experiments involving healthy adult individuals and defines Biosafety Level 1 (BL1) through Biosafety Level 4 (BL4). Appendix K supersedes Appendix G for large scale (over 10 liters) research or production involving healthy adult individuals and defines Good Large Scale Practice (GLSP) through Biosafety Level 3—Large Scale (BL3–LS).

Appendix B–II. Quantitative Risk Assessment

Appendix B–II–A. An initial qualitative risk assessment should be followed by a thorough quantitative risk assessment of the specific agent strain, immune status of the host relative to the agent in question, and potential agent-host-activity interactions, e.g., potential for aerosol production.

Appendix B–II–B. In the event that additional information is available regarding a specific strain listed in Appendix B, the Principal Investigator (PI) must make an initial qualitative risk assessment. The Institutional Biosafety Committee (IBC) must also make a quantitative risk assessment for experiments described in Section III–A, Experiments that Require IBC Approval, RAC Review, and NIH Approval, and Section III–C, Experiments that Require IBC Approval Before Initiation.

Appendix B–III. Risk Assessment Criteria

Factors to be considered in determining the level of containment include agent factors such as: virulence, pathogenicity, stability, route of spread, communicability, operations(s), quantity, and availability of vaccines or treatment. Changes to the agent which enhance or remove virulence factors should be considered by the PI and IBC which has the authority to raise or lower the containment level for that particular agent (see Sections III–C–2–a and V–B). For strains in which there is increased risk potential, the level of physical containment should be increased over the level that is recommended for the parent strain.

Appendix B–III–A. Agent-Specific Considerations. The following criteria should be considered when making a risk assessment determination for a specific strain:

Appendix B–III–A–1. Any strain isolated directly from a human or animal should be treated as a potentially pathogenic organism until proven otherwise.

Appendix B–III–A–2. Any strain that is known to be more hazardous than the parent (wild-type) strain, e.g., introduction of a drug-resistance trait to a strain that is not known to acquire that trait naturally, if such acquisition could compromise the use of the drug to control that agent, should be handled at a higher containment level (see Section III–A–1).

Appendix B–III–A–3. For any strain that has been genetically modified and is not specifically listed in Appendix B, the PI must make an initial determination regarding the potential risk of the genetically modified agent. The Institutional Biosafety Committee (IBC) must also make a quantitative risk assessment for experiments described in Section III–A, Experiments that Require IBC approval, RAC Review, and NIH Approval, and Section III–C, Experiments that Require IBC Approval Before Initiation.

Appendix B–III–A–4. For agents where more than one species is known to be pathogenic for humans, Appendix B may include the genus name as well as individual species which are known to be pathogenic. When such a genus is listed in Appendix B, non-pathogenic species and strains are excluded. For parasites, non-infectious life cycle stages are excluded.

Appendix B–III–A–5. Certain attenuated strains or strains that have been demonstrated to have lost known virulence factors, e.g., genes, and that are to be used as: (1) a product, (2) part of a product, (3) or for prophylactic or therapeutic purposes, may qualify for a reduction in containment compared to the Risk Group (RG) assigned to the parent strain (see Sections III–C–2–a and V–B).

Appendix B–III–A–6. Careful consideration should be given to the application of some Risk Group 2 (RG2) agents. RG2 agents may be cultured at BL2 containment, e.g., dengue virus; however, when such agents are used for animal inoculation work or transmission studies, BL3 containment is recommended. Similarly, RG3 agents, e.g., monkey pox, Venezuelan equine encephalitis, and yellow fever viruses should be handled at BL4 containment for animal inoculation and transmission studies.

Appendix B–III–A–7. Individuals working with HIV, SIV, or other bloodborne pathogens should consult the Occupational Exposure to Bloodborne Pathogens, Final Rule (see Appendix B–VI–J). BL2 containment is recommended for activities involving all blood-contaminated clinical specimens, body fluids, and tissues from all humans or from HIV- or SIV- infected or inoculated laboratory animals. Activities such as producing research-laboratory scale quantities of HIV or SIV, manipulating concentrated virus preparations, and conducting procedures that may produce droplets or aerosols, are performed in a BL2 facility, but using the additional practices and containment equipment recommended for BL3. Activities involving industrial-scale volumes or preparation of concentrated HIV or SIV are conducted in a BL3 facility, using BL3 practices and containment equipment (see Appendix B–VI–D).

Appendix B–III–A–8. Specific strains may fall into either a more hazardous Risk Group (RG) or a less hazardous risk group depending on genetic background and natural history. Appendix B is derived from information regarding the parent (wild-type) strain (see Appendices B–VI–B through B–VI–D).

Appendix B–III–B. Laboratory Personnel Considerations. Appendix B is based on the potential effect of a biological agent on healthy adult humans and does not account for instances in which an individual may have increased susceptibility to such agents, e.g., preexisting disease, medications, compromised immunity, pregnancy, or breast feeding.

Appendix B–IV. Classification of Etiologic Agents and Oncogenic Viruses by Risk Group (RG)

The World Health Organization recommends the use of the term Risk Group (RG) to indicate qualitative risk assessment based on agent characteristics (see Appendix B–VI–E). Appendix B is intended to serve as guidance in determining RG classification. The characteristics used for the qualitative risk assessment of biohazardous agents by RG are defined in Appendix B–IV–A. RG are categorized according to their potential risk, i.e., Risk Group 1 (RG1) corresponds to the lowest level of risk and Risk Group 4 (RG4) corresponds to the highest level of risk (see Appendix B–VI–E). Appendix B–IV–B summarizes RG1 through RG4 and the relationship of these categories to Appendix G (see Appendix B–VI–E).

Certain strains specified in RG2, are known to represent minimal risk to humans; therefore, such organisms may be classified within RG1 and handled at BL1 (see Appendices III–C–2–a and V–B). Certain attenuated strains that are commonly used for live vaccines or that have an extensive history of safe laboratory use without harmful effect, may be placed in a lower RG than the parent strain (see Appendices B–VI–C and B–VI–D).

Risk assessment is ultimately a subjective process. Strains that are not listed in RG2 through RG4 are not implicitly classified in RG1; therefore, the PI must make an initial risk assessment determination. The Institutional Biosafety Committee (IBC) must also make a quantitative risk assessment for experiments described in Section III–A, Experiments that Require IBC approval, RAC Review, and NIH Approval, and Section III–C, Experiments that Require IBC Approval Before Initiation. Further guidance regarding the assessment of risk for agents not specifically listed in Appendix B is available from: Centers for Disease Control and Prevention, Biosafety Branch, Office of Health and Safety, Mail Stop F–05, 1600 Clifton Road, N.E., Atlanta, Georgia 30333; Phone: (404) 639–3883; Fax: (404) 639–2294. Biosafety in Microbiological and Biomedical Research Laboratories (see Appendix B–VI–D) and Control of Communicable Diseases in Man (see Appendix B–VI–B) provide additional guidance for determining appropriate containment conditions for specific etiologic agents and oncogenic viruses.

Appendix B–IV–A. Classification of Biohazardous Agents by Risk Group (RG) (see Appendix B–VI–E).

APPENDIX B–IV–A—CLASSIFICATION OF BIOHAZARDOUS AGENTS BY RISK GROUP (RG)

Risk Group 1 (RG1)	No/very low individual risk ..... No/very low community risk.	An agent that is unlikely to cause human disease. Well characterized agents not known to cause disease in healthy adult humans and of minimal potential hazard to laboratory personnel and the environment.
Risk Group 2 (RG2)	Moderate individual risk ..... Low community risk.	Agents which can cause human disease but are unlikely to be a serious hazard to workers, the community or the environment; percutaneous exposure, ingestion, or mucous membrane exposure may cause serious infection; however, effective treatment and preventive measures are available and the risk of spread of infection is limited.
Risk Group 3 (RG3)	High individual risk ..... Low community risk.	Indigenous or exotic agents which usually cause serious human disease but do not ordinarily spread from one infected individual to another. Effective treatment or preventive measures are available.
Risk Group 4 (RG4)	High individual risk ..... High community risk.	Dangerous/exotic agents which can cause serious human disease and can be readily transmitted directly or indirectly from one individual to another. Effective treatment and preventive measures are not usually available.

Appendix B–IV–B. Relationship Between Risk Group (RG) and Appendix G (see Appendix B–VI–E).

Note. Special consideration will be given to large-scale (greater that 10 liters of culture) and aerosol producing operations which may pose additional significant risks and thus may require additional containment (see Appendix K).

APPENDIX B–IV–B—RELATIONSHIP BETWEEN RISK GROUP (RG) AND APPENDIX G (SEE APPENDIX B–VI–E)

Risk group (RG)	Biosafety level	Examples of laboratories	Laboratory practices	Safety equipment
Risk Group 1 (RG1).	Biosafety Level 1 (BL1) (Appendix G–II–A).	Basic teaching laboratories	Good microbiological practices (Appendix G–II–A–1).	Generally not required (Appendix G–II–A–4).
Risk Group 2 (RG2).	Biosafety Level 2 (BL2) (Appendix G–II–B).	(1) primary health services; (2) primary level hospitals; (3) diagnostic, teaching, and research laboratories.	Good microbiological practices, protective clothing, biosafety sign when special provisions required (Appendix G–II–B–2).	Open bench plus biosafety cabinet (Class I,II) for potential aerosols (Appendices G–II–B–3 and G–III–L).
Risk Group 3 (RG3).	Biosafety Level 3 (BL3) (Appendix G–II–C).	Special diagnostic laboratories	Good microbiological practices, protective clothing, biosafety sign, special clothing, controlled assess, directional air flow (Appendix G–II–C–2).	Biosafety cabinet (Class I,II,II) and/or other primary containment for all activities (Appendices G–II–C–3 and G–III–L).
Risk Group 4 (RG4).	Maximum Containment/Biosafety Level 4 (BL4) (Appendix G–II–D).	Dangerous pathogens units	Good microbiological practices, protective clothing, biosafety sign, special clothing, controlled assess, directional air flow, airlock entry, shower exit, special waste disposal (Appendix G–II–D–2).	Biosafety cabinet (Class III) or Class I or II in combination with positive pressure suits ventilated by life-support system, double-door autoclave (Appendices G–II–D–4 and G–II–L).

Appendix B–IV–C. Risk Group 1 (RG1) Agents

Note. It is not appropriate to assume that an unassessed agent belongs in RG1, e.g., vaccine strains which have undergone multiple *in vivo* passages are not considered to be avirulent based only on the fact that they are vaccine strains.

RG1 agents are usually not placed on a list but are assumed to include all bacterial, fungal, viral, rickettsial, chlamydial, and parasitic agents which have been assessed for hazard and that are not included in higher RG. RG1 agents can be used for undergraduate and secondary educational training and teaching laboratories and other facilities in which work is conducted with defined and characterized strains of viable microorganisms that are: (1) not known to cause disease in healthy adult humans, and (2) represent minimal potential hazard to laboratory personnel or the environment under standard conditions. RG1 agents can be handled safely in the laboratory without special apparatus or equipment using techniques generally acceptable for nonpathogenic materials. RG1 includes the following agents: asporogenic Bacillus subtilis or Bacillus licheniformis (see exceptions in Appendix C–IV–A); Escherichia coli-K12 (see exceptions in Appendix C–II–A); Saccharomyces cerevisiae and Saccharomyces uvarum (see exceptions in Appendix C–III–A); Baculovirus vectors (see exceptions in Appendix C–I–A); infectious canine hepatitis viruses; and influenza reference strains A/PR/8/34 and A/WS/33.

Appendix B–IV–C–1. Risk Group 1 (RG1) Low-Risk Oncogenic Viruses (See Appendix B–VI–G)

Adenovirus 7-Simian virus 40 (Ad7–SV40)
Avian leukosis virus
Bovine leukemia virus
Bovine papilloma virus
Chick-embryo-lethal orphan (CELO) virus or fowl adenovirus 1
Dog sarcoma virus
Guinea pig herpes virus
Lucke (Frog) virus
Hamster leukemia virus
Marek's disease virus
Mason-Pfizer monkey virus
Mouse mammary tumor virus
Murine leukemia virus
Murine sarcoma virus
Polyoma virus
Rat leukemia virus
Rous sarcoma virus
Shope fibroma virus
Shope papilloma virus
Simian virus 40 (SV40)

Appendix B–IV–D. Risk Group 2 (RG2) Agents

RG2 includes agents that represent moderate risk to healthy human adults and the environment. RG2 agents may produce disease (varying degrees of severity) as a result of accidental inoculation, injection, or other means of cutaneous penetration. RG2 agents can generally be contained using standard laboratory practices. Some RG2 agents may cause disease as a result of direct contact or respiratory transmission; however, such instances are self-limiting and do not result in serious illness, e.g. the common cold (rhinoviruses). RG2 agents are recommended for use only in facilities where laboratory personnel are trained in the safe handling of these agents (see Appendix G–II–B–2).

Appendix B–IV–D–1. Risk Group 2 (RG2)—Bacteria

Note. When "spp" follows the name of a genus, or "serotype" follows a species, only those species or serotypes known to be pathogenic to healthy human adults are included.

Acinetobacter baumannii
Actinobacillus spp.
Actinomyces pyogenes
Aeromonas hydrophila
Amycolata autotrophica
Archanobacterium haemolyticum
Arizona hinshawii—all serotypes
Bacillus anthracis (BL3 practices)
Bartonella henselae, B. quintana, B. vinsonii
Bordetella spp. including *B. pertussis* (BL3 practices)
Borrelia recurrentis, B. burgdorferi
Burkholderia (previously Pasteurella spp.) except those listed in Appendix B–IV–E–1 (RG3))
Burkholderia pseudomallei (BL3 practices)
Campylobacter coli, C. fetus spp. fetus, C. jejuni
Chlamydia psittaci (BL3 practices)
Chlamydia trachomatis (BL3 practices)
Chlamydia pneumoniae (BL3 practices)
Clostridium botulinum (BL3 practices), *Cl. chauvoei, Cl. haemolyticum, Cl. histolyticum, Cl. novyi, Cl. septicum, Cl. tetani*
Corynebacterium diphtheriae, C. pseudotuberculosis, C. renale
Dermatophilus congolensis
Edwardsiella tarda
Erysipelothrix rhusiopathiae
Escherichia coli—all enteropathogenic, enterotoxigenic, enteroinvasive and strains bearing K1 antigen; including *E. coli* O157:H7
Haemophilus ducreyi, H. influenzae
Helicobacter pylori
Klebsiella spp.
Legionella spp. including L. pneumophila (BL3 practices)
Legionella-like organisms
Leptospira interrogans—all serotypes
Listeria spp.
Moraxella spp.
Mycobacterium spp. (except those listed in Appendix B–IV–E–1 (RG3)) including *M. avium complex, M. asiaticum, M. chelonei, M. fortuitum, M. kansasii, M. leprae, M. malmoense, M. marinum, M. paratuberculosis, M. scrofulaceum, M. simiae, M. szulgai, M. ulcerans, M. xenopi*
Mycoplasma spp., except *M. mycoides* and *M. agalactiae* which are restricted animal pathogens (see Appendix B–V–B)
Neisseria gonorrhoea (BL3 practices), *N. meningitidis* (BL3 practices)
Nocardia asteroides, N. brasiliensis, N. otitidiscaviarum, N. transvalensis
Rhodococcus equi
Salmonella spp. and serotypes including *S. arizonae, S. cholerasuis, S. enteritidis, S. gallinarum-pullorum, S. meleagridis, S. paratyphi,* A, B, C, *S. typhi* (BL3 practices), *S. typhimurium*
Shigella spp. (BL3 practices) and serotypes including *S. boydii, S. dysenteriae,* Type 1, *S. flexneri, S. sonnei*
Sphaerophorus necrophorus
Staphylococcus aureus
Streptobacillus moniliformis
Streptococcus spp. including *Streptococcus pneumoniae, S. pyogenes*
Treponema pallidum, T. carateum
Vibrio cholerae, V. parahemolyticus, V. vulnificus
Yersinia enterocolitica, Y. pestis (BL3 practices)

Appendix B–IV–D–2. Risk Group 2 (RG2)—Fungal Agents

Note. When "spp" follows the name of a genus, or "serotype" follows a species, only those species or serotypes known to be pathogenic to healthy human adults are included.

Blastomyces dermatitidis
Cladosporium bantianum, C. (Xylohypha) trichoides
Cryptococcus neoformans (Droplets/aerosols require biosafety cabinet)
Dactylaria galopava (Ochroconis gallopavum)
Epidermophyton spp.
Exophiala (Wangiella) dermatitidis
Fonsecaea pedrosoi
Microsporum spp.
Paracoccidioides braziliensis
Penicillium marneffei
Sporothrix schenckii
Trichophyton spp.

Appendix B–IV–D–3. Risk Group 2 (RG2)—Parasitic Agents

Note. When "spp" follows the name of a genus, or "serotype" follows a species, only those species or serotypes known to be pathogenic to healthy human adults are included.

Ancylostoma spp. human hookworms including *A. duodenale, A. ceylanicum*
Ascaris spp. including *Ascaris lumbricoides suum*
Babesia spp. including *B. divergens, B. microti*
Brugia spp. filaria worms including *B. malayi, B. timori*
Coccidia spp.
Cryptosporidium spp. including *C. parvum*
Cysticercus cellulosae (hydatid cyst, larva of *T. solium*)
Echinococcus spp. including *E. granulosis, E. multilocularis, E. vogeli*
Entamoeba histolytica
Enterobius spp.
Fasciola spp. including *F. gigantica, F. hepatica*
Giardia spp. including *G. lamblia*
Heterophyes spp.
Hymenolepis spp. including *H. diminuta, H. nana*
Isospora spp.
Leishmania spp. including *L. braziliensis, L. donovani, L. ethiopia, L. major, L. mexicana, L. peruvania, L. tropica*
Loa loa filaria
Microsporidium spp.
Naegleria fowleri
Necator spp. human hookworms, including *N. americanus*
Onchoerca spp. filaria including, *O. volvulus*
Plasmodium spp. including simian species, *P. cynomologi, P. falciparum, P. malariae, P. ovale, P. vivax*
Sarcocystis spp. including *S. sui hominis*
Schistosoma spp. including *S. haematobium, S. intercalatum, S. japonicum, S. mansoni, S. mekongi*
Strongyloides spp. including *S. stercoralis*
Taenia solium
Toxocara spp. including *T. canis*
Toxoplasma spp. including *T. gondii*
Trichinella spiralis
Trypanosoma spp. including *T. brucei brucei, T. brucei gambiense, T. brucei rhodesiense, T. cruzi*
Wuchereria bancrofti (filaria)

Appendix B–IV–D–4–a. Risk Group 2 (RG2)—Viruses and Prions (See Appendices B–IV–D–4–b and B–IV–D–4–c)

Note. When "spp" follows the name of a genus, or "serotype" follows a species, only those species or serotypes known to be pathogenic to healthy human adults are included.

Adenoviruses, human—all types
Arboviruses (see Appendix B–IV–D–4–b)
Arenaviruses (see Appendix B–IV–D–4–b)
Bunyamwera virus
Coronaviruses
Coxsackie A and B viruses
Creutzfeldt-Jacob disease agent (prion)
Echoviruses—all types
Encephalomyocarditis virus (EMC)
Encephalomyelitis viruses (droplets/aerosols require BL3 practices) (see Appendix B–IV–D–4–b)
Hepatitis A, B (BL3 practices), C (BL3 practices), D, E viruses
Herpesviruses (BL3 practices) including Cytomegalovirus, Epstein Barr, *Herpes simplex* types 1 and 2, and *Herpes zoster,* except Herpesvirus simiae (Monkey B virus) (see Appendix B–IV–F–4 (RG4))
Human Immunodeficiency Virus (HIV) all serotypes (see Appendices B–VI–A–7 and B–IV–J for special requirements)
Human T cell lymphotropic viruses (HTLV) types 1 and 2 (BL3 practices)
Influenza viruses
Kuru (prion)
Lymphocytic choriomeningitis virus (BL3 practices—except neurotropic strains)
Lymphogranuloma venereum agent
Measles virus
Molluscum contagiosum virus
Mumps virus
Orf virus
Papovaviridae including human papilloma viruses
Parainfluenza virus
Paravaccinia virus
Polioviruses—all types, wild and attenuated
Poxviruses—all types such as Cowpox (biosafety cabinet and immunization required), Monkeypox (biosafety cabinet and immunization required) or Vaccinia (biosafety cabinet and immunization required), Camelpox, Milker—s node virus, Molluscum contagiosum virus, Orf, Rabbitpox, Tanapox, and Yabapox except Alastrim, Smallpox, and Whitepox (see Appendices B–V–B and B–VI–H)

Rabies virus (biosafety cabinet and immunization required)—all strains including
fixed/attenuated virus
except Rabies street virus
Reoviruses—all types
Respiratory syncytial virus
Rhinoviruses—all types
Rubella virus
Simian viruses—all types including simian immunodeficiency virus (BL3 practices), except Herpesvirus simiae (Monkey B virus) and Marburg virus (see Appendix B–IV–F–4 (RG4))
Transmissible Spongioform Encephalopathies (TME)—prions (Creutzfieldt-Jacob; Kuru)
Vesicular Stomatitis Virus, lab adapted strains: VSV-Indiana, San Juan, and Glasgow

Appendix B–IV–D–4–b. Arboviruses and Arenaviruses Assigned to Biosafety Level 2

Note. When laboratory work is conducted with biological agents for which epidemiology and etiology are unknown or incompletely understood, it is presumed that the work presents a biohazard similar to related agents until further information can be provided. This method of risk assessment was used by the American Committee on Arthropod-Borne Viruses (ACAV) Subcommittee on Arbovirus Laboratory Safety for work with arboviruses for which risk information is inadequate or unavailable (see Appendix B–VI–D).

Acado
Acara
Aguacate
Alfuy
Almpiwar
Amapari
Ananindeua
Anhanga
Anhembi
Anopheles A
Anopheles B
Apeu
Apoi
Aride
Arkonam
Aroa
Aruac
Arumowot
Aura
Avalon
Abras
Abu Hammad
Aabahoyo
Bagaza
Bahig
Bakau
Baku
Bandia
Bangoran
Bangui
Banzi
Barmah Forest
Barur
Batai
Batama
Bauline
Bebaru
Belmont
Benevides
Benfica
Bertioga
Bimiti
Birao
Bluetongue
Boraceia
Botambi
Boteke
Bouboui
Bujaru
Bunyamwera
Bunyip
Burg E Arab
Bushbush
Bussuquara
Buttonwillow
Bwamba
Cacao
Cache Valley
Caimito
California enc.
Calovo
Candiru
Cape Wrath
Capim
Caraparu
Carey Island
Catu
Chaco
Chagres
Chandipura
Changuinola
Charleville
Chenuda
Chilibre
Chobar gorge
Clo Mor
Colorado tick fever
Corriparta
Cotia
Cowbone Ridge
Csiro Village
Cuiaba-D'aguilar
Dakar Bat
Dengue-1
Dengue-2
Dengue-3
Dengue-4
Dera Ghazi Khan
East. equine enc. (vaccine recommended)
Edge Hill
Entebbe Bat
Ep. Hem. Disease
Erve
Eubenangee
Eyach
Flanders
Fort Morgan
Frijoles
Gamboa
Gan Gan
Gomoka
Gossas
Grand Arbaud
Great Island
Guajara
Guama
Guaratuba
Guaroa
Gumbo Limbo
Hart Park
Hazara
Highlands J
Huacho
Hughes
Icoaraci
Ieri
Ilesha
Ilheus
Ingwavuma
Inkoo
Ippy
Irituia
Isfahan
Itaporanga
Itaqui
Jamestown Canyon
Japanaut
Jerry Slough
Johnston Atoll
Joinjakaka
Juan Diaz
Jugra
Jurona
Jutiapa
Kadam
Kaeng Khoi
Kaikalur
Kaisodi
Kamese
Kammavan pettai
Kannaman galam
Kao Shuan
Karimabad
Karshi
Kasba
Kemerovo
Kern Canyon
Ketapang
Keterah
Keuraliba
Keystone
Kismayo
Klamath
Kokobera
Kolongo
Koongol
Kotonkan
Kowanyama
Kunjin
Kununurra
Kwatta
La Crosse
La Joya
Lagos Bat
Landjia
Langat
Lanjan
Las Maloyas
Latino
Le Dantec

Lebombo
Lednice
Lipovnik
Lokern
Lone Star
Lukuni
M'poko
Madrid
Maguari
Mahogany Hammock
Main Drain
Malakal
Manawa
Manzanilla
Mapputta
Maprik
Marco
Marituba
Marrakai
Matariya
Matruh
Matucare
Melao
Mermet
Minatitlan
Minnal
Mirim
Mitchell River
Modoc
Moju
Mono Lake
Mont. myotis leuk.
Moriche
Mosqueiro
Mossuril
Mount Elgon Bat
Murutucu
Mykines
Navarro
Nepuyo
Ngaingan
Nique
Nkolbisson
Nola
Ntaya
Nugget
Nyamanini
Nyando
O'nyong-nyong
Okhotskiy
Okola
Olifantsvlei
Oriboca
Ossa
Pacora
Pacui
Pahayokee
Palyam
Parana
Pata
Pathum Thani
Patois
Phnom-Penh Bat
Pichinde
Pixuna
Pongola
Ponteves
Precarious Point
Pretoria
Prospect Hill
Puchong
Punta Salinas
Punta Toro
Qalyub
Quaranfil
Restan
Rio Bravo
Rio Grande
Ross River
Royal Farm
Sabo
Saboya
Saint Floris
Sakhalin
Salehabad
San angelo
Sandfly f. (Naples)
Sandfly f. (Sicilian)
Sandjimba
Sango
Sathuperi
Sawgrass
Sebokele
Seletar
Sembalam
Serra do Navio
Shamonda
Shark River
Shuni
Silverwater
Simbu
Simian hem. fever
Sindbis
Sixgun City
Snowshoe Hare
Sokuluk
Soldado
Sororoca
Stratford
Sunday Canyon
Tacaiuma
Tacaribe
Taggert
Tahyna
Tamiami
Tanga
Tanjong Rabok
Tataguine
Tehran
Tembe
Tembusu
Tensaw
Tete
Tettnang
Thimiri
Thottapalayam
Tibrogargan
Timbo
Timboteua
Tindholmur
Toscana
Toure
Tribec
Triniti
Trivittatus
Trubanaman
Tsuruse
Turlock
Tyuleniy
Uganda S
Umatilla
Umbre
Una
Upolu
Urucuri
Usutu
Uukuniemi
Vellore
Venkatapuram
Vinces
Virgin River
VS-Indiana
VS-New Jersey
Wad Medani
Wallal
Wanowrie
Warrego
West. equine enc. (vaccine recommended)
Whataroa
Witwatersrand
Wonga
Wongorr
Wyeomyia
Yaquinea Head
Yata
Yogue
Zaliv Terpeniya
Zegla
Zika
Zingilamo
Zirqa

Appendix B–IV–D–4–c. Vaccine Strains of Risk Group 3 (RG3) and Risk Group 4 (RG4) Viruses Which May Be Handled at Biosafety Level 2

Chikungunya, strain 131/25
Junin, strain Candid #1
Rift Valley fever, strain MP–12
Venezuelan equine encephalomyelitis, strain TC–83
Yellow fever, strain 17–D

Appendix B–IV–D–4–d. Risk Group 2 (RG2)—Moderate Risk Oncogenic Viruses (see Appendix B–VI–G)

Adenovirus
Adenovirus 2—simian virus 40 (Ad2–SV40)
Epstein Barr virus (EBV)
Feline leukemia virus (FeLV)
Feline sarcoma virus (FeSV)
Gibbon leukemia virus (GaLV)
Herpesvirus (HV) ateles
Herpesvirus (HV) saimiri
Papovaviridae including human papilloma viruses
Simian sarcoma virus (SSV)–1
Yabapox virus

Appendix B–IV–E. Risk Group 3 (RG3) Agents

Note. When "spp" follows the name of a genus, or "serotype" follows a species, only those species or serotypes known to be pathogenic to healthy human adults are included.

RG3 includes indigenous or exotic agents which may potentially cause serious or lethal disease as a result of inhalation exposure. RG3 includes agents involving special hazards to laboratory personnel or agents derived from outside the United States and require a permit for importation, unless they are specified for higher classification. RG3 includes pathogens which require special containment conditions for facilities in which laboratory personnel have received specialized training in: (1) the safe handling of hazardous agents, i.e., equal to or greater than college level microbiology laboratory training, and (2) handling the specific RG3 agent or similar pathogens that may potentially cause serious or lethal disease. Laboratory personnel shall be supervised by trained scientists who possess significant experience in the safe handling of biohazardous agents and materials.

Appendix B–IV–E–1. Risk Group 3 (RG3)—Bacterial Agents including Chlamydia and Rickettsia

Bartonella spp.
Brucella spp. including B. abortus, B. canis, B. melitensis (USDA restricted), *B. suis*
Burkholderia (Pseudomonas) mallei, B. pseudomallei (see Appendix B–VI–F)
Coxiella burnetii
Francisella tularensis
Mycobacterium bovis, M. tuberculosis
Pasteurella multocida type B—"buffalo" and others (see Appendix B–VI–F)
Rickettsia akari, R. australis, R. canada, R. conorii, R. prowazekii
R. rickettsii, R. siberica, R. tsutsugamushi, R. typhi (R. mooseri)
Yersinia pestis (antibiotic resistant strains)

Appendix B–IV–E–2. Risk Group 3 (RG3)—Fungal Agents

Coccidioides immitis (sporulating cultures; contaminated soil)
Histoplasma capsulatum, H. capsulatum var. duboisii

Appendix B–IV–E–3. Risk Group 3 (RG3)—Parasitic Agents

None

Appendix B–IV–E–4. Risk Group 3 (RG3)—Viral Agents

Arboviruses and certain other viruses assigned to Risk Group 3 (West Nile and Semliki Forest viruses may be classified up or down depending on the conditions of use and geographical location of the laboratory (see Appendices B–IV–E–5, B–IV–E–6 and B–VI–I).

Lymphocytic choriomeningitis virus (LCM) (neurotrophic strains)
Monkey pox virus—when used *in vitro* (see Appendix B–VI–H)
Rabies Street virus

Appendix B–4–E–5. Arboviruses and Certain Other Viruses Assigned to Biosafety Level 3 (on the Basis of Insufficient Experience)

Adelaide River
Agua Preta
Alenquer
Almeirim
Altamira
Andasibe
Antequera
Araguari
Aransas Bay
Arbia
Arboledas
Babanki
Batken
Belem
Berrimah
Bimbo
Bobaya
Bobia
Bozo
Buenaventura
Cabassue (BL3 facilities/HEPA filtration of exhaust air prior to discharge, vaccine recommended)
Cacipacore
Calchaqui
Cananeia
Caninde
Chim
Coastal Plains
Connecticut
Corfou
Dabakala
Douglas
Enseada
Estero Real
Fomede
Forecariah
Fort Sherman
Gabek Forest
Gadgets Gully
Garba
Gordil
Gray Lodge
Gurupi
Iaco
Ibaraki
Ife
Ingangapi
Inini
Issyk-Kul
Itaituba
Itimirim
Itupiranga
Jacareacanga
Jamanxi
Jari
Kedougou
Khasan
Kindia
Kyzylagach
Lake Clarendon
Llano Seco
Macaua
Mapuera
Mboke
Meaban
Mojui Dos Compos
Monte Dourado
Munguba
Naranjal
Nariva
Nasoule
Ndelle
New Minto
Ngari
Ngoupe
Nodamura
Northway
Odrenisrou
Omo
Oriximina
Ouango
Oubangui
Oubi
Ourem
Palestina
Para
Paramushir
Paroo River
Perinet
Petevo
Picola
Playas
Pueblo Viejo
Purus
Radi
Razdan
Resistencia
Rochambeau
Salanga
San Juan
Santa Rosa
Santarem
Saraca
Saumarez Reef
Sedlec
Sena Madureira
Sepik
Shokwe
Slovakia
Somone
Spipur
Tai
Tamdy
Telok Forest
Termeil
Thiafora
Tilligerry
Tinaroo
Tlacotalpan
Tonate (BL3 facilities/HEPA filtration of exhaust air prior to discharge, vaccine recommended)
Ttinga
Xiburema
Yacaaba
Yaounde
Yoka
Yug Bogkanova

Appendix B–IV–E–6. Arboviruses and Certain Other Viruses Assigned to Biosafety Level 3

Aino

Akabane
Bhanja
Chikungunya (BL3 facilities/HEPA filtration of exhaust air prior to discharge, vaccine recommended)
Cocal
Dhori
Dugbe
Everglades (BL3 facilities/HEPA filtration of exhaust air prior to discharge, vaccine recommended)
Flexal
Germiston (BL3 facilities/HEPA filtration of exhaust air prior to discharge)
Getah
Hantaan
Israel Turkey mening.
Japanese enc.
Junin (BL3 facilities/HEPA filtration of exhaust air prior to discharge, vaccine recommended)
Kairi
Kimberley
Koutango
Louping Ill (BL3 facilities/HEPA filtration of exhaust air prior to discharge) (The importation, possession, or use of this agent is restricted by USDA regulation or administrative policy) (see Appendices B–VI–D and B–VI–F)
Mayaro
Middelburg
Mobala
Mopeia (This virus is presently being registered in the Catalogue of Arboviruses)
Mucambo (BL3 facilities/HEPA filtration of exhaust air prior to discharge, vaccine recommended)
Murray Valley enc.
Nairobi sheep disease (The importation, possession, or use of this agent is restricted by USDA regulation or administrative policy) (see Appendices B–VI–D and B–VI–F).
Ndumu
Negishi
Oropouche (BL3 facilities/HEPA filtration of exhaust air prior to discharge)
Orungo
Peaton
Piry
Powassan
Puumala
Rift Valley fever (Zinga virus) (BL3 facilities/HEPA filtration of exhaust air prior to discharge, vaccine recommended) The importation, possession, or use of this agent is restricted by USDA regulation or administrative policy (see Appendices B–VI–D and B–VI–F).
Sagiyama
Sal Vieja
San Perlita
Semliki Forest
Seoul
Spondweni
St. Louis enc.
Thogoto
Tocio (BL3 facilities/HEPA filtration of exhaust air prior to discharge)
Turuna
Venezuelan equine encephalitis (BL3 facilities/HEPA filtration of exhaust air prior to discharge, vaccine recommended)
Vesicular Stomatitus (alagoas)
Wesselsbron (BL3 facilities/HEPA filtration of exhaust air prior to discharge) (The importation, possession, or use of this agent is restricted by USDA regulation or administrative policy) (see Appendices B–VI–D and B–VI–F).
West Nile
Yellow fever (BL3 facilities/HEPA filtration of exhaust air prior to discharge, vaccine recommended)
Zinga (Rift Valley Fever virus) (BL3 facilities/HEPA filtration of exhaust air prior to discharge, vaccine recommended) The importation, possession, or use of this agent is restricted by USDA regulation or administrative policy (see Appendices B–VI–D and B–VI–F).

Appendix B–IV–F. Risk Group 4 (RG4) Agents

RG4 includes dangerous and exotic agents that pose a high individual risk of aerosol-transmitted laboratory infections (or related agents with unknown means of transmission) which can result in life-threatening disease. RG4 agents require the most stringent containment conditions because they are extremely hazardous to laboratory personnel and may cause serious epidemic disease. RG4 agents can only be used in special facilities in which laboratory personnel have received specialized training in: (1) the safe handling of hazardous agents, i.e., equal to or greater than college level microbiology laboratory training, and (2) handling the specific RG3 agent or similar pathogens that may potentially cause serious or lethal disease. Laboratory personnel shall be supervised by trained scientists who possess significant experience in the safe handling of biohazardous agents and materials.

Appendix B–IV–F–1. Risk Group 4 (RG4)—Bacterial Agents

None

Appendix B–IV–F–2. Risk Group 4 (RG4)—Fungal Agents

None

Appendix B–IV–F–3. Risk Group 4 (RG4)—Parasitic Agents

None

Appendix B–IV–F–4. Risk Group 4 (RG4)—Viral Agents

Absettarov
Central European encephalitis viruses
Crimean hemorrhagic fever (Congo)
Ebola fever virus
Guanarito
Hanzalova
Hemorrhagic fever agents and viruses as yet undefined
Herpesvirus simiae (Monkey B virus)
Hypr
Junin (BL3 containment and practices if vaccinated)
Kumlinge
Kyasanur forest disease
Lassa
Machupo
Marburg
Omsk hemorrhagic fever
Russian spring—summer encephalitis
Tick-borne orthomyxoviridae, Dhori & Thogoto

Appendix B–V. Restricted Pathogens

Appendix B–V–A. Restricted Plant Pathogens

Note. See Appendix P, *Physical and Biological Containment for Recombinant DNA Research Involving Plants.*

Non-indigenous plant pathogens may require special laboratory design, operation, and containment features not generally addressed in Biosafety in the Microbiological and Biomedical Research Laboratories (see Appendix B–VI–D). Information on the importation, possession, or use of these agents is available from: U.S. Department of Agriculture, Animal and Plant Health Inspection Service, Veterinary Services, Import-Export Products Staff, Room 756, Federal Building, 6505 Belcrest Road, Hyattsville, Maryland 20782; Phone: (301) 436–7830; Fax: (301) 436–8226.

Appendix B–V–B. Restricted Animal Pathogens

Note. See Appendix Q, *Physical and Biological Containment for Recombinant DNA Research Involving Animals.*

Non-indigenous domestic livestock and poultry pathogens may require special laboratory design, operation, and containment features not generally addressed in Biosafety in the Microbiological and Biomedical Research Laboratories (see Appendix B–VI–D). The importation, possession, or use of these agents is prohibited or restricted by law or by the U.S. Department of Agriculture regulations and administrative policies. Animal pathogens other than those zoonotic

agents listed in Appendix B may be subject to USDA regulations. Information on the importation, possession, or use of these agents is available from: U.S. Department of Agriculture, Animal and Plant Health Inspection Service, Veterinary Services, Import-Export Products Staff, Room 756, Federal Building, 6505 Belcrest Road, Hyattsville, Maryland 20782; Phone: (301) 436–7830; Fax: (301) 436–8226.

Appendix B–V–C. Organisms Which May Not Be Studied in the United States Except at Specified Facilities

Alastrim (see Appendix B–VI–H)
Small pox (see Appendix B–VI–H)
White pox (see Appendix B–VI–H)

Appendix B–VI. Footnotes and References to Appendix B

Appendix B–VI–A. Appendix B has been adapted from the RG classification recommended by the World Health Organization (see Appendix B–VI–E), the Agent Summary Statements described in Biosafety in Microbiological and Biomedical Laboratories (see Appendix B–VI–D), Control of Communicable Diseases of Man (see Appendix B–VI–B), recommendations of the Task Force of the American Society for Microbiology, and a 1982 draft document of the Centers for Disease Control and Prevention, which includes a more complete risk assessment of human pathogens (Dr. R. Knudsen—personal communication). Appendices B–IV–A and B–IV–B are derived from the World Health Organization Laboratory Biosafety Manual (see Appendix B–VI–E). Appendices B–IV–D–4–b, B–IV–D–4–c, B–IV–E–5 and B–IV–E–6 were obtained directly (electronic transmission) from the Centers for Disease Control and Prevention. The original reference for this classification was Classification of Etiologic Agents on the Basis of Hazard, 4th edition, July 1974 (see Appendix B–VI–C).

Appendix B–VI–B. Benenson, Abram S. ed., Control of Communicable Diseases in Man, 15th edition. 1990. American Public Health Association, Washington, D.C.

Appendix B–VI–C. Center for Disease Control, Office of Biosafety, Classification of Etiologic Agents on the Basis of Hazard, 4th Edition. 1974. U.S. Department of Health, Education and Welfare, Public Health Service.

Appendix B–VI–D. U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control and Prevention and the National Institutes of Health. Biosafety in Microbiological and Biomedical Research Laboratories, 3rd edition. 1993. Copies available from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (stock # 017–040–00523–7), Phone: (202) 512–2356.

Appendix B–VI–E. World Health Organization Laboratory Biosafety Manual, 2nd edition. WHO Albany, NY ORDER FROM: WHO Publication Centre, USA, (Q Corp) 49 Sheridan Avenue, Albany, New York 12210; Phone: (518) 436–9686 (Order # 1152213) (cost $23.40 plus $3.00 handling).

Appendix B–VI–F. A U.S. Department of Agriculture permit, required for import and interstate transport of pathogens, may be obtained from the U.S. Department of Agriculture, ATTN: Animal and Plant Health Inspection Service, Import-Export Products Office, Room 756, Federal Building, 6505 Belcrest Road, Hyattsville, Maryland 20782. Telephone; 301–436–7830 or 8499; FAX 301–436–8226

Appendix B–VI–G. National Cancer Institute Safety Standards for Research Involving Oncogenic Viruses, October 1974. U.S. Department of Health, Education, and Welfare (Publication # (NIH) 75–790).

Appendix B–VI–H. All activities, including storage of variola and whitepox, are restricted to the single national facility (World Health Organization Collaborating Center for Smallpox Research, Centers for Disease Control and Prevention, Atlanta, Georgia).

Appendix B–VI–I. Published regulations or guidelines from Federal, State, or local governments must also be taken into account.

Appendix B–VI–J. U.S. Department of Labor, Occupational Safety and Health Administration. 1991. Occupational Exposure to Bloodborne Pathogens, Final Rule (56 FR 64175–64182).

The rest of the NIH Guidelines will have terminology changes (i.e., Class 1, 2, 3, 4 will be changed to Risk Group 1, 2, 3, 4, respectively. Class 5 will become restrictive pathogens.) Cross references will be changed accordingly to revision in Appendix B.

XV. Report From Ad Hoc Review Committee

On March 8 and May 1, 1995, the *Ad hoc* Review Committee met to discuss three major topics for review: (1) domain and mandate of the Recombinant DNA Advisory Committee; (2) composition of the Recombinant DNA Advisory Committee; and (3) Recombinant DNA Advisory Committee's review of human gene transfer protocols. Dr. Nelson Wivel will give a status report on the *Ad hoc* Review Committee.

XVI. Presentation on Fetal Sheep Studies/Zanjani

Dr. Esmail Zanjani of the Veterans Administration Hospital Medical Center, Reno, Nevada, will be giving a presentation on Fetal Sheep Studies. Dr. Zanjani will present results of his experimental work on in utero cell transfer.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally, NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

Effective Date: May 9, 1995.

Daryl A. Chamblee,

Acting Deputy Director for Science Policy and Technology Transfer.

[FR Doc. 95–12405 Filed 5–19–95; 8:45 am]

BILLING CODE 4140–01–P

federal register

Monday
May 22, 1995

Part V

The President

Proclamation 6802—Prayer for Peace, Memorial Day, 1995

Federal Register
Vol. 60, No. 98
Monday, May 22, 1995

Presidential Documents

Title 3—

The President

Proclamation 6802 of May 18, 1995

Prayer for Peace, Memorial Day, 1995

By the President of the United States of America

A Proclamation

The essence of America is the quality and breadth of the freedoms guaranteed by the Constitution. Yet far too often in our country's history, the price of preserving these freedoms has been the lives of our Nation's young men and women and the heartbreak of their families and friends. The light and laughter of our lost sons and daughters can never be replaced. But the gift of their courage will always endure. America remembers the sacrifices of those who gave their lives to protect our liberty. For our citizens and for freedom-loving people around the world, they have kept democracy's flame burning brightly.

Forged in revolution and tempered by more than two centuries of fighting injustice, America has grown stronger, determined to safeguard the blessings that have been so hard-won. As we recall the selfless devotion of those who have risen to defend the cause of freedom, we resolve today that their efforts shall not have been in vain. America still holds fast to the principles upon which it was founded, and its people still stand bound together by our common faith in peace. In remembrance of our fallen heroes, we pray that peace will forever grace our land, that it will guide relations between citizens and friendships among nations, and that our people will one day see a time when harmony fills the Earth.

May God comfort all who mourn.

In respect and recognition of the courageous men and women to whom we pay tribute, the Congress, by joint resolution approved on May 11, 1950 (64 Stat. 158), has requested the President to issue a proclamation calling upon the people of the United States to observe each Memorial Day as a day of prayer for permanent peace and designating a period on that day when the people of the United States might unite in prayer.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim Memorial Day, May 29, 1995, as a day of prayer for permanent peace. I designate the hour beginning in each locality at 11 o'clock in the morning of that day as a time to join in prayer. I urge the press, radio, television, and all information media to take part in this observance.

I also request the Governors of the United States and the Commonwealth of Puerto Rico, and the appropriate officials of all units of government, to direct that the flag be flown at half-staff until noon during this Memorial Day on all buildings, grounds, and naval vessels throughout the United States and in all areas under its jurisdiction and control, and I request the people of the United States to display the flag at half-staff from their homes for the customary forenoon period.

IN WITNESS WHEREOF, I have hereunto set my hand this eighteenth day of May, in the year of our Lord nineteen hundred and ninety-five, and of the Independence of the United States of America the two hundred and nineteenth.

William J. Clinton

[FR Doc. 95–12668
Filed 5–19–95; 10:48 am]
Billing code 3195–01–P

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–2470).

H.R. 421/P.L. 104–10

To amend the Alaska Native Claims Settlement Act to provide for the purchase of common stock of Cook Inlet Region, and for other purposes. (May 18, 1995; 109 Stat. 155; 3 pages)

H.R. 517/P.L. 104–11

Chacoan Outliers Protection Act of 1995 (May 18, 1995; 109 Stat. 158; 3 pages)

H.R. 1380/P.L. 104–12

Truth in Lending Class Action Relief Act of 1995 (May 18, 1995; 109 Stat. 161; 2 pages)

Last List April 25, 1995

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–026–00001–8)	$5.00	Jan. 1, 1995
3 (1994 Compilation and Parts 100 and 101)	(869–026–00002–6)	40.00	[1] Jan. 1, 1995
4	(869–026–00003–4)	5.50	Jan. 1, 1995
5 Parts:			
1–699	(869–026–00004–2)	23.00	Jan. 1, 1995
700–1199	(869–026–00005–1)	20.00	Jan. 1, 1995
1200–End, 6 (6 Reserved)	(869–026–00006–9)	23.00	Jan. 1, 1995
7 Parts:			
0–26	(869–026–00007–7)	21.00	Jan. 1, 1995
27–45	(869–026–00008–5)	14.00	Jan. 1, 1995
46–51	(869–026–00009–3)	21.00	Jan. 1, 1995
52	(869–026–00010–7)	30.00	Jan. 1, 1995
*53–209	(869–026–00011–5)	25.00	Jan. 1, 1995
210–299	(869–026–00012–3)	34.00	Jan. 1, 1995
300–399	(869–026–00013–1)	16.00	Jan. 1, 1995
400–699	(869–026–00014–0)	21.00	Jan. 1, 1995
700–899	(869–026–00015–8)	23.00	Jan. 1, 1995
900–999	(869–026–00016–6)	32.00	Jan. 1, 1995
1000–1059	(869–026–00017–4)	23.00	Jan. 1, 1995
1060–1119	(869–026–00018–2)	15.00	Jan. 1, 1995
1120–1199	(869–026–00019–1)	12.00	Jan. 1, 1995
1200–1499	(869–026–00020–4)	32.00	Jan. 1, 1995
1500–1899	(869–026–00021–2)	35.00	Jan. 1, 1995
1900–1939	(869–026–00022–1)	16.00	Jan. 1, 1995
1940–1949	(869–026–00023–9)	30.00	Jan. 1, 1995
1950–1999	(869–026–00024–7)	40.00	Jan. 1, 1995
2000–End	(869–026–00025–5)	14.00	Jan. 1, 1995
8	(869–026–00026–3)	23.00	Jan. 1, 1995
9 Parts:			
*1–199	(869–026–00027–1)	30.00	Jan. 1, 1995
200–End	(869–026–00028–0)	23.00	Jan. 1, 1995
10 Parts:			
0–50	(869–026–00029–8)	30.00	Jan. 1, 1995
51–199	(869–026–00030–1)	23.00	Jan. 1, 1995
200–399	(869–026–00031–0)	15.00	[4] Jan. 1, 1993
400–499	(869–026–00032–8)	21.00	Jan. 1, 1995
500–End	(869–026–00033–6)	39.00	Jan. 1, 1995
11	(869–026–00034–4)	14.00	Jan. 1, 1995
12 Parts:			
1–199	(869–026–00035–2)	12.00	Jan. 1, 1995
200–219	(869–026–00036–1)	16.00	Jan. 1, 1995
220–299	(869–026–00037–9)	28.00	Jan. 1, 1995
300–499	(869–026–00038–7)	23.00	Jan. 1, 1995
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13	(869–026–00041–7)	32.00	Jan. 1, 1995
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200–1199	(869–026–00045–0)	23.00	Jan. 1, 1995
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15 Parts:			
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300–799	(869–026–00048–4)	26.00	Jan. 1, 1995
800–End	(869–026–00049–2)	21.00	Jan. 1, 1995
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200–239	(869–022–00055–1)	23.00	Apr. 1, 1994
240–End	(869–022–00056–0)	30.00	Apr. 1, 1994
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400–End	(869–022–00060–8)	11.00	Apr. 1, 1994
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400–499	(869–022–00064–1)	34.00	Apr. 1, 1994
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21 Parts:			
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100–169	(869–022–00067–5)	21.00	Apr. 1, 1994
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800–1299	(869–022–00073–0)	22.00	Apr. 1, 1994
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300–End	(869–022–00076–4)	23.00	Apr. 1, 1994
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§§ 1.501–1.640	(869–022–00090–0)	21.00	Apr. 1, 1994
§§ 1.641–1.850	(869–022–00091–8)	24.00	Apr. 1, 1994
§§ 1.851–1.907	(869–022–00092–6)	26.00	Apr. 1, 1994
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*500–599	(869–026–00104–9)	6.00	[4] Apr. 1, 1990

Title	Stock Number	Price	Revision Date
600–End	(869–022–00102–7)	8.00	Apr. 1, 1994
27 Parts:			
1–199	(869–022–00103–5)	36.00	Apr. 1, 1994
200–End	(869–026–00107–3)	13.00	[6]Apr. 1, 1994
28 Parts:			
1–42	(869–022–00105–1)	27.00	July 1, 1994
43–end	(869–022–00106–0)	21.00	July 1, 1994
29 Parts:			
0–99	(869–022–00107–8)	21.00	July 1, 1994
100–499	(869–022–00108–6)	9.50	July 1, 1994
500–899	(869–022–00109–4)	35.00	July 1, 1994
900–1899	(869–022–00110–8)	17.00	July 1, 1994
1900–1910 (§§ 1901.1 to 1910.999)	(869–022–00111–6)	33.00	July 1, 1994
1910 (§§ 1910.1000 to end)	(869–022–00112–4)	21.00	July 1, 1994
1911–1925	(869–022–00113–2)	26.00	July 1, 1994
1926	(869–022–00114–1)	33.00	July 1, 1994
1927–End	(869–022–00115–9)	36.00	July 1, 1994
30 Parts:			
1–199	(869–022–00116–7)	27.00	July 1, 1994
200–699	(869–022–00117–5)	19.00	July 1, 1994
700–End	(869–022–00118–3)	27.00	July 1, 1994
31 Parts:			
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200–End	(869–022–00120–5)	30.00	July 1, 1994
32 Parts:			
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1–190	(869–022–00121–3)	31.00	July 1, 1994
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1–124	(869–022–00127–2)	20.00	July 1, 1994
125–199	(869–022–00128–1)	26.00	July 1, 1994
200–End	(869–022–00129–9)	24.00	July 1, 1994
34 Parts:			
1–299	(869–022–00130–2)	28.00	July 1, 1994
300–399	(869–022–00131–1)	21.00	July 1, 1994
400–End	(869–022–00132–9)	40.00	July 1, 1994
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200–499	(869–022–00178–7)	21.00	Oct. 1, 1994
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47 Parts:			
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[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1995. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1994. The CFR volume issued July 1, 1991, should be retained.

[6] No amendments to this volume were promulgated during the period January 1, 1993 to December 31, 1994. The CFR volume issued January 1, 1993, should be retained.

[7] No amendments to this volume were promulgated during the period October 1, 1993, to September 30, 1994. The CFR volume issued October 1, 1993, should be retained.

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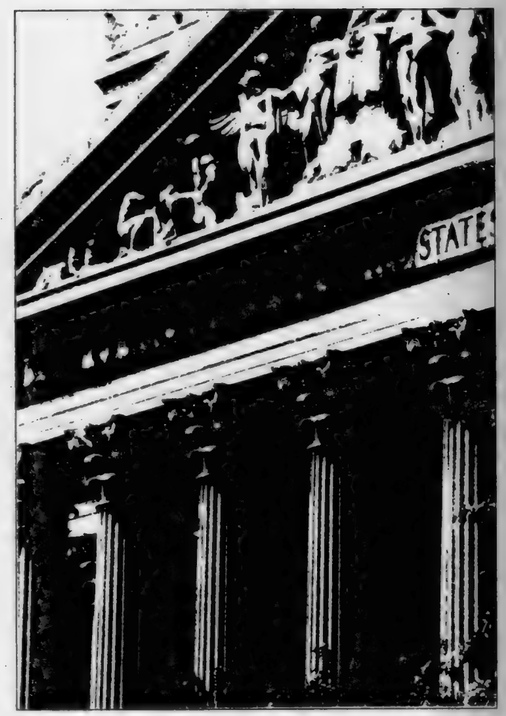
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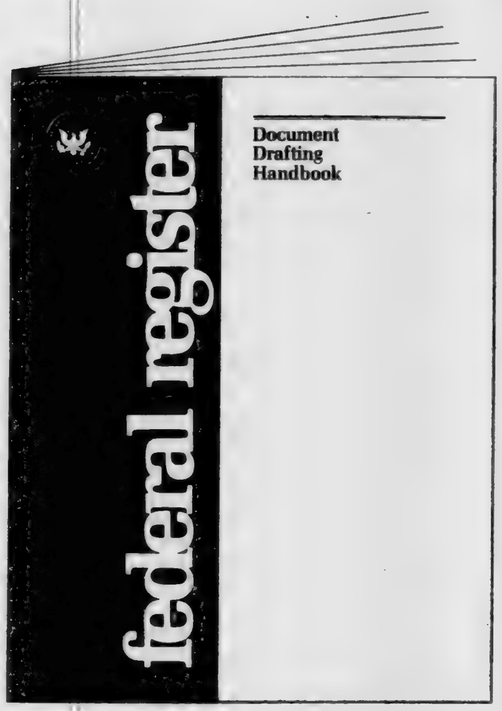
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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 436 and 442

[Docket No. 94N–0352]

Antibiotic Drugs; Cefuroxime Axetil for Oral Suspension

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the antibiotic drug regulations to include the accepted standards for cefuroxime axetil for its use in a new dosage form of cefuroxime axetil, cefuroxime axetil for oral suspension. The manufacturer has supplied sufficient data and information to establish its safety and efficacy.

DATES: Effective June 22, 1995; written comments, notice of participation, and requests for a hearing by June 22, 1995; data, information, and analyses to justify a hearing by July 24, 1995.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: James Timper, Center for Drug Evaluation and Research (HFD–520), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6714.

SUPPLEMENTARY INFORMATION: FDA has evaluated data submitted in accordance with regulations promulgated under section 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357), as amended, with respect to a request for approval of a new dosage form of cefuroxime axetil, cefuroxime axetil for oral suspension. The agency has concluded that the data supplied by the manufacturer concerning this antibiotic drug are adequate to establish its safety and efficacy when used as directed in the labeling and that the regulations should be amended in parts 436 and 442 (21 CFR parts 436 and 442) to include the accepted standards for this product.

Environmental Impact

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Submitting Comments and Filing Objections

This final rule announces standards that FDA has accepted in a request for approval of an antibiotic drug. Because this final rule is not controversial and because, when effective, it provides notice of accepted standards, FDA finds that notice and comment procedure is unnecessary and not in the public interest. This final rule, therefore, is effective June 22, 1995. However interested persons may, on or before June 22, 1995, submit written comments to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this final rule may file objections to it and request a hearing. Reasonable grounds for the hearing must be shown. Any person who decides to seek a hearing must file (1) on or before June 22, 1995, a written notice of participation and request for a hearing, and (2) on or before July 24, 1995, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 314.300. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for a hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for a hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing. All submissions must be filed in three copies, identified with the docket number appearing in the heading of this document and filed with the Dockets Management Branch.

The procedures and requirements governing this order, a notice of participation and request for a hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 314.300.

All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Parts 436 and 442

Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 436 and 442 are amended as follows:

PART 436—TESTS AND METHODS OF ASSAY OF ANTIBIOTIC AND ANTIBIOTIC-CONTAINING DRUGS

1. The authority citation for 21 CFR part 436 continues to read as follows:

Authority: Sec. 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357).

2. Section 436.215 is amended by alphabetically adding a new entry to the table in paragraph (b) and by revising paragraph (c)(9) to read as follows:

§ 436.215 Dissolution test.

* * * * *

(b) * * *

Dosage form	Dissolution medium	Rotation rate [1]	Sampling time(s)	Apparatus
Cefuroxime axetil for oral suspension.	900 mL Sorenson's Modified Phosphate Buffer, pH 7.0.	50	30 min	2

[1] Rotation rate of basket or paddle stirring element (revolutions per minute).

(c) * * *

(9) *Cefuroxime axetil tablets and powder for oral suspension*—(i) *Preparation of working standard solution*—(*a*) *Cefuroxime axetil tablets.* Accurately weigh approximately 60 milligrams of cefuroxime axetil working standard into a suitable-sized volumetric flask. Dissolve in 5 milliliters of methanol and dilute to volume with 0.07*N* hydrochloric acid to obtain a known concentration equivalent to 0.01 to 0.02 milligram of cefuroxime activity per milliliter.

(*b*) *Cefuroxime axetil for oral suspension.* Accurately weigh approximately 15 milligrams of cefuroxime axetil working standard into a 100-milliliter volumetric flask. Dissolve in 5 milliliters of methanol and dilute to volume with Sorenson's Modified Phosphate Buffer, pH 7.0 (4.2 grams of sodium dihydrogen orthophosphate dihydrate and 14.3 grams of hydrogen disodium orthophosphate dodecahydrate per liter of water).

(ii) *Preparation of sample solution*—(*a*) *Cefuroxime axetil tablets.* Filter through a 0.45-micron filter and dilute an accurately measured portion of the filtrate with sufficient 0.07*N* hydrochloric acid to obtain a concentration equivalent to 0.01 to 0.02 milligram of cefuroxime activity per milliliter (estimated).

(*b*) *Cefuroxime axetil for oral suspension.* Filter the sample through an 8-micron filter. A coarse prefilter may be used to prevent clogging. Use the filtrate solution without further dilution.

(iii) *Procedure*—(*a*) *Cefuroxime axetil tablets.* Using a suitable spectrophotometer and 0.07*N* hydrochloric acid as the blank, determine the absorbance of each standard and sample solution at the absorbance peak at approximately 280 nanometers. Determine the exact position of the absorption peak for the particular instrument used.

(*b*) *Cefuroxime axetil for oral suspension.* Using a suitable spectrophotometer and Sorenson's Modified Phosphate Buffer, pH 7.0 (4.2 grams of sodium dihydrogen orthophosphate dihydrate and 14.3 grams of hydrogen disodium orthophosphate dodecahydrate per liter of water) as the blank, determine the absorbance of each standard and sample solution at the absorbance peak at approximately 280 nanometers. Determine the exact position of the absorption peak for the particular instrument used.

(iv) *Calculations.* Determine the total amount of cefuroxime activity dissolved as follows:

$$T = \frac{A_U \times C \times d \times 900}{A_s}$$

where:
T = Total milligrams of cefuroxime activity dissolved;
A_U = Absorbance of sample;
c = Cefuroxime activity of working standard solution in milligrams per milliliter;
d = Dilution factor of sample filtrate; and
A_s = Absorbance of standard.

* * * * *

PART 442—CEPHA ANTIBIOTIC DRUGS

3. The authority citation for 21 CFR part 442 continues to read as follows:

Authority: Sec. 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357).

§ 442.119a [Redesignated from § 442.119]

4. Section 442.119 is redesignated as § 442.119a and new §§ 442.119 and 442.119b are added to subpart B to read as follows:

§ 442.119 Cefuroxime axetil oral dosage forms.

§ 442.119b Cefuroxime axetil for oral suspension.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Cefuroxime axetil for oral suspension is cefuroxime axetil with one or more suitable and harmless diluents, suspending and sweetening agents, and flavorings. When reconstituted as directed in the labeling, it contains cefuroxime axetil equivalent to 25 milligrams of cefuroxime per millimeter. Its potency is satisfactory if it is not less than 90 percent and not more than 115 percent of the number of milligrams of cefuroxime that it is represented to contain. It passes the dissolution test. Its moisture content is not more than 0.2 percent. When reconstituted as directed in the labeling, its pH is not less than 3.5 and not more than 5.5. It passes the identity test. The cefuroxime axetil used conforms to the standards prescribed by § 442.19(a)(1).

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(A) The cefuroxime axetil used in making the batch for potency, isomer A ratio, moisture, crystallinity, and identity.

(B) The batch for cefuroxime potency, dissolution, moisture, pH of constituted suspension, and identity.

(ii) Samples, if required by the Director, Center for Drug Evaluation and Research:

(A) The cefuroxime axetil used in making the batch: 10 packages, each containing approximately 500 milligrams.

(B) The batch: A minimum of 12 immediate containers.

(b) *Tests and methods of assay*—(1) *Potency.* Proceed as directed in § 442.19(b)(1). Working standard and sample solutions and calculations are as follows:

(i) *Preparation of working standard solution.* Dissolve approximately 15 milligrams of the cefuroxime axetil working standard, accurately weighed, in 20.0 milliliters of methanol in a 50-milliliter volumetric flask. Dilute to volume with deionized water, and swirl to mix. Store for no more than 8 hours under refrigeration and protected from light.

(ii) *Preparation of sample solution.* Reconstitute the sample as directed in the labeling. Transfer an accurately measured representative portion of the suspension equivalent to one dose into a 200-milliliter volumetric flask. Add 10 milliliters of methanol and disperse the sample. Dilute to volume with methanol. Dilute 20.0 milliliters of this solution to volume in a 50-milliliter volumetric flask with deionized water, swirl to mix, and allow to stand for 10 minutes. (Note: A white turbidity is formed.) Filter this solution via a suitable disposable filter unit, discarding the first 5 milliliters. Store for no more than 8 hours under refrigeration and protect from light.

(iii) *Calculations.* Calculate the milligrams of cefuroxime per dose (5 milliliters) as follows:

$$\frac{\text{Milligrams of cefuroxime per 5 milliliters of sample}}{} = \frac{A_U \times P_S \times d}{A_S \times 1{,}000}$$

where:
A_U = Sum of the areas of the cefuroxime axetil sample isomer A and isomer B peaks;
A_S = Sum of the peak areas of the cefuroxime axetil working standard isomer A and isomer B peaks;
P_S = Cefuroxime activity in the cefuroxime axetil working standard solution in micrograms per milliliter; and
d = Dilution factor of the sample.

(2) *Dissolution.* Proceed as directed in § 436.215 of this chapter. The quantity Q (the amount of cefuroxime activity dissolved) is 60 percent at 30 minutes.

(3) *Moisture.* Proceed as directed in § 436.201 of this chapter.

(4) *pH.* Reconstitute as directed in the labeling and proceed as directed in § 436.202 of this chapter.

(5) *Identity.* The high-performance liquid chromatogram of the sample determined as directed in paragraph (b)(1) of this section compares qualitatively to that of the cefuroxime axetil working standard.

Dated: May 9, 1995.

Murray M. Lumpkin,

Deputy Director, Center for Drug Evaluation and Research.

[FR Doc. 95–12604 Filed 5–22–95; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 522

[Docket No. 95N–0096]

Implantation or Injectable Dosage Form New Animal Drugs; Guaifenesin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect the change of the animal drug name from glyceryl guaiacolate to guaifenesin. This amendment is an administrative change to redesignate glyceryl guaiacolate products as guaifenesin products.

EFFECTIVE DATE: May 23, 1995.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV–216), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1722.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 30, 1972 (37 FR 12936) and November 5, 1976 (41 FR 48732), FDA published final rules which reflected approval of injectable glyceryl guaiacolate products. In the **Federal Register** of December 10, 1984 (49 FR 48038), FDA published a final rule which reflected approval of a guaifenesin powder for injection. Guaifenesin is the newer chemical name for glyceryl guaiacolate. At the time of the December 10, 1984, approval, the prior approvals were not amended to reflect the newer chemical name. FDA is amending the regulations in part 522 (21 CFR part 522) to reflect the newer chemical name by removing §§ 522.1060, 522.1060a, and 522.1060b; by adding a new sponsor to § 522.1085; and by adding new § 522.1086 *Guaifenesin injection.*

FDA has determined under 21 CFR 25.24(a)(9) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

§ 522.1060 [Removed]

2. Section 522.1060 *Glyceryl guaiacolate implantation or injectable dosage forms* is removed.

§ 522.1060a [Removed]

3. Section 522.1060a *Glyceryl guaiacolate sterile powder* is removed.

§ 522.1060b [Removed]

4. Section 522.1060b *Glyceryl guaiacolate injection* is removed.

§ 522.1085 [Amended]

5. Section 522.1085 *Guaifenesin sterile powder* is amended in paragraph (b) by removing "000031" and adding in its place the phrase "000031 and 037990".

6. New § 522.1086 is added to read as follows:

§ 522.1086 Guaifenesin injection.

(a) *Specifications.* Each milliliter of sterile aqueous solution contains 50 milligrams of guaifenesin and 50 milligrams of dextrose.

(b) *Sponsor.* See No. 037990 in § 510.600(c) of this chapter.

(c) *Conditions of use.* (1) The drug is used intravenously in horses as a skeletal muscle relaxant.

(2) Administer rapidly at a dosage of 1 milliliter per pound of body weight.

(3) No to be used in horses intended for food.

(4) Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: May 5, 1995.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 95–12506 Filed 5–22–95; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF EDUCATION

34 CFR Parts 78, 208, 215, 230, 232, 233, 234, 236, 238, 241, 245, 246, 247, 250, 251, 252, 253, 254, 255, 256, 257, 258, 282, 298, 346, 347, 354, 362, 372, 374, 405, 407, 408, 409, 414, 416, 417, 418, 419, 422, 423, 424, 445, 462, 463, 471, 473, 474, 475, 476, 500, 501, 520, 524, 525, 526, 537, 538, 548, 555, 561, 573, 574, 581, 629, 665, 671, 673, 691, 698, 700, 706, 707, 708, 722, 750, 755, 757, 758, 760, 761, 762, 763, 768, 773, 778, 779, and 790

Removal of Regulations

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the Code of Federal Regulations (CFR) to remove unnecessary and obsolete regulations. As a result of new legislation, absence of funding, and review in accordance with the President's regulatory reinvention initiative, the Secretary has determined

that these regulations are no longer needed. The Secretary takes this action to remove the regulations from the CFR.

EFFECTIVE DATE: These regulations are effective June 22, 1995.

FOR FURTHER INFORMATION CONTACT: Kenneth C. Depew, U.S. Department of Education, Room 5112, FB-10, 600 Independence Avenue, SW, Washington, DC 20202–2241. Telephone: (202) 401–8300. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: President Clinton's memorandum of March 4, 1995, titled "Regulatory Reinvention Initiative" directed heads of departments and agencies to review all existing regulations to eliminate those that are outdated and modify others to increase flexibility and reduce burden. The Department has undertaken a thorough review of its existing regulations and has identified the regulations removed by this document as obsolete and unnecessary.

The regulations being removed are no longer necessary to administer the program, have been superseded by new legislation, or were issued to implement a program that is no longer funded. To the extent that regulations are needed to implement new legislation, they will be issued separately from this document. Any determination to issue new regulations will be carefully considered to ensure that it is consistent with the President's regulatory reform efforts and the principles in Executive Order 12866.

In consultation with customers and partners, the Department is also reviewing its other existing regulations thoroughly at this time, and those regulations will be amended as appropriate to eliminate or revise outdated provisions, reduce burden, or increase flexibility. Amendments that can be accomplished without statutory changes are expected to be published for public comment as soon as the reviews are completed and regulatory changes are drafted. For example, the notice of proposed rulemaking published on May 1, 1995 (60 FR 21400), implementing amendments to the Title I—Helping Disadvantaged Children Meet High Standards program under the Elementary and Secondary Education Act of 1965, as amended by the Improving America's Schools Act of 1994, includes the removal of four additional parts. In addition, the Secretary will seek appropriate statutory changes if legislative authority is required in order to achieve regulatory reform.

Waiver of Proposed Rulemaking

In accordance with section 437 of the General Education Provisions Act (20 U.S.C. 1232) and the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, these regulations merely reflect statutory changes and remove unnecessary and obsolete regulatory provisions. Removal of the regulations does not establish or affect substantive policy. Therefore, the Secretary has determined, pursuant to 5 U.S.C. 553(b)(B), that public comment is unnecessary and contrary to the public interest.

Paperwork Reduction Act of 1980

These regulations have been examined under the Paperwork Reduction Act of 1980 and have been found to contain no information collection requirements.

Assessment of Educational Impact

Based on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects

34 CFR Part 78

Administrative practice and procedure, Education Appeal Board, Grant programs—education.

34 CFR Part 208

Elementary and secondary education, Grant programs—education, Teachers.

34 CFR Part 215

Education of disadvantaged, Elementary and secondary education, Grant programs—education.

34 CFR Part 230

Drug abuse, Grant programs—education, Hawaiian natives.

34 CFR Part 232

Drug abuse, Elementary and secondary education, Grant programs—education.

34 CFR Part 233

Drug abuse, Elementary and secondary education, Grant programs—education, Teachers.

34 CFR Part 234

Drug abuse, Colleges and universities, Elementary and secondary education, Grant programs—education.

34 CFR Part 236

Drug abuse, Elementary and secondary education, Grant programs—education.

34 CFR Part 238

Drug abuse, Elementary and secondary education, Grant programs—education.

34 CFR Part 241

Elementary and secondary education, Grant programs—education, Law.

34 CFR Part 245

Grant programs—education, Equal educational opportunity, Women.

34 CFR Part 246

Grant programs—education, Equal educational opportunity, Women.

34 CFR Part 247

Grant programs—education, Equal educational opportunity, Women.

34 CFR Part 250

Elementary and secondary education, Grant programs—education, Indians—education.

34 CFR Part 251

Elementary and secondary education, Grant programs—education, Indians—education.

34 CFR Part 252

Elementary and secondary education, Grant programs—education, Indians—education.

34 CFR Part 253

Elementary and secondary education, Grant programs—education, Indians—education.

34 CFR Part 254

Elementary and secondary education, Grant programs—education, Indians—education.

34 CFR Part 255

Elementary and secondary education, Grant programs—education, Indians—education.

34 CFR Part 256

Elementary and secondary education, Grant programs—education, Indians—education, Teachers.

34 CFR Part 257

Adult education, Elementary and secondary education, Grant programs—education, Indians—education.

34 CFR Part 258

Adult education, Elementary and secondary education, Grant programs—education, Indians—education.

34 CFR Part 282

Adult education, Education of disadvantaged, Elementary and secondary education, Grant programs—education, Teachers.

34 CFR Part 298

Education of disadvantaged, Elementary and secondary education, Grant programs—education, Libraries, Teachers.

34 CFR Part 346

Grant programs—education, Science and technology.

34 CFR Part 347

Grant programs—education, Science and technology.

34 CFR Part 354

Educational research, Grant programs—education.

34 CFR Part 362

Grant programs—education, Vocational rehabilitation.

34 CFR Part 372

Grant programs—education, Vocational rehabilitation.

34 CFR Part 374

Grant programs—education, Recreation and recreation areas, Vocational rehabilitation.

34 CFR Part 405

Colleges and universities, Grant programs—education, Vocational education.

34 CFR Part 407

Grant programs—education, Vocational education.

34 CFR Part 408

Education of disadvantaged, Employment, Grant programs—education, Vocational education.

34 CFR Part 409

Grant programs—education, Vocational education.

34 CFR Part 414

College and universities, Grant programs—education, Telecommunications, Vocational education.

34 CFR Part 416

Grant programs—education, Student aid, Teachers, Vocational education.

34 CFR Part 417

Grant programs—education, Teachers, Vocational education.

34 CFR Part 418

Colleges and universities, Grant programs—education, Scholarships and fellowships, Teachers, Vocational education.

34 CFR Part 419

Grant programs—education, Scholarships and fellowships, Vocational education.

34 CFR Part 422

Grant programs—education, Prisoners, Vocational education.

34 CFR Part 423

Grant programs—education, Education of disadvantaged, Vocational education.

34 CFR Part 424

Grant programs—education, Vocational education.

34 CFR Part 445

Colleges and universities, Elementary and secondary education, Grant programs—education, Vocational education.

34 CFR Part 462

Adult education, Grant programs—education.

34 CFR Part 463

Adult education, Education of disadvantaged, Grant programs—education.

34 CFR Part 471

Adult education, Grant programs—education.

34 CFR Part 473

Adult education, Grant programs—education, Manpower training programs, Small businesses.

34 CFR Part 474

Adult education, Education of disadvantaged, Youth, Grant programs—education.

34 CFR Part 475

Adult education, Grant programs—education, Migrant labor.

34 CFR Part 476

Adult education, Grant programs—education.

34 CFR Part 500

Bilingual education, Grant programs—education.

34 CFR Part 501

Bilingual education, Grant programs—education.

34 CFR Part 520

Bilingual education, Equal educational opportunity, Grant programs—education.

34 CFR Part 524

Bilingual education, Grant programs—education.

34 CFR Part 525

Bilingual education, Grant programs—education.

34 CFR Part 526

Bilingual education, Grant programs—education.

34 CFR Part 537

Bilingual education, Grant programs—education.

34 CFR Part 538

Bilingual education, Education of disadvantaged, Grant programs—education, Refugees.

34 CFR Part 548

Bilingual education, Grant programs—education.

34 CFR Part 555

Bilingual education, Grant programs—education.

34 CFR Part 561

Bilingual education, Grant programs—education.

34 CFR Part 573

Bilingual education, Colleges and universities, Grant programs—education.

34 CFR Part 574

Bilingual education, Grant programs—education.

34 CFR Part 581

Bilingual education, Elementary and secondary education, Grant programs—education.

34 CFR Part 629

Adult education, Colleges and universities, Grant programs—education, Veterans.

34 CFR Part 665

Colleges and universities, Grant programs—education, Teachers.

34 CFR Part 671

Colleges and universities, Grant programs—education, Libraries.

34 CFR Part 673

Colleges and universities, Grant programs—education, Loan programs.

34 CFR Part 691

Colleges and universities, Scholarships and fellowships, Student aid.

34 CFR Part 698

Colleges and universities, Civil rights, Crime, Grant programs—education.

34 CFR Part 700

Educational research, Grant programs—education.

34 CFR Part 706

Educational research, Grant programs—education.

34 CFR Part 707

Educational research, Grant programs—education.

34 CFR Part 708

Educational research, Grant programs—education.

34 CFR Part 722

Business and industry, Colleges and universities, Education of disadvantaged, Elementary and secondary education, Grant programs—education.

34 CFR Part 750

Educational research, Elementary and secondary education, Grant programs—education.

34 CFR Part 755

Educational research, Elementary and secondary education, Grant programs—education.

34 CFR Part 757

Educational research, Elementary and secondary education, Grant programs—education.

34 CFR Part 758

Educational research, Elementary and secondary education, Grant programs—education.

34 CFR Part 760

Education of disadvantaged, Educational research, Elementary and secondary education, Grant programs—education.

34 CFR Part 761

Educational research, Equal educational opportunity, Grant programs—education.

34 CFR Part 762

Educational research, Scholarships and fellowships.

34 CFR Part 763

Drug abuse, Elementary and secondary education, Grant programs-education.

34 CFR Part 768

Grant programs—education, Libraries.

34 CFR Part 773

Colleges and universities, Educational research, Grant programs—education, Libraries.

34 CFR Part 778

Educational research, Grant programs—education, Libraries.

34 CFR Part 779

Grant programs—education, Libraries.

34 CFR Part 790

Grant programs—education, Teachers.

Dated: May 19, 1995.

Richard W. Riley,

Secretary of Education.

(Catalog of Federal Domestic Assistance numbers do not apply.)

For the reasons set forth in the preamble, under the authority at 20 U.S.C. 1221e–3, the Secretary of Education amends Title 34 of the Code of Federal Regulations by removing Parts 78, 208, 215, 230, 232, 233, 234, 236, 238, 241, 245, 246, 247, 250, 251, 252, 253, 254, 255, 256, 257, 258, 282, 298, 346, 347, 354, 362, 372, 374, 405, 407, 408, 409, 414, 416, 417, 418, 419, 422, 423, 424, 445, 462, 463, 471, 473, 474, 475, 476, 500, 501, 520, 524, 525, 526, 537, 538, 548, 555, 561, 573, 574, 581, 629, 665, 671, 673, 681, 696, 700, 706, 707, 708, 722, 750, 755, 757, 758, 760, 761, 762, 763, 768, 773, 778, 779, and 790, and by removing the reserved designation for parts 404 and 420.

[FR Doc. 95–12732 Filed 5–19–95; 1:54 pm]

BILLING CODE 4000–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7617]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This rule identifies communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The dates listed in the third column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the NFIP at: Post Office Box 6464, Rockville, MD 20849, (800) 638–6620.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea, Jr., Division Director, Program Implementation Division, Mitigation Directorate, 500 C Street, SW., room 417, Washington, DC 20472, (202) 646–3619.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM). The date of the flood map, if one has been published, is indicated in the fourth column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012(a), requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard areas shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director certifies that this rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the rule creates no additional burden, but lists those communities eligible for the sale of flood insurance.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State/location	Community No.	Effective date of eligibility	Current effective map date
New Eligibles—Emergency Program:			
Pennsylvania: McConnellsburg, borough of, Fulton County.	422701	Apr. 7, 1995.	
Montana: Roosevelt County, unincorporated areas	300166	Apr. 7, 1995	Dec. 4, 1979.
Illinois: Nauvoo, city of, Hancock County	170767	Apr. 7, 1995	Oct. 10, 1975.
Alaska: Fort Yukon, city of, unorganized borough	020045	Apr. 24, 1995.	
North Dakota: Minnewaukan, city of, Benson County	380240	.....do.	
Georgia: Sumter County, unincorporated areas	130521	Apr. 26, 1995.	
Michigan: Millington, township of, Tuscola County	260929	.....do.	
Texas:			
Burton, city of, Washington County	480649	.....do	Dec. 20, 1974.
Ector, city of, Fannin County	480809	.....do	July 11, 1975.
Trinity County, unincorporated areas	481031	.....do	May 2, 1980.
South Carolina: Sellers, town of, Marion County	450145	.....do	May 2, 1980.
Reinstatements:			
New York: Cherry Creek, town of, Chautauqua County	361107	July 8, 1980 Emerg; July 2, 1982 Reg; Nov. 4, 1992, Susp; Apr. 28, 1995, Rein.	July 2, 1982.
Pennsylvania: Huston, township of, Blair County	422332	Feb. 6, 1976, Emerg; Sept. 30, 1980, Reg; June 16, 1993, Susp; Apr. 28, 1995, Rein.	Sept. 30, 1980.
Regular Program Conversions:			
Region I:			
Maine: Phillips, town of, Franklin County	230060	Apr. 17, 1995 Suspension Withdrawn	Apr. 17, 1995.
Region III:			
Pennsylvania: Springhill, township of, Fayette County	421639	.....do.	
Region IV:			
Mississippi: Coahoma County, unincorporated areas	280038	.....do	Do.
Tennessee: Ripley, town of, Lauderdale County	470100	.....do	Do.
Region V:			
Minnesota:			
Dover, city of, Olmsted County	270566	.....do	Do.
Eyota, city of, Olmsted County	270329	.....do	Do.
Oronoco, city of, Olmsted County	270330	.....do	Do.
Stewartville, city of, Olmsted County	270332	.....do	Do.
Ohio: Richwood, village of, Union County	390549	.....do	Do.
Region VII:			
Missouri:			
Clarkton, city of, Dunklin County	290126	.....do	Do.
Independence, city of, Clay and Jackson Counties	290172	.....Do.	Do

Code for reading fourth column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension; Rein.—Reinstatement.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Issued: May 16, 1995.

Frank H. Thomas,

Deputy Associate Director, Mitigation Directorate.

[FR Doc. 95–12575 Filed 5–22–95; 8:45 am]

BILLING CODE 6718–21–P

FEDERAL MARITIME COMMISSION

46 CFR Parts 501, 502, 503, 504, 514, 515, 550, 552, 560, 572, 580, 581, 582, and 583

[Docket No. 95–01]

Filing of Tariffs by Marine Terminal Operators, Publishing, Filing and Posting of Tariffs in Domestic Offshore Commerce; Publishing and Filing of Tariffs by Common Carriers in the Foreign Commerce of the United States; Service Contracts

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission ("Commission") is removing its rules relating to Filing of Tariffs by Marine Terminal Operators; Publishing, Filing and Posting of Tariffs in Domestic Offshore Commerce; Publishing and Filing of Tariffs by Common Carriers in the Foreign Commerce of the United States; and Service Contracts. These regulations contain the guidelines, standards, and procedures for marine terminal operators ("MTO's") and common carriers by water to file and publish their tariffs and/or service contract essential terms with the Commission in paper format. With the full scale implementation of the Commission's Automated Tariff Filing and Information System ("ATFI"), which now requires tariffs and service contracts to be filed electronically, these regulations are no longer necessary. The Commission is also amending various other regulations to delete references to removed regulations and add replacement citations.

EFFECTIVE DATE: May 23, 1995.

FOR FURTHER INFORMATION CONTACT: Bryant L. VanBrakle, Director, Bureau of Tariffs, Certification and Licensing, Federal Maritime Commission, Washington, D.C. 20573, (202) 523–5796.

SUPPLEMENTARY INFORMATION: The Federal Maritime Commission initiated this proceeding by publishing a Notice of Proposed Rulemaking ("NPR") in the **Federal Register** on January 12, 1995. The NPR solicited comments on a proposal to remove certain regulations that governed the filing of tariffs and service contracts: 46 CFR Part 515, Filing of Tariffs by Marine Terminal Operators; 46 CFR Part 550, Publishing, Filing and Posting of Tariffs in Domestic Offshore Commerce; 46 CFR Part 580, Publishing and Filing of Tariffs by Common Carriers in the Foreign Commerce of the United States; and 46 CFR Part 581, Service Contracts.

The Commission is removing these parts because ATFI is now fully implemented and all MTO's and common carriers are now required to file their tariffs and service contracts in electronic format. (See Public Law 102–582, the High Seas Driftnet Fisheries Enforcement Act, section 502 of which directs carriers to "file electronically with the Commission all tariffs and all essential terms of service contracts required to be filed" by the 1916, 1933, or 1984 Acts; see also, 46 CFR Part 514).

The Commission did not receive any comments on the proposal to remove these regulations. The Commission is therefore adopting the proposed rule as its final rule; and in addition, the Commission is amending Parts 501, 502, 503, 504, 514, 552, 560, 572, 582, and 583 to delete references to the above removed parts and to add replacement citations. Also, 46 CFR § 514.15 is amended by removing paragraph (b)(23)(ii) which erroneously refers to Part 525 which was previously removed by the Commission. These additional changes were not part of the NPR and are not substantive changes.

The Federal Maritime Commission certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that this final rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units, and small governmental organizations. "The criteria contained in this section requires the agency head to examine both the degree of impact as well as the dispersion of that impact." S. Rep. No. 878, 96th Cong., 2d Sess. 14 (1980) reprinted at 1980 U.S. Code Cong. and Admin. News, p. 2788 at 2801. The Commission does not believe that the removal of Parts 515, 550, 580 and 581 under the circumstances described above will result in an impact upon a substantial number of small entities.

This final rule does not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1980, as amended. Therefore, OMB review is not required.

List of Subjects

46 CFR Part 501

Administrative practice and procedure, Authority delegations (Government agencies), Organization and functions (Government agencies), Seals and insignia.

46 CFR Part 502

Administrative practice and procedure, Claims, Equal access to justice, Investigations, Lawyers, Maritime carriers, Penalties, Reporting and recordkeeping requirements.

46 CFR Part 503

Classified information, Freedom of information, Privacy, Sunshine Act.

46 CFR Part 504

Environmental impact statements, Reporting and recordkeeping requirements.

46 CFR Part 514

Freight, Harbors, Maritime carriers, Reporting and recordkeeping requirements.

46 CFR Part 515

Freight, Harbors, Reporting and recordkeeping requirements, Warehouses.

46 CFR Part 550

Maritime carriers, Reporting and recordkeeping requirements.

46 CFR Part 552

Maritime carriers, Reporting and recordkeeping requirements, Uniform System of Accounts.

46 CFR Part 560

Administrative practice and procedure, Antitrust, Freight, Maritime carriers, Penalties, Reporting and recordkeeping requirements.

46 CFR Part 572

Administrative practice and procedure, Maritime carriers, Reporting and recordkeeping requirements.

46 CFR Part 580

Freight, Maritime carriers, Reporting and recordkeeping requirements.

46 CFR Part 581

Freight, Maritime carriers, Reporting and recordkeeping requirements.

46 CFR Part 582

Maritime carriers, Penalties, Reporting and recordkeeping requirements.

46 CFR Part 583

Freight, Maritime carriers, Reporting and recordkeeping requirements, Surety bonds.

Therefore, pursuant to 5 U.S.C. 553; sections 17 and 43 of the Shipping Act, 1916 (46 U.S.C. app. 816, 841(a)); sections 2, 3, 4, and 5 of the Intercoastal Shipping Act, 1933 (46 U.S.C. app. 843, 844, 845, 845(a), 845(b), 847); sections 8, 10, and 17 of the Shipping Act of 1984 (46 U.S.C. app. 1707, 1709, 1716); chapter IV of title 46 of the Code of Federal Regulations is amended as follows:

PART 515—[REMOVED]

1. Part 515 is removed.

PART 550—[REMOVED]

2. Part 550 is removed.

PART 580—[REMOVED]

3. Part 580 is removed.

PART 581—[REMOVED]

4. Part 581 is removed.

PART 501—THE FEDERAL MARITIME COMMISSION—GENERAL

5. The authority citation for Part 501 continues to read as follows:

Authority: 5 U.S.C. 551–557, 701–706, 2903 and 6304; 31 U.S.C. 3721; 41 U.S.C. 414 and 418; 44 U.S.C. 501–520 and 3501–3520; 46 U.S.C. app. 801–848, 876, 1111, and 1701–1720; Reorganization Plan No. 7 of 1961, 26 FR 7315, August 12, 1961; Pub. L. 89–56, 79 Stat. 195; 5 CFR Part 2638.

6. Section 501.5 is amended by revising the second sentence of paragraph (h) introductory text to read as follows:

§ 501.5 Functions of the organizational components of the Federal Maritime Commission.

* * * * *

(h) * * * These programs carry out provisions of the Shipping Act, 1933; the Shipping Act of 1984; and Pub. L. 89–777, as implemented under Parts 510, 514, 540, 552, 582 and 583 of this chapter. * * *

* * * * *

7. Section 501.23 is revised to read as follows:

§ 501.23 Delegation to the General Counsel.

The authority listed in this section is delegated to the General Counsel: Authority to classify carriers as state-controlled carriers within the meaning of section 3(8) of the Shipping Act of 1984, except where a carrier submits a rebuttal statement pursuant to § 514.4(c)(2)(ii) of this chapter.

8. Section 501.27 is amended by revising paragraphs (i), (j), and (k) to read as follows:

§ 501.27 Delegation to and redelegation by the Director, Bureau of Tariffs, Certification and Licensing.

* * * * *

(i) Authority contained in § 514.7(j) of this chapter to notify filing parties of the Commission's intent to reject a service contract and/or statement of essential terms and subsequently reject and return such contracts.

(j) Authority contained in part 514 of this chapter to approve, but not deny, requests for permission to correct clerical or administrative errors in the essential terms of filed service contracts.

(k) Authority contained in parts 514 and 583 of this chapter to cancel the tariffs of NVOCCs who fail to file a surety bond, guaranty or insurance policy or, if required, designate an agent for receipt of process, or whose surety bond or agent designation is canceled.

* * * * *

PART 502—RULES OF PRACTICE AND PROCEDURE

9. The authority citation for Part 502 continues to read as follows:

Authority: 5 U.S.C. 504, 551, 552, 553, 556(c), 559, 561–569, 571–596; 12 U.S.C. 1141j(a); 18 U.S.C. 207; 26 U.S.C. 501(c)(3); 28 U.S.C. 2112(a); 31 U.S.C. 9701; 46 U.S.C. app. 817, 820, 826, 841a, 1114(b), 1705, 1707–1711, 1713–1716; E.O. 11222 of May 8, 1965 (30 FR 6469); 21 U.S.C. 853a; and Pub. L. 88–777 (46 U.S.C. app. 817d, 817e).

10. Section 502.67 is amended by revising the first sentence of paragraph (b)(2) to read as follows:

§ 502.67 Proceedings under section 3(a) of the Intercoastal Shipping Act, 1933.

* * * * *

(b) * * *

(2) Protests against across-the-board increases, as defined in § 514.2 of this chapter, and against other proposed changes in tariffs filed on at least thirty (30) days' notice, shall be filed and served no later than twenty (20) days prior to the proposed effective date of the change. * * *

* * * * *

PART 503—PUBLIC INFORMATION

11. The authority citation for Part 503 continues to read as follows:

Authority: 5 U.S.C. 552, 552a, 552b, 553; 31 U.S.C. 9701; E.O. 12356, 47 FR 14874, 15557, 3 CFR 1982 Comp., p. 167.

12. Section 503.32 is amended by revising paragraph (d) to read as follows:

§ 503.32 Records generally available.

* * * * *

(d) Terminal tariffs filed pursuant to part 514 of this chapter.

* * * * *

PART 504—PROCEDURES FOR ENVIRONMENTAL POLICY ANALYSIS

13. The authority citation for Part 504 continues to read as follows:

Authority: 5 U.S.C. 552, 553; secs. 21 and 43 of the Shipping Act, 1916 (46 U.S.C. app. 820 and 841a); secs. 13 and 17 of the Shipping Act of 1984 (46 U.S.C. app. 1712 and 1716); sec. 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(b) and sec. 382(b) of the Energy Policy and Conservation Act of 1975 (42 U.S.C. 6362).

14. Section 504.4 is amended by removing the semicolon at the end of paragraphs (a)(2), (a)(4), and (a)(5) and adding a period in its place and by revising paragraphs (a)(6) and (a)(7) to read as follows:

§ 504.4 Categorical exclusions.

* * * * *

(a) * * *

(6) Consideration of special permission applications filed pursuant to 46 CFR part 514.

(7) Receipt of terminal tariffs pursuant to 46 CFR part 514.

* * * * *

PART 514—TARIFFS AND SERVICE CONTRACTS

15. The authority citation for Part 514 continues to read as follows:

Authority: 5 U.S.C. 552 and 553; 31 U.S.C. 9701; 46 U.S.C. app. 804, 812, 814–817(a), 820, 833a, 841a, 843, 844, 845, 845a, 845b, 847, 1702–1712, 1714–1716, 1718, 1721 and 1722; and sec. 2(b) of Pub. L. 101–92, 103 Stat. 601.

16. Section 514.1 is amended by revising the first sentence of paragraph (c)(1)(iii)(E) to read as follows:

§ 514.1 Scope, purpose, requirements, penalties and fees.

* * * * *

(c) * * *

(1) * * *

(iii) * * *

(E) The tariff(s) of any common carrier who files an anti-rebate certification after December 31 but before the end of the forty-five (45) days' notice period will not be canceled; however, the common carrier will be subject to civil penalties as provided in parts 502 and 582 of this chapter. * * *

* * * * *

§ 514.15 [Amended]

17. Section 514.15 is amended by removing and reserving paragraph (b)(23)(ii).

PART 552—FINANCIAL REPORTS OF VESSEL OPERATING COMMON CARRIERS BY WATER IN THE DOMESTIC OFFSHORE TRADES

18. The authority citation for Part 552 continues to read as follows:

Authority: 5 U.S.C. 553; 31 U.S.C. 9701; 46 U.S.C. app. 817(a), 820, 841a, 843, 844, 845, 845a and 847.

19. Section 552.1 is amended by revising the second sentence of paragraph (a) to read as follows:

§ 552.1 Purpose.

(a) * * * Compliance is mandatory and failure to file the reports required under this part may result in denial of rate increases or rejection of tariff line items implementing rate changes or penalties of up to $100 for each day of such default (46 U.S.C. app. 820(a)).

* * * * *

20. Section 552.5 is amended by revising paragraphs (b) and (c) to read as follows:

§ 552.5 Definitions.

* * * * *

(b) *The service* means those voyages and/or terminal facilities in which cargo subject to the Commission's regulation under part 514 of this chapter is either carried or handled.

(c) *The trade* means that part of the Service subject to the Commission's regulation under part 514 of this chapter, more extensively defined under *Domestic offshore trade* in paragraph (f) of this section.

* * * * *

PART 560—AGREEMENTS BY COMMON CARRIERS AND OTHER PERSONS SUBJECT TO THE SHIPPING ACT, 1916

21. The authority citation for Part 560 continues to read as follows:

Authority: 5 U.S.C. 553; 31 U.S.C. 9701; 46 U.S.C. app. 814, 817(a), 820, 821, 833a, and 841a.

22. Section 560.308 is amended by revising the first sentence of paragraph (a) introductory text to read as follows:

§ 560.308 Marine terminal services agreements—exemption.

(a) *Marine terminal services agreement* means an agreement, contract, understanding, arrangement or association, written or oral (including any modification, cancellation or appendix) between a marine terminal operator and a common carrier by water in interstate commerce that applies to marine terminal services as defined in 46 CFR 514.2 (including any marine terminal facilities, as defined in 46 CFR 514.2, which may be provided incidentally to such marine terminal services) that are provided to and paid for by a common carrier by water in interstate commerce. * * *

* * * * *

23. Section 560.702 is amended by revising the last sentence of paragraph (c) to read as follows:

§ 560.702 Filing of minutes—including shippers' requests and complaints.

* * * * *

(c) * * * This reporting exemption does not apply to discussions involving general rate policy, general rate changes, the opening or closing of rates, or discussions involving items, that if adopted, would be required to be published in other tariff sections as specified in Part 514 of this chapter.

* * * * *

PART 572—AGREEMENTS BY OCEAN COMMON CARRIERS AND OTHER PERSONS SUBJECT TO THE SHIPPING ACT OF 1984

24. The authority citation for Part 572 continues to read as follows:

Authority: 5 U.S.C. 553; 31 U.S.C. 9701; 46 U.S.C. app. 1701–1707, 1709–1710, 1712 and 1714–1717.

25. Section 572.310 is amended by revising the first sentence of paragraph (a) introductory text to read as follows:

§ 572.310 Marine terminal services agreements— exemption

(a) *Marine terminal services agreement* means an agreement, contract, understanding, arrangement or association, written or oral (including any modification, cancellation or appendix) between a marine terminal operator and an ocean common carrier that applies to marine terminal services as defined in 46 CFR 514.2 (including any marine terminal facilities, as defined in 46 CFR 514.2, which may be provided incidentally to such marine terminal services) that are provided to and paid for by an ocean common carrier. * * *

* * * * *

26. Section 572.801 is amended by revising the last sentence of paragraph (b)(1) to read as follows:

§ 572.801 Independent action.

* * * * *

(b) (1) * * * A conference agreement shall not require or permit a conference member to give more than 10 calendar days' notice to the conference, except that in the case of a new or increased rate the notice period shall conform to the requirements of § 514.9(b) of this chapter.

* * * * *

PART 582—CERTIFICATION OF COMPANY POLICIES AND EFFORTS TO COMBAT REBATING IN THE FOREIGN COMMERCE OF THE UNITED STATES

27. The authority citation for Part 582 continues to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 1701, 1702, 1707, 1709, 1712, and 1714–1716.

28. Section 582.1 is amended by revising the third sentence of paragraph (b) to read as follows:

§ 582.1 Scope.

* * * * *

(b) * * * Failure of a common carrier to file an anti-rebate certification and publish notice of certification in its tariffs as provided by this part and part 514 of this chapter will result in tariff cancellation effective forty-five (45) days after notice, as provided in § 514.1(c)(1)(iii)(C) of this chapter or, if an initial tariff filing, rejection. * * *

PART 583—SURETY FOR NON-VESSEL-OPERATING COMMON CARRIERS

29. The authority citation for Part 583 continues to read as follows:

Authority: 5 U.S.C. 553; 31 U.S.C. 9701; 46 U.S.C. app. 1702, 1707, 1709, 1710–1712, 1716 and 1721.

30. Section 583.5 is amended by revising paragraphs (d) and (e) to read as follows:

§ 583.5 Resident agent.

* * * * *

(d) Designations of resident agent under paragraphs (a) and (b) of this section and provisions relating to service of process under paragraph (c) of this section shall be published in the NVOCC's tariff in accordance with § 514.15(b)(24) of this chapter.

(e) Every non-vessel-operating common carrier using a group or association of NVOCCs to cover all or part of its financial responsibility requirement under § 583.4 shall publish the name and address of the group or association's resident agent for receipt of judicial and administrative process, including subpoenas, in its tariff in accordance with § 514.15(b)(24)(ii) of this chapter.

31. Section 583.7 is amended by revising paragraphs (b)(2) and (b)(3) to read as follows:

§ 583.7 Proof of Compliance.

* * * * *

(b) * * *

(2) Reviewing a copy of the tariff rule published by the NVOCC and in effect under § 514.15(b)(24) of this chapter; or

(3) Any other appropriate procedure, provided that such procedure is set forth in the carrier's tariff of general applicability as required by § 514.15(b)(25) of this chapter.

* * * * *

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 95–12511 Filed 5–22–95; 8:45 am]

BILLING CODE 6730–01–W

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 107

[Docket No. HM–208B, Amdt. No. 107–34]

RIN 2137–AC86

Hazardous Materials Transportation Registration and Fee Assessment Program

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: RSPA is maintaining the current annual registration fee of $300 (which includes a $50 processing fee), for persons engaged in transporting or offering for transportation certain categories and quantities of hazardous materials in intrastate, interstate, and foreign commerce. In addition, this final rule adopts two changes to the statutorily mandated registration and fee assessment program. Applicability of the registration requirement to materials that are extremely toxic by inhalation (Hazard Zone A) is expanded to include materials in a hazard class or division other than Division 2.3 or Division 6.1. RSPA is also adopting an exception from the registration requirement for foreign officers, as authorized by the amended statute.

EFFECTIVE DATE: July 1, 1995.

FOR FURTHER INFORMATION CONTACT: David Donaldson, Office of Hazardous Materials Planning and Analysis, (202) 366–4484, or Jean McIntyre, Office of Hazardous Materials Standards, (202) 366–4488, RSPA, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

On July 9, 1992, RSPA published a final rule under Docket HM–208 (57 FR 30620), establishing a national registration and fee assessment program, as required by 49 U.S.C. 5108 *et seq.* (Federal hazardous materials transportation law), for persons engaged in transporting or offering for transportation certain categories and quantities of hazardous materials in intrastate, interstate, and foreign commerce. Persons subject to the registration program are required to file annually a registration statement with RSPA and pay a total annual fee of $300, of which $250 is used to fund the Hazardous Materials Public Sector Training and Planning Grants Program, and $50 is used to offset processing costs. The registration fee of $250 is the minimum amount permitted under the statute. Grants to States and Indian tribes are expected to total more than $20 million through 1995, the third year that this program has been in effect. Average annual funding levels ($6.3 million) however have been below the congressionally authorized level of $16.975 million per year.

On January 30, 1995, RSPA issued a notice of proposed rulemaking (NPRM) (Docket HM–208B; 60 FR 5822) that proposed changes to increase the annual registration fee for certain persons. The NPRM distinguished between large, medium, and small entities that conduct operations in one or more of the five categories for which registration is required. RSPA proposed a four-level fee structure that considered the comparative risks that may be posed by the types and quantities of transportation activities covered by the registration requirement. The annual fee, under the graduated fee schedule proposed by RSPA, would be determined on the basis of the registrant's transportation activity during the prior calendar year: large ($5,656), medium ($2,550), small ($500), and low ($300).

II. Graduated Fee Schedule

More than 350 comments were received in response to the NPRM. Commenters opposing the increased fee schedule generally claimed that improved compliance efforts would eliminate the need to increase the fees to fully fund the grant program. Twelve commenters who supported the proposal to increased fees representing several States and local emergency response organizations that benefit directly from the grants program indicated a need for increased funding for grants. Approximately 100 inquiries were forwarded by Members of Congress on behalf of their constituents. Many commenters raised several complex issues and suggested various funding alternatives.

As indicated in the notice of proposed rulemaking, an Industry Working Group (IWG), facilitated by the Hazardous Materials Advisory Council, and reflecting the perspective of many persons subject to the registration and fee collection requirements, provided recommendations on how the registration and fee collection requirement could be improved. Those recommendations contain the basic themes that are reflected in many of the 350 comments. In addition, the IWG offered numerous suggestions on how RSPA may be able to more effectively communicate registration requirements in non-technical language that the regulated community can more easily understand. RSPA has revised its brochure describing the registration program to reflect many of changes suggested by the IWG.

RSPA received comments on behalf of the Alliance for Uniform Hazmat Transportation Procedures (Alliance), the National Conference of State Legislatures (NCSL), and the National Association of SARA Title III Officials. These commenters, reflecting the perspective of entities that benefit from the State and Indian tribe grant program funded by the fee, also generally opposed RSPA's proposed graduated fee structure. For example, NCSL believes that because RSPA has not generated, collected, or disbursed what NCSL considers as "modestly authorized levels," the purpose of the Federal program has been eroded. NCSL strongly recommended that RSPA reevaluate the Federal registration program with an eye toward elimination. The Alliance opposed the fee schedule and believes that RSPA's actions will create obstacles in the registration of motor carriers by States and that implementation of the proposed fee schedule is premature.

Based on the comments RSPA received in response to the NPRM, including the various alternatives and recommendations presented, RSPA has decided not to adopt the current proposal to increase the registration fees at this time. Regulations regarding registration (Subpart G to 49 CFR Part 107) are retained. Therefore, the annual registration fee remains at $300. This decision will maintain the current levels of funding to the States and Indian

tribes for the Hazardous Materials Public Sector Training and Planning Grants Program.

RSPA plans to assess fully the registration and grants program before considering further action regarding an increase in the fee. RSPA will work with its Federal, State, and local partners, industry and labor, and environmental and public interest groups, to examine the costs and benefits of these programs. One aspect of this assessment may include an evaluation of combining several legislative mandates into a State-administered uniform program for permits and registration. RSPA's outreach efforts on this matter may include public meetings and workshops, as well as participation in meetings and seminars sponsored by others. RSPA will also continue to promote maximum compliance with the current registration program.

III. Foreign Offerors

Foreign offerors are included in the definition of "persons" who are subject to the registration requirement to the extent that they engage in any of the activities covered by the registration program. However, because of the potential for reciprocal actions by other governments, and significant problems associated with informing and identifying the parties concerned, RSPA delayed application of the registration requirement to these entities until July 1, 1996. See 49 CFR 107.606(f). Subsequently, section 104 of Public Law 103–311, enacted August 26, 1994, amended 49 U.S.C. 5108(a) by adding a new subparagraph that reads as follows:

(4) The Secretary may waive the filing of a registration statement, or the payment of a fee, required under this subsection, or both, for any person not domiciled in the United States who solely offers hazardous materials for transportation to the United States from a place outside the United States if the country of which such person is a domiciliary does not require persons domiciled in the United States who solely offer hazardous materials for transportation to the foreign country from places in the United States to file registration statements, or to pay fees, for making such an offer.

In this final rule, RSPA makes permanent the exception currently provided in § 107.606(f). However, as proposed in the NPRM, the general exception in § 107.606(a)(6) is limited to persons who offer hazardous materials for transportation to the United States from a foreign country that does not impose a registration statement or fee payment requirement on a person domiciled in the United States who offers hazardous materials for transportation to that country.

In § 107.606(b), RSPA explains that persons domiciled in countries that enforce a registration statement or fee payment requirement must file a registration statement and pay the annual fee upon a positive determination made by RSPA's Associate Administrator for Hazardous Materials Safety, the U.S. Competent Authority, that the other country's requirement is prejudicial to persons domiciled in the United States. The U.S. Competent Authority's determination will be communicated directly to the other country's Competent Authority, and will be published in the **Federal Register**. No later than 60 days following publication in the **Federal Register** of that Competent Authority determination, offerors domiciled in the other country are required to file a registration statement and pay the annual fee. If such an offeror does not register as required, it may not offer a hazardous material for transportation from that country to the United States.

IV. Expanded PIH Registration Requirements

As proposed in § 107.601(c), RSPA is broadening the scope of materials extremely toxic by inhalation covered by the registration requirement, to include every "material poisonous by inhalation" (PIH) as defined in 49 CFR 171.8 that meets the criteria for Hazard Zone A (extremely toxic). This change addresses several PIH materials that are listed in the Hazardous Materials Table in 49 CFR 172.101 as a Class 3, Class 8, Division 4.2 or Division 5.1 hazardous material. RSPA believes that this change will not add a substantial number of persons that are required to register.

V. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is considered a significant regulatory action under section 3(f) of Executive Order 12866 and was reviewed by the Office of Management and Budget. This rule is considered a significant rule under the Regulatory Policies and Procedures of the Department of Transportation [44 FR 11034]. A regulatory evaluation is available for review in the Docket. Because the statute mandates the establishment and collection of fees, the discretionary aspects of this rulemaking are limited to setting the amount of the fee within the statutory range for each person subject to the registration program. The fees are not related to the cost of RSPA's hazardous materials safety programs. The fees to be paid by shippers and carriers of certain hazardous materials in transportation are related to the benefits received by these persons from the sale and transportation of hazardous materials and from emergency response services provided by public sector resources, should an accident or incident occur. The fees are also related to expenses incurred by State, Indian tribal, and local hazardous materials emergency preparedness and response activities.

B. Executive Order 12612

This action has been analyzed in accordance with Executive Order 12612 ("Federalism"). States and local governments are "persons" under 49 U.S.C. 5102, but are specifically exempted from the requirement to file a registration statement. The regulations herein have no substantial effects on the States, on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various levels of government. This registration regulation has no preemptive effect. It does not impair the ability of States, local governments or Indian tribes to impose their own fees or registration or permit requirements on intrastate, interstate or foreign offerors or carriers of hazardous materials. Thus, RSPA lacks discretion in this area, and preparation of a federalism assessment is not warranted.

C. Regulatory Flexibility Act

This final rule maintains the minimum fee requirement mandated by statute for shippers and carriers of hazardous materials who are subject to the registration requirement. Therefore, I certify that this final rule will not have a significant economic impact on a substantial number of small entities.

D. Paperwork Reduction Act

Under 49 U.S.C. 5108, the information management requirements of the Paperwork Reduction Act [44 U.S.C. 3501 *et seq.*) do not apply to this final rule.

E. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 107

Administrative practice and procedure, Hazardous materials transportation, Packaging and containers, Penalties, Reporting and recordkeeping requirements.

On the basis of the foregoing, 49 CFR part 107 is amended as follows:

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

1. The authority citation for part 107 continues to read as follows:

Authority: 49 U.S.C. 5101–5127, 44701; 49 CFR 1.45, 1.53.

2. In § 107.601, paragraph (c) is revised to read as follows:

§ 107.601 Applicability.

* * * * *

(c) More than one L (1.06 quarts) per package of a material extremely toxic by inhalation (i.e., "material poisonous by inhalation," as defined in § 171.8 of this chapter, that meets a criteria for "hazard zone A," as specified in §§ 173.116(a) or 173.133(a) of this chapter);

* * * * *

3. Section 107.606 is revised to read as follows:

§ 107.606 Exceptions.

(a) The following are excepted from the requirements of this subpart:

(1) An agency of the Federal government.

(2) A State agency.

(3) An agency of a political subdivision of a State.

(4) An employee of any of those agencies in paragraphs (a)(1) through (a)(3) of this section with respect to the employee's official duties.

(5) A hazmat employee (including, for purposes of this subpart, the owner-operator of a motor vehicle that transports in commerce hazardous materials, if that vehicle at the time of those activities, is leased to a registered motor carrier under a 30-day or longer lease as prescribed in 49 CFR part 1057 or an equivalent contractual agreement).

(6) A person domiciled outside the United States, who offers solely from a location outside the United States, hazardous materials for transportation in commerce, *provided* that the country of which such a person is a domiciliary does not require persons domiciled in the United States, who solely offer hazardous materials for transportation to the foreign country from places in the United States, to file a registration statement or to pay a registration fee.

(b) Upon making a determination that persons domiciled in the United States, who offer hazardous materials for transportation to a foreign country solely from places in the United States, must file registration statements or pay fees to that foreign country, the U.S. Competent Authority will provide notice of such determination directly to the Competent Authority of that foreign country and by publication in the **Federal Register**. Persons who offer hazardous materials for transportation to the United States from that foreign country must file a registration statement and pay the required fee no later than 60 days following publication of the determination in the **Federal Register**.

Issued in Washington, DC on May 18, 1995, under the authority delegated in 49 CFR part 1.

D.K. Sharma,

Administrator, Research and Special Programs Administration.

[FR Doc. 95–12658 Filed 5–19–95; 9:58 am]

BILLING CODE 4910–60–P

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 74–14; Notice 94]

RIN 2127–AF30

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration. (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This final rule allows manufacturers the option of installing a manual device that motorists could use to deactivate the front passenger-side air bag in vehicles in which infant restraints can be used in the front seat only. The affected vehicles are passenger cars and light trucks without rear seats and vehicles with rear seats that are too small to accommodate typical rear-facing infant restraints and convertible infant restraints used in the rear-facing mode (hereafter referred to as "typical rear-facing infant restraints"). The deactivation device is needed because when rear-facing infant restraints are used in the front seats of dual air bag vehicles, they extend forward to a point near the dashboard where they can be struck by a deploying air bag. Testing has shown this to have the potential for serious injury to infants. The ability to deactivate the passenger air bag will allow parents to safely use rear-facing infant restraints in the front seat of these vehicles. The need for the deactivation device is steadily growing because manufacturers are beginning to install, and soon will be required to install, passenger-side air bags in all passenger cars and light trucks.

DATES: Effective Date: The amendments made in this rule are effective June 22, 1995.

Petition Date: Any petitions for reconsideration must be received by NHTSA no later than June 22, 1995.

ADDRESSES: Any petitions for reconsideration should refer to the docket and notice number of this notice and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel Cohen, Chief, Frontal Crash Protection Division, Office of Vehicle Safety Standards, NRM–12, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. Telephone: (202) 366–2264.

SUPPLEMENTARY INFORMATION:

Background

On October 7, 1994, NHTSA published a notice of proposed rulemaking (NPRM) which proposed to allow manufacturers the option of installing a manual device (hereafter referred to as a "cutoff device") that motorists could use to deactivate the front passenger air bag in a vehicle without rear seats for the purpose of allowing them to safely use rear-facing infant restraints in the front seat (59 FR 51158). NHTSA issued the NPRM because one particular type of child restraint, i.e., a rear-facing infant restraint, should not be placed in the front seat of a vehicle equipped with a passenger air bag. This poses a problem because manufacturers are beginning to install, and soon will be required to install, passenger air bags in vehicles.

While NHTSA had taken a number of steps to warn parents of air bag/infant restraint interaction problems, members of the American Automobile Manufacturers Association (AAMA) indicated a need for further action in a meeting with NHTSA on January 24, 1994.[1] AAMA asked for the meeting to explore the possibility of installing an air bag cutoff device to allow rear-facing infant restraints to be placed in air bag-equipped passenger seating positions. AAMA representatives discussed the general concept of an air bag cutoff device, which could be either automatic or manual. However, the representatives emphasized that the industry is not quite ready to install automatic devices because automatic cutoff technology is not yet ready for production. At the meeting, AAMA asked whether

[1] A complete description of various steps NHTSA has taken to address this problem can be found in the October 7 notice.

Standard No. 208 would permit such devices and, if not permitted, whether the agency would consider initiating rulemaking to permit such devices. As explained in the October 7 NPRM, NHTSA decided to propose to allow manufacturers to install a manual cutoff device because of concerns that its warnings about the use of rear facing infant restraints are of little avail when a parent must transport his or her infant in a vehicle that is physically unable to accommodate a child any place other than the front seat.

The October 7 NPRM proposed to allow the use of manual cutoff devices in vehicles with no rear seats, subject to certain conditions. If installed, the device could only be operable by using the ignition key and the device would have to be separate from the ignition switch. Once turned off, the air bag would have to remain off until reactivated using the ignition key. The agency also proposed requiring a yellow warning light that was capable of several levels of brightness and bore the identifying words "AIR BAG OFF" to inform vehicle occupants that the passenger side air bag was off. The warning light could not be combined with the vehicle's air bag readiness indicator. The vehicle owner's manual would have to contain complete instructions regarding the operation of the cutoff device, including warnings about the safety consequences of misuse. Finally, the device would only have been allowed for approximately two years to encourage the orderly development and introduction of automatic cutoff devices.

The agency received 15 comments on the October 7 NPRM. Commenters included three automobile manufacturers (Ford, Mazda, and Volvo), GenCorp Aerojet (an equipment manufacturer), Advocates for Highway and Auto Safety (Advocates), the American Academy of Pediatrics (AAP), the AAMA, the Automotive Occupant Restraints Council (AORC), the Insurance Institute for Highway Safety (IIHS), the National Automobile Dealers Association (NADA), SafetyBeltSafe U.S.A., the Wisconsin Department of Transportation (DOT), and three private citizens. In general, all commenters supported the proposal. Automobile manufacturers and the AAMA believed a number of the conditions in the NPRM were too restrictive. Safety groups premised their support on the conditions that NHTSA had proposed placing on manual cutoff devices and on the limited time during which they would be allowed. All of these comments were considered by the agency in formulating this final rule, and the most significant comments are addressed below.

Affected Vehicles

NHTSA proposed to allow, but not require, manual cutoff devices only in passenger cars and light trucks which do not have forward-facing rear seats. NHTSA stated that it did not believe that manual cutoff devices should be allowed in vehicles which can accommodate a rear-facing infant restraint in the rear seat, because, even in vehicles without air bags, NHTSA recommends the rear seat as the optimum location for any child restraint.

Five commenters (Mazda, AAMA, NADA, and the private citizens) asked NHTSA to allow manual cutoff devices in all vehicles, since parents often prefer to place infants in the front seat even when a rear seat is available. Two commenters (Ford and AAMA) said that NHTSA should also allow the manual cutoff device in vehicles with rear seats that are too small to accommodate a rear-facing infant restraint. Two other commenters (Mazda and Advocates) explicitly discussed inadequate rear seats, and one additional commenter (IIHS) implicitly discussed inadequate rear seats. The Wisconsin DOT asked NHTSA to also allow manual cutoff devices in police vehicles. Advocates and IIHS supported the proposal.

With the exception of including vehicles with a rear seat which is too small to accommodate a typical rear-facing infant restraint, NHTSA is not expanding the class of vehicles that are permitted to have a manual cutoff device. NHTSA does not believe that it should allow all vehicles to have a manual cutoff device to accommodate parental preference for placement in the front seat. If any child seat can be placed in a rear seat, that is the safest position.

As explained previously, two commenters (Ford and AAMA) said that NHTSA should also allow the manual cutoff device in vehicles with rear seats that are too small to accommodate a rear-facing infant restraint. One commenter (Advocates) said that NHTSA should not allow the manual cutoff device in such vehicles as a rear-facing infant seat can be accommodated even if the seat is too small for an adult.

In response to these comments, NHTSA examined whether there were vehicles that had inadequate rear seats[2] and thus should be allowed to have a cutoff switch. As stated in the NPRM, NHTSA intended to allow the cutoff switch whenever a rear-facing infant restraint could not be accommodated in the rear seat of a vehicle. NHTSA examined this issue to determine the consistency of that stated intent and its tentative conclusion that the only vehicles in this category were vehicles without rear seats. NHTSA obtained dimensional information on rear seat occupant space and rear-facing infant restraints. After examining rear-facing infant restraint sizes and rear seat geometries, NHTSA concluded that some rear-facing infant restraints will not fit in some vehicles under certain conditions. A complete discussion of NHTSA's research and methodology can be found in a document titled "Evaluation of Infant Seat Fit in Passenger Cars and Light Trucks" which NHTSA has placed in the docket for this notice.

Based on the results presented in that document, NHTSA has modified this rule to allow the installation of a cutoff device in any vehicle with less than 720 millimeters between the rearward surface of the front seat back and the forward surface of the rear seat back, measured longitudinally in a horizontal line tangent to the highest point of the rear seat bottom, and with the front seat in its mid-track fore-and-aft adjustment position. NHTSA estimates that this provision will allow approximately 27 percent of all passenger cars to have a cutoff device.

NHTSA considered using alternative dimensions for identifying inadequate rear seats. For example, the agency considered using other front seat adjustment positions. If the agency used the full forward position, fewer vehicles would be classified as having inadequate rear seats. However, that result would be based on an unrealistic position for the front seat. Many adults could not use the front seat comfortably in the full-forward position. Alternatively, the agency could have used the full rear position. That adjustment position would allow the largest adults to sit comfortably in the front seat. However, it would also have increased the number of vehicles classified as having an inadequate rear seat. The mid-track position, which is used for other Standard No. 208 testing, was chosen as a compromise.

The agency also considered alternative values to represent the length of rear-facing infant restraints. The agency selected the average length of the child seats NHTSA measured. By choosing this measurement, the agency is ensuring that the vehicles which do not have a cutoff device for the passenger side air bag are those that have a rear seat large enough to give parents a fairly wide choice of restraints, including convertible restraints, which will fit in the rear seat.

While police vehicles could use a manual cutoff device to avoid interactions with communications and police equipment, NHTSA is not allowing installation of the device. To keep law enforcement and police equipment manufacturers informed, Ford and General Motors met with groups and associations to prepare them for the installation of passenger side air bags. Ford and General Motors recommend that equipment not be mounted within the air bag deployment area. Many equipment manufacturers now produce smaller, more compact police equipment and mounting devices to facilitate this.

In October 1993, NHTSA, the International Association of Chiefs of Police, and the Law Enforcement Television Network (LETN), in conjunction with Ford and General Motors, conducted a seminar, "Dual Air Bags: Where Do I Put My Equipment?," to explain the deployment area and safety benefits of passenger side air bags. This seminar was videotaped by LETN and broadcast at least 25 times. Additionally, NHTSA duplicated copies of the videotape for dissemination throughout the nation. Because other means are available to avoid air bag/equipment interaction, NHTSA is not allowing the installation of the manual cutoff device in police vehicles.

Phase-Out of Manual Cutoff Devices

In the NPRM, NHTSA tentatively concluded that the installation of manual cutoff devices should not be permitted indefinitely. The agency also tentatively concluded that vehicles with air bags having manual cutoff devices should not be counted toward compliance with the phase-in for air bags. Further, the agency said that manual cutoff devices should be prohibited in all passenger cars manufactured on or after September 1, 1997, and all light trucks manufactured on or after September 1, 1997, and all light trucks manufactured on or after September 1, 1998. These are the dates on which 100 percent compliance is required by 49 U.S.C. 30127. To implement these proposals, NHTSA proposed to amend S4.1.5.1(b)'s definition of an "inflatable restraint system," a term used in the paragraphs relating to the air bag requirements, to state that it does not include an air bag that can be deactivated by a manual cutoff device. NHTSA stated that it believed this several year period would give manufacturers time to develop and introduce automatic cutoff devices.

Five commenters (Ford, Mazda, AAP, AAMA and a private citizen) expressed concern that automatic cutoff devices might not be available before the end of the period in which manual cutoff devices would be allowed. Four commenters (GenCorp, Advocates, AORC, and IIHS) expressed confidence that automatic cutoff devices would be available before the end of this time period.

NHTSA is not extending the time period in which manual cutoff devices would be allowed. First, one of the commenters which expressed confidence that automatic cutoff devices would soon be available was GenCorp, a company which develops such devices. Another, AORC, is an organization whose member companies (equipment manufacturers, some of whom develop such devices) "are confident that satisfactory automatic solutions will be successfully developed on a timely basis." Second, in the discussion of automatic devices in many of the comments, it is clear that the vehicle manufacturers were discussing more sophisticated sensors, i.e., one that would deactivate the air bag in a number of situations, not just when a rear-facing infant seat is present.

Two commenters, AAMA and Ford, asked for confirmation that an LTV with a driver's air bag, and a passenger side air bag with a manual cutoff device would quality for the "one truck credit" and the "1.5 truck credit" during the phase-in periods for the automatic protection and mandatory air bag requirements. The "one truck credit" permits light trucks equipped with an air bag for the driver and a manual lap/shoulder belt for the front passenger to count as one truck towards the phase-in requirements for both automatic protection and mandatory air bags. The "1.5 truck credit" permits light trucks equipped with an air bag for the driver and some type of automatic protection for the front passenger to count as 1.5 trucks towards the phase-in requirements for automatic protection only.

With regard to the "one truck credit," these commenters are correct. Since a vehicle with a driver's air bag would qualify for credit as one vehicle toward both the automatic protection requirement and the mandatory air bag requirement with a manual belt system alone, it would also qualify for the credit if equipped with a voluntarily-installed air bag with a manual cutoff device, presuming the vehicle had a manual belt on the passenger side.

With regard to the "1.5 truck credit" during the automatic restraint phase-in, NHTSA has decided that a vehicle with a passenger air bag equipped with a manual cutoff device should quality for this credit. While such a system does not provide the equivalent level of automatic protection to the passenger as an air bag without a cutoff device, NHTSA believes that it provides a greater level of occupant protection than a manual lap/shoulder belt alone, and warrants additional credit. No change in the regulatory text is required to allow this credit as the amended definition of "inflatable restraint" does not apply to S4.1.2.1(a), the section the passenger seating position must comply with to qualify for the credit.

Means of Activation

NHTSA proposed to require the use of the ignition key to activate the cutoff device. NHTSA believed this requirement would make the device simple and easy to use, but still require conscious thought and deliberate action on the part of the user. In addition, it would also place control of the device in the hands of the driver, thereby minimizing the likelihood of accidental or inappropriate activation.

IIHS said that the device should not be activated by the ignition key, but that NHTSA should require a means to prevent inadvertent activation (i.e., shielded switches). AAMA and Ford asked the agency to delete the word "only" to permit "other ignition keys similar but not identical to the ignition key." Ford expressed its believe that alternate means of activation would not be so effective in meeting NHTSA's goals. Mazda stated that it believed it would be sufficient to require a means to prevent inadvertent activations without specifying the use of the ignition key.

After reviewing these comments, NHTSA has decided to retain the requirement that the cutoff device be activated by an ignition key, though not requiring it to be an identical ignition key. NHTSA believes that this addresses IIHS's concern that, if a parent forgot to turn off the air bag prior to starting the car, they would be unlikely to turn off the car to deactivate the air bag, leaving an infant at risk if the air bag deployed. NHTSA does not believe that Mazda's suggestion is appropriate, since there is no objective means of determining that inadvertent activation is not likely.

As explained in AAMA's comment, the use of the identical ignition key would require cutoff devices "to be equipped with lock tumblers and manufactured and stocked in the many key combinations used to deter vehicle

[2] By "inadequate rear seat," the agency is referring to seats which do not have sufficient fore-and-aft clearance to accommodate typical rear-facing infant restraints.

theft." AAMA believed this would increase the risk that the driver would be unable to deactivate the air bag, either because non-matching lock tumblers were installed at the factory, or because the ignition lock was replaced with a non-matching key cylinder. Deleting the word "only" from the regulatory text will allow manufacturers to install a lock on the cutoff device which has fewer tumblers than the locks used in ignitions. While the ignition key will operate both the ignition and the cutoff device, manufacturers will also be able to provide a separate key which operated only the cutoff device.

Air Bag Reactivation

NHTSA proposed to require that manual cutoff devices be designed so that, once the cutoff device has been used to deactivate the air bag, the air bag will remain deactivated until it is manually reactivated by means of the cutoff device. NHTSA requested comments on whether it should, in the alternative, require that the air bag be automatically reactivated when the vehicle is turned off. NHTSA explained that its ultimate decision would be based on weighing the relative risks to infants who might be placed in the front seat when the air bag is activated against the risks to adults who might ride in the passenger seat while the air bag is not activated.

In its preliminary estimate of those relative risks, the agency estimated that 1,050 air bag deployments a year will occur in pickup trucks and two-seater vehicles when a front passenger seat is occupied by an infant in a rear-facing infant seat. The level of the injuries resulting from these deployments are uncertain, but may well be severe. Conversely, the agency estimated that failure to reactivate the air bag for the benefit of non-infant passengers, would result in approximately 3 occupants who are at least one year old receiving AIS 2–5 (survivable) injuries. In addition, 1–3 fatalities and 23–32 additional injuries could occur each year as a result of deliberate misuse. Based on these estimates, the agency believed that the number of infants who would avoid potentially serious injury far exceeds the number of non-infants who might be injured.

Five commenters (Ford, Volvo, AAP, AAMA, and IIHS) agreed with NHTSA's proposal. Two commenters (Advocates and AORC) stated that NHTSA should require automatic reactivation of the air bag. NADA suggested that NHTSA could require automatic reactivation if the cutoff device did not incorporate a warning light.

NHTSA has decided to adopt the manual reactivation requirement. NHTSA believes that all air bags should be reactivated in the same way. No commenter provided specific data to refute the analysis NHTSA made in the NPRM which resulted in the tentative conclusion to propose manual reactivation. Adult passengers will be able to see the warning light, and will be informed if the air bag is not activated. In addition, such passengers will receive significant safety protection by wearing lap/shoulder belts. AAP suggested that NHTSA require information in the owner's manual recommending that parents educate non-infant, non-literate children of the function of the warning light so that they will also be aware of the need to remind the driver to turn the air bag on. While NHTSA is not requiring such information in the owner's manual, NHTSA agrees that it would be a good practice.

Warning Light

NHTSA proposed requiring that there be a telltale light on the dashboard that is clearly visible from both the driver and front passenger seating positions and that is illuminated whenever the passenger air bag has been deactivated by means of the cutoff device. This light would be separate from the air bag readiness indicator already required by Standard No. 208. NHTSA proposed that the color of the telltale be yellow, with the words "AIR BAG OFF" clearly visible on the telltale when the passenger side air bag has been deactivated.

Two commenters (Ford and AAMA) asked NHTSA to allow the telltale to have one brightness level. Ford also asked the agency to allow either the words "AIR BAG OFF" OR "OFF" on the telltale, Advocates asked the agency to require the words "WARNING, AIR BAG OFF" on the telltale. Mazda asked the agency to permit the telltale to be combined with the readiness indicator. AORC, which supported automatic reactivation of the air bag, asked the agency to require a telltale which warned of the possible need to deactivate the air bag. Volvo suggested that the agency should require a telltale if a vehicle is equipped with an automatic cutoff device. Finally, SafetyBeltSafe said the agency should require the telltale to indicate both when the air bag is "off" and when it is "on."

After reviewing these comments, NHTSA is modifying the warning light requirement only to allow one level of brightness and to permit the words "AIR BAG OFF" to be either on the telltale or adjacent to the telltale. Other telltales are allowed to have only one level of brightness. NHTSA believes that having the words "AIR BAG OFF" adjacent to the telltale will be as effective a means of informing the driver or passenger of the purpose of the telltale as words on the telltale itself. NHTSA is not adding the word "WARNING" because NHTSA believes that drivers are aware that the purpose of a telltale is to warn them of a condition that may require immediate attention.

Air Bag Readiness Indicator

Currently, S4.5.2 of FMVSS No. 208 requires that every vehicle equipped with an air bag also be equipped with an air bag readiness indicator that informs the driver about the operational status of the air bag system. As explained in the NPRM, NHTSA is not aware of any manufacturer which complies with this requirement by installing separate readiness indicators, one for the driver air bag and another for the passenger air bag. Therefore, NHTSA proposed to amend S4.5.2 to limit the operation of a single readiness indicator when the cutoff device is "on" so that the indicator monitors only the air bag that is not deactivated, i.e., the driver air bag. When the cutoff device is "off," the passenger air bag would be activated, and the readiness indicator would monitor the readiness of both the driver air bag and the passenger air bag.

Advocates stated that NHTSA should require separate readiness indicators for each air bag. Volvo asked the agency to standardize the "design, locations and identification" of readiness indicators.

NHTSA is not modifying the proposed change to the readiness indicator requirements. NHTSA does not believe it is necessary to require a separate indicator since the warning light, in effect, acts as a readiness indicator for the passenger air bag. NHTSA is also not aware of any safety need to specify the readiness indicator requirements in greater detail as requested by Volvo.

Testing

AAMA asked the agency to specify that compliance testing of the passenger air bag in a vehicle with a manual cutoff device would be done only with the air bag activated. NHTSA has added explicit language to that effect in the regulatory language.

Costs

In the NPRM, NHTSA estimated the per vehicle price for a passenger air bag cutoff device to be $10.15. Ford commented that its "manual deactivation system is several times the agency's estimated consumer cost, even without the photocell dimming feature which the agency estimates would cost another $5.00."

Ford did not provide any documentation to substantiate its claim that the real cost was several times what the agency estimated. Therefore, NHTSA does not have any basis for re-examining its estimate. Since the agency is not requiring more than one level of brightness, the cost is estimated to be $4.86. In any event, the agency is not requiring such devices; thus, any cost is associated with voluntary installation.

Owner's Manual

NHTSA also proposed to require that manufacturers include information concerning the cutoff device in the owner's manual. NHTSA did not propose specific language which must be included in the owner's manual. NHTSA proposed to require the owner's manual to include instructions on the operation of the cutoff device, a statement that the cutoff device should only be used when a rear-facing infant restraint is installed in the front passenger seating position, and a warning about the safety consequences of using the cutoff device at other times.

These requirements have been included in the final rule since no commenter disagreed with any aspect of the owner's manual requirement.

Labels

Currently, Standard No. 208 requires that, by September 1, 1994, air bag-equipped vehicles will bear a label on the sun visor that warns, in part:

Do not Install Rearward-Facing Child Seats in any Front Passenger Seat Position

Also, Standard No. 213 has been amended to require either of the following labels on rear-facing infant seats or on child restraints that can be converted for use in a rear-facing infant mode:

Warning—Place This Restraint in a Vehicle Seat That Does Not Have an Air Bag

or

Warning—When Your Baby's Size Requires That This Restraint be Used so That Your Baby Faces the Rear of the Vehicle, Place the Restraint in a Vehicle Seat That Does Not Have an Air Bag

The first warning is to be used for child seats that are rear-facing only, and the second warning is to be used for infant seats that covert from forward-facing to rear-facing.

In the NPRM, NHTSA tentatively concluded that the language of these labels did not need to be amended.

Ford and AAMA asked the agency to amend the sun visor label to add a phrase like, "unless the passenger air bag is turned off." Because it agrees that some motorists may be confused by this message if the vehicle has a manual cutoff device, NHTSA is amending the vehicle label requirements for vehicles equipped with manual cutoff devices. However, NHTSA is not adopting the specific language requested by Ford. Ford's language is predicated on a design which incorporates a switch with an on and off position, as Ford's design does. NHTSA is concerned that this design-based wording could be confusing if other vehicle manufacturers used designs differing from Ford's.

Automatic Cutoff Devices

As discussed in the NPRM, NHTSA concluded that Standard No. 208 currently allows automatic cutoff devices. NHTSA requested comments on whether the agency should regulate automatic cutoff devices. Specifically, NHTSA requested comments on whether any or all of the proposals in the NPRM relating to warning lights, readiness indicators, owner's manuals, and labels should also apply to vehicles equipped with automatic cutoff devices.

Only one commenter, Volvo, believed that some aspects of this final rule should also apply to automatic cutoff devices. In addition, Volvo expressed concern that, contrary to NHTSA's belief, some automatic cutoff devices may deactivate the air bag during the Standard No. 208 compliance test. NHTSA is deferring any decision on regulations for automatic cutoff devices until there is further information on how, and under what circumstances, such devices would operate.

Blue Ribbon Panel on Child Restraints

In the NPRM, NHTSA described a number of activities the agency has taken to inform consumers on proper use of child restraints. While this notice has discussed one reason why parents may not be able to use a child restraint correctly (i.e., insufficient fore-aft clearance to place the child restraint in the rear seat), improper installation can result from other factors.

On February 13, 1995, the agency announced the information of a "blue ribbon panel" to further address the issue of how child restraints can be made easier to install and use. The panel was asked to present its recommendations by June 1, 1995.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under E.O. 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was reviewed under E.O. 12866, "Regulatory Planning and Review." This action has been determined to be "significant" under the Department of Transportation's regulatory policies and procedures.

The agency estimates that the consumer cost of the voluntarily installed manual cutoff device is $4.86. The $5.00 light sensor is not required in the final rule and the $5.15 for the cutoff device was wrong in the October 7, 1994 NPRM. The $5.15 included $0.29 for a placard label that the agency decided not to propose. The Preliminary Regulatory Evaluation included the correct estimate of $4.86 (1993 dollars).

The agency has revised its estimates of the number of air bag deployments per year when a front passenger seat is occupied by an infant in a rear-facing infant restraint in pickup trucks or two-seater vehicles to be 793. The agency also estimates that the number of similar deployments in other vehicles with less than 720 millimeters of rear seat space that would be eligible for a manual cutoff device is 845. Thus, the total deployments per year in vehicles that would be eligible for a manual cutoff device when the front passenger seat is occupied by an infant in a rear-facing infant restraint is estimated to be 1,638. These estimates assume that the front seat positions continue to be used by infants in vehicles with air bags and they are used by infants in vehicles without air bags, and that the warning labels are not effective in changing people's behavior. The level of injuries from these deployments are uncertain, but may well be severe.

In an effort to assess the potential for safety trade-offs resulting from the failure to reactivate the air bag after it has been deactivated for an infant, the agency estimates that only 1.3 percent of the vehicles permitted to have a cutoff device would be carrying an infant. If one assumes for the purpose of analysis that 10 percent of these were not reactivated, approximately 14 older occupants may receive AIS 2–5 (survivable) injuries. In addition, for every one percent of the vehicles in which the air bag is deliberately deactivated, 3 fatalities and 100–111 AIS 2–5 injuries would occur annually. Since the agency believes that the percentage of vehicles in which the air bag is inadvertently left off or

deactivated would be fairly small, the number of infants who would avoid potentially serious injury far exceed the number of non-infants who might be injured.

A final regulatory evaluation has been prepared for this rulemaking. A more detailed explanation of the costs and benefits can be found in that document.

Regulatory Flexibility Act

NHTSA has also considered the impacts of this final rule under the Regulatory Flexibility Act. I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. As explained above, NHTSA does not anticipate a significant economic impact from this rulemaking action.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (P.L. 96–511), there are no requirements for information collection associated with this final rule.

National Environmental Policy Act

NHTSA has also analyzed this final rule under the National Environmental Policy Act and determined that it will not have a significant impact on the human environment.

Executive Order 12612 (Federalism)

NHTSA has analyzed this rule in accordance with the principles and criteria contained in E.O. 12612, and has determined that this rule will not have significant federalism implications to warrant the preparation of a Federalism Assessment.

Civil Justice Reform

This final rule does not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the State requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, 49 CFR Part 571 is amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for Part 571 of Title 49 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.208 is amended by revising sections S4.1.5.1(b), S4.5.1(b)(1), and S4.5.2 and adding new sections S4.5.4 and S4.5.4.1 through S4.5.4.4 and S8.4, to read as follows:

§ 571.208 Standard No. 208, Occupant Crash Protection.

* * * * *

S4.1.5.1 *Front/angular automatic protection system.*

* * * * *

(b) For the purposes of sections S4.1.5 through S4.1.5.3 and S4.2.6 through S4.2.6.2, an *inflatable restraint system* means an air bag that is activated in a crash, other than an air bag that can be deactivated by a manual cutoff device permitted by S4.5.4 of this standard.

* * * * *

S4.5.1 *Labeling and owner's manual information.*

* * * * *

(b) *Label on sun visor above front outboard seating positions equipped with inflatable restraint.*

(1) Each vehicle manufactured on or after September 1, 1994, shall comply with either S4.5.1(b)(1)(i) or S4.5.1(b)(1)(ii).

(i) Each front outboard seating position that provides an inflatable restraint shall have a label permanently affixed to the sun visor for such seating position on either side of the sun visor, at the manufacturer's option. Except as provided in S4.5.1(b)(3), this label shall read:

CAUTION

TO AVOID SERIOUS INJURY:

For maximum safety protection in all types of crashes, you must always wear your safety belt.
Do not install rearward-facing child seats in any front passenger seat position.
Do not sit or lean unnecessarily close to the air bag.
Do not place any objects over the air bag or between the air bag and yourself.
See the owner's manual for further information and explanations.

(ii) If the vehicle is equipped with a cutoff device permitted by S4.5.4 of this standard, each front outboard seating position that provides an inflatable restraint shall have a label permanently affixed to the sun visor for such seating position on either side of the sun visor, at the manufacturer's option. This label shall read:

CAUTION

TO AVOID SERIOUS INJURY:

For maximum safety protection in all types of crashes, you must always wear your safety belt.
Do not install rearward-facing child seats in any front passenger seat position, unless the air bag is off.
Do not sit or lean unnecessarily close to the air bag.
Do not place any objects over the air bag or between the air bag and yourself.
See the owner's manual for further information and explanations.

* * * * *

S4.5.2 *Readiness Indicator.* An occupant protection system that deploys in the event of a crash shall have a monitoring system with a readiness indicator. The indicator shall monitor its own readiness and shall be clearly visible from the driver's designated seating position. If the vehicle is equipped with a single readiness indicator for both a driver and passenger air bag, and if the vehicle is equipped with a cutoff device permitted by S4.5.4 of this standard, the readiness indicator shall monitor only the readiness of the driver air bag when the passenger air bag has been deactivated by means of the cutoff device. A list of the elements of the system being monitored by the indicator shall be included with the information furnished in accordance with S4.5.1 but need not be included on the label.

* * * * *

S4.5.4 *Passenger Air Bag Manual Cutoff Device.* Passenger cars, trucks, buses, and multipurpose passenger vehicles may be equipped with a device that deactivates the air bag installed at the right front passenger position in the vehicle, if all of the conditions in S4.5.4.1 through S4.5.4.4 are satisfied.

S4.5.4.1 The vehicle complies with either S4.5.4.1(a) or S4.5.4.1(b).

(a) The vehicle has no forward-facing designated seating positions to the rear of the front seating positions.

(b) With the seats and seat backs adjusted as specified in S8.1.2 and S8.1.3, the distance, measured along a longitudinal horizontal line tangent to the highest point of the rear seat bottom in the longitudinal vertical plane described in either S4.5.4.1(b)(1) or S4.5.4.1(b)(2), between the rearward surface of the front seat back and the forward surface of the rear seat back is less than 720 millimeters.

(1) In a vehicle equipped with front bucket seats, the vertical plane at the centerline of the driver's seat cushion.

(2) In a vehicle equipped with front bench seating, the vertical plane which passes through the center of the steering wheel rim.

S4.5.4.2 The device is operable by means of the ignition key for the vehicle. The device shall be separate from the ignition switch for the vehicle, so that the driver must take some action with the ignition key other than inserting it or turning it in the ignition switch to deactivate the passenger air bag. Once deactivated, the passenger air bag shall remain deactivated until it is reactivated by means of the device.

S4.5.4.3 A telltale light on the dashboard shall be clearly visible from all front seating positions and shall be illuminated whenever the passenger air bag is deactivated. The telltale:

(a) Shall be yellow;

(b) Shall have the identifying words "AIR BAG OFF" on the telltale or within 25 millimeters of the telltale;

(c) Shall remain illuminated for the entire time that the passenger air bag is deactivated;

(d) Shall not be illuminated at any time when the passenger air bag is not deactivated; and,

(e) Shall not be combined with the readiness indicator required by S4.5.2 of this standard.

S4.5.4.4 The vehicle owner's manual shall provide, in a readily understandable format:

(a) Complete instructions on the operation of the cutoff device;

(b) A statement that the cutoff device should only be used when a rear-facing infant restraint is installed in the front passenger seating position; and,

(c) A warning about the safety consequences of using the cutoff device at other times.

* * * * *

S8.4 *Frontal test condition.* If the vehicle is equipped with a cutoff device permitted by S4.5.4 of this standard, the device is deactivated.

* * * * *

Issued on May 18, 1995.

Ricardo Martinez,

Administrator.

[FR Doc. 95–12555 Filed 5–18–95; 1:52 pm]

BILLING CODE 4910–59–M

Proposed Rules

Federal Register
Vol. 60, No. 99
Tuesday, May 23, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 704 and 741

Corporate Credit Unions; Requirements for Insurance

AGENCY: National Credit Union Administration (NCUA).

ACTION: Extension of comment period.

SUMMARY: On April 13, 1995, the NCUA Board issued a proposed rule revising its regulations governing corporate credit unions and requirements for insurance. 60 FR 20438 (April 26, 1995). Comments were requested by June 26, 1995.

The supplementary section of the proposed rule indicated that NCUA would be conducting analytical assessments of the proposed regulation's effect on corporate credit union earnings and capital accumulation. 60 FR at 20443. NCUA has been working with an outside firm to provide such assessments, using simulation modeling techniques. The process has proved to be more time-consuming than envisioned, due to the need to tailor existing modeling programs to the specifics of corporate credit union balance sheets.

The NCUA Chairman indicated at the April 13, 1995, Board meeting that the comment period would be extended if additional time were needed because of unanticipated circumstances. The Board has determined that additional time is necessary to allow NCUA and the public sufficient opportunity to analyze the results of the modeling process and the implications for the proposed regulation. Accordingly, the comment period is being extended 60 days to August 25, 1995.

DATES: The comment period is extended from June 26, 1995, to August 25, 1995.

ADDRESSES: Mail comments to Becky Baker, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428. Send comments to Ms. Baker via the bulletin board by dialing 703–518–6480.

FOR FURTHER INFORMATION CONTACT: H. Allen Carver, Director, Office of Corporate Credit Unions (703) 518–6640, at the above address.

Authority: The authority for this action is the general rulemaking authority of the NCUA Board.

By the National Credit Union Administration Board on May 17, 1995.

Becky Baker,

Secretary of the Board.

[FR Doc. 95–12599 Filed 5–22–95; 8:45 am]

BILLING CODE 7535–01–M

FEDERAL TRADE COMMISSION

16 CFR Part 400

Trade Regulation Rule: Advertising and Labeling as to Size of Sleeping Bags

AGENCY: Federal Trade Commission.

ACTION: Advance notice of proposed rulemaking (ANPR).

SUMMARY: The Federal Trade Commission ("Commission") proposes to repeal its Trade Regulation Rule entitled "Advertising and Labeling as to Size of Sleeping Bags" ("Sleeping Bag Rule"), 16 CFR part 400. The proceeding will address whether the Sleeping Bag Rule should be repealed or remain in effect. The Commission is soliciting written comment, data and arguments concerning this proposal.

DATES: Written comments must be submitted on or before June 22, 1995.

ADDRESSES: Written comments should be identified as "16 CFR Part 400" and sent to Secretary, Federal Trade Commission, 6th Street & Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: John A. Crowley, Esq., (202) 326–3280, Division of Service Industry Practices, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

Part A—Background Information

This notice is published pursuant to Section 18 of the Federal Trade Commission Act, 15 U.S.C. 57a *et seq.*, the provisions of part 1, subpart B of the Commission's rules of practice, 16 CFR 1.7, and 5 U.S.C. 551 *et seq.* This authority permits the Commission to promulgate, modify and repeal trade regulation rules that define with specificity acts or practices that are unfair or deceptive in or affecting commerce within the meaning of section 5(a)(1) of the FTC Act, 15 U.S.C. 45(a)(1).

The Sleeping Bag Rule, promulgated by the Commission on October 11, 1963, declares that it is an unfair method of competition and an unfair or deceptive act or practice to use the "cut size" of the materials from which a sleeping bag is made to describe the size of a sleeping bag in advertising, labeling or marking unless:

(1) "The dimensions of the cut size are accurate measurements of the yard goods used in construction of the sleeping bags"; and

(2) "Such 'cut size' dimensions are accompanied by the words 'cut size'"; and

(3) The reference to "cut size" is "accompanied by a clear and conspicuous disclosure of the length and width of the finished products and by an explanation that such dimensions constitute the finished size."

The Commission periodically reviews the rules and guides it has promulgated, seeking information about the costs and benefits of such rules and guides and their regulatory and economic impact. The information obtained assists the Commission in identifying rules and guides that warrant modification or rescission. Pursuant to its review schedule, on April 19, 1993, the Commission published in the **Federal Register** a request for public comments on the Sleeping Bag Rule. 58 FR 21095. The Commission asked commenters to address questions relating to the costs and benefits of the rule, the burdens it imposes, and the basis for assessing whether it should be retained, or amended.

The Commission received only one comment relating to the Sleeping Bag Rule. The commenter stated that there was a continuing need for the rule to deter deceptive practices.

Prior to the request for comments, Commission staff conducted an informal inquiry and inspected sleeping bags at several national chain stores. This inquiry found no violations of the Rule on either the sleeping bag packaging materials or the labels affixed to the product itself. In fact, it appeared from that limited inquiry that industry products were marked with only the finished size. Additionally, the Commission has no record of receiving any complaints regarding non-compliance with the rule, or of initiating any law enforcement actions alleging violations of the rule's requirements. Finally, the Uniform Packaging and Labeling Regulation, which has been adopted by 47 states, regulates the labeling of sleeping bags, and appears to provide that these items must be labeled with their finished size.

Part B—Objectives

Based on the review described above, the Commission has determined that there may no longer be a need to continue the Sleeping Bag Rule in light of the apparent changes in industry practices and the existence of laws in nearly all of the states that appear to mandate point-of-sale disclosures similar to those required by the rule. The objective of this notice is to solicit comment on whether the Commission should initiate a rulemaking proceeding to repeal the Sleeping Bag Rule.

Part C—Alternative Actions

The Commission is not aware of any feasible alternatives to either repealing or retaining the Sleeping Bag Rule.

Part D—Request for Comments

Members of the public are invited to comment on any issues or concerns they believe are relevant or appropriate to the Commission's review of the Sleeping Bag Rule. Comments submitted during the regulatory review proceeding described above will be made part of the record, and need not be resubmitted. A comment that includes the reasoning or basis for a proposition will likely be more persuasive than a comment without supporting information. The Commission requests that factual data upon which the comments are based be submitted with the comments. In this section, the Commission identifies a number of issues on which it solicits public comment. The identification of issues is designed to assist the public to comment on relevant matters and should not be construed as a limitation on the issues on which public comment may be submitted.

Questions

(1) Do manufacturers and sellers of sleeping bags currently use "cut size" as a means of marking the size of their products for sale at retail to consumers?

(2) Does the fact that nearly all of the states have adopted the Uniform Packaging and Labeling Regulation, which governs the labeling of sleeping bags, eliminate or greatly lessen the need for the Sleeping Bag Rule?

(3) What are the benefits to consumers from the rule?

(4) What are the costs to industry imposed by the rule?

(5) Is there a continuing need for the rule or should the rule be repealed?

Authority: Sec. 18(d)(2)(B) of the Federal Trade Commission Act, 15 U.S.C. 57a(d)(2)(B).

List of Subjects in 16 CFR Part 400

Advertising, Trade practices, Sleeping bags.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95–12580 Filed 5–22–95; 8:45 am]

BILLING CODE 6750–01–M

16 CFR Part 402

Trade Regulation Rule Concerning Deception as to Non-Prismatic and Partially Prismatic Instruments Being Prismatic Binoculars

AGENCY: Federal Trade Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Federal Trade Commission (the "Commission") proposed to repeal its Trade Regulation Rule entitled "Deception as to Non-Prismatic and Partially Prismatic Instruments Being Prismatic Binoculars" ("Binocular Rule"), 16 C.F.R. part 402. The proceeding will address whether the Binocular Rule should be repealed or remain in effect. The Commission is soliciting written comment, data, and arguments concerning this proposal.

DATES: Written comments must be submitted on or before June 22, 1995.

ADDRESSES: Written comments should be identified as "16 CFR Part 402" and sent to Secretary, Federal Trade Commission, Room 159, Sixth Street and Pennsylvania Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Phillip S. Priesman, Attorney, Federal Trade Commission, Division of Advertising Practices, Bureau of Consumer Protection, Washington, D.C. 20580. (202) 326–2484.

SUPPLEMENTARY INFORMATION:

Part A—Background Information

This notice is being published pursuant to Section 18 of the Federal Trade Commission ("FTC") Act, 15 U.S.C. 57a *et seq.*, the provisions of Part 1, Subpart B of the Commission's Rules of Practice, 16 CFR 1.7, and 5 U.S.C. 551 *et seq.* This authority permits the Commission to promulgate, modify, and repeal trade regulation rules that define with specificity acts or practices that are unfair or deceptive in or affecting commerce within the meaning of Section 5(a)(1) of the FTC Act, 15 U.S.C. 45.

The Binocular Rule was published in final form in the **Federal Register** on June 5, 1964, and became effective on December 2, 1964. The Rule requires a clear and conspicuous disclosure on any advertising or packaging for non-prismatic or partially prismatic binoculars that the instruments are not fully prismatic. Fully prismatic binoculars rely on a prism within the instrument to reverse the visual image entering the lens so that it appears right-side up to the user. Other binoculars rely partially or entirely on mirrors to reverse the visual image. When the rule was promulgated, the Commission was concerned that consumers could be misled into believing that non-prismatic binoculars were in fact prismatic, absent such a disclosure.

To prevent consumer deception, the rule proscribed the use of the term "binocular" to describe anything other than a fully prismatic instrument, unless the term was modified to indicate the true nature of the item. Under the Rule, non-prismatic instruments could be identified as binoculars only if they incorporated a descriptive term such as "binocular-nonprismatic," "binocular-mirror prismatic," or "binocular-nonprismatic mirror."

Part B—Objectives

As part of its continuing review of its trade regulation rules to determine their current effectiveness and impact, the Commission recently obtained information bearing on the need for this Rule.[1] The objective of this notice is to solicit comment on whether the Commission should initiate a rulemaking proceeding to repeal the Binocular Rule.

Part C—Alternative Actions

The Commission will consider alternatives to repealing the Binocular Rule if the comments indicate that the

[1] In a memorandum to all federal departments and agencies dated March 4, 1995, the President requested all agencies to review their regulations and to initiate proceedings to eliminate those they determined were obsolete or unnecessary. In 1992, the Commission adopted a plan to review all its rules and guides at least once during a ten-year period. In response to the President's request, the Commission accelerated its scheduled review of certain rules to identify any that might be appropriate candidates for repeal or amendment.

Rule continues to serve its original purpose.

Part D—Request for Comments

Members of the public are invited to comment on any issues or concerns they believe are relevant or appropriate to the Commission's review of the Binocular Rule. The Commission requests that factual data upon which the comments are based be submitted with the comments. In this section, the Commission identifies the issues on which it solicits public comment. The identification of issues is designed to assist the public and should not be construed as a limitation on the issues on which public comment may be submitted.

Questions

(1) Is any manufacturer currently manufacturing non-prismatic or partially-prismatic binoculars?

(2) Is any individual or business entity currently marketing non-prismatic or partially-prismatic binoculars?

(3) Do any retail stores or suppliers still maintain stocks of non-prismatic or partially-prismatic binoculars?

(4) What benefits do consumers derive from the Rule?

(5) Should the Rule be kept in effect or should it be repealed?

Authority: Section 18(d)(2)(B) of the Federal Trade Commission Act, 15 U.S.C. 57a(d)(2)(B).

List of Subjects in 16 CFR Part 417

Binoculars, Trade practices.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95–12583 Filed 5–22–95; 8:45 am]

BILLING CODE 6750–01–M

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16 CFR Part 404

Trade Regulation Rule: Deceptive Advertising and Labeling as to Size of Tablecloths and Related Products

AGENCY: Federal Trade Commission.

ACTION: Advance notice of proposed rulemaking (ANPR).

SUMMARY: The Federal Trade Commission ("Commission") proposes to repeal its Trade Regulations Rule entitled "Deceptive Advertising and Labeling as to Size of Tablecloths and Related Products ("Tablecloth Rule"), 16 CFR part 404. The proceeding will address whether the Tablecloth Rule should be repealed or remain in effect. The Commission is soliciting written comment, data and arguments concerning this proposal.

DATES: Written comments must be submitted on or before June 22, 1995.

ADDRESSES: Written comments should be identified as "16 CFR Part 404" and sent to Secretary, Federal Trade Commission, 6th Street & Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: John A. Crowley, Esq., (202) 326–3280, Division of Service Industry Practices, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

Part A—Background Information

This notice is published pursuant to Section 18 of the Federal Trade Commission Act, 15 U.S.C. 57a *et seq.*, the provisions of part 1, subpart B of the Commission's rules of practice, 16 CFR 1.7, and 5 U.S.C. 551 *et seq.* This authority permits the Commission to promulgate, modify and repeal trade regulation rules that define with specificity acts or practices that are unfair or deceptive in or affecting commerce within the meaning of section 5(a)(1) of the FTC Act, 15 U.S.C. 45(a)(1).

The Tablecloth Rule, promulgated by the Commission on August 5, 1964, declares that in connection with the sale or offering for sale of tablecloths and related products such as doilies, table mats, dresser scarves, place mats, table runners, napkins and tea sets, any representation of the cut size (that is, the dimensions of materials used in the construction of such products) constitutes an unfair method of competition and an unfair and deceptive act or practice unless:

(a) "Such 'cut size' dimensions are accompanied by the words 'cut size'"; and

(b) "The 'cut size' is accompanied by a clear and conspicuous disclosure of the dimensions of the finished products and by an explanation that such dimensions constitute the finished size.".

The Commission periodically reviews the rules and guides it has promulgated, seeking information about the costs and benefits of such rules and guides and their regulatory and economic impact. The information obtained assists the Commission in identifying rules and guides that warrant modification or rescission. Pursuant to its review schedule, on April 19, 1993, the Commission published in the **Federal Register** a request for public comments on the Tablecloth Rule. 58 FR 21124. The Commission asked commenters to address questions relating to the costs and benefits of the rule, the burdens it imposes, and the basis for assessing whether it should be retained, or amended.

The Commission received only one comment specifically addressing this rule along with a general comment referring to several rules under review. The comment specific to this rule was submitted by a trade group representing the textile rental, linen supply, uniform rental, dust control and commercial laundry services industries. In its one-page comment letter, the association stated there is a continuing need for this rule. The commenter believes that the rule does not impose any additional costs or burdens on entities subject to the rule and that the rule raises the level of professionalism in the industry.

In addition, one general comment, applicable to several rules being reviewed, was received from an advertising agency association. This organization recommends rescission of the Tablecloth Rule because the general prohibitions covering false and deceptive advertising apply to the industry and thus the rule creates unnecessary administrative costs for the government, industry members and consumers. The advertising association did not submit any analysis or data relating to the imposition of unnecessary administrative costs on affected industry members, government or consumers.

Prior to the request for comments, Commission staff engaged in an informal review of industry practices by examining the marking of dimensions on tablecloths and other items subject to the rule available for retail sale at several national chain stores. This informal review revealed no instances of rule violations. In fact, it appeared from that limited review that industry products were marked with only the finished size. Additionally, the Commission has no record of receiving any complaints regarding non-compliance with the rule, or of initiating any law enforcement actions alleging violations of the rule's requirements. Finally, the Uniform Packaging and Labeling Regulation, which has been adopted by 47 states, regulates the labeling of tablecloths, providing that these items must be labeled with their finished size.

Part B—Objectives

Based on the review described above, the Commission has determined that there may no longer be a need to continue the Tablecloth Rule in light of the apparent changes in industry practices and the existence of laws in nearly all of the states mandating the point-of-sale disclosure required by the rule. The objective of this notice is to solicit comment on whether the Commission should initiate a rulemaking proceeding to repeal the Tablecloth Rule.

Part C—Alternative Actions

The Commission is not aware of any feasible alternatives to either repealing or retaining the Tablecloth Rule.

Part D—Request for Comments

Members of the public are invited to comment on any issues or concerns they believe are relevant or appropriate to the Commission's review of the Tablecloth Rule. Comments submitted during the regulatory review proceeding described above will be made part of the record, and need not be resubmitted. A comment that includes the reasoning or basis for a proposition will likely be more persuasive than a comment without supporting information. The Commission requests that factual data upon which the comments are based be submitted with the comments. In this section, the Commission identifies a number of issues on which it solicits public comment. The identification of issues is designed to assist the public to comment on relevant matters and should not be construed as a limitation on the issues on which public comment may be submitted.

Questions

(1) Do manufacturers and sellers of tablecloths currently use "cut size" as a means of marking the size of their products for sale at retail to consumers?

(2) Does the fact that nearly all of the states have adopted the Uniform Packaging and Labeling Regulation, which governs the labeling of tablecloths, eliminate or greatly lessen the need for the Tablecloth Rule?

(3) What are the benefits to consumers from the rule?

(4) What are the costs to industry imposed by the rule?

(5) Is there a continuing need for the rule or should the rule be repealed?

Authority: Sec. 18(d)(2)(B) of the Federal Trade Commission Act, 15 U.S.C. 57a(d)(2)(B).

List of Subjects in 16 CFR Part 404

Advertising, Trade practices, Tablecloths.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95–12579 Filed 5–22–95; 8:45 am]

BILLING CODE 6750–01–M

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16 CFR Part 413

Trade Regulation Rule Concerning the Failure To Disclose That Skin Irritation May Result From Washing or Handling Glass Fiber Curtains and Draperies and Glass Fiber Curtain and Drapery Fabrics

AGENCY: Federal Trade Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Federal Trade Commission (the "Commission") proposes to commence a rulemaking proceeding to repeal its Trade Regulation Rule entitled "Failure to Disclose that Skin Irritation May Result from Washing or Handling Glass Fiber Curtains and Draperies and Glass Fiber Curtain and Drapery Fabrics" ("Fiberglass Curtain Rule"), 16 CFR Part 413. The proceeding will address whether the Fiberglass Curtain Rule should be repealed or remain in effect. The Commission is soliciting written comment, data, and arguments concerning this proposal.

DATES: Written comments must be submitted on or before June 22, 1995.

ADDRESSES: Written comments should be identified as "16 CFR Part 413" and sent to Secretary, Federal Trade Commission, Room 159, Sixth Street and Pennsylvania Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Edwin Rodriguez or Janice Frankle, Attorneys, Federal Trade Commission, Division of Enforcement, Bureau of Consumer Protection, Washington, DC 20580, (202) 326–3147 or (202) 326–3022.

SUPPLEMENTARY INFORMATION:

Part A—Background Information

This notice is being published pursuant to Section 18 of the Federal Trade Commission ("FTC") Act, 15 U.S.C. 57a *et seq.*, the provisions of Part 1, Subpart B of the Commission's Rules of Practice, 16 CFR 1.7, and 5 U.S.C. 551 *et seq.* This authority permits the Commission to promulgate, modify, and repeal trade regulation rules that define with specificity acts or practices that are unfair or deceptive in or affecting commerce within the meaning of Section 5(a)(1) of the FTC Act, 15 U.S.C. 45.

The Fiberglass Curtain Rule requires marketers of fiberglass curtains or draperies and fiberglass curtain or drapery cloth to disclose that skin irritation may result from handling fiberglass curtains or curtain cloth and from contact with clothing or other articles which have been washed (1) with such glass fiber products, or (2) in a container previously used for washing such glass fiber products unless the glass particles have been removed from such container by cleaning.

The Rule was promulgated on July 28, 1967 (32 FR 11023 (1967)). The Statement of Basis and Purpose for the Rule stated that the "record is replete with consumer statements relating their experiences with varying degrees of irritation resulting from the exposure of their skin to particles from glass fiber curtains, draperies, and fabrics." Consequently, the Commission concluded that it was in the public interest to caution consumers that skin irritation could result from the direct handling of fiberglass curtains, drapes, and yard goods, and from body contact with clothing or other articles that had been contaminated with fiberglass particles when they were washed with fiberglass products or in a container previously used to wash fiberglass products when the container had not been cleaned of all glass particles.

Part B—Objectives

As part of its continuing review of its trade regulation rules to determine their current effectiveness and impact, the Commission recently obtained information bearing on the need for this Rule.[1] Based on this review, the Commission has tentatively determined that fiberglass curtains and drapes and fiberglass curtain or drape fabric no longer present a substantial threat of skin irritation to the consumer because technological developments in fire retardant fabrics have caused fiberglass fabric to be displaced by polyester and modacrylics in the curtain and drapery area. Fiberglass fabrics are now used almost exclusively for very specialized industrial uses. These technological developments and market changes suggest that the Fiberglass Curtain Rule may not be necessary and in the public interest. The objective of this notice is to solicit comment on whether the Commission should initiate a rulemaking proceedings to repeal the Fiberglass Curtain Rule.

[1] In a memorandum to all federal departments and agencies dated March 4, 1995, the President requested all agencies to review their regulations and to initiate proceedings to eliminate those they determined were obsolete or unnecessary. In 1992, the Commission adopted a plan to review all its rules and guides at least once during a ten-year period. In response to the President's request, the Commission accelerated its scheduled review of certain rules to identify any that might be appropriate candidates for repeal or amendment. For example, under the ten-year plan, the Fiberglass Curtain Rule was scheduled for review in 1998.

Part C—Alternative Actions

The Commission is not aware of any feasible alternatives to repealing the Fiberglass Curtain Rule.

Part D—Request for Comments

Members of the public are invited to comment on any issues or concerns they believe are relevant or appropriate to the Commission's review of the Fiberglass Curtain Rule. The Commission requests that factual data upon which the comments are based be submitted with the comments. In this section, the Commission identifies the issues on which it solicits public comment. The identification of issues is designed to assist the public and should not be construed as a limitation on the issues on which public comment may be submitted.

Questions

(1) Is any manufacturer currently manufacturing and marketing fiberglass fabric for decorative use, as opposed to industrial use such as electronic circuit boards, joint tape, and insulation?

(2) Is any individual or business entity currently marketing fiberglass curtains or drapes?

(3) What benefits do consumers derive from the Rule?

(4) Have there been any technological or other changes that have reduced or eliminated the possibility of skin irritation from contact from glass fiber material?

(5) Should the Rule be kept in effect or should it be repealed?

Authority: Section 18(d)(2)(B) of the Federal Trade Commission Act, 15 U.S.C. 57a(d)(2)(B).

List of Subjects in 16 CFR 413

Fiberglass curtains and curtain fabric, Trade practices.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95–12584 Filed 5–22–95; 8:45 am]

BILLING CODE 6750–01–M

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16 CFR Part 417

Trade Regulation Rule Concerning the Failure To Disclose the Lethal Effects of Inhaling Quick-Freeze Aerosol Spray Products Used for Frosting Cocktail Glasses

AGENCY: Federal Trade Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Federal Trade Commission (the "Commission") proposes to commence a rulemaking proceeding to repeal its Trade Regulation Rule entitled "Failure to Disclose the Lethal Effects of Inhaling Quick-Freeze Aerosol Spray Products Used for Frosting Cocktail Glasses" ("Quick-Freeze Spray Rule"), 16 CFR part 417. The proceeding will address whether the Quick-Freeze Spray Rule should be repealed or remain in effect. The Commission is soliciting written comment, data, and arguments concerning this proposal.

DATES: Written comments must be submitted on or before June 22, 1995.

ADDRESSES: Written comments should be identified as "16 CFR Part 417" and sent to Secretary, Federal Trade Commission, Room 159, Sixth Street and Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Lemuel W. Dowdy or George Brent Mickum IV, Attorneys, Federal Trade Commission, Division of Enforcement, Bureau of Consumer Protection, Washington, DC 20580, (202) 326–2981 or (202) 326–3132.

SUPPLEMENTARY INFORMATION:

Part A—Background Information

This notice is being published pursuant to Section 18 of the Federal Trade Commission ("FTC") Act, 15 U.S.C. 57a *et seq.*, the provisions of part 1, subpart B of Commission's rules of practice, 16 CFR 1.7, and 5 U.S.C. 551 *et seq.* This authority permits the Commission to promulgate, modify, and repeal trade regulation rules that define with specificity acts or practices that are unfair or deceptive in or affecting commerce within the meaning of section 5(a)(1) of the FTC Act, 15 U.S.C. 45.

The Quick-Freeze Spray Rule requires a clear and conspicuous warning on aerosol spray products used for frosting beverage glasses. The warning states that the contents should not be inhaled in concentrated form and that doing so may cause injury or death. Glass frosting products contain a compound known as Fluorocarbon 12 (dichlorodifluoromethane), which is also the principal ingredient used in coolants for automobile air conditioners and refrigerators.

The Rule was promulgated on February 20, 1969 (34 FR 2417 (1969)). The Statement of Basis and Purpose for the Rule stated that, although the product is not harmful when used as directed, there had been several instances where the intentional misuse of this product by inhaling its vapors resulted in death. Consequently, the Commission concluded that it was in the public interest to caution purchasers who may not otherwise be aware of the lethal effects of inhaling the product.

On October 25, 1989, the Commission published a notice in the **Federal Register** soliciting public comments on the Rule's impact on small entities. (54 FR 43435). No comments were received in response to the notice. The Commission determined, however, that a small amount of quick freeze aerosol products were still available for sale. Therefore, the Commission determined that because the Rule's safety warnings, if followed, could prevent physical harm and loss of life, the Rule should be retained.

Part B—Objectives

As part of its continuing review of its trade regulation rules to determine their current effectiveness and impact, the Commission recently obtained information bearing on the need for this Rule.[1] Based on this review, the Commission has determined that glass frosting products are no longer produced and that they are precluded by the Clean Air Act from being reintroduced into the market place.[2] The objective of this notice is to solicit comment on whether the Commission should initiate a rulemaking proceeding to repeal the Quick-Freeze Spray Rule.

Part C—Alternative Actions

The Commission is not aware of any feasible alternatives to repealing the Quick-Freeze Spray Rule.

Part D—Request for Comments

Members of the public are invited to comment on any issues or concerns they believe are relevant or appropriate to the Commission's review of the Quick-Freeze Spray Rule. The Commission requests that factual data upon which the comments are based be submitted with the comments. In this section, the Commission identifies the issues on which it solicits public comment. The identification of issues is designed to assist the public and should not be construed as a limitation on the issues on which public comment may be submitted.

[1] In a memorandum to all federal departments and agencies dated March 4, 1995, the President requested all agencies to review their regulations and to initiate proceedings to eliminate those they determined were obsolete or unnecessary. In 1992, the Commission adopted a plan to review all its rules and guides at least once during a ten-year period. In response to the President's request, the Commission accelerated its scheduled review of certain rules to identify any that might be appropriate candidates for repeal or amendment. For example, under the ten-year plan, the Quick-Freeze Rule was scheduled for review in 1999, ten years after its last review.

[2] 42 U.S.C. 7401, 7671i. Regulations promulgated by the Environmental Protection Agency implementing the Clean Air Act ban chlorofluorocarbons in aerosols and foams for non-essential uses. 40 CFR 82.64. The ban, which includes fluorocarbon 12, became effective on January 17, 1994.

Questions

(1) Is any manufacturer currently manufacturing quick-freeze spray products?

(2) Is any individual or business entity currently marketing quick-freeze spray products?

(3) Do any retail stores or suppliers still maintain stocks of quick-freeze spray products for resale?

(4) What benefits do consumers derive from the Rule?

(5) Does regulation of this product by the Environmental Protection Agency render the Rule unnecessary?

(6) Should the Rule be kept in effect or should it be repealed?

Authority: Section 18(d)(2)(B) of the Federal Trade Commission Act, 15 U.S.C. 57a(d)(2)(B).

List of Subjects in 16 CFR Part 417

Quick-freeze aerosol spray, Trade practices.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95–12582 Filed 5–22–95; 8:45 am]

BILLING CODE 6750–01–M

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16 CFR Part 418

Trade Regulation Rule: Deceptive Advertising and Labeling as to Length of Extension Ladders

AGENCY: Federal Trade Commission.

ACTION: Advance notice of proposed rulemaking (ANPR).

SUMMARY: The Federal Trade Commission ("Commission") proposes to repeal its Trade Regulation Rule entitled "Deceptive Advertising and Labeling as to Length of Extension Ladders" ("Extension Ladder Rule"), 16 CFR part 418. The proceeding will address whether the Extension Ladder Rule should be repealed or remain in effect. The Commission is soliciting written comment, data and arguments concerning this proposal.

DATES: Written comments must be submitted on or before June 22, 1995.

ADDRESSES: Written comments should be identified as "16 CFR Part 418" and sent to Secretary, Federal Trade Commission, 6th Street & Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: John A. Crowley, Esq., (202) 326–3280, Division of Service Industry Practices, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

Part A—Background Information

This notice is published pursuant to Section 18 of the Federal Trade Commission Act, 15 U.S.C. 57a *et seq.*, the provisions of part 1, subpart B of the Commission's rules of practice, 16 CFR 1.7, and 5 U.S.C. 551 *et seq.* This authority permits the Commission to promulgate, modify and repeal trade regulation rules that define with specificity acts or practices that are unfair or deceptive in or affecting Commerce within the meaning of section 5(a)(1) of the FTC Act, 15 U.S.C. 45(a)(1).

The Extension Ladder Rule, promulgated by the Commission on June 22, 1969, declares that it is an unfair or deceptive act or practice and an unfair method of competition to represent the size or length of an extension ladder, in terms of the total length of the component sections thereof, unless:

(a) Such size or length representation is accompanied by the words "total length of sections" or words with similar meanings which clearly indicate the basis of the representation; and,

(b) Such size or length representation is accompanied by a statement in close proximity which clearly and conspicuously shows the maximum length of the product when fully extended for use (i.e., excluding the footage lost in overlapping) along with an explanation for the basis of such representation.

The Commission periodically reviews rules and guides seeking information about the costs and benefits of such rules and guides and their regulatory and economic impact. The information obtained assists the Commission in identifying rules and guides that warrant modification or rescission. Pursuant to its review schedule, on April 19, 1993, the Commission published in the **Federal Register** a request for public comments on its Extension Ladder Rule. 58 FR 21125. The Commission asked commenters to address questions relating to the costs and benefits of the rule, the burdens it imposes, and the basis for assessing whether it should be retained, or amended.

The request for comments on the Extension Ladder Rule elicited six specific comments. One commenter, a consumer, opined that the only label that should be on ladders is the "maximum working length" since consumers should not have to do any figuring to determine the length of the ladder that would meet their needs.

Of the other five commenters, four are manufacturers or suppliers of ladders and one is a trade association. A number of these comments refer to ANSI standard A14, which governs the labeling of ladders. ANSI standard A14 details the requirements for labeling portable wood ladders, portable metal ladders, fixed ladders, job made ladders and portable reinforced plastic ladders. The ANSI standard requires specification of the maximum working length of extension ladders, as well as several other pieces of information not required by the Extension Ladder Rule, including the total length of the ladder's sections and the highest standing level of the ladder. Compliance with the ANSI standard therefore ensures compliance with the labeling requirements of the Extension Ladder Rule.

Several commenters noted this overlap in the coverage of the Extension Ladder Rule and ANSI standard A14, and recommended that the rule be retained unchanged.

Another commenter stated that the rule has imposed minor, incremental costs, but opined that the benefits have been significant in that consumers have a better understanding of extension ladder length. The commenter questioned whether there was a continuing need for this rule given the existence of ANSI standard A14 and UL Standard 184.

In addition to this specific comment, one general comment, applicable to several rules being reviewed, was received from an advertising agency association. This organization recommends rescission of the Extension Ladder Rule because the general prohibitions covering false and deceptive advertising apply to the ladder industry, and thus the Rule creates unnecessary administrative costs for the government, industry members and consumers. The advertising association did not submit any analysis or data relating to the imposition of unnecessary administrative costs on affected industry members, government or consumers.

Finally, Commission staff engaged in an informal review of industry practices by examining the marking of length on extension ladders available for retail sale at several chain stores. That review indicated general compliance with the requirements of the rule. Additionally, the Commission has no record of receiving any complaints regarding non-compliance with the rule, or of initiating any law enforcement actions

alleging violations of the rule's requirements.

Part B—Objectives

Based on the review described above, the Commission has determined that there may no longer be a need to continue the Extension Ladder Rule in light of the apparent changes in industry practices and the existence of standards mandating the point-of-sale disclosures required by the rule. The objective of this notice is to solicit comment on whether the Commission should initiate a rulemaking proceeding to repeal the Extension Ladder Rule.

Part C—Alternative Actions

The Commission is not aware of any feasible alternatives to either repealing or retaining the Extension Ladder Rule.

Part D—Request for Comments

Members of the public are invited to comment on any issues or concerns they believe are relevant or appropriate to the Commission's review of the Extension Ladder Rule. Comments submitted during the regulatory review proceeding described above will be made part of the record, and need not be resubmitted. A comment that includes the reasoning or basis for a proposition will likely be more persuasive than a comment without supporting information. The Commission requests that factual data upon which the comments are based be submitted with the comments. In this section, the Commission identifies a number of issues on which it solicits public comment. The identification of issues is designed to assist the public to comment on relevant matters and should not be construed as a limitation on the issues on which public comment may be submitted.

Questions

(1) Does the existence of the ANSI standard governing the labeling of extension ladders eliminate or greatly lessen the need for the rule?

(2) What are the benefits to consumers from the rule?

(3) What are the costs to industry imposed by the rule?

(4) Is there a continuing need for the rule or should the rule be repealed?

Authority: Sec. 18(d)(2)(B) of the Federal Trade Commission Act, 15 U.S.C. 57a(d)(2)(B).

List of Subjects in 16 CFR Part 418

Advertising, Trade practices, extension ladders.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95–12581 Filed 5–22–95; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 934

North Dakota Regulatory Program

ACTION: Proposed rule; reopening and extension of public comment period on proposed amendment.

SUMMARY: OSM is announcing receipt of revisions and additional explanatory information pertaining to a previously proposed amendment to the North Dakota regulatory program (hereinafter, the "North Dakota program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The revisions and additional explanatory information pertain to North Dakota's "Standards for Evaluation of Revegetation Success and Recommended Procedures for Pre- and Postmining Vegetation Assessments." The amendment is intended to revise this document to be consistent with the Federal regulations and to improve operational efficiency.

DATES: Written comments must be received by 4:00 p.m., m.d.t., June 7, 1995.

ADDRESSES: Written comments should be mailed or hand delivered to Guy Padgett at the address listed below.

Copies of the North Dakota program, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Casper Field Office.

Guy Padgett, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 100 East B Street, Room 2128, Casper, WY 82601–1918, Telephone: (307) 261–5776

Edward J. Englerth, Director, Reclamation Division, North Dakota Public Service Commission, Capitol Building, Bismarck, ND 58505–0165, Telephone: (701) 224–4092

FOR FURTHER INFORMATION CONTACT: Guy Padgett, Telephone: (307) 261–5776.

SUPPLEMENTARY INFORMATION:

I. Background on the North Dakota Program

On December 15, 1980, the Secretary of the Interior conditionally approved the North Dakota program. General background information on the North Dakota program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the North Dakota program can be found in the December 15, 1980, **Federal Register** (45 FR 82214). Subsequent actions concerning North Dakota's program and program amendments can be found at 30 CFR 934.12, 934.13, 934.15, 934.16, and 934.30.

II. Proposed Amendment

By letter dated February 17, 1994, North Dakota submitted a proposed amendment to its program pursuant to SMCRA (administrative record No. ND–U–01). North Dakota submitted the proposed revisions to its "Standards for Evaluation of Revegetation Success and Recommended Procedures for Pre- and Postmining Vegetation Assessments" (hereinafter, the "revegetation success document") in response to required program amendments at 30 CFR 934.16 (b) through (i), (w), and (x), and at its own initiative.

OSM announced receipt of the proposed amendment in the March 14, 1994, **Federal Register** (49 FR 11744), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (administrative record No. ND–U–05). Because no one requested a public hearing or meeting, none was held. The public comment period ended on April 13, 1994.

During its review of the amendment, OSM identified concerns and notified North Dakota of these concerns by letter dated September 9, 1994 (administrative record No. ND–U–10). North Dakota responded in a letter dated December 21, 1994, by submitting a revised amendment and additional explanatory information (administrative record No. ND–U–14) that addressed the concerns identified by OSM.

OSM announced receipt of the December 21, 1994, revised amendment in the January 19, 1995, **Federal Register** (60 FR 3790) and invited public comment on its adequacy (administrative record No. ND–U–15). The public comment period ended on February 3, 1995.

Subsequently, North Dakota requested a meeting with OSM to discuss its December 21, 1994, revisions that were made in response to OSM's September 9, 1994, issue letter. OSM and North Dakota met on April 11, 1995 (administrative record No. ND–U–16). North Dakota, by letter dated May 11, 1995 (administrative record No. ND–U–17), submitted, at its own initiative, additional revisions and explanatory information to its revegetation success document.

In its May 11, 1995, revised amendment, North Dakota proposes (1) A county-wide correction factor to be used with the U.S. Natural Resources Conservation Service (NRCS) yield information to adjust for climatic yield conditions on land reclaimed for use as cropland or prime farmland, (2) deletion of the allowance for "auxiliary shelterbelts" without revegetation success standards on land reclaimed for use as shelterbelts, (3) addition of the ability for North Dakota to require, by permit condition, shelterbelts as a postmining land use that meet the success standards in its revegetation success document, (4) addition of the allowance for tree and shrub stocking standards approved by the State Game and Fish Department and the State Forest Service, as well as by the U.S. NRCS, on land reclaimed for use as shelterbelts, (5) addition of the requirement that all species in the approved seed mixture must be present at the time of final bond release on land reclaimed for use as tame pastureland, (6) clarification that actual sample means must be used in formulas that determine sample size when measuring success of revegetation for bond release, (7) addition of specifications for size and location of representative strips used to demonstrate the restoration of soil productivity on land reclaimed for use as cropland and prime farmland, (8) deletion of the State wetland classification system and retention of the Stewart and Kantrud system of wetland classification for premining assessments on land to be reclaimed for use as fish and wildlife habitat, (9) clarification of the requirement that sampling techniques for measuring success of woody plant density use a 90-percent statistical confidence interval, (10) allowance as a normal conservation practice the voluntary planting of trees and shrubs on agricultural land at the request of the land owner or for fish and wildlife enhancement, and (11) clarification that a *single* reinforced interseeding may be allowed without restarting the liability period on land reclaimed for use as native grazing land.

III. Public Comment Procedures

OSM is reopening the comment period on the proposed North Dakota program amendment to provide the public an opportunity to reconsider the adequacy of the proposed amendment in light of the additional materials submitted. In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the North Dakota program.

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Casper Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

IV. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 12550) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 934

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 17, 1995.

Richard J. Seibel,

Regional Director, Western Regional Coordinating Center.

[FR Doc. 95–12574 Filed 5–22–95; 8:45 am]

BILLING CODE 4310–05–M

Office of the Secretary

43 CFR Part 11

RIN 1090–AA43

Natural Resource Damage Assessments; Type B—Nonuse Values

AGENCY: Department of the Interior.

ACTION: Notice of correction to semiannual regulatory agenda.

SUMMARY: On May 8, 1995, the semiannual regulatory agenda was published. The agenda incorrectly listed the Department of the Interior's Natural Resource Damage Assessments; Type B—Nonuse Values rulemaking as a completed/long-term action that had been withdrawn on March 31, 1995. 60 FR 23408, 23419. This rulemaking has neither been withdrawn nor completed. A proposed rule was issued on May 4, 1994. 59 FR 23097. The comment period closed on October 7, 1994. 59 FR 32175. The Department is currently reviewing and considering the comments received.

Dated: May 16, 1995.

Willie R. Taylor,

Director, Office of Environmental Policy and Compliance.

[FR Doc. 95–12514 Filed 5–22–95; 8:45 am]

BILLING CODE 4310–RG–M

FEDERAL MARITIME COMMISSION

46 CFR Part 514

[Docket No. 95–06]

Service Contract Filing Requirements—Miscellaneous Revisions

AGENCY: Federal Maritime Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Maritime Commission proposes to amend its rules to provide an optional, abbreviated service contract format and to require service contracts to include certain identifying information concerning the signatories. This should reduce duplication and Commission and carrier costs, as well as facilitate automation of the Commission's service contract records.

DATES: Comments due June 22, 1995.

ADDRESSES: Comments (original and 15 copies) are to be submitted to: Joseph C. Polking, Secretary, Federal Maritime Commission, 800 North Capitol Street, N.W., Washington, D.C. 20573, (202) 523–5725.

FOR FURTHER INFORMATION CONTACT: Bryant L. VanBrakle, Director, Bureau of Tariffs, Certification and Licensing, Federal Maritime Commission, 800 North Capitol Street, N.W., Washington, D.C. 20573, (202) 523–5796.

SUPPLEMENTARY INFORMATION: Service contracts subject to section 8(c) of the Shipping Act of 1984 ("1984 Act" or "the Act"), 46 U.S.C. app. 1707(c),[1] are filed confidentially with the Federal Maritime Commission ("FMC" or "Commission").[2] Prior to such filing, a statement of each contract's essential terms ("ET") is filed electronically in the Commission's Automated Tariff Filing and Information System ("ATFI"), made available to the general public in tariff format, and offered to all similarly situated shippers.[3]

ETs have been required to be filed in ATFI since November 1993. However, the associated confidential service contracts continue to be filed in paper format and can often be of considerable length. There is significant duplication between a service contract's text and that of its corresponding ET. To the extent the overlap between these interdependent documents can be minimized, the rate of error between the two documents should also be reduced.

Because service contracts are filed confidentially with the Commission, they must be secured under lock and key. Given the rapidly rising number of contract filings, and their sheer physical bulk, these documents are consuming an ever larger portion of the Commission's limited secured storage space.

Apart from the foregoing, the Commission is also proposing to address a ministerial detail relating to the content of service contracts. The current service contract rules do not require contracts to set forth the signatories' addresses. This has resulted in difficulty in clearly identifying shipper parties, including named affiliates, to certain service contracts, and, in some cases, hampered the Commission's investigative efforts.

The Commission therefore proposes to afford service contract parties the option of filing their service contracts in an abbreviated format, on condition that such filings incorporate by reference the corresponding ATFI ETs; certify that said ET contains all aspects of the parties' contract which are not set forth in the service contract filing; and set forth certain specific information. The FMC also proposes to require service contracts to set forth the parties' names, titles and addresses.

The collection of information requirements contained in this proposed rule have been submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511), as amended. Public reporting burden for this collection of information is estimated to decrease to an average of one manhour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Bruce A. Dombrowski, Deputy Managing Director, Federal Maritime Commission, Washington, D.C. 20573 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

The Chairman of the Commission certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, that this proposed rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units, and small governmental jurisdictions.

List of Subjects in 46 CFR Part 514

Administrative practice and procedure, Antitrust, Automatic data processing, Cargo vessels, Confidential business information, Contracts, Exports, Freight, Freight forwarders, Imports, Maritime carriers, Penalties, Rates and fares, Reporting and recordkeeping requirements.

Therefore, pursuant to 5 U.S.C. 553 and sections 3, 8, and 17 of the Shipping Act of 1984 (46 U.S.C. app. 1702, 1707 and 1716), the Federal Maritime Commission proposes to amend Part 514 of Title 46 of the Code of Federal Regulations as follows:

PART 514—[AMENDED]

1. The authority citation for Part 514 continues to read:

Authority: 5 U.S.C. 552 and 553; 31 U.S.C. 9701; 46 U.S.C. app. 804, 812, 814–817(a), 820, 833a, 841a, 843, 844, 845, 845a, 845b, 847, 1702–1712, 1714–1716, 1718, 1721, and 1722; and sec. 2(b) of Pub. L. 101–92, 103 Stat. 601.

2. Section 514.7 is amended by revising paragraphs (h)(1)(v) and (h)(1)(vi) and adding paragraph (h)(2)(i)(C) to read as follows:

[1] A service contract is defined by section 3(21) of the Act as:

"* * * a contract between a shipper and an ocean common carrier or conference in which the shipper makes a commitment to provide a certain minimum quantity of cargo over a fixed time period, and the ocean common carrier or conference commits to a certain rate or rate schedule as well as a defined level—such as assured space, transit time, port rotation, or similar service features; the contract may also specify provisions in the event of nonperformance on the part of either party."

[2] Section 8(c) of the 1984 Act provides:

"* * * each [service] contract entered into * * * shall be filed confidentially with the Commission, and at the same time, a concise statement of its essential terms shall be filed with the Commission and made available to the general public in tariff format, and those essential terms shall be available to all shippers similarly situated. The essential terms shall include—

(1) the origin and destination port ranges in the case of port-to-port movements, and the origin and destination geographic areas in the case of through intermodal movements;

(2) the commodity or commodities involved;

(3) the minimum volume;

(4) the line-haul rate;

(5) the duration;

(6) service commitments; and

(7) the liquidated damages for nonperformance, if any.

[3] This requirement is implemented in the Commission's rules and regulations at 46 CFR 514.7(f)(1).

§ 514.7 Service contracts in foreign commerce.

* * * * *

(h) * * *

(1) * * *

(v) The true and complete names and addresses of the contract parties and the typewritten names, titles and addresses of the representatives signing the contract for the parties. Any further references in the contract to such parties shall be consistent with the first reference (e.g., (exact name), "carrier," "shipper," or "association," etc.); and

(vi) The true and complete names and addresses of every affiliate of each contract party named under paragraph (h)(1)(v) of this section entitled to receive or authorized to offer services under the contract, except that in the case of a contract entered into by a conference or shippers' association, individual members need not be named unless the contract includes or excludes specific members. In the event the list of affiliates is too lengthy to be included on the first page, reference shall be made to the exact location of such information.

* * * * *

(2) * * *

(i) * * *

(C) Section 514.7(h)(2)(i)(A) does not apply to a service contract that incorporates by reference all of the associated essential terms filing as published in ATFI, provided that the parties certify that, other than for those provisions set forth in the filed service contract, such essential terms filing sets forth the parties' true and complete contract.[1]

* * * * *

By the Commission.

Joseph C. Polking,

Secretary.

Exhibit II to Part 514

Sample Abbreviated Format Service Contract

Service Contract No.: SC 1–95
FMC File No.: 50,000
Essentials Terms No.: ET 1–95
Amendment No.: _____
Service Contract Essential Terms Publication No.: 003
Tariff(s) of General Applicability No.: 001, 002
Carrier/Conference Name: Efficient Liner Transportation, Inc.
Carrier/Conference Address: 1227 Seaway Drive, Washington, DC 20573

and

Shipper Name: ABC Electronics Company
Shipper Address: 7221 Happiness Lane, New York, NY 10001

This is a service contract pursuant to the Shipping Act of 1984 (46 U.S.C. app. 1701 et seq.) and FMC rules at 46 C.F.R. Part 514, between "CARRIER/CONFERENCE" and "SHIPPER" parties named herein. The contract parties certify that the terms set forth herein and the essential terms as published in Carrier/Conference Service Contract Essential Terms Tariff No. 003, ET No. 1–95, in the Federal Maritime Commission's Automated Tariff Filing and Information System, constitute the true and complete copy of all aspects of this contract and are hereby incorporated by reference.

Further, shipper party named herein certifies its status and that of any affiliate(s)/subsidiary(ies) named herein as (check appropriate box(es):

☐ NVOCC
☐ Shippers' Association
☐ Owner of Cargo
☐ Other (Please specify)

Records maintained to support shipments under this service contract are: bills of lading, shipping manifests, and other related written correspondence between contract parties.

Contact person for records in the event of a request by the Federal Maritime Commission: Efficient Liner Transportation, Inc., Traffic Manager, 1227 Seaway Drive, Washington, DC 20573, (202) 523–5856.

_____
(Carrier/Conference Signature)
Date _____
Carl T. Booker, President
Efficient Liner Transportation, Inc.

_____
(Shipper Signature)
Date _____
Vanessa M. Banks, President
ABC Electronics Company
Affiliate of shipper: Quality Compact Discs, Inc.
Affiliate's address: 7221–A Happiness Lane, New York, NY 10001

[1] See Exhibit II of this part for an example of an abbreviated format service contract.

[FR Doc. 95–12512 Filed 5–22–95; 8:45 am]

BILLING CODE 5750–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AD08

Migratory Bird Harvest Information Program

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed Rule; Extension of Comment Period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the extension of the comment period for Service's March 15, 1995, Proposed Rule published in the **Federal Register** from April 1 to May 31, 1995.

DATES: The comment period for the proposed framework will end on May 31, 1995.

ADDRESSES: Written comments should be sent to: Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, 10815 Loblolly Pine Drive, Laurel, Maryland 20708–4028. Comments received will be available for public inspection during normal business hours in Building 158, 10815 Loblolly Pine Drive (Gate 4, Patuxent Environmental Science Center), Laurel, Maryland 20708–4028.

FOR FURTHER INFORMATION CONTACT: Paul I. Padding, Office of Migratory Bird Management, (301) 497–5980, FAX (301) 497–5981.

SUPPLEMENTARY INFORMATION: The Service announced in the March 15, 1995, **Federal Register** (60 FR 14194) the planned expansion of the Migratory Bird Harvest Information Program (Program) to include the States of Michigan, Oklahoma, and Oregon beginning in the 1995–96 hunting season, and minor modifications to the Program. This Program provides annually a nationwide sample frame of migratory bird hunters, from which representative samples of hunters are selected and asked to participate in a voluntary survey. State wildlife agencies provide a sample frame of hunters by annually collecting the name, address, date of birth, and a brief summary of migratory bird hunting activity from the previous year from each licensed migratory bird hunter in their State. States forward this information to the Service, and the Service samples hunters and conducts national hunter activity and harvest surveys.

Dated: May 16, 1995.

George T. Frampton, Jr.

Assistant Secretary for Fish and Wildlife and Parks

[FR Doc. 95–12508 Filed 5–22–95; 8:45 am]

BILLING CODE 4310–55–F

Notices

Federal Register
Vol. 60, No. 99
Tuesday, May 23, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to biosys of Palo Alto, California an exclusive license to U.S. Patent No. 5,061,697 issued October 29, 1991, (S.N. 07/389,090), "Adherent Autoencapsulating Spray Formulations of Biocontrol Agents." Notice of Availability was published in the Federal Register on December 19, 1989.

DATES: Comments must be received on or before July 24, 1995.

ADDRESSES: Send comments to USDA, ARS, Office of Technology Transfer, Room 401, Building 005, BARC-West, Baltimore Boulevard, Beltsville, Maryland 20705–2350.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights to this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as biosys has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

R.M. Parry, Jr.,
Assistant Administrator.

[FR Doc. 95–12507 Filed 5–22–95; 8:45 am]
BILLING CODE 3410–03–M

Food Safety and Inspection Service

[Docket No. 95–007N]

International Standard-Setting Activities

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice informs the public of the sanitary and phytosanitary standard-setting activities of the Codex Alimentarius Commission (Codex), in accordance with section 491 of the Trade Agreements Act of 1979, as amended by the Uruguay Round Agreements Act, Public Law 103–465, 108 Stat. 4809 (1994), and seeks comments on standards currently under consideration and recommendations for new standards. This notice covers the time periods from June 1, 1994, to May 31, 1995, and May 31, 1995, to June 1, 1996.

ADDRESSES: Submit written comments in triplicate to Diane Moore, Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 4352–S, Washington, DC 20250–3700. Please state that your comments refer to Codex and, if your comments relate to specific Codex committees, please identify those committees in your comments. All comments submitted in response to the sanitary and phytosanitary standard-setting activities of Codex will be available for public inspection in the Docket Clerk's Office between 8:30 a.m. and 1 p.m., and 2 p.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Dr. Marvin A. Norcross, U.S. Coordinator for Codex Alimentarius, Office of the U.S. Codex Alimentarius, U.S. Department of Agriculture, Food Safety and Inspection Service, West End Court, Room 311, Washington, DC 20250; (202) 254–2517. For information pertaining to particular committees, the delegate of that committee may be contacted. (A complete list of U.S. delegates and alternate delegates can be found in *Appendix 1* to this notice.)

SUPPLEMENTARY INFORMATION:

Background

The World Trade Organization (WTO) was established on January 1, 1995, as the common international institutional framework for the conduct of trade relations among its members in matters related to the Uruguay Round Agreements. The WTO is the successor organization to the General Agreements on Tariffs and Trade (GATT). U.S. membership in the WTO was approved by Congress when it enacted the Uruguay Round Agreements Act, which was signed into law by the President on December 8, 1994. Pursuant to section 491 of the Trade Agreements Act of 1979, as amended, the President is required to designate an agency to be responsible for informing the public of the sanitary and phytosanitary (SPS) standard-setting activities of each international standard-setting organization, the Codex Alimentarius Commission (Codex), International Office of Epizootics (OIE), and the International Plant Protection Convention (IPPC). The President, pursuant to Proclamation No. 6780 of March 23, 1995 (60 FR 15845), designated the U.S. Department of Agriculture as the agency responsible for informing the public of sanitary and phytosanitary standard-setting activities of each international standard-setting organization. The Secretary of Agriculture is delegating to the Under Secretary for Food Safety the responsibility to inform the public of the SPS standard-setting activities of Codex. The Acting Under Secretary for Food Safety has, in turn, assigned the responsibility for informing the public to the Office of U.S. Codex Alimentarius in the Food Safety and Inspection Service (FSIS).

The Codex Alimentarius Commission (Codex), was created in 1962 by two U.N. organizations, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). Codex is the major international organization for encouraging fair international trade in food and protecting the health and economic interests of consumers. Through adoption of food standards, codes of practice, and other guidelines developed by its committees and by promoting their adoption and implementation by governments, Codex seeks to ensure that the world's food supply is sound, wholesome, free from adulteration, and correctly labeled. In the United States, FSIS, USDA; the Food and Drug Administration (FDA), Department of Health and Human Services (HHS), and the Environmental Protection Agency (EPA) manage and carry out U.S. Codex activities. A supplemental **Federal Register** notice on the acceptance procedures for Codex standards will be published at a later date.

As the agency responsible for informing the public of the sanitary and phytosanitary standard-setting activities of Codex, FSIS will be publishing this notice in the **Federal Register** annually, setting forth the following information:

1. The sanitary or phytosanitary standards under consideration or planned for consideration; and
2. For each sanitary or phytosanitary standard specified:
   a. A description of the consideration or planned consideration of the standard;
   b. Whether the United States is participating or plans to participate in the consideration of the standard;
   c. The agenda for United States participation, if any; and
   d. The agency responsible for representing the United States with respect to the standard.

TO OBTAIN COPIES OF THOSE STANDARDS LISTED IN THIS NOTICE THAT ARE UNDER CONSIDERAITON BY CODEX, PLEASE CONTACT THE CODEX DELEGATE OR THE OFFICE OF U.S. CODEX ALIMENTARIUS. This notice also solicits public comment on those standards that are under consideration and on recommendations for new standards. All comments received will be circulated by FSIS to the U.S. delegate on the relevant Codex committee, and, whent he delegate is not from the agency responsible for representing the United States with respect to the standard, also to the agency that will be responsible for representing the United States with respect to the standard. The delegage, in conjuction with the responsible agency, will take the comments received into account in paritcipating in the consideration of the standards and in proposing matters to be considered by Codex.

The information proved below describes the status of Codex standard-setting activities by the Codex Committees for the two year period from June 1, 1994 to June 1, 1996. In addition, the following information is included with this **Federal Register** notice:

Appendix 1. List of U.S. Codex Officials (includes U.S. delegates and alternate delegates).
Appendix 2. Timetable fo Codex Sessions (June 1994 through June 1996).
Appendix 3. Definitions for Purpose of Codex Alimentarius.
Appendix 4. Uniform Procedure for the Elaboration of Codex Standards and Related Texts.
Appendix 5. Nature of Codex Standards.
Appendix 6. Provisional Agenda of the Joint FAO/WHO Food Standards Program, Codex Alimentarius Commission, 21st Session.

Codex committee	Standard	Status of consideration	U.S. participation/agenda	Responsible agency
Residues of Veterinary Drugs in Foods (to be considered at Twenty-first Session of the Codex Alimentarius Commission) (CAC) Ref. Alinorm 95/31:	Sulfadimizine	MRLs Under Consideration at Step 8.	Yes	HHS/FDA.
	Flubendazole	MRLs Under Consideration at Step 8.	Yes	HHS/FDA.
	Thiabendazole	MRL Under Consideration at Step 8.	Yes	HHS/FDA.
	Isometamidium	MRLs Under Consideration at Step 8.	Yes	HHS/FDA.
	Bovine Somatotropins	MRLs Under Consideration at Step 8.	Yes	HHS/FDA.
	Triclabendazole	MRLs Under Consideration at Step 7.	Yes	HHS/FDA.
	Levamisole	MRLs Under Consideration at Step 4&5.	Yes	HHS/FDA.
	Diminazene	MRLs Under Consideration at Step 5.	Yes	HHS/FDA.
	Carazolol	MRLs Under Consideration at Step 4.	Yes	HHS/FDA.
	Spiramycin	MRLs Under Consideration at Step 4.	Yes	HHS/FDA.

Done at Washington, DC, on May 17, 1995.

Michael R. Taylor,
Acting Under Secretary for Food Safety.

Codex Committee on Residues of Veterinary Drugs in Foods

The Codex Committee on Residues of Veterinary Drugs in Foods was established in 1986. The Committee determines priorities for the consideration of residues of veterinary drugs in foods and recommends maximum levels of such substances. A Codex Maximum Limit for Residues of Veterinary Drugs (MRLVD) is the maximum concentration of residue resulting from the use of a veterinary drug (expressed in mg/kg or µg/kg on a fresh weight basis) that is recommended by the Codex Alimentarius Commission to be legally permitted or recognized as acceptable in or on a food.

An MRLVD is based on the type and amount of residue considered to be without any toxicological hazard for human health as expressed by the Acceptable Daily Intake (ADI)*, or on the basis of a temporary ADI that utilizes an additional safety factor. An MRLVD also takes into account other relevant public health risks as well as food technological aspects.

When establishing an MRLVD, consideration is also given to residues that occur in food of plant origin and/or the environment. Furthermore, the MRLVD may be reduced to be consistent with good practices in the use of veterinary drugs and to the extent that practical and analytical methods are available.

Codex committee	Standard	Status of consideration	U.S. participation/agenda	Responsible agency
	Febantel	MRLs Under Consideration at Step 4.	Yes	HHS/FDA.
	Fenbendazole	MRLs Under Consideration at Step 4.	Yes	HHS/FDA.
	Oxfendazole	MRLs Under Consideration at Step 4.	Yes	HHS/FDA.
	Spectinomycin	MRLs Under Consideration at Step 4.	Yes	HHS/FDA.
	Dexamethasone	MRLs Under Consideration at Step 4.	Yes	HHS/FDA.

*Acceptable Daily Intake (ADI): An estimate by the Joint FAO/WHO Expert Committee on Food Additives (JECFA) of the amount of a veterinary drug, expressed on a body weight basis, that can be ingested daily over a lifetime without appreciable health risk (standard man = 60 kg).

Food Additives and Contaminants

The Codex Committee on Food Additives and Contaminants establishes or endorses permitted maximum or guideline levels for individual food additives, contaminants, and naturally occurring toxicants in food and animal feed.

The following matters contained in Alinorm 95/12A will be brought to the Twenty-first session of the Codex Alimentarious Commission in July, 1995:

► Proposed Draft General Standard for Food Additives, Annex A (Guidelines for the Estimation of Appropriate Levels of Use of Food Additives) for adoption at Step 5; (Note: The draft standard is being developed in stages according to food additive functional classes, beginning with antioxidants and preservatives (at Step 4); see attached list.)

► *Specifications for sulfuric acid, potassium sodium L(+)-tartrate, sodium dihydrogen phosphate and sodium L(+)-tartrate; (*Not in Step Procedure)

► Proposed Draft Preamble to the General Standard for Contaminants and Toxins in Foods for adoption at Step 8; (Note: A number of potential contaminants are currently under consideration (at Step 4) to determine the need for establishing maximum allowable levels in foods; see attached list.)

► Proposed Draft General Standard for Contaminants and Toxicants in Food (excluding preamble), Annex B at Step 5;

► Position paper on aflatoxin control at Step 1;

► Draft Maximum Level for Aflatoxin M1 in Milk at Step 7;

► Proposed Draft Code of Practice for the Reduction of Aflatoxins in Raw Materials and Supplementary Feeding stuffs for Milk-Producing Animals at Step 3;

► Position Paper on Ochratoxins at Step 1;

► Proposed Draft Code of Practice on Source Directed Measures to Reduce Contamination of Food Stuffs at Step 3; and

► Proposed Draft Standard for Lead at Step 3.

AGENCY RESPONSIBLE: HHS/FDA
U.S. PARTICIPATION: Yes

Food Additives and Contaminants

For the purposes of Codex, a food additive means any substance not normally consumed as a food by itself and not normally used as a typical ingredient in the food, whether or not it has nutritive value, the intentional addition of which to food for a technological (including organoleptic) purpose in the manufacture, processing, preparation, treatment, packing, packaging, transport, or holding of such food results, or may be reasonably expected to result, (directly or indirectly) in it or its by-products becoming a component of or otherwise affecting the characteristics of such foods. The food additive term does not include "contaminants" or substances added to food for maintaining or improving nutritional qualities.

The General Standard for Food Additives (GSFA) will set forth maximum levels of use of food additives in various foods and food categories. The maximum levels will be based on the food additive provisions of previously established Codex commodity standards, as well as on the use of the additives in non-standardized foods.

Only those food additives that have been found to be acceptable by the Joint FAO/WHO Expert Committee on Food Additives (JECFA) will be included in the general Standard for Food Additives. The draft GSFA, which is being developed in stages, currently covers only those JECFA-reviewed food additives that are used as antioxidants and preservatives. These JECFA-reviewed food additives are listed in the table below.

Codex committee	Substance	Status of consideration	U.S. participation/agenda	Responsible agency
(Food Additives and Contaminants) Ref. Alinorm 95/12A.	Acetic Acid	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Anoxomer	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Ascorbic Acid	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Ascorbyl Palmitate	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Ascorbyl Stearate	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Benzoic Acid	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Benzoyl Peroxide	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Butylated Hydroxyanisole	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.

Codex committee	Substance	Status of consideration	U.S. participation/agenda	Responsible agency
	Butylated Hydroxytoluene	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Calcium Acetate	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Calcium Ascorbate	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Calcium Benzoate	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Calcium Disodium Ethylenediaminetetraacetate.	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Calcium Hydrogen Sulphite	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Calcium Propionate	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Calcium Sorbate	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Calcium Sulphite	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Carbon Dioxide	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Citric Acid	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Dilauryl Thiodipropionate	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Dimethyl Decarbonate	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Diphenyl	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Disodium Ethylenediaminetetraacetate.	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Dodecyl Gallate	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Erythorbic Acid	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Ethyl p-Hydroxybenzoate	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Formic Acid	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Glucose Oxidase from Aspergillus niger.	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Guaiac Resin	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Hexamethylene Tetramine	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Isopropyl Citrates	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Lecithin	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Lysozyme	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Methyl p-Hydroxybenzoate	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Nisin	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Octyl Gallate	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Ortho-Phenylphenol	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Oxystearin	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Pimaricin (Natamycin)	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Potassium Acetate	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Potassium Ascorbate	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Potassium Benzoate	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Potassium Hydrogen Sulphite	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Potassium Lactate	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.

Codex committee	Substance	Status of consideration	U.S. participation/agenda	Responsible agency
	Potassium Metabisulphite	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Sodium Nitrite	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Sodium o-Phenylphenol	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Sodium Propionate	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Sodium Sorbate	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Sodium Sulphite	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Sodium Thiosulphate	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Sorbic Acid	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Stannous Chloride	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Sulphur dioxide	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	tert-Butylhydroquinone	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Thiodipropionic Acid	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Tocopherols Concentrate, Mixed	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Tocopherols, d-Alpha	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Tocopherols, d-Alpha, Concentrate	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.

Food Additives and Contaminants

A contaminant means any substance not intentionally added to food, which is present in such food as a result of the production (including operations carried out in crop husbandry, animal husbandy and veterinary medicine), manufacture, processing, preparation, treatment, packing, packaging, transport, or holding of such food or as a result of environmental contamination. The term contaminant does not include insect fragments, rodent hairs, and other extraneous matter.

The *Codex maximum level* (ML) for a contaminant or naturally occurring toxicant in a food or feed commodity is the maximum concentration of that substance recommended by the Codex Alimentarius Commission to be legally permitted in that commodity. The ML is intended to ensure free movement of food in international trade while protecting the health of the consumer.

The General Standard for Contaminants and Toxins in Foods will establish maximum levels for contaminants in foods based on the following considerations: toxicological data, human exposure estimates, availability of analytical procedures, fair trade and technological implications, regional variations, risk assessment, and risk management.

The criteria for inclusion of a maximum level for a contaminant in a food are that: (a) Consumption of the contaminated food presents a significant risk to consumers; and (b) the existence of actual problems in trade of food. The contaminants currently being examined to determine whether they meet these criteria are listed below.

Codex committee	Substance	Status of consideration	U.S. participation/agenda	Responsible agency
(Food Additives and Contaminants) Ref. Alinorm 95/12A.	Aluminum	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Antimony	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Arsenic	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Barium	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Beryllium	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Cadmium	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Cobalt	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Chromium	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Copper	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.

Codex committee	Substance	Status of consideration	U.S. participation/agenda	Responsible agency
	Iron	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Lead	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Manganese	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Mercury	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Molybdenum	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Nickel	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Tin	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Thallium	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Zinc	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Fluor (compounds)	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Bromine (compounds)	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Bromide ion	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Iodine (compounds)	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Iodide ion	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Selenium (compounds)	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Nitrogen (compounds)	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Nitrate ion	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Nitrite ion	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Asbestos	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Chlorinated aliphatic hydrocarbons	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Monochloromethane (methyl chloride).	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Dichloromethane	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Trichloromethane (chloroform)	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Tetrachloromethane	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Monochloroethene (vinylchloride)	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	1,1-Dichloroethane	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	1,2-Dichloroethane	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Dichloroethene	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	1,1,1-trichloroethane	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Trichloroethene	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Tetrachloroethene	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Halogenated aliphatic hydrocarbons (other than chlorinated).	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Aromatic halogenated hydrocarbons.	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Pentachlorobenzene	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Polychlorotbiphenyls (PCBs)	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Polychloroterphenyls (PCTs)	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.

Codex committee	Substance	Status of consideration	U.S. participation/agenda	Responsible agency
	Polybromobiphenyls (PBBs)	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Tetrachlorobenzyltoluenes (TCBTs).	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Chlorinated dibenzodioxins and dibenzofurans.	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Brominated dibenzodioxins and dibenzofurans.	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Chlorinated alcohols and related compounds.	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	1,3-dichloro-2-propanol	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	3-chloro-1,2-propanediol	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	3-chloro-1,2-propanediol	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Chlorinated phenols	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Other chlorinated aromatic compounds.	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Other brominated aromatic compounds.	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Aliphatic hydrocarbons	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Hexane	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Aromatic hydrocarbons	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Benzene	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Toluene	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Styrene	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Polycyclic aromatic hydrocarbons (PAHs).	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Heterocyclic compounds	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Alcohols and ethers	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Aldehydes and ketones	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Carbonic acids and esters	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Phthalate esters	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Amino compounds	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Nitrile compounds	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Acrylonitrile	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Methacrylonitrile	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Nitrosamines	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Detergents and disinfectants	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Other organic compounds	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Ethylcarbamate	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Aflatoxins	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Aflatoxins, total	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Aflatoxin B_1	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Aflatoxin M_1	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Ochtratoxins	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.

Codex committee	Substance	Status of consideration	U.S. participation/agenda	Responsible agency
	Trichothecenes	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	T–2 toxin	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Fusarenon-X	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Monacetoxyscirpenol	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Diacetoxyscirpenol.	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA
	Neosolaniol	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Verrucarin	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Nivalenol	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Deoxynivalenol	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Other fusarium toxins	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Fumonisin	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Monififormin	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Zearalenon	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Ergot alkaloids	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Other mycotoxins	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Patulin	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Sterigmatocystin	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Luteoskyrin	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Phycotoxins	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	DSP	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	PSP	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Bacterial toxins	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Food processing related toxins	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Glycoalkaloids	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Solanine	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Chaconine	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Tomatine	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Glucosinolates	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Cyanogenic glycosides	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Other food plant related toxins	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Safrole	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Agaritin	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Erucic acid	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Animal inherent food toxins	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Americium	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Cesium 134	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.

Codex committee	Substance	Status of consideration	U.S. participation/agenda	Responsible agency
	Cesium 137	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Cobalt	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Iodine	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Polonium	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Plutonium	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Radium	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Ruthenium	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Strontium	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Tritium	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.
	Potassium	Maximum Levels Under Consideration at Step 4.	Yes	HHS/FDA.

Codex Committee on Pesticide Residues

The Codex Committee on Pesticide Residues establishes maximum limits for pesticide residues for specific food items or in groups of food. A Codex Maximum Limit for Pesticide Residues (MRLP) is the maximum concentration of a pesticide residue (expressed as mg/kg), recommended by the Codex Alimentarius Commission to be legally permitted in or on food commodities and animal feeds. MRLs are based on toxicological effects and on Good Agricultural Practice (GAP) data and foods derived from commodities that comply with the respective MRLPs are intended to be toxicologically acceptable.

Codex MRLPs, which are primarily intended to apply in international trade, are derived from reviews conducted by the Joint Meeting on Pesticide Residues (JMPR) following:

(a) Toxicological assessment of the pesticide and its residue; and

(b) Review of residue data from supervised trials and supervised uses including those reflecting national good agricultural practices. Data from supervised trials conducted at the highest nationally recommended, authorized, or registered uses are included in the review. In order to accommodate variations in national pest control requirements, Codex MRLPs take into account the higher levels shown to arise in such supervised trials, which are considered to represent effective pest control practices.

Consideration of the various dietary residue intake estimates and determinations both at the national and international level in comparison with the ADI,* should indicate that foods complying with Codex MRLPs are safe for human consumption.

Codex committee	Standard	Status of consideration	U.S. participation/agenda	Responsible agency
Pesticide Residues (to be considered at the 27th Session of the Codex Committee on Pesticide Residues Ref. CL 1994/24–PR).	Aldicarb	MRL Under Consideration at Step 6.	Yes	EPA.
	Benalaxyl	MRL Under Consideration at Step 3.	Yes	EPA.
	Bentazone	MRLs Under Consideration at Step 6.	Yes	EPA.
	Bromopropylate	MRLs Under Consideration at Step 3 and Withdrawals.	Yes	EPA.
	Carbofuran	MRL Under Consideration (Withdrawal)[1].	Yes	EPA.
	Chlorothalonil	MRLs Under Consideration at Step 3 and 6 and Withdrawals.	Yes	EPA.
	Cycloxydim	MRLs Under Consideration at Step 3.	Yes	EPA.
	Cyfluthrin	MRL Under Consideration at Step 6.	Yes	EPA.
	DDT	MRLs Under Consideration at Step 3.	Yes	EPA.
	Diazinon	MRLs Under Consideration at Step 3 and Withdrawals.	Yes	EPA.
	Dichlorvos	MRLs Under Consideration at Step 3 and Withdrawals.	Yes	EPA.

*Acceptable Daily Intake (ADI) of a chemical is the daily intake which, during an entire lifetime, appears to be without appreciable risk to the health of the consumer on the basis of all the known facts at the time of the evaluation of the chemical by the Joint FAO/WHO Meeting on Pesticide Residues. It is expressed in milligrams of the chemical per kilogram of body weight.

Codex committee	Standard	Status of consideration	U.S. participation/agenda	Responsible agency
	Dithiocarbamates	MRLs Under Consideration at Step 3 and Withdrawals.	Yes	EPA.
	Endosulfan	MRLs Under Consideration at Step 3 and 6 and Withdrawals.	Yes	EPA.
	Ethylenethiourea	MRLs Under Consideration at Step 8.	Yes	EPA.
	Etofenprox	MRLs Under Consideration at Step 3.	Yes	EPA.
	Fenbutatinoxide	MRLs Under Consideration at Step 3 and Withdrawals.	Yes	EPA.
	Fenpropathrin	MRLs Under Consideration at Step 3.	Yes	EPA.
	Fentin	MRL Under Consideration at Step 6.	Yes	EPA.
	Flucythrinate	MRLs Under Consideration (Withdrawals).	Yes	EPA.
	Flusilazole	MRLs Under Consideration at Step 3 and 6.	Yes	EPA.
	Folpet	MRLs Under Consideration at Step 3 and withdrawals.	Yes	EPA.
	Heptachlor	MRLs Under Consideration (Withdrawals).	Yes	EPA.
	Hexaconazole	MRLs Under Consideration at Step 6.	Yes	EPA.
	Methidathion	MRL Under Consideration at Step 3.	Yes	EPA.
	Monocrotophos	MRL Under Consideration at Step 3.	Yes	EPA.
	Omethoate	MRLs Under Consideration at Step 3 and 6.	Yes	EPA.
	Oxydemetonmethyl	MRLs Under Consideration at Step 3 and 6.	Yes	EPA.
	Phorate	MRL Under Consideration at Step 6.	Yes	EPA.
	Procymidone	MRLs Under Consideration at Step 3 and 6.	Yes	EPA.
	Profenofos	MRLs Under Consideration at Step 6.	Yes	EPA.
	Pyrazophos	MRLs Under Consideration at Step 3.	Yes	EPA.
	Triazophos	MRLs Under Consideration at Step 3, 6, 8.	Yes	EPA.
	Vinclozolin	MRL Under Consideration at Step 6.	Yes	EPA.

[1] Withdrawal—Recommended for withdrawal from Codex (see CL 1994/24–PR).

Codex Committee on Methods of Analysis and Sampling

The Codex Committee on Methods of Analysis and Sampling serves as a coordinating body for Codex with other international groups working in methods of analysis and sampling and quality assurance systems for laboratories.

The following matters will be brought to the attention of the 21st session of the Codex Alimentarius Commission in July 1995, for adoption:

- The Proposed Revised Protocol for the Design, Conduct and Interpretation of Collaborative Studies*;
- The Proficiency Testing Harmonized Protocol for Laboratory Analysis*; and
- Five Codex General Methods of Analysis for Contaminants at Step 8.
  - ► Lead and Cadmium in Food
  - ► Copper, Iron, and Nickel in Edible Oils and Fats
  - ► Lead in Edible Oils and Fats
  - ► Tin in Canned Foods
  - ► Multiple Elements in Foodstuffs

A revised paper on the Impact of Implementation of the Proposed Criteria for Evaluating Acceptable Methods of Analysis and Other Methods of Analysis is being circulated for comments.

In addition, the Draft Codex General Guidelines and the Development of Objective Criteria For Assessing the Competence of Testing Laboratories Involved in the Import and Export Control of Foods were circulated for comment.

The reference documents is Alinorm 95/23.

*Not in Step procedure.

Responsible Agency: HHS/FDA
U.S. Participation: Yes

Codex Committee on Food Import and Export Certification and Inspection Systems

The Codex Committee on Food Import and Export Certification and Inspection Systems is charged with developing principles and guidelines for food import and export certification systems. Included in the charge are application of measures by competent authorities to provide assurance that foods comply with essential requirements. Recognition of quality assurance systems through the development of guidelines will help ensure that foods conform to the essential requirements.

The Third Session of the Committee (Alinorm 95/30A) recommended that the Proposed Draft Guidelines for the Exchange of Information on Rejections

be considered by the Twenty-first session of the Codex Alimentarius Commission in July, 1995.

Two documents to be considered for final adoption at Step 8 by the Commission are:

- Draft Principles for Food Import and Export Inspection and Certification; and
- Draft Guidelines for the Exchange of Information in Food Control Emergency Situations.

The proposed draft guidelines for the exchange of information on rejections will be considered by the Commission at Step 5. Several documents are being elaborated for future discussion by the Committee:

- Proposed Draft Guidelines on the Principle Elements in an Electronic Documentation System at Step 3;
- Proposed Draft Generic Guidelines for the Design, Operation, Assessment and Accreditation of Food Inspection and Certification Systems at Step 3;
- Application of the ISO 9000 Series to Food Inspection and Certification Systems at Step 2; and
- Proposed Draft Guidelines for the Development of Agreements between Exporting and Importing Countries at Step 1.

Responsible Agency: HHS/FDA
U.S. Participation: Yes

Codex Committee on General Principles

The Codex Committee on General Principles deals with rules and procedures referred to it by the Codex Alimentarius Commission. None of the following recommendations for changing the rules of procedure for Codex are in the Step Procedure. The reference document is Alinorm 95/33.

The Eleventh Session recommended that the Rules of Procedure of Codex Alimentarius be amended to provide that one-third of the members of the Commission would be a quorum to make recommendations for amendment of the Statutes and Rules of Procedure. The Committee also agreed to revise several sections of the Procedural Manual including General Principles of the Codex Alimentarius, Guidelines for Codex Committees, and Relations Between Commodity Committees and General Committees. These matters will be considered for adoption by the Twenty-first session of the Codex Alimentarius Commission in July 1995.

The Committee also agreed to continue its work on the integration of science and other factors in the Codex decision-making process.

Responsible Agency: USDA/FSIS
U.S. Participation: Yes

Codex Committee on Food Labelling

The Codex Committee on Food Labelling is responsible for drafting provisions on labelling applicable to all foods and to study specific labelling problems assigned by the Codex Alimentarius Commission. All of the guidelines and recommendations listed below are in Alinorm 95/22.

The Proposed Draft Guidelines on the Use of Health and Nutrition Claims will be considered by the Codex Alimentarius Commission at its Twenty-first session in July, 1995, and the Proposed Draft Guidelines on the Use of the Term "Halal" will also be considered by Commission. Both Proposed Draft Guidelines will be considered by the Commission at Step 5.

Two documents are being circulated for comment with a view to discussion at the next Committee Session:

- Draft Guidelines for the Labelling, Production, Processing, and Marketing of Organically Produced Foods at Step 6; and
- Proposed Draft Recommendations for the Labelling of Foods and Ingredients that can cause Hypersensitivity at Step 3.

In addition, the document on the Implications of Biotechnology prepared by the United States delegation for the Twenty-third Session of the Committee will be circulated for additional comment and recommendations on how the Committee should proceed.

Codex Committee on Food Hygiene

The Food Hygiene Committee drafts basic provisions on food hygiene for all foods. The term "hygiene" also includes, where applicable, microbiological specifications for food and associated methodology.

The Proposed Revised Draft Code of Practice on the General Principles of Food Hygiene, including the Annex on the Application of HACCP Systems, will be considered at Step 5 by the Codex Alimentarius Commission at its Twenty-first session in July, 1995.

In addition, the Commission will consider the Draft Code of Practice for Spices and Dried Aromatic Plants for final adoption at Step 8.

Certain documents are to be elaborated prior to the next session of the Committee in late 1995. They are:

- Revision of the Principles for the Establishment and Application of Microbiological Criteria for Foods at Step 3;
- Proposed Draft Code of Practice for Refrigerated Packaged Foods with Extended Shelf-life at Step 3;
- Proposed Draft Code of Hygienic Practice for Uncured/Unripened Cheese and Ripened Soft Cheese at Step 3;
- *Recommendations for the Control of *Listeria monocytogenes*; and
- *Implementation of Risk Assessment—Development of Guidelines on the Application of the Principles of Risk Assessment and Risk Management to Food Hygiene, Including Strategies for Their Application.

The Committee also agreed to propose that the following items be considered in its future work:

- *Implications for the Broader Application of the HACCP System:
- *Guidelines for Consumer Education in Food Hygiene
- *Code of Practice for All Foodstuffs Transported in Bulk
- *Code of Hygienic Practice for Bottled Water

All documents listed above are contained in Alinorm 95/13.

Responsible Agency: HHS/FDA, USDA/FSIS
U.S. Participation: Yes

Codex Committee on Tropical Fresh Fruits and Vegetables

The Codex Committee on Tropical Fresh Fruits and Vegetables was established in June 1988. The Committee is responsible for elaborating world-wide standards and codes of practice as may be appropriate for tropical fresh fruits and vegetables which are grown exclusively in tropical zones. Several of the standards listed below are contained in ALINORM 95/35.

The fifth session of the Committee recommended that the following standards and Code of Practice be considered by the Twenty-first session of the Codex Alimentarius Commission in July, 1995, at Step 8:

- Draft Standard for Litchi;
- Draft Standard for Avocado; and
- Draft Code of Practice for the Packaging and Transport of Tropical Fresh Fruits and Vegetables

The Committee also recommended initiation or continuation of work in the following areas:

- Draft Standard for Banana (at Step 6);
- Draft Standard for Mangosteen (at Step 5);
- Draft Standard for Oranges (at Step 3);
- Draft Standard for Limes (at Step 3);
- Draft Standard for Pummelo (at Step 3);
- Draft Standard for Tropical Asparagus (at Step 3);

*Not in the Step Procedure

- Code of Practice for the Quality Inspection and Certification of Fresh Fruits and Vegetables (at Step 3);
- Draft Standard for Guava (at Step 1);
- Draft Standard for Chayote (at Step 1);
- Draft Standard for Fresh Coconut (at Step 1);
- Preparation of a paper on the Objective Indices of Maturity in Commercial Transactions of Fruits and Vegetables (at Step 1); and
- Document concerning the Application of Quality Tolerances at Import (at Step 1)

Responsible Agency: USDA/AMS
U.S. Participation: Yes

Codex Committee on Nutrition and Foods for Special Dietary Uses

The Committee on Nutrition and Foods for Special Dietary Uses is responsible for studying nutritional problems referred by the Codex Alimentarius Commission. The Committee also drafts provisions on nutritional aspects for all foods and develops guidelines, general principles, and standards for foods for special dietary uses.

The reference document for the following standards is Alinorm 95/26. Matters which will be brought before the Twenty-first session in July, 1995, are:

- Draft Standard for Formula Foods for Use in Very Low Energy Diets for Weight Reduction for adoption at Step 8; and
- Proposed Draft Standard for Formulated Supplementary Foods and in Particular Processed Cereal Based Foods for Infants and Young Children at Step 3.

The Nineteenth Commission directed the Committee to develop a standard combining the Guidelines for Formulated Supplementary Foods for Older Infants and Young Children and the Codex Standard Processed Cereal-Based Foods for Infants and Young Children. The Committee attempted unsuccessfully to combine the guideline and the standard and is seeking approval from the Twenty-first Commission to abandon the attempt. The Committee recognizes that the Standard for Processed Cereal-Based Foods needs revision.

- Other matters to be presented to the Twenty-first Commission include:
- Proposed Draft Amendment of the Standard for Food Grade Salt to include the Iodization of Salt at Step 3;
- Proposed Draft Guidelines for Dietary Supplements of Vitamins and Minerals at Step 3;
- Proposed Draft Revised Standard for Gluten-free Foods at Step 3;
- Criteria for Definitions of Nutrient Reference Values and need for governments to submit existing data at Step 1;
- Proposed Draft Amendment to the Standard for Infant Formula to revise Vitamin B_{12} at Step 3 of accelerated procedure;
- Proposed Draft Revised Guidelines on the Inclusion of Provisions on Nutritional Quality at Step 3; and
- Revision of Standard for Infant Formula at Step 1.

The Committee obtained general support, at its last meeting, for renaming the Committee the Codex Committee on Nutrition.

Responsible Agency: HHS/FDA
U.S. Participation: Yes

Codex Committee on Fish and Fishery Products

The Fish and Fishery Products Committee is responsible for elaborating standards for fresh and frozen fish, crustaceans, and mollusks.

The following Draft Standards will be considered for adoption by the Twenty-first session of the Codex Alimentarius Commission in July, 1995, at Step 8:

- Draft General Standard for Quick Frozen Fish Fillets;
- Draft Standard for Quick Frozen Raw Squid;
- Draft Revised Standard for Quick Frozen Blocks of Fish Fillets, Minced Fish Flesh and Mixtures and Fillets and Minced Fish Flesh;
- Draft Revised Standard for Quick Frozen Finfish, Eviscerated and Uneviscerated;
- Draft Revised Standard for Quick Frozen Lobsters;
- Draft Revised Standard for Quick Frozen Fish Sticks (Fish Fingers), Fish Portions and Fish Fillets-Breaded and in Batter;
- Draft Revised Standard for Quick Frozen Shrimps or Prawns;
- Draft Revised Standard for Canned Crab Meat;
- Draft Revised Standard for Canned Finfish;
- Draft Revised Standard for Canned Salmon;
- Draft Revised Standard for Canned Sardines and Sardine-Type Products;
- Draft Revised Standard for Canned Shrimps and Prawns;
- Draft Revised Standard for Canned Tuna and Bonito; and
- Proposed Draft Revised Standard for Salted Fish and Dried Salted Fish of the Gadidae Family

The Committee agreed to have the following Codes redrafted, to take into account the recommendations of the Commission as well as to incorporate the HACCP approach at Step 3;

Proposed Draft Revised Code of Practice for Frozen Fish;
Proposed Draft Revised Code of Practice for Canned Fish;
Proposed Draft Revised Code of Practice for Frozen Shrimps and Prawns;
Proposed Draft Revised Code of Practice for Molluscan Shellfish;
Proposed Draft Revised Code of Practice for Fresh Fish;
Proposed Draft Revised Code of Practice for Smoked Fish; and
Proposed Draft Revised Code of Practice for Salted Fish;

The Committee also agreed to have the following documents elaborated at Step 3 for consideration of the next session:

- Proposed Draft Code of Practice for the Products of Aquaculture;
- Proposed Draft Code of Practice for Frozen Surimi;
- Proposed Draft Guidelines for the Sensory Evaluation of Fish and Shellfish; and
- Proposed Draft Appendix to the Guideline Levels for Methylmercury in Fish.

The reference document contained the above information is Alinorm 95/18.

Responsible Agency: HHS/FDA
U.S. Participation: Yes

Codex Committee on Cereals, Pulses and Legumes

The Codex Committee on Cereals, Pulses and Legumes is responsible for the elaboration of world-wide standards and/or codes of practice as may be appropriate for cereals, pulses, and legumes and their products.

The following Draft Standards will be considered for adoption by the Twenty-First session of the Codex Alimentarius Commission in July, 1995, at Step 8:

- Rice;
- Wheat and Durum Wheat;
- Peanuts;
- Oats; and;
- Processed Couscous.

In addition, the Commission will consider the following proposed draft Codex Standards for adoption at Step 5, with the recommendation to omit Steps 6 and 7 for adoption at Step 8:

- Wheat Flour;
- Maize (Corn);
- Whole Maize (Corn) Meal;
- Degermed Maize (Corn) Meal;
- Maize (Corn) Grits;
- Certain Pulses;
- Sorghum Grains;
- Sorghum Flour;
- Durum Wheat Semolina and Durum Wheat Flour;

► Gari;
► Whole and Decorticated Pearl Millet Grains;
► Pearl Millet Flour; and
► Edible Cassava Flour;

The Committee also agreed to advance the following document:

Proposed Draft Guideline Level and Sampling Plan for Total Aflatoxins in Peanuts intended for further Processing (at Step 5).

The reference document containing the above information is ALINORM 95/29.

Responsible Agency: HHS/FDA and USDA/GIPSA
U.S. Participation: Yes

Codex Committee on Milk and Milk Products

The Codex Committee on Milk and Milk Products was established by the Codex Alimentarius Commission at its Twentieth session. The Committee was originally established by the Food and Agriculture Organization (FAO) and the World Health Organization (WHO) in 1958. The Committee was integrated into the Joint FAO/WHO Food Standards Programme in 1962. Until 1993, the Committee was named the Joint FAO/WHO Committee of Government Experts on the Code of Principles Concerning Milk and Milk Products. The Committee is responsible for establishing international codes and standards concerning milk and milk products. All of the standards listed below are contained in Alinorm 95/11.

The First session of the Milk and Milk Products Committee recommended that the following standards be considered by the Twenty-first session of the Commission in July, 1995 at Step 5:

► Butter;
► Milkfat Products;
► Evaporated Milks;
► Sweetened Condensed Milks;
► Milk and Cream Powders;
► Cheese; and
► Whey Cheese.

The Committee also recommended that the Twenty-first Commission adopt the Draft Standards for Whey Powders and Edible Casein Products at Step 8.

The Committee also recommended initiation or continuation of the following:

► Fermented Milk Products with Heat Treatment after Fermentation; (at Step 1)
► Fermented Milk Products without Heat Treatment; (at Step 1)
► Cheeses in Brine; (at Step 6)
► Unripened Cheeses; (at Step 6)
► Processed Cheese; (at Step 3)
► Cream; (at Step 3)
► Yoghurt; (at Step 3)
► Individual Cheeses; (at Step 3)
► Review of the Code of Principles concerning Milk and Milk Products; (at Step 1)
► Nutritional and Quality Descriptors; (at Step 1) and
► Definitions of Heat Treatment (at Step 1)

Agency Responsible: HHS/FDA
U.S. Participation: Yes

Codex Committee on Fats and Oils

The Fats and Oils Committee is responsible for elaborating standards for fats and oils of animal, vegetable, and marine origin.

The following Proposed Draft Code and Standards will be considered at the Twenty-first session of the Codex Alimentarius Commission in July, 1995, at Step 5:

► Proposed Draft Code of Practice for the Storage and Transport of Fats and Oils in Bulk;
► Proposed Draft Standard for Edible Fats and Oils not Covered by Individual Standards;
► Proposed Draft Standard for Products Sold as an Alternative to Ghee;
► Proposed Draft Standard for Named Animal Fats;
► Proposed Draft Standard for Named Vegetable Oils;
► Proposed Draft Standard for Fat Spreads;
► Proposed Draft Standard for Olive Oils and Olive-Pomace Oils; and
► Proposed Draft Standard for Mayonnaise.

The following two standards will be considered for adoption by the Commission at its Twenty-first session:

► Draft Standard for Palm Olein at Step 8; and
► Draft Standard Palm Stearin at Step 8

All of the above documents are contained in Alinorm 95/17.

Responsible Agency: HHS/FDA
U.S. Participation: Yes

Certain Codex Subject Committees

Several Codex Alimentarius General Subject Committees have adjourned *sine die*. The following Committees fall into this category:

► *Cocoa Products and Chocolate* *
Responsible Agency: HHS/FDA
U.S. Participation: Yes
► *Edible Ices*
► *Meat Hygiene* *
Responsible Agency: USDA/FSIS
U.S. Participation: Yes
► *Natural Mineral Waters* *
Responsible Agency: HHS/FDA
U.S. Participation: Yes
► *Processed Meat and Poultry Products* *
Responsible Agency: USDA/FSIS
U.S. Participation: Yes
► *Processed Fruits and Vegetables* *
Responsible Agency: HHS/FDA
U.S. Participation: Yes
► *Sugars*
► *Soups and Broths*
► *Vegetable Proteins* *
Responsible Agency: HHS/FDA
U.S. Participation: Yes

A brief report on activities of the Codex Committee on Edible Ices, the Codex Committee on Sugars, and the Codex Committee on Soups and Broths follows:

Edible Ices

The Committee on Edible Ices is responsible for elaborating standards for all types of edible ices, including mixes and powders used for their manufacture. The Committee has been adjourned since 1978. However, as directed by the Codex Alimentarius Commission, the Secretariat of the Host Country (Sweden) has prepared a Revised Codex Standard for Edible Ices and Ice Mixes (see CL 1995/7–EI). This Revised Standard was circulated to member governments for comments by May 15, 1995. The objective of the revision is to focus the standard only on public health, food safety, and consumer protection. Provisions in the existing standard that deal with quality factors and criteria typically used in commerce to define or describe the product are of an advisory nature and have been removed in the Revised Standard.

Agency Responsible: HHS/FDA
U.S. Participation: Yes

Sugars

The Codex Committee on Sugars is responsible for elaborating world-wide standards for all types of sugars and sugar products. The Committee has been adjourned since 1974. At the direction of the Codex Alimentarius Commission, the Secretariat of the Host Government (the United Kingdom) was asked to examine the existing Codex Standards relating to sugars and the Codex Standard for Honey. During the Nineteenth session of the Codex Alimentarius Commission, the Commission agreed that existing Codex Standards should be reviewed in order to simplify them. Those documents were revised and circulated to member governments (see CL 1995/5–S) for comments by April 30, 1995. The objective of the revision is to focus the standards only on public health, food safety, and consumer protection.

Agency Responsible: HHS/FDA
U.S. Participation: Yes

Soups and Broths

The Codex Committee on Soups and Broths is responsible for elaborating world-wide standards for soups, broths, bouillons, and consommes. The committee adjourned since die in 1977.

In light of the decision made by the 19th session of the Commission to simplify and revise Codex standards, a revised version of the standard for Bouillons and Consommes will be presented to the Twenty-first session of the Commission in July, 1995, for adoption. The *Revised Proposed Draft World-Wide Codex Standard for Bouillons and Consommes* was circulated to member governments for comments by October 1, 1994, and can be found in CL 1993/32–SB.

Agency Responsible: USDA/FSIS
U.S. Participation: Yes

Joint U.N.E.C.E. Codex Alimentarius Groups of Experts

Two groups of experts dealt with specific commodities much as the Codex Commodity Committees do. The Joint Groups of Experts have completed their main tasks and have adjourned. They could be called to meet again if the Codex Alimentarius Commission so decided. These Groups are:

► Standardization of Quick Frozen Foods; and
► Standardization of Fruit Juices.

There are no standards from either group for consideration by the Twenty-first session of the Commission in July, 1995, and we are unaware of any being considered for the Twenty-second session of the Commission in 1997.

Responsible Agency: HHS/FDA
U.S. Participation: Yes

FAO/WHO Regional Coordinating Committees

The Codex Alimentarius Commission is made up of an Executive Committee, as well as approximately 25 subsidiary bodies. Included in these subsidiary bodies are several coordinating committees.

There are currently five Regional Coordinating Committees:

—Coordinating Committee for Africa
—Coordinating Committee for Asia
—Coordinating Committee for Europe
—Coordinating Committee for Latin America and the Caribbean
—Coordinating Committee for North America and the South-West Pacific

The United States participates as an active member of the Coordinating Committee for North America and the South-West Pacific, and is informed of the other coordinating committees through meeting documents, final reports, and representation at meetings.

Each regional committee:

—Defines the problems and needs of the region concerning food standards and food control;
—Promotes within the committee contacts for the mutual exchange of information on proposed regulatory initiatives and problems arising from food control and stimulates the strengthening of food control infrastructures;
—Recommends to the Commission the development of world-wide standards for products of interest to the region, including products considered by the committee to have an international market potential in the future;
—And, exercises a general coordinating role for the region and such other functions as may be entrusted to it by the Commission.

Codex Coordinating Committee for North America and the South-West Pacific

The Coordinating Committee is responsible for defining problems and needs concerning food standards and food control of all Codex member countries of the regions.

The Committee, at its Third session, recommended that the Executive Committee consider proposals concerning the broader application of the HACCP system and that the proposals also be considered by the Twenty-first session of the Codex Alimentarius Commission. The Committee also requested that a comprehensive plan for risk assessment methodology and decision making criteria be developed by the Commission, and that risk analysis be considered as part of the Codex Strategy Plan.

The Committee expressed the view that the Commission should be the focus of international harmonization initiatives with respect to genetically engineered foods. In addition, the Committee recommended that further work should be carried out on the sale of potentially harmful herbs and botanicals as food. Finally, the Committee recommended that the work of the Commission should be expedited. (The information contained above can be found in ALINORM 95/32).

Responsible Agency: USDA/FSIS

U.S. Participation: Yes

Appendix 1—U.S. Codex Alimentarius Officials

April 3, 1995

Steering Committee Members

Dr. Marvin A. Norcross, U.S. Coordinator for Codex Alimentarius, Food Safety and Inspection Service, U.S. Department of Agriculture, West End Court, Room 311, 1255 22nd Street, NW., Washington, DC 20250, Phone #: (202) 254–2517, Fax #: (202) 254–2530

Mr. Michael Taylor, Acting Under Secretary for Food Safety, U.S. Department of Agriculture, Room 331–E, Administration Building, 14th and Independence Avenue, SW., Washington, DC 20250, Phone #: (202) 720–7025, Fax #: (202) 690–4437

Ms. Patricia Jensen, Acting Assistant Secretary, Marketing and Regulatory Programs, U.S. Department of Agriculture, Room 228–W, Administration Building, 14th and Independence Avenue, SW., Washington, DC 20250, Phone #: (202) 720–4256, Fax #: (202) 720–5775

Mr. Thomas Billy, Associate Administrator, Food Safety and Inspection Service, U.S. Department of Agriculture, Room 331–E, Administration Building, 14th and Independence Avenue, SW., Washington, DC 20250, Phone #: (202) 720–7025, Fax #: (202) 690–4437

Dr. Alex Thiermann, Deputy Administrator, International Services, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 324–E, Administration Building, 14th and Independence Avenue, SW., Washington, DC 20250, Phone #: (202) 720–7593, Fax #: (202) 690–1484

Dr. Lynn R. Goldman, Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances, U.S. Environmental Protection Agency, 401 M Street, SW. (7101), 637 East Tower, Washington, DC 20460, Phone #: (202) 260–2902, Fax #: (202) 260–1847

Dr. Penelope A. Fenner-Crisp, Deputy Director, Office of Pesticide Programs (7501C), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, Phone #: (703) 305–7092, Fax #: (703) 308–4776

Mr. William Schultz, Deputy Commissioner for Policy, Food and Drug Administration, HF–22, 5600 Fishers Lane, Rockville, MD 20857, Phone #: (301) 443–2854, Fax #: (301) 443–5930

Dr. Fred R. Shank, Director, Center for Food Safety and Applied Nutrition (HFS–1), Food and Drug Administration, Room 6815, 200 C Street, SW., Washington, DC 20204, Phone #: (202) 205–4850, Fax #: (202) 205–5025

* There has been no activity in these committees over the past year and none is expected in the next year.

CODEX COMMITTEE CHAIRPERSONS

[March 15, 1995]

Mr. Steven N. Tanner, Deputy Director, Quality Assurance and Research Division, Federal Grain Inspection Service, U.S. Department of Agriculture, 10383 N. Executive Hills Blvd., Kansas City, MO 64153–1394, Phone #: (816) 891–0404, Fax #: (816) 891–8070.	Cereals, Pulses and Legumes (adjourned sine die).
Dr. John Kvenberg, Strategic Manager for HACCP Policy, Center for Food Safety and Applied Nutrition, Food and Drug Administration, Room 3014, HFS–10, 200 C Street, SW., Washington, DC 20204, Phone #: (202) 205–4010, Fax #: (202) 205–4121.	Food Hygiene.
Mr. Gerald R. Parlet, Assistant to the Chief, Processed Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 0713, South Building, Washington, DC 20250, Phone #: (202) 720–9896, Fax #: (202) 690–1527.	Processed Fruits and Vegetables (adjourned sine die).
Dr. Stephen F. Sundlof, Director, Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Place (HFV–1), Rockville, MD 20855, Phone #: (301) 594–1740, Fax #: (301) 594–1830.	Residues of Veterinary Drugs in Foods.

Listing of U.S. Delegates and Alternate Delegates

Worldwide General Subject Codes Committees

Codex Committee on Residues of Veterinary Drug in Foods

(Host Government—United States)

U.S. Delegate:
Dr. Marvin A. Norcross, Food Safety and Inspection Service, U.S. Department of Agriculture, West End Court, Room 311, 1255 22nd Street, NW., Washington, DC 20250, Phone #: (202) 254–2517, Fax #: (202) 254–2530

Alternate Delegate:
Dr. Robert C. Livingston, Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine (HFV–100), Food and Drug Administration, 7500 Standish Place, Rockville, MD 20855, Phone #: (301) 594–1620, Fax #: (301) 594–2297

Codex Committee on Food Additives and Contaminants

(Host Government—The Netherlands)

U.S. Delegate:
Dr. Fred R. Shank, Director, Center for Food Safety and Applied Nutrition (HFS–1), Food and Drug Administration, 200 C Street, SW., Room 6185, Washington, DC 20204, Phone #: (202) 205–4850, Fax #: (202) 205–5025

Alternate Delegate:
(Vacant)

Codex Committee on Pesticide Residues

(Host Government—The Netherlands)

U.S. Delegate:
Dr. Richard Schmitt, Deputy Director, Special Review and Reregistration Division, Office of Pesticide Programs, U.S. Environmental Protection Agency, 401 M Street, SW. (7508W), Washington, DC 20460, Phone #: (703) 308–8000, Fax #: (703) 308–8005

Alternate Delegates:
Mr. John R. Wessel, Director, Contaminants Policy Staff, Food and Drug Administration, Room 13–74 (HFC–6), 5600 Fishers Lane, Rockville, MD 20857, Phone #: (301) 443–1815, Fax #: (301) 443–7707
Dr. Richard Parry, Jr., Assistant Administrator, Cooperative Interactions, Agricultural Research Service, U.S. Department of Agriculture, Room 358–A, Administration Bldg., Washington, DC 20250, Phone #: (202) 720–3973, Fax #: (202) 720–5427

Codex Committee on Methods of Analysis and Sampling

(Host Government—Hungary)

U.S. Delegate:
Dr. William Horwitz, Scientific Advisor, Center for Food Safety and Applied Nutrition (HFS–500), Food and Drug Administration, Room 3832, 200 C Street, SW., Washington, DC 20204, Phone #: (202) 205–4346, Fax #: (202) 401–7740

Alternate Delegate:
Dr. William Franks, Director, Science Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 3507, South Building, 14th and Independence Avenue, SW., Washington, DC 20250, Phone #: (202) 720–5231, Fax #: (202) 720–6496

Codex Committee on Food Import and Export Certification and Inspection Systems

(Host Government—Australia)

Delegate:
Dr. Fred R. Shank, Director, Center for Food Safety and Applied Nutrition (HFS–1), Food and Drug Administration, Room 6815, 200 C Street, SW., Washington, DC 20204, Phone #: (202) 205–4850, Fax #: (202) 205–5025

Alternate Delegate:
Dr. John Prucha, Deputy Administrator, International Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Room 341–E, Administration Building, Washington, DC 20250, Phone #: (202) 720–3473, Fax #: (202) 690–3856

Codex Committee on General Principles

(Host Government—France)

Delegate:
Note: A member of the Steering Committee heads the delegation to meetings of the General Principles Committee

Codex Committee on Food Labeling

(Host Government—Canada)

Delegate:
Dr. F. Edward Scarbrough, Director, Office of Food Labeling, Center for Food Safety and Applied Nutrition (HFS–150), Food and Drug Administration, 200 C Street, SW., Room 1832, Washington, DC 20204, Phone #: (202) 205–4561, Fax #: (202) 205–4594

Alternate Delegate:
Mr. John W. McCutcheon, Deputy Administrator, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Room 350–E, Administration Building, Washington, DC 20250, Phone #: (202) 720–2709, Fax #: (202) 720–2025

Codex Committee on Food Hygiene

(Host Government—United States)

Delegate:
Dr. Robert L. Buchanan, Deputy Administrator, Science and Technology, Food Safety and Inspection Service, U.S. Department of Agriculture, Room 402, Annex Building, Washington, DC 20250, Phone #: (202) 205–0495, Fax #: (202) 401–1760

Alternate Delegate:
Mr. E. Spencer Garrett, Director, National Seafood Inspection Laboratory, National Marine Fisheries, 705 Convent Street, Pascagoula, MS 39568–1207, Phone #: (601) 762–7403, Fax #: (601) 769–9200

Worldwide Commodity Codex Committees

Codex Committee on Tropical Fresh Fruits and Vegetables

(Host Government—Mexico)

Delegate:
Mr. David Priester, International Standards Coordinator, FPB, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2068, South Building, 14th and Independence Ave., SW., Washington, DC 20250, Phone #: (202) 720–2184, Fax #: (202) 720–0016

Alternate Delegate:
Ms. Sharon E. Bomer-Lauritsen, Asst. to Director, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2071, South Building, 14th and Independence Avenue, SW., Washington, DC 20250, Phone #: (202) 720–2173, Fax #: (202) 720–0016

Codex Committee on Nutrition and Foods for Special Dietary Uses

(Host Government—Germany)

Delegate:
Dr. Elizabeth Yetley, Acting Director, Office of Special Nutritionals, Center for Food Safety and Applied Nutrition, FDA, 200 C Street, SW. (HFS–450), Washington, DC 20204, Phone #: (202) 205–4168, Fax #: (202) 205–5295

Alternate Delegate:
Ms. Linda P. Posati, Deputy Director, Product Assessment Division, Labels, Standards and Review Program, RP, U.S. Department of Agriculture, Food Safety and Inspection Service, West End Court Building, Room 329, 1255 22 Street, NW., Washington, DC 20037, Phone #: (202) 254–2565, Fax #: (202) 254–2499

Codex Committee on Fish and Fishery Products

(Host Government—Norway)

Delegate:
Mr. Thomas Billy, Associate Administrator, Food Safety and Inspection Service, U.S. Department of Agriculture, Room 331–E, Administration Building, 14th and Independence Avenue, SW., Washington, DC 20250, Phone #: (202) 720–7025, Fax #: (202) 690–4437

Alternate Delegate:
Mr. Samuel W. McKeen, Director, Office of Trade and Industry Services, National Oceanic and Atmospheric Administration, NMFS, 1335 East-West Highway, Room 6490, Silver Spring, MD 20910, Phone #:(301) 713–2351, Fax #: (301) 713–1081

Codex Committee on Cereals, Pulses and Legumes

(Host Government—United States)

Delegate:
Mr. Charles W. Cooper, Director, International Activities Staff, Center for Food Safety and Applied Nutrition, Room 5823 (HFS–585), Food and Drug Administration, 200 C Street, SW., Washington, DC 20204, Phone #: (202) 205–5042, Fax #: (202) 401–7739

Alternate Delegate:
Mr. David Shipman, Chief, Standards and Procedures Branch, U.S. Department of Agriculture, Room 1661-South Building, 14th and Independence Ave., SW., Washington, DC 20250, Phone #: (202) 720–0228, Fax #: (202) 720–1015

Codex Committee on Milk and Milk Products

(Host Government—New Zealand)

Delegate:
Mr. Duane Spomer, Chief, Dairy Standardization Branch, U.S. Department of Agriculture, Agricultural Marketing Service, Room 2750-South Building, 14th and Independence Ave., SW., Washington, DC 20250, Phone #: (202) 720–9385, Fax #: (202) 720–2643

Alternate Delegate:
(Vacant).

Codex Committee on Fats and Oils

(Host Government—United Kingdom)

Delegate:
Mr. Charles W. Cooper, Director, International Activities Staff, Center for Food Safety and Applied Nutrition, Room 5823 (HFS–585), Food and Drug Administration, 200 C Street, SW., Washington, DC 20204, Phone #: (202) 205–5042, Fax #: (202) 401–7739

Alternate Delegate:
Mr. Timothy L. Mounts, Research Leader, Food Quality and Safety Research Unit, National Center for Agricultural Utilization Research, Agricultural Research Service, USDA, 1815 North University Street, Peoria, IL 61604, Phone #: (309) 681–6555, Fax #: 681–6679

Worldwide Commodity Codex Committees

(Adjourned sine die)

Codex Committee on Cocoa Products and Chocolate

(Host Government—Switzerland)

Delegate:
Mr. Charles W. Cooper, Director International Activities Staff, Center for Food Safety and Applied Nutrition, Room 5823 (HFS—585), Food and Drug Administration, 200 C Street, SW., Washington, DC 20204, Phone #: (202) 205–5042, Fax #: (202) 401–7739

Alternate Delegate:
Dr. Michelle Smith, Food Technologist, Office of Food Labeling, Center for Food Safety and Applied Nutrition (HFS–158), 200 C Street, SW., Washington, DC 20204, Phone #: (202) 205–5099, Fax #: (202) 205–4594

Codex Committee on Sugars

(Host Government—United Kingdom)

Delegate:
Dr. Thomas J. Army, Area Director, Northern Plains Area, Agricultural Research Center, 1201 Oakridge Drive, Suite 150, Ft. Collins, CO 80525–5562, Phone #: (303) 229–5557, Fax #: (303) 229–5531

Alternate Delegate:
Mr. Durward Dodgen, Office of Premarket Approval, Center for Food Safety and Applied Nutrition, (HFS–200), Food and Drug Administration, 200 C Street, SW., Washington, DC 20204, Phone #: (202) 418–3100, Fax #: (202) 418–3131

Codex Committee on Processed Fruits and Vegetables

(Host Government—United States)

U.S. Delegate:
Mr. Richard B. Boyd, Senior Marketing Specialist, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 717, South Building, 14th and Independence Avenue, SW., Washington, DC 20250, Phone #: (202) 720–5021, Fax #: (202) 690–1527

Alternate Delegate:
Mr. Charles W. Cooper, Director, International Activities Staff, Center for Food Safety and Applied Nutrition, Room 5823 (HFS–585), Food and Drug Administration, 200 C Street, SW., Washington, DC 20204, Phone #: (202) 205–5042, Fax #: (202) 401–7739

Codex Committee on Edible Ices

(Host Government—Sweden)

Delegate:
Mr. Charles W. Cooper, Director, International Activities Staff, Center for Food Safety and Applied Nutrition, Room 5823 (HFS–585), Food and Drug Administration, 200 C Street, SW., Washington, DC 20204, Phone #: (202) 205–5042, Fax #: (202) 401–7739

Alternate Delegate:
(Vacant)

Codex Committee on Soups and Broths

(Host Government—Switzerland)

Delegate:
Mr. Charles Edwards, Director, Product Assessment Division, Labels, Standards and Review Program, RP, Food Safety and Inspection Service, U.S. Department of Agriculture, West End Court Building, Room 329, 1255 22nd Street, NW., Washington, DC 20037, Phone #: (202) 254–2565, Fax #: (202) 254–2499

Alternate Delegate:
Mr. Robert Post, Branch Chief, Food Standards and Ingredients Branch, PAD, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, West End Court Building, Room 237, 1255 22nd Street, NW., Washington, DC 20037, Phone #: (202) 254–2588, Fax #: (202) 254–2499

Codex Committee on Vegetable Proteins

(Host Government—Canada)

U.S. Delegate:
Dr. Wilda H. Martinez, Associate Deputy Administrator, Aqua Products and Human Nutrition Sciences, U.S. Department of Agriculture, Agriculture Research Service, Room 107, B–005, Beltsville, MD 20705, Phone #: (301) 504–6275, Fax #: (301) 504–6699

Alternate Delegate:
Ms. Elizabeth J. Campbell, Director, Division of Programs and Enforcement Policy, Center for Food Safety and Applied Nutrition (HFS–155), Food and Drug Administration, 200 C Street, SW., Washington, DC 20204, Phone #: (202) 205–5229, Fax #: (202) 205–4594

Codex Committee on Meat Hygiene

(Host Government—New Zealand)

Delegate:
Dr. John Prucha, Deputy Administrator, International Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Room 341–E, Administration Building, Washington, DC 20250, Phone #: (202) 720–3473, Fax #: (202) 690–3856

Alternate Delegate:

Dr. Richard Mikita, Export Advisor, International Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Room 6916A, Franklin Court, Suite 6900E, Washington, DC 20250–3700, Phone #: (202) 501–6703, Fax #: (202) 501–6399

Codex Committee on Processed Meat and Poultry Products

(Host Government—Denmark)

U.S. Delegate:
Mr. Charles Edwards, Director, Product Assessment Division, Labels, Standard and Review Program, RP, Food Safety and Inspection Service, U.S. Department of Agriculture, West End Court Building, Room 329, 1255 22 Street, NW., Washington, DC 20037, Phone #: (202) 254–2565, Fax #: (202) 254–2499

Alternate Delegate:
Mr. Syed Amjad Ali, Food Technologist, Food Safety and Inspection Service, U.S. Department of Agriculture, West End Court, Room 311, 1255 22nd Street, NW., Washington, DC 20250, Phone #: (202) 254–2517, Fax #: (202) 254–2530

Codex Committee on Natural Mineral Waters

(Host Government—Switzerland)

U.S. Delegate:
Dr. Terry C. Troxel, Director, Division of Programs and Enforcement Policy, Center for Food Safety and Applied Nutrition (HFS–305), Food and Drug Administration, 200 C Street, SW., Washington, DC 20204, Phone #: (202) 205–5321, Fax #: (202) 205–4422

Alternate Delegate:
(Vacant)

Joint U.N.E.C.E. Codex Alimentarius Groups of Experts

Joint ECE/Codex Alimentarius Group of Experts on Standardization of Quick Frozen Foods

U.S. Delegate:
Mr. Richard B. Boyd, Senior Marketing Specialist, Fruit and Vegetable Division, Agriculture Marketing Service, U.S. Department of Agriculture, Room 0717, South Building, 14th and Independence Avenue, SW., Washington, DC 20250, Phone #: (202) 720–5021, Fax #: (202) 690–1527

Alternate Delegate:
Mr. Charles W. Cooper, Director, International Activities Staff, Center for Food Safety and Applied Nutrition, Room 5823 (HFS–585), Food and Drug Administration, 200 C Street, SW., Washington, DC 20204, Phone #: (202) 205–5042, Fax #: (202) 401–7739

Joint ECE/Codex Alimentarius Group of Experts on Standardization of Fruit Juices

U.S. Delegate:
(Vacant)

Alternate Delegate:
Mr. Richard B. Boyd, Senior Marketing Specialist, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 0717, South Building, 14th and Independence Avenue, SW., Washington, DC 20250, Phone #: (202) 720–5021, Fax #: (202) 690–1527

Subsidiary Bodies of the Codex Alimentarius

There are five regional coordinating committees:

Coordinating Committee for Africa
Coordinating Committee for Asia
Coordinating Committee for Europe
Coordinating Committee for Latin America and the Caribbean, and
Coordinating Committee for North America and the South-West Pacific

Contact:
Ms. Rhonda S. Nally, Executive Officer for Codex Alimentarius, Food Safety and Inspection Service, U.S. Department of Agriculture, West End Court, Room 311, 1255 22nd Street, NW., Washington, DC 20250, Phone #: (202) 254–2517, Fax #: (202) 254–2530

APPENDIX 2.—TIMETABLE OF CODEX SESSIONS

[June 1994 through June 1996]

1994			
CX 732–3	Codex Coordinating Committee for North America and the South-West Pacific (3rd Session).	31 May–3 June	Vancouver.
CX 730–8	Codex Committee on Residues of Veterinary Drugs in Foods (8th Session)	7–10 June	Washington, DC.
CX 702–41	Executive Committee of the Codex Alimentarius Commission (41st Session)	28–30 June	Rome.
CX 731–5	Codex Committee on Tropical Fresh Fruits and Vegetables (5th Session)	5–9 Sept	Mexico City.
CX 712–27	Codex Committee on Food Hygiene (27th Session)	17–21 Oct	Washington, DC.
CX 714–23	Codex Committee on Food Labeling (23rd Session)	24–28 Oct	Ottawa.
CX 729–9	Codex Committee on Cereals, Pulses and Legumes (9th Session)	31 Oct.–4 Nov	Washington, DC.
CX 703–1	Codex Committee on Milk and Milk Products (1st Session)	28 Nov.–2 Dec	Rome.
1995			
CX 733–3	Codex Committee on Food Import and Export Inspection and Certification Systems (3rd Session).	27 Feb.–3 Mar	Canberra.
CX 711–27	Codex Committee on Food Additives and Contaminants (27th Session)	20–24 Mar	The Hague.
CX 720–19	Codex Committee on Nutrition and Foods for Special Dietary Uses (19th Session).	27–31 Mar	Bonn.
CX 725–9	Codex Coordinating Committee for Latin America and the Caribbean (9th Session).	3–6 Apr	Brasília.
CX 718–27	Codex Committee on Pesticide Residues (27th Session)	24–29 Apr	The Hague.
CX 707–11	Codex Coordinating Committee for Africa (11th Session)	8–11 May	Abuja.
CX 702–42	Executive Committee of the Codex Alimentarius Commission (42nd Session)	28–30 June	Rome.
CX 701–21	Codex Alimentarius Commission (21st Session)	3–8 July	Rome.
CX 715–20	Codex Committee on Methods of Analysis and Sampling (20th Session)	2–6 Oct	Budapest.
CX 712–28	Codex Committee on Food Hygiene (28th Session)	TBA	Washington, DC.
CX 730–9	Codex Committee on Residues of Veterinary Drugs in Foods (9th Session)	TBA	Washington, DC.
CX 732–4	Codex Coordinating Committee for North America and the South-West Pacific (4th Session).	5–8 Dec	[Rotorua] N.Z.
1996			
CX 731–6	Codex Committee on Tropical Fresh Fruits and Vegetables (6th Session)	29 Jan.–2 Feb	Mexico City.
CX 711–28	Codex Committee on Food Additives and Contaminants (28th Session)	11–15 Mar	The Hague.
CX 727–10	Codex Regional Coordinating Committee for Asia (10th Session)	19–22 Mar	[Tokyo].
CX 718–28	Codex Committee on Pesticide Residues (28th Session)	15–20 Apr	The Hague.
CX 706–20	Codex Regional Coordinating Committee for Europe (20th Session)	23–26 Apr	Stockholm.
CX 722–22	Codex Committee on Fish and Fishery Products (22nd Session)	6–10 May	Bergen.
CX 714–24	Codex Committee on Food Labelling (24th Session)	14–17 May	Ottawa.

APPENDIX 2.—TIMETABLE OF CODEX SESSIONS—Continued

[June 1994 through June 1996]

CX 703–1	Codex Committee on Milk and Milk Products (2nd Session)	27–31 May	Rome.
CX 702–43	Executive Committee of the Codex Alimentarius Commission (43rd Session)	4–7 June	Geneva.
CX 708–16	Codex Committee on Cocoa Products and Chocolate (16th Session)	10–12 June	TBA.
CX 719–5	Codex Committee on Natural Mineral Waters (5th Session)	13–14 June	TBA.
CX 707–12	Codex Regional Coordinating Committee for Africa (12th Session)	TBA	TBA.

Appendix 3—Definitions for the Purpose of Codex Alimentarius

Words and phrases have specific meanings when used by the Codex Alimentarius. For the purposes of Codex, the following definitions apply:

1. *Food* means any substance, whether processed, semi-processed or raw, which is intended for human consumption, and includes drink, chewing gum, and any substance which has been used in the manufacture, preparation or treatment of "food" but does not include cosmetics or tobacco or substances used only as drugs.

2. *Food Hygiene* comprises conditions and measures necessary for the production, processing, storage and distribution of food designed to ensure a safe, sound, wholesome product fit for human consumption.

3. *Food Additive* means any substance not normally consumed as a food by itself and not normally used as a typical ingredient of the food, whether or not it has nutritive value, the intentional addition of which to food for a technological (including organoleptic) purpose in the manufacture, processing, preparation, treatment, packing, packaging, transport, or holding of such food results, or may be reasonably expected to result (directly or indirectly) in it or its by-products becoming a component of or otherwise affecting the characteristics of such foods. The food additive term does not include "contaminants" or substances added to food for maintaining or improving nutritional qualities.

4. *Contaminant* means any substance not intentionally added to food, which is present in such food as a result of the production (including operations carried out in crop husbandry, animal husbandry, and veterinary medicine), manufacture, processing, preparation, treatment, packing, packaging, transport or holding of such food or as a result of environmental contamination. The term does not include insect fragments, rodent hairs and other extraneous matters.

5. *Pesticide* means any substance intended for preventing, destroying, attracting, repelling, or controlling any pest including unwanted species of plants or animals during the production, storage, transport, distribution and processing of food, agricultural commodities, or animal feeds or which may be administered to animals for the control of ectoparasites. The term includes substances intended for use as a plant-growth regulator, defoliant, desiccant, fruit thinning agent, or sprouting inhibitor and substances applied to crops either before or after harvest to protect the commodity from deterioration during storage and transport. The term pesticides excludes fertilizers, plant and animal nutrients, food additives, and animal drugs.

6. *Pesticide Residue* means any specified substance in food, agricultural commodities, or animal feed resulting from the use of a pesticide. The term includes any derivatives of a pesticide, such as conversion products, metabolites, reaction products, and impurities considered to be of toxicological significance.

7. *Good Agricultural Practice in the Use of Pesticides (GAP)* includes the nationally authorized safe uses of pesticides under actual conditions necessary for effective and reliable pest control. It encompasses a range of levels of pesticide applications up to the highest authorized use, applied in a manner which leaves a residue which is the smallest amount practicable.

Authorized safe uses are determined at the national level and include nationally registered or recommended uses, which take into account public and occupational health and environmental safety considerations.

Actual conditions include any stage in the production, storage, transport, distribution and processing of food commodities and animal feed.

8. *Codex Maximum Limit for Pesticide Residues (MRLP)* is the maximum concentration of a pesticide residue (expressed as mg/kg), recommended by the Codex Alimentarius Commission to be legally permitted in or on food commodities and animal feeds. MRLPs are based on their toxicological effects and on GAP data and foods derived from commodities that comply with the respective MRLPs are intended to be toxologically acceptable.

Codex MRLPs, which are primarily intended to apply in international trade, are derived from reviews conducted by the JMPR following:

(a) Toxicological assessment of the pesticide and its residue and

(b) Review of residue data from supervised trials and supervised uses including those reflecting national good agricultural practices. Data from supervised trials conducted at the highest nationally recommended, authorized, or registered uses are included in the review. In order to accommodate variations in national pest control requirements, Codex MRLPs take into account the higher levels shown to arise in such supervised trials, which are considered to represent effective pest control practices.

Consideration of the various dietary residue intake estimates and determinations both at the national and international level in comparison with the ADI, should indicate that foods complying with Codex MRLPs are safe for human consumption.

9. *Veterinary Drug* means any substance applied or administered to any food-producing animal, such as meat or milk-producing animals, poultry, fish or bees, whether used for therapeutic, prophylactic or diagnostic purposes or for modification of physiological functions or behavior.

10. *Residues of Veterinary Drugs* include the parent compounds and/or their metabolites in any edible portion of the animal product, and include residues of associated impurities of the veterinary drug concerned.

11. *Codex Maximum Limit for Residues of Veterinary Drugs (MRLVD)* is the maximum concentration of residue resulting from the use of a veterinary drug (expressed in mg/kg or ug/kg on a fresh weight basis) that is recommended by the Codex Alimentarius Commission to be legally permitted or recognized as acceptable in or on food.

An MRLVD is based on the type and amount of residue considered to be without any toxicological hazard for human health as expressed by the Acceptable Daily Intake (ADI), or on the basis of a temporary ADI that utilizes an additional safety factor. An MRLVD also takes into account other relevant public health risks as well as food technological aspects.

When establishing an MRLVD, consideration is also given to residues that occur in food of plant origin and/or the environment. Furthermore, the MRLVD may be reduced to be consistent with good practices in the use of veterinary drugs and to the extent that practical and analytical methods are available.

12. *Good Practice in the Use of Veterinary Drugs* (GPVD) is the official recommended or authorized usage including withdrawal periods approved by national authorities, of veterinary drugs under practicable conditions.

13. *Processing Aid* means any substance or material, not including apparatus or utensils, not consumed as a food ingredient by itself, intentionally used in the processing of raw materials, foods or its ingredients, to fulfill a certain technological purpose during treatment or processing and which may result in the non-intentional but unavoidable presence of residues or derivatives in the final product.

Appendix 4—Uniform Procedure for the Elaboration of Codex Standards and Related Texts

Steps 1, 2 and 3

(1) The Commission decides, taking into account the "Criteria for the Establishment of Work Priorities and for the Establishment of Subsidiary Bodies," to elaborate a Worldwide

Codex Standard and also decides which subsidiary body or other body should undertake the work. A decision to elaborate a Worldwide Codex Standard may also be taken by subsidiary bodies of the Commission in accordance with the above-mentioned criteria, subject to subsequent approval by the Commission or its Executive Committee at the earliest possible opportunity. In the case of Codex Regional Standards, the Commission shall base its decision on the proposal of the majority of members belonging to a given region or group of countries submitted at a session of the Codex Alimentarius Commission.

(2) The Secretariat arranges for the preparation of a proposed draft standard. In the case of Maximum Limits for Residues of Pesticides or Veterinary Drugs, the Secretariat distributes the recommendations for maximum limits, when available from the Joint Meetings of the FAO Panel of Experts on Pesticide Residues in Food and the Environment and the WHO Panel of Experts on Pesticide Residues (JMPR), or the Joint FAO/WHO Expert Committee on Food Additives (JECFA). In the cases of milk and milk products or individual standards for cheeses, the Secretariat distributes the recommendations of the International Dairy Federation (IDF).

(3) The proposed draft standard is sent to members of the Commission and interested international organizations for comment on all aspects including possible implications of the proposed draft standard for their economic interests.

Step 4

The comments received are sent by the Secretariat to the subsidiary body or other body concerned which has the power to consider such comments and to amend the proposed draft standard.

Step 5[2]

The proposed draft standard is submitted through the Secretariat to the Commission or to the Executive Committee with a view to its adoption as a draft standard. When making any decision at this step, the Commission or the Executive Committee will give due consideration to any comments that may be submitted by any of its members regarding the implications which the proposed draft standard or any provisions of the standard may have for their economic interests. In the case of Regional Standards, all members of the Commission may present their comments, take part in the debate and propose amendments, but only the majority of the Members of the region or group of countries concerned attending the session can decide to amend or adopt the draft. When making any decisions at this step, the members of the region or group of countries concerned will give due consideration to any comments that may be submitted by any of the members of the Commission regarding the implications which the proposed draft standard or any provisions of the proposed draft standard may have for their economic interests.

Step 6

The draft standard is sent by the Secretariat to all members and interested international organizations for comment on all aspects, including possible implications of the draft standard for their economic interests.

Step 7

The comments received are sent by the Secretariat to the subsidiary body or other body concerned, which has the power to consider such comments and amend the draft standard.

Step 8

The draft standard is submitted through the Secretariat to the Commission together with any written proposals received from members and interested international organizations for amendments at Step 8 with a view to its adoption as a Codex Standard. In the case of Regional standards, all members and interested international organizations may present their comments, take part in the debate and propose amendments but only the majority of members of the region or group of countries concerned attending the session can decide to amend and adopt the draft.

Appendix 5—Nature of Codex Standards

Codex standards contain requirements for food aimed at ensuring for the consumer a sound, wholesome food product free from adulteration, and correctly labelled. A Codex standard for any food or foods should be drawn up in accordance with the Format for Codex Commodity Standards and contain, as appropriate, the criteria listed therein.

Format for Codex Commodity Standards Including Standards Elaborated Under the Code of Principles Concerning Milk and Milk Products

Introduction

The format is also intended for use as a guide by the subsidiary bodies of the Codex Alimentarius Commission in presenting their standards, with the object of achieving, as far as possible, a uniform presentation of commodity standards. The format also indicates the statements which should be included in standards as appropriate under the relevant headings of the standard. The sections of the format required to be completed for a standard are only those provisions that are appropriate to an international standard for the food in question.

Name of the Standard
Scope
Description
Essential Composition and Quality Factors
Food Additives
Contaminants
Hygiene
Weights and Measures
Labelling
Methods of Analysis and Sampling

Format for Codex Standards

Name of the Standard

The name of the standard should be clear and as concise as possible. It should usually be the common name by which the food covered by the standard is known or, if more than one food is dealt with in the standard, by a generic name covering them all. If a fully informative title is inordinately long, as subtitle could be added.

Scope

This section should contain a clear, concise statement as to the food or foods to which the standard is applicable unless the name of the standard clearly and concisely identifies the food or foods. A generic standard covering more than one specific product should clearly identify the specific products to which the standard applies.

Description

This section should contain a definition of the product or products with an indication, where appropriate, of the raw materials from which the product or products are derived and any necessary references to processes of manufacture. The description may also include references to types and styles of product and to type of pack. The description may also include additional definitions when these additional definitions are required to clarify the meaning of the standard.

Essential Composition and Quality Factors

This section should contain all quantitative and other requirements as to composition including, where necessary, identity characteristics, provisions on packing media and requirements as to compulsory and optional ingredients. It should also include quality factors which are essential for the designation, definition, or composition of the product concerned. Such factors could include the quality of the raw material, with the object of protecting the health of the consumer, provisions on taste, odor, color, and texture which may be apprehended by the senses, and basic quality criteria for the finished products, with the object of preventing fraud. This section may refer to tolerances for defects, such as blemishes or imperfect material, but this information should be contained in appendix to the standard or in another advisory text.

Food Additives

This section should contain the names of the additives permitted and, where appropriate, the maximum amount permitted in the food. It should be prepared in accordance with guidance given on pages 93 to 96 of the Codex Procedural Manual and may take the following form:

"The following provisions in respect of food additives and their specifications as contained in section . . . of the Codex Alimentarius are subject to endorsement [have been endorsed] by the Codex Committee on Food Additives and Contaminants."

A tabulation should then follow, viz.:

"*Name of additive, maximum level* (in percentage or mg/kg)."

Contaminants

(a) *Pesticide Residues:* This section should include, by reference, any levels for pesticide residues that have been established by the Codex Committee on Pesticide Residues for the product concerned.

(b) *Other Contaminants:* In addition, this section should contain the names of other contaminants and where appropriate the maximum level permitted in the food, and the text to appear in the standard may take the following form:

"The following provisions in respect of contaminants, other than pesticide residues, are subject to endorsement [have been endorsed] by the Codex Committee on Food Additives and Contaminants."

A tabulation should then follow, viz.:

"*Name of contaminant, maximum level* (in percentage or mg/kg)."

Hygiene

Any specific mandatory hygiene provisions considered necessary should be included in this section. They should be prepared in accordance with the guidance given on pages 96 to 98 of the Codex Procedural Manual. Reference should also be made to applicable codes of hygienic practice. Any parts of such codes, including in particular any end-product specifications, should be set out in the standard, if it is considered necessary that they should be made mandatory. The following statement should also appear:

"The following provisions in respect of the food hygiene of the product are subject to endorsement [have been endorsed] by the Codex Committee on Food Hygiene."

Weights and Measures

This section should include all provisions, other than labelling provisions, relating to weights and measures, e.g. where appropriate, fill of container, weight, measure or count of units determined by an appropriate method of sampling and analysis. Weights and measures should be expressed in S.I. units. In the case of standards which include provisions for the sale of products in standardized amounts, e.g. multiples of 100 grams, S.I. units should be used, but this would not preclude additional statements in the standards of these standardized amounts in approximately similar amounts in other systems of weights and measures.

Labelling

This section should include all the labelling provisions contained in the standard and should be prepared in accordance with the guidance given on pages 91 to 93 of the Codex Procedural Manual. Provisions should be included by reference to the General Standard for the Labelling of Prepackaged Foods. The section may also contain provisions which are exemptions from, additions to, or which are necessary for the interpretation of the General Standard in respect of the product concerned provided that these can be justified fully. The following statement should also appear:

"The following provisions in respect of the labelling of this product are subject to endorsement [have been endorsed] by the Codex Committee on Food Labelling."

Methods of Analysis and Sampling

This section should include, either specifically or by reference, all methods of analysis and sampling considered necessary and should be prepared in accordance with the guidance given on pages 99 to 102 of the Codex Procedural Manual. If two or more methods have been proved to be equivalent by the Codex Committee on Methods of Analysis and Sampling, these could be regarded as alternative and included in this section either specifically or by reference. The following statement should also appear:

"The methods of analysis and sampling described hereunder are to be endorsed [have been endorsed] by the Codex Committee on Methods of Analysis and Sampling."

Appendix 6

Provisional Agenda of the Joint FAO/WHO Food Standards Programme, Codex Alimentarius Commission, Twenty-First Session, Plenary Hall, FAO Headquarters, Rome, July 3–8, 1995:

Item and subject matter	Document
1. Adoption of the Agenda	ALINORM 95/1.
2. Election of Officers of the Commission and Members of the Executive Committee and Appointment of Regional Coordinators.	ALINORM 95/2.
3. Report on the financial situation of the Joint FAO/WHO Food Standards Programme for 1994/95 and 1996/97	ALINORM 95/5.
4. Implementation of the Medium-Term Plan of the Codex Alimentarius Commission:	ALINORM 95/6.
(a) Report on progress in achieving the Medium-Term Plan	
(b) Strategies for achieving the Medium-Term Plan	
5. Implementation of the Uruguay Round of Multilateral Trade Negotiations: Working arrangements between the Codex Alimentarius Commission and the World Trade Organization.	ALINORM 95/7.
6. Consideration of proposals to base Codex standards and other recommendations of scientific principles and the extent to which other factors need to be taken into account.	ALINORM 95/8.
7. Risk assessment/risk analysis in Codex: Recommendations of a Joint FAO/WHO Expert Consultation	ALINORM 95/9.
8. Cooperation with the United Nations Economic Commission for Europe in the elaboration of world-wide standards for fresh fruit and vegetables and related products.	ALINORM 95/10.
9. Consideration of draft amendments to the Procedural Manual of the Codex Alimentarius Commission:	ALINORM 95/14.
(a) Rules of Procedure	
(b) Guidelines for Codex Committees	
(c) Format of Codex Standards	
10. Consideration of draft and proposed draft standards and related texts for general application:	ALINORM 95/21 Part I.
(a) Food Additives	
(b) Contaminants	
(c) Pesticides (Maximum residue limits)	
(d) Veterinary drugs (Maximum residue limits)	
(e) Food labelling (Amendments)	
(f) Food Hygiene (Codes of Practice)	
(g) Methods of analysis and sampling	
(h) Import/export inspection and certification	
11. Consideration of draft and proposed draft standards and related texts for specific commodities:	ALINORM 95/21 Part II.
(a) Fish and fishery products	
(b) Fats and oils	
(c) Milk and milk products	
(d) Tropical fresh fruit and vegetables	
(e) Other products	
12. Consideration of proposals to elaborate new standards and/or related texts as Step 1	ALINORM 95/21 Part III.
(a) Proposals by Codex Committee	
(b) Opinion of the Executive Committee	
(c) New proposals	
13. Matters arising from the reports of Codex Committees	ALINORM 95/21 Part IV.
14. Confirmation of Chairmanship of Codex Committees	ALINORM 95/16.

[2] Without prejudice to any decision that may be taken by the Commission at Step 5, the proposed draft standard may be sent by the Secretariat for government comment prior to its consideration at Step 5, when, in the opinion of the subsidiary body or other body concerned, the time between the relevant session of the Commission and the subsequent session of the subsidiary or other body concerned requires such action in order to advance the work.

Item and subject matter	Document
15. Other business 16. Adoption of Report	

[FR Doc. 95–12570 Filed 5–22–95; 8:45 am]
BILLING CODE 3410-DM-M

Forest Service

Coconino National Forest, Arizona; Environmental Impact Statement (EIS) for Pocket/Baker Ecosystem

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent To Prepare an Environmental Impact Statement.

SUMMARY: The Long Valley Ranger District of the Coconino National Forest is planning to prepare an environmental impact statement on a proposal to manage lands within the Pocket/Baker Ecosystem. Some of the projects to be considered include thinning the understory in ponderosa pine stands to reduce the high levels of dwarf mistletoe infection; prescribing controlled fire for the reduction of forest fuels, nutrient cycling, and stimulation of fire dependent grasses and forbes; reconfiguring the grazing patterns of cattle to improve the range vegetation and the watershed condition; thinning of trees along state highways 87 and 260 to feature the more prominent large trees and for the reduction of shade that causes ice hazards on the roadway; reducing the use and/or improving the dispersed recreation sites for sustainable future use; reversing the declining health and vigor of remnant quaking aspen stands; restoring and protecting historic drainage structures; and closing and/or rehabilitating roads located within stream courses or their associated filter strips.

RESPONSIBLE OFFICIAL: The District Ranger, Bruce C. Greco, will be the responsible official and will select one of the alternatives presented in the environmental impact statement.

FOR FURTHER INFORMATION CONTACT: Bruce Greco, Long Valley District Ranger or John Gerritsma, Planning Team Leader at (602) 354–2216.

SUPPLEMENTARY INFORMATION: Analysis work began on the Pocket portion of the Pocket/Baker 20K in 1991. In 1993 the scope of the project was broadened to include the Baker portion to create a more logical ecosystem for analysis. The interdisciplinary planning team followed a formal NEPA evaluation process with active, detailed scoping and involvement for a wide range of interests. Because of the complexity and diversity of this ecosystem, and the potential significance of several resource issues, we are evaluating completion of the analysis through an Environmental Impact Statement (EIS). The issues include:

(1) Sustaining vegetative conditions for threatened, endangered, and sensitive species (TE&S). Many of the ponderosa pine sites are heavily infected with Southwestern dwarf mistletoe, a parasitic disease common throughout the Forest. Current tree densities needed for the Mexican spotted owl (MSO) cannot be sustained due to mortality induced by dwarf mistletoe. Harvesting trees now to reduce dwarf mistletoe infection will decrease tree crown densities, modify MSO habitat, and result in adverse effects to the proposed critical habitat of the MSO. The consequences of no treatment is also declining canopy closures as trees die, that after 30–60 years will result in the same impacts as reducing dwarf mistletoe now. In addition, delaying these treatments now will increase the costs (in dollars and environmental impacts) and reduce future options for maintaining desired conditions.

(2) Absence of fire in the ecosystem. Past aggressive fire suppression, limited prescribed burning, and incomplete treatment of forest litter has resulted in heavy forest fuels along the Mogollan Rim. Potentially catastrophic fire could occur in this area given the proximity to the communities of Pine and Strawberry, fuel loading, prevailing winds, topography, and heavy public recreation use.

(3) Treatment of small diameter ponderosa pine trees. Dense ponderosa pine sites are at a higher risk of catastrophic events such as fire and disease than less dense sites. Also, without natural or management thinning actions, trees on these sites will not grow into the desired mature yellow pines within a reasonable amount of time.

(4) Demand for recreation opportunities on the Mogollon Rim. The expressed need for an increased variety and amount of yearlong recreational activities is increasing faster than the ecosystem can handle. This situation is evident by the increasing number of people trying to play in the snow along Highway 87 each winter, almost continuous summer camping and vehicle use within meadows and the more popular camping areas, and increasing firewood cutting (both legal and illegal).

(5) Decline of aspen in the ecosystem: Aspen is declining in this ecosystem for several reasons. Lack of fire is retarding aspen sprouting and increasing competition from both grasses and other tree species. Also, the large elk populations seek out young aspen shoots, thereby limiting reproduction success. Options to reverse the declining presence of aspen are limited by environmental and social concerns.

Preparing an EIS will allow us to fully evaluate the significance of the environmental effects of these resource components and issues. Scoping for comments and field trips were previously accomplished prior to this analysis becoming an EIS. However, comments on the issues and suggestions for additional issues are welcome in response to the draft environmental impact statement which will follow this Notice of Intent, shortly. The Interdisciplinary Team will reconvene to consider new comments.

The draft environmental impact statement can be expected in June 1995. A forty-five-day comment period pursuant to 36 CFR 219.10(b) will be provided for the public to make comments on the draft environmental impact statement. A record of decision will be prepared and filed with the final environmental impact statement. A forty-five-day appeal period pursuant to 36 CFR 217.8(a) will be applicable.

The forty-five day comment period on the draft environmental impact statement will begin when the Environmental Protection Agency's Notice of Availability appears in the **Federal Register.**

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. To be most helpful, comments on the draft environmental impact statement should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3).

In addition, Federal court decisions have established that reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *City of Angoon* v. *Hodel*, (9th Circuit, 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final.

Dated: May 15, 1995.

Bruce C. Greco,

District Ranger, Long Valley Ranger District, Coconino National Forest.

[FR Doc. 95–12537 Filed 5–22–95; 8:45 am]
BILLING CODE 3410-11-M

Committee of State Foresters

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Committee of State Foresters will meet in Flatwoods, West Virginia, on June 19–20, 1995. The meeting will begin at 1 p.m. on June 19 and end at noon on June 20. The Committee is comprised of 7 members of the Executive Committee of the National Association of State Foresters. The meeting provides an opportunity for committee members to consult with the Secretary of Agriculture regarding the administration and application of various parts of the Cooperative Forestry Assistance Act of 1978. The Under Secretary for Natural Resources and Environment will chair this meeting. The meeting is open to public attendance; however, participation is limited to Forest Service personnel and Committee members. Persons who wish to bring cooperative forestry matters to the attention of the Committee may file written statements with the Executive Secretary of the Committee before or after the meeting.

DATES: The meeting will be held from June 19–20, 1995.

ADDRESSES: The meeting will be held in the conference room at the Days Inn (I–79, Exit 67), 2000 Sutton Lane, Sutton, West Virginia. Members of the public who wish to attend must register in advance with Marlene Edwards, Office of the Deputy Chief for State and Private Forestry.

Send written comments to Joan M. Comanor, Executive Secretary, Committee of State Foresters, c/o Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090, (202) 205–1657.

FOR FURTHER INFORMATION CONTACT: Marlene Edwards, Office of the Deputy Chief for State and Private Forestry, Forest Service, (202) 205–1657.

Dated: May 18, 1995.

Joan M. Comanor,

Deputy Chief, S&PF.

[FR Doc. 95–12578 Filed 5–22–95; 8:45 am]
BILLING CODE 3410-11-M

Western Washington Cascades Provincial Interagency Executive Committee (PIEC) Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of Meeting.

SUMMARY: The Western Washington Cascades PIEC Advisory Committee will meet on June 14, 1995 at the Mount Baker-Snoqualmie National Forest Headquarters, 21905 64th Avenue West, in Mountlake Terrace, Washington. The meeting will begin at 9:00 a.m. and continue until 4:30 p.m. Agenda items to be covered include: (1) Discussion of federal and state watershed analysis processes; (2) discussion of agency criteria for setting watershed analysis priorities in fiscal year 1996; (3) discuss tribal activities and processes related to federal and state watershed analysis; (4) discussion of fiscal year 1995 watershed analysis opportunities; (5) other topics as appropriate; and (6) open public forum. An informational workshop on the federal watershed analysis process will precede the June 14th meeting. The workshop will be held on June 13, 1995, at Edmonds Community College, Room 202, Mountlake Terrace Hall, 20000 68th Avenue West, Lynnwood, Washington. The workshop will commence at 1:00 p.m. and continue until 4:00 p.m. that day. All Western Washington Cascades Province Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Bob Dunblazier, Province Liaison, USDA, Mount Baker-Snoqualmie National Forest, 21905 64th Avenue West, Mountlake Terrace, Washington 98043, 206–744–3270.

Dated: May 17, 1995.

Dennis E. Bschor,

Forest Supervisor.

[FR Doc. 95–12543 Filed 5–22–95; 8:45 am]
BILLING CODE 3410-11-M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Wyoming Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Wyoming Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 1:00 p.m. on Saturday, June 17, 1995, at the Little America, 2800 W. Lincolnway, Cheyenne, Wyoming 82003. The purpose of the meeting is to brief Committee members on Commission and regional activities, discuss current civil rights issues in the State, and approve plans for future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Oralia G. Mercado, 307–472–2105 or Ki-Taek Chun, Acting Director of the Rocky Mountain Regional Office, 303–866–1040 (TDD 303–866–1049). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 16, 1995.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 95–12557 Filed 5–22–95; 8:45 am]
BILLING CODE 6335-01-P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Regulations and Procedures Technical Advisory Committee; Notice of Meeting Change

Federal Register citation of previous announcement: p. 21792, May 3, 1995.

Previously announced time of meeting: 9:00 a.m., May 23, 1995. New time of meeting: 9:00 a.m., June 15, 1995, Room 3884.

Dated: May 19, 1995.

Lee Ann Carpenter,

Director, Technical Advisory Committee Unit.

[FR Doc. 95–12719 Filed 5–19–95; 12:18 pm]

BILLING CODE 3510–DT–M

Foreign-Trade Zones Board

[Order No. 743]

Grant of Authority for Subzone Status; Merck & Co., Inc. (Pharmaceuticals); Dougherty County, Georgia

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a-81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Savannah Airport Commission, grantee of Foreign-Trade Zone 104, for authority to establish special-purpose subzone status at the pharmaceutical manufacturing facility of Merck & Co., Inc., in Dougherty County, Georgia, was filed by the Board on January 3, 1994, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 1–94, 59 FR 1925, 1–13–94); and,

Whereas, the Board has found that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby authorizes the establishment of a subzone (Subzone 104A) at the plant site of Merck & Co., Inc., in Dougherty County, Georgia, at the location described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 12th day of May 1995.

Susan G. Esserman,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 95–12596 Filed 5–22–95; 8:45 am]

BILLING CODE 3510–DS–P

[Order No. 741]

Grant of Authority for Subzone Status; Merck, Sharp & Dohme Química de Puerto Rico, Inc. (Pharmaceuticals); Arecibo, Puerto Rico

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Commercial and Farm Credit and Development Corporation of Puerto Rico, grantee of Foreign-Trade Zone 61, for authority to establish special-purpose subzone status at the pharmaceutical manufacturing facility of Merck, Sharp & Dohme Química de Puerto Rico, Inc., in Arecibo, Puerto Rico, was filed by the Board on August 9, 1993, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 39–93, 58 FR 44492, 8–23–93); and,

Whereas, the Board has found that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby authorizes the establishment of a subzone (Subzone 61D) at the plant site of Merck, Sharp & Dohme Química de Puerto Rico, Inc., in Arecibo, Puerto Rico, at the location described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 12th day of May 1995.

Susan G. Esserman,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 95–12594 Filed 5–22–95; 8:45 am]

BILLING CODE 3510–DS–P

[Order No. 742]

Grant of Authority for Subzone Status; Merck, Sharp & Dohme Química de Puerto Rico, Inc. (Pharmaceuticals); Barceloneta, Puerto Rico

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Commercial and Farm Credit and Development Corporation of Puerto Rico, grantee of Foreign-Trade Zone 61, for authority to establish special-purpose subzone status at the pharmaceutical manufacturing facility of Merck, Sharp & Dohme Química de Puerto Rico, Inc., in Barceloneta, Puerto Rico, was filed by the Board on August 30, 1993, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 49–93, 58 FR 47858, 9–13–93); and,

Whereas, the Board has found that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby authorizes the establishment of a subzone (Subzone 61E) at the plant site of Merck, Sharp & Dohme Química de Puerto Rico, Inc., in Barceloneta, Puerto Rico, at the location described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 12th day of May 1995.

Susan G. Esserman,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 95–12595 Filed 5–22–95; 8:45 am]

BILLING CODE 3510–DS–M

International Trade Administration

Initiation of New Shipper Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of New Shipper Antidumping Duty Administrative Reviews.

SUMMARY: The Department of Commerce (the Department) has received a request to conduct new shipper administrative reviews of an antidumping duty order with an April anniversary date. In accordance with the Commerce Regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: May 23, 1995.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department has received a request, in accordance with 19 CFR 353.22(h) (1995), for new shipper reviews of an antidumping duty order with an April anniversary date.

Initiation of Reviews

In accordance with 19 CFR 353.22(h), we are initiating two new shipper reviews of the antidumping duty order on fresh and chilled Atlantic salmon from Norway. We intend to issue the final results of these reviews not later than February 9, 1996.

Antidumping duty proceeding	Period to be reviewed
Norway:	
Fresh and Chilled Atlantic Salmon	
A–403–801	
Cocoon Ltd. A/S; Nordic Group A/L	11/01/94–04/30/95

Concurrent with publication of this notice, we will instruct the Customs Service to allow, at the option of the importer, the posting, until the completion of the review, of a bond or sucurity in lieu of a cash deposit for each entry of the merchandise (19 CFR 353.22(h)(3)(ii)(B)(4) (1995)).

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 353.34(b).

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)) and 19 CFR 353.22(h).

Dated: May 17, 1995.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 95–12593 Filed 5–22–95; 8:45 am]

BILLING CODE 3510–DS–M

National Institute of Standards and Technology

Announcement of a Meeting to Discuss an Opportunity to Join a Cooperative Research and Development Consortium for Accelerated Wear Resistance Screening Tests for Orthopedic Joint Replacement Implant Materials

AGENCY: National Institute of Standards and Technology.

ACTION: Notice of public meeting.

SUMMARY: The National Institute of Standards and Technology (NIST) invites interested parties to attend a meeting on July 6, 1995 to discuss the possibility of setting up a cooperative research consortium on the development of methods to accelerate the evaluation of wear resistance of orthopedic hip and knee implant materials. Parties interested in participating in the consortium should be prepared to invest adequate resources in the collaboration and be firmly committed to the goal of developing new accelerated wear evaluation technology.

Any program undertaken will be within the scope and confines of The Federal Technology Transfer Act of 1986 (Pub. L. 99–502, 15 U.S.C. 3710a), which provides federal laboratories including NIST, with the authority to enter into cooperative research agreements with qualified parties. Under this law, NIST may provide "personnel, service, facilities, equipment or other resources with or without reimbursement (but not funds to non-federal parties)"—to the cooperative research program.

The meeting will be held on July 6, 1995 at 8:30 a.m., Room A315, Building 224 at NIST in Gaithersburg, MD, for interested parties. The meeting will discuss the possible formation of a research consortium including NIST and orthopedic industry to conduct research in this area. This is not a grant program.

DATES: The meeting will be held on July 6, 1995. Interested parties should contact NIST to confirm their attendance at the address, telephone number or FAX number shown below no later than June 22, 1995.

ADDRESSES: The meeting will held at 8:30 a.m., Room A315, Building 224, National Institute of Standards and Technology, Gaithersburg, MD.

FOR FURTHER INFORMATION CONTACT: Dr. John A. Tesk, Building 224, Room A143, National Institute of Standards and Technology, Gaithersburg, MD 20899. Telephone: 301–975–6799; FAX: 301–963–9143; e-mail: tesk@ micf.nist.gov.

Dated: May 16, 1995.

Raymond G. Kammer,

Deputy Director.

[FR Doc. 95–12548 Filed 5–22–95; 8:45 am]

BILLING CODE 3510–13–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comments on Bilateral Textile Consultations on Men's and Boys' Wool Coats Other Than Suit Type

May 17, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen (India) and Anne Novak (Brazil), International Trade Specialists, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on categories for which consultations have been requested, call (202) 482–3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Under the terms of Article 6 of the Uruguay Round Agreement on Textiles and Clothing (ATC) and the Uruguay Round Agreements Act, the Government of the United States requested consultations, on April 18, 1995 and April 26, 1995, respectively, with the Governments of India and the Federative Republic of Brazil with respect to men's and boys' wool coats other than suit type in Category 434, produced or manufactured in India and Brazil.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations with the Government of India and the Government of the Federative Republic of Brazil, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of wool textile products in Category 434, produced or manufactured in India and Brazil and exported during the twelve-month period April 18, 1995 through April 17, 1996, at a level of not less than 45,750 dozen, in the case of India, and exported during the twelve-month period April 26, 1995 through April 25, 1996, at a level of not less than 9,519 dozen, in the case of Brazil. On April 18, 1995, CITA dropped its request for consultations with India on Category 434 that was made on December 30, 1994 (see 60 FR 5653, published on January 30, 1995) and resubmitted the request under Article 6 of the ATC.

A summary statement of serious damage concerning Category 434 follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Category 434, or to comment on domestic production or availability of products included in Category 434, is invited to submit 10 copies of such comments or information to Rita D. Hayes, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; ATTN: Helen L. LeGrande. The comments received will be considered in the context of the consultations with the Government of India and the Government of the Federative Republic of Brazil.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning Category 434. Should such a solution be reached in consultations with the Governments of India and the Federative Republic of Brazil, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994).

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Statement of Serious Damage

Men's and Boys' Wool Coats Other Than Suit Type—Category 434

April 1995

The sharp and substantial increase in imports of men's and boys' wool coats other than suit type, Category 434, is causing serious damage to the U.S. industry producing men's and boys' wool coats other than suit type.

U.S. imports of men's and boys' wool coats other than suit type, Category 434, surged to 189,180 dozen in the year ending January 1995, 40 percent above the same period a year earlier.

Serious damage to the domestic industry resulting from the sharp and substantial increase in imports of men's and boys' wool coats other than suit type is attributed to India and Brazil. The combination of high import levels, surging imports, and low priced goods from these countries have resulted in loss of domestic output, market share, investment, employment, man-hours worked, and total annual wages.

Total imports from the two countries listed above increased from 31,371 dozen in the year ending January 1994 to 55,269 dozen in the twelve months ending in January 1995, a sharp and substantial increase of 76 percent. Together their year ending January 1994 imports were 23 percent of total Category 434 imports. Their share of total category imports increased to 29 percent in the year ending January 1995. Their year ending January 1995 imports were 36 percent of total U.S. production of men's and boys' non-suit type wool coats in the year ending September 1994.

[FR Doc. 95–12600 Filed 5–22–95; 8:45 am]

BILLING CODE 3510-DR-F

Request for Public Comments on Bilateral Textile Consultations on Woven Wool Shirts and Blouses

April 17, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen (India) and Anne Novak (Hong Kong), International Trade Specialists, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on categories for which consultations have been requested, call (202) 482–3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Under the terms of Article 6 of the Uruguay Round Agreement on Textiles and Clothing (ATC) and the Uruguay Round Agreements Act, the Government of the United States requested consultations, on April 18, 1995 and April 27, 1995, respectively, with the Governments of India and the Hong Kong with respect to woven wool shirts and blouses in Category 440, produced or manufactured in India and Hong Kong.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations with the Government of India and the Government of Hong Kong, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of wool textile products in Category 440, produced or manufactured in India and Hong Kong and exported during the twelve-month period April 18, 1995 through April 17, 1996, at a level of not less than 76,698 dozen, in the case of India, and exported during the twelve-month period April 27, 1995 through April 26, 1996, at a level of not less than 5,428 dozen, in the case of Hong Kong. On April 18, 1995, CITA dropped its request for consultations with India on Category 440 that was made on December 30, 1994 (see 60 FR 5653, published on January 30, 1995) and resubmitted the request under Article 6 of the ATC.

A summary statement of serious damage concerning Category 440 follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Category 440, or to comment on domestic production or availability of products included in Category 440, is invited to submit 10 copies of such comments or information to Rita D. Hayes, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; ATTN: Helen L. LeGrande. The comments received will be considered in the context of the consultations with the Government of India and the Government of Hong Kong.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning Category 440. Should such a solution be reached in consultations with the Governments of India and Hong Kong, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994).

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Summary Statement of Serious Damage

Woven Wool Shirts and Blouses—Category 440

April 1995

The sharp and substantial increase in imports of woven wool shirts and blouses, Category 440, is causing serious damage to the U.S. industry producing woven wool shirts and blouses.

Category 440 imports surged to 141,502 dozen in the year ending January 1995, nearly double the year ending January 1994 level.

Serious damage to the domestic industry resulting from the sharp and substantial increase in imports of woven wool shirts and blouses is attributed to India and Hong Kong. The combination of high import levels, surging imports, and low priced goods from these countries have resulted in loss of domestic output, market share, investment, employment, man-hours worked, and total annual wages.

Total imports from these two countries increased from 17,687 dozen in the year ending January 1994 to 82,126 dozen in the twelve months ending in January 1995, a sharp and substantial increase of 364 percent. Together their year ending January 1994 imports were 24 percent of total Category 440 imports. Their share of total category imports increased to 58 percent in the year ending January 1995. Their year ending January 1995 imports were 107 percent of total U.S. production of woven wool shirts and blouses in the year ending September 1994.

[FR Doc. 95–12601 Filed 5–22–95; 8:45 am]

BILLING CODE 3510-DR-F

Request for Public Comments on Bilateral Textile Consultations on Women's and Girls' Wool Coats

May 17, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen (India) and Jennifer Aldrich (Honduras), International Trade Specialists, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on categories for which consultations have been requested, call (202) 482–3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Under the terms of Article 6 of the Uruguay Round Agreement on Textiles and Clothing (ATC) and the Uruguay Round Agreements Act, the Government of the United States requested consultations, on April 18, 1995 and April 24, 1995, respectively, with the Governments of India and Honduras with respect to women's and girls' wool coats in Category 435, produced or manufactured in India and Honduras.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations with the Government of India and the Government of Honduras, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of wool textile products in Category 435, produced or manufactured in India and Honduras and exported during the twelve-month period April 18, 1995 through April 17, 1996, at a level of not less than 37,487 dozen, in the case of India, and exported during the twelve-month period April 24, 1995 through April 23, 1996, at a level of not less than 14,400 dozen, in the case of Honduras. On April 18, 1995, CITA dropped its request for consultations with India on Category 435 that was made on December 30, 1994 (see 60 FR 5653, published on January 30, 1995) and resubmitted the request under Article 6 of the ATC.

A summary statement of serious damage concerning Category 435 follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Category 435, or to comment on domestic production or availability of products included in Category 435, is invited to submit 10 copies of such comments or information to Rita D. Hayes, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; ATTN: Helen L. LeGrande. The comments received will be considered in the context of the consultations with the Government of India and the Government of Honduras.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce,

14th and Constitution Avenue, NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning Category 435. Should such a solution be reached in consultations with the Governments of India and Honduras, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994).

Rita D. Hayes,

Chairman, Committee for the Implementntion of Textile Agreements.

Summary Statement of Serious Damage

Women's and Girls' Wool Coats—Category 435

April 1995

The sharp and substantial increase in imports of women's and girls' wool coats, Category 435, is causing serious damage to the U.S. industry producing women's and girls' wool coats.

Category 435 imports surged to 1,206,632 dozen in the year ending January 1995, 9 percent above the year ending January 1994 level.

Serious damage to the domestic industry resulting from the sharp and substantial increase in imports of women's and girls' wool coats is attributed to India and Honduras. In both cases surging imports and low priced goods have resulted in loss of domestic output, market share, investment, employment, man-hours worked, and total annual wages.

Total imports from these two countries increased from 10,366 dozen in the year ending January 1994 to 51,887 dozen in the twelve months ending in January 1995, a sharp and substantial increase of 400 percent. Together their year ending January 1994 imports were 0.9 percent of total Category 435 imports. Their share of total category imports increased to 4.3 percent in the year ending January 1995. Their year ending January 1995 imports were 5.7 percent of total U.S. production of women's and girls' wool coats in the year ending September 1994.

[FR Doc. 95–12603 Filed 5–22–95; 8:45 am]

BILLING CODE 3516–DR–F

Request for Public Comments on Bilateral Textile Consultations on Man-Made Fiber Luggage

May 17, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen (Philippines), Helen L. LeGrande (Sri Lanka) and Ross Arnold (Thailand), International Trade Specialists, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on categories for which consultations have been requested, call (202) 482–3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Under the terms of Article 6 of the Uruguay Round Agreement on Textiles and Clothing (ATC) and the Uruguay Round Agreements Act, the Government of the United States requested consultations, on April 24, 1995 (Philippines) and April 27, 1995 (Sri Lanka and Thailand), with the Governments of the Philippines, the Democratic Socialist Republic of Sri Lanka and Thailand with respect to man-made fiber luggage in Category 670–L, produced or manufactured in the Philippines, Sri Lanka and Thailand.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations with the Government of the Philippines and the Government of the Democratic Socialist Republic of Sri Lanka and the Government of Thailand, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of man-made fiber textile products in Category 670–L, produced or manufactured in the Philippines, Sri Lanka and Thailand and exported during the twelve-month period April 24, 1995 through April 23, 1996, at a level of not less than 7,718,533 kilograms, in the case of the Philippines; exported during the twelve-month period April 27, 1995 through April 26, 1996, at a level of not less than 3,420,904 kilograms, in the case of Sri Lanka; and exported during the twelve-month period April 27, 1995 through April 26, 1996, at a level of not less than 19,792,859 kilograms, in the case of Thailand. On April 27, 1995, CITA dropped its request for consultations with Thailand on Category 670–L that was made on November 28, 1994 (see 60 FR 2081, published on January 6, 1995) and resubmitted the request under Article 6 of the ATC.

A summary statement of serious damage concerning Category 670–L follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Category 670–L, or to comment on domestic production or availability of products included in Category 670–L, is invited to submit 10 copies of such comments or information to Rita D. Hayes, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; ATTN: Helen L. LeGrande. The comments received will be considered in the context of the consultations with the Government of the Philippines, the Government of the Democratic Socialist Republic of Sri Lanka and the Government of Thailand.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning Category 670–L. Should such a solution be reached in consultations with the Governments of the Philippines, Sri Lanka and Thailand, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994).

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Summary Statement of Serious Damage

Manmade Fiber Luggage—Category 670–L

April 1995

The sharp and substantial increase in imports of manmade fiber luggage, Category 670–L, is causing serious damage to the U.S. industry producing manmade fiber luggage.

Manmade fiber luggage imports, Category 670–L, increased from 72,550,000 kilograms in 1992 to 77,238,000 kilograms in 1993, a six percent increase. Manmade fiber luggage imports, Category 670–L, continued to increase in 1994 and 1995, reaching 87,413,000 kilograms during year ending January 1995, 13 percent above the year ending January 1994 level and 20 percent above the 1992 level.

Serious damage to the domestic industry resulting from the sharp and substantial increase in imports of manmade fiber luggage is attributed to imports from Thailand, Philippines and Sri Lanka. The combination of high import levels, surging imports and low priced luggage from these countries have resulted in loss of domestic output, market share, investment, employment, and man-hours worked.

Total imports of manmade fiber luggage, Category 670–L, from the three countries listed above increased from 24,069,000 kilograms in the year ending January 1994 to 30,932,000 kilograms in the twelve months ending in January 1995, a sharp and substantial increase of 29 percent. Together their year ending January 1994 imports were 31 percent of total U.S. imports in Category 670–L. Their share of total Category 670–L imports increased to 35 percent in the year ending January 1995. Their year ending January 1995 imports, measured in kilograms of fabric content, were 102 percent of total 1994 U.S. production of manmade fiber luggage.

[FR Doc. 95–12602 Filed 5–22–95; 8:45 am]

BILLING CODE 3516–DR–F

DEPARTMENT OF DEFENSE

Department of the Navy

Naval Research Advisory Committee; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Naval Research Advisory Committee Panel on Reduced Manning will meet on May 23 and 24, 1995. The meeting will be held at the Office of Naval Research, 800 North Quincy Street, Room 915, Ballston Center Tower One, Arlington, Virginia. The first session will commence at 10:00 a.m. and terminate at 5:00 p.m. on May 23; the second session will commence at 8:00 a.m. and terminate at 5:00 p.m. on May 24, 1995. All sessions of the meeting will be open to the public.

The purpose of the meeting is to provide the Navy with an assessment of the force structure and ship concepts which would require a minimum manning level with a goal of 25% reduction of current manning.

The meeting will include briefings and discussions relating to ship systems automation, shipboard manning, manpower planning, damage control, and lessons learned.

This Notice is being published late because of administrative delays which constitute an exceptional circumstance, not allowing Notice to be published in the **Federal Register** at least 15 days before the date of the meeting.

For further information concerning this meeting contact:Ms. Diane Mason-Muir, Office of Naval Research, Ballston Center Tower One, 800 North Quincy Street, Arlington, VA 22217-5660, Telephone Number: (703) 696-4870.

Dated: May 11, 1995

M. D. SCHETZSLE,

LT, JAGC, USNR, Alternate Federal Register Liaison Officer.

[FR Doc. 95-12650 Filed 5–22–95; 8:45 am]

BILLING CODE 3810–AE–F

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADIMINISTRATION

[OMB Control No. 9000–0088]

Clearance Request for Travel Costs

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0088).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Travel Costs.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

FAR 31.205–46, Travel Costs, requires that, except in extraordinary and temporary situations, costs incurred by a contractor for lodging, meals, and incidental expenses shall be considered to be reasonable and allowable only to the extent that they do not exceed on a daily basis the per diem rates in effect as of the time of travel as set forth in the Federal Travel Regulation for travel in the conterminous 48 United States, the Joint Travel Regulations, Volume 2, Appendix A, for travel in Alaska, Hawaii, the Commonwealth of Puerto Rico, and territories and possessions of the United States, and the Department of State Standardized Regulations, section 925, "Maximum Travel Per Diem Allowances for Foreign Areas." The burden generated by this coverage is in the form of the contractor preparing a justification whenever a higher actual expense reimbursement method is used.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *15 minutes* per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to General Services Administration, FAR Secretariat, 18th and F Streets, NW., Room 4037, Washington, DC 20405.

The annual reporting burden is estimated as follows: Respondents, *16,000;* responses per respondent, *10;* total annual responses, *160,000;* preparation hours per response, *.25;* and total response burden hours, *40,000.*

OBTAINING COPIES OF PROPOSALS: Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), Room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0088, Travel Costs, in all correspondents.

Dated: May 12, 1995.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 95–12534 Filed 5–22–95; 8:45 am]

BILLING CODE 6820–EP–M

[OMB Control No. 9000–0095]

Clearance Request for Commerce Patent Regulations

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0095).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Commerce Patent Regulations, Public Law 98–620.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

As a result of the Department of Commerce (Commerce) publishing a final rule in the **Federal Register** implementing Public Law 98–620 (52 FR 8552, March 18, 1987), a revision to FAR subpart 27.3 to implement the Commerce regulation was published in the **Federal Register** as an interim rule on June 12, 1989 (54 FR 25060).

A Government contractor must report all subject inventions to the contracting officer, submit a disclosure of the invention, and identify any publication, or sale, or public use of the invention (52.227–11(c), 52.228–12(c), and 52.227–13(e)(2)). Contractors are required to submit periodic or interim and final reports listing subject inventions (27.303(a); 27.304–1(e)(1) (i) and (ii); 27.304–1(e)(2) (i) and (ii); 52.227–12(f)(7); 52.227–14(e)(3)). In order to ensure that subject inventions are reported, the contractor is required to establish and maintain effective procedures for identifying and disclosing subject inventions (52.227–11, Alternate IV; 52.227–12(f)(5); 52.227–13(e)(1)). In addition, the contractor must require his employees, by written agreements, to disclose subject inventions (52.227–11(f)(2); 52.227–12(f)(2); 52.227–13(e)(4)). The contractor also has an obligation to utilize the subject invention, and agree to report, upon request, the utilization or efforts to utilize the subject invention (27.302(e); 52.227–11(h); 52.227–12(h)).

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average 3.9 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to General Services Administration, FAR Secretariat, 18th & F Streets, NW, Room 4037, Washington, DC 20405.

The annual reporting burden is estimated as follows: Respondents, 1,200; responses per respondent, 9.75; total annual responses, 11,700; preparation hours per response, 3.9; and total response burden hours, 45,630.

OBTAINING COPIES OF PROPOSALS: Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), Room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0095, Commerce Patent Regulations, in all correspondence.

Dated: April 12, 1995.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 95–12535 Filed 5–22–95; 8:45 am]

BILLING CODE 6820–EP–M

DEPARTMENT OF EDUCATION

National Educational Research Policy and Priorities Board; Meeting

AGENCY: National Educational Research Policy and Priorities Board; Education.

ACTION: Notice of partially closed meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Educational Research Policy and Priorities Board. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act and is intended to notify the general public of their opportunity to attend the open portions of the meeting.

DATES: June 8 and 9, 1995.

TIMES: June 8, 1995, 8 a.m. to 5 p.m. (open). June 9, 1995, 8 a.m. to approximately 9 a.m. (closed); approximately 9 a.m. to 3 p.m. (open).

LOCATION: Association of American Railroads Conference Center, Rooms A and B, Fourth Floor, 50 F St., NW., Washington, DC 20001. On June 8, from approximately 10 a.m. to 11:30 a.m. only, the meeting will move to room 326, 555 New Jersey Ave., NW.

FOR FURTHER INFORMATION CONTACT: John Christensen, Designated Federal Official, Office of Educational Research and Improvement, 555 New Jersey Ave., NW., Washington, DC 20208–7579. Telephone: (202) 219–2065.

SUPPLEMENTARY INFORMATION: The National Educational Research Policy and Priorities Board is authorized by Section 921 of the Educational Research, Development, Dissemination, and Improvement Act of 1994. The Board works collaboratively with the Assistant Secretary for the Office of Educational Research and Improvement to forge a national consensus with respect to a long-term agenda for educational research, development, and dissemination, and to provide advice and assistance to the Assistant Secretary in administering the duties of the Office.

The meeting of the Board is open to the public, except for a portion which will be closed on June 9 from 8 a.m. to approximately 9 a.m. The proposed agenda on June 8 includes subcommittee reports, a meeting with representatives from educational associations, and reports on research and development center priorities and on standards for the evaluation of research, and discussion of the research priorities plan.

On June 9 the Board will consider personnel, organizational, and business matters and develop approaches to a research agenda. The meeting will be closed to the public from 8 a.m. to approximately 9 a.m. under the authority of Section 10(d) of the Federal Advisory Committee Act and under exemptions (2) and (6) of Section 552b(c) of Title 5 U.S.C. to discuss the procedure for the selection of an executive director. The Board will consider matters that relate solely to the internal personnel rules and practices of the Board and also to the personal qualifications and experience of potential candidates for this position, matters that would disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session.

A final agenda will be available from the Board office on June 1, 1995.

A summary of the activities at the closed session and related matters which are informative to the public consistent with the policy of Title 5 U.S.C. 552b will be available to the public within 14 days of the meeting. Records are kept of all Board proceedings, and are available for public inspection at the office of the National Educational Research Policy and Priorities Board, 555 New Jersey Ave., NW., Washington, DC 20208–7564.

Dated: May 17, 1995.

Sharon P. Robinson,

Assistant Secretary.

[FR Doc. 95–12516 Filed 5–22–95; 8:45 am]

BILLING CODE 4000–01–M

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board; Education.

AGENCY: Notice of Achievement Levels Committee Teleconference meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming teleconference meeting of the Achievement Levels Committees of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: June 12, 1995.

TIME: 2:00 P.M. (e.t.), until adjournment, approximately, 3:30 p.m., (open).

LOCATION: 800 North Capitol Street, NW., Suite 825, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Mary Ann Wilmer, Operations Officer, National Assessment Governing Board, Suite 825, 800 North Capitol Street, NW., Washington, D.C. 20002–4233, Telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 412 of the National Education Statistics Act of 1994 (Title IV of the Improving America's Schools Act of 1994), (Pub. L. 103–382).

The Board is established to formulate policy guidelines for the National Assessment of Educational Progress. The Board is responsible for selecting subject areas to be assessed, developing assessment objectives, identifying appropriate achievement goals for each grade and subject tested, and establishing standards and procedures for interstate and national comparisons.

On June 12, the Achievement Levels Committee will hold a teleconference meeting beginning at 2:00 p.m. The purpose of this meeting is to select (1) exemplar items for the 1994 U.S. history and world geography reports, and (2) exemplar items for the 1994 reading report. Other agenda items include consideration of a report from NCES on technical issues in performance assessments, and discussion of the Advisory Council on Education Statistics document on standards.

Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite 825, 800 North Capitol Street, N.W., Washington, D.C., from 8:30 a.m. to 5:00 p.m.

Dated: May 18, 1995.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 95–12547 Filed 5–22–95; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP95–493–000, et al.]

Columbia Gas Transmission Corporation, et al.; Natural Gas Certificate Filings

May 16, 1995.

Take notice that the following filings have been made with the Commission:

1. Columbia Gas Transmission Corporation

[Docket No. CP95–493–000]

Take notice that on May 11, 1995, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. CP95–493–000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate the facilities necessary to establish thirteen new points of delivery to existing customers for firm transportation service under Columbia's blanket certificate issued in Docket No. CP83–76–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Specifically, Columbia proposes to construct and operate twelve new points of delivery to Mountaineer Gas Company (MGC) all of which would be located in West Virginia and would have a total estimated design day and annual quantity of 18 Dth and 1,800 Dth, respectively. In addition, Columbia proposes to construct and operate one new point of delivery to West Ohio Gas Company (WOG) which would be located in Ohio and would have an estimated design day and annual quantity of 3 Dth and 175 Dth, respectively. Columbia states that the new points of delivery would allow MGC and WOG to serve residential customers.

Columbia states that the quantities to be provided through the new delivery points will be within Columbia's authorized level of services and, therefore, there is no impact on Columbia's existing design day and annual obligations to the customers as a result of the construction and operation of the new points of delivery for firm transportation service.

Columbia estimates that the cost to install the new taps to be approximately $150 per tap which will be treated as an O&M expense.

Columbia states that it will comply with all of the environmental requirements of § 157.206(d) of the Commission's regulations prior to the construction of any facilities.

Comment date: June 30, 1995, in accordance with Standard Paragraph G at the end of this notice.

2. Panhandle Eastern Pipe Line Company

[Docket No. CP95–496–000]

Take notice that on May 12, 1995, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP95–496–000 a request pursuant to §§ 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon in place approximately 5,330 feet of 18-inch pipeline under Panhandle's blanket certificate issued in Docket No. CP83–83–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Panhandle proposes to abandon in place approximately 5,300 feet of 18-inch pipeline. In conjunction with the proposed abandonment Panhandle will perform additional work under its blanket certificate and § 157.208(a)(1) of the Commission's Regulations to install approximately 8,550 feet of new 18-inch

pipeline. The facilities are located in Oakland County, Michigan.

Comment date: June 30, 1995, in accordance with Standard Paragraph G at the end of this notice.

3. Algonquin Gas Transmission Company

[Docket No. CP95–497–000]

Take notice that on May 10, 1995, Algonquin Gas Transmission Company (Algonquin), 1284 Soldiers Field Road, Boston, MA 02135, filed in Docket No. CP95–497–000 a request pursuant to Section 7 of the Natural Gas Act, as amended, and §§ 157.205, 157.212, 157.216(b) for authorization to construct and operate certain appurtenant facilities at its existing Ponkapoag meter station in connection with volumes to be delivered to Boston Gas Company (Boston Gas) at the Ponkapoag delivery point in Milton, Massachusetts and to abandon the facilities that are replaced by the new facilities. This request is made in accordance with the authority granted to Algonquin in its blanket certificate issued in Docket No. CP87–317–000 pursuant to 18 CFR Part 157, Subpart F of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open for public inspection.

Algonquin states that Boston Gas has requested and Algonquin has agreed to construct appurtenant facilities at an existing meter station, at an estimated cost of $1,596,600. Algonquin would install additional heaters in the meter station yard and replace pressure regulators, headers and meter runs. It is stated that construction activities would be within the existing fenced area at the meter station site in previously disturbed areas. It is further stated that Boston Gas would reimburse Algonquin for costs incurred in installing the facilities.

Comment date: June 30, 1995, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–12522 Filed 5–22–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER95–802–000]

IEP Power Marketing, L.L.C.; Notice of Issuance of Order

May 17, 1995.

On March 22 and April 4, 1995, IEP Power Marketing, L.L.C. (IPM) submitted for filing a rate schedule under which IPM will engage in wholesale electric power and energy transactions as a marketer. IPM also requested waiver of various Commission regulations. In particular, IPM requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by IPM.

On May 11, 1995, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by IPM should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, IPM is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of IPM's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is June 12, 1995.

Copies of the full text of the order are available from the Commission's Public Reference Branch, Room 3308, 941 North Capitol Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 95–12523 Filed 5–22–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–245–001]

Koch Gateway Pipeline Company; Notice of Compliance Filing

May 17, 1995.

Take notice that on May 15, 1995, Koch Gateway Pipeline Company (Koch Gateway) tendered for filing as part of its FERC Gas Tariff Fifth Revised Volume No. 1, the following tariff sheets, to be effective May 4, 1995:

Second Revised Sheet No. 3606

Koch Gateway states that on May 5, 1995, the Office of Pipeline Regulation (OPR) issued a Letter Order in the above captioned proceeding. Pursuant to that Letter Order, Koch Gateway was directed to file within 10 days to correct pagination on Tariff Sheet No. 3606. Accordingly, Koch Gateway has revised the pagination to delete First Revised Sheet No. 3606, which has previously been approved by the Commission, and added Second Revised Sheet No. 3606.

Koch Gateway also states that the tariff sheets are being mailed to all parties on the official service list created by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with § 385.211 of the Commission's Regulations. All such protests should be filed on or before May 24, 1995. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–12524 Filed 5–22–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–495–000]

NorAm Gas Transmission Company; Notice of Request Under Blanket Authorization

May 17, 1995.

Take notice that on May 12, 1995, NorAm Gas Transmission Company (NGT), 1600 Smith Street, Houston, Texas 77002, filed in Docket No. CP95–495–000 a request pursuant to §§ 157.205 and 157.211 and 216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211 and 216) for authorization to abandon, replace, and relocate certain facilities on Line 3, 4–H, and 4–14 under NGT's blanket certificate issued in Docket No. CP82–384–000, *et al.*, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Specifically, NGT proposes to:

(1) Abandon twenty eight 1-inch rural domestic taps on Lines 3 and 4–H and to install three taps on Line 4–1–4 at a construction cost of $4,454;

(2) Abandon the Hunter Town Border Station on Line 3 and relocate it on Line 4–14 at a construction cost of $28,540;

(3) Abandon and relocate the Garber Regulator Station on Line 4–A at a construction cost of $17,673; and

(4) Abandon the Pond Creek Regulator Station on Line 4–1–4 and replace and relocate it on Line 4–B (Extension) at a construction cost of $14,672.

Arkla will reimburse NGT for the costs associated with the taps to be installed on Line 4–1–4.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–12525 Filed 5–22–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER95–357–000]

Northeast Utilities Service Company; Notice of Filing

May 17, 1995.

Take notice that on March 31, 1995, Northeast Utilities Service Company (NUSCO) tendered for filing on behalf of The Connecticut Light and Power Company (CL&P), Western Massachusetts Electric Company (WMECO), Holyoke Water Power Company (HWP), Holyoke Power and Electric Company and Public Service Company of New Hampshire (together, the NU System Companies) clarification of the formula for the determination of operation and maintenance expense contained in Schedule B to the Distribution Service Agreement previously filed by NUSCO in the above-referenced docket.

NUSCO renews its request that the proposed rate schedule changes be permitted to become effective January 1, 1995. NUSCO states that a copy of the filing has been mailed or delivered to the affected parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before May 26, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–12526 Filed 5–22–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–206–003]

Northern Natural Gas Company; Notice of Technical Conference

May 17, 1995.

In the Commission's order issued March 10, 1995, the Commission held that the filing in the above captioned proceeding raises issues that should be addressed in a technical conference.

Take notice that the technical conference will be held on Thursday May 25, 1995, at 1:00 p.m., in Room 2402–A at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. All interested parties and Staff are permitted to attend.

Lois D. Cashell,

Secretary.

[FR Doc. 95–12527 Filed 5–22–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–416–000]

Northern Natural Gas Company; Notice of Technical Conference

May 17, 1995.

In the Commission's order issued February 15, 1995, the Commission held that the filing in the above captioned proceeding raises issues that should be addressed in a technical conference.

Take notice that the technical conference will be held on Thursday, May 25, 1995, at 2:00 p.m., Room 2402–A at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington D.C. 20426. All interested parties and Staff are permitted to attend.

Lois D. Cashell,

Secretary.

[FR Doc. 95–12528 Filed 5–22–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–297–000]

Northwest Alaskan Pipeline Company; Notice of Tariff Changes

May 17, 1995.

Take notice that on May 15, 1995, Northwest Alaskan Pipeline Company (Northwest Alaskan), tendered for filing in Docket No. RP95–297–000 to become part of its FERC Gas Tariff Original Volume No. 2, Thirty-Sixth Revised Sheet No. 5.

Northwest Alaskan states that it is submitting Thirty-Sixth Revised Sheet No. 5 reflecting a decrease in total demand charges for Canadian gas purchased by Northwest Alaskan from Pan-Alberta Gas Ltd. (Pan-Alberta) and resold to Northwest Alaskan's two U.S. purchasers, Pan-Alberta Gas (U.S.), Inc. ("PAG–US") under Rate Schedules X–1, X–2 and X–3, and Pacific Interstate Transmission Company ("PIT") under Rate Schedule X–4.

Northwest Alaskan states that it is submitting Thirty-Sixth Revised Sheet No. 5 pursuant to the provisions of the amended purchase agreements between Northwest Alaskan and PAG–US and PIT, and pursuant to Rate Schedules X–1, X–2, X–3 and X–4, which provide for Northwest Alaskan to file 45 days prior to the commencement of the next demand charge period (July 1, 1995

through December 31, 1995) the demand charges and demand charge adjustments which Northwest Alaskan will charge during the period.

Northwest Alaskan requests that Thirty-Sixth Revised Sheet No. 5 become effective July 1, 1995.

Northwest Alaskan States that a copy of this filing has been served on Northwest Alaskan's customers.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before May 24, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–12529 Filed 5–22–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–217–001]

Trunkline Gas Company; Notice of Compliance Filing

May 17, 1995.

Take notice that on May 12, 1995, Trunkline Gas Company (Trunkline) tendered for filing revised working papers reflecting its Initial Stranded Transportation (IST) Cost Surcharge reconciliation to reflect the calculation of interest on excess recoveries in compliance with Ordering Paragraph (C) of the Commission's Order of April 27, 1995 in Docket No. RP95–217–000.

Trunkline states that copies of this filing have been served on all affected customers and applicable state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before May 24, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–12530 Filed 5–22–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–3–004]

Williams Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

May 17, 1995.

Take notice that on May 12, 1995, William Natural Gas Company (WNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Sheet No. 11, Second Substitute First Revised Sheet No. 12. The proposed effective date of this tariff sheet is November 5, 1994.

WNG states that this filing is being made in compliance with Commission order issued May 2, 1995 in Docket No. RP95–3. WNG was directed by the order to file, within 30 days of the issuance of the order, actual tariff sheets reflecting the $35 million direct bill that eliminates the small municipal customers identified in WNG's Small Customer Settlement filed October 5, 1994, in Docket No. RP95–3–001.

WNG states that a copy of its filing was served on all jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before May 24, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–12531 Filed 5–22–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–296–000]

Williams Natural Gas Co.; Notice of Proposed Changes in FERC Gas Tariff

May 17, 1995.

Take notice that on May 12, 1995, Williams Natural Gas Company (WNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, First Revised Sheet No. 253. The proposed effective date of this tariff sheet is June 15, 1995.

WNG states that the purpose of the instant filing is to amend Article 14 of the General Terms and Conditions of WNG's FERC Gas Tariff to provide for the extension of WNG's pricing differential mechanism (PDM) until October 1, 1997. The Commission has previously held that PDMs will continue for two years from the effective date of Order No. 636 restructuring. While WNG's FERC Gas Tariff does not explicitly so provide, WNG's PDM would expire on October 1, 1995.

WNG states that a copy of its filing was served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 24, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–12532 Filed 5–22–95; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5197–9]

Regulatory Reinvention (XL) Pilot Projects

AGENCY: Environmental Protection Agency (EPA).

ACTION: Solicitation of proposals and request for comment.

SUMMARY: EPA is announcing a set of actions to give regulated sources the flexibility to develop alternative strategies that will replace or modify specific regulatory requirements on the condition that they produce greater environmental benefits. This document announces three of EPA's regulatory reinvention pilot programs: the XL program for facilities; the industry-wide or sector-based XL program; and XL program dealing with government agencies regulated by EPA. EPA invites private and public entities or groups of entities regulated by EPA under its various statutory authorities to submit proposals in these areas. Proposals for a fourth area—the community-based XL program—will be accepted at a later time. This document also invites interested members of the public to comment on all aspects of these programs. The document responds to President Clinton's announcement, contained in the March 16, 1995, document Reinventing Environmental Regulation, that EPA would implement pilot programs to develop innovative alternatives to the current regulatory system. EPA has set a goal of implementing a total of fifty projects in the four program areas. Each project will involve the exercise of regulatory flexibility by EPA in exchange for a commitment on the part of the regulated entity to achieve better environmental results than would have been attained through full compliance with all applicable regulations. This program will be undertaken in full partnership with the states. These pilots complement EPA's ongoing regulatory reinvention activities, including the Common Sense Initiative and the Environmental Leadership Program. This summer, EPA will select up to six project proposals and begin the development of a final project agreement. Final Project Agreements for the remaining pilots will be based on EPA's learning experience on the initial projects.

The document includes background information on the programs; a description of the programs; their relationship to other regulatory reinvention activities; the criteria, process, and timing for the selection of projects; an invitation for public comment; and the Information Collection Request document required by the Paperwork Reduction Act.

DATES: The period for submission of proposals will begin upon EPA's announcement in the **Federal Register** that clearance has been obtained under the Paperwork Reduction Act, allowing EPA to accept proposals. This will be an open solicitation with no set end date, and project proponents may submit more than one project proposal. The period for comment on all aspects of the programs will begin with publication of this document and extend for thirty days. The period for comment on the attached Information Collection Request will begin with the publication of this document and extend for ten days.

ADDRESSES: Project proposals and all comments should be sent to: Regulatory Reinvention Pilot Projects, FRL–5197–9, Water Docket, Mail Code 4101, US EPA, 401 M Street, SW., Washington, DC, 20460. The docket accepts no faxes. In addition to providing general information about the proposed project, project proponents are encouraged to comment on the relationship of their proposals to the criteria for project selection described in this notice. Proponents of projects are invited, but by no means required, to submit other useful materials in paper or other audio/visual or electronic formats.

FOR FURTHER INFORMATION CONTACT: Jon Kessler, Office of Policy, Planning and Evaluation; United States Environmental Protection Agency; West Tower 1013; 401 M Street, SW.; Mail Code 2111; Washington, DC, 20460. The telephone number for the Office is (202) 260–4034. The facsimile number is (202) 401–6637.

SUPPLEMENTARY INFORMATION:

Background

Over the last two years, the Environmental Protection Agency has charted a course designed to demonstrate that environmental goals can best be achieved by providing regulatory and policy flexibility while maintaining accountability, that flexibility can also provide greater protection at a lower cost, that better decisions result from a collaborative process with people working together, and that environmental solutions are often achieved by focusing efforts at the facility or place where protection is being sought. EPA has found that allowing facilities, communities, and other entities to explore non-traditional pollution control solutions can result in regulated entities achieving environmental protection results beyond those anticipated by current regulations or policies. Often these alternative approaches can produce cheaper, more efficient results as well.

Description of the Programs

On March 16, 1995, the President announced as part of his National Performance Review regulatory reinvention initiative that EPA would develop a set of pilot projects that provide the flexibility to test alternative strategies to achieve environmental goals. The initiative will give a limited number of regulated entities an opportunity to demonstrate excellence and leadership. They will be given the flexibility to develop alternative strategies that will replace or modify specific regulatory requirements on the condition that they produce greater environmental benefits. In exchange for greater flexibility, regulated entities will be held to a higher standard of accountability for demonstrating project results. This **Federal Register** Notice is a solicitation for pilot project proposals in the three general areas: Industry-wide projects (XL for Sectors); facility based projects (XL for Facilities); and government agency projects (XL for Government). Proposals are invited from groups of firms in an industry, individual regulated facilities, and government agencies regulated by EPA.

These projects will require the participation of state and tribal regulatory agencies. In most cases, these agencies are full partners with EPA as they implement EPA programs that have been delegated to them. EPA is taking a decentralized or "franchising" approach to the implementation of XL programs. Under this approach, individual projects will be managed in most cases by the units of government that are best suited to address the issues raised by the projects. These may be state or tribal environmental agencies that are co-regulators with EPA, EPA headquarters, or EPA regional offices. As they develop project proposals, project proponents should coordinate with and gain the support of their state and tribal environmental agencies that have regulatory responsibility within the scope of the project. In addition to their role as co-regulators, these same agencies, as well as other local government agencies, are major stakeholders in the management of environmental quality. As such, their support for project proposals should be sought in any case.

Selection and participation in the program will proceed as indicated in the flow chart that follows. EPA expects that there will be competition among project proponents for acceptance into the program. The first stage in the process begins with the publication of this notice. Those who have projects meeting the listed criteria are encouraged to submit initial project proposals. EPA will then review submissions to select those that do most to advance the purposes of this program. An internal review process has been established to evaluate proposals submitted in response to this notice. This group, consisting of representatives of state and tribal environmental agencies as well as EPA headquarters and regional offices, will screen all proposals, considering the criteria described in this notice, and recommend proposals for further

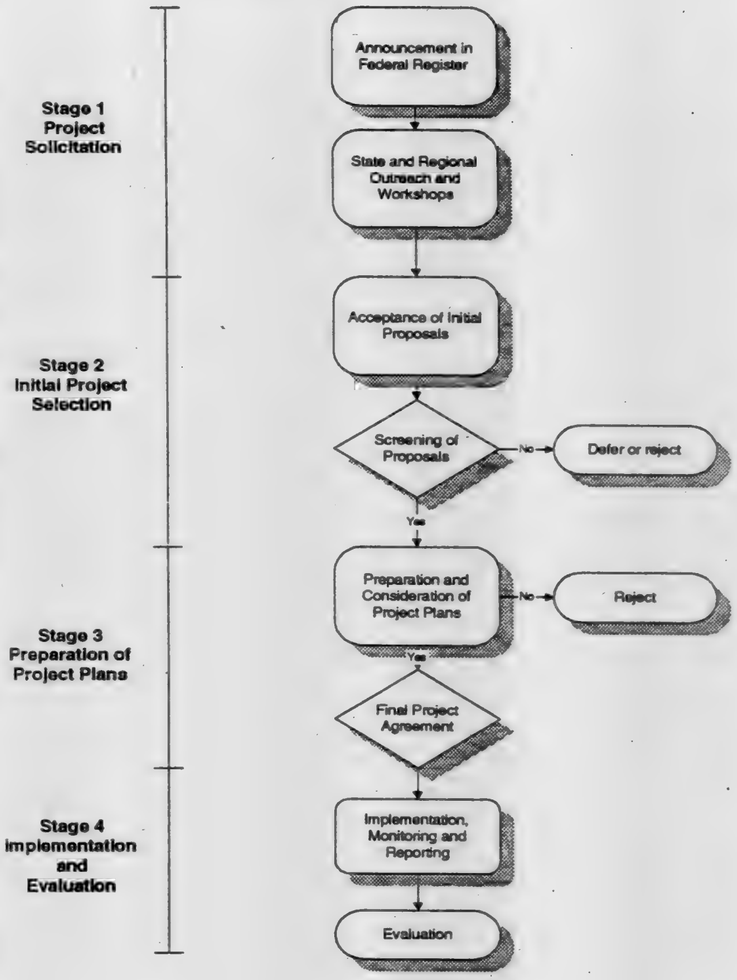
development. The group may also seek additional comment from relevant local environmental officials.

Based on the recommendations of the review group, EPA will invite particular project proponents to join with state or tribal environmental agencies as well as other coregulators, to develop a Final Project Agreement. EPA will encourage project proponents at this stage to incorporate their project plans into the overall strategic plan of the business entity. In any case, the responsibility for developing detailed project plans that address the program criteria will be with the project proponents. Only the signing of a Final Project Agreement will constitute the selection of a pilot as a full fledged pilot project. Parties to the Final Project Agreement should include at least EPA, project proponents, state or tribal environmental agencies, as well as other co-regulators. These agreements will deal with project-specific issues such as legal authority for project implementation, provision for regulatory flexibility for pilots, public involvement, specific commitments to environmental progress, expected environmental results, enforceability, etc. Each Final Project Agreement should clearly set forth objective, specific requirements that the subject facility or facilities have agreed to meet. EPA anticipates that the agreements will be structured so that any enforcement relief EPA has provided with respect to applicable regulatory requirements will be conditioned on the facilities' compliance with the specified requirements. EPA invites project proponents to include, in their proposals, suggestions for additional or alternative approaches to enforcing these requirements. Unless otherwise agreed to by both EPA and the proponent, the time to negotiate and sign a Final Project Agreement should be limited to six months from the date of initial project acceptance. The final phase of the program involves implementation, monitoring, and evaluation of the agreement terms.

EPA will hold a series of state and regional workshops to provide additional information on the programs and on project proposal development.

BILLING CODE 6560-50-M

Flow Chart for Pilot Projects



BILLING CODE 6560-50-C

Data Quality Issues

To demonstrate that an alternative environmental management strategy is more effective than existing and reasonably foreseeable future regulatory requirements, project proponents should estimate both the baseline result from these requirements and the environmental results from the alternative strategy for their specific projects. These estimates are likely to be uncertain due to scientific and/or engineering questions as well as to interpretations of future applicable regulatory requirements. An important element of the Final Project Agreement will be an explicit statement concerning what data and analyses are needed to make these findings. The Final Project Agreement will be based on the learning experience EPA has with the projects it initially selects.

Project Examples

Consistent with EPA's objective to develop and demonstrate more flexible environmental management strategies, EPA intends to be flexible in entertaining proposals pursuant to this notice. In evaluating proposals, EPA will consider the selection criteria included in this notice. EPA also encourages proponents of proposals to be creative in suggesting alternative strategies and new forms of flexibility. To help stimulate such creativity, we provide the following guidance for the three different types of pilot projects. These examples are intended to be illustrative only; EPA encourages the submission of other types of projects that address the selection criteria and that have the strong prospect of producing "cleaner, cheaper, smarter" results compared to the current system.

Facility-based XL projects. National environmental requirements may not always be the best solution to environmental problems. Substantial cost savings can sometimes be realized, and environmental quality enhanced, through more flexible approaches involving pollution prevention. Pilot projects focused on individual facilities should test alternatives to current environmental management approaches driven by compliance with existing regulations. Taking account of facility-specific circumstances, the overall objective should be to devise and test more flexible approaches that result in both better environmental results and reduced compliance costs.

Industry-wide XL projects. The many regulations affecting an industry are often promulgated piecemeal over a long period of time rather than as a comprehensive environmental program. In many cases, national regulations apply relatively uniform requirements to many industries with very different environmental and economic characteristics. Pilot projects addressing these problems might take many forms. One example is the approach taken in The Netherlands, where overall environmental performance objectives and emission reduction targets for entire industries are negotiated between trade associations and the government, followed by enforceable facility-specific agreements to implement the industry-wide goals. Such projects might take the form of combining all federal (and possible state) requirements for an industry into a single, integrated Final Project Agreement. Sector-based and place-based strategies might be combined in a project that focused on a number of facilities in the same or related industries within a given geographic region or ecosystem. Projects might propose development of enforceable "best management practices" for pollution prevention or pilot the application of upcoming ISO 14000 voluntary environmental standards within a specific industry sector. EPA also encourages projects that combined an industry-wide component with facility-specific pilots to test the industry-wide strategy being developed.

XL projects for government agencies regulated by EPA. Government agencies, in the management of their facilities, have the same environmental responsibilities and face many of the same regulatory issues as private businesses. Agency-sponsored projects might test concepts with broad application in both public and private sector facilities. In seeking to comply with environmental statutes, however, government agencies also face unique obstacles and often have unique opportunities to innovate. Pilot projects in this category might address themselves to the unique issues faced by government agencies, such as the optimization of environmental control strategies over the long term in the context of annual budgeting, or the ability to reduce overall compliance costs by controlling specific pollution sources out of reach of environmental regulators. Outside of the process described today, the Department of Defense and EPA are working to develop pilot projects at two to four DOD facilities. The DOD pilots will seek to define performance goals and create an optimal approach to achieve those goals, combining compliance with unique pollution prevention and technology resources available to DOD.

Relationship of Pilots to Other Reinvention Efforts

The Common Sense Initiative was launched to move the Agency beyond the traditional medium by medium approach to environmental management to a systematic, sector-based approach. Announced in July 1994, the CSI focuses on six industry sectors—auto manufacturing, computers and electronics, iron and steel, metal finishing, petroleum refining, and printing industries. Each is directed by a consensus-based, multi-stakeholder advisory subcommittee, with CSI as a whole directed by the Common Sense Initiative Council operating under the Federal Advisory Committee Act. The purpose of CSI is to recommend changes in environmental regulations, statutes and programs that will result in "cleaner, cheaper, and smarter" outcomes for entire industries. Such changes, when accepted and promulgated, will lead to permanent adjustments to current programs.

Each of the CSI sector-specific subcommittees is developing a plan covering a broad spectrum of activities including (but not limited to) regulations, pollution prevention, reporting requirements and public access to data, permitting, innovative compliance assistance and enforcement, and innovative technology. In some cases, these plans will include projects that meet the criteria outlined today for regulatory reinvention pilots. Firms or other project sponsors in CSI industries are encouraged to develop XL projects. Project sponsors in CSI industries considering such projects should work through CSI in order to develop them. This will enable them to take advantage of the substantial progress being made through CSI including established stakeholder committees, working relationships among stakeholders, and progress toward identifying common concerns. (Project sponsors in CSI industries should contact Vivian Daub, Interim Director, Common Sense Initiative, at (202) 260–7417.)

The Environmental Leadership Program (ELP) grew out of a desire to test innovative compliance approaches such as third-party auditing. It is one of the means for streamlining compliance oversight as referenced in the President's March 16 announcement. ELP allows facilities to identify ways to streamline reporting requirements and reduce compliance inspections, without sacrificing environmental and public health protection. Facilities will use innovative management techniques such as environmental auditing and pollution prevention to reduce the burden of paperwork and inspections on the facilities, while enhancing compliance with existing environmental laws. At the completion of these one-year pilot projects, the lessons learned from these projects will be applied to others.

ELP differs from the XL programs being announced today in that the XL programs include flexibility from existing regulation in exchange for the attainment of environmental results beyond what would have been achieved through full compliance with those regulations. ELP projects, on the other hand, work to achieve improvements in environmental quality within existing regulatory requirements.

EPA expects that compliance-oriented ELP projects may include regulatory innovations, and that some projects conducted pursuant to today's notice will also address compliance systems. EPA welcomes XL program proposals from ELP participants. (For information on ELP contact Tai-Ming Chang, Director, Environmental Leadership Program, at (202) 564–5081.)

Legal Mechanisms for Pilot Projects

EPA will seek to use a variety of administrative and compliance mechanisms to provide regulatory flexibility for final project agreements. Where a pilot project does not fully comply with one or more environmental requirements (e.g., where a facility does not fully attain a technology-based emission or discharge standard but adopts a pollution prevention program or installs additional controls on other releases so as to achieve superior environmental results at the facility), EPA will use enforcement mechanisms to facilitate the projects. These will be conditioned on the pilot project meeting requirements specified in the project plan. In particular circumstances, EPA may consider changes in underlying regulations, or may seek changes in underlying statutes. EPA recognizes that these questions raise issues of importance both to the Government and to potential participants in regulatory pilot projects. Applicants are invited to present EPA with proposed approaches tailored to provide the regulatory flexibility for their pilot projects.

Project Criteria

EPA will consider the following criteria in evaluating pilot project proposals:

1. Environmental results. Projects that are chosen should be able to achieve environmental performance that is superior to what would be achieved through compliance with current and reasonably anticipated future regulation. "Cleaner results" can be achieved directly through the environmental performance of the project or through the reinvestment of the cost savings from the project in activities that produce greater environmental results. Explicit definitions and measures of "cleaner results" should be included in the project agreement negotiated among stakeholders.

2. Cost savings and paperwork reduction. The project should produce cost savings or economic opportunity, and/or result in a decrease in paperwork burden.

3. Stakeholder support. The extent to which project proponents have sought and achieved the support of parties that have a stake in the environmental impacts of the project is an important factor. Stakeholders may include communities near the project, local or state governments, businesses, environmental and other public interest groups, or other similar entities.

4. Innovation/Multi-Media Pollution Prevention. EPA is looking for projects that test innovative strategies for achieving environmental results. These strategies may include processes, technologies, or management practices. Projects should embody a systematic approach to environmental protection that tests alternatives to several regulatory requirements and/or affects more than one environmental medium. EPA has a preference for protecting the environment by preventing the generation of pollution rather than by controlling pollution once it has been created. Pilot projects should reflect this preference.

5. Transferability. The pilots are intended to test new approaches that could conceivably be incorporated into the Agency's programs or in other industries, or other facilities in the same industry. EPA is therefore most interested in pilot projects that test new approaches that could one day be applied more broadly.

6. Feasibility. The project should be technically and administratively feasible and the project proponents must have the financial capability to carry it out.

7. Monitoring, reporting and evaluation. The project proponents should identify how to make information about the project, including performance data, available to stakeholders in a form that is easily understandable. Projects should have clear objectives and requirements that will be measurable in order to allow EPA and the public to evaluate the success of the project and enforce its terms. Also, the project sponsor should be clear about the time frame within which results will be achievable.

8. Shifting of risk burden. The project must be consistent with Executive Order 12898 on Environmental Justice. It must protect worker safety and ensure that no one is subjected to unjust or disproportionate environmental impacts.

EPA intends to work cooperatively with project proponents to develop and refine acceptable approaches. At the same time, the Agency must retain the ultimate authority to select projects based on a qualitative consideration of these criteria. Moreover, given the pilot nature of the programs proposed today and the limited number of slots, projects that satisfy many or all of the criteria may nonetheless not be selected if, in the Agency's judgment, other proposed projects better serve the objectives of the program. Moreover, no person is required to submit a proposal or obtain approval as a condition of commencing or continuing a regulated activity. Accordingly, there will be no formal administrative review available for proposals that are not selected, nor does EPA believe there will be a right to judicial review.

Timing for Project Selection

EPA intends to invite selected project proponents to negotiate final project agreements on a phased basis, with a small number of early selections followed by a period of project selection on a rolling basis. This summer, EPA plans to invite approximately six project proponents to begin the development of a Final Project Agreement. Beyond that date, project proponents will be invited to enter the next phase of the program on a rolling basis. EPA intends to select and initiate approximately 50 pilot projects within the next two years.

Request for Comment on Aspects of Program Pilots

Interested members of the public are invited to comment on all aspects of the pilot project program. EPA requests specific comment on the legal mechanisms for implementing project agreements, and the data requirements for determining both existing environmental baselines and the level of environmental quality that would result from the project agreement.

Paperwork Reduction Act

The information collection provisions in this notice, including the request for proposals, have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request

document has been prepared by EPA (ICR No. 1749.01) and is attached as an appendix to this notice. Additional copies may be obtained from Sandy Farmer, Information Policy Branch; EPA, 401 M Street, SW. (Mail Code 2136); Washington, DC 20460 or by calling (202) 260–2740. These information collection provisions are not effective until OMB approves them and a notice of OMB approval containing the ICR control number is published in the **Federal Register**. EPA will announce by separate Federal Register notice when proposals may be submitted.

Public reporting burden for this collection of information is estimated to average 150 hours per application response, including: time for reviewing instructions; developing the proposal; reviewing the proposal through respondent management; and consulting in some fashion with state or tribal co-regulatory agencies as encouraged in the solicitation. An additional 10 hours per respondent are estimated to be required of the state and tribal agencies consulted in the development of project proposals.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch; EPA; 401 M Street, SW. (Mail Code 2136); Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The period of comment for the Information Collection Request will begin with the publication of this notice and extend for ten days.

Dated: May 17, 1995.

Fred Hansen,

Deputy Administrator.

Solicitation for Proposals for Regulatory Reinvention Pilot Projects—Supporting Statement for Information Collection Request (#1749.01)

1. Identification of the Information Collection

1(a) Title and Number of the Information Collection

Title: Regulatory Reinvention Pilot Projects

1(b) Short Characterization

This is a solicitation for proposals for a new program established pursuant to President Clinton's March 16, 1995, National Performance Review initiative: Reinventing Environmental Regulation. Regulatory Reinvention Pilot Projects are a set of pilot projects to test performance-based environmental management systems as alternatives to command and control regulatory approaches. These projects (called Project XL) are divided into four categories: facility-based projects, industry- or sector-based projects, community-based projects, and government agency-based projects. Under these projects, regulated entities will be given flexibility to depart from existing regulatory requirements in exchange for enforceable commitments to achieve environmental results that, on the whole, go beyond what would have been achieved through full compliance with those regulations. A competitive proposal process will allow us to select those projects that show the most promise to demonstrate successful alternative environmental management strategies.

The information will be collected by EPA's Office of Policy, Planing, and Evaluation (OPPE), which has been given responsibility for implementation of this program. The program itself will include other offices within EPA headquarters, EPA regions, state and tribal environmental agencies. The solicitation will help us identify those regulated entities who are interested in participating in Project XL pilot projects, the types of projects they are interested in pursuing, and the extent to which those projects our criteria for project selection. EPA has no form that is designated for a collection of this type.

This solicitation for proposals will be included in a **Federal Register** notice announcing Project XL, and will be sent to parties that have already expressed interest in developing pilot projects. Potential project proponents will mail completed proposals to the Office of Policy, Planning and Evaluation at EPA. The proposals will be distributed to a cross-agency review group that will evaluate and select proposals for initial participation in pilot project development. The process is further described in the attached notice.

2. Need for and Use of the Collection

2(a) Need/Authority for the Collection

The information is needed to implement the regulatory reinvention pilot project initiative outlined by President Clinton in his Reinventing Environmental Regulation directive. Under this initiative, EPA is to solicit its regulated entities for their best ideas on regulatory reinvention, and for pilot projects to test those ideas.

2(b) Use/Users of the Data

The proposals collected pursuant to this solicitation will be used as the starting point for development of full-fledged pilot projects. A competitive process will ensure that EPA can choose from a pool of useful project ideas. Moreover, a simple and flexible proposal format such as envisioned here will allow a diversity of regulated entities, small as well as large firms, agencies, and communities, to develop proposals. EPA will use the proposal submissions to screen ideas and select the most promising ones for further development.

3. The Respondents and the Information Requested

3(a) Respondents/SIC Codes

Potential respondents include all entities regulated by EPA pursuant to its authority under the various environmental statutes who wish to participate in the regulatory reinvention pilot project program.

3(b) Information Requested

The attached notice does not specify a format for proposals. It requests that proposals include, "* * * in addition to providing general information about the proposed project, project proponents are encouraged to comment on the relationship of their proposals to the criteria for project selection described in this notice. Proponents of projects are invited, but by no means required, to submit other useful materials in paper or other audio/visual or electronic formats." As noted earlier, EPA's goal is to create as flexible as possible a solicitation process.

The nature of activities respondents are expected to conduct include: preparation of technical proposals, discussion with management of the respondent, consultation with state, tribal agencies, local governments and community or environmental stakeholders, and clerical matters related to project proposal. In technical preparation, respondents are encouraged to address the nine criteria described in the attached notice. Respondents are expected to describe the nature of control, pollution prevention, or other activities to be undertaken as part of the project; to define the scope of regulatory flexibility needed to undertake these activities (i.e. The otherwise required actions to be forgone in this project); and to discuss the nature of stakeholder or other processes the project would propose in order to move to Final Project Agreement. Proposals would likely require some level of management sign-off from the respondent.

There is no recordkeeping requirement. Time for management discussions is also included in burden estimates. The notice strongly encourages consultation with state, tribal and community stakeholders, such as holding a meeting with the applicable regulatory agency.

4. The Information Collected—Agency Activities, Collection Methodology, and Information Management

4(a) Agency Activities

EPA will receive proposals and will develop a method for screening them based on the criteria described in the attached notice. These proposals will then be distributed to the cross-agency workgroup, with proposals addressing specific areas of regulatory policy highlighted to those parts of EPA with specific interest in those areas. Although the number of proposals submitted in response to this notice is a matter of speculation, EPA has estimated that it will be between one hundred and five hundred. EPA intends to ultimately implement about 50 projects. As such, proposals that clearly violate or do not address the criteria will be screened out at this point. However, OPPE intends to provide the other EPA, state and tribal agencies participating in the cross-agency project selection process maximum opportunity to view project proposals. As such, most proposals will be distributed directly to the committee without initial screening.

As was noted earlier, this will be an open solicitation following a "rolling admissions" model with no set end date. (A cutoff will ultimately be announced via a future **Federal Register** notice.) As such, proposals will be screened and reviewed as they arrive. Once screened and reviewed, proposals will be responded to in one of three fashions. Proposals will be rejected, and proposers thanked for their interest. Proposals will be accepted, and proponents invited to participate in the development of Final Project Agreements, or proposals will be deferred for future consideration. In this instance, EPA may discuss with the project proponent ways to increase the attractiveness of the proposal.

4(b) Collection Methodology and Management

This notice was developed by a team consisting of EPA headquarters and regional personnel; and representatives of state environmental agencies, through the Environmental Commission of the States. EPA also held discussions with a number of program stakeholders, including environmental and regulated community organizations. Also, a number of comments on the solicitation process were received unsolicited in response to President Clinton's March 16 directive and follow up press coverage of the regulatory reinvention effort. The solicitation process is the result of all of these comments and opinions.

The collection process will be as follows. EPA will place this solicitation in the **Federal Register**. EPA will also distribute copies upon request, and participate where invited in workshops designed to assist potential project proponents in development of proposals. Proposals will be sent to an EPA docket, where they will be logged in and catalogued. The docket will retain a copy for archival purposes, and display a copy for public viewing. Three additional copies will then be sent to OPPE for screening, reference purposes, and distribution to the cross-agency committee for proposal review. OPPE has also developed a Lotus Notes database for purposes of tracking proposals and telephone or other inquiries related to them.

4(c) Small Entity Flexibility

The flexible proposal process described earlier is designed to be useful to large as well as small entities. It was designed to be simple to respond to, with no undue burden on entities without full-time environmental managers, etc. EPA does not expect that this solicitation would impose additional burdens on small entities.

4(d) Collection Schedule

This will be an open solicitation for proposals, beginning with publication of the attached notice and with no set end date. In terms of choosing projects for initial participation in the program, EPA intends to select up to six projects by mid-June.

5. Nonduplication, Consultations, and Other Collection Criteria

5(a) Nonduplication

EPA does not have a form that would collect the information needed under the Regulatory Reinvention Pilot Projects pursuant to the recommendations of our cross-agency committee. Nor do existing databases of project proposals (e.g. Environmental Technology Initiative) provide a useful source of projects for this effort.

5(b) Consultations

This notice was developed by a team consisting of EPA headquarters and regional personnel; and representatives of state environmental agencies, through the Environmental Commission of the States. EPA also held discussions with a number of program stakeholders, including environmental and regulated community organizations. Also, a number of comments on the solicitation process were received unsolicited in response to President Clinton's March 16 directive and follow up press coverage of the regulatory reinvention effort. The solicitation process is the result of all of these comments and opinions.

5(c) Not Applicable

5(d) Not Applicable

5(e) Not Applicable

6. Estimating the Burden and Cost of the Collection

6(a) Respondent Burden

This section presents EPA's estimates of the burden hours and cost to complete the information collection activities associate with this collection. In using this analysis, however, it should be remembered not only that all responses to this solicitation are voluntary, but also that respondents have some expected value attached with their participation. Fundamental to projects in this program will be reduced cost of compliance due to increased regulatory flexibility. Not unlike a contracts-based Request For Proposals, one would not expect a response from any entity where the burdens associated with preparing the response outweigh the expected benefits to the respondent.

As noted earlier, EPA estimates the number of response proposals pursuant to this solicitation to be approximately 100 to 500. Estimating respondent costs in developing proposals is made difficult by the extremely flexible approach to this solicitation. Recall that the solicitation does not specify the form or nature of responses, except to give respondents a sense that only brief proposals (no more than 10 pages) are requested. EPA has already received several unsolicited proposals in response to the March 16, 1995, Reinventing Environmental Regulation document in which the pilot project programs were announced. To estimate the cost of proposal development, EPA asked (via telephone conversation) a sample of seven of these proposal sponsors to estimate the cost of preparing their unsolicited submissions. The data presented here are based on the median of their responses.

The proposal development process is, for these purposes, divided into four phases: technical aspects, management discussion, consultation with

government agencies and other potential stakeholders, and clerical preparation. Technical aspects cover development of the substantive portions of the proposal. The average for technical aspects of proposal development is estimated at 50 person hours. Management discussion covers presentation and refinement of proposals at corporate or other entity management levels. Management time also includes estimates of legal review, which though technical, has higher than average technical labor costs. The average time for management level discussions is estimated at 30 person hours. The solicitation strongly encourages project proponents to seek the support of state or tribal environmental agencies in advance of proposal to EPA. Although none of our unsolicited respondents had actively pursued this, they estimated the cost of doing so at approximately 60 person hours of management and technical time for the regulated entities, and 10 person hours of mixed management and technical time for the state or tribal agency. Clerical aspects of the proposal, such as typing, mailing, etc., were estimated at 10 hours. These figures, along with labor costs associated with them, are summarized in Figure 1.

FIGURE 1.—ESTIMATE OF RESPONDENT BURDEN AND COSTS

	Hours			
	Management	Technical	Clerical	Total
Prepare technical proposal	10	35	5	50
Discuss with management	25	5	.....	30
Consult with state/tribal agencies	40	20	.....	60
Clerical aspects of proposal	.....	.....	10	10
Subtotal—technical proposal	75	60	15	150
Subtotal (@ 100 respondents)	7,500	6,000	1,500	15,000
Subtotal (@ 500 respondents)	37,500	30,000	7,500	75,000
State/tribal consultation	5	5	.....	10
Subtotal (@ 100 respondents)	500	500	.....	1,000
Subtotal (@ 500 respondents)	2,500	2,500	.....	5,000
Range of total burden hours	8,000–40,000	6,500–32,500	1,500–7,500	16,000–80,000
	Costs			
Labor cost assumptions (per hour)	$70	$50	$20	.....
Subtotal—technical proposal	5,250	3,000	300	$8,550
Subtotal (@ 100 respondents)	525,000	300,000	30,000	855,000
Subtotal (@ 500 respondents)	2,625,000	1,500,000	150,000	4,275,000
Subtotal—state/tribal costs	350	250	.....	600
Subtotal (@ 100 respondents)	35,000	25,000	.....	60,000
Subtotal (@ 500 respondents)	175,000	125,000	.....	300,000
Range of total labor costs (x $1000)	$560–$2,800	$325–$1,625	$30–$150	$915–$4,575

In summary, respondent burden are estimated at 150 hours per respondent for preparation of each application (including consultation with state and tribal authorities, and mailing), and an additional 10 hours per state or tribal government agency are estimated to be required for consultation in the development of each project proposals. Given the expected range of between 100 and 500 applications, the total application burden are estimated at between 16,000 and 80,000 hours.

6(b) Respondent Costs

Per the previous discussion, total respondent costs are estimated to range between $915,000 (100 applicants), and $4,575,000 (500 applicants). This includes between $855,000 and $4,275,000 to develop the technical proposal, and another $60,000 to $300,000 for state and tribal consultation in proposal development.

6(c) Estimating Agency Burden and Cost

EPA will incur costs to process and review specific proposal and provide outreach in support of proposal preparation. For specific applications, EPA will incur costs to: Receive and process the proposals; initially screen the proposals; and distribute proposals to the cross-agency review group. (This document does not estimate the costs of the full regulatory reinvention pilot project program, but only the gathering of information through this solicitation). In addition, EPA will incur costs to perform outreach and training and disseminate information on the solicitation. Agency costs are summarized in Figure 2. Total EPA costs, at the upper range of five hundred responses, are estimated at $432,500.

FIGURE 2.—ESTIMATE OF EPA COST FOR INFORMATION COLLECTION

	Proposal	Total
Receive and process proposals	$10	.....
Perform initial screening	50	.....
distribute proposals across Agency	5	.....
Specific proposal costs	65	$32,500
Creating additional information documents	.....	50,000

FIGURE 2.—ESTIMATE OF EPA COST FOR INFORMATION COLLECTION—Continued

	Proposal	Total
Conducting workshops/public outreach	.....	350,000
Total	.....	$432,500

6(d) Bottom Line Burden Hours and Costs

Total respondent burden and cost for completing the proposals solicited in the Regulatory Reinvention Pilot Project are estimated at approximately 16,000 to 80,000 burden hours, and $915,000 to $4,575,000. Total EPA costs for processing specific proposals and supporting proposal development through technical outreach and workshops is estimated at $432,500.

6(e) Reasons for Change in Burden

This new burden results from the desire to implement regulatory reinvention pilot projects to test implementation alternative, performance-based, options to conventional command and control regulatory approaches.

6(f) Burden Statement

Public reporting burden for this collection of information is estimated to average 150 hours per application response, including: time for reviewing instructions, developing the proposal; reviewing the proposal through respondent management; and consulting with state or tribal co-regulatory agencies, and other community or environmental stakeholders are encouraged in the solicitation. An additional 10 hours per respondent are estimated to be required of the state and tribal agencies consulted in the development of project proposals. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: Director, Regulatory Information Division, Mail Code 2136, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C., 20460, Attention Regulatory Reinvention Pilot Projects Information Collection Burden (ICR#1749.01); and to the Office of Management and Budget Paperwork Reduction Project, Washington, D.C. 20503.

[FR Doc. 95–12563 Filed 5–22–95; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1049–DR]

Louisiana; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Louisiana (FEMA–1049–DR), dated May 10, 1995, and related determinations.

EFFECTIVE DATE: May 17, 1995.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Louisiana dated May 10, 1995, is hereby amended to include the following areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 10, 1995:

St. Bernard and St. Tammany Parishes for Public Assistance (already designated for Individual Assistance).

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Associate Director, Response and Recovery Directorate.

[FR Doc. 95–12577 Filed 5–22–95; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1050–DR]

North Dakota; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of North Dakota (FEMA–1050–DR), dated May 16, 1995, and related determinations.

EFFECTIVE DATE: May 16, 1995.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated May 16, 1995, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of North Dakota, resulting from severe storms, flooding and ground saturation due to high water tables beginning on March 1, 1995 and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of North Dakota.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas. Individual Assistance may be added at a later date, if requested and warranted. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint David P. Grier of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of North Dakota to have been affected adversely by this declared major disaster.

Benson, Bottineau, Cavalier, Griggs, Nelson, Ramsey, Rolette, Steele, Towner, and Walsh Counties for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

James L. Witt,

Director.

[FR Doc. 95–12576 Filed 5–22–95; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL RESERVE SYSTEM

Edward N. Barol, Trustee for the Irrevocable Trust and Travel One, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 6, 1995.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. Edward N. Barol, Trustee for the Irrevocable Trust and Travel One, Narberth, Pennsylvania; to acquire an additional 18.43 percent, for a total of 21.44 percent, of the voting shares of First Bank of Philadelphia, Philadelphia, Pennsylvania

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Mr. Bernard D. Cooper, Marion, Iowa; to acquire 100 percent of the voting shares of Delhi Bancshares, Inc., Delhi, Iowa, and thereby indirectly acquire Delhi Savings Bank, Delhi, Iowa.

Board of Governors of the Federal Reserve System, May 17, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–12540 Filed 5–22–95; 8:45 am]

BILLING CODE 6210–01–F

Towne Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than June 16, 1995.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Towne Bancorp, Inc., Perrysburg, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of Towne Bank, Perrysburg, Ohio.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Foursquare Cornerstone, Inc., Brookfield, Wisconsin; to become a bank holding company by acquiring 100 percent of the voting shares of Cornerstone Bank, Brookfield, Wisconsin, a *de novo* bank.

C. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Security Northwest Bancorporation, Inc., Bloomington, Minnesota; to merge with The Highland Bancorporation, Inc., Bloomington, Minnesota, and thereby indirectly acquire The Highland Bank, St. Paul, Minnesota.

D. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Whitcorp Financial Company, Leoti, Kansas; to merge with Western Bancorp, Inc., Garden City, Kansas, and thereby indirectly acquire Western State Bank, Garden City, Kansas.

Board of Governors of the Federal Reserve System, May 17, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–12541 Filed 5–22–95; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

[File No. 951 0022]

Columbia/HCA Healthcare Corporation; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would permit, among other things, Columbia/HCA and Healthtrust, Inc. to merge, provided that Columbia/HCA divests seven hospitals within twelve months (nine months for the divestiture of three hospitals in the Salt Lake City area). The proposed consent agreement would require the respondent, for ten years, to obtain Commission approval before acquiring another acute care hospital in any of the six market areas at issue, and before transferring an acute care hospital in any of the areas to another entity that already operates one in that area.

DATES: Comments must be received on or before July 24, 1995.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580

FOR FURTHER INFORMATION CONTACT: Mark Horoschak, FTC/S–3115, Washington, DC 20580, (202) 326–2756.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order

In the matter of Columbia/HCA Healthcare Corporation, a corporation File No. 951–0022.

The Federal Trade Commission ("Commission"), having initiated an investigation into the proposed acquisition of Healthtrust, Inc.—The Hospital Company ("Healthtrust") by Columbia/HCA Healthcare Corporation ("Columbia/HCA"), and of certain acts and practices of Columbia/HCA, and it now appearing that Columbia/HCA ("proposed respondent") is willing to enter into an agreement containing an order to divest certain assets, to cease and desist from making certain acquisitions, and providing for other relief:

It is hereby agreed by and between the proposed respondent by its duly authorized officers and attorneys, and counsel for the Commission that:

1. The proposed respondent Columbia/HCA is a corporation organized, existing, and doing business under and by virtue of the laws of Delaware, with its principal place of business at One Park Plaza, Nashville, Tennessee 37203.

2. The proposed respondent admits all the jurisdictional facts set forth in the draft of complaint.

3. The proposed respondent waives:

a. any further procedural steps;

b. the requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. all rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. any claim under the Equal Access to Justice Act.

4. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by the proposed respondent that the law has been violated as alleged in the draft of complaint or that the facts as alleged in the draft of complaint, other than jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to the proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint and its decision containing the following order to divest and to cease and desist, and other relief in disposition of the proceedings, and (2) make information public with respect thereto. When so entered, the order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. The proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or this agreement may be used to vary or contradict the terms of the order.

7. The proposed respondent has read the proposed complaint and order contemplated hereby. The proposed respondent understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that the Commission's approval, pursuant to the Commission's order in Docket No. C–3538, of the Acquisition, as defined in the following order, is conditioned upon the proposed respondent's compliance with the terms of the following order. The proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the following order after it becomes final, or as the successor to Healthtrust, Inc.—The Hospital Company, of the Commission's order in Docket No. C–3538.

Order

I

It is ordered That, as used in this order, the following definitions shall apply:

A. "Columbia/HCA" or "respondent" means Columbia/HCA Healthcare Corporation, its partnerships, joint ventures, companies, subsidiaries, divisions, and groups and affiliates controlled by Columbia/HCA; their directors, officers, employees, agents, and representatives; and their successors and assigns.

B. "Healthtrust" means Healthtrust, Inc.—The Hospital Company, its partnerships, joint ventures, companies, subsidiaries, divisions, and groups and affiliates controlled by Healthtrust; their directors, officers, employees, agents, and representatives; and their successors and assigns.

C. "Commission" means the Federal Trade Commission.

D. The "Acquisition" means the transaction contemplated by the October 4, 1994, agreement between Columbia/HCA and Healthtrust, whereby Columbia/HCA will acquire all the stock of Healthtrust, a wholly-owned subsidiary of Columbia/HCA will be merged with and into Healthtrust, and Healthtrust will operate as a wholly-owned subsidiary of Columbia/HCA.

E. "Acute care hospital" means a health care facility, licensed as a hospital, other than a federally-owned facility, having a duly organized governing body with overall administrative and professional responsibility, and an organized professional staff, that provides 24-hour inpatient care, that may also provide outpatient services, and having as a primary function the provision of inpatient services for medical diagnosis, treatment, and care of physically injured or sick persons with short term or episodic health problems or infirmities.

F. To "operate" an acute care hospital means to own, lease, manage, or otherwise control or direct the operations of an acute care hospital, directly or indirectly.

G. To "acquire" an acute care hospital means, directly or indirectly, through subsidiaries, partnerships, or otherwise:

1. To acquire the whole or any part of the assets used or previously used within the last two years (and still suitable for use) for operating an acute care hospital from any person presently engaged in, or within the two years preceding such acquisition engaged in, operating an acute care hospital;

2. To acquire the whole or any part of the stock, share capital, equity, or other interest in any person engaged in, or

within the two years preceding such acquisition engaged in, operating an acute care hospital;

3. To acquire or otherwise obtain the right to designate, directly or indirectly, directors or trustees of an acute care hospital; or

4. To enter into any other arrangement to obtain direct or indirect ownership, management, or control of an acute care hospital or any part thereof, including, but not limited to, a lease of or management contract for an acute care hospital.

H. "Affiliate" means any entity whose management and policies are controlled in any way, directly or indirectly, by the person with which it is affiliated.

I. "Person" means any natural person, partnership, corporation, company, association, trust, joint venture, or other business or legal entity, including any governmental agency.

J. "Relevant area(s)" means:

1. the Salt Lake City-Ogden Metropolitan Statistical Area, encompassing three contiguous counties in northern Utah: Weber County, Davis County, and Salt Lake County;

2. the Pensacola area, encompassing the Florida counties of Escambia and Santa Rosa;

3. the Okaloosa area, encompassing the Florida county of Okaloosa;

4. the Denton area, encompassing the Texas counties of Cooke and Denton (excluding the incorporated city of Lewisville and that portion of Denton County south of Texas highway number 121);

5. the Ville Platte-Mamou-Opelousas area, encompassing the Louisiana parishes of Evangeline and St. Landry; and

6. the Orlando area, encompassing the Florida counties of Seminole, Orange, and Osceola.

K. "CLHS" means Central Louisiana Healthcare System Limited Partnership, a Louisiana partnership in commendam in which Columbia/HCA currently holds a partnership interest, its partnerships, joint ventures, companies including the Ville Platte Medical Center, subsidiaries, divisions, and groups and affiliates controlled by CLHS; their directors, officers, employees, agents, and representatives; and their successors and assigns.

L. "ORHS" means Orlando Regional Healthcare System, Inc., a Florida corporation, its partnerships, joint ventures, companies, subsidiaries, divisions, and groups and affiliates controlled by ORHS; their directors, officers, employees, agents, and representatives; and their successors and assigns.

M. The "SSH Joint Venture" means the Florida partnership in which Healthtrust (through a wholly-owned subsidiary) and ORHS (through a wholly-owned subsidiary) hold partnership interests, which owns and operates the South Seminole Hospital in Longwood, Florida.

N. The "SSH Joint Venture Interest" means Healthtrust's interest in the SSH Joint Venture.

O. The "Schedule A Assets" means the assets listed on the attached Schedule A.

P. The "Schedule B Assets" means the assets listed on the attached Schedule B.

Q. The "Utah Healthtrust Assets" means the assets listed on the attached Schedule C.

R. "Assets and Businesses" include, but are not limited to, all assets, properties, businesses, rights, privileges, contractual interests, licenses, and goodwill of whatever nature, tangible and intangible, including, without limitation, the following:

1. all real property interests (including fee simple interests and real property leasehold interests, whether as lessor or lessee), together with all buildings, improvements, and fixtures located thereon, all construction in progress thereat, all appurtenances thereto, and all licenses and permits related thereto (collectively, the "Real Property");

2. all contracts and agreements with physicians, other health care providers, unions, third party payors, HMOs, customers, suppliers, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, consigners, and consignees (collectively, the "Contracts");

3. all machinery, equipment, fixtures, vehicles, furniture, inventories, and supplies (other than such inventories and supplies as are used in the ordinary course of business during the time that Columbia/HCA owns the assets) (collectively, the "Personal Property");

4. all research materials, technical information, management information systems, software, software licenses, inventions, trade secrets, technology, know how, specifications, designs, drawings, processes, and quality control data (collectively, the "Intangible Personal Property");

5. all books, records, and files, excluding, however, the corporate minute books and tax records of Columbia/HCA and its affiliates; and

6. all prepaid expenses.

II

It is further ordered That:

A. Respondent shall divest (or in the case of the Ville Platte Medical Center shall cause CLHS to divest), absolutely and in good faith, within twelve (12) months of the date this order becomes final, the Schedule A Assets.

B. Respondent shall also divest absolutely and in good faith, within twelve (12) months of the date this order becomes final, the Assets and Business of, including all improvements, additions, and enhancements made to such facilities prior to divestiture, either of the following:

1. Denton Regional Medical Center, 4405 North Interstate 35, Denton, Texas 76207, including the following (collectively "DRMC"):

a. DRMC Office Building, 4401 North I–35, Denton, Texas 76207;

b. the medical office building and vacant land at 3353 I–35E South, Denton, Texas 76107;

c. the satellite offices operated at Denton Regional Medical Center, 1207A North Grand Avenue, Gainesville, Texas 76240;

d. Flow Rehabilitation Hospital, 1310 Scripture, Denton, Texas 76201;

e. Denton Regional Medical Center—Little Elm, 420 FM720 West, Suite 9, Little Elm, Texas 75068;

f. Professional Health Care Services, 621 Londonderry Lane, Denton, Texas 76205; or

2. Denton Community Hospital, 107 N. Bonnie Brae, Denton, Texas 76201, and the Medical Office Building at Scripture/Bonnie Brae (collectively "Denton Community Hospital").

C. Respondent shall also divest such additional Assets and Businesses ancillary to the Schedule A Assets and to either DRMC or Denton Community Hospital, and effect such arrangements as are necessary to assure the marketability, viability, and competitiveness of the Schedule A Assets, DRMC and Denton Community Hospital.

D. Respondent shall divest the Schedule A Assets, and either DRMC or Denton Community Hospital, only to an acquirer or acquirers that receive the prior approval of the Commission and only in a manner that receives the prior approval of the Commission. If respondent proposes to divest Denton Community Hospital, it must provide the Commission with the written consent of the landlord of such facilities to the proposed assignment and divestiture at the time that Commission approval of the divestiture is sought. The purpose of the divestitures of the Schedule A Assets and of either DRMC or Denton Community Hospital, is to ensure the continuation of the Schedule A Assets and of either DRMC or Denton Community Hospital, as ongoing, viable acute care hospitals and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's complaint.

E. With respect to the Schedule A Assets and DRMC, respondent shall comply with all terms of the Agreement to Hold Separate Regarding the Florida, Texas, and Louisiana Assets, attached hereto and made a part hereof as Appendix I. Said Hold Separate shall continue in effect until such time as respondent had fulfilled the divestiture requirements of this order or until such other time as said Hold Separate provides.

F. Pending divestiture of the Schedule A Assets and DRMC or Denton Community Hospital, respondent shall take such actions as are necessary to maintain the present marketability, viability, and competitiveness of the Schedule A Assets, DRMC, and Denton Community Hospital, and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the Schedule A Assets, DRMC, and Denton Community Hospital, except for ordinary wear and tear.

G. A condition of approval by the Commission of each divestiture shall be a written agreement by the acquirer(s) of the Schedule A Assets and of either DRMC or Denton Community Hospital, that it will not sell for a period of ten (10) years from the date of divestiture, directly or indirectly, through subsidiaries, partnerships, or otherwise, without the prior approval of the Commission, any Schedule A Asset, DRMC, or Denton Community Hospital to any person who operates, or will operate immediately following the sale, any other acute care hospital in the same relevant area where the divested acute care hospital is located. Provided, however, that the acquirer is not required to seek prior approval of the Commission for the sale of any of the assets identified in any Part II of Schedule A.

III

It is further ordered That:

A. Within six (6) months of the date this order becomes final, respondent shall terminate, absolutely and in good faith, the SSH Joint Venture, by either acquiring ORSH's interest in the SSH Joint Venture or by divesting the SSH Joint Venture Interest. The purpose of the termination of the SSH Joint Venture is to ensure the continuation of the South Seminole Hospital as an ongoing, viable acute care hospital and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's complaint.

B. If respondent terminates the SSH Joint Venture by acquiring ORHS's interest in the SSH Joint Venture, such acquisition shall occur only in such a manner that receives the prior approval of the Commission. If respondent terminates the Joint Venture by divesting the SSH Joint Venture Interest, such divestiture shall be made only to an acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission.

C. With respect to the SSH Joint Venture Interest, respondent shall comply with all terms of the Agreement to Hold Separate Regarding the Florida, Texas, and Louisiana Assets, attached hereto and made a part hereof as Appendix I. Said Hold Separate shall continue in effect until such time as respondent has fulfilled the divestiture requirements of this order or until such other time as said Hold Separate provides.

D. Pending the divestiture of the SSH Joint Venture Interest, respondent shall take such actions as are necessary to maintain the present marketability, viability, and competitiveness of the South Seminole Hospital, and to prevent the destruction, removal, wasting, deterioration, or impairment of the South Seminole Hospital, except for ordinary wear and tear.

E. A condition of approval by the Commission of the divestiture of the SSH Joint Venture Interest, to any acquirer except ORHS, shall be a written agreement by the acquirer of the SSH Joint Venture Interest that it will not sell for a period of ten (10) years from the date of divestiture, directly or indirectly, through subsidiaries, partnerships, or otherwise, without the prior approval of the Commission, any interest in South Seminole Hospital to any person who operates, or will operate immediately following the sale, any other acute care hospital in the Orlando area.

IV

It is further ordered That:

A Respondent shall divest, absolutely and in good faith, within nine (9) months of the date the Commission approves the Acquisition pursuant to Paragraph IV.E. of the order in Docket No. C–3538, the Schedule B Assets.

B. Respondent shall also divest such additional Assets and Businesses ancillary to the Schedule B Assets and effect such arrangements as are necessary to assure the marketability, viability, and competitiveness of the Schedule B Assets.

C. Respondent shall divest the Schedule B Assets only to an acquirer or acquirers that receive the prior approval of the Commission, and only in a manner that receives the prior approval of the Commission. The purpose of the divestitures of the Schedule B Assets is to ensure the continuation of the Schedule B Assets as ongoing, viable acute care hospitals and to remedy the lessening of competition resulting from the acquisition as alleged in the Commission's complaint and as described in the Commission's letter approving the Acquisition.

D. Respondent shall comply with all terms of the Agreement to Hold Separate regarding the Utah Healthtrust Assets listed on Schedule C, and as described in Appendix II which is attached hereto and made a part hereof ("Utah Hold Separate"). Said Utah Hold Separate shall continue in effect until such time as respondent has fulfilled the divestiture requirements of Paragraph IV of this order, or until such other time as the Utah Hold Separate provides.

E. Pending divestiture of the Schedule B Assets, respondent shall take such actions as are necessary to maintain the present marketability, viability, and competitiveness of the Schedule B Assets and of the Utah Healthtrust Assets, and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the Schedule B Assets and any of the Utah Healthtrust Assets, except for ordinary wear and tear.

F. A condition of approval by the Commission of each divestiture shall be a written agreement by the acquirer(s) of each Schedule B Asset that it will not sell for a period of ten (10) years from the date of divestitute, directly or indirectly, through subsidiaries, partnerships, or otherwise, without the prior approval of the Commission, any Schedule B Asset to any person who operates, or will operate immediately following the sale, any other acute care hospital in the same relevant area where the divested acute care hospital is located. Provided, however, that the acquirer is not required to seek prior approval of the Commission for the sale of any of the assets identified in any Part II of Schedule B.

V

It Is further ordered That:

A. If the respondent has not divested (or in the case of the Ville Platte Medical Center has not caused CLHS to divest), absolutely and in good faith and with the Commission's prior approval, each Schedule A Asset and either DRMC or Denton Community Hospital, in accordance with this order, within twelve (12) months of the date this order

becomes final, the Commission may appoint a trustee to divest the undivested Schedule A Assets and either DRMC or Denton Community Hospital.

B. If the respondent has not terminated absolutely and in good faith and with the Commission's prior approval, the SSH Joint Venture, in accordance with this order, within six (6) months of the date this order becomes final, the Commission may appoint a trustee to divest the SSH Joint Venture Interest.

C. If the respondent has not divested, absolutely and in good faith and with the Commission's prior approval, each Schedule B Asset, in accordance with this order within nine (9) months of the date the Commission approves the Acquisition pursuant to the order in Docket No. C–3538, the Commission may appoint a trustee to divest the Utah Healthtrust Assets.

D. In the event that the Commission or the Attorney General brings an action for any failure to comply with this order or in any way relating to the Acquisition, pursuant to section 5(*l*) of the Federal Trade Commission Act, 15 U.S.C. 45(*l*), or any other statute enforced by the Commission, the respondent shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under Paragraph V.A, V.B, or V.C shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it for any failure by the respondent to comply with this order, or the order in Docket No. C–3538.

E. If a trustee is appointed by the Commission or a court pursuant to Paragraph V.A, V.B, or V.C of this order, the respondent shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:

1. The Commission shall select the trustee, subject to the consent of the respondent, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If respondent has not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to respondent of the identity of any proposed trustee, respondent shall be deemed to have consented to the selection of the proposed trustee.

2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest any undivested Schedule A Asset, DRMC or Denton Community Hospital, the SSH Joint Venture Interest, or Utah Healthtrust Asset.

3. Within ten (10) days after appointment of the trustee, respondent shall execute a trust agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture(s) required by this order.

4. The trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in Paragraph V.E.3 to accomplish the divestiture(s), which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve-month period, the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or in the case of a court-appointed trustee, by the court; provided however, the Commission may extend this period only two (2) times.

5. The trustee shall have full and complete access to the personnel, books, records, and facilities related to the Schedule A Assets, DRMC, Denton Community Hospital, the SSH Joint Venture Interest, the Schedule B Assets, the Utah Healthtrust Assets, or to any other relevant information as the trustee may request. Respondent shall develop such financial or other information as such trustee may reasonably request and shall cooperate with the trustee. Respondent shall take no action to interfere with or impede the trustee's accomplishment of the divestiture(s). Any delays in divestiture caused by respondent shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court appointed trustee, by the court.

6. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to the respondent's absolute and unconditional obligation to divest at no minimum price. The divestiture(s) shall be made in the manner and to an acquirer(s) as set forth in Paragraph II for the Schedule A Assets and DRMC or Denton Community Hospital; Paragraph III for the SSH Joint Venture Interest; and Paragraph IV and Paragraph V.C for the Utah Healthtrust Assets; provided, however, if the trustee receives bona fide offers from more than one acquiring entity for any one facility or asset, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity selected by respondent from among those approved by the Commission.

7. The trustee shall serve, without bond or other security, at the cost and expense of the respondent, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have the authority to employ, at the cost and expense of respondent, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the sale and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of the respondent and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the undivested Schedule A Assets, either DRMC or Denton Community Hospital, the SSH Joint Venture Interest, or the Utah Healthtrust Assets.

8. Respondent shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Paragraph V.A, V.B, or V.C of this order.

10. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative, or at the request of the trustee, issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture(s) required by this order.

11. The trustee shall have no obligation or authority to operate or maintain the Schedule A Assets, DRMC, Denton Community Hospital, the SSH Joint Venture Interest, or the Utah Healthtrust Assets.

12. The trustee shall report in writing to the respondent and to the Commission every sixty (60) days concerning the trustee's effort to accomplish divestiture.

VI

It is further ordered That, for a period of ten (10) years from the date this order becomes final, respondent shall not, without the prior approval of the Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise:

A. Acquire any stock, share capital, equity, or other interest in any person presently engaged in, or within the two years preceding such acquisition engaged in, operating an acute care hospital in any relevant area;

B. Acquire any assets used, or previously used, in any relevant area (and still suitable for use) for operating an acute care hospital from any person presently engaged in, or within the two years preceding such acquisition engaged in, operating an acute care hospital in any relevant area;

C. Enter into any agreement or other arrangement to obtain direct or indirect ownership, management, or control of any acute care hospital, or any part thereof, in any relevant area, including but not limited to, a lease of or management contract for any such acute care hospital;

D. Acquire or otherwise obtain the right to designate, directly or indirectly, directors or trustees of any acute care hospital in any relevant area;

E. Permit any acute care hospital it operates in any relevant area to be acquired by any person that operates, or will operate immediately following such acquisition, any other acute care hospital in the same relevant area.

Provided, however, that such prior approval shall not be required for:

1. the establishment by respondent of a new acute care hospital facility in a relevant area: (a) that is a replacement for an existing acute care hospital facility operated by respondent, and not required to be divested by respondent pursuant to this order, in the same relevant area; or (b) that is not a replacement for any acute care hospital facility in any relevant area;

2. any transaction otherwise subject to this Paragraph VI of this order if the fair market value of (or, in case of an asset acquisition, the consideration to be paid for) the acute care hospital or part thereof to be acquired does not exceed one million dollars ($1,000,000); or

3. the acquisition of products or services in the ordinary course of business.

VII

It is further ordered That, for a period of ten (10) years from the date this order becomes final, respondent shall not, directly or indirectly, through subsidiaries, partnerships or otherwise, without providing advance written notification to the Commission, consummate any joint venture or other arrangement with any other acute care hospital in any relevant area for the joint establishment or operation of any new acute care hospital, or any hospital, medical, surgical, diagnostic, or treatment service or facility, or part thereof in the same relevant area where both parties operate an acute care hospital. Such advance notification shall be filed immediately upon respondent's issuance of a letter of intent for, or execution of an agreement to enter into, such a transaction, whichever is earlier.

Said notification required by this Paragraph VII of this order shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations (as amended), and shall be prepared and transmitted in accordance with the requirements of that part, except that no filing fee will be required for any such notification, notification need not be made to the United Stated Department of Justice, and notification is required only of respondent and not of any other party to the transaction. Respondent is not required to observe any waiting period for said notification required by this Paragraph VII.

Respondent shall comply with reasonable requests by the Commission staff for additional information concerning any transaction subject to this Paragraph VII of this order, within fifteen (15) days of service of such requests.

Provided, however, that no transaction shall be subject to this Paragraph VII of this order if:

1. the fair market value of the assets to be contributed to the joint venture or other arrangement by acute care hospitals not operated by respondent does not exceed one million dollars ($1,000,000);

2. the service, facility, or part thereof to be established or operated in a transaction subject to this order is to engage in no activities other than the provision of the following services: Laundry; data processing; purchasing; materials management; billing and collection; dietary; industrial engineering; maintenance; printing; security; records management; laboratory testing; personnel education, testing, or training; or

3. notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. 18a, or prior approval by the Commission is required, and has been requested, pursuant to Paragraph VI of this order.

VIII

It is further ordered That, for a period of ten (10) years from the date this order becomes final, respondent shall not permit all, or any substantial part of, any acute care hospital it operates in any relevant area to be acquired by any other person (except pursuant to the divestitures required by Paragraphs II, III, and IV of this order), unless the acquiring person files with the Commission, prior to the closing of such acquisition, a written agreement to be bound by the provisions of this order, which agreement respondent shall require as a condition precedent to the acquisition.

IX

It is further ordered That:

A. Within sixty (60) days after the date this order becomes final and every sixty (60) days thereafter until the respondent has fully complied with Paragraphs II, III, and IV of this order, respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with Paragraphs II, III, and IV of this order. Respondent shall include in its compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with Paragraphs II, III, and IV of the order, including a description of all substantive contacts or negotiations for the divestitures or the termination of the SSH joint venture, and the identify of all parties contacted. Respondent shall include in its compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning the divestitures.

B. One (1) year from the date this order becomes final, annually for the next nine (9) years on the anniversary of the date this order becomes final, and at other times as the Commission may require, respondent shall file a verified written report with the Commission setting forth in detail the manner and form in which it has complied and it is complying with Paragraphs V, VI, VII, and VIII of this order.

X

It is further ordered That respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in the corporation that may affect compliance obligations arising out of the order.

XI

It is further ordered That, for the purpose of determining or securing compliance with this order, the respondent shall permit any duly authorized representative of the Commission:

A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of the respondent relating to any matters contained in this order; and

B. Upon five days' notice to respondent and without restraint or interference from it, to interview officers, directors, or employees of respondent, who may have counsel present regarding such matters.

Schedule A

The assets to be divested pursuant to Paragraph II ("Schedule A Assets") shall consist of, without limitation, all Assets and Businesses (including all improvements, additions and enhancements made to such assets prior to divestiture), of the following:

A. The Pensacola area Schedule A Assets are:

Part I

1. Medical Center of Santa Rosa, Inc., d.b.a. Santa Rosa Medical Center, 1450 Berryhill Road, Milton, Florida 32570

Part II

2. MRI (Magnetic Resonance Imaging)—free-standing modular building attached to hospital by walkway, leased 60 months—originated in 1993.
3. EMS (Emergency Medial Services), 4930 Glover Lane, Milton, Florida 32570
4. Berryhill Medical Park—including undeveloped land Milton, Florida 32570
   Master Leased 10 years:
   Building 1—1540 Berryhill Medical Park (7,612 sq. ft.)
   Building 2—1550 Berryhill Medical Park (5,943 sq. ft.)
   Building 3—1560 Berryhill Medical Park (4,427 sq. ft.)
5. Santa Rosa Primary Care Center, Leased Building at 4928 Highway 90, Pace, Florida 32571
6. Office Space Leases (as Tenant):
   3,250 sq. ft. from Pace Medical Center Partnership, 2874 Highway 90, Building A, Pace, Florida 32571
   1,360 sq. ft. from Pace Medical Center Partnership, 2874 Highway 90, Building B, Pace, Florida 32571
   25,200 sq. ft. from Dave Gilbert, 5950 Berryhill Road, Building 1.3, Santa Rosa, Florida 32570

2. The Okaloosa area Schedule A Assets are:

Part I

1. North Okaloosa Medical Center—Hospital, 151 Redstone Avenue, Crestview, Florida 32539 (with approximately 34 acres of land).

Part II

2. Crestview Professional Condominium Association, Professional Office Buildings, 131 Redstone Avenue, Crestview, Florida 32539 (Suites 101, 103, 104, 105, 107, 108, 109)
3. Lease of North Okaloosa Medical Office Building, 131 Redstone Avenue, Crestview, Florida 32539 (Suites 125, 127 and 129)
4. Lease of Medical Office Building, 127 Redstone Avenue, Crestview, Florida 32539
5. Rural Health Clinic, LaGrange Medical Clinic Building, Rt. 3, Box 16, Highway 331 North, Freeport, Florida 34329
6. Bluewater Bay Clinic, Market Place Professional Center, 1507 Merchants Way, Niceville, Florida 32588
7. Rural Health Clinic, Lease of Access Medical Clinic Building, 130 Redstone Avenue, Crestview, Florida 32539

3. The Ville Platte-Mamou-Opelousas area Schedule A Assets are:

Part I

1. Ville Platte Medical Center, 800 East Main Street, Ville Platte, Louisiana 70586

Part II

2. Lease (expires October 1995) of the Ardwin Physicians Office Building, Ville Platte, Louisiana

Schedule B

The assets to be divested pursuant to Paragraph IV ("Schedule B Assets") shall consist of, without limitation, all Assets and Businesses (including all improvements, additions and enhancements made to such assets prior to divestiture), of the following:

a. The Pioneer Valley Assets are:

Part I

1. Pioneer Valley Hospital, 3460 South Pioneer Park, West Valley City, Utah 84120

Part II

2. Three (3) Medical Office Buildings (on hospital campus)
3. Lease of 69,382 sq. ft. (on hospital campus)
4. Land (empty lot), 40th West Street, West Jordan, Utah 84088
5. Lease of 11,750 sq. ft. (corner of 90th South Street and 27th West Street), West Jordan, Utah 84088
6. Least of 7,134 sq. ft., 150 Wright Bros. Drive, Suite 540, Salt Lake City, Utah 84116
7. Salt Lake Industrial Clinic, 441 S. Redwood Road, Salt Lake City, Utah 84104

B. The Jordan Valley Assets are:

Part I

1. Jordan Valley Hospital, 3580 West 9000 South, West Jordan, Utah 84088

Part II

2. Three (3) leases of office space (on hospital campus) (12,000 sq. ft.; 3,374 sq. ft; and 4,620 sq. ft)
3. 12% limited liability partnership in South Ridge Professional Plaza (on campus)
4. Lease of Medical Office Building (Perry Realty), South Valley Medical Plaza, 3590 West 9000 South, West Jordan, Utah 84088

C. The Davis Hospital Assets are:

Part I

1. Davis Hospital and Medical Center, 1600 West Antelope Drive, Layton, Utah 84041

Part II

2. Medical Office Building, 1660 West Antelope Drive, Layton, Utah 84041
3. Medical Office Building, 2132 North 1700 West, Layton, Utah 84041

Schedule C—Utah Healthtrust Assets

The Utah Healthtrust Assets shall consist of, without limitation, all Assets and Businesses (including all improvements, additions and enhancements made to such assets prior to divestiture), of Healthtrust in the State of Utah at the time of the Acquisition, including, without limitation, the following:

1. The following facilities:

a. Pioneer Valley Hospital, 3460 South Pioneer Park, West Valley City, Utah 84120; three (3) medical office buildings on the campus of the hospital; the lease of 69,382 sq. feet on the hospital campus; land (empty lot) at 40th West Street, West Jordan, Utah 84088; lease of 11,750 sq. ft. (corner of 90th South Street and 27th West Street), West Jordan, Utah 84088; and lease of 7,134 sq. ft., 150 Wright Bros. Drive, Suite 540, Salt Lake City, Utah 84116;

b. Jordan Valley Hospital, 3580 West 9000 South, West Jordan, Utah 84084; three (3) leases of office space on the campus of the hospital (12,000 sq. ft., 3,374 sq. ft., and 4,620 sq. ft.); a 12 percent limited lability partnership in South Ridge Professional Plaza, and the lease of Medical Office Building (Perry Realty), South Valley Medical Plaza; 3590 West 9000 South, West Jordan, Utah 84088;

c. Lakeview Hospital, 630 East Medical Drive, Bountiful, Utah 84010;

d. Brigham City Community Hospital, 950 South 500 West, Brigham City, Utah 84302;

e. Ogden Regional Medical Center, 5475 South 500 East, Ogden, Utah 84405;

f. Castleview Hospital, 300 North Hospital Drive, Price, Utah 84501;

g. Springville Medical Center, 730 East 300 South, Springville, Utah 84663; and

h. Ashley Valley Medical Center, 151 West 200 North, Vernal, Utah 84078; and

2. HTI of Utah, Inc., its partnerships, joint ventures, companies, subsidiaries, divisions, and groups and affiliates controlled by HTI of Utah or Healthtrust in Utah; their directors, officers, employees, agents, and representatives; and their successors and assigns; and the following corporations and their successors and assigns;

a. Brigham City Community Hospital, Inc.;

b. Castleview Hospital, Inc.;

c. HTI HomeMed of Utah, Inc.;

d. HTI-Managed Care of Utah, Inc.;

e. HTI Physician Services of Utah, Inc.;

f. HTI Utah Data Corporation;

g. Hospital Corporation of Utah;

h. Intergroup Healthcare Corporation of Utah;

i. Medical Services of Salt Lake City, Inc.;

j. MHHE Corporation;

k. Mountain View Hospital, Inc.;

l. Ogden Medical Center, Inc.;

m. Pioneer Valley Hospital, Inc.; and

n. West Jordan Hospital Corporation.

Appendix I—Agreement to Hold Separate Regarding the Florida, Texas, and Louisiana Assets

In the matter of Columbia/HCA Healthcare Corporation, a corporation. File No. 951–0022.

This agreement to Hold Separate Regarding the Florida, Texas and Louisiana Assets ("Agreement") is by and between Columbia/HCA Healthcare Corporation ("Columbia/HCA" or "respondent"), a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business at One Park Plaza, Nashville, Tennessee 37203; and the Federal Trade Commission ("Commission"), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. 41, *et seq.*

Premises

Whereas, on October 4, 1994, Columbia/HCA and Healthtrust Inc.—The Hospital Company ("Healthtrust") entered into an agreement whereby Columbia/HCA will acquire all the stock of Healthtrust, a wholly-owned subsidiary of Columbia/HCA will be merged with and into Healthtrust, and Healthtrust will operate as a wholly-owned subsidiary of Columbia (the "Acquisition"); and

Whereas, Columbia/HCA, with its principal place of business at one Park Plaza, Nashville, Tennessee 37203, owns and operates, among other things, acute care hospitals; and

Whereas, the Commission is now investigating the Acquisition to determine if it would violate any of the statutes enforced by the Commission; and

Whereas, if the Commission accepts the Agreement Containing Consent Order ("Consent Order"), which would require the divestiture of certain assets listed in Paragraph II of the Consent Order ("Schedule A Assets and DRMC or Denton Community Hospital") and termination of certain interests described in Paragraph III of the Consent Order ("SSI Joint Venture"), the Commission must place the Consent Order on the public record for a period of at least sixty (60) days and may subsequently withdraw such acceptance pursuant to the provisions of Section 2.34 of the Commission's Rules; and

Whereas, the Commission is concerned that if an understanding is not reached, preserving the *status quo ante* of the Schedule A Assets, DRMC and the SSI Joint Venture Interest (collectively the "Hold Separate Assets"), during the period prior to the final acceptance and issuance of the Consent Order by the Commission (after the 60-day public comment period), divestitures resulting from any proceeding challenging the legality of the Acquisition might not be possible, or might be less than an effective remedy; and

Whereas, the Commission is concerned that if the Acquisition is consummated, it will be necessary to preserve the Commission's ability to require the divestitures of the Schedule A Assets, DRMC or Denton Community Hospital, and the SSI Joint Venture Interest, and the Commission's right to have the Hold Separate Assets continue as viable acute care hospitals independent of Columbia/HCA; and

Whereas, the purposes of this Agreement and the Consent Order are to:

(i) preserve the Hold Separate Assets as viable, competitive, and ongoing acute care hospitals, independent of Columbia/HCA, pending the divestitures of the Schedule A Assets and DRMC or Denton Community Hospital, and the termination of the SSI Joint Venture as required under the terms of the Consent Order;

(ii) prevent interim harm to competition from the operation of the Hold Separate Assets pending the divestitures as required under the terms of the Consent Order;

(iii) remedy any anticompetitive effects of the Acquisition;

Whereas, respondent's entering into this Agreement shall in no way be construed as an admission by respondent that the Acquisition is illegal; and

Whereas, respondent understands that no act or transaction contemplated by this Agreement shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this Agreement.

Now, therefore, the parties agree, upon understanding that the Commission has not yet determined whether the Acquisition will be challenged, and in consideration of the Commission's agreement that, at the time it accepts the Consent Order for public comment it will grant early termination of the Hart-Scott-Rodino waiting period, and unless the Commission determines to reject the Consent Order, it will not seek further relief from respondent with respect to the Acquisition, except that the Commission may exercise any and all rights to enforce this Agreement and the Consent Order to which it is annexed and made a part thereof, and in the event the required divestitures of the Schedule A Assets and DRMC or Denton Community Hospital, and the termination of the SSI Joint Venture are not accomplished, to appoint a trustee to seek divestitures of said assets pursuant to the Consent Order, to seek civil penalties, to seek a court appointed trustee, and/or seek other equitable relief, as follows:

1. Respondent agrees to execute the Agreement Containing Consent Order and be bound by the Consent Order.

2. Respondent agrees that from the date this Agreement is accepted until the earliest of the dates listed in subparagraphs 2.a or 2.b, it will comply with the provisions of paragraph 3 of this Agreement:

a. three (3) business days after the Commission withdraws its acceptance of the Consent Order pursuant to the provisions of Section 2.34 of the Commission's Rules; or

b. the day after the last of the divestitures of the Schedule A Assets and DRMC or Denton Community Hospital, and the termination of the SSI Joint Venture, as required by the Consent Order, is completed.

3. To ensure the complete independence and viability of the hold Separate Assets, and to assure that no competitive information is exchanged between Columbia/HCA and the managers of the Hold Separate Assets, respondent shall hold the Schedule A Assets, DRMC and the SSI Joint Venture Interest, as they are presently constituted, separate and apart on the following terms and conditions:

a. The Hold Separate Assets, as they are presently constituted, shall be held separate and apart and shall be managed and operated

independently of respondent (meaning her and hereinafter, Columbia/HCA excluding the Hold Separate Assets), except to the extent that respondent must exercise direction and control over such assets to assure compliance with this Agreement or the Consent Order, and except as otherwise provided in this Agreement.

b. Prior to, or simultaneously with the Acquisition, respondent shall organize a distinct and separate legal entity, either a corporation, limited liability company, or general or limited partnership ("New Company") and adopt constituent documents for the New Company that are not inconsistent with other provisions of this Agreement or the Consent Order. Respondent shall transfer (or in the case of the Ville Platte Medical Center, cause the Central Louisiana Healthcare System Limited Partnership ("CLHS") to transfer) all ownership and control of all Hold Separate Assets to the New Company.

c. The board of directors of the New Company, or, in the event respondent organizes an entity other than a corporation, the government body of the entity ("New Board"), shall have three members. Respondent shall elect the members of the New Board. The New Board shall consist of the following three persons: Winfield C. Dunn, Samuel H. Howard, and David C. Colby, provided they agree, or comparable, knowledgeable persons. The Chairman of the New Board shall be: Winfield C. Dunn (provided he agrees), or a comparable, knowledgeable person, who shall remain independent of Columbia/HCA and competent to assure the continued viability and competitiveness of the Hold Separate Assets and the south Seminole Hospital in Longwood, Florida. The New Board shall include no more than one member who is a director, officer, employee, or agent of respondent, who shall be David C. Colby, provided he agrees, or a comparable knowledgeable person ("the respondent's New Board member"). The New Board shall meet monthly during the course of the Hold Separate, and as otherwise necessary. Meetings of the New Board during the term of this Agreement shall be audiographically transcribed and the tapes retained for two (2) years after the termination of this Agreement.

d. Respondent shall not exercise direction or control over, or influence directly or indirectly, the Hold Separate Assets or South Seminole Hospital, the independent Chairman of the Board of the New Company, the New Board, or the New Company or any of its operations or businesses; provided, however, that respondent may exercise only such direction and control over the New Company as is necessary to assure compliance with this Agreement or the Consent Order, or with all applicable laws. In addition, as to the SSH Joint Venture and South Seminole Hospital, only the following individuals within Columbia/HCA and Healthtrust shall have access to or involvement with termination of the SSI Joint Venture or efforts to divest the SSI Joint Venture Interest: Richard L. Scott, Stephen T. Braun, Donald P. Fay, Ashby Q. Burks, Joseph D. Moore, Phillip D. Wheeler, and George M. Garrett.

e. Respondent shall maintain the viability, competitiveness, and marketability of the Hold Separate Assets; shall not sell, transfer, or encumber said Assets (other than in the normal course of business); and shall not cause or permit the destruction, removal, wasting, or deterioration, or otherwise impair their viability, competitiveness, or marketability of said Hold Separate Assets.

f. Except for the respondent's New Board member, respondent shall not permit any director, officer, employee, or agent of respondent to also be a director, officer, or employee of the New Company.

g. The New Company shall be staffed with sufficient employees to maintain the visibility and competitiveness of the Hold Separate Assets, which employees shall be selected from the existing employee base of each facility or entity and may also be hired from sources other than these facilities and entities.

h. With the exception of the respondent's New Board Member, respondent shall not change the composition of the New Board unless the independent Chairman consents. The independent Chairman shall have power to remove members of the New Board for cause and to require respondent to appoint replacement members to the New Board as provided in Paragraph 3.c. Respondent shall not change the composition of the management of the New Company except that the New Board shall have the power to remove management employees for cause.

i. If the independent Chairman ceases to act or fails to act diligently, a substitute Chairman shall be appointed in the same manner as provided in Paragraph 3.c of this Agreement.

j. Except as required by law, and except to the extent that necessary information is exchanged in the course of evaluating the Acquisition, defending investigations, defending or prosecuting litigation, obtaining legal device, negotiating agreements to divest assets, or complying with this Agreement or the Consent Order, respondent shall not receive or have access to, or use or continue to use, any Material Confidential information not in the public domain about the New Company or the activities of the hospitals operated by the New Board. Access to Material Confidential Information relating to South Seminole Hospital or the SSH Joint Venture, for these limited, stated purposes shall be restricted within Columbia/HCA and Healthtrust to those individuals named in Paragraph 3.d, above. Nor shall the New Company or the New Board receive or have access to, or use or continue to use, any Material Confidential Information not in the public domain about respondent and relating to respondent's acute care hospitals. Respondent may receive, on a regular basis, aggregate financial information relating to the New Company necessary and essential to allow respondent to prepare United States consolidated financial reports, tax returns, and personnel reports. Any such information that is obtained pursuant to this subparagraph shall be used only for the purposes set forth in this subparagraph. ("Material Confidential Information," as used herein, means competitively sensitive or proprietary information not independently known to an entity from sources other than the entity to which the information pertains, and includes, but is not limited to, customer lists, price lists, marketing methods, patents, technologies, processes, or other trade secrets.)

k. Except as permitted by this Agreement, the respondent's New Board member shall not, in his or her capacity as a New Board member, receive Material Confidential Information and shall not disclose any such information received under this Agreement to respondent, or use it to obtain any advantage for respondent. The respondent's New Board member shall enter a confidentiality agreement prohibiting disclosure of Material Confidential Information. The respondent's New Board member shall participate in matters that come before the New Board only for the limited purposes of considering a capital investment or other transaction exceeding $250,000, approving any proposed budget and operating plans, and carrying out respondent's responsibilities under this Agreement and the Consent Order. Except as permitted by this Agreement, the respondent's New Board member shall not participate in any matter, or attempt to influence the votes of the other members of the New Board with respect to matters, that would involve a conflict of interest if respondent and the New Company were separate and independent entities.

l. Any material transaction of the New Company that is out of the ordinary course of business must be approved by a majority vote of the New Board; provided that the New Company shall engage in no transaction, material or otherwise, that is precluded by this Agreement.

m. If necessary, respondent shall provide the New Company with sufficient working capital to operate the Hold Separate Assets at their respective current rates of operation, to meet any capital calls anticipated in respect of the SSH Joint Venture, and to carry out any capital improvement plans for the Schedule A Assets, DRMC and the South Seminole Hospital that have already been approved.

n. Columbia/HCA shall continue to provide the same support services to the Hold Separate Assets as are being provided to such assets by Columbia/HCA or Healthtrust as of the date this Agreement is signed. Columbia/HCA may charge the Hold Separate Assets the same fees, if any, charged by Columbia/HCA or Healthtrust for such support services as of the date of this Agreement. Columbia/HCA personnel providing such support services must retain and maintain all Material Confidential Information of the Hold Separate Assets on a confidential basis, and, except as if permitted by this Agreement, such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any person whose employment involves any of respondent's businesses. Such personnel shall also execute confidentiality agreements prohibiting the disclosure of any Material Confidential Information of the Hold Separate Assets.

o. During the period commencing on the date this Agreement is effective and terminating on the earlier of (i) twelve (12) months after the date the Consent Order becomes final, or (ii) the date contemplated by subparagraph 2.b (the "Initial Divestiture Period"), respondent shall make available for use by the New Company funds sufficient to perform all necessary routine maintenance to, and replacement of, the Hold Separate Assets ("normal repair and replacement"). Provided, however, that in any event, respondent shall provide the New Company with such funds as are necessary to maintain the viability, competitiveness, and marketability of such Assets.

p. Columbia/HCA shall circulate, to its management employees responsible for the operation of acute care hospitals in any of the relevant areas defined in the Consent Order in this matter, a notice of this Hold Separate and Consent Order in the form attached as Attachment A.

q. The New Board shall serve at the cost and expense of Columbia/HCA. Columbia/HCA shall indemnify the New Board against any losses or claims of any kind that might arise out of its involvement under this Hold Separate, except to the extent that such losses or claims result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the New Board directors.

r. The NEw Board shall have access to and be informed about all companies who inquire about, seek, or propose to buy any Hold Separate Asset.

s. Within thirty days (30) after the date this Agreement is accepted by the Commission and every thirty (30) days thereafter until this Agreement terminates, the New Board shall report in writing to the Commission concerning the New Board's efforts to accomplish the purposes of this Hold Separate. In addition, within thirty days (30) after the date this Agreement is accepted by the Commission and every thirty (30) thereafter until this Agreement terminates, respondent shall file with the Commission a verified written report, setting forth, among other things that may be required from time to time, a detailed memorialization of all communications, both intra-company and with third parties, relating to the termination of the SSH Joint Venture.

4. Should the Commission seek in any proceeding to compel respondent to divest any of the Hold Separate Assets, as provided in the Consent Order, or to seek any other injunctive or equitable relief for any failure to comply with the Consent Order or this Agreement, or in any way relating to the Acquisition, as defined in the draft of complaint, respondent shall not raise any objection based upon the expiration of the applicable Hart-Scott-Rodino Antitrust Improvements Act waiting period or the fact that the Commission has permitted the Acquisition. Respondent also waives all rights to contest the validity of this Agreement.

5. To the extent that this Agreement requires respondent to take, or prohibits respondent from taking, certain actions that otherwise may be required or prohibited by contract, respondent shall abide by the terms of this Agreement or the Consent Order and shall not assert as a defense such contract requirements in a civil penalty action brought by the Commission to enforce the terms of this Agreement or Consent Order.

6. For the purposes of determining or securing compliance with this Agreement, and subject to any legally recognized privilege, and upon written request with reasonable notice to respondent made to its principal office, respondent shall permit any duly authorized representatives of the Commission:

a. Access, during office hours of respondent and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and all other records and documents in the possession or under the control of the respondent relating to compliance with this Agreement;

b. Upon five (5) days' notice to respondent and without restraint or interference from respondent, to interview officers, directors, or employees of respondent, who may have counsel present, regarding such matters.

7. This Agreement shall not be finding until approved by the Commission.

Attachment A—Notice of Divestiture and Requirement for Confidentiality

Columbia/HCA Healthcare Corporation and Healthtrust Inc.—The Hospital Company have entered into a Consent Agreement and Agreement to Hold Separate with the Federal Trade Commission relating to the divestiture of certain Healthtrust and Columbia/HCA acute care hospitals and the termination of a joint venture agreement ("Assets"). The hospitals to be divested include:

1. Santa Rosa Medical Center, 1450 Berryhill Road, Milton, Florida 32572.

2. North Okaloosa Medical Center, 151 Redstone Avenue Southeast, Crestview, Florida 32536.

3. Denton Regional Medical Center, 4405 North Interstate 35, Denton, Texas 76207 or the Denton Community Hospital, 107 N. Bonnie Brae, Denton, Texas 76201.

4. Ville Platte Medical Center, 800 East Main Street, Ville Platte, Louisiana 70586.

5. Davis Hospital and Medical Center, 1600 West Antelope Drive, Layton, Utah 84041.

6. Pioneer Valley Hospital, 3460 South Pioneer Parkway, West Valley City, Utah 84120, including the Salt Lake Industrial Clinic, 441 S. Redwood Road, Salt Lake City, Utah 84104.

7. Jordan Valley Hospital, 3580 West 9000 South, West Jordan, Utah 84088.

The joint venture agreement that must be terminated involves the joint venture that owns South Seminole Hospital in Longwood, Florida. Columbia/HCA and Healthtrust must terminate the joint venture either by selling Healthtrust's interest in the joint venture or by acquiring the other joint venture partner's interest.

Until after the FTC's Order becomes final and the Assets are divested, the Assets must be managed and maintained as separate, ongoing businesses, independent of all other Columbia/HCA businesses. All competitive information relating to the Assets must be retained and maintained by the persons involved in the operation of the Assets on a confidential basis, and such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any other person whose employment involves any other Columbia/HCA business. Similarly, all such persons involved in Columbia/HCA shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any other person whose employment involves any of the Assets.

Any violation of the Consent Agreement or the Agreement to Hold Separate, incorporated by reference as part of the Consent Order, may subject Columbia/HCA to civil penalties and other relief as provided by law.

Appendix II—Agreement to Hold Separate Regarding the Utah Healthtrust Assets

In the matter of Columbia/HCA Healthcare Corporation, a corporation. File No. 951–0022.

This Agreement to Hold Separate Regarding the Utah Healthtrust Assets ("Agreement") is by and between Columbia/HCA Healthcare Corporation ("Columbia/HCA" or "respondent"), a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business at One Park Plaza, Nashville, Tennessee 37203; and the Federal Trade Commission ("Commission"), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. 41, *et seq.*

Premises

Whereas, on October 4, 1994, Columbia/HCA and Healthtrust Inc.—The Hospital Company ("Healthtrust") entered into an agreement whereby Columbia/HCA will acquire all the stock of Healthtrust, a wholly-owned subsidiary of Columbia/HCA will be merged with and into Healthtrust, and Healthtrust will operate as a wholly-owned subsidiary of Columbia (the "Acquisition"); and

Whereas, on October 20, 1994, the Commission, with the consent of Healthtrust, issued its complaint and made final its Order to settle charges that the acquisition by Healthtrust of certain assets of Holy Cross Health System Corporation violated Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45 (*In the Matter of Healthtrust, Inc.—The Hospital Company*, Docket No. C–3536); and

Whereas, the Order in Docket No. C–3538 provides that for a period of ten (10) years, Healthtrust shall not permit any acute care hospital it operates in the Three-County Area of Utah, as defined in Paragraph I.G. of the Order in Docket No. C–3538, to be acquired, without the prior approval of the Commission, by any person that operates any other acute care hospital in the Three-County Area; and

Whereas, on February 15, 1995, Healthtrust petitioned the Commission to approve the sale of four Healthtrust acute care hospitals (the "Utah Healthtrust Hospitals") to Columbia/HCA; and

Whereas, Columbia/HCA, with its principal place of business at One Park Plaza,

Nashville, Tennessee 37203, owns and operates, among other things, acute care hospitals in the Three-County Area of Utah, and elsewhere; and

Whereas, the Commission is now investigating the Acquisition to determine whether it would violate any of the statutes enforced by the Commission and whether the Commission should approve the Acquisition pursuant to the Order in *In the Matter of Healthtrust, Inc.—The Hospital Company*, Docket No. C–3538); and

Whereas, the Commission has determined to grant Healthtrust the prior approval required for its sale of the Utah Healthtrust Hospitals to Columbia/HCA, conditioned, however, upon Columbia/HCA divesting, as required by the Agreement Containing Consent Order ("Consent Agreement" or "Consent Order"), to which this Hold Separate is attached and made a part thereof as Appendix II, three Utah hospitals and related assets (the "Schedule B Assets" as defined in Paragraph I of the Consent Order); and

Whereas, if the Commission accepts the Consent Order, which would require the divestiture of the Schedule B Assets pursuant to Paragraph IV of the Consent Order, the Commission must place the Consent Order on the public record for a period of at least sixty (60) days and may subsequently withdraw such acceptance pursuant to the provisions of Section 2.34 of the Commission's Rules; and

Whereas, the Commission is concerned that if an understanding is not reached, preserving the *status quo ante* of the Utah Healthtrust Assets, as identified in Schedule C to the Consent Order, during the period prior to the final acceptance and issuance of the Consent Order by the Commission (after the 60-day public comment period), divestitures resulting from any proceeding challenging the legality of the Acquisition might not be possible, or might be less than an effective remedy; and

Whereas, if the Commission accepts the Consent Order, and Columbia/HCA has not divested with the Commission's prior approval, each Schedule B Asset, in accordance with the Consent Order, within nine (9) months of the date the Commission conditionally approves the Acquisition pursuant to the order in Docket No. C–3538, the Commission may appoint a trustee to divest the Utah Healthtrust Assets, as identified in Schedule C to the Consent Order; and

Whereas, the Commission is concerned that if the Acquisition is consummated, it will be necessary to preserve the Commission's ability to require the divestitures of the Utah Healthtrust Assets and the Commission's right to have the Utah Healthtrust Assets continue as viable acute care hospitals independent of Columbia/HCA; and

Whereas, the purposes of this Agreement and the Consent Order are to:

(i) preserve the Utah Healthtrust Assets as viable, competitive, and ongoing acute care hospitals, independent of Columbia/HCA, pending the divestitures of the Schedule B Assets or the Utah Healthtrust Assets as required under the terms of the Consent Order; and

(ii) prevent interim harm to competition from the operation of the Utah Healthtrust Assets pending divestitures of the Schedule B Assets or the Utah Healthtrust Assets as required under the terms of the Consent Order; and

(iii) remedy any anticompetitive effects of the Acquisition;

Whereas, respondent's entering into this Agreement shall in no way be construed as an admission by respondent that the Acquisition is illegal; and

Whereas, respondent understands that no act or transaction contemplated by this Agreement shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this Agreement.

Now, therefore, the parties agree, upon understanding that the Commission has not yet determined whether the Acquisition will be challenged, and in consideration of the Commission's conditional approval of the Acquisition and its agreement that, at the time it accepts the Consent Order for public comment it will grant early termination of the Hart-Scott-Rodino waiting period, and unless the Commission determines to reject the Consent Order, it will not seek further relief from respondent with respect to the Acquisition, except that the Commission may exercise any and all rights to enforce this Agreement and the Consent Order to which it is annexed and made a part thereof, and the Order in Docket No. C–3538, and in the event the required divestitures of the Schedule B Assets are not accomplished, to appoint a trustee to seek divestitures of the Utah Healthtrust Assets pursuant to the Consent Order, to seek civil penalties, to seek a court appointed trustee, and/or to seek other equitable relief, as follows:

1. Respondent agrees to execute the Agreement Containing Consent Order and be bound by the attached Consent Order.

2. Respondent agrees that from the date this Agreement is accepted until the earliest of the dates listed in subparagraphs 2.a or 2.b, it will comply with the provisions of paragraph 3 of this Agreement:

a. three (3) business days after the Commission withdraws its acceptance of the Consent Order pursuant to the provisions of Section 2.34 of the Commission's Rules; or

b. the day after the last of the divestitures of the Schedule B Assets or the Utah Healthtrust Assets, as required by the Consent Order, is completed.

3. To ensure the complete independence and viability of the Utah Healthtrust Assets, and to assure that no competitive information is exchanged between Columbia/HCA and the managers of the Utah Healthtrust Assets, respondent shall hold the Utah Healthtrust Assets, as they are presently constituted, separate and apart on the following terms and conditions:

a. The Utah Healthtrust Assets, as they are presently constituted, shall be held separate and apart and shall be managed and operated independently of respondent (meaning here and hereinafter, Columbia/HCA excluding the Utah Healthtrust Assets), except to the extent that respondent must exercise direction and control over such assets to assure compliance with this Agreement or the Consent Order, and except as otherwise provided in this Agreement.

b. Prior to, or simultaneously with the Acquisition, respondent shall transfer all ownership and control of all Utah Healthtrust Assets to HTI of Utah, Inc.

c. The board of directors of HTI of Utah, Inc. ("HTI Board"), shall have three members. Respondent shall elect the members of the HTI Board. The HTI Board shall consist of the following three persons: (i) Kent H. Wallace; (ii) Kenneth W. Perry; and (iii) David C. Colby, provided they agree, or comparable, knowledgeable persons. The Chairman of the HTI Board shall be Kent H. Wallace, provided he agrees, or a comparable knowledgeable person, who shall remain independent of Columbia/HCA and competent to assure the continued viability and competitiveness of the Healthtrust Utah Assets. The HTI Board shall include no more than one member who is a director, officer, employee, or agent of respondent, who shall be David C. Colby, provided he agrees, or a comparable, knowledgeable person ("the respondent's HTI Board member"). The HTI Board shall meet monthly during the course of the Hold Separate, and as otherwise necessary. Meetings of the HTI Board during the term of this Agreement shall be audiographically transcribed and the tapes retained for two (2) years after the termination of this Agreement.

d. Respondent shall not exercise direction or control over, or influence directly or indirectly, the Utah Healthtrust Assets, the independent Chairman of the Board of the HTI of Utah Inc., HTI of Utah Inc., or any of its operations or businesses; provided, however, that respondent may exercise only such direction and control over HTI of Utah Inc. as is necessary to assure compliance with this Agreement or the Consent Order, or with all applicable laws.

e. Respondent shall maintain the viability, competitiveness, and marketability of the Utah Healthtrust Assets, shall not sell, transfer, or encumber said Assets (other than in the normal course of business); and shall not cause or permit the destruction, removal, wasting, or deterioration, or otherwise impair their viability, competitiveness, or marketability of said Assets.

f. Except for the respondent's HTI Board member, respondent shall not permit any director, officer, employee, or agent of respondent to also be a director, officer, or employee of HTI of Utah Inc.

g. HTI Utah of Utah Inc. shall be staffed with sufficient employees to maintain the viability and competitiveness of the Utah Healthtrust Assets, which employees shall be selected from the existing employee base of each facility or entity and may also be hired from sources other than these facilities and entities.

h. With the exception of the respondent's HTI Board Member, respondent shall not change the composition of the HTI Board unless the independent Chairman consents. The independent Chairman shall have power to remove members of the HTI Board for cause and to require respondent to appoint replacement members to the New Board as provided in Paragraph 3.c. Respondent shall not change the composition of the management of HTI of Utah Inc., except that the HTI Board shall have the power to remove management employees for cause.

i. If the independent Chairman ceases to act or fails to act diligently, a substitute Chairman shall be appointed in the same manner as provided in Paragraph 3.c of this Agreement.

j. Except as required by law, and except to the extent that necessary information is exchanged in the course of evaluating the Acquisition, defending investigations, defending or prosecuting litigation, obtaining legal advice, negotiating agreements to divest assets, or complying with this Agreement or the Consent Order, respondent shall not receive or have access to, or use or continue to use, any Material Confidential Information not in the public domain about HTI of Utah Inc., or the activities of or the hospitals operated by the HTI Board. Nor shall HTI of Utah Inc. or the HTI Board receive or have access to, or use or continue to use, any Material Confidential Information not in the public domain about respondent and relating to respondent's acute care hospitals. Respondent may receive, on a regular basis, aggregate financial information relating to HTI of Utah Inc. necessary and essential to allow respondent to prepare United States consolidated financial reports, tax returns, and personnel reports. Any such information that is obtained pursuant to this subparagraph shall be used only for the purposes set forth in this subparagraph. ("Material Confidential Information," as used herein, means competitively sensitive or proprietary information not independently known to an entity from sources other than the entity to which the information pertains, and includes, but is not limited to, customer lists, price lists, marketing methods, patents, technologies, processes, or other trade secrets.]

k. Except as permitted by this Agreement, the respondent's HTI Board member shall not, in his or her capacity as an HTI Board member, receive Material Confidential Information and shall not disclose any such information received under this Agreement to respondent, or use it to obtain any advantage for respondent. The respondent's HTI Board member shall enter a confidentiality agreement prohibiting disclosure of Material Confidential Information. The respondent's HTI Board member shall participate in matters that come before the HTI Board only for the limited purposes of considering a capital investment or other transaction exceeding $250,000, approving any proposed budget and operating plans, and carrying out respondent's responsibilities under this Agreement and the Consent Order. Except as permitted by this Agreement, the respondent's HTI Board member shall not participate in any matter, or attempt to influence the votes of the other members of the HTI Board with respect to matters, that would involve a conflict of interest if respondent and HTI of Utah Inc. were separate and independent entities.

l. Any material transaction of HTI of Utah Inc. that is out of the ordinary course of business must be approved by a majority vote of the HTI Board; provided that HTI of Utah Inc. shall engage in no transaction, material or otherwise, that is precluded by this Agreement.

m. If necessary, respondent shall provide HTI of Utah Inc. with sufficient working capital to operate the Utah Healthtrust Assets at their respective current rates of operation and to carry out any capital improvement plans for the Utah Healthtrust Assets that have already been approved.

n. Columbia/HCA shall continue to provide the same support services to the Utah Healthtrust Assets, as are being provided to such Assets by Healthtrust as of the date this Agreement is signed. Columbia/HCA may charge the HTI of Utah Inc. the same fees, if any, charged by Healthtrust for such support services as of the date of this Agreement. Columbia/HCA personnel providing such support services must retain and maintain all material confidential information of the Utah Healthtrust Assets on a confidential basis, and, except as is permitted by this Agreement, such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any person whose employment involves any of respondent's businesses. Such personnel shall also execute confidentiality agreements prohibiting the disclosure of any Material Confidential Information of the Utah Healthtrust Assets.

o. During the period commencing on the date this Agreement is effective and terminating on the earlier of (i) twelve (12) months after the date the Consent Order becomes final, or (ii) the date contemplated by subparagraph 2.b (the "Initial Divestiture Period"), respondent shall make available for use by HTI of Utah Inc. funds sufficient to perform all necessary routine maintenance to, and replacements of, the Utah Healthtrust Assets ("normal repair and replacement"). Provided, however, that in any event, respondent shall provide HTI of Utah Inc. with such funds as are necessary to maintain the viability, competitiveness, and marketability of such Assets.

p. Columbia/HCA shall circulate, to its management employees responsible for the operation of acute care hospitals in any of the relevant areas defined in the Consent Order in this matter, a notice of this Hold Separate and Consent Order in the form attached as Attachment A.

q. The HTI Board shall serve at the cost and expense of Columbia/HCA. Columbia/HCA shall indemnify the HTI Board against any losses or claims of any kind that might arise out of its involvement under this Hold Separate, except to the extent that such losses or claims result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the HTI Board directors.

r. The HTI Board shall have access to and be informed about all companies who inquire about, seek, or propose to buy any Schedule B Assets or the Utah Healthtrust Assets.

s. Within thirty (30) days after the date this Agreement is accepted by the Commission and every thirty (30) days thereafter until this Agreement terminates, the HTI Board shall report in writing to the Commission concerning the HTI Board's efforts to accomplish the purposes of this Hold Separate.

4. Should the Commission seek in any proceeding to compel respondent to divest any of the Schedule B Assets or the Utah Healthtrust Assets, as provided in the Consent Order, or to seek any other injunctive or equitable relief for any failure to comply with the Consent Order or this Agreement, or in any way relating to the acquisition, as defined in the draft of complaint, respondent shall not raise any objection based upon the expiration of the applicable Hart-Scott-Rodino Antitrust Improvements Act waiting period or the fact that the Commission has permitted the Acquisition. Respondent also waives all rights to contest the validity of this Agreement.

5. To the extent that this Agreement requires respondent to take, or prohibits respondent from taking, certain actions that otherwise may be required or prohibited by contract, respondent shall abide by the terms of this Agreement or the Consent Order and shall not assert as a defense such contract requirements in a civil penalty action brought by the Commission to enforce the terms of this Agreement or Consent Order.

6. For the purposes of determining or securing compliance with this Agreement, and subject to any legally recognized privilege, and upon written request with reasonable notice to respondent made to its principal office, respondent shall permit any duly authorized representatives of the Commission:

a. Access, during office hours of respondent and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and all other records and documents in the possession or under the control of the respondent relating to compliance with this Agreement;

b. Upon five (5) days' notice to respondent and without restraint or interference from respondent, to interview officers, directors, or employees of respondent, who may have counsel present, regarding such matters.

7. This Agreement shall not be binding until approved by the Commission.

Attachment A—Notice of Divestiture and Requirement for Confidentiality

Columbia/RCA Healthcare Corporation and Healthtrust Inc.—The Hospital Company have entered into a Consent Agreement and Agreement to Hold Separate with the Federal Trade Commission relating to the divestiture of certain Healthtrust and Columbia/HCA acute care hospitals and the termination of a joint venture agreement ("Assets"). The hospitals to be divested include:

1. Santa Rosa Medical Center, 1450 Berryhill Road, Milton, Florida 32572.

2. North Okaloosa Medical Center, 151 Redstone Avenue Southeast, Crestview, Florida 32536.

3. Denton Regional Medical Center, 4405 North Interstate 35, Denton, Texas 76207 or the Denton Community Hospital, 107 N. Bonnie Brae, Denton, Texas 76201.

4. Ville Platte Medical Center, 800 East Main Street, Ville Platte, Louisiana 70586.

5. Davis Hospital and Medical Center, 1600 West Antelope Drive, Layton, Utah 84041.

6. Pioneer Valley Hospital, 3460 South Pioneer Parkway, West Valley City, Utah 84120, including the Salt Lake Industrial Clinic, 441 S. Redwood Road, Salt Lake City, Utah 84104.

7. Jordan Valley Hospital, 3580 West 9000 South, West Jordan, Utah 84088.

The joint venture agreement that must be terminated involves a joint venture that owns South Seminole Hospital in Longwood, Florida. Columbia/HCA and Healthtrust must terminate the joint venture either by selling Healthtrust's interest in the joint venture or by acquiring the other joint venture partner's interest.

Until after the FTC's Order becomes final and the Assets are divested, the Assets must be managed and maintained as separate, ongoing businesses, independent of all other Columbia/HCA businesses. All competitive information relating to the Assets must be retained and maintained by the persons involved in the operation of the Assets on a confidential basis, and such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any other person whose employment involves any other Columbia/HCA business. Similarly, all such persons involved in Columbia/HCA shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any other person whose employment involves any of the Assets.

Any violation of the Consent Agreement or the Agreement to Hold Separate, incorporated by reference as part of the Consent Order, may subject Columbia/HCA to civil penalties and other relief as provided by law.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission ("Commission") has accepted, subject to final approval, a proposed consent order from Columbia/HCA Healthcare Corporation ("Columbia/HCA"). The agreement is designed to remedy anticompetitive effects stemming from Columbia/HCA's proposed acquisition of Healthtrust, Inc.—The Hospital Company ("Healthtrust").

The proposed consent order has been placed on the public record for sixty days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

Columbia/HCA and Healthtrust both own and/or operate acute care hospitals in various localities around the country. The Commission's draft complaint accompanying the proposed consent order charges that on or about October 4, 1994, Columbia/HCA agreed to acquire all the stock of Healthtrust, and that the Commission has reason to believe that the acquisition, as well as the agreement to enter into the acquisition, may substantially lessen competition, in violation of Section 7 of the Clayton Act and Section 5 of the FTC Act.

According to the draft complaint, the proposed acquisition may have an anticompetitive impact upon competition for acute care hospital services in six localities ("relevant areas") where Columbia/HCA and Healthtrust are direct competitors. The complaint alleges that the acute care hospital services market in each area is already highly concentrated, and entry by new competitors would be difficult. The complaint alleges that the Commission has reason to believe that the acquisition would violate Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act, unless an effective remedy eliminates the anticompetitive effects. The relevant areas in which the complaint alleges the acquisition may lessen competition, and the hospitals Columbia/HCA and Healthtrust own and/or operate in each relevant area, are as follows:

(1) The Pensacola area, which encompasses the Florida counties of Escambia and Santa Rosa. Columbia/HCA's acute care hospital in this area is the West Florida Regional Medical Center, in Pensacola; and Healthtrust's acute care hospital in this area is the Santa Rosa Medical Center, in Milton.

(2) The Okaloosa area, which encompasses the Florida county of Okaloosa. Columbia/HCA's acute care hospitals in this area are Twin Cities Hospital, in Niceville; Fort Walton Beach Medical Center, in Ft. Walton Beach; and Destin Community Hospital, in Destin. Healthtrust's acute care hospital in this area is North Okaloosa Medical Center, in Crestview.

(3) The Denton area, encompassing the Texas counties of Cooke and Denton (excluding the incorporated city of Lewisville and that portion of Denton County south of Texas highway number 121). Columbia/HCA's acute care hospital in this area is Denton Community Hospital, in Denton; and Healthtrust's acute care hospital in this area is Denton Regional Medical Center, also in Denton.

(4) The Ville Platte-Mamou-Opelousas area, encompassing the Louisiana parishes of Evangeline and St. Landry. Columbia/HCA's acute care hospital in this area is the Ville Platte Medical Center, in Ville Platte; and Healthtrust's acute care hospitals in this area are Savoy Medical Center, in Savoy, and Doctors Hospital of Opelousas, in Opelousas.

(5) The Salt Lake City—Ogden Metropolitan Statistical Area ("MSA"), encompassing three contiguous counties in northern Utah: Weber County, Davis County, and Salt Lake County. This area includes the Salt Lake City area (encompassing Salt Lake County and southern Davis County) and the Ogden area (encompassing Weber County and northern Davis County). Columbia/HCA's acute care hospitals in the MSA are Davis Hospital and Medical Center, in Layton, and St. Mark's Hospital, in Salt Lake City. Healthtrust's acute care hospitals in the MSA are Pioneer Valley Hospital, in West Valley City; Jordan Valley Hospital, in West Jordan; Lakeview Hospital, in Bountiful; and Ogden Regional Medical Center, in Ogden.

(6) The Orlando area, encompassing the Florida counties of Seminole, Orange, and Osceola. Columbia/HCA's acute care hospitals in this area are Central Florida Regional Hospital, in Sanford; Columbia Park Medical Center, in Orlando; Osceola Regional Hospital, in Kissimmee; and Winter Park Memorial Hospital, in Winter Park. Healthtrust's acute care hospital in this area is South Seminole Hospital, in Lakewood. The complaint further alleges that South Seminole Hospital is jointly owned by Healthtrust and the Orlando Regional Health System ("ORHS"), and that ORHS operates four additional hospitals in the Orlando area.

Healthtrust is subject to a prior Commission order issued in *Healthtrust, Inc.—The Hospital Company*, Docket No. C–3538. Under that order, Healthtrust must obtain prior Commission approval before transferring its hospitals in the Salt Lake City area to anyone who operates other hospitals in that relevant area. Healthtrust requested the Commission's prior approval to transfer its hospitals in the Salt Lake City area to Columbia/HCA, and the Commission granted that approval at the same time it accepted this consent agreement with Columbia/HCA for public comment.

The consent order, if issued in final form by the Commission, would settle charges that the acquisition many substantially lessen competition in the six relevant areas. The order contains provisions requiring divestiture by Columbia/HCA of the following acute care hospitals, in five of the relevant areas:

(1) The Pensacola area—Healthtrust's Santa Rosa Medical Center, in Milton;

(2) The Okaloosa area—Healthtrust's North Okaloosa Medical Center, in Crestview;

(3) The Denton area—Healthtrust's Denton Regional Medical Center, in Denton, or in the alternative, Columbia/HCA's Denton Community Hospital, also in Denton;

(4) The Ville Platte-Mamou-Opelousas area—Columbia's Ville Platte Medical Center, in Ville Platte; and

(5) The Salt Lake City—Ogden MSA—Columbia/HCA's Davis Hospital and Medical Center, in Layton, and Healthtrust's Pioneer Valley Hospital, in West Valley City and Jordan Valley Hospital, in West Jordan.

The purpose of these hospital divestitures is to maintain the scope and intensity of competition among general acute care hospitals in each of the foregoing areas, as existed before the acquisition.

In addition, in the Orlando area, Columbia must terminate the joint venture with ORHS in the South Seminole Hospital, in Lakewood, either by buying out the co-venturer's interest, or by selling Healthtrust's interest in the venture. The purpose of the divestiture in the Orlando area is to prevent two major competitors, Columbia/HCA and ORHS, from sharing ownership of the South Seminole Hospital.

The proposed order requires Columbia/HCA to obtain the approval of the Commission for the divestiture of the hospitals in the relevant areas. Under the terms of the order, the required divestitures in four of the areas, the Pensacola area, the Okaloosa area, the Denton area, and the Ville Platte-Mamou-Opelousas area, must be completed within twelve months of the date the order becomes final. In the Salt Lake City–Ogden MSA, Columbia/HCA must divest the identified hospitals within nine months of the date the Commission granted prior approval for Healthtrust to transfer its hospitals to Columbia/HCA. In the Orlando area, Columbia/HCA must terminate Healthtrust's participation in the South Seminole Hospital within six months of the date the order becomes final.

If the required divestitures in the Pensacola area, the Okaloosa area, the Denton area, and the Ville Platte-Mamou-Opelousas area, are not completed within twelve months, Columbia/HCA would consent to the appointment of a trustee, who would have twelve additional months to effect the divestitures. If the required divestitures in the Salt Lake City–Ogden MSA are not completed within nine months, Columbia/HCA would consent to the appointment of a trustee, who would have twelve months to sell all the Utah assets of Healthtrust, including all the Healthtrust hospitals in Utah. If the joint venture in Orlando is not terminated within six months, Columbia/HCA would consent to the appointment of a trustee, who would have twelve months to sell Healthtrust's interest in the joint venture.

The two hold-separate agreements executed in conjunction with the consent agreement require Columbia/HCA, until the completion of the divestitures or as otherwise specified, to hold separate and preserve the assets and businesses necessary to insure the viability and marketability of the assets to be divested, including all of Healthtrust's assets in the state of Utah. The proposed order provides that approval by the Commission of the divestitures shall be conditioned upon the agreement by the acquirers that, for ten years from the date of the divestiture, it will not sell, without the prior approval of the Commission, to another person operating (or in the process of acquiring) any acute care hospital in the same relevant area.

The order would prohibit Columbia/HCA from acquiring any acute care hospital in any of the six relevant areas without the prior approval of the Federal Trade Commission. It would also prohibit Columbia/HCA from transferring, without prior Commission approval, any acute care hospital it operates in any relevant area to another person operating (or in the process of acquiring) an acute care hospital in the same relevant area. These provisions, in combination, would give the Commission authority to prohibit any substantial combination of the acute care hospital operations of Columbia/HCA with those of any other acute care hospital in the same relevant area, unless Columbia/HCA convinced the Commission that a particular transaction would not endanger competition in that relevant area. The provisions would not apply to acquisitions or sales where the value of the transferred assets is $1 million or less, and the provisions would expire ten years after the order becomes final.

For ten years, the order would prohibit Columbia/HCA from transferring all or any substantial part of any acute care hospital in any relevant area to another party without first filing with the Commission an agreement by the transferee to be bound by the order.

The purpose of this analysis is to invite public comment concerning the proposed order, to assist the Commission in its determination whether to make the order final. This analysis is not intended to constitute an official interpretation of the agreement and order or to modify their terms in any way.

The agreement is for settlement purposes only and does not constitute an admission by Columbia/HCA that its proposed acquisition would have violated the law, as alleged in the Commission's complaint.

Donald S. Clark,

Secretary.

[FR Doc. 95–12589 Filed 5–22–95; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–3569]

Del Monte Foods Company, et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, Del Monte Corporation and Pacific Coast Producers to terminate the purchase option agreement and the provisions of the supply agreement that relate to planning for the 1995 canning season within three days after this order becomes final, and to terminate the remaining provisions of the supply agreement by June 30, 1995. In addition, the order requires the California-based respondents to obtain, for ten years, Commission approval before acquiring any stock or assets of a United States canned fruit manufacturer and before entering into a variety of marketing, packing, or other agreements with competitors.

DATES: Complaint and Order issued April 11, 1995.[1]

FOR FURTHER INFORMATION CONTACT: Ronald Rowe, FTC/S–2105, Washington, DC 20580. (202) 326–2610.

SUPPLEMENTARY INFORMATION: On Friday, January 27, 1995, there was published in the **Federal Register**, 60 FR 5397, a proposed consent agreement with analysis In the Matter of Del Monte Foods Company, et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Donald S. Clark,

Secretary.

[FR Doc. 95–12586 Filed 5–22–95; 8:45 am]

BILLING CODE 6750–01–M

[1] Copies of the Complaint, the Decision and Order, and Commissioner Starek's statement are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

[Dkt. 9263]

National Dietary Research, Inc., et al.; Proposed Consent Agreement with Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a Florida-based corporation and its owner from making claims regarding weight loss, hunger reduction, calorie absorption, cholesterol reduction, effects on cellulite or body measurements, or any other health benefits of any product or program they advertise or sell, unless the respondents possess competent and reliable scientific evidence to substantiate the claims. Also, the consent agreement would prohibit the respondents from misrepresenting test results, from representing that any advertisement is something other than a paid advertisement, and from representing that an endorsement is typical of the experience of consumers who use the product, unless the claim is substantiated. In addition, the consent agreement would require National Dietary Research to pay $100,000 to the Commission.

DATES: Comments must be received on or before July 24, 1995.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Joel Winston or Richard Cleland, FTC/S–4002, Washington, DC 20580. (202) 326–3153 or 326–3088.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 3.25(f) of the Commission's rules of practice (16 CFR 3.25(f)), notice is hereby given that the following

consent agreement containing a consent order(s) to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order to Cease and Desist

In the matter of National Dietary Research, Inc., a corporation; The William H. Morris Company, a corporation; and William H. Morris, individually and as an officer of said corporations. Docket No. 9263.

The agreement herein, by and between National Dietary Research, Inc., and The William H. Morris Company, corporations, by their duly authorized officer; and William H. Morris, individually and as an officer of said corporations, hereinafter sometimes referred to as respondents, and their attorneys, and counsel for the Federal Trade Commission, is entered into in accordance with the Commission's rule governing consent order procedures. In accordance therewith the parties hereby agree that:

1. Respondent National Dietary Research, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Florida, with its office and principal place of business located at 1377 K Street, NW., Suite 553, Washington, DC 20005.

Respondent The William H. Morris Company is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Florida, with its office and principal place of business located at 2804 Smitter Road, Tampa, Florida, 33618.

Respondent William H. Morris is an officer of said corporations. He formulates, directs, and controls the policies, acts, and practices of said corporations. His home address is 2906 Smitter Road, Tampa, Florida, 33618.

2. Respondents have been served with a copy of the complaint issued by the Federal Trade Commission charging them with violations of sections 5(a) and 12 of the Federal Trade Commission Act, and have filed answers to said complaint denying said charges.

3. Respondents admit all the jurisdictional facts set forth in the Commission's complaint in this proceeding.

4. Respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

5. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the respondents, in which event it will take such action as it may consider appropriate, or issue and serve its decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in the complaint, or that the facts as alleged in the compliant, other than jurisdictional facts, are true.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 3.25(f) of the Commission's rules, the Commission may without further notice to respondents, (1) Issue its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to respondents' addresses as stated in this agreement shall constitute service. Respondents waive any right they might have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or to contradict the terms of the order.

8. Respondents have read the complaint and the order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

9. If it is accepted by the Commission, this Agreement constitutes a full settlement between the Commission and respondents as to the activities alleged in the complaint to have constituted violations of the Federal Trade Commission Act and which occurred prior to the date of entry of the order. As to those activities alleged in the complaint, and which occurred prior to the date of entry of the order, the Commission hereby releases the respondents from all other further liability to the Commission.

Order

I

It is ordered That respondents National Dietary Research, Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees, The William H. Morris Company, a corporation, its successors and assigns, and its officers, agents, representatives, and employees, and William H. Morris, individually and as an officer of the corporate respondents, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of any product or program in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that the product or program

a. Provides any weight loss benefit;
b. Is an effective treatment for obesity;
c. Reduces hunger or is an effective appetite suppressant;
d. Decreases the intestinal absorption of calories;
e. Reduces, can reduce or helps reduce serum cholesterol;
f. Provides, can provide or helps provide any other health benefit; or
g. Has any effect on cellulite or on the user's body measurements,

unless, at the time they make such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation. For purposes of this Order, competent and reliable scientific evidence shall mean tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

II

It is further ordered That respondents National Dietary Research, Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees, The William H. Morris Company, a corporation, its successors and assigns, and its officers, agents, representatives, and employees, and William H. Morris, individually and as an officer of the corporate respondents, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of any product or program in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication,

a. The existence, contents, validity, results, conclusions, or interpretations of any test or study;
b. The amount of fiber or any other nutrient or dietary constituent contained in or provided by the product or program, whether described in quantitative or qualitative terms;
c. That the product or program contains or provides a high, rich, excellent or superior source of fiber or any other nutrient or dietary constituent using those words or words of similar meaning; or
d. The research activities or other activities of National Dietary Research or any other organization affiliated with respondents.

III

It is further ordered That respondents National Dietary Research, Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees, The William H. Morris Company, a corporation, its successors and assigns, and its officers, agents, representatives, and employees, and William H. Morris, individually and as officer of the corporate respondents, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of any product or program in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from creating, producing, selling or disseminating any advertisement that misrepresents, in any manner, directly or by implication, that it is not a paid advertisement.

IV

It is further ordered That respondents National Dietary Research, Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees, The William H. Morris Company, a corporation, its successors and assigns, and its officers, agents, representatives, and employees, and William H. Morris, individually and as an officer of the corporate respondents, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of any product or program in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that any endorsement (as "endorsement" is defined in 16 CFR 255.0(b)) of a product or program represents the typical or ordinary experience of members of the public who use the product or program, unless at the time of making such representation, the representation is true, and respondents possess and rely upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates such representation, provided, however, respondents may use such endorsements if the statements or depictions that comprise the endorsements are true and accurate, and if respondents disclose clearly and prominently and in close proximity to the endorsement what they generally expected performance would be in the depicted circumstances or the limited applicability of the endorser's experience to what consumers may generally expect to achieve, that is, that consumers should not expect to experience similar results.

V

Nothing in this Order shall prohibit respondents from making any representation that is specifically permitted in labeling for any product by regulations promulgated by the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990.

VI

Nothing in this Order shall prohibit respondents from making any representation for any drug that is permitted in labeling for any such drug under any tentative final or final standard promulgated by the Food and Drug Administration, or under any new drug application approved by the Food and Drug Administration.

VII

It is further ordered That no later than the date that this Order becomes final, respondents National Dietary Research, Inc., a corporation, its successors and assigns, The William H. Morris Company, a corporation, its successors and assigns, and William H. Morris, individually and as officer of the corporate respondents, shall deposit into an escrow account, to be established by the Commission for the purpose of receiving payment due under this Order ("escrow account"), the sum of one hundred thousand dollars ($100,000).

The funds paid by respondents, together with accrued interest, shall, in the discretion of the Commission, be used by the Commission to provide direct redress to purchasers of Food Source One in connection with the acts or practices alleged in the complaint, and to pay any attendant costs of administration. If the Commission determines, in its sole discretion, that redress to purchasers of this product is wholly or partially impracticable or is otherwise unwarranted, any funds not so used shall be paid to the United States Treasury. Respondents shall be notified as to how the funds are distributed, but shall have no right to contest the manner of distribution chosen by the Commission. No portion of the payment as herein provided shall be deemed a payment of any fine, penalty, or punitive assessment.

At any time after this Order becomes final, the Commission may direct the escrow agent to transfer funds from the escrow account, including accrued interest, to the Commission to be distributed as herein provided. The Commission, or its representative, shall, in its sole discretion, select the escrow agent.

Respondents relinquish all dominion, control and title to the funds paid into the escrow account, and all legal and equitable title to the funds vested in the Treasurer of the United States and in the designated consumers. Respondents shall make no claim to or demand for return of the funds, directly or indirectly, through counsel or otherwise; and in the event of bankruptcy of respondents, respondents acknowledge that the funds are not part of the debtor's estate, nor does the estate have any claim or interest therein.

VIII

It is further ordered That, for five (5) years after the last date of dissemination of any representation covered by this Order, respondents, or their successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

1. All materials that were relied upon to substantiate any representation covered by this Order; and
2. All test reports, studies, surveys, demonstrations or other evidence in their possession or control, or of which they have knowledge, that contradict, qualify, or call into question such representation or the basis upon which respondents relied for such representation, including complaints from consumers.

IX

It is further ordered That the corporate respondents shall notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in the corporations such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporations which may affect compliance obligations arising under this Order.

X

It is further ordered That the corporate respondents shall distribute a copy of this Order to each of their operating divisions and to each of their officers, agents, representatives, or employees engaged in the preparation or placement of advertisements, promotional materials, product labels or other such sales materials covered by this Order.

XI

It is further ordered That the individual respondent shall, for a period of five (5) years from the date of issuance of this Order, notify the Commission within thirty (30) days in the event of the discontinuance of his present business or employment, the activities of which include the advertising, offering for sale, sale, or distribution of consumer products, and of his affiliation with any new business or employment involving such activities. Each notice of affiliation with any new business or employment shall include respondent's new business address and telephone number, current home address, and a statement describing the nature of the business or employment and his duties and responsibilities.

XII

It is further ordered That respondents shall, within sixty (60) days after service of this Order upon them and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied or intend to comply with this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from National Dietary Research, Inc., William H. Morris Company and William H. Morris, the president and sole owner of the corporate respondents. The respondents sell various tablets made of compressed fiber and other ingredients, which are advertised for their alleged weight loss and cholesterol lowering benefits.

On November 9, 1993, the Commission issued an administrative complaint in this matter (described below), and a complaint and corresponding motion for preliminary injunctive relief was filed in the U.S. district Court for the Middle District of Florida, Tampa Division on November 17, 1993. The administrative complaint was withdrawn from adjudication on January 23, 1993 for the purpose of considering the proposed consent agreement. The preliminary injunctive action was dismissed without prejudice on February 20, 1995.

The proposed consent order has been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action, or make final the proposed order contained in the agreement.

This matter concerns advertising claims made in connection with the sale of two of the respondents' products, Food Source One ("FS–1"), a purported weight loss and cholesterol lowering tablet containing small amounts of dietary fiber and other ingredients, and Vancol 5000 ("Vancol"), a purported cholesterol lowering tablet containing small amounts of psyllium fiber, chromium picolinate and other ingredients.

The Commission's complaint in this matter charges the respondents with making unsubstantiated claims, in advertisements and promotional materials, regarding the efficacy of FS–1 for weight loss and lowering serum cholesterol and unsubstantiated claims regarding the efficacy of Vancol for lowering serum cholesterol. With regard to FS–1, the complaint alleges that the respondents have represented, directly or by implication, that the product: Causes significant weight loss; causes significant weight loss without dieting or otherwise changing normal eating patterns; is an effectives treatment for obesity; reduces hunger and is an effective appetite suppressant; decreases the intestinal absorption of calories; and may significantly reduce serum cholesterol. The complaint charges that the respondents failed to possess and rely upon a reasonable basis for these representations.

The complaint alleges that the respondents also represented, directly or by implication, that: Scientific studies of certain ingredients contained in FS–1, including studies published in the British Journal or Nutrition and the American Journal of Clinical Nutrition, demonstrate that FS–1 causes significant weight loss; scientific studies of certain ingredients contained in FS–1, including a study published in the British Journal of Nutrition, demonstrate that FS–1 causes significant weight loss without dieting; FS–1 has a high fiber content; National Dietary Research is a bona fide, independent research organization that has conducted research seeking nutritional solutions to world-wide health problems; and certain of the respondents' advertisements for FS–1 are independent newspaper stories and not paid advertisements. The complaint alleges that these representations are false and misleading.

With regard to Vancol, the complaint alleges that the respondents have represented, directly or by implication, that the product significantly reduces serum cholesterol and that it significantly reduces serum cholesterol without dieting or otherwise changing normal eating patterns. The complaint charges that the respondents failed to possess and rely upon a reasonable basis for these representations. The complaint also alleges that the respondents represented, directly or by implication, that scientific studies of certain ingredients contained in Vancol demonstrate that Vancol significantly reduces serum cholesterol. The complaint charges that this representation is false and misleading.

In addition to the above-mentioned complaint allegations, the complaint also alleges that through the use of statements in certain advertisements for FS–1 and Vancol, the respondents have represented, directly or by implication, that testimonials from consumers appearing in advertisements for FS–1 and Vancol reflect the typical or ordinary experience of members of the public who have used the products. The complaint charges that the respondents failed to possess and rely upon a reasonable basis for these representations.

The proposed order contains provisions designed to remedy the alleged violations. The proposed order also provides for consumer redress of $100,000. In the event that consumer redress is not feasible, the proposed order provides that the funds will be deposited in the United States Treasury.

Part I of the proposed order requires the respondents to cease from making any representation that any product or program provides any weight loss benefit, is an effective treatment for obesity, reduces hunger or suppresses the appetite, decreases the intestinal absorption of calories, reduces serum cholesterol, provides, can provide or helps provide any other health benefit or has any effect on cellulite or on the user's body measurements, unless they possess and rely upon competent and reliable scientific evidence that substantiates the representation. Part II(a) of the order prohibits the respondents from misrepresenting the existence, contents, validity, results, conclusions, or interpretations of any test or study. Part II (b) and (c), respectively, prohibit misrepresentation of the amount of fiber or any nutrient contained in a product and prohibit false claims that a product is a high source of fiber or any other nutrient. Part II(d) prohibits misrepresentation of the research activities or other activities of National Dietary Research or any other organization affiliated with the respondents.

Part III of the proposed order prohibits the respondents from disseminating any advertisement for any product or program that misrepresents, in any manner, that it is not a paid advertisement. Part IV of the order prohibits representations that testimonials represent the typical or ordinary experience of consumers who use the product, unless the representations are true and the respondents have competent and reliable evidence that substantiates such representations. An additional provision in this Part permits the respondents to use a truthful, non-typical testimonial, if they disclose clearly and prominently in close proximity to the testimonial what the generally expected performance would be in the depicted circumstances, or the limited applicability of the endorser's experience to what consumers may generally expect to achieve, that is, that consumers should not expect to experience similar results.

Parts V and VI of the proposed order contain provisions permitting certain claims that are approved for labels by the FDA, under either the Nutrition Labeling and Education Act, a tentative final or final monograph, or any new drug application approved by the FDA.

Part VII of the proposed order requires the respondents to pay $100,000 in consumer redress, or if that is impracticable, to pay the same amount to the U.S. Treasury.

Parts VIII, IX, X, XI and XII of the proposed order are compliance reporting provisions that require the respondents to: retain all records that would bear on the respondents' compliance with the order; to notify the Commission of any changes in the structure of the corporate respondents that may affect their compliance obligations under the order, or any changes in the business affiliations of the individual respondent relating to the advertising, offering for sale, sale or distribution of consumer products; to distribute copies of the order to the corporate respondents' operating divisions and to those persons responsible for the preparation and review of advertising material covered by the order; and to report to the Commission their compliance with the terms of the order.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 95–12587 Filed 5–22–95; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. 9271]

B.A.T Industries p.l.c., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order permits, among other things, B.A.T Industries and Brown & Williamson Tobacco Corporation to consummate the acquisition of American Tobacco Company, but requires them to divest, within twelve months, six American Tobacco discount cigarette brands and to divest to the purchaser of these brands three American Tobacco full-revenue brands, as well as the American Tobacco manufacturing facility in Reidsville, N.C. If the required divestitures are not completed on time, the consent order permits the Commission to appoint a trustee to complete the transactions. In addition, the consent order requires the respondents, for ten years, to obtain Commission approval before acquiring any interest in a cigarette manufacturer or any assets used to manufacture or distribute cigarettes in the United States.

DATES: Complaint issued November 28, 1994. Order issued April 19, 1995.[1]

FOR FURTHER INFORMATION CONTACT: Joseph Krauss, FTC/H–324, Washington, D.C. 20580. (202) 326–2713.

SUPPLEMENTARY INFORMATION: On Wednesday, January 11, 1995, there was published in the **Federal Register**, 60 FR 2751, a proposed consent agreement with analysis In the Matter of B.A.T Industries p.l.c., et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

Comments were filed and considered by the Commission. The Commission has made its jurisdictional findings and entered an order to divest, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Donald S. Clark,

Secretary.

[FR Doc. 95–12585 Filed 5–22–95; 8:45 am]

BILLING CODE 6750–01–M

[File No. 932–3234]

Original Marketing Inc.; Proposed Consent Agreement with Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, the Florida-based

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, N.W., Washington, D.C. 20580.

corporation, two of its officers and an affiliated advertising agency from making performance or benefit claims for any weight-loss or weight-control product or program or acupressure device unless the claims are true and substantiated by competent and reliable scientific evidence. Also, the proposed consent agreement would prohibit the respondents from misrepresenting any endorsement or testimonial for any weight-loss or weight-control product or program or any acupressure device as representing the typical or ordinary experience of users. In addition, the individual respondents would be required to post a $300,000 performance bond, or to pay that amount into an escrow account, before marketing any weight-loss or weight-control product or program or any acupressure device.

DATES: Comments must be received on or before July 24, 1995.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Richard Cleland, FTC/S–4002, Washington, D.C. 20580, (202) 326–3088.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

In the matter of Original Marketing, Inc., d/b/a ACU–STOP 2000, and Franklin & Joseph, Inc., corporations, Barry A. Weiss, individually and as an officer and director of Original Marketing, Inc., and Roger Franklin, individually and as an officer and director of Original Marketing, Inc. and Franklin & Joseph, Inc., File No. 932–3234.

Agreement Containing Consent Order To Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Original Marketing, Inc. d/b/a Acu-Stop 2000 ("OMI") and Franklin & Joseph, Inc., corporations; Barry A. Weiss, individually and as an officer and director of Original Marketing, Inc.; and Roger Franklin, individually and as an officer and director of Original Marketing, Inc. and Franklin & Joseph, Inc., hereinafter sometimes referred to as proposed respondents, and it now appearing that proposed respondents are willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between Original Marketing, Inc. d/b/a Acu-Stop 2000 and Franklin & Joseph, Inc., by their duly authorized officers; Barry A. Weiss, individually and as an officer and director of Original Marketing, Inc.; and Roger Franklin, individually and as an officer and director of Original Marketing, Inc. and Franklin & Joseph, Inc., and their attorney and counsel for the Federal Trade Commission that:

1. Proposed respondent OMI is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its office and principal place of business located at 11570 Wiles Road, in the City of Pompano Beach, State of Florida.

Proposed respondent Franklin & Joseph, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 237 Mamaroneck Avenue, in the City of White Plains, State of New York.

Proposed respondent Barry A. Weiss is an officer and director of OMI. He formulates, directs and controls the policies, acts and practices of OMI. He resides at 22471 Vista Wood Way, Boca Raton, Florida.

Proposed respondent Roger Franklin is an officer and director of OMI and Franklin & Joseph, Inc. He formulates, directs and controls the acts and practices of said corporations. He resides at 33 Maplemoor Lane, White Plains, New York.

2. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint.

3. Proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents of facts, other than jurisdictional facts, or of violations of law as alleged in the draft of complaint.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondents' addresses as stated in this agreement shall constitute service. Proposed respondents waive any right they might have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondents have read the proposed complaint and order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

For the purposes of this Order:

1. "Component and reliable scientific evidence" shall mean tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

2. "Acupressure device" shall mean any product, program, or service that is intended to function by means of the principles of acupressure.

I

It is ordered That respondents, Original Marketing, Inc. and Franklin & Joseph, Inc., corporations, their successors and assigns, and their officers; Barry A. Weiss, individually and as an officer and director of Original Marketing, Inc.; Roger Franklin, individually and as an officer and director of Original Marketing, Inc. and Franklin & Joseph, Inc.; and respondents' agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale, or distribution of the AcuStop 2000 or any other acupressure device in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that

a. Such product causes significant weight loss;

B. Such product causes significant weight loss without the need to diet or exercise;

C. Such product controls appetite or eliminates a person's craving for food; or

D. Such product is scientifically proven to cause significant weight loss or control appetite.

II

It is further ordered That respondents, Original Marketing, Inc. and Franklin & Joseph, Inc., corporations, their successors and assigns, and their officers; Barry A. Weiss, individually and as an officer and director of Original Marketing, Inc.; Roger Franklin, individually and as an officer and director of Original Marketing, Inc. and Franklin & Joseph, Inc.; and respondents' agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device in connection with the advertising, packaging, labeling, promotion, offering for sale, sale, or distribution of any weight-loss or weight-control product or program or any acupressure device in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representation, directly or by implication, regarding the performance, benefits, efficacy, or safety of such product, program, or device unless such representation is true and unless, at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

III

It is further ordered That respondents, Original Marketing, Inc. and Franklin & Joseph, Inc., corporations, their successors and assigns, and their officers; Barry A. Weiss, individually and as an officer and director of Original Marketing, Inc.; Roger Franklin, individually and as an officer and director of Original Marketing, Inc. and Franklin & Joseph, Inc.; and respondents' agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale, or distribution of any weight-loss or weight-control product or program or any acupressure device in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that any endorsement (as "endorsement" is defined in 16 C.F.R. § 255.0(b)) of the product, program, or device represents the typical or ordinary experience of members of the public who use the product, program, or device unless this is the case.

IV

It is further ordered That respondents, Original Marketing, Inc. and Franklin & Joseph, Inc., corporations, their successors and assigns, and their officers; Barry A. Weiss, individually and as an officer and director of Original Marketing, Inc.; Roger Franklin, individually and as an officer and director of Original Marketing, Inc. and Franklin & Joseph, Inc.; and respondents' agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale, or distribution of any weight-loss or weight-control product or program or any acupressure device in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, the contents, validity, results, conclusions, or interpretations of any test or study.

V

It is further ordered That respondents, and their successors and assigns, are jointly and severally liable for, and shall pay refunds to eligible consumers of Acu-Stop 2000 as provided herein. "Eligible consumer" shall mean any person who purchases, or has purchased, an Acu-Stop 2000 from respondents; who returns, or has returned, the device to respondents requesting a refund prior to ninety (90) days after the date this Order becomes final; and who has not previously received a refund. "Eligible consumer" shall not include persons who request a credit from a credit card issuer and who do not otherwise request a credit or refund from respondents. Respondents shall provide to the Commission all information necessary to identify eligible consumers and to verify their eligibility.

A. Not later than the date this Order becomes final, respondents shall deposit into an escrow account, to be established by the Commission for the purpose of receiving payments due under the provisions of this Order ("escrow account"), the sum of fifty thousand dollars ($50,000.00). These funds, together with accrued interest, less any amount necessary to pay the costs of administering the escrow account and refund program provided herein, shall be used by the Commission or its representative to pay refunds to those eligible consumers who purchased an Acu-Stop 2000 from respondents prior to January 1, 1995. Any funds remaining in the escrow account after all refunds to consumers under this subparagraph have been paid shall be paid to the United States Treasury.

At any time after this Order becomes final, the Commission may direct the escrow agent to transfer funds from the escrow account, including accrued interest, to the Commission to be distributed as herein provided. Respondents shall be notified as to how the funds are distributed, but shall have no right to contest the manner of distribution chosen by the Commission. The Commission, or its representative, shall, in its sole discretion, select the escrow agent. Costs associated with the administration of the escrow account and refund program provided herein, if any, shall be paid from funds in the escrow account.

Respondents relinquish all dominion, control and title to the funds paid into the escrow account, and all legal and equitable title to the funds shall vest in the Treasurer of the United States and in the designated consumers. Respondents shall make no claim to or demand for the return of the funds, directly or indirectly, through counsel or otherwise; and in the event of bankruptcy of respondents, respondents acknowledge that the funds are not part of the debtor's estate, nor does the estate have any claim or interest therein.

B. Respondents shall pay from their own funds refunds to all eligible consumers who are not paid from the escrow account provided herein. This requirement shall include:

(1) all refund requests from eligible consumers who purchased an Acu-Stop 2000 after January 1, 1995, and

(2) all refund requests under subparagraph A that exceed the amount available in the escrow account.

All refunds required in subparagraph B.1 shall be paid within thirty (30) days after the receipt of the request, or within thirty (30) days after the date this Order becomes final, whichever is later. All refunds required in subparagraph B.2 shall be paid within thirty (30) days after notification to respondents that the funds available in the escrow account to pay refunds have been depleted.

VI

It is further ordered That for three (3) years after this Order becomes final, respondents, and their successors and assigns, shall maintain documents and records demonstrating the manner and form of respondents' compliance with Part V of this Order, and upon request make available to the Commission, at a place it designates for inspection and copying, copies of:

A. All documents and records evidencing the refunds respondents paid, or charge card credits issued, to eligible consumers, as that term is defined in Part V;

B. A list containing the name, mailing address, and purchase price for each eligible consumer who requested a refund;

C. The name and last known address of each consumer who requested a refund but was refused and the reason for each refusal to refund; and

D. Copies of all correspondence and other communications to, or from, any consumers regarding a refund.

VII

It is further ordered the respondents Barry A. Weiss, Roger Franklin, and their agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division, joint venture or other device, do forthwith cease and desist from advertising, promoting, offering for sale, selling, or distributing any weight-loss or weight-control product or program or any acupressure device to the general public, unless, prior to advertising, promoting, offering for sale, selling, or distributing to the general public any such product, respondents Weiss and Franklin first obtain a performance bond in the principal sum of three hundred thousand dollars ($300,000). Said bond shall be conditioned upon compliance by respondents Weiss and Franklin with the provisions of the Federal Trade Commission Act, and with the provisions of this Order. The bond shall be deemed continuous and remain in full force and effect as long as respondents Weiss and Franklin continue to advertise, promote, offer for sale, sell, or distribute any weight-loss or weight-control product or program or any acupressure device, directly or indirectly, to the general public, and for at least five (5) years after they have ceased any such activity. The bond shall cite this Order as the subject matter of the bond and provide surety against respondents' failure to pay consumer redress or disgorgement as set forth herein. Such performance bond shall be an influence agreement providing surety issued by a surety company that is admitted to do business in a state in which respondents Weiss and Franklin are doing business and that holds a Federal Certificate of Authority as Acceptable Surety on Federal Bonding and Reinsuring.

Respondents Weiss and Franklin shall provide a copy of such performance bond to the associate director of the Federal Trade Commission's Division of Enforcement, 6th Street & Pennsylvania Avenue, N.W., Washington, D.C. 20580, prior to the commencement of any business for which such bond is required.

Provided, however, in lieu of a performance bond, respondents Weiss and Franklin may establish and fund, pursuant to the terms set forth herein, an escrow account in the principal sum of three hundred thousand dollars ($300,000) in cash, or such other assets of equivalent value, which the Commission, or its representative, in its sole discretion may approve. Respondents Weiss and Franklin shall maintain such amount in that account for as long as they continue to advertise, promote, offer for sale, sell, or distribute any weight-loss or weight-control product or program or any acupressure device, directly or indirectly, to the general public, and for at least five (5) years after they have ceased any such activity. Respondents Weiss and Franklin shall pay all costs associated with the creation, funding, operation, and administration of the escrow account. The Commission, or its representative, shall, in its sole discretion, select the escrow agent. The escrow agreement shall be in substantially the form attached to this Order as Exhibit A.

The performance bond or escrow agreement shall provide that the surety company or escrow agent, within thirty (30) days following receipt of notice that a final judgment or an order of the Commission against respondent Weiss and/or respondent Franklin for consumer redress or disgorgement in an action brought under the provisions of the Federal Trade Commission Act has been entered, or, in the case of an order of the Commission, has become final, finding that Weiss and/or Franklin has violated the terms of this Order or the Federal Trade Commission Act, and determining the amount of consumer redress or disgorgement to be paid, shall pay to the Commission so much of the performance bond or funds of the escrow account as does not exceed the amount of consumer redress or disgorgement ordered, and which remains unsatisfied at the time notice is provided to the surety company or escrow agent, *provided that,* if respondents have agreed to the entry of a court order or an order of the Commission, a specific finding that respondents violated the terms of this Order or the provisions of the Federal Trade Commission Act shall not be necessary. A copy of the notice provided for herein shall be mailed to respondent Weiss and/or respondent Franklin at their last known address.

Respondents Weiss and Franklin may not disclose the existence of the performance bond or escrow account to any consumer, or other purchaser or prospective purchaser, to whom a covered product, program, or device is advertised, promoted, offered for sale, sold, or distributed, without also disclosing at the same time and in a like manner that the performance bond or escrow account is required by order of the Federal Trade Commission in settlement of changes that respondents engaged in false and misleading representations.

VIII

It is further ordered That for five (5) years after the last date of dissemination of any representation covered by this Order, respondents, or their successors and assigns, shall maintain and upon request make available to the Federal Trade Commission or its staff for inspection and copying:

A. All materials that were relied upon in disseminating such representation; and

B. All tests, reports, studies, surveys, demonstrations or other evidence in their possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers.

IX

It is further ordered That respondents, Original Marketing, Inc. and Franklin & Joseph, Inc., shall:

A. Within thirty (30) days after service of this Order, provide a copy of this Order to each of respondents' current principals, officers, directors and managers, and to all personnel, agents, and representatives having sales, advertising, or policy responsibility with respect to the subject matter of this Order; and

B. For a period of five (5) years from the date of issuance of this Order, provide a copy of this Order to each of respondents' future principals, officers, directors, and managers, and to all personnel, agents, and representatives having sales, advertising, or policy responsibility with respect to the subject matter of this Order who are associated with respondents or any subsidiary, successor, or assign, within three (3) days after the person assumes his or her position.

X

It is further ordered That respondents, Original Marketing, Inc. and Franklin & Joseph, Inc., shall notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in their corporate structures, including but not limited to dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or affiliates, the planned filing of a bankruptcy petition, or any other corporate change that may affect compliance obligations arising out of this Order.

XI

It is further ordered That respondents, Barry A. Weiss and Roger Franklin, shall, for a period of five (5) years from the date of issuance of this Order, notify the Commission within thirty (30) days of the discontinuance of his present business or employment and of his affiliation with any new business or employment. Each notice of affiliation with any new business or employment shall include respondents' new business address and telephone number, current home address, and a statement describing the nature of the business or employment and his duties and responsibilities.

XII

It is further ordered That respondents, Original Marketing, Inc. and Franklin & Joseph, Inc., corporations, their successors and assigns, and their officers; Barry A. Weiss, individually and as an officer and director of Original Marketing, Inc.; and Roger Franklin, individually and as an officer and director of Original Marketing, Inc. and Franklin & Joseph, Inc., shall, within sixty (60) days after service of this Order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this Order.

Exhibit A

This Escrow Agreement, made and entered into this _____ day of _____, ____, by and between _____ (hereinafter "_____"); and the Federal Trade Commission, an agency of the Government of the United States of America, by and through _____ (hereinafter "FTC"); and _____ (hereinafter "Escrow Agent");

Witnesseth:

Whereas, the FTC and _____ have entered into an Agreement Containing Consent Order to Cease and Desist (hereinafter "Consent Order"), a copy of which is attached hereto as Exhibit A; and

Whereas, the Consent Order requires that _____ cease and desist from advertising, promoting, offering for sale, selling, or distributing any weight-loss or weight-control product or program or any acupressure device to the general public unless _____ first establishes and maintains an escrow account, under the terms and conditions specified in the Consent Order;

Now, Wherefore, in accordance with the terms of the Consent Order, which are incorporated herein by reference, the parties covenant and agree as follows:

1. _____ shall establish an Escrow Account at _____, to be styled _____ Escrow Account, _____, Escrow Agent. _____ shall deposit into the Escrow Account an initial sum of at least three hundred thousand dollars ($300,000.00) in cash, or other approved assets of equivalent value. Thereafter, _____ shall deposit such additional amounts into the Escrow Account as are necessary to maintain the total amount in the Escrow Account at three hundred thousand dollars ($300,000.00).

2. The Escrow Agent shall be the sole signatory on the Escrow Account and access to the funds held in that account shall be solely through the Escrow Agent. It is understood by the parties to this Escrow Agreement that upon the signing of this Agreement, _____ relinquishes to the Escrow Agent, all legal title to the escrow funds, except as to such amounts in the Escrow Account that are in excess of three hundred thousand dollars ($300,000.00). Until and unless the Escrow Account is terminated as provided for herein, _____ agrees to make no claim to or demand for return of the funds, directly or indirectly, through counsel or otherwise; and, in the event of bankruptcy, _____ acknowledges that the funds are not part of _____'s estate, nor does the estate have any claim or interest therein.

3. The Escrow Agent and the parties hereto agree that the escrow funds shall be held only in accordance with the terms of the Consent Order and the Escrow Agreement. _____ shall pay all costs associated with the creation, funding, operation, and administration of the Escrow Account as they become due. In the event that _____ fails to pay such costs as they become due, the Escrow Agent shall pay the costs from the interest earned on the escrow funds.

4. The Escrow Agent, within thirty days following receipt of notice that a final judgment or an order of the Commission against _____ for consumer redress or disgorgement in an action brought under the provisions of the Federal Trade Commission Act has been entered, or, in the case of an order of the Commission, has become final, finding that ____ has violated the terms of the Consent Order or the provisions of the Federal Trade Commission Act, and determining the amount of consumer redress or disgorgement to be paid, which notice shall also be mailed to _____ at his last known address, shall pay to the Commission so much of the funds of the Escrow Account as does not exceed the amount of consumer redress or disgorgement ordered, and which remains unsatisfied at the time notice is provided to the Escrow Agent, *provided that,* If _____ has agreed to the entry of a court order or an order of the Commission, a specific finding that _____ violated the terms of the Consent Order or the provisions of the Federal Trade Commission Act shall not be necessary. The Escrow Agent shall have the power to convert to cash so

much of the Escrow Account assets as are necessary to satisfy the obligations of the judgment or order .

5. The Escrow Account shall continue until at least five years after _____ last advertises, promotes, offers for sale, sells, or distributes any product specified in the Consent Order, at which time, if there are no pending FTC investigations, legal or administrative actions by the FTC against _____, or unsatisfied obligations pursuant to a judgment or order described in paragraph 4 herein, for which a claim could be made against the escrow funds under the terms of the Consent Order, the FTC shall, upon _____'s request, instruct the Escrow Agent to terminate the Escrow Account and return the balance of the Escrow Account to _____. At such time, the Escrow Agent shall be fully and completely released from its agency as herein described. The legal title to the escrow funds shall vest in _____ at such time as the Escrow Agent, pursuant to instructions from the FTC, returns the funds to _____.

Witness the signatures of the parties, the day and year first above written.

Date:

Signatures

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from proposed respondents Original Marketing, Inc. d/b/a Acu-Stop 2000; Franklin & Joseph, Inc.; Barry A. Weiss; and Roger Franklin.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

This matter concerns advertising related to the sale of an ear-mold acupressure device, marketed under the name Acu-Stop 2000, which nests in the ear. The Commission's Complaint charges that proposed respondents Original Marketing, Inc. d/b/a Acu-Stop 2000; Franklin & Joseph, Inc.; Barry A. Weiss; and Roger Franklin falsely represented that the Acu-Stop 2000: (1) Causes significant weight loss; (2) causes significant weight loss without the need to diet or exercise; and (3) controls appetite or eliminates a person's craving for food.

The Complaint also alleges that proposed respondents falsely and misleadingly represented that they possessed and relied upon a reasonable basis when they made those claims. The Complaint further alleges that proposed respondents falsely represented that the Acu-Stop 2000 is scientifically proven to cause significant weight loss and control appetite. Finally, the Complaint alleges that proposed respondents falsely represented that testimonials from consumers appearing in advertisements for the Acu-Stop 2000 reflect the typical or ordinary experience of members of the public who have used the device.

The proposed consent order contains provisions designed to remedy the violations charged and to prevent proposed respondents from engaging in similar acts in the future.

Part I of the proposed order prohibits proposed respondents from representing that the Acu-Stop 2000 or any other acupressure device: (1) Causes significant weight loss; (2) causes significant weight loss without the need to diet or exercise; (3) controls appetite or eliminates a person's craving for food; or (4) is scientifically proven to cause significant weight loss and control appetite. The order defines "acupressure device" as "any product, program, or service that is intended to function by means of the principles of acupressure." Part II requires proposed respondents to possess competent and reliable scientific evidence before making representations regarding the performance, benefits, efficacy, or safety of any weight-loss or weight-control product or program or any acupressure device. Part III prohibits proposed respondents from falsely claiming that endorsements or testimonials for any weight-loss or weight-control product or program or any acupressure device represent the typical or ordinary experience of members of the public who use the product, program, or device. Part IV prohibits proposed respondents from misrepresenting the results of tests or studies for any weight-loss or weight-control product or program or any acupressure device.

Part V holds proposed respondents jointly and severally liable for, and requires them to pay, refunds to all purchasers of the Acu-Stop 2000 who return or have returned the device for a refund. Part V.A. requires respondents to deposit $50,000 into an escrow account for payment of refunds to eligible consumers who purchased the device prior to January 1, 1995, and who previously have requested a refund or do so within ninety days after the proposed order becomes final. Part V.B. requires proposed respondents to pay, out of their own funds, all refund requests from eligible consumers that exceed $50,000 and all such requests for purchases made after January 1, 1995. Together, these two provisions require proposed respondents to pay all existing refund requests and future requests made up to ninety days after the proposed order becomes final. Part VI requires that proposed respondents maintain records demonstrating the manner and form of their compliance with the requirement that they make refunds.

Part VII requires that proposed respondents Weiss and Franklin post a bond or fund an escrow account in the amount of $300,000 prior to the future marketing any weight-loss or weight-control product or program or any acupressure device.

Part VIII requires proposed respondents to maintain, for five (5) years, all materials that support, contradict, qualify, or call into question any representations they make which are covered by the proposed order. Part IX requires proposed respondents Original Marketing, Inc. and Franklin & Joseph, Inc. to distribute a copy of the order to current and future principals, officers, directors, and managers, as well as to any employees having sales, advertising, or policy responsibility with respect to the subject matter of the order. Under Part X of the proposed order, proposed respondents Original Marketing, Inc. and Franklin & Joseph, Inc. shall notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in their corporate structures that may affect compliance with the order's obligations. Part XI requires that proposed respondents Weiss and Franklin, for a period of five (5) years, notify the Commission of any change in their business or employment. Part XII obliges proposed respondents to file compliance reports with the Commission.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 95–12588 Filed 5–22–95; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

The Regional Offices of the Administration for Children and Families Statement of Organization, Functions, and Delegations of Authority

This Notice amends Part K of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (DHHS), Administration for Children and Families (ACF) as follows: Chapter KD, The Regional Offices of the Administration for Children and Families (58 FR 44343), as last amended, August 20, 1993. This reorganization realigns the functions in Region 6 to support their streamlining plan. This Chapter is amended as follows:

1. KD.10 Organization. Regions 1, 3, 4, 5, 7 through X are organized as follows:

Office of the Regional Administrator (KD1A, KD3A, KD4A, KD5A, KD7A through KDXA)
Office of Financial Operations (KD1B, KD3B, KD4B, KD5B, KD7B through KDXB)
Office of Family Security (KD1C, KD3C, KD4C, KD5C, KD7C through KDXC)
Office of Family Supportive Services (KD1D, KD3D, KD4D, KD5D, KD7D through KDXD)

After the end of KD2.20 Functions, Paragraph D, insert the following:

2. KD6.10 Organization. The Administration for Children and Families, Region 6, is organized as follows:

Office of the Regional Administrator (KD6A)
Office of State and Tribal Programs (KD6E)
Office of Community Programs (KD6F)

Functions. A. The Office of the Regional Administrator is headed by a Regional Administrator. In addition, the Office of the Regional Administrator has a Deputy Regional Administrator who reports to the Regional Administrator. The Office provides executive leadership and directives to state, county, city, territorial and tribal governments, as well as public and private local grantees to ensure effective and efficient program and financial management. It ensures that these entities conform to federal laws, regulations, policies and procedures governing the programs, and exercises all delegated authorities and responsibilities for oversight of the programs. The office takes action to approve state plans and submits recommendations to the Assistant Secretary for Children and Families concerning state plan disapproval. The Office contributes to the development of national policy based on regional perspectives on all ACF programs. It oversees ACF operations, the management of ACF regional staff; coordinates activities across regional programs; and assures that goals and objectives are met and departmental and agency initiatives are carried out. The Office alerts the Assistant Secretary for Children and Families to problems and issues that may have significant regional or national impact. The Office represents ACF at the regional level in executive communications within ACF, with the HHS Regional Director, other HHS operating divisions, other federal agencies, and public or private local organizations representing children and families.

Within the Office of the Regional Administrator, the Program Coordinator and Planning Unit (PCPU), headed by the Executive Officer and consisting of administrative staff, assists the Regional Administrator and Deputy Regional Administrator in providing day-to-day support for regional administrative functions, including budget, internal systems, employee relations and human resource development activities. The PCPU develops and implements the regional planning process. Tracking, monitoring and reporting on regional progress in the attainment of ACF national goals and objectives are carried out. The PCPU coordinates public awareness activities, information dissemination and education campaigns in accordance with the ACF Office of Public Affairs and in conjunction with the HHS Regional Director. The Unit also assists the Regional Administrator in management of cross-cutting initiatives and activities among the regional components, and ensures effective and efficient management of internal automation processes.

B. The Office of State and Tribal Programs is headed by an Assistant Regional Administrator who reports to the Regional Administrator. The Office is responsible for providing centralized management, financial management services, and technical administration of ACF formula, block and entitlement programs such as Aid to Families with Dependent Children (AFDC), Child Support Enforcement (CSE), Job Opportunities and Basic Skills Training (JOBS), Title IV–A Child Care, Child Care and Development Block Grant (CCDBG), Child Welfare Services, Foster Care and Adoption Assistance, Child Abuse and Neglect and Developmental Disabilities. The Office provides policy guidance to state, county, city or town and tribal governments and public and private organizations to assure consistent and uniform adherence to federal requirements governing formula and entitlement programs. State plans are reviewed and recommendations concerning state plan approval or disapproval are made to the Regional Administrator. The Office provides technical assistance to entities responsible for administering these programs to resolve identified problems, ensures that appropriate procedures and practices are adopted, monitors the programs to ensure their efficiency and effectiveness, establishes regional financial management priorities and reviews cost allocation plans, and oversees the management and coordination of office automation systems in the regional and monitors state systems projects for the CSE, AFDC, Child Welfare and JOBS programs. The Office provides financial management services for ACF formula and entitlement grants in the region. Also reviews cost estimates and reports for ACF entitlement and formula grant programs and recommends funding levels. The Office performs systematic fiscal reviews and makes recommendations to the Regional Administrator to approve, defer or disallow claims for federal financial participation in ACF formula and entitlement grant programs. As applicable, recommendations are made on the clearance and closure of audits of state programs, paying particular attention to financial management deficiencies that decrease the efficiency and effectiveness of the ACF programs and taking steps to monitor the resolution of such deficiencies. The Office represents the Regional Administrator in dealing with ACF Program Offices on all program and financial policy matters under its jurisdiction. Alerts or early warnings are provided to the Regional Administrator regarding problems or issues that may have significant implications for the programs.

C. The Office of Community Programs is headed by an Assistant Regional Administrator who reports to the Regional Administrator. The Office is responsible for providing centralized management, financial management services, and technical administration of ACF discretionary grant programs such as Head Start and Runaway and

Homeless Youth (RHY). In that regard, the Office provides policy guidance to state, county, city or town and tribal governments and public and private organizations to assure consistent and uniform adherence to federal requirements. The Office provides technical assistance to entities responsible for administering these programs to ensure that appropriate procedures and practices are adopted, and monitors the programs to ensure their efficiency and effectiveness. The Office performs systematic fiscal reviews and makes recommendations to the Regional Administrator to approve or disallow costs under ACF discretionary grant programs. The Office issues certain discretionary grant awards based on a review of project objectives, budget projections, and proposed funding levels. As applicable, recommendations are made on the clearance and closure of audits of grantee programs, paying particular attention to financial management deficiencies that decrease the efficiency and effectiveness of the ACF programs and taking steps to monitor the resolution of such deficiencies. The Office oversees the management and coordination of office automation systems in the region such as the PC Cost and HS Cost systems for budget analysis on Head Start Applications and monitors grantee systems projects such as the Head Start Program Information Report, Head Start Management Tracking System and the Youth Development and Head Start Bulletin Board. The Office represents the Regional Administrator in dealing with ACF Program Offices on all program policy and financial matters under its jurisdiction. Alerts or early warnings are provided to the Regional Administrator regarding problems or issues that may have significant implications on the programs.

Dated: May 15, 1995.

Mary Jo Bane,

Assistant Secretary for Children and Families.

[FR Doc. 95–12550 Filed 5–22–95; 8:45 am]

BILLING CODE 4148–01–M

Office of Refugee Resettlement; Statement of Organization, Functions, and Delegations of Authority

This Notice amends Part K, Chapter K of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services, Administration for Children and Families (56 FR 42332) as last amended, August 27, 1991; KR, The Office of Refugee Resettlement (59 FR 23888), as last amended, May 9, 1994. This reorganization will realign the functions of the Office of Refugee Resettlement into two divisions, thereby improving the efficiency and effectiveness of the refugee activities in the Administration for Children and Families. Specifically, we are amending Chapter KR with the following:

KR.00 Mission. The Office of Refugee Resettlement (ORR) advises the Secretary, through the Assistant Secretary for Children and Families, on matters relating to refugee resettlement, immigration, and repatriation. The Office plans, develops and directs implementation of a comprehensive program for domestic refugee and entrant resettlement assistance. It develops, recommends, and issues program policies, procedures and interpretations to provide program direction. The Office monitors and evaluates the performance of states and other public and private agencies in administering these programs and supports actions to improve them. It provides leadership and direction in the development and coordination of national public and private programs that provide assistance to refugees, entrants, and other immigrants.

The Office also plans, develops and provides direction on the administration of the U.S. Repatriate Program.

KR.10 Organization. The Office of Refugee Resettlement is headed by a Director who reports directly to the Assistant Secretary for Children and Families and consists of:

Office of the Director [KRA]
Division of Refugee Self-Sufficiency [KRE]
Division of Community Resettlement [KRF]

KR.20 Functions. A. Office of the Director is directly responsible to the Assistant Secretary for Children and Families for carrying out ORR's mission and providing guidance and general supervision to the components of ORR. Within the Office of the Director, staff assist the Director in managing the formulation of program policy and budget and in the formulation of salaries and expense budgets. Staff also provide administrative, personnel and data processing support services.

The Office coordinates with the lead refugee and entrant program offices of other federal departments; provides leadership in representing refugee and entrant programs, policies and administration to a variety of governmental entities and other public and private interests; and acts as the coordinator of the total refugee and entrant resettlement effort for ACF and the Department.

B. Division of Refugee Self-Sufficiency provides direction for assuring that refugees are provided assistance and services through the State-administered program and alternative programs such as the voluntary agency program and Wilson/Fish projects in a manner that helps refugees to become employed and economically self-sufficient as soon after their arrival in the United States as possible. It monitors and provides technical assistance to the state-administered domestic assistance programs and develops guidance and procedures for their implementation; manages special initiatives to increase refugee self-sufficiency such as through demonstration or pilot programs; manages the unaccompanied minors program to ensure that refugee and entrant unaccompanied minors are provided appropriate care and services; manages the allocation and tracking of funds for refugee cash and refugee medical assistance and State administrative costs; prepares annual budget estimates and related materials; and develops regulations, legislative proposals, and routine interpretations of policy regarding the State-administered and alternative programs.

C. Division of Community Resettlement directs and manages effective refugee resettlement through the programmatic implementation of grants, contracts and special initiatives associated with national discretionary activity and other activities as specified by the Director or required by Congressional mandate.

The Division ensures the quality of medical screening and initial medical treatment of refugees; collects data and performs analyses on the changing needs of the refugee and entrant population; provides leadership to identify data needs and sources, formulates data and reporting requirements; assists states and private agencies on data reporting and the resolution of reporting problems; compiles, evaluates, and disseminates information on the nationwide performance and costs of refugee service programs; responds to unanticipated refugee and entrant arrivals or significant increases in arrivals to communities where adequate or appropriate services do not exist; strengthens the role of ethnic community national or multi-State organizations to promote economic independence among refugees; provides for English Language Training and provides where specific needs have been shown and recognized by the Director for health (including mental health) services, social services, educational and other services.

The Division develops Repatriation plans to make arrangements and approve payments for temporary assistance to certain U.S. citizens and dependents repatriated from foreign countries, and for the hospitalization of certain U.S. Nationals repatriated because of mental illness.

Dated: May 17, 1995.

Mary Jo Bane,

Assistant Secretary for Children and Families.

[FR Doc. 95–12551 Filed 5–22–95; 8:45 am]

BILLING CODE 4184–01–M

Centers for Disease Control and Prevention

[Announcement 553]

Cooperative Agreement for Adult Blood Lead Epidemiology Surveillance Programs and/or Intervention Projects to Prevent Adult Lead Poisoning

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1995 funds for new and competing continuation of State-Based Adult Blood Lead Epidemiology and Surveillance Programs (ABLES) and intervention projects to prevent adult lead poisoning in high-risk industries and occupations. The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Occupational Safety and Health. (To order a copy of Healthy People 2000, see the Section Where To Obtain Additional Information.)

Authority

This program is authorized under the Occupational Safety and Health Act of 1970, section 20(a), (29 U.S.C. 669(a)), and section 22(e)(7), (29 U.S.C. 671(e)(7)).

Smoke-Free Workplace

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Environmental Justice Initiative

Activities conducted under this announcement should be consistent with the Federal Executive Order No. 12898 entitled "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations." Awardees, to the greatest extent practicable and permitted by law, shall make achieving environmental justice part of its program's mission by identifying and addressing, as appropriate, disproportionately high and adverse human health and environmental effects of lead on minority populations and low-income populations.

Eligible Applicants

Eligible applicants must have regulations for reporting blood lead levels or provide assurances that such regulations will be in place within six months of awarding the cooperative agreement. Eligible applicants are State health departments or other State health agencies or departments deemed most appropriate by the State to direct and coordinate the State's adult lead poisoning prevention program. This eligibility includes health departments or other official organizational authority (agency or instrumentality) of the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States. Also eligible are federally recognized Indian tribal governments.

Note: Other official State and territorial agencies with occupational safety and health jurisdiction may also apply. Applicants other than health departments must apply in collaboration with and through their State and territorial health department.

For Surveillance Funds Only: Eligible applicants must have regulations for reporting of blood lead (PbB) levels by both public and private laboratories or provide assurances that such regulations will be in place no later than September 30, 1995. This program is intended to initiate and build capacity for surveillance of adult PbB levels. Therefore, any applicant that already has in place a PbB level surveillance activity must demonstrate how these grant funds will be used to enhance, expand or improve the current activity, in order to remain eligible for funding. CDC funds should be added to blood-lead surveillance funding from other sources, if such funding exists. Applicants other than State health departments must apply in conjunction with their State or territorial health department. If a State agency applying for cooperative agreement funds is other than the official State health department, written concurrence by the State health department must be provided.

(In order to compete for additional funding, applicants that are currently being funded for "Adult Blood Lead Epidemiology and Surveillance" programs must submit new supplemental proposals for their surveillance activities, and/or a proposal for an intervention project. These supplements must meet all the above eligibility and will be evaluated as a part of the surveillance program/intervention project objective review.)

Availability of Funds

Surveillance/Intervention Funds

Approximately $539,500 will be available in FY 1995. These funds will be awarded as follows:

Surveillance Programs

A. Approximately $81,000 to fund up to three cooperative agreements for States currently without a lead surveillance program but who meet the eligibility criteria. These awards are expected to range from approximately $25,000 to $30,000 with the average award being approximately $27,000.

B. Approximately $278,500 to fund up to thirteen cooperative agreements. Eligible applicants include those States currently receiving CDC/NIOSH ABLES support and those which provide quarterly data to the national reporting system. These awards are expected to range from $20,000 to $22,000, with the average award being approximately $21,500.

Intervention Project(s)

C. Approximately $180,000 to fund up to two cooperative agreements for intervention projects. These awards are expected to range from $80,000 to $100,000, with the average award being approximately $90,000.

The new awards are expected to begin on or about September 30, 1995. New awards for surveillance programs listed under Parts A and B are made for 12-month budget periods within project periods not to exceed 5 years. Awards for Intervention project(s) under Part C are made for a project period of one year. Funding estimates outlined above are subject to change based on the actual availability of funds and the scope and quality of applications received. Continuation awards within the project period will be made on the basis of satisfactory progress and availability of funds.

These awards are intended to develop, expand, or improve adult blood lead epidemiology and

surveillance programs and/or develop statewide capacity for conducting surveillance of elevated blood-lead levels. Funds for intervention projects are for the development and conduct of projects to reduce adult lead poisoning. Cooperative agreement funds should be used to increase the level of expenditures from State, local, and other funding sources. Awards will be made with the expectation that expanded or improved surveillance activities will continue when awarded funds are terminated at the end of the project period.

Purpose

This program is intended to initiate and build capacity for blood lead level surveillance and/or conduct interventions to prevent adult lead poisoning. Therefore, any applicant that already has a blood lead level surveillance activity in place must demonstrate how these cooperative agreement funds will be used to enhance, expand, or improve the current activity in order to remain eligible for funding.

Cooperative agreement funds should be added to blood lead surveillance funding from other sources, if such funding exists. Funds for this program may not be used in place of any existing funding for blood lead surveillance or intervention activities. Funds should be used to: (1) Collect data on adults with elevated blood lead levels; (2) identify possible sources of lead exposure; (3) monitor medical, occupational, and environmental management of lead-poisoned adults; (4) provide information on adult lead poisoning and its prevention and management to the public, health professionals, and policy and decision makers; (5) encourage and support community-based programs directed to the goal of eliminating adult lead poisoning; and (6) build capacity for conducting surveillance of elevated blood lead (BLL's) levels in adults.

Cooperative Agreement funds for surveillance are to be used to develop and implement complete surveillance systems for blood lead levels in adults to ensure appropriate targeting for high-risk industries and occupations and track progress in the elimination of adult lead poisoning. Intervention funds are to be used to develop effective models for intervention in the prevention of adult lead poisoning.

Surveillance Programs

This cooperative agreement program is intended to assist State health departments or other appropriate agencies to implement a complete blood lead surveillance activity. For the purpose of these programs a complete blood lead surveillance activity is defined as a process which: (1) Systematically collects information over time about adults (primarily workers) with elevated BLL's using laboratory reports as the data source; (2) collects follow-up information on industry and occupation of individuals identified on laboratory reports; (3) provides for the follow-up of cases, including field investigations when necessary; and (4) provides timely and useful analysis and reporting of the accumulated data.

Intervention Projects

The purpose of these awards is to assist State health departments or other appropriate agencies to develop effective models for intervention in the prevention of occupational lead poisoning. In particular, the focus should be on lead-using industries and occupations covered under the Occupational Safety and Health Administration (OSHA) Lead Standard for General Industry (29 CFR 1025.1910) or the Construction Standard (29 CFR part 1926) to determine methods for effective interventions to control lead exposures and reduce blood lead levels. An effective intervention strategy developed by the program will serve as a model for other programs nationally.

Goals

Surveillance Programs

The *surveillance* component of this announcement is intended to assist State health departments or other appropriate agencies to implement a complete surveillance activity for BLL's in adults. Development of surveillance systems at the local, State and national levels is essential for targeting interventions to high-risk industries and occupations and for tracking progress in eliminating adult poisoning.

The goals of the ABLES program are to:

1. Increase the number of State health departments with surveillance systems for elevated BLL's;
2. Build the capacity of State- or territorial-based BLL surveillance systems;
3. Use data from these systems to conduct national surveillance of elevated BLL's;
4. Disseminate data on the occurrence of elevated BLL's to government agencies, researchers, employers, and medical care providers;
5. Direct intervention efforts to reduce occupational and environmental lead exposure;
6. Characterize reports by industry and occupation to assist with targeting educational outreach efforts and prevention activities.

Intervention Project(s)

Intervention funds are to be used for developing effective models for intervention in the prevention of adult lead poisoning. The goals are to:

1. Develop a model for intervention related to lead poisoning targeting high-risk industries or occupational businesses;
2. Build occupational disease prevention capacity via State health departments or other appropriate agencies at the State, or local level;
3. Design, field test, demonstrate, and evaluate the effectiveness of the intervention.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for conducting activities under A. (Recipient Activities), and CDC/NIOSH will be responsible for the activities listed under B. (CDC/NIOSH Activities).

The following requirements are for surveillance only cooperative agreement projects:

A. *Recipient Resources and Activities*

1. Develop effective, well-defined, working relationships with childhood lead poisoning prevention programs within the applicants' State.
2. Refine and implement, in collaboration with CDC/NIOSH, the methodology for surveillance as proposed in the respective program application.
3. Provide collaborative partnerships with CDC/NIOSH in any interim and/or final evaluation of the surveillance activity.
4. Monitor and evaluate all major program activities and services.
5. Demonstrate experience or access to professionals knowledgeable in conducting and evaluating public health programs.
6. Develop ability to translate program findings to State and local public health officials, policy- and decision-makers, and to others seeking to strengthen program efforts.

B. *CDC/NIOSH Activities*

1. Provide technical assistance and consultation in the implementation of the surveillance activities throughout the project period.
2. Provide a format for reporting surveillance data to CDC/NIOSH.
3. Analyze and provide summary surveillance data for national reporting.
4. Provide timely feedback to the recipient from the review of quarterly reports on the program activities conducted by the recipient.
5. Provide assistance in the conduct of field investigations at the recipient's request and as resources permit.

The following requirements are for Adult Lead Poisoning Intervention only projects:

A. *Recipient Activities*

1. Hire or establish a full-time director/coordinator with authority and responsibility to carry out the requirements of intervention project activities.
2. Collaborate with CDC/NIOSH to refine the methodology for the proposed intervention as described in the program application.
3. Develop and document all facets of the intervention program.
4. Develop plan for evaluating intervention process and outcomes.
5. Evaluate the model program using CDC Prevention Effectiveness Criteria.

B. *NIOSH/CDC Activities*

1. Provide technical assistance and consultation in the implementation of the model program throughout the project period.
2. Provide assistance in the conduct of field investigations and intervention efforts, at the recipient's request.
3. Provide guidelines for evaluating the intervention activities and technical assistance for the evaluation.

Note: Applicants may submit proposals for surveillance programs and/or intervention project(s).

Evaluation Criteria

The review of applications will be conducted by an objective review committee who will review the quality of the application based on the strength and completeness of the plan submitted. The budget justification will be used to assess how well the technical plan is likely to be carried out using available resources. The maximum ratings score of an application is 100 points.

A: The Factors To Be Considered in the Evaluation of Applications for Surveillance Program Funds Only Are

1. *Surveillance Activity* (35%)

The clarity, feasibility, and scientific soundness of the surveillance approach. Also, the extent to which a proposed schedule for accomplishing each activity and methods for evaluating each activity are clearly defined and appropriate.

The following points will be specifically evaluated:

a. How laboratories report PbB levels.
b. How data will be collected and managed.
c. How data quality and completeness of reporting will be assured.
d. How and when data will be analyzed.
e. How summary data will be reported and disseminated.
f. Protocols for follow-up of individuals with elevated PbB levels.
g. Provisions to obtain industry and occupation data.

2. *Progress Toward Complete Blood-Lead Surveillance* (30%)

The extent to which the proposed activities are likely to result in substantial progress toward establishing a complete State-based PbB surveillance activity (as defined in the **PURPOSE** Section).

3. *Project Sustainability* (20%)

The extent to which the proposed activities are likely to result in the long-term maintenance of a complete State-based PbB surveillance system. In particular, specific activities that will be undertaken by the State during the project period to ensure that the surveillance program continues after completion of the project period.

4. *Personnel* (10%)

The extent to which the qualifications and time commitments of project personnel are clearly documented and appropriate for implementing the proposal. (Project requires full-time director/coordinator with authority and responsibility to carry out the requirements of surveillance program activities. Position must be approved by the applicant's personnel system.)

5. *Use of Existing Resources* (5%)

The extent to which the proposal would make effective use of existing resources and expertise within the applicant agency or through collaboration with other agencies.

6. *BUDGET* (Not Scored)

The extent to which the budget is reasonable, clearly justified, and consistent with the intended use of funds.

B: The Factors To Be Considered in the Evaluation of Applications for Intervention Project Funds Only Are

1. The clarity, feasibility, and scientific soundness of the approach. The following will be specifically considered: (30%)

a. Who will be targeted for the intervention?
b. How will the intervention be conducted and by whom?
c. How will the intervention be evaluated?
d. How will the data be analyzed?

2. The extent to which the proposed activities are likely to result in the development and execution of a model intervention strategy to prevent and reduce occupational lead poisoning in high-risk industries or occupations. (25%)

3. The extent to which the proposed schedule for accomplishing each of the project activities and the methods for evaluating each activity are clearly defined and appropriate. (15%)

4. The extent to which the proposed activities are feasible and a plan for documenting all facets of the intervention is provided such that the model program may be adopted by other health departments or appropriate agencies or organizations. (15%)

5. The extent to which the qualifications and time commitments of project personnel are clearly documented and appropriate for implementing the proposal. (10%)

6. The extent to which the proposal would make effective use of existing resources and expertise within the applicant agency or through collaboration with other agencies. (5%)

7. The extent to which the budget is reasonable, clearly justified and consistent with the intended use of funds. (not scored)

Funding Priorities

Applicants applying for ABLES surveillance funds will be considered in two categories:

Priorities

(A) Approximately $81,000 to fund up to three new cooperative agreements (new is defined as ABLES programs not currently supported by CDC/NIOSH) who meet the eligibility requirements.

(B) Approximately $278,500 will be available to fund up to thirteen cooperative agreements for those States currently receiving CDC/NIOSH ABLES funding or for those States which provide quarterly data to the national surveillance program but are not supported monetarily by CDC/NIOSH. High priority will be given to proposals which devise strategies for enhancing their current surveillance system by coding industry and occupation and developing augmentation efforts such as calculation of State-specific rates.

(C) Approximately $180,000 will be available to fund up to two cooperative agreements for intervention projects targeting high-risk industries and occupations (high-risk defined as the potential for highest lead exposures based on investigations of worksites or targeting worker populations where cases of elevated blood lead levels persist.) Eligible applicants may also

apply for intervention project funds in addition to surveillance funds and should develop separate proposals, within the same request for assistance, for intervention projects.

Interested persons are invited to comment on the proposed funding priority. Comments received within 30 days after publication in the **Federal Register** will be considered before the final funding priority is established. If the funding priority should change as a result of any comments received, a revised announcement will be published in the **Federal Register**, and revised applications will be accepted prior to final selection of awards.

Written comments should be addressed to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–13, Atlanta, GA 30305.

Executive Order 12372 Review

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order (E.O.) 12372. E.O. 12372 sets up a system for State and local government review of proposed Federal assistance applications. Applicants should contact their State Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC for each affected State. Indian tribes are strongly encouraged to request tribal government review of the proposed application. A current list of SPOCs is included in the application kit.

If the SPOCs or tribal governments have any State process or tribal process recommendations on applications submitted to CDC, they should send them to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Atlanta, GA 30305, no later than 60 days after the application due date. The granting agency does not guarantee to "accommodate or explain" State or tribal process recommendations it receives after that date.

Public Health System Reporting Requirement

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.197.

Other Requirements

Paperwork Reduction Act

Projects that involve the collection of information from ten or more individuals and funded by this cooperative agreement will be subject to approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations, 45 CFR part 46, regarding the protection of human subjects. Assurance must be provided to demonstrate the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

In addition to other applicable committees, Indian Health Service (IHS) institutional review committees also must review the project if any component of IHS will be involved or will support the research. If any American Indian community is involved, its tribal government must also approve that portion of the project applicable to it.

Application Submission and Deadline

The original and two copies of the PHS 5161–1 (Revised 7/92, OMB Number 0937–0189) must be submitted to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Atlanta, GA 30305 on or before July 14, 1995.

1. Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date, or

(b) Sent on or before the deadline date and received in time for submission for the review process. Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.

2. Late Applications: Applications which do not meet the criteria in 1.(a) or 1.(b) above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where To Obtain Additional Information

To receive additional written information call (404) 332–4561. You will be asked to leave your name, address, and telephone number and will need to refer to Announcement 553. You will receive a complete program description, information on application procedures, and application forms.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from Oppie Byrd, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–13, Atlanta, GA 30305, telephone (404) 842–6796 .

Technical assistance on surveillance programs and/or intervention projects may be obtained from Robert Roscoe, M.S., Epidemiologist, ABLES Project Officer, or Shiro Tanaka, M.D., Division of Surveillance, Hazard Evaluations and Field Studies, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC), 4676 Columbia Parkway, Mailstop R–21, Cincinnati, OH 45226, telephone (513) 841–4353.

Please refer to Announcement Number 553 when requesting information and submitting an application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512–1800.

Dated: May 15, 1995.

Diane D. Porter,

Acting Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–12545 Filed 5–22–95; 8:45 am]

BILLING CODE 4163–19–P

Food and Drug Administration

[Docket Nos. 91P–0186 and 93P–0306]

Proposed Warning Labels for Iron-Containing Products; FDA Report on Consumer Research; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a report entitled "Consumer Research on Proposed Warning Labels for Iron-Containing Products," which describes the results of research conducted by the agency to evaluate consumer understanding of the proposed warning labels for iron-containing products. FDA is inviting comments on the findings in this report.

DATES: Written comments by July 24, 1995.

ADDRESSES: Submit written comments and requests for single copies of "Consumer Research on Proposed Warning Labels for Iron-Containing Products" to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. Comments and requests should be identified with the docket number found in brackets in the heading of this document. Send two self-addressed adhesive labels to assist that office in processing your requests. After the comment period shown above, copies of the document will be available at cost from the Freedom of Information Staff (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857. "Consumer Research on Proposed Warning Labels for Iron-Containing Products" and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Raymond E. Schucker, Center for Food Safety and Applied Nutrition (HFS–725), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5657.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 6, 1994 (59 FR 51030), FDA issued a proposal ("the initial proposal") on actions that it tentatively concluded were necessary to stop the recent epidemic of pediatric poisonings from over consumption of iron-containing products. In the **Federal Register** of February 16, 1995 (60 FR 8989), the agency issued a supplementary proposal to clarify changes in its legal authority with the passage of the Dietary Supplement Health and Education Act (Pub. L. 103–417).

In the initial proposal, FDA announced that it may conduct focus group research to evaluate consumer understanding of the proposed warning messages and to ensure that the messages are not misleading. FDA has conducted this research. Consumers provided feedback as to their understanding of the proposed warnings and the degree to which the specific wording of the messages was believable, relevant, confusing, or irritating. Additional warning messages were created as a result of public comment on the proposed rule, and these messages were also evaluated in the focus groups.

FDA stated in the initial proposal that it would make a report of the results of this research available for public comment before it issued the final regulations. The research report is now available for public comment.

Dated: May 18, 1995.

David A. Kessler,

Commissioner of Food and Drugs.

[FR Doc. 95–12605 Filed 5–22–95; 8:45 am]

BILLING CODE 4160–01–F

Public Health Service

Announcement of Availability of Funds for Family Planning Service Grants

AGENCY: Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The Office of Population Affairs announces the availability of funds for FY 1996 family planning services grant projects under the authority of Title X of the Public Health Service Act (42 U.S.C. 300, *et seq.*) and solicits applications for competing grant awards to serve the areas and/or populations set out below. Only applications which propose to serve the populations and/or areas set out below will be accepted for review and possible funding.

OMB Catalog of Federal Domestic Assistance 93.217.

DATES: Application due dates vary. See Supplementary Information below.

ADDRESSES: Additional information may be obtained from and completed applications should be sent to the appropriate Regional Health Administrator at the address below:

Region I—(Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont): DHHS/PHS Region I, John F. Kennedy Federal Building, Government Center, Room 1400, Boston, MA 02203

Region II—(New Jersey, New York, Puerto Rico, Virgin Islands): DHHS/PHS Region II, 26 Federal Plaza, Room 3337, New York, NY 10278

Region III—(Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, W. Virginia DHHS/PHS Region III, 3535 Market Street, Philadelphia, PA 19101

Region IV—(Alabama, Florida, Georgia, Kentucky, Mississippi, N. Carolina, S. Carolina, Tennessee): DHHS/PHS Region IV, 101 Marietta Tower, Suite 1106, Atlanta, GA 30323

Region V—(Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin): DHHS/PHS Region V, 105 West Adams Street, 17th Floor, Chicago, IL 60603

Region VI—(Arkansas, Louisiana, New Mexico, Oklahoma, Texas): DHHS/PHS Region VI 1200 Main Tower Building, Room 1800, Dallas, TX 75202

Region VII—(Iowa, Kansas, Missouri, Nebraska): DHHS/PHS Region VII, 601 East 12th Street, 5th Fl. W., Kansas City, MO 64106

Region VIII—(Colorado, Montana, N. Dakota, S. Dakota, Utah, Wyoming): DHHS/PHS Region VIII, 1961 Stout Street, Denver, CO 80294

Region IX—(Arizona, California, Hawaii, Nevada, Commonwealth of the Northern Mariana Islands, American Samoa, Guam, Republic of Palau, Federated States of Micronesia, Republic of the Marshall Islands): DHHS/PHS Region IX, 50 United Nations Plaza, Room 327, San Francisco, CA 94102

Region X—(Alaska, Idaho, Oregon, Washington): DHHS/PHS Region X, Blanchard Plaza, 2201 Sixth Avenue, M/S RX–20, Seattle, WA 98121.

FOR FURTHER INFORMATION CONTACT: Regional Grants Management Officers: Region I, Mary O'Brien—617/565–1482; Region II, Steven Wong—212/264–4496; Region III, Marty Bree—215/596–6653; Region IV, Wayne Cutchins—404/331–2597; Region V, Lawrence Poole—312/353–8700; Region VI, Joyce Bailey—214/767–3879; Region VII, Michael Rowland—816/426–2924; Region VIII, Susan A. Jaworowski—303/844–4461; Region IX, Ken Souza—415/556–8187; Region X, Jim Tipton—206/615/2473.

Regional Program Consultants for Family Planning: Region I, James Sliker—617/565–1452; Region II, Margaret Lee—212/264–2571; Region III, Elizabeth Reed—215/596–6686; Region IV, Christino Rodrigues—404/331–5254; Region V, George Hockenberry—312/535–1700; Region VI, Paul Smith—214/767–3072; Region

VII, Susan Moskosky—816/426–2924; Region VIII, John J. McCarthy, Jr.—303/844–5955; Region IX, James Hauser—415/556–7117; Region X, Karen Matsuda—206/615–2501.

SUPPLEMENTARY INFORMATION: Title X of the Public Health Service Act, 42 U.S.C. 300, *et seq.*, authorizes the Secretary of Health and Human Services (HHS) to award grants to public or private nonprofit entities to assist in the establishment and operation of voluntary family planning projects to provide a broad range of acceptable and effective family planning methods and services (including natural family planning methods, infertility services, and services for adolescents). The statute requires that, to the extent practicable, entities shall encourage family participation. Also, Title X funds may not be used in programs where abortion is a method of family planning. Implementing regulations appear at 42 CFR Part 59 Subpart A.

On February 5, 1993, HHS published at 58 FR 7462 an interim rule that suspends the 1988 Title X rules, pending the promulgation of new regulations. The principal effect of this action was to suspend the definitions of "family planning," "grantees," "prenatal care," "Title X," "Title X Program," and "Title X Project" presently found at 42 CFR 59.2 and 42 CFR 59.7–59.10. Proposed rules were also published at 58 FR 7464 on the same date. During the pendency of rulemaking, the compliance standards that were in effect prior to the issuance of the 1988 rule, including those set out in the 1981 Family Planning Guidelines, are being used to administer the program. Copies of the pre-1988 compliance standards are available from the Regional Program Consultants listed above.

The Title X program has established these five priorities:

(1) Increasing outreach to women not likely to seek services, including homeless persons, disabled persons, substance abusers and adolescents;
(2) Expanding the comprehensiveness of reproductive health services, including STD and cancer screening and prevention, increased involvement of male partners, HIV prevention, education and counseling, and substance abuse screening and referral;
(3) Serving adolescents, including more community education, emphasis on postponement of sexual activity, and more accessible provision of contraceptive counseling and contraception;
(4) Eliminating disincentives to provide high-cost but highly effective contraceptives such as Norplant and Depo-Provera, serving high risk (and high-unit cost) clients, and providing nonrevenue-generating services such as community education and prevention services; and
(5) Emphasizing training and retention of family planning nurse practitioners, particularly minority nurse practitioners and nurse practitioners serving disadvantaged and medically underserved communities.

These program priorities represent overriding goals which are being pursued to the extent that funding increases or increases in program efficiency allow. Some funding may be available to Title X grantees to improve and expand services.

The Administration's FY 1996 budget request for this program is $198.9 million. This amount represents a three percent increase over the FY 1995 appropriation of $193.3 million, of which $179.6 million will be made available to Title X service grantees. Approximately 17 percent of the funds appropriated for FY 1996 and made available to Title X service grantees will be used for competing grants. The remaining funds will be used for non-competing continuation grants. This program announcement is subject to the appropriation of funds and is a contingency action being taken to ensure that, should funds become available for this purpose, they can be awarded in a timely fashion consistent with the needs of the program as well as to provide for the distribution of funds throughout the fiscal year. Since the precise funding levels for FY 1996 are uncertain at this point, the funding levels set out below are based on the FY 1994 appropriation level. However, it is expected that funding levels will be increased, if the appropriation for FY 1996 increases.

For FY 1995, the entire $179.6 million will be allocated among the 10 DHHS regions, and will in turn be awarded to public and private non-profit agencies located within the regions. Each regional office is responsible for evaluating applications, establishing priorities, and setting funding levels according to criteria in 42 CFR 59.11.

This notice announces the availability of funds to provide family planning services in 16 States, the Navajo Reservation, and the Commonwealth of the Northern Mariana Islands. Competing grant applications are invited for the following areas:

Populations or areas to be served	Number of grants to be awarded	FY 1994 funding	Application due date	Grant funding date
Region I:				
Connecticut	1	$1,486,000	9/1/95	1/1/96
Boston, MA	1	1,226,000	3/1/96	7/1/96/
Southeastern MA	1	712,000	9/1/95	1/1/96
Western MA	1	662,000	9/1/95	1/1/96
Central MA	1	501,000	9/1/95	1/1/96
Northeastern MA	1	746,000	3/1/96	7/1/96
Maine	1	1,089,000	3/1/96	7/1/96
New Hampshire	1	637,000	3/1/96	7/1/96
Rhode Island	1	415,000	3/1/96	7/1/96
Vermont	1	541,000	9/1/95	1/1/96
Region V:				
St. Paul, MN	1	235,000	9/1/95	1/1/96
Cleveland, OH	1	1,346,000	12/1/95	4/1/96
Region VI:				
Oklahoma	1	2,639,000	8/1/95	12/1/95
Texas	1	9,426,000	12/1/95	4/1/96
Region VII:				
Missouri	1	3,517,000	12/1/95	4/1/96
Nebraska	1	1,168,000	3/1/96	7/1/96

Populations or areas to be served	Number of grants to be awarded	FY 1994 funding	Application due date	Grant funding date
Region VIII:				
North Dakota	1	470,000	3/1/96	7/1/96
Utah	1	140,000	3/1/96	7/1/96
Region IX:				
Navajo Reservation-AZ	1	511,000	3/1/96	7/1/96
Hawaii	1	874,000	3/1/96	7/1/96
Clark County, NV	1	584,000	9/1/95	1/1/96
Commonwealth of the Northern Marianas Islands	1	67,000	9/1/95	1/1/96
Total	22	28,992,000		

Applications must be postmarked or, it not sent by U.S. mail, received at the appropriate Grants Management Office no later than close of business on application due dates listed above. Private metered postmarks will not be acceptable as proof of timely mailing. Applications which are postmarked or, if not sent by U.S. mail, delivered to the appropriate Grants Management Office later than the application due date will be judged late and will not be accepted for review. (Applicants should request a legibly dated postmark from the U.S. Postal Service.) Applications which do not conform to the requirements of this program announcement or do not meet the applicable regulatory requirements at 42 CFR part 59, subpart A will not be accepted for review. Applicants will be so notified, and the applications will be returned.

Applications will be evaluated on the following criteria:

(1) The number of patients and, in particular, the number of low-income patients to be served;
(2) The extent to which family planning services are needed locally;
(3) The relative need of the applicant;
(4) The capacity of the applicant to make rapid and effective use of the Federal assistance;
(5) The adequacy of the applicant's facilities and staff;
(6) The relative availability of non-Federal resources within the community to be served and the degree to which those resources are committed to the project; and
(7) The degree to which the project plan adequately provides for the requirements set forth in the Title X regulations

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS—led national activity for setting priority areas. This announcement is related to the priority areas of Family Planning. A midcourse review of the objectives is presently ongoing, and the proposed revisions are contained in a draft report. A notice of Availability and Request for Comment on the Healthy People 2000 Midcourse Revisions was published in the **Fedeal Register** on October 3, 1994 (59 FR 50253). Requests for copies of the Draft for Public Review and Comment: Healthy People 2000 Midcourse Revisions can be faxed to (301) 594–5981 or mailed to: OFP/OPA, East-West Towers, Suite 200, 5600 Fishers Lane, Rockville, MD 20857. A new PHS report, Healthy People 2000 Midcourse Review and Revisions, featuring the final revisions and status report on progress in achieving targets for the year 2000, will be published in 1995.

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Application Requirements

Application kits (including the application form, PHS 5161—approved by OMB under control number 0937–0189) and technical assistance for preparing proposals are available from the regional offices. An application must contain: (1) A narrative description of the project and the manner in which the applicant intends to conduct it in order to carry out the regulations of the law and regulations; (2) a budget that includes an estimate of project income and costs, with justification for the amount of grant funds requested; (3) a description of the standards and qualifications that will be required for all personnel and facilities to be used by the project; and (4) such other pertinent information as may be required by the Secretary as specified in the application kit. In preparing an application, applications should respond to all applicable regulatory requirements.

Application Review and Evaluation

Each regional office is responsible for establishing its own review process. Applications must be submitted to the appropriate regional office at the address listed above. Staff are available to answer questions and provide limited technical assistance in the preparation of grant applications.

Grant Awards

Grant projects are generally approved for 3 to 5 years with an annual non-competitive review of a continuation application to obtain continued support. Non-competing continuation awards are subject to factors such as the project making satisfactory progress and the availability of funds. In all cases, continuation awards require a determination by HHS that continued funding is in the best interest of the Federal Government.

Review Under Executive Order 12372

Applicants under this announcement are subject to the review requirements of Executive Order 12372, State Review of applications for Federal Financial Assistance, as implemented by 45 CFR part 100. As soon as possible, the applicant should discuss the project with the State Single Point of Contact (SPOC) for each State to be served. The application kit contains the currently available listing of the SPOCs which have elected to be informed of the submission of applications. For those States not represented on the listing, further inquiries should be made by the applicant regarding the submission to the Grants Management Office of the appropriate region. State Single Point of Contact comments must be received by the regional office 30 days prior to the funding date to be considered.

When final funding decisions have been made, each applicant will be notified by letter of the outcome of its application. The official document notifying an applicant that a project application has been approved for funding is the Notice of Grant Award,

which specifies to the grantee the amount of money awarded, the purposes of the grant, and terms and conditions of the grant award.

Dated: May 17, 1995.

Felicia H. Stewart,

Deputy Assistant Secretary for Population Affairs.

[FR Doc. 95–12556 Filed 5–22–95; 8:45 am]

BILLING CODE 4150–17–M

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

Proposed Criteria for Reviewing and Making Recommendations on Federal Mandates

ACTION: Notice of proposed criteria.

SUMMARY: The Advisory Commission on Intergovernmental Relations (ACIR) is soliciting public comments on its proposed criteria for investigating and reviewing existing federal mandates and formulating recommendations to modify, suspend, or terminate specific mandates on State, local, or Tribal governments.

DATES: Comments must be received by June 22, 1995.

ADDRESSES: Comments should be sent to Philip M. Dearborn, Director, Government Finance Research, ACIR, 800 K Street NW., Suite 450 South, Washington, DC 20575.

FOR FURTHER INFORMATION CONTACT: Philip Dearborn at 202/653–5538.

SUPPLEMENTARY INFORMATION: The Advisory Commission on Intergovernmental Relations (ACIR, 42 U.S.C. 4271) is charged in Sec. 302 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 109 Stat. 67) with investigating and reviewing the role of Federal mandates in intergovernmental relations and formulating recommendations to modify, suspend, or terminate specific mandates on State, local, or Tribal governments.

Section 302 defines "Federal mandate" very broadly for the purposes of the ACIR review as "any provision in statute or regulation or any Federal court ruling that imposes an enforceable duty on State, local, or Tribal governments including a condition of Federal assistance or a duty arising from participation in a voluntary Federal program."

ACIR will select for in-depth review those Federal mandates generally recognized as creating significant concerns within the intergovernmental system. In accordance with Public Law 104–4, ACIR will give review priority to mandates that are subject to judicial proceedings in Federal courts. To formulate its recommendations, ACIR will evaluate each mandate to determine the specific conditions causing concern.

The Commission will make the final decisions about which mandates it will review based on two types of criteria:

(1) Those that provide a basis for identifying mandates of significant concern; and

(2) Those that provide a basis for formulating recommendations to modify, suspend, or terminate specific mandates that are of concern.

Criteria for Identifying Mandates of Significant Concern

In general, Federal mandates will be selected for intensive review if they have one or more of the following characteristics:

1. The mandate requires State, local, or Tribal governments to expend substantial amounts to their own resources in a manner that significantly distorts their spending priorities. This addresses mandates that require more than incidental amounts of spending. It will not include all Federal mandates that require governments to spend money.

2. The mandate establishes terms or conditions for Federal assistance in a program or activity in which State, local, or Tribal governments have little discretion over whether or not to participate. This will include mandates in entitlements and discretionary programs. It will exclude conditions of grants in small categorical programs that are distributed on the basis of annual or periodic applications and that are received only by a limited number of governments.

3. The mandates abridges historic powers of State, local, or Tribal governments, the exercise of which would not adversely affect other jurisdictions. This will include mandates that have an impact on internal State, local, and Tribal government affairs related to issues not widely acknowledged as being of national concern and for which the absence of the mandate would not create adverse spillover effects.

4. The mandate imposes compliance requirements that make it difficult or impossible for State, local, and Tribal governments to implement. Implementation delays, issuance of court orders, or assessment of fines may be indicative of mandate requirements that go beyond State, local, or Tribal fiscal resources, or administrative or technological capacity, after reasonable efforts at compliance have been made.

5. The mandate has been the subject of widespread objections and complaints by State and local governments and their representatives. This will include mandates that are based on problems of national scope, but are not federally funded.

Criteria for Formulating Recommendations

ACIR will investigate the specific characteristics of each mandate causing significant concern in order to formulate a recommendation to modify, suspend, or terminate the mandate. For purposes of formulating such recommendations, ACIR will focus on specific provisions in laws, regulations, or court orders.

When a mandate affects a State or local program that directly competes with a comparable private sector activity, ACIR will consider the effects on both the government and private sector in making its recommendation. ACIR also will consider (1) impacts of mandates on working men and women and (2) mandates for utilization of metric systems.

ACIR will investigate each mandate selected for intensive review to determine whether or not they have one or more of the following characteristics:

1. Federal Intrusion

• Requirements are not based on demonstrated national needs.

• Requirements are related to issues not widely recognized as national concerns or as being within the appropriate scope of Federal activities.

• Requirements are based on problems of national scope, but which State, local, or Tribal governments have been able or willing to solve effectively, either independently or through voluntary cooperation.

• Requirements are based on problems of national scope, but are not federally funded.

These mandates should be terminated or modified to express non-binding national guidelines. In some instances, the basis provision could be retained in Federal law, but compliance could be made voluntary.

2. Unnecessarily Rigid

• Provisions do not permit adjustments to the circumstances or needs of individual jurisdictions.

• Provisions restrict flexibility to use less costly or less onerous alternative procedures to achieve the goal of the mandate.

• Provisions do not allow governments to set implementation or compliance priorities and schedules, taking into account risk analysis, greatest benefit, or other factors.

These mandates should be modified to provide options, waivers, or exemptions, or be terminated.

3. Unnecessarily Complex

• Requirements are unnecessarily detailed and difficult to understand.

• Provisions are too process specific rather than results oriented.

These mandates should be simplified, clarified, or otherwise revised to facilitate understanding and implementation, or be terminated.

4. Unclear Goals or Standards

• Goals or standards are too vague, confusing, or poorly written to permit clear or consistent implementation of requirements or measurement of results.

These goals or standards should be rewritten or the mandate should be terminated.

5. Contradictory or Inconsistent

• Provisions in one mandate may make it difficult or impossible to comply with other provisions in the same or other Federal, State, local, or Tribal laws.

• Requirements use conflicting and confusing definitions and standards. These mandates should be modified to bring conflicting requirements into conformance. In some instances, it may be appropriate to terminate one or all of the requirements. Where possible, common definitions and standards should be used, especially in planning and reporting requirements.

6. Duplicative

• Provisions in two or more Federal mandates may have the same general goals but require different actions for compliance.

These mandates could be terminated, consolidated, to modified or facilitate compliance.

7. Obsolete

• Provisions were enacted when conditions or needs were different or before existing technologies were available.

• Provisions have been superseded by later requirements.

These mandates should be modified to reflect current conditions or existing technology. If a mandate is no longer necessary or has been superseded, it should be terminated.

8. Inadequate Scientific Basis

• Provisions were enacted based on inadequate or inconclusive scientific research or knowledge.

• Provisions are not based on current, peer-reviewed scientific research.

• Provisions are not justified by risk assessment or cost-benefit.

These mandates should be terminated or modified to reflect current science. In some cases, suspension of the mandate may be appropriate to provide time for additional research.

9. Lacking in Practical Value

• Requirements do not achieve the intended results.

• Requirements are perceived by citizens as unnecessary, insignificant, or ineffective, thereby producing credibility problems for governments.

• Requirements have high costs relative to the importance of the issue.

These mandates should be evaluated to determine whether or not they are effective. If they cannot be shown to be effective and worthy of public support, they should be terminated. If they are effective, it still may be appropriate to suspend the mandates to allow time for public education and consensus building on their value.

10. Resource Demands Exceed Capacity

• Requirements for compliance exceed State, local, and Tribal governments' fiscal, administrative, and/or technological capacity.

These mandates should be terminated or modified to reduce compliance problems, or assistance could be provided to upgrade capacity. In some instances, compliance schedule extensions or exemptions may be appropriate.

11. Compounds Fiscal Difficulties

• Compliance with the requirements of any one mandate or with multiple mandates compounds fiscal difficulties of governmental jurisdictions that are experiencing fiscal stress.

In these situations, certain of the mandates affecting the jurisdictions—exclusive of those that are vital to public health or safety—should be considered for partial or total suspension until the government experiencing fiscal stress is able to comply. The conditions triggering consideration of such suspensions should include:

a. Governments faced with costs dramatically out of line with their revenue bases, as determined by comparisons with other similar governments that are complying; or

b. Governments that are experiencing severe fiscal distress for reasons not immediately within their control. There should be some definitive evidence of severe problems, such as State receivership, State declaration of distress, Chapter 9 bankruptcy, or a debt rating below investment grade. This should not include annual budget balancing problems.

Dated: May 18, 1995.

William E. Davis III,

Executive Director.

[FR Doc. 95–12591 Filed 5–22–95; 8:45 am]

BILLING CODE 5500–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–962–1410–00–P; AA–10968]

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Section 14(h)(1) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(h), will be issued to Chugach Alaska Corporation for 0.10 acre. The land involved is in the vicinity of Long Bay, Alaska.

U.S. Survey No. 6935, Alaska.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Anchorage Daily News. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal, government or regional corporation, shall have until June 22, 1995 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

Margaret J. McDaniel,

Acting Chief, Branch of Gulf Rim Adjudication.

[FR Doc. 95–12558 Filed 5–22–95; 8:45 am]

BILLING CODE 4310–JA–P

National Park Service

Environmental Assessment for Proposed M.J. Murdock Aviation Center and Proposed Master Plan Amendment for Fort Vancouver National Historic Site, Washington

ACTION: Notice of availability of environmental assessment.

SUMMARY: This Notice announces the availability of an Environmental Assessment (EA) for the proposed M.J. Murdock Aviation Center; the site plan constitutes a proposed amendment of the Master Plan for Fort Vancouver National Historic Site. This Notice also announces a public meeting for the purpose of receiving public comment on the EA.

DATES: Written comments on the EA should be received no later than June 22, 1995. The date of the public meeting is 7 June (Wednesday) 1995.

ADDRESSES: Copies of the EA are available on request from the Superintendent, Fort Vancouver National Historic Site, 612 East Reserve Street, Vancouver, WA 98661–3811; telephone (360) 696–7655, ext. 2. Written comments should be submitted to the above address.

The public meeting will be held at the Clark Public Utilities District (PUD) Building, 1200 Fort Vancouver Way, Vancouver, Washington, from 7:00–9:00 p.m. on Wednesday, 7 June 1995.

SUPPLEMENTARY INFORMATION: The proposed amendment of the Master Plan would provide for the adaptive reuse of three historic aviation structures and the reconstruction of a hanger as the principal components of the proposed M.J. Murdock Aviation Center, an aviation museum to be located adjacent to Pearson Field. The proposed museum development would implement a provision of a 1994 Memorandum of Agreement between the National Park Service and the City of Vancouver. The proposed Center would be located within Fort Vancouver National Historic Site. The City of Vancouver would have the responsibility for the aviation museum's development, operation and maintenance.

Dated: May 11, 1995.

William C. Walters,

Acting Regional Director, Pacific Northwest Region, National Park Service.

[FR Doc. 95–12592 Filed 5–22–95; 8:45 am]

BILLING CODE 4310–70–M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before May 13, 1995. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127. Written comments should be submitted by June 7, 1995.

Carol D. Shull,

Keeper of the National Register.

ARKANSAS

Crawford County
- Slack—Comstock—Marshall Farm, N of AR 220 W, Uniontown, 95000694

Izard County
- Caney Springs Cumberland Presbyterian Church, NW of jct. of AR 289 and Co. Rd. 70, Sage vicinity, 95000693

Prairie County
- American Legion Hut—Des Arc, 206 Erwin St., Des Arc, 95000692

GEORGIA

Brantley County
- Brantley County Courthouse (Georgia County Courthouses TR), 117 Brantley St., Nahunta, 95000712

Bryan County
- Bryan County Courthouse (Georgia County Courthouses TR), College St., Pembroke, 95000713

Cook County
- Cook County Courthouse (Georgia County Courthouses TR), 212 N. Hutchinson Ave., Adel, 95000714

Emanuel County
- Emanuel County Courthouse and Sheriff Department (Georgia County Courthouses TR), Main St., Swainsboro, 95000715

Fannin County
- Fannin County Courthouse (Georgia County Courthouses TR), Jct. of W. Main and Summit Sts., Blue Ridge, 95000716

Hall County
- Hall County Courthouse (Georgia County Courthouses TR), Jct. of Spring and Green Sts., Gainesville, 95000717

Quitman County
- Quitman County Courthouse and Old Jail (Georgia County Courthouses TR), Main St., Georgetown, 95000718

Taylor County
- Taylor County Courthouse (Georgia County Courthouses TR), Main St., Butler, 95000719

Telfair County
- Telfair County Courthouse and Jail (Georgia County Courthouses TR), Courthouse Sq., McRae, 95000720

Troup County
- Troup County Courthouse, Annex, and Jail (Georgia County Courthouses TR), E. Haralson St., LaGrange, 95000721

INDIANA

Clark County
- Bottorff—McCulloch Farm, 6702 Bethany Rd., Charlestown vicinity, 95000699

Decatur County
- Greensburg Carnegie Public Library, 114 N. Michigan Ave., Greensburg, 95000701

Hamilton County
- Holliday Hydroelectric Powerhouse and Dam, Riverwood Ave. at jct. with 211th St., across the White R., Noblesville vicinity, 95000706

Jackson County
- Seymour Commercial Historic District, Roughly bounded by Walnut, Third, Ewing and Bruce Sts., Seymour, 95000708

Lake County
- Emerson, Ralph Waldo, School, 716 E. 7th Ave., Gary, 95000702

Lawrence County
- Bedford Courthouse Square Historic District, Roughly bounded by L, 14th, 17th and H Sts., Bedford, 95000704
- Helton—Mayo Farm, Jct. of Boyd Ln. and IN 58, Bedford vicinity, 95000709

Marion County
- Bush Stadium, 1501 W. 16th St., Indianapolis, 95000703
- P. C. C. & St. L. Railroad Freight Depot, 449 S. Pennsylvania St., Indianapolis, 95000697

Monroe County
- Stinesville Commercial Historic District, 8201, 8211, 8223, 8231 and 8237 W. Main St., Stinesville, 95000707

Vigo County
- Terre Haute Masonic Temple, 224 N. Eighth St., Terre Haute, 95000705

Wayne County
- Witt—Champe—Myers House, Jct. of Spring and Foundry Sts., SE corner, Dublin, 95000700

IOWA

Fayette County
- Bigler Building, 210 Mill St., Clermont, 95000691

KANSAS

Pratt County
- Rice, J. R., Barn and Granary, N of US 54, NW of Cullison, Cullison vicinity, 95000695

MASSACHUSETTS

Norfolk County
- Milton Hill Historic District, Roughly bounded by Adams and School Sts., Randolph and Canton Aves. and Brook Rd., Milton, 95000698

MISSISSIPPI

Hinds County
- Poindexter Park Historic District, Roughly bounded by W. Pearl St., Rose St., Hunt St., W. Capitol St. and Clifton St., Jackson, 95000685

NORTH CAROLINA

Chatham County
- Deep River Camelback Truss Bridge, Adjacent to NC 2153 over Deep R., Cumnock-Gulf vicinity, 95000696

OREGON

Jackson County
- Ashland Cemetery (Historic Cemeteries of Ashland MPS), Jct. of E. Main and Morton Sts., Ashland, 95000687
- Mountain View Cemetery (Historic Cemeteries of Ashland MPS), Jct. of Normal Ave. and OR 66, Ashland, 95000688

Linn County
- Elkins Flour Mill, Bounded by US 20, Industrial Way, the Santiam-Albany Canal and the Callaghan RR tracks, Lebanon, 95000689

Multnomah County
- Hill Hotel, 2255–2261 Burnside St., Portland, 95000690

Wasco County
- Trevitt's Addition Historic District, Roughly bounded by 2nd, Liberty and 6th Sts. and Mill Cr., The Dalles, 95000686

RHODE ISLAND

Providence County
- Blackstone Boulevard Realty Plat Historic District, Roughly bounded by Blackstone Blvd., Rochambeau Ave., Holly St. and Elmgrove Ave., Providence, 95000711

In order to assist in the preservation of the following property, the 15-day commenting period is being waived:

MASSACHUSETTS

Middlesex County
- Bullard Farm, 7 Bullard Ln., Holliston, 95000710

[FR Doc. 95–12509 Filed 5–22–95; 8:45 am]

BILLING CODE 4310–70–P

Saint Croix National Scenic Riverway, Minnesota and Wisconsin

AGENCY: National Park Service, Interior.

ACTION: Notice—temporary restricted access.

SUMMARY: The National Park Service is establishing a temporary restricted access program for the Federally-administered portion of the Lower Saint Croix National Scenic Riverway for the 1995 boating season. This program is being put in place to prevent the spread of the exotic zebra mussel into the upper section of the riverway. The restrictions are now being implemented and are effective through November 30, 1995. This notice is given pursuant to 36 CFR Sections 1.5, 1.6 and 1.7.

DATES: This action is effective immediately and provides notice of the implementation of restrictions on the Federal portion of the Lower Saint Croix National Scenic Riverway through November 30, 1995.

ADDRESSES: Copies of the 1995 Zebra Mussel Response Plan are available for public review at the following locations.

Superintendent's Office, Saint Croix National Scenic Riverway, 401 Hamilton Street, St. Croix Falls, WI 54024.

St. Croix National Scenic Riverway, Lower River Visitor Center, 117 Main Street, Stillwater, MN 55082.

FOR FURTHER INFORMATION CONTACT: Anthony L. Andersen, Superintendent, Saint Croix National Scenic Riverway, P.O. Box 708, Saint Croix Falls, Wisconsin 54024; telephone 715–483–3284.

SUPPLEMENTARY INFORMATION: The exotic zebra mussel (Dreissena polymorpha) was accidently introduced into the waters of the United States in 1986. The zebra mussel is a small filter-feeding mollusk that attaches itself to hard surfaces. It has been identified as an aquatic nuisance species in the Nonindigenous Aquatic Nuisance Prevention Control Act of 1990, 16 U.S.C. 4701. Since that time, populations have spread from the Great Lakes throughout the major eastern and midwestern river systems, including the Mississippi River as far upstream as Minneapolis, Minnesota. The primary vector in the spread of the zebra mussel is by in-water vessels. Once established in river systems the spread may be downstream by current.

Prevention efforts are directed at minimizing the risk of unintentional introduction and spread of the zebra mussels as a nuisance species. Minimizing such risks is particularly important since once the zebra mussel has become established, it is nearly impossible to eliminate. Research suggests that the biological impact of the zebra mussel may be dramatic due to: (1) Its ability to filter large quantities of water, thus limiting the food available to other species and (2) its demonstrated potential to extirpate native species common of mussels.

At immediate threat on the St. Croix River are a variety of natural and economic resources, values and interests dependent upon the river including the Northern States King Power Plant at Bayport, several marinas, several communities and municipalities and supporting infrastructure and industry, thousands of individual boatowners and riparian landowners, native fauna and flora and the overall water quality of the river itself.

The 1995 Zebra Mussel Response Plan expands upon activities initiated in 1993 and continued in 1994. The change for the 1995 boating season is the implementation of a zebra mussel free certification/pass program for vessels traveling upstream past the Arcola Sandbar, approximately 5 miles upstream of the north city limits of Stillwater, Minnesota.

The components of this program include:

1. "Passes": Free daily passes will be issued for vessels traveling downstream from upstream of the Arcola Sandbar. These passes will be issued at the Arcola Ranger Station and will allow the vessel to return upstream of the Arcola Sandbar before 12 midnight on the same day the pass is issued. Any vessel not returning on the same day before 12 midnight must be decontaminated at an approved cleaning station and certified free of zebra mussels before proceeding upstream of the Arcola Sandbar. To receive a pass, boat operators must certify that they will not travel downstream of Kinnickinnic Narrows, approximate mile 6 of the St. Croix River.

2. "Certification of Decontamination": Any vessel may travel upstream of the Arcola Sandbar that has been decontaminated at an approved cleaning station and certified free of zebra mussels before proceeding upstream of the Arcola Sandbar. The upstream travel must be done before 1200 midnight on the same day of cleaning and certification.

Vessel cleaning and certification are available at Wolf Marine in Stillwater, MN. At the time of this notice Wolf Marine is the only officially approved cleaning station.

Dated: May 18, 1995.

Bob Marriott,

Acting Chief, Ranger Activities Division.

[FR Doc. 95–12590 Filed 5–22–95; 8:45 am]

BILLING CODE 4310–70–P

Bureau of Reclamation

Yakima River Basin Water Enhancement Project, Yakima, Washington

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent to prepare a programmatic environmental impact statement.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended, the Bureau of

Reclamation (Reclamation) intends to prepare a programmatic environmental impact statement (PEIS) for implementing provisions of the legislation authorizing the Yakima River Basin Water Enhancement Project (Enhancement Project). The purpose of the Enhancement Project is to meet the competing needs of the Yakima River basin through improved water conservation and management, and other appropriate means. This may include reducing water diversions by improving conveyance, distribution, and onfarm irrigation facilities; and changing operations, management, and administration of Yakima River basin water. Conserved water will be used to increase instream flows and provide a more stable irrigation supply. The Enhancement Project legislation also authorizes actions on the Yakima Indian Reservation to benefit the members of the Yakima Indian Nation.

FOR FURTHER INFORMATION CONTACT: Mr. Cline Sweet, Environmental Program Manager, Upper Columbia Area Office, Bureau of Reclamation, PO Box 1749, Yakima, WA 98907–1749; telephone (509) 575–5848.

SUPPLEMENTARY INFORMATION:

Background

Federal involvement in the Yakima River basin began in 1905 with authorization of the first facilities of the Yakima Project. The Yakima Project now consists of seven divisions: A storage division consisting of seven reservoirs and six water service divisions with separate diversion, conveyance, and distribution facilities.

The Yakima River basin is highly dependent upon water from the Yakima River and its tributaries to meet a multitude of economic, environmental, and societal needs. The Yakima Project provides the primary facilities for the regulation and use of basin waters.

Congress first authorized a study of the Enhancement Project in 1979. Phase one of the Enhancement Project was implemented in 1984 when Congress authorized the Secretary of the Interior, through Reclamation, to construct fish passage and protective facilities in the Yakima River basin. The work was performed in partnership with the Bonneville Power Administration, the State of Washington, and others under the auspices of the Fish and Wildlife Program of the Northwest Power Planning Council.

The Columbia River Basin Fish and Wildlife Program adopted by the Northwest Power Planning Council in 1982 identified the Yakima River basin as one of the areas with the greatest potential for the production of salmon and steelhead. With the existing project facilities and operational requirements, maintaining a stable irrigation water supply and instream flows for the maintenance and enhancement of salmon and steelhead in the Yakima River basin is difficult to achieve.

In dry years, the water supply available is allocated among the water users pursuant to entitlements set forth in a Federal District Court Judgment of January 31, 1945 (1945 Consent Decree). The 1945 Consent Decree requires reductions in the water supply available to junior water right holders before any reductions to senior right holders. Additionally, a Federal Court directive on November 28, 1980, requiring Reclamation to make releases from Yakima Project reservoirs to assure adequate instream flows for anadromous fish spawning and rearing further reduces the reliability of irrigation water supplies.

Current Activities

The Enhancement Project legislation established the Yakima River Basin Water Conservation Program which is central to balancing the competing demands on the basin's water supply. This voluntary program will reduce demands on the available water supply by promoting conservation measures to improve:

- The efficiency of water delivery and use.
- Instream flows for fish and wildlife.
- The reliability of the irrigation water supply.

The actual measures that will be adopted depend on the preparation of water conservation plans detailing what can be done. Cost effectiveness will be considered and separate NEPA compliance will be completed when recommending water conservation actions for implementation. The water conservation measures will occur in steps over a period of years providing the opportunity to monitor, evaluate, and adjust subsequent measures.

The legislation also directs the Secretary of the Interior to establish a conservation advisory group, in consultation with the State of Washington, the Yakama Indian Nation, the Yakima River basin irrigators, and other interested parties. A charter for the group has been drafted and nominees are being sought.

The legislation was developed by a consortium of local, tribal, State, and Federal entities involved with water resource activities in the basin and is the result of a consensus building effort to structure an acceptable, comprehensive approach to the basin's water problems. An extensive scoping effort will be conducted by mail along with public scoping sessions which will be scheduled at a later date.

Alternative Measures

The PEIS will serve as an umbrella document to ensure that the interaction and cumulative effects of all activities proposed for implementation under Title XII of the Act of October 31, 1994 (Pub. L. 103–434), which authorized the Enhancement Project, are addressed. The provisions and measures for the legislation will set the limits on activities to be evaluated in the PEIS.

Two major alternatives are being considered: action, i.e., implementing the legislation, and no action. The action alternative will be an incremental analysis showing impacts at different levels of implementation of project components. Separate NEPA analyses addressing various alternatives will be conducted for site specific actions not covered in sufficient detail in the PEIS.

Potential Federal Action

Reclamation is seeking funding to implement Public Law 103–434. The draft PEIS is expected to be completed in June of 1996.

Anyone interested in more information concerning the study, or who has information concerning the study or suggestions as to significant environmental issues, should contact Mr. Sweet as provided above.

Dated: April 27, 1995.

John W. Keys, III,

Regional Director, Pacific Northwest Region.

[FR Doc. 95–12559 Filed 5–22–95; 8:45 am]

BILLING CODE 4310–94–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–55 (Sub-No. 506X)]

CSX Transportation, Inc.—Abandonment Exemption—in Fannin County, GA

CSX Transportation, Inc. (CSXT), has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon approximately 14.23 miles of rail line extending between milepost LKX–382.47 at McCaysville and milepost LKX–396.7 at Blue Ridge, in Fannin County, GA.

CSXT has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on June 22, 1995 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by June 2, 1995. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by June 12, 1995, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: Charles M. Rosenberger, CSX Transportation, Inc., 500 Water Street J150, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

CSXT has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by May 26, 1995. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: May 16, 1995.

By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–12554 Filed 5–22–95; 8:45 am]

BILLING CODE 7035–01–P

[1] A stay will be issued routinely where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Environmental Analysis in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental grounds is encouraged to file promptly so that the Commission may act on the request before the effective date.

[2] See *Exempt. of Rail Abandonment Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept late-filed trail use statements so long as it retains jurisdiction.

DEPARTMENT OF JUSTICE

Notice of Lodging of Settlement Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on May 15, 1995 a proposed Joint Stipulation And Order of Dismissal in *United States* v. *Jeffrey M. Kanter and Kanter Cars, Inc.* Civil Action No. 1:95 CV 1073 was lodged with the United States District Court for the Northern District of Ohio. This Joint Stipulation And Order of Dismissal represents a settlement of claims against Jeffrey M. Kanter and Kanter Cars, Inc. for violations of the Clean Air Act.

On May 15, 1995, the United States filed a Complaint pursuant to Sections 204 and 205 of the Clean Air Act ("CAA" or "the Act"), 42 U.S.C. 7523 and 7524, for injunctive relief and assessment of civil penalties against Jeffrey M. Kanter and Kanter Cars, Inc. The Complaint alleged that Jeffrey M. Kanter and Kanter Cars, Inc. violated CAA Section 203(a)(1), 42 U.S.C. 7522(a)(1), by manufacturing and selling Citroen 2CV based automobiles which were not covered by certificates of conformity issued under CAA Section 206(a), 42 U.S.C. 7525(a). The United States, Jeffrey M. Kanter, and Kanter Cars, Inc. have reached a settlement which resolves the issues set forth in the Complaint. Under this settlement, Jeffrey M. Kanter and Kanter Cars, Inc. will pay the United States a civil penalty of $4800.00.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Joint Stipulation And Order of Dismissal. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Jeffrey M. Kanter and Kanter Cars, Inc.*, D.J. ref. 90–5–2–1–1870A.

The proposed Joint Stipulation And Order of Dismissal may be examined at the Office of the United States Attorney, Northern District of Ohio, 1800 Bank One Center, 600 Superior Ave, Cleveland, OH 44114–2600 and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. A copy of the proposed Joint Stipulation And Order of Dismissal may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy, please enclose a check in the amount of $2.00 (25 cents per page reproduction costs) payable to the Consent Decree Library.

Joel M. Gross,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–12560 Filed 5–22–95; 8:45 am]

BILLING CODE 4410–01–M

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 95–5]

Request for Comments on the Waiver of Moral Rights in Visual Artworks

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of hearing and request for public comment.

SUMMARY: The Copyright Office is holding a public hearing to solicit comments on the effect of the waiver of moral rights provision of the Visual Artists Rights Act of 1990 (VARA). Section 608 of VARA requires the Copyright Office to study the effect of VARA's waiver provision and to publish its findings. To fulfill the statutory obligations of section 608, the Copyright Office is examining the extent to which authors waive moral rights in their visual artworks under the waiver provision. The Office also will accept written comments.

DATES: The public hearing will be held on Wednesday, June 21, 1995, from 10:00 a.m. to 4:00 p.m. Requests to present oral testimony at the hearing should be received on or before June 16, 1995. Written comments by those persons testifying at the hearing should

be received on or before June 19, 1995. All other written comments must be received on or before July 31, 1995.

ADDRESSES: Interested parties should submit written comments and requests to present oral testimony by mail to Marilyn J. Kretsinger, Acting General Counsel, Copyright Office GC/I&R, P.O. Box 70400, Southwest Station, Washington, D.C. 20024, or by hand delivery to the Office of General Counsel, Copyright Office, James Madison Memorial Building, Room LM 407, First Street and Independence Avenue, S.E., Washington, D.C., or by Telefax: (202) 707–8366. The hearing will be held in Room 414, which is located on the fourth floor of the Library of Congress, James Madison Memorial Building, First Street and Independence Avenue, S.E., Washington, D.C. Written comments and a transcript of the hearing will be available for public inspection in the Office of the General Counsel, Copyright Office, James Madison Memorial Building, Room LM–407, First Street and Independence Avenue, S.E., Washington, D.C.

FOR ADDITIONAL INFORMATION CONTACT: Marilyn J. Kretsinger, Acting General Counsel, Copyright Office GC/I&R, P.O. Box 70400, Southwest Station, Washington, D.C. 20024, Telephone (202) 707–8389. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION: On December 1, 1990, President Bush signed into law the Visual Artists Rights Act (VARA), which was codified as section 106A of title 17 of the United States Code and went into effect on June 1, 1991. VARA grants certain visual artists the moral right of attribution, which is the right to claim or disclaim authorship of a work, and the moral right of integrity, which is the right to prevent any intentional distortion, mutilation or other modification of a work which is prejudicial to the artist's reputation or honor and to prevent the destruction of a work of recognized stature by any intentional or grossly negligent act. VARA also provides that these rights may not be transferred but can be waived.

The waiver provision was the most controversial portion of VARA. Congress was concerned that artists might be compelled to waive their rights of integrity and attribution. This concern is detailed in the House Report:

> The Committee intends to ensure that the waiver provisions serve to facilitate current practices while not eviscerating the protections provided by the proposed law. It is important, therefore, for the Congress to know whether waivers are being automatically obtained in every case involving a covered work of visual art, whether any imbalance in the economic bargaining power of the parties serves to compel artists to waive their rights, and whether the parties are properly adhering to the strict rules governing waiver.

H.R. Rep. No. 514, 101st Cong., 2d Sess. 22 (1990).

To address this concern, when Congress passed VARA it included section 608, requiring the Copyright Office to study the waiver provision to determine whether artists' contracts routinely provide for waiver of moral rights. Specifically, section 608 requires the Copyright Office to study the extent to which the rights conferred by VARA are being waived by visual artists and to present its findings to Congress in an interim report which was submitted on December 1, 1992, and in a final report which must be submitted by December 1, 1995. The Copyright Office is in the process of preparing this final report.

I. Background

On March 1, 1989, the United States acceded to the Paris text of the Berne Convention for the Protection of Literary and Artistic Works. Article 6*bis* of the Berne Convention requires countries to provide protection of the moral rights of paternity and integrity.[1] During the debate on adherence to the Berne Convention, some argued that the United States needed to enact specific moral rights legislation. The vast majority of those seeking adherence contended that existing laws, both Federal and State, statutory and common, were sufficient to meet the requirements of the Berne Convention. Congress agreed with the majority and therefore did not include any substantive moral rights provisions in the Berne Convention Implementation Act. H.R. Rep. No. 514, 101st Cong., 2d Sess. 7–8 (1990).

Congress acknowledged that adherence to the Berne Convention did not end the debate about whether the United States should adopt artists' rights laws and it did enact such a law in 1990; through VARA it created a uniform Federal system of rights for certain visual artists.

The scope of VARA is very narrow; it applies only to works of fine art which are identified as "works of visual art." A "work of visual art" as defined in the Copyright Code includes any painting, drawing, print, sculpture, or still photographic image produced for exhibition purposes, produced in a single copy or an edition of 200 or fewer if signed and consecutively numbered by the artist. 17 U.S.C. 101 (1990). VARA specifically excludes works for hire, motion pictures and other audiovisual works, and works of applied art.[2]

If a work qualifies as a "work of visual art" the author of that work is granted two rights: the right of attribution and the right of integrity. The right of attribution gives the visual artist the right to be named as author of a work; the right to prevent use of his or her name as author of a work he or she did not create; and the right to prevent the use of his or her name if the work has been distorted, mutilated or modified in a manner that would be prejudicial to the artist's honor or reputation. 17 U.S.C. 106A(a) (1990). The right of integrity allows the artist to prevent intentional distortion or modification of the work that would be prejudicial to the artist's honor or reputation, and to prevent destruction of a work of recognized stature. *Id.*

The rights granted by VARA are not absolute. The integrity rights are subject to special provisions if the work of visual art is incorporated into or otherwise made part of a building. Where such a work of visual art cannot be removed from the building without being damaged or otherwise modified, the moral right of integrity in section 106A will apply unless the work was installed in the building before the effective date of VARA or the artist signed a written agreement acknowledging that the work may be damaged or modified when it is removed from the building. 17 U.S.C. 113(d)(1) (1990). If the work of visual art can be removed from the building without damage or modification, the moral rights in section 106A will apply unless the owner of the building complies with special notice requirements. See 17 U.S.C. 113(d)(2) (1990).

Another limitation on the rights granted by VARA concerns their duration. Despite Berne's general requirement that the term of protection for moral rights be at least coextensive with the term of protection for economic

[1] This provision was added in the Rome Conference (1928). As part of the VARA study, the Copyright Office is examining the moral rights protection, if any, in selected countries and also looking at case law and practices in those countries. This overview should provide some insight into international practice on waiver of moral rights.

[2] It also explicitly excludes posters, maps, globes, charts, technical drawings, diagrams, models, books, magazines, newspapers, periodicals, data bases, electronic information services, electronic publications and similar publications, any merchandising item or advertising, promotional, descriptive, covering, or packaging material or container, and any portion or part of any of these items. Works not entitled to copyright protection under title 17 are also excluded. 17 U.S.C. 101 (1990).

rights, which is the life of the author and fifty years after the author's death, VARA rights endure only for the life of the artist, or where the work is a joint work, the life of the last surviving artist. 17 U.S.C. 106A(d) (1990).

The subject of the study is waiver of the rights of integrity and attribution. Congress explicitly provided that the moral rights of integrity and attribution may be waived. 17 U.S.C. 106A(e) (1990). For a waiver to be valid it must be expressly agreed to in a written instrument that is signed by the artist and that specifically identifies the work and the uses of the work to which the waiver applies. 17 U.S.C. 106A(e)(1) (1990). A waiver will apply only to the work and uses identified in the written instrument. *Id.*[3] In the case of a joint work, a valid waiver by one author constitutes a waiver of the rights for all joint authors. *Id.*

The Copyright Office published a **Federal Register** notice on June 10, 1992, requesting information and inviting public comment on the moral rights waiver provision in VARA. 57 FR 24659 (1992). In response to this notice, the Copyright Office received a total of seven comments.[4] Although the comments were helpful, most of them were very brief. At the time of the interim report, VARA had been in effect for only two years and there were few, if any, measurable effects of the waiver provision. The comments of the seven parties are summarized in the interim report, submitted to Congress on December 1, 1992.

II. Current Status of the Copyright Office Study

The results of the interim study demonstrated that obtaining information from artists on their experience with the waiver provision for the final report would be a major challenge. The Copyright Office thus began an extensive outreach program aimed at getting factual information on the effects of VARA's waiver provision.

To reach individual artists, the Copyright Office developed a survey questionnaire designed to reveal the effect of VARA waiver provisions on the visual arts community. The survey was modeled in part after the "Volunteer Lawyers for the Arts Visual Artists Rights Act of 1990 Questionnaire" submitted by the Massachusetts Volunteer Lawyers for the Arts in response to the June 1992 **Federal Register** notice.

One goal of the survey was to determine whether waiver of moral rights provisions are routinely included in art contracts; and, if so, whether this occurs because of the parties' relative bargaining power or for other reasons. Another goal of the survey was to ascertain whether waivers occur only in the context of a written contract, as required by statute, or whether waivers also occur orally.

Following review of the survey by a group consisting of copyright experts and representatives of the art community, the Office revised and distributed the survey questionnaire to hundreds of visual art-related organizations. These organizations consisted primarily of state art councils, volunteer lawyers for the arts associations, and art schools and universities. Altogether, the Copyright Office mailed out more than 6,800 surveys. The actual number of surveys distributed was far greater, however, because many of the surveys were duplicated by the recipient organizations and distributed to still others in the visual arts community.

III. Preliminary Analysis of VARA Survey

By May 15, 1995, the Copyright Office had received 1063 completed surveys. Our final report to Congress will include a detailed analysis of survey results, but a preliminary analysis of 985 surveys received by mid-April reveals the following data.

A. Knowledge of VARA

Even five years after VARA's enactment, survey results indicated that educating artists about their new moral rights is perhaps as critical as the Congressional intent to study the extent to which artists waive these rights. The survey, therefore, fulfilled an educational need. Before receiving the survey, 73 percent of all respondents were aware of moral rights in certain works of visual art. Fifty-eight percent, however, previously were unaware such rights could be waived, and sixty-six percent did not know that waiver requires an express, written agreement. Seventy-nine percent of all respondents said they have not seen contracts that include a waiver provision. Eight percent have waived moral rights in a signed contract, but a full 77 percent have not, and five percent said they did not know.

B. Respondent Profile

The majority of responses were from artists. Ninety percent of respondents believed they were covered by the survey's definition of "visual artist" (i.e., one who creates a "work of visual art" as defined by VARA). Of these, 58 percent identified themselves as painters (an artist could check as many media as applied). Only eight percent of respondents were not VARA artists: Of these, five percent created art works not covered by VARA, another two percent were art professors, and the remaining were others associated with the arts.

Most respondents did not earn a significant income from their art. More than half have worked under commission, but 68 percent earned less than $10,000 from their art in an average year. Five percent claimed income between $25,000–$40,000, and nine percent said their art-related income exceeded that amount. Roughtly half were represented by a gallery or agent, but 42 percent had no repression.

C. Willingness to Waive Moral Rights

Forty-four percent of artists indicated they were unwilling to waive moral rights in the future. Seven percent would waive such rights; 36 percent did not know whether they would waive these rights, and 123 artists declined to say.

Of seventy-nine individuals who had waived the right of integrity or attribution in a signed contract, 42 said they did so to gain exposure and 37 said they did so to make a sale. Eleven percent had declined a contract because it included a waiver clause, and 13 percent had insisted such a clause be struck before signing. Most artists (58%) did not know whether rejecting a waiver would cost them the contract, but some (15%) thought it would. Eighty-one percent had never been pressured to waive moral rights, but six percent had.

IV. Subject Matter To Be Addressed at the Public Hearing

To supplement the information gathered through the survey, the Copyright Office will hold a public hearing to solicit comments on the effect of the waiver of moral rights provision in the Visual Artists Rights Act. We anticipate that the hearing will provide an opportunity to obtain more information on existing practices relating to waivers of moral rights in visual art.

The Copyright Office is also interested in studying actual or model contracts that contain language concerning waiver

[3] VARA does not permit blanket waivers and prohibits the specific person to whom the waiver is made from transferring the waiver to a third party. H.R. Rep. No. 514, 101st Cong., 2d Sess. 18–19 (1990).

[4] Comments were received from the Nebraska Arts Council; Professor of Law, John Henry Merryman; the Capital Arts Center/BG–WC Arts Commission; the General Services Administration; the Committee for America's Copyright Community; Volunteer Lawyers for the Arts of Massachusetts, Inc.; and Volunteer Lawyers for the Arts of New York.

of moral rights. We would like to see examples of as many visual art contracts as possible, especially those with waivers, and would appreciate any party sending us such contracts.

The Copyright Office specifically invites comments on the following questions:

Awareness of rights. To what extent are artists aware of VARA and the rights of integrity and attribution provided by VARA? Has awareness of VARA increased? Please give examples.

Extent of waiver. Are waiver of moral rights provisions routinely included in artists' contracts? Do parties that obtain waiver of moral rights in a contract exercise the waiver or is a waiver secured merely as an "insurance policy"? Does waiver vary depending on the nature of the work? For example, are mobiles and sculptures treated differently than paintings and prints? Does it vary based on the location of the work, for example, murals that are part of buildings? What experiences have artists had with owners of buildings? Does it vary depending on the purchaser? Does it matter whether the purchaser is a national or regional institution, an owner of a public or private building, an art collector or investor? Please give examples where possible.

Contract specifics. What is the economic effect of a waiver in the course of contract negotiations? Is there any evidence on how much a waiver is worth—that is, how much more a purchaser would pay if the artist waived the right? Are there proportionately more waivers given for artistic works that are included in buildings than for other types of works? When a waiver is included in a contract, does the contract specifically identify the work and use for which the waiver applies? What types of contracts include waivers: contracts for sale of work? contracts for transfer of copyright ownership? contracts for commissioned works? contracts that include only a waiver provision? If a waiver is included in a contract, is that waiver limited in duration? If limited in duration, what is the typical term of the waiver?

Artists' concerns. What are the factors artists consider when determining whether to agree to a waiver of moral rights in a contract? Describe any instances where artists were coerced into waiving their moral rights. Has VARA had an effect on commission of visual art?

Do artists have unequal bargaining power when dealing with established galleries and other organizations? If the artist's selling power (demand for his or her works) or reputation affects or determines whether or not waiver will be required, how much experience or how well know does the artist have to be in order to avoid waiver? Give specific examples, if possible.

Experience in other countries. What types of experiences have artists had with moral rights abroad? Are artists asked to waive their moral rights in contracts entered into in foreign countries? If so, in what countries?

Experience with U.S. law. Should moral rights be waivable? Should the provisions of the Visual Artists Rights Act be amended or modified in any way?

The Copyright Office is interested in receiving public comment on these issues and any other issues relevant to the VARA study.

Dated: May 18, 1995.

Marybeth Peters,

Register of Copyrights.

[FR Doc. 95–12606 Filed 5–22–95; 8:45 am]

BILLING CODE 1410-30-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 95–031]

National Environmental Policy Act; International Space Station Program

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of intent to prepare a Tier 2 environmental impact statement (EIS) and conduct scoping for the assembly and operation of the proposed International Space Station (ISS) Program.

SUMMARY: The National Aeronautics and Space Administration, in accordance with the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500–1508), and NASA's policy and procedures (14 CFR Part 1216 Subpart 1216.3), intends to prepare a Tier 2 EIS for the ISS Program. The proposed action by NASA is to continue to provide U.S. participation in the assembly and operation of the ISS. The alternative is cancellation of the ISS Program, specifically, the "No Action" alternative. The Tier 2 EIS will focus on those areas of the ISS Program which have changed substantially since the Tier 1 EIS was prepared. This includes modifications to the space station itself, its assembly and operation, and an assessment of the probability and consequences of reentry of the station into Earth's atmosphere.

DATES: Interested parties are invited to submit written comments to NASA on or before July 7, 1995, to ensure full consideration during the scoping process.

ADDRESSES: Comments should be in writing and addressed to Mr. David Ruszczyk, NASA Johnson Space Flight Center, Code OF, Houston, Texas 77058–3696.

FOR FURTHER INFORMATION CONTACT: Mr. David Ruszczyk, 713–244–7756.

SUPPLEMENTARY INFORMATION: NASA issued the Final Tier 1 Environmental Impact Statement for Space Station Freedom, March 1991 (hereinafter referred to as the "Tier 1 EIS"). The Tier 1 EIS was prepared as part of the decision process to determine whether to proceed with the development, assembly, and operation of a human occupied space station in cooperation with the Canadian Space Agency, the European Space Agency, and Japan's National Space Development Agency. Several programmatic and design configuration alternatives were considered, along with the alternative to take no action. The program decision, made on the basis of the Tier 1 EIS and other relevant documents, was to proceed with full scale design and development of the concept known as Space Station Freedom.

At the time the Tier EIS was prepared, detailed design inforfnation was not available. As a consequence, some issues relating to the potential environmental effects of Space Station Freedom were deferred to the Tier 2 EIS. These issues included the impacts of any significant design modifications that might be incorporated as the design matured; and a quantitative analysis of the probability and consequences of accidental or uncontrolled reentry into the Earth's atmosphere during assembly and operation. Other impacts that were reserved include venting of nontoxic gases during station operation, and change to a hydrazine propulsion system.

On March 9, 1993, the President directed NASA to undertake a major redesign of the space station program in such a manner that major reductions in the projected costs of Space Station Freedom could be realized. An Advisory Committee on the Redesign of the Space Station was chartered to provide advice with respect to the redesign options for the U.S. space station program. The results of the redesign studies were presented in the Space Station Redesign Team Final Report to the Advisory Committee on the Redesign of the Space Station, dated June 1993. The result was the currently proposed ISS, which includes design modifications and agreements to include Russia as a partner, and incorporates Russian hardware and capabilities into the program.

The proposed action considered in this Tier 2 EIS is to continue the implementation of the U.S. contribution to the overall effort to assemble and operate the ISS. The remaining alternative involves the "No Action" alternative (*i.e.*, cancellation of U.S. participation in the ISS). Significant design changes that have occurred since the Tier 1 EIS include, but are not necessarily limited to, the following: The number of research laboratories on the space station has been increased from three to six; the number of logistics modules has been increased from one to two; the pressurized volume has been almost doubled; the crew size has been increased from four to six; and the orbital inclination has been changed from 28.5 degrees to 51.6 degrees, permitting space station access by Russian launch vehicles and additional mission control capabilities from Russia's mission control center. The ISS contemplates 15 Russian launches, increasing the total number of launches through completion of assembly from 32 to 44, and reducing the number of U.S. launches from 29 to 27, one European launch, and one launch yet to be determined. Accordingly, resupply flights to the completed ISS will now include Russian as well as U.S. flights; whereas Space Station Freedom was to be resupplied exclusively by U.S. Space Shuttle flights. The planned U.S. launches will not include any expendable launch vehicles; only the Space Shuttle will be used. However, the U.S. may use expendable launch vehicles in a contingency or backup role.

The design of the ISS has progressed to the point where it is now possible to conduct a quantitative analysis of the probability and consequences of accidental or uncontrolled reentry into the Earth's atmosphere. The Tier 2 EIS will assess the probabilities and potential impacts associated with accidental or uncontrolled reentry. The Tier 2 EIS also will address decommissioning alternatives, including the plan presented in the Tier 1 EIS.

Other issues to be addressed in the Tier 2 EIS include, but will not necessarily be limited to, the following: the cumulative effects of the U.S. launches associated with the assembly and operation of the ISS; the change to a Unsymmetrical Dimethylhydrazine/ Nitrogen Tetroxide propulsion system; and the venting and outgassing of nontoxic gases from the ISS. The Tier 2 EIS will address environmental effects on the United States and the integrated ISS impacts on the global commons.

Written public input and comments on the range of alternatives being considered and the potential environmental issues related to the assembly and the operation of the International Space Station are hereby solicited.

Dated: May 12, 1995.

Benita A. Cooper,

Associate Administrator for Management Systems and Facilities.

[FR Doc. 95–12553 Filed 5–22–95; 8:45 am]

BILLING CODE 7510-01-M

[Notice 95–032]

Intent To Grant a Partially Exclusive License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant a patent license.

SUMMARY: NASA hereby gives notice of intent to grant MERCO Incorporated, 1667 Cole Boulevard, Suite 400, Golden, Colorado 80401, a partially exclusive license to practice the invention protected by U.S. Patent No. 5,128,797, "NON-MECHANICAL OPTICAL PATH SWITCHING AND ITS APPLICATION TO DUAL BEAM SPECTROSCOPY INCLUDING GAS FILTER CORRELATION RADIOMETRY," which was issued on July 7, 1992, by the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The partially exclusive license will contain appropriate terms and conditions to be negotiated in accordance with the Department of Commerce patent licensing regulations (37 CFR 404). NASA will negotiate the final terms and conditions and grant the license unless, within 60 days of the date of this notice, the Director of Patent Licensing receives written objections to the grant, together with supporting documentation. The Director of Licensing will review all written responses to the notice and then recommend to the Associate General Counsel (Intellectual Property) whether to grant the license.

DATES: Comments to the notice must be received by July 24, 1995.

ADDRESSES: National Aeronautics and Space Administration, Code GP, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Harry Lupuloff, NASA, Director of Patent Licensing, (202) 358–2041.

Dated: May 16, 1995.

Edward A. Frankle,

General Counsel.

[FR Doc. 95–12552 Filed 5–22–95; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL INSTITUTE FOR LITERACY

National Institute for Literacy Advisory Board; Meeting

AGENCY: National Institute for Literacy Advisory Board, National Institute for Literacy.

ACTION: Notice of meeting.

SUMMARY: This Notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Institute for Literacy Advisory Board (Board). This notice also describes the function of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend the meeting.

DATES AND TIMES: June 15, 1995, 9 a.m. to 4 p.m.

ADDRESSES: World Education, 210 Lincoln Street, 6th Floor, Boston, Massachusetts, 02111.

FOR FURTHER INFORMATION CONTACT: Sharyn M. Abbott, Acting Executive Officer, National Institute for Literacy, 800 Connecticut Avenue, NW, Suite 200, Washington, DC 20006. Telephone (202) 632–1503.

SUPPLEMENTARY INFORMATION: The Board is established under Section 384 of the Adult Education Act, as amended by Title I of Public Law 102–73, the National Literacy Act of 1991. The Board consists of ten individuals appointed by the President with the advice and consent of the Senate. The Board is established to advise and make recommendations to the Interagency Group, composed of the Secretaries of Education, Labor, and Health and Human Services, which administers the National Institute for Literacy (Institute). The Interagency Group considers the Board's recommendations in planning the goals of the Institute and in the implementation of any programs to achieve the goals of the Institute. Specifically, the Board performs the following functions: (a) Makes recommendations concerning the appointment of the Director and the staff of the Institute; (b) provides independent advice on operation of the Institute; and (c) receives reports from the Interagency Group and the Director of the Institute. In addition, the Institute consults with the Board on the award of

fellowships. The Board will meet in Boston, Massachusetts on June 15, 1995 from 9 a.m. to 4 p.m. The meeting of the Board is open to the public. The agenda includes discussion of the Institute's plans and priorities for program years 1995 and 1996; the status of new Board member nominations; and other relevant Institute matters. Records are kept of all Board proceedings and are available for public inspection at the National Institute for Literacy, 800 Connecticut Avenue, NW, Suite 200, Washington, DC 20006 from 8:30 a.m. to 5 p.m.

Dated: May 17, 1995.

Andrew J. Hartman,

Executive Director, National Institute for Literacy.

[FR Doc. 95–12536 Filed 5–22–95; 8:45 am]

BILLING CODE 6055–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from May 1, 1995, through May 12, 1995. The last biweekly notice was published on May 10, 1995 (60 FR 24904).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By June 23, 1995, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to (Project Director): petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Maricopa County, Arizona

Date of application for amendments: April 6, 1995.

Brief description of amendments: The proposed amendment involves changes in personnel titles, implementation of line item improvements delineated in Generic Letter 93–07, "Modification of the Technical Specification Administrative Control Requirements for Emergency and Security Plans," changes in the Plant Review Board, and miscellaneous minor changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

These changes involve (1) minor changes in the organization of PVNGS, (2) line item improvements recommended by the NRC, or (3) clarification or corrections to existing specifications. It is expected that the organizational changes will have a positive effect on the conduct of plant operations and safety-related work. Functions which are necessary to operate the facility safely and in accordance with the operating licenses, remain in the new organization. The line item improvements to the Technical Specifications will not affect the safe operation of the plant and continue to ensure proper control of administrative activities. The proposed changes will not affect the operation of structures, systems and components, and will not reduce programmatic controls such that plant safety would be affected. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) The proposed changes do not create the possibility of a new or different kind of accident from any accident previously analyzed.

The proposed changes will not affect the operation of structures, systems and components, and will not reduce programmatic controls such that plant safety would be affected. The changes in the organization and as a result of line item improvements will continue to provide necessary oversight and control of administrative processes. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

(3) The proposed changes do not involve a significant reduction in a margin of safety.

These changes are administrative and will not diminish any organizational or administrative controls currently in place. The proposed changes will not affect the operation of structures, systems and components, and will not reduce programmatic controls such that plant safety would be affected. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

Local Public Document Room location: Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004.

Attorney for licensee: Nancy C. Loftin, Esq., Corporate Secretary and Counsel, Arizona Public Service Company, P.O. Box 53999, Mail Station 9068, Phoenix, Arizona 85072–3999.

NRC Project Director: William H. Bateman.

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Unit Nos. 1, 2, and 3, Maricopa County, Arizona

Date of amendment requests: April 18, 1995.

Description of amendment requests: The proposed Technical Specification amendments would revise the surveillance requirements for Technical Specification 3/4.4.4, "Steam Generators," and the associated Bases. These amendments would allow the installation of tube sleeves as an alternative to plugging defective steam generator tubes.

Basis for proposed no significant hazards consideration determination:

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment to permit the use of steam generator tube sleeves as an alternative to tube plugging is a safe and effective repair procedure that does not require removing a tube from service. Mechanical strength, corrosion resistance, installation methods, and inservice inspection techniques of sleeves have been shown to meet NRC acceptance criteria.

Analytical verifications were performed using design and operating transient parameters selected to envelope loads imposed during normal operating and accident conditions. Fatigue and stress analysis of sleeved tube assemblies were completed in accordance with the requirements of Section III of the ASME Code. The results of qualification testing, analysis and plant operating experience at other facilities demonstrates that the sleeving process is an acceptable means of maintaining steam generator tube integrity. The sleeve configuration has been designed and analyzed in accordance with the structural margins specified in Regulatory Guide (RG) 1.121. Furthermore, the installed sleeve will be monitored through periodic inspections on a sample basis with eddy current techniques. A sleeve-specific plugging margin, per the recommendations of RG 1.121, has been specified with appropriate allowances for NDE (nondestructive examination) uncertainty and defect growth rate.

The consequences of accidents previously analyzed are not increased as a result of sleeving activities. The hypothetical failure of the sleeve would be bounded by the current steam generator tube rupture analysis contained in the PVNGS (Palo Verde Nuclear Generating Station) UFSAR (updated final safety analysis report). Due to the slight reduction in diameter caused by the sleeve wall thickness, it is expected that the primary release rates would be less than assumed for the steam generator tube rupture analysis, and therefore would result in lower total primary fluid mass release to the secondary system. Additionally, further conservatism is introduced if the break were postulated to occur at a location on the tube higher than the location where a sleeve is installed. The overall effect would be reduced steam generator tube rupture release rates. The minimal reduction in flow area associated with a tube sleeve has no significant affect on steam generator performance with respect to heat transfer or system flow resistance and pressure drop. The installation of sleeves rather than plugging also maintains a greater heat transfer surface in the steam generator. In any case, the impacts are bounded by evaluations which demonstrate the acceptability of tube plugging which totally removes the tube from service. Therefore, in comparison to plugging, tube sleeving is considered a significant improvement with respect to steam generator performance. The cumulative impact of multiple sleeved tubes was evaluated to ensure the effects remain within the analytical design bases.

Recent industry experience with forced shutdown events associated with tube failures at sleeve junctions was assessed by ASP and ABB–CE. The root cause of these events has been attributed to the lack of proper post-installation stress relief and/or the imposition of high stresses due the tube growth restrictions at locked tube support. The material and design of the PVNGS steam generator supports minimizes the potential for locked supports. The tube supports are of eggcrate design and are constructed of ferritic stainless steel. The large flow area in the eggcrate design provides better irrigation and reduces the potential for steam blanketing, therefore, the tube-to-tube support crevices are less likely to be blocked by crud, boiler water deposits and corrosion products. Since the support material is type 409 ferritic stainless steel, it is not susceptible to magnetite corrosion which has resulted in denting and lockup at plants with carbon steel supports. These conclusions have been substantiated via tube pull activities conducted in PVNGS Unit 2. Although ABB–CE does not require post-weld heat treatment in all applications, APS will require that a post-weld stress relief be conducted for all sleeve installations.

APS has incorporated an integrated leakage monitoring program, utilizing equipment, procedure upgrades and administrative shutdown limits significantly lower than Technical Specification requirements. The program is designed to provide plant operators with the ability to detect and respond to changes in primary-to-secondary leakage and shutdown the unit prior to a significant leak or steam generator tube rupture, should sleeve or tube degradation exceed expected values. The program is designed to reduce the probability of steam generator tube rupture events.

Therefore, based on the above, the proposed amendment does not significantly increase the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously analyzed.

A sleeved steam generator tube performs the same function in the same passive manner as an unsleeved steam generator tube. Tube sleeves are designed, qualified, and maintained under the stress and pressure limits of Section III of the ASME Code and Regulatory Guide 1.121.

The installation of the sleeve, including weld and welder qualification and nondestructive examination (NDE), meets or exceeds the requirements of ASME Section XI. Three types of NDE are conducted. Ultrasonic Testing (UT) is performed to verify adequacy of the tube to sleeve weld assuring proper fusion. Eddy current testing (ET) is performed following each installation to establish baseline data for each sleeve in order to monitor future degradation of the primary to secondary pressure boundary. Visual inspections may be performed to verify or ascertain the mechanical and structural condition of a weld. Critical conditions which are checked include weld width and completeness, and the absence of visibly noticeable indications such as cracks, pits, and burn through.

ABB-Combustion Engineering Inc., Report CEN–613–P, "Arizona Public Service Co., Palo Verde Units 1, 2, and 3, Steam Generator Tube Repair Using Leak Tight Sleeves," Revision 01, January 1995, demonstrates that the repair of degraded steam generator tubes using tube sleeves will result in tube bundle integrity consistent with the original design basis. An extensive analysis and corrosion and mechanical test programs were undertaken to prove the adequacy of tube sleeve repair. The proposed amendments have no significant effect on the configuration of the plant, and the change does not effect the way in which the plant is operated. Based upon the results of the analytical and test programs described in the ABB Combustion Engineering Inc. report, the tube sleeve fulfills its intended function and meets or exceeds established design criteria. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

Evaluation of the sleeved tubes indicates no detrimental effects on the sleeve-tube assembly resulting from reactor system flow, coolant chemistries, or thermal and pressure conditions. Structural analyses of the sleeve-tube assembly, using demonstrated margins of safety, have established sleeve-tube integrity under normal and accident conditions. Structural analyses have been performed for sleeves which span the tube at the top of the tubesheet and which span the flow distribution plate or eggcrate support. Mechanical testing has been performed to support the analyses. Corrosion testing of typical sleeve-tube assemblies has been completed and reveals no evidence of sleeve or tube corrosion considered detrimental under anticipated service conditions.

Based upon the testing and analyses performed, the installation of tube sleeves will not result in a significant reduction in a margin of safety.

Steam generator tube integrity is maintained under the same limits for sleeved tubes as for unsleeved tubes, i.e., Section III of the ASME Code and Regulatory Guide 1.121. The portions of the installed sleeve assembly which represents the reactor coolant pressure boundary can be monitored for the initiation and progression of sleeve/tube wall degradation, thus satisfying the requirements of Regulatory Guide 1.83. The degradation limit at which a sleeve/tube boundary is considered inoperable has been analyzed in accordance with Regulatory Guide 1.121 and is specified. Eddy current detectability of flaws has been verified by ABB Combustion Engineering. The Technical Specifications continue to require monitoring and restriction of primary to secondary system leakage through the steam generators. A conservative integrated leakage program employed by APS provides reasonable assurance than an orderly unit shutdown will occur prior to a significant increase in leakage due to failure of a sleeved or unsleeved tube. The minimal reduction in reactor coolant system flow, due to sleeving, is considered to have an insignificant impact on steam generator operation during normal operation or accident conditions and is bounded by tube plugging evaluations. Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on that review, it appears that the three standards of § 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004.

Attorney for licensees: Nancy C. Loftin, Esq., Corporate Secretary and Counsel, Arizona Public Service Company, P.O. Box 53999, Mail Station 9068, Phoenix, Arizona 85072–3999.

NRC Project Director: William H. Bateman.

Commonwealth Edison Company, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendment request: February 16, 1993, as supplemented by letter dated May 2, 1995.

Description of amendment request: As a result of findings by a Diagnostic Evaluation Team inspection performed by the NRC staff at the Dresden Nuclear Power Station in 1987, Commonwealth Edison Company (ComEd, the licensee) made a decision that both the Dresden Nuclear Power Station and sister site Quad Cities Nuclear Power Station, needed attention focused on the existing custom Technical Specifications (TS) used.

The licensee made the decision to initiate a Technical Specification Upgrade Program (TSUP) for both Dresden and Quad Cities. The licensee evaluated the current TS for both Dresden and Quad Cities against the Standard Technical Specifications (STS) contained in NUREG–0123, "Standard Technical Specifications General Electric Plants BWR/4." The licensee's evaluation identified numerous potential improvements such as clarifying requirements, changing TS to make them more understandable and to eliminate interpretation, and deleting requirements that are no longer considered current with industry practice. As a result of the evaluation, ComEd has elected to upgrade both the Dresden and Quad Cities TS to the STS contained in NUREG–0123.

The TSUP for Dresden and Quad Cities is not a complete adaption of the STS. The TSUP focuses on (1) integrating additional information such as equipment operability requirements during shutdown conditions, (2) clarifying requirements such as limiting conditions for operations and action statements utilizing STS terminology, (3) deleting superseded requirements and modifications to the TS based on the licensee's responses to Generic Letters (GL), and (4) relocating specific items to more appropriate TS locations.

The February 16, 1993, and May 2, 1995, applications proposed to upgrade only Section 3/4.10 (Refueling Operations) of the Dresden and Quad Cities TS.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated because:

In general, the proposed amendment represents the conversion of current requirements to a more generic format, or the addition of requirements which are based on the current safety analysis. Implementation of these changes will provide increased reliability of equipment assumed to operate in the current safety analysis, or provide continued assurance that specified parameters remain within their acceptance limits, and as such, will not significantly increase the probability or consequences of a previously evaluated accident.

Some of the proposed changes represent minor curtailments of the current requirements which are based on generic guidance or previously approved provisions for other stations. The proposed amendment for Dresden and Quad Cities Station's Technical Specification Section 3/4.10 are based on STS guidelines or later operating BWR plant's NRC accepted changes. Any deviations from STS requirements do not significantly increase the probability or consequences of any previously evaluated accidents for Dresden or Quad Cities Stations. The proposed amendment is consistent with the current safety analyses and has been previously determined to represent sufficient requirements for the assurance and reliability of equipment assumed to operate in the safety analysis, or provide continued assurance that specified parameters remain within their acceptance limits. As such, these changes will not significantly increase the probability or consequences of a previously evaluated accident.

The associated systems that make up the Refueling Systems are not assumed in any safety analysis to initiate any accident sequence for Dresden or Quad Cities Stations; therefore, the probability of any accident previously evaluated is not increased by the proposed amendment. In addition, the proposed surveillance requirements for the proposed amendments to these systems are generally more prescriptive than the current requirements specified within the Technical Specifications. The additional surveillance requirements improve the reliability and availability of all affected systems and therefore, reduce the consequences of any accident previously evaluated as the probability of the systems outlined within Section 3/4.10 of the proposed Technical Specifications, performing its intended function is increased by the additional surveillances.

Create the possibility of a new or different kind of accident from any previously evaluated because:

In general, the proposed amendment represents the conversion of current requirements to a more generic format, or the addition of requirements which are based on the current safety analysis. Others represent minor curtailments of the current requirements which are based on generic guidance or previously approved provisions for other stations. These changes do not involve revisions to the design of the station. Some of the changes may involve revision in the operation of the station; however, these provide additional restrictions which are in accordance with the current safety analysis, or are to provide for additional testing or surveillances which will not introduce new failure mechanisms beyond those already considered in the current safety analyses.

The proposed amendment for Dresden and Quad Cities Station's Technical Specification Section 3/4.10 is based on STS guidelines or later operating BWR plants' NRC accepted changes. The proposed amendment has been reviewed for acceptability at the Dresden and Quad Cities Nuclear Power Stations considering similarity of system or component design versus the STS or later operating BWRs. Any deviations from STS requirements do not create the possibility of a new or different kind of accident previously evaluated for Dresden or Quad Cities Stations. No new modes of operation are introduced by the proposed changes, considering the acceptable operational modes in present specifications, the STS, or later operating BWRs. Surveillance requirements are changed to reflect improvements in technique, frequency of performance or operating experience at later plants. Proposed changes to action statements in many places add requirements that are not in the present technical specifications or adopt requirements that have been used successfully at other operating BWRs with designs similar to Dresden and Quad Cities. The proposed changes maintain at least the present level of operability. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

The associated systems that make up the Refueling Systems are not assumed in any

safety analysis to initiate any accident sequence for Dresden or Quad Cities Stations. In addition, the proposed surveillance requirements for affected systems associated with the Refueling Systems are generally more prescriptive than the current requirements specified within the Technical Specifications; therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

Involve a significant reduction in the margin of safety because:

In general, the proposed amendment represents the conversion of current requirements to a more generic format, or the addition of requirements which are based on the current safety analysis. Others represent minor curtailments of the current requirements which are based on generic guidance or previously approved provisions for other stations. Some of the later individual items may introduce minor reductions in the margin of safety when compared to the current requirements. However, other individual changes are the adoption of new requirements which will provide significant enhancement of the reliability of the equipment assumed to operate in the safety analysis, or provide enhanced assurance that specified parameters remain with their acceptance limits. These enhancements compensate for the individual minor reductions, such that taken together, the proposed changes will not significantly reduce the margin of safety.

The proposed amendment to Technical Specification Section 3/4.10 implements present requirements, or the intent of present requirements in accordance with the guidelines set forth in the STS. Any deviations from STS requirements do not significantly reduce the margin of safety for Dresden or Quad Cities Stations. The proposed changes are intended to improve readability, usability, and the understanding of technical specification requirements while maintaining acceptable levels of safe operation. The proposed changes have been evaluated and found to be acceptable for use at Dresden and Quad Cities based on system design, safety analysis requirements and operational performance. Since the proposed changes are based on NRC accepted provisions at other operating plants that are applicable at Dresden and Quad Cities and maintain necessary levels of system, component or parameter (reliability), the proposed changes do not involve a significant reduction in the margin of safety.

The proposed amendment for Dresden and Quad Cities Stations will not reduce the availability of systems associated with the Refueling Systems when required to mitigate accident conditions; therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: For Dresden, Morris Area Public Library District, 604 Liberty Street, Morris, Illinois 60450; for Quad Cities, Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

NRC Project Director: Robert A. Capra.

Duke Power Company, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: September 19, 1994, as supplemented by letter dated April 26, 1995.

Description of amendment request: The amendments would change the Technical Specifications (TS) to increase the enrichment limits for fuel stored in the fuel pools and establish restricted loading patterns and associated burnup criteria for qualifying fuel in the spent fuel pools. In addition, several administrative changes have been included in order to provide clarity to the TS and bring them more in line with the Standard Technical Specifications format. These changes are as follows:

(1) The TS index is changed to add TS 3/4.9.12 and 3/4.9.13, Tables 3.9–1 and 3.9–2 and Figure 3.9–1.

(2) TS 3/4.9.12, Spent Fuel Pool (SFP) Boron Concentration, is added to establish a boron concentration limit and to establish a Limiting Condition for Operation (LCO) for all modes of operation and to allow the numerical value of the limit to be specified in the Core Operating Limits Report (COLR).

(3) TS 3/4.9.13, Tables 3.9–1 and 3.9–2 and Figure 3.9–1 are being added to establish restricted loading patterns for spent fuel storage and associated burnup criteria.

(4) Corresponding BASES for TSs 3/4.9.12 and 3/4.9.13 are added to explain the basis for each LCO, Action Statement, and Surveillance Requirement covered by the subject TSs.

(5) TS 5.6, Fuel Storage, is changed to reflect limits for criticality analysis for fuel storage.

(6) TS 6.9, Reporting Requirements, is changed to reflect the inclusion of the SFP boron concentration limit values in the COLR as established by TS 3/4.9.12.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

There is no increase in the probability or consequences of an accident in the new fuel vault since the only credible accidents for this area are criticality accidents and it has been shown that calculated, worst case K_{eff} for this area is (less than or equal to) 0.95 under all conditions.

There is no increase in the probability of a fuel drop accident in the Spent Fuel Storage Pool since the mass of an assembly will not be affected by the increase in fuel enrichment. The likelihood of other accidents, previously evaluated and described in Section 9.1.2 of the FSAR (Final Safety Analysis Report), is also not affected by the proposed changes. In fact, it could be postulated that since the increase in fuel enrichment will allow for extended fuel cycles, there will be a decrease in fuel movement and the probability of an accident may likewise be decreased. There is also no increase in the consequences of a fuel drop accident in the Spent Fuel Pool since the fission product inventory of individual fuel assemblies will not change significantly as a result of increased initial enrichment. In addition, no change to safety related systems is being made.

Therefore, the consequences of a fuel rupture accident remain unchanged. In addition, it has been shown that K_{eff} is (less than or equal to) 0.95, under all conditions. Therefore, the consequences of a criticality accident in the Spent Fuel Pool remain unchanged as well.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not create the possibility of a new or different kind of accident since fuel handling accidents (fuel drop and misplacement) are not new or different kinds of accidents. Fuel handling accidents are already discussed in the FSAR for fuel with enrichments up to 4.0 weight %. As described in Section IV.9 of Attachment IV, additional analyses have been performed for fuel with enrichment up to 5.00 weight %. Worst case misloading accidents associated with the new loading patterns were evaluated. It was shown that the negative reactivity provided by soluble boron maintains K_{eff} (less than or equal to) 0.95.

3. The proposed changes do not involve a significant reduction in the margin of safety.

The proposed change does not involve a significant reduction in the margin of safety since, in all cases, a K_{eff} [less than or equal to] 0.95 is being maintained. Criticality analyses have been performed which show that the new fuel storage vault will remain subcritical under a variety of moderation conditions, from fully flooded to optimum moderation. As discussed above, the Spent Fuel Pool will remain sufficiently subcritical during any fuel misplacement accident.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242.

NRC Project Director: Herbert N. Berkow.

Florida Power and Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of amendment request: March 30, 1995, and supplemented May 5, 1995.

Description of amendment request: The licensee proposes to change Turkey Point Units 3 and 4 Technical Specifications (TS) by separation of the 24-hour emergency diesel generator (EDG) run from the hot restart EDG test.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the facility in accordance with the proposed amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed TS changes would revise the EDG surveillance criteria to allow the EDG hot-start test with full ESF load acceptance to be performed separately and independently from the 24-hour EDG run. The proposed SRs (surveillance requirements) would continue to demonstrate that the objectives of these two tests are met. Specifically, the EDGs are shown to be: (1) Capable of starting and running continuously at full load capability for an interval not less than 24 hours, and (2) capable of restarting from a full load temperature condition. The proposed changes would not affect the EDGs' ability to support mitigation of the consequences of any previously evaluated accident. Additionally, the proposed changes to the SRs do not affect the initiating assumptions or progression of any accident sequence.

Therefore, operation of the facility would not involve a significant increase in the probability or consequences of an accident previously analyzed.

(2) Operation of the facility in accordance with the proposed amendments would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed TS SR changes do not require any physical changes to the plant or equipment, and do not impact any design or functional requirements of the EDGs. The proposed changes do not create any plant configurations which are prohibited by the TS. The proposed changes continue to meet the EDG test objectives associated with demonstrating EDG operability.

Therefore, operation of the facility in accordance with the proposed amendments would not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Operation of the facility in accordance with the proposed amendments would not involve a significant reduction in a margin of safety.

The proposed TS SR changes do not require any physical changes to the plant or equipment and do not impact any design or functional requirements of the EDGs. Surveillance testing in accordance with the proposed TS will continue to demonstrate the ability of the EDGs to perform their intended function of providing electrical power to mitigate design basis transients, consistent with the plant safety analyses.

Therefore, operation of the facility in accordance with the proposed amendments would not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of § 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Florida International University, University Park, Miami, Florida 33199.

Attorney for licensee: J. R. Newman, Esquire, Morgan, Lewis & Bockius, 1800 M Street, NW., Washington, DC 20036.

NRC Project Director: David B. Matthews.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: April 7, 1995.

Description of amendment request: The proposed amendment would revise the technical specifications (TS) to relocate the axial power distribution limits to the Core Operating Limits Report (COLR).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change relocates the cycle-specific Axial Power Distribution (APD) limits contained in Figure 1–2 of the Technical Specifications (TS), to the Core Operating Limits Report (COLR). This change is consistent with the NRC recommendations of Generic Letter 88–16, and will not modify the methodology used in generating the limits nor the manner in which they are implemented. The methodology used to determine the APD limits is reviewed and approved by the NRC in accordance with TS 5.9.5. The APD limits will continue to be determined by analyzing the same postulated events as previously analyzed. The plant will continue to operate within the limits specified in the COLR and will take the same remedial actions if the APD limit is exceeded as required by the current TS. Therefore, the proposed change would not increase the probability or consequences of an accident previously evaluated.

(2) The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

There will be no physical alterations to the plant configuration, changes to setpoint values, or changes to the implementation of setpoints or limits as a result of this proposed change. The proposed change only relocates the APD figure from the TS to the COLR consistent with NRC Generic Letter 88–16. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

(3) The proposed change does not involve a significant reduction in a margin of safety.

As indicated above, the implementation of the APD into the COLR, consistent with the guidance of NRC Generic Letter 88–16, makes use of the existing safety analysis methodologies and the resulting limits and setpoints for plant operation. Additionally, the safety analysis acceptance criteria for operations with the proposed change have not changed from that use in the current reload analysis. Therefore, the margin of safety is not reduced due to the relocation of the APD from the TS and implementation in the COLR.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102.

Attorney for licensee: LeBoeuf, Lamb, Leiby, and MacRae, 1875 Connecticut Avenue, NW., Washington, DC 20009–5728.

NRC Project Director: William Bateman.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment requests: April 19, 1995 (Reference LAR 95–03).

Description of amendment requests: The proposed amendments would revise the combined Technical Specifications (TS) for the Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2 to revise TS 3/4.8.1.1, "A.C. Sources, Operating." The specific TS changes proposed are as follows:

(1) TS 4.8.1.1.2b.8), emergency diesel generator (EDG) 24-hour load run and hot restart surveillance, would be revised to delete the requirement to perform TS 4.8.1.1.2b.5)b), loss of offsite power (LOOP) load sequencing surveillance within 5 minutes following the 24-hour test.

(2) New TS 4.8.1.1.2e. would be added to perform an EDG hot restart test within 5 minutes of shutting down the EDG after the EDG has operated for at least 2 hours at a load of greater than or equal to 2484 kW.

(3) TS 4.8.1.1.2b.8), TS 4.8.1.1.2e., and footnote "*" on page 3/4 8–5 would be changed to be cycle-specific with the new TS requirements effective for Units 1 and 2, Cycle 8 and after.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Demonstrating emergency diesel generator (EDG) hot restart capability without sequencing loss of offsite power (LOOP) loads does not invalidate or reduce the effectiveness of the hot restart test, since normal operating temperatures are achieved prior to the hot restart test. Sequencing the LOOP loads does not contribute to verifying that the EDG will start from normal operating temperatures. The proposed TS 4.8.1.1.[2]e may be performed in any plant condition since performance of this new surveillance will have no adverse effect on plant operations. The reliability of the EDGs is not affected by the proposed changes.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not involve any physical alterations to the plant. The proposed changes will not have any adverse effect on the ability of the EDGs to perform their required safety function.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not involve a significant reduction in a margin of safety.

The proposed changes will not alter any accident analysis assumptions, initial conditions, or results. Consequently, the proposed changes do not have any effect on the margin of safety. The proposed changes to the surveillance requirements would continue to demonstrate the ability of the EDGs to perform their intended safety function.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of § 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Attorney for licensee: Christopher J. Warner, Esq., Pacific Gas and Electric Company, PO Box 7442, San Francisco, California 94120.

NRC Project Director: William H. Bateman.

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Docket No. 50–278, Peach Bottom Atomic Power Station, Unit No. 3, York County, Pennsylvania

Date of application for amendment: November 21, 1994.

Description of amendment request: The proposed change would extend the Type A test (i.e., Containment Integrated Leak Rate Test (CILRT)) interval on a one-time basis.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed Technical Specifications (TS) change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The accidents which are potentially adversely impacted by the proposed change are any Loss of Coolant Accident (LOCA) inside primary containment as described in the PBAPS, Units 2 and 3 UFSAR.

The proposed change increases the surveillance interval of the 10 CFR part 50, appendix J Type A test (i.e., Containment Integrated Leakage Rate Test (CILRT)) from 46 months to 70 months. This test is performed to determine that the total leakage from containment does not exceed the maximum allowable primary containment leakage rate (i.e., designated La) at a calculated peak containment internal pressure (Pa), as defined in 10 CFR part 50, appendix J. The primary containment limits the leakage of radioactive material during and following design bases accidents in order to comply with the offsite does limits specified in 10 CFR part 100. Accordingly, the primary containment is not an accident initiator. It is an accident mitigator. No physical or operational changes to the containment structure, plant systems, or components would be made as a result of the proposed change. Therefore, the probability of occurrence of an accident previously evaluated is not increased.

The failure effects that are potentially created by the proposed one-time TS change have been considered. The relevant components important to safety which are potentially affected are the containment structure, plant systems, and containment penetrations. There are no physical or operational changes to any plant equipment associated with the proposed TS change. Therefore, the probability or consequences of a malfunction of equipment important to safety is not increased.

The proposed change introduces the possibility that primary containment leakage in excess of the allowable value (i.e., La) would remain undetected during the proposed 24 month extension of the interval between the Type A tests. The types of mechanisms which would cause degradation of the primary containment can be categorized into two types. These are: (1) Degradation due to work which is performed as part of a modification or maintenance activity on a component or system (i.e., activity-based), or; (2) degradation resulting from a time-based failure mechanism.

A review of the history of the PBAPS, Unit 3 CILRT results was performed to evaluate the risk of activity-based and time-based degradation. This review has determined that the potential for a time-based and activity-based failure is minimal. The PBAPS LLRT program would identify most types of penetration leakage. The LLRT program involves measurement of leakage from Type B and Type C primary containment penetrations as defined in 10 CFR part 50, appendix J.

The 10 CFR part 50, appendix J, Type B tests are intended to detect local leaks and to measure leakage across pressure containing or leakage-limiting boundaries other than values, such as containment penetrations incorporating resilient seals, gaskets, expansion bellows, flexible seal assemblies, door operating mechanism penetrations that are part of the containment system, doors, and hatches. 10 CFR part 50, appendix J, Type C testing is intended to measure reactor system primary containment isolation valve leakage rates. The frequency of the Type B and Type C testing is not being altered by the proposed TS change. The acceptance criterion for Type B and Type C leakage is 0.6 La (i.e., 0.3% wt/day) which, when compared to the Type A test acceptance criterion of 0.75 La (i.e., 0.375% wt/day), is a significant portion of the Type A test allowable leakage.

The proposed TS change only extends the interval between two consecutive Type A tests. The Type B and Type C tests will be performed as required. The Type B and Type C tests will continue to be used to confirm that the containment isolation valves and penetrations have not degraded. Containment system components that would not be tested are the containment structure itself and small-diameter instrumentation lines. Time-based degradation of any of the instrumentation lines would not likely be identified by faulty instrument indication or during instrument calibrations that will be performed during the PBAPS, Unit 3 refueling outage 10. In examining the potential for a time-based failure mechanism that could cause significant degradation of the containment structure, we concluded that the risk, if any, of such a mechanism is small since the design requirements and fabrication specifications established for the containment structure are in themselves adequate to ensure containment leak tight integrity.

Based on the above evaluation, we have concluded that the proposed TS change will have a negligible impact on the consequences of any accident previously evaluated.

Although this review concluded that the risk of undetected primary containment degradation is not increased, the Individual Plan Examination (IPE) for PBAPS, Units 2 and 3, was also reviewed in order to access the impact of exceeding the primary containment allowable leakage rate, if a non-mechanistic activity type (i.e., time-based) failure were to occur. The IPE included an evaluation of the effect of various containment leakage sizes under different scenarios. The IPE results showed that a containment leakage rate of 35% wt/day would represent less than a 5% increase in risk to the public of being exposed to radiation. This evaluation was based on a study performed by Oak Ridge National Laboratory for light water reactors that evaluated the impact of leakage rates on public risk. As stated earlier, the current value of La for PBAPS, Unit 3, is 0.5% wt/day, which is significantly less than the 35% wt/day discussed in the IPE evaluation.

Therefore, the proposed TS change involving a one-time extension of the Type A test interval and performing the Type A test after the second appendix J 10-year service period will not involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change is an increase of a surveillance test interval and does not make any physical or operational changes to existing plant systems or components. Primary containment acts as an accident mitigator not initiator. Therefore, the possibility of a different type of accident than any previously evaluated or the possibility of a different type of equipment malfunction is not introduced.

Therefore, the proposed TS change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed TS change does not involve a significant reduction in a margin of safety.

The total primary containment leakage rate ensures that the total containment leakage volume will not exceed the value assumed in the safety analyses at the peak accident pressure. As an added conservatism, the measured overall leakage rate is further limited to less than or equal to 0.75 La during performance of periodic tests to account for possible degradation of the containment leakage barriers between leakage tests. There is the potential that containment degradation could remain undetected during the proposed 24 month surveillance interval extension and result in the containment leakage exceeding this allowable value assumed in safety analysis. A review of the history of the PBAPS, Unit 3 CILRT results was performed to evaluate the risk of activity-based and time-based degradation. This review has determined that the potential for a time-based and activity-based failure is minimal. The PBAPS LLRT program would identify most types of penetration leakage. The LLRT program involves measurement of leakage from Type B and Type C primary containment penetrations as defined in 10 CFR part 50, appendix J.

The 10 CFR part 50, appendix J, Type B tests are intended to detect local leaks and to measure leakage across pressure containing or leakage-limiting boundaries other than valves, such as containment penetrations incorporating resilient seals, gaskets, expansion bellows, flexible seal assemblies, door operating mechanism penetrations that are part of the containment system, doors, and hatches. 10 CFR part 50, appendix J, Type C testing is intended to measure reactor system primary containment isolation valve leakage rates. The frequency of the Type B and Type C testing is not being altered by the proposed TS change.

Therefore, we have concluded that the proposed extended test interval would not result in a non-detectable PBAPS, Unit 3 primary containment leakage rate in excess of the allowable value (i.e., 0.5% wt/day) established by the TS and 10 CFR part 50, appendix J.

Therefore, the proposed TS change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Attorney for Licensee: J.W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, Pennsylvania 19101.

NRC Project Director: John F. Stolz.

Public Service Electric & Gas Company, Docket No. 50–272, Salem Nuclear Generating Station, Unit No. 1, Salem County, New Jersey

Date of amendment request: April 4, 1995.

Description of amendment request: The amendment would provide a one-time interval extension for the Type A test required by 10 CFR part 50, appendix J. The extension would allow the test to be conducted during the thirteenth refueling outage, rather than the twelfth refueling outage.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change will provide a one-time exemption from 10 CFR part 50, appendix J Section III.D.1(a) leak rate test schedule requirement. This change will allow for a one-time test interval for Type A Integrated Leak Rate Tests (ILRTs) of 65+/−10 months.

Leak rate testing is not an initiating event in any accident, therefore, this proposed change does not involve a significant increase in the probability of a previously evaluated accident.

Type A tests are capable of detecting both local leak paths and gross containment failure paths. The history at Salem Generating Station Unit 1 (SGS1) demonstrates that Type B and C Local Leak Rate Tests (LLRTs) have consistently detected any excessive local leakages. SGS1 has passed all of its ILRTs with significant margin.

Administrtive controls govern the maintenance and testing of containment penetrations such that the probability of excessive penetration leakage due to improper maintenance or valve misalignment is very low. Following any maintenance that could affect the leakage characteristics of any containment penetration, an LLRT is performed to ensure acceptable leakage levels. Following any LLRT on a containment isolation valve, an independent valve alignment check is performed before declaring the penetration OPERABLE. Therefore, Type A testing is not necessary to ensure acceptable leakage rates through containment penetrations.

While Type A testing is not necessary to ensure acceptable leakage rates through

containment penetrations, Type A testing is necessary to demonstrate that there are no gross containment failures. Structural failure of the containment is considered to be a very unlikely event, and in fact, since SGS1 has been in operation, it has never failed a Type A ILRT. Therefore, a one-time exemption increasing the interval for performing an ILRT does not result in a significant decrease in the confidence in the leak tightness of the containment structure.

Therefore, this proposed change does not result in a significant increase of the probability or consequences of any previously evaluated accident.

2. Will not create the possibility of a new or different kind of accident from any accident previously evaluated.

This proposed change allows a one-time interval of 65+/−10 months for the next ILRT. The method of performing the test is not changed. No new accident modes are created by extending the testing intervals. No safety-related equipment or safety functions are altered as a result of this change. A one-time extension of the ILRT test interval has no influence on, nor does it contribute in any way to, the possibility of a new or different kind of accident or malfunction from those previously analyzed.

3. Will not involve a significant reduction in a margin of safety.

The purpose of the existing schedule of ILRTs is to ensure that the release of radioactive materials will be restricted to those leak paths and leak rates assumed in accident analyses. The relaxed schedule for ILRTs does not allow for relaxation of Type B and C LLRTs. Therefore, methods for detecting local containment leak paths and leak rates are unaffected by this proposed change. Given that the test history for ILRTs shows no failure during plant life, a one-time increase of the test interval does not lead to a significant probability of creating a new leakage path or increased leakage rates, and the margin of safety inherent in existing accident analyses is maintained. Therefore, this change does not involve a significant reduction kin the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW, Washington, DC 20005–3502.

NRC Project Director: John F. Stolz.

Public Service Electric & Gas Company, Docket No. 50–272, Salem Nuclear Generating Station, Unit No. 1, Salem County, New Jersey

Date of amendment request: May 4, 1995.

Description of amendment request: The amendment would authorize a one-time extension for the Type A test (overall integrated containment leakage rate) that is required by 10 CFR part 50, appendix J. The current Technical Specification would require that this test be conducted by July 7, 1995. The amendment would allow this test to be conducted by November 30, 1995.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change involves no hardware changes, no changes to the operation of any systems or components, and no changes to existing structures. This change is temporary, allowing a one-time extension of a specific surveillance requirement for cycle 12 to allow surveillance testing to coincide with the twelfth refueling outage. The proposed surveillance interval extension is short and will not result in any significant reduction in structural reliability nor will the extension affect the abillty of the structure in performing its intended functions. to preclude the possibility of an undetected containment failure/leakage at a valve or penetration seal, Type "B" and "C" tests will continue to be performed as required by the Technical Specifications. Therefore, this change will not involve a significant increase in the probability or consequences of any accidents previously evaluated.

2. Will not create the possibility of a new or different kind of accident from any previously evaluated.

Extending the surveillance interval for the performance of specific testing will not create the possibility of any new or different kinds of accident. No changes are required to any system configurations, plant equipment, or analyses. Therefore, this change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Will not involve a significant reduction in a margin of safety.

The proposed change will not alter any assumptions, initial conditions, or results of any accident analyses. The safety limits assumed in the accident analyses and the design function of the structure required to mitigate the consequences of any postulated accidents will not be changed since only the surveillance interval is being extended. Historical performance indicates a high degree of reliability, and surveillance testing performed during continued plant operation will verify that Salem 1 will remain within analyzed limits. Consequently, the change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public library, 112 West Broadway, Salem, New Jersey 08079.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Project Director: John F. Stolz.

Public Service Electric & Gas Company, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: April 18, 1995.

Description of amendment request: The amendments would delete the quarterly leak rate test for the containment pressure-vacuum relief valves which is presently required because of the valves' resilient seat material. The resilient valve seat material will be replaced with a hard seat (metal to metal) design. The valves would still remain in the 10 CFR part 50 appendix J, Type C leak rate test program.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The containment pressure/vacuum relief valves are normally closed, and are used under administrative control to maintain containment internal pressure within −1.5 psig and +0.3 psig, as required by SGS Technical Specifications. The pressure/vacuum relief valves are relied upon for containment isolation and automatically close on high containment pressure or high containment atmosphere radioactivity. The pressure/vacuum relief system does not affect the probability of any previously evaluated accident.

The containment isolation function of the pressure/vacuum relief valves limits the consequences of a radiological release inside containment (i.e., Loss of Coolant Accident). The proposed changes to eliminate quarterly pressure drop (leak rate) testing would not increase the consequences of any previously evaluated accident. The valve flow characteristics and closure time requirements are not affected. The valves will continue to be subject to the Type C leak rate test criteria of 10 CFR part 50, appendix J. The deletion of the augmented quarterly test requirement is justified by replacement of the resilient valve seat material (which has a history of degradation and loss of leaktightness) with a metal to metal seating design.

2. Do not create the possibility of a new or different kind of accident from any accident previously evaluated.

Eliminating quarterly leak rate testing based on improved valve design would not result in any new or different kind of accident. The valves would continue to perform the containment isolation function consistent with the plant safety analyses, and would not adversely affect the initiation or progression of any accident sequence.

(3) Do not involve a significant reduction in a margin of safety.

This proposal involves replacement of the existing pressure/vacuum relief valves, which have resilient seating material, with valves using a hard seat (metal to metal design). Based on the improved design and operating experience of the replacement valves, augmented quarterly leak rate testing is no longer necessary or appropriate to verify leaktightness of the valves. Periodic leak rate testing will continue to be performed in accordance with 10 CFR part 450, appendix J. The pressure/vacuum relief valves will continue to maintain their containment isolation capability such that no margin of safety is affected by the proposed changes.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public library, 112 West Broadway, Salem, New Jersey 08079.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Project Director: John F. Stolz.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plants, Units 1 and 2, Hamilton County, Tennessee

Date of amendment request: May 3, 1995 (TS 93–09).

Descripton of amendment request: The proposed change would revise the implementation schedule for Amendment Nos. 182 and 174 from that stated in the amendments when they were approved by the Commission by letter dated May 24, 1994. As issued, the amendments reflected the licensee's plans to implement the changes for both units during the Unit 2 Cycle 6 refueling outage. However, by letter dated August 19, 1994, the licensee requested that implementation be delayed to 1995. This request was granted by Amendment Nos. 188 and 180 for Units 1 and 2 respectively by letter dated October 17, 1994. By letter dated May 3, 1995, the licensee informed the staff that evaluation of the design changes have concluded that significant safety risks would be involved with modification activities associated with installation. Therefore, the licensee has requested that implementation of the amendment be changed to specify that the amendment will be implemented along with the related plant modifications, without specifying the date when the modifications would be performed. No changes to the technical specification pages other than those approved when the amendments were issued are needed.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has determined that the no significant hazards consideration exists. This analysis was provided in the original submittal for the amendment from the licensee dated October 1, 1993, and was used in the preparation of the amendments. The licensee has determined that this analysis remains valid for the proposed revision and that the changes do not constitute a significant hazard. The staff previously issued the proposed finding in the **Federal Register** (59 FR 4947 and 59 FR 47182) and there were no public comments on the finding. This analysis is reproduced as follows:

TVA has evaluated the proposed technical specification (TS) change and has determined that it does not represent a significant hazards consideration based on criteria established in 10 CFR 50.92(c). Operation of Sequoyah Nuclear Plant (SQN) in accordance with the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed revision supports the implementation of design logic and setpoint changes to the loss-of-power relaying. This relaying is designed to ensure adequate voltage is available to safety-related loads in order to enhance their operability and support accident mitigation functions and to provide for auxiliary feedwater (AFW) pump starts. The design changes alter relay logic and delete unnecessary relaying, but do not change the diesel generator (D/G) start and load-shedding actuations that result from loss-of-power conditions. Therefore, no new actuations or functions have been created; and because the existing and proposed functions provide for accident mitigation considerations that are not the source of an accident, the probability of an accident is not increased. The deletion of the 6.9-kilovolt shutdown board normal-feeder undervoltage relays actually reduces the potential for inadvertent shutdown board blackouts as a result of short-duration voltage transients or instrument failures.

The setpoints and time delays for loss-of-power functions have been modified based on the guidelines developed by the Electrical Distribution System Clearinghouse as evaluated and determined through detailed analysis by TVA. This design is documented in TVA Calculations SQN–EEB–MS–TI06–0008, 27DAT, and DS–1–2 and is available for NRC review at the SQN site. The assigned values are conservative settings that will ensure adequate voltage is supplied to safety-related loads for accident mitigation and safety functions under normal, degraded, and loss-of-offsite-power voltage conditions with appropriate time delays to prevent damage to electrical loads and minimize premature or unnecessary actuations. The identification of loss-of-voltage conditions is enhanced by the design changes to ensure the timely sequencing of loads onto the D/G and the initiation of AFW pump starts for accident mitigation. Because there are no reductions in safety functions resulting from the design logic, setpoint, and time-delay changes to the loss-of-power instrumentation and offsite dose levels for postulated accidents will not be increased, the consequences of an accident are not increased.

The applicable mode addition, TS 3.0.4 exclusion deletion, and response time measurement clarification incorporated in the proposed change do not affect plant functions. These changes reflect the requirements that SQN has been maintaining and serve to clarify the requirements to provide consistency of application and easier understanding. The AFW footnote addition and bases revision only clarify operability conditions that are consistent with the plant design for the AFW pump and loss-of-power instrumentation. Because there are no changes to plant functions or operations, these revisions have no impact on accident probabilities or consequences.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

As described above, the loss-of-power instrumentation ensures adequate voltage to safety-related loads by initiating D/G starts and load shedding and provides for AFW pump starting, but is not considered to be the source of an accident. Although the design logic, setpoint, and time-delay actuation criteria have changed, the output functions to various plant systems that actuate for load shedding and D/G starts remain the same. Therefore, actuation criteria have been affected, but not safety functions, and the TVA evaluation has confirmed that the new design enhances the ability to maintain adequate voltage to support safety functions. Since safety functions have not changed and the new loss-of-power instrumentation design continues to support operability of safety-related equipment, ro new or different accident is created.

The applicable mode addition, TS 3.0.4 exclusion deletion, and response time measurement clarification, as well as the AFW operability clarifications, do not affect plant functions and will not create a new accident.

3. Involve a significant reduction in a margin of safety.

The proposed loss-of-power TS changes support design logic, setpoint, and time-delay requirements that have been verified by

TVA analysis to provide acceptable voltage levels for safety-related components. In determining the acceptability of these voltage levels, the minimum voltage for operation as well as detrimental component heating resulting from sustained degraded-voltage conditions were considered. This design ensures that safety-related loads will be available and operable for normal and accident plant conditions. The applicable mode addition, TS 3.0.4 exclusion deletion, response time measurement clarification, and AFW operability clarifications provide enhancements to TS requirements and do not affect plant functions. Therefore, no safety functions are reduced by these changes and there is no reduction in the margin of safety.

The NRC has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11H, Knoxville, Tennessee 37902.

NRC Project Director: Frederick J. Hebdon.

The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50–440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of amendment request: April 28, 1995.

Description of amendment request: The proposed amendment would extend for one more operating cycle an exception to Limiting Condition for Operation (LCO) 3.0.4 as it applies to the Technical Specification for the main steam isolation valve leakage control system. The existing LCO 3.0.4 exception was issued by Amendment 63 to the Operating License, and will expire upon completion of the fifty cycle of plant operation. The extension is proposed for the duration of the sixth cycle of operation to permit completion of activities necessary to implement the most appropriate permanent resolution for the issue of secondary containment bypass leakage through the main steam line drains.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below.

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

This License Amendment application proposes an extension for one operating cycle of the exception to Limiting Condition for Operation for Operation (LCO) 3.0.4 as it applies to the Technical Specification for the MSIV [main steam isolation valve] Leakage Control system. This extension is proposed for the duration of the sixth cycle of PNPP (Perry Nuclear Power Plant) operation, to permit completion of activities necessary to implement the most appropriate permanent resolution for the issue of secondary containment bypass leakage through the Main Steam Line drains. During the sixth cycle, the drains will remain in their current configuration, which seals off the bypass leakage path. The sealed drain path results in a temporary inoperability of the Inboard MSIV Leakage control system (MSIV–LCS) subsystem when the plant is operated below 50% power, due to condensate build-up in the bottom of the steam lines between the MSIVs. The requested 3.0.4 exception is necessary to permit plant startups with this temporary inoperability, for the duration of the sixth operating cycle.

The probability of occurrence of a previously evaluated accident is not affected by the proposed extension of the LCO 3.0.4 exception since no change to the plant or to the manner in which the plant is operated is involved. The existing plant configuration will be maintained for another operating cycle, and possible concerns resulting from that configuration have been analyzed. The extra weight of the water pooled between the MSIVs was analyzed with respect to piping supports and seismic considerations and was found to be acceptable, and any condensate that is carried past the outboard MSIVs will be drained to the condenser by drain connections downstream of the outboard MSIVs before it can reach the turbine. The temporary inoperability of the Inboard MSIV–LCS when below 50% power has no impact on accident initiation probability, since LCS does not serve to prevent accidents, but is only used in mitigating the consequences of Loss of Coolant Accidents that have already occurred.

The consequences of an accident are not significantly increased in that the Outboard MSIV–LCS will be available to perform the MSIV–LCS function by mitigating the consequences of a Loss of Coolant Accident (LOCA) during the temporary period in which the Inboard MSIV–LCS is unavailable. Any condensate that is carried past the outboard MSIVs will be drained to the condenser by drain connections downstream of the outboard MSIVs; therefore no impairment of the Outboard MSIV–LCS will result from condensed water.

The Action statement for one inoperable LCS subsystem remains the same, and the limits plant operation to the previously established 30-day Allowable Outage Time. The Action required if both the subsystems of MSIV–LCS were to become inoperable also remains the same. The MSIV function of isolating the Main Stream Lines is also unaffected by the existing plant configuration, since MSIV performance will not be affected by the existence of accumulated water in the bottom of the steam lines between the MSIVs during the plant operation below 50% power. Therefore, if necessary, the Main Steam Lines will be isloated, and leakage past the MSIVs will be routed for filtration as in the design-basis radiological analyses, and the consequences of previously evaluated accidents will remain unaffected.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change to permit inoperability of the Inboard MSIV–LCS during periods of startup and power ascension to 50% RTP (rated thermal power) and during shutdown below 50% RTP does not create the possibility of a new or different kind of accident from any previously evaluated. The Inboard MSIV–LCS is only credited during a Recirculation Line Break LOCA wherein Reactor Coolant System depressurization occurs. The temporary unavailability of the Inboard MSIV–LCS. the amendment to the Technical Specifications is an administrative change that does not involve any change to the current plant design or methods of operation. No new plant equipment failure modes or accident initiators are introduced by the extension of the LCO 3.0.4 exception.

3. The proposed change does not involve a significant reduction in a margin of safety.

The response to the Recirculation Line Break LOCA will not be significantly affected since the Outboard MSIV–LCS can be assumed to be available. Allowing entry into Operational Conditions 1, 2 and 3 while utilizing the existing Action statement does not significantly reduce the margin of safety since the duration of time allowed for remaining in that Action statement is not increased. The proposed change will have no adverse impact on the reactor coolant system pressure boundary nor will any other system protective boundary or safety limit be affected.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Gail H. Marcus.

The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50–440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of amendment request: May 1, 1995.

Description of amendment request: The proposed amendment would eliminate selected response time testing requirements, and incorporate guidance provided by Generic Letter 93–08, "Relocation of Technical Specification Tables of Instrument Response Time Limits."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

For those proposed changes dealing with the elimination of selected response time test requirements, the purpose of the proposed Technical Specification change is to eliminate response time testing requirements for selected components in the Reactor Protection System, Isolation system, and Emergency Core Cooling System. The BWR Owners' Group has completed an evaluation which demonstrates that the response time testing is redundant to other Technical Specification required testing. These other tests, in conjunction with actions taken in response to NRC Bulletin 90–01, "Loss of Fill-Oil in Transmitters Manufactured by Rosemount," and Supplement 1, are sufficient to identify failure modes or degradations in instrument response time and ensure operation of the associated systems within acceptable limits. There are no known failure modes that can be detected by response time testing that cannot also be detected by the other required Technical Specification testing. This evaluation was documented in NEDO–32291, "System Analyses for Elimination of Selected Response Time Testing Requirements," January 1994, and the letter from T. Green to P. Loeser dated April 15, 1994 which were approved by an NRC Safety Evaluation dated December 28, 1994. The applicability of this evaluation to the Perry Nuclear Power Plant (PNPP) has been confirmed. In addition, PNPP will complete the additional actions identified in the NRC staff's Safety Evaluation of NEDO–32291.

Because of the continued application of other existing Technical Specification required tests such as channel calibrations, channel checks, channel functional tests, and logic system functional tests, the response times of these systems will be maintained within the acceptance limits assumed in plant safety analysis and required for successful mitigation of an initiating event. The proposed Technical Specification changes do not affect the capability of the associated systems to perform their intended function within their required response time, nor do the proposed changes themselves affect the operation of any equipment. As a result the proposed changes dealing with elimination of selected response time tests do not involve a significant increase in the probability or the consequences of an accident previously evaluated.

For those changes dealing with moving the surveillance requirement for ECCS RESPONSE TIME testing from the instrumentation section to the system section of the Technical Specifications, no change in testing requirements (other than the elimination of the instrument loops implemented as part of the NEDO–32291 changes) has been introduced. The relaxation in Applicability does not increase the probability or the consequences of an accident previously evaluated, since there are no design basis events during OPERATIONAL CONDITION 4 and 5 where ECCS systems are relied upon.

For those changes dealing with relocation of the response time limits from Technical Specification Tables and into the Updated Safety Analysis Report (USAR), the proposed changes are administrative in nature in that the test requirements and time limits are still requirements, but the placement of the limits have been relocated from the Technical Specifications and into the USAR. Therefore these changes do not involve a significant increase in the probability or the consequences of an accident previously evaluated.

2. The changes do not create the possibility of a new or different kind of accident from any previously evaluated.

None of the proposed Technical Specification changes affect the capability of the associated systems to perform their intended function within the acceptance limits assumed in plant safety analyses and required for successful mitigation of an initiating event. The proposed changes also do not change the manner in which any plant equipment is operated. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. The changes do not involve a significant reduction in the margin of safety.

The current Technical Specification response times are based on the maximum allowable value assumed in the plant safety analyses. These analyses conservatively establish the margin of safety. As described above, the proposed Technical Specification changes do not affect the capability of the associated systems to perform their intended function within the allowed response time used as the basis for the plant safety analyses. Plant and system response to an initiating event will remain in compliance within the assumptions of the safety analyses, and therefore the margin of safety is not affected.

Although not explicitly evaluated, the proposed Technical Specification changes dealing with response time testing elimination will provide an improvement to plant safety and operation by reducing the time safety systems are unavailable, reducing safety system actuation, reducing plant shutdown risk, limiting radiation exposure to plant personnel, and eliminating the diversion of key personnel to conduct unnecessary testing. Therefore, the proposed changes do not result in a significant reduction in a margin of safety, and may result in an overall increase in the margin of safety.

The changes dealing with relocation of the time response limits from the Technical Specifications to the USAR is an administrative change that does not affect either the requirements to perform response time testing or the limits associated with the response time tests. Future changes to the limits will be controlled by 10 CFR 50.59. Therefore, this portion of the change does not result in a significant decrease in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Gail H. Marcus.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of amendment request: April 26, 1995.

Description of amendment request: the proposed amendment would revise Technical Specification (TS) Surveillance Requirements 3/4.7.6 and associated Bases to reduce the upper limit on the control room filtration subsystem flow rate. It would also adopt ASTM D–3803–1989 as the laboratory testing standard for control room filtration and control building pressurization charcoal absorber.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed revision does not involve a significant hazards consideration because operation of Callaway Plant with this change would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

Overall protection system performance will remain within the bounds of the accident analysis documented in FSAR Chapter 15 * * * since no hardware changes are proposed.

The Control Room Emergency Ventilation System (CREVS) will continue to function in a manner consistent with the above analysis assumptions and the plant design basis. There will be no degradation in the performance of or an increase in the number of challenges to equipment assumed to function during an accident situation.

These Technical Specification revisions do not involve any hardware changes nor do they affect the probability of any event initiators. The change to the control room filtration flow rate is consistent with the original licensing basis and will ensure an average atmosphere residence time of greater than or equal to 0.25 sec. There will be no change to ESF (engineered safety feature) actuation setpoints or accident mitigation capabilities. The laboratory testing will demonstrate the required absorber performance after a design basis LOCA (loss-of-coolant accident).

The control room dose analyses assume a total flow rate through the control room filtration units that is less than the proposed upper limit. As such, there will be no changes required to the control room dose analyses.

Based on the above, these Technical Specification changes will not increase the probability or consequences of an accident or malfunction.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated.

As discussed above, there are no hardware changes associated with these Technical Specification revisions nor are there any changes in the method by which any safety-related plant system performs its safety function.

Revisions to the Surveillance Requirements for the CREVS will ensure that the control room does analysis assumptions made in support of OL (operating license) Amendment No. 96 are valid. Changes to the control room filtration unit flow rate are more limiting than that currently specified and have already been implemented by resetting the open limit switches on the respective units' outlet dampers. This flow rate is consistent with the design basis for the filtration units as originally licensed.

No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures are introduced as a result of these changes. There will be no adverse effect or challenges imposed on any safety-related system as a result of these changes. Therefore, the possibility of a new or different kind of accident is not created.

(3) Involve a significant reduction in a margin of safety.

There will be no margin reduction since these changes are in the conservative direction and have already been approved by NRC via the approval of OL Amendment No. 96. The reduced upper bound flow rate for the control room filtration units is consistent with their design basis and will maintain an average atmosphere residence time greater than or equal to 0.25 sec under both clean and dirty filter conditions. The new charcoal absorber sample laboratory testing protocol is more stringent than the current testing practice and more accurately demonstrates the required performance after a design basis LOCA.

There will be no effect on the manner in which safety limits or limiting safety system settings are determined nor will there be any effect on those plant systems, necessary to assure the accomplishment of protection functions. There will no impact on the overpower limit, DNBR (departure from nucleate boiling ratio) limits, F_Q, F[delta]H, LOCA PCT (peak cladding temperature), peak local power density, or any other margin of safety. These changes will ensure that the criteria of GDC 19 are met.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW, Washington, DC 20037.

NRC Project Director: Gail H. Marcus.

Wisconsin Electric Power Company, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Power Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: April 17, 1995.

Description of amendment request: The proposed amendment would modify Technical Specification (TS) Section 15.6.2, "Organization," and TS Section 15.6.3, "Facility Staff Qualifications." The training requirements for the Operations Manager and other staff would be changed to provide staffing flexibility.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated; create the possibility of a new or different kind of accident from any previously evaluated; or create the possibility of a new or different kind of accident from any previously evaluated.

1. The proposed change affects only an administrative control, which was based on industry guidance in ANSI N18.1–1971, that recommended the Operations Manager hold an SRO (senior reactor operator) license. This administrative control is being updated to meet the current guidance in ANSI/ANS 3.1–1987.

2. The proposed qualification requirements for the Operations Manager ensures the individual filling the position meets knowledge levels equivalent to the present requirements. It also ensures that individuals responsible for directing the activities of licensed operators continue to hold SRO licenses as required by 10 CFR 50.54(l).

3. Since the proposed specifications ensure regulatory requirements are met and ensures knowledge levels equivalent to existing license requirements for operations management, the proposed changes are considered administrative. The design of plant systems and equipment is not being altered. Plant operations will continue to be directed and performed by qualified personnel. Therefore, the probability or consequences of accidents previously evaluated are not affected, a new or different type of accident is not created, nor is a margin of safety reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin 54241.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Gail H. Marcus.

Wisconsin Electric Power Company, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Power Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: April 27, 1995.

Description of amendment request: The proposed amendment would modify Technical Specification (TS) Table 15.3.5–1, "Engineered Safety Features Initiation Instrument Setting Limits," and TS Table 15.35–3, "Engineered Safety Features." Setting limits would be modified and references would be changed. The bases for TS Section 15.3.5, "Instrumentation System," would also be changed to be consistent with the TS changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Operation of this facility under the proposed Technical Specifications will not create a significant increase in the probability or consequences of an accident previously evaluated.

The probabilities of accidents previously evaluated are based on the probability of initiating events for these accidents.

Initiating events for accidents previously evaluated for Point Beach include: control rod withdrawal and drops, CVCS (chemical and volume control system) malfunction (Boron Dilution), startup of an inactive reactor coolant loop, reduction in feedwater enthalpy, excessive load increase, losses of reactor coolant flow, loss of external electrical load, loss of normal feedwater, loss of all AC power to the auxiliaries, turbine overspeed, fuel handling accidents, accidental releases of water liquid or gas, steam generator tube rupture, steam pipe rupture, control rod ejection, and primary coolant system ruptures.

This license amendment request proposes to correct some minor errors, include appropriate operability requirements for the modification to include the safety injection signal in the time delay for the 4.16KV degraded voltage protection logic, slightly lower the degraded voltage setting limit, change the format of the 4.16 KV degraded voltage and loss of voltage setting limits, and change the time delays associated with the 4.16 KV degraded voltage, 4.16 KV loss of voltage and 480 V loss of voltage protection functions.

These proposed changes do not cause an increase in the probabilities of any accidents previously evaluated because these changes will not cause an increase in the probability of any initiating events for accidents previously evaluated. In particular, these proposed changes affect time delay and format of the setting limits associated with the 4.16 KV degraded voltage, 4.16 KV loss of voltage, and 480 V loss of voltage protection functions. These are protection functions and do not cause accidents.

The consequences of the accidents previously evaluated in the PBNP FSAR (Final Safety Analysis Report) are determined by the results of analyses that are based on initial conditions of the plant, the type of accident, transient response of the plant, and the operation and failure of equipment and systems. The changes proposed in this license amendment request provide appropriate limiting conditions for operation, action settlements, allowable outage times, setting limits, and time delays for the Point Beach Nuclear Plant Technical Specifications for the 4.16 KV degraded voltage, 4.16 KV loss of voltage, and 480 V loss voltage protection functions.

The proposed changes affect functions that are required to ensure the proper operation of engineered features equipment. The proposed changes do not increase the probability of failure of this equipment or its ability to operate as required for the accidents previously evaluated in the PBNP FSAR.

The modifications to reduce the time delay limit associated with the 4.16 KV degraded voltage protection function when the degraded voltage condition is coincident with a safety injection signal, have been designed and installed in accordance with the requirements for PBNP. The probability of occurrence of degraded voltage conditions at PBNP has not been increased. The modifications and proposed Technical Specifications will ensure the proper operation of ESF (engineered safety feature) equipment. These changes do not increase the possibility of failure of this equipment.

Therefore, this proposed license amendment does not affect the consequences of any accident previously evaluated in the Point Beach Nuclear Plant FSAR, because the factors that are used to determine the consequences of accidents are not being changed.

2. Operation of this facility under the proposed Technical Specifications change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

New or different kinds of accidents can only be created by new or different accident initiators or sequences. New and different types of accidents (different from those that were originally analyzed for Point Beach) have been evaluated and incorporated into the licensing basis for Point Beach Nuclear Plant. Examples of different accidents that have been incorporated into the Point Beach Licensing basis include anticipated transients without scram and station blackout.

The changes proposed by this license amendment request do not create any new or different accident initiators or sequences because these changes to the 4.16 KV degraded voltage, 4.16 KV loss of voltage, and 480 V loss of voltage protection functions will not cause failures of equipment or accident sequences different than the accidents previously evaluated. Therefore, these modifications and proposed Technical Specification changes do not create the possibility of an accident of a different type than any previously evaluated in the Point Beach FSAR.

3. Operation of this facility under the proposed Technical Specifications change will not create a significant reduction in a margin of safety.

The margins of safety for Point Beach are based on the design and operation of the reactor and containment and the safety systems that provide their protection.

The changes proposed by this license amendment request provide the appropriate setting limits and time delays for the 4.16 KV degraded voltage, 4.16 KV loss of voltage, and 480 V loss of voltage protection functions. This ensures that the safety systems that protect the reactor and containment will operate as required. The design and operation of the reactor and containment are not affected by these proposed changes. Therefore, the margins of safety for Point Beach are not being reduced because the design and operation of the reactor and containment are not being changed and the safety systems that provide their protection that are being changed are being modified in accordance with the applicable design and installation requirements for Point Beach Nuclear Plant.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin 54241.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Gail H. Marcus.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Northeast Nuclear Energy Company, et al., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of amendment request: April 21, 1995.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) 3.1.2.4, "Charging Pumps-Operating," by adding a note that indicates that the provisions of TS 3.0.4 and 4.0.4 are not applicable for entry into MODE 4 from MODE 5.

Date of publication individual notice in **Federal Register:** May 2, 1995 (60 FR 21558).

Expiration date of individual notice: June 1, 1995.

Local Public Document Room location: Learning Resource Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, Connecticut 06360.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act

of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Ch. 1, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved.

Carolina Power & Light Company, et al., Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of application for amendment: August 19, 1994, as supplemented November 3, 1994.

Brief description of amendment: The amendment requests a line-item improvement to the Radiological Effluent Technical Specifications pursuant to the guidance of Generic Letter 89–01 and incorporates the requirements of revised 10 CFR part 20 and 10 CFR 50.36a.

Date of issuance: May 1, 1995.

Effective date: May 1, 1994.

Amendment No.: 58.

Facility Operating License No. NPF–63: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** October 12, 1994 (60 FR 51617) The Commission's related evaluation of the amendment, and NRC's response to the public comments received, are contained in a Safety Evaluation dated May 1, 1995.

No significant hazards consideration comments received: Yes.

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

Duke Power Company, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of application for amendments: November 22, 1994, as supplemented by letters dated January 30, March 2, March 13, and May 2, 1995.

Brief description of amendments: The amendments revise Technical Specification 3.8 to establish restricted loading patterns and associated burnup criteria for placing fuel in the Oconee spent fule pools. In addition, the Design Features sections associated with the reactor and fuel storage are also revised.

Date of issuance: May 3, 1995.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 209, 209, and 206.

Facility Operating License Nos. DPR–38, DPR–47, and DPR–55: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 15, 1995 (60 FR 8746); Re-Noticed March 29, 1995 (60 FR 16185).

The May 2, 1995, letter did not change the scope of the November 22, 1994, application and the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 3, 1995.

No significant hazards consideration comments received: No.

Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691.

Duquesne Light Company, et al., Docket No. 50–412, Beaver Valley Power Station, Unit 2, Shippingport, Pennsylvania

Date of application for amendment: April 10, 1995, as supplemented April 12, 1995, and April 20, 1995.

Brief description of amendment: This amendment revises Technical Specification 4.6.2.2.d to delete the reference to the specific test acceptance criteria for the Containment Recirculation Spray Pumps and replace the specific test acceptance criteria with reference to the developed head required by the plant's safety analysis. In addition, the 18-month test frequency would be replaced with the test frequency requirements specified in the IST Program. The current footnote (1) pertaining to the performance of recirculation spray pump 2RSS*P21A would be deleted.

Date of issuance: May 3, 1995.

Effective date: May 3, 1995.

Amendment No.: 68.

Facility Operating License No. NPF–73: Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: Yes (60 FR 19417, April 18, 1995) That notice provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination. No comments have been received. The notice also provided for an opportunity to request a hearing by May 18, 1995, but indicated that if the Commission makes a final no significant hazards consideration any such hearing would take place after issuance of the amendment.

The Commission's related evaluation of the amendment, finding of exigent circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated May 3, 1995.

No significant hazards consideration comments received: No.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Entergy Operations, Inc., Docket Nos. 50–313 and 50–368, Arkansas Nuclear One, Unit Nos. 1 and 2, Pope County, Arkansas

Date of amendment request: August 30, 1994 as supplemented January 19, 1995.

Brief description of amendments: The amendments changed requirements related to the site perimeter security system.

Date of issuance: April 28, 1995.

Effective date: April 28, 1995.

Amendment Nos.: Unit 1—Amendment No. 180; Unit 2—Amendment No. 161

Facility Operating License Nos. DPR–51 and NPF–6: Amendments revised the licenses.

Date of initial notice in **Federal Register:** April 12, 1995 (60 FR 18625).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 28, 1995.

No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, AR 72801.

Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: December 14, 1993, as supplemented by letter dated March 3, 1995.

Brief description of amendment: The amendment changed the Appendix A Technical Specifications by removing the reactor vessel material specimen withdrawal schedule and by updating the reactor coolant system pressure-temperature (P–T) curves.

Date of issuance: May 8, 1995.

Effective date: May 8, 1995.

Amendment No.: 106.

Facility Operating License No. NPF–38.: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 19, 1994 (59 FR 2867).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 8, 1995.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

Florida Power and Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of application for amendments: October 20, 1994.

Brief description of amendments: These amendments change the definition of "core alteration" to exclude the movement of items not associated with reactivity. The second change involves allowing the personnel airlock (PAL) doors to remain open during fuel movement and core alterations under certain conditions.

Date of issuance: May 11, 1995.

Effective date: May 11, 1995.

Amendment Nos.: 173 and 167.

Facility Operating License No. DPR–31 and DPR–41: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 9, 1994 (59 FR 55869).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 11, 1995.

No significant hazards consideration comments received: No.

Local Public Document Room location: Florida International University, University Park, Miami, Florida 33199.

GPU Nuclear Corporation, et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: February 28, 1995.

Brief description of amendment: The amendment revises Technical Specification (TS) Section 6.5.1.12 to delete the requirement to render determinations in writing with regard to whether or not activities listed in TS Sections 6.5.1.2 and 6.5.1.5 constitute an unreviewed safety question. These activities are changes to Appendix A Technical Specifications (6.5.1.2) and investigations of all violations of the TSs (6.5.1.5). This change is consistent with NUREG–1433 Standard Technical Specifications General Electric Plants, BWR/4 Revision 0, dated September 28, 1992.

Date of issuance: May 1, 1995.

Effective date: May 1, 1995.

Amendment No.: 180.

Facility Operating License No. DPR–16.: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 29, 1995 (60 FR 16188).

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated May 1, 1995.

No significant hazards consideration comments received: Yes.

By letter dated April 5, 1995, Mr. Kent W. Tosch, of the State of New Jersey Department of Environmental Protection commented that they concur with GPU Nuclear's rationale that these unreviewed safety question reviews serve no value since these activities specifically require NRC review and approval. The State official had no other comments.

Local Public Document Room location: Ocean County Library, Reference Department, 101 Washington Street, Toms River, NJ 08753.

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Dos. 50–498 and 50–499, South Texas Projects, Units 1 and 2, Matagorda County, Texas

Date of amendment request: February 15, 1995.

Brief description of amendment: The amendment modified Technical Specification 4.6.2.3.a.2 (and associated Bases) to reflect the reactor containment fan cooler flow rate assumed in the accident analysis and to specify that this flow is provided by the component cooling water system.

Date of issuance: May 2, 1995.

Effective date: May 2, 1995, to be implemented within 30 days.

Amendment Nos.: Unit 1—Amendment No. 74; Unit 2—Amendment No. 63.

Facility Operating License Nos. NPF–76 AND NPF–80. The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 29, 1995 (60 FR 16189) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 2, 1995.

No significant hazards consideration comments received: No.

Local Public Document Room location: Wharton County Junior College, J.M. Hodge Learning Center, 911 Boling Highway, Wharton, TX 77488.

Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50–461, Clinton Power Station, Unit No. 1. DeWitt County, Illinois

Date of application for amendment: February 10, 1995.

Brief description of amendment: The amendment changes Technical Specification 3.3.2.1, "Control Rod Block Instrumentation," to revise two surveillance requirements and their associated notes for the Rod Withdrawal Limiter mode of the Rod Pattern Control System. The changes are consistent with the Clinton Power Station Technical Specifications prior to implementation of the improved Technical Specifications (Amendment No. 95) and eliminates the potential for unnecessary power reductions.

Date of issuance: May 2, 1995.

Effective date: May 2, 1995.

Amendment No.: 100.

Facility Operating License No. NPF–62. The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register: March 29, 1995. (60 FR 16190)**

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 2, 1995.

No significant hazard consideration comments received: No.

Local Public Document Room location: The Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Niagara Mohawk Power Corporation, Docket No. 50–410, Nine Mile Point Nuclear Station, Unit 2, Oswego County, New York

Date of application for amendment: July 22, 1993, as supplemented February 4, August 23, September 16, October 6, and December 2, 1994, and January 3, January 9, March 8, and April 10, 1995.

Brief description of amendment: The amendment modified Facility Operating License No. NPF–69 and the NMP–2 TSs to authorize an increase in the maximum power level of NMP–2 from 3323 megawatts thermal (MW_t) to 3467 MW_t. The amendment also approves changes to the TSs to implement uprated power operation.

Date of issuance: April 28, 1995.

Effective date: As of the date of issuance to be implemented prior to restart from refueling outage number 4.

Amendment No.: 66.

Facility Operating License No. NPF–69: Amendment revises the Technical Specifications and modifies Facility Operating License No. NPF–69.

Date of initial notice in **Federal Register: March 16, 1994 (59 FR 12360). The letters dated February 4, August 23, September 16, October 6, and December 2, 1994, and January 3, January 9, March 8, and April 10, 1995, provided clarifying information that did not change the initial proposed no significant hazards consideration determination.**

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 28, 1995.

No significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Northeast Nuclear Energy Company, et al., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of application for amendment: October 18, 1994, a supplemented February 21, 1995.

Brief description of amendment: The amendment changes Surveillance Requirement 4.6.1.2.a (Overall Integrated Containment Leakage Rate Tests) by revising the surveillance interval for Type A tests from 40 plus or minus 10 months to approximately equal intervals during each 10-year inservice period. The amendment also removes a note that expired upon completion of Cycle II refueling outage.

Date of issuance: May 3, 1995.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 187.

Facility Operating License No. DPR–65. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 29, 1995 (60 FR 16191).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated may 3, 1995.

No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resource Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London turnpike, Norwich, CT 06360.

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit no. 3, New London County, Connecticut

Date of application for amendment: December 23, 1994.

Brief description of amendment: The amendment changes the acceptance criteria for the peak transient generator voltage from 4784 volts to 5000 volts during full load rejection tests of the diesel generator (DG), and also deletes the 10-year surveillance requirement to perform a 110% pressure test of the DG fuel oil system.

Date of issuance: May 1, 1995.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 110.

Facility Operating License No. NPF–49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 15, 1995 (60 FR 8751).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 1, 1995.

No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, CT 06360.

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: September 28, 1994.

Brief description of amendment: The amendment revises Surveillance Requirement 4.6.1.2.a of the Technical Specification to eliminate the requirement to perform Type A tests on an interval of 40 plus or minus 10 months while reiterating the Appendix J requirement that the Type A tests be performed three times, at approximately equal intervals, during each 10 year service period. In addition, a footnote is added which states that the third Type A test will be performed during the sixth refueling outage. This reflects an exemption to Appendix J which separates the third Type A test from the 10 year inservice inspection.

Date of issuance: May 8, 1995.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 111.

Facility Operating License No. NPF–49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 23, 1994 (59 FR 60384)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 8, 1995.

No significant hazards consideration comments received: NO.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, CT 06360.

Public Service Electric & Gas Company, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendment: August 19, 1994, as supplemented March 15, 1995.

Brief description of amendment: The amendments add a new action statement to Technical Specification 3.1.3.2.1., "Position Indication Systems—Operating".

Date of issuance: May 3, 1995.

Effective date: May 3, 1995.

Amendment No.: 166 and 148.

Facility Operating License Nos. DPR–70 and DPR–75. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 12, 1994 (59 FR 51626) The March 15, 1995 supplement provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated may 3, 1995.

No significant hazards consideration comments received: No.

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: March 19, 1993; superseded May 16, 1994; superseded February 10, 1995; supplemented February 17, 1995 (TS 93–04).

Brief description of amendment: The amendments clarify the Limiting Conditions for Operation applicable to the dual function of the containment vacuum relief isolation lines by specifying the actions that would be required should one or more of the vacuum relief isolation lines by specifying the actions that would be required should one or more of the vacuum relief lines be incapable of performing the containment isolation function or incapable of performing the vacuum relief function.

Date of issuance: April 28, 1995.

Effective date: April 28, 1995.

Amendment No.: 197 and 188.

Facility Operating License Nos. DPR–77 and DPR–79: Amendments revise the technical specifications.

Date of initial notice in **Federal Register:** May 12, 1994 (58 FR 28060); renoticed June 22, 1994 (59 FR 32237), and March 29, 1995 (60 FR 16202).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 28, 1995.

No significant hazards consideration comments received: None.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendment: November 15, 1994; superseded March 7, 1995 (TS 94–12).

Brief description of amendments: The amendments remove the frequencies specified in the Technical Specifications for performing audits and delete the requirement to perform the Radiological Emergency Plan, Physical Security Plan, and Safeguard Contingency Plan reviews.

Date of issuance: May 10, 1995.

Effective date: May 10, 1995.

Amendment No.: 198 and 189.

Facility Operating License Nos. DPR–77 and DPR–79: Amendments revise the technical specifications.

Date of initial notice in **Federal Register:** December 21, 1994 (59 FR 65823); renoticed March 29, 1995 (60 FR 16203)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 10, 1995.

No significant hazards consideration comments received: None.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402.

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of application for amendment: January 30, 1995.

Brief description of amendment: This amendment revises Technical Specification (TS) 4.6.1.2.a, "Containment Systems, Containment Leakage, Surveillance Requirements (SR)" and Bases 3/4.6, "Containment Systems," to state that Type A tests for overall integrated containment leakage rate testing shall be conducted in accordance with the requirements specified in appendix J of 10 CFR part 50, as modified by NRC-approved exemptions. Additionally, TS SR 4.6.1.2.a.

Date of issuance: May 3, 1995.

Effective date: May 3, 1995.

Amendment No.: 198.

Facility Operating License No. NPF–3. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 15, 1995 (60 FR 14028).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 3, 1995.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Virginia Electric and Power Company, et al., Docket Nos. 50–338 and 50–339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of application for amendments: July 8, 1993, as supplemented by letters dated July 12, 1994, and March 7, 1995.

Brief description of amendments: The amendments revise the NA–1&2 Technical Specifications by deleting the requirements to periodically review certain administrative and technical procedures.

Date of issuance: May 1, 1995.

Effective date: May 1, 1995.

Amendment Nos.: 190 and 171.

Facility Operating License Nos. NPF–4 and NPF–7: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 4, 1993 (58 FR 41518).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 1, 1995.

No significant hazards consideration comments received: No.

Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903–2498.

Virginia Electric and Power Company, et al., Docket Nos. 50–338 and 50–339; North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of application for amendments: December 27, 1993, as supplemented September 6, 1994, and March 7, 1995.

Brief description of amendments: The amendments revise the NA–1&2 Technical Specifications regarding the review responsibilities of the Station Nuclear Safety and Operating Committee and the Management Safety Review Committee.

Date of issuance: May 2, 1995.

Effective date: May 2, 1995.

Amendment Nos.: 191 and 172.

Facility Operating License Nos. NPF–4 and NPF–7: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 16, 1994 (59 FR 7700).

The September 6, 1994, and March 7, 1995 submittals provided additional information only, and did not change the staff's initial proposed determination of no significant hazards consideration.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 2, 1995.

No significant hazards consideration comments received: No.

Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903–2498.

Virginia Electric and Power Company, Docket Nos. 50–280 and 50–281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of application for amendments: June 28, 1991.

Brief description of amendments: These amendments incorporate operability and surveillance requirements for power-operated relief valves to conform with Generic Letter 90–06.

Date of issuance: May 2, 1995.

Effective date: May 2, 1995.

Amendment Nos.: 198 and 198.

Facility Operating License Nos. DPR–32 and DPR–37: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 2, 1991 (56 FR 49929).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 2, 1995.

No significant hazards consideration comments received: No.

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Notice of Issuance of Amendments to Facility Operating Licenses and Final Determination of No Significant Hazards Consideration and Opportunity for a Hearing (Exigent Public Announcement or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Ch. I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level), the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. By June 23, 1995, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at lest one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to (*Project Director*): petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

Commonwealth Edison Company, Docket Nos. 50–295 and 50–304, Zion Nuclear Power Station, Units 1 and 2

Date of application for amendments: April 24, 1995.

Brief description of amendments: the amendments change the Technical Specifications by modifying the surveillance testing periodicity requirements of the automatic actuation logic of engineered safeguards equipment.

Date of issuance: May 5, 1995.

Effective date: May 5, 1995.

Amendment Nos.: 162 and 150.

Facility Operating Licenses Nos. DPR–39 and DPR–48. The amendments revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: No.

The Commission's related evaluation of the amendments, finding of emergency circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated May 5, 1995.

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690.

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

NRC Project Director: Robert A. Capra.

Baltimore Gas and Electric Company, Docket No. 50–317, Calvert Cliffs Nuclear Power Pant, Unit No. 1, Calvert County, Maryland

Date of application for amendment: April 28, 1995.

Brief description of amendment: The amendment revises the control room emergency ventilation system TS 3.7.6.1, Limiting Condition For Operation. The revision extends the one-time increase in the allowed outage time for loss of emergency power only, from the 30 days previously approved, to 45 days. This extension is necessary to allow time to repair the Number 21 emergency diesel generator which failed its operability tests subsequent to modifications which have been recently completed.

Date of issuance: May 2, 1995.

Effective date: As of the date of issuance to be implemented upon receipt.

Amendment No.: 205.

Facility Operating License No. DPR–53: Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: No.

The Commission's related evaluation of the amendment, consultation with the State, and final determination of no significant hazards consideration are continued in a Safety Evaluation dated May 2, 1995.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678.

Attorney for licensee: Jay E. Silbert, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N. Street, NW., Washington, DC 20037.

NRC Project Director: Ledyard B. Marsh.

Dated at Rockville, MD, this 17th day of May, 1995.

For the Nuclear Regulatory Commission,

Elinor G. Adensam,

Acting Director, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–12538 Filed 5–22–95; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–35723; File No. SR–Amex–95–08]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Membership Structure and Requirements and the Exchange's Gratuity Fund

May 16, 1995.

I. Introduction

On February 17, 1995, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its Construction, Rules and Membership Lease Plan to allow organizations, including certain pension plans, to own memberships legally as well as beneficially and to allow individuals and organizations to own multiple memberships. The Exchange also is proposing to revise its Gratuity Fund to reflect the above changes, to increase the death benefit paid thereunder, and to allow options principal members to participate therein.

The proposed rule change was published for comment in Securities

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

memberships assessed, regardless of whether or to what extent a particular participant being assessed has already "phased-in" to full eligibility.

No member's beneficiaries would be entitled to receive more than one Fund benefit upon the member's death by virtue of the deceased member's status as both lessor and lessee, or for any other reason. The family of a member who owns multiple memberships would be able to collect only one benefit. A member would be eligible on only one seat, and must designate that seat to the Exchange. The lessees or nominees of the other seats, of course, would be eligible on those seats. The trustees of the Fund would have the authority to resolve disputes with respect to a person's eligibility to participate in the Fund.[21]

III. Comments Received by the Commission

The Commission received one comment letter from S.G. Marx & Associates Inc., a member of the Exchange.[22] The commenter alleged that the Exchange had delayed approval of the membership of one of the company's nominees until after June 10, 1993 so that, under the proposal, such member would not be able to participate in the Gratuity Fund. Additionally, the commenter objected to the fact that, under the proposal, certain of its memberships would be required to pay an assessment to the Fund, notwithstanding that no one connected with such membership would be a participant in the Fund.

IV. Discussion

The Commission believes that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges and, in particular, the requirements of Sections 6(b) (2), (4), and (5) of the Act.[23] Section 6(b)(2) of the Act requires the rules of an exchange, subject to the provisions of Section 6(c) of the Act,[24] to ensure that any registered broker or dealer or natural person associated with a registered broker or dealer may become a member of the exchange. Section 6(b)(4) of the Act requires the rules of an exchange to provide for the equitable allocation of reasonable dues and fees among members and persons using exchange facilities. Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

A. Changes to Amex Membership Structure

Currently, the Exchange allows organizations to own beneficially multiple memberships. As beneficial owners, member organizations are able to vote the memberships that they own (and do not lease out) and otherwise enjoy all of the financial advantages of membership. Because they are only beneficial holders, however, member organizations must designate individuals nominally to own the seat on their behalf.

The Commission believes that the amendment of the Exchange's rules to permit organizations to own memberships directly and to permit individuals and organizations to own multiple memberships should not result in any substantive changes in the operation of the Exchange. Such changes should have the beneficial effect of allowing member organizations to simplify the arrangements that they have made with regard to their ownership and operation of Exchange memberships. Moreover, several other exchanges permit organizations, as well as individuals, to own memberships and the Commission is not aware of any problems that have resulted from such membership structure.[25]

The Commission believes that the amendments to the Exchange's rules to permit certain pension plans to acquire ownership of one or more seats for investment purposes and either to lease their seats or to designate nominees to operate them reasonably balances the Exchange's interest in having the flexibility to approve entities with new organizational structures for Exchange membership with the regulatory interests in protecting the financial and structural integrity of the Exchange. In the event such an entity designated a nominee to operate its seat, the pension plan would have to be a broker or dealer registered with the Commission pursuant to the Act, because this is a prerequisite to becoming an Exchange member organization,[26] and would be subject to all other membership approval requirements generally applicable to member organizations. If the pension plan leased the seat, the plan would be subject to all approval requirements generally applicable to lessors. In either event, the pension plan's trustee would have to be approved as an approved person under the Constitution and Rules of the Exchange.

The Commission believes that the changes to the Exchange's fees relating to the transfer of memberships are consistent with Section 6(b)(4) of the Act, which requires the equitable allocation of reasonable dues and fees among members and persons using exchange facilities. The proposed amendments would make two changes to the Exchange's fee structure. The first change would equalize the initiation fee for nominal transfers, (*i.e.*, intra-firm) and transfers by lease of regular memberships and options principal memberships. The Commission believes that such equalization is proper in view of the Exchange's representation that the administrative expenses attributable to the two types of membership are identical. The second change would impose a substantially reduced processing fee for changes in membership during the ninety-day period following the effective date of these changes, except for bona fide sales and bona fide changes in leases or nominees. The Commission believes that it is appropriate for the Exchange to offer a reduced fee for a limited period of time as a means of encouraging members to take advantage of the new alternatives available in structuring ownership of Amex seats.

B. Gratuity Fund

The Commission is unaware of any reason why the Exchange's proposal to expand participation in the Gratuity Fund to all active Exchange members and to increase the death benefit provided thereunder should not be approved. The Exchange's proposal, however, also limits participation in the Fund. Specifically, the proposal excludes inactive members from participation in the Fund, except for such members who have been active on the Exchange for at least two years or who were participants in the Fund (or options principal members) as of the date the Exchange's Board approved such proposal. As a result, the proposal would exclude lessors who are currently participants in the Fund but who were not regular members or regular member lessors as of June 10, 1993 from participation in the Fund. With regard to these participants, the Commission notes that, before they become lessors, the Exchange gave them written notice that they would no longer be participants in the Fund if this proposal were approved. Further, the Commission previously published this rule change for comment and received no adverse comments regarding this disparate treatment.[27] Additionally, the Commission believes that it is reasonable for the Exchange to make a distinction in treatment between participants who became inactive members of the Exchange with the expectation that they would be participants in the Fund and members who had no such expectation.[28] Similarly, the Commission is unaware of any reason why the Exchange's proposal to phase-in the full death benefit over a four year period for all new members should not be approved.[29]

Finally, the Commission believes that the changes in the Fund assessment are consistent with Section 6(b)(4) of the Act, which requires the equitable allocation of reasonable dues and fees among members and persons using exchange facilities.[30] The Commission notes that, with one exception, the assessment applies equally to all members[31] and that there is always at least one individual connected to each membership who has the right to participate in the Fund.

IV. Conclusion

In summary, the Commission believes that the changes relating to the Exchange's membership structure will provide the Exchange and its members with increased flexibility without causing any substantive changes in the operation of the Exchange. Further, the Commission believes that the changes relating to the Exchange's Gratuity Fund should provide enhanced benefits to a wider range of members.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[32] that the proposed rule change (SR–Amex–95–08) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[33]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–12517 Filed 5–22–95; 8:45 am]

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[21] Options principal members, lessees, and nominees also would be eligible to become trustees of the Fund. For further discussion of rules governing trustees of the Fund, *see* Art. IX of the Amex Constitution.

[22] See Marx Letter, *supra*, note 3.

[23] 15 U.S.C. 78f(b)(2), (4), (5).

[24] 15 U.S.C. 78f(c). Section 6(c) of the Act allows an exchange to deny membership to certain classes of persons.

[25] See *e.g.*, Art. I, Sec. 1.1 and Sec. 2.2 of the Constitution of the Chicago Board Options Exchange, Inc. and Art. II, Sec. 1 of the Constitution of the Chicago Stock Exchange, Incorporated.

[26] See Art. IV., Sec. 2(d) of the Amex Constitution.

[27] See Securities Exchange Act Release No. 35411 (Feb. 22, 1995), 60 FR 11153 (March 1, 1995).

[28] In approving this provision, the Commission does not mean to dismiss the comment of S.G. Marx and Associates Inc. regarding the Exchange's alleged delay in the approval of the membership of one of the company's nominees until after June 10, 1993 so that, under the proposal, such member would not be able to participate in the Gratuity Fund. The Commission believes that such allegation speaks to whether the Exchange applied its rules in a fair and impartial manner, rather that the advisability of the provision in question and on that basis is approving this order. The Commission emphasizes that such approval should not be interpreted as addressing the merits of the above allegation in any manner.

[29] As discussed *supra* at note 17 and the accompanying text, the phase-in schedule does not apply to persons who are already participants or who become participants by virtue of these amendments.

[30] The Commission notes that the proposed change, when combined with the provision that allows current lessees to "opt-out" of participation in the Fund, could result in a membership being required to pay an assessment to the Fund, notwithstanding that no one connected with such membership would be a participant in the Fund. The comment letter of S.G. Marx & Associates Inc. discussed this situation. See Marx Letter, *supra*, note 3.

[31] See note 20, *supra*, for a discussion of the exception regarding certain options principal memberships.

[32] 15 U.S.C. 78s(b)(2).

[33] 17 CFR 200.30–3(a)(12).

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[1] 15 U.S.C. 78s(b)(1) (1988).

[Release No. 34–35711; File No. SR–CHX–95–12]

Self-Regulatory Organizations; Chicago Stock Exchange, Incorporated; Notice of Filing of Proposed Rule Change Regarding Depository Eligibility Requirements

May 12, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on April 26, 1995, the Chicago Stock Exchange, Incorporated ("CHX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by CHX. The Commission is publishing this notice to solicit comments from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CHX proposes to amend Rule 7 of Article XXVIII of its rules relating to the depository eligibility requirements for issuers that desire to list their securities on CHX.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CHX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Under the proposed rule change, CHX will adopt a uniform depository eligibility rule for issuers that desire to list their securities on the CHX. The uniform rule has been developed by the Legal and Regulatory Subgroup of the U.S. Working Committee of the Group of Thirty in coordination with each of the national securities exchange and the National Association of Securities Dealers ("NASD"). It is anticipated that each national securities exchange and the NASD will file rule changes proposing adoption of depository eligibility standards substantially similar to CHX's proposed rule and will seek to make such changes effective contemporaneously with the effective date of the transition from a five-day ("T+5") to a three-day ("T+3") settlement cycle. The transition is set to occur June 7, 19995.[3]

The proposed rule change will require issuers to ensure that securities to be listed on CHX have been included in the file of eligible issues maintained by a securities depository registered as a clearing agency under Section 17A of the Securities Exchange Act of 1934.[4] This requirement will not apply to a security if the terms of such security cannot be reasonably modified to meet the criteria for depository eligibility at all securities depositories.

The proposed rule change sets forth additional requirements that must be met before a security will be deemed to be "depository eligible," as such term is used in Article XXII, Rule 37 of the CHX rules ("Book-Entry Settlement

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[2] The Commission has modified the language in these sections.

[3] Securities Exchange Act Release Nos. 33023 (October 6, 1993), 58 FR 52891 (adoption of Rule 15c6–1) and 34952 (November 9, 1994), 59 FR 59137 (change of effective date of Rule 15c6–1 from June 1, 1995 to June 7, 1995).

[4] 15 U.S.C. 78q–1 (1988).

Requirements").[5] The proposed rule specifies different requirements for depository eligibility depending upon whether a new issue is distributed by an underwriting syndicate before or after the date a securities depository system is available for monitoring repurchases of the distributed shares by syndicate members ("flipping tracking system").

Currently, a flipping tracking system is being developed that will include a securities depository service that (i) can be activated upon the request of the managing underwriter for a period of time that the managing underwriter specifies, (ii) in certain circumstances, will require the delivering participant to provide to the depository information sufficient to identify the seller of such shares as a precondition to the processing of book-entry delivery instructions for distributed shares, and (iii) will report to the managing underwriter the identity of any other syndicate member or selling group member whose customer(s) sold distributed shares (but will not report to the managing underwriter the identity of such customer(s)) and, in certain circumstances, will report to such syndicate member or selling group member the identity of such customer(s). Prior to the availability of a flipping tracking system, the managing underwriter may delay the date a security is deemed "depository eligible" for up to three months after trading has commenced in the security. After the availability of a flipping tracking system, a new issue will be deemed to be depository eligible upon commencement of trading on CHX.

The proposed rule change is consistent with Section 6(b)(5) of the Act[6] in that it is designed to promote just and equitable principals of trade.

(B) Self-Regulatory Organization's Statement on Burden on Competition

CHX believes that no burden will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments have been solicited or received. CHX will notify the Commission of any written comments received by CHX.

[5] Pursuant to Article XXII, Rule 37 of the CHX rules, trades by a member in depository eligible securities generally must be settled by book-entry through a securities depository.

[6] 15 U.S.C. 78f(b)(5) (1988).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which CHX consents, the Commission will:

(a) By order approve such proposed rule change or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

CHX has requested accelerated effectiveness of the proposed rule change in order that the rule can become effective on June 7, 1995.[7]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 5th Street, N.W., Washington, D.C. 20549. Copies of such filings will also be available for inspection and copying at the principal office of CHX. All submissions should refer to the file number SR–CHX–95–12 and should be submitted by June 13, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–12518 Filed 5–22–95; 8:45 am]

BILLING CODE 8010–01–M

[7] *Supra* note 3 and accompanying text.

[8] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–35722; File No. SR–CHX–95–11]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to the Automatic Execution of Limit Orders

May 16, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 31, 1995, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change and on May 5, 1995, filed Amendment No. 1 to the proposed rule change,[1] as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to reactivate its system enhancement relating to the automatic execution of limit orders[2] with one modification. This system enhancement was originally approved by the Commission as a one-year pilot program. See Securities Exchange Act Release No. 32124 (Apr. 13, 1993), 58 FR 21325 (approving File No. SR–MSE–92–03) ("Pilot Approval Order"). The original one-year pilot program lapsed on April 15, 1994 without the Exchange filing for an extension or permanent approval.[3]

The proposed automatic execution feature ("Auto-Ex") will operate by comparing the size of the CHX-entered limit order against the amount of stock ahead of that order in the primary market when the issue is trading in the primary market at the limit price.[4] The

[1] See letter from Craig Long, Foley & Lardner, to Glen Barrentine, Senior Counsel, SEC, dated May 4, 1995. In Amendment No. 1, the Exchange requests that the rule filing be approved on a one-year pilot basis and makes certain clarifying changes to the text of Item I.

[2] A limit order is an order to buy or sell a stated amount of a security at a specified price or at a better price.

[3] In the Pilot Approval Order, the Commission described its concerns with the program and requested that the Exchange submit a report detailing the use of the pilot. The Exchange, however, did not submit the report because specialists on the Exchange made little or no use of the pilot program. Telephone conversation between Craig Long, Foley & Lardner, and Jennifer Choi, SEC, on April 17, 1995.

[4] In the original pilot program,the Auto-Ex was to operate by comparing the size of CHX-entered limit order against the amount of stock ahead of that order in the "consolidated market" rather than in the primary market. This change is the one modification made by the Exchange to the original pilot program. Telephone conversation with Craig Long, Foley & Lardner, and Jennifer Choi, SEC, on April 17, 1995.

comparison will be made against the primary market quotation size. The Auto-Ex system will keep track of all prints in the primary market and will automatically execute the limit order once sufficient size prints in the primary market.[5] As additional limit orders at the same price are received by the specialist, comparisons will be made and entered based upon the shares ahead of those limit orders at the time of receipt, including shares ahead on the CHX. The Auto-Ex feature will not permit a limit order to be filled out of sequence. Limit orders will not be compared for Auto-Ex purposes until such time as the limit price equals the bid or offer, as the case may be, quoted in the primary market for the first time.[6]

The Auto-Ex feature will execute limit orders in accordance with existing CHX rules.[7] Auto-Ex will be available for all dually traded issues; however, specialists will be permitted to choose Auto-Ex on an issue by issue basis.[8] Generally, the Exchange believes that specialists will choose to use Auto-Ex for issues that, based on experience, have demonstrated reliable and accurate quotes in the primary market.[9] Limit orders not subject to Auto-Ex will be "flagged" with a prompt to alert the specialist that a fill may be due. The proposal to establish an Auto-Ex feature applies only to non-marketable limit orders.[10] It is not applicable to marketable limit orders or to market orders.[11] The text of the proposed rule change is as follows [new text is italicized]:

Article XX

Rule 37(b)

(12) Automatic Execution of Limit Orders. A Specialist may voluntarily choose to activate a feature of MAX that automatically executes limit orders on a specialist's book at the limit price after both of the following conditions are met: (1) the issue is trading at the limit price in the primary market, and (2) enough transactions in the issue are executed in the primary market at prices which are equal to the limit price of the order such that the size associated with such transactions are, in aggregate, equal to or greater than the sum of (a) the size displayed at the limit price in the primary market when the limit order was entered on the specialist's book, plus (b) the size of the limit order. This feature can be activated on a stock-by-stock basis only. Once activated, it must remain activated for a minimum of five trading days and can only be deactivated on a certain day (to be determined by the Exchange from time to time) each month.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to reactivate the CHX's Auto-Ex feature for limit orders in order to further automate the CHX's trading floor functions and in order to improve the CHX's performance in filling limit orders.

By providing for automatic execution of limit orders in accordance with existing Exchange rules, the CHX is eliminating the need for the manual operation required of specialists in determining when and to what extent limit orders are due fills based on primary market prints. The manual effort expended by specialists in filling limit orders that are entitled to primary market protection is often time-consuming and can result in errors, particularly when there is heavy trading volume. The present proposal will, therefore, directly benefit customers because it will result in more timely fills while eliminating errors resulting from manual execution

The Auto-Ex feature will not change or amend any CHX trading rules, nor will it cause or allow limit orders to be filled under different parameters than under existing rules. Auto-Ex will only automate the manner in which limit orders are filled. The CHX will continue to monitor specialist execution of limit orders through the Market Regulation/ Surveillance Department. In addition, CHX specialists will continue to be responsible for their books to the same degree as they are now under the manual execution system for limit orders.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act in that it is designed to prevent fraudulent and manipulative acts and practices and to perfect the mechanism of a free and open market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

[5] For example, assume a CHX specialist receives an agency limit order to buy 2,000 shares of ABC at ½. The primary market quotation is ½ bid, ¾ offered, 5,000 shares bid and 5,000 shares offered, meaning there are 5,000 shares ahead of the CHX order. The Auto-Ex system will automatically execute the entire CHX limit order after 7,000 shares print at ½ in the primary market. However, when more than 5,000 but less than 7,000 shares print at ½ in the primary market, the order will be flagged with a flashing prompt to alert the specialist that the order may be due at least a partial fill. See CHX Article XX, Rule 37(a) governing primary market protection of certain limit orders.

[6] For example, if the primary market quotation is ¼ bid, ½ offered, 4,000 shares bid and 4,000 shares offered, and a CHX specialist receives a limit order to buy 2,000 shares for ⅛, that limit order will not be compared against the amount of stock ahead of the order in the primary market until such time as the ¼ bid is exhausted and the ⅛ bid becomes the best bid. At that time, the size that is disseminated with the ⅛ bid is the size against which the limit order is compared for Auto-Ex purposes.

[7] The CHX specialist will be the contra-side of all Auto-Ex trades. See Securities Exchange Act Release No. 32124 (Apr. 13, 1993), 58 FR 21325 (approving File No. SR–MSE–92–03).

[8] The CHX will limit a specialist's ability to activate and then deactivate Auto-Ex regularly by: (1) Only permitting a specialist to deactivate Auto-Ex on a certain day each month and (2) requiring that issues remain on Auto-Ex for a minimum of five trading days.

[9] Telephone conversation between Craig Long, Foley & Lardner, and Glen Barrentine and Jennifer Choi, SEC, on May 3, 1995.

[10] Under CHX Rule 37(b)(7), specialists generally are required to automatically execute nonmarketable agency limit orders at the limit price when there is a price penetration of the limit price in the primary market.

[11] A limit order is called "marketable" when the prevailing best offer (bid) is equal to or less (greater) than the limit buy (sell) order price. CHX Rule 37(b)(7) provides for the automatic execution at the BBO or better of all limit orders that are marketable when entered into the Exchange's automated execution system ("MAX") provided that such orders are of a certain size and are eligible for execution under CHX rule 37(a).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CHX–92–11 and should be submitted by June 13, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–12519 Filed 5–22–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35720; File No. SR–DTC–95–06]

Self-Regulatory Organizations; The Depository Trust Company; Order Granting Accelerated Approval of a Proposed Rule Change Modifying the Same-Day Funds Settlement System to Accommodate the Overall Conversion to Same-Day Funds Settlement for Securities Transactions

May 16, 1995.

On March 22, 1995, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–DTC–95–06) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on April 21, 1995.[2] No comment letters were received. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change.

I. Description of the Proposal

DTC currently processes the money settlements related to different types of securities transactions in either the next-day funds[3] settlement ("NDFS") system or the same-day funds[4] settlement ("SDFS") system. The NDFS system is used primarily for the money settlement of equity, corporate debt, and municipal debt issue transactions. The SDFS system began operation in 1987 and is used primarily for the money settlement of transactions in commercial paper and other money market instruments ("MMIs").[5]

DTC and the National Securities Clearing Corporation ("NSCC") jointly have issued three memoranda which describe DTC's and NSCC's respective plans for converting their payment systems to SDFS.[6] DTC's sections of the memoranda describe its plan to combine its NDFS and SDFS systems into a single system which will be based on the design of the current SDFS system with some modifications. DTC's and NSCC's plans are in accord with the 1989 recommendation of the international Group of Thirty[7] that all securities transactions should settle in same-day funds.[8]

Under the conversion plan, all issues currently settling in DTC's NDFS system will be transferred to the SDFS system on a single day, which DTC anticipates will occur in the fourth quarter of 1995 or the first quarter of 1996.[9] In order to assure an efficient conversion, certain modifications to the current SDFS system will be implemented at various times during 1995 prior to the overall conversion date. The purpose of the current rule change is to convert DTC's current SDFS system Participants Fund to an all cash fund and to modify certain risk management controls and other features of the SDFS system. The Participants Fund for the NDFS system will not be affected by this rule change. The rule change implements a number of the modifications described in the 1994 Memorandum.[10]

Currently, the SDFS system Participants Fund consists of cash and securities and has separate components for money market instruments and for other SDFS system securities.[11] The rule change converts DTC's SDFS system Participants Fund to an all-cash fund with no separate component for the MMI Program.[12] The rule change also decreases the minimum deposit to the SDFS system Participants Fund from $200,000 to $10,000 and changes the method of calculating a participant's required deposit.

The new SDFS Participants Fund formula bases each participant's required deposit on the amount of liquidity that the participant uses in the system. A participant's liquidity use will be determined using a sixty day rolling average of the participant's intraday net debit peaks.[13] The rule change requires a participant to deposit in the SDFS Participants Fund an amount equal to that participant's proportional liquidity needs.[14]

In addition, the rule change modifies certain risk management controls in the SDFS system. The method used to calculate the net debit cap for each participant is being changed[15] and the maximum net debit cap for each participant is being increased to $900,000,000 from approximately $580,000,000 today. The rule change also adds the Largest Provisional Net Credit ("LPNC") calculation control which is designed to protect DTC against the combined failure of an issuer of MMIs and a participant. The LPNC control creates a provisional net balance by withholding a participant's largest net settlement credit due to transactions in any single issuer's MMIs. DTC's risk management controls will be applied to the provisional net balance that is created by the LPNC procedure, and transactions that cause the provisional net balance to violate those risk management controls will not be completed.[16]

The rule change also modifies certain aspects of DTC's Participant Operating Procedures on reclamations[17] for both the NDFS and the SDFS system, the Receiver Authorized Delivery ("RAD") service[18] and the recycle algorithm for deliver orders.[19] The modified procedures provide for the validation of all reclaims by DTC's system. When a participant submits a reclaim for processing in DTC's NDFS or SDFS systems, DTC's system will verify that a corresponding original delivery that was completed on the same day exists for every reclaim presented for processing.

The modified procedures also establish a minimum threshold of $15,000,000 for bilateral RAD limits. Participants currently are permitted to set individual dollar limits against other possible contra-participants so that deliveries with a settlement value exceeding the specified limit will not be processed until the receiver-participant has reviewed and approved the delivery. To limit the number of transactions subject to RAD, participants will not be able to set RAD limits at an amount less than $15 million.

The new recycle algorithm for deliver orders will offer SDFS system users a second recycle options for deliver orders. Transactions that are recycled because of insufficient positions or violations of risk management controls are currently prioritized based on transaction type and then on transaction size ("Option 1"). The new option ("Option 2") provides participants with the ability to choose whether pending transactions caused by an insufficient position will be recycled in the order in which they were entered (*i.e.*, first in, first out) or in the Option 1 prioritization schedule.[20]

Most of the modifications to be implemented by the rule change will be effective on dates to be specified by DTC in the second quarter of 1995. The control involving the LPNC calculation and the $15,000,000 threshold for bilateral RAD limits will be made effective on dates to be specified by DTC in the third quarter of 1995.

II. Discussion

Section 17A(b)(3)(F) requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible.[21] As discussed below, the Commission believes that DTC's proposed rule change is consistent with DTC's obligations under the Act.

The Commission believes that DTC's SDFS system rules and procedures provides certain protections for DTC and its participants from financial loss associated with member defaults and insolvencies. The rule change contains a number of protections designed to decrease the chance of member default and to limit loss in the event of a default. Those protections include an all-cash SDFS Participants Fund, a new Participants Fund formula based on liquidity use, a new net debit cap formula, a new fixed net debit cap of $900 million, and the application of the LPNC control.

The new SDFS Participants Fund will be comprised of approximately $400

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 35613 (April 17, 1995), 60 FR 19971.

[3] The term "next-day funds" refers to payment by means of certified checks that are for value on the following day.

[4] The term "same-day funds" refers to payment in funds that are immediately available and generally are transferred by electronic means.

[5] For a description of the SDFS system, refer to Securities Exchange Act Release Nos. 24689 (July 9, 1987), 52 FR 26613 (File No. SR–DTC–87–04) (order granting temporary approval to DTC's SDFS settlement service); 26051 (August 31, 1988), 53 FR 34853 (File No. SR–DTC–88–06) (order granting permanent approval to DTC's SDFS settlement service); 33958 (April 22, 1994), 59 FR 22878 (SR–DTC–93–12) (order temporarily approving DTC's MMI settlement program through April 1, 1994); and 35655 (April 30, 1995), 60 FR 22423 (File No. SR–DTC–95–05) (order temporarily approving DTC's MMI settlement program through April 30, 1996).

[6] The Depository Trust Company and National Securities Clearing Corporation, Memorandum (July 1, 1992) ("1992 Memorandum"); The Depository Trust Company and National Securities Clearing Corporation, Memorandum (July 26, 1993) ("1993 Memorandum"); The Depository Trust Company and National Securities Clearing Corporation, Memorandum (July 29, 1994) ("1994 Memorandum").

[7] The Group of Thirty was established in 1978 as an independent, nonpartisan, nonprofit organization composed of international financial leaders whose focus is on international economic and financial issues.

[8] Group of Thirty, Clearance and Settlement Systems in the World's Securities Markets (March 1989) ("Group of Thirty Report").

[9] Only one DTC Participants Fund will be needed when the NDFS system and the SDFS system are combined into a new SDFS system.

[10] *Supra* note 6 and accompanying text.

[11] Currently, the SDFS system Participants Fund consists of approximately $253 million in cash and $567 million in pledged securities.

[12] Under the conversion plan, the SDFS system Participants Fund will consist of $400 million in cash. Based on current activity levels, DTC believes that a $400 million cash-only Participants Fund will provide sufficient protection against present liquidity and credit risks. Pursuant to its rules, DTC may change the formulas used to determine a participant's required deposit or require a participant to make additional deposits to the Participants Fund.

[13] The new SDFS system will monitor the levels of a participant's net settlement debits during each day and will record the highest net debit experienced by that participant. This measure of liquidity is referred to as the participant's "intraday debit peak."

[14] For example, assume DTC had three participants, A, B, and C, and had established $400,000,000 as the size of the SDFS system Participants Fund. Each participant's minimum deposit would be $10,000 for a total of $30,000 which leaves $399,970,000 as the incremental fund deposit amount needed for the Participants Fund. In order to allocate the $399,970,000 among the three participants, their respective average intraday net debit peaks would be used. Assume Participant A's average net debit peak is $300,000,000, Participant B's is $500,000,000, and Participant C's is $500,000,000. Since all incurred net debit peaks of at least $300,000,000, each created liquidity needs of $300,000,000 and would contribute equally to provide DTC's first $300,000,000. Each would be responsible for a $10,000 minimum deposit plus a $99,990,000 incremental deposit bringing the total to $100,000,000 for each participant and $300,000,000 in total. Participants B and C would be assigned an additional $100,000,000 increment since they were responsible for creating liquidity needs up to $500,000,000. Together, A, B, and C would be assigned incremental amounts totaling $499,970,000. Since the goal is to create a $400,000,000 Participants Fund, the $499,970,000 must be prorated downward to 399,970,000, the amount needed in addition to their minimum contributions to achieve $400,000,000. Each participant's increments would be reduced by applying a factor of .799988 (*i.e.*, 399,970,000/499,970,000). Their required deposits would then be as follows:

A: $10,000 + ($99,990,000 × .799988)=$80,000,800

B: $10,000 + ($199,990,000 × .799988)=$159,999,600

C: $10,000 + ($199,990,000 × .799988)=$159,999,600

Total: $400,000,000

[15] A participant's net debit cap will be based on an average of the participant's three highest intraday net debit peaks over a rolling three-month period multiplied by factors ranging from 1 to 2 based on a sliding scale relative to the size of the participant's net debit peaks. Net debit caps will be determined by and will be applied to a participant's simulated net debit balances caused by the Largest Provisional Net Credit ("LPNC") procedure describe below.

[16] DTC will subtract the amount of a participant's largest provisional net credit due to transactions in any single issuer's MMIs from the participant's collateral monitor ("simulated collateral monitor") and net debit or credit balance ("simulated balance"). If a transaction will cause the simulated collateral monitor to turn negative (*i.e.*, the participant's collateral would be insufficient to cover its simulated net debit after the transaction) or the resulting net debit balance to exceed the participant's net debit cap, the transaction will be blocked. Blocked transactions will be recycled until credits from other transactions in MMIs of issuers other than those of the largest provisional net credit cause the simulated collateral monitor to be positive or the resulting net debit to be within the net debit cap limits.

[17] A reclamation is the return of a delivery order or a payment order by a participant.

[18] RAD allows participants to review and either approve or cancel incoming deliveries before they are processed in DTC's system.

[19] DTC's Account Transfer Processor system provides for the recycling or pending of transactions that cannot be completed due to a participant's insufficient positions or violations of risk management controls (*i.e.*, Net Debit Cap and Collateral Monitor).

[20] Under Options 1 and 2, CNS deliveries are always given the highest priority on the recycle queue.

[21] 15 U.S.C. 78q–1(b)(3)(F) (1988).

million in cash deposit and $700 million in committed line(s) of credit.[22] In the event that a participant fails to settle for any reason, the all-cash fund in most cases should provide enough immediate liquidity to complete settlement without causing DTC to use its lines of credit. The size of the fund, $400 million in cash, was designed to provide sufficient liquidity to cover all but a few of DTC's largest participants' individual net settlement debits. The $700 million in committed lines of credit should provide additional liquidity sufficient to cover the large end-of-day net debits expected to be produced by these few largest participants with the application of a new net debit cap of $900 million.

Although the minimum deposit to the Participants Fund has been decreased from $200,000 to $10,000, participants will be required to deposit additional amounts based on the size of their intraday net debits weighted against other participants' net debits. As a result, the cash deposits in the SDFS system fund will be increased from $210 to $400 million. The allocation under the new Participants Fund formula will apportion fund deposits among participants in proportion to the liquidity requirements they generate in the system. The new Participants Fund formula also will more accurately reflect each participant's liquidity requirements because it is based on a participant's net debit peaks for the prior sixty days. The current fund formula is based on a participant's average gross debits and credits only for the prior month. While the use of gross debits and credits reflects a participant's activity levels, the use of net debit peaks reflects a participants actual liquidity needs.

The changes to DTC's risk management controls also are intended to protect DTC and its participants against the inability of one or more participants to fulfill its or their settlement obligations. DTC's risk management controls are based on the Board of Governors of the Federal Reserve System's guidelines for book-entry securities systems that settle over Fedwire.[23] The new net debit cap formula establishes a single net debit cap as opposed to the several adjustable and fixed net debit caps currently used in the SDFS system.[24] The new net debit cap will better reflect the participants most recent liquidity needs and not just its liquidity needs for the prior month[25] because it will be calculated daily using a 90-day rolling average.[26] By requiring participants to have sufficient collateral to support their net debits and by ensuring that their net debits do not exceed their net debit caps, the new LPNC procedure should help to ensure that the occurrence of a combined MMI issuer's default and a participant's failure to settle does not expose DTC to loss and liquidity risks. The application of the LPNC procedure to both the net debit cap and the collateralization procedures should result in a failing participant's net debit remaining collateralized and within its net debit cap if the MMI issuer in which it has the largest net credit also defaulted.

The rule change implements certain modifications to DTC's current SDFS system to provide for an efficient conversion to SDFS environment for all securities transactions. The Commission believes that the overall conversion to a SDFS system will help reduce systemic risk by eliminating overnight credit risk. The SDFS system also will reduce risk by achieving closer conformity with the payment methods used in the derivatives markets, government securities markets and other markets.

For the reasons described above, the Commission believes that DTC's proposed rule change fulfills the requirements of Section 17A(b)(3)(F) of the Act because the proposal assures the safeguarding of securities and funds in the custody and control of DTC. Furthermore, the proposed rule change facilitates the overall conversion of DTC's payment system to an SDFS system which should facilitate the prompt and accurate clearance and settlement of securities transactions.

DTC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing. The Commission finds good cause for so approving the proposed rule change because the modifications implemented by the rule change are part of the planned conversion of DTC's entire money settlement system to an SDFS system. The Commission believes that participants should have the opportunity to become familiar with the SDFS system capability and the new risk management controls prior to the complete conversion to an SDFS system for securities transactions.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act, particularly with Section 17A(b)(3)(F) of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–DTC–95–06) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[27]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–12520 Filed 5–22–95; 8:45 am]

BILLING CODE 8010–01–M

[22] The current SDFS Participants Fund consists of approximately $253 million in cash contributions, $50 million in internal sources, $500 million in external lines of credit and $500 million in additional external lines of credit exclusively dedicated to the MMI program.

[23] "Federal Reserve Policy Statement on Private Delivery-Against-Payment Systems," Board of Governors of the Federal Reserve System (June 15, 1989).

[24] A participant's net debit cap currently is the least of the following: (1) An amount which is a multiple of the participant's mandatory and voluntary deposits in the fund; (2) an amount equal to 75% of DTC's lines of credit; (3) an amount, if any, determined by the participant's settling bank; or (4) an amount, if any, determined by DTC.

[25] Because a participant's current adjustable net debit cap is based on the participant's mandatory fund deposit, it will only change on a monthly basis as the required deposit changes. However, a participant may choose to increase its adjustable net debit cap at any time by making voluntary deposits.

[26] *Supra* note 15.

[27] 17 CFR 200.30–3(a)(12) (1994).

[Release No. IC–21075; 812–9530]

Northern Life Insurance Company, et al.; Notice of Application

May 16, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an Order under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Northern Life Insurance Company ("Northern Life"), Separate Account One (the "Separate Account"), and Washington Square Securities, Inc. (the "Distributor").

RELEVANT ACT SECTIONS: Order requested under section 6(c) of the Act granting an exemption from sections 26(a)(2)(C) and 27(c)(2) of the Act.

SUMMARY OF APPLICATION: Applicants request an order permitting Northern Life to deduct a mortality and expense risk charge from the assets of the Separate Account in connection with the offering of certain flexible premium individual deferred variable annuity contracts.

FILING DATE: The application was filed on March 20, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 13, 1995, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, c/o James E. Nelson, Esq., ReliaStar Financial Corp., 20 Washington Avenue South, Minneapolis, Minnesota 55401.

FOR FURTHER INFORMATION CONTACT: Sarah A. Wagman, Staff Attorney, at (202) 942–0654, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. Northern Life, a stock life insurance company, is incorporated under Washington law. Northern Life is an indirect, wholly-owned subsidiary of ReliaStar Financial Corp.

2. The Separate Account was established by Northern Life as a funding medium for certain flexible premium individual deferred variable annuity contracts (the "Contracts"). The Separate Account is registered with the SEC as a unit investment trust under the Act. Units of interest in the Separate Account under the Contracts will be registered under the Securities Act of 1933.

3. The Separate Account currently is divided into subaccounts which invest in the series ("Series") of Variable Insurance Products Fund, Variable Insurance Products Fund II, or Northstar/NWNL (each, a "Fund"). Each Fund is a diversified, open-end management investment company. Each Series has separate investment objectives and policies.

4. The Distributor is the distributor and principal underwriter of the Contracts. The Distributor is registered under the Securities Exchange Act of 1934 as a broker-dealer, and is a member of the National Association of Securities Dealers, Inc.

5. The Contracts consist of two series of flexible premium individual deferred variable annuity contracts. The first series of Contracts consists of an individual deferred tax-sheltered annuity contract, an individual deferred retirement annuity contract, and an individual deferred annuity contract (the "Transfer Series Contracts"). The second series of Contracts consists of a flexible premium individual deferred tax-sheltered annuity contract and a flexible premium individual deferred retirement annuity contract (the "Flex Series Contracts").

6. The minimum purchase payment for a Transfer Series Contract is $15,000, and subsequent payments must be at least $5,000. The minimum purchase payment, and minimum subsequent payment, for a Flex Series Contract is $50. Purchase payments may be allocated to one or more of the subaccounts of the Separate Account which have been established to support the Contracts, or to Fixed Account A or Fixed Account B, which are part of the general account of Northern Life.

7. Several annuity payout options, on both a fixed and variable basis, are available under the Contracts. Northern Life also provides a guaranteed death benefit. If the Contract owner (or, in the case of certain Transfer Series Contracts, the annuitant) dies prior to age 80, the death benefit is equal to the greater of (i) all purchase payments less any withdrawals, amounts used to purchase annuity payouts, any outstanding loan balance, and the amount of previously deducted annual Contract charges, (ii) the Contract value less any outstanding loan balance, or (iii) the Contract value on the most recent Contract anniversary that is a multiple of six years, measured from the Contract issue date, plus any purchase payments since that anniversary and minus any withdrawals, amounts used to purchase annuity payouts, and any previously deducted annual Contract charges since that anniversary, and less any outstanding loan balance. If the Contract owner (or, in the case of certain Transfer Series Contracts, the annuitant) dies on or after age 80, the death benefit is the Contract value less the outstanding loan balance. If the Contract owner of a Transfer Series individual deferred annuity Contract dies at any age, the death benefit will be equal to the Contract value less any applicable contingent deferred sales charge, any outstanding loan balance and the $30 annual Contract charge.

8. Among the various charges and fees Northern Life will deduct under the Contracts is an annual Contract charge of $30 designed to compensate Northern Life for the administrative services provided under the Contracts. It will be deducted *pro rata* from the fixed accounts and each Separate Account subaccount, and is guaranteed not to increase.

9. Northern Life also will deduct from the assets of the Separate Account a daily asset administration charge, equal to an annual rate of .15%. This charge is designed to reimburse Northern Life for administrative services it provides with respect to the Contracts and the Separate Account, and is guaranteed not to increase.

10. Northern Life does not currently intend to impose a charge for any transfers among the Separate Account subaccounts and the fixed accounts, but reserves the right to impose a charge of up to $25 for each transfer. Northern Life also does not currently intend to impose a processing fee for partial withdrawals of Contract value, but reserves the right to assess a fee not to exceed the lesser of 2% of the partial withdrawal account, of $25.

11. These administrative charges will be deducted in reliance on rule 26a–1 under the Act, and each represents reimbursement only for administration costs expected to be incurred over the life of the Contracts. Northern Life does not anticipate any profit from any of these charges. Administrative charges may be reduced or waived under certain circumstances.

12. Northern Life may assess a contingent deferred sales charge ("CDSC") in the event of any partial or full withdrawal of Contract value under the Transfer Series Contracts and the Flex Series Contracts. The CDSC for the Transfer Series Contracts is calculated as a percentage of each purchase payment. The CDSC will apply during the year the Contract takes effect and for the five Contract years immediately thereafter, according to the following schedule:

Contract year of withdrawal minus contract year of purchase payment	Withdrawal charge as a percentage of each purchase payment (percent)
0	6
1	6
2	5
3	5
4	4
5	2
6 and later	0

For purposes of imposing the CDSC, purchase payments are considered to be withdrawn on a first-in, first-out basis,

and purchase payments are considered to be withdrawn before earnings thereon. No CDSC is imposed upon either annuitization or payment of the death benefit, except that if the Contract owner of a Transfer Series individual deferred annuity Contracts dies, a CDSC is deducted upon payment of the death benefit.

13. The CDSC for the Flex Series Contracts is calculated as a percentage of Contract value withdrawn. The CDSC may be assessed against any full or partial withdrawal of Contract value occurring before the eleventh Contract year, in accordance with the following schedule:

Contract year	Withdrawal charge
1	8
2	8
3	8
4	7
5	6
6	5
7	4
8	3
9	2
10	1
11+	0

No CDSC is imposed upon either annuitization or payment of the death benefit.

14. Under both the Transfer Series Contracts and the Flex Series Contracts, the Contract owner may withdraw a portion of the Contract value during any 12-month period after the issue date of the Contract without Northern Life deducting a CDSC. The amount on which no CDSC will be imposed is the greater of: (i) 10% of the Contract value less any outstanding loan balance, or (ii) the purchase payments remaining which are no longer subject to a CDSC (Transfer Series Contracts) or the Contract value no longer subject to a CDSC (Flex Series Contracts). This privilege may only be exercised a limited number of times during any 12-month period. In addition, the CDSC may be reduced or waived under certain circumstances.

15. Northern Life does not anticipate that CDSC revenues from the Transfer Series Contracts and the Flex Series Contracts will generate sufficient funds to pay the cost of distributing the Contracts. If CDSC revenues are insufficient to cover distribution expenses, the deficiency will be met with amounts from Northern Life's general account, which may include amounts derived from the mortality and expense risk charge.

16. Northern Life may deduct any applicable premium taxes levied by any unit of government. As permitted or required by applicable state law, Northern Life may deduct premium taxes from purchase payments upon receipt, or deduct premium taxes from Contract value at a later date.

17. Northern Life proposes to assess a charge to compensate it for bearing certain mortality and expense risks in connection with both Contracts. This charge is equal to an effective annual rate of 1.25% of the value of the assets in the Separate Account. Of that amount, .85% is attributable to mortality risks, and .40% is attributed to expense risks. The rate of the mortality and expense risk charge is guaranteed not to increase.

18. The mortality risk arises from Northern Life's contractual obligation to make annuity payments regardless of how long all annuitants, or any individual annuitant, may live. This obligation assures that neither an annuitant's own longevity, nor an improvement in general live expectancy, will adversely affect the monthly annuity payments that an annuitant will receive under a Contract. Northern Life also incurs a mortality risk in connection with the death benefit guarantee. In addition, Northern Life assumes the expense risk that its actual administrative costs will exceed the amount recovered through the administrative charges.

19. If the mortality and expense risk charge is insufficient to cover Northern Life's actual costs and assumed risks, the loss will fall on Northern Life. If the charge is more than sufficient to cover costs, any excess will be profit to Northern Life. Northern Life currently anticipates a profit from this charge.

Applicant's Legal Analysis

1. Applicants request an exemption under section 6(c) of the Act from sections 26(a)(2)(C) and 27(c)(2) of the Act to permit the deduction of a mortality and expense risk charge from the assets of the Separate Account under the Contracts.

2. Sections 26(a)(2)(C) and 27(c)(2) of the Act, in relevant part, prohibit a principle underwriter for, or depositor of, a registered unit investment trust from selling periodic payment plan certificates unless the proceeds of all payments, other than sales loads, on such certificates are deposited with a qualified trustee or custodian, within the meaning of section 26(a)(1), and are held under arrangements that prohibit any payment to the depositor or principal underwriter except a reasonable fee, as the SEC may prescribe, for performing bookkeeping and other administrative duties normally performed by the trustee or custodian. Northern Life's deduction of a mortality and expense risk charge from the assets of the Separate Account may be deemed to be a payment prohibited by sections 26(a)(2)(C) and 27(c)(2).

3. Section 6(c) of the Act authorizes the SEC, by order upon application, to grant an exemption from any provision of the Act, or any rule or regulation promulgated thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. Applicants believe that Northern Life is entitled to reasonable compensation for its assumption of mortality and expense risks. Applicants represent that the proposed mortality and expense risk charge of 1.25% is consistent with the protection of investors because it is a reasonable and proper insurance charge. The charge is a reasonable one to compensate Northern Life for the risks that: (i) Annuitants under the Contracts will live longer individually or as a group than has been anticipated in setting the annuity rates guaranteed in the Contracts; (ii) the Contract value will be less than the death benefit; and (iii) administrative expenses will be greater than amounts derived from the administrative charges.

5. Northern Life represents that the 1.25% mortality and expense risk charge under the Contracts is within the range of industry practice for comparable annuity products. This representation is based upon Northern Life's analysis of publicly available information about similar industry products, taking into consideration such factors as current charge levels, the existence of charge level guarantees, and guaranteed annuity rates. Northern Life will maintain at its administrative offices, and make available to the SEC upon request, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, its comparative survey.

6. Applicants acknowledge that if a profit is realized from the mortality and expense risk charge, all or a portion of such profit may be viewed as being offset by distribution expenses not reimbursed by CDSC revenues. Northern Life has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements for the Contracts will benefit the Separate Account and the Contract owners. The basis for that conclusion will be set forth in a memorandum that will be maintained by Northern Life at its administrative offices and will be available to the SEC.

7. Northern Life states that the Separate Account will invest only in those management investment companies that undertake, in the event such company should adopt a plan under rule 12b–1 under the Act to finance distribution expenses, to have a board of directors (or trustees), a majority of whom are not "interested persons" of such investment company, formulate and approve any such plan pursuant to rule 12b–1.

Conclusion

For the reasons set forth above, applicants believe that the requested exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–12598 Filed 5–22–95; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21079; 812–9496]

Quest for Value Distributors, et al.; Notice of Application

May 17, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Quest for Value's Unit Investment Laddered Trust Series ("Quilts") and Quest for Value Distributors ("Quest Distributors" or the "Sponsor").

RELEVANT ACT SECTIONS: Order requested under sections 11(a) and 11(c).

SUMMARY OF APPLICATION: Applicants request an order to permit certain offers of exchange between unit investment trusts.

FILING DATES: The application was filed on February 23, 1995, and amended on April 12, 1995 and May 5, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 12, 1995, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary: SEC, 450 5th Street NW, Washington, DC 20549. Applicants: Two World Trade Center, 225 Liberty Street, New York, New York 10080–6116.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney (202) 942–0572, or C. David Messman, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. Quilts is a series of unit investment trusts registered under the Act and is sponsored by Quest Distributors. Quilts consists of Quilts Monthly Income—U.S. Treasury Series 1, Quilts Asset Builder—U.S. Series 3, Quilts Income—Corporate Series 1, and Quilts Municipal Insured Series 1. Applicants also request relief for future series of Quilts and subsequently issued unit investment trusts sponsored by the Sponsor or a sponsor controlled by or under common control with the Sponsor and registered (or to be registered) under the Securities Act of 1933 and the Act (collectively with Quilts, the "Trusts").

2. The sales charge for initial investment in the Trusts currently ranges between .85% to 4.5% of the public offering price, subject to discounts for certain volume transactions. Quest Distributors intends to maintain a secondary market for the units of each series, although it is not obligated to do so. The sales charge upon units sold in the secondary market ranges from .85% to 4.5% plus net accrued interest.

3. Applicants propose to offer an exchange privilege to unitholders of the Trusts at a reduced sales charge (the "Exchange Privilege"). Unitholders would be able to exchange any of their units for units in one or more available series of the Trusts (the "Exchange Trust"). Applicants also propose to offer a rollover privilege to unitholders of the Trusts at a reduced sales charge (the "Rollover Privilege"). Unitholders would be able to "roll over" their units in a series which is terminating for units of one or more new series of the Trusts (the "Rollover Trust").

4. To exercise the Exchange or Rollover Privilege, a unitholder must notify the Sponsor. Exercise of the Exchange or Rollover Privilege is subject to the following conditions: (a) The Sponsor must be maintaining a secondary market in units of the Trust held by the unitholder and units of the Trust to be acquired in the exchange, (b) at the time of the exchange, there must be units of the Exchange or Rollover Trust to be acquired available for sale, and (c) exchanges will be in whole units only.

5. Unitholders who wish to exchange units under the Exchange or Rollover Privileges within the first five months of purchase will not be eligible for the reduced sales charge. Such unitholders will be charged a sales load equal to the greater of (a) the reduced sales load or (b) an amount which, when added to the sales charge paid by the unitholder upon his or her original purchase of units of the Trusts, would equal the sales charge applicable to the direct purchase of the newly acquired units, determined as of the date of exchange.

Applicants' Legal Analysis

1. Section 11(a) requires SEC approval of an offer to exchange securities between open-end investment companies if the exchange occurs on any basis other than the relative net asset values of the securities to be exchanged. Section 11(c) makes section 11(a) applicable to any type of exchange offer of securities of registered unit investment trusts for the securities of any other investment company, irrespective of the basis of exchange.

2. Applicants represent that unitholders will not be induced or encouraged to participate in the exchange privilege through an active advertising or sales campaign. Quest Distributors recognizes its responsibility to its customers against generating excessive commissions through churning and asserts that the sales charge collected will not be a significant economic incentive to salesmen to promote inappropriately the exchange privilege. Applicants further believe that the Exchange and Rollover Privileges are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant's Conditions

If the requested order is granted, applicants agree to the following conditions:

1. The prospectus for each series and any sales literature or advertising that mentions the existence of the Exchange Privilege or the Rollover Privilege will disclose that the Exchange and the Rollover Privilege are subject to termination and that their terms are subject to change.

2. Whenever the Exchange Privilege or the Rollover Privilege is to be terminated or its terms are to be amended materially, any holder of a security subject to that privilege will be given prominent notice of the impending termination or amendment at least 60 days prior to the date of termination or the effective date of the amendment, provided that:

a. No such notice need be given if the only material effect of an amendment is to reduce or eliminate the sales charge payable at the time of an exchange, to add one or more new series eligible for the Exchange Privilege or the Rollover Privilege, or to delete a series which has terminated; and

b. No notice need be given if, under extraordinary circumstances, either

i. There is a suspension of the redemption of units of an Exchange Trust or a Rollover Trust under section 22(e) of the Act and the rules and regulations thereunder, or

ii. An Exchange Trust or a Rollover Trust temporarily delays or ceases the sale of its units because it is unable to invest amounts effectively in accordance with applicable investment objectives, policies and restrictions.

3. An investor who purchases units under the Exchange or Rollover Privilege will pay a lower aggregate sales charge than that which would be paid for the units by a new investor.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margatet H. McFarland,

Deputy Secretary.

[FR Doc. 95–12597 Filed 5–22–95; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21068; File No. 812–9438]

Smith Barney/Travelers Series Fund, et al.

May 15, 1995.

AGENCY: Securities and Exchange Commission (the "Commission" or the "SEC").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Smith Barney/Travelers Series Fund("SB/T Fund"), Smith Barney Series Fund ("Series Fund"), and certain life insurance companies and their separate accounts investing now or in the future in the SB/T Fund or the Series Fund.

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) of the 1940 Act for exemptions from the provisions of Section 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

SUMMARY OF APPLICATION: Applicants seek an order to the extent necessary to permit shares of the SB/T Fund, the Series Fund and all future open-end investment companies for which Smith Barney Mutual Fund Management, Inc., or any affiliate thereof, serves as investment adviser, manager, principal underwriter, or sponsor and whose shares are sold to separate accounts of insurance companies and qualified person and retirement plans the "Future Funds") (the SB/T Fund, the Series Fund and the Future Funds collectively are referred to as the "Funds") to be sold to and held by: (a) Variable annuity and variable life insurance separate accounts of both affiliated and unaffiliated life insurance companies ("Participating Insurance Companies"); and (b) qualified pension and retirement plans outside of the separate account context ("Qualified Plans").

FILING DATES: The application was filed on January 18, 1995, and amended on May 5, 1995.

HEARING AND NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 9, 1995, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants: Christina T. Sydor, Esquire, Smith Barney, Inc., 388 Greenwich Street, Twenty-Second Floor, New York, New York 10013.

FOR FURTHER INFORMATION CONTACT: Mark C. Amorosi, Attorney, or Wendy Finck Friedlander, Deputy Chief, at (202) 942–0670, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The SB/T Fund, a Maryland corporation incorporated on February 22, 1994, is registered under the 1940 Act as an open-end, diversified management investment company. The SB/T Fund consists of eleven portfolios: The Smith Barney Income and Growth Portfolio, the Alliance Growth Portfolio, the American Capital Enterprise Portfolio, the Smith Barney International Equity Portfolio, the Smith Barney Pacific Basin Portfolio, the TBC Managed Income Portfolio, the Putnam Diversified Income Portfolio, the G.T. Global Strategic Income Portfolio, the Smith Barney High Income Portfolio, the MFS Total Return Portfolio, and the Smith Barney Money Market Portfolio. Additional portfolios may be added in the future.

2. The Series Fund, a Massachusetts business trust organized on May 13, 1991, is registered under the 1940 Act as an open-end, diversified management investment company. The Series Fund consists of ten separate portfolios (together with the portfolios of the SB/T Fund and Future Funds, the "Portfolios"): the Money Market Portfolio, the Intermediate High Grade Portfolio, the Diversified Strategic Income Portfolio, the Equity Income Portfolio, the Equity Index Portfolio, the Growth & Global Income Portfolio, the Appreciation Portfolio, the Total Return Portfolio, the Emerging Growth Portfolio, and the International Equity Portfolio. Additional portfolios may be added in the future.

3. Smith Barney Mutual Funds Management, Inc. ("SBMFM") is the investment adviser for the SB/T Fund, and is a wholly-owned subsidiary of Smith Barney Holdings, Incorporated. Smith Barney Holdings, Inc. is a wholly-owned subsidiary of Travelers Group, which is a financial services holding company engaged, through its subsidiaries, principally in four business segments: investment services, consumer finance services, life insurance services, and property and casualty insurance services.

4. SBMFM also is the investment adviser for all the Series Fund Portfolios except the Equity Index Portfolio and the Emerging Growth Fund Portfolio. PanAgora Asset Management, Inc. is the investment adviser for the Equity Index Portfolio, and is 50% owned by Nippon Life Insurance Company and 50% owned by Lehman Brothers, Inc., which is a wholly-owned subsidiary of Lehman Brothers Holdings, Inc. American Capital Asset Management, Inc., is the investment adviser for the Emerging Growth Fund Portfolio and is a wholly-owned subsidiary of American Capital Management & Research, Inc., which is an indirect wholly-owned subsidiary of VKM Holdings. SBMFM, PanAgora Asset Management, Inc. and American Capital Asset Management, Inc. (collectively, the "Advisers") are registered as investment advisers under the Investment Advisers Act of 1940.

5. Shares of the SB/T Fund currently are sold to a separate account (the "Travelers Separate Account") of The Travelers Insurance Company ("The Travelers") which funds benefits under variable contracts issued through that separate account. Shares of the Series Fund currently are sold to the Travelers Separate Account and to separate accounts of the IDS Life Insurance Company and the IDS Life Insurance Company of New York which fund benefits under variable contracts issued by those companies.

6. Applicants state that, upon the granting of the order requested in this application, the Funds intend to offer shares of their existing Portfolios and future investment portfolios to separate accounts of Participating Insurance Companies (the "Separate Accounts") to serve as the investment vehicle for various types of insurance products, which may include variable annuity contracts, single premium variable life insurance contracts, scheduled premium variable life insurance contracts and flexible premium variable life insurance contracts.

Applicant's Legal Analysis

1. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust, Rule 6e–2(b)(15) provides partial exemptions from Section 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. The relief provides by Rule 6e–2 is also available to a separate account's investment adviser, principal underwriter, and sponsor or depositor. The exemptions granted by Rule 6e–2(b)(15) are available only where the management investment company underlying the unit investment trust ("underlying fund") offers its shares "exclusively to variable life insurance separate accounts of the life insurer, or of any affiliated life insurance company." Therefore, the relief granted by Rule 6e–2(b)(15) is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an underlying fund that also offers its shares to a variable annuity or a flexible premium variable life insurance separate account of the same company or of any other life insurance company. The use of a common management investment company as the underlying investment medium for both variable annuity and variable life insurance separate accounts of the same life insurance company or of any affiliate life insurance company is referred to herein as "mixed funding."

2. In addition, the relief granted by Rule 6e–2(b)(15) is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an underlying fund that also offers its shares to separate accounts funding variable contracts of one or more unaffiliated life insurance companies. The use of a common management investment company as the underlying investment medium for variable life insurance separate accounts of one insurance company and separate accounts funding variable contracts of one or more unaffiliated life insurance companies is referred to herein as "shared funding."

3. Applicants state that the relief granted by Rule 6e–2(b)(15) is not affected by the purchase of shares of a Fund by the Qualified Plans. Applicants note, however, that because the relief under Rule 6e–2(b)(15) is available only where shares are offered exclusively to separate accounts, additional exemptive relief is necessary if shares of the Funds also are to be sold to Qualified Plans.

4. In connection with the funding of flexible premium variable life insurance contracts issued through a unit investment trust, Rule 6e–3(T)(b)(15) provides partial exemptions from Sections 9(a), 15(a), and 15(b) of the 1940 Act. The relief provided by Rule 6e–3(T) also is available to a separate account's investment adviser, principal underwriter, and sponsor or depositor. The exemptions granted by Rule 6e–3(T) are available only where the unit investment trust's underlying fund offers its shares "exclusively to separate accounts of the life insurer or of any affiliated life insurance company, offering either scheduled contracts or flexible contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company * * *" Therefore, Rule 6e–3(T) permits mixed funding with respect to a flexible premium variable life insurance separate account subject to certain conditions. However, Rule 6e–3(T) does not permit shared funding because the relief granted by Rule 6e–3(T)(b)(15) is not available with respect to a flexible premium variable life insurance separate account that owns shares of a management company that also offers its shares to separate accounts (including variable annuity and flexible premium and scheduled premium variable life insurance separate accounts) of unaffiliated life insurance companies.

5. Applicants state that the relief granted by Rule 6e–3(T) is not affected by the purchase of shares of the Funds by the Qualified Plans. Applicants note, however, that because the relief under Rule 6e–3(T) is available only where shares are offered exclusively to separate accounts, additional exemptive relief is necessary if shares of the Funds are also to be sold to Qualified Plans.

6. Applicants state that changes in the tax law have created the opportunity for each Fund to increase its asset base through the sale of shares of the Fund to Qualified Plans. Applicants state the Section 817(h) of the Internal Revenue Code of 1986, as amended (the "Code"), imposes certain diversification standards on the underlying assets of the contracts held in the Funds. The Code provides that such contracts shall not be treated as annuity contracts or life insurance contracts for any period in which the investments are not, in accordance with regulations prescribed by the Department of the Treasury, adequately diversified. On March 2, 1989, the Department of the Treasury issued regulations which established diversification requirements for the investment portfolios underlying variable contracts. Treas. Reg. § 1.817–5 (1989). The regulations provide that, to meet the diversification requirements, all of the beneficial interests in the investment company must be held by the segregated asset accounts of one or more insurance companies. The regulations do, however, contain certain exceptions to this requirement, one of which allows shares in an investment company to be held by the trustee of a qualified pension or retirement plan without adversely affecting the ability of shares in the same investment company also to be held by the separate accounts of insurance companies in connection with their variable contracts. Treas. Reg. § 1.817–5(f)(3)(iii).

7. Applicants state that the promulgation of Rules 6e–2 and Rule 6e–3(T) under the 1940 Act preceded the insurance of these Treasury regulations. Applicants assert that, given the then current tax law, the sale of shares of the same investment

company to both separate accounts and qualified pension and retirement plans could not have been envisioned at the time of the adoption of Rules 6e–2(b)(15) and 6e–3(T)(b)(15).

8. Applicants therefore request that the Commission, under its authority in Section 6(c) of the 1940 Act, grant relief from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder for themselves and for variable life insurance separate accounts of the Participating Insurance Companies, and the principal underwriters and depositors of such separate accounts, to the extent necessary to permit mixed funding and shared funding.

9. Section 9(a) of the 1940 Act makes it unlawful for any company to serve as an investment adviser to, or principal underwriter for, any registered open-end investment company if an affiliated person of that company is subject to any disqualification specified in Sections 9(a)(1) or 9(a)(2), Rule 6e–2(b)(15)(i) and (ii) and Rule 6e–3(T)(b)(15)(i) and (ii) provide exemptions from Section 9(a) under certain circumstances, subject to limitations on mixed and shared funding. The relief provided by Rules 6e–2(b)(15)(i) and 6e–3(T)(b)(15)(i) permits a person disqualified under Section 9(a) to serve as an officer, director, or employee of the life insurer, or any of its affiliates, so long as that person does not participate directly in the management or administration of the underlying fund. The relief provided by Rules 6e–2(b)(15)(ii) and 6e–3(T)(b)(15)(ii) permits the life insurer to serve as the underlying fund's investment adviser or principal underwriter provided that none of the insurer's personnel who are ineligible pursuant to Section 9(a) participate in the management or administration of the fund.

10. Applicants state that the partial relief granted in Rules 6e–2(b)(15) and 6e–3(T)(b)(15) from the requirements of Section 9(a), in effect, limits the monitoring of an insurer's personnel that would otherwise be necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of Section 9. Applicants state that Rules 6e–2 and 6e–3(T) recognize that it is not necessary for the protection of investors or for the purposes of the 1940 Act to apply the provisions of Section 9(a) to the many individuals in an insurance company complex, most of whom typically will have no involvement in matters pertaining to an investment company in that organization. Applicants submit that there is no regulatory reason to apply the provisions of Section 9(a) to the many individuals in various unaffiliated insurance companies (or affiliated companies of Participating Insurance Companies) that may utilize the Funds as the funding medium for variable contracts. The application states that the relief requested will not be affected by the proposed sale of shares of the Funds to Qualified Plans. The insulation of the Funds from individuals disqualified under the 1940 Act remains in place. Applicants assert that, since the Qualified Plans are not investment companies and will not be deemed affiliated by virtue of their shareholdings, no additional relief is necessary.

11. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) under the 1940 Act assume the existence of a pass-through voting requirement with respect to management investment company shares held by a separate account. The application states that the Participating Insurance Companies will provide pass-through voting privileges to all contract owners so long as the Commission interprets the 1940 Act to require such privileges.

12. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) provide partial exemptions from Sections 13(a), 15(a), and 15(b) of the 1940 Act to the extent that those sections have been deemed by the Commission to require "pass-through" voting with respect to management investment company shares held by a separate account, to permit the insurance company to disregard the voting instructions of its contract owners in certain limited circumstances.

Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(b)(15)(iii) (A) provide that the insurance company may disregard voting instructions of its contract owners in connection with the voting of shares of an underlying fund if such instructions would require such shares to be voted to cause such companies to make, or refrain from making, certain investments which would result in changes in the subclassification or investment objectives of such companies, or to approve or disapprove any contract between a Fund and its investment adviser, when required to do so by an insurance regulatory authority, subject to the provisions of paragraphs (b)(5)(i) and (b)(7)(ii)(A) of each Rule.

Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(B) provide that the insurance company may disregard contract owners' voting instructions if the contract owners initiate any change in such company's investment policies or any principal underwriter or investment adviser, provided that disregarding such voting instructions is reasonable and subject to the other provisions of paragraphs (b)(5)(ii) and (b)(7)(ii) (B) and (C) of each Rule.

13. Applicants further represent that the sale of shares by a Fund to the Qualified Plans does not impact relief requested in this regard. Shares of the Funds sold to Qualified Plans would be held by the trustees of the Qualified Plans as required by Section 403(a) of ERISA. Section 403(a) also provides that the trustee(s) must have exclusive authority and discretion to manage and control the Qualified Plan with two exceptions: (a) When the Qualified Plan expressly provides that the trustee(s) is (are) subject to the direction of a named fiduciary who is not a trustee, in which case the trustee(s) is (are) subject to proper directions made in accordance with the terms of the Qualified Plan and not contrary to ERISA; and (b) when the authority to manage, acquire or dispose of assets of the Qualified Plan is delegated to one or more investment managers pursuant to Section 402(c)(3) of ERISA. Unless one of the two exceptions stated in Section 403(a) applies, Qualified Plan trustees have the exclusive authority and responsibility for voting proxies. Where a named fiduciary appoints an investment manager, the investment manager has the responsibility to vote the shares held unless the right to vote such shares is reserved to the trustees or to the named fiduciary. In any event, there is no pass-through voting to the participants in Qualified Plans. Accordingly, Applicants note that, unlike the case with insurance company separate accounts, the issue of the resolution of material irreconcilable conflicts with respect to voting is not present with respect to Qualified Plans because they are not entitled to pass-through voting privileges.

14. Applicants state that no increase conflicts of interest would be presented by the granting of the requested relief. Applicants assert that shared funding does not present any issues that do not already exist where a single insurance company is licensed to do business in several or all states. Applicants note that where Participating Insurance Companies are domiciled in different states, it is possible that the state insurance regulatory body in a state in which one Participating Insurance Company is domiciled could require action that is inconsistent with the requirements of insurance regulators in one or more other states in which other Participating Insurance Companies are domiciled. Applicants state that the possibility, however, is no different and no greater than exists where a single insurer and its affiliates offer their insurance products in several states.

15. Applicants argue that affiliation does not reduce the potential, if any exists, for differences in state regulatory requirements. In any event, the conditions (adapted from the conditions included in Rule 6e–3(T)(b)(15)) discussed below are designed to safeguard against any adverse effects that different state regulatory requirements may produce. If a particular state insurance regulator's decision conflicts with the majority of other state regulators, the affected insurer may be required to withdraw its separate account's investment in the relevant Fund.

16. Applicants also argue that affiliation does not eliminate the potential, if any exists, for divergent judgments as to when a Participating Insurance Company properly may disregard voting instructions of contract owners. Potential disagreement is limited by the requirement that the Participating Insurance Company's disregard of voting instructions be both reasonable and based on specified good faith determinations. However, if a Participating Insurance Company's decision to disregard contract owner instructions represents a minority position or would preclude a majority vote approving a particular change, such Participating Insurance Company may be required, at the election of the relevant Fund, to withdraw its investment in that Fund. No charge or penalty will be imposed as a result of such withdrawal.

17. Applicants state that there is no reason why the investment policies of a Fund with mixed funding would or should be materially different from what those policies would or should be if such investment company of series thereof funded only variable annuity or only variable life insurance contracts. Applicants therefore argue that there is no reason to believe that conflicts of interest would result from mixed funding. Moreover, Applicants represent that the Portfolios will be managed to attempt to achieve the investment objective(s) of such Portfolio and not to favor or disfavor any particular insurer or type of variable contract.

18. Applicants note that no single investment strategy can be identified as appropriate to a particular insurance product. Each pool of variable annuity and variable life insurance contract owners is composed of individuals of diverse financial status, age, insurance and investment goals. An investment company supporting even one type of insurance product must accommodate those diverse factors in order to attract and retain purchasers.

19. Applicants further note that Section 817 of the Code is the only section in the Code where separate accounts are discussed. Section 817(h) imposes certain diversification standards on the underlying assets of variable annuity contracts and variable life contracts held in the portfolios of management investment companies. Treasury Regulation 1.817–5(f)(3)(iii), which established diversification requirements for such portfolios, specifically permits, among other things, "qualified pension or retirement plans" and separate accounts to share the same underlying management investment company. Therefore, neither the Code, the Treasury regulations nor the revenue rulings thereunder present any inherent conflicts of interest if Qualified Plans, variable annuity separate accounts and variable life insurance separate accounts all invest in the same management investment company.

20. While there are differences in the manner in which distributions are taxed for variable annuity contracts, variable life insurance conflicts and Qualified Plans. Applicants state that the tax consequences do not raise any conflicts of interests with respect to the use of the Funds. When distributions are to be made, and the separate account or the Qualified Plan is unable to net purchase payments to make the distributions, the separate account or the Qualified Plan will redeem shares of the affected Fund at their net asset value. The Qualified Plan will then make distributions in accordance with the terms of the Qualified Plan. The life insurance company will surrender values from the separate account into the general account to make distributions in accordance with the terms of the variable contract.

21. With respect to voting rights, Applicants state that it is possible to provide an equitable means of giving such voting rights to contract owners and to Qualified Plans. Applicants represent that the transfer agent for each Fund will inform each Participating Insurance Company of its share ownership in each Separate Account, as well as inform the trustees of the Qualified Plans of their holdings. Each Participating Insurance Company will then solicit voting instructions in accordance with Rules 6e–2 and 6e–3(T).

22. Applicants argue that the ability of Funds to sell their shares directly to Qualified Plans does not create a "senior security", as such term is defined under Section 18(g) of the 1940 Act, with respect to any variable annuity or variable life contract owner as opposed to a participant under a Qualified Plan. Regardless of the rights and benefits of participants and contract owners under the respective Qualified Plans and contracts, the Qualified Plans and the separate accounts have rights only with respect to their respective shares of the Funds. Such shares may be redeemed only at net asset value. No shareholder of any Fund has any preference over any other shareholder of that Fund with respect to distribution of assets or payment of dividends.

23. Finally, Applicants assert that there are no conflicts between contract owners and participants under the Qualified Plans with respect to the state insurance commissioners' veto powers (direct with respect to variable life insurance and indirect with respect to variable annuities) over investment objectives. The basic premise of shareholder voting is that not all shareholders may agree with a particular proposal. The state insurance commissioners have been given the veto power in recognition of the fact that insurance companies cannot simply redeem their separate accounts out of one fund and invest those monies in another fund. To accomplish such redemptions and transfers, complex, time consuming transactions must be undertaken. Conversely, trustees of Qualified Plans can make the decision quickly and implement redemption of shares from a Fund and reinvest the monies in another funding vehicle without the same regulatory impediments or, as is the case with most Qualified Plans, hold cash pending suitable investment. Based on the foregoing, Applicants represent that even should there arise issues where the interests of contract owners and the interests of Qualified Plans conflict, the issues can be resolved almost immediately because trustees of the Qualified Plans can, independently, redeem shares out of the Funds.

24. Applicants state that various factors have kept certain insurance companies from offering variable annuity and variable life insurance contracts. These factors include the cost of organizing and operating an investment funding medium, the lack of expertise with respect to investment management and the lack of public name recognition of certain insurers as investment professionals. Applicants argue that use of the Funds as common investment media for the contracts would ameliorate these concerns. Applicants submit that mixed funding and shared funding should benefit variable contract owners by: (a)

Eliminating a significant portion of the costs of establishing and administering separate funds; (b) allowing for a greater amount of assets available for investment by the Funds, thereby promoting economies of scale, permitting greater safety through greater diversification, and/or making the addition of new portfolios more feasible; and (c) encouraging more insurance companies to offer variable contracts, resulting in increased competition with respect to both variable contract design and pricing, which can be expected to result in more product variation and lower charges. Each Fund will be managed to attempt to achieve its investment objectives and not to favor or disfavor any particular Participating Insurance Company or type of insurance product.

25. Applicants assert that there is no significant legal impediment to permitting mixed and shared funding. Applicants state that separate accounts organized as unit investment trusts have historically been employed to accumulate shares of mutual funds which have not been affiliated with the depositor or sponsor of the separate account. Applicants also assert that mixed and shared funding will have no adverse federal income tax consequences.

Applicants' Conditions

The Applicants have consented to the following conditions:

1. A majority of the Board of Directors or Board of Trustees (as appropriate) (the "Board") of each Fund shall consist of persons who are not "interested persons," as defined by Section 2(a)(19) of the 1940 Act and Rules thereunder and as modified by any applicable orders of the Commission, except that, if this condition is not met by reason of death, disqualification, or bona fide resignation of any director or directors, then the operation of this condition shall be suspended: (i) For a period of 45 days, if the vacancy or vacancies may be filled by the Board; (ii) for a period of 60 days, if a vote of shareholders is required to fill the vacancy or vacancies; or (iii) for such longer period as the Commission may prescribe by order upon application.

2. The Board of each fund will monitor its Fund for the existence of any material irreconcilable conflict between and among the interests of the contract owners of all Separate Accounts investing in the Fund. A material irreconcilable conflict may arise for a variety of reasons, including: (a) State insurance regulatory authority action; (b) a change in applicable federal or state insurance tax or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretive letter, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of any series are being managed; (e) a difference in voting instructions given by variable annuity and variable life insurance contract owners; or (f) a decision by a Participating Insurance Company to disregard contract owner voting instructions.

3. Participating Insurance Companies, the Advisers and any Qualified Plan that executes a fund participation agreement upon becoming an owner of 10% or more of the assets of a Fund (the "Participants") will report any potential or existing conflicts, of which they become aware, to the Board. Participants will be obligated to assist the appropriate Board in carrying out its responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This responsibility includes, but is not limited to, an obligation by each Participating Insurance Company to inform the Board whenever contract owner voting instructions are disregarded. These responsibilities will be contractual obligations of all Participating Insurance Companies and Qualified Plans investing in a Fund under their agreements governing participation therein, and such agreements shall provide that such responsibilities will be carried out with a view only to the interests of the contract owners.

4. If a majority of the Board, or a majority of the disinterested members of the Board, determine that a material irreconcilable conflict exists the relevant Participating Insurance Companies and Qualified Plans shall, at their expense and to the extent reasonably practicable (as determined by a majority of disinterested members of the Board), take whatever steps are necessary to remedy or eliminate the irreconcilable material conflict, up to and including: (a) Withdrawing the assets allocable to some or all of the Separate Accounts from the Fund or any series therein and reinvesting such assets in a different investment medium (including another series of the Fund), or submitting the question whether such segregation should be implemented to a vote of all affected contract owners and, as appropriate, segregating the assets of any appropriate group (*i.e.*, annuity contract owners, life insurance contract owners, or variable contract owners of one or more Participating Insurance Company) that votes in favor of such segregation, or offering to the affected contract owners the option of making such a change; (b) withdrawing the assets allocable to some or all of the Qualified Plans from the affected Fund or any Portfolio of the Fund and reinvesting such assets in a different investment medium, including another Portfolio of the Fund; and (c) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of a Participating Insurance Company's decision to disregard contract owner voting instructions, and that decision represents a minority position or would preclude a majority vote, the Participating Insurance Company may be required, at the election of the Fund, to withdraw its Separate Account's investment therein, and no charge or penalty will be imposed as a result of such withdrawal. The responsibility to take remedial action in the event of a Board determination of an irreconcilable material conflict and to bear the cost of such remedial action shall be a contractual obligation of all Participating Insurance Companies and Qualified Plans under their agreements governing participation in the Fund and these responsibilities will be carried out with a view only to the interests of the contract owners and participants in the Qualified Plans.

For the purposes of condition (4), a majority of disinterested members of the Board shall determine whether or not any proposed action adequately remedies any irreconcilable material conflict, but in no event will the Fund or the Advisers be required to establish a new funding medium for any variable contract. No Participating Insurance Company shall be required by this condition (4) to establish a new funding medium for any variable contract if an offer to do so has been declined by a vote of a majority of contract owners materially affected by the irreconcilable material conflict.

5. The determination by the Board of the existence of an irreconcilable material conflict and its implications shall be made known promptly in writing to all Participating Insurance Companies and Qualified Plans.

6. Participating Insurance Companies will provide pass-through voting privileges to all variable contract owners so long as the Commission continues to interpret the 1940 Act to require pass-through voting privileges for variable contract owners. Accordingly, each Participating Insurance Company, where applicable, will vote shares of the Fund held in its Separate Accounts in a manner consistent with timely voting instructions received from contract owners. Each Participating Insurance Company also will vote shares of each Fund held in its Separate Accounts for which no timely voting instructions from contract owners are received, as well as shares it owns, in the same proportion as those shares for which voting instructions are received. Each Participating Insurance Company shall be responsible for assuring that each of their Separate Accounts participating in the Fund calculates voting privileges in a manner consistent with all other Participants. The obligation to calculate voting privileges in a manner consistent with all other Separate Accounts investing in the Fund shall be a contractual obligation of all Participating Insurance Companies under their agreements governing participation in the Fund.

7. Each Fund will notify all Participants that prospectus disclosure regarding potential risks of mixed and shared funding may be appropriate. Each Fund shall disclose in its prospectus that: (a) Its shares are offered to qualified pension and retirement plans and to separate accounts which fund both annuity and life insurance contracts of both affiliated and unaffiliated Participating Insurance Companies; (b) material irreconcilable conflicts may arise from mixed and shared funding; and (c) the Board will monitor the Fund for any material conflicts and determine what action, if any, should be taken.

8. All reports received by the Board regarding potential or existing conflicts, and all Board action with respect to determining the existence of a conflict, notifying Participants of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the Board or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

9. If and to the extent Rule 6e–2 and Rule 6e–3(T) are amended, or Rule 6e–3 is adopted, to provide exemptive relief from any provision of the 1940 Act or the rules thereunder with respect to mixed and shared funding on terms and conditions materially different from any exemptions granted in the order requested, then the Funds and/or the Participants, as appropriate, shall take such steps as may be necessary to comply with Rule 6e–2 and Rule 6e–3(T), as amended, the Rule 6e–3, as adopted, to the extent such rules are applicable.

10. Each Fund will comply with all provisions of the 1940 Act requiring voting by shareholders (which, for these purposes, shall be the persons having a voting interest in the shares of the Fund), and in particular each Fund will either provide for annual meetings (except insofar as the Commission may interpret Section 16 of the 1940 Act not to require such meetings) or comply with Section 16(c) (although the Funds are not within the trusts described in this section) as well as with Sections 16(a) and, if and when applicable, Section 16(b). Further, each Fund will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of directors (or trustees) and with whatever rules the Commission may promulgate with respect thereto.

11. The Participants, at least annually, shall submit to the Board such reports, materials or data as the Board may reasonably request so that the Board may fully carry out the obligations imposed upon it by these stated conditions, and said reports, materials, and data shall be submitted more frequently if deemed appropriate by the Board. The obligations of the Participating Insurance Companies and Qualified Plans to provide these reports, materials, and data to the Board when it so reasonably requests shall be a contractual obligation of all Participating Insurance Companies and Qualified Plans under their agreements governing participation in the Funds.

12. In the event that a Qualified Plan ever should become an owner of 10 percent or more of the assets of a Fund, such Qualified Plan will execute a fund participation agreement with the applicable Fund. A Qualified Plan shareholder will execute an application with each of the Funds, including Future Funds, that contains an acknowledgement of this condition at the time of the Qualified Plan's initial purchase of shares of the Fund.

Conclusion

For the reasons stated above, Applicants believe that the requested exemptions, in accordance with the standards of Section 6(c), as appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–12521 Filed 5–22–95; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[License No. 04/05–0018]

Investor's Equity, Inc.; Notice of Surrender of Licensee

Notice is hereby given that Investor's Equity, Inc., 1355 Peachtree Street, Atlanta, Georgia 30309 has surrendered its License to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (Act). Investor's Equity was licensed by the Small Business Administration on August 10, 1961.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender of the License was accepted on May 4, 1995, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: May 16, 1995.

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 95–12571 Filed 5–22–95; 8:45 am]

BILLING CODE 8025–01–M

[License No. 02/02–5351]

Exim Capital Corporation

Notice is hereby given that Exim Capital Corporation (Exim), 241 Fifth Avenue, New York, New York 10016, a Federal Licensee under the Small Business Investment Act of 1958, as amended (the Act), in connection with the proposed financing of a small concern is seeking an exemption under Section 312 of the Act and Section 107.903 Conflicts of interest of the SBA Rules and Regulations (13 CFR 107.903 (1994)). An exemption may not be granted by SBA until Notices of this transaction have been published. Exim proposes to provide debt financing to KBJ Cleaners, Inc. (KBJ) located 6–01 Saddle River Road, Fairlawn, New Jersey. The financing is contemplated for use in the expansion of KBJ's existing operations and additional working capital.

The financing is brought within the purview of Section 107.903(b)(1) of the regulations because Mr. Byung Hyun An

and Ms. Chu Ja An, 100% shareholders of KBJ are the brother-in-law and sister of Mr. Victor Chun, President and shareholder of Exim.

Notice is further given that any person, not later than 15 days from the date of the publication of the Notice, submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, S.W., Washington, D.C. 20416.

A copy of this Notice shall be published, in accordance with Section 107.903(e) of the Regulations, in a newspaper of general circulation in New York, New York.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: May 16, 1995.

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 95–12572 Filed 5–22–95; 8:45 am]

BILLING CODE 8025–01–M

SOCIAL SECURITY ADMINISTRATION

1994–95 Advisory Council on Social Security; Meeting

AGENCY: Social Security Administration.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice announces a meeting of the 1994–95 Advisory Council on Social Security (the Council).

DATES: Friday, June 2, 1995, 9:00 a.m. to 5:00 p.m. and Saturday, June 3, 1995, 9:00 a.m. to 3:00 p.m.

ADDRESSES: The Carnegie Endowment for International Peace, 2400 N Street, N.W., Washington; D.C. 20037, (202) 862–7900.

FOR FURTHER INFORMATION CONTACT: By mail—Dan Wartonick, 1994–95 Advisory Council on Social Security, Suite 705, 1825 Connecticut Avenue, NW, Washington, DC 20009; By telephone—(202) 482–7117; By telefax—(202) 482–7123.

SUPPLEMENTARY INFORMATION:

I. Purpose

Under section 706 of the Social Security Act (the Act), the Secretary of Health and Human Services (the Secretary) appoints the Council every 4 years. The Council examines issues affecting the Social Security Old-Age, Survivors, and Disability Insurance (OASDI) programs, as well as the Medicare program and impacts on the Medicaid program, which were created under the Act.

In addition, the Secretary has asked the Council specifically to address the following:

- Social Security financing issues, including developing recommendations for improving the long-range financial status of the OASDI programs;
- General program issues such as the relative equity and adequacy of Social Security benefits for persons at various income levels, in various family situations, and various age cohorts, taking into account such factors as the increased labor force participation of women, lower marriage rates, increased likelihood of divorce, and higher poverty rates of aged women.

In addressing these topics, the Secretary suggested that the Council may wish to analyze the relative roles of the public and private sectors in providing retirement income, how policies in both sectors affect retirement decisions and the economic status of the elderly, and how the disability insurance program provisions and the availability of health insurance and health care costs affect such matters.

The Council is composed of 12 members in addition to the chairman: Robert Ball, Joan Bok, Ann Combs, Edith Fierst, Gloria Johnson, Thomas Jones, George Kourpias, Sylvester Schieber, Gerald Shea, Marc Twinney, Fidel Vargas, and Carolyn Weaver. The chairman is Edward Gramlich.

The Council met previously on June 24–25 (59 FR 30367), July 29, 1994 (59 FR 35942), September 29–30 (59 FR 47146), October 21–22 (59 FR 51451), November 18–19 (59 FR 55272), January 27 (60 FR 3416), February 10–11 (60 FR 5433), March 8–9 (60 FR 10091), March 10–11 (60 FR 10090), April 21–22 (60 FR 18419) and May 19–20 (60 FR 24961).

II. Agenda

The following topics will be presented and discussed:

- Options for ensuring the long-term financing of the Social Security program;
- Changes to Social Security benefits to ensure relative equity and adequacy; and
- Relative roles of the public and private sectors in providing retirement income.

The meeting is open to the public to the extent that space is available. Interpreter services for persons with hearing impairments will be provided. A transcript of the meeting will be available to the public on an at-cost-of duplication basis. The transcript can be ordered from the Executive Director of the Council.

(Catalog of Federal Domestic Assistance Program Nos. 93.802, Social Security-Disability Insurance; 93.803, Social Security-Retirement Insurance; 93.805, Social Security-Survivors Insurance)

Dated: May 17, 1995.

David C. Lindeman,

Executive Director, 1994–95 Advisory Council on Social Security.

[FR Doc. 95–12620 Filed 5–22–95; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF THE TREASURY

[Treasury Directive 16–25]

Efficiency, Effectiveness, and Equity in the Transfer of Federal Funds; Delegation of Authority

Dated: May 15, 1995.

1. *Delegation.* By the authority granted to the Fiscal Assistant Secretary by Treasury Order (TO) 101–05, this Directive delegates to the Commissioner, Financial Management Service, the authority to perform any duty or function of the Secretary prescribed or required pursuant to 31 U.S.C. 3335 and 6503, including the issuing of regulations which are binding on executive agencies and govern the timely disbursement of Federal funds and entering into agreements with States concerning transfers of Federal funds to States.

2. *Redelegation.* The Commissioner, Financial Management Service, may redelegate this authority in writing, and it may be exercised in the individual capacity and under the individual title of each official receiving such authority, except that regulations must have the approval of the Commissioner .

3. *Regulations.* The issuance of any regulations pursuant to this Directive shall be in accordance with Treasury Directive 28–01, "Preparation and Review of Regulations."

4. *Authorities.*

a. The Cash Management Improvement Act of 1990, Public Law 101–453, 104 Stat. 1058, as amended, codified at 31 U.S.C. 3335, 6501, and 6503.

b. TO 101–05, "Reporting Relationships and Supervision of Officials, Offices and Bureaus, Delegation of Certain Authority, and Order of Succession in the Department of the Treasury."

5. *Expiration.* This Directive shall expire three years from the date of issuance unless superseded or cancelled prior to that date.

6. *Office of Primary Interest.* Office of the Commissioner, Financial Management Service.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 95–12549 Filed 5–22–95; 8:45 am]

BILLING CODE 4810–25–P

Internal Revenue Service

[Delegation Order No. 175 (Rev. 3)]

Delegation of Authority

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Delegation of authority.

SUMMARY: The authority to determine that a plan amendment is reasonable and provides for only de minimis increases in the liabilities of the plan in accordance with section 412(f)(2)(A) of the Internal Revenue Code (Code) and section 304(b)(2)(A) of the Employee Retirement Income Security Act of 1974 (ERISA) has already been delegated to the Director, Employee Plans Division, with authority to redelegate. There is now delegated to the Director, Employee Plans Division, the additional authority to determine that a plan amendment is reasonable and provides for only de minimis increases in the liabilities of the plan in accordance with section 401(a)(3–3)(B)(ii) of the Code and section 204(i)(2)(A) of ERISA, with authority to redelegate, but not below Branch Chiefs, Employee Plans Division.

EFFECTIVE DATE: May 19, 1995.

FOR FURTHER INFORMATION CONTACT: John H. Turner, CP:E:EP:P:2, Room 6702, 1111 Constitution Avenue, NW., Washington, DC 20224, (202) 622–6214 (not a toll-free number).

Effective Date: May 19, 1995.

Authority to Determine if Plan Amendment is Reasonable and Has De Minimis Effect on Plan Liability in Accordance with Section 412(f)(2)(A) of the Internal Revenue Code (Code) and Section 304(b)(2)(A) of the Employee Retirement Income Security Act (ERISA), or Section 401(a)(33)(B)(ii) of the Code and Section 204(i)(2)(A) of ERISA.

Pursuant to authority vested in the Commissioner of Internal Revenue by Treasury Department Order 150–10, there is hereby delegated to the Director, Employee Plans Division, the authority to determine that a plan amendment is reasonable and provides for only de minimis increases in the liabilities of the plan in accordance with section 412(f)(2)(A) of the Code and section 304(b)(2)(A) of ERISA or in accordance with section 401(a)(33)(B)(ii) of the Code and section 204(i)(2)(A) of ERISA.

The authority delegated herein may be redelegated, but not below Branch Chiefs, Employee Plans Division.

To the extent that the authority previously exercised consistent with this Order may require ratification, it is hereby affirmed and ratified.

Delegation Order No. 175 (Rev. 2), effective October 31, 1987, is superseded.

Dated: April 13, 1995.

Phil Brand,

Chief Compliance Officer.

[FR Doc. 95–12515 Filed 5–22–95; 8:45 am]

BILLING CODE 4830–01–U

Sunshine Act Meetings

Federal Register

Vol. 60, No. 99

Tuesday, May 23, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, May 25, 1995.

LOCATION: Room 410, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Closed to the Public.

MATTER TO BE CONSIDERED:

Compliance Status Report

The staff will brief the Commission on the status of various compliance matters.

For a record message containing the latest agenda information, call (301) 504-0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway., Bethesda, MD 20207 (301 504-0800

Dated: May 19, 1995.

Sadye E. Dunn,

Secretary.

[FR Doc. 95-12660 Filed 5-19-95; 10:25 am]

BILLING CODE 6355-01-M

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), that the June 8, 1995 regular meeting of the Farm Credit Administration Board (Board) will not be held and that a special meeting of the Board is scheduled for Thursday, June 15, 1995 at 10:00 a.m. An agenda for this meeting will be published at a later date.

FOR FURTHER INFORMATION CONTACT: Floyd Fithian, Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

Date: May 19, 1995.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 95–12760 Filed 5–19–95; 3:25 pm]

BILLING CODE 7590-01-P

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:02 p.m. on Thursday, May 18, 1995, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Recommendations regarding an administrative enforcement proceeding.

Application of Savings Bank of Mendocino County, Ukiah, California, to assume the liability to pay deposits made in the Ukiah, California Branch of U.S. Bank of California, Sacramento, California.

Matters relating to the Corporation's corporate activities.

In calling the meeting, the Board determined, on motion of Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), seconded by Vice Chairman Andrew C. Hove, Jr., concurred in by Director Eugene A. Ludwig (Comptroller of the Currency), and Chairman Ricki Helfer, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550–17th Street, N.W., Washington, D.C.

Dated: May 19, 1995.

Federal Deposit Insurance Corporation.

Patti C. Fox,

Acting Deputy Executive Secretary.

[FR Doc. 95–12667 Filed 5–19–95; 10:38 am]

BILLING CODE 6714-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of May 22, 29, June 5, and 12, 1995.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of May 22

Wednesday, May 24

10:00 a.m.
Briefing on Part 1 Recommendations for National Performance Review Phase II (Public Meeting)
(Contact: Jack Roe, 301–415–1354)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Thursday, May 25

10:00 a.m.
Briefing on Operator Licensing Programs (Public Meeting)
(Contact: Bruce Boger, 301–415–1004)

Friday, May 26

10:00 a.m.
Briefing by Executive Branch (Closed—Ex. 1)

Week of May 29—Tentative

Thursday, June 1

10:00 a.m.
Briefing on Electricity Forecast From Energy Information Administration (EIA) Annual Energy Outlook (Public Meeting)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting)
(Please Note: This item will be affirmed immediately following the conclusion of the preceding meeting.)
a. Kenneth G. Pierce (Shorewood, Illinois), Initial Decision (Vacating Staff Order), LBP–95–04, Docket Nos. 55–30662–EA, IA–94–007 (Tenative)
(Contact: Andrew Bates, 301–415–1963)
1:00 p.m.
Briefing by Executive Branch (Closed—Ex. 1)
2:00 p.m.
Briefing on Steam Generator Issues (Public Meeting)
(Contact: Brian Sheron, 301–415–2722)

Week of June 5—Tenative

Thursday, June 8

9:30 a.m.
Meeting with Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting)
(Contact: John Larkins, 301–415–7360)
11:00 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Friday, June 9

9:00 a.m.
Briefing by DOE on Status of Multi-Purpose Canisters (MPC) (Public Meeting)
10:30 a.m.
Briefing by DOE on High Level Waste Program (Public Meeting)

Week of June 12—Tentative

Wednesday, June 14

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

The schedule for Commission meetings is subject to change on short notice.

TO VERIFY THE STATUS OF MEETING CALLS: (Recording)—(301) 415–1292.

CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415–1661.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1963).

In addition, distribution of this meeting notice over the internet system will also become available in the near future. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to alb@nrc.gov or gkt@nrc.gov.

* * * * *

Dated: May 19, 1995.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 95–12790 Filed 5–19–95; 3:25 pm]

BILLING CODE 7590-01-M

federal register

Tuesday
May 23, 1995

Part II

Department of the Treasury

Customs Service

19 CFR Part 10 et al.
Rules of Origin for Textile and Apparel Products; Proposed Rule

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 10, 12 and 102

RIN 1515–AB71

Rules of Origin for Textile and Apparel Products

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Customs Regulations to implement the provisions of section 334 of the Uruguay Round Agreements Act ("the Act") regarding the country of origin of textile and apparel products. Except for the purpose of identifying products of Israel, the proposed rules would govern the determination of the country of origin of imported textile and apparel products for purposes of laws enforced by the Customs Service. The proposed rules also implement the provisions of section 334 of the Act regarding the treatment of components that are cut to shape in the United States from foreign fabric, exported for assembly, and returned to the United States. The document also implements previously-enacted provisions regarding the treatment of articles assembled or produced in a Caribbean Basin Initiative beneficiary country wholly from U.S.-produced components, materials or ingredients.

DATES: Comments must be received on or before June 22, 1995.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to the Regulations Branch, U.S. Customs Service, Franklin Court, 1301 Constitution Avenue, N.W., Washington, D.C. 20229. Comments submitted may be inspected at the Regulations Branch, Office of Regulations and Rulings, Franklin Court, 1099 14th Street, N.W., Suite 4000, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Phil Robins, Office of Regulations and Rulings (202–482–7029).

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1994, President Clinton signed into law the Uruguay Round Agreements Act ("the Act"), Public Law 103–465, 108 Stat. 4809. Subtitle D of Title III of the Act deals with textiles and includes section 334 (codified at 19 U.S.C. 3592) which concerns rules of origin for textile and apparel products.

Paragraph (a) of section 334 provides that the Secretary of the Treasury shall prescribe rules implementing the principles contained in paragraph (b) for determining the origin of "textiles and apparel products". Paragraph (a) further provides that such rules must be promulgated in final form not later than July 1, 1995.

Paragraph (b) of section 334 incorporates the following provisions: (1) For purposes of the customs laws and the administration of quantitative restrictions and except as otherwise provided for by statute, general rules for determining when a "textile or apparel product" originates in a country, territory, or insular possession, and is the growth, product, or manufacture of that country, territory, or insular possession; (2) special origin rules for goods classifiable under certain specified tariff headings and subheadings; (3) a "multicountry rule" for determining origin when the origin of a good cannot be determined under the preceding provisions of paragraph (b); (4) special rules governing the treatment of components that are cut to shape in the United States from foreign fabric, exported for assembly, and returned to the United States; and (5) an exception to the application of section 334 that specifically provides for the continued application of the administrative practices that were applied immediately before the enactment of the Act to determine the origin of textile and apparel products from Israel, unless such practices are modified by the mutual consent of the United States and Israel.

Paragraph (c) of section 334 provides that section 334 shall apply to goods entered, or withdrawn from warehouse, for consumption on or after July 1, 1996. Paragraph (c) further provides that section 334 shall not apply to goods entered or withdrawn from warehouse on or before January 1, 1998, that are covered by contracts of sale which were entered into, with all material terms fixed, before July 20, 1994, and which are filed, with an accompanying certification, with the Commissioner of Customs within 60 days after the date of the enactment of the Act. On January 27, 1995, Customs published in the **Federal Register** (60 FR 5457) a notice setting forth the procedures for filing such contracts and certifications.

The purpose of this document is to set forth for public comment proposed regulations implementing the principles contained in section 334(b) of the Act, with a view to promulgation of final regulations by July 1, 1995, as mandated by section 334(a) of the Act.

Discussion of Proposed Rules

On January 3, 1994, Customs published T.D. 94–4 in the **Federal Register** (59 FR 110) setting forth interim regulations for determining the origin of goods from Canada and Mexico other than for the purposes of determining eligibility for preference under the North American Free Trade Agreement (NAFTA). T.D. 94–4 set forth these interim rules as a new Part 102 of the Customs Regulations (19 CFR Part 102), entitled "Rules of Origin", and also set forth consequential conforming interim amendments to existing sections within Parts 12 and 134 of the Customs Regulations (19 CFR Parts 12 and 134). These interim regulations were made immediately effective for trade from Canada and Mexico pursuant to Annex 311 of the NAFTA. No final action on these interim regulatory amendments has been taken.

Also on January 3, 1994, Customs published a document in the **Federal Register** (59 FR 141) that proposed to amend § 102.0 of the interim regulations published as T.D. 94–4 so that the Part 102 provisions would also apply to country of origin determinations "for purposes of the Customs and related laws and the navigation laws of the United States" for goods from all countries. This document also proposed to amend various provisions within Parts 4, 10, 12, 134 and 177 of the Customs Regulations (19 CFR Parts 4, 10, 12, 134 and 177) to ensure that the rules contained in Part 102 would control wherever language requiring a country of origin determination appears in those other regulatory provisions. Final action also has not been taken on these proposed regulatory amendments.

In keeping with the intended function of Part 102 as the repository for origin rules under the uniform rules of origin principle reflected in the January 3, 1994, proposal mentioned above, Customs proposes in this document to implement those provisions of section 334(b) of the Act that have broad application under the terms of the statute by amending the Part 102 provisions and by amending other regulatory provisions as necessary to conform to those Part 102 changes. With regard to the remaining provisions of section 334(b) (that is, the special rules governing the treatment of components that are cut to shape in the United States from foreign fabric, exported for assembly, and returned to the United States) and with one exception as discussed further below, Customs proposes to implement those provisions by amending that portion of Part 10 of the Customs Regulations (19 CFR Part 10) that concerns articles assembled abroad with United States components because the subject provisions of section 334(b) are more appropriate to that context. In addition, it is proposed to make a number of amendments to existing regulatory provisions to ensure that those existing provisions will be consistent with the new regulatory proposals implementing section 334(b) of the Act. The proposed amendments are discussed in more detail below.

A. Proposed Amendments to Part 10

Section 334(b)(4)(A) of the Act

Section 334(b)(4)(A) of the Act provides that the value of a component that is cut to shape (but not to length, width, or both) in the United States from foreign fabric and exported to another country, territory, or insular possession for assembly into an article that is then returned to the United States: (1) Shall not be included in the dutiable value of such article; and (2) may be applied toward determining the percentage referred to in General Note 7(b)(i)(B) of the Harmonized Tariff Schedule of the United States (HTSUS), subject to the limitation provided in that note.

Subheading 9802.00.80, HTSUS, provides a duty exemption for fabricated components of U.S. origin that are assembled abroad and returned to the United States. Under current textile rules of origin, textile components that are cut to shape in the United States from foreign fabric qualify as U.S.-origin fabricated components under subheading 9802.00.80, HTSUS. The effect of section 334(b)(4)(A) of the Act is to continue the duty exemption for those components, notwithstanding the fact that under the origin principles in section 334(b) of the Act such components would no longer qualify as products of the United States (see the "cutting versus assembly" discussion in connection with the proposed amendments to Part 102 below). In addition, section 334(b)(4)(A) in effect continues the present practice of allowing the value of such cut-to-shape textile components to be applied toward the 35 percent value-content requirement, up to the 15 percent maximum limitation for materials produced in the United States, for purposes of the Caribbean Basin Initiative (CBI) duty-free program established by the Caribbean Basin Economic Recovery Act, as amended (19 U.S.C. 2701 *et seq.*), and reflected in General Note 7, HTSUS.

Although section 334(b)(4)(A) of the Act is a separate statutory provision and does not amend or otherwise affect subheading 9802.00.80, HTSUS, Customs believes that the references to "component" and "assembly" in the Act were intended to mirror the concepts of, including the types of operations traditionally permitted under, subheading 9802.00.80, HTSUS. Accordingly, Customs believes that the appropriate place for regulatory implementation of this aspect of the Act would be following the existing Part 10 regulations applicable to subheading 9802.00.80, HTSUS, because some of those existing regulatory provisions appear to be equally relevant for purposes of this provision of the Act. Therefore, Customs proposes to add a new § 10.25 (19 CFR 10.25) that would reflect the relevant terms of section 334(b)(4)(A) of the Act and that would also provide for the applicability of certain of those existing regulatory standards and procedures (for example, the U.S. component valuation principles, the assembly and incidental operations principles, and the documentation requirements).

With regard to the second aspect of section 334(b)(4)(A) of the Act, which allows the value of textile components cut to shape in the United States to be applied toward the 35 percent value-content requirement under the CBI duty-free program, Customs proposes to reflect this provision in the context of the CBI implementing regulations by adding a new paragraph (d) to § 10.195 (19 CFR 10.195). Although modeled on present paragraph (c) of that section, the following particular points are noted regarding this new paragraph (d): (1) The proposed text mentions the percentage "referred to in paragraph (c)" (that is, the 15 percent maximum attributable to U.S. materials) rather than the percentage referred to in paragraph (a) (that is, the overall 35 percent value-content requirement), in order to clarify that the new allowance operates as part of, or an alternative to, but not in addition to, the pre-existing 15 percent allowance for U.S.-produced materials; and (2) contrary to present § 10.195(c), which refers to materials produced in the "customs territory of the U.S. (other than the Commonwealth of Puerto Rico)" and thus reflects the specific terms of the CBI statute (19 U.S.C. 2703(a)(1)), the text of this new § 10.195(d) refers to a textile component that is cut to shape in the "U.S. (including the Commonwealth of Puerto Rico)", because Customs believes that the reference to the "United States" in section 334(b)(4)(A) of the Act was intended to cover Puerto Rico.

Section 334(b)(4)(B) of the Act

Section 334(b)(4)(B) of the Act provides that no article (except a textile or apparel product) assembled in whole of components described in section 334(b)(4)(A) of the Act, or of such components and components that are products of the United States, in a CBI beneficiary country shall be treated as a foreign article, or as subject to duty, if the components after exportation from the United States, and the article itself before importation into the United States, do not enter into the commerce of any foreign country other than such a beneficiary country.

U.S. Note 2(b), Subchapter II, Chapter 98, HTSUS, provides that no article (except a textile article, apparel article, or petroleum, or any product derived from petroleum, provided for in heading 2709 or 2710) may be treated as a foreign article or as subject to duty if the article is assembled or processed in a CBI beneficiary country in whole of fabricated components that are a product of the United States or if the article is processed in a CBI beneficiary country in whole of ingredients (other than water) that are a product of the United States, provided that neither the fabricated components, materials or ingredients after exportation from the United States, nor the article itself before importation into the United States, enters the commerce of any foreign country other than a CBI beneficiary country. The effect of section 334(b)(4)(B) of the Act is to continue this Note 2(b) treatment for textile and apparel articles which would meet the requirements of the Note but for the fact that, under the origin principles in section 334(b) of the Act, components cut to shape in the United States from foreign fabric would no longer qualify as products of the United States.

Customs notes that the provisions of Note 2(b) discussed above have not been implemented in the Customs Regulations. Accordingly, based on the same rationale stated above regarding the addition of new § 10.25 to implement section 334(b)(4)(A) of the Act, Customs proposes to add a new § 10.26 (19 CFR 10.26) which would cover both Note 2(b) and the provisions of section 334(b)(4)(B) of the Act. To reflect that these are discrete statutory provisions, paragraph (a) of the proposed new section covers only Note 2(b) and paragraph (b) thereof covers only the provisions of section 334(b)(4)(B) of the Act. Paragraph (c) sets forth definitions or rules for purposes of the section and includes, as subparagraph (c)(3), a rule regarding

entry into the commerce (of a non-beneficiary country) which is modeled on the "imported directly" principle contained in § 10.193 of the CBI implementing regulations.

Customs proposes to define the terms "textile article", "apparel article", and "textile or apparel product" for purposes of new § 10.26 more narrowly than the term "textile or apparel product" is defined for purposes of the new Part 102 provisions (see the below discussion of the proposed Part 102 amendments in regard to the latter). As noted above, § 10.26(a) would implement the provisions of U.S. Note 2(b), Subchapter II, Chapter 98, HTSUS, and § 10.26(b) would implement section 334(b)(4)(B) of the Act. With regard to the scope of the terms "textile article" and "apparel article" as used in Note 2(b), in T.D. 91–88, 25 Cust.Bull. 226, Customs issued an interpretive rule which concluded that articles (other than footwear and parts of footwear) classifiable in HTSUS provisions that have a textile and apparel category number designation should be considered "textile" and "apparel" articles for purposes of Note 2(b). Footwear and parts of footwear were determined in this interpretive rule not to constitute "textile" and "apparel" articles under Note 2(b). As indicated above, Customs believes that the primary purpose of section 334(b)(4)(B) of the Act is to preserve the current duty exemption granted under Note 2(b) for articles assembled abroad from components cut to shape in the United States from foreign fabric. For example, under Customs current interpretation of Note 2(b), foreign fabric components cut to shape in the United States that are assembled in a CBI beneficiary country into a footwear upper or assembled into gloves classifiable in a provision that does not have a textile quota category number have been considered to be outside the scope of the articles excluded from this duty exemption. If, however, the term, "textile or apparel product" as used in § 334(b)(4)(B) of the Act is interpreted to cover the same articles covered by the term "textile or apparel product" as used elsewhere in section 334(b) of the Act [which include footwear and parts thereof and many articles that are not classified in quota provisions], Customs would fail to give effect to the legislative purpose behind this provision. Indeed, under such an interpretation this provision would be nullified by the exception contained therein, since no good can be "assembled in whole of components [cut to shape from foreign fabric in the United States] * * *" and still be considered to fall outside the scope of goods excluded from the duty-free treatment allowed under the provision in question. Therefore, solely for purposes of section 334(b)(4)(B) of the Act, it is proposed to define the term "textile or apparel product" to reflect the same interpretation previously given by Customs to the terms "textile article" and "apparel article" under Note 2(b).

B. Proposed Amendments to Part 102

The proposed amendments to Part 102 set forth in this document specifically implement sections 334(b)(1)–(3) and (5) of the Act. These proposed changes affect Part 102 and other provisions of the Customs Regulations.

The proposed amendments to Part 102 set forth in this document represent the view of Customs on the application of the principles contained in sections 334(b)(1)–(3) and (5) and are intended to be used in all determinations of whether a textile good is the product of a particular country, territory, or possession, except where other statutory authority provides for application of a different origin standard. Accordingly, starting on July 1, 1996, the final regulations resulting from these proposed regulatory texts would take precedence over any other conflicting provisions in Part 102 or elsewhere in the Customs Regulations but would not control origin determinations regarding textile and apparel products of Israel.

Scope of "Textile or Apparel Product"

Section 334(b) of the Act sets forth principles governing the determination of the origin of "a textile or apparel product" for purposes of laws enforced by Customs. However, nowhere in the legislation is "textile or apparel product" defined. Customs believes that the principles in section 334(b) were intended to be applicable to essentially the same goods to which Customs has applied the principles of § 12.130 of the Customs Regulations (19 CFR 12.130).

Section 12.130, which Customs currently follows in determining the country of origin of textile products for most purposes, specifically states that its provisions cover textiles and textile products subject to section 204, Agricultural Act of 1956, as amended (7 U.S.C. 1854), that is, merchandise which is the subject of an international textile agreement. Customs has interpreted this to include all goods classifiable in Section XI of the HTSUS and all goods classifiable outside Section XI under a provision that has a textile and apparel category number designation. However, Customs has ruled that while the provisions of § 12.130 are specifically applicable only for international textile agreement purposes, *the principles* of § 12.130 are applicable to all textiles and textile products for all purposes (*i.e.*, quota, marking and duty assessment).

The United States is a signatory to the Agreement Establishing the World Trade Organization (the WTO Agreement) and to the Agreement on Textiles and Clothing annexed thereto. In the Annex to the Agreement on Textiles and Clothing, textile and clothing products are defined by means of a listing of subheadings in the international Harmonized Commodity Description and Coding System, or Harmonized System (which has been implemented in the United States in the HTSUS). The subheadings listed in the Annex to the Agreement on Textiles and Clothing include some provisions which presently do not have a textile and apparel category number currently associated with them. They also do not include every provision contained in Harmonized System/HTSUS Section XI (which covers textiles and textile articles).

Customs notes that sections 101(d)(4), 331 and 332 of the Act specifically refer to the Agreement On Textiles And Clothing of the WTO Agreement. Moreover, section 332 of the Act amended the second sentence of section 204 of the Agricultural Act of 1956 to specifically authorize the President to issue, in order to carry out a multilateral agreement ("including but not limited to the Agreement on Textiles and Clothing" of the WTO Agreement), regulations governing the entry or withdrawal from warehouse of articles covered by such an agreement that are the products of countries which are not parties to the agreement or to which the United States does not apply the agreement.

Customs believes that, in order to reflect the overall context in which section 334 of the Act was enacted, the regulations implementing the principles of section 334(b) must, with slight technical modifications, have reference to the subheadings listed in the Annex to the Agreement on Textiles and Clothing of the WTO Agreement. Customs believes that, in the absence of a specific statutory definition, Customs is required to determine the scope of section 334. In doing this, Customs has considered the wording of section 334, its development, and the context in which it was enacted.

Accordingly, it is the position of Customs that the regulations implementing section 334(b) of the Act should apply to (1) all goods classifiable in Section XI of the HTSUS and (2) with one exception, all goods classifiable under any subheading outside Section XI that is listed in the Annex to the Agreement on Textiles and Clothing of the WTO Agreement. This will avoid any possibility of interpreting "apparel product" to include apparel products consisting entirely of plastic or other nontextile component parts, which clearly are not intended to be covered by section 334 of the Act.

The one exception to the subheadings listed in the WTO Agreement concerns subheading 9113.90 which provides for watch straps, watch bands, watch bracelets, and parts thereof. That subheading is further broken down in the HTSUS into two 8-digit subheadings, only one of which, subheading 9113.90.40, provides for goods of textile materials. Customs believes that it would be inappropriate to treat clearly nontextile goods as falling within the scope of "textile or apparel article" as used in section 334(b) of the Act. Accordingly, the definition of "textile or apparel product" in the proposed Part 102 regulatory texts set forth in this document includes a reference to subheading 9113.90.40 but does not refer to subheading 9113.90.80 which covers the remainder of the goods falling under subheading 9113.90.

Customs recognizes that, by referring to the Agreement on Textiles and Clothing, the proposed rules of origin in this document will cover some goods not presently considered to be within the purview of § 12.130 (for example, wadding and gauze impregnated or coated with medicinals, umbrellas, automobile seat belts, parachutes, watch straps, doll clothing).

General Approach in Proposed Rules

Customs proposes to implement the section 334(b) origin principles within Part 102 as a new § 102.21. This proposed new § 102.21 includes an applicability provision (paragraph (a)) to clarify the scope of the section, various definitions of terms used in the section (paragraph (b)), five general origin rules (paragraph (c)) which apply in a hierarchical and sequential manner, a special provision for sets (paragraph (d)), and specific change in tariff classification rules (paragraph (e)) which apply for purposes of the second general origin rule. The proposed regulatory texts, and the section 334(b) principles which they implement, are discussed in more detail below.

Proposed § 102.21 would supersede those provisions of §§ 102.1 through 102.20 for those products that fall within the scope of § 102.21, except for the purpose of identifying products of Israel for which §§ 102.1 through 102.20 will remain in effect. Customs expects that Part 102 will have been made effective for all imports prior to July 1, 1996, when § 102.21 will become effective.

Wholly Obtained or Produced

The first § 102.21 general origin rule (paragraph (c)(1)) provides that the country of origin of a textile or apparel product is the single country, territory, or insular possession in which the good was wholly obtained or produced. This rule sets forth the principle contained in section 334(b)(1)(A) of the Act. The definition of "a good wholly obtained or produced" contained in present § 102.1(g) would apply for purposes of this proposed rule.

Change in Tariff Classification

Where a textile or apparel product is not wholly obtained or produced in a single country, territory, or insular possession, the second general origin rule (paragraph (c)(2)) provides that the country of origin of such a good is the single country, territory, or insular possession in which each material incorporated in the good underwent an applicable change in tariff (HTSUS) classification specified in paragraph (e). The proposed tariff shift rules contained in paragraph (e) reflect the views of Customs on the results obtained when the principles of section 334(b) of the Act are applied to specific textile goods. Because Customs believes that the tariff shift approach represents the most transparent and predictable method for determining origin under the principles contained in section 334(b) of the Act, an attempt has been made to reflect the application of those principles within the proposed tariff shift rules to the greatest extent practicable.

Assembly Versus Cutting

Under the rulings presently issued by Customs, the country of origin of some textile products, particularly apparel products, is often determined on the basis of where the components thereof were cut to shape. Since promulgation of § 12.130 in 1984, it has been suggested to Customs that cutting components from fabric is an extremely minor manufacturing operation and thus should not determine origin. The position of Customs in regard to cutting, however, was not predicated on the time or expense involved in that operation. Rather, it was based on the physical change of the fabric and the result of the cutting operation—a change from material which could be used for a number of different purposes to a garment part that was dedicated to a specific use in a specific type of garment.

Under section 334(b)(1)(D) of the Act, which applies to all goods not covered by the preceding provisions of paragraph (b)(1) other than goods covered by the special rules of section 334(b)(2), a textile or apparel product has its origin in the country, territory, or possession in which it is *wholly assembled* from its component pieces. In addition, the "multicountry rule" of section 334(b)(3) of the Act discussed below refers to the place in which the most important *assembly* or manufacturing process occurs or the last place in which important *assembly* or manufacturing occurs.

In view of the overall approach taken in section 334(b) of the Act, including the fact that assembly is mentioned in three contexts as a process conferring origin while no mention whatsoever is made of cutting, and in view of its historical context, Customs believes that section 334(b) was intended to eliminate cutting from playing any role in determining the country of origin of textile and apparel products. Accordingly, many of the tariff shift rules contained in paragraph (e) of proposed new § 102.21 have been drafted to reflect this consideration.

Fabric-Making Process

Section 334(b)(1)(C) of the Act provides that if the product is a fabric, its country of origin is the country, territory, or insular possession in which "the constituent fibers, filaments, or yarns are woven, knitted, needled, tufted, felted, entangled, or transformed by any other fabric-making process". In view of the wording of this statutory provision, Customs proposes to define the term "fabric-making process" for purposes of proposed new § 102.21 as including only processes which advance basic materials (fibers, yarns, etc.) into a fabric, thereby excluding any process which starts with a fabric and ends up with a different type of fabric. Because of the existence of spunbonded fabrics, which are produced by extruding polymers directly into fabric form, the term "polymers" has been included in the proposed definition. In addition, since twine, cordage, or rope may be used to make a textile fabric (for example, a fabric of heading 5608), those terms have also been included in the proposed definition.

Scope of "Wholly Assembled"

The "wholly assembled" principle of section 334(b)(1)(D) of the Act as discussed above has been assimilated into the tariff shift rules under paragraph (e) of proposed § 102.21. In

addition, because the tariff shift rules will not always yield an origin result, this principle has also been incorporated within the third general origin rule under paragraph (c) of proposed § 102.21 with specific reference to goods not knit to shape which are not covered by the special rules of section 334(b)(2) of the Act and thus remain subject to the section 334(b)(1)(D) principle. For purposes of § 102.21, Customs proposes a definition of "wholly assembled" which would embody the following principles:

1. The entire good must be assembled, and the assembly must take place in a single country, territory, or insular possession. This is intended to reflect the concept of "wholly" and to ensure, consistent with the overall aim of the section 334(b) principles, the attribution of a good to only one country, territory, or insular possession.

2. The assembly must, at a minimum, involve two separate components that are combined to form the good. Section 334(b)(1)(D) of the Act uses the terminology "wholly assembled * * * from its component pieces." Since the statute uses the plural "pieces", Customs believes that Congress intended that the assembled good incorporate more than one previously separate component. Accordingly, while it may be argued that folding a fabric over on itself and stitching that fold in place is an assembly, Customs does not believe that such a process constitutes an assembly "from its component pieces." Also, Customs will not normally consider materials used to join components (for example, sewing thread, rivets) as falling within the purview of the term "components" as that term is used in this context.

3. Minor attachments and embellishments (for example, appliques, beads, spangles, embroidery, buttons) which do not appreciably affect the identity of the good are not required to be added to the good in the country, territory, or insular possession where the "component pieces" are assembled into the good in order for that good to qualify as "wholly assembled" in a single country, territory, or insular possession. This principle is included in the proposed definition because, once assembled, the product exists whether or not minor attachments and embellishments are attached and because Customs does not believe that Congress intended that a simple process, such as attaching a few buttons or beads to a good, should be allowed to nullify the assembly rule of origin principle. Moreover, Customs notes that the origin result would be the same even if the addition of minor attachments and embellishments were to disqualify the good from being "wholly assembled" in one country, territory, or insular possession. For example, where fabric from Country A is cut in Country B, all the cut pieces are assembled into a shirt in Country C, and the buttons are attached to the shirt in Country D, even if it were argued that the shirt does not qualify as "wholly assembled" in Country C, that shirt would still have its origin in Country C by application of the first "multicountry rule" under section 334(b)(3) of the Act because Country C is the country in which the most important assembly or manufacturing process occurs. For essentially the same reasons, the proposed definition of "wholly assembled" also contains an exception for minor subassemblies (for example, collars, cuffs, plackets, pockets).

Special Rules for Certain HTSUS Headings and Subheadings

Section 334(b)(2)(A) of the Act provides that the origin of a good classifiable under one of the HTSUS provisions enumerated therein "shall be determined under subparagraph (A), (B), or (C) of paragraph (1), as appropriate". Subparagraph (A) provides for products "wholly obtained or produced" in a country, territory, or possession. Subparagraph (B) provides rules for determining the country of origin of yarn, thread, twine, cordage, rope, cable, and braiding. Subparagraph (C) sets out a rule of origin for fabric.

The words "as appropriate" in section 334(b)(2)(A) of the Act appear to have created some confusion regarding the application of that statutory provision. In this regard it has been suggested to Customs, for example, that because neither a bed sheet nor a comforter (each of which is classifiable in a tariff provision listed in section 334(b)(2)(A)) is a fabric, it would not be appropriate to determine the origin of the sheet or comforter by resorting to subparagraph (1)(C) which on its face covers only fabric. Customs does not agree with this suggested interpretation because all of the HTSUS provisions listed in section 334(b)(2)(A) cover goods that have been advanced beyond the form of (in other words, have been made from) yarn, thread, etc., or fabric. Accordingly, the suggested interpretation would make a nullity of section 334(b)(2)(A).

Customs believes that the words "as appropriate" in section 334(b)(2)(A) of the Act are simply intended to alert the reader to use common sense. For example, when determining the origin of a bed sheet cut and finished in Country B from fabric woven in Country A, the appropriate rule is subparagraph (1)(C) which concerns the origin of fabrics. Subparagraph (1)(A) cannot be used because the sheet was not wholly produced in a single country, and subparagraph (1)(B), which concerns yarns, twine, etc., obviously is not applicable because the sheet is made from a fabric. The proposed tariff shift rules set forth in this document for goods classified in the HTSUS provisions enumerated in section 334(b)(2)(A) of the Act have been drafted to reflect this position.

Knit-To-Shape Garments

Section 334(b)(2)(B) of the Act provides that "a textile or apparel product which is knit to shape" shall be considered to originate in the country, territory, or insular possession in which it is knit. This statutory provision is reflected in proposed § 102.21 both under the third general origin rule (paragraph (c)(3)) and in the tariff shift rules under paragraph (e).

While § 12.130(e)(2)(iii) of the Customs Regulations presently addresses the assembly of "knit-to-shape component parts", section 334(b)(2)(B) of the Act applies the knit-to-shape concept to the imported article as a whole. Because of the wording used in § 12.130, the present position of Customs is that if a garment contains at least one major knit-to-shape component, the presence of that component will preclude the assembly of that garment from conferring origin.

Customs believes that the phrase "knit to shape" should be defined for purposes of proposed new § 102.21. Accordingly, focusing on the entire article (as opposed to the components comprising that article), Customs proposes to define the phrase "knit to shape" as referring to a good with an exterior surface wholly comprised of fabric knitted directly to the shape used in the good (except for neck and front opening trim), with no consideration being given to minor cutting or trimming. This means that if an article consists of more than one component, *all* exterior components (except for neck and front opening trim) must be formed by knitting into the general shape that they are found in the article in order for the knitting to confer origin.

Multicountry Rule

In some cases the proposed tariff shift rules were drafted to reflect an origin result that would be reached for specific goods by application of the "multicountry rule" contained in section 334(b)(3) of the Act. The "multicountry rule" provides that where the origin of a good cannot be determined under the general or special rules set forth in section 334(b)(1) or (2) of the Act, the good shall be considered to have its origin either in the country, territory, or insular possession in which the most important assembly or manufacturing process occurs or (in effect, if two or more equally important assembly or manufacturing processes are attributable to different countries, territories or insular possessions) in the last country, territory, or insular possession in which important assembly or manufacturing occurs. The two parts of this "multicountry rule" are also set forth separately as the proposed fourth (paragraph (c)(4)) and fifth (paragraph (c)(5)) general origin rules in recognition of the fact that the tariff shift rules will not always yield an origin result.

Treatment of Sets

A set is two or more articles, each classifiable under a different tariff heading, which, when packaged together, meet a particular need or carry out a specific activity. As such, the entire set is usually classifiable as a unit under a single tariff subheading. In T.D. 91–7, 25 Cust. Bull. 7 (1991), Customs determined that each component not substantially transformed as a result of its inclusion in a set must be individually marked to indicate its own country of origin. This marking requirement is applicable to all goods, not just textiles. In addition, in order to prevent circumvention of international textile agreements, Customs, at the direction of the Committee for the Implementation of Textile Agreements, has for years been requiring that textile components of a set be broken out on a Customs Form 7501 (Customs Entry/Entry Summary) to meet quota/visa requirements.

Section 334(b) of the Act, and the legislative history relating thereto, are silent on the determination of the country of origin of sets. Customs believes that this omission was not inadvertent and that Congress intended that the present practice of Customs continue for purposes of applying the origin principles contained in section 334(b). Accordingly, Customs proposes to include in new § 102.21 a paragraph (d) to provide that in the case of goods which are classifiable as sets and which include one or more components that are textile or apparel products, the country, territory, or insular possession of origin of each such textile or apparel component shall be determined separately under the rules set forth in paragraph (c) of § 102.21.

Comments

Before adopting the proposed amendments as a final rule, consideration will be given to any written comments (preferably in triplicate) timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, Franklin Court, 1099 14th Street, NW., Suite 4000, Washington, DC.

Executive Order 12866

This document does not meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that, if adopted, the proposed amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, the proposed amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Paperwork Reduction Act

The collection of information requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC. 20503. A copy should also be sent to Customs at the address set forth previously.

The collection of information in these proposed regulations is in § 10.25. This information is used by Customs to determine whether articles assembled abroad from textile components cut to shape in the United States from foreign fabric are entitled to reduced or duty-free treatment under section 334(b)(4)(A) of the Act or under the CBI. The likely respondents are business organizations including importers, exporters, and manufacturers.

Estimated total annual reporting and/or recordkeeping burden: 750 hours.

Estimated average annual burden per respondent/recordkeeper: 1.5 hours.

Estimated number of respondents and/or recordkeepers: 500.

Estimated annual frequency of responses: 2,000.

Drafting Information: The principal author of this document was Francis W. Foote, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 10

Customs duties and inspection, Imports, Reporting and recordkeeping requirements.

19 CFR Part 12

Customs duties and inspection, Labeling, Marking, Reporting and recordkeeping requirements, Textiles and textile products.

19 CFR Part 102

Customs duties and inspections, Imports, Reporting and recordkeeping requirements, Rules of origin, Trade agreements.

Proposed Amendments to the Regulations

For the reasons stated above, it is proposed to amend Parts 10, 12 and 102, Customs Regulations (19 CFR Parts 10, 12 and 102), as set forth below.

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The general authority citation for Part 10 and the specific authority citations for §§ 10.191–10.198 continue to read, and a specific authority citation for §§ 10.25 and 10.26 is added to read, as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1321, 1481, 1484, 1498, 1508, 1623, 1624;

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Sections 10.25 and 10.26 also issued under 19 U.S.C. 3592;

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Sections 10.191–10.198 also issued under 19 U.S.C. 2701 *et seq.*;

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2. Sections 10.25 and 10.26 are added under the heading "Articles assembled abroad with United States components" to read as follows:

§ 10.25 Textile components cut to shape in the United States and assembled abroad.

Where a textile component is cut to shape (but not to length, width, or both) in the United States from foreign fabric and exported to another country, territory, or insular possession for assembly into an article that is then returned to the United States and entered, or withdrawn from warehouse, for consumption on or after July 1, 1996, the value of the textile component shall not be included in the dutiable value of

the article. For purposes of determining whether a reduction in the dutiable value of an imported article may be allowed under this section:

(a) The terms "textile component" and "fabric" have reference only to goods covered by the definition of "textile or apparel product" set forth in § 102.21(b)(4) of this chapter;

(b) The operations performed abroad on the textile component shall conform to the requirements and examples set forth in § 10.16 insofar as they may be applicable to a textile component; and

(c) The valuation and documentation provisions of §§ 10.17, 10.18, 10.21 and 10.24 shall apply.

§ 10.26 Articles assembled or processed in a beneficiary country in whole of U.S. components or ingredients; articles assembled in a beneficiary country from textile components cut to shape in the United States.

(a) No article (except a textile article, apparel article, or petroleum, or any product derived from petroleum, provided for in heading 2709 or 2710, Harmonized Tariff Schedule of the United States (HTSUS)) shall be treated as a foreign article or as subject to duty:

(1) If the article is assembled or processed in a beneficiary country in whole of fabricated components that are a product of the United States; or

(2) If the article is processed in a beneficiary country in whole of ingredients (other than water) that are a product of the United States; and

(3) Neither the fabricated components, materials or ingredients after their exportation from the United States, nor the article before its importation into the United States, enters into the commerce of any foreign country other than a beneficiary country.

(b) No article (except a textile or apparel product) entered, or withdrawn from warehouse, for consumption on or after July 1, 1996, shall be treated as a foreign article or as subject to duty:

(1) If the article is assembled in a beneficiary country in whole of textile components cut to shape (but not to length, width, or both) in the United States from foreign fabric; or

(2) If the article is assembled in a beneficiary country in whole of both textile components described in paragraph (b)(1) and components that are products of the United States; and

(3) Neither the components after their exportation from the United States, nor the article before its importation into the United States, enters into the commerce of any foreign country other than a beneficiary country.

(c) For purposes of this section:

(1) The terms "textile article", "apparel article", and "textile or apparel product" cover all articles, other than footwear and parts of footwear, that are classifiable in an HTSUS subheading which carries a textile and apparel category number designation;

(2) The term "beneficiary country" has the meaning set forth in § 10.191(b)(1); and

(3) A component or an article shall be deemed to have not entered into the commerce of any foreign country other than a beneficiary country if:

(i) The component was shipped directly from the United States to a beneficiary country, or the article was shipped directly to the United States from a beneficiary country, without passing through the territory of any non-beneficiary country; or

(ii) Where the component or article passed through the territory of a non-beneficiary country while en route to a beneficiary country or the United States:

(A) The invoices, bills of lading, and other shipping documents pertaining to the component or article show a beneficiary country or the United States as the final destination and the component or article was neither sold at wholesale or retail nor subjected to any processing or other operation in the non-beneficiary country; or

(B) The component or article remained under the control of the customs authority of the non-beneficiary country and was not subjected to operations in that non-beneficiary country other than loading and unloading and activities necessary to preserve the component or article in good condition.

3. In § 10.195, paragraphs (d) and (e) are redesignated as paragraphs (e) and (f) respectively and a new paragraph (d) is added to read as follows:

§ 10.195 Country of origin criteria.

* * * * *

(d) *Textile components cut to shape in the U.S.* The percentage referred to in paragraph (c) of this section may be attributed in whole or in part to the cost or value of a textile component that is cut to shape (but not to length, width, or both) in the U.S. (including the Commonwealth of Puerto Rico) from foreign fabric and exported to a beneficiary country for assembly into an article that is then returned to the U.S. and entered, or withdrawn from warehouse, for consumption on or after July 1, 1996. For purposes of this paragraph, the terms "textile component" and "fabric" have reference only to goods covered by the definition of "textile or apparel product" set forth in § 102.21(b)(4) of this chapter.

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PART 12—SPECIAL CLASSES OF MERCHANDISE

1. The authority citation for Part 12 continues to read in part as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

* * * * *

Sections 12.130 and 12.131 also issued under 7 U.S.C. 1854;

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§ 12.130 [Amended]

2. In § 12.130:

a. The last sentence of paragraph (b) is amended by adding after "Mexico" the words ", and the origin of textile and apparel products covered by § 102.21 of this chapter,";

b. The last sentence of the introductory text of paragraph (d) is amended by adding after "Mexico" the words ", and the origin of textile and apparel products covered by § 102.21 of this chapter,"; and

c. The introductory text of paragraph (e)(1) is amended by adding after "Mexico" the words "and except for textile and apparel products".

PART 102—RULES OF ORIGIN

1. The authority citation for Part 102 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1624, 3314, 3592.

2. Section 102.0 is amended by removing the word "This" at the beginning of the first sentence and adding, in its place, the words "Except in the case of goods covered by § 102.21, this" and by adding a sentence at the end to read as follows:

§ 102.0 Scope.

* * * The rules for determining the country of origin of textile and apparel products set forth in § 102.21 apply for the foregoing purposes and for the other purposes stated in that section.

2. Section 102.11 is amended by adding an introductory paragraph before paragraph (a) to read as follows:

§ 102.11 General rules.

The following rules shall apply for purposes of determining the country of origin of imported goods other than textile and apparel products covered by § 102.21.

* * * * *

3. Section 102.21 is added to read as follows:

§ 102.21 Textile and apparel products.

(a) *Applicability.* Except for purposes of determining whether goods originate in Israel or are the growth, product, or manufacture of Israel, and except as otherwise provided for by statute, the provisions of this section shall control the determination of the country of origin of imported textile and apparel products for purposes of the Customs laws and the administration of quantitative restrictions. The provisions of this section shall apply to goods entered, or withdrawn from warehouse, for consumption on or after July 1, 1996.

(b) *Definitions.* The following terms shall have the meanings indicated when used in this section:

(1) *Country of origin.* The term "country of origin" means the country, territory, or insular possession in which a good originates or of which a good is the growth, product, or manufacture.

(2) *Fabric-making process.* A "fabric-making process" is any manufacturing operation which begins with polymers, fibers, filaments (including strips), yarns, twine, cordage, or rope, and results in a textile fabric.

(3) *Knit to shape.* The term "knit to shape" applies to any good with an exterior surface area wholly comprised of one or more fabrics knitted or crocheted directly to the shape used in the good (except for fabric used for trimming the neck or front opening). Minor cutting or trimming of fabric will not affect the determination of whether a good is "knit to shape."

(4) *Textile or apparel product.* A "textile or apparel product" is any good classifiable in Chapters 50 through 63, Harmonized Tariff Schedule of the United States (HTSUS), and any good classifiable under one of the following HTSUS headings or subheadings:

3005.90
3921.12.15
3921.13.15
3921.90.2550
4202.12.40–80
4202.22.40–80
4202.32.40–95
4202.92.15–30
4202.92.60–90
6405.20.60
6406.10.77
6406.10.90
6406.99.15
6501
6502
6503
6504
6505.90
6601.10–99
7019.10.15
7019.10.28
7019.20
8708.21
8804
9113.90.40
9404.90.10
9404.90.80–95
9502.91
9612.10.9010

(5) *Wholly assembled.* The term "wholly assembled" when used with reference to a good means that all components, of which there must be at least two, preexisted in essentially the same condition as found in the finished good and were combined to form the finished good in a single country, territory, or insular possession. Minor attachments and minor embellishments (for example, appliques, beads, spangles, embroidery, buttons) not appreciably affecting the identity of the good, and minor subassemblies (for example, collars, cuffs, plackets, pockets), will not affect the status of a good as "wholly assembled" in a single country, territory, or insular possession.

(c) *General rules.* Subject to paragraph (d) of this section, the country of origin of a textile or apparel product shall be determined by sequential application of paragraphs (c) (1) through (5) of this section and, in each case where appropriate to the specific context, by application of the additional requirements or conditions of §§ 102.12 through 102.19 of this part.

(1) The country of origin of a textile or apparel product is the single country, territory, or insular possession in which the good was wholly obtained or produced.

(2) Where the country of origin of a textile or apparel product cannot be determined under paragraph (c)(1) of this section, the country of origin of the good is the single country, territory, or insular possession in which each foreign material incorporated in that good underwent an applicable change in tariff classification, and/or met any other requirement, specified for the good in paragraph (e) of this section.

(3) Where the country of origin of a textile or apparel product cannot be determined under paragraph (c) (1) or (2) of this section:

(i) If the good was knit to shape, the country of origin of the good is the single country, territory, or insular possession in which the good was knit; or

(ii) If the good was not knit to shape and the good was wholly assembled in a single country, territory, or insular possession, the country of origin of the good is the country, territory, or insular possession in which the good was wholly assembled.

(4) Where the country of origin of a textile or apparel product cannot be determined under paragraph (c) (1), (2) or (3) of this section, the country of origin of the good is the single country, territory, or insular possession in which the most important assembly or manufacturing process occurred.

(5) Where the country of origin of a textile or apparel product cannot be determined under paragraph (c) (1), (2), (3) or (4) of this section, the country of origin of the good is the last country, territory, or insular possession in which an important assembly or manufacturing process occurred.

(d) *Treatment of sets.* Where a good classifiable in the HTSUS as a set includes one or more components that are textile or apparel products and a single country of origin for all of the components of the set cannot be determined under paragraph (c) of this section, the country of origin of each component of the set that is a textile or apparel product shall be determined separately under paragraph (c) of this section.

(e) *Specific rules by tariff classification.* The following rules shall apply for purposes of determining the country of origin of a textile or apparel product under paragraph (c)(2) of this section:

HTSUS	Tariff shift and/or other requirements
3005.90	If the good contains pharmaceutical substances, a change to subheading 3005.90 from any other heading; or, If the good does not contain pharmaceutical substances, a change to subheading 3005.90 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5601 through 5603, 5801 through 5804, 5806, 5809, 5903, 5906 through 5907, and 6001 through 6002.
3921.12.15	A change to subheading 3921.12.15 from any other heading.
3921.13.15	A change to subheading 3921.13.15 from any other heading.
3921.90.2550	A change to subheading 3921.90.2550 from any other heading.
4202.12.40–4202.12.80	A change to subheading 4202.12.40 through 4202.12.80 from any other heading, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.

HTSUS	Tariff shift and/or other requirements
4202.22.40–4202.22.80	A change to subheading 4202.22.40 through 4202.22.80 from any other heading, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.
4202.32.40–4202.32.95	A change to subheading 4202.32.40 through 4202.32.95 from any other heading, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.
4202.92.15–4202.92.30	A change to subheading 4202.92.15 through 4202.92.30 from any other heading, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.
4202.92.60–4202.92.90	A change to subheading 4202.92.60 through 4202.92.90 from any other heading, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.
5001–5002	A change to heading 5001 through 5002 from any other chapter.
5003	A change to heading 5003 from any other heading, provided that the change is the result of garnetting. If the change to heading 5003 is not the result of garnetting, the country of origin of the good is the country of origin of the good prior to its becoming waste.
5004–5006	(1) If the good is of staple fibers, a change to heading 5004 through 5006 from any heading outside that group, provided that the change is the result of a spinning process. (2) If the good is of filaments, a change to heading 5004 through 5006 from any heading outside that group, provided that the change is the result of an extrusion process.
5007	A change to heading 5007 from any other heading, provided that the change is the result of a fabric-making process.
5101–5103	A change to heading 5101 through 5103 from any other chapter.
5104	A change to heading 5104 from any other heading.
5105	A change to heading 5105 from any other chapter.
5106–5110	A change to heading 5106 through 5110 from any heading outside that group, provided that the change is the result of a spinning process.
5111–5113	A change to heading 5111 through 5113 from any heading outside that group, provided that the change is the result of a fabric-making process.
5201	A change to heading 5201 from any other chapter.
5202	A change to heading 5202 from any other heading, provided that the change is the result of garnetting. If the change to heading 5202 is not the result of garnetting, the country of origin of the good is the country of origin of the good prior to its becoming waste.
5203	A change to heading 5203 from any other chapter.
5204–5207	A change to heading 5204 through 5207 from any heading outside that group, provided that the change is the result of a spinning process.
5208–5212	A change to heading 5208 through 5212 from any heading outside that group provided the change is the result of a fabric-making process.
5301–5305	(1) Except for waste, a change to heading 5301 through 5305 from any other chapter. (2) For waste, a change to heading 5301 through 5305 from any heading outside that group, provided that the change is the result of garnetting. If the change is not the result of garnetting, the country of origin of the good is the country of origin of the good prior to its becoming waste.
5306–5307	A change to heading 5306 through 5307 from any heading outside that group, provided that the change is the result of a spinning process.
5308	(1) Except for paper yarns, a change to heading 5308 from any other heading, provided that the change is the result of a spinning process. (2) For paper yarns, a change to heading 5308 from any other heading, except from heading 4707, 4801 through 4806, 4811, and 4818.
5309–5311	A change to heading 5309 through 5311 from any heading outside that group, provided that the change is the result of a fabric-making process.
5401–5406	A change to heading 5401 through 5406 from any other heading, provided that the change is the result of an extrusion process.
5407–5408	A change to heading 5407 through 5408 from any heading outside that group, provided that the change is the result of a fabric-making process.
5501–5502	A change to heading 5501 through 5502 from any other chapter, provided that the change is the result of an extrusion process.
5503–5504	A change to heading 5503 through 5504 from any other chapter, except from Chapter 54.
5505	A change to heading 5505 from any other heading, provided that the change is the result of garnetting. If the change is not the result of garnetting, the country of origin of the good is the country of origin of the good prior to its becoming waste.
5506–5507	A change to heading 5506 through 5507 from any other chapter, except from Chapter 54.
5508–5511	A change to heading 5508 through 5511 from any heading outside that group, provided that the change is the result of a spinning process.
5512–5516	A change to heading 5512 through 5516 from any heading outside that group, provided that the change is the result of a fabric-making process.
5601	(1) A change to wadding of heading 5601 from any other heading, except from heading 5105, 5203, and 5501 through 5507. (2) A change to flock, textile dust, mill neps, or articles of wadding, of heading 5601 from any other heading or from wadding of heading 5601.
5602–5603	A change to heading 5602 through 5603 from any heading outside that group, provided that the change is the result of a fabric-making process.
5604	(1) If the textile component is of continuous filaments, including strips, a change of those filaments, including strips, to heading 5604 from any other heading, except from heading 5001 through 5007, 5401 through 5408, and 5501 through 5502, and provided that the change is the result of an extrusion process. (2) If the textile component is of staple fibers, a change of those fibers to heading 5604 from any other heading, except from heading 5004 through 5006, 5106 through 5110, 5204 through 5207, 5306 through 5308, and 5508 through 5511, and provided that the change is the result of a spinning process.

HTSUS	Tariff shift and/or other requirements
5605–5606	If the good is of continuous filaments, including strips, a change of those filaments, including strips, to heading 5605 through 5606 from any other heading, except from heading 5001 through 5007, 5401 through 5408, and 5501 through 5502, and provided that the change is the result of an extrusion process; or If the good is of staple fibers, a change of those fibers to heading 5605 through 5606 from any other heading, except from heading 5106 through 5110, 5204 through 5207, 5306 through 5308, and 5508 through 5511, and provided that the change is the result of a spinning process.
5607	If the good is of continuous filaments, including strips, a change of those filaments, including strips, to heading 5607 from any other heading, except from heading 5001 through 5007, 5401 through 5406, and 5501 through 5511, and provided that the change is the result of an extrusion process; or If the good is of staple fibers, a change of those fibers to heading 5607 from any other heading, except from heading 5106 through 5110, 5204 through 5207, 5306 through 5308, and 5508 through 5511, and provided that the change is the result of a spinning process.
5608	(1) A change to netting of heading 5608 from any other heading, except from heading 5804, and provided that the change is the result of a fabric-making process. (2) A change to fishing nets or other made up nets of heading 5608: (a) If the good does not contain nontextile attachments, from any other heading, except from heading 5804 and 6002, and provided that the change is the result of a fabric-making process; or (b) If the good contains nontextile attachments, from any heading, including a change from another good of heading 5608, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.
5609	(1) If the good is of continuous filaments, including strips, a change of those filaments, including strips, to heading 5609 from any heading, except from heading 5001 through 5007, 5401 through 5406, 5501 through 5502, and 5604 through 5607, and provided that the change is the result of an extrusion process. (2) If the good is of staple fibers, a change of those fibers to heading 5609 from any other heading, except from heading 5106 through 5110, 5204 through 5207, 5306 through 5308, 5508 through 5511, and 5604 through 5607, and provided that the change is the result of a spinning process.
5701–5705	A change to heading 5701 through 5705 from any other chapter.
5801–5803	A change to heading 5801 through 5803 from any other heading, including a heading within that group, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, and 6002, and provided that the change is the result of a fabric-making process.
5804.10	A change to subheading 5804.10 from any other heading, except from heading 5608, and provided that the change is the result of a fabric-making process.
5804.21–5804.30	A change to subheading 5804.21 through 5804.30 from any other heading, provided that the change is the result of a fabric-making process.
5805	A change to heading 5805 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, and 5512 through 5516, and provided that the change is the result of a fabric-making process.
5806	A change to heading 5806 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, and 5801 through 5803, and provided that the change is the result of a fabric-making process.
5807	A change to heading 5807 from any other chapter, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, and 6001 through 6002, and subheading 6307.90, and provided that the change is the result of a fabric-making process.
5808.10	(1) If the good is of continuous filaments, including stripe, a change of those filaments, including strips, to subheading 5808.10 from any heading, except from heading 5001 through 5007, 5401 through 5406, 5501 through 5502, and 5604 through 5607, and provided that the change is the result of an extrusion process. (2) If the good is of staple fibers, a change of those fibers to heading 5808.10 from any other heading, except from heading 5106 through 5113, 5204 through 5212, 5306 through 5311, 5401 through 5408, 5508 through 5516, and 5604 through 5607, and provided that the change is the result of a spinning process.
5808.90	(1) For ornamental fabric trimmings, a change to subheading 5808.90 from any other chapter, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, and 5512 through 5516, and provided that the change is the result of a fabric-making process. (2) For nonfabric ornamental trimmings: (a) If the trimming is of continuous filaments, including strips, a change to subheading 5808.90 from any other heading, except from heading 5001 through 5007, 5401 through 5408, 5501 through 5502, and 5604 through 5607, and provided that the change is the result of an extrusion process; or (b) If the trimming is of staple fibers, a change to subheading 5808.90 from any other heading, except from heading 5106 through 5113, 5204 through 5212, 5306 through 5311, 5401 through 5408, 5508 through 5516, and 5604 through 5607, and provided that the change is the result of a spinning process. (3) For tassels, pompons and similar articles: (a) If the good has been wholly assembled in a single country, territory, or insular possession, a change to subheading 5808.90 from any other heading; (b) If the good has not been wholly assembled in a single country, territory, or insular possession and the good is of staple fibers, a change to subheading 5808.90 from any other heading, except from heading 5004 through 5006, 5106 through 5110, 5204 through 5207, 5306 through 5308, and 5508 through 5511, and 5604 through 5607, and provided that the change is the result of a spinning process; or (c) If the good has not been wholly assembled in a single country, territory, or insular possession and the good is of filaments, including strips, a change to subheading 5808.90 from any other heading, except from heading 5001 through 5007, 5401 through 5406, and 5501 through 5502, and provided that the change is the result of an extrusion process.
5809	A change to heading 5809 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5801 through 5802, 5804, and 5806, and provided that the change is the result of a fabric-making process.
5810.10	A change to subheading 5810.10 from any other heading.

HTSUS	Tariff shift and/or other requirements
5810.91–5810.99	A change to subheading 5810.91 through 5810.99 from any other chapter, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5608, 5903, 5907, and 6001 through 6002, and provided that the change is the result of a fabric-making process.
5811	A change to heading 5811 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5801 through 5804, 5801 through 5804, 5806, 5809 through 5810, 5903, 5907, and 6001 through 6002, and subheading 6307.90, and provided that the change is the result of a fabric-making process.
5901–5903	A change to heading 5901 through 5903 from any other heading, including a heading within that group, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5803, 5806, 5808, and 6002, and provided that the change is the result of a fabric-making process.
5904	A change to heading 5904 from any other heading, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.
5905	A change to heading 5905 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5603, 5803, 5806, 5808, and 6002, and provided that the change is the result of a fabric-making process.
5906–5907	A change to heading 5906 through 5907 from any other chapter, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5803, 5806, 5808, and 6002, and provided that the change is the result of a fabric-making process.
5908	(1) Except for yarns, twine, cord, and braid, a change to heading 5908 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5801 through 5802, 5806, 5808, and 6001 through 6002. (2) For yarns, twine, cord, and braid: (a) If the good is of continuous filaments, including strips, a change to heading 5908 from any other heading, except from heading 5001 through 5007, 5401 through 5406, and 5501 through 5502, and provided that the change is the result of an extrusion process; or (b) If the good is of staple fibers, a change to heading 5908 from any other heading, except from heading 5106 through 5110, 5204 through 5207, 5306 through 5308, and 5508 through 5511, and 5605 through 5607, and provided that the change is the result of a spinning process.
5909	A change to heading 5909 from any other chapter, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5603, 5801 through 5804, 5806, 5808, and 6001 through 6002, and provided that the good does not contain armor or accessories of nontextile material and provided that the change is the result of a fabric-making process; or A change to textile hosepiping with armor or accessories of nontextile material, of heading 5909, from any heading, including a change from another good of heading 5909, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.
5910	(1) For belts and belting of braid, rope, or cord: (a) If the good is of continuous filaments, including strips, a change of those filaments, including strips, to heading 5910 from any other heading, except from heading 5001 through 5006, 5401 through 5406, and 5501 through 5502, and provided that the change is the result of an extrusion process; or (b) If the good is of staple fibers, a change of those fibers to heading 5910 from any other heading, except from heading 5106 through 5110, 5204 through 5207, 5306 through 5308, and 5508 through 5511, and provided that the change is the result of a spinning process. (2) For fabric belting and belts, not braids and not combined with nontextile components, whether or not reinforced with metal or other material, a change to heading 5910 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5804, 5806, 5808 through 5809, and 6001 through 6002, and provided the change is the result of a fabric-making process. (3) For fabric belts, including belts of braided materials, combined with nontextile components, whether or not reinforced with metal or other material, a change to heading 5910 from any heading, including a change from another good of heading 5910, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.
5911.10–5911.40	A change to subheading 5911.10 through 5911.40 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5804, 5806, and 6001 through 6002, and provided that the change is the result of a fabric-making process.
5911.90	(1) For goods of yarn, rope, cord, braid: (a) If the good is of continuous filaments, including strips, a change of those filaments, including strips, to subheading 5911.90 from any other heading, except from heading 5001 through 5006, 5401 through 5406, and 5501 through 5502, and provided that the change is the result of an extrusion process; or (b) If the good is of staple fibers, a change of those fibers to subheading 5911.90 from any other heading, except from heading 5106 through 5110, 5204 through 5207, 5306 through 5308, and 5508 through 5511, and provided that the change is the result of a spinning process. (2) If the good is a fabric, a change to subheading 5911.90 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5804, 5806, 5809, and 6001 through 6002, and provided that the change is the result of a fabric-making process. (3) If the good is a made up article, a change to subheading 5911.90 from any heading, including a change from another good of heading 5911, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.
6001–6002	A change to heading 6001 through 6002 from any heading outside that group, provided that the change is the result of a fabric-making process.

HTSUS	Tariff shift and/or other requirements
6101–6117	(1) If the good is not knit to shape and consists of two or more component parts, a change to an assembled good of heading 6101 through 6117 from unassembled components, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession. (2) If the good is not knit to shape and does not consist of two or more component parts, a change to heading 6101 through 6117 from any heading outside that group, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5806, 5809 through 5811, 5903, 5906 through 5907, and 6001 through 6002, and subheading 6307.90, and provided that the change is the result of a fabric-making process. (3) If the good is knit to shape, a change to heading 6101 through 6117 from any heading outside that group, provided that the knit-to-shape components are knit in a single country, territory, or insular possession.
6201–6208	(1) If the good consists of two or more component parts, a change to an assembled good of heading 6201 through 6208 from unassembled components, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession. (2) If the good does not consist of two or more component parts, a change to heading 6201 through 6208 from any heading outside that group, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5806, 5809 through 5811, 5903, 5906 through 5907, and 6217, and subheading 6307.90, and provided that the change is the result of a fabric-making process.
6209.10.0000–6209.20.5035	(1) If the good consists of two or more component parts, a change to an assembled good of subheading 6209.10.0000 through 6209.20.5035 from unassembled components, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession. (2) If the good does not consist of two or more component parts, a change to subheading 6209.10.0000 through 6209.20.5035 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5806, 5809 through 5811, 5903, 5906 through 5907, and 6217, and subheading 6307.90, and provided that the change is the result of a fabric-making process.
6209.20.5040	A change to subheading 6209.20.5040 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5806, 5809 through 5811, 5903, 5906 through 5907, and 6217, and subheading 6307.90, and provided that the change is the result of a fabric-making process.
6209.20.5045–6209.90.9000	(1) If the good consists of two or more component parts, a change to an assembled good of subheading 6209.20.5045 through 6209.90.9000 from unassembled components, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession. (2) If the good does not consist of two or more component parts, a change to subheading 6209.20.5045 through 6209.90.9000 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5806, 5809 through 5811, 5903, 5906 through 5907, and 6217, and subheading 6307.90, and provided that the change is the result of a fabric-making process.
6210–6212	(1) If the good consists of two or more component parts, a change to an assembled good of heading 6210 through 6212 from unassembled components, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession. (2) If the good does not consist of two or more component parts, a change to heading 6210 through 6212 from any heading outside that group, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5806, 5809 through 5811, 5903, 5906 through 5907, 6001 through 6002, and 6217, and subheading 6307.90, and provided that the change is the result of a fabric-making process.
6213–6214	A change to heading 6213 through 6214 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5806, 5809 through 5811, 5903, 5906 through 5907, and 6217, and subheading 6307.90, and provided that the change is the result of a fabric-making process.
6215–6217	(1) If the good consists of two or more component parts, a change to an assembled good of heading 6215 through 6217 from unassembled components, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession. (2) If the good does not consist of two or more component parts, a change to heading 6215 through 6217 from any heading outside that group, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5806, 5809 through 5811, 5903, 5906 through 5907, and 6217, and subheading 6307.90, and provided that the change is the result of a fabric-making process.
6301–6306	A change to heading 6301 through 6306 from any heading outside that group, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5806, 5809 through 5811, 5903, 5906 through 5907, and 6001 through 6002, and subheading 6307.90, and provided that the change is the result of a fabric-making process.
6307.10	A change to subheading 6307.10 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5804, 5806, 5809 through 5811, 5903, 5906 through 5907, and 6001 through 6002, and provided that the change is the result of a fabric-making process.
6307.20	A change to subheading 6307.20 from any other heading, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.
6307.90	A change to subheading 6307.90 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5804, 5806, 5807 through 5811, 5903, 5906 through 5907, and 6001 through 6002, and provided that the change is the result of a fabric-making process.

HTSUS	Tariff shift and/or other requirements
6308	A change to heading 6308 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5804, 5806, 5809 through 5811, 5903, 5906 through 5907, and 6001 through 6002, and provided that the change is the result of a fabric-making process.
6309–6310	The country, territory, or insular possession in which the good was last collected and packaged for shipment.
6405.20.60	A change to subheading 6405.20.60 from any other heading, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.
6406.10.77	(1) If the good consists of two or more components, a change to subheading 6406.10.77 from any other heading, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession. (2) If the good does not consist of two or more components, a change to subheading 6406.10.77 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5608, 5801 through 5804, 5806, 5808 through 5810, 5903, 5906 through 5907, and 6001 through 6002, and provided that the change is the result of a fabric-making process.
6406.10.90	(1) If the good consists of two or more components, a change to subheading 6406.10.90 from any other heading, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession. (2) If the good does not consist of two or more components, a change to subheading 6406.10.90 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5608, 5801 through 5804, 5806, 5808 through 5810, 5903, 5906 through 5907, and 6001 through 6002, and provided that the change is the result of a fabric-making process.
6406.99.15	(1) If the good consists of two or more components, a change to subheading 6406.99.15 from any other heading, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession. (2) If the good does not consist of two or more components, a change to subheading 6406.99.15 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5608, 5801 through 5804, 5806, 5808 through 5810, 5903, 5906 through 5907, and 6001 through 6002, and provided that the change is the result of a fabric-making process.
6501	(1) If the good consists of two or more components, a change to heading 6501 from any other heading, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession. (2) If the good does not consist of two or more components, a change to heading 6501 from any other heading, except from heading 5603, and provided that the change is the result of a fabric-making process.
6502	(1) If the good consists of two or more components, a change to heading 6502 from any other heading, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession. (2) If the good does not consist of two or more components, a change to heading 6502 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5608, 5801 through 5804, 5806, 5808 through 5810, 5903, 5906 through 5907, and 6001 through 6002, and provided that the change is the result of a fabric-making process.
6503	(1) If the good consists of two or more components, a change to heading 6503 from any other heading, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession. (2) If the good does not consist of two or more components, a change to heading 6503 from any other heading, except from heading 5603, and provided that the change is the result of a fabric-making process.
6504	(1) If the good consists of two or more components, a change to heading 6504 from any other heading, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession. (2) If the good does not consist of two or more components, a change to heading 6504 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5608, 5801 through 5804, 5806, 5808 through 5810, 5903, 5906 through 5907, and 6001 through 6002, and provided that the change is the result of a fabric-making process.
6505.90	(1) If the good consists of two or more components, a change to subheading 6505.90 from any other heading, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession. (2) If the good does not consist of two or more components, a change to subheading 6505.90 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5608, 5801 through 5804, 5806, 5808 through 5811, 5903, 5906 through 5907, and 6001 through 6002, and provided that the change is the result of a fabric-making process.
6601.10–6601.91	A change to subheading 6601.10 through 6601.91 from any other heading, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.
7019.10.15	(1) If the good is of filaments, a change to subheading 7019.10.15 from any other heading, provided that the change is the result of an extrusion process. (2) If the good is of staple fibers, a change to subheading 7019.10.15 from any other subheading, except from subheading 7019.10.30 through 7019.10.90 and 7019.31 through 7019.90, and provided that the change is the result of a spinning process.
7019.10.28	(1) If the good is of filaments, a change to subheading 7019.10.28 from any other heading, provided that the change is the result of an extrusion process. (2) If the good is of staple fibers, a change to subheading 7019.10.28 from any other subheading, except from subheading 7019.10.30 through 7019.10.90 and 7019.31 through 7019.90, and provided that the change is the result of a spinning process.
7019.20	A change to subheading 7019.20 from any other heading, provided that the change is the result of a fabric-making process.

HTSUS	Tariff shift and/or other requirements
8708.21	(1) For seat belts not combined with nontextile components, a change to subheading 8708.21 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, and 5512 through 5516, and provided that the change is the result of a fabric-making process. (2) For seat belts combined with nontextile components, a change to an assembled good of subheading 8708.21 from unassembled components, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.
8804	(1) If the good consists of two or more component parts, a change to an assembled good of heading 8804 from unassembled components, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession. (2) If the good does not consist of two or more component parts, a change to heading 8804 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5603, 5801 through 5804, 5806, 5809 through 5811, 5903, 5906 through 5907, and 6001 through 6002, and subheading 6307.90, and provided that the change is the result of a fabric-making process.
9113.90.40	(1) If the good consists of two or more component parts, a change to an assembled good of subheading 9113.90.40 from unassembled components, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession. (2) If the good does not consist of two or more component parts, a change to subheading 9113.90.40 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5603, 5801 through 5802, 5806, 5809, 5903, 5906 through 5907, and 6001 through 6002, and subheading 6307.90, and provided that the change is the result of a fabric-making process.
9404.90.10	A change to subheading 9404.90.10 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5806, 5809 through 5811, 5903, 5906 through 5907, and 6001 through 6002, and subheading 6307.90, and provided that the change is the result of a fabric-making process.
9404.90.80–9404.90.95	A change to subheading 9404.90.80 through 9404.90.95 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5806, 5809 through 5811, 5903, 5906 through 5907, and 6001 through 6002, and subheading 6307.90, and provided that the change is the result of a fabric-making process.
9502.91	A change to an assembled good of subheading 9502.91 from unassembled components, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.
9612.10.9010	A change to subheading 9612.10.9010 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5603, 5806, 5903, 5906 through 5907, and 6002, and provided that the change is the result of a fabric-making process.

Approved: May 15, 1995.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

George J. Weise,

Commissioner of Customs.

[FR Doc. 95–12655 Filed 5–22–95; 8:45 am]

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federal register

Tuesday
May 23, 1995

Part III

The President

Memorandum of May 17, 1995—Certification Regarding Use of the Exchange Stabilization Fund and Federal Reserve in Relation to the Economic Crisis in Mexico

Federal Register
Vol. 60, No. 99
Tuesday, May 23, 1995

Presidential Documents

Title 3—

The President

Memorandum of May 17, 1995

Certification Regarding Use of the Exchange Stabilization Fund and Federal Reserve in Relation to the Economic Crisis in Mexico

Memorandum for the Secretary of the Treasury

On January 31, 1995, I approved a program of assistance to Mexico, in the form of swap facilities and securities guarantees in an amount not to exceed $20 million, using the Exchange Stabilization Fund (the "ESF program").

By virtue of the authority vested in me by the Constitution and the laws of the United States, including section 301 of title 3, United States Code, and section 406 of the Emergency Supplemental Appropriations and Rescissions for the Department of Defense to Preserve and Enhance Military Readiness Act of 1995 (Public Law 104–6), I hereby certify that:

(1) There is no projected cost (as defined in the Federal Credit Reform Act of 1990) to the United States from the proposed swap transaction.

(2) All loans, credits, guarantees, and currency swaps to Mexico from the Exchange Stabilization Fund or the Federal Reserve System are adequately backed to ensure that all United States funds are repaid.

(3) The Government of Mexico is making progress in ensuring an independent central bank.

(4) Mexico has in effect a significant economic reform effort.

(5) The Executive Branch has provided the documents requested by House Resolution 80 adopted March 1, 1995, and described in paragraphs (1) through (28) of that Resolution. All documents identified as responsive to the Resolution have been provided to the entire House of Representatives. Pursuant to the terms of the Resolution, the Executive Branch has not provided those documents as to which the Executive Branch has informed the House that it would be inconsistent with the public interest to provide the documents to the House. Pursuant to arrangements for safekeeping of classified materials in House facilities, classified documents have been provided to the House by making them available either at designated, secure House facilities or at Executive Branch facilities. Each agency, including the Federal Reserve Board, has advised the House of the procedures employed by that agency to provide the documents requested by House Resolution 80.

I have been informed that the Board of Governors of the Federal Reserve System has provided the documents requested by House Resolution 80 and described in paragraphs (1) through (28) of that Resolution.

I hereby delegate to you the reporting requirement contained in section 406 of Public Law 104–6. You are authorized and requested to report this certification immediately to the Speaker of the House and appropriate congressional committees, as defined in section 407 of Public Law 104–6.

I also hereby delegate to you the reporting requirement contained in section 403 of Public Law 104–6.

You are authorized and directed to publish this memorandum in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, May 17, 1995.

[FR Doc. 95–12812
Filed 5–19–95; 4:42 pm]
Billing code 4810–25–M

federal register

Tuesday
May 23, 1995

Part IV

The President

Proclamation 6803—National Maritime Day, 1995

Federal Register
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Tuesday, May 23, 1995

Presidential Documents

Title 3—

The President

Proclamation 6803 of May 19, 1995

National Maritime Day, 1995

By the President of the United States of America

A Proclamation

The United States owes much to our merchant sailors. At our Nation's beginning, these outstanding citizens opened new avenues of commerce and helped nurture a fledgling democracy into a beacon of freedom for people around the world. Since President Franklin D. Roosevelt first proclaimed National Maritime Day 62 years ago, the U.S. Merchant Marine has built on its legacy of patriotism. Its great tradition of courage and valor is an inspiration to all Americans.

This year, as we honor those who served and sacrificed for our Nation during World War II, the contributions of the U.S. Merchant Marine are a special source of pride. We will always remember the heroism of those mariners and the dangers they faced to protect our liberty.

America's Merchant Marine and civilian seafarers have put themselves at risk time and again to support our Armed Forces. They provided pivotal service during OPERATION DESERT STORM, during America's humanitarian mission in Somalia, and throughout OPERATION RESTORE DEMOCRACY in Haiti.

Today, our country remains determined to maintain a strong U.S. flag presence on the high seas, a commitment central to advancing our Nation's national and economic security. I urge Americans to join efforts in support of maritime revitalization legislation and our ongoing shipbuilding production program. Americans' pioneering spirit has endowed our Nation with the most innovative maritime technologies and the most skilled maritime labor force on Earth. Working together, we can preserve this critical advantage for generations to come.

In recognition of the importance of the U.S. Merchant Marine, the Congress, by a joint resolution approved May 20, 1933, has designated May 22 of each year as "National Maritime Day" and has authorized and requested the President to issue annually a proclamation calling for its appropriate observance.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim May 22, 1995, as National Maritime Day. I urge the people of the United States to observe this day with appropriate programs, ceremonies, and activities and by displaying the flag of the United States at their homes and in their communities. I also request that all ships sailing under the American flag dress ship on that day.

IN WITNESS WHEREOF, I have hereunto set my hand this nineteenth day of May, in the year of our Lord nineteen hundred and ninety-five, and of the Independence of the United States of America the two hundred and nineteenth.

William J. Clinton

[FR Doc. 95-12847
Filed 5-22-95; 11:24 am]
Billing code 3195-01-P

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5–24–95
Vol. 60

No. 100

federal register

Wednesday
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Vol. 60 No. 100
Pages 27401–27656

federal register

Wednesday
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Electronic Bulletin Board
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Federal Register
Vol. 60, No. 100
Wednesday, May 24, 1995

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 35

[Docket No. 95–08]

RIN 1557–AB44

Agricultural Loan Loss Amortization

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is removing its rule governing agricultural loan loss amortization, effective January 1, 1999. This action is another component of the OCC's Regulation Review Program, which is intended to update and streamline OCC regulations and to reduce unnecessary regulatory costs and other burdens. This action is needed to eliminate the rule when it becomes obsolete.

EFFECTIVE DATE: January 1, 1999.

FOR FURTHER INFORMATION CONTACT: Andrew T. Gutierrez, Attorney, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219, (202) 874–5090.

SUPPLEMENTARY INFORMATION:

Background

The OCC is removing 12 CFR part 35, effective January 1, 1999, as a component of its Regulation Review Program. The goal of the Regulation Review Program is to review all of the OCC's rules to revise, streamline, and simplify them, and to eliminate provisions that do not contribute significantly to maintaining the safety and soundness of national banks or to accomplishing the OCC's other statutory responsibilities.

Title VIII of the Competitive Equality Banking Act of 1987, Pub. L. 100–86, 101 Stat. 635 (1987), added 12 U.S.C. 1823(j) in an attempt to alleviate some of the financial pressures then facing agricultural banks. In particular, 12 U.S.C. 1823(j) permits an agricultural bank to amortize over a period not to exceed seven years: (1) any loss on a qualified agricultural loan that the bank would otherwise be required to show on its annual financial statement for any year between December 31, 1983, and January 1, 1992; and (2) any loss resulting from the reappraisal of property that the bank owned or acquired between January 1, 1983, and January 1, 1992, in connection with a qualified agricultural loan. The OCC implemented this statutory provision by promulgating 12 CFR part 35 with a temporary rule published on November 2, 1987 (52 FR 41959), and a final rule published on July 28, 1988 (53 FR 28373).

Because the statute requires that a loss occur on or before December 31, 1991, to qualify, and that the amortization period may not exceed seven years, the program becomes obsolete on January 1, 1999. Reflecting this fact, 12 CFR 35.3(b) requires that loans under the program must be fully amortized by December 31, 1998.

On February 8, 1995, the OCC proposed to remove 12 CFR part 35, effective January 1, 1999, in order to obviate the need for regulatory action in the future (60 FR 7467). The OCC received two comment letters on the proposed rule, both of which supported the proposed action. Consequently, the OCC is issuing this final rule to remove 12 CFR part 35, effective January 1, 1999. Prior to that date, an annotation to 12 CFR part 35 will indicate the effective date for removal of the part.

Regulatory Flexibility Act

It is hereby certified that this final rule will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. This final rule has no material impact on national banks, regardless of size.

Executive Order 12866

The OCC has determined that this final rule is not a significant regulatory action under Executive Order 12866.

Paperwork Reduction Act

The collection of information contained in 12 CFR 35.7 has been approved by the Office of Management and Budget (OMB) under OMB Control Number 1557–0186. This final rule will remove as unnecessary, for the reasons set forth in the preamble, that collection of information effective January 1, 1999.

Unfunded Mandates Act of 1995

The OCC has determined that this final rule will not result in expenditures by state, local, and tribal governments, or by the private sector, of more than $100 million in any one year. Accordingly, a budgetary impact statement is not required under section 202 of the Unfunded Mandates Act of 1995.

List of Subjects in 12 CFR Part 35

Accounting, Agriculture, National banks, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set out in the preamble, and under the authority of 12 U.S.C. 93a and 1823(j), chapter I of title 12 of the Code of Federal Regulations is amended as follows:

PART 35—[REMOVED]

1. Part 35 is removed effective January 1, 1999.

Dated: May 18, 1995.

Eugene A. Ludwig,
Comptroller of the Currency.

[FR Doc. 95–12648 Filed 5–23–95; 8:45 am]
BILLING CODE 4810–33–P

FARM CREDIT ADMINISTRATION

12 CFR Parts 614, 615, and 618

RIN 3052–AB53

Loan Policies and Operations; Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; General Provisions; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration (FCA) published a final regulation under parts 614, 615, 618 on April 24, 1995 (60 FR 20008). The final regulation repeals several regulations

concerning loan policies and operations, funding, and miscellaneous items as well as two Agency prior-approval requirements. These repeals are part of an ongoing effort by the FCA to reduce unnecessary regulatory burdens on Farm Credit System institutions. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is May 24, 1995.

EFFECTIVE DATE: The regulation amending 12 CFR parts 614, 615, 618 published on April 24, 1995 (60 FR 20008) is effective May 24, 1995.

FOR FURTHER INFORMATION CONTACT:
W. Eric Howard, Policy Analyst, Regulation Development, Office of Examination, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4498, TDD (703) 883–4444,

or

Richard A. Katz, Senior Attorney, Regulatory Operations Division, Office of General Counsel, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4020, TDD (703) 883–4444.

(12 U.S.C. 2252(a) (9) and (10)).

Dated: May 19, 1995.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 95–12741 Filed 5–23–95; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–48–AD; Amendment 39–9238; AD 95–11–04]

Airworthiness Directives; Aerospatiale Model ATR42–200, –300, and –320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Aerospatiale Model ATR42–200, –300, and –320 series airplanes, that requires modification of the wiring in the elevator controls and the pitch trim dissymmetry monitoring equipment. This amendment is prompted by a report of loss of a propeller and engine gearbox, which resulted in damage to the fuselage. There has also been a report that a modification was implemented in the elevator control cables during manufacture, which reduced the maximum physical separation between the elevator controls and the monitoring equipment. The actions specified by this AD are intended to prevent reduced controllability of the airplane in the event that debris from an engine burst or propeller failure were to strike the fuselage and sever the elevator flight controls.

DATES: Effective June 23, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 23, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from Aerospatiale, 316 Route de Bayonee, 31060 Toulouse, Cedex 03, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Sam Grober, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–1187; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Aerospatiale Model ATR42–200, –300, –320 series airplanes was published in the **Federal Register** on July 20, 1994 (59 FR 36998). That action proposed to require modification of the wiring in the elevator controls and the pitch trim dissymmetry monitoring equipment.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The manufacturer requests that reference to a certain incident involving a Model ATR42–300 series airplane be deleted from the Discussion section of the preamble of the proposed rule. The manufacturer states that the incident did not result in any damage to flight controls and, therefore, should not be referred to in the final rule. The FAA acknowledges that, since the incident was apparently not connected with the flight controls, deletion of the reference to the incident would be appropriate. However, since the Discussion section of the preamble of the proposal does not reappear in the final rule, no change to the final rule is necessary.

Another commenter requests that the compliance time to perform the modification be extended from the proposed 3 months to 12 months. The commenter states that investigation has shown that only 4% of all affected operators have found any defective propellers. The commenter states that detection of this small percentage of defective propellers does not justify the urgency of a 3-month compliance time. The FAA concurs with the commenter's request to extend the compliance time for the modification requirements. The FAA's intent was that the modifications be performed during a regularly scheduled maintenance visit for the majority of the affected fleet, when the airplanes would be located at a base where special equipment and trained personnel would be readily available, if necessary. Based on the information supplied by the commenter, the FAA now recognizes that 12 months corresponds more closely to the interval representative of most of the affected operators' normal maintenance schedules. Paragraph (a) of the final rule has been revised to reflect a compliance time of 12 months. The FAA does not consider that this extension will adversely affect safety.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been added to this final rule to clarify this long-standing requirement.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA has recently reviewed the figures it has used over the past several years in calculating the economic impact of AD activity. In order to account for various inflationary costs in the airline industry, the FAA has determined that it is necessary to increase the labor rate used in these calculations from $55 per work hour to $60 per work hour. The economic impact information, below, has been revised to reflect this increase in the specified hourly labor rate.

The FAA estimates that 110 airplanes of U.S. registry will be affected by this AD, that it will take approximately 49 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will be provided by the manufacturer at no cost to operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $323,400, or $2,940 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–11–04 Aerospatiale: Amendment 39–9238. Docket 94–NM–48–AD.

Applicability: Model ATR42–200, –300, and –320 series airplanes, as listed in Aerospatiale Service Bulletins ATR42–27–0068 and ATR42–27–0069, both dated January 25, 1994; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced controllability of the airplane, accomplish the following:

(a) Within 12 months after the effective date of this AD, modify the wiring in the elevator controls and the pitch trim dissymmetry monitoring equipment, in accordance with Aerospatiale Service Bulletin ATR42–27–0068 or ATR42–27–0069, both dated January 25, 1994; as applicable.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The modification shall be done in accordance with Aerospatiale Service Bulletin ATR42–27–0068, dated January 25, 1994; or Aerospatiale Service Bulletin ATR42–27–0069, dated January 25, 1994; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Aerospatiale, 316 Route de Bayonee, 31060 Toulouse, Cedex 03, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on June 23, 1995.

Issued in Renton, Washington, on May 16, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–12443 Filed 5–23–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–NM–190–AD; Amendment 39–9237; AD 95–11–03]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, that requires replacement of the existing pressure relief valve in the potable water system with a non-adjustable, single setting valve. This amendment is prompted by reports of potable water tanks that ruptured and resulted in damage to the passenger compartment. The actions specified by this AD are intended to prevent injury to the crew and passengers and damage to the passenger compartment due to an explosive failure of the potable water tank.

DATES: Effective June 23, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 23, 1995.

ADDRESSES: The service information referenced in this AD may be obtained

from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Don Eiford, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, Seattle Aircraft Certification Office, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2788; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 747 series airplanes was published in the **Federal Register** on December 15, 1994 (59 FR 64629). That action proposed to require replacement of the existing pressure relief valve in the potable water system with a non-adjustable, single setting valve.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Two commenters support the rule.

The Air Transport Association of America (ATA), on behalf of several of its members, supports the proposed rule, but requests that the proposed compliance time of 6 months be extended to 12 months. ATA states that the 6-month compliance time would require several members to "special schedule" their maintenance planning in order to accomplish the proposed replacement of the pressure relief valve in the potable water system. The FAA does not concur with the commenter's request to extend the compliance time. In developing an appropriate compliance time for this action, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but the availability of required parts and the practical aspect of replacing the pressure relief valve within a maximum interval of time allowable for all affected airplanes to continue to operate without compromising safety. The manufacturer has advised that an ample number of required parts will be available for the replacement of the pressure relief valve for the U.S. fleet within the proposed compliance period. Additionally, the replacement actions required by this AD are uncomplicated and do not require special scheduling; the inspection could be accomplished during an "A" check, which occurs every one or two weeks. However, under the provisions of paragraph (b) of the final rule, the FAA may approve requests for adjustments to the compliance time if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety.

Since issuance of the Notice, Boeing has issued Revision 1, dated March 2, 1995, of Boeing Alert Service Bulletin 747–38A2105. This alert service bulletin changes airplane grouping by putting all Model 747 SP series airplanes in Group 3, and changes the part numbers of the valves required for Group 1 and Group 2 airplanes. Revision 1 does not increase the scope of the work required. Therefore, the FAA has revised the final rule to reflect the latest revision to the service bulletin as the appropriate source of service information.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 983 Boeing Model 747 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 205 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $120 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $73,800, or $360 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–11–03 Boeing: Amendment 39–9237. Docket 94–NM–190–AD.

Applicability: Model 747 series airplanes, line positions 1 through 1013 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent explosive failure of the potable water tank, which could cause damage to the passenger compartment and result in injury to the crew and passengers, accomplish the following:

(a) Within 6 months after the effective date of this AD, replace the existing pressure relief valve in the potable water system with a non-adjustable, single setting valve, in accordance with Boeing Alert Service Bulletin 747–38A2105, Revision 1, dated March 2, 1995.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The replacement shall be done in accordance with Boeing Service Bulletin 747–38A2105, Revision 1, dated March 2, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on June 23, 1995.

Issued in Renton, Washington, on May 16, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–12444 Filed 5–23–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 71

[Airspace Docket No. 95–ANE–07]

Amendment to Class E Airspace; Claremont, NH

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment modifies the Class E airspace at Claremont Municipal Airport, Claremont, NH, to provide adequate controlled airspace for the new GPS Runway 29, Standard Instrument Approach Procedure (SIAP). This action will add an extension running easterly from the basic radius of the Claremont, NH, Class E airspace that extends from 700 feet above the surface.

EFFECTIVE DATE: 0901 UTC, July 20, 1995.

FOR FURTHER INFORMATION CONTACT: Joseph A. Bellabona, System Management Branch, ANE–530, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7536; fax (617) 238–7596.

SUPPLEMENTARY INFORMATION:

History

On March 28, 1995, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by increasing the Class E airspace in the vicinity of Claremont Municipal Airport, Claremont, NH (60 FR 15885). The proposed action would provide adequate controlled airspace for the new GPS runway 29, Standard Instrument Approach Procedure at Claremont Municipal Airport, Claremont, NH, by adding to the basic radius of Class E airspace extending upward from 700 feet above the surface, airspace within 2 miles on each side of the 094° bearing from the Claremont Nondirectional Beacon (NDB) extending from the 5.5-mile radius to 15.3 miles east of the Claremont NDB. The proposed action would not affect that airspace within the Springfield, VT, Concord, NH, and Lebanon, NH, Class E areas.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments on the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9B, dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation involves only an established body of technical regulations for which frequent and routine amendments are necessary to keep these regulations operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979; and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated economic cost will be so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, the FAA certifies that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963, Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9b, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth

* * * * *

ANE NH E5 Claremont, NH [Revised]

Claremont NDB

(Lat. 43°22'10" N, long. 72°22'16" W)

That airspace extending upward from 700 feet above the surface within a 5.5 mile radius of the Claremont NDB; and within 2 miles on each side of the 094° bearing from the Claremont NDB, extending from 5.5-mile radius to 15.3 miles east of the Claremont NDB; excluding that airspace within the Springfield, VT, Concord, NH, and Lebanon, NH, Class E areas.

* * * * *

Issued in Burlington, Massachusetts, on May 10, 1995.

John J. Boyce,

Acting Manager, Air Traffic Division, New England Region.

[FR Doc. 95–12758 Filed 5–23–95; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 16 and 1270

[Docket No. 93N-0453]

Human Tissue for Transplantation and Human Reproductive Tissue: Scientific and Regulatory Issues and Perspectives; Notice of Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public workshop entitled "Human Tissue for Transplantation and Human Reproductive Tissue: Scientific and Regulatory Issues and Perspectives." The purpose of this workshop is to provide an opportunity for continued discussion of the regulation of human tissue for transplantation as outlined by FDA in an interim rule that published in the **Federal Register** of December 14, 1993. The workshop will include discussions of other related issues, including regulating reproductive tissue.

DATES: The public workshop will be held on Tuesday and Wednesday, June 20 and 21, 1995, 8:30 a.m. to 5:30 p.m. Preregistration is requested by Friday, June 9, 1995.

ADDRESSES: The public workshop will be held at the National Institutes of Health, Bldg. 45, Natcher Auditorium, 9000 Rockville Pike, Bethesda, MD. There is no registration fee.

FOR FURTHER INFORMATION CONTACT:

Regarding information on registration: Julie Furman, KRA Corp., 1010 Wayne Ave., suite 850, Silver Spring, MD 20910, 301–495–1591, or FAX 301–495–9410.

Regarding information on this document: Marty A. Wells, Center for Biologics Evaluation and Research (HFM–305), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–0967.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 14, 1993 (58 FR 65514), FDA published an interim rule on human tissue intended for transplantation. This interim rule requires certain infectious disease testing, donor screening, and recordkeeping to help prevent the transmission of acquired immune deficiency syndrome (AIDS) and hepatitis through human tissue used in transplantation. The regulations in the interim rule became effective upon publication.

The objectives of the public workshop are to: (1) Promote an understanding of related public health issues based on scientific knowledge; (2) provide an opportunity for discussion of current donor screening and testing practices for human tissue for transplantation and human reproductive tissue; (3) identify the practices and procedures of the procurer, processor, distributor, and user of human tissue for transplantation and human reproductive tissue and their interactions; and (4) examine the existing state and industry approaches to the regulation of human tissue for transplantation and human reproductive tissue.

The workshop will consist of plenary and breakout sessions that will include the following topics: (1) Donor screening; (2) infectious disease testing and inactivation methods; (3) voluntary standards; (4) assessment of industry practices related to tracking; (5) interactions with organ procurement organizations and procurement coordination practices; and (6) state regulatory approaches and industry practices.

Dated: May 19, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–12763 Filed 5–19–95; 3:29 pm]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD13–95–017]

Safety Zone Regulations; Portland Rose Festival Fireworks Display, Willamette River, Portland, OR

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Cost Guard is establishing a safety zone for the Portland Rose Festival Fireworks Display which is scheduled to be held in Portland, Oregon, on June 2, 1995. The safety zone will be located on the Willamette River between the Morrison and Hawthorne Bridges from river mile 12.8 to river mile 13.1. This safety zone is needed to protect persons, facilities, and vessels from safety hazards associated with the fireworks display. Entry into this safety zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATE: This regulation becomes effective on June 2, 1995, at 8:45 p.m. (PDT) and terminates on June 2, 1995, at 11:10 p.m. (PDT), unless sooner terminated by the Captain of the Port. If inclement weather causes the fireworks display to be postponed, this regulation will be effective on June 4, 1995, from 8:45 p.m. (PDT) to 11:10 p.m. (PDT), unless sooner terminated by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT:

LTJG C.A. Roskam, c/o Captain of the Port Portland, 6767 N. Basin Ave, Portland, Oregon 97217–3992, (503) 240–9338.

SUPPLEMENTARY INFORMATION:

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective less than 30 days after **Federal Register** publication. Publishing a NPRM and delaying its effective date would be contrary to the public interest since immediate action is necessary to ensure the safety of structures and vessels operating in the area of the fireworks display. Due to the complex planning and coordination involved, the event sponsor, the Portland Rose Festival Association, was unable to provide the Coast Guard with notice of the final details until 30 days prior to the date of the event. Therefore, sufficient time was not available to publish the proposed rule in advance of the event or to provide a delayed effective date. Following normal rulemaking procedures in this case would be impracticable.

Drafting Information

The principal persons involved in drafting this document are LTJG C.A. Roskam, Project Officer for the Captain of the Port of Portland, OR, and LCDR J.C. Odell, Project Counsel, Thirteenth Coast Guard District Legal Office.

Background and Purpose

The event requiring this regulation is a fireworks display sponsored by the Portland Rose Festival Association, as part of the Portland Rose Festival in the Portland, Oregon, area. The fireworks display is scheduled to begin on June 2, 1995, at 9:45 p.m. (PDT). If the fireworks display cannot be held on June 2, 1995, because of inclement weather, it will be rescheduled for June 4, 1995, at 9:45 p.m. (PDT).

During the fireworks display, spectator vessels may attempt to approach the fireworks launching barge at close range. If allowed to do so, these vessels and the persons onboard them may be exposed to potential damage, fire, and personal injury due to sparks, falling debris, and unexploded fireworks.

In order to protect the safety of life and property on the navigable waters during this event, the Coast Guard is establishing a safety zone around the fireworks launching barge on the waters of the Willamette River from river mile 12.8 to river mile 13.1 between the Morrison and Hawthorne Bridges. Entry into this zone will be prohibited unless authorized by the captain of the Port. This safety zone will be enforced by representatives of the Captain of the Port Portland. The Captain of the Port may be assisted by other federal agencies.

Regulatory Evaluation

This temporary final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This expectation is based on the fact that the entry into the safety zone will only be restricted for less than 3 hours on the day of the event. The entities most likely to be affected by this action are commercial tug and barge operators on the Willamette River. Most of these entities are aware of the fireworks display and the safety zone, and they can schedule their transits accordingly. If safe to do so, the representative of the Captain of the Port assigned to enforce this safety zone may authorize commercial vessels to pass through the safety zone on a case-by-case basis.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C, 601 *et seq.*), the Coast Guard must consider whether this final rule will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

For the reasons outlined in the Regulatory Evaluation above, the Coast Guard expects the impact of this final rule to be minimal on all entities. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This final rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*)

Federalism

The Coast Guard has analyzed this final rule in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this final rule and has concluded that, under section 2.B.2.c. of Commandant Instruction M16475.1B, it is categorically excluded from further environmental documentation. A Categorical Exclusion Determination has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Final Regulation

For the reasons set out in the preamble, the Coast Guard amends part 165 of title 33, Code of Federal Regulations, as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A temporary § 165.T13015 is added to read as follows:

§ 165.T13015 Safety Zone; Willamette River, Portland, OR.

(a) *Location.* The following area is a safety zone: All waters on the Willamette River between the Morrison and Hawthorne Bridges from river mile 12.8 to river mile 13.1, Portland, Oregon.

(b) The designated representative of the Captain of The Port is any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port Portland, to act on his behalf. The following officers have or will be designated by the Captain of the Port: The Coast Guard Patrol Commander, the senior boarding officer on each vessel enforcing the safety zone, and the Duty Officer at Coast Guard Group Portland, Oregon.

(c) *Regulations:* (1) In accordance with the general regulations in § 165.23 of this part, entry into this safety zone is prohibited unless authorized by the Captain of the Port or his designated representatives.

(2) A succession of sharp, short signals by whistle, siren, or horn from vessels patrolling the area under the direction of the Patrol Commander shall serve as a signal to stop. Vessels or persons signalled shall stop and comply with the orders of the patrol vessels; failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(d) *Effective Dates:* This section becomes effective on June 2, 1995, at 8:45 p.m. (PDT) and terminate on June 2, 1995, at 11:10 p.m. (PDT), unless sooner terminated by the Captain of the Port. If inclement weather causes the fireworks display to be postponed, the regulation will be effective on June 4, 1995, from 8:45 p.m. (PDT) to 11:10 p.m. (PDT), unless sooner terminated by the Captain of the Port.

Dated: May 9, 1995.

C.E. Bills,

Captain, U.S. Coast Guard, Captain of the Port.

[FR Doc. 95–12737 Filed 5–23–95; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AF03

Line of Duty

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends Department of Veterans Affairs (VA) adjudication regulations concerning service connection for disabilities incurred or aggravated in line of duty. This amendment is necessary to implement legislation which precludes the establishment of service connection for any condition that results from the abuse of alcohol or drugs by the person on whose service benefits are claimed.

EFFECTIVE DATE: November 1, 1990.

FOR FURTHER INFORMATION CONTACT:

Lorna Weston, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–7210.

SUPPLEMENTARY INFORMATION: Section 8052 of the Omnibus Budget Reconciliation Act of 1990 (OBRA 1990), Pub. L. 101–508, amended 38 U.S.C. 105(a), 110 (recodified as 1110) and 331 (recodified as 1131) to provide that injuries or diseases resulting from the abuse of alcohol or drugs by the person on whose service benefits are claimed will not be considered incurred in line of duty and thus are not compensable by VA as service-connected disabilities.

On March 1, 1994, VA published a proposal in the **Federal Register** (59 FR 9719) to amend its adjudication regulations at 38 CFR 3.1 and 3.301 to provide that injuries or diseases incurred or aggravated during service as a result of the abuse of alcohol or drugs will not be considered incurred or aggravated in line of duty for purposes of service connection. Interested persons were invited to submit written comments, suggestions or objections on or before May 2, 1994. We received two comments: One from the Disabled American Veterans and one from a concerned individual.

One commenter expressed agreement with the amendment as proposed and suggested no changes.

The other commenter recommended that VA include within the body of the regulations the statutory direction that the amendments apply only to claims filed after October 31, 1990. We concur with that recommendation and have added appropriate language to the regulations at 38 CFR 3.1(m) and 3.301(a).

The same commenter noted that the *Veterans Benefits Administration Manual M 21–1* and VBA Circular 21–90–12 provide that alcohol- or drug-related disabilities will be considered service-connected if alcohol abuse is a manifestation of a service-connected disability such as post traumatic stress disorder, or if drug abuse arose out of therapy for a service-connected disability. He stated that these are substantive rules that should be included in the amendment to § 3.301.

The manual and circular provisions which the commenter cited are examples of the application of 38 CFR 3.310(a), which provides that disability that is proximately due to or the result of a service-connected disease or injury shall be service-connected and that when service connection is thus established for a secondary condition the secondary condition shall be considered a part of the original condition. In circumstances such as those raised by the commenter, VA is required by § 3.310(a) to consider conditions that it has determined are secondary to a service-connected condition to be part of that service-connected condition rather than a result of the abuse of alcohol or drugs. Since that requirement is established elsewhere in VA's regulations, it is unnecessary to incorporate those provisions into § 3.301.

The same commenter, citing the *Diagnostic and Statistical Manual of Mental Disorders* (Third Edition—Revised, 1987), (DSM–III–R), published by the American Psychiatric Association, stated that, at the time Congress enacted OBRA 1990, alcohol abuse had an established definition. The commenter implied that this definition was so well established as to constitute the meaning Congress intended when it enacted OBRA 1990, and suggested that, to the extent that VA's definition of alcohol abuse is inconsistent with the established definition, VA's definition exceeds the authority of the Secretary of Veterans Affairs to promulgate regulations. The commenter suggested that the definitions of alcohol abuse and drug abuse in DSM–III–R be adopted by VA.

While the DSM–III–R definitions may have been widely accepted in the medical community, they were intended for diagnostic and statistical purposes. There is no evidence to suggest that Congress had these diagnostic criteria in mind at the time OBRA 1990 was enacted. Rather, Congress clearly intended that no service-connected benefits would be granted for disability or death resulting from drug or alcohol abuse, whether from pathology due to long-term use, or from traumatic effects related to acute intoxication.

Nevertheless, we have further considered the meaning of the terms alcohol abuse and drug abuse in OBRA 1990. Congress did not define either term in OBRA 1990, and the legislative history does not indicate that Congress intended the terms to mean anything other than their commonly understood meanings. Therefore, we have concluded that Congress intended these terms to have their ordinary, contemporary, common meanings. We think that the definition of drug abuse in the proposed rule accurately reflects Congress' intent and, accordingly, have adopted the proposed definition in the final rule. However, we think that the definition of alcohol abuse in the proposed rule does not accurately reflect Congress' intent, since that definition differs from the common meaning. Therefore, we have changed the definition of alcohol abuse in the final rule to more accurately reflect the meaning we think Congress intended, i.e., "the use of alcoholic beverages over time, or such excessive use at any one time, sufficient to cause disability to or death of the user." Under these circumstances, the definition of alcohol abuse constitutes an interpretative rule and need not be published as a proposed rule for notice and comment.

VA appreciates the comments submitted in response to the proposed rule which is now adopted with the changes noted above.

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This amendment will directly affect VA beneficiaries, but will not directly affect small business. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This regulatory action has been reviewed by the Office of Management and Budget under Executive Order 12866.

(The Catalog of Federal Domestic Assistance program number is 64.109).

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Health care, Individuals with disabilities, Pensions, Veterans.

Approved: May 12, 1995.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 3 is amended as set forth below:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A, continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

§ 3.1 [Amended]

2. In § 3.1(m), in the first sentence, remove the period at the end of the sentence and insert, in its place, "or, for claims filed after October 31, 1990, was a result of his or her abuse of alcohol or drugs."

§ 3.301 [Amended]

3. In § 3.301(a), at the end of the paragraph, remove the period and insert, in its place, "or, for claims filed after October 31, 1990, the result of his or her abuse of alcohol or drugs."

4. In § 3.301(c), revise the heading to read as follows: "*Specific applications; willful misconduct.*"

5. In § 3.301(c)(3), after the third sentence, add a new sentence in parenthesis to read as follows: "(See paragraph (d) of this section regarding service connection where disability or death is a result of abuse of drugs.)"; and in the fourth sentence, remove the words "Similarly, where" and add, in their place, the word "Where".

6. In § 3.301, add a new paragraph (d) and an authority citation to read as follows:

§ 3.301 Line of duty and misconduct.

* * * * *

(d) *Line of duty; abuse of alcohol or drugs.* An injury or disease incurred during active military, naval, or air service shall not be deemed to have been incurred in line of duty if such injury or disease was a result of the abuse of alcohol or drugs by the person on whose service benefits are claimed. For the purpose of this paragraph, alcohol abuse means the use of alcoholic beverages over time, or such excessive use at any one time, sufficient to cause disability to or death of the user; drug abuse means the use of illegal drugs (including prescription drugs that are illegally or illicitly obtained), the intentional use of prescription or non-prescription drugs for a purpose other than the medically intended use, or the use of substances other than alcohol to enjoy their intoxicating effects.

(Authority: 38 U.S.C. 105(a))

[FR Doc. 95–12644 Filed 5–23–95; 8:45 am]
BILLING CODE 8320–01–P

38 CFR Part 3

RIN 2900–AH38

Examinations

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) adjudication regulations to reflect a statutory change which authorizes VA to accept the report of a private physician's examination that is otherwise adequate for rating purposes to establish entitlement to compensation or pension benefits.

EFFECTIVE DATE: This amendment is effective November 2, 1994, the date that Public Law 103–446, the Veterans' Benefits Improvements Act of 1994, became effective.

FOR FURTHER INFORMATION CONTACT: Paul Trowbridge, Consultant, Regulations Staff (211B), Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue NW., Washington, DC 20420, telephone (202) 273–7210.

SUPPLEMENTARY INFORMATION: On November 2, 1994, the Veterans' Benefits Improvements Act of 1994 was signed into law. Section 301 of that statute created 38 U.S.C. 5125, which authorizes the Secretary of Veterans Affairs to accept the report of a private physician's examination that is otherwise adequate for rating purposes to establish entitlement to compensation or pension benefits. This document amends 38 CFR 3.157, 3.326, 3.327, and 3.352 in order to reflect that statutory authority.

38 CFR 3.157(b)(2) is amended to remove the requirement that a private physician's statement be confirmed by a VA examination prior to granting service connection for a disability. 38 CFR 3.326(d) is amended to show that a private physician's statement may be accepted for rating any compensation or pension claim as long as it is adequate for rating purposes. 38 CFR 3.327(b)(1) is amended to remove the requirement that at least one VA examination be made in every case in which compensation benefits are awarded. 38 CFR 3.352(b)(1) is amended to remove the requirement that a veteran's need for the special aid and attendance benefit under 38 U.S.C. 1114(r) must be determined by a Department of Veterans Affairs physician.

Administrative Procedure Act

This final rule amends VA regulations merely to reflect statutory provisions. Accordingly, there is a basis for dispensing with prior notice and comment and for dispensing with a 30-day delay of the effective date.

Regulatory Flexibility Act

This final rule will not have a significant economic impact on a substantial number of small entities since it merely reflects a statutory change.

The Catalog of Federal Domestic Assistance program numbers are 64.104, 64.105, 64.109, and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Health care, Individuals with disabilities, Pensions, Veterans.

Approved: May 17, 1995.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 3 is amended as set forth below:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

§ 3.157 [Amended]

2. In § 3.157, the last sentence in paragraph (b)(2) is removed.

3. In § 3.326, paragraph (d) is revised to read as follows:

§ 3.326 Examinations.

* * * * *

(d) A statement from a private physician that includes clinical manifestations and substantiation of diagnosis by findings of diagnostic techniques generally accepted by medical authorities, such as pathological studies, X-rays, and laboratory tests as appropriate, may be accepted for rating any claim without further examination, provided it is otherwise adequate for rating purposes.

(Authority: 38 U.S.C. 5125)

§ 3.327 [Amended]

4. In § 3.327, the first two sentences in paragraph (b)(1) are removed.

§ 3.352 [Amended]

5. In § 3.352, paragraph (b)(1)(iv) is removed.

[FR Doc. 95–12707 Filed 5–23–95; 8:45 am]
BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Ky–83–6927a; FRL–5184–7]

Approval and Promulgation of Implementation Plans State: Kentucky Approval of Revisions to State Implementation Plan (SIP)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a revision to the state implementation plan (SIP) submitted by the Commonwealth of Kentucky through the Natural Resources

and Environmental Protection Cabinet (Cabinet). This revision will incorporate into the SIP an operating permit issued to the Calgon Carbon Corporation located in the Kentucky portion of the Ashland/Huntington ozone (O_3) nonattainment area. This permit will reduce the emissions of volatile organic compounds (VOCs) by requiring reasonably available control technology (RACT).

DATES: This final rule will be effective July 10, 1995, unless adverse or critical comments are received by June 23, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments on this action should be addressed to Scott Southwick, at the EPA Regional Office listed below.

Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street, NE, Atlanta, Georgia 30365.

Division for Air Quality, Department for Environmental Protection, Natural Resources and Environmental Protection Cabinet, 316 St. Clair Mall, Frankfort, Kentucky 40601.

FOR FURTHER INFORMATION CONTACT: Scott Southwick, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4, Environmental Protection Agency, 345 Courtland Street, NE, Atlanta, Georgia 30365. The telephone number is 404/347–3555 x 4207. Reference file KY–083.

SUPPLEMENTARY INFORMATION: Section 182(b)(2) of the Clean Air Act as Amended in 1990 (CAA) requires states to implement RACT for moderate and above O_3 nonattainment areas for: (1) Each category of VOC sources in the area covered by a control technique guideline (CTG) issued between November 15, 1990, and the date of attainment of these areas; (2) All VOC sources in the area covered by any CTG before November 15, 1990; and (3) All other major stationary sources of VOC (non-CTG sources) that are located in the area. Kentucky has already met the requirements of items (1) and (2) of section 182(b)(2) (see 59 FR 32352 published on June 23, 1994). On November 23, 1994, the Cabinet submitted a revision to the SIP requiring VOC RACT through a permit issued to the Calgon Carbon Corporation (Calgon). This permit requires Calgon to comply with 1.8 lbs/hr emission limit in the reactivation furnace. The permit also requires Calgon to maintain a 1400 degrees fahrenheit temperature in the fireboxes and a coal residence time of 0.1 seconds in all bakers and activator burners.

Calgon is the only major source located in the Kentucky portion of the Ashland/Huntington O_3 nonattainment area not subject to a CTG. The approval of this revision will satisfy section 182(b)(2)(C) which requires RACT on all non-CTG sources located in the Ashland/Huntington moderate O_3 nonattainment area.

Final Action

The EPA is approving the Calgon Permit and is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective July 24, 1995 unless, within 30 days of its publication, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective July 24, 1995.

Under section 307(b)(1) of the CAA, 42 U.S.C. 7607 (b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 24, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the CAA, 42 U.S.C. 7607(b)(2).)

The OMB has exempted these actions from review under Executive Order 12866.

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000..

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. Section 7410(a)(2).

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: March 21, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

Part 52 of chapter I, title 40, *Code of Federal Regulations*, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42.U.S.C. 7401–7671q.

Subpart S—Kentucky

2. Section 52.920, is amended by adding paragraph (c)(78) to read as follows:

§ 52.920 Identification of plan.

* * * * *

(c) * * *

(78) Operating Permit requiring VOC RACT for Calgon Corporation in the Kentucky portion of the Ashland/Huntington ozone nonattainment area, submitted November 11, 1994.

(i) Incorporation by reference. Natural Resources and Environmental Protection Cabinet; Kentucky Department for Environmental Protection; Division for Air Quality; Permit 0–94–020; Calgon Carbon Corporation, effective on November 17, 1994.

(ii) Other material. Letter of November 23, 1994, from the Commonwealth of Kentucky Natural Resources and Environmental Protection Cabinet.

[FR Doc. 95–12617 Filed 5–23–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[MN30–1–6215a; FRL–5183–8]

Approval and Promulgation of Implementation Plans; Minnesota

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: Minnesota submitted a revision intended to simplify and update the rules in its State Implementation Plan (SIP). These revisions included deleting regulations that are redundant with Federal New Source Performance Standards (NSPS) regulations, removing odor regulations and other similar regulations from the SIP, and recodifying the regulations. In the case of open burning, the State requested removal of the regulations from the SIP or, in the alternative, replacing these regulations with statutes that regulate open burning. USEPA is replacing the open burning regulations in the SIP with the new statutes and is approving all other revisions requested by the State.

EFFECTIVE DATE: This action will be effective July 24, 1995 unless adverse or critical comments are received by June 23, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Written comments should be addressed to: William L. MacDowell, Chief, Regulation Development Section, Air Enforcement Branch (AE–17J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the SIP revision request and U.S. EPA's analysis are available for public inspection during normal business hours at the following addresses: United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard (AE–17J), Chicago, Illinois 60604; and Jerry Kurtzweg (6102), United States Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: John Summerhays, Air Enforcement Branch, Regulation Development Section (AE–17J), United States Environmental Protection, Region 5, Chicago, Illinois 60604, (312) 886–6067.

SUPPLEMENTARY INFORMATION:

I. Review of State Submittal

On November 23, 1993, the Minnesota Pollution Control Agency (MPCA) submitted a request to (1) eliminate a number of regulations that need not be included in the Minnesota State Implementation Plan (SIP), (2) recodify the remaining regulations, and (3) make miscellaneous other changes. Each of these types of revisions are discussed in separate sections below.

Elimination of Regulations

MPCA recommended elimination of several categories of regulations from the SIP. The category with the most regulations recommended for elimination are regulations that repeat the requirements for new sources established by the United States Environmental Protection Agency (USEPA) in various New Source Performance Standards (NSPS). Some of these regulations also govern emissions from "existing sources," i.e. sources that existed before the effective date of or otherwise not subject to a relevant NSPS. Most of these regulations were submitted in 1981. In its 1982 rulemaking on these regulations, USEPA approved these regulations only for "existing sources," reflecting concern that these regulations would either be unnecessary by virtue of being redundant with Federal NSPS or be detrimental by virtue of causing uncertainty as to which of conflicting State versus Federal provisions apply. In this context, "existing sources" should be considered not only to include sources that existed prior to the effective date of the NSPS but also to include sources that are newer but are not subject to the NSPS due to size or other reasons.

Minnesota's submittal refines the list of rules which, by USEPA's approach, should be removed from the SIP or applied only to "existing sources." In the cases of regulations for portland cement plants, asphalt concrete plants, grain elevators, sulfuric acid plants, and nitric acid plants, the State has specified which portions of the relevant sets of rules regulate new sources and which portions regulate existing sources. In the cases of regulations for lead smelters and brass and bronze plants, there are no existing brass or bronze plants and the only existing lead smelter is subject to a separate more stringent administrative order in the SIP. Therefore, the regulations apply only to new sources and should be eliminated from the SIP in their entirety. In the cases of regulations for incinerators and sewage sludge incinerators, MPCA does not identify portions of the rules that only apply to new sources but comments that USEPA should state that the SIP only includes these rules as they apply to existing sources (which again may include newly constructed sources that are not subject to NSPS). USEPA concurs with Minnesota's list of which of these rules should be removed from the SIP, and is modifying the SIP accordingly.

A second set of regulations recommended for elimination concern odors and acid/base fallout. MPCA's submittal states that these regulations were not intended for purposes of achieving air quality standards or other Clean Air Act purposes and remain unnecessary for such purposes. Specifically, Minnesota requests on this basis that USEPA delete the set of regulations entitled Ambient Odor Control, the set entitled Limits for Animal Matter Odors, and the set entitled Limits on Acid, Base Emissions. These regulations were adopted around 1970 and were submitted and approved as part of a package that included all extant air pollution regulations. USEPA concurs with Minnesota's request and is removing these regulations from the SIP.

A third set of regulations recommended for elimination concern indirect sources. These regulations establish permitting requirements for the facilities such as highways, shopping malls, and airports that attract motor vehicles and thus indirectly cause mobile source emissions. These regulations were submitted in 1981 and approved by USEPA in 1982.

Nevertheless, section 110(a)(5)(A)(iii) of the Clean Air Act (added in 1977) states that "Any State may * * * suspend or revoke any [indirect source review program], provided the [implementation plan] meets the requirements of [section 110]." Minnesota is maintaining these regulations as State enforceable requirements, and will continue to implement indirect source review, but the State is seeking to remove these regulations from the federally enforceable SIP. The SIP has been found to meet the requirements of Section 110, and so the criteria in section 110(a)(5)(A)(iii) for removal of the indirect source regulations from Minnesota's SIP have been satisfied. Consequently, USEPA is removing these regulations from the SIP.

A final set of regulations recommended for elimination concern open burning. MPCA explained that the Minnesota Legislature rescinded these air pollution regulations and incorporated similar restrictions into legislation administered by the Minnesota Department of Natural Resources (DNR). MPCA argued that particulate matter emitted from open burning was not found to be significant in the State's development of plans to address the nonattainment areas, and argued that these regulations may be considered to be nuisance regulations rather than particulate matter regulations. Nevertheless, MPCA's submittal states "If the EPA does not approve the MPCA's request to remove the open burning program from the SIP, then the MPCA requests that the applicable portions of [the current statute that addresses open burning] be incorporated as part of Minnesota's SIP * * *."

Minnesota's open burning regulations generally prohibit open burning of leaves and other vegetative material, with exemptions for campfires and cooking and exemptions for certain types of burning which may be conducted upon receipt of a permit. Open burning causes emissions most notably of particulate matter and also of carbon monoxide, hydrocarbons, and air toxicants. MPCA has not attempted to analyze the ambient impact of eliminating these restrictions. Available evidence is limited but suggests that the impacts of open burning can be significant. Therefore, absent evidence to the contrary, USEPA finds that open burning should be retained as part of the Minnesota SIP. USEPA further finds that the alternative of revising the SIP by replacing the old regulations with the new statute is fully appropriate. The statute provides essentially the same or better air quality benefits insofar as it provides for more effective administration of similar restrictions. This alternative would remove the open burning program from "MPCA's regulatory program," as requested by MPCA. (This portion of the SIP would be administered by the Minnesota DNR.) Although Minnesota planned in any case to continue the open burning restrictions in force, this alternative would retain these restrictions as part of the Federal SIP, thereby retaining Federal authority to object should the State subsequently wish to end the restrictions. Therefore, USEPA is approving Minnesota's alternative of replacing MPCA regulations with State statutes.

Recodification

MPCA requested that USEPA renumber the rules in the SIP to be consistent with the State's current numbering system. This renumbering itself would not change any of the substance of the requirements included in these rules. USEPA approves this renumbering, to make the SIP consistent with current State rule numbering.

Other Revisions

The most significant other revisions requested by MPCA concern the definitions given in Rule 7005.0100. All of the definitions requested by MPCA are acceptable. However, rulemaking on these revisions is complicated by the interrelationship with other rulemakings on Rule 7005.0100. In USEPA's rulemaking on a prior recodification request (published March 23, 1993, at 58 FR 15433), USEPA chose not to approve post-1985 revisions to Rule 7005.0100 due to their significance to permitting rules which were still under review. Recent rulemaking on a subsequent set of permitting rules approved selected revisions to this rule. Consequently, this submittal includes only a small number of definitions that differ from definitions that have already been approved. Nevertheless, for convenience, USEPA is approving the full set of definitions in Rule 7005.0100 as submitted by MPCA. (Note that Subpart 25a, defining "National Emissions Standards for Hazardous Air Pollutant," was excluded from MPCA's submittal and is therefore excluded from the approved SIP.)

A further significant revision included in MPCA's recodification submittal is an enhancement of requirements for sources to report emissions. (These provisions do not address the requirements in amended section 114 of the Clean Air Act for enhanced compliance monitoring.) USEPA approves this revision, which would replace Rule 7005.1870 (4) with Rules 7019.3000 and 7019.3010.

Rulemaking Action

USEPA is making various revisions in accordance with Minnesota's request. USEPA is recodifying the SIP to reflect the new Minnesota rule numbering. In addition, this action (1) replaces the open burning regulations with the current statutory provisions (rather than removing the restrictions altogether), (2) modifies the delineation of new source limits that are excluded from the SIP, (3) removes the odor regulations and indirect source regulations from the SIP, (4) incorporates the enhanced emission reporting regulations, and (5) makes various other minor revisions requested by MPCA. The codification of this rulemaking delineates the revised SIP. The specific regulations that are revised by this action are discussed in detail in the technical support document for this rulemaking.

This action is being taken without prior proposal because the changes are believed to be noncontroversial and USEPA anticipates no significant comments on them. This action will be effective July 24, 1995 unless adverse or critical comments are received by June 23, 1995.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. USEPA shall consider each request for revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The OMB has exempted this regulatory action from Executive Order 12866 review.

Under the Regulatory Flexibility Act, 5 U.S.C. § 600 *et seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. (5 U.S.C. §§ 603 and 604.) Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *USEPA*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. section 7410(a)(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [60 days from the date of publication]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, New source review, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides, Volatile organic compounds.

Note: Incorporation by reference of the State Implementation Plan for the State of Minnesota was approved by the Director of the Federal Register on July 1, 1982.

Dated: March 20, 1995.

David A. Ullrich,

Acting Regional Administrator.

Title 40 of the Code of Federal Regulations, chapter I, part 52, is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. Section 52.1220 is amended by adding paragraph (c)(40) to read as follows:

§ 52.1220 Identification of plan.

* * * * *

(c) * * *

(40) On November 23, 1993, the State of Minnesota requested recodification of the regulations in its State Implementation Plan, requested removal of various regulations, and submitted recodified regulations containing minor revisions.

(i) Incorporation by reference.

(A) Minnesota regulations in Chapters 7005, 7007, 7009, 7011, 7017, 7019, and 7023, effective October 18, 1993.

(B) Submitted portions of Minnesota Statutes Sections 17.135, 88.01, 88.02, 88.03, 88.16, 88.17, and 88.171, effective 1993.

3. Section 52.1222 is revised to read as follows:

§ 52.1222 EPA-approved Minnesota State regulations.

The following table identifies the State regulations submitted to and approved by EPA as revisions to the Minnesota State Implementation Plan (SIP). This table is for informational purposes only and does not have any independent regulatory effect. This table also does not include administrative orders that have been approved into the SIP. To determine regulatory requirements for a specific situation consult the plan identified in § 52.1220. To the extent that this table conflicts with § 52.1220, § 52.1220 governs.

TABLE 52.1222.—EPA APPROVED REGULATIONS

Rule description	Minnesota rule numbers	Contents of SIP	Effective date	Relevant ¶s in § 52.1220 [1]
Definitions and Abbreviations	7005.0100–.0110	Full rules except def'n of NESHAP.	10/18/93	b,c20,c40.
Air Emission Permits	7007.0050–.1850	Full rules	8/10/93	b,c3,c5, c24,c26,c39.
Offsets	7007.4000–.4030	Full rules	10/18/93	c33.
Ambient Air Quality Standards	7009.0010–.0080	All except 7009.0030 and 7009.0040.	10/18/93	b,c3,c26.
Air Pollution Episodes	7009.1000–.1110	Full rules	10/18/93	c1,c21.
Applicability	7011.0010, .0020	Full rules	10/18/93	b,c20
Opacity	7011.0100–.0120	All except 7011.0120	10/18/93	b,c3,c20.
Fugitive Particulate	7011.0150	Full rules	10/18/93	b.
Indirect Heating Equipment	7011.0500–.0550	Full rules	10/18/93	b,c3,c20,c21
Direct Heating Equipment	7011.0600–.0620	Full rules	10/18/93	c20,c21.
Industrial Process Equipment	7011.0700–.0735	Full rules	10/18/93	b,c20
Portland Cement Plants	7011.0800–.0825	All except 7011.0810	10/18/93	c20,c40.
Asphalt Concrete Plants	7011.0900–.0920	All except 7011.0910	10/18/93	c20,c40.
Grain Elevators	7011.1000–.1015	All except 7011.1005(2)	10/18/93	c20,c25,c40.
Coal Handling Facilities	7011.1100–.1140	All except 7011.1130	10/18/93	c21.
Incinerators	7011.1201–.1207	All rules for "existing sources" [2]	10/18/93	b,c20,c40.
Sewage Sludge Incinerators	7011.1300–.1325	All rules for "existing sources"	10/18/93	c20,c40
Petroleum Refineries	7011.1400–.1430	All rules for "existing sources"	10/18/93	c20,c21.
Liquid Petroleum and VOC Storage Vessels.	7011.1500–.1515	All rules for "existing sources"	10/18/93	b,c21.
Sulfuric Acid Plants	7011.1600–.1630	All except 7011.1610	10/18/93	b,c3,c21,c40
Nitric Acid Plants	7011.1700–.1725	All except 7011.1710	10/18/93	b,c3,c21,c40.
Inorganic Fibrous Materials	7011.2100–.2105	All rules	10/18/93	c20.
Stationary Internal Combustion Engine.	7011.2300	Entire rule	10/18/93	b,c21.
CEMS	7017.1000	Entire Rule	10/18/93	c20.
Performance Tests	7017.2000	Entire Rule	10/18/93	c20.
Notifications	7019.1000	Entire Rule	10/18/93	c20.
Reports	7019.2000	Entire Rule	10/18/93	c20.
Emission Inventory	7019.3000, .3010	All rules	10/18/93	c20,c40.

TABLE 52.1222.—EPA APPROVED REGULATIONS—Continued

Rule description	Minnesota rule numbers	Contents of SIP	Effective date	Relevant ¶s in §52.1220 [1]
Motor Vehicles	7023.0100–.0120	All rules	10/18/93	b,c21.
Open Burning	Portions of Chapter 17 and 88 of MN Statutes.	All submitted portions of Sections 17.135, 88.01, 88.02, 88.03, 88.16, 88.17, and 88.171.	1993	b,c21,c26, c40.

[1] Recodifications affect essentially all rules but are shown only for substantively revised rules.
[2] "Existing" sources are sources other than those subject to a new source performance standard.

[FR Doc. 95–12619 Filed 5–23–95; 8:45 am]
BILLING CODE 6560–50–P

40 CFR Part 180

[PP 3F4233/R2134; FRL–4953–9]

RIN 2070–AB78

Bromoxynil; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes a time-limited tolerance, to expire on April 1, 1997, for residues of the herbicide bromoxynil (3,5-dibromo-4-hydroxybenzonitrile) resulting from the application of its octanoic and heptanoic acid esters in or on the raw agricultural commodity (RAC) cottonseed (transgenic BXN varieties only) at 0.04 part per million (ppm). Rhone-Poulenc AG Co. submitted petitions requesting EPA to establish the maximum permissible residue of the herbicide in or on the RAC.

EFFECTIVE DATE: This regulation becomes effective May 24, 1995.

ADDRESSES: Written objections, identified by the document control number, [PP 3F4233/R2134], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

A copy of objections and requests for hearings filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies and requests for hearings must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and requests for hearings will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and requests for hearings in electronic form must be identified by the docket number [PP 3F4233/R2134]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and requests for hearings on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Robert Taylor, Product Manager (PM) 25, Registration Division (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 241, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)–305–6800; e-mail: taylor.robert@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 29, 1995 (60 FR 16111), EPA issued a proposed rule that gave notice that the Rhone-Poulenc AG Co., P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709, had submitted a pesticide petition, PP 3F4233, to EPA proposing to amend 40 CFR 180.324 by establishing a regulation to permit residues of the herbicide bromoxynil (3,5-dibromo-4-hydroxybenzonitrile) resulting from the application of its octanoic and heptanoic acid esters in or on the raw agricultural commodity (RAC) transgenic cottonseed at 0.04 ppm. There were no comments or requests for referral to an advisory committee received in response to the notice of filing.

The tolerance will expire on April 1, 1997. Based upon the evaluation of a mouse carcinogenicity study currently under review and submission of an analytical method, residue data, and livestock metabolism study on the metabolite, the Agency will determine whether establishing permanent tolerances is appropriate. Residues remaining in or on the raw agricultural commodity after expiration of this tolerance will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the conditional registration.

There were no negative comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted with the proposal and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the time-limited tolerance will protect the public health. Therefore, the time-limited tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following:

There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

A record has been established for this rulemaking under docket number [PP 3F4233/R2134] (including any objections and hearing requests submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Written objections and requests for hearings, identified by the document control number [PP 3F4233/R2134], may be submitted to the Hearing Clerk (1900), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

A copy of electronic objections and requests for hearings can be sent directly to EPA at:

opp-Docket@epamail.epa.gov

A copy of electronic objections and requests for hearings must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all objections and hearing requests submitted directly in writing. The official rulemaking record is the paper record maintained at the address in **ADDRESSES** at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of the Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 4, 1995.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.324, by adding new paragraph (d), to read as follows:

§ 180.324 Bromoxynil; tolerances for residues.

* * * * *

(d) A tolerance is established for residues of the herbicide bromxynil (3,5-dibromo-4-hydroxybenzonitrile) resulting from application of its octanoic and heptanoic acid esters in or on the following raw agricultural commodity:

Commodity	Parts per million	Expiration date
Cottonseed (transgenic BXN varieties only).	0.04	April 1, 1997.

[FR Doc. 95–12565 Filed 5–23–95; 8:45 am]
BILLING CODE 6560–50–F

40 CFR Part 180

[OPP–300380A; FRL–4952–3]

RIN 2070–AB78

Acetic Acid Ethenyl Ester, Polymer with Ethenol and (α)-2-Propenyl-(ω)-Hydroxypoly(Oxy-1,2-Ethanediyl); Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes an exemption from the requirement of a tolerance for residues of acetic acid ethenyl ester, polymer with ethenol and (α)-2-propenyl-(ω)-hydroxypoly(oxy-1,2-ethanediyl) (CAS Reg. No. 137091-12-4), when used as an inert ingredient (component of water-soluble film) in pesticide formulations applied to growing crops only under 40 CFR 180.1001(d). Japan Technical Information Center, Inc., requested this regulation on behalf of Nippon Gohsei (U.S.A.) Co., Ltd., pursuant to the Federal Food, Drug and Cosmetic Act (FFDCA).

EFFECTIVE DATE: This regulation becomes effective May 24, 1995.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [OPP-300380A], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs,

Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Copies of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [OPP-300380A]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Kerry Leifer, Registration Support Branch, Registration Division (7505W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 2800 Crystal Drive, North Tower, 6th Floor, Arlington, VA 22202, (703)-308-8323; e-mail: leifer.kerry@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 22, 1995 (60 FR 15111), EPA issued a proposed rule that gave notice that the Japan Information Center, Inc., 775 South 23rd St., Arlington, VA 22202, on behalf of Nippon Gohsei (U.S.A.) Co., Ltd., had submitted pesticide petition (PP) 4EO4403 to EPA requesting that the Administrator, pursuant to section 408(e) of the FFDCA (21 U.S.C. 346a(e)), propose to amend 40 CFR 180.1001(d) by establishing an exemption from the requirement of a tolerance for residues of acetic acid ethenyl ester, polymer with ethenol and (α)-2-propenyl-(ω)-hydroxypoly(oxy-1,2-ethanediyl) (CAS Reg. No. 137091-12-4), when used as an inert ingredient (component of water-soluble film) in pesticide formulations applied to growing crops only under 40 CFR 180.1001(d).

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted with the proposal and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance exemption will protect the public health. Therefore, the tolerance exemption is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of the Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

A record has been established for this rulemaking under docket number [OPP-300380A] (including any comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Written objections and hearing requests, identified by the document control number, [OPP-300380A], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460.

Copies of electronic objections and hearing requests filed with the Hearing Clerk can be sent directly to EPA at: opp-Docket@epamail.epa.gov.

Copies of electronic objections and hearing requests filed with the Hearing Clerk must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any objections received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 4, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.1001(d) is amended in the table therein by adding and alphabetically inserting the inert ingredient, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(d) * * *

Inert ingredient	Limits	Uses
* * *	*	* * *
Acetic acid ethenyl ester, polymer with ethenol and (α)-2-propenyl-(ω)-hydroxypoly (oxy-1,2-ethanediyl) (CAS Reg. No.137091-12-4); minimum number average molecular weight 15,000.	.....	Component of water-soluble film.
* * *	*	* * *

* * * * *

[FR Doc. 95–12567 Filed 5–23–95; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 180

[PP 0E3909, 2E4052, 2E4065, 2E4092, and 3E4162/R2128; FRL–4950–3]

RIN 2070–AB78

2-[1-(Ethoxyimino)Butyl]-5-[2-(Ethylthio)Propyl]-3-Hydroxy-2-Cyclohexen-1-One; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes time-limited tolerances for the combined residues of the herbicide 2-[1-(ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one (also referred to in this document as sethoxydim) and its metabolites in or on various raw agricultural commodities. The Interregional Research Project No. 4 (IR-4) requested this regulation to establish maximum permissible levels for residues of the herbicide. These time-limited tolerances expire on December 31, 1996.

EFFECTIVE DATE: This regulation becomes effective May 24, 1995.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 0E3909, 2E4052, 2E4065, 2E4092, and 3E4162/R2128], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

A copy of objections and hearing requests may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of electronic objections and hearing request must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number, [PP 0E3909, 2E4052, 2E4065, 2E4092, and 3E4162/R2128]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Sixth Floor, Crystal Station #1, 2800 Jefferson Davis Hwy., Arlington, VA 22202, (703)-308-8783; e-mail: jamerson.hoyt@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 15, 1995 (60 FR 13939), EPA issued a proposed rule that gave notice that the the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petitions (PP) 0E3909, 2E4052, 2E4065, 2E4092, and 3E4162 to EPA on behalf of various Agricultural Experiment Stations.

These petitions requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e), amend 40 CFR 180.412 by establishing time-limited tolerances for combined residues of the herbicide 2-[1-(ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one and its metabolites containing the 2-cyclohexen-1-one moiety (calculated as the herbicide) in or on various raw agricultural commodities.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted on the proposal and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency

concludes that the time-limited tolerances will protect the public health. Therefore, the time-limited tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of the Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

A record has been established for this rulemaking under docket number [PP 0E3909, 2E4052, 2E4065, 2E4092, and 3E4162/R2128] (including any comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

A copy of electronic objections and hearing requests filed with the Hearing Clerk can be sent directly to EPA at:
opp-Docket@epamail.epa.gov

A copy of electronic objections and hearing requests filed with the Hearing Clerk must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any objections received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in **ADDRESSES** at the beginning of this document.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 10, 1995.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.412, by revising the section heading and the introductory text of paragraphs (a) and (b) and by adding new paragraphs (c) and (d), to read as follows:

§ 180.412 2-[1-(Ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one; tolerances for residues.

(a) Tolerances are established for combined residues of the herbicide 2-[1-(ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one and its metabolites containing the 2-cyclohexen-1-one moiety (calculated as the herbicide) in or on the following raw agricultural commodities:

* * * * *

(b) Tolerances with regional registration, as defined in § 180.1(n), are established for the combined residues of the herbicide 2-[1-(ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one) and its metabolites containing the 2-cyclohexen-1-one moiety (calculated as the herbicide) in or on the following raw agricultural commodities:

* * * * *

(c) Time-limited tolerances to expire on December 31, 1996, are established for combined residues of the herbicide 2-[1-(ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one and its metabolites containing the 2-cyclohexen-1-one moiety (calculated as the herbicide) in or on the following raw agricultural commodities:

Commodity	Parts per million
Asparagus	4.0
Carrot	1.0
Cranberry	2.0
Peppermint	30.0
Spearmint	30.0

(d) Time-limited tolerances to expire on December 31, 1996, are established for combined residues of the herbicide 2-[1-(ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one and its metabolites containing the 2-cyclohexen-1-one moiety (calculated as the herbicide) in or on the following raw agricultural commodities:

Commodity	Parts per million
Endive	2.0

[FR Doc. 95–12744 Filed 5–23–95; 8:45 am]
BILLING CODE 6560-60-F

40 CFR Part 180

[PP 2F4154/R2136; FRL–4955–3]

RIN 2070–AB78

Fenbuconazole; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for combined residues of the fungicide fenbuconazole, *alpha*-[2-(4-chlorophenyl)ethyl]-*alpha*-phenyl-3-[1*H*-1,2,4-triazole)-1-propanenitrile, and its metabolites *cis*-5-(4-chlorophenyl)dihydro-3-phenyl-3-(1*H*-1,2,4-triazole-1-ylmethyl)-2-3*H*-furanone and *trans*-5-(4-chlorophenyl)dihydro-3-phenyl-3-(1*H*-1,2,4-triazole-1-ylmethyl)-2-3*H*-furanone, expressed as fenbuconazole, in or on the raw agricultural commodity bananas (whole fruit) at 0.3 ppm of which not more than 0.05 ppm is contained in the banana pulp. Rohm & Haas Co. submitted petitions for this regulation to establish a maximum permissible level for residues of the fungicide.

EFFECTIVE DATE: This regulation becomes effective May 24, 1995..

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 2F4154/R2136], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing request filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20450. In person, bring copy of objections and hearing request to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [PP 2F4154/R2136]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: James M. Stone, Acting Product Manager (PM) 22, Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 229, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)- 305-5540; e-mail: stone.james@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of December 30, 1992 (57 FR 62334), which announced that Rohm & Haas, Agricultural Chemicals, Independence Mall West, Philadelphia, PA 19105, had submitted a pesticide petition (PP) 2F4154, to EPA requesting that the Administrator, pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), amend 40 CFR part 180 by establishing a regulation to permit residues of fenbuconazole, *alpha*-[2-(4-chlorophenyl)ethyl]-*alpha*-phenyl-3-(1*H*-1,2,4-triazole)-1-propanenitrile, and its metabolites [5-(4-chlorophenyl)-dihydro-3-phenyl-3-(methyl-1*H*-1,2,4-triazole-1-yl)-2-3*H*-furanone] in or on bananas (pulp) at 0.05 part per million (ppm) and bananas (peel) at 0.3 ppm. Subsequently, on **June 29**, 1994 (59 FR 33503), **EPA announced** that Rohm & **Haas** had **amended** the petition to propose amending 40 CFR part 180 by establishing a regulation to permit residues of fenbuconazole, *alpha*-(2-(4-chlorophenyl)ethyl)-*alpha*-phenyl-3-(1*H*-1,2,4-triazole)-1-propanenitrile, and its metabolites *cis*-5-(4-chlorophenyl)dihydro-3-phenyl-3-(1*H*-1,2,4-triazole-1-4-ylmethyl)-2-3*H*-furanone and *trans*-5-(4-chlorophenyl)dihydro-3-phenyl-3-(1*H*-1,2,4-triazole-1-ylmethyl)-2-3*H*-furanone in or on bananas (whole fruit) at 0.3 ppm of which not more than 0.05 ppm is contained in banana pulp.

There were no comments or requests for referral to an advisory committee received in response to these notices of filing.

The scientific data submitted in the petitions and all other relevant material have been evaluated. The toxicology data considered in support of the tolerances include:

1. A rat acute oral study with an LD_{50} greater than 2 grams (g)/kilogram (kg).

2. A 13-week rat feeding study with a no-observed-effect level (NOEL) of 20 ppm (1.3 milligrams(mg)/kg/day males and 1.5 mg/kg/day females) and a lowest-observed-effect level (LOEL) of 80 ppm (5.1 mg/kg/day males and 6.3 mg/kg/day females) based on hepatotoxicity.

3. A 3-month mouse feeding study with a NOEL of 20 ppm (3.8 mg/kg/day males and 5.7 mg/kg/day females) and a LOEL of 60 ppm (11.1 mg/kg/day males and 17.6 mg/kg/day females) based on hepatotoxicity.

4. A 3-month dog feeding study with a NOEL of 100 ppm (3.3 mg/kg/day males and 3.5 mg/kg/day females) and LOEL of 400 ppm (13.3 mg/kg/day males and 14.0 mg/kg/day females), based hepatocellular hypertrophy.

5. A 21-day rat dermal study with a NOEL greater than 1,000 mg/kg/day (limit dose).

6. A 78-week dietary carcinogenicity study in mice with a NOEL of 1.43 mg/kg/day and a LOEL of 28.6 mg/kg/day (males) and 92.9 mg/kg/day (females) based on hepatocellular enlargement and a greater incidence and severity of hepatocellular vacuolation. There was evidence of carcinogenicity based on the occurrence of increased trend for malignant liver tumors in males and an increase in benign and malignant liver tumors in females. The carcinogenic effects observed are discussed below.

7. A 24-month rat chronic feeding/carcinogenicity study with a NOEL of 80 ppm (3.03 mg/kg/day for males and 4.02 mg/kg/day for females) for systemic effects and an LEL of 800 ppm (30.62 mg/kg/day for males and 43.07 mg/kg/day for females) based on decreased in body weights in females, and increased liver weighs in females and males along with hepatocellular enlargement and

vacuolization. There was also an increase in thyroid weights with slight increases in thyroid focal cystic hyperplasia and follicular cell neoplasia in both sexes. A LOEL was not established for males. There was evidence of carcinogenicity based on the increased occurrence of thyroid follicular cell benign and malignant tumors in males. The carcinogenic effects observed are discussed further below.

8. A 24-month male rat chronic feeding/carcinogenicity study with a NOEL of less than 800 ppm (30.41 mg/kg/day) and a LOEL is 800 ppm (30.41 mg/kg/day) based on increased liver with centrilobular to midzonal hepatocellular enlargement and vacuolization, decreased body weight gain, and increased thyroid weights. There was evidence of carcinogenicity based on the increased occurrence of thyroid follicular cell benign and malignant tumors. The carcinogenic effects observed are discussed further below.

9. A 1-year dog chronic feeding study with a NOEL of 150 ppm (3.75 mg/kg/day) and the LOEL, based on decreases in body weight gain and increased liver weight, of 1,200 ppm (30 mg/kg/day).

10. A two generation reproduction study in rats with a parental NOEL of 4 mg/kg/day (80 ppm) and a LOEL of 40 mg/kg/day (800 ppm), based on decreased body weight, decreased food consumption, increased number of dams not delivering viable or delivering nonviable offspring, and increases in adrenal and thyroid weights. The reproductive NOEL is greater than 40 mg/kg/day (800 ppm) [(highest dose tested (HDT)].

11. A developmental toxicity study in rabbits with a maternal NOEL of 10 mg/kg/day, and a developmental NOEL of 30 mg/kg/day, and a maternal LOEL of 30 mg/kg/day due to only 1/19 (5%) of the pregnant does producing a viable fetus, and no developmental LOEL (greater than 30 mg/kg/day).

12. A developmental toxicity study in rats with a maternal NOEL and developmental NOEL of 30 mg/kg/day and a LEL of 75 mg/kg/day due to decrease in maternal body weight compared to controls and increase in early and late resorption with a decrease in number of live fetuses per dam.

13. No evidence of gene mutation was observed in a test for induction of gene mutation at the HGPRT locus in Chinese hamster ovary cells. No increase in the number of cells with aberrations or observations per cell were noted in an *in vivo* cytogenetics assay using bone marrow from treated rats. No increase in unscheduled DNA synthesis in rat primary hepatocyte study was observed.

14. A rat metabolism study showed that radiolabeled fenbuconazole is rapidly absorbed, distributed, and excreted following oral administration in rats. Biliary excretion data indicated that systemic absorption of fenbuconazole was high for all dosing groups. The feces was the major route of excretion. Tissue distribution and bioaccumulation of fenbuconazole appeared to be minimal.

The Health Effects Division Carcinogenicity Peer Review Committee has concluded that the available data provide limited evidence of the carcinogenicity of fenbuconazole in mice and rats and has classified fenbuconazole as a Group C (possible human carcinogen with limited evidence of carcinogenicity in animals) in accordance with Agency guidelines, published in the **Federal Register** in 1986 (51 FR 33992; Sept. 24, 1986) and recommended that for the purpose of risk characterization a low-dose extrapolation model should be applied to the experimental animal tumor data for quantification for human risk ($Q1^*$). This decision was based on the induction of thyroid follicular cell adenomas and/or combined adenomas-carcinomas in male rats in two studies, both by pairwise comparison with controls and by trend analysis. The studies were combined for the purpose of deriving the $Q1^*$. The $Q1^*$ for fenbuconazole based on a recalculation with a 3/4's power safety factor is 1.06×10^{-2} $(mg/kg/day)^{-1}$ in human equivalents.

Based on (1) the established pecan and stone fruit group (except plums and prunes) tolerances, (2) the limitation of production of the only fenbuconazole product registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) for use on stone fruit to 28,500 pounds of active ingredient per year (calculated to be equivalent to treating 12.8% of the total U.S acreage of apricots, cherries, nectarines, and peaches per year), and (3) the proposed banana tolerances, the upper-bound limit of the dietary carcinogenic risk is calculated in the range of 1 incidence in 1 million (9×10^{-7}).

Processing studies for bananas are not required. Therefore, food/feed additive tolerances are not needed in conjunction with these uses.

Using the NOEL of 3.0 mg/kg/day from the most sensitive species in the rat chronic feeding study with a 100-fold safety factor, the Reference Dose (RfD) for systemic effects is 0.03 mg/kg/day. The theoretical maximum residue contribution (TMRC) from the established and proposed tolerances is 0.000616 mg/kg/day and utilizes 2 percent of the RfD for the overall U.S. population. For exposure of the most highly exposed subgroups in the population, non-nursing infants (less than 1-year old), the TMRC is 0.00522 mg/kg/day and utilizes 17 percent of the RfD.

The metabolism of fenbuconazole in plants is adequately understood. Due to the following chemistry data gap, magnitude of the residue: Crop field trials with unbagged bananas (two in Hawaii and two in Puerto Rico) [GLN 171-4], EPA believes it is inappropriate to establish permanent tolerances for the uses of fenbuconazole at this time. However, based on trials with bagged bananas and one side-by-side trial with bagged and unbagged bananas, EPA believes that the existing data support time-limited tolerances to December 31, 1998.

The nature of the residue in plants is adequately understood for the purposes of these time-limited tolerances. An analytical method, gas-liquid chromatography with a thermionic-specific detector with nitrogen selectivity, is available for enforcement purposes. The enforcement methodology has been submitted to the Food and Drug Administration for publication in the Pesticide Analytical Manual, Vol. II (PAM II). Because of the long lead time for publication of the method in PAM II, the analytical methodology is being made available in the interim to anyone interested in pesticide enforcement when requested from: Calvin Furlow, Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-5232.

There is no reasonable expectation that secondary residues will occur in milk, eggs, or meat of livestock and poultry since there are no livestock feed items associated with this action. The pesticide is considered useful for the purpose for which the tolerance is sought. Based on the information and data considered, the Agency has determined that the time-limited tolerance established by amending 40 CFR part 180 will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or request a hearing with the

Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fees provided by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, and the requestor's contentions on each such issue, and a summary of the evidence relied upon by the objection (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: there is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

A record has been established for this rulemaking under docket number [PP 2F4154/R2136] (including objections and hearing requests submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132, Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Written objections and hearing requests, identified by the document control number [PP 2F4154/R2136], may be submitted to the Hearing Clerk (1900), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

A copy of electronic objections and hearing requests filed with the Hearing Clerk can be sent directly to EPA at:
opp-Docket@epamail.epa.gov

A copy of electronic objections and hearing requests filed with the Hearing Clerk must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all objections and hearing requests submitted directly in writing. The official rulemaking record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines "significant" as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 10, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

b. In § 180.480, by amending paragraph (a) in the table therein by adding and alphabetically inserting the raw agricultural commodity bananas, to read as follows:

§ 180.480 Fenbuconazole; tolerances for residues.

(a) * * *

Commodity	Parts per million
Bananas (whole fruit)	0.3 (of which not more than 0.05 ppm is contained in the banana pulp).
* * *	* *

* * * * * * *

[FR Doc. 95–12743 Filed 5–23–95; 8:45 am]
BILLING CODE 6560-50-F

40 CFR Part 180

[PP 4E4359/R2127; FRL–4936–3]
RIN 2070–AB78

Paraquat; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes tolerances for residues of the desiccant, defoliant, and herbicide paraquat in or on the raw agricultural commodities lentils, lentil forage, and lentil hay. The Interregional Research Project No. 4 (IR-4) requested this regulation to establish the maximum permissible levels for residues of paraquat in or on the commodities, and EPA has found that paraquat is useful and safe for the requested tolerances.

EFFECTIVE DATE: This regulation becomes effective May 24, 1995.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 4E4359/R2127], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees

accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [4E4359/R2127]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Sixth Floor, Crystal Station #1, 2800 Jefferson Davis Hwy., Arlington, VA 22202, (703)-308-8783; e-mail: jamerson.hoyt@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 15, 1995 (60 FR 13939), EPA issued a proposed rule that gave notice that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petition (PP) 4E4359 to EPA on behalf of the Agricultural Experiment Stations of Idaho and Washington. The petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e), amend 40 CFR 180.205 by establishing tolerances for residues of paraquat (1,1'-dimethyl-4,4'-bipyridinium-ion) derived from application of either the bis(methyl sulfate) or the dichloride salt (both calculated as the cation), in or on the raw agricultural commodities lentils at 0.3 part per million (ppm), lentil forage at 0.1 ppm, and lentil hay at 0.4 ppm.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted with the proposal and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerances will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

A record has been established for this rulemaking under docket number [PP 4E4359/R2127] (including any objections and hearing requests submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Written objections and hearing requests, identified by the document control number [PP 4E4359/R2127], may be submitted to the Hearing Clerk (1900), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

A copy of electronic objections and hearing requests filed with the Hearing Clerk can be sent directly to EPA at:

opp-Docket@epamail.epa.gov

A copy of electronic objections and hearing requests filed with the Hearing Clerk must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all objections and hearing requests submitted directly in writing. The official rulemaking record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of the Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 10, 1995.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.205, paragraph (a) is amended in the table therein by adding and alphabetically inserting entries for the raw agricultural commodities lentils, lentil forage, and lentil hay, to read as follows:

§ 180.205 Paraquat; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Lentils	0.3
Lentil, forage	0.1
Lentil, hay	0.4
* * * * *	

* * * * *

[FR Doc. 95-12745 Filed 5-23-95; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[GEN Docket No. 90-314, FCC 95-167]

Unlicensed Personal Communications Services; Radio Frequency Devices

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: By this action, the Commission affirms its designation of UTAM, Inc., to manage the transition of the 1910–1930 MHz band from the Private Operational Fixed Microwave Service to unlicensed Personal Communication Service (PCS) operations. Further, the Commission accepts UTAM's plan for the relocation of fixed microwave operations from this spectrum and the deployment of unlicensed PCS devices. The Commission is requiring UTAM to submit reports at six-month intervals on the progress of the plan's implementation. UTAM's management of the transition of the 1910–1930 MHz band will help to ensure that new and innovative unlicensed PCS devices, such as wireless PBX equipment, wireless messaging systems, wireless local area networks, and a broad range of data communication products, are made available as rapidly as possible without disrupting fixed microwave service.

EFFECTIVE DATE: June 23, 1995.

FOR FURTHER INFORMATION CONTACT: David L. Means, Office of Engineering and Technology, New Technology Development Division, (301) 725–1585, extension 206.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Fourth Memorandum Opinion and Order, FCC 95–167, adopted April 19, 1995, and released May 12, 1995. The full text of this decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. Copies may also be purchased from the Commission's duplicating contractor, International Transcription Services, at (202) 857–3800 or 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of the Memorandum Option and Order

1. This *Fourth Memorandum Opinion and Order* affirms its designation of UTAM, Inc., to manage the transition of the 1910–1930 MHz band from the Private Operational Fixed Microwave Service to unlicensed Personal Communication Service (PCS) operations. Further, the Commission accepts UTAM's plan for the relocation of fixed microwave operations from this spectrum and the deployment of unlicensed PCS devices. The Commission is requiring UTAM to submit reports at six-month intervals on the progress of the plan's implementation.

2. The 1910–1930 MHz band is currently occupied by 383 fixed point-to-point microwave links. In the *Second Report and Order*, 58 FR 59174, November 8, 1993, the Commission designated UTAM as the coordinator for the transition of the unlicensed PCS band from the fixed microwave service to unlicensed PCS, conditioned on UTAM's submission and the Commissions acceptance of: (1) A funding plan that is equitable to all prospective manufacturers of unlicensed devices, and (2) a plan for "band clearing" that will permit the implementation of nomadic devices and, in particular, nomadic data PCS devices, as promptly as possible.

3. On August 1, 1994, UTAM, Inc., submitted its plan for managing the transition of the 1910–1930 MHz band to use by unlicensed PCS operations. The UTAM plan describes UTAM's organization and governance, financing plan, bank clearing plan, coordination procedures, protection of proprietary information, dispute resolution procedures and UTAM's plans for ending its coordination role and dissolving itself.

4. We find that UTAM's cost and revenue projections are reasonable. These projections appear to be based on conservative estimates and to allow for situations where a revenue source may develop somewhat slowly. While we recognize that there is always some uncertainty in making such projections, we are convinced that there will eventually be sufficient revenues to totally fund relocation of the microwave incumbents. It seems fair to assume the PCS licensees will bear approximately half the cost of relocating the incumbent microwave links in the 1910–1930 MHz band, since these links are paired with links in the licensed PCS spectrum. We agree with UTAM that its estimate of the cost for relocating each link is conservative, which should provide some margin if UTAM is faced with relocating more links than it anticipates. We do not agree with arguments that the relocation of links would be disrupted if there are funding shortfalls. We note, in particular, that UTAM will not initiate relocation negotiations until adequate funding is available. Further,

we believe that UTAM is taking adequate steps to control interference so as to avoid the need to relocate microwave links prematurely. We also see no need to require UTAM to establish a contingency fund for such situations. We are satisfied that the BIS study provides a reasonable estimate of unlicensed PCS device deployment and takes due account of demand that may be satisfied through other equipment or services. Even if demand for unlicensed PCS devices does not fall within the range predicted by the BIS study, or if licensed PCS penetration lags or negotiations with incumbents take longer than anticipated, the safeguards included in the plan ensure that the only consequence will be that band clearing will simply take longer. With regard to concerns about equity in the band clearing process, we agree with UTAM that the plan clearly indicates that donated funds may be designated for clearing any part of the spectrum that the donor chooses and will be credited as an advance against the donor's clearing fees. Thus, no company interested in clearing the asynchronous band segment for deployment of nomadic products will be forced to subsidize coordination activities.

5. We believe that UTAM's band clearing plan is workable and appropriate. While we understand concerns for the need to make spectrum available for nomadic operations promptly, we also recognize the practical difficulties UTAM faces in clearing the 1910–1930 MHz band. We believe that UTAM has devised a workable strategy for expediting nomadic device deployment given the existing constraints, such as the need to fund and negotiate the relocation of the incumbent microwave links, and the fact that incumbent public safety licensees are not required to relocate for five years. While we are sympathetic to desires for a more rapid deployment scheme for nomadic data devices in this spectrum, none is apparent. We believe that the only way to make the band fully available to nomadic devices is to completely clear it. The most effective way to do so is to enable non-nomadic devices to be deployed so that fees from such deployment can be used to complete the band clearing process as rapidly as possible. While we share doubts regarding the potential of the "wedge" clearing approach to make significant amounts of spectrum available to nomadic devices prior to complete band clearing, this approach appears to be the soundest plan given the constraints. As an alternative for those developers of nomadic devices whose needs could be accommodated by the UTAM plan, we note that we recently allocated additional spectrum at 2390–2400 MHz for unlicensed data PCS devices, and this spectrum will not require clearing. We believe that the immediate needs of unlicensed nomadic data PCS devices can be accommodated in this spectrum. Operation in the 2390–2400 MHz band will not require participation in UTAM and will not be governed by the UTAM plan.

6. With regard to concerns about deployment of nomadic devices prior to complete band clearing, we addressed this matter in the *Memorandum Opinion and Order* in this proceeding, 59 FR 32830, June 24, 1994. We stated therein that when we have determined that spectrum is available, or will soon be available, for deployment of nomadic devices, we will issue a Public Notice announcing the date upon which we will begin accepting and processing applications for certification of such devices. We believe that this plan will adequately ensure that nomadic operations do not cause interference to fixed microwave operations. We believe UTAM's commitment to voluntarily address the concerns of the incumbent microwave community regarding coordination with PCS licensees to negotiate microwave relocations on a system-wide basis where possible and appropriately will further the relocation process. Such system-wide coordination and negotiation activities will promote more rapid availability of spectrum and minimize the relocation burden for incumbent microwave licensees. We believe that is neither necessary nor practical for the Commission to require such system-wide negotiations. Similarly, we believe that UTAM has adequately responded to concerns about clearing priorities and updating of the zone status.

7. We believe that UTAM has adequately responded to the concerns that have been raised about its coordination procedures. Its explanation that appropriate adjustments have already been incorporated into the TIA Bulletin 10F criteria and stated intention to coordinate system deployed in Zone 1 areas at maximum system capacity appear to adequately address the concerns of the microwave community. We also note that UTAM is taking steps to respond to the concerns of HP and other manufacturers regarding the necessity for advance warning for "stop deployment" orders. We are similarly convinced that UTAM will be gathering sufficient information to monitor manufacturer compliance with its LVP and to expeditiously locate any source of interference, should it occur. We disagree that we intended that UTAM develop and specify a standard procedure or specific technology to prevent unauthorized deployment of unlicensed PCS devices. In fact, we previously stated that we would allow UTAM broad flexibility in establishing the means it uses to fulfill its responsibility for ensuring that unlicensed devices do not interfere with existing microwave operations. We continue to believe that this is the appropriate approach. We believe that the standards for disablement mechanisms outlined in the plan, with the clarifications provided by UTAM in its response to the comments, will adequately protect incumbent microwave operations from potential interference caused by unauthorized relocation of unlicensed devices. We also agree with UTAM that further requirements would not prevent those who wish to intentionally violate the rules from doing so.

8. Regarding enforcement, we believe that the requirements of Section 15.307(b) of the Commission's rules are adequate to ensure manufacturers' compliance with the procedures established by UTAM, and that no additional rules are necessary or desirable. We fully intend to take appropriate enforcement action against parties that violate the rules and procedures we have established with regard to operation in the unlicensed spectrum at 1910–1930 MHz. We further believe that the clarifications UTAM provides regarding its dispute resolution procedures remove any confusion over UTAM's intent to work in good faith to resolve any disputes that may arise.

9. We find that UTAM has provided adequate and sufficient information to satisfy the conditions laid out in the *Second Report and Order*. As explained above, we believe that UTAM has adequately addressed all of the relevant issues. We find no merit in arguments that UTAM's authorization should be revoked or limited. While Apple challenges UTAM's governance, it offers no specifics as to how the governance procedures should be changed or otherwise improved. Further, we disagree that it is necessary or desirable to identify an alternative entity at this time to manage the band transition should UTAM cease operation. We note that no alternative to UTAM has been suggested or come forward. Therefore, we are reaffirming UTAM has the coordinator for the transition of the 1910–1930 MHz band from fixed microwave services to use by unlicensed PCS.

10. We do not believe it is necessary to require UTAM to submit a revised plan that includes the additional information presented in its reply comments. We recognize that, to some extent, the plan and details of its implementation are a work in progress. Accordingly, we believe the appropriate course of action is to monitor UTAM's implementation of the plan. We are requiring UTAM to furnish biannual reports on its progress in implementing the plan. The first report will be due July 1, 1995, and every six months thereafter. The reports should provide an update on the status of the financial and band clearing plans, the extent of incumbent microwave relocation, and the extent of unlicensed PCS device deployment. Additionally, the reports should provide updated projections of future band clearing and unlicensed PCS implementation based on the best and most current data available at the time the report is prepared. We also are requiring that the report provide information on any problems or difficulties encountered in implementing the plan and how they are being resolved.

Ordering Clauses

11. Accordingly, It Is Ordered, pursuant to sections 4(i), 7(a), 302, 303(c), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, U.S.C. Sections 154(i), 157(a), 302, 303(c), 303(f), 303(g), and 303(r), that UTAM, Inc. is designated to coordinate and manage the transition of the 1910–1930 MHz band from the Private Operational Fixed Microwave Service to unlicensed PCS operations. It Is Further Ordered, that UTAM, Inc., shall submit to the Commission reports on its progress in implementing its plan beginning on July 1, 1995, and every six months thereafter. It Is Further Ordered, that Part 15 is amended as shown to remove the conditions attached to UTAM's designation as the coordinator for unlicensed PCS operations in the 1910–1930 MHz band.

List of Subjects in 47 CFR Part 15

Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Part 15 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 15—RADIO FREQUENCY DEVICES

1. The authority citation for part 15 continues to read as follows:

Authority: Secs. 4, 302, 303, 304, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154, 302, 303, 304, and 307.

2. Section 15.307(a) is revised to read as follows:

§ 15.307 Coordination with fixed microwave service.

(a) UTAM, Inc., is designated to coordinate and manage the transition of the 1910–1930 MHz band from Private Operational-Fixed Microwave Service (OFS) operating under part 94 of this chapter to unlicensed PCS operations.

* * * * *

[FR Doc. 95–12704 Filed 5–23–95; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 672 and 675

[Docket No. 900633–1095; I.D. 051595I]

Groundfish of the Gulf of Alaska; Groundfish of the Bering Sea and Aleutian Islands Area; Bycatch Rate Standards for the Second Half of 1995

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Pacific halibut and red king crab bycatch rate standards; request for comments.

SUMMARY: NMFS announces Pacific halibut and red king crab bycatch rate standards for the second half of 1995. Publication of these bycatch rate standards is required under regulations implementing the vessel incentive program. This action is necessary to implement the bycatch rate standards for vessel operators who participate in the Alaska groundfish trawl fisheries under the incentive program. The intent of this action is to reduce prohibited species bycatch rates and promote conservation of groundfish and other fishery resources.

DATES: Effective 12:01 a.m., Alaska local time (A.l.t.), July 1, 1995, through 12 midnight, A.l.t., December 31, 1995. Comments on this action must be received at the following address no later than 4:30 p.m., A.l.t., June 30, 1995.

ADDRESSES: Comments should be mailed to Ronald J. Berg, Chief, Fisheries Management Division, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Gravel; or be delivered to 709 West 9th Street, Federal Building, Room 401, Juneau, AK.

FOR FURTHER INFORMATION CONTACT: Susan J. Salveson, 907–586–7228.

SUPPLEMENTARY INFORMATION: The domestic groundfish fisheries in the exclusive economic zone of the Bering Sea and Aleutian Islands management area (BSAI) and Gulf of Alaska (GOA) are managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutians Islands and the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMPs). The FMPs were prepared by the North Pacific Fishery Management Council under the authority of the Magnuson Fishery Conservation and Management Act. The FMPs are implemented by regulations for the U.S. fisheries at 50 CFR parts 672, 675, and 676. General regulations that also pertain to the U.S. fisheries appear at 50 CFR part 620. Regulations that establish observer coverage requirements are set out at 50 CFR part 677.

Regulations at §§ 672.26 and 675.26 implement a vessel incentive program to reduce halibut and red king crab bycatch rates in the groundfish trawl fisheries. Under the incentive program, operators of trawl vessels may not exceed Pacific halibut bycatch rate standards specified for the BSAI and GOA midwater pollock and "other trawl" fisheries, and the BSAI yellowfin sole and "bottom pollock" fisheries. Vessel operators also may not exceed red king crab bycatch standards specified for the BSAI yellowfin sole and "other trawl" fisheries in Bycatch Limitation Zone 1 (defined in § 675.2). The fisheries included under the incentive program are defined in regulations at §§ 672.26(b) and 675.26(b).

Regulations at §§ 672.26(c) and 675.26(c) require that halibut and red crab bycatch rate standards for each fishery included under the incentive program be published in the **Federal Register**. The standards are in effect for specified seasons within the 6-month periods of January 1 through June 30, and July 1 through December 31. For purposes of calculating vessel bycatch rates under the incentive program, 1995 fishing months were specified in the **Federal Register** on January 12, 1995 (60 FR 2905).

Halibut and red king crab bycatch rate standards for the first half of 1995 also were published in the **Federal Register** on January 12, 1995. As required by §§ 672.26(c) and 675.26(c), the Director, Alaska Region, NMFS (Regional Director), has established the bycatch rate standards for the second half of 1995 (July 1 through December 31).

These standards are set out in Table 1 and are based on the following information and considerations:

1. Previous years' average observed bycatch rates,
2. Immediately preceding season's average observed bycatch rates,
3. The bycatch allowances and associated fishery closures specified under §§ 672.20(f) and 675.21,
4. Anticipated groundfish harvests,
5. Anticipated seasonal distribution of fishing effort for groundfish, and
6. Other information and criteria deemed relevant by the Regional Director.

TABLE 1.—BYCATCH RATE STANDARDS BY FISHERY FOR THE SECOND HALF OF 1995 FOR PURPOSES OF THE VESSEL INCENTIVE PROGRAM IN THE BSAI AND GOA

Fishery	Bycatch rate standard
Pacific halibut bycatch rate standards (kilogram of halibut/metric ton of groundfish catch):	
BSAI Midwater pollock	1.0
BSAI Bottom pollock	5.0
BSAI Yellowfin sole	5.0
BSAI Other trawl	30.0
GOA Midwater pollock	1.0
GOA Other trawl	40.0
Zone 1 red king crab bycatch rate standards (number of crab/metric ton of groundfish catch):	
BSAI yellowfin sole	2.5
BSAI Other trawl	2.5

Bycatch Rate Standards for Pacific Halibut

The halibut bycatch rate standards for the 1995 trawl fisheries are unchanged from those implemented in 1994. The Regional Director based 1995 standards for the second half of 1995 on anticipated seasonal fishing effort for groundfish species and 1992–95 halibut bycatch rates observed in the trawl fisheries included under the incentive program. In determining these bycatch rate standards, the Regional Director recognized that directed fishing for BSAI Pacific cod by vessels using trawl gear is closed until October 25, 1995 (60 FR 20658, April 27, 1995) and that directed fishing for yellowfin sole is closed until August 1, 1995. The Regional Director also considered the August 15 opening date of the 1995 BSAI pollock "B" season (§ 675.23(e)).

The halibut bycatch rate standards for the BSAI yellowfin sole and "bottom pollock" fisheries are each set at 5 kilogram (kg) halibut/metric ton (mt) of groundfish. These standards approximate the average annual rates observed on trawl vessels participating in these fisheries since 1992.

The halibut bycatch rate standard for the BSAI and GOA midwater pollock fisheries (1 kg halibut/mt of groundfish) is higher than the bycatch rates normally experienced by vessels participating in these fisheries. This standard is intended to encourage vessel operators to maintain off-bottom trawl operations and limit further bycatch of halibut in the pollock fishery when halibut prohibited species catch limits at §§ 672.20(f) and 675.21(c)(1) prohibit directed fishing for pollock by vessels using non-pelagic trawl gear.

A bycatch rate standard of 30 kg halibut/mt of groundfish is established for the BSAI "other trawl" fishery. This standard has remained unchanged since 1992. A bycatch rate standard of 40 kg halibut/mt of groundfish is established for the GOA "other trawl" fishery, which is unchanged from 1994.

The bycatch rate standards recommended for the GOA and BSAI "other trawl" fisheries are intended to simplify the GOA and BSAI incentive program by specifying a single bycatch rate standard for the trawl fisheries that are not assigned fishery-specific bycatch rate standards, while maintaining the objective of the incentive program to reduce overall halibut bycatch rates. Observer data collected from the 1994 GOA "other trawl" fishery show average third and fourth quarter halibut bycatch rates of 26 and 44 kg halibut/mt of groundfish, respectively. The first quarter rate from 1995 was lower, at 15 kg halibut/mt of groundfish, although the second quarter rate increased to 59 kg halibut/mt of groundfish. Observer data collected from the 1994 BSAI "other trawl" fishery show third and fourth quarter halibut bycatch rates of 3 and 4 kg halibut/mt of groundfish, respectively. The first and second quarter rates from the 1995 BSAI "other trawl" fishery were 11 and 14 kg halibut/mt of groundfish, respectively.

Generally, the average bycatch rates experienced by vessels participating in the GOA and BSAI "other trawl" fisheries are lower than the bycatch rate standards for these fisheries set out in Table 1. However, the Regional Director has determined that the halibut bycatch rate standards for the "other trawl" fisheries will continue to provide an incentive to vessel operators to avoid unusually high bycatch rates while participating in these fisheries and contribute towards an overall reduction in halibut bycatch rates experienced in the Alaska trawl fisheries.

Bycatch Rate Standards for Red King Crab

The red king crab bycatch rate standard for the yellowfin sole and "other trawl" fisheries in Zone 1 of the Bering Sea subarea is 2.5 crab/mt of groundfish during the second half of 1995. This standard remains unchanged since 1992.

Fishing for groundfish in Zone 1 is expected to be limited during the second half of 1995 because of fishery closures. Directed fishing for yellowfin sole in Zone 1 by vessels using trawl gear is closed for the remainder of 1995, because the Zone 1 *C. bairdi* Tanner crab bycatch allowance specified for this fishery has been reached (60 FR 17653, April 7, 1995). Directed fishing in Zone 1 for most groundfish species included in the "other trawl" fishery (defined at § 675.26(b)(4)) is closed for the remainder of 1995 because of halibut, red king crab, or *C. bairdi* Tanner crab bycatch restrictions (rockfish, Greenland turbot, sablefish, arrowtooth flounder (60 FR 8479, February 14, 1995); and Pacific cod (60 FR 15521, March 24, 1995)). Fishing in Zone 1 for rock sole, flathead sole, and "other flatfish" could occur after July 1 when the remaining portion of the halibut bycatch mortality limit apportioned to these fisheries becomes available. However, the 1995 halibut and *C. bairdi* bycatch allowances specified for these flatfish fisheries (60 FR 8479, February 14, 1995) likely will limit directed fishing in Zone 1 before the 1995 red king crab bycatch allowance specified for these fisheries is reached. Through late April 1995, the rock sole, flathead sole, and "other flatfish" fisheries have taken 85 percent and 71 percent of the halibut and *C. bairdi* bycatch allowances, respectively, specified for these fisheries for 1995, whereas only 19 percent of the red king crab bycatch allowance specified for these fisheries has been taken.

Given that Zone 1 has been closed to most fisheries during the second half of the year since 1992, limited data exist on which to base a red king crab bycatch rate standard for the second half of the year. Since 1992, average quarterly bycatch rates have ranged from 2.39 red king crab/mt groundfish to near zero. Although the red king crab bycatch rate standard set out in Table 1 is higher than the highest average quarterly bycatch rate since 1992, the Regional Director maintained the 2.5 red king crab/mt of groundfish bycatch rate standard to support any exploratory fishing in Zone 1 by vessel operators attempting to avoid relatively high halibut and *C. bairdi* bycatch rates typically experienced in other areas of the BSAI.

The Regional Director has determined that the bycatch rate standards set out in Table 1 are appropriately based on the information and considerations necessary for such determinations under §§ 672.26(c) and 675.26(c). These bycatch rate standards may be revised and published in the **Federal Register** when deemed appropriate by the Regional Director, pending his consideration of the information set forth at §§ 672.26(c)(2)(v) and 675.26(c)(2)(v).

Classification

This action is taken under 50 CFR 672.26 and 675.26 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 17, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–12616 Filed 5–23–95; 8:45 am]

BILLING CODE 3510–22–W

Proposed Rules

Federal Register
Vol. 60, No. 100
Wednesday, May 24, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 300 and 319

[Docket No. 94–114–1]

Importation of Fruits and Vegetables

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to allow a number of previously prohibited fruits and vegetables to be imported into the United States from certain parts of the world. All of the fruits and vegetables, as a condition of entry, would be subject to inspection, disinfection, or both, at the port of first arrival as may be required by a U.S. Department of Agriculture inspector. In addition, some of the fruits and vegetables would be required to undergo prescribed treatments for fruit flies or other injurious insects as a condition of entry, or to meet other special conditions. This proposed action would provide the United States with additional kinds and sources of fruits and vegetables while continuing to provide protection against the introduction and dissemination of injurious plant pests by imported fruits and vegetables.

DATES: Consideration will be given only to comments received on or before June 23, 1995.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 94–114–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 94–114–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Frank E. Cooper or Mr. Peter Grosser, Senior Operations Officers, Port Operations, PPQ, APHIS, Suite 4A03, 4700 River Road Unit 139, Riverdale, MD 20737–1236; (301) 734–8645.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR 319.56 through 319.56–8 (referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of injurious insects that are new to or not widely distributed within and throughout the United States.

We are proposing to amend the regulations to allow additional fruits and vegetables to be imported into the United States from certain parts of the world under specified conditions. The importation of these fruits and vegetables has been prohibited because of the risk that the fruits and vegetables could introduce injurious insects into the United States. We are proposing to allow these importations at the request of various importers and foreign ministries of agriculture, and after conducting pest risk analyses [1] that indicate the fruits or vegetables can be imported under certain conditions without significant pest risk.

All of the fruits and vegetables included in this document would be subject to the requirements in § 319.56–6 of the regulations. Section 319.56–6 provides, among other things, that all imported fruits and vegetables, as a condition of entry, shall be subject to inspection, disinfection, or both, at the port of first arrival, as may be required by a U.S. Department of Agriculture (USDA) inspector to detect and eliminate plant pests. Section 319.56–6 also provides that any shipment of fruits and vegetables may be refused entry if the shipment is infested with fruit flies or other dangerous plant pests and an inspector determines that it cannot be cleaned by disinfection or treatment.

Some of the fruits and vegetables proposed for importation would be required to undergo prescribed treatments for fruit flies or other insect pests as a condition of entry, or to meet other special conditions. The proposed conditions of entry, which are discussed in greater detail below, appear adequate to prevent the introduction and dissemination of injurious plant pests by the importation of fruits and vegetables from certain foreign countries and localities into the United States.

Subject to Inspection and Treatment Upon Arrival

We are proposing to allow the following fruits and vegetables to be imported into the United States from the country or locality indicated in accordance with § 319.56–6 and all other applicable requirements of the regulations:

Country/Locality	Common name	Botanical name	Plant part(s)
Ecuador	Basil	*Ocimum spp.*	Above ground parts.
El Salvador	Basil	*Ocimum spp.*	Above ground parts.
Israel	Chives	*Allium schoenoprasum*	Leaf.
	Dill.	*Anethum graveolens.*	Above ground parts.
Jamaica	Pak choi	*Brassica chinensis*	Leaf and stem.
Netherlands	Radish	*Raphanus sativus*	Root.
New Zealand	Oca	*Oxalis tuberosa*	Tuber.

[1] Information on these pest risk analyses and any other pest risk analysis referred to in this document may be obtained by writing to the persons listed under FOR FURTHER INFORMATION CONTACT.

Pest risk analyses conducted by the Animal and Plant Health Inspection Service (APHIS) have shown that the fruits and vegetables listed above are not attacked by fruit flies or other injurious plant pests, either because they are not hosts to the pests or because the pests are not present in the country or locality of origin. In addition, we have determined that any other injurious plant pests that might be carried by any of the listed fruits or vegetables would be readily detectable by a USDA inspector. Therefore, the provisions in § 319.56–6 concerning inspection, disinfection, or both, at the port of first arrival, appear adequate to prevent the introduction into the United States of injurious plant pests by the importation of these fruits and vegetables.

Subject to Inspection and Treatment Upon Arrival; Additional Conditions

In addition to the fruits and vegetables listed above, we are proposing to allow the following fruits and vegetables to be imported into the United States from the country or locality indicated in accordance with § 319.56–6 and all other applicable requirements of the regulations, and subject to the additional prescribed conditions explained below.

Papaya from Belize. We are proposing to allow papaya (fruit, *Carica papaya*) from Belize to be imported into the United States without treatment for the Mediterranean fruit fly (Medfly) if the fruit is grown in one of the designated Medfly-free districts of Belize. Belize has conducted a national Medfly trapping program for more than 6 years with the cooperation and monitoring of APHIS.[2] An intensive, ongoing trapping program in the districts of Cayo, Corozal, and Orange Walk has established that those districts are free from Medfly. Therefore, we are proposing to allow papayas to be imported from these three districts without treatment for Medfly if the papayas are accompanied by a phytosanitary certificate issued by the Belizean Department of Agriculture stating that the fruit originated in the district of Cayo, Corozal, or Orange Walk.

Because there are approved treatments for Medfly that can be used on papaya, we would also allow papaya grown in Belize outside the Medfly-free areas to be imported into the United States, provided the fruit is treated for Medfly as described below under "Treatment Required."

With or without treatment, however, the entry of the papaya into Hawaii—where most domestically grown papayas are produced—would be prohibited as a precaution against the possible introduction of *Toxotrypana curvicauda*. Accordingly, the cartons in which the papaya are packed would have to be stamped "Not for importation into or distribution in HI."

Pest risk analyses conducted by APHIS have determined that any other injurious plant pests that might be carried by the papaya would be readily detectable by a USDA inspector. Therefore, the provisions in § 319.56 and all other applicable requirements of the regulations and the additional special conditions appear adequate to prevent the introduction into the United States of injurious plant pests by the importation of papaya from Belize.

Cantaloupe from Brazil. We are proposing to allow the importation of cantaloupe (fruit, *Cucumis melo*) from Brazil under the same conditions currently imposed on the importation of honeydew melons from Brazil (7 CFR 319.56–2aa). Cantaloupe, like honeydew melon, is a recorded host of the South American cucurbit fly, and we believe that the multiple safeguards applied to the importation of honeydew melon from Brazil would also be adequate to prevent the introduction of the pest with cantaloupe.

Specifically, the cantaloupe would have to be grown in that area of Brazil considered by APHIS to be free of the South American cucurbit fly. The free area is described in § 319.56–2aa(a). During the last 7 years, Brazil's Ministry of Agriculture, the Departamento de Defenso Sanitaria Vegetal (DDSV), has conducted surveys in and around the free area to establish the absence of infestations of the South American cucurbit fly in the free area. APHIS has determined that the survey methods used by the DDSV are adequate to detect infestations of the pest, and that the requirements enforced by the DDSV to prevent the introduction of the South American cucurbit fly into the free area are at least equivalent to those imposed under 7 CFR chapter III to prevent the introduction into the United States and interstate spread of injurious insects.

The cantaloupe would have to be accompanied by a phytosanitary certificate issued by DDSV that includes a declaration that the fruit was grown in the free area. The cantaloupe would have to be shipped in an enclosed container or vehicle, or under a tarpaulin cover, while in transit from the free area in Brazil to the United States to prevent the fruit from being exposed to insect pests. Finally, shipments of the cantaloupe would have to be labeled in accordance with § 319.56–2(g) of the regulations.

Pest risk analyses conducted by APHIS have determined that any other injurious plant pests that might be carried by the cantaloupe would be readily detectable by a USDA inspector. Therefore, the applicable requirements of the regulations and these special conditions appear adequate to prevent the introduction into the United States of injurious plant pests.

Ya Pears from China. We are proposing to allow Ya variety pears (fruit, *Pyrus bretschneideri*) to be imported into the United States from China under certain conditions designed to prevent the introduction of *Bactrocera dorsalis* and other exotic pests into the United States.

First, we would require that the pears be grown in an APHIS-approved export growing area in Hebei Province by growers registered with the Chinese Ministry of Agriculture. The Ministry of Agriculture would be responsible for conducting field inspections for signs of pest infestation during the growing season. The registered growers would be responsible for following the phytosanitary measures agreed upon by APHIS and the Ministry of Agriculture, including applying pesticides to reduce the pest population and bagging the pears on the trees to reduce the opportunity for insect pests to attack the fruit during the growing season. The bags would have to remain on the pears through the harvest and during their movement to the packing house.

In order to prevent Ya pears intended for export to the United States from being commingled with any other fruit, the packing houses in which the pears would be prepared for exportation to the United States could not be used for other fruit during the pear export season. The packing houses could accept only those pears that were grown in the APHIS-approved growing area and that were still in intact bags. Additionally, the pears would have to be loaded into containers at the packing house and the containers then sealed before movement to the port of export to prevent the fruit from being exposed to insect pests while en route to the port of export. Each shipment of Ya pears would have to be accompanied by a phytosanitary certificate issued by the Chinese Ministry of Agriculture stating that the conditions discussed above have been met.

Finally, we would require that the pears be cold treated for *Bactrocera dorsalis* in accordance with the Plant

[2] Details on APHIS-monitored trapping programs in Belize are available from Operational Support, IS, APHIS, Suite 5A03, 4700 River Road Unit 67, Riverdale, MD 20737–1233.

Protection and Quarantine (PPQ) Treatment Manual, which has been incorporated by reference into the Code of Federal Regulations at 7 CFR 300.1. The prescribed cold treatment would be conducted as follows:

10 days at 0 °C (32 °F) or below;
11 days at 0.55 °C (33 °F) or below;
12 days at 1.1 °C (34 °F) or below; or
14 days at 1.66 °C (35 °F) or below.

We believe that the growing, harvest, shipment, and treatment conditions described above and the other requirements of the regulations would be adequate to prevent the introduction of *Bactrocera dorsalis* and other insect pests into the United States on Ya pears imported from China.

Lettuce from Israel. Under the regulations in § 319.56–2x, lettuce may be imported into the United States from Israel only if treated in accordance with the PPQ Treatment Manual. The treatment—fumigation with methyl bromide—is required because the lettuce may be attacked by leafminers, thrips, and *Sminthuris viridis*. We are proposing to amend the regulations to offer an alternative that would allow lettuce to be imported into the United States from Israel without fumigation.

We would require that the lettuce be grown in insect-proof houses covered with 50-gauge mesh screens, with double self-closing doors and hard walks (no soil) between the beds. The lettuce would have to be grown in growing media that had been sterilized by steam or chemical means. Additionally, the crop would have to be protected with sticky traps and prophylactic sprays approved for lettuce by Israel.

The lettuce would have to be inspected for signs of pest infestation during its active growth phase, with the inspection monitored by a representative of the Israeli Ministry of Agriculture.

After being harvested, the lettuce would have to be packed in insect-proof packing houses. The movement from the growing house to the packing house would have to take place at night and, during the movement, the lettuce would have to be held in plastic containers covered by 50-gauge mesh screens. Inside the insect-proof packing houses, the lettuce would have to be individually packed in transparent plastic bags, then packed in cartons; the cartons would have to be placed on pallets and covered in shrink wrapping. The lettuce would have to be transported to the airport in a closed, refrigerated truck for shipment to the United States.

Finally, each shipment of lettuce would have to be accompanied by a phytosanitary certificate issued by the Israeli Ministry of Agriculture stating that the conditions discussed above have been met. We believe that these multiple levels of pest exclusion measures and the other applicable requirements of the regulations would be adequate to prevent the introduction into the United States of leafminers, thrips, and *Sminthuris viridis* on lettuce imported from Israel.

Treatment Required

Additionally, we are proposing to allow the fruits and vegetables listed below to be imported into the United States. These fruits and vegetables are attacked by the Medfly or other injurious insects, as specified below, in their country or locality of origin. Visual inspection cannot be relied upon to detect these insects. However, the fruits and vegetables listed below can be treated to destroy the Medfly or other injurious insects. Therefore, we propose to allow these fruits and vegetables to be imported into the United States, or specified parts of the United States, only if they have been treated in accordance with the PPQ Treatment Manual.

We would revise the PPQ Treatment Manual to show that treatments are required as follows for the fruits and vegetables listed below:

Country—Common Name, Botanical Name, and Plant Part(s)

Belize

Papaya, *Carica papaya*, Fruit.

All fruit grown outside the districts of Cayo, Corozal, and Orange Walk must be treated for Medfly with high-temperature forced air or vapor heat treatment, as follows:

High-temperature forced air treatment:

The treatment consists of four incremental temperature increases, with each increase in air temperature based on when the internal temperature in the seed cavity is reached as indicated below:

Air temperature	Seed cavity temperature
1. 43 ± 1 °C (109.4 ± 1.8 °F).	41 ± 1.5 °C (105.8 ± 2.7 °F).
2. 45 ± 1 °C (113.0 ± 1.8 °F).	44 ± 1 °C (111.2 ± 1.8 °F).
3. 46.5 ± 1 °C (115.7 ± 1.8 °F).	46 ± 0.76 °C (114.8 ± 1.35 °F).
4. 49 ± 0.5 °C (120.2 ± 0.9 °F).	47.2 °C (117 °F).

Expose fruit in an approved chamber to each air temperature in steps 1 through 4 until the indicated seed cavity temperature is reached. Treatment is complete when the seed cavity temperature reaches 47.2 °C (117 °F). The treated fruit may be hydrocooled immediately with tap water (20 ± 5 °C or 68 ± 9 °F) when 47.2 °C is reached.

Alternative single-stage high-temperature forced air treatment:

Conditioning: To enable the papayas to tolerate the treatment, the fruit may have to be conditioned. Such conditioning is the responsibility of the shipper and at the shipper's risk. Conditioning of the fruit may be considered part of the overall treatment.

Preparation: Insert temperature sensors into the seed cavity with the probe's tip at the approximate center of the fruit. Use a temperature recorder to monitor temperatures. Set the print interval for at least once every 5 minutes. The APHIS-approved operating protocol of the chamber must be inaccessible to the operator. The papayas must be in single layers and put into APHIS-approved trays or lugs or in APHIS-approved and certified bulk bins. Have the trays, lugs, or bins put into the chamber. The chamber for treating the fruit must be airtight. Make sure that there are fans present to circulate the air. If certified bulk bins are used, the direction of the air flow and the protocol for monitoring the fruit's temperature during treatment must be APHIS-certified.

Application: The air temperature during treatment must be sufficient to raise the temperature at the fruit's center to 47.2 °C (117 °F) or higher. Whether the air temperatures are single or multiple staged or ramped is the responsibility of the shipper. Maintain the relative humidity in the chamber as desired by the shipper. If the relative humidity is kept within 40 to 60 percent, though, tests have shown that there will be less damage to the papayas. The papayas must be treated for at least 4 hours. The treatment is complete once the temperature at the fruit's center reaches 47.2 °C (117 °F) or higher. The treated papayas may be hydrocooled immediately by whatever means are deemed appropriate by the shipper. However, if the papayas are hydrocooled with water at a temperature lower than 12.5 °C (54.5 °F), the fruit may be damaged.

Vapor heat treatment:

1. Raise temperature of article by saturated water vapor at 44.4 °C (112 °F) until approximate center of fruit reaches 44.4 °C (112 °F) within a time period designated by the inspector.

2. Hold fruit temperature at 44.4 °C (112 °F) for 8.75 hours, then cool immediately.

(Pretreatment conditioning is optional and is the responsibility of the shipper.)

Entry of the papayas into Hawaii prohibited due to *Toxotrypana curvicauda*.

China

Litchi, *Litchi chinensis*, Fruit.

Cold treatment as follows for *Conopomorpha sinensis* and *Bactrocera dorsalis:*

15 days at 1 °C (33.8 °F) or below, or
18 days at 1.39 °C (34.5 °F) or below.

(Pulp of the fruit must be at or below the indicated temperature at the time treatment begins.)

Entry into Florida prohibited due to litchi rust mite.

India Grape,

Vitis spp., Fruit.

Cold treatment for *Bactrocera dorsalis* and *Eutetranychus orientalis*, followed by fumigation for a complex of insect pests:

Cold treatment as follows:

10 days at 0 °C (32 °F) or below;
11 days at 0.55 °C (33 °F) or below;
12 days at 1.11 °C (34 °F) or below; or
14 days at 1.66 °C (35 °F) or below.

(Pulp of the fruit must be at or below the indicated temperature at the time treatment begins.)

Fumigation as follows:

With methyl bromide at NAP—chamber or tarpaulin:

24 g/m³ (1½ lbs/1000 ft³) for 2 hours at 26.5 °C (80 °F) or above, with minimum gas concentrations of:
19 g (19 oz) at ½ hour after fumigation begins
14 g (14 oz) at 2 hours after fumigation begins; or:

32 g/m³ (2 lbs/1000 ft³) for 2 hours at 21–26 °C (70–79 °F), with minimum gas concentrations of:
26 g (26 oz) at ½ hour after fumigation begins
19 g (19 oz) at 2 hours after fumigation begins; or:

40 g/m³ (2½ lbs/1000 ft³) for 2 hours at 15.5–20.5 °C (60–69 °F), with minimum gas concentrations of:
32 g (32 oz) at ½ hour after fumigation begins
24 g (24 oz) at 2 hours after fumigation begins; or:

48 g/m³ (3 lbs/1000 ft³) for 2 hours at 10–15 °C (50–59 °F), with minimum gas concentrations of:
38 g (38 oz) at ½ hour after fumigation begins
29 g (29 oz) at 2 hours after fumigation begins; or:

64 g/m³ (4 lbs/1000 ft³) for 2 hours at 4.5–9.5 °C (40–49 °F), with minimum gas concentrations of:
48 g (48 oz) at ½ hour after fumigation begins
38 g (38 oz) at 2 hours after fumigation begins

(Fruit must be at the indicated temperature at start of fumigation.)

Litchi, *Litchi chinensis*, Fruit.

Cold treatment for *Conopomorpha sinensis* and *Bactrocera dorsalis* as set forth above for litchi from China.

Entry into Florida prohibited due to litchi rust mite.

Zimbabwe

Apricot, *Prunus armeniaca*, Fruit.

Cold treatment for Medfly, *Pterandrus rosa*, and *Cryptophlebia leucotreta* as follows:

22 days at −0.55 °C (31 °F) or below.

(If the temperature exceeds −0.27 °C (31.5 °F), the treatment shall be extended one-third of a day for each day or part of a day that the temperature is above −0.27 °C. If the temperature exceeds 1.11 °C (34 °F) at any time, the treatment is nullified.

Nectarine, *Prunus persica*, Fruit.

Cold treatment for Medfly, *Pterandrus rosa*, and *Cryptophlebia leucotreta* as set forth above for apricot from Zimbabwe.

Peach, *Prunus persica*, Fruit.

Cold treatment for Medfly, *Pterandrus rosa*, and *Cryptophlebia leucotreta* as set forth above for apricot from Zimbabwe.

Plum, *Prunus domestica*, Fruit.

Cold treatment for Medfly, *Pterandrus rosa*, and *Cryptophlebia leucotreta* as set forth above for apricot from Zimbabwe.

The treatments described above have been determined to be effective against the specified insects. This determination is based on research evaluated and approved by the Department. A bibliography and additional information on this research may be obtained from the Hoboken Methods Development Center, PPQ, APHIS, USDA, 209 River Street, Hoboken, NJ 07030.

In accordance with § 319.56–2x(b) of the regulations, those fruits and vegetables listed above that would require treatment for fruit flies would be restricted to ports of arrival at Wilmington, NC, and the North Atlantic if treatment has not been completed before the fruits and vegetables arrive in the United States. Climatic conditions at Wilmington, NC, and at North Atlantic ports are unsuitable for the fruit flies listed above. Therefore, in the unlikely event that any fruit flies escape before treatment, they will not become established pests in the United States. The designated North Atlantic ports are: Atlantic Ocean ports north of, and including, Baltimore; ports on the Great Lakes and St. Lawrence Seaway; Canadian border ports on the North Dakota border and east of North Dakota; and, for air shipments, Washington, DC (including Baltimore-Washington International and Dulles International airports).

In the case of litchi from China and India, we would prohibit the fruit to be imported into or distributed within Florida because of concerns regarding the potential introduction of the litchi rust mite and the effects such an introduction could have on the Florida litchi industry. Accordingly, the cartons in which the litchi are packed would have to be stamped "Not for importation into or distribution in FL."

Pest risk analyses conducted by APHIS have determined that any other injurious plant pests that might be carried by the fruits and vegetables listed above would be readily detectable by a USDA inspector. As noted, the fruits and vegetables would be subject to inspection, disinfection, or both, at the port of first arrival, in accordance with § 319.56–6. We believe that these requirements and conditions are adequate to prevent the introduction into the United States of injurious plant pests by the importation of these fruits and vegetables.

Use of Methyl Bromide

Methyl bromide is currently in widespread use as a fumigant. It is prescribed as a treatment for grapes from India to be imported into the United States under this proposal. The environmental effects of using methyl bromide, however, are being scrutinized by international, Federal, and State agencies. The U.S. Environmental Protection Agency (EPA), based on its evaluation of data concerning the ozone depletion potential of methyl bromide, published a notice of final rulemaking in the **Federal Register** on December 10, 1993 (58 FR 65018–65082). That rulemaking freezes methyl bromide production at 1991 levels and requires the phasing out of domestic use of methyl bromide by the year 2001. APHIS is studying the effectiveness and environmental acceptability of alternative treatments to prepare for the eventual unavailability of methyl bromide fumigation. Our current proposal assumes the continued availability of methyl bromide for use as a fumigant for at least the next few years.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with 5 U.S.C. 603, we have performed an Initial Regulatory Flexibility Analysis, which is set out below, regarding the impact of this proposed rule on small entities. However, we do not currently have all the data necessary for a comprehensive analysis of the effects of this rule on small entities. Therefore, we are inviting comments concerning potential effects. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from implementation of this proposed rule.

Under the Plant Quarantine Act and the Federal Plant Pest Act (7 U.S.C. 150dd, 150ee, 150ff, 151–167), the Secretary of Agriculture is authorized to regulate the importation of fruits and vegetables to prevent the introduction of injurious plant pests.

This proposed rule would amend the regulations governing the importation of fruits and vegetables by allowing a number of previously prohibited fruits and vegetables to be imported into the United States from certain foreign countries and localities under specified conditions. The importation of these fruits and vegetables has been prohibited because of the risk that they could introduce injurious plant pests into the United States. This proposed rule would revise the status of certain commodities from certain countries and localities, allowing their importation into the United States for the first time.

Our proposed changes are based on pest risk analyses that were conducted by APHIS at the request of various importers and foreign ministries of agriculture. The pest risk analyses indicate that the fruits or vegetables listed in this proposed rule could, under certain conditions, be imported into the United States without significant pest risk. All of the fruits and vegetables, as a condition of entry, would be subject to inspection, disinfection, or both, at the port of first arrival as may be required by a USDA inspector. In

addition, some of the fruits and vegetables in this proposal also would be required to undergo mandatory treatment for fruit flies or other injurious insects as a condition of entry, or to meet other special conditions. Our proposed action would provide the United States with additional kinds and sources of fruits and vegetables while continuing to provide protection against the introduction into the United States of injurious plant pests by imported fruits and vegetables.

Papayas From Belize

The United States produced 71.3 million pounds of papayas in 1993. Papayas are produced commercially on approximately 300 farms, the majority of which are in Hawaii. Nearly 65 percent of those farms are owned by individuals whose major occupation is not farming, while the balance are operated by individuals whose major occupation is farming. All of the farms are considered to be small entities according to Small Business Administration (SBA) size standards.

The United States imported 31.3 million pounds of papayas, valued at $8,883,000, in 1993. Most of the imported papayas came from Mexico (66.6 percent), Jamaica (14.4 percent), and Belize (13.7 percent). The United States exported 16.7 million pounds of fresh papayas, worth $14,245,000, in 1993. The major importers were Japan (73.4 percent) and Canada (24.6 percent). Almost all exports of domestically grown papayas are from Hawaii, while all imports of foreign-origin papayas come into the continental United States.

The total annual production of papayas in Belize is approximately 4.5 million pounds. Its current exports account for about 4.2 million pounds. The additional amount expected to be exported to the United States would be approximately 300,000 pounds of fresh papayas. Even if all the available supply were exported to the United States, it would increase the U.S. supply of papayas by only about 0.34 percent. A 0.34 percent increase in supply is unlikely to have any impact on prices or on producers or consumers.

Cantaloupes From Brazil

The United States produced about 1,910 million pounds of cantaloupes, with a total value of $310 million, in 1993. Cantaloupes are produced commercially on about 7,500 farms, nearly 97 percent of which are considered to be small entities, according to SBA size standards. The United States is a net importer of cantaloupes. Imports totalled approximately 458 million pounds of cantaloupes. The major sources of imported cantaloupes include Mexico (32.8 percent), Honduras (26 percent), Costa Rica (17.5 percent), Guatemala (16 percent), and the Dominican Republic (2.8 percent). There were 116 million pounds of cantaloupes exported from the United States in 1993, of which nearly 95 percent went to Canada, while about 4 percent went to Mexico.

The commercial production of cantaloupe is in the infant stage in Brazil. Most of the Brazilian production is concentrated in the states of Rio Grande do Norte and São Paulo. Production occurs mainly during the months of October through March, while U.S. production occurs during the months of May through September. Thus, any export from Brazil would be supplementary to, rather than competitive with, the U.S. supply. Total production of cantaloupes in Brazil was about 5,000 metric tons, or 11 million pounds, in 1994. Currently all cantaloupe production in Brazil is for domestic consumption. However, even if all Brazilian production were to be exported to the United States, the U.S. cantaloupe supply would increase by less than 0.5 percent. Because this proposed rule would allow the importation of cantaloupe from only part of Brazil—that area considered by APHIS to be free of the South American cucurbit fly—any increase in the U.S. cantaloupe supply would be even smaller. Such an increase would not be expected to impact U.S. producer prices.

Ya Pear From Peoples Republic of China

The United States produced 860,000 metric tons (1,895 million pounds) of pears in 1993. The United States is a net exporter of pears, having exported 244 million pounds and imported 143 million pounds in 1993. Most of the pears imported into the United States came from Chile (57.3 percent), Argentina (30.4 percent), South Africa (6.1 percent), and New Zealand (3.9 percent). The main importers of U.S. pears are Canada (32.9 percent) and Mexico (34.9 percent), with the remaining quantities distributed among 45 destinations. There are approximately 9,800 farms producing pears in the United States, about 98 percent of which are considered to be small entities, according to SBA size standards.

China produced about 30,000 metric tons (or 66 million pounds) of Ya pears in 1993. It exported about 5,700 metric tons (or 12,562,800 pounds). Exports are to several countries in Europe, the Middle East, and Southeast Asia. The Ya pears that would be imported from the Peoples Republic of China are of a different variety than pears produced in the United States; because they are considered to be different products, they are not expected to be competitive with domestically grown pears.

Litchi From Peoples Republic of China

The U.S. produced about 700,000 pounds of Litchi in 1993. There are 205 farms that produced litchi, most of which are considered to be small entities according to SBA criteria.

China produced approximately 27,000 metric tons (or 59.5 million pounds) of litchi in 1994, exporting about 25 percent (about 15 million pounds) of its production. Most of China's litchi exports went to several countries in Western Europe, the Middle East, and Southeast Asia, as well as to Canada. What proportion of China's domestic litchi production would be exported to the United States is not clear. In the event that a significant proportion of China's production is exported to the United States, U.S. producers would most likely be negatively impacted in the short run, since the increased supply would drive the market price of litchi down. U.S. consumers, on the other hand, would benefit from the lower price as well as the increased choice. In the long run, as a result of foreign competition in the U.S. litchi market, more competitive and cost-effective producers may emerge. Lower prices could also result in an increased demand for litchi. Which of these effects would outweigh the other cannot be stated definitely.

Basil From Ecuador and El Salvador

The United States imported 5,397,091 pounds of fresh or dried basil in 1993 (the ratio of fresh to dried cannot be ascertained). The major sources of import were Egypt (77.7 percent), Mexico (16.1 percent), France (2.2 percent), and Taiwan (1.2 percent). No information was obtained on potential production and imports of basil from Ecuador and El Salvador.

Grapes From India

Total domestic grape production in 1993 was 5,466,606 metric tons (or 12,048 million pounds). There are approximately 21,843 producers of grapes in the United States, about 97 percent of which are considered to be small entities, according to SBA size standards. The United States imported 708,712,000 pounds of grapes in 1993, with most imports occurring between the months of December and April. Grape imports to the United States originate mainly from Chile, which accounted for 88.6 percent of the imports. Mexico is a distant second with 11 percent of the imports. The United States exported 449,331,000 pounds of grapes in 1993, with most exports occurring between the months of August and November. Canada receives approximately 62 percent of U.S. exports, while the remaining destinations are highly varied.

At present, India produces about 426,000 (1990–1992 average) metric tons (or 939 million pounds) of grapes and exports approximately 4,000 metric tons (or 8.8 million pounds). Most of these exports go to Europe. In the unlikely event that India's grape exports were all directed to the United States, they would represent less than 0.08 percent of domestic production. This amount would not have a significant impact upon U.S. market supply. Both producer prices and consumer prices would likely be unaffected by the actual grape import from India.

Pak Choi From Jamaica

There is no published data on the U.S. production of pak choi and no record of trade. Jamaica's current production of pak choi is estimated to be 3,825 metric tons (8.43 million pounds). Most production takes place between January and April. Although the exact amount that would be shipped to the United States is not known, approximately 50–75 percent of total production is expected to be exported to the United States. This is expected to expand the variety of choices available to vegetable consumers.

Chives from Israel

Israel produces approximately 100 metric tons of chives. Production takes place mainly from October to the end of March. Currently about 95 percent of production is exported to Europe. It is expected about 20 to 40 metric tons to be exported to the United States. Both producer prices and consumer prices would likely be unaffected by the importation of chives from Israel.

Dill From Israel

The United States imported 1,828,359 pounds of dill in 1993 (trade records do not clearly indicate whether the dill was fresh or dried). The major sources were India (68 percent), Pakistan (13.2 percent), Egypt (10 percent), Sweden (3.2 percent), and Turkey (2.5 percent). The United States is a net importer of dill. Israel produced about 520 metric tons (1,146,000 pounds) of dill in 1994 and exported about 46 metric tons of dill during the same period. Israel expects that it would export about 30 metric tons of dill to the United States within the next 3 to 5 years. Both producer prices and consumer prices would likely be unaffected by the importation of dill from Israel.

Lettuce From Israel

Total U.S. production of head, leaf, and romaine lettuce in 1993 was 3,756,350 metric tons (or 8,279 million pounds). There are approximately 2,660 producers of lettuce in the United States, about 97 percent of which are considered to be small entities according to SBA size standards.

The United States is a net exporter of lettuce. It imported 32,738,000 pounds of lettuce in 1993, mainly from Mexico and Canada, which together accounted for 99.2 percent of the imports. The United States exported 693,354,000 pounds of lettuce in 1993. Canada received approximately 82 percent of those exports, while the remaining destinations were highly varied.

Israel produced about 10 million pounds of insect-free lettuce, which is grown inside insect-proof screenhouses, during 1993. About 10 percent of the production is exported to Europe and the rest is consumed domestically. The amount of lettuce that would be exported to the United States is expected to be about 1,600,000 pounds, which represents less than 0.02 percent of U.S. production. This amount would not have a significant impact upon U.S. market supply. Additionally, the marketing target for this lettuce, both in Israel's domestic market as well as in the export market, is the ultra-orthodox religious community, members of which would not consume lettuce produced in any other way. Importation of this specialty product is not expected to compete with domestic production. Both producer prices and consumer prices would likely be unaffected by the importation of insect-free lettuce from Israel.

Radishes From the Netherlands

The United States produced about 122.4 million pounds of radishes in 1993. Radishes are produced on about 760 farms, all of which are considered to be small entities. The United States is a net importer of radishes and it imported 35,121,976 pounds of fresh and chilled (the proportion of fresh to chilled cannot be ascertained) radishes in 1993. Over 94 percent of these imported radishes came from Mexico and 5.5 percent from Canada.

The Netherlands currently produces about 68 million pounds of radishes. Exports are expected to increase in stages, from 1.1 million pounds in the first year, to 2.2 million pounds during the second year, to about 4.4 million pounds (about 3 percent of U.S. supply) the third year and thereafter. Exports of radishes are expected to be spread equally over a 12-month period, with no significant peak period.

Oca From New Zealand

There is no known commercial production of oca in the United States. Additionally, there is no record of oca imports into the United States. Oca is a specialty crop and only minor production is carried on in New Zealand. Most production occurs between the months of March and October. Annual production is about 110,000 pounds. Current oca exports from New Zealand to the rest of the world equal about 440 pounds. Allowing the importation of oca from New Zealand into the United States would provide additional choice to vegetable consumers.

Apricots, Peaches, Plums, and Nectarines From Zimbabwe

In 1993 the United States produced 87,430 metric tons (192.7 million pounds) of apricots on 3,353 farms; 1,130,00 metric tons (2,490.6 million pounds) of peaches on 19,106 farms; 182,395 metric tons (402 million pounds) of nectarines on 2,488 farms; and 176,710 metric tons (390 million pounds) of plums on 8,006 farms. About 98 percent of these farms are considered to be small entities according to SBA size standards.

The United States is a net exporter of all four of these commodities. Imports of these four commodities into the United States are largely from Chile, while most of the U.S. exports are destined for Canada, Mexico, Taiwan, Hong Kong, and the United Kingdom. Although relevant volume data is not available, the addition of Zimbabwe as a new trading partner in apricots, peaches, plums, and nectarines is unlikely to shift the favorable balance of trade that the United States currently enjoys for these four commodities.

Summary

The United States produces large amounts of grapes, cantaloupes, pears, papayas and radishes. The proposed importations of these and other listed commodities would likely increase supply. However, since potential imports would represent a very small proportion of the total domestic production of each product, no significant negative impact on U.S. producers is expected from such importations. Although increased supply generally results in lower prices, no information is currently available

about the magnitude of price responses to changes in supply. Overall, the benefits to consumers of any resulting price decline would likely outweigh the small losses to producers. Additionally, importation of oca and pak choi would increase the availability of new products. Both oca and pak choi have a limited market and are unlikely to compete with other products. Similarly, the Ya pears and cantaloupes proposed for importation are also unlikely to compete with other products. Ya pears are of different variety than any domestically produced pear, while cantaloupes from Brazil would be imported during the off season for U.S. cantaloupes. Other products such as basil and dill are very minor products. Some of these products are grown to supplement other farm income.

The aggregate economic impact of this proposed rule is expected to be positive. U.S. consumers would benefit from a greater availability of fruits and vegetables. U.S. importers would also benefit from a greater availability of fruits and vegetables to import.

The alternative to this proposed rule was to make no changes in the fruits and vegetables regulations. After consideration, we rejected this alternative since there was no pest risk reason to maintain the prohibitions on the affected produce.

This proposed rule contains no paperwork or recordkeeping requirements.

Executive Order 12778

This proposed rule would allow certain fruits and vegetables to be imported into the United States from certain parts of the world. If this proposed rule is adopted, State and local laws and regulations regarding the importation of fruits and vegetables under this rule would be preempted while the fruits and vegetables are in foreign commerce. Fresh fruits and vegetables are generally imported for immediate distribution and sale to the consuming public, and would remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. If this proposed rule is adopted, no retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this proposed rule. The assessment provides a basis for the conclusion that the importation of fruits and vegetables under the conditions specified in this proposed rule would not present a significant risk of introducing or disseminating plant pests and would not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 et seq.), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. In addition, copies may be obtained by writing to the individuals listed under **FOR FURTHER INFORMATION CONTACT.**

Paperwork Reduction Act

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

List of Subjects

7 CFR Part 300

Incorporation by reference, Plant diseases and pests, Quarantine.

7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Incorporation by reference, Nursery Stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, title 7, chapter III, of the Code of Federal Regulations would be amended as follows:

PART 300—INCORPORATION BY REFERENCE

1. The authority citation for part 300 would continue to read as follows:

Authority: 7 U.S.C. 150ee, 154, 161, 162, 167; 7 CFR 2.17, 2.51, and 371.2(c).

2. In § 300.1, paragraph (a) would be revised to read as follows:

§ 300.1 Materials incorporated by reference.

(a) The Plant Protection and Quarantine Treatment Manual, which was reprinted on November 30, 1992, and includes all revisions through _____ 1995, has been approved for incorporation by reference in 7 CFR chapter III by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

* * * * *

PART 319—FOREIGN QUARANTINE NOTICES

3. The authority citation for part 319 would continue to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167, and 450; 21 U.S.C. 136 and 136a; 7 CFR 2.17, 2.51, and 371.2(c).

4. In § 319.56–2t, the table would be amended by adding, in alphabetical order, the following:

§ 319.56–2t Administrative instructions: conditions governing the entry of certain fruits and vegetables.

* * * * *

Country/Locality	Common name	Botanical name	Plant part(s)
Belize			
	Papaya	*Carica papaya*	Fruit (Must be accompanied by a phytosanitary certificate issued by the Belizean department of agriculture stating that the fruit originated in the district of Cayo, Corozal, or Orange Walk. Papayas from other districts enterable only with treatment—see § 319.56–2x). Prohibited entry into Hawaii due to *Toxotrypana curvicauda*. Cartons in which fruit is packed must be stamped "Not for importation into or distribution within HI."
Ecuador			
	Basil	*Ocimum* spp	Above ground parts.
El Salvador	Basil	*Ocimum* spp	Above ground parts.
Israel			
	Chives	*Allium schoenoprasum.*	Leaf.
	Dill	*Anethum graveolens.*	Above ground parts.
Jamaica			
	Pak choi	*Brassica chinensis*	Leaf and stem.
Netherlands New Zealand	Radish	*Raphanus sativus*	Root.
	Oca	*Oxalis tuberosa*	Tuber.

5. In § 319.56–2u, the section heading and would be revised and paragraph (a) would be added to read as follows:

§ 319.56–2u Conditions governing the entry of lettuce and peppers from Israel.

(a) Lettuce may be imported into the United States from Israel without fumigation for leafminers, thrips, and *Sminthuris viridis* only under the following conditions:

(1) *Growing conditions.* (i) The lettuce must be grown in insect-proof houses covered with 50 mesh screens, double self-closing doors, and hard walks (no soil) between the beds;

(ii) The lettuce must be grown in growing media that has been sterilized by steam or chemical means;

(iii) The lettuce must be inspected during its active growth phase and the inspection must be monitored by a representative of the Israeli Ministry of Agriculture;

(iv) The crop must be protected with sticky traps and prophylactic sprays approved for the crop by Israel;

(v) The lettuce must be moved to an insect-proof packing house at night in plastic containers covered by 50 mesh screens;

(vi) The lettuce must be packed in an insect-proof packing house, individually packed in transparent plastic bags, packed in cartons, placed on pallets, and then covered with shrink wrapping; and

(vii) The lettuce must be transported to the airport in a closed refrigerated truck for shipment to the United States.

(2) Each shipment of lettuce must be accompanied by a phytosanitary certificate issued by the Israeli Ministry of Agriculture stating that the conditions of paragraph (a)(1) of this section have been met.

* * * * *

6. In § 319.56–2x, paragraph (a) would be amended as follows:

a. In the table, in the entry for Israel, the entry for lettuce would be amended in the fourth column under the heading *Plant part(s)* by adding the words "(Treatment for leafminers, thrips, and *Sminthuris viridis* not required if the

lettuce is imported in accordance with § 319.56–2u(a))" after the word "Leaf".

b. The table would be amended by adding, in alphabetical order, the following:

**§ 319.56–2x Administrative instructions; conditions governing the entry of certain fruits and vegetables for which treatment is required. (a) * * *

Country/Locality	Common name	Botanical name	Plant part(s)
Belize	Papaya	*Carica papaya*	Fruit (Treatment for Medfly not required for fruit grown in the districts of Cayo, Corozal, and Orange Walk - see § 319.56–2t). Papayas prohibited entry into Hawaii due to *Toxotrypana curvicauda*. Cartons in which fruit is packed must be stamped "Not for importation into or distribution in HI".
China	Litchi	*Litchi chinensis*	Fruit (Prohibited entry into Florida due to litchi rust mite. Cartons in which litchi are packed must be stamped "Not for importation into or distribution in FL").
India	Grapes	*Vitis* spp	Fruit.
	Litchi	*Litchi chinensis*	Fruit (Prohibited entry into Florida due to litchi rust mite. Cartons in which litchi are packed must be stamped "Not for importation into or distribution in FL").
Zimbabwe			
	Apricot	*Prunus armeniaca*	Fruit.
	Nectarine	*Prunus persica*	Fruit.
	Peach	*Prunus persica*	Fruit.
	Plum	*Prunus domestica*	Fruit.

§ 319.56–2aa [Amended]

7. In § 319.56–2aa, the section heading and the introductory text of the section would be amended by adding the words "and cantaloupe" after the word "melons"; paragraph (a) would be amended by adding the words "or cantaloupe" after the word "melons" in the first sentence and both times it appears in the second sentence; paragraph (b) would be amended by adding the words "or cantaloupe" after the word "melons"; and paragraph (c) would be amended by adding the words "or cantaloupe" after the word "melons".

8. A new § 319.56–2ee would be added to read as follows:

§ 319.56–2ee Administrative instructions: conditions governing the entry of Ya variety pears from China.

Ya variety pears may be imported into the United States from China only under the following conditions:

(a) *Growing and harvest conditions.* (1) The pears must have been grown by growers registered with the Chinese Ministry of Agriculture in an APHIS-approved export growing area in Hebei Province.

(2) Field inspections for signs of pest infestation must be conducted by the Chinese Ministry of Agriculture during the growing season.

(3) The registered growers shall be responsible for following the phytosanitary measures agreed upon by APHIS and the Chinese Ministry of Agriculture, including applying pesticides to reduce the pest population and bagging the pears on the trees to reduce the opportunity for pests to attack the fruit during the growing season. The bags must remain on the pears through the harvest and during their movement to the packing house.

(4) The packing houses in which the pears are prepared for exportation shall not be used for any fruit other than Ya variety pears from registered growers during the pear export season. The packing houses shall accept only those pears that are in intact bags as required by paragraph (a)(3) of this section. The pears must be loaded into containers at the packing house and the containers then sealed before movement to the port of export.

(b) *Treatment.* The pears must be cold treated for *Bactrocera dorsalis* in accordance with the Plant Protection and Quarantine Treatment Manual, which is incorporated by reference at § 300.1 of this chapter.

(c) Each shipment of pears must be accompanied by a phytosanitary certificate issued by the Chinese Ministry of Agriculture stating that the conditions of paragraphs (a) and (b) of this section have been met.

Done in Washington, DC, this 18th day of May 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–12748 Filed 5–23–95; 8:45 am]

BILLING CODE 3410–34–P

7 CFR Part 354

[Docket No. 94–074–1]

RIN 0579–AA68

User Fees—Commercial Aircraft and Vessels; Phytosanitary Certificates

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the user fee regulations by lowering the fees charged for certain agricultural quarantine and inspection services we provide in connection with the arrival of an international commercial aircraft at a port in the customs territory of the United States. We are also proposing to amend the user fee regulations by raising the fees charged for export certification of plants and plant products. We have determined, based on a review of our user fees, that the fees must be adjusted to reflect the actual cost of providing these services. In addition, we are proposing to amend the user fee regulations to clarify the exemption for certain vessels which sail only between the United States and Canada.

DATES: Consideration will be given only to comments received on or before June 23, 1995.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 94–074–1, Regulatory Analysis and Development, PPD, APHIS, suite 3CO3, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 94–074–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: For information concerning program operations, contact Mr. Don Thompson, Staff Officer, Port Operations, PPQ, APHIS, 4700 River Road Unit 136, Riverdale, MD 20737–1236, (301) 734–8295.

For information concerning rate development, contact Ms. Donna Ford, PPQ User Fees Section Head, FSSB; BAD, APHIS, 4700 River Road Unit 54, Riverdale, MD 20737–1232, (301) 734–5901.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR 354.3 (referred to below as the "regulations") contain provisions for the collection of user fees for certain international services provided by the Animal and Plant Health Inspection Service (APHIS). In this docket we are proposing to amend 2 user fees: (1) The user fee for servicing international commercial aircraft arriving at ports in the customs territory of the United States; and (2) the user fee for certifying plants and plant products for export. We are also proposing to clarify the exemption from user fees which applies to certain vessels which sail only between the United States and Canada. Each amendment is discussed separately below.

International Commercial Aircraft

One service our user fees cover is the cost of agricultural quarantine and inspection (AQI) services provided by APHIS in connection with the arrival of an international commercial aircraft at a port in the customs territory of the United States. (The customs territory of the United States is defined in the regulations as the 50 States, the District of Columbia, and Puerto Rico.)

The current user fee for international commercial aircraft became effective on January 1, 1993, following the publication of an interim rule in the **Federal Register** on December 31, 1992 (Docket No. 92–148–1, 57 FR 62468–62473). At that time the fee was set at $61.00. This fee was later affirmed in a document published in the **Federal Register** on November 9, 1993 (Docket No. 92–148–2, 58 FR 59354–59356).

As we have stated in previous proposed and final regulations, we intend to monitor our user fees and review them at least annually to determine whether the fees should be adjusted. After reviewing the fees that were collected in FY 1993 and FY 1994 and calculating our cost and revenue projections for FY 1995, we have determined that the fee for international commercial aircraft needs to be lowered from $61.00 to $53.00 for each arrival. This is necessary to avoid collecting more revenue than needed to cover the costs of the services we provide.

Calculation of User Fees for Commercial Aircraft

To calculate the adjusted user fees for commercial aircraft, we determined the total projected cost of providing AQI services in FY 1995 for international commercial aircraft. The cost of providing these services in FY 1993 and FY 1994 served as a basis for calculating our projected FY 1995 costs. It is important to note that each year in the budget process, Congress limits or specifies how much APHIS can withdraw from the AQI User Fee Account. For FY 1993, APHIS was authorized to spend $83.3 million. For FY 1994 we were authorized to spend $91.6 million, plus $6.9 million to cover additional AQI program needs.

In FY 1992, APHIS established accounting procedures to segregate AQI user fee program costs. We published a detailed description of these procedures in the **Federal Register** on December 31, 1992 (57 FR 62469–62471), as part of a document (Docket No. 92–148–1) amending some of our user fees.

As part of our accounting procedures, we established distinct accounting codes to record costs that can be directly related to each inspection activity. At the State level and below, the following costs are direct-charged to the AQI User Fee Account: Salaries and benefits for inspectors and canine officers, supervisors (such as officers-in-charge) and clerical staff, user-fee-specific equipment, contracts, and large supply items such as x-ray equipment or uniforms.

Other costs that cannot be directly charged to individual accounts are charged to "distributable" accounts established at the State level. The following types of costs are charged to distributable accounts: utilities, rent, telephone, vehicles, office supplies, etc. The costs in these distributable accounts are prorated (or distributed) among all the activities that benefit from the expense, based on the ratio of the costs that are directly charged to each activity divided by the total costs directly charged to each account at the field level. For example, if a State office performs work on domestic programs, AQI user fee programs, and AQI appropriated programs, the costs are distributed among each program, based on the percentage of the direct costs for that activity at the field level that is charged to that activity. Costs incurred at the regional, headquarters program staff, and agency-level support offices are also prorated to the separate AQI

activities based on the percentage of the costs that were directly charged to each activity at the field level, as discussed above.

Under these accounting procedures, we calculated the total cost of providing AQI services in FY 1993 and FY 1994 by determining the amounts in each direct-charge account, then adding the pro rata share of the distributable accounts maintained at the State, regional, headquarters, and agency levels. In FY 1993, it cost APHIS approximately $13.9 million to provide services to commercial aircraft; in FY 1994 the cost was approximately $17.5 million.

We projected that in FY 1995, it will cost APHIS a total of $18.9 million to provide inspection services for international commercial aircraft. Of this total, $15.7 million is for program delivery costs, which are costs incurred at the State level and below. The total also includes $1.7 million for a pro rata share of the program direction and support costs, as explained above, which include items at the regional and headquarters program staff levels. Finally, the total includes $1.5 million for a pro rata share of agency-level support costs, as discussed above, which include activities that support the entire agency, such as recruitment and development, legislative and public affairs, regulations development, regulatory enforcement, budget and accounting services, and payroll and purchasing services. The exceptions are costs for billing and collection services, legal counsel, and rate development services. These costs are directly related to user fee activities, so these costs are directly added to the user fee activities they support and are not included in the proration of agency-level costs.

For the commercial aircraft user fee, we also have the authority to include an amount that would provide for a reasonable reserve balance in the AQI User Fee Account (referred to below as "the Account"). We defined a "reasonable reserve balance" as equal to 3 months' normal operating expenses. We have now accumulated a reserve balance equal to this amount in the Account for international aircraft. Therefore, the reserve component of this user fee would be eliminated in our proposed fee adjustments.

Volumes

We estimated the annual number of international commercial aircraft that would be subject to inspection. The estimates, which were based on our FY 1993 and FY 1994 collection history, were then used as a basis for projecting activity volumes for FY 1995.

A total of 357,442 commercial aircraft were subject to inspection during FY 1993. During FY 1993, we revised the aircraft clearance fee from $76.75 per arrival to $61.00 per arrival. The decrease became effective for all aircraft arriving in the United States on or after January 1, 1993. To arrive at the FY 1993 volume for aircraft, we divided the first quarter collections (October 1 through December 31, 1992) of $6,187,047.75 by $76.75, the per arrival fee, for a total first quarter volume of 80,613. We divided the 3 remaining quarter collections of $16,886,569.00 by $61.00, the revised per arrival fee, for a volume total of 276,829 for the remainder of the fiscal year. This produced a total FY 1993 volume of 357,442. Our FY 1994, volume projection is 350,293. To arrive at the FY 1994 volume for aircraft, we divided our projected FY 1994 collections of $21,367,873.00 by $61.00, the per arrival fee, for a volume total of 350,293. While the actual volume went down in FY 1994, we do not expect that to happen again in FY 1995. In fact, in FY 1995 we are projecting a modest volume increase of 2 percent. Therefore, we applied a 2 percent increase to the FY 1994 volume of 350,293 to arrive at a projected FY 1995 commercial aircraft volume of 357,299.

Fee Adjustments and Rounding of Fees

In calculating the adjusted user fees, our final step was to divide the sum of the cost of providing service by the projected number of international commercial aircraft subject to inspection, thereby arriving at a "raw" fee.

For the commercial aircraft user fee, the raw fee was $52.99; rounding this fee up to the nearest quarter yields a fee of $53.00. Rounding up ensures that the fee would be easy to calculate and collect. The lower fee of $53.00 would be sufficient to recover the full cost of providing aircraft inspection services, without collecting more revenue than needed to cover the costs of the services provided.

Commercial Vessels

Another AQI service we offer is inspection of commercial vessels of 100 net tons or more. Certain categories of commercial vessels are exempt from paying APHIS user fees under the current regulations. Among those is "any vessel which sails only between United States and Canadian ports" (see current § 354.3(b)(2)(vi)).

The United States Customs Service (Customs), U.S. Department of the Treasury, collects APHIS user fees and remits them to us. Customs has requested that we amend our regulations to make it easier for them to determine which vessels are exempt from our fees.

Under our regulations, certain vessels are exempt from paying APHIS user fees. Customs must determine, when reviewing the paperwork presented for each arriving vessels, which vessels are exempt. In order to ensure that they have the necessary information to make this determination, Customs has requested that we amend § 354.3(b)(2)(vi) of our regulations to require Masters of vessels in the United States-Canada trade arriving from Canada to certify, in the "Remarks" block of the General Declaration, Customs Form 1301, that the vessel has sailed solely between the United States and Canada for the previous 2 years.

The proposed certification would be placed in a document which vessels arriving in the United States are required, under Customs regulations in 19 CFR 4.7, to present to the Customs official on duty at the port of arrival. In addition to helping Customs to more accurately and efficiently collect APHIS user fees, the proposed requirement would also clarify that vessels which "sail only between United States and Canada ports" are vessels which have done so for at least the previous 2 years. The 2-year restriction is necessary to ensure that pests and regulated articles brought on board the vessel at ports outside Canada or the United States no longer pose a pest or disease risk. This requirement is identical to requirements in our regulations concerning the handling and disposal of garbage from places outside the United States (see 7 CFR 330.400 and 9 CFR 95.4).

Phytosanitary Certificates

In addition to AQI services, our user fees also cover the issuance of phytosanitary certificates for the export of plants and plant products. Phytosanitary certificates are issued in accordance with 7 U.S.C. 147a and regulations in 7 CFR part 353. These documents certify agricultural products as being free from plant pests, according to the phytosanitary requirements of the foreign countries to which the plants or plant products may be exported, or to the freedom from exposure to plant pests while in transit through the United States. These certificates must be issued in accordance with 7 CFR part 353 to be accepted in international commerce.

The user fees for some phytosanitary certificates issued by APHIS became effective on March 17, 1993, upon publication of a final rule in the **Federal Register** on March 17, 1993 (Docket 92–088–2, 58 FR 14305–14307). The user fees for other phytosanitary certificates issued by APHIS became effective on February 9, 1992, following the publication of a final rule in the **Federal Register** on January 9, 1992 (Docket No. 91–135, 57 FR 755–773). The fees were set at: (1) $30.00 for a certificate for a commercial shipment; (2) $19.00 for a certificate for certain low-value commercial shipments; (3) $19.00 for a certificate for a non-commercial shipment; (4) $30.00 for a certificate for reexport of a commercial shipment; (5) $19.00 for a certificate for reexport of certain low value commercial shipments; (6) $30.00 for a processed product certificate for a commercial shipment; (7) $6.00 for reissuing any certificate or certificate for reexport (see current 7 CFR 354.3(g)(5)). In addition, there is a $6.00 user fee for processing unissued phytosanitary certificates of all types (see 7 CFR 354.3(h)).

After reviewing the fees for phytosanitary certificates that were collected in FY 1993 and FY 1994 and calculating our cost and revenue projections for FY 1995, we have determined that, for the reasons discussed below, the fees need to be adjusted in order to recover the full cost of providing services. Therefore, we are proposing to raise our user fees for phytosanitary certificates as follows: (1) to $50.00 for a certificate for a commercial shipment; (2) to $23.00 for a certificate for certain low-value commercial shipments; (3) to $23.00 for a certificate for a non-commercial shipment; (4) to $50.00 for a certificate for reexport of a commercial shipment; (5) to $23.00 for a certificate for reexport of certain low value commercial shipments; (6) to $50.00 for a processed product certificate for a commercial shipment; (7) to $7.00 for reissuing any certificate or certificate for reexport. In addition, we are proposing to raise the user fee for processing unissued phytosanitary certificates of all types to $7.00.

Calculation of User Fees for Phytosanitary Certificates

To calculate the adjusted user fees for phytosanitary certificates, we determined the total projected cost of providing phytosanitary certificate services in FY 1995. The cost of providing these services in FY 1993 and FY 1994 served as a basis for calculating our projected FY 1995 costs.

In FY 1992, APHIS established accounting procedures to segregate phytosanitary certificate-related costs. We established distinct accounting codes to record costs that can be directly related to this activity. At the State level and below, the following costs are charged directly to the phytosanitary certificate user fee account: salaries and benefits for inspectors, supervisors (such as officers-in-charge) and clerical staff, user-fee-specific equipment, contracts, and large supply items such as uniforms.

Other costs that cannot be directly charged to individual accounts are charged to "distributable" accounts established at the State level. The following types of costs are charged to distributable accounts: utilities, rent, telephone, vehicles, office supplies, etc. The costs in these distributable accounts are prorated (or distributed) among all the activities that benefit from the expense, based on the ratio of the costs that are directly charged to each activity divided by the total costs directly charged to each account at the field level. For example, if a State office performs work on domestic programs and phytosanitary certificate programs, the costs are distributed among each program, based on the percentage of the direct costs for that activity at the field level that is charged to that activity. Costs incurred at the regional, headquarters program staff, and agency-level support offices are also prorated to the separate phytosanitary certificate-related activities, based on the percentage of the costs that were directly charged to each activity at the field level, as discussed above.

Under these accounting procedures, we calculated the total cost of providing phytosanitary certificate services in FY 1993 and FY 1994 by determining the amounts in each direct-charge account, then adding the pro rata share of the distributable accounts maintained at the State, regional, headquarters, and agency levels. In FY 1993, it cost APHIS approximately $3.5 million to issue phytosanitary certificates, and it cost APHIS approximately $4.1 million in FY 1994. We project our FY 1995 costs to be $4.6 million. Of this total, $3.83 million is for program delivery costs, which are costs incurred at the State level and below. The total also includes $389,000 for a pro rata share of the program direction and support costs, as explained above, which include items at the regional and headquarters program staff levels. Finally, the total includes $384,000 for a pro rata share of agency-level support costs, as discussed above, which include activities that support the entire agency, such as recruitment and development, legislative and public affairs, regulations development, regulatory enforcement, budget and accounting services, and payroll and purchasing services. The exceptions are costs for billing and collection services, legal counsel, and rate development services. These costs are directly related to user fee activities, so these costs are directly added to the user fee activities they support and are not included in the proration of agency-level costs.

To calculate the adjusted user fees for phytosanitary certificates, we determined the total projected cost of issuing phytosanitary certificates in FY 1995, based on our costs to provide these services in FY 1993 and FY 1994.

Under our accounting procedures, we calculated the total cost of issuing phytosanitary certificates in FY 1993 by determining the amount in each direct-charge account, then adding the prorata share of the distributable accounts maintained at the State, regional, headquarters, and agency levels.

We then used a weighted average method to develop the rate for each type of phytosanitary certificate. The average time to complete each type of certificate was calculated. Each type of phytosanitary certificate fee was assigned a weighted value. This was done by comparing the time value for each certificate type relative to the time value for commercial certificates. The time value of commercial certificates was 2.45. This was weighted 1.00 (2.45/2.45). Non-commercial certificates were given a value of 0.46 (1.13/2.45), and reissued certificates were given a value of 0.14 (0.35/2.45).

We then applied the weighted values to our volume estimates for FY 1995 to determine the weighted transaction amounts. The total number of transactions for each category was then added and divided into the total program cost. In this way we arrived at an average per inspection cost of $49.84. We multiplied the average per inspection cost by the activity weight. This produced the weighted average cost for each type of certificate. The raw fees calculated using this method were: $49.84 for commercial phytosanitary certificates; $22.76 for non-commercial phytosanitary certificates; and $7.05 for reissued and returned phytosanitary certificates. We then rounded the raw fees for commercial and non-commercial certificates up to the nearest quarter, for final fees of $50.00 and $23.00. Due to the small number of reissued and returned certificates which we process, and in order to make collecting fees easier, we rounded the raw fee for these certificates down for a final fee of $7.00.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the

purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

This proposed rule, if adopted, would increase the user fees for phytosanitary certificates to recover the cost to APHIS of providing export certification services for plants and plant products. This proposed rule, if adopted, would also reduce the user fee for international commercial aircraft to correspond with the cost to APHIS of providing services. Amendments to user fees are necessary to adjust for changes in service volume and in costs.

Federal phytosanitary certificates are issued in accordance with the International Plant Protection Convention. They certify that agricultural products moving between countries are free from injurious insects and diseases. These certificates must be issued by APHIS to be accepted in international commerce, and must accompany the majority of agricultural commodities (except livestock products) traded. Traded commodities generally include cereals and grains (such as soybeans, wheat, and corn), fruit and vegetables, and other horticultural products. In 1993, the value of exported agricultural products requiring phytosanitary certificates was estimated at $3 billion.

Current user fees for phytosanitary certificates do not fully recover APHIS's costs for services performed. In the past fiscal year, the total cost of providing phytosanitary certificate services was $3,487,347, while total fee collections amounted only to $2,875,716. The reason for the discrepancy is that we overestimated the number of certificates that would be issued, thereby underestimating the cost of issuing each certificate. The total program cost for the 1994–1995 fiscal year, which we must recover through user fees, is estimated at $4,643,385. This amount includes costs associated with program delivery, program direction and support, agency support, departmental charges, and Office of the General Counsel services. If the proposed fee increases are adopted, estimated collections would rise to $4,717,947.

Exporters of agricultural commodities would be affected by this rule. The Regulatory Flexibility Act requires APHIS to address the economic impact of imposing user fees on "small" entities. The Small Business Administration (SBA) criteria for a small wholesale business engaged in the trading of fresh fruits and vegetables is that the business have 100 or fewer employees. SBA criteria for a small crop production business is that it have annual revenues up to $500,000.

Approximately 90,000 phytosanitary certificates were issued in 1993. Certificates for commercial shipments are issued to wholesale businesses engaged in the trading of fresh fruits and vegetables, and to crop production businesses. Certificates are also issued to export brokers who handle shipments of produce from various sources. The proportion of exporters in this group which may qualify as small is unknown. It is likely that a large number of these brokers employ fewer than 100 workers.

In general, the value of an average commercial shipment is likely to be well over the proposed $50 user fee. Given that the total value of agricultural products requiring phytosanitary certificates exported in 1993, estimated at $3 billion, is much larger in magnitude than the $4.7 million in total user fee collection, any impact on U.S. producers/exporters is expected to be small.

Phytosanitary certificates for noncommercial exporters are generally issued to individuals and to exporters of low value commodities. The user fee for this category of phytosanitary certificate is proposed to increase from $19 to $23, an increase of 21 percent. Although user fees represent a proportionately larger share of the total value of noncommercial and low-value exports, these small exports may possess a much higher value in the foreign country than in the United States. Moveover, exports by individuals may be gift items with nonmonetary values offsetting some of the impact of the fee increase.

SBA criteria for a small airline is that it have 1,500 or fewer employees. Data from the 1988 Census indicates that there were 67 domestic and international airline operators employing a total of 481,000 employees. Although the size distribution of air carriers that enter the customs territory of the United States is unknown, the impact of the proposed user fee change, regardless of carrier size, is positive—we are proposing a 13 percent user fee reduction, from $61 to $53 per aircraft. The lower fee is sufficient to recover the full cost of providing aircraft inspection services, without collecting more revenue than needed to recover costs. The estimated cost to provide inspection services for international commercial aircraft in FY 1995 is $18.9 million. At the proposed user fee of $53 per aircraft and a projected FY 1995 commercial aircraft volume of 357,299, total collections would amount to $18.9 million.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been approved by the Office of Management and Budget (OMB), and there are no new requirements. The assigned OMB control number is 1515–00–62.

List of Subjects in 7 CFR Part 354

Exports, Government employees, Imports, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Travel and transportation expenses.

Accordingly, 7 CFR part 354 would be amended as follows:

PART 354—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS; AND USER FEES

1. The authority citation for part 354 would continue to read as follows:

Authority: 7 U.S.C. 2260; 21 U.S.C. 136 and 136a; 49 U.S.C. 1741; 7 CFR 2.17, 2.51, and 371.2(c).

2. Section 354.3 would be amended as follows:

a. By revising paragraph (b)(2)(vi) to read as set forth below.

b. In paragraph (e)(1), the last sentence, by removing "$61" and adding "$53" in its place.

c. In paragraph (g)(5)(i)(A), by removing "$30" and adding "$50" in its place.

d. In paragraph (g)(5)(i)(B), by removing "$19" and adding "$23" in its place.

e. In paragraph (g)(5)(ii), by removing "$19" and adding "$23" in its place.

f. In paragraph (g)(5)(iii)(A), by removing "$30" and adding "$50" in its place.

g. In paragraph (g)(5)(iii)(B), by removing "$19" and adding "$23" in its place.

h. In paragraph (g)(5)(iv), by removing "$30" and adding "$50" in its place.

i. In paragraph (g)(5)(v), by removing "$6" and adding "$7" in its place.

j. In paragraph (h)(2), by removing "$6" and adding "$7" in its place.

§ 354.3 User fees for certain international services.

* * * * *

(b)(2)(vi) Any vessel which sails only between United States and Canadian ports, when the Master of such vessel arriving from Canada certifies, in the "Remarks" block of the General Declaration, Customs Form 1301, that the vessel has sailed solely between the United States and Canada for the previous 2 years.

(Approved by the Office of Management and Budget under control number 1515–00–62).

* * * * *

Done in Washington, DC, this 19th day of May 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–12750 Filed 5–23–95; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 264

[INS No. 1686–95]

RIN 1115–AD87

Removal of Form I–151, Alien Registration Receipt Card, From the Listing of Forms Recognized as Evidence of Registration for Lawful Permanent Resident Aliens

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the Immigration and Naturalization Service ("the Service") regulations by removing Form I–151, Alien Registration Receipt Card, from the listing of forms recognized as evidence of registration as a lawful permanent resident alien. This rule is necessary to complete the establishment of the current Alien Registration Receipt Card, Form I–551, as the exclusive alien registration receipt card for use by permanent resident aliens.

DATES: Written comments must be submitted on or before July 24, 1995.

ADDRESSES: Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street, NW., Room 5307, Washington, DC 20536, Attn: Public Comment Clerk. To ensure proper handling, please reference INS No. 1686–95 on your correspondence. Comments are available for public inspection at this location by calling (202) 514–3048 to arrange an appointment.

FOR FURTHER INFORMATION CONTACT: Gerard Casale, Senior Adjudications Officer, Immigration and Naturalization Service, Room 3214, 425 I Street NW., Washington, DC 20536, telephone (202) 514–5014.

SUPPLEMENTARY INFORMATION:

Background

On September 20, 1993, the Service published a final rule in the **Federal Register** at 58 FR 48775–48780, establishing the Form I–551, Alien Registration Receipt Card, as the exclusive form of registration for lawful permanent resident aliens, by terminating the validity of the old Form I–151, Alien Registration Receipt Card. In addition, the final rule provided the procedures by which a lawful permanent resident alien in possession of a Form I–151 or a prior alien registration document, such as the Form AR–3 or AR–103, could replace these documents with the current Form I–551. The final rule provided that the amendments to 8 CFR part 264 concerning the procedures for applying for a replacement card became effective on October 20, 1993.The final rule also provided that the effective date for the removal of references to the Form I–151 from 8 CFR parts 204, 211, 223, 223a, 235, 251, 252, 247a, 299, 316, and 334 would be September 20, 1994. On September 14, 1994, the Service published a final rule at 59 FR 47063, delaying the effective date of the amendments to 8 CFR parts 204, 211, 223, 235, 251, 252, 247a. 299, 316, and 334, from September 20,1994, until March 20, 1995. On March 17, 1995, a final rule was published in the **Federal Register** at 60 FR 14353, further delaying the effective date of the amendments to 8 CFR parts 204, 211, 235, 251, 252, 274a, 299, 316, and 334, from March 20, 1995, until March 20, 1996.

Removal of Form I–151 From the List of Prescribed Service Forms

The Service's reasons for terminating the validity of the Form I–151, Alien Registration Receipt Card have been discussed in detail in the previous notice of proposed rulemaking published on May 28, 1993, at 58 FR 31000–31003, and in the final rulemaking published on September 20, 1993, at 58 FR 48775–48780, which considered and addressed the public comments received. These rulemakings advised the public of the Service's conclusion that the current Form I–551 Alien Registration Receipt Card must be established as the exclusive Alien Registration Receipt card because "it is no longer sound public policy to recognize Alien Registration Receipt Cards that predate the use of the Form I–551." 58 FR 48775 (September 20, 1993).

In the course of that rulemaking process, however, the intended removal of Form I–151 from the list of prescribed Service forms in 8 CFR 264.1(b) was inadvertently omitted. By removing the Form I–151 from that list, the proposed rule would correct that previous omission and complete the I–151 card replacement program's declared objective of establishing the current Form I–551 as the sole Alien Registration Receipt Card recognized by the Service. The Service intends that this rule, if adopted, would take effect on March 20, 1996, the date on which the validity of the old Form I–151 Alien Registration Receipt Card will terminate under the final rule published March 17, 1995, at 60 FR 14353. By taking effect upon the same date, the proposed rule would preclude any discrepancy or confusion over the effective date on which the validity of the old cards will terminate.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that the rule will not have a significant adverse economic impact on a substantial number of small entities because of the following factors. The provisions of this rule merely clarify the requirements of existing regulations concerning documentation of lawful permanent resident aliens. As such, the new provisions have no significant adverse economic impact on the small entities.

Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order 12612

The regulations proposed herein will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12606

The Commissioner of the Immigration and Naturalization Service certifies that she has assessed this rule in light of the criteria in Executive Order 12606 and has determined that this regulation will not have an impact on family well-being.

List of Subjects in 8 CFR Part 264

Aliens, Reporting and recordkeeping requirements.

Accordingly, part 264 of chapter I of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 264—REGISTRATION AND FINGERPRINTING OF ALIENS IN THE UNITED STATES

1. The authority citation for part 264 continues to read as follows:

Authority: 8 U.S.C. 1103, 1201, 1201a, 1301–1305.

§ 264.1 [Amended]

2. In § 264.1, paragraph (b) is amended by removing the Form Number and Class reference to Form "I–151" from the listing of forms.

Dated: April 12, 1995.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 95–12717 Filed 5–23–95; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

[Docket No: EE–RM–93–701]

Energy Conservation Program for Consumer Products

AGENCY: Office of Energy Efficiency and Renewable Energy, DOE.

ACTION: Proposed Rule.

SUMMARY: This document reproposes amendments to the Department of Energy's clothes washer test procedure to provide a means to test clothes washers that are designed to lock out wash/rinse temperature selections from the normal cycle.

DATES: Consumer usage test data for clothes washers that "lockout" certain temperature selections shall be provided to DOE by June 30, 1995, and will be placed in Department's Freedom of Information Reading Room. Comments, including comments on any consumer usage data that are submitted, shall be provided by July 31, 1995.

ADDRESSES: Written comments and data (ten copies) are to be submitted to: U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Proposed Test Procedures for Clothes Washers, Docket No. EE–RM–93–701, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

P. Marc LaFrance, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–43, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8423

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–72, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9507

SUPPLEMENTARY INFORMATION:

I. Introduction

An amended appliance energy conservation standard for clothes washers became effective May 14, 1994. Manufacturers are required to test their clothes washers for compliance with the new standard using the test procedure regulations set forth in 10 CFR Part 430, Subpart B, Appendix J.

Whirlpool Corporation (Whirlpool) designed a new line of clothes washers to meet this standard which lock out a warm rinse when the user selects a hot water wash/warm water rinse temperature combination setting in the cycle Whirlpool has designated as the "normal cycle." That is, although the controls may be set for a warm rinse in this circumstance, a cold water rinse would be provided. However, a warm rinse is available in all other cycles. Thus, energy consumption in the "normal cycle" is lower than in the other cycles which offer a warm rinse option.

Whirlpool requested an informal interpretation of the test procedure from the Department's Office of Energy Efficiency and Renewable Energy in 1992, and again in early 1993. Whirlpool asserted that the test procedure requires all testing be conducted in the "normal cycle" as defined in Section 1.10 of the test procedure, with the temperature selector set to the hottest setting that is available in the normal cycle. The Office of Energy Efficiency and Renewable Energy responded by letters dated December 18, 1992, and April 21, 1993, which disagreed with Whirlpool's interpretation. Whirlpool engaged in further discussions with the Department's Office of General Counsel, and after review, the General Counsel wrote a letter to Whirlpool on October 20, 1993 stating: "Whirlpool's interpretation of the test procedure is one that the Department concurs is a permissible reading of the test procedure. The Department believes, however, that Whirlpool's interpretation may yield results not consistent with the objectives of the Energy Policy and Conservation Act, as amended." The letter further stated that the Department planned to amend the test procedure to clarify the testing requirements for clothes washers that do not have all of the temperature combinations available in the normal cycle.

II. Discussion

The Department published a proposed rule to amend the clothes washer test procedure to address the Whirlpool clothes washer "lockout" issue. 58 FR 67710 (December 22, 1993) (hereafter referred to as the December 1993 Proposed Rule). A public hearing was held on February 24, 1994.

The Department received eight written comments in response to the proposed rule and received testimony from four persons at the public hearing. Written comment or testimony was provided by the American Council for an Energy-Efficient Economy (ACEEE), Frigidaire Company (Frigidaire), General Electric Appliances (GEA), Maytag Corporation (Maytag), Natural Resources Defense Council (NRDC), the Oregon Department of Energy (ODOE), Speed Queen Company (Speed Queen), and Whirlpool.

(A) Proposed Test Procedure Amendment Issues

1. Temperature Selection Lockout. The Department proposed to test a clothes washer with a warm rinse "lockout" feature by prorating the hot water consumption between the temperature combination setting in the normal cycle and the corresponding temperature combination in the cycle with the greatest hot water consumption, for each temperature combination selection locked out of the normal cycle. The unknown factor in the calculation is the frequency with which users will choose the normal versus other cycles when a warm rinse is selected, that is, the proration value. As stated in the December 1993 Proposed Rule, clothes washers which offer the warm rinse lockout design feature had not been distributed in commerce and, therefore, no data regarding the effect of this feature on consumer selection were available.

Whirlpool asserted that consumer usage of the normal cycle would not change because of the lockout feature, and that, based on Proctor and Gamble's (P&G) historical consumer usage data on the use of the normal cycle versus other cycles, it was appropriate to assume that users would use the normal cycle 75 percent of the time in spite of the warm rinse lock out. Because of confidentiality concerns raised by Whirlpool, the Department did not consult with other manufacturers or industry experts on this issue. Based on Whirlpool's argument, DOE proposed a proration value at 75 percent, that is, users would override the normal cycle "lockout" only 25 percent of the time. The Department stated that the proposed proration was subject to revision as data becomes available to reflect actual consumer usage of machines with the lockout feature.

ACEEE [1] was "troubled" by use of the 75/25 apportionment, because it was not based on empirical measurements on how consumers would actually use washers. "Therefore, we recommend that for the present time, a 100 percent weighing factor be assigned to the most energy-intensive cycle, until such time that empirical data is available on how these washers will actually be used." (ACEEE, No. 5 at 1).

Maytag stated, "While Maytag's data indicates the 'normal cycle' use to be 67%, this percentage could be dramatically impacted by the manner in which a manufacturer designs and displays its 'normal cycle' for the product." (Maytag, No. 1 at 5). Maytag further stated, "If you put a normal cycle on a washer that is not too appealing to the customer * * * it's [use is] going to drop down to some lower number." (Maytag, Testimony at 14).

Frigidaire stated, "The 75/25 apportionment is inappropriate" because it "is based on products where all temperature options are available in the normal cycle" and "is not valid for a product with a 'new' feature." (Frigidaire, No. 2 at 3). Frigidaire further stated, "I don't see how the proposed lockout saves any energy at all. * * * It will just require the consumer to use a different named cycle to get the results, or to get the water temperatures that they want to use." (Frigidaire, Testimony at 38).

GEA stated, "We question what effect the temperature lockout feature will have on the 75%/25% cycle usage assumptions which justify the usage factors found in the calculation." (GEA, No. 3 at 6). Speed Queen stated, "Consumers will quickly modify their usage pattern by switching to select the cycle most nearly approximating a 'normal' cycle to obtain the hot wash/warm rinse selection." (Speed Queen, No. 8 at 2).

Frigidaire also produced an estimate of the impact of the proposed rule. Frigidaire stated that the proposed test procedure would underestimate energy consumption by 24.9 percent and 31.4 percent for its five-temperature and four-temperature machines, respectively, as compared to clothes washers without warm rinse lockout. (Frigidaire, No. 2 at 7).

Whirlpool's comment is the only one that supported the proposed apportionment. (Whirlpool, No. 4 at 5 and No. 9 at 6). Whirlpool believes that the 75 percent value for use of the normal cycle has been consistent over many surveys.[2] It also believes the type of cycle to be used is chosen first, then the temperature selection is made. However, Whirlpool acknowledged that it did not have machines in the field to develop data concerning the validity of the proposal. (Whirlpool, Testimony at 25). Whirlpool offered to conduct a market study to evaluate consumer use of the product with and without the warm rinse lockout. (Whirlpool, No. 9 at 6).

Based upon review of the comments, the Department is inclined to agree with the majority of commenters that users seeking a warm rinse will shift to a cycle other than the normal cycle to get the desired temperature combination more often than 25 percent of the time. The Department has concluded therefore that use of the 75 percent weighting for use of the normal cycle is inappropriate. Whirlpool's assumption regarding consumer behavior, i.e., that the use of the normal cycle would not be affected by the presence of a warm rinse lockout, is not supported by any empirical data [3] or by any other major clothes washer manufacturer. Consumers will most likely alter their cycle usage patterns if they desire a particular temperature selection.

The Department nonetheless believes that a warm rinse lockout on the normal cycle will result in some reduction in hot water usage because a small percentage of consumers will use the normal cycle with the locked out warm rinse feature, rather than adjusting the controls to another cycle in order to get a warm rinse. Thus, the Department is proposing an amendment to the clothes washer test procedure with a credit of 20 percent for the temperature selection lockout design feature. That is, instead of a 75/25 percent split between the normal cycle and the most energy intensive cycle for locked out temperature selections as proposed in the December 1993 Proposed Rule, DOE is proposing a 20/80 percent split in today's Notice.

The Department remains interested in receiving statistically significant consumer usage data for clothes washers with locked out temperature selections in the normal cycle. The Department expects to receive consumer usage data from Whirlpool. The Department welcomes any other interested party to submit consumer usage data. Moreover, DOE will make available for review any data submitted to the Department in response to today's Notice.

Although the lockout feature's energy saving value is subject to question, the Department encourages the introduction of control features for appliances that can be fully demonstrated to save energy.

2. Lockout Features other than Temperature Selection. The comments expressed a concern that other features or selections could be locked out.

[1] Comments on the proposed rule have been assigned docket numbers and have been numbered consecutively. Statements that were presented at the February 24, 1994, public hearing are identified as Testimony.

[2] Proctor and Gamble survey data from numerous years was referenced in Whirlpool's submission. However, the survey data was not based on usage of clothes washers with a lockout feature.

[3] The P&G data concerning choices among cycles were not obtained under conditions where the lockout feature was present.

Frigidaire, Speed Queen, and Maytag indicated that a hot wash or a maximum water level could also be locked out. (Frigidaire, Testimony at 35; Speed Queen, No. 8 at 1; Maytag, No. 1 at 5).

Today's proposed rule addresses all possible temperature selection lockouts. Possible lockouts relating to wash time and maximum fill level were not part of the December 1993 Proposed Rule and are not addressed in today's Notice. The commenters' concerns appear to be unfounded under the existing test procedure. The requirement for wash time is specified as a basic test condition (Section 2.10), and any testing conducted with less time than 9.75 minutes of agitation time would not comply with the requirements of the existing regulations. The requirement for maximum fill is specified prior to the selection of the wash cycle and refers to the maximum fill of the clothes washer. Moreover, DOE is not aware of any products currently employing such lockout designs. Such designs, should they emerge, could be addressed in a separate rulemaking.

3. Energy Test Cycle. Several commenters raised questions about the Department maintaining the requirement for testing in the "normal" cycle. Maytag, Speed Queen, and GEA proposed the use of an energy test cycle which would include elements such as minimum wash time, all wash/rinse temperature combinations, maximum water fill, and maximum spin speed. Maytag suggested specific changes to the test procedure for its proposed test cycle. (Maytag, No. 6 at 1). Speed Queen proposed that a test cycle be adopted with requirements very similar to Maytag's proposal. (Speed Queen, No. 8 at 1). GEA supported the Maytag proposal of a test cycle if the Department continued with the amendment. (GEA, No. 12 at 4). The ODOE supported the Maytag suggestion of a test cycle. (ODOE, No. 11 at 1). The ACEEE generally supported the Maytag proposal but believes it should be done in a subsequent rulemaking. (ACEEE, No. 5 at 2).

The Department does not believe it would be appropriate in this rulemaking to adopt an alternate test cycle. Furthermore, the Department does not have any assessment as to how an alternate test cycle would affect existing models and the potential development of new models. The Department may consider adopting an alternate test cycle in the future.

4. Ambiguity in Test Procedure. The Department received comments indicating that the test procedure proposed in the December 1993 Proposed Rule was ambiguous and complicated. Frigidaire indicated that the proposed test procedure was unnecessarily complicated and adds test burden and ambiguities with room for creative interpretation. (Frigidaire, No. 2 at 8 and Testimony at 34).

The Department has clarified the proposed amendment to the test procedure so that there is no change to any testing requirements for clothes washers that do not incorporate temperature selection lockouts. The proposed amendment has been clarified to reference specifically the sections that are inapplicable to clothes washers without temperature selection lockouts (see Section 3.2). Additionally, the definition of the "non-normal cycle" was modified to specifically exclude any manually selected pre-wash, pre-soak, and extra-rinse cycles.

5. Classes. Frigidaire recommends having a separate class and minimum energy standard for clothes washers with lockout. (Frigidaire, Testimony at 31). NRDC opposed the addition of a separate class and minimum energy standard for clothes washers with lockout. (NRDC, No. 10 at 2). The Department believes that a separate class and standard for products with lockout features is not justified. The primary reason is that clothes washers with temperature selection lockouts do not provide any added utility to the consumer and, therefore, do not warrant a separate class.

6. Effective Date of Amended Test Procedure. Commenters criticized the Department's proposal to allow one year of lead time from the date of publication of the final rule to the date the test procedure amendment becomes effective. Comments opposing a one-year lead time include Maytag (Maytag, No. 1 at 4), ACEEE (ACEEE, No. 5 at 1), Speed Queen (Speed Queen, No. 8 at 2), NRDC (NRDC, No. 10 at 3), and ODOE (ODOE, No. 11 at 2). All of these commenters believe that a 180-day lead time is sufficient. Whirlpool agreed with the Department's original proposal of one year lead time. (Whirlpool, No. 9 at 6).

The Department agrees with the majority of commenters that 180 days is reasonable. Coupled with the advance notice of a likely change in the test procedure provided by this Notice, an effective date 180 days following publication of the final rule should provide ample time for manufacturers to make any necessary adjustments.

7. Impact on Existing Efficiency Standard. To the Department's knowledge, Whirlpool is the only manufacturer of clothes washers that is actively considering use of a lockout feature, and is thus the only manufacturer directly affected by today's proposed rule. The Department has determined that the proposed amendment to the test procedure will not significantly alter measured energy use or energy efficiency, and thus no change in the energy efficiency standard would be required under 42 U.S.C. 6293(e)(2).

(B) Interpretation of Test Procedures

The Department received numerous comments concerning the Department's procedures for providing informal interpretations of test procedures to manufacturers, such as the one provided to Whirlpool concerning the "lockout" issue.

GEA called for the Department to provide notice and an opportunity for comment before issuing an interpretation. (GEA, No. 3 at 3–4). Maytag strongly urged the Department to adopt internal procedures designed to provide appropriate notice to all parties potentially affected by a request for an informal interpretative ruling. (Maytag, No. 1 at 3). Speed Queen said a Petition for Waiver was the proper vehicle necessary to institute a test procedure change in this matter. (Speed Queen, No. 8 at 2). Whirlpool supported the Department's process of interpretation. (Whirlpool, No. 9 at 2–3).

On April 8, 1994, DOE met with representatives of trade associations and manufacturers to discuss procedures to be implemented with regard to future requests concerning interpretations of DOE regulations. Having considered the views of various interested parties, DOE has opened and will maintain a file in its headquarters' Freedom of Information Reading Room in which DOE will make available any written request for an informal, non-binding interpretative ruling and any written informal rulings issued by DOE. These materials will be placed in the DOE Freedom of Information Reading Room under the heading "Consumer Product Informal Interpretations, Docket No. EE–OBT–INTERPS." Interested persons may examine and copy the file periodically.

The Department does not propose to amend the existing procedures for obtaining formal Interpretations in today's notice. The procedures for formal Interpretations are set out in 10 CFR §§ 205.80–205.86.

III. Regulatory Review

The December 1993 Proposed Rule set forth determinations with regards to: Environmental Review, Regulatory Planning and Review, Regulatory Flexibility Act, and Federalism Review. The determinations made under each of these topics in the December 1993 Proposed Rule remain valid.

A. "Takings" Assessment Review

It has been determined pursuant to Executive Order 12630 (52 FR 8859, March 18, 1988) that this regulation would not result in any takings which might require compensation under the Fifth Amendment to the United States Constitution.

B. Paperwork Reduction Act Review

No new information or record keeping requirements are imposed by this rulemaking. Accordingly, no OMB clearance is required under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

IV. Public Comment

Interested persons are invited to participate in this rulemaking by submitting data, comments or information with respect to the proposed test procedure amendment. Public comment has already been received on many elements of this proposal in response to the December 1993 Proposed Rule, so the Department is particularly interested in comments on the key changes from the December 1993 Proposed Rule—the 20/80 proration for use of the normal cycle with a temperature lockout and the effective date 180 days after publication of the final rule.

Interested persons are invited to submit statistically significant usage data or information on the usage behavior of consumers with clothes washers that have temperature selections locked out of the normal cycle. Such data or information shall be sent to the address indicated at the beginning of the notice. Comments with regard to the proposed amendment or comments on any submitted consumer usage data, which will be available in the Department's Freedom of Information Room, shall also be sent to the address indicated at the beginning of this notice.

Data and comments should be identified both on the envelope and on the documents as "Amendment of the Test Procedure for Clothes Washers, Docket No. EE–RM–93–701." Ten (10) copies are requested to be submitted. If possible, the Department would appreciate an electronic copy of the comments on a 3.5" diskette. The Department is currently using WordPerfect™ 5.1. All submittals received by the dates specified at the beginning of this notice will be considered by the Department of Energy before final action is taken on the Proposed Rule.

Pursuant to the provisions of 10 CFR 1004.11, any person submitting information which he or she believes to be confidential and exempt by law from public disclosure should submit one complete copy of the document and nine copies, if possible, from which the information believed to be confidential has been deleted. The Department of Energy will make a determination with regard to the confidential status of the information and treat it according to its determination.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Energy conservation, Household appliances.

Issued in Washington, DC, May 5, 1995.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

1. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309.

Appendix J [Amended]

2. In appendix J to subpart B of part 430, paragraphs 1.10 through 1.18 are redesignated as paragraphs 1.13 through 1.21, paragraph 1.9 is redesignated as paragraph 1.10 and new paragraphs 1.9, 1.11 and 1.12 are added to read as follows:

1. Definitions

* * * * *

1.9 "Lock out" means to make unavailable at least one wash/rinse water temperature combination in the normal cycle that is available in another cycle on the machine.

* * * * *

1.11 "Most energy intensive cycle" means a cycle other than the normal cycle that uses the most energy when tested with the required wash/rinse temperature combinations.

1.12 "Non-normal cycle" means a cycle other than the normal cycle, excluding any manually selected pre-wash, pre-soak, or extra rinse.

* * * * *

3. Paragraph 3.2 of appendix J to subpart B of part 430 is revised to read as follows:

3. Test Measurements

* * * * *

3.2 Test cycle. Establish the testing conditions set forth in section 2 of this appendix. For clothes washers that do not lock out any wash/rinse water temperature combination in the normal cycle, skip section 3.2.5. For automatic clothes washers that lock out certain wash/rinse temperature combinations in the normal cycle, perform all tests in section 3.2 of this appendix.

* * * * *

4. In appendix J to subpart B of part 430, add new paragraphs 3.2.5 through 3.2.5.5 to read as follows:

3. Test Measurements

* * * * *

3.2.5 Hot water energy consumption testing for clothes washers that lock out any wash/rinse temperature combinations in the normal cycle.

3.2.5.1 For clothes washers that lock out certain wash/rinse temperature combinations, perform additional tests on non-normal cycles. Set the cycle selector to a non-normal cycle. Set the water level selector at maximum fill and insert the appropriate test load, if applicable. Activate the cycle of the clothes washer and also any suds-saver switch. Set the wash/rinse temperature selector to the hottest temperature combination setting that is locked out in the normal cycle and repeat 3.2.2.3, 3.2.2.4, and 3.2.2.5.

3.2.5.2 Repeat 3.2.5.1 under the same temperature combination setting for all other untested non-normal cycles on the machine.

3.2.5.3 Total the measured hot water consumption of wash, deep rinse, and spray rinse of each non-normal cycle tested in 3.2.5.1 and 3.2.5.2 and compare. The cycle that has the highest hot water consumption shall be the most energy intensive cycle for that particular wash/rinse temperature combination setting.

3.2.5.4 Repeat 3.2.5.1 through 3.2.5.2 for all other wash/rinse temperature combination selections that are locked out in the normal cycle.

3.2.5.5 Set the water level selector at minimum fill and insert the appropriate test load, if applicable. Activate the cycle of the clothes washer and also any suds-saver switch. Repeat tests as described in 3.2.5.1 through 3.2.5.4, except that minimum fill tests are required only for the most energy intensive cycles as determined during the maximum fill tests.

* * * * *

5. In appendix J to subpart B of part 430, paragraph 4.1 is revised to read as follows:

4. Calculation of Derived Results from Test Measurements

4.1 Per-cycle temperature-weighted hot water consumption for maximum and minimum water fill levels. Calculate the per-cycle temperature-weighted hot water consumption for the maximum water fill level. V_{max}, expressed in gallons per cycle and defined as:

$$V_{max} = X_1 \sum_{i=1}^{n}[(V_i \times L) \times TUF_i] + X_2 [TUF_w \times S_H]$$

where:

V_i=Reported hot water consumption in gallons per-cycle at maximum fill for each wash/rinse temperature selection, as recorded in 3.3.2. (For clothes washers that lock out certain wash/rinse temperature combinations, there will be "V_i's" for wash/rinse temperature combination settings available in the normal cycle and "V_i's" for wash/rinse temperature combination settings in the most energy intensive cycles.)

L=Lock out factor to be applied to the reported hot water consumption.

L=1, used for the wash/rinse temperature combination settings that do not lock out temperature selections in the normal cycle.

L=0.20, used for the locked out wash/rinse temperature combination settings of the normal cycle. (This is used only for clothes washers that lock out one or more wash/rinse temperature selections in the normal cycle.)

L=0.80, used for the locked out wash/rinse temperature combination settings of the most energy intensive cycles. (This is used only for clothes washers that lock out one or more wash/rinse temperatures selections in the normal cycle.)

TUF_i=Applicable temperature use factor corresponding to wash/rinse temperature selection as shown in 5 or 6.

n=For clothes washers that do not lock out any wash/rinse temperature combinations in the normal cycle, n=the number of wash/rinse temperature combination settings available to the user. For clothes washers that lock out one or more temperature selections in the normal cycle, n=the number of wash/rinse temperature combination settings on the washers plus the number of wash/rinse temperature combination settings that are locked out in the normal cycle.

TUF_w=Temperature use factor for warm wash setting.

For clothes washers equipped with suds-saver feature:

X_1=Frequency of use without suds-saver feature=.86.

X_2=Frequency of use with suds-saver feature=.14.

For clothes washers not equipped with suds-saver feature:

X_1=1.0

X_2=0.0

S_H=Fresh make-up water measured during suds-return cycle at maximum water fill level.

Calculate the per-cycle temperature-weighted hot water consumption for the minimum water fill level, V_{min}, expressed in gallons per cycle and defined as:

$$V_{min} = X_1 \sum_{j=1}^{n}[(V_j \times L) \times TUF_j] + X_2 [TUF_w \times S_L]$$

where:

V_j=Reported hot water consumption in gallons per cycle at minimum fill for each wash/rinse temperature selection, as recorded in 3.3.3. (For clothes washers that lock out certain wash/rinse temperature combinations, there will be "V_j's" for wash/rinse temperature combination settings available in the normal cycle and "V_j's" for wash/rinse temperature combination settings in the most energy intensive cycle.)

L=As defined above.

TUF_j=Applicable temperature factor corresponding to wash/rinse temperature selection as shown in 5 or 6.

S_L=Fresh make-up water measured during suds-return cycle at minimum water fill level.

n=As defined above.

TUF_w=As defined above.

X_1=As defined above.

X_2=As defined above.

* * * * *

6. The headings in paragraphs 5.1, 5.2, and 5.3 of appendix J to subpart B of part 430 are amended by removing the expressions (n=5), (n=4), and (n=3), respectively.

[FR Doc. 95–12622 Filed 5–23–95; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–140–AD]

Airworthiness Directives; Boeing Model 747–400, 757, and 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Boeing Model 747–400, 757, and 767 series airplanes. This proposal would require a revision to the Airplane Flight Manual that would advise flight crews to monitor the engine indication and crew alerting system (EICAS) for "status" level messages pertaining to impending engine fuel filter bypass. This proposal also would require the installation of upgraded EICAS computers that provide "advisory" level messages to indicate such bypass conditions. This proposal is prompted by a finding that EICAS computers currently installed on these airplanes do not provide an appropriate indication to the flight crew of an impending engine fuel filter bypass condition. The actions specified by the proposed AD are intended to ensure that the flight crew is appropriately aware of conditions involving a severely contaminated airplane fuel system and the associated increased potential for engine power loss.

DATES: Comments must be received by July 19, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–140–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jeff Duven, Aerospace Engineer, Propulsion Branch, ANM–140S, Seattle Aircraft Certification Office, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2688; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–140–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–140–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA recently has learned that appropriate indication to the flight crew of an impending engine fuel filter bypass condition is not provided on Boeing Models 747–400 and 757 series airplanes, and on Model 767 series airplanes powered by General Electric CF6–80A and CF6–80C2 engines, Pratt & Whitney PW 4000 engines, and Rolls-Royce RB211–524 engines. Such indication to the flight crew is required by part 25 of the Federal Aviation Regulations (14 CFR part 25), which establishes the certification requirements for all transport category airplanes, including the Models 747–400, 757, and 767.

Service experience has demonstrated that severe fuel contamination can lead to fuel filter bypass, engine power loss, engine flameout, and consequent airplane diversions. Fuel contaminants have been known to adversely affect entire fuel systems on airplanes and, therefore, pose a threat of complete loss of power on all engines. Clear indication to the flight crew of an impending fuel filter bypass condition is necessary in order to ensure that the flight crew is warned promptly of conditions that could lead to a loss of power from one or more engines.

The engine indication and crew alerting system (EICAS) computers installed on Model 747–400, 757, and 767 series airplanes use a multi-level message system to provide indications of various conditions to the flight crew. The levels of messages, in increasing order of importance to the flight crew, are indicated as "status," "advisory," "caution," and "warning." In general, "status" messages are used to ensure an acceptable airplane condition prior to dispatch of the airplane. A "status" level message on the EICAS computer is not considered to be an item that flight crews need to be aware of during flight, or an item that would have any effect on the flight planning considerations made by the flight crew.

The EICAS computers currently installed on all Model 747–400 and 757 series airplanes, and on certain Model 767 series airplanes, use a "status" level message to indicate impending engine fuel filter bypass conditions. The FAA considers that this use of a "status" level message to indicate these conditions is an unsafe condition, since such messages do not provide information to the flight crew at an appropriate awareness level. Using a "status" level message to indicate an impending engine fuel filter bypass condition could result in the flight crew being unaware of a severely contaminated airplane fuel system and the associated increased potential for engine power loss. This condition, if not corrected, could result in the airplane landing with reduced engine power, or the total loss of engine power before the airplane is able to reach a suitable landing site.

It should be noted that the addressed unsafe condition pertains only to situations involving gross fuel contaminants. Such contaminants exceed the particulate size or concentration capabilities of what the engine fuel filters are certified to handle. Additionally, the type of gross fuel contaminants that are of concern do not include ice, which can be eliminated by fuel heating. Contamination of airplane fuel systems has occurred in the past and will likely occur in the future, despite the many industry standards intended to maintain cleanliness of the airplane fuel supply. Examples of such contamination found in service include microbial growth, sealant, lint, metal particles, fuel tank cleaning chemicals, and liquid fertilizer. There also have been data indicating the existence of other contaminants in the fuel system that, although unidentified, were severe enough to cause engine power loss.

Since an unsafe condition has been identified that is likely to exist on other products of this same type design, the proposed AD would require, initially, a revision to the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) of affected airplanes that would require the flight crew to respond to EICAS "status" level messages that indicate impending engine fuel filter bypass conditions. Information addressing the presence of multiple engine fuel filter bypass messages would be contained in this AFM revision.

This proposed AD also would require the installation, on certain airplanes, of upgraded EICAS computers that display an "advisory" level message to the flight crew to indicate that an impending engine fuel filter bypass condition exists for each engine. Following installation of the upgraded EICAS computers, the AFM information would be required to be revised to be consistent with the displayed information.

The upgraded EICAS installation would not be required for Model 767 airplanes powered by Pratt & Whitney JT9D engines, since those airplanes are currently equipped with EICAS computers that provide the level of indications that are otherwise proposed in this notice. However, the AFM for those airplanes does not contain appropriate information addressing these messages. Therefore, this proposed AD would require revising the Limitations Section of that AFM to include information addressing the situation where multiple advisory level messages are present, indicating that multiple engine fuel filters are in an impending bypass condition.

There are approximately 1,378 Model 747–400, 757, and 767 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 588 airplanes of U.S. registry would be affected by this proposed AD.

The proposed initial revision to the AFM would take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the total cost impact of this proposed action on U.S. operators is estimated to be $35,280, or $60 per airplane.

The FAA currently has no specific cost estimates associated with the proposed installation of upgraded EICAS computers, since the upgrade has not been developed yet. The FAA has been advised, however, that the manufacturer is planning other changes to these EICAS computers that are

necessary to provide for global positioning system (GPS) navigation capability and other enhanced features. The proposed compliance time of four years for the EICAS installation requirements of this AD will allow a portion of the EICAS computers installed on airplanes affected by this AD to have the required EICAS message upgrade made coincidentally with those other planned EICAS changes, thereby reducing the costs and scheduling impact of such changes on operators. As indicated earlier in this preamble, the FAA specifically invites the submission of comments and other data regarding the economic aspect of this proposal.

The proposed revision to the AFM that would be required subsequent to the installation of the upgraded EICAS computers would take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the total cost impact of this proposed action on U.S. operators is estimated to be $35,280, or $60 per airplane.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 94–NM–140–AD.

Applicability: All Model 747–400, 757, and 767 series airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure that the flight crew is appropriately aware of conditions involving a severely contaminated airplane fuel system and the associated increased potential for engine power loss, accomplish the following:

(a) For all Model 747–400 series airplanes: Within 60 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following statement. This may be accomplished by inserting a copy of this AD in the AFM.

"Respond to the EICAS STATUS CUE by checking for the following status level messages(s):

ENG 1 FUEL FILT
ENG 2 FUEL FILT
ENG 3 FUEL FILT
ENG 4 FUEL FILT

If more than one of these impending fuel filter bypass messages is displayed, airplane fuel system contamination may be present, which can result in erratic engine operation and engine flameout."

(b) For all Model 757 series airplanes, and Model 767 series airplanes powered by General Electric CF6–80A and CF6–80C2 engines, Pratt & Whitney PW 4000 engines, and Rolls-Royce RB211–524 engines: Within 60 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following statement. This may be accomplished by inserting a copy of this AD in the AFM.

"Respond to the EICAS STATUS CUE by checking for the following status level messages(s):

R ENG FUEL FILT
L ENG FUEL FILT

If more than one of these impending fuel filter bypass messages is displayed, airplane fuel system contamination may be present, which can result in erratic engine operation and engine flameout."

(c) For Model 767 series airplanes powered by Pratt & Whitney JT9D engines: Within 60 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following statement. This may be accomplished by inserting a copy of this AD in the AFM.

"If both of the following EICAS advisory level messages for impending fuel filter bypass are displayed, and engine fuel icing is not suspected (based on the fuel temperature being too high or because engine fuel heat has been selected "on"), airplane fuel system contamination may be present, which can result in erratic engine operation and engine flameout:

R ENG FUEL FILT
L ENG FUEL FILT"

(d) For all Model 747–400 series airplanes; all Model 757 series airplanes; and Model 767 series airplanes powered by General Electric CF6–80A and CF6–80C2 engines, Pratt & Whitney PW 4000 engines, and Rolls-Royce RB211–524 engines: Accomplish the requirements of paragraph (d)(1) and (d)(2) of this AD:

(1) Within 4 years after the effective date of this AD, install an upgraded engine indication and crew alerting system (EICAS) computer that will provide "advisory" level messages to the flight crew to indicate an impending engine fuel filter bypass condition for each engine. The installation shall be accomplished in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(2) Coincidental with the installation required by paragraph (d)(1) of this AD, remove the AFM revisions required by paragraphs (a) and (b) of this AD, and revise the Limitations Section of the AFM to advise the flight crew that impending engine fuel filter bypass advisory level messages for multiple engines may indicate contamination of the airplane fuel system, which can result in erratic engine operation and engine flameout. The revision to the Limitations Section must be approved by the Manager, Seattle ACO, FAA, Transport Airplane Directorate.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Operations Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished. Issued in Renton, Washington, on May 18, 1995. Original Signed By:

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–12710 Filed 5–23–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–NM–16–AD]

Airworthiness Directives; McDonnell Douglas Model DC–9 and C–9 (Military) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all McDonnell Douglas Model DC–9 and C–9 (military) series airplanes. This proposal would require replacement, inspection, and modification of the attach fittings of the main landing gear (MLG). This proposal is prompted by reports of severe structural damage and rupture of the integral fuel tank due to overload of the MLG caused by adverse landing conditions. The actions specified by the proposed AD are intended to minimize the possibility of primary structural damage and rupture of the integral fuel tank due to overload of the MLG; these conditions could lead to fuel spillage and a resultant fire.

DATES: Comments must be received by July 19, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–16–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: David Y. J. Hsu, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5323; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–NM–16–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–16–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

Since October 28, 1971, the FAA has received 11 reports of severe structural damage and rupture of the wing integral fuel tank on McDonnell Douglas Model DC–9 series airplanes. These occurrences resulted from unpredictable overload of the main landing gear (MLG) caused by adverse landing conditions. Model DC–9 series airplanes having certain MLG fittings attached to the airframe in a particular manner can sustain damage of the primary structure and rupture of the integral fuel tank during certain abnormal landing conditions. Such conditions include overrunning the runway, going off the runway, skidding off the runway, taxiing into holes on a runway under repair, landing off the runway, or a hard landing. Structural damage of this type could compromise the integrity of the integral fuel tank. Should the integral fuel tank subsequently rupture, it could result in fuel spillage and a resultant fire.

The FAA has reviewed and approved McDonnell Douglas DC–9 Service Bulletin 57–207, dated May 24, 1994, which references two other McDonnell Douglas DC–9 service bulletins that contain procedures which, when accomplished, will improve the capability of the MLG to break away during abnormal landing operations. These service bulletins contain procedures for replacement, inspection, and modification of the attachments of the MLG attach fittings, as follows:

1. McDonnell Douglas DC–9 Service Bulletin 57–125, Revision 5, dated November 5, 1990, describes procedures for replacement of MLG attach fittings fabricated from 7079–T6 with fittings fabricated from 7075–T73 aluminum alloy forgings. These procedures are specified in the service bulletin as Option 1.

2. McDonnell Douglas DC–9 Service Bulletin 57–148, Revision 5, dated November 23, 1992. This service bulletin describes procedures for the following:

—Enlarging the counterbores in the MLG attach fitting at the inboard and outboard lower attachment holes, and performing a high frequency eddy current inspection of the counterbore areas to detect cracks;
—Shotpeening selected areas of the MLG attach fitting;
—Replacing the lower attachment bolts of the inboard and outboard MLG attach fittings with bolts having a different part number; and
—Replacing the fasteners through the lower flange of the MLG attach fitting with interference fit fasteners.

These procedures are identified in the service bulletin as Phase 2.

Accomplishment of the actions described above will minimize the possibility of primary structural damage, fuel tank rupture, and possible fuel spillage due to unpredictable overload of the MLG caused by abnormal landing operations.

Accomplishment of the procedures described in Revision 4 of McDonnell Douglas DC–9 Service Bulletin 57–125 is required currently by AD 90–18–03, amendment 39–6701 (55 FR 34704, August 24, 1990) to address an unsafe condition identified as cracking due to stress corrosion and subsequent degradation of the structural capability of the affected airplanes. Revisions 3, 4, and 5 of that service bulletin also specify procedures which, when accomplished, will improve the

capability of the MLG to break away during abnormal landing operations. Therefore, the FAA has determined that the unsafe condition related to structural damage of the integral fuel tank, as addressed by this proposed AD, also has been addressed adequately for those airplanes on which Option 1 of Revision 3, 4, or 5 of the service bulletin has been accomplished. However, the original version through Revision 2 of McDonnell Douglas DC–9 Service Bulletin 57–125 do not contain procedures that will improve the breakaway capability of the MLG. The FAA has previously approved accomplishment of Option 1 in accordance with the original version through Revision 2 of the service bulletin, in lieu of Revision 4, as an acceptable alternative method of compliance with AD 90–18–03. Therefore, for airplanes on which the procedures described in the original version, Revision 1, or Revision 2 of McDonnell Douglas DC–9 Service Bulletin 57–125 have been accomplished, the FAA finds that Phase 2, as specified in McDonnell Douglas DC–9 Service Bulletin 57–148, also must be accomplished to ensure that the unsafe condition specified in this proposed AD is corrected.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require one of the actions specified below, as applicable. The actions would be required to be accomplished in accordance with the service bulletins described previously.

1. Replacement of the attach fittings of both the right and left MLG's would be required for airplanes on which Option 1 (or production equivalent) of McDonnell Douglas DC–9 Service Bulletin 57–125 (original version through Revision 5) has not been accomplished.

2. Inspection and modification of the attach fittings of both the right and left MLG's would be required for airplanes on which Option 1 of McDonnell Douglas DC–9 Service Bulletin 57–125 (original version through Revision 2) has been accomplished, but on which Phase 2 of McDonnell Douglas DC–9 Service Bulletin 57–148 (original version through Revision 5) has not been accomplished.

There are approximately 906 Model DC–9 and C–9 (military) series airplanes of the affected design in the worldwide fleet. The FAA estimates that 549 airplanes of U.S. registry would be affected by this proposed AD.

The FAA estimates that the replacement specified as Option 1 in McDonnell Douglas DC–9 Service Bulletin 57–125 has been accomplished on all 549 airplanes of U.S. registry that would be affected by this proposed AD. (As discussed previously, accomplishment of Option 1 was required by AD 90–18–03.) Accordingly, the FAA finds that the proposed replacement required by this AD would impose no additional economic burden on any U.S. operator.

However, should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 425 work hours to accomplish Option 1, at an average labor charge of $60 per work hour. The cost of required parts would be $58,853 per airplane. Based on these figures, the total cost impact for accomplishing Option 1 would be $84,353 per airplane.

The FAA estimates that all 549 airplanes of U.S. registry would be required to accomplish the inspection and modification specified as Phase 2 in McDonnell Douglas DC–9 Service Bulletin 57–148. It would take approximately 36 work hours per airplane to accomplish Phase 2, at an average labor rate of $60 per work hour. Required parts would cost approximately $4,338 per airplane. Based on these figures, the total cost impact on U.S. operators for accomplishing Phase 2 is estimated to be $3,567,402, or $6,498 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished this proposed requirement (Phase 2) of this AD action, and that no operator would accomplish that action in the future if this AD were not adopted.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this notice to clarify this long-standing requirement.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 95–NM–16–AD.

Applicability: All Model DC–9 and C–9 (military) series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To minimize the possibility of primary structural damage and rupture of the integral fuel tank due to overload of the main landing gear (MLG) caused by adverse landing conditions, and subsequent fuel spillage and a resultant fire, accomplish the following:

(a) For airplanes on which Option 1 (or production equivalent) has not been accomplished as specified in McDonnell Douglas DC–9 Service Bulletin 57–125 (original issue through Revision 5): Within 12 months after the effective date of this AD, replace the attach fittings of both the right and left MLG's in accordance with Option 1 of the Accomplishment Instructions of McDonnell Douglas DC–9 Service Bulletins 57–125, Revision 5, dated November 5, 1990.

Note 2: Airplanes on which Option 1 has been accomplished as specified in any of the following revisions of McDonnell Douglas DC–9 Service Bulletin 57–125, are considered to be in compliance with this AD and no further action is required by this AD:

Service bulletin No.	Revision level	Date
57–125	Revision 3	October 28, 1982; or
	Revision 4	June 21, 1983; or
	Revision 5	November 5, 1990.

(b) For airplanes on which Option 1 has been accomplished as specified in McDonnell Douglas DC–9 Service Bulletin 57–125 (original version through Revision 2); but on which Phase 2 has not been accomplished as specified in McDonnell Douglas DC–9 Service Bulletin 57–148 (original version through Revision 5): Within 12 months after the effective date of this AD, inspect and modify the attach fittings of both the right and left MLG's in accordance with Phase 2 of McDonnell Douglas DC–9 Service Bulletin 57–148, Revision 5, dated November 23, 1992.

Note 3: Airplanes on which both Option 1 (or a production equivalent) has been accomplished as specified in any of the following revisions of McDonnell Douglas DC–9 Service Bulletin 57–125; and Phase 2 (or a production equivalent) has been accomplished as specified in any of the following revisions of McDonnell Douglas DC–9 Service Bulletin 57–148; are considered to be in compliance with this AD and no further action is required by this AD:

Service bulletin No.	Revision level	Date
57–125	(original)	January 26, 1979; or
	Revision 1	February 16, 1979; or
	Revision 2	August 24, 1979; and
57–148	(original)	October 1, 1982; or
	Revision 1	June 8, 1983; or
	Revision 2	August 9, 1989; or
	Revision 3	September 11, 1990; or
	Revision 4	February 25, 1991; or
	Revision 5	November 23, 1992.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on May 18, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–12712 Filed 5–23–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 71

[Airspace Docket No. 95–ANE–28]

Proposed Alternation Class D and Class E Airspace; Hartford, CT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would modify the Class D and Class E airspace areas established in the vicinity of the Hartford-Brainard Airport, Hartford, CT. Those airspace areas also define controlled airspace to contain aircraft operating to and from the Rentschler Airport, a privately operated airport in East Hartford, CT. The owner of Rentschler Airport has recently closed the control tower. Therefore, this action is necessary to revise the Class D and Class E airspace in the vicinity of the Rentschler and Hartford-Brainard airports.

DATES: Comments must be received on or before June 23, 1995.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, ANE–530, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7530; fax (617) 238–7596.

The official docket may be examined in the Office of the Assistant Chief Counsel for the New England Region, ANE–7, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7050; fax (617) 238–7055.

An informal docket may also be examined during normal business hours in the Office of the Manager, System Management Branch, Air Traffic Division, ANE–530, at the first address shown above.

FOR FURTHER INFORMATION CONTACT: Joanne Botos, System Management Branch, ANE–530, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7533; fax (617) 238–7596.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regularly decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commentators wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comment to Airspace Docket No 95–ANE–28." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, at 12 New England Executive Park, Burlington, MA 02108–5299, both before and after the closing date for comments. A report summarizing each

substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, Air Traffic Division, 12 New England Executive Park, Burlington, MA 02108–5299. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify the Class D and Class E airspace areas established in the vicinity of the Hartford-Brainard Airport, Hartford, CT. Those airspace areas also define controlled airspace to contain aircraft operating to and from the Rentschler Airport, a privately operated airport in East Hartford, CT. The owner of Rentschler Airport, United Technologies, Inc., has recently closed the control tower. Therefore, this action is necessary to revise the Class D and Class E airspace in the vicinity of the Rentschler and Hartford-Brainard airports. The FAA has reviewed the airspace needs of the Standard Instrument Approach Procedures (SIAP's) at Rentschler that will remain, and has included the controlled airspace necessary for those SIAP's in the proposed airspace descriptions. Class D and Class E airspace areas are published in FAA Order 7400.9B, dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. Class D airspace areas appear in paragraph 5000 of FAA Order 7400.9B, Class E areas extending upward from 700 feet or more about the surface of the earth appear in paragraph 6005. The Class D and Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation involves only an established body of technical regulations for which frequent and routine amendments are necessary to keep these regulations operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated economic cost will be so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, the FAA certifies that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposed to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963, Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 5000 General

* * * * *

ANE CT D Hartford, CT [Revised]

That airspace extending upward from the surface to and including 2,500 feet MSL within a 4.6-mile radius of Hartford-Brainard Airport from the Hartford-Brainard Airport 158° bearing clockwise to the Hartford-Brainard Airport 052° bearing, and within a 6.0-mile radius of Hartford-Brainard Airport from the Hartford-Brainard Airport 052° bearing clockwise to the 158° bearing; excluding that airspace within the Windsor Locks, CT Class C airspace area. This Class D airspace is effective during the specific dates and times established in advance by a Notice of Airmen (NOTAM). The effective dates and times will thereafter be continuously published in the Airport Facility Directory.

* * * * *

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth

* * * * *

ANE CT E5 Hartford, CT [Revised]

Hartford-Braindard Airport, Hartford, CT
(Lat. 41°44'10" N, long. 72°39'00" W)

That airspace extending upward from 700 feet above the surface within an 11.5-mile radius of Hartford-Brainard Airport; excluding that airspace within the Windsor Locks, CT and Chester, CT Class E airspace areas.

* * * * *

Issued in Burlington, Massachusetts, on May 17, 1995.

Eileen B. Seaman,

Acting Manager, Air Traffic Division, New England Region.

[FR Doc. 95–12756 Filed 5–23–95; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 95–ACE–2]

Proposed Amendment to Class E Airspace; Scribner, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Class E airspace area at Scribner, NE. The development of a standard instrument approach procedure (SIAP) at Scribner State Airport, utilizing the new Scriber, NE Very High Frequency Omnidirectional Range (VOR) as a navigational aid, has made the proposal necessary. The intended effect of this proposal is to provide control airspace for aircraft executing the SIAP at Scribner, NE. This action will also change the airport status from VFR to IFR.

DATES: Comments must be received on or before July 3, 1995.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Operations Branch, ACE–530, Federal Aviation Administration, Docket No. 95–ACE–2, 601 East 12th Street, Kansas City, MO 64106. The official docket may be examined in the Office of the Assistant Chief Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during business hours in the office of the Manager, Air Traffic Operations Branch, Air Traffic Division, at the address listed above.

FOR FURTHER INFORMATION CONTACT: Brenda Doney, ACE–530A, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone number: (816) 426–3409.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire.

Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 95–ACE–2." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to provide additional controlled airspace for Instrument Flight Rules (IFR) procedures at the Scribner State Airport. The additional airspace would segregate aircraft operating under VFR conditions from aircraft operating under IFR procedures. The area would be depicted on appropriate aeronautical charts, thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9B, dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order. The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth

* * * * *

ACE NE E5 Scribner, NE [New]

Scribner State Airport, NE
(Lat. 41°36'46" N, long. 96°37'43" W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Scribner State Airport.

* * * * *

Issued in Kansas City, MO, on May 3, 1995.

Herman J. Lyons, Jr.,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 95–12757 Filed 5–23–95; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[INTL–0023–95]

RIN 1545–AT49

Allocation and Apportionment of Research and Experimental Expenditures

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document provides guidance concerning the allocation and apportionment of research and experimental expenditures for purposes of determining taxable income from sources within and without the United States. This document affects taxpayers that have income from United States and foreign sources and that have made expenditures for research and experimentation that the taxpayer deducts under section 174 of the Internal Revenue Code of 1986. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written comments must be received by August 22, 1995. Outlines of topics to be discussed at the public hearing scheduled for September 8, 1995, at 10 a.m. must be received by August 18, 1995.

ADDRESSES: Send submissions to: CC:DOM:CORP:T:R (INTL–0023–95), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:T:R (INTL–0023–95), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20224. The public hearing will be held in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Carl Cooper

at (202) 622–3840; concerning submissions, Michael Slaughter, (202) 622–8543 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

This notice of proposed rulemaking does not contain collections of information and, therefore, it has not been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act (44 U.S.C. 3504(h)).

Background and Explanation of Provisions

Section 1.861–8(e)(3) of the Income Tax Regulations provides rules regarding the allocation and apportionment of research and experimental expenditures for purposes of determining taxable income from sources within and without the United States.

This notice of proposed rulemaking proposes three changes to the existing regulations at § 1.861–8(e)(3).

First, allocation of research and experimental expenditures to three digit SIC code product categories of gross income would be permitted. Existing regulations require taxpayers to allocate research and experimental expenditures to two digit SIC code product categories. Use of three digit SIC code product categories would enable taxpayers to allocate research and experimental expenditures to narrower classes of gross income than the classes of gross income permitted by the existing regulations.

Second, the percentage of research and experimental expenditures that may be exclusively apportioned to United States source income under the sales method of apportionment under § 1.861–8(e)(3)(ii) would be increased from 30 percent to 50 percent. Thus, where an apportionment based upon geographic sources of income of a deduction for research and experimental expenses is necessary and the sales method of apportionment is elected, an amount equal to 50 percent of the deduction for research and experimental expenditures shall be apportioned exclusively to the statutory or residual grouping of gross income, as the case may be, arising from the geographic source where the research and experimental activities which account for more than 50 percent of the amount of the deduction were performed.

Third, use of the optional gross income methods of apportionment would constitute a binding election to use such methods in subsequent years. The election would not be revocable without the prior consent of the Commissioner.

These changes would apply to taxable years beginning after December 31, 1995. However, the taxpayer would have the option to apply the new rules, in their entirety, to taxable years beginning after December 31, 1994.

Examples (3) through *(8)* of § 1.861–8(g) are conformed to these changes. *Examples (9)* through *(16)* and *Example (23)* are removed and reserved.

The three changes are proposed in part on the basis of an economic study performed by the Treasury Department pursuant to Rev. Proc. 92–56, 1992–2 C.B. 409, which is being simultaneously published by Treasury. The Treasury study evaluates the factual relationships between taxpayer performed research and experimental expenses and income from foreign sources. The study reviewed evidence of foreign returns from research and experimental expenditures in the form of both royalties and the retained earnings and profits of controlled foreign corporations. Estimates of foreign returns attributable to research and experimental expenditures were translated into appropriate allocations and apportionments using two alternative methodologies. One methodology was based on estimated comparable domestic returns for research and experimental expenditures. The other methodology simulated the relationship expected between the current returns from research and experimental expenditures and the level of current research and experimental expenditures for taxpayers with ongoing research programs. The methodologies generated a range of allocations and apportionments to foreign income that were not inconsistent with the available evidence. The allocations and apportionments to foreign income which would result from adoption of these proposed regulations are within that range and are about 25 percent lower than the allocations and apportionments to foreign income which result under the current regulations.

In addition, the proposed regulations provide explicit rules for allocating and apportioning research and experimental expenses incurred by a partnership and for computing a partner's sales for purposes of apportioning research and experimental expenses under the sales method.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for September 8, 1995, at 10 a.m. in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW, Washington, DC. Because of access restrictions, visitors will not be admitted beyond the building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit written comments by August 22, 1995 and submit an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by August 18, 1995.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Carl Cooper, Office of the Associate Chief Counsel (International). However, other personnel from IRS and Treasury participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation continues to read as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.861–8 is amended by:

1. Revising paragraph (e)(3).
2. Revising paragraph (g), *Examples (3)* through *(8)*.
3. Removing and reserving paragraph (g), *Examples (9)* through *(16)* and *(23)*.

The revisions read as follows:

§ 1.861–8 Computation of taxable income from sources within the United States and from other sources and activities.

* * * * *

(e) * * *

* * * * *

(3) *Research and experimental expenditures*—(i) *Allocation*—(A) *In general.* The methods of allocation and apportionment of research and experimental expenditures set forth in this paragraph (e)(3) recognize that research and experimentation is an inherently speculative activity, that findings may contribute unexpected benefits, and that the gross income derived from successful research and experimentation must bear the cost of unsuccessful research and experimentation. Expenditures for research and experimentation which a taxpayer deducts under section 174 ordinarily shall be considered deductions which are definitely related to all income reasonably connected with the relevant broad product category (or categories) of the taxpayer and therefore allocable to all items of gross income as a class (including income from sales, royalties, and dividends) related to such product category (or categories). For purposes of this allocation, the product category (or categories) which a taxpayer may be considered to have shall be determined in accordance with the provisions of paragraph (e)(3)(i)(B) of this section.

(B) *Determination of product categories.* Ordinarily, a taxpayer's research and experimental expenditures may be divided between the relevant product categories. Where research and experimentation is conducted with respect to more than one product category, the taxpayer may aggregate the categories for purposes of allocation and apportionment; however, the taxpayer may not subdivide the categories. Where research and experimentation is not clearly identified with any product category (or categories), it will be considered conducted with respect to all the taxpayer's product categories. A taxpayer shall determine the relevant product categories by reference to the three digit classification of the Standard Industrial Classification Manual (SIC code). A copy may be purchased from the Superintendent of Documents, United States Government Printing Office, Washington, DC 20402. The individual products included within each category are enumerated in Executive Office of the President, Office of Management and Budget, Standard Industrial Classification Manual, 1987 (or later edition, as available). Once a taxpayer selects a product category for the first taxable year for which this paragraph (e)(3) is effective with respect to the taxpayer, it must continue to use that product category in following years, unless the taxpayer establishes to the satisfaction of the Commissioner that, due to changes in the relevant facts, a change in the product category is appropriate. For this purpose, a change in the taxpayer's selection of a product category shall include a change from a three digit SIC code category to a two digit SIC code category, a change from a two digit SIC code category to a three digit SIC code category, or any other aggregation, disaggregation or change of a previously selected SIC code category. The two digit SIC code category "Wholesale trade" is not applicable with respect to sales by the taxpayer of goods and services from any other of the taxpayer's product categories and is not applicable with respect to a domestic international sales corporation (DISC) or foreign sales corporation (FSC) for which the taxpayer is a related supplier of goods and services from any of the taxpayer's product categories. The two digit SIC code category "Retail trade" is not applicable with respect to sales by the taxpayer of goods and services from any other of the taxpayer's product categories, except Wholesale trade, and is not applicable with respect to a DISC or FSC for which the taxpayer is a related supplier of goods and services from any other of the taxpayer's product categories, except Wholesale trade.

(C) *Affiliated Group.* (*1*) Except as provided in paragraph (e)(3)(i)(C)(*2*) of this section, the allocation and apportionment required by this paragraph (e)(3) shall be determined as if all members of the affiliated group (as defined in § 1.861–14T(d)) were a single corporation. See § 1.861–14T.

(*2*) For purposes of the allocation and apportionment required by this paragraph (e)(3), sales and gross income from products produced in whole or in part in a possession by an electing corporation (within the meaning of section 936(h)(5)(E)), and dividends from an electing corporation, shall not be taken into account, except that this paragraph (e)(3)(i)(C)(*2*) shall not apply to sales of (and gross income and dividends attributable to sales of) products with respect to which an election under section 936(h)(5)(F) is not in effect.

(*3*) The research and experimental expenditures taken into account for purposes of this paragraph (e)(3) shall be reduced by the amount of such expenditures included in computing the cost-sharing amount (determined under section 936(h)(5)(C)(i)(I)).

(D) *Exception.* Where research and experimentation is undertaken solely to meet legal requirements imposed by a political entity with respect to improvement or marketing of specific products or processes, and the results cannot reasonably be expected to generate amounts of gross income (beyond de minimis amounts) outside a single geographic source, the deduction for such research and experimentation shall be considered definitely related and therefore allocable only to the grouping (or groupings) of gross income within that geographic source as a class (and apportioned, if necessary, between such groupings as set forth in paragraphs (e)(3)(ii)(B) and (iii) of this section). For example, where a taxpayer performs tests on a product in response to a requirement imposed by the U.S. Food and Drug Administration, and the test results cannot reasonably be expected to generate amounts of gross income (beyond de minimis amounts) outside the United States, the costs of testing shall be allocated solely to gross income from sources within the United States.

(ii) *Apportionment of research and experimentation—sales method*—(A) *Exclusive apportionment.* Where an apportionment based upon geographic sources of income of a deduction for research and experimentation is necessary (after applying the exception in paragraph (e)(3)(i)(D) of this section), an amount equal to fifty percent (50%) of such deduction for research and experimentation shall be apportioned exclusively to the statutory grouping of gross income or the residual grouping of gross income, as the case may be, arising from the geographic source where the research and experimental activities which account for more than fifty percent (50%) of the amount of such deduction were performed. If the fifty percent test of the preceding sentence is not met, then no part of the deduction shall be apportioned under this paragraph (e)(3)(ii)(A). This exclusive apportionment reflects the view that research and experimentation is often most valuable in the country where it is performed, for two reasons. First,

research and experimentation often benefits a broad product category, consisting of many individual products, all of which may be sold in the nearest market but only some of which may be sold in foreign markets. Second, research and experimentation often is utilized in the nearest market before it is used in other markets, and in such cases, has a lower value per unit of sales when used in foreign markets. The taxpayer may establish to the satisfaction of the Commissioner that, in its case, one or both of the conditions mentioned in the preceding sentences warrant a significantly greater percent than 50 percent (50%) because the research and experimentation is reasonably expected to have very limited or long delayed application outside the geographic source where it was performed. For purposes of establishing that only some products within the product category (or categories) are sold in foreign markets, the taxpayer shall compare the commercial production of individual products in domestic and foreign markets made by itself, by uncontrolled parties (as defined under paragraph (e)(3)(ii)(C) of this section) of products involving intangible property which was licensed or sold by the taxpayer, and by those controlled corporations (as defined under paragraph (e)(3)(ii)(D) of this section) which can reasonably be expected to benefit directly or indirectly from any of the taxpayer's research expense connected with the product category (or categories). The individual products compared for this purpose shall be limited, for nonmanufactured categories, solely to those enumerated in Executive Office of the President, Office of Management and Budget Standard Industrial Classification Manual, 1987 (or later edition, as available), and, for manufactured categories, solely to those enumerated at a 7-digit level in the U.S. Bureau of the Census, Census of Manufacturers: 1992, Numerical List of Manufactured Products, 1993 (or later edition, as available). Copies of both of these documents may be purchased from the Superintendent of Documents, United States Government Printing Office, Washington, DC 20402. For purposes of establishing the delayed application of research findings abroad, the taxpayer shall compare the commercial introduction of its own particular products and processes (not limited by those listed in the Standard Industrial Classification Manual or the Numerical List of Manufactured Products) in the United States and foreign markets, made by itself, by uncontrolled parties (as defined under paragraph (e)(3)(ii)(C) of this section) of products involving intangible property which was licensed or sold by the taxpayer, and by those controlled corporations (as defined under paragraph (e)(3)(ii)(D) of this section) which can reasonably be expected to benefit directly or indirectly from the taxpayer's research expense connected with the product category (or categories). For purposes of evaluating the delay in the application of research findings in foreign markets, the taxpayer shall use a safe haven discount rate of 10 percent per year of delay unless he is able to establish to the satisfaction of the Commissioner, by reference to the cost of money and the number of years during which economic benefit can be directly attributable to the results of the taxpayer's research, that another discount rate is more appropriate.

(B) *Remaining apportionment.* The amount equal to the remaining portion of such deduction for research and experimentation, not apportioned under paragraph (e)(3)(ii)(A) of this section, shall be apportioned between the statutory grouping (or among the statutory groupings) within the class of gross income and the residual grouping within such class in the same proportions that the amount of sales from the product category (or categories) which resulted in such gross income within the statutory grouping (or statutory groupings) and in the residual grouping bear, respectively, to the total amount of sales from the product category (or categories). For purposes of this paragraph (e)(3), amounts received from the lease of equipment during a taxable year shall be regarded as sales receipts for such taxable year. Amounts apportioned under this paragraph (e)(3) may exceed the amount of gross income related to the product category within the statutory grouping. In such case, the excess shall be applied against other gross income within the statutory grouping. See paragraph (d)(1) of this section for instances where the apportionment leads to an excess of deductions over gross income within the statutory grouping.

(C) *Sales of uncontrolled parties.* For purposes of the apportionment under paragraph (e)(3)(ii)(B) of this section, the sales from the product category (or categories) by each party uncontrolled by the taxpayer, of particular products involving intangible property which was licensed or sold by the taxpayer to such uncontrolled party shall be taken fully into account both for determining the taxpayer's apportionment and for determining the apportionment of any other member of a controlled group of corporations to which the taxpayer belongs if the uncontrolled party can reasonably be expected to benefit directly or indirectly (through any member of the controlled group of corporations to which the taxpayer belongs) from the research expense connected with the product category (or categories) of such other member. In the case of licensed products, if the amount of sales of such products is unknown (for example, where the licensed product is a component of a large machine), a reasonable estimate should be made. In the case of sales of intangible property, and in cases where a reasonable estimate of sales of licensed products cannot be made, the sales taken into account shall be an amount which is ten times the amount received or accrued for the intangible during the taxpayer's taxable year. For purposes of this paragraph (e)(3)(ii)(C), the term *uncontrolled party* means a party which is not a person with a relationship to the taxpayer (specified in section 267(b)), or is not a member of a controlled group of corporations to which the taxpayer belongs (within the meaning of section 993(a)(3) or section 927(d)(4)). An uncontrolled party can reasonably be expected to benefit from the research expense of a member of a controlled group of corporations to which the taxpayer belongs if such member can reasonably be expected to license, sell, or transfer intangible property to that uncontrolled party or transfer secret processes to that uncontrolled party, directly or indirectly, through a member of the controlled group of corporations to which the taxpayer belongs.

(D) *Sales of controlled parties.* For purposes of the apportionment under paragraph (e)(3)(ii)(B) of this section, the sales from the product category (or categories) of the taxpayer shall be taken fully into account and the sales from the product category (or categories) of a corporation controlled by the taxpayer shall be taken into account to the extent provided in this paragraph (e)(3)(ii)(D) for determining the taxpayer's apportionment, if such corporation can reasonably be expected to benefit directly or indirectly (through another member of the controlled group of corporations to which the taxpayer belongs) from the taxpayer's research expense connected with the product category (or categories). However, sales from the product category (or categories) between or among such controlled corporations or the taxpayer shall not be taken into account more than once; in such a situation, the amount sold by the selling corporation to the buying corporation shall be subtracted from the sales of the buying corporation. For purposes of this paragraph (e)(3)(ii)(D), the term *a corporation controlled by the taxpayer* means any corporation other than an *uncontrolled party* as defined in paragraph (e)(3)(ii)(C) of this section. A corporation controlled by the taxpayer can reasonably be expected to benefit from the taxpayer's research expense if the taxpayer can be expected to license, sell, or transfer intangible property to that corporation or transfer secret processes to that corporation, either directly or indirectly through a member of the controlled group of corporations to which the taxpayer belongs. Past experience with research and experimentation shall be considered in determining reasonable expectations. However, if the corporation controlled by the taxpayer has entered into a bona fide cost-sharing arrangement, in accordance with the provisions of § 1.482–7, with the taxpayer for the purpose of developing intangible property, then that corporation shall not reasonably be expected to benefit from the taxpayer's share of the research expense. The sales from the product category (or categories) of a corporation controlled by the taxpayer taken into account shall be equal to the amount of sales that bear the same proportion to total sales of the controlled corporation as the taxpayer's direct or indirect ownership, as defined in section 1563, of the total combined voting power of all classes of stock entitled to vote of such corporation bears to the total outstanding combined voting power of all such classes of stock of such corporation.

(iii) *Apportionment of research and experimentation—gross income methods.* In lieu of apportioning the deduction for research and experimental expense under paragraph (e)(3)(ii) of this section, a taxpayer may make a binding election pursuant to paragraph (e)(3)(iii)(C) of this section to apportion such deduction, as prescribed in paragraph (e)(3)(iii)(A) or (B) of this section, between the statutory grouping (or among the statutory groupings) of gross income and the residual grouping of gross income. These optional methods must be applied to the taxpayer's entire deduction for research and experimental expense remaining after applying the exception in paragraph (e)(3)(i)(D) of this section, and may not be applied on a product category basis. Thus, after the allocation of the taxpayer's entire deduction for research and experimental expense under paragraph (e)(3)(i) of this section (by attribution to SIC code categories), the taxpayer must then apportion as necessary the entire deduction as allocated by separate amounts to various product categories, using only the sales method under paragraph (e)(3)(ii) of this section or only the optional gross income methods under this paragraph (e)(3)(iii). The taxpayer may not use the sales method for a portion of the deduction and optional gross income methods for the remainder of the deduction separately allocated.

(A) *Option one.* The taxpayer may apportion its research and experimental expenditures ratably on the basis of gross income between the statutory grouping (or among the statutory groupings) of gross income and the residual grouping of gross income in the same proportions that the amount of gross income in the statutory grouping (or groupings) and the amount of gross income in the residual grouping bear, respectively, to the total amount of gross income, if both of the following two conditions are met.

(*1*) The amount of research and experimental expense ratably apportioned to the statutory grouping (or groupings in the aggregate) is not less than fifty percent (50%) of the amount which would have been so apportioned if the taxpayer had used the method described in paragraph (e)(3)(ii) of this section; and

(*2*) The amount of research and experimental expense ratably apportioned to the residual grouping is not less than fifty percent (50%) of the amount which would have been so apportioned if the taxpayer had used the method described in paragraph (e)(3)(ii) of this section.

(B) *Option two.* If, when the amount of research and experimental expense is apportioned ratably on the basis of gross income, either of the conditions described in paragraph (e)(3)(iii)(A) (*1*) or (*2*) of this section is not met, the taxpayer may either—

(*1*) Where the condition of paragraph (e)(3)(iii)(A)(*1*) of this section is not met, apportion fifty percent (50%) of the amount of research and experimental expense which would have been apportioned to the statutory grouping (or groupings in the aggregate) under paragraph (e)(3)(ii) of this section to such statutory grouping (or to such statutory groupings in the aggregate and then among such groupings on the basis of gross income within each grouping), and apportion the balance of the amount of research and experimental expenses to the residual grouping; or

(*2*) Where the condition of paragraph (e)(3)(iii)(A)(*2*) of this section is not met, apportion fifty percent (50%) of the amount of research and experimental expense which would have been apportioned to the residual grouping under paragraph (e)(3)(ii) of this section to such residual grouping, and apportion the balance of the amount of research and experimental expenses to the statutory grouping (or to the statutory groupings in the aggregate and then among such groupings ratably on the basis of gross income within each grouping).

(C) *Binding election to use optional gross income methods.* A taxpayer may use either the sales method under paragraph (e)(3)(ii) of this section or the optional gross income methods under this paragraph (e)(3)(iii) for its return filed for its first taxable year to which this paragraph (e)(3) applies. The taxpayer's use of the optional gross income methods for its return filed for its first taxable year to which this paragraph (e)(3) applies or for any subsequent taxable year shall constitute a binding election to use the optional gross income methods for all taxable years thereafter. The taxpayer's election to use the optional gross income methods may not be revoked without the prior consent of the Commissioner.

(iv) *Special rules for partnerships.* For purposes of applying this paragraph (e)(3), if research and experimental expenditures are incurred by a partnership in which the taxpayer is a partner, the taxpayer's research and experimental expenditures shall include the taxpayer's distributive share of the partnership's research and experimental expenditures. In applying the exception for expenditures undertaken to meet legal requirements under paragraph (e)(3)(i)(D) of this section and the exclusive apportionment for the sales method under paragraph (e)(3)(ii)(A) of this section, a partner's distributive share of research and experimental expenditures incurred by a partnership shall be treated as incurred by the partner for the same purpose and in the same location as incurred by the partnership. In applying the remaining apportionment for the sales method under paragraph (e)(3)(ii)(B) of this section, a taxpayer's sales from a product category shall include the taxpayer's share of any sales from the product category of any partnership in which the taxpayer is a partner. For purposes of the preceding sentence, a taxpayer's share of sales shall be proportionate to the taxpayer's distributive share of the partnership's gross income in the product category, but the sales of the partnership taken into account by the taxpayer shall in no event be less than ten times the amount received or accrued for any intangible from the partnership during the taxpayer's taxable year.

(v) *Examples. Examples (3)* through *(8)* of paragraph (g) of this section illustrate the allocation and apportionment of research and experimental deductions.

(vi) *Effective date.* This paragraph (e)(3) applies to taxable years beginning after December 31, 1995. However, the taxpayer may at its option, apply this paragraph (e)(3) in its entirety to taxable years beginning after December 31, 1994.

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(g) * * *

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Example 3—Research and Experimentation—(i) *Facts.* X, a domestic corporation, is a manufacturer and distributor of small gasoline engines for lawn mowers. Gasoline engines are a product within the category, Engines and Turbines (SIC Industry Group 351). Y, a wholly owned foreign subsidiary of X, also manufactures and sells these engines abroad. During 1996, X incurred expenditures of $60,000 on research and experimentation, which it deducts as a current expense, to invent and patent a new and improved gasoline engine. All of the research and experimentation was performed in the United States. In 1996, the domestic sales by X of the new engine total $500,000 and foreign sales by Y total $300,000. X provides technology for the manufacture of engines to Y via a license that requires the payment of an arm's length royalty. In 1996, X's income is $150,000, of which $140,000 is from domestic sales and $10,000 is royalties from Y.

(ii) *Allocation.* The research and experimental expenditures were incurred in connection with small gasoline engines and they are definitely related to the items of gross income to which the research gives rise, namely gross income from the sale of small gasoline engines in the United States and royalties received from subsidiary Y, a foreign manufacturer of gasoline engines. Accordingly, the expenses are allocable to this class of gross income.

(iii) *Apportionment.* (A) For purposes of applying the foreign tax credit limitation, the statutory grouping is general limitation gross income from sources without the United States and the residual grouping is general limitation gross income from sources within the United States. Since the related class of gross income derived from the use of engine technology consists of both gross income from sources without the United States (royalties from Y) and gross income from sources within the United States (gross income from engine sales), X's deduction of $60,000 for its research and experimental expenditure must be apportioned between the statutory and residual grouping before the foreign tax credit limitation may be determined. Because more than 50 percent of X's research and experimental activity was performed in the United States, 50 percent of that deduction can be apportioned exclusively to the residual grouping of gross income, gross income from sources within the United States. The remaining 50 percent of the deduction can then be apportioned between the residual and statutory groupings on the basis of sales by X and Y. Alternatively, X's deduction for research and experimentation can be apportioned under the optional gross income method. The apportionment for 1996 is as follows:

(*1*) *Tentative Apportionment on the Basis of Sales.*

(*i*) Research and experimental expense to be apportioned between residual and statutory groupings of gross income: $60,000.

(*ii*) Less: Exclusive apportionment of research and experimental expense to the residual grouping of gross income ($60,000×50 percent): $30,000.

(*iii*) Research and experimental expense to be apportioned between residual and statutory groupings of gross income on the basis of sales: $30,000.

(*iv*) Apportionment of research and experimental expense to the residual grouping of gross income ($30,000×$500,000/($500,000+$300,000)): $18,750.

(*v*) Apportionment of research and experimental expense to the statutory grouping of gross income ($30,000×$300,000/($500,000+$300,000)): $11,250.

(*vi*) Total apportioned deduction for research and experimentation: $60,000.

(*vii*) Amount apportioned to the residual grouping ($30,000+$18,750): $48,750.

(*viii*) Amount apportioned to the statutory grouping: $11,250.

(*2*) *Tentative Apportionment on the Basis of Gross Income.*

(*i*) Research and experimental expense apportioned to sources within the United States (residual grouping) ($60,000×$140,000/($140,000+$10,000)): $56,000.

(*ii*) Research and experimental expense apportioned to sources within country Y (statutory grouping) ($60,000×$10,000/($140,000+$10,000)): $4,000.

(*iii*) Amount apportioned to the residual grouping: $56,000.

(*iv*) Amount apportioned to the statutory grouping: $4,000.

(B) The total research and experimental expense apportioned to the statutory grouping ($4,000) under the gross income method is approximately 36 percent of the amount apportioned to the statutory grouping under the sales method. Thus, X may use option two of the gross income method (paragraph (e)(3)(iii)(B) of this section) and apportion to the statutory grouping fifty percent (50%) of the $11,250 apportioned to that grouping under the sales method. Thus, X apportions $5,625 of research and experimental expense to the statutory grouping. X's use of the optional gross income method will constitute a binding election to use the optional gross income method for all taxable years thereafter.

Example 4—Research and Experimentation—(i) *Facts.* Assume the same facts as in *Example 3* except that X also spends $30,000 in 1996 for research on steam turbines, all of which is performed in the United States, and X has steam turbine sales in the United States of $400,000. X's foreign subsidiary Y neither manufactures nor sells steam turbines. The steam turbine research is in addition to the $60,000 in research which X does on gasoline engines for lawnmowers. X thus has a deduction of $90,000 for its research activity. X's gross income is $200,000, of which $140,000 is from sales of gasoline engines, $50,000 is from sales of steam turbines, and $10,000 is royalties from Y.

(ii) *Allocation.* X's research expenses generate income from sales of small gasoline engines and steam turbines. Both of these products are in the same three digit SIC code category, Engines and Turbines (SIC Industry Group 351). Therefore, the deduction is definitely related to this product category and allocable to all items of income attributable to it. These items of X's income are gross income from the sale of small gasoline engines and steam turbines in the United States and royalties from foreign subsidiary Y, a foreign manufacturer and seller of small gasoline engines.

(iii) *Apportionment.* (A) For purposes of applying the foreign tax credit limitation, the statutory grouping is general limitation gross income from sources outside the United States and the residual grouping is general limitation gross income from sources within the United States. X's deduction of $90,000 must be apportioned between the statutory and residual groupings. Because more than 50 percent of X's research and experimental activity was performed in the United States, 50 percent of that deduction can be apportioned exclusively to the residual grouping, general limitation gross income from sources within the United States. The remaining 50 percent of the deduction can then be apportioned between the residual and statutory groupings on the basis of total sales by X and Y. Alternatively, X's deduction for research and experimentation can be apportioned under the optional gross income methods. The apportionment for 1996 is as follows:

(*1*) *Tentative Apportionment on the Basis of Sales.*

(*i*) Research and experimental expense to be apportioned between residual and statutory groupings of gross income: $90,000.

(*ii*) Less: Exclusive apportionment of the research and experimental expense to the residual grouping of gross income ($90,000×50 percent): $45,000.

(*iv*) Research and experimental expense to be apportioned between the residual and statutory groupings of gross income on the basis of sales: $45,000.

(*iv*) Apportionment of research and experimental expense to the residual grouping of gross income ($45,000×($500,000+400,000)/($500,000+$400,000+$300,000)): $33,750.

(*v*) Apportionment of research and experimental expense to the statutory grouping of gross income ($45,000×$300,000/($500,000+$400,000+$300,000)): $11,250.

(*vi*) Total apportioned deduction for research and experimentation: $90,000.

(*vii*) Amount apportioned to the residual grouping ($45,000+$33,750): $78,750.

(*viii*) Amount apportioned to the statutory grouping: $11,250.

(*2*) *Tentative Apportionment on the Basis of Gross Income.*

(*i*) Research and experimental expense apportioned to sources within the United States (residual grouping) ($90,000×$190,000/($140,000+$50,000+10,000)): $85,500.

(*ii*) Research and experimental expense apportioned to sources within country Y (statutory grouping) ($90,000×$10,000/($140,000+$50,000+$10,000)): $4,500.

(*iii*) Amount apportioned to the residual grouping: $85,500.

(*iv*) Amount apportioned to the statutory grouping: $4,500.

(B) The total research and experimental expense apportioned to the statutory grouping ($4,500) under the gross income method is 40 percent of the amount apportioned to the statutory grouping under the sales method. Thus, X may use option two of the gross income method (paragraph (e)(3)(iii)(B) of this section) and apportion to the statutory grouping fifty percent (50%) of the $11,250 apportioned to that grouping under the sales method. Thus, X apportions $5,625 of research and experimental expense to the statutory grouping. X's use of the optional gross income method will constitute a binding election to use the optional gross income method for all taxable years thereafter.

Example 5—Research and Experimentation—(i) *Facts.* Assume the same facts as in *Example 3* except that in 1997 X continues its sales of the new engines, with sales of $600,000 in the United States and $400,000 by subsidiary Y. X also acquires a 60 percent ownership interest in foreign corporation Z and a 100 percent ownership interest in foreign corporation C. X transfers its engine technology to Z for a royalty equal to 5 percent of sales, and X enters into an arm's length cost-sharing arrangement with C to share the funding of all of X's research activity. In 1997, corporation Z has sales in country Z equal to $1,000,000. X incurs expense of $80,000 on research and experimentation in 1997, and in addition, X performs $15,000 of research on gasoline engines which was funded by the cost-sharing arrangement with C. All of Z's sales are from the product category, Engines and Turbines (SIC Industry Group 351). X performs all of its research in the United States and $20,000 of its expenditure of $80,000 is made solely to meet pollution standards mandated by law. X establishes, to the satisfaction of the Commissioner, that the expenditure in response to pollution standards is not expected to generate gross income (beyond *de minimis* amounts) outside the United States.

(ii) *Allocation.* The $20,000 of research expense which X incurred in connection with pollution standards is definitely related and thus allocable to the residual grouping, general limitation gross income from sources within the United States. The remaining $60,000 in research and experimental expenditure incurred by X is definitely related to all gasoline engines and is therefore allocable to the class of gross income to which the engines give rise, gross income from sales in the United States, royalties from country Y, and royalties from country Z. No part of the $60,000 research expense is allocable to dividends from country C, because corporation C has already paid, through its cost-sharing arrangement, for research activity performed by X which may benefit C.

(iii) *Apportionment.* For purposes of applying the foreign tax credit limitation, the statutory grouping is general limitation gross income from sources without the United States, and the residual grouping is general limitation gross income from sources within the United States. X's deduction of $60,000 for its research and experimental expenditure must be apportioned between these groupings. Because more than 50 percent of the research and experimentation was performed in the United States, 50 percent of the $60,000 deduction can be apportioned exclusively to the residual grouping. The remaining 50 percent of the deduction can then be apportioned between the residual and the statutory grouping on the basis of sales by X, Y, and Z. (If X utilized the optional gross income methods in 1996, then its use of such methods constituted a binding election to use the optional gross income methods for all taxable years thereafter. The optional gross income methods are not illustrated in this *Example 5* (see instead *Examples 3* and *4*).) Since X has only a 60 percent ownership interest in corporation Z, only 60 percent of Z's sales (60% of $1,000,000, or $600,000) are included for purposes of apportionment. The allocation and apportionment for 1997 is as follows:

(A) X's total research expense: $80,000.

(B) Less: Legally mandated research directly allocated to the residual grouping of gross income: $20,000.

(C) Tentative apportionment on the basis of sales.

(*1*) Research and experimental expense to be apportioned between residual and statutory groupings of gross income: $60,000.

(*2*) Less: Exclusive apportionment of research and experimental expense to the residual grouping of gross income ($60,000×50 percent): $30,000.

(*3*) Research and experimental expense to be apportioned between the residual and the statutory grouping on the basis of sales: $30,000.

(*4*) Apportionment of research and experimental expense to general limitation gross income from sources within the United States (residual grouping) ($30,000×$600,000/($600,000+$400,000+$600,000)): $11,250.

(*5*) Apportionment of research and experimental expense to general limitation gross income from countries Y and Z (statutory grouping) ($30,000×$400,000+$600,000/($600,000+$400,000+$600,000)): $18,750.

(*6*) Total apportioned deduction for research and experimentation ($30,000+$30,000): 60,000.

(*7*) Amount apportioned to the residual grouping ($30,000+$11,250): $41,250.

(*8*) Amount apportioned to the statutory grouping of sources within countries Y and Z: $18,750.

Example 6—Research and Experimentation—(i) *Facts.* X, a domestic corporation, manufacturers and sells forklift trucks and other types of materials handling equipment in the United States. The manufacture and sale of forklift trucks and other materials handling equipment belongs to the product category, Construction, Mining, and Materials Handling Machinery and Equipment (SIC Industry Group 353). X also sells its forklift trucks to a wholesaling subsidiary located in foreign country Y (but title passes in the United States), and X manufactures forklift trucks in foreign country Z. The wholesaling of forklift trucks to country Y also belongs to X's product category Transportation equipment and, therefore, may not belong to the product category, Wholesale trade (SIC Major Group 50 and 51). In 1997, X sold $7,000,000 of forklift trucks to purchasers in the United States, $3,000,000 of forklift trucks to the wholesaling subsidiary in Y, and transferred forklift truck components with an FOB export value of $2,000,000 to its branch in Z. The branch's sales of finished forklift trucks were $5,000,000. In response to legally mandated emission control requirements, X's United States research department has been engaged in a research project to improve the performance and quality of engine exhaust systems used on its products in the United States. It incurs expenses of $100,000 for this purpose in 1997. In the past, X has customarily adapted the product improvements developed originally for the domestic market to its forklift trucks manufactured abroad. During the taxable year 1997, development of an improved engine exhaust system is completed and X begins installing the new system during the latter part of the taxable year in products manufactured and sold in the United States. X continues to manufacture and sell forklift trucks in foreign countries without the improved engine exhaust systems.

(ii) *Allocation.* X's deduction for its research expense is definitely related to the income to which it gives rise, namely income from the manufacture and sale of forklift trucks within the United States and in country Z. Although the research is undertaken in response to a legal mandate, it can reasonably be expected to generate gross income from the manufacture and sale of trucks by the branch in Z. Therefore, the deduction is not allocable solely to income from X's domestic sales of forklift trucks. It is allocable to income from such sales and income from the sales of X's branch in Z.

(iii) *Apportionment.* For the method of apportionment on the basis of either sales or gross income, see example 3. However, in determining the amount of research apportioned to income from foreign and domestic sources, the net sales of the branch in Z are $3,000,000 ($5,000,000 less $2,000,000) and the sales within the United States are $12,000,000 ($7,000,000 plus $3,000,000 plus $2,000,000).

Example 7—Research and Experimentation—(i) *Facts.* X, a domestic corporation, is a drug company which manufactures a wide variety of pharmaceutical products for sale in the United States. Pharmaceutical products belong to the product category, Drugs (SIC Industry Group 283). X exports its pharmaceutical products through a foreign sales corporation (FSC). X's wholly owned foreign subsidiary Y also manufactures pharmaceutical products. In 1997, X has domestic sales of $10,000,000, the FSC has sales of $3,000,000, and Y has sales of $5,000,000. In that same year, 1997, X incurs

expense of $200,000 on research to test a product in response to requirements imposed by the United States Food and Drug Administration (FDA). X is able to show that, even though country Y imposes certain testing requirements on pharmaceutical products, the research performed in the United States is not accepted by country Y for purposes of its own licensing requirements, and the research has minimal use abroad. X is further able to show that its FSC sells goods to countries which do not accept or do not require research performed in the United States for purposes of their own licensing standards.

(ii) *Allocation.* Since X's research expense of $200,000 is undertaken to meet the requirements of the United States Food and Drug Administration, and since it is reasonable to expect that the expenditure will not generate gross income (beyond *de minimis* amounts) outside the United States, the deduction is definitely related and thus allocable to the residual grouping.

(iii) *Apportionment.* No apportionment is necessary since the entire expense is allocated to the residual grouping, general limitation gross income from sales within the United States.

Example 8—Research and Experimentation—(i) *Facts.* X, a domestic corporation, is engaged in continuous research and experimentation to improve the quality of the products that it manufactures and sells, which are floodlights, flashlights, fuse boxes, and solderless connectors. X incurs and deducts $100,000 of expenditure for research and experimentation in 1997 which was performed exclusively in the United States. As a result of this research activity, X acquires patents which it uses in its own manufacturing activity. X licenses its floodlight patent to Y and Z, uncontrolled foreign corporations, for use in their own territories, countries Y and Z, respectively. Corporation Y pays X an arm's length royalty of $3,000 plus $0.20 for each floodlight sold. Sales of floodlights by Y for the taxable year are $135,000 (at $4.50 per unit) or 30,000 units, and the royalty is $9,000 ($3,000+$0.20×30,000). Y has sales of other products of $500,000. Z pays X an arm's length royalty of $3,000 plus $0.30 for each unit sold. Z manufactures 30,000 floodlights in the taxable year, and the royalty is $12,000 ($3,000+$0.30×30,000). The dollar value of Z's floodlight sales is not known and cannot be reasonably estimated because, in this case, the floodlights are not sold separately by Z but are instead used as a component in Z's manufacture of lighting equipment for theaters. The sales of all Z's products, including the lighting equipment for theaters, are $1,000,000. Y and Z each sell the floodlights exclusively within their respective countries. X's sales of floodlights for the taxable year are $500,000 and its sales of its other products, flashlights, fuse boxes, and solderless connectors, are $400,000. X has gross income of $500,000, consisting of gross income from domestic sources of $479,000, and royalty income of $9,000 and $12,000 from foreign corporations Y and Z respectively.

(ii) *Allocation.* X's research and experimental expenses are definitely related to all of the products that it produces, which are floodlights, flashlights, fuse boxes, and solderless connectors. All of these products are in the same three digit SIC Code category, Electric Lighting and Wiring Equipment (SIC Industry Group 364). Thus, X's research and experimental expenses are allocable to all items of income attributable to this product category, domestic sales income and royalty income from the foreign countries in which corporations Y and Z operate.

(iii) *Apportionment.* (A) The statutory grouping of gross income is general limitation income from sources without the United States. The residual grouping is general limitation gross income from sources within the United States. X's deduction of $100,000 for its research expenditures must be apportioned between the groupings. For apportionment on the basis of sales in accordance with paragraph (e)(3)(ii) of this section, X is entitled to an exclusive apportionment of 50 percent of its research and experimental expense to the residual grouping, general limitation gross income from sources within the United States, since more than 50 percent of the research activity was performed in the United States. The remaining 50 percent of the deduction can then be apportioned between the residual and statutory groupings on the basis of sales. Since Y and Z are unrelated licensees of X, only their sales of the licensed product, floodlights, are included for purposes of apportionment. Floodlight sales of Z are unknown, but are estimated at ten times royalties from Z, or $120,000. All of X's sales from the entire product category are included for purposes of apportionment on the basis of sales. Alternatively, X may apportion its deduction on the basis of gross income, in accordance with paragraph (e)(3)(iii) of this section. The apportionment is as follows:

(*1*) *Tentative Apportionment on the basis of sales.*

(*i*) Research and experimental expense to be apportioned between statutory and residual groupings of gross income: $100,000.

(*ii*) Less: Exclusive apportionment of research and experimental expense to the residual groupings of gross income ($100,000 x 50 percent): $50,000.

(*iii*) Research and experimental expense to be apportioned between the statutory and residual groupings of gross income on the basis of sales: $50,000.

(*iv*) Apportionment of research and experimental expense to the residual groupings of gross income ($50,000×$900,000/($900,000+$135,000+$120,000)): $38,961.

(*v*) Apportionment of research and experimental expense to the statutory grouping, royalty income from countries Y and Z ($50,000×$135,000+$120,000/($900,000+$135,000+$120,000)): $11,039.

(*vi*) Total apportioned deduction for research and experimentation: $100,000.

(*vii*) Amount apportioned to the residual grouping ($50,000+$38,961): $88,961.

(*viii*) Apportioned to the statutory grouping of sources within countries Y and Z: $11,039.

(*2*) *Tentative apportionment on gross income basis.*

(*i*) Apportionment of research and experimental expense to the residual grouping of gross income ($100,000×$479,000/$500,000): $95,800.

(*ii*) Apportionment of research and experimental expense to the statutory grouping of gross income ($100,000×$9,000+$12,000/$500,000): $4,200.

(*iii*) Amount apportioned to the residual grouping: $95,800.

(*iv*) Amount apportioned to the statutory grouping of general limitation income from sources without the United States: $4,200.

(B) Since X's apportionment on the basis of gross income to the statutory grouping, $4,200, is less than 50 percent of its apportionment on the basis of sales to the statutory grouping, $11,039 it may use Option two of paragraph (e)(3)(iii)(B) of this section and apportion $5,520 (50 percent of $11,039) to the statutory grouping.

Examples (9) through *(16)*—[Reserved]

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Example (23)—[Reserved]

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Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 95–12621 Filed 5–19–95; 9:25 am]

BILLING CODE 4830–01–U

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 203

Technical Assistance for Public Participation

AGENCY: Department of Defense, Office of the Deputy Under Secretary of Defense for Environmental Security (DUSD(ES)).

ACTION: Notice of request for comments.

SUMMARY: Consistent with section 326 of The National Defense Authorization Act for Fiscal Year 1995 (NDAA–95), the Department of Defense intends to publish interim rules for providing technical assistance funding to citizens affected by the environmental restoration of Department of Defense facilities. This request for comments discusses and solicits comments on several options the Department of Defense is considering for providing assistance to community members of Technical Review Committee (TRCs) and Restoration Advisory Boards (RABs) to obtain technical advisors and facilitate the participation of these members and affected citizens in environmental restoration activities at their associated installations. The Department of Defense will consider these comments in formulating an Interim Final Rule.

DATES: Written comments must be received on or before July 24, 1995.

ADDRESSES: Send written comments to the Office of the Deputy Under Secretary of Defense for Environmental Security/Cleanup, 3400 Defense Pentagon, Washington, DC 20301–3400.

FOR FURTHER INFORMATION CONTACT: Patricia Ferrebee or Marcia Read, telephone (703) 697–7475.

SUPPLEMENTARY INFORMATION: Today's request for comments has the following sections:

I. Background
II. Options for Providing Assistance
III. Requests for Comments

I. Background

The Department of Defense is engaged in environmental investigations, removal actions, treatability studies, community relations efforts, interim remedial actions, cleanups, and operation and maintenance activities at approximately 1800 active installations, 70 closing installations, and 2200 formerly utilized defense properties in the United States under the Defense Environmental Restoration Program (DERP, 10 USC Chapter 160).

The Department of Defense has issued policy for establishing Restoration Advisory Boards (RABs) at all installations. On September 9, 1993, the Department of Defense issued policy for establishing RABs at installations designated for closure or realignment under Base Realignment and Closure (BRAC) Acts of 1988 and 1990 where property will be available for transfer the community. On April 14, 1994, the Department of Defense issued RAB policy for non-closing installations as part of Management Guidance for Execution of the FY94/95 and Development of the FY96 Defense Environmental Restoration Program. The policy called for the establishment of RABs at Department of Defense installations where there is sufficient, sustained community interest. Criteria for determining sufficient interest are: (1) A government requests that a RAB be formed; (2) fifty local residents sign a petition requesting that a RAB be formed; or (3) an installation determines that a RAB is needed. On September 27, 1994, the Department of Defense and the Environmental Protection Agency (EPA) issued joint RAB guidelines on how to develop and implement a RAB. The guidelines are now in effect for all installations.

The purpose of a RAB is to bring together people who reflect the diverse interests within the local community, enabling the early and continual flow of information between the affected community, the military installation, and environmental oversight agencies. The Department of Defense has established, or is in the process of establishing, RABs to ensure that all stakeholders have a voice and can actively participate in a timely and thorough manner in the review of environmental restoration activities and projects at an intallation. RAB community members provide advice as individuals to the decision-makers on restoration issues. This forum is used for the expression and careful consideration of diverse points of view. The RAB complements other community involvement efforts, but does not replace them.

On October 5, 1994, Congress passed the National Defense Authorization Act for Fiscal Year 1995 (NDAA–95, Public Law 103–337), which contained specific provisions for RABs (amending 10 USC 2705 which contains requirements for Technical Review Committees (TRCs) under the Superfund Amendments and Reauthorization Act). Section 326(a) [Section 2705(d)(2)] of the NDAA–95 requires the Secretary of Defense to prescribe regulations on the characteristics, composition, funding, and establishment of RABs. Section 326(b) of the NDAA [Section 2705(e)(2)(C)] authorizes the Department of Defense to make funds available to community members of TRCs and RABs to: (1) Obtain technical assistance in interpreting scientific and engineering issues with regard to the nature of environmental hazards at an installation and the restoration activities proposed for or conducted at the installation; and (2) assist such members and affected citizens to participate more effectively in environmental restoration activities at the installation. Section 326(b) [Section 2705(e)(3)(A) and (B)] specifies that funds for community members of TRCs and RABs at closing and non-closing installations be provided from the BRAC and Defense Environmental Restoration Account (DERA), respectively, and that the total amount of funds from these accounts not exceed $7,500,000. This paragraph [Section 2705(e)(2)(B) and (C)] further states that funding can be given to TRC and RAB members only if they reside in the vicinity of the installation and are not potentially responsible parties.

The Department of Defense has developed a number of options for providing technical and public participation assistance to community members of TRCs and RABs. The Department of Defense is issuing this request for comments to notify the public of its efforts, and to solicit comments on a number of promising funding options. The Department of Defense will publish an interim rule specifying available funding mechanisms after considering any comments received.

II. Options for Providing Assistance

The Department of Defense is seeking to provide technical and public participation assistance to community members of TRCs and RABs at its facilities in the most efficient manner. Technical assistance under this program means the provision of technical advisors, facilitators, mediators, and educators. Public participation assistance means the provision of training and related expenses. Three options are being considered for providing expeditious assistance to TRCs and RABs. These options are described separately in the following sections, but are not mutually exclusive.

Option A: Use EPA TAG and TOSC Mechanisms

This option for providing assistance to community members of TRCs and RABs at Department of Defense facilities involves the use of existing vehicles under EPA's Technical Assistance Grant (TAG) and Technical Outreach Services to Communities (TOSC) program. The TAG program provides funds for qualified citizens' groups affected by a site on EPA's National Priorities List (NPL) to hire independent technical advisors to help interpret and comment on site-related information. Under this option, the Department of Defense and EPA would sign a Memorandum of Understanding (MOU) authorizing EPA to provide additional assistance to community organizations subject to existing TAG regulations. EPA Regional TAG specialists would provide outreach to community members of TRCs, RABs, or other members of the community desiring technical assistance and would assist them throughout the application process and during the post-award administration phase. The Department of Defense would reimburse EPA for all awarded TAGs at Department of Defense facilities. Under this option, community members at NPL installations would obtain funds directly for technical assistance. Under this option, the TAG regulations published in the **Federal Register** on October 1, 1992, page 45311 through 45321, and recorded in 40 CFR Part 35, Subpart M, would be followed. These regulations allow for one TAG award per NPL facility but would not preclude the same community group from applying for additional technical assistance.

The TOSC is a pilot program funded by EPA to provide communities affected by hazardous waste sites with a variety of technical support services. The TOSC

program complements EPA's TAG program by serving as a mechanism for providing technical assistance to communities near non-NPL hazardous waste sites. The TOSC program provides services to communities through five geographically-based Hazardous Substance Research Centers (HSRCs) created in 1986. Each HSRC is a consortium of universities which supports two EPA Regions (i.e. Regions 1&2, 3&4, 5&6, 7&8, 9&10). Each HSRC provides independent technical resources and services that are flexible and tailored to the identified needs of a community. HSRC researchers and professionals are available to conduct technical and educational programs in a community, assist in the review of technical documents, provide comments on proposed actions, and answer questions. Under this option, the Department of Defense and EPA would sign an MOU that makes the TOSC program available to community members of TRCs, RABs, and other community groups through EPA Superfund Regional Community Relations Staff. EPA Regional Community Relations Staff would provide outreach near a Department of Defense facility to community members desiring TOSC support, would review proposals for assistance from community members, and would work with them throughout the approval and post-approval process. The Department of Defense would reimburse EPA for TOSC service rendered. Under this option, community members of TRCs and RABs at non-NPL installations would obtain technical advisors and related services from designated HSRCs.

Option B: Procure One or More Technical Assistance Providers

This option would involve the competitive procurement of one or more independent technical assistance providers to provide technical and public participation assistance to community members of TRCs and RABs at Department of Defense facilities. This assistance would be above the administrative support to TRCs and RABs already provided by the installations. One or more technical assistance providers would provide this assistance and would carry out many of the administrative and financial management requirements associated with a technical and public participation assistance program. An announcement, a procurement for technical assistance providers, would be made via the **Federal Register** in conjunction with the publication of the Interim Final Rule mentioned in Section I. Actual awards to one or more qualified technical assistance providers would be made via grants or cooperative agreements based on the results of an independent selection process. Recent experience with a similar grants process in the Department of Defense suggests that this option will involve a five or six month procurement process beginning with a formal announcement of a competition in the **Federal Register** and ending with awards to technical assistance providers.

At a later date, the Department of Defense plans a **Federal Register** announcement requesting expressions of interest to serve as a technical assistance provider. As indicated in that announcement, the technical assistance provider would provide technical assistance and public participation assistance to community members of TRCs and RABs. The provider would be responsible for receiving, evaluating, and making recommendations on applications from RABs for support and for providing the applications to the appropriate DoD approving official based on DoD established criteria. Once the approving official has selected the applications, the technical assistance provider would assume full responsibility for ensuring that the technical services and public participation support provided are delivered in a timely and effective manner to community members of TRCs and RABs, and that all funds are managed and dispersed in full compliance with appropriate Department of Defense regulations. The technical assistance provider would be responsible for supporting TRC and RAB requests nationwide or within a particular geographic area. Minimum qualifications for a technical assistance provider are:

(1) Perceived as neutral and credible.

(2) Either have or be able to obtain an interdisciplinary staff with demonstrated expertise in hazardous substance remediation, investigation, management and/or research.

(3) Management capability, for both financial and scientific management, and a demonstrated skill in planning and scheduling projects of comparable magnitude to that discussed in this Announcement.

(4) Ability to provide facilitation and mediation services.

(5) Knowledge and experience in environmental restoration activities preferably at federal facilities.

(6) A demonstrated ability to disseminate results of hazardous substance information through an interdisciplinary program to locally affected and concerned citizens.

(7) The ability to perform the required tasks either nationally or within a defined geographic area.

(8) Not-for-profit.

Under this option, community members of TRCs and RABs would be responsible for making requests to the community co-chair or designated members of the TRC or RAB responsible for applying to the designated technical assistance provider for assistance and for preparing facility specific statements describing the type and level of support requested. The technical assistance provider would be responsible for allocating available resources among these competing requests using general guidelines and established criteria provided by Department of Defense.

Option C: Issue Purchase Orders to Assistance Providers

This option would involve the issuance of purchase orders to technical and public participation assistance providers up to the allowable government purchase limit per purchase order (now at $25,000). If multiple purchase orders were needed to assist community members of a particular TRC or RAB, the combined sum of these purchase orders could not exceed a specified allotment. Qualified assistance providers would be selected by the community members of a TRC or RAB at each Department of Defense facility using guidelines provided by the Department of Defense. Under this option, community members of the TRC or RAB would provide a description of the services it is requesting to a Department of Defense contracting office, along with a cost estimate, and would identify the assistance provider and the provider's statement of qualifications. A minimum set of organizational qualifications for receiving a purchase order would be specified under this option by the Department of Defense. These qualifications would be promulgated as part of an Interim Final Rule.

Under all options described in the preceding sections, the local installations will continue to be responsible for providing administrative support in accordance with joint EPA and Department of Defense Restoration Advisory Board Implementation Guidelines issued September 27, 1994.

III. Requests for Comments

Today the Department of Defense solicits comments on the options for providing technical and public participation assistance to community members of RABs or TRCs. Each of the options described in Section II of this notice have strengths and weaknesses. Option A is the most timely option with the advantage of using existing EPA mechanisms to provide support, but also has the attached limitations of the TAG and TOSC programs as to the type of support which could be provided. Option B would procure independent technical assistance providers for the program and would relieve community members of TRCs and RABs of much of the administrative burden associated with managing government grants; however, it requires the time needed for a competitive procurement and does not provide the funds directly to community members of TRCs and RABs. Option C allows greater control and flexibility by community members, but imposes greater administrative burdens on community members of TRCs and RABs and on the contracting office issuing the purchase order. The Department of Defense is interested in determining the opinions of affected citizens and groups on these options. This would include preferences for particular options over others. It would also include comments on the individual options and the components of those options as described in Section II. There also exists the possibility of combining one or more of the Section II options. The Department of Defense solicits any comments or suggestions regarding option combinations. The Department of Defense also solicits comments on specific aspects of each option as well as on additional options desired to provide for technical and public participation assistance.

Within the options are specific items for which the Department of Defense solicits comments. These include the qualifications given for the independent technical assistance providers described in Option B. Comments on either the list of qualifications provided or on additional qualifications which should be added are encouraged. Both Options A and B have provisions for the division of the country into geographic areas with different service providers for each area. Do those commenting have preferences regarding nationwide versus regionalized coverage by service providers for these options? All options will be subject to an allotment cap. Do those commenting have suggestions as to the size of such a cap or the criteria which should be use to establish a cap? The Department of Defense has developed a list of public participation services it believes should be provided under Options B and C in addition to hiring technical advisors, facilitators, mediators and educators. These services are: translation and interpretation; training; transportation to meetings; and payment of approved travel. Comments on these or other services to be included under Options B and C are encouraged.

Dated: May 18, 1995.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–12628 Filed 5–23–95; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD13–90–028]

RIN 2115–AE06

Regulated Navigation Area: Puget Sound and Strait of Juan de Fuca, WA; Grays Harbor, WA; Columbia River & Willamette River OR; Yaguina Bay, OR; Umpqua River, OR; Coos Bay, OR

AGENCY: Coast Guard, DOT.

ACTION: Notice of termination.

SUMMARY: This rulemaking project was initiated to adopt regulations requiring an emergency tow-wire on tank barges while transiting certain port areas of the Pacific Northwest. The project is no longer necessary because the Coast Guard issued separate regulations on December 22, 1993, which require an emergency tow wire or tow line on all offshore oil barges. The Coast Guard is therefore terminating further rulemaking under docket number CGD13–90–028.

FOR FURTHER INFORMATION CONTACT: LCDR J. Bigley or LTJG M. L. Kammerer, Thirteenth Coast Guard District, Port Safety and Security Branch, (206) 220–7210.

SUPPLEMENTARY INFORMATION: On May 22, 1990, the Coast Guard published a "Request for comments; notice of hearing" at 55 FR 21044 seeking public comment on six navigation safety initiatives for port areas in the Pacific Northwest. These six safety initiatives involved the use of tug escorts, emergency towing plans, speed criteria, additional bridge personnel, emergency tow-wire requirements for tank barges, and requirements for extended pilotage. A public hearing was held on June 22, 1990, in Seattle, Washington, to hear comments on the six initiatives and alternative courses of action. The comments pertaining to emergency tow-wire requirements for tank barges were addressed and incorporated in a notice of proposed rulemaking (NPRM) published on October 24, 1991 at 56 FR 55104.

The rule proposed by the October 24, 1991, NPRM would have required all tank barges to carry an emergency tow-wire while transiting certain port areas of the Pacific Northwest. This rule was proposed in response to the growing concerns of the citizens of Washington and Oregon that regulatory action was necessary to prevent the discharge of oil or other hazardous substances during transportation. The proposed rule was intended to enhance navigation safety, thereby reducing the risk of pollution and environmental damage from collisions and groundings.

Subsequent to publication of the October 24, 1991 NPRM, the Coast Guard issued regulations requiring that all offshore oil barges carry an emergency tow wire or tow line (December 22, 1993, 58 FR 67988). These separate regulations became effective on January 21, 1994, and are codified at 33 CFR 155.230. Because these separate regulations adequately addressed the same issue addressed by the proposed rule, the proposed rule has become unnecessary, and the Coast Guard is terminating further rulemaking under docket number CGD13–90–028.

Dated: May 16, 1995.

John A. Pierson,

Captain, U.S. Coast Guard, Commander, Thirteenth Coast Guard District, Acting.

[FR Doc. 95–12735 Filed 5–23–95; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[KY–83–6927b; FRL–5184–8]

Approval and Promulgation of Implementation Plans State: Kentucky Approval of Revisions to State Implementation Plan (SIP)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the state implementation plan (SIP) submitted by the Commonwealth of Kentucky through the Natural Resources and Environmental Protection Cabinet (Cabinet). This revision will incorporate into the SIP an operating permit issued to the Calgon Carbon Corporation located in the Kentucky portion of the Ashland/Huntington ozone (O_3) nonattainment area. This permit will reduce the emissions of volatile organic compounds (VOCs) by requiring reasonably available control technology

(RACT). In the final rules section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: To be considered, comments must be received by June 23, 1995.

ADDRESSES: Written comments on this action should be addressed to Scott Southwick, at the EPA Regional Office listed below.

Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street, NE, Atlanta, Georgia 30365.

Division for Air Quality, Department for Environmental Protection, Natural Resources and Environmental Protection Cabinet, 316 St. Clair Mall, Frankfort, Kentucky 40601.

FOR FURTHER INFORMATION CONTACT: Scott Southwick, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE, Atlanta, Georgia 30365. The telephone number is 404/347–3555 x 4207. Reference file KY–083.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: March 21, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 95–12618 Filed 5–23–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[MN30–1–6215b; FRL–5183–9]

Approval and Promulgation of Implementation Plans; Minnesota

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: In the Final Rules Section of the **Federal Register**, the USEPA is approving recodification of Minnesota's regulations, removal of certain redundant and unnecessary regulations from the SIP, and other minor revisions. USEPA is taking that action as a direct final rule without prior proposal because USEPA views the action as noncontroversial and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to the proposal of that action. If USEPA receives adverse public comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. USEPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this action must be received by June 23, 1995.

SUPPLEMENTARY INFORMATION: Addresses and Supplementary Information are provided in the Rules section of this **Federal Register**.

Authority: 42 U.S.C. 7401–7671q.

Dated: March 20, 1995.

David A. Ullrich,

Acting Regional Administrator.

[FR Doc. 95–12562 Filed 5–23–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[Region II Docket No.129, NY10–1–6212, FRL–5210–1]

Approval and Promulgation of Implementation Plans; New York State Implementation Plan Revision

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency is proposing to approve a revision to the New York State Implementation Plan (SIP) related to the control of volatile organic compounds. The SIP revision consists of amendments to Part 200, "General Provisions," Part 201, "Permits and Certificates," Part 228, "Surface Coating Processes," Part 229, "Petroleum and Volatile Organic Liquid Storage," Part 233, "Pharmaceutical and Cosmetic Manufacturing Processes," and Part 234, "Graphic Arts." The amendments extend reasonably available control technology rules to enlarged nonattainment areas and to areas of the Northeast Ozone Transport Region as required by the Clean Air Act. In addition, the amendments to Part 228 correct deficiencies in New York's existing SIP, as required by the Clean Air Act.

DATES: Comments must be received on or before June 23, 1995.

ADDRESSES: All comments should be addressed to: William S. Baker, Chief Air Programs Branch, Environmental Protection Agency, Region II Office, 290 Broadway, New York, New York 10007–1866.

Copies of the State submittal are available at the following addresses for inspection during normal business hours: Environmental Protection Agency, Region II Office, Air Programs Branch, 290 Broadway, 20th Floor, New York, New York 10007–1866.

New York State Department of Environmental Conservation, Division of Air Resources, 50 Wolf Road, Albany, New York 12233.

FOR FURTHER INFORMATION CONTACT: Paul R. Truchan, State Implementation Plan Section, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 20th Floor, New York, New York 10007–1866, (212) 637–4249.

SUPPLEMENTARY INFORMATION:

Background

The Clean Air Act (Act) as amended in 1990 sets forth a number of requirements that states with areas designated as nonattainment for ozone must satisfy and a timetable for satisfying these requirements. These requirements are further explained in the General Preamble to the Act (57 FR 13513), which was published on April 16, 1992. The specific requirements vary depending upon the severity of the ozone problem. One of the requirements, and the subject of this proposed rulemaking, is for states to adopt reasonably available control technology (RACT) rules for various volatile organic compound (VOC)

source categories. Section 182 sets forth two separate RACT requirements for ozone nonattainment areas. The first requirement, contained in Section 182(a)(2)(A) and referred to as RACT fix-up, requires the correction of RACT rules for which EPA identified deficiencies before the Act was amended in 1990. The second requirement, set forth in Section 182(b)(2), applies to moderate (and above) ozone nonattainment areas. The goal of this latter requirement is to ensure that areas not required previously to adopt RACT for some or all of the major stationary sources, adopt rules and "catch-up" to those areas subject to more stringent RACT requirements. In addition, the RACT catch-up provision requires certain areas to apply RACT to smaller sources because the definition of major source has been changed to include smaller sources.

The State has previously adopted regulations addressing some of these requirements and EPA has approved many of these revisions to the New York State Implementation Plan (SIP). On March 8, 1993, New York submitted a SIP revision addressing more of these requirements. This SIP revision is the subject of this proposed action.

In New York the applicability of these requirements varies depending on whether the source category is in an area previously designated nonattainment (New York City and the counties of Nassau, Suffolk, Westchester and Rockland), a nonattainment area where the boundaries have been extended by the Act (the towns of Blooming Grove, Chester, Highlands, Monroe, Tuxedo, Warwick and Woodbury in Orange County), or an area within the Northeast Ozone Transport Region (the entire State). There are also areas in New York which are designated as marginal nonattainment (parts or all of the counties of Albany, Greene, Montgomery, Rensselaer, Saratoga, Schenectady, Erie, Niagara, Essex, and Jefferson.) There are no RACT requirements for these areas because of their marginal designation, but these areas are subject to the RACT requirements for an area within the Northeast Ozone Transport Region. On October 6, 1994, Dutchess and Putnam counties and portions of Orange County were reclassified as moderate nonattainment (See section ahead entitled "Requirements for nonattainment areas with expanded boundaries").

Requirements for Previously Designated Nonattainment Areas

The New York portion of the "New Jersey, New York, Connecticut interstate metropolitan air quality control region" (composed of New York City and the counties of Nassau, Suffolk, Westchester and Rockland) was previously designated nonattainment for ozone. Under the amended Act, EPA included these areas as part of the New York-Northern New Jersey-Long Island Nonattainment Area and classified it as severe nonattainment for ozone.

Section 182(a)(2)(A) of the Act requires states with ozone nonattainment areas classified as marginal or above, to fix their deficient RACT rules for ozone precursors in accordance with EPA's pre-enactment guidance by May 15, 1991. New York made SIP submittals addressing this requirement and EPA approved this submittal with the exception of two remaining deficiencies for the New York portion of the New York-Northern New Jersey-Long Island Nonattainment Area on July 27, 1993 (58 FR 40057 and 58 FR 40062). New York's March 8, 1993 SIP revision corrects these two remaining deficiencies as described later in this proposal.

Section 182(b)(2) of the Act requires states with ozone nonattainment areas classified as moderate or above to develop RACT for (1) all pre-enactment Control Technology Guideline (CTG) source categories; (2) all sources subject to post-enactment CTGs; and (3) all other major sources in those areas.

With regard to the first requirement, the pre-amended Act required ozone nonattainment areas to adopt RACT rules for certain sources of VOC emissions. EPA issued three sets of CTGs, establishing a "presumptive norm" for RACT for various categories of VOC sources. The three sets of CTGs were (1) Group I—issued before January 1978 (15 CTGs); (2) Group II—issued in 1978 (9 CTGs); and (3) Group III—issued in the early 1980's (5 CTGs). New York was required to adopt RACT rules for all of the CTG sources. New York had already developed RACT rules for the pre-enactment CTG sources. Therefore nothing further is required to fulfill this portion of the requirement.

With regard to the second requirement, New York has followed the process set forth by EPA in its CTG document issued as Appendix B to the General Preamble. In Appendix B, EPA provides that states could delay submission of non-CTG rules for those sources the state anticipates will be covered by one of EPA's 11 proposed post-enactment CTGs. Section 183(a) requires EPA to issue these 11 CTGs by November 15, 1993 and, when each is issued to establish a schedule for state adoption. Therefore, New York would be required to adopt by that schedule. Should EPA not issue a CTG by November 15, 1994, then New York would have to adopt RACT for those major source categories by November 15, 1994.

On November 15, 1993, EPA published a CTG for reactor processes and distillation operations in the synthetic organic chemical manufacturing industry. On March 23, 1994, in 56 FR 13717, EPA published an addendum to that CTG. In that addendum EPA explained that states are required to adopt RACT rules for this CTG category by March 23, 1995 and that sources must be in compliance with these rules no later than November 15, 1996. EPA did not issue any additional CTGs by the November 15, 1993 deadline. Therefore, in order to meet the Appendix B requirement, New York must adopt RACT rules for reactor processes and distillation operations in the synthetic organic chemical manufacturing industry by March 23, 1995. In addition, New York must adopt RACT rules for all major sources which would be subject to other post-enactment CTG categories by November 15, 1994.

With regard to the third requirement, Section 182(d) of the Act defines major sources in severe ozone nonattainment areas as sources capable of emitting 25 tons or more of VOC per year. Therefore, New York was required to adopt RACT rules for all sources that exceed this 25 ton per year cut-off by November 15, 1992.

New York had already developed RACT rules for the pre-enactment CTGs in this area. These rules all meet the 25 ton per year cutoff or a lower cutoff specified by the applicable CTG, therefore, nothing further is needed to fulfill this portion of the requirement for pre-enactment CTG sources. New York's March 8, 1993 submittal is intended to address some of the RACT requirements for non-CTG major sources including: volatile organic liquid storage (other than gasoline), marine tanker loading and pharmaceutical manufacturing processes (other than synthesized processes). These regulations are addressed in this proposal. In a January 15, 1992 letter, EPA notified the Governor of New York that it was starting the sanction process required by Section 179(a) of the Act,[1] because of

[1] Section 179(a) of the Act requires that EPA impose sanctions 18 months after finding; that a

Continued

New York's failure to completely address the requirement to develop RACT regulations for all non-CTG major sources. On July 8, 1994, New York submitted the necessary regulations which EPA found complete on July 13, 1994 thereby stopping the sanction process. These regulations will be the subject of a future **Federal Register** notice.

Requirements for Nonattainment Areas With Expanded Boundaries

On November 6, 1991 (56 FR 56694), EPA extended the boundaries of the New York-Northern New Jersey-Long Island Nonattainment Area to include Putnam and Orange counties. New York, however, requested time to study the boundaries and classification under Section 187(d)(4)(A)(iv). Based on New York's study, EPA confirmed that the southern part of Orange County (the towns of Blooming Grove, Chester, Highlands, Monroe, Tuxedo, Warwick and Woodbury) should remain in the New York-Northern New Jersey-Long Island Nonattainment Area with a nonattainment classification of severe and that Putnam County should be included in the Poughkeepsie Area with a nonattainment classification of marginal. The northern portion of Orange County was classified as attainment for ozone. Therefore, only the southern portion of Orange County described previously was covered by the extended nonattainment area boundary provisions.

The southern portion of Orange County was not subject to the Section 182(a)(2)(A) RACT fix-up requirement. However, under Section 182(b)(2), the State was required to submit RACT rules for all sources subject to a pre-enactment CTG or a post-enactment CTG and to submit RACT rules for all other major VOC sources. For this area, a major source is one that has the potential to emit greater than 25 tons per year.

New York's March 8, 1993 SIP revision extended the applicability of New York's RACT rules for sources covered by pre-enactment CTGs to the towns in the southern portion of Orange County and it also adds control requirements for some non-CTG RACT sources in this area. These regulations are addressed in this proposal. As was explained earlier for the previously designated portion of the New York-Northern New Jersey-Long Island Nonattainment Area, the State needed to make additional submissions with respect to non-CTG RACT rules. This was also true for the expanded portion of the New York-Northern New Jersey-Long Island Nonattainment Area. The State has now made the necessary submissions which will be the subject of a future **Federal Register** notice.

It should be noted that on October 6, 1994 (59 FR 50848), EPA reclassified Dutchess, Putnam and the northern portion of Orange County as moderate nonattainment for ozone. The new moderate classification changes the requirements for these areas. However, since these areas are in the Northeast Ozone Transport Region there will be a minimum of changes needed to the regulations. The State should still review the regulations to determine if administrative changes are needed.

Requirements for Areas in the Northeast Ozone Transport Region

Because ozone is a regional problem, Section 184(a) of the Act included all of New York State in the Northeast Ozone Transport Region. Section 184(b)(1)(B) requires areas that are part of the Ozone Transport Region to implement RACT rules for VOC sources. This requirement includes sources subject to pre-enactment CTGs, sources subject to post-enactment CTGs, and all non-CTG sources with the potential to emit more than 50 tons of VOCs per year.

New York's March 8, 1993, SIP revision extended the applicability of New York's RACT rules for sources covered by pre-enactment CTGs statewide and it also adds control requirements for some non-CTG RACT sources. These regulations are addressed in this proposal. As was explained earlier for the portions of New York which are designated as severe, the State needed to make additional submissions with respect to non-CTG RACT rules. This was also true for the remainder of the State. The State has now made the necessary submissions which will be the subject of a future **Federal Register** notice.

SIP Deficiencies

EPA has identified a number of deficiencies in New York's Ozone SIP. New York made a number of submittals intending to address these deficiencies but on October 16, 1991, EPA wrote to the Governor of New York, informing him that New York had missed the May 15, 1991 deadline to correct all of the RACT deficiencies that EPA had previously identified. This initiated the sanction process required by Section 179(a) of the Act.

The specific problems that EPA identified were the failure to develop a control measure regulating the detection and repair of component leaks at synthetic organic chemical manufacturing industry (SOCMI) facilities, an inadequate definition for VOC, and inadequate emission limitations for certain surface coatings.

On January 8, 1992, New York submitted SIP revisions that addressed the missing control measures for SOCMI facilities and the inadequate definition of VOC. EPA approved this SIP revision on July 27, 1993 (58 FR 40057).

In its March 8, 1993, SIP revision, New York addressed the remaining SIP deficiencies. EPA's April 9, 1993, determination that this submittal was complete stopped the sanctions process initiated on October 16, 1991. EPA's action on these rules is addressed in this proposal.

State Submittals

On March 8, 1993, New York submitted to EPA a request to revise its SIP. The revisions consisted of amendments to Part 200, "General Provisions," Part 201 "Permits and Certificates," Part 228, "Surface Coating Processes," Part 229 "Petroleum and Volatile Organic Liquid Storage and Transfer," Part 233, "Pharmaceutical and Cosmetic Manufacturing Processes," and Part 234, "Graphic Arts" of Title 6 of the New York Code of Rules and Regulations. These regulations were adopted on February 27, 1993, and became effective on March 29, 1993. These regulations address, in part, the requirements of the Clean Air Act explained previously. It should be noted that because the specific requirements of the Act which New York must address vary by the severity of the ozone problem in a specific area, the applicability of New York's regulations also vary by area. A summary of EPA's review and findings concerning these regulations follows. For a more detailed analysis, see the technical support document which is available at EPA's Region 2 office.

Part 200—General Provisions

A definition for "Lower Orange County Metropolitan Area" was added to Part 200. The definition is consistent with EPA's current non-attainment designation. In addition, Part 200 was updated to reflect numbering changes made previously to other regulations dealing with references to test methods. EPA proposes to fully approve Part 200.

Part 201—Permits and Certificates

EPA's past approval of Part 201 dates back to 1981 and the regulation has been revised from time to time since then. Some of the current revisions were necessary to extend the applicability of Part 201 to source categories which were previously exempted from these requirements. Other changes were made which clarify when a certificate to operate is required, when a certificate to construct or operate can be transferred, and when a certificate to operate ceases to be valid. On June 28, 1989 (54 FR 27274), EPA provided guidance on what requirements a state operating permit program must meet in order to part of a SIP. There are, however, certain inconsistencies between Part 201 and EPA's guidance pertaining to public participation procedures. EPA is in the process of preparing additional guidance which may necessitate changes to state permit programs similar to Part 201. EPA is proposing to approve the current revisions to Part 201 because they are necessary for the efficient administration of the expanded RACT regulations discussed later in this proposal. EPA may in the near future notify New York that Part 201 must be revised in order for Part 201 to remain in the SIP.

Part 228—Surface Coating Processes

New York has made two corrections to Part 228 to address existing deficiencies in New York's RACT rules as required by Section 182(a)(2)(A) of the Act. These corrections involve removing an exemption for high performance aluminum architectural coatings previously contained in 228.3(a)(2)(v), and removing an emission limit for clear coating of metal furniture previously contained in 228.8 table 1. Sources that were previously regulated under these provisions must now meet the requirements for miscellaneous metal parts and metal furniture respectively contained in the revised Part 228. EPA is proposing to approve both of these changes. These changes correct the last of the deficiencies in New York's SIP that were required to be corrected under Section 182(a)(2)(A). New York's submission of a SIP which met EPA's completeness criteria (40 CFR 51 Appendix V) stopped the sanction process required by Section 179(a).

New York has also extended the applicability of sources regulated by Part 228 to cover unregulated sources in upstate New York. Depending upon the type of surface coating operation, the regulation applies to sources with potential annual emissions of VOCs of either 10 tons or 50 tons. New York has required that certain surface coating operations must be regulated at sources with potential annual emissions of 10 tons to meet requirements set forth in CTGs for surface coating operations. New York has regulated additional types of surface coating operations at facilities with the potential annual emissions of 50 tons to satisfy the Section 184(b) requirement to require RACT for all major sources of VOCs. The applicability of Part 228 has also been extended to include the seven towns in southern Orange County that have been added to the New York-Northern New Jersey-Long Island Nonattainment area. The applicability in southern Orange County extends to sources with potential annual emissions of either 10 tons or 25 tons, depending upon the type of surface coating source being regulated. Sources must comply with these new requirements by June 1, 1995. This date is consistent with the Act's requirement that sources required to be regulated be in compliance with RACT requirements "as expeditiously as practicable but no later than May 31, 1995."

New York has also removed from the rule, a facility wide reduction plan (bubble) as a compliance option. Part 228 previously contained generic provisions allowing for the mathematical combination of VOC emissions or "bubble" provisions. These provisions were not consistent with EPA's Emission Trading Policy (51 FR 43814, December 4, 1986) because New York had not attained the national ambient air quality standard for ozone by December 31, 1987 and its SIP was found to be substantially inadequate. New York decided to eliminate these bubble provisions as a control option. This change makes Part 228 consistent with EPA's Emission Trading Policy.

In addition to making changes required by the Act, New York has made a number of other changes to Part 228. New York added a low use specialty coating exemption. To be exempted: each low-use specialty coating to be exempted must be identified in the plants permit and approved by the State prior to exemption, the plant-wide total exempted coating usage cannot exceed 55 gallons from all coatings, the source must maintain records on an as used basis for each exempted and non-exempted coating, and the annual potential to emit of these exempt coatings can not exceed five percent of the facility's total annual potential to emit. Since this is consistent with EPA's August 10, 1990 guidance, EPA is proposing to approve it. New York also revised Part 228 to clarify that sources are allowed the option of either reformulating coatings or using control equipment to reduce VOC emissions. The control efficiency required is the lesser of the control efficiency required to meet the coating limits required for reformulated coatings calculated on a solids as applied basis or 85%. EPA proposes to fully approve Part 228.

Part 229—Petroleum Liquid Storage Facilities

Control requirements were added for the transfer of gasoline at gasoline bulk plants and loading terminals in upstate New York that were previously uncontrolled. Control requirements were also added for the storage of volatile organic liquids (other than gasoline) and marine gasoline loading facilities statewide. Marine gasoline loading facilities at all gasoline storage and distribution facilities which have a daily throughput of greater than 20,000 gallons must be equipped with and operating a vapor control system. The final compliance date for newly regulated sources is June 1, 1995, except for marine vessel loading facilities which must be in compliance by November 15, 1994. EPA proposes to fully approve Part 229.

Part 233—Pharmaceutical Manufacturing Processes

The applicability of Part 233 was extended to control unregulated sources in upstate New York. In addition, control requirements were added for non-synthesized pharmaceutical manufacturing processes and for cosmetic manufacturing processes statewide. These sources must control emissions from: process equipment, air dryer and production equipment exhausts, VOC transfers, centrifuges and filters, in process tanks and leaks. All newly regulated sources must comply with these requirements by June 1, 1995. New York has also removed facility wide emission reduction plans (bubbles) as a compliance option. EPA proposes to fully approve Part 233.

Part 234—Graphic Arts

The applicability of Part 234 was extended to control unregulated sources in upstate New York that have potential annual emissions of 50 tons or more. In addition, the applicability has been extended to sources located in the seven towns in southern Orange County that are part of the New York-Northern New Jersey-Long Island Nonattainment area. The applicability to these sources extends down to those with 25 tons or more of potential annual emissions. Statewide control requirements were also added for screen printing operations and offset lithographic printing operations. New York has also added provisions regulating the handling, storage and disposal of VOCs. An opacity limitation was also added

state has failed to submit a SIP or an element of a SIP that is required by the Act; that a State has submitted a SIP or an element of a SIP that is incomplete; or that EPA disapproves a SIP submission for a nonattainment area.

for all sources subject to this regulation. EPA proposes to fully approve Part 234.

Conclusion

EPA is proposing full approval of Parts 200, 201, 228, 229, 233 and 234 because they are consistent with EPA policy and guidance and also meet the requirements of Sections 110, 182(a)(2)(A), 182(b)(2) and 184(b) of the Act.

Nothing in this proposal should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. § 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. §§ 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under Section 110 and subchapter I, Part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moveover, due to the nature of the federal-state relationship under the Act, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *US EPA*, 427 US 246, 256–66 (S.Ct. 1976); 42 U.S.C. § 7410(a)(2).

The Office of Management and Budget has exempted these actions from review under Executive Order 12866.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C 7401–7671q.

Dated: May 2, 1995.

William Muszynski,

Acting Regional Administrator.

[FR Doc. 95–12772 Filed 5–23–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 86

[FRL–5209–9]

RIN 2060–AE27

Revisions to the Federal Test Procedure for Emissions From Motor Vehicles

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of comment period.

SUMMARY: On February 7, 1995 (60 FR 7404), EPA published a Notice of Proposed Rulemaking in the **Federal Register** that proposed additions and revisions to the tailpipe emissions portions of the Federal Test Procedure for light-duty vehicles and light-duty trucks. Interested parties should consult that notice and/or the public docket (see **ADDRESSES** below) for a detailed description and background of the proposal.

A public hearing regarding the proposed regulations was held on April 19 and 20, 1995. In joint testimony presented at that hearing the Agency was asked by the American Automobile Manufacturers Association and the Association of International Automobile Manufacturers to consider extending the comment period from 30 days after the public hearing to 90 days after the public hearing. As a continuation of previous EPA-industry cooperation efforts, the automobile manufacturers have extensive test programs in progress to investigate many aspects of the proposed regulations. The completion of these programs and the necessary data analyses to follow can not be accomplished within the original comment period. The EPA believes that the test programs and the resulting data have sufficient merit to warrant the requested extension of the comment period.

DATES: The comment period for the notice of proposed rulemaking will be extended from the original closing date of May 22, 1995 to July 19, 1995.

ADDRESSES: Comments should be submitted in duplicate to Public Docket No. A–92–64, at: Air Docket Section, U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460. (Phone 202–260–7548; FAX 202–260–4000).

Materials relevant to this notice have been placed in Docket No. A–92–64. The docket is located at the above address in Room M–1500, Waterside Mall, and may be inspected weekdays between 8:30 a.m. and 5:30 p.m. A reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT: John German, Certification Division, U.S. Environmental Protection Agency, National Vehicle and Fuel Emissions Laboratory, 2565 Plymouth Road, Ann Arbor, Michigan, 48105. Telephone (313) 668–4214. Fax (313) 741–7869.

Dated: May 16, 1995.

Mary D. Nichols,

Assistant Administrator for Air and Radiation.

[FR Doc. 95–12771 Filed 5–23–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 180

[OPP–300386; FRL–4954–1]

RIN 2070–AC18

Polymethylene Polyphenylisocyanate, Polymer with Ethylene Diamine, Diethylene Triamine and Sebacoyl Chloride, Cross-Linked; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to establish an exemption from the requirement of a tolerance for residues of polymethylene polyphenylisocyanate, polymer with ethylene diamine, diethylene triamine and sebacoyl chloride, cross-linked, when used as an inert ingredient (encapsulating agent) in pesticide formulations applied to growing crops only under 40 CFR 180.1001(d) to replace and delete the existing exemption from the requirement of a tolerance for residues of cross-linked nylon-type encapsulating polymer under 40 CFR 180.1028. Elf Atochem North America, Inc., requested this proposed regulation pursuant to the Federal Food, Drug and Cosmetic Act.

DATES: Written comments, identified by the document control number [OPP-300386], must be received on or before June 23, 1995.

ADDRESSES: By mail, submit written comments to Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington,

VA 22202. Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP-300386]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Mary Waller, Registration Support Branch, Registration Division (7505W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 2800 Crystal Drive, North Tower, 6th Floor, Arlington, VA 22202, (703)-308-8811; e-mail: waller.mary@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Elf Atochem North America, Inc., 2000 Market St., Philadelphia, PA 10103-3222, submitted pesticide petition (PP) 5E4447 to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food Drug, and Cosmetic Act (FFDCA) (21 U.S.C. 346a(e)), propose to amend 40 CFR part 180 by replacing the existing exemption from the requirement of a tolerance for residues of cross-linked nylon-type encapsulating polymer listed under 40 CFR 180.1028 with an exemption from the requirement of a tolerance for residues of polymethylene polyphenylisocyanate, polymer with ethylene diamine, diethylene triamine and sebacoyl chloride, cross-linked, when used as an inert ingredient (encapsulating agent) in pesticide formulations applied to growing crops only under 40 CFR 180.1001(d).

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125, and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not to imply nontoxicity; the ingredient may or may not be chemically active.

The data submitted in the petition and other relevant material have been evaluated. As part of the EPA policy statement on inert ingredients published in the **Federal Register** of April 22, 1987 (52 FR 13305), the Agency set forth a list of studies which would generally be used to evaluate the risks posed by the presence of an inert ingredient in a pesticide formulation. However, where it can be determined without that data that the inert ingredient will present minimal or no risk, the Agency generally does not require some or all of the listed studies to rule on the proposed tolerance or exemption from the requirement of a tolerance for an inert ingredient. The Agency has decided that no data, in addition to that described below, for polymethylene polyphenylisocyanate, polymer with ethylene diamine, diethylene triamine and sebacoyl chloride, cross-linked, will need to be submitted. The rationale for this decision is described below.

In the case of certain chemical substances that are defined as "polymers," the Agency has established a set of criteria which identify categories of polymers that present low risk. These criteria (described in 40 CFR 723.250) identify polymers that are relatively unreactive and stable compared to other chemical substances as well as polymers that typically are not readily absorbed. These properties generally limit a polymer's ability to cause adverse effects. In addition, these criteria exclude polymers about which little is known. The Agency believes that polymers meeting the criteria noted above will present minimal or no risk. Polymethylene polyphenylisocyanate, polymer with ethylene diamine, diethylene triamine and sebacoyl chloride, cross-linked, conforms to the definition of a polymer given in 40 CFR 723.250(b)(11) and meets the following criteria that are used to identify low-risk polymers.

1. The minimum number-average molecular weight of polymethylene polyphenylisocyanate, polymer with ethylene diamine, diethylene triamine and sebacoyl chloride, cross-linked, is 100,000. Substances with molecular weights greater than 400 generally are not absorbed through the intact skin, and substances with molecular weights greater than 1,000 generally are not absorbed through the intact gastrointestinal tract. Chemicals not absorbed through skin or GI tract generally are incapable of eliciting a toxic response.

2. Polymethylene polyphenylisocyanate, polymer with ethylene diamine, diethylene triamine and sebacoyl chloride, cross-linked, is not a cationic polymer, nor is it reasonably expected to become a cationic polymer in a natural aquatic environment.

3. Polymethylene polyphenylisocyanate, polymer with ethylene diamine, diethylene triamine and sebacoyl chloride, cross-linked, does not contain less than 32.0 percent by weight of the atomic element carbon.

4. Polymethylene polyphenylisocyanate, polymer with ethylene diamine, diethylene triamine and sebacoyl chloride, cross-linked, contains as an integral part of its composition the atomic elements carbon, hydrogen, nitrogen, and oxygen.

5. Polymethylene polyphenylisocyanate, polymer with ethylene diamine, diethylene triamine and sebacoyl chloride, cross-linked, does not contain as an integral part of its composition, except as impurities, any elements other than those listed in 40 CFR 723.250(d)(3)(ii).

6. Polymethylene polyphenylisocyanate, polymer with ethylene diamine, diethylene triamine and sebacoyl chloride, cross-linked, is not a biopolymer, a synthetic equivalent of a biopolymer, or a derivative or modification of a biopolymer that is substantially intact.

7. Polymethylene polyphenylisocyanate, polymer with ethylene diamine, diethylene triamine and sebacoyl chloride, cross-linked, is not manufactured from reactants containing, other than impurities, halogen atoms or cyano groups.

8. Polymethylene polyphenylisocyanate, polymer with ethylene diamine, diethylene triamine and sebacoyl chloride, cross-linked, does not contain a reactive functional group that is intended or reasonably expected to undergo further reaction.

9. Polymethylene polyphenylisocyanate, polymer with ethylene diamine, diethylene triamine and sebacoyl chloride, cross-linked, is neither designed nor reasonably expected to substantially degrade, decompose, or depolymerize.

The establishment of an exemption from the requirement of a tolerance for residues of polymethylene polyphenylisocyanate, polymer with ethylene diamine, diethylene triamine and sebacoyl chloride, cross-linked, when used as an inert ingredient (encapsulating agent) in pesticide formulations applied to growing crops only under 40 CFR 180.1001 will obviate the need to maintain an exemption from the requirement of a tolerance for cross-linked nylon-type encapsulating polymer as listed under 40 CFR 180.1028. The polymer listed in 40 CFR 180.1028 is described as being "formed by the reaction of a mixture of sebacoyl chloride and polymethylene polyphenylisocyanate with a mixture of ethylene diamine and diethylene triamine." The resultant polymer can best be described as polymethylene polyphenylisocyanate, polymer with ethylene diamine, diethylene triamine and sebacoyl chloride, cross-linked, the subject of this proposed regulation.

In addition, based on the polymer's conformance to the set of criteria that are used to identify low-risk polymers, the additional use restrictions described in 40 CFR 180.1028 (i.e., use as an encapsulating material for formulations of methyl parathion applied to growing alfalfa, apples, artichokes, barley, cabbage, cherries, corn (except popcorn), cotton, forage grasses, grapes, beans, (dry, lima, and snap), peaches, pears, peas, plums (fresh prunes), potatoes, rice, soybeans, tomotoes, and wheat and for formulations of parathion applied to growing sorghum), are no longer applicable.

Based on the information above and review of its use, EPA has found that, when used in accordance with good agricultural practice, this ingredient is useful, and a tolerance is not necessary to protect the public health. Therefore, EPA proposes that the exemption from the requirement of a tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, that contains any of the ingredients listed herein, may request within 30 days after the publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the FFDCA.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [OPP-300386]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays.

A record has been established for this rulemaking under docket number [OPP-300386] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-Docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in **ADDRESSES** at the beginning of this document.

The Office of Management and Budget has exempted this rule from the requirements of section 2 of Executive Order 12866.

Pursuant to the requirement of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have an economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subject in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Food additives, Pesticides and pests, Processed foods, Reporting and recordkeeping requirements.

Dated: May 10, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.1001(d) is amended in the table therein by adding and alphabetically inserting the inert ingredient, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(d) * * *

Inert ingredient	Limits	Uses
Polymethylene polyphenylisocyanate, polymer with ethylene diamine, diethylene triamine and sebacoyl chloride, cross-linked; minimum number average molecular weight 100,000.		Encapsulating agent

* * * * *

§ 180.1028 [Removed]

3. By removing § 180.1028 *Cross-linked nylon-type encapsulating polymer; exemption from the requirement of a tolerance* is deleted.

[FR Doc. 95-12742 Filed 5-23-95; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 95-68, RM-8629]

Radio Broadcasting Services; Berlin, MD

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by John P. Gillen, proposing the allotment of Channel 235A to Berlin, Maryland, as that community's second FM Broadcast service. The coordinates for Channel 235A are 38-13-45 and 75-10-58. There is a site restriction 10.8 kilometers (6.7 miles) southeast of the community.

DATES: Comments must be filed on or before July 10, 1995, and reply comments on or before July 25, 1995.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: John P. Gillen, 12314 Dixie Drive, Bishopville, Maryland 21813.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 95-68, adopted May 11, 1995, and released May 18, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW, Suite 140, Washington, D.C. 20037, (202) 857-3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95-12703 Filed 5-23-95; 8:45 am]

BILLING CODE 6712-01-F

47 CFR Part 73

[MM Docket No. 95-67, RM-8624]

Radio Broadcasting Services; Greenfield & Stockton, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by KYOO Communications proposing the allotment of Channel 299A at Stockton, Missouri, as that community's first local service. The coordinates for Channel 299A at Stockton are 37-42-22 and 93-53-21. There is a site restriction 8.5 kilometers (5.3 miles) west of the community. To accommodate Channel 299A at Stockton, we shall propose the deletion of vacant Channel 299A at Greenfield, Missouri.

DATES: Comments must be filed on or before July 10, 1995, and reply comments on or before July 25, 1995.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: William J. Pennington, III, 5519 Rockingham Road-East, Greensboro, North Carolina 27407.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 95-67, adopted May 8, 1995, and released May 18, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW, Suite 140, Washington, D.C. 20037, (202) 857-3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95-12705 Filed 5-23-95; 8:45 am]

BILLING CODE 6712-01-F

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

[FAR Case 94-753]

Federal Acquisition Regulation; Public Meeting on Travel Cost

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of public meeting on proposed rule.

SUMMARY: At 59 FR 64542, December 14, 1994, a Federal Acquisition Regulation (FAR) proposed rule for implementing statutory requirements of the Federal Acquisition Streamlining Act, (the Act) with regard to travel cost was published. Numerous written comments have been received at the FAR Secretariat in response to the **Federal Register** document. The notice announces a public meeting for the Travel Cost rule.

DATES: The meeting will be at 2:00 p.m. on June 14, 1995.

ADDRESSES: The public meeting will held at: Office of Personnel Management, 1900 E Street NW., Room 1350, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, FAR Secretariat, General Services Administration, 18th and F Streets NW., Washington, DC 20405. Telephone: (202) 501–4755; FAX (202) 501–4067.

SUPPLEMENTARY INFORMATION: In order to implement Section 2191 of the Act, the Cost Principles Team drafted a proposed rule which would use the Federal Travel Regulation/Joint Travel Regulation (FTR/JTR) rates as a baseline, while allowing contractors to propose alternative maximum per diem rates based on existing travel cost reimbursement systems. After review and analysis of the public comments on the proposed rule, the team has preliminarily decided to recommend retention of the current cost principle language at FAR 31.205–46 without change and to withdraw the proposed rule.

The team's preliminary determination to retain the current cost principle language is based on the following: (i) Industry and Government agency commentors generally agreed that the proposed rule's alternative maximum per diem rate requirements would place an undue administrative burden on contractor and Government personnel; (ii) commentors proposing a revision to the "reasonableness standard" did not provide any empirical data to support claimed inequities or increased administrative burdens under the current rule; and (iii) the commenters' alternatives were considered by the team to be administratively burdensome and inadequate to protect the Government's interests. The team's preliminary conclusion is that retaining the current FAR requirement will reduce disagreements and disputes between contractors and the Government, is less burdensome administratively than any alternative proposed, and results in equitable reimbursement of per diem costs.

To allow the public to present its views on this determination, a public meeting will be held on June 14, 1995. Persons or organizations wishing to make presentations will be allowed 10 minutes to present their views, provided they notify the FAR Secretariat at (202) 501–4745 and provide an advance copy of their remarks not later than June 9, 1995. All participants should be prepared to provide data to support their positions. The team is particularly interested in data which supports the contention that FTR/JTR rates are inequitable or that the current FAR requirements are more administratively burdensome than would be other proposed alternatives, either proposed during the public comment process, or presented at this meeting. Alternatives, other than those previously proposed during the public comment period, may be submitted the consideration. The team will enter into discussion with commentors and the audience during this meeting.

Dated: May 18, 1995.

Edward C. Loeb,

Deputy Project Manager for Implementation of the Federal Acquisition Streamlining Act of 1994.

[FR Doc. 95–12659 Filed 5–23–95; 8:45 am]

BILLING CODE 6820–EP–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 575

[Docket No. 94–30, Notice 2]

RIN 2127–AF17

Consumer Information Regulations Uniform Tire Quality Grading Standards

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Uniform Tire Quality Grading Standards to:

1. Revise treadwear testing procedures to maintain the base course wear rate of course monitoring tires at its current value. That revision should eliminate treadwear grade inflation, reduce testing expenses, and reduce the adverse environmental consequences of operating testing convoys;

2. Create a new traction grading category of "AA" in addition to the current traction grades of A, B, and C to differentiate those tires with the highest traction characteristics from lower performing tires;

3. Replace the temperature resistance grade with a rolling resistance/fuel economy grade. This change would provide a measure of a key fuel economy characteristic of tires, and responds to the President's Climate Change Action Plan.

DATES: Comments on this notice must be received on or before July 10, 1995.

ADDRESSES: Comments should refer to the docket and notice number shown above and be submitted to Docket Section, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Room 5111, Washington, DC 20590. Docket room hours are from 9:30 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Orron Kee, Office of Market Incentives, Office of the Associate Administrator for Rulemaking, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Room 5320, Washington, DC 20590, telephone (202) 366–0846.

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I. Background

49 U.S.C. 30123(e) requires the Secretary of Transportation to prescribe a uniform system for grading motor vehicle tires to assist consumers in making informed choices when purchasing tires. NHTSA implemented this congressional mandate by issuing the Uniform Tire Quality Grading Standards (UTQGS) (49 CFR § 575.104). The UTQGS are applicable to most passenger car tires.

The UTQGS require manufacturers to grade their tires for treadwear, traction, and temperature resistance. Those characteristics were adopted by NHTSA after an extended process of study, testing, and public comment. NHTSA believed that those three characteristics provided the best balance of tire properties that would be the most meaningful to consumers. Because those three characteristics interact with each other, however, manufacturers must use care in trying to improve any particular characteristic since improving one characteristic could detract from one or both of the other characteristics. For example, treadwear life could be extended by adjusting the tire compounds to produce a harder tread. That adjustment, however, could detract from traction performance. Tread life could also be extended by adding more rubber compound to the tread. That addition, however, could increase rolling resistance, causing greater internal heating. The increased heating could, in turn, result in temperature buildup and possibly result in tire failure.

II. April 25, 1994 Request for Comments

On April 25, 1994, NHTSA published a Request for Comments in the **Federal Register** (59 FR 19686) requesting public comment on possible improvements to the UTQGS. Specifically, the agency requested comments on ways to cure a problem of treadwear grade inflation, whether to add an additional rating category to provide a means of differentiating tires with the highest traction characteristics, and whether to commence the grading of tires for rolling resistance. In view of the complexity of the subject matter of this notice, the agency is repeating much of the background explanatory discussion in the Request for Comments.

A. Treadwear

In the Request for Comments, the agency described the testing of candidate tires, the role played by course monitoring tires in adjusting the measured wear of candidate tires and the possible sources of treadwear rating inflation.

1. Treadwear Test and Calculation Procedures

a. Candidate tires. The treadwear grade is considered the most meaningful of the three grades to the public, but treadwear is also the most difficult of the three characteristics to grade.

The procedures which NHTSA follows for testing tires for compliance with the UTQGS are specified in 49 CFR 575.104(e), Treadwear grading conditions and procedures. NHTSA tests treadwear by running the tires being tested, called candidate tires, on test vehicles multiple times over a 400-mile test course on public roads in the vicinity of San Angelo, Texas. The test vehicles travel in convoys of two or four passenger cars, light trucks, or multipurpose passenger vehicles, each with a GVWR of 10,000 pounds or less. To equalize operating conditions, the drivers are changed at regular intervals, the tires are rotated to different positions on the vehicles, and the vehicles are rotated to different positions within the convoy.

Candidate tires are subjected to a 6,400 mile test. At the end of the test, the total measured wear is multiplied by a factor that reflects the severity of the environmental conditions during the test (the purpose and derivation of that factor is explained below in the discussion of course monitoring tires). The result of the multiplication is the adjusted wear rate (AWR) of the candidate tires. The AWR is extrapolated to wearout, which is considered to be the point at which 1/16th of an inch of tread remains. The extrapolated figure becomes the treadwear grade. A grade of 100 indicates that the tire can be expected to achieve 30,000 miles to wear out, as measured on the San Angelo course. A treadwear grade of 150 should achieve 50 percent more mileage than the one graded 100, if tested on the same course and under the same conditions. NHTSA emphasizes, however, that the treadwear grades are not meant to be indicative of the actual mileage every consumer can expect from a given tire. The grades are intended to be indicators of relative performance rather than absolute performance. Thus, a tire graded at 150 should achieve 50 percent more mileage than one graded at 100. The actual tire mileage achieved by a motorist depends on many variables, such as geographic location, road conditions, individual driving habits, climate, weather, tire maintenance, and so forth.

b. Course Monitoring Tires. Environmental factors like changes in road and climatic conditions can cause course wear rates for the same tire to vary on a daily basis. In order to compensate for the effect of such variables on the amount of wear during a particular treadwear convoy test, candidate tires are tested along with control tires called course monitoring tires (CMT). Four CMT's are placed on one test vehicle and four candidate tires with identical size designations are placed on each other test vehicle in the convoy. CMTs are built to the specifications of American Society for Testing and Materials (ASTM) standard E1136, which specifies tight controls over the production, handling, and storage of those standardized control tires.

Since CMT lots are not precisely identical, even though manufactured to ASTM standards, a base course wear rate (BCWR) is established for each new batch or lot of CMTs procured by the agency. The BCWR is the calculated wear rate of that lot of CMTs under "average" conditions and is applied to the CMTs to adjust for the variability in the wear rates between CMT lots. The BCWR for the new lot is determined by running tires selected from that lot over the test course in a convoy along with CMTs from the previous lot. The previous CMTs are run in an attempt to determine whether and to what extent there have been changes in the condition of the course. The measure of those changes is called a course severity adjustment factor (CSAF). The CSAF is determined by dividing the BCWR for the CMTs by the average wear rate of the 4 CMTs in the test convoy. It is assumed that any difference between the BCWR and the wear rate reflects changes in the course. The measured wear rate of the new CMTs is then multiplied by the CSAF to obtain the adjusted wear rate (AWR) of the new CMTs, which then becomes the BCWR for new CMTs. This procedure is intended to make the BCWR of new CMTs comparable to that of the previous CMTs by removing changes in the course as a source of difference between the BCWR of the previous CMTs and that of the new CMTs.

Upon completion of the 6,400-mile test of the candidate tires, the BCWR of the new CMT lot is divided by the average measured wear rate of the new CMTs in the test convoy to determine the CSAF for that convoy. That CSAF is then applied to the wear rates of the candidate tires. The AWR of the candidate tires is extrapolated to the point of wear out, which then becomes the treadwear rating of the candidate tires.

2. Treadwear Grade Inflation

NHTSA has noted significant increases in treadwear ratings since the UTQGS became fully effective in 1980. Early in the UTQGS program, the treadwear ratings remained at roughly the same level. As the years progressed, however, treadwear ratings have drifted steadily upward in both manufacturers' and NHTSA's testing results. In part, this increase reflects the fact that current tires are of higher quality, perform better and last longer than tires produced even a few years ago. Such improvements result from industry developments such as improvements in rubber compounds, cord materials, tire designs, and tread configurations.

The agency believes, however, that some of the increase in treadwear grades cannot be explained by improvements in tires. A significant amount of the unexplained increase is traceable to a decline in the BCWRs of each successive lot of CMTs. Under the formula for calculating treadwear, the BCWRs for CMTs and treadwear vary inversely, Thus, as the BCWRs decrease, treadwear increases.

3. Decline in Base Course Wear Rate

Since the first lot of CMTs was procured in 1975, there has been a steady and consistent decline in the BCWRs of each successive lot of CMTs. Although measured wear rates for CMTs have varied, BCWRs have steadily declined from 4.44 mils per thousand miles for the original lot of CMTs to 1.47 mils per thousand miles for the last lot purchased in 1993, as shown in Table 1, below:

TABLE 1.—CMT WEAR RATES AND BASE COURSE WEAR RATE ADJUSTMENT FACTORS

Year tested	Manufacturer	Series	Wear rate (mils per 1,000 miles)	BCWR
1975	Goodyear	Batch 1	4.44	4.44
1979	Goodyear	Batch 1	4.08	
1979	Goodyear	Batch 2	3.82	4.16
1980	Goodyear	Batch 2	5.29	
1980	Goodyear	Batch 3	4.76	3.74
1984	Goodyear	Batch 3	4.22	
1984	Uniroyal	40000	3.27	2.80
1987	Uniroyal	40000	5.96	
1987	Uniroyal	71000	4.56	2.21
1989	Uniroyal	71000	5.01	
1989	Uniroyal	91000	4.84	2.14
1991	Uniroyal	91000	6.24	
1991	ASTM E1136	010000	4.94	1.70
1991	ASTM E1136	010000	6.96	
1992	ASTM E1136	110000	6.65	1.62
1992	ASTM E1136	110000	5.83	
1992	ASTM E1136	210000	5.60	1.56
1993	ASTM E1136	210000	7.21	
1993	ASTM E1136	310000	6.80	1.47

4. Causes of the Decline in BCWRs and Possible Agency Responses

The decline in the BCWRs suggests either that the test course itself is becoming progressively rougher or that other factors, as yet unidentified, are responsible, or both. The agency does not believe that the course has changed to any significant extent. The test course is well maintained by the State of Texas and presumably has changed little in severity over the years.

Accordingly, the agency has considered a number of other factors which could explain the decline, such as effects of aging and storage on tire performance, errors in the BCWR calculation, or some combination of those and perhaps other factors. The agency believes that the decline of the BCWRs may be caused in large part by the aging of the CMTs themselves while in storage. In addition, since the decrease in BCWRs has been so consistent with each new lot of CMTs, the agency believes that the problem may also be caused at least in part by an as-yet unidentified flaw in the formula for calculating the BCWR.

As tires age, their chemical compounds steadily emit minute amounts of gases. The rate of emission may be affected by environmental conditions. Further, environmental conditions, such as extremes of temperature can directly affect the tires. The combined effect of the environmental conditions and the emission of gases can cause changes in the rubber compounds over time. Such changes adversely affect the resiliency of the rubber, increasing wear rates and giving a false indication that the test course could be becoming more severe.

To minimize the aging factor, the agency has in recent years procured CMTs in small lots so as to reduce the interval between determining the BCWR for a given lot and subsequently using tires from that lot in determining the BCWR for the next lot. The agency has also begun to store the CMTs in polyethylene bags in a warehouse in which the temperature, although not controlled to the extent specified in ASTM E1136, normally ranges between 60° and 90°. The agency hopes that by storing the CMTs in the bags they will not be exposed to the atmosphere, thereby diminishing the gas emissions described above and lessening the outgas effect on the tires.

With respect to the formula for calculating BCWR, the agency requested comment on whether the practice of recalculating the BCWR of each new lot of CMTs should be abandoned and the wear rates of candidate tires compared directly with those of the CMTs, that is, without adjusting the wear rate of the new CMTs to reflect differences (theoretically due to aging) between the wear rates of the new CMTs and the CMTs from the previous lot. The intent of the BCWR is to provide a common baseline by which to grade candidate tires. However, NHTSA's practice of relating all new CMTs to the original CMTs in the manner specified in the UTQGS has somehow distorted the treadwear grading procedure to bring about the inflated results now being experienced.

In asking whether the agency should switch to direct comparison, the agency sought available data on whether such direct comparison of the wear rates of CMTs and candidate tires would avoid the effects of flaws in the current treadwear procedures. The switch to direct comparison could result in lower, and perhaps more realistic, treadwear ratings. On the other hand, it could change the original intent of the CMT, which was to provide a common baseline for comparison of wear rates, regardless of when a candidate tire was tested. In addition, it could present a problem for the tires already graded and still in production by having to re-test and re-grade them.

The agency posed four other questions in the notice, i.e., whether the current ratings are misleading, whether a new system should be developed for treadwear grading, whether the test should be changed, and whether the BCWR computation procedure should be changed.

B. Traction

1. Traction Test and Calculation Procedures

Traction grades are established by sliding tires over test pads also located near San Angelo, Texas. One pad consists of a wet asphalt surface; the other, a wet concrete surface. A test trailer is equipped with two control tires manufactured in accordance with ASTM standard E501. The control tires are inflated to 24 pounds per square inch (psi), statically balanced, allowed to cool to ambient temperature with inflation pressure maintained at 24 psi, then installed on the test trailer. Each tire is loaded to 1,085 pounds. The trailer is first towed over the wet asphalt surface at a speed of 40 miles per hour (mph). As one of the wheels with a control tire passes across the asphalt, it is locked. The traction coefficient of the locked wheel is recorded for a period of 0.5 to 1.5 seconds after lockup. The same procedure is then followed for the same wheel/control tire as the trailer is towed across the wet concrete surface. These tests are conducted 10 times on each surface for that wheel/control tire. The same tests are then conducted for the other wheel/control tire. The 20 measurements taken on each surface are averaged to find the control tire traction coefficient for that surface. After the testing of the control tires, those coefficients are used in calculating the traction coefficients of the candidate tires.

In testing the candidate tires, two tires of the same type, construction, manufacturer, line, and size designation are prepared and tested utilizing the same procedures described above for the control tires. The loads on the candidate tires, however, are maintained at 85 percent of the test loads specified in § 575.104(h). The adjusted traction coefficients of the candidate tires are determined in accordance with § 575.104(f)(2)(ix) and (x).

The grades of the candidate tires are designated as "A", "B", or "C." A tire that achieves both a high level of traction performance on asphalt (above 0.47μ) and a high level on concrete (above 0.35μ) is graded "A." A tire achieving medium traction performance (0.38μ on wet asphalt and 0.26μ on wet concrete) is graded "B." A tire achieving traction performance lower than 0.38μ on asphalt and 0.26μ on concrete is graded "C."

2. Ability of Traction Grading System to Differentiate Highest Traction Tires

NHTSA's analysis of traction test data since 1989 indicates that tire traction performance has improved to the extent that the current grading system does not adequately differentiate between tires with different levels of performance, particularly the highest performing tires.

Another issue being examined by NHTSA is the implication of the increasing number of vehicles with antilock braking systems (ABS) for the way in which traction is measured. For non-ABS vehicles, sliding traction is the primary traction force in panic braking since the vehicles' wheels are locked during such braking. However, for ABS vehicles, peak tire traction is the primary traction force since the ABS keeps the tire rolling during panic braking.

3. Possible Solutions to Traction Grading Problems

The agency solicited comments on whether the traction ratings should be revised to differentiate the highest performing tires. One alternative for addressing this problem would be to adjust each grade category so that it would represent a higher band or range of performance than it currently does. For example, the A grade could be adjusted so that it includes tires with traction coefficients above 0.54μ on asphalt and above 0.41μ on concrete, while a B rating could include tires with traction coefficients above 0.48μ and 0.35μ respectively, and a C rating could include tires with performance below that. Another alternative would be to make no adjustment in the level of performance represented by the existing grades, but create a new grade category of "AA" for the highest performing tires, i.e., those tires achieving traction coefficients above 0.54μ and 0.41μ respectively.

NHTSA also sought comments on whether to replace or supplement traction grading based on sliding traction with traction grading based on peak tire traction and asked about the cost of measuring peak traction.

C. Temperature and Rolling Resistance/ Fuel Economy

1. Temperature Resistance

The current provisions of the UTQGS require grading tires in a third category, temperature resistance. The temperature resistance grade indicates the extent to which heat is generated and/or dissipated by a tire by measuring the ability of the tire to operate at high speeds without tire failure. Heat is generated by the energy absorbed by the tire from the friction caused by the flexing and slipping of the rubber as it rolls along the road. That energy is wasted and appears in the tire as heat. The more energy that is wasted, the greater the heat buildup. If the tire is unable to dissipate that heat effectively or if the tire is unable to resist the heat buildup, its ability to run at high speeds without failure is reduced. Therefore, its temperature resistance grade is lower.

Heat buildup is generally caused by some combination of tire overloading, high speed operation, and/or improper inflation pressure, all of which contribute to greater flexing and increased heat buildup. Sustained high temperature can cause structural degeneration of the tire compounds resulting in reduced tire life or outright tire failure.

NHTSA tests tires for temperature resistance utilizing the same laboratory test wheel as the high speed performance test of Federal motor vehicle safety standard (Standard) No. 109, *New pneumatic tires*. That test is conducted at speeds up to 85 mph, while the UTQGS temperature resistance test is run at speeds of up to 115 mph. A tire is graded "A" if it completes the test at a sustained speed of 115 mph without visual evidence of tread, sidewall, ply, cord, innerliner, or bead separation, chunking, broken cords, cracking or open splices, and the inflation pressure is not less than the specified test pressure. A tire is graded "B" if it completes the test at speeds between 100 and 115 mph without the damage mentioned above, and is graded "C" if it has successfully completed the test at speeds between 85 and 100 mph.

2. Rolling Resistance/Fuel Economy

NHTSA considers temperature resistance to be a valid safety concern

and is unaware of any problems with the accuracy of the ratings. However, despite the agency's efforts over the years to educate the public by means of consumer information bulletins, press releases, and labels affixed to tires explaining the meaning and significance of the UTQGS ratings, NHTSA has found that most of the tire-buying public is not aware of and/or does not understand the significance of the temperature resistance rating.

Conversely, increasing interest has been shown in adding a rating for rolling resistance on the basis that such a rating could be readily understood by the public. The possibility of adding such a rating was discussed at the White House Conference on Global Climate Change on June 10 and 11, 1993 (hereinafter referred to as the Conference). At a meeting of the Auto and Light Truck Workshop of the Transportation Working Group of the Conference, Michelin presented a paper asserting that the average rolling resistance for original equipment all-season radial tires was 22.6 percent less than that for typical replacement tires. Further, it was suggested that a 4 percent improvement in fuel economy could be realized if replacement tires had the same rolling resistance as original equipment tires.

As a result of the Conference, the Administration issued a report on October 19, 1993, entitled The Climate Change Action Plan (Plan), setting forth a series of initiatives to reduce greenhouse gas emissions. The Plan calls for reduction of U.S. greenhouse gas emissions to 1990 levels by the year 2000. One of the initiatives to accomplish that goal calls for DOT, through NHTSA, to issue new rules and test procedures requiring manufacturers to test and label tires relative to their rolling resistance.

NHTSA expressed its belief in the Request for Comments that there is a close relationship between temperature resistance and rolling resistance. One of the causes of heat generation in tires, the action of the tread on the road surface, also causes rolling resistance. In fact, it is the friction resulting from rolling resistance that is the immediate cause of heat generation in the tire. Properties of the road and of tire materials, such as roughness, softness, as well as amount of flexing, determine the amount of friction and therefore the amount of heat generated.

Rolling resistance is measured in a procedure similar to that used for measuring temperature resistance, namely by running a tire under load on a test wheel. The energy consumed in driving the tire is measured and the energy recovered from the tire is measured by the test equipment. The difference is the heat energy lost which is the measure of the rolling resistance.

Safety benefits should not be lost by substituting rolling resistance for temperature resistance since the two are related and determined by similar tests. Standard No. 109 would continue to ensure that all tires are capable of safe operation at speeds of up to 85 mph, which establishes a minimum safety threshold. Further, given that the public is not very responsive to temperature resistance ratings, the elimination of those ratings should not cause the tire manufacturers to lower the temperature resistance performance of their tires.

3. Issues Regarding Temperature/Rolling Resistance/Fuel Economy

The agency invited comments on a wide variety of issues relating to temperature resistance. Among them were whether the rolling resistance can be improved without detracting from the other rated tire performance characteristics, whether the temperature resistance rating should be supplemented by or replaced by a rolling resistance rating, whether such a substitution would have any safety consequences, and how rolling resistance values should be translated into improvements in "real world" fuel economy.

III. Summary of Public Comments, Agency Decisions and Benefits and Costs

To preserve the continuity of discussion about each type of UTQGS rating, the agency presents below, as one unit, the summary of public comments, the agency decision in response to those comments, and the costs and benefits of the decision first with respect to the treadwear rating procedures, then traction, and then temperature/rolling resistance.

A. Treadwear

1. Summary of Comments

Bridgestone/Firestone, Inc. (BF), The Goodyear Tire and Rubber Company (Goodyear), General Tire (GT), Michelin, MTS Systems Corporation (MTS), Dunlop Tire Corporation (Dunlop), Cooper Tire and Rubber Company (Cooper), and the European Tyre and Rim Technical Organisation (ETRTO) responded to the agency's treadwear issues. BF, GT, and Dunlop did not consider the UTQGS treadwear grade misleading to consumers, so long as the grade is used only to compare tires and not project expected mileage to wearout. Goodyear, ETRTO, and Michelin, on the other hand, believed that the treadwear rating is misleading to the public because the treadwear test produces inconsistent results. They argued that the inconsistencies arose from such factors as the steady decline in the BCWR, the relatively short duration of the treadwear test, and the low wear rates of the tires, which cause the treadwear test to overestimate tire life. Michelin further commented that although tire technology has improved considerably in the past few years, treadwear grades have increased faster than technological improvements. Michelin commented that the test course is not sufficiently demanding.

BF, Goodyear, Cooper, and Dunlop commented that the treadwear grade should be deleted altogether, arguing that it is not needed and is not cost effective. Goodyear stated that manufacturers' tire warranties are better and more meaningful to consumers, and BF asserted that NHTSA's own figures indicate that 70 percent of the tire-buying public pay no attention to the treadwear grade. Cooper and Dunlop asserted that the treadwear grade is environmentally unfriendly, Dunlop contending that every test convoy adds 22 tons of greenhouse gases to the environment and costs $27,524.64.

Goodyear, Dunlop, Michelin, BF, and MTS commented that if the treadwear grade remains a part of the UTQGS, a new system should be developed for rating it. They contended that the present rating system is too expensive, unreliable, and has too many variables. Goodyear, Dunlop, and MTS urged development of a standard, repeatable laboratory test, and BF, Cooper and Dunlop recommended that NHTSA participate with the ASTM F9 Committee to develop a new indoor, environmentally friendly test procedure. This refers to a committee of the ASTM, designated the "F9 Committee," which was formed to develop a laboratory test to assess treadwear potential.

Goodyear, Michelin, BF, and MTS all agreed that the test procedure should be changed, contending that the vehicle to vehicle rotation of the candidate tires creates new variables in addition to the existing ones. Finally, Goodyear, Cooper, Dunlop, BF, and GT recommended that the BCWR be fixed at its present figure of 1.47 to achieve more consistent results and save testing costs.

2. Agency Decision

The agency is not persuaded by the commenters' assertions that the treadwear ratings of tires under the UTQGS are inconsistent and mislead the public. The agency does not agree that the treadwear test results are inconsistent. The treadwear grade provides a basis on which to compare the relative treadwear of tires tested under controlled conditions. The agency believes that a road test has the inherent advantage of measuring treadwear rates under actual road conditions. Further, the computations used in calculating the BCWR, CSAF, and the AWR are specifically intended to make the treadwear test results as consistent as possible.

NHTSA does not agree with commenters that suggested that the practice of vehicle to vehicle rotation of candidate tires creates new variables and should be changed. On the contrary, NHTSA has found, and so stated in a previous notice (55 FR 47765) that rotation of the tires throughout the test convoy significantly reduced the variability of treadwear grades resulting from test car and driver factors.

NHTSA believes that the treadwear ratings provide consumers with reliable information on which to distinguish between the relative performance of the different tire types and brands. They are not intended to project the actual expected mileage of a tire. Tire purchasers are specifically advised of this on the label required by 49 CFR 575.104(d)(1)(B)(2), which states that the treadwear rating is a "comparative rating" and explains what the rating represents. The voluntary treadwear warranties provided by manufacturers do, by contrast, indicate the amount of mileage that can be expected from a given tire. NHTSA considers the UTQGS treadwear ratings and the manufacturers' warranties to be complementary and, in many instances, confirm each other. NHTSA's surveys show that 74 percent of the public had heard of the treadwear ratings and 29 percent consider such ratings in making their tire purchases. While 29 percent may seem a comparatively small percentage of the tire buying public, it is large enough to be influential. Tire manufacturers continue to make improvements in treadwear. Further, treadwear related information is given prominent treatment in tire advertising.

Cooper and Dunlop commented that the treadwear rating should be deleted because the testing is expensive and "environmentally unfriendly." Since treadwear is the central feature of the statutorily-mandated UTQGS, NHTSA is not proposing to delete treadwear. NHTSA is well aware of the expense of treadwear testing. NHTSA's contract cost of operating a 4-car test convoy for the 7,200 mile test (6,400 miles for the test and 800 miles for the pre-test break-in) is $17,751. Dunlop did not disclose the basis for the $27,524.64 figure it quoted. Regardless of the per convoy cost, the agency notes that the per tire cost is minimal, considering that the test cost is averaged over all the tires produced of the same type. As to greenhouse gas emissions, NHTSA estimates that the emissions into the atmosphere per 4-car convoy is between 14.08 and 15.8 tons. Again, Dunlop did not explain how it arrived at the 22-ton figure.

As discussed in section IIA1, *Treadwear test and calculation procedures*, above, the agency believes that the primary reason for past treadwear grade inflation has been the effects of aging on the CMTs while in storage. The agency believes, however, that wrapping the CMTs in polyethylene bags and storing them in a warehouse where the temperature only varies between 60° and 90° is minimizing the aging effects on the different lots of CMTs.

The agency is persuaded by the suggestions of Goodyear, Cooper, Dunlop, BF and GT that the BCWR be fixed at its present figure, 1.47 mils per thousand. Maintaining the BCWR at the current figure would allow existing treadwear ratings to remain essentially unchanged and prevent future grade creep. Further, the fiscal expense and environmental effects of running test convoys would be eliminated. Accordingly, NHTSA proposes to fix the BCWR of all future lots of CMTs at the current rate of 1.47 mils per thousand, or the value in use on the date of issuance of any final rule resulting from this proposed rulemaking action. If the agency issues such a final rule, it would consider taking the further step of subsequently substituting the BCWR in use on the effective date of the final rule for the BCWR in use on the issuance date of the final rule. The agency believes that fixing the BCWR, in addition to the more strictly controlled storage procedures, would eliminate or significantly reduce treadwear grade inflation and reduce costs both to NHTSA and the industry by not having to test each new lot of CMTs.

3. Costs and Benefits

The agency believes that assigning a fixed value to the BCWR would reduce to insignificance, if not eliminate entirely, the inflation of treadwear ratings. The change in storage procedures is internal to NHTSA and will not result in any costs to tire manufacturers or consumers. Fixing the BCWR at its present rate also would have no cost effect on manufacturers or consumers because it involves no additional testing, retesting or relabeling of tires. The treadwear amendments would, however, benefit both manufacturers and the public by simplifying the required treadwear grading of tires and by making the treadwear grades more realistic and consistent.

B. Traction

1. Public Comments

Goodyear, Dunlop, ETRTO, GT, MTS, and BF recommended maintaining the current traction rating method. GT and Dunlop stated that changing the rating system could cause confusion both to consumers and to the industry, and MTS stated that the current system produces reliable, repeatable results.

Cooper, on the other hand, recommended changing the rating system, arguing, without explanation, that the current system is oversimplified and potentially misleading. Cooper argued further that the traction numbers generated since NHTSA changed the test pads at San Angelo in 1989 are significantly lower than before the pads were changed and that therefore there is no need for an additional traction grade level. Specifically, Cooper cited traction tests conducted on the new skid pads in 1992 and 1993 on 54 tires of 28 different brands from 12 different manufacturers. Cooper stated that those tests showed an arithmetic mean of only 0.48±.04 for traction coefficients on the wet asphalt surface and 0.34±.02 on the wet concrete surface. Cooper stated that these figures showed a significantly different statistical distribution than that cited by NHTSA in support of the suggestion to upgrade the traction grading system. In addition, Cooper noted that none of the 54 tires tested would qualify for NHTSA's suggested "AA" traction grade. Finally, Cooper suggested that the agency work with the ASTM F9 Committee to develop a better test method.

Only Michelin supported the suggestion that the traction grade be upgraded. Cooper and Dunlop opposed upgrading the traction rating, arguing that it would confuse the public and increase costs to the industry with no consequent benefit to consumers. Dunlop stated that changes to the traction grading scheme would mean most existing tires and those in production would need to be regraded. Although Goodyear and ETRTO were not enthusiastic about upgrading the traction category, they stated that if the traction grade were changed, they favored creation of the "AA" category. MTS agreed that if the traction grade were changed, "AA" would be the simplest and most meaningful change.

With respect to whether peak traction should be measured and added to the traction grade, Goodyear, Michelin and MTS expressed support for the suggestion, saying that peak traction correlates with stopping distance and the measurements are reliable. Dunlop, Cooper, and BF opposed the suggestion, however, contending that the majority of motor vehicles currently on the road are not equipped with ABS. They also contended that peak traction data are more variable than sliding traction data and thus not so reliable.

The commenters agreed, however, that the cost of measuring peak traction would be minimal since both peak and sliding traction values could be measured under current test procedures, although data retrieval systems would need to be modified.

2. Agency Decision

NHTSA does not agree with the conclusions that Cooper draws from its figures regarding the traction coefficients of the new skid pads at San Angelo. The agency notes that Cooper's figures are based on a relatively small sample.

NHTSA statistically analyzed larger samples. Its analysis of traction tests of 254 candidate tires tested on the new skid pads showed that the distribution of the traction coefficients of the tested tires had a mean, or average, value of 0.516 on the wet asphalt surface and 0.364 on the wet concrete surface. The standard deviation about the mean values of this tire group was 0.029 on the wet asphalt and 0.017 on the concrete surface.

NHTSA's statistical analysis of 196 candidate tires tested on the old skid pads showed the mean value of the traction coefficients of those tires to be to be 0.533 on the wet asphalt surface and 0.375 on the wet concrete surface. The standard deviation about the arithmetic mean among this group was 0.036 on the old asphalt surface and 0.027 on the old concrete surface. The agency believes that the difference between the traction coefficients of the 196 tires tested on the old skid pads and the 254 tires tested on the new skid pads may be due to differences in the old and the new pads or differences in the tire populations of 1989–1991 and 1992–1994. In any case, all future traction testing will occur on the new pads since the old pads no longer exist.

Based on the average traction coefficient and standard deviation values from the new pads, the agency proposes adding a fourth category, designated as "AA," to the traction grade only for tires with traction coefficients that exceed 0.54 (representing the mean, 0.516, and adding the standard deviation of 0.029) when tested on wet asphalt and 0.38 (0.364, the mean, +0.017, the standard deviation) when tested on wet concrete. Of the 254 tires tested as described above, only 8 would currently qualify for the new "AA" grade. The agency believes, however, that an optional new traction rating would provide an incentive for manufacturers to improve the traction performance of other tire lines.

NHTSA disagrees with GT and Dunlop that providing a means for differentiating the highest traction tires would cause confusion among consumers. To the contrary, NHTSA believes that adding the "AA" rating would benefit consumers by providing them additional guidance for choosing the proper tires to suit their individual needs.

Since upgrading traction performance to take advantage of the "AA" rating is optional, tire manufacturers would not necessarily incur any additional costs. Those manufacturers that chose to use the AA rating would be free to pass on whatever additional costs they would incur to their customers (see discussion of costs below).

NHTSA agrees with Goodyear, Michelin and MTS that there is a correlation between peak and sliding traction and that both values can be considered equivalent for grading purposes. However, the agency is persuaded by the comments of Dunlop, Cooper and BF that the majority of vehicles currently on the road are not equipped with ABS. Thus, they depend on sliding traction rather than peak traction for maximum stopping action. Accordingly, NHTSA does not propose to include peak traction in the traction ratings at this time.

3. Costs and Benefits

The proposed amendments to the traction grade under the UTQGS would create an additional level of traction rating the use of which would be optional to manufacturers. Therefore, the proposed "AA" traction rating would apply only to those manufacturers who elect to produce tires that meet the proposed "AA" criteria and label those tires accordingly. As discussed in IIIB above, only 8 of the 254 tires skid-tested by NHTSA would qualify for the proposed "AA" rating. The manufacturers' costs of reworking tire molds to accommodate the new traction rating would be minimal and would be necessary only for this small group and only if the manufacturers of those tires opted to give those tires the new, higher grade. The paper labels required by 49 CFR 575.104(d)(1)(i)(B)(2), however, would need to be changed to reflect the 4-grade rating system.

C. Temperature/Rolling Resistance/Fuel Economy

1. Public Comments

All comments on the Request for Comments addressed the temperature/rolling resistance/fuel economy issue. Nine trade and consumer associations responded, including engineering companies and test laboratories, 5 of which supported a rolling resistance grade and 4 of which were opposed. Seven tire manufacturers responded, 6 of which opposed a rolling resistance grade either as a substitute for the temperature resistance grade or as a fourth rating category under the UTQGS. Fourteen private citizens commented, 9 of whom supported a rolling resistance grade, while 5 were opposed.

The members of the public and the private associations and companies that opposed a rolling resistance grade cited various objections to it. For example, Mr. Christopher Smith of Pennsylvania asserted that NHTSA should not be concerned with rolling resistance because it robs consumers of their choices. Mr. Fred Crum of California stated that road surface ratings are more important than rolling resistance ratings if fuel savings are to be achieved. Mr. Robert Burns, President of the Private Brand Tire Group (PBTG) asserted that the government should not force consumers to bear the cost of testing and remolding a new UTQGS symbol which will be passed on to them by manufacturers. Advocates for Highway Safety (AHS) expressed concern that addition of a rolling resistance rating could cause consumers, for reasons of economy, to purchase tires that have a lower overall traction performance.

Cooper, Dunlop, Goodyear, BF and GT argued that rolling resistance and temperature resistance are separate properties. They asserted that rolling resistance measures the energy consumed by the tire, which relates to the efficiency of the tire in converting motive power to distance traveled, while temperature resistance relates to the ability of the tire structure and materials to withstand the temperatures generated by the flexing of the rubber and its reinforcing materials. The PBTG opposed the deletion of the temperature resistance grade, asserting that the temperature resistance characteristics of tires are relevant to such hot climates as the American desert southwest where tire dealers choose their tire lines on this basis. Cooper and Dunlop stated that such desert countries as Saudi Arabia require tires imported into their countries to be rated at least "B" for temperature resistance. Goodyear, on the other hand, supported the deletion of the temperature resistance rating because, as NHTSA discussed in the Request for Comments of April 25, 1994, the majority of consumers pay no attention to this rating when purchasing tires. Michelin also supported the deletion of the temperature resistance grade, stating that the voluntary speed ratings placed on some tires by manufacturers in accordance with SAE Recommended Practice J1561, Laboratory Speed Test Procedure for Passenger Car Tires, adequately represent the temperature resistance capability of the tire.

Michelin commented that vehicle manufacturers, in order to meet fuel economy requirements, have long required their tire suppliers to provide low rolling resistance original equipment (OE) tires, while still imposing strict standards on treadwear, traction, and speed durability. Michelin stated that since 1980 tire rolling resistance has in some cases been reduced by as much as 50 percent while still maintaining other performance characteristics. BF asserted that the rolling resistance of OE tires is constantly being improved to meet CAFE standards and that that technology is included in after-market tires through standardization. Therefore, BF argued that there is no need to establish a rolling resistance grade for the UTQGS.

NTDRA, PBTG, Goodyear, and GT argued that a rolling resistance grade would be costly and yield little or no consumer benefit because of lack of consumer interest. NTDRA contended that a rolling resistance grade would constitute an unnecessary cost burden on manufacturers. Goodyear, claiming a the lack of success of its Invicta GFE model low rolling resistance tire, stated that there is little public interest in low rolling resistance/fuel efficient tires because of their increased cost. STL asserted that there are too many variables in measuring rolling resistance to be of any consumer benefit.

Goodyear, Michelin, Dunlop and Cooper stated that even tires of the same size designation, construction and load-carrying capacity can have different rolling resistance characteristics. PBTG, Goodyear, GT, BF, and Dunlop argued that rolling resistance cannot be improved without adversely affecting treadwear and traction. Michelin disagreed with this assertion, saying that tire manufacturers have used tire technology to reduce rolling resistance in OE tires without adversely affecting treadwear or traction.

Manufacturers generally agreed that there would be a difference in production and consumer costs between grading for temperature resistance and rolling resistance, but did not specify what such difference might be. Goodyear stated that it costs less to test for rolling resistance than for temperature resistance, but more tests would probably be required. Goodyear estimated that rolling resistance tests cost $175 per test while temperature resistance tests cost $250 per test. BF stated that it would be "extremely expensive" to consumers to implement all the changes suggested by NHTSA in the Request for Comments. GT estimated that to achieve reduced rolling resistance without loss of the other tire properties would increase tire costs to consumers by 15 percent, due to the increased cost of redesigning and testing of tire lines. Goodyear asserted that a tire designed to minimize rolling resistance may have a shorter tread life, thereby creating the need for more tires with associated increased energy consumption. The American Retreaders Association expressed concern that such low rolling resistance tires may not be retreadable.

PBTG, Goodyear, BF, GT, Dunlop, NTDRA and Cooper asserted that the best course of action would be for NHTSA to mount a publicity campaign to educate the public with respect to proper tire maintenance and encourage people to maintain proper inflation pressure, proper balance and alignment, and obey speed limits. The commenters asserted that those measures would have a more significant effect on reduction of greenhouse gasses than grading tires for their rolling resistance characteristics. Nevertheless, Dunlop, BF, Goodyear, GT, and Cooper suggested that if NHTSA decides to proceed with the rolling resistance grade, the agency should make the requirement effective for newly-introduced tire lines only.

The lone manufacturer supporting the establishment of a rolling resistance grade was Michelin. That company supported the deletion of the temperature resistance grade, stating that it does not serve the purpose for which it was intended and does not provide useful consumer information. Michelin asserted, on the other hand, that establishment of a rolling resistance grade for all tires would encourage manufacturers to improve the rolling resistance characteristics of replacement tires and bring them up to the capabilities of OE tires. Michelin estimated that the additional consumer cost would be less than $1 per tire, but in any case no more than $2.50 per tire. Michelin believes that those costs would be more than offset by the value of the fuel conservation and reduction of global warming gases that rolling resistance labeling would make possible.

2. Agency Decision

a. *Temperature resistance.* The temperature resistance grade under the UTQGS represents a tire's ability to dissipate and withstand heat buildup that can cause the tire to degenerate and result in a reduction of tire life or even tire failure. Currently, 20.4 percent of new replacement tire lines are rated A, 51.8 percent are rated B, and 26.4 percent are rated C.

The temperature resistance grade is not widely understood by consumers and therefore most do not find it useful when purchasing tires. NHTSA's data indicate that of consumers purchasing tires for their own use, 38 percent have heard of the temperature resistance grade, while only 12 percent consider it in making tire selections. The comparable figures for the other types of ratings are 74 percent and 29 percent for the treadwear ratings and 65 and 27 percent for the traction ratings.

As stated above, in order to create wider knowledge and better understanding of the UTQGS ratings among consumers, including the temperature resistance rating, NHTSA has issued consumer information bulletins, press releases, and has required labels to be affixed to each individual tire. These efforts seemed to arouse little public interest and had no lasting effect. NHTSA has considered expanding its publicity efforts into nationwide publicity campaigns, but such publicity campaigns are very expensive. Further, based on the lack of response to previous publicity on the subject, NHTSA has no reason to believe that a widespread, expensive publicity campaign would produce any more significant results than past efforts. NHTSA believes that the safety purposes of the temperature resistance grade can be essentially met by other existing measures. The high speed performance test specified in section S5.5 of Standard No. 109, New pneumatic tires, assures the minimum temperature resistance performance for all passenger car tires. That section requires that tires be tested at 75 miles per hour (mph) for 30 minutes, at 80 mph for 30 minutes, and again at 85 mph for 30 minutes. At the end of the test, the tire must have not less than the initial inflation pressure and must not

show the indications of damage specified in paragraph S4.2.2.5(a) of Standard No. 109. Successful completion of this test equates to a temperature resistance grade of "C" under the UTQGS. That meets at least the minimum requirements under the UTQGS.

To accommodate those with special needs, such as law enforcement vehicles that require tires capable of sustained high speeds or those operating in areas of high ambient temperatures, tire speed ratings are available. These ratings are voluntary industry ratings in accordance with the procedures set forth in SAE-J1561. Such ratings are indicated by symbols molded onto or into tire sidewalls which range from the "S" category, meaning capability of sustained speeds up to 112 mph, to the "Y" category, meaning capability of sustained speeds up to 186 mph. Tires above the "S" category would be equivalent to a UTQGS temperature resistance rating of "A."

With respect to Michelin's comment, noted above, that the manufacturers' voluntary speed ratings adequately represent the temperature resistance capability of a tire, NHTSA has no data about the number of consumers who know of and consider the industry speed ratings. The agency believes, however, that consumers who need, for reasons such as occupation or climate, tires with higher speed ratings are motivated to obtain information about the industry speed ratings and consider them in selecting replacement tires.

For those reasons, NHTSA proposes to delete the temperature resistance rating from the UTQGS, substituting therefor a rolling resistance/fuel economy rating, as discussed below. NHTSA believes that since the UTQGS are intended to be meaningful and helpful to the tire-buying public in selecting tires that suit their individual needs, the agency should continue its efforts to make the UTQGS as meaningful and helpful as possible to consumers by rating those tire characteristics which the public understands and in which the public is interested.

b. *Rolling resistance/fuel economy.* Based on the public comments in response to the agency's April 25, 1994 Request for Comments, the agency believes that there is a direct correlation between rolling resistance and fuel economy. Michelin commented that a 5 percent reduction in rolling resistance results in a 1 percent fuel savings at highway speeds, regardless of the vehicle's fuel consumption. The agency would welcome comments on the validity of this relationship.

NHTSA also solicits comments on how the relationship would be affected by various real-world driving conditions, such as temperature, precipitation, vehicle speed, and road conditions, and vehicle conditions such as wheel alignment, tire balance, and inflation pressures. Even if that relationship would not be affected by those conditions, NHTSA assumes that any such fuel savings would be reduced in direct proportion to the number of tires on the vehicle that do not have low rolling resistance. For example, under this assumption, a vehicle equipped with 2 low rolling resistance tires and 2 tires with rolling resistance typical of current replacement tires would achieve only half the savings of the same vehicle equipped with 4 low rolling resistance tires. The agency requests comment on that assumption.

The agency does not agree with the assertions of some commenters that rolling resistance cannot be improved without detracting from the other tire characteristics. NHTSA agrees with commenters on the Request for Comments that although rolling resistance and temperature resistance are separate properties, there is a correlation between rolling resistance and heat generation. Rolling resistance contributes to heat buildup which can ultimately result in tire failure. Thus, a tire with lower rolling resistance will normally run cooler, and therefore safer, than a tire with higher rolling resistance. In addition, a tire with lower rolling resistance creates less friction, thus contributing to tire efficiency which in turn results in less fuel consumption.

Michelin and other commenters pointed out that the rolling resistance of OEM tires has been significantly reduced in recent years to assist vehicle manufacturers in meeting corporate auto fuel economy (CAFE) standards, without loss of traction or treadwear. Since the achievement of rolling resistance reductions without adverse safety consequences is a significant issue, NHTSA solicits more specific data on the differences in rolling resistance and traction characteristics between OEM and replacement tires at the manufacturers' recommended pressures and at typical inflation pressures.

While the cheapest way of reducing rolling resistance would also reduce traction, there are other ways, such as alternative tread compounds, that are reasonable in cost and that may not affect traction. Further, the UTQGS traction ratings would inform purchasers when making a particular tire choice that would involve a reduction in traction. Therefore, there should logically be no inherent detraction from treadwear or traction capabilities by the production and purchase of low rolling resistance replacement tires. Nevertheless, the agency solicits comments on the extent to which, if at all, there is or could be a trade-off between safety characteristics such as traction and low rolling resistance. If such trade-offs do exist—(1) to what extent would this occur in real-world driving and vehicle conditions and typical inflation pressures? (2) how do tire manufacturers trade off those characteristics between OEM and replacement tires? (3) to what extent to the trade-offs vary for the different ways of reducing rolling resistance?

NHTSA has no data regarding Goodyear's assertion that low rolling resistance tires may have a shorter tread life, thus requiring more tires with associated increased energy consumption and the adverse environmental consequences of more scrap tires for disposal. NHTSA has not received any reports or indication that low rolling resistance OEM tires tend to have lower treadwear grades. To the contrary, as discussed above, treadwear grades have steadily increased over the past several years. Nevertheless, information is requested on any differences in treadwear ratings between OEM and replacement tires.

Several comments suggested that there was no public interest in lower rolling resistance. This suggestion appears to be based largely on speculation. One commenter did rely on the lack of success of its reduced rolling resistance tire. The agency does not believe that much reliance can be placed on that experience. When that tire was being sold, there was no comparative information available to the public regarding the rolling resistance of other tires.

NHTSA believes that while significant improvements have been made in the rolling resistance of OEM tires in the last 15 years, changes in replacement tire rolling resistance have lagged behind somewhat. The agency has no data, and Michelin provided no specifics, regarding that company's assertion that the rolling resistance of OEM tires has been reduced by 50 percent since 1980. Similarly, NHTSA has no data indicating that, as BF contended, the low rolling resistance technology of OEM tires is being applied to replacement tires. Although that might eventually happen, NHTSA believes that there is an equally strong possibility that it will not. The agency would welcome data on the amount of

reduction in rolling resistance in OEM tires since 1980 and to what extent, if any, such technology has been applied to currently available replacement tires.

Tire manufacturers have been producing low rolling resistance OEM tires for vehicle manufacturers since 1980 and equivalent low rolling resistance tires are available on the replacement market to some extent. However, comparative information on the fuel economy benefits of such tires is not available to consumers. The agency seeks to expedite the availability of low rolling resistance tires by encouraging tire manufacturers to produce low rolling resistance replacement tires and emphasize the economic and environmental advantages of such tires in their promotional advertising. NHTSA will also publicize the advantages of low rolling resistance tires and encourage the public to purchase them.

NHTSA disagrees with commenters that suggested that a public education program encouraging proper tire maintenance would result in as much fuel conservation as requiring a rolling resistance grade. The agency is aware that a great deal of fuel is unnecessarily consumed by improper tire maintenance, particularly improper inflation pressure. However, the agency believes that even if the motoring public did properly maintain all tires, there would continue to be potential fuel savings available by reducing the rolling resistance of replacement tires.

ARA did not explain why it thought low rolling resistance tires would not be retreadable. In response to the ARA comment, however, Michelin stated that low rolling resistance tires have routinely been retreaded without any problems. NHTSA has not received any information or complaints on this issue, which could indicate that there is no significant problem with retreading low rolling resistance tires. The agency also notes that it is not aware that many car tires are currently retreaded. NHTSA would welcome comments on this issue, however, particularly if there are problems with retreadability, including the types and sizes of tires involved.

Some commenters stated that the rolling resistance of larger tires is less than that of smaller tires under the same loading conditions. For instance, Cooper commented that tire size makes a difference in rolling resistance measurements because tire loading is not precisely proportional to tire size. Michelin reported rolling resistance values of 8.3 kilograms per ton to 9.8 kilograms per ton for tires in a given tire line having the same rim diameter and aspect ratio, but of different width.

NHTSA does not believe that the variation in the rolling resistance of different sized tires would be so great as that reported by Michelin under the procedures of SAE J–1269. The agency believes that, as measured under test loading conditions, rolling resistance should remain approximately the same for all tire sizes in a tire line. If certain tire lines do show substantial differences in rolling resistance among sizes, testing of each size may be necessary to determine fuel economy grades. Depending on the number of tires and lines involved, manufacturers might choose to grade each size individually or assign the lower value to all tires within the same line. At the extreme, there may be two or three rolling-resistance values for a tire line, just as there is presently for temperature resistance or treadwear.

For the reasons discussed above, the agency proposes to delete the temperature resistance grade from the UTQGS and substitute a fuel economy grade. The agency considers fuel economy more understandable and more meaningful to the tire-buying public than the temperature resistance rating. As pointed out above, the latter is not widely understood or utilized by the public in their tire purchases. Finally, addition of the fuel economy grade furthers the initiatives in the Climate Change Action Plan issued by the Administration in a national effort to reduce greenhouse gas emissions.

The agency is proposing to base the new fuel economy rating on a rolling resistance coefficient instead of rolling resistance itself since this will partially normalize rolling resistance variations by tire size within a tire line. The rolling resistance coefficient (C_r) is calculated by dividing the rolling resistance by the load on the tire when tested in accordance with SAE J–1269. Michelin stated that this coefficient ranges from 0.0073 to 0.0156, while Goodyear assessed the range as being between 0.0067 and 0.0152, and STL fixed it at 0.005 to 0.015.

Using 0.010 as the midpoint of the range, one method of rating fuel economy based on the rolling resistance coefficient would be by rating tires with a coefficient of less than 0.010 as "A" for fuel economy. Tires with a coefficient of 0.010 to 0.015 could be graded "B", while tires with a rolling resistance coefficient greater than 0.015 could be rated "C". This approach would be consistent with the views of those commenters who stated that if a rolling resistance/fuel economy rating were established, the A, B, and C ratings would be simpler, and therefore preferable.

Michelin, on the other hand, prefers a more differentiated, quantitative expression of the amount of potential fuel savings than would be provided by a general indication as in the case of the letter ratings. The agency believes that some consumers might also prefer this method. For example, a rolling resistance coefficient of 0.0080 would be graded as a 9 percent increase in fuel savings (100(0.0150–0.0080)/(0.0150)(5)) compared to a rolling resistance coefficient of 0.0150 (the number (5) in the preceding calculation represents a 5 percent change in rolling resistance, corresponding to a 1 percent change in fuel economy). A rolling resistance coefficient of 0.0150 or greater would be graded as 0 percent, indicating no fuel savings.

The agency seeks to make the rolling resistance/fuel economy rating as meaningful as possible to consumers. Accordingly, the agency solicits comments on the feasibility and preferability of the two methods of expressing the rating as discussed above, namely the A, B, and C method or the method quantifying the amount of potential fuel savings of the tire.

Note: All amendments related to the former method are identified in the regulatory text as "alternative 1" and all those related to the latter method are identified as "alternative 2."

3. Costs and Benefits.

The requirement to test and label all tires for rolling resistance could add to the testing costs associated with the production of tires. NHTSA believes that some of the costs of grading tires for rolling resistance would be offset by the deletion of testing for temperature resistance. Some commenters stated that although the rolling resistance test is less costly than the temperature resistance test, tire manufacturers may need to conduct more rolling resistance tests on different tire sizes to determine accurate fuel economy grades.

GT estimated the cost of rolling resistance testing at $250 per test, while Goodyear estimated $175 and BF estimated $100. Considering those comments, NHTSA believes that, as stated in the Request for Comments of April 25, 1994, the cost of a rolling resistance test should not exceed $250. The commenters variously estimated the cost of rolling resistance testing machines at between $400,000 and $1.2 million. Cooper stated that if rolling resistance tests were required, it would require a capital investment of $1.2 million to purchase 4 test machines. Considering the data submitted by commenters, NHTSA estimates that a single tire station rolling resistance test

machine can be purchased for $500,000. NHTSA also notes, however, that tire manufacturers have the option of contracting with independent testing laboratories for their testing requirements, thereby avoiding a large capital outlay.

NHTSA estimates that the costs of labeling for fuel economy would be minimal, probably no more than pennies per tire. That conclusion is based on Cooper's statement that its total UTQGS labeling costs are $0.10 per tire, and Michelin's statement that its total UTQGS labeling could cost up to $0.15 per tire. On this issue, NHTSA agrees with Michelin that if given sufficient lead time to change tire molds during a regular replacement cycle, the proposed labeling changes would have negligible cost impact.

NHTSA estimates that the consumer cost of improving rolling resistance would be no more than $5 per tire, or $20 per set of 4. However, those figures are based on the projected cost of reducing the average rolling resistance of OEM tires by 10 percent, not on the cost of reducing average aftermarket tires' rolling resistance values to the level of average OEM tires. NHTSA solicits additional and more specific comments on the cost per tire of decreasing the rolling resistance of typical replacement tires to that of typical OEM tires, including the magnitude of that reduction in rolling resistance (Michelin asserted that the average rolling resistance of OEM tires is 22.6 percent lower than that of average replacement tires) and a description of the specific materials and design changes on which the cost estimate(s) is based. Further, are any alternative materials or designs that would significantly lower costs? To what extent are the answers to this question affected by typical tire and vehicle maintenance habits by consumers, such as inflation pressure, wheel alignment and tire balance?

NHTSA estimates that, assuming the realization of fuel economy gains of 4 percent, the use of 4 low rolling resistance replacement tires on a typical passenger car could result in fuel savings of 67 gallons over an assumed 40,000 mile tread life. The present value of such fuel savings, excluding Federal and state taxes, would be approximately $58. The average cost-benefit ratio of fuel savings per tire purchase would therefore be 2.9 to 1 ($58/$20) for passenger cars. Given these assumptions, the improved rolling resistance of the tires could in most cases pay for itself in slightly more than 1 year.

However, NHTSA notes that the imposition of rolling resistance grading would not include any obligation for tire manufacturers to reduce the rolling resistance of their tires. In fact, if the manufacturers believe that there is no consumer interest in low rolling resistance tires, they need not make any changes in their tires other than adding the grade marking on the sidewall.

D. Lead Time

The agency is proposing to make these amendments effective one year after issuance of the final rule. The agency believes that this would be sufficient for the following reasons. None of the amendments would require tire manufacturers to redesign their tires. Further, neither the treadwear nor the traction amendments would require the retesting of any tires. The rolling resistance/fuel economy amendments would require the testing of all existing tires. However, the agency believes that that testing could be readily completed in time to begin labeling tires with rolling resistance information at the end of a year.

Several tire manufacturers urged that the rolling resistance requirement be made effective for newly introduced tire lines only. The agency lacks authority to establish effective dates in the requested fashion. It could phase-in the requirement by percentage of production, as it has various vehicle standards, or by type of tire. However, NHTSA believes that a year should be sufficient lead time and that a phase-in would not be necessary. Nevertheless, the agency requests comment on these lead time issues.

IV. Rulemaking Analyses and Notices

A. E.O. 12866 and DOT Regulatory Policies and Procedures

This notice has not been reviewed under E.O. 12866, Regulatory Planning and Review. The agency has considered the impact of this rulemaking action and has concluded that it is not "significant" under the DOT's Regulatory Policies and Procedures. The amendments proposed in this notice are intended to make the UTQGS more meaningful and helpful to consumers in selecting tires to meet their needs. The amendments to the provisions regarding the treadwear and traction ratings are intended to reduce the treadwear rating inflation experienced in the past, and to add a traction grade category that differentiates the highest traction tires from lower traction tires. Neither of those testing and labeling amendments inherently involves any additional costs either to manufacturers or to consumers. The testing costs for a fuel economy grade would be offset by the savings realized by not having to conduct temperature resistance testing. The rolling resistance test is cheaper than the temperature resistance test, but more tire sizes may need to be tested. Additional discussion of these issues is contained in the agency's Preliminary Regulatory Evaluation, a copy of which has been placed in the public docket with this rulemaking action.

B. Regulatory Flexibility Act

NHTSA has considered the impacts of this rulemaking action under the Regulatory Flexibility Act. I hereby certify that the proposed amendments would not have a significant economic impact on a substantial number of small entities. Accordingly, the agency has not prepared a preliminary regulatory flexibility analysis.

The agency believes that no passenger car tire manufacturers qualify as small businesses. Small businesses, small organizations, and small governmental units would be affected by this rulemaking only to the extent that initially they may voluntarily pay as much as $5 more per tire for low rolling resistance tires in order to obtain the fuel savings associated with such tires.

C. National Environmental Policy Act

NHTSA has analyzed this rulemaking for purposes of the National Environmental Policy Act and has determined that implementation of this action would have no significant impact on the quality of the human environment.

Rolling resistance labeling could indirectly result in some modest environmental benefit, to the extent that such labeling encourages consumers to buy more fuel efficient aftermarket tires. However, the agency currently is unable to estimate the extent of any increase in sales of such tires. For illustrative purposes, the agency estimated the impacts that would result from 5, 10, and 15 percentage point increases in the sales of tires with low rolling resistance (NHTSA believes that the current market share for low rolling resistance tires in the aftermarket is about 15 percent). Such sales increases could reduce fleet fuel consumption by 155, 309, and 464 million gallons, respectively, over the assumed 40,000 mile tread lives of tires. This range of reductions is equivalent to oil savings of 10 to 30 thousand barrels per day. Further, such reductions in fuel consumption would result in vehicle carbon dioxide emission reductions of approximately 1.4, 2.7, and 4.1 million metric tons over the tread lives of the tires.

D. Federalism

NHTSA has analyzed this proposal in accordance with the principles and criteria contained in E.O. 12612 and has determined that the proposals in this notice do not have sufficient federalism implications to warrant preparation of a Federalism Assessment. No state laws would be affected.

E. Civil Justice Reform

The proposed amendments in this notice would not have any retroactive effect. Under 49 U.S.C. 30103(b), whenever a Federal motor vehicle safety standard is in effect, a state or political subdivision thereof may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle only if the state's standard is identical to the Federal standard. However, the United States government, a state or political subdivision of a state may prescribe a standard for a motor vehicle or motor vehicle equipment obtained for its own use that imposes a higher performance requirement than that required by the Federal standard. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. A petition for reconsideration or other administrative proceedings is not required before parties may file suit in court.

V. Comments

A. Comment Closing Date

NHTSA has determined that it is in the public interest to provide a comment period of less than 60 days in this instance because of the importance of the President's Climate Change Action Plan to fuel conservation and the reduction of greenhouse gas emissions into the environment. In addition, the Joint Conference Report on the Department of Transportation's Fiscal Year 1995 Appropriations directed the agency to issue a rolling resistance tire labeling rule by June 1, 1995.

B. General

Interested persons are invited to submit comments on the amendments proposed in this rulemaking action. It is requested but not required that any comments be submitted in 10 copies each.

Comments must not exceed 15 pages in length (49 CFR 553.21). This limitation is intended to encourage commenters to detail their primary arguments in concise fashion. Necessary attachments, however, may be appended to those comments without regard to the 15-page limit.

If a commenter wishes to submit certain information under a claim of confidentiality, 3 copies of the complete submission including the purportedly confidential business information should be submitted to the Chief Counsel, NHTSA at the street address shown above, and 7 copies from which the purportedly confidential information has been expunged should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in 49 CFR part 512, the agency's confidential business information regulation.

All comments received on or before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available to the public for examination in the docket at the above address both before and after the closing date. To the extent possible, comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for public inspection in the docket. NHTSA will continue file relevant information in the docket after the closing date, and it is recommended that interested persons continue to monitor the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed stamped postcard in the envelope with their comments. Upon receiving the comments the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 575

Consumer protection, Motor vehicle safety, Reporting and recordkeeping, Tires.

In consideration of the foregoing, 49 CFR Part 575 would be amended as follows:

PART 575—CONSUMER INFORMATION REGULATIONS

1. The authority citation for Part 575 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. Section 575.104 would be amended by revising paragraphs (a); (d)(1)(i)(B); (d)(1)(ii); (d)(1)(iii); (d)(2)(i), and (d)(2)(ii) introductory text; adding paragraph (d)(2)(ii)(D); revising paragraphs (d)(2)(iii); (e)(2)(ix)(C); and (g); Table 1; and Figure 1; and in Figure 2, by revising Part I and in Part II, by removing the paragraph for "Temperature" and adding a paragraph for "Fuel Economy"; and by removing Table 2A and sections (i) through (l).

§ 575.104 Uniform tire quality grading standards.

(a) *Scope.* This section requires motor vehicle and tire manufacturers and tire brand name owners to provide information indicating the relative performance of passenger car tires in the areas of treadwear, traction, and fuel economy.

* * * * *

(d) Requirements—(1) Information. * * *

Alternative 1 to paragraph (d)(1)(i)(B)

(i)(B) Each tire manufactured on and after the effective date of these amendments, other than a tire sold as original equipment on a new vehicle, shall have affixed to its tread surface so as not to be easily removable a label or labels containing its grades and other information in the form illustrated in Figure 2, Parts I and II. The treadwear grade attributed to the tire shall be either imprinted or indelibly stamped on the label containing the material in Part I of Figure 2, directly to the right of or below the word "TREADWEAR". The traction grade attributed to the tire shall be indelibly circled in an array of the potential grade letters AA, A, B, or C, directly to the right of or below the words "TRACTION" in Part I of Figure 2. The fuel economy grade attributed to the tire shall be indelibly circled in an array of the potential grade letters A, B, or C directly to the right of or below the words "FUEL ECONOMY" in Part I of Figure 2. The words "TREADWEAR", "TRACTION", and "FUEL ECONOMY," in that order, may be laid out vertically or horizontally. The text of Part II of Figure 2 may be printed in capital letters. The text of Part I and the text of Part II of Figure 2 need not appear on the same label, but the edges of the two texts must be positioned on the tire tread so as to be separated by a distance of no more than one inch. If the text of Part I and the text of Part II of Figure 2 are placed on separate labels, the notation "See EXPLANATION OF DOT QUALITY GRADES" shall be added to the bottom of the Part I text, and the words "EXPLANATION OF DOT QUALITY GRADES" shall appear at the top of the Part II text. The text of Figure 2 shall be oriented on the tire tread surface with lines of type running perpendicular to the tread circumference. If a label bearing a tire size designation is attached to the tire tread surface and the tire size designation is oriented with lines of type running perpendicular to the tread

circumference, the text of Figure 2 shall read in the same direction as the tire size designation.

ALTERNATIVE 2 TO PARAGRAPH (d)(1)(i)(B)

(i)(B) Each tire manufactured on and after the effective date of these amendments, other than a tire sold as original equipment on a new vehicle, shall have affixed to its tread surface so as not to be easily removable, a label or labels containing its grades and other information in the form illustrated in Figure 2, Parts I and II. The treadwear grade attributed to the tire shall be either imprinted or indelibly stamped on the label containing the material in Part I of Figure 2, directly to the right of or below the word "TREADWEAR." The traction grade attributed to the tire shall be indelibly circled in an array of the potential grade letters AA, A, B, or C, directly to the right of or below the word "TRACTION." The fuel economy grade attributed to the tire shall be either imprinted or indelibly stamped on the label containing the material in Part I of Figure 2, directly to the right of or below the words "FUEL ECONOMY." The words "TREADWEAR," "TREADWEAR," and "FUEL ECONOMY," in that order, may be laid out vertically or horizontally. The text of Part II of Figure 2 may be printed in capital letters. The text of Part II of Figure 2 may be printed in capital letters. The text of Part I and the text of Part II of Figure 2 need not appear on the same label, but the edges of the two texts must be positioned on the tire tread so as to be separated by a distance of no more than one inch. If the text of Part I and the text of Part II of Figure 2 are placed on separate labels, the notation "See EXPLANATION OF DOT QUALITY GRADES" shall be added to the bottom of the Part I text, and the words "EXPLANATION OF DOT QUALITY GRADES" shall appear at the top of the Part II text. The text of Figure 2 shall be oriented on the tire tread surface with lines of type running perpendicular to the tread circumference. If a label bearing a tire size designation is attached to the tire tread surface and the tire size designation is oriented with lines of type running perpendicular to the tread circumference, the text of Figure 2 shall read in the same direction as the tire size designation.

ALTERNATIVE 1 TO PARAGRAPH (d)(1)(ii)

(ii) In the case of information required in accordance with § 575.6(c) to be furnished to prospective purchasers of motor vehicles and tires, each vehicle manufacturer and each tire manufacturer or brand name owner shall, as part of that information, list all possible grades for traction and fuel economy, and restate verbatim the explanations for each performance area specified in Figure 2. The information need not be in the same format as in Figure 2. In the case of a tire manufacturer or brand name owner, the information must indicate clearly and unambiguously the grade in each performance area for each tire of that manufacturer or brand name owner offered for sale at the particular location.

ALTERNATIVE 2 TO PARAGRAPH (d)(1)(ii)

(ii) In the case of information required in accordance with § 575.6(c) to be furnished to prospective purchasers of motor vehicles and tires, each vehicle manufacturer and each tire manufacturer or brand name owner shall, as part of that information, list all possible grades for traction and fuel economy, and restate verbatim the explanations for each performance area specified in Figure 2. The information need not be in the same format as in Figure 2. In the case of a tire manufacturer or brand name owner, the information must indicate clearly and unambiguously the grade in each performance area for each tire of that manufacturer or brand name owner offered for sale at the particular location.

ALTERNATIVE 1 TO PARAGRAPH (d)(1)(iii)

(iii) In the case of information required in accordance with § 575.6(a) to be furnished to the first purchaser of a new motor vehicle, other than a motor vehicle equipped with tires manufactured prior to the effective date of these amendments, each manufacturer of motor vehicles shall, as part of the information, list all possible grades for traction and fuel economy, and restate verbatim the explanation for each performance area specified in Figure 2. The information need not be in the format of Figure 2, but it must contain a statement referring the reader to the tire sidewall for the specific tire grades for the tires with which the vehicle is equipped.

ALTERNATIVE 2 TO PARAGRAPH (d)(1)(iii)

(iii) In the case of information required in accordance with § 575.6(a) to be furnished to the first purchaser of a new motor vehicle, other than a motor vehicle equipped with tires manufactured prior to the effective date of these amendments, each manufacturer of motor vehicles shall, as part of the information, list all possible grades for traction and fuel economy, and restate verbatim the explanation for each performance area specified in Figure 2. The information need not be in the format of Figure 2, but it must contain a statement referring the reader to the tire sidewall for the specific tire grades for the tires with which the vehicle is equipped.

(2) Performance—(i) Treadwear. Each tire shall be graded for treadwear performance with the word "TREADWEAR" followed by a number of two or three digits representing the tire's grade for treadwear, expressed as a percentage of the NHTSA nominal treadwear value, when tested in accordance with the conditions and procedures specified in paragraph (e) of this section. Treadwear grades shall be in multiples of 20 (for example, 80, 120, and 160).

(ii) Traction. Each tire shall be graded for traction performance with the word "TRACTION," followed by the symbols C, B, A, or AA, when the tire is tested in accordance with the conditions and procedures specified in paragraph (f) of this section.

* * * * *

(D) The tire may be graded AA only when its adjusted traction coefficient is both:

(*1*) More than 0.54 when tested in accordance with paragraph (f)(2) of this section on the asphalt surface specified in paragraph (f)(1)(i) of this section; and

(*2*) More than 0.38 when tested in accordance with paragraph (f)(2) of this section on the concrete surface specified in paragraph (f)(1)(i) of this section.

ALTERNATIVE 1 TO PARAGRAPH (d)(2)(iii)

(iii) Fuel economy. Each tire shall be graded for fuel economy performance with the words "FUEL ECONOMY" followed by the letter A, B, or C, based on its performance when the tire is tested in accordance with the procedures specified in paragraph (g) of this section.

(A) The tire may be graded A only if its rolling resistance coefficient is less than 0.010.

(B) The tire may be graded B only if its rolling resistance coefficient is equal to or greater than 0.010 but less than 0.015.

(C) The tire may be graded C if its rolling resistance coefficient equal to or greater than 0.015.

ALTERNATIVE 2 TO PARAGRAPH (d)(2)(iii)

(iii) Fuel economy. Each tire shall be graded for fuel economy performance with the words "FUEL ECONOMY" followed by the tire's rated percentage of increase in fuel savings, such as "5%", based on the tire's performance when tested in accordance with the procedures specified in paragraph (g) of this section.

* * * * *

(e) Treadwear grading conditions and procedures. * * *

(2) Treadwear grading procedure. * * *

(ix) * * *

(C) Determine the course severity adjustment factor by assigning a base wear rate of 1.47 to the course monitoring tires and dividing that rate by the average wear rate for the four course monitoring tires.

* * * * *

ALTERNATIVE 1 TO PARAGRAPH (g)

(g) Fuel economy grading. The fuel economy grade is calculated as follows:

(1) The tire's rolling resistance coefficient is determined in accordance with the procedures of SAE Recommended Practice J–1269, Rolling Resistance Measurement Procedure for Passenger Car, Light Truck, and Highway Truck and Bus Tires, revised March, 1987 (SAE J–1269).

(2) The rolling resistance coefficient (C_r) is the ratio of rolling resistance force (F_r) to the normal load on the tire: (F_n) or $C_r = F_r + F_n$.

Example No 1. F_n=1,100 pounds of force (lbf); F_r=8 lbf; then C_r=8 ÷ 1,00=0.00727.

A rolling resistance coefficient of 0.00727 would result in a grade of "A" for fuel economy.

Example No. 2. F_n=1,100 lbf, and F_r=18 lbf, then C_r=18 ÷ 1,100=0.01636.

A rolling resistance coefficient of 0.01636 would result in a grade of "C" for fuel economy.

ALTERNATIVE 2 TO PARAGRAPH (g)

(g) Fuel economy grading. The fuel economy grade is calculated as follows:

(1) The tire's rolling resistance coefficient is determined in accordance with the procedures of SAE Recommended Practice J–1269, Rolling Resistance Measurement Procedure for Passenger Car, Light Truck, and Highway Truck and Bus Tires, revised March, 1987 (SAE J–1269).

(2) The rolling resistance coefficient (Cr) is the ratio of rolling resistance force (Fr) to the normal load on the tire: (Fn) or Cr=Fr+Fn.

Example No 1. Fn=1,100 pounds of force (lbf); Fr=8 lbf; then Cr=8=÷1,100=0.00727.

Example No. 2. Fn=1,100 lbf, and Fr=18 lbf, then Cr=18÷1,100=0.01636.

(3) Determine the tire's fuel economy grade by subtracting its rolling resistance coefficient from 0.0150, then multiply by 1,333. The resulting number, rounded to the nearest whole number, is the fuel economy grade, expressed as a percentage.

(i)(A) Using the numbers in Example No. 1 in paragraph (g)(2) of this section, given the rolling resistance coefficient (Cr) of 0.00727, the fuel economy grade (Fg) would be calculated as follows:

Fg=(0.0150–0.00727)×1,333=(0.00773)×1,333=10.30 percent, rounded to 10 percent.

(B) This would represent an increase of 10 percent in fuel economy, expressed as a fuel economy grade of "10%".

(ii) Using the numbers in Example No. 2 in paragraph (g)(2) of this section: If Fn=1,100 lbf, and Fr=18 lbf, then Cr=18÷1,100=0.01636

Fg=(0.0150–0.01636) ×1,333=(−0.00136) ×1,333 = −1.82 or 0 percent A negative value represents a 0 percent increase in fuel economy, and would be expressed as a fuel economy grade of "0%".

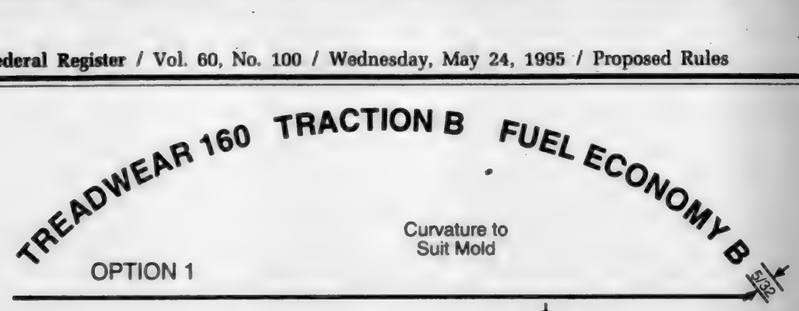
TABLE 1.—TEST INFLATION PRESSURES

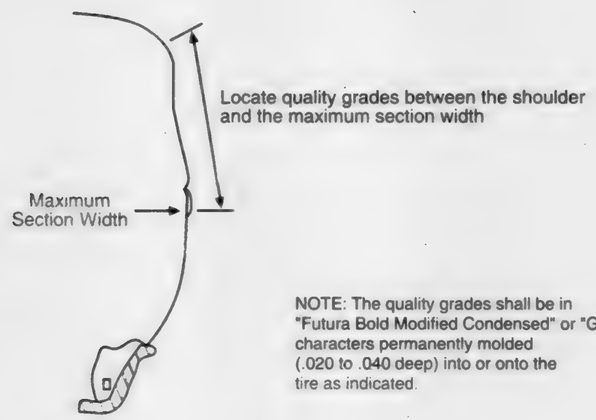
Maximum permissible inflation pressure for the treadwear test												
Tires other than CT tires									CT Tires			
Psi				kPa					kPa			
32	36	40	60	240	280	300	340	350	290	330	350	390
24	28	32	52	180	220	180	220	230	230	270	230	270

* * * * *

ALTERNATIVE 1 TO FIGURE 1

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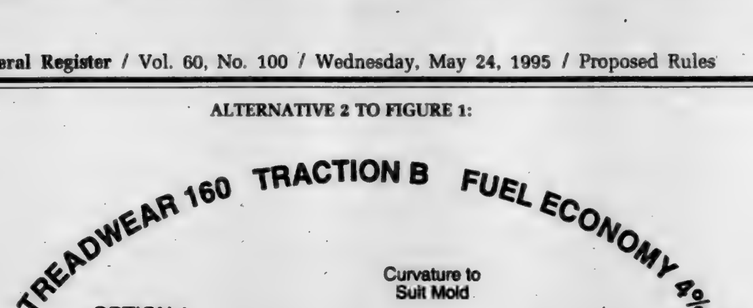


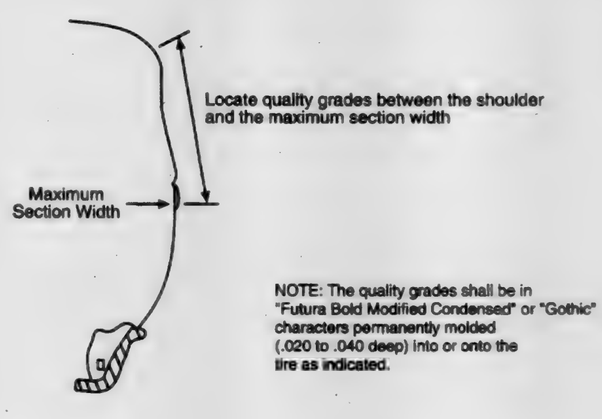
NOTE: The quality grades shall be in "Futura Bold Modified Condensed" or "Gothic" characters permanently molded (.020 to .040 deep) into or onto the tire as indicated.

Figure 1

Revsion 1

ALTERNATIVE 2 TO FIGURE 1:





NOTE: The quality grades shall be in "Futura Bold Modified Condensed" or "Gothic" characters permanently molded (.020 to .040 deep) into or onto the tire as indicated.

Figure 1

Revsion 2

BILLING CODE 4910-59-P

ALTERNATIVE 1 TO FIGURE 2—[PART I]

Figure 2—[Part I]—DOT Quality Grades

TREADWEAR
TRACTION AA A B C
FUEL ECONOMY A B C

ALTERNATIVE 2 TO FIGURE 2—[PART I]

TREADWEAR
TRACTION AA A B C
FUEL ECONOMY

ALTERNATIVE 1 TO FIGURE 2—[PART II]

[Part II] * * *

* * * * *

FUEL ECONOMY

The fuel economy grade gives a relative value of the tire's potential to affect a motor vehicle's fuel economy. For example, a vehicle with four tires rated "A" for fuel economy would have lower rolling resistance and therefore greater fuel efficiency than a vehicle with four tires rated "B" or "C". Saving fuel reduces carbon dioxide emissions which contribute to global warming. It should be noted, however, that actual fuel savings depend on driving habits, proper vehicle and tire maintenance, proper tire inflation pressure, road conditions, and climate. The fuel economy grade is based on testing the tire for rolling resistance under controlled conditions using specified test procedures. Only tires of the size appropriate for your car should be compared.

[ALTERNATIVE 2 TO FIGURE 2—[PART II]

[Part II * * *]

* * * * *

FUEL ECONOMY

The fuel economy grade gives a relative value of the tire's potential to affect a motor vehicle's fuel economy. For example, a vehicle with four tires rated "2%" for fuel economy would achieve 2% higher fuel economy than a vehicle with four tires rated "0%." A vehicle with two tires rated "2%" and two tires rated "0%" would achieve 1% higher fuel economy than a vehicle with four tires rated "0%." Saving fuel reduces carbon dioxide emissions which contribute to global warming. It should be noted, however, that actual fuel savings depend on driving habits, proper vehicle and tire maintenance, proper tire inflation pressure, road conditions, and climate. The fuel economy grade is based on testing the tire for rolling resistance under controlled conditions using specified test procedures. Only tires of the size appropriate for your car should be compared.

* * * * *

Issued on May 17, 1995.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 95–12513 Filed 5–18–95; 1:52 pm]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 950206040–5040–01; I.D. 051595J]

Groundfish of the Bering Sea and Aleutian Islands Area; Apportionment of Reserve

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Commerce.

ACTION: Apportionment of reserve; request for comments.

SUMMARY: NMFS proposes to apportion reserve to certain target species in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to allow for ongoing harvest and account for previous harvest of the total allowable catch (TAC). It is intended to promote the goals and objectives of the North Pacific Fishery Management Council.

DATES: Comments must be received at the following address no later than 4:30 p.m., Alaska local time June 7, 1995.

ADDRESSES: Comments may be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, 709 W. 9th, Room 453, Juneau, AK 99801 or P.O. Box 21668, Juneau, AK 99802, Attention: Lori Gravel.

FOR FURTHER INFORMATION CONTACT: Nick Hindman, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the U.S. BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

The Director, Alaska Region, NMFS, has determined that the initial TACs specified for pollock, Greenland turbot, and Pacific ocean perch (POP) in the Bering Sea (BS) subarea; for pollock, Greenland turbot, POP, and sharpchin/northern rockfish in the Aleutian Islands (AI) subarea; for Atka mackerel in the combined Eastern Aleutian District and BS subarea; for Atka mackerel in the Central and Western Aleutian Districts; and for Pacific cod, arrowtooth flounder, and the "other species" category in the BSAI; need to be supplemented from the non-specific reserve in order to continue operations and account for prior harvest.

Therefore, in accordance with § 675.20(b), NMFS proposes to apportion from the reserve to TACs for the following species: (1) For the Bering Sea subarea —93,750 metric tons (mt) to pollock, 700 mt to Greenland turbot, and 277 mt to POP; (2) for the AI subarea—4,245 mt to pollock, 350 mt to Greenland turbot, 1,575 mt to POP; and 765 mt to sharpchin/northern rockfish; (3) for the combined Eastern Aleutian District and BS subarea—2,025 mt to Atka mackerel; (4) for the Central Aleutian District—7,500 mt to Atka mackerel; (5) for the Western Aleutian District—2,475 mt to Atka mackerel; and (6) for the BSAI—37,500 mt to Pacific cod, 1,534 mt to arrowtooth flounder, and 3,000 mt to the "other species" category.

These proposed apportionments are consistent with § 675.20(a)(2)(i) and do not result in overfishing of a target species or the "other species" category, because the revised TACs are equal to or less than specifications of acceptable biological catch.

Pursuant to § 675.20(a)(3)(i) the proposed apportionments of pollock are allocated between the inshore and offshore components: (1) For the BS subarea - 32,812 mt to vessels catching pollock for processing by the inshore component and 60,938 mt to vessels catching pollock for processing by the offshore component; (2) for the AI subarea—1,486 mt to vessels catching pollock for processing by the inshore component and 2,759 to vessels catching pollock for processing by the offshore component.

Pursuant to § 675.20(a)(3)(iv) the proposed apportionment of the BSAI Pacific cod TAC is allocated 750 mt to vessels using jig gear, 16,500 mt to vessels using hook-and-line or pot gear, and 20,250 mt to vessels using trawl gear.

In accordance with the 1995 final specifications for the BSAI (FR 60 8479, February 14, 1995) the allocation of Pacific cod to hook-and-line/pot gear will result in seasonal apportionments as follows: For the period January 1 through April 30—80,300 mt, for the period May 1 through August 31—20,900 mt, and for the period September 1 through December 31—8,800 mt.

Classification

This action is taken under 50 CFR 675.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801, *et seq.*

Dated: May 17, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–12615 Filed 5–23–95; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 60, No. 100

Wednesday, May 24, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 95–034–1]

Availability of Information on Releases of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice pertains to information concerning the receipt of permit applications and issuance of permits by the Animal and Plant Health Inspection Service for environmental releases of certain genetically engineered organisms. The purpose of this notice is to advise interested persons of the availability of this information on the Internet service and through lists prepared on a monthly basis.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, BBEP, APHIS, Suite 5B05, 4700 River Road Unit 147, Riverdale, MD 20737–1237; (301) 734–7612. For assistance in gaining access to information on the Internet contact Dr. Keith Reding, and for a list of environmental release permit applications received and permits issued contact Mr. Clayton Givens at this same address and telephone number.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 (referred to below as the regulations) regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained or a notification acknowledged before a regulated article may be introduced into the United States.

In order to provide information to the public in a timely manner about the regulatory activities administered by the Animal and Plant Health Inspection Service (APHIS) under 7 CFR part 340, we have made information, except that claimed as trade secret or confidential business information, available on the Internet. The information available includes records of environmental release permits and notifications, movement permits and notifications, and petitions for nonregulated status received and approved. The Internet address for Biotechnology Permits on the APHIS World Wide Web is: URL: http://www.aphis.usda.gov/BBEP/BP. For assistance in using the Internet for access to the APHIS Biotechnology Permits Home Page, please refer to the individual listed above under **FOR FURTHER INFORMATION CONTACT.**

Information about environmental releases conducted under permit is also available in hard copy form. To obtain a copy of the monthly lists of environmental release permit applications received and permits issued, please refer to the person designated above under **FOR FURTHER INFORMATION CONTACT.**

In accordance with the provisions of APHIS' National Environmental Policy Act Implementing Procedures published in the **Federal Register** on February 1, 1995 (60 FR 6000–6005, Docket No. 93–165–3), and effective on March 3, 1995, APHIS will publish a notice in the **Federal Register** announcing the availability of an environmental assessment when one is prepared for an environmental release permit.

Done in Washington, DC, this 18th day of May 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–12747 Filed 5–23–95; 8:45 am]

BILLING CODE 3410–34–M

Food Safety and Inspection Service

[Docket No. 95–020N]

National Consultation on Foodborne Diseases and Animal Production Food Hygiene

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The Food Safety and Inspection Service (FSIS), the Animal and Plant Health Inspection Service, and the World Health Organization are co-hosting a consultation, "National Consultation on Foodborne Diseases and Animal Production Food Hygiene," on June 8, 1995, at the Sphinx Club, 1315 K Street, NW., Washington, DC 20005. The purpose of the consultation is to explore ways to refine and advance strategies to assure the safety of meat and poultry products as well as discuss the rationale and significance of international animal production (preharvest) food hygiene activities in foodborne disease control programs.

FOR FURTHER INFORMATION CONTACT: Ms. Margaret Webb, Communications and Public Affairs, FSIS Animal Production Food Safety Program, FSIS, USDA, (202) 690–2683.

To register to attend, call Ms. Jennifer Callahan (202) 501–7136.

SUPPLEMENTARY INFORMATION: The consultation will begin at 8:30 a.m. and end at 9 p.m. The consultation will primarily focus on the economic and public health impact of foodborne diseases and the contribution animal production hygiene can make to pathogen control under prevailing conditions in different regions of the world.

Seating space for observers at the forum is limited. Early registration is recommended. Please call Ms. Jennifer Callahan if you wish to attend the consultation (see **FOR FURTHER INFORMATION CONTACT**). Observers attending the consultation will be responsible for making their own hotel arrangements.

Done at Washington, DC, on: May 17, 1995.

Michael R. Taylor,

Acting Under Secretary for Food Safety.

[FR Doc. 95–12573 Filed 5–23–95; 8:45 am]

BILLING CODE 3410–DM–P

[Docket No. 95–018N]

Codex Alimentarius: Public Meeting

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Food Safety and Inspection Service (FSIS), U.S. Department of Agriculture (USDA); the Food and Drug Administration (FDA), U.S. Department of Health and Human Services (HHS); and the Environmental Protection Agency (EPA) are sponsoring a public meeting on June 7, 1995, from 9 a.m. to 4:00 p.m., in the Washington Rooms, Hyatt Regency—Crystal City, 2799 Jefferson Davis Highway, Crystal City, Virginia. The meeting will provide information and solicit public comments and suggestions on U.S. participation in activities of the Codex Alimentarius Commission. The co-sponsors of this public meeting recognize the importance of providing interested parties the opportunity to obtain background information on Codex, to discuss current Codex issues, and to address U.S. participation in the Codex process.

FOR FURTHER INFORMATION CONTACT: Dr. Marvin A. Norcross, U.S. Coordinator for Codex Alimentarius, USDA, Food Safety and Inspection Service, Room 311-West End Court, Washington, DC 20250–3700, telephone (202) 254–2517; Fax (202) 254–2530.

SUPPLEMENTARY INFORMATION: Codex was established in 1962 by two United Nations' organizations, the Food and Agriculture Organization and the World Health Organization, to encourage fair international trade in food and to promote the health and economic interests of consumers worldwide.

Codex provides a forum for the world's leading experts to discuss, debate, and often reach scientific consensus on food safety issues that affect trade. There are currently 151 member nations of Codex that work to develop Standards, Codes of Practice, and Guidelines dealing with basic principles, technical specifications for products, and good manufacturing practices.

With the signing of the North American Free Trade Agreement (NAFTA), the successful conclusion of the Uruguay Round of multilateral trade negotiations, and the formation of the World Trade Organization, the role of Codex as an international standard-setting body has become much more visible and critical to U.S. interests.

On January 1, 1995, the Uruguay Round Agreement of the General Agreement on Tariffs and Trade was implemented by the United States. One part of this is the Agreement on Sanitary and Phytosanitary Measures elevating the significance of Codex standards and requiring that a country scientifically justify its actions to achieve its level of food safety, if higher than Codex recommendations. The Agreement on Sanitary and Phytosanitary Measures recognizes three international standard-setting organizations. The three are the Codex for food safety, the International Plant Protection Convention for plant health, and the Office of International Epizootics for animal health.

Within the United States, Codex activities are carried out by officials from USDA, FDA, EPA, and the National Marine Fisheries Service who serve as U.S. Delegates and Alternate Delegates to various Codex Committees. Dr. Marvin A. Norcross, Food Safety and Inspection Service, USDA, assisted by a Codex staff, serves as the U.S. Coordinator for Codex Alimentarius. A Steering Committee made up of Senior Executives from USDA, FDA, and EPA provides direction for all U.S. Codex activities.

Meeting Agenda

The following specific issues will be discussed during the public meeting:

1. The implications of NAFTA and the Uruguay Round Agreements Act for Codex and U.S. participation.
2. The draft "U.S. Codex Strategic Plan." (copies available see **FOR FURTHER INFORMATION CONTACT.**)
3. The paper "Role of Science in the Codex Decision-Making Process." (copies available see **FOR FURTHER INFORMATION CONTACT.**)
4. An overview of matters to be addressed during the upcoming 21st session of the Codex Alimentarius Commission.
5. Issues raised by public comments relating to Codex.

Attendance

The meeting will be open to all interested parties on a space available basis. All persons wishing to give a presentation at the meeting should submit a written request that includes the participant's name and organization, address, telephone and facsimile numbers, and a copy of the remarks to be presented. Send your request to Dr. Marvin Norcross (see **FOR FURTHER INFORMATION CONTACT**).

All information and comments presented will be carefully reviewed and taken into consideration for future Codex activities. A summary of the meeting and copies of information submitted during the meeting will be available for review in the FSIS Docket Clerk's Office, Room 4352, South Building, U.S. Department of Agriculture, Washington, DC. 20250.

Done at Washington, DC, on: May 17, 1995.

Michael R. Taylor,

Administrator, Food Safety and Inspection Service.

[FR Doc. 95–12749 Filed 5–23–95; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: To give firms an opportunity to comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD 04/18/95–05/15/95

Firm name	Address	Date petition accepted	Product
Plastic Design, Inc	111 Industrial Park Road, Middletown, CT 06457.	04/18/95	Medical, transportation, automotive, security system and misc. plastic parts.
E/G Electro-Graph, Inc	2365 Camino Vida Roble, Carlsbad, CA 92009.	04/26/95	Semiconductor machinery parts.
Shube's Manufacturing, Inc	600 Moon Street, S.E. Albuquerque, NM 87123.	04/26/95	Pewter figurines made of nonprecious metal.
Pyott-Boone Electronics, Inc	P.O. Box 809, Tazewell, VA 24651.	04/28/95	Electronic communications and monitoring equipment and sub-assemblies for mining industry.
Galax Electronics Tech. Inc	2391 Zanker Road, Suite 340, San Jose, CA 95031.	04/28/95	Cable harness assemblies.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD 04/18/95–05/15/95—Continued

Firm name	Address	Date petition accepted	Product
Dia-Netics, Inc	410 E. Odell Street, Marionville, MO 65705.	04/28/95	Coils and bobbins for electrical relays.
Ruebush Packing Company	2910 S. Tabor Drive, Silver City, NM 88061.	05/03/95	Beef.
J.B. Martin Company, Inc	321 East Avenue, Leesville, SC 29070.	05/08/95	Velvet textile fabric of manmade and cotton fiber.
G.J. Nikolas & Company, Inc	2800 Washington Boulevard, Bellwood, IL 60104.	05/08/95	Lacquer, pigmented enabels, thinners and bronze powders and dyes.

The petitions were submitted pursuant to section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Trade Adjustment Assistance Division, Room 7023, Economic Development Administration, U.S. Department of Commerce, Washington, D.C. 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: May 18, 1995.

Lewis R. Podolske,

Acting Director, Trade Adjustment Assistance Division.

[FR Doc. 95–12649 Filed 5–23–95; 8:45 am]

BILLING CODE 3510–24–M

National Oceanic and Atmospheric Administration

[I.D. 051595F]

Permits; Foreign Fishing

In accordance with a memorandum of understanding with the Secretary of State, the National Marine Fisheries Service publishes for public review and comment summaries of applications received by the Secretary of State requesting permits for foreign fishing vessels to operate in the Exclusive Economic Zone (EEZ) under provisions of the Magnuson Fishery Conservation and Management Act (Magnuson Act, 16 U.S.C. 1801 *et seq.*). This notice concerns the receipt of an application from the Government of the Russian Federation requesting authorization to conduct a joint venture (JV) in the Northwest Atlantic Ocean. The application requests 20,000 metric tons of Atlantic sea herring be made available for the JV. The factory trawler NADIR is identified as the vessel that will receive sea herring from U.S. vessels. While no Fishery Management Plan for Atlantic sea herring has yet been implemented, based on receipt of the Russian application, and in accordance with section 201(h) of the Magnuson Act, necessary regulatory actions are being effected and a Preliminary Fishery Management Plan (PMP) for Atlantic sea herring is being developed. Approvability of the proposed JV to have the foreign vessel NADIR receive Atlantic sea herring from U.S. fishing vessels in the EEZ will be contigent on specifications under the PMP that would make available an amount of U.S.-harvested herring for such operations, and on other issues that bear on the approval of foreign fishing permits. Send comments on this application to:

NOAA—National Marine Fisheries Service, Office of Fisheries Conservation and Management, 1315 East-West Highway, Silver Spring, MD 20910 and/or, to one or both of the Regional Fishery Management Councils listed below:

Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906; 617/231–0422.

David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, Federal Building, Room 2115, 300 South New Street, Dover, DE 19901–6790; 302/674–2331.

For further information contact Robert A. Dickinson, Office of Fisheries Conservation and Management, (301) 713–2337.

Dated: May 18, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–12721 Filed 5–23–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 051795A]

Marine Mammals and Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of modification request for a scientific research permit (P771#67).

SUMMARY: Notice is hereby given that the National Marine Mammal Laboratory, 7600 Sand Point Way, NE., BIN C15700 Building 1, Seattle WA 98115–0070 has requested a modification to permit 837 to take the marine mammals listed below for the purpose of scientific research.

DATES: Written comments must be received on or before June 23, 1995.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Director, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668 (907/586–7221);

Director, Northwest Region, NMFS, 7600 Sand Point Way NE., BIN C15700 Building 1, Seattle, WA 98115–0070;

Director, Southwest Region, NMFS, 501 West Ocean Blvd. Suite 4200, Long Beach, CA 90802–4213;

Written data or views, or requests for a public hearing on this request, should be submitted to the Chief, Permits Division, F/PR1, Office of Protected Resources, Silver Spring, MD 20910, within 30 days of the publication of this notice.

FOR FURTHER INFORMATION CONTACT: Gary Barone (301–713–2289).

SUPPLEMENTARY INFORMATION: Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Fur Seal Act of 1966 (16 U.S.C. 1151–1187) and the Regulations promulgated thereunder (50 CFR part 215).

The applicant seeks to sedate up to 10 percent of the fur seals authorized under Condition A–5 of Permit 837; take tissue samples from up to 300 fur seals; instrument 46 fur seal pups with time-wet recorders or time-depth recorders; satellite tag up to 30 adult female fur seals on San Miguel Island; and inadvertently harass up to 7,431 additional fur seals and 15,000 California sea lions.

Dated: May 18, 1995.

Ann D. Terbush,

Chief, Permits & Documentation Division, National Marine Fisheries Service.

[FR Doc. 95–12720 Filed 5–23–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 050995A]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application for a scientific research permit (P524B).

SUMMARY: Notice is hereby given that the University of Hawaii at Manoa, Honolulu, HI 96822 (co-investigators: Dr. Shannon Atkinson and James Palmer), has applied in due form for a permit to obtain blood and blubber samples and to import samples from various species of cetaceans for purposes of scientific research. Written comments or requests for a public hearing must be received on or before June 23, 1995.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Director, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298 (508/281–9250);

Director, Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432 (813/893–3141);

Director, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213 (310/980–4001);

Director, Northwest Region, NMFS, 7600 Sand Point Way, NE, BIN C15700, Bldg. 1, Seattle, WA, 98115–0070 (206/526–6150); and

Director, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668 (907/586–7221).

Written data or views, or requests for a public hearing on this request, should be submitted to the Director, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Kellie Foster (301/713–1401).

SUPPLEMENTARY INFORMATION: Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222).

The applicants seek authorization to obtain blood serum and blubber samples from cetaceans taken in subsistence hunting, and incidental, stranded and captive mortalities. The applicant also requests authorization to import blood and blubber samples from Iceland, Norway, Japan, Russia, and Denmark as well as utilize samples in storage at the National Marine Mammal Lab. No specimens will be imported into the United States that were taken illegally in the country of origin. The objectives of this research are to develop a method of extracting steroid hormones from cetacean blubber and then to compare and determine a possible correlation between blood and blubber steroid concentrations.

Dated: May 18, 1995.

Ann D. Terbush,

Chief, Permits & Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–12723 Filed 5–23–95; 8:45 am]

BILLING CODE 3510–22–F

[I. D. 050195F]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of Scientific Research Permits Nos. 954 (P492A) and 955 (P492B).

SUMMARY: Notice is hereby given that Dr. Graham Worthy and Co-investigators Mr. Alan Abend and Ms. Lisl Shoda have been issued permits No. 954 and 955, to obtain and import/export marine mammal specimens and to take specimens from rehabilitated elephant seals, respectively, for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

(P492A) Director, Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2532 (813/570–5312); (P492B) Director, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213 (310/980–4001).

FOR FURTHER INFORMATION CONTACT: Ruth Johnson, 301/713–2289.

SUPPLEMENTARY INFORMATION: On March 10, 1995, notice was published in the **Federal Register** (60 FR 13121) that applications had been filed by the above named individuals to obtain tissue samples for scientific research purposes. The requested Permits have been granted under authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of

endangered fish and wildlife (50 CFR part 222).

Issuance of permit No. 954 as required by the Endangered Species Act of 1973, as amended, was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of the permit; and (3) is consistent with the purposes and policies set forth in section 2 of the Endangered Species Act.

Dated: May 18, 1995.

Ann D. Terbush,

Chief, Permits & Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–12724 Filed 5–23–95; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review.

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title; Applicable Forms; OMB Control Number: Telecommunications Service Priority System; SF Forms 315, 316, 317, 318, 319, and 320; OMB Control Number 0704–0305

Type of Request: Revision

Number of Respondents: 94

Responses Per Respondent: 18

Annual Responses: 1,692

Average Burden Per Response: 2.16 hours

Annual Burden Hours: 3,654

Needs and Uses: The Telecommunications Service Priority (TSP) System identifies leased telecommunications services vital to National Security and Emergency Preparedness, and provides the legal basis for vendor priority installation and restoration. The information collected hereby, provides the DoD with the data necessary to make appropriate telecommunications service priority assignments. It is additionally used to maintain the currency of associated data bases.

Affected Public: State or local governments; Businesses or other for-profit; Federal agencies or employees; and small businesses or organizations

Frequency: On occasion

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Mr. Edward C. Springer. Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Mr. William Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: May 19, 1995.

Patricia L. Topping,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–12730 Filed 5–23–95; 8:45 am]

BILLING CODE 5000–04–P

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title: Technical Assistance for Public Participation in the Defense Environmental Restoration Program

Type of Request: Expedited Processing—Approval date requested: 30 days following publication in the **Federal Register**

Number of Respondents: 100

Responses Per Respondent: 1

Annual Responses: 100

Average Burden Per Response: 6 hours

Annual Burden Hours: 600

Needs and Uses: The Department of Defense (DoD) is establishing a Technical Assistance for Public Participation in the Defense Environmental Restoration Program as authorized by the National Defense Authorization Act of Fiscal Year 1995. The information collected hereby, will be utilized to assess whether one of the options DoD is proposing in the establishment of this program is feasible. A separately published Notice of Expression of Interest will propose criteria for providers, including technical expertise, management capability, and not-for-profit status, as well as offer potential providers an opportunity to submit responses expressing their interest in this program.

Affected Public: Not-for-profit institutions; State, local, or tribal government

Frequency: Onetime

Respondent's Obligation: Required to obtain or retain benefits

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Mr. William Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: May 19, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–12731 Filed 5–23–95; 8:45 am]

BILLING CODE 5000–04–P

Office of the Secretary

Manual for Courts-Martial

AGENCY: Joint Service Committee on Military Justice (JSC).

ACTION: Notice of proposed amendment.

SUMMARY: The Department of Defense is considering recommending changes to the Manual for Courts-Martial, United States, 1984, Executive Order No. 12473, as amended by Executive Order Nos. 12484, 12550, 12586, 12708, 12767, 12888, and 12936. The proposed changes are part of the 1995 annual review required by the Manual for Courts-Martial and DoD Directive 5500.17. "Review of the Manual for Courts-Martial," January 23, 1985.

The proposed changes have not been coordinated within the Department of Defense under DoD Directive 5500.1, "Preparation and Processing of Legislation, Executive Orders, Proclamations, and Reports and Comments Thereon", May 21, 1964, and do not constitute the official position of the Department of Defense, the Military Departments, or any other government agency.

This notice is provided in accordance with DoD Directive 5500.17, "Review of the Manual for Courts-Martial", January 23, 1985. This notice is intended only to improve the internal management of the Federal government. It is not intended to create any right or benefit, substantive or procedural, enforceable at

law by a party against the United States, its agencies, its officers, or any person.

The proposed changes follow in their entirety: R.C.M. 305(g), *et seq.*, is amended to read as follows: (g) *Who may direct release from confinement.* Any commander of a prisoner, an officer appointed under regulations of the Secretary concerned to conduct the review under subsections (i) and/or (j) of this rule, or, once charges have been referred, a military judge detailed to the court-martial to which the charges against the accused have been referred may direct release from pretrial confinement. For the purposes of this subsection, "any commander" includes the immediate or higher commander of the prisoner and the commander of the installation on which the confinement facility is located. (h) *Notification and action by commander.*

(1) *Report.* Unless the commander of the prisoner ordered the pretrial confinement, the commissioned, warrant, noncommissioned, or petty officer in to whose charge the prisoner was committed shall, within 24 hours after that commitment, cause to be made a report to the commander which shall contain the name of the prisoner, the offenses charged against the prisoner, an the name of the person who ordered or authorized confinement.

(2) *Action by commander.*

(A) *Decision.* Not later than 72 hours after the commander's ordering of a prisoner into pretrial confinement, or after receipt of a report that a member of the commander's unit or organization has been confined, whichever situation is applicable, the commander shall decide whether pretrial confinement will continue. A commander complying with RCM 305(d), or this subsection, may also satisfy the probable cause review of subsection RCM (i)(1) and (2) below, provided the commander is a neutral and detached officer and acts within 48 hours of the imposition of confinement under the military's control.

(B) *Requirements for confinement.* The commander shall direct the prisoner's release from pretrial confinement unless the commander believes upon probable cause, that is, upon reasonable grounds, that:

(i) An offense triable by a court-martial has been committed;

(ii) The prisoner committed it; and

(iii) Confinement is necessary because it is foreseeable that:

(a) The prisoner will not appear at trial, pretrial hearing, or investigation, or

(b) The prisoner will engage in serious criminal misconduct; and

(iv) Less severe forms of restraint are inadequate.

Serious criminal misconduct includes intimidation of witnesses or other obstruction of justice, seriously injuring others, or other offenses which pose a serious threat to the safety of the community or to the effectiveness, morale, discipline, readiness, or safety of the command, or to the national security of the United States. As used in this rule, "national security" means the national defense and foreign relations of the United States and specifically includes: military or defense advantage over any foreign nation or group of nations; a favorable foreign relations position; or a defense posture capable of successfully resisting hostile or destructive action from within or without, overt or covert.

(C) *Memorandum.* If continued pretrial confinement is approved, the commander shall prepare a written memorandum which states the reasons for the conclusion that the requirements for confinement in subsection (h)(2)(B) of this rule have been met. This memorandum may include hearsay and may incorporate by reference other documents, such as witness statements, investigative reports, or official records. This memorandum shall be forwarded to the 7 day reviewing officer under subsection (i) of this rule. If such a memorandum was prepared by the commander before ordering confinement, a second memorandum need not be prepared, however, additional information may be added to the memorandum at any time.

(i) Procedures for review of pretrial confinement.

(1) Preliminary review. Review of the adequacy of probable cause to continue pretrial confinement shall be made by a neutral and detached officer within 48 hours of imposition of confinement under military control. If the prisoner was apprehended by civilian authorities and remains in civilian custody at the request of military authorities, reasonable efforts will be made to bring the prisoner under military control in a timely fashion. In calculating the number of days of confinement for purposes of this rule, the initial date of confinement shall count as one day and the date of the review shall also count as one day.

(2) By whom made. The review under subsection (1) shall be made by a neutral and detached officer. A determination made by a commanding officer under subsection (d) or (h) of this rule satisfies this requirement.

(3) 7 Day Review. Within 7 days of the imposition of confinement, a neutral and detached officer appointed in accordance with regulations prescribed by the Secretary concerned shall review the probable cause determination and necessity for continued pretrail confinement.

(4) Nature of the 7 day review.

(A) Matters considered. The review under this subsection shall include a review of the memorandum submitted by the prisoner's commander under subsection (h)(2)(C) of this rule. Additional written matters may be considered, including any submitted by the accused. The prisoner, and the prisoner's counsel, if any, shall be allowed to appear before the reviewing officer and make a statement, if practicable. A representative of the command may appear before the reviewing officer to make a statement.

(B) Rules of evidence. Except for Mil. R. Evid., Section V (Privileges) and Mil R. Evid 302 and 305, the Military Rules of Evidence shall not apply to the matters considered.

(C) Standard of proof. The requirements for confinement under subsection (h)(2)(B) of this rule must be proved by a preponderance of the evidence.

(5) Extension of time limit. The reviewing officer may, for good cause, extend the time limit for completion of the initial review to 10 days after the imposition of pretrial confinement.

(6) Action by reviewing officer. Upon completion of review, the reviewing officer shall approve continued confinement or order immediate release.

(7) Memorandum. The reviewing officer's conclusions, including the factual findings on which they are based, shall be set forth in a written memorandum. A copy of the memorandum and of all documents considered by the reviewing officer shall be maintained in accordance with regulations prescribed by the Secretary concerned and provided to the accused or the Government on request.

(8) Reconsideration of approval of continued confinement. The reviewing officer shall, after notice to the parties, reconsider the decision to confine the prisoner upon request based upon any significant information not previously considered.

(j) Review by military judge. Once the charges for which the accussed has been confined are referred to trial, the military judge shall review the propriety of the pretrial confinement upon motion for appropriate relief.

(1) Release. The military judge shall order release from pretrial confinement only if:

(A) The reviewing officer's decision was an abuse of discretion, and there is not sufficient information presented to

the military judge justifying continuation of pretrial confinement under subsection (h)(2)(B) of this rule;

(B) Information not presented to the reviewing officer establishes that the prisoner should be released under subsection (h)(2)(B) of this rule; or

(C) The provisions of subsection (i) (2) or (3) of this rule have not been complied with and information presented to the military judge does not establish sufficient grounds for continued confinement under subsection (h)(2)(B) of this rule.

(2) Pretrial Confinement Credit. The military judge shall order administrative credit under subsection (k) of this rule for any pretrial confinement served. A military judge shall order 1 day credit for each day of confinement served in anticipation of trial by courts-martial, and may order more than 1 day credit for each day served as a result of abuse of discretion or of failure to comply with the provisions of subsection (f), (h), or (i) of this rule. The military judge may order additional credit for each day of pretrial confinement considered illegal or which involves unusually harsh circumstances.

Appendix 21, R.C.M. 305 Amendments be amended by inserting the following at the end of section R.C.M. 305(i) Amendments:

1995 Amendment: The amendment to subsections (h)(2)(A) and (i) conforms military practice to the 48-hour probable cause review required by *County of Riverside* v. *McLaughlin*, 500 U.S. 44 (1991), and *United* v. *Rexroat*, 38 M.J. 292 (C.M.A. 1993). *Rexroat*, which applies *McLaughlin* to courts-martial, requires that after an accused is ordered into pretrial confinement, a neutral and detached official must review the probable cause for continued pretrial confinement within 48 hours. *Rexroat* makes clear that this neutral and detached official may be a commander, but this is not required. Additionally, nothing in this amendment prohibits the commander initially ordering an accused into pretrial confinement under subsection (d) from conducting the 48-hour probable cause review required by the subsection (i) (1) and (2), or the 72-hour review required by subsection (h)(2)(A), or all three actions, provided that commander is neutral and detached within the meaning of *United States* v. *Ezell*, 6 M.J. 307, 318–319 (C.M.A. 1979), and *United States* v. *Lopex*, 35 M.J. 35, 41 Rule 1109. Vacation of suspension of sentence Rule 1109(d), is amended to read as follows:

(d) Vacation of suspended general court-martial sentence or of a special court-martial sentence including a suspended bad-conduct discharge.

Rule 1109(d)(1)(A), is amended to read as follows:

(A) In general. Before vacation of the suspension of any general court-martial sentence, or of special court-martial sentence which, as approved, includes a suspended bad-conduct discharge, the officer having special court-martial jurisdiction over the probationer shall personally hold a hearing on the alleged violation of the conditions of suspension. If there is no officer having special court-martial jurisdiction over the accused, who is subordinate to the officer having general court-martial jurisdiction over the accused, the officer exercising general court-marital jurisdiction over the accused shall personally hold the hearing under subsection (d)(1) of this rule. In such cases, subsection (d)(1)(D) of this rule shall not apply.

(1) Action by officer having special court-martial jurisdiction over probationer.

Rule 1109(e), is amended to read as follows:

(e) Vacation of suspended special court-martial sentence not including a suspended bad-conduct discharge or of a suspended summary court-martial sentence.

Rule 1109(e)(1), is amended to read as follows:

(1) In general. Before a vacation of the suspension of the special court-marital sentence not including a suspended bad-conduct discharge or of a summary court-martial sentence, the officer having authority to convene for the command in which the probabtioner is serving or assigned to same kind of court-martial which imposed the sentence shall cause a hearing to be held on the alleged violation(s) of the conditions of suspension.

The following discussion section shall be inserted after R.C.M. 1109(e)(5):

Discussion

If the special court-martial includes an approved bad conduct discharge, and suspended lesser punishments, the special court-martial convening authority may approve the vacation of lesser punishments.

Appendix 21, R.C.M. 1109 Amendments be amended by inserting the following at the end thereof:

1995 Amendment: The Rule is amended to clarify that "the suspension of a special court-martial sentence which as approved includes a bad-conduct discharge," permits the officer exercising special court-martial jurisdiction to vacate any suspended punishments other than an approved suspended bad conduct discharge.

M.R.E. 1102 is amended to read as follows:

Substantive amendments to the Federal Rules of Evidence, in so far as they affect criminal proceedings, shall apply to the Military Rules of Evidence 180 days after the effective date of such amendments unless action to the contrary is taken by the President.

Appendix 22, Rule 1102 Amendments be amended by inserting the following at the end thereof:

1995 Amendment: The rule is modified to more clearly reflect the Committee's original intent that the Federal Rules of Evidence apply to the armed forces "to the extent practicable". The new language is intended to insure that only changes which affect the substantive criminal practice, as opposed to technical language of the rule, are automatically applicable to the armed forces.

Part IV of the *Manual for Courts-Martial, United States, 1984*, be amended by inserting the following new paragraph after paragraph 97:

97a. Article 134—(Parole, Violation of)

a. Text. See paragraph 60.

b. Elements.

(1) That the accused was a prisoner as the result of a court-martial conviction;

(2) That the accused was on parole;

(3) That the conditions of parole were that (_____);

(4) That the accused violated the conditions of his parole by doing an act or failing to do an act;

(5) That the conduct was to the prejudice of good or discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

c. Explanation.

(1) "Prisoner" refers only to those in confinement resulting from conviction at a court-martial or other criminal proceedings.

(2) "Parole" is defined as "word or honor." A prisoner on parole, or parolee, has agreed to adhere to a parole plan and conditions of parole. A "parole plan" is a written or oral agreement made by the prisoner prior to parole to do or refrain from doing certain acts or activities. A parole plan may include a residence requirement stating where and with whom a parolee will live, and a requirement that the prisoner have an offer of guaranteed employment. "Conditions of parole" include the parole plan and other reasonable and appropriate conditions of parole, such as paying restitution, beginning or continuing treatment for alcohol or drug abuse, or paying a fine ordered executed as part of the prisoner's court-martial sentence. In return for giving his or her "word of honor" to abide by a parole plan and conditions of parole, the prisoner is granted parole.

d. Lesser included offense. Article 80—attempts.

e. Maximum punishment. Bad conduct discharge, confinement for 6 months and forfeiture of two-thirds pay per month for 6 months.

f. Sample specification.

In that _____ (personal jurisdiction data), a prisoner on parole, did, (at/on board—location), on or about _____, 199____, violate the conditions of his parole by _____.

ADDRESSES: Copies of the proposed changes may be examined at the Office of the Judge Advocate General, Criminal Law Division, Building 111, Washington Navy Yard, Washington, DC 20374–1111. A copy of the proposed changes may be obtained by mail upon request from the foregoing address, ATTN: LT Kristen M. Henrichsen.

DATES: Comments on the proposed changes must be received no later than August 7, 1995, for consideration by the Joint Service Committee on Military Justice.

FOR FURTHER INFORMATION CONTACT: LT Kristen M. Henrichsen, JAGC, USN, Executive Secretary, Joint Service Committee on Military Justice, Office of the Judge Advocate General, Criminal Law Division, Building 111, Washington Navy Yard, Washington, DC 20374–1111; (202) 433–5895.

Dated: May 18, 1995.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–12631 Filed 5–23–95; 8:45 am]

BILLING CODE 5000–04–M

Department of Defense Education Benefits Board of Actuaries; Notice of Meeting

SUMMARY: A meeting of the board has been scheduled to execute the provisions of Chapter 101, Title 10, United States Code (10 U.S.C. 2006 et. seq.). The Board shall review DoD actuarial methods and assumptions to be used in the valuation of the G.I. Bill. Persons desiring to 1) attend the DoD Education Benefits Board of Actuaries meeting or 2) make an oral presentation or submit a written statement for consideration at the meeting must notify Patricia Robertson at (703) 696–6336 by July 28, 1995.

DATES: August 4, 1995, 10 am to 1 pm.

ADDRESSES: Room 1E801 #4.

FOR FURTHER INFORMATION CONTACT:

Benjamin I. Gottlieb, Executive Secretary, DoD Office of the Actuary, 4th floor, 1600 Wilson Boulevard, Arlington, VA 22209–2593, (703) 696–5869.

Dated: May 18, 1995.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–12629 Filed 5–23–94; 8:45 am]

BILLING CODE 5000–04–M

Joint Service Committee on Military Justice; Public Meeting

AGENCY: Joint Service Committee on Military Justice (JSC).

ACTION: Notice of public meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda for the 1995 annual public meeting of the JSC. This notice also describes the functions of the JSC.

DATES: Wednesday, July 12, 1995, 10 a.m. to 11 a.m.

ADDRESS: Building 111, Washington Navy Yard, Washington, DC.

FUNCTION: The JSC was established by the Judge Advocates General in 1972. The JSC currently operates under Department of Defense Directive 5500.17 of January 23, 1985. It is the function of the JSC to improve Military Justice through the preparation and evaluation of proposed amendments and changes to the Uniform Code of Military Justice and the *Manual for Courts-Martial.*

AGENDA: The JSC will receive public comment concerning its 1995 Annual Review of *Manual for Courts-Martial, United States, 1984*, as published on May 24, 1995.

FOR FURTHER INFORMATION CONTACT:

LT Kristen M. Henrichsen, JAGC, USN, Executive Secretary, Joint Service Committee on Military Justice, Building 111, Washington Navy Yard, Washington, DC 20374–1111; (202) 433–5895.

Dated: May 24, 1995.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–12630 Filed 5–23–95; 8:45 am]

BILLING CODE 5000–04–M

Department of the Air Force

Record of Decision (ROD) for the Disposal and Reuse of Richards-Gebaur Air Force Base (AFB), Colorado

On April 28, 1995, the Air Force signed the ROD for the Disposal and Reuse of Richards-Gebaur AFB. The decisions included in this ROD have been made in consideration of, but not limited to, the information contained in the Final Environmental Impact Statement (FEIS) filed with the Environmental Protection Agency on July 1, 1994.

Richards-Gebaur AFB closed on September 30, 1994, pursuant to the Defense Authorization Amendments and Base Closure and Realignment Act of 1988 (Pub. L. 100–526) upon recommendation of the Secretary of Defense and findings of the Defense Base Closure and Realignment Commission. This ROD documents the Richards-Gebaur AFB disposal decisions.

The decision conveyed by the ROD is to dispose of Richards-Gebaur AFB in a manner that enables airport operation and commercial, office, and industrial areas. In addition, there will be two military reusers. This allows for the full implementation of the central theme of the proposed future land use plans discussed in the FEIS. The environmental findings and mitigation measures contained in the ROD remain fully applicable.

Consistent with the community reuse plan, the ROD balances aviation, industrial, office industrial park, commercial, and military uses throughout the base.

Several disposal methods and parcels are involved in the ROD, including a public benefit conveyance sponsored by the Federal Aviation Administration (FAA), Federal transfers to the U.S. Army and the U.S. Marine Corps, and negotiated sales to public bodies.

Of the 428 acres, the Kansas City Aviation Department (KCAD) will gain more than 178 acres in an FAA-sponsored public benefit conveyance. Another 12-acre transfer will be offered to the City of Belton, Missouri through negotiated sale. The Air Force will transfer 184 acres to the Department of the Army, and 54 acres to the U.S. Marine Corps. The electric system with appropriate easements for maintenance and repair will be conveyed through negotiated sale to an eligible public body. The other utilities (gas, telephone, water, and sewer) were transferred in a previous disposal action. Utility

easements will be granted as appropriate.

The road network is an integral part of all parcels. Primary roads will be conveyed to the KCAD. Secondary roadways that fall within a parcel completely will be included as part of the parcel.

The implementation of the closure and reuse action and associated mitigation measures will proceed with minimal adverse impact to the environment. This action conforms with applicable Federal, State, and local statues and regulations, and all reasonable and practical efforts have been incorporated to minimize harm to the local public and environment.

Our Program Manager for the Air Force Base Conversion Agency is Ms. Teresa R. Pohlman, and she may be reached at 703–696–5561.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 95–12688 Filed 5–23–95; 8:45 am]

BILLING CODE 3910–01–P

Department of the Army

Meeting of the Industry/Government Working Group for Performance Criteria of Military Clothing and Equipment

AGENCY: Army Soldiers System Command, DoD.

ACTION: Meeting announcement.

SUMMARY: The Industry/Government Working for Performance Criteria of Military Clothing and Equipment will meet on Tuesday, June 27, 1995 at the Soldiers System Command, Natick Research, Development and Engineering Center, Natick, MA. The Comfort and Durability committees will meet separately at 9 and then together as a group at 1.

The purpose of the meeting is to identify performance criteria and test methodology that will be used to measure comfort and durability of military clothing and individual equipment. The U.S. Army is interested in consumer and market research data in the areas of comfort and durability of fabrics, clothing and equipment, as well as related test methods, standards, specifications, or handbooks.

FOR FURTHER INFORMATION CONTACT: Carole A. Faria, Textile Technologist, at (508) 651–5460.

Dated: May 12, 1995.

Carole A. Faria,

Textile Technologist.

[FR Doc. 95–12645 Filed 5–23–95; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

President's Advisory Commission on Educational Excellence for Hispanic Americans; Public Hearing

AGENCY: President's Advisory Commission on Educational Excellence for Hispanic Americans.

ACTION: Notice of public hearing.

SUMMARY: This notice sets the schedule and agenda of a forthcoming Public Hearing of the President's Advisory Commission on Educational Excellence for Hispanic Americans. This notice also describes the functions of the Commission. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act.

DATES, TIMES AND LOCATIONS: Friday, June 2, 1995, 10 a.m.–6 p.m. at NY City Council Chambers, City Hall, New York, NY, 10007; 212/788–7171. Saturday, June 3, 1995, 10 a.m.–5 p.m. at Hostos Community College, 450 Grand Concourse, East Theater Academic Complex, Bronx, NY 10451; 718/518–6888 (Security Office).

FOR FURTHER INFORMATION CONTACT: Marsha Harper, Telephone: (202) 205–2420.

SUPPLEMENTARY INFORMATION: The President's Advisory Commission on Educational Excellence for Hispanic Americans is established under Executive Order of February, 1994. The Commission is established to advise on Hispanic achievements of the National Goals, as well as other educational accomplishments. The Public Hearing panelist presentations to the Commission is open to the public. There will be an opportunity for public comment the last 1–2 hours of the Hearing. The panelist presentation topics on the agenda include: Bilingual Education; Special Education; Immigrant Education; Overcrowding and Facility Conditions; Hispanic Drop-Out Rates; Successful Programs; Parental Involvement; Access to Technology and Resources; Teacher and Administrator Recruitment, Training and Promotion; School Finance Reform and Equity; Governance and Local Control of School Systems.

Records are kept of all Commission proceedings, and are available for public inspection at the White House Initiative For Hispanic Education at 600 Independence Avenue, SW., Room 2115, Washington, D.C. 20202 from the hours of 9 a.m. to 5 p.m.

Dated: May 18, 1995.

Mario Moreno,

Assistant Secretary, Office of Intergovernmental and Interagency Affairs.

[FR Doc. 95–12651 Filed 5–18–95; 4:26 pm]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Availability of the Dual Axis Radiographic Hydrodynamic Test Facility Draft Environmental Impact Statement

AGENCY: Department of Energy.

ACTION: Notice of availability and public hearings.

SUMMARY: The Department of Energy (DOE) announces the availability of the Dual Axis Radiographic Hydrodynamic Test (DARHT) Facility Draft Environmental Impact Statement (EIS), DOE/EIS–0228D, for public review and comment, and the dates, times and places for public hearings on the Draft EIS. The alternative actions analyzed in the Draft EIS would occur at the DOE's Los Alamos National Laboratory (LANL) in northern New Mexico.

DATES: Written comments on the Draft EIS are invited from the public. Comments must be postmarked by Monday, June 26, 1995, to ensure consideration; late comments will be considered to the extent practicable. The DOE will use the comments received to help prepare the final version of the DARHT EIS. Public hearings on the Draft EIS will be held as follows:

Wednesday, May 31, 1995, Los Alamos, New Mexico, 2:00pm–4:00pm and 6:30pm–9:00pm, Los Alamos Inn, 2201 Trinity Drive, Los Alamos, NM, (505) 662–7211.

Thursday, June 1, 1995, Santa Fe, New Mexico, 2:00pm–4:00pm and 6:30pm–9:00pm, High Mesa Inn, 3347 Cerrillos Road, Santa Fe, NM, (505) 473–2800.

The meetings will use a workshop format to facilitate dialogue among DOE, LANL, and the public and will provide opportunities for information exchange and discussion as well as submitting prepared statements.

ADDRESSES: Requests for copies of the Draft DARHT EIS, written comments on the Draft EIS, or other matters regarding this environmental review should be addressed to: Ms. Diana Webb, DARHT EIS Project Manager, Los Alamos Area Office, Department of Energy, 528 35th Street, Los Alamos, NM 87544. Ms. Webb may be contacted by telephone at (505) 665–6353 or by facsimile at (505) 665–1506.

FOR FURTHER INFORMATION CONTACT: For general information on the DARHT project, interested parties may contact Ms. Webb at the address and phone number above. For general information on the DOE NEPA process, please contact Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance, EH–42, Department of Energy, 1000 Independence Ave., SW, Washington, DC 20585. Ms. Borgstrom may be contacted by leaving a message at (800) 472–2756 or by calling (202) 586–4600.

SUPPLEMENTARY INFORMATION: The Draft EIS was prepared pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*, the Council on Environmental Quality NEPA regulations (40 CFR 1500) and the DOE NEPA regulations (10 CFR 1021).

The Department proposes to provide enhanced high-resolution radiography (x-ray) capability for the purpose of performing hydrodynamic tests and dynamic experiments in support of its national defense mission. The enhanced radiography facility would be a key component of the Department's near-term science-based stockpile stewardship and management program. These hydrodynamic tests and dynamic experiments are required to assist DOE in ensuring the continued safety, security, and reliability of existing nuclear weapons as they age.

The Draft DARHT EIS analyzes the environmental consequences of alternative ways to accomplish the proposed action. The DOE's preferred alternative would be to complete and operate the DARHT facility at LANL in northern New Mexico. Radiographic hydrodynamic testing is now conducted in two existing facilities within the DOE complex—a 30-year-old facility at LANL, and a 10-year-old facility at the DOE's Lawrence Livermore National Laboratory in California. The Draft DARHT EIS compares the environmental impacts that would be expected to occur from continuing to operate existing facilities (the No Action Alternative) with the consequences that would be expected to occur if DOE implemented the Preferred Alternative or one of four other operational alternatives. The Draft EIS has a classified supplement that provides additional information and analysis. DOE has distributed copies of the Draft DARHT EIS to appropriate Congressional members and committees, the State of New Mexico, American Indian tribal governments, local county governments, other federal agencies, and other interested parties. DOE expects to complete the Final EIS in August 1995, and reach a Record of Decision in September 1995.

Signed in Washington, D.C., this 17th day of May, 1995, for the United States Department of Energy.

Victor H. Reis,

Assistant Secretary for Defense Programs.

[FR Doc. 95–12626 Filed 5–23–95; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. ER93–523–003, et al.]

Western Resources, Inc. et al.; Electric Rate and Corporate Regulation Filings

May 17, 1995.

Take notice that the following filings have been made with the Commission:

1. Western Resources, Inc.

[Docket No. ER93–523–003]

Take notice that on March 14, 1995, Western Resources, Inc. tendered for filing its compliance filing in the above-referenced docket.

Comment date: May 31, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. Niagara Mohawk Power Corporation, Indeck-Olean Limited Partnership

[Docket No. EL95–45–000; Docket No. QF90–154–005]

On May 15, 1995, Niagara Mohawk Power Corporation (Niagara Mohawk) filed a petition for declaratory order requesting that the Commission revoke the qualifying status of the cogeneration facility operated by Indeck-Olean Limited Partnership (Indeck Olean). Indeck-Olean filed notices of self-certification for the facility in Docket Nos. QF90–154–000, QF90–154–001, QF90–154–002 and QF90–154–003.

In Docket Nos. EL95–11–000 and QF90–154–004 Indeck-Olean filed a petition for waiver of the Commission's operating and efficiency standards for calendar years 1993 and 1994. See 59 FR 64401 (Dec. 14, 1994) and 60 FR 2578 (Jan. 10, 1995). Niagara Mohawk has opposed waiver. Niagara Mohawk states that copies of its petition for declaratory order have been provided to Indeck-Olean and to other participants in Docket Nos. EL95–11–000 and QF90–154–004.

Niagara Mohawk states that waiver of the Commission's operating and efficiency standards is not warranted for the Indeck-Olean facility. Niagara Mohawk asks that the Commission declare that Indeck-Olean's QF certification is revoked effective June 8, 1994; that Indeck-Olean is obligated to refund any amounts collected in excess of the market value of electricity at the time of delivery; and, that Indeck-Olean must cease the sale of electricity at wholesale until such time as it has complied with Section 205 of the Federal Power Act or recertified its plant as a "qualifying facility."

Comment date: June 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. North American Energy Conservation, Inc.

[Docket No. ER94–152–005]

Take notice that on April 28, 1995, North American Energy Conservation, Inc. tendered for filing a summary of its activity for the quarter ending March 31, 1995.

4. Citizens Utilities Company

[Docket No. ER94–1561–001]

Take notice that on April 18, 1995, Citizens Utilities Company tendered for filing its compliance filing in the above-referenced docket.

Comment date: May 31, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Gulfstream Energy, LLC

[Docket No. ER94–1597–002]

Take notice that on April 28, 1995, Gulfstream Energy, LLC tendered for filing a summary of its activity for the quarter ending March 31, 1995, pursuant to the Commission's letter order issued November 21, 1994 in Docket No. ER94–1597–000.

6. J. Aron & Company

[Docket No. ER95–34–003]

Take notice that on April 11, 1995, J. Aron & Company tendered for filing a letter reporting that it did not engage in any electric power purchases and sales during the calendar quarter ended March 31, 1995.

7. Mesquite Energy Services Inc.

[Docket No. ER95–74–001]

Take notice that on April 28, 1995, Mesquite Energy Services Inc. tendered for filing a quarterly informational filing for the calendar quarter ended March 31, 1995, indicating no transactions occurred.

Such filing was made pursuant to the Commission's letter order dated January 4, 1995, in Docket No. ER95–74–000.

8. Florida Power Corporation

[Docket No. ER95–457–001]

Take notice that on April 21, 1995, Florida Power Corporation tendered for filing a revised fuel adjustment clause for service to Reedy Creek Improvement

District, Inc. in compliance with the Commission's order of March 21, 1995. As directed by the Commission, the revised fuel adjustment clause eliminates the provision for imputation of fossil fuel costs incurred by Qualifying Facilities.

Comment date: June 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Union Electric Company

[Docket No. ER95–744–000]

Take notice that on May 5, 1995, Union Electric Company (UE) submitted a request to withdraw the filing of the Agreement for Maintenance Energy dated March 10, 1995 between the City of Sikeston, Missouri and UE and terminate this docket.

Comment date: June 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Northeast Utilities Service Company

[Docket No. ER95–951–000]

Take notice that on April 26, 1995, Northeast Utilities Service Company (NUSCO) tendered for filing a Service Agreement with PECO Energy Company under the NU System Companies' System Power Sales/Exchange Tariff No 6.

NUSCO states that a copy of this filing has been mailed to PECO Energy Company.

NUSCO requests that the Service Agreement become effective on May 1, 1995.

Comment date: May 31, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. Southern California Edison Company

[Docket No. ER95–999–000]

Take notice that on May 1, 1995, Southern California Edison Company (Edison) tendered for filing the following Supplemental Agreement (Supplemental Agreement) to the 1990 Integrated Operations Agreement (IOA) with the City of Riverside (Riverside), FERC Rate Schedule No. 250, and associated Firm Transmission Service Agreement:

Supplemental Agreement Between Southern California Edison Companyand City of Riverside for the integration of the Washington Water Power-Riverside Power Sale Agreement

Edison Riverside Washington Water Power Firm Transmission Agreement

The Supplemental Agreement and FTS Agreement set forth the terms and conditions by which Edison will integrate Riverside's Washington Water Power resource and provide bi-directional firm transmission service.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: May 31, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. Entergy Services, Inc.

[Docket No. ER95–1001–000]

Take notice that on May 1, 1995, Entergy Services, Inc. (Entergy Services), as agent for Arkansas Power and Light Company (AP&L), Gulf States Utilities Company (GSU), Louisiana Power & Light Company (MP&L) and New Orleans Public Service Inc. (NOPSI) (collectively, the Entergy Operating Companies) filed revisions to the rates under the network service tariff (NST) and the point-to-point transmission service tariff (TST) filed in Docket No. ER95–112 on October 31, 1994 and revised on January 24, 1995. Entergy Services requests that the revised rates become effective June 1, 1995, subject to refund, in accordance with the provisions of the NSI and TST.

Comment date: May 31, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–12709 Filed 5–23–95; 8:45 am]

BILLING CODE 6717–01–P

[Project Nos. 2225–008, et al.]

Hydroelectric Applications [Public Utility District No. 1 of Pend Oreille County, et al.]; Notice of Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1 a. *Type of Application:* Amendment of License.

b. *Project No.:* 2225–008.

c. *Date Filed:* December 2, 1994.

d. *Applicant:* Public Utility District No. 1 of Pend Oreille County.

e. *Name of Project:* Sullivan Creek.

f. *Location:* On Sullivan Creek, in Pend Oreille County, Washington.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Michael V. Stimac, HDR Engineering, Inc., 500–108th Avenue, NE., Suite 1200, Bellevue, WA 98004, (206) 453–1523.

i. *FERC Contact:* Regina Saizan, (202) 219–2673.

j. *Comment Date:* June 23, 1995.

k. *Description of the Request:* The licensee proposes to re-establish generation at the project by constructing a new intake structure at the southwest corner of Mill Pond, placing a buried 16,340-ft., 90-inch diameter steel pipeline and penstock along the original flume right-of-way, enlarging the existing powerhouse to accommodate the installation of new electrical generating equipment, and upgrading the road surface of an existing access road to the intake site. The proposed project would have a total installed capacity of 11.2 MW.

l. This notice also consists of the following standard paragraphs: B, C2, and D2.

2 a. *Type of Application:* Transfer of License.

b. *Project No:* 4316–011.

c. *Date Filed:* April 21, 1995.

d. *Applicant:* Trans Mountain Hydro Corp.

e. *Name of Project:* Blue Valley Ranch.

f. *Location:* On the Blue River, Grand County, Colorado, near Heeney.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* David Bailey, Esq., Parcel Mauro Hultin & Spaanstra, P.C., 1801 California, Suite 3600, Denver, CO 80202, (303) 292–6400,

i. *FERC Contact:* Mark Hooper, (202) 219–2680.

j. *Comment Date:* June 26, 1995.

k. *Description of Transfer:* Applicant proposes to transfer the license to Galloway, Inc.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

3 a. *Type of Application:* Transfer of License.

b. *Project No:* 4444–013.

c. *Date Filed:* April 21, 1995.

d. *Applicant:* Trans Mountain Hydro Corp.

e. *Name of Project:* Blue Valley Ranch.

f. *Location:* On the Blue River, Grand County, Colorado, near Heeney.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* David Bailey, Esq., Parcel Mauro Hultin & Spaanstra, P.C., 1801 California, Suite 3600, Denver, CO 80202, (303) 292–6400.

i. *FERC Contact:* Mark Hooper, (202) 219–2680.

j. *Comment Date:* June 26, 1995.

k. *Description of Transfer:* Applicant proposes to transfer the license to Galloway, Inc.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

4 a. *Type of Application:* Surrender of License.

b. *Project No:* 6632–008.

c. *Date Filed:* April 20, 1995.

d. *Applicant:* John N. Webster.

e. *Name of Project:* Wiswall Dam Hydroelectric Project.

f. *Location:* Lamprey River, Strafford County, New Hampshire.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. Section 791(a)–825(r).

h. *Applicant Contact:* John N. Webster, Southern New Hampshire Hydroelectric Development Corp., P.O. Box 178, South Berwick, ME 03908, (207) 384–5334.

i. *FERC Contact:* Hillary Berlin, (202) 219–0038.

j. *Comment Date:* June 23, 1995.

k. *Description of Project:* The licensee states that the project is uneconomical to construct at this time.

l. The notice also consists of the following standard paragraphs: B, C1, and D2.

5 a. *Type of Application:* Subsequent License.

b. *Project No.:* 2438–007.

c. *Date filed:* November 5, 1993.

d. *Applicant:* Seneca Falls Power Corporation.

e. *Name of Project:* Waterloo and Seneca Falls Project.

f. *Location:* On the Seneca River in Seneca County, New York.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. Patrick Oot, President, Seneca Falls Power Corporation, 4450 Swissvale Drive, Manlius, NY 13104, (315) 637–4761.

i. *FERC Contact:* Robert Bell (202) 219–2806.

j. *Comment Date:* July 17, 1995.

k. *Status of Environmental Analysis:* This application is accepted for filing but is not ready for environmental analysis at this time—see attached standard paragraph E1.

l. *Description of Project:* The proposed project consists of the following two developments:

Seneca Falls Development

(1) The existing 68-foot-high, 118-foot-long dam; (2) having an impoundment with a surface area of 135 acres with a storage capacity of 2,700 acre-feet, and a normal water surface elevation of 430.5 feet Barge Canal Datum (BCD); (3) an existing intake structure; (4) the existing powerhouse having 4 generating units with a total proposed capacity of 8,500-kW; (5) the existing tailrace; (6) the existing 300-foot-long, 34.5-kV transmission line; and (7) appurtenant facilities.

Waterloo Development

(1) The existing 16.5-foot-high, 251-foot-long dam; (2) having an impoundment with a surface area of 1.1 acre with negligible storage, and a normal water surface elevation of 446.3 feet BCD; (3) an existing intake structure; (4) the existing powerhouse having 4 generating units with a total proposed capacity of 2,260-kW; (5) the existing tailrace; (6) the existing 20-foot-long, 34.5-kV transmission; and (7) appurtenant facilities.

The existing project would also be subject to Federal takeover under Sections 14 and 15 of the Federal Power Act. Based on the expiration of December 31, 1993, the Applicant's estimated net investment in the project would amount to $3,925,242.

m. *Purpose of Project:* Project power would be sold to a local utility.

n. This notice also consists of the following standard paragraphs: B1 and E1.

o. *Available Location of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, N.E., Room 3104, Washington, D.C., 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Mr. Patrick Oot, President, Seneca Falls Power Corporation, 4450 Swissvale Drive, Manlius, NY 13104, (315) 637–4761.

6 a. *Type of Application:* Major License.

b. *Project No.:* 10855–002.

c. *Date filed:* May 2, 1994.

d. *Applicant:* Upper Peninsula Power Company.

e. *Name of Project:* Dead River Project.

f. *Location:* On the Dead River in Marquette County, Michigan.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. Clarence R. Fisher, President, Upper Peninsula Power Company, P. O. Box 130, 600 Lakeshore Drive, Houghton, MI 49931–0130, (906) 487–5000.

i. *FERC Contact:* Robert Bell, (202) 219–2806.

j. *Comment Date:* July 17, 1995.

k. *Status of Environmental Analysis:* This application is accepted for filing but is not ready for environmental analysis at this time—see attached standard paragraph E1.

l. *Description of Project:* The constructed project consists of the following developments:

Silver Lake Dam Development

(1) An existing 1,500-foot-long, 30-foot-high earth embankment Dam; (2) an existing 100-foot-long, 7.7-foot-high concrete ogee crest spillway; (3) an existing 1,491-foot-long, 34-foot-high concrete gravity outlet structure; (4) four existing earthen saddle dikes: (a) 200-foot-long, 5-foot-high dike 1; (b) 370-foot-long, 7-foot-high dike 2; (c) 170-foot-long, 6-foot-high dike 3; (d) 290-foot-long, 5-foot-high dike 4; (4) an existing reservoir having a surface area of 1,464-acres with a storage capacity of 33,513 acre-feet, and a normal water surface elevation of 1,486.25 feet NGVD. There is no generation proposed at this development.

Hoist Dam Development

(1) An existing 4,602-foot-long concrete gravity Hoist Dam with sections varying in height from 6 to 63 feet; (2) an existing reservoir having a surface area of 3,202-acres with a storage capacity of 46,998 acre-feet, and normal water surface elevation of 1,347.5 feet NGVD; (3) an existing intake structure; (4) an existing 342-foot-long, 9-foot-wide, 10-foot-high tunnel; (5) an existing 193-foot-long, 7-foot-diameter riveted steel penstock; (6) an existing powerhouse containing 3 generating units with a total installed capacity of 4.425–MW; (7) an existing tailrace; (8) an existing 33-kV transmission line; and (9) appurtenant facilities. The estimated average annual generation is 15,643–MWh.

McClure Dam Development

(1) An existing 1,874-foot-long, earth embankment and concrete gravity McClure Dam varying in height from 22 to 51.4 feet; (2) an existing reservoir having a surface area of 95.9-acres with a storage capacity of 1,870 acre-feet, and normal water surface elevation of 1,196.4 feet NGVD; (3) an existing intake structure; (4) an existing 13,302-foot-

long, 7-foot-diameter steel, wood, and concrete pipeline; (5) an existing 40-foot-high, 30-foot-diameter concrete surge tank; (6) an existing powerhouse containing 2 generating units with a total installed capacity of 9.863-MW; (7) an existing tailrace; (8) an existing 33-kV transmission line; and (9) appurtenant facilities. The estimated average annual generation is 48,452-MWh.

m. *Purpose of Project:* Project power would be sold to a local utility.

n. This notice also consists of the following standard paragraphs: B1 and E1.

o. *Available Location of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., Room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Mr. Clarence R. Fisher, President, Upper Peninsula Power Company, P.O. Box 130, 600 Lakeshore Drive, Houghton, MI 49931–0130, (906) 487–5000.

7 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11531–000.

c. *Date filed:* May 1, 1995.

d. *Applicant:* City of Boulder, Colorado.

e. *Name of Project:* Silver Lake Hydroelectric Project.

f. *Location:* At the terminus of the applicant's existing Silver Lake Raw Water Pipeline, near the city of Boulder, in Boulder County, Colorado.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Eva June Busse, P.E., Hydro Projects Manager, City of Boulder, P.O. Box 791, Boulder, Colorado 80306, (303) 441–4271.

i. *FERC Contact:* Mr. Michael Strzelecki, (202) 219–2827.

j. *Comment Date:* July 26, 1995.

k. *Description of Project:* The proposed project would consist of: (1) The applicant's existing diversion structure and intake on Boulder Creek; (2) the applicant's existing 18-inch-diameter, 18,000-foot-long Silver Lake Raw Water Pipeline; (3) a powerhouse containing one generating unit with an installed capacity of 2,750 Kw; (4) a 1,000-foot-long transmission line interconnecting with an existing Public Service Company of Colorado transmission line; and (5) appurtenant facilities.

No new access roads will be needed to conduct the studies.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

Standard Paragraphs

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

B1. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, Room 1027, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

C2. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS," "RECOMMENDATIONS FOR TERMS AND CONDITIONS," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATION," "PROTEST," or "MOTION TO INTERVENE," as applicable, and the Project Number of the particular application to which the filing refers. Any of these documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. A copy of a notice of intent, competing application, or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

E1. Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) Bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant.

Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Dated: May 17, 1995.

Lois D. Cashell,

Secretary.

[FR Doc. 95–12708 Filed 5–23–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. PR95–8–001]

Arkansas Western Gas Co.; Notice of Amended Petition for Rate Approval

May 18, 1995.

Take notice that on may 5, 1985, Arkansas Western Gas Company (AWG) filed pursuant to section 284.123(b)(2) of the Commission's regulations, an amended petition for rate approval requesting that the Commission approve as fair and equitable a maximum rate of $0.1596 MMBtu, plus 3.1 percent for compressor fuel and lost and unaccounted for gas, for transportation services performed under section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA). this amendment represents a prospective increase from the rate of $0.1300 per MMBtus AVG requested in this docket on March 3, 1985.

AWG states that it is an intrastate pipeline within the meaning of section 2(16) of the NGPA and it owns and operates an intrastate pipeline system in the State of Arkansas. AWG proposes and effective date of March 3, 1995.

Pursuant to section 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the rate will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150-day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data, and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with section 385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All motions must be filed with the Secretary of the Commission on or before June 1, 1995. The petition for rate approval is on file with the Commission and is available for public inspection.

Lois D. Chashell,

Secretary.

[FR Doc. 95–12634 Filed 5–23–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP95–298–000 and RP95–31–007]

National Fuel Gas Supply Corporation; Notice of Tariff Filing

May 18, 1995.

Take notice that on May 15, 1995, National Fuel Gas Supply Corporation (National) tendered for filing, as a limited application under Section 4 of the Natural Gas Act, its filing to comply with the May 8, 1995 letter order and the Commission's April 12, 1995 order issued in these proceedings. These orders required that National allocate transmission costs either to all of its storage services or to none, and that National explain how its tariff sheets meet the Commission's objectives.

National has filed as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following primary tariff sheets reflecting the assignment of transmission costs to all of its firm storage services, with a proposed effective date of June 1, 1995:

Tenth Revised Sheet No. 5
Third Revised Sheet No. 5A
Ninth Revised Sheet No. 6
Fifth Revised Sheet No. 6A

National is also filing first and second alternative sets of tariff sheets.

National further states that it has included the relevant workpapers setting forth National's cost-of-service used to develop the rates included in its filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure. All such motions to intervene or protests should be filed on or before May 25, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–12637 Filed 5–23–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–216–001]

Tennessee Gas Pipeline Company; Notice of Filing

May 18, 1995.

Take notice that on May 12, 1995, Tennessee Gas Pipeline Company (Tennessee) tendered for filing a schedule displaying the effective and termination dates for contracts that caused a reduction in billing determinants in Docket No. RP95–216.

Tennessee states that the purpose of this filing is to comply with the Commission's April 27, 1995 Order in Docket No. RP95–216 requiring Tennessee to file additional information supporting the billing determinants contained in the filing. In addition, Tennessee is revising its billing determinants to correct an inadvertent reduction to NIPSCO's contract number 548 effective July 1, 1995. No change in the GSR surcharge is required as a result of this correction.

Tennessee states that copies of the filing have been mailed to all affected parties.

Any persons desiring to protest said filing should file a motion to protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR Section 385.211). All such protests should be filed before May 25, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–12636 Filed 5–23–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP95–63–000, RP95–64–000, RP95–88–000, RP95–90–000, RP95–112–000, RP95–206–000]

Tennessee Gas Pipeline Co.; Notice of Technical Conference

May 18, 1995.

Take notice that a technical conference concerning the above dockets will be convened on June 1, 1995, at 9 a.m., at the Crystal City Marriott (Crystal Forum), 1999 Jefferson Davis Highway, Arlington, Virginia. The purpose of the technical conference is to continue discussions begun at the prior conference concerning Tennessee's operations.

All parties, as defined by 18 CFR 385.102(c), and all participants as defined in 18 CFR 385.102(b), are invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact Jake Hiatt (713) 757–6855 at Tennessee or Chris Young (202) 208–0620 and Robert McLean (202) 208–1179 at the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 95–12635 Filed 5–23–95; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34076; FRL–4954–8]

Reregistration Eligibility Decision Documents for Ethephon, et. al.; Availability for Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of Reregistration Eligibility Decision documents; opening of public comment period.

SUMMARY: This notice announces the availability of the Reregistration Eligibility Decision (RED) documents for the active ingredients Ethephon, Linuron and Metolachlor. This notice starts a 60–day public comment period. The REDs for the chemicals listed above are the Agency's formal regulatory assessments of the health and environmental data base of the subject chemicals and present the Agency's determination regarding which pesticidal uses are eligible for reregistration.

DATES: Written comments on these decisions must be submitted by July 24, 1995.

ADDRESSES: Three copies of comments identified with the docket number "OPP–34076" and the case number (noted below), should be submitted to: By mail: OPP Pesticide Docket, Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., S.W., Washington, DC 20460. In person, deliver comments to: OPP Pesticide Docket, Rm. 1132, Crystal Mall 2 (CM#2), 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number "OPP–34076". No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in **FOR FURTHER INFORMATION CONTACT** of this document.

FOR FURTHER INFORMATION CONTACT: Technical questions on the above listed decisions should be directed to the appropriate Chemical review managers:

List	Chemical Name	Case No.	Chemical Review Manager	Telephone No.
List A	Ethephon	Case 0382	Judy Loranger	(703) 308–8056.
List A	Linuron	Case 0047	Karen Jones	(703) 308–8047.
List A	Metolachlor	Case 0001	Jane Mitchell	(703) 308–8061.

Information submitted as a comment in response to this Notice may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public docket. Information not marked confidential will be included in the public docket without prior notice (including comments and data submitted electronically). The public docket and docket index, including printed paper versions of electronic comments, which does not include any information claimed as CBI will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

To request a copy of any of the above listed RED documents, or a RED Fact Sheet, contact the OPP Pesticide Docket, Public Response and Program Resources Branch, in Rm. 1132 at the address given above or call (703) 305–5805.

Electronic copies of the REDs and RED fact sheets can be downloaded from the Pesticide Special Review and Reregistration Information System at 703–308–7224, and also can be reached on the Internet via fedworld.gov and EPA's gopher server, gopher.epa.gov.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

SUPPLEMENTARY INFORMATION: The Agency has issued Reregistration Eligibility Decision (RED) documents for the pesticidal active ingredients listed above. Under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended in 1988, EPA is conducting an accelerated reregistration program to reevaluate existing pesticides to make sure they meet current scientific and regulatory standards. The data base to support the reregistration of each of the chemicals listed above is substantially complete. EPA has determined that all currently registered products subject to reregistration containing these active ingredients are eligible for reregistration.

All registrants of products containing one or more of the above listed active ingredients have been sent the appropriate RED documents and must respond to labeling requirements and product specific data requirements (if applicable) within 8 months of receipt. Products containing other active ingredients will not be reregistered until those other active ingredients are determined to be eligible for reregistration.

The reregistration program is being conducted under Congressionally mandated time frames, and EPA recognizes both the need to make timely reregistration decisions and to involve the public. Therefore, EPA is issuing these REDs as final documents with a 60–day comment period. Although the 60–day public comment period does not affect the registrant's response due date, it is intended to provide an opportunity for public input and a mechanism for initiating any necessary amendments to the RED. All comments will be carefully considered by the Agency. If any comment significantly affects a RED, EPA will amend the RED by publishing the amendment in the **Federal Register**.

List of Subjects

Environmental protection.

Dated: May 16, 1995.

Lois Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 95–12566 Filed 5–23–95; 8:45 am]

BILLING CODE 6560–50–F

[PF–625; FRL–4951–3]

Pesticide Tolerance Petitions; Filings and Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces initial filings and an amendment to pesticide petitions (PP) and to food and feed additive petitions (FAP) proposing the establishment of regulations for residues of certain pesticide chemicals in or on various agricultural commodities.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [PF–625; FRL 4951–3]. No CBI should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, contact the PM named in each petition at the following office location/telephone number:

Product Manager	Office location/telephone number/e-mail	Address
Robert Taylor (PM–25)	Rm. 241, CM #2, 703-305-6027; e-mail: taylor.robert@epamail.epa.gov.	1921 Jefferson Davis Hwy., Arlington, VA.
Joanne Miller (PM–23)	Rm. 237, CM #2, 703-305-6224; e-mail: miller.joanne@epamail.epa.gov..	Do.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions and food/feed additive petitions as follows proposing the amendment of regulations for residues of certain pesticide chemicals in or on various agricultural commodities.

Initial Filings

1. *PP 5F4440.* Valent U.S.A. Corp., 1333 North California Blvd., Suite 600, Walnut Creek, CA 94596, proposes amending 40 CFR 180.458 by establishing tolerances for the combined residues of the herbicide clethodim ((E)-(±)-2-[1-[[(3-chloro-2-propenyl)oxy] imino] propyl]-5-[2-(ethylthio)propenyl]-3-hydroxy-2-cyclohexen-1-one) and its metabolites containing the 2-cyclohexen-1-one moiety in or on the raw agricultural commodities alfalfa, forage at 10 ppm; alfalfa, hay at 15 ppm; dry bean, seeds at 2 ppm; dry bean, forage at 5 ppm; dry bean, straw/hay at 7 ppm; peanut, nut meat at 3 ppm; peanut, hulls at 2 ppm; peanut, hay at 5 ppm. Proposed analytical method for determining residues is a compound-specific method (liquid chromatography (HPLC/UV)) or a common moiety method (gas chromatography with sulfur detector). (PM-23)

2. *PP 5F4454.* E.I. duPont de Nemours & Co., Agricultural Products, Walkers Mill, Barley Mill Plaza, P.O. Box 80038, Wilmington, DE 19880-0038, proposes to amend 40 CFR part 180 by establishing a regulation to permit residues of chlorimuron ethyl (ethyl-2-[[[[(4-chloro -6- methoxypyrimidin -2yl) amino] carbonyl] amino] sulfonyl]benzoate) in or on the raw agricultural commodities corn (field/grain); corn, (field/forage); and corn (field/fodder) at 0.05 ppm. The analytical enforcement method is column surtehony (heart cut) liquid chromatography (HPLC/UV). (PM-25)

3. *PP 5F4469.* American Cyanamid Co., P.O. Box 400, Princeton, NJ 08543, proposes to amend 40 CFR part 180 by establishing a regulation to permit combined residues of the herbicide prosulfuron, 1-(4-methoxy-6-methyl-triazin-2-yl)-3-[2-(3,3,3-trifluoropropyl)-phenylsulfonyl]-urea, on cereal grains, cereal grains forage, fodder, and straw (except rice and wild rice) at 0.02 ppm. (PM-25)

4. *FAP 5H5713.* Valent U.S.A. Corp., 1333 North California Blvd., Suite 600, Walnut Creek, CA 94596, proposes amending 40 CFR 186.1075 by establishing a tolerance for the combined residues of the herbicide clethodim ((E)-(±)-2-[1-[[(3-chloro-2-propenyl)oxy]imino]propyl]-5-[2-(ethylthio)propenyl]-3-hydroxy-2-cyclohexen-1-one and its metabolites containing the 2-cyclohexen-1-one moiety in or on the processed commodity peanut, meal at 10 ppm. Proposed analytical method for determining residues is a compound-specific method (liquid chromatography (HPLC)). (PM-23)

Amended Filing

5. *PP 3F4225.* In the **Federal Register** of October 21, 1993 (58 FR 54354), EPA issued a notice announcing that Ciba-Geigy Corp. proposed to amend 40 CFR part 180 by establishing a regulation to permit residues of triasulfuron, 3-(6-methoxy-4-methyl-1,3,5-triazin-2-yl)-1-(2-chloroethoxy) phenylsulfonyl) urea in or on grass, forage at 7.0 ppm and grass, hay at 2.0 ppm. Ciba-Geigy is amending the petition to inlcude the establishment of a regulation permitting residues of triasulfuron in the kidney of cattle, goats, hogs, horses, and sheep at 0.5 ppm. (PM-25).

A record has been established for this notice document under docket number [PF-625; FRL 4951-3] (including any comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-Docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in **ADDRESSES** at the beginning of this document.

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping

Authority: 7 U.S.C. 136a.

Dated: April 28, 1995.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 95–12564; Filed 5–23–95; 8:45 am]

BILLING CODE 6560–50–F

[PP 3G4184 and 3G4214/T676; FRL 4953–3]

Flutolanil; Establishment of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established temporary tolerances for residues of the fungicide flutolanil in or on certain raw agricultural commodities. These temporary tolerances were requested by AgrEvo USA Company.

DATES: These temporary tolerances expire April 30, 1996.

FOR FURTHER INFORMATION CONTACT: By mail: Connie Welch, Product Manager (PM) 21, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 229, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–6900; e-mail: welch.connie@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: AgrEvo USA Company, Little Falls Centre One, 2711 Centreville Rd., Wilmington, DE 19808, has requested in pesticide petitions (PP) 3G4184 and 3G4214, the establishment of temporary tolerances for residues of the fungicide flutolanil (*N*-[3-(1-Methylethoxy)phenyl)-2-(trifluoromethyl)benzamide) in or on the raw agricultural commodities rice (whole grain) and rice straw at 7.0 parts per million (ppm), rice hulls at 25.0 ppm, and rice bran at 10.0 ppm; peanut nutmeats at 0.4 ppm, peanut hulls at 13.0 ppm, peanut meal at 1.0 ppm and peanut soapstock at 1.0 ppm. These temporary tolerances will permit the marketing of the above raw agricultural commodities when treated in accordance with the provisions of the experimental use permits 45639–EUP–48 and 45639–EUP–50, which are being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (Pub. L. 95–396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that establishment of the temporary tolerances will protect the public health. Therefore, the temporary tolerances have been established on the condition that the pesticide be used in accordance with the experimental use permits and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permits.

2. AgrEvo USA Co., must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire April 30, 1996. Residues not in excess of these amounts remaining in or on the raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permits and temporary tolerances. These tolerances may be revoked if the experimental use permits are revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirement of section 3 of Executive Order 12866.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Authority: 21 U.S.C. 346a(j).

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 9, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 95–12569 Filed 5–23–95; 8:45 am]

BILLING CODE 6560–50–F

[OPP–180971; FRL 4953–5]

Pirimicarb; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received specific exemption requests from the Idaho, Nevada, Oregon, Washington, and Wyoming Departments of Agriculture (hereafter referred to as the "Applicants") for use of the unregistered insecticide, pirimicarb, to control aphids and lygus bugs on alfalfa grown for seed. The proposed use would impact up to 30,000 acres in Idaho; 18,000 acres in Nevada; 10,000 acres in Oregon; 15,000 acres in Washington; and 2,000 acres in Wyoming. In accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before June 8, 1995.

ADDRESSES: Three copies of written comments, bearing the identification notation "OPP–180971," should be submitted by mail to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–180971]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Larry Fried, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, Crystal Station I, 2800 Jefferson Davis Highway, Arlington, VA, (703) 308–8328; Internet address: fried.larry@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a State agency from any registration provision of FIFRA if she determines that emergency conditions exist which require such exemption.

The Applicants have or will request the Administrator to issue a specific exemption for the use of the insecticide, pirimicarb, formulated as Pirimor 50–DF Insecticide manufactured by Zeneca Inc. to control aphids. Information in accordance with 40 CFR part 166 was submitted as part of this request.

According to the Applicants, pirimicarb is the only known insecticide that provides control of aphids and lygus bugs without inflicting harm to the native bee populations following application. The use of the currently registered insecticides will present significant risk to beneficial organisms (native pollinating bees). The alfalfa industry heavily relies on bee pollination to ensure successful crop development. Over time, use of the registered products may be responsible for substantial bee kills that would profoundly impact the alfalfa seed industry and the ecosystem.

Under the proposed exemption Pirimor 50–DF would be used at a rate

of [(1.0 to 3.0 oz., or 0.063 to 0.188 lb. of active ingredient (a.i.))] per acre per application, applied in a minimum application spray volume of 5 gallons per acre by air or 10 gallons per acre by ground. A maximum of three applications have been requested. If approved, a maximum total rate of 6 ounces of product will not be exceeded this growing season.

The existence of state regulations/restrictions prohibit the use of any alfalfa byproducts of the seed industry for livestock feed. Applications would be made between May 1, 1995 and September 30, 1995.

This notice does not constitute a decision by EPA on the application itself. Pirimicarb is classified as a new chemical by the Agency. The regulations governing section 18 require that the Agency publish a notice of receipt in the **Federal Register** and solicit public comment on an application for a specific exemption if the applicant proposes use of a new chemical. Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above.

A record has been established for this notice under docket number "[OPP-180971]" (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in **ADDRESSES** at the beginning of this document.

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemptions requested by the Idaho, Nevada, Oregon, Washington, and Wyoming Departments of Agriculture.

List of Subjects

Environmental protection, Pesticides and pests, Crisis exemptions

Dated: May 8, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 95–12568 Filed 5–23–95; 8:45 am]

BILLING CODE 6560–50–F

[FRL–5209–1]

Final NPDES General Permit for Offshore Oil and Gas Operations on the Outer Continental Shelf (OCS) and State Waters of Alaska: Arctic NPDES General Permit (No. AKG284200)

AGENCY: Environmental Protection Agency.

ACTION: Notice of final NPDES general permit.

SUMMARY: The Regional Administrator, Region 10, is issuing the final Arctic National Pollutant Discharge Elimination System (NPDES) general permit which will authorize offshore oil and gas stratigraphic test and exploration wells in the federal and state waters of the Beaufort and Chukchi Seas. Development and production wells are not authorized to discharge by this general permit.

Notice of the draft Arctic general permit was published September 20, 1995 (59 FR 48314–48324) and in two Alaskan newspapers. A brief description of the basis for the conditions and requirements of the proposed permit is given in the fact sheet published at the aforementioned **Federal Register** citation.

The final permit which follows establishes effluent limitations, standards, prohibitions, and other conditions on discharges from facilities in the area of coverage. The conditions are based on material contained in the administrative record. Changes made in response to comments received during the public comment period are addressed in full in a document entitled "Response to Comments Received on the Proposed Issuance of the Arctic General NPDES Permit." This document is being sent to all commenters and is available to other parties upon request at the address provided in this document.

DATES: The general permit shall become effective June 23, 1995.

ADDRESSES: Unless other wise noted in the permit, correspondence regarding this permit should be sent to Environmental Protection Agency, Region 10, Attn: Ocean Programs Section, WD–137, 1200 Sixth Avenue, Seattle, Washington, 98101.

Administrative Record: The administrative record for the final permit is available for public review at EPA, Region 10, at the preceding address.

FOR FURTHER INFORMATION CONTACT: Anne Dailey, of Region 10, at the preceding address or telephone (206) 553–2110. Copies of the final general permit, the response to comments, and today's publication will be provided upon request from the Region 10 Public Information Center at 1–800–424–4EPA (4372) or 206–553–1200.

SUPPLEMENTARY INFORMATION:

Organization of This Notice

I. Introduction
II. Basis for Permit Conditions
III. Changes Made from Draft to Final Permit
IV. Other Legal Requirements
  A. Oil Spill Requirements
  B. Endangered Species Act
  C. Coastal Zone Management Act
  D. Marine Protection, Research and Sanctuaries Act
  E. State Water Quality Standards and State Certification
  F. Executive Order 12291
  G. Paperwork Reduction Act
  H. Regulatory Flexibility Act
V. References
  Appendix A: List of Changes from Draft to Final Permit

I. Introduction

EPA issues this general permit pursuant to its authority under sections 301(b), 304, 306, 307, 308, 401, 402, 403, and 501 of the Clean Water Act and the U.S. Coast Guard regulations (33 CFR part 151). This permit authorizes discharges from oil and gas stratigraphic and exploratory wells in the area of coverage on the Alaskan Outer Continental Shelf and contiguous state waters in the Beaufort and Chukchi Seas. The area of coverage is defined as Federal waters of the Beaufort Sea and Chukchi Sea planning basins as defined by Minerals Management Service (MMS) (see U.S. Dept. of the Interior, 1992) and State waters contiguous to the landward boundary of the Beaufort Sea and Chukchi Sea planning basins.

Public notice for the draft permit was published in the **Federal Register** on September 20, 1994 (59 FR 48314–48324) and in the Anchorage Times and

in the Arctic Sounder on September 20, 1994. The comment period was scheduled to close on November 21, 1994. In response to requests, the comment period was formally extended to close January 20, 1995. Public hearings were tentatively scheduled to be held in Barrow and Anchorage, Alaska but were canceled due to lack of interest.

The following parties submitted written comments: Alaska and Inuvialuit Beluga Whale Committee, Alaska Oil and Gas Association, American Petroleum Institute, Baker Hughes Inteq, British Petroleum, Exxon Exploration Company, Marathon Oil Company, Charles Etok Edwardsen, Jr., James McCollough, M–I Drilling Fluids, National Marine Fisheries Service, Native Village of Point Lay, Alaska, North Slope Borough, Trustees for Alaska, U.S. Department of Energy, U.S. Department of the Interior, and Unocal Energy Resources Division.

II. Basis for Permit Conditions

Section III of the fact sheet for the draft permit (59 FR 48315–48317, September 20, 1995) is incorporated by reference, as supplemented and amended below. The fact sheet for the draft permit, the response to comments document, the final Ocean Discharge Criteria Evaluation, and the 401 Certification issued by the State of Alaska set forth the principal facts and the significant factual, legal, and policy questions considered in the development of the terms and conditions of the final permit.

III. Changes Made From Draft to Final Permit

Changes have been made from the draft permit to the final permit in response to public comments received on the draft permit, the final consistency determination from the State of Alaska, and the final 401 Certification from the State of Alaska. In developing the final permit, Region 10 has considered all comments received. Every attempt has been made to thoroughly respond to comments raised during the comment period in the response to comments document, which is available upon request. In some instances, minor wording changes have been made to the proposed permit language in order to clarify some points as a result of comments. In response to other comments, there have been substantive changes made to the permit.

The following identifies several specific areas of change, among others, which have been embodied in the final permit: The mud plan requirements have been refined and clarified; toxicity testing requirements have been clarified; discharge restrictions have been placed on Omalik Lagoon, Naokok Pass, and Pingaorarok Pass; the areas requiring environmental monitoring have been revised and clarified; additional controls on sanitary wastes have been included, and a prohibition on the discharge of putrescible wastes has been added. Many comments were made regarding the Best Management Practices Plan requirements and several changes were made in response to comments. Appendix A to this notice identifies the changes made from the draft to the final permit. The detailed response to public comments is available upon request from the Region 10 Public Information Center at 1–800–424–4EPA (4372), 1–206–553–1200, or from the address listed above.

IV. Other Legal Requirements

A. Oil Spill Requirements

Oil spill requirements in the final permit have been modified to reflect Executive Order 12777 which implements provisions of the Oil Pollution Act of 1990. E.O. 12777 removed offshore facilities from jurisdiction under EPA and placed them under Department of Interior (DOI) jurisdiction. Specifically within DOI, Minerals Management Service has the responsibility.

Offshore operators are now required to submit Oil Spill Contingency Plans to MMS for review. Additionally, operators in state waters are required to submit Oil Discharge Prevention and Contingency Plans to the Alaska Department of Environmental Conservation for review. With the new requirements, operators in federal or state waters are no longer required to develop Spill Prevention, Control, and Contingency (SPCC) plans under section 311 of the Act.

B. Endangered Species Act

EPA has informally consulted with the U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS) pursuant to section 7 consultation of the Endangered Species Act (ESA). EPA has addressed ESA issues in the Final Ocean Discharge Criteria Evaluation (U.S. EPA, 1995a) and the Final Biological Evaluation (U.S. EPA, 1995b) for the area of coverage. Based upon information in the aforementioned documents, Region 10 concluded that this final permit is not likely to adversely affect any endangered or threatened species nor adversely affect its critical habitat. EPA requested comments from USFWS and the NMFS on this determination. Comments raised by the USFWS and NMFS have been addressed. Both agencies concurred in writing with EPA's determination of no adverse effect.

C. Coastal Zone Management Act

The proposed permit and consistency determination were submitted to the State of Alaska for state interagency review at the time of public notice. The State of Alaska has concurred that the activities allowed by this permit are consistent with local and state Coastal Management Plans.

D. Marine Protection, Research and Sanctuaries Act

No marine sanctuaries as designated by this Act exist in the vicinity of the permit areas.

E. State Water Quality Standards and State Certification

The State of Alaska has certified pursuant to section 401 of the Clean Water Act that the discharges authorized in state waters by this permit comply with state water quality standards and regulations. All conditions and stipulations included in the certification have been included in the final permit.

F. Executive Order 12866

The Office of Management and Budget has exempted this action from the review requirements of Executive Order 12866 pursuant to section 8(b) of that order.

G. Paperwork Reduction Act

EPA has reviewed the requirements imposed on regulated facilities in this draft general permit under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* The information collection requirements have already been approved by the Office of Management and Budget (OMB) in submissions made for the NPDES permit program under the provisions of the Clean Water Act. In addition, the environmental monitoring requirements pursuant to section 403(c) of the Clean Water Act in Part II.B.4. of this permit are similar to the monitoring requirements that were approved by OMB for the previously issued Beaufort Sea II and Chukchi Sea general permits.

H. The Regulatory Flexibility Act

After review of the facts presented in the notice of intent printed above, I hereby certify, pursuant to the provisions of 5 U.S.C. 605(b), that this general permit will not have a significant impact on a substantial number of small entities. This

certification is based on the fact that the regulated parties have greater than 500 employees and are not classified as small businesses under the Small Business Administration regulations established at 49 FR 5024 *et seq.* (February 9, 1984). These facilities are classified as Major Group 13—Oil and Gas Extraction SIC 1311 Crude Petroleum and Natural Gas.

Dated: April 12, 1995.

Chuck Clarke,

Regional Administrator, Region 10.

V. References

U.S. Department of the Interior. 1992. Outer Continental Shelf Natural Gas and Oil Resource Management: Comprehensive Program (1992–1997). Proposed Final. Minerals Management Service.

U.S. EPA. Region 10. 1995a. Final Ocean Discharge Criteria Evaluation. Prepared with assistance from Tetra Tech, Inc. February 1995.

U.S. EPA. Region 10. 1995b. Final Biological Evaluation. Prepared with assistance from Tetra Tech, Inc. February 1995.

Appendix A: List of Changes Made From the Draft to Final Permit

Below is a list of final permit sections which have been modified since the draft permit was proposed. Along with each permit section identified below, the specific response to comment number and/or the certification stipulation which explains the rationale and basis for the change is noted.

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Response to comment 22
Part I.A.
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Part I.F.
401 Certification, Stipulation 2
Part II.A.1.
Footnote 1, 401 Certification, Stipulation 3
Footnote 2, Response to comment 11(c)
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Part II.A.1.c.
Response to comment 11(c)
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Part II.A.1.g.
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Part II.A.1.k.
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Part II.A.3.b.
Response to comment 1(b) and 2
Part II.A.4.
Response to comment 5(c)
Part II.B.
Table, 401 Certification, Stipulation 6
Footnote 2, Response to comment 11(c)
Footnote 5, 401 Certification, Stipulation 7
Footnote 7, 401 Certification, Stipulation 8
Part II.C.
Response to comment 22
Part II.C.1.
Response to comment 11(c)
Part II.D.
Footnote 2, Response to comment 11(c) and 401 Certification, Stipulation 9
Part II.E.4.
401 Certification, Stipulation 10
Part II.F.4.
Update reference to current document
Part II.F.4.d.
Response to comment 26(n)
Part II.F.5.
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Part II.F.6.
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Part III.F.
401 Certification, Stipulation 13
Part VI.45.
Response to comment 17
Part VI.49.
401 Certification, Stipulation 8 and 10
Part VI.52.
Response to comment 30(a)
Part VI.58.
Response to comment 30(a)
Part VI.
Definition numbers have been changed to reflect the additional definitions.
Part VII.
A reference section is now included

Final NPDES General Permit, U.S. Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101

AUTHORIZATION TO DISCHARGE UNDER THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM FOR OIL AND GAS EXPLORATION FACILITIES ON THE OUTER CONTINENTAL SHELF AND CONTIGUOUS STATE WATERS

In compliance with the provisions of the Clean Water Act, 33 U.S.C. 1251 *et seq.*, the following discharges are authorized in accordance with this National Pollutant Discharge Elimination System ("NPDES"):

Discharge name	Discharge No.
Drilling Fluid and Drilling Cuttings	001
Deck Drainage	002
Sanitary Wastes	003
Domestic Wastes	004
Desalination Unit Wastes	005
Blowout Preventer Fluid	006
Boiler Blowdown	007
Fire Control System Test Water	008
Non-Contact Cooling Water	009
Uncontaminated Ballast Water	010
Bilge Water	011
Excess Cement Slurry	012
Mud, Cuttings, Cement at Seafloor	013
Test Fluids	014

From oil and gas exploratory facilities in offshore areas (defined in 40 CFR part 435, subpart A), to all federal waters of the U.S. located in the Beaufort Sea and Chukchi Sea planning basins as defined by U.S. Department of Interior, Minerals Management Service (1992) and to all state waters contiguous to the Beaufort Sea and Chukchi Sea Minerals Management Service planning areas in accordance with effluent limitations, monitoring and reporting requirements, and other conditions set forth in Parts I through V herein. The discharge of pollutants not specifically set out in this permit is not authorized. Permittees who do not request and receive coverage under this general permit as described in Part I are not authorized to discharge to the specified waters unless an individual NPDES permit has been issued to the permittee by EPA, Region 10.

This permit shall be modified or revoked at any time if, on the basis of any new data, the Director determines that such data would have justified the application of different permit conditions at the time of issuance. Permit modification or revocation will be conducted in accordance with 40 CFR 122.62, 122.63, and 122.64. In addition to any other grounds specified herein, this permit shall be modified or revoked at any time if, on the basis of any new data, the Director determines that continued discharges may cause unreasonable degradation of the marine environment in accordance with section 403(c) and as promulgated in 40 CFR part 125, subpart M.

Under 40 CFR 122.44(c)(3), if an applicable standard or limitation is promulgated under sections 301(b)(2)(C) and (D), 304(b)(2), and 307(a)(2) and that effluent standard or limitation is more stringent than any effluent limitation in the permit or controls a pollutant not limited in the permit, the permit shall be promptly modified or revoked and reissued to conform to that effluent standard or limitation.

This permit shall become effective on June 23, 1995.

This permit and the authorization to discharge shall expire at midnight on June 23, 2000.

Signed this 12th day of April 1995.

Chuck Clarke,

Regional Administrator.

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I. Notification Requirements

This permit does not authorize the discharge of pollutants to waters of the United States until the following three requirements, which are set out in more detail in subparagraphs A. through C. below, are met. First, the permit applicant must send in a request to be covered by the permit and authorization to discharge. Second, the applicant must receive from EPA an authorization to discharge. Third, once authorized, the permittee must notify EPA of its intent to discharge at least seven days in advance of the discharge. Failure to comply with any of these requirements will vitiate any prior authorization to discharge under this general permit.

A. Requests for Coverage and Authorization to Discharge Under the General Permit

Persons requesting coverage under this general permit shall provide to EPA written request to be covered by this permit at least 60 days prior to initiation of discharges. All requests for coverage and authorization to discharge under the general permit shall be provided to the Alaska Department of Environmental Conservation Joint Pipeline Regional Office in Anchorage. The request shall include the following information:

1. Name and address of the permittee.

2. Lease and block numbers of operations and discharges.

3. Any discharge or operating conditions which will require special monitoring (Part II.A.4.).

B. Authorization to Discharge

The permittee's discharges are not authorized until the permittee receives from EPA written notification that EPA has assigned a permit number under this general permit to operations at the discharge site. A permit number cannot be assigned until the following information is received. This information shall be provided to EPA in the request for coverage, if possible, but in no case less than 30 days prior to commencement of discharges.

1. Name and location of discharge site, including lease block number and approximate coordinates.

2. Range of water depths (below mean lower low water) in lease block, and depth of discharge.

3. Initial date and expected duration of operations.

C. Notice of Intent to Commencement of Discharges

The permittee shall notify EPA, Region 10, no later than 7 days prior to initiation of discharges from the facility and from each well. The notification shall include the exact coordinates (latitude and longitude) and water depth of the discharge site, and may be oral or in writing. The Certification of Planning for Drilling Muds (*see* Part II.A.1.f.) and the Best Management Practices Plan Certification (*see* Part II.F.1.) shall also be submitted no later than the notification of commencement of discharges. If notification is given orally, written confirmation must follow within 7 days.

D. Sites Requiring Environmental Surveys

All operators that locate within the areas covered by this general permit shall submit to EPA copies of any exploration plans, biological surveys, and/or environmental reports required by the Regional Supervisor, Field Operations of the Minerals Management Service, State of Alaska, for the identification and/or protection of biological populations or habitats. Permittees shall notify Region 10 in writing when no exploration plan or environmental report will be sent.

E. Termination of Discharges

The permittee shall notify EPA within 30 days following cessation of discharges from each well and from the discharge site. The notification may be provided in a DMR or under separate cover.

F. Submission of Requests for Coverage and Authorization, Notice of Intent to Commence Discharge, and Other Reports

Reports and notifications required herein shall be submitted to the following addresses.

All requests for coverage and authorization and notices of intent:

Director, Water Division, U.S. Environmental Protection Agency, Reg. 10, Attn: Ocean Programs Section, WD–137, 1200 Sixth Avenue, Seattle, Washington 98101, (206) 553–1583

Alaska Department of Environmental Conservation, Pipeline Corridor Regional Office, Attn: Water Quality and Wastewater Programs, 411 West 4th Ave., Suite 2C, Anchorage, Alaska 99501

All monitoring reports and notifications of non-compliance:

Director, Water Division, U.S. Environmental Protection Agency, Reg. 10, Attn: Water Compliance Section, WD–135, 1200 Sixth Avenue, Seattle, Washington 98101, (206) 553–6513

G. Changes from Authorization Under General Permit to Authorization Under an Individual Permit

1. The Director may require any permittee discharging under the authority of this permit to apply for and obtain an individual NPDES permit when any one of the following conditions exist:

a. The discharge(s) is (are) a significant contributor of pollution.

b. The permittee is not in compliance with the conditions of this general permit.

c. A change has occurred in the availability of the demonstrated technology or practices for the control or abatement of pollutants applicable to the point source.

d. A Water Quality Management Plan containing requirements applicable to such point source is approved.

e. The point sources covered by this permit no longer:

(1) Involve the same or substantially similar types of operations,

(2) Discharge the same types of wastes,

(3) Require the same effluent limitations or operating conditions, or

(4) Require the same or similar monitoring.

f. In the opinion of the Director, the discharges are more appropriately controlled under an individual permit than under a general NPDES permit.

2. The Director may require any permittee authorized by this permit to apply for an individual NPDES permit only if the permittee has been notified in writing that an individual permit application is required.

3. Any permittee authorized by this permit may request to be excluded from the coverage of this general permit by applying for an individual permit. The owner or operator shall submit an application together with the reasons supporting the request to the Director no later than 90 days after the effective date of the permit.

4. When an individual NPDES permit is issued to a permittee otherwise subject to this general permit, the authorization to discharge under this general permit is automatically terminated on the effective date of the individual permit.

II. Specific Limitations and Monitoring Requirements

During the effective period of this permit, operators authorized to discharge under the general permit are authorized to discharge the enumerated pollutants subject to the restrictions set forth herein. This permit does not authorize the discharge of any waste streams, including spills and other unintentional or non-routine discharges of pollutants, that are not part of the normal operation of the facility or any pollutants that are not ordinarily present in such waste streams. This permit does not authorize the discharge of any pollutants not specifically set out in Part II.A.1. of this permit.

The operators shall limit discharges as specified in the permit below. All figures represent maximum effluent limits unless otherwise indicated. The permittee shall comply with the following effluent limits at all times unless provided for by this permit (e.g., unanticipated bypass) regardless of the frequency of monitoring or reporting required by other provisions of this permit.

A. Drilling Mud and Drilling Cuttings (Discharge 001)

1. Effluent Limitations and General Requirements

The permittee may discharge drilling muds and drilling cuttings subject to the effluent limitations and related requirements set forth herein. Permittee shall limit and monitor the following parameters in accordance with Parts II.A.2.–4., II.E., III., and the requirements set out herein.

EFFLUENT LIMITS AND MONITORING REQUIREMENTS

Effluent characteristic	Discharge limitation	Measurement frequency	Sample type/ method	Reported value(s)
Toxicity	30,000 ppm SPP minimum.	See Part II.A.1.g.,k .	Drilling Fluids Toxicity Test.	96 hr LC50.
Flow rate/Water depth [1]				
0–5 meters	No discharge	Hourly during discharge.	Estimate	Maximum hourly rate.
>5–20 meters	500 bbl/hr.			
>20–40 meters	750 bbl/hr.			
>40 meters	1000 bbl/hr.			
Oil-based fluids	No discharge	Daily and before bulk discharges.	Grab/Static Sheen Test [2].	Presence or absence.
Diesel oil [3]	No discharge	Daily and before bulk discharges.	Grab/GC	Presence or absence.
Free oil	No discharge	Daily and before bulk discharge.	Grab/Static Sheen Test [2].	Number of days sheen observed.
Hg and Cd in barite	1 mg Hg/kg barite, 3 mg Cd/kg barite.	Once per well	AAS	Concentrations (mg/kg, dry wt.).
Total volume	([4])	Daily	Estimate	Monthly total.
Mud plan	NA	Prior Certification	See Parts II.A.d.,e.,f	NA.
Chemical inventory	NA	Once/mud system	See Part II.A.i	NA.
Chemical analysis	NA	Once/mud system	See Part II.A.j	NA.

[1] Maximum flow rate of total muds and cuttings into waters of given depths and under open water, broken ice, and stable ice conditions. A 9:1 predilution is required in open water, under-ice, and unstable or broken ice conditions.

[2] For discharges during stable ice, below ice, to unstable ice or broken ice conditions, a water temperature that approximates surface water temperatures after breakup shall be used.

[3] The measurement for diesel oil is daily if muds and cuttings fail static sheen test, before bulk discharges, and end-of-well.

[4] Exploratory drilling discharges are limited to discharges from no more than five wells at a single drilling site. If a step-out or sidetracked well is drilled from a previously drilled well hole, the step-out well is counted as a new well. Requests to discharge the wastes from more than five wells per site will be considered by the Director on a case-by-case basis.

a. *No discharge of oil-based muds.* Permittee shall not discharge oil-based drilling muds (containing oil as the continuous phase with water as the dispersed phase).

b. *No discharge of diesel oil.* Permittee shall not discharge water-based drilling muds which have contained diesel oil or cuttings associated with any muds which have contained diesel oil. Compliance with the limitation on diesel oil shall be demonstrated by gas chromatography (GC) analysis of drilling mud collected from the mud used at the greatest well depth ("end-of-well" sample) and of any muds or cuttings which fail the daily Static Sheen Test (Part II.A.1.c. below). In all cases, the determination of the presence or absence of diesel oil shall be based on a comparison of the GC spectra of the sample and of diesel oil in storage at the facility. The method for GC analysis shall be that described in "Analysis of Diesel Oil in Drilling Fluids and Drill Cuttings" (CENTEC, 1985) available from EPA, Region 10. Gas chromatography/mass spectrometry (GC/MS) may be used if an instance should arise where the operator and EPA determine that greater resolution of the drilling mud "fingerprint" is needed for a particular drilling mud sample.

The end-of-well analysis for diesel oil shall be done in conjunction with the end-of-well analyses required in Part II.A.1.j. The results and raw data, including the spectra, from the GC analysis shall be provided to the Director by written report (1) within 30 days of a positive result with the Static Sheen Test when a discharge has occurred, or (2) for the end-of-well analysis, within 45 days of well completion.

c. *No discharge of free oil.* There shall be no discharge of free oil as a result of the discharge of drill cuttings and/or drilling muds. The permittee shall perform the Static Sheen Test on separate samples of drilling muds and cuttings on each day of discharge and prior to bulk discharges. The test shall be conducted in accordance with "Approved Methodology": Laboratory Sheen Tests for the Offshore Subcategory, Oil and Gas Extraction Industry " which is appendix 1 of subpart A of 40 CFR part 435. For discharges during stable ice, below ice, to unstable ice or broken ice conditions, a water temperature that approximates surface water temperatures at breakup shall be used. The discharge of drilling muds or cuttings which fail the Static Sheen Test is prohibited.

Whenever muds or cuttings fail the Static Sheen Test and a discharge has occurred in the past 24 hours, the permittee is required to analyze an undiluted sample of the material which failed the test to determine the presence or absence of diesel oil. The determination and reporting of results shall be performed according to Part II.A.1.b. above.

d. *Planned discharge of drilling muds and additives—Mud Plan.* The permittee shall develop and have on-site at all times a written procedural plan for the formulation and control of drilling mud/additive systems (hereafter "the mud plan"). The mud plan must specify the mud/additive systems to be used. The plan shall be implemented during drilling operations.

The mud plan shall be available to the Agency upon request. Prior to commencement of discharges from a given operation, the permittee shall provide EPA and ADEC with written certification that a mud plan does exist and is available to the agencies (*See* Parts I.C. and II.A.1.f. of the permit).

At a minimum, the mud plan shall provide the following information:

(1) Types of muds proposed for discharge, the well name, well number, NPDES permit number and mud types as basic plan identification for each well drilled.

(2) Specific for use at each well and mud type, a list including commercial product names, descriptions of the products, and the maximum proposed discharge concentrations for each product. Concentrations shall be commonly stated in terms of "lb/bbl," "gal/bbl;" although "% (wt)" or "% v/v" (% volume oil/volume mud) may be appropriate in some instances. Each mud/additive system shall be clearly labelled with respect to mud type (e.g., KCl/polymer mud, freshwater lignosulfonate mud). Components of the basic mud shall be listed separately from specialty or contingency additives which may be used.

(3) A record of the operator's determination of how discharge is expected to comply with the 30,000 ppm SPP toxicity limitation. Operator's determination must be based upon, but not necessarily limited to, the following criteria:

(a) Estimate of worst-case cumulative discharge toxicity based on additive toxicity estimations or commercially calculated discharge toxicity estimations.

(b) Estimations of discharge toxicity based on the use of mineral oil pills (and subsequent discharge of residual mineral oil concentrations (see Part II.A.1.g. below) must be estimated separately from the proposed mud/additive system.

(c) Where possible, overall toxicity shall be minimized.

(4) A clearly stated procedure for determining whether or not an additive not originally planned for or included in toxicity estimations above may be used and discharged.

(5) An outline of the mud planning process which shall be consistent with other permit requirements. Names and titles of personnel responsible for the mud planning process shall be included.

e. *Drilling mud and additive formulations.* Only those drilling muds, specialty additives, and mineral oil pills that meet the criteria of this permit and are contained in the operator's mud plan (see Part II.A.1.d. above) shall be discharged. In no case shall toxicity of the discharged mud exceed the toxicity limit of 30,000 ppm SPP (*see* Part II.A.1. above).

f. *Certification of planning for drilling mud discharge.* For each well the operator shall submit written certification which states that a mud plan is complete, on-site, and available upon request. In addition, each certification shall identify the well it pertains to by well name, well number, and the NPDES permit number. The certification shall be submitted no later than the written notice of intent to commence discharge (*see* Part I.C.).

If the operator elects to use a particular drilling mud/additive system on subsequent wells, the original mud plan may be re-used. Information identifying the plan (*see* Part II.A.1.d(1), above), however, must reflect use of the plan for the current well.

g. Restrictions on the use of a mineral oil pill in drilling fluid. The discharge of residual amounts of mineral oil pills (mineral oil plus additives) is authorized by this permit provided that the mineral oil pill and at least a 50 bbl buffer of drilling fluid on either side of the pill are removed from the circulating drilling fluid system and not discharged to the waters of the United States. In the event that more than one pill is applied to a single well, the previous pill and buffer shall be removed prior to application of a subsequent pill. Residual mineral oil concentration in the discharged mud shall not exceed 2% v/v (API Retort Test) (*see* Part II.A.1.g.[9] below). The discharged mud must comply with all permit conditions, including no discharge of free oil.

Should drilling mud containing residual mineral oil pill (after pill and buffer removal) be discharged, the following information shall be reported within 60 days of discharge:

(1) Dates of pill application, recovery, and discharge;

(2) Results of the Drilling Fluids Toxicity Test on samples of:

(a) The mud *before* each pill is added and

(b) The mud *after* removal of each pill and buffer (taken when residual mineral oil pill concentration is expected to be greatest)

(3) Name of spotting compound and mineral oil products used;

(4) Volumes of spotting compound, mineral oil, water, and barite in the pill;

(5) Total volume of mud circulating prior to pill application, volume of pill formulated, and volume of pill circulated;

(6) Volume of pill recovered, volume of mud buffer recovered, and volume of mud circulating after pill and buffer recovery;

(7) Percent recovery of the pill (include calculations);

(8) Estimated concentrations of residual spotting compound and mineral oil in the sample of mud discharged, as determined from amounts added and total mud volume circulating prior to pill application;

(9) Measured oil content of the mud samples, as determined by the API retort method; and

(10) An itemization of other drilling fluid specialty additives contained in the discharged mud.

h. *Mercury and cadmium content of barite.* The permittee shall not discharge a drilling mud to which barite was added if such barite contained mercury in excess of 1 mg/kg or cadmium in excess of 3 mg/kg (dry weight basis). The permittee shall analyze a representative sample of stock barite once prior to drilling each well and submit the results for total mercury and total cadmium in the Discharge Monitoring Report upon well completion. If more than one well is drilled at a site, new analyses are not required for subsequent wells if no new supplies of barite have been received since the previous analysis. In this case, the DMR should state that no new barite was received since the last reported analysis. Operators may provide certification, as documented by the supplier(s), that the barite will meet the above limits. The concentration of the mercury and cadmium in the barite shall be reported on the DMR as documented by the supplier. Analyses shall be conducted by atomic absorption spectrophotometry and results expressed as mg/kg (dry weight) of barite.

i. *Chemical inventory.* For each mud system discharged, the permittee shall maintain a precise chemical inventory of all constituents added downhole, including all drilling mud additives used to meet specific drilling requirements. The permittee shall report the following for *each* mud system:

(1) Base mud type (as identified in mud plan);

(2) Name and total amount of each constituent in discharged mud;

(3) The total volumes of mud created and added downhole; and

(4) Maximum concentration of each constituent in the discharged mud.

In addition, for each mud system discharged, the permittee shall report the following:

(5) The total volumes of mud discharged; and

(6) The estimated amount of each constituent discharged.

j. *Chemical analysis.* The permittee shall analyze each discharged mud system containing a mineral oil lubricity and/or spotting agent. Samples shall be collected when the mineral oil additive concentration is at its maximum value. If no mineral oil is used, the analysis shall be done on a drilling mud sample collected from the mud system used at the greatest well depth. All samples shall be collected prior to any predilution. Each drilling mud sample shall be of sufficient size to allow for both the chemical testing described here and the toxicity testing described below in Part II.A.1.k.

The chemical analysis shall include the following metals: Barium, cadmium, chromium, copper, mercury, zinc, and lead. The total concentration and total recoverable concentration shall be conducted on split samples and reported for each metal and shall be obtained by the methods given in 40 CFR part 136. The results shall be reported in "mg/kg of whole mud (dry weight)," and the moisture content (percent by weight) of the original drilling mud sample shall be reported.

In addition, permittees shall analyze mud samples for oil content (percent by weight and by volume). The analytical method shall be the retort distillation method for oil (American Petroleum Institute, Recommended Practice 13–1, 1990).

Results of chemical analyses shall be submitted within 45 days following well completion. Results shall be submitted with the end-of-well chemical inventory, *see* Part II.A.1.i., and shall identify the corresponding mud system from the end-of-well inventory.

k. *Toxicity test.* If no mineral oil is used, the toxicity test shall be conducted monthly to determine compliance with the toxicity limit. At end-of-well, a sample shall be collected for toxicity testing. This sample can also serve as the monthly monitoring sample. The sample shall be a representative subsample of that collected for chemical analysis (see Part I.A.1.j.). The permittee shall complete a minimum of two toxicity tests on each mud system where a mineral oil lubricity or spotting agent is used. One sample shall be collected before applying the pill and one after removing the pill (*see* Part II.A.1.g.). The "after pill" sample test results can be used as the monthly monitoring sample. If the well is completed within 96 hours of collection of the "after pill" drilling mud sample, then these test results can also serve as the end-of-well test.

The testing and reporting of results shall be in accordance with appendix 2 to subpart A of 40 CFR Part 435. Results of toxicity tests shall be reported on monthly DMRs. Full copies of the toxicity test reports shall be attached to the DMRs and be accompanied by an inventory of all base mud components and specialty additives present in the sampled mud (including concentrations of each). Results are due within 45 days following well completion.

2. Depth-Related Requirements

The total drilling muds and drill cuttings discharge rate shall not exceed the following rates where depth is measured as meters from mean lower low water (MLLW): (a) 1000 bbl/hr in water depths exceeding 40 meters, (b) 750 bbl/hr in water depths greater than 20 meters but not exceeding 40 meters, (c) 500 bbl/hr in water depths greater than 5 meters but not exceeding 20 meters, and (d) discharge of muds and cuttings are prohibited between the shore (mainland and barrier islands) and the 5 meter isobath.

3. Area and Seasonal Restrictions

a. Discharge is not authorized within 1000 meters of the Steffansson Sound Boulder Patch (near the mouth of the Sagavanirktok River) or between individual units of the Patch where the separation between units is greater than 2000 meters but less than 5000 meters. The Boulder Patch is defined as an area which has more than 10 percent of a one-hundred-square-meter area covered by boulders to which kelp is attached.

b. Discharge is not authorized within Omalik Lagoon, Kasegaluk Lagoon or within 3 miles of the following passes of the Kasegaluk Lagoon: Kukpowruk Pass, Akunik Pass, Utukok Pass, Icy Cape Pass, Alokiakatat Pass, Naokok Pass, and Pingaorarok Pass.

c. Discharge is prohibited within 1000 meters of river mouths or deltas during unstable or broken ice or open water conditions.

d. During *open-water conditions,* discharge in the area from the 5 to 20 meters isobaths as measured from MLLW shall be released no deeper than 1 meter below the surface of the receiving water.

e. During *unstable or broken ice conditions,* the following conditions apply for discharges shoreward of the 20 meters isobath as measured from MLLW:

(1) Discharge shall be prediluted to a 9:1 ratio of seawater to drilling muds and cuttings.

(2) Environmental monitoring is required as specified in Part II.A.4. below.

f. During *stable ice conditions,* unless authorized otherwise by the Director, the following conditions apply:

(1) Discharges shall be to above-ice locations and shall avoid to the maximum extent possible areas of sea ice cracking or major stress fracturing.

(2) Predilution and flow rate restrictions do not apply.

4. Environmental Monitoring Requirements

a. *Purpose/areas to be monitored.* Monitoring is required in the following areas which have been identified as requiring further information on the fate and, in some cases, the effects of discharged drilling muds. If the location authorized for discharge of drilling muds and drill cuttings is within 4000 meters of the following areas, then environmental monitoring is required:

(1) Below-ice to water depths shallower than 20 meters as measured from MLLW,

(2) The Steffansson Sound Boulder Patch (see Part II.A.3.a. of this permit for further definition),

(3) The protected areas of Kasegaluk Lagoon and the seven identified passes (see Part II.A.3.b. for further definition),

(4) Omalik Lagoon, or

(5) River mouths or deltas during unstable or broken ice or open water conditions.

b. *Objectives.* The objectives of the monitoring shall be to:

(1) Monitor for discharge-related impacts,

(2) Determine statistically significant changes in sediment pollutant concentrations and sediment toxicity with time and distance from the discharge

(3) Monitor for discharge related impacts to the benthic community,

(4) Assess whether any impacts warrant an adjustment of the monitoring program, and

(5) Provide information for permit reissuance.

The monitoring shall include, but not be limited to, relevant hydrographic, sediment hydrocarbon, and heavy metal data from surveys conducted before and during drilling mud disposal operations and up to at least one year after drilling operations cease.

c. *Detailed monitoring proposal.* The Permittee shall submit a plan of study for the environmental monitoring program to EPA and ADEC for review with or prior to submission of the written request for authorization to discharge (Part I.B.). EPA and ADEC may require changes in the monitoring program's design. Copies of the study plan shall be sent concurrently to the North Slope Borough. The plan shall address:

(1) The monitoring objectives,

(2) Appropriate null and alternate test hypotheses,

(3) A statistically valid sampling design,

(4) All monitoring procedures and methods,

(5) A quality assurance/quality control program,

(6) A detailed discussion of how data will be used to meet, test and evaluate the monitoring objectives, and

(7) A summary of the results of previous environmental monitoring as they apply to the proposed program plan.

d. *Reporting and data submission requirements.* The Permittee shall analyze the data and submit a draft report by within 180 days following the completion of sample collection. Copies of the draft report shall be sent concurrently to ADEC and the North Slope Borough. The report shall address the environmental monitoring objectives by using appropriate descriptive and analytical methods to test for and to describe any impacts of the effluent on sediment pollutant concentrations, sediment quality, water quality and/or the benthic community. The report shall include all relevant quality assurance/quality control (QA/QC) information, including but not limited to instrumentation, laboratory procedures, detection limits/precision requirements of the applied analyses, and sample collection methodology.

EPA and ADEC will review the draft report in accordance with the environmental monitoring objectives and evaluate it for compliance with the requirements of the permit. If revisions to the report are required, the Permittee shall complete them and submit the final report to EPA and ADEC within two months of the Director's request. Copies of the final report shall be sent concurrently to the North Slope Borough. The Permittee will be required to correct, repeat and/or expand environmental monitoring programs which have not fulfilled the requirements of the permit.

e. *Modification of monitoring program.* monitoring program may be modified if EPA and ADEC, in consultation with the North Slope Borough, determine that it is appropriate. The modified program may include changes in (1) sampling stations, (2) sampling times, and/or (3) parameters.

B. Deck Drainage, Sanitary Wastes, and Domestic Wastes (Discharges 002–004)

Permittees shall limit and monitor discharges from deck drainage, sanitary wastes, and domestic wastes in accordance with Parts II.E., III, and the following requirements.

EFFLUENT LIMITS AND MONITORING REQUIREMENTS

Effluent characteristic	Discharge limitation	Measurement frequency	Sample type/ method	Reported value(s)
All Discharges (002–004):				
Flow rate	NA	Monthly	Estimate	Monthly average.
Deck Drainage (002) [1]				
Free oil	No discharge	Daily, during discharge.	Visual/sheen on receiving water [2].	Number of days sheen observed.
Sanitary Wastes (003) [3]				
Solids	No floating solids	Daily	Observation [4]	Number of days solids observed.
Residual chlorine [5]	As close as possible to but no less than, 1.0 mg/l.	Monthly	Grab [6]	Concentration (mg/l).
BOD		Weekly [9]	Grab	
30 day average	30 mg/l			Monthly average.
24-hr maximum	60mg/l			Daily maximum.
TSS		Weekly [9]	Grab	
30 day average	30 mg/l		Monthly average [10]	
24-hr maximum	60mg/l		Daily maximum [10]	
Domestic Wastes (004):				

EFFLUENT LIMITS AND MONITORING REQUIREMENTS—Continued

Effluent characteristic	Discharge limitation	Measurement frequency	Sample type/method	Reported value(s)
Floating solids	No discharge	Daily	Observation[4]	Number of days solid observed.
Foam	No discharge	Daily	Observation[4]	Number of days foam observed.
All other domestic waste (garbage)	No discharge[7]	Daily	Observation[8]	Number of days solids observed.

[1] Area drains for either washdown water or rainfall that may be contaminated with oil and grease shall be separated from those area drains that would not be contaminated. Any deck drainage which is commingled with other wastes prior to discharge shall be subject at the point of discharge to the most stringent of the limitations on the individual effluents.

[2] If discharge occurs during broken, unstable, or stable ice conditions, the sample type/method shall be "Grab/Static Sheen Test" as described in appendix 1 to subpart A of 40 CFR part 435. For discharges during stable ice, below ice, to unstable ice or broken ice conditions, a water temperature that approximates surface water temperatures after breakup shall be used.

[3] Any facility using a marine sanitation device (MSD) that complies with pollution control standards and regulations under section 312 of the Act shall be deemed to be in compliance with the limitations for this outfall until such time as the device is replaced or is found not to comply with such standards and regulations. The MSD shall be tested yearly for proper operation and test results maintained at the facility. In cases where sanitary and domestic wastes are mixed prior to discharge, and sampling of the sanitary waste component stream is infeasible, the discharge may be sampled after mixing. In such cases, the discharge limitations for sanitary wastes shall apply to the mixed waste stream.

[4] Monitoring by visual observation of the surface of the receiving water in the vicinity of the outfall(s), shall be done during daylight at a time of maximum estimated discharge.

[5] This limitation applies only to M10 facilities. Under ice disposal of residual chlorine is not authorized unless residual chlorine is reduced to a level to ensure compliance with the State of Alaska's Water Quality criteria of 10 µg/l residual chlorine.

[6] Residual chlorine may be monitored according to test procedures approved under 40 CFR part 136 or using a Hach Test Kit capable of measuring free chlorine in the range 0–3.5 mg/l with a sensitivity of 0.1 mg/l or better.

[7] Discharge of food waste is prohibited within 12 nautical miles from nearest land. Comminuted food waste able to pass through a 25 mm mesh screen (approximately 1 inch) may be discharged more than 12 nautical miles from nearest land. Discharge of putrescible wastes is prohibited within and beyond 12 nautical miles of nearest land.

[8] An observation shall be made during daylight by visual observation of the surface in the vicinity of domestic waste outfalls following either the morning or midday meal at a time of maximum estimated discharge.9/

[9] Based on weekly sampling and depending on the length of the calendar month, a total of 3–4 samples will be analyzed per month. The reported 30 day average value shall be the average of all weekly samples taken during the month. The highest value of all weekly samples shall be reported.

C. Miscellaneous Discharges (Discharges 005–013).

Permittee shall limit and monitor discharges from desalination unit wastes (005), blowout preventer fluid (006), boiler blowdown (007), fire control system test water (008), non-contact cooling waster (009), uncontaminated ballast water (010), bilge water (011), excess cement slurry (012), and mud, cuttings, and cement at the seafloor (013) in accordance with Parts II.E., III., and the following requirements.

EFFLUENT LIMITS AND MONITORING REQUIREMENTS

Effluent characteristic	Discharge limitation	Measurement frequency	Sample type/method	Reported value(s)
All Discharges (005–013):				
Flow rate (MGD)	NA	Monthly	Estimate	Monthly average.
Free oil	No discharge	Once/discharge for intermittent or once/day for continuous discharges.	Visual/sheen on receiving.	No. of days sheen observed.

1. Bilge water (011) shall be processed through an oil-water separator prior to discharge. If discharge of bilge water occurs during broken, unstable, or stable ice conditions, the sample type/method used to determine compliance with the no free oil limitation shall be "Grab/Static Sheen Test." For discharges above stable ice, below ice, to unstable, or to broken ice, a water temperature that approximates surface water temperatures after breakup shall be used.

2. The permittee shall maintain an inventory of the quantities and rates of chemicals (other than water or seawater) added to cooling water (009) and desalination (005) systems. The inventory shall be submitted with the monthly Discharge Monitoring Report.

D. Test Fluids (Discharge 014)

Permittee shall limit and monitor test fluids in accordance with Parts II.E., III. and the following requirements.

EFFLUENT LIMITS AND MONITORING REQUIREMENTS

Effluent characteristic	Discharge limitation	Measurement frequency	Sample type/method	Reported Value(s)
Volume (bbl)	NA	Once/discharge	Estimate	Total vol./test.[1]
Free oil	No discharge	Once/discharge	Grab/Static Sheen Test[2].	Number of times sheen observed.
Oil and grease	42 mg/l daily max., 29 mg/l monthly avg..	Once/discharge	Grab	Daily max. and monthly avg.
pH	6.5–8.5[3]	Once/discharge	Grab	Ph.
Oil-based fluids	No discharge	Once/discharge	Grab/GC	Presence or absence.

[1] Volume will be reported as the number of barrels of fluids sent downhole during testing and the number of barrels discharged. The chemical composition of the fluids sent downhole will also be reported.

[2] For discharges during stable ice, below ice, to unstable ice or broken ice conditions, a water temperature that approximates surface water temperatures after breakup shall be used. The static sheen test is presumed to cover the no visible sheen standard in the State of Alaska Water Quality Standards.

[3] Any spent acidic test fluids shall be neutralized before discharge such that the Ph at the point of discharge shall not be less than 6.5 or greater than 8.5.

E. General discharge limitations for all waste streams (001 Through 014).

1. *Floating solids, visible foam, or oily wastes.* There shall be no discharge of floating solids or visible foam in other than trace amounts, nor of oily wastes which produce a sheen on the surface of the receiving water.

2. *Surfactants, dispersants, and detergents.* The discharge of surfactants, dispersants, and detergents shall be minimized except as necessary to comply with the safety requirements of the Occupational Health and Safety Administration and the Minerals Management Service. The discharge of dispersants to marine waters in response to oil or other hazardous spills are not authorized this permit. *See also* Part III.G.

3. *Applicable marine water quality criteria.* There shall be no discharge of any constituent in concentrations which will result in an exceedence of applicable marine water quality criteria at the edge of a permitted mixing zone. Initial mixing in federal waters is defined at 40 CFR 227.29.

4. *Rubbish, trash, and other refuse.* The discharge of any solid material not authorized in the above permit is prohibited. Under U.S. Coast Guard regulations, discharges of garbage, including plastics, from fixed and floating platforms engaged in exploration of seabed mineral resources are prohibited with one exception -victual waste. Victual waste may be discharged beyond 12 nautical miles from nearest land if it has passed through a comminuter or grinder and can pass through a screen with openings no greater than 25 millimeters (approximately one inch). Discharge of putrescible wastes is prohibited within and beyond 12 nautical miles of nearest land.

5. *Other toxic and non-conventional compounds.* There shall be no discharge of diesel oil, halogenated phenol compounds, trisodium nitrilotriacetic acid, sodium chromate or sodium dichromate.

F. Best management practices plan requirement.

1. *Implementation.* The permittee shall develop and implement a Best Management Practices (BMP) Plan which achieves the objectives and the specific requirements listed below. The Plan shall be implemented as soon as possible but no later than 7 days prior to initiation of discharges from the facility and from each well.

The permittee shall certify that its BMP Plan is complete, on-site, and available upon request to EPA and ADEC. This certification shall identify the well it pertains to by well name, well number, and the NPDES permit number and be signed by an authorized representative of the permittee. The certification shall be submitted no later than the written notice of intent to commence discharge (*see* Part I.C.) and the Certification of Planning for Drilling Mud (*see* Part II.A.1.f.).

2. *Purpose.* Through implementation of the BMP Plan the permittee shall prevent or minimize the generation and the potential for the release of pollutants from the facility to the waters of the United States through normal operations and ancillary activities.

3. *Objectives.* The permittee shall develop and amend the BMP Plan consistent with the following objectives for the control of pollutants.

a. The number and quantity of pollutants and the toxicity of effluent generated, discharged or potentially discharged at the facility shall be minimized by the permittee to the extent feasible by managing each influent waste stream in the most appropriate manner.

b. Under the BMP Plan, and any Standard Operating Procedures (SOPs) included in the Plan, the permittee shall ensure proper operation and maintenance of the treatment facility.

c. The permittee shall establish specific objectives for the control of pollutants by conducting the following evaluations.

(1) Each facility component or system shall be examined for its waste minimization opportunities and its potential for causing a release of significant amounts of pollutants to waters of the United States due to equipment failure, improper operation, natural phenomena such as rain or snowfall, etc. The examination shall include all normal operations and ancillary activities including material storage areas, site runoff, in-plant transfer, process and material handling areas, loading or unloading operations, spillage or leaks, sludge and waste disposal, or drainage from raw material storage.

(2) Where experience indicates a reasonable potential for equipment failure (e.g., a tank overflow or leakage), natural condition (e.g., precipitation), or other circumstances to result in significant amounts of pollutants reaching surface waters, the program should include a prediction of the direction, rate of flow and total quantity of pollutants which could be discharged from the facility as a result of each condition or circumstance.

4. *Requirements.* The BMP Plan shall be consistent with the objectives in Part 3 above and the general guidance contained in the publication entitled "Guidance Document for Developing Best Management Practices (BMP)" (EPA Document Number EPA 833–B–93–004, U.S. EPA, 1993) or any subsequent revisions to the guidance document. The BMP Plan shall:

a. Be documented in narrative form, and shall include any necessary plot plans, drawings or maps, and shall be developed in accordance with good

engineering practices. The BMP Plan shall be organized and written with the following structure:

(1) Name and location of the facility or operation (including identification by latitude/longitude).

(2) Statement of BMP policy.

(3) Structure, functions, and procedures of the Best Management Practices Committee.

(4) Specific management practices and standard operating procedures to achieve the above objectives, including, but not limited to, the following:

(a) Modification of equipment, facilities, technology, processes, and procedures,

(b) Reformulation or redesign of products,

(c) Substitution of materials, and

(d) Improvement in management, inventory control, materials handling or general operational phases of the facility.

(5) Risk identification and assessment.

(6) Reporting of BMP incidents.

(7) Materials compatibility.

(8) Good housekeeping.

(9) Preventative maintenance.

(10) Inspections and records.

(11) Security.

(12) Employee training.

b. Include the following provisions concerning BMP Plan review:

(1) Be reviewed by plant engineering staff and the plant manager.

(2) Be reviewed and endorsed by the permittee's BMP Committee.

(3) Include a statement that the above reviews have been completed and that the BMP Plan fulfills the requirements set forth in this permit. The statement shall be certified by the dated signatures of each BMP Committee member.

c. Establish specific best management practices to meet the objectives identified in Part 3 this section, addressing each component or system capable of generating or causing a release of significant amounts of pollutants, and identifying specific preventative or remedial measures to be implemented.

d. Establish specific best management practices or other measures which ensure that the following specific requirements are met:

(1) Ensure proper management of solid and hazardous waste in accordance with regulations promulgated under the Resource Conservation and Recovery Act (RCRA) and the Alaska Solid Waste Management Regulations (18 AAC 60). Management practices required under RCRA regulations shall be referenced in the BMP Plan.

(2) Reflect requirements within Oil Spill Contingency Plans required by the Minerals Management Service (*see* 30 CFR part 254). Permittees in state waters must also reflect the requirements within Oil Discharge Prevention and Contingency Plans as required by ADEC. Permittees may incorporate any part of such plans into the BMP Plan by reference.

(3) Reflect requirements for storm water control under section 402(p) of the Act and the regulations at 40 CFR 122.26 and 122.44, and otherwise eliminate to the extent practicable, contamination of storm water runoff.

(4) Reflect the development and implementation of the Mud Plan (*see* Part II.A.1.d.) for the formulation and control of drilling mud systems.

5. *Documentation.* The permittee shall maintain a copy of the BMP Plan at the facility and shall make the plan available to EPA and ADEC upon request. All offices of the permittee which are required to maintain a copy of the NPDES permit shall also maintain a copy of the BMP Plan.

6. *BMP Plan modification.* The permittee shall amend the BMP Plan whenever there is a change in the facility or in the operation of the facility which materially increases the generation of pollutants or their release or potential release to the receiving waters. The permittee shall also amend the Plan, as appropriate, when plant operations covered by the BMP Plan change. Any such changes to the BMP Plan shall be consistent with the objectives and specific requirements listed above. All changes in the BMP Plan shall be reviewed by the plant engineering staff and plant manager and shall be reported to EPA and ADEC in writing.

7. *Modification for ineffectiveness.* At any time, if the BMP Plan proves to be ineffective in achieving the general objective of preventing and minimizing the generation of pollutants and their release and potential release to the receiving waters and/or the specific requirements above, the permit and/or the BMP Plan shall be subject to modification to incorporate revised BMP requirements.

III. Monitoring, Recording and Reporting Requirements

A. Representative Sampling (Routine and Non-Routine Discharges)

The Permittee shall collect all effluent samples from the effluent stream prior to discharge into the receiving waters. Samples and measurements shall be representative of the volume and nature of the monitored discharge.

In order to ensure that the effluent limits set forth in this permit are not violated at times other than when routine samples are taken, the Permittee shall collect additional samples at the appropriate outfall(s), and analyze them for the parameters limited in Part I.A.-E. of this permit (as applicable for the wastestream), whenever any discharge occurs that may reasonably be expected to cause or contribute to a violation that is unlikely to be detected by a routine sample.

The Permittee shall collect such additional samples as soon as possible after the spill or discharge. The samples shall be analyzed in accordance with paragraph C., below. In the event of an anticipated bypass, as defined in Part IV.G. of this permit, the Permittee shall collect and analyze additional samples as soon as the bypassed effluent reaches the outfall. The Permittee shall report all additional monitoring in accordance with paragraph D., below.

B. Reporting of Monitoring Results

The Permittee shall summarize monitoring results each month on the Discharge Monitoring Report (DMR) form (EPA No. 3320–1). The Permittee shall submit reports monthly, postmarked by the 10th day of the following month. The Permittee shall sign and certify all DMRs, and all other reports, in accordance with the requirements of Part V.E. of this permit (*"Signatory Requirements"*). The Permittee shall submit the legible originals of these documents to the Director, Water Division, with copies to ADEC at the following addresses:

United States Environmental Protection Agency, Region 10, 1200 Sixth Avenue, WD–135, Seattle, Washington 98101

Alaska Department of Environmental Conservation, Pipeline Corridor Regional Office, Attn: Water Quality & Wastewater Programs, 411 W. 4th Ave., Suite 2C, Anchorage Alaska 99501

C. Monitoring Procedures

Monitoring must be conducted according to test procedures approved under 40 CFR part 136, unless other test procedures have been specified in this permit.

D. Additional Monitoring by Permittee

If the Permittee monitors any pollutant more frequently than required by this permit, using test procedures approved under 40 CFR part 136 or as specified in this permit, the Permittee shall include the results of this monitoring in the calculation and reporting of the data submitted in the DMR. The Permittee shall indicate on the DMR whenever it has performed additional monitoring, and shall explain why it performed such monitoring.

Upon request by the Director, the Permittee shall submit results of any other sampling, regardless of the test method used.

E. Records Contents

All effluent monitoring records shall bear the hand-written signature of the person who prepared them. In addition, all records of monitoring information shall include:

1. The date, exact place, and time of sampling or measurements;

2. The names of the individual(s) who performed the sampling or measurements;

3. The date(s) analyses were performed;

4. The names of the individual(s) who performed the analyses;

5. The analytical techniques or methods used; and

6. The results of such analyses.

F. Retention of Records

The Permittee shall retain records of all monitoring information, including, but not limited to, all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, copies of DMRs, a copy of the NPDES permit, and records of all data used to complete the application for this permit, for a period of at least five years from the date of the sample, measurement, report or application, or for the term of this permit, whichever is longer. This period may be extended by request of the Director or ADEC at any time.

A copy of the final permit shall be maintained at the drilling site.

G. Twenty-four Hour Notice of Noncompliance Reporting

1. The Permittee shall report the following occurrences of noncompliance by telephone within 24 hours from the time the Permittee becomes aware of the circumstances:

a. Any noncompliance that may endanger health or the environment;

b. Any unanticipated bypass that results in or contributes to an exceedence of any effluent limitation in the permit (See Part IV.G., *"Bypass of Treatment Facilities"*);

c. Any upset that results in or contributes to an exceedence of any effluent limitation in the permit (See Part IV.H., *"Upset Conditions"*); or

d. Any violation of a maximum daily discharge limitation for any of the pollutants listed in the permit .

2. The Permittee shall also provide a written submission within five days of the time that the Permittee becomes aware of any event required to be reported under subpart 1 above. The written submission shall contain:

a. A description of the noncompliance and its cause;

b. The period of noncompliance, including exact dates and times;

c. The estimated time noncompliance is expected to continue if it has not been corrected; and

d. steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

e. The results of any monitoring data required under Paragraph III.A., above.

3. The Director may, at his or her sole discretion, waive the written report on a case-by-case basis if the oral report has been received within 24 hours by the Water Compliance Section in Seattle, Washington, by telephone, (206) 553–1213.

4. Reports shall be submitted to the addresses in Part III.B. (*"Reporting of Monitoring Results"*).

H. Other Noncompliance Reporting

The Permittee shall report all instances of noncompliance, not required to be reported within 24 hours, at the time that monitoring reports for Part III.B. are submitted. The reports shall contain the information listed in Part III.G.2. of this permit.

I. Changes in Discharge of Toxic Substances

The Permittee shall notify the Director and ADEC as soon as it knows, or has reason to believe:

1. That any activity has occurred or will occur that would result in the discharge, on a routine or frequent basis, of any toxic pollutant that is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

a. One hundred micrograms per liter (100 ug/l);

b. Two hundred micrograms per liter (200 ug/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 ug/l) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;

c. Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 CFR 122.21(g)(7); or

d. The level established by the Director in accordance with 40 CFR 122.44(f).

2. That any activity has occurred or will occur that would result in any discharge, on a non-routine or infrequent basis, of any toxic pollutant that is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

a. Five hundred micrograms per liter (500 ug/l);

b. One milligram per liter (1 mg/l) for antimony;

c. Ten (10) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 CFR 122.21(g)(7); or

d. The level established by the Director in accordance with 40 CFR 122.44(f).

IV. Compliance Responsibilities

A. Duty to Comply

The Permittee shall comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action, for permit termination, revocation and reissuance, or modification, or for denial of a permit renewal application. The Permittee shall give reasonable advance notice to the Director and ADEC of any planned changes in the permitted facility or activity that may result in noncompliance with permit requirements.

B. Penalties for Violations of Permit Conditions

1. Civil and Administrative Penalties. Sections 309(d) and 309(g) of the Act provide that any person who violates a permit condition implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act shall be subject to a civil or administrative penalty, not to exceed $25,000 per day for each violation.

2. Criminal Penalties:

a. Negligent Violations. Section 309(c)(1) of the Act provides that any person who negligently violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act shall be punished by a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than 1 year, or by both.

b. Knowing Violations. Section 309(c)(2) of the Act provides that any person who knowingly violates a permit condition implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act shall be punished by a fine of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than 3 years, or by both.

c. Knowing Endangerment. Section 309(c)(3) of the Act provides that any person who knowingly violates a permit condition implementing sections 301, 302, 303, 306, 307, 308, 318, or 405 of the Act, and who knows at that time that he thereby places another person in

imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than $250,000 or imprisonment of not more than 15 years, or both. A person that is an organization shall be subject to a fine of not more than $1,000,000.

d. False Statements. Section 309(c)(4) of the Act provides that any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Act or who knowingly falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained under this Act, shall be punished by a fine of not more than $10,000, or by imprisonment for not more than 2 years, or by both. Except as provided in permit conditions in Part IV.G., ("Bypass of Treatment Facilities") and Part IV.H., ("Upset Conditions"), nothing in this permit shall be construed to relieve the Permittee of the civil or criminal penalties for noncompliance.

C. Need to Halt or Reduce Activity Not a Defense

It shall not be a defense for the Permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

D. Duty to Mitigate

The Permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit that has a reasonable likelihood of adversely affecting human health or the environment.

E. Proper Operation and Maintenance

The Permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) that are installed or used by the Permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems only when the operation is necessary to achieve compliance with the conditions of the permit.

F. Removed Substances

Solids, sludges, filter backwash, or other pollutants removed in the course of treatment or control of water and wastewaters shall be disposed of in a manner such as to prevent any pollutant from such materials from entering navigable waters, except as specifically authorized in Part II.

G. Bypass of Treatment Facilities

1. Bypass not exceeding limitations. The Permittee may allow any bypass to occur that does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of paragraphs 2 and 3 of this Part.

2. Notice.

a. Anticipated bypass. If the Permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least 10 days before the date of the bypass.

b. Unanticipated bypass. The Permittee shall submit notice of an unanticipated bypass as required under Part III.G. ("*Twenty-four Hour Notice of Noncompliance Reporting*").

3. Prohibition of bypass.

a. Bypass is prohibited, and the Director or ADEC may take enforcement action against the Permittee for a bypass, unless:

(1) The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment shall have been installed in the exercise of reasonable engineering judgment to prevent a bypass that occurred during normal periods of equipment downtime or preventive maintenance; and

(3) The Permittee submitted notices as required under paragraph 2 of this Part.

b. The Director and ADEC may approve an anticipated bypass, after considering its adverse effects, if the Director and ADEC determine that it will meet the three conditions listed above in paragraph 3.a. of this Part.

H. Upset Conditions

1. Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the Permittee meets the requirements of paragraph 2 of this Part. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

2. Conditions necessary for a demonstration of upset. To establish the affirmative defense of upset, the Permittee shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

a. An upset occurred and that the Permittee can identify the cause(s) of the upset;

b. The permitted facility was at the time being properly operated;

c. The Permittee submitted notice of the upset as required under *Part III.G., Twenty-four Hour Notice of Noncompliance Reporting;* and

d. The Permittee complied with any remedial measures required under *Part IV.D., Duty to Mitigate.*

3. Burden of proof. In any enforcement proceeding, the Permittee seeking to establish the occurrence of an upset has the burden of proof.

I. Toxic Pollutants

The Permittee shall comply with effluent standards or prohibitions established under section 307(a) of the Act for toxic pollutants within the time provided in the regulations that establish those standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

J. Planned Changes

The Permittee shall give notice to the Director and ADEC as soon as possible of any planned physical alterations or additions to the permitted facility whenever:

1. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source as determined in 40 CFR 122.29(b); or

2. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants that are subject neither to effluent limitations in the permit, nor to notification requirements under Part III.I.

The Permittee shall give notice to the Director and ADEC as soon as possible of any planned changes in process or chemical use whenever such change could significantly change the nature or increase the quantity of pollutants discharged.

K. Anticipated Noncompliance

The Permittee shall also give advance notice to the Director and ADEC of any planned changes in the permitted facility or activity that may result in noncompliance with this permit.

V. General Provisions

A. Permit Actions

This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the Permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

B. Duty to Reapply

If the Permittee intends to continue an activity regulated by this permit after the expiration date of this permit, the Permittee must apply for and obtain a new permit. The application shall be submitted at least 180 days before the expiration date of this permit.

C. Duty to Provide Information

The Permittee shall furnish to the Director and ADEC, within the time specified in the request, any information that the Director or ADEC may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The Permittee shall also furnish to the Director or ADEC, upon request, copies of records required to be kept by this permit.

D. Other Information

When the Permittee becomes aware that it failed to submit any relevant facts in a permit application, or that it submitted incorrect information in a permit application or any report to the Director or ADEC, it shall promptly submit the omitted facts or corrected information.

E. Signatory Requirements

All applications, reports or information submitted to the Director and ADEC shall be signed and certified.

1. All permit applications shall be signed as follows:

a. For a corporation: by a responsible corporate officer.

b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively.

c. For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official.

2. All reports required by the permit and other information requested by the Director or ADEC shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:

a. The authorization is made in writing by a person described above and submitted to the Director and ADEC, and

b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company.

3. Changes to authorization. If an authorization under Part V.E.2. is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of paragraph V.E.2. must be submitted to the Regional Administrator and ADEC prior to or together with any reports, information, or applications to be signed by an authorized representative.

4. Certification. Any person signing a document under this Part shall make the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

F. Availability of Reports

Except for data determined to be confidential under 40 CFR part 2, all reports prepared in accordance with this permit shall be available for public inspection at the offices of the state water pollution control agency and the Director and ADEC. As required by the Act, permit applications, permits, Best Management Practices Plans, Mud Plans, and effluent data shall not be considered confidential.

G. Inspection and Entry

The Permittee shall allow the Director, ADEC, or an authorized representative (including an authorized contractor acting as a representative of the Administrator), upon the presentation of credentials and other documents as may be required by law, to:

1. Enter upon the Permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

4. Sample or monitor at reasonable times, for the purpose of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location.

H. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the Permittee from any responsibilities, liabilities, or penalties to which the Permittee is or may be subject under section 311 of the Act.

I. Property Rights

The issuance of this permit does not convey any property rights of any sort, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of federal, state or local laws or regulations.

J. Severability

The provisions of this permit are severable. If any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

K. Transfers

This permit may be automatically transferred to a new Permittee if:

1. The current Permittee notifies the Director at least 30 days in advance of the proposed transfer date;

2. The notice includes a written agreement between the existing and new Permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and

3. The Director does not notify the existing Permittee and the proposed new Permittee of his or her intent to modify, or revoke and reissue the permit.

If the notice described in paragraph 3 above is not received, the transfer is effective on the date specified in the agreement mentioned in paragraph 2 above.

L. State Laws

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the Permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable state law or regulation under authority preserved by section 510 of the Act.

M. Reopener Clause

1. This permit shall be modified, or alternatively, revoked and reissued, to comply with any applicable effluent standard or limitation issued or approved under sections 301(b)(2)(C) and (D), 304(b)(2), and 307(a)(2) of the Act, as amended, if the effluent standard, limitation, or requirement so issued or approved:

a. Contains different conditions or is otherwise more stringent than any condition in the permit; or

b. Controls any pollutant or disposal method not addressed in the permit.

The permit as modified or reissued under this paragraph shall also contain any other requirements of the Act then applicable.

2. This permit may be reopened to adjust any effluent limitations if future water quality studies, waste load allocation determinations, or changes in water quality standards show the need for different requirements.

VI. Definitions and Acronyms

1. *AAS* means atomic absorption spectrophotometry.

2. *Average of daily values* for 30 consecutive days means the average of the daily values obtained during any 30 consecutive day period.

3. *Ballast water* means harbor, river, and seawater added or removed to maintain the proper ship stability when not loaded with cargo.

4. *BMP* means Best Management Practices.

5. *bbl/hr* means barrels per hour. One barrel equals 42 gallons.

6. *Bilge water* means water which collects in the lower internal parts of the drilling vessel hull.

7. *Blowout preventer fluid* means fluid used to actuate hydraulic equipment on the blowout preventer.

8. *Boiler blowdown* means the discharge of water and minerals drained from boiler drums.

9. *Bulk discharge* means the discharge of more than 100 barrels in a one-hour period.

10. *Bypass* means the intentional diversion of waste streams from any portion of a treatment facility (see Part IV.G.).

11. *Cd* means cadmium.

12. *Cooling water* means once-through non-contact cooling water.

13. *Deck drainage* means all waste resulting from deck washings, spillage, rainwater, and runoff from gutters, and drains including drip pans and work areas within facilities subject to this permit.

14. *Desalination unit wastes* means wastewater associated with the process of creating freshwater from seawater.

15. *Diesel oil* means the grade of distillate fuel, as specified in the American Society for Testing and Materials Standard Specification D975–81, that is typically used as the continuous phase in conventional oil-based drilling fluids, which contains a number of toxic pollutants. For the purpose of this permit, diesel oil includes the fuel oil present at the facility.

16. *Domestic wastes* means materials discharged from showers, sinks, safety showers, eye-wash stations, hand-wash stations, fish-cleaning stations, galleys, and laundries.

17. *Drill cuttings* means the particles generated by drilling into subsurface geological formations and carried to the surface with the drilling fluid.

18. *Drilling fluid* means the circulating fluid (mud) used in the rotary drilling of wells to clean and condition the hole and to counterbalance formation pressure. A water-based drilling fluid is the conventional drilling mud in which water is the continuous phase and the suspended medium for solids, whether or not oil is present. An oil-based drilling fluid has diesel oil, mineral oil, or some other oil as its continuous phase with water as the dispersed phase.

19. *Drilling Fluids Toxicity Test* means a toxicity test conducted and reported in accordance with the following approved toxicity test methodology: "Drilling Fluids Toxicity Test" as defined in appendix 2 to subpart A of 40 CFR part 435.

20. *Excess cement slurry* means the excess cement including additives and wastes from equipment washdown after a cementing operation.

21. *Exploratory facilities* means any fixed or mobile structure subject to subpart A of 40 CFR part 435 that are engaged in drilling of wells to determine the nature of potential hydrocarbon reservoirs (such as ice islands, gravel islands, concrete island drilling units).

22. *Fire control system test water* means the water released during the training of personnel in fire protection and the testing and maintenance of fire protection equipment.

23. *Garbage* means all kinds of victual, domestic, and operational waste, excluding fresh fish and part thereof, generated during the normal operation and liable to be disposed of continuously or periodically except dishwater, graywater, and those substances that are defined or listed in other Annexes to MARPOL 73/78.

24. *GC* means gas chromatography. GC/MS means gas chromatography/mass spectrometry.

25. *A grab sample* is a single sample or measurement taken at a specific time or over as short a period of time as is feasible.

26. *Hg* means mercury.

27. *lb/bbl* means pounds per barrel.

28. *Maximum* means the highest measured discharge or pollutant in a wastestream during the time period of interest.

29. *Maximum hourly rate as applied to drilling mud, cuttings, and washwater* means the greatest number of barrels of drilling fluids discharged within one hour, expressed as barrels per hour.

30. *MLLW* means mean lower low water.

31. *MGD* means million gallons per day.

32. *mg/kg* means milligrams per kilogram.

33. *mg/l* means milligrams per liter.

34. *Mineral oils* means a class of low volatility petroleum product, generally of lower aromatic hydrocarbon content and lower toxicity than diesel oil.

35. *Mineral oil pills* (also called mineral oil spots) are formulated and circulated in the mud system as a slug in attempt to free stuck pipe. Pills generally consists of two parts; a spotting compound and mineral oil.

36. *Minimum* means the lowest measured discharge or pollutant in a wastestream during the time period of interest.

37. *Monitoring month* means the period consisting of the calendar weeks which end in a given calendar month.

38. *Monthly average* means the average of daily discharges over a monitoring month, calculated as the sum of all daily discharges measured during a monitoring month divided by the number of daily discharges measured during that month.

39. *MSD* means marine sanitation device.

40. *Muds, cuttings, cement at sea floor* means the materials discharged at the surface of the ocean floor in the early phases of drilling operations, before the well casing is set, and during well abandonment and plugging.

41. *M9IM* means those offshore facilities continuously manned by nine (9) or fewer persons or only intermittently manned by any number of persons.

42. *M10* means those offshore facilities continuously manned by ten (10) or more persons.

43. *No discharge of free oil* means that waste streams may not be discharged when they would cause a film or sheen upon or a discoloration of the surface of the receiving water or fail the static sheen test defined in appendix 1 to 40 CFR part 435, subpart A.

44. *No discharge of diesel oil* in drilling mud means a determination that diesel oil is not present based on a comparison of the gas chromatogram from an extract of the drilling mud and from diesel oil obtained from the drilling rig or platform. GC/MS may also be used.

45. *Oil-based drilling mud* means a drilling mud with fossil-derived petroleum hydrocarbons as the continuous phase.

46. *Open water* means less than 25 percent ice coverage within a one (1) mile radius of the discharge site.

47. *Plastics* means any garbage that is solid material, that contains as an essential ingredient one or more synthetic organic high polymers, and that is formed or shaped either during the manufacture of the polymer or polymers or during fabrication into a finished product by heat or pressure or both. "Degradable" plastics, which are composed of combinations of degradable starches are either (a) synthetically produced or (b) naturally produced but harvested and adapted for use, are considered to be plastics. Naturally produced plastics such as crabshells and other types of shells, which appear normally in the marine environment, are not considered to be plastics.

48. *ppm* means parts per million.

49. *Putrescible waste* means waste capable of becoming rotting, rotten, or stinking.

50. *Sanitary wastes* means human body waste discharged from toilets and urinals.

51. *Severe property damage* means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

52. *Sidetracked well* means a new hole drilled from a main well to a different bottom hole location.

53. *Site* means the single, specific geographical location where a mobile drilling facility (jackup rig, semi-submersible, or arctic mobile rig) conducts its activity, including the area beneath the facility, or to a location on a single gravel island.

54. *Slush ice* occurs during the initial stage of ice formation when unconsolidated individual ice crystals (frazil) form a slush layer at the surface of the water column.

55. *SPP* means suspended particulate phase.

56. *Stable ice* means ice that is stable enough to support discharged muds and cuttings.

57. *Static Sheen Test* means the standard test procedure that has been developed for this industrial subcategory for the purpose of demonstrating compliance with the requirement of no discharge of free oil. The methodology for performing the static sheen test is presented in Appendix 1 to Subpart A of 40 CFR part 435.

58. *Step-out well* means a new hole drilled from a main well to a different bottom hole location.

59. *Test fluid* means the discharge which would occur should hydrocarbons be located during exploratory drilling and tested for formation pressure and content. This would consist of fluids sent downhole during testing along with water and particulate matter from the formation.

60. *Toxicity* as applied to BAT effluent limitations for drilling fluids and drill cuttings shall refer to the toxicity test procedure presented in Appendix 2 to Subpart A of 40 CFR 435.

61. *Unstable or broken ice conditions* means greater than 25 percent ice coverage within a one (1) mile radius of the discharge site after spring breakup or after the start of ice formation in the fall, but not stable ice.

62. *Upset* means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation (see Part IV.H.).

63. *v/v* means volume of oil/volume of mud (per API Retort Test).

64. *Victual waste* means any spoiled or unspoiled food waste.

65. *Waste stream* means any non-de minimis stream of pollutants within the Permittee's facility that enters any permitted outfall or navigable waters. This includes spills and other unintentional, non-routine or unanticipated discharges.

66. *Water depth* means the depth of the water between the surface and the seafloor as measured at mean lower low water (0.0).

67. *24-hour composite* sample means a flow-proportioned mixture of not less than 8 discrete aliquots. Each aliquot shall be a grab sample of not less than 100 ml and shall be collected and stored in accordance with procedures prescribed in the most recent edition of *Standard Methods for the Examination of Water and Wastewater*.

68. *96-hr LC50* means the concentration of a test material that is lethal to 50 percent of the test organisms in a toxicity test after 96 hours of constant exposure.

VII. References

CENTEC. 1985. Analysis of Diesel Oil in Drilling Fluids and Drill Cuttings. Attachment to a letter dated 4/22/95 from David F. Tompkins, Centec Analytical Services, to Janis Hastings, EPA Region 10.

U.S. Department of Interior. 1992. Outer Continental Shelf Natural Gas and Oil Resource Management: Comprehensive Program (1992–1997). Proposed final. Minerals Management Service.

U.S. Environmental Protection Agency. 1993. Guidance Manual for Developing Best Management Practices (BMP). Office of Water. EPA 833–B–93–004. October 1993. (Note—this can be obtained free of charge from the EPA Water Resource Center by calling 202/260–7786.)

[FR Doc. 95–12370 Filed 5–23–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5210–2]

Hazardous Waste Management System: Land Disposal Restrictions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed approval of application to extend the approved Case-by-Case Extension of Land Disposal Restrictions Effective Date.

SUMMARY: EPA is today proposing approval of the application submitted by Great Lakes Chemical Corporation (Great Lakes), requesting an extension to the June 30, 1995, extended date of the RCRA land disposal restrictions (LDR) treatment standards applicable to wastewaters with the hazardous wastes codes K117, K118, K131, K132, and F039. To be granted such a request, the applicant must demonstrate, among other things, that there is insufficient capacity to manage its waste and has entered into a binding contractual commitment to construct or otherwise

provide such capacity, but due to circumstances beyond its control, such capacity could not reasonably be made available by the effective date. Great Lakes adequately met these requirements and was granted an initial Case-By-Case Extension for one year effective June 30, 1994 to June 30, 1995, with the option to renew this extension for up to one additional year (see FR 5151–3). Based on the Case-By-Case extension provisions and request by Great Lakes to extend the ban date, Great Lakes will be allowed, upon final approval to land dispose of its K117, K118, K131, K132, AND F039 wastes upon final approval, until September 30, 1995, without being subject to the land disposal restrictions applicable to such wastes. Final Approval of this extension, will only be valid for injection into Well Nos. 5 and 6.

EFFECTIVE DATE: This approved extension of the LDR effective date becomes effective May 11, 1995.

ADDRESSES: Environmental Protection Agency, Region 6, Water Management Division, Water Supply Branch (6W–SU), 1445 Ross Avenue, Dallas, Texas 75202–2733.

FOR FURTHER INFORMATION CONTACT: The RCRA/Superfund Hotline, at (800) 424–9346 (toll free) or (703) 412–9810, in the Washington, DC metropolitan area.

Dated: May 11, 1995.

Myron O. Knudson,

Director, Water Management Division.

[FR Doc. 95–12773 Filed 5–23–95; 8:45 am]

BILLING CODE 6560–50–P

Gulf of Mexico Program Technical Advisory Committee Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting of the Technical Advisory Committee of the Gulf of Mexico Program.

SUMMARY: The Gulf of Mexico Program's Technical Advisory Committee will hold a meeting at the Marriott Hotel, 555 Canal Street, New Orleans, Louisiana.

FOR FURTHER INFORMATION CONTACT: Dr. Douglas Lipka, Acting Director, Gulf of Mexico Program Office, Building 1103, Room 202, John C. Stennis Space Center, Stennis Space Center, MS 39529–6000, at (601) 688–3726.

SUPPLEMENTARY INFORMATION: A meeting of the Technical Advisory Committee of the Gulf of Mexico Program will be held June 20, 1995, at the Marriott Hotel, 555 Canal Street, New Orleans, Louisiana. The committee will meet from 8 a.m. to 5 p.m. Agenda items will include: A report from Battelle on the draft QA/QC plan for the Gulf of Mexico Program; Development of a conceptual model for the Gulf of Mexico; Strategies for locating long-term monitoring sites on the Gulf coast (this will focus on possible integration of GEMS, LTER sites, LMER sites and REMAP); A research needs/coordination conference for the Gulf Program partner agencies; Hypoxia (Dead Zone) Symposium Planning; and Introduce the role of the TAC in the issue integration process. The meeting is open to the public.

Douglas A. Lipka,

Acting Director, Gulf of Mexico Program

[FR Doc. 95–12774 Filed 5–23–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5210–4]

Clean Water Act (CWA) 304(l): Availability of List of Submissions and Proposed Approval Decisions

AGENCY: U.S. Environmental Protection Agency (U.S. EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of a list submitted to U.S. EPA pursuant to Section 304(l)(1)(C) of the CWA, 33 U.S.C. 1314(l)(1)(C) as well as U.S. EPA's proposed approval decision, and request for public comment.

DATES: Comments must be submitted to U.S. EPA on or before June 23, 1995.

ADDRESSES: Copies of these items can be obtained by writing or calling: Mr. Howard Pham, U.S. EPA—Region 5, 304(l) Coordinator, U.S. Environmental Protection Agency-Region 5, Water Division (Mail Code WQP–16J), 77 West Jackson Blvd., Chicago, Illinois 60604–3507, telephone: (312) 353–2310.

Comments on these items should be sent to Howard Pham, U.S. EPA—Region 5 at the address given above.

FOR FURTHER INFORMATION CONTACT: Howard Pham at the address and telephone number given above.

SUPPLEMENTARY INFORMATION: Section 304(l) of the CWA, 33 U.S.C. 1314(l), required each State, within 2 years after February 4, 1987, to submit to the U.S. EPA, three lists of waters, including a list of those waters in which the State does not expect to achieve applicable water quality standards, after application of technology-based controls, due to discharges of toxic pollutants from point sources (the "B List" or "Short List"). 33 U.S.C. 1314(l)(1)(B). The second, or "Mini" list consists of waters that are not meeting the new water quality standards developed under Section 303(c)(2)(B) for toxic pollutants because of pollution from point and nonpoint sources. 33 U.S.C. 1314(l)(1)(A)(i). The third, or "Long" list includes all waters on the other two lists, plus any waters which, after the implementation of technology-based controls, are not expected to meet the water quality goals of the Act. 33 U.S.C. 1314(l)(1)(A)(ii).

For each water segment identified in these lists, the State was required, by February 4, 1989, to submit a "C List" specifying point sources discharging toxic pollutants believed to be preventing or impairing such water quality. 33 U.S.C. 1314(l)(1)(C).

For each point source identified on the State's C list as discharging toxic pollutants into a water segment on the State's B list, the State was further required to submit to U.S. EPA, an individual control strategy (ICS) that the State determined would serve to reduce point source discharges of toxic pollutants to the receiving water to a degree sufficient to attain water quality standards in that water within 3 years after the date of the establishment of the ICS. 33 U.S.C. 1314(l)(1)(D).

U.S. EPA initially interpreted the statute to require States to identify on the C list, only those facilities that discharge toxic pollutants believed to be impairing waters listed on the B list. In *Natural Resources Defense Council (NRDC)* v. *U.S. EPA*, the Ninth Circuit Court of Appeals remanded that portion of the regulation and directed U.S. EPA to amend the regulations to require the States to identify all point sources discharging any toxic pollutant that is believed to be preventing or impairing water quality of any stream segment listed on any of the three lists of waters, and to indicate the amount of the toxic pollutant discharges by each source. See *NRDC* v. *U.S. EPA*, 915 F.2d 1313, 1323–24 (9th Cir. 1990). U.S. EPA amended 40 CFR 130.10(d)(3) accordingly. See 57 FR 33040 (July 24, 1992).

Consistent with U.S. EPA's amended regulation, the State of Ohio submitted on April 20, 1992, to U.S. EPA, for approval a supplemental facility list (SFL) as required under Section 304(l)(1)(C). U.S. EPA's review of Ohio' 304(l) SFL and its procedures used to develop the list, found the procedures to be consistent with the requirements of the amended regulations. Based on the above findings, U.S. EPA noticed the availability of Ohio's SFL, as well as the Agency's proposed approval decisions and request for public comments (see U.S. EPA's Notice of Availability and Proposed Approval Decisions published at FR 12332, March 24, 1994).

On June 20, 1994, the Ohio Environmental Protection Agency (Ohio EPA) notified U.S. EPA in writing that it was withdrawing its 304(l) SFL submitted to U.S. EPA on April 20, 1992. Based upon public comments received and other information gathered by Ohio EPA during the public comment period, Ohio determined that its 304(l) SFL needed to be re-evaluated based upon criteria set forth at 40 CFR 130.10.

Ohio EPA in its re-evaluation procedures, examined each segment to be impaired to identify the specific toxicant responsible for the impairment, identify the contaminated water columns, assess data to evaluate the magnitude of contamination, incorporate newer data into the assessment, and more specifically identify the location of an impairment in relation to dischargers in the same waterbody. Using the re-evaluation procedures the State of Ohio, on February 8, 1995, resubmitted a SFL to U.S. EPA for approval. The procedures have been reviewed and accepted by U.S. EPA. The following table indicates the decisions made for the State of Ohio's SFL. Ohio's SFL contains 36 facilities. U.S. EPA notes that the National Pollutant Discharge Elimination System permits for those facilities already include requirements that meet water quality-based considerations for parameters of concern. Therefore, those permits will be considered acceptable ICSs.

U.S. EPA today proposes to approve the 304(l) SFL for the State of Ohio. U.S. EPA solicits public comment on the approval decision.

Dated: May 8, 1995.

David A. Ullrich,

Acting Regional Administrator.

U.S. ENVIRONMENTAL PROTECTION AGENCY

[Section 304(1) supplemental list]

Waterbody ID	Water body name, upper RM–lower RM	Discharge name	NPDES #/Ohio #	Parameters of concern
OH 2–12	Mill Creek, 20.9–0.0	Mahoning County Boardman WWTP.	OH0037249/3PK00002	Zn, Cu, Cr.
OH 2–20	Mahoning River (Mill Creek to Meander Creek—WWTP 28.5–20.0.	Girard–WWTP	OH0025364/3PD00010	Cr, Zn.
		Niles–WWTP	OH0026743/3PD00036	Cr, Zn.
OH 2–23	Meander Creek, 20.4–0.0	Mahoning County, Meander Creek, WWTP.	OH0045721/3PK00011	Cu, Zn.
OH 2–27	Mosquito Creek (Mosquito Creek Reservoir to Mahoning River), 12.4–0.0.	Trumbull County, Mosquito Creek.	OH0043401/3PK00009	Cu, Pb, Hg.
OH 2–35	Mahoning River (Meander Creek to Duck Creek), 43.8–28.5.	LTV Steel–Warren	OH0011274/31D00004	Cr.
		City of Warren, WWTP	OH0027987/3PE00008	Cr, Pb, Ni.
OH 10–5	Tuscarawas River (Newman Creek to Pigeon Run), 91.9–86.7.	Mercury Stainless Steel–Washington.	OH0092444/31D00067	Cr, Pb, Cu.
		Massillon–WWTP	OH0020516/3PE00007	Cr, Zn, Pb, Cu.
OH 10–19	Little Chippewa Creek, 12.9–0.0.	Orrville–WWTP	OH0020371/3PD00017	Zn.
OH 10–31	Pigeon Creek, 8.6–0.0	Polysar Resins	OH0088072/31Q00035	Organics.
OH 15–31	Tuscarawas River (Conotton Creek to Sugar Creek) 65.6–58.1.	Empire Detroit	OH0004910/01D00036	Cr+6, Pb, Zn.
OH 16–19	Rocky Fork Mohican River, 19.6–0.0.	Stone Container Corporation	OH0005649/21A00001	Cu, Zn, Pb, Cr, Ni.
		Cyclops Industries (Armco Steel).	OH0006840/21D00003	Zn, Cd, Pb, Cu, Ni.
OH 17–14	Jerome Ford Mohican River (Lang Creek to Lake Fork) 12.2–0.0.	Ashland–WWTP	OH0023906/2PD00010	Cu, Pb, Ni, Zn.
OH 22–58	Beaver Run, 4.8–0.0	Hebron–WWTP	OH0021539/4PB00005	Cd, Zn, Hg.
OH 24–106	Muskingum River (Salt Creek to Millers Run), 67.0–50.5.	Glacier Clevite/ McConnellsville.	OH0048372/01C00000	Cu, Pb, Cr, Zn.
		Gould/McConnellsville	OH0048364/01C00011	Cr, Cu, Pb.
OH 44–16	Little Salt Creek (Headwaters to Buckeye Creek), 28.5–21.2.	Jackson–WWTP	OH0020834/OPD00008	Cu, Pb, Zn.
OH 50–9	Little Beaver Creek, 9.0–0.0	Montgomery County Eastern Regional–WWTP.	OH0026590/1PL00001	Cu, Zn.
OH 55–18	Blue Jacket Creek, 7.8–0.0	Bellefontaine WWTP	OH0024066/1PD00000	Cd, Cu, Pb, Zn.
OH 63–19	Wabash River (Headwaters to Stony Creek), 508.8–481.3.	Fort Recovery Industries	OH0010138/21C00001	Cu.
OH 66–3	Blanchard (Eagle Creek to Ottawa River), 58.1–45.6.	Findlay–WWTP	OH0025135/2PD00008	Zn, Hg.
OH 69–15	Town Creek, 26.3–0.0	Van Wert WWTP NOOS	OH0027910/2PD00006	Cd, Zn.
OH 72–11	Prairie Creek, 12.7–0.0	Bryan–WWTP	OH0020532/2PD00018	Cu.

U.S. ENVIRONMENTAL PROTECTION AGENCY—Continued

[Section 304(1) supplemental list]

Waterbody ID	Water body name, upper RM–lower RM	Discharge name	NPDES #/Ohio #	Parameters of concern
OH 73–26	Maumee River (Auglaize River to Wade Creek), 64.0–52.0.	GMC Defiance	OH0002665/21N00004	Zn.
		Defiance–WWTP	OH0024899/2PD00013	Zn.
OH 76–24	Otter Creek, 10.2–0.0	Sun Oil Refinery	OH0002763/21G00003	Cr.
		Libbey-Owens Ford	OH0002445/21N00020	As.
OH 83–11	Raccoon Creek, 14.9–0.0	Clyde–WWTP	OH0024686/2PD00004	Cu.
OH 88–5	Cuyahoga River (Congress Lake Out to Lower Cuyahoga), 56.8–42.3.	Kent–WWTP	OH0025917/3PD00031	Cd, Cu, Zn.
OH 89–1	Cuyahoga River (Big Creek Lake to Lake Erie).	LTV Steel Cleveland East Side (west side merge with the east side).	OH0000957/31D00003	Zn, CN.
		DuPont/Cleveland (Zaclon)	OH0000990/31E00005	Zn, CN.
OH 89–8	Tinkers Creek (Pond Brook to Cuyahoga River), 22.5–0.0.	Bedford Heights WWTP	OH0024058/3PD00006	Cu, Pb.
		Twinsburg WWTP	OH0027863/3PD00039	Cu.
OH 89–8.3	Beaver Meadow Creek, 3.0–0.0.	Solon Central WWTP	OH0027430/3PD00019	Cu, Hg.

[FR Doc. 95–12775 Filed 5–23–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1049–DR]

Louisiana; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Louisiana (FEMA–1049–DR), dated May 10, 1995, and related determinations.

EFFECTIVE DATE: May 17, 1995.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective May 16, 1995.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Associate Director, Response and Recovery Directorate.

[FR Doc. 95–12740 Filed 5–23–95; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1051–DR]

Mississippi; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Mississippi (FEMA–1051–DR), dated May 12, 1995, and related determinations.

EFFECTIVE DATE: May 17, 1995.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective May 17, 1995.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Associate Director, Response and Recovery Directorate.

[FR Doc. 95–12739 Filed 5–23–95; 8:45 am]

BILLING CODE 6718–02–M

U.S. Fire Administration

Arson Prevention Grant Program

AGENCY: U.S. Fire Administration, FEMA.

ACTION: Notice of funds and grant availability.

SUMMARY: The Federal Emergency Management Agency (FEMA), gives notice of funds and grant availability under the Arson Prevention Act of 1994. This grant program is limited to States or consortia of States for demonstration programs on arson research, prevention and control.

DATES: The grant application materials/Application for Federal Assistance will be available on or about June 19, 1995. Grant Applications must be received by the FEMA Assistance Officer not later than July 17, 1995.

ADDRESSES: Applications for assistance must be in writing to the following address: Patricia A. English, Office of Financial Management, Federal Emergency Management Agency, 500 C Street, SW., room 731, Washington, DC 20742.

Ask for Request for Assistance No. EMW–95–S–4780. Please include a self-addressed mailing label with your request.

FOR FURTHER INFORMATION CONTACT: Kenneth J. Kuntz, Fire Studies Specialist, United States Fire Administration, 16825 South Seton Ave, Emmitsburg, MD. 21727, (301) 447–1271, (facsimile)(301) 447–1102.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) gives notice that $2,000,000 is available to support not more than ten (10) competitive grant awards for demonstration programs on arson research, prevention, and control. Under the Arson Prevention Act of 1994 this grant program is limited to States or consortia of States. Elements of local government such as fire and police departments, public and private groups or organizations, professional associations, and similar entities, are not eligible by law to apply.

(a) Arson Prevention Act of 1994 targets the following goals as the only topics eligible for funding under this authority:

(1) To improve the training by States leading to professional certification of arson investigators in accordance with nationally recognized certification standards.

(2) To provide resources for the formation of arson task forces or interagency organizational arrangements involving police and fire departments and other relevant local agencies, such as a State arson bureau and the office of a fire marshal of a State.

(3) To combat fraud as a cause of arson and to advance research at the State and local levels on the significance and prevention of fraud as a motive for setting fires.

(4) To provide for the management of arson squads including:

(i) Training courses for fire departments in arson case management including standardization of investigative techniques and reporting methodology;

(ii) The preparation of arson unit management guides; and

(iii) The development and dissemination of new public education materials relating to the arson problem.

(5) To combat civil unrest as a cause of arson, and to advance research at the State and local levels on the prevention and control of arson linked to urban disorders.

(6) To combat juvenile arson, such as juvenile fire setter counseling programs and similar intervention programs, and to advance research at the State and local levels on the prevention of juvenile arson.

(7) To combat drug-related arson, and to advance research at the State and local levels on the causes and prevention of drug-related arson.

(8) To combat domestic violence as a cause of arson, and to advance research at the State and local levels on the prevention of arson arising from domestic violence.

(9) To combat arson in rural areas and to improve the capability of firefighters to identify and prevent arson initiated fires in rural areas and public forests.

(10) To improve the capability of firefighters to identify and combat arson through expanded training programs, including:

(i) Training courses at the State fire academies; and

(ii) Innovative courses at the National Fire Academy and made available to volunteer firefighters through regional delivery methods, including teleconferencing and satellite delivered television programs.

(b) States or consortia of States wishing to apply for these arson prevention grants must demonstrate meeting the following eligibility requirements:

(1) The applicant must be a State or consortium of States;

(2) The applicant must obtain at least 25 percent of the costs of the programs funded by the grant, in cash or in kind, from non-Federal sources;

(3) The applicant will demonstrate that as a grant recipient they will not decrease the prior level of spending of funds of the State or consortium from non-Federal sources for arson research, prevention, and control programs.

(4) The applicant will use no more than 10 percent of the funds provided under the grant for administrative costs of the program.

(5) The applicant will demonstrate the efforts it is making to ensure that all local jurisdictions will provide arson data to the National Fire Incident Reporting System (NFIRS) or the Uniform Crime Reporting (UCR) program.

(6) The applicant will demonstrate that they have a policy to promote the training of its firefighters actively in cardiopulmonary resuscitation (CPR).

(c) The following evaluation factors (numerically weighted to ensure consistent and balanced scoring) will be used by the evaluation panel(s) to select the best proposal in each distinct goal category:

(1) The degree to which the proposal is seen to address the targeted goal or each goal (component) in a combination of goals (Factor Weight: 10);

(2) The scope and effect of the proposed initiative in relation to the proposed program cost (Factor Weight: 10);

(3) The degree to which the proposed activity supports a "model program initiative" suitable for replication in other jurisdictions (Factor Weight: 10);

(4) The degree to which the proposed activity demonstrates an effective and efficient integration of a variety of program resources (Factor Weight: 10);

(5) The degree to which the proposed activity could sustain itself upon the completion of the grant performance period (Factor Weight: 15);

(6) The degree to which the proposed activity would target intervention strategies addressing high risk groups, properties, or specific conditions (Factor Weight: 10);

(7) The degree to which the activity proposed would produce a lasting anti-arson program, initiative or other such appropriate outcome (Factor Weight: 10);

(8) The degree to which the proposed activity promotes the introduction of new technology, innovative techniques or nontraditional approaches to reduce the nation's arson problem (Factor Weight: 10);

(9) The degree to which the proposed activity relies upon the development of intergovernmental, interorganizational, or community involving "partnerships" to promote goal attainment (Factor Weight: 10);

(10) The degree to which the proposed activity support the enhanced ability to collect arson data (Factor Weight: 10).

(d) We anticipate awarding competitive grants following this request for assistance, and anticipate making one award in each goal category.

Dated: May 18, 1995.

Robert R. Boyer,

Senior Procurement Executive, Office of Financial Management.

[FR Doc. 95–12738 Filed 5–23–95; 8:45 am]

BILLING CODE 6718–25–P

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

Ocean Trade International, Inc., 9600 N.W. 25th Street, Suite 2D, Miami, FL 33172; Officers: Jaime S. Blanco, President, Ana M. Blanco, Vice President.

Pro Cargo Services, Corp., 7225 N.W. 25th Street, Suite 210, Miami, FL 33122; Officers: Alfredo M. Puig, President, Jesus F. Couso, Vice President.

P&P Group, Corp., 1862 N.W. 82nd Ave., Miami, FL 33126; Officers: Gaspar Garces, President, Maria Eugenia Garces, Vice President.

Dated: May 19, 1995.

By the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 95–12669 Filed 5–23–95; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Announcement 537]

State Grants To Support Development and Evaluation of Nutrition Intervention Programs

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1995 funds for grants to support the development and evaluation of State and community nutrition intervention programs.

This announcement addresses two distinct components:

I. "Nutrition Intervention Assistance" for supporting the implementation of nutrition interventions.

II. "5 A Day Evaluation" for supporting the evaluation of 5 A Day for Better Health nutrition intervention programs.

Applicants may apply for either the Nutrition Intervention Assistance component or the 5 A Day Evaluation component or both components.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2000," a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related specifically to the priority area of Nutrition and, generally, to several other priority areas of health promotion and preventive services—including Physical Activity and Fitness, Heart Disease, Cancer, and Diabetes. (For ordering a copy of "Healthy People 2000," see the Section, "Where to Obtain Additional Information.")

Authority

This program is authorized under section 317(k)(2) (42 U.S.C. 247b (k)(2)) of the Public Health Service Act, as amended.

Smoke-Free Workplace

PHS strongly encourages all grant recipients to provide a smoke-free workplace and to promote the nonuse of all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Eligible Applicants

A. Nutrition Intervention Assistance

Assistance will be provided only to the health departments of States or their bona fide agents. This includes American Samoa, the Commonwealth of Puerto Rico, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of the Marshall Islands, the Republic of Palau, and federally recognized Indian tribal governments. Excluded are the States, territories and American Indian tribes of: Alaska, Alabama, Arizona, Arkansas, California, Colorado, Connecticut, District of Columbia, Hawaii, Iowa, Kansas, Massachusetts, Maine, Montana, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New York, North Dakota, Ohio, Rhode Island, Tennessee, Texas, Utah, Vermont, West Virginia, Washington, Bristol Bay Area Health Corporation, Poarch Band of Creek Indians, Mississippi Band of Choctaw Indians, Miccosukee Corporation, and the Virgin Islands, which were funded for nutrition intervention activities under Program Announcement 494, entitled State Grants to Support Development and Evaluation of Nutrition Intervention Programs.

B. 5 A Day Evaluation

Assistance will be provided only to the health departments of States or their bona fide agents. This includes the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of the Marshall Islands, the Republic of Palau, and federally recognized Indian tribal governments.

Eligibility for this component is restricted to States who have established, clearly defined, evaluable, long range 5 A Day for Better Health projects in a specific community channel.

Eligible applicants for nutrition intervention program grants have been restricted to official health departments of States or their bona fide agents or instrumentalities because:

1. The methodology to conduct this program has been structured to support the national goals and objectives of "Healthy People 2000." In many instances, State health departments have already embraced or established their own goals and objectives which match or are synonymous with those outlined in "Healthy People 2000."

2. The conduct of Statewide health promotion, health education, and risk reduction programs directed towards reducing the prevalence of behavioral risks in the population lies solely with State Health Departments.

3. Program evaluation is expected to be useful to State Health Departments in program and intervention development. Because comparable methods are used from State to State and from year to year, States can compare data and intervention methods with other States and monitor the effects of interventions over time.

Availability of Funds

Approximately $740,000 is available in FY 1995 to fund approximately 22 awards. Awards may be made for the Nutrition Intervention Assistance, or 5 A Day Evaluation or both.

A. Nutrition Intervention Assistance

Approximately $450,000 is available to fund approximately 18 awards. It is expected that the average award will be $25,000 ranging from $18,000 to $32,000. States are encouraged to use these funds to expand the community involvement toward the goals of this program.

B. 5 A Day Evaluation

Approximately $290,000 is available to fund approximately 4 awards. It is expected that the average award will be $75,000 ranging from $60,000 to $90,000. Awards will be considered only for applicants who have an established, clearly defined, and evaluable long range 5 A Day for Better Health project in a specific community channel (e.g., supermarkets, schools, churches, food assistance programs, worksites, health clinics, media, etc.).

It is expected that the awards will begin on or about September 28, 1995, and will be made for a 12-month budget period within a project period of one year. Funding estimates may vary and are subject to change.

Awards under this announcement will not be sufficient to fully support an applicant's proposed activities, but are meant to be used in conjunction with other resources—whether direct funding or in-kind contributions—that the applicant may have available.

Purpose

The awards will support State efforts to develop and evaluate nutrition intervention programs. Emphasis will be placed on supporting activities of partnerships to carry out interventions

and/or evaluations designed to increase the consumption of fruits and vegetables, to decrease fat intake, and/or to increase physical activity while improving diet.

Program Requirements

A. Nutrition Intervention Assistance

Promote programmatic activities to achieve Healthy People 2000 dietary objectives that relate to increased consumption of fruits and vegetables, reduced intake of fat, and/or improving diet while increasing physical activity. Applicants should propose specific and discrete activities, but applicants are given latitude in deciding which specific activities to propose. Activities proposed by applicants might include but are not limited to the following:

1. Assist a Statewide or community-wide coalition to implement a 5 A Day for Better Health project by using effective public and private partnerships.

2. Implement an intervention to promote physical activity and improved diet among a defined low-income population.

3. Evaluate a health communication campaign. (Such campaigns could be broad-based, could target specific populations, or could support specific programs, such as Project LEAN or 5 A Day for Better Health.)

4. Integrate a nutrition education component into an existing State chronic disease program (e.g., diabetes, cancer, and heart disease prevention programs) or into appropriate services of a managed care provider.

B. 5 A Day Evaluation

An evaluation of a 5 A Day intervention in a specific community channel. Applicants should propose a plan for an evaluation of a clearly defined, long range effort in a specific community channel.

Evaluation Criteria

Applications for the Nutrition Intervention Assistance and the 5 A Day Evaluation components will be allocated 100 points each and will be reviewed and evaluated according to the following criteria:

A. Nutrition Intervention Assistance

1. Background

The degree to which the applicant succinctly describes the problems to be addressed and current activities for resolving them. (10 points)

2. Objectives

The degree to which objectives are realistic, time-phased, measurable, and specific. (20 points)

3. Program Plan

The adequacy of the applicant's plan to carry out the proposed activities and accomplish the stated objectives. (40 points)

4. Program Integration

The adequacy of the applicant's commitment to provide sufficient staff and resources necessary to achieve the program objectives. (20 points)

5. Evaluation

The extent to which the applicant presents a reasonable plan to measure progress in meeting objectives and evaluate performance. (10 points)

6. Budget

The extent to which the applicant provides a detailed budget and line item justification that is consistent with the stated objectives, program purpose, and planned activities of the project. (not weighted)

B. 5 A Day Evaluation

1. Background

The degree to which the applicant clearly describes a long range, clearly defined, evaluable 5 A Day for Better Health project, including a description of the intervention method and channel. (25 points)

2. Program Plan

The adequacy of the applicant's plan to carry out the evaluation, including the specific objectives and measures in the evaluation. (45 points)

3. Capacity

The capabilities of the personnel (including consultants where appropriate) to carry out the evaluation. (30 points)

4. Budget

The extent to which the applicant provides a detailed budget and line item justification that is consistent with the evaluation plan. (not weighted)

Executive Order 12372 Review

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order (E.O.) 12372. E.O. 12372 sets up a system for State and local government review of proposed Federal assistance applications. Applicants (other than federally recognized Indian tribal governments) should contact their State Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC for each affected State. A current list of SPOCs is included in the application kit. If SPOCs have any State process recommendations on applications submitted to CDC, they should send them to Clara M. Jenkins, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–13, Atlanta, GA 30305, no later than 60 days after the application deadline date. The Program Announcement Number and Program Title should be referenced on the document. CDC does not guarantee to "accommodate or explain" State process recommendations it receives after the date.

Indian tribes are strongly encouraged to request tribal government review of the proposed application. If tribal governments have any tribal process recommendations on applications submitted to CDC, they should forward them to Clara M. Jenkins, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–13, Atlanta, GA 30305. This should be done no later than 60 days after the application date. The granting agency does not guarantee to "accommodate or explain" for tribal process recommendations it receives after that date.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.283.

Application Submission and Deadline

The original and two copies of the application PHS Form 5161–1 (OMB Number 0937–0189) must be submitted to Clara M. Jenkins, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers For Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mail Stop E–13, Atlanta, GA 30305, on or before June 30, 1995.

1. Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to

the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be accepted as proof of timely mailing.)

2. Late Applications: Applications that do not meet the criteria in 1.(a) or 1.(b) above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where To Obtain Additional Information

A complete program description and information on application procedures are contained in the application package. Business management technical assistance may be obtained from Albertha Carey, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers For Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mail Stop E–13, Atlanta, GA 30305, telephone (404) 842–6508. Programmatic technical assistance may be obtained from Judy Pruden, M.Ed., R.D., Division of Nutrition, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE., Mail Stop K–26, Atlanta, GA, 30341–3724, telephone (404) 488–4260.

Please refer to Announcement Number 537 when requesting information and submitting an application.

Potential applicants may obtain a copy of "Healthy People 2000" (Full Report; Stock No. 017–001–00474–0) or "Healthy People 2000" (Summary Report; Stock No. 017–001–00473–1) referenced in the "Introduction" through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512–1800.

Dated: May 15, 1995.

Joseph R. Carter

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC)

[FR Doc. 95–12762 Filed 5–23–95; 8:45 am]

BILLING CODE 4163–18–P

Food and Drug Administration

Advisory Committees; Notice of Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

FDA has established an Advisory Committee Information Hotline (the hotline) using a voice-mail telephone system. The hotline provides the public with access to the most current information on FDA advisory committee meetings. The advisory committee hotline, which will disseminate current information and information updates, can be accessed by dialing 1–800–741–8138 or 301–443–0572. Each advisory committee is assigned a 5-digit number. This 5-digit number will appear in each individual notice of meeting. The hotline will enable the public to obtain information about a particular advisory committee by using the committee's 5-digit number. Information in the hotline is preliminary and may change before a meeting is actually held. The hotline will be updated when such changes are made.

MEETINGS: The following advisory committee meetings are announced:

Oncologic Drugs Advisory Committee

Date, time, and place. June 8 and 9, 1995, 8 a.m., Parklawn Bldg., conference rooms D and E, 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, June 8, 1995, 8 a.m. to 9 a.m., unless public participation does not last that long; open committee discussion, 9 a.m. to 5 p.m.; open committee discussion, June 9, 1995, 8 a.m. to 11:30 a.m.; closed committee deliberations, 11:30 a.m. to 4 p.m.; Adele S. Seifried, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Oncologic Drugs Advisory Committee, code 12542.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in treatment of cancer.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before June 5, 1995, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On June 8, 1995, the committee will discuss: (1) New drug application (NDA) 50–704, Daunoxome® Injection (liposomal daunorubicin, Vestar, Inc.) "as the primary therapy for the palliative management of advanced, HIV-associated Kaposi's Sarcoma," and (2) NDA 20–449, Taxotere® (docetaxel, Rhone-Poulenc Rorer), for treatment of "patients with locally advanced or metastatic breast carcinoma in whom previous therapy has failed; prior therapy should have included an anthracycline unless clinically contraindicated." On June 9, 1995, the committee will discuss NDA 20–221, Ethyol (amifostine injection, U.S. Bioscience, Inc.) "as a cytoprotective agent against the cumulative renal toxicities associated with cisplatin and the cumulative hematologic toxicity associated with cyclophosphamide and cisplatin in patients with advanced solid tumors of non-germ cell origin."

Closed committee deliberations. On June 9, 1995, the committee will discuss trade secret and/or confidential commercial information relevant to investigational new drugs (IND's) and pending NDA's. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Orthopedic and Rehabilitation Devices Panel of the Medical Devices Advisory Committee

Date, time, and place. June 12, 1995, 8:30 a.m., Holiday Inn—Gaithersburg, Ballroom, Two Montgomery Village Ave., Gaithersburg, MD. A limited number of overnight accommodations have been reserved at the Holiday Inn—Gaithersburg. Attendees requiring overnight accommodations may contact the hotel at 301–948–8900 and reference the FDA panel meeting block. Reservations will be confirmed at the group rate based on availability.

Type of meeting and contact person. Open public hearing, 8:30 a.m. to 9 a.m., unless public participation does not last that long; open committee discussion, 9 a.m. to 12 m.; closed committee deliberations, 12 m. to 1:30 p.m.; open public hearing, 1:30 p.m. to 2 p.m., unless public participation does not last that long; open committee discussion, 2 p.m. to 5 p.m.; Paula J. Wilkerson, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2036, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Orthopedic and Rehabilitation Panel, code 12521.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before June 1, 1995, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss general issues relating to a premarket approval application for a total knee replacement device. The committee will also hear an FDA presentation on conditions of approval and the gathering of long-term data. The afternoon session will include presentations and committee discussion on hip replacement systems. Speakers will examine components of clinical protocol design including: Medical and clinical aspects, rating systems, patient selection, controls, and statistical considerations.

Closed committee deliberations. The committee will discuss trade secret and/or confidential commercial information relating to orthopedic devices. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Blood Products Advisory Committee

Date, time, and place. June 23, 1995, 8 a.m., Marriott—Bethesda, Congressional Salons I, II, and III, 5151 Pooks Hill Rd., Bethesda, MD.

Type of meeting and contact person. Open committee discussion, 8 a.m. to 10:45 a.m.; open public hearing, 10:45 a.m. to 11:45 a.m., unless public participation does not last that long; open committee discussion, 11:45 a.m. to 3 p.m.; closed committee deliberations, 3 p.m. to 3:30 p.m.; Linda A. Smallwood, Center for Biologics Evaluation and Research (HFM–350), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–594–6700, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Blood Products Advisory Committee, code 12388.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness, and appropriate use of blood products intended for use in the diagnosis, prevention, or treatment of human diseases.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before June 12, 1995, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. In the morning, the committee will discuss and provide recommendations on human immunodeficiency virus (HIV) antigen screening of blood donors. In the afternoon, the committee will discuss and review the report of the intramural research site visit of the Laboratory of Cellular Hematology, Division of Hematology, Office of Blood Research and Review, Center for Biologics Evaluation and Research.

Closed committee deliberations. The committee will discuss the intramural scientific program. This portion of the meeting will be closed to prevent disclosure of personal information concerning individuals associated with the research program, a disclosure of which would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA) (5 U.S.C. app. 2, 10(d)), permits

such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, deliberation to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: May 17, 1995.

Linda A. Suydam,

Interim Deputy Commissioner for Operations.

[FR Doc. 95–12661 Filed 5–23–95; 8:45 am]

BILLING CODE 4160–01–F

Office of Inspector General

Program Exclusions: April 1995

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions.

During the month of April 1995, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusion is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, Maternal and Child Health Services Block Grant and Block Grants to States for Social Services programs. In addition, no program payment is made to any business or facility, e.g., a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all other Federal non-procurement programs.

Subject, City, State	Effective Date
Program-Related Convictions	
Appel, Neal G, Brick, NJ	05/07/95
Bessette, Marcia F, Somerset, MA	05/04/95
Campbell, Rose, Lubec, ME	05/04/95
Campis, Eva B, Miami Beach, FL	05/09/95
Casey, Kathleen M, Monson, MA	05/04/95
Chaudhry, Baber Z, Metairie, LA	05/07/95
Curtis, Marianne, Costa Mesa, CA	05/04/95
Doshi, Bhupendrakumar, Brooklyn, NY	05/07/95
Ehrlich, Leah L, Fort Collins, CA	05/04/95
Garcia, Jose A, Miami, FL	05/09/95
Garrigo, Luis E, Miami, FL	05/09/95
Gomez, Jose M, Miami, FL	05/09/95
Goss, Louis, Montgomery, PA	05/07/95
Health Careers, Inc., North Wales, PA	05/09/95
Kheang, Rithik, Ontario, CA	05/04/95
McAfee, Robert W, Firebaugh, CA	05/04/95
McDermott, Robert T, Easton, PA	05/09/95
Mom's Taxi Corp, Carmel, NY	05/07/95
Muhammad, Bilal, I, Fremont, CA	05/04/95
Nnamdie, Oku J, Miami, FL	05/09/95
Raggi, Mindi, North Wales, PA	05/09/95
Recovery Management Corp. III, Newport News, VA	05/11/95
Rodriguez-Suarez, Mercedes, FL	05/09/95
Tan, Teresita V, Brooklyn, NY	05/07/95
Vallen, Jerry, Carmel, NY	05/07/95
Waters, Larry E, Canal Point, FL	05/04/95
Patient Abuse/Neglect Convictions	
Araujo, Maria, Medford, MA	05/04/95

Subject, City, State	Effective Date
Booth, Felicia T, Oklahoma City, OK	05/04/95
Dennise, Jacqueline, Rochester, NY	05/07/95
Donaldson, Denise, Lakehurst, NJ	05/07/95
Haggerty, Lula Ann, Waskom, TX	05/04/95
Hatter, Clarice, Little Rock, AR	05/04/95
Hunnicutt, Monica M, Springfield, MA	05/04/95
Jeanpierre, Linda Ann, New Orleans, LA	05/04/95
Leggett, Joseph Edward, Huntsville, TX	05/04/95
Reyes, Lucio A, El Paso, TX	05/04/95
Russell, Laura A, Pineville, LA	05/04/95
Shelton, Vanessa, Vicksburg, MS	05/04/95
Walsh, Patricia, Lawrence, MA	05/04/95
Conviction for Health Care Fraud	
Alexander, Merrill, Brooklyn, NY	05/07/95
Dixon, Richard L, Brunswick, ME	05/04/95
Garcia, Louis, Corpus Christi, TX	05/04/95
Jackson, Mark M, Duluth, MN	05/04/95
Martinez, Robert Jr, Pearland, TX	05/04/95
Controlled Substance Convictions	
Velez, Afdiel, Atlanta, GA	05/04/95
License Revocation/Suspension	
Acosta, Romeo Duque, Pompano Beach, FL	05/04/95
Berndt, Jack, Watertown, SD	05/04/95
Feiner, Neil F, Providence, RI	05/04/95
Geick, Vande E, Lincoln, NE	05/04/95
Gold, Carl G, Newton, MA	05/04/95
Koontz, Jennifer A, Rockport, ME	05/04/95
Limberopoulos, Nicholas V, Lowell, MA	05/04/95
Magrito, Pamela J, East Providence, RI	05/04/95
McCarty, Deborah A, Wellington, OK	05/04/95
McFarland, Robert B, Boulder, CO	05/04/95
Miller, John J, Kalispell, MT	05/04/95
Orndoff, Robert K, Cambridge, OH	05/04/95
Osoba, William, Wichita, KA	05/04/95
Popick, Edward Robert, St. Petersburg, FL	05/04/95
Smith, John I, Dillion, CO	05/04/95
Storm, Roger L Jr, Springfield, OH	05/04/95
Sullivan, Richard T, Providence, RI	05/04/95
Wilkinson, Toby L, Westminster, CO	05/04/95
Williams, Joseph, Bridgeport, CT	05/04/95
Federal/State Exclusion/Suspension	
Porter, Thomas E, Goreville, IL	05/04/95
Entities Owned/Controlled by Convicted	
Cane Run Dental Center, Louisville, KY	05/04/95
Gargo Dental Associates, Inc., South Miami, FL	05/09/95
Lazaro, Dejesus Jr Diagnostic, Miami, FL	05/09/95
Trufaith Health Services, Inc., Miami, FL	05/09/95
Default on Health Loan	
Aarnodt, Wayne Garth, Grand Rapids, MI	05/04/95
Atwell, Sandra L, Shawnee, OK	05/09/95
Aufderheide, Dean H, Ft. Walton Beach, FL	05/04/95
Bauwens, David M, Steele, ND	05/04/95
Beavers, John E, Oklahoma City, OK	05/09/95
Benedict, Susan E, Santa Monica, CA	05/04/95
Berry, Alphonso, Southfield, MI	05/04/95
Betelman, Genady, Brooklyn, NY	05/07/95
Blount, Steve A, De Soto, TX	05/09/95
Brown, Wilbur E, Dunwoody, GA	05/04/95
Buck, Larry A, Iola, KA	05/04/95
Coello-Chavarri, Carlos A, Boca Raton, FL	05/04/95
Covek, Robert J, Grayslake, IL	05/04/95
Crandon, David J, Westminster, CA	05/04/95
Dang, Dung Duc, Channelview, TX	05/09/95

Subject, City, State	Effective Date
Dannels, Douglas Gale, Douglasville, GA	05/04/95
Davis-Wiese, Jacqueline S, Tempe, AZ	05/04/95
Dewees, Randel K, Los Gatos, CA	05/04/95
Dinofer, Jeffrey S, Miami, FL	05/04/95
Etienne, Ivan Joseph, Miami, FL	05/04/95
Fair, Benny Jr, Fort Wayne, IN	05/04/95
Fine, Mitchell L, Delray Beach, FL	05/04/95
Foxworth, Raymond, Jackson, MS	05/04/95
Fuller, Martin C, Chicago, IL	05/04/95
Gelbard, Steven D, Coral Springs, FL	05/09/95
Haggard, Joe R, Mapleton, UT	05/04/95
Holyway, Craig T, Detroit, MI	05/04/95
Howell, Richard W, Oklahoma City, OK	05/09/95
Hudson, Donald L, St Johns, MI	05/04/95
Jasper, Charles S, San Rafael, CA	05/04/95
Lanzarotta, Suzette T, Grass Valley, CA	05/04/95
Lee, John H, Port Arthur, TX	05/09/95
Luu, Kham Ngoc, Houston, TX	05/09/95
Marek, Michael L, Houston, TX	05/09/95
McKenzie, Janell T, Vincent, AL	05/04/95
McNair, Lawrence, Gulfport, MS	05/04/95
Melville, Carl J, Crestline, CA	05/04/95
Monahan, Michael L, Carlsbad, CA	05/04/95
Monbarren, John W, Lakewood, OH	05/04/95
Nugent, Richard E, Las Vegas, NV	05/04/95
Olson, Robert M III, Sierra Madre, CA	05/04/95
Otto, David E, Willoughby, OH	05/04/95
Pearman, Darrell W, Oklahoma City, OK	05/09/95
Pickett, Jan W, Colony, TX	05/09/95
Platt, Caroline M, Portland, OR	05/04/95
Pryor, Cornelius M III, Los Angeles, CA	05/04/95
Reischman, Grace A, Charlotte, NC	05/04/95
Reischman, Timothy J, Charlotte, NC	05/04/95
Rivera, Nelson E, Hartford, CT	05/04/95
Saunders, Robert D, Kingsport, TN	05/04/95
Scanlon, Mark J, Cincinnati, OH	05/04/95
Sensenig, Barry W, Boulder, CO	05/04/95
Seyfarth, Huey Augusta Jr, Baton Rouge, LA	05/09/95
Shanefelter, Charles D III, Saratoga, CA	05/04/95
Spogen, Frederick C III, Cocoa Beach, FL	05/04/95
Stewart, Barry A, Knoxville, TN	05/04/95
Stiggers, Donald, Cleveland, OH	05/04/95
Tessmer, Jon F, Brownwood, TX	05/09/95
Thornton, James G, Nevada City, CA	05/04/95
Tucker, James A, Arlington, TX	05/09/95
Unruh, Steve L, Baytown, TX	05/09/95
Ward, William F III, Norristown, PA	05/09/95
Werrell, Sandra M, Mt Laurel, NJ	05/07/95
Whitaker, Gary W, San Antonio, TX	05/09/95
White, Jeffrey Richard, Chattaroy, WA	05/04/95
Wiest, Gregory J, Baton Rouge, LA	05/09/95
Wiggins, William H III, Dunwoody, GA	05/04/95
Williams, Joanne, Sherman Oaks, CA	05/04/95
Section 1128Aa	
Evans, Harry D, Gilmer, TX	02/23/95
Home Bound Eyecare, Gilmer, TX	02/23/95

Dated: May 15, 1995.

William M. Libercci,

Director, Health Care Administrative Sanctions, Office of Civil Fraud and Administrative Adjudication.

[FR Doc. 95–12689 Filed 5–23–95; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. N–95–1409; FR–2383–N–06]

Notice of Submission of Proposed Information Collection to OMB

AGENCY: Office of the Secretary.

ACTION: Notice.

SUMMARY: The information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for expedited review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject requirements.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within ten (10) working days from the date of this Notice. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone No. (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the Department of Housing and Urban Development has submitted to OMB, for expedited processing, an information collection package with respect to Restrictions on Assistance to Noncitizens final rule, published on March 20, 1995.

The March 20, 1995 final rule implements Section 214 of the Housing and Community Development Act of 1980. This statute prohibits the Department from making financial assistance available to persons other than United States citizens, nationals, or certain categories of eligible noncitizens in certain HUD programs.

The Department has submitted the information collection package, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35):

(1) The title of the information collection proposal;

(2) the office of the agency to collect the information;

(3) the description of the need for the information and its use;

(4) the agency form number, if applicable;

(5) what members of the public will be affected by the information collection requirements;

(6) how frequently information submission will be required;

(7) an estimate of the total number of hours needed to prepare the information submission including numbers of respondents, frequency of response, and hours of response;

(8) whether the requirements reflect a new or an extension, reinstatement, or revision of an information collection requirement; and

(9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: May 8, 1995.

Nelson A. Díaz,

General Counsel.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Restrictions on Assistance to Noncitizens (FR–2383).

Office: Secretary.

Discription of the Need For The Information and Its Proposed Use: This rule implements Section 214 of the Housing and Community Development Act of 1980, as amended. Section 214 prohibits HUD from making housing assistance under certain covered programs available to persons who are not U.S. citizens, nationals, or eligible noncitizens under the categories specified in the statute.

Form Number: None.

Respondents: Individuals or Households, Business or Other For-Profit, and State, Local, or Tribal Government.

Reporting Burden:

	No. of respondents	×	Frequency of response	×	hours per response	=	Burden hours
Information collection	3,030,547		varies		varies		405,458

Total Estimated Burden Hours: 405,458.

Status: New.

Contract: Bruce Vincent (PIH), HUD, (202) 708–0744; Linda Flister (Housing), HUD, (202) 708–2300; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: May 8, 1995.

Supporting Statement for FR–2383—Restrictions and Assistance to Noncitizens

A. Justification

1. This request for OMB approval seeks clearance for information collections related to the implementation of Section 214 of the Housing and Community Development Act of 1980, as amended (42 U.S.C. 1436a), that prohibits the Secretary of HUD from making financial assistance available for the benefit of any person, who is not a U.S. citizen, national, or who is not a noncitizen of legal immigration status under one of the six categories of legal immigrant status specified in the statute. (Attachment #1 is a copy of Section 214.)

Implementation of Section 214 through Issuance of Regulations. The March 20, 1995, final rule implements Section 214 by adding certain regulatory provisions to the HUD existing regulations, listed below. (Attachment #2 is a copy of the March 20, 1995 final rule.)

- 24 CFR part 200, 215 (the Rent Supplement Program);
- 24 CFR part 200, 235 (Section 235 Program—Sec. 235 of the National Housing Act);
- 24 CFR part 200, 236 (Section 236 Program—Sec. 236 of the National Housing Act);
- 24 CFR part 812 (Section 8 Housing Assistance Payments Program);
- 24 CFR part 950 (Indian Housing Program) [Note: HUD's Indian Housing program was moved from part 905 to 950];
- 24 CFR part 912 (Public Housing Program);
- Applicable conforming amendments (for purposes of cross-referencing the Section 214 requirements contained in the above listed parts) were made to several other parts: 247, 850, 880, 881, 882, 883, 883, 886, 887, 900, 904 and 960.

The Information Collection Requirements in the March 20, 1995 final rule. The majority of the information collection requirements contained in the March 20, 1995 final rule flow directly from the statute. The statute specifies a declaration shall be submitted by each individual family member, and that alien registration documentation must be submitted for those individuals that indicate legal immigration status. Additionally, the statute provides for certain procedures such as an INS appeal process, a hearing process provided by the owner or housing authority that necessitate appropriate notices to the individual advising of the availability of processes. The statute also provides for certain actions to occur if immigration status is not confirmed (i.e., denial or termination of assistance) which also, for due process considerations, necessitate certain notices to provide fair notice of the possibility of these occurrences.

2. The following provides information on the frequency of the submission of information collection requirements.

- *Notice to applicants and tenants of requirements of Section 214.* The rule provides that notification of the requirements of Section 214 must be given to each applicant at the time of application for assistance, and to each tenant at the time of, and together with, any notice of regular reexamination of tenant income, but not later than one year following the effective date of the final rule.
- The notice is intended to facilitate the implementation of Section 214 and to ensure that applicants are not passed over for admission because they did not have sufficient knowledge of this new admission procedure and sufficient time to obtain

evidence of their eligible immigration status, when applicable.

• For applicants whose applications are pending, the final rule provides that notification must be given as soon as possible, but leaves precise timing to the discretion of the housing authority or project owner.

• Again, for existing tenants, the rule provides that notice be given when the housing authority or project owner gives notice of its up-coming reexamination of income. Generally, housing authorities and project owners provide notice to tenants that a reexamination is about to occur.

• Accordingly, no new times are established for notification of the requirements of Section 214 that are different from those periods when the housing authority or project owner would otherwise provide notice to the applicant or tenant or certain important information. (See §§ 200.183(f)(1), 812.6(f)(1), 912.6(f)(1) and 950.310(g)(1).)

• The information that needs to be included in the notice is described in the regulation. (See §§ 200.183(f)(2), 812.6(f)(2), 912.6(f)(2), and 950.310(g)(2).) However, no specific form is required, but model notices will be provided.

• *Declaration of citizenship or eligible immigration status.* Section 214(d)(1)(A) requires that applicants and tenants for HUD housing assistance programs covered by Section 214 must submit a declaration signed under penalty of perjury, in which individual indicates that he or she is a citizen or noncitizen with eligible immigration status. (See §§ 200.183(c), 812.6(c), 912.6(c), and 950.310(e)(3).)

• Every member of an applicant or tenant family must submit this document. An adult member of the family must execute this form on behalf of any children.

• The declaration need only be executed and submitted one time.

• No specific form of declaration is prescribed, but model language will be made available. The declaration may be incorporated as part of the application for housing assistance. (See §§ 200.183(c)(2), 812.6(c)(2), 912.6(c)(2), and 950.310(e)(3).)

• *No declaration necessary if individual is not a citizen or does not of eligible immigration status.* The March 20, 1995 final rule provides if one or more members of a family elect not to contend that they have eligible immigration status if other members of the family establish their citizenship or eligible immigration status. (see §§ 200.183(e), 812.6(e), 912.6(e), and 950.310(f).

• Section 214(c)(1)(A) provides that for existing tenants "continued assistance" is available if the head of the household or spouse is a U.S. citizen, national, or has eligible immigration status (as specified in Section 214). The regulatory provision permitting individuals to elect not to declare in certain situations should reduce the information collection requirements and processing requirements.

• *Verification consent form.* Section 214(d)(3) requires that those individuals who declare eligible immigration status, must have their status verified with the INS. Accordingly, so that these individuals will know that verification will be undertaken, the rule provides for a verification consent form to be signed by each noncitizen who declares eligible immigration status. (See §§ 200.183(d), 812.6(d), 912.6(d), 950.310(e)(4).) The consent form puts the family member on notice that his immigration status will be confirmed with INS.

Only members of a family who declares eligible immigration status must execute the verification consent form.

No specific form is prescribed, but model language will be made available.

• *Proof of age.* Section 214(d)(2)(A) provides that for noncitizens who are 62 years of age or older and receiving assistance under a Section 214 covered program on June 19, 1995 [the effective date of the final rule], in addition to a declaration the 62-year or older noncitizen may submit proof of age in lieu of submission of documents that evidence immigration status. (See §§ 200.813(b)(92)(ii), 812.6(b)(2)(ii), 912.6(b)(2)(ii), and 950.310(e)(2)(ii)(B).)

Only members of families who are existing tenants and who declare eligible immigration status and are 62 years of age or older must submit proof of age.

Types of documents that constitute proof of age are not prescribed in the rule. Since there is no prescribed list of acceptable documentation, it is anticipated that this burden should be minimal, and less burdensome for elderly persons than submission of immigration documents.

• *Evidence of immigration status.* Section 214 (d)(2)(A) requires that persons who declare that they are noncitizens with eligible immigration status must submit acceptable evidence of eligible immigration status. In accordance with INS requirements, the rule specifies which documents constitute acceptable evidence of immigration status. (See §§ 200.184, 812.7, 912.7, 950.310 (k)(2).

Only individuals who declare eligible immigration status (and are not existing tenants who are 62 years of age or older) must submit evidence of immigration status.

Evidence of immigration status need only be submitted one time, unless the individual's status changes, and the individual wants the housing authority's or project owner's record to reflect the changed immigration status.

The applicant or tenant noncitizen must submit the original documents, but they will be photocopied and returned by the project owner or housing authority. Note these are documents that already should be in the possession of the individual, and therefore there should be minimal burden associated with this requirement.

One-time submission of immigration documents. For each family member, evidence of immigration status is required to be submitted only one time during continuously assisted occupancy under any covered program.

• *Notice extending time to submit documentation, or denying extended time to submit documentation.* Section 214(d)(4)(A) requires that individuals must be given a reasonable opportunity to submit documentation if they submit the declaration required by Section 214. The rule provides consistent with Section 214 that project owners and housing authorities grant a reasonable extension. The period is to be determined by the project owner or housing authority, and must be definite in time (i.e., cannot be for an indefinite period). To avoid any difference of opinion concerning if in fact an extension was granted, the extension must be in writing. (See §§ 200.183(h), 812.6(h), 912.6(h) and 950.310(i).)

No specific form of notice is prescribed.

• *Primary verification through SAVE system.* The housing authority and project owner must verify with INS the immigration status of the applicant or tenant who declares eligible immigration status. This is done through means of an automated system that provides access to alien names, file an admission numbers (generally through a computer or touch tone telephone). Immigration status will be verified at the time of application for applicants, and at the time of the first annual reexamination for existing tenants. The time involved in making the primary verification is anticipated to be minimal.

• *Secondary verification through manual search.* If the primary verification fails to confirm eligible immigration status, then the housing authority or project owner requests the INS to conduct a manual search.

• *Notice when secondary verification fails to confirm immigration status.* If secondary verification (the manual search that follows the automated primary verification which fails to confirm immigration status) fails to confirm immigration status, the housing authority or project owner must issue a notice to the family advising that immigration status was not confirmed by INS records. (See §§ 200.185(c)(3), 812.8(c)(3), 912.8(c)(3), and 950.310(1)(3)(iii).)

No specific form or notice is prescribed.

Note that the notice required under these regulatory sections is the same as that required under the provisions described in the following paragraph 8 in the supporting statement.

• *Notice of denial or termination of assistance.* If the family fails to produce the immigration documents within a reasonable period, including any extension thereof, or if the immigration status is not concerned, the housing authority and project owner must issue a notice to the family that puts them on notice of the possibility of denial or termination of assistance, and advises them of their rights and responsibilities. (See §§ 200.186(d), 812.9(d), 912.9(d) and 950.310(m)(4).)

The information to be included in the notice is set forth in the rule, but no specific form of notice is prescribed.

• *Temporary deferral of termination of assistance—notification requirements connected with deferral of termination of assistance.* Section 214(c)(1)(B) provides that a housing authority or project owner may defer termination of financial assistance if necessary to permit the orderly transition of the family (that is determined ineligible under Section 214 for HUD financial assistance) to other affordable housing. The deferral may be up to a period for three years, and is available in increments of six month periods. Section 214(c)(1)(B) requires that "at the beginning of each deferral period," the housing authority or project owner shall inform the family of their ineligibility for financial assistance and offer assistance in finding other affordable housing.

The notification required by Section 214(c)(1)(B) and the ways in which assistance may be offered (also required by Section 214(c)(1)(B) reflected in the rule (see §§ 200.187(c), 812.10(d), 912.10(d), and 950.310(r)(3).)

• *Proration of assistance.* For mixed families, the final rule provides for housing authorities and project owners to prorate assistance, that is determine rental subsidy on the basis of the number of family members that are eligible for assistance. The formula for determining proration is set forth in the statute. (See §§ 200.188, 812.11, 912.11 and 950.310(s).)

Paperwork Matrix contained in August 25, 1994 Proposed Rule

The following duplicates the paperwork matrix that was contained in the published August 25,1994 proposed rule.

TABULATION OF ANNUAL REPORTING BURDEN NONCITIZENS RULE—RESTRICTION ON ASSISTANCE TO NONCITIZENS

Description of information collection	Section of 24 CFR affected	No. of respondents	No. of responses per respondent	Total annual responses	Hours per response	Total hours
Notification to tenants and applicants in Public & Indian Housing.	905.310(g) 912.6	3,300	700	2,310,000	.01	23,100
Denials, terminations, extensions, deferrals.	905.310(m)(4), (r) 912.9, 912.10.	3,300	19	62,700	.10 (6 minutes)	6,270
Notification and verification, denial, termination in section 8.	812.6, 812.9, 912.10	2,470,777	1	2,470,777	.05 (3 minutes)	123,539
Notification and verification, denial, termination in FHA subsidized.	200.183, 200.186 200.187, 235.13.	412,315	1	412,315	.05	20,616
Extensions	812.6(h), 200.183(h)	144,155	1	144,155	.16	23,065 (10 min.)
Recordkeeping—Public and Indian Housing.	905.310(q), 912.9(h)	3,300	761	2,511,300	.01	25,113
Recordkeeping in section 8	812.9(h)	2,470,777	1	2,470,777	.05	125,539
Recordkeeping in FHA subsidized.	200.186(h) 235.13	412,315	1	412,315	.05	20,616
Total Annual Burden						405,458

3. *Information Technology.* INS's Systematic Alien Verification Entitlement (SAVE) is an automatic system that should reduce the verification burden on responsible entities. This system can be operated by a touch-tone telephone or computer. This technology allows the housing authority or project owner to confirm the immigration status of an individual without the necessity for substantial paperwork.

4. *Minimizing Duplication.* While HUD has attempted to reduce the frequency of verifying immigration status (see the response to #2 above) by requiring only a one-time verification and by providing that verification of immigration status should occur when all other verifications occur, unfortunately; no other documents or system currently exist that will verify immigration status other than as set forth in the rule. This is the first time that housing authorities and project owners are being asked to verify immigration status.

5. *No Significant Impact on a Substantial Number of Small Entities.* As stated in both HUD's proposed rule (59 FR 43916) and final rule (60 FR 14823), HUD maintains that there is no significant impact on a substantial number of small entities.

6. *Consequences if Information Collection is Not Conducted.* If the information is collected as required by the rule, the consequence will be that persons who are not here legally in the United States or who do not meet one of the six immigration categories specified in the status will receive scarce housing resources.

7. *Special Circumstances that Require Collection to be Made Inconsistent with 5 CFR 1320.6.* None.

8. *Consultation with Persons Outside the Agency.* No formal consultation was undertaken. INS provided HUD with copies of its SAVE manual that HUD followed in describing the SAVE verification systems in the rule. Through its proposed rule, HUD received comments from housing authorities and project owners on data collection, frequency of collection, etc. These comments were taken into consideration in the development of the final rule.

9. *Assurance of Confidentiality.* INS's SAVE system carries its own protective measures. HUD's rule provides that individuals asked to submit evidence of immigration status shall be advised that this evidence will only be released to INS for purposes of establishing eligibility for financial assistance and not for any other purpose. (See §§ 200.183(d)(3), 812.6(d)(3), 912.6(d)(3), 950.310(e)(3)(iii).).

10. *Questions of a Sensitive Nature.* The only information required of a sensitive nature is citizenship/immigration status. This information is required by statute. No other sensitive information is sought under this rule.

11. *Estimates of Annualized Costs to the Federal Government.* The statute provides that HUD is to pay each public housing agency or other entity an amount equal to 100 percent of the costs incurred in implementing and operating an immigration verification system. At this point in time, before implementation, it is difficult to estimate the cost. Because HUD believes that the percentage of illegal aliens who have access to HUD housing assistance is minimal, and because of the technology involved (technology which can be operated through use of a touch tone telephone), the cost is not anticipated to be substantial. Any cost to respondent (housing authority or project manager) is assumed to be covered within the basic application, verification and reexamination processes of each of the programs covered by this rule.

12. *Provide Estimates of Burden Hours.* Please see matrix that is provided in the response to number 2.

13. *Amendments to Existing Collections.* Not applicable.

14. *Publication of Results.* Not applicable.

Summary. HUD believes that the administrative burden imposed by implementation of Section 214 will not be substantial. Although tracking of citizenship and noncitizenship status has not been undertaken to date, HUD believes that the number of noncitizens with ineligible immigration status residing in HUD public housing or assisted housing is low. HUD bases this belief on the fact that waiting for HUD housing assistance can take several years, the paperwork, to the completed to obtain HUD housing assistance is not insignificant, and citizenship and noncitizenship verification is already undertaken with other forms of Federal benefits (e.g., food stamps, Aid to families forms of Federal benefits (e.g., food stamps, Aid to Families with Dependent children), and frequently families for HUD housing assistance also will be recipients of other forms of benefits.

HUD believes that the burden on housing authorities and project owners will not be onerous for the reason set forth above, and also because documentation of citizenship or noncitizenship status is similar to and can be undertaken at the same time as determination of income eligibility. Additionally the house authority and project owner is not required to assist the family in obtaining evidence or to determine the validity of the evidence submitted.

For family members, the burden should be minimal because for citizens only a declaration is required. For noncitizens with eligible immigration status, such noncitizens should have with them their evidence of eligible immigration status.

[FR Doc. 95–12714 Filed 5–23–95; 8:45 am]
BILLING CODE 4210–32–M

[Docket No. N–95–3918; FR–3907–N–01]

Office of the Assistant Secretary for Housing—Federal Housing Commissioner; FY 1995 Funding Availability for HUD—Approved Housing Counseling Agencies

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Fiscal Year 1995 notice of funding availability for HUD-approved housing counseling agencies.

SUMMARY: This Notice announces the availability of Fiscal Year (FY) 1995 funding from the U.S. Department of Housing and Urban Development (HUD) for HUD-approved housing counseling agencies to provide housing counseling to homebuyers, homeowners, and renters. HUD anticipates that a maximum of $9.5 million dollars will be available through this Notice of Funding Availability (NOFA). All housing counseling agencies approved by HUD as of the publication date of this NOFA may apply for FY 1995 funding. This includes: (1) Multi-State, regional, or national intermediary organizations, and (2) local housing counseling agencies that do not elect to affiliate with a HUD-approved intermediary organization.

This NOFA contains additional information on the purpose and background of the NOFA and funding levels available to local counseling agencies and intermediary organizations respectively; eligible activities and funding criteria; and application requirements and procedures.

DATES: Completed applications must be submitted no later than 4 p.m. E.S.T. on June 23, 1995. As further described below, any completed application must be physically *received* by this deadline date and hour at the appropriate local HUD office (for local applicants) *or* at the Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW, Room 9282, Washington D.C. 20410 (for national, regional or multi-State applicants). In the interest of fairness to all applicants, late applications will be treated as ineligible for consideration. Applicants should take this requirement into account and make early submission of their applications to avoid loss of eligibility brought about by any unanticipated delays or other delivery-related problems. It is not sufficient for an application to be postmarked within the deadline. Applications sent by facsimile (FAX) will not be accepted. HUD will not waive this submission deadline for any reason.

ADDRESSES: For local housing counseling agency applicants: An original and two copies of the completed application must be submitted to the local HUD office having jurisdiction over the locality or area in which the proposed program is located. These copies should be sent to the attention of the Single Family Division Director, and the envelope should be clearly marked, "FY 1995 Counseling Application". A list of Single Family Division Directors and local HUD Offices appears at the end of this NOFA. Failure to submit an application to the correct office in accordance with the above procedures will result in disqualification of the application.

For national, regional and multi-State housing counseling agencies: An original and two copies of the completed application must be submitted to the person listed below in HUD Headquarters. The envelope should be clearly marked, "FY 1995 Counseling Application."

FOR FURTHER INFORMATION CONTACT: Marion F. Connell, Program Advisor, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW, Room 9282, Washington D.C. 20410; telephone (202) 708–0614, extension 2315 (voice), or (202) 708–4594 (TDD number). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this NOFA have been approved by the Office of Management and Budget, under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), and assigned OMB control number 2502–0261.

I. Purpose and Substantive Description

A. Authority and Purpose

HUD's housing counseling program is authorized under section 106 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x). The purpose of the program is to promote and protect the interests of housing consumers participating in HUD and other housing programs, as well as to help protect the interests of HUD and mortgage lenders. The Housing Counseling program is generally governed by HUD Handbook 7610.1, REV–3, which is currently under revision.

The new version of the Handbook is expected to be in effect by the time funding under this NOFA is provided. The new Handbook will differ from the current Handbook in that national, regional, and multi-State housing counseling intermediaries may be approved as counseling agencies and reimbursement will no longer be made on a "counseling unit" basis. Procedures for the approval of housing counseling intermediaries were published on April 25, 1995 (60 FR 20360). New reimbursement procedures are explained in the grant application kit for this NOFA. To the extent that this NOFA and its accompanying application kit are inconsistent with the current Handbook, the Handbook is superseded.

Section 106 authorizes HUD to provide counseling and advice to tenants and homeowners with respect to property maintenance, financial management, and such other matters as may be appropriate to assist tenants and homeowners in improving their housing conditions and in meeting the responsibilities of tenancy and homeownership. In addition, HUD-approved counseling agencies are permitted and encouraged by HUD to conduct community outreach activities and provide counseling to individuals with the objective of increasing awareness of homeownership opportunities and improving access of low and moderate income households to sources of mortgage credit. HUD believes that this activity is key to the revitalization and stabilization of low income and minority neighborhoods. (See the recently published notice inviting the application by national, multi-State and regional organizations for housing counseling agency approval, described above.)

Under the housing counseling program, HUD contracts with qualified public or private nonprofit organizations to provide the services authorized by the statute. When Congress appropriates funds for this purpose, HUD announces the availability of such funds, and invites applications from eligible agencies, through a notice published in the **Federal Register**. Currently there are 661 HUD-approved housing counseling agencies, serving over 1,000 locations. Annually, all HUD-approved agencies are eligible to apply for housing counseling grants. However, an agency that is approved by HUD does not automatically receive HUD funding, and HUD expects that all counseling agencies will continually work to develop other funding resources. In FY '94, 431 HUD-approved agencies received housing counseling funding from HUD.

B. Allocation Amounts

Approximately $12 million has been appropriated for FY 1995. Of this amount, $9.5 million is being made available under this NOFA for lump-sum, performance-based grants, as defined at 24 CFR part 84, subpart E. Approximately $3.5 million is being set aside to fund national, regional and multi-State organizations that apply for funding under this NOFA. No national, regional, or multi-State agency may receive more than $1 million. Approximately $6 million has been made available for grants to local HUD approved housing counseling agencies, and it has been allocated to each of the 10 HUD geographical areas (formerly Regions) by a formula that gives equal weight to the percentage of HUD insured single family mortgage defaults within each geographical area as of January 31, 1995, compared to the nationwide total the percentage of first-time homebuyers that were approved for FHA-insured mortgages by geographical area during 1994 compared to the nationwide total for those periods. This formula reflects the increased emphasis that HUD is placing on the expansion of homeownership opportunities for first-time homebuyers. For FY 1995, no individual local housing counseling agency may be awarded more than $100,000.

Amounts allocated for use in local agency programs, by HUD geographical area, are as follows:

Geographical areas	Default data		Allocation amount	First-time homebuyer data			Total allocation
	No. of defaults	Percent of nat'l defaults		No. of 1st timers	Percent of nat'l 1st timers	Allocation amount	
New England	3,052	1.95	58,623	13,720	2.99	89,589	148,213
NY/NJ	13,145	8.42	252,491	27,593	6.01	180,178	432,669
Mid-Atlantic	17,453	11.17	335,239	52,515	11.43	342,915	678,154
SE/Caribbean	38,973	24.95	748,598	89,713	19.53	585,812	1,334,410
Midwest	25,174	16.12	483,545	86,977	18.93	567,946	1,051,491
Southwest	22,486	14.40	431,914	50,966	11.09	332,800	764,714
Great Plains	4,040	2.59	77,601	17,613	3.83	115,010	192,611
Rocky Mts	4,125	2.64	79,233	26,062	5.67	170,181	249,414
Pac/Hawaii	25,020	16.02	480,587	74,670	16.25	487,584	968,171
NW/Alaska	2,716	1.74	52,169	19,600	4.27	127,985	180,154
Totals	156,184	100	3,000,000	459,429	100	3,000,000	6,000,000

Allocations of program funding already made are: $650,000 specifically to provide training and technical assistance to Home Equity Conversion Mortgage (HECM) counselors and to develop HECM distance learning and outreach materials; $500,000 to establish a Housing Counseling Clearinghouse as recommended by the National Homeownership Strategy; $400,000 to develop software for HUD-approved counseling agencies to computerize record-keeping and create a communications network; and $250,000 to extend the toll-free 800 number (800/569–4287) housing counseling referral service for public use.

If funds remain after HUD has funded all approvable grant applications in a HUD geographical area, or if any funds become available due to deobligation, that amount shall be reallocated and used in keeping with the statute and in a manner that will improve the delivery of housing counseling service nationwide. Any balance will be used to fund training for counselors from HUD approved agencies as provided by the Appropriations Act and requested by program users. HUD already has earmarked a minimum of $500,000 for this purpose.

C. Eligible Applicants

1. General

There are two types of HUD-approved organizations that are eligible to submit applications pursuant to this NOFA: (1) National, regional, or multi-State housing counseling organizations (also known as "intermediaries" or "umbrella groups"); and (2) local housing counseling agencies.

National, regional, and multi-State nonprofit, intermediary organizations must identify all their proposed affiliates in their application. These intermediaries must assure that their proposed affiliates are unique to their team and will not undertake a separate application for funds either as an affiliate of another intermediary or directly as a HUD-approved local counseling agency. Should any duplication occur, both the intermediary organization and the local agency involved will automatically be ineligible for further consideration to receive FY 1995 housing counseling funds. In addition, an intermediary-applicant must also assure that it has executed a sub-agreement with its affiliates that clearly delineates their mutual responsibilities for program management, incorporating appropriate timeframes for reporting results to HUD.

Once funded, the national, regional, and multi-State intermediaries will be given broad discretion in implementing their housing counseling programs. On behalf of HUD, the intermediaries will act as managers in the housing counseling process and, as such, may determine funding levels and counseling activity for each of their affiliates, except that no single affiliate may receive more than $100,000. HUD will hold the intermediary organization accountable for the performance of its affiliates.

Local counseling agencies may apply either directly to HUD for funding, or as a part of an affiliated intermediary network. Since HUD is not requesting a continuation of funding for housing counseling activities as a separate and discrete program for FY 1996 and thereafter, it encourages local agencies to consider affiliating with a larger entity as one avenue of possible future

funding and support for local programs. Local housing counseling agencies that are not currently HUD-approved may receive FY 1995 funding only as an affiliate of a HUD-approved national, regional, or multi-State intermediary's application for FY 1995 funds. In this instance, the intermediary organization must certify that the quality of services provided will meet, or exceed, standards for local HUD-approved agencies.

2. Civil Rights Prerequisites

Applicants that fall into any one of the following categories will be ineligible for funding under this NOFA:

a. The Department of Justice has brought a civil rights suit against the applicant and the suit is pending;

b. There has been an adjudication of a civil rights violation in a civil action brought against the applicant by a private individual, unless the applicant is operating in compliance with a court order, or implementing a HUD-approved compliance agreement designed to correct the areas of noncompliance;

c. There are outstanding findings of noncompliance with civil rights statutes, Executive Orders or regulations as a result of formal administrative proceedings, or the Secretary has issued a charge against the applicant under the Fair Housing Act, unless the applicant is operating under a conciliation or compliance agreement designed to correct the areas of noncompliance; or

d. HUD has deferred application processing by HUD under one of the following authorities:

i. Title VI of the Civil Rights Act of 1964 and the implementing guidelines of the Attorney General (28 CFR 50.3) and the HUD regulations (24 CFR 1.8);

ii. Section 504 of the Rehabilitation Act of 1973 and the HUD section 504 regulations (24 CFR 8.57);

iii. Executive Order 11063, as amended by Executive Order 12892 and HUD regulations (24 CFR Part 107);

iv. Title II of the Americans with Disabilities Act of 1990 and applicable regulations (28 CFR Part 36); or

v. The Age Discrimination Act of 1975 (42 U.S.C. 6101–6107) and implementing regulations (24 CFR Part 146).

3. Requirements Applicable to Religious Organizations

Where the applicant is, or proposes to contract with, a primarily religious organization, or a wholly secular organization established by a primarily religious organization, to provide, manage, or operate a housing counseling program, the organization must undertake its responsibilities under the counseling program in accordance with the following principles:

a. It will not discriminate against any employee or applicant for employment under the program on the basis of religion and will not limit employment or give preference in employment to persons on the basis of religion;

b. It will not discriminate against any person applying for counseling under the program on the basis of religion and will not limit such assistance or give preference to persons on the basis of religion; and

c. It will provide no religious instruction or religious counseling, conduct no religious services or worship, engage in no religious proselytizing, and exert no other religious influence in the provision of assistance under the housing counseling program.

D. Eligible Activities

Eligible activities will vary depending upon whether the applicant is a HUD-approved local counseling agency or a HUD-approved national, regional, or multi-State housing counseling intermediary.

1. Local Housing Counseling Agencies

Local housing counseling agencies funded under this NOFA may use HUD funds to deliver comprehensive housing counseling or to specialize in the delivery of particular housing counseling services according to the housing needs they identified for their target area in the plan that was previously approved by HUD. HUD recognizes that local housing counseling agencies may offer a wide range of services, including:

a. Renter assistance, including information about rent subsidy programs, rights and responsibilities of tenants, lease and rental agreements, etc.;

b. Outreach initiatives, including providing general information about housing opportunities within the community and providing appropriate information to persons with disabilities;

c. Pre-purchase homeownership counseling, covering such issues as purchase procedures, mortgage financing, downpayment/closing cost fund accumulation, accessibility requirements of the property—if appropriate, credit improvement, debt consolidation, etc.;

d. Post-purchase counseling, including such issues as property maintenance, personal money management, home equity conversion mortgages, etc.; or

e. Mortgage delinquency and default resolution, including restructuring debt, arrangement of reinstatement plans, loan forbearance, assignment of mortgage to HUD, etc.

HUD-funded local counseling agencies may elect to offer their services to a wide range of clients or may elect to serve a more limited audience. Potential clients include: renters; potential homebuyers; homeowners eligible for and applying for HUD-related, VA, FmHA, State, local, or conventionally financed housing or housing assistance; or persons who occupy such housing and seek the assistance of a HUD-approved housing counseling agency to resolve a housing need (including the need of a person with a disability for accessible housing) or problem. Local housing counseling agencies may elect to offer this assistance in conjunction with any HUD housing program but must be familiar with FHA's single family and multifamily housing programs.

2. National, Regional, or Multi-State Counseling Intermediaries

The primary activity of national, regional, or multi-State nonprofit housing counseling intermediaries will be to manage the use of HUD housing counseling funds, including the distribution of counseling funding to affiliated local housing counseling organizations. Local affiliates of the selected national, regional, or multi-State counseling intermediaries are eligible to undertake any or all of the housing counseling activities outlined above for the HUD-approved local housing counseling agencies. The local affiliates receiving funding through intermediaries do not need to be HUD-approved in order to receive these funds from the intermediary. However, the national, regional, or multi-State intermediary organization must be HUD-approved as of the NOFA publication date.

E. Selection Process

1. Local Housing Counseling Agencies

All applications meeting the requirements of this NOFA will be selected for funding, if sufficient funds are available within the HUD geographic allocation area for local housing counseling agency applicants.

a. Criteria/Ranking Factors

All applications will be rated and ranked by staff in the appropriate local HUD office using the following criteria:

i. Capability of the applicant as determined by HUD, including competent delivery of counseling services and timely drawdown of any HUD funds awarded in the prior Fiscal Year—up to 50 points;

ii. Adequacy of the activities proposed by the applicant in response to housing needs identified in the applicant's housing counseling plan as previously approved by HUD—up to 25 points;

iii. Evidence of private funding sources contributing to the applicant's operating budget over the past calendar year—up to 15 points; and

iv. Evidence of current funding support from units of government located within the target area which the applicant intends to serve—up to 10 points.

b. Selection Procedure

National, regional, and multi-State applications will be ranked in Headquarters and selected for funding, in rank order, until all funds for such agencies are depleted. Local agency applications will be reviewed by the Field Office and assigned points under the selection criteria. Then the Field Office will submit its recommendations for funding to HUD Headquarters for final review, to ensure appropriate geographical distribution of program funds and consistent application of the criteria described above. HUD Headquarters will then rank the local agency applications within the geographical areas and select for funding, in rank order, all acceptable applications to the point at which all funds are depleted.

i. Breaking a Tie

If two or more applications receive the same number of points and sufficient funds are not available to fund all such applications, first the application or applications requesting the smallest grants will be selected, if a sufficient amount remains to fund them. If two or more tied applications request the same amount and sufficient funds are not available to fund all such applications, the following system will be used to break the ties:

A. If the tied applications are for programs to be carried out in different jurisdictions, applications with the highest number of points for the rating criterion a. ii. (adequacy of activities) stated above will be selected, if sufficient funds remain.

B. If the tied applications are to be carried out in the same jurisdiction, applications with the highest number of points for the rating criterion a. i. (capability) stated above will be selected, if sufficient funds remain.

ii. Reallocations

Funds remaining after applying the procedures described in paragraph E.1.b. will be reallocated to fund the highest ranking remaining applications without regard to their location.

iii. Procedural Errors

Procedural errors by HUD discovered after initial ratings, but before notification to Congress of selected applicants, will be corrected and rankings will be revised.

iv. Reductions

HUD will approve an application for an amount lower than the amount requested or adjust line items in the proposed budget within the amount requested (or both) if it determines that:

A. The amount requested for one or more eligible activities is unreasonable, unnecessary, or unjustified;

B. An activity proposed for funding does not qualify as an eligible activity;

C. The applicant is not able to carry out all the activities requested; or

D. Insufficient amounts remain in that funding round to fund the full amount requested in the application.

v. Limitation of Geographic Scope

HUD may reduce the geographic scope of the proposed program if it determines that:

A. Two or more fundable applications substantially overlap; or

B. The proposed geographic scope is overly large given the capacity of the organization.

2. National, Regional, and Multi-State Counseling Organizations

If more applications are submitted to HUD Headquarters from national, regional, and multi-State organizations that meet all the requirements of this NOFA than can be funded with the amount allocated for this purpose, they will be rated by staff in HUD Headquarters using the above ranking criteria stated in paragraph 1. a., and the top-rated applicants will be selected. Paragraphs 1. c. iii., iv., and v., above also apply to the selection of national, regional, and multi-State counseling organizations.

3. Notification of Approval or Disapproval

After completion of the selection process, but no later than six months after the deadline date for submission of the applications, as stated in this NOFA, HUD will notify, in writing, the applicants that have been selected and the applicants that have not been selected.

F. Funding Levels

Funding levels will be based on the amount authorized by the Congress, geographical distribution as described above, the performance record of each counseling agency as determined by HUD's analysis of prior year counseling workload and results of the most recent biennial performance review, competent delivery of counseling services and timely drawdown of funds awarded, and the agency's needs, as specified in the application according to its housing counseling plan previously approved by HUD. In addition, applicants that can demonstrate successful efforts to obtain non-HUD funding in their applications will receive extra consideration in HUD's rating and ranking process. HUD funding provided *must* be less than the total actual cost of the agency's housing counseling program.

1. Local Housing Counseling Agencies

HUD will fund local agencies according to the budget submitted with the application, in an amount not to exceed $100,000. Amounts requested by local housing counseling agencies should reflect anticipated operating needs for housing counseling activities, based upon counseling experience during the last year and existing agency capacity. To the maximum extent possible, local counseling agencies also must seek other private and public sources of funding to supplement HUD funding. HUD never intends for its counseling grant funds to cover all costs incurred by an agency participating in the program.

Local housing counseling agencies may use the HUD grant to undertake any of the eligible counseling activities described in this NOFA and included in their HUD-approved plan. FY 1995 housing counseling grant funds also may be used for "capacity building" as defined in this NOFA. Up to $4,000 of the grant amount may be used to: purchase computer equipment that meets, or exceeds, HUD specifications; enhance existing telephone service, such as purchasing a Telecommunications Device for the Deaf (TDD) to serve persons with hearing impairments (as an alternative to using TDD relay service); and install FAX machines. The Department will require that all funded grantees that do not currently have adequate computer systems use all or a portion of their $4,000 capacity building portion of the grant to purchase computer hardware according to HUD specifications. Computer training for one staff person also may be paid from the $4,000 set-aside, as may training on how to use a TDD. Title to equipment acquired by a recipient with program funds shall vest in the recipient, subject to the provisions of 24 CFR part 84, subpart E.

2. National, Regional, or Multi-State Counseling Intermediaries

The intermediary organization will distribute the majority of funds awarded to their proposed local housing counseling affiliates. Intermediaries should budget an amount which reflects their best estimate of cost to oversee and fund these counseling efforts, as well as the funding needs of their affiliates. Note that HUD housing counseling funding is not intended to fully fund either the intermediary's housing counseling program or the housing counseling programs of the local affiliates. To the maximum extent possible, intermediaries and their local affiliates are expected to seek other private and public sources of funding for housing counseling to supplement HUD funding.

An intermediary may use up to $5,000 of its total grant amount for capacity building expenses such as: purchasing computer equipment; enhancing telephone service, such as purchasing a Telecommunications Device for the Deaf (TDD) to serve persons with hearing impairments (as an alternative to using TDD relay service); installing FAX machines; and preparing or publishing counseling materials. If the intermediary does not have an adequate computer system, the Department will require that the $5,000 capacity building portion of the grant be used to purchase necessary equipment meeting HUD specifications. Title to equipment acquired by a recipient with program funds shall vest in the recipient, subject to the provisions of 24 CFR part 84, subpart E.

HUD will give the selected nonprofit intermediaries wide discretion to implement the housing counseling program with their affiliates. The intermediary may decide how to allocate funding among its affiliates and may determine funding levels at or below $100,000 for individual affiliates, with the understanding that a written record will be kept of how this determination is made. This record shall be made available to the agencies affiliated with the intermediary.

III. Checklist of Application Submission Requirements

A. General

Contents of an application will differ somewhat for local housing counseling agencies and for national, regional, or multi-State intermediaries; however, all applicants are expected to submit:

1. Standard Form 424, Application for Federal Assistance.

2. Standard Form 424B, Assurances-Non-construction Programs.

3. Certification of a Drug Free Workplace, in accordance with the Drug-Free Workplace Act of 1988, and HUD's regulations at 24 CFR part 24, subpart F.

4. Anti-lobbying certification in accordance with section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352), and the regulations at 24 CFR part 87.

5. Form HUD–2880, Applicant/Recipient Disclosure Update Report, as required under subpart C of 24 CFR part 12, Accountability in the Provision of HUD Assistance.

6. Disclosure of Lobbying Activities on SF–LLL must be used to disclose lobbying with other than Federal funds at the time of application.

7. HUD Form 9902–Housing Counseling Agency Fiscal Year Activity Report for 1994. Where an applicant did not participate in HUD's Housing Counseling Program during FY 1994, this report should be completed to reflect the agency's counseling workload during that period in any case. This form must be fully completed and submitted by every applicant for FY 1995 HUD funding. HUD will reject any application that does not include this form.

8. Assurance that, if funded, it will administer its housing counseling program in keeping with the provisions of HUD Handbook 7610.1, as revised.

9. A description of the counseling services to be offered in response to housing needs in the agency's target area, according to the plan previously approved by HUD, with any modifications necessitated by changing housing market conditions in the agency's target area(s).

10. A realistic, proposed budget for use of HUD funds if awarded. This should be broken down into two categories: direct counseling costs and capacity building costs. Note that the budget submitted by a local agency may not exceed a total of $100,000. Capacity building costs for local agencies may not exceed $4,000. National, regional and multi-state organizations may submit a proposed budget up to $1 million. Capacity building costs for these organizations may not exceed $5,000.

B. National, Regional, and Multi-State Intermediaries

National, regional, and multi-State intermediaries must submit an application which covers both their network organization and their affiliated agencies. This application must include:

1. Description of affiliated agencies. For each, list the following information:

a. Organization name

b. Address

c. Director and contact person (if different)

d. Phone/FAX numbers (including TDD, if appropriate)

e. Federal tax identification number

f. ZIP code service areas

g. Number of staff providing counseling

h. Type of services offered (defined by renter assistance, outreach initiatives, pre-purchase counseling, post-purchase counseling, and mortgage default and delinquency counseling)

i. Number of years of housing counseling experience

2. Relationship with affiliates. Briefly describe the intermediary's relationship with affiliates (i.e. membership organization, field or branch offices, subsidiary organizations, etc.).

3. Oversight system. Describe the process that will be used for determining affiliate funding levels, distributing funds, and monitoring affiliate performance.

IV. Corrections to Deficient Applications

After the submission deadline, applicants may cure only non-substantial, technical deficiencies that surface during HUD screening of their application. Applicants will have a "cure period" to correct such deficiencies that are not integral to HUD's review of the application. Applicants have 14 calendar days from the date HUD notifies them of any problem to submit the appropriate information to HUD. Notification of a technical deficiency may be in writing or by telephone. If the HUD notification is by telephone, a written confirmation will be transmitted by HUD to the applicant. Where HUD determines that an application as initially submitted is fundamentally incomplete, or would require substantial revisions, it will not consider the application further. Note: HUD will not inform applicants regarding application deficiencies other than as described in this section.

V. Other Matters

Environmental Impact

A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations at 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332, in connection with the Notice of Funding Availability published in connection with the Housing Counseling program on March 21, 1994 (59 FR 13366). That Finding is applicable to this NOFA and is available for public inspection during business hours in the Office of the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410.

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this NOFA does not have "federalism implications" because it does not have substantial direct effects on the States (including their political subdivisions), or on the distribution of power and responsibilities among the various levels of government. This NOFA only affects nonprofit or public organizations who seek funding for their housing counseling activities.

Impact on the Family

The General Counsel, as the Designated Official under Executive Order 12606, the Family, has determined that this NOFA has potential significant impact on family formation, maintenance, and general well-being only to the extent that the entities who qualify for participation in HUD's housing counseling program under this notice will provide families with the counseling and advice they need to avoid rent delinquencies or mortgage defaults, and to develop competence and responsibility in meeting their housing needs. Since the potential impact on the family is considered beneficial, no further review under the Order is necessary.

Documentation and Public Access Requirements: HUD Reform Act

HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b).)

Prohibition Against Advance Information on Funding Decisions: HUD Reform Act

HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a), 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are restrained by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815 (voice) or (202) 708–1112 (TDD). (These are not toll-free numbers.) The Office of Ethics can provide information of a general nature to HUD employees, as well. However, a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact his or her Assistant General Counsel or Headquarters counsel for the program to which the question pertains.

Influence on Awards: HUD Reform Act

Section 112 of the Department of Housing and Urban Development Act (42 U.S.C. 3537b) contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence the award of HUD assistance, if the fees are tied to the amount of assistance received, or if they are contingent upon the receipt of assistance. See 24 CFR part 86.

Any questions about these requirements should be directed to the Office of Ethics, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410–0500. Telephone: (202) 708–3815 (voice); (202) 708–1112 (TDD). (These are not toll-free numbers.) Forms necessary for compliance with the rule may be obtained from the local HUD office.

Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of 24 CFR part 87. That regulation prohibits recipients of federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative branches of the federal government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no federal funds have been or will be spent on lobbying activities in connection with the assistance.

Catalog

The Catalog of Federal Domestic Assistance Program number is 14.169.

Dated: May 12, 1995.

Jeanne K. Engel,

General Deputy, Assistant Secretary for Housing-Federal Housing Commissioner.

Appendix A—HUD Offices

Note: The title of all those listed is: Director, Single Family Division, U.S. Department of Housing and Urban Development. Telephone numbers are not toll-free.

Applicants within the Oklahoma State/Southwest Area who would have submitted applications to the HUD Oklahoma State Office in Oklahoma City, should send their applications to the Tulsa, Oklahoma Area Office.

HUD—New England Area

Connecticut State Office

Mr. Ronald T. Black, First Floor, 330 Main Street, Hartford, CT 06106–1860, (203) 240–4569.

Massachusetts State Office

Mr. Edward T. Bernard, Room 375, Thomas P. O'Neill, Jr. Federal Building, 10 Causeway Street, Boston, MA 02222–1092, (617) 565–5101.

New Hampshire State Office

Mr. Loren Cole, Norris Cotton Federal Building, 275 Chestnut Street, Manchester, NH 03101–2487, (603) 666–7755.

Rhode Island State Office

Mr. Michael Dziok, Sixth Floor, 10 Weybosset Street, Providence, RI 02903–2808, (401) 528–5351.

HUD—New York, New Jersey Area

New Jersey State Office

Ms. Encarnacion Loukatos, Thirteenth Floor, One Newark Center, Newark, NJ 07102–5260, (201) 622–7900 X3400.

New York State Office

Mr. Juan Bustista, 26 Federal Plaza, New York, NY 10278–0068, (212) 264–0777 X3746.

Albany Area Office

Mr. Robert S. Scofield, Jr., 52 Corporate Circle, Albany, NY 12203–5121, (518) 464–4204.

Buffalo Area Office

Mr. Glenn Ruggles, Fifth Floor, Lafayette Court, 465 Main Street, Buffalo, NY 14203–1780, (716) 846–5732.

Camden Area Office

Mr. Philip Caulfield, Second Floor, Hudson Building, 800 Hudson Square, Camden, NJ 08102–1156, (609) 757–5083.

HUD—Midatlantic Area

District of Columbia Office

Ms. Carole Catineau, 820 First Street, NE, Washington, D.C. 20002–4502, (202) 275–9200 X3055.

Maryland State Office

Ms. Candace Simms, Fifth Floor, City Crescent Building, 10 South Howard Street, Baltimore, MD 21201–2505, (410) 962–2520 X3094.

Pennsylvania State Office

Mr. Mike Perretta, The Wanamaker Building, 100 Penn Square East, Philadelphia, PA 19107–3380, (215) 656–0507.

Virginia State Office

Ms. Rheba G. Gwaltney, The 3600 Centre, 3600 West Broad Street, P.O. Box 90331, Richmond, VA 23230–0331, (804) 278–4512.

West Virginia State Office

Mr. Peter Minter, Kanawha Valley Building, Suite 708, 405 Capitol Street, Charleston, WV 25301–1795, (304) 347–7064.

Pittsburgh Area Office

Mr. Richard Nemoytin, 412 Old Post Office Courthouse, 7th Avenue and Grant Street, Pittsburgh, PA 15219–1906, (412) 644–5940.

HUD—Southeast/Caribbean Area

Alabama State Office

Ms. Martha Andrus, Suite 300, Beacon Ridge Tower, 600 Beacon Parkway, West, Birmingham, AL 35209–3144, (205) 290–7648.

Caribbean Office

Ms. Margarita Delgado, New San Juan Office Building, 159 Carlos Chardon Avenue, San Juan, PR 00918–1804, (809) 766–5402.

Georgia State Office

Ms. Janice Cooper, Richard B. Russell Federal Building, 75 Spring Street, S.W., Atlanta, GA 30303–3388, (404) 331–4801.

Kentucky State Office

Mr. David A. Powell, 601 West Broadway, P.O. Box 1044, Louisville, KY 40201–1044, (502) 582–6167.

Mississippi State Office

Mr. Jerry F. Perkins, Suite 910, Doctor A.H. McCoy Federal Building, 100 West Capitol Street, Jackson, MS 39269–1016, (601) 965–4930.

North Carolina State Office

Mr. Robert Dennis, Koger Building, 2306 West Meadowview Road, Greensboro, NC 27407–3707, (910) 547–4053.

South Carolina State Office

Mr. David L. Ball, Strom Thurmond Federal Building, 1835 Assembly Street, Columbia, SC 29201–2480, (803) 765–5593.

Coral Gables Area Office

Ms. Sara D. Warren, Gables 1 Tower, 1320 South Dixie Highway, Coral Gables, FL 33146–2911, (305) 662–4527.

Jacksonville Area Office

Ms. Martha A. Littlefield, Suite 2200, Southern Bell Tower, 301 West Bay Street, Jacksonville, FL 32202–5121, (904) 232–2811.

Knoxville Area Office

Mr. John Robbins, Third Floor, John J. Duncan Federal Building, 710 Locust Street, Knoxville, TN 37902–2526, (615) 545–4377.

Memphis Area Office

Ms. Bonnie G. Johnson, Suite 1200, One Memphis Place, 200 Jefferson Avenue, Memphis, TN 38103–2335, (901) 544–3403.

Tennessee State Office

Mr. Ed M. Phillips, Suite 200, 251 Cumberland Bend Drive, Nashville, TN 37228–1803, (615) 736–7154.

Orlando Area Office

Mr. Robert K. Osterman, Suite 270, Langley Building, 3751 Maguire Boulevard, Orlando, FL 32803–3032, (407) 648–6441.

Tampa Area Office

Ms. Nikki A. Spitzer, Suite 700, Timberlake Federal Building Annex, 501 East Polk Street, Tampa, FL 33602–3945, (813) 228–2504.

HUD—Midwest Area

Illinois State Office

Ms. Debra F. Robinson, Ralph H. Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604–3507, (312) 886–9043.

Indiana State Office

Ms. Brenda Laroche, 151 North Delaware Street, Indianapolis, IN 46204–2526, (317) 226–7034.

Michigan State Office

Mr. John Frelich, Patrick V. McNamara Federal Building, 477 Michigan Avenue, Detroit, MI 48226–2592, (313) 226–6885.

Minnesota State Office

Mr. John E. Buenger, 220 Second Street, South, Minneapolis, MN 55401–2195, (612) 370–3053.

Ohio State Office

Mr. Verlon Shannon, 200 North High Street, Columbus, OH 43215–2499, (614) 469–5536.

Wisconsin State Office

Mr. Larry Milewski, Suite 1380, Henry S. Reuss Federal Plaza, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2289, (414) 297–3156.

Cincinnati Area Office

Ms. Louistine Tuck, 525 Vine St., Suite 700, Cincinnati, OH 45202–3253, (513) 684–2233.

Cleveland Area Office

Mr. Kendel King, Fifth Floor, Renaissance Building, 1350 Euclid Avenue, Cleveland, OH 44115–1815, (216) 522–2784.

Flint Area Office

Mr. Gary Levine, Room 200, 605 North Saginaw Street, Flint, MI 48502–1953, (810) 766–5107.

Grand Rapids Area Office

Ms. Shirley Bryant, 2922 Fuller Avenue, NE, Grand Rapids, MI 49505–3499, (616) 456–2146.

HUD—Southwest Area

Arkansas State Office

Ms. Susan E. Finister, Suite 900, TCBY Tower, 425 West Capitol Avenue, Little Rock, AR 72201–3488, (501) 324–5961.

Louisiana State Office

Mr. Byron D. Duplantier, 9th Floor, Hale Boggs Federal Building, 501 Magazine St., New Orleans, LA 70130–3099, (504) 589–6833.

New Mexico State Office

Ms. Carol G. Johnson, 625 Truman Street, NE, Albuquerque, NM 87110–6443, (505) 262–6269.

Texas State Office

Mr. Louis Ybarra, 1600 Throckmorton Street, P.O. Box 2905, Fort Worth, TX 76113–2905, (817) 885–6255.

Houston Area Office

Mr. Henry Hadnot, Suite 200, Norfolk Tower, 2211 Norfolk, Houston, TX 77098–4096, (713) 834–3289.

Lubbock Area Office

Mr. Miguel Rincon (Acting), Federal Office Building, 1205 Texas Avenue, Lubbock, TX 79401–4093, (806) 743–7262.

San Antonio Area Office

Mr. Antonio C. Cabral, Washington Square, 800 Dolorosa Street, San Antonio, TX 78207–4563, (210) 229–6898.

Shreveport Area Office

Ms. Martha Sakre, Suite 1510, 401 Edwards Street, Shreveport, LA 71101–3107, (318) 676–3387.

Tulsa Area Office

Ms. Jeanne King, 50 East 15th Street, Suite 110, Tulsa, OK 74119–4032, (918) 581–7442.

HUD—Great Plains

Iowa State Office

Mr. Patrick Liao, Room 239, Federal Building, 210 Walnut Street, Des Moines, IA 50309–2155, (515) 284–4804.

Kansas/Missouri State Office

Mr. Deryll Sellmeyer, Room 200, Gateway Tower II, 400 State Avenue, Kansas City, KS 66101–2406, (913) 551–6820.

Nebraska State Office

Ms. Nancy Sheets, Executive Tower Centre, 10909 Mill Valley Road, Omaha, NE 68154–3955, (402) 492–3135.

Saint Louis Area Field Office Mr. Art Pearrow, Third Floor, Robert A. Young Federal Building, 1222 Spruce Street, St. Louis, MO 63103–2836, (314) 539–6388.

HUD—Rocky Mountains Area

Colorado State Office

Ms. Sheryl S. Miller, First Interstate Tower North, 633 17th Street, Denver, CO 80202–3607, (303) 672–5343.

Montana State Office

Mr. Gerald Boone, Room 340, Federal Office Building, Drawer 10095, 301 S. Park, Helena, MT 59626–0095, (406) 449–5205.

Utah State Office

Mr. Richard P. Bell, Suite 550, 257 Tower, 257 East, 200 South, Salt Lake City, UT 84111–2048, (801) 524–5241.

HUD—Pacific/Hawaii Area

Arizona State Office

Ms. Bernice Campbell, Suite 1600, Two Arizona Center, 400 North 5th Street, Phoenix, AZ 85004–2361, (602) 379–6704.

California State Office

Mr. Keith Axtell (Acting), Philip Burton Federal Building and U.S. Courthouse, 450 Golden Gate Avenue, P.O. Box 36003, San Francisco, CA 94102–3448, (415) 556–0796.

Hawaii State Office

Ms. Jill B. Hurt, 7 Waterfront Plaza (Suite 500), 500 Ala Moana Boulevard, Honolulu, HI 96813–4918, (808) 522–8190.

Nevada State Office

Mr. Benjamin F. Davis, Suite 700, Atrium Building, 333 No. Rancho Drive, Las Vegas, NV 89106–3714, (702) 388–6500.

Fresno Area Office

Ms. Yvielle Edwards-Lee, Suite 138, 1630 E. Shaw Avenue, Fresno, CA 93710–8193, (209) 487–5032.

Los Angeles Area Office

Mr. Malcolm Findley, 1615 West Olympic Boulevard, Los Angeles, CA 90015–3801, (213) 251–7217.

Reno Area Office

Mr. William Fattic, Suite 114, 1575 Delucchi Lane, Reno, NV 89502–6581, (702) 784–5388.

Sacramento Area Office

Mr. Ron M. Johnson (Acting), Suite 200, 777 12th Avenue, Sacramento, CA 95814–1997, (916) 498–5254.

San Diego Area Office

Mr. Danny E. Mendez, Mission City Corporate Center, 2365 Northside drive (Suite 300), San Diego, CA 92108–2712, (619) 557–2608.

Santa Ana Area Office

Mr. David A. Westerfield, Suite 500, 3 Hutton Centre, Santa Ana, CA 92707–5764, (714) 957–7352.

Tucson Area Office

Ms. Sharon K. Atwell, Suite 700, Security Pacific Bank Plaza, 33 North Stone Avenue, Tucson, AZ 85701–1467, (520) 670–6000.

HUD—Northwest/Alaska Area

Alaska State Office

Mr. Paul O. Johnson, Suite 401, University Plaza Building, 949 East 36th Avenue, Anchorage, AK 99508–4399, (907) 271–4610.

Idaho State Office

Mr. Gary L. Gillespie, Suite 220, Plaza IV, 800 Park Boulevard, Boise, ID 83712–7743, (208) 334–1991.

Oregon State Office

Ms. Pamela D. West, 520 S.W. 6th Avenue, Portland, OR 97204–1596, (503) 326–2684.

Washington State Office

Mr. David L. Rodgers, Suite 200, Seattle Federal Office Building, 909 First Avenue, Seattle, WA 98104–1000, (206) 220–5200 X3252.

[FR Doc. 95–12729 Filed 5–23–95; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–030–1220–00; Closure Notice No. NV–030–95–03]

Emergency Closure of Federal Lands

SUMMARY: Notice is hereby given that certain public lands in the vicinity of Golden Valley, Washoe County, Nevada, are closed to all motorized vehicles. This closure is necessary due to unauthorized road construction and off-road vehicle use which is causing considerable adverse effects to soil, vegetation and wildlife habitat in the area.

DATES: This closure goes into effect on June 1, 1995, and will remain in effect until the Carson City District Manager determines it is no longer needed.

FOR FURTHER INFORMATION CONTACT: James M. Phillips, Lahontan Resource Area Manager, Carson City District, 1535 Hot Springs Road, Carson City, Nevada 89706. Telephone (702) 885–6100.

SUPPLEMENTARY INFORMATION: The authorities for this closure are 43 CFR 8341.2,43 CFR 8342.3 and 43 CFR 8364.1. Any person who fails to comply with a closure order is subject to arrest and fines in accordance with applicable provisions of 18 USC 3571 and/or imprisonment not to exceed 12 months.

This closure applies to all motorized vehicles excluding (1) any emergency or law enforcement vehicle while being used for emergency purposes, and (2) any vehicle whose use is expressly authorized in writing by the Lahontan Resource Area Manager.

The public lands affected by this closure are located in Golden Valley, and while excluding the main access road running from the west-southwest to the east-northeast through these lands, include all other lands within:

Mt. Diablo Meridian

T.20N., R.19E.,
Sec. 2, E½SE¼SW¼, W½SW¼SE¼.

A map of the area closed to motorized vehicles is posted in the Carson City District Office.

Dated: May 16, 1995.

John O. Singlaub,

Carson City District Manager.

[FR Doc. 95–12706 Filed 5–23–95; 8:45 am]

BILLING CODE 4310–HC–M

[WY–920–05–1320–01; WYW136447]

Invitation for Coal Exploration License; Campbell County, WY

May 15, 1995.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of invitation for coal exploration license.

SUMMARY: .Pursuant to section 2(b) of the Mineral Leasing Act of February 25, 1920, as amended by section 4 of the Federal Coal Leasing Amendments Act of 1976, 90 Stat. 1083, 30 U.S.C. 201 (b), and to the regulations adopted as Subpart 3410, Title 43, Code of Federal Regulations, all interested parties are hereby invited to participate with Antelope Coal Company on a pro rata cost sharing basis in its program for the exploration of coal deposits owned by the United State of America in the following-described lands in Campbell County, Wyoming:

T. 41 N., R. 71 W., 6th P.M., Wyoming,
Sec. 22: Lots 2, 10;
Sec. 23: Lots 11, 12, 14, 15;
Sec. 27: Lots 6, 11;
Containing approximately 33.60 acres.

All of the coal in the above-described land consists of unleased Federal coal within the Powder River Basin Known Recoverable Coal Resource Area. The purpose of the exploration program is to conduct off-lease exploration by drilling.

ADDRESSES: The proposed exploration program is fully described and will be conducted pursuant to an exploration plan to be approved by the Bureau of

Land Management. Copies of the exploration plan are available for review during normal business hours in the following offices (serialized under number WYW136447): Bureau of Land Management, Wyoming State Office, 2515 Warren Avenue, P.O. Box 1828, Cheyenne, Wyoming 82003; and, Bureau of Land Management, Casper District Office, 1701 East 'E' Street, Casper, Wyoming 82601.

SUPPLEMENTARY INFORMATION: This notice of invitation will be published in the *The News-Record* of Gillette, Wyoming, Once each week for two consecutive weeks beginning the week of May 22, 1995, and in the **Federal Register**. Any party electing to participate in this exploration program must send written notice to both the Bureau of Land Management and Antelope Coal Company no later than thirty days after publication of this invitation in the **Federal Register**. The written notice should be sent to the following addresses: Antelope Coal Company, Attn: Tom Suchomel, Caller Box 3009, Gillette, Wyoming 82717, and the Bureau of Land Management, Wyoming State Office, Home Base Chief, Minerals and Lands Authorization Group, P.O. Box 1828, Cheyenne, WY 82003.

The foregoing is published in the **Federal Register** pursuant to Title 43 Code of Federal Regulations, Section 3410.2–1(c)(1).

Michael J. Madrid,

Chief, Minerals/Lands Authorization Group, Wyoming State Office.

[FR Doc. 95–12701 Filed 5–23–95; 8:45 am]

BILLING CODE 4310–22–M

[WY–920–05–1320–10; WYW136504]

Invitation for Coal Exploration License; Campbell County, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Invitation for Coal Exploration License.

SUMMARY: Cordero Mining Co., a wholly owned subsidiary of Kennecott Energy and Coal Company, hereby invites all interested parties to participate on a pro rata cost sharing basis in its coal exploration program concerning federally-owned coal underlying the following described land in Campbell County, Wyoming:

T. 46 N., R. 71 W., 6th P.M., Wyoming,
Sec. 1: Lots 5 thru 20;
Sec. 11: Lot 16;
Sec. 12: Lots 4, 5, and 9 thru 16;
Sec. 13: Lots 1 thru 4, 7 and 8;
Sec. 14: Lot 1.

Containing 1,376.20 acres.

All of the coal in the above land consists of unleased Federal coal within the Powder River Basin Known Coal Resource Area. The purpose of the exploration program is to conduct exploration drilling on the above listed land.

ADDRESSES: A detailed description of the proposed drilling program is available for review during normal business hours in the following offices (under serial number *WYW136504*): Bureau of Land Management, Wyoming State Office, 4th Floor Public Room, 2515 Warren Avenue, P.O. Box 1828, Cheyenne, Wyoming 82003; *and*, Bureau of Land Management, Casper District Office, Branch of Solid Minerals, 1701 East "E" Street, Casper, Wyoming 82601.

SUPPLEMENTARY INFORMATION: This notice of invitation will be published in the News-Record of Gillette, Wyoming, once each week for two (2) consecutive weeks and is expected to be published beginning no later than the week of May 22, 1995, and in the **Federal Register**. Any party electing to participate in this exploration program must send written notice to both the Bureau of Land Management *and* the Cordero Mining Co., no later than thirty (30) days after publication of this invitation in the **Federal Register**. The written notice should be sent to the following addresses: Bureau of Land Management, Wyoming State Office (WSO 925–9), Home Base Chief, Mineral/Lands Authorization Group, Division of Land and Minerals Authorization, P.O. Box 1828, Cheyenne, WY 82003–1828 *and* to Cordero Mining Co., Attn: Mr. John Trummel, Kennecott Energy Co., 505 S. Gillette Avenue, Gillette, WY 82716.

The foregoing is published in the **Federal Register** pursuant to Title 43 Code of Federal Regulations, Section 3410.2–1(c)(1).

Pamela J. Lewis,

Supervisory Land Law Examiner, Wyoming State Office.

[FR Doc. 95–12702 Filed 5–23–95; 8:45 am]

BILLING CODE 4310–22–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Offshore Pipelines

AGENCIES: Minerals Management Service (MMS), Interior. Research and Special Programs Administration (RSPA), Transportation.

ACTION: Notice of proposed revision of memorandum of understanding (MOU) and public meeting.

SUMMARY: The Department of the Interior (DOI) and the Department of Transportation (DOT) are proposing to revise their May 6, 1976, MOU on their respective responsibilities concerning offshore pipelines. This action will redefine the boundary lines over which MMS and RSPA exercise their inspection and enforcement roles, giving MMS greater inspection responsibilities over offshore pipelines previously inspected by RSPA. The intent of the new MOU is to put, to the extent practicable, all flowlines and gathering lines under DOI responsibility, while transmission lines remain under DOT responsibility. This will result in more efficient utilization of government resources for offshore pipeline inspection. DOI and DOT will hold a public meeting on this proposed revision in New Orleans, Louisiana, on August 1, 1995.

DATES: Comments must be submitted on or before August 22, 1995.

ADDRESSES: Written comments should be directed concurrently to: (a) Department of the Interior; Minerals Management Service; Mail Stop 4700; 381 Elden Street; Herndon, Virginia 22070–4817; Attention: Chief, Engineering and Standards Branch, and (b) Department of Transportation; Office of Pipeline Safety Regulatory Programs, Research and Special Programs Administration; 400 Seventh Street SW.; Room 2335; Washington, D.C. 20590; Attention: L.E. Herrick.

PUBLIC MEETING: DOI and DOT will hold a public meeting to receive comments and to discuss the proposed MOU on August 1, 1995, 8:30 a.m. to 5:00 p.m., Room 111; Minerals Management Service; Gulf of Mexico Outer Continental Shelf Region; 1201 Elmwood Park Boulevard; New Orleans, Louisiana 70123–2394.

FOR FURTHER INFORMATION CONTACT: Carl W. Anderson, Engineering and Standards Branch, MMS; telephone (703) 787–1600; or L.E. Herrick, Office of Pipeline Safety Regulatory Programs; telephone (202) 366–5523.

SUPPLEMENTARY INFORMATION:

Introduction

There are about 18,300 miles of active Outer Continental Shelf (OCS) oil and gas pipelines jointly regulated by DOI and DOT under an MOU agreed upon in 1976 (41 FR 23746; June 11, 1976). Under the existing MOU, DOI has primary responsibility for about 4,500 miles of these pipelines delegated to the Minerals Management Service (MMS). DOT has primary responsibility for about 13,800 miles of these pipelines delegated to RSPA. The MMS regulations for pipelines in the OCS are in 30 CFR part 250, Subpart J. The RSPA pipeline safety regulations are in 49 CFR parts 190–199.

The primary concerns with operating pipelines offshore include protecting life and property offshore, and protecting the OCS from environmental damage resulting from pipeline spills. These issues are of paramount importance to both MMS and RSPA. The National Academy of Sciences reported that while offshore oil and gas production operations contribute less than 2 percent by volume of the oil that is spilled into the sea, pipelines accounted for over 97 percent by volume of that oil spilled from OCS operations. These spills resulted almost entirely from anchors, construction operations, or fishing trawls that struck the pipelines and caused them to rupture.

Corrosion-related pipeline spills tend to be minor compared to spills resulting from external damage; however, because the pipeline system is extensive and aging, MMS and RSPA are also concerned about oil spills resulting from corrosion.

Separate MOU on Oil-Spill Response

Under a separate MOU among DOI, DOT, and the U.S. Environmental Protection Agency pursuant to the Oil Pollution Act of 1990, the agencies have divided their respective responsibilities for oil-spill prevention and response according to the definition of "coast line" contained in the Submerged Lands Act, 43 U.S.C. 1301(c). (See 59 FR 9494; February 28, 1994.) Nothing herein is intended to affect the implementation or administration of that MOU.

Background

The DOT and DOI are proposing to revise the current MOU that delineates DOI's and DOT's respective boundaries with respect to inspection of offshore pipelines in the OCS. The MOU has never been updated, even though there have been many legislative, regulatory, and administrative changes during the past 19 years affecting the respective inspection responsibilities that each agency performs. These changes, coupled with the differing regulatory priorities and operating responsibilities of the two organizations (MMS and RSPA) charged with promulgating and enforcing regulation over pipeline safety and environmental protection in the OCS, have rendered the MOU outdated. For example, the current MOU predates the following legislative and regulatory developments:

(1) The formation of RSPA in 1977,
(2) The 1978 OCS Lands Act Amendments,
(3) The formation of MMS in 1982,
(4) Amendments to the pipeline safety laws (see 49 U.S.C. 60101 et seq.), and
(5) The Federal Water Pollution Control Act as amended by the Oil Pollution Act of 1990 and implemented under Executive order 12777 of October 1991.

Under the current MOU, RSPA is responsible for enforcing its design, construction, operation, and maintenance requirements on pipelines transporting hazardous liquids and natural gas "to the shore from the outlet flange at——

(i) Each OCS facility where hydrocarbons are produced, or

(ii) Each OCS facility where produced hydrocarbons are first separated, dehydrated, or otherwise processed, whichever facility is farther downstream, including subsequent on-line transmission equipment but not including any subsequent production equipment."

Also under the current MOU, MMS is responsible for enforcing its design, construction, operation, and maintenance regulations on offshore pipelines extending upstream from the outlet flange described above into each production well in the OCS. In this regard, MMS has responsibilities for promulgating and enforcing regulations for the prevention of waste, protection of the environment, conservation of natural resources, production measurement, and safety of OCS lessee and right-of-way holder activities.

MMS has regulatory responsibilities relating to activities performed in the OCS. RSPA has responsibilities for inspecting and enforcing its regulations over all onshore pipeline systems in the country. The revised MOU would result in MMS assuming a greater inspection responsibility for pipelines currently under DOT responsibility. MMS would integrate these additional pipelines into its current inspection program.

Because the revised MOU would shift the boundaries being used by MMS and RSPA in inspecting under their regulations, some OCS pipelines that are currently subject to DOT regulations governing their design, construction, maintenance, and operations, would become subject to DOI regulations governing such requirements. This shift in boundary for areas of responsibility—generally from the *first* OCS facility where hydrocarbons are produced, separated, dehydrated, or otherwise processed to the *last* such facility—will require subsequent public rulemaking changes by both DOT and DOI. Following the final approval and signing of the revised MOU, DOT and DOI will separately propose changes to their respective regulations to reflect the new regulatory boundaries. The principal regulations that would be affected are found at 49 CFR parts 191.1, 192.1, 195.1 and 199 for DOT and at 30 CFR part 250.150 for DOI.

DOI anticipates that existing offshore pipelines that shift from DOT to DOI responsibility will not be immediately subject to MMS design and construction requirements unless: (1) those requirements were a condition of MMS approval for the right-of-way on which the pipelines are located, or (2) the pipeline undergoes major repair or modification. Design and construction requirements are those requirements that are established when the pipeline is initially designed and constructed, such as pipe specifications, design of pipeline components, and welding procedures. Retrofitting existing pipelines to conform to different design and construction standards can involve considerable risk to personnel and be extremely costly. Therefore, DOI will be cautious in imposing changes of this type on pipeline operators heretofore operating under DOT design and construction requirements. On the other hand, DOI operation and maintenance regulations, such as corrosion protection, operation and maintenance plans, periodic inspections, and periodic tests are requirements that can be applied to pipelines any time after construction. There are differences between DOT and DOI regulations with respect to these types of requirements and their compliance costs. therefore, any operator currently under DOT responsibility who is shifted to DOI responsibility—after implementation of the revised MOU and appropriate changes are promulgated for 30 CFR part 250.150—will immediately become subject to DOI operation, maintenance, and inspection requirements.

Operators of pipelines that will become subject to MMS regulatory responsibility are reminded that MMS has regulatory procedures under which departures from its requirements may be granted on a case-by-case basis, provided there is sound engineering analysis that shows the operation, practice, or situation will provide an equal or greater level of operational safety or of environmental protection.

Comments are invited concerning (1) the effect that the new MOU will have

on offshore oil and gas lessees and pipeline operators, (2) the time required for operations currently operating under DOT regulations to come into compliance with DOI regulations, (3) regulatory difficulties that may be involved in complying with new regulations, and (4) changes to the proposed MOU that would facilitate the implementation of the MOU.

Upon signing the proposed revised MOU by both the Secretary of the Interior and Secretary of Transportation, the 1976 MOU will be terminated and revised MOU will become effective. The revised MOU will be published final in a subsequent **Federal Register** Notice.

Dated: April 4, 1995.

Cynthia Quarterman,

Director, MMS.

Dated: May 16, 1995.

D.K. Sharma,

Administrator, RSPA.

The proposed revised MOU is as follows:

Memorandum of Understanding Between the Department of Transportation and the Department of the Interior Regarding Offshore Pipelines

I. Introduction

This memorandum of Understanding (MOU) replaces the MOU between the Department of Transportation (DOT) and the Department of the Interior (DOI) regarding offshore pipelines which was signed and became effective May 6, 1976, and which terminates as of the effective date of this MOU. Nothing in this MOU relieves an offshore pipeline owner or operator from complying with the regulations of any State or Federal agency.

In recognition of each of the parties' respective regulatory responsibilities, DOI and DOT agree that an MOU is needed to assure coordination and consultation during the development and implementation of regulatory requirements and to facilitate comparable regulatory requirements for all offshore pipelines whether under DOI or DOT jurisdiction.

II. Legislative and Regulatory Responsibilities of the Parties

The DOT has the responsibility for promulgating and enforcing regulations for the safe and environmentally sound transportation of gases and hazardous liquids by pipeline. DOT administers the following laws as they relate to pipelines: (1) the pipeline safety laws (49 U.S.C. 60101 *et seq.*), (2) the Deepwater Port Act of 1974 (33 U.S.C. 1501–1524), and (3) the Federal Water Pollution Control Act (FWPCA) (33 U.S.C. 1251–1375), as amended by the Oil Pollution Act of 1990 (OPA) (Pub. L. 101–380) and implemented under Executive Order (E.O.) 12777.

The DOI has responsibilities for promulgating and enforcing regulations for the prevention of waste, protection of the environment, and conservation of the natural resources of the Outer Continental Shelf (OCS) as that area is defined in the OCS Lands Act (OCSLA) (43 U.S.C. 1331 *et seq.*). These responsibilities include production measurement and safety of OCS lessee and right-of-way holder activities, including transportation of oil and natural gas by pipeline. DOI also has certain responsibilities for granting rights-of-way and rights of use and easement for the construction of pipelines and associated facilities in the OCS. DOI administers the following laws as they relate to offshore piplines: (1) the OCSLA for the production of minerals which includes their transportation to shore, (2) the Federal Oil and Gas Royalty Management Act of 1982 for oil and gas production measurement, and (3) the FWPCA, as amended by OPA and implemented under E.O. 12777.

Under a separate MOU pursuant to the OPA, DOI and DOT have divided their respective responsibilities for oil-spill prevention and response according to the definition of "coast line" contained in the Submerged Lands Act, 43 U.S.C. 1301(c).

III. Division of Responsibilities

DOI and DOT agree to the following division of off shore pipeline regulatory responsibilities with respect to design, construction, operations, and maintenance regulations for all pipelines in the OCS pursuant to OCSLA. The Appendix contains nine hypothetical cases to illustrate how this MOU would be interpreted in practice.

DOI Responsibilities

1. DOI will establish and enforce design, construction, operation, and maintenance and regulations and investigate significant accidents pursuant to the OCSLA for all pipelines that connect to downstream production or processing facilities in the OCS. The DOI area of responsibility will extend from producing wells to 50 meters (164 feet) downstream from the base of the departing pipeline riser on the last OCS production or processing facility (Cases 1, 7, and 9). Additionally, DOI will have responsibility for the following pipelines:

a. That portion of a pipeline otherwise subject to DOT responsibility that crosses an OCS production or processing facility from 50 meters upstream of the base of the incoming riser to 50 meters downstream of the base of the department riser (Case 2).

b. A pipeline from an OCS producing well or production or processing facility to the first subsea tie-in with a larger-diameter pipeline in the OCS (Cases 3, 7, and 9). However, if the first subsea tie-in with a larger-diameter pipeline is in State waters, DOI responsibility extends to the Federal-State boundary (Case 6).

c. The OCS portion of a pipeline that connects directly to a production well or a production or processing facility in State waters (Cases 4, 8, and 9).

d. The OCS portion of a pipeline from an OCS producing well that connects directly to production or processing facilities located onshore (Case 5).

e. OCS production service and water lines.

2. DOI will consult with DOT during the development of regulatory requirements and will send a copy of each draft notice of proposed rulemaking (NPR) concerning offshore pipelines to DOT for review at least 30 days before the NPR is published in the **Federal Register**. Publication of the NPR by DOI is not contingent upon the concurrence of DOT with the proposal contained in the NPR.

3. Upon approval of right-of-way applications for pipelines under DOT responsibility, DOI will provide copies of its approval letters to DOT. When DOI grants rights-of-way for pipelines which are under DOT responsibility, DOI will condition its approval on the pipelines being designed, constructed, operated, and maintained in compliance with DOT regulations.

4. The DOI will allow DOT to utilize, on a reimbursable basis, DOI-contracted helicopters for the inspection of offshore pipelines, subject to helicopter availability.

5. For pipelines under DOT responsibility, DOI will report to DOT in writing any apparent violation of DOT regulations that is identified during the course of DOI inspections.

DOT Responsibilities

1. DOT will establish and enforce design, construction, operation, and maintenance regulations and investigate significant accidents for all offshore pipelines beginning 50 meters (164 feet) downstream from the base of the departing pipeline riser on the last OCS production or processing facility, except as provided for in paragraphs 1, 1(a), 1(b), 1(c), 1(d), and 1(e) under "DOI Responsibilities;" and paragraph 7 under "Joint Responsibilities."

2. DOT will consult with DOI during the development of regulatory requirements and will send a copy of each draft NPR concerning offshore pipelines to DOI for review at least 30 days before the NPR is published in the **Federal Register**. Publication of the NPR by DOT is not contingent upon the concurrence of DOI with the proposal contained in the NPR.

3. For pipelines under DOI responsibility, DOT will report to DOI in writing any apparent violation of DOI regulations that is identified during the course of DOT inspections.

Joint Responsibilities

1. DOI and DOT will consult and coordinate all of their respective rulemaking efforts affecting offshore pipelines. Supporting regulatory analyses (e.g., Determination of Effects of Rules, Regulatory Impact Analyses, and information collection burdens, etc.) will also be coordinated, although the analyses will be appropriate for each agency and the industry segments it regulates.

2. DOI and DOT will coordinate all of their respective research and development projects concerning offshore pipelines.

3. DOI and DOT may perform joint inspections of pipeline segments that are subject to both DOI and DOT regulations.

4. DOI and DOT may perform joint or independent investigations of accidents involving offshore pipeline segments that are subject to either or both DOI and DOT responsibility.

5. DOI and DOT will provide each other with any agreement or MOU with any Federal or State agency concerning offshore pipelines.

6. At least once each calendar year, DOI and DOT will jointly review existing standards, regulations, orders, operating practices, and environmental and safety issues concerning offshore pipelines.

7. The DOI and DOT may, through their enforcement agencies, agree to exceptions to this MOU on a facility by facility or area by area basis. Affected parties shall be notified of such exceptions.

IV. Implementation

Within 120 days of the signing of this MOU, DOI and DOT will develop and initiate a joint implementation plan. The plan will take into account differences in the regulatory requirements of DOI and DOT that could cause regulatory conflicts or incompatible requirements for those offshore pipeline segments that are subject to both DOI and DOT jurisdiction.

The respective points of contact for the provisions of this MOU are:

Associate Administrator for Pipeline Safety, Research and Special Programs Administration, Department of Transportation, 400 7th Street, SW., Washington, D.C. 20590

Associate Director for Offshore Minerals Management, Minerals Management Service, Mail Stop 4000, 1849 C Street, NW., Washington, D.C. 20240

Thereafter, DOI and DOT will meet periodically to review and update the joint implementation plan and to review this MOU for any needed revisions.

V. Modification

Either party to this agreement may propose modifications by submitting them in writing to the head of the other Department. No modification may be adopted except with the consent of both parties. Both parties shall indicate their consent to or disagreement with any proposed modification within 60 days of receipt. Upon the request of either party, representatives of both parties shall meet for the purpose of considering modifications to this agreement.

VI. Termination

This MOU may be terminated by either party upon 60-day written notice to the other party.

VII. Administration

This MOU will be administered by DOI's Minerals Management Service and DOT's Research and Special Programs Administration or such successor agencies as may be designated by the respective Secretaries.

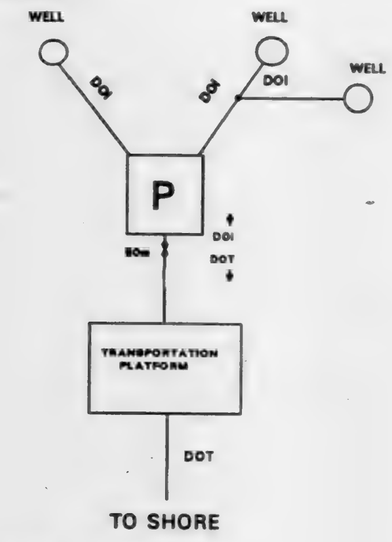
VIII. Effective Date

This MOU is in effect upon signature.

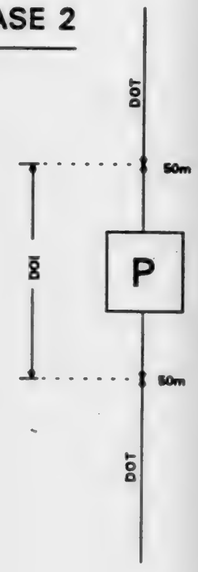
BILLING CODE 4310-MR-M

APPENDIX

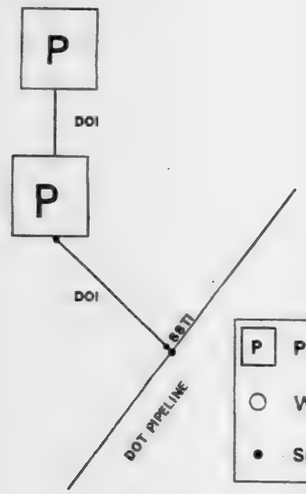
CASE 1



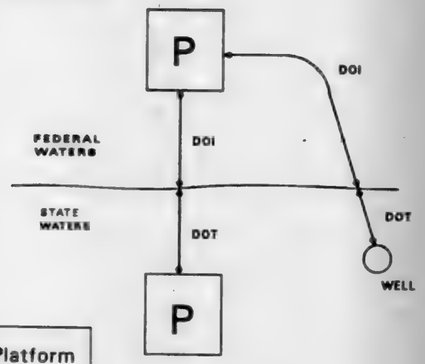
CASE 2



CASE 3



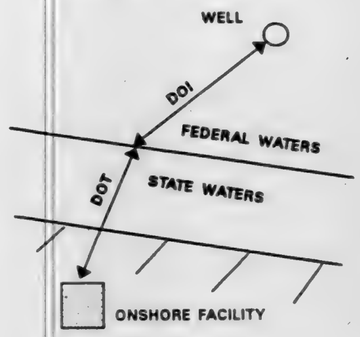
CASE 4



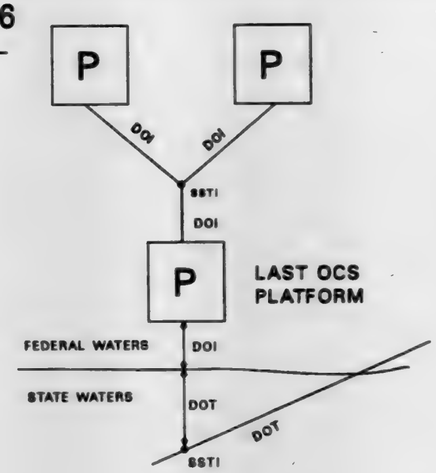


NOTE: DOT PIPELINES IN STATE WATERS MAY BE SUBJECT TO STATE AUTHORITY UNDER A CERTIFICATION OR AGREEMENT.

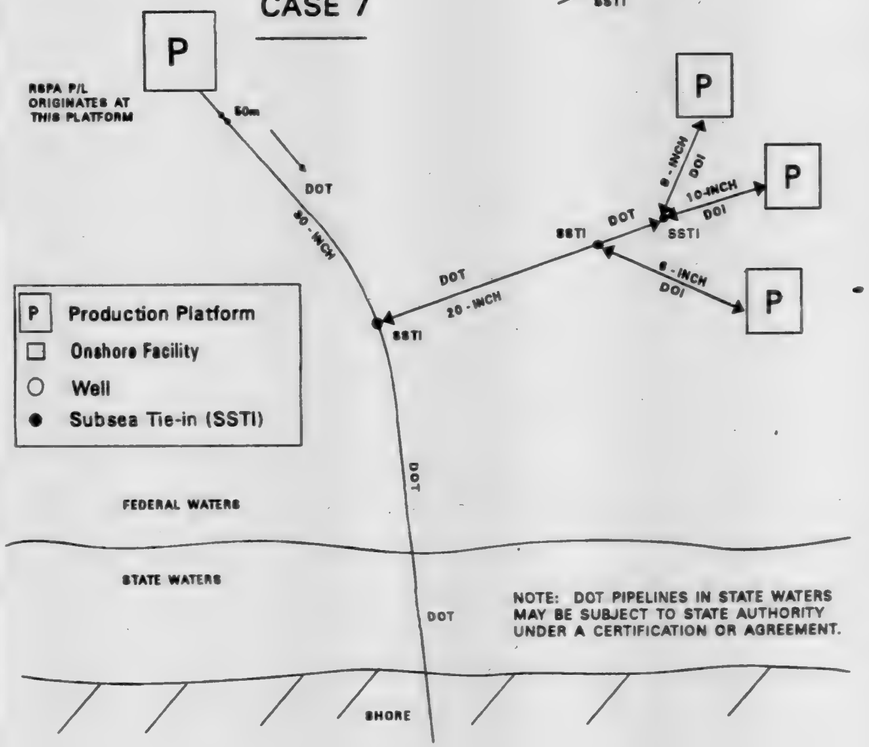
CASE 5



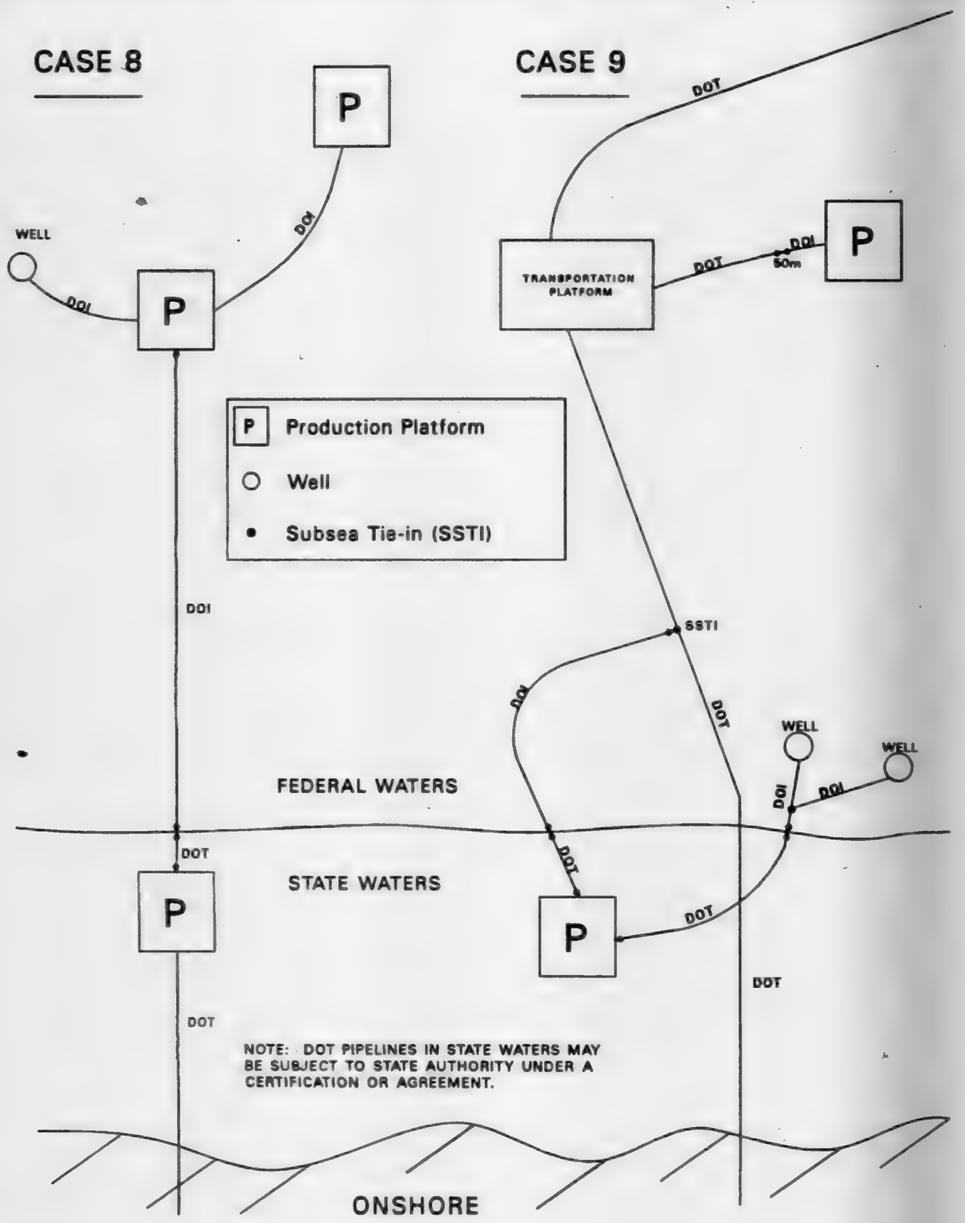
CASE 6



CASE 7



NOTE: DOT PIPELINES IN STATE WATERS MAY BE SUBJECT TO STATE AUTHORITY UNDER A CERTIFICATION OR AGREEMENT.



[FR Doc. 95–12633 Filed 5–23–95; 8:45 am]
BILLING CODE 4310–MR–C

DEPARTMENT OF THE INTERIOR

National Park Service

Final Rock Creek Tennis Stadium Environment Impact Statement, Washington, DC

AGENCY: National Park Service (Interior).

ACTION: Notice to distribute the final environmental impact statement.

SUMMARY: Pursuant to Council on Environmental Quality regulations and National Park Service policy, the National Park Service (NPS) announces the release of the Final Environmental Impact Statement (FEIS) for the Rock Creek Tennis Stadium. The FEIS presents the NPS preferred alternative for future management and use of the Rock Creek Tennis Stadium. The preferred alternative, Alternative 2, allows for only one professional tennis tournament a year, in addition to amateur and league tennis events. Mitigation to relieve the park and surrounding neighborhood of parking and traffic congestion will be required for every professional tennis tournament. At a minimum, mitigation will include elimination of parking on turf areas in the park, measures to prevent tournament related parking on neighborhood streets, use of remote parking and shuttle buses, and dedication of some existing paved parking areas in the park for shuttle bus loading and storage. No major physical alterations to the park for buses or parking are proposed.

ADDRESSES: For copies of the FEIS, please contact: Superintendent Rock Creek Park, 3545 Williamsburg Lane, Washington, DC 20008. Copies can also be reviewed at the Rock Creek Park Nature Center.

The responsible official is Mr. Robert G. Stanton, Regional Director, National Capitol Region, National Park Service, 1100 Ohio Drive, SW., Washington, DC 20242.

A final public record of decision will be released stating the NPS selected alternative, environmental mitigation strategies adopted, and the rationale for the decisions no sooner than 30 days from the publication of this notice.

Dated: May 18, 1995.

Terry R. Carlstrom,

Acting Regional Director, National Capital Region.

[FR Doc. 95–12624 Filed 5–23–95; 8:45 am]
BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

Investigation No. 337–TA–375

Certain Clog Style Articles of Footwear; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. § 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on April 18, 1995, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, on behalf of R. G. Barry Corporation, 13405 Yarmouth Road, N.W., Pickerington, Ohio 43147. A supplement to the complaint dated May 8, 1995 was filed on May 10, 1995. The complaint, as supplemented, alleges a violation of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain clog style articles of footwear by reason of alleged infringement of claims 1–5 of U.S. Letters Patent 5,392,532, and that there exists an industry in the United States as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after a full investigation, issue a permanent exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Room 112, Washington, D.C. 20436, telephone 202–205–1802. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

FOR FURTHER INFORMATION CONTACT: Steven A. Glazer, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2577.

AUTHORITY: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in § 210.10 of the Commission's Final Rules of Practice and Procedure, 59 Fed. Reg. 39020, 39043 (August 1, 1994).

SCOPE OF INVESTIGATION: Having considered the complaint, the U.S. International Trade Commission, on May 16, 1995, Ordered That —

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain clog style articles of footwear by reason of alleged infringement of claims 1–5 of U.S. Letters Patent 5,392,532, and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—R. G. Barry Corporation, 13405 Yarmouth Road, N.W., Pickerington, Ohio 43147

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Mervyn's, Inc., 25001 Industrial Blvd., P.O. Box 5020, Hayward, CA 94545–2801

S. Goldberg & Co., Inc., 20 E. Broadway, Hackensack, NJ 07601.

(c) Steven A. Glazer, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW., Room 401K, Washington, D.C. 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with § 210.13 of the Commission's Final Rules of Practice and Procedure, 59 FR 39020, 39045 (August 1, 1994). Pursuant to 19 CFR 201.16(d) and 210.13(a) of the Commission's Final Rules, 59 FR at 39045, such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and notice of investigation. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this

notice, and to authorize the administrative law judge and the Commission, without further notice to such respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

Issued: May 17, 1995.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–12728 Filed 5–23–95; 8:45 am]

BILLING CODE 7020–02–P

Investigation No. 731–TA–705 (Final)

Furfuryl Alcohol From Thailand

AGENCY: International Trade Commission.

ACTION: Institution and scheduling of final antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731–TA–705 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Thailand of furfuryl alcohol, provided for in subheading 2932.13.00 of the Harmonized Tariff Schedule of the United States.

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: May 5, 1995.

FOR FURTHER INFORMATION CONTACT: Fred H. Fischer (phone: 202–205–3179; e-mail: fred.fischer@itc.sprint.com), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. Information can also be obtained by calling the Office of Investigations' remote bulletin board system for personal computers at 202–205–1895 (N,8,1).

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted as a result of an affirmative final determination by the Department of Commerce that imports of furfuryl alcohol from Thailand are being sold in the United States at less than fair value within the meaning of section 735 of the Act (19 U.S.C. § 1673d). This investigation was requested in a petition filed on May 31, 1994, by counsel on behalf of QO Chemicals, Inc., West Lafayette, IN.

Participation in the Investigation and Public Service List

Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, not later than twenty-one (21) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under An Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this final investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in this investigation will be placed in the nonpublic record on May 25, 1995, and a public version will be issued thereafter, pursuant to § 207.21 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on June 13, 1995, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before June 5, 1995. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on June 6, 1995, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ 201.6(b)(2), 201.13(f), and 207.23(b) of the Commission's rules. Parties are strongly encouraged to submit as early in the investigation as possible any requests to present a portion of their hearing testimony *in camera*.

Written Submissions

Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § ection 207.22 of the Commission's rules; the deadline for filing is June 6, 1995. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.24 of the Commission's rules. The deadline for filing posthearing briefs is June 21, 1995; witness testimony must be filed no later than three (3) days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before June 21, 1995. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ sections 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules.

Issued: May 17, 1995.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–12727 Filed 5–23–95; 8:45 am]

BILLING CODE 7020–02–P

Investigation No. 731–TA–725 (Final)

Manganese Sulfate From The People's Republic of China

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of a final antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731–TA–725 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from the People's Republic of China (China) of manganese sulfate, provided for in subheading 2833.29.50 of the Harmonized Tariff Schedule of the United States.[1]

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: May 11, 1995.

FOR FURTHER INFORMATION CONTACT: Jonathan Seiger (202–205–3183), Office of Investigations, U.S. International Trade Commission, 500 E Street S.W., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. Information can also be obtained by calling the Office of Investigations' remote bulletin board system for personal computers at 202–205–1895 (N,8,1).

[1] The product covered by this investigation is manganese sulfate, including manganese sulfate monohydrate ($MnSO_4 \cdot H_2O$) and any other forms, whether or not hydrated, without regard to form, shape, or size, the addition of other elements, the presence of other elements as impurities, and/or the method of manufacture.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of manganese sulfate from China are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. § 1673b). The investigation was requested in a petition filed on November 30, 1994, by American MicroTrace Corporation, Virginia Beach, VA.

Participation in the Investigation and Public Service List

Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, not later than twenty-one (21) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this final investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in this investigation will be placed in the nonpublic record on September 20, 1995, and a public version will be issued thereafter, pursuant to § 207.21 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on October 3, 1995, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before September 22, 1995. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on September 26, 1995, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ 201.6(b)(2), 201.13(f), and 207.23(b) of the Commission's rules. Parties are strongly encouraged to submit as early in the investigation as possible any requests to present a portion of their hearing testimony *in camera*.

Written Submissions

Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.22 of the Commission's rules; the deadline for filing is September 27, 1995. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.24 of the Commission's rules. The deadline for filing posthearing briefs is October 12, 1995; witness testimony must be filed no later than three (3) days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before October 12, 1995. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ sections 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules.

Issued: May 19, 1995.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–12725 Filed 5–23–95; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 337–TA–370]

In the Matter of: Certain Salinomycin Biomass and Preparations Containing Same

Notice is hereby given that the prehearing conference in this matter will commence at 10:00 a.m. on June 5, 1995, in Courtroom B (Room 111), U.S. International Trade Commission Building, 500 E St. S.W., Washington, D.C., and the hearing will commence immediately thereafter.

The Secretary shall publish this notice in the **Federal Register**.

Issued: May 16, 1995.

Sidney Harris,

Administrative Law Judge.

[FR Doc. 95–12726 Filed 5–23–95; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 USC Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;
(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;
(3) Who will be asked or required to respond, as well as a brief abstract;
(4) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;
(5) An estimate of the total public burden (in hours) associated with the collection; and,
(6) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/ Information Resources Management/ Justice Management Division Suite 850, WCTR, Washington, DC 20530.

New Collection

(1) COPS Standard Hiring Program Application.
(2) COPS 010/01. Office of Community Oriented Policing Services, United States Department of Justice.
(3) Primary=State, Local or Tribal Government, Others=None. The COPS Standard Hiring Program Application is to be used to apply for grants for additional police hiring or to establish new municipal police agencies to address crime and related problems through community policing.
(4) 3200 annual respondents at 5.5 hours per response.
(5) 24,000 annual burden hours.
(6) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: May 18, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 94–12657 Filed 5–23–95; 8:45 am]

BILLING CODE 4410–21–M

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Composite Materials Characterization, Inc.

Notice is hereby given that, on March 27, 1995, pursuant to the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), parties to the Composite Materials Characterization, Inc. ("CMS") have filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in it's membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the Sikorsky Aircraft Division of United Technologies Corporation has been replaced by Sikorsky Aircraft Corporation, a subsidiary of United Technologies Corporation located in Stratford, CT; and Grumman Aerospace Corporation is no longer a member.

No other changes have been made in either the membership, corporate name, or planned activities of the venture. Membership in the project remains open, and the members intend to file additional written notifications disclosing all changes in membership.

On December 18, 1987, CMC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on January 15, 1988 (53 FR 1074).

The last notification was filed with the Department on June 15, 1993. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on July 19, 1993 (58 FR 38585).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–12683 Filed 5–23–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Computer Integrated Revision Total Hip Replacement Surgery Project

Notice is hereby given that, on February 23, 1995, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Computer Integrated Revision Total Hip Replacement Surgery Project, has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are: Integrated Surgical Systems, Inc., Sacramento, CA, and International Business Machines Corporation, Yorktown, NY.

The nature and objective of this joint venture is to develop and clinically demonstrate a computer-integrated system to assist surgeons in revision total hip replacement surgery.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–12680 Filed 5–23–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993 Collaboration Agreement Between E.I. Du Pont De Nemours and Company and Cambridge Industries, Inc.

Notice is hereby given that, on February 22, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), E.I. du Pont de Nemours and Company have filed written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing: (1) The identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are E.I. du Pont de Nemours and Company, Advanced Material Systems Division, Newark, DE; and Cambridge Industries, Inc., Madison Heights, MI. The general area of collaboration is to develop structural thermoplastic composites for automotive applications at a minimum twenty-five percent reduction in investment cost versus steel and to commercialize high performance composite materials for structural applications in the automotive market in connection with the award by National Institute of Standards and Technology, Department of Commerce under the Advanced Technology Program pursuant to 15 U.S.C. 278n.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 12685 Filed 5–23–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Engineered Surfaces for Rolling and Sliding Contacts Program

Notice is hereby given that, on March 15, 1995, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301, *et seq.* ("the Act"), the participants in the Engineered Surfaces for Rolling and Sliding Contacts Program ("ESRSCP") have filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties and the general area of planned activity are: Caterpillar Inc., Peoria, IL; The Timken Company, Canton, OH; General Motors Corporation, Romulus, MI.

The nature and objective of the research program performed in accordance with ESRSCP is to develop the process and material technology base to manufacture engineered surfaces for improved contact fatigue, scuffing, and wear of critical, high technology components such as gears, bearings, and fuel system components.

Information about participation in ESRSCP may be obtained by contacting Phil J. Shankwitz, Caterpillar Inc., Peoria, IL; Harvey P. Nixon, The Timken Company, Canton, OH; or Ron Leachman, General Motors Corporation, Romulus, MI.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–12682 Filed 5–23–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Financial Services Technology Consortium, Inc.

Notice is hereby given that, on January 18, 1995, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Financial Services Technology Consortium, Inc. (the "Consortium") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. The following parties were admitted as Associate Members of the Consortium: R.D.M. Corporation, Ontario, CANADA; National Semiconductor Corporation, Sunnyvale, CA; Equifax Credit Information Services, Atlanta, GA; and Lifecycle Technology, Fairfax, VA. The following party was admitted as an Advisory Member of the Consortium: Electronic Check Clearing House Organization, Dallas, TX.

No other changes have been made in either the membership or planned activity of the Consortium. Membership remains open, and the Consortium intends to file additional written notifications disclosing all changes in membership.

On October 21, 1993, the Consortium filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on December 14, 1993 (58 FR 65399).

The last notification was filed with the Department on December 21, 1994. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on April 13, 1995 (60 FR 18857).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–12676 Filed 5–23–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—"Ultra-Low Emission Engine Program"

Notice is hereby given that, on March 10,1995, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Southwest Research Institute ("SwRI") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Fuji Heavy Industries, Ltd. and Isuzu Motors, Ltd. have withdrawn their participation; and the period of performance has been extended for one year to September 30, 1995.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and SwRI intends to file additional written notification disclosing all changes in membership.

On November 13, 1991, SwRI filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act December 9, 1991, 56 FR 64276.

The last notification was filed with the Department on May 13, 1994. A notice was published in the **Federal**

Register pursuant to section 6(b) of the Act on June 9, 1994, 59 FR 29826.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–12675 Filed 5–23–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Hart Communication Foundation

Notice is hereby given that, on March 16, 1995, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Hart Communication Foundation ("HCF") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the identities of the new members are: Apparatebau Hundsbach GmbH, Baden-Baden, GERMANY; BESTA AG, Uster, SWITZERLAND; BTG Kalle Inventing AB, Saffle, SWEDEN; Elsag Bailey Process Automation, Warminster, PA; EMCO Flowmeters, Longmont, CO; Fieldbus International AS, Oslo, NORWAY; Helios AG, Therwil, SWITZERLAND; MACTek Corporation, Twinsburg, OH; Magnetrol International, Downers Grove, IL; Milltronics Ltd., Peterborough, Ontario, CANADA; Schlumberger Measurement North America, Greenwood, SC; Valmet Automation Inc., Tampere, FINDLAND; VEGA-Grieshaber KG, Schiltach, GERMANY; MTS System Corporation, Cary, NC; and MESCO Engineering GmbH, Lorrach, GERMANY. The following are no longer members of HCF: Fisher & Porter Company; Oyster Terminal Ltd.; and Prime Technology, Inc.

No other changes have been made in either membership or planned acitvity of the group research project. Membership remains open, and HCF intends to file additional written notification disclosing all changes in membership.

On March 17, 1994, HCF filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on May 5, 1994 (59 FR 23234). The last notification was published in the **Federal Register** pursuant to section 6(b) of the Act on November 17, 1994 (59 FR 59433).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–12678 Filed 5–23–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Health Information Infrastructure Joint Venture

Notice is hereby given that, on March 27, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Health Information Infrastructure Joint Venture has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recover of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are: Andersen Consulting LLP, Chicago, IL; Automation Engineering, Garland, TX; Enigma Logic, Inc., Concord CA; Expersoft Corporation, San Diego, CA; MedicaLogic, Inc., Beavertron, OR; and Medical Records Corporation, Cleveland OH. The general area of planned activity is to design, develop, and the demonstrate key technologies and components of an integrated medical information system, pursuant to a Cooperative Agreement with the Advanced Technology Program administered by the National Institute of Standards and Technology.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–12687 Filed 5–23–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—IBACOS, Inc.

Notice is hereby given that, on January 24, 1995, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), IBACOS, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Carrier Corporation, Syracuse, NY has become a new member of IBACOS. In addition, Honeywell, Inc. has withdrawn membership with IBACOS.

No other changes have been made in either the membership or planned activity of the group research project. Membership remains open and IBACOS, Inc. intends to file additional written notifications disclosing all changes in membership.

On April 6, 1992, IBACOS, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act May 6, 1992, 57 FR 19442.

The last notification was filed with the Department on February 23, 1994. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on April 20, 1994, 59 FR 18829–30.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–12684 Filed 5–23–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Minnesota Mining and Manufacturing, and Solon Consulting Group, Ltd.

Notice is hereby given that, on February 13, 1995, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Minnesota Mining and Manufacturing, and Solon Consulting Group, Ltd. have filed written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are Minnesota Mining and Manufacturing, St. Paul, MN; and Solon Consulting Group, Ltd., Silver Spring, MD. The general area of planned activity is to develop technology to define espisodes of treatment for the diseases and conditions found in the enrolled population of typical managed care organizations.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–12671 Filed 5–23–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Automated Highway System Consortium

Notice is hereby given that, on February 7, 1995, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), General Motors Corporation has filed on behalf of the National Automated Highway system Consortium (NAHSC) and the Department of Transportation (DOT) written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are General Motors Corporation, Detroit, MI; Parsons Brinckerhoff, Washington, DC; Caltrans, Sacramento, CA; Carnegie Mellon University—Robotics Institute, Pittsburgh, PA; Bechtel, Gaithersburg, MD; Delco Electronics (a subsidiary of General Motors Corporation), Kokomo, IN; Hughes Aircraft Company (a subsidiary of General Motors Corporation), Fullerton, CA; Martin Marietta Technologies In., Littleton, CO; and University of California—Berkeley—PATH, Berkeley, CA. The NAHSC was established in response to a U.S. Department of Transportation (DOT) request for application initiated to implement a provision of the Intermodal Surface Transportation Efficiency Act of 1991. The objective of the resultant cooperative agreement between the NAHSC and DOT is to make major improvements in the safety, productivity and environmental quality of the U.S. surface transportation system. The NAHSC intends to promote enhanced international competitiveness of U.S. industry and encourage the civilian sector to capitalize on decades of public investment in defense technologies, focussing on systems designed feasibility, definition and prototyping of a safe, reliable, cost-effective automated highway system capable of substantially improving throughput, safety and air quality along high-demand travel corridors.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–12673 Filed 5–23–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Network Management Forum

Notice is hereby given that, on March 14, 1995, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the Network Management Forum ("the Forum") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions to its membership. The additional notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damage under specified circumstances. Specifically, the identities of the new members to the venture are as follows: US West Technologies, Inc., Boulder, CO; and Accugraph Corporation, El Paso, TX are Corporate Members. Database Server Systems Limited, Wokingham, Berkshire, UNITED KINGDOM; Korea Telecom, Seoul, KOREA; Legent Corporation, Bellevue, WA; Object Design, Inc., Burlington, MA; and Remedy Corporation, Mountain View, CA are Associate Members. Consultancy & Projects Group, Rome, ITALY; Instituto Costarricense De Electricidad, Miami, FL; ITT-Team Telecom Inc., Givat Shmuel, ISRAEL; and University of Maryland at College Park, College Park, MD are Affiliate Members.

No other changes have been made, since the last notification filed with the Department, in either the membership or planned activity of the group research project. Membership in this group research project remains open, and the Forum intends to file additional written notifications disclosing all changes in membership.

On October 21, 1988, the Forum filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on December 8, 1988 (53 FR 49615).

The last notification was filed with the Department on October 19, 1994. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on February 16, 1995 (60 FR 9052).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–12674 Filed 5–23–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—The Consortium for Non-Contact Gauging

Notice is hereby given that, on March 7, 1995, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the participants in the Consortium for Non-Contact Gauging ("CNCG"), have filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objective of the venture. The notifications were filed for the purpose of extending the protection of the Act limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties and its general area of planned activities are: Cleveland Advanced Manufacturing Program, Cleveland, OH; Caterpillar Incorporated, Peoria, IL; Chrysler Corporation, Detroit, MI; CyberOptics Corporation, Minneapolis, MN; Eaton Corporation, Cleveland, OH; GE Aircraft Engines, Cincinnati, OH; GE Corporate Research and Development, Schenectady, NY; the Sheffield Measurement Division of Giddings & Lewis, Dayton, OH; the Industrial Technology Institute, Ann Arbor, MI; NASA Lewis Research Center, Cleveland, OH; the Ohio Aerospace Institute, Cleveland, OH; the Department of Electrical & Computer Engineering of the University of Cincinnati, Cincinnati, OH; Central State University, Wilberforce, OH; and Intelligent Automation Systems, Cambridge, MA. The nature and objective of the research program, performed in accordance with CNCG, is to design and develop a flexible, high-speed, high-accuracy measurement system based on combining a low-resolution pre-inspection system, high-resolution optical sensors, and a precision five-axis positioner with an integrated control system to tie the subsystems together and link to other shop systems. The proposed system is referred to as the Rapid Agile Metrology for Manufacturing (RAMM) system.

Participation in this project remains open. Information regarding participation in the project may be obtained from Eileen Picket, Ohio Aerospace Institute, Cleveland, Ohio.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–12670 Filed 5–23–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Northrop Grumman Corporation Research and Development Venture

Notice is hereby given that, on March 22, 1995, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Northrop Grumman Corporation has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are: Grumman Aerospace Company, Bethpage, NY (a subsidiary of Northrop Grumman Corporation); The Cyril Bath Company, Monroe, NC; and Massachusetts Institute of Technology, Cambridge, MA. The objective of the venture is to conduct joint research to develop commercially viable technology for reconfigurable tooling for sheet metal forming and other potential low rate production applications for an adaptive factory environment.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–12681 Filed 5–23–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—The Passive Millimeter Wavelength Camera Technology Reinvestment Project ("PMMWC TRP")

Notice is hereby given that, on February 1, 1995, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 et seq. ("the Act"), TRW Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the projects. The notifications were fled for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act; the identities of the parties are: TRW Inc., Redondo Beach, CA; and McDonnell Douglas Aerospace, Long Beach, CA. The nature and objectives of the Passive Millimeter Wave Camera (PMMWC) Consortium is to provide the most advanced and affordable US military systems, and the most competitive commercial products in the global marketplace for the civilian airlines, parcel carriers, fire and rescue, and related industries through the development of a PMMW camera that "sees" through weather and projects a TV-like image of the forward scene. To accomplish this objective, a partnership comprised of a radiometric sensor developer and an aircraft manufacturer has been established forming a fully integrated team. This will avoid inefficient duplication of effort and expense while performing research in this area. The Parities intend to cooperate in the collection, exchange and, where appropriate, dissemination of the research results, to work closely with various government and private agencies, and perform further acts allowed by the National Cooperative Research and Production Act that would advance the PMMWC TRP's objectives.

Membership in the venture remains open, and the parties intend to file additional written notifications disclosing all changes in the membership or planned activities.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–12679 Filed 5–23–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Petroleum Environmental Research Forum

Notice is hereby given that, on March 1, 1995, pursuant to the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the participants in the Petroleum Environmental Research Forum ("PERF") Project No. 93–19 have filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties and the general area of planned activity are: Amoco Oil Company, Naperville, IL; Marine Spill Response Corporation, Washington, DC; and University of West Florida, Pensacola, FL.

The nature and objectives of the research program performed in accordance with PERF Project No. 93–19 is to determine the effect of bioemulsifers on the bioremediation of open water oil spills.

Information about participation in Project 93–19 may be obtained by contacting David E. Fritz, Amoco Oil Company, Naperville, IL.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–12672 Filed 5–23–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Petroleum Environmental Research Forum—Project No. 93–08

Notice is hereby given that, on March 15, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* ("the Act"), the Participants in the Petroleum Environmental Research Forum ("PERF") Project No. 93-08, titled "Environmentally Acceptable Thread Compounds", have filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are Mobil Research and Development Corporation, Dallas, Texas; Siderca S.A.I.C., Buenos Aires, ARGENTINA; Texaco Inc., Bellaire, Texas; and U.S. Steel Group, Fairfield, Alabama. The general area of planned activity is to investigate and evaluate the behavior and acceptability of certain candidate environmentally acceptable alternative line pipe, casing and tubing (LP–C&T) thread compounds on full-size API tubing. Research and development work required in furtherance of PERF Project No. 93–08 is to be carried out by Centre For Frontier Engineering Research.

Participation in this Project will remain open to any and all interested parties until issuance of the final Project Report, which is presently expected to occur approximately Six (6) months after the Project commences. The participants intend to file additional written notifications disclosing all changes in membership of the group of participants involved in this Project. Information regarding participation in the Project may be obtained from Mobil Research and Development Corporation, P.O. Box 650232, Dallas, Texas 75265–0232, attention Mr. Thomas E. Becker.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–12686 Filed 5–23–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1943—Unixware Technology Group Inc.

Notice is here given that, on March 28, 1995, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), UnixWare Technology Group Inc. (UTG) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specially, the identities of the new members are: Hitachi, Ltd., Atsugi-Shi, JAPAN; Pyramid Technology Corp., San Francisco, CA; Super Computer Inc. Eau Claire, WI; and Sybase Inc., Emeryville, CA.

No other changes have been made in either membership or planned activity of the group research project. Membership remains open and UTG plans to file additional written notification disclosing all changes in membership.

On July 19, 1994, UnixWare Technology Group, Inc., filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 23, 1995 (60 FR 15305).

The last notification was filed with the Department on December 12, 1994. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on April 13, 1995 (60 FR 18858).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–12677 Filed 5–23–95; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–29,920]

Goody Products, Inc., Kearney, NJ; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance Operating in the Following States

TA–W–29,920A Alabama
TA–W–29,920B California
TA–W–29,920C Georgia
TA–W–29,920D Florida
TA–W–29,920E Kentucky
TA–W–29,920F Virginia
TA–W–29,920G Ohio
TA–W–29,920H Pennsylvania
TA–W–29,920I New York
TA–W–29,920J North Carolina
TA–W–29,920K Washington
TA–W–29,920L Connecticut

and Opti-Ray, Inc., Farmingdale, New York

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 10, 1994, applicable to all workers of the subject firm. The Notice was published in the **Federal Register** on August 25, 1994 (59 FR 43867). The certification was subsequently amended February 23, 1995, and published in the **Federal Register** March 10, 1995 (60 FR 13180).

The Department is again amending the certification. The Department has received new information from the company that Opti-Ray located in Farmingdale, New York was a subsidiary of Goody Products, and was inadvertently omitted from the original certification. New findings show Opti-Ray distributed sunglasses for Goody Products promotional packages.

The intent of the Department's certification is to include all workers who were adversely affected by increased imports. Accordingly, the Department is amending the certification to include workers at Opti-Ray, Inc., Farmingdale, New York.

The amended notice applicable to TA–W–29,920 is hereby issued as follows:

All workers of Goody Products, Inc., Kearney, New Jersey and operating in the following States: Alabama, California, Georgia, Florida, Kentucky, Virginia, Ohio, Pennsylvania, New York, North Carolina, Washington and Connecticut engaged in employment related to the production and sale of hair barrettes; and all workers of Opti-Ray, Inc., Farmingdale, New York engaged in the sale and distribution of sunglasses, who became totally or partially separated from employment on or after May 18, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, DC, this 11th day of May 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–12639 Filed 5–23–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,963]

Goody Products, Inc. Opti-Ray Division Farmingdale, New York; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on April 24, 1995 in response to a worker petition which was filed on behalf of workers at the Opti-Ray Division of Goody Products, Inc., Farmingdale, New York.

An active certification covering the petitioning group of workers remains in effect (TA–W–30,920I). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C. this 12th day of May, 1995.

Victor J. Trunzo,

Program Manager, Policy, and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–12643 Filed 5–23–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,001; TA–W–30,001A]

Jencraft Manufacturing Company, Incorporated Elsa, Texas, et al.; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 15, 1994, applicable to all workers of Jencraft Manufacturing Company, Incorporated, located in Elsa, Texas. The notice was published in the **Federal Register** on August 15, 1994 (57 FR 41793).

At the request of the State Agency, the Department examined the certification for workers of the subject firm. New findings show that when Jencraft closed the Elsa, Texas facility on August 1, 1994, the company relocated production to McAllen, Texas. Layoffs are continuing at Jencrafts' McAllen, Texas location.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Jencraft Manufacturing Company, Incorporated, who were adversely affected by increased imports.

The amended notice applicable to TA–W–30,001 is hereby issued as follows:

All workers of Jencraft Manufacturing Company, Incorporated, Elsa, Texas and McAllen, Texas engaged in employment related to the production of mini and vertical blinds who became totally or partially separated from employment on or after June 5, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 11th day of May 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–12638 Filed 5–23–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,768]

Kelley Oil Corporation Headquartered in Houston, Texas; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

Operating at Various Locations in the Following States:

TA–W–30,768A New York
TA–W–30,768B Lousisiana
TA–W–30,768C Texas (excluding Houston)

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) The Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 30, 1995, applicable to all workers of Kelley Oil Corporation, headquartered in Houston, Texas and operating at various locations in New York and Louisiana. The notice was published in the **Federal Register** on April 27, 1995 (60 FR 20764).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. Findings show that in addition to the headquarters in Houston, Kelley Oil Corporation operated at various locations within the State of Texas. The Department is amending the certification to cover the Kelley Oil workers within the State of Texas.

The intent of the Department's certification is to include all workers of Kelly Oil Corporation who were adversely affected by increased imports.

The amended notice applicable to TA–W–30,768) is hereby issued as follows:

All workers of Kelley Oil Corporation, headquartered in Houston, Texas (TA–W–30,768) and operating at various locations in the following cited States who became totally or partially separated from employment on or after February 7, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

TA–W–30,768A New York
TA–W–30,768B Lousiana
TA–W–30,768C Texas (excluding Houston)

Signed at Washington, D.C. this 11th day of May 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–12641 Filed 5–23–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,688]

Union Camp Corp.; Retail Packaging of the Flexible Packaging Division Savannah, GA; Notice of Affirmative Determination Regarding Application for Reconsideration

On April 24, 1995, the union requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for workers of the subject firm. The denial notice was signed on March 30, 1995 and published in the **Federal Register** on April 27, 1995 (60 FR 20763).

The issue is whether plastic bags are like and directly competitive with paper bags.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, D.C., this 11th day of May, 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–12640 Filed 5–23–95; 8:45 am]

BILLING CODE 4510–30–M

[NAFTA–00420]

ITT Automotive Body Systems Division, Roscommon, MI; Amended Certification Regarding Eligibility To Apply for NAFTA Transitional Adjustment Assistance

In accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on May 1, 1995, applicable to all workers at the subject firm. The notice will soon be published in the **Federal Register**.

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. Findings show workers of ITT Automotive, Body Systems Division, produced tire winches (spare tire holders) and other automotive components. The workers are separately identifiable. Only those workers of ITT's Body Systems Division producing tire winches were adversely affected by the shift in production to a company affiliate facility in Mexico. Accordingly, the Department is amending the certification to properly reflect the correct worker group.

The amended notice applicable to NAFTA–00420 is hereby issued as follows:

All workers of ITT Automotive, Body Systems Division, Roscommon, Michigan engaged in the production of tire winches who became totally or partially separated from employment on or after March 23, 1994 are eligible to apply for NAFTA–TAA Section 250 of the Trade Act of 1974.

Signed at Washington, DC this 11th day of May 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–12642 Filed 5–23–95; 8:45 am]

BILLING CODE 4510–30–M

LEGAL SERVICES CORPORATION

Audit Guide for LSC Recipients and Auditors

AGENCY: Legal Services Corporation.

ACTION: Proposed guideline.

SUMMARY: The Legal Services Corporation (LSC or Corporation) hereby publishes for comment by interested parties a proposed Audit Guide for Legal Services Corporation Recipients and Auditors (Audit Guide). The Audit Guide will replace the audit portions of both editions of the current Audit and Accounting Guide for Recipients and Auditors (Audit and Accounting Guide). The Audit Guide will be maintained as a separate document, under the authority of the LSC Office of Inspector General. The accounting and financial reporting requirements of the Audit and Accounting Guide will remain in effect until amended in the future.

The proposed Audit Guide prescribes the use of Government Auditing Standards (GAS or GAGAS), with guidance under Office of Management and Budget (OMB) Circular A–133. The Audit Guide establishes a uniform standard under which recipient audits will be conducted; it simplifies audit requirements by adopting standards that are widely recognized in the federal and nonprofit audit communities; it provides for the effective implementation of recommendations designed to streamline the monitoring of recipients for compliance; and it eliminates the obsolescence of LSC audit requirements that date from the 1980's.

There will be five appendices to the new Audit Guide, which in themselves establish no new rules, regulations or guidelines for recipients.

DATES: Comments should be received in writing on or before June 23, 1995. Late comments will be considered to the extent practicable. Where possible comments should reference applicable paragraph numbers in the proposed revision. To facilitate conversion of the comments in computer format for analysis, respondents are asked to send a copy of the comments on either a 3.5 or 5.25 inch diskette in ASCII format.

ADDRESSES: Comments should be submitted to the Office of Inspector General, Legal Services Corporation, 750 First St., NE., 10th Floor, Washington, DC 20002–4250.

FOR FURTHER INFORMATION CONTACT: Karen M. Voellm, Chief of Audits (202) 336–8830.

SUPPLEMENTARY INFORMATION: The Legal Services Corporation Act, Sec. 1009(c)(1) requires that the Corporation either directly "conduct, or require each grantee, contractor, or person or entity receiving financial assistance" from the Corporation to provide for an annual financial audit. Historically, the Corporation has chosen to require recipients to provide the audit pursuant to Corporation audit guidance provided in the Audit and Accounting Guide.

On Tuesday, July 30, 1976, the Legal Services Corporation published in the **Federal Register** its Audit and Accounting Guide for Recipients and Auditors (41 FR 29951–29979). Pursuant to section 1008(e) of the Legal Services Corporation Act (42 U.S.C. 2996(g)(c)), the Corporation thereafter requested (41 FR 32794) and received comments from interested persons. The Audit and Accounting Guide became effective on October 4, 1976.

On July 19, 1977, the Corporation published a notice instructing recipients to use the revised Audit and Accounting Guide that had been distributed in June of 1977. (42 FR 37077). The instruction was effective immediately upon publication. There were additional unpublished revisions in September 1979 and 1981 and a separate Fundamental Criteria of an Accounting and Financial Reporting System; each was issued directly to grant recipients.

On February 20, 1985, the Corporation published a notice of availability of a revised Audit and Accounting Guide that had been distributed February 11, 1985. (50 FR 7150). The notice established a ninety-day period for the submission of comments. On November 29, 1985, after adoption by the Corporation's Board of Directors, the final publication of the revised Audit and Accounting Guide appeared in the **Federal Register.** (50 FR 49276). This version of the Audit and Accounting Guide became effective January 1, 1986. Shortly thereafter, however, the Corporation gave recipients the option of using either the September 1981 or the January 1986 version of the Audit and Accounting Guide. Today, recipients are still permitted to follow either Audit and Accounting Guide.

The proposed Audit Guide makes one major change in current standards. All financial statement audits for periods ending on or after December 31, 1995, will be conducted pursuant to GAGAS rather than just the less comprehensive Generally Accepted Audit Standards (GAAS). As a result of the change to GAGAS, much of the detail of the audit portions of the current Audit and Accounting Guides is replaced by reference to the well-established and documented GAGAS.

GAGAS requires auditors, in the conduct of an audit of an entity's financial statements, to plan and design audit procedures to assess compliance with laws and regulations that have a material effect on the financial statements, and to assess the related internal controls. GAGAS also contains requirements relating to the auditor's professional qualifications, the quality of the audit effort, and the contents of meaningful audit reports. GAGAS is widely recognized as audit requirements that provide audit coverage that is broad enough to help fulfill the reasonable needs of potential users of the audit report, and is more comprehensive than the current GAAS requirements of the Corporation's Audit and Accounting Guides. GAGAS standards are the ones that nonprofit organizations receiving federal assistance are required to follow pursuant to the requirements of OMB Circular A–133. Currently, LSC recipients receiving significant amounts of federal funds are already required to arrange for audits conducted under GAGAS, and at least 45% of LSC recipient audits for FY1993 were conducted under GAGAS.

For LSC, for its grant recipients and for Congress, a switch to GAGAS produces a number of benefits.

First, as already noted, the most obvious benefit of GAGAS audits is that a more thorough examination of the recipient's financial activities is made and a more comprehensive report on compliance with laws and regulations and on the maintenance of internal controls is provided to the Corporation and the public. In addition, auditors qualified to perform GAGAS audits are more likely to provide a high quality service than auditors not so qualified. As a result, the recipients' boards of directors and the Corporation will be provided higher quality and more extensive oversight information regarding the activities of local recipients and their staffs. For reasons such as these, GAGAS are the standards deemed by Congress to provide the appropriate level of accountability for audits involving taxpayer funds. Adopting GAGAS demonstrates the Corporation's and recipients' commitment to ensuring high levels of such accountability.

Second, a requirement that recipient annual financial statement audits be done in accordance with GAGAS simplifies the content of the Audit Guide and reduces the resources needed to develop it and keep it up-to-date. With audit requirements defined by the American Institute of Certified Public Accountants (AICPA) (GAAS) and the Comptroller General of the United States (GAGAS), the Corporation needs only to identify for the auditor supplemental, Corporation-specific requirements imposed by the Corporation's Act, appropriations laws or regulations. Along with these savings to the Corporation, recipients will also benefit from simplification; the potential for conflicting audit requirements among varied grant sources will be reduced.

Third, with the advent and development of the Corporation's Office of Inspector General and its special responsibility for and expertise in areas of audit policy, it has become advantageous and prudent to separate

the audit and accounting guidance into two separate Guides and to place authority over the Audit Guide in the OIG. Consistent with the Inspector General Act of 1978, as amended, and with practice throughout the federal government, the OIG will develop Corporation audit policy, establish audit requirements, maintain the Audit Guide and its appendices and review recipient audited financial statements to assure that they meet the standards of the Audit Guide. The Corporation, its recipients and the Congress will all benefit by having expert and centralized audit guidance to refer to.

Fourth, it is arguable that the Corporation is required by the Inspector General Act of 1978, as amended, to adopt GAGAS. Under Section 4 of that Act, the Inspector General is to provide policy direction for Corporation audits and to assure that audits conducted by non-Federal auditors complies with standards established by the Comptroller General, of which GAGAS is a prime example. Moreover, GAGAS are now the standards for audits of substantial amounts of federal funds distributed to nonprofit service providers either directly by federal agencies, or through state and local government intermediaries. The Corporation's special status as a DC private nonprofit corporation distributing funds that are federal in origin may not be a sufficient practical or legal reason to distinguish Corporation audits from other federal audits.

Fifth, the two current Audit and Accounting Guides have both become out of date. Both accounting principles and auditing standards have evolved significantly during the past decade. In addition, the persistence of two versions of the Audit and Accounting Guide, as the result of an unresolved controversy dating to 1986, causes continuing confusion regarding applicable standards and inconsistency in financial reporting by recipients. A new, single Audit Guide will bring the Corporation's audit guidance up to date and eliminate the confusion.

Sixth, in May of 1994, the OIG published its *Audit Report of Grantee Monitoring*. The audit reviewed LSC's performance of its on-site monitoring function. It disclosed, in part, that the former monitoring system duplicated to a large degree the work of the independent public accountants. The audit disclosed that about half of the recommendations made as a result of LSC monitoring dealt with accounting, financial management systems, and internal controls—areas covered in annual audits by the grantees' independent public accountants (IPAs). This duplication was costly and unnecessary. In addition the report noted that monitoring activities were believed to be overly invasive by LSC grantees.

The findings and recommendations of the *Audit Report of Grantee Monitoring*, as well as the obsolescence of LSC's audit guidance, signaled a need to adopt auditing standards that would permit the effective assessment of certain fiscal areas by the IPA as part of the annual audit, as well as promote uniformity in the audits of LSC recipients. Adoption of GAGAS facilitates the implementation of an expanded role in testing and reporting on compliance requirements by recipients' IPAs. For this reason, one of the major recommendations of the performance audit of monitoring—that the Corporation expand its use of IPAs in monitoring—is workable and efficient only if GAGAS are applied to the audits.

There will be five appendices to the proposed Audit Guide. One of the appendices to the Audit Guide will be a new Compliance Supplement which will identify the financial-related regulations that auditors should examine in the course of the recipients' annual audit and will contain suggested audit procedures for the auditor to assess compliance with applicable laws and regulations. The other appendices will include a sample audit agreement, a model format for audited financial statements, the Corporation's pre-existing Fundamental Criteria for an Accounting and Financial Reporting System for LSC Recipients and a Guide for Procurement of Audit Services. Because the appendices themselves establish no new rules, regulations, or guidelines for recipients, they are not published for comment and will be promulgated without formal adoption by the Corporation's Board of Directors.

For the reasons set forth above, LSC proposes the Audit Guide read as follows:

Legal Services Corporation Audit Guide for Recipients and Auditors

Foreword

Under the Legal Services Corporation (LSC) Act, LSC provides financial support to organizations that furnish legal assistance to eligible clients. The Act requires that LSC either conduct or require each recipient of LSC funds to provide for an annual financial statement audit.

In 1976, LSC adopted an Audit and Accounting Guide for Recipients and Auditors of LSC funds. The Audit and Accounting Guide was amended several times through 1981. Then, effective January 1, 1986, a fully revised Audit and Accounting Guide was published, but LSC subsequently declared the 1986 Audit and Accounting Guide to be just an alternative to rather than a binding replacement of the amended original Audit and Accounting Guide.

In 1995, LSC promulgated the following Audit Guide to replace the audit portions of both the original and the 1986 Audit and Accounting Guide. In addition, LSC will attach five appendices to this Audit Guide for use by recipients and auditors.

Appendix A. A Sample Audit Agreement which contains provisions LSC recommends recipients consider incorporating in their audit agreements.
Appendix B. Model Format for Audited Financial Statements and Footnotes.
Appendix C. The Compliance Supplement provides notice to both recipients and their auditors of the general federal requirements and the specific LSC regulations which are to be tested for compliance. The Compliance Supplement will change as LSC rules, regulations and guidelines are adopted, amended or revoked, but it establishes no new rules, regulations or guidelines itself.
Appendix D. The Fundamental Criteria of an Accounting and Financial Reporting System, previously promulgated by LSC. It establishes minimum standards for the elements of an adequate accounting and financial reporting system.
Appendix E. A Guide for Procurement of Audit Services, prepared by the LSC Office of Inspector General (OIG) in the spring of 1994 and revised in 1995. This Guide is intended to assist recipients in planning and procuring audit services.

It is anticipated that the accounting portions of both the original and the 1986 Audit and Accounting Guide will also be replaced in the future.

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Appendix E Guide for Procurement of Audit Services by Legal Services Corporation Recipients

Authorities: The Legal Services Corporation Act of 1974, as amended, sec. 1008(a) and (b),(42 U.S.C.2996g(a) and (b)); sec. 1009(c)(1),(42 U.S.C. 2996h(c)(1)); and sec. 1010(c),(42 U.S.C.2996i(c)); The Inspector General Act of 1978, as amended, 5 U.S.C. App. 3, sec. 4(a)(1); and sec. 4(b)(1).

Introduction

The Office of Inspector General (OIG) of the Legal Services Corporation (LSC) is responsible for establishing and interpreting LSC audit policy pursuant to a resolution adopted by the LSC Board of Directors on May 13, 1995. The OIG will periodically revise the Audit Guide and related audit policies and will review audit reports to ensure compliance with appropriate auditing standards and the policies prescribed by the Audit Guide. The OIG will examine the audits to identify reported control deficiencies, questioned costs and financial-related instances of noncompliance. Program-related findings and issues identified in the review of the audit reports will be forwarded to management for action.

I–1. Purpose

This Audit Guide provides a uniform approach for audits of LSC recipients and describes recipients' financial responsibilities with respect to the audit. The Audit Guide is to be used in conjunction with the Compliance Supplement (Appendix C). The Audit Guide and the Compliance Supplement provide the auditor flexibility in planning and performing the audit, encourage professional judgement in determining the audit steps necessary to accomplish audit objectives, and do not supplant the auditor's judgement of the audit work required in particular situations. The suggested procedures included in the Compliance Supplement do not cover all the circumstances or conditions likely to be encountered during the course of an audit.

I–2. Required Standards and Guidance

Audits of recipients, contractors, persons or entities receiving financial assistance from LSC (all hereinafter referred to as "recipients") are to be performed in accordance with Generally Accepted Auditing Standards (GAAS); Government Auditing Standards (GAS or GAGAS) issued by the United States General Accounting Office (GAO); Office of Management and Budget (OMB) Circular A–133, Audits of Institutions of Higher Education and Other Not-for-Profit Organizations; and this Audit Guide.

For purposes of OMB Circular A–133, LSC is to be considered a major program. The Compliance Supplement (Appendix C) is to be followed for LSC funds. Accordingly, the OMB Compliance Supplement for Audits of Institutions of Higher Learning and Other Non-Profit Institutions does not apply to LSC programs.

The requirements of the Audit Guide apply to all recipients and subrecipients of LSC funds, except where specific provisions have been otherwise made through grant or subgrant agreements. This Audit Guide is not intended to apply to grants to law schools, universities or other special grants, which are covered by special provisions. Exceptions to these requirements will be determined by the OIG in conjunction with LSC management.

I–3. Authority

This Audit Guide has been prepared under the authority provided by the following sections of the LSC Act and the IG Act:

Records and Reports—LSC Act sec. 1008:

(a) The Corporation is authorized to require such reports as it deems necessary from any recipient, contractor, or person or entity receiving financial assistance under this title regarding activities carried out pursuant to this title.

(b) The Corporation is authorized to prescribe the keeping of records with respect to funds provided by grant or contract and shall have access to such records at all reasonable times for the purpose of insuring compliance with the grant or contract or terms and conditions upon which financial assistance was provided.

Audit—LSC Act sec. 1009(c)(1):

The corporation shall conduct or require each recipient, contractor, or person or entity receiving financial assistance under this title to provide for an annual financial audit.

Recipients' Non-LSC Funds—LSC Act sec. 1010(c):

Non-Federal funds received by the Corporation, and funds received by any recipient from a source other than the Corporation, shall be accounted for and reported as receipts and disbursements separate and distinct from Federal funds. * * *

Duties and Responsibilities * * *—IG Act sec. 4(a)(1) and 4(b)(1):

4(a) It shall be the duty and responsibility of each Inspector General, with respect to the establishment within which his Office is established—(1) to provide policy direction for and to conduct, supervise, and coordinate audits * * * relating to the programs and operations of such establishment. * * *

4(b)(1) In carrying out the responsibilities specified in subsection (a)(1), each Inspector General shall * * * (C) take appropriate steps to assure that any work performed by non-Federal auditors complies with the standards established by the Comptroller General. * * *

I–4. Effective Date

This Audit Guide is effective for audits of LSC programs for periods ending on or after December 31, 1995.

I–5. Revisions and Supplements to the Guide

The OIG will periodically revise the Audit Guide and its appendices through bulletins or replacement sections. Revisions may reflect changes to corporate regulations, auditing standards, funding requirements, or other published guidelines. Revisions should be incorporated into the recipient's copy of the Audit Guide, and furnished to the IPAs by the recipients. If there are any questions regarding the content of any revisions or supplements, please contact the OIG prior to the audit.

I–6. Cumulative Status of Revisions

Effective date	Description
August 1976	Original Edition of "Audit and Accounting Guide for Recipients and Auditors" Issued.
June 1977	Revised Original Edition of Audit and Accounting Guide Issued.
September 1979	Revision to Pages 4–1 and 6–6.
September 1981	Revision to Pages ii, 4–1, 6–6, VIII–3, and addition of Page 4–2.
January 1, 1986	Revised 1986 Edition of Audit and Accounting Guide Effective.

Effective date	Description
August 13, 1986	Regulation 1630 replaces Chapter 4 of both the Original and 1986 Edition of the Audit and Accounting Guide.
December 31, 1995.	Chapter 6 of both Original and 1986 Audit and Accounting Guide replaced by "Audit Guide."

I–7. Financial Responsibilities of Recipients

A. Maintain Adequate Accounting System

Recipients, under the direction of their boards of directors, are required to establish and maintain adequate accounting records and internal control procedures. Until revised, guidance with regard to these responsibilities is found in both LSC's Original and 1986 Edition of the "Audit and Accounting Guide for Recipients and Auditors," referred to in I–6, above. An effective financial system should accomplish the following objectives:

1. Resources are safeguarded against waste, loss and misuse;
2. Resources are used consistent with LSC regulations and grant conditions;
3. Management is provided with timely, accurate financial information sufficient to manage the resources of the recipient; and
4. Reporting is reliable and in sufficient detail to demonstrate to funding sources and the general public the recipient's commitment to accountability for the resources with which it has been entrusted.

B. Provide Audited Financial Statements

Recipients are responsible for preparing annual financial statements and arranging for an audit of those statements to be completed within ninety days of the recipient's fiscal year end. The recipients' boards of directors have the final responsibility for the appointment of the auditor. However, consistent with the authority granted in the LSC Act sec. 1009(c)(1), LSC reserves the right to preclude the appointment of an auditor if experience has shown the auditor's work to be unsatisfactory or if a conflict of interest exists.

A written agreement between the recipient and the IPA must be executed and, at a minimum, is to specifically include all matters described in Section II–1 of this Audit Guide (Subsections A through F).

Appendix A is a sample audit agreement that includes the required matters described in Section II–1, and additional provisions that can be used to document the understanding between the recipient and the IPA. Recipients should consider incorporating these additional provisions in their audit.

In connection with the procurement of audit services, recipients should refer to the Guide for Procurement of Audit Services (Appendix E).

II. Audit Performance Requirements

II–1. Audit Requirements

A. Objectives

The primary audit objectives are to determine whether:

1. The financial statements present fairly the financial position and the results of operations in accordance with Generally Accepted Accounting Principles (GAAP);
2. The internal control structure provides reasonable assurance that the institution is managing Corporation funds in compliance with applicable laws and regulations, and controls ensure compliance with the laws and regulations that could have a material impact on the financial statements; and
3. The recipient has complied with applicable provisions of federal law, Corporation regulations and the grant agreement that may have a direct and material effect on its financial statement amounts.

B. Reports

The IPA will prepare the following audit reports:

1. Opinion (or disclaimer of opinion) that the financial statements have been prepared in accordance with GAAP;
2. Report on the Internal Control Structure;
3. Report on Compliance with Laws and Regulations; and
4. A Management Letter, if appropriate.

C. Qualifications of the IPA

The comprehensive nature of auditing performed in accordance with *GAS* places on the IPA the responsibility for ensuring that: (1) the audit is conducted by personnel who collectively have the necessary skills; (2) independence is maintained; (3) applicable standards are followed in planning and conducting audits and reporting the results; (4) the IPA has an appropriate internal quality control system in place; and (5) the IPA undergoes an external quality control review. IPAs must meet the qualifications stated in Government Auditing Standards.

D. Audit Working Papers

The audit working papers will be prepared in accordance with *GAS*, and will be retained by the IPA for at least eight [1] years from the date of the final audit report.

E. Access to Audit Working Papers

The audit working papers will be available for examination upon request by representatives of LSC and the Comptroller General of the United States. The audit working papers will be subject to Quality Assurance Review conducted by the LSC OIG.

F. Disclosure of Irregularities, Illegal Acts and Other Non-Compliance

If, during an audit, matters are uncovered relative to actual, potential, or suspected defalcations, or other similar irregularities, the IPA will comply with SAS Numbers 53 and 54. In addition, the IPA shall notify immediately the Office of Inspector General at (202) 336–8830.

G. Privileged or Confidential Information

GAS paragraphs 5.30 and 5.31 state: Certain information may be prohibited from general disclosure by federal, state, or local laws or regulations. Such information may be provided on a need-to-know basis only by persons authorized by law or regulation to receive it. If such requirements prohibit auditors from including pertinent data in the report, they should state the nature of the information omitted, and the requirement that makes the omission necessary. The auditors should obtain assurance that a valid requirement for the omission exists and, when appropriate, consult with legal counsel.

II–2. Review of Internal Controls

In accepting LSC funds, recipient management asserts that its accounting system is adequate to comply with LSC requirements. As part of the review of internal controls the auditor is required to evaluate the effectiveness of the recipient's accounting system and internal controls. The primary objectives of this evaluation are to ensure that resources are safeguarded against waste, loss and misuse and that resources are used consistent with LSC regulations and grant conditions.

Appendix D is the Fundamental Criteria of an Accounting and Financial Reporting System (Fundamental Criteria). It establishes minimum standards for the elements of an adequate accounting and financial reporting system. The criteria contained in the Fundamental Criteria should be considered in an auditor's assessment of the recipient's internal control structure. The Fundamental Criteria is in addition to, rather than a substitute for, standard internal control checklists, and does not preclude the exercise of appropriate auditor's judgement in assessing internal controls.

[1] See GSA General Records Schedule 22, Transmittal No. 3, February 22, 1991.

II–3. Assessing Compliance With Laws and Regulations

The requirements set out in the Compliance Supplement (Appendix C) are those that could have a material impact on an organization's financial statements. Accordingly, examination of these compliance requirements are to be included as part of the audit.

The Compliance Supplement specifies the objectives and provides suggested procedures to be considered in the auditor's assessment of a recipient's compliance with laws and regulations. The suggested procedures can be used to test for compliance with laws and regulations, as well as to evaluate the related controls. Auditors should use professional judgement to decide which procedures to apply, and the extent to which reviews and tests should be performed. Some procedures require a review and evaluation of internal controls. If the reviews and evaluations were performed as part of the internal control structure review, audit procedures can be modified to avoid duplication. Auditors should also refer to the grant agreements for additional requirements.

In certain cases non-compliance may result in questioned costs. Auditors are to ensure that sufficient information is obtained to support the amounts questioned. Working papers should adequately document the basis for any questioned costs and the amounts reported.

II–4. Audit Follow-up

Consistent with *GAS* paragraph 4.10, the auditor is required to follow-up on known material findings and recommendations from previous audits that could affect the financial statement audit. The objective is to determine whether timely and appropriate corrective action has been taken. Auditors are required to report the status of uncorrected material findings and recommendations from prior audits. In addition, these requirements are also applicable to findings and recommendations issued in a management letter.

III. Audit Reporting Requirements

III–1. Audit Reports

The IPAs are to issue the reports called for in Paragraph II–1(C) and should follow the requirements of *GAS* and Statement on Auditing Standards (SAS) 74 (and any revisions thereto) for the content and format of the reports.

III–2. Views of Responsible Officials

Consistent with *GAS* paragraph 7.38, auditors should report the views of responsible program officials concerning the auditors' findings, conclusions, and recommendations, as well as corrections planned.

III–3. Report Distribution

Four copies of the audit reports are to be submitted to the LSC OIG within ninety days of the recipient's year end. Under extenuating circumstances, an extension of the ninety-day requirement may be granted. Requests for extensions should be in writing, and directed to the Chief for Audits of the OIG.

IV. Reference Materials

A. Title X—Legal Services Corporation Act of 1974, 42 USC 2996; Pub. L. 93–355, amended by Pub. L. 95–222 and 98–166.
B. 45 CFR Part 1600, *et seq.*
C. *Government Auditing Standards*, issued by the Comptroller General of the United States, 1994 Revision.
D. OMB Circular A–133, Audits of Institutions of Higher Education and Other Non-Profit Institutions.
E. AICPA Professional Standards, Volume I.
F. AICPA Integrated Practice System, Not-For-Profit Organizations Audit Manual.
G. Practitioners Publishing Company *Guide to Audits of Nonprofit Organizations*, Seventh Edition (June 1994).
H. AICPA Statement of Position (SOP) 92–9, *Audits of Not-for-Profit Organizations Receiving Federal Awards*, December 28, 1992.
I. Pursuant to LSC Regulations, 45 CFR 1630.4(g):
The Circulars of the Office of Management and Budget shall provide guidance for all allowable cost questions arising under this part when relevant policies or criteria therein are not inconsistent with the provisions of the Act, applicable appropriations acts, this part, the Audit and Accounting Guide for Recipients and Auditors, and Corporation rules, regulations, guidelines, and instructions.

Among the OMB Circulars which might be referred to if LSC policies are not dispositive:

1. Office of Management and Budget (OMB) Circular A–50 (Revised), *Audit Follow-up.*
2. OMB Circular A–110, *Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations.*
3. OMB Circular A–122, *Cost Principles for Nonprofit Organizations.*
4. OMB Circular A–123, *Internal Control Systems.*
5. OMB Circular A–127, *Financial Management Systems.*

Dated: May 19, 1995.

Victor M. Fortuno,
General Counsel.

[FR Doc. 95–12764 Filed 5–23–95; 8:45 am]
BILLING CODE 7050–01–P

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

Media Arts Advisory Panel; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Advisory Panel (Arts on Radio Section) to the National Council on the Arts will be held on June 6, 1995 from 9 a.m. to 6:30 p.m. on June 6, 1995. This meeting will be held in Room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public from 9 a.m. to 9:15 a.m. for introductory remarks and from 5:30 p.m. to 6:30 p.m. for a guideline and policy discussion.

The remaining portion of this meeting, from 9:15 a.m. to 5:30 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994 this session will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

Dated: May 19, 1995.

Yvonne M. Sabine,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 95–12797 Filed 5–22–95; 8:45 am]

BILLING CODE 7537–01–M

Theater Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Theater Advisory Panel (Services to the Field Section) to the National Council on the Arts will be held on June 8, 1995 from 9:30 a.m. to 4 p.m. This meeting will be held in Room 730, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 9:30 a.m. to 10 a.m. for introductory remarks and a discussion of review criteria.

The remaining portion of this meeting from 10 a.m. to 4 p.m. is for the purpose of panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, this session will be closed to the public pursuant to subsection (c)(4), (6) and 9(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

Dated: May 19, 1995.

Yvonne M. Sabine,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 95–12798 Filed 5–22–95; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Privacy Act of 1974: New System of Records

AGENCY: National Science Foundation.

ACTION: Notice of new system of records and routine uses.

SUMMARY: Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), the National Science Foundation is providing notice of a new system of records—NSF–59, "Science and Technology (STC) Database."

This system is established and maintained by NSF. The records are to be used to help evaluate the Science and Technology Centers' achievements of program goals, such as diversity of participants and enhancements of skills. Evaluation will include followup surveys of Center participants.

EFFECTIVE DATE: Sections 552a(e) (4) and (11) of Title 5 of the U.S. Code requires that the public have thirty days to comment on the routine uses of systems of records. The new routine uses that are the subject of this notice will take effect thirty days from date of this publication, unless modified by a subsequent notice to incorporate comments received from the public.

ADDRESSES: Written comments should be submitted to the NSF Privacy Act Officer, National Science Foundation, Division of Contracts, Policy and Oversight, 4201 Wilson Boulevard, room 485, Arlington, Virginia 22230.

Dated: May 18, 1995.

Herman G. Fleming,

NSF Privacy Act Officer.

NSF–59

SYSTEM NAME:

Science and Technology Centers (STC) Database.

SYSTEM LOCATION:

Office of Science and Technology Infrastructure, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals participating in NSF funded Science and Technology Center activities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include the names, SSNs, areas of research, race, ethnicity, genders, and other related information. They may also include the results of followup surveys of Center participants. The records will be used to help evaluate the Centers' achievement of program goals, such as diversity of participants and enhancement of skills. Evaluation will include followup surveys of Center participants. The results of the evaluations will be statistical and will not identify individual participants.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information from the system may be given to contractors and other individuals who perform a service to or work under a contract, cooperative agreement or other arrangement for the Federal government.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All original materials are kept at NSF.

RETRIEVABILITY:

By Center and then alphabetically by individual.

SAFEGUARDS:

Building is locked during non-business hours. Records at NSF are kept in rooms that are locked during non-business hours. Records maintained by NSF contractors are kept in similar rooms and some records are locked in cabinets. Records maintained in electronic forms are accessible only to those employees within the Office of Science and Technology Infrastructure.

RETENTION AND DISPOSAL:

A records retention schedule has not yet been approved.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director, Office of Science and Technology Infrastructure, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

NOTIFICATION PROCEDURE:

The NSF Privacy Act Officer should be contacted in accordance with procedures found at 45 CFR part 613.

RECORD ACCESS PROCEDURES:

See "Notification" above.

CONTESTING RECORD PROCEDURES:

See "Notification" above.

RECORD SOURCE CATEGORIES:

Science and Technology Centers.

SYSTEM EXEMPTIONS FROM CERTAIN PROVISIONS OF THE PRIVACY ACT:

None.

[FR Doc. 95–12632 Filed 5–23–95; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–443]

North Atlantic Energy Service Corporation Seabrook Station, Unit No. 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from Facility Operating License No. NPF–86, issued to North Atlantic Energy Service Corporation (the licensee or North Atlantic), for operation of the Seabrook Station, Unit No. 1 (Seabrook) located in Rockingham County, New Hampshire.

Environmental Assessment

Identification of the Proposed Action

This Environmental Assessment has been prepared to address potential environmental issues related to North Atlantic's application of February 17, 1995. The proposed action would exempt North Atlantic from the requirements of 10 CFR Part 50, Appendix J, Paragraph III.D.1.(a), to the extent that a one-time interval extension would be granted for Type A testing. The interval between the first and second Type A tests in the first 10-year containment inservice inspection period would be extended by approximately 22 months from the November 1995 refueling outage to the September 1997 refueling outage.

The Need for the Proposed Action

The proposed action would permit North Atlantic to defer the Type A test from the November 1995 refueling outage, thereby saving the cost of performing the test and eliminating the test period from the critical path time of the outage. North Atlantic has stated that the exemption request meets the requirements of 10 CFR 50.12, paragraphs (a)(1) and (a)(2)(ii). The historical Type A tests have demonstrated that Seabrook has a low leakage containment. All three Type A tests have been performed without a single failure with as-found leak rates being significantly lower than the acceptance and design limits. The Type B and C testing programs, i.e., the local leak rate tests, are not being modified and will continue effectively to detect containment leakage caused by the degradation of active containment isolation components as well as containment penetrations. It has been the experience at Seabrook that any significant containment leakage paths are detected by the Type B and C tests and that the Type A test results have only been confirmatory of the results of the Type B and C test results.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the proposed one-time exemption would not increase the probability or consequences of accidents previously analyzed and the proposed one-time exemption would not affect facility radiation levels or facility radiological effluents. North Atlantic has analyzed the results of previous Type A tests performed at Seabrook to show good containment performance and they will conduct the Type B and C local leak rate tests which historically have been shown to be the principal means of detecting containment leakage paths with the Type A tests confirming the Type B and C test results. It is also noted that North Atlantic will perform the visual containment inspection although it is only required by Appendix J to be conducted in conjunction with Type A tests. The NRC staff considers that these inspections, though limited in scope, provide an important added level of confidence in the continued integrity of the containment boundary. The change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the NRC staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Seabrook Station, Unit No. 1.

Agencies and Persons Consulted

In accordance with its stated policy, on April 11, 1995 the NRC staff consulted with the New Hampshire state official, Mr. George Iverson of the New Hampshire Emergency Management Agency regarding the environmental impact of the proposed action. On April 12, 1995 the NRC staff consulted with the Massachusetts state official, Mr. James Muckerheid of the Massachusetts Emergency Management Agency. The state officials had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see North Atlantic's letter dated February 17, 1995, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Exeter Public Library, Fonders Park, Exeter, NH 03833.

Dated at Rockville, Maryland, this 16th day of May 1995.

For the Nuclear Regulatory Commission.

Phillip F. McKee,

Director, Project Directorate I–3 Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–12665 Filed 5–23–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–445 and 50–446]

Texas Utilities Electric Company; (Comanche Peak Steam Electric Station, Units 1 and 2); Exemption

I

Texas Utilities Electric Company (the licensee) is the holder of Facility Operating License Nos. NPF–87 and NPF–89 for the Comanche Peak Steam Electric Station, Unit Nos 1 and 2 (CPSES) respectively. The operating licenses provide, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facilities consists of two pressurized water reactors at the licensee's site in Somervell County, Texas.

II

It is stated in 10 CFR 73.55, "Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage," paragraph (a), that "The licensee shall establish and maintain an onsite physical protection system and security organization which will have as its objective to provide high assurance that activities involving special nuclear material are not inimical to the common defense and security and do not constitute an unreasonable risk to the public health and safety."

It is specified in 10 CFR 73.55(d), "Access Requirements," paragraph (1), that "the licensee shall control all points of personnel and vehicle access into a protected area." It is specified in 10 CFR 73.55(d)(5) that "A numbered picture badge identification system shall be used for all individuals who are authorized access to protected areas without escort * * *" It also states that an individual not employed by the licensee (i.e., contractors) may be authorized access to protected areas without escort provided the individual "receives a picture badge upon entrance into the protected area which must be returned upon exit from the protected area * * *"

The licensee proposed to implement an alternative unescorted access control system which would eliminate the need to issue and retrieve badges at each entrance/exit location and would allow all individuals with unescorted access to keep their badges with them when departing the site.

An exemption from 10 CFR 73.55(d)(5) is required to allow contractors who have unescorted access to take their badges offsite instead of returning them when exiting the site. By letter dated January 16, 1995 (TXX–95012), as supplemented by letters dated March 1 (TXX–95064), and April 3, 1995 (TXX–95089), the licensee requested an exemption from certain requirements of 10 CFR 73.55(d)(5) for this purpose.

III

Pursuant to 10 CFR 73.5, "Specific exemptions," the Commission may, upon application of any interested person or upon its own initiative, grant such exemptions in this part as it determines are authorized by law and will not endanger life or property or the common defense and security, and are otherwise in the public interest.

Pursuant to 10 CFR 73.55, the Commission may authorize a licensee to provide measures for protection against radiological sabotage provided the licensee demonstrates that the measures have "the same high assurance objective" and meet "the general performance requirements" of the regulation, and "the overall level of system performance provides protection against radiological sabotage equivalent" to that which would be provided by the regulation.

At the CPSES site, unescorted access into protected areas is controlled through the use of a photograph on a combination badge and keycard. (Hereafter, these are referred to as badges.) The security officers at the entrance station use the photograph on the badge to visually identify the individual requesting access. The badges for both licensee employees and contractor personnel who have been granted unescorted access are issued upon entrance at the entrance/exit location and are returned upon exit. The badges are stored and are retrievable at the entrance/exit location. In accordance with 10 CFR 73.55(d)(5), contractor individuals are not allowed to take badges offsite. In accordance with the plant's physical security plan, neither licensee employees nor contractors are allowed to take badges offsite.

Under the proposed system, each individual who is authorized for unescorted access into protected areas would have the physical characteristics of their hand (hand geometry) registered with their badge number in the access control system. When an individual enters the badge into the card reader and places their hand on the measuring surface, the system would record the individual's hand image. The unique characteristics of the extracted hand image would be compared with the previously stored template in the access control system to verify authorization for entry. Individuals, including licensee employees and contractors, would be allowed to keep their badges with them when they depart the site and thus eliminate the process to issue, retrieve and store badges at the entrance stations to the plant. Badges do not carry any information other than a unique identification number.

All other access processes, including search function capability, would remain the same. This system would not be used for persons requiring escorted access, i.e., visitors.

Based on a Sandia report entitled, "A Performance Evaluation of Biometric Identification Devices" (SAND91–0276 UC–906 Unlimited Release, printed June 1991), and on the licensee's experience with the current photo-identification system, the licensee stated that the false acceptance rate for the hand geometry system is comparable to that of the current system. The biometric system has been in use for a number of years at several sensitive Department of Energy facilities. The licensee will implement a process for testing the proposed system to ensure continued overall level of performance equivalent to that specified in the regulation. The Physical Security Plan for CPSES will be revised to include implementation and testing of the hand geometry access control system and to allow licensee employees and contractors to take their badges offsite.

The licensee will control all points of personnel access into a protected area under the observation of security personnel through the use of a badge and verification of hand geometry. A numbered picture badge identification system will continue to be used for all individuals who are authorized unescorted access to protected areas. Badges will continue to be displayed by all individuals while inside the protected area.

Since both the badges and hand geometry would be necessary for access into the protected areas, the proposed system would provide for a positive verification process and the potential loss of a badge by an individual, as a result of taking the badge offsite, would not enable an unauthorized entry into protected areas.

For the foregoing reasons, pursuant to 10 CFR 73.55, the NRC staff has determined that the proposed alternative measures for protection against radiological sabotage meet "the same high assurance objective," and "the general performance requirements" of the regulation and that "the overall level of system performance provides protection against radiological sabotage equivalent" to that which would be provided by the regulation.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 73.5, this exemption is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest. Therefore, as long as the license uses the hand geometry access control system, the Commission hereby grants Texas Utilities Electric Company an exemption from those requirements of 10 CFR 73.55(d)(5) relating to the returning of picture badges upon exit from the protected area such that individuals not employed by the licensee, i.e., contractors, who are authorized unescorted access into the protected area, may take their picture badges offsite.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the environment (60 FR 21835). This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 16th day of May 1995.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Acting Director, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–12666 Filed 5–23–95; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–35734; File No. SR–Amex–95–17]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change Regarding Depository Eligibility Requirements

May 18, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on May 16, 1995, the American Stock Exchange, Inc. ("Amex") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by Amex. The Commission is publishing this notice to solicit comments from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Amex proposes to adopt a rule which will set forth depository eligibility requirements for issuers that apply to list their securities on Amex.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Under the proposed rule change, Amex will adopt a uniform depository eligibility rule for issuers that desire to list their securities on Amex. The uniform rule has been developed by the Legal and Regulatory Subgroup of the U.S. working Committee of the Group of Thirty in coordination with each of the national securities exchanges and the National Association of Securities Dealers ("NASD"). It is anticipated that each national securities exchange and the NASD will file rule changes proposing adoption of depository eligibility standards substantially similar to Amex's proposed rule and will seek to make such changes effective contemporaneously with the effective date of the transition from a five-day ("T+5") to a three-day ("T+3") settlement cycle. The transition is set to occur June 7, 1995.[3]

The proposed model depository eligibility rule is intended to encourage issuers and underwriters to take the simple steps necessary to make the issuers' securities depository eligible although it is carefully structured so that it will not preclude from listing idiosyncratic securities which cannot be made to meet all depositories' requirements. The proposed rule will require that before any issue of securities of a domestic issuer (excluding American Depository Receipts for securities of a foreign issuer) is listed on Amex, Amex must have received a representation from the issuer that a CUSIP number identifying the securities has been included in the file of eligible issues maintained by a securities depository registered as a clearing agency under Section 17A of the Act.[4] This requirement will not apply to a security if the terms of such security cannot be reasonably modified to meet the criteria for depository eligibility at all securities depositories.

The need of syndicate managers to monitor "flipping" also has been recognized. As a result, the proposed rule change sets forth additional requirements that must be met before a security will be deemed to be "depository eligible," as such term is used in Part IV, Section 3, Rule 776 of the Amex rules ("book-entry settlement of transactions rule").[5] The proposed rule specifies different requirements for depository eligibility depending upon whether a new issue is distributed by an underwriting syndicate before or after the date a securities depository system is available for monitoring repurchases of the distributed shares by syndicate members ("flipping tracing system").

Currently, a flipping tracking system is being developed that will include a securities depository service that (i) can be activated upon the request of the managing underwriter for a period of time that the managing underwriter specifies, (ii) in certain circumstances, will require the delivering participant to provide to the depository information sufficient to identify the seller of such shares as a precondition to the processing of book-entry delivery instructions for distributed shares, and (iii) will report to the managing underwriter the identity of any other syndicate member or selling group member whose customer(s) sold distributed shares (but will not report to the managing underwriter the identity of such customer[s]) and, in certain circumstances, will report to such syndicate member or selling group member the identity of such customer(s). Prior to the availability of

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] The Commission has modified the language in these sections.

[3] Securities Exchange Act Release Nos. 33023 (October 6, 1993), 58 FR 52891 (adoption of Rule 15c6–1) and 34952 (November 9, 1994), 59 FR 59137 (change of effective date of Rule 15c6–1 from June 1, 1995 to June 7, 1995).

[4] 15 U.S.C. 78q–1 (1988).

[5] Pursuant to Amex's book-entry settlement of transactions rule, trades by a member in depository eligible securities generally must be settled by book-entry through a securities depository.

a flipping tracking system, the managing underwriter may delay the date a security is deemed "depository eligible" for up to three months after trading has commenced in the security. After the availability of a flipping tracing system, a new issue will be deemed to be depository eligible upon commencement of trading on Amex.

The proposed rule change is consistent with Section 6(b)(5) of the Act[6] in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. That proposed rule change is designed to improve clearing and settlement practices in the industry while reducing risk to investors.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which Amex consents, the Commission will:

(a) By order approve such proposed rule change or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

Amex has requested accelerated effectiveness of the proposed rule change in order that the rule can become effective on June 7, 1995.[7]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 5th Street, NW., Washington, DC 20549. Copies of such filings will also be available for inspection and copying at the principal office of Amex. All submissions should refer to file number SR–Amex–95–17 and should be submitted by June 14, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–12691 Filed 5–23–95; 8:45 am]

BILLING CODE 8015–01–M

[Release No. 34–35735; File No. SR–BSE–95–09]

Self-Regulatory Organizations; Boston Stock Exchange, Incorporated; Notice of Filing of Proposed Rule Change Regarding Depository Eligibility Requirements

May 18, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on May 18, 1995, the Boston Stock Exchange, Incorporated ("BSE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by BSE. The Commission is publishing this notice to solicit comments from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

BSE proposes to adopt a rule which will set forth depository eligibility requirements for issuers that apply to list their securities on BSE.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, BSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Under the proposed rule change, BSE will adopt a uniform depository eligibility rule for issuers that desire to list their securities on BSE. The uniform rule has been developed by the Legal and Regulatory Subgroup of the U.S. Working Committee of the Group of Thirty in coordination with each of the national securities exchanges and the National Association of Securities Dealers ("NASD"). It is anticipated that each national securities exchange and the NASD will file rule changes proposing adoption of depository eligibility standards substantially similar to BSE's proposed rule and will seek to make such changes effective contemporaneously with the effective date of the transition from a five-day ("T+5") to a three-day ("T+3") settlement cycle. The transition is set to occur June 7, 1995.[3]

The proposed rule change will require issuers to ensure that securities to be listed on BSE have been included in the file of eligible issues maintained by a securities depository registered as a clearing agency under Section 17A of the Act.[4] This requirement will not apply to a security if the terms of such security cannot be reasonably modified to meet the criteria for depository eligibility at all securities depositories.

The proposed rule change sets forth additional requirements that must be met before a security will be deemed to be "depository eligible," as such term is used in Chapter III, Section 7 of the BSE rules ("uniform book-entry settlement rule").[5] The proposed rule specifies different requirements for depository eligibility depending upon whether a new issue is distributed by an underwriting syndicate before or after the date a securities depository system is available for monitoring repurchases of the distributed shares by syndicate members ("flipping tracking system").

Currently, a flipping tracking system is being developed that will include a securities depository service that (i) can be activated upon the request of the managing underwriter for a period of time that the managing underwriter specifies, (ii) in certain circumstances, will require the delivering participant to provide to the depository information sufficient to identify the seller of such shares as a precondition to the processing of book-entry delivery instructions for distributed shares, and (iii) will report to the managing underwriter the identity of any other syndicate member or selling group member whose customer(s) sold distributed shares (but will not report to the managing underwriter the identity of such customer[s]) and, in certain circumstances, will report to such syndicate member or selling group member the identity of such customer(s). Prior to the availability of a flipping tracking system, the managing underwriter may delay the date a security is deemed "depository eligible" for up to three months after trading has commenced in the security. After the availability of a flipping tracking system, a new issue will be deemed to be depository eligible upon commencement of trading on BSE.

The proposed rule change is consistent with Section 6(b)(5) of the Act[6] in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest. The proposed rule is designed to reduce the number of transactions in depository eligible securities for which settlement is effected by the physical delivery of securities. By requiring that transactions between member firms and transactions between member firms and clients that settle on a delivery-versus-payment or receipt-versus-payment basis occur only with rare exceptions in a book-entry environment, the efficiency of the U.S. settlement system will be enhanced and the systemic risk of that system will be reduced.

(B) Self-Regulatory Organization's Statement on Burden on Competition

BSE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

BSE has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which BSE consents, the Commission will:

(a) By order approve such proposed rule change or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

BSE has requested accelerated effectiveness of the proposed rule change in order that the rule can become effective on June 7, 1995.[7]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 5th Street, N.W., Washington, D.C. 20549. Copies of such filings will also be available for inspection and copying at the principal office of BSE. All submissions should refer to file number SR–BSE–95–09 and should be submitted by June 14, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–12692 Filed 5–23–95; 8:45 am]

BILLING CODE 8015–01–M

[Release No. 34–35738; File Nos. SR–Amex–95–13, SR–CBOE–95–13, SR–NYSE–95–04, SR–PSE–95–05, and SR–PHLX–95–10]

Self-Regulatory Organizations; Order Approving Proposed Rule Changes by the American Stock Exchange, Inc., the Chicago Board Options Exchange, Inc., the New York Stock Exchange, Inc., the Pacific Stock Exchange, Inc., and the Philadelphia Stock Exchange, Inc. Relating to Permanent Approval of the Hedge Exemption Pilot Programs

May 18, 1995.

On February 1, 1995, the Chicago Board Options Exchange, Inc. ("CBOE"); on February 3, 1995, the Philadelphia Stock Exchange, Inc. ("PHLX"); on February 21, 1995, the Pacific Stock Exchange, Inc. ("PSE"); on February 28, 1995, the New York Stock Exchange, Inc. ("NYSE"); and on March 14, 1995, the American Stock Exchange, Inc. ("Amex") (each individually referred to as an "Exchange" and two or more collectively referred to as "Exchanges"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] filed with the Securities and Exchange Commission ("SEC" or "Commission") proposed rule changes seeking permanent approval of the Exchanges' hedge exemption pilot programs.

The proposed rule changes were published for comment in the **Federal Register** on March 28, 1995.[3] No comments were received regarding the Exchanges' proposals.

The proposals filed by the Exchanges seek permanent approval of the Exchanges' pilot programs for exemptions from equity position limits for certain hedged positions.[4] In addition, the proposals filed by the CBOE, the NYSE, and the PSE also seek permanent approval of the Exchanges' pilot programs for position limit exemptions for certain hedged broad-based stock index option positions.[5]

Continued

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[6] 15 U.S.C. 78f(b)(5) (1988).

[7] *Supra* note 3 and accompanying text.

[8] 17 CFR 200.30–3(a)(12) (1994).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] The Commission has modified the language in these sections.

[3] Securities Exchange Act Release Nos. 33023 (October 6, 1993), 58 FR 52891 (adoption of Rule 15c6–1) and 34952 (November 9, 1994), 59 FR 59137 (change of effective date of Rule 15c6–1 from June 1, 1995 to June 7, 1995).

[4] 15 U.S.C. 78q–1 (1988).

[5] Pursuant to BSE's uniform book-entry settlement rule, trades by a member in depository eligible securities generally must be settled by book-entry through a securities depository.

[6] 15 U.S.C. 78f(b)(5) (1988).

[7] *Supra* note 3 and accompanying text.

[8] 17 CFR 200.30–3(a)(12) (1994).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[3] *See* Securities Exchange Act Release No. 35523 (March 22, 1995), 60 FR 15947.

[4] Position limits impose a ceiling on the aggregate number of options contracts on the same side of the market that can be held or written by an investor or group of investors acting in concert.

[5] Under the equity option hedge exemption pilots, the applicable position and exercise limits can never exceed twice the existing position limit. Under the CBOE's and the PSE's broad-based index hedge exemption pilots, the exempted positions

In 1988, the Commission approved pilot programs by the Amex, and the PHLX providing exemptions from position limits for certain fully hedged equity option positions.[6] In addition, the Commission approved pilot programs proposed by the CBOE, the NYSE, and the PSE providing exemptions from position limits for certain fully hedged equity option positions and/or stock index option positions.[7] Most recently, the Exchanges' pilot programs were extended through May 17, 1995.[8]

The pilot programs for equity option positions allow an exemption from equity option position and exercise limits for accounts that have established one of the four most commonly used hedged positions on a limited one-for-one basis (*i.e.*, 100 shares of stock for one option contract). The four hedged positions are: (1) Long stock and short call; (2) long stock and long put; (3) short stock and long call; and (4) short stock and short put. Under the equity option programs, the maximum position limit (including the allowed exemptions) may not exceed twice the established option position limit.

The index hedge exemption programs allow public customers to apply for position limit exemptions for positions in broad-based index options that are hedged with Exchange-approved qualified portfolios of stock.[9] Under the broad-based index option hedge exemption program a public customer must receive specific Exchange approval to exceed the position limits by a specified amount before establishing a position in reliance upon the hedge exemption requirements. Under these requirements, a qualified portfolio is comprised of net long or short positions in common stocks or securities readily convertible into common stocks in at least four industry groups and contains at least twenty stocks, none of which accounts for more than 15% of the value of the portfolio. To remain qualified, a portfolio must meet these standards at all times, regardless of trading activity in the stocks.

Subject to the maximum number of exempt option contracts allowed under the Exchanges' broad-based index option hedge exemption programs,[10] the broad-based index option hedge exemption applies to positions in broad-based index options to the extent that the underlying value of the option positions does not exceed the unhedged value of the qualified portfolio. The unhedged value is determined as follows: (1) The value of the net long or short positions for each of the stocks or their equivalents are totaled; and (2) the value of (a) any opposite side of the market calls and puts in broad-based index options, (b) any opposite side of the market positions in stock index futures, and (c) any economically equivalent opposite side of the market positions in other stock index options and in options on stock index futures, is subtracted from the total.

Under the broad-based index option hedge exemption programs, hedge exemption customers agree to, among other things, establish and liquidate options and stock positions or their equivalents in an orderly fashion; not establish or liquidate positions in a manner calculated to cause unreasonable price fluctuations or unwarranted price changes; not establish or liquidate a stock position or its equivalent contemporaneously with the establishment or liquidation of an equivalent broad index stock group option position with a view toward taking advantage of any differential between the prices of the stocks or their equivalents and the options; and liquidate an offsetting portion of the options position prior to or contemporaneously with any decrease in the available hedge value of the qualified portfolio.

Each of the pilot programs allow the underlying hedged positions to include securities that are readily convertible into common stock.[11] Under all of the pilot programs, exercise limits continue to correspond to position limits, so that investors are allowed to exercise, during five consecutive business days, the number of option contracts set forth as the position limit, as well as those contracts purchased pursuant to the pilot program.[12]

The Exchanges believe that the proposed rule changes are consistent with Section 6(b) of the Act, in general, and further the objectives of Section 6(b)(5), in particular, in that they are designed to protect investors and the public interest and to remove impediments to and perfect the mechanism of a free and open market.

The Commission finds that the proposed rule changes seeking permanent approval of the Exchanges' hedge exemption pilot programs are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5) thereunder.[13] The Commission concludes, as it did when originally approving each of the pilot programs, that providing for increased position and exercise limits for equity options and broad-based stock index options in circumstances where those excess positions are fully hedged with offsetting stock positions will provide greater depth and liquidity to the market and will allow investors to hedge their stock portfolios more effectively, without significantly increasing concerns regarding intermarket manipulations or disruptions of either the options market or the underlying stock market.

In this regard, the Commission notes that the Exchanges' hedge exemption programs have operated on a pilot basis since 1988 and that the Exchanges have not experienced any significant difficulties with the pilots since their inception or observed any market disruptions resulting from the increased positions. In addition, the Exchanges have submitted reports to the Commission describing, among other things, the frequency with which the exemptions have been utilized, the types of investors using the exemptions, the size of the positions assumed pursuant to the programs, and the market impact of the programs. The reports indicate that the Exchanges have not observed any negative impact on their markets as a result of the hedge exemption programs. Finally, the Exchanges have established surveillance procedures designed to monitor compliance with the position limit hedge exemption programs. The Commission expects the Exchanges to continue to monitor utilization of the hedge exemptions to ensure compliance with the programs' requirements.

With regard to the equity option hedge exemption, the Commission believes, as it has concluded in the past,[14] that the exemption will not disrupt the options or equity markets or substantially increase the possibility of manipulation in the underlying stocks or options. In this regard, the Commission notes that the position and exercise limit exemption is limited to accounts that have established one of four hedged positions. Moreover, market disruption concerns are lessened because any option positions in excess of current position limits must be hedged fully with an offsetting stock position on a one-for-one basis; thus, the holder of the options position would not be required to enter the market to buy or sell the stock if the options were exercised or assigned. The Commission also believes that a maximum position of double the existing position and exercise limits will help to ensure that any potential market disruptions are minimal.

With regard to the broad-based index option hedge exemption programs, the Commission believes, as it has concluded previously,[15] that the programs will allow more effective hedging of stock portfolios and may increase the depth and liquidity of the stock index options market. In this regard, public customers with long or short stock portfolios (or instruments convertible into such securities) will be able to utilize the broad-based index hedge exemption, thereby making an alternative hedging technique more available to such customers and facilitating their use of index options to hedge their portfolios, rather than financially equivalent index futures products.

As noted above, the broad-based index option hedge exemption applies only to public customers and each request for the exemption must be specifically approved by the appropriate Exchange. This should ensure that the hedges are appropriate for the position being taken and in compliance with Exchange rules.

In addition, the Commission notes that the broad-based index option hedge exemptions have additional safeguards that will make it difficult to use the exempted positions to disrupt or manipulate the market. In this regard, the qualified stock portfolio must be broad-based, and correspond in value to the value of the options hedge so that the increased positions could not be used in a leveraged manner. Both the options and stock positions must be initiated and liquidated in an orderly manner. The requirement that a reduction in the options position must occur at or before the corresponding reduction in the stock portfolio position should ensure that the stock transactions are not used to impact the market so as to benefit the options position. Moreover, because the exemption may not be used for arbitrage in stock baskets and overlying stock index options, the broad-based index option hedge exemption should not exacerbate stock market volatility. Finally, the Commission notes that the index option hedge exemption applies only to options on broad-based indexes, where the potential for manipulation is minimal and thus regulatory concerns are decreased.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[16] that the proposed rule changes (SR–Amex–95–13, SR–CBOE–95–13, SR–NYSE–95–04, SR–PSE–95–09, and SR–PHLX–95–10) are approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 95–12690 Filed 5–23–95; 8:45 am]
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may not exceed 75,000 same-side of the market option contracts in a class of broad-based index options. Under the NYSE's broad-based index hedge exemption pilot, the exempted positions may not exceed 125,000 same-side of the market contracts. Unlike the equity option hedge exemption, each exemption to position limits under the broad-based index option hedge exemption must be specifically approved by the Exchange for each customer and each position. *See* CBOE Rule 24.4, "Position Limits for Broad-Based Index Options," Interpretation and Policy .01; NYSE Rule 704, "Position Limits," Supplementary Material .70; and PSE Rule 7.8, "Terms of Option Contracts," Commentary .02.

[6] *See* Securities Exchange Act Release No. 25738 (May 24, 1988), 53 FR 20201 (June 2, 1988) (order approving File Nos. SR–Amex–87–13, SR–CBOE–87–27, and SR–PHLX–87–37).

[7] *See* Securities Exchange Act Release Nos. 25738 (May 24, 1988), 53 FR 20204 (June 2, 1988) (order approving File No. SR–CBOE–87–25) (establishing CBOE's stock index option hedge exemption pilot program); 27786 (March 8, 1990), 55 FR 9523 (March 14, 1990) (order approving File No. SR–NYSE–89–09) (establishing NYSE's equity option and stock index option hedge exemption pilot programs); 25811 (June 20, 1988), 53 FR 23821 (June 24, 1988) (order approving File No. SR–PSE–88–09) (establishing PSE's equity option hedge exemption pilot program); 32900 (September 14, 1993), 58 FR 49077 (September 21, 1993) (order approving File No. SR–PSE–92–38) (extending PSE's stock index option hedge exemption pilot program); and 32903 (September 14, 1993), 58 FR 49068 (September 21, 1993) (order approving File No. SR–CBOE–91–44) (extending the CBOE's index option hedge exemption program).

[8] *See* Securities Exchange Act Release Nos. 34986 (November 18, 1994) 59 FR 60856 (November 28, 1994) (order approving File Nos. SR–Amex–94–49, SR–CBOE–94–41, SR–PSE–94–33, and PHLX–94–53); and 35194 (January 5, 1995), 60 FR 2800 (January 11, 1995) (order approving File No. SR–NYSE–94–47).

[9] The CBOE's broad-based index hedge exemption program does not apply to A.M.-settled, European-style Standard & Poor's ("S&P") 500 Index options and Quarterly Index Expiration options on the S&P 500.

[10] *See* note 5, *supra*.

[11] The Commission expects the Exchanges to determine on a case-by-case basis whether an instrument that is being used as the basis for an underlying hedged position is readily and immediately convertible into the security underlying the corresponding option position. In this regard, the Commission finds that an instrument which will become convertible into a security at a future date, but which is not presently convertible, is not a "convertible" security for purposes of the equity option position limit hedge exemption until the date it becomes convertible. In addition, if the convertible security used to hedge an options position is called for redemption by the issuer, the security would have to be converted into the underlying security immediately or the corresponding options position reduced accordingly. *See, e.g.*, Securities Exchange Act Release No. 32903, *supra* note 7.

[12] Exercise limits prohibit the exercise by an investor or group of investors acting in concert of more than the number of options contracts specified in the position limit rule within five consecutive business days.

[13] 15 U.S.C. § 78f(b)(5) (1988 & Supp. V 1993).

[14] *See* Securities Exchange Act Release No. 25738, *supra* note 6.

[15] *See* Securities Exchange Act Release Nos. 32903 and 32900, *supra* note 7.

[16] 15 U.S.C. 78s(b)(2)(1982).

[17] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–35725; File No. SR–CBOE–95–15]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Telephones at the S&P 100 Index Option Trading Post on the Floor of the Exchange

May 17, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 12, 1995, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule change

The CBOE proposes to treat as a rule of the Exchange the conditions governing the use of member-owned and Exchange-owned telephones located at the S&P 100 Index option ("OEX") trading post on the floor of the Exchange. The text of the proposed rule change is available at the Office of the Secretary, the CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Section (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis, for, the Proposed Rule Change

The purpose of the proposed rule change is to apply the policy currently governing the use of telephones at

equity option trading posts[1] to the member-owned or Exchange-owned telephones at the OEX trading post on the floor of the Exchange. With the exception of the prohibition on the use of telephone at the OEX trading posts to receive incoming calls, the Exchange represents that the telephone policy described below is substantively identical to the policy approved by the Commission for the use of telephones at equity option trading posts on the floor of the CBOE.[2]

Exchange Rule 6.23 prohibits members from establishing or maintaining any telephone or other wire communications between their offices and the Exchange floor, and it authorizes the Exchange to direct the discontinuance of any communication facility terminating on the Exchange floor. Pursuant to Rule 6.23, the Exchange is instituting this policy for use at the OEX trading post. The Exchange believes that the proposed rule change will allow market-makers to obtain and transmit information more efficiently which may result in benefits to investors by improving the execution of orders.

The proposed rule change also imposes user fees on members who are approved to use Exchange-installed telephones located at the OEX trading post. This action is being taken pursuant to CBOE Rule. 2.22, which permits the Exchange to impose fees on members for the use of Exchange facilities or for any services or privileges granted by the Exchange.

As with the use of telephones at the equity trading posts, the Exchange has determined to file this policy for the use of telephones at the OEX trading post and make it a formal rule of the Exchange. Accordingly, the Exchange undertakes that it will surveil for violations of the policy and that members will be subject to formal disciplinary proceedings for violations of the policy. The conditions imposed by the Exchange's policy include:

1. The telephones may not be used to receive orders, although quotes that have been publicly disseminated pursuant to CBOE Rule 6.43 may be provided.

2. Members may give their clerks their PIN access code. Although both members and clerks may use the telephones, members will have priority. Each member will be responsible for all calls made using that Member's PIN access code.

3. Headsets will not be permitted on the telephones in the OEX post pit. Portable or cellular telephones also will not be permitted.

4. Clerks will not be permitted to establish a base of operations utilizing telephones at the OEX post.

5. Members and their clerks using the telephones consent to the Exchange requiring that any telephone or line be subject to tape recording.

6. The telephones will be used for voice service only. Data services (PC's, fax, etc.) will remain subject to Exchange consent under a separate program.

7. Incoming calls are not permitted on the telephones at the OEX post. There will be no restrictions on where a Member may call.

Upon the approval of these conditions as rules of the Exchange, the Exchange will publish a Regulatory Circular, substantially in the form filed by the CBOE with the Commission, in order to inform members that these conditions are rules, and that violations may lead to disciplinary proceedings.

By restricting floor telephones to hard-wired devices only and not allowing cellular, portable, or headset telephones, the Exchange believes it will better be able to monitor and control telephone usage on the floor. In addition, the Exchange believes that currently available technology would not permit a large number of portable or cellular telephones to be used in the environment of the trading floor without significant deterioration or interruption of service.

As with the use of telephones at the equity trading posts, the Exchange intends to police compliance with these conditions by means of its customary floor surveillance procedures, including reliance on surveillance by floor officials and Exchange employees. In addition, the Exchange has in place a surveillance sharing agreement with the Chicago Mercantile Exchange ("CME") whereby transaction information is continually made available to the CBOE regarding futures transaction activity by CBOE members that is above certain defined parameters. In addition, the Exchange also receives surveillance information through its participation in the Intermarket Surveillance Group ("ISG").[3]

Because the telephone policy does not restrict where a member may call, the telephones may be used to place orders in equity of futures markets,[4] which raises the possibility of orders being entered based on non-public information. Because the S&P 100 index, on which OEX options are based, is a capitalization-weighted index of 100 different "blue chip" stocks, however, the Exchange believes that non-public information is not likely to be significant in predicting future changes in the value of the OEX. In any event, the Exchange believes that the surveillance procedures it has in place will detect and deter any attempts at manipulation through the using of OEX options.

The fees the Exchange will charge for the use of the telephones will generally be the same as those charged for the use of telephones at the equity option trading posts. Specifically, local calls over Exchange telephones will be charged at 10 cents per minute. Long distance calls over Exchange telephones will be charged at a rate 25% greater than the Exchange's direct costs. In addition, the Exchange will charge a $5 monthly fee for the use of the telephones located at the OEX trading post.

The CBOE believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(5) of the Act, in particular, in that the proposal is designed to improve communications to and from the Exchange's trading floor in a manner that prevents fraudulent and manipulative acts and practices, promotes just and equitable principles of trade, perfects the mechanism of a free and open market, and protects investors and the public interest.

In addition, the Exchange believes the proposed rule change with respect to the fees to be charged by the CBOE in connection with the telephones located at the OEX trading post is consistent with Section 6(b)(4) of the Act in that it is designed to provide for the equitable allocation of reasonable dues, fees, and charges among CBOE members.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; (3) does not become operative for 30 days from May 12, 1995, the date on which it was filed, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five days prior to the filing date, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(e)(6) thereunder.[5]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–95–15 and should be submitted by June 14, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–12693 Filed 5–23–95; 8:45 am]

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[1] *See* Securities Exchange Act Release No. 33701 (March 2, 1994), 59 FR 113336 (March 10, 1994).

[2] *Id.*

[3] The ISG was formed on July 14, 1983 to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. *See* Intermarket Surveillance Group Agreement, July 14, 1983. The most recent amendment to the ISG Agreement, which incorporates the original agreement and all amendments made thereafter, was signed by ISG members on January 29, 1990. *See* Second Amendment to the Intermarket Surveillance Group Agreement, January 29, 1990. The members of the ISG are: the American Stock Exchange, Inc.; the Boston Stock Exchange, Inc.; the CBOE; the Chicago Stock Exchange, Inc.; the National Association of Securities Dealers, Inc. ("NASD"); the New York Stock Exchange, Inc.; the Pacific Stock Exchange, Inc.; and the Philadelphia Stock Exchange, Inc. Because of potential opportunities for trading abuses involving stock index futures, stock options, and the underlying stock and the need for greater sharing of surveillance information for these potential intermarket trading abuses, the major stock index futures exchanges (*e.g.*, the Chicago Mercantile Exchange and the Chicago Board of Trade) joined the ISG as affiliate members in 1990.

[4] This telephone policy also allows members to use the floor telephones located at the OEX trading post for the purpose of providing quotations on OEX options. In use telephones for this purpose, the CBOE represents that members may only provide quotations that have been publicly disseminated pursuant to CBOE Rule 6.43.

[5] 17 CFR 240.19b–4(e)(6) (1994).

[6] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–35736; File No. SR–DTC–95–06]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Fees Charged for Various Services

May 18, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on April 25, 1995, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to adjust DTC's fee schedule for various services.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments that it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change, which will be effective for services provided on and after May 1, 1995, is to adjust the fees charged for various services to bring them closer to or to their respective estimated service costs for 1995.

Continuing DTC's annual practice of aligning service fees with estimated service costs, DTC's Board of Directors completed a review of its unit service costs for 1995 and adjusted many DTC service fees accordingly. The 1995 fee schedule has been set to yield $11.4 million less in operating revenue on an annual basis than the 1994 fee schedule would have yielded. This will mark the ninth consecutive year in which DTC has not had to increase its overall schedule of service fees to users. Moreover, for the fourth consecutive year a significant fee reduction will be implemented.[4]

Section 17A(b)(3)(D) of the Act[5] requires that the rules of a clearing agency provide for the equitable allocation of reasonable dues, fees, and other charges among its participants. DTC believes that the proposed rule change is consistent with the requirements of Section 17A(b)(3)(D) of the Act because its new fee schedule allocates its fees more equitably among its participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

DTC informed participants and other users of its services of the proposed fee

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] The revised fee schedule is available for review in the Annex to Exhibit A of File No. SR–DTC–95–08. The file is available for review in the Commission's Public Reference Room and at the principal office of DTC.

[3] The Commission has modified the text of the summaries prepared by DTC.

[4] While some service fees were increased, others remained unchanged or were decreased making the net result an overall decrease in service fees. Telephone conversation between Piku Thakkar, Attorney, DTC, and Margaret J. Robb, Attorney, Division of Market Regulation, Commission (April 27, 1995).

[5] 15 U.S.C. 78q–1(b)(3)(D) (1988).

revisions by a memorandum dated March 10, 1995, entitled "1995 Revisions of DTC Service Fees." Because participants have supported cost-based fees in the past and because overall the subject fee changes are modest, DTC believes that a formal period for participant comment was not necessary this year.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii)[6] of the Act and Rule 19b–4(e)(2)[7] thereunder because the rule change establishes or changes a due, fee, or other charge. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to the File No. SR–DTC–95–08 and should be submitted by June 14, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–12699 Filed 5–23–95; 8:45 am]

BILLING CODE 8010–01–M

[6] 15 U.S.C. 78s(b)(3)(A)(ii) (1988).

[7] 17 CFR 240.19b–4(e)(2) (1994).

[8] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–35724; File No. SR–CSE–95–04]

Self-Regulatory Organizations; The Cincinnati Stock Exchange Incorporated; Order Approving Proposed Rule Change Relating to Implementation of a Three-Day Settlement Standard

May 17, 1995.

On April 4, 1995, The Cincinnati Stock Exchange Incorporated ("CSE") filed a proposed rule change (File No. SR–CSE–95–04) with the Securities and Exchange Commission ("Commission") pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on April 17, 1995, to solicit comments from interested persons.[2] The Commission did not receive any comments. As discussed below, this order approves the proposed rule change.

I. Description

In October 1993, the Commission adopted Rule 15c6–1 under the Act which will become effective June 7, 1995.[3] The rule establishes three business days after the trade date ("T+3"), instead of five business days ("T+5"), as the standard settlement cycle for most securities transactions. Several of the CSE's rules are interrelated with the standard settlement time frame. The purpose of the proposed rule change is to amend CSE's rules in order that they are consistent with a T+3 settlement standard for securities transactions.

The following changes to CSE rules are needed to implement the new settlement standard established by Rule 15c6–1. Rule 3.8(b)(1)(iii) will require that members receive reasonable assurance from the customer that a security will be delivered within three business days of the execution of the order. Rule 3.8(b)(2) will require that members note on order tickets that the customer has the ability to deliver stock within three business days. Rule 11.4 will provide that transactions in stocks (other than those made for "cash") shall be "ex-dividend" or "ex-rights" on the second business day preceding the record date fixed by the company or the date of the closing of transfer books except when the Board of Trustees of CSE rules otherwise. When the record date or closing of transfer books occur upon a day other than a business day, transactions in stocks shall be "ex-dividend" or "ex-rights" on the third preceding business day.

CSE has requested that the proposed rule change become effective on the same date as Rule 15c6–1, which will be June 7, 1995. The transition from five day settlement to three day settlement will occur over a four day period.[4]

II. Discussion

The Commission believes the proposal is consistent with the requirements of Section 6 of the Act.[5] Specifically, Section 6(b)(5) states that the rules of the exchange must be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information. On June 7, 1995, the new settlement cycle of T+3 will be established, as mandated by the Commission's Rule 15c6–1. As a result, the CSE's current rules based on a T+5 settlement cycle will be inconsistent with this rule. This proposal will amend the CSE's rules to harmonize them with the Commission Rule 15c6–1 and with a T+3 settlement cycle.

In addition, the Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Act in that it protects investors and the public interest by reducing the risk to clearing corporations, their members, and public investors which is inherent in settling securities transactions. The reduction of the time period for settlement of most securities transactions will correspondingly decrease the number of unsettled trades in the clearance and settlement system at any given time. Thus fewer unsettled trades will be subject to credit and market risk.[6]

IV. Conclusion

For the reasons stated above, the Commission finds that CSE's proposal is consistent with Section 6 of the Act.[7]

[1] 15 U.S.C. 78s(b) (1988).

[2] Securities Exchange Act Release No. 35580 (April 7, 1995), 60 FR 19312.

[3] Securities Exchange Act Release Nos. 33023 (October 6, 1993), 58 FR 52891 (adopting Rule 15c6–1) and 34952 (November 9, 1994), 59 FR 59137 (changing effective date from June 1, 1995, to June 7, 1995).

[4] Friday, June 2, will be the last trading day with five business day settlement. Monday, June 5, and Tuesday, June 6, will be trading days with four business day settlement. Wednesday, June 7, will be the first trading day with three business day settlement. As a result, trades from June 2 and June 5 will settle on Friday, June 9. Trades from June 6 and June 7 will settle on Monday, June 12.

[5] 15 U.S.C. 78f (1988).

[6] The release adopting Commission Rule 15c6–1 stated, "[T]he value of securities positions can change suddenly causing a market participant to default on unsettled positions. Because the markets are interwoven through common members, default at one clearing corporation or by a major market participant or end-user could trigger additional failures resulting in risk to the national clearance and settlement system." Securities Exchange Act Release No. 33023 (October 6, 1993), 58 FR 52891.

[7] 15 U.S.C. 78f (1988).

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (File No. SR–CSE–95–04) be and hereby is approved, effective June 7, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–12697 Filed 5–23–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35732; File No. SR–NASD–94–9]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change to Provide Non-member Viewing Access to SelectNet and that the Transmission of Broadcast Orders Through SelectNet be Solely on an Anonymous Basis

May 18, 1995.

I. Introduction

On January 30, 1995, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder.[2] The NASD seeks to amend SelectNet in two ways: (a) to provide real-time access to non-members to view all "broadcast" orders in SelectNet; and (b) to provide that the transmission of broadcast orders through SelectNet be solely on an anonymous basis.

Notice of the proposed rule change appeared in the **Federal Register** on April 28, 1994[3] and March 7, 1995.[4] The Commission received letters from four commenters in response to the NASD's proposal. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Background

Originally referred to as the Order Confirmation Transaction Service ("OCT") and approved by the Commission in January 1988,[5] the NASD developed SelectNet in response to the difficulties experienced in the Nasdaq market during the market break of October 1987. SelectNet is an electronic screen-based order routing system allowing market makers and order-entry firms (collectively referred to as "participants") to negotiate securities transactions in Nasdaq securities through computer communications rather than relying on the telephone.

To enter an order in SelectNet, a participant enters the normal trade information: security symbol, side (buy or sell), transaction size, and price. Participants may enter orders priced at, above or below the inside bid or ask and, thus, SelectNet offers the opportunity to negotiate for a price superior to the current inside quote. In addition, participants may provide that an order or counter-offer will be in effect for anywhere from 3 to 99 minutes, specify a day order, or indicate whether price or size are negotiable or whether a specific minimum quantity is acceptable. Participants may accept, counter, or decline a SelectNet order. In the event that a participant elects to counter an offer, the service allows negotiations to be conducted between the participants by exchanging counter-offers until an agreement is reached. Once agreement is reached, the execution is "locked-in" and reported to the tape.

Through SelectNet, participants may either direct an order to a particular market maker in the security, broadcast to all market makers in the security, or broadcast to all participants watching a particular security (a feature known as "all call"). The participants then may negotiate the terms of the order through counter-offers entered into the system. SelectNet's default setting provides anonymity for broadcast orders. However, a participant currently entering a broadcast order may elect to identify itself. After an anonymous broadcast order is executed, each participant to the transaction learns the identity of the other. In contrast, directed orders always display to the receiving participant the identity of the participant entering the order.

III. Description of the Rule Change

The NASD seeks to modify SelectNet in two ways. First, it proposes to permit non-member viewing access to orders broadcast through SelectNet. Second, the NASD proposes to require that broadcast orders be entered on an anonymous basis only.

A. Non-member Viewing Access to Broadcast Orders

Under the NASD's proposal, non-members will be permitted to view on a real-time basis all orders broadcast through SelectNet. Specifically, non-members will be able to view all unexecuted broadcast SelectNet orders, including the security name, the side of the order (buy or sell), the quantity available, the order price, the original size of the order, the outstanding portion, and the duration of the order (from 3 to 99 minutes or all day). The NASD will provide this information via the Level 2 Nasdaq Workstation service, to which non-members may subscribe. In addition, the NASD will provide a data feed of the broadcast SelectNet information to data vendors who in turn may provide the information to non-members. Under either alternative, dissemination of SelectNet information will be provided on a real-time basis.

Non-members, however, will not be permitted to interact through SelectNet with the order or be provided access to orders directed from one participant to another. Moreover, because the NASD's proposal will restrict all broadcast orders to an anonymous basis, neither members nor non-members will be able to determine the identity of the participant entering a broadcast order.

B. All Broadcast Orders will be on an Anonymous Basis

As currently configured, SelectNet allows a participant broadcasting an order to elect either to identify itself or to send the order anonymously. Under this proposal, however, participants will be limited to entering broadcast orders on an anonymous basis.[6] If two firms begin negotiating the terms of a broadcast order, however, the participant that entered the order may choose to identify itself to the contra side.

IV. Comments

As noted above, the Commission received letters from four commenters in response to the proposal. Three of the commenters addressed the proposal to provide non-member viewing access, with one of these commenters supporting the proposal and the other two opposing it; the fourth commenter

[8] 15 U.S.C. 78s(b)(2) (1988).

[9] 17 CFR 200.30(a)(12) (1994).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[3] Securities Exchange Act Release No. 33938 (Apr. 20, 1994), 59 FR 22033 (Apr. 28, 1994) (notice of original proposal and Amendment No. 1).

[4] Securities Exchange Act Release No. 35428 (Feb. 28, 1995), 60 FR 12583 (Mar. 7, 1995) (notice of Amendment No. 2).

[5] Securities Exchange Act Release No. 25263 (Jan. 11, 1988), 53 FR 1430 (Jan. 19, 1988) (order approving SelectNet, previously referred to as the Order Confirmation Transaction Service, on a temporary, accelerated basis). *See also,* Securities Exchange Act Release No. 25523 (Mar. 28, 1988), 53 FR 10965 (Apr. 4, 1988) (order extending temporary approval of SelectNet); Securities Exchange Act Release No. 25690 (May 11, 1988), 53 FR 17523 (May 17, 1988) (order granting permanent approval of SelectNet).

[6] In contrast, directed orders will continue to identify the participant transmitting an order to another participant.

expressed opposition to the proposal to require anonymity for broadcast orders. The NASD responded to these comments in Amendment No. 2[7] and by a letter dated April 8, 1995.[8]

Commenters responding to the NASD's original proposal criticized it because it would have limited non-member viewing access to Nasdaq WorkStation Level 2 subscribers.[9] These commenters argued that the NASD should provide this access through a vendor data feed. In response, the NASD amended its filing to provide to vendors a separate data feed of broadcast orders.[10]

The NYSE and American Stock Exchange ("Amex") generally opposed the proposal because of their concerns about the broader policy issues surrounding SelectNet. Specifically, the NYSE and Amex argue that "orders" entered in SelectNet are actually quotations for purposes of the Quote Rule[11] and, therefore, the NASD should include them for dissemination in the calculation of the best bid and offer.[12] In response, the NASD argues that SelectNet orders lack the characteristics that trigger an obligation to include an order in the calculation of the best bid or offer in a Nasdaq security. Specifically, the NASD contends that unlike quotes, SelectNet orders are generally limited in duration[13] and subject to price and size negotiation. The NASD concludes that classifying SelectNet orders as "indications of interest" would be more appropriate than treating them as bids or offers.[14] Moreover, the NASD argues that reassessing whether market maker orders broadcast through SelectNet should be reflected in the market maker's quote would necessarily include a similar assessment concerning market maker orders entered in Instinet.

One commenter opposed the NASD's proposal to modify the operation of SelectNet to provide that all broadcast orders be entered anonymously.[15] This commenter argued that it identifies itself regularly with the hope that market makers will contact it to negotiate the order further. This commenter noted that it often wishes to be associated with certain buy or sell interest and that, paradoxically, the NASD's proposal to provide more information to non-members will result in less information to members.

In response, the NASD reiterated the two concerns set forth in its original filing as the basis for the proposal. First, the NASD believes that orders entered on an anonymous basis will act to maintain the incentives for dealers to continue to make markets that provide needed liquidity. The depth and liquidity of the Nasdaq market is dependent upon the presence of market makers who, among other duties, are required to maintain firm, continuous, two-sided quotations and participate in automated execution systems.[16] The NASD is concerned about allowing order-entry firms to advertise buy and sell interest without having to satisfy these obligations. Specifically, the NASD believes that it would be inappropriate to allow a firm to pose as a dealer by posting identified positions in SelectNet without registering as a market maker. To allow this, the NASD argues, would reduce the incentive for firms to undertake market making responsibilities and consequently adversely affect market liquidity.

Second, the NASD is concerned that allowing a participant to identify itself provides the opportunity for the participant to condition or influence the market in one direction or another. For example, in the situation where a particular participant is considered a lead market maker or a major institutional block positioner in a security, if it were interested in buying shares in the stock, it might broadcast a sell order in SelectNet and identify itself. The influence associated with the participant's name might trigger a decrease in the bid in reaction to the sell interest. This reaction would allow the participant to purchase the security at a lower price than would otherwise have been the case, simply because it was advertising its name, or conditioning the market.[17]

Finally, the NASD noted that once two firms begin negotiating an order, the firm entering the order may choose to identify itself to the contra side. Thus, two participants negotiating an order that find the need to continue negotiations over the telephone rather than through SelectNet may arrange to do so.

V. Discussion

The Commission believes that the rule change is consistent with the requirements of Sections 11A and 15A of the Act and the rules and regulations thereunder applicable to the NASD and, therefore, has determined to approve the proposal.

Section 11A sets forth the Congressional goal of achieving more efficient and effective market operations and the economically efficient execution of transactions through new data processing and communications techniques.[18] Section 11A also expresses the Congressional finding that the public interest, the protection of investors and the maintenance of fair and orderly markets are enhanced by assuring: (a) fair competition among brokers and dealers, and (b) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.[19] Section 15A requires that the rules of the NASD, among other things, be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest.[20]

A. Non-member Viewing Access

In its *Market 2000* report,[21] the Commission's Division of Market Regulation ("Division") expressed concern that the limited transparency of SelectNet orders often conceals from the broader market the best trading interest in a security and, in turn, impedes competition and price discovery.[22] The Division, therefore, recommended that the NASD consider ways to enhance SelectNet transparency.[23] The Commission believes that this proposal is a positive response to the Division's recommendation in *Market 2000*.

The NASD's proposal to provide non-members viewing access to orders broadcast through SelectNet will help achieve more efficient and effective market operations by increasing transparency of market information. Increased transparency, in turn, will facilitate more efficient price discovery and enhance price competition among all market participants. This change to SelectNet will allow non-members to obtain with relative ease and low cost important pricing information about Nasdaq securities. Moreover, investors will be better able to assess the overall supply and demand for a particular Nasdaq security and, thus, effect transactions in a more cost-effective manner. They will now be able to view, although not participate directly in, an important system for trading Nasdaq securities.[24]

In response to the NASD's proposal, the NYSE and Amex raised broad policy concerns about the operation of SelectNet in the context of the Quote Rule. The NYSE and Amex argued that orders broadcast through SelectNet constitute quotations for purposes of the Quote Rule and, therefore, should be reflected in market maker quotations.

The Commission believes that this issue reaches beyond the broadcast of SelectNet orders to non-members. For example, it raises question about whether the widespread dissemination of orders through broker-dealer trading systems, such as Instinet, constitute quotations for purposes of the Quote Rule. Thus, the Commission believes that this issue is beyond the scope of this proposal and that the policy issue raised by the NYSE and Amex deserve continued examination. Moreover, the Commission believes that this proposal is a meaningful advance in the effort to enhance transparency in the Nasdaq market and, therefore, should not await further debate of this issue.

B. The Anonymous Display of All Broadcast Orders

As noted above, the NASD will not identify the origin of SelectNet orders when pricing information is made available through Nasdaq or vendor facilities. One commenter opposed this feature for the reasons described above.

The Commission currently believes the NASD's proposal incorporating anonymity in the display of orders broadcast through SelectNet is consistent with the goals of the Act. The Commission believes requiring anonymity will promote just and equitable principles of trade by removing a mechanism for a participant to induce market movement simply by associating its name with a particular order.

In addition, the Commission finds that the rule change does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. While the imposition of the anonymity requirement may alter certain existing trading practices, the Commission believes that the proposal furthers the purposes of the Act by enhancing SelectNet transparency for non-members. The Commission believes that expanded dissemination of SelectNet information will better inform public investors regarding the prices at which investors and dealers are willing to transact business in a particular security.

VI. Conclusion

For the reasons stated above, the Commission finds that the proposed rule change is consistent with the requirements of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change SR–NASD–94–9 be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[25]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–12698 Filed 5–23–95; 8:45 am]

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[7] Securities Exchange Act Release No. 35428 (Feb. 28, 1995), 60 FR 12583 (Mar. 7, 1995) (notice of Amendment No. 2).

[8] Letter from Richard Ketchum, Executive Vice President & Chief Operating Officer, NASD, to Jonathan G. Katz, Secretary, SEC (Apr. 28, 1995).

[9] Letters from James E. Buck, Senior Vice President and Secretary, NYSE (June 2, 1994), Daniel Parker Odell, Assistant Secretary, NYSE (Mar. 28, 1995), and Craig S. Tyle, Vice President & Senior Counsel, Investment Company Institute (May 19, 1994), to Jonathan G. Katz, Secretary, SEC.

[10] Securities Exchange Act Release No. 35428 (Feb. 28, 1995), 60 FR 12583 (Mar. 7, 1995) (notice of Amendment No. 2). In response to this amendment, the Investment Company Institute submitted a second comment letter, expressing its support for the proposal. Letter from Craig S. Tyle, Vice President & Senior Counsel, Investment Company Institute, to Jonathan G. Katz, Secretary, SEC (Mar. 28, 1995).

[11] 17 CFR 240.11Ac1–1.

[12] The NYSE also notes in its comment letters that the SelectNet rules are contained in the *SelectNet User Guide*, but are not included in the *NASD Manual*. *See SelectNet User Guide* (Nov. 1990). The NASD has committed to submit to the Commission a package of SelectNet rules by the end of 1995. Letter from Richard Ketchum, Executive Vice President & Chief Operating Officer, NASD, to Jonathan G. Katz, Secretary, SEC (Apr. 28, 1995).

[13] The NASD represents that SelectNet orders are usually either executed immediately or expire after three minutes. Thus, the NASD further argues, SelectNet orders fall within the exception that allows the NASD to exclude from the best bid or offer calculation an order which is executed immediately. 17 CFR 240.11Ac1–1(b)(1)(ii).

[14] Under rules promulgated pursuant to the Act, "indications of interest" are not considered bids or offers. 17 CFR 240.11Ac1–1(a)(8).

[15] Letter from John C. Helmer, President, Caldwell Securities Incorporated, to Jonathan G. Katz, Secretary, SEC (Mar. 15, 1994).

[16] 17 CFR 240.11Ac1–1 and *NASD Manual*, Schedules to the By-Laws, Schedule D, Sec. 2(a) and (b), (CCH) ¶ 1819.

[17] Indeed, the Commission and the NASD also have expressed concern that other types of market conditioning may violate just and equitable principles of trade. *See, e.g., NASD Manual*, Rules of Fair Practice, Art. III, Sec. 6, (CCH) ¶ 2156 (no member shall offer to buy or sell a security unless the member is prepared at the time to honor the offer).

[18] 15 U.S.C. § 78k–1(a)(1)(B).

[19] *Id.* 78k–1(a)(C)(ii) and (iii).

[20] *Id.* 78o–3(b)(6).

[21] *Market 2000: An Examination of Current Equity Market Developments*, Division of Market Regulation, United States Securities and Exchange Commission (Jan. 1994).

[22] *Id.* at IV–7.

[23] *Id.* at 19 and IV–7.

[24] The NASD has represented that SelectNet usage has grown from a daily average of 3,000 transactions and 6 million shares in the first half of 1991 to over 10,550 transactions and more than 12.6 million shares in the first quarter of 1995.

[25] 17 CFR 200.30–3(a)(12).

[Investment Company Act Release No. 21081; 811–0407]

SBM Company; Notice of Application

May 17, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 ("Act").

APPLICANT: SBM Company.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an amended order eliminating prior conditions, thus permitting applicant to sell substantially all of its assets, including a subsidiary that is a registered investment company, to another company.

FILING DATE: The application was filed on April 5, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 12, 1995, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 8400 Normandale Lake Boulevard, Suite 1150, Minneapolis, Minnesota 55437.

FOR FURTHER INFORMATION CONTACT: James J. Dwyer, Staff Attorney, at (202) 942–0581, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant, a Minnesota corporation, is a financial holding company that also acts as investment adviser, transfer agent, and dividend disbursing agent for certain mutual funds. Applicant's wholly-owned subsidiaries are State Bond and

Mortgage Life Insurance Company ("SBM Life"), a Minnesota insurance company, and SBM Financial Services, Inc., a registered broker-dealer. SBM Certificate Company (the "Certificate Company"), a registered face-amount certificate company, is a wholly-owned subsidiary of SBM Life.

2. In 1990, the Certificate Company was formed for the purpose of acquiring all of the assets and assuming all of the liabilities of applicant's face-amount certificate business in order to permit applicant to deregister as an investment company. On January 29, 1991, the SEC issued an order (the "Existing Order")[1] under section 8(f) of the Act declaring that applicant had ceased to be an investment company because, among other things, it primarily was engaged, through wholly-owned subsidiaries, in businesses that are excepted from the definition of an investment company under sections 3(c)(3) and 3(c)(6) of the Act.[2] The Existing Order was issued subject to the following conditions: (i) applicant will not issue any additional face-amount certificates; (ii) applicant will maintain 100% ownership of the Certificate Company so long as any face-amount certificates that applicant issued (the "Certificates") are outstanding and the Certificate Company is a registered investment company; (iii) applicant will require the Certificate Company to maintain reserves for the Certificates as required by section 28 and comply with all other applicable provisions of the Act so long as any Certificates are outstanding and the Certificate Company is a registered investment company; and (iv) until released from such obligation by the Certificate holders or such obligations are paid in accordance with their terms upon maturity or surrender, applicant will remain liable to the Certificate holders for all amounts due them under the Certificates.

3. Since the time the Certificate Company assumed applicant's face-amount certificate business, applicant represents that the Certificate Company has conducted such business in accordance with applicable federal law, including maintaining deposits of qualified assets with an independent custodian and making all payments required by the terms of the Certificates. During 1994, however, the Certificate Company and SBM Life experienced significant capital pressures as a result of increasing interest rates and the fact that a large portion of the investment portfolios of both companies was invested in mortgage pass-through securities and collateralized mortgage obligations. The market value and cash flows of these securities were adversely affected by rapid increases in interest rates during 1994. The capital position of these companies also was adversely affected by the adoption of FASB 115, which requires that certain debt securities be reflected at market value rather than at amortized cost. As a result of the Minnesota Department of Commerce's annual examination of the Certificate Company, the Minnesota Department, in a letter dated November 9, 1994, recommended an increase in the capital of the Certificate Company. In March 1995, SBM Life invested $1.5 million cash into the Certificate Company to satisfy concerns of the Minnesota Department. After extensive efforts to raise up to $15–20 million of additional capital, it was decided that the sale of control of applicant or of its operating assets was necessary.

4. Consequently, applicant intends to sell substantially all of its assets, including the stock of SBM Life and the Certificate Company, to ARM Financial Group, Inc. ("ARM"), a Delaware corporation. Approximately 86% of the outstanding voting shares of ARM is owned by an investment fund sponsored by Morgan Stanley & Co. The balance of ARM is owned chiefly by ARM's executives, certain employees, managers, and independent directors. ARM has committed to contribute up to $20 million to the capital of SBM Life and the Certificate Company, up to $2.5 million of which is expected to be used to strengthen the capital of the Certificate Company. ARM intends that its subsidiary, ARM Capital Advisors, will manage the assets transferred from the Certificate Company. Following the sale, applicant intends to liquidate and dissolve in accordance with Minnesota law.

Applicant's Legal Analysis

1. Applicant requests that the Existing Order be amended to remove all of the conditions thereto to permit the sale of assets to ARM. The requested amendment is necessary to assure that the proposed sale of applicant's assets does not conflict with the Existing Order. Applicant believes that the proposed sale will afford additional protection to Certificate holders and is in the best interests of these investors. ARM, relative to applicant, has greater and more ready access to capital by reason of its financial and operating characteristics, as well as its affiliation with Morgan Stanley.

2. Applicant believes that the Act is not intended to limit the power of an entity to engage in fundamental corporate acts such as a sale of assets and dissolution. Applicant asserts that the conditions to the Existing Order did not contemplate the proposed sale, nor, in the view of applicant, could the conditions reasonably have been intended to inhibit such sale. The conditions may afford Certificate holders additional safeguards while applicant is a going concern, but have no continuing utility once applicant ceases to conduct business.

3. Applicant notes that the Certificate Company is a registered investment company that has operated as a stand-alone entity for more than four years. The Certificates and their holders will continue to be protected following the proposed sale by all applicable provisions of the Act, including the maintenance of deposits of qualified assets and the capital requirements of section 28 of the Act. Applicant contends that nothing contemplated by its proposal will result in any failure to comply with the Act.

4. Applicant also represents that substantially all existing Certificate holders have renewed their Certificates at least once since the Certificate Company assumed the liabilities of such Certificates from applicant in 1991. In so doing, these holders received and had an opportunity to review the then current prospectus relating to the Certificates prior to the date of renewal. The prospectus primarily describes the Certificate Company and its business, and disclaims applicant as a potential source of capital strength to the Certificate Company. Accordingly, applicant believes that the vast majority of the Certificate holders have made their decision to renew their Certificates largely in reliance on the financial strength and other operating characteristics of the Certificate Company, and not on applicant's continuing liability with respect to the Certificates.

5. Applicant, moreover, states that Certificate holders may surrender their Certificates to the Certificate Company for payment at any time before or after the proposed sale. Applicant states its proposed dissolution will not affect the obligations created by the Certificates, which obligations were expressly assumed by the Certificate Company. For the reasons discussed above, applicant believes that an amended order is appropriate.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–12695 Filed 5–23–95; 8:45 am]

BILLING CODE 8010–01–M

[1] *State Bond and Mortgage Company*, Investment Company Act Release Nos. 17826 (Oct. 29, 1990) (notice) and 17965 (Jan. 29, 1991) (order).

[2] Section 8(f) provides that "[w]henever the [SEC], on its own motion or upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order and upon the taking effect of such order the registration of such company shall cease to be in effect. If necessary for the protection of investors, an order under this subsection may be made upon appropriate conditions." Sections 3(c)(3) and 3(c)(6) provide in relevant part that a person is not an investment company if it is an insurance company or a company that primarily is engaged, directly or through majority-owned subsidiaries, in the insurance company business.

[Investment Company Act Release No. 21080; 811–3902]

Sentry Investors Variable Account II; Notice of Application

May 17, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Sentry Investors Variable Account II.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring it has ceased to be an investment company.

FILING DATE: The application was filed on March 29, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 12, 1995, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, D.C. 20549. Applicant, c/o Sentry Investors Life Insurance Company, 1800 North Point Drive, Stevens Point, Wisconsin 54481.

FOR FURTHER INFORMATION CONTACT: Sarah A. Wagman, Staff Attorney, at (202) 942–0654, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a life insurance separate account established pursuant to Massachusetts insurance law to fund certain individual flexible purchase payment deferred variable annuity contracts (the "Contracts"). On November 10, 1983, applicant registered under the Act as a unit investment trust. On the same date, applicant filed a registration statement on Form S–6 to register the Contracts as securities under the Securities Act of 1933. The registration statement became effective on July 23, 1984. Sentry Investors Life Insurance Company is applicant's depositor (the "Depositor"), and Sentry Equity Services, Inc. is applicant's principal underwriter.

2. On November 1, 1994, applicant transferred all of its assets and liabilities to Sentry Variable Account II (the "Sentry Account"), an existing registered separate account, pursuant to an assumption reinsurance agreement. The agreement provided that Sentry Life Insurance Company would assume legal ownership of applicant's assets, as well as responsibility for satisfying all liabilities and obligations arising under the Contracts. The transaction was effected pursuant to an SEC order.[1] The transfer of applicant's assets and liabilities to the Sentry Account was achieved by combining each of applicant's subaccounts with the identical subaccounts of the Sentry Account. The share transfer was made at the relative net asset values of the subaccounts in conformance with section 22(c) of the Act and rule 22c–1 thereunder. No charges or other deductions were made with respect to the Contracts. As a result of the transaction, applicant's Contract owners received certificates reflecting the new depositor and the new separate account supporting their Contracts. The net asset value of the subaccount units acquired in the transaction was identical to the net asset value of the subaccount units supporting applicant's Contracts before the transfer.

3. The transaction was approved by the Depositor's board of directors, and by the board of directors of Sentry Life Insurance Company, the Sentry Account's depositor. Applicant also obtained approvals from state insurance authorities of those states in which applicant's Contract owners reside.

4. Immediately prior to the merger, applicant had 70 Contract owners. At the time of filing the application, applicant has no remaining Contract holders. All of applicant's Contract holders had the assets underlying their contracts transferred to the Sentry Account.

5. Sentry Life Insurance Company bore all direct and indirect costs incurred in connection with the merger.

6. Applicant has no remaining assets, outstanding debts, or liabilities. Applicant is current with all of its filings under the Act, including all Form N–SAR filings. Applicant is not a party to any litigation or administrative proceeding. Applicant is not now engaged, nor does it intend to engage, in any business activities other than those necessary for the winding-up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–12694 Filed 5–23–95; 8:45 am]

BILLING CODE 8010–01–M

[1] Sentry Life Insurance Company, *et al.*, Investment Company Act Release Nos. 20576 (Sep. 26, 1994) (notice) and 20654 (Oct. 25, 1994) (order).

[Rel. No. IC–21082; File No. 812–9280]

T. Rowe Price Equity Series, Inc. et al.

May 17, 1995.

AGENCY: Securities and Exchange Commission (the "SEC" or "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act" or "Act").

APPLICANTS: T. Rowe Price Equity Series, Inc., T. Rowe Price International Series, Inc. and T. Rowe Price Fixed Income Series, Inc. (the "Fund(s)") and T. Rowe Price Associates, Inc. and Rowe Price-Fleming International, Inc. (the "Adviser(s)").

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) of the Act for exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

SUMMARY OF APPLICATION: Applicants seek an order of exemption to the extent necessary to permit shares of the Funds to be issued to and held by registered and unregistered variable annuity and variable life insurance separate accounts of both affiliated and unaffiliated life insurance companies.

FILING DATE: The application was filed on October 11, 1994 and amended on May 4, 1995.

HEARING OR NOTIFICATION HEARING: An order granting the application will be

issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the SEC by 5:30 p.m. on June 12, 1995 and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the request and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, D.C. 20549. Applicants, 100 East Pratt Street, Baltimore, Maryland 21202.

FOR FURTHER INFORMATION CONTACT: Joyce Merrick Pickholz, Senior Counsel, or Wendy Finck Friedlander, Deputy Chief, on (202) 942–0670, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. Each Fund is a Maryland corporation registered under the Act as an open-end diversified management investment company. The authorized capital stock of each Fund may be issued as one or more classes (each a "Series") of stock, each Series representing an interest in a different investment portfolio. T. Rowe Price Equity Series, Inc. currently consists of three Series. T. Rowe Price Associates, Inc. is the investment adviser for the three Series. T. Rowe Price International Series, Inc. currently consists of one Series of stock for which Rowe Price-Fleming International, Inc. serves as investment adviser. T. Rowe Price Fixed Income Series, Inc. currently consists of one Series for which T. Rowe Price Associates, Inc. Serves as the investment adviser. The registration statements for the funds on Form N–1A are incorporated by reference into the application (File Nos. 33–52161, 33–52171 and 33–52749 for T. Rowe Price Equity Series, Inc., T. Rowe Price International Series, Inc. and T. Rowe Price Fixed Income Series, Inc. respectively).

2. Shares of the Funds will be offered to insurance companies as investment vehicles for their separate accounts that support variable annuity contracts and/or variable life insurance contracts (collectively, "variable contracts"). Insurance companies whose separate accounts do or will own shares of the Funds are referred to herein as "participating insurance companies," respectively.

3. Each participating insurance company will design its own variable annuity or variable life insurance contracts for issuance through its participating separate account. Each participating insurance company will have the legal obligation of satisfying all requirements applicable to it under the federal securities laws. It is anticipated that participating insurance companies and their registered separate accounts will rely on Rule 6e–2 or 6e–3(T) under the Act, although some may rely on individual exemptive orders as well, in connection with variable life insurance contracts. The Funds' role vis-a-vis the variable contracts, so far as the federal securities laws are applicable, will be limited to that of offering their shares to participating separate accounts of participating insurance companies, and fulfilling any conditions the Commission may impose upon granting the Order requested in the application.

4. Applicants anticipate that certain participating insurance companies may have a separate account investing in the Funds that will not be registered as an investment company under the Act in reliance on relevant exemptions (an "unregistered separate account"). Applicants represent that these participating insurance companies would be parties to participation agreements with the Funds, as contemplated by the conditions set forth in the application, and the same conditions would be imposed by such agreements on unregistered separate accounts as on registered separate accounts. Further, with respect to voting privileges, shares attributable to variable contracts supported by unregistered separate accounts will be deemed to be shares owned by the insurance company for purposes of the conditions set forth in the application relating to voting of Fund shares, unless voting privileges have been extended to the variable contracts supported by such unregistered separate accounts. Where voting privileges have been extended, Fund shares attributable to the variable contracts will be voted in accordance with instructions received from the owners thereof.

Applicants' Legal Analysis

1. In connection with scheduled premium variable life insurance contracts issued through a separate account registered under the Act as a unit investment trust, Rule 6e–2(b)(15) provides partial exemptions from sections 9(a), 13(a), 15(a) and 15(b) of the Act. The exemptions granted to a separate account (and any investment adviser, principal underwriter and depositor thereof) by Rule 6e–2(b)(15), however, are not available with respect to a scheduled premium variable life insurance separate account that owns shares of an investment company that also offers its shares to a variable annuity separate account of the same or of any affiliated or unaffiliated insurance company ("mixed funding"). In addition, the relief granted by Rule 6e–2(b)(15) is not available if shares of the underlying investment company are offered to variable annuity or variable life insurance separate accounts of unaffiliated insurance companies ("shared funding"). "Mixed and shared funding" denotes the use of a common management investment company to fund a variable annuity separate account of one insurance company and the variable annuity or variable life separate accounts of other affiliated and unaffiliated insurance companies. Accordingly, Applicants seek an order exempting scheduled premium variable life insurance separate accounts (and, to the extent necessary, any investment adviser, principal underwriter and depositor of such an account) from Sections 9(a), 13(a), 15(a) and 15(b) of the Act, and Rule 6e–2(b)(15) thereunder, to the extent necessary to permit shares of the Funds to be offered and sold in connection with both mixed funding and shared funding.

2. In connection with flexible premium variable life insurance contracts issued through a separate account registered under the Act as a unit investment trust, Rule 6e–3(T)(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the Act. The exemptions granted to a separate account (and to any investment adviser, principal underwriter and depositor thereof) by Rule 6e–3(T)(b)(15) permit mixed funding of flexible premium variable life insurance but preclude shared funding. Accordingly, Applicants seek an order exempting flexible premium variable life insurance separate accounts (and, to the extent necessary, any investment adviser, principal underwriter and depositor of such an account) from Sections 9(a), 13(a), and 15(b) of the Act, and Rule 6e–3(T)(b)(15) thereunder, to the extent necessary to permit shares of the Funds to be offered and sold to separate accounts in connection with shared funding.

3. Section 9(a) provides that it is unlawful for any company to serve as investment adviser or principal underwriter of any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in Sections 9(a) (1) or (2). Rules 6e–2(b)(15)(i) and ii), and 6e–3(T)(b)(15)(i) and (ii), provide exemptions from Section 9(a) under certain circumstances, subject to the limitations on mixed and shared funding. These exemptions limit the application of the eligibility restrictions to affiliated individuals or companies that directly participate in the management or administration of the underlying management investment company.

4. The application states that the partial relief granted in Rules 6e–2(b)(15) and 6e-3(T)(b)(15) from the requirements of Section 9 of the Act limits the amount of monitoring necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of Section 9. The Applicants state that those Rules recognize that it is not necessary for the protection of investors or the proposes fairly intended by the policy and provisions of the Act to apply the provisions of Section 9(a) to individuals in a large insurance company complex, most of whom will have no involvement in matters pertaining to investment companies in (or invested in by) that organization. Applicants state that it is also unnecessary to apply Section 9(a) to individuals in various unaffiliated insurance companies (or affiliated companies of participating insurance companies) that may utilize the Funds as the funding medium for variable contracts. Applicants argue that applying the requirements of Section 9(a) because of investment by other insurers' separate accounts would be unjustified and would not serve any regulatory purpose. The application states that the participating insurers are not expected to play any role in the management or administration of the Funds and that those individuals who participate in the management or administration of the Funds will remain the same regardless of which separate accounts or insurance companies use the Funds. Furthermore, the increased monitoring costs would reduce the net rates of return realized by contract owners.

5. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) assume the existence of a pass-through voting requirement with respect to management investment company shares held by a separate account. Applicants state that pass-through voting privileges will be provided with respect to all owners of variable contracts registered with the Commission so long as the Commission interprets the Act to require pass-through voting privileges for variable contract owners. Applicants anticipate that contracts supported by separate accounts that are not registered under the Act, will not provide for pass-through voting privileges. Applicants represent that shares of the Funds that are attributable to those contracts will be voted in the same proportion as those shares for which voting instructions have been received.

6. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) provide exemptions from the pass-through voting requirement with respect to several significant matters, assuming the limitations on mixed and shared funding are observed. Both Rules provide that the insurance company may disregard the voting instructions of its contract owners with respect to the investments of an underlying fund or any contract between a fund and its investment adviser, when required to do so by an insurance regulatory authority. Voting instructions may also be disregarded by the insurance company if the contract owners initiate any change in the investment company's investment policies, principal underwriter or any investment adviser provided that disregarding such voting instructions is reasonable and based on a specific good faith determination as required under the Rules. Applicants assert that the rights of an insurance company or of a state insurance regulator to disregard contract owner's voting instructions are not inconsistent with mixed or shared funding. According to the Applicants, there is no reason why the investment policies of any portfolio of the Funds would or should be materially different from what it would or should be if it funded only annuity contracts or only scheduled or flexible premium life contracts and that there is no reason to believe that different features of various types of contracts will lead to different investment policies for different types of variable contracts. Applicants represent that the Funds will not be managed to favor or disfavor any particular insurer or type of insurance product.

7. The Application states that mixed and shared funding should provide several benefits to variable contract holders. It would permit a greater amount of assets available for investment, thereby promoting economies of scale, permitting a greater diversification, and making the addition of new portfolios more feasible. The Applicants believe that making the Funds available for mixed and shared funding will encourage more insurance companies to offer variable contracts, and this should result in increased competition with respect to both variable contract design and pricing, which can be expected to result in more product variation and lower charges.

8. The Applicants see no significant legal impediment to permitting mixed and shared funding. Separate accounts organized as unit investment trusts have historically been employed to accumulate shares of mutual funds which have not been affiliated with the depositor or sponsor of the separate account. The Applicants do not believe that mixed and shared funding will have any adverse federal income tax consequences.

Applicants' Conditions

Applicants consent to the following conditions if an order is granted:

1. A majority of the Board of Directors of each Fund (the "Board") shall consist of persons who are not "interested persons" of the Fund, as defined by Section 2(a)(19) of the Act and the Rules thereunder and as modified by any applicable orders of the Commission, except that if this condition is not met by reason of the death, disqualification or bona fide resignation of any director or directors, then the operation of this condition shall be suspended: (a) For a period of 45 days if the vacancy or vacancies may be filled by the Board of Directors; (b) for a period of 60 days if a vote of shareholders is required to fill the vacancy or vacancies; or (c) for such longer period as the Commission may prescribe by order upon application.

2. Each Board will monitor its Fund for the existence of any material irreconcilable conflict between the interests of the life insurance contract owners and annuity contract owners and any future contract owners in the Fund. A material irreconcilable conflict may arise for a variety of reasons, including: (a) An action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretative letter, or any similar action by insurance, tax or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of any Series are being managed; or (e) a difference in voting instructions given by variable annuity contract owners and variable life insurance contract owners.

3. Participating insurance companies and the Advisers will report any potential or existing conflicts to the Board. Participating insurance companies and the Advisers will be responsible for assisting each Board in carrying out its responsibilities under

these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This includes, but is not limited to, an obligation by each participating insurance company to inform the Board whenever contract owner voting instructions are disregarded. The responsibility to report such information and conflicts and to assist the board will be a contractual obligation of all participating insurance companies under the agreements governing participation in a Fund and these responsibilities will be carried out with a view only to the interests of the contract owners.

4. If it is determined by a majority of the Board, or a majority of its disinterested directors, that a material irreconcilable conflict exists, the relevant insurance companies shall, at their expense and to the extent reasonably practicable (as determined by a majority of the disinterested directors), take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict, including: (1) Withdrawing the assets allocable to some or all of the separate accounts from the Fund or any Series and reinvesting such assets in a different investment medium, including another Series of the Fund, or submitting the question whether such segregation should be implemented to a vote of all affected contract owners and, as appropriate, segregating the assets of any appropriate group (*i.e.*, variable annuity contract owners, variable life insurance contract owners or variable contract owners or one or more participating insurance companies) that votes in favor of such segregation, or offering to the affected contract owners the option of making such a change; and (2) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of a participating insurer's decision to disregard contract owner voting instructions and that decision represents a minority position or would preclude a majority vote, the insurer may be required, at the Fund's election, to withdraw its separate account's investment in the Fund and no charge or penalty will be imposed as a result of such withdrawal. The responsibility to take remedial action in the event of a Board determination of a material irreconcilable conflict and to bear the cost of such remedial action shall be a contractual obligation of all participating insurance companies under their agreements governing participation in a Fund.

For purposes of condition 4, a majority of the disinterested members of the Board shall determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but in no event will the Fund or the applicable Adviser be required to establish a new funding vehicle for any variable contract. No participating insurance company shall be required by this condition 4 to establish a new funding vehicle for any variable contract if an offer to do so has been declined by vote of a majority of contract owners materially adversely affected by the irreconcilable material conflict, but in no event will a Fund or the Advisers be required to establish a new funding medium for any variable contract. No participating insurance company shall be required by this condition 4 to establish a new funding medium for any variable contract if an offer to do so has been declined by a vote of a majority to contract owners materially adversely affected by the irreconcilable material conflict.

5. A Board's determination of the existence of a material irreconcilable conflict and its implications shall be made known promptly to all participating insurance companies.

6. Participating insurance companies will pass-through voting privileges to owners of variable contracts registered with the Commission so long as the Commission continues to interpret the Act as requiring pass-through voting privileges for such variable contracts. As to such owners and owners of any other variable contracts to which voting privileges have been extended, participating insurance companies will vote shares of the applicable Fund held in their separate accounts in a manner consistent with timely voting instructions received from such contract owners. Each participating insurance company will vote shares of the Fund held in its separate accounts for which no timely voting instructions from contract owners are received, as well as shares it owns (including shares held by unregistered separate accounts supporting variable contracts for which not voting privileges have been granted to the owners thereof), in the same proportion as those shares for which voting instructions have been received. Participating insurance companies will be responsible for assuring that each of their separate accounts participating in the Funds calculates voting privileges in a manner consistent with other participating insurance companies. The obligation to calculate voting privileges in a manner consistent with other separate accounts investing in the Funds shall be a contractual obligation of all participating insurance companies under their agreements governing participation in the Funds.

7. All reports received by a Board of potential or existing conflicts, and all Board action with regard to determining the existence of a conflict, notifying participating insurance companies of a conflict and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the Board or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

8. Each Fund will comply with all provisions of the Act requiring voting by shareholders, and, in particular, will either provide for annual meetings (except insofar as the Commission may interpret Section 16 as not requiring such meetings), or comply with Section 16(c) of the Act (although the Funds are not trusts described in Section 16(c) of the Act) as well as with Section 16(a) and, if and when applicable, 16(b). Further, the Funds will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of directors and with whatever rules the Commission may promulgate with respect thereto.

9. Each Fund will disclose in its prospectus that (1) the Fund is intended to be a funding vehicle for all types of variable annuity and variable life insurance contracts offered by various insurance companies, (2) material irreconcilable conflicts may possibly arise, and (3) the Fund's Board will monitor events in order to identify the existence of any material irreconcilable conflict and determine what action, if any, should be taken in response to such conflict. Each Fund will notify all participating insurance companies that separate account prospectus disclosure regarding potential risks of mixed and shared funding may be appropriate.

10. If and to the extent that Rule 6e–2 and Rule 6e–3(T) are amended, or Rule 6e–3 is adopted, to provide exemptive relief from any provision of the Act or the rules promulgated thereunder with respect to mixed or shared funding on terms and conditions materially different from any exemptions granted in the order requested in this application, then the Funds and/or participating insurance companies, as appropriate, shall take such steps as may be necessary to comply with Rules 6e–2 and 6e–3(T), or Rule 6e–3, to the extent such amended rules are applicable.

11. The participating insurance companies shall at least annually submit to the relevant Board such reports, materials or data as the Board may reasonably request so that the Board or the Fund may fully carry out the obligations imposed upon them by the conditions contained in this application, and such reports, materials and data shall be submitted more frequently if deemed appropriate by the Board. The obligations of the participating insurance Companies to provide these reports, materials and data to the Board, when it so reasonably requests, shall be a contractual obligation of all participating insurance companies under their agreements governing participation in the Funds.

Conclusion

For the reasons stated above, Applicants believe that the requested exemptions in accordance with the standards of Section 6(c), are appropriate in the public interest and are consistent with the protection of investors and the purposes fairly intended by the policy and the provisions of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–12696 Filed 5–23–95; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21084; 812–9570]

WNC Housing Tax Credit Fund V, L.P., Series 3 Through 8, and WNC & Associates, Inc.; Notice of Application

May 18, 1995.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: WNC Housing Tax Credit Fund V, L.P. Series 3, WNC Housing Tax Credit Fund V, L.P., Series 4, WNC Housing Tax Credit Fund V, L.P., Series 5, WNC Housing Tax Credit Fund V, L.P., Series 6, WNC Housing Tax Credit Fund V, L.P., Series 7, WNC Housing Tax Credit Fund V, L.P., Series 8 (individually, a "Series," and collectively, the "Fund"), and WNC & Associates, Inc. (the "General Partner").

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) from all provisions of the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit each Series to invest in limited partnerships that engage in the ownership and operation of apartment complexes for low and moderate income persons.

FILING DATE: The application was filed on April 14, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing.

Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 12, 1995, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, D.C. 20549. Applicants, 3158 Redhill Avenue, Suite 120, Costa Mesa, California 92626–3416.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 942–0572, or C. David Messman, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. Each Series was formed as a California limited partnership on March 28, 1995. Each Series will operate as a "two-tier" partnership, *i.e.*, each Series, as a limited partner, will invest in other limited partnerships ("Local Limited Partnerships"). The Local Limited Partnerships in turn will engage in the ownership and operation of apartment complexes expected to be qualified for low income housing tax credit under the Internal Revenue Code of 1986.

2. The objectives of each Series are to (a) provide current tax benefits primarily in the form of low income housing credits which investors may use to offset their Federal income tax liabilities, (b) preserve and protect its capital, and (c) provide cash distributions from sale or refinancing transactions.

3. On April 13, 1995, the Fund filed a registration statement under the Securities Act of 1933, pursuant to which the Fund intends to offer publicity, in one or more series of offering, 50,000 units of limited partnership interest ("Units") at $1,000 per unit. The minimum investment will be five Units. Purchasers of the Units will become limited partners ("Limited Partners") of the Series offering the Units.

4. A Series will not accept any subscriptions for Units until the requested exemptive order is granted or the Series receives an opinion of counsel that it is exempt from registration under the Act. Subscriptions for Units must be approved by the General Partner. Such approval will be conditioned upon representations as to suitability of the investment for each subscriber. The suitability standards provide, among other things, that investment in a Series is suitable only for an investor who either (a) has a net worth (exclusive of home, furnishings, and automobiles), of at least $35,000 and an annual gross income of at least $35,000, or (b) irrespective of annual income, has a net worth (exclusive of home, furnishings, and automobiles) of at least $75,000. Units will be sold only to investors who meet these suitability standards, or more restrictive standards as may be established by certain states for purchases of Units within their respective jurisdictions. In addition, transfers of Units will be permitted only if the transferee meets the same suitability standards as had been imposed on the transferor Limited Partner.

5. Although a Series' direct control over the management of each apartment complex will be limited, the Series' ownership of interests in Local Limited Partnerships will, in an economic sense, be tantamount to direct ownership of the apartment complexes themselves. A Series normally will acquire at least a 90% interest in the profits, losses, and tax credits of the Local Limited Partnerships. However, in certain cases, the Series may acquire a lesser interest. In these cases, the Series normally will acquire at least a 50% interest in the profits, losses, and tax credits of the Local Limited Partnership. From 95% to 100% of the proceeds from a sale or refinancing of an apartment complex normally will be paid to the Series until it has received a full return of that portion of the net proceeds invested in the Local Limited Partnership (which may be reduced by any cash flow distributions previously received). A Series also will receive a share of any remaining sale of refinancing proceeds. A Series' share of these proceeds may range from 10% to 90%.

6. Each Series will have certain voting rights with respect to each Local Limited Partnership. The voting rights will include the right to dismiss and replace the local general partner on the basis of performance, to approve or

disapprove a sale or refinancing of the apartment complex owned by such Local Limited Partnership, to approve or disapprove the dissolution of the Local Limited Partnership, and to approve or disapprove amendments to the Local Limited Partnership agreement materially and adversely affecting the Series' investment.

7. Each Series will be controlled by the General Partner, pursuant to a partnership agreement (the "Partnership Agreement"). The Limited Partners, consistent with their limited liability status, will not be entitled to participate in the control of the business of the Series. However, a majority-in-interest of the Limited Partners will have the right to amend the Partnership Agreement (subject to certain limitations), to remove any General Partner and elect a replacement, and to dissolve the Series. In addition, under the Partnership Agreement, each Limited Partner is entitled to review all books and records of the Series.

8. The Partnership Agreement and prospectus of the Series contain numerous provisions designed to insure fair dealing by the General Partner with the Limited Partners. All compensation to be paid to the General Partner and its affiliates is specified in the Partnership Agreement and prospectus. While the fees and other forms of compensation that will be paid to the General Partner and its affiliates will not have been negotiated at arm's length, applicants believe that the compensation is fair and on terms no less favorable to the Series than would be the case if such arrangements had been made with independent third parties.

9. During the offering and organizational phase, the General Partner and its affiliates will receive a nonaccountable expense reimbursement equal to 1% of capital contributions. The General Partner also will be reimbursed by each Series for the actual amount of expenses incurred in connection with organizing the Series and conducting the offering. However, the General Partner has agreed to pay any organization and offering expenses (including selling commissions and the nonaccountable expense reimbursement) in excess of 14.5% of capital contributions.

10. During the acquisition phase, each Series will pay the General Partner or its affiliates a selection fee equal to 7.5% for analyzing and evaluating potential investments in Local Limited Partnerships. The General Partner and its affiliates will be reimbursed by each Series for the actual amount of any partnership acquisition expenses advanced by them, provided that acquisition expenses will not exceed 1% of capital contributions. Aggregate acquisition fees and acquisition expenses paid in connection with the acquisition of Local Limited Partnership interests by each Series will be limited by the Partnership Agreement and will comply with guidelines published by the North American Securities Administration Association. These guidelines require that a specified percentage (generally 80%, but subject to reduction) of the aggregate Limited Partners' capital contributions to a Series be committed to Local Limited Partnership interests.

11. During the operating phase, the General Partner will receive 1% of any cash available for distribution and each Series may pay certain fees and reimbursements to the General Partner or its affiliates. An asset management fee will be payable for services related to the administration of the affairs of each Series in connection with each Local Limited Partnership in which the Series invests. Other fees may be paid in consideration of property management services provided by the General Partner or its affiliates as to the management and leasing agents for some of the apartment complexes. In addition, the General Partner and its affiliates generally will be allocated 1% of profits and losses of each Series for tax purposes and tax credits.

12. During the liquidation phase, and subject to certain prior payments to the General Partner or its affiliates a fee equal to 1% of the sales price of the properties sold in which the General Partner or its affiliates had provided a substantial amount of services. The General Partner also will receive 10% of any additional sale or refinancing proceeds remaining after the return of the General Partner's capital contribution, subject to certain prior payments.

13. All proceeds from any Series of the public offering of Units initially will be placed in an escrow account with the National Bank of Southern California ("Escrow Agent"). Pending release of offering proceeds to an individual Series, the Escrow Agent will deposit escrowed funds in short-term United States Government securities, securities issued or guaranteed by the United States Government, and certificates of deposit or time or demand deposits in commercial banks. Upon receipt of a prescribed minimum amount of capital contributions for a Series, funds in escrow will be released to an individual Series and held by its pending investment in Local Limited Partnerships.

14. If investment opportunities may be invested in by more than one entity that the General Partner or its affiliates advises or manages, the decision as to the particular entity which will be allocated the investment will be based upon such factors as the effect of the acquisition on diversification of each entity's portfolio, the estimated income tax effects of the purchase on each entity, the amount of funds of each entity available for investment, and the length of time such funds have been available for investment. Priority generally will be given to the entity having uninvested funds for the longest period of time. However, (a) any partnership which was formed to invest primarily in apartment complexes eligible only for Federal low income housing credits will be given priority with respect to any investment which is not eligible for California low income housing credits and (b) each Series and any other partnership which was formed to invest primarily in apartment complexes eligible for California low income housing credits as well as for Federal credits will be given priority with respect to any investment which is eligible for the California credits.

Applicants' Legal Analysis

1. Applicants believe that the Fund and its Series will not be "investment companies" under sections 3(a)(1) or 3(a)(3) of the Act. If the Fund and its Series are deemed to be investment companies, however, applicants request an exemption under section 6(c) from all provisions of the Act.

2. Section 3(a)(1) of the Act provides that an issuer is an "investment company" if it is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting, or trading in securities. Applicants, however, believe that the Partnership will not be an investment company under section 3(a)(1) because the Partnership will be in the business of investing in and being beneficial owner of apartment complexes, not securities.

3. Section 3(a)(3) of the Act provides that an issuer is an "investment company" if it is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire "investment securities" having a value exceeding 40% of the value of such issuer's total assets (exclusive of government securities and cash items). Applicants, however, believe that the Local Limited Partnership interests should not be considered "investment securities" because those interests are not readily marketable, have no value apart from the value of the apartment complexes owned by the Local Limited Partnerships, and cannot be sold without severe adverse tax consequences.

4. Applicants believe that the two-tier structure is consistent with the purposes and criteria set forth in the SEC's release concerning two-tier real estate partnerships (the "Release").[1] The Release states that investment companies that are two-tier real estate partnerships that invest in limited partnerships engaged in the development and operation of housing for low and moderate income persons may qualify for an exemption from the Act pursuant to section 6(c). Section 6(c) provides that the SEC may exempt any person from any provision of the Act and any rule thereunder, if, and to the extent that, such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

5. The Release lists two conditions, designed for the protection of investors, which must be satisfied by two-tier partnerships to qualify for the exemption under section 6(c). First, interests in the issuer should be sold only to persons for whom investments in limited profit, essentially tax-shelter, investments would not be unsuitable. Second, requirements for fair dealing by the general partner of the issuer with the limited partners of the issuer should be included in the basic organizational documents of the company.

6. Applicants assert, among other things, that the suitability standards set forth in the application the requirements for fair dealing provided by the Partnership Agreement, and pertinent governmental regulations imposed on each Local Limited Partnership by various Federal, state, and local agencies provided protection to investors in Units comparable to that provided by the Act. In addition, applicants assert that the requested exemption is both necessary and appropriate in the public interest.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Maragret H. McFarland,

Deputy Secretary.

[FR Doc. 95–12700 Filed 5–23–95; 8:45 am]

BILLING CODE 8010–01–M

[1] Investment Company Act Release No. 8456 (Aug. 9, 1974).

SMALL BUSINESS ADMINISTRATION

Investment Advisory Council; Public Meeting

The U.S. Small Business Administration Investment Advisory Councils will hold a public meeting on Thursday, June 8, 1995, from 10:00 a.m. to 3:00 p.m. at the ANA Hotel, located at 2401 M Street, N.W., Washington, DC, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Ed Cleveland, Office of Investments, U.S. Small Business Administration, 409 Third Street SW., Washington, DC, (202) 205–6510.

Dorothy A. Overal,

Director, Office of Advisory Councils.

[FR Doc. 95–12656 Filed 5–23–95; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 USC Chapter 35).

DATE: May 18, 1995.

ADDRESSES: Written comments on the DOT information collection requests should be forwarded, as quickly as possible, to Edward Clarke, Office of Management and Budget, New Executive Office Building, Room 10202, Washington, D.C. 20503. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB official of your intent immediately.

FOR FURTHER INFORMATION CONTACT: Copies of the DOT information collection requests submitted to OMB may be obtained from Susan Pickrel or Annette Wilson, Information Management Division, M–34, Office of the Secretary of Transportation, 400 Seventh Street SW., Washington, D.C. 20590, (202) 366–4735.

SUPPLEMENTARY INFORMATION: Section 3507 of Title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the **Federal Register**, listing those information collection requests submitted to OMB for approval or renewal under that Act. OMB reviews and approves agency submissions in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms and the reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

Items Submitted to OMB for Review

The following information collection requests were submitted to OMB on May 18, 1995:

DOT No: 4052
OMB No: 2133–0025
Administration: Maritime Administration
Title: Position Reporting System for Vessels (AMVER/USMER)
Need for Information: Section 204(b), 212(A), 1203(a)—Merchant Marine Act 1936, as amended (46 U.S.C. 1114(b), 1122.a, 1283; Public Law 97–31 (95 Stat. 157 August 6, 1981); 46 CFR 307 (51 18329 May 19, 1986); 49 CFR 1.66 (46FR 47458 September 28, 1981.
Proposed Use of Information: The information will provide a current plot of U.S. flag and certain non-flag ships to allow for immediate marshalling of ships for national defense purposes and for search and rescue for safety of life at sea.
Frequency: Every 48 hours at sea, arrival and departure, and changes to previous informaton
Burden Estimate: 11,600
Respondents: Ship Operators
Form(s): CG–4796–A, CG–4796–A (MA)
Average Burden Hours Per Response: 53.53 hours

DOT No: 4053
OMB No: 2115–0073
Administration: United States Coast Guard
Title: Alternate Compliance—International Navigation Rules, Alternate Compliance—Inland Navigation Rules
Need for Information: The International Regulations for Preventing Collisions at Sea, 1972 (33 U.S.C. 1601 et. seg.) and the Inland Navigational Rules Act of 1980 (33 U.S.C. 2001 et. seq.) adopted a uniform system of

navigation rules for international and inland waters, respectively. Both allow vessels to deviate from technical requirements when it is determined by the Coast Guard, that they cannot fully comply for reasons of configuration of special use.
Proposed Use of Information: Coast Guard will use this information to determine if alternative compliance is justified.
Frequency: On occasion
Burden Estimate: 135 hours
Respondents: Vessel Owners, Operators, Builders and Agents
Form(s): None
Average Burden Hours Per Response: 1 hour and 30 minutes reporting and 5 minutes recordkeeping

DOT No: 4054
OMB No: 2115–0094
Administration: United States Coast Guard
Title: Safety Approval of Cargo Containers
Need for Information: Public Law 95–208, International Safe Container Act, and Title 49, Code of Federal Regulations, Part 1.46, gives Coast Guard the authority to approve new and existing cargo containers.
Proposed Use of Information: Coast Guard will use this information to ensure that: (1) no unauthorized changes are made to new cargo containers being manufactered, (2) periodic examinations are carried out as required and (3) container handlers and authorities in other countries will allow free movement of U.S. containers in foreign trade.
Frequency: On Occasion
Burden Estimate: 99,129 hours
Respondents: Container owners, operators, manufacturers and delegated approval authorities
Form(s): None
Average Burden Hours Per Response: 10 minutes reporting and 1 hour recordkeeping

DOT No: 4055
OMB No: 2133–0020
Administration: Federal Aviation Administration
Title: Maintenance, Preventive Maintenance, Rebuilding and Alteration FAR 43
Need for Information: The information collections required by FAR 43 are authorized principally by 49 U.S.C. Section 44701(a)(2) which authorizes the Secretary of Transportation to prescribe reasonable rules and regulations and minimum standards governing, in the interest of safety, inspecting, servicing, and overhauling of aircraft, aircraft engines, propellers, and appliances, including provision of examinations and reports the Secretary may accept in lieu of those made by its officers and employees.
Proposed Use of Information: The information is used by the FAA to ensure this work is performed by qualified persons, and at proper intervals.
Frequency: As needed for reporting and recordkeeping
Burden Estimate: 5,509,531 hours
Respondents: Individuals
Form(s): FAA Form 337
Average Burden Hours Per Response: 30 minutes per response for the form and 3 minutes per entry for recordkeeping

DOT No: 4056
OMB No: 2115–New
Administration: U.S. Coast Guard
Title: Inflatable Personal Flotation Devices (PFD) for Recreational Vessels PFD Marking, Inflation Mechansim Marking, Manufacturer Records, Information Pamphlet and Owner's Manual
Need for Information: Title 46 U.S.C. Section 4302(a) gives Coast Guard the authority to prescribe regulations establishing minimum safety standards for recreational vessels and associated equipment.
Proposed Use of Information: This information will be used by law enforcement officers to determine if the PFD's are Coast Guard approved.
Frequency: Once
Burden Estimate: 503.33 hours
Respondents: Manufacturers of Personal Flotation Devices
Form(s): None
Average Burden Hours Per Response: 101 hours per reporting.

Issued in Washington, D.C. on May 18, 1995.

Paula R. Ewen,

Chief, Information Management Division.

[FR Doc. 95–12662 Filed 5–23–95; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

Proposed Advisory Circular; Continued Airworthiness Assessment

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability of proposed advisory circular and request for comments.

SUMMARY: This notice announces the availability of Advisory Circular (AC), No. 39–XX, Continued Airworthiness Assessments.

DATES: Comments must be received on or before June 23, 1995.

ADDRESSES: Send all comments on the proposed AC to the Federal Aviation Administration, Attn: Engine and Propeller Standards Staff, ANE–110, Engine and Propeller Directorate, Aircraft Certification Service, 12 New England Executive Park, Burlington, MA, 01803–5299.

FOR FURTHER INFORMATION CONTACT: Thomas Boudreau, Engine and Propeller Standards Staff, ANE–110, at the above address, telephone (617) 238–7117, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

A copy of the subject AC may be obtained by contacting the person named above under **FOR FURTHER INFORMATION CONTACT.** Interested persons are invited to comment on the proposed AC, and to submit such written data, views, or arguments as they desire. Commenters must identify the subject of the AC, and submit comments in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Engine and Propeller Directorate, Aircraft Certification Service, before issuance of the final AC.

Background

This AC is on the subject of continued airworthiness assessments of turbine engines, propellers, and Auxiliary power units (APU's) for use on Federal Aviation Regulation (FAR) part 25 certified aircraft. The methods presented in this AC facilitate the understanding of safety related problems and suggest a consistent and measured response to identified safety problems.

This advisory circular, published under the authority granted to the Administrator by 49 U.S.C. 106(g), 49 U.S.C. App. 1354(a), 1421 and 1423, provides guidance for these proposed requirements.

Issued in Burlington, Mass., on May 16, 1995.

James C. Jones,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 95–12755 Filed 5–23–95; 8:45 am]

BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee Meeting on Noise Certification Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Aviation Rulemaking Advisory Committee to discuss noise certification issues.

DATES: The meeting will be held on June 21, 1995, at 9 a.m. Arrange for oral presentations by June 7, 1995.

ADDRESSES: The meeting will be held at the General Aviation Manufacturers Association, suite 801, 1400 K Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Carolina Forrester, Federal Aviation Administration, Office of Rulemaking (ARM–206), 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267–9690; fax (202) 267–5075.

SUPPLEMENTARY INFORMATION: Pursuant to § 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee to be held on June 21, 1995, at the General Aviation Manufacturers Association, Suite 801, 1400 K Street, NW., Washington, DC 20005. The agenda will include:

- Opening Remarks.
- Committee administration.
- Presentation of Work Plan by the FAR/JAR Harmonization Working Group for Helicopters.
- Presentation of Work by the FAR/JAR Harmonization Working Group for Propeller-Driven Small Airplanes.
- Status Report from the FAR/JAR Harmonization Working Group for Subsonic Transport Category Large Airplanes and Subsonic Turbojet Powered Airplanes.
- A discussion of future meeting dates, activities, and plans.
- Adjourn.

Attendance is open to the interested public, but will be limited to the space available. The public must make arrangements by June 7, 1995, to present oral statements at the meeting. The public may present written statements to the Committee at any time by providing 25 copies to the Executive Director, or by bringing the copies to him at the meeting. In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on May 19, 1995.

Paul R. Dykeman,

Assistant Executive Director for Noise Certification Issues, Aviation Rulemaking Advisory Committee.

[FR Doc. 95–12752 Filed 5–23–95; 8:45 am]

BILLING CODE 4910–13–M

RTCA, Inc., Special Committee 182; Minimum Operational Performance Standards (MOPS) for an Avionics Computer Resource (ACR)

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee 182 meeting to be held July 18–20, 1995, starting at 9:00 a.m. The meeting will be held at RTCA, Inc., 1140 Connecticut Avenue NW., Suite 1020, Washington, DC, 20036.

The agenda will include: (1) Chairman's Introductory Remarks; (2) Review and Approval of Meeting Agenda; (3) Review and Approval of Minutes from Fifth Meeting held April 5–7; (4) Discussion of ACR Objectives/Benefits—Review Input from Avionics Manufacturers; (5) Establish "Story Board" Topical Sentence for Major Sections of MOPS Document; (6) Continue Development of ACR Functional, Operational and Performance Specifications; (7) Joint Session with AEEC APEX Working Group (Wednesday, July 19, AM); (8) Review Definition of Terms, "Application," "Partition and Process"; (9) Other Business; (10) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information, should contact the RTCA Secretariat, 1140 Connecticut Avenue NW., Suite 1020, Washington, D.C. 20036; (202) 833–9339 (phone) or (202) 833–9434 (fax). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, May 18, 1995.

Janice L. Peters,

Designated Official.

[FR Doc. 95–12625 Filed 5–23–95; 8:45 am]

BILLING CODE 4910–13–M

RTCA, Inc., Special Committee 183; Standards for Airport Security Access Control

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee 183 meeting to be held June 12–13, 1995. The first day Plenary session will begin at 9:30 a.m.; the second day Editorial Working Group session will be 9:30–11:30 a.m. The meeting will be held at RTCA, Inc., 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036.

The agenda will be as follows: (1) Administrative Announcements; (2) General Introductions; (3) Review and Approval of Meeting Agenda; (4) Review and Approval of Minutes of Eighth Meeting held May 17; (5) Review of SC–183 Meeting Schedule July–September 1995; (6) Review of Draft Material; (7) Working Group Issues; (8) Other Business; (9) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information, should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone) or (202) 833–9434 (fax). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on May 18, 1995.

Janice L. Peters,

Designated Official.

[FR Doc. 95–12626 Filed 5–23–95; 8:45 am]

BILLING CODE 4910–13–M

RTCA, Inc., Special Committee 184; Minimum Performance and Installation Standards for Taxi-Hold Position Lights

Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee 184 meeting to be held June 5–6, 1995, starting at 9:00 a.m. The meeting will be held at the RTCA Conference Room, 1140 Connecticut Avenue NW., Suite 1020, Washington, DC 20036.

The agenda will be as follows: (1) Administrative Announcements; (2) Chairman's Introductory Remarks; (3) Review and Approval of meeting Agenda; (4) Review and Approval of Minutes of May 3–4 Meeting; (5) Review Status of Action Items; (6) Review of Draft Document Inputs; (7) Working Group Drafting Session; (8) Other Business; (9) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information, should contact the RTCA Secretariat, 1140 Connecticut Avenue NW., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone) or (202) 833–9434 (fax). Members of the public

may present a written statement to the committee at any time.

Issued in Washington, DC, on May 18, 1995.

Janice L. Peters,

Designated Official.

[FR Doc. 95–12627 Filed 5–23–95; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent To Rule on Applications To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at John F. Kennedy International Airport, Jamaica, NY; LaGuardia Airport (LGA), Flushing, NY, and Newark International Airport (EWR), Newark, NJ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on applications.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC and to amend previous PFC applications at JFK, LGA and EWR Airports under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before June 23, 1995.

ADDRESSES: Comments on these applications may be mailed or delivered in triplicate to the FAA at the following address: Mr. Philip Brito, Manager New York Airports District Office, 600 Old Country Road, Suite 446, Garden City, New York, 11530.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. George J. Marlin, Executive Director of the Port Authority of New York & New Jersey at the following address: One World Trade Center, Suite 1973, New York, New York 10048.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Port Authority of New York & New Jersey under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Philip Brito, Manager of the New York Airports District Office, Manager New York Airports District Office 600 Old Country Road, suite 446, Garden City, NY, 11530. The applications may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the applications to impose and use the revenue from a PFC at JFK, LGA and EWR Airports as well as applications to amend previous PFC approvals at all three airports under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158). On May 8, 1995, the FAA determined that the applications to impose and use the revenue from a PFC submitted by Port Authority of New York & New Jersey were substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the applications, in whole or in part, no later than July 9, 1995.

The following is a brief overview of the applications.

Level of the proposed PFC: $3.00

Proposed charge effective date: October 1, 1995

Proposed charge expiration date: August 31, 2001

Total estimated PFC revenue: $663,000,000

Brief description of proposed projects:

JFK Projects

—Automated Guideway Transit System—Planning and Design To impose and use an additional $38 million in PFC funds to reimburse the Port Authority for $19 million in planning previously authorized by the Board of Commissioners, to complete the planning studies for the AGT system, and to advance the design procurement and local permitting efforts prior to the implementation phase. Approximately $2 million of this total is for planning studies for the EWR Monorail-NEC (FGT) project beyond the $7 million approved by the FAA in 1992.

—Automated Guideway Transit System—Howard Beach Component To impose $325 million in PFC funds for the remainder of the on-airport portion of the AGT system at JFK. This segment would extend from the CTA to Federal Circle along the Van Wyck and extend to serve the employee parking lot, the long term parking lots and the Howard Beach subway station.

LGA Projects

—Automated Guideway Transit System—On-Airport Component To impose $61 million in PFCs to fund a portion of the on-airport component of the AGT system at LGA.

—Second Grand Central Parkway to LGA Flyover To amend previous PFC to withdraw this project.

EWR Projects

—EWR Monrail
To impose and use an additional $50 million, also to use $50 million in PFCs already imposed, for the construction of a monorail linking various areas within the airport.

—Landside Access—Phase 1A
To impose and use $50 million for on-airport roadway improvements and modifications to reduce congestion.

—EWR I–78 Flyover
To amend previous PFC to withdraw this project.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi, except commuter air carriers.

Any person may inspect the applications in person at the FAA office listed above under "**FOR FURTHER INFORMATION CONTACT**" and at the FAA regional Airports office located at: Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York, 11430.

In addition, any person may, upon request, inspect the applications, notice and other documents germane to the application in person at the Port Authority of New York & New Jersey.

Issued in Jamaica, New York on May 11, 1995.

William DeGraaff,

Manager, Planning & Programming Branch, Eastern Region.

[FR Doc. 95–1754 Filed 5–3–95; 8:45 am]

BILLING CODE 4910–13–M

Federal Railroad Administration

[FRA Docket Nos. PB–95–1 and SA–95–2]

MK Rail Corporation (MKRC) and CSX Transportation, Inc. (CSXT)

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Change of hearing date.

SUMMARY: On May 5, 1995, FRA published in the **Federal Register** a Notice of Petition for Waivers or Compliance (60 FR 22427) regarding the future operations of a train known as the "Iron Highway." FRA scheduled a public hearing for May 25, 1995. Due to scheduling constraints, FRA must change the date of the public hearing. As a consequence, FRA is rescheduling the public hearing to June 29, 1995, in room 4436 of the Nassif Building, DOT Headquarters Building, 400 Seventh Street SW., Washington, DC. We apologize for any inconvenience this rescheduling may cause.

DATES: A public hearing will be held at 10 a.m. on June 29, 1995.

ADDRESSES: A public hearing will be held in room 4436 of the Nassif Building, 400 Seventh Street SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Harold Morick, Motive Power & Equipment Division, Office of Safety, FRA, 400 Seventh Street SW., Washington, DC 20590 (telephone 202–366–4094), or Mark Tessler, Trial Attorney, Office of Chief Council, FRA, 400 Seventh Street SW., Washington, DC 20590 (telephone 202–366–0628).

Issued in Washington, DC, on May 18, 1995.

E.R. English,

Director, Office of Safety Enforcement.

[FR Doc. 95–12663 Filed 5–23–95; 8:45 am]

BILLING CODE 4910–06–M

National Highway Traffic Safety Administration

[Docket No. 94–107; Notice 2]

Excalibur Automobile Corp.; Grant of Application for Decision of Inconsequential Noncompliance

Excalibur Automobile Corporation (Excalibur) of Milwaukee, Wisconsin, determined that some of its vehicles failed to comply with the automatic restraint system requirements of 49 CFR 571.208, Federal Motor Vehicle Safety Standard (FMVSS) No. 208, "Occupant Crash Protection," and filed an appropriate report pursuant to 49 CFR part 573, "Defect and Noncompliance Reports." Excalibur has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—"Motor Vehicle Safety" on the basis that the noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of the application was published on January 5, 1995 (60 FR 1823). This notice grants the application.

Paragraph S4.1.4 of FMVSS No. 208 requires that vehicles manufactured on or after September 1, 1989, be equipped with a restraint system at each front outboard designated seating position that meets the standard's frontal crash protection requirements by means that require no action by vehicle occupants. This type of system is referred to as an automatic restraint system.

Excalibur manufactured 59 model year 1993, 1994, and 1995 JAC 427 Cobras without automatic restraint systems. These vehicles all contain Type 2, three-point harness active restraint systems. However, as Excalibur noted in its part 573 Report filed concurrently with the application under consideration, "36 JAC 427 Cobras are in dealers' possession and 15 have been acquired by ultimate purchasers. The remaining automobiles remain in the possession of Excalibur." NHTSA granted Excalibur's application for temporary exemption on March 6, 1995 (60 FR 12281), an agency action that covers the 36 unsold cars in dealer stock and in Excalibur's possession. Therefore, only the 15 cars that have been sold remain subject to the application under consideration.

Excalibur supported its application for inconsequential noncompliance with the following. The 15 JAC 427 Cobras all contain Type 2, three-point harness active restraint systems. Bringing these vehicles into compliance with paragraph S4.1.4 of FMVSS 208 would be very difficult from an engineering perspective, and whatever feasible solutions may be available, would most likely result in significant expense for Excalibur, a small financially-strapped company.

As set forth below, Excalibur argued that the overall safety risk from noncompliance with paragraph S4.1.4 of FMVSS 208 is inconsequential because of (1) the vehicle's specialized and limited use and small number and (2) Excalibur's belief that Cobra owners have a relatively high level of safety belt use and (3) Excalibur's proposal to boost further Cobra safety belt use by placing a warning label in the vehicle.

1. The Overall Safety Risk From Noncompliance of Excalibur's (15) JAC 427 Cobras With FMVSS 208 Is Inconsequential Given Their Specialized And Limited Use And Small Number

The JAC 427 Cobra is not an ordinary passenger automobile designed for daily use. It is a classically-styled automobile viewed as a collector's item by automobile purchasers. * * * The JAC 427 Cobra is a convertible which seats two persons, and has a small trunk. As a result, it is not designed to be used as a family's primary passenger vehicle. Instead, the JAC 427 Cobra is typically driven only short distances from an owner's home. Owners of these (sic) type of automobiles generally drive these automobiles no more than 4000 miles per year.

Excalibur has never planned to produce many JAC 427 Cobras due to the limited capacity of its manufacturing facilities and the nature of its manufacturing process. For example, the highest monthly total of JAC 427 Cobra automobiles ever produced was 17. Only 59 of these automobiles were produced for sale in the U.S. between January 1993 and September 1994, a 21-month period. In 1995, Excalibur's total planned production is only 100–180 JAC 427 Cobras for sale worldwide, or no more than 15 per month. Of the 100–180, only 60% of the JAC 427 Cobras, or 60–108, are proposed for sale in the U.S.

The collector's nature of the JAC 427 Cobra, the low number of miles that these types of vehicles are driven on any consistent basis, and the small number of actual JAC 427 Cobras that do not comply with FMVSS 208 illustrate the overall reduced safety risk of these vehicles, especially when compared to the overall risk posed by the average use of the standard family passenger vehicle. Thus, the total effect of the existence of only (15) JAC 427 noncomplying automobiles—which are meant for weekend pleasure driving—is inconsequential in relation to the overall level of motor vehicle safety in the U.S.

2. The Safety Risk From Noncompliance Of Excalibur's (15) JAC 427 Cobras With FMVSS 208 Is Inconsequential Due To Probable Existing Cobra Safety Belt Use And To Excalibur's Proposal To Boost Cobra Safety Belt Use

The use of safety belts has been shown to significantly reduce injuries and fatalities in automobile crashes. *See generally* NHTSA, *Evaluation of the Effectiveness of Occupant Protection—FMVSS 208 Interim Report, June 1992* (hereinafter referred to as "Interim Report"). Use of safety belts has increased dramatically since 1983 due to the enactment of state mandatory safety belt laws and the installation of automatic safety belt systems. By May of 1992, 42 states plus the District of Columbia and Puerto Rico had enacted laws requiring the use of safety belts. Interim Report at v. Safety belt use overall increased nationwide to nearly 59% in late 1991, ranging from 24% in Mississippi to 83% in Hawaii. NHTSA, *Effectiveness of Occupant Protection Systems and Their Use—Report to Congress, January 1993.* Manual safety belt use nationwide reached 56% in 1991, and may be even higher today due to increased safety awareness. *See* Interim Report at viii.

An informal survey of Excalibur automobile owners, including those of the JAC 427 Cobra, revealed that these owners on average are 45 year-old males with greater incomes and higher levels of education than the general population. Unlike youthful segments of the population who are more prone to reckless driving, Excalibur automobile owners are predominantly established, responsible people who value their personal safety and the quality and uniqueness of their investment in an Excalibur automobile. As a result, Excalibur opines that the owners of the JAC 427 Cobras are more likely to be wearing a safety belt while driving than other segments of the population, such as young single males.

To ensure even higher safety belt use in its JAC 427 Cobras, and thereby increase the safety of the driver and passenger, Excalibur proposes reminding in the strongest terms possible both the driver and passenger of the consequences of not using their safety belts. Excalibur would accomplish this by posting a warning label plainly and clearly visible to both the driver and passenger which states as follows:

WARNING: YOU MUST USE THE SEATBELT PROVIDED IN THIS VEHICLE. IT IS THE LAW. FAILURE TO USE THE SEATBELT COULD RESULT IN SERIOUS INJURY OR DEATH SINCE THIS CAR DOES NOT HAVE AN AIRBAG OR AUTOMATIC RESTRAINT SYSTEM.

Such a label should boost safety belt use by the drivers and passengers of the 59 JAC 427 Cobras, making the safety risk inconsequential by comparison to the safety risk associated with automobiles having automatic restraint systems.

No comments were received on the application.

As noted, the agency has granted Excalibur's application for temporary exemption, on grounds that immediate compliance would cause it substantial economic hardship. An additional finding was that the exemption would be consistent with the public interest and motor vehicle safety. This finding was reached in part on the limited number of vehicles that will be covered by the exemption during its life. Given the fact that there are far fewer vehicles covered by the application under consideration, and that the noncompliance apparently cannot be remedied by repair, the agency wishes to reach a decision that is consistent with that reached in granting the application for temporary exemption. Given the fact that there are 15 vehicles involved here, and that they comply with the requirements of FMVSS No. 208 that were once in effect, Excalibur's noncompliance may be deemed inconsequential to safety.

NHTSA concurs with Excalibur's plan to provide a warning label, but points out to Excalibur that not all States have mandatory seatbelt laws. Further, the label implies that it is not important to use the seatbelt if a vehicle does not have an airbag or other automatic restraint system. It is important to use the seatbelts regardless of whether there is an automatic restraint system. The agency calls this to the manufacturer's attention with the expectation that the label provided will be modified to reflect these comments.

In consideration of the foregoing, it is hereby found that the applicant has met its burden of persuasion that the noncompliance herein described is inconsequential to safety. Accordingly, its application is granted, and the applicant is exempted from providing the notification of the noncompliance that is required by 49 U.S.C. 30118, and from remedying the noncompliance, as required by 49 U.S.C. 30120.

(15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: May 18, 1995.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 95–12664 Filed 5–23–95; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Tax on Certain Imported Substances (Polybutylene, et. al); Notice of Determinations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This notice announces determinations, under Notice 89–61, that the list of taxable substances in section 4672(a)(3) will be modified to include polybutylene and polybutylene/ethylene.

EFFECTIVE DATE: This modification is effective July 1, 1990.

FOR FURTHER INFORMATION CONTACT: Ruth Hoffman, Office of Assistant Chief Counsel (Passthroughs and Special Industries), (202) 622–3130 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Under section 4672(a), an importer or exporter of any substance may request that the Secretary determine whether the substance should be listed as a taxable substance. The Secretary shall add the substance to the list of taxable substances in section 4672(a)(3) if the Secretary determines that taxable chemicals constitute more than 50 percent of the weight, or more than 50 percent of the value, of the materials used to produce the substance. This determination is to be made on the basis of the predominant method of production. Notice 89–61, 1989–1 C.B. 717, sets forth the rules relating to the determination process.

Determination

On May 16, 1995, the Secretary determined that polybutylene and polybutylene/ethylene should be added to the list of taxable substances in section 4672(a)(3), effective July 1, 1990.

The rate of tax prescribed for polybutylene, under section 4671(b)(3), is $4.70 per ton. This is based upon a conversion factor for butylene of 0.966.

The rate of tax prescribed for polybutylene/ethylene, under section 4671(b)(3), is $4.86 per ton. This is based upon a combined conversion factor for butylene and ethylene of 0.999.

The petitioner is Pecten Chemicals, a manufacturer and exporter of these substances. No material comments were received on these petitions. The following information is the basis for the determinations.

Polybutylene

HTS number: 3902.90.00.10
CAS number: 25036–29–7

Polybutylene is derived from the taxable chemical butylene. Polybutylene is a solid produced predominantly by the Zeigler-Nata Catalyzed, Bulk, Polymerization Process.

The stoichiometric material consumption formula for polybutylene is:

$n\ (C_4H_8)$ (butylene) ——> $(C_4H_8)_n$ (polybutylene)

Polybutylene has been determined to be a taxable substance because a review of its stoichiometric material consumption formula shows that, based on the predominant method of production, taxable chemicals constitute 100 percent by weight of the materials used in its production.

Polybutylene/Ethylene

HTS number: 3902.90.00.10
CAS number: 54570–68–2

Polybutylene/ethylene is derived from the taxable chemicals butylene and ethylene. Polybutylene/ethylene is a solid produced predominantly by the Zeigler-Nata Catalyzed, Bulk, Polymerization Process.

The stoichiometric material consumption formula for polybutylene/ethylene is:

$n\ (C_4H_8)$ (butylene) + $m\ (C_2H_4)$ (ethylene) ——> $(C_4H_8)_n(C_2H_4)_m$ (polybutylene/ethylene)

Polybutylene/ethylene has been determined to be a taxable substance because a review of its stoichiometric material consumption formula shows that, based on the predominant method of production, taxable chemicals constitute 100 percent by weight of the materials used in its production.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 95–12765 Filed 5–23–95; 8:45 am]

BILLING CODE 4830–01–U

Tax on Certain Imported Substances; Definition of Substance

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This notice modifies the definition of *substance* as that term relates to synthetic organic chemicals under Notice 89–61. It affects manufacturers and importers of taxable chemicals that are used in manufacturing taxable substances, and importers and exporters of those substances.

EFFECTIVE DATE: May 24, 1995.

FOR FURTHER INFORMATION CONTACT: Ruth Hoffman, Office of Assistant Chief Counsel (Passthroughs and Special Industries), (202) 622–3130 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Under section 4672(a), an importer or exporter of any substance may request that the Secretary determine whether that substance should be listed as a taxable substance. The Secretary shall add the substance to the list of taxable substances in section 4672(a)(3) if the Secretary determines that taxable chemicals constitute more than 50 percent of the weight, or more than 50 percent of the value, of the materials used to produce the substance. This determination is to be made on the basis of the predominant method of production.

Notice 89–61, 1989–1 C.B. 717, sets forth the rules relating to the determination process. Under Notice 89–61, for synthetic organic chemicals the term *substance* excludes textile fibers, yarns, and staple, and fabricated products that are molded, formed, woven, or otherwise finished into end-use products.

Modification of Definition of Substance

Certain polymers (resins) are initially produced as intermediate products in pellet, powder, or fiber form. Under Notice 89–61, a polymer in the form of pellet or powder, but not fiber, is eligible for listing as a taxable substance. This Notice modifies the definition of *substance* to include polymers extruded in fiber form.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 95–12766 Filed 5–23–95; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review: Complaints, 38 CFR 18.542; and Notice to Subrecipients, 38 CFR 18.532

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Ron Taylor, Information Management Service (045A4), 810 Vermont Avenue, NW, Washington, DC 20420, (202) 523–3412.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, Room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before June 23, 1995.

Dated: May 15, 1995.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

Reinstatement

1. Age Discrimination Complaints, 38 CFR 18.542; and Notice of Subrecipients, 38 CFR 18.532.
2. This information collection pertains to the recordkeeping requirement that Federally funded recipients process complaints of age discrimination in their respective programs and that these recipients notify subrecipients of their obligations under the law and VA's implementing regulations.
3. Individuals or households—Businesses or other for-profit—Not-for-profit institutions—State, Local or Tribal Governments.
4. The estimated total annual report hours and recordkeeping burden is 409 hours. However, the burden placed on the public in this reporting and recordkeeping requirement is not unique to the Federal government. Therefore, VA will be indicating a burden hour of one for the OMB reports management system. The information being requested from the public is retained or requested as a matter of practice.
5. 1½ hours.
6. On occasion.
7. 234 recordkeepers.

[FR Doc. 95–12654 Filed 5–23–95; 8:45 am]

BILLING CODE 8320–01–M

Information Collection Under OMB Review: Request for Estate Information, VA Form Letter 27–439

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Trish Fineran, Veterans Benefits Administration (20M30), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–5886.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, Room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: May 15, 1995.

By direction of the Secretary:

Donald L. Neilson,

Director, Information Management Service.

Reinstatement

1. Request for Estate Information, VA Form Letter 27–439.

2. The form letter provides Veterans Benefits Administration the information necessary to determine whether size of the estate is within legal boundaries for discontinuance of benefits to incompetent veterans when specific conditions exist.
3. Individuals or households—Business or other for-profit—Not-for-profit institutions—State, Local or Tribal Government.
4. 5,060 hours.
5. 10 minutes.
6. On occasion.
7. 13,800 respondents.

[FR Doc. 95–12653 Filed 5–23–95; 8:45 am]
BILLING CODE 8320–01–M

Information Collection Under OMB Review: Appeal to Board of Veteran's Appeals, VA Form 9; Withdrawal of Services by a Representative; Fee Agreement; Motion for Review of Expenses; Requests for Changes in Hearing Date; and Motion for Reconsideration

AGENCY: Department of Veterans Affairs.
ACTION: Notice.

The Department of Veterans Affairs has submitted OMB for following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Ron Taylor, Information Management Service (045A4), 810 Vermont Avenue, NW, Washington, DC 20420, (202) 523–3412.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, Room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer by no later than June 23, 1995.

Dated: May 15, 1995.

By direction of the Secretary:
Donald L. Neilson,
Director, Information Management Service.

Reinstatement

1. Appeal to Board of Veterans' Appeals, VA Form 9; Withdrawal of Services by a Representative; Fee Agreement; Motion for Review of Expenses; Requests for Changes in Hearing Date; and Motion for Reconsideration.
2. The information collection is judicial in nature and is required in processing appeals from denial of claims for VA benefits and in regulation of representatives' fees.
3. Individuals or households.
4. 51,598 hours.
5. Estimate of Burden Hour Per Respondent: 58 minutes (*Average*).
   a. Appeal to Board of Veterans' Appeals—1 hour.
   b. Withdrawal of Services by a Representative—30 minutes.
   c. Fee Agreement—6 minutes (basic filing); 4 hours (motion filing).
   d. Requests for Changes in Hearing Date—10 minutes (basic request); 1 hour (requests requiring preparation of a motion).
   e. Motion for Review of Expenses—4 hours.
6. On occasion.
7. 53,397 responses.

[FR Doc. 95–12652 Filed 5–23–95; 8:45 am]
BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 60, No. 100
Wednesday, May 24, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94–409) 5 U.S.C. 552b(e)(3).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Tuesday, May 30, 1995.
PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.
STATUS: Closed.
MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: May 19, 1995.
Jennifer J. Johnson,
Deputy Secretary of the Board.
[FR Doc. 95–12821 Filed 5–22–95; 9:12 am]
BILLING CODE 6210–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m., Thursday, June 1, 1995.
PLACE: The Board Room, 5th Floor, 490 L'Enfant Plaza, S.W., Washington, D.C. 20594.
STATUS: Open.
MATTERS TO BE CONSIDERED:
6431B Special Investigation Report: Safety of the Air Tour Industry in the United States.
6554 Briefs of Aviation Accidents.
NEWS MEDIA CONTACT: Telephone: (202) 382–0660.
FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382–6525.

Dated: May 19, 1995.
Bea Hardesty,
Federal Register Liaison Officer.
[FR Doc. 95–12804 Filed 5–22–95; 9:12 am]
BILLING CODE 7533–01–M

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [60 FR 26481, May 17, 1995].
STATUS: Open Meeting.
PLACE: 450 Fifth Street, N.W., Washington, D.C.
DATE PREVIOUSLY ANNOUNCED: May 17, 1995.
CHANGE IN THE MEETING: Deletion.

The following item will not be considered at an open meeting scheduled for Friday, May 19, 1995, at 11:00 a.m.

Whether to propose amendments to the all-holder's/best price provisions of: (i) Rule 13e–4; and (ii) 14d–10 to prohibit a tender offeror from paying a soliciting dealer fee to a security holder with respect to any tender by that holder for its own account.

Commissioner Wallman, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary (202) 942–7070.

Dated: May 18, 1995.
Jonathan G. Katz,
Secretary.
[FR Doc. 95–12822 Filed 5–22–95; 9:12 am]
BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of May 22, 1995.

A closed meeting will be held on Monday, May 22, 1995, at 11:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Wallman, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Monday, May 22, 1995, at 11:00 a.m., will be:

Institution of administrative proceedings of an enforcement nature.
Settlement of injunctive actions.
Settlement of administrative proceedings of an enforcement nature.
Dismissal of injunctive action.
Amendment of administrative proceeding of an enforcement nature.
Modify settlement of administrative proceeding of an enforcement nature.
Opinion.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary (202) 942–7070.

Dated: May 22, 1995.
Jonathan G. Katz,
Secretary.
[FR Doc. 95–12924 Filed 5–22–95; 3:45 pm]
BILLING CODE 8010–01–M

Corrections

Federal Register
Vol. 60, No. 100
Wednesday, May 24, 1995

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No. 950411099–5099–01]

RIN 0651–AA52

Amendment to Rules for Extension of Patent Term

Correction

In rule document 95–11787 beginning on page 25615 in the issue of Friday, May 12, 1995, make the following corrections:

1. On page 25616, in the second column, in the third full paragraph, in the fourth line, insert "term" after "patent".

2. On the same page, in the same column, in the fourth paragraph, in the fifth line, remove "further".

3. On page 25617, in the second column, in the first full paragraph, in the first sentence, "Section 1750" should read "Section 1760".

4. On the same page, in the third column, under the heading **Other Considerations**, in the first full paragraph, in the last line, "35091" should read "3501".

BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 63

[AD–FRL–5115–7]
RIN 2060–AC14

National Emission Standards for Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks

Correction

In rule document 95–65 beginning on page 4948 in the issue of Wednesday, Janaury 25, 1995, make the following corrections:

On page 4950, Tables 3 and 4 should be removed. They appear correctly on page 4951.

BILLING CODE 1505–01–D

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 212

[INS No. 1688–95]
RIN 1115–AD89

Waiver of the Two-Year Home Country Physical Presence Requirements for Certain Foreign Medical Graduates

Correction

In rule document 95–12272 beginning on page 26676 in the issue of Thursday, May 18, 1995, make the following correction:

§ 212.7 [Corrected]

On page 26681, in the second column, amendatory instruction 2. to § 212.7 should read as set forth below.

"2. In § 212.7, paragraphs (c)(9) and (c)(10) are redesignated as paragraphs (c)(10) and (c)(11), respectively, and a new paragraph (c)(9) is added to read as follows:".

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–95–031]
RIN 2115–AA97

Safety Zone: Macy's 1995 Fourth of July Fireworks, East River, NY

Correction

In proposed rule document 95–11659 beginning on page 25189 in the issue of Thursday, May 11, 1995, make the following correction:

§ 165.T01–031 [Corrected]

On page 25190, in the third column, in § 165.T01-031(c)(3)(ii), in the sixth line, insert the following after "between":

"the Williamsburg Bridge and the charted position of Buoy 18 (LLNR 27335). These vessels may enter the zone and proceed to this area between".

BILLING CODE 1505–01–D

federal register

Wednesday
May 24, 1995

Part II

Department of Housing and Urban Development

Supportive Housing for Persons With Disabilities; Fund Availability; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N–95–3904; FR–3903–N–01]

Notice of Fund Availability (NOFA) for Supportive Housing for Persons With Disabilities

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of fund availability for Fiscal Year (FY) 1995.

SUMMARY: This NOFA announces HUD's funding for supportive housing for persons with disabilities. This document describes the following: (a) The purpose of the NOFA and information regarding eligibility, submission requirements, available amounts, and selection criteria; and (b) application processing, including how to apply and how selections will be made.

APPLICATION PACKAGE: The Application Package can be obtained from the Multifamily Housing Clearinghouse, P.O. Box 6424, Rockville, MD 20850, telephone 1–800–685–8470; and from the appropriate HUD Office identified in appendix A to this NOFA. The Application Package includes a checklist of steps and exhibits involved in the application process.

DATES: The deadline for receipt of applications in response to this NOFA is 4 p.m. local time on July 24, 1995. The application deadline is firm as to *date* and *hour*. In the interest of fairness to all applicants, HUD will not consider any application that is received after the deadline. Sponsors should take this into account and submit applications as early as possible to avoid the risk of unanticipated delays or delivery-related problems. In particular, Sponsors intending to mail applications must provide sufficient time to permit delivery on or before the deadline date. Acceptance by a Post Office or private mailer does not constitute delivery. Facsimile (FAX), COD, and postage due applications will not be accepted.

ADDRESSES: Applications must be delivered to the Director of the Multifamily Housing Division in the HUD Office for your jurisdiction. A listing of HUD Offices, their addresses, and telephone numbers is attached as appendix A to this NOFA. HUD will date and time stamp incoming applications to evidence timely receipt, and upon request will provide the applicant with an acknowledgement of receipt.

FOR FURTHER INFORMATION CONTACT: The HUD Office for your jurisdiction, as listed in appendix A to this NOFA.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this NOFA have been approved by the Office of Management and Budget (OMB), under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), and assigned OMB Control Number 2502–0267.

I. Purpose and Substantive Description

A. Authority

Section 811 of the Cranston-Gonzalez National Affordable Housing Act (the NAHA) (Pub. L. 101–625, approved November 28, 1990), as amended by the Housing and Community Development Act of 1992) (HCD Act of 1992) (Pub. L. 102–550, approved October 28, 1992), authorized a new supportive housing program for persons with disabilities, and replaced assistance for persons with disabilities previously covered by section 202 of the Housing Act of 1959 (section 202 continues, as amended by section 801 of the NAHA, and HCD Act of 1992, to authorize supportive housing for the elderly). HUD provides the assistance as capital advances and contracts for project rental assistance in accordance with 24 CFR part 890. Capital advances may be used to finance the construction, rehabilitation, or acquisition with or without rehabilitation, including acquisition from the Resolution Trust Corporation (RTC), of structures to be developed into a variety of housing options ranging from group homes and independent living facilities, to dwelling units in multifamily housing developments, condominium housing, and cooperative housing. Acquisition without rehabilitation is permitted only for group homes or properties acquired from the RTC. This assistance may also cover the cost of real property acquisition, site improvement, conversion, demolition, relocation, and other expenses that the Secretary determines are necessary to expand the supply of supportive housing for persons with disabilities.

For supportive housing for persons with disabilities, the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1995 (Pub. L. 103–327, approved September 28, 1994) provides $387,000,000 for capital advances for supportive housing for persons with disabilities, as authorized by section 811 of the NAHA, and for project rental assistance, and amendments to contracts for project rental assistance, for supportive housing for persons with disabilities, as authorized by section 811 of the NAHA.

In accordance with an agreement between HUD and the Administration for Rural Housing and Economic Development Services (ARHEDS) (formerly the Farmers Home Administration (FmHA)), which facilitates the coordination between the two agencies in administering their respective rental assistance programs, HUD is required to notify ARHEDS of applications for housing assistance it receives. This notification gives ARHEDS the opportunity to comment if it has concern about the demand for additional assisted housing and possible harm to existing projects in the same housing market area. HUD will consider the ARHEDS comments in its review and project selection process.

B. Allocation Amounts

In accordance with 24 CFR part 791, the Assistant Secretary will allocate the amounts available for capital advances for supportive housing for persons with disabilities. HUD reserves project rental assistance funds sufficient for 20-year project rental assistance contracts in support of the units selected for capital advances, consistent with current operating cost standards.

The allocation formula for Section 811 funds consists of the following two data elements:

1. A measure of the number of persons identified as having a public transportation disability; and

2. A measure of the number of persons identified as having a work disability.

Due to the elimination of the 10 HUD Regional Offices, the Section 811 capital advance funds have been allocated, based on the formula above, to 51 HUD Offices as shown on the following chart:

FISCAL YEAR 1995 ALLOCATIONS FOR SUPPORTIVE HOUSING FOR PERSONS WITH DISABILITIES

[Fiscal Year 1995 Section 811 Allocations]

Offices	Capital advance authority	Units
New England:		
Massachusetts	$4,053,040	52
Connecticut	2,175,115	28
New Hampshire	1,202,081	20
Rhode Island	1,157,571	15
Total	8,587,807	115
New York/New Jersey:		
New York	12,284,104	158
Buffalo	2,926,426	43
New Jersey	5,985,522	77
Total	21,196,052	278
Mid-Atlantic:		
Maryland	2,039,706	32
West Virginia	1,332,779	23
Pennsylvania	5,926,132	86
Pittsburgh	2,421,348	40
Virginia	2,107,107	40
DC	2,160,322	33
Total	15,987,394	254
Southeast/Caribbean:		
Georgia	3,452,517	58
Alabama	2,583,292	51
Caribbean	2,695,997	41
South Carolina	2,175,063	40
North Carolina	4,583,069	70
Mississippi	1,793,626	36
Jacksonville	8,103,682	143
Kentucky	2,353,307	42
Knoxville	1,222,748	24
Tennessee	1,507,819	30
Total	30,571,150	545
Midwest:		
Illinois	7,742,486	107
Cincinnati	1,389,418	24
Cleveland	3,445,072	54
Ohio	1,363,677	24
Michigan	4,288,202	67
Grand Rapids	1,056,716	19
Indiana	2,819,986	49
Wisconsin	2,222,256	35
Minnesota	1,886,433	28
Total	26,194,246	407
Southwest:		
Texas/New Mexico	4,033,221	77
Houston	2,361,150	44
Arkansas	1,452,576	31
Louisiana	2,497,047	49
Oklahoma	1,582,766	32
San Antonio	2,057,581	41
Total	13,984,341	274
Great Plains:		
Iowa	1,150,920	22
Kansas/Missouri	2,012,074	37
Nebraska	779,167	15
St. Louis	1,927,154	31
Total	5,869,315	105
Rocky Mountains:		
Colorado	2,629,947	48
Total	2,629,947	48
Pacific/Hawaii:		
Hawaii (Guam)	1,752,779	15
Los Angeles	12,903,390	169

FISCAL YEAR 1995 ALLOCATIONS FOR SUPPORTIVE HOUSING FOR PERSONS WITH DISABILITIES—Continued

[Fiscal Year 1995 Section 811 Allocations]

Offices	Capital advance authority	Units
Arizona	1,564,195	30
Sacramento	1,537,871	21
California	6,495,719	86
Total	24,253,954	321
Northwest/Alaska:		
Alaska	1,752,779	15
Oregon	1,759,232	29
Washington	2,159,783	32
Total	5,671,794	76
National Total	154,946,000	2,421

C. Eligibility

Nonprofit organizations are the only eligible applicants under this program. A single Sponsor shall not request more units in a given HUD Office than permitted for that HUD Office in the Invitation.

D. Initial Screening, Technical Processing, and Selection Criteria

1. Initial Screening

HUD will review applications for section 811 capital advances that HUD receives at the appropriate address by 4:00 p.m. local time on July 24, 1995 to determine if all parts of the application are included. HUD will not review the content of the application as part of initial screening. HUD will send deficiency letters, by certified mail, informing Sponsors of any missing parts of the application. Sponsors must correct such deficiencies within 14 calendar days from the date of the deficiency letter. Any document requested as a result of the initial screening may be executed or prepared within the deficiency period, except for Forms HUD–92016–CAs, Articles of Incorporation, IRS exemption rulings, Forms SF–424, Board Resolution committing the minimum capital investment, and site control documents (all of these excepted items must be dated no later than the application deadline date).

Note: SPONSORS OF PROJECTS IN OKLAHOMA MAY SUBMIT THE SUPPORTIVE SERVICES CERTIFICATION AND THE CERTIFICATION OF CONSISTENCY WITH THE CONSOLIDATED PLAN AFTER THE APPLICATION DEADLINE BUT NO LATER THAN AUGUST 25, 1995. If these are the only deficiencies discovered during initial screening, affected Sponsors will not receive a deficiency letter.

2. Technical Processing

All applications will be placed in technical processing upon receipt of the response to the deficiency letter or at the end of the 14-day period. All applications will undergo a complete analysis. If a reviewer finds that clarification is needed to complete the review or an exhibit is missing that was not requested after initial screening, the reviewer shall immediately advise the Multifamily Housing Representative, who will: (a) Request, by telephone, that the Sponsor submit the information within five (5) working days; and (b) follow up by certified letter. Communications must be attached to the technical review and findings memorandum. As part of this analysis, HUD will conduct its environmental review in accordance with 24 CFR part 50 only on those applications containing satisfactory evidence of site control.

Examples of reasons for technical processing rejection include an ineligible Sponsor, ineligible population to be served, lack of legal capacity, or a Supportive Services Certification on which the appropriate State or local agency indicated that the provision of services is not well-designed to meet the needs of persons with disabilities, or that the Sponsor did not demonstrate sufficiently that supportive services will be provided on a consistent, long-term basis. The Secretary will not reject an application based on technical processing without giving notice of that rejection with all rejection reasons and affording the applicant an opportunity to appeal. HUD will afford an applicant 14 calendar days from the date of HUD's written notice to appeal a technical rejection to the HUD Office. The HUD Office must respond within five working days to the Sponsor. The HUD Office shall make a determination on an appeal prior to making its selection recommendations. All applications will be either rated or technically rejected at the end of technical processing.

Technical processing will also assure that the Sponsor has complied with the requirements in the civil rights certification (24 CFR 890.265(b)(9)(i)). There must not have been an adjudication of a civil rights violation in a civil action brought against the Sponsor by a private individual, unless the Sponsor is operating in compliance with a court order, or implementing a HUD-approved compliance agreement designed to correct the areas of noncompliance. There must be no pending civil rights suits against the Sponsor instituted by the Department of Justice, and no pending administrative actions for civil rights violations instituted by HUD (including a charge of discrimination under the Fair Housing Act). There must be no outstanding findings of noncompliance with civil rights statutes, Executive Orders, or regulations, as a result of formal administrative proceedings, nor any charges issued by the Secretary against the Sponsor under the Fair Housing Act, unless the Sponsor is operating under a conciliation or compliance agreement designed to correct the areas of noncompliance. Moreover, there must not be a deferral of the processing of applications from the Sponsor imposed by HUD under Title VI of the Civil Rights Act of 1964, HUD's implementing regulations (24 CFR 1.8), procedures (HUD Handbook 8040.1), and the Attorney General's Guidelines (28 CFR 50.3); or under section 504 of the Rehabilitation Act of 1973 and HUD's implementing regulations (24 CFR 8.57), and the Americans with Disabilities Act.

Upon completion of technical processing, all acceptable applications will be rated according to the selection criteria in 24 CFR 890.300(d) (also below in section I.D.3. of this NOFA). Applications that have a total score of 50 points or more will be eligible for selection and will be placed in rank order. These applications will be selected based on rank order to and including the last application that can be funded out of the local HUD Office's allocation. Local HUD Offices will no longer skip over any applications in order to select one based on the funds remaining. Any funds remaining after this process has been completed will be returned to Headquarters for selecting applications based on a national rank order.

3. Selection Criteria

Applications for Section 811 capital advances that successfully complete technical processing will be rated using the following selection criteria:

(a) The Sponsor's ability to develop and operate the proposed housing on a long-term basis, considering the following (70 points maximum—60 base points plus 10 bonus points):

(1) The scope, extent, and quality of the Sponsor's experience in providing housing or related services to those proposed to be served by the project and the scope of the proposed project (*i.e.*, number of units, services, relocation costs, development, and operation) in relationship to the Sponsor's demonstrated development and management capacity.(32 points);

(2) The scope, extent, and quality of the Sponsor's experience in providing housing or related services to minority persons or families (8 points);

(3) The scope, extent, and quality of the Sponsor's experience in providing opportunities for minority- and women-owned business enterprises participation (5 points);

(4) Applications submitted by Sponsors whose boards are comprised of at least 51 percent persons with disabilities (5 bonus points);

(5) The extent of local community support for the project and for the Sponsor's activities, including previous experience in serving the area where the project is to be located, and the Sponsor's demonstrated ability to enlist volunteers and raise local funds (15 points); and

(6) The Sponsor's involvement of persons with disabilities (including minority persons with disabilities) in the development of the application, and its intent to involve persons with disabilities (including minority persons with disabilities) in the development of the project (5 bonus points).

(b) The need for supportive housing for persons with disabilities in the area to be served, the extent to which the Sponsor has site control, suitability of the site, and the design of the project, considering (50 points maximum—40 base points plus 10 bonus points):

(1) The extent of the need for the project in the area based on a determination by the HUD Office. This determination will be made by considering the Sponsor's evidence of need in the area based on the guidelines in § 890.265(b)(18), as well as other economic, demographic, and housing market data available to the HUD Office. The data could include the availability of existing Federally assisted housing (HUD and ARHEDS) for persons with disabilities and current occupancy in such facilities, Federally assisted housing for persons with disabilities under construction or for which fund reservations have been issued, and, in accordance with an agreement between HUD and ARHEDS, comments from ARHEDS on the demand for additional assisted housing and the possible harm to existing projects in the same housing market area (8 points);

(2) Applications containing acceptable evidence of control of an approvable site (10 bonus points);

(3) The proximity or accessibility of the site to shopping, medical facilities, transportation, places of worship, recreational facilities, places of employment, and other necessary services to the intended occupants; adequacy of utilities and streets, and freedom of the site from adverse environmental conditions (site control projects only); and compliance with the site and neighborhood standards (15 points);

(4) Suitability of the site from the standpoint of promoting a greater choice of housing opportunities for minority persons with disabilities (7 points); and

(5) The extent to which the proposed design will meet any special needs of persons with disabilities the housing is intended to serve and will accommodate the provision of any necessary on-site supportive services for the proposed residents (10 points).

(c) The project will be located within the boundaries of a Federally-designated Empowerment Zone, Urban Supplemental Empowerment Zone, Enterprise Community, or Urban Enhanced Enterprise Community (5 bonus points).

The maximum number of points an application can earn without bonus points is 100. An application can earn an additional 25 bonus points for a maximum total of 125 points.

II. Application Process

All applications for Section 811 capital advances submitted by eligible Sponsors must be filed with the appropriate HUD Office receiving an allocation and must meet the requirements of this NOFA. No application will be accepted after 4 p.m. local time on July 24, 1995, unless that date and time is extended by a Notice published in the **Federal Register**. HUD will not accept applications received after that date and time, even if postmarked by the deadline date. Applications submitted by facsimile are not acceptable.

Immediately upon publication of this NOFA, if names have not already been provided to the Multifamily Housing Clearinghouse, HUD Offices shall notify minority media and media for persons with disabilities, all persons and organizations on their mailing lists, minority and other organizations within their jurisdiction involved in housing and community development, and groups with special interest in housing for disabled households.

Organizations interested in applying for a Section 811 capital advance should contact the Multifamily Housing Clearinghouse at 1–800–685–8470 for a copy of the Application Package, and advise the appropriate HUD Office if they wish to attend the workshop described below. HUD encourages minority organizations to participate in this program as Sponsors. HUD Offices will advise all organizations on their mailing list of the date, time, and place of workshops at which HUD will explain the Section 811 program.

HUD strongly recommends that prospective applicants attend the local HUD Office workshop. Interested persons with disabilities should contact the HUD Office to assure that any necessary arrangements can be made to enable their attendance and participation in the workshop. While strongly urged to do so, if Sponsors cannot attend a workshop, Application Packages can also be obtained from the Multifamily Housing Clearinghouse (see address and telephone number in the "Application Package" section, above). However, Sponsors must contact the appropriate HUD Office with any questions regarding the submission of applications and for any additional application requirements. At the workshops, HUD will distribute Application Packages and will explain application procedures and requirements. Also, HUD will address concerns such as local market conditions, building codes, historic preservation, floodplain management,

displacement and relocation, zoning, and housing costs.

III. Application Submission Requirements

A. Application

Each application shall include all of the information, materials, forms, and exhibits listed in section III.B., below, of this NOFA (with the exception of applications submitted by Sponsors selected for a Section 811 fund reservation within the last three funding cycles), and must be indexed and tabbed. Previously selected Section 811 Sponsors are not required to submit the information described in B.2. (a), (b), and (c), below, of this NOFA (Exhibits 2.a., b., and c. of the application), which are the articles of incorporation (or other organizational documents), by-laws, and the IRS tax exemption, respectively. If there has been a change in any of the eligibility documents since its previous HUD approval, the Sponsor must submit the updated information in its application. The HUD Office will base its determination of the eligibility of a new Sponsor for a reservation of Section 811 capital advance funds on the information provided in the application. HUD Offices will verify a Sponsor's indication of previous HUD approval by checking the project number and approval status with the appropriate HUD Office. In addition to this relief of paperwork burden in preparing applications, applicants will be able to use information and exhibits previously prepared for prior applications under Section 811, Section 202, or other funding programs. Examples of exhibits that may be readily adapted or amended to decrease the burden of application preparation include, among others, those on previous participation in the Section 202 or Section 811 programs; applicant experience in the provision of housing and services; supportive services plan; community ties; and experience serving minorities.

B. General Application Requirements

1. Form HUD–92016–CA, Application for Section 811 Supportive Housing Capital Advance.

Note: A SPONSOR MAY APPLY FOR A SCATTERED SITE PROJECT PROVIDED EACH SITE CONTAINS THE SAME FACILITY TYPE (*E.G.*, GROUP HOME, INDEPENDENT LIVING FACILITY, CONDOMINIUM UNIT). IF THE SPONSOR PROPOSES A MIX OF FACILITY TYPES, IT MUST SUBMIT ONE APPLICATION PER FACILITY TYPE.

2. Evidence of *each* Sponsor's legal status as a nonprofit organization, including the following:

(a) Articles of Incorporation, constitution, or other organizational documents;

(b) By-laws;

(c) IRS section 501(c)(3) tax exemption ruling (this must be submitted by all Sponsors, including churches). Previously, nonprofit organizations in Puerto Rico were exempt from this requirement provided they were exempt from income taxation under Puerto Rico law, have never been liable for payment of Federal income taxes, and do not pay patronage dividends. HUD has learned, however, that nonprofit organizations in Puerto Rico may apply and be granted IRS section 501(c)(3) tax exemption rulings. This requirement also applies to nonprofit organizations in Guam. Therefore, to the extent permitted within the application period for this NOFA, Sponsors should pursue a tax exemption ruling under 501(c)(3). If a Sponsor is unable, after using its best efforts, to secure such a ruling, it may use the regulatory exemption described in this paragraph (c), above.

Note: SPONSORS WHO HAVE RECEIVED A SECTION 811 FUND RESERVATION WITHIN THE LAST THREE FUNDING CYCLES ARE NOT REQUIRED TO SUBMIT THE DOCUMENTS DESCRIBED IN (a), (b), and (c), ABOVE. INSTEAD, SPONSORS MUST SUBMIT THE PROJECT NUMBER OF THE LATEST APPLICATION SUBMITTED AND THE HUD OFFICE TO WHICH IT WAS SUBMITTED. IF THERE HAVE BEEN ANY MODIFICATIONS OR ADDITIONS TO THE SUBJECT DOCUMENTS, INDICATE SUCH, AND SUBMIT THE NEW MATERIAL.

(d) Resolution of the board, duly certified by an officer, that no officer or director of the Sponsor or Owner has or will have any financial interest in any contract with the Owner or in any firm or corporation that has or will have a contract with the Owner and that includes a current listing of all duly qualified and sitting officers and directors by title and the ending date of each person's term.

(e) The number of people on the Sponsor's board and the number of those people who have a disability.

3. Sponsor's purpose, community ties, and experience, including the following:

(a) Description of Sponsor's purpose and current activities;

(b) Description of Sponsor's ties to the community at large and to the disabled community in particular;

(c) Description of Sponsor's housing and/or supportive services experience. The description should include any rental housing projects and/or medical facilities sponsored, owned, and operated by the Sponsor, the Sponsor's past or current involvement in any programs other than housing that demonstrates the Sponsor's management capabilities and experience, and the Sponsor's experience in serving persons with disabilities and minorities.

(d) Description of Sponsor's experience in contracting with minority- and women-owned businesses, including a summary of the total amount awarded in each of the two categories for the preceding three years, and the percentage that amount represents of all contracts awarded by the Sponsor in the relevant time period;

(e) A certified Board Resolution acknowledging responsibilities of sponsorship, long-term support of the project(s), willingness of Sponsor to assist the Owner to develop, own, manage and provide appropriate services in connection with the proposed project, and that it reflects the will of its membership. Also, evidence, in the form of a certified Board Resolution, of the Sponsor's willingness to fund the estimated start-up expenses, the Minimum Capital Investment (one-half of one-percent of the HUD-approved capital advance, not to exceed $10,000) (see § 890.250), and the estimated cost of any amenities or features (and operating costs related thereto) that would not be covered by the approved capital advance;

(f) Description, if applicable, of the Sponsor's efforts to involve persons with disabilities in the development of the application, as well as its intent to involve persons with disabilities in the development of the project.

4. Project information including the following:

(a) Evidence of need for supportive housing. An identification of the proposed population and evidence demonstrating sustained effective demand for the housing for the proposed population in the area to be served, such as a description of market conditions in existing Federally assisted housing for persons with disabilities (occupancy, waiting lists, etc.), State or local needs assessments of persons with disabilities in the area, the types of supportive services arrangements currently available in the area, and the use of such services as evidenced by data from local social service agencies.

(b) Description of the project, including the following:

(1) Number and type of structure(s), number of bedrooms if group home, number of units with bedroom distribution if independent living units (including condos), number of residents with disabilities, and resident staff per structure.

(2) An identification of all community spaces, amenities, or features planned for the housing. A description of how the spaces, amenities, or features will be used, the extent to which they are necessary to accommodate any special needs of the proposed residents, and the provision of any on-site supportive services also must be included. If these community spaces, amenities, or features would not comply with the design and cost standards of § 890.220, the Sponsor must demonstrate its ability and willingness to contribute both the incremental development cost and continuing operating cost associated with the community spaces, amenities, or features; and

(3) Description of whether and how the project will promote energy efficiency, and, if applicable, innovative construction or rehabilitation methods or technologies to be used that will promote efficient construction.

(c) A supportive services plan (a copy of which must be sent to the appropriate State or local agency as instructed in section IV.B., below, of this NOFA) that includes:

(1) A detailed description of whether the housing is intended to serve persons with physical, mental, or emotional impairments, developmental disabilities, or chronic mental illness. Include how and from whom persons will be referred and admitted to the project. The Sponsor may, with the approval of the Secretary, limit occupancy within housing developed under this part to persons with disabilities who have similar disabilities and require a similar set of supportive services in a supportive housing environment.

(2) A detailed description of any supportive service needs of the proposed population and the extent to which the supportive services will be needed.

(3) The manner in which such services will be provided, either by residents taking responsibility for acquiring their own services, to the extent needed, on an individual basis, or by a comprehensive service plan organized by the Sponsor.

(4) If services will be organized or provided by the Sponsor, include the following:

(i) The name(s) of the agency(s) (if other than the Sponsor) that will be responsible for providing the supportive services;

(ii) The evidence of each service provider's capability and experience in providing such supportive services;

(iii) A description of how, when, how often, and where (on/off-site) the services will be provided;

(iv) A description of residential staff, if needed;

(v) Identification of the extent of State and local funds to assist in the provision of supportive services;

(vi) Letters of intent from service providers or funding sources, indicating commitments to fund or to provide the supportive services, or indication that a particular service will be available to proposed residents. If the Sponsor will be providing any supportive services or will be coordinating the provision of any of the supportive services, a letter indicating its commitment to either provide the supportive services or ensure their provision for the life of the project;

(vii) If any State or local government funds will be provided, a description of the State or local agency's philosophy/policy concerning residential facilities for the population to be served, and a demonstration by the Sponsor that the application is consistent with State or local plans and policies governing the development and operation of facilities for the same disabled population.

(5) If the proposed residents will be taking responsibility for acquiring their own supportive services, a description of appropriate services in the community from which the residents can choose.

(6) Assurances that the proposed residents will receive supportive services based on their individual needs, and a commitment that accepting supportive services will not be a condition of occupancy.

(7) Form HUD 92013E, Supplemental Application Processing Form—Housing for Persons with Disabilities. Identify all supportive services, if any, to be provided to the persons occupying such housing.

(d) Supportive Services Certification. A certification from the appropriate State or local agency identified in the Application Package that the provision of supportive services is well designed to serve the special needs of persons with disabilities, that the necessary supportive services will be provided on a consistent, long-term basis, and that the proposed facility is consistent with State or local plans and policies governing the development and operation of facilities to serve individuals of the proposed occupancy category. (The name, address, and telephone number of the appropriate agency can be obtained from the appropriate HUD Office.)

Note: SPONSORS OF PROJECTS IN OKLAHOMA MAY SUBMIT THE SUPPORTIVE SERVICES CERTIFICATION AFTER THE APPLICATION DEADLINE DATE BUT NO LATER THAN AUGUST 25, 1995.

(e) Evidence of control of an approvable site, or identification of a site for which the Sponsor provides reasonable assurances that it will obtain control within 6 months from the date of fund reservation (if Sponsor is approved for funding).

(1) If the Sponsor has control of the site, it must submit the following information:

(i) Evidence that the Sponsor has entered into a legally binding option agreement to purchase or lease the proposed site; or has a copy of the contract of sale for the site, a deed, long-term leasehold, a request with all supporting documentation, submitted either prior to or with the Application for Capital Advance, for a partial release of a site covered by a mortgage under a HUD program, or other evidence of legal ownership of the site (including properties to be acquired from the RTC). The option agreement period must extend through the end of the current fiscal year and contain a renewal provision so that the option can be renewed for at least an additional six months. The Sponsor must also identify any restrictive covenants, including reverter clauses. In the case of a site to be acquired from a public body, evidence that the public body possesses clear title to the site, and has entered into a legally binding agreement to lease or convey the site to the Sponsor after it receives and accepts a notice of Section 811 capital advance, and identification of any restrictive covenants, including reverter clauses. However, in localities where HUD determines that the time constraints of the funding round will not permit all of the required official actions (*e.g.*, approval of Community Planning Boards) that are necessary to convey publicly-owned sites, a letter in the application from the mayor or director of the appropriate local agency indicating their approval of conveyance of the site contingent upon the necessary approval action is acceptable and may be approved by the HUD Office if it has satisfactory experience with timely conveyance of sites from that public body. In such cases, documentation shall also include a copy of the public body's evidence of ownership and identification of any restrictive covenants, including reverter clauses. For properties to be acquired from the RTC, include a copy of the RTC prepared Transaction Screen Checklist or Phase I Environmental Site Assessment, and applicable

documentation, per the RTC Environmental Guidelines.

Note: A PROPOSED PROJECT SITE MAY NOT BE ACQUIRED OR OPTIONED FROM A GENERAL CONTRACTOR (OR ITS AFFILIATE) THAT WILL CONSTRUCT THE SECTION 811 PROJECT OR FROM ANY OTHER DEVELOPMENT TEAM MEMBER.

(ii) Evidence that the project as proposed is permissible under applicable zoning ordinances or regulations, or a statement of the proposed action required to make the proposed project permissible and the basis for the belief that the proposed action will be completed successfully before the submission of the commitment application (*e.g.*, a summary of the results of any recent requests for rezoning on land in similar zoning classifications and the time required for such rezoning, preliminary indications of acceptability from zoning bodies, *etc.*).

(iii) Narrative description of site and area surrounding the site, characteristics of neighborhood, how the site will promote greater housing opportunities for minorities, and any other information that affects the suitability of the site for persons with disabilities and including:

(A) If acquisition, evidence that the structure has been constructed or occupied for at least three years (other than RTC properties);

(B) A statement that the Sponsor is willing to seek a different site if the preferred site is unapprovable and that site control will be obtained within six months of notification of fund reservation;

(C) A map showing the location of the site and the racial composition of the neighborhood, with the area of racial concentration delineated;

(D) A Transaction Screen Process, in accordance with the American Society for Testing and Material (ASTM) Standards E 1528–93 and E 1527–93, as amended. If the completion of the Transaction Screen Questionnaire results in either a "yes" or "unknown" response, further study is required, and the Sponsor must complete a Phase I Environmental Site Assessment in accordance with the ASTM and submit it with the application. If the Phase I study indicates the possible presence of contamination and/or hazards, further study must be undertaken. At this point, the Sponsor must decide whether to continue with this site or choose another site. Should the Sponsor choose another site, the same environmental site assessment procedure identified above must be followed for that site. Since all Transaction Screen processes and Phase I studies must be completed and submitted with the application, it is important that the Sponsor start the site assessment process as soon after the publication of this NOFA as possible.

If the Sponsor chooses to continue with the original site, then it must undertake a detailed Phase II Environmental Site Assessment by an appropriate professional.

Note: THIS COULD BE AN EXPENSIVE UNDERTAKING. THE COST OF THE STUDY WILL BE BORNE BY THE SPONSOR IF THE APPLICATION IS NOT SELECTED.

If the Phase II Assessment reveals site contamination, the extent of the contamination and a plan for clean-up of the site must be submitted to the local HUD Office. The plan for clean-up must include a contract for remediation of the problem(s) and an approval letter from the applicable Federal, State, and/or local agency with jurisdiction over the site. In order for the application to be considered for review under this FY 1995 funding, this information would have to be submitted to the local HUD Office no later than August 16, 1995.

(E) If an exception to the project size limits is being requested, describe why the site was selected and demonstrate the following:

(*i*) The increased number of people is necessary for the economic feasibility of the project;

(*ii*) The project is compatible with other residential development and the population density of the area in which the project is to be located;

(*iii*) The increased number of people will not prohibit their successful integration into the community;

(*iv*) The project is marketable in the community;

(*v*) The size of the project is consistent with State and/or local policies governing similar facilities for the proposed population; and

(*vi*) A statement that the Sponsor is willing to have its application processed at the project size limit should HUD not approve the exception.

(2) If the Sponsor has identified a site, but does not have it under control, it must submit the following information:

(i) A description of the location of the site, including its street address and unit number (if condominium), neighborhood/community characteristics (to include racial and ethnic data), amenities, adjacent housing and/or facilities, how the site will promote greater housing opportunities for minorities, and any other information that affects the suitability of the site for persons with disabilities;

(ii) A description of the activities undertaken to identify the site, as well as what actions must be taken to obtain control of the site, if approved for funding;

(iii) An indication as to whether the site is properly zoned. If it is not, an indication of the actions/time necessary for proper zoning;

(iv) A status of the sale of the site; and

(v) An indication as to whether the site would involve relocation.

(f) Statements of support for the proposed project from nongovernmental organizations familiar with the needs of the population it would serve, any sources of local funds to serve the project, minority support, and how long the Sponsor has been in existence (include any additional related information).

(g) For group homes to be licensed as intermediate care facilities (in which funding for the intermediate care is provided under Title XIX of the Social Security Act) that serve persons with developmental disabilities, the following must be submitted:

(1) Evidence demonstrating that the proposed project will primarily provide housing rather than medical facilities, and is or will be licensed by appropriate State agencies;

(2) Description of the medical training of the staff of the proposed facility and any nursing services that will be required by the residents on-site;

(3) Description of the services that will be funded by Medicaid for residents of the proposed project, including their nature, frequency, and where the services are to be provided;

(4) Description of any special design features proposed for the group home that are not common to other Section 811 group homes for the proposed population, and the Sponsor's rationale for including them;

(5) Written evidence from the State Medicaid Office that it recognizes the need for a tenant contribution to rent and has agreed to pay the cost of the tenant contribution in the Medicaid payment to the Owner; and

(6) Statement certifying that the Individual Program Plan for each resident will include participation in an out-of-the-home activity program for at least six hours each weekday.

5. A list of the applications, if any, the Sponsor has submitted or is planning to submit to any other HUD Office in response to this NOFA or the NOFA for Supportive Housing for the Elderly (published elsewhere in today's **Federal Register**). Indicate, by HUD Office, the number of units requested and the proposed location by city and State for each application. Also, a list of all FY 1994 and prior year projects to which the Sponsor(s) is a party, identified by project number and HUD Office, which have not been finally closed.

6. HUD–2880, Applicant/Recipient Disclosure/Update Report including Social Security Numbers and Employee Identification Numbers.

7. E.O. 12372. A certification that the Sponsor has submitted a copy of its application, if required, to the State agency (single point of contact) for State review in accordance with Executive Order 12372.

8. A statement that: (a) Identifies all persons (families, individuals, businesses, and nonprofit organizations) by race/minority group and status as owners or tenants occupying the property on the date of submission of the application for a capital advance; (b) Indicates the estimated cost of relocation payments and other services; and (c) Identifies the staff organization that will carry out the relocation activities. (This requirement applies to applications with site control only. Sponsors of applications with identified sites that are selected will be required to submit this information at a later date once they have obtained site control.)

Note: IF ANY OF THE RELOCATION COSTS WILL BE FUNDED FROM SOURCES OTHER THAN THE SECTION 811 CAPITAL ADVANCE, THE SPONSOR MUST PROVIDE EVIDENCE OF A FIRM COMMITMENT OF THESE FUNDS. WHEN EVALUATING APPLICATIONS, HUD WILL CONSIDER THE TOTAL COST OF PROPOSALS (*I.E.*, COST OF SITE ACQUISITION, RELOCATION, CONSTRUCTION AND OTHER PROJECT COSTS).

9. SF–424. A certification on SF–424, Application for Federal Assistance, that the Sponsor(s) is not delinquent on the repayment of any Federal debt.

10. Disclosure of Lobbying Activities. If the amount applied for is greater than $100,000, the certification with regard to lobbying required by 24 CFR part 87 must be included. If the amount applied for is greater than $100,000 and the applicant has made or has agreed to make any payment using nonappropriated funds for lobbying activity, as described in 24 CFR part 87, the submission must also include SF–LLL, Disclosure of Lobbying Activities. The applicant determines if the submission of the SF–LLL form is applicable.

11. Sponsor Certifications.

(a) A certification of the Sponsor(s)' intent to comply with section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and the implementing regulations at 24 CFR part 8; the Fair Housing Act (42 U.S.C. 3600–3619) and the implementing regulations at 24 CFR parts 100, 108, 109, and 110; Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and the implementing regulations at 24 CFR part 1; section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and the implementing regulations at 24 CFR part 135; the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107) and the implementing regulations at 24 CFR part 146; Executive Order 11246 (as amended) and the implementing regulations at 41 CFR Chapter 60; the regulations implementing Executive Order 11063 (Equal Opportunity in Housing) at 24 CFR part 107; the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*) to the extent applicable; the affirmative fair housing marketing requirements of 24 CFR part 200, subpart M and the implementing regulations at 24 CFR part 108; and other applicable Federal, State, and local laws prohibiting discrimination and promoting equal opportunity.

(b) A certification that the Sponsor(s) will comply with the requirements of the Drug-Free Workplace Act.

(c) A certification that the project will comply with HUD's design and cost standards; the Uniform Federal Accessibility Standards and HUD's implementing regulations at 24 CFR part 40; section 504 of the Rehabilitation Act of 1973 and HUD's implementing regulations at 24 CFR part 8; and for covered multifamily dwellings designed and constructed for first occupancy after March 13, 1991, the design and construction requirements of the Fair Housing Act and HUD's implementing regulations at 24 CFR part 100; and the Americans with Disabilities Act of 1990.

(d) A certification by the Sponsor(s) that it will comply (or has complied) with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), implemented by regulations at 49 CFR part 24, and 24 CFR 890.260(e).

(e) A certification by the Sponsor(s) that it will form an Owner (as defined in 24 CFR 890.105) after the issuance of the capital advance, will cause the Owner to file a request for determination of eligibility and a request for capital advance under 24 CFR 890.300, and will provide sufficient resources to the Owner to insure the development and long-term operation of the project.

(f) A certification that the Sponsor will comply with the requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846) and implementing regulations at 24 CFR part 35 (except as superseded in 24 CFR 890.260(f)(2)).

(g) Certification of Consistency with the Consolidated Plan (Plan) for the jurisdiction in which the proposed project will be located must be submitted by the Sponsor (see NOTE below if the jurisdiction does not have an approved Plan). The certification must be made by the unit of general local government if it is required to have, or has, a complete Plan. Otherwise the certification may be made by the State, or if the project will be located in a unit of general local government authorized to use an abbreviated strategy, by the unit of general local government if it is willing to prepare such a Plan.

All certifications must be made by the public official responsible for submitting the Plan to HUD. The certifications must be submitted as part of the application by the application submission deadline set forth in this NOFA, except as provided in the next paragraph. The Plan regulations are published in 24 CFR part 91.

Notes: (1) IF THE JURISDICTION'S PLAN PROGRAM YEAR HAS NOT YET STARTED, THE JURISDICTION MAY CERTIFY CONSISTENCY WITH THEIR FY 1994 CHAS IN LIEU OF THE PLAN. A NOTICE PUBLISHED IN THE FEBRUARY 6, 1995 **FEDERAL REGISTER** ESTABLISHED THAT A JURISDICTION'S PREVIOUSLY APPROVED CHAS WILL REMAIN IN EFFECT UNTIL THE START DATE OF THE JURISDICTION'S NEW CONSOLIDATED PROGRAM YEAR, AT WHICH POINT THE JURISDICTION'S NEW PLAN WOULD TAKE EFFECT. THE NOTICE ALSO ALLOWS JURISDICTIONS TO USE THEIR ANNUAL PLAN FOR FY 1994 AS EXTENDED BY THE FEBRUARY 6, 1995 **FEDERAL REGISTER** NOTICE FOR THE PURPOSE OF CERTIFICATIONS OF CONSISTENCY.

(2) SPONSORS OF PROJECTS IN OKLAHOMA MAY SUBMIT THE CERTIFICATION OF CONSISTENCY WITH THE CONSOLIDATED PLAN AFTER THE APPLICATION DEADLINE BUT NO LATER THAN AUGUST 25, 1995.

IV. Additional Information

A. Sites

The National Affordable Housing Act requires Sponsors submitting applications for Section 811 fund reservations to provide either (a) evidence of site control, or (b) reasonable assurances that it will have control of a site within six months of notification of fund reservation. Accordingly, if a Sponsor has control of a site at the time it submits its application, it must include evidence of such as described in 24 CFR 890.265. If it does not have site control, it must provide the information required in § 890.265 as a reasonable assurance that site control will be obtained within six months of fund reservation notification.

Sponsors may select a site different from the one(s) submitted in their original applications if the original site is not approvable. Selection of a different site will require HUD performance of an environmental review on the new site, which could result in rejection of that site. However, if a Sponsor does not have site control for any reason 12 months after notification of fund reservation, the assistance will be recaptured and reallocated.

Sponsors submitting satisfactory evidence of an approvable site (*i.e.*, site control) will have 10 bonus points added to the rating of their applications. Sponsors submitting proper identification of a site will not be eligible for the 10 bonus points.

Applications containing evidence of site control where either the evidence or the site is not approvable will *not* be rejected provided the application indicates the Sponsor's willingness to select another site and an assurance that site control will be obtained within six months of fund reservation notification.

In the case of a scattered site application submitted with evidence of site control for all of the sites, the evidence must be satisfactory for each site, and all the sites must be approvable for the application to receive the 10 bonus points for site control. The same applies to a scattered site application in which the Sponsor has control of some of the sites but has only identified others. It would also not be eligible for the 10 bonus points for site control.

B. Supportive Services

The National Affordable Housing Act requires Sponsors submitting applications for Section 811 fund reservations to include a supportive services plan and a certification from the appropriate State or local agency that the provision of services identified in the supportive services plan is well designed to serve the special needs of persons with disabilities. Paragraph III.B.4.(c) above outlines the information that must be in the Supportive Services Plan. Sponsors must submit one copy of their Supportive Services Plans to the appropriate State or local agency well in advance of the application deadline date in order for the State or local agency to review the Supportive Services Plan and complete the Supportive Services Certification (Paragraph III.B.4(d) above, to be supplied by the Sponsor from the Application Package received from the HUD Office) and return it to the Sponsor for inclusion with the application submission to HUD.

Note: SPONSORS OF PROJECTS IN OKLAHOMA MAY SUBMIT THE SUPPORTIVE SERVICES CERTIFICATION AFTER THE APPLICATION DEADLINE DATE BUT NO LATER THAN AUGUST 25, 1995.

Since the appropriate State or local agency will review the Supportive Services Plan on behalf of HUD, the Supportive Services Certification, in addition to the indication as to whether the provision of supportive services is well designed, will indicate whether the Sponsor demonstrated that necessary supportive services will be provided on a consistent, long-term basis. If HUD receives an application in which the Supportive Services Certification is missing, is received by HUD after the deficiency period, or indicates that either the provision of services is *not* well designed to meet the special needs of persons with disabilities or that the Sponsor failed to demonstrate that the necessary services will be provided on a consistent, long-term basis, the application shall be rejected.

HUD recognizes that there will be varying degrees of need for supportive services by the potential residents of Section 811 housing, even to the degree of needing no special services at all. Sponsors must describe this in the application, in Exhibit 4. A Sponsor proposing to serve persons with disabilities who need few, if any, special services will not have its application penalized as a result. In addition, Sponsors may not require residents, as a condition of occupancy, to accept any supportive service.

C. Project Size Limits

The maximum number of persons with disabilities in an independent living facility is 24 persons for all disability types.

V. Other Matters

A. Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection during business hours in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410.

B. Federalism Executive Order

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this NOFA does not have substantial direct effects on States or their political subdivisions, or on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. This NOFA merely notifies the public of the availability of capital advances for supportive housing for persons with disabilities.

C. Family Executive Order

The General Counsel, as the Designated Official under Executive Order 12606, *the Family*, has determined that this NOFA does not have the potential for significant impact on family formation, maintenance, or general well-being. This NOFA may have a positive though indirect effect on families, to the extent that families will benefit from the provision of supportive housing for persons with disabilities. Since any effect on families is beneficial, this NOFA is not subject to review under the Order.

D. Accountability in the Provision of HUD Assistance

HUD has promulgated a final rule to implement section 102 of the Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act). The final rule is codified at 24 CFR part 12. Section 102 contains a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 14, 1992, HUD published in the **Federal Register** (57 FR 1942) additional information that gave the public (including applicants for, and recipients of, HUD assistance) further information on the implementation, public access, and disclosure requirements of section 102. The documentation, public access, and disclosure requirements of section 102 are applicable to assistance awarded under this NOFA as follows:

1. Documentation and Public Access

HUD will ensure documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these requirements.)

2. Disclosures

HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See 24 CFR subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

E. Documentation and Public Access Requirements: HUD Reform Act

HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these requirements.)

F. Section 103

HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 was published May 13, 1991 (56 FR 22088) and became effective on June 12, 1991. That regulation, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are restrained by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815 (TDD/Voice). (This is not a toll-free number.) The Office of Ethics can provide information of a general nature to HUD employees, as well. However, a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside HUD, should contact his or her HUD Office Counsel, or Headquarters counsel for the program to which the question pertains.

G. Lobbying

Section 13 of the Department of Housing and Urban Development Act (42 U.S.C. 3537b) contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by HUD and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 22912). If readers are involved in any efforts to influence HUD in these ways, they are urged to read the final rule, particularly the examples contained in Appendix A of the rule.

Any questions regarding the rule should be directed to the Director, Office of Ethics, Room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. Telephone: (202) 708–3815 TDD/Voice). (This is not a toll-free number.) Forms necessary for compliance with the rule may be obtained from the local HUD Office.

H. Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) (the Byrd Amendment) and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the executive or legislative branches of the Federal Government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no Federal funds have been or will be spent on lobbying activities in connection with the assistance.

I. Catalog of Federal Domestic Assistance Program

The Catalog of Federal Domestic Assistance Program title and number is 14.181, Supportive Housing for Persons with Disabilities.

Authority: Section 811, National Affordable Housing Act, as amended (42 U.S.C. 8013), section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: April 26, 1995.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

Appendix A—HUD Offices

Note: The first line of the mailing address for all offices is U.S. Department of Housing and Urban Development. Telephone numbers listed are not toll-free.

HUD—NEW ENGLAND AREA

CONNECTICUT STATE OFFICE

First Floor, 330 Main Street, Hartford, CT 06106–1860, (203) 240–4523

MASSACHUSETTS STATE OFFICE

Room 375, Thomas P. O'Neill, Jr. Federal Building, 10 Causeway Street, Boston, MA 02222–1092, (617) 565–5234

NEW HAMPSHIRE STATE OFFICE

Norris Cotton Federal Building, 275 Chestnut Street, Manchester, NH 03101–2487, (603) 666–7681

RHODE ISLAND STATE OFFICE

Sixth Floor, 10 Weybosset Street, Providence, RI 02903–2808, (401) 528–5351

HUD—NEW YORK, NEW JERSEY AREA

NEW JERSEY STATE OFFICE

Thirteenth Floor, One Newark Center, Newark, NJ 07102–5260, (201) 622–7900

NEW YORK STATE OFFICE

26 Federal Plaza, New York, NY 10278–0068, (212) 264–6500

BUFFALO AREA OFFICE

Fifth Floor, Lafayette Court, 465 Main Street, Buffalo, NY 14203–1780, (716) 846–5755

HUD—MIDATLANTIC AREA

DISTRICT OF COLUMBIA OFFICE

820 First Street, NE, Washington, D.C. 20002–4502, (202) 275–9200

MARYLAND STATE OFFICE

Fifth Floor, City Crescent Building, 10 South Howard Street, Baltimore, MD 21201–2505, (401) 962–2520

PENNSYLVANIA STATE OFFICE

Liberty Square Building, 105 South 7th Street, Philadelphia, PA 19106–3392, (215) 597–2560

VIRGINIA STATE OFFICE

The 3600 Centre, 3600 West Broad Street, P.O. Box 90331, Richmond, VA 23230 - 0331, (804) 278–4507

WEST VIRGINIA STATE OFFICE

Suite 708, 405 Capitol Street, Charleston, WV 25301–1795, (304) 347–7000

PITTSBURGH AREA OFFICE

412 Old Post Office Courthouse, 7th Avenue and Grant Street, Pittsburgh, PA 15219–1906, (412) 644–6428

HUD—SOUTHEAST/CARIBBEAN AREA

ALABAMA STATE OFFICE

Suite 300, Beacon Ridge Tower, 600 Beacon Parkway, West, Birmingham, AL 35209–3144, (205) 290–7617

CARIBBEAN OFFICE

New San Juan Office Building, 159 Carlos Chardon Avenue, San Juan, PR 00918–1804, (809) 766–6121

GEORGIA STATE OFFICE

Richard B. Russell Federal Building, 75 Spring Street, S.W., Atlanta, GA 30303–3388, (404) 331–5136

KENTUCKY STATE OFFICE

601 West Broadway, P.O. Box 1044, Louisville, KY 40201–1044, (502) 582–5251

MISSISSIPPI STATE OFFICE

Suite 910, Doctor A.H. McCoy Federal Building, 100 West Capitol Street, Jackson, MS 39269–1016, (601) 965–5308

NORTH CAROLINA STATE OFFICE

Koger Building, 2306 West Meadowview Road, Greensboro, NC 27407–3707, (919) 547–4001

SOUTH CAROLINA STATE OFFICE

Strom Thurmond Federal Building, 1835 Assembly Street, Columbia, SC 29201–2480, (803) 765–5592

TENNESSEE STATE OFFICE

Suite 200, 251 Cumberland Bend Drive, Nashville, TN 37228–1803, (615) 736–5213

JACKSONVILLE AREA OFFICE

Suite 2200, Southern Bell Tower, 301 West Bay Street, Jacksonville, FL 32202–5121, (904) 232–2626

KNOXVILLE AREA OFFICE

Third Floor, John J. Duncan Federal Building, 710 Locust Street, Knoxville, TN 37902–2526, (615) 545–4384

HUD—MIDWEST AREA

ILLINOIS STATE OFFICE

Ralph H. Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604–3507, (312) 353–5680

INDIANA STATE OFFICE

151 North Delaware Street, Indianapolis, IN 46204–2526, (317) 226–6303

MICHIGAN STATE OFFICE

Patrick V. McNamara Federal Building, 477 Michigan Avenue, Detroit, MI 48226–2592, (313) 226–7900

MINNESOTA STATE OFFICE

220 Second Street, South, Minneapolis, MN 55401–2195, (612) 370–3000

OHIO STATE OFFICE

200 North High Street, Columbus, OH 43215–2499, (614) 469–5737

WISCONSIN STATE OFFICE

Suite 1380, Henry S. Reuss Federal Plaza, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2289, (414) 297–3214

CINCINNATI AREA OFFICE

Room 9002 Federal Office Building, 550 Main Street, Cincinnati, OH 45202–3253, (513) 684–2884

CLEVELAND AREA OFFICE

Fifth Floor, Renaissance Building, 1350 Euclid Avenue, Cleveland, OH 44115–1815, (216) 522–4058

GRAND RAPIDS AREA OFFICE

2922 Fuller Avenue, NE., Grand Rapids, MI 49505–3499, (616) 456–2100

HUD—SOUTHWEST AREA

ARKANSAS STATE OFFICE

Suite 900, TCBY Tower, 425 West Capitol Avenue, Little Rock, AR 72201–3488, (501) 324–5931

LOUISIANA STATE OFFICE

Ninth Floor, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130–3099, (504) 589–7200

OKLAHOMA STATE OFFICE

Suite 400, 500 West Main, Oklahoma City, OK 73102, (405) 231–4345

TEXAS STATE OFFICE

1600 Throckmorton Street, P.O. Box 2905, Fort Worth, TX 76113–2905, (817) 885–5401

HOUSTON AREA OFFICE

Suite 200, Norfolk Tower, 2211 Norfolk, Houston, TX 77098–4096, (713) 834–3274

SAN ANTONIO AREA OFFICE

Washington Square, 800 Dolorosa Street, San Antonio, TX 78207–4563, (210) 229–6800

HUD—GREAT PLAINS

IOWA STATE OFFICE

Room 239, Federal Building, 210 Walnut Street, Des Moines, IA 50309–2155, (515) 284–4512

KANSAS/MISSOURI STATE OFFICE

Room 200, Gateway Tower II, 400 State Avenue, Kansas City, KS 66101–2406, (913) 551–5462

NEBRASKA STATE OFFICE

Executive Tower Centre, 10909 Mill Valley Road, Omaha, NE 68154–3955, (402) 492–3100

SAINT LOUIS AREA FIELD OFFICE

Third Floor, Robert A. Young Federal Building, 1222 Spruce Street, St. Louis, MO 63103–2836, (314) 539–6583

HUD—ROCKY MOUNTAINS AREA

COLORADO STATE OFFICE

633 17th Street, Denver, CO 80202–3607, (303) 672–5440

HUD—PACIFIC/HAWAII AREA

ARIZONA STATE OFFICE

Suite 1600, Two Arizona Center, 400 North 5th Street, Phoenix, AZ 85004–2361, (602) 379–4434

CALIFORNIA STATE OFFICE

Philip Burton Federal Building and U.S. Courthouse, 450 Golden Gate Avenue, P.O. Box 36003, San Francisco, CA 94102–3448, (415) 556–4752

HAWAII STATE OFFICE

Suite 500, 7 Waterfront Plaza, 500 Ala Moana Boulevard, Honolulu, HI 96813–4918, (808) 522–8175

LOS ANGELES AREA OFFICE

1615 West Olympic Boulevard, Los Angeles, CA 90015–3801, (213) 251–7122

SACRAMENTO AREA OFFICE

Suite 200, 777 12th Avenue, Sacramento, CA 95814–1997, (916) 551–1351

HUD—NORTHWEST/ALASKA AREA

ALASKA STATE OFFICE

Suite 401, University Plaza Building, 949 East 36th Avenue, Anchorage, AK 99508–4399, (907) 271–4170

OREGON STATE OFFICE

520 S.W. 6th Avenue, Portland, OR 97204–1596, (503) 326–2561

WASHINGTON STATE OFFICE

Suite 200, Seattle Federal Office Building, 909 First Avenue, Seattle, WA 98104–1000, (206) 220–5101

[FR Doc. 95–12715 Filed 5–23–95; 8:45 am]

BILLING CODE 4210–27–P

federal register

Wednesday
May 24, 1995

Part III

Department of Housing and Urban Development

Supportive Housing for the Elderly; Fund Availability; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N–95–3909; FR–3904–N–01]

Notice of Fund Availability (NOFA) for Supportive Housing for the Elderly

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of fund availability for Fiscal Year (FY) 1995.

SUMMARY: This NOFA announces HUD's funding for supportive housing for the elderly. This document describes the following: (a) The purpose of the NOFA, and information regarding eligibility, submission requirements, available amounts, and selection criteria; and (b) application processing, including how to apply and how selections will be made.

APPLICATION PACKAGE: The Application Package can be obtained from the Multifamily Housing Clearinghouse, P.O. Box 6424, Rockville, MD 20850, telephone 1–800–685–8470; and from the appropriate HUD Office identified in appendix A to this NOFA. The Application Package includes a checklist of steps and exhibits involved in the application process.

DATES: The deadline for receipt of applications in response to this NOFA is 4 p.m. local time on July 24, 1995. The application deadline is firm as to *date* and *hour*. In the interest of fairness to all applicants, HUD will not consider any application that is received after the deadline. Sponsors should take this into account and submit applications as early as possible to avoid the risk of unanticipated delays or delivery-related problems. In particular, Sponsors intending to mail applications must provide sufficient time to permit delivery on or before the deadline date. Acceptance by a Post Office or private mailer does not constitute delivery. Facsimile (FAX), COD, and postage due applications will not be accepted.

ADDRESSES: Applications must be delivered to the Director of the Multifamily Housing Division in the HUD Office for your jurisdiction. A listing of HUD Offices, their addresses, and telephone numbers are attached as appendix A to this NOFA. HUD will date and time stamp incoming applications to evidence timely receipt, and upon request will provide the applicant with an acknowledgement of receipt.

FOR FURTHER INFORMATION CONTACT: The HUD Office for your jurisdiction, as listed in appendix A to this NOFA.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this NOFA have been approved by the Office of Management and Budget (OMB), under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), and assigned OMB Control Number 2502–0267.

I. Purpose and Substantive Description

A. Authority

Section 801 of the Cranston-Gonzalez National Affordable Housing Act (NAHA) (Pub. L. 101–625, approved November 28, 1990), amended section 202 of the Housing Act of 1959 (12 U.S.C. 1701q). Section 202 was also amended by the Housing and Community Development Act of 1992 (HCD Act of 1992) (Pub. L. 102–550, approved October 28, 1992). The Secretary is authorized to provide assistance to private nonprofit organizations and nonprofit consumer cooperatives to expand the supply of supportive housing for the elderly. HUD provides the assistance as capital advances and contracts for project rental assistance in accordance with 24 CFR part 889. This assistance may be used to finance the construction or rehabilitation of a structure, or acquisition of a structure from the Resolution Trust Corporation (RTC), to be used as supportive housing for the elderly in accordance with part 889.

For supportive housing for the elderly, the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1995 (Pub. L. 103–327, approved September 28, 1994) (Fiscal Year 1995 Appropriations Act) provides $1,279,000,000 for capital advances, including amendments to capital advance contracts (not procurement contracts), for housing for the elderly as authorized by section 202 of the Housing Act of 1959, (as amended by the NAHA and HCD Act of 1992), and for project rental assistance, and amendments to contracts for project rental assistance, for supportive housing for the elderly under section 202(c)(2) of the Housing Act of 1959, as amended. The Fiscal Year 1995 Appropriations Act further provides that $22,000,000 of the above total shall be for service coordinators pursuant to section 202(q) of the Housing Act of 1959, as amended, and subtitle E of title VI of the Housing and Community Development Act of 1992, other than section 676 of such Act and section 8(d)(2)(F)(i) of the Act. Any unreserved balances provided in prior years for such purposes are to be merged with amounts provided in the Fiscal Year 1995 Appropriations Act.

In accordance with an agreement between HUD and the Administration for Rural Housing and Economic Development Services (ARHEDS) (formerly the Farmers Home Administration (FmHA), which facilitates the coordination between the two agencies in administering their respective rental assistance programs, HUD is required to notify ARHEDS of applications for housing assistance it receives. This notification gives ARHEDS the opportunity to comment if it has concerns about the demand for additional assisted housing and possible harm to existing projects in the same housing market area. HUD will consider the ARHEDS comments in its review and project selection process.

B. Allocation Amounts

In accordance with 24 CFR part 791, the Assistant Secretary will allocate the amounts available for capital advances for supportive housing for the elderly. HUD reserves project rental assistance funds sufficient for 20-year project rental assistance contracts in support of the units selected for capital advances, consistent with current operating cost standards.

The allocation formula for Section 202 funds consists of a measure of the number of one- and two-person elderly renter households with incomes at or below the very low income limit (50 percent of area median family income, as determined by HUD, with an adjustment for household size) that have housing deficiencies.

Since the allocations to some HUD Offices are not sufficient to develop feasible projects in both metropolitan and nonmetropolitan areas, the funds may be allocated to only one of the geographical areas. HUD Offices that have an allocation for only one area may accept applications for the other area. However, these applications can only be funded by that HUD Office after all other approvable applications submitted in response to the advertised allocation area have been funded by that HUD Office.

Applicants for capital advances in the area served by the Wisconsin State HUD Office are hereby put on notice that the capital advance amount available to the Wisconsin Office, as stated in this NOFA, may be reduced or eliminated due to ongoing legal proceedings between HUD and the City of Milwaukee, and that the determination of whether to reduce or eliminate those funds is entirely within the discretion of HUD. If HUD takes such action or actions, it will publish a notice to that effect in the **Federal Register**.

Based on the allocation formula, HUD has allocated the available capital advance funds as shown on the following chart:

FISCAL YEAR 1995 ALLOCATIONS FOR SUPPORTIVE HOUSING FOR THE ELDERLY

[Fiscal Year 1995 Section 202 Allocations]

Offices	Metropolitan		Nonmetropolitan		Totals	
	Capital advance		Capital advance		Capital advance	
	Authority	Units	Authority	Units	Authority	Units
New England:						
Massachusetts	$20,509,305	253	556,267	7	21,065,572	260
Connecticut	8,865,457	109	426,190	5	9,293,647	114
New Hampshire	2,567,368	41	3,121,220	50	5,688,588	91
Rhode Island	3,823,878	49	404,625	5	4,328,503	54
Total	35,866,008	452	4,510,302	57	40,376,310	519
New York/New Jersey:						
New York	61,370,898	756	558,167	7	61,929,065	763
Buffalo	13,310,685	187	2,691,349	38	16,002,034	225
New Jersey	23,917,973	295	0	0	23,917,973	295
Total	98,599,556	1,238	3,249,516	45	101,849,072	1,283
Mid-Atlantic:						
Maryland	5,792,022	87	598,261	9	6,390,283	96
West Virginia	1,229,113	20	1,255,886	21	2,484,999	41
Pennsylvania	17,573,194	243	2,039,026	28	19,612,220	271
Pittsburgh	6,821,610	107	1,443,745	23	8,265,355	130
Virginia	4,494,342	81	1,829,105	33	6,323,447	114
D.C.	6,121,140	89	0	0	6,121,140	89
Total	42,031,421	627	7,166,023	114	49,197,444	741
Southeast/Caribbean:						
Georgia	5,385,231	101	2,895,944	54	8,281,175	155
Alabama	3,575,258	65	1,945,569	36	5,520,827	101
Caribbean	2,376,504	35	1,182,362	17	3,558,866	52
South Carolina	2,656,623	46	1,321,226	23	3,977,849	69
North Carolina	6,829,911	99	4,014,080	58	10,843,991	157
Mississippi	1,069,259	20	2,304,179	44	3,373,438	64
Jacksonville	20,849,046	352	1,049,769	18	21,898,815	370
Kentucky	2,956,679	51	2,354,387	40	5,311,066	91
Knoxville	1,584,997	30	608,036	12	2,193,033	42
Tennessee	3,013,681	57	1,341,985	25	4,355,666	82
Total	50,297,189	856	19,017,537	327	69,314,726	1183
Midwest:						
Illinois	24,738,434	327	3,811,924	50	28,550,358	377
Cincinnati	4,495,981	75	301,817	5	4,797,798	80
Cleveland	9,695,262	145	1,136,745	17	10,832,007	162
Ohio	2,868,471	48	1,323,740	22	4,192,211	70
Michigan	10,371,824	155	440,888	7	10,812,712	162
Grand Rapids	2,434,564	42	1,377,252	24	3,811,816	66
Indiana	6,138,991	101	1,976,141	33	8,115,132	134
Wisconsin	7,274,458	109	3,079,631	46	10,354,089	155
Minnesota	6,421,380	92	2,877,359	41	9,298,739	133
Total	74,439,365	1094	16,325,497	245	90,764,862	1,339
Southwest:						
Texas/New Mexico	7,573,809	138	2,581,427	47	10,155,236	185
Houston	4,205,306	75	697,947	12	4,903,253	87
Arkansas	1,388,791	28	1,919,891	39	3,308,682	67
Louisiana	4,161,193	78	1,071,620	20	5,232,813	98
Oklahoma	2,174,576	41	1,549,978	30	3,724,554	71
San Antonio	3,199,914	61	703,077	13	3,902,991	74
Total	22,703,589	421	8,523,940	161	31,227,529	582
Great Plains:						
Iowa	1,652,893	30	2,273,979	41	3,926,872	71
Kansas/Missouri	4,133,393	72	2,258,250	40	6,391,643	112
Nebraska	1,107,618	20	989,364	18	2,096,982	38
St. Louis	4,389,497	67	1,794,411	27	6,183,908	94

FISCAL YEAR 1995 ALLOCATIONS FOR SUPPORTIVE HOUSING FOR THE ELDERLY—Continued

[Fiscal Year 1995 Section 202 Allocations]

Offices	Metropolitan		Nonmetropolitan		Totals	
	Capital advance		Capital advance		Capital advance	
	Authority	Units	Authority	Units	Authority	Units
Total	11,283,401	189	7,316,004	126	18,599,405	315
Rocky Mountains:						
Colorado	6,163,362	101	3,484,774	61	9,648,136	162
Total	6,163,362	101	3,484,774	61	9,648,136	162
Pacific/Hawaii						
Hawaii (Guam)	2,495,738	20	630,889	5	3,126,627	25
Los Angeles	43,776,505	549	403,541	5	44,180,046	554
Arizona	3,791,028	70	467,419	9	4,258,447	79
Sacramento	5,126,114	66	760,865	10	5,886,979	76
California	23,207,260	293	975,372	13	24,182,632	306
Total	78,396,645	998	3,238,086	42	81,634,731	1040
Northwest/Alaska:						
Alaska	2,438,199	20	610,537	5	3,048,736	25
Oregon	4,330,567	68	1,998,275	32	6,328,842	100
Washington	7,062,367	99	1,466,227	21	8,528,594	120
Total	13,831,133	187	4,075,039	58	17,906,172	245
National Total	433,611,669	6163	76,906,718	1,246	510,518,387	7,409

C. Eligibility

Private, nonprofit organizations and nonprofit consumer cooperatives are the only eligible applicants under this program. Neither a public body nor an instrumentality of a public body is eligible to participate in the program. No organization shall participate as Sponsor or Co-sponsor in the filing of application(s) for a capital advance in a single geographical region in this fiscal year in excess of that necessary to finance the construction, rehabilitation, or acquisition (acquisition permitted only with RTC properties) of 300 units of housing and related facilities for the elderly. This limit shall apply to organizations that participate as Co-sponsors regardless of whether the Co-sponsors are affiliated or nonaffiliated entities. In addition, the national limit for any one applicant is 10 percent of the total units allocated in all HUD Offices. Affiliated entities that submit separate applications shall be deemed to be a single entity for the purposes of these limits. No single application may propose more than the number of units allocated to a HUD Office or 125 units, whichever is less. Reservations for projects will not be approved for less than 5 units.

D. Initial Screening, Technical Processing, and Selection Criteria

1. Initial Screening

HUD will review applications for Section 202 capital advances that are received by HUD at the appropriate address by 4 p.m. local time on July 24, 1995, to determine if all parts of the application are included. HUD will not review the content of the application as part of initial screening. HUD will send deficiency letters, by certified mail, informing Sponsors of any missing parts of the application. Sponsors must correct such deficiencies within 14 calendar days from the date of the deficiency letter. Any document requested as a result of the initial screening may be executed or prepared within the deficiency period, except for Forms HUD–92015–CAs, Articles of Incorporation, IRS exemption rulings, Forms SF–424, Board Resolution committing the minimum capital investment, and site control documents (all of these excepted items must be dated no later than the application deadline date).

Note: SPONSORS OF PROJECTS IN OKLAHOMA MAY SUBMIT THE CERTIFICATION OF CONSISTENCY WITH THE CONSOLIDATED PLAN AFTER THE APPLICATION DEADLINE DATE BUT NO LATER THAN AUGUST 25, 1995. If this is the only deficiency discovered during initial screening, affected Sponsors will not receive a deficiency letter.

2. Technical Processing

All applications will be placed in technical processing upon receipt of the response to the deficiency letter or at the end of the 14-day period. These applications will undergo a complete analysis. If a reviewer finds that clarification is needed to complete the review, or an exhibit is missing that was not requested after initial screening, the reviewer shall immediately advise the Multifamily Housing Representative, who will: (a) Request, by telephone, that the Sponsor submit the information within five (5) working days; and (b) follow up by certified letter. Communications must be attached to the technical review and findings memorandum. As part of this analysis, HUD will conduct its environmental review in accordance with 24 CFR part 50.

Examples of reasons for technical processing rejection include an ineligible Sponsor, ineligible population to be served, lack of legal capacity, lack of site control, and unacceptable site based upon a site visit. The Secretary will not reject an application based on technical processing without giving notice of that rejection with all rejection reasons, and affording the applicant an opportunity to appeal. HUD will afford an applicant 14 calendar days from the date of HUD's written notice to appeal a technical rejection to the HUD Office. The HUD Office must respond within five working days to the Sponsor. The HUD Office shall make a determination on an appeal prior to making its selection recommendations. All applications will be either rated or technically rejected at the end of technical processing.

Technical processing will also assure that the Sponsor has complied with the

requirements in the civil rights certification (24 CFR 890.265(b)(9)(i)). There must not have been an adjudication of a civil rights violation in a civil action brought against the Sponsor by a private individual, unless the Sponsor is operating in compliance with a court order, or implementing a HUD-approved compliance agreement designed to correct the areas of noncompliance. There must be no pending civil rights suits against the Sponsor instituted by the Department of Justice, and no pending administrative actions for civil rights violations instituted by HUD (including a charge of discrimination under the Fair Housing Act). There must be no outstanding findings of noncompliance with civil rights statutes, Executive Orders, or regulations, as a result of formal administrative proceedings, nor any charges issued by the Secretary against the Sponsor under the Fair Housing Act, unless the Sponsor is operating under a conciliation or compliance agreement designed to correct the areas of noncompliance. Moreover, there must not be a deferral of the processing of applications from the Sponsor imposed by HUD under Title VI of the Civil Rights Act of 1964, HUD's implementing regulations (24 CFR 1.8), procedures (HUD Handbook 8040.1), and the Attorney General's Guidelines (28 CFR 50.3); or under section 504 of the Rehabilitation Act of 1973 and HUD's implementing regulations (24 CFR 8.57), and the Americans with Disabilities Act.

Upon completion of technical processing, all acceptable applications will be rated according to the selection criteria in § 889.300(d) (also below in section I.D.3. of this NOFA). Applications, submitted in response to the advertised allocation (metropolitan and/or nonmetropolitan), which have a total score of 50 points or more will be eligible for selection and will be placed in rank order. These applications will be selected based on rank order, to and including the last application that can be funded out of the local HUD Office's allocation. Local HUD Offices will no longer skip over any applications in order to select one based on the funds remaining. HUD Offices that have an allocation for only one area (metropolitan or nonmetropolitan, due to limited allocations) may fund applications in rank order from other areas in that Office that did not receive an allocation. These selections would be made only after funding all applications eligible in the advertised allocation area, and only for any remaining funds. Funds remaining after these two processes are completed will be returned to Headquarters for selecting applications on a national rank order.

3. Selection Criteria

Applications for Section 202 capital advances that successfully complete technical processing will be rated using the following selection criteria:

(a) The Sponsor's ability to develop and operate the proposed housing on a long-term basis, considering the following (60 points maximum—55 base points plus 5 bonus points):

(1) The scope, extent, and quality of the Sponsor's experience in providing housing or related services to those proposed to be served by the project, and the scope of the proposed project (*i.e.*, number of units, services, relocation costs, development, and operation) in relationship to the Sponsor's demonstrated development and management capacity. (30 points);

(2) The scope, extent, and quality of the Sponsor's experience in providing housing or related services to minority persons or families (8 points);

(3) The scope, extent, and quality of the Sponsor's experience in providing opportunities for minority- and women-owned business enterprises participation (5 points); and

(4) The extent of local community support for the project and for the Sponsor's activities, including previous experience in serving the area where the project is to be located, and Sponsor's demonstrated ability to enlist volunteers and raise local funds (12 points);

(5) The Sponsor's involvement of elderly persons, including minority elderly persons, in the development of the application and its intent to involve elderly persons, including minority elderly persons, in the development of the project (5 bonus points);

(b) The need for supportive housing for the elderly in the area to be served and the suitability of the site, considering (25 points maximum):

(1) The extent of the need for the project in the area based on a determination by the HUD Office. HUD will make this determination by considering the Sponsor's evidence of need in the area based on the guidelines in § 889.270(b)(17), as well as other economic, demographic, and housing market data available to the HUD Office. The data could include the availability of existing Federally assisted housing (HUD and ARHEDS) (*e.g.*, considering availability and vacancy rates of public housing) for the elderly and current occupancy in such facilities, Federally assisted housing for the elderly under construction or for which fund reservations have been issued, and in accordance with an agreement between HUD and the ARHEDS, comments from the ARHEDS on the demand for additional assisted housing and the possible harm to existing projects in the same housing market area (8 points).

(2) The proximity or accessibility of the site to shopping, medical facilities, transportation, places of worship, recreational facilities, places of employment, and other necessary services to the intended occupants; adequacy of utilities and streets; freedom of the site from adverse environmental conditions; compliance with site and neighborhood standards (10 points); and

(3) Suitability of the site from the standpoint of promoting a greater choice of housing opportunities for minority elderly persons/families (7 points).

(c) Adequacy of the provision of supportive services and of the proposed facility, considering (20 points maximum):

(1) The extent to which the proposed design will meet the special physical needs of elderly persons (3 points);

(2) The extent to which the proposed size and unit mix of the housing will enable the Sponsor to manage and operate the housing efficiently and ensure that the provision of supportive services will be accomplished in an economical fashion (4 points);

(3) The extent to which the proposed design of the housing will accommodate the provision of supportive services that are expected to be needed, initially and over the useful life of the housing, by the category or categories of elderly persons the housing is intended to serve (3 points);

(4) The extent to which the proposed supportive services meet the identified needs of the residents (5 points); and

(5) The extent to which the Sponsor demonstrated that the identified supportive services will be provided on a consistent, long-term basis (5 points); and

(d) The project will be located within the boundaries of a Federally-designated Empowerment Zone, Urban Supplemental Empowerment Zone, Enterprise Community, or Urban Enhanced Enterprise Community (5 bonus points). The maximum number of points an application can earn without bonus points is 100. An application can earn an additional bonus points for a maximum total of 125 points.

II. Application Process

All applications for Section 202 capital advances submitted by eligible Sponsors must be filed with the appropriate HUD Office receiving an allocation and must meet the

requirements of this NOFA. No application will be accepted after 4 p.m. local time on July 24, 1995, unless that date and time is extended by a Notice published in the **Federal Register**. Applications received after that date and time will not be accepted, even if postmarked by the deadline date. Applications submitted by facsimile are not acceptable.

Immediately upon publication of this NOFA, if names have not already been provided to the Multifamily Housing Clearinghouse, HUD Offices shall notify elderly and minority media, all persons and organizations on their mailing lists, minority and other organizations within their jurisdiction involved in housing and community development, and groups with special interest in housing for elderly households.

Organizations interested in applying for a section 202 capital advance should contact the Multifamily Housing Clearinghouse at 1–800–685–8470 for a copy of the application package, and advise the HUD Office whether they wish to attend the workshop described below. HUD encourages minority organizations to participate in this program as Sponsors. HUD Offices will advise all organizations on their mailing list of the date, time, and place of workshops at which HUD will explain the Section 202 program.

HUD strongly recommends that prospective applicants attend the local HUD Office workshop. Interested persons with disabilities should contact the HUD Office to assure that any necessary arrangements can be made to enable their attendance and participation in the workshop. While strongly urged to do so, if Sponsors cannot attend a workshop, they can obtain Application Packages from the Multifamily Housing Clearinghouse (see address and telephone number in the "Application Package" section of this NOFA, above). Contact the appropriate HUD Office with any questions regarding the submission of applications.

At the workshops, HUD will explain application procedures and requirements. HUD will also address concerns such as local market conditions, building codes, historic preservation, floodplain management, displacement and relocation, zoning, and housing costs.

III. Application Submission Requirements

A. Application

Each application shall include all of the information, materials, forms, and exhibits listed in section III.B., below (with the exception of applications submitted by Sponsors selected for a Section 202 fund reservation within the last three funding cycles), and must be indexed and tabbed. Previously selected Section 202 Sponsors are not required to submit the information described in B.2.(a), (b), and (c), below (Exhibits 2.a., b., and c. of the application), which are the articles of incorporation, (or other organizational documents), by-laws, and the IRS tax exemption, respectively. If there has been a change in any of the eligibility documents since its previous HUD approval, the Sponsor must submit the updated information in its application. The local HUD Office will base its determination of the eligibility of a new Sponsor for a reservation of Section 202 capital advance funds on the information provided in the application. HUD Offices will verify a Sponsor's indication of previous HUD approval by checking the project number and approval status with the appropriate HUD Office.

In addition to this relief of paperwork burden in preparing applications, applicants will be able to use information and exhibits previously prepared for prior applications under Section 202, Section 811, or other funding programs. Examples of exhibits that may be readily adapted or amended to decrease the burden of application preparation include, among others, those on previous participation in the Section 202 or Section 811 programs, applicant experience in provision of housing and services, supportive services plan, community ties, and experience serving minorities.

B. General Application Requirements

1. Form HUD–92015–CA, Application for Section 202 Supportive Housing Capital Advance.

2. Evidence of *each* Sponsor's legal status as a private, nonprofit organization or nonprofit consumer cooperative, including the following:

(a) Articles of Incorporation, constitution, or other organizational documents;

(b) By-laws;

(c) IRS tax exemption ruling (this must be submitted by all Sponsors, including churches). A consumer cooperative that is tax exempt under State law, has never been liable for payment of Federal income taxes, and does not pay patronage dividends may be exempt from the requirement set out in the previous sentence if it is not eligible for tax exemption. Under previous funding rounds, the above provision was also true for nonprofit organizations organized in Puerto Rico and Guam. HUD has now learned that nonprofits in Puerto Rico and Guam may apply and be granted IRS section 501(c)(3) tax exemption rulings. Therefore, to the extent permitted within the application period for this NOFA, Sponsors should pursue a tax exemption ruling under 501(c)(3). If a Sponsor is unable, after using its best efforts, to secure such a ruling, it may use the regulatory exemption described in this paragraph (c), above.

Note: SPONSORS WHO HAVE RECEIVED A SECTION 202 FUND RESERVATION WITHIN THE LAST THREE FUNDING CYCLES ARE NOT REQUIRED TO SUBMIT THE DOCUMENTS DESCRIBED IN (a), (b), and (c), ABOVE. INSTEAD, SPONSORS MUST SUBMIT THE PROJECT NUMBER OF THE LATEST APPLICATION AND THE HUD OFFICE TO WHICH IT WAS SUBMITTED. IF THERE HAVE BEEN ANY MODIFICATIONS OR ADDITIONS TO THE SUBJECT DOCUMENTS, INDICATE SUCH, AND SUBMIT THE NEW MATERIAL.

(d) Resolution of the board, duly certified by an officer, that no officer or director of the Sponsor or Owner has or will have any financial interest in any contract with the Owner or in any firm or corporation that has or will have a contract with the Owner and that includes a current listing of all duly qualified and sitting officers and directors by title, and the beginning and ending date of each person's term.

3. Sponsor's purpose, community ties, and experience, including the following:

(a) A description of Sponsor's purposes and activities, ties to the community, and minority support, and how long the Sponsor has been in existence (include any additional related information);

(b) A description of Sponsor's housing and/or supportive services experience. The description should include any rental housing projects and/or medical facilities, sponsored, owned, and operated by the Sponsor, the Sponsor's past or current involvement in any programs other than housing that demonstrates the Sponsor's management capabilities and experience, and the Sponsor's experience in serving the elderly and/or families and minorities;

(c) A description of Sponsor's experience in contracting with minority- and women-owned businesses including a summary of the total amount awarded in each of the two categories for the preceding three years, and the percentage that amount represents of all contracts awarded by the Sponsor in the relevant time period;

(d) A certified Board Resolution, acknowledging responsibilities of sponsorship, long-term support of the project(s), willingness of Sponsor to assist the Owner to develop, own, manage, and provide appropriate services in connection with the proposed project, and that it reflects the will of its membership. Also, evidence, in the form of a certified Board Resolution, of the Sponsor's willingness to fund the estimated start-up expenses, the Minimum Capital Investment (one-half of one percent of the HUD-approved capital advance, not to exceed $10,000, if nonaffiliated with a National Sponsor; one-half of one percent of the HUD-approved capital advance, not to exceed $25,000, for all other Sponsors; see § 889.250), and the estimated cost of any amenities or features (and operating costs related thereto) that would not be covered by the approved capital advance.

(e) Description, if applicable, of the Sponsor's efforts to involve elderly persons, including minority elderly persons, in the development of the application, as well as its intent to involve elderly persons in the development of the project.

4. Project information, including the following:

(a) Evidence of need for supportive housing. Such evidence would include a description of the category or categories of elderly persons the housing is intended to serve and evidence demonstrating sustained effective demand for supportive housing for that population in the market area to be served, taking into consideration the occupancy and vacancy conditions in existing Federally assisted housing for the elderly (HUD and ARHEDS; *e.g.*, public housing); State or local data on the limitations in activities of daily living among the elderly in the area; aging in place in existing assisted rentals; trends in demographic changes in elderly population and households; the numbers of income eligible elderly households by size, tenure, and housing condition, the types of supportive services arrangements currently available in the area and the use of such services as evidenced by data from local social service agencies or agencies on aging.

(b) Description of the project, including the following:

(1) Narrative description of the building design, including a description of any special design features and community space, and how this design will facilitate the delivery of services in an economical fashion and accommodate the changing needs of the residents over the next 10–20 years.

(2) Describe whether and how the project will promote energy efficiency, and, if applicable, innovative construction or rehabilitation methods or technologies to be used that will promote efficient construction.

(c) Evidence of site control and permissive zoning.

(1) Evidence that the Sponsor has entered into a legally binding option agreement to buy or lease the proposed site; or has a copy of the contract of sale for the site, a deed, long-term leasehold, a request with all supporting documentation, submitted either prior to or with the Application for Capital Advance, for a partial release of a site covered by a mortgage under a HUD program, or other evidence of legal ownership of the site (including properties to be acquired from the Resolution Trust Corporation). The option agreement period must extend through the end of the current fiscal year and contain a renewal provision so that the option can be renewed for at least an additional six months. The Sponsor must also identify any restrictive covenants, including reverter clauses. In the case of a site to be acquired from a public body, evidence that the public body possesses clear title to the site, and has entered into a legally binding agreement to lease or convey the site to the Sponsor after it receives and accepts a notice of Section 202 capital advance and identification of any restrictive covenants, including reverter clauses. However, in localities where HUD determines the time constraints of the funding round will not permit all of the required official actions (*e.g.*, approval of Community Planning Boards) that are necessary to convey publicly-owned sites, a letter in the application from the mayor or director of the appropriate local agency indicating approval of conveyance of the site contingent upon the necessary approval action is acceptable and may be approved by the HUD Office if it has satisfactory experience with timely conveyance of sites from that public body. In such cases, documentation shall also include a copy of the public body's evidence of ownership and identification of any restrictive covenants, including reverter clauses. For properties to be acquired from the RTC, include a copy of the RTC prepared Transaction Screen Checklist or Phase I Environmental Site Assessment, and applicable documentation, per the RTC Environmental Guidelines.

Note: A PROPOSED PROJECT SITE MAY NOT BE ACQUIRED OR OPTIONED FROM A GENERAL CONTRACTOR (OR ITS AFFILIATE) THAT WILL CONSTRUCT THE SECTION 202 PROJECT OR FROM ANY OTHER DEVELOPMENT TEAM MEMBER.

(2) Evidence that the project as proposed is permissible under applicable zoning ordinances or regulations, or a statement of the proposed action required to make the proposed project permissible and the basis for belief that the proposed action will be completed successfully before the submission of the commitment application (*e.g.*, a summary of the results of any recent requests for rezoning on land in similar zoning classifications and the time required for such rezoning, preliminary indications of acceptability from zoning bodies, *etc.*).

(3) Narrative description of site and area surrounding the site, characteristics of neighborhood, how the site will promote greater housing opportunities for minorities, and any other information that affects the suitability of the site for the elderly.

(4) A map showing the location of the site and the racial composition of the neighborhood, with the area of racial concentration delineated.

(5) A Transaction Screen Process, in accordance with the American Society for Testing and Material (ASTM) Standards E 1528–93 and E 1527–93, as amended. If the completion of the Transaction Screen Questionnaire results in either a "yes" or "unknown" response, further study is required, and the Sponsor must complete a Phase I Environmental Site Assessment in accordance with the ASTM and submit it with the application. If the Phase I study indicates the possible presence of contamination and/or hazards, further study must be undertaken. At this point, the Sponsor must decide whether to continue with this site or choose another site. Should the Sponsor choose another site, the same environmental site assessment procedure identified above must be followed for that site. Since all Transaction Screen processes and Phase I studies must be completed and submitted with the application, it is important that the Sponsor start the site assessment process as soon after the publication of this NOFA as possible.

If the Sponsor chooses to continue with the original site, then it must undertake a detailed Phase II Environmental Site Assessment by an appropriate professional.

Note: THIS COULD BE AN EXPENSIVE UNDERTAKING. THE COST OF THE STUDY WILL BE BORNE BY THE SPONSOR IF THE APPLICATION IS NOT SELECTED.

If the Phase II Assessment reveals site contamination the extent of the contamination, and a plan for clean-up of the site must be submitted to the local HUD Office. The plan for clean-up must

include a contract for remediation of the problem(s) and an approval letter from the applicable Federal, State, and/or local agency with jurisdiction over the site. In order for the application to be considered for review under this FY 1995 funding, this information would have to be submitted to the local HUD Office no later than August 16, 1995.

(d) Provision of supportive services and proposed facility.

(1) A detailed description of the supportive services proposed to be provided to the anticipated occupancy.

(2) Form HUD 92013E, Supplemental Application Processing Form—Housing for the Elderly. Identify all supportive services, if any, to be provided to the persons occupying such housing.

(3) A description of public or private sources of assistance that reasonably could be expected to fund the proposed services.

(4) The manner in which such services will be provided to such persons (*i.e.*, on or off-site), including whether a service coordinator will facilitate the adequate provision of such services, and how the services will meet the identified needs of the residents.

5. A list of the applications, if any, the Sponsor has submitted or is planning to submit to any other HUD Office in response to this NOFA or the NOFA for Supportive Housing for Persons with Disabilities (published elsewhere in today's **Federal Register**). Indicate by HUD Office, the proposed location by city and State, and the number of units requested for each application. Include a list of all FY 1994 and prior year projects to which the Sponsor(s) is a party, identified by project number and HUD Office, which have not been finally closed.

6. HUD–2880, Applicant/Recipient Disclosure/Update Report, including Social Security Numbers and Employee Identification Numbers.

7. E.O. 12372. A certification that the Sponsor has submitted a copy of its applications, if required, to the State agency (single point of contact) for State review in accordance with Executive Order 12372.

8. A statement that (a) identifies all persons (families, individuals, businesses, and nonprofit organizations), identified by race/minority group, and status as owners or tenants, occupying the property on the date of submission of the application for a capital advance; (b) indicates the estimated cost of relocation payments and other services; and (c) identifies the staff organization that will carry out the relocation activities.

Note: IF ANY OF THE RELOCATION COSTS WILL BE FUNDED FROM SOURCES OTHER THAN THE SECTION 202 CAPITAL ADVANCE, THE SPONSOR MUST PROVIDE EVIDENCE OF A FIRM COMMITMENT OF THESE FUNDS. WHEN EVALUATING APPLICATIONS, HUD WILL CONSIDER THE TOTAL COST OF PROPOSALS (*I.E.*, COST OF SITE ACQUISITION, RELOCATION, CONSTRUCTION AND OTHER PROJECT COSTS).

9. SF–424. A certification on SF–424, Application for Federal Assistance, that the Sponsor(s) is not delinquent on the repayment of any Federal debt.

10. Disclosure of Lobbying Activities. If the amount applied for is greater than $100,000, the certification with regard to lobbying required by 24 CFR part 87 must be included. If the amount applied for is greater than $100,000, and the applicant has made or has agreed to make any payment using nonappropriated funds for lobbying activity, as described in 24 CFR part 87, the submission must also include SF–LLL, Disclosure of Lobbying Activities. The applicant determines if the submission of the SF–LLL form is applicable.

11. Sponsor Certifications.

(a) A certification of the Sponsor(s)' intent to comply with section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and the implementing regulations at 24 CFR Part 8; the Fair Housing Act (42 U.S.C. 3600–3619) and the implementing regulations at 24 CFR Parts 100, 108, 109, and 110; Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and the implementing regulations at 24 CFR Part 1; section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and the implementing regulations at 24 CFR Part 135; the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107) and the implementing regulations at 24 CFR Part 146; Executive Order 11246 (as amended) and the implementing regulations at 41 CFR Chapter 60; the regulations implementing Executive Order 11063 (Equal Opportunity in Housing) at 24 CFR Part 107; the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*) to the extent applicable; the affirmative fair housing marketing requirements of 24 CFR part 200, subpart M and the implementing regulations at 24 CFR part 108; and other applicable Federal, State, and local laws prohibiting discrimination and promoting equal opportunity.

(b) A certification that the Sponsor(s) will comply with the requirements of the Drug-Free Workplace Act.

(c) A certification that the project will comply with HUD's design and cost standards; the Uniform Federal Accessibility Standards and HUD's implementing regulations at 24 CFR part 40; Section 504 of the Rehabilitation Act of 1973 and HUD's implementing regulations at 24 CFR part 8; and for covered multifamily dwellings designed and constructed for first occupancy after March 13, 1991, the design and construction requirements of the Fair Housing Act and HUD's implementing regulations at 24 CFR part 100; and the Americans with Disabilities Act of 1990.

(d) A certification by the Sponsor(s) that it will comply (or has complied) with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), implemented by regulations at 49 CFR part 24, and 24 CFR 889.265(e).

(e) A certification by the Sponsor(s) that it will form an Owner (as defined in 24 CFR 889.105) after the issuance of the capital advance, will cause the Owner to file a request for determination of eligibility and a request for capital advance under § 889.300, and will provide sufficient resources to the Owner to insure the development and long-term operation of the project, including capitalizing the Owner at conditional commitment processing in an amount sufficient to meet its obligations in connection with the project.

(f) Certification of Consistency with the Consolidated Plan (Plan) for the jurisdiction in which the proposed project will be located must be submitted by the Sponsor (see NOTE below if the jurisdiction does not have an approved Plan). The certification must be made by the unit of general local government if it is required to have, or has, a complete Plan. Otherwise the certification may be made by the State, or if the project will be located in a unit of general local government authorized to use an abbreviated strategy, by the unit of general local government if it is willing to prepare such a Plan.

All certifications must be made by the public official responsible for submitting the Plan to HUD. The certifications must be submitted as part of the application by the application submission deadline set forth in this NOFA, except as provided in the next paragraph. The Plan regulations are published in 24 CFR part 91.

Notes: (1) If the jurisdiction's plan program year has not yet started, the jurisdiction may certify consistency with their FY 1994 CHAS in lieu of the plan. A notice published in the February 6, 1995 **Federal Register** (60 FR 6967) established that a jurisdiction's previously approved CHAS will remain in effect until the start date of the jurisdiction's new consolidated program year, at which point the jurisdiction's new plan would take effect. The notice also allows jurisdictions to use their annual plan for FY 1994 as extended by the February 6, 1995 **Federal Register** notice for the purpose of certifications of consistency.

(2) Sponsors of projects in Oklahoma may submit the certification of consistency with the consolidated plan after the application deadline date but no later than August 25, 1995.

IV. Other Matters

A. Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection during business hours in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410.

B. Federalism Executive Order

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this NOFA does not have substantial direct effects on States or their political subdivisions, or on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. This NOFA merely notifies the public of the availability of capital advances and project rental assistance for supportive housing for the elderly.

C. Family Executive Order

The General Counsel, as the Designated Official under Executive Order 12606, *the Family*, has determined that this NOFA does not have the potential for significant impact on family formation, maintenance, or general well-being. This NOFA may have a positive though indirect effect on families, to the extent that families will benefit from the provision of supportive housing for elderly persons. Since any effect on families is beneficial, this NOFA is not subject to review under the Order.

D. Accountability in the Provision of HUD Assistance

HUD has promulgated a final rule to implement section 102 of the Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act). The final rule is codified at 24 CFR part 12. Section 102 contains a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 14, 1992, HUD published in the **Federal Register** (57 FR 1942) additional information that gave the public (including applicants for and recipients of HUD assistance) further information on the implementation, public access, and disclosure requirements of section 102. The documentation, public access, and disclosure requirements of section 102 are applicable to assistance awarded under this NOFA as follows:

1. Documentation and Public Access

HUD will ensure documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these requirements.)

2. Disclosures

HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See 24 CFR subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

E. Documentation and Public Access Requirements: HUD Reform Act

HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these requirements.)

F. Section 103

HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 was published May 13, 1991 (56 FR 22088) and became effective on June 12, 1991. That regulation, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are restrained by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815 (TDD/Voice). (This is not a toll-free number.) The Office of Ethics can provide information of a general nature to HUD employees, as well. However, a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside HUD, should contact his or her HUD Office Counsel, or Headquarters counsel for the program to which the question pertains.

G. Lobbying

Section 13 of the Department of Housing and Urban Development Act (42 U.S.C. 3537b) contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who

are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by HUD and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 22912). If readers are involved in any efforts to influence HUD in these ways, they are urged to read the final rule, particularly the examples contained in Appendix A of the rule.

Any questions regarding the rule should be directed to the Director, Office of Ethics, Room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. Telephone: (202) 708–3815 (TDD/Voice). (This is not a toll-free number.) Forms necessary for compliance with the rule may be obtained from the local HUD Office.

H. Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of Section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) (the Byrd Amendment) and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the executive or legislative branches of the Federal Government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no Federal funds have been or will be spent on lobbying activities in connection with the assistance.

I. Catalog of Federal Domestic Assistance Program

The Catalog of Federal Domestic Assistance Program title and number is 14.181, Housing for the Elderly or Handicapped.

Authority: Section 202, Housing Act of 1959, as amended (12 U.S.C. 1701q), Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: April 26, 1995.

Nicolas P. Retsinas,

Assistant Secretary for Housing, Federal Housing Commissioner.

Appendix A—HUD Offices

Note: The first line of the mailing address for all offices is U.S. Department of Housing and Urban Development. Telephone numbers listed are not toll-free.

HUD—NEW ENGLAND AREA

CONNECTICUT STATE OFFICE

First Floor, 330 Main Street, Hartford, CT 06106–1860, (203) 240–4523

MASSACHUSETTS STATE OFFICE

Room 375, Thomas P. O'Neill, Jr. Federal Building, 10 Causeway Street, Boston, MA 02222–1092, (617) 565–5234

NEW HAMPSHIRE STATE OFFICE

Norris Cotton Federal Building, 275 Chestnut Street, Manchester, NH 03101–2487, (603) 666–7681

RHODE ISLAND STATE OFFICE

Sixth Floor, 10 Weybosset Street, Providence, RI 02903–2808, (401) 528–5351

HUD—NEW YORK, NEW JERSEY AREA

NEW JERSEY STATE OFFICE

Thirteenth Floor, One Newark Center, Newark, NJ 07102–5260, (201) 622–7900

NEW YORK STATE OFFICE

26 Federal Plaza, New York, NY 10278–0068, (212) 264–6500

BUFFALO AREA OFFICE

Fifth Floor, Lafayette Court, 465 Main Street, Buffalo, NY 14203–1780, (716) 846–5755

HUD—MIDATLANTIC AREA

DISTRICT OF COLUMBIA OFFICE

820 First Street, NE., Washington, D.C. 20002–4502, (202) 275–9200

MARYLAND STATE OFFICE

Fifth Floor, City Crescent Building, 10 South Howard Street, Baltimore, MD 21201–2505, (401) 962–2520

PENNSYLVANIA STATE OFFICE

Liberty Square Building, 105 South 7th Street, Philadelphia, PA 19106–3392, (215) 597–2560

VIRGINIA STATE OFFICE

The 3600 Centre, 3600 West Broad Street, P.O. Box 90331, Richmond, VA 23230–0331, (804) 278–4507

WEST VIRGINIA STATE OFFICE

Suite 708, 405 Capitol Street, Charleston, WV 25301–1795, (304) 347–7000

PITTSBURGH AREA OFFICE

412 Old Post Office Courthouse, 7th Avenue and Grant Street, Pittsburgh, PA 15219–1906, (412) 644–6428

HUD—SOUTHEAST/CARIBBEAN AREA

ALABAMA STATE OFFICE

Suite 300, Beacon Ridge Tower, 600 Beacon Parkway, West, Birmingham, AL 35209–3144, (205) 290–7617

CARIBBEAN OFFICE

New San Juan Office Building, 159 Carlos Chardon Avenue, San Juan, PR 00918–1804, (809) 766–6121

GEORGIA STATE OFFICE

Richard B. Russell Federal Building, 75 Spring Street, SW., Atlanta, GA 30303–3388, (404) 331–5136

KENTUCKY STATE OFFICE

601 West Broadway, P.O. Box 1044, Louisville, KY 40201–1044, (502) 582–5251

MISSISSIPPI STATE OFFICE

Suite 910, Doctor A.H. McCoy Federal Building, 100 West Capitol Street, Jackson, MS 39269–1016, (601) 965–5308

NORTH CAROLINA STATE OFFICE

Koger Building, 2306 West Meadowview Road, Greensboro, NC 27407–3707, (919) 547–4001

SOUTH CAROLINA STATE OFFICE

Strom Thurmond Federal Building, 1835 Assembly Street, Columbia, SC 29201–2480, (803) 765–5592

TENNESSEE STATE OFFICE

Suite 200, 251 Cumberland Bend Drive, Nashville, TN 37228–1803, (615) 736–5213

JACKSONVILLE AREA OFFICE

Suite 2200, Southern Bell Tower, 301 West Bay Street, Jacksonville, FL 32202–5121, (904) 232–2626

KNOXVILLE AREA OFFICE

Third Floor, John J. Duncan Federal Building, 710 Locust Street, Knoxville, TN 37902–2526, (615) 545–4384

HUD—MIDWEST AREA

ILLINOIS STATE OFFICE

Ralph H. Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604–3507, (312) 353–5680

INDIANA STATE OFFICE

151 North Delaware Street, Indianapolis, IN 46204–2526, (317) 226–6303

MICHIGAN STATE OFFICE

Patrick V. McNamara Federal Building, 477 Michigan Avenue, Detroit, MI 48226–2592, (313) 226–7900

MINNESOTA STATE OFFICE

220 Second Street, South, Minneapolis, MN 55401–2195, (612) 370–3000

OHIO STATE OFFICE

200 North High Street, Columbus, OH 43215–2499, (614) 469–5737

WISCONSIN STATE OFFICE

Suite 1380, Henry S. Reuss Federal Plaza, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2289, (414) 297–3214

CINCINNATI AREA OFFICE

Room 9002, Federal Office Building, 550 Main Street, Cincinnati, OH 45202–3253, (513) 684–2884

CLEVELAND AREA OFFICE

Fifth Floor, Renaissance Building, 1350 Euclid Avenue, Cleveland, OH 44115–1815, (216) 522–4058

GRAND RAPIDS AREA OFFICE

2922 Fuller Avenue, NE., Grand Rapids, MI 49505–3499, (616) 456–2100

HUD—SOUTHWEST AREA

ARKANSAS STATE OFFICE

Suite 900, TCBY Tower, 425 West Capitol Avenue, Little Rock, AR 72201–3488, (501) 324–5931

LOUISIANA STATE OFFICE

Ninth Floor, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130–3099, (504) 589–7200

OKLAHOMA STATE OFFICE

Suite 400, 500 West Main, Oklahoma City, OK 73102, (405) 231–4345

TEXAS STATE OFFICE

1600 Throckmorton Street, P.O. Box 2905, Fort Worth, TX 76113–2905, (817) 885–5401

HOUSTON AREA OFFICE

Suite 200, Norfolk Tower, 2211 Norfolk, Houston, TX 77098–4096, (713) 834–3274

SAN ANTONIO AREA OFFICE

Washington Square, 800 Dolorosa Street, San Antonio, TX 78207–4563, (210) 229–6800

HUD—GREAT PLAINS

IOWA STATE OFFICE

Room 239, Federal Building, 210 Walnut Street, Des Moines, IA 50309–2155, (515) 284–4512

KANSAS/MISSOURI STATE OFFICE

Room 200, Gateway Tower II, 400 State Avenue, Kansas City, KS 66101–2406, (913) 551–5462

NEBRASKA STATE OFFICE

Executive Tower Centre, 10909 Mill Valley Road, Omaha, NE 68154–3955, (402) 492–3100

SAINT LOUIS AREA FIELD OFFICE

Third Floor, Robert A. Young Federal Building, 1222 Spruce Street, St. Louis, MO 63103–2836, (314) 539–6583

HUD—ROCKY MOUNTAINS AREA

COLORADO STATE OFFICE

633 17th Street, Denver, CO 80202–3607, (303) 672–5440

HUD—PACIFIC/HAWAII AREA

ARIZONA STATE OFFICE

Suite 1600, Two Arizona Center, 400 North 5th Street, Phoenix, AZ 85004–2361, (602) 379–4434

CALIFORNIA STATE OFFICE

Philip Burton Federal Building and U.S. Courthouse, 450 Golden Gate Avenue, P.O. Box 36003, San Francisco, CA 94102–3448, (415) 556–4752

HAWAII STATE OFFICE

Suite 500, 7 Waterfront Plaza, 500 Ala Moana Boulevard, Honolulu, HI 96813–4918, (808) 522–8175

LOS ANGELES AREA OFFICE

1615 West Olympic Boulevard, Los Angeles, CA 90015–3801, (213) 251–7122

SACRAMENTO AREA OFFICE

Suite 200, 777 12th Avenue, Sacramento, CA 95814–1997, (916) 551–1351

HUD—NORTHWEST/ALASKA AREA

ALASKA STATE OFFICE

Suite 401, University Plaza Building, 949 East 36th Avenue, Anchorage, AK 99508–4399, (907) 271–4170

OREGON STATE OFFICE

520 SW. 6th Avenue, Portland, OR 97204–1596, (503) 326–2561

WASHINGTON STATE OFFICE

Suite 200, Seattle Federal Office Building, 909 First Avenue, Seattle, WA 98104–1000, (206) 220–5101

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Wednesday
May 24, 1995

Part IV

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 956

Sweet Onions Grown in Washington and Oregon; Final Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 956

[Docket No. 94AMA–FV–956–1; FV93–956–1FR]

Sweet Onions Grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon; Order Regulating Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule establishes a Federal marketing agreement and order which regulates the handling of Walla Walla Sweet Onions grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon. The order was favored by the required two-thirds majority of producers voting in a referendum and the marketing agreement was executed by the required number of handlers, that is, handlers who collectively handled more than 50 percent of all onions handled during the representative period. The marketing agreement and order authorize production and marketing research and marketing development and promotion projects, including paid advertising, and authorize container markings. The objective of the order is to improve producer returns by strengthening consumer demand through various promotional activities and by reducing production and marketing costs through production and marketing research. Agreement and order activities will be financed by assessments levied on Walla Walla Sweet Onion handlers. The order was considered at a public hearing in November 1993. The referendum was conducted by the Department of Agriculture by mail ballot April 7–14, 1995.

EFFECTIVE DATE: May 19, 1995.

FOR FURTHER INFORMATION CONTACT: Gary D. Olson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 1220 S.W. Third Avenue, room 369, Portland, Oregon 97204; telephone: (503) 326–2724, FAX: (503) 326–7440; or Robert F. Matthews, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, D.C. 20090–6456; telephone: (202) 690–0464, FAX: (202) 720–5698.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Notice of Hearing—Issued October 26, 1993; published October 29, 1993 (58 FR 58105);

Notice of Recommended Decision—Issued November 3, 1994; published November 10, 1994 (59 FR 56254);

Secretary's Decision—Issued March 30, 1995; published April 5, 1995 (60 FR 17274).

Preliminary Statement

This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code, and is therefore excluded from the requirements of Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this action.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary of Agriculture (Secretary) a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

The marketing agreement and order were formulated on the record of a public hearing held at Walla Walla, Washington, November 15, 1993. Notice of the hearing was published in the October 26, 1993, issue of the **Federal Register** (58 FR 58105). The notice set forth a proposed order submitted by the Walla Walla Sweet Onion Grower's Association on behalf of Walla Walla Sweet Onion producers in the production area.

The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act, and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

Approximately 25 witnesses, including Walla Walla Sweet Onion producers, handlers, and a Washington State University researcher, testified in support of the order. Proponents emphasized that Walla Walla Sweet Onion producers need a Federal marketing order to effectively compete with other sweet onion producing areas. No one present at the hearing testified in opposition to the proposed order. At the close of the hearing, January 15, 1994, was established as the date by which briefs, statements, and proposed corrections to the transcript were due. No briefs were received.

The proponents testified that Walla Walla Sweet Onion producers, in order to remain competitive with other sweet onion producing areas, must conduct research and promotion programs to reduce production and marketing costs and increase sales. Such programs should include production and marketing research projects and promotion projects, including paid advertising.

Testimony indicated that voluntary research and development efforts by the Walla Walla Sweet Onion industry have not been successful because of the lack of a coherent research and development plan with broad-based industry support. Also, a relatively small percentage of the U.S. onion crop is produced in the production area in Walla Walla County, Washington, and Umatilla County, Oregon, and individual producers and handlers cannot implement an effective research, marketing development, and promotion program. By contrast, most other onion growing areas in the United States are large enough to convince private entities, such as seed companies, to conduct production research and developmental efforts with the result being new varieties specifically suited to those areas. Proponents believe that an industry-wide program is therefore necessary to enable the pooling of resources to address common problems. A single producer or even two or three producers cannot marshal the resources necessary to conduct effective research, marketing, and promotion programs including paid advertising.

Upon the basis of evidence introduced at the hearing and the record thereof, the Acting Assistant Secretary, Marketing and Regulatory Programs, on March 30, 1995, filed with the Hearing Clerk, U.S. Department of Agriculture, a Final Decision and Referendum Order, directing that a referendum be conducted during the period April 7–14, 1995, among producers of Walla Walla Sweet Onions to determine whether they favored issuance of the proposed marketing order. In the referendum, the

marketing order was favored by more than two-thirds of the producers voting in the referendum and also by producers of more than two-thirds of the production represented in the referendum. The marketing agreement was signed by handlers who, during the representative period, handled more than 50 percent of the volume of Walla Walla Sweet Onions handled during the representative period. The referendum results and handler sign-up met the statutory requirements on producer and handler approval necessary to issue the marketing order and agreement.

Small Business Consideration: In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Administrator of the Agricultural Marketing Service considered the economic impact of this action on small entities. The record indicates that there are approximately nine handlers of Walla Walla Sweet Onions in the production area and 50 producers. Small agricultural service firms have been defined by the Small Business Administration (SBA) (13 CFR 121.601) as those whose annual receipts are less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. The majority of the handlers and producers may be classified as small entities.

During the 1992 season, commercial shipments of Walla Walla Sweet Onions totaled about 390,000 hundredweight at an average f.o.b. price of $16.60 per hundredweight for a total value of $6,474,000. An indeterminate volume, probably about 10 percent, was sold at roadside stands. While there is a great variance in the size of individual handlers' operations, the record indicates that nearly all of the handlers that will be regulated under this order qualify as small firms under the SBA's definition. Witnesses testified that because most of the producers and handlers of Walla Walla Sweet Onions are small, they are unable to individually finance the types of research and promotion efforts needed by the industry. A marketing order program will provide a means for these small entities to pool their resources and work together to solve their common problems. Witnesses testified that such action is necessary for this relatively small industry to remain profitable in the face of intense competition from larger production areas.

Acreage and supplies of Walla Walla Sweet Onions have declined in recent years, and proponents believe that the order will provide a much needed means of halting a drop in grower returns experienced in past seasons. This will be achieved by strengthening demand, developing new markets for existing supplies and encouraging increased production.

Also, costs could be reduced through production research. Thus, the order is expected to have a positive impact on producer returns.

The order authorizes the collection of assessments from handlers of Walla Walla Sweet Onion producers, handlers, and a public member nominated by growers and handlers and selected by the Secretary of Agriculture (Secretary). Daily administration of the order will be carried out by a staff hired by the committee. The order will not regulate the production of Walla Walla Sweet Onions and places no restriction on the quality or quantities of Walla Walla Sweet Onions that could be handled.

The principal requirements of the order that affect handlers are the requirements that they pay assessments on fresh market shipments of Walla Walla Sweet Onions to fund research and promotion programs and that container markings could be regulated. The amount of the assessment rate is not specified in the order, but witnesses at the hearing indicated that an appropriate rate might be five cents per 50-pound bag for administrative costs; research and promotion costs could require an additional five to seven cents per bag or more. Any assessment rate to cover committee expenses that may be established will be recommended by the committee to the Secretary for approval.

The order also imposes some reporting and recordkeeping requirements on handlers. Handler testimony indicated that the expected burden imposed with respect to these requirements will be negligible. Most of the information that will be reported to the committee is already compiled by handlers for other uses and is readily available. In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) and section 3504(h) of that Act, the information collection and recordkeeping requirements that may be imposed by this order have been approved by OMB and assigned OMB Number 0581–0172. Any requirements imposed will be evaluated against the potential benefits to be derived and it is expected that any added burden resulting from increased recordkeeping will not be significant when compared to those anticipated benefits.

Reporting and recordkeeping requirements issued under comparable marketing order programs impose an average annual burden on each regulated handler of about one hour and a two year record retention requirement. It is reasonable to expect that a comparable burden may be imposed under this order on the estimated nine handlers of Walla Walla Sweet Onions.

In determining that the order will not have a significant economic impact on a substantial number of small entities, all of the issues discussed above were considered. The order provisions have been carefully reviewed and every effort has been made to eliminate any unnecessary costs or requirements. Although the order may impose some additional costs and requirements on handlers, it is anticipated that the order will help to strengthen demand for Walla Walla Sweet Onions. Therefore, any additional costs should be offset by the benefits derived from expanded markets and sales benefitting handlers and producers alike.

Accordingly, it is determined that the order will not have a significant economic impact on a substantial number of small handlers or producers.

Findings and Determinations

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*) and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR

Part 900), a public hearing was held upon a proposed marketing agreement and a proposed order, regulating the handling of Sweet Onions grown in the Walla Walla Valley of Southeastern Washington and Northeastern Oregon.

Upon the basis of the evidence introduced at the hearing and the record thereof, it is found that:

(1) The marketing agreement and order, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The marketing agreement and order regulates the handling of sweet onions grown in the production area in the same manner as, and is applicable only, to persons in the respective classes of commercial and industrial activity specified in, the marketing agreement and order upon which a hearing has been held;

(3) The marketing agreement and order is limited in its application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area will not effectively carry out the declared policy of the Act;

(4) There are no differences in the production and marketing of sweet onions grown in the production area which make necessary different terms and provisions applicable to different parts of such area; and

(5) All handling of sweet onions grown in the production area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

(b) *Additional findings.* It is necessary and in the public interest to make this order effective not later than May 19, 1995.

A later effective date would unnecessarily delay the implementation of the agreement and order and the collection of handler assessments necessary to fund day-to-day program expenses and authorized research and promotion activities. The harvesting and marketing of the 1995 Walla Walla Sweet Onion crop is expected to begin in mid-June. Hence, Department and industry implementation activities must begin promptly. These activities include, but are not limited to, industry meetings to nominate the members and alternate members of the administrative committee to locally administer the marketing order, the selection of that Committee by the Secretary of Agriculture, and following that holding Committee meetings to select a management team, draft Committee operating guidelines, consider a budget and assessment rate for the 1995 fiscal period, and make other recommendations consistent with order authority. Some of the Committee recommendations will require rulemaking by the Department to be implemented.

In view of the foregoing, it is hereby found and determined that good cause exists for making this order effective May 19, 1995, and that it would be contrary to the public interest to delay the effective date of this order for 30 days after its publication in the **Federal Register** (Sec. 553(d), Administrative Procedure Act; 5 U.S.C. 551–559).

(c) *Determinations.* It is hereby determined that:

(1) The "Marketing Agreement Regulating the Handling of Sweet Onions Grown in the Walla Walla Valley of Southeastern Washington and Northeastern Oregon," upon which the aforesaid public hearing was held has been signed by handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping sweet onions covered by the order) who during the period January 1 through December 31, 1994, handled not less than 50 percent of the volume of such sweet onions covered by this order, and

(2) The issuance of this order is favored or approved by at least two-thirds of the producers who participated in a referendum on the question of its approval and who, during the period January 1 through December 31, 1994 (which has been deemed to be a representative period), have been engaged within the Walla Walla Sweet Onion production area in the production of Walla Walla Sweet Onions for market, such producers having also produced for market at least two-thirds of the volume of such commodity represented in the referendum.

List of Subjects in 7 CFR Part 958

Marketing agreements, Onions, Reporting and recordkeeping requirements.

Order Relative to Handling of Sweet Onions Grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon

It is therefore ordered, that on and after the effective date hereof, all handling of sweet onions grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon, shall be in conformity to, and in compliance with, the terms and conditions of the said order, as follows:

The provisions of the marketing order include §§ 956.1 through 956.96. The marketing agreement includes the provisions of the order and three additional provisions, § 956.97 Counterparts, § 956.98 Additional parties, and § 956.99 Order with marketing agreement. These provisions are not published herein as part of the order.

The provisions of the marketing order are set forth in full herein.

Title 7, Chapter IX is amended by adding part 956 to read as follows:

PART 956—SWEET ONIONS GROWN IN THE WALLA WALLA VALLEY OF SOUTHEAST WASHINGTON AND NORTHEAST OREGON

Subpart—Order Regulating Handling

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Authority: 7 U.S.C. 601–674.

Definitions

§ 956.1 Secretary.

Secretary means the Secretary of Agriculture of the United States or any officer or employee of the Department of Agriculture who has been delegated, or to whom authority may hereafter be delegated, the authority to act for the Secretary.

§ 956.2 Act.

Act means Public Act No. 10, 73d Congress (May 12, 1933), as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (Sec. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601 *et seq.*).

§ 956.3 Person.

Person means an individual, partnership, corporation, association, or any other business unit.

§ 956.4 Production area.

Production area means a tract of land in Umatilla County, Oregon, and Walla Walla County, Washington, based on surveyors' maps, enclosed by the following boundaries: Commencing at the Southeast corner of Section 13, Township (Twp.) 5 North, Range (Rge.) 36 East, W.M.; thence Westerly along the South line of Sections 13, 14, 15, 16, 17, and 18 in Twp. 5 North, Rge. 36 East, Sections 13, 14, 15, 16, 17, and 18 in Twp. 5 North, Rge. 35 East, Sections 13, 14, 15, 16, 17, and 18 in Twp. 5 North, Rge. 34 East, Sections 13, 14, and 15 in Twp. 5 North, Rge. 33 East, W.M. to the East right of way line of the Northern Pacific Railway, as it runs Northwesterly through Vansyckle Canyon; thence Northwesterly along said Easterly right of way line to a point in the Northwest ¼ of Section 20, Twp. 7 North, Rge. 32 East, W.M. where said line intersects the South right of way of the Union Pacific Railway, said intersection being commonly known as Zangar Junction; thence Easterly along said South right of way line of the Union Pacific Railway to a point in the Southwest ¼ of Section 23, Twp. 7 North, Rge. 32 East where said line intersects the South right of way line of Washington State Highway No. 12; thence Easterly along said South right of way line to the intersection with the West line of Section 34, Twp. 7 North, Rge. 33 East, W.M.; thence North, along the West line of Sections 34, 27, 22, 15, 10, and 3 in Twp. 7 North, Rge. 33 East, W.M., and the West line of Sections 34, 27, and 22 in Twp. 8 North, Rge. 33 East, W.M. to the Northwest corner of said Section 22; thence East along the North line of said Section 22 to the Northeast corner thereof; thence North along the West line of Sections 14, 11, and 2 in Twp. 8 North, Rge. 33 East, W.M. to the Northwest corner of said Section 2; thence East along North lines of Sections 2 and 1 in Twp. 8 North, Rge. 33 East, W.M. and the North line of Section 6, Twp. 8 North, Rge. 34 East, W.M. to the centerline of the Touchet River; thence northerly and Easterly along said centerline of the Touchet River as it runs through Twp. 9 North, Rge. 34 East, Twp. 9 North, Rge. 35 East, Twp. 10 North, Rge. 35 East, Twp. 10 North, Rge. 36 East, Twp. 9 North, Rge. 36 East, and Twp. 9 North, Rge. 37 East to a point on the East line of Section 11 in Twp. 9 North, Rge. 37 East, W.M., thence South along the East line of Sections 11, 14, 23, 26, and 35 in Twp. 9 North, Rge. 37 East, W.M., the East lines of Sections 2, 11, 14, 23, 26, and 35 in Twp. 8 North, Rge. 37 East, W.M., the East lines of Sections 2, 11, 14, 23, 26, and 35 in Twp. 7 North, Rge. 37 East, W.M., and the East lines of Sections 2, 11, and fractional Section 14 in Twp. 6 North, Rge. 37 East, W.M., to a point on the Washington-Oregon State line; thence West along said State Line to the closing corner on the West side of Section 18 in Twp. 6 North, Rge. 37 East, W.M.; thence South along the West line of Sections 18, 19, 30, and 31 in Twp. 6 North, Rge. 37 East, W.M. and the West line of Sections 6, 7, and 18 in Twp. 5 North, Rge. 37 East to the corner common to Sections 18 and 19 in Twp. 5 North, Rge. 37 East, W.M. and 13 and 24 in Twp. 5 North, Rge. 36 East, W.M., Being the True Point of Beginning of this Legal Description.

§ 956.5 Walla Walla Sweet Onions.

Walla Walla Sweet Onions means all varieties of *Allium cepa* grown within the production area, except Spanish hybrid varieties. The committee may, with the approval of the Secretary, exempt individual varieties from any or all regulations issued under this part.

§ 956.6 Handler.

Handler is synonymous with "shipper" and means any person (except a common or contract carrier of Walla Walla Sweet Onions owned by another person) who handles Walla Walla Sweet Onions or causes Walla Walla Sweet Onions to be handled.

§ 956.7 Registered handler.

Registered handler means any person with adequate facilities for preparing Walla Walla Sweet Onions for commercial market, who has requested such registration and is so recorded by the committee, or any person who has access to such facilities and has recorded with the committee the ability and willingness to assume customary obligations of preparing Walla Walla Sweet Onions for commercial market. The committee may recommend, for approval of the Secretary, procedures with respect to handler registration.

§ 956.8 Handle.

Handle is synonymous with "ship" and means to package, load, sell, transport, or in any way place Walla Walla Sweet Onions or cause Walla Walla Sweet Onions to be placed in the current of commerce within the production area or between the production area and any point outside thereof. Such term shall not include the transportation, sale, or delivery of harvested Walla Walla Sweet Onions to a handler within the production area for the purpose of having such Walla Walla Sweet Onions prepared for market.

§ 956.9 Container.

Container means a box, bag, crate, hamper, basket, package, or any other receptacle used in the packaging, transporting, sale, shipment, or other handling of Walla Walla Sweet Onions.

§ 956.10 Producer.

Producer is synonymous with "grower" and means any person engaged in a proprietary capacity in the production of Walla Walla Sweet Onions for market.

§ 956.11 Varieties.

Varieties means and includes all classifications, subdivisions, or types of Walla Walla Sweet Onions according to those definitive characteristics now or hereafter recognized by the United States Department of Agriculture or recommended by the committee and approved by the Secretary.

§ 956.12 Committee.

Committee means the Walla Walla Sweet Onion Committee established pursuant to § 956.20.

§ 956.13 Fiscal period.

Fiscal period means the period beginning on June 1 and ending on May 31 of each year, or other such period as may be recommended by the committee and approved by the Secretary.

Administrative Committee

§ 956.20 Establishment and membership.

(a) The Walla Walla Sweet Onion Committee, consisting of ten members, is hereby established. The committee shall consist of six producer members, three handler members, and one public member. Each member shall have an alternate who shall have the same qualifications as the member.

(b) A producer shall have three years of experience in producing onions in order to qualify for committee membership. At the time of selection, no more than two producer members may be affiliated with the same handler.

§ 956.21 Term of office.

(a) Except as otherwise provided in paragraph (b) of this section, the term of office of committee members and their respective alternates shall be for three fiscal periods beginning on June 1 or such other date as recommended by the committee and approved by the Secretary. The terms shall be determined so that one-third of the grower membership and one-third of the handler membership shall terminate each year. Members and alternates shall serve during the term of office for which they are selected and have been qualified, or during that portion thereof beginning on the date on which they qualify during such term of office and continuing until the end thereof, or until their successors are selected and have qualified.

(b) The term of office of the initial members and alternates shall begin as soon as possible after the effective date of this subpart. One-third of the initial industry members and alternates shall serve for a one-year term, one-third shall serve for a two-year term, and one-third shall serve for a three-year term. The initial, as well as all successive terms of office of the public member and alternate member shall be for three years.

(c) The consecutive terms of office for all members shall be limited to two three-year terms. There shall be no such limitation for alternate members.

§ 956.22 Nominations.

Nominations from which the Secretary may select the members of the committee and their respective alternates may be made in the following manner:

(a) The committee shall hold or cause to be held, within the production area and prior to April 1 of each year or by such other date as may be specified by the Secretary, one or more meetings of producers and handlers for the purpose of designating one nominee for each of the member and alternate member positions which are vacant or will be vacant at the end of the fiscal period;

(b) In arranging for such meetings the committee may, if it deems such desirable, cooperate with existing organizations and agencies;

(c) Nominations for committee members and alternate members shall be provided to the Secretary, in such manner and form as the Secretary may prescribe, not later than 30 days prior to the end of the fiscal period within which the current term of office expires;

(d) Only producers may participate in designating nominees for producer committee members and their alternates and only handlers may participate in designating nominees for handler committee members and their alternates;

(e) Each person who is both a handler and a producer may vote either as a handler or as a producer, but not both;

(f) Each person is entitled to cast only one vote on behalf of him or herself, his or her partners, agents, subsidiaries, affiliates and representatives, in designating nominees for committee members and alternates. An eligible producer's or handler's privilege of casting only one vote, as aforesaid, shall be construed to permit such voter to cast one vote for each producer member and alternate member position to be filled or each handler member and alternate member position to be filled, but not both.

(g) Every three years, at the first meeting following selection, the committee shall nominate the public member and alternate for a three-year term of office.

(h) The committee shall prescribe such additional qualifications, administrative rules and procedures for selection and voting for each candidate as it deems necessary and as the Secretary approves.

§ 956.23 Selection.

The Secretary shall select members and alternate members of the committee from the nominations made pursuant to § 956.22 or from other qualified persons.

§ 956.24 Qualification and acceptance.

Any person nominated to serve as a member or alternate member of the committee shall, prior to selection by the Secretary, qualify by filing a written background and acceptance statement indicating such person's willingness to serve in the position for which nominated.

§ 956.25 Alternates.

An alternate member of the committee shall act in the place and stead of the member for whom such person is an alternate, during such member's absence. In the event of the death, removal, resignation, or disqualification of a member, that member's alternate shall serve until a successor to such member has qualified and is selected.

§ 956.26 Vacancies.

To fill any vacancy occasioned by the failure of any person nominated as a member or as an alternate to qualify, or in the event of the death, removal, resignation, or disqualification of a member or alternate, a successor for the unexpired term may be selected by the Secretary from nominations made pursuant to § 956.22 from previously unselected nominees on the current nominee list, or from other eligible persons.

§ 956.27 Failure to nominate.

If nominations are not made within the time and manner prescribed in § 956.22 the Secretary may, without regard to nominations, select the members and alternates on the basis of the representation provided for in § 956.20.

§ 956.28 Procedure.

(a) Six members of the committee shall constitute a quorum, and six concurring votes shall be required to pass any motion or approve any committee action, except that recommendations made pursuant to § 956.61 shall require seven concurring votes.

(b) The committee may provide for meetings by telephone, telegraph, facsimile, or other means of communication, and any vote cast orally at such meetings shall be confirmed promptly in writing: *Provided,* That if an assembled meeting is held, all votes shall be cast in person.

§ 956.29 Expenses.

Members and alternates shall serve without compensation but shall be reimbursed for such expenses authorized by the committee and necessarily incurred by them in attending committee meetings and in the performance of their duties under this part.

§ 956.30 Powers.

The committee shall have the following powers:

(a) To administer the provisions of this part in accordance with its terms;

(b) To make rules and regulations to effectuate the terms and provisions of this part;

(c) To receive, investigate, and report to the Secretary complaints of violations of the provisions of this part; and

(d) To recommend to the Secretary amendments to this part.

§ 956.31 Duties.

It shall be among the duties of the committee:

(a) At the beginning of each fiscal period, or as soon thereafter as practicable, to meet and organize, to select a chairperson and such other officers as may be necessary, to select subcommittees, and to adopt such rules and regulations for the conduct of its business as it may deem advisable;

(b) To act as intermediary between the Secretary and any producer or handler;

(c) To furnish to the Secretary such available information as the Secretary may request;

(d) To appoint such employees, agents, and representatives as it may deem necessary and to determine the salaries and define the duties of each such person;

(e) To investigate from time to time and to assemble data on the growing, harvesting, shipping, and marketing conditions with respect to Walla Walla Sweet Onions and to engage in such research and service activities which relate to the production, handling, or marketing of Walla Walla Sweet Onions as may be approved by the Secretary;

(f) To keep minutes, books, and records which clearly reflect all of the acts and transactions of the committee. Such minutes, books, and records shall be subject to examination at any time by the Secretary or the Secretary's authorized agent or representative;

(g) To make available to producers and handlers the committee voting record on recommended regulations and on other matters of policy;

(h) Prior to each fiscal period, to submit to the Secretary a budget of its proposed expenses for such fiscal period, together with a report thereon, and a recommendation as to the rate of assessment for such period;

(i) To cause its books to be audited by a competent accountant at least once each fiscal period, and at such other time as the committee may deem necessary or as the Secretary may require; the report of such audit shall show the receipt and expenditure of funds collected pursuant to this part; a copy of each such report shall be furnished to the Secretary, and a copy of each such report shall be made available at the principal office of the committee for inspection by producers and handlers: *Provided,* that confidential information shall be removed from all copies made available to the public; and

(j) To consult, cooperate, and exchange information with other onion marketing committees and other individuals or agencies in connection with all proper committee activities and objectives under this subpart.

Expenses and Assessments

§ 956.40 Expenses.

The committee is authorized to incur such expenses as the Secretary may find are reasonable and likely to be incurred by the committee for its maintenance and functioning, and to enable it to exercise its powers and perform its duties in accordance with the provisions of this part. The funds to cover such expenses shall be acquired in the manner prescribed in §§ 956.42 and 956.45.

§ 956.41 Budget.

Prior to each fiscal period and as may be necessary thereafter, the committee shall prepare an estimated budget of income and expenditures necessary for the administration of this part. The committee shall recommend a rate of assessment calculated to provide adequate funds to defray its proposed expenditures. The committee shall present such budget to the Secretary with an accompanying report showing the basis for its calculations.

§ 956.42 Assessments.

(a) The funds to cover the committee's expenses shall be acquired by the levying of assessments upon handlers as provided in this subpart. Each person who first handles Walla Walla Sweet Onions shall pay assessments to the committee upon demand, which assessments shall be in payment of such handler's pro rata share of the committee's expenses.

(b) Assessments shall be levied upon handlers, at rates established by the Secretary. Such rates may be established upon the basis of the committee's recommendations or other available information.

(c) At any time during, or subsequent to, a given fiscal period, the committee may recommend the approval of an amended budget and an increase in the rate of assessment. Upon the basis of such recommendations, or other available information, the Secretary may approve an amended budget and increase the assessment rate. Such increase in the assessment rate shall be applicable to all Walla Walla Sweet Onions which were handled by each handler thereof during such fiscal period.

(d) The payment of assessments for the maintenance and functioning of the committee may be required under this part throughout the period it is in effect, irrespective of whether particular provisions of this part are suspended or become inoperative.

(e) To provide funds for the administration of the provisions of this part during the initial fiscal period or the first part of a fiscal period when neither sufficient operating reserve funds nor sufficient revenue from assessments on the current season's shipments are available, the committee may accept payment of assessments in advance or may borrow money for such purposes.

(f) The committee may impose a late payment charge or an interest charge, or both, on any handler who fails to pay any assessment in a timely manner. Such time and the rates shall be recommended by the committee and approved by the Secretary.

§ 956.43 Accounting.

(a) All funds received by the committee pursuant to the provisions of this part shall be used solely for the purposes specified in this part.

(b) The Secretary may at any time require the committee, its members and alternate members, employees, agents, and all other such persons associated with the committee to account for all receipts, disbursements, funds, property, or records for which they are responsible. Whenever any person ceases to be a member, alternate member, employee, or agent of the committee, such person shall account for all receipts, disbursements, funds, property, and records pertaining to the committee's activities for which such person was responsible, deliver all property and funds in such person's possession to the committee, and execute such assignments and other instruments as may be necessary or appropriate to vest in the committee full title to all of the property, funds, and claims vested in such person pursuant to this part.

(c) The committee may make recommendations to the Secretary for one or more of the members thereof, or any other person, to act as a trustee for holding records, funds, or any other committee property during periods of suspension of this part, or during any period or periods when regulations are not in effect and, upon determining such action is appropriate, the Secretary may direct that such person or persons shall act as trustee or trustees for the committee.

§ 956.44 Excess funds.

If, at the end of a fiscal period, the assessments collected are in excess of expenses incurred, such excess shall be accounted for as follows:

(a) The committee, with approval of the Secretary, may establish an operating reserve and may carry over to subsequent fiscal periods excess funds in a reserve so established, except funds in the reserve shall not exceed the equivalent of approximately two fiscal period's budgeted expenses. Such reserve funds may be used:

(1) To defray any expenses authorized under this part;

(2) To defray expenses during any fiscal period prior to the time assessment income is sufficient to cover such expenses;

(3) To cover deficits incurred during any fiscal period when assessment income is less than expenses;

(4) To defray expenses incurred during any period when any or all provisions of this part are suspended or are inoperative; and

(5) To cover necessary expenses of liquidation in the event of termination of this part.

(b) Upon termination of this part, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate except that to the extent practicable, such funds shall be returned pro rata to the persons from whom such funds were collected.

(c) If such excess is not retained in a reserve as provided in paragraph (a) of this section, each handler entitled to a proportionate refund of the excess assessments collected shall be credited at the end of a fiscal period with such refund against the operations of the following fiscal period unless such handler demands payment thereof, in which event such proportionate refund shall be paid as soon as practicable.

§ 956.45 Contributions.

The committee may accept voluntary contributions but these shall be used only to pay expenses incurred pursuant to § 956.50. Such contributions shall be free from any encumbrances by the donor, and the committee shall retain complete control of their use.

Research and Development

§ 956.50 Research and development.

(a) The committee, with the approval of the Secretary, may establish or provide for the establishment of production research, marketing research and development, and marketing promotion projects, including paid advertising, designed to assist, improve, or promote the marketing, distribution, consumption, or efficient production of Walla Walla Sweet Onions. Any such project for the promotion and advertising of Walla Walla Sweet Onions may utilize an identifying mark, including but not limited to registered trademarks and logos, which shall be made available for use by all handlers in accordance with such terms and conditions as the committee, with the approval of the Secretary, may prescribe. The committee may register such logos with the Commissioner of Patents and Trademarks, U.S. Patent and Trademark Office. The expense of such projects shall be paid from funds collected pursuant to §§ 956.42 and 956.45.

(b) In recommending projects pursuant to this section, the committee shall give consideration to the following:

(1) The expected supply of Walla Walla Sweet Onions in relation to market requirements;

(2) The supply situation among competing onion areas and communities;

(3) The anticipated benefits from such projects in relation to their costs;

(4) The need for marketing research with respect to any market development activity; and

(5) Other relevant factors.

(c) If the committee concludes that a program of research and development should be undertaken, or continued, in any fiscal period, it shall submit the following for the approval of the Secretary:

(1) Its recommendations as to the funds to be obtained pursuant to §§ 956.42 and 956.45;

(2) Its recommendations as to any research projects; and

(3) Its recommendations as to promotion activity and paid advertising.

(d) Upon conclusion of each activity, but at least annually, the committee shall summarize and report the results of such activity to the Secretary.

(e) All marketing promotion activity engaged in by the committee, including paid advertising, shall be subject to the following terms and conditions:

(1) No marketing promotion, including paid advertising, shall refer to any private brand, private trademark, or private trade name;

(2) No promotion or advertising shall disparage the quality, use, value, or sale of like or any other agricultural commodity or product, and no false or unwarranted claims shall be made in connection with the product; and

(3) No promotion or advertising shall be undertaken without reason to believe that returns to producers will be improved by such activity.

Regulation

§ 956.61 Recommendation for regulations.

The committee shall recommend regulations to the Secretary whenever it deems it advisable, as provided in § 956.62. The committee also may recommend modification, suspension, or termination of any regulation, or amendments thereto, in order to facilitate the handling of Walla Walla Sweet Onions for the purposes authorized in § 956.63. The committee may also recommend amendment, modification, termination, or suspension of any regulation issued under this part.

§ 956.62 Container markings.

The committee may, with the approval of the Secretary, provide a method, through rules and regulations issued pursuant to this part, for fixing the marking of containers which may be used in the packaging or handling of Walla Walla Sweet Onions, including appropriate logo or other container markings to identify the contents thereof. Further, the committee may, with the approval of the Secretary, establish through rules and regulations such safeguards as may be necessary to ensure that such container marking requirements are in compliance with the rules and regulations.

§ 956.63 Handling for specified purposes.

Upon the basis of recommendations and information submitted by the committee, or other available information, the Secretary may issue special regulations, or modify, suspend, or terminate requirements in effect pursuant to §§ 956.42 and 956.62 or any combination thereof, in order to facilitate the handling of onions for the following purposes:

(a) Shipments of Walla Walla Sweet Onions for relief or to charitable institutions;

(b) Shipments of Walla Walla Sweet Onions for livestock feed;

(c) Shipments of Walla Walla Sweet Onions for planting and for plants;

(d) Shipments of Walla Walla Sweet Onions as salad onions;

(e) Shipments of Walla Walla Sweet Onions for all processing uses including, pickling, peeling, dehydration, juicing, or other processing;

(f) Shipments of Walla Walla Sweet Onions for disposal;

(g) Shipments of Walla Walla Sweet Onions for seed;

(h) Shipments of Walla Walla Sweet Onions for packing or storing within the production area or outside the production area, but within specified locations in the States of Oregon and Washington; and

(i) Shipments of Walla Walla Sweet Onions for other purposes which may be specified.

§ 956.64 Minimum quantities.

The committee, with the approval of the Secretary, may establish minimum quantities below which Walla Walla Sweet Onion shipments will be free from the requirements in, or pursuant to, §§ 956.42, 956.62, and 956.63, or any combination thereof.

§ 956.65 Notification of regulations.

The Secretary shall notify the committee of each regulation issued and of each amendment, modification, suspension, or termination thereof. The committee shall give reasonable notice thereof to handlers.

§ 956.66 Safeguards.

(a) The committee, with the approval of the Secretary, may prescribe adequate safeguards to prevent Walla Walla Sweet Onions shipped, pursuant to §§ 956.63 and 956.64, from entering channels of trade for other than the purpose authorized therefor.

(b) The committee, with the approval of the Secretary, may also prescribe rules and regulations governing the issuance, and the contents, of Certificates of Privilege, if such certificates are prescribed as safeguards by the committee. Such safeguards may include requirements that:

(1) Handlers shall first file applications with the committee to ship such Walla Walla Sweet Onions.

(2) Handlers shall pay the pro rata share of expenses provided by § 956.42 in connection with such Walla Walla Sweet Onions.

(3) Handlers shall obtain Certificates of Privilege from the committee prior to effecting the particular onion shipment.

(c) The committee may rescind any Certificate of Privilege, or refuse to issue any Certificate of Privilege, to any handler if proof is obtained that Walla Walla Sweet Onions shipped by the handler for the purposes stated in the Certificate of Privilege were handled contrary to the provisions of this part.

(d) The Secretary shall have the right to modify, change, alter, or rescind any safeguards prescribed and any certificates issued by the committee pursuant to the provisions of this section.

(e) The committee shall make reports to the Secretary as requested, showing the number of applications for such certificates, the quantity of Walla Walla Sweet Onions covered by such applications, the number of such applications denied and certificates granted, the quantity of Walla Walla Sweet Onions handled under duly issued certificates, and such other information as may be requested.

Reports

§ 956.80 Reports and recordkeeping.

Upon request of the committee, made with the approval of the Secretary, each handler shall furnish to the committee, in such manner and at such time as it may prescribe, such reports and other information as may be necessary for the committee to perform its duties under this part.

(a) Such reports may include, but are not necessarily limited to, the following:

(1) The acreage of Walla Walla Sweet Onions grown;

(2) The quantities of Walla Walla Sweet Onions received by such handler;

(3) The quantities of Walla Walla Sweet Onions disposed of by such handler;

(4) The disposition date of such Walla Walla Sweet Onions;

(5) The manner of disposition of such Walla Walla Sweet Onions; and

(6) The identification of the carrier transporting such Walla Walla Sweet Onions.

(b) All such reports shall be held under appropriate protective classification and custody by the committee, or duly appointed employees thereof, so that any information contained therein which may adversely affect the competitive position of any handler in relation to other handlers will not be disclosed. Compilations of general reports from data submitted by handlers is authorized, subject to the prohibition of disclosure of individual handler's identity or operations.

(c) Each handler shall maintain for at least two succeeding years such records of the Walla Walla Sweet Onions received and disposed of by such handler as may be necessary to verify reports submitted to the committee pursuant to this section.

Miscellaneous Provisions

§ 956.85 Termination or suspension.

(a) The Secretary may at any time terminate the provisions of this subpart by giving at least one day's notice by means of a press release or in any other manner which the Secretary may determine.

(b) The Secretary shall terminate or suspend the operations of any or all of the provisions of this subpart whenever it is found that such provisions do not tend to effectuate the declared policy of the act.

(c) The Secretary shall terminate the provisions of this subpart at the end of any fiscal period whenever it is found that such termination is favored by a majority of producers who, during a representative period, have been engaged in the production of Walla Walla Sweet Onions: Provided, That such majority has, during such representative period, produced for market more than fifty percent of the volume of such Walla Walla Sweet Onions produced for market, but such termination shall be announced at least 90 days before the end of the current fiscal period.

(d) Within six years of the effective date of this subpart the Secretary shall conduct a continuance referendum to ascertain whether continuance of this subpart is favored by producers. Subsequent referenda to ascertain continuance shall be conducted every six years thereafter. The Secretary may terminate the provisions of this part at the end of any fiscal period in which the Secretary has found that continuance of this subpart is not favored by a majority of producers who, during a representative period determined by the Secretary, have been engaged in the production for market of Walla Walla Sweet Onions in the production area. Such termination shall be announced on or before the end of the fiscal period.

(e) The provisions of this subpart shall, in any event, terminate whenever the provisions of the Act authorizing them cease to be in effect.

§ 956.87 Proceedings after termination.

(a) Upon the termination of the provisions of this subpart, the then functioning members of the committee shall continue as joint trustees, for the purpose of liquidating the affairs of the committee, of all funds and property then in the possession, or under control, of the committee, including claims for any funds unpaid or property not delivered at the time of such termination. Action by said trusteeship shall require the concurrence of a majority of the said trustees.

(b) The said trustees shall continue in such capacity until discharged by the Secretary; shall, from time to time, account for all receipts and disbursements and deliver all property on hand, together with all books and records of said committee and of the trustees, to such person as the Secretary may direct; and shall upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property, and claims vested in

said committee or the trustees pursuant to this subpart.

(c) Any person to whom funds, property, or claims have been transferred or delivered by the committee or its members pursuant to this section shall be subject to the same obligations imposed upon the members of the committee and upon the said trustees.

§ 956.88 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant to this subpart, or the issuance of any amendments to either thereof, shall not:

(a) Affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this subpart;

(b) Release or extinguish any violation of this subpart or of any regulations issued under this subpart; and

(c) Affect or impair any rights or remedies of the Secretary or of any other person with respect to any such violations.

§ 956.89 Compliance.

No handler shall handle Walla Walla Sweet Onions except in conformity to the provisions of this part.

§ 956.90 Right of the Secretary.

The members of the committee, including successors and alternates, and any agent or employee appointed or employed by the committee shall be subject to removal or suspension by the Secretary at any time. Each and every order, regulation, decision, determination, or other act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time. Upon such disapproval, the disapproved action of the committee shall be deemed null and void except as to acts done in reliance thereon or in compliance therewith prior to such disapproval by the Secretary.

§ 956.91 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this subpart shall cease upon the termination of this subpart, except with respect to acts done under and during the existence of this subpart.

§ 956.92 Agents.

The Secretary may, by designation in writing, name any person, including any officer or employee of the Government, or name any agency in the United States Department of Agriculture, to act as the Secretary's agent or representative in connection with any of the provisions of this part.

§ 956.93 Derogation.

Nothing contained in this part is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States to exercise any powers granted by the Act or otherwise, or, in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 956.94 Personal liability.

No member or alternate of the committee or any employee or agent thereof, shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any handler or to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate, employee, or agent, except for acts of dishonesty, willful misconduct, or gross negligence.

§ 956.95 Separability.

If any provision of this subpart is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this subpart, or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

§ 956.96 Amendments.

Amendments to this subpart may be proposed, from time to time, by the committee or by the Secretary.

Dated: May 19, 1995.

David R. Shipman,

Acting Deputy, Assistant Secretary, Marketing and Regulatory Programs.

[FR Doc. 95–12746 Filed 5–23–95; 8:45 am]

BILLING CODE 3410–02–P

federal register

Wednesday
May 24, 1995

Part V

Department of Education

Grants and Cooperative Agreements; Availability, etc.; Rehabilitation Research and Training Centers Program; Notices

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research

AGENCY: Department of Education.

ACTION: Notice of Final Funding Priorities for Fiscal Years 1995–1996 for Rehabilitation Research and Training Centers.

SUMMARY: The Secretary announces final funding priorities for certain Rehabilitation Research and Training Centers (RRTCs) under the National Institute on Disability and Rehabilitation Research (NIDRR) for fiscal years 1995–1996. The Secretary takes this action to focus research attention on areas of national need. These priorities are intended to improve outcomes for individuals with disabilities.

EFFECTIVE DATE: These priorities take effect on June 23, 1995.

FOR FURTHER INFORMATION CONTACT: David Esquith, U.S. Department of Education, 600 Independence Avenue, S.W., Switzer Building, room 3424, Washington, D.C. 20202–2601. Telephone (202) 205–8801. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–5516.

SUPPLEMENTARY INFORMATION: This notice contains four final priorities under the RRTC program: Independent living and disability policy; Management and services of Centers for Independent Living (CILs); Improved services for low-functioning deaf individuals; and Rehabilitation in long-term mental illness. These priorities support the National Education Goals that call for all Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Authority for the RRTC program of NIDRR is contained in section 204(b)(2) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 760–762). The Secretary may make awards through grants or cooperative agreements. Under the regulations for this program (see 34 CFR 352.32), the Secretary may establish research priorities by reserving funds to support particular research activities.

On November 15, 1994, the Secretary published a notice of proposed priorities in the **Federal Register** at 59 FR 59030. The Department of Education received a number of letters commenting on each of the priorities, as well as a large number of letters recommending additional priority areas. Modifications were made to the priorities as a result of those comments. The comments, and the Secretary's responses to them, are discussed in an appendix to this notice.

Note: This notice of final priorities does NOT solicit applications. A notice inviting applications under these competitions is published in a separate notice in this issue of the **Federal Register**.

Applicants have considerable latitude in proposing the specific research and related projects they will undertake to achieve the designated outcomes; however, the regulatory selection criteria for the program (34 CFR 352.31) state that the Secretary reviews the extent to which applicants justify their choice of research projects in terms of the relevance to the priority and to the needs of individuals with disabilities. The Secretary also reviews the extent to which applicants present a scientific methodology that includes reasonable hypotheses, methods of data collection and analysis, and a means to evaluate the extent to which project objectives have been achieved.

The Department is particularly interested in ensuring that the expenditure of public funds is justified by the execution of intended activities and the advancement of knowledge and, thus, has built this accountability into the selection criteria. Not later than three years after the establishment of any RRTC, NIDRR will conduct one or more reviews of the activities and achievements of the Center. In accordance with the provisions of 34 CFR 75.253(a), continued funding depends at all times on satisfactory performance and accomplishment.

General

The Secretary announces that the following requirements will apply to all of the RRTCs pursuant to the priorities:

Each RRTC must conduct an integrated program of research to develop solutions to problems confronted by individuals with disabilities.

Each RRTC must conduct a coordinated and advanced program of training in rehabilitation research, including training in research methodology and applied research experience, that will contribute to the number of qualified researchers working in the area of rehabilitation research.

Each Center must disseminate and encourage the use of new rehabilitation knowledge. They must make available all materials for dissemination or training in alternate formats to make them accessible to individuals with a range of disabling conditions.

Each RRTC must involve individuals with disabilities and, if appropriate, their family members, as well as rehabilitation service providers, in planning and implementing the research and training programs, in interpreting and disseminating the research findings, and in evaluating the Center.

Priorities

Under 34 CFR 75.105(c)(3) the Secretary gives an absolute preference to applications that meet one of the following priorities. The Secretary will fund under this competition only applications that meet one of these absolute priorities:

Priorities 1 and 2: Independent Living

Background

Independent Living (IL) programs operate from a philosophy of consumer control, self-help, advocacy, development of peer relationships and peer role models, and equal access of individuals with significant disabilities to society, programs, and activities. The IL philosophy stresses the concept of empowerment of individuals with disabilities to control their own lives through participation in service planning, management of their own personal assistants, informed decisionmaking, and self advocacy. In its 25-year history, "Independent Living" has been a philosophy, a social movement, and a service program. These priorities address all of these aspects of independent living, and propose investigations into new applications of independent living concepts, as well as studies and training related to the operations of the publicly-supported IL programs.

The 1992 Amendments to the Rehabilitation Act: established Statewide Independent Living Councils (SILCs) to jointly develop and sign the State plan for independent living; created a new definition of a CIL as a consumer-controlled, community-based, cross-disability, nonresidential, private non-profit agency that is designed and operated within a local community by individuals with disabilities and provides an array of independent living services; modified the State and Federal responsibilities for making grants to CILs; and specifically authorized advocacy services.

NIDRR has funded RRTCs in independent living since 1980. Current RRTCs focus on disability policy, IL management, and IL for underserved populations. The current Centers on policy and management will receive their final funding in fiscal year 1994. In order to determine the continued need for RRTCs in IL, and some possible research needs, NIDRR convened a two-day focus group of experts in IL research and administration in Washington in January, 1994. The following priorities are based largely on the work of this focus group as well as reports from the current research centers and input from other Federal agencies. Focus group participants raised issues for further investigation in the following areas of program operations: implementation of program standards; outcome measures and accountability; improved program services; reaching diverse populations; training, recruitment, and retention of staff; and effective operations of governing boards and SILCs.

The focus group also discussed a number of issues concerning new roles for CILs in societal developments such as violence, homelessness, and information technology, and in the formulation and implementation of policy in areas with particular implications for individuals with disabilities, such as the Americans with Disabilities Act (ADA) and the reform of the health care delivery system.

The RRTC on CIL management and services will be funded jointly by NIDRR and RSA and will be required to work closely with the RSA grantee providing training, technical assistance, and transition assistance to CILs under Part C of Title VII of the amended Rehabilitation Act.

Priority 1: Independent Living and Disability Policy

Under this priority, the Secretary supports an RRTC on independent living and disability policy that—(1) conducts research on policy barriers to achieving independent living in such areas as transportation, housing, and health care; (2) examines the role and effectiveness of CILs in increasing community options for independent living and the capacity of communities to meet the independent living needs of individuals with significant disabilities; and (3) identifies and provides training and information on effective strategies that CILS use to effect change.

In addition to activities proposed by the applicant to carry out these purposes, the center must conduct the following activities:

- Analyze CIL policies regarding activities to promote implementation of the ADA, and develop strategies that CILs might adopt, including an analysis of the implications and consequences of various options;
- Review CIL and vocational rehabilitation agency policies related to collaborations, and design strategies for innovative partnerships to promote employment outcomes for individuals with disabilities;
- Identify strategies for CILs to promote accessible generic community services for individuals with significant disabilities, including vulnerable individuals such as persons with disabilities who are homeless, who are at risk for societal abuse and violence, and those who are from minority backgrounds.
- Provide training and information to CILs, policymakers, administrators, and advocates on research findings and identified strategies.

Priority 2: Independent Living Center Management and Services

An RRTC on CIL management and services will conduct research and training activities and develop model approaches that will enhance the capacity of CILs to—(1) plan, manage, and evaluate program services, including the measurement of program outcomes and compliance with national standards; (2) provide appropriate services to cultural and linguistic minorities; (3) recruit, train, and retain appropriate staff; (4) develop effective governing boards, including appropriate staff relations; and (5) collaborate effectively with State Vocational Rehabilitation agencies to promote employment outcomes among individuals with disabilities. The RRTC will also conduct research and training activities to promote the effective operation of SILCs.

In addition to activities proposed by the applicant to carry out these purposes, the Center must conduct the following activities:

- Identify best practices and develop and test optimal programs for CILs in expanding services to youth with disabilities and in interfacing with education and transition programs to prepare youth for independent living;
- Review CIL funding patterns and analyze the impact on CILs of diverse funding sources, and design and test several options for generating funding from alternate sources, including those independent of public financing;
- Document the initial development, composition, and operation of the SILCs; identify effective operational practices, develop and provide training to a selected sample of SILCs, and evaluate the impact of this effort; and
- Coordinate activities with and provide instruments, curricula, and methodologies, as well as research findings, to the RSA technical assistance grantee under Part C of Title VII of the Rehabilitation Act.

Peer Support in the Rehabilitation of Long-Term Mental Illness

Background

Findings of the National Institute of Mental Health Epidemiological Catchment Area program are that more than 20 percent of all Americans have a diagnosable mental disorder in any given year. (Office of Technology Assessment, *Psychiatric Disabilities, Employment, and the Americans with Disabilities Act*, 1994). Of the population with mental disorders, 4 to 5 million adults are considered "seriously mentally ill" (Rutman, 1993). This priority focuses on that part of the population that has serious and persistent mental disorders that interfere with normal activities of daily life; the term "persons with long-term mental illness" (LTMI) is also commonly used to refer to this population.

A number of community-based programs, many of them operated by consumers, have developed in recent years offering vocational counseling, educational and training programs, job placement services, and ongoing peer support. These programs often are a low-cost augmentation of scarce community services. (Parrish, J., Center for Mental Health Services, 1994). The programs are, however, very difficult to evaluate (Goldkiang, D., American Journal of Community Psychiatry, October, 1991). Nevertheless, in order to identify those elements of community-based programs that are most effective in meeting the needs of individuals with LTMI, there is a need to evaluate the effectiveness of various models of peer support services in community-based programs (including those that are consumer-run) in: serving the most significantly disabled individuals; providing appropriate services for individuals from minority cultures; obtaining diverse funding sources; maintaining accountability; training peer service providers; providing an appropriate range and quality of services; providing crisis response services; and achieving optimal outcomes.

In addition, peer-support programs may have a significant role in crisis response and in minimizing the need for involuntary institutionalization or treatment. However, the leadership and the staff of organizations that rely on peer support require appropriate training and preparation if they are to be effective in crisis intervention.

The mental health field has become increasingly aware of the special concerns and unmet needs of women with LTMI. A recent study indicated

that 40 percent of the children in foster care in New York City have mothers with mental illness (New York State Office of Mental Health). Peer support is a potential resource to assist these women to develop the capacity to parent children and to obtain and maintain housing, employment, and social supports in the community (Salasin, S., Center for Mental Health Services, 1994).

There are strong indications that community-based peer support programs have not been as prevalent or as effective in minority cultures. Approaches to this problem include providing more training in cultural awareness and sensitivity (Cook, J. A., 1992) to existing community-based programs, and developing programs operated by or representing minority individuals and cultures.

The National Task Force for Rehabilitation and Employment of Persons with Psychiatric Disabilities called, in 1993, for improved dissemination of useful research findings and best practices to all appropriate target audiences. The Task Force also recommended that the findings be translated in ways that are useful for policymakers, administrators, consumers, and families of diverse cultural backgrounds. The mental health field currently does not make full use of computerized information systems to access knowledge about long-term mental illness, or to link researchers, service providers, trainers, educators, and consumers for on-line discussion and information sharing. (Nance, R., Illinois Dept. of Mental Health and Developmental Disabilities, 1993, letter to CMHS). With effective training and technical assistance, community-based programs and consumer organizations could use technology to access resources, establish electronic bulletin boards, and conduct conferences and training.

The National Institute on Disability and Rehabilitation Research proposes to support an RRTC on LTMI in collaboration with the Center for Mental Health Services of the Substance Abuse and Mental Health Services Administration. This RRTC on LTMI will focus on the role of community-based peer support in improving independence, employment, and community integration. Any Center to be funded under this priority must involve individuals with long-term mental illness and consumer-run and other community-based programs that use peer support in the planning, management, and operations of the Center and must consider the perspectives of individuals with LTMI in all aspects of its research and related programs.

Priority

An RRTC on peer support approaches to the rehabilitation of individuals with LTMI will study the most effective uses of peer support in: (1) Crisis management and prevention of hospitalization; (2) facilitating employment and return to work; (3) meeting the specific needs of women with LTMI; and (4) addressing the needs of individuals with LTMI from diverse cultural backgrounds.

In addition to activities proposed by the applicant to carry out these purposes, the center must conduct the following activities:

- Develop an evaluation protocol for community-based peer support programs, including those that are consumer-run, with outcome measures based on empirical data on factors such as recovery, independence, empowerment, employment, community integration, and cultural competency;
- Develop, test, and implement model training programs for preservice and inservice training of peers as service providers; and
- Develop and disseminate strategies to increase the effectiveness of information-sharing among and between consumer and provider organizations, researchers, and peer organizations.

Priority 4: Improved Outcomes for Low-Functioning Deaf Individuals

Background

Approximately one of every 1,000 infants is born with a hearing impairment that is severe enough to prevent the spontaneous development of spoken language, according to the *National Strategic Research Plan for Deafness and Hearing Impairment*, National Institute on Deafness and Other Communication Disorders (NIDCD), 1992. While many of these prelingually deaf and severely hearing-impaired individuals complete education and attain employment and independence, the report of the Commission on the Education of the Deaf (COED) indicates that the majority of deaf students do not go into any postsecondary education, and that many need further education or training to obtain appropriate employment (COED, Toward Equality: Education of the Deaf, 1988). Moreover, an estimated 100,000 deaf people are unemployed or seriously underemployed due to such problems as deficiencies in language performance and related psychological, vocational, and social underdevelopment. (COED, 1988, p. 69.)

These "low-functioning" deaf (LFD) individuals often do not have comprehensive rehabilitation training and related services accessible and available to them. This segment of the deaf population—sometimes called "low functioning", "low achieving", "multiply disabled deaf", or "traditionally underserved deaf"—requires long term and intensive habilitative and rehabilitative services and is the focus of this priority.

The deaf individuals to be addressed by this Center frequently exhibit deficits in vocational skills, independent living skills, manual and oral communication skills, social skills, and academic skills, and many have significant secondary disabilities. Many are from socioeconomically and culturally disadvantaged backgrounds, and many are from ethnic or linguistic minorities. Services to this population are scarce and fragmented. In addition to understanding the social, vocational, and educational implications of the disability, service providers must also be able to communicate with the individuals, often through less than optimal means, such as rudimentary sign language.

In 1990, NIDRR funded an RRTC on Traditionally Underserved Persons Who Are Deaf, located at the University of Northern Illinois, to study the parameters and service needs of this population. Funding for this Center ends in fiscal year 1994. Activities of this Center included a needs assessment, development of a model service program, outcome studies, qualitative and quantitative analyses and surveys, development of curriculum and training materials, conduct of training seminars, and provision of technical assistance. The new Center will have the benefit of the work of the previous Center on Traditionally Underserved Deaf Populations. The new Center will be required to coordinate its activities with related projects for this population funded by RSA and by the Office of Special Education Programs (OSEP), including activities supported by these agencies that target the needs of children, youth, and adults who are deaf-blind.

In January 1994, NIDRR convened a focus group of consumers and providers of services, researchers, and advocates to consider the issue of the need for ongoing research in the area of low-functioning deaf individuals and to identify specific questions. The input from the panel and other experts from the field has contributed to the decision to fund additional research to understand more fully the population of low-functioning deaf individuals, especially those with secondary disabilities, and to develop improved interventions and service systems for those individuals.

Priority

An RRTC on the special needs of low-functioning deaf individuals shall—(1) develop appropriate assessment techniques for this population; (2) evaluate the applicability of a variety of strategies to enhance the development of language and literacy skills in this population; and (3) identify the range of services and service resources necessary to meet the rehabilitation and independent living needs of this population and develop mechanisms for coordination among service agencies and across service systems to foster a comprehensive system of services to enhance their integration into the community. In addition to activities proposed by the applicant to carry out these purposes, the center must conduct the following activities.

- Identify and develop appropriate personnel training that will lead to the required competencies and train service providers to deliver enhanced services to this population; and
- Develop effective materials and media to enhance the dissemination of new knowledge on LFD to appropriate audiences, including LFD individuals and their families, independent living centers, educators, and health care practitioners.
- Coordinate its activities with related projects for this population funded by RSA and by the Office of Special Education Programs (OSEP), including activities supported by these agencies that target the needs of children, youth, and adults who are deaf-blind.

Applicable Program Regulations

34 CFR Parts 350 and 352.

Program Authority: 29 U.S.C. 760–762.

(Catalog of Federal Domestic Assistance Number 84.133B, Rehabilitation Research and Training Centers)

Dated: May 18, 1995.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

Appendix—Analysis of Comments and Changes

The Secretary received 17 letters of comment about the proposed priorities and 138 letters urging the establishment of various additional priorities. These comments are discussed in the order of the priorities to which they refer.

Independent Living—General

Comment: One commenter stated that all priorities should contain language stating that the SILCs must include equal representation of persons with cognitive and physical disabilities.

Discussion: The SILCs are appointed by the Governors according to statute and regulation that are not subject to governance by the NIDRR priorities.

Changes: None.

Comment: The same commenter recommended including language that would make clear that both the RRTC and "its Independent Living programs" must include both people with physical disabilities as well as people with cognitive disabilities.

Discussion: The CILs are chartered, governed, and staffed according to State and Federal statutes and regulations that are not subject to governance by NIDRR priorities. The Rehabilitation Act, as amended, requires that independent living centers supported by funds under the Act be "cross-disability" (Sec. 702).

Changes: None.

Comment: The same commenter suggested that one of the RRTC's activities should be analyzing issues related to independent and supported living for persons with mental retardation and developmental disabilities.

Discussion: NIDRR agrees that it is important to make independent living services available and relevant to individuals with cognitive, emotional, sensory, and physical disabilities. In fact, in 1993, NIDRR established a separate RRTC specifically to address the research and training aspects of expanding IL programs and concepts to those populations not traditionally served in CILs. That RRTC is located at the University of Kansas. "Supported living" is not a required subject of these Independent Living priorities. However, any applicant is free to address these issues within the general scope of either of these priorities.

Changes: None.

Comment: One commenter stated that the priorities related to independent living should emphasize improving collaboration between CILs and State vocational rehabilitation agencies to enhance employment outcomes and other common goals.

Discussion: The Secretary agrees that improving collaboration between CILs and State VC agencies is an important strategy in enhancing independent living for individuals with significant disabilities.

Changes: The Secretary has added an activity to each of the RRTCs on IL focusing on strategies for collaboration and innovative partnerships between CILs and State vocational rehabilitation agencies to promote employment outcomes.

Independent Living and Disability Policy

Comment: One commenter suggested that the name of the Center be changed to Independent Living and Public Policy because there are generic public policies affecting individuals with disabilities.

Discussion: The Secretary regards disability policy as any public policy that affects the "inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities of all ages." (Quotation from the Rehabilitation Act, as amended, Sec. 200, stating the purpose of NIDRR's research.) This definition includes "generic" public policy when the specific relevance to the outcomes of integration-independence-employment for persons for disabilities is demonstrated. As described in the response to the succeeding comment, the genesis of this RRTC was as a center to conduct research and training that would enhance independent living programs. The Secretary believes there is strong support for maintaining this as an RRTC on independent living.

Changes: None.

Comment: The same commenter recommended that other organizations serving people with disabilities should be included as appropriate research subjects and training audiences in this Center, since many of these single disability organizations have a superior record of serving individuals traditionally underserved by CILs.

Discussion: Again, the Secretary points to the genesis and justification of this as an RRTC on independent living. While the priority does not preclude gathering data from or providing training to, other disability organizations that may be able to contribute to strengthening CILs and independent living programs, the focus of this Center is on defining and disseminating the concept of independent living programs and on strengthening those programs, particularly the CILs, in their ability to promote and apply independent living concepts and to measure their effects. The priority does not preclude the Center from disseminating its products broadly as long as the focus on independent living programs is maintained.

Changes: None.

Comment: The same commenter also requested that the Department modify the third activity in the proposed priority, which requires the Center to analyze CIL policies regarding implementation of the Americans with Disabilities Act (ADA) and develop potential strategies for CILs, to add "other strategies to promote full community inclusion" after ADA. The commenter goes on to say that this entire activity could be a subset of the second activity under the priority.

Discussion: NIDRR has a particular interest, based on Congressional directives, in facilitating and analyzing the successful implementation of the ADA, and in assisting CILs to participate effectively in that process. The ADA reflects a statutory civil rights and antidiscrimination approach to achieving equal opportunity for individuals with disabilities. As such, it has been hailed as a landmark piece of legislation in disability, and is certainly different in many important respects from other approaches to inclusion. An applicant may propose to examine other inclusion strategies consistent with the stated purposes of the priority. However, NIDRR is continuing to require that the RRTC analyze CIL policies with respect to the ADA.

Changes: None.

Comment: The same commenter also suggested that the priority be modified to authorize the Center to "conduct research and provide training on a range of policy issues not limited to the content outlined above". The commenter suggests that

subjects such as health care reform, ADA, housing, or employment, (along with presumably as yet unidentified policy issues that could emerge) could take center stage and become important issues for the Center to examine.

Discussion: The Secretary reiterates that the focus of this priority is on policy barriers to achieving independent living and the role of CILs in increasing the capacity of communities to meet the IL needs of individuals with disabilities. The priority requires that the applicant address the areas that were given priority importance by the focus group, namely homelessness, abuse, violence, ADA, and diverse populations. However, other than that, the applicant may propose to conduct research on those policy barriers which the applicant believes are most critical.

Changes: None.

Comment: One commenter suggested that the Secretary define health care reform to include both medical and non-medical services that are funded through the public health care system, because of the dependence of persons with developmental disabilities on the health care system for non-medical services and supports.

Discussion: The final priority has been revised to clarify the focus of this RRTC. The RRTC must conduct research on policy barriers to independent living. While issues of the availability of health care may constitute policy barriers, the priority no longer specifically requires the RRTC to analyze issues related to health care reform.

Changes: Analysis of health care reform is no longer a requirement.

Independent Living Center Management and Services

Comment: One commenter recommended that the activity related to CIL services to linguistic, cultural, and ethnic minorities should be centered on CIL management activities related to diverse populations. The commenter urged that NIDRR maintain its current RRTC on IL programs for underserved populations.

Discussion: The inclusion of this activity in this RRTC does not imply a change in NIDRR's commitment to an RRTC on underserved populations. NIDRR would like to point out that a major emphasis in the NIDRR priority that established the Center for underserved populations was on those disability groups that are not traditionally served by CILs and independent living programs—such as persons with cognitive, emotional, and sensory disabilities, persons with HIV/AIDS, homeless individuals, youth, and elderly persons—as well as ethnic and linguistic minorities. Therefore, the Secretary believes it is appropriate to increase attention to improving the ability of IL programs to serve ethnic and linguistic minorities. The priority as proposed suggested that the RRTC do this through identification of best practices, and the development and testing of models for the delivery of IL services to ethnically diverse populations. Applicants for the RRTC may propose to focus on "management" aspects of enhancing the capacity of CILs to provide appropriate services, such as staffing, recruitment, staff training, evaluation, consumer participation, or training of ethnic minority groups in IL management. The suitability of the approach would be assessed by the peer reviewers for these applications.

Changes: None.

Improved Outcomes for Individuals With Long-Term Mental Illness

Comment: Several commenters were concerned that consumer-run organizations should not be excluded from participating in any resultant Center, or that, in fact, their participation should be encouraged.

Discussion: The Secretary agrees that consumer-run organizations should be involved as applicants, consortium-members, subcontractors, advisory board members, trainees, dissemination vehicles, or in other appropriate capacities, in any Center resulting from this priority.

Changes: The background statement to the priority has been amended to include a provision that any Center to be funded under this priority must involve consumers and consumer-run organizations in the planning, management, and operations of the Center and must consider the perspectives of individuals with LTMI in all aspects of its research and related programs.

Comment: Two commenters commented on the terminology used in the priority. The comments focused on the appropriateness of the terms "long-term mental illness", "LTMI", and "consumer".

Discussion: Among the few commenters who commented on this question of terminology, there were several competing and apparently inconsistent nomenclatures. Other commenters did not mention nomenclature. This inhibits any conclusion that there is a generally accepted terminology. Furthermore, the Rehabilitation Act, under which NIDRR is authorized, uses the term "individuals with mental illness". The Secretary does not believe there is sufficient cause to change the terms throughout the priority.

Changes: None.

Comment: One commenter suggested that the requirement for model training programs for culturally sensitive training for peer service providers could be extended to include models that include pre-service, inservice, and ongoing technical support.

Discussion: The Secretary believes that culturally sensitive training models are needed for all levels of peer support workers. However, the priority as written would permit applicants to focus on training for all parts of the continuum, or to focus on specific segments that they identify as needing more attention. The Secretary is reluctant to impose more requirements on the applicants, and prefers to allow the applicants to present their proposals for evaluation by the peer reviewers.

Changes: None.

Comment: Two commenters suggested that emphasis on parenting skills should be for men as well as women.

Discussion: The reference to parenting skills in the priority was provided as an example of an area for consideration in addressing the specific needs of women with LTMI. The topic of parenting skills is not itself a focus of the priority.

Changes: None.

Comment: One commenter suggested that the activity on special adaptations for minority populations should include focus on the role of family support, values, and expectations.

Discussion: The Secretary believes that applicants should have the opportunity to propose how they will study the most effective approaches to meeting the needs of individuals with LTMI from diverse cultural backgrounds.

Changes: None.

Comment: One commenter suggested that the activity on outcome evaluations should contain specific reference to operationally defining the emerging concepts of "recovery" and "community integration". Two commenters recommended that any outcomes to be measured should be defined through the perspectives of individuals with psychiatric disabilities, and that the RRTC should be encouraged to use the expertise of researchers with long-term mental illness in the development of outcome measures.

Discussion: The Secretary believes that these comments are important ones in the discussion of these issues. Operational definitions of outcome variables are likely to be essential to any evaluation strategy. However, the Secretary does not believe it is necessary to direct applicants on how to develop an evaluation methodology. The Secretary believes that it is important to include the perspectives of individuals with psychiatric disabilities in all activities, models, strategies, training programs, research methods, and dissemination strategies of the Center.

Changes: A sentence has been added to the Background statement emphasizing the importance of including the perspectives of individuals with long-term mental illness in all areas of the RRTC's work.

Comment: One commenter suggested that there needs to be a clear definition of "consumer-operated" programs.

Discussion: The Secretary is aware that there may be more than one definition or model for "consumer-operated" or "consumer-run" programs and acknowledges that the multiple terms used in the proposed priority may have caused some confusion. The nomenclature used in the final priority has been revised for consistency. However, the Secretary prefers to encourage each applicant to present the definition, or definitions, of consumer-run program and community-based program which it proposes to use, and the peer reviewers to evaluate the appropriateness of the definitions to the purposes of the priority.

Changes: The nomenclature in the background section and the final priority have been revised for consistency.

Comment: Several commenters made references to the desirability of involving consumer-run organizations as grantees, either by mandating that only such organizations could receive the grant or by specifying roles for consumer-run organizations in the grantee's organizational structure.

Discussion: Program regulations, which are discussed in the preamble to these priorities, and delineated in part in the notice soliciting applications for these Centers, describe the entities that are eligible to apply for RRTC grants. The Secretary does not intend to amend those regulations by further restricting eligibility for this Center grant. However, the Secretary believes that additional language inserted into the Background and the activities of the priority indicate the expectation that consumers and consumer organizations will have important roles in the RRTC.

Changes: The final paragraph of the Background statement has been amended to add "Any Center to be funded under this priority must involve consumers and consumer-run organizations in the planning, management, and operations of the Center and must consider the perspectives of individuals with LTMI in all aspects of its research and related programs."

Comment: Several commenters suggested modifications to the information dissemination components of the priority. Some questioned the appropriateness of the dissemination activity centered around the use of electronic information networks, since they believe that consumers, consumer organizations, and many other community-based service providers do not have access to the necessary electronic technology. One commenter recommended that the priority include an activity for developing a consumer information exchange.

Discussion: The Secretary believes that applicants should have the flexibility to propose how they will develop and disseminate strategies to increase the sharing of information.

Changes: The final activity in the priority has been amended to read "develop and disseminate strategies to increase the effectiveness of information-sharing among and between consumer and provider organizations, researchers, and peer organizations.

Improved Outcomes for Low-Functioning Deaf Individuals

Comment: One commenter stated that the RRTC should be required to address the needs of deaf-blind individuals who meet the profile of low-functioning.

Discussion: The Secretary points out that the priority requires the new Center to coordinate activities with related projects funded by RSA and OSEP, which do serve individuals who are deaf-blind. Applicants for a grant under this priority may address needs of deaf-blind individuals as the priority now exists. However, the Secretary does not require that they do so.

Changes: None.

Recommendations for Additional Priorities

Comment: Several commenters recommended that NIDRR establish RRTCs addressing the needs of individuals with End-Stage Renal Disease (ESRD); one recommended a center on assistive technology for inclusion, and a substantial number urged the establishment of an RRTC on community integration for individuals with mental retardation.

Discussion: The Secretary is considering these suggestions for future priorities. In part as a response to these comments, the Secretary published a Notice of Proposed Priority for a dissemination and technical assistance center on Facilitating Community Integration for Individuals with Mental Retardation in the **Federal Register** of March 31, 1995 (60 FR 16760). The Secretary also reminds all commenters that NIDRR sponsors a Field-Initiated Research program under which potential applicants may submit applications for research related to any area of disability and rehabilitation.

Changes: None.

[FR Doc. 95–12767 Filed 5–23–95; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.133B]

Office of Special Education and Rehabilitative Services; National Institute on Disability and Rehabilitation Research; Notice Inviting Applications for Certain New Awards Under the Rehabilitation Research and Training Centers (RRTC) for Fiscal Year (FY) 1995

NOTE TO APPLICANTS: This notice is a complete application package. The notice contains information, application forms, and instructions needed to apply for a grant under this competitions. The final priorities for the Rehabilitation Research and Training Centers (RRTC) program are published in this issue of the **Federal Register**. This consolidated application package includes the closing date, estimated funding, and application forms necessary to apply for an award under this program's competition. Potential applicants should consult the statement of the final priority published in this issue to ascertain the substantive requirements for their applications.

The estimated funding level in this notice does not bind the Department of Education to make awards or to any specific number of awards or funding levels.

This notice of final priorities supports the National Education Goal that calls for all Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities and citizenship.

APPLICATION NOTICE FOR FISCAL YEAR 1995, REHABILITATION RESEARCH AND TRAINING CENTERS CFDA NO. 84.133B

Funding priority	Deadline for transmittal of applications	Estimated number of awards	Estimated size of awards (per year)	Project period (months)
Independent living and disability policy	July 21, 1995 ..	1	$400,000	60
Independent living center management and services	July 21, 1995 ..	1	650,000	60
Peer support in rehabilitation of long-term mental illness	July 21, 1995 ..	1	545,000	60
Improved outcomes for low-functioning deaf individuals	July 21, 1995 ..	1	400,000	60

Applications available: May 25, 1995.

APPLICABLE REGULATIONS: (a) The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, 78, 80, 81, 82, 85, 86; (b) the regulations for this program in 34 CFR Parts 350 (amended April 5, 1995, (60 FR 17426)) and 352 (amended April 5, 1995, (60 FR 17429)); and (c) the notice of final priorities published elsewhere in this issue of the **Federal Register**.

PURPOSE OF PROGRAM: Rehabilitation Research and Training Centers conduct coordinated and advanced programs of rehabilitation research, provide training—including undergraduate, graduate, and in-service training—to research and other rehabilitation personnel, and assist individuals to more effectively provide rehabilitation services.

Selection Criteria: The Secretary uses the following selection criteria to evaluate applications under this program.

(a) *Relevance and importance of the research program* (20 points). The Secretary reviews each application to determine to what degree—

(1) The proposed activities are responsive to a priority established by the Secretary and address a significant need of a disabled target population and rehabilitation service providers;

(2) The overall research program of the Center includes appropriate interdisciplinary and collaborative research activities, is likely to lead to

new and useful knowledge in the priority area, and is likely to become a nationally recognized source of scientific knowledge; and

(3) The applicant demonstrates that all component activities of the Center are related to the overall objective of the Center, and will build upon and complement each other to enhance the likelihood of solving significant rehabilitation problems.

(b) *Quality of the research design* (35 points). The Secretary reviews each application to determine to what degree—

(1) The applicant proposes a comprehensive research program for the entire project period, including at least three interrelated research projects;

(2) The research design and methodology of each proposed activity are meritorious in that—

(i) The literature review is appropriate and indicates familiarity with current research in the field;

(ii) The research hypotheses are important and scientifically relevant;

(iii) The sample populations are appropriate and significant;

(iv) The data collection and measurement techniques are appropriate and likely to be effective;

(v) The data analysis methods are appropriate; and

(vi) The applicant assures that human subjects, animals, and the environment are adequately protected; and

(3) The application discusses the anticipated research results and demonstrates how those results would satisfy the original hypotheses and could be used for planning future research, including generation of new hypotheses where applicable.

(c) *Quality of the training and dissemination program (25 points).* The Secretary reviews each application to determine the degree to which—

(1) The proposed plan for training and dissemination provides evidence that research results will be effectively disseminated and utilized based on the identification of appropriate and accessible target groups; the proposed training materials and methods are appropriate; the proposed activities are relevant to the regional and national needs of the rehabilitation field; and the training materials and dissemination packages will be developed in alternate media that are usable by people with various types of disabilities.

(2) The proposed plan for training and dissemination provides for—

(i) Advanced training in rehabilitation research;

(ii) Training rehabilitation service personnel and other appropriate individuals to improve practitioner skills based on new knowledge derived from research;

(iii) Training packages that make research results available to service providers, researchers, educators, individuals with disabilities, parents, and others;

(iv) Technical assistance or consultation that is responsive to the concerns of service providers and consumers; and

(v) Dissemination of research findings through publication in professional journals, textbooks, and consumer and other publications, and through other appropriate media such as audiovisual materials and telecommunications.

(vi) Dissemination of research findings and other materials in appropriate formats and accessible media for use by individuals with various disabilities.

(d) *Quality of the organization and management* (20 points). The Secretary reviews each application to determine the degree to which—

(1) The staffing plan for the Center provides evidence that the project director, research director, training director, principal investigators, and other personnel have appropriate training and experience in disciplines required to conduct the proposed activities; the commitment of staff time is adequate to conduct all proposed activities; and the Center, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping conditions;

(2) The budgets for the Center and for each component project are reasonable, adequate, and cost-effective for the proposed activities;

(3) The facilities, equipment, and other resources are adequate and are appropriately accessible to persons with disabilities;

(4) The plan of operations is adequate to accomplish the Center's objectives and to ensure proper and efficient management of the Center;

(5) The proposed relationships with Federal, State, and local rehabilitation service providers and consumer organizations are likely to ensure that the Center program is relevant and applicable to the needs of consumers and service providers;

(6) The past performance and accomplishments of the applicant indicate an ability to complete successfully the proposed scope of work;

(7) The application demonstrates appropriate commitment and support by the host institution and opportunities for interdisciplinary activities and collaboration with other institutions; and

(8) The plan for evaluation of the Center provides for an annual assessment of the outcomes of the research, the impact of the training and dissemination activities on the target populations, and the extent to which the overall objectives have been accomplished.

ELIGIBLE APPLICANTS: Institutions of higher education and public or private agencies and organizations collaborating with institutions of higher education, including Indian tribes and tribal organizations, are eligible to apply for awards under this program.

Program Authority: 29 U.S.C. 762.

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # [Applicant must insert number and letter]), Washington, D.C. 20202–4725, or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. [Washington, D.C. time] on the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # [Applicant must insert number and letter]), Room #3633, Regional Office Building #3, 7th and D Streets, S.W., Washington, D.C.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) An applicant wishing to know that its application has been received by the Department must include with the application a stamped self-addressed postcard containing the CFDA number and title of this program.

(3) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and letter, if any—of the competition under which the application is being submitted.

Application Forms and Instructions

The appendix to this application is divided into four parts. These parts are organized in the same manner that the submitted application should be organized. These parts are as follows:

PART I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

PART II: Budget Form—Non-Construction Programs (Standard Form 524A) and instructions.

PART III: Application Narrative.

Additional Materials

Estimated Public Reporting Burden.

Assurances—Non-Construction Programs (Standard Form 424B).

Certification Regarding Lobbying, Debarment, Suspension, and Other Responsibility Matters and Drug-Free Work Place Requirements (ED Form 80–0013).

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form ED–80–0014) and instructions. (NOTE: ED Form ED–80–0014 is intended for the use of primary participants and should not be transmitted to the Department.)

Disclosure of Lobbying Activities (Standard Form LLL (if applicable) and instructions; and Disclosure Lobbying Activities Continuation Sheet (Standard Form LLL-A).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an *original signature.* No grant may be awarded unless a completed application form has been received.

FOR FURTHER INFORMATION CONTACT: In order to obtain an application package, contact William H. Whalen, U.S. Department of Education, 600 Independence Avenue S.W., Switzer Building, Room 3411, Washington, D.C. 20202. Telephone: (202) 205–9141. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8887.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 29 U.S.C. 760–762.

Dated: May 18, 1995.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

Appendix

Application Forms and Instructions

Applicants are advised to reproduce and complete the application forms in this Section. Applicants are required to submit an original and two copies of each application as provided in this Section.

Frequent Questions

1. Can I get an extension of the due date?

No! On rare occasions the Department of Education may extend a closing date for all applicants. If that occurs, a notice of the revised due date is published in the **Federal Register**. However, there are no extensions or exceptions to the due date made for individual applicants.

2. What should be included in the application?

The application should include a project narrative, vitae of key personnel, and a budget, as well as the Assurances forms included in this package. Vitae of staff or consultants should include the individual's title and role in the proposed project, and other information that is specifically pertinent to this proposed project. The budgets for both the first year and subsequent project years should be included.

If collaboration with another organization is involved in the proposed activity, the application should include assurances of participation by the other parties, including written agreements or assurances of cooperation. It is not useful to include general letters of support or endorsement in the application.

If the applicant proposes to use unique tests or other measurement instruments that are not widely known in the field, it would be helpful to include the instrument in the application.

Many applications contain voluminous appendices that are not helpful and in many cases cannot even be mailed to the reviewers. It is generally not helpful to include such things as brochures, general capability statements of collaborating organizations, maps, copies of publications, or descriptions of other projects completed by the applicant.

3. What format should be used for the application?

NIDRR generally advises applicants that they may organize the application to follow the selection criteria that will be used. The specific review criteria vary according to the specific program, and are contained in this Consolidated Application Package.

4. May I submit applications to more than one NIDRR program competition or more than one application to a program?

Yes, you may submit applications to any program for which they are responsive to the program requirements. You may submit the same application to as many competitions as you believe appropriate. You may also submit more than one application in any given competition.

5. What is the allowable indirect cost rate?

The limits on indirect costs vary according to the program and the type of application.

Applicants in the FIR, AND Innovation grants programs should limit indirect charges to the organization's approved rate. If the organization does not have an approved rate, the application should include an estimated actual rate.

6. Can profitmaking businesses apply for grants?

Yes. However, for-profit organizations will not be able to collect a fee or profit on the grant, and in some programs will be required to share in the costs of the project.

7. Can individuals apply for grants?

No. Only organizations are eligible to apply for *grants* under NIDRR programs.

8. Can NIDRR staff advise me whether my project is of interest to NIDRR or likely to be funded?

No. NIDRR staff can advise you of the requirements of the program in which you propose to submit your application. However, staff cannot advise you of whether your subject area or proposed approach is likely to receive approval.

9. How do I assure that my application will be referred to the most appropriate panel for review?

Applicants should be sure that their applications are referred to the correct competition by clearly including the competition title and CFDA number, including alphabetical code, on the Standard Form 424, and including the title of the priority to which they are responding.

10. How soon after submitting my application can I find out if it will be funded?

The time from closing date to grant award date varies from program to program. Generally speaking, NIDRR endeavors to have awards made within five to six months of the closing date. Unsuccessful applicants generally will be notified within that time frame as well. For the purpose of estimating a project start date, the applicant should estimate approximately six months from the closing date, but no later than the following September 30.

11. Can I call NIDRR to find out if my application is being funded?

No! When NIDRR is able to release information on the status of grant applications, it will notify applicants by letter. The results of the peer review cannot be released except through this formal notification.

12. If my application is successful, can I assume I will get the requested budget amount in subsequent years?

No. Those budget projections are necessary and helpful for planning purposes. However, a complete budget and budget justification must be submitted for each year of the project and there will be negotiations on the budget each year.

13. Will all approved applications be funded?

No. It often happens that the peer review panels approve for funding more applications than NIDRR can fund within available resources. Applicants who are approved but not funded are encouraged to consider submitting similar applications in future competitions.

BILLING CODE 4000-01-P

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐
A. State; B. County; C. Municipal; D. Township; E. Interstate; F. Intermunicipal; G. Special District; H. Independent School Dist.; I. State Controlled Institution of Higher Learning; J. Private University; K. Indian Tribe; L. Individual; M. Profit Organization; N. Other (Specify): _____

8. TYPE OF APPLICATION:
☐ New ☐ Continuation ☐ Revision
If Revision, enter appropriate letter(s) in box(es): ☐ ☐
A. Increase Award; B. Decrease Award; C. Increase Duration; D. Decrease Duration; Other (specify): _____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ . ☐☐☐
TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:		16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. Federal	$ .00	a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON: DATE _____
b. Applicant	$ .00	b. NO ☐ PROGRAM IS NOT COVERED BY E.O. 12372 ☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW
c. State	$ .00	
d. Local	$ .00	
e. Other	$ .00	
f. Program Income	$ .00	17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT? ☐ Yes If "Yes," attach an explanation. ☐ No
g. TOTAL	$ .00	

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: — "New" means a new assistance award. — "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. — "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11.	Enter a brief descriptive title of the project. if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12.	List only the largest political entities affected (e.g., State, counties, cities).
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

SF 424 (REV 4-88) Back

U.S. DEPARTMENT OF EDUCATION

BUDGET INFORMATION

NON-CONSTRUCTION PROGRAMS

OMB Control No. 1875-0102

Expiration Date: 9/30/95

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY

U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

ED FORM NO. 524

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED FORM NO. 524

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

Standard Form 424B (4-88)
Prescribed by OMB Circular A-102

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

SF 424B (4-88) Back

Public reporting burden for these collections of information is estimated to average 30 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding this burden estimate or any other aspect of these collections of information, including suggestions for reducing this burden, to: the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and to the Office of Management and Budget, Paperwork Reduction Project 1820-0027, Washington, D.C. 20503.

Rehabilitation Research and Training Centers (CFDA No. 84.133B)

34 CFR Parts 350 and 352.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV. 12/88), which is obsolete)

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 –

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about –

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will–

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3),

Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013, 6/90 (Replaces ED 80-0008, 12/89; ED Form GCS-008, (REV. 12/88); ED 80-0010, 5/90; and ED 80-0011, 5/90, which are obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change For Material Change Only: year _____ quarter ____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier ____, *if known:* Congressional District, *if known:*	Congressional District, *if known:*
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable:* _____
8. Federal Action Number, *if known:*	9. Award Amount, *if known:* $
10. a. Name and Address of Lobbying Entity (*if individual, last name, first name, MI*):	b. Individuals Performing Services (*including address if different from No. 10a*) (*last name, first name, MI*):

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment (*check all that apply*):	13. Type of Payment (*check all that apply*):
$ _____ ☐ actual ☐ planned	☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. Form of Payment (*check all that apply*): ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____
Print Name: _____
Title: _____
Telephone No.: _____ Date: _____

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Standard Form - LLL

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 mintues per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OMB
0348-0046

Reporting Entity: _____ Page ____ of ____

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[FR Doc. 95–12768 Filed 5–23–95; 8:45 am]
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Vol. 60, No. 100

Wednesday, May 24, 1995

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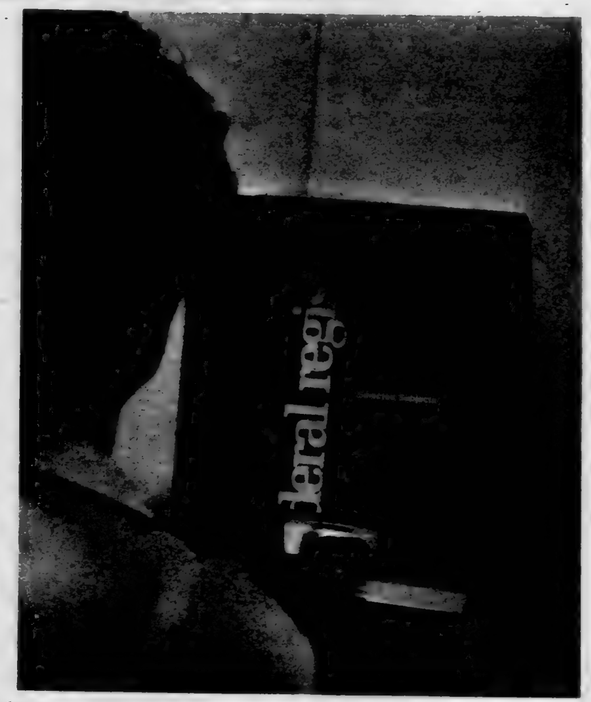
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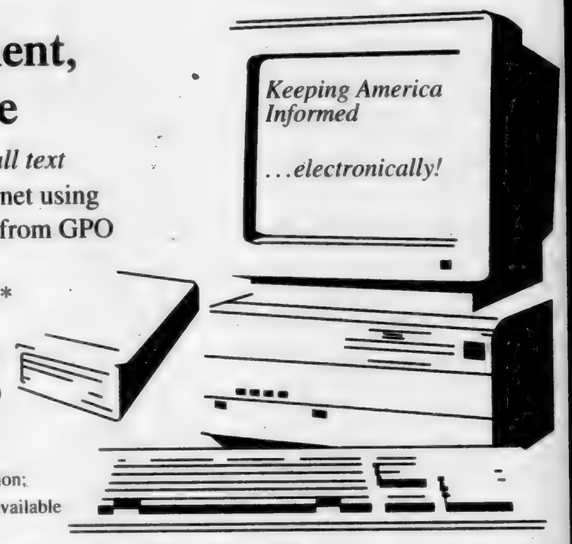
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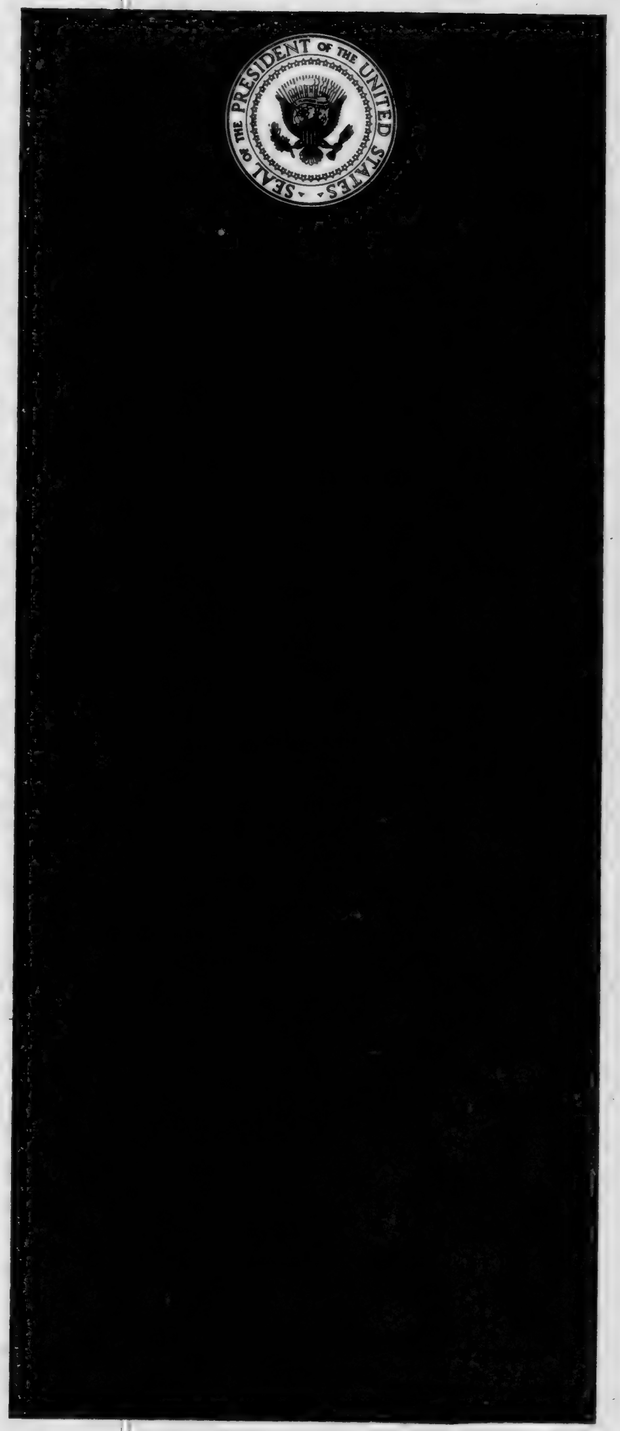
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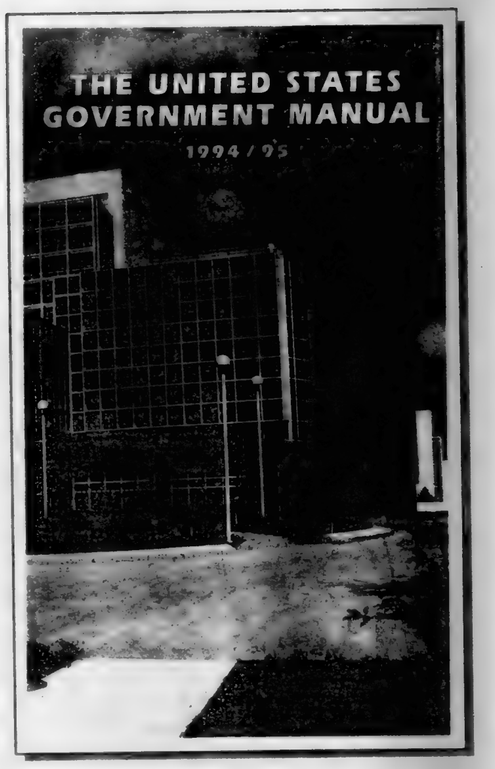
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Presidential Documents

Title 3—

The President

Proclamation 6804 of May 22, 1995

To Modify Duty-Free Treatment Under the Generalized System of Preferences and for Other Purposes

By the President of the United States of America

A Proclamation

1. Pursuant to section 504(c) of the Trade Act of 1974, as amended ("Trade Act") (19 U.S.C. 2464(c)), beneficiary developing countries, except those designated as least-developed beneficiary developing countries pursuant to section 504(c)(6) of the Trade Act, are subject to limitations on the preferential treatment afforded under the Generalized System of Preferences (GSP). I have determined, pursuant to sections 504(a)(1), (c)(1), and (c)(2) of the Trade Act (19 U.S.C. 2464(a)(1), (c)(1), and (c)(2)), that certain beneficiary developing countries should no longer receive preferential tariff treatment under the GSP with respect to certain eligible articles.

2. To reflect clearly the names of certain beneficiary developing countries under the GSP, I have decided that it is necessary and appropriate to modify general note 4 of the Harmonized Tariff Schedule of the United States (HTS).

3. In Proclamation No. 6767 of February 3, 1995, conforming changes with respect to certain articles under the GSP were omitted. I have decided that it is necessary and appropriate to modify the HTS to make such conforming changes.

4. Proclamation No. 6763 of December 23, 1994, implemented the Uruguay Round Agreements, including Schedule XX, with respect to the United States and incorporated in the HTS tariff modifications necessary and appropriate to carry out the Uruguay Round Agreements. Certain technical errors, including inadvertent omissions, were made in that proclamation. I have determined that it is necessary to reflect accurately the intended tariff treatment provided for in the Uruguay Round Agreements to modify certain provisions of the HTS as set forth in Annex III to this proclamation.

5. Section 604 of the Trade Act (19 U.S.C. 2483) authorizes the President to embody in the HTS the substance of the relevant provisions of that Act, and of other Acts affecting import treatment, and actions thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States, including but not limited to sections 504 and 604 of the Trade Act, do proclaim that:

(1)(a) To make certain conforming changes, the Rates of Duty 1-Special subcolumn for each of the HTS subheadings enumerated in Annex I(A) to this proclamation is modified: (i) by deleting the symbol "A*" in parentheses, and (ii) by inserting the symbol "A" in lieu thereof.

(b) To provide that one or more countries should no longer be treated as a beneficiary developing country with respect to an eligible article for purposes of the GSP, the Rates of Duty 1-Special subcolumn for each of the HTS provisions enumerated in Annex I(B) to this proclamation is modified: (i) by deleting the symbol "A" in parentheses, and (ii) by inserting the symbol "A*" in lieu thereof.

(2) To reflect clearly the names of certain beneficiaries and to provide that one or more countries are no longer to be treated as beneficiary developing countries with respect to an eligible article for purposes of the GSP, general note 4 to the HTS is modified as provided in Annex II to this proclamation.

(3) The HTS is modified as provided in Annex III to this proclamation.

(4) Any provisions of previous proclamations and Executive orders inconsistent with the provisions of this proclamation are hereby superseded to the extent of such inconsistency.

(5)(a) The modifications made by Annexes I and II to this proclamation shall be effective with respect to articles both: (i) imported on or after January 1, 1976, and (ii) entered, or withdrawn from warehouse for consumption, on or after July 1, 1995.

(b) The modifications made by Annex III to this proclamation shall be effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the dates specified in such annex.

IN WITNESS WHEREOF, I have hereunto set my hand thistwenty-second day of May, in the year of our Lord nineteen hundred and ninety-five, and of the Independence of the United States of America the two hundred and nineteenth.

William J. Clinton

Billing Code 3195-01-P

Annex I

Modification in the HTS of an Article's Preferential Tariff Treatment under the GSP

Effective with respect to articles both: (i) imported on or after January 1, 1976, and (ii) entered, or withdrawn from warehouse for consumption, on or after July 1, 1995:

(A). For the following HTS subheadings, in the Rates of Duty 1-Special subcolumn, delete the symbol "A*" and insert an "A" in lieu thereof:

3909.10.00	8419.90.10	
4011.91.50	8517.30.15	
8419.19.00		

(B). For the following HTS provisions, in the Rates of Duty 1-Special subcolumn, delete the symbol "A" and insert an "A*" in lieu thereof:

0304.20.50	0813.40.10	2208.90.10	6501.00.60	8483.50.40
0703.10.20	0813.40.80	2208.90.70	7002.10.20	8517.82.40
0708.10.20	1106.30.20	2309.90.70	7106.92.00	8519.21.00
0708.10.40	1519.11.00	2401.10.21	7109.00.00	8519.31.00
0709.10.00	1519.12.00	2401.10.29	7113.20.21	8519.99.00
0709.20.10	1601.00.40	2401.20.45	7114.19.00	8521.10.90
0710.22.15	1604.14.50	2401.20.55	7115.90.20	8527.90.90
0710.29.05	1604.16.30	2516.90.00	7319.20.00	8528.10.04
0710.29.30	1604.30.20	3920.93.00	7407.29.15	8528.10.11
0710.80.50	1605.10.05	4006.10.00	7603.10.00	8528.10.13
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0711.30.00	1902.11.40	4205.00.60	7614.90.50	9006.53.00
0711.40.00	2005.80.00	4412.19.30	7615.10.10	9009.12.00
0714.10.00	2007.99.40	4412.19.40	8107.90.00	9018.11.60
0714.20.00	2007.99.48	4412.99.40	8112.11.60	9102.29.04
0714.90.10	2008.19.30	4421.90.10	8112.91.50	9303.90.80
0802.50.20	2008.50.20	4823.90.20	8213.00.60	9401.90.15
0802.50.40	2008.99.28	5209.51.30	8401.10.00	9506.61.00
0804.50.80	2008.99.35	5307.20.00	8402.20.00	9606.29.20
0811.20.20	2106.90.52	5607.30.20	8414.90.30	9614.20.60
0811.20.40	2202.90.36	5609.00.20	8419.90.20	9614.20.80
0811.90.50	2202.90.37	5702.99.20	8450.90.40	
0811.90.55	2207.10.30	5703.90.00	8469.10.80	

Annex II

Modifications to General Note 4 of the HTS

Effective with respect to articles both: (i) imported on or after January 1, 1976, and (ii) entered, or withdrawn from warehouse for consumption, on or after July 1, 1995.

(A). General note 4(a) is modified by:
(1). deleting "Each of the former republics of the Socialist Federal Republic of Yugoslavia other than Serbia and Montenegro" from the list of independent countries; and
(2). inserting the following countries in alphabetical order in the list of independent countries--

Bosnia and Hercegovina
Croatia
Macedonia, Former Yugoslav Republic of
Slovenia

Annex II (continued)

(B). General note 4(d) is modified by:

(1). adding in numerical sequence, the following HTS subheadings and countries set out opposite them:

0304.20.50	Argentina	4202.22.35	Philippines
0703.10.20	Chile	4205.00.60	Argentina
0708.10.20	Guatemala	4412.19.30	Russia
0708.10.40	Guatemala	4412.19.40	Indonesia
0709.10.00	Chile	4412.99.40	Indonesia
0709.20.10	Peru	4421.90.10	Honduras
0710.22.15	Guatemala	4823.90.20	Philippines
0710.29.05	Turkey	5209.51.30	India
0710.29.30	Dominican Republic	5307.20.00	India
0710.80.50	Dominican Republic	5607.30.20	Philippines
0710.80.65	Guatemala	5609.00.20	Philippines
0710.80.93	Guatemala	5702.99.20	India
0711.30.00	Turkey	5703.90.00	India
0711.40.00	Sri Lanka	6501.00.60	Czech Republic
0714.10.00	Costa Rica	7002.10.20	Malaysia
0714.20.00	Dominican Republic	7106.92.00	Chile
0714.90.10	Costa Rica	7109.00.00	Chile
0802.50.20	Turkey	7113.20.21	Oman
0802.50.40	Turkey	7114.19.00	Chile
0804.50.80	Thailand	7115.90.20	Argentina
0811.20.20	Chile	7319.20.00	Malaysia
0811.20.40	Chile	7407.29.15	Chile
0811.90.50	Costa Rica	7603.10.00	Bahrain
0811.90.55	Guatemala	7604.10.50	Russia
0813.40.10	Thailand	7614.90.20	Venezuela
0813.40.80	Thailand	7614.90.50	Venezuela
1106.30.20	Ecuador	7615.10.10	Thailand
1519.11.00	Malaysia	8107.90.00	Bulgaria
1519.12.00	Malaysia	8112.11.60	Kazakhstan
1601.00.40	Brazil	8112.91.50	Chile
1604.14.50	Thailand	8213.00.60	Brazil
1604.16.30	Morocco	8401.10.00	Russia
1604.30.20	Russia	8402.20.00	Colombia
1605.10.05	Thailand	8414.90.30	Slovenia
1702.90.35	Belize	8419.90.20	Brazil
1703.90.30	Lebanon	8450.90.40	Brazil
1902.11.40	Thailand	8469.10.90	Indonesia
2005.80.00	Thailand	8483.50.40	Malaysia
2007.99.40	Thailand	8517.82.40	Thailand
2007.99.48	Argentina	8519.21.00	Malaysia
2008.19.30	Turkey	8519.31.00	Malaysia
2008.50.20	Argentina	8519.99.00	Malaysia
2008.99.28	Turkey	8521.10.90	Malaysia
2008.99.35	Thailand	8527.90.90	Philippines
2106.90.52	Philippines	8528.10.04	Hungary
2202.90.36	Colombia	8528.10.11	Malaysia
2202.90.37	Dominican Republic	8528.10.13	Malaysia
2207.10.30	Ecuador	8528.10.34	Malaysia
2208.90.10	Trinidad and Tobago	8802.50.90	Russia
2208.90.70	Russia	9006.53.00	Malaysia
2309.90.70	Hungary	9009.12.00	Thailand
2401.10.21	Dominican Republic	9018.11.60	Argentina
2401.10.29	Honduras	9102.29.04	Philippines
2401.20.45	Indonesia	9303.90.80	Russia
2401.20.55	Indonesia	9401.90.15	Czech Republic
2516.90.00	South Africa	9506.61.00	Philippines
3920.93.00	India	9606.29.20	Thailand
4006.10.00	Brazil	9614.20.60	Turkey
4104.39.20	Thailand	9614.20.80	Turkey

Annex II (continued)

(B). (con.):

(2). adding, in alphabetical order, the country set out opposite the following HTS subheadings:

1701.99.05	Colombia	2917.14.10	Brazil
1701.99.10	Colombia	2917.37.00	Romania
2804.29.00	Ukraine	2933.29.45	Slovenia
2805.40.00	Russia	2933.40.08	Hungary
2825.30.00	South Africa	2933.71.00	Russia
2825.70.00	Chile	2938.10.00	Brazil
2840.11.00	Turkey	3806.30.00	Argentina
2843.21.00	Chile	3823.90.40	Malaysia
2903.14.00	Brazil	4106.19.30	Pakistan
2903.23.00	Brazil	4106.20.60	Pakistan
2905.11.20	Trinidad and Tobago	4107.90.60	South Africa
2907.15.10	Russia	7202.21.10	Macedonia, Former Yugoslav Republic of
2910.20.00	Brazil		
2915.34.00	Venezuela	7403.12.00	Peru
2915.35.00	Venezuela	7605.11.00	Russia

Annex III

Modifications to the HTS

Section A. Effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after January 1, 1995.

(1). General note 4(d) is modified by deleting "2921.43.18 India" and "2924.29.46 India" and by inserting "2921.43.19 India" and "2924.29.47 India" in numerical sequence.

(2). General note 4(d) is modified by deleting "2930.40.00 India", "2933.51.10 India", "2934.30.08 India", "2934.30.15 India" and "9504.20.60 Brazil" from such note.

(3). General note 4(d) is modified by inserting "2935.00.32 India" in numerical sequance in such note.

(4). The Rates of Duty 1-Special subcolumn for subheadings 0202.30.02 and 0202.30.10 is modified by inserting, in alphabetical order, the symbol "A" in the parentheses following the Free rate of duty in such subcolumn.

(5). The superior text immediately preceding subheading 9904.04.59 is deleted and the following "Provided for in subheadings 0404.10.15, 1517.90.60, 1704.90.58, 1806.20.82, 1806.20.83, 1806.32.70, 1806.32.80, 1806.90.08, 1806.90.10, 1901.20.15, 1901.20.50, 2106.90.66 or 2106.90.87" is inserted in lieu thereof.

Section B. For the following subheading, the Rates of Duty 1-General subcolumn is modified on January 1 of each year by deleting the existing general rate of duty and inserting in lieu thereof the rate of duty indicated in the table below for such year.

HTS subheading	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004
3823.90.46	16.8%	15.7%	14.6%	13.4%	12.2%	11.1%	10%	8.8%	7.6%	6.5%

[FR Doc. 95-13019
Filed 5-23-95; 3:00 pm]
Billing code 3190-01-C

Presidential Documents

Memorandum of May 19, 1995

Delegation of Responsibilities Under Section 509 of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 (Public Law 103–236)

Memorandum for the Secretary of Defense

By the authority vested in me by the Constitution and laws of the United States of America, including section 301 of title 3 of the United States Code, I hereby delegate to the Secretary of Defense the functions conferred upon the President by section 509 of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 (Public Law 103–236), to transfer, with the concurrence of the Secretary of State, to the Republic of Korea, in return for concessions to be negotiated by the Secretary of Defense, any or all of the items described in paragraph (2) of section 509 of that Act, subject to the conditions, requirements and limitations set forth in section 509 of said Act.

Any reference in this delegation of authority to any Act shall be deemed to be a reference to such Act as amended from time to time.

The authority delegated to the Secretary of Defense may be redelegated within the Department of Defense.

You are authorized and directed to publish this memorandum in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, May 19, 1995.

[FR Doc. 95–13041
Filed 5–23–95; 4:00 pm]
Billing code 5000–04–M

Rules and Regulations

Federal Register
Vol. 60, No. 101
Thursday, May 25, 1995

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 300 and 319

[Docket No. 91–074–6]

RIN 0579–AA47

Importation of Logs, Lumber, and Other Unmanufactured Wood Articles

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are establishing comprehensive regulations concerning imported unmanufactured wood articles. The new regulations will affect persons importing logs, lumber, bark chips, wood chips, certain wood packing materials, and other unmanufactured wood articles. We are also amending several existing regulations to remove provisions concerning the importation of certain wood articles, and to state that such articles will instead be covered under the new regulations. We are also incorporating by reference Agriculture Handbook 188, the "Dry Kiln Operator's Manual," which contains treatments authorized by this final rule. We are taking these actions because there is increased interest in importing large volumes of unmanufactured wood articles into the United States, and prohibitions and restrictions are necessary to eliminate any significant plant pest risk associated with importing these articles.

DATES: Final rule effective August 23, 1995. The Director of the Office of the Federal Register approved the incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 on August 23, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Richard L. Orr, Senior Entomologist, APHIS, Policy and Program Development, Planning and Risk Analysis Systems, 4700 River Road Unit 117, Riverdale, MD 20737–1238, 301–734–8939.

SUPPLEMENTARY INFORMATION:

Background

The Animal and Plant Health Inspection Service (APHIS) is establishing comprehensive regulations to eliminate any significant plant pest risks presented by the importation [1] of logs, lumber, and other unmanufactured wood articles.

A changing national and world economy has recently increased the incentives to import wood that may present a significant increase in the risk of plant pest introduction into the United States. An example of this change is the interest of sawmills and other wood processors in utilizing foreign sources of wood to offset expected harvest reductions in the United States, or to provide raw materials for their facilities at prices competitive with or better than domestic prices.

Trees produced in many foreign locations are attacked by a wide variety of exotic plant pests and pathogens that do not occur in this country. Logs and other unmanufactured wood articles imported into the United States could pose a significant hazard of introducing plant pests and pathogens detrimental to agriculture and to natural, cultivated, and urban forest resources. Plant pests and pathogens introduced into the United States in the past, such as the gypsy moth and the agents of Dutch elm disease and chestnut blight, have caused billions of dollars of damage to United States forest and plant resources.

Until recently, the quantity and variety of unmanufactured wood imported were very limited, and there was little need to develop regulations specifically to address such imports. With few exceptions (see the discussion below of interim regulations allowing importation of certain logs from Chile and New Zealand), APHIS has been dealing with such imports only by detaining shipments at ports of first arrival for inspection, and ordering further action if warranted pursuant to the Federal Plant Pest Act and regulations issued under that Act (7 CFR part 330). In addition, APHIS has prohibited the entry into the United States of logs from the former Soviet Far East and Siberia because a detailed plant pest risk assessment found that dangerous plant pests could occur in such logs and may be introduced with them.

However, when large volumes of wood imports are involved, inspection at the port of first arrival without other conditions relating to the wood imports is not practical or adequate for preventing the introduction of plant pests associated with imported wood. Interest in importing logs and other unmanufactured wood articles from various countries is increasing rapidly toward a point where inspection and control activities solely at the port of first arrival will not be feasible. There is currently an intense commercial interest in developing a long-term industry in the Pacific Northwest for importing and processing logs from foreign countries. There is also potential for increased log and other unmanufactured wood article imports into other areas of the United States.

Interim Rules Affecting Certain Logs From Chile and New Zealand

An interim rule published in the **Federal Register** on February 16, 1993, and effective January 19, 1993 (58 FR 8524–8533, Docket No. 91–074–4), established importation requirements for Monterey pine and Douglas-fir logs from New Zealand. Plant pest risks associated with importing these articles, and import requirements that would reduce these risks to insignificant levels, were identified early in the course of developing comprehensive wood import regulations. Therefore, to reduce these plant pest risks as soon as possible, we established regulatory requirements in 7 CFR 319.40–1 through 319.40–8 for certain logs from New Zealand.

A second interim rule published in the **Federal Register** on November 9, 1993 (58 FR 59348–59353, Docket No. 91–074–5), and effective November 2, 1993, established importation requirements for Monterey pine logs from Chile. This interim rule applied the same requirements to Monterey pine logs from Chile that the first interim rule applied to Monterey pine and Douglas-fir logs from New Zealand.

[1] Throughout this document, the words "import" and "importation" are used to mean moving or bringing articles *into the territorial limits of the United States.*

This final rule replaces the regulations established by the interim rules with comprehensive regulations affecting importation of unmanufactured wood articles from all places, including Chile and New Zealand. The provisions contained in this rule for Monterey pine logs from Chile, and for Monterey pine and Douglas-fir logs from New Zealand are essentially the same as the requirements imposed by the interim rule, except that the interim rule used slightly different definitions due to its limited scope.

Proposed Rule

On January 20, 1994, we published a document in the **Federal Register** (59 FR 3002–3029, Docket No. 91–074–3) proposing to replace the interim regulations, "Subpart—Logs from Chile and New Zealand," with a new "Subpart—Logs, Lumber, and Other Unmanufactured Wood Articles" containing prohibitions and restrictions concerning imported unmanufactured wood articles.

The proposed rule, and this final rule, are based on an approach that gives importers three complementary options for importing regulated articles. These are:

(1) If the regulations contain specific requirements for importing a specific article from a specific country or area, you may import the article by complying with those requirements. Examples of this option include the importation of Monterey pine logs and raw lumber from Chile and New Zealand in accordance with the requirements of § 319.40–5, "Importation and entry requirements for specified articles." We intend to add more articles, countries or areas from which articles may be imported, and importation requirements to this section as new requests to import various articles are evaluated and approved.

(2) If the regulations do not contain specific requirements for importing the article you wish to import, or if you believe the article may be safely imported under less stringent conditions than the regulations require, you may submit an application for a permit to import the article, and describe in the application information about the article's origin, processing, treatment, and handling. We will evaluate the permit request, conducting plant pest risk assessments as necessary, and if we determine that the article may be safely imported under conditions not already in the regulations, we will institute rulemaking to add the appropriate articles and conditions to § 319.40–5, "Importation and entry requirements for specified articles."

(3) If the regulations do not contain specific requirements for importing the article you wish to import, you may wish to import the article before there is time to complete plant pest risk assessments and add the article and the necessary specific importation requirements to the regulations. In this case, you may import the article by complying with one of the universal importation options in § 319.40–6. These universal options employ heat treatment and other conditions for importing logs and lumber not otherwise enterable. These universal options are relatively stringent, because they must eliminate the spectrum of potential plant pests and address risks that have not been characterized. The universal options are designed to give importers a way to import articles that would otherwise be prohibited until detailed plant pest risk assessments are completed. Whenever feasible, importers may choose to employ universal options while plant pest risk assessments and rulemaking are underway to establish less stringent requirements for the articles they wish to import. Importers of some articles may find that complying with a universal option is the most feasible and cost-effective way to import their articles.

Comments on the Proposed Rule

We solicited comments concerning our proposal for a 90-day comment period ending April 20, 1994. We received 56 comments by that date. Eleven were from companies and industrial associations involved in the harvesting and importation of logs and other wood products, or the manufacturing of wood products that could be derived from such imports, or the sale of products or processes used in such manufacturing. Eleven comments were from environmental organizations. Six comments were from universities. Four comments were from State agencies involved in forestry or agriculture. Four comments were from agencies of the Canadian government, and one from the Delegation of the Commission of the European Communities. National associations representing Federal and State employees involved in forestry, American growers of nursery stock, and interested members of the public also submitted comments.

We carefully evaluated these comments. While most supported implementing regulations addressing the importation of wood, many raised questions about how to do so in an optimally effective manner. These comments are discussed below in detail.

In response to the comments, APHIS is making eight changes to the proposed requirements. These changes are:

1. *Change the standard for heat treatment and heat treatment with moisture reduction from 56 °C for 30 minutes to 71.1 °C for 75 minutes.* This change is in response to several commenters who recommended that APHIS use 71.1 °C for 75 minutes as reported in the Forest Service's Scientific Panel Review of January 10, 1992—Proposed Test Shipment Protocol for Importing Siberian Larch Logs. Upon reviewing this research and our data from the proposal supporting a lesser temperature-time combination, we believe we were in error in believing that the proposed heat treatment would effectively eliminate all plant pests of concern. Specifically, a heat treatment of 56 °C for 30 minutes could allow various harmful fungi to survive. Research reports show that various fungi in wood can survive 1 to several hours of heat treatment at temperatures ranging from 56 °C to 70 °C, but are destroyed by a treatment of 71.1 °C for 75 minutes. The heat treatment required by the regulations must be able to effectively destroy all potentially dangerous fungi. Therefore, we are changing the requirements for heat treatment and heat treatment with moisture reduction in § 319.40–7 (c) and (d) to specify 71.1 °C for 75 minutes. We will allow heat treatment at lower temperatures only in specific kiln drying processes where the fungicidal action of the heat is extended over a long period of time and is complemented by moisture reduction (see below).

2. *Allow kiln drying conducted in accordance with acceptable industry practices to qualify as heat treatment with moisture reduction, in lieu of a specific temperature-time combination.* As proposed, heat treatment with moisture reduction had to raise the temperature at the center of the treated article to 56 °C for 30 minutes. If we changed this provision consistent with the above change in the temperature and time of heat treatments (i.e., 71.1 °C for 75 minutes), then most articles kiln dried according to industry practices would not qualify as heat treated with moisture reduction, even though they meet the dryness standard of the regulations (a moisture content of 20 percent or less, as specified in § 319.40–7(d)).

In fact, research shows that while some fungi survive temperatures between 56 °C and 70 °C for relatively short periods, all harmful fungi are destroyed by kiln drying that is conducted according to standard industry practice, which often dries wood at lower temperatures over a period of 1 to many days, reducing the moisture content eventually to 20 percent or less.

In summary, heat treatment with moisture reduction is an effective treatment if it is employed in either of two ways. It may reduce the moisture content of the article quickly, by employing a temperature of 71.1 °C for 75 minutes or more; or, it may reduce the moisture content more slowly by employing standard industrial dry kiln practices using a lower temperature.

Several commenters suggested that to allow industry to use commonly employed kiln drying techniques to the extent they are effective, we should modify the requirement for heat treatment with moisture reduction. They cited a publication of the Forest Service which the wood industry relies on to specify acceptable kiln drying practices. This publication is the Dry Kiln Operator's Manual, Agriculture Handbook 188.

We agree with these comments, and are changing the requirement for heat treatment with moisture reduction in § 319.40–7(d) to provide that heat treatment with moisture reduction may employ:

1. Kiln drying conducted in accordance with the schedules prescribed for the regulated article in the Dry Kiln Operator's Manual, Agriculture Handbook 188, which is incorporated by reference at § 300.1 of this chapter; or,

2. Dry heat, exposure to microwave energy, or any other method that raises the temperature of the center of each treated regulated article to at least 71.1 °C, maintains the regulated articles at that center temperature for at least 75 minutes, and reduces the moisture content of the regulated article to 20 percent or less as measured by an electrical conductivity meter.

We are also incorporating by reference, in 7 CFR 300.1, the Dry Kiln Operator's Manual.

3. *Allow noncontainerized wood chips to be imported under certain conditions.* Many industry commenters cited a substantial economic burden if they had to import wood chips only in sealed containers, rather than on deck or in open containers. Several suggested allowing some wood chips to be imported on barges or other vessels, covered by tarpaulins, if the wood chips come from a relatively low-risk source (live healthy trees from a managed tropical plantation) and are alone on a vessel (no other regulated articles) that is moved directly to the United States.

We agree with this suggestion. Wood chips derived from live healthy trees from a managed tropical plantation are not likely to present plant pest risks that would not be controlled by the limits imposed by the regulations on the use of the chips. This is because there are few forest pests present in tropical climates that can survive winters in temperate climates. The few tropical plant pests that can survive temperate winters would likely be excluded from managed tropical plantations by the plant pest control practices employed at such plantations. If such chips are imported alone on a vessel and covered by a tarpaulin, there is little risk that the chips will be infested during transit by plant pests from higher-risk wood products. On the other hand, wood chips from unmanaged trees and trees in temperate areas are more likely to present serious plant pest risks. These chips should be subject to the full restrictions proposed for wood chips in the proposed rule, i.e., they should be imported in sealed containers, and subject to fumigation or heat treatment, to prevent the introduction of plant pests they may harbor.

Therefore, we are changing § 319.40–6(c)(2), the universal importation requirement for wood chips and bark chips, by adding the following sentence: "If the wood chips or bark chips are derived from live, healthy, plantation-grown trees in tropical areas, they may be shipped on deck if no other regulated articles are present on the vessel, and the wood chips or bark chips are completely covered by a tarpaulin during the entire journey directly to the United States."

4. *Allow pallets to be imported in accordance with the requirements for solid wood packing materials, even if the pallets are imported as cargo.* Several commenters noted that pallets should be allowed to be imported as cargo under no greater restrictions than if they are imported in actual use as packing. They pointed out that in normal shipping practice, large amounts of pallets are used to ship articles to a port, and then may be shipped as cargo from ports with a pallet surplus to ports with a pallet shortage. Commenters felt that pallets that have been in use, and have met the regulatory requirements for importation in use, do not present significant risks and should not have to meet additional requirements if they are subsequently moved as cargo.

We agree. We are changing § 319.40–3(b) to allow pallets that are imported as cargo to be imported under the same requirements that apply to pallets that are in use as packing materials at the time of importation. Briefly, these requirements are that if the pallets are free from bark and are used for articles that are not regulated articles, they must be accompanied by an importer document stating that they are totally free from bark, and apparently free from live plant pests. If the pallets are free from bark and are used for regulated articles, they must be accompanied by an importer document stating that they are totally free from bark, apparently free from live plant pests, and have been heat treated, fumigated, or treated with preservatives in accordance with § 319.40–7, or meet all the importation and entry conditions required for the regulated article the solid wood packing material is used to move. If the pallets are not free from bark, they must be accompanied by an importer document stating that the pallets have been heat treated, fumigated, or treated with preservatives in accordance with § 319.40–7. In all cases, the pallets are also subject to the inspection and other port of arrival requirements of § 319.40–9.

5. *Exclude European Russia from the group of Asian countries to which more severe prohibitions and restrictions apply.* Several commenters noted that the apparent intent to exclude European Russia from these more severe requirements was not carried out by the precise language, allowing many importations to occur from all places "except countries in Asia that are wholly or in part east of 60° East Longitude and north of the Tropic of Cancer." Russia does extend east of 60° East Longitude. It was not our intent to include European Russia in this area, as can be seen from the context of the language in the preamble of the proposed rule. Therefore, we are changing this geographic description each time it appears to read "except places in Asia that are east of 60° East Longitude and north of the Tropic of Cancer."

6. *Continue to allow the ongoing importation of railroad ties from countries outside Asia, for subsequent pressure treatment and use in the United States, which APHIS has allowed to occur for some time.* Commenters noted that these articles are normally treated within 30 days, and have been considered low risk. We agree that the regulations should continue to allow the importation of these railroad ties. We are adding the following new paragraph (f) to § 319.40–5, the section concerning importation requirements for specified articles: "Cross-ties (railroad ties) from all countries except places in Asia that are east of 60° East Longitude and north of the Tropic of Cancer may be imported if completely

free of bark and accompanied by an importer document stating that the cross-ties will be pressure treated within 30 days following the date of importation."

7. *Amend the definition of "Log" so that it includes cants sawn from logs.* One commenter pointed out that by his reading of the regulations, it seemed likely that cants (partly trimmed logs) were subject to the same requirements as logs, but the regulations did not make this point absolutely clear. We did in fact intend that the regulations treat logs and cants the same. To make this clear, we are revising the proposed definition of "Log," which read "The bole of a tree; trimmed timber that has not been further sawn," to read "The bole of a tree; trimmed timber that has not been sawn further than to form cants."

8. *Amend the requirements for completing an application for an import permit to require that the applicant specify not only any chemical treatments that will be employed prior to or after importation, but also the dosage of the chemicals that is employed.* One commenter pointed out that the permit application procedure in proposed § 319.40–4(a) required the applicant to provide, among other information, the names of any chemicals employed in treatments prior to or after importation (proposed § 319.40–4(a) (4) and (5)). He suggested that the application should also include the dosage used for such treatments, so that APHIS and the public can judge whether the treatments are effectively applied. We agree, and are adding a requirement for dosage information to the affected sections.

With the exception of the changes just discussed, and minor editorial changes, we are adopting the provisions of the proposed rule as a final rule. Additional comments are discussed below.

Goals and Mission of APHIS as They Relate to the Proposed Rule

Comment: APHIS should not consider the needs of international trade but should focus exclusively on pest exclusion as worded in the Federal Plant Pest Act of 1957.

Response: It is important to recognize that APHIS has a number of responsibilities and legal mandates beyond the Federal Plant Pest Act. These include international trade agreements such as the General Agreement on Tariffs and Trade and the North American Free Trade Agreement, statutes such as the Regulatory Flexibility Act and the Paperwork Reduction Act, Executive Orders, and additional legal and policy guides. One of APHIS's basic responsibilities is plant pest exclusion, but this has to be conducted in balance with other national needs and goals.

The majority of comments which specifically addressed the issue of balancing the needs of international commerce with prevention of pest introduction clearly favored such a balancing. However, some commenters believed that APHIS should reduce or terminate raw wood exports, so that wood could be used to meet domestic needs, removing the need for the importation of raw wood. APHIS does not have statutory authority to stop or reduce the export of raw logs by U.S. private land owners and companies so that the wood can be used for domestic needs.

Opposition to the Importation of Unmanufactured Wood

Comment: APHIS should restrict imports to manufactured and/or finished wood products only.

Response: APHIS believes that this approach is too extreme. With proper mitigation and monitoring, the importation of some raw wood material from certain locations presents an insignificant plant pest risk.

Limitations of the Pest Risk Assessment Process

Comment: Some comments were directed toward the risk assessment process. A few were concerned that the process did not fully address the unknowns, did not address enough pests, or did not incorporate the full scope of experts needed.

Response: The risk assessments conducted by the Forest Service were the most resource extensive risk assessments ever utilized by APHIS to determine the plant pest risk associated with an imported commodity. Great care was taken to choose which assessments needed to be completed before the rule was written. The first assessment focused on raw timber from Siberia, which was identified as extremely high risk. From this assessment, some universal requirements for the rule were derived. Two additional risk assessments were conducted on those timber commodities which were identified as lower risk (specific species of plantation grown trees from New Zealand and Chile). The specific requirements for these commodities were developed from these assessments.

APHIS recognizes both the need for future assessments and the need to improve the risk assessment process. The risk assessment process used for the various assessments was derived from the National Research Council's section on ecological risk assessment as published in its 1993 "Issues in Risk Assessment" and represents the state of the art as it now stands for conducting ecological risk assessments.

APHIS recognizes that the process is not perfect and that evolution will continue to be necessary. The risk assessment process is being, and will continue to be, modified and improved to make sure that it is the best that the science of ecological risk assessment can provide.

One of the most difficult issues is how to assess the risk associated with unknown organisms, or with known organisms that do not have well-described characteristics or survival and spread capabilities. The regulations are designed to ensure that there is an insignificant risk that importing regulated articles will result in the entry and establishment of either known or unknown dangerous plant pests.

Need for More Assessments of Additional Log Species

Comment: APHIS needs to complete additional assessments for various timber products considered for importation.

Response: APHIS agrees, and with the cooperation of the Forest Service, will continue to conduct risk assessments and amend regulations based on them, as appropriate.

Packing Material

Comment: The regulations proposed for solid wood packing materials are too restrictive.

Response: We also received comments stating that the regulations proposed for solid wood packing materials are necessary and appropriate. We believe that the requirements in this final rulemaking document for the importation of solid wood packing materials are necessary to prevent the introduction of plant pests into the United States.

Temperate Hardwoods, Tropical Hardwoods, and Chips

Comment: Temperate and tropical hardwoods should be subject to entry requirements that are as strict as those for temperate softwoods.

Response: The volume of imported temperate and tropical hardwoods has remained at a low sustained level. These small shipments of high priced logs and lumber can be monitored and controlled much more easily than the proposed large shipments of softwood logs.

Comment: The proposed regulations for wood chip importations are too restrictive and it would not be feasible for importers to meet the requirements. The 30-day time limit for processing wood chips after importation is too short, and the proposed requirement for containerized transportation of wood chips is unnecessary and costly.

Response: APHIS believes that the 30-day limit for processing the chips is reasonable. The extension to 60 days requested by several commenters would present additional concerns with monitoring and increased plant pest risk. One commenter was under the incorrect assumption that the chips still had to be processed within the 30-day period if they had been subjected to an approved fumigation. This is not the case. The 30-day limitation is directed toward raw, untreated chips.

The changes we are making to the proposed requirement for containerized transportation of wood chips are discussed above.

Methyl Bromide

Comment: In view of the negative effects of methyl bromide (MB) on the ozone layer, APHIS should not rely upon use of MB. Also, the regulations do not include plans for how APHIS will deal with articles requiring MB fumigation after MB is removed from regulatory use around the year 2001.

Response: APHIS is concerned about the effects of MB on the ozone layer and will abide by the Environmental Protection Agency's phase-out schedule. However, present reliance by commerce on MB is such that immediately terminating all regulatory use of MB is not realistic.

The regulations were written with the phase out of MB in mind. All MB requirements presented in the regulations have alternative treatments. It is APHIS's hope that industry will develop and implement alternative mitigation schedules (e.g. irradiation, heat, borate, etc.) to replace its reliance on methyl bromide for the importation of regulated articles.

Bark Removal on Temperate Softwood Logs

Comment: Temperate softwood logs should be required to have 100 percent of the bark removed before importation, since even small patches of bark can harbor insect pests.

Response: APHIS recognizes that 100 percent debarking of logs is not realistic. It is important to remember that APHIS requires either a heat treatment or fumigation to complement the debarking of temperate softwood logs. This combination of debarking with other mitigation requirements is sufficient to destroy plant pests of concern in the bark or directly under the bark.

Other Comments and Responses

Comment: APHIS should add other treatments, such as irradiation and borates, to the universal importation requirements.

Response: APHIS recognizes the potential value of irradiation, borates, and other treatments for use as universal or specific treatments. Ongoing research into the use of irradiation and borates on timber products looks promising. However, the data is not yet complete to the extent necessary for APHIS to propose specific treatments. Irradiation treatments as well as other alternatives will be added to the regulations as they are developed and proven both effective and operationally feasible.

Comment: For logs imported from Chile and New Zealand, APHIS should change the regulations to facilitate on-deck fumigation and transport of logs, and extend the time period for processing such imported logs after they are imported (currently 60 days).

Response: The restrictions associated with the movement of logs from Chile and New Zealand prompted a number of responses from industry. Extending the time allowed to process the logs once they enter the United States and allowing the fumigation and movement of logs on the deck of ships were the two most stated requests.

APHIS believes that allowing additional time beyond 60 days for processing the logs would make monitoring difficult and increase the plant pest risk. Therefore, APHIS will maintain the 60-day requirement.

APHIS has prohibited the movement of logs on the open deck of ships because of the possibility of infestation of the logs while at the port of origin and/or other foreign ports visited while the ship is in transit. APHIS believes that until the issue of infestation during shipment to the United States is satisfactorily answered, the movement of logs on the open deck of ships must continue to be prohibited.

Comment: The regulations should specify strong penalties that will be imposed on persons who do not comply with the regulations. The regulations should also make importers financially responsible for damages and control costs resulting from pests introduced through their shipments.

Response: For an importer, the primary practical consequence for non-compliance is future ineligibility to import additional shipments.

USDA has no authority to require importers to post bonds or otherwise stipulate their financial responsibility for costs that may result from introduced plant pests. However, individual shipments will be refused entry unless the shipments comply with regulatory requirements.

APHIS can also respond to violations by canceling compliance agreements. Because domestic processing facilities must hold a current compliance agreement to import and process many types of regulated articles in the regulations, APHIS can stop violators from importing articles by canceling or refusing to sign a compliance agreement.

In addition, statutory authority allows us to impose civil and criminal penalties on violators. Individuals also have recourse through the courts; persons who believe they suffered harm due to an importer who did not comply with regulatory requirements may file a civil suit against that importer.

Comment: APHIS must allocate additional resources and personnel, especially inspectors at ports and sawmills processing imported wood, if the regulations are to be successfully enforced and monitored.

Response: We agree that adequate resources and personnel, especially inspectors, must be devoted to prevent the introduction of plant pests into the United States. Adjustments in the level of personnel and resources devoted to APHIS programs are a normal part of management in the agency. Duties and staffing levels will be adjusted, at ports and elsewhere, to take the needs of the new wood import program into account.

While APHIS will assign some personnel to major ports to work specifically with wood imports, and will assign some personnel to work specifically with monitoring compliance both overseas and in domestic processing facilities, we believe much of the resources needed for this program are already in place, in the form of existing APHIS port personnel and cooperating personnel from State plant protection agencies.

Funding levels and agency personnel may vary from year to year. Import authorizations will not be provided if the level of resources decreases below the level needed to ensure that all imported regulated articles are subject to the level of inspection and monitoring necessary to prevent the introduction of plant pests into the United States.

Regarding APHIS resources needed to ensure compliance with the regulations, commenters should be aware that user fees we collect for some program operations will help to ensure that the needed resources are available.

Comment: The regulations would allow importers to self-certify, in the "importer document," information

about the type, quantity, and origin of imported articles and any treatments that have been applied to them. This self-certification is not an adequate substitute for a certificate issued by a plant protection organization recording the required information. You cannot rely on importers to honestly and completely record the necessary information in an informal importer document. In particular, exports from the former Soviet Union are subject to rampant corruption, forgery of documents, and smuggling.

Response: Questions about enforcement of regulations and how to deter violators who may present inaccurate information and documents opens up a complex nest of issues much larger than any single regulation. The general position of APHIS on these issues is as follows:

1. *Violations are most likely when the profit for the violator is high and the risk is low.* APHIS plans its enforcement activities accordingly. We tend to scrutinize carefully large shipments of regulated articles, especially those of particularly valuable species. We employ various means to independently verify the accuracy of documents associated with these shipments—whether the documents are issued by an importer or by a government agency. We keep importers aware of the risks they face if they file inaccurate documents or fail to meet regulatory requirements. These risks include civil penalties, criminal fines and jail sentences, and loss of business due to APHIS rejection of permit applications and compliance agreement applications. Generally, wood commodities are not so lucrative that an importer would risk these penalties, especially long-term loss of business, for the sake of fraudulently importing any one shipment. We intend to vigorously publicize our enforcement activities related to this final rule during the initial implementation period, to make potential violators aware of the risks they face.

2. *Self-certification has worked in other programs.* Many APHIS and other Federal agencies have programs that rely in part on regulated individuals providing accurate certifications to the agency. Experience has shown that these programs can work when the interests of both the regulated party and the agency are served by accurate self-certification. Examples of APHIS programs that have successfully employed self-certification include the domestic Gypsy Moth quarantine under 7 CFR 301.45 through 301.45–12 (in which businesses operating under compliance agreements may issue certificates), and the importation program for greenhouse-grown potted plants from Canada under 7 CFR 319.37–4(c) (in which greenhouse growers apply labels which certify that their plants meet certain growing requirements). Such programs work, in part, because our inspectors learn to evaluate the accuracy of self-certifications through visual examination of the materials and through independent sources of information. The programs also work because they are generally employed where the regulated parties have a financial reason to desire a continuing relationship of trust with the regulating agency, so they can continue to do business. This is the case with importer documents employed in this final rule.

3. *The accuracy of self-certifications is often empirically tested at the port of first arrival.* Much of the information in importer documents can be independently checked, sometimes by direct inspection and testing. Inspectors can discover a great deal about the accuracy of documents concerning a shipment by looking for plant pests and evidence of treatments in the articles. Moisture content can be directly measured at ports to determine whether kiln drying has occurred. Fraudulent importer documents will often conflict with waybills, valid importer documents from earlier shipments, and other records. We intend to use all of these opportunities to enhance enforcement and create a culture in which importers see that issuing inaccurate documents is not worth the risk.

4. *Individual "high-crime" areas of international trade must be addressed in a larger forum than just the wood regulations.* We agree that doing business in the former Soviet Union presents severe problems for honest businesspersons and the customs services of many countries. There is widespread smuggling, forgery of documents, and coercion of officials related to exports from this area. While we are not aware of significant criminal activities affecting unmanufactured wood exports from the former Soviet Union, this may be because such exports to the United States have not been allowed to occur in significant quantities until now.

For these reasons, we will take particular care in enforcing regulatory requirements with regard to the importation of regulated articles from the former Soviet Union. As discussed above, there are numerous methods available to APHIS to confirm that the importation of regulated articles meets the regulatory requirements. We intend to employ them vigorously.

There is an ongoing, international effort to reduce the level of smuggling, fraud, and other criminal activity associated with exports from the former Soviet Union. The State Department and the Federal Bureau of Investigation are working with their counterparts in other countries and in the former Soviet republics to try to stabilize the situation, and APHIS will monitor the results of these efforts to determine what level of enforcement activity needs to be directed toward shipments of regulated articles from the former Soviet Union.

Comment: The regulations should minimize the costs associated with importing wood by imposing requirements that are both effective in pest control and cost efficient. To keep costs under control, the regulations should not include additional controls beyond those needed to control pest risk.

Response: We agree, and believe we have designed the regulations to effectively exclude plant pests at minimal cost. Wherever we had two or more alternative, equally effective control methods, we wrote the regulations to allow importers to choose whichever method was less costly and disruptive to commerce in their particular cases. Whenever control methods with significant costs were necessary, such as heat treatment, we avoided using detailed "design standards" that can add to costs by requiring treatment facilities to be built and operated in particular ways. Instead, we have employed "performance standards" that allow maximum freedom for innovation and cost savings to regulated parties.

Comment: In developing the proposed rule, APHIS failed to adequately communicate with the affected parties and the public. Only 10 representatives of environmental public interest organizations were on the distribution list for National Environmental Policy Act (NEPA) materials associated with the rule, and Indian Tribes with extensive forest holdings were not contacted.

Response: We disagree. APHIS had numerous contacts with potentially affected groups prior to rulemaking. We actively sought information from academic, environmental, and industry organizations and encouraged them to involve their constituents in contributing to APHIS development of a proposed rule. We sent representatives to forestry conferences to explain APHIS perspectives early in the process. We developed a mailing list of persons and organizations interested in potential rulemaking for wood imports, which grew to over 500 members by the time the proposal was drafted. Persons on this list were informed of each significant step that preceded the proposal, for example, public meetings, plant pest risk analyses, and interim APHIS requirements at ports. We published an advance notice of proposed rulemaking prior to the proposed rule. We also established an electronic bulletin board, accessible by direct dial and through the Internet, to distribute copies of the proposed rule and associated documents and to accept public comments on the proposal. These activities resulted in far greater early public involvement than is usual for a Federal informal rulemaking proceeding.

Also, publication of the proposed rule in the **Federal Register** meets the minimum procedural standard for adequate public notice. We believe our outreach activities far exceeded this minimum standard. Certainly, any individual or group that was interested in the wood imports issue and was involved with the media and forums where wood and forestry issues are normally discussed had ample notice of, and opportunity to participate in, APHIS decisionmaking prior to the issuance of the proposed rule.

Comment: To ensure consistent nationwide requirements for importing wood, and to facilitate interstate and international commerce, the APHIS regulations should preempt all State and local requirements for wood imports. Officials in various States appear to have very different understandings of what authority they have over imports and how they are to interact with APHIS personnel.

Response: Executive Order 12612, "Federalism," instructs Federal agencies not to take actions that exceed the powers enumerated for the Federal government in the Constitution, and not to unnecessarily preempt State law or preclude States from developing policies and taking actions at their discretion. We do not believe the proposed changes to the regulations raise Federalism implications in terms of the Executive Order. The regulations address how a Federal agency will conduct operations of a Federal program, and do not preclude States from developing policies or exercising their authority to involve their employees in any plant protection programs developed by a State. States are free to pass laws or implement regulations for State plant protection programs. However, State programs may not add requirements for importing regulated articles that are inconsistent or in conflict with the requirements established by the Federal regulations. States may not cite their participation in the enforcement of the Federal regulations as the basis for also enforcing additional requirements that are not contained in the Federal regulations.

In the "Executive Order 12778" section of the proposed rule, we stated "If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted * * *." We believe State and local laws and regulations would be inconsistent with our rule if they prohibit imports allowed by our regulations, or if they impose conditions on importation that are in addition to the conditions set forth in this final rule. States may impose requirements in accordance with State law that are not inconsistent with our regulations.

Executive Order 12866 and Regulatory Flexibility Act

We are issuing this final rule in conformance with Executive Order 12866. This rule has been determined to be significant and has been reviewed by the Office of Management and Budget under Executive Order 12866.

We have prepared an economic analysis concerning this final rule. This analysis indicates that this rule will not have significant annual effects on the economy. Copies of the economic analysis may be obtained by sending a written request to APHIS, Policy and Program Development, Regulatory Analysis and Development, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Copies of the economic analysis are also available for inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect the analysis are requested to call ahead on (202) 690–2817 to facilitate entry at the reading room.

The United States has become the world's leading importer of unmanufactured wood. In 1990, the United States imported the equivalent of 34.4 million cubic meters (CBM) of logs, lumber, and other unmanufactured wood valued at about $5.1 billion. Total imports nearly tripled between 1950 and 1990, with most of this increase occurring after 1970. Historically, Canada has supplied the United States with virtually all of its unmanufactured wood imports.

Domestic production of logs, lumber, and other unmanufactured wood has increased steadily since 1950. In roundwood equivalents, production in 1990 was 1.6 times greater than in 1950. Most timber production occurs in southern and western States. In 1990, Oregon and Washington accounted for about 16 percent of the total U.S. tree harvest.

Domestic logging companies are facing increasing challenges from conservation groups. Conservationists are opposed to many tree harvesting practices, especially clear cutting. In addition, concern over habitats for wildlife has raised questions about replacement of old growth/diversified forests with monoculture. Conservation issues are likely to limit future tree harvests in several northwestern States.

Nationally, commercial forest lands are projected to decrease by about 4 percent over the next 50 years. Production is likely to decline in the Pacific Northwest and increase in the South and Rocky Mountain States.[2] A slightly limited domestic harvest combined with higher consumer demand would likely result in an increased demand for imported wood and wood products. Alternative supplies of logs and other wood products have been located in the former Soviet Union, New Zealand, Chile, Brazil, and other countries. Wood imports from alternative sources have the potential to introduce and disseminate exotic plant pests and diseases throughout the United States.

This final rule regulates the importation of logs and other unmanufactured wood products from all areas. There are exemptions from some requirements for imports from Canada and Mexican border states because most insects and other wood pests in these areas are also indigenous to the United States, or will become so through natural migration. Therefore, wood imports from Canada and Mexican border states do not pose a significant risk of exotic plant pest introduction.

The regulations will reduce to an insignificant level the risk of entry and dissemination of plant pests associated with unmanufactured wood imports. Some regulated wood products are prohibited importation based on plant pest risk assessments that reveal more than an insignificant risk of the introduction of plant pests. Unrestricted trade in unmanufactured wood would likely result in losses to domestic agriculture from plant pest damage. Without governmental regulation, private entities might engage in trading activities that would result in the introduction of plant pests into the United States.

[2] Over the next 50 years, new technologies may allow wood products companies to remove larger amounts of wood products from each tree.

The following items are subject to the regulations: logs; wood chips; lumber; whole trees; portions of trees not consisting solely of leaves, flowers, fruits, buds, or seeds; bark; cork; laths; hog fuel; sawdust; painted raw wood products; excelsior; wood mulch; wood shavings; pickets; stakes; shingles; solid wood packing materials; humus; compost; and litter. Manufactured wood products are not regulated by the rule. The regulations require that certain specified imported unmanufactured wood products be treated prior to arrival in the United States.

In 1990 the United States imported about 255,800 CBM of unmanufactured wood that would require treatment under the final regulations. These unmanufactured wood imports accounted for less than one percent of total 1990 domestic supplies. Imported shipments of kiln dried lumber are not required to be treated.

About 4.1 million newly manufactured units of wood dunnage were imported as cargo from regulated areas in 1990. Dunnage imported as cargo can be manufactured from rough untreated lumber that has not been stripped of all tree bark.[3] Imports comprised about 27 percent of the newly manufactured dunnage products available in the United States during 1990.

Imports of regulated articles that will now require treatment totaled about $27.4 million in 1990. Total domestic supplies of these articles exceeded $80 billion during the same year. Therefore, the value of imports that will require treatment under the final regulations represented less than one percent of total domestic supplies in 1990.

Our economic analysis estimates that this action would increase economic welfare for domestic producers of logs, lumber, and other regulated wood products by about $35.2 million. However, U.S. consumers of these products will incur a welfare loss of about $171.9 million.

About 98.8 percent of total estimated losses are attributable to treatment costs for dunnage (including scrap lumber) used to pack various commodities that are imported into the United States. APHIS anticipates that this loss will be mitigated as shipping companies switch to bark free dunnage materials to avoid Q–40 related treatment costs. Shippers will take precautions to ensure that dunnage is bark free before commodities are loaded at the foreign port of origin.

[3] For the purpose of this economic analysis, dunnage imported as cargo includes dunnage produced for first time use, and does not include dunnage manufactured from used or scrap lumber.

The Agency maintains that bark free dunnage material is readily available throughout the world and can be substituted at little or no cost. Therefore, APHIS estimates that the required use of bark free dunnage will result in a negligible cost increase to shippers in the long run.

Complying with the rule's requirements may cost U.S. society up to $136.7 million; this represents the cost of plant pest exclusion. This cost estimate does not include the opportunity cost associated with importation of timber products like Siberian larch that might be imported in the absence of this rule. Data are not available to make this estimate. Additionally, this cost figure does not take into account either the benefits that would be accrued by excluding pests, or the probability that businesses would be able to reduce cost by switching to less costly options such as bark free dunnage.

If the United States does not expend resources to exclude plant pests through regulation or other means, such pests could become established and cause significant damage to domestic agriculture. For example, in the past few years plant pests including the Asian gypsy moth and pine shoot beetle have recently been introduced into the U.S., and several million dollars have been spent on efforts to control and prevent further spread to noninfested areas of the country. A recent USDA Forest Service pest risk assessment concerning potential Siberian timber imports evaluated the potential costs to U.S. society of several nonindigenous plant pests. The risk assessment estimated that introduction of a single pest, larch canker, could cause direct timber losses of $129.0 million annually. The same study estimated that a worst-case scenario involving heavy establishment of exotic defoliators in the United States could cost $58 billion (about $4.1 billion annually). This is a damage estimate of resources that would be lost to established defoliators.

The benefits that would accrue from pest exclusion may be less because control efforts would be put in place to regulate the spread of exotic pests. Total benefits should be calculated as the avoided cost of such control efforts and avoided damages to agricultural and forest resources. However, past experiences with introduced exotic defoliators indicate that control measures would not likely prevent further spread and thus make eradication extremely unlikely.

The initial estimated losses will be offset over time as businesses adapt to new international wood marketing channels. If resource constraints remain constant after this rule is implemented, consumers will purchase a slightly higher volume of domestic wood products at prices that are slightly higher than those that currently prevail in the U.S. market. However, domestic consumers will continue to supplement their wood and wood product purchases with imports whenever the imported price is lower than the domestic price.

Each year about 6 to 7.5 million non-bulk shipments of various commodities are imported into the United States. APHIS estimates that between 3.6 and 4.5 million (60 percent) of annual imported non-bulk shipments arrive in the United States packed in dunnage made of rough untreated wood with bark. The regulations will prohibit untreated dunnage with bark from entering the United States.

APHIS does not expect the economic impact on U.S. producers of regulated articles to be uniform across the country. Producers in southern and Rocky Mountain States will likely gain more than producers in the Pacific Northwest. Conservation issues and resource constraints will likely limit the amount of welfare gain acquired by loggers and sawmills in Oregon and Washington.

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 ("the Act"), which the President signed into law on March 22, 1995, USDA has assessed the effects of this rulemaking action on State, local, and tribal governments, and the private sector. This action does not compel the expenditure of $100 million or more by any State, local or tribal governments, or by anyone in the private sector, and therefore a statement under section 202 of the Act is not required.

The Regulatory Flexibility Act requires that APHIS specifically consider the economic impact of regulations on small entities. Small Business Administration (SBA) data indicates that about 25,998 domestic entities could be impacted by the restrictions on regulated articles. About 25,769 (99 percent) of these entities are classified as small according to SBA criteria. These consist of approximately 14,662 small logging companies or sawmills that produce domestic wood articles, and approximately 15,642 entities that could import foreign wood for processing or resale. (These two figures total more than 25,769 because some firms process or resell both domestic and imported wood.) These small entities should experience most of the anticipated $35.2 million increase in domestic welfare. This increase will be a small average economic benefit for

affected small entities, as it represents less than one percent of combined average annual sales for impacted small entities. A few small entities will undoubtedly accrue a disproportionate share of the domestic welfare increase due to their individual positions in their markets and variations in business strategies for dealing with new opportunities. The overall impact on small businesses is expected to be minor.

Under these circumstances, the Acting Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

National Environmental Policy Act

In accordance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), APHIS has prepared an environmental impact statement (EIS) addressing the importation of logs, lumber, and other unmanufactured wood in accordance with this rule. On August 12, 1994, a notice was published in the **Federal Register** (59 FR 41441) informing the public of the availability of the final EIS.

The final EIS considered and evaluated the six following alternatives:

Alternative 1—No Action (No Regulations)
Alternative 2—Final Regulations (Preferred Alternative)
Alternative 3—Prohibit Untreated Wood Except Packing Material
Alternative 4—Prohibit Untreated Wood
Alternative 5—Prohibit Unmanufactured Wood Except Packing Material
Alternative 6—Prohibit Unmanufactured Wood

The final EIS addressed the potential impacts to the human environment, including possible risks to human health, impacts to forest resources, impacts to biodiversity, impacts from the use of methyl bromide, and impacts to global climate change, cultural resources, and endangered and threatened species. A detailed analysis of potential impacts from the use of methyl bromide was prepared because of the classification of methyl bromide as an ozone depletor.

The analysis of the environmental impacts to all aspects of the human environment revealed that impacts attributable to the six alternatives are virtually identical, but are entirely dependent upon the degree to which plant pests are able to be excluded. Each alternative demonstrated a different likelihood of success.

Alternative 6 is the most protective, that is, the most likely to minimize the risk of plant pest introduction. However, it is also the most restrictive with regard to importation of unmanufactured wood articles. Alternative 1, the No Action Alternative, is believed to be the least protective, and more likely than the other alternatives to result in inadvertent plant pest introductions.

Alternative 4 is similar to Alternative 6 in that it is protective but may unnecessarily interfere with trade. The protective capacity of Alternatives 3 and 5 is diminished by the exclusion of packing materials from treatment requirements.

Alternative 2, the Preferred Alternative, offers a balanced approach to the importation of logs, lumber, and other unmanufactured wood articles that requires plant pest treatments in all cases in which APHIS has identified a risk of plant pest introductions. This alternative was selected by the agency and is reflected by this final rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been submitted for approval to the Office of Management and Budget.

List of Subjects

7 CFR Part 300

Incorporation by reference, Plant diseases and pests, Quarantine.

7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Incorporation by reference, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, 7 CFR parts 300 and 319 are amended to read as follows:

PART 300—INCORPORATION BY REFERENCE

1. Part 300 is revised to read as follows:

Authority: 7 U.S.C. 150ee, 154, 161, 162, and 167; 7 CFR 2.17, 2.51, and 371.2(c).

§ 300.1 Materials incorporated by reference; availability.

(a) *Plant Protection and Quarantine Treatment Manual.* The Plant Protection and Quarantine Treatment Manual, which was reprinted on November 30, 1992, and includes all revisions through March 1995, has been approved for incorporation by reference in 7 CFR chapter III by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(1) The treatments specified in the Plant Protection and Quarantine Treatment Manual and its revisions are required to authorize the movement of certain articles regulated by domestic quarantines (7 CFR parts 301 and 318) and foreign quarantines (7 CFR part 319).

(2) *Availability.* Copies of the Plant Protection and Quarantine Treatment Manual:

(i) Are available for inspection at the Office of the Federal Register Library, 800 North Capitol Street NW, Suite 700, Washington, DC; or,

(ii) May be obtained by writing or calling the Animal and Plant Health Inspection Service, Documents Management Branch, Printing Distribution and Mail Section, 4700 River Road Unit 1, Riverdale, MD 20737–1229, (301) 734–5524; or

(iii) May be obtained from field offices of the Animal and Plant Health Inspection Service, Plant Protection and Quarantine. Addresses of these offices may be found in local telephone directories.

(b) *Dry Kiln Operator's Manual.* The Dry Kiln Operator's Manual, which was published in August 1991 as Agriculture Handbook No. 188 by the United States Department of Agriculture, Forest Service, has been approved for incorporation by reference in 7 CFR chapter III by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(1) The kiln drying schedules specified in the Dry Kiln Operator's Manual provide a method by which certain articles regulated by "Subpart—Logs, Lumber, and Other Unmanufactured Wood Articles" (7 CFR 319.40–1 through 319.40–11) may be imported into the United States.

(2) *Availability.* Copies of the Dry Kiln Operator's Manual are available for inspection at the Office of the Federal Register Library, 800 North Capitol Street NW, Suite 700, Washington, DC, or are for sale as ISBN 0–16–035819–1 by the U.S. Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, DC 20402–9328.

PART 319—FOREIGN QUARANTINE NOTICES

2. The authority citation for part 319 is revised to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167, 450, 2803, and 2809; 21 U.S.C. 136 and 136a; 7 CFR 2.17, 2.51, and 371.2(c).

Subpart—Citrus Canker and Other Citrus Diseases

3. In § 319.19, paragraphs (a), (b), (c), and (d) are revised to read as follows:

§ 319.19 Notice of quarantine.

(a) In order to prevent the introduction into the United States of the citrus canker disease (*Xanthomonas citri* (Hasse) Dowson) and other citrus diseases, the importation into the United States of plants or any plant part, except fruit and seeds, of all genera, species, and varieties of the subfamilies Aurantioideae, Rutoideae, and Toddalioideae of the botanical family Rutaceae is prohibited, except as provided in paragraphs (b), (c), and (d) of this section.

(b) Plants or plant parts of all genera, species, and varieties of the subfamilies Aurantioideae, Rutoideae, and Toddalioideae of the botanical family Rutaceae may be imported into the United States for experimental or scientific purposes in accordance with conditions prescribed by the Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture.

(c) Plants or plant parts of all genera, species, and varieties of the subfamilies Aurantioideae, Rutoideae, and Toddalioideae of the botanical family Rutaceae may be imported into Guam in accordance with § 319.37–6.

(d) Plants or plant parts of all genera, species, and varieties of the subfamilies Aurantioideae, Rutoideae, and Toddalioideae of the botanical family Rutaceae that are regulated articles under §§ 319.40–1 through 319.40–11 may be imported into the United States in accordance with §§ 319.40–1 through 319.40–11 and without restriction by this subpart.

* * * * *

Subpart—Bamboo

4. The title "Subpart—Bamboo" is revised to read "Subpart—Bamboo Capable of Propagation".

5. In § 319.34, paragraphs (a) and (c) are removed; paragraphs (b) and (d) are redesignated as paragraphs (a) and (b); and newly designated paragraph (a) is revised to read as follows:

§ 319.34 Notice of quarantine.

(a) In order to prevent the introduction into the United States of dangerous plant diseases, including bamboo smut (*Ustilago shiraiana*), the importation into the United States of any variety of bamboo seed, bamboo plants, or bamboo cuttings capable of propagation,[1] including all genera and species of Bambuseae, is prohibited unless imported:

(1) For experimental or scientific purposes by the United States Department of Agriculture;

(2) For export, or for transportation and exportation in bond, in accordance with §§ 352.2 through 352.15 of this chapter; or,

(3) Into Guam in accordance with § 319.37–4(b).

* * * * *

Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products[1 2]

6. In § 319.37–1, the definition of "Prohibited article" is revised to read as follows:

§ 319.37–1 Definitions

* * * * *

Prohibited article. Any nursery stock, plant, root, bulb, seed, or other plant product designated in § 319.37–2 (a) or (b), except wood articles regulated under §§ 319.40–1 through 319.40–11, "Subpart—Logs, Lumber, and Other Unmanufactured Wood Articles."

* * * * *

7. "Subpart—Logs from Chile and New Zealand" of this part is revised to read as follows:

Subpart—Logs, Lumber, and Other Unmanufactured Wood Articles

Sec.

319.40–1 Definitions.
319.40–2 General prohibitions and restrictions; relation to other regulations.
319.40–3 General permits; articles that may be imported without a specific permit; articles that may be imported without either a specific permit or an importer document.
319.40–4 Application for a permit to import regulated articles; issuance and withdrawal of permits.
319.40–5 Importation and entry requirements for specified articles.
319.40–6 Universal importation options.
319.40–7 Treatments and safeguards.
319.40–8 Processing at facilities operating under compliance agreements.
319.40–9 Inspection and other requirements at port of first arrival.
319.40–10 Costs and charges.
319.40–11 Plant pest risk assessment standards.

§ 319.40–1 Definitions.

Administrator. The Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture, or any employee of the United States Department of Agriculture delegated to act in his or her stead.

APHIS. The Animal and Plant Health Inspection Service, United States Department of Agriculture.

Bark chips. Bark fragments broken or shredded from log or branch surfaces.

Certificate. A certificate of inspection relating to a regulated article, which is issued by an official authorized by the national government of the country in which the regulated article was produced or grown, which contains a description of the regulated article, which certifies that the regulated article has been inspected, is believed to be free of plant pests, and is believed to be eligible for importation pursuant to the laws and regulations of the United States, and which may contain any specific additional declarations required under this subpart.

Compliance agreement. A written agreement between APHIS and a person engaged in processing, handling, or moving regulated articles, in which the person agrees to comply with requirements contained in the agreement.

Departmental permit. A document issued by the Administrator authorizing the importation of a regulated article for experimental, scientific, or educational purposes.

Free from rot. No more than two percent by weight of the regulated articles in a lot show visual evidence of fructification of fungi or growth of other microorganisms that cause decay and the breakdown of cell walls in the regulated articles.

General permit. A written authorization contained in § 319.40–3 for any person to import the articles named by the general permit, in accordance with the requirements specified by the general permit, without being issued a specific permit.

Humus, compost, and litter. Partially or wholly decayed plant matter.

Import (imported, importation). To bring or move into the territorial limits of the United States.

Importer document. A written declaration signed by the importer of regulated articles, which must accompany the regulated articles at the time of importation, in which the importer accurately declares information about the regulated articles required to be disclosed by § 319.40–2(b).

Inspector. Any individual authorized by the Administrator to enforce this subpart.

Log. The bole of a tree; trimmed timber that has not been sawn further than to form cants.

Loose wood packing material. Excelsior (wood wool), sawdust, and wood shavings, produced as a result of sawing or shaving wood into small, slender, and curved pieces.

Lot. All the regulated articles on a single means of conveyance that are derived from the same species of tree and were subjected to the same treatments prior to importation, and that are consigned to the same person.

Lumber. Logs that have been sawn into boards, planks, or structural members such as beams.

Permit. A specific permit to import a regulated article issued in accordance with § 319.40–4, or a general permit promulgated in § 319.40–3.

Plant pest. Any living stage of any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants or reproductive parts of parasitic plants, noxious weeds, viruses, or any organism similar to or allied with any of the foregoing, or any infectious substances, which can injure or cause disease or damage in any plants, parts of plants, or any products of plants.

Port of first arrival. The area (such as a seaport, airport, or land border station) where a person or a means of conveyance first arrives in the United States, and where inspection of regulated articles is carried out by inspectors.

Primary processing. Any of the following processes: cleaning (removal of soil, limbs, and foliage), debarking, rough sawing (bucking or squaring), rough shaping, spraying with fungicide or insecticide sprays, and fumigation.

Regulated article. The following articles, if they are unprocessed or have received only primary processing: logs; lumber; any whole tree; any cut tree or any portion of a tree, not solely consisting of leaves, flowers, fruits, buds, or seeds; bark; cork; laths; hog fuel; sawdust; painted raw wood products; excelsior (wood wool); wood chips; wood mulch; wood shavings; pickets; stakes; shingles; solid wood packing materials; humus; compost; and litter.

Sealed container; sealable container. A completely enclosed container designed for the storage or transportation of cargo, and constructed of metal or fiberglass, or other rigid material, providing an enclosure which prevents the entrance or exit of plant pests and is accessed through doors that can be closed and secured with a lock or seal. Sealed (sealable) containers are distinct and separable from the means of conveyance carrying them.

Solid wood packing material. Wood packing materials other than loose wood packing materials, used or for use with cargo to prevent damage, including, but not limited to, dunnage, crating, pallets, packing blocks, drums, cases, and skids.

Specific permit. A written document issued by APHIS to the applicant in accordance with § 319.40–4 that authorizes importation of articles in accordance with this subpart and specifies or refers to the regulations applicable to the particular importation.

Treatment Manual. The Plant Protection and Quarantine Treatment Manual, which is incorporated by reference at § 300.1 of this chapter in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

Tropical hardwoods. Hardwood timber species which grow only in tropical climates.

United States. All of the States of the United States, the District of Columbia, Guam, the Northern Mariana Islands, Puerto Rico, the Virgin Islands of the United States, and all other territories and possessions of the United States.

Wood chips. Wood fragments broken or shredded from any wood.

Wood mulch. Bark chips, wood chips, wood shavings, or sawdust intended for use as a protective or decorative ground cover.

§ 319.40–2 General prohibitions and restrictions; relation to other regulations.

(a) *Permit required.* Except for regulated articles exempted from this requirement by paragraph (c) of this section or § 319.40–3, no regulated article may be imported unless a specific permit has been issued for importation of the regulated article in accordance with § 319.40–4, and unless the regulated article meets all other applicable requirements of this subpart and any requirements specified by APHIS in the specific permit.

(b) *Importer document; documentation of type, quantity, and origin of regulated articles.* Except for regulated articles exempted from this requirement by paragraph (c) of this section or § 319.40–3, no regulated article may be imported unless it is accompanied by an importer document stating the following information. A certificate that contains this information may be used in lieu of an importer document at the option of the importer:

(1) The genus and species of the tree from which the regulated article was derived;

(2) The country, and locality if known, where the tree from which the regulated article was derived was harvested;

(3) The quantity of the regulated article to be imported;

(4) The use for which the regulated article is imported; and

(5) Any treatments or handling of the regulated article required by this subpart that were performed prior to arrival at the port of first arrival.

(c) *Regulation of articles imported for propagation or human consumption.* The requirements of this subpart do not apply to regulated articles that are allowed importation in accordance with § 319.19, "Subpart—Citrus Canker and Other Citrus Diseases"; § 319.34, "Subpart—Bamboo Capable of Propagation"; or §§ 319.37 through 319.37–14, "Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products"; or to regulated articles imported for human consumption that are allowed importation in accordance with §§ 319.56 through 319.56–8, "Subpart—Fruits and Vegetables."

(d) *Regulated articles imported for experimental, scientific or educational purposes.* Any regulated article may be imported without further restriction under this subpart if:

(1) Imported by the United States Department of Agriculture for experimental, scientific, or educational purposes;

(2) Imported pursuant to a Departmental permit issued by APHIS for the regulated article prior to its importation and kept on file at the port of first arrival; and

(3) Imported under conditions specified on the Departmental permit and found by the Administrator to be adequate to prevent the introduction into the United States of plant pests.

(e) *Designation of additional regulated articles.* An inspector may designate any article as a regulated article by giving written notice of the

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[1] Regulations concerning the importation into the United States of bamboo not capable of propagation are set forth in §§ 319.40–1 through 319.40–11.

[1] The Plant Protection and Quarantine Program also enforces regulations promulgated under the Endangered Species Act of 1973 (P.L. 93–205, as amended) which contains additional prohibitions and restrictions on importation into the United States of articles subject to this subpart (See 50 CFR parts 17 and 23).

[2] One or more common names of articles are given in parentheses after most scientific names (when common names are known) for the purpose of helping to identify the articles represented by such scientific names; however, unless otherwise specified, a reference to a scientific name includes all articles within the category represented by the scientific name regardless of whether the common name or names are as comprehensive in scope as the scientific name.

designation to the owner or person in possession or control of the article. APHIS will implement rulemaking to add articles designated as regulated articles to the definition of regulated article in § 319.40–1 if importation of the article appears to present a recurring significant risk of introducing plant pests. Inspectors may designate an article as a regulated article after determining that:

(1) The article was imported in the same container or hold as a regulated article;

(2) Other articles of the same type imported from the same country have been found to carry plant pests; or

(3) The article appears to be contaminated with regulated articles or soil.

§ 319.40–3 General permits; articles that may be imported without a specific permit; articles that may be imported without either a specific permit or an importer document.

(a) *Canada and Mexico.* APHIS hereby issues a general permit to import articles authorized by this paragraph. Regulated articles from Canada and from states in Mexico adjacent to the United States border, other than regulated articles of the subfamilies Aurantioideae, Rutoideae, and Toddalioideae of the botanical family Rutaceae, may be imported without restriction under this subpart, except that they must be accompanied by an importer document stating that the regulated articles are derived from trees harvested in, and have never been moved outside, Canada or states in Mexico adjacent to the United States border, and except that they are subject to the inspection and other requirements in § 319.40–9.

(b) *Solid wood packing materials*—(1) *Free of bark; used with non-regulated articles.* APHIS hereby issues a general permit to import regulated articles authorized by this paragraph. Solid wood packing materials that are completely free of bark and are in actual use at the time of importation as packing materials for articles which are not regulated articles may be imported without restriction under this subpart, except that:

(i) The solid wood packing materials are subject to the inspection and other requirements in § 319.40–9; and

(ii) The solid wood packing materials must be accompanied at the time of importation by an importer document, stating that the solid wood packing materials are totally free from bark, and apparently free from live plant pests.

(2) *Free of bark; used with regulated articles.* APHIS hereby issues a general permit to import regulated articles authorized by this paragraph. Solid wood packing materials that are completely free of bark and are in actual use at the time of importation as packing materials for regulated articles may be imported without restriction under this subpart, except that:

(i) The solid wood packing materials are subject to the inspection and other requirements in § 319.40–9;

(ii) The solid wood packing materials must be accompanied at the time of importation by an importer document, stating that the solid wood packing materials are totally free from bark, and apparently free from live plant pests; and

(iii) The solid wood packing materials must be accompanied at the time of importation by an importer document, stating that the solid wood packing materials have been heat treated, fumigated, or treated with preservatives in accordance with § 319.40–7, or meet all the importation and entry conditions required for the regulated article the solid wood packing material is used to move.

(3) *Not free of bark; used with regulated or nonregulated articles.* APHIS hereby issues a general permit to import regulated articles authorized by this paragraph. Solid wood packing materials that are not completely free of bark and are in actual use as packing at the time of importation may be imported without restriction under this subpart, except that:

(i) The solid wood packing materials are subject to the inspection and other requirements in § 319.40–9;

(ii) The solid wood packing materials must be accompanied at the time of importation by an importer document, stating that the solid wood packing materials have been heat treated, fumigated, or treated with preservatives in accordance with § 319.40–7.

(4) *Pallets moved as cargo.* APHIS hereby issues a general permit to import regulated articles authorized by this paragraph. Pallets that are completely free of bark and that are not in actual use as packing at the time of importation (i.e., pallets moved as cargo) may be imported without restriction under this subpart, except that:

(i) The pallets are subject to the inspection and other requirements in § 319.40–9; and

(ii) The pallets are accompanied by an importer document stating that the pallets were previously eligible for importation in accordance with paragraph (b) of this section and have not had wood added to them since that use. Solid wood packing materials other than pallets that are imported as cargo must be imported in accordance with the requirements of this subpart for raw lumber.

(c) *Loose wood packing materials.* APHIS hereby issues a general permit to import regulated articles authorized by this paragraph. Loose wood packing materials (whether in use as packing or imported as cargo) that are dry may be imported subject to the inspection and other requirements in § 319.40–9 and without further restriction under this subpart.

(d) *Bamboo timber.* APHIS hereby issues a general permit to import regulated articles authorized by this paragraph. Bamboo timber which is free of leaves and seeds and has been sawn or split lengthwise and dried may be imported subject to the inspection and other requirements in § 319.40–9 and without further restriction under this subpart.

(e) *Regulated articles the permit process has determined to present no plant pest risk.* Regulated articles for which a specific permit has been issued in accordance with § 319.40–4(b)(2)(i) may be imported without other restriction under this subpart, except that they are subject to the inspection and other requirements in § 319.40–9.

§ 319.40–4 Application for a permit to import regulated articles; issuance and withdrawal of permits.

(a) *Application procedure.* A written application for a permit [1] must be submitted to the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Port Operations Permit Unit, 4700 River Road Unit 136, Riverdale, MD 20737–1236. The completed application must include the following information:

(1) The specific type of regulated article to be imported, including the genus and species name of the tree from which the regulated article was derived;

(2) Country, and locality if known, where the tree from which the regulated article was derived was harvested;

(3) The quantity of the regulated article to be imported;

(4) A description of any processing, treatment or handling of the regulated article to be performed prior to importation, including the location where any processing or treatment was or will be performed and the names and dosage of any chemicals employed in treatments;

[1] Application forms for permits are available without charge from the Administrator, c/o the Permit Unit, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, 4700 River Road, Riverdale, MD 20737, or local offices of Plant Protection and Quarantine, which are listed in telephone directories.

(5) A description of any processing, treatment, or handling of the regulated article intended to be performed following importation, including the location where any processing or treatment will be performed and the names and dosage of any chemicals employed in treatments;

(6) Whether the regulated article will or will not be imported in a sealed container or in a hold;

(7) The means of conveyance to be used to import the regulated article;

(8) The intended port of first arrival in the United States of the regulated article, and any subsequent ports in the United States at which regulated articles may be unloaded;

(9) The destination and general intended use of the regulated article;

(10) The name and address of the applicant and, if the applicant's address is not within the United States, the name and address of an agent in the United States whom the applicant names for acceptance of service of process; and

(11) A statement certifying the applicant as the importer of record.

(b) *Review of application and issuance of permit.* After receipt and review of the application, APHIS shall determine whether it appears that the regulated article at the time of importation will meet either the specific importation requirements in § 319.40–5 or the universal importation requirements in § 319.40–6.

(1) If it appears that the regulated article proposed for importation will meet the requirements of either § 319.40–5 or § 319.40–6, a permit stating the applicable conditions for importation under this subpart shall be issued for the importation of the regulated article identified in the application.

(2) If it appears that the regulated article proposed for importation will not meet the requirements of either § 319.40–5 or § 319.40–6 because these sections do not address the particular regulated article identified in the application, APHIS shall review the application by applying the plant pest risk assessment standards specified in § 319.40–11.

(i) If this review reveals that importation of the regulated article under a permit and subject to the inspection and other requirements in § 319.40–9, but without any further conditions, will not result in the introduction of plant pests into the United States, a permit for importation of the regulated article shall be issued. The permit may only be issued in unique and unforeseen circumstances when the importation of the regulated article is not expected to recur.

(ii) If this review reveals that the regulated article may be imported under conditions that would reduce the plant pest risk to an insignificant level, APHIS may implement rulemaking to add the additional conditions to this subpart, and after the regulations are effective, may issue a permit for importation of the regulated article.

(3) No permit will be issued to an applicant who has had a permit withdrawn under paragraph (d) of this section during the 12 months prior to receipt of the permit application by APHIS, unless the withdrawn permit has been reinstated upon appeal.

(c) *Permit does not guarantee eligibility for import.* Even if a permit has been issued for the importation of a regulated article, the regulated article may be imported only if all applicable requirements of this subpart are met and only if an inspector at the port of first arrival determines that no emergency measures pursuant to the Federal Plant Pest Act or other measures pursuant to the Plant Quarantine Act are necessary with respect to the regulated article.[2]

(d) *Denial and withdrawal of permits.* Any permit which has been issued may be withdrawn by an inspector or the Administrator if he or she determines that the person to whom the permit was issued has violated any requirement of this subpart. If the withdrawal is oral, the decision to withdraw the permit and the reasons for the withdrawal of the permit shall be confirmed in writing as promptly as circumstances permit. Any person whose permit has been denied or withdrawn may appeal the decision in writing to the Administrator within 10 days after receiving the written notification of the withdrawal. The appeal shall state all of the facts and reasons upon which the person relies to show that the permit was wrongfully denied or withdrawn. The Administrator shall grant or deny the appeal, in writing, stating the reasons for granting or denying the appeal as promptly as circumstances permit. If there is a conflict as to any material fact and the person from whom the permit is withdrawn requests a hearing, a hearing shall be held to resolve the conflict. Rules of practice concerning the hearing shall be adopted by the Administrator.

[2] Section 105(a) of the Federal Plant Pest Act (7 U.S.C. 150dd(a)) provides, among other things, that the Secretary of Agriculture may, whenever he deems it necessary as an emergency measure in order to prevent the dissemination of any plant pest new to or not theretofore known to be widely prevalent or distributed within and throughout the United States, seize, quarantine, treat, apply other remedial measures to, destroy, or dispose of, in such manner as he deems appropriate, subject to section 105(d) of the Federal Plant Pest Act (7 U.S.C. 150dd(d)), any product or article, including any article subject to this subpart, which is moving into or through the United States, and which he has reason to believe is infested with any such plant pest at the time of the movement, or which has moved into the United States, and which he has reason to believe was infested with any such plant pest at the time of the movement. Section 10 of the Plant Quarantine Act (7 U.S.C. 164a) and section 107 of the Federal Plant Pest Act (7 U.S.C. 150ff) also authorize measures against regulated articles which are not in compliance with this subpart.

§ 319.40–5 Importation and entry requirements for specified articles.

(a) *Bamboo timber.* Bamboo timber consisting of whole culms or canes may be imported into Guam or the Northern Mariana Islands subject to inspection and other requirements of § 319.40–9. Bamboo timber consisting of whole culms or canes that are completely dry as evidenced by lack of moisture in node tissue may be imported into any part of the United States subject to inspection and other requirements of § 319.40–9.

(b) *Monterey pine logs and lumber from Chile and New Zealand; Douglas-fir logs and lumber from New Zealand—(1) Logs.* (i) *Requirements prior to importation.* Monterey or Radiata pine (*Pinus radiata*) logs from Chile or New Zealand and Douglas-fir (*Pseudotsuga menziesii*) logs from New Zealand that are accompanied by a certificate stating that the logs meet the requirements of paragraph (b)(1)(i) (A) through (D) of this section, and that are consigned to a facility in the United States that operates in accordance with § 319.40–8, may be imported in accordance with paragraphs (b)(1)(i)(A) through (b)(1)(iii) of this section.

(A) The logs must be from live healthy trees which are apparently free of plant pests, plant pest damage, and decay organisms.

(B) The logs must be debarked in accordance with § 319.40–7(b) prior to fumigation.

(C) The logs and any solid wood packing materials to be used with the logs during shipment to the United States must be fumigated in accordance with § 319.40–7(f)(1), within 45 days following the date the trees are felled and prior to arrival of the logs in the United States, in the holds or in sealable containers. Fumigation must be conducted in the same sealable container or hold in which the logs and solid wood packing materials are exported to the United States.

(D) During shipment to the United States, no other regulated article is permitted on the means of conveyance with the logs, unless the logs and the other regulated articles are in separate

holds or separate sealed containers, or, if the logs and other regulated articles are mixed in a hold or sealed container, the other regulated articles either have been heat treated with moisture reduction in accordance with § 319.40–7(d), or have been fumigated in the hold or sealable container in accordance with paragraph (b)(1)(i)(C) of this section.

(ii) *Requirements upon arrival in the United States.* The following requirements apply upon arrival of the logs in the United States.

(A) The logs must be kept segregated from other regulated articles from the time of discharge from the means of conveyance until the logs are completely processed at a facility in the United States that operates under a compliance agreement in accordance with § 319.40–8.

(B) The logs must be moved from the port of first arrival to the facility that operates under a compliance agreement in accordance with § 319.40–8 by as direct a route as reasonably possible.

(iii) *Requirements at the processing facility.* The logs must be consigned to a facility operating under a compliance agreement in accordance with § 319.40–8 that includes the following requirements:

(A) Logs or any products generated from logs, including lumber, must be heat treated in accordance with § 319.40–7(c), or heat treated with moisture reduction in accordance with § 319.40–7(d).

(B) The logs, including sawdust, wood chips, or other products generated from the logs in the United States, must be processed in accordance with paragraph (b)(1)(iii) of this section within 60 days from the time the logs are released from the port of first arrival.

(C) Sawdust, wood chips, and waste generated by sawing or processing the logs must be disposed of by burning, heat treatment in accordance with § 319.40–7(c), heat treatment with moisture reduction in accordance with § 319.40–7(d), or other processing that will destroy any plant pests associated with the sawdust, wood chips, and waste. Composting and use of the sawdust, wood chips, and waste as mulch are prohibited unless composting and use as mulch are preceded by fumigation in accordance with § 319.40–7(f)(3), heat treatment in accordance with § 319.40–7(c), or heat treatment with moisture reduction in accordance with § 319.40–7(d). Wood chips, sawdust, and waste may be moved in enclosed trucks for processing at another facility operating under a compliance agreement in accordance with § 319.40–8.

(2) *Raw lumber.* Raw lumber, including solid wood packing materials imported as cargo, from Chile or New Zealand derived from Monterey or Radiata pine (*Pinus radiata*) logs and raw lumber from New Zealand derived from Douglas-fir (*Pseudotsuga menziesii*) logs may be imported in accordance with paragraphs (b)(2) (i) and (ii) of this section.

(i) During shipment to the United States, no other regulated article (other than solid wood packing materials) is permitted on the means of conveyance with the raw lumber, unless the raw lumber and the other regulated articles are in separate holds or separate sealed containers; *Except for* mixed shipments of logs and raw lumber fumigated in accordance with § 319.40–7(f)(2) and moved in accordance with paragraph (b)(1)(i)(D) of this section. Raw lumber on the vessel's deck must be in a sealed container.

(ii) The raw lumber must be consigned to a facility operating under a compliance agreement in accordance with § 319.40–8 that requires the raw lumber to be heat treated in accordance with § 319.40–7(c) or heat treated with moisture reduction in accordance with § 319.40–7(d) before any cutting, planing, or sawing of the raw lumber, and within 30 days from the time the lumber is released from the port of first arrival.

(c) *Tropical hardwoods.*—(1) *Debarked.* Tropical hardwood logs and lumber that have been debarked in accordance with § 319.40–7(b) may be imported subject to the inspection and other requirements of § 319.40–9.

(2) *Not debarked.* Tropical hardwood logs that have not been debarked may be imported if fumigated in accordance with § 319.40–7(f)(1) prior to arrival in the United States.

(3) *Not debarked; small lots.* Tropical hardwood logs that have not been debarked may be imported into the United States, other than into Hawaii, Puerto Rico, or the Virgin Islands of the United States, if imported in a lot of 15 or fewer logs and subject to the inspection and other requirements of § 319.40–9.

(d) *Temperate hardwoods.* Temperate hardwood logs and lumber (with or without bark) from all places except places in Asia that are east of 60° East Longitude and north of the Tropic of Cancer may be imported if fumigated in accordance with § 319.40–7(f) prior to arrival in the United States and subject to the inspection and other requirements of § 319.40–9.

(e) *Regulated articles associated with exclusively tropical climate pests.* Regulated articles that have been identified by a plant pest risk assessment as associated solely with plant pests that can successfully become established only in tropical or subtropical climates may be imported if:

(1) The regulated article is imported only to a destination in the continental United States; and,

(2) the regulated article is not imported into any tropical or subtropical areas of the United States specified in the permit.

(f) Cross-ties (railroad ties) from all places except places in Asia that are east of 60° East Longitude and north of the Tropic of Cancer may be imported if completely free of bark and accompanied by an importer document stating that the cross-ties will be pressure treated within 30 days following the date of importation.

§ 319.40–6 Universal importation options.

(a) *Logs.* Logs may be imported if prior to importation the logs have been debarked in accordance with § 319.40–7(b) and heat treated in accordance with § 319.40–7(c). During the entire interval between treatment and export, the logs must be stored and handled in a manner which excludes any access to the logs by plant pests.

(b) *Lumber.*—(1) *Heat treated or heat treated with moisture reduction.* Lumber that prior to importation has been heat treated in accordance with § 319.40–7(c), or heat treated with moisture reduction in accordance with § 319.40–7(d), may be imported in accordance with paragraphs (b)(1) (i) and (ii) of this section.

(i) During shipment to the United States, no other regulated article (other than solid wood packing materials) is permitted on the means of conveyance with the lumber, unless the lumber and the other regulated articles are in separate holds or separate sealed containers, or, if the lumber and other regulated articles are mixed in a hold or sealed container, all the regulated articles have been heat treated in accordance with § 319.40–7(c), or heat treated with moisture reduction in accordance with § 319.40–7(d). Lumber on the vessel's deck must be in a sealed container, unless it has been heat treated with moisture reduction in accordance with § 319.40–7(d).

(ii) If lumber has been heat treated in accordance with § 319.40–7(c), that fact must be stated on the importer document, or by a permanent marking on each piece of lumber in the form of the letters "HT" or the words "Heat Treated." If lumber has been heat treated with moisture reduction in accordance with § 319.40–7(d), that fact must be stated on the importer

document, or by a permanent marking, on each piece of lumber or on the cover of bundles of lumber, in the form of the letters "KD" or the words "Kiln Dried."

(2) *Raw lumber.* Raw lumber, including solid wood packing materials imported as cargo, from all places except places in Asia that are wholly east of 60° East Longitude and north of the Tropic of Cancer may be imported in accordance with paragraphs (b)(2) (i) and (ii) of this section.

(i) During shipment to the United States, no other regulated article (other than solid wood packing materials) is permitted on the means of conveyance with the raw lumber, unless the raw lumber and the other regulated articles are in separate holds or separate sealed containers. Raw lumber on the vessel's deck must be in a sealed container.

(ii) The raw lumber must be consigned to a facility operating under a compliance agreement in accordance with § 319.40–8 that requires the raw lumber to be heat treated in accordance with § 319.40–7(c) or heat treated with moisture reduction in accordance with § 319.40–7(d), within 30 days from the time the lumber is released from the port of first arrival. Heat treatment must be completed before any cutting, planing, or sawing of the raw lumber.

(c) *Wood chips and bark chips.* Wood chips and bark chips from any place except countries in Asia that are wholly east of 60° East Longitude and wholly or in part north of the Tropic of Cancer may be imported in accordance with this paragraph.

(1) The wood chips or bark chips must be accompanied by an importer document stating that the wood chips or bark chips were either:

(i) Derived from live, healthy, tropical species of plantation-grown trees grown in tropical areas; or

(ii) Fumigated with methyl bromide in accordance with § 319.40–7(f)(3), heat treated in accordance with § 319.40–7(c), or heat treated with moisture reduction in accordance with § 319.40–7(d).

(2) During shipment to the United States, no other regulated articles (other than solid wood packing materials) are permitted in the holds or sealed containers carrying the wood chips or bark chips. Wood chips or bark chips on the vessel's deck must be in a sealed container; *Except that;* If the wood chips or bark chips are derived from live, healthy, plantation-grown trees in tropical areas, they may be shipped on deck if no other regulated articles are present on the vessel, and the wood chips or bark chips are completely covered by a tarpaulin during the entire journey directly to the United States.

(3) The wood chips or bark chips must be free from rot at the time of importation, unless accompanied by an importer document stating that the entire lot was fumigated with methyl bromide in accordance with § 319.40–7(f)(3), heat treated in accordance with § 319.40–7(c), or heat treated with moisture reduction in accordance with § 319.40–7(d).

(4) Wood chips or bark chips imported in accordance with this paragraph must be consigned to a facility operating under a compliance agreement in accordance with § 319.40–8. The wood chips or bark chips must be burned, heat treated in accordance with § 319.40–7(c), heat treated with moisture reduction in accordance with § 319.40–7(d), or otherwise processed in a manner that will destroy any plant pests associated with the wood chips or bark chips, within 30 days of arrival at the facility. If the wood chips or bark chips are to be used for mulching or composting, they must first be fumigated in accordance with § 319.40–7(f)(3), heat treated in accordance with § 319.40–7(c), or heat treated with moisture reduction in accordance with § 319.40–7(d).

(d) *Wood mulch, humus, compost, and litter.* Wood mulch, humus, compost, and litter may be imported if accompanied by an importer document stating that the wood mulch, humus, compost, or litter was fumigated in accordance with § 319.40–7(f)(3), heat treated in accordance with § 319.40–7(c), or heat treated with moisture reduction in accordance with § 319.40–7(d).

(e) *Cork and bark.* Cork and cork bark, cinnamon bark, and other bark to be used for food, manufacture of medicine, or chemical extraction may be imported if free from rot at the time of importation and subject to the inspection and other requirements of § 319.40–9.

§ 319.40–7 Treatments and safeguards.

(a) *Certification of treatments or safeguards.* If APHIS determines that a document required for the importation of regulated articles is inaccurate, the regulated articles which are the subject of the certificate or other document shall be refused entry into the United States. In addition, APHIS may determine not to accept any further certificates for the importation of regulated articles in accordance with this subpart from a country in which an inaccurate certificate is issued, and APHIS may determine not to allow the importation of any or all regulated articles from any such country, until corrective action acceptable to APHIS establishes that certificates issued in that country will be accurate.

(b) *Debarking.* Except for raw lumber, no more than 2 percent of the surface of all regulated articles in a lot may retain bark, with no single regulated article retaining bark on more than 5 percent of its surface. For raw lumber, debarking must remove 100 percent of the bark.

(c) *Heat treatment.* Heat treatment must be performed only at a facility where APHIS or an inspector authorized by the Administrator and the national government of the country in which the facility is located has inspected the facility and determined that its operation complies with the standards of this paragraph. Heat treatment procedures may employ steam, hot water, kilns, exposure to microwave energy, or any other method (e.g., the hot water and steam techniques used in veneer production) that raises the temperature of the center of each treated regulated article to at least 71.1 °C and maintains the regulated article at that center temperature for at least 75 minutes. For regulated articles heat treated prior to arrival in the United States, during the entire interval between treatment and export the regulated article must be stored, handled, or safeguarded in a manner which excludes any infestation of the regulated article by plant pests.

(d) *Heat treatment with moisture reduction.* (1) Heat treatment with moisture reduction may employ:

(i) Kiln drying conducted in accordance with the schedules prescribed for the regulated article in the Dry Kiln Operator's Manual, Agriculture Handbook 188, which is incorporated by reference at § 300.1 of this chapter; or,

(ii) Dry heat, exposure to microwave energy, or any other method that raises the temperature of the center of each treated regulated article to at least 71.1 °C, maintains the regulated articles at that center temperature for at least 75 minutes, and reduces the moisture content of the regulated article to 20 percent or less as measured by an electrical conductivity meter.

(2) For regulated articles heat treated with moisture reduction prior to arrival in the United States, during the entire interval between treatment and export the regulated article must be stored, handled, or safeguarded in a manner which excludes any infestation of the regulated article by plant pests.

(e) *Surface pesticide treatments.* All United States Environmental Protection Agency registered surface pesticide treatments are authorized for regulated articles imported in accordance with this subpart. Surface pesticide

treatments must be conducted in accordance with label directions approved by the United States Environmental Protection Agency. When used on heat treated logs, a surface pesticide treatment must be first applied within 48 hours following heat treatment. The surface pesticide treatment must be repeated at least every 30 days during storage of the regulated article, with the final treatment occurring no more than 30 days prior to departure of the means of conveyance that carries the regulated articles to the United States.

(f) *Methyl bromide fumigation.* The following minimum standards for methyl bromide fumigation treatment are authorized for the regulated articles listed in paragraphs (f)(1) through (f)(3) of this section. Any method of fumigation that meets or exceeds the specified temperature/time/concentration products is acceptable.

(1) *Logs.* (i) *T–312 schedule.* The entire log and the ambient air must be at a temperature of 5 °C or above throughout fumigation. The fumigation must be conducted using schedule T–312 contained in the Treatment Manual. In lieu of the schedule T–312 methyl bromide concentration, fumigation may be conducted with an initial methyl bromide concentration of at least 240 g/m³ with exposure and concentration levels adequate to provide a concentration-time product of at least 17,280 gram-hours calculated on the initial methyl bromide concentration.

(ii) *T–404 schedule.* The entire log and the ambient air must be at a temperature of 5 °C or above throughout fumigation. The fumigation must be conducted using schedule T–404 contained in the Treatment Manual. In lieu of the schedule T–404 methyl bromide concentration, fumigation may be conducted with an initial methyl bromide concentration of at least 120 g/m³ with exposure and concentration levels adequate to provide a concentration-time product of at least 1920 gram-hours calculated on the initial methyl bromide concentration.

(2) *Lumber.* The lumber and the ambient air must be at a temperature of 5 °C or above throughout fumigation. The fumigation must be conducted using schedule T–404 contained in the Treatment Manual. In lieu of the schedule T–404 methyl bromide concentration, fumigation may be conducted with an initial methyl bromide concentration of at least 120 g/m³ with exposure and concentration levels adequate to provide a concentration-time product of at least 1920 gram-hours calculated on the initial methyl bromide concentration.

(3) *Regulated articles other than logs or lumber.* (i) If the ambient air and the regulated articles other than logs or lumber are at a temperature of 21 °C or above throughout fumigation, the fumigation must be conducted using schedule T–404 contained in the Treatment Manual. In lieu of the schedule T–404 methyl bromide concentration, fumigation may be conducted with an initial methyl bromide concentration of at least 48 g/m³ with exposure and concentration levels adequate to provide a concentration-time product of at least 760 gram-hours calculated on the initial methyl bromide concentration.

(ii) If the ambient air and the regulated articles other than logs or lumber are at a temperature of 4.5–20.5 °C throughout fumigation, the fumigation must be conducted using schedule T–404 contained in the Treatment Manual. In lieu of the schedule T–404 methyl bromide concentration, fumigation may be conducted with an initial methyl bromide concentration of at least 120 g/m³ with exposure and concentration levels adequate to provide a concentration-time product of at least 1920 gram-hours calculated on the initial methyl bromide concentration.

(g) *Preservatives.* All preservative treatments that use a preservative product that is registered by the United States Environmental Protection Agency are authorized for treatment of regulated articles imported in accordance with this subpart. Preservative treatments must be performed in accordance with label directions approved by the United States Environmental Protection Agency.

§ 319.40–8 Processing at facilities operating under compliance agreements.

(a) Any person who operates a facility in which imported regulated articles are processed may enter into a compliance agreement to facilitate the importation of regulated articles under this subpart. The compliance agreement shall specify the requirements necessary to prevent spread of plant pests from the facility, requirements to ensure the processing method effectively destroys plant pests, and the requirements for the application of chemical materials in accordance with the Treatment Manual. The compliance agreement shall also state that inspectors must be allowed access to the facility to monitor compliance with the requirements of the compliance agreement and of this subpart. Compliance agreement forms may be obtained from the Administrator or an inspector.

(b) Any compliance agreement may be canceled by the inspector who is supervising its enforcement, orally or in writing, whenever the inspector finds that the person who entered into the compliance agreement has failed to comply with the conditions of the compliance agreement. If the cancellation is oral, the decision to cancel the compliance agreement and the reasons for cancellation of the compliance agreement shall be confirmed in writing, as promptly as circumstances permit. Any person whose compliance agreement has been canceled may appeal the decision in writing to the Administrator within 10 days after receiving written notification of the cancellation. The appeal shall state all of the facts and reasons upon which the person relies to show that the compliance agreement was wrongfully canceled. The Administrator shall grant or deny the appeal, in writing, stating the reasons for granting or denying the appeal, as promptly as circumstances permit. If there is a conflict as to any material fact and the person whose compliance agreement has been canceled requests a hearing, a hearing shall be held to resolve the conflict. Rules of practice concerning the hearing will be adopted by the Administrator.

§ 319.40–9 Inspection and other requirements at port of first arrival.

(a) *Procedures for all regulated articles.* (1) All imported regulated articles shall be inspected at the port of first arrival. If the inspector finds signs of plant pests on or in the regulated article, or finds that the regulated article may have been associated with other articles infested with plant pests, the regulated article shall be cleaned or treated as required by an inspector, and the regulated article and any products of the regulated article shall also be subject to reinspection, cleaning, and treatment at the option of an inspector at any time and place before all applicable requirements of this subpart have been accomplished.

(2) Regulated articles shall be assembled for inspection at the port of first arrival, or at any other place prescribed by an inspector, at a place and time and in a manner designated by an inspector.

(3) If an inspector finds that an imported regulated article is so infested with a plant pest that, in the judgment of the inspector, the regulated article cannot be cleaned or treated, or contains soil or other prohibited contaminants, the entire lot may be refused entry into the United States.

(4) No person shall move any imported regulated article from the port of first arrival unless and until an inspector notifies the person, in writing or through an electronic database, that the regulated article:

(i) Is in compliance with all applicable regulations and has been inspected and found to be apparently free of plant pests; [3] or,

(ii) Has been inspected and the inspector requires reinspection, cleaning, or treatment of the regulated article at a place other than the port of first arrival.

(b) *Notice of arrival; visual examination of regulated articles at port of first arrival.* (1) At least 7 days prior to the expected date of arrival in the United States of a shipment of regulated articles imported in accordance with this subpart, the permittee or his or her agent must notify the APHIS Officer in Charge at the port of arrival of the date of expected arrival. The address and telephone number of the APHIS Officer in Charge will be specified in any specific permit issued by APHIS [4]. This notice may be in writing or by telephone. The notice must include the number of any specific permit issued for the regulated articles; the name, if any, of the means of conveyance carrying the regulated articles; the type and quantity of the regulated articles; the expected date of arrival; the country of origin of the regulated articles; the name and the number, if any, of the dock or area where the regulated articles are to be unloaded; and the name of the importer or broker at the port of arrival.

(2) Imported regulated articles which have been debarked in accordance with § 319.40–7(b) and can be safely and practically inspected will be visually examined for plant pests by an inspector at the port of first arrival. If plant pests are found on or in the regulated articles or if the regulated article cannot be safely and practically inspected, the regulated articles must be treated in accordance with the Treatment Manual.

(c) *Marking and identity of regulated articles.* Any regulated article, at the time of importation shall bear on the outer container (if in a container), on the regulated article (if not in a container), or on a document accompanying the regulated article the following information:

(1) General nature and quantity of the regulated articles;

(2) Country and locality, if known, where the tree from which the regulated article was derived was harvested;

(3) Name and address of the person importing the regulated article;

(4) Name and address of consignee of the regulated article;

(5) Identifying shipper's mark and number; and

(6) Number of the permit (if one was issued) authorizing the importation of the regulated article into the United States.

(d) *Sampling for plant pests at port of first arrival.* Any imported regulated article may be sampled for plant pests at the port of first arrival. If an inspector finds it necessary to order treatment of a regulated article at the port of first arrival, any sampling will be done prior to treatment.

§ 319.40–10 Costs and charges.

The services of an inspector during regularly assigned hours of duty and at the usual places of duty shall be furnished without cost to the importer.[5] The inspector may require the importer to furnish any labor, chemicals, packing materials, or other supplies required in handling regulated articles under this subpart. APHIS will not be responsible for any costs or charges, other than those identified in this section.

§ 319.40–11 Plant pest risk assessment standards.

When evaluating a request to import a regulated article not allowed importation under this subpart, or a request to import a regulated article under conditions other than those prescribed by this subpart, APHIS will conduct the following analysis to determine the plant pest risks associated with each requested importation in order to determine whether or not to issue a permit under this subpart or to propose regulations establishing conditions for the importation into the United States of the regulated article.

(a) *Collecting commodity information.* (1) APHIS will evaluate the application for information describing the regulated article and the origin, processing, treatment, and handling of the regulated article; and

(2) APHIS will evaluate history of past plant pest interceptions or introductions (including data from foreign countries) associated with the regulated article.

(b) *Cataloging quarantine pests.* For the regulated article specified in an application, APHIS will determine what plant pests or potential plant pests are associated with the type of tree from which the regulated article was derived, in the country and locality from which the regulated article is to be exported. A plant pest that meets one of the following criteria is a quarantine pest and will be further evaluated in accordance with paragraph (c) of this section:

(1) Non-indigenous plant pest not present in the United States;

(2) Non-indigenous plant pest, present in the United States and capable of further dissemination in the United States;

(3) Non-indigenous plant pest that is present in the United States and has reached probable limits of its ecological range, but differs genetically from the plant pest in the United States in a way that demonstrates a potential for greater damage potential in the United States;

(4) Native species of the United States that has reached probable limits of its ecological range, but differs genetically from the plant pest in the United States in a way that demonstrates a potential for greater damage potential in the United States; or

(5) Non-indigenous or native plant pest that may be able to vector another plant pest that meets one of the criteria in paragraphs (b)(1) through (4) of this section.

(c) *Determining which quarantine pests to assess.* (1) APHIS will divide quarantine pests identified in paragraph (b) of this section into groups depending upon where the plant pest is most likely to be found. The plant pests would be grouped as follows:

(i) Plant pests found on the bark;

(ii) Plant pests found under the bark; and

(iii) Plant pests found in the wood.

(2) APHIS will subdivide each of the groups in paragraph (c)(1) of this section into associated taxa.

(3) APHIS will rank the plant pests in each group in paragraph (c)(2) of this section according to plant pest risk, based on the available biological information and demonstrated plant pest importance.

(4) APHIS will identify any plant pests ranked in paragraph (c)(3) of this section for which plant pest risk assessments have previously been performed in accordance with this section. APHIS will conduct individual plant pest risk assessments for the remaining plant pests, starting with the highest ranked plant pest(s) in each group.

(5) The number of plant pests in each group to be evaluated through individual plant pest risk assessment will be based on biological similarities

[3] Certain regulated articles may also be subject to §§ 319.56 through 319.56–8, "Subpart—Fruits and Vegetables," or to Noxious Weed Act regulations under part 360 of this chapter, or to Endangered Species Act regulations under parts 355 and 356 of this chapter and 50 CFR parts 17 and 23.

[4] A list of APHIS Officers in Charge may be obtained from the Administrator, c/o Port Operations, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, 4700 River Road, Riverdale, MD 20737.

[5] Provisions relating to costs for other services of an inspector are contained in part 354 of this chapter.

of members of the group as they relate to measures taken in connection with the importation of the regulated article to mitigate the plant pest risk associated with the regulated article. For example, if the plant pest risk assessment for the highest ranked plant pest indicates a need for a mitigation measure that would result in the same reduction of risk for other plant pests ranked in the group, the other members need not be subjected to individual plant pest risk assessment.

(d) *Conducting individual plant pest risk assessments.* APHIS will evaluate each of the plant pests identified in paragraph (c)(4) of this section by:

(1) Estimation of the probability of the plant pest being on, with, or in the regulated article at the time of importation;

(2) Estimation of the probability of the plant pest surviving in transit on the regulated article and entering the United States undetected;

(3) Estimation of the probability of the plant pest colonizing once it has entered into the United States;

(4) Estimation of the probability of the plant pest spreading beyond any colonized area; and

(5) Estimation of the damage to plants that could be expected upon introduction and dissemination within the United States of the plant pest.

(e) *Estimating unmitigated overall plant pest risk.* APHIS will develop an estimation of the overall plant pest risk associated with importing the regulated article based on compilation of individual plant pest risk assessments performed in accordance with paragraph (d) of this section.

(f) *Evaluating available requirements to determine whether they would allow safe importation of the regulated article.* The requirements of this subpart, and any other requirements relevant to the regulated article and plant pests involved, will be compared with the individual plant pest risk assessments in order to determine whether particular conditions on the importation of the regulated article would reduce the plant pest risk to an insignificant level. If APHIS determines that the imposition of particular conditions on the importation of the regulated article could reduce the plant pest risk to an insignificant level, and determines that sufficient APHIS resources are available to implement or ensure implementation of the conditions, APHIS will implement rulemaking to allow importation of the requested regulated article under the conditions identified by the plant pest risk assessment process.

Subpart—Packing Materials

§ 319.69 [Amended]

8. The introductory text to § 319.69 is removed.

9. In § 319.69, paragraph (a), the phrase "On and after July 1, 1933, the" is removed and the word "The" is added in its place.

10. In § 319.69, paragraph (b), the phrase "On and after June 8, 1953, the" is removed and the word "The" is added in its place.

11. In § 319.69, paragraph (b)(3) is removed, and paragraphs (b)(4) and (b)(5) are redesignated as paragraphs (b)(3) and (b)(4), respectively.

§ 319.69a [Amended]

12. In § 319.69a, paragraph (a) is amended by removing the reference "(b)(1), (3), and (4)" and adding the reference "(b)(1) and (3)" in its place.

Done in Washington, DC, this 19th day of May 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–12789 Filed 5–24–95; 8:45 am]

BILLING CODE 3410–34–P

Agricultural Marketing Service

7 CFR Part 946

[FV95–946–2FR]

Irish Potatoes Grown in Washington; Establishment of Interest Charge on Overdue Assessment Payments and Clarification of Operating Reserve Authority

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule establishes an interest charge on overdue assessments under the marketing order and clarifies authority for an operating reserve not to exceed approximately two fiscal periods' expenses. This action will contribute to the efficient operation of the order by ensuring that adequate funds are available to cover authorized expenses incurred under the order. This rule was recommended by the State of Washington Potato Committee (Committee), the agency responsible for the local administration of the order.

EFFECTIVE DATE: May 25, 1995.

FOR FURTHER INFORMATION CONTACT: Dennis L. West, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 1220 SW Third Avenue, room 369, Portland, Oregon 97204–2807; telephone: (503) 326–2724; or James B. Wendland, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, D.C. 20090–6456; telephone: (202) 720–2170.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 113 and Marketing Order No. 946 (7 CFR part 946), both as amended, regulating the handling of Irish potatoes grown in Washington, hereinafter referred to as the "order." The order is authorized by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this final rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this action.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary of Agriculture (Secretary) a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days aiter the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially

small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 50 handlers of Washington potatoes subject to regulation under the order and approximately 450 producers of Washington potatoes in the regulated production area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those whose annual receipts are less than $500,000. The majority of potato handlers and producers regulated under the order may be classified as small entities.

This rule (1) establishes an interest charge of one (1) percent per month to be applied to any assessment balance remaining unpaid after 30 days, and (2) clarifies that funds in the operating reserve may not exceed approximately two fiscal periods' expenses.

These changes were unanimously recommended by the Committee. The changes will contribute to the efficient operation of the program by ensuring that adequate funds are available to cover the Committee's authorized expenses.

Section 946.41 of the order specifies that if handlers do not pay their assessments within the time prescribed by the Committee, the assessments may be increased by a late payment charge or an interest charge, or both, at rates prescribed by the Committee with the approval of the Secretary.

The Committee depends upon handler assessment payments for operating funds. Handlers are invoiced by the Committee on a monthly basis. However, some handlers are continually late with their assessment payments, and a few wait until the end of the season to remit to the Committee what is owed. When assessments are not paid in a timely manner, the handlers paying assessments on time are placed in an unfair situation compared with the delinquent handlers, who have use of that unpaid assessment money for other purposes, including earning interest in a financial institution.

As part of its collection efforts, the Committee has requested handlers to promptly submit delinquent assessment payments. However, such requests have not substantially decreased the frequency of delinquent payments. To facilitate the collection of assessments needed for the maintenance and functioning of the Committee, it recommended the establishment of an interest charge of one (1) percent per month to be applied to any assessment balance remaining unpaid after 30 days, and that this one (1) percent interest charge shall be applied monthly thereafter to the unpaid balance, including any accumulated unpaid interest. The Committee believes that these charges are high enough to encourage timely assessment payments. The charges are within the interest range customarily charged by banks on commercial accounts.

This change will encourage handlers to pay their assessments when due, thereby eliminating inequities. The Committee believes that this will be an effective means to ensure timely payments. This action is expected to reduce the need for Department involvement with compliance efforts and thereby reduce the costs for the government to administer the order.

Effective June 5, 1972, § 946.42 of the order was revised to authorize the Committee to maintain an operating reserve not to exceed approximately two fiscal periods' operational expenses, or such lower limits as the Committee, with the approval of the Secretary, may establish (37 FR 10915; June 1, 1972). Funds in the reserve are available for use by the Committee for expenses authorized pursuant to § 946.40. Since June of 1972, the Committee has conducted its financial operations with a reserve approximating two fiscal periods' expenses and has not recommended a lower limit.

However, the proviso in paragraph (a) of § 946.142 of Subpart—Rules and Regulations (7 CFR § 946.100–946.142; 32 FR 16199; November 28, 1967) limiting the operating reserve to approximately one fiscal year's expenses has never been updated to bring it into conformity with amended paragraph (a) of § 946.42 of the order. This rule makes that conforming change by changing the words "one fiscal year's expenses" at the end of the proviso to "two fiscal periods' expenses".

A proposed rule on these actions was published in the **Federal Register** on April 18, 1995, (60 FR 19382). It provided a 15-day comment period which ended May 3, 1995. No comments were received.

Based on available information, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matters presented, the information and recommendations submitted by the Committee and other information, it is found that finalizing the proposed rule, without change, as published in the **Federal Register** (60 FR 19382, April 18, 1995), will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action clarifies authority for an operating financial reserve approximating two fiscal periods' expenses rather than one; (2) this action should be in effect as soon as possible so handlers can make plans for the upcoming shipping season and to encourage any handlers owing delinquent assessments to promptly pay; (3) this action was unanimously recommended by the Committee at an open public meeting and all interested persons had an opportunity to provide input; and (4) this action provided a 15-day period for submission of written comments and none were received.

List of Subjects in 7 CFR Part 946

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 946 is amended as follows:

PART 946—IRISH POTATOES GROWN IN WASHINGTON

1. The authority citation for 7 CFR part 946 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new § 946.141 is added to read as follows:

§ 946.141 Late payment and interest charge.

The Committee shall impose an interest charge on any handler who fails to pay his or her assessment within thirty (30) days of the billing date shown on the handler's assessment statement received from the Committee. The interest charge shall, after 30 days, be one percent of the unpaid assessment balance. In the event the handler fails to pay the delinquent assessment, the one percent interest charge shall be applied monthly thereafter to the unpaid balance, including any accumulated unpaid interest. Any amount paid by a handler as an assessment, including any charges imposed pursuant to this paragraph, shall be credited when the payment is received in the Committee office.

3. In § 946.142, paragraph (a) is revised to read as follows:

§ 946.142 Operating reserve.

(a) The Committee, with the approval of the Secretary, may carry over excess funds into subsequent fiscal periods as an operating reserve: *Provided*, That

funds in the operating reserve may not exceed approximately two fiscal periods' expenses.

* * * * *

Dated: May 19, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–12803 Filed 5–24–95; 8:45 am]

BILLING CODE 3410–02–P

FARM CREDIT ADMINISTRATION

12 CFR Part 620

RIN 3052–AB37

Disclosure to Shareholders; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration (FCA) published a final regulation under part 620 on April 24, 1995 (60 FR 20011). The final regulation amends its disclosure requirements for association annual meeting information statements including required disclosures for director candidates nominated from the floor. The amendments provide associations more flexibility in accepting floor nominations for director positions, clarify disclosure requirements when annual meetings are held in more than one session and shareholders vote by mail, and make other technical changes. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is May 24, 1995.

EFFECTIVE DATE: The regulation amending 12 CFR part 620 published on April 24, 1995 (60 FR 20011) is effective May 24, 1995.

FOR FURTHER INFORMATION CONTACT:

Laurie A. Rea, Policy Analyst, Regulation Development, Office of Examination, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4498, TDD (703) 883–4444,

or

James M. Morris, Senior Attorney, Regulatory Operations Division, Office of General Counsel, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4020, TDD (703) 883–4444.

(12 U.S.C. 2252(a) (9) and (10))

Dated: May 19, 1995.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 95–12761 Filed 5–24–95; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–SW–09–AD; Amendment 39–9239; AD 95–11–05]

Airworthiness Directives; Societe Nationale Industrielle Aerospatiale and Eurocopter France Model AS–355 E, F, F1, F2, and N Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Societe Nationale Industrielle Aerospatiale and Eurocopter France (Eurocopter France) Model AS–355 E, F, F1, F2, and N helicopters. This action requires a check to ensure that the main gearbox (MGB) oil pressure warning light illuminates during each shutdown of the helicopter engine until the MGB oil pressure switch (switch) is removed and replaced. This amendment is prompted by a malfunction of the MGB switch. This condition, if not corrected, could result in failure to detect a loss of oil pressure, loss of the MGB, loss of power to the main rotor system, and subsequent loss of control of the helicopter.

DATES: Effective June 9, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 9, 1995.

Comments for inclusion in the Rules Docket must be received on or before July 24, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–SW–09–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

The service information referenced in this AD may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005. This information may be examined at the FAA, Office of the Assistant Chief Counsel, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Monschke, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5116, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: The Direction Generale De L'Aviation Civile, which is the airworthiness authority for France, has notified the FAA that an unsafe condition may exist on Eurocopter France Model AS–355 E, F, F1, F2, and N helicopters. The Direction Generale De L'Aviation Civile advises that a possible malfunction of the MGB switch, part number (P/N) 704A37–721–082 (S1130–021–082), modification number 350A07–7141, was reported by the manufacturer.

Eurocopter France has issued Eurocopter Service Bulletin AS 355 No. 01.39, Revision 1, dated April 21, 1994, which specifies a check each time the rotor is stopped to ensure that the MGB oil pressure warning light illuminates, and removal of the MGB switch, P/N 704A37–721–082 (S1130–021–082), modification number 350A07–7141, and replacement with an airworthy MGB switch. The Direction Generale De L'Aviation Civile classified this service bulletin as mandatory and issued AD 94–088–050(B) in order to assure the continued airworthiness of these helicopters in France.

These helicopter models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the Direction Generale De L'Aviation Civile has kept the FAA informed of the situation described above. The FAA has examined the findings of the Direction Generale De L'Aviation Civile, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other Eurocopter France Model AS–355 E, F, F1, F2, and N helicopters of the same type design registered in the United States, this AD is being issued to prevent an undetected loss of oil pressure, loss of the MGB, loss of power to the main rotor system, and subsequent loss of control of the helicopter. This AD requires a check during each shutdown of the helicopter engine to ensure that the MGB oil pressure warning light illuminates, and removal of the MGB switch, P/N 704A37–721–082 (S1130–021–082), modification number 350A07–7141, and replacement with MGB switch, P/N 704A37–721–089 (S1130–021–089), modification number 350A07–7152, or Jaeger MGB switch, P/N 704A37–721–014 (068651.54/350A32–3134–00), within 30 days after the effective date of this AD. The owner/operator check does not require the use of tools, precision measuring equipment, training, pilot logbook endorsements, or the use of technical data not contained in the AD. Additionally, this owner/operator check is considered part of the normal engine shutdown checks. This check may be performed by an owner/operator holding at least a private pilot certificate and must be entered into the aircraft records showing compliance with this AD in accordance with sections 43.11 and 91.417(a)(2)(v) of the Federal Aviation Regulations. An undetected loss of oil pressure could result in a forced autorotative landing due to loss of power to the main rotor system. Due to the short compliance time and the criticality of the MGB switch to detect a loss of oil pressure, this AD is being issued immediately. The actions are required to be accomplished in accordance with the service bulletin described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 95–SW–09–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR section 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

95–11–05 Societe Nationale Industrielle Aerospatiale and Eurocopter France (Eurocopter France): Amendment 39–9239. Docket No. 95–SW–09–AD.

Applicability: Model AS–355 E, F, F1, F2, and N helicopters, with main gearbox (MGB) oil pressure switch (switch), part number (P/N) 704A37–721–082 (S1130–021–082), modification number 350A07–7141, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously. To prevent an undetected loss of oil pressure, loss of the MGB, loss of power to the main rotor system, and subsequent loss of control of the helicopter, accomplish the following:

(a) Until the MGB switch installation required by paragraph (c) of this AD is accomplished, during each shutdown of the helicopter engine, check to ensure that the MGB pressure warning light illuminates. If it does not illuminate, before further flight, replace the MGB switch in accordance with paragraph (c) of this AD.

(b) The operational check required by paragraph (a) of this AD may be performed by an owner/operator holding at least a private pilot certificate and must be entered into the aircraft records showing compliance with this AD in accordance with 14 CFR sections 43.11 and 91.417(a)(2)(v).

(c) Within 30 days after the effective date of this AD, remove the MGB switch, P/N 704A37–721–082 (S1130–021–082), modification number 350A07–7141, and replace with MGB switch, P/N 704A37–721–089 (S1130–021–089), modification number 350A07–7152, or Jaeger MGB switch, P/N 704A37–721–014 (068651.54/350A32–3134–00) in accordance with paragraph CC(1) of

Eurocopter Service Bulletin AS 355, No. 01.39, Revision 1, dated April 21, 1994.

Note 2: The MGB switch P/N is engraved on the MGB switch casing.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used when approved by the Manager, Rotorcraft Standards Staff, FAA, Rotorcraft Directorate. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Standards Staff.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Standards Staff.

(e) The check, removal, and replacement shall be done in accordance with Eurocopter Service Bulletin AS 355 No. 01.39, Revision 1, dated April 21, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005. Copies may be inspected at the FAA, Office of the Assistant Chief Counsel, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on June 9, 1995.

Issued in Fort Worth, Texas, on May 17, 1995.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 95–12607 Filed 5–24–95; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 95–SW–10–AD; Amendment 39–9240; AD 95–11–06]

Airworthiness Directives; Societe Nationale Industrielle Aerospatiale and Eurocopter France Model AS–350B, BA, D, B1, and B2 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Societe Nationale Industrielle Aerospatiale and Eurocopter France (Eurocopter France) Model AS–350B, BA, D, B1, and B2 helicopters. This action requires a check to ensure that the main gearbox (MGB) oil pressure warning light illuminates during each shutdown of the helicopter engine until the MGB oil pressure switch (switch) is removed and replaced. This amendment is prompted by a malfunction of the MGB switch. This condition, if not corrected, could result in failure to detect a loss of MGB oil pressure, loss of the MGB, loss of power to the main rotor system, and subsequent loss of control of the helicopter.

DATES: Effective June 9, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 9, 1995.

Comments for inclusion in the Rules Docket must be received on or before July 24, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–SW–10–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

The service information referenced in this AD may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005. This information may be examined at the FAA, Office of the Assistant Chief Counsel, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Monschke, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5116, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: The Direction Generale De L'Aviation Civile, which is the airworthiness authority for France, has notified the FAA that an unsafe condition may exist on Eurocopter France Model AS–350B, BA, D, B1, and B2 helicopters. The Direction Generale De L'Aviation Civile advises that a possible malfunction of the MGB switch, part number (P/N) 704A37–721–082 (S1130–021–082), modification number 350A07–7141, was reported by the manufacturer.

Eurocopter France has issued Eurocopter Service Bulletin AS 350 No. 01.43, Revision 1, dated April 21, 1994, which specifies a check each time the rotor is stopped to ensure that the MGB oil pressure warning light illuminates, and removal of the MGB switch, P/N 704A37–721–082 (S1130–021–082), modification number 350A07–7141, and replacement with an airworthy MGB switch. The Direction Generale De L'Aviation Civile classified this service bulletin as mandatory and issued AD 94–087–068(B) in order to assure the continued airworthiness of these helicopters in France.

These helicopter models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the Direction Generale De L'Aviation Civile has kept the FAA informed of the situation described above. The FAA has examined the findings of the Direction Generale De L'Aviation Civile, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other Eurocopter France Model AS–350B, BA, D, B1, and B2 helicopters of the same type design registered in the United States, this AD is being issued to prevent an undetected loss of MGB oil pressure, loss of the MGB, loss of power to the main rotor system, and subsequent loss of control of the helicopter. This AD requires a check during each shutdown of the helicopter engine to ensure that the MGB oil pressure warning light illuminates and, removal of the MGB switch, P/N 704A37–721–082 (S1130–021–082), modification number 350A07–7141, and replacement with MGB switch, P/N 704A37–721–089 (S1130–021–089), modification number 350A07–7152, or Jaeger MGB switch, P/N 704A37–721–014 (068651.54/350A32–3134–00), within 30 days after the effective date of this AD. The owner/operator check does not require the use of tools, precision measuring equipment, training, pilot logbook endorsements, or the use of technical data not contained in the AD. Additionally, this owner/operator check is considered part of the normal engine shutdown checks. This check may be performed by an owner/operator holding at least a private pilot certificate and must be entered into the aircraft records showing compliance with this AD in accordance with sections 43.11 and 91.417(a)(2)(v) of the Federal Aviation Regulations. An undetected loss of oil pressure could result in a forced autorotative landing due to loss of power to the main rotor system. Due to the short compliance time and the criticality of the failure of the MGB switch to detect a loss of oil pressure, this AD is being issued immediately. The actions are required to be

accomplished in accordance with the service bulletin described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 95–SW–10–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR section 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

95–11–06 Societe Nationale Industrielle Aerospatiale and Eurocopter France: Amendment 39–9240. Docket No. 95–SW–10–AD.

Applicability: Model AS–350B, BA, D, B1, and B2 helicopters, with main gearbox (MGB) oil pressure switch (switch) part number (P/N) 704A37–721–082 (S1130–021–082), modification number 350A07–7141, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration of the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously. To prevent an undetected loss of MGB oil pressure, loss of the MGB, loss of power to the main rotor system, and subsequent loss of control of the helicopter, accomplish the following:

(a) Until the MGB switch installation required by paragraph (c) of this AD is accomplished, during each shutdown of the helicopter engine, check to ensure that the MGB oil pressure warning light illuminates. If it does not illuminate, before further flight, replace the MGB switch in accordance with paragraph (c) of this AD.

(b) The operational check required by paragraph (a) of this AD may be performed by an owner/operator holding at least a private pilot certificate and must be entered into the aircraft records showing compliance with this AD in accordance with 14 CFR sections 43.11 and 91.417(a)(2)(v).

(c) Within 30 days after the effective date of this AD, remove the MGB switch, P/N 704A37–721–082 (S1130–021–082), modification number 350A07–7141, and replace with MGB switch, P/N 704A37–721–089 (S1130–021–089), modification number 350A07–7152, or Jaeger MGB switch, P/N 704A37–721–014 (068651.54/350A32–3134–00) in accordance with paragraph CC (1) of Eurocopter Service Bulletin AS–350, No. 01.43, Revision 1, dated April 21, 1994.

Note 2: The MGB switch P/N is engraved on the MGB switch casing.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used when approved by the Manager, Rotorcraft Standards Staff, FAA, Rotorcraft Directorate. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Standards Staff.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Standards Staff.

(e) The check, removal, and replacement shall be done in accordance with Eurocopter Service Bulletin AS–350, No. 01.43, Revision 1, dated April 21, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005. Copies may be inspected at the FAA, Office of the Assistant Chief Counsel, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on June 9, 1995.

Issued in Fort Worth, Texas, on May 17, 1995.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 95–12608 Filed 5–24–95; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 71

[Airspace Docket No. 95-AWP–7]

Amendment of Class E Airspace Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace areas at Hilo International, General Field, HI, Kaneohe Marine Corps Air Station (MCAS), HI, Lihue Airport, HI, and Crows Landing Naval Auxiliary Landing Field (NALF), CA. Presently, the Class E2 airspace areas at Hilo, HI, Kaneohe MCAS, HI, and Lihue, HI, are incorrectly referenced in the Airport/Facility Directory. This action will correct that error by properly referencing these Class E airspace areas in the Airport/Facility Directory, Pacific Chart Supplement. This action also corrects an error in the geographic coordinates of the E2 airspace area at Crows Landing NALF, CA, and the E4 airspace area at Hilo, HI.

EFFECTIVE DATE: 0901 UTC, July 20, 1995.

FOR FURTHER INFORMATION CONTACT: Scott Speer, System Management Specialist, System Management Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 297–0010.

SUPPLEMENTARY INFORMATION:

The Rule

This action corrects references the Class E2 airspace areas at Hilo, HI, Kaneohe MCAS, HI, and Lihue, HI, in the Airport/Facility Directory of the Pacific Chart Supplement. This action also corrects an error in the geographic coordinates of the E2 airspace area at Crows Landing NALF, CA, and the E4 airspace area at Hilo, HI. This action is editorial in nature. I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary, because this action is a minor technical amendment in which the public is not particularly interested. Class E airspace designations are published in paragraphs 6002 and 6004 of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will not affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporated by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.09B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 6002 Class E airspace area designated as a surface for an airport.

* * * * *

AWP HI E2 Hilo, Hi [Revised]

Hilo International, General Lyman Field, HI
(Lat. 19°43'13"N, long. 155°02'55"W)

That airspace extending upward from the surface within a 4.3-mile radius of General Lyman Field. This Class E airspace is effective during the specific dated and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory, Pacific Chart Supplement.

* * * * *

AWP HI E2 Kaneohe MCAS, HI [Revised]

Kaneohe MCAS, HI
(Lat. 21°27'06"N, long. 157°46'10"W)

That airspace extending upward from the surface within a 4.3-mile radius of Kaneohe MCAS. This Class E airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory, Pacific Chart Supplement.

* * * * *

AWP HI E2 Lihue, HI [Revised]

Lihue Airport, HI
(Lat. 21°58'34"N, long. 159°20'20"W)

That airspace extending upward from the surface within a 4.3-mile radius of Lihue Airport. This Class E airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory, Pacific Chart Supplement.

* * * * *

AWP CA E2 Crows Landing NALF, CA [Revised]

Crows Landing NALF, CA
(Lat. 37°24'29"N, long. 121°06'34"W)
Patterson Airport, CA
(Lat. 37°28'07"N, long. 121°10'10"W)

That airspace extending upward from the surface within a 5-mile radius of Crows Landing NALF, excluding the airspace 3 miles west of and parallel to the 164°/344° bearing from/to Crows Landing NALF, and excluding that portion within a 1-mile radius of Patterson Airport. This Class E airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6004 Class E airspace areas designated as an extension to a Class D surface area.

* * * * *

AWP HI E4 Hilo, HI [Revised]

Hilo International, General Lyman Field, HI
(Lat. 19°43'13"N, long. 155°02'55"W)
Hilo VORTAC
(Lat. 19°43'17"N, long. 155°00'39"W)

That airspace extending upward from the surface within 3 miles each of the Hilo VORTAC 090° radial, extending from the 4.3-mile radius of General Lyman Field to 8.7 miles east of the VORTAC. This Class E airspace area is effective during the specific dates and times established in advance be a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory, Pacific Chart Supplement.

Issued in Los Angeles, California, on April 24, 1995.

Richard R. Lien,

Manager, Air Traffic Division Western-Pacific Region.

[FR Doc. 95–12898 Filed 5–24–95; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 94–AWA–7]

Modification of the Cedar Rapids Municipal Airport, IA, Corpus Christi International Airport, TX, Harlingen Rio Grande Valley International Airport, TX, Abilene Regional Airport, TX, Dyess AFB, TX, and Santa Barbara Municipal Airport CA, Class C Airspace Areas and Establishment of the Cedar Rapids Municipal Airport, IA, Class E Airspace Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule modifies the Class C airspace areas at Cedar Rapids Municipal Airport, IA, Corpus Christi International Airport, TX, Harlingen Rio Grande Valley International Airport, TX, Abilene Regional Airport, TX, Dyess AFB, TX, and Santa Barbara Municipal Airport, CA. Class C airspace areas are predicated on an operational air traffic control tower (ATCT) serviced by a radar approach control facility. This action modifies these areas to reflect the radar approach control facility's hours of operation. The designated boundaries or altitudes of these Class C airspace areas will remain as they currently exist. In addition, this action establishes Class E airspace at Cedar Rapids Municipal Airport, IA, when the associated radar approach control facility is not in operation.

EFFECTIVE DATE: 0901 UTC, July 20, 1995.

FOR FURTHER INFORMATION CONTACT: William C. Nelson, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9295.

SUPPLEMENTARY INFORMATION:

History

On April 5, 1995, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify Class C airspace areas at Cedar Rapids Municipal Airport, IA, Corpus Christi International Airport, TX, Harlingen Rio Grande Valley International Airport, TX, Abilene Regional Airport, TX, Dyess AFB, TX, and Santa Barbara Municipal Airport, CA, and to establish Class E airspace at Cedar Rapids Municipal Airport, IA (60 FR 17284). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Class C and Class E airspace designations are published in paragraphs 4000 and 6002, respectively, of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class C and E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) modifies the Class C airspace areas at Cedar Rapids Municipal Airport, IA, Corpus Christi International Airport, TX, Harlingen Rio Grande Valley International Airport, TX, Abilene Regional Airport, TX, Dyess AFB, TX, and Santa Barbara Municipal Airport, CA. These areas are modified to reflect the radar approach control facility's hours of operation. The designated boundaries or altitudes of these Class C airspace areas will not change. In addition, this action establishes Class E airspace at Cedar Rapids Municipal Airport, IA, when the associated radar approach control facility is not in operation.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 4000—Subpart C—Class C Airspace

* * * * *

ACE IA C Cedar Rapids Municipal Airport, IA (Revised)

Cedar Rapids Municipal Airport, IA
(Lat. 41°53'05" N., long. 91°42'40" W.)

That airspace extending upward from the surface to and including 4,900 feet MSL within a 5-mile radius of Cedar Rapids Municipal Airport and that airspace extending upward from 2,100 feet MSL to and including 4,900 feet MSL within a 10-mile radius of Cedar Rapids Municipal Airport. The Class C airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ASW TX C Corpus Christi International Airport, TX (Revised)

(Corpus Christi International Airport, TX
(Lat. 27°46'13" N., long. 97°30'04" W.)

That airspace extending upward from the surface to and including 4,000 feet MSL within a 5-mile radius of the Corpus Christi International Airport, and that airspace extending upward from 1,200 feet MSL to 4,000 feet MSL within a 10-mile radius of the airport from the 287° bearing from the airport clockwise to the 197° bearing from the airport, and that airspace extending upward from 1,500 feet MSL to 4,000 feet MSL within a 10-mile radius of the airport from the 197° bearing from the airport clockwise to the 287° bearing from the airport.

* * * * *

ASW TX C Harlingen, TX (Revised)

Rio Grande Valley International Airport, TX
(Lat. 26°13'42" N., long. 97°39'16" W.)

That airspace extending upward from the surface to and including 4,000 feet MSL

within a 5-mile radius of the Rio Grande Valley International Airport, excluding that airspace east of the Arroyo Colorado that is north of the Southern Pacific Railroad; and that airspace extending upward from 2,000 feet MSL to 4,000 feet MSL within a 10-mile radius of the airport from Farm Road 1420 and the Arroyo Colorado clockwise to the Southern Pacific Railroad; and that airspace extending upward from 1,300 feet MSL to 4,000 feet MSL to the 10-mile radius of the airport from the Southern Pacific Railroad clockwise to U.S. Highway 83 (Business Route); and that airspace extending upward from 1,500 feet MSL to 4,000 feet MSL from U.S. Highway 83 (Business Route) clockwise to U.S. Highway 77 (Business Route); and that airspace extending upward from 1,200 feet MSL to 4,000 feet MSL from U.S. Highway 77 (Business Route) clockwise to Farm Road 1420. This Class C airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ASW TX C Abilene Regional Airport, TX [Revised]

Abilene Regional Airport, TX
(Lat. 32°24'40" N., long. 99°40'55" W.)

That airspace extending upward from the surface to and including 5,800 feet MSL within a 5-mile radius of the Abilene Regional Airport, excluding that airspace from the surface to 3,600 feet MSL east of long. 99°39'00" W., and north of the Abilene VORTAC 103°/283° radial within 5 miles of the airport; and that airspace extending upward from 3,600 feet MSL to and including 5,800 feet MSL within a 10-mile radius of the airport north of the Abilene VORTAC 103°/283° radial; and that airspace extending upward from 4,300 feet MSL to and including 5,800 feet MSL within a 10-mile radius of the airport south of the Abilene VORTAC 103°/283° radial.

* * * * *

ASW TX C Dyess AFB, TX (Revised)

Dyess AFB, TX
(Lat. 32°25'12" N., long. 99°51'25" W.)

That airspace extending upward from the surface to and including 5,800 feet MSL within a 5-mile radius of Dyess AFB; and that airspace extending upward from 3,600 feet MSL to and including 5,800 feet MSL within a 10-mile radius of Dyess AFB north of the Abilene VORTAC 103°/283° radials; and that airspace extending upward from 4,300 feet MSL to and including 5,800 feet MSL within a 10-mile radius of the Dyess AFB and south of the Abilene VORTAC 103°/283° radials. This Class C airspace area excludes any airspace included within the Abilene Regional Airport, TX, Class C airspace area.

* * * * *

AWP CA C Santa Barbara Municipal Airport, CA (Revised)

Santa Barbara Municipal Airport, CA
(Lat. 34°25'34" N., long. 119°50'26" W.)

That airspace within a 5-mile radius of the Santa Barbara Municipal Airport extending upward from the surface to and including 4,000 feet MSL; and that airspace within a 10-mile radius of the airport extending upward from 1,500 feet MSL to and including 4,000 feet MSL, excluding that airspace from the 295° bearing from the airport, between the 5- and 10-mile radius, clockwise to the 090° bearing from the airport. This Class C airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6002—Class E Airspace Areas Designated as a Surface Area for an Airport

* * * * *

ACE IA E2 Cedar Rapids Municipal Airport, IA (New)

Cedar Rapids Municipal Airport, IA
(Lat. 41°53'05" N., long. 91°42'40" W.)

Within a 4.2-mile radius of the Cedar Rapids Municipal Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Washington, DC, on May 18, 1995.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 95–12902 Filed 5–24–95; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 305

RIN 3084–AA26

Rule Concerning Disclosures Regarding Energy Consumption and Water Use of Certain Home Appliances and Other Products Required Under the Energy Policy and Conservation Act ("Appliance Labeling Rule"); Correction to Ranges of Comparability for Clothes Washers

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission amends its Appliance Labeling Rule by issuing corrections to the ranges of comparability used on required labels for clothes washers that were published on April 21, 1995.[1] Properly labeled clothes washers manufactured prior to the effective date of this document (including clothes washers labeled in accordance with the ranges published on April 21, 1995) need not be relabeled. Catalogs printed prior to the effective date in accordance with 16 CFR 305.14 need not be revised. Those manufacturers who have already printed or purchased labels in reliance on the April 21 document may use those labels until the label stock is exhausted; they must use labels based on the ranges published today after that.

EFFECTIVE DATE: August 23, 1995.

FOR FURTHER INFORMATION CONTACT: James Mills, Attorney, 202–326–3035, Division of Enforcement, Federal Trade Commission, Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION: This notice publishes the corrected range figures, which, under Sections 305.10, 305.11 and 305.14 of the rule, must be used on labels on clothes washers manufactured on and after August 23, 1995 and in advertising of clothes washers in catalogs printed after August 23, 1995.

Estimated annual energy consumption figures for 1995 for clothes washers have been submitted by manufacturers and analyzed by the Commission. New ranges of comparability based upon them were published in the **Federal Register** on April 21, 1995. The staff of the Commission has learned since publication of the ranges that there was an inadvertent error in the ranges. The staff has corrected the error, and the new ranges published today reflect the correction. For the sake of clarity, the Commission is republishing the complete set of ranges in their correction form.

Although this corrected notice is being published prior to the effective date of the April 21, 1995 notice, which is now rescinded, manufacturers need not relabel any appliances already labeled and may use any labels that were ordered or printed before the date of this notice in good faith reliance on the April 21 notice. After this initial stock of labels is exhausted, however, labels based on today's notice must be used.

In consideration of the foregoing, the Commission amends Appendix F of its Appliance Labeling Rule by publishing the following ranges of comparability for use in the labeling and advertising of clothes washers beginning August 23, 1995.

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

Accordingly, 16 CFR Part 305 is amended as follows:

[1] 60 FR 19645. The ranges were to become effective on July 20, 1995.

PART 305—[AMENDED]

1. The authority citation for part 305 continues to read as follows:

Authority: 42 U.S.C. 6294.

2. Appendix F to Part 305 is revised to read as follows:

Appendix F to Part 305—Clothes Washers

Range Information

"Compact" includes all household clothes washers with a tub capacity of less than 1.6 cu. ft. or 13 gallons of water.

"Standard" includes all household clothes washers with a tub capacity of 1.6 cu. ft. or 13 gallons of water or more.

Capacity	Range of estimated annual energy consumption (kWh/yr.)	
	Low	High
Compact:		
Top Loading	607	1226
Front Loading	(*)	(*)
Standard:		
Top Loading	603	1818
Front Loading	286	395

* No data submitted.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95–12856 Filed 5–24–95; 8:45 am]

BILLING CODE 6750–01–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 232

[Release Nos. 33–7169; 34–35749; 35–26294; 39–2331; IC–21085]

RIN 3235–AG10

Adoption of Updated EDGAR Filer Manual

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Commission is adopting an updated edition of the EDGAR Filer Manual and is providing for its incorporation by reference into the Code of Federal Regulations.

EFFECTIVE DATES: The amendment to Regulation S-T will be effective on June 7, 1995. The new edition of the EDGAR Filer Manual (Release 4.30) will be effective on June 7, 1995. The incorporation by reference of the EDGAR Filer Manual is approved by the Director of the Federal Register as of June 7, 1995.

FOR FURTHER INFORMATION CONTACT: In the Office of Information Technology, David T. Copenhafer at (202) 942–8800; in the Division of Corporation Finance, Sylvia J. Reis or Serena C. Swegle at (202) 942–2940; in the Division of Investment Management, Anthony A. Vertuno at (202) 942–0591 or Ruth Armfield Sanders at (202) 942–0633.

SUPPLEMENTARY INFORMATION: The Commission today announces the adoption of an updated EDGAR Filer Manual ("Filer Manual"), which sets forth the technical formatting requirements governing the preparation and submission of electronic filings through the Electronic Data Gathering, Analysis, and Retrieval ("EDGAR") system.[1] Compliance with the provisions of the Filer Manual is required in order to assure the timely acceptance and processing of filings made in electronic format.[2] Filers should consult the Filer Manual in conjunction with the Commission's rules governing mandated electronic filing when preparing documents for electronic submission.[3] In this update, new form types have been added in order to implement solutions to prospectus delivery issues arising in connection with the change to T+3 securities transaction settlement.[4] The updated manual also contains some minor additional changes to reflect improvements requested by the filer community and SEC staff, such as the extension of the length of time that temporary passwords remain active. Rule 301 of Regulation S-T also is being amended to provide for the incorporation by reference of the Filer Manual into the Code of Federal Regulations, which incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. The revised Filer Manual and the amendment to Rule 301 will be effective on June 7, 1995.

Paper copies of the updated Filer Manual may be obtained at the following address: Public Reference Room, U.S. Securities and Exchange Commission, Mail Stop 1–2, 450 Fifth Street, N.W., Washington D.C. 20549. Electronic format copies will be available on the EDGAR electronic bulletin board. Copies also may be obtained from Disclosure Incorporated, the paper and microfiche contractor for the Commission, at (800) 638–8241.

Since the Filer Manual relates solely to agency procedure or practice, publication for notice and comment is not required under the Administrative Procedure Act.[5] It follows that the requirements of the Regulatory Flexibility Act[6] do not apply.

The changes in the Filer Manual are effective June 7, 1995, in accordance with the Administrative Procedure Act, which allows for effectiveness in less than 30 days after publication, if, *inter alia*, "otherwise provided by the agency for good cause found and published with the rule." 5 U.S.C 553(d)(3). The Commission finds that there is good cause for the updated Filer Manual to become effective on June 7, 1995 since the changes are designed to allow market participants to comply with the T+3 settlement cycle. The Commission adopted final rules to facilitate prospectus delivery within the T+3 settlement cycle. *See* Release No. 33–7168 (May 11, 1995). Those rules, as well as overall implementation of T+3 settlement, will become effective on June 7, 1995. The changes made by the updated Filer Manual are designed to permit electronic filing of the appropriate forms consistent with Release No. 33–7168 (May 11, 1995). Therefore, it is appropriate to make the updated Filer Manual effective on the same date as the newly adopted rules. Moreover, effectiveness of the new rules and the new Filer Manual on the same date will ensure that potential market disruption relating to prospectus delivery would be avoided.

Statutory Basis

The amendment to Regulation S-T is being adopted under Sections 6, 7, 8, 10, and 19(a) of the Securities Act of 1933,[7]

[1] The Filer Manual originally was adopted on April 1, 1993, and became effective on April 26, 1993. Release No. 33–6986 (April 1, 1993) [58 FR 18638]. Updates to the Filer Manual were adopted in July and September of 1994, and January of 1995. Release No. 33–7073 (July 8, 1994) [59 FR 36262], Release No. 33–7094 [59 FR 49572] and Release No. 33–7123 [59 FR 68068], respectively.

[2] *See* Rule 301 of Regulation S-T (17 CFR 232.301).

[3] *See* Release Nos. 33–6977 (February 23, 1993) [58 FR 14628], IC–19284 (February 23, 1993) [58 FR 14848], 35–25746 (February 23, 1993) [58 FR 14999], and 33–6980 (February 23, 1993) [58 FR 15009] for a comprehensive treatment of the rules adopted by the Commission governing mandated electronic filing. *See also* Release No. 33–7122 (December 19, 1994), in which the Commission made the EDGAR rules final and applicable to all domestic registrants and adopted minor amendments to the EDGAR rules.

[4] Securities Act Release No. 7168 (May 11, 1995) [60 FR 26604]. Additional programming related to this rulemaking will be completed at a later date. Notice will be provided in the SEC News Digest and the **Federal Register**, and on the EDGAR Bulletin Board.

[5] 5 U.S.C. 553(b).

[6] 5 U.S.C. 601–612.

[7] 15 U.S.C. 77f, 77g, 77h, 77j and 77s(a).

Sections 3, 12, 13, 14, 15, 23, and 35A of the Securities Exchange Act of 1934,[8] Section 20 of the Public Utility Holding Company Act of 1935,[9] Section 319 of the Trust Indenture Act of 1939,[10] and Sections 8, 30, 31, and 38 of the Investment Company Act of 1940.[11]

List of Subjects in 17 CFR Part 232

Incorporation by reference; Investment companies; Registration requirements; Reporting and recordkeeping requirements; Securities.

Text of the Amendment

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

1. The authority citation for Part 232 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77sss(a), 78c(b), 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*(d), 79t(a), 80a–8, 80a–29, 80a–30 and 80a–37.

2. Section 232.301 is revised to read as follows:

§ 232.301 EDGAR Filer Manual.

Electronic filings shall be prepared in the manner prescribed by the EDGAR Filer Manual, promulgated by the Commission, which sets out the technical formatting requirements for electronic submissions. The June 1995 edition of the *EDGAR Filer Manual: Guide for Electronic Filing with the U.S. Securities and Exchange Commission (Release 4.30)* is incorporated into the Code of Federal Regulations by reference, which action was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Compliance with the requirements found therein is essential to the timely receipt and acceptance of documents filed with or otherwise submitted to the Commission in electronic format. Paper copies of the EDGAR Filer Manual may be obtained at the following address: Public Reference Room, U.S. Securities and Exchange Commission, Mail Stop 1–2, 450 5th Street, N.W., Washington, D.C. 20549. They also may be obtained from Disclosure Incorporated by calling (800) 638–8241. Electronic format copies are available through the EDGAR electronic bulletin board. Information on becoming an EDGAR E-mail/electronic bulletin board subscriber is available by contacting CompuServe Inc. at (800) 848–8199.

Dated: May 22, 1995.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–12846 Filed 5–23–95; 10:35 am]

BILLING CODE 8010–01–P

[8] 15 U.S.C. 78c, 78*l*, 78m, 78n, 78o, 78w and 78*ll*.

[9] 15 U.S.C. 79t.

[10] 15 U.S.C. 77sss.

[11] 15 U.S.C. 80a–8, 80a–29, 80a–30 and 80a–37.

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 550

[BOP–1010–F; BOP–1034–I]

RIN 1120–AA16; RIN 1120–AA36

Drug Abuse Treatment Programs: Early Release Consideration

AGENCY: Bureau of Prisons, Justice.

ACTION: Further issuance of interim rule with request for comments.

SUMMARY: In this document, the Bureau of Prisons is amending its rule on Drug Abuse Treatment Programs in order to allow for consideration of early release of eligible inmates who complete a residential drug abuse treatment program. This amendment is necessary to implement provisions of the Violent Crime Control and Law Enforcement Act of 1994. Further changes to the regulations are being made for the sake of clarification.

DATES: Effective June 26, 1995; comments are due July 24, 1995.

ADDRESSES: Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 514–6655.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is further amending its regulations on Drug Abuse Treatment Programs. A final rule on this subject with interim provisions on eligibility requirements for the residential and nonresidential drug abuse treatment programs was published in the **Federal Register** on October 21, 1994. The Bureau has received no comment on the interim provisions, and the Bureau therefore adopts those interim provisions as final. For organizational reasons, §§ 550.55, 550.56, 550.57, and 550.58 are being redesignated respectively as §§ 550.56, 550.57, 550.55, and 550.59.

The Bureau, in this document, is also issuing interim provisions intended to implement Section 32001 of the Violent Crime Control and Law Enforcement Act of 1994. This section provides, among other things, that the period a prisoner convicted of a non-violent offense remains in custody after successfully completing a program of residential substance abuse treatment may be reduced by the Bureau of Prisons, but such reduction may not be more than one year from the term the prisoner must otherwise serve.

New § 550.58 establishes procedures to be used by the Bureau in determining eligibility for early release and for determination of the length of the reduction in sentence. In keeping with the statutory provision that possible reduction in sentence is applicable to an inmate convicted of a nonviolent offense, an inmate whose current offense falls under the definition in 18 U.S.C. 924(c)(3) of a crime of violence is excluded from consideration. Under this section, a crime of violence means an offense that is a felony and has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or that by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense. Information contained in the Presentence Investigation Report ordinarily is sufficient to allow staff to determine if the inmate's committed offense meets this definition of crime of violence. In exercising the Bureau's discretion in reducing a sentence, the Bureau shall also review the criminal history of the inmate contained in the Presentence Investigation Report, and any inmate with a federal and/or state conviction for homicide, forcible rape, robbery, or aggravated assault shall also be excluded from consideration. Because state convictions may show a considerable range in the degree of violence used in the offense, the Bureau has chosen to use the above cited categories of crimes, which are reported under the FBI Violent Crime Index, as the sole determinant of violence in the criminal history. Inmates in Bureau custody who are not serving a sentence for a federal offense (for example, INS detainees, pretrial inmates, or contractual boarders) are not eligible for consideration of early release. An inmate with an INS detainer, however, may be eligible for consideration of early release to the detainer. An inmate eligible for parole is not eligible for consideration for early release by the Bureau; information concerning the successful completion of a residential drug abuse treatment program by a parole-eligible inmate will be transmitted to the Parole Commission for appropriate consideration under procedures duly promulgated by the Commission.

Further eligibility requirements in § 550.58(a) pertain to completion of a residential drug abuse treatment program. An inmate who had previously completed a Bureau of Prisons drug abuse treatment program before October 1, 1989 (that is, before the current program design) may be eligible for consideration for early release. Staff must confirm that the program completed matches the treatment required by statute. The inmate must complete appropriate acknowledgement of program responsibility, complete a refresher treatment program and all applicable transitional services program, and maintain a discipline record as specified in § 550.58(a)(1)(iv). An inmate who has successfully completed a Bureau of Prisons drug abuse treatment program on or after October 1, 1989 is otherwise eligible if the inmate completes all applicable transitional services and maintains a discipline record as specified in § 550.58(a)(2)(ii).

Under the procedures for application contained in § 550.58(b), eligible inmates currently enrolled in a residential drug abuse treatment program are automatically considered without any further required action on their part; inmates who had previously completed a residential drug abuse treatment program (or which matches the treatment required by statute) must notify the institution's drug abuse coordinator via a request to staff in order to be considered for early release.

As specified in § 550.58(c), the length of reduction may be up to 12 months. If, upon completion of all required transitional services, the inmate has less than 12 months to serve, the amount of reduction may not exceed the amount of time left on service of sentence. The Community Corrections Regional Administrator may retard or disallow any portion of the maximum 12 months for an inmate in a community-based program (for example, a community corrections center) based on a disciplinary finding or based on program needs.

New § 550.60 is added to require that an inmate who files an administrative remedy request on the operation of a drug abuse treatment program affecting consideration for early release must so indicate in the beginning of the request. This is intended to assist staff in preparing a response.

Further changes to the Bureau's regulations on drug abuse treatment programs are summarized below.

Section 550.50 is revised to specify that the availability of drug abuse treatment programs is subject to the availability of appropriated funds. The former regulations had stated that these programs were made available to the extent practicable. This amendment conforms to the wording of the revised statutory authority.

Section 550.52 is revised for editorial reasons to clarify that drug abuse programming and treatment opportunities are separate from the Admission and Orientation program.

In § 550.54, paragraph (c) is amended to expand exemptions from the requirements for participation in the drug abuse education course.

In new § 550.55, the introductory text of paragraph (a) has been revised for the sake of clarity. Paragraph (a)(1) has been revised to ensure the integrity of documentation of a drug abuse problem.

In new § 550.56, the description of the residential drug abuse treatment program is expanded to indicate more clearly the duration of program involvement and the connection with subsequent transitional services programming. The introductory text of paragraph (a) has been revised for the sake of clarity. Paragraph (a)(1) has been revised to ensure the integrity of documentation of a drug abuse problem. A new paragraph (c) has been added to define requirements for program completion. Former paragraph (c) has been redesignated and revised as new paragraph (d) in order to specify more clearly expulsion criteria. Given the significance of the added incentive of possible early release, the Bureau believes these changes are necessary to reduce unnecessary confusion regarding program participation.

New § 550.57 has been revised to include reference in new paragraph (a)(4) to consideration for early release as an incentive for program participation. Provisions formerly contained in § 550.55(c) regarding the return of incentives previously received upon an inmate's withdrawal or expulsion have also been transferred to this section.

New § 550.59 has been reorganized and revised to clarify the requirements for transitional services, whether in an institution or in a community-based program. As revised in paragraph (c), transitional services may be required for all inmates with a documented drug abuse problem, regardless of the inmate's choice to participate in the residential drug abuse treatment program.

Interested persons may participate in this rulemaking by submitting data, views, or arguments in writing to the Bureau of Prisons, 320 First Street, NW., HOLC Room 754, Washington, DC 20534. Comments received on the interim rule provisions during the comment period will be considered before final action is taken. All comments received remain on file for public inspection at the above address.

The Bureau of Prisons has determined that this rule is not a significant regulatory action for the purpose of E.O. 12866, and accordingly this rule was not reviewed by the Office of Management and Budget. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96–354), does not have a significant impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 550

Prisoners.

Kathleen M. Hawk,

Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(p), parts 545 and 550 in subchapter C of 28 CFR, chapter V is amended as set forth below.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 550—DRUG PROGRAMS

1. The authority citation for 28 CFR part 550 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4251–4255, 5006–5024 (repealed October 12, 1984 as to conduct occurring after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

2. Section 550.50 is revised to read as follows:

§ 550.50 Purpose and scope.

The Bureau of Prisons provides, subject to the availability of appropriated funds, drug abuse treatment programs to inmates.

3. Section 550.52 is revised to read as follows:

§ 550.52 Admission and Orientation program.

Drug abuse treatment coordinators at all institutions shall ensure that inmates are informed during the Admission and Orientation program about local and Bureau-wide drug abuse programming and treatment opportunities.

4. In § 550.54, paragraph (c) is amended by revising the second sentence to read as follows:

§ 550.54 Requirements for drug abuse education course.

* * * * *

(c) * * * An inmate may also be exempted from the drug abuse education course if that inmate does not have enough time remaining to serve to complete the drug abuse education course, or if that inmate volunteers for, enters and completes a residential drug abuse treatment program, or if he/she completes a structured drug abuse treatment program at one of the Bureau of Prisons' Intensive Confinement Centers (ICC).

§§ 550.55 through 550.57 [Redesignated]

5. Sections 550.55, 550.56, and 550.57 are redesignated respectively as §§ 550.56, 550.57, and 550.55.

6. In newly designated § 550.55, paragraph (a) introductory text and (a)(1) are revised to read as follows:

§ 550.55 Non-residential drug abuse treatment program.

* * * * *

(a) *Eligibility.* An inmate must meet all of the following criteria to be eligible for the non-residential drug abuse treatment program.

(1) The inmate must have a verifiable documented drug abuse problem.

* * * * *

7. Newly designated § 550.56 is revised to read as follows:

§ 550.56 Institution residential drug abuse treatment program.

Residential drug abuse treatment is available at selected Bureau of Prisons institutions. It is a course of individual and group activities provided by a team of drug abuse treatment specialists and the drug abuse treatment coordinator in a treatment unit set apart from the general prison population, lasting a minimum of 500 hours over a six to twelve-month period. Inmates enrolled in a residential drug abuse treatment program shall be required to complete subsequent transitional services programming in a community-based program and/or in a Bureau institution.

(a) *Eligibility.* An inmate must meet all of the following criteria to be eligible for the residential drug abuse treatment program.

(1) The inmate must have a verifiable documented drug abuse problem.

(2) The inmate must have no serious mental impairment which would substantially interfere with or preclude full participation in the program.

(3) The inmate must sign an agreement acknowledging his/her program responsibility.

(4) Ordinarily, the inmate must be within thirty-six months of release.

(5) The security level of the residential program institution must be appropriate for the inmate.

(b) *Application/Referral/Placement.* Participation in the residential drug abuse treatment program is voluntary. An inmate may be referred for treatment by unit or drug treatment staff or apply for the program by submitting a request to a staff member (ordinarily, a member of the inmate's unit team or the drug abuse treatment coordinator). The decision on placement is made by the drug abuse treatment coordinator.

(c) *Completion.* Completion of the residential drug abuse treatment program requires attendance and participation in scheduled individual and group activities and a passing grade on examinations covering each separate subject module of the program. An inmate who fails an examination on any subject module ordinarily shall be allowed to retest one time. A certificate of achievement will be awarded to all who successfully complete the program. A copy of this certificate will be forwarded to the unit team for placement in the inmate's central file.

(d) *Withdrawal/expulsion.* (1) An inmate may withdraw voluntarily from the program.

(2) The drug abuse treatment coordinator may remove an inmate from the program based upon disruptive behavior related to the program. Ordinarily, staff shall provide the inmate with at least one warning prior to removal. An inmate may not ordinarily be removed immediately without warning unless the inmate, pursuant to an incident report, is found by the DHO to have:

(i) Used or possessed alcohol or drugs;

(ii) Been violent or threatened violence against staff or another inmate; or

(iii) Committed a 100 level prohibited act.

(3) Withdrawal or removal from the residential program may result in the inmate's being returned to his/her prior institution (when the inmate had been specifically transferred for the purpose of program participation).

8. Newly designated § 550.57 is revised to read as follows:

§ 550.57 Incentives for residential drug abuse treatment program participation.

(a) An inmate may receive incentives for his or her satisfactory involvement in the residential program. These incentives may include, but are not limited to, the following.

(1) Limited financial awards, based upon the inmate's achievement/completion of program phases.

(2) Consideration for the maximum period of time (currently 180 days) in a Community Corrections Center placement, provided the inmate is otherwise eligible for this designation.

(3) Local institution incentives such as preferred living quarters or special recognition privileges.

(4) If eligible under § 550.58, consideration for early release.

(b) An inmate must meet his/her financial program responsibility obligations (see 28 CFR part 545) prior to being able to receive an incentive for his/her residential program participation.

(c) Withdrawal or removal from the residential program may result in the loss of incentives previously achieved.

§ 550.58 [Redesignated as § 550.59]

9. Section 550.58 is redesignated as § 550.59 and revised to read as follows:

§ 550.59 Transitional drug treatment services.

Transitional treatment programming is required for all inmates completing an institution's residential treatment program. Transitional treatment includes treatment provided to inmates who, upon completing the residential program, return to the general population of that or another institution or who are transferred to a community-based program. An inmate's refusal to participate in this program is considered a program failure and disqualifies the inmate for any additional incentives consideration, and may result in the inmate's redesignation.

(a) An inmate who successfully completes a residential drug abuse program and who participates in transitional treatment programming at an institution is required to participate in such programming for a minimum of one hour per month.

(b) An inmate who successfully completes a residential drug abuse program and who, based on eligibility, is transferred to a Community Corrections Center (CCC), is required to participate in a community-based treatment program, in addition to the required employment and other program activities of the CCC. The inmate's failure to meet the requirements of treatment may result in the inmate's being returned to the institution for refusing a program assignment.

(c) An inmate with a documented drug abuse problem but who did not choose to volunteer for the residential drug abuse program may be required to participate in transitional services as a condition of participation in a community-based program with the approval of the transitional services manager.

10. A new § 550.58 is added to read as follows:

§ 550.58 Consideration for early release.

An inmate who completes a residential drug abuse treatment program during his or her current commitment may be eligible for early release by a period not to exceed 12 months, in accordance with paragraph (a) of this section, unless the inmate is an INS detainee, a pretrial inmate, a contractual boarder (for example, a D.C., State, or military inmate), or eligible for parole, or unless the inmate's current offense is determined to be a crime of violence as defined in 18 U.S.C. 924(c)(3), or unless the inmate has a prior federal and/or state conviction for homicide, forcible rape, robbery, or aggravated assault.

(a) *Eligibility.* (1) An inmate who had successfully completed a Bureau of Prisons residential drug abuse treatment program before October 1, 1989 is otherwise eligible if:

(i) Staff confirm that the completed program matches the treatment required by statute;

(ii) The inmate signs an agreement acknowledging his/her program responsibility;

(iii) The inmate completes a refresher treatment program and all applicable transitional services programs; and

(iv) Since completion of the program, the inmate has not been found to have committed a 100 level prohibited act and has not been found to have committed a prohibited act involving alcohol or drugs.

(2) An inmate who has successfully completed a Bureau of Prisons residential drug abuse treatment program on or after October 1, 1989 is otherwise eligible if:

(i) The inmate completes all applicable transitional services programs; and

(ii) Since completion of the program, the inmate has not been found to have committed a 100 level prohibited act and has not been found to have committed a prohibited act involving alcohol or drugs.

(b) *Application.* (1) *Inmates currently enrolled.* Eligible inmates currently enrolled in a residential drug abuse treatment program shall automatically be considered for early release.

(2) *Inmates who had previously completed program requirements.* Eligible inmates who have previously completed a residential drug abuse treatment program (or which matches the treatment required by statute) must notify the institution's drug abuse program coordinator via a Request to Staff in order to be considered for early release.

(c) *Length of reduction.* (1) Except as specified in paragraphs (c)(2) and (3) of this section, an inmate who is approved for early release may receive a reduction of up to 12 months.

(2) If the inmate has less than 12 months to serve after completion of all required transitional services, the amount of reduction may not exceed the amount of time left on service of sentence.

(3) If, based upon a disciplinary finding or based on program needs (for example, the inmate has not established an adequate release plan), the Community Corrections Regional Administrator may retard or disallow any portion of the maximum 12 months for an inmate in a community-based program.

11. Section 550.60 is added to read as follows:

§ 550.60 Inmate appeals.

(a) Administrative remedy procedures for the formal review of a complaint relating to any aspect of an inmate's confinement (including the operation of the drug abuse treatment programs) are contained in 28 CFR 542, subpart B.

(b) In order to expedite staff response, an inmate who has previously been found to be eligible for early release must, when filing an administrative remedy request pursuant to 28 CFR 542, subpart B on an action which would result in the inmate's loss of early release eligibility, indicate in the first sentence of the request that the request affects the inmate's early release.

[FR Doc. 95–12802 Filed 5–24–95; 8:45 am]
BILLING CODE 4410–05–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD05–93–103]

RIN 2115–AA98

Anchorage Grounds; Spa Creek, Annapolis, MD

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is consolidating Anchorages A and B in Spa Creek Anchorage in Annapolis Harbor, Md. into one anchorage. This action is necessary because the City of Annapolis has experienced difficulty enforcing safe boating operations within the separate anchorages. Consolidation of the two anchorages tightens control over the use and access to the composite anchorage, thereby increasing the efficiency of mooring operations and vessel safety.

EFFECTIVE DATE: This is effective June 26, 1995.

FOR FURTHER INFORMATION CONTACT: LCDR Tom Flynn (804) 398–6690.

SUPPLEMENTARY INFORMATION: This action follows completion of an Army Corps of Engineers study of the Annapolis Harbor conducted in December 1990, under the authority of Section 4(i) of the Water Resources Development Act of 1988, Public Law 100–676. The Corps of Engineers' study recommended a realignment of the channel in Annapolis Harbor by nonstructural, nondredging measures, in order to promote more efficient mooring operations in the harbor. Recognizing the desirability of accommodating existing users, increasing harbor safety by making mooring operations more efficient, and doing so in a cost effective manner, the study determined that the existing anchorage configuration should be revised by consolidating anchorages A and B, in Spa Creek, Annapolis, MD, into a single anchorage. The City of Annapolis, MD and asked the Coast Guard to initiate the process for effecting a consolidation. Pursuant to this request, the Coast Guard published a Notice of Proposed Rulemaking concerning this section in the **Federal Register** (58 FR 57769; October 27, 1993). The Commander, Fifth Coast Guard District, also published the proposal in Local Notice to Mariners 45–93 dated November 9, 1993. Each notice allowed interested persons to submit comments through December 13, 1993. Total comment on the rule consisted of one letter, the substance of which was beyond the scope of this rulemaking and contained no constructive recommendations. The comment was considered, discussed and forwarded to the City of Annapolis. There are no substantive differences between the proposed rule and the final rule.

Drafting Information

The drafters of this rule are LCDR Tom Flynn, project officer, Fifth Coast Guard District, Aids to Navigation and Waterways Management Branch and LCDR Bill Shelton, project attorney, Fifth Coast Guard District Legal Office.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does into require an assessment of potential costs

and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. Although the regulation enhances control over the harbor and promotes the efficiency of mooring operations, harbor access will not be reduced, nor will vessel traffic within the harbor be diverted or impeded.

Environment

This final rule has been thoroughly reviewed by the Coast Guard and determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.e of Commandant Instruction M16475.1B.

Collection of Information

This regulation contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that it does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

Final Regulation

In consideration of the foregoing, Part 110 of Title 33, Code of Federal Regulations, is amended as follows:

PART 110—ANCHORAGE REGULATIONS

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035 and 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g). Section 110.1a and each section listed in 110.1a are also issued under 33 U.S.C. 1223 and 1231.

2. Section 110.159 is amended by removing paragraph (a)(6) , by removing "(a)(3), (a)(5), and (a)(6)" in the note at the end of paragraph (a) and adding in its place "(a)(3), and (a)(5)"and by revising paragraph (a)(5) to read as follows:

§ 110.159 Annapolis Harbor, Md.

(a) * * *

(5) *Spa Creek Anchorage.* In Spa Creek, those waters bounded by a line connecting the following points:

Latitude	*Longitude*
38°58'37.3" N	76°28'48.1" W
38°58'36.1" N	76°28'57.8" W
38°58'31.6" N	76°29'03.3" W
38°58'26.7" N	76°28'59.5" W

Datum: NAD 83

* * * * *

Dated: May 16, 1995.

M.K. Cain,

Captain, U.S. Coast Guard, Acting Commander, fifth Coast Guard District.

[FR Doc. 95–12733 Filed 5–24–95; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 165

[CGD02–95–013]

RIN 2115–AA97

Safety Zone; Wolf River Chute, Memphis, TN

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the Wolf River Chute between mile markers 0.0 and 1.0 in proximity of Lower Mississippi River mile 735.0. The zone is needed to control vessel traffic during the USS WHIRLWIND's commissioning ceremony. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port.

EFFECTIVE DATE: This regulation is effective from 8 a.m. until 1 p.m. on July 1, 1995.

FOR FURTHER INFORMATION CONTACT: LTJG Joel Roberts, Assistant Chief of Port Operations, Coast Guard Captain of the Port Memphis, 200 Jefferson Avenue, Suite 1301, Memphis, TN, 38103, Phone: (901) 544–3941.

SUPPLEMENTARY INFORMATION:

Background and Purpose

At approximately 8 a.m. on July 1, 1995, the U.S. Navy will commence preparations for the commissioning of the USS WHIRLWIND on the Wolf River Chute mile 0.5. The commissioning ceremony will take place that morning with a large contingency of public and private spectators. The navigable channel may be blocked by spectator craft during the ceremony. A safety zone is being established on the Wolf River Chute from mile marker 0.0 to 1.0 in order to ensure the safety of spectator vessels observing the commissioning ceremony. All vessels shall establish passing arrangements with the Coast Guard Patrol Commander on scene, or via VHF Marine Band Radio, Channel 81, prior to transiting the zone and shall abide by the conditions of the arrangement. Entry of vessels or persons into this zone without a passing arrangement with the Coast Guard Patrol Commander is prohibited except as authorized by the Captain of the Port, Memphis, TN.

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation. Publication of a notice of proposed rulemaking would be contrary to the public interest because immediate action is necessary to control vessel traffic in order to prevent vessel collisions, loss of life and property damage.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Collection of Information

This rule contains no information collection requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under paragraph 2.B.2 of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Temporary Regulation

For the reasons set out in the preamble, the Coast Guard amends Part 165 of Title 33, Code of Federal Regulations as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A new temporary § 165.T02–013 is added to read as follows:

§ 165.T02–013 Safety Zone; Wolf River Chute, Memphis, TN.

(a) *Location.* The following area is a Safety Zone: All waters within the shoreline and boundaries of the Wolf River Chute miles 0.0 to 1.0.

(b) *Effective dates.* This section becomes effective at 8 a.m. on July 1, 1995, and terminates at 1 p.m. on July 1, 1995.

(c) *Regulations.* In accordance with the general regulations in § 165.23, entry into this zone is prohibited except as authorized by the Captain of the Port. The Captain of the Port will notify the public of changes in the status of this zone by Marine Safety Radio Broadcast of VHF Marine Band Radio, Channel 22 (157.1 MHz).

Dated: May 4, 1995.

A.L. Thompson, Jr.,

Commander, U.S. Coast Guard, Captain of the Port Memphis.

[FR Doc. 95–12736 Filed 5–24–95; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–5209–7]

National Oil and Hazardous Substances Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of a site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) announces the deletion of Hamilton Island, located in Skamania County, Washington from the National Priorities List (NPL). The NPL is Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. EPA and the State of Washington have determined that no further cleanup under CERCLA is appropriate.

EFFECTIVE DATE: May 25, 1995.

FOR FURTHER INFORMATION CONTACT: Christopher Cora, Site Manager, U.S. Environmental Protection Agency, Region 10, 1200 6th Avenue, HW–124, Seattle, WA 98101, (206) 553–1148.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is: Hamilton Island, Skamania County, Washington.

A Notice of Intent to Delete for this site was published April 12, 1995 **Federal Register** [Vol. 60, No. 70, 18565–18566]. The closing date for comments on the Notice of Intent to Delete was May 12, 1995. EPA received no comments.

EPA identifies sites which appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. Any site deleted from the NPL remains eligible for remedial actions in the unlikely event that conditions at the site warrant such action in the future. Deletion of a site from the NPL does not affect responsible party liability or impede Agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, and Water supply.

Dated: May 16, 1995.

Chuck Clarke,

Regional Administrator, U.S. EPA Region 10.

For the reasons set out in the preamble, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for Part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351.

Appendix B [Amended]

2. Table 2 of Appendix B to part 300 is amended by removing the site for Hamilton Island Landfill (USA/COE), North Bonneville, Washington.

[FR Doc. 95–12770 Filed 5–24–95; 8:45 am]

BILLING CODE 5580–50–M

40 CFR Part 763

[OPPTS–62147; FRL–4957–3]

Asbestos Model Accreditation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Clarification of interim final rule.

SUMMARY: EPA is informing the general public and the providers of asbestos training courses approved pursuant to Subchapter II of the Toxic Substances Control Act (TSCA) of a clarification regarding the training course self-certification requirements of the Asbestos Model Accreditation Plan (MAP), Interim Final Rule. The Agency recognizes upgraded training courses as being self-certified as of the date upon which EPA received the original self-certification, even though one or more approving state programs may not have received a copy of the self-certification until a later date, provided that all self-certifications were received on or before October 4, 1994. If EPA and all approving state programs received a proper self-certification for a course from an approved training provider on or before October 4, 1994, the provider retains the approval for that course, and a student who successfully completes a course on or after the self-certification date for that course will be fully accredited. Consistent with this clarification, EPA will adjust the self-certification effective dates of affected courses and publish these new dates in its National Directory of AHERA Accredited Courses (NDAAC). This information will become publicly available through the NDAAC update scheduled for May 31, 1995.

DATES: This clarification affects MAP training courses and persons accredited pursuant to the MAP on or after April 4, 1994, when the MAP revisions took effect.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: In 1994, pursuant to a Congressional mandate in Subchapter II of TSCA, EPA revised the original MAP by increasing the minimum number of training hours, including hands-on training, required for asbestos abatement workers in both schools and pubic and commercial buildings. In addition, EPA modified the MAP to implement the extension of

accreditation requirements to public and commercial buildings.

Unit V.B. of the revised MAP addresses the self-certification requirements applicable to training courses and providers:

As of October 4, 1994, an approved training provider must certify to EPA and to any State that has approved the provider for TSCA accreditation, that each of the provider's training courses complies with the requirements of this MAP . . . .

. . . . The timely receipt of a complete self-certification by EPA and all approving States shall have the effect of extending approval under this MAP to the training courses offered by the submitting provider. If a self-certification is not received by the approving government bodies on or before the due date, the affected training course is not approved under this MAP. Such training providers must then reapply for approval of these training courses pursuant to the procedures outlined in Unit III. (40 CFR part 763, Subpart E, Appendix C, V. B.).

EPA envisioned that under this provision, a training provider's self-certification would be effective on the date that EPA received the original submission, or the date that the last of the approving state programs received a duplicate submission, whichever occurred later. Some training providers, however, believed that the effective date of the self-certification for a course was the date when EPA received the original submission. These providers, after upgrading their training courses to comply with the MAP and submitting self-certification to EPA, assumed that they were approved for TSCA accreditation and began offering training courses, even though one or more approving state programs may not have received a duplicate self-certification at the time that training began. Persons who completed these training courses may now be experiencing difficulty in demonstrating their TSCA accreditation for state licensure and employment purposes.

In order to clarify the regulatory language and the compliance status of training providers and students under the revised MAP, EPA is issuing this clarification. It makes clear that the MAP requires a training provider to provide self-certification of its training courses to both EPA and all approving states on or before October, 4, 1994, but recognizes the date of initial receipt of the self-certification by EPA as the effective date of the self-certification. This clarification only affects providers who upgraded their training courses in accordance with the MAP standards and submitted self-certification to EPA and one or more states at different times, but who completed all of the required submissions on or before the October 4, 1994, deadline. Therefore, even if a provider offered these upgraded training courses for TSCA accreditation purposes after EPA was in receipt of the provider's self-certification but before all of the approving states had received their duplicate notices, EPA considers these courses to be fully approved pursuant to the MAP Interim Final Rule. Accordingly, any person who successfully completed such a course on or after the date that EPA received the self-certification is fully accredited under TSCA section 206.

As provided in the MAP, however, a training provider that failed to complete the self-certification process for a particular course forfeited TSCA approval of that training course on October 5, 1994. Such providers became ineligible to offer that course after October 4, 1994, as an approved course, and persons completing such a training course after October 4, 1994, would not be accredited pursuant to TSCA section 206. Consequently, after October 4, 1994, in order to offer a TSCA-accreditation training course that has lost its approval, such training providers must reapply for a new approval through a state program that is in compliance with the MAP.

To reflect this clarification, EPA will adjust the self-certification effective dates for the affected training courses in the next regularly scheduled edition of its "National Directory of AHERA Accredited Courses (NDAAC)." Copies of this publication are free of charge, and may be obtained by calling EPA's NDAAC Clearinghouse at 1–800–462–6706. As a result, a number of upgraded training courses will have self-certification effective dates that are earlier than those published in previous versions of the NDAAC. Because no self-certification effective dates will be changed to a later date as a result of this action, no training providers or courses will be adversely affected.

List of Subjects in 40 CFR Part 763

Environmental protection, Asbestos, Hazardous substances, Incorporation by reference, Occupational health and safety, Recordkeeping, Schools.

Dated: May 17, 1995.

William H. Sanders III,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 95–12895 Filed 5–24–95; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL MARITIME COMMISSION

46 CFR Part 501

The Federal Maritime Commission—General

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission is delegating to the Bureau of Hearing Counsel the authority to compromise issues relating to the retention, suspension or revocation of ocean freight forwarder licenses. Concurrently, the authority of the Director, Bureau of Tariffs, Certification and Licensing, to determine corrective action with respect to such licensees is removed. Notice and public procedures are not necessary prior to the issuance of this rule because it deals solely with matters of agency organization. Neither is a delayed effective date required.

EFFECTIVE DATE: May 25, 1995.

FOR FURTHER INFORMATION CONTACT: Vern W. Hill, Acting Director, Bureau of Hearing Counsel, Federal Maritime Commission, 800 North Capital Street, NW., Washington, DC 20573–0001, (202) 523–5783.

List of Subjects in 46 CFR Part 501

Administrative practice and procedure, Authority delegations (Government agencies), Organization and functions (Government agencies), Seals and insignia.

Accordingly, chapter IV of title 46 of the Code of Federal Regulations is amended as follows:

PART 501—THE FEDERAL MARITIME COMMISSION—GENERAL

1. The authority citation for Part 501 continues to read as follows:

Authority: 5 U.S.C. 551–557, 701–706, 2903 and 6304; 31 U.S.C. 3721; 41 U.S.C. 414 and 418; 44 U.S.C. 501–520 and 3501–3520; 46 U.S.C. app. 801–848, 876, 1111, and 1701–1720; Reorganization Plan No. 7 of 1961, 26 FR 7315, August 12, 1961; Pub. L. 89–56, 79 Stat. 195; 5 CFR Part 2638.

Subpart C—Delegation and Redelegation of Authorities

§ 501.27 [Amended]

2. Section 501.27(o) is removed.

3. Section 501.28 is revised to read as follows:

§ 501.28 Delegation to the Director, Bureau of Hearing Counsel.

The authority to compromise civil penalty claims has been delegated to the Director, Bureau of Hearing Counsel, by § 502.604(g) of this chapter. This delegation shall include the authority to compromise issues relating to the retention, suspension or revocation of ocean freight forwarder licenses. See also §§ 501.5(i) and 501.21.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 95–12777 Filed 5–24–95; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 13

[PR Docket No. 94–58; FCC 95–162]

Temporary Conditional Operating Authority for Commercial Radio Operator License Applicants

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action amends the rules for commercial radio operators to authorize persons who have passed the required examinations and applied for commercial radio operator licenses to perform the functions of a commercial radio operator on a temporary and conditional basis while awaiting their licenses. This amendment was necessary because the rules currently require that after passing the examinations necessary to qualify for certain of these licenses, and submitting an application to the Commission, an applicant must wait for the Commission to process the application. The intended effect of the final rule is to permit people who have passed the necessary examinations to commence work immediately after they receive their Proof-of-Passing Certificates.

EFFECTIVE DATE: July 1, 1995.

FOR FURTHER INFORMATION CONTACT: William T. Cross, Federal Communications Commission, Wireless Telecommunications Bureau, Private Wireless Division, Washington, D.C. 20554, (202) 418–0680.

SUPPLEMENTARY INFORMATION: A summary of the Commission's *Report and Order*, adopted April 17, 1995, and released April 27, 1995, is provided above. The complete text of this action is available for inspection and copying during normal business hours at the FCC, room 239, 1919 M Street, NW, Washington, DC. The complete text of this action, including the rule amendments, may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW, suite 140, Washington, DC 20037.

1. The final rules are set forth at the end of this document.

2. The rules contained herein have been analyzed with respect to the paperwork Reduction Act of 1980, 44 U.S.C. section 3501 *et seq.*, and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements and will not increase or decrease burden hours imposed on the public.

3. In accordance with section 605(b) of the Regulatory Flexibility Act of 1980, 5 USC section 605(b), the Commission provides the following Final Regulatory Flexibility Analysis.

Need and purpose of this action. This rule making proceeding was needed to obtain comments regarding our proposal to authorize persons who have passed the required examinations and applied for commercial radio operator licenses to perform the functions of a commercial radio operator on a temporary and conditional basis while awaiting their licenses. The purpose of this action is to permit persons who must have the license as a condition of employment to start work immediately. A likely secondary benefit is applicants will receive their Commission-issued licenses sooner due to a reduction in the number of inquiries to the processing staff regarding the status of pending applications.

Summary of issues raised by the public comments in response to the Initial Regulatory Flexibility Analysis. The commentor agrees that the potential impact of these rule changes is to improve the efficiency in licensing commercial radio operators, thereby making it easier for persons to become licensed commercial radio operators. No other comments were received.

Significant alternatives considered and rejected. Alternatives include the Commission continuing to require persons wait until they receive a Commission-issued license document before they can perform the functions of a commercial radio operator. The proposed alternative is adopted to minimize the impact on persons who require this document as a condition of employment. The Secretary shall send a copy of this *Report and Order* including the certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 605(b) of the Regulatory Flexibility Act. Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. section 601–612 (1981).

4. A copy of this *Report and Order* will be forwarded to the Chief Counsel for Advocacy of the Small Business Administration.

5. This Report and Order is issued under the authority of sections 4(f)(4)(A), (B), and (J), 4(i), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. section 154(f)(4)(A), (B),and (J), 154(i), and 303(r).

List of Subjects in 47 CFR Part 13

Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Part 13 of chapter I of title 47 of the Code of Federal Regulations is amended as follows:

PART 13—COMMERCIAL RADIO OPERATORS

1. The authority citation for Part 13 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082 as amended; 47 U.S.C. 154, 303.

2. Section 13.9 is amended by redesignating paragraphs (d) and (e) as paragraphs (e) and (f) respectively, and adding a new paragraph (d) to read as follows:

§ 13.9 Eligibility and application for new license or endorsement.

* * * * *

(d) Provided that a person's commercial radio operator license was not revoked, or suspended, and is not the subject of an ongoing suspension proceeding, a person whose application for a commercial radio operator license has been received by the FCC but which has not yet been acted upon and who holds a PPC(s) indicating that he or she passed the necessary examination(s) within the previous 365 days, is authorized to exercise the rights and privileges of the operator license for which the application was received. This authority is valid for a period of 90 days from the date the application was received. The FCC, in its discretion, may cancel this temporary conditional operating authority without a hearing.

* * * * *

3. Section 13.13 is amended by redesignating paragraphs (d) and (e) as paragraphs (e) and (f) respectively, and adding a new paragraph (d) to read as follows:

§ 13.13 Application for a renewed or modified license.

* * * * *

(d) Provided that a person's commercial radio operator license was not revoked, or suspended, and is not the subject of an ongoing suspension proceeding, a person holding a General Radiotelephone Operator License,

Marine Radio Operator Permit, First Class Radiotelegraph Operator's Certificate, Second Class Radiotelegraph Operator's Certificate, Third Class Radiotelegraph Operator's Certificate, GMDSS Radio Operator's License, or GMDSS Radio Maintainer's License, who has an application for another commercial radio operator license which has not yet been acted upon pending at the FCC and who holds a PPC(s) indicating that he or she passed the necessary examination(s) within the previous 365 days, is authorized to exercise the rights and privileges of the license for which the application is filed. This authority is valid for a period of 90 days from the date the application is received. The FCC, in its discretion, may cancel this temporary conditional operating authority without a hearing.

* * * * *

4. In § 13.19, paragraphs (b)(3) and (c) are revised to read as follows:

§ 13.19 Operator's responsibility.

* * * * *

(b) * * *

(3) The class, serial number and expiration date of the license when the FCC has issued the operator a license, or the PPC serial number(s) and date(s) of issue when the operator is awaiting FCC action on an application.

(c) When the operator is on duty and in charge of transmitting systems, or performing service, maintenance or inspection functions, the license or permit document, or a photocopy thereof, or a copy of the application and PPC(s) received by the FCC, must be posted or in the operator's personal possession, and available for inspection upon request by a FCC representative.

* * * * *

[FR Doc. 95–12791 Filed 5–24–95; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 390

[FHWA Docket No. MC–93–17]

RIN 2125–AD14

Federal Motor Carrier Safety Regulations; General; Intermodal Transportation

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule; petitions for reconsideration of effective date; request for comments.

SUMMARY: The FHWA published a document on May 16, 1995 at 60 FR 26001 which administratively extended until September 27, 1995, the effective date of its final rule implementing the requirements of the Intermodal Safe Container Transportation Act of 1992. The final rule was published on December 29, 1994, and its original effective date was June 27, 1995. The only purpose of this three-month extension was to provide the FHWA sufficient time to request, receive, and analyze comments, and to publish a final determination, on whether a further extension is warranted. This document requests comments on the major issues raised by petitioners who have requested an extension of the effective date of, and certain exemptions from, the final rule.

DATES: Replies to this request for comments must be received on or before June 26, 1995. As indicated in the May 16, 1995 document, the effective date of the final rule published on December 29, 1994 at 59 FR 67544 has been extended to September 27, 1995.

ADDRESSES: Submit written, signed comments to FHWA Docket No. MC–93–17, Room 4232, HCC–10, Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Peter C. Chandler, Office of Motor Carrier Research and Standards, HCS–10, (202) 366–5763; or Mr. Charles E. Medalen, Office of the Chief Counsel, HCC–20, (202) 366–1354, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

On December 29, 1994, the FHWA published a final rule which implemented the requirements of the Intermodal Safe Container Transportation Act of 1992 (the Act) [Pub.L. 102–548, 106 Stat. 3646, partly codified at 49 U.S.C. 5901–5907 (formerly 49 U.S.C. 501 and 508)]. The final rule requires any person who presents a container or trailer with a gross cargo weight of more than 4,536 kilograms or 10,000 pounds to an initial carrier for intermodal transportation to provide a certification to such carrier. Motor carriers are prohibited from accepting a loaded container or trailer prior to receiving a tangible certification. Motor carriers, rail carriers, water carriers, ocean common carriers, and intermediaries that receive a certification in the course of intermodal transportation must forward the certification to a subsequent carrier transporting the loaded container or trailer. The objective of the final rule was to reduce the number of overweight motor vehicles transporting intermodal containers or trailers by improving communication between shippers and motor carriers.

Issues Raised by Industry Groups

The FHWA has received letters from several companies and industry groups petitioning the FHWA to extend the effective date of the final rule. Among those requesting an extension are APL Land Transport Services, Inc. (APL); the European Shippers' Councils; "K" Line America, Inc. (KLA); the Intermodal Safe Container Coalition (Coalition); the National Industrial Transportation League; the Steamship Association of Southern California; and, Warren & Associates, a law firm representing two freight conferences. The APL, KLA, and the Coalition were the parties who provided the most information in support of an extension. Copies of these letters are available for review in the docket.

For ease of presentation, the FHWA has grouped the issues raised by the petitioners into four major categories: (1) Electronic data interchange (EDI); (2) the widespread need for education and training, especially for foreign shippers; (3) the cargo weight threshold used in determining the applicability of the final rule; and, (4) the results of the data collection needs study mandated by the Act. The FHWA believes that some of the petitioners' assertions warrant public discussion.

Electronic Data Interchange

The KLA wrote that "the complexities of establishing a uniform method for electronic transmission of data between very divergent industries, each with their own unique data requirements, makes compliance by all parties in the intermodal network by the June date difficult to impossible." The KLA explained further that the certification data should ideally be passed as part of an already existing data transmission which would necessitate the various parties sending and receiving the certification information to agree on the data format and the meaning of each field. The development of these specifications, the KLA continued, requires time to allow the users of the formats to develop the workable file layouts, to agree on the meaning of each field, and to insure that the formats selected would not create incompatibilities within the computers used to send and receive these messages. The KLA also added that individual companies must modify their in-house programs to utilize the data after these formats are established.

The APL asserted that the changes needed to assure that the necessary EDI takes place will require an extensive effort. The APL wrote that full implementation through EDI would not be possible by June 27, 1995, for its own operations, and it surmises the same would be true for most of the industry. The Coalition asserted that the forwarding of paper certifications, which would be necessary if the final rule became effective on June 27, 1995, would be tremendously cumbersome and burdensome because the intermodal transportation industry increasingly communicates through EDI. The Coalition explained further that there is no existing system for the forwarding of paper certifications to a subsequent carrier and that such a system would most certainly break down. The Coalition wrote that the development of necessary EDI standards will take at least until November 1995, and that even more time will be needed for programming, testing, training, and coordination. Although the Coalition requested an extension of the effective date until May 1, 1996, it asserted that compliance through the use of EDI by such date is a most ambitious goal. Warren & Associates stated that the June 27, 1995, effective date does not take into consideration the advance time required to integrate and standardize compliance through the use of EDI among the different industry participants.

FHWA Response: The intermodal transportation industry relies heavily on EDI. The FHWA recognizes that the development of EDI standards could not have begun in any substantial way prior to publication of the final rule on December 29, 1994, when all parties were made aware of the specific regulatory requirements. The development of standards, computer programming, and training are necessary for the intermodal transportation industry to accomplish the forwarding of certifications between carriers through the use of EDI. The FHWA also recognizes that making the final rule effective before the intermodal transportation industry has sufficient time to complete the necessary tasks for compliance to be achieved through the use of EDI would require the forwarding of paper certifications. This may cause large disruptions in domestic and international trade and commerce. The FHWA requests comments on the length of time that would be needed for the intermodal transportation industry to complete the tasks necessary for compliance with the final rule through the use of EDI.

Education and Training

The KLA wrote that an extension of the effective date of the final rule is also justified because of the need to educate numerous parties on its requirements. The KLA asserted that education of affected parties in the United States by June 27, 1995, would be a daunting task and that advising overseas shippers would be "impossible." The European Shippers' Councils wrote that European exporters have not yet received information on what the Act requires of them or instructions on how a certification should be issued. The European Shippers' Councils asserted that it would be impossible for all European shippers to comply with the final rule by June 27, 1995. The Coalition wrote that making shippers aware of their obligations will require a massive educational effort, one that is far from completed.

FHWA Response: The FHWA recognizes that it has a responsibility to inform participants in the intermodal transportation industry of their responsibilities under the final rule. The FHWA has developed an educational pamphlet which, unfortunately, is not yet available for distribution. In addition to English, the pamphlet will be available in German, French, Spanish, Japanese, and Mandarin Chinese. Pamphlets will be provided to various associations for domestic and international distribution upon its availability. In addition, the Department of State will assist the FHWA with the international distribution of the pamphlets. The FHWA will also request assistance from various embassies with international distribution of the pamphlets. The FHWA requests comments on what additional educational materials would be helpful and how the pamphlets and other materials should be distributed.

Cargo Weight Threshold

The Coalition recommended that the jurisdictional weight threshold of the Act and the final rule (more than 4,536 kilograms [10,000 pounds] gross cargo weight) should be raised. The Coalition stated that "even though there is no possibility under the law of physics that either international or domestic shipments weighing between 10,000 and 40,000 pounds could cause gross vehicle weight violations as defined in the Act, the Act and Regulations nonetheless require each shipment to be weighed and subject to the advance notification and certification requirements." In a letter, however, the Steamship Operators Intermodal Committee (SOIC) asserted that the Coalition's statement is erroneous. The SOIC wrote that its tests show that a 20 foot container which is loaded with 40,000 pounds of cargo exceeds the maximum gross weight allowed by the bridge gross weight formula when it is mounted on a 23 foot chassis.

FHWA Response: The Act specifically establishes a gross cargo weight applicability threshold of more than 4,536 kilograms (10,000 pounds) for loaded containers and trailers. Accordingly, the regulations issued by the FHWA are applicable to containers or trailers in intermodal transportation with an actual gross cargo weight (inclusive of packing material and pallets) of more than 4,536 kilograms (10,000 pounds). Although the gross cargo weight threshold of more than 4,536 kilograms (10,000 pounds) mandated by Congress extends the scope of the Act beyond the range of cargo weight typically associated with overweight conditions, the FHWA cannot modify the gross cargo weight threshold of the final rule without a congressional amendment to the Act.

Data Collection Needs Study

The National Industrial Transportation League requested that the study mandated by the Act be accelerated and that the effective date of the final rule be extended pending the findings of the study.

FHWA Response: The Act requires the Secretary of Transportation to conduct a study to assess existing data and data collection needs with respect to the movement in intermodal transportation of loaded containers and trailers in the violation of the Act and highway weight laws. The Act requires that the final report from the study provide legislative and other recommendations for improving the collection of such data. The Congress did not intend the study to be a prerequisite to the promulgation and enforcement of regulations which implement the requirements of the Act, but rather a separate activity designed to provide insight into the data needs that would assist Congress in making future related legislative decisions. Completion of the study is not by itself sufficient grounds to warrant an extension, and the schedule for the study cannot be significantly accelerated.

Opposition to a Lengthy Extension of the Effective Date of the Final Rule

In addition to letters requesting an extension of the effective date of the final rule, the FHWA received two letters in opposition. The American Trucking Associations, Inc. (ATA), opposed a lengthy extension of the effective date, but indicated that it could support an extension until January 1, 1996, to permit the FHWA to proceed with a rulemaking on the various petitions that have been filed, including its own. The ATA recognized that the EDI concerns of those requesting an extension may have some validity. In addition, Mr. M. P. McLean wrote that these regulations are necessary and long overdue and recommended they be implemented without delay.

Petition for Exemptions by the American Trucking Associations, Inc.

On April 7, 1995, the ATA filed a petition to exempt three types of motor carrier operations from the final rule:

1. A motor carrier which loads a container or trailer and provides all highway portions of the intermodal transportation.

2. A motor carrier which loads a container or trailer, provides the initial highway portion of the intermodal transportation, and assumes responsibility for the violations of highway weight laws of other motor carriers that transport the loaded container or trailer.

3. A motor carrier which is presented a loaded trailer for domestic transportation with a bill of lading that includes the weight and a reasonable description of the cargo, as well as the shipper's signature, and which subsequently decides on its own initiative to ship the loaded trailer by rail for a portion of the domestic transportation.

For the first type of operation, the ATA asserts that the certification serves no purpose because the motor carrier controls the loading of the container or trailer and, therefore, always knows the weight and identity of the cargo. In the second type, the ATA argues that the certification serves no purpose because the initial motor carrier knows the weight and identity of the cargo and has assumed responsibility for any overweight citations issued to other motor carriers. In the third type, the ATA contends that a certification should not be required because the use of intermodal transportation would be discouraged if a shipper that had to prepare a certification for every trailer on the possibility that its motor carrier might have the trailer transported by rail and because the motor carrier in this situation has been provided all of the pertinent information that would otherwise be included in a certification. The ATA asserts that all of these requested exemptions will eliminate unnecessary paperwork burden and have no adverse impact on highway safety. The ATA's petition is available for review in the docket.

Request for Comments

The FHWA is not requesting comments on the content of the final rule, but only on the ATA's petition for three exemptions and whether an extension of the effective date of the final rule beyond September 27, 1995, is necessary to allow affected parties to become familiar with their responsibilities and take necessary actions for compliance. The FHWA requests comments regarding the appropriateness of the following effective dates requested by the petitioners:

1. January 1, 1996, as mentioned by the ATA in its statements regarding the various filed petitions.

2. May 1, 1996, as requested by the Coalition and Warren & Associates based on their arguments related to: EDI; education; and paperwork burdens and costs associated with compliance to the final rule.

3. June 1, 1996, as requested by the KLA based on their arguments related to EDI and education.

4. Any other date.

The FHWA requests commenters to provide information and data which support their position. Commenters who support a specific effective date are requested to provide a timetable of activities necessary for compliance.

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket room at the above address. The FHWA will not consider any request for an extension of the comment period of this publication. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable. In addition to late comments, the FHWA will also continue to file in the docket relevant information that becomes available after the comment closing date, and interested persons should continue to examine the docket for new material.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has previously determined that the final rule implementing the Intermodal Safe Container Transportation Act of 1992 is a significant regulatory action within the meaning of Executive Order 12866 and significant under Department of Transportation regulatory policies and procedures because it affects intermodal transportation and attracts substantial public interest. As such, the final rule was reviewed by the Office of Management and Budget and the Office of the Secretary of Transportation before being published. This present action is intended only to allow comments on an appropriate effective date for the December 29, 1994, final rule. Based on the information received in response to this action, the FHWA will make a final determination on an appropriate effective date. It is anticipated that the economic impact of this action will be minimal; therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this action on small entities. Based upon this evaluation, as well as for the reasons set forth in the previous paragraph, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action does not have sufficient Federalism implications to warrant the preparation of a Federalism assessment. Nothing in this action directly preempts any State law or regulation.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

The information collection requirements contained in the December 29, 1994, final rule have been approved by the Office of Management and Budget in accordance with the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and assigned the control number of 2125–0557 which expires on June 30, 1997. This action does not affect the recordkeeping requirements previously established.

National Environmental Policy Act

The agency has analyzed this rulemaking for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 390

Highway safety, Highways and roads, Intermodal transportation, Motor carriers, Recordkeeping requirements.

Authority: 49 U.S.C. 5901–5907, 31132, 31136, 31502 and 31504; 49 CFR 1.46.

Issued on: May 19, 1995.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 95–12814 Filed 5–24–95; 8:45 am]

BILLING CODE 4910–22–P

Proposed Rules

Federal Register
Vol. 60, No. 101
Thursday, May 25, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–38–AD]

Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Fokker Model F28 Mark 0100 series airplanes. This proposal would require replacement of the return filter diaphragm assemblies on hydraulic systems 1 and 2 with modified filter units having new diaphragms. This proposal is prompted by a report of insufficient running clearance of the brake units due to overpressure in the hydraulic return system; this condition could lead to brake overheating. The actions specified by the proposed AD are intended to prevent overpressure of the hydraulic return system, which could result in reduced braking performance and/or blown tires due to brake overheating.

DATES: Comments must be received by July 5, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–38–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2141; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–NM–38–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–38–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, recently notified the FAA that an unsafe condition may exist on certain Fokker Model F28 Mark 0100 series airplanes. The RLD advises that it received a report of insufficient running clearance of the brake units on a Fokker Model F28 Mark 0100 series airplane due to overpressure in the hydraulic return system. Results of an investigation revealed that the outlet check valve of a return filter diaphragm assembly of the hydraulic system was blocked. The probable cause of this blockage was determined to be incorrect manufacturing tolerances, which resulted in extrusion of the lower seal at the inner diameter during installation. The RLD received additional reports concerning the possibility of a hydraulic lock between the diaphragm and the check valve of the filter inlet port. This hydraulic lock could lead to incorrect installation of the filter bowl and element.

These conditions, if not corrected, could result in overpressure of the hydraulic return system, which may result in reduced braking performance and/or blown tires due to brake overheating.

Fokker has issued Service Bulletin SBF100–29–025, dated December 31, 1993, which describes procedures for replacement of the return filter diaphragm assemblies on hydraulic systems 1 and 2 with modified filter units having new diaphragms. Installation of these modified units will ensure that the outlet check valve of the return filter diaphragm assembly is not blocked, and will eliminate the possibility of a hydraulic lock between the diaphragm and the check valve of the filter inlet port. The RLD classified this service bulletin as mandatory and issued Netherlands airworthiness directive 94–024 (A), dated January 28, 1994, in order to assure the continued airworthiness of these airplanes in the Netherlands.

This airplane model is manufactured in the Netherlands and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require replacement of the return filter diaphragm assemblies on hydraulic systems 1 and 2 with modified filter units having new diaphragms. The actions would be required to be accomplished in accordance with the service bulletin described previously.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this notice to clarify this long-standing requirement.

The FAA estimates that 119 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would be provided by the parts manufacturer at no cost to operators. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $14,280, or $120 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Fokker: Docket 95–NM–38–AD.

Applicability: Model F28 Mark 0100 series airplanes equipped with Aircraft Porous Media Europe (APME) Limited hydraulic return filter assemblies having part numbers (P/N) QA07236 and QA07237, all serial numbers; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent overpressure in the hydraulic return system, which could result in reduced braking performance and/or blown tires due to brake overheating, accomplish the following:

(a) Within 6 months after the effective date of this AD, replace the return filters, P/N's QA07236 and QA07237, on hydraulic systems 1 and 2, respectively, with modified return filter units, in accordance with Fokker Service Bulletin SBF100–29–025, dated December 31, 1993.

(b) As of the effective date of this AD, no person shall install on any airplane a return filter unit, P/N QA07236 or QA07237, on hydraulic system 1 or 2, respectively, unless that unit has been modified in accordance with Fokker Service Bulletin SBF100–29–025, dated December 31, 1993.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on May 19, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–12827 Filed 5–24–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–NM–162–AD]

Airworthiness Directives; Beech Model 400, 400A, and MU–300–10 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Beech Model 400, 400A, and MU–300–10 airplanes. This proposal would require installation of an improved adjustment mechanism on the flightcrew seats and replacement of the existing aluminum seat reinforcement assemblies with steel assemblies. This

proposal is prompted by reports of incomplete latching of the existing adjustment mechanism and cracked reinforcement assemblies, which could result in sudden shifting of a flightcrew seat. The actions specified by the proposed AD are intended to prevent such shifting of a flightcrew seat, which could impair the flightcrew's ability to control the airplane.

DATES: Comments must be received by July 5, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–162–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Raytheon Aircraft Company, P. O. Box 85, Wichita, Kansas 67201–0085. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

FOR FURTHER INFORMATION CONTACT: Larry Engler, Aerospace Engineer, Airframe Branch, ACE–118W, FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4122; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–162–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–162–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received several reports of incomplete latching of the adjustment mechanism on a flightcrew seat on Beech Model 400 series airplanes, which can result in a sudden shift of the seat position. The latching pins are designed to go into an adjustment hole on each rear leg assembly of the crew seat. However, due to the rigidity of the pin/tube assembly, both pins could not slip completely into the latched position unless the holes on both rear assemblies were aligned. Additionally, the FAA has received reports of cracking in the aluminum reinforcement assemblies of the flightcrew seat, which also may contribute to shifting of the seat. Shifting of a flightcrew seat during flight, if not corrected, could impair the flightcrews's ability to control the airplane.

The FAA has reviewed and approved Beechcraft Service Bulletin No. 2536, Revision 1, dated April 1995, which describes procedures for installing an improved adjustment mechanism on the flightcrew seats. This adjustment mechanism will allow each pin to slide into the latched position without both rear leg assemblies being aligned. The service bulletin also describes procedures for replacing the existing aluminum seat reinforcement assemblies with stronger steel assemblies.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require installing an improved adjustment mechanism on the flightcrew seats, and replacing the existing aluminum seat reinforcement assemblies with steel assemblies. The actions would be required to be accomplished in accordance with the service bulletin described previously.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this notice to clarify this long-standing requirement.

There are approximately 169 Model 400, 400A, and MU–300–10 airplanes of the affected design in the worldwide fleet. The FAA estimates that 121 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 24 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $700 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $258,940, or $2,140 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Beech Aircraft Corporation: Docket 94–NM–162–AD.

Applicability: Model 400 airplanes, serial numbers RJ–1 through RJ–65 inclusive; Model 400A airplanes, serial numbers RK–1 through RK–93 inclusive; and Model MU–300–10 airplanes, serial numbers A1001SA through A1011SA inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced controllability of the airplane due to a shifting of the flightcrew seat during flight, accomplish the following:

(a) Within 200 hours time-in-service after the effective date of this AD, install an improved adjustment mechanism on the flightcrew seat, and replace the existing aluminum seat reinforcement assemblies with steel assemblies, in accordance with Beechcraft Service Bulletin No. 2536, Revision 1, dated April 1995.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on May 19, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–12828 Filed 5–24–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 91 and 135

[Docket No. 25149, Notice 95–6; Special Federal Aviation Regulation (SFAR) No. 50–2]

RIN 2120–AF60

Special Flight Rules in the Vicinity of the Grand Canyon National Park

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); correction.

SUMMARY: This document contains a correction to a Notice of Proposed Rulemaking (NPRM), Special Flight Rules in the Vicinity of the Grand Canyon National Park, SFAR No. 50–2, published in the **Federal Register** on April 12, 1995 (60 FR 18700).

FOR FURTHER INFORMATION CONTACT: Mrs. Ellen Crum, Air Traffic Rules Branch, ATP–230, Telephone (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document, Docket No. 25149, published on April 12, 1995 (60 FR 18700), proposed to extend the effectiveness of SFAR No. 50–2. The Notice No. was omitted from the heading.

Correction to NPRM

The NPRM, published in the **Federal Register** on April 12, 1995 (60 FR 18700), is corrected as follows:

1. By adding the words "Notice 95–6;", on page 18700, first column, in the heading, after "Docket No. 25149,".

Issued in Washington, DC, on May 17, 1995.

Donald P. Byrne,

Assistant Chief Counsel, Office of the Chief Counsel.

[FR Doc. 95–12753 Filed 5–24–95; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915, and 1926

[Docket No. H–049]

RIN 1218–0099

Respiratory Protection

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Scheduling of a technical panel discussion on assigned protection factors as part of the pending rulemaking hearing.

SUMMARY: By this document, the Occupational Safety and Health Administration (OSHA) announces the convening, pursuant to 29 CFR 1911.4, of a panel to discuss certain science-policy issues involved in respirator selection, focusing on the need for, and limitations of, assigning protection factors for respirators by class. This panel discussion will take place on June 15, 1995, as part of the scheduled rulemaking hearing on respiratory protection. Details on the process and procedures associated with the panel discussion are described below.

DATES: The hearing on the proposed rule will begin on June 6, 1995. The panel discussion is scheduled for 9:00 a.m. on June 15, 1995.

ADDRESSES: The hearing and panel discussion will be held in the auditorium of the U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Proposal: Mr. Richard Liblong, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, 200 Constitution Avenue, N.W., Room N3647, Washington, D.C. 20210; (202) 219–8151.

Hearing: Mr. Thomas Hall, Division of Consumer Affairs, Occupational Safety

and Health Administration, 200 Constitution Avenue, N.W., Room N3649, Washington, D.C. 20210; (202) 219–8615.

SUPPLEMENTARY INFORMATION:

Background

On November 15, 1994, OSHA published a notice of proposed rulemaking on its respiratory protection standard (59 FR 58884 *et seq.*). The proposal is intended to update the current respirator standard to reflect changes in methodology, technology and approach related to respirator protection that have occurred since the existing respiratory protection standard was adopted in 1971.

The hearing on this proposal is scheduled to begin on June 6, 1995, (60 FR 4132 *et seq.*), and will last until at least until June 20, 1995. OSHA is in the process of contacting parties who have submitted notices of intention to appear at the hearing, to confirm the scheduling of their oral testimony.

Scheduling of Science-Policy Panel

OSHA has scheduled, on June 15, 1995, a panel discussion concerning technical, scientific, and policy issues surrounding the assignment of protection factors (APFs). The panel will be comprised of representatives of 6 parties invited by OSHA to participate in the discussion, as well as an OSHA representative. The panel discussion will be chaired by an additional OSHA official. Each invited party is already a participant in the rulemaking by virtue of having submitted a timely notice of intention to appear to testify and is already scheduled to provide testimony on APFs. Each invited party may choose its representative, who need not necessarily be an individual named in the notices of intention to appear at the hearings which the parties previously submitted. OSHA expects that the representatives will possess technical expertise and a willingness to exchange views in a constructive manner. The general agenda for the panel discussion consists of the issues stated below, and a more detailed agenda will be distributed during the hearing no later than June 9, 1995. Questions and brief comments to the panel from hearing participants and, to the extent time permits, from the audience, will be permitted until the Administrative Law Judge adjourns the hearing for the day on June 15, 1995.

The purpose of the panel discussion is to provide a variety of perspectives on the uncertainties surrounding the choice of APFs, so that OSHA can rely upon informed judgement if the Agency decides to set an APF for each respirator class as part of this rulemaking. Conflicting information regarding APFs is emerging in this rulemaking and warrants focused discussion. OSHA believes that additional information and viewpoints on APFs would be useful in resolving various open questions and in arriving at sensible conclusions.

OSHA contemplates that discussion topics will include: the validity of results obtained from available protection factor studies; the range of statistical uncertainty and person-to-person variability surrounding the results of these studies; correlations between study results; identification/specification of procedures and protocols that should be used in determining APFs; and science-policy issues on the role of protection factors in a required selection logic.

In choosing panel participants OSHA will attempt to include, if possible, those participants who have expressed an interest in APFs, and a willingness to exchange views on the record. It should be emphasized that the panel is a device to gather testimony; by opening the discussion to a broad range of parties and interests at once, OSHA believes that information will be tested, that views will be shared, and that the areas of uncertainty intrinsic to these issues will be crystallized. For these reasons, OSHA finds that, pursuant to 29 CFR 1911.4, "good cause" exists for scheduling this panel discussion.

The panel's discussions will be facilitated by an OSHA official who will guide the discussion to ensure that the Agency's information needs are met. Since the discussion is "on the record", and is part of the hearing procedure, the Administrative Law Judge will be the overall presiding official, consistent with 29 CFR part 1911.

Although as noted above, OSHA is organizing and selecting the makeup of the panel, all hearing participants will have the opportunity, subject to the direction and reasonable discretion of the Administrative Law Judge, to participate at appropriate intervals by making their own comments and by asking clarifying questions of participants. During the panel discussion, participants will discuss the agenda issues and not repeat their testimony provided elsewhere in the hearing. To avoid unproductive, irrelevant or repetitive questioning by panel members, hearing participants, or the public, the Administrative Law Judge will exercise discretion in disallowing such questioning.

The rest of the hearing procedures are set out in 29 CFR 1911.15–18, in the **Federal Register** notices of November 15, 1994 (59 FR 58884 *et seq.*) and also repeated in the notice of January 20, 1995 (60 FR 4132 *et seq.*) or in the Administrative Law Judge's prehearing guidelines which will be sent to all persons who have filed notices of intention to appear.

Authority and Signature

This document was prepared under the direction of Joseph A. Dear, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C., 20210. It is issued pursuant to section 6(b) of the Occupational Safety and Health Act of 1970 (84 Stat. 1593, 29 U.S.C. 655).

Signed at Washington, D.C. this 19th day of May, 1995.

Joseph A. Dear,

Assistant Secretary of Labor.

[FR Doc. 95–12876 Filed 5–24–95; 8:45 am]

BILLING CODE 4510–25–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 925

Missouri Abandoned Mine Lands Reclamation (AMLR) Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening and extension of public comment period on proposed amendment.

SUMMARY: OSM is announcing receipt of revisions pertaining to a previously proposed amendment to the Missouri AMLR plan (hereinafter referred to as the "Missouri plan") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The revisions for Missouri's proposed statutes, regulation, and State reclamation plan provisions of the Missouri Abandoned Mine Lands program pertain to powers of the Land Reclamation Commission, expenditures of the abandoned mine reclamation fund, eligible coal lands and water, and a future set-aside program. The amendment is intended to revise the Missouri AMLR plan to be consistent with the corresponding Federal standards, to clarify ambiguities, and to improve operational efficiency.

DATES: Written comments must be received by 4:00 p.m., c.d.t., June 9, 1995.

ADDRESSES: Written comments should be mailed or hand delivered to Michael C. Wolfrom at the address listed below.

Copies of the Missouri plan, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Kansas City Field Office.

Michael C. Wolfrom, Acting Director, Kansas City Field Office, Office of Surface Mining Reclamation and Enforcement, 934 Wyandotte, Room 500, Kansas City, Missouri 64105.

Missouri Department of Natural Resources, Land Reclamation Program, 205 Jefferson Street, P.O. Box 176, Jefferson City, Missouri 65102, Telephone: (314) 751–4041.

FOR FURTHER INFORMATION CONTACT: Michael C. Wolfrom, telephone: (816) 374–6405.

SUPPLEMENTARY INFORMATION:

I. Background on Title IV of SMCRA

Title IV of SMCRA established an abandoned mine land (AML) program for the purposes of reclaiming and restoring lands and waters adversely affected by past mining. The program is funded by a reclamation fee levied on the production of coal. Lands and waters eligible for reclamation under Title IV are those that are mined or affected by mining and abandoned or inadequately reclaimed prior to August 3, 1977, and for which there is no continuing reclamation responsibility under State or Federal laws. The Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508, Title VI, Subtitle A, Nov. 5, 1990, effective Oct. 1, 1991) amended SMCRA, to provide changes in the eligibility of project sites for AML expenditures. The Secretary adopted AML regulations (59 FR 28136, May 31, 1994) at 30 CFR Chapter VII, Subchapter R, Parts 795, 870, 872, 873, 874, 875, 876, and 886 to implement this act. Title IV of SMCRA now provides for reclamation of certain mine sites where the mining occurred after August 3, 1977. These include interim program sites where bond forfeiture proceeds were insufficient for adequate reclamation and sites affected any time between August 4, 1977, and November 5, 1990, for which there were insufficient funds for adequate reclamation due to the insolvency of the bond surety.

Title IV provides for State submittal to OSM of an AMLR plan. The Secretary of the Interior adopted regulations at 30 CFR 870 through 888 that implement Title IV of SMCRA. Under these regulations, the Secretary reviewed the plans submitted by States and solicited and considered comments of State and Federal agencies and the public. Based upon the comments received, the Secretary determined whether a State had the ability and necessary legislation to implement the provisions of Title IV. After making such determination, the Secretary decided whether to approve the State AMLR program. Approval granted the State exclusive authority to administer its plan.

Upon approval of a State's plan by the Secretary, the State may submit to OSM, on an annual basis, an application for funds to be expended by that State on specific projects that are necessary to implement the approved plan. Such annual requests are reviewed and approved by OSM in accordance with the requirements of 30 CFR Part 886.

II. Background on the Missouri Plan

On January 29, 1982, the Secretary of the Interior approved the Missouri plan. General background information on the Missouri plan, including the Secretary's findings, the disposition of comments, and the approval of the Missouri plan can be found in the January 29, 1982, **Federal Register** (47 FR 4253). Subsequent actions concerning the Missouri plan and plan amendments can be found at 30 CFR 925.20 and 925.25.

III. Proposed Amendment

By letter dated November 29, 1994, Missouri submitted a proposed amendment to its AMLR plan pursuant to SMCRA (administrative record No. AML–MO–89). Missouri submitted the proposed amendment in response to a September 26, 1994, letter (administrative record No. AML–MO–88) that OSM sent to Missouri in accordance with 30 CFR 884.15(b) concerning revisions to the AML regulations at 30 CFR Chapter VII, Subchapter R (59 FR 28136, May 31, 1994).

Missouri proposed to amend its statutes at (1) Revised Statutes of Missouri (RSMo) Section 444.810.2, pertaining to powers of the Land Reclamation Commission (Commission) to require that any rules promulgated under the authority of the Commission shall not become effective until they are approved by the joint committee on administrative rules and to provide the procedures necessary for this review and approval process, (2) RSMo Section 444.915.2, pertaining to priorities for expenditures of monies deposited to the abandoned mine reclamation fund, and (3) RSMo 444.915.3, pertaining to reclamation of interim program and insolvent surety coal sites. Missouri also proposed to amend its rules at 10 Code of State Regulations (CSR) 40–9.020 (1)(D) and (E) for general requirements related to the reclamation of coal lands and water abandoned after August 3, 1977, and at 10 CSR 40–9.020(3), concerning the definition of the term "left or abandoned in either an unreclaimed or inadequately reclaimed condition."

In addition, Missouri proposed to amend its AML State Reclamation Plan at (1) Section 884.13(c)(2), concerning project ranking and selection procedures to require the submittal of the Abandoned Mine Land Problem Area Description Form (OSM 76), to provide that interim program and insolvent surety coal sites mined after August 3, 1977, may be eligible for AML funding, and to exclude certain types of sites from AML funding, (2) Section 884.13(d)(3), concerning purchasing and procurement procedures that restrict the eligibility of bidders and their subcontractors on AML contracts, and (3) Section 884.13(d)(4), concerning accounting procedures and the use of AML State-share funds annually for a future reclamation set-aside program in Missouri.

OSM announced receipt of the proposed amendment in the December 13, 1994, **Federal Register** (59 FR 64176), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (administrative record No. AML–MO–91). The public comment period ended on January 12, 1995. At the request of the Missouri Department of Natural Resources, OSM held a public meeting in Jefferson, Missouri on March 1, 1995. OSM entered a summary of the public meeting into the administrative record (administrative record No. AML–MO–96).

During its review of the proposed amendment, OSM identified concerns relating to the provisions of (1) RSMo 444.915.3(3), concerning the reclamation of sites where mining occurred between certain dates and the surety company became insolvent, (2) 10 CSR 40–9.020(1)(D) and (E), concerning eligible coal lands and waters, and (3) Section 884.13(d)(4), concerning the creation of a future reclamation set-aside program. OSM notified Missouri of the concerns in a letter dated February 16, 1995 (administrative record No. AML–MO–93).

Missouri responded in a letter dated May 16, 1995, by submitting a revised amendment and additional explanatory information (administrative record No.

AML–MO–100). Missouri proposes revisions to and additional explanatory information for (1) RSMo 444.915.3(3), pertaining to the reclamation of insolvent surety coal sites, (2) 10 CSR 40–9.020(1)(D) and (E), pertaining to priorities of eligible coal lands and waters for reclamation and reimbursement for the cost of reclamation, and (3) Section 884.13(D)(4) of the AML State Reclamation Plan, pertaining to the use of AML State-share funds to establish a future set-aside program in Missouri.

IV. Public Comment Procedures

OSM is reopening the comment period on the proposed Missouri plan amendment to provide the public an opportunity to reconsider the adequacy of the proposed amendment in light of the additional materials submitted. In accordance with the provisions of 30 CFR 884.14 AND 884.15(a), OSM is seeking comments on whether the proposed amendment satisfies the applicable plan approval criteria of 30 CFR 884.14. If the amendment is deemed adequate, it will become part of the Missouri plan.

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Kansas City Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

V. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State AMLR plans and revisions thereof since each such plan is drafted and promulgated by a specific State, not by OSM. Decisions on proposed State AMLR plans and revisions thereof submitted by a State are based on a determination of whether the submittal meets the requirements of Title IV of SMCRA (30 U.S.C. 1231–1243) and the applicable Federal regulations at 30 CFR Parts 884 and 888.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since agency decisions on proposed State AMLR plans and revisions thereof are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements established by SMCRA or previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have as significant economic impact, the Department relied upon the data and assumptions in the analyses for the corresponding Federal regulations.

List of Subjects in 30 CFR Part 925

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 19, 1995.

Nancy L. Shaw,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 95–12881 Filed 5–24–95; 8:45 am]

BILLING CODE 4310–05M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1803, 1815, and 1852

Addition of Coverage to NASA FAR Supplement on NASA Ombudsman Program

AGENCY: Office of Procurement, National Aeronautics and Space Administration (NASA).

ACTION: Notice of proposed rulemaking.

SUMMARY: To improve communications with interested parties, NASA plans to establish an Ombudsman Program. This rule sets forth a clause for identification of the NASA and installation ombudsmen to be included in solicitations and contracts. The clause is also to serve as the basis for a statement to be included in "Commerce Business Daily" announcements. In addition, the rule amends NASA's coverage on procurement integrity to include the NASA and installation ombudsmen as individuals authorized access to proprietary and source selection information.

DATES: Comments must be received on or before July 24, 1995.

ADDRESSES: Submit comments to Mr. Joseph Le Cren, Analysis Division (Code HC), Office of Procurement, NASA Headquarters, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Le Cren, (202) 358–0444.

SUPPLEMENTARY INFORMATION:

Background

In order to improve communications with interested parties (offerors, potential offerors, contractors), and to facilitate the resolution of concerns in an informal manner, NASA plans to establish an Ombudsman Program. In addition, section 1004(a) of the Federal Acquisition Streamlining Act of 1994, Public Law 103–355, enacted October 13, 1994, requires NASA, under 10 U.S.C. 2304c(e), to appoint a task and delivery order ombudsman where multiple task or delivery order contracts are made. In order to accomplish these things, a NASA Management Instruction has been developed to establish the NASA Ombudsman Program. It is also necessary to amend the NASA FAR Supplement to include a clause to notify offerors, potential offerors, contractors, and industry representatives of the purpose of the NASA Ombudsman Program and to provide the names and telephone numbers of the agency and applicable installation ombudsmen. The rule also proposes to amend the current NASA FAR Supplement coverage on procurement integrity to include the NASA and installation ombudsmen as individuals authorized access to proprietary and source selection information, as needed, to carry out their duties.

Impact

NASA certifies that this regulation will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) This rule does not impose any reporting or recordkeeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 48 CFR Parts 1803, 1815 and 1852

Government procurement.

Deidre A. Lee,

Associate Administrator for Procurement.

Accordingly, 48 CFR Parts 1803, 1815 and 1852 are proposed to be amended as follows:

PART 1803—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

1. The authority citation for 48 CFR Parts 1803, 1815 and 1852 continue to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

2. In section 1803.104–5, the introductory text of paragraph (c) is revised and paragraph (c)(11) is added to read as follows:

1803.104–5 Disclosure, protection, and marking of proprietary and source selection information.

* * * * *

(c) Government employees serving in the following positions are authorized access to proprietary or source selection information, but only to the extent necessary to perform their official duties:

* * * * *

(11) Duly designated ombudsman.

* * * * *

PART 1815—CONTRACTING BY NEGOTIATION

3. Subpart 1815.70 is added to read as follows:

Subpart 1815.70—Ombudsman

1815.7001 NASA Ombudsman Program.
1815.7002 Commerce Business Daily announcements, solicitations and contracts.

* * * * *

Subpart 1815.70—Ombudsman

1815.7001 NASA Ombudsman Program.

NASA's implementation of an ombudsman program is in NMI 1210.XX, NASA Ombudsman Program.

1815.7002 Commerce Business Daily announcements, solicitations and contracts.

The contracting officer shall include a statement similar to that contained in the clause at 1852.215–84, Ombudsman, in Commerce Business Daily announcements of competitive procurements. Also, a clause substantially the same as the one at 1852.215–84 shall be included in Section L of solicitations, including draft solicitations, and in all contracts.

3. Section 1852.215-84 is added to read as follows:

1852.215–84 Ombudsman.

As prescribed in 1815.7002, insert the following clause:

Ombudsman

(XXX 1995)

An ombudsman has been appointed to hear concerns from offerors, potential offerors, and contractors during the preaward and postaward phases of this acquisition. The purpose of the ombudsman is not to diminish the authority of the contracting officer, the Source Selection Board, or the selection official, but to communicate concerns, issues, disagreements, and recommendations of interested parties to the appropriate Government personnel and to work to resolve them. When requested, the ombudsman will maintain strict confidentiality as to the source of the concern. The ombudsman does not participate in the evaluation of proposals, the source selection process, or the arbitration of formal contract disputes. Interested parties are invited to call the installation ombudsman _____ [Insert name] at _____ [Insert telephone number]. Concerns, issues, disagreements, and recommendations which cannot be resolved at the installation may be referred to the NASA ombudsman _____ [Insert name] at _____ [Insert telephone number].

(End of Clause)

[FR Doc. 95–12776 Filed 5–24–95; 8:45 am]

BILLING CODE 7510–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

Air Brake Systems; Denial of Petition for Rulemaking

AGENCY: National Highway Traffic Safety Administration.

ACTION: Denial of petition for rulemaking.

SUMMARY: This notice denies a petition for rulemaking, submitted by Rocky Mountain Technology Engineering Corporation, to require that all air braked trailers using adjustable axles be equipped with an automatic pneumatic locking device. According to the petitioner, its device will ensure that the adjustable axles are automatically locked in place while the vehicle is in motion. It will help prevent back injuries now reportedly resulting from the misuse of manual systems. After conducting its review, the agency has determined that the petition should not be granted because measures designed to prevent back injuries and the unintended movement of adjustable axles do not raise significant safety problems.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Carter, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–65274.

SUPPLEMENTARY INFORMATION: Federal Motor Vehicle Safety Standard (FMVSS) No. 121, *Air Brake Systems* (49 CFR 571.121), establishes performance requirements for braking systems on vehicles equipped with air brakes. The purpose of the standard is to ensure safe braking performance under normal and emergency braking conditions.

Neither FMVSS No. 121 nor any other FMVSS presently addresses the locking of adjustable axles on trailers.[1] Such adjustable axles are also referred to as slider axles. Adjustable axles can move backward and forward on semi-trailers. Such adjustability allows the axles to be moved so as to balance the loading on the various axles of the trailer. In this way, users of semi-trailers can avoid exceeding the weight limit on each axle. The adjustability also allows the distance between the coupling and the rear axle to be limited in order to improve trailer mobility. Currently, most adjustable axles incorporate a mechanical system for locking the axles in place.

On September 30, 1994, Mr. Larry Wessels, the president of Rocky Mountain Technology Engineering Corporation (Rocky Mountain), submitted a petition for rulemaking requesting that FMVSS No. 121 be amended to require semitrailers with adjustable axles to be equipped with an automatic pneumatic locking system. Such a system would be joined to the air brake system and would allow automatic retraction of the locking pins, provided that the parking spring brakes have been set. A video tape accompanying the petition highlighted two principle differences between present adjustable axle systems and the one described by the petitioner. First, Rocky Mountain's device uses four locking pins instead of two. Second, its device engages automatically through the use of air pressure, rather than manually through the use of lever arms. The petitioner contended that its device would replace manual locking systems, which it claimed fail more readily and frequently result in back injuries when

[1] The Federal Motor Carrier Safety Regulations (FMCSR) issued by the Federal Highway Administration (FHWA) specify that "Adjustable axle assemblies shall not have locking pins missing or disengaged." 49 CFR 393.207.

the driver tries to manually retract the pin to adjust the sliding axle. The petitioner also contended that its system would more likely ensure that the adjustable axles remain in place. Based on its concern, Rocky Mountain requested that the agency initiate rulemaking to require this product.

After reviewing the petition and other available information, NHTSA has determined that requiring an automatic locking pin system would not prevent injuries and fatalities related to motor vehicle accidents. In reviewing its recall and defect investigation files, NHTSA found only one agency Engineering Analysis involving adjustable axle assemblies: in 1980, the agency opened an investigation based upon six consumer complaints involving accidents in which the adjustable assembly completely separated from Freuhauf flatbed trailers. The agency conducted a number of laboratory and field tests in an attempt to dislodge the pins from the frame rails. In none of the tests performed over a broad range of conditions was the agency able to dislodge the pins. The agency closed this Engineering Analysis without ordering a recall, redesign, or any other changes to the manufacturer's product. The agency's review of its Office of Defect Investigation's (ODI's) Customer Complaint file similarly found no safety problems with respect to adjustable axles.

NHTSA also is concerned that requiring a system like Rocky Mountain's could potentially create operational problems, given that it would increase the complexity of adjustable axle locking systems. Specifically, Rocky Mountain's automatic locking system would add approximately 20 additional air couplings, 17 more separate air lines, four additional air pistons, one fairly complex control valve, and the electrical support system to monitor the position of the pistons along with the wiring and lighting to the cab area. As a result, the system's reliability must be very good. This is so because when more components are added to a system, each component must have a high individual reliability rate to maintain the same reliability for the total system or vehicle. The mechanical systems are less complex compared with the automatic system because they have many fewer parts. However, the agency believes that they are capable of performing their intended function.

NHTSA notes that requiring Rocky Mountain's product would result in considerable costs. Rocky Mountain indicated that its device would cost approximately $100 more than the present manual system. Given that the average annual production of trailers is approximately 186,000 units and that between 85 percent and 90 percent of trailers have adjustable axles, NHTSA estimates that requiring the petitioner's device would cost approximately $16 million ($100 x 186,000 x 85 percent) annually.

Rocky Mountain claimed that its device would prevent injuries caused both while the vehicle is in use and while the stationary vehicle's axle is being adjusted. Based on its review of safety data, NHTSA is aware of few injuries caused by such situations.

Based on the above considerations, NHTSA has determined that Rocky Mountain's petition should be denied. This decision is based in part on the fact that there are no test data, other information or analyses to substantiate the petitioner's claim that the requested amendment would reduce injuries and fatalities associated with motor vehicle accidents. Moreover, such a requirement would result in significant costs without corresponding benefits.

In accordance with 49 CFR Part 552, the agency has completed its technical review of the petition and determined that there is no reasonable possibility that the requested amendment would be issued at the conclusion of a rulemaking proceeding. Accordingly, the agency is denying the petition.

Notwithstanding NHTSA's decision to deny Rocky Mountain's petition, the agency notes that neither the requirements of FMVSS No. 121 nor those of the agency's underlying statute under which the standard was issued, prohibit the installation of the petitioner's product; provided that if it is installed on a vehicle by a vehicle manufacturer, dealer, distributor or repair business, neither the act of installation nor the operation of the device makes inoperative any device or element of design installed on that vehicle in compliance with FMVSS No. 121.

Authority: 49 U.S.C. 30103 and 30162; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: May 19, 1995.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 95–12831 Filed 5–24–95; 8:45 am]

BILLING CODE 4910–59–P

Notices

Federal Register
Vol. 60, No. 101
Thursday, May 25, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Administration, Committee on Regulation, and Special Committee to Review the Government in the Sunshine Act

ACTION: Notice of public meetings.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92–463), notice is hereby given of meetings of the following committees of the Administrative Conference of the United States: Committee on Administration, Committee on Regulation, and Special Committee to Review the Government in the Sunshine Act.

Agency: Committee on Administration.

Dates: Thursday, June 15, 1995, at 11:30 a.m.

Addresses: American Arbitration Association, Sixth Floor, 1150 Connecticut Avenue, N.W., Washington, DC.

For Further Information Contact: Charles Pou, Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW, Suite 500, Washington, DC 20037. Telephone: (202) 254–7020.

Agency: Committee on Regulation.

Dates: Friday, June 16, 1995, from 7:30 a.m. to 8:45 a.m.

Addresses: Hay-Adams Hotel, 800 Sixteenth Street, NW, Suite 706, Washington, DC.

For Further Information Contact: David M. Pritzker, Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW, Suite 500, Washington, DC 20037. Telephone: (202) 254–7020.

Agency: Special Committee to Review the Government in the Sunshine Act.

Dates: Tuesday, June 27, 1995, at 2:00 p.m.

Addresses: Office of the Chairman, Administrative Conference, 2120 L Street, NW, Suite 500, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jeffrey S. Lubbers, Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW, Suite 500, Washington, DC 20037. Telephone: (202) 254–7020.

SUPPLEMENTARY INFORMATION: The Committee on Administration will meet to continue discussion of the potential use of alternative dispute resolution and other innovative techniques for resolving conflicts between endangered species and development interests. The Committee will consider convening public meetings and/or some other form of public involvement to address issues raised by the consultants' report.

The Committee on Regulation will meet to continue discussion of possible recommendations on self-implementation, or self-enforcement, as a regulatory alternative to direct enforcement. The committee has been considering a draft report on this subject by Professor Douglas C. Michael of the University of Kentucky College of Law.

The Special Committee to Review the Government in the Sunshine Act will meet for the second time to continue its deliberations concerning the need for changes in the Act. The study was initiated by a letter from over a dozen current and former agency commissioners requesting that the Administrative Conference review the operation of the Government in the Sunshine Act. Copies of the letter are available from the Administrative Conference. This meeting is being held for the purpose of hearing from representatives of groups that have a special interest in maximizing the public availability of government information.

Attendance at the meetings is open to the interested public, but limited to the space available. Persons wishing to attend should notify the Office of the Chairman at least two days prior to the meeting. The chairman of each committee, if he deems it appropriate, may permit members of the public to present oral statements at the meeting. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of each meeting will be available on request.

Dated: May 18, 1995.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 95–12816 Filed 5–24–95; 8:45 am]

BILLING CODE 6110–01–W

Assembly of Administrative Conference; Meeting

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92–463), notice is hereby given of a meeting of the Assembly of the Administrative Conference of the United States.

DATES: Thursday, June 15, 1995, 1:00 p.m.; Friday, June 16, 1995, 9:00 a.m.

ADDRESSES: Amphitheatre of the Office of Thrift Supervision, Second Floor, 1700 G Street, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Renee Barnow (202) 254–7020.

SUPPLEMENTARY INFORMATION: The Assembly of the Administrative Conference of the United States makes recommendations to administrative agencies, the President, Congress, and the Judicial Conference of the United States regarding the efficiency, adequacy, and fairness of the administrative procedures used by Federal agencies in carrying out their programs. The Assembly will meet in Plenary Session to consider, not necessarily in the order stated, proposed recommendations on the following subjects:

1. Review of Existing Agency Regulations;
2. Streamlined Processes for Noncontroversial and Emergency Rulemaking;
3. Resolution of Government Contract Bid Protest Disputes;
4. Alternative Dispute Resolution Confidentiality and the Freedom of Information Act; and
5. Use of Mediation under the Americans with Disabilities Act.

The agenda will also include a forum on innovative approaches to resolving workplace conflicts. The forum, scheduled for June 16 (approximately 10:30 a.m.), will include a presentation by commissioners of the Equal Employment Opportunity Commission describing the Commission's new mediation program. A panel of

commentators will discuss this and other initiatives.

Plenary sessions are open to the public. All participants with special needs and/or who will require assistance should contact Sharon D. Anderson or Lavette M. Miller. Further information on the meeting, including copies of proposed recomendations, may be obtained from the Office of the Chairman, Suite 500, 2120 L Street, N.W., Washington, D.C. 20037, telephone (202) 254–7020.

Dated: May 18, 1995.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 95–12815 Filed 5–24–95; 8:45 am]

BILLING CODE 6118–01–W

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

May 19, 1995.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) title of the information collection; (3) Form number(s), if applicable; (4) Who will be required or asked to report; (5) An estimate of the number of responses; (65) An estimate of the total number of hours needed to provide the information; (7) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, D.C. 20250, (202) 690–2118.

Emergency Collection

• Office of Inspector General
Commodity Origin Questionnaire for Agricultural Commodities
Business or other for-profit; 100 responses; 200 hours
Raymond G. Poland, (202) 720–2887

Revision

• Rural Economic & Community Development
7 CFR 1980–D, Rural Housing Loans
FmHA 1980–11, 12, 13, 16, 17, 18, 20, 21; RECD 1980–80, 81, 86
Individuals or households Business or other for-profit; State, Local or Tribal government; 158–216 responses; 77,645 hours
Jack Holston (202), 720–9736

• Animal and Plant Health Inspection Service
7 CFR 354 & 9 CFR 130 User Fees
PPQ 250 & VS 16–7
Individuals or households; Business or other for-profit; Federal government; State, local or Tribal government; 246,103 responses; 9,349 hours
Helen Schmitt, (301) 734–5901

• Cooperative State Research, Education, and Extension Service
Application Kit
CSREES—55, 661, 662 and 663
Individuals or households; Business or other for-profit; Not-for-profit; Federal Government; State, Local or Tribal Government; 5,200 responses; 23,600 hours
Sondra Watkins, (202) 401–5050

Extension

• Food and Consumer Service
WIC Program Annual Closeout Report with Addendum
FCS–227 and FCS–227A
State, Local or Tribal government; 86 responses; 490 hours
Joan Carroll, (703) 305–2716

• Food and Consumer Service
WIC Local Agency Directory Report
FCS–648
State, Local or Tribal Government; 86 responses; 64 hours
Joan Carroll, (703) 305–2716

• Foreign Agricultural Service
List of Commodities by firm Available for Exporting
Business or other for-profit; Farms; 4500 responses; 1125 hours
Jeffrey Hesse, (202) 690–3424.

Larry K. Roberson,

Deputy Departmental Clearance Officer.

[FR Doc. 95–12882 Filed 5–24–95; 8:45 am]

BILLING CODE 3410–01–M

Food Safety and Inspection Service

[Docket No. 95–015N]

Guidelines for Preparing and Submitting Experimental Protocols for In-Plant Trials of New Technologies and Procedures

AGENCY: Food Safety Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The Food Safety and Inspection Service has issued Directive 10,700.1, establishing guidelines for preparing and submitting experimental protocols for in-plant research or trials of new technologies and procedures in federally inspected meat and poultry plants. This notice summarizes Directive 10,700.1 and announces its availability to interested persons.

ADDRESSES: To obtain a copy of FSIS Directive 10,700.1, "Guidelines for Preparing and Submitting Experimental Protocols for In-Plant Trials of New Technologies and Procedures," contact Ms. Diane Moore, Docket Clerk, room 4352, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 720–3813.

FOR FURTHER INFORMATION CONTACT: Dr. Pat Basu, Director, Technology Assessment and Research Coordination Division, Science and Technology, Food Safety and Inspection Service, U.S. Department of Agriculture, room 302, Annex Building, 300 12th Street SW., Washington, DC 20250, (202) 720–8623.

SUPPLEMENTARY INFORMATION:

Background

The Food Safety and Inspection Service (FSIS) periodically issues directives that either explain internal administrative policies and procedures or, as in the case of Directive 10,700.1, clarify FSIS regulations and procedures regarding meat and poultry product safety and inspection. While these directives are intended for FSIS inspectors and other employees, they are also regularly sent to other interested persons, including meat and poultry plant management, trade associations, and State and local governments. To ensure that all interested persons are aware of the substance and availability of this directive, FSIS is publishing this notice.

Directive 10,700.1

As part of its comprehensive strategy to reduce the occurrence and numbers of pathogenic organisms in meat and poultry for the purpose of reducing the incidence of foodborne illness associated with consumption of those products, FSIS has proposed a series of new requirements applicable to all federally inspected meat and poultry plants ("Pathogen Reduction; Hazard Analysis and Critical Control Points (HACCP) Systems"; February 3, 1995, 60 FR 6774–6889). In order to meet the requirements proposed in that document, the meat and poultry industries may find it useful to develop innovative technologies and procedures that more effectively protect meat and poultry products from microbiological and other hazards. FSIS is committed to fostering such innovation.

In the past few years, innovative technologies and procedures have been developed by the meat and poultry industry and allied enterprises to enhance industry productivity and profitability. FSIS believes that industry innovation should also be directed to improving food safety. FSIS intends as part of its comprehensive long-term food safety strategy to increase the incentives for such innovation by establishing public health-driven targets, guidelines, and standards that establishments will be held accountable for meeting. Also, FSIS is redoubling its efforts to facilitate experimentation in the meat and poultry industries.

Specifically, FSIS is encouraging in-plant experimentation, which both aids in the development of new production and processing techniques and provides the requisite confirmation that new technologies and procedures are efficacious, practical, and manageable in commercial plant environments. FSIS has reviewed its policies and procedures governing review and approval of in-plant experimentation with the intention of simplifying them to the maximum extent possible, while ensuring that important safety and efficacy issues are considered. As a result, on April 11, 1995, FSIS issued Directive 10,700.1, "Guidelines for Preparing and Submitting Experimental Protocols for In-Plant Trials of New Technologies and Procedures."

Directive 10,700.1 explains that a written proposal and protocol must be submitted to FSIS, reviewed, and approved prior to any in-plant research or demonstration of technologies and procedures that could affect product safety, worker safety, environmental safety, or inspection procedures. The written proposal and protocol must contain a statement of purpose, a scientific literature review, including data from laboratory studies supporting further in-plant trials, a detailed description of the research methodology to be used, and other administrative information. Also, proposals for research on technologies or procedures that could alter inspection procedures, affect food safety, or are to be approved for general use must include a detailed study design and a commitment to submit final research results. Applicants must submit proposals and protocols at least 60 days before any experiments begin, so that FSIS may have adequate time to both review the proposal and notify, if necessary, the local FSIS inspection staff who would observe the approved experiment.

FSIS will not approve any proposal or protocol for in-plant experimentation that could result in an increased risk for the public and accordingly has placed certain restrictions on experiments involving the artificial contamination of food products. For example, in experiments where researchers artificially contaminate carcasses with fecal material that may contain human pathogens, any products from these carcasses must be removed from commercial channels or reconditioned to be wholesome and fit for sale. Also, in tests where researchers artificially contaminate carcasses with surrogate organisms that approximate the growth or spread of human pathogens, trimming of treated areas followed by an antimicrobial wash is required before product can be moved into commerce. Furthermore, while FSIS will not approve experiments that unreasonably interfere with our inspection responsibilities, requests for modest changes in inspection during an experiment will be considered on a case-by-case basis.

FSIS requires that certain proposal and protocol submissions include approvals from other agencies. If any chemical reagents or other such materials are to be used in an experiment, those materials must have been approved by Food and Drug Administration. Also, certain proposals for experiments that may affect worker safety must be accompanied by appropriate regulatory citations or by written approval from the Environmental Protection Agency (EPA) and/or the Occupational Safety and Health Administration. And, some proposals for experiments that may impact environmental safety must be accompanied by approvals from EPA.

During approved in-plant experimentation, FSIS reserves the right to have on-site observers present and to review interim data. Should unexpected safety concerns arise at any time, for example, if food products affected by the experiment are in violation of food safety statutes or present an increased risk to the public, FSIS will require termination of the experiment. FSIS also reserves the right to have an approved proposal, as well as experimental results, reviewed by outside parties, as long as proprietary rights are safeguarded. Further, FSIS reserves the right to request the "raw" data initially collected from the experiment when evaluating the results of in-plant experiments.

FSIS has established a new unit, the Technology Assessment and Research Coordination Division (TARCD), which will function as the single point of entry for in-plant research protocols and experimental results. TARCD will perform the initial review of proposals for acceptability and completeness and then forward the proposals to teams within FSIS for technical review. TARCD also will be responsible for conveying results from FSIS technical reviews to the researchers requesting approval for in-plant experiments. TARCD will similarly coordinate the review of results and facilitate the policy decision process.

Proposals and protocols that are unapproved or in the approval process will be unavailable to the public. Approved proposals and protocols will be available and on file in the FSIS Freedom of Information Act (FOIA) reading room. FSIS will ensure FOIA protection for proprietary information contained in proposals and protocols available to the public.

Development and dissemination of these guidelines, as well as the establishment within FSIS of a single office for receiving proposed protocols for in-plant research, is intended to encourage the technological and procedural innovation necessary to enhance food safety within the meat and poultry industries.

Done at Washington, DC on May 19, 1995.

Michael R. Taylor,

Acting Under Secretary for Food Safety.

[FR Doc. 95–12883 Filed 5–24–95; 8:45 am]

BILLING CODE 3410–DM–P

Forest Service

Notice of Intent

AGENCY: Forest Service, USDA.

ACTION: Revision of notice of intent to prepare an Environmental Impact Statement.

SUMMARY: On May 13, 1992, the Forest Service filed a notice of intent in the **Federal Register** to prepare an environmental impact statement (EIS) to analyze revision of management guidelines for the Desolation Wilderness on the Pacific and Placerville Ranger Districts of the Eldorado National Forest and the Lake Tahoe Basin Management Unit, El Dorado County, California. A subsequent notice was filed on May 2, 1994, because the draft EIS was delayed more than 6 months. This notice is being filed because the EIS has been delayed more than 6 months and because the responsible official has been changed.

ADDRESSES: John Phipps, Forest Supervisor, Eldorado National Forest, ATTN: Desolation Wilderness EIS, 100

Forni Rd. Placerville, CA 95667, phone 916–622–5061.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and EIS to Karen Leyse, Interdisciplinary Team Leader, Eldorado National Forest, 100 Forni Rd. Placerville, CA 95667, phone 916–622–5061.

SUPPLEMENTARY INFORMATION: The *Eldorado National Forest Land and Resource Management Plan* (1989), the *Lake Tahoe Basin Management Unit Land and Resource Management Plan* (1988), and the 1964 Wilderness Act have provided general management direction for Desolation Wilderness. The current Desolation Wilderness Management Plan was completed in 1978; both Forest Plans indicate the need to review the existing Desolation Wilderness Plan and to revise it as needed. The decision may result in amendment to the Forest Plans.

A great deal of scoping has been completed since the original notice of intent was filed. Through scoping, the following issues have been identified:

1. Fire. Fire suppression has affected the development and maintenance of natural plant communities and the resulting ecosystems. Current fire management policy and suppression techniques are not consistent with maintaining natural processes and wilderness characteristics.

2. Fisheries. Stocking of fish in wilderness lakes provides recreational opportunities for the public, but this practice affects naturally occurring biodiversity and ecosystems, which are protected by wilderness designation.

3. Range. Current grazing practices may impact water quality, vegetation, meadow and riparian areas, wildlife, and archaeological sites. Grazing is a historical use; however, the presence of cattle disturbs some visitors.

4. Water quality. Current use and management practices may be creating unacceptable water quality conditions in the wilderness.

5. Wood fires. Many wilderness users value campfires as part of the wilderness experience; however, collection of firewood and presence of firerings, ashes, and other campfire debris degrades campsites and eliminates down, woody debris, an important part of the ecosystem.

6. Visitor impacts. Some areas of the wilderness, especially lakeshores and easily accessed sites, are being damaged by visitor use. Users, including recreational stock users, may impact the vegetation, soils, wildlife, and cultural sites.

7. Quotas and group size. The number and distribution of users and the size of groups (including stock) affect the values and character of the wilderness and the quality of the wilderness experience.

8. Aircraft overflights. Overflights are common and intrude on the wilderness experience.

9. Dogs. The presence of dogs disturbs some visitors, adds to sanitation problems, and may harass wildlife.

10. Recreational shooting. Some visitors feel that the responsible use of guns should be allowed. Others are disturbed by the noise and the harassment of wildlife and have expressed concern for their own safety.

11. Trails. Management and development of trailheads and trails may affect the amounts and patterns of use and the quality of the wilderness experience.

In preparing the EIS, the Forest Service will be considering a range of alternatives for future management of the wilderness. The Forest Service is in the process of developing these alternatives, which range from maximum recreational use of the wilderness to maximum wilderness protection. These preliminary alternatives may be revised before the draft EIS is issued as new information is developed or new comments are received:

Maximum Opportunity. This alternative would increase the use of the wilderness by expanding the trail system and signing, maintaining all trails, and upgrading unimproved trails. Camping would be allowed in all zones. Fisheries opportunities would be increased. Campfires would be permitted in designated firings, back country toilets would be installed, group sizes of 25 would be permitted, and quotas for overnight camping would be raised. There would be no limits on recreational shooting. There would be no group size limits for recreational stock. No fees would be charged.

No Action. The current situation would continue unchanged. There would continue to be unlimited day use with quotas on overnight use in the 3-month summer period. Camping would be permitted in all zones. Maintenance and reconstruction of existing trails would continue. Fish stocking of lakes and operation of stream flow management dams would continue. Wood fires would continue to be prohibited. All fires, including lightening caused fires, would be suppressed. Sanitation recommendations would continue to include a 100-foot setback from water. There would be no limits on recreational shooting or recreational stock. The forests would continue to pursue charging a permit reservation fee.

Enhanced Wilderness Experience. The quality of the wilderness experience would be improved by restricting the number of day users in heavily used areas and by slightly reducing the number of overnight users permitted over a 5-month summer period. Group sizes would be reduced in remote areas. The number of stock permitted per group would be limited, and recreational shooting would be limited during the heavy use season. There would be a leash requirement for dogs. Fish stocking would continue at reduced levels. Overnight wilderness permits would be issued by zone or by destination, with no camping in heaviest use areas. "No trace" wood fires would be allowed in designated areas. Several trails could be removed. Other trails would be made more primitive. Directional signing would be found only at major trail intersections. Prescribed natural fire would be allowed in areas of the wilderness where fire hazard is low.

Physical Restoration. The number of day and overnight users would be further reduced from the Enhanced Wilderness Experience alternative during a 5-month summer quota period. Group sizes for users and stock would be reduced. Grazing would be permitted only where appropriate based on wilderness resource conditions. Recreational shooting would be prohibited. Camping and outfitter/guide use would be regulated by zone. Dogs would be required to be on a leash. Fish stocking would be reduced, and riparian areas would be revegetated. Some trails could be removed and others would be re-routed in sensitive areas. Planned and natural prescribed fire would be used to return areas of the wilderness to pre-historical conditions. Reservation and permit fees (if legal) would be collected.

Enhanced Ecosystem. Group sizes for users and stock would be further reduced from the other alternatives, and the numbers of overall visitors would be reduced. Grazing would be permitted only where appropriate based on wilderness resources conditions. Stocking of non-indigenous fish species would be allowed only if the fish populations were adversely influenced by humans. Dogs would be required to be on a leash. Recreational shooting and campfires would be prohibited. The number of signs, stream maintenance dams, and trails would be reduced. Trails would be re-routed away from sensitive areas; stream crossings would be repaired; riparian areas would be revegetated. Planned and natural prescribed fire would be used throughout the wilderness. Reservation and permit fees (if legal) would be collected.

Maximum Wilderness Preservation. The wilderness would be managed for very primitive to pristine conditions. Stock and human use levels would be reduced. Dogs, shooting, and campfires would be prohibited. Signing, streamflow maintenance dams, some campsites, and many trails would be removed. Fish stocking would cease. Reservation and permit fees (if legal) would be collected.

John Phipps, Forest Supervisor, Eldorado National Forest, and Robert E. Harris, Forest Supervisor, Lake Tahoe Basin Management Unit, are the responsible officials.

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by August 1995. At that time the EPA will publish a notice of availability of the draft EIS in the **Federal Register**.

The comment period on the draft EIS will be 45 days from the date EPA's notice of availability appears in the **Federal Register**. It is very important that reviewers participate at that time. To be the most helpful, comments on the draft EIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of draft EIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions, *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978), and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final EIS. *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objectives are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

After the comment period ends on the draft EIS, the comments will be analyzed and considered by the Forest Service in preparing the final EIS. The final EIS is scheduled to be completed by January 1996. The Forest Service is required to respond in the final EIS to the comments received (40 CFR 1503.4). The responsible officials will consider the comments, responses, disclosure of environmental consequences, and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible officials will document the decision and rationale in the Record of Decision. That decision will be subject to appeal.

Dated: May 15, 1995.

Robert E. Harris,

Forest Supervisor, Lake Tahoe Basin Management Unit.

Dated: May 15, 1995.

John Phipps,

Forest Supervisor, Eldorado National Forest.

[FR Doc. 95–12857 Filed 5–24–95; 8:45 am]

BILLING CODE 3410–11–M

Inland Native Fish Strategy; Environmental Assessment for Public Review

ACTION: Notice of publication of the Inland Native Fish Strategy Environmental Assessment for public review.

SUMMARY: In the March 14, 1995, **Federal Register** (Vol. 60, No. 49, pp. 13697–13698), notice was given that the Forest Service, in cooperation with the Bureau of Land Management and US Fish and Wildlife Service, is gathering information in order to prepare an Environmental Assessment (EA) for a proposal to protect habitat and populations of native inland fish.

This EA will address National Forest System lands on the Bitterroot, Boise, Caribou, Challis, Clearwater, Colville, Deerlodge, Deschutes, Flathead, Fremont, Helena, Humboldt, Idaho Panhandle, Kootenai, Lolo, Malheur, Ochoco, Payette, Sawtooth, Wallowa-Whitman, and Winema National Forests in the Northern, Intermountain, and Pacific Northwest Regions.

The public scoping period began March 14 and ended April 26, 1995. As of May 1, approximately 235 letters have been received from the public. Many people commented that they should have an opportunity to review the alternatives and effects analysis that will be documented in the Environmental Assessment. The agency agrees that the public should have this opportunity. The Environmental Assessment will be completed on or about May 31, and will be sent to the public for a 30-day review and comment period. These comments will be considered in reaching a decision.

FOR FURTHER INFORMATION CONTACT: Questions about the environmental assessment should be directed to David Wright, Team Leader, USDA Forest Service, 3815 Schrieber Way, Coeur d'Alene, Idaho, 83814. Phone: (208) 765–7223.

The responsible officials for this Environmental Assessment are the Regional Foresters for the Intermountain, Northern, and Pacific Northwest Regions. They will make a decision regarding this proposal considering the comments and responses, environmental consequences discussed in the Environmental Assessment, and applicable laws, regulations, and policies. The decision and reasons for the decision will be documented in a Decision Notice. The Decision Notice is expected to be available in late July, 1995.

Dated: May 16, 1995.

David J. Wright,

Inland Native Fish Team Leader, USDA, Forest Service.

[FR Doc. 95–12858 Filed 5–24–95; 8:45 am]

BILLING CODE 3410–11–M

Willamette Provincial Interagency Executive Committee (PIEC), Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Willamette PIEC Advisory Committee will meet on Thursday, June 15, 1995, at the Salem District Bureau of Land Management (BLM) Office, 1717 Fabry Road SE, Salem, Oregon. The meeting will being at 9:00 a.m. and continue until approximately 3:00 p.m. Agenda items to be covered include: (1) Followup on procedural issues, (2) Information on watershed analysis and schedule for FY 95–97, (3) Key issues, concerns, and opportunities of Federal Agencies for implementing the Northwest Forest Plan, (4) Identifying Advisory Committee tasks, (5) Open public forum. All Willamette PIEC meetings are open to the public, and interested citizens are encouraged to attend. Written comments concerning the Advisory Committee's affairs can be submitted at the meeting. Oral comment can also be made during the public forum. Length of oral comments will be limited to the time allotted on the agenda.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Neal Forrester, Designated Federal Official, Willamette National Forest, 211 East Seventh Avenue, Eugene, Oregon; 503–465–6924.

Dated: May 19, 1995.
Darrel L. Kenops,
Forest Supervisor.
[FR Doc. 95–12824 Filed 5–24–95; 8:45 am]
BILLING CODE 3410–11–M

Rural Utilities Service

Seminole Electric Cooperative, Inc.; Draft Supplemental Environmental Impact Statement

AGENCY: Rural Utilities Service, USDA.
ACTION: Notice of availability of draft supplemental environmental impact statement.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS) and the U.S. Environmental Protection Agency (EPA) are issuing a Draft Supplemental Environmental Impact Statement (DSEIS) related to Seminole Electric Cooperative, Inc.'s, (Seminole) proposed Hardee Unit 3. The DSEIS is a supplement to the Final Environmental Impact Statement issued in January 1991 by the Rural Electrification Administration (predecessor of RUS), with EPA, and the Federal Energy Regulatory Commission as cooperating agencies, for their actions related to the Hardee Power Station. Hardee Unit 3 would increase the originally proposed ultimate output of the Hardee Power Station from 660 megawatts (MW) to 880 MW.

RUS's federal action related to Hardee Unit 3 would be providing a loan guarantee to Seminole to cover the cost of project construction. EPA's federal action related to Hardee Unit 3 has, to date, been the preparation of the draft National Pollutant Discharge Elimination System (NPDES) permit needed to operate the new unit. However, on May 1, 1995, EPA authorized the State of Florida to administer the NPDES Permit Program (with EPA program oversight retained). As such, EPA's role as an NPDES permitting agency has changed and EPA no longer has a direct federal action related to the proposed Hardee Unit 3. With program authorization, the NPDES permitting decision now is a state action as opposed to an EPA federal action. The notice for the Draft NPDES permit will be issued by the State of Florida. Despite program authorization, EPA nevertheless remains a cooperating agency to RUS for the DSEIS and will also have a role in the RUS National Environmental Policy Act process for Hardee Unit 3 by providing review and comment on the DSEIS and Final Supplemental Environmental Impact Statement for Hardee Unit 3 via its responsibilities pursuant to Section 309 of the Clean Air Act. The draft NPDES permit is Appendix A to the DSEIS.

FOR FURTHER INFORMATION CONTACT: Mr. Lawrence R. Wolfe, Chief, Environmental Compliance Branch, Electric Staff Division, Rural Utilities Service, Ag. Box 1569, Washington, DC 20250, Telephone (202) 720–1784, Fax (202) 720–7491.

SUPPLEMENTARY INFORMATION: The DSEIS for Hardee Unit 3 covers the construction and operation of 440 MW of additional generating capacity to be installed at the existing 1,300-acre Hardee Power Station site. The Hardee Power Station site is located in Hardee and Polk counties approximately 9 miles northwest of Wauchula, 16 miles south-southwest of Bartow, and 40 miles east of Tampa Bay. The site is bordered on the east by Hardee County Road 663, a CSX Railroad right-of-way, and CF Industries' Hardee Complex. IMC-Agrico properties surround the remaining portions of the site. Payne Creek flows along the southern and western boundary of the Hardee Power Station site. The proposed Hardee Unit 3 would occupy approximately 50 acres of this site.

As proposed in the Final Environmental Impact Statement for the Hardee Power Station, Hardee Power Partners has constructed and operates 295 MW of generation capacity at the Hardee Power Station and proposes an additional 145 MW of generation capacity there by the year 2003 for use by Seminole. Seminole originally proposed to construct and operate an additional 220 MW at the Hardee Power Station at a future date to be determined. That addition, along with Hardee Power Partners' 145 MW addition, would have increased the existing 295 MW Hardee Power Station capacity to 660 MW. Seminole now proposes in the DSEIS to construct 440 MW of additional capacity at the Hardee Power Station at a specified date, 1999, instead of the originally proposed 220 MW addition at an unspecified date. As now proposed, the Hardee Power Station Site would be made up of a total of 880 MW of capacity when completed.

The proposed Hardee Unit 3 would consist of natural gas fired combustion turbines utilizing heat recovery steam generators that will operate efficiently by recovering heat from the combustion turbines. Fuel oil would be used as a backup source of fuel. These are the same type of generators already installed at the Hardee Power Station (295 MW) and the same type proposed for future installation (145 MW) at the site by Hardee Power Partners. The natural gas would be transported via an existing 18 inch diameter, underground gas pipeline connected to the Florida Gas Transmission System to the Hardee Power Station. Three existing 230 kilovolt transmission lines would be utilized to connect Hardee Unit 3 into the Florida transmission grid.

Alternatives to the project as proposed included no action, design alternatives, alternative fuels, and conservation.

Seminole has provided RUS with a Site Certification Application/Environmental Analysis for Hardee Unit 3 which is the primary support document used by RUS to develop its DSEIS. RUS has concluded that the Site Certification Application/Environmental Analysis for Hardee Unit 3 represents an accurate assessment of the potential environmental impacts related to the proposed project. The Hardee Unit 3 Site Certification Application/Environmental Analysis has been incorporated by reference into the DSEIS and is available for inspection by interested parties at RUS or Seminole at the addresses provided in this notice. That document, along with the DSEIS, will also be available for review at the following libraries:

Bartow Public Library, 315 E. Parker Street, Bartow, Florida 33830
Hardee County Library, 315 N. 6th Avenue, Suite 114, Wauchula, Florida 33837.

Anyone wishing to comment on the DSEIS should do so in writing within the 45-day comment period to RUS at the appropriate address provided in this notice. All comments received during the comment period will be given consideration in the formulation of the Final Supplemental Environmental Impact Statement for Hardee Unit 3. (Oral responses submitted by telephone will be considered, but it is recommended that comments be submitted in writing.) A copy of each written comment and a summary of each oral comment received will be included in the Final Supplemental Environmental Impact Statement.

Notice of availability of the DSEIS and the 45-day comment period is being published in the **Federal Register** by RUS and EPA. Seminole will have a notice similar to this one published in newspapers of general circulation in the proposed project area. As it is possible that RUS, EPA, and Seminole's notices will not appear on the same date, the 45-day comment period will begin on the date the latest notice (RUS, EPA or Seminole's) is published. Questions concerning the closing date of the 45-day comment period should be referred to Mr. Lawrence Wolfe at (202) 720–1784.

Dated: May 22, 1995.
Adam M. Golodner,
Deputy Administrator, Program Operations.
[FR Doc. 95–12884 Filed 5–24–95; 8:45 am]
BILLING CODE 3410–15–M

South Mississippi Electric Power Association; Notice of Intent To Hold Scoping Meeting and Prepare an Environmental Assessment and/or Environmental Impact Statement

AGENCY: Rural Utilities Service, USDA.
ACTION: Notice of intent to hold scoping meeting and prepare an environmental assessment and/or environmental impact statement.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS) formerly the Rural Electrification Administration, pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality (CEQ) Regulations for Implementing NEPA (40 CFR Parts 1500–1508), and RUS Environmental Policies and Procedures (7 CFR Part 1794) may prepare an Environmental Assessment and/or an Environmental Impact Statement (EIS) for its Federal action related to a proposal by South Mississippi Electric Power Association (SMEPA) to construct additional natural gas-fired generating capacity. RUS will provide project approval and may provide financing assistance to SMEPA for project construction costs.

DATES: RUS will conduct a scoping meeting in an open house forum from 6 p.m. to 8:30 p.m. on Wednesday June 28, 1995.

ADDRESSES: The meeting will be held in SMEPA's Headquarters conference center at 7037 U.S. Highway 49 in Hattiesburg, Mississippi.

FOR FURTHER INFORMATION CONTACT: Lawrence R. Wolfe, Chief, Environmental Compliance Branch, Rural Utilities Service, Room 1246 South Agriculture Building, Mail Code 1569, Washington, DC 20250, telephone (202) 720–1784.

SUPPLEMENTARY INFORMATION: South Mississippi Electric Power Association proposes to construct additional gas-fired generating capacity at its Moselle Station on Jones County. The Moselle Station is located approximately 2 miles west of Interstate 59 on Highway 589. The proposed additions would consist of a 100 megawatt (MW) simply cycle combustion turbine and repowering an existing 59 MW steam electric generator with a 120 MW combined cycle combustion turbine. Other facilities include two 161 kilovolt bays that would be added to the Moselle Substation. The alternate site for the simple cycle combustion turbine is SMEPA's Morrow Station in Lamar County.

Alternatives to be considered by RUS and SEPA include: (a) No action, (b) demand-side reduction, (c) purchased power from other utilities or independent power producers and (d) alternative sites.

To be presented at the public scoping meeting will be the Combustion Turbine Project Alternative Analysis and Siting Study (Study) prepared by SMEPA. The Study is available for public review at RUS and SMEPA at the addresses provided in this notice.

The Study can also be reviewed at the Hattiesburg Public Library, Main Street, Hattiesburg, the office of Dixie Electric Power Association, Highway 84 East, Laurel, and the office of Pearl River Valley Electric Power Association, Highway 13 North, Columbia.

Government agencies, private organizations, and the public are invited to participate in the planning and analysis of the proposed project. Representatives from RUS and SMEPA will be available to discuss RUS' environmental review process, describe the project and alternatives under consideration, discuss the scope of environmental issues to be considered, answer questions, and accept oral and written comments. Written comments will be accepted for at least 30 days after the June 28 public scoping meeting. Written comments should be sent to RUS at the address provided in this notice.

From information provided in the Study, input from government agencies, private organizations, and the public, SMEPA will prepare an environmental analysis to be submitted to RUS for review. If significant effects are not evident based on a review of the environmental analysis and other relevant information, RUS will prepare an environmental assessment to determine if the preparation of an EIS is warranted.

Should RUS determine that the preparation of an EIS is not warranted, it will prepare a finding of no significant impact (FONSI). The FONSI will be made available for public review and comment for 30 days. RUS will not take its final action related to the project prior to the expiration of the 30-day period.

Any final action by RUS related to the proposed project will be subject to, and contingent upon, compliance with all relevant Federal environmental laws and regulations and completion of environmental procedures as prescribed by CEQ and RUS environmental policies and procedures.

Dated: May 22, 1995.
Adam M. Golodner,
Deputy Administrator—Program Operations.
[FR Doc. 95–12855 Filed 5–24–95; 8:45 am]
BILLING CODE 3410–15–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 24–95]

Foreign-Trade Zone 115, Beaumont, TX; Proposed Foreign-Trade Subzone; Mobil Corporation (Oil Refinery Complex), Jefferson/Liberty Counties, Texas

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Foreign-Trade Zone of Southeast Texas, Inc., grantee of FTZ 115, requesting special-purpose subzone status for the oil refinery complex of Mobil Corporation, located in Jefferson/Liberty Counties (Beaumont area), Texas. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on May 16, 1995.

The refinery complex (3,165 acres) consists of 7 sites in Jefferson/Liberty Counties, Texas: *Site 1* (2,200 acres)—main refinery and petrochemical feedstock complex located along the Neches River at End of Burt Road, Jefferson County; *Site 2* (51 acres)—Mobil Colonial Tank Farm, located at 13300 West Port Arthur Road, Jefferson County; *Site 3* (24 acres)—Mobil Hull underground storage facility, located some 50 miles northwest of the refinery at End of Mobil Road in the City of Hull (Liberty County); *Site 4* (188 acres)—Daisetta underground petrochemical storage facility, located some 50 miles northwest of the refinery at End of Bobcat Lane in the City of Daisetta (Liberty County); *Site 5* (625 acres)—Mobil Magpetco Tank Farm, located at State Highway 366, five miles south of the refinery, Jefferson County; *Site 6*—crude oil storage facility within the Unocal Nederland tank farm, located at State Highway 366, adjacent to Site 5, Jefferson County; *Site 7*—crude oil storage facility within the Sun Marine Terminal, located at State Highway 347, adjacent to Site 6, Jefferson County.

The refinery (330,000 barrels per day; 1,800 employees) is used to produce

fuels and petrochemical feedstocks. Fuels produced include gasoline, jet fuel, kerosene, gas oil, diesel fuel, residual fuels, and naphthas. Petrochemicals include hydrogen, methane, ethane, propane, benzene, toluene, xylene, ethylene and propylene. Refinery by-products include petroleum coke, sulfur, lubricating oils, and paraffin wax. Most of the crude oil (80 percent of inputs), and some feedstocks and motor fuel blendstocks are sourced abroad.

Zone procedures would exempt the refinery from Customs duty payments on the foreign products used in its exports. On domestic sales, the company would be able to choose the finished product duty rate (nonprivileged foreign status—NPF) on certain petrochemical feedstocks and refinery by-products (duty-free). The duty on crude oil ranges from 5.25 cents to 10.5 cents/barrel. The application indicates that the savings from zone procedures would help improve the refinery's international competitiveness.

In accordance with the Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is July 24, 1995. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to August 8, 1995.)

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce District Office #1 Allen Center, Suite 1160, 500 Dallas, Houston, Texas 77002

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: May 19, 1995.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 95–12905 Filed 5–24–95; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

Determination Not To Revoke Antidumping Duty Orders and Findings Nor To Terminate Suspended Investigations

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Determination not To revoke antidumping duty orders and findings nor to terminate suspended investigations.

SUMMARY: The Department of Commerce (the Department) is notifying the public of its determination not to revoke the antidumping duty orders and findings nor to terminate the suspended investigations listed below.

EFFECTIVE DATE: May 25, 1995.

FOR FURTHER INFORMATION CONTACT: Michael Panfeld or the analyst listed under Antidumping Proceeding at: Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue NW., Washington, D.C. 20230, telephone (202) 482–4737.

SUPPLEMENTARY INFORMATION: The Department may revoke an antidumping duty order or finding or terminate a suspended investigation, pursuant to 19 CFR 353.25(d)(4)(iii), if no interested party has requested an administrative review for four consecutive annual anniversary months and no domestic interested party objects to the revocation or requests an administrative review.

We had not received a request to conduct an administrative review for the most recent four consecutive annual anniversary months. Therefore, pursuant to § 353.25(d)(4)(i) of the Department's regulations, on May 3, May 4, June 1, July 1, August 1, September 1, September 29, October 31, November 25, and December 28 of 1994, and February 3 and March 1 of 1995, we published in the **Federal Register** a notice of intent to revoke these antidumping duty orders and findings and to terminate the suspended investigations and served written notice of the intent to each domestic interested party on the Department's service list in each case. Within the specified time frame, we received objections from domestic interested parties to our intent to revoke these antidumping duty orders and findings and to terminate the suspended investigations. Therefore, because domestic interested parties objected to our intent to revoke or terminate, we no longer intend to revoke these antidumping duty orders and findings or to terminate the suspended investigations.

Antidumping Proceeding

A–357–802
Argentina
Rectangular Tubing
Objection Date: May 27, 1994
Objector: Hannibal Industries, Inc.

A–831–801
Armenia
Solid Urea
Objection Date: July 26, 1994
Objector: Ad Hoc Committee of Domestic Nitrogen Producers

A–832–801
Azerbaijan
Solid Urea
Objection Date: July 26, 1994; July 28, 1994
Objector: Ad Hoc Committee of Domestic Nitrogen Producers, Cominco Fertilizer (U.S.) Inc

A–822–801
Belarus
Solid Urea
Objection Date: July 26, 1994; July 28, 1994
Objector: Ad Hoc Committee of Domestic Nitrogen Producers, Cominco Fertilizers (U.S.) Inc.

A–423–077
Belgium
Sugar
Objection Date: June 22, 1994
Objector: American Sugar Cane League et al.

A–351–503
Brazil
Construction Castings
Objection Date: May 10, 1994
Objector: Municipal Castings Fair Trade Council

A–122–006
Canada
Steel Jacks
Objection Date: September 7, 1994
Objector: Bloomfield Manufacturing Company Inc.

A–122–085
Canada
Sugar and Syrups
Objection Date: May 17, 1994
Objector: American Sugar Cane League et al.

A–427–009
France
Industrial Nitrocellulose
Objection Date: August 17, 1994
Objector: Aqualon Company

A–427–078
France
Sugar
Objection Date: June 22, 1994
Objector: American Sugar Cane League et al.

A–833–801
Georgia
Solid Urea
Objection Date: July 26, 1994
Objector: Ad Hoc Committee of Domestic Nitrogen Producers

A–833–803
Georgia
Titanium Sponge
Objection Date: August 31, 1994
Objector: Titanium Metals Corporation

A–428–061
Germany
Precipitated Barium Carbonate
Objection Date: June 20, 1994
Objector: Chemical Products Corporation

A–428–082
Germany
Sugar
Objection Date: June 22, 1994
Objector: American Sugar Cane League et al.

A–507–502
Iran
In-Shell Pistachio Nuts
Objection Date: July 26, 1994
Objector: California Pistachio Commission, Western Pistachio Association

A–588–055
Japan
Acrylic Sheet
Objection Date: August 30, 1994; August 31, 1994
Objector: ICI Acrylics Inc., Cyro Industries

A–588–607
Japan
Amorphous Silica Filament Fabric
Objection Date: September 29, 1994
Objector: Ametek, Inc. and HITCO, Inc.

A–588–704
Japan
Brass Sheet & Strip
Objection Date: August 8, 1994
Objector: The Copper & Brass Fabricators Council

A–588–605
Japan
Cast Iron Pipe Fittings
Objection Date: July 26, 1994
Objector: Grinnell Corp., Stockham Valves and Fittings Co., Inc.

A–588–007
Japan
High Capacity Pagers
Objection Date: August 12, 1994
Objector: Motorola, Inc.

A–588–066
Japan
Impression Fabric
Objection Date: May 31, 1994
Objector: Bomont Industries

A–588–706
Japan
Nitrile Rubber
Objection Date: June 30, 1994
Objector: Zeon Chemicals Kentucky, Inc.

A–588–045
Japan
Steel Wire Rope
Objection Date: October 11, 1994
Objector: Committee of Domestic Steel Wire Rope and Specialty Cable Manufacturers

A–588–041
Japan
Synthetic Methionine
Objection Date: July 18, 1994; July 28, 1994
Objector: Degussa Corp., Novus International Inc.

A–834–801
Kazakhstan
Solid Urea
Objection Date: July 26, 1994
Objector: Ad Hoc Committee of Domestic Nitrogen Producers

A–779–602
Kenya
Standard Carnations
Objection Date: May 31, 1994,
Objector: Floral Trade Council

A–835–801
Kyrgyzstan
Solid Urea
Objection Date: July 26, 1994
Objector: Ad Hoc Committee of Domestic Nitrogen Producers

A–449–801
Latvia
Solid Urea
Objection Date: July 26, 1994
Objector: Ad Hoc Committee of Domestic Nitrogen Producers

A–451–801
Lithuania
Solid Urea
Objection Date: July 26, 1994
Objector: Ad Hoc Committee of Domestic Nitrogen Producers

A–841–801
Moldova
Solid Urea
Objection Date: July 27, 1994
Objector: Ad Hoc Committee of Domestic Nitrogen Producers

A–485–601
Romania
Solid Urea
Objection Date: July 26, 1994
Objector: Ad Hoc Committee of Domestic Nitrogen Producers

A–821–801
Russia
Solid Urea
Objection Date: July 26, 1994
Objector: Ad Hoc Committee of Domestic Nitrogen Producers

A–580–507
South Korea
Certain Malleable Cast Iron Pipe Fittings
Objection Date: May 4, 1994
Objector: Grinnell Corporation, Ward Manufacturing, Inc., and Stockham Valves & Fittings Co., Inc.

A–401–040
Sweden
Stainless Steel Plate
Objection Date: June 21, 1994
Objector: Allegheny Ludlum Steel Corporation

A–583–080
Taiwan
Carbon Steel Plate
Objection Date: June 30, 1994
Objector: Bethlehem Steel Corporation

A–583–505
Taiwan
Oil Country Tubular Goods
Objection Date: June 28, 1994
Objector: North Star Steel Company

A–583–507
Taiwan
Pipe Fittings
Objection Date: May 4, 1994
Objector: Grinnell Corporation, Ward Manufacturing, Inc., Stockham Valves & Fittings Co., Inc.

A–842–801
Tajikistan
Solid Urea
Objection Date: July 26, 1994
Objector: Ad Hoc Committee of Domestic Nitrogen Producers

A–549–601
Thailand
Malleable Pipe Fittings
Objection Date: August 10, 1994
Objector: Grinnell Corp., et al.

A–570–101
The People's Republic of China
Cotton Printcloth
Objection Date: September 30, 1994
Objector: American Textile Manufacturers Institute

A–570–504
The People's Republic of China
Petroleum Wax Candles
Objection Date: August 8, 1994
Objector: National Candle Association

A–823–801
The Ukraine
Solid Urea
Objection Date: July 26, 1994
Objector: Ad Hoc Committee of Domestic Nitrogen Producers

A–489–501
Turkey
Pipes and Tubes
Objection Date: May 31, 1994
Objector: Allied Tube & Conduit Corporation, Wheatland Tube Co.

A–843–801
Turkmenistan
Solid Urea
Objection Date: July 26, 1994
Objector: Ad Hoc Committee of Domestic Nitrogen Producers

A–844–801
Uzbekistan
Solid Urea
Objection Date: July 26, 1994

Objector: Ad Hoc Committee of Domestic Nitrogen Producers
A–479–601
Yugoslavia
Tapered Roller Bearings
Objection Date: August 31, 1994
Objector: The Timken Company
A–357–405
Argentina
Barbed Wire and Barbless Fencing Wire
Objection Date: November 21, 1994; November 30, 1994
Objector: Oklahoma Steel & Wire Co., Insteel Industries, Inc.
A–351–602
Brazil
Certain Carbon Steel Butt-Weld Pipe Fittings
Objection Date: December 21, 1994
Objector: Tube Forgings of America Inc., et al.
A–428–062
Germany
Animal Glue
Objection Date: December 23, 1994
Objector: Hudson Industries Corporation
A–588–811
Japan
Drafting Machines and Parts Thereof
Objection Date: December 22, 1994
Objector: Vemco Corporation
A–588–091
Japan
Large Electric Motors
Objection Date: December 14, 1994; December 19, 1994
Objector: Reliance Electric Company, Siemens Energy & Automation, Inc.
A–588–046
Japan
Polychloroprene Rubber
Objection Date: December 29, 1994
Objector: E. I. Du Pont de Nemours & Company, Inc.
A–588–068
Japan
Steel Wire Strand
Objection Date: December 22, 1994
Objector: Florida Wire & Cable Company
A–614–502
New Zealand
Low-Fuming Brazing Copper Rod & Wire
Objection Date: December 2, 1994
Objector: Copper & Brass Fabricators Council
A–559–502
Singapore
Light-Walled Rectangular Pipe & Tube
Objection Date: November 23, 1994
Objector: Hannibal Industries, Inc.
A–583–508
Taiwan
Porcelain-On-Steel Cooking Ware
Objection Date: December 28, 1994
Objector: General Housewares Corporation
A–588–090
Japan
Certain Small Electric Motors of 5 to 150 Horsepower
Objection Date: November 18, 1994
Objector: Reliance Electric Industrial Company
A–433–064
Austria
Railway Track Maintenance Equipment
Objection Date: February 28, 1995
Objector: Kershaw Manufacturing Co., Inc.
A–351–603
Brazil
Brass Sheet & Strip
Objection Date: January 9, 1995
Objector: Copper & Brass Fabricators Council, Inc.
A–122–605
Canada
Color Picture Tubes
Objection Date: January 31, 1995
Objector: AFL-CIO et al.
A–588–602
Japan
Butt-Weld Pipe Fittings
Objection Date: February 17, 1995
Objector: Tube Forgings of America, Inc. et al.
A–588–609
Japan
Color Picture Tubes
Objection Date: January 23, 1995; January 31, 1995
Objector: Thomson Consumer Electronics, AFL-CIO et al.
A–588–056
Japan
Melamine
Objection Date: February 13, 1995
Objector: Melamine Chemicals Inc.
A–559–601
Singapore
Color Picture Tubes
Objection Date: January 23, 1995; January 31, 1995
Objector: Thomson Consumer Electronics, AFL-CIO et al.
A–791–502
South Africa
Brazing Copper Wire & Rod
Objection Date: January 9, 1995
Objector: Copper & Brass Fabricators Council, Inc.
A–580–603
South Korea
Brass Sheet & Strip
Objection Date: January 9, 1995
Objector: Copper & Brass Fabricators Council, Inc.
A–580–605
South Korea
Color Picture Tubes
Objection Date: January 23, 1995; January 31, 1995
Objector: Thomson Consumer Electronics, AFL-CIO et al.
A–583–603
Taiwan
Stainless Steel Cooking Ware
Objection Date: January 30, 1995
Objector: Farberware Inc.
A–570–501
The People's Republic of China
Paint Brushes
Objection Date: February 16, 1995; February 22, 1995
Objector: American Brush Manufacturers Association, EZ Painter Corporation
A–122–701
Canada
Potassium Chloride
Objection Date: January 27, 1995
Objector: New Mexico Potash Corporation et al.
A–602–039
Australia
Canned Bartlett Pears
Objection Date: March 23, 1995
Objector: Pacific Coast Canned Pear Service, Inc.
A–337–602
Chile
Standard Carnations
Objection Date: March 30, 1995
Objector: Floral Trade Council
A–427–602
France
Brass Sheet & Strip
Objection Date: March 10, 1995
Objector: Copper & Brass Fabricators Council
A–475–401
Italy
Brass Fire Protection Equipment
Objection Date: March 31, 1995
Objector: Figgie Fire Protection Systems
A–570–002
The People's Republic of China
Chloropicrin
Objection Date: March 27, 1995
Objector: Niklor Chemical Co., et. al.

Dated: May 19, 1995.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 95–12904 Filed 5–24–95; 8:45 am]

BILLING CODE 3510–DS–P

The Scripps Research Institute, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 94–149. *Applicant:* The Scripps Research Institute, LaJolla, CA 92037. *Instrument:* Microvolume Stopped Flow Spectrofluorimeter, Model SX.17MV. *Manufacturer:* Applied Photophysics, United Kingdom. *Intended Use:* See notice at 60 FR 3394, January 17, 1995. *Reasons:* The foreign instrument provides: (1) multiple component mixing, (2) automatic acquisition of time-resolved emission spectra and, (3) 150W Xenon source covering the entire UV-VIS wavelength range. *Advice Received From:* The National Institutes of Health, March 21, 1995.

Docket Number: 95–007. *Applicant:* Ohio State University, Columbus, OH 43210. *Instrument:* Frequency Synthesizer, *Manufacturer:* KVARTZ Measuring Instruments & Systems, CIS. *Intended Use:* See notice at 60 FR 9662, February 21, 1995. *Reasons:* The foreign instrument provides: (1) swept frequency over the range 118 to 178 GHz, (2) 100 Hz resolution and (3) output power to 25 mW for pumping and observing specific molecular absorptions. *Advice Received From:* National Institute of Standards and Technology, April 5, 1995 and Los Alamos National Laboratory, April 11, 1995.

The National Institutes of Health, National Institute of Standards and Technology and Los Alamos National Laboratory advise that (1) these capabilities are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to either of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 95–12906 Filed 5–24–95; 8:45 am]

BILLING CODE 3510–DS–F

National Oceanic and Atmospheric Administration

Monterey Bay National Marine Sanctuary Advisory Council Open Meeting

AGENCY: Sanctuaries and Reserves Division (SRD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

SUMMARY: The Advisory Council was established in December 1993 to advise NOAA's Sanctuaries and Reserves Division regarding the management of the Monterey Bay National Marine Sanctuary. The Advisory Council was convened under the National Marine Sanctuaries Act.

TIME AND PLACE: Friday, June 23, 1995, from 9:00 until 4:30. The meeting will be held at the Crossroads Community Room, Carmel, California.

AGENDA: General issues related to the Monterey Bay National Marine Sanctuary are expected to be discussed, including an update from the Sanctuary Manager, reports from the working groups, an update on the Water Quality Protection Program, a status report on the California Mussel Watch Program, and an update on the Vessel Traffic Report.

PUBLIC PARTICIPATION: The meeting will be open to the public. Seats will be available on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Jane Delay at (408) 647–4246 or Elizabeth Moore at (301) 713–3141.

Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program

Dated: May 22, 1995.

W. Stanley Wilson,

Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 95–12880 Filed 5–24–95; 8:45 am]

BILLING CODE 3510–08–M

[I.D. 050995B]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application to modify permit no. 917 (P774#2).

SUMMARY: Notice is hereby given that Dr. John B. Pearce, NMFS, Northeast Fisheries Science Center, 166 Waters Street, Room 312, Woods Hole, MA 02543–1097, has requested a modification to permit No. 917.

DATES: Written comments or requests for a public hearing must be received on or before June 26, 1995.

ADDRESSES: The modification request and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Director, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298 (508/281–9250).

Written data or views, or requests for a public hearing on this request should be submitted to the Chief, Permits Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Kellie Foster, (301/713–1401).

SUPPLEMENTARY INFORMATION: Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular modification request would be appropriate.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

The subject modification to permit No. 917, issued on May 11, 1994 (59 FR 25891) is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222).

Permit No. 917 authorizes the permit holder to conduct a number of studies on several cetacean species as well as gray and harbor seals in the notheastern U.S. and Canadian waters. The research activities include: Vessel surveys, aerial surveys and photogrammetry, photo-identification studies, and the collection of biopsies. The permit holder requests additional authorization to collect biopsy samples from sei whales for genetic analyses, which will provide information on stock structure.

Ann D. Terbush,

Chief, Permits & Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–12722 Filed 5–24–95; 8:45 am]

BILLING CODE 3510–22–F

COMMODITY FUTURES TRADING COMMISSION

Chicago Mercantile Exchange: Proposed Amendments Converting the Live Hogs Futures Contract From a Physical Delivery Contract to a Cash Settlement System

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed contract market rule changes.

SUMMARY: The Chicago Mercantile Exchange ("CME") has submitted proposed amendments to its Live Hogs futures contract that would convert the delivery provisions of that futures contract from a physical delivery contract to a cash settlement system. In accordance with Section 5a(a)(12) of the Commodity Exchange Act, and acting pursuant to the authority delegated by Commission Regulation 140.96, the Acting Director of the Division of Economic Analysis ("Division") of the Commodity Futures Trading Commission ("Commission") has determined, on behalf of the Commission, that the proposed amendments are of major economic significance and that publication of the proposed amendments would be in the public interest. On behalf of the Commission, the Division is requesting comment on this proposal.

DATES: Comments must be received on or before June 26, 1995.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW, Washington, D.C. 20581. Reference should be made to the proposed amendments converting the live hogs futures contract to cash settlement.

FOR FURTHER INFORMATION CONTACT: Frederick V. Linse, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581, telephone (202) 254–7303.

SUPPLEMENTARY INFORMATION: The existing terms of the live hogs futures contract provides for physical delivery of 40,000 pounds of live hogs meeting specified quality and weight requirements at CME-approved public livestock yards at seven delivery points located in six different states. The contract currently specifies a maximum daily price fluctuation limit of 1.5 cents per pound, which is applicable through the last trading day of each expiring contract month. The contract's existing terms also specify that trading ends on the business day immediately preceding the last five business days of the contract month. In addition, the contract's current terms provide for speculative position limits of 900 contracts in any one month and 450 contracts in the expiring month.

The proposed amendments would delete all physical delivery provisions of the futures contract. These provisions would be replaced by terms specifying cash settlement of all open positions at the expiration of trading in a contract month. The cash settlement price would reflect the value of hogs on a carcass weight basis during the last two trading days of expiring contract months. Specifically, the proposed cash settlement price would equal the two-day weighted average of U.S. Department of Agriculture (USDA) Lean Value Direct Hog Prices for packer base weight hog carcasses, 51–52 percent lean/.80–.99 inches of backfat at the last rib or equivalent as reported by the USDA for the Western Corn Belt, the Eastern Corn Belt and the Mid-South. Under the proposals, the cash settlement price would be calculated by summing the above-noted USDA-reported average prices for each region and each of the two days weighted by the ratio of the total number of lean hogs sold directly to packers in that region on that day relative to the total number of lean hogs sold directly to packers in all three regions combined during the specified two-day period.

The proposed amendments also will specify that the contract's trading unit will be 40,000 pounds of lean hog carcasses. In addition, the proposed amendments will provide that the contract's existing 1.5-cent-per-pound maximum daily price fluctuation will not be applicable during the last two trading days of an expiring contract month. Speculative position limits would be 3,000 contracts in any individual non-spot contract month and 450 contracts in expiring contract months as of the close of business on the fifth business day of the spot month. Trading in expiring contract months would end on the tenth business day of the spot month for both the futures and option contracts.

In addition to the substantive amendments, the proposed amendments would make certain conforming changes to other rules governing the live hog futures and option contracts. Also, the proposed amendments would rename the contracts as the "lean hogs" futures and options contracts.

According to the CME, physical delivery through public livestock yards no longer reflects dominant cash market practice. The CME notes that less than 10% of hogs meeting the requirements for delivery on the futures contract are currently sold through such yards, and that the percentage of hogs sold through such yards is expected to continue to decline. The CME further indicates that, as a result of the decline in importance of sales through public livestock yards, the usefulness of the live hogs futures contract as a price discovery and risk management tool has been adversely affected. The CME indicates, in this respect, that the limited cash market activity at most public terminal markets raises valid questions regarding whether the prices paid at the terminal markets accurately reflect prices paid in the rest of the industry.

According to the CME, the decline in importance of the terminal markets has been accompanied by an increase in the importance of direct sales to packers at packing plants and country buying stations, and an increase in carcass-basis pricing. The CME said that, according to the USDA, 90% of the hogs sold in the U.S. during 1990 (the latest year for which statistics are available) were sold through non-public markets, mainly packing plants and country buying stations. The CME also said that approximately 75% of market hogs sold in 1993 were sold on a carcass grade and yield basis.

The CME believes that cash settlement using carcass-based pricing is necessary to ensure the long-term viability of the contract for the reasons noted above. The CME also believes that increasing the speculative limits to 3,000 contracts in individual non-spot months and to 450 contracts in the expiring month will accommodate new business from certain commercial entities and increase the liquidity of the market.

The CME proposes to make the amendments effective only for all newly listed contracts, following Commission approval. No currently open contract month or position would be affected by the proposed amendments.

On behalf of the Commission, the Division is requesting comment on the proposed amendments. In particular, the Division is seeking comment on regarding the extent to which the proposed cash settlement price will reflect the underlying cash market and the susceptibility of the proposed cash settlement price to manipulation or distortion.

Copies of the proposed amendments will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW, Washington, D.C. 20581. Copies of the amended terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by telephone at (202) 254–6314.

The materials submitted by the CME in support of the proposed amendments may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)). Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the proposed amendments should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581 by the specified date.

Issued in Washington, D.C. on May 18, 1995.

Blake Imel,

Acting Director.

[FR Doc. 95–12875 Filed 5–24–95; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Notice of Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 8 and 9 June 1995.

Time of Meeting: 1300–1700, 8 June 1995; 0830–1500, 9 June 1995.

Place: Pentagon—Washington, DC.

Agenda: The Army Science Board's (ASB) 1994 Summer Study on "Technical Architecture C4I" will meet to discuss concepts and plans for marketing the Army's Technical Architecture. These meetings will be closed to the public in accordance with Section 552b(c), to Title 5, U.S.C., specifically subparagraph (4) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The proprietary information to be discussed is so inextricably intertwined so as to preclude opening any portion of these meetings. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 95–12860 Filed 5–24–95; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Eisenhower Professional Development Federal Activities Program—Initial Teacher Professional Development Projects

AGENCY: Department of Education.

ACTION: Notice of final priority for (FY) fiscal year 1995; correction.

SUMMARY: On May 1, 1995, the Secretary of Education published in the **Federal Register** (60 FR 21396) an absolute priority for a FY 1995 competition under the Dwight D. Eisenhower Professional Development Federal Activities Program. On May 10, the Office of the Federal Register published a notice to correct errors made in that notice. The notice published on May 1 omitted teacher preparation from the required activities in the absolute priority. This document corrects that error on page 21396, column 3, in the paragraph labeled "Initial Teacher Professional Development Projects," Line 13, by inserting "preparation," following the word "teacher."

FOR FURTHER INFORMATION CONTACT: Trudy Turner or Annora Dorsey, U.S. Department of Education, 555 New Jersey Avenue NW., Room 502, Washington, D.C. 20208–5645. Fax: (202) 219–2106; Telephone: (202) 219–2206. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday, except Federal holidays.

(Catalog of Federal Domestic Assistance Number 84.168, Dwight D. Eisenhower Professional Development Federal Activities Program)

Dated: May 17, 1995.

Sharon P. Robinson,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 95–12811 Filed 5–24–95; 8:45 am]

BILLING CODE 4000–01–M

National Assessment Governing Board; Public Forum

AGENCY: National Assessment Governing Board; Education.

ACTION: Notice of meeting.

SUMMARY: The National Assessment Governing Board is announcing the opportunity for commentary and review of the achievement levels being considered for the 1994 U.S. history assessment and the world geography assessment of the National Assessment of Educational Progress (NAEP). The Board, in accordance with its statutory responsibility to identify "develop appropriate student performance levels for each age and grade in each subject area tested under the National Assessment" has contracted with American College Testing, which convened panels of judges for each subject to recommend achievement levels for grades 4, 8, and 12 to be used in reporting the 1994 NAEP. The Board intends to take final action on these recommendations at its regularly scheduled quarterly meeting on August 5, 1995. This document is intended to notify interested individuals and organizations of their opportunity to present oral and/or written views to the Board.

DATES: June 13, 1995.

TIME: 9:00 a.m. to 3:00 p.m.

PLACE: The Madison Hotel, 15th and M Streets, N.W., Washington, D.C. (202) 862–1600.

FOR FURTHER INFORMATION CONTACT: Susan Cooper Loomis, NAEP Project Director, American College Testing, 2201 North Dodge Street, Iowa City, Iowa 52243. Telephone: 319–337–1048; or, Mary Lyn Bourque, Assistant Director for Psychometrics, National Assessment Governing Board, 800 North Capitol Street, Suite 825, Washington, D.C. 20002–4233. Telephone: 202–357–6940.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under Section 412 of the Improving America's Schools Act of 1994, reauthorization of the Elementary and Secondary Education Act (1965) (Pub. L. 103–382).

The Board is established to formulate policy guidelines and to advise the Commissioner of the National Center for Education Statistics on policies and actions needed to improve the form and use of the National Assessment of Educational Progress, and develop specifications for the design, methodology, and reporting of test results. The Board also is responsible for selecting subject areas to be assessed, identifying the objectives for each age and grade tested, and established standards and procedures for interstate and national comparisons. The National Assessment Governing Board will hold a public forum in Washington, D.C. on Tuesday, June 13, 1995 to hear comments on proposed definitions of U.S. history achievement levels and of world geography achievement levels, both for grades 4, 8, and 12 to be used in reporting the National Assessment of Educational Progress. The proposed achievement levels were prepared by

the panel for U.S. history and the panel for world geography in accordance with the NAGB policy document "Setting Appropriate Achievement Levels for the National Assessment of Educational Progress," dated November 20, 1993, and further amended on March 5, 1995, and a design developed by American College Testing and approved by the Board on March 5, 1994. The proposals include detailed descriptions of the subject-matter knowledge and skills proposed for each level.

These proposals are scheduled to be presented to the Board during its quarterly meeting in Washington, D.C. August 3–5, 1995. The text of these proposals and a description of the achievement levels-setting process may be obtained by contacting the ACT office at the address or telephone number above by 3:00 p.m. on June 9, 1995. However, every effort will be made to receive testimony from all persons attending the forum who wish to make a presentation. Written statements should be submitted at the forum or to the ACT office by 5:00 p.m. on July 10, 1995. The Board plans to analyze all comments received in response to this announcement. The results of the public comments will be used by the Board in conjunction with other information to fulfill its statutory requirement to establish achievement levels on the National Assessment.

Records are kept of all Board proceedings, and are available to public inspection at the National Assessment Governing Board, 800 North Capitol Street, Suite 825, Washington, D.C., from 8:30 a.m. to 5:00 p.m., Monday through Friday.

Dated: May 22, 1995.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 95–12836 Filed 5–24–95; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Request for Commission Approval to Grant a Permit for Dredging on Project Lands

May 19, 1995.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Request for Commission Approval to Grant a Permit for Dredging on Project Lands.

b. *Project No.:* 459–074.

c. *Dated Filed:* December 12, 1994.

d. *Applicant:* Union Electric.

e. *Name of Project:* Osage Project.

f. *Location:* Lake of the Ozarks, Camden County, Missouri.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. *Applicant Contact:* Mr. Dan Jarvis, Union Electric Company, Route No. 3, P.O. Box 234, Eldon, MO 65026, (314) 621–3222.

i. *FERC Contact:* Joseph C. Adamson, (202) 219–1040.

j. *Comment Date:* June 20, 1995.

k. *Description of Proposed Action:* Union Electric requested Commission authorization to issue a dredging permit as required by license article 21. The application is to permit Mr. Thomas Veninga to excavate an area 20 feet wide by 40 feet long to the depth of 652 Union Electric Datum, containing 60 cubic yards of material, from the Lake of the Ozarks, for the purpose of constructing a boat dock and providing boat access to project waters. The application also includes a provision to place a fish habitat structure (a brush pile) for mitigation.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Lois D. Cashell,

Secretary.

[FR Doc. 95–12807 Filed 5–24–95; 8:45 am]

BILLING CODE 6717–01–M

Request for Commission Approval to Grant a Permit for Dredging on Project Lands

May 19, 1995

Take notice that the following hydroelectric application has been filed with the Commission, and is available for public inspection:

a. *Type of Application:* Request for Commission Approval to Grant a Permit for Dredging on Project Lands.

b. *Project No.:* 459–071.

c. *Date Filed:* December 12, 1994.

d. *Applicant:* Union Electric.

e. *Name of Project:* Osage Project.

f. *Location:* Lake of the Ozarks, Morgan County, Missouri.

g. *Filed Pursuant to:* Federal Power act, 16 U.S.C. § 791(a)–825(r).

h. *Applicant Contact:* Mr. Dan Jarvis, Union Electric Company, Route No. 3, P.O. Box 234, Eldon, MO 65026, (314) 621–3222.

i. *FERC Contact:* Joseph C. Adamson, (202) 219–1040.

j. *Comment Date:* June 20, 1995.

k. *Description of Proposed Action:* Union Electric requested Commission authorization to issue a dredging permit as required by license article 21. The application is to permit Mr. W.J. Robb to excavate two areas approximately 19 feed wide by 25 feet long to the depth of 652 Union Electric Datum (UED), and an area 5 feet wide by 15 feet long to the depth of 652 UED for the purpose of constructing a boat dock and providing boat access to project waters. Approximately 25 cubic yards of material would be excavated from the Lake of the Ozarks. The application also includes a provision to place a fish habitat structure (a brush pile) for mitigation.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Lois D. Cashell,

Secretary.

[FR Doc. 95–12808 Filed 5–24–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RM93–11–000]

Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992

Issued May 19, 1995.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of Annual Change in the Producer Price Index for Finished Goods, Minus One Percent.

SUMMARY: The Commission is issuing the index that oil pipelines must apply to their January 1–June 30, 1995 rate ceiling levels to compute their rate ceiling levels for the period July 1, 1995, through June 30, 1996, in accordance with 18 CFR 342.3(d). This index, which is the percent change (expressed as a decimal) in the annual average Producer Price Index for Finished Goods from 1993 to 1994, minus one percent, is a negative .003585. Oil pipelines must multiply their January 1–June 30, 1995 rate ceiling levels by .996415 to compute their rate ceiling levels for the period July 1, 1995 through June 30, 1996.

FOR FURTHER INFORMATION CONTACT: Lucille M. Langlois, Office of Economic Policy, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, (202) 208–2141.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 3104, 941 North Capitol Street, N.E., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400, 1200 or 300bps, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this document will be available on CIPS for 60 days from the date of issuance in ASCII and WordPerfect 5.1 format. After 60 days the document will be archived, but still accessible. The complete text on diskette in Wordperfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 3104, 941 North Capitol Street, N.E., Washington, DC 20426.

Notice of Annual Change in the Producer Price Index for Finished Goods, Minus One Percent

Issued May 19, 1995.

In Order No. 561, the Federal Energy Regulatory Commission issued a Final Rule adopting regulations to implement the requirements of the Energy Policy Act of 1992.[1] The Final Rule provides a methodology for oil pipelines to change their rates through use of an index system that establishes ceiling levels for such rates. The index system as set forth in the Commission's regulations at 18 CFR 342.3 is based on the annual change in the Producer Price Index for Finished Goods (PPI–FG), minus one percent. The regulations provide that each year the Commission will publish an index reflecting the final change in the PPI–FG, minus one percent, after the final PPI–FG is made available by the Bureau of Labor Statistics in May of each calendar year.

The annual average PPI–FG index figure for 1993 was 124.7 and the annual average PPI–FG index figure for 1994 was 125.5.[2] The percent change expressed as a decimal) in the annual average PPI–FG from 1993 to 1994, minus one percent therefore is a negative .003585.[3] Thus, oil pipelines must multiply their January 1–June 30, 1995 rate ceiling levels by .996415 to compute their rate ceiling levels for the period July 1, 1995, through June 30, 1996, in accordance with 18 CFR 342.3(d). If a resulting rate ceiling level is below a filed rate, that rate must be reduced in accordance with 18 CFR 342.3(e).

Lois D. Cashell,

Secretary.

[FR Doc. 95–12838 Filed 5–24–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER95–764–000; Docket No. ER94–1475–000]

Illinois Power Company, et al.; Notice of Issuance of Order

May 22, 1995.

On July 20, 1994, as amended on August 26, 1994, March 20, 1995, and April 5, 1995, Illinova Power Marketing, Inc. (Illinova), an affiliate of Illinois Power Company,[1] filed a proposed rate schedule, a petition for waivers, blanket approvals, disclaimer of jurisdiction, and authorization to transact as a power marketer at market-based rates, in Docket No. ER94–1475. On May 18, 1995, the Commission issued an Order Noting and Granting Interventions, Accepting for Filing and Suspending Transmission Tariffs as Modified, Establishing Hearing Procedures, Accepting for Filing and Suspending

[1] III FERC Stats. & Regs. ¶ 30,985 (1993); 58 FR 58753 (November 4, 1993).

[2] The final figure for the annual average PPI–FG is published by the Bureau of Labor Statistics in mid-May of each year. This figure is publicly available from the Division of Industrial Prices and Price Indexes of the Bureau of Labor Statistics, at (202) 606–7705, and is available in print in August in Table 1 of the annual data supplement to the BLS publication *Producer Price Indexes.*

[3] [125.5 – 124.7]/124.7=.006415; .006415 – 0.01= – .003585.

[1] Illinois Power and Illinova are both subsidiaries of Illinova Corporation. Illinova currently owns interests in qualifying facilities and is also involved in natural gas marketing activities.

Request for Market-Based rates, and Granting Waivers and Authorizations (Order), in the above-docketed proceedings.

The Commission's May 18, 1995 Order granted the request for blanket approvals under 18 CFR Part 34, subject to the following conditions found in Ordering Paragraphs (J), (K), and (M):

"(J) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by Illinova should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(K) Absent a request to be heard within the period set forth in Ordering Paragraph (J) above, Illinova is hereby authorized, pursuant to section 204 of the Federal Power Act, to issued securities and assume obligations or liabilities as guarantor, endorser, security, or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of Illinova, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(M) The Commission reserves the right to modify this order and to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of Illinova's issuances of securities or assumptions of liabilities. . ."

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is June 19, 1995. Copies of the full text of the order are available from the Commission's Public Reference Branch, Room 3308, 941 North Capitol Street, NE., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 95–12839 Filed 5–24–95; 8:45 am]

BILLING CODE 6717–01–M

Federal Energy Regulatory Commission

[Docket No. CP95–501–000]

K N Interstate Gas Transmission Co.; Application

May 19, 1995.

Take notice that on May 16, 1995, K N Interstate Gas Transmission Co. (KNI), P.O. Box 281304, Lakewood, Colorado 80228, filed in Docket No. CP95–501–000 an application pursuant to Section 7(b) of the Natural Gas Act for authorization to abandon by sale to Mountain Petroleum Corporation (MPC) its Phuma Compressor Station facilities located in Phillips County, Colorado, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

KNI proposes to abandon by sale to MPC one Ajax DPC42 compressor, one glycol dehydrator and miscellaneous station pipeline and valves. KNI states that its predecessor constructed the Phuma Compressor Station in 1977 to compress gas that it purchased from MPC and gathered through its adjacent gathering system for use as system supply. KNI states that, due to the small amount of gas (100 Mcf per day) received from MPC, the costs of operating the gathering system by K N Gas Gathering, Inc. (KNGG) and the compressor station facilities by KNI exceeded the revenues received to gather and compress the gas. KNI also states that, in order to relieve KNGG and KNI of the high cost of operating the facilities and still provide MPC with the opportunity to produce its gas, KNI, KNGG and MPC have entered into a facilities purchase and sale agreement whereby MPC would purchase the facilities. It is indicated that, because of its non-jurisdictional status, the gathering system has already been transferred to MPC by KNGG. It is also indicated that because MPC is the only producer with gas supplies connected to the Phuma facilities, no other party would be affected by the proposed abandonment.

KNI states that MPC would purchase the compressor station, dehydrator and appurtenant facilities at a price of $12,500.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 9, 1995, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for KNI to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 95–12810 Filed 5–24–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–432–000]

Trunkline Gas Company; Application

May 19, 1995.

Take notice that on May 1, 1995, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP95–432–000 an abbreviated application pursuant to Section 7(b) of the Natural Gas Act, as amended, and Sections 157.7 and 157.18 of the Federal Energy Regulatory Commission's (Commission) Regulations thereunder, for permission and approval to abandon certain mainline transmission facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Trunkline states that it proposes to abandon approximately 2,187 feet of twenty-inch connector pipeline (Line 100–T1) on the south side of Trunkline's Red River crossing in Rapides Parish, Louisiana. Trunkline indicates that this connector pipeline was originally certificated in Docket No. G–13300. Trunkline further states that Line 100–T1 is located between Line 54B–100–26" and a retired dual twelve-inch river crossing. It is indicated that Line 54B–100–26" was constructed in Docket No. G–14704 to connect Trunkline's Line 100–1–26" mainline to a dual twenty-four-inch river crossing (River Crossing 100–2) also constructed pursuant to Docket No. G–14704 and

located further downstream of the dual twelve-inch river crossing which was subsequently retired from service.

Trunkline indicates that after it received authorization in Docket No. CP65–117 to increase mainline capacity by 50,000 Mcf per day, the necessity arose for the construction of River Crossing 100–3. Trunkline states that after River Crossings 100–2 and 100–3 were placed into service, Trunkline removed the dual twelve-inch river crossing from active service. It is indicated that when the dual twelve-inch river crossing was taken out of service, Line 100–T1 was blinded on the north end connected to the dual twelve-inch river crossing, thus rendering Line 100–T1 a nonfunctional facility. Trunkline avers that the south end of Line 100–T1, which is connected to Line 54B–100, was not blinded and therefore gas has still been able to flow into Line 100–T1 from Line 54B–100 to no purpose.

Trunkline submits that the removal of Line 100–T1 will not affect Trunkline's mainline capacity, and will allow Trunkline to eliminate safety concerns and the cost of maintaining this nonfunctional facility. It is indicated that the scope of work for the proposed abandonment includes isolation and blowdown of Line 100–T1 and Line 54B–100, cutting and removing the tee from Line 54B–100, returning Line 54B–100 to service, and removing Line 100–T1.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 9, 1995, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10), All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, and if the Commission on its own review of the matter finds that the abandonment is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provide for, unless otherwise advised, it will be unnecessary for Trunkline to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 95–12809 Filed 5–24–95; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5210–0]

Determining Compliance With Water Quality Based Effluent Limits Below Quantitation in the Absence of Promulgated Minimum Levels (MLs)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Request for Technical Data and Notice of Presentation-Style meeting.

SUMMARY: On March 22, 1994, the Environmental Protection Agency's (EPA) Office of Wastewater Management (OWM) released for comment the draft "National Guidance for the Permitting, Monitoring, and Enforcement of Water Quality-based Effluent Limitations Set Below Analytical Detection or Quantitation Levels." The draft guidance was distributed to EPA Headquarters, EPA Regions, National Pollutant Discharge Elimination System (NPDES) state representatives, trade associations and environmental groups for comment. In general, there was support by all parties for the need for the guidance. However, there were several issues raised by the commenters which must be resolved before the guidance becomes final. Of particular concern to commenters was the methodology used to determine quantitation levels in the absence of promulgated MLs. Today's notice is to invite interested stakeholders to submit technical data to EPA on this issue, and to announce a meeting to discuss this topic and the data submitted.

DATES: Technical information should be submitted on or before June 22, 1995. A presentation-style meeting is scheduled for Wednesday, August 2 and Thursday, August 3, 1995 in McLean, Virginia. Meeting attendees should reply by June 22, 1995, confirming your attendance.

ADDRESSES: Technical data should be sent to Jackie Romney; U.S. Environmental Protection Agency; Office of Wastewater Management; MC–4203; 401 M Street, S.W.; Washington, DC 20460; 202/260–9528. A Government contractor will compile and maintain the confidentiality of the data. Meeting reservations should be made by calling Lynn Kurth of SAIC at 703/917–8496.

FOR FURTHER INFORMATION CONTACT: Jackie Romney; U.S. Environmental Protection Agency; Office of Wastewater Management; MC—4203; 401 M Street, S.W.; Washington, DC 20460; 202/260–9528.

SUPPLEMENTARY INFORMATION: On March 22, 1994, EPA's Office of Wastewater Management released the draft "National Guidance for the Permitting, Monitoring, and Enforcement of Water Quality-based Effluent Limitations Set Below Analytical Detection or Quantitation Levels." The primary intent of the guidance is to promote national consistency in the implementation of water quality-based effluent limits (WQBELs) established below detection or quantitation levels. The secondary intent of the guidance is to ensure that National Pollutant Discharge Elimination System (NPDES) permittees strive to measure as closely as possible to WQBELs even in the absence of more sensitive promulgated methods. The draft guidance contains four main recommendations including: (1) Permit limits should be expressed as the calculated WQBEL; (2) the minimum level (ML) should be used as the quantitation level and included in the permit as a footnote to the WQBEL; (3) where a promulgated ML is not available, an "interim ML" should be calculated using a factor of 3.18 times the method detection limit (MDL); and (4) analytical results below the ML should be reported as zero.

The draft guidance was distributed to EPA Headquarters, EPA Regions, NPDES state representatives, and trade associations and environmental groups for comment. In general, there was support by all parties for the need for the guidance. However, there were several technical issues that were raised. Of particular concern to commenters was the methodology used to determine quantitation levels in the absence of promulgated MLs. Based on subsequent meetings with the regulated community, EPA has delayed finalizing the guidance until this issue is resolved.

A presentation-style meeting will be held on August 2–3, 1995 in McLean,

Virginia, to gather additional technical information to assist EPA in resolving these technical issues in order to finalize the guidance. This meeting will involve representatives from EPA Regions, States, the regulated community, trade associations, the scientific community, and environmental groups. Representatives from the parties submitting comments are invited to attend the meeting to present supporting data. This meeting will focus particularly on the procedure for developing quantitation levels (when there is no promulgated ML) to measure compliance with WQBELs. The meeting will provide an opportunity for commenters to present information supporting their specific concerns.

EPA is interested in the following types of technical data:

(1) Data to support the proposed use of the minimum level at 3.18 time the MDL (analogous to the International Union of Pure and Applied Chemistry (IUPAC) and the American Chemical Society (ACS) limit of quantitation) in the absence of a promulgated ML.

(2) Data to support an alternative quantitation level for compliance monitoring with WQBELs in the absence of a promulgated ML.

(3) Data which show the impacts of matrix interference which are not accounted for through the proposed site-specific MDLs or MLs, as well as any industry matrix interference data to support matrix interference cases.

In addition to the technical data above, EPA would like to review any actual examples submitted by commenters of enforcement actions taken for violating WQBELs set below detection or quantitation levels.

It is EPA's objective that this meeting be comprised of representatives who: contribute technical expertise relevant to this topic; represent a wide spectrum of interests (e.g, business, academia, environmental groups, and government); and are willing to participate in the entire two day meeting.

Participants must submit any supporting data they wish to provide by *June 22, 1995*. The data will be compiled by EPA prior to the meeting to ensure an organized presentation of information. Please note that technical comments on alternative approaches to develop quantitation levels received without supporting technical data cannot be considered at the meeting. If a copy of the March 22, 1994, draft "National Guidance for the Permitting, Monitoring, and Enforcement of Water Quality-based Effluent Limitations Set Below Analytical Detection or Quantitation Levels" is needed, please contact Mildred Thomas at 202/260–6054 to receive a copy.

Once EPA has reviewed the data, data summaries will be sent to all registered participants prior to the August meeting. Specific information on the meeting location, time of meeting and meeting agenda will be sent to each registered participant prior to the August 2 & 3, 1995 meeting.

Dated: May 17, 1995.

Michael B. Cook,

Director, Office of Wastewater Management.

[FR Doc. 95–12894 Filed 5–24–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1051–DR]

Mississippi; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Mississippi, (FEMA–1051–DR), dated May 12, 1995, and related determinations.

EFFECTIVE DATE: May 19, 1995.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Mississippi dated May 12, 1995, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 12, 1995.

Jackson County for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Associate Director, Response and Recovery Directorate.

[FR Doc. 95–12855 Filed 5–24–95; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL RESERVE SYSTEM

Larry Reginold Dean, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 8, 1995.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Larry Reginold Dean, Lake Park, Georgia; to retain 10.96 percent of the voting shares of VB&T Bancshares Corporation, Valdosta, Georgia, and thereby indirectly acquire Valdosta Bank & Trust Company, Valdosta, Georgia.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. William A. Moore, Huxley, Iowa; to acquire an additional 76.5 percent for a total of 100 percent of the voting shares of Huxley Bancorp, Huxley, Iowa, and thereby indirectly acquire First State Bank, Huxley, Iowa.

Board of Governors of the Federal Reserve System, May 19, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–12841 Filed 5–24–95; 8:45 am]

BILLING CODE 6210–01–F

Wachovia Corporation; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 95-12098) published on page 26436 of the issue for Wednesday, May 17, 1995.

Under the Federal Reserve Bank of Richmond heading, the entry for Wachovia Corporation, is revised to read as follows:

1. Wachovia Corporation, Winston-Salem, North Carolina; to engage *de novo* through its subsidiary, Wachovia Capital Markets, Inc., Winston-Salem, North Carolina, in making, acquiring, or servicing loans or other extensions of credit (including issuing letters of credit and accepting drafts) for the company's account or the account of others, pursuant to § 225.25(b)(1) of the Board's Regulation Y, and leasing real and personal property or acting as agent, broker, or adviser in leasing such property, pursuant to §§ 225.25(b)(5)(i) and 225.25(b)(5)(ii) of the Board's Regulation Y.

Comments on this application must be received by May 31, 1995.

Board of Governors of the Federal Reserve System, May 19, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–12845 Filed 5–24–95; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Announcement 568]

Community-Based Asthma Intervention Demonstration Programs

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1995 funds for cooperative agreements for the development, implementation, and evaluation of community-based asthma intervention demonstration programs.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2000," a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Environmental Health. (For ordering a copy of "Healthy People 2000," see the section "Where to Obtain Additional Information.")

Authority

This cooperative agreement is authorized under the Public Health Service Act, section 301 (42 U.S.C. 241).

Smoke-Free Workplace

PHS strongly encourages all grant recipients to provide a smoke-free workplace and to promote the nonuse of all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Eligible Applicants

Eligible applicants are the official public health agencies of States or their bona fide agents or instrumentalities. This includes the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of Palau, and federally recognized Indian tribal governments.

Only one application from an official agency (State or local) may enter the review process and be considered for award under this program. Eligible applicants may enter into contracts and consortia agreements and understandings as necessary to meet the requirements of the program and strengthen the overall application. The intent to use the above mechanisms must be stated in the application and the nature and scope of work of these mechanisms requires the approval of CDC.

Availability of Funds

Approximately $200,000 will be available in FY 1995 to fund two awards. It is expected that the average award will be $100,000. It is expected that the awards will begin on or about September 30, 1995, and will be made for a 12-month budget period within a project period of up to 2 years.

Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Purpose

The purpose of this project is to develop and test cost-effective, community-based asthma interventions which address one or more of the environmental risk factors among poor children. The specific objectives are:

A. Develop a community-based intervention program which is demonstrated to be cost-effective, can be sustained over time, and can serve as a model for other communities;

B. Evaluate the effectiveness of interventions which are targeted at specific risk factors;

C. Establish a network of public and private organizations and individuals within the community who share a common goal of preventing morbidity due to asthma among poor and other high-risk children to work on improved public education about asthma and its prevention and;

D. Improve the understanding concerning the prevalence of specific environmental risk factors among poor and other high-risk children with asthma.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under A. (Recipient Activities), and CDC will be responsible for the activities under B. (CDC Activities).

A. Recipient Activities:

1. Establish a mechanism for the surveillance of urgent care visits for asthma among a target population;

2. Develop a network of community organizations and individuals who share an interest in the health of poor children for the purpose of enhanced coordination of efforts aimed at patient and public education about asthma;

3. Measure the prevalence of one or more environmental risk factors within a target population and;

4. Develop, pilot test, and evaluate a community-based asthma intervention program focused primarily on one environmental risk factor.

B. CDC Activities:

1. Sponsor a planning workshop for all recipients and selected outside experts;

2. Collaborate with the recipient in all stages of the project, including the design of the protocol and data collection instruments, data analysis, interpretation of results, and preparation of written reports;

3. Provide on-site programmatic technical assistance in planning, implementing, and evaluating ongoing and innovative program activities;

4. Participate in improving program performance through consultation based on information and activities of other projects and;

5. Coordinate the activities of all recipients and facilitate the exchange of information and experiences among recipients.

Evaluation Criteria

Applications will be reviewed and evaluated according to the following criteria:

1. Understanding the Problem (10 points)

Evidence of the applicant's understanding of the problem and the purpose of the cooperative agreement.

2. Measurable Objectives (25 points)

The consistency of the measurable objectives with the stated purpose of the cooperative agreement and the ability to meet the objectives and timetable within the specified period.

3. Proposed Plan (25 points)

The adequacy of the applicant's plan to carry out the activities proposed. Of particular interest is the potential long-term sustainability of the intervention and the involvement of community organizations.

4. Management and Staffing Plan (25 points)

The extent to which the proposal has described (a) the qualifications and commitment of the applicant, (b) detailed allocations of time and effort of staff devoted to the project, (c) information on how the applicant will implement and administer the project and (d) the qualifications of the key project staff.

5. Proposed Evaluation Plan (15 points)

The adequacy of the applicant's plan to monitor progress toward meeting the objectives of the project.

6. Budget (not scored)

The extent to which the budget is reasonable, adequately justified, and consistent with the intended use of the cooperative agreement funds.

7. Human Subjects (not scored)

The applicant must clearly state whether or not human subjects will be used in research.

Executive Order 12372 Review

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order (E.O.) 12372. E.O. 12372 sets up a system for State and local government review of proposed Federal assistance applications. Applicants (other than federally recognized Indian tribal governments) should contact their State Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current list of SPOCs is included in the application kit. If SPOCs have any State process recommendations on applications submitted to CDC, they should send them to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E13, Atlanta, Georgia 30305, no later than 60 days after the application deadline. The Announcement Number and Program Title should be referenced on the documents. The granting agency does not guarantee to "accommodate or explain" for State process recommendations it receives after that date.

Indian tribes are strongly encouraged to request tribal government review of the proposed application. If tribal governments have any tribal process recommendations on applications submitted to CDC, they should send them to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E13, Atlanta, Georgia 30305, no later than 60 days after the application deadline. The Announcement Number and Program Title should be referenced on the documents. The granting agency does not guarantee to "accommodate or explain" for tribal process recommendations it receives after that date.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 93.283.

Other Requirements

Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by cooperative agreement will be subject to approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations, 45 CFR Part 46, regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by appropriate institutional review committees. In addition to other applicable committees, Indian Health Service (IHS) institutional review committees also must review the project if any component of IHS will be involved or will support the research. If any American Indian community is involved, its tribal government must also approve that portion of the project applicable to it. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

Application Submission and Deadline

The original and two copies of the application PHS Form 5161–1 (OMB Number 0937-0189) must be submitted to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E13, Atlanta, Georgia 30305, on or before July 19, 1995.

1. Deadline: Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date; or

b. Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. Late Applications: Applications that do not meet the criteria in 1.a. or 1.b. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where To Obtain Additional Information

A complete program description, information on application procedures, an application package, and business management technical assistance may be obtained from Adrienne Brown, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E13, Atlanta, Georgia 30305, telephone (404) 842–6634. Programmatic technical assistance may be obtained from James Rifenburg, Air Pollution and Respiratory Health Branch, Division of Environmental Hazards and Health Effects, National Center for Environmental Health, Centers for Disease Control and Prevention (CDC), Mailstop F39, 4770 Buford Highway, NE., Atlanta, Georgia 30341–3724, telephone (404) 488–7320.

Please refer to Announcement 568 when requesting information or submitting an application.

Potential applicants may obtain a copy of "Healthy People 2000" (Full Report, Stock No. 017–001–00474–0) or "Healthy People 2000" (Summary Report, Stock No. 017- 001–00473–1) referenced in the "INTRODUCTION" through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512–1800.

Dated: May 19, 1995.

Joseph R. Carter,

Acting Associate Director for Management, and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–12834 Filed 5–24–95; 8:45 am]

BILLING CODE 4163–18–P

[Announcement 519]

Prevention of the Complications of Hemophilia

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1995 funds for a cooperative agreement program to conduct a trial of primary prophylaxis therapy for the prevention of joint disease and/or inhibitor formation in children with hemophilia.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Diabetes and Chronic Disabling Conditions. (For ordering a copy of Healthy People 2000, see the section Where to Obtain Additional Information.)

Authority

This program is authorized under Sections 301(a) and 317(k)(2) of the Public Health Service Act, as amended [42 U.S.C. 241(a) and 247b(k)(2)]. Applicable program regulations are found in 42 CFR Part 51b—Project Grants for Preventive Health Services.

Smoke-Free Workplace

PHS strongly encourages all grant recipients to provide a smoke-free workplace and to promote nonuse of all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Eligible Applicants

Because of the low prevalence of hemophilia, competition is limited to hemophilia treatment centers (HTCs) that routinely access and administer comprehensive health care to sufficient numbers of previously untreated patients with severe hemophilia each year. Since HTCs are the only health care facilities administering to the numbers of hemophiliacs required for this study, assistance will be provided only to hemophilia treatment centers.

Availability of Funds

Approximately $500,000 is available in FY 1995 to fund up to two awards. It is expected that the award will begin on or about September 30, 1995, and will be made for a 12-month budget period within a project period of up to 5 years. Funding estimates may vary and are subject to change. Continuation awards within the project period will be made on the basis of satisfactory programmatic progress and the availability of funds.

Purpose

The purpose of this hemophilia cooperative agreement program is to assist recipients in the implementation of and analysis of data from a randomized, controlled trial of primary prophylaxis in previously untreated patients with severe hemophilia A and no demonstrable factor VIII inhibitors. Cost and efficacy of early intervention should be determined in the treatment group and should be compared to similar data from appropriately treated, control subjects. In addition to objective measures of joint function and mobility, the cumulative risk of factor VIII inhibitor development should be determined for each treatment group and total costs and complication rates ascertained. Molecular characterization of factor VIII defects and detailed molecular HLA typing should be determined for all subjects in an effort to predict which subjects will develop inhibitors.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for the activities under A. below, and CDC shall be responsible for conducting activities under B. below:

A. Recipient Activities

1. Develop standardized study protocols, data collection instruments, interview questionnaires, progress report forms, and amend previous protocols with new activities or procedures incorporating all changes agreed to at assistance meetings.

2. Train study coordinators and medical personnel in methods of data collection and patient assessment in the use of standard data abstraction instruments, in techniques of reviewing medical records, in interviewing patients, and in other methods of data collection as appropriate and provided for in the study protocols. It is the responsibility of the recipient to ensure uniform training of study personnel at all data collection sites and to ensure that the data is collected in a uniform manner at all locations.

3. Develop appropriate management and evaluation systems to ensure that study personnel use data collection and interview instruments according to standard study protocols.

4. Collect and edit all data from all sites, including cost effectiveness data.

5. Obtain and transmit to CDC sufficient clinical specimens for specialized laboratory analysis and genetic testing, including whole blood, plasma, cell pellets or joint tissue/fluid, to meet the requirements of the study.

6. Publish the results of the study using a writing committee to determine the inclusion and order of authors on all publications.

B. CDC Activities

1. Provide consultation, and scientific and technical assistance in planning and implementing the study protocol. This assistance will include the development of standard study protocols, data abstraction instruments, interview questionnaires, consent and progress report forms.

2. Participate in the planning, coordination, and facilitation of initial and periodic meetings with recipients to exchange operational experiences, and to provide consultation and assistance in the modification of standard study protocols as needed.

3. Provide the required software and technical assistance in statistical and epidemiologic methods to conduct data analysis.

4. The coagulation research laboratory at CDC will be responsible for confirmation of factor VIII inhibitor levels and will serve as the central reference laboratory for molecular analysis of all study participants. CDC will be responsible for epitope typing of all inhibitors and other specialized immunological/genetic testing.

Evaluation Criteria

Applications will be reviewed and evaluated according to the following criteria: (Total 100 points)

A. Capacity

1. The capacity of the applicant to accrue a minimum total of 40 boys with severe factor VIII (<1%) who are 30 months old or less without a history of joint hemorrhage from multiple HTCs to each treatment arm of the protocol. Each participating HTC must be able to enroll a minimum of 5 previously untreated patients who meet the above criteria. (20 points)

2. The capacity to accrue and maintain patients on trials will be measured by (a) the number of patients

eligible for randomization into the trial that are seen annually at each HTC, (b) the number of patients entered and successfully followed in previous similar trials and (c) the publication of the results of other such trials in peer reviewed journals. Such publications should demonstrate that the applicant is capable of enrolling and following young hemophiliacs in a clinical trial. (20 points)

3. Qualifications of proposed staff to meet stated objectives and goals, and the availability of facilities to be used during the project period. (10 points)

B. Goals and Objectives

The extent to which the applicant's proposed goals and objectives meet the required activities specified under section A. "Recipient Activities" of this announcement, and that are measurable, specific, time-phased, and realistic. (10 points)

C. Methods and Activities

1. The quality of the applicant's plan for conducting program activities and the extent to which the clinical trial design proposed is: (a) appropriate to accomplish stated goals and objectives; (b) acceptable to the needs of the patient population (e.g., likely to produce compliance); (c) feasible within programmatic and fiscal restrictions. (30 points)

2. The recipient should demonstrate a basic knowledge of the methods of randomized, clinical trials and describe how they will implement a standardized protocol at various HTCs; (a) develop standardized progress report forms; (b) collect, edit, and transmit appropriate data to the CDC. (10 points)

D. Budget

The extent to which the budget is reasonable and consistent with the intended use of the cooperative agreement funds. (not scored)

Funding Priorities

In order to maximize the probability of developing meaningful conclusions from this randomized trial in the shortest possible time, funding priorities will take into consideration the ability of the HTC (including geographical representation of all participating HTCs) to accrue up to 40 previously untreated hemophilia patients in each treatment arm of the protocol.

Interested persons are invited to comment on the proposed funding priorities. All comments received on or before June 26, 1995 will be considered before the final funding priorities are established.

Written comments should be addressed to: Clara M. Jenkins, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–18, Atlanta, Georgia 30305.

Executive Order 12372 Review

This program is not subject to Executive Order 12372 review.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.283, Centers for Disease Control and Prevention (CDC)—Investigations and Technical Assistance.

Other Requirements

Paperwork Reduction Act

Projects that involve collection of information from 10 or more individuals and funded by the cooperative agreements will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations (45 CFR Part 46) regarding the protection of human subjects. Assurance must be provided which demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing evidence of this assurance in accordance with the appropriate guidelines and forms provided in the application kit.

All information obtained in connection with this prevention trial shall not, without such individual's consent, be disclosed except as may be necessary to provide services to him or her or as may be required by a law of a State or political subdivision of a State. Information derived from any such program may be disclosed: (1) in summary, statistical, or other form, or (2) for clinical or research proposed, but only if the identity of the individuals under such program is not disclosed.

Application Submission and Deadline

The original and five copies of the application PHS Form 398 (OMB Number 0925–0001) must be submitted to Clara M. Jenkins, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–18, Atlanta, Georgia 30305, on or before July 7, 1995.

1. Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) received on or before the deadline date; or

(b) sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. Late Applications: Applications which do not meet the criteria in 1.(a) or 1.(b) above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where To Obtain Additional Information

A complete program description and information on application procedures are contained in the application package. Business management technical assistance may be obtained from Locke Thompson, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–18, Atlanta, Georgia 30305, telephone (404) 842–6595. Programmatic technical assistance may be obtained from Bruce Evatt, M.D., Division of HIV/AIDS, National Center for Infectious Diseases, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Mailstop E–64, Atlanta, Georgia 30333, telephone (404) 639–3925.

Please refer to Announcement Number 519 when requesting information and submitting an application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) referenced in the Introduction through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512- 1800.

Dated: May 19, 1995.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–12835 Filed 5–24–95; 8:45 am]

BILLING CODE 4163–18–P

Food and Drug Administration

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

FDA has established an Advisory Committee Information Hotline (the hotline) using a voice-mail telephone system. The hotline provides the public with access to the most current information on FDA advisory committee meetings. The advisory committee hotline, which will disseminate current information and information updates, can be accessed by dialing 1–800–741–8138 or 301–443–0572. Each advisory committee is assigned a 5-digit number. This 5-digit number will appear in each individual notice of meeting. The hotline will enable the public to obtain information about a particular advisory committee by using the committee's 5-digit number. Information in the hotline is preliminary and may change before a meeting is actually held. The hotline will be updated when such changes are made.

MEETING: The following advisory committee meeting is announced:

Fertility and Maternal Health Drugs Advisory Committee With Generic Drugs and Endocrinologic and Metabolic Drugs Advisory Committee Representation

Date, time, and place. July 27 and 28, 1995, 9 a.m., Parklawn Bldg., conference rooms D and E, 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, July 27, 1995, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 5 p.m.; open committee discussion, July 28, 1995, 9 a.m. to 5 p.m.; Philip A. Corfman, Center for Drug Evaluation and Research (HFD–510), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3510, or Kimberly Topper, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Fertility and Maternal Health Drugs Advisory Committee, code 12537.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in the practice of obstetrics and gynecology.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before July 7, 1995, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss the necessary components of conjugated estrogens as they relate to clinical efficacy of conjugated estrogens and other estrogen replacement drug products for approved indications. Copies of the draft agenda will be available June 1, 1995, from CDER Executive Secretariat Staff (HFD–8), Center for Drug Evaluation and Research, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. The final agenda will be available at the meeting.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: May 17, 1995.

Linda A. Suydam,

Interim Deputy Commissioner for Operations.

[FR Doc. 95–12909 Filed 5–24–95; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

[OPL–005–N]

Medicare Program; June 12, 1995 Meeting of the Practicing Physicians Advisory Council

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the Practicing Physicians Advisory Council. This meeting is open to the public.

DATES: The meeting is scheduled for June 12, 1995, from 8 a.m. until 4 p.m. e.d.t. (Additional meetings are tentatively scheduled for September 11 and December 11, 1995.)

ADDRESSES: The meeting will be held in Room 800, 8th Floor, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Sam Shekar, M.D., Executive Director, Practicing Physicians Advisory Council, Room 435–H, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, (202) 690–7874.

SUPPLEMENTARY INFORMATION: The Secretary of Health and Human Services (the Secretary) is mandated by section 1868 of the Social Security Act, to appoint a Practicing Physicians Advisory Council (the Council) based on nominations submitted by medical organizations representing physicians. The Council meets quarterly to discuss certain proposed changes in regulations and carrier manual instructions related to physicians' services, as identified by the Secretary. To the extent feasible and consistent with statutory deadlines, the consultation must occur before publication of the proposed changes. The Council submits an annual report on its recommendations to the Secretary and the Administrator of the Health Care Financing Administration not later than December 31 of each year.

The Council consists of 15 physicians, each of whom has submitted at least 250 claims for physicians' services under Medicare in the previous year. Members of the Council include both participating and nonparticipating physicians, and physicians practicing in rural and underserved urban areas. At least 11 members must be doctors of medicine or osteopathy authorized to practice medicine and surgery by the States in which they practice. Members have been invited to serve for overlapping 4-year terms. In accordance with section 14 of the Federal Advisory Committee Act, terms of more than 2 years are contingent upon the renewal of the Council by appropriate action before the end of the 2-year term.

The Council held its first meeting on May 11, 1992.

The current members are: Richard Bronfman, D.P.M.; Gary C. Dennis, M.D.; Catalina E. Garcia, M.D.; Harvey P. Hanlen, O.D.; Kenneth D. Hansen, M.D.; Ardis Hoven, M.D.; Sandral Hullett, M.D.; Jerilynn S. Kaibel, D.C.; Marie G. Kuffner, M.D.; Marc Lowe, M.D.; Katherine L. Markette, M.D.; Isadore Rosenfeld, M.D.; Richard B. Tompkins, M.D.; Kenneth M. Viste, Jr., M.D.; and James C. Waites, M.D. The chairperson is Kenneth M. Viste, Jr., M.D.

The next meeting of the Council will be held on June 12, 1995. The following topics will be discussed at that meeting:

- The Office of the Inspector General study of physician control of nonphysician services.
- The revision of certificates of medical necessity for durable medical equipment.
- Medicare and Medicaid legislative issues.

Individuals or organizations who wish to make 5-minute oral presentations on the above issues should contact the Executive Director by 12:00 noon, June 2, 1995, to be scheduled. For the name, address, and telephone number of the Executive Director, see the **FOR FURTHER INFORMATION CONTACT** section at the beginning of this notice. The number of oral presentations may be limited by the time available. A written copy of the oral presentation should be submitted to the Executive Director no later than 12:00 noon, June 5, 1995.

Anyone who is not scheduled to speak may submit written comments to the Executive Director by 12:00 noon, June 9, 1995. The meeting is open to the public, but attendance is limited to the space available on a first-come basis.

(Section 1868 of the Social Security Act (42 U.S.C. 1395ee) and section 10(a) of Public Law 92–463 (5 U.S.C. App. 2, section 10(a)); 45 C.F.R. Part 11)

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: May 22, 1995.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

[FR Doc. 95–12849 Filed 5–24–95; 8:45 am]

BILLING CODE 4120–01–P

Health Resources and Services Administration

Notification of Expiring Project Periods for Community and Migrant Health Centers

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that a total of 273 Community Health Center and Migrant Health Center (C/MHC) grantees will reach the end of their project periods during fiscal year (FY) 1996. It is the intent of HRSA to continue to support health services in the areas served by these grantees, given the need inherent in their designation as medically underserved, within these geographic areas. This notice provides interested parties the opportunity to gather information and decide whether to pursue Federal funding as a community or migrant health center. During this process, communication with Regional Office staff is essential (see Appendix I).

DUE DATES: Current grant expiration dates vary by grantee throughout FY 1996. Applications for competing grants are normally due 120 days prior to the expiration of the current grant award.

SUPPLEMENTARY INFORMATION: The C/MHC programs are carried out currently under the authority of Sections 330 and 329 of the Public Health Service Act. The program regulations are codified in Title 42 of the Code of Federal Regulations (CFR), Parts 51c and 56. The C/MHC programs are designed to promote the development and operation of community-based primary health care service systems in medically underserved areas for medically underserved populations.

The list of areas for which a current Section 329/330 grant project period expires in FY 1996 is set forth in Appendix II. The service areas are listed by city and county. Detailed information for each service area, such as census tracts, can be obtained by contacting the appropriate PHS regional office (see Appendix I).

A project period is the total amount of time for which a grant has been programmatically approved. For purposes of this notice, grant awards

will be made for a one year budget period and up to a five year project period.

Dated: May 22, 1995.

Ciro V. Sumaya,

Administrator.

Appendix I—Regional Office Staff

Region I: Robin Lawrence, D.D.S., Acting Director, Division of Health Services Delivery, DHHS—Region I, JFK Federal Building #1401, Boston, MA 02203, (617) 565–1456

Region II: Ronald Moss, Director, Division of Health Services Delivery, DHHS—Region II, JFK Federal Building, 26 Federal Plaza, New York, NY 10278, (212) 264–2664

Region III: Bruce Riegel, Director, Division of Health Services Delivery, DHHS—Region III, 3535 Market Street, Philadelphia, PA 19104, (215) 596–1885

Region IV: Marlene Lockwood, Acting Director, Division of Health Services Delivery, DHHS—Region IV, 101 Marietta Tower, Atlanta, GA 30323, (404) 331–0250

Region V: Deborah Willis, M.D., Acting Director, Division of Health Services Delivery, DHHS—Region IV, 105 West Adams Street, 17th Floor, Chicago, IL 60603, (312) 353–1711

Region VI: Frederick Pintz, M.D., Director, Division of Health Services Delivery, DHHS—Region VI, 1200 Main Tower Building, Dallas, TX 75202, (214) 767–6547

Region VII: C. Ray Maddox, Director, Division of Health Services Delivery, DHHS—Region VII, Federal Office Building, 601 East 12th Street, Kansas City, MO 64106, (816) 426–5226

Region VIII: Barbara Bailey, Director, Division of Health Services Delivery, DHHS—Region VIII, Federal Office Building, 1961 Stout Street, Denver, CO 80294, (303) 844–3203

Region IX: Gordon Soares, Director, Division of Health Services Delivery, DHHS—Region IX, 50 United Nations Plaza, San Francisco, CA 94102, (415) 556–3610

Region X: Douglas Woods, Director, Division of Health Services Delivery, DHHS—Region X, Blanchard Plaza, 2201 Sixth Avenue, Seattle, WA 98121, (206) 615–2491

REGION/STATE/SERVICE AREA

	Number of grants	Grant expiration date
Region 01		
Connecticut:	3	
City: Washington		12/31/95
County: Windham		
City: Washington		12/31/95
County: Tolland		
City: Hartford		01/31/96
County: Hartford		
Maine:	6	
City: Ashland		03/31/96
County: Aroostook		
City: Brooks		03/31/96
County: Waldo		
City: Harrington		03/31/96
County: Washington		
City: Manchester		03/31/96
County: Kennebec		
City: Manchester		03/31/96
County: Androscoggin		
City: Manchester		03/31/96
County: Aroostook		
City: Manchester		03/31/96
County: Hancock		
City: Manchester		03/31/96
County: Oxford		
City: Manchester		03/31/96
County: Penobscot		
City: Manchester		03/31/96
County: Waldo		
City: Manchester		03/31/96
County: Washington		
City: Bucksport		03/31/96
County: Hancock		
City: Lubec		12/31/95
County: Washington		
City: Albion		05/31/96
County: Kennebec		
City: Belgrade Lakes		05/31/96
County: Kennebec		
City: Madison		05/31/96
County: Somerset		
City: Richmond		05/31/96
County: Sagadahoc		
City: Coopers Mills		05/31/96
County: Lincoln		
City: Waterville		05/31/96
County: Kennebec		
City: Rangeley		05/31/96
County: Franklin		
City: Rangeley		05/31/96

REGION/STATE/SERVICE AREA—Continued

	Number of grants	Grant expiration date
County: Kennebec		
City: Rangeley		05/31/96
County: Knox		
City: Rangeley		05/31/96
County: Lincoln		
City: Rangeley		05/31/96
County: Sagadahoc		
City: Rangeley		05/31/96
County: Somerset		
City: Rangeley		05/31/96
County: Waldo		
City: Eagle Lake		03/31/96
County: Aroostook		
City: St Francis		03/31/96
County: Aroostook		
City: Kezar Falls		05/31/96
County: Cumberland		
City: Kezar Falls		05/31/96
County: Oxford		
City: Kezar Falls		05/31/96
County: York		
Massachusetts:	4	
City: Dorchester		09/29/95
County: Suffolk		
City: Boston		03/31/96
County: Suffolk		
City: Provincetown		01/31/96
County: Barnstable		
City: Lynn		01/31/96
County: Essex		
New Hampshire:	2	
City: Littleton		06/30/96
County: Coos		
City: Littleton		06/30/96
County: Grafton		
City: Littleton		06/30/96
County: Caledonia		
City: Littleton		06/30/96
County: Orange		
City: Raymond		05/31/96
County: Rockingham		
City: Newmarket		05/31/96
County: Rockingham		
City: Newmarket		05/31/96
County: Strafford		
Rhode Island:	3	
City: Providence		11/30/95
County: Providence		
City: Providence		11/30/95
County: Fox Point		
City: Providence		11/30/95
County: Olneyville		
City: Providence		11/30/95
County: Smith Hill		
City: Providence		11/30/95
County: South Side		
City: Providence		11/30/95
County: West End		
City: Woonsocket		01/31/96
County: Providence		
City: Hope Valley		11/30/95
County: Washington		
Region: 02		
New Jersey:	6	
City: Trenton		03/31/96
County: Mercer		
City: Hammonton		01/31/96
County: Atlantic		
City: Pleasantville		01/31/96

REGION/STATE/SERVICE AREA—Continued

	Number of grants	Grant expiration date
County: Atlantic		
City: Salem		01/31/96
County: Salem		
City: Salem		01/31/96
County: Atlantic		
City: Salem		01/31/96
County: Camden		
City: Salem		01/31/96
County: Cumberland		
City: Plainfield		05/31/96
County: Union		
City: Vineland		12/31/95
County: Cumberland		
City: Bridgeton		12/31/95
County: Cumberland		
City: Bridgeton		12/31/95
County: Salem		
City: Camden		09/29/96
County: Camden		
City: Paterson		12/31/95
County: Passaic		
New York:	16	
City: Buffalo		12/31/95
County: Erie		
City: Albany		03/31/96
County: Albany		
City: Albany		03/31/96
County: Rensselaer		
City: Syracuse		03/31/96
County: Onondaga		
City: Albion		12/31/95
County: Orleans		
City: Brockport		12/31/95
County: Monroe		
City: Brockport		12/31/95
County: Genesee		
City: Brockport		12/31/95
County: Orleans		
City: New York City		11/30/95
County: New York		
City: Rochester		12/31/95
County: Monroe		
City: Newburgh		05/31/96
County: Orange		
City: Pulaski		12/31/95
County: Oswego		
City: Rochester		12/31/95
County: Monroe		
City: New York City		11/30/95
County: Kings		
City: Cincinnatus		11/30/95
County: Cortland		
City: Marathon		11/30/95
County: Cortland		
City: De Ruyter		11/30/95
County: Madison		
City: Cortland		11/30/95
County: Cortland		
City: Cortland		11/30/95
County: Chenango		
City: Cortland		11/30/95
County: Madison		
City: Hammond		06/30/96
County: St. Lawrence		
City: Lafargeville		06/30/96
County: Jefferson		
City: Theresa		06/30/96
County: Jefferson		
City: Theresa		06/30/96
County: St. Lawrence		
City: New York City		03/31/96

REGION/STATE/SERVICE AREA—Continued

	Number of grants	Grant expiration date
County: New York		
City: New York City		03/31/96
County: Kings		
City: New York City		03/31/96
County: Queens		
City: Peekskill		01/31/96
County: Westchester		
City: Beacon		01/31/96
County: Dutchess		
City: Goshen		01/31/96
County: Orange		
City: Goshen		01/31/96
County: Columbia		
City: Goshen		01/31/96
County: Dutchess		
City: Goshen		01/31/96
County: Putnam		
City: Goshen		01/31/96
County: Ulster		
City: Goshen		01/31/96
County: Westchester		
City: Ossining		12/31/95
County: Westchester		
City: Tarreytown		12/31/95
County: Westchester		
City: Tarreytown		05/31/96
County: Bronx		
Puerto Rico:	10	
City: Castaner		03/31/96
County: Lares		
City: Castaner		03/31/96
County: Adjuntas		
City: Castaner		03/31/96
County: Las Marias		
City: Castaner		03/31/96
County: Maricao		
City: Castaner		03/31/96
County: Yauco		
City: Ponce		11/30/95
County: Ponce		
City: Ponce		11/30/95
County: Penuelas		
City: Cidra		01/31/96
County: Cidra		
City: Patillas		03/31/96
County: Patillas		
City: Camuy		01/31/96
County: Camuy		
City: Rincon		03/31/96
County: Rincon		
City: Ciales		01/31/96
County: Ciales		
City: Florida		12/31/95
County: Florida		
City: Barceloneta		05/31/96
County: Barceloneta		
City: Lares		03/31/96
County: Lares		
Virgin Islands:	1	
City: Charlotte Amalie		05/31/96
County: St. Thomas		

Region: 03

Delaware:	2	
City: Dover		03/31/96
County: Kent		
City: Nassawadox		03/31/96
County: Northampton		
City: Nassawadox		03/31/96

REGION/STATE/SERVICE AREA—Continued

	Number of grants	Grant expiration date
County: Kent		
City: Nassawadox		03/31/96
County: Sussex		
City: Nassawadox		03/31/96
County: Caroline		
City: Nassawadox		03/31/96
County: Dorchester		
City: Nassawadox		03/31/96
County: Kent		
City: Nassawadox		03/31/96
County: Queen Anne's		
City: Nassawadox		03/31/96
County: Somerset		
City: Nassawadox		03/31/96
County: Talbot		
City: Nassawadox		03/31/96
County: Wicomico		
City: Nassawadox		03/31/96
County: Worcester		
City: Nassawadox		03/31/96
County: Accomack		
City: Wilmington		06/30/96
County: New Castle		
Maryland:	5	
City: Baltimore		09/29/96
County: Baltimore		
City: Baltimore		09/29/96
County: Baltimore City.		
City: Baltimore		03/31/96
County: Baltimore City.		
City: Princess Anne		05/31/96
County: Somerset		
City: Princess Anne		05/31/96
County: Wicomico		
City: Princess Anne		05/31/96
County: Worcester		
City: Brandywine		06/30/96
County: Charles		
City: Brandywine		06/30/96
County: Prince George's		
City: Broad Top		01/31/96
County: Huntingdon		
City: Broad Top		01/31/96
County: Bedford		
City: Broad Top		01/31/96
County: Fulton		
Pennsylvania:	11	
City: Shickshinny		01/31/96
County: Luzerne		
City: Falls		01/31/96
County: Wyoming		
City: Nuremburg		01/31/96
County: Luzerne		
City: Freeland		01/31/96
County: Luzerne		
City: Edwardsville		01/31/96
County: Luzerne		
City: Wilkes Barre		01/31/96
County: Luzerne		
City: Noxen		01/31/96
County: Luzerne		
City: Noxen		01/31/96
County: Schuylkill		
City: Noxen		01/31/96
County: Wyoming		
City: York		03/31/96
County: York		
City: Carmichaels		01/31/96
County: Greene		
City: California		01/31/96

REGION/STATE/SERVICE AREA—Continued

	Number of grants	Grant expiration date
County: Washington		
City: Bentleyville		01/31/96
County: Washington		
City: Waynesburg		01/31/96
County: Greene		
City: Fredericktown		01/31/96
County: Washington		
City: Republic		01/31/96
County: Fayette		
City: Republic		01/31/96
County: Greene		
City: Republic		01/31/96
County: Washington		
City: Camp Hill		03/31/96
County: Cumberland		
City: Philadelphia		11/30/95
County: Philadelphia		
City: Sinnamahoning		03/31/96
County: Cameron		
City: Emporium		03/31/96
County: Cameron		
City: Coudersport		03/31/96
County: Cameron		
City: Coudersport		03/31/96
County: Potter		
City: Greensboro		03/31/96
County: Greene		
City: Rogersville		03/31/96
County: Greene		
City: Rogersville		03/31/96
County: Fayette		
City: Lancaster		03/31/96
County: Lancaster		
City: Chester		01/31/96
County: Delaware		
City: Brookhaven		01/31/96
County: Delaware		
City: Sharon		01/31/96
County: Mercer		
City: Farrell		01/31/96
County: Mercer		
City: Farrell		01/31/96
County: Lawrence		
City: Philadelphia		01/31/96
County: Philadelphia		
Virginia:	6	
City: St Charles		05/31/96
County: Lee		
City: Stoney Creek		01/31/96
County: Sussex		
City: Stoney Creek		01/31/96
County: Dinwiddie		
City: Newport News		11/30/95
County: Newport News City		
City: Newport News		11/30/95
County: Hampton City		
City: Ivor		03/31/96
County: Southampton		
City: Ivor		03/31/96
County: Isle of Wight		
City: Ewing		03/31/96
County: Lee		
City: Portsmouth		06/30/96
County: Portsmouth City		
West Virginia:	10	
City: Arnett		03/31/96
County: Wyoming		
City: Colcord		03/31/96
County: Boone		
City: Beckley		03/31/96
County: Raleigh		
City: Ravencliff		03/31/96

REGION/STATE/SERVICE AREA—Continued

	Number of grants	Grant expiration date
County: Wyoming		
City: Ravencliff		03/31/96
County: Louisa		
City: Ravencliff		03/31/96
County: Boone		
City: Burton		05/31/96
County: Wetzel		
City: Blacksville		05/31/96
County: Monongalia		
City: Blacksville		05/31/96
County: Greene		
City: Milton		05/31/96
County: Cabell		
City: Harts		05/31/96
County: Lincoln		
City: Wayne		05/31/96
County: Wayne		
City: Cedar Grove		05/31/96
County: Kanawha		
City: Ft Gay		05/31/96
County: Wayne		
City: Huntington		05/31/96
County: Cabell		
City: Huntington		05/31/96
County: Kanawha		
City: Huntington		05/31/96
County: Lincoln		
City: Huntington		05/31/96
County: Logan		
City: Huntington		05/31/96
County: Mingo		
City: Huntington		05/31/96
County: Putnam		
City: Huntington		05/31/96
County: Wayne		
City: Martinsburg		03/31/96
County: Berkeley		
City: Martinsburg		03/31/96
County: Jefferson		
City: Martinsburg		03/31/96
County: Morgan		
City: Union		01/31/96
County: Monroe		
City: Gary		01/31/96
County: McDowell		
City: Man		06/30/96
County: Logan		
City: Man		06/30/96
County: McDowell		
City: Man		06/30/96
County: Mingo		
City: Man		06/30/96
County: Wyoming		
City: Rainelle		11/30/95
County: Greenbrier		
City: Rainelle		11/30/95
County: Fayette		
City: Rainelle		11/30/95
County: Nicholas		
City: Rainelle		11/30/95
County: Summers		
City: Baker		05/31/96
County: Hardy		
City: Baker		05/31/96
County: Hampshire		
City: Grantsville		05/31/96
County: Calhoun		

Region: 04

Alabama:	6	

REGION/STATE/SERVICE AREA—Continued

	Number of grants	Grant expiration date
City: Eutaw		09/29/95
County: Greene		
City: Greensboro		09/29/96
County: Hale		
City: Gilbertown		09/29/96
County: Choctaw		
City: Livingston		09/29/96
County: Sumter		
City: Dempolis		09/29/96
County: Marengo		
City: Dempolis		09/29/96
County: Choctaw		
City: Dempolis		09/29/96
County: Greene		
City: Dempolis		09/29/96
County: Hale		
City: Dempolis		09/29/96
County: Lowndes		
City: Dempolis		09/29/96
County: Sumter		
City: Montgomery		01/31/96
County: Montgomery		
City: Ramer		01/31/96
County: Montgomery		
City: Midway		03/31/96
County: Bullock		
City: Hurtsboro		03/31/96
County: Russell		
City: Tuskegee		03/31/96
County: Macon		
City: Dadeville		03/31/96
County: Tallapoosa		
City: Pittsview		03/31/96
County: Russell		
City: Pittsview		03/31/96
County: Bullock		
City: Pittsview		03/31/96
County: Macon		
City: Pittsview		03/31/96
County: Tallapoosa		
City: Evergreen		11/30/95
County: Conecuh		
City: McKenzie		11/30/95
County: Butler		
City: Red Level		11/30/95
County: Covington		
City: Red Level		11/30/95
County: Butler		
City: Red Level		11/30/95
County: Conecuh		
City: McIntosh		11/30/95
County: Washington		
City: Irvington		11/30/95
County: Mobile		
City: Grand Bay		11/30/95
County: Mobile		
City: Grand Bay		11/30/95
County: Washington		
City: Trenton		05/31/96
County: Jackson		
City: Scottsboro		05/31/96
County: Jackson		
City: Section		05/31/96
County: Jackson		
City: Bryant		05/31/96
County: Jackson		
City: Flat Rock		05/31/96
County: Jackson		
Florida:	9	
City: Wewahitchka		03/31/96
County: Gulf		
City: Panacea		03/31/96

REGION/STATE/SERVICE AREA—Continued

	Number of grants	Grant expiration date
County: Wakulla		
City: Carrabelle		03/31/96
County: Franklin		
City: Carrabelle		03/31/96
County: Gulf		
City: Carrabelle		03/31/96
County: Wakulla		
City: Winter Garden		01/31/96
County: Orange		
City: Groveland		01/31/96
County: Lake		
City: Apopka		01/31/96
County: Orange		
City: Apopka		01/31/96
County: Lake		
City: Naples		03/31/96
County: Collier		
City: Everglades City		03/31/96
County: Collier		
City: Immokalee		03/31/96
County: Collier		
City: Oviedo		12/31/95
County: Seminole		
City: Sanford		12/31/95
County: Seminole		
City: Dover		03/31/96
County: Hillsborough		
City: Ruskin		03/31/96
County: Hillsborough		
City: Tampa		03/31/96
County: Hillsborough		
City: Trenton		05/31/96
County: Gilchrist		
City: Trenton		05/31/96
County: Levy		
City: Dade City		11/30/95
County: Pasco		
City: Lacoochee		11/30/95
County: Pasco		
City: Zehyryhills		11/30/95
County: Pasco		
City: Tallahassee		06/30/96
County: Leon		
City: Lake City		05/31/96
County: Columbia		
Georgia:	9	
City: Morrow		05/31/96
County: Clayton		
City: Decatur		05/31/96
County: Dekalb		
City: Atlanta		05/31/96
County: Dekalb		
City: Atlanta		05/31/96
County: Clayton		
City: Atlanta		05/31/96
County: Fulton		
City: Morganton		11/30/95
County: Fannin		
City: Morganton		11/30/95
County: Union		
City: Gibson		09/29/96
County: Glascock		
City: Crawfordville		09/29/96
County: Taliaferro		
City: Warrenton		09/29/96
County: Warren		
City: Sparta		09/29/96
County: Hancock		
City: Sparta		09/29/96
County: Glascock		
City: Sparta		09/29/96

REGION/STATE/SERVICE AREA—Continued

	Number of grants	Grant expiration date
County: Taliaferro		
City: Sparta		09/29/96
County: Warren		
City: Richland		01/31/96
County: Stewart		
City: Richland		01/31/96
County: Sumter		
City: Richland		01/31/96
County: Webster		
City: Albany		05/31/96
County: Dougherty		
City: Leesburg		05/31/96
County: Lee		
City: Newton		05/31/96
County: Baker		
City: Albany		05/31/96
County: Baker		
City: Albany		05/31/96
County: Lee		
City: Barnesville		01/31/96
County: Pike		
City: Zebulon		01/31/96
County: Pike		
City: Zebulon		01/31/96
County: Lamar		
City: Waycross		06/30/96
County: Ware		
City: Atlanta		05/31/96
County: Fulton		
City: Reidsville		05/31/96
County: Tattnall		
City: Lyons		05/31/96
County: Toombs		
City: Metter		05/31/96
County: Candler		
City: Alamo		05/31/96
County: Wheeler		
City: Ellaville		05/31/96
County: Schley		
City: Fort Valley		05/31/96
County: Peach		
City: Douglas		05/31/96
County: Coffee		
City: Douglas		05/31/96
County: Bulloch		
City: Douglas		05/31/96
County: Candler		
City: Douglas		05/31/96
County: Peach		
City: Douglas		05/31/96
County: Schley		
City: Douglas		05/31/96
County: Tattnall		
City: Douglas		05/31/96
County: Toombs		
City: Douglas		05/31/96
County: Wheeler		
City: Swainsboro		06/30/96
County: Emanuel		
Kentucky:	5	
City: Salyersville		01/31/96
County: Magoffin		
City: Grethel		01/31/96
County: Floyd		
City: Prestonsburg		01/31/96
County: Floyd		
City: Prestonsburg		01/31/96
County: Magoffin		
City: McKee		05/31/96
County: Jackson		
City: Louisville		11/30/95

REGION/STATE/SERVICE AREA—Continued

	Number of grants	Grant expiration date
County: Jefferson		
City: Fairdale		11/30/95
County: Jefferson		
City: Greenville		06/30/96
County: Muhlenberg		
City: Lexington		01/31/96
County: Fayette		
Mississippi:	7	
City: Utica		11/30/95
County: Hinds		
City: Jackson		11/30/95
County: Hinds		
City: Mound Bayou		11/30/95
County: Bolivar		
City: Greenville		11/30/95
County: Washington		
City: Greenville		11/30/95
County: Bolivar		
City: Greenville		11/30/95
County: Sunflower		
City: Byhalia		03/31/96
County: Marshall		
City: Byhalia		03/31/96
County: DeSoto		
City: Byhalia		03/31/96
County: Tate		
City: Leakesville		01/31/96
County: Greene		
City: State Line		01/31/96
County: Greene		
City: Tunica		09/29/96
County: Tunica		
City: Clarksdale		09/29/96
County: Coahoma		
City: Clarksdale		09/29/96
County: Tallahatchie		
City: Clarksdale		09/29/96
County: Tate		
City: Clarksdale		09/29/96
County: Tunica		
City: Shubuta		05/31/96
County: Clarke		
City: Shubuta		05/31/96
County: Jasper		
City: Shubuta		05/31/96
County: Wayne		
City: Ashland		09/29/96
County: Benton		
City: Ashland		09/29/96
County: Alcorn		
City: Ashland		09/29/96
County: Marshall		
City: Ashland		09/29/96
County: Tippah		
City: Ashland		09/29/96
County: Union		
City: Ashland		09/29/96
County: Wayne		
North Carolina:	10	
City: Newton Grove		03/31/96
County: Sampson		
City: Newton Grove		03/31/96
County: Harnett		
City: Newton Grove		03/31/96
County: Johnston		
City: Raleigh		11/30/95
County: Wake		
City: Apex		11/30/95
County: Wake		
City: Warreton		11/30/95
County: Warren		
City: Manson		11/30/95

REGION/STATE/SERVICE AREA—Continued

	Number of grants	Grant expiration date
County: Warren		
City: Manson		11/30/95
County: Vance		
City: Aurora		11/30/95
County: Beaufort		
City: Aurora		11/30/95
County: Pamlico		
City: Yanceyville		09/29/96
County: Caswell		
City: Faison		12/31/95
County: Duplin		
City: Faison		12/31/95
County: Pender		
City: Faison		12/31/95
County: Sampson		
City: Faison		12/31/95
County: Wayne		
City: Wade		01/31/96
County: Cumberland		
City: Wade		01/31/96
County: Bladen		
City: Charlotte		03/31/96
County: Mecklenburg		
City: Kinston		11/30/95
County: Lenoir		
City: Windsor		03/31/96
County: Bertie		
City: Lewiston		03/31/96
County: Bertie		
South Carolina:	4	
City: Sheldon		05/31/96
County: Beaufort		
City: Hardeeville		05/31/96
County: Jasper		
City: ST. Helena Island		05/31/96
County: Beaufort		
City: Ridgeland		05/31/96
County: Jasper		
City: Ridgeland		05/31/96
County: Beaufort		
City: Fairfax		03/31/96
County: Allendale		
City: Ehrhardt		03/31/96
County: Bamberg		
City: Ehrhardt		03/31/96
County: Allendale		
City: EhrHardt		03/31/96
County: Hampton		
City: Mcbee		09/29/96
County: Chesterfield		
City: Jefferson		09/29/96
County: Chesterfield		
City: Jefferson		09/29/96
County: Kershaw		
City: Bishopville		09/29/96
County: Lee		
City: Clio		09/29/96
County: Marlboro		
City: Society Hill		09/29/96
County: Darlington		
City: Cheraw		09/29/96
County: Chesterfield		
City: Cheraw		09/29/96
County: Darlington		
City: Cheraw		09/29/96
County: Dillon		
City: Cheraw		09/29/96
County: Lee		
City: Cheraw		09/29/96
County: Marlboro		
Tennessee:	7	

REGION/STATE/SERVICE AREA—Continued

	Number of grants	Grant expiration date
City: Decatur		01/31/96
County: Meigs		
City: Dayton		01/31/96
County: Rhea		
City: Benton		01/31/96
County: Polk		
City: Coalmont		01/31/96
County: Grundy		
City: Pikesville		01/31/96
County: Bledsoe		
City: Pikesville		01/31/96
County: Meigs		
City: Pikesville		01/31/96
County: Polk		
City: Pikesville		01/31/96
County: Rhea		
City: Chattanooga		11/30/95
County: Hamilton		
City: Roan Mountain		03/31/96
County: Carter		
City: Bulls Gap		03/31/96
County: Hawkins		
City: Bluff City		03/31/96
County: Sullivan		
City: Sneedville		03/31/96
County: Hancock		
City: Rogersville		03/31/96
County: Hawkins		
City: Erwin		03/31/96
County: Unicoi		
City: Mountain City		03/31/96
County: Johnson		
City: Kingston		03/31/96
County: McMinn		
City: Flag Pond		03/31/96
County: Unicoi		
City: Flag Pond		03/31/96
County: Johnson		
City: Flag Pond		03/31/96
County: Sullivan		
City: Nashville		01/31/96
County: Davidson		
City: Huntsville		05/31/96
County: Scott		
City: Oneida		05/31/96
County: Scott		
City: Robbins		05/31/96
County: Scott		
City: Robbins		05/31/96
County: Campbell		
City: Frakes		01/31/96
County: Bell		
City: Jellico		01/31/96
County: Claiborne		
City: Jacksboro		01/31/96
County: Campbell		
City: Williamsburg		01/31/96
County: Whitley		
City: Williamsburg		01/31/96
County: Bell		
City: Williamsburg		01/31/96
County: Campbell		
City: Williamsburg		01/31/96
County: Claiborne		
City: Tiptonville		01/31/96
County: Lake		
City: Ridgely		01/31/96

REGION/STATE/SERVICE AREA—Continued

	Number of grants	Grant expiration date
County: Lake		
Region: 05		
Illinois:	9	
City: Tamms		05/31/96
County: Alexander		
City: Cairo		05/31/96
County: Alexander		
City: Pulaski		05/31/96
County: Pulaski		
City: Pulaski		05/31/96
County: Alexander		
City: Pulaski		05/31/96
County: Johnson		
City: Pulaski		05/31/96
County: Union		
City: Cobden		03/31/96
County: Jackson		
City: Carbondale		03/31/96
County: Jackson		
City: Grand Tower		03/31/96
County: Jackson		
City: Carterville		03/31/96
County: Williamson		
City: Carterville		03/31/96
County: Alexander		
City: Carterville		03/31/96
County: Franklin		
City: Carterville		03/31/96
County: Jackson		
City: Carterville		03/31/96
County: Perry		
City: Carterville		03/31/96
County: Union		
City: Champaign		11/30/95
County: Champaign		
City: Oquawka		12/31/95
County: Henderson		
City: Biggsville		12/31/95
County: Henderson		
City: Biggsville		12/31/95
County: Mercer		
City: Biggsville		12/31/95
County: Warren		
City: Rockford		11/30/95
County: Winnebago		
City: Decatur		05/31/96
County: Macon		
City: Chicago		09/29/96
County: Cook		
Indiana	1	
City: Kokomo		05/31/96
County: Howard		
City: Marion		05/31/96
County: Grant		
City: South Bend		05/31/96
County: St Joseph		
City: Indianapolis		05/31/96
County: Marion		
City: Bluffton		05/31/96
County: Wells		
City: Elwood		05/31/96
County: Grant		
City: Elwood		05/31/96
County: Adams		
City: Elwood		05/31/96
County: Blackford		
City: Elwood		05/31/96
County: Carroll		
City: Elwood		05/31/96

REGION/STATE/SERVICE AREA—Continued

	Number of grants	Grant expiration date
County: Cass		
City: Elwood		05/31/96
County: Clinton		
City: Elwood		05/31/96
County: Delaware		
City: Elwood		05/31/96
County: Elkhart		
City: Elwood		05/31/96
County: Howard		
City: Elwood		05/31/96
County: Huntington		
City: Elwood		05/31/96
County: Jay		
City: Elwood		05/31/96
County: Kosciusko		
City: Elwood		05/31/96
County: La Porte		
City: Elwood		05/31/96
County: Madison		
City: Elwood		05/31/96
County: Marshall		
City: Elwood		05/31/96
County: Miami		
City: Elwood		05/31/96
County: Randolph		
City: Elwood		05/31/96
County: St. Joseph		
City: Elwood		05/31/96
County: Starke		
City: Elwood		05/31/96
County: Tipton		
City: Elwood		05/31/96
County: Wabash		
City: Elwood		05/31/96
County: Wells		
City: Elwood		05/31/96
County: Van Wert		
Michigan:	9	
City: Baldwin		09/29/96
County: Lake		
City: Baldwin		09/29/96
County: Newaygo		
City: Roscommon		12/31/95
County: Roscommon		
City: Houghton Lake		12/31/95
County: Roscommon		
City: Houghton Lake		12/31/95
County: Crawford		
City: Houghton Lake		12/31/95
County: Missaukee		
City: Saginaw		09/29/96
County: Saginaw		
City: Caro		09/29/96
County: Tuscola		
City: Greenville		09/29/96
County: Montcalm		
City: Linwood		09/29/96
County: Bay		
City: Saginaw		09/29/96
County: Arenac		
City: Saginaw		09/29/96
County: Bay		
City: Saginaw		09/29/96
County: Genesee		
City: Saginaw		09/29/96
County: Lapeer		
City: Saginaw		09/29/96
County: Montcalm		
City: Saginaw		09/29/96
County: Tuscola		
City: Sparta		03/31/96

REGION/STATE/SERVICE AREA—Continued

	Number of grants	Grant expiration date
County: Kent		
City: Sparta		03/31/96
County: Muskegon		
City: Sparta		03/31/96
County: Newaygo		
City: Sparta		03/31/96
County: Ottawa		
City: East Jordan		03/31/96
County: Charlevoix		
City: East Jordan		03/31/96
County: Antrim		
City: Grand Rapids		03/31/96
County: Kent		
City: Algonac		05/31/96
County: St. Clair		
City: New Haven		05/31/96
County: Macomb		
City: New Haven		05/31/96
County: St. Clair		
City: Hillman		01/31/96
County: Montmorency		
City: Hillman		01/31/96
County: Alpena		
City: Hillman		01/31/96
County: Presque Isle		
City: Flint		03/31/96
County: Genesee		
City: Flint		03/31/96
County: Kalamazoo		
Minnesota:	3	
City: Ada		09/29/96
County: Norman		
City: Crookston		09/29/96
County: Polk		
City: Breckenridge		09/29/96
County: Wilkin		
City: Montevideo		09/29/96
County: Chippewa		
City: Olivia		09/29/96
County: Renville		
City: Dodge Center		09/29/96
County: Steele		
City: Moorhead		09/29/96
County: Clay		
City: Moorhead		09/29/96
County: Brown		
City: Moorhead		09/29/96
County: Chippewa		
City: Moorhead		09/29/96
County: Dodge		
City: Moorhead		09/29/96
County: Freeborn		
City: Moorhead		09/29/96
County: Grant		
City: Moorhead		09/29/96
County: Hennepin		
City: Moorhead		09/29/96
County: Kandiyohi		
City: Moorhead		09/29/96
County: Kittson		
City: Moorhead		09/29/96
County: Lac Qui Parle		
City: Moorhead		09/29/96
County: McLeod		
City: Moorhead		09/29/96
County: Marshall		
City: Moorhead		09/29/96
County: Meeker		
City: Moorhead		09/29/96
County: Nicollet		
City: Moorhead		09/29/96

REGION/STATE/SERVICE AREA—Continued

	Number of grants	Grant expiration date
County: Norman		
City: Moorhead		09/29/96
County: Otter Tail		
City: Moorhead		09/29/96
County: Polk		
City: Moorhead		09/29/96
County: Redwood		
City: Moorhead		09/29/96
County: Renville		
City: Moorhead		09/29/96
County: Sibley		
City: Moorhead		09/29/96
County: Steele		
City: Moorhead		09/29/96
County: Wilkin		
City: Moorhead		09/29/96
County: Yellow Medicine		
City: Minneapolis		03/31/96
County: Hennepin		
Ohio:	10	
City: Freeport		01/31/96
County: Harrison		
City: Woodsfield		01/31/96
County: Monroe		
City: Barnesville		01/31/96
County: Belmont		
City: Barnesville		01/31/96
County: Guernsey		
City: Barnesville		01/31/96
County: Harrison		
City: Barnesville		01/31/96
County: Monroe		
City: Barnesville		01/31/96
County: Tuscarawas		
City: Cleveland		09/29/96
County: Cuyahoga		
City: Greenville		03/31/96
County: Darke		
City: Ripley		12/31/95
County: Brown		
City: New Richmond		12/31/95
County: Clermont		
City: Mt. Orab		12/31/95
County: Brown		
City: Peebles		12/31/95
County: Adams		
City: Georgetown		12/31/95
County: Brown		
City: Batavia		12/31/95
County: Clermont		
City: Cincinnati		12/31/95
County: Hamilton		
City: Batavia		12/31/95
County: Adams		
City: Batavia		12/31/95
County: Brown		
City: Batavia		12/31/95
County: Fayette		
City: Batavia		12/31/95
County: Highland		
City: Batavia		12/31/95
County: Meigs		
City: Batavia		12/31/95
County: Pike		
City: Batavia		12/31/95
County: Ross		
City: Batavia		12/31/95
County: Scioto		
City: Cincinnati		12/31/95
County: Hamilton		
City: Lincoln Heights		12/31/95

REGION/STATE/SERVICE AREA—Continued

	Number of grants	Grant expiration date
County: Hamilton		
City: Coal Grove		05/31/96
County: Lawrence		
City: South Point		05/31/96
County: Lawrence		
City: Ironton		05/31/96
County: Lawrence		
City: Toledo		11/30/95
County: Lucas		
City: New Lexington		01/31/96
County: Perry		
City: McArthur		01/31/96
County: Vinton		
City: Chillicothe		01/31/96
County: Ross		
City: Chillicothe		01/31/96
County: Athens		
City: Chillicothe		01/31/96
County: Jackson		
City: Chillicothe		01/31/96
County: Perry		
City: Chillicothe		01/31/96
County: Pike		
City: Chillicothe		01/31/96
County: Vinton		
City: Piketon		01/31/96
County: Pike		
City: Piketon		01/31/96
County: Ross		
City: Lisbon		12/31/95
County: Columbiana		
Wisconsin:	5	
City: Marshfield		05/31/96
County: Wood		
City: Minocqua		05/31/96
County: Oneida		
City: Ladysmith		05/31/96
County: Rusk		
City: Rice Lake		05/31/96
County: Barron		
City: Park Falls		05/31/96
County: Price		
City: Park Falls		05/31/96
County: Ashland		
City: Park Falls		05/31/96
County: Chippewa		
City: Park Falls		05/31/96
County: Clark		
City: Park Falls		05/31/96
County: Iron		
City: Park Falls		05/31/96
County: Jackson		
City: Park Falls		05/31/96
County: Lincoln		
City: Park Falls		05/31/96
County: Marathon		
City: Park Falls		05/31/96
County: Portage		
City: Park Falls		05/31/96
County: Rusk		
City: Park Falls		05/31/96
County: Sawyer		
City: Park Falls		05/31/96
County: Taylor		
City: Park Falls		05/31/96
County: Wood		
City: Lakewood		01/31/96
County: Oconto		
City: Lakewood		01/31/96
County: Forest		
City: Lakewood		01/31/96

REGION/STATE/SERVICE AREA—Continued

	Number of grants	Grant expiration date
County: Marinette		
City: Milwaukee		12/31/95
County: Milwaukee		
City: Wausau		06/30/96
County: Marathon		
City: Kenosha		06/30/96
County: Kenosha		
Region: 6		
Arkansas:	5	
City: Madison		11/30/95
County: Lee		
City: Wabash		11/30/95
County: Phillips		
City: Marianna		11/30/95
County: Lee		
City: Marianna		11/30/95
County: Phillips		
City: Marianna		11/30/95
County: St. Francis		
City: College Station		05/31/96
County: Pulaski		
City: Altheimer		05/31/96
County: Jefferson		
City: Redfield		05/31/96
County: Jefferson		
City: Rison		05/31/96
County: Cleveland		
City: Pine Bluff		05/31/96
County: Jefferson		
City: Pine Bluff		05/31/96
County: Cleveland		
City: Pine Bluff		05/31/96
County: Grant		
City: Pine Bluff		05/31/96
County: Pulaski		
City: Clarendon		05/31/96
County: Monroe		
City: Devalls Bluff		05/31/96
County: Monroe		
City: Brinkley		05/31/96
County: Monroe		
City: Holly Grove		05/31/96
County: Monroe		
City: Holly Grove		05/31/96
County: Prairie		
City: Strong		03/31/96
County: Union		
City: Bradley		03/31/96
County: Lafayette		
City: Lewisville		03/31/96
County: Lafayette		
City: Hampton		03/31/96
County: Calhoun		
City: Bearden		03/31/96
County: Bradley		
City: Bearden		03/31/96
County: Calhoun		
City: Bearden		03/31/96
County: Lafayette		
City: Bearden		03/31/96
County: Ouachita		
City: Bearden		03/31/96
County: Union		
City: Hope		03/31/96
County: Hempstead		
City: Wilmot		01/31/96
County: Ashley		
City: Portland		01/31/96

REGION/STATE/SERVICE AREA—Continued

	Number of grants	Grant expiration date
County: Ashley		
City: Eudora		01/31/96
County: Chicot		
City: Dermott		01/31/96
County: Drew		
City: Dermott		01/31/96
County: Ashley		
City: Dermott		01/31/96
County: Chicot		
Louisiana:	4	
City: Tallulah		01/31/96
County: Madison		
City: Leesville		01/31/96
County: Vernon		
City: Natchitoches		01/31/96
County: Natchitoches		
City: Logansport		01/31/96
County: De Soto		
City: Natchitoches		01/31/96
County: De Soto		
City: Natchitoches		01/31/96
County: Madison		
City: Natchitoches		01/31/96
County: Tensas		
City: Natchitoches		01/31/96
County: Vernon		
City: Baton Rouge		01/31/96
County: East Baton Rouge		
City: Sicily Island		12/31/95
County: Catahoula		
City: St. Gabriel		06/30/96
County: Iberville		
City: St. Gabriel		06/30/96
County: Ascension		
New Mexico:	6	
City: Espanola		05/31/96
County: Rio Arriba		
City: Las Vegas		05/31/96
County: San Miguel		
City: Riberia		05/31/96
County: San Miguel		
City: Embudo		05/31/96
County: Rio Arriba		
City: Wagon Mound		05/31/96
County: Mora		
City: Las Vegas		05/31/96
County: San Miguel		
City: Roy		05/31/96
County: Harding		
City: Penasco		05/31/96
County: Taos		
City: Coyote		05/31/96
County: Rio Arriba		
City: Anton Chico		05/31/96
County: Guadalupe		
City: Truchas		05/31/96
County: Rio Arriba		
City: Espanola		05/31/96
County: Rio Arriba		
City: Espanola		05/31/96
County: Guadalupe		
City: Espanola		05/31/96
County: Mora		
City: Espanola		05/31/96
County: Rio Arriba		
City: Espanola		05/31/96
County: Santa Fe		
City: Espanola		05/31/96
County: Taos		
City: Hatch		03/31/96
County: Dona Ana		
City: Truth or Consequences		03/31/96

REGION/STATE/SERVICE AREA—Continued

	Number of grants	Grant expiration date
County: Sierra		
City: Portales		01/31/96
County: Roosevelt		
City: Clovis		01/31/96
County: Curry		
City: Clovis		01/31/96
County: Roosevelt		
City: Roswell		01/31/96
County: Chaves		
City: Anthony		05/31/96
County: Dona Ana		
City: Sunland Park		05/31/96
County: Dona Ana		
City: Mesilla		05/31/96
County: Dona Ana		
City: San Miquel		05/31/96
County: Dona Ana		
City: Estancia		12/31/95
County: Torrance		
City: Cuba		12/31/95
County: Sandoval		
City: Farmington		12/31/95
County: San Juan		
City: Questa		12/31/95
County: Taos		
City: Jemez Springs		12/31/95
County: Sandoval		
City: Santa Fe		12/31/95
County: Santa Fe		
City: Carlsbad		12/31/95
County: Eddy		
City: Loving		12/31/95
County: Eddy		
City: Counseler		12/31/95
County: Sandoval		
City: Ojo Encino		12/31/95
County: Sandoval		
City: Torreon		12/31/95
County: Sandoval		
City: Reserve		12/31/95
County: Catron		
City: Reserve		12/31/95
County: Eddy		
City: Reserve		12/31/95
County: McKinley		
City: Reserve		12/31/95
County: Sandoval		
City: Reserve		12/31/95
County: San Juan		
City: Reserve		12/31/95
County: Taos		
City: Reserve		12/31/95
County: Torrance		
City: Grants		12/31/95
County: Valencia		
City: Santa Fe		05/31/96
County: Santa Fe		
Oklahoma:	3	
City: Oklahoma City		01/31/96
County: Oklahoma		
City: Oklahoma City		06/30/96
County: Oklahoma		
City: Tulsa		03/31/96
County: Tulsa		
Texas	8	
City: Dallas		05/31/96
County: Dallas		
City: Eagle Pass		05/31/96
County: Maverick		
City: Brackettville		05/31/96
County: Kinney		
City: Del Rio		05/31/96

REGION/STATE/SERVICE AREA—Continued

	Number of grants	Grant expiration date
County: Val Verde		
City: Eagle Pass		05/31/96
County: Kinney		
City: Eagle Pass		05/31/96
County: Val Verde		
City: Dallas		11/30/95
County: Dallas		
City: Newton		03/31/96
County: Newton		
City: Newton		03/31/96
County: Jasper		
City: El Paso		11/30/95
County: El Paso		
City: San Elizario		11/30/95
County: El Paso		
City: Nacogdoches		05/31/96
County: Nacogdoches		
City: Pleasanton		01/31/96
County: Atascosa		
City: Houston		06/30/96
County: Harris		
Region: 07		
Iowa	3	
City: Des Moines		01/31/96
County: Polk		
City: Des Moines		01/31/96
County: Adair		
City: Des Moines		01/31/96
County: Adams		
City: Des Moines		01/31/96
County: Allamakee		
City: Des Moines		01/31/96
County: Appanoose		
City: Des Moines		01/31/96
County: Audubon		
City: Des Moines		01/31/96
County: Benton		
City: Des Moines		01/31/96
County: Black Hawk		
City: Des Moines		01/31/96
County: Boone		
City: Des Moines		01/31/96
County: Bremer		
City: Des Moines		01/31/96
County: Buchanan		
City: Des Moines		01/31/96
County: Buena Vista		
City: Des Moines		01/31/96
County: Butler		
City: Des Monies		01/31/96
County: Calhoun		
City: Des Moines		01/31/96
County: Carroll		
City: Des Monies		01/31/96
County: Cass		
City: Des Moines		01/31/96
County: Cedar		
City: Des Moines		01/31/96
County: Cerro Gordo		
City: Des Moines		01/31/96
County: Cherokee		
City: Des Moines		01/31/96
County: Chickasaw		
City: Des Moines		01/31/96
County: Clarke		
City: Des Moines		01/31/96
County: Clay		
City: Des Moines		01/31/96

REGION/STATE/SERVICE AREA—Continued

	Number of grants	Grant expiration date
County: Clayton		
City: Des Moines		01/31/96
County: Clinton		
City: Des Moines		01/31/96
County: Crawford		
City: Des Moines		01/31/96
County: Dallas		
City: Des Moines		01/31/96
County: Davis		
City: Des Moines		01/31/96
County: Decatur		
City: Des Moines		01/31/96
County: Delaware		
City: Des Moines		01/31/96
County: Des Moines		
City: Des Moines		01/31/96
County: Dickinson		
City: Des Moines		01/31/96
County: Dubuque		
City: Des Moines		01/31/96
County: Emmet		
City: Des Moines		01/31/96
County: Fayette		
City: Des Moines		01/31/96
County: Floyd		
City: Des Moines		01/31/96
County: Franklin		
City: Des Moines		01/31/96
County: Fremont		
City: Des Moines		01/31/96
County: Greene		
City: Des Moines		01/31/96
County: Grundy		
City: Des Moines		01/31/96
County: Guthrie		
City: Des Moines		01/31/96
County: Hamilton		
City: Des Moines		01/31/96
County: Hancock		
City: Des Moines		01/31/96
County: Hardin		
City: Des Moines		01/31/96
County: Harrison		
City: Des Moines		01/31/96
County: Henry		
City: Des Moines		01/31/96
County: Howard		
City: Des Moines		01/31/96
County: Humboldt		
City: Des Moines		01/31/96
County: Ida		
City: Des Moines		01/31/96
County: Iowa		
City: Des Moines		01/31/96
County: Jackson		
City: Des Moines		01/31/96
County: Jasper		
City: Des Moines		01/31/96
County: Jefferson		
City: Des Moines		01/31/96
County: Johnson		
City: Des Moines		01/31/96
County: Jones		
City: Des Moines		01/31/96
County: Keokuk		
City: Des Moines		01/31/96
County: Kossuth		
City: Des Moines		01/31/96
County: Lee		
City: Des Moines		01/31/96
County: Linn		
City: Des Moines		01/31/96

REGION/STATE/SERVICE AREA—Continued

	Number of grants	Grant expiration date
County: Louisa		
City: Des Moines		01/31/96
County: Lucas		
City: Des Moines		01/31/96
County: Lyon		
City: Des Moines		01/31/96
County: Madison		
City: Des Moines		01/31/96
County: Mahaska		
City: Des Moines		01/31/96
County: Marion		
City: Des Moines		01/31/96
County: Marshall		
City: Des Moines		01/31/96
County: Mills		
City: Des Moines		01/31/96
County: Mitchell		
City: Des Moines		01/31/96
County: Monona		
City: Des Moines		01/31/96
County: Monroe		
City: Des Moines		01/31/96
County: Montgomery		
City: Des Moines		01/31/96
County: Muscatine		
City: Des Moines		01/31/96
County: O'Brien		
City: Des Moines		01/31/96
County: Osceola		
City: Des Moines		01/31/96
County: Page		
City: Des Moines		01/31/96
County: Palo Alto		
City: Des Moines		01/31/96
County: Plymouth		
City: Des Moines		01/31/96
County: Pocahontas		
City: Des Moines		01/31/96
County: Polk		
City: Des Moines		01/31/96
County: Pottawattamie		
City: Des Moines		01/31/96
County: Poweshiek		
City: Des Moines		01/31/96
County: Ringgold		
City: Des Moines		01/31/96
County: Sac		
City: Des Moines		01/31/96
County: Scott		
City: Des Moines		01/31/96
County: Shelby		
City: Des Moines		01/31/96
County: Sioux		
City: Des Moines		01/31/96
County: Story		
City: Des Moines		01/31/96
County: Tama		
City: Des Moines		01/31/96
County: Taylor		
City: Des Moines		01/31/96
County: Union		
City: Des Moines		01/31/96
County: Van Buren		
City: Des Moines		01/31/96
County: Wapello		
City: Des Moines		01/31/96
County: Warren		
City: Des Moines		01/31/96
County: Washington		
City: Des Moines		01/31/96
County: Wayne		
City: Des Moines		01/31/96

REGION/STATE/SERVICE AREA—Continued

	Number of grants	Grant expiration date
County: Webster		
City: Des Moines		01/31/96
County: Winnebago		
City: Des Moines		01/31/96
County: Winneshiek		
City: Des Moines		01/31/96
County: Woodbury		
City: Des Moines		01/31/96
County: Worth		
City: Des Moines		01/31/96
County: Wright		
City: Davenport		01/31/96
County: Scott		
City: Waterloo		01/31/96
County: Black Hawk		
Kansas:	1	
City: Wichita		03/31/96
County: Sedgwick		
Missouri:	4	
City: Kansas City		03/31/96
County: Jackson		
City: Kansas City		03/31/96
County: Jackson		
City: St. Louis		01/31/96
County: St. Louis City		
City: Mound City		01/31/96
County: Holt		
City: Mound City		01/31/96
County: Atchison		
City: Mound City		01/31/96
County: Gentry		
Nebraska:	1	
City: Omaha		01/31/96
County: Douglas		
Region: 08		
Colorado:	9	
City: Ft Morgan		12/31/95
County: Morgan		
City: Delta		12/31/95
County: Delta		
City: Denver		12/31/95
County: Denver		
City: Denver		12/31/95
County: Adams		
City: Denver		12/31/95
County: Alamosa		
City: Denver		12/31/95
County: Baca		
City: Denver		12/31/95
County: Bent		
City: Denver		12/31/95
County: Boulder		
City: Denver		12/31/95
County: Cheyenne		
City: Denver		12/31/95
County: Conejos		
City: Denver		12/31/95
County: Costilla		
City: Denver		12/31/95
County: Crowley		
City: Denver		12/31/95
County: Delta		
City: Denver		12/31/95
County: Kiowa		
City: Denver		12/31/95
County: Kit Carson		
City: Denver		12/31/95
County: Larimer		
City: Denver		12/31/95

REGION/STATE/SERVICE AREA—Continued

	Number of grants	Grant expiration date
County: Logan		
City: Denver		12/31/95
County: Mesa		
City: Denver		12/31/95
County: Montrose		
City: Denver		12/31/95
County: Morgan		
City: Denver		12/31/95
County: Otero		
City: Denver		12/31/95
County: Phillips		
City: Denver		12/31/95
County: Prowers		
City: Denver		12/31/95
County: Pueblo		
City: Denver		12/31/95
County: Rio Grande		
City: Denver		12/31/95
County: Saguache		
City: Denver		12/31/95
County: Sedgwick		
City: Denver		12/31/95
County: Washington		
City: Denver		12/31/95
County: Weld		
City: Denver		12/31/95
County: Yuma		
City: Center		11/30/95
County: Saguache		
City: Antonito		11/30/95
County: Conejos		
City: San Luis		11/30/95
County: Costilla		
City: Alamosa		11/30/95
County: Alamosa		
City: Monte Vista		11/30/95
County: Rio Grande		
City: Del Norte		11/30/95
County: Rio Grande		
City: Del Norte		11/30/95
County: Alamosa		
City: Del Norte		11/30/95
County: Conejos		
City: Del Norte		11/30/95
County: Costilla		
City: Del Norte		11/30/95
County: Mineral		
City: Del Norte		11/30/95
County: Saguache		
City: Denver		12/31/95
County: Denver		
City: Pueblo		05/31/96
County: Pueblo		
City: Rocky Ford		12/31/95
County: Otero		
City: Rocky Ford		12/31/95
County: Bent		
City: Las Animas		12/31/95
County: Bent		
City: Rocky Ford		12/31/95
County: Crowley		
City: Black Hawk		05/31/96
County: Gilpin		
City: Black Hawk		05/31/96
County: Boulder		
City: Colorado Springs		12/31/95
County: El Paso		
City: Lafayette		01/31/96
County: Boulder		
City: Thornton		01/31/96
County: Adams		
City: Thornton		01/31/96

REGION/STATE/SERVICE AREA—Continued

	Number of grants	Grant expiration date
County: Boulder		
City: Delta		06/30/96
County: Delta		
City: Delta		06/30/96
County: Montrose		
City: Montrose		06/30/96
County: Montrose		
Montana:	3	
City: Billings		01/31/96
County: Yellowstone		
City: Billings		01/31/96
County: Big Horn		
City: Billings		01/31/96
County: Carbon		
City: Billings		01/31/96
County: Carter		
City: Billings		01/31/96
County: Custer		
City: Billings		01/31/96
County: Daniels		
City: Billings		01/31/96
County: Dawson		
City: Billings		01/31/96
County: Fallon		
City: Billings		01/31/96
County: Garfield		
City: Billings		01/31/96
County: McCone		
City: Billings		01/31/96
County: Powder River		
City: Billings		01/31/96
County: Prairie		
City: Billings		01/31/96
County: Richland		
City: Billings		01/31/96
County: Roosevelt		
City: Billings		01/31/96
County: Rosebud		
City: Billings		01/31/96
County: Sheridan		
City: Billings		01/31/96
County: Stillwater		
City: Billings		01/31/96
County: Sweet Grass		
City: Billings		01/31/96
County: Treasure		
City: Billings		01/31/96
County: Valley		
City: Billings		01/31/96
County: Wibaux		
City: Billings		03/31/96
County: Yellowstone		
City: Helena		06/30/96
County: Lewis and Clark		
South Dakota:	3	
City: Lake Preston		11/30/95
County: Kingsbury		
City: Howard		11/30/95
County: Miner		
City: Howard		11/30/95
County: Clark		
City: Howard		11/30/95
County: Hamlin		
City: Howard		11/30/95
County: Kingsbury		
City: Howard		11/30/95
County: Lake		
City: Clark		11/30/95
County: Clark		
City: Madison		11/30/95
County: Lake		
City: Sioux Falls		12/31/95

REGION/STATE/SERVICE AREA—Continued

	Number of grants	Grant expiration date
County: Minnehaha		
City: Wessington Springs		01/31/96
County: Jerauld		
City: Wessington Springs		01/31/96
County: Aurora		
City: Wessington Springs		01/31/96
County: Sanborn		
Utah:	1	
City: Green River		05/31/96
County: Emery		
City: Green River		05/31/96
County: Grand		
City: Moab		05/31/96
County: Grand		
Wyoming:	2	
City: Worland		01/31/96
County: Washakie		
City: Worland		01/31/96
County: Big Horn		
City: Worland		01/31/96
County: Fremont		
City: Worland		01/31/96
County: Park		
City: Guernsey		01/31/96
County: Platte		
City: Guernsey		01/31/96
County: Goshen		
Region: 09		
Arizona:	6	
City: Maricopa		05/31/96
County: Pinal		
City: Casa Grande		05/31/96
County: Pinal		
City: Nogales		05/31/96
County: Santa Cruz		
City: Patagonia		05/31/96
County: Santa Cruz		
City: Tucson		12/31/95
County: Pima		
City: Surprise		11/30/95
County: Maricopa		
City: Queen Creek		11/30/95
County: Maricopa		
City: Buckeye		11/30/95
County: Maricopa		
City: Phoenix		09/29/96
County: Maricopa		
City: Greenvalley		01/31/96
County: Pima		
California:	12	
City: East Palo Alto		03/31/96
County: San Mateo		
City: Salinas		12/31/95
County: Monterey		
City: Salinas		12/31/95
County: Alameda		
City: San Ysidro		12/31/95
County: San Diego		
City: San Joaquin		06/30/96
County: Fresno		
City: Oakland		03/31/96
County: Alameda		
City: Lost Hills		03/31/96
County: Kern		
City: Buttonwillow		03/31/96
County: Kern		
City: Wasco		03/31/96
County: Kern		
City: Laytonville		05/31/96

REGION/STATE/SERVICE AREA—Continued

	Number of grants	Grant expiration date
County: Mendocino		
City: Ukiah		06/30/96
County: Mendocino		
City: Ukiah		11/30/95
County: Los Angeles		
City: San Diego		12/31/95
County: San Diego		
City: San Diego		03/31/96
County: Los Angeles		
City: Fresno		01/31/96
County: Fresno		
Hawaii:	2	
City: Waianae		01/31/96
County: Honolulu		
City: Honolulu		06/30/96
County: Honolulu		
Nevada:	3	
City: Hawthorne		05/31/95
County: Eureka		
City: Hawthorne		05/31/95
County: Washoe		
City: Hawthorne		05/31/95
County: Landers		
City: Hawthorne		05/31/95
County: Nye		
City: Las Vegas		03/31/96
County: Clark		
City: Reno		06/30/96
County: Washoe		
Region: 10		
Alaska:	2	
City: Anchorage		05/31/96
County: Anchorage Borough		
City: Fairbanks		06/30/96
County: Fairbanks North Star Borough		
Idaho:	4	
City: Nampa		03/31/96
County: Canyon		
City: Homedale		03/31/96
County: Owyhee		
City: Marsing		03/31/96
County: Owyhee		
City: Nampa		03/31/96
County: Ada		
City: Nampa		03/31/96
County: Owyhee		
City: Nampa		03/31/96
County: Malheur		
City: American Falls		05/31/96
County: Power		
City: Lava Hot Springs		05/31/96
County: Bannock		
City: Aberdeen		05/31/96
County: Bingham		
City: Pocatello		05/31/96
County: Bannock		
City: Soda Springs		05/31/96
County: Caribou		
City: Soda Springs		05/31/96
County: Bannock		
City: Soda Springs		05/31/96
County: Bingham		
City: Soda Springs		05/31/96
County: Power		
City: Downey		05/31/96
County: Bannock		
City: Nyssa		01/31/96
County: Malheur		
City: Payette		01/31/96

REGION/STATE/SERVICE AREA—Continued

	Number of grants	Grant expiration date
County: Payette		
City: Vale		01/31/96
County: Malheur		
City: Ontario		01/31/96
County: Malheur		
City: Ontario		01/31/96
County: Gem		
City: Ontario		01/31/96
County: Payette		
City: Ontario		01/31/96
County: Washington		
City: Ontario		01/31/96
County: Malheur		
City: Emmett		01/31/96
County: Gem		
City: Twin Falls		01/31/96
County: Twin Falls		
City: Burley		01/31/96
County: Cassia		
City: Buhl		01/31/96
County: Twin Falls		
City: Jackpot		01/31/96
County: Elko		
City: Jackpot		01/31/96
County: Cassia		
City: Jackpot		01/31/96
County: Gooding		
City: Jackpot		01/31/96
County: Jerome		
City: Jackpot		01/31/96
County: Lincoln		
City: Jackpot		01/31/96
County: Minidoka		
City: Jackpot		01/31/96
County: Twin Falls		
Oregon:	4	
City: Salem		11/30/95
County: Polk		
City: Salem		11/30/95
County: Marion		
City: Salem		11/30/95
County: Yamhill		
City: Portland		11/30/95
County: Multnomah		
City: Gresham		11/30/95
County: Multnomah		
City: Hood River		01/31/96
County: Hood River		
City: Hood River		01/31/96
County: Wasco		
City: Hood River		01/31/96
County: Klickitat		
City: Klamath Falls		06/30/96
County: Klamath		
Washington:	8	
City: Copalis Beach		05/31/96
County: Grays Harbor		
City: Neilton		05/31/96
County: Grays Harbor		
City: Aberdeen		05/31/96
County: Grays Harbor		
City: Aberdeen		05/31/96
County: Jefferson		
City: Aberdeen		05/31/96
County: Pacific		
City: Aberdeen		05/31/96
County: Wahkiakum		
City: Springdale		01/31/96
County: Stevens		
City: Northport		01/31/96
County: Stevens		
City: Orient		01/31/96

REGION/STATE/SERVICE AREA—Continued

	Number of grants	Grant expiration date
County: Ferry		
City: Loon Lake		01/31/96
County: Ferry		
City: Chewelah		01/31/96
County: Stevens		
City: Spokane		01/31/96
County: Spokane		
City: Spokane		01/31/96
County: Ferry		
City: Spokane		01/31/96
County: Pend Oreille		
City: Spokane		01/31/96
County: Stevens		
City: Tacoma		05/31/96
County: Pierce		
City: Sumner		05/31/96
County: Pierce		
City: Othello		11/30/95
County: Adams		
City: Othello		11/30/95
County: Franklin		
City: Othello		11/30/95
County: Grant		
City: Seattle		01/31/96
County: King		
City: Grandview		03/31/96
County: Yakima		
City: Walla Walla		03/31/96
County: Yakima		
City: Hermiston		03/31/96
County: Umatilla		
City: Yakima		03/31/96
County: Yakima		
City: Grandview		03/31/96
County: Yakima		
City: Grandview		03/31/96
County: Morrow		
City: Grandview		03/31/96
County: Umatilla		
City: Grandview		03/31/96
County: Columbia		
City: Grandview		03/31/96
County: Walla Walla		
City: Toppenish		03/31/96
County: Yakima		
City: Pasco		05/31/96
County: Franklin		
City: Pasco		05/31/96
County: Benton		
City: Pasco		05/31/96
County: King		
City: Everett		06/30/96
County: Snohomish		

Notification of Expiring Project Periods for Health Care for the Homeless and Health Care Services for Homeless Children Programs

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that a total of 120 Health Care for the Homeless (HCH) grantees and 10 Health Care Services for Homeless Children grantees will reach the end of their project periods during fiscal year (FY) 1996. Assuming the availability of sufficient appropriated funds in FY 1996, it is the intent of HRSA to continue to support health services to the homeless populations in these areas/locations given the continued need for cost-effective, community-based primary care services for these medically underserved populations within these geographic areas.

This notice provides interested parties the opportunity to gather information and decide whether to pursue Federal funding as a HCH program grantee. During this process, communication with Regional Office staff is essential (see Appendix I). A subsequent notice will be published in the **Federal Register** to announce the availability of funds for FY 1996 and provide detailed information on the grant review criteria.

DUE DATES: Current grant expiration dates vary by grantee throughout FY

1996. Applications for competing continuation grants are normally due 120 days prior to the expiration of the current grant award.

SUPPLEMENTARY INFORMATION: The HCH programs are carried out currently under the authority of section 340 of the Public Health Service Act. The HCH program is designed to increase the homeless population's access to cost-effective, case managed, and integrated primary care and substance abuse services provided by existing community-based programs/providers. In addition, the Health Care Services for Homeless Children's program will provide comprehensive primary health services to homeless children and to children at imminent risk of homelessness.

The list of areas in which a current homeless project period expires in FY 1996 is set forth in Appendix II. The areas listed include the city. Further information including the census tract, if applicable, can be obtained by contacting the appropriate PHS regional office (see Appendix I).

A project period is the total amount of time for which a grant has been programmatically approved. For purposes of this notice, grant awards will be made for a one year budget period and up to a five year project period.

Dated: May 22, 1995.

Ciro V. Sumaya,

Administrator.

Appendix I—Regional Office Staff

Region I: Robin Lawrence, D.D.S., Acting Director, Division of Health Services Delivery, DHHS—Region I, John F. Kennedy Federal Building #1401, Boston, MA 02203, (617) 565–1463

Region II: Ronald Moss, Director, Division of Health Services Delivery, DHHS—Region II, 26 Federal Plaza, New York, NY 10278, (212) 264–2664

Region III: Bruce Riegel, Director, Division of Health Services Delivery, DHHS—Region III, 3535 Market Street, Philadelphia, PA 19104, (215) 596–1885

Region IV: Marlene Lockwood, Acting Director, Division of Health Services Delivery, DHHS—Region IV, 101 Marietta Tower, Atlanta, GA 30323, (404) 331–0250

Region V: Deborah Willis, M.D., Acting Director, Division of Health Services Delivery, DHHS—Region V, 105 West Adams Street, 17th Floor, Chicago, IL 60603, (312) 353–1711

Region VI: Frederick Pintz, M.D., Director, Division of Health Services Delivery, DHHS—Region VI, 1200 Main Tower, Dallas, TX 75202, (214) 767–6547

Region VII: Ray Maddox, Director, Division of Health Services Delivery, DHHS—Region VII, 601 East 12th Street, Kansas City, MO 64106, (816) 426–5226

Region VIII: Barbara Bailey, Director, Division of Health Services Delivery, DHHS—Region VIII, 1961 Stout Street, Denver, CO 80294, (303) 844–3203

Region IX: Gordon Soares, Director, Division of Health Services Delivery, DHHS—Region IX, 50 United Nations Plaza, San Francisco, CA 94102, (415) 556–3610

Region X: Douglas Woods, Director, Division of Health Services Delivery, DHHS—Region X, 2201 Sixth Avenue, Seattle, WA 98121, (206) 615–2491

APPENDIX II.—LISTING OF HCH GRANTEES SORTED BY REGION, STATE, AND CITY

City	Project Period Ending Date
State of: AK	
Anchorage	10/31/95
Total number of Grantees in the State of: AK	1
State of: AL	
Birmingham	10/31/95
Birmingham	10/31/95
Mobile	11/30/95
Total Number of Grantees in the State of: AL	3
State of: AZ	
Phoenix	10/31/95
Tucson	12/31/95
Total Number of Grantees in the State of: AZ	2
State of: CA	
Alvison	03/31/96
Belmont	10/31/95
Belmont	10/31/95
Lamont	03/31/96
Martinez	10/31/95
Nipoma	10/31/95
Oakland	10/31/95
Oakland	10/31/95
Sacramento	10/31/95
San Diego	12/31/95
San Fernando	11/30/95
San Francisco	10/31/95
Santa Barbara	10/31/95
Santa Cruz	10/31/95
Total Number of Grantees in the State of: CA	14
State of: CO	
Colorado Springs	12/31/95
Denver	10/31/95

APPENDIX II.—LISTING OF HCH GRANTEES SORTED BY REGION, STATE, AND CITY—Continued

City	Project Period Ending Date
Denver	10/31/95
Total Number of Grantees in the State of: CO	3
State of: CT	
Bridgeport	01/31/96
Danielson	12/31/95
Hartford	12/31/96
New Haven	10/31/95
Total Number of Grantees in the State of: CT	4
State of: DC	
Washington	10/31/95
Total Number of Grantees in the State of: DC	1
State of: FL	
Clearwater	10/31/95
Fort Lauderdale	10/31/95
Miami	10/31/95
Total Number of Grantees in the State of: FL	3
State of: GA	
Atlanta	10/31/95
Total Number of Grantees in the State of: GA	1
State of: HI	
Honolulu	10/31/95
Total Number of Grantees in the State of: HI	1
State of: IA	
Davenport	01/31/96
Des Moines	10/31/95
Waterloo	01/31/96
Total Number of Grantees in the State of: IA	3
State of: ID	
Nampa	03/31/96
Total Number of Grantees in the State of: ID	1
State of: IL	
Chicago	10/31/95
Rockford	11/30/95
Total Number of Grantees in the State of: IL	2
State of: IN	
Indianapolis	10/31/95
Indianapolis	10/31/95
Total Number of Grantees in the State of: IN	2
State of: KS	
Wichita	03/31/96
Total Number of Grantees in the State of: KS	1
State of: KY	
Lexington	01/31/96
Louisville	11/30/95
Total Number of Grantees in the State of: KY	2

APPENDIX II.—LISTING OF HCH GRANTEES SORTED BY REGION, STATE, AND CITY—Continued

City	Project Period Ending Date
State of:	
LA	
New Orleans	10/31/95
Total Number of Grantees in the State of: LA	1
State of:	
MA	
Boston	10/31/95
Springfield	10/31/95
Worcester	10/31/95
Total Number of Grantees in the State of: MA	3
State of:	
MD	
Baltimore	10/31/95
Baltimore	10/31/95
Total Number of Grantees in the State of: MD	2
State of:	
ME	
Portland	10/31/95
Total Number of Grantees in the State of: ME	1
State of:	
MI	
Algonac	10/31/95
Battle Creek	10/31/95
Detroit	10/31/95
Flint	03/31/96
Grand Rapids	10/31/95
Kalamazoo	01/31/96
Lansing	10/31/95
Total Number of Grantees in the State of: MI	7
State of:	
MN	
Minneapolis	10/31/95
St. Paul	01/31/96
St. Paul	01/31/96
Total Number of Grantees in the State of: MN	3
State of:	
MO	
Kansas City	03/31/96
St. Louis	01/31/96
Total Number of Grantees in the State of: MO	2
State of:	
MS	
Jackson	11/30/95
Total Number of Grantees in the State of: MS	1
State of:	
MT	
Billings	03/31/96
Total Number of Grantees in the State of: MT	1
State of:	
NC	
Durham	10/31/95
Raleigh	11/30/95
Total Number of Grantees in the State of: NC	2
State of:	
ND	
Fargo	10/31/95
Total Number of Grantees in the State of: ND	1

APPENDIX II.—LISTING OF HCH GRANTEES SORTED BY REGION, STATE, AND CITY—Continued

City	Project Period Ending Date
State of:	
NE	
Omaha	01/31/96
Total Number of Grantees in the State of: NE	1
State of:	
NH	
Manchester	10/31/95
Total Number of Grantees in the State of: NH	1
State of:	
NJ	
Jersey City	03/31/96
Newark	10/31/95
Trenton	03/31/96
Total Number of Grantees in the State of: NJ	3
State of:	
NM	
Albuquerque	10/31/95
Albuquerque	10/31/95
Total Number of Grantees in the State of: NM	2
State of:	
NV	
Las Vegas	03/31/96
Total Number of Grantees in the State of: NV	1
State of:	
NY	
Mount Vernon	12/31/95
New York	10/31/95
New York	10/31/95
New York	10/31/95
New York	10/31/95
New York	11/30/95
Peekskill	01/31/96
White Plains	10/31/95
Total Number of Grantees in the State of: NY	9
State of:	
OH	
Cincinnati	12/31/95
Cleveland	10/31/95
Columbus	10/31/95
Dayton	10/31/95
Ironton	10/31/95
Toledo	11/30/95
Total Number of Grantees in the State of: OH	6
State of:	
OK	
Oklahoma City	01/31/96
Tulsa	10/31/96
Total Number of grantees in the State of: OK	2
State of:	
OR	
Eugene	10/31/95
Portland	11/30/95
Salem	11/30/95
Total Number of Grantees in the State of: OR	3
State of:	
PA	
Erie	10/31/95
Philadelphia	10/31/95
Pittsburgh	01/31/96
Wilkes-Barre	01/31/96

APPENDIX II.—LISTING OF HCH GRANTEES SORTED BY REGION, STATE, AND CITY—Continued

City	Project Period Ending Date
Total Number of Grantees in the State of: PA	4
State of: PR	
Santruce	10/31/95
Total Number of Grantees in the State of: PR	1
State of: RI	
Providence	10/31/95
Woonsocket	01/31/96
Total Number of grantees in the State of: RI	2
State of: SC	
Charleston	10/31/95
Eastover	10/31/95
Total Number of Grantees in the State of: SC	2
State of: SD	
Rapid City	10/31/95
Total Number of Grantees in the State of: SD	1
State of: TN	
Chattanooga	10/31/95
Memphis	10/31/95
Nashville	10/31/95
Nashville	10/31/95
Total Number of Grantees in the State of: TN	4
State of: TX	
Dallas	10/31/95
Houston	10/31/95
Houston	10/31/95
Lubbock	06/30/95
Plainview	10/31/95
San Antonio	03/31/96
San Antonio	03/31/96
Total Number of Grantees in the State of: TX	7
State of: UT	
Salt Lake City	12/31/95
Total Number of Grantees in the State of: UT	1
State of: VA	
Newport News	11/30/95
Richmond	10/31/95
Total Number of grantees in the State of: VA	2
State of: VT	
Burlington	10/31/95
Total Number of grantees in the State of: VT	1
State of: WA	
Seattle	01/31/96
Seattle	03/31/96
Spokane	10/31/95
Tacoma	10/31/95
Total Number of Grantees in the State of: WA	4
State of: WI	
Green Bay	10/31/95
Milwaukee	10/31/95

APPENDIX II.—LISTING OF HCH GRANTEES SORTED BY REGION, STATE, AND CITY—Continued

City	Project Period Ending Date
Total Number of Grantees in the State of: WI	2
State of: WV	
Huntington	10/31/95
Total Number of Grantees in the State of: WV	1
State of: WY	
Casper	10/31/95
Cheyenne	10/31/95
Total Number of Grantees in the State of: WY	2
Total Number of Grantees: 130.	

[FR Doc. 95–12829 Filed 5–24–95; 8:45 am]
BILLING CODE 4160–15–P

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Meeting

Notice is hereby given of the meeting of the National Cholesterol Education Program Coordinating Committee, sponsored by the National Heart, Lung, and Blood Institute on Tuesday, June 6, 1995, from 9 a.m. to 3 p.m. at the Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, Maryland, 20814 (301) 897–9400.

The entire meeting is open to the public. The Coordinating Committee is meeting to define the priorities, activities, and needs of the participating groups in the National Cholesterol Education Program. Attendance by the public will be limited to space available.

For detailed program information, agenda, list of participants, and meeting summary, contact: Dr. James I. Cleeman, Coordinator, National Cholesterol Education Program, Office of Prevention, Education and Control; National Heart, Lung, and Blood Institute; National Institutes of Health, 31 Center Drive MSC 2480; Bethesda Maryland 20892, (301) 496–1051.

Dated: May 12, 1995.

Claude Lenfant,

Director, NHLBI.

[FR Doc. 95–12817 Filed 5–24–95; 8:45 am]
BILLING CODE 4140–01–P

National Heart, Lung, and Blood Institute; Notice of Meeting

Notice is hereby given of the meeting of the National Asthma Education and Prevention Program Coordinating Committee, sponsored by the National Heart, Lung, and Blood Institute on Monday, June 19, 1995, from 9 a.m. to 3 p.m. at the Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, Maryland, 20814 (301) 897–9400.

The entire meeting is open to the public. The Coordinating Committee is meeting to define the priorities, activities, and needs of the participating groups in the National Asthma Education and Prevention Program. Attendance by the public will be limited to space available.

For detailed program information, agenda, list of participants, and meeting summary, contact: Mr. Robinson Fulwood, Coordinator, National Asthma Education and Prevention Program, Office of Prevention, Education and Control; National Heart, Lung, and Blood Institute; National Institutes of Health, Building 31, Room 4A–05, 31 Center Drive MSC 2480, Bethesda, Maryland 20892, (301) 496–0554.

Dated: May 13, 1995.

Claude Lenfant,

Director, NHLBI.

[FR Doc. 95–12818 Filed 5–24–95; 8:45 am]
BILLING CODE 4140–01–P

Public Health Service

Office of the Assistant Secretary for Health; Notice on Availability of Funds and Request for a Cooperative Agreement to Prevent Cancer in Minority Populations

AGENCY: Office of Minority Health, Office of the Assistant Secretary for Health, PHS, DHHS.

ACTION: Notice of extension of application deadline for request for applications and eligibility clarification.

The Notice of Availability of Funds published May 1, 1995, (60 FR 21366) had a due date for application receipt of May 31, 1995. This notice extends the deadline date to June 26, 1995.

Eligible applicants were restricted to public and private non-profit teaching hospitals in North Philadelphia. This notice clarifies that the hospital itself does not have to be physically located in North Philadelphia, however, the teaching hospital's catchment area should be North Philadelphia.

ADDRESSES/CONTACTS: Applications must be prepared on Form PHS 5161–1 (Revised July 1992 and approved by OMB under Control Number 09370189). Application kits and technical assistance on budget and business aspects of the application may be obtained from Ms. Carolyn A. Williams, Grants Management Officer, Office of Minority Health, Rockwall II Building, Suite 1000, 5515 Security Lane, Rockville, MD, 20852, (telephone 301/594–0758) or by Internet E-mail cwilliams@oash.ssw.dhhs.gov. Completed applications are to be submitted to the same address.

Technical assistance on the programmatic content for the Cooperative Agreement to Prevent Cancer in Minority Populations may be obtained from Mr. John Walker, III, Project Officer. He can be reached at the Office of Minority Health, Rockwall II Building, Suite 1000, 5515 Security Lane, Rockville, MD 20852, (telephone 301/594–0769) or by Internet E-mail jwalker@oash.ssw.dhhs.gov.

In addition, OMH Regional Minority Health Consultants (RMHCc) are available to provide technical assistance. A listing of the RMHCs and how they may be contacted is provided in the grant application kit. Applicants also can contact the OMH Resource Center at 1–800–444–6472 for health information and generic information on preparing grant applications.

DEADLINE: To receive consideration, grant applications must be received by

the Grants Management Officer by June 26, 1995. Applications will be considered as meeting the deadline if they are either:

(1) Received at the above address on or before the deadline date, or (2) Sent to the above address on or before the deadline date and received in time for orderly processing. Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing. Applications submitted by facsimile transmission will *not* be accepted. Applications which do not meet the deadline will be considered late and will be returned to the applicant unread.

Dated: May 19, 1995.

Clay E. Simpson, Jr.,

Acting Deputy Assistant Secretary for Minority Health.

[FR Doc. 95–12848 Filed 5–25–95; 8:45 am]

BILLING CODE 4160–17–M

National Toxicology Program; National Toxicology Program (NTP) Board of Scientific Counselors' Meeting; Review of Draft NTP Technical Reports

Pursuant to Public Law 92–463, notice is hereby given of the next meeting of the NTP Board of Scientific Counselors' Technical Reports Review Subcommittee on June 20 and 21, 1995, in the Conference Center, Building 101, South Campus, National Institute of Environmental Health Sciences (NIEHS), 111 Alexander Drive, Research Triangle Park, North Carolina. The meeting will begin at 8:30 a.m. on both days and is open to the public. The primary agenda topic is the peer review of draft Technical Reports of long-term toxicology and carcinogenesis studies and one short-term toxicity study from the National Toxicology Program.

Additionally, on June 21, a series of presentations will be made concerning the toxicologic findings from collaborative prechronic inhalation studies on carbon disulfide. There will be a presentation titled "Update on the New Diet (NTP–2000) for Rats and Mice in NTP Toxicology and Carcinogenesis Studies".

Tentatively scheduled to be peer reviewed on June 20 and 21 are draft Technical Reports of six two-year studies, listed alphabetically, along with supporting information in the attached table. Similar information is given for the short-term report on 1,4-butanediol. All studies were done using Fischer 344 rats and B6C3F1 mice, while one two-year study also employed Sencar mice. The order of review is given in the far right column of the table. Copies of the draft Reports may be obtained, as available, from: Central Data Management, MD A0–01, P.O. Box 12233, Research Triangle Park, NC 27709 (919/541–3419).

In addition to the traditional two-year study results, the studies with butyl benzyl phthalate, t-butylhydroquinone, salicylazosulfapyridine, and scopolamine hydrobromide trihydrate included groups run under mild dietary restrictions. A separate report (see table) will deal with the effects of dietary restrictions on the results of these four studies, and will draw some conclusions about the usefulness of this approach to performing toxicology and carcinogenesis studies.

Persons wanting to make a formal presentation regarding a particular Technical Report must notify the Executive Secretary by telephone, by FAX, or by mail no later than June 14, 1995, and provide a written copy in advance of the meeting so copies can be made and distributed to all Subcommittee members and staff and made available at the meeting for attendees. Written statements should supplement and may expand on the oral presentation. *Oral presentations should be limited to no more than five minutes.*

The program would welcome receiving toxicology and carcinogenesis information from completed, ongoing, or planned studies by others, as well as current production data, human exposure information, and use patterns for any of the chemicals listed in this announcement. Please contact Central Data Management at the address given above, and they will relay the information to the appropriate staff scientist.

The Executive Secretary, Dr. Larry G. Hart, P.O. Box 12233, Research Triangle Park, North Carolina 27709 (telephone 919/541–3971; FAX 919/541–0719) will furnish a final agenda and a roster of Subcommittee members prior to the meeting. Summary minutes subsequent to the meeting will be available upon request.

Attachment

Dated: May 15, 1995.

Kenneth Olden,

Director, National Toxicology Program.

SUMMARY DATA FOR TECHNICAL REPORTS AND SHORT-TERM TOXICITY REPORTS SCHEDULED FOR REVIEW AT THE MEETING OF THE BOARD OF SCIENTIFIC COUNSELORS' TECHNICAL REPORTS REVIEW SUBCOMMITTEE JUNE 20–21, 1995

Chemical CAS No.	Report No.	Primary uses	Route/exposure levels	Review order
Long-Term Studies:				
Butyl Benzyl Phthalate 85–68–7	TR–458	Plasticizer for PVC-based flooring products. Also used in biodegradable tampon ejectors, organic intermediate.	Dosed-Feed (NIH–07): Male Rats: 0, .3%, .6%, or 1.2%; 60/group, Female Rats: 0, .6%, 1.2%, or 2.4%; 60/group.	3
T-Butylhydroquinone 1948–33–0	TR–459	Antioxidant in vegetable fats and oils. Intermediate.	Dosed-Feed (NIH–07): Rats & Mice: 0, 0.125, 0.25, or 0.5% in feed; 70 Rats, 60 Mice.	2
Codeine 76–57–3	TR–455	Antitussive, analgesic, chemical intermediate, naturally occurring.	Dosed-Feed (NIH–07 (Powdered)): Rats: 0, 400, 800, or 1600, Mice: 0, 750, 1500, or 3000 ppm; 60/group.	8
1,2-Dihydro-2,2,4-Trimethylquinoline (Monomer) 147–47–7.	TR–456	Monomer polymerized for use as a rubber antioxidant.	Topical (Acetone): Rats: 0, 60, or 100 mg/kg, Mice: 0, 6, or 10 mg/kg (core), Rats: 0, 36, 60, or 100 mg/kg Mice: 0, 3.6, 6.0, or 10.0 mg/kg.	7
Effect of Dietary Restriction on Toxicology and Carcinogenesis Studies in F344/N Rats and B6C3F1Mice.	TR–460	Feed Restriction Studies		5

SUMMARY DATA FOR TECHNICAL REPORTS AND SHORT-TERM TOXICITY REPORTS SCHEDULED FOR REVIEW AT THE MEETING OF THE BOARD OF SCIENTIFIC COUNSELORS' TECHNICAL REPORTS REVIEW SUBCOMMITTEE JUNE 20–21, 1995—Continued

Chemical CAS No.	Report No.	Primary uses	Route/exposure levels	Review order
Salicylazosulfapyridine 599–79–1.	TR–457	Treatment of granulomatous Colitis (vet.); antibacterial.	Gavage (Corn Oil): Rats: 84, 168, or 337.5 mg/kg; 70/group Mice: 675, 1350, or 2700 mg/kg; 60/group.	1
Scopolamine Hydrobromide Trihydrate 6533–68–2.	TR–445	Anticholinergic; treatment of motion sickness.	Gavage (Deionized water): Rats & Mice: 0,1,5, or 25 mg/kg; 70/group. Diet Restriction: Mice: 0 or 25 mg/kg; 70/group.	4
Short-Term Study:				
1,4-Butanediol 110–63–4	TOX–54	Chemical intermediate for tetrahydrofuran, monomer for polybutylene terephthalate resins; intermediate in polyester resins, used in production of 1,4-butanediol dimethanesulfonate.	Review of metabolism and disposition studies and prediction of lack of carcinogenicity in long-term studies.	6

[FR Doc. 95–12819 Filed 5–24–95; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF INTERIOR

Bureau of Land Management

[CA–067–1050–00]

Proposed Closure and Restrictions on Public Land in Imperial County, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of closure to camping and vehicular traffic and designation for day use only of certain public lands in the Tumco Historic Townsite of Imperial County, CA.

SUMMARY: In accordance with title 43 Code of Federal Regulations, section 8364.1, notice is hereby given that all roads and lands in the below listed area will be closed to camping and vehicular traffic. Additionally, the area will be designated for day use only. The affected area is managed by the El Centro Resource Area of the Bureau of Land Management and is known as the Historic Townsite of Tumco. The closure area includes T. 15 S., R. 20 E., section 1, SW¼; section 12, N½; and those portions of section 2, SE¼, and section 11, NE¼, SBBM, that are east of the designated fence line. The closure is necessary to prevent undue degradation of National Register of Historic Places eligible cultural resources. An official parking area will be established adjacent to the townsite and a self-guided walking tour developed.

The action does not apply to BLM operation and maintenance vehicles, law enforcement vehicles and other vehicles specifically authorized by the authorized officer of BLM.

DATES: The closure becomes effective June 30, 1995 and remains in effect until revoked by the authorized officer.

FOR FURTHER INFORMATION CONTACT: Patricia Weller, Archaeologist, of the El Centro Resource Area, phone (619–337–4424).

G. Ben Koski, Area Manager,

El Centro Resource Area.

[FR Doc. 95–12862 Filed 5–24–95; 8:45 am]

BILLING CODE 4310–40–P

[CO–050–1220–00]

Emergency Road Closure

AGENCY: Bureau of Land Management, Interior.

ACTION: Emergency closure of road.

SUMMARY: Notice is hereby given that lands administered by BLM adjacent to and including the Phantom Canyon Road, (Fremont County Road 67) will be temporarily closed from approximately Mile Post 4.5 to approximately Mile Post 15 to motorized vehicle use. This notice is in accordance with 43 CFR 8364.1(a), Closure and Restriction orders. This closure is in cooperation with the Fremont County road closure and is to facilitate the replacement of a bridge on County Road 67. The closure is necessary for the safety of the public, the construction crews working in the area and to prevent vandalism at the work site.

DATES: This closure is in effect from May 15, 1995 and will remain in effect until the reopening of the Phantom Canyon Road by the Fremont County Road Dept.

ADDRESSES: Comments can be directed to the Area Manager, Royal Gorge Resource Area or District Manager, Canon City District, 3170 East Main, Canon City, CO 81212.

FOR FURTHER INFORMATION CONTACT: Jack H. Hagan, District Law Enforcement Ranger at (719) 275–0631.

SUPPLEMENTARY INFORMATION: These restrictions do not apply to Emergency, Law Enforcement, Federal, State, County and other authorized personnel who are in the area for official or emergency purposes and who are expressly authorized by BLM or county officials. Any person who fails to comply with this closure order will be subject to the penalties as defined in 18 USC 3571.

Adrian Neisius,

Associate District Manager.

[FR Doc. 95–12863 Filed 5–24–95; 8:45 am]

BILLING CODE 4310–JB–M

[OR120–6850–04 G5–124]

Closure Notice for Motor Vehicles on Certain Designated Roads

AGENCY: Bureau of Land Management, U.S. Department of Interior.

ACTION: Closure of certain roads.

SUMMARY: Notice is hereby given that certain roads which will have barriers or will be gated in: T.21 S., R.7 W.; T.22 S., R.7 W.; T.22 S., R.8 W.; T.28 S., R.10 W.; and T.29 S., R.10 W., Williamette Meridian in the Coos Bay District, within Coos and Douglas Counties. Roads will be closed to access by motorized vehicles in accordance with the Management Framework Plan (MFP) as analyzed in the South Coast-Curry Timber Management Environmental Impact Statement (BLM, 1981), (*SCCFEIS*) and its Record of Decision (BLM, 1983) as supplemented by the

Final Supplemental Environmental Impact Statement on Management of Habitat for Late Successional and Old Growth Forest Related Species Within the Range of the Northern Spotted Owl and its Record of Decision (Interagency, 1994). Closure is for an indefinite period (15 years or longer) beginning on or about 1 June, 1995, when roads will have barriers or gates installed. Closures may be reversed by the BLM. Acceptable reasons for reopening include the following: fire (prescribed or suppression), emergency, rescue, forestry management on lands administered by a private party (including but not limited to thinning, fertilization, stand exams, reforestation and harvesting activities on private lands and as authorized by the Area Manager on BLM administered lands), salvage sales on BLM administered lands (authorized by the Area Manager or their agent on a case-by-case basis), small forest products sales on BLM administered lands (authorized by the Area Manager or their agent on a case-case basis) and wildlife/fisheries monitoring and research. *Recreational use of motor vehicles by all parties within the closed areas is prohibited.* This does not affect non motorized forms of travel. The reason for this order is to implement the Northwest Forest Plan as it relates to road density management and is designed primarily to enhance big game habitat, reduce sedimentation, and reduce maintenance costs.

Copies of the environmental assessment for this proposal and maps of the roads affected are available from the Coos Bay District office, at the address below.

All persons authorized to enforce state game laws may enforce this closure. Oregon State Police and the Coos County Sheriff's Department are hereby authorized to enforce state and federal laws and regulations on federal properties affected in this notice.

This closure order is in accordance with the provisions of Pub. L. 93–452, the Sikes Act (88 Stat. 1369), (16 U.S.C. 670 et. seq.) and Pub. L. 94–579, the Federal Land Policy and Management Act of 1976 (90 stat. 2743), (43 U.S.C. 1701), 43 CFR, Subpart 8364 and BLM Manual Handbook, State Office—Oregon H–2812–1–Logging Road Right-of-way.

Any person who fails to comply with the provisions of this order may be subject to penalties outlined in 43 CFR 8360.0–7 or as ordered through the Oregon judicial system.

The following is a list of road closures identified by this order, by resource area and road number. The location of the gate or barrier will be at or near the beginning of each road.

Umpqua Resource Area (Paradise Creek Watershed)

Road Number		
21	07	31.02
21	07	31.06
21	07	31.08
21	07	36.00
22	08	01.00
22	08	01.02
22	08	01.03
22	08	03.00

un-numbered spur roads in T. 21 S., R.7 W., Will. Mer. within Sections 19 and 31 and three un-numbered spur roads in T. 22 S., R.8 W., Section 11, Will. Mer.

Myrtlewood Resource Area (Sandy Creek Watershed)

Road Number		
28	10	27.1
28	10	34.6
28	10	35.0
29	10	01.0
29	10	01.2
29	10	02.2 B
29	10	02.3
29	10	03.1
29	10	09.5
29	10	09.6
29	10	09.7
29	10	11.3
29	10	14.3
29	10	14.5
29	10	15.3
29	10	16.2
29	10	21.0
29	10	21.2 A
29	10	23.0

and the un-numbered spur roads in T. 29 S., R.10 W. within Sections: 2, 3, 11, 15, 16, 21, and 23, Will. Mer.

ADDRESSES: Detailed information concerning this notice, including the environmental analysis, is available for review at the Bureau of Land Management's Coos Bay District Office, 1300 Airport Lane, North Bend, OR 97459–2000.

DATES: On or before June 26, 1995, interested parties may submit comments to the Coos Bay District Manager at the above address. Objections will be evaluated by the District Manager Director who may sustain, vacate or modify this action. In the absence of any objection, this action will become the final determination of the Bureau of Land Management.

FOR FURTHER INFORMATION CONTACT: Steve Fowler, Coos Bay District Office, (503) 756–0100.

Dated: May 18, 1995.

Cary Osterhaus,

Acting District Manager.

[FR Doc. 95–12861 Filed 5–24–95; 8:45 am]

BILLING CODE 4310–33–P

[WY–920–41–5700; WYW130331]

Proposed Reinstatement of Terminated Oil and Gas Lease

May 17, 1995.

Pursuant to the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW130331 for lands in Weston County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW130331 effective September 1, 1994, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Pamela J. Lewis,

Supervisory Land Law Examiner.

[FR Doc. 95–12864 Filed 5–24–95; 8:45 am]

BILLING CODE 4310–22–M

[ID–942–7130–00–7660]

Idaho: Filing of Plats of Survey; Idaho

The plats, three (3) of the following described land were officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9:00 a.m., May 15, 1995.

The supplemental plats, three (3), of partially unsurveyed T. 48 N., R. 5 E., Boise Meridian, Idaho, prepared to create tracts 63–67 in unsurveyed section 6, tracts 68–72 in unsurveyed sections 16 and 17, and tracts 73–83 in unsurveyed sections 8 and 9, was accepted, May 15, 1995.

These supplemental plats were prepared to meet certain administrative needs of the Bureau of Land Management.

All inquiries concerning the survey of the above described land must be sent to the Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Dated: May 15, 1995.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 95–12867 Filed 5–24–95; 8:45 am]

BILLING CODE 4310–GG–M

[UT–068–05–5700–11; UTU–71889]

Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification for Conveyance (Patent) of Public Lands in Grand County, Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, UTU–71889, Recreation and Public Purposes (R&PP) Act Classification for Conveyance (Patent) of Public Lands in Grand County, Utah.

SUMMARY: Notice is given that the following public lands in Grand County, Utah have been examined and found suitable for classification for conveyance (patent) to the Grand County Solid Waste Management Special Service District No. 1 (District) under the provisions of the Recreation and Public Purposes Act, as amended and supplemented (43 U.S.C. 869 *et seq.*). The District proposes to use the lands for a regional sanitary landfill site.

Salt Lake Meridian, Utah

T. 23 S., R. 19 E.
Sec. 14, S½NW¼.

The above described land aggregates 80.00 acres more or less.

The lands are not needed for Federal purposes. Conveyance is consistent with current BLM land use planning and would be in the public interest.

A plan amendment was completed on March 10, 1995 that made these public lands available for disposal under the Recreation and Public Purposes Act for a regional sanitary landfill site.

The patent, when issued, will be subject to the following terms, conditions and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. The provision that the patentee shall comply with all Federal and State laws applicable to the disposal, placement, or release of hazardous substances.

3. A right-of-way will be reserved for ditches and canals constructed by the authority of the United States (Act of August 30, 1890, 26 Stat, 391; 43 U.S.C. 945).

4. All minerals, including oil and gas, shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals.

5. The conveyance of the land will be subject to all valid existing rights, reservations, and privileges of record. Existing rights, reservations, and privileges of record include, but are not limited to:

a. Oil and gas lease UTU–66023.

b. Any other reservations the Authorized Officer determines appropriate to ensure public access and proper management of Federal lands and interests therein.

6. The Grand County Solid Waste Management Special Service District No. 1, its successors or assigns, assumes all liability for and shall defend, indemnify, and save harmless the United States and its officers, agents, representatives, and employees (hereinafter referred to in this clause as the United States), from all claims, loss, damage, actions, causes of action, expense, and liability (hereinafter referred to in this clause as claims) resulting from, brought for, or on account of, any personal injury, threat of personal injury, or property damage received or sustained by any person or persons (including the patentee's employees) or property growing out of, occurring, or attributable directly or indirectly, to the disposal of solid waste on, or the release of hazardous substances from the land described above, regardless of whether such claims shall be attributable to: (1) the concurrent, contributory, or partial fault, failure, or negligence of the United States, or (2) the sole fault, failure, or negligence of the United States.

7. Provided, that the title shall revert to the United States upon a finding, after notice and opportunity for a hearing, that the patentee has not substantially developed the lands in accordance with the approved plan of development on or before the date five years after the date of conveyance. No portion of the land shall under any circumstance revert to the United States if any such portion has been used for solid waste disposal or for any other purpose which may result in the disposal, placement, or release of any hazardous substance.

8. If, at any time, the patentee transfers to another party ownership of any portion of the land not used for the purpose(s) specified in the application and approved plan of development, the patentee shall pay the Bureau of Land Management the fair market value, as determined by the authorized officer, of the transferred portion as of the date of transfer, including the value of any improvements thereon.

9. The above described land has been conveyed for utilization as a regional sanitary landfill. Upon closure, the site may contain small quantities of commercial and household hazardous waste as determined in the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6901), and defined in 40 CFR 261.4 and 261.5. Although there is no indication these materials pose any significant risk to human health or the environment, future land uses should be limited to those which do not penetrate the liner or final cover of the landfill unless excavation is conducted subject to applicable State and Federal requirements.

Publication of this notice in the **Federal Register** constitutes notice to the grazing permittee, Dan Jorgensen, that his grazing lease is directly effected by this action. Specifically, the subject lands are presently used for livestock grazing, involving the Big Flat-Ten Mile Cattle Allotment. Mr. Jorgensen (Grazing Record # 436318-cattle) holds the grazing privileges for the 80.00 acre parcel. The estimated permitted grazing capacity of these lands is 5 AUMs, however, there would be no reduction in the permittee's grazing preference as a result of this action. The land (acreage) will have to be excluded from the allotment effective upon issuance of the patent. There are no authorized range improvements on the subject lands.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws.

DATES: On or before July 10, 1995, interested persons may submit comments regarding the proposed conveyance or classification of the lands to the Moab District Manager, Bureau of Land Management, 82 East Dogwood Drive, Suite M, Moab, Utah 84532.

CLASSIFICATION COMMENTS: Interested parties may submit comments involving the suitability of the land for a regional sanitary landfill. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

APPLICATION COMMENTS: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not

directly related to the suitability of the land for a regional sanitary landfill.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register**.

SUPPLEMENTARY INFORMATION: Detailed information concerning this action may be obtained from Mary von Koch, Realty Specialist, Grand Resource Area, 82 E. Dogwood, Suite G, Moab, Utah 84532, (801) 259–2128 or Brad Groesbeck, District Realty Specialist, Moab District Office, 82 East Dogwood Drive, Suite M, Moab, Utah 84532, (801) 259–2115.

Dated: May 12, 1995.

Katherine Kitchell,

District Manager.

[FR Doc. 95–12865 Filed 5–24–95; 8:45 am]

BILLING CODE 4310–DQ–P

[CO–034–95–1220–00]

Designation Order; Establishment of a Camping Moratorium on Public Lands Within San Miguel County, CO

AGENCY: Bureau of land Management, Montrose District, Uncompahgre Basin Resource Area, Montrose, Colorado.

ACTION: Implementation of a moratorium on overnight camping on public lands administered by the Bureau of Land Management as a San Miguel River Special Recreation Management Area (SRMA) in San Miguel County, Colorado.

SUMMARY: Notice is given that overnight camping is prohibited on BLM Public Lands along County Road M–59 in the San Miguel River Special Recreation Management Area. The area closed to camping is bounded to the south by Deep Creek, located approximately 7 miles east of the town of Telluride on the San Miguel River and to the north by the town of Sawpit located approximately four (4) miles downstream of Deep Creek. This camping moratorium applies only to overnight camping use on BLM-administered lands along County Road M–59, and does not affect day use of the public lands within this area or overnight camping use on other BLM-administered lands within the Special Recreation Management Area.

DATES: This camping moratorium will be effective May 26, 1995, and continue until such time that the San Miguel River Management Plan is completed.

SUPPLEMENTARY INFORMATION: This camping moratorium is being established to assist the Bureau in reducing problems associated with the camping in this problem area while it prepares a management plan for the river corridor. The moratorium will help reduce the incidences of long-term occupancy trespass being conducted under the guise of camping on public lands within the San Miguel River Special Recreation Management Area.

The camping moratorium is also necessary to prevent excessive impacts to soil, vegetation and other resources caused by long-term camping and inappropriate vehicle use. The moratorium applies to all public land users except those who have obtained prior approval from the authorized officer, and those who are specifically allowed a longer stay under terms of a Special Recreation Permit.

CFR Title 43, Chapter II, Part 8360, Subpart 8364 provides BLM authority for establishing this closure to camping.

8360.0–7 PENALTIES. Violations of any regulations in this part by a member of the public are punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months.

FOR FURTHER INFORMATION CONTACT: Additional information concerning this camping moratorium for public lands administered by the BLM in San Miguel County in the state of Colorado may be obtained from Karen Tucker, Recreation Planner, Uncompahgre Basin Resource Area, Montrose District, 2505 South Townsend Ave., Montrose, Colorado 80401, (970) 249–6047.

Dated: May 15, 1995.

Jamie E. Connell,

Acting District Manager.

[FR Doc. 95–12866 Filed 5–24–95; 8:45 am]

BILLING CODE 4310–JB–M

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT–774024

Applicant: Dr. Beltran and Dr. Honeycutt, Texas A & M University College Station, TX.

The applicant requests a permit to import tissue samples of Spanish lynx (*Felis pardalis*) and ocelot (*Felis pardalis*) previously collected and accessioned in museums or with universities for scientific research.

PRT–802571

Applicant: Mr. Paul H. Snider, Elk Grove, CA.

The applicant requests a permit to import one male bontebok (*Damaliscus pygargus dorcas*) culled from the captive herd maintained by F.W.M. Bowker, Jr., Grahamstown, Republic of South Africa for the purpose of enhancement of the species.

PRT–802572

Applicant: Mrs. Renee Snider, Elk Grove, CA.

The applicant requests a permit to import one male bontebok (*Damaliscus pygargus dorcas*) culled from the captive herd maintained by F.W.M. Bowker, Jr., Grahamstown, Republic of South Africa for enhancement of the species.

PRT–802564

Applicant: Mr. T. Darrell Albright, Roswell, GA.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from the captive herd maintained by Mr. Andrew Austin, "Spitzkop", Grahamstown, Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–802636

Applicant: Parker Creek Ranch, San Antonio, TX.

The applicant requests a permit to authorize interstate and foreign commerce, export, and cull of excess male barasingha (*Cervus duvauceli*), red lechwe (*Kobus leche*), Eld's brow-antlered deer (*Cervus eldi*), dama gazelle (*Gazella dama* spp.) and Arabian oryx (*Oryx leucoryx*) from his captive herd for the purpose of enhancement of survival of the species.

PRT–802637

Applicant: Wyo-Braska Natural History Museum, Gering, NE.

The applicant requests a permit to import a mounted sport-hunted trophy of one male wood bison (*Bison bison athabascae*) from North West Territories, Canada for the purpose of enhancement of the survival of the species through conservation education.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: May 19, 1995.

Caroline Anderson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 95–12806 Filed 5–24–95; 8:45 am]

BILLING CODE 4310–55–P

Minerals Management Service

Change in Location of Workshop on Proposed Policy Options for Outer Continental Shelf (OCS) Natural Gas and Oil Resource Management

AGENCY: Minerals Management Service, Interior.

SUMMARY: The Minerals Management Service (MMS) was to hold a workshop on proposed policy options for Outer Continental Shelf natural gas and oil resource management at its Gulf of Mexico Regional Office located in Jefferson, Louisiana, on June 12–13, 1995. Because of the recent floods, the venue has been changed. The workshop will now be held at the Westin Canal Place, 100 Rue Iberville, New Orleans, Louisiana 70130.

REGISTRATION: Those wishing to attend any part of the 2-day session should register in advance and indicate which day(s) they plan to be present. Reservations should be made by phone (703–787–1628) or facsimile (703–787–1621) no later than May 31, 1995, to Ms. Karen Decker, Minerals Management Service, Mail Stop-4200, 381 Elden Street, Herndon, Virginia 22070.

COMMENTS: Written comments on the workshop and/or the individual topics should be sent by mail to the attention of Ms. Mary Vavrina, Economic Evaluation Branch, Minerals Management Service, 381 Elden Street, MS–4220, Herndon, Virginia, 22070, or at the above facsimile number. For more detail on the issues that MMS will address, see the Call for Comment on Proposed Policy Options published in the **Federal Register** on April 20, 1995 (60 FR 19767).

DATES: Monday, June 12, and Tuesday, June 13, 1995, 8:30 a.m. to 5:00 p.m. Central Time.

ADDRESSES: The Westin Canal Place, 100 Rue Iberville, New Orleans, Louisiana 70130—(504) 566–7006 or 1–(800) 228–3000. Contact person: Barney Congdon, (504) 736–2595.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Vavrina in Herndon, Virginia, at the address or facsimile number listed above, or call her directly at (703) 787–1540.

Dated: May 19, 1995.

Thomas Gernhofer,

Associate Director for Offshore Minerals Management.

[FR Doc. 95–12840 Filed 5–24–95; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–352]

Andean Trade Preference Act: Effect on the U.S. Economy and on Andean Drug Crop Eradication

AGENCY: International Trade Commission.

ACTION: Notice of opportunity to submit comments in connection with 1994 annual report.

EFFECTIVE DATE: May 19, 1995.

FOR FURTHER INFORMATION CONTACT: Thomas F. Jennings (202–205–3260), Trade Reports Division, Office of Economics, U.S. International Trade Commission, Washington, D.C. 20436.

Background: Section 206 of ATPA (19 U.S.C. 3204) requires that the Commission submit annual reports to the Congress regarding:

(1) the actual economic effect of ATPA on the U.S. economy generally as well as on specific industries which produce articles that are like, or directly competitive with, articles being imported under the Act;

(2) the probable future effect of ATPA on the U.S. economy generally and on industries affected by the Act; and

(3) the estimated effect of ATPA on drug-related crop eradication and crop substitution efforts of beneficiary countries.

Section 332(b) of the Tariff Act of 1930 (19 U.S.C. 1332(b)) provides the Commission with general authority to conduct factfinding investigations with respect to trade and tariff matters. Notice of institution of the investigation and the schedule for such reports was published in the **Federal Register** of March 10, 1994 (59 FR 11308). The Commission's second annual report on ATPA, covering calendar year 1994, is to be submitted by September 30, 1995.

Written Submissions: The Commission does not plan to hold a public hearing in connection with the preparation of this report. However, interested persons are invited to submit written statements concerning the matters to be addressed in the report. Commercial or financial information that a party desires the Commission to treat as confidential must be submitted on separate sheets of peper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section 201 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons in the Office of the Secretary of the Commission. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted at the earliest practical date and should be received no later than July 14, 1995.

Address all submissions to Office of the Secretary, U.S. International Trade Commission, 500 E St., S.W., Washington, D.C. 20436. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

Issued: May 22, 1995.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–12877 Filed 5–24–95; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 332–227]

Annual Report on the Impact of the Caribbean Basin Economic Recovery Act on U.S. Industries and Consumers

AGENCY: International Trade Commission.

ACTION: Notice of opportunity to submit comments in connection with 1994 annual report.

EFFECTIVE DATE: May 19, 1995

FOR FURTHER INFORMATION CONTACT: Thomas Jennings (202–205–3260), Trade Reports Division, Office of Economics, U.S. International Trade Commission, Washington, D.C. 20436.

Background: Section 215(a) of the Caribbean Basin Economic Recovery Act (CBERA) (19 U.S.C. 2704(a)) requires that the Commission submit annual reports to the Congress and the President on the impact of the act on

industries and consumers in the United States. Section 215(b) of the CBERA requires the Commission to assess the actual effect of the act on the United States economy generally as well as on appropriate domestic industries and to assess the probable future effects of the act. Section 215(c)(2) of the CBERA requires that the Commission provide an opportunity for the public, either orally or in writing, or both, to submit to the Commission information relating to matters that will be addressed in the reports. The Commission instituted the present investigation under section 332(b) of the Tariff Act of 1930 (19 U.S.C. 1332(b)) on March 21, 1986, for the purpose of gathering and presenting such information on the CBERA. Section 332(b) of the Tariff Act of 1930 provides the Commission with general authority to conduct factfinding investigations with respect to trade and tariff matters. Notice of institution of the investigation and the schedule for such reports was published in the **Federal Register** of May 14, 1986 (51 FR 17678). The tenth report, covering calendar year 1994, is to be submitted by September 30, 1995.

Written Submissions: The Commission does not plan to hold a public hearing in connection with the tenth annual report. However, interested persons are invited to submit written statements concerning the matters to be addressed in the report. Commercial or financial information that a party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons in the Office of the Secretary to the Commission. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted at the earliest practical date and should be received no later than July 14, 1995.

Address all submissions to the Secretary to the Commission, U.S. International Trade Commission, 500 E St., SW., Washington, D.C. 20436. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

Issued: May 22, 1995.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–12878 Filed 5–24–95; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32549 (Sub-No. 15)]

Grainbelt Corporation—Trackage Rights Over Burlington Northern Railroad Company Between Snyder, OK, and Quanah, TX

AGENCY: Interstate Commerce Commission.

ACTION: Decision No. 24; notice of acceptance of responsive application filed by Grainbelt Corporation.

SUMMARY: The Commission is accepting for consideration the application filed by Grainbelt Corporation (GNBC) for the modification of certain trackage rights over lines of Burlington Northern Railroad Company (BN) between Snyder, OK, and Quanah, TX. This application is responsive to the primary application filed by BN and its corporate parent, Burlington Northern Inc. (BNI), and The Atchison, Topeka and Santa Fe Railway Company (Santa Fe) and its corporate parent, Santa Fe Pacific Corporation (SFP), by which primary applicants BNI, BN, SFP, and Santa Fe seek approval for BNI's acquisition of, control of, and merger with SFP, the resulting common control of BN and Santa Fe by the merged company, the consolidation of BN and Santa Fe railroad operations, and the merger of BN and Santa Fe.

DATES: The effective date of this decision is May 25, 1995. Comments regarding the GNBC responsive application must be filed with the Commission by June 9, 1995. Rebuttal in support of the GNBC responsive application must be filed by June 19, 1995. Briefs (not to exceed 50 pages) must be filed by June 29, 1995.

ADDRESSES: An original and 20 copies of all documents must refer to Finance Docket No. 32549 (Sub-No. 15) and be sent to the Office of the Secretary, Case Control Branch, Attn: Finance Docket No. 32549 (Sub-No. 15), Interstate Commerce Commission, 1201 Constitution Avenue, N.W., Washington, D.C. 20423. Parties are encouraged also to submit all pleadings and attachments on a 3.5-inch diskette in WordPerfect 5.1 format.

In addition, one copy of all documents in this proceeding must be served, by first class mail, on: the Secretary of the Department of Transportation; the Attorney General of the United States; Administrative Law Judge Jacob Leventhal, Federal Energy Regulatory Commission, Office of Hearings, 825 North Capitol Street, N.E., Washington, D.C. 20426; Betty Jo Christian, Esq., Steptoe & Johnson, 1330 Connecticut Avenue, N.W., Washington, D.C. 20036–1795 (representing primary applicants BNI and BN); Erika Z. Jones, Esq., Mayer, Brown & Platt, 2000 Pennsylvania Avenue, N.W., Suite 6500, Washington, D.C. 20006 (representing primary applicants SFP and Santa Fe); and William P. Quinn, Esq., Gollatz, Griffin & Ewing, P.C., 213 W. Miner St., P.O. Box 796, West Chester, PA 19381–0796 (representing responsive applicant GNBC).

Furthermore, one copy of all documents in this proceeding must be served, by first class mail, on all persons designated parties of record [POR] on the Commission's service list, served on May 19, 1995.

FOR FURTHER INFORMATION CONTACT: Julia Farr, (202) 927–5352. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: By this responsive application, GNBC seeks modification of overhead trackage rights it holds over an approximately 60-mile BN line between Snyder, OK, and Quanah, TX. The trackage rights were granted to GNBC in conjunction with its purchase of a rail line from BN in 1987. GNBC requests that the trackage rights be amended to allow for interchanges with other carriers at Altus, OK and at Quanah. GNBC states that this would allow for interchange with GNBC's sister corporation, Farmrail Corporation (FMRC) at Altus, and with Southern Pacific Transportation Company (SP) at Quanah. GNBC states that it expects that a commonly controlled BN/Santa Fe would provide facilities in Altus and Quanah which would allow for the direct interchange between GNBC and other carriers. Furthermore, GNBC requests the right to provide local service to industries located at and in the vicinity of Altus.

GNBC's responsive application substantially complies with the applicable regulations, and it has therefore been accepted for consideration by the Commission.

The responsive application and exhibits are available for inspection in the Public Docket Room at the offices of the Commission in Washington, D.C. In addition, they may be obtained upon request from GNBC's representative named above.

This responsive application is consolidated for disposition with the Finance Docket No. 32549 primary application (and all embraced proceedings). Service of an initial decision will be waived, and determination of the merits of the responsive application will be made in the first instance by the entire Commission. 49 U.S.C. 11345(f).

Interested persons may participate formally by submitting written comments regarding the responsive application, subject to the filing and service requirements specified above. Such comments (referred to as "responses" in the procedural schedule) should indicate the exact proceeding designation and should be filed with the Commission by June 9, 1995. Comments shall include the following: the commenter's position in support of or in opposition to the proposed transaction; any and all evidence, including verified statements, in support of or in opposition to the proposed transaction; and specific reasons why approval would or would not be in the public interest. Interested persons who do not intend to participate formally in the proceeding but who desire to comment may also file statements, also subject to the filing and service requirements specified above. Persons must state specifically whether they intend to participate actively in the proceeding or whether they wish only to be advised of all decisions issued by the Commission. Failure to state an intention to participate as an active party will result in the person being placed in the latter category.

Because GNBC's responsive application contains proposed conditions to approval of the primary application in Finance Docket No. 32549, the Commission will entertain no requests for affirmative relief to this proposal. Parties may only participate in direct support of or direct opposition to GNBC's responsive application as filed.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Decided: May 17, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioners Simmons and McDonald.

Vernon A. Williams,

Secretary.

[FR Doc. 95–12888 Filed 5–24–95; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32549 (Sub-No. 13)]

Houston Lighting and Power Company; Trackage Rights Over Lines of The Atchison, Topeka and Santa Fe Railway Company in Texas

AGENCY: Interstate Commerce Commission.

ACTION: Decision No. 22; Notice of acceptance of responsive application filed by Houston Lighting and Power Company.

SUMMARY: The Commission is accepting for consideration the application filed by Houston Lighting and Power Company (HL&P) for trackage rights over lines of The Atchison, Topeka and Santa Fe Railway Company (Santa Fe) between Rosenberg, TX, and Smithers Lake, TX, and/or between Sealy, TX, and Smithers Lake, TX. This application is responsive to the primary application filed by Burlington Northern Railroad Company (BN) and its corporate parent, Burlington Northern Inc. (BNI), and Santa Fe and its corporate parent, Santa Fe Pacific Corporation (SFP), by which primary applicants BNI, BN, SFP, and Santa Fe seek approval for BNI's acquisition of, control of, and merger with SFP, the resulting common control of BN and Santa Fe by the merged company, the consolidation of BN and Santa Fe railroad operations, and the merger of BN and Santa Fe.

DATES: The effective date of this decision is May 25, 1995. Comments regarding the HL&P responsive application must be filed with the Commission by June 9, 1995. Rebuttal in support of the HL&P responsive application must be filed by June 19, 1995. Briefs (not to exceed 50 pages) must be filed by June 29, 1995.

ADDRESSES: An original and 20 copies of all documents must refer to Finance Docket No. 32549 (Sub-No. 13) and be sent to the Office of the Secretary, Case Control Branch, Attn: Finance Docket No. 32549 (Sub-No. 13), Interstate Commerce Commission, 1201 Constitution Avenue, NW., Washington, DC 20423. Parties are encouraged also to submit all pleadings and attachments on a 3.5-inch diskette in WordPerfect 5.1 format.

In addition, one copy of all documents in this proceeding must be served, by first class mail, on: The Secretary of the Department of Transportation; the Attorney General of the United States; Administrative Law Judge Jacob Leventhal, Federal Energy Regulatory Commission, Office of Hearings, 825 North Capitol Street, NE., Washington, DC 20426; Betty Jo Christian, Esq., Steptoe & Johnson, 1330 Connecticut Avenue, NW., Washington, DC 20036–1795 (representing primary applicants BNI and BN); Erika Z. Jones, Esq., Mayer, Brown & Platt, 2000 Pennsylvania Avenue, NW., Suite 6500, Washington, DC 20006 (representing primary applicants SFP and Santa Fe); and C. Michael Loftus, Esq., Slover & Loftus, 1224 Seventeenth Street, NW., Washington, DC 20036 (representing responsive applicant HL&P).

Furthermore, one copy of all documents in this proceeding must be served, by first class mail, on all persons designated parties of record [POR] on the Commission's service list, served on May 19, 1995.

FOR FURTHER INFORMATION CONTACT: Julia Farr, (202) 927–5352. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: By this responsive application, HL&P seeks trackage rights over certain lines of Santa Fe between Rosenberg, TX, and Smithers Lake, TX, and/or between Sealy, TX, and Smithers Lake, TX. Specifically, HL&P seeks overhead trackage rights on behalf of a rail carrier(s) unaffiliated with the primary applicants over a 47.2-mile Santa Fe line for the movement of coal trains between milepost 94.6, at Sealy, TX, and Smithers Lake, TX, where HL&P's coal-fired electric generating facility known as the W.A. Parish Electric Generating Station (Parish Station) is located. HL&P also seeks, instead of or in addition to its first request, overhead trackage rights on behalf of a rail carrier(s) unaffiliated with the primary applicants over an 18.8-mile Santa Fe line for the movement of coal trains between milepost 66.2, at Rosenberg, TX, and Smithers Lake, TX, where the Parish Station is located. HL&P asserts that the requested trackage rights would serve to maintain existing rail competition that would be eliminated if the Commission approves the proposed BN/Santa Fe merger.

HL&P's responsive application substantially complies with the applicable regulations,[1] and it has therefore been accepted for consideration by the Commission.

The responsive application and exhibits are available for inspection in the Public Docket Room at the offices of the Commission in Washington, DC. In addition, they may be obtained upon request from HL&P's representative named above.

[1] HL&P states that it recognizes that, because it is not an "applicant carrier" as defined by 49 CFR 1180.3(b), applicant carriers who may receive such requested trackage rights as a result of this responsive application will necessarily have to resolve carrier-specific, trackage rights issues in a "follow-up proceeding." (HLP–12, at 3–4.)

This responsive application is consolidated for disposition with the Finance Docket No. 32549 primary application (and all embraced proceedings). Service of an initial decision will be waived, and determination of the merits of the responsive application will be made in the first instance by the entire Commission. 49 U.S.C. 11345(f).

Interested persons may participate formally by submitting written comments regarding the responsive application, subject to the filing and service requirements specified above. Such comments (referred to as "responses" in the procedural schedule) should indicate the exact proceeding designation and should be filed with the Commission by June 9, 1995. Comments shall include the following: The commenter's position in support of or in opposition to the proposed transaction; any and all evidence, including verified statements, in support of or in opposition to the proposed transaction; and specific reasons why approval would or would not be in the public interest. Interested persons who do not intend to participate formally in the proceeding but who desire to comment may also file statements, also subject to the filing and service requirements specified above. Persons must state specifically whether they intend to participate actively in the proceeding or whether they wish only to be advised of all decisions issued by the Commission. Failure to state an intention to participate as an active party will result in the person being placed in the latter category.

Because HL&P's responsive application contains proposed conditions to approval of the primary application in Finance Docket No. 32549, the Commission will entertain no requests for affirmative relief to this proposal. Parties may only participate in direct support of or direct opposition to HL&P's responsive application as filed.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Decided: May 17, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioners Simmons and McDonald.

Vernon A. Williams,

Secretary.

[FR Doc. 95–12886 Filed 5–24–95; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32549 (Sub-No. 17)]

Keokuk Junction Railway—Trackage Rights and Terminal Access on Certain Lines of Burlington Northern Railroad Company in Iowa, Missouri, and Illinois

AGENCY: Interstate Commerce Commission.

ACTION: Decision No. 26; Notice of acceptance of responsive application filed by Keokuk Junction Railway.

SUMMARY: The Commission is accepting for consideration the application filed by Keokuk Junction Railway (KJRY) for trackage rights and terminal access over certain lines of Burlington Northern Railroad Company (BN) in Iowa, Missouri, and Illinois. This application is responsive to the primary application filed by BN and its corporate parent, Burlington Northern Inc. (BNI), and The Atchison, Topeka and Santa Fe Railway Company (Santa Fe) and its corporate parent, Santa Fe Pacific Corporation (SFP), by which primary applicants BNI, BN, SFP, and Santa Fe seek approval for BNI's acquisition of, control of, and merger with SFP, the resulting common control of BN and Santa Fe by the merged company, the consolidation of BN and Santa Fe railroad operations, and the merger of BN and Santa Fe.

DATES: The effective date of this decision is May 25, 1995. Comments regarding the KJRY responsive application must be filed with the Commission by June 9, 1995. Rebuttal in support of the KJRY responsive application must be filed by June 19, 1995. Briefs (not to exceed 50 pages) must be filed by June 29, 1995.

ADDRESSES: An original and 20 copies of all documents must refer to Finance Docket No. 32549 (Sub-No. 17) and be sent to the Office of the Secretary, Case Control Branch, Attn: Finance Docket No. 32549 (Sub-No. 17), Interstate Commerce Commission, 1201 Constitution Avenue, N.W., Washington, D.C. 20423. Parties are encouraged also to submit all pleadings and attachments on a 3.5-inch diskette in WordPerfect 5.1 format.

In addition, one copy of all documents in this proceeding must be served, by first class mail, on: the Secretary of the Department of Transportation; the Attorney General of the United States; Administrative Law Judge Jacob Leventhal, Federal Energy Regulatory Commission, Office of Hearings, 825 North Capitol Street, N.E., Washington, D.C. 20426; Betty Jo Christian, Esq., Steptoe & Johnson, 1330 Connecticut Avenue, N.W., Washington, D.C. 20036–1795 (representing primary applicants BNI and BN); Erika Z. Jones, Esq., Mayer, Brown & Platt, 2000 Pennsylvania Avenue, N.W., Suite 6500, Washington, D.C. 20006 (representing primary applicants SFP and Santa Fe); and Robert A. Wimbish, Esq., Rea, Cross & Auchincloss, Suite 420, 1920 N Street, N.W., Washington, D.C. 20036 (representing responsive applicant KJRY).

Furthermore, one copy of all documents in this proceeding must be served, by first class mail, on all persons designated parties of record [POR] on the Commission's service list, served on May 19, 1995.

FOR FURTHER INFORMATION CONTACT: Julia Farr, (202) 927–5352. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: By this responsive application, KJRY seeks trackage rights and terminal access over certain BN lines in Iowa, Missouri, and Illinois.

The sought trackage rights (for which KJRY envisions compensation of not more than $0.40 per car mile) are: (1) unrestricted local trackage rights on BN's Hannibal Subdivision between MP 177.9 at Keokuk, IA, and MP 136.9 at West Quincy, MO, a distance of 41 miles, with full right of interchange at West Quincy with the primary applicants, Norfolk Southern Railway (NS), and Southern Pacific Transportation Company (SPT); and (2) overhead trackage rights on BN's Hannibal Subdivision from MP 136.9 at West Quincy to MP 94.1 at Louisiana, MO, a distance of 42.8 miles, in order to interchange with NS at Hannibal, MO, and with Gateway Western Railway at Louisiana, MO. KJRY indicates, however, that it will not exercise the overhead trackage rights south of West Quincy, as long as (a) NS retains trackage rights through West Quincy to Quincy, IL, and continues to be able to interchange with KJRY at either location as mutually convenient, and (b) SPT and KJRY have a mutually satisfactory interchange at West Quincy.

The sought terminal access consists of three requirements to be imposed on BN: (1) A requirement that BN sell to KJRY at net liquidated value (or going concern value, whichever is appropriate) all BN terminal tracks and facilities in Keokuk including yard trackage, buildings, and the Mooar Line (KJRY envisions that it will assume all industrial switching in Keokuk currently provided by BN, and that it will enter into a long-term contract with the primary applicants on switch rates and service); (2) a requirement that BN absorb KJRY's switch charges at a level no higher than BN's current switch charges in Keokuk, subject to inflationary adjustments; and (3) a requirement that BN grant reciprocal switching access rights to KJRY at Quincy, IL, limited to traffic originating or terminating on KJRY's lines.

KJRY's responsive application substantially complies with the applicable regulations, and it has therefore been accepted for consideration by the Commission.

The responsive application and exhibits are available for inspection in the Public Docket Room at the offices of the Commission in Washington, D.C. In addition, they may be obtained upon request from KJRY's representative named above.

This responsive application is consolidated for disposition with the Finance Docket No. 32549 primary application (and all embraced proceedings). Service of an initial decision will be waived, and determination of the merits of the responsive application will be made in the first instance by the entire Commission. 49 U.S.C. 11345(f).

Interested persons may participate formally by submitting written comments regarding the responsive application, subject to the filing and service requirements specified above. Such comments (referred to as "responses" in the procedural schedule) should indicate the exact proceeding designation and should be filed with the Commission by June 9, 1995. Comments shall include the following: the commenter's position in support of or in opposition to the proposed transaction; any and all evidence, including verified statements, in support of or in opposition to the proposed transaction; and specific reasons why approval would or would not be in the public interest. Interested persons who do not intend to participate formally in the proceeding but who desire to comment may also file statements, also subject to the filing and service requirements specified above. Persons must state specifically whether they intend to participate actively in the proceeding or whether they wish only to be advised of all decisions issued by the Commission. Failure to state an intention to participate as an active party will result in the person being placed in the latter category.

Because KJRY's responsive application contains proposed conditions to approval of the primary application in Finance Docket No. 32549, the Commission will entertain no requests for affirmative relief to this proposal. Parties may only participate in direct support of or direct opposition to KJRY's responsive application as filed.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Decided: May 17, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioners Simmons and McDonald.

Vernon A. Williams,

Secretary.

[FR Doc. 95–12890 Filed 5–24–95; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32549 (Sub-No. 18)]

Seagraves, Whiteface and Lubbock Railroad Co.—Trackage Rights Over Lines of The Atchison, Topeka and Santa Fe Railway Company Between Lubbock and Sweetwater, TX, and Other Conditions

AGENCY: Interstate Commerce Commission.

ACTION: Decision No. 27; Notice of acceptance of responsive application filed by Seagraves, Whiteface and Lubbock Railroad Co.

SUMMARY: The Commission is accepting for consideration the application filed by Seagraves, Whiteface and Lubbock Railroad Co. (SWGR) for trackage rights over lines of The Atchison, Topeka and Santa Fe Railway Company (Santa Fe) between Lubbock and Sweetwater, TX, and other conditions. This application is responsive to the primary application filed by Burlington Northern Railroad Company (BN) and its corporate parent, Burlington Northern Inc. (BNI), and Santa Fe and its corporate parent, Santa Fe Pacific Corporation (SFP), by which primary applicants BNI, BN, SFP, and Santa Fe seek approval for BNI's acquisition of, control of, and merger with SFP, the resulting common control of BN and Santa Fe by the merged company, the consolidation of BN and Santa Fe railroad operations, and the merger of BN and Santa Fe.

DATES: The effective date of this decision is May 25, 1995. Comments regarding the SWGR responsive application must be filed with the Commission by June 9, 1995. Rebuttal in support of the SWGR responsive application must be filed by June 19, 1995. Briefs (not to exceed 50 pages) must be filed by June 29, 1995.

ADDRESSES: An original and 20 copies of all documents must refer to Finance Docket No. 32549 (Sub-No. 18) and be sent to the Office of the Secretary, Case Control Branch, Attn: Finance Docket No. 32549 (Sub-No. 18), Interstate Commerce Commission, 1201 Constitution Avenue, NW., Washington, DC 20423. Parties are encouraged also to submit all pleadings and attachments on a 3.5-inch diskette in WordPerfect 5.1 format.

In addition, one copy of all documents in this proceeding must be served, by first class mail, on: the Secretary of the Department of Transportation; the Attorney General of the United States; Administrative Law Judge Jacob Leventhal, Federal Energy Regulatory Commission, Office of Hearings, 825 North Capitol Street, NE., Washington, DC 20426; Betty Jo Christian, Esq., Steptoe & Johnson, 1330 Connecticut Avenue, NW., Washington, DC 20036–1795 (representing primary applicants BNI and BN); Erika Z. Jones, Esq., Mayer, Brown & Platt, 2000 Pennsylvania Avenue, NW., Suite 6500, Washington, DC 20006 (representing primary applicants SFP and Santa Fe); and Robert A. Wimbish, Esq., Rea, Cross & Auchincloss, Suite 420, 1920 N Street, NW., Washington, DC 20036 (representing responsive applicant SWGR).

Furthermore, one copy of all documents in this proceeding must be served, by first class mail, on all persons designated parties of record [POR] on the Commission's service list, served on May 19, 1995.

FOR FURTHER INFORMATION CONTACT: Julia Farr, (202) 927–5352. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: By this responsive application, SWGR seeks unrestricted overhead trackage rights on Santa Fe's Lubbock and Slaton Subdivisions between Lubbock and Sweetwater, TX, a distance of 67 miles, with unrestricted interchange rights with Union Pacific Railroad Company at Sweetwater. SWGR also seeks the following additional conditions: (a) The elimination of Santa Fe's $75 per car each way reciprocal switch charge for each railcar interchanged between SWGR and BN at Santa Fe's Lubbock rail yard; (b) the continuation of revenue divisions on movements over BN lines; (c) the enforcement of current contractual obligations between SWGR and BN and between SWGR and Santa Fe; and (d) a requirement that a commonly controlled BN/Santa Fe provide SWGR with the same car supply that BN and Santa Fe each provide today.

SWGR's responsive application substantially complies with the applicable regulations, and it has therefore been accepted for consideration by the Commission.

The responsive application and exhibits are available for inspection in the Public Docket Room at the offices of

the Commission in Washington, DC In addition, they may be obtained upon request from SWGR's representative named above.

This responsive application is consolidated for disposition with the Finance Docket No. 32549 primary application (and all embraced proceedings). Service of an initial decision will be waived, and determination of the merits of the responsive application will be made in the first instance by the entire Commission. 49 U.S.C. 11345(f).

Interested persons may participate formally by submitting written comments regarding the responsive application, subject to the filing and service requirements specified above. Such comments (referred to as "responses" in the procedural schedule) should indicate the exact proceeding designation and should be filed with the Commission by June 9, 1995. Comments shall include the following: the commenter's position in support of or in opposition to the proposed transaction; any and all evidence, including verified statements, in support of or in opposition to the proposed transaction; and specific reasons why approval would or would not be in the public interest. Interested persons who do not intend to participate formally in the proceeding but who desire to comment may also file statements, also subject to the filing and service requirements specified above. Persons must state specifically whether they intend to participate actively in the proceeding or whether they wish only to be advised of all decisions issued by the Commission. Failure to state an intention to participate as an active party will result in the person being placed in the latter category.

Because SWGR's responsive application contains proposed conditions to approval of the primary application in Finance Docket No. 32549, the Commission will entertain no requests for affirmative relief to this proposal. Parties may only participate in direct support of or direct opposition to SWGR's responsive application as filed.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Decided: May 17, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioners Simmons and McDonald.

Vernon A. Williams,

Secretary.

[FR Doc. 95–12891 Filed 5–24–95; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32549 (Sub-No. 14)]

Southwestern Public Service Company and Tuco Inc.—Trackage Rights Over Lines of Burlington Northern Railroad Company and The Atchison, Topeka and Santa Fe Railway Company

AGENCY: Interstate Commerce Commission.

ACTION: Decision No. 23; Notice of acceptance of responsive application filed by Southwestern Public Service Company and Tuco Inc.

SUMMARY: The Commission is accepting for consideration the application filed by Southwestern Public Service Company and Tuco Inc. (SPS/TUCO) for trackage rights over lines of The Atchison, Topeka and Santa Fe Railway Company (Santa Fe), and to the extent appropriate or necessary, the lines of Burlington Northern Railroad Company (BN). This application is responsive to the primary application filed by BN and its corporate parent, Burlington Northern Inc. (BNI), and Santa Fe and its corporate parent, Santa Fe Pacific Corporation (SFP), by which primary applicants BNI, BN, SFP, and Santa Fe seek approval for BNI's acquisition of, control of, and merger with SFP, the resulting common control of BN and Santa Fe by the merged company, the consolidation of BN and Santa Fe railroad operations, and the merger of BN and Santa Fe.

DATES: The effective date of this decision is May 25, 1995. Comments regarding the SPS/TUCO responsive application must be filed with the Commission by June 9, 1995. Rebuttal in support of the SPS/TUCO responsive application must be filed by June 19, 1995. Briefs (not to exceed 50 pages) must be filed by June 29, 1995.

ADDRESSES: An original and 20 copies of all documents must refer to Finance Docket No. 32549 (Sub-No. 14) and be sent to the Office of the Secretary, Case Control Branch, Attn: Finance Docket No. 32549 (Sub-No. 14), Interstate Commerce Commission, 1201 Constitution Avenue, N.W., Washington, D.C. 20423. Parties are encouraged also to submit all pleadings and attachments on a 3.5-inch diskette in WordPerfect 5.1 format.

In addition, one copy of all documents in this proceeding must be served, by first class mail, on: the Secretary of the Department of Transportation; the Attorney General of the United States; Administrative Law Judge Jacob Leventhal, Federal Energy Regulatory Commission, Office of Hearings, 825 North Capitol Street, N.E., Washington, D.C. 20426; Betty Jo Christian, Esq., Steptoe & Johnson, 1330 Connecticut Avenue, N.W., Washington, D.C. 20036–1795 (representing primary applicants BNI and BN); Erika Z. Jones, Esq., Mayer, Brown & Platt, 2000 Pennsylvania Avenue, N.W., Suite 6500, Washington, D.C. 20006 (representing primary applicants SFP and Santa Fe); and C. Michael Loftus, Esq., Slover & Loftus, 1224 Seventeenth Street, N.W., Washington, D.C. 20036 (representing responsive applicant SPS/TUCO).

Furthermore, one copy of all documents in this proceeding must be served, by first class mail, on all persons designated parties of record [POR] on the Commission's service list, served on May 19, 1995.

FOR FURTHER INFORMATION CONTACT: Julia Farr, (202) 927–5352. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: By this responsive application, SPS/TUCO seeks overhead trackage rights on behalf of a rail carrier(s) unaffiliated with the primary applicants over approximately 441 miles of lines of Santa Fe (and to the extent appropriate or necessary, the lines of BN) for the movement of coal trains between Pueblo, CO, and SPS' coal-fired, electric generating facilities known as the Tolk Station, located near Muleshoe or Mill, TX, via Amarillo, TX, and Hereford, TX, with the right to serve SPS' coal-fired, electric generating facilities known as the Harrington Station, located at Amarillo, TX.

SPS/TUCO's responsive application substantially complies with the applicable regulations,[1] and it has therefore been accepted for consideration by the Commission.

The responsive application and exhibits are available for inspection in the Public Docket Room at the offices of the Commission in Washington, D.C. In addition, they may be obtained upon request from SPS/TUCO's representative named above.

This responsive application is consolidated for disposition with the Finance Docket No. 32549 primary application (and all embraced proceedings). Service of an initial decision will be waived, and determination of the merits of the responsive application will be made in the first instance by the entire Commission. 49 U.S.C. 11345(f).

Interested persons may participate formally by submitting written comments regarding the responsive application, subject to the filing and service requirements specified above. Such comments (referred to as "responses" in the procedural schedule) should indicate the exact proceeding designation and should be filed with the Commission by June 9, 1995. Comments shall include the following: the commenter's position in support of or in opposition to the proposed transaction; any and all evidence, including verified statements, in support of or in opposition to the proposed transaction; and specific reasons why approval would or would not be in the public interest. Interested persons who do not intend to participate formally in the proceeding but who desire to comment may also file statements, also subject to the filing and service requirements specified above. Persons must state specifically whether they intend to participate actively in the proceeding or whether they wish only to be advised of all decisions issued by the Commission. Failure to state an intention to participate as an active party will result in the person being placed in the latter category.

Because SPS/TUCO's responsive application contains proposed conditions to approval of the primary application in Finance Docket No. 32549, the Commission will entertain no requests for affirmative relief to this proposal. Parties may only participate in direct support of or direct opposition to SPS/TUCO's responsive application as filed.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Decided: May 17, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioners Simmons and McDonald.

Vernon A. Williams,

Secretary.

[FR Doc. 95–12887 Filed 5–24–95; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32549 (Sub-No. 16)]

Western Fuels Service Corp.—Trackage Rights Over The Atchison, Topeka and Santa Fe Railway Company Between Denver, CO, and Holcomb, KS

AGENCY: Interstate Commerce Commission.

ACTION: Decision No. 25; notice of acceptance of responsive application filed by Western Fuels Service Corp.

SUMMARY: The Commission is accepting for consideration the application filed by Western Fuels Service Corp. (WFSC) for trackage rights over lines of The Atchison, Topeka and Santa Fe Railway Company (Santa Fe) in Colorado and Kansas. This application is responsive to the primary application filed by Burlington Northern Railroad Company (BN) and its corporate parent, Burlington Northern Inc. (BNI), and Santa Fe and its corporate parent, Santa Fe Pacific Corporation (SFP), by which primary applicants BNI, BN, SFP, and Santa Fe seek approval for BNI's acquisition of, control of, and merger with SFP, the resulting common control of BN and Santa Fe by the merged company, the consolidation of BN and Santa Fe railroad operations, and the merger of BN and Santa Fe.

DATES: The effective date of this decision is May 25, 1995. Comments regarding the WFSC responsive application must be filed with the Commission by June 9, 1995. Rebuttal in support of the WFSC responsive application must be filed by June 19, 1995. Briefs (not to exceed 50 pages) must be filed by June 29, 1995.

ADDRESSES: An original and 20 copies of all documents must refer to Finance Docket No. 32549 (Sub-No. 16) and be sent to the Office of the Secretary, Case Control Branch, Attn: Finance Docket No. 32549 (Sub-No. 16), Interstate Commerce Commission, 1201 Constitution Avenue, N.W., Washington, D.C. 20423. Parties are encouraged also to submit all pleadings and attachments on a 3.5-inch diskette in WordPerfect 5.1 format.

In addition, one copy of all documents in this proceeding must be served, by first class mail, on: the Secretary of the Department of Transportation; the Attorney General of the United States; Administrative Law Judge Jacob Leventhal, Federal Energy Regulatory Commission, Office of Hearings, 825 North Capitol Street, N.E., Washington, D.C. 20426; Betty Jo Christian, Esq., Steptoe & Johnson, 1330 Connecticut Avenue, N.W., Washington, D.C. 20036–1795 (representing primary applicants BNI and BN); Erika Z. Jones, Esq., Mayer, Brown & Platt, 2000 Pennsylvania Avenue, N.W., Suite 6500, Washington, D.C. 20006 (representing primary applicants SFP and Santa Fe); and Peter Glaser, Esq., Doherty, Rumble and Butler, P.C., 1625 M Street, N.W., Washington, D.C. 20036 (representing responsive applicant WFSC).

Furthermore, one copy of all documents in this proceeding must be served, by first class mail, on all persons designated parties of record [POR] on the Commission's service list, served on May 19, 1995.

FOR FURTHER INFORMATION CONTACT: Julia Farr, (202) 927–5352. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: By this responsive application, WFSC seeks trackage rights over approximately 326 miles of Santa Fe's lines between Denver, CO, and Holcomb, KS, from the BN Yard at Denver, CO (BN MP 541.2) to the Santa Fe Yard at Pueblo, CO (Santa Fe MP 733.4) to the Sunflower Electric Station (also known as Holcomb Station) at Holcomb, KS (Santa Fe MP 407.4). WFSC is a wholly owned subsidiary of Western Fuels Association, Inc. (WFA), a non-profit fuel supply cooperative corporation whose member-owners are municipally and cooperatively owned electric utilities located in the Rocky Mountain West, the Midwest, the Southwest, and Louisiana. Sunflower Electric Station is a coal-burning electric generating facility owned by Sunflower Electric Power Corporation, a WFA member. The trackage rights sought by WFSC are intended to be used for the transportation of coal moving to Sunflower Electric Station.

WFSC's responsive application substantially complies with the applicable regulations, and it has therefore been accepted for consideration by the Commission. WFSC maintains, and we agree, that the trackage rights sought in its responsive application constitute a minor transaction. *See* 49 CFR 1180.2(b) (a transaction is minor if it does not involve the control or merger of two or more class I railroads and if it clearly will not have any anticompetitive effects).

The responsive application and exhibits are available for inspection in the Public Docket Room at the offices of the Commission in Washington, D.C. In addition, they may be obtained upon request from WFSC's representative named above.

This responsive application is consolidated for disposition with the Finance Docket No. 32549 primary application (and all embraced proceedings). Service of an initial decision will be waived, and determination of the merits of the responsive application will be made in the first instance by the entire Commission. 49 U.S.C. 11345(f).

Interested persons may participate formally by submitting written comments regarding the responsive application, subject to the filing and service requirements specified above. Such comments (referred to as "responses" in the procedural schedule) should indicate the exact proceeding

[1] SPS/TUCO recognizes that, because it is not an "applicant carrier" as defined by 49 CFR 1180.3(b), applicant carriers who may receive such requested trackage rights as a result of this responsive application will necessarily have to resolve carrier-specific, trackage rights issues in a "follow-up proceeding." (SPST–11, at 3–4.)

designation and should be filed with the Commission by June 9, 1995. Comments shall include the following: The commenter's position in support of or in opposition to the proposed transaction; any and all evidence, including verified statements, in support of or in opposition to the proposed transaction; and specific reasons why approval would or would not be in the public interest. Interested persons who do not intend to participate formally in the proceeding but who desire to comment may also file statements, also subject to the filing and service requirements specified above. Persons must state specifically whether they intend to participate actively in the proceeding or whether they wish only to be advised of all decisions issued by the Commission. Failure to state an intention to participate as an active party will result in the person being placed in the latter category.

Because WFSC's responsive application contains proposed conditions to approval of the primary application in Finance Docket No. 32549, the Commission will entertain no requests for affirmative relief to this proposal. Parties may only participate in direct support of or direct opposition to WFSC's responsive application as filed.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Decided: May 17, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioners Simmons and McDonald.

Vernon A. Williams,

Secretary.

[FR Doc. 95–12889 Filed 5–24–95; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Department policy, 28 C.F.R. 50.7, notice is hereby given that a proposed consent decree in *United States v. Barsotti's Inc.* Civil Action No. C–95–20310 RMW (PVG), was lodged on May 10, 1995 with the United States District Court for the Northern District of California. The compliant seeks civil penalties and injunctive relief for violations of the Clean Air Act and National Emission Standards for Hazardous Air Pollutants ("NESHAP") for asbestos. 40 C.F.R. Part 61, Subpart M (1991). The compliant alleges that Barsotti violated the Asbestos NESHAP's Standard for Demolition and Renovation, 40 C.F.R. 61.145, during the renovation of Pacific Gas and Electric Co.'s Moss Landing Power Plant in Moss Landing, California in September 1992. Barsotti violated 40 C.F.R. 61.145(b) by: (1) Failing to adequately wet the regulated asbestos-containing material ("RACM") during the stripping operation, (2) failing to keep the RACM wet prior to disposal and (3) failing to carefully lower the RACM to the ground to prevent releases of asbestos. The consent decree requires Barsotti to pay a penalty of $68,000, which will be shared equally with the Monterey Unified Air Pollution Control District, and requires Barsotti to implement an asbestos management program and an asbestos training program if it should engage in future asbestos abatement activities.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States v. Barsotti's, Inc.* DOJ Ref. #90–5–21–1905.

The proposed consent decree may be examined at the Office if the United States Attorney Nothern District of California, 450 Golden Gate avenue, San Francisco, CA 94102; Office of the Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94102; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A Copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $5.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–12868 Filed 5–24–95; 8:45 am]

BILLING CODE 4410–10–M

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, 38 Fed. Reg. 19029, notice is hereby given that on May 16, 1995, a proposed Consent Decree in *United States v. James River Paper Company,* Civil Action No. 95–258–JD was lodged with the United States District Court for the District of New Hampshire resolving the matters alleged in a complaint filed simultaneously with the Consent Decree. The proposed Consent Decree concerns alleged violations by James River of Sections 309(b) and (d) of the Clean Water Act ("CWA"), 33 U.S.C. 1319(b) and (d), Sections 3008(a) and (g) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6928(a) and (g), Section 109(c) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9609(c), and Section 325(b)(3) of the Emergency Planning and Community Right-to-Know Act ("EPCRA"), 42 U.S.C. 11045(b)(3), at pulp and paper mills operated by James River in Gorham and Berlin, New Hampshire.

The CWA violations alleged in the complaint include: violations of the federal pretreatment standards and National Prohibited Discharge Standard; the unauthorized discharge of pollutants without a permit; and the discharge of pollutants in excess of levels allowed under a permit. The RCRA violation alleged in the complaint includes the disposal of hazardous waste without a permit. Finally, the CERCLA and EPCRA violations alleged in the complaint include the failure to timely report the spill of sulfuric acid at the pulp mill.

Under the terms of the Consent Decree, the defendant will pay a civil penalty of $200,000 to the United States and will be required to comply with the Clean Water Act. In addition, the defendant will be required to install equipment at the pulp mill necessary to reduce certain sulfur emissions from wastewater effluent.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Washington, D.C. 20530, and should refer to *United States v. James River Paper Company,* D.J. Ref. 90–5–1–1–4123.

The proposed Consent Decree may be examined at the Region I Office of the Environmental Protection Agency, One Congress Street, Boston, Massachusetts, and at the office of the United States Attorney, District of New Hampshire, 55 Pleasant Street, Concord, New Hampshire, c/o Gretchen L. Witt, Assistant U.S. Attorney. Copies of the Consent Decree may also be examined at the Consent Decree Library, 1120 G.

Street, N.W., 4th Floor, Washington, D.C. 20005 (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $6.00 (25 cents per page reproduction cost) made payable to Consent Decree Library.

Joel M. Gross,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–12869 Filed 5–24–95; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Advanced Lead-Acid Battery Consortium

Notice is hereby given that, on August 26, 1994, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the Advanced Lead-Acid Battery Consortium ("ALABC"), a discrete program of the International Lead Zinc Research Organization, Inc. ("ILZRO"), has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Delco Remy Division of GM Corporation, Anderson, IN; and Global & Yuasa Battery Company Ltd., Changwon, Kyungnam, KOREA have become members to the ALABC.

No other changes have been made in either membership or planned activity of the group research project. Membership remains open and ALABC intends to file additional written notification disclosing any changes in membership.

On June 15, 1992, the ALABC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on July 29, 1992 (57 FR 33522).

The last notification was filed with the Department on May 31, 1994. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on June 23, 1994 (59 FR 32462).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–12870 Filed 5–24–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Curagen Corporation and Soane Technologies, Inc.

Notice is hereby given that, on February 9, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), CuraGen Corporation and Soane Technologies, Inc. have filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are CuraGen Corporation, Branford, CT; and Soane Technologies, Inc., Hayward, CA. The general area of planned activity is to develop, and subsequently commercialize, a prototype microfabricated device for analysis of DNA, and more particularly, the characterization of complex genetic disorders.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–12871 Filed 5–24–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Joint Development Venture Called "Versit"

Notice is hereby given that, on January 26, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), a Joint Development Venture called "versit" has filed written notifications on behalf of Siemens Rolm Communications Inc.; AT&T Corp.; International Business Machines Corporation; and Apple Computer, Inc., simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties to the venture are: Siemens Rolm Communications Inc., Santa Clara, CA; AT&T Corp., Basking Ridge, NJ; International Business Machines Corporation, Somers, NY; and Apple Computer, Inc., Cupertino, CA.

The Joint Development Venture called "versit" was formed pursuant to an Agreement effective on November 21, 1994. The venture's objectives are to define, develop and promote open specifications that will enable interoperability among diverse and competing communications and computing products and network services and to make such specifications available to all interested parties.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–12872 Filed 5–24–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Open Software Foundation, Inc.

Notice is hereby given that, on July 20, 1994, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Open Software Foundation, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the identities of the new, non-voting members of OSF are as follows: AGIP, S.p.A., Milano, ITALY: ASCII Corporation, Tokyo, JAPAN; ASK Group, Inc., Alameda, CA; Defense Research Agency, electronics Division, Worcester, ENGLAND; Dynamic Software AB-Dynasoft, Stockholm, SWEDEN; Electricite de France/Gaz de France, Issy Les Moulneaux, FRANCE; Fraunhofer Institute IAO, Stuttgart, GERMANY; Information exchange Steering Committee, Canberra, AUSTRALIA; Institute for Defense Analyses, Alexandria, VA; Just System Corporation, Tokus, JAPAN; Market Vision, New York, NY; NASA/Goddard Space Flight Center, Greenbelt, MD; Naval Research Laboratory, Washington, D.C.; Northern Telecom Limited, Ottawa, CANADA; Object Management Group, Framingham, MA; Openvision, Inc., Pleasanton, CA; Pyramid Technology, San Jose, CA; QA Training Limited, Gloucestershire, ENGLAND; Samsung Group, Kihung-Eup, KOREA; Sandia National Laboratories, Albuquerque, NM; Singalab PTE Ltd., Chadwick, SINGAPORE; Tecsiel S.p.A., Napoli, ITALY; World Bank, Washington, D.C.; Bull Worldwide

Information Systems, Massy CEDEX, FRANCE; and International Computers Limited, Bracknell, Berks, ENGLAND.

New Allied Sponsors of OSF, i.e., a group of affiliated members which share a single vote, are NEC Corporation, Tokyo, JAPAN; Siemens Nixdorf Informationssysteme AG, Munchen, GERMANY; Silicon Graphics Computer Systems, Mountain View, CA; Sony Corporation, Tokyo, JAPAN; and Transarc Corporation, Pittsburgh, PA.

The previous notification filed on May 11, 1994 is hereby corrected to show a change in address as follows: Persetel (Pty) Ltd., Sandton, Johannesburg, SOUTH AFRICA; USAF ESD, Hanscom AFB, MA; and University of Bilkent, Ankara, TURKEY; and to add Unilever PLC/NV, London, ENGLAND as a member of OSF.

No other changes have been made in either membership or planned activity of the group research project. Membership in this group research project remains open, and OSF intends to file additional written notifications disclosing all changes in membership.

On May 11, 1994, OSF filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to Section 6(b) of the Act on August 31, 1994 (59 Fed. Reg. 45009).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–12873 Filed 5–24–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993; SI Diamond Technology, Inc.

Notice is hereby given, that on March 21, 1995, pursuant to the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), SI Diamond Technology, Inc., for itself and on behalf of its members, has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are: SI Diamond Technology, Inc., Houston, TX; and Supertex, Inc., Sunnyvale, CA. The purpose of this joint venture is to develop and demonstrate diamond diode field emission display process technology needed for production of a 10", full color, VGA, flat panel display. The activities of this Joint Venture project will be partially funded by an award from the Advanced Technology Program, National Institute of Standards and Technology, Department of Commerce.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–12874 Filed 5–24–95; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Section 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on February 17, 1994, Calbiochem-Novabiochem Corporation, 10394 Pacific Center Court, Attn: Receiving Inspector, San Diego, California 92121–4340, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
Amphetamine (1100)	II
Phencyclidine (7471)	II
Phenylacetone (8501)	II
Cocaine (9041)	II

The firm plans to import small quantities of the listed controlled substances to make reagents for distribution to the biomedical research commodity.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of these basic classes of controlled substances may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than June 26, 1995.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–43746 (September 23, 1975), all applicants for registration to import basic classes of any controlled substances in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e), and (f) are satisfied.

Dated May 18, 1995.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 95–12782 Filed 5–24–95; 8:45 am]

BILLING CODE 4410–09–M

Importer of Controlled Substances; Notice of Registration

By Notice dated April 25, 1994, and published in the **Federal Register** on May 4, 1994, (59 FR 23081), Cambridge Isotope Lab, 50 Frontage Road, Andover, Massachusetts 01810, made application to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Dimethyltryptamine (7435)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Phencyclidine (7471)	II
Cocaine (9041)	II
Codeine (9050)	II
Benzoylecgonine (9180)	II
Methadone (9250)	II
Morphine (9300)	II
Fentanyl (9801)	II

No comments or objections have been received. Therefore, pursuant to Section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, Section 1311.42, the above firm is granted registration as an importer of the basic classes of controlled substances listed above.

Dated: May 16, 1995.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 95–12779 Filed 5–24–95; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated October 20, 1994, and published in the **Federal Register** on October 28, 1994, (59 FR 54219), Hoffman-LaRoche, Inc., 340 Kingsland Street, Nutley, New Jersey 07110, made application to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of Levorphanol (9220), a basic class of controlled substance listed in Schedule II.

No comments or objections have been received. Therefore, pursuant to Section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, Section 1301.54(e), the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: May 17, 1995.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 95–12780 Filed 5–24–95; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Notice of Correction

In the **Federal Register** (FR Doc. 95–8920) Vol. 60, No. 70 at page 18618, dated April 12, 1995, the listing of controlled substances should have included Oxycodone (9143), Hydromorphone (9150), Diphenoxylate (9170) and Noroxymorphone (9668) for Mallinckrodt Chemical, Inc., Mallinckrodt & Second Streets, St. Louis, Missouri 63147.

Dated: May 17, 1995.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 95–12778 Filed 5–24–95; 8:45 am]

BILLING CODE 4410–09–M

Importation of Controlled Substances; Notice of Application

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Section 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on January 18, 1995, North Pacific Trading Company, 1505 SE Gideon Street, Portland, Oregon 97202, made application to the Drug Enforcement Administration to be registered as an importer of Marihuana (7360) a basic class of controlled substance in Schedule I.

This application is exclusively for the importation of marithuana seed which will be rendered non-viable and used as bird seed.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of these basic classes of controlled substances may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1305.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justices, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than June 26, 1995.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42(b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43747–46 (September 23, 1975), all applicants for registration to import basic classes of any controlled substances in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311. 42 (a), (b), (c), (d), (e), and (f) are satisfied.

Dated: May 18, 1995.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 95–12783 Filed 5–24–95; 8:45 am]

BILLING CODE 4410–09–M

Importer of Controlled Substances; Application Withdrawal for Nycomed Incorporated

By letter dated April 17, 1995, Nycomed Inc., 33 Riverside Avenue, Rensselaer, New York 12144, withdrew their request to be registered as an importer of Meperidine (9230).

Therefore, the Notice dated February 14, 1995, in **Federal Register** (FR Doc. 95–3627), Vol. 60, No. 30 at page 8414 is hereby withdrawn.

Dated: May 17, 1995.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 95–12781 Filed 5–24–95; 8:45 am]

BILLING CODE 4410–09–M

Importation of Controlled Substances; Notice of Application

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Section 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on March 22, 1995, Research Biochemicals, Limited Partnership, One Strathmore Road, Natick, Massachusetts 01760, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below;

Drug	Schedule
Methaqualone (2565)	I
Ibogaine (7260)	I
Tetrahydrocannabinols (7370)	I
Bufotenie (7433)	I
Dimethyltryptamine (7435)	I
Etorphine (except HC1) (9056)	I
Methylphenidate (1724)	II
Etorphine Hydrochloride (9059)	II
Diphenoxylate (9170)	II

Drug	Schedule
Metazocine (9240)	II
Methadone (9250)	II
Fentanyl (9801)	II

The firm plans to import small quantities of the controlled substances to manufacture laboratory reference standards and neurochemicals.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of these basic classes of controlled substances may file written comment son or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than June 26, 1995.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import basic classes of any controlled substances in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e), and (f) are satisfied.

Dated: May 17, 1995.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 95–12784 Filed 5–24–95; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on March 22, 1995, Roche Diagnostic Systems Inc., 1080 U.S. Highway 202, Somerville, New Jersey 08876, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
Phencyclidine (7471)	II
Methadone (9250)	II
Morphine (9300)	II

The firm plans to manufacture very small quantities of the listed controlled substances which will be incorporated in drug of abuse detection kits.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than June 26, 1995.

Dated May 18, 1995.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 95–12785 Filed 5–24–95; 8:45 am]

BILLING CODE 4410–09–M

Immigration and Naturalization Service

[INS No. 1723–95; AG Order No. 1967–95]

RIN 1115–AC30

Extension of Designation of Rwanda Under Temporary Protected Status Program

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: This notice extends, until June 6, 1996, the Attorney General's designation of Rwanda under the Temporary Protected Status program provided for in section 244A of the Immigration and Nationality Act, as amended ("the Act"). Accordingly, eligible aliens who are nationals of Rwanda, or who have no nationality and who last habitually resided in Rwanda, may re-register for Temporary Protected Status and extension of employment authorization. This re-registration is limited to persons who already have registered or will register for the initial period of Temporary Protected Status, which ends on June 6, 1995. In addition during the extension period, some aliens may be eligible for late initial registration pursuant to 8 CFR 240.2(f)(2).

EFFECTIVE DATE: This extension of designation is effective on June 7, 1995, and will remain in effect until June 6, 1996. Re-registration procedures become effective May 25, 1995, and will remain in effect until June 23, 1995.

FOR FURTHER INFORMATION CONTACT: Ronald Chirlin, Senior Immigration Examiner, Immigration and Naturalization Service, Room 3214, 325 I Street, NW., Washington, DC 20536, telephone (202) 514–5014.

SUPPLEMENTARY INFORMATION: Under section 244A of the Act, as amended by section 302(a) of Pub. L. 101–649 and section 304(b) of Pub. L. 102–232 (8 U.S.C. 1254a), the Attorney General is authorized to grant Temporary Protected Status in the United States to eligible aliens who are nationals of a foreign state designated by the Attorney General, or who have no nationality and who last habitually resided in that state. The Attorney General may designate a state upon finding that the state is experiencing ongoing armed conflict, environmental disaster, or certain other extraordinary and temporary conditions that prevent nationals or residents of the country from returning in safety.

Effective on June 7, 1994, the Attorney General designated Rwanda for Temporary Protected Status for a period of 12 months, 59 FR 29440. This notice extends the designation of Rwanda under the Temporary Protected Status program for an additional 12 months, in accordance with sections 244A(b)(3) (A) and (C) of the Act.

This notice also describes the procedures with which eligible aliens who are nationals of Rwanda, or who have no nationality and who last habitually resided in Rwanda, must comply in applying for continuation of Temporary Protected Status.

In addition to timely re-registrations and late re-registration authorized by this notice's extension of Rwanda's Temporary Protected Status designation, late initial registrations are possible for some Rwandans under 8 CFR 240.2(f)(2). Such late initial registrants must have been "continuously physically present" in the United States since June 7,1994, and must have had a valid immigrant or non-immigrant status during the original registration period.

An application for Employment Authorization, Form I–765, must always be filed as part of either a re-registration or as part of a late initial registration together with the Application for Temporary Protected Status, Form I–821. The appropriate filing fee must accompany Form I–765 unless a properly documented fee waiver request is submitted to the Immigration and Naturalization Service or the applicant does not request employment authorization. The Form I–765 is necessary for data gathering purposes.

Notice of Extension of Designation of Rwanda Under the Temporary Protected Status Program

By the authority vested in me as Attorney General under section 244A of the Immigration and Nationality Act, as amended, (8 U.S.C. 1254a), and pursuant to sections 244A(b)(3) (A) and (C) of the Act, I have had consultations with the appropriate agencies of the Government concerning (a) the conditions in Rwanda; and (b) whether permitting nationals of Rwanda, and aliens having no nationality who last habitually resided in Rwanda, to remain temporarily in the United States is contrary to the national interest of the United States. As a result, I determine that the conditions for the original designation of Temporary Protected Status for Rwanda continue to be met. Accordingly, it is ordered as follows:

(1) The designation of Rwanda under section 244A(b) of the Act is extended for an additional 12-month period from June 7, 1995, to June 6, 1996.

(2) I estimate that there are approximately 200 nationals of Rwanda, and aliens having no nationality who last habitually resided in Rwanda, who have been granted Temporary Protected Status and who are eligible for re-registration.

(3) A national of Rwanda, or an alien having no nationality who last habitually resided in Rwanda, who received a grant of Temporary Protected Status during the initial period of designation from June 7, 1994, to June 6, 1995, must comply with the re-registration requirements contained in 9 CFR 240.17, which are described in pertinent part in paragraphs (4) and (5) of this notice.

(4) A national of Rwanda, or an alien having no nationality who last habitually resided in Rwanda, who previously has been granted Temporary Protected Status, must re-register by filing a new Application for Temporary Protected Status, Form I–821, together with an Application for Employment Authorization, Form I–765, within the 30-day period beginning on May 25, 1995 and ending on June 23, 1995, in order to be eligible for Temporary Protected Status during the period from June 7, 1995, until June 6, 1996. Late re-registration applications will be allowed for "good cause" pursuant to 8 CFR 240.17(c).

(5) There is no fee for the Form I–821 filed as part of the re-registration application. The fee prescribed in 8 CFR 103.7(b)(1), currently seventy dollars ($70), will be charged for the Form I–765, filed by an alien requesting employment authorization pursuant to the provisions of paragraph (4) of this notice. An alien who does not request employment authorization must nonetheless file Form I–821 together with Form I–765, but in such cases both Form I–821 and Form I–765 should be submitted without fee.

(6) Pursuant to section 244A(b)(3)(A) and (C) of the Act, the Attorney General will review, at last 60 days before June 6, 1996, the designation of Rwanda under the Temporary Protected Status program to determine whether the conditions for designation continue to be met. Notice of that determination, including the basis for the determination,will be published in the **Federal Register.**

(7) Information concerning the Temporary Protected Status program for nationals of Rwanda, and aliens having no nationality who last habitually resided in Rwanda, will be available at local Immigration and Naturalization Service offices upon publication of this notice.

Dated: May 17, 1995.

Janet Reno,

Attorney General.

[FR Doc. 95–12793 Filed 5–24–95; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Glass Ceiling Commission; Open Meeting

SUMMARY: Pursuant to Title II of the Civil Rights Act of 1991 (Pub. L. 102–166) and Section 9 of the Federal Advisory Committee Act (FACA) (Pub. L. 92–462, 5 U.S.C. App. II) a Notice of establishment of the Glass Ceiling Commission was published in the **Federal Register** on March 30, 1992 (57 FR 10776). Pursuant to section 10(a) of FACA, this is to announce a meeting of the Commission which is to take place on Friday, June 2, 1995 and Saturday, June 3, 1995. The purpose of the Commission is to, among other things, focus greater attention on the importance of eliminating artificial barriers to the advancement of minorities and women to management and decisionmaking positions in business. The Commission has the practical task of: (a) Conducting basic research into practices, policies, and manner in which management and decisionmaking positions in business are filled; (b) conducting comparative research of businesses and industries in which minorities and women are promoted or are not promoted; and (c) recommending measures to enhance opportunities for and the elimination of artificial barriers to the advancement of minorities and women to management and decisionmaking positions.

TIME AND PLACE: The meeting will be held on June 2, 1995, 9:00 AM–12:00 Noon, 1:00 PM–6:00 PM and again on Saturday, June 3, 1995, 9:00 AM–1:00 PM (Eastern Standard Time), at the Kingsmill Resort, 1010 Kingsmill Road, Williamburg, Virginia.

The Commission will meet to discuss and decide the recommendations for Report Two.

Individuals with disabilities should contact Ms. René A. Redwood at (202) 219–7342 if special accommodations are needed.

FOR FURTHER INFORMATION CONTACT: René A. Redwood, Executive Director, The Glass Ceiling Commission, c/o U.S. Department of Labor, 200 Constitution Avenue, N.W., Room C–2313, Washington, D.C. 20210. Telephone (202) 219–7342.

Due to an oversight, we are unable to provide more notice of this meeting.

Signed at Washington, D.C. this 22nd day of May, 1995.

Howard S. Hankerson,

Research Director, Glass Ceiling Commission.

[FR Doc. 95–12998 Filed 5–24–95; 8:45 am]

BILLING CODE 4510–23–M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations

will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address show below, not later than June 5, 1995.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 5, 1995.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 15th day of May, 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
American Standard Apparel (Wkrs)	Mifflinburg, PA	05/15/95	04/28/95	31,006	T-Shirts, Active Wear, etc.
GE Control Products (GECP) (Wkrs)	Carroll, IA	05/15/95	04/25/95	31,007	Range and Minute Timers.
Magnox Inc. (Wkrs)	Pulaski, VA	05/15/95	04/21/95	31,008	Magnetic Iron Oxide.
Mel Coat (ILGWU)	Weehawken, NJ	05/15/95	04/26/95	31,009	Women's Coats.
Gist-Brocades Food Ingredients (IBT)	East Brunswick, NJ	05/15/95	05/01/95	31,010	Fresh Yeast and Dry Yeast.
R & H Well Service, Inc. (Wkrs)	Midland, TX	05/15/95	04/10/95	31,011	Services for Oil Industry.
Rogerson Aircraft Corp. (Wkrs)	Port Angeles, WA	05/15/95	04/25/95	31,012	Aircraft Parts and Subassemblies.
Marie Coat (ILGWU)	Clifton, NJ	05/15/95	05/02/95	31,013	Women's Coats.
Sabrina Coat (ILGWU)	Paterson, NJ	05/15/95	05/02/95	31,014	Women's Coats.
Casual Coat (ILGWU)	Paterson, NJ	05/15/95	05/02/95	31,015	Women's Coats.
American Design (ILGWU)	Passaic, NJ	05/15/95	05/02/95	31,016	Women's Coats.
Q & T Coat (ILGWU)	Paterson, NJ	05/15/95	05/02/95	31,017	Women's Coats.
Dietrich Industries Inc. (Co.)	Blairsville, PA	05/15/95	04/17/95	31,018	Galvanized Bldg. Products.
E.R.A. Coat (ILGWU)	Paterson, NJ	05/15/95	05/02/95	31,019	Women's Coats.
Boeing Wichita (IAMAW)	Wichita, KS	05/15/95	05/03/95	31,020	Fuselages (Aircraft).
Crowntuft Div. of Kellwood Co. (Co.)	Calhoun, GA	05/15/95	05/01/95	31,021	Chenille Robes.
Gynotech (Co.)	Middlesex, NJ	05/15/95	05/04/95	31,022	Cervical Dilators.
Hilo Coast Processing Co (Wkrs)	Pepeekeo, HI	05/15/95	05/03/95	31,023	Cane Sugar.
Legends Manufacturing, Inc (Wkrs)	Throop, PA	05/15/95	04/20/95	31,024	Ladies' Dresses.
McDonnell Douglas Aerospace (IAM)	Monrovia, CA	05/15/95	04/18/95	31,025	Avionics.
Hubbell-Bell, Inc. (IBEW)	Fogelsville, PA	05/15/95	02/05/95	31,026	Electrical Fittings.
UMC Petroleum Corp. (Wkrs)	Denver, CO	05/15/95	05/01/95	31,027	Oil and Gas Exploration.
Zwickel, Inc. (Wkrs)	Philadelphia, PA	05/15/95	04/24/95	31,028	Warm-Up Suits, Fleecewear.
Osram Sylvania, Inc. (Wkrs)	Camillus, NY	05/15/95	04/24/95	31,029	Credit Union.
Ulster Scientific, Inc. (Wkrs)	New Paltz, NY	05/15/95	05/03/95	31,030	Diabetic Products.
Larry Mahan Western Industries Inc. (Wkrs).	El Paso, TX	05/15/95	05/04/95	31,031	Boots.
ITT Automotive Structural (Co.)	Roscommon, MI	05/15/95	05/05/95	31,032	Wench Line.
Atlantic Bouquet (Wkrs)	Secaucus, NJ	05/15/95	04/25/95	31,033	Flower Wholesalers.
Briggs & Stratton Corporation (UPIU)	Wauwatosa, WI	05/15/95	05/05/95	31,034	Small Gasoline Engines.
Clo-Shure of Rhode Island, Inc. (Co.)	Warwick, RI	05/15/95	04/26/95	31,035	Various Metal Stampings.
Clo-Shure of Rhode Island, Inc. (Co.)	New York, NY	05/15/95	04/26/95	31,036	Various Metal Stampings.
Fioretti, Inc. (Wkrs)	Pittston, PA	05/15/95	05/05/95	31,037	Women's Apparel.

[FR Doc. 95–12852 Filed 5–24–95; 8:45 am]

BILLING CODE 4510–30–M

Notice of Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of May, 1995.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–30,992; General Electric, Murfreesboro, TN

TA–W–30,881; Electro-Scan, Inc., Garfield, NJ

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–30,847; Arizona Public Service Corp., Palo Verde Nuclear Power Plant, Phoenix AZ

U.S. imports of electricity were negligible during the period under investigation.

TA–W–30,867; Butterick Co., Inc., New York, NY

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–30,994; Cable Manufacturing & Assembly Co., Inc., Rockaway, NJ

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–30,862; Bourns, Inc., Pressure Products, Riverside, CA

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–30,945; Graphic Vinyl Products, Inc., Newark, NJ

The investigation revealed that criterion (1) and criterion (2) have not been met. A significant number of proportion of the workers did not become totally or partially separated as required for certification. Sales or production did not decline during the relevant period as required for certification.

Affirmative Determinations for Worker Adjustment Assistance

TA–W–30,885; Saratoga Resources, Inc., including Lobo Operating, Inc, & Lobo Energy, Inc., Houston, TX

A certification was issued covering all workers separated on or after February 27, 1994.

TA–W–31,004; J & R Creations, Inc., Hoboken, NJ

A certification was issued covering all workers separated on or after April 26, 1994.

TA–W–30,977; Hudson Valley Tree, Inc., Evansville, IN

A certification was issued covering all workers separated on or after April 20, 1994.

TA–W–30,976; Hudson Valley Tree, Inc., Newburgh, NY

A certification was issued covering all workers separated on or after April 20, 1994.

TA–W–30,857; APC Corp., Hawthorne, NJ

A certification was issued covering all workers separated on or after April 15, 1994.

TA–W–30,859; Edgecombe Manufacturing, Tarboro, NC

A certification was issued covering all workers separated on or after March 13, 1994.

TA–W–30,860; Wilson Apparel, Wilson, NC

A certification was issued covering all workers separated on or after March 13, 1994.

TA–W–30,928; Marty Sculpture, Inc., Milton, VT

A certification was issued covering all workers separated on or after March 13, 1994.

TA–W–30,938; Ametek, Inc., U.S. Gauge Div., Sellersville, PA

A certification was issued covering all workers separated on or after April 15, 1994.

TA–W–30,874; The Texwipe Co., Upper Saddle River, NJ

A certification was issued covering all workers separated on or after March 14, 1994.

TA–W–30,850; Haggar Clothing Co., Robstown Manufacturing Co, Robstown, TX

A certification was issued covering all workers separate on or after March 16, 1994.

TA–W–30,795, Hyperion Power Technologies/Titan Transformer, Watertown, MA

A certification was issued covering all workers separated on or after February 20, 1994.

TA–W–30,922; Boskovich Farms, Inc., Moreno Valley, CA (Perris & Hemet Areas)

A certification was issued covering all workers separated on or after April 7, 1994.

TA–W–31,035 & TA–31,036; Clo-Shure of Rhode Island, Inc., New York, NY and Warwick, RI

A certification was issued covering all workers separated on or after April 26, 1994.

TA–W–30,873; Joshua Meier Corp, (formerly Located in North Bergen, NJ), Hasbrouck, NJ

A certification was issued covering all workers separated on or after February 20, 1994.

TA–W–30,966; Organik Technologies/ Bug Sky Washington, Tacoma, WA

A certification was issued covering all workers separated on or after March 1, 1994.

TA–W–30,856; Reliance Electric Co., Ashtabula, OH

A certification was issued covering all workers separated on or after March 14, 1994.

TA–W–30,865; Ohio Coil Service, A Subsidiary of General Electric Co., Newcomerstown, OH

A certification was issued covering all workers separated on or after March 15, 1994.

TA–W–30,838; Black Box Corp. of PA, Lawrence, PA

A certification was issued covering all workers separated on or after March 3, 1994.

TA–W–30,868; Kodalux Preocessing Service Qualex, Inc., Findlay, OH

A certification was issued covering all workers separated on or after March 15, 1994.

TA–W–30.937; Kingston Oil Corp., Winfield, TN

A certification was issued covering all workers separated on or after April 5, 1994.

TA–W–30,953; Strattec Security Corp., Formerly Briggs & Stratton Technologies Div. (Including Leased Workers From Briggs & Stratton Corp), Glendale, WI

A certification was issued covering all workers separated on or after April 11, 1994.

TA–W–30,848; Halo Lighting—Div. of Cooper Lighting, Elk Grove Village, IL

A certification was issued covering all workers separated on or after March 7, 1994.

TA–W–30,998; Studley Products, Inc., Newark, NJ

A certification was issued covering all workers separated on or after May 8, 1995.

TA–W–31,003; Garan, Inc., Adamsville, TN

A certification was issued covering all workers separated on or after April 24, 1995.

TA–W–30,831; National Semiconductor, South Portland, ME

A certification was issued covering all workers separated on or after May 17, 1995.

TA–W–30,886; Ametek, Inc., US Gauge Div., Allentown, PA

A certification was issued covering all workers separated on or after October 7, 1995.

TA–W–30,876; Anchor Hocking Packaging Co., Glassboro, NJ

A certification was issued covering all workers separated on or after March 21, 1994.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a) Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the

Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the months of May, 1995.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(A) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(B) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased.

(C) That the increase in imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(2) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

NAFTA–TAA–00422; General Electric Co., Rome, GA

The investigation revealed that criteria (3) and (4) were not met. There was no shift in production of General Electric Co., Rome, GA to Mexico or Canada during the period under investigation, nor did the subject firm import from Mexico or Canada any articles that are like or directly competitive with medium transformers.

NAFTA–TAA–00424; Astronautics Corp of America, Plants #1 and #4, Milwaukee, WI

The investigation revealed that criteria (3) and (4) were not met. A survey of the major customers of Astronautics Corp of America revealed that customers either did not import aircraft instruments components from Canada or Mexico.

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–00417; Redpath Apparel Group, Falfurrias, TX

A certification was issued covering all workers at Redpath Apparel Group, Falfurrias, TX separated on or after March 22, 1994.

NAFTA–TAA–00423; Central Products Co., Linden, NJ

A certification was issued covering all workers at Central Products Co., Linden, NJ separated on or after April 3, 1994.

NAFTA–TAA–00415; APC Corp., Hawthorne, NJ

A certification was issued covering all workers at APC Corp., Hawthorne, NJ separated on or after March 30, 1994.

NAFTA–TAA–00427; Boskovich Farms, Inc., Hemat/Perris Areas, Moreno Valley, CA

A certification was issued covering all workers at Boskovich Farms, Inc., Hemat/Perris Areas, Moreno Valley, CA separated on or after March 10, 1994.

I hereby certify that the aforementioned determinations were issued during the months of May, 1995. Copies of these determinations are available for inspection in Room C–4318, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: May 18, 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–12854 Filed 5–24–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,829]

Lockheed Fort Worth Company, a Division of Lockheed Corporation, Department 73, Fort Worth, Texas; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on March 20, 1995 in response to a worker petition which was filed on behalf of workers and former workers at Department 73 of Lockheed Fort Worth Company, a division of Lockheed Corporation, located in Fort Worth, Texas (TA–W–30,829).

Workers at Department 73 of Lockheed Fort Worth Company, a division of Lockheed Corporation, located in Fort Worth, Texas will be certified under a revised determination (TA–W–30,485). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, D.C. this 17th day of May 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–12853 Filed 5–24–95; 8:45 am]

BILLING CODE 4510–30–M

Pension and Welfare Benefits Administration

Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Working Group on Pension Education of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held from 9:30 a.m. until 12:00 noon, Tuesday, June 13, 1995, in Suite S–3215 A-B, U.S. Department of Labor Building, Third and Constitution Avenue, N.W., Washington, D.C. 20210.

This work group was formed by the Advisory Council to study issues relating to pension education for employees and employers.

The purpose of the June 13 meeting is to receive testimony from invited persons concerning the types of educational information that is needed and the individual retirement needs of employees. The work group will also take testimony and/or submissions from employee representatives, employer representatives and other interested individuals and groups regarding the subject matter.

Individuals or representatives of organizations wishing to address the work group should submit a written request on or before June 8, 1995 to Linda R. Jackson, Acting Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N–5677, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Oral presentations will be limited to ten (10) minutes, but witnesses may submit an extended statement for the record.

Organizatins or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before June 8, 1995.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 95–12820 Filed 5–24–95; 8:45 am]

BILLING CODE 4510–25–M

Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Working Group on Defined Contribution Adequacy of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held from 9:30 a.m. until 12:00 noon, Wednesday, June 14, 1995, in Suite S–3215 A–B, U.S. Department of Labor Building, Third and Constitution Avenue, N.W., Washington, D.C. 20210.

This work group was formed by the Advisory Council to study issues relating to the adequacy of defined contribution plans for employee retirement income.

The purpose of the June 14 meeting is to receive testimony from invited persons and to hold discussions concerning the following questions: (1) What constitutes an adequate retirement income?; (2) What defined contribution research and studies have been done? and (3) What further research, if any, is needed? The work group will also take testimony and/or submissions from employee representatives, employer representatives and other interested individuals and groups regarding the subject matter.

Individuals or representatives of organizations wishing to address the work group should submit a written request on or before June 8, 1995 to Linda R. Jackson, Acting Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N–5677, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Oral presentations will be limited to ten (10) minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before June 8, 1995.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 95–12842 Filed 5–24–95; 8:45 am]

BILLING CODE 4510–25–M

Advisory Council on Employee Welfare and Pension Benefit Plans; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Working Group on Real Estate Investment of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held from 1:00 p.m. until 3:30 noon, Tuesday, June 13, 1995, in Suite S–3215 A–B, U.S. Department of Labor Building, Third and Constitution Avenue, N.W., Washington, D.C. 20210.

This work group was formed by the Advisory Council to study issues relating to real estate investment, focusing on real estate investment advisor practices and real estate valuations.

The purpose of the June 13 meeting is to receive testimony from invited persons addressing the following questions: (1) Is current regulatory oversight of real estate investment advisors adequate?; (2) Is additional regulation needed beyond the Securities and Exchange Commission registration guidelines?; and (3) Would self-regulation of real estate investment advisors be better? The work group will hear testimony from a plan sponsor, a pension consultant dealing with real estate, a Department of Labor representative, a real estate investment manager, and a lawyer with experience in real estate fee structures.

The work group will also take testimony and/or submissions from employee representatives, employer representatives and other interested individuals and groups regarding the subject matter. Individuals or representatives of organizations wishing to address the work group should submit a written request on or before June 8, 1995 to Linda R. Jackson, Acting Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N–5677, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Oral presentations will be limited to ten (10) minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before June 8, 1995.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 95–12843 Filed 5–24–95; 8:45 am]

BILLING CODE 4510–25–M

Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held on Wednesday, June 14, 1995, in Suite S–2508, U.S. Department of Labor Building, Third and Constitution Avenue, N.W., Washington, D.C. 20210.

The purpose of this meeting, which will begin at 1:00 p.m., is to receive status reports of the council's 1995 work groups and to invite public comment on any aspect of the administration of ERISA.

Members of the public are encouraged to file a written statement pertaining to any topic concerning ERISA by submitting 20 copies on or before June 8, 1995 to Linda R. Jackson, Acting Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N–5677, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Individuals or representatives of organizations wishing to address the Advisory Council should forward their request to the Acting Executive Secretary or telephone on (202) 219–8753. Oral presentations will be limited to ten (10) minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before June 8, 1995.

Signed at Washington, D.C. this 19th day of May, 1995.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 95–12844 Filed 5–24–95; 8:45 am]

BILLING CODE 4510–25–M

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Expansion Arts Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Expansion Arts Advisory Panel (Capstone Project Section) to the National Council on the Arts will be held on June 13, 1995 from 9:00 a.m. to 5:30 p.m. This meeting will be held in Room 714, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public from 9:00 a.m. to 9:45 a.m. for opening remarks and a general

program overview and from 4:30 p.m. to 5:30 p.m. for a policy discussion.

The remaining portion of this meeting from 9:45 a.m. to 4:30 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, this session will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

Dated: May 19, 1995.

Yvonne M. Sabine,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 95–12795 Filed 5–24–95; 8:45 am]

BILLING CODE 7537–01–M

National Endowment for the Arts, Museum Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Museum Advisory Panel (Overview Section) to the National Council on the Arts will be held on June 13–14, 1995, from 9:00 a.m. to 6:00 p.m. on June 13 and from 9:00 a.m. to 3:00 p.m. on June 14, This meeting will be held in room M–07 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, N.W., Washington, D.C., 20506.

This meeting will be open to the public on a space available basis.

Any interested person may observe meetings or portions thereof, which are open to the public, and may be permitted to participate in the discussions at the discretion of the meeting chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW Washington, D.C. 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call 202/682–5433.

Dated: May 19, 1995.

Yvonne M. Sabine,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 95–12794 Filed 5–24–95; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Electrical and Communications Systems; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name and Committee Code: Special Emphasis Panel in Electrical and Communications Systems (#1196).

Date and Time: June 13, 1995/8:00 am–5:30 pm/June 14, 1995/8:00 am–5:30 pm.

Place: Room 530–Subpanel 1–June 13, 1995/Room 330–Subpanel 2–June 14, 1995, National Science Foundation, 4201 Wilson Blvd, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Chen-Ching Liu, Program Director, Power Systems, Division of Electrical and Communications Systems, Room 675, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1339.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review final proposals "Sensors and Sensor Systems for Power Systems and Other Dispersed Civil Infrastructure Systems".

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: May 22, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–12913 Filed 5–24–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel for Geosciences; Meeting

In accordance with the Federal Advisory Committee Act (Public Law 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel for Geosciences (1756).

Date: June 12–14, 1995.

Time: 7:30 a.m. to 9:00 p.m. each day.

Place: Room 360 & 365, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Maryellen Cameron, Program Director, Petrology and Geochemistry Program, Division of Earth Sciences, Room 785, National Science Foundation, Arlington, VA 22230, (703) 306–1554.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate environmental geochemistry and biochemistry proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: May 22, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–12910 Filed 5–24–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Information Robotics and Intelligent Systems; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science foundation announces the following meeting.

Name: Special Emphasis Panel in Information Robotics and Intelligent Systems (1200).

Date and Time: June 13, 1995, and June 15, 1995, 9:00 a.m. to 5:00 p.m.

Place: NSF, 4201 Wilson Blvd., Room 1150, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Howard Moraff, Acting Deputy Division Director, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1928.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate the Programs Operations.

Reason for Closing: The proposals being reviewed included information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: May 22, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–12912 Filed 5–24–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Networking and Communications Research and Infrastructure (NCRI); Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Networking and Communications Research (#1207).

Date and Time: June 12–14, 1995; 8:30 am to 5:00 pm.

Place: Room 1175, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230

Type of Meeting: Closed.

Contact Person: Dr. Aubrey Bush, NCRI, National Science Foundation, Room 1175, Arlington, VA 22230 (703 306–1949).

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review & evaluate proposals submitted for Networking and Communications Program.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b. (c) (4) and (6) of the Government in the Sunshine Act.

Dated: May 22, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–12911 Filed 5–24–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Physics; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Physics (#1208).

Date: June 14–16, 1995.

Place: Massachusetts Institute of Technology, Room 37–252, The Marlar Lounge, 70 Vassar Street, Cambridge, Massachusetts.

Type of Meeting: Closed.

Contact Person: Dr. David Berley, Program Manager, Laser Interferometer Gravitational Observatory, Physics Division, Room 1015, National Science Foundation, 4201 Arlington Blvd., Arlington, VA 22230. Telephone: (703) 306–1892.

Purpose of Meeting: To review the MIT subactivity of the LIGO project including the Research and Development, the Detecter Fabrication, and the Facilities Support. Evaluate the past activities and assess the proposed program through the end of the LIGO construction period (1999) with the view toward the long term operations.

Agenda: To review the MIT subactivity of the LIGO project, the past activities and the proposed program.

Reason for Closing: The Project plans being reviewed include information of a proprietary or confidential nature, including technical information; information on personnel and proprietary data for present and future subcontracts. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: May 22, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–12916 Filed 5–24–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Research, Evaluation and Dissemination; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Research, Evaluation and Dissemination.

Date and Time: June 15, 1995; 8:30 a.m. to 5:00 p.m., June 16, 1995; 8:30 a.m. to 5:00 p.m.

Location: Rooms 310, 320, 360, Arlington Rennaissance Hotel, 950 North Stafford Street, Arlington, VA 22203.

Type of Meeting: Closed.

Contact Person: Dr. Nora Sabelli, Program Director, 4201 Wilson Boulevard, Room 855, Arlington, VA 22230. Telephone (703) 306–1651.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals and provide advice and recommendations as part of the selection process for proposals submitted to the Networking Infrastructure for Education Program.

Reason for Closing: Because the proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and financial data, such as salaries; and personal information concerning individuals associated with proposals, the meetings are closed to the public. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Dated: May 22, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–12914 Filed 5–24–95; 8:45 am]

BILLING CODE 7555–01–M

Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Social, Behavioral and Economic Research (#1766).

Date and Time: June 12–13, 1995; 9:00 a.m. to 5:00 p.m.

Place: Room 970, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

Type of Meeting: Closed.

Contact Person: John E. Yellen, Program Director for Archaeology, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230. Telephone: (703) 306–1759.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate instrumentation development and acquisition proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: May 22, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–12915 Filed 5–24–95; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–295]

Commonwealth Edison Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–39, issued to Commonwealth Edison Company (ComEd, the licensee), for operation of the Zion Nuclear Power Station, Unit 1, located in Lake County, Illinois.

The proposed amendment would add a provision to the Technical Specifications (TS) to permit continued operation of Zion, Unit 1, with 154 steam generator tubes in service which potentially exceed the 40 percent through-wall repair or plugging criteria. The 154 tubes were identified as possibly exceeding the repair or plugging criteria as a result of the application of a revised flaw disposition guideline for test results retained from previous Zion, Unit 1, steam generator inspections. The proposed change consists of a footnote added to the TS which states that the 154 affected steam generator tubes may remain in service until initial entry into Mode 5, Cold Shutdown, for the refueling outage that is currently scheduled to begin in September 1995.

In 10 CFR 50.91(a)(6), it specifies that the Commission may, where exigent circumstances exist, allow less than 30 days for public comment. Exigent circumstances have been found to exist for this proposed amendment. The licensee identified concerns in late 1994 associated with the methodology for the disposition of some detected indications from eddy current testing performed on Zion steam generator tubes. Revised flaw disposition guidelines were developed and applied to test results retained from previous Zion, Unit 1, steam generator inspections. The application of the revised guidelines resulted in the identification of 154 steam generator tubes which could potentially exceed the plugging or repair criteria specified in TS 4.3.1.B.4.A.6 (imperfection depth of greater than or equal to 40 percent of the nominal tube wall thickness). On May 16, 1995, the licensee determined that the uncertainty regarding compliance with TS 3.4.3.1.B required a unit shutdown in accordance with TS 3.0.3. The licensee requested and was granted a Notice of Enforcement Discretion (NOED) verbally on May 16, 1995. The written request for the NOED and a request for a license amendment was submitted on May 17, 1995. In order to restore licensee compliance with TS as quickly as possible and maintain public participation in the license amendment process as much as practical, the staff is exercising the exigent provisions of 10 CFR 50.91(a)(6).

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of occurrence of any accident previously evaluated.

The Main Steamline Break is the bounding event for secondary system depressurization. The sequence of events which are necessary precursors to the catastrophic steam line failure are external to the Steam Generators and is unaffected by the fact that Steam Generator tubes with known indications located deep within the tube sheet crevice were allowed to remain in service. There is no credible manner in which the condition of the tubes deep within the tube sheet crevice of the Steam Generator can influence the integrity of the Main Steamline.

The probability that a tube rupture will occur is not increased because the indications of interest are constrained deep within the tube sheet crevice. Due to the fact that the degradation mechanism has been characterized as inner diameter (I.D.) PWSCC and that they are located deep within the tube sheet crevice, the failure probability (i.e. tube rupture) is not increased. Thus, the probability of tube rupture for these indications is taken to the zero. With no possibility of the tubes of interest rupturing due to the indications constrained within the tube sheet area, there is no increase in the probability of occurrence that a tube rupture event will occur.

No significant increase in offsite dose consequences have been postulated for the Steamline Break transient. In order to characterize the impact of an event which would involve a limiting Main Steamline Break coincident with the maximum credible leakage from all affected tubes, a dose evaluation has been performed and compared to the typical acceptance criteria of a small fraction (~10%) of the guidelines set forth in 10 CFR 100. The evaluation performed is described in detail in Enclosure 6 [Letter from T. Simpkin (ComEd) to Document Control Desk (NRC) dated May 17, 1995] of this request and assumed the following occurrences:

—Failure of a main streamline outside of containment,
—Bounding leakage of 0.5 GPM per tube for 154 tubes, and
—The calculation assumes a 2 hour release.

When the RCS iodine limit is administratively constrained to 0.06 uCi/cc, the thyroid dose is calculated to be just under 30 Rem thyroid, which is still a small percentage of 10 CFR 100 limits. Thus, the consequences of an accident previously analyzed are not significantly increased.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not add new or different types of plant equipment nor do they alter any plant procedures used during recovery from accidents described in the analysis. Installed equipment is not being operated in a new or different manner. No new failure mechanisms are created by this change. Because no change is being made to the initiating mechanisms of an accident, and no equipment or procedural changes are involved, the proposed LAR does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed changes do not involve a significant reduction in a margin of safety.

The margin of safety for allowable tube degradation is based on a conservative allowance for eddy current uncertainty and a high confidence level that sufficient tube wall thickness remains to operate until the next scheduled inspection period with an acceptably low risk of tube failure. The indications of interest are characterized as I.D. PWSCC located at the roll transition nominally 18.25 inches deep in the tube sheet crevice. Past inspections indicate that any crack growth will be into the rolled portion of the tube. The recent operating history of Unit 1, both in the lack of primary-to-secondary leakage and the stable behavior of the tubes in service, provides confidence that sufficient structural integrity exists to support at least the additional four months of power operation. Thus, the margin of safety has not been adversely impacted.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 15 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 15-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 15-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By June 26, 1995, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Waukegan Public Library, 128 North County Street, Waukegan, Illinois 60085. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Robert A. Capra, Director, Project Directorate III–2: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated May 17, 1995, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room, located at the Waukegan Public Library, 128 North County Street, Waukegan, Illinois 60085.

Dated at Rockville, Maryland, this 19th day of May 1995.

For the Nuclear Regulatory Commission.

William D. Reckley,

Project Manager, Project Directorate III–2, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–12850 Filed 5–24–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–366]

Georgia Power Company, et al.; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Georgia Power Company, et al. (the licensee), to withdraw its March 14, 1995, application for proposed amendment to Facility Operating License No. NPF–5 for the Edwin I. Hatch Nuclear Plant, Unit No. 2, located in Applying County, Georgia.

The proposed amendment would have revised the primary containment isolation instrumentation action in the Technical Specifications to permit the drywell and wetwell purge valves, isolated by the drywell radiation monitor signal, to be opened with one inoperable drywell radiation monitor.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on March 29, 1995 (60 FR 16188). However, by letter dated May 1, 1995, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated March 14, 1995, and the licensee's letter dated May 1, 1995, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513.

Dated at Rockville, Maryland, this 18th day of May 1995.

For the Nuclear Regulatory Commission.

Kahtan N. Jabbour,

Senior Project Manager, Project Directorate II–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–12851 Filed 5–24–95; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Meeting of the Advisory Committee on Trade Policy and Negotiations

AGENCY: Office of the United States Trade Representative.

ACTION: Notice that the June 8, 1995 meeting of the Advisory Committee on Trade Policy and Negotiation will be held from 10:00 a.m. to 2:00 p.m. The meeting will be closed to the public from 10:00 a.m. to 1:15 p.m. The meeting will be open to the public from 1:15 p.m. to 2:00 p.m.

SUMMARY: The Advisory Committee of Trade Policy and Negotiation will hold a meeting on June 8, 1995 from 10:00 a.m. to 2:00 p.m. The meeting will be closed to the public from 10:00 a.m. to 1:15 p.m. The meeting will include a review and discussion of current issues which influence U.S. trade policy. Pursuant to Section 2155(f)(2) of Title 19 of the United States Code, I have determined that this portion of the meeting will be concerned with matters the disclosure of which would seriously compromise the development by the United States Government of trade policy, priorities, negotiating objectives or bargaining positions with respect to the operation of any trade agreement and other matters arising in connection with the development, implementation and administration of the trade policy of the United States. The meeting will be open to the public and press from 1:15 p.m. to 2:00 p.m. when trade policy issues will be discussed. Attendance during this part of the meeting is for observation only. Individuals who are not members of the committee will not be invited to comment.

DATES: The meeting is scheduled for June 8, 1995, unless otherwise notified.

ADDRESSES: The meeting will be held at the Four Seasons Hotel, located at 2800 Pennsylvania Ave., Washington, D.C. unless otherwise notified.

FOR FURTHER INFORMATION CONTRACT: Michaelle Burstin, Director of Public Liaison, Office of the United States Trade Representative, (202) 395-6120.

Michael Kantor,

United States Trade Representative.

[FR Doc. 95-12879 Filed 5-24-95; 8:45 am]

BILLING CODE 3190-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–35733; File No. SR–NSCC–95–05]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of a Proposed Rule Change Modifying Procedures Relating to the Trade Comparison Service for Debt Securities

May 18, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

("Act"),[1] notice is hereby given that on April 19 1995, the National Securities Clearing Corporation ("Commission") the proposed rule change (File No. SR–NSCC–95–05) as described in Items I, II, and III below, which items have been prepared primarily by NSCC. On April 24, 1995, NSCC filed an amendment to the proposed rule change requesting the Commission to consider the rule filing pursuant to Section 19(b)(2)[2] of the Act rather than under Section 19(b)(3)(A)[3] of the Act as originally filed.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule is to modify NSCC's procedures relating to the trade comparison service for debt securities. Specifically, NSCC is proposing to expand the parameters for trade input and trade comparison for transactions in debt securities.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Set forth in sections (A), (B), and (C) below, are the most significant aspects of such statements.[5]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to expand the parameters for trade input and comparison of transactions in debt securities. The proposed rule change will increase the initial trade date comparison rate for debt securities by expanding the comparison parameters from $.05 per $1,000 of contract amount to a net $10 difference per trade for trades of $100,000 or less and to $.10 per $1,000 of contract amount for trades greater than $100,000. If approved by the Commission, NSCC expects to implement the proposed rule change during late second quarter 1995. Participants will be notified of the exact date of this change by an NSCC Important Notice.

NSCC believes the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because the rule proposal will facilitate the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will impact or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments relating to the proposed rule change have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which NSCC consents, the Commission will:

(a) By order approve such proposed rule change or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of NSCC. All submissions should refer to the file number SR–NSCC–95–05 and should be submitted by June 15, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–12805 Filed 5–24–95; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 15 U.S.C. 78s(b)(2) (1988).

[3] 15 U.S.C. 78s(b)(3)(A) (1988).

[4] Letter from John P. Barry, Associate Counsel, NSCC, to Peter Geraghty, Senior Counsel, Division of Market Regulation, Commission (April 24, 1995).

[5] The Commission has modified parts of these statements.

[6] 17 CFR 200.30–3(a)(12) (1994).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2775]

Louisiana; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on May 10, 1995, and amendments thereto on May 11, I find that the following parishes in the State of Louisiana constitute a disaster area due to damages caused by severe storms, tornadoes, and flooding beginning on May 8, 1995 and continuing: Ascension, Assumption, Jefferson, LaFourche, Orleans, St. Bernard, St. Charles, St. James, St. John the Baptist, St. Tammany, Tangipahoa, and Terrebonne. Applications for loans for physical damages may be filed until the close of business on July 10, 1995, and for loans for economic injury until the close of business on February 12, 1996, at the address listed below: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Ft. Worth, TX 76155, or other locally announced locations. In addition, applications for economic injury loans from small businesses located in the following contiguous parishes and counties may be filed until the specified date at the above location: East Baton Rouge, Iberia, Iberville, Livingston, Plaquemines, St. Helena. St. Martin, St. Mary, and Washington Parishes in Louisiana, and Amite, Hancock, Pearl River, and Pike Counties in Mississippi.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000

	Percent
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125
For Economic Injury	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 277506. For economic injury the numbers are 851900 for Louisiana and 852000 for Mississippi.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: May 17, 1995.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 95–12892 Filed 5–24–95; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2776]

Mississippi; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on May 12, 1995, I find that Hancock, Harrison, and Pearl River Counties in the State of Mississippi constitute a disaster area due to damages caused by severe storms, tornadoes, and flooding beginning on May 8, 1995 and continuing. Applications for loans for physical damages may be filed until the close of business on July 10, 1995, and for loans for economic injury until the close of business on February 12, 1996, at the address listed below: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308, or other locally announced locations. In addition, applications for economic injury loans from small businesses located in the contiguous counties of Forrest, Jackson, Lamar, Marion, and Stone in the State of Mississippi may be filed until the specified date at the above location.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Other (including non-profit organizations) with credit available elsewhere	7.125
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 277606 and for economic injury the number is 852000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: May 17, 1995.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 95–12893 Filed 5–24–95; 8:45 am]

BILLING CODE 8025–01–17

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Approval of Noise Compatibility Program Bishop International Airport Flint, MI

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by Bishop International Airport Authority, Michigan, under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96–193) and 14 CFR Part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96–52 (1980). On March 1, 1993, the FAA determined that the noise exposure maps submitted by Bishop International Airport Authority under Part 150 were in compliance with applicable requirements. On July 25, 1994, the Assistant Administrator for Airports approved the Bishop International Airport noise compatibility program.

All but one of the recommendations of the program were approved; Noise Abatement Item 1b was disapproved pending submittal of additional information. The approved program consists of two (2) noise abatement measure and five (5) land use measures.

EFFECTIVE DATE: The effective date of the FAA's approval of the Bishop International Airport noise compatibility program is July 25, 1994.

FOR FURTHER INFORMATION CONTACT: Ernest Gubry, Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111, 313–487–7280. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for Bishop International Airport, effective July 25, 1994.

Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) Part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act, and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating

safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to the FAA's approval of an airport noise compatibility program are delineated in FAR Part 150, section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where federal funding is sought, requests for project grants must be submitted to the FAA Detroit Airports District Office in Belleville, Michigan.

Bishop International Airport Authority submitted noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study (conducted from August 1988 through September 1993) to the FAA. The Bishop International Airport noise exposure maps were determined by the FAA to be in compliance with applicable requirements on March 1, 1993. Notice of this determination was published in the **Federal Register** on March 15, 1993.

The Bishop International Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to the year 1999. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on January 26, 1994, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period would have been deemed to be an approval of such program.

The submitted program contained seven (7) proposed actions for noise mitigation. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The overall program, therefore, was approved by the Assistant Administrator for Airports effective July 25, 1994.

Outright approval was granted for all of the specific program elements with the exception of Item 1b, Development of SIDS and STARS (Standard Instrument Departure and Standard Arrival Procedures), which was disapproved pending submittal of additional information.

The approved items are:

Noise Abatement Procedures

1a. Voluntary Noise Abatement Procedures
2. Monitoring and Review of the Noise Exposure Maps/Noise Compatibility Plan Status

Land Use Measures

1. Land Acquisition and Relocation of Noise Impacted Mobile Homes
2. Easement Acquisition
3. Soundproofing and/or Climate Control for Locally Determined Qualified Compatible Residences
4. Airport Zoning/Overlay District
5. Real Estate Disclosure

These determinations are set forth in detail in a Record of Approval endorsed by the Assistant Administrator for Airports on July 25, 1994. The Record of Approval, as well as other evaluation materials and documents which comprised the submittal to the FAA, are available for review at the following locations:

Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111

Bishop International Airport Authority, Bishop International Airport, G–3425 W. Bristol Road, Flint, Michigan 48507–3183

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Belleville, Michigan, May 11, 1995.

Jack D. Roemer,

Acting Manager, Detroit Airports District Office, Great Lakes Region.

[FR Doc. 95–12900 Filed 5–24–95; 8:45 am]

BILLING CODE 4910–13–M

Receipt of Revision to Noise Compatibility Program and Request for Review, Louisville International Airport, Louisville, KY

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces that it is reviewing a proposed revision to the noise compatibility program that was submitted by the Regional Airport Authority of Louisville and Jefferson County (RAA) under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96–193) and 14 CFR Part 150. The existing noise compatibility program was approved April 8, 1994. The proposed revision to the noise compatibility program will be approved or disapproved on or before November 13, 1995.

DATES: The effective date of the FAA's review of the revision to the noise compatibility program is May 17, 1995. The public comment period ends July 16, 1995.

FOR FURTHER INFORMATION CONTACT: Cynthia K. Wills, 2851 Directors Cove, Suite 3, Memphis, Tennessee 38131–0301; 901–544–3495. Comments on the proposed revision to the noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA is reviewing a proposed revision to the noise compatibility program for Louisville International Airport which will be approved or disapproved on or before November 13, 1995. This notice also announces the availability of this program for public review and comment.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposed for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has formally received the proposed revision to the noise compatibility program for Louisville International Airport, effective May 1, 1995. It was requested that the FAA review this material and that the noise mitigation measure proposed by the airport be approved as a revision to the noise compatibility program under Section 104(b) of the Act. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to

approval or disapproval of the program. The formal review, limited by law to a maximum of 180 days will be completed on or before November 13, 1995.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise compatibility program, and the proposed revisions to the noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., Room 617, Washington, DC 20591

Federal Aviation Administration, Memphis Airports District Office, 2851 Directors Cove, Suite 3, Memphis, Tennessee 38131

Administrative Office, Regional Airport Authority of Louisville and Jefferson County, Louisville International Airport, Louisville, Kentucky 40209

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Memphis, Tennessee, May 17, 1995.

LaVerne F. Reid,

Manager, Memphis Airports District Office.

[FR Doc. 95–12903 Filed 5–24–95; 8:45 am]

BILLING CODE 4910–13–M

Intent To Prepare an Environmental Impact Statement and to Conduct Second Phase Scoping on Airport Alternatives to Accommodate the Long-term Air Transportation Needs of the Minneapolis-St. Paul Region, MN

AGENCY: Federal Aviation Administration, Department of Transportation.

ACTION: Notice of intent to prepare an Environmental Impact Statement and to conduct second phase public scoping.

SUMMARY: The Federal Aviation Administration (FAA) is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared on the potential effects of alternatives to accommodate the long-term air transportation needs of the Minneapolis-St. Paul region, including a new major airport site and a comprehensive plan for expansion and improvements to the existing Minneapolis-St. Paul International Airport. To ensure that all significant issues related to the proposed action are identified, the FAA is soliciting information and comments from the public concerning this project and is advising Federal, State and local agencies and the public of the scoping process and scheduled meetings that will be conducted as part of this process.

FOR FURTHER INFORMATION CONTACT: Mr. Glen Orcutt, Airports District Office, Federal Aviation Administration, 6020—28th Avenue South, Room 102, Minneapolis, Minnesota 55450–2706 (612) 725–4221.

SUPPLEMENTARY INFORMATION: The FAA proposes to prepare an EIS on the potential consequences and possible alternatives of a new major airport site selection that would allow construction of a replacement airport for the Minneapolis-St. Paul region, a comprehensive plan for the expansion at the existing Minneapolis-St. Paul International Airport, other reasonable alternatives and the no action alternative. A First Phase Scoping Report describing the Dual Track Planning Process was prepared and made available for public and agency review on March 30, 1992. Three public meetings were held in April 1992 for public and agency comment. Responses to substantive comments were published in March 1993.

A Second Phase Scoping Document has been prepared by the Metropolitan Airports Commission (MAC), a cooperating agency in the environmental process. This Scoping Document will be circulated to Federal, State and local agencies and will be available to the public for their review and comment. The Second Phase Scoping Document describes the results of the Dual Track Planning process which was described in the First Phase Scoping Report. A state and federal Environmental Impact Statement for the Dual Track Planning is being prepared by the MAC and the FAA, respectively. The EIS will compare all reasonable alternatives required to meet the Minneapolis-St. Paul region year 2020 aviation demand, disclose their environmental consequences and ensure that mitigating measures are considered to minimize adverse environmental effects.

To ensure a full cooperative effort, the FAA as lead agency on the federal EIS, recognizes the magnitude of this proposal and extends an invitation to affected Federal, State and local agencies to participate as a cooperating agency on this project. In accepting the duties and role of a cooperating agency, the agency shall participate in the NEPA process at the earliest point, shall participate in the scoping process, shall assist in preparing those portions of the EIS in which it has the greatest technical expertise and shall make available staff support to enhance interdisciplinary capability. Agencies interested in participating as a cooperating agency are requested to respond to the FAA at the address listed at the beginning of this notice.

The environmental review of the project will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amendment (42 U.S.C. 4371, *et seq.*), CEQ regulations (40 CFR 1500–1508), FAA Orders 5050.4A and 1050.1D and all applicable Federal and State regulations and local ordinances.

PUBLIC SCOPING: A scoping meeting will be conducted on June 27, 1995, at the Metropolitan Airports Commission General Offices, 6040—28th Avenue South, Minneapolis, Minnesota, beginning at 2:00 p.m. for Federal, State and local agencies. Scoping meetings for the public will be held on June 26, 1995, at the Metropolitan Airports Commission General Offices 6040—28th Avenue South, Minneapolis, Minnesota, beginning at 7:00 p.m. and again at 7:00 p.m. on June 27, 1995, at the Hastings Middle School Auditorium, 9th and Vermillion Streets, Hastings, Minnesota to allow for public input. Agencies and the public will be notified of subsequent meetings as they are scheduled. Written comments will be accepted until July 5, 1995, and may be directed to the FAA at the following address: Federal Aviation Administration, Airports District Office, MSP–ADO–600, 6020—28th Avenue South, Room 102, Minneapolis, Minnesota 55450–2706.

Issued in Des Plaines, Illinois, on May 18, 1995.

Benito De Leon,

Manager, Planning/Programming Branch, Airports Division, FAA, Great Lakes Region.

[FR Doc. 95–12901 Filed 5–24–95; 8:45 am]

BILLING CODE 4910–13–M

Federal Aviation Administration

Request for Comment and Information; Draft Report to Congress on Potential Hazards to Aircraft by Locating Waste Disposal Sites in Vicinity of Airports

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for comment regarding Report to Congress on the potential hazards to aircraft by locating waste disposal sites in the vicinity of airports.

SUMMARY: This notice requests comment to help fulfill a requirement in Section 203 of the Airport and Airway Safety Capacity, Noise Improvement, and Intermodal Transportation Act of 1992 (Public Law 102–581).

Section 203(b)(2) directs the Secretary of Transportation to conduct a study to determine whether a municipal solid waste facility, located within a 5-mile radius of the end of a runway, has the potential for attracting or sustaining bird movements (from feeding, watering, or roosting in the area) and poses a hazard to runways or approach and departure patterns of aircraft. The Secretary of Transportation has directed the Federal Aviation Administration (FAA) to conduct this study.

This notice solicits comments from the public on a draft report, as directed by Congress. The FAA believes a wide-range of public views will be beneficial in developing a comprehensive final Report to Congress.

DATES: Comments must be received by June 26, 1995.

ADDRESSES: Send all comments in triplicate to: Airport Safety and Compliance Branch, AAS–310, Federal Aviation Administration, 800 Independence Ave., SW, Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Benedict D. Castellano, Manager, Airport Safety and Compliance Branch, AAS–310, Federal Aviation Administration, 800 Independence Ave., SW, Washington, DC 20591.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) maintains that there exists a potential safety hazard when a waste disposal site is located within 5,000 feet of a runway used by piston-powered aircraft and within 10,000 feet of a runway used by turbo-engine aircraft. Additionally, when a waste disposal site is located within a 5-mile radius of a runway, such site may be incompatible with aircraft operations when the site attracts or sustains hazardous bird movements from feeding, watering, or roosting areas into or across the runways and/or approach and departure paths of aircraft.

In conducting the study mandated by Congress, the FAA examined the history of birds striking aircraft and reviewed several scientific papers published on the subject of landfills and birds. A draft report has been developed which outlines Federal regulations and policies on the subject, and discusses the basis of FAA criteria for siting of landfills. The report contains FAA's findings and future concerns. It includes a recommendation for continuing the current policy to object to the establishment of waste disposal sites within the criteria specified above.

All comments received on this draft report will be fully considered in the development of the final report, to be submitted to Congress.

Issued in Washington, DC, on May 19, 1995.

Ray Uhl,

Acting Director, Office of Airport Safety and Standards.

Draft Report on the Potential Hazards to Aircraft in Locating Waste Disposal Sites in the Vicinity of Airport

Purpose

This report is submitted to Congress in response to Section 203(b)(2) of the Airport and Airway Safety, Capacity, Noise Improvement, and Intermodal Transportation Act of 1992 which directs the Secretary of Transportation to conduct a study to determine whether a municipal solid waste facility, located within a 5-mile radius of the end of a runway, has the potential for attracting or sustaining bird movements (from feeding, watering, or roosting in the area) and poses a hazard to runways or approach and departure patterns of aircraft.

Scope of Report

Because most wildlife movements are seasonally influenced, a complete study of the issues presented would require that researchers document all wildlife activity for at least 1 year. In order to produce more credible information, at least 3 years of study data would be necessary to calculate valid statistical averages. Given the limited time frame specified in the Act for completing this study, it was not considered feasible to formulate and carry out a fully scientific research project to address the issue of siting landfills near airports. Instead, this report was developed from historical data, past studies, and research on the incidents and accidents involving bird strikes and aircraft, and on the potential of solid waste disposal sites to attract and sustain bird movements.

Aircraft Bird Strikes Historical Background

It is generally agreed that birds and aircraft are not compatible even though they share the common thread of flight. Bird strikes with aircraft were recorded as early as 1912, when a Wright Flyer crashed after striking a bird off the Pacific coast. Calbraith Rodgers, the pilot who drowned in the crash, became the first aviation fatality attributed to a bird strike.

Developments over the last 80 years have brought aviation to unprecedented levels of sophistication. However, this increased level of sophistication has not provided aircraft with an immunity to damages resulting from strikes with wildlife. Modern aircraft carry more passengers at greater speeds than ever before, thus increasing the potential for catastrophe. At high speed, even small animals become damaging projectiles to large aircraft. According to V.F.E. Soloman, a noted Canadian bird hazard specialist, a 4-pound bird struck at 260 knots exerts a force of 14 tons; at 520 knots, the force becomes 57 tons.

Bird strikes have been responsible for more than 100 deaths in the United States. Some of the more notable accidents that were attributed to bird strikes included: On March 10, 1960, a Lockheed Electra departing Boston's Logan Airport struck starlings and crashed, resulting in 62 deaths. In 1973, a Learjet departing Dekalb-Peachtree Airport in Georgia struck a flock of cowbirds (small blackbirds) and ingested them into the engines. Both engines sustained compressor stalls, causing the aircraft to crash, killing all seven on board. On November 12, 1975, a DC–10 departing John F. Kennedy Airport ingested gulls on takeoff roll, aborted the takeoff, caught fire, and was completely destroyed. The accident resulted in a number of injuries, but no deaths. Fortunately, the 139 passengers, who were airline employees, were able to evacuate the burning craft quickly.

Although it has been argued that these accidents are no longer relevant and that modern aircraft have become more resistant to damage and disaster from bird strikes, this is not the case, In 1988, in Bahar Dar, Ethiopia, a Boeing–737 on takeoff struck a flock of speckled pigeons and crashed, killing 35 passengers and injuring 21 others.

The reports that followed the incidents mentioned above noted that birds had been attracted by either waste disposal operations or by trash on or about the vicinity of the airport. Following the 1973 Learjet crash, the

National Transportation Safety Board recommended that the Federal Aviation Administration (FAA) "implement a procedure for more stringent and continued surveillance of all facilities subject to the provisions of the Airport and Airway Development Act and impose timely sanctions against operators of facilities, which receive federal aid and do not fully comply with the requirements imposed upon them by the provisions of this act." A provision in the Act specifies that grant recipients, to the extent reasonable, maintain compatible land uses around an airport.

Whether or not a catastrophe results, bird hazards can be responsible for unnecessary risk and expense. The FAA receives an average of 2,000 bird strike reports each year. This reporting system is voluntary and does not reflect the total number of strikes or cost estimates of damage to aircraft or the aviation industry. It is generally accepted that more than half of all strikes go unreported. Far less information is received on cost estimates. Information regarding the amount of damage is seldom reported because pilots normally fill out the strike report before the actual extent of damage is determined.

However, damage to aircraft from birds can be severe and costly. According to a recent Environmental Impact Statement (EIS) for John F. Kennedy International Airport, after ingesting 1 bird, a Boeing-747 aborted its takeoff, blew 10 tires, and damaged the brakes while stopping. The resulting damage from this one incident cost the airline $200,000. Additionally, the EIS reported that between 1979 and 1993, bird strikes caused 46 instances of engine damage, 22 instances of nonengine damage, and 51 aborted takeoffs (USDA 1994).[1]

Landfills as Attractions to Birds

A number of scientific papers have been published regarding the association of birds and waste disposal operations. It is generally accepted that large numbers of birds commonly frequent landfills in search of food. In a recent study conducted by the United States Department of Agriculture's Denver Wildlife Research Center (DWRC) for the FAA, 699,477 individual birds of 42 species were recorded at 3 landfills in 958 observation periods (Belant et al. 1994).[2] Although gulls may be found at inland landfills, they are one of the more common bird species associated with coastal landfills. Additionally, crows, starlings, blackbirds, pigeons, sparrows, and vultures have been documented as common visitors to most landfills regardless of the location (Lake 1984).[3]

Bird populations that impact human health and safety have been less understood and documented. However, in 1971 the Environmental Protection Agency (EPA) released a report that surveyed land disposal sites reporting bird aircraft hazards. In the discussion section on page 26 it stated, "there is little doubt that improper solid waste disposal sites in many areas of the country contribute to the bird/aircraft strike hazard at airports." Furthermore, it was stated in the summary and conclusions that, "analysis of judgments following two lawsuits resulting from aircraft/bird strike accidents indicated a strong possibility that both government and a disposal site owner could be liable for an accident attributed to birds if the disposal site was knowingly attracting birds and contributing to the risk of bird/aircraft collisions" (Davidson et al. 1971).[4] Considering the reports referenced above, FAA believes there is enough information available to support the conclusion that landfills are attractive to birds and that a potential hazard will exist whenever numbers of birds are drawn into or across air traffic corridors.

The FAA has initiated research to understand, identify, and manage potentially hazardous wildlife populations better on or near airports. Actual research is being completed under a contract with DWRC. DWRC is recognized as one of the most experienced organizations in the field of nuisance wildlife management. Although wildlife hazard research is currently underway, it remains in preliminary stages. This preliminary research will establish a solid data base that will be used for later comparisons.

More research is also needed to assess the effectiveness of wildlife control techniques. It is common for operators of waste disposal facilities to include wildlife control techniques in proposals to locate or expand operations in the vicinity of airports. These techniques include the use of pyrotechnic devices, broadcast bird distress calls, and as a last resort, lethal control. Although these controls are often presented as being sufficient to offset any wildlife attraction caused by the landfill activity, there is little documentation that these controls will significantly mitigate the attractiveness of a landfill to birds over an extended period. Thus, there is no assurance that such efforts would actually alleviate a bird hazard near an airport should one arise after the landfill is constructed. There exists ample information regarding bird dependence on landfills. Conversely, there is little information documenting successful long-term mitigation of the problem.

Landfill Siting Near Airports

Locating a waste disposal site, particularly in and around urban areas, has become a very serious problem for most communities, from both physical and political viewpoints. As a result, there has been an increasing need to expand existing sites and establish new waste disposal facilities and landfills. A proposal to establish such a facility close to a populated or recreational area will, in most cases, result in considerable controversy and public opposition. Landfill proponents often consider or select sites located at the end of runways or in the vicinity of airports as solutions to these issues. These locations are often near, but outside, population centers; are noise impacted or otherwise unattractive for building development; provide readily available and inexpensive land; and generally provide a location with good road access. As a result, these sites stand a much greater chance of being accepted by the public for landfill use. Because of its concern that the attractiveness of these landfills to bird populations has a potential to impact the safety of aircraft operating to and from airports, the FAA has taken a number of actions and established policies and procedures to evaluate the impact of potential landfill sites adjacent to airports.

Federal Regulations, Policies, and Procedures

A. *Federal Aviation Regulations Part 139.* Airports which serve any scheduled or unscheduled passenger operation of an air carrier that is conducted with an aircraft having a seating capacity of more than 30 passengers are required by Federal Aviation Regulations Part 139 to have an airport operating certificate from the FAA. This certificate is only granted after the airport is inspected by an FAA airport certification inspector to ensure

[1] Final Environmental Impact Statement, Gull Hazard Reduction Program, John F. Kennedy International Airport, United States Department of Agriculture, May 1994, pp. 1–7, 1–10.

[2] Jerrold L. Belant et al., "Gull and Other Bird Abundance at Three Mixed Solid Waste Landfills in Northern Ohio," DOT Interim Report, DTFA01–91–Z–02004, (1992), p. 23.

[3] David W. Lake, "Airport Bird Hazards Associated With Solid Waste Disposal Facilities," *Proceedings: Wildlife Hazards to Aircraft Conference and Training Workshop*, (1984), p. 221.

[4] George R. Davidson, Jr. et al., "Land Disposal Sites Near Airports Reporting Bird/Aircraft Hazards," Open-File Report, (TSR 1.6.004/0), U.S. Environmental Protection Agency, 1971, p. 2.

that all minimum safety standards of Part 139 have been met. Under Section 139.337, all operators of certificated airports shall provide for "the conduct of an ecological study, acceptable to the Administrator, when any of the following events occurs on or near the airport: (1) An air carrier aircraft experiences a multiple bird strike or engine ingestion. (2) An air carrier experiences a damaging collision with wildlife other than birds. (3) Wildlife of a size or in numbers capable of causing an event described in paragraph (a) (1) or (2) of this section is observed to have access to any airport flight pattern or movement area." Based in part on this study, FAA may require the airport operator to formulate and implement a wildlife hazard management plan.

B. *Order 5200.5A, Waste Disposal Sites On Or Near Airports.* FAA issued Order 5200.5 on October 16, 1974, to provide internal guidance regarding FAA's official position on siting landfills near airports in an effort to reduce potential airport/wildlife hazards. The current Order 5200.5A, "Waste Disposal Sites On or Near Airports," and the original Order 5200.5, contain criteria concerning the establishment, elimination, or monitoring of landfills, open dumps, waste disposal sites, or other similar facilities on or in the vicinity of airports. Orders, such as 5200.5A, are internal directives that provides guidance to FAA employees. Advisory circulars are public information and may be instructive to those who receive grants from the FAA. These orders and advisory circulars have no authority over facilities located off airport property. Also, FAA has no authority to approve or redirect land use outside of the airport perimeter. For airports that receive Federal funds, the owner, operator, or grant recipient must comply with terms of the grant obligation to the extent reasonable to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations. However, in most cases landfills are located outside the airport property and are often beyond the airport owner's jurisdictional control.

Order 5200.5A sets forth the policy that waste disposal sites are incompatible with aircraft operations when located within those areas adjacent to an airport that are defined through the application of the following three criteria: (1) when located within 10,000 feet of any runway end used or planned to be used by turbine-powered aircraft; (2) within 5,000 feet of any runway end used by piston-powered aircraft; and (3) when located within a 5-mile radius of a runway end, such that it attracts or sustains hazardous bird movements from feeding, watering, or roosting areas into or across the runways and/or approach and departure paths of aircraft. Although frequent movements of birds across aircraft approach and departure paths could be a safety concern beyond the 5-mile radius, this distance was considered a reasonable limit for application of the FAA criteria. The earlier version of the FAA order had no such limit.

C. *FAA Notification Requirements.* To assist FAA in its ability to monitor the siting of landfills near airports, the Congress in 1992 enacted legislation to amend the Federal Aviation Act to allow the Secretary of Transportation to require that persons proposing to establish sanitary landfills notify the Secretary when such notice will promote safety and the efficient use or preservation of navigable airspace. A proposed FAA regulatory amendment will establish an area within a 5-mile radius from an airport for requiring such a notification.

D. *EPA Notification Requirements.* Because of safety concerns and a lack of jurisdiction, FAA actively sought the assistance of the EPA to consider airport safety concerns when processing landfill siting permits. FAA suggested that the criteria in Order 5200.5A be incorporated into EPA's revision of its solid waste disposal regulations. As a result of FAA comments, the EPA adopted a regulatory requirement in the Solid Waste Disposal Facility Criteria, 40 Code of Federal Regulations Section 258.10, that landfill owners or operators notify the affected airport and appropriate FAA office whenever they intend to expand or propose a new landfill within 5 miles of an airport. However, EPA chose not to prohibit landfill operations within the 5,000 and 10,000 foot distance criteria identified by FAA. Instead, it required operators within these areas to demonstrate to the State agency having the authority to issue the permit that the operation does not pose a bird hazard to aircraft.

Basis of FAA Criteria for Siting of Landfills

FAA believes that any open household or putrescible waste disposal activity within 5,000 feet of a runway serving piston-powered aircraft and 10,000 feet from a runway serving turbine-powered aircraft is incompatible with safe aircraft operations. Outside this criteria but within 5 miles of the runway edge, FAA will review proposed landfill locations on a case-by-case basis. Under these circumstances, if the site falls directly under the approach or departure path or has the potential to increase birds in the active airspace, FAA will generally consider the site as being incompatible with the airport. If the site were located between the 10,000-foot limit and the 5-mile limit away from the approach or departure path and would not likely attract birds across the active airspace, FAA will not consider the site incompatible. During this case-by-case evaluation, factors such as the native bird populations, local geography, and the airport traffic patters are considered.

The distance used in FAA's guidance is based on several factors. Bird strikes are voluntarily reported to FAA from ground level to several thousand feet above ground level (AGL). Most bird strikes occur below 500 feet with numbers diminishing to insignificant levels above 3,000 feet. Based on normal performance characteristics, departing aircraft should be at approximately 500 feet AGL after traveling 10,000 feet from the runway end and approaching 3,000 feet AGL at 5 miles. These distances and altitudes form the basis for the minimum criteria designated for a turbine-powered aircraft.

Criteria for piston-powered aircraft specifies a lesser distance of 5,000 feet due to different performance characteristics. These aircraft are slower and make more noise relative to a bird's ability to respond. The engine noise and slower airspeed allow the operator and bird more time to react and avoid striking each other. Additionally, piston-powered aircraft do not have engine intakes that can ingest birds.

The 5-mile area is specified in Order 5200.5A to allow FAA the opportunity to review the traffic patterns, geography, and juxtaposition of the proposed landfill site and airport. As birds do not respect minimum distances, this review provides FAA an early opportunity to comment on proposed disposal sites in critical air traffic areas immediately outside the 5,000 and 10,000 foot zones. The review also takes into account existing numbers of birds in the area and other natural, man-made, or geographical features such as refuges, water reservoirs, or coastlines that may be located across air traffic paths from the proposed disposal site. As a note of reference, the 5-mile radius is also used in other countries, such as Canada, which restricts landfill development within 8 kilometers, or 4.8 miles of an airport reference point.

Future Concerns

There are indications that bird species with the greatest potential to create wildlife hazards on airports are

increasing and that future resolutions to these hazards may become more complex. Certain species that frequent landfills, such as ring-billed gulls, are increasing in unprecedented numbers. At the same time, the public is becoming more involved in wildlife management issues. The National Environmental Policy Act may require public involvement in the solution of a wildlife-related airport safety problem. The public's involvement may be costly and time consuming, resulting in a trade-off of accepting potential hazards while possible solutions are debated.

The likelihood of bird strikes may be further exacerbated by design changes to modern aircraft, which incorporate larger inlet engines to achieve reduced noise levels. These larger, quieter engines give birds less warning and require them to avoid a larger surface area.

Findings

1. FAA believes that current data is insufficient to permit an accurate and consistent quantification of the risk created by locating landfills within 5 miles of an airport. Although a quantified risk assessment is not available, the potential hazard of bird strikes has been established in reports following aircraft accidents.

2. FAA believes that landfills constitute a potential hazard to aviation if located within 5 miles from a runway end for the following reasons:

a. Bird strikes in the vicinity of waste disposal activities located within 5 miles of an airport have been a factor in numerous accidents, some involving loss of human life.

b. Bird activity is generally recognized to occur at altitudes that brings it into the path of aircraft during approach and departure operations, the most critical time for aircraft performance.

c. Modern aircraft, with quieter engines and larger engine inlets, increase the potential for bird strikes due to the reduced warning resulting from quieter engines with greater frontal areas which combine to increase the chances of birds being struck or ingested.

d. Bird mitigation techniques, although offered as a solution, have not been proven effective over extended periods of time. In addition, future mitigation programs will become more complicated and require more time to implement, resulting in a trade-off of potential hazards.

e. Landfills are intense attractants to birds. When located in or adjacent to airspace used by aircraft, a potential hazard will result.

3. As total bird control is not possible, the best solution is to restrict actions on or in the vicinity of an active airport to reduce bird attractions.

4. The distance criteria contained in FAA Order 52.005A serve as a reasonable basis for determining the incompatibility of a landfill site with airport operations.

Recommendations

Although not a solution to all airport-related bird hazards, locating intense attractions to wildlife, such as landfills, outside the areas specified by the FAA reduces the risk of a potentially hazardous collision between aircraft and birds. Progress has been made toward this goal by the EPA. Although EPA stops short of prohibiting landfills within the 5,000 and 10,000 foot areas designated by the FAA, it does require that operators of existing municipal solid waste landfills within those areas demonstrate to the State agency that issues municipal solid waste permits that such units do not pose a bird hazard to aircraft. Additionally, proponents of new or expanded landfill sites within 5 miles of an airport must notify the affected airport and the FAA of their intentions.

In an effort to enhance aviation safety. FAA recommends that no new or expanded municipal solid waste or putrescible landfill be located within the FAA specified 5,000 and 10,000 foot criteria or in the approach/departure areas within 5 miles of an airport if deemed incompatible with safe aircraft operations.

[FR Doc. 95–12899 Filed 5–24–95; 8:45 am]

BILLING CODE 4910–13–M

National Highway Traffic Safety Administration

Research and Development Programs Meeting

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: This notice announces a public meeting at which NHTSA will describe and discuss specific research and development projects and request suggestions for agenda topics.

DATES AND TIMES: The National Highway Traffic Safety Administration will hold a public meeting devoted primarily to presentations of specific research and development projects on June 27, 1995, beginning at 1:30 p.m. and ending at approximately 5:00 p.m. The deadline for interested parties to suggest agenda topics is 4:15 p.m. on June 8, 1995. Questions may be submitted in advance regarding the agency's research and development projects. They must be submitted in writing by June 19, 1995, to the address given below. If sufficient time is available, questions received after the June 19 date will be answered at the meeting in the discussion period. The individual, group, or company asking a question does not have to be present for the question to be answered. A consolidated list of the questions submitted by June 19 will be available at the meeting and will be mailed to requesters after the meeting.

ADDRESSES: The meeting will be held at the Ramada Inn, near Detroit Metro Airport, 8270 Wickham Rd., Romulus, MI 48174. Suggestions for specific R&D topics as described below and questions for the June 27, 1995, meeting relating to the agency's research and development programs should be submitted to the Office of the Associate Administrator for Research and Development, NRD–01, National Highway Traffic Safety Administration, Room 6206, 400 Seventh St., SW, Washington, DC 20590. The fax number is 202–366–5930.

FOR FURTHER INFORMATION: NHTSA intends to provide detailed presentations about its research and development programs in a series of quarterly public meetings. The series started in April 1993. The purpose is to make available more complete and timely information regarding the agency's research and development programs. This tenth meeting in the series will be held on June 27, 1995.

NHTSA requests suggestions from interested parties on the specific agenda topics. NHTSA will base its decisions about the agenda, in part, on the suggestions it receives by close of business at 4:15 p.m. on June 8, 1995. Before the meeting, it will publish a notice with an agenda listing the research and development topics to be discussed. NHTSA asks that the suggestions be taken from the list below and that they be limited to six, in priority order, so that the presentations at the June 27 R&D meeting can be most useful to the audience. Please note that almost all of these topics have been discussed at the previous nine meetings to some extent and that presentations at the tenth meeting will be reports on current status, results, and plans.

Specific Crashworthiness R&D topics are:

Improved frontal crash protection problem analysis and program status,
Advanced glazing research,
Highway traffic injury studies,
Head and neck injury research,
Lower extremity injury research,
Thorax injury research,
Human injury simulation and analysis,
Crash test dummy component development,
Vehicle aggressivity and fleet compatibility,
Upgrade side crash protection,
Upgrade seat and occupant restraint systems,
Child safety research, and
Electric and alternate fuel vehicle safety.

Specific Crash Avoidance R&D topics are:

Truck crashworthiness/occupant protection,
Truck tire traction,
Portable data acquisition system for crash avoidance research,
Systems to enhance EMS response (automatic collision notification)
Vehicle motion environment,
Crash causal analysis,
Human factors guidelines for crash avoidance warning devices,
Longer combination vehicle safety,
Drowsy driver monitoring
Driver workload assessment, and
Performance guidelines for IVHS systems (approach).

Questions regarding research projects that have been submitted in writing not later than close of business on June 19, 1995, will be answered as time permits. Beginning with this tenth meeting, the time allotted to answering questions has been increased. A transcript of the meeting, copies of materials handed out at the meeting, and copies of the suggestions offered by commenters will be available for public inspection in the NHTSA's Technical Reference Section, Room 5108, 400 Seventh St., SW, Washington, DC 20590. Copies of the transcript will then be available at 10 cents a page, upon request to NHTSA's Technical Reference Section. The Technical Reference Section is open to the public from 9:30 a.m. to 4:00 p.m.

NHTSA will provide technical aids to participants as necessary, during the Research and Development Programs Meeting. Thus, any person desiring the assistance of "auxiliary aids" (e.g., sign-language interpreter, telecommunication devices for deaf persons (TTDs), readers, taped texts, braille materials, or large print materials and/or a magnifying device), please contact Rita Gibbons on 202–366–4862 by close of business June 21, 1995.

FOR FUTHER INFORMATION CONTACT: Rita Gibbons, Administrative Staff Assistant, Office of research and Development, 400 Seventh Street, SW, Washington, DC 20590. Telephone 202–366–4862. Fax number: 202–366–5930.

Issued: May 19, 1995.

George L. Parker,

Associate Administrator for Research and Development.

[FR Doc. 95–12832 Filed 5–24–95; 8:45 am]

BILLING CODE 4910–59–M

Research and Special Programs Administration

[Docket No. P–94–1W; Notice 2]

Columbia Gulf Transmission Company; Transportation of Natural Gas by Pipeline, Grant of Waiver

Columbia Gulf Transmission Company (Columbia Gulf) has petitioned the Research and Special Programs Administration (RSPA) for a waiver from compliance with 49 CFR 192.612(b)(3), which requires that gas pipeline facilities in the Gulf of Mexico found to be exposed on the seabed or constituting a hazard to navigation be reburied so that the top of the pipe is 36 inches below the seabed for normal excavation or 18 inches for rock excavation.

During a DOT-required survey, Columbia Gulf discovered that a 260 foot portion of the 36-inch Bluewater Mainline 200 did not meet the 12-inch depth of cover requirements of § 192.612. At the point where coverage is not sufficient, Columbia Gulf's pipeline crosses over a Trunkline Gas Company (Trunkline) 16-inch pipeline and an Amoco Production Company (AMOCO) abandoned 4-inch pipeline. Therefore, Columbia Gulf cannot comply with the lowering requirement without first lowering or crossing below the Trunkline and Amoco pipelines. This coincidental lowering would present the potential for damage to these lines which could cause environmental pollution.

This waiver will allow Columbia Gulf to cover 813 feet along the subject pipeline segment with a concrete mesh blanket alternative to the 36-inch depth of cover requirement. The waiver will also extend the time limitation required for compliance with § 192.612 until November 30, 1995, to allow for completion of the work.

A "concrete mesh blanket" unit is an 8 foot x 20 foot section constructed from 160 individually cast 17 inch x 17 inch x 9 inch beveled concrete briquettes inter-connected with ¾ inch polypropelene UV stabilized line. A total of 41 (8 foot x 20 foot x 9 inch) units of "concrete mesh blanket" will be required to cover the 813 feet of affected pipeline. Each of the 41 units will be hydrojetted flush with the seabed and permanently anchored with six screw anchors.

The top of the 12-inch pipeline the mesh blanket is intended to cover is presently buried 6 inches below unconsolidated bottom in the Gulf of Mexico from Lat. 29°30′21.46″, Long. 92°22′54.08″ to Lat. 29°30′13.4″, Long. 92°22′53.98″; Block 15, Vermillion area, approximately 8 miles South of Pecan Island, LA. The pipeline is coated with concrete.

The use of the proposed blanket will effectively cover the pipeline to 15 inches (9″ blanket + 6″ cover). The required reburial is to 36 inches below the bottom or 18 inches below a rock bottom. Therefore this waiver is necessary to allow for the use of the concrete mesh blanket.

Columbia Gulf will also install a rock shield over the pipeline before installation of the blanket. The rock shield must be of at least ⅜ inches of thickness constructed of an appropriate material, such as "Tuff N Nuff" manufactured by Submar.

In response to this petition and the justification contained therein, RSPA issued a notice of petition for waiver inviting interested parties to comment (Notice 1)(60 FR 10893, Feb. 28, 1995). In that notice, RSPA explained why granting a waiver from the requirements of § 192.612 to allow placement of the concrete mesh blanket would not have a deleterious impact on safety. Comments were received from three pipeline operators and one interstate pipeline association. Each commentor endorsed the petition and recommended granting the waiver.

One commentor further recommended that RSPA also require Columbia Gulf to notify Trunkline at least 48 hours in advance so as to allow a Trunkline inspector to be present while work is in progress in the vicinity of its pipeline. RSPA agrees, and hereby requires Columbia Gulf to notify Trunkline as described.

In view of these reasons and those stated in the foregoing discussion, RSPA, by this order, finds that a waiver of compliance with § 192.612(c)(3) is consistent with pipeline safety. Accordingly, Columbia Gulf Transmission Company's petition from compliance with § 192.612(b)(3) is granted.

Authority: 49 U.S.C. 1672(d); § 1.53, and appendix A of part 106.

Issued in Washington, D.C. on May 19, 1995.

Cesar De Leon,

Acting Associate Administrator for Pipeline Safety.

[FR Doc. 95–12837 Filed 5–24–95; 8:45 am]

BILLING CODE 4910–60–P

federal register

Thursday
May 25, 1995

Part II

Department of Labor

Employment and Training Administration

Department of Education

School-to-Work Opportunities Act; Local Partnership Grants; Notice

DEPARTMENT OF LABOR

Employment and Training Administration

DEPARTMENT OF EDUCATION

RIN 1830–ZA02

School-to-Work Opportunities Act; Local Partnership Grants

AGENCIES: Department of Labor and Department of Education.

ACTION: Notice of proposed selection criteria, administrative cost cap, and definition.

SUMMARY: The Departments of Labor and Education jointly propose selection criteria to be used in evaluating applications submitted under the School-to-Work Opportunities Local Partnership (Local Partnership Grants) competition in fiscal year (FY) 1995 and succeeding years, authorized under Title III of the School-to-Work Opportunities Act of 1994 (the Act). Local Partnership Grants will enable local partnerships, that have built a sound planning and development base, to begin implementation of School-to-Work Opportunities initiatives that will become a part of a statewide School-to-Work Opportunities system. These initiatives will offer young Americans access to programs designed to prepare them for first jobs in high-skill, high-wage careers, and to increase their opportunities for further education and training. The Departments also propose a definition for the term "administrative costs" as well as a 10 percent cap on administrative costs incurred by local partnerships receiving grants under Title III.

DATES: Comments must be received on or before June 26, 1995.

ADDRESSES: Comments should be addressed to Maria Kniesler, National School-to-Work Office, 400 Virginia Avenue, SW., Suite 210, Washington, DC 20024. Comments may also be faxed to the National School-to-Work Office, Attention: Maria Kniesler at (202) 401–6211.

FOR FURTHER INFORMATION CONTACT: Maria Kniesler, National School-to-Work Office (202) 401–6218 (this is not a toll-free number). Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background

The Departments of Labor and Education intend to reserve funds appropriated for FY 1995 under the Act (P.L. 103–239) for a competition for Local Partnership Grants authorized under Title III of the Act. The Departments propose an administrative cost cap, a definition of the term "administrative costs," and selection criteria that would be used in evaluating applications submitted in response to the FY 1995 Local Partnership Grant competition. Local partnerships are advised that applications for Local Partnership Grants must meet all of the requirements of the Act that apply to programs funded under Title III.

In accordance with section 5 of the Act, and as part of their ongoing efforts to improve their joint administration of all School-to-Work Opportunities programs authorized under the Act, including the School-to-Work Opportunities Local Partnership program, the Departments are currently in the process of considering appropriate administrative procedures. It is the intent of the Departments that whatever procedures are used will result in the most effective and efficient joint administration of all School-to-Work Opportunities programs. In response to this notice, commenters are encouraged to submit comments and suggestions on how the Departments can best achieve the efficient and effective joint administration of the School-to-Work Opportunities Local Partnership program, including comments and suggestions relating to the joint grants administration process and to the applicability of administrative regulations.

Proposed Administrative Cost Cap, Definition, and Selection Criteria

The Departments propose to apply the 10 percent cap on administrative costs contained in section 215(b)(6) of the Act to local partnerships receiving grants directly under this competition. The Departments have concluded that applying the 10 percent cap to Title III grants awarded to local partnerships by the Departments would be consistent with the Act's broader limitations on administrative costs, with the 10 percent cap imposed on partnerships receiving School-to-Work Opportunities subgrants from States, and with section 305 of Title III, which requires conformity between School-to-Work Opportunities plans of local partnerships and State School-to-Work Opportunities plans. The Departments also propose a definition of the term "administrative costs," which is a term that appears in the Act but which the Act does not define, and the Departments propose to apply the selection criteria in this notice to the FY 1995 competition for Local Partnership Grants. Unless modified in the final notice for this competition, the 10 percent administrative cap, the definition of administrative costs, and selection criteria proposed herein, will be used for future Local Partnership Grants in the years succeeding FY 1995. The Departments solicit comments on the proposed 10 percent cap, the proposed definition, and the proposed selection criteria. A final notice of selection criteria will be published in the **Federal Register** after the Departments have taken into account the responses to this notice and have applied other relevant considerations.

Note: This notice of proposed selection criteria does not solicit applications. A notice inviting applications for School-to-Work Opportunities Local Partnership Grants will be published in the **Federal Register** concurrent with or immediately following publication of the notice of final selection criteria.

Definition

All definitions in the Act apply to School-to-Work Opportunities systems funded under this and future Local Partnership Grant competitions. However, the Act does not contain a definition of the term "administrative costs." The Departments, therefore, propose to apply the following definition to the administration of grants under this competition:

The term "administrative costs" means the activities of a local partnership that are necessary for the proper and efficient performance of its duties under the Local Partnership Grant pursuant to the School-to-Work Opportunities Act and that are not directly related to the provision of services to participants or otherwise allocable to the program's allowable activities under the grant listed in section 215(b)(4) and section 215(c) of the Act. Administrative costs may be either personnel and non-personnel costs, and may be either direct and indirect. Costs of administration include those costs that are related to this grant in such categories as—

A. Costs of salaries, wages, and related costs of the grantee's staff engaged in—

- Overall system management, system coordination, and general administrative functions;
- Preparing program plans, budgets, and schedules, as well as applicable amendments;

- Monitoring of local initiatives, pilot projects, subrecipients, and related systems and processes;
- Procurement activities, including the award of specific subgrants, contracts, and purchase orders;
- Developing systems and procedures, including management information systems, for ensuring compliance with the requirements under the Act;
- Preparing reports and other documents related to the Act;
- Coordinating the resolution of audit findings;

B. Costs for goods and services required for administration of the School-to-Work Opportunities system;

C. Costs of system-wide management functions; and

D. Travel costs incurred for official business in carrying out grants management or administrative activities.

Selection Criteria

Selection Criterion 1: Comprehensive Local School-to-Work Opportunities System (40 Points)

Considerations: In applying this criterion, reviewers will consider—

A. *20 Points.* The extent to which the partnership has designed a comprehensive local School-to-Work Opportunities plan that—

- Includes effective strategies for integrating school-based and work-based learning, integrating academic and vocational education, and establishing linkages between secondary and postsecondary education;
- Is likely to produce systemic change that will have substantial impact on the preparation of all students for a first job in a high-skill, high-wage career and in increasing their opportunities for further learning;
- Ensures all students will have a range of options, including options for higher education, additional training and employment in high-skill, high-wage jobs;
- Ensures coordination and integration with existing school-to-work programs, including programs financed from State and private sources, with funds available from Federal education and training programs (such as the Job Training Partnership Act and the Carl D. Perkins Vocational and Applied Technology Education Act); and where applicable, communities designated as Empowerment Zones or Enhanced Enterprise Communities (EZ/EEC);
- Serves a geographical area that reflects the needs of the local labor market, and is able to adjust to regional structures that the State School-to-Work Opportunities plan may identify; and
- Targets occupational clusters that represent growing industries in the partnership's geographic area; and, where applicable, demonstrates that the clusters are included among the occupational clusters being targeted by the State School-to-Work Opportunities system.

B. *20 Points.* The extent to which the partnership's plan demonstrates its capability to achieve the statutory requirements and to effectively put in place the system components in Title I of the School-to-Work Opportunities Act, including—

- A work-based learning component that includes the statutory "mandatory activities" and that contributes to the transformation of workplaces into active learning components of the education system through an array of learning experiences such as mentoring, job-shadowing, unpaid work experiences, school-sponsored enterprises, and paid work experiences;
- A school-based learning component that provides students with high-level academic and technical skills consistent with academic standards that the State establishes for all students, including, where applicable, standards established under the Goals 2000: Educate America Act;
- A connecting activities component to provide a functional link between students' school and work activities, and between employers and educators;
- Effective processes for assessing skills and knowledge required in career majors, and issuing portable skill certificates that are benchmarked to high-quality standards such as those States will establish under the Goals 2000: Educate America Act, and for periodically assessing and collecting information on student outcomes, as well as a realistic strategy and timetable for implementing the process in concert with the State.
- A flexible School-to-Work Opportunities system that allows students participating in the local system to develop new career goals over time, and to change career majors; and
- Effective strategies for: providing staff development for teachers, worksite mentors and other key personnel; developing model curricula and innovative instructional methodologies; expanding career and academic counseling in elementary and secondary schools; and utilizing innovative technology-based instructional techniques.

Selection Criterion 2: Quality and Effectiveness of the Local Partnership (20 Points)

Considerations: In applying this criterion, reviewers will refer to section 4(11) of the Act and consider—

- Whether the partnership's plan demonstrates an effective and convincing strategy for continuing the commitment of employers and other interested parties in the local School-to-Work Opportunities system;
- The effectiveness of the partnership's plan to include private sector representatives as joint partners with educators in both the design and the implementation of the local School-to-Work Opportunities system;
- The extent to which the local partnership has developed strategies to provide a range of opportunities for employers to participate in the design and implementation of the local School-to-Work Opportunities system, including membership on councils and partnerships; assistance in setting standards, designing curricula, and determining outcomes; providing worksite experiences for teachers; helping to recruit other employers; and providing worksite learning activities for students such as mentoring, job shadowing, unpaid work experiences, and paid work experiences;
- The extent to which the roles and responsibilities of the key partners, including employers, educators, representatives of labor organizations or nonmanagerial employee representatives, community-based organizations, and other key parties are clearly defined and are likely to produce the desired changes in the way students are prepared for the future;
- The extent to which the partnership demonstrates the capacity to build a quality local School-to-Work Opportunities system;
- Whether the partnership has included methods for sustaining and expanding the partnership, as the program expands in scope and size.

Selection Criterion 3: Participation of All Students (15 Points)

Considerations: In applying this criterion, reviewers will consider—

- The extent to which the partnership has developed realistic strategies for ensuring that all students have effective and meaningful opportunities to participate in the local School-to-Work Opportunities system;
- Whether the partnership has identified potential barriers to the participation of any students, and the degree to which it proposes effective ways of overcoming these barriers;

• The degree to which the partnership has developed realistic goals and methods for assisting young women to participate in School-to-Work Opportunities programs leading to employment in high-performance, high-paying jobs, including non-traditional jobs;

• The partnership's methods for ensuring safe and healthy work environments for students; and

• The extent to which the partnership's plan provides for the participation of a significant number or percentage of students in School-to-Work Opportunities activities listed under Title I of the Act.

Selection Criterion 4: Collaboration With State (15 Points)

Considerations: In applying this criterion, reviewers will consider—

• The extent to which the local partnership has effectively consulted with its State School-to-Work Opportunities partnership, and has established realistic methods for ensuring consistency of its local strategies with the statewide School-to-Work Opportunities system being developed by that State partnership;

• Whether the local partnership has developed a sound strategy for integrating its plan, as necessary, with the State plan for a statewide School-to-Work Opportunities system;

• The extent to which the local partnership has developed effective processes through which it is able to assist and collaborate with the State in establishing the statewide School-to-Work system, and is able to provide feedback to the state on their system-building process.

• Whether the plan includes a feasible workplan that describes the steps that will be taken in order to make the local system part of the State School-to-Work Opportunities system, including a timeline that includes major planned objectives during the grant period.

Selection Criterion 5: Management Plan (10 Points)

Considerations: In applying this criterion, reviewers will consider—

• The feasibility and effectiveness of the partnership's strategy for using other resources, including private sector resources, to maintain the system when Federal resources under the School-to-Work Opportunities Act are no longer available.

• The extent to which the partnership's management plan anticipates barriers to implementation and proposes effective methods for addressing barriers as they arise.

• Whether the plan includes feasible measurable goals for the School-to-Work Opportunities system, based on performance outcomes established under section 402 of the Act, and an effective method for collecting information relevant to the local partnership's progress in meeting its goals.

• Whether the plan includes a regularly scheduled process for improving or redesigning the School-to-Work Opportunities system based on performance outcomes established under section 402 of the Act.

• The extent to which the resources requested will be used to develop information, products and ideas that will assist other States and local partnerships as they design and implement local systems.

• The extent to which the partnership will limit equipment and other purchases in order to maximize the amounts spent on delivery of services to students.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 29 CFR Part 17. The objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Departments' specific plans and actions for this program.

Executive Order 12866

This notice of proposed priority has been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the notice of proposed priority are those resulting from statutory requirements and those determined by the Secretary to be necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this notice of proposed priority, the Secretary has determined that the benefits of the proposed priority justify the costs.

The Secretary has also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

To assist the Department in complying with the specific requirements of Executive Order 12866, the Secretary invites comment on whether there may be further opportunities to reduce any potential costs or increase potential benefits resulting from this proposed priority without impeding the effective and efficient administration of the program.

Invitation to Comment

Interested persons are invited to submit comments on the proposed application of the 10 percent cap on administrative costs, the proposed selection criteria, and the proposed definition of the term "administrative costs" contained in this notice. All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in the National School-to-Work Office, 400 Virginia Avenue, S.W., Suite 210, Washington, D.C., between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week, except Federal holidays.

(Catalog of Federal Domestic Assistance Number has not been assigned.)

Dated: May 16, 1995.

Doug Ross,

Assistant Secretary for Employment and Training, Department of Labor.

Augusta Kappner,

Assistant Secretary for Vocational and Adult Education, Department of Education.

[FR Doc. 95–12786 Filed 5–24–95; 8:45 am]

BILLING CODE 4000–01–P

federal register

Thursday
May 25, 1995

Part III

Department of Education

Urban and Rural Local Reform Initiative; Inviting Applications for New Awards for Fiscal Year 1995; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.312A]

Urban and Rural Local Reform Initiative; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1995

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and the Education Department General Administrative Regulations (EDGAR), the notice contains all of the information, application requirements, and instructions needed to apply for a grant under this competition.

Purpose of Program: To assist urban and rural local educational agencies (LEAs) with large numbers or concentrations of students who are economically disadvantaged or who have limited English proficiency in the development and implementation of comprehensive local improvement plans directed at enabling all children to reach challenging academic standards.

Eligible Applicants: Urban and rural LEAs with large numbers or concentrations of students who are economically disadvantaged or who have limited English proficiency.

Deadline for Transmittal of Applications: July 7, 1995.

Deadline for Intergovernmental Review: September 7, 1995.

Available Funds: Approximately $10.1 million.

Estimated Range of Awards: For large urban LEAs (i.e., urban LEAs administering schools with a total enrollment of 100,000 or more elementary and secondary students), the estimated range is from $200,000 to $1 million. For mid-sized urban LEAs (i.e., urban LEAs administering schools with a total enrollment of at least 50,000 but less than 100,000 elementary and secondary school students), the estimated range is from $150,000 to $750,000. For small urban LEAs (i.e., urban LEAs administering schools with a total enrollment of less than 50,000 elementary and secondary school students), the estimated range is from $100,000 to $500,000. For rural LEAs, the estimated range is from $25,000 to $250,000.

Estimated Number of Awards: 40.

Note: These estimates are projections for the guidance of potential applicants. The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months.

Applicable Regulations

The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR Part 75 (Direct Grant Programs).

(2) 34 CFR Part 77 (Definitions that Apply to Department Regulations).

(3) 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(4) 34 CFR Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(5) 34 CFR Part 81 (General Education Provisions Act—Enforcement).

(6) 34 CFR Part 82 (New Restrictions on Lobbying).

(7) 34 CFR Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(8) 34 CFR Part 86 (Drug-Free Schools and Campuses).

Supplementary Information

(a) Background

The Goals 2000: Educate America Act (Pub. L. 103–227) (20 U.S.C. 5801 *et seq.*) (the Act) asks States and communities to reform their education systems through the development and implementation of comprehensive improvement plans based on challenging academic standards and high expectations for all students. One of the fundamental premises underlying Goals 2000 is that comprehensive, systemic reform should be promoted from the bottom up in communities, LEAs, and schools. Section 314(b) of the Goals 2000 legislation helps facilitate bottom-up reform by authorizing the Secretary to provide funding and technical assistance to urban and rural LEAs with large numbers or concentrations of students who are economically disadvantaged or who have limited English proficiency in order for the LEAs to develop and implement comprehensive local improvement plans designed to help all children reach challenging academic standards.

(b) Serving Large Numbers or Concentrations of Students Who Are Economically Disadvantaged or Who Have Limited English Proficiency

In its application, an LEA should demonstrate the standard used to determine the number or concentration of students who are economically disadvantaged or who have limited English proficiency. For example, an "economically disadvantaged student" could be defined as one eligible for free or reduced price lunch under the National School Lunch Act. If this measure were used by the applicant, its application would indicate the number or percentage of students receiving free or reduced price lunch.

The Secretary is particularly interested in receiving applications from urban or rural LEAs that satisfy the requirement for serving large numbers or concentrations of economically disadvantaged or limited English-proficient students by demonstrating that at least one of the following conditions is present:

(1) The number of economically disadvantaged elementary and secondary school students (as measured, for example, by students eligible for free or reduced price lunch under the National School Lunch Act) in the schools administered by the LEA totals at least 35,000.

(2) The number of economically disadvantaged elementary and secondary school students (as measured, for example, by students eligible for free or reduced price lunch under the National School Lunch Act) in the schools administered by the LEA is at least 70 percent of the total number of elementary and secondary students in those schools.

(3) The number of elementary and secondary school students who have limited English proficiency in the schools administered by the LEA totals at least 10,000.

(4) The number of elementary and secondary school students who have limited English proficiency in the schools administered by the LEA is at least 25 percent of the total number of elementary and secondary students in those schools.

LEAs that meet one or more of these four conditions will not receive competitive or absolute preference over other LEAs that serve a large number or concentration of economically disadvantaged or limited English-proficient students. The specific numbers and percentages in these examples merely illustrate some of the possible ways that an LEA might demonstrate that it serves "large numbers or concentrations of students who are economically disadvantaged or who have limited English proficiency." Eligible LEAs may have fewer numbers or lower percentages of economically disadvantaged or limited English-proficient students than the specific numbers or percentages outlined above.

(c) Eligible LEAs That Serve Schools in Empowerment Zones or Enterprise Communities

The Secretary strongly encourages applications from eligible LEAs that serve schools in communities designated as Empowerment Zones or Enterprise Communities by the Department of Housing and Urban Development and the Department of Agriculture. The emphasis in section 314(b) of the Act on coordinated planning to meet the pressing needs of urban and rural LEAs with large numbers or concentrations of limited English-proficient and economically disadvantaged students makes it ideally suited to play a key role in the Empowerment Zone and Enterprise Community program.

(d) Applications From LEAs in States Not Participating in Goals 2000

LEAs with large numbers or concentrations of students who are economically disadvantaged or who have limited English proficiency are eligible to apply for a local reform grant whether or not the State in which they are located is participating under Title III of Goals 2000.

(e) Developing and Implementing a Local Improvement Plan

In explaining how its proposed process for developing and implementing a local improvement plan would help all students, especially economically disadvantaged and limited English-proficient students, reach challenging academic standards, an applicant might demonstrate—

(1) How the local plan development and implementation would be aligned with any reform initiatives that are being undertaken by the State or LEA under the Goals 2000: Educate America Act, the Improving America's Schools Act of 1994, the School-to-Work Opportunities Act, and other reform programs;

(2) The process by which the applicant would develop and implement specific strategies to ensure that economically disadvantaged students and limited English-proficient students, as well as other students, will reach challenging content and student performance standards;

(3) The process by which other programs administered by the applicant would be effectively integrated into the local reform plan; and

(4) The process by which the applicant would ensure that individual schools will have the flexibility to develop school-based plans that address their particular needs and that are consistent with the local improvement plan or plans.

In addition, in presenting its plan of operation, an applicant might explain how the local improvement plan would be developed and implemented through broad-based outreach and collaborative processes. The Secretary encourages applicants to address issues such as the following in describing these processes:

(1) The extent to which the local plan would be developed by a broad-based panel that is representative of the diversity of the students in the community, and that includes teachers, parents, advocacy groups, school administrators, business representatives, and others, as appropriate;

(2) How the panel would conduct a grassroots outreach process to involve all segments of the community—including teachers, parents, advocacy groups, school administrators, business and community leaders, and others as appropriate—in a continuing dialogue concerning the issues that will be addressed during the development and implementation of the plan or plans; and

(3) How the plan development and implementation process would give special consideration to the input received from parents of, and other individuals and organizations working with, economically disadvantaged and limited English-proficient students.

The Secretary recognizes that LEAs share similar problems. LEAs are encouraged to work in concert with each other and with educational reform partners (e.g., business organizations, parent organizations, community-based organizations, institutions of higher education, or service providers) in developing and implementing their local reform plans.

(f) Evaluation Strategies

In devising evaluation strategies for the proposed project, the Secretary encourages applicants to consider issues such as the following:

(1) The process by which rigorous timelines and challenging performance indicators would be established for the development and implementation of comprehensive local improvement plans; and for plans already in the implementation stages, a description of indicators, timelines, and methods being used for evaluation;

(2) How effectively the overall evaluation strategies would assess the LEA's progress in developing and implementing its local improvement plan, and assess outcomes attained during the project period, especially progress toward improved student achievement in the LEA;

(3) How the LEA would document key activities in the development and implementation of the plan;

(4) How the evaluation findings would be used to provide feedback to the grantee so that appropriate modifications could be made; and

(5) How the evaluation findings would be shared with the community as well as other LEAs.

The Department of Education intends to conduct a national multi-year evaluation of projects funded under this competition. The evaluation may assess all components of the project. Grantees will be required to cooperate in the evaluation, including sharing locally collected evaluation data with the entity conducting the evaluation. The evaluation may examine items such as the following: the process by which the plan has been developed; the comprehensiveness of the plan; support for the plan; and selected outcome data (e.g., student achievement and performance documentation, attendance records). The evaluation contractor may also conduct site visits and request additional data from the grantee, as appropriate.

Application Requirements

The authorizing statute—section 314(b) of the Act—provides that the grants under this competition should be made "in accordance with the provisions of section 309(a) that the Secretary deems appropriate." The Secretary has determined that a local improvement plan developed under section 314(b) must meet the requirements in sections 309(a)(3) (A) through (F), and section 309(a)(3)(H) of the Act. That is, each local improvement plan developed with funds awarded under this competition shall—

(A) Be developed by a broad-based panel that—

(i) Is appointed by the LEA and is representative of the diversity of students and community with regard to race, language, ethnicity, gender, disability, and socioeconomic characteristics and includes teachers, parents, advocacy groups, school administrators, business representatives, and others, as appropriate; and

(ii) Shall, following the selection of its members, establish the procedures regarding the operation of the panel, including the designation of the chairperson;

(B) Address districtwide education improvement, directed at enabling all students to meet the State content standards and State student performance standards, including specific goals and benchmarks, reflect the priority of the State improvement plan (for LEAs in Goals 2000 States or in States undergoing other comprehensive reform efforts) and include a strategy for—

(i) Ensuring that all students have a fair opportunity to learn;

(ii) Improving teaching and learning;

(iii) Improving governance and management;

(iv) Generating, maintaining, and strengthening parental and community involvement; and

(v) Expanding improvements throughout the LEA;

(C) Promote the flexibility of local schools in developing plans that address the particular needs of their school and community and are consistent with the local improvement plan;

(D) Describe a process of broad-based community participation in the development, implementation, and evaluation of the local improvement plan;

(E) Describe how the LEA will encourage and assist schools to develop and implement comprehensive school improvement plans that—

(i) Focus on helping all students reach State content standards and State student performance standards; and

(ii) Address relevant elements of the local improvement plan of the LEA identified in paragraph (B);

(F) Describe how the LEA will implement specific programs aimed at ensuring improvements in school readiness and the ability of students to learn effectively at all grade levels by identifying the most pressing needs facing students and their families with regard to social services, health care, nutrition, and child care, and entering into partnerships with public and private nonprofit agencies to increase the access of students and families to coordinated nonsectarian services in a school setting or at a nearby site; and

(G) Note: The requirements of section 309(a)(3)(G) do not apply to the section 314(b) grants;

(H) Identify, with an explanation, any State or Federal requirements that the LEA believes impede educational improvement and that such agency requests to be waived in accordance with section 311 (for those LEAs in Goals 2000 States), which requests shall promptly be submitted to the Secretary by the LEA.

All LEAs applying for a grant are also required to demonstrate that they have large numbers or concentrations of students who are economically disadvantaged or who have limited English proficiency.

Selection Criteria

(a)(1) The Secretary uses the following selection criteria in 34 CFR 75.210 to evaluate applications under this competition.

(2) The maximum score for all of these criteria is 100 points.

(3) The maximum score for each criterion is indicated in parentheses.

The Secretary assigns the 15 points that are reserved in 34 CFR 75.210(c) as follows: 10 points to selection criterion (34 CFR 75.210(b)(2) (Extent of need for the project) for a possible total of 30 points; and 5 points to selection criterion (34 CFR 75.210(b)(3) (Plan of operation) for a possible total of 20 points.

(b) *The criteria*—(1) *Meeting the purposes of the authorizing statute.* (30 points) The Secretary reviews each application to determine how well the project will meet the purposes of the authorizing statute (i.e., sections 2 and 314(b) of the Goals 2000: Educate America Act), including consideration of—

(i) The objectives of the project; and

(ii) How the objectives of the project further the purposes of the authorizing statute.

(2) *Extent of need for the project.* (30 points) The Secretary reviews each application to determine the extent to which the project meets specific needs recognized in the statute that authorizes the program, including consideration of—

(i) The needs addressed by the project;

(ii) How the applicant identified those needs;

(iii) How those needs will be met by the project; and

(iv) The benefits to be gained by meeting those needs.

(3) *Plan of operation.* (20 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(i) The quality of the design of the project;

(ii) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(iii) How well the objectives of the project relate to the purpose of the program;

(iv) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(v) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disability.

(4) *Quality of key personnel.* (7 points)

(i) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraphs (4)(i)(A) and (B) will commit to the project; and

(D) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability.

(ii) To determine personnel qualifications under paragraphs (4)(i)(A) and (B), the Secretary considers:

(A) Experience and training in fields related to the objectives of the project; and

(B) Any other qualifications that pertain to the quality of the project.

(5) *Budget and effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(i) The budget is adequate to support the project; and

(ii) Costs are reasonable in relation to the objectives of the project.

(6) *Evaluation plan.* (5 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(i) Are appropriate to the project; and

(ii) To the extent possible, are objective and produce data that are quantifiable.

(7) *Adequacy of resources.* (3 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

Intergovernmental Review of Federal Programs

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR Part 79.

The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive order. If you want to know the name and address of any State Single Point of Contact, see the list published in the **Federal Register** on March 3, 1995 (60 FR 16713).

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA# 84.312A, U.S. Department of Education, Room 6300, 600 Independence Avenue, SW., Washington, DC 20202.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, DC time) on the date indicated in this notice.

PLEASE NOTE THAT THE ABOVE ADDRESS IS NOT THE SAME ADDRESS AS THE ONE TO WHICH THE APPLICANT SUBMITS ITS COMPLETED APPLICATION. *DO NOT SEND APPLICATIONS TO THE ABOVE ADDRESS. INSTRUCTIONS FOR TRANSMITTAL OF APPLICATIONS:*

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U. S. Department of Education, Application Control Center, Attention: (CFDA 84.312A), Washington, DC 20202–4725 or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA 84.312A), Room #3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgment to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708–9494.

(3) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and suffix letter, if any—of the competition under which the application is being submitted.

Application Instructions and Forms

The appendix to this application is divided into three parts plus a statement regarding estimated public reporting burden and various assurances and certifications. These parts and additional materials are organized in the same manner that the submitted application should be organized. The parts and additional materials are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

Part II: Budget Information—Non-Construction Programs (Standard Form 524A) and instructions.

Part III: Application Narrative.

Additional Materials

Estimated Public Reporting Burden.

Assurances—Non-Construction Programs (Standard Form 424B).

Certifications regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013).

Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80–0014, 9190) and instructions.

(Note: ED 80–0014 is intended for the use of grantees and should not be transmitted to the Department.)

Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions; and Disclosure of Lobbying Activities Continuation Sheet (Standard Form LLL–A).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. No grant may be awarded unless a completed application form has been received.

Application Workshops

The Department will conduct workshops to provide assistance to potential applicants concerning requirements of the authorizing statute and the application process. However, applicants are encouraged to begin preparation of their applications immediately upon receipt of this application package.

The workshops will be held on the following dates and at the following locations. Pre-registration is suggested.

Monday, June 12, 1995, 10:00 am to 3:00 p.m., Federal Building, Room 16350, 3535 Market Street, Philadelphia, PA 19104, (215) 596–0175

Wednesday, June 14, 1995, 10:00 am to 3:00 p.m., El Centro Community College, Main & Lamar (Lamar entrance), A Building, 5th floor, Room A525, Dallas, TX 75201, (214) 767–3626

Friday, June 16, 1995, 10:00 am to 3:00 p.m., Federal Building, Room 205, 50 United Nations Plaza, San Francisco, CA 94102, (415) 556–4920

FOR FURTHER INFORMATION CONTACT: Jackie C. Jackson, U.S. Department of Education, 600 Independence Avenue, SW., Portals Building, Room 4000, Washington, DC 20202–2110, Telephone: (202) 401–0039, FAX: (202) 205–0303. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: Section 314(b) of the Goals 2000: Educate America Act, 20 U.S.C. 5894(b).

Dated: May 19, 1995.

Thomas W. Payzant,

Assistant Secretary, Elementary and Secondary Education.

BILLING CODE 4000-01-P

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: Application ☐ Construction ☒ Non-Construction / Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State — H. Independent School Dist.
B. County — I. State Controlled Institution of Higher Learning
C. Municipal — J. Private University
D. Township — K. Indian Tribe
E. Interstate — L. Individual
F. Intermunicipal — M. Profit Organization
G. Special District — N. Other (Specify): _____

8. TYPE OF APPLICATION:

☒ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

9. NAME OF FEDERAL AGENCY: Department of Education

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 8 4 . 3 1 2A

TITLE: Urban and Rural Local Reform Initiative

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE_____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

U.S. DEPARTMENT OF EDUCATION

BUDGET INFORMATION

NON-CONSTRUCTION PROGRAMS

OMB Control No. 1875-0102

Expiration Date: 9/30/95

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

ED FORM NO. 524

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED FORM NO. 524

INSTRUCTIONS FOR ED FORM NO. 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary
U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e):
For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f):
Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e):
Show the total budget request for each project year for which funding is requested.

Line 12, column (f):
Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Instructions for ED Form 524 (cont.)

Section B - Budget Summary
Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e):
For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f):
Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e):
Show the total matching or other contribution for each project year.

Line 12, column (f):
Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information
Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.

2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.

3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.

4. Provide other explanations or comments you deem necessary.

BILLING CODE 4000-01-C

Instructions for Part III Application Narrative

Before preparing the Application Narrative an applicant should read the information in this notice, including the selection criteria the Secretary uses to evaluate applications.

The narrative should encompass each function or activity for which funds are being requested and should—

1. Begin with an Abstract; that is, a summary of the proposed project;

2. Describe the proposed project in light of each of the selection criteria in the order in which the criteria are listed in this application; and

3. Include any other pertinent information that might assist the Secretary in reviewing the application.

The Secretary strongly requests the applicant to limit the Application Narrative to no more than 20 double-spaced, typed (on one side only), although the Secretary will consider applications of greater length. The Department has found that successful applications for similar programs generally meet this page limit.

Instructions for Estimated Public Reporting Burden

Under terms of the Paperwork Reduction Act of 1980, as amended, and the regulations implementing that Act, the Department of Education invites comment on the public reporting burden in this collection of information. Public reporting burden for this collection of information is estimated to average 20 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. You may send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202–4651; and to the Office of Management and Budget, Paperwork Reduction Project, 1810–0574, Washington, D.C. 20503.

(Information collection approved under OMB control number 1810–0574. Expiration date: 4/30/98.)

BILLING CODE 4000-01-P

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

Standard Form 4248 (4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

SF 424B (4-88) Back

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to assert. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 –

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about –

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will –

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3),

Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted--

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 --

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV. 12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action: ☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	2. Status of Federal Action: ☐ a. bid/offer/application b. initial award c. post-award	3. Report Type: ☐ a. initial filing b. material change For Material Change Only: year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity: ☐ Prime ☐ Subawardee Tier _____, *if known*: Congressional District, *if known*:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime: Congressional District, *if known*:
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known*:	9. Award Amount, *if known*: $
10. a. Name and Address of Lobbying Entity (*if individual, last name, first name, MI*):	b. Individuals Performing Services (*including address if different from No. 10a*) (*last name, first name, MI*):

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment (*check all that apply*): $ _____ ☐ actual ☐ planned	13. Type of Payment (*check all that apply*): ☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. Form of Payment (*check all that apply*): ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C.1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____
Federal Use Only:	Authorized for Local Reproduction Standard Form - LLL

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 mintues per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OMB
0348-0046

Reporting Entity: _____ Page ____ of ____

Authorized for Local Reproduction
Standard Form - LLL-A

[FR Doc. 95–12787 Filed 5–24–95; 8:45 am]
BILLING CODE 4000–01–C

federal register

Thursday
May 25, 1995

Part IV

Department of Education

Parental Assistance Program; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.310A]

Parental Assistance Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1995

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and the Education Department General Administrative Regulations (EDGAR), the notice contains all of the information, application requirements, and instructions needed to apply for a grant under this competition.

Purpose of Program: To assist nonprofit organizations, and nonprofit organizations in consortia with local educational agencies (LEAs), in establishing parental information and resource centers that would (1) increase parents' knowledge of and confidence in child-rearing activities, such as teaching and nurturing their young children; (2) strengthen partnerships between parents and professionals in meeting the educational needs of children aged birth through five and the working relationship between home and school; and (3) enhance the developmental progress of the children assisted under the program.

Eligible Applicants: Nonprofit organizations, and nonprofit organizations in consortia with LEAs.

Deadline for Transmittal of Applications: July 7, 1995.

Deadline for Intergovernmental Review: September 7, 1995.

Available Funds: Approximately $10 million.

Estimated Range of Awards: $50,000 to $500,000.

(**Note:** Due to anticipated variances in the breadth of proposed activities, the estimated range is very broad.)

Estimated Number of Awards: 44.

Note: These estimates are projections for the guidance of potential applicants. The Department of Education is not bound by any estimates in this notice.

Project Period: Up to 48 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations).

(2) 34 CFR Part 75 (Direct Grant Programs).

(3) 34 CFR Part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR Part 81 (General Education Provisions Act—Enforcement).

(6) 34 CFR Part 82 (New Restrictions on Lobbying).

(7) 34 CFR Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(8) 34 CFR Part 86 (Drug-Free Schools and Campuses).

Note: The regulations in 34 CFR Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments) apply to an LEA that is part of a consortium receiving assistance.

Supplementary Information:

Increased parental involvement and participation in the social, emotional and academic growth of children is an essential part of comprehensive education reform. Title IV of the Goals 2000: Educate America Act (Pub. L. 103–227) (20 U.S.C 5801 *et seq.*) (the Act) helps foster parental involvement by authorizing grants to nonprofit organizations, and nonprofit organizations in consortia with LEAs, to establish and fund parent information and resource centers. These centers will provide training, information, and support to (a) parents of children aged birth through five years; (b) parents of children enrolled in elementary and secondary schools; and (c) individuals who work with these parents.

Grant funds received under this program may be used for the following purposes:

(1) For parent training, information, and support programs that assist parents to—

(a) Better understand their children's educational needs;

(b) Provide followup for their children's educational achievement;

(c) Communicate more effectively with teachers, counselors, administrators, and other professional educators and support staff;

(d) Participate in the design and provision of assistance to students who are not making adequate educational progress;

(e) Obtain information about the range of options, programs, services, and resources available at the national, State, and local levels to assist parents of children aged birth through five years, and parents of children in elementary and secondary schools;

(f) Seek technical assistance regarding compliance with the requirements of title IV and of other Federal programs relevant to achieving the National Education Goals;

(g) Participate in State and local decisionmaking;

(h) Train other parents; and

(i) Plan, implement, and fund activities that coordinate the education of their children with other Federal programs that serve their children or their families.

(2) To include State or local educational personnel where such participation will further the activities assisted under the grant.

Entities are encouraged to develop and implement their projects through broad-based outreach and collaborative processes that reflect the diverse needs of parents to be served. The Secretary is especially interested in receiving applications from eligible entities that would facilitate and support opportunities for broad-based participation of communities and parents in the project from throughout the State or throughout a large area of the State, including—

(i) Areas with high concentrations of low-income families;

(ii) Urban and rural areas; and

(iii) Parents of children who are low-income, minority, or have limited English proficiency.

The Secretary believes that a meritorious proposal might also describe how the applicant would coordinate project activities with the activities being conducted by other organizations and agencies, parent centers, and parent groups. The Secretary invites applications from eligible entities that would provide training, information, and support to parents who reside in communities that are developing or implementing a comprehensive education reform plan in which family involvement is an integral strategy, such as those communities supported by a national leadership grant under section 314(b)(1) of Goals 2000, by a subgrant under section 309(a) of the Act, or by other funds. In developing proposals for increasing the involvement of parents in their children's learning and for strengthening partnerships between parents and educational professionals, applicants might consider issues such as the following:

(1) How the participating communities have assessed or propose to assess the interests and needs of parents in these communities, particularly the interests and needs of parents of low-income, minority, and limited English proficient children, in order to provide services that meet their needs.

(2) How parent groups, schools, and organizations and agencies in the local communities would collaborate to initiate or expand opportunities for parents to be involved in their children's learning and strengthen their relationships in order to meet the educational needs of children.

(3) How the applicant organization and participating communities will use information currently available concerning best practices in parent and family involvement activities to meet parents' information, training, and support needs.

(4) How participating communities will implement activities that enable parents to engage in learning activities with their children at home and at school.

(5) How the applicant organization would establish, expand, or otherwise participate in a broad-based Statewide or areawide network of parents, school personnel, business and community leaders, organizations that work with parents and their children, and others as appropriate, that helps the communities participating in the project as well as other communities learn from and support each other.

Geographic Distribution of Funds:

The Secretary will ensure that grants awarded under this competition will be distributed, to the greatest extent possible, to all geographic regions of the country.

Program Requirements:

Each grantee receiving funding under this program must—

(A)(i) Be governed by a board of directors the membership of which includes parents; or

(ii) Be an organization that represents the interests of parents;

(B) Establish a special advisory committee the membership of which—

(i) Includes—

(I) Parents of children aged birth through five years, and parents of children enrolled in elementary and secondary schools; and

(II) Representatives of educational professionals with expertise in improving services for disadvantaged children; and

(ii) Is broadly representative of minority, low-income, and other individuals and groups that have an interest in compensatory education and family literacy;

(C) Use at least one-half of the funds provided under this Act in each fiscal year to serve areas with high concentrations of low-income families in order to serve parents who are severely educationally or economically disadvantaged;

(D) Operate a center of sufficient size, scope, and quality to ensure that the center is adequate to serve the parents in the area;

(E) Serve both urban and rural areas;

(F) Design a center that meets the unique training, information, and support needs of parents of children aged birth through five years, and of parents of children enrolled in elementary and secondary schools, particularly parents who are economically or educationally disadvantaged;

(G) Demonstrate the capacity and expertise to conduct the effective training information and support activities for which assistance is sought;

(H) Network with—

(i) Clearinghouses;

(ii) Parent centers for the parents of infants, toddlers, children, and youth with disabilities served under section 631(e) of the Individuals with Disabilities Act;

(iii) Other organizations and agencies;

(iv) Established national, State, and local parent groups representing the full range of parents of children, aged birth through five years; and

(v) Parents of children enrolled in elementary and secondary schools;

(I) Focus on serving parents of children aged birth through five years, and parents of children enrolled in elementary and secondary schools, who are parents of low-income, minority, and limited-English proficient, children; and

(J) Use part of the funds received under this program to establish, expand, or operate Parents as Teachers programs or Home Instructions for Preschool Youngsters programs, as defined in section 405 of the Act.

Each application for assistance must include assurances that the grantee will comply with these requirements.

To be eligible for a continuation award, in each fiscal year after the first fiscal year a grantee receives assistance under this program, the grantee must demonstrate that a portion of the services provided by the grantee is supported through non-Federal contributions, which contributions may be in cash or in kind.

Selection Criteria

The Secretary will use the selection criteria in 34 CFR 75.210 to evaluate applications under this competition. The Secretary assigns the 15 points that are reserved in 34 CFR 75.210(c) as follows: 10 additional points to selection criterion (2)—Extent of need for the project—for a total of 30 points for that criterion; and 5 additional points to criterion (3)—Plan of operation—for a total of 20 points for that criterion.

The maximum score for all of the criteria totals 100 points. The maximum score for each criterion is indicated in parentheses with the criterion. The criteria are as follows:

(1) *Meeting the purposes of the authorizing statute.* (30 points) The Secretary reviews each application to determine how well the project will meet the purposes of the authorizing statute (i.e., title IV of the Goals 2000: Educate America Act), including consideration of—

(i) The objectives of the project; and

(ii) How the objectives of the project further the purposes of the authorizing statute.

(2) *Extent of need for the project.* (30 points) The Secretary reviews each application to determine the extent to which the project meets specific needs recognized in the statute that authorizes the program, including consideration of:

(i) The needs addressed by the project;

(ii) How the applicant identified those needs;

(iii) How those needs will be met by the project; and

(iv) The benefits to be gained by meeting those needs.

(3) *Plan of operation.* (20 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(i) The quality of the design of the project;

(ii) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(iii) How well the objectives of the project relate to the purpose of the program;

(iv) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(v) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disability.

(4) *Quality of key personnel.* (7 points)

(i) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraphs (4)(i) (A) and (B) will commit to the project; and

(D) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability.

(ii) To determine personnel qualifications under paragraphs (4)(i) (A) and (B), the Secretary considers:

(A) Experience and training in fields related to the objectives of the project; and

(B) Any other qualifications that pertain to the quality of the project.

(5) *Budget and effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which:

(i) The budget is adequate to support the project; and

(ii) Costs are reasonable in relation to the objectives of the project.

(6) *Evaluation plan.* (5 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation:

(i) Are appropriate to the project; and

(ii) To the extent possible, are objective and produce data that are quantifiable.

(7) *Adequacy of resources.* (3 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

Intergovernmental Review of Federal Programs

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR Part 79.

The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive order. If you want to know the name and address of any State Single Point of Contact, see the list published in the **Federal Register** on March 31, 1995 (60 FR 16713).

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA# 84.310, U.S. Department of Education, room 6300, 600 Independence Avenue, SW., Washington, DC 20202.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, DC time) on the date indicated in this notice.

Please Note That the Above Address Is Not the Same Address as the One to Which the Applicant Submits Its Completed Application. *Do Not Send Applications to the Above Address.*

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84.310), Washington, DC 20202–4725 or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84.310), room #3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgment to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708–9494.

(3) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and suffix letter, if any—of the competition under which the application is being submitted.

Application Instructions and Forms

The appendix to this application is divided into three parts plus a statement regarding estimated public reporting burden and various assurances and certifications. These parts and additional materials are organized in the same manner that the submitted application should be organized. The parts and additional materials are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

Part II: Budget Information—Non-Construction Programs (Standard Form 524A) and instructions.

Part III: Application Narrative.

Additional Materials

Estimated Public Reporting Burden.

Assurances—Non-Construction Programs (Standard Form 424B).

Certifications regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013).

Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80–0014, 9/90) and instructions.

(**Note:** ED 80–0014 is intended for the use of grantees and should not be transmitted to the Department.)

Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions; and Disclosure of Lobbying Activities Continuation Sheet (Standard Form LLL–A).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. No grant may be awarded unless a completed application form has been received.

Application Workshops

The Department will conduct workshops to provide assistance to potential applicants concerning requirements of the authorizing statute and the application process. However, applicants are encouraged to begin preparation of their applications immediately upon receipt of this application package.

The workshops will be held on the following dates and at the following locations. Pre-registration is suggested.

Monday, June 12, 1995, 10:00 am to 3:00 pm, Federal Building, Room 16350, 3535 Market Street, Philadelphia, PA 19104, (215) 596–0175

Wednesday, June 14, 1995, 10:00 am to 3:00 pm, El Centro Community College, Main & Lamar (Lamar entrance), A Building, 5th floor, Room A525, Dallas, TX 75201, (214) 767–3626

Friday, June 16, 1995, 10:00 am to 3:00 pm, Federal Building, Room 205, 50 United Nations Plaza, San Francisco, CA 94102, (415) 556–4920

FOR FURTHER INFORMATION CONTACT: Patricia Gore, U.S. Department of Education, 600 Independence Avenue, S.W., Portals Building, Room 4000, Washington, D.C. 20202–6135. Telephone: (202) 401–0039. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: Title IV of the Goals 2000: Educate America Act, 20 U.S.C. 5911 *et seq.*

Dated: May 19, 1995.

Thomas W. Payzant,

Assistant Secretary, Elementary and Secondary Education.

BILLING 4001-01-P

OMB Approval No. 8348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: Application ☐ Construction ☒ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐
A. State; B. County; C. Municipal; D. Township; E. Interstate; F. Intermunicipal; G. Special District; H. Independent School Dist.; I. State Controlled Institution of Higher Learning; J. Private University; K. Indian Tribe; L. Individual; M. Profit Organization; N. Other (Specify): _____

8. TYPE OF APPLICATION:
☒ New ☐ Continuation ☐ Revision
If Revision, enter appropriate letter(s) in box(es): ☐ ☐
A. Increase Award; B. Decrease Award; C. Increase Duration; D. Decrease Duration; Other (specify): _____

9. NAME OF FEDERAL AGENCY:
U.S. Department of Education

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 8 4 . 3 1 0A
TITLE: Parental Assistance Program

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT: Start Date; Ending Date

14. CONGRESSIONAL DISTRICTS OF: a. Applicant; b. Project

15. ESTIMATED FUNDING:

a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON: DATE _____
b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

SF 424 (REV 4-88) Back

U.S. DEPARTMENT OF EDUCATION

BUDGET INFORMATION

NON-CONSTRUCTION PROGRAMS

OMB Control No. 1875-0102

Expiration Date: 9/30/95

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

ED FORM NO. 524

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED FORM NO. 524

INSTRUCTIONS FOR ED FORM NO. 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary
U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e):
For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f):
Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e):
Show the total budget request for each project year for which funding is requested.

Line 12, column (f):
Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Instructions for ED Form 524 (cont.)

Section B - Budget Summary
Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e):
For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f):
Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e):
Show the total matching or other contribution for each project year.

Line 12, column (f):
Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information
Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.

2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.

3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.

4. Provide other explanations or comments you deem necessary.

BILLING CODE 4000-01-C

Instructions for Part III Application Narrative

Before preparing the Application Narrative an applicant should read carefully the authorizing statute and the information in this notice, including the selection criteria the Secretary uses to evaluate applications.

The narrative should encompass each function or activity for which funds are being requested and should—

1. Begin with an Abstract; that is, a summary of the proposed project;
2. Describe the proposed project in light of each of the selection criteria in the order in which the criteria are listed in this application; and
3. Include any other pertinent information that might assist the Secretary in reviewing the application.

The Secretary strongly requests the applicant to limit the Application Narrative to no more than 20 double-spaced, typed (on one side only), although the Secretary will consider applications of greater length. The Department has found that successful applications for similar programs generally meet this page limit.

Instructions for Estimated Public Reporting Burden

Under terms of the Paperwork Reduction Act of 1980, as amended, and the regulations implementing that Act, the Department of Education invites comment on the public reporting burden in this collection of information. Public reporting burden for this collection of information is estimated to average 48 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. You may send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. Washington, D.C. 20202–4651; and to the Office of Management and Budget, Paperwork Reduction Project, 1810–0578), Washington, D.C. 20503.

(Information collection approved under OMB control number 1810–0578. Expiration date: 5/31/98.)

BILLING CODE 4000-01-P

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

Standard Form 424B (4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

SF 424B (4-88) Back

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 –

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about–

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will–

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office

Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV. 12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change For Material Change Only: year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known:* Congressional District, *if known:*	Congressional District, *if known:*
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable:* _____
8. Federal Action Number, *if known:*	9. Award Amount, *if known:* $
10. a. Name and Address of Lobbying Entity (*if individual, last name, first name, MI*):	b. Individuals Performing Services (*including address if different from No. 10a*) (*last name, first name, MI*):

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment (*check all that apply*):	13. Type of Payment (*check all that apply*):
$ _____ ☐ actual ☐ planned	☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. Form of Payment (*check all that apply*): ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____
Federal Use Only:	Authorized for Local Reproduction Standard Form - LLL

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

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0348-0046

Reporting Entity: _____ Page ____ of ____

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[FR Doc. 95–12788 Filed 5–24–95; 8:45 am]
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federal register

Thursday
May 25, 1995

Part V

Department of Labor

Office of Labor-Management Programs

29 CFR Ch. II and Part 270
Permanent Replacement of Lawfully Striking Employees by Federal Contractors; Final Rule

DEPARTMENT OF LABOR

Office of Labor-Management Programs

29 CFR Chapter II and Part 270

RIN 1294–AA13

Permanent Replacement of Lawfully Striking Employees by Federal Contractors

AGENCY: Office of Labor-Management Programs, Office of the American Workplace, Labor.

ACTION: Final rule.

SUMMARY: This final rule implements Executive Order 12954, which was signed by President Clinton on March 8, 1995 and became effective on that date. Executive Order 12954 provides that in procuring goods and services, in order to ensure the economical and efficient administration and completion of contracts, federal contracting agencies shall not contract with employers that permanently replace lawfully striking employees. This final rule also makes a technical amendment to Chapter II of the Department's regulations, changing the heading of that chapter to reflect the earlier establishment of the Office of the American Workplace and its component offices, including the Office of Labor-Management Programs.

DATES: Effective June 26, 1995.

FOR FURTHER INFORMATION CONTACT: Charles L. Smith, Special Assistant to the Deputy Secretary, Office of the American Workplace, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–2203, Washington, DC 20210, (202) 219–6045. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

I. Background

On March 8, 1995, President Clinton signed Executive Order 12954, "Ensuring the Economical and Efficient Administration and Completion of Federal Government Contracts." The Order became effective on March 8, 1995, the date it was signed, and was published in the **Federal Register** on March 10, 1995, 60 FR 13023.

In the Order, the President sets forth the finding that economy and efficiency in procurement are generally advanced by contracting with employers that do not permanently replace lawfully striking employees. That is, the permanent replacement of strikers can adversely affect a contractor's ability to reliably provide high quality goods and services, thereby adversely affecting the Federal Government's economy, efficiency, and cost of operations. The Order then states that "[i]t is the policy of the executive branch in procuring goods and services that, to ensure the economical and efficient administration and completion of Federal Government contracts, contracting agencies shall not contract with employers that permanently replace lawfully striking employees." The Order further states that all discretion under the Order is to be exercised in accordance with this policy.

The Order then establishes a flexible mechanism, based on case-by-case determinations, designed to ensure economy and efficiency in government procurement involving contractors that have permanently replaced lawfully striking employees. Under the Order, the Secretary of Labor is authorized to conduct investigations, either on the basis of a complaint or on his or her own initiative, and to hold hearings as he or she deems advisable in order to determine whether an organizational unit of a federal contractor has permanently replaced lawfully striking employees.

When the Secretary finds that an organizational unit of a federal contractor has permanently replaced lawfully striking employees, he or she may exercise either or both of two options. First, he or she may find that it is appropriate to terminate existing contracts for convenience; the head of the contracting agency may object to that finding in writing and the termination for convenience shall not be issued.

Second, the Secretary may find that it is appropriate to debar the contractor from future contracts and renewal of existing contracts until the labor dispute is resolved. However, a contracting agency may enter into a contract with the employer if there is a compelling reason to do so.

The Secretary has delegated his authority under the Order to the Assistant Secretary for the American Workplace in Secretary's Order No. 2–95, which was signed on March 8, 1995 and published in the **Federal Register** on March 13, 1995, 60 FR 13602.

On March 29, 1995, the Department published a notice of proposed rulemaking, 60 FR 16354, setting forth proposed regulations implementing the Order. The notice also invited comments from the public, with the comment period ending April 28, 1995.

II. Summary and Discussion of the Comments

Fifty comments were submitted and considered. (Two additional comments were not considered. One was postmarked after the next business day after the expiration of the comment period, and the other was dated after the expiration of the comment period.)

Thirty-four officials from the following employers and employer associations submitted comments:

—Phoenix Cement,
—RC Cement Company, Inc. (4 officials),
—Hercules Cement Company (2 officials),
—Kaiser Cement Corporation,
—Heartland Cement Company (2 officials),
—National Association of Hosiery Manufacturers,
—Roanoke Cement Company,
—Signal Mountain Cement Company,
—National Electrical Contractors Association, Puget Sound Chapter,
—National Association of Plumbing-Heating-Cooling Contractors,
—Medusa Cement Company (2 officials),
—Holnam, Inc.,
—National Cement Company of Alabama, Inc.,
—Medusa Aggregates Company (2 officials),
—American Portland Cement Alliance,
—Citadel Cement Company,
—Associated Builders and Contractors, Inc.,
—The Associated General Contractors of America,
—National Mining Association,
—National Private Truck Council,
—Can Manufacturers Institute,
—American Health Care Association,
—Textile Rental Services Association of America,
—National Grocers Association,
—River Cement Company, Selma Plant,
—American Movers Conference,
—Painting and Decorating Contractors of America.

Four comments were received from the following associations:

—Labor Policy Association, Inc.,
—Alliance to Keep Americans Working,
—American Bar Association,
—Society for Human Resource Management.

Two comments were received from the following law firms:

—Wessels & Pautsch (on behalf of unnamed clients),
—Jones, Day, Reavis & Pogue (on behalf of the Chamber of Commerce of the United States of America, the National Association of Manufacturers, Bridgestone/Firestone, Inc., and Mosler Inc.).

Six comments were received from the following labor organizations:

—United Automobile, Aerospace & Agricultural Implement Workers of America,
—International Union of Operating Engineers,
—International Brotherhood of Teamsters,
—Air Line Pilots Association,
—American Association of University Professors,
—United Steelworkers of America.

Two comments were received from the following U.S. government agencies:

—Department of Health and Human Services,
—General Services Administration.

Finally, two comments were received from individuals.

The Department has carefully reviewed and considered all statements made in the comments in developing this final rule. The following is a summary of the comments and the Department's response.

A. Comments on the Definition of "Lawfully Striking Employee"

Several comments objected to the element of the definition in the proposed regulations which provides that a strike is considered to be lawful until it has been finally adjudicated to be unlawful. These comments stated that final adjudication could take years, thereby keeping the contractor in limbo unfairly. One comment also stated that in the case of clearly unlawful strikes such as "wildcat" strikes or strikes in violation of a "no strike" contract clause, there should be discretion to deny strikers protection from replacement employees prior to final adjudication.

The proposed regulations do provide discretion, on a case-by-case basis, for the Assistant Secretary to determine that neither debarment nor termination of a contract is appropriate based on the entire record, and the nature of the strike as well as the status of related litigation may certainly be issues for development in the record. However, whether a strike is unlawful under federal, state or local law is generally a complex matter which is most suitably resolved in accordance with the standards and procedures set in those laws. OAW should not as a rule substitute its judgement for that of the relevant agencies and the courts. Accordingly, OAW believes that it is not necessary or appropriate to change the definition of "lawfully striking employee" or otherwise modify the regulations to specifically deal with "clearly unlawful strikes" since the Assistant Secretary already has sufficient discretion under the proposed regulations.

One comment objected to the reference to "state or local law" in the proposed definition because the lawfulness of a strike by employees covered by the National Labor Relations Act (NLRA) cannot be adjudicated under state or local law. Another comment stated that state law characterization of a dispute as a lockout for purposes of unemployment compensation should not affect the determination of whether a dispute is a strike or a lockout under federal law.

The inclusion of the phrase "state or local law" in the proposed definition is intended to deal with the situation where an entity of state or local government has a federal contract. State or local law would be pertinent in such cases in determining the lawfulness of a strike. However, state or local law would not affect the characterization or lawfulness of a strike by employees covered by the NLRA or the Railway Labor Act.

Finally, one comment expressed concern over the definition of "employee," which excludes "supervisors." This comment suggested that only those persons with full managerial or supervisory authority should be considered as supervisors excluded from the definition of employee, as recommended in the report of the Commission on the Future of Worker-Management Relations (also referred to as the Dunlop Commission), issued in December 1994. The comment noted that the Supreme Court has interpreted the similar definition of the term "employee" in the NLRA as excluding as supervisors persons who incidentally direct other employees' work.

Despite the similarity of the definition of "employee" in the proposed regulations to the definition in the NLRA (and perhaps other statutes), and the guidance that may be provided by court or administrative rulings issued pursuant to other statutes or executive orders, the Assistant Secretary is not necessarily bound by those rulings. The Assistant Secretary has the discretion and authority to make decisions on debarment and contract termination on the basis of the entire record in each case so as to effectuate the purposes of the Order.

B. Comments on the Definition of "Permanently Replaced"

One comment objected to the definition of permanently replaced because it lacks any temporal element and therefore may include any strikers without an unconditional right to reinstatement. That is, an employer that contemplates permanently replacing strikers in the future could be determined to have actually permanently replaced strikers since their reinstatement may be conditional upon return to work at a future time. The comment argues that an employer should not have to declare that striking employees have an unconditional right to reinstatement at any time in order to prevent the Assistant Secretary from concluding that it has permanently replaced its striking employees. The comment concludes by stating that an employer should not be considered to have permanently replaced its lawfully striking employees unless it refuses to reinstate them or declares or evidences that its replacement workers may affect the reinstatement rights of the striking employees.

We do not believe that these concerns are well-founded. Whether or not lawfully striking employees have been permanently replaced at a particular point in time is a factual question to be resolved on the basis of the entire situation at that time, including (as the commenter appears to note with approval) the employer's declarations and other evidence from the employer's actions that its replacement workers may affect the reinstatement rights of the striking employees.

Another comment suggested that the definition of "permanently replaced" be revised to include situations where a contractor has entered into a contract with another entity to provide the goods or services required by the contract as well as the situation where a contractor permanently replaces its striking employees with replacement employees. However, OAW does not believe it is necessary or appropriate to revise the language of the definition. Under the proposed definition, the Assistant Secretary has the authority and discretion to determine on a case-by-case basis whether the Order is applicable where employees are permanently replaced by subcontracting as well as replaced by hiring new employees.

C. Comments on the Definitions of "Organizational Unit" and "Affiliate"

The largest number of specific comments concerned the definitions of the terms "organizational unit of a federal contractor" and "affiliate." Several comments simply asked questions concerning the scope of the application of the Order and the regulations. For example, these questions included whether the Order applies to a federal contractor whose sister company permanently replaces lawfully striking employees, whether it applies to a contractor as a whole or just the organizational element that is doing the work on a federal contract, and

whether it applies only to situations in which workers on a federal contract are replaced.

Many comments suggested that the proposed regulations be revised so as to limit the scope of the Order's application. For example, one comment suggested generally that affiliates or sister companies of a federal contractor should not be subject to the Order; another comment suggested that, for nursing home chains, the Order's application should be limited to the specific facility that permanently replaced lawfully striking employees.

On the other hand, several comments suggested that the proposed regulations be revised to expand the scope of the Order's application. For example, one comment suggested that the Order should apply to sister companies to which work in connection with a federal contract is transferred when the primary contractor has permanently replaced lawfully striking employees; another comment suggested that, for institutions of higher learning, the Order should apply to the entire university and not to just the Department which has the federal contract.

The number and variety of the particular situations described in the comments underscore the rationale for making determinations on the Order's application on a case-by-case basis rather than attempting to establish general rules to cover all situations. Further, in a rulemaking action it is not appropriate to make determinations about specific situations or particular industries described in the comments.

Nevertheless, the following general comments can be made on the questions and situations raised in the comments regarding the definitions of organizational unit of a federal contractor and affiliate.

In the case where (1) Corporation XYZ is a prime contractor holding a contract with a contracting agency, (2) Division A of Corporation XYZ is responsible for performing the contract, and (3) Division B of Corporation XYZ performs no work on the contract but could provide the goods or services required to be provided under the contract, then Corporation XYZ, Division A, and Division B (and any other affiliates of Corporation XYZ that could provide the goods or services required by the contract) form an "organizational unit of a federal contractor" under the regulations. If any part of the organizational unit permanently replaces lawfully striking employees (including, for example, employees of Division B who are not performing work on the federal contract), then the entire organizational unit would be subject to debarment if appropriate, and any contracts over $100,000 which any part of the organizational unit has with a contracting agency would be subject to a finding of whether termination for convenience is appropriate.

With regard to questions and comments concerning subcontractors, the Order is directed only to prime or first tier contractors. Thus, § 270.1(e) defines "contractor" as a "prime contractor," which is defined at § 270.1(p) as any person holding a contract with a contracting agency. One comment noted that the regulations implementing Executive Order 11246, which deals with nondiscrimination in employment by government contractors, explicitly covers subcontractors as well as federal contractors. However, Executive Order 11246, unlike Executive Order 12954, specifically includes subcontractors within its coverage. There is no basis for revising the proposed regulations to include subcontractors.

In addition to these general questions and comments, there were two narrower issues raised in the comments. One comment suggested that the second part of the proposed definition of "organizational unit of a federal contractor," relating to affiliates, be revised to include only affiliates that actually *provide or will provide* the goods or services required by the contract rather than affiliates that *could* provide those goods or services. However, OAW believes that the proposed definition is more consistent with the findings and purposes of the Order.

Finally, one comment suggested that the definition of "affiliate" in the Federal Acquisition Regulation (FAR) be used. However, the definition in the proposed regulations closely follows the FAR definition in all material respects.

D. Comments on Time Frames

Several comments suggested the addition of time frames to the procedures in the regulations. One of these comments suggested that the regulations at § 270.11, concerning investigations, be revised so that an agency which has a contract with a contractor that may have permanently replaced lawfully striking employees be formally notified at the beginning of the investigation. (Currently the only reference to notification of interested agencies is after the Assistant Secretary's decision that debarment and/or termination of the contract is appropriate.)

OAW believes that in most if not all cases, agencies will receive early notification since one of the first steps in an investigation will very likely be to obtain information from the contracting agency about the existence and amount of the contract with the contractor that may have permanently replaced lawfully striking employees. Therefore, OAW does not believe that it is necessary or appropriate to put a formal notification requirement in the regulations inasmuch as it is possible in some cases that the matter will be dismissed solely on the basis of preliminary information obtained about whether the contractor has permanently replaced lawfully striking employees, thus making it unnecessary to involve the agency.

One comment suggested that the contractor be notified that it is under investigation within three business days, or some other definite and limited time period, so that the contractor has time to adequately respond to the complaint. OAW does not believe that this is necessary or appropriate since the regulations at §§ 270.12(d) and 270.13 provide sufficient time for a contractor to present its position. In addition, the matter may be dismissed at an early stage based on information obtained relating to the contract and/or whether lawfully striking employees have been permanently replaced, thus obviating the need to notify the contractor.

One comment suggested that contractors be provided thirty days to respond to a notice of proposed debarment, as in the FAR at 48 CFR 9.406–3(c), rather than the fifteen days in proposed § 270.12(d). OAW believes that fifteen days is sufficient time for a contractor to provide information that raises a genuine dispute over material facts, given the limited issues involved in these proceedings. If the contractor has raised a genuine dispute over material facts, it will also be provided the opportunity to present its position at the hearing provided in § 270.13(a).

Another comment suggested the addition of time frames throughout the process for conducting investigations, making findings, holding hearings, etc. OAW does not believe that it is appropriate to set a time frame for all enforcement proceedings because the nature of each proceeding will vary based on the complexity and scope of the issues.

Finally, two comments noted that the regulations do not indicate when a debarment decision becomes effective. The final regulations have been revised at § 270.15(b) to state that debarment is effective immediately upon issuance of the debarment decision. However, unlike the FAR at 48 CFR 9.404 and 9.405, debarment is not effective at the time of the Assistant Secretary's decision to propose debarment (§ 270.12(d)) since the Order authorizes debarment only after a final decision. (The Assistant Secretary will only transmit the final decision to debar to the General Services Administration for inclusion on the consolidated list of debarred contractors, currently titled the "List of Parties Excluded from Procurement Programs," not information pertaining to the earlier decision to propose debarment.) In order to avoid confusion on this point, the wording of § 270.12(d) has been revised so as to eliminate the use of the term "notice of proposed debarment."

E. Resolution of Labor Dispute

One comment suggested certain revisions to § 270.16 concerning the Assistant Secretary's determination that a labor dispute has been resolved. The comment argued that there should be two touchstones for such a determination: (1) whether the parties have resolved their differences and (2) whether the striking employees have returned to work. The commenter proposed that § 270.16 provide that "an agreement of the parties in which the strikers which have been permanently replaced have returned to work" be the standard for determining that a labor dispute has been resolved. OAW believes that the current flexible standard in § 270.16, which provides that the Assistant Secretary will consider various factors in determining whether a labor dispute has been resolved, is preferable to a rigid definition.

F. Other Comments

1. Several comments suggested that the regulations be revised to set out standards and criteria for the exercise of discretion in making decisions. Two comments suggested that objective contract performance criteria should be established to govern decisions on whether debarment and/or termination of a contract for convenience is appropriate. Another comment suggested that § 270.15(a) be revised to specify when the scope of a debarment would go beyond the organizational unit which permanently replaced lawfully striking employees. However, in view of the fact that the Order establishes a flexible enforcement mechanism based on case-by-case determinations, OAW has decided that it would not be appropriate to circumvent that enforcement mechanism by unnecessarily limiting the Assistant Secretary's discretion in the regulations.

2. Three comments suggested that this rulemaking procedure be delayed pending the outcome of current litigation challenging the Executive Order, and that the comment period be reopened at the conclusion of the litigation. It is clearly not possible to delay rulemaking; the Order is effective as of the date it was signed and the Secretary has the obligation to promulgate a final rule implementing the Order.

3. One comment noted that under proposed regulations governing nonprocurement debarment and suspension and FAR (59 FR 65607, December 20, 1994), issued pursuant to § 2455 of the Federal Streamlining Act of 1994 and Executive Order 12689, reciprocal effect is to be given to debarment and suspension under FAR (for procurement programs) and under Executive Order 12549 and the implementing regulations (for nonprocurement activity such as grants). Thus, under these proposed regulations, a federal contractor which is debarred under Executive Order 12954 for permanently replacing lawfully striking employees would also be ineligible for nonprocurement activity such as grants. Because of this broad impact, the comment suggested that state and local governments be excluded from the definition of "person" so that they could not be considered to be federal contractors.

OAW believes that any impact on state and local government nonprocurement activity, though possible, will at most be rare. First, under most state law, strikes by employees of state entities are unlawful so that Executive Order 12954 will not be applicable. Second, the Assistant Secretary has the authority and discretion to find that debarment in a particular case is not appropriate. Finally, a finding by the Assistant Secretary that termination of the specific contract held by a state entity is appropriate would not have any impact on nonprocurement activity.

4. One comment asked whether it is correct in concluding that an entity is not a contractor subject to the Order solely because it receives Medicare and/or Medicaid reimbursements. This position is correct. The relationship between the federal government and a health care provider receiving payments under the Medicare program or receiving payments from states under the Medicaid program is a grantor-grantee relationship, not a contracting agency-contractor relationship. (Medicaid, unlike Medicare, does not involve a relationship between an executive agency of the U.S. government and a participating health care provider; rather, Medicaid is actually a grant program to the states.) Therefore, a contractor is not covered by the Order by virtue of the receipt of Medicare and/or Medicaid reimbursements.

However, under the proposed regulations referred to in the preceding comment regarding nonprocurement debarment and suspension and FAR, debarment under Executive Order 12954 for permanently replacing lawfully striking employees would also render a contractor ineligible for nonprocurement activity, including grants. Of course, as previously noted, the regulations give the Assistant Secretary the authority and discretion to make determinations on a case-by-case basis on whether debarment is appropriate, or whether termination of the specific contract is appropriate.

5. One comment suggested that the regulations should require that the agency head take certain steps before deciding not to adopt the Assistant Secretary's decisions that debarment and/or contract termination is appropriate, including issuing a notice and allowing the complainant to present his or her position. However, the Order does not provide the authority to require such a procedure.

6. Two comments stated that §§ 270.12 (b) and (c) of the regulations are confusing because under § 270.12(c) a contract can be terminated for convenience only if the contractor is found to have permanently replaced lawfully striking employees after March 8, 1995 (the effective date of the Executive Order) while § 270.12(b) specifies that a contractor can be debarred if the contractor is found to have permanently replaced lawfully striking employees and does not specify a time frame. However, these provisions of the proposed regulations reflect the effective dates for debarment and contract termination in the Order. That is, a contractor may be debarred if the contractor is found to have permanently replaced lawfully striking employees prior to March 8 but, pursuant to section 12(a) of the Order, a contract can only be terminated for convenience if the contractor is found to have permanently replaced lawfully striking employees after March 8.

7. One comment suggested revising proposed § 270.12(d) to include the effects of debarment in the notice to contractors advising of the Assistant Secretary's decision to propose debarment and/or termination. This change has been made.

8. One comment suggested revising proposed § 270.16(b) to state that the Assistant Secretary will specifically notify the General Services Administration of any decision to

terminate debarment because of the resolution of the labor dispute and publish the decision in the **Federal Register**. This suggestion has been adopted in this final rule.

9. Finally, many of the comments questioned the legality and the rationale of the Executive Order. These issues are clearly not within the purview of this rulemaking action.

In addition to promulgating regulations implementing Executive Order 12954, this final rule also changes the heading of Chapter II of Title 29 of the Code of Federal Regulations from "Bureau of Labor-Management Relations and Cooperative Programs, Department of Labor" to "Office of Labor-Management Programs, Department of Labor." The Office of Labor-Management Programs, a unit within the Office of the American Workplace, was established by Secretary's Order 2–93 (58 FR 42578) and, among other things, performs functions previously assigned to the Bureau of Labor-Management Relations and Cooperative Programs.

III. Administrative Notices

A. Executive Order 12866

The Department of Labor has determined that this rule is a significant regulatory action as defined in section 3(f) of Executive Order 12866. The Department is issuing this rule in conformance with that Executive Order. The Department has determined that the potential benefits of this regulatory action outweigh the potential costs, and that the rule promotes the President's priorities. This rule does not meet the criteria of section 3(f)(1) of Executive Order 12866 and, therefore, the information in section 6(a)(3)(C) of that Executive Order is not required. This rule has been reviewed by the Office of Management and Budget.

B. Regulatory Flexibility Act

The Agency Head has certified that this rule is not expected to have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act. The Order and the regulations apply only to federal contracts in excess of $100,000.

C. Paperwork Reduction Act

This rule contains no information collection requirements for purposes of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

List of Subjects in 29 CFR Part 270

Administrative practice and procedure; Government contracts; Federal contractors and subcontractors.

Accordingly, Chapter II of Title 29 is amended as set forth below.

Signed at Washington, D.C., this 23rd day of May, 1995.

Charles L. Smith,

Special Assistant to the Deputy Secretary.

CHAPTER II—OFFICE OF LABOR-MANAGEMENT PROGRAMS, DEPARTMENT OF LABOR

1. The heading of Chapter II, now reading "Bureau of Labor-Management Relations and Cooperative Programs, Department of Labor," is revised to read "Office of Labor-Management Programs, Department of Labor."

2. A new Part 270 is added to 29 CFR Chapter II to read as follows:

PART 270—OBLIGATIONS OF FEDERAL CONTRACTING AGENCIES: PERMANENT REPLACEMENT OF LAWFULLY STRIKING EMPLOYEES

Subpart A—Preliminary Matters

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Authority: Executive Order No. 12954, 60 FR 13023; Secretary's Order No. 2–93, 58 FR 42578; Secretary's Order No. 2–95, 60 FR 13602.

Subpart A—Preliminary Matters

§ 270.1 Definitions.

(a) *Affiliates* means business concerns, organizations, or individuals among which, directly or indirectly, either one controls or has the power to control the other, or a third party controls or has the power to control both. Indicia of control include, but are not limited to, interlocking management or ownership, identity of interest among family members, shared facilities and equipment, common use of employees, or a business entity organized following the debarment, suspension, or proposed debarment of a contractor which has the same or similar management, ownership, or principal employees as the contractor that was debarred, suspended, or proposed for debarment.

(b) *Assistant Secretary* means the Assistant Secretary of Labor for the American Workplace.

(c) *Contract* means a mutually binding agreement between the Government as a buyer, represented by a contracting agency, and a seller, where the seller agrees to furnish supplies or services (including construction) and the Government agrees to pay for them. It includes job orders or task orders issued under basic ordering agreements; letter contracts; orders, such as purchase orders under which the contract becomes effective by written acceptance or performance; and bilateral modifications to a contract, which increase the supplies or services to be delivered under the contract. For purposes of this part a contract is limited to agreements in which the Government agrees to pay an amount in excess of the Simplified Acquisition Threshold of $100,000 specified in section 4(11) of the Office of Federal Procurement Policy Act, 41 U.S.C. 403(11). The term "contract" does not include agreements in which the parties stand in the relationship of employer and employee.

(d) *Contracting agency* means any executive department or independent establishment in the executive branch of the Government, including any wholly owned Government corporation.

(e) *Contractor* means a prime contractor.

(f) *Department* means the U.S. Department of Labor.

(g) *Deputy Assistant Secretary* means the Deputy Assistant Secretary for Labor-Management Programs, Office of the American Workplace, U.S. Department of Labor.

(h) *Employee* includes any employee of an employer, and includes any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, but does not include any individual having the status of an independent contractor or any individual employed as a supervisor.

(i) *Government* means the government of the United States of America.

(j) *Labor dispute* includes any controversy concerning terms, tenure, or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

(k) *Lawfully striking employee* means an employee who is engaged in a strike that has not been finally adjudicated to be unlawful under any applicable federal, state, or local law.

(l) *Order* means Executive Order 12954, dated March 8, 1995 (60 FR 13023, March 10, 1995).

(m) *Organizational unit of a federal contractor* includes:

(1) A division or other organizational element of a person that is responsible as the prime contractor for performing a contract, and

(2) Any other affiliate of the person that could provide the goods or services required to be provided under the contract.

(n) *Permanently replaced*, when used in connection with a lawfully striking employee, means that during a lawful strike the employer has placed an individual in the lawfully striking employee's position, and the striking employee does not have an unconditional right to reinstatement.

(o) *Person* means any natural person, corporation, partnership or joint venture, unincorporated association, state or local government, and any agency, instrumentality, or subdivision of such a government.

(p) *Prime contractor* means any person holding a contract with a contracting agency.

(q) *Secretary* means the Secretary of Labor, U.S. Department of Labor, or his or her designee.

§ 270.2 Statement of Policy.

(a) It is the policy of the Executive Branch of the Federal Government that in procuring goods and services, in order to ensure the economical and efficient administration and completion of contracts, contracting agencies shall not contract with employers that permanently replace lawfully striking employees.

(b) All discretion under the Order and this part shall be exercised consistent with this policy.

(c) The Order and this part apply only to contracts in excess of the Simplified Acquisition Threshold of $100,000 established in section 4(11) of the Office of Federal Procurement Policy Act, 41 U.S.C. 403(11).

Subpart B—Enforcement

§ 270.10 Complaints.

(a) Complaints may be filed by an employee of an organizational unit of a federal contractor, or his or her representative, alleging that the organizational unit has permanently replaced lawfully striking employees. All complaints should be filed with the Deputy Assistant Secretary for Labor-Management Programs, Office of the American Workplace, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–2203, Washington, DC 20210.

(b) The complaint must be in writing and should include the name, address, and telephone number of the complainant, the name and address of the organizational unit of the federal contractor alleged to have permanently replaced lawfully striking employees, an identification of the lawfully striking employees who were allegedly permanently replaced, and any other pertinent information which will assist in the investigation and resolution of the complaint.

§ 270.11 Investigations.

The Deputy Assistant Secretary may cause an investigation to be conducted of an organizational unit of a federal contractor, regarding the permanent replacement of lawfully striking employees, on the basis of complaints filed with the Department, information submitted by other persons, or other available information. The Deputy Assistant Secretary shall notify the organizational unit of a federal contractor of the initiation of an investigation and the potential consequences under the Order. The Deputy Assistant Secretary may also cause a fact finding hearing to be conducted, either instead of or in addition to an investigation. The Deputy Assistant Secretary shall transmit the record, including a proposed finding of fact and a recommendation as to debarment and/or termination of a contract or contracts, to the Assistant Secretary.

§ 270.12 Findings by the Assistant Secretary.

(a) Upon receipt of the record, the Assistant Secretary shall make a finding as to whether the organizational unit of the federal contractor has permanently replaced lawfully striking employees.

(b) If the Assistant Secretary finds that the organizational unit of the federal contractor has permanently replaced lawfully striking employees, he or she shall determine whether it is appropriate to propose debarment.

(c) If the Assistant Secretary finds that the organizational unit of the federal contractor has permanently replaced lawfully striking employees after March 8, 1995, the effective date of the Order, he or she shall also determine whether it is appropriate to propose termination for convenience of the contract or contracts of the organizational unit.

(d) If the Assistant Secretary proposes debarment and/or termination, he or she shall notify the organizational unit of the proposed debarment and/or termination by certified mail, return receipt requested, advising the organizational unit of the effects of debarment and its right, within 15 days after receipt of the notice, to submit, in person, in writing, or through a representative, information and argument in opposition to debarment and/or termination.

§ 270.13 Hearings.

(a) If the Assistant Secretary finds that the submission by the organizational unit of a federal contractor in opposition to the proposed debarment and/or termination raises a genuine dispute over facts material to the proposed debarment and/or termination, the Assistant Secretary shall afford the organizational unit the opportunity to appear at an informal hearing. The Assistant Secretary or his or her designee shall preside over the proceeding.

(b) The Assistant Secretary shall make a decision on the proposed debarment and/or termination of a contract or contract based on the record.

§ 270.14 Termination of contract for convenience.

(a) Upon finding that termination of a contract or contracts for convenience is appropriate, the Assistant Secretary shall notify the organizational unit of a federal contractor by certified mail, return receipt requested, and shall transmit that finding to the head of any department or agency that contracts with the organizational unit.

(b) The head of the department or agency shall notify the Assistant Secretary in writing of those contracts that have been terminated for convenience pursuant to the Assistant Secretary's finding.

(c) If the head of the department or agency objects to the termination for convenience of a contract, he or she shall notify the Assistant Secretary in writing, promptly after receipt of the Assistant Secretary's finding, of the reasons for not terminating the contract and the termination for convenience shall not be issued.

§ 270.15 Debarment.

(a) The scope of any debarment normally will be limited to the organizational unit of a federal contractor that the Assistant Secretary has found to have permanently replaced lawfully striking employees.

(b) Upon finding that debarment is appropriate, the Assistant Secretary shall promptly notify the organizational unit of the federal contractor by certified mail, return receipt requested. The

notice shall advise the organizational unit of the federal contractor:

(1) That debarment is effective immediately;

(2) That the debarment will not extend beyond the date when the labor dispute precipitating the permanent replacement of lawfully striking employees has been resolved, as determined by the Assistant Secretary in accordance with § 270.16;

(3) That under the debarment, contracting agencies throughout the executive branch of the Government shall not contract or consent to subcontracts with the organizational unit of the federal contractor nor renew or otherwise extend the duration of current contracts, unless the head of a contracting agency or his or her designee determines that there is a compelling reason for such action.

(c) The Assistant Secretary shall notify the Administrator of the General Services Administration of the debarment and the Administrator shall include the contractor on the list of debarred contractors. The Assistant Secretary shall publish or cause to be published in the **Federal Register**, the names of contractors that have, in the judgment of the Assistant Secretary, permanently replaced lawfully striking employees and have been the subject of debarment. Departments and agencies shall not renew or otherwise extend the duration of current contracts or solicit offers from, award contracts to, or consent to subcontracts with these contractors unless the head of the agency or his or her designee determines, in writing, that there is compelling reason for such action.

§ 270.16 Determination of resolution of labor dispute.

(a) The Assistant Secretary may cause an investigation to be conducted, on his or her own initiative or upon request by any person, to determine whether a labor dispute that resulted in debarment has been resolved. Among the factors or conditions that the Assistant Secretary may consider are:

(1) Whether the parties to the labor dispute have either reached a formal settlement or agreed on a procedure for resolving their differences.

(2) Whether the parties have agreed informally to end the labor dispute without the signing of a written agreement.

(3) Whether striking employees have returned to work.

(4) Any other relevant factors tending to lead to the conclusion that the labor dispute has ended.

(b) If the Assistant Secretary determines that the labor dispute has been resolved, he or she shall terminate the debarment and notify the General Services Administration of this action. Notification shall also be given to the public, federal agencies, federal contractors, and other interested persons, through publication in the **Federal Register**, of this action.

Subpart C—Ancillary Matters

§ 270.20 Cooperation with the Assistant Secretary.

Consistent with section 7 of the Order, each contracting agency shall cooperate with the Assistant Secretary and provide such information and assistance as the Assistant Secretary may require in the performance of the Assistant Secretary's functions under the Order and the regulations in this part.

§ 270.21 Rulings and interpretations.

Rulings under or interpretations of the Order or the regulations contained in this part shall be made by the Assistant Secretary or his or her designee.

§ 270.22 Delegation of authority by the Secretary.

Consistent with section 8 of the Order, the Secretary may delegate any function or duty of the Secretary under this Order to any officer in the Department or to any other officer in the executive branch of the Government, with the consent of the head of the department or agency in which that officer serves.

§ 270.23 General.

(a) The regulations in this part implement Executive Order 12954 only and do not modify or affect the interpretation of any other Department of Labor regulations or policy.

(b) Consistent with section 10 of the Order, nothing contained in the Order or this part, or promulgated pursuant to the Order or this part, is intended to confer any substantive or procedural right, benefit, or privilege enforceable at law by a party against the United States, its agencies or instrumentalities, its officers, or its employees.

[FR Doc. 95–12960 Filed 5–24–95; 8:45 am]

BILLING CODE 4510–86–P

federal register

Thursday
May 25, 1995

Part VI

The President

Proclamation 6805—World Trade Week, 1995

Federal Register
Vol. 60, No. 101
Thursday, May 25, 1995

Presidential Documents

Title 3—

The President

Proclamation 6805 of May 22, 1995

World Trade Week, 1995

By the President of the United States of America

A Proclamation

American exports bolster the quality of life for countless people, supporting 10.5 million jobs here at home and supplying popular American products to millions worldwide. They fuel our Nation's economy, create high-wage jobs for our citizens, and link us to countries everywhere. That is why my Administration supported NAFTA and brought the Uruguay Round GATT negotiations to a successful conclusion. As we celebrate World Trade Week this year, we pause to recognize the many ways in which "Exporting is Everybody's Business."

In the two years since my Administration launched this country's first National Export Strategy, America has led the way in trade promotion and advocacy efforts, strengthening existing programs and developing new initiatives to serve U.S. exporters. The Trade Promotion Coordinating Committee (TPCC) has worked to create a more streamlined, responsive, and effective system that enhances our Nation's economy and helps our firms to compete successfully around the globe.

During the past year, we have worked to develop a new, innovative trade finance strategy. The Export-Import Bank of the United States, the Overseas Private Investment Corporation, the Trade and Development Agency, the Small Business Administration, and the Departments of the Treasury and Commerce have provided new forms of trade finance that help our firms to compete in the global marketplace. We are addressing the removal of unnecessary and ineffective export controls and streamlining the licensing process, liberalizing controls on a range of high-technology products and increasing the effectiveness of multilateral control regimes.

With the restructuring of the U.S. and Foreign Commercial Service, now the Commercial Service of the United States, the Department of Commerce is working in partnership with the businesses it serves, promoting U.S. exports, advocating U.S. business interests abroad, assisting U.S. firms to realize their export potential, and supporting the export promotion efforts of other public and private organizations. By the end of this year, 15 U.S. Export Assistance Centers will be open across the country, offering virtually every American business person a coordinated, multi-faceted, international trade team close at hand.

Already, U.S. exports to our neighbors in the Southern Hemisphere exceed $92 billion, generating good jobs for our workers and demonstrating our competitiveness throughout the international marketplace. At the Summit of the Americas this past December, our Nation reaffirmed its commitment to the extension of free trade throughout the Hemisphere by the year 2005—an opportunity that promises to bolster our economy even further. These efforts, combined with our progress with the countries of the Organization for Asian-Pacific Economic Cooperation (APEC), mean trade gains of historic proportions. And that means more jobs for hardworking Americans.

Still, much remains to be done. U.S. exporters must be given every opportunity to sell our products freely and fairly. Our companies must meet the challenge of venturing into new markets. They must keep quality high and production efficient, while marketing American goods and services to

new customers around the world. The work is difficult, but the rewards are great: a strong economy, better goods and services, and a brighter future for all of us.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim May 21 through May 27, 1995, as "World Trade Week." I invite the people of the United States to join in appropriate observances to celebrate the potential of international trade to create prosperity for all.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-second day of May, in the year of our Lord nineteen hundred and ninety-five, and of the Independence of the United States of America the two hundred and nineteenth.

William J. Clinton

[FR Doc. 95–13020
Filed 5–23–95; 3:15 pm]
Billing code 3195–01–P

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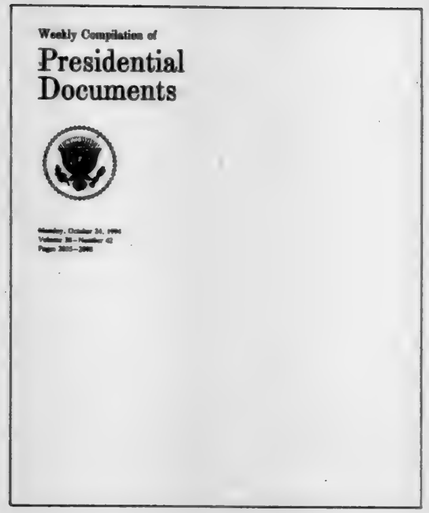
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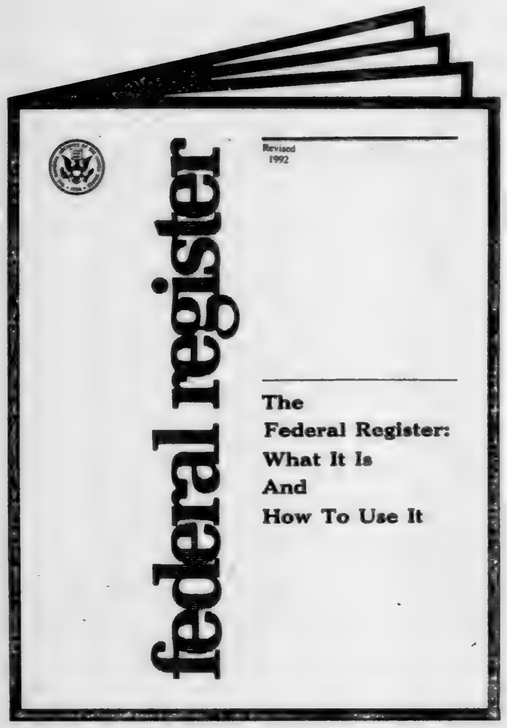
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5–26–95
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federal register

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Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

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Federal Register
Vol. 60, No. 102
Friday, May 26, 1995

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Consolidated Farm Service Agency

7 CFR Part 723

Commodity Credit Corporation

7 CFR Part 1464

RIN 0560–AD63

1995 Marketing Quota and Price Support for Burley Tobacco

AGENCIES: Consolidated Farm Service Agency and Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this final rule is to codify determinations made by the Secretary of Agriculture (Secretary) with respect to the 1995 crop of burley tobacco. In accordance with the Agricultural Adjustment Act of 1938, as amended (1938 Act), the Secretary determined the 1995 marketing quota for burley tobacco to be 549.0 million pounds. In accordance with the Agricultural Act of 1949, as amended (the 1949 Act), the Secretary determined the 1995 price support level to be 172.5 cents per pound.

EFFECTIVE DATE: February 1, 1995.

FOR FURTHER INFORMATION CONTACT: Robert Tarczy, CFSA, USDA, room 3739, South Building, PO. Box 2415, Washington, DC 20013–2415, on 202 720–5346.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined to be significant for purposes of Executive Order 12866 and, therefore, has been reviewed by OMB under Executive Order 12866.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies, are Commodity Loans and Purchases—10.051.

Executive Order 12778

This final rule has been reviewed in accordance with Executive Order 12778, Civil Justice Reform. The provisions of this rule do not preempt State laws, are not retroactive, and do not involve administrative appeals.

Paperwork Reduction Act

The amendments to 7 CFR parts 723 and 1464 set forth in this final rule do not contain any new or revised information collection requirements that require clearance through the Office of Management and Budget under the provisions of 44 U.S.C. chapter 35.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule because CFSA is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Proclamation

On February 1, 1995, the Secretary proclaimed the national marketing quota and announced price support level for the 1995 crop of burley tobacco. The Secretary also announced that a referendum would be conducted by mail ballot with respect to burley tobacco.

During February 27–March 2, 1995, eligible burley tobacco producers voted in a referendum to determine whether such producers disapprove marketing quotas for the 1995, 1996, and 1997 marketing years (MY's) for this kind of tobacco. Of the producers voting, 96.8 percent favored marketing quotas for burley tobacco. Accordingly, quotas and price support are in effect for the 1995 MY.

Marketing Quota

Section 319(c)(3)(A)(B) of the 1938 Act provides, in part, that the national marketing quota for a marketing year for burley tobacco is the quantity of such tobacco that is not more than 103 percent nor less than 97 percent of the total of: (1) The amount of burley tobacco that domestic manufacturers of cigarettes estimate they intend to purchase on U.S. auction markets or from producers, (2) the average quantity exported annually from the U.S. during the 3 marketing years immediately preceding the marketing year for which the determination is being made, and (3) the quantity, if any, that the Secretary, in the Secretary's discretion, determines necessary to adjust loan stocks to the reserve stock level.

Section 319(c)(3)(C) further provides that, with respect to the 1995 and 1996 marketing years, any reduction in the national marketing quota being determined shall not exceed 10 percent of the previous year's national marketing quota. However, if actual loan stocks exceed the prescribed reserve stock level by 50 percent, the Secretary may set the quota according to the three-component formula (plus or minus 3 percent). The reserve stock level is defined in section 301(b)(14)(C) of the 1938 Act as the greater of 50 million pounds or 15 percent of the national marketing quota for burley tobacco for the marketing year immediately preceding the marketing year for which the level is being determined.

Section 320A of the 1938 Act provides that all domestic manufacturers of cigarettes with more than 1 percent of U.S. cigarette production and sales shall submit to the Secretary a statement of purchase intentions for the 1995 crop of burley tobacco by January 15, 1995. Five such manufacturers were required to submit such a statement for the 1995 crop and the total of their intended purchases for the 1995 crop is 385.0 million pounds. The 3-year average of exports is 160.1 million pounds.

The national marketing quota for the 1994 crop year was 542.7 million pounds (59 FR 33723). Thus, in accordance with section 301 (b)(14)(D), the reserve stock level for use in determining the 1995 marketing quota for burley tobacco is 81.4 million pounds.

On December 1, 1994, the major cigarette manufacturers contracted with Burley Tobacco Growers Cooperative Association, Inc. and Burley Stabilization Corporation to buy all 1991–93 loan stocks. Loans from the 1994 crop total 60.5 million pounds. Accordingly, the adjustment necessary to maintain loan stocks at the reserve supply level is an increase of 20.9 million pounds.

The total of the three marketing quota components for the 1995–96 marketing year is 566.0 million pounds. In addition, USDA used the discretionary authority to reduce the three-component total by 3 percent because the Secretary determined that the 1995/96 supply would be more than ample. Accordingly, the national marketing quota for the marketing year beginning October 1, 1995, for burley tobacco is 549.0 million pounds.

In accordance with section 319(c) of the 1938 Act, the Secretary is authorized to establish a national reserve from the national quota in an amount equivalent to not more than 1 percent of the national quota for the purpose of making corrections in farm quotas adjusting for inequities, and for establishing quotas for new farms. The Secretary has determined that a national reserve for the 1995 crop of burley tobacco of 2,187,713 pounds is adequate for these purposes.

Price Support

Price support is required to be made available for each crop of a kind of tobacco for which quotas are in effect, or for which marketing quotas have not been disapproved by producers, at a level determined in accordance with a formula prescribed in section 106 of the 1949 Act.

With respect to the 1995 crop of burley tobacco, the level of support is determined in accordance with sections 106 (d) and (f) of the 1949 Act. Section 106(f)(7)(A) of the 1949 Act provides that the level of support for the 1995 crop of burley tobacco shall be:

(1) The level, in cents per pound, at which the 1994 crop of burley tobacco was supported, plus or minus, respectively,

(2) An adjustment of not less than 65 percent nor more than 100 percent of the total, as determined by the Secretary after taking into consideration the supply of the kind of tobacco involved in relation to demand, of:

(A) 66.7 percent of the amount by which:

(I) The average price received by producers for burley tobacco on the United States auction markets, as determined by the Secretary, during the 5 marketing years immediately preceding the marketing year for which the determination is being made, excluding the year in which the average price was the highest and the year in which the average price was the lowest in such period, is greater or less than:

(II) The average price received by producers for burley tobacco on the United States auction markets, as determined by the Secretary, during the 5 marketing years immediately preceding the marketing year prior to the marketing year for which the determination is being made, excluding the year in which the average price was the highest and the year in which the average price was the lowest in such period; and

(B) 33.3 percent of the change, expressed as a cost per pound of tobacco, in the index of prices paid by the tobacco producers from January 1 to December 31 of the calendar year immediately preceding the year in which the determination is made.

The difference between the two 5-year averages (i.e., the difference between (A) (I) and (II)) is 2.1 cents per pound. The difference in the cost index from January 1 to December 31, 1994, is 0.9 cents per pound. Applying these components to the price support formula (2.1 cents per pound, two-thirds weight; 0.9 cents per pound, one-third weight) results in a weighted total of 1.7 cents per pound. As indicated, section 106 provides that the Secretary may, on the basis of supply and demand conditions, limit the change in the price support level to no less than 65 percent of that amount. In order to remain competitive in foreign and domestic markets, the Secretary used his discretion to limit the increase to 65 percent of the maximum allowable increase. Accordingly, the 1995 crop of burley tobacco will be supported at 172.5 cents per pound, 1.1 cents higher than in 1994.

List of Subjects

7 CFR Part 723

Acreage allotments, Marketing quotas, Penalties, Reporting and recordkeeping requirements, Tobacco.

7 CFR Part 1464

Loan programs—agriculture, Price support programs, Tobacco, Reporting and recordkeeping requirements, Warehouses.

Accordingly, 7 CFR parts 723 and 1464 are amended as follows:

PART 723—TOBACCO

1. The authority citation for 7 CFR part 723 continues to read as follows:

Authority: 7 U.S.C. 1301, 1311–1314, 1314–1, 1314b, 1314b–1, 1314b–2, 1314c, 1314d, 1314e, 1314f, 1314i, 1315, 1316, 1362, 1363, 1372–75, 1421, 1445–1, and 1445–2.

2. Section 723.112 is amended by adding paragraph (c) to read as follows:

§ 723.112 Burley (type 31) tobacco.

* * * * *

(c) The 1995-crop national marketing quota is 549.0 million pounds.

PART 1464—TOBACCO

3. The authority citation for 7 CFR part 1464 continues to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1441, 1445, 1445–1 and 1445–2; 15 U.S.C. 714b and 714c.

4. Section 1464.19 is amended by adding paragraph (c) to read as follows:

§ 1464.19 Burley (type 31) tobacco.

* * * * *

(c) The 1995-crop national price support level is 172.5 cents per pound.

Signed at Washington, DC, on May 21, 1995.

Bruce R. Weber.

Acting Administrator, Consolidated Farm Service Agency and Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 95–13001 Filed 5–25–95; 8:45 am]

BILLING CODE 3410–05–P

Commodity Credit Corporation

7 CFR Part 1421

RIN 0560–AD67

1995-Crop Peanuts; National Average Support Levels for Quota and Additional Peanuts; and Minimum Commodity Credit Corporation Export Edible Sale Price for Additional Peanuts

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this final rule is to codify determinations made by the Secretary of Agriculture (Secretary) with respect to the 1995 peanut crop: the national average support level for quota peanuts of $678.36 per short ton (st); the national average support level for additional peanuts of $132 per st; and the minimum Commodity Credit Corporation (CCC) export edible sale price for additional peanuts of $400 per st. The determinations of the national average support levels for quota and additional peanuts were made pursuant to the statutory requirements of the Agricultural Act of 1949 (the 1949 Act), as amended. The determination and announcement of the minimum CCC export edible sale price for additional peanuts is a discretionary action made to facilitate the negotiation of private contracts for export edible peanuts.

EFFECTIVE DATE: February 15, 1995.

FOR FURTHER INFORMATION CONTACT: John A. Craven, Consolidated Farm Service Agency (CFSA), Room 3744, South Building, United States Department of Agriculture, PO. Box 2415, Washington, DC 20013–2415, Telephone 202–690–0446.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined to be significant and was reviewed by OMB under Executive Order 12866.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the catalogue of Federal Domestic Assistance, to which this rule applies, are Commodity Loans and Purchases—10.051.

Executive Order 12778

This rule has been reviewed in accordance with Executive Order 12778. The provisions of this rule do preempt State law, are not retroactive, and do not involve administrative appeals.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable because CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject of these determinations.

Paperwork Reduction Act

The amendments to 7 CFR part 1421 set forth in this final rule do not contain information collections that require clearance by the Office of Management and Budget under the provisions of 44 U.S.C. 35.

Determinations

This rule is issued pursuant to the provisions of the 1949 Act.

On February 15, 1995, the Secretary announced the national average support levels for 1995-crop quota and additional peanuts and the minimum CCC export edible sales price for 1995-crop additional peanuts.

Section 1017 of the Food Security Act of 1985, as amended, provides that the Secretary shall determine the rate of loans, payments, and purchases for the 1991 through 1995 crops of commodities without regard to the requirements for notice and public participation in rulemaking as prescribed in 5 U.S.C. 553 or any directive of the Secretary.

A. Quota Peanuts Support Level

In accordance with section 108B(a)(2) of the 1949 Act, the national average price support level for 1995 crop quota peanuts must be the corresponding 1994-crop price support level adjusted to reflect any increases in the national average cost of peanut production (excluding any changes in the cost of land) during the calendar year immediately preceding marketing year (MY) 1995, except that the MY 1995 price support level cannot exceed the MY 1994 support level by more than 5 percent. In the event of a reduction in these costs of production, the MY 1995 price support level for quota peanuts would be required, under the terms of Section 108B, to be unchanged from MY 1994. The MY 1994 quota peanut price support level is $678.36 per short ton (st). The MY 1995 support level for quota peanuts was determined based on the following estimates:

PEANUT PRODUCTION COST CALCULATIONS

Variable/component	1993	1994
Production costs.	$492.91/acre	$489.07/acre.
Trend yields .	2,500 lbs./acre.	2,500 lbs./acre.
Production costs.	$394.33/st	$391.26/st.

1995 QUOTA CALCULATIONS

[Dollars per short ton]

Change during 1994 in the average cost of producing peanuts	−$3.07
1995 Quota Support Level (1994 Support + any cost increase)	678.36

As indicated, relevant peanut production costs decreased from calendar year 1993 to 1994. The MY 1995 quota peanut price support level is accordingly established at $678.36 per st, unchanged from MY 1994.

B. Additional Peanut Support Level

Section 108B(b)(1) of the 1949 Act provides that price support shall be made available for additional peanuts at such level as the Secretary determines will ensure no losses to CCC from the sale or disposal of such peanuts, taking into consideration the demand for peanut oil and peanut meal, expected prices of other vegetable oils and protein meals, and the demand for peanuts in foreign markets.

The MY 1995 price support level for additional peanuts is established at $132 per st to ensure no losses to CCC from the sale or disposal of such peanuts, unchanged from MY 1994. Peanuts are pledged as collateral for price support loans. The peanuts are then sold out of inventory in order to recoup the loan principal, interest and related costs. The statutory factors have been analyzed as set out below. Based on those factors, it is anticipated that while the current oil market is unusually strong, there is enough uncertainty in the market to suggest caution in setting the floor price for inventory peanuts sold for crushing. For that reason, it has been determined that the support rate should remain unchanged from the level for additional peanuts that was in place for the 1994 crop, that being $132.00 per st.

In making this determination, the following information was considered:

1. The domestic use of peanut oil during MY 1995 is forecast to be 115,000 st, up 2 percent from MY 1994 projected domestic use. MY 1995 peanut oil beginning stocks are expected to be 19,000 st, up 50 percent from MY 1994. The MY 1995 average peanut oil price is expected to be $0.40 per pound, down $0.06 per pound from MY 1994.

2. The domestic use of peanut meal during MY 1995 is forecast to be 180,000 st, down 2,000 st from MY 1994 projected domestic use. MY 1995 peanut meal beginning stocks are expected to be 5,000 st, down 2,000 st from MY 1994. The MY 1995 average peanut meal price is expected to be $155 per st, up $20 per st from MY 1994.

3. The domestic disappearance of soybean oil during MY 1995 is forecast to be 6,650,000 st, up 2.3 percent from projected MY 1994 domestic disappearance. MY 1995 soybean oil beginning stocks are expected to be 640,000 st, up 16 percent from MY 1994. The MY 1995 average soybean oil price is expected to be $0.27 per pound, unchanged from MY 1994.

4. The domestic disappearance of cottonseed oil during MY 1995 is forecast to be 510,000 st, up slightly from projected MY 1994 domestic disappearance. MY 1995 cottonseed oil beginning stocks are expected to be 40,000 st, down 25 percent from MY 1994. The MY 1995 average cottonseed oil price is expected to be $0.27 per pound, up $0.02 from MY 1994.

5. The domestic disappearance of soybean meal during MY 1995 is forecast to be 26,500,000 st, up 1.0 percent from projected MY 1994 domestic disappearance. MY 1995 soybean meal beginning stocks are expected to be 300,000 st, up 50 percent from MY 1994. The MY 1995 average soybean meal price is expected to be $160 per st, up $5 per st from MY 1994.

6. The domestic disappearance of cottonseed meal during MY 1995 is forecast to be 1,725,000 st, up 3 percent from projected MY 1994 domestic disappearance. MY 1995 cottonseed meal beginning stocks are expected to be 65,000 st, up 23 percent from MY 1994. The average cottonseed meal price for MY 1995 is expected to be $125 per st, up $5 per st from MY 1994.

7. The world use of peanuts for MY 1994 is expected to be 24.42 million metric tons, up 1.3 percent from MY 1993. World peanut production for MY 1994 is forecast to be 24.47 million metric tons, up 2 percent from MY 1993. Ending stocks for MY 1994 are forecast at 0.70 million metric tons, up 8 percent from MY 1993.

C. Minimum CCC Export Edible Sales Price for Additional Peanuts

The minimum price at which additional peanuts owned or controlled by CCC may be sold for use as edible peanuts in export markets is a discretionary action that, by practice, is announced at the same time as quota and additional peanut support levels to facilitate the negotiation of additional peanut contracts by producers and handlers.

A proposed rule setting forth the MY 1995 minimum CCC export edible sales price of $400 per st was published on January 4, 1995 (60 FR 381). Six comments were received in response to the notice during the public comment period that ended on January 17, 1995. The six respondents addressing this issue were five shellers or sheller/processors and one peanut product manufacturer. Five comments supported a CCC export edible sales price of $400 per st or above; most of these felt that the $400 minimum had served the industry well since 1986. One sheller respondent felt that CCC should discontinue the policy of announcing a minimum export edible sales price and make all additional peanuts available to export markets at market determined prices. The $400 price has been adopted in this final rule for the reasons set out in the January 4 notice.

List of Subjects in 7 CFR Part 1421

Grains, Loan programs-agriculture, Oilseeds, Peanuts, Price support programs, Reporting and recordkeeping requirements, Soybeans, Surety bonds, Warehouses.

Accordingly, 7 CFR part 1421 is amended as follows:

PART 1421—GRAINS AND SIMILARLY HANDLED COMMODITIES

1. The authority citation for 7 CFR part 1421 continues to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1425, 1441z, 1444f–1, 1445b–3a, 1445c–3, 1445e, and 1446f; 15 U.S.C. 714b and 714c.

2. Section 1421.7(b)(8)(iv) is revised and paragraph (b)(8)(v) is added to read as follows:

§ 1421.7 Adjustment of basic support rates.

* * * * *

(b) * * *

(8) * * *

(iv) 1994 Peanuts, Quota—$678.36 per short ton; Additional—$132.00 per short ton;

(v) 1995 Peanuts, Quota—$678.36 per short ton; Additional—$132.00 per short ton;

* * * * * *

3. Sections 1421.27(a)(2)(iv) is revised and paragraph (a)(2)(v) is added to read as follows:

§ 1421.27 Producer-handler purchases of additional peanuts pledged as collateral for a loan.

(a) * * *

(2) * * *

(iv) The 1994 minimum CCC sales price for additional peanuts sold for export edible use is $400 per short ton;

(v) The 1995 minimum CCC sales price for additional peanuts sold for export edible use is $400 per short ton.

* * * * * *

Signed at Washington, DC, on May 21, 1995.

Bruce R. Weber,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 95–13000 Filed 5–25–95; 8:45 am]

BILLING CODE 3410–05–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 116

Policies of General Application

AGENCY: Small Business Administration (SBA).

ACTION: Interim final rule with request for comments.

SUMMARY: On October 22, 1994, the President signed Public Law 103–403, The Small Business Administration Reauthorization and Amendments Act of 1994. Section 612 of that Act requires SBA to promulgate regulations by April 22, 1995 which require certification by any recipient of financial assistance under the Small Business Act that such recipient is not delinquent on a court order or other formal agreement requiring payment of child support. This interim final rule, published in accordance with Public Law 103–403, implements this requirement.

DATES: This rule becomes effective May 26, 1995. Comments by June 26, 1995.

ADDRESSES: Comments should be sent to John R. Cox, Associate Administrator for Financial Assistance, Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: John R. Cox, (202) 205–6490.

SUPPLEMENTARY INFORMATION: Public Law 103–403 required SBA, among other things, to promulgate regulations which require certification by any recipient of Agency financial assistance under the Small Business Act that the recipient is not delinquent on a court order or other formal agreement requiring payment of child support. In that regard, Section 612 of Pub. L. 103–403, October 22, 1994, states:

(f) Certification of Compliance with Child Support Obligations.—

(1) In General. For financial assistance approved *after the promulgation of final regulations to implement this section,* each recipient of financial assistance under this Act, including a recipient of a direct loan or a loan guarantee, shall certify that the recipient is not more than 60 days delinquent under the terms of any—

(A) administrative order;

(B) court order; or

(C) repayment agreement entered into between the recipient and the custodial parent or State agency providing child support enforcement services, that requires the recipient to pay child support, as such is defined in section 462(b) of the Social Security Act.

(2) Enforcement. *Not later than 6 months after the date of enactment of this subsection, the Administration shall promulgate such regulations as may be necessary to enforce compliance with the requirements of this subsection.*

[Emphasis added.]

The Conference Report language on this section is useful in providing guidance for implementing this requirement. (See Report 103–824 to accompany S. 2060.) It provides:

Sec. 612. Certification of compliance with child support obligations.

Both bills contained provisions requiring SBA borrowers to certify that they are not in violation of any court order or agreement requiring the payment of child support. The conference report contains the same provision with a clarification with court orders, administrative orders, or agreements, specifically 60 days or more in arrears.

While intending to strengthen federal policy in support of family support obligations, the conferees recognize that economic circumstances may from time to time cause a parent to be late in such payments. It is not the intent of the conferees to subject minor lapses to the criminal and civil penalties contained in both the Small Business Act and the False Statements Act for false representations made to the agency in the course of a loan application or other application for assistance. Hence, the conference agreement provides for a certification that the applicant is not more than 60 days late in making any child support payment required by court order or agreement. Loan applicants should be advised of this provision at the outset of the application process, but certification pursuant to this section may be made as part of the loan closing.

Thus, certification at the time of application does not appear to be *required,* although it may be used as a means for "weeding out" delinquents. In the alternative, certification at the time of closing is consistent with the intent of Congress, and these regulations require such certification.

SBA has also determined that the intent of the legislation is to require *individuals* who are subject to agreements requiring the payment of child support to make the required certifications. Many of the applicants for SBA financial assistance are corporations, partnerships and sole proprietorships. For purposes of these regulations, SBA will require any owner or partner holding 50% or more of the voting interests of an applicant (a principal) to certify.

Finally, SBA takes the position that the statute intends coverage only for its business loan and disaster loan program; i.e. financial assistance made available under the Small Business Act. Therefore, only applicants for assistance under those programs will be required to make the required certifications.

In practice, after the effective date of these regulations, SBA or its participating lender will notify the principals of all applicants for assistance under the business and disaster loan programs at the time of application that they must certify to compliance with outstanding court orders or agreements requiring the payment of child support. The required certification will be made a condition of the loan authorization which if not satisfied will be a ground for not closing the loan.

Compliance With Executive Orders 12612, 12778, and 12866, the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., and the Paperwork Reduction Act, 44 U.S.C. Ch. 35

For purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., SBA certifies that this final rule does not have a significant economic impact on a substantial number of small entities.

BAS certifies that this final rule does not constitute a significant regulatory action for the purposes of Executive Order 12866, since the change is not likely to result in an annual effect on the economy of $100 million or more.

SBA certifies that this final rule does not impose additional reporting or recordkeeping requirements which would be subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

This final rule does not have federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612.

For purposes of Executive Order 12778, SBA certifies that this final rule is drafted, to the extent practicable, in accordance with the standards set forth in section 2 of that Order.

Because this final rule reflects a reporting requirement imposed by Pub. L. 103–403, and is required to be effective by April 22, 1995, SBA is publishing this final rule without opportunity for prior public comment pursuant to 5 U.S.C. 553(b)(A). However, SBA solicits and will consider any comments it receives with respect to this final rule in making future adjustments.

(Catalog of Federal Domestic Assistance Program Nos. 59.001, 59.002, 59.008, 59.012, 59.021)

List of Subjects in 13 CFR Part 116

Small businesses.

Accordingly, pursuant to the authority contained in section 5(b)(6) of the Small Business Act, 15 U.S.C. 634(b)(6), SBA amends part 116, chapter I, title 13, Code of Federal Regulations, as follows:

1. Subpart F is added to read as follows:

Subpart F—Compliance With Child Support Obligations.

116.42 Policy.
116.43 Certification.
116.44 Recipient.

Authority: Sec. 612 of Pub. L. 103–403, 108 Stat. 4175.

Subpart F—Compliance With Child Support Obligations

§ 116.42 Policy.

It is the policy of SBA that each recipient of financial assistance under the Small Business Act shall certify that the recipient is not more than 60 days delinquent under any administrative order, court order, or repayment agreement between the recipient and the custodial parent or a State agency providing child support enforcement services that requires the recipient to pay child support as that term is defined in section 462(b) of the Social Security Act.

§ 116.43 Certification.

The certification required to comply with the statement of policy expressed in § 116.41 shall be a condition of all financial assistance granted under sections 7 (a) and (b) of the Small Business Act.

§ 116.44 Recipient.

For purposes of this subpart the term recipient shall mean an owner of 50% or more of the ownership interest of an applicant for assistance under section 7 (a) or (b) of the Small Business Act.

Dated: April 26, 1995.

Cassandra M. Pulley,

Deputy Administrator.

[FR Doc. 95–12647 Filed 5–25–95; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–ANE–05; Amendment 39–9243; AD 95–11–06]

Airworthiness Directives; Hartzell Propeller Inc. Models HC–92WK–( ) and HC–92ZK–( ) Propellers

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes airworthiness directive (AD) 73–02–01, applicable to Hartzell Propeller Inc. Models HC–92WK–( ) and HC–92ZK–( ) propellers, that currently requires visual and penetrant inspections of the propeller blade shank area for corrosion at 1,000 hour time in service (TIS) intervals and shotpeening after inspection. This amendment requires a one-time inspection of the blade clamp screws, then a dye penetrant inspection, compressive rolling of the blade shank, and replacement of blade clamp screws, all to be accomplished at intervals of 500 hours TIS. This amendment is prompted by reports of two recent propeller blade separations that occurred at less than 1,000 hours TIS since last inspection. The actions specified by this AD are intended to prevent propeller blade separation, which could result in loss of control of the aircraft.

DATES: Effective June 12, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 12, 1995.

Comments for inclusion in the Rules Docket must be received on or before July 25, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No.

95–ANE–05, 12 New England Executive Park, Burlington, MA 01803–5299.

The service information referenced in this AD may be obtained from Hartzell Propeller Inc., One Propeller Place, Piqua, OH 45356–2634; telephone (513) 778–4200, fax (513) 778–4391. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tomaso DiPaolo, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 East Devon Avenue, Room 232, Des Plaines, IL 60018; telephone (708) 294–7031, fax (708) 294–7834.

SUPPLEMENTARY INFORMATION: On January 5, 1973, the Federal Aviation Administration (FAA) issued airworthiness directive (AD) 73–02–01, Amendment 39–1584 (38 FR 1381, January 12, 1973), applicable to Hartzell Propeller Inc. Models HC–92WK–( ) and HC–92ZK–( ) propellers, to require visual and penetrant inspections of the propeller blade shank area for corrosion prior to accumulating 1,000 hour time in service (TIS) intervals, and shotpeening after inspection. That action was prompted by the separation of a blade at the blank shank of a Hartzell propeller. That condition, if not corrected, could result in propeller blade separation, which could result in loss of control of the aircraft.

Since the issuance of that AD, the FAA has received reports of two recent propeller blade separations that occurred at less than 1,000 hours TIS since last inspection. In both accidents, the propeller blade separation resulted from a crack at the propeller blade shank. Either crack may have initiated from a failed blade clamp screw, part number A–282, which was found in both accidents.

The FAA has reviewed and approved the technical contents of Hartzell Propeller Inc. Service Bulletin (SB) No. 202, dated January 5, 1995, that describes procedures for inspection of the clamp screw, visual and dye penetrant inspections and compressive rolling of the propeller blade shank, and replacement of blade clamp screws. Since an unsafe condition has been identified that is likely to exist or develop on other propellers of this same type design, this AD supersedes AD 73–02–01 to require a one-time inspection of the clamp screws, then a dye penetrant inspection, compressive rolling of the propeller blade shank, and replacement of blade clamp screws, all to be accomplished at intervals of 500 hours TIS. The actions are required to be accomplished in accordance with the SB described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–ANE–05." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–1584, (38 FR 1381, January 12 ,1973), and by adding a new airworthiness directive, Amendment 39–9243, to read as follows:

95–11–08 Hartzell Propeller Inc.: Amendment 39–9243. Docket 95–ANE–05. Supersedes AD 73–02–01, Amendment 39–1584.

Applicability: Hartzell Propeller Inc. Models HC–92WK–( ) and HC–92ZK–( ) propellers, installed on but not limited to the following aircraft: Aerostar Aircraft Corp. (formerly Ted Smith Aerostar) Model Aerostar 360; Air & Space America, Inc. Model 18A; Aircraft Acquisition Corp. (formerly Helio) Models H–250, 500; Beech Models 95, B95, B95A, D95A, E95; Cessna Models 172, 175, 175A; Found Brothers Aviation Ltd. Models FBA 100, FBA–2C; Kwad Company Model Super-V; Mooney Aircraft Corp. Model M20A; Piper Models PA–23, PA–24, PA–25; Procaer Model F15/B; Revo Inc. Models C2, Lake LA–4; and Simmering Graz Pauker A.G. Model SGP–222.

Note 1: This airworthiness directive (AD) applies to each propeller identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For propellers that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (e) to request approval from the Federal Aviation Administration (FAA). This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any propeller from the applicability of this AD.

Note 2: The above is not an exhaustive list of aircraft which may contain the affected Hartzell Models HC–92WK–( ) and HC–92ZK–( ) propellers because of installation approvals made by, for example, Supplemental Type Certificate or field approval under FAA Form 337 "Major Repair and Alteration." It is the responsibility of the owner, operator, and person returning the aircraft to service to determine if an aircraft has an affected propeller.

Compliance: Required as indicated, unless accomplished previously.

To prevent propeller blade separation, which could result in loss of control of the aircraft, accomplish the following:

(a) For all affected propellers, within 10 hours time in service (TIS) after the effective date of this AD, perform a blade clamp screw inspection in accordance with Procedure No. 1 of Hartzell Propeller Inc. Service Bulletin (SB) No. 202, dated January 5, 1995. If any clamp screws are loose (i.e., screws turn when applying torque in a clockwise rotation) or broken, remove propeller and send to an authorized repair station for disassembly and inspection in accordance with paragraph (b) of this AD prior to further flight.

(b) For affected propellers whose time since last blade dye penetrant inspection or compliance with AD 73–02–01 is unknown, within the next 10 hours TIS after the effective date of this AD, accomplish the following:

(1) Disassemble, perform a dye penetrant inspection of the blade shank, perform compressive rolling of the blade shank, and replace clamp socket screws with Part Number (P/N) A–321 clamp socket screws in accordance with Procedure No. 2 of Hartzell Propeller Inc. SB No. 202, dated January 5, 1995. If cracks are found during a dye penetrant inspection of the blade shank, replace with a serviceable blade that has been compressively rolled in the blade shank.

(2) At intervals not to exceed 500 hours TIS since last inspection, repeat paragraph (b)(1) of this AD. The P/N A–321 clamp screws are to be used one time only and are to be replaced with new screws each time the propeller blade clamp is disassembled.

(c) For affected propellers whose time since last blade dye penetrant inspection or compliance with AD 73–02–01 is greater than 275 hours TIS, within the next 25 hours TIS after the effective date of this AD, accomplish paragraphs (b)(1) and (b)(2) of this AD.

(d) For affected propellers whose time since last blade dye penetrant inspection or compliance with AD 73–02–01 is less than or equal to 275 hours TIS, prior to reaching 300 hours TIS since last blade dye penetrant inspection or compliance with AD 73–02–01, accomplish paragraphs (b)(1) and (b)(2) of this AD.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Chicago Aircraft Certification Office. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Chicago Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Chicago Aircraft Certification Office.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished. Special flight permits should not be issued if loose or broken screws are found.

(g) The actions required by this AD shall be done in accordance with the following Hartzell Propeller Inc. SB:

Document No. SB No. 202.
Pages: 1–5.
Date: January 5, 1995.
Total pages: 5.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Hartzell Propeller Inc., One Propeller Place, Piqua, OH 45356–2634; telephone (513) 778–4200, fax (513) 778–4391. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on June 12, 1995.

Issued in Burlington, Massachusetts, on May 17, 1995.

James C. Jones,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 95–12825 Filed 5–24–95; 2:35 pm]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–SW–08–AD; Amendment 39–9247; AD 95–11–14]

Airworthiness Directives; Bell Helicopter Textron, Inc. Model 206A, 206B, 206L, 206L–1, 206L–3, and 206L–4 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Bell Helicopter Textron, Inc. Model 206A, 206B, 206L, 206L–1, 206L–3, and 206L–4 helicopters, that requires removal and replacement of certain crosstube assemblies (crosstubes). This amendment is prompted by two accidents attributed to crosstube failures and 27 field reports that indicated corrosion or metal fatigue may cause a failure of the affected crosstubes. The actions specified by this AD are intended to prevent failure of the crosstubes and subsequent loss of control of the helicopter.

DATE: Effective June 30, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Tony Nguyen, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Certification Office, Fort Worth, Texas 76193–0170, telephone (817) 222–5177, fax (817) 222–5959.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to Bell Helicopter Textron, Inc. Model 206A, 206B, 206L, 206L–1, 206L–3, and 206L–4 helicopters was published in the **Federal Register** on November 14, 1994 (59 FR 56438). That action proposed to require removal and replacement of certain crosstubes within the next 90 calendar days.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the one comment received.

The commenter states that the FAA should require an annual skid gear inspection rather than requiring the more costly replacement of the crosstubes. The FAA does not concur. The FAA has determined that, due to the location of the potential crack and the speed at which a crack could propagate, an annual inspection would not be a sufficient interval to detect a potentially critical crack. The economic impact of a repetitive inspection at an interval short enough to detect the crack would have a greater adverse economic impact on owners/operators than the

economic impact which would be incurred by replacing the crosstubes.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed, except for editorial changes and adding explanatory Note 1, relating to the scope of the applicability statement when modifications, alterations, or repairs have been made in the area subject to the requirements of the AD.

The FAA estimates that 5,700 helicopters of U.S. registry will be affected by this AD, that it will take approximately 10 work hours per helicopter to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $6,400 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $39,900,000 to replace two crosstubes per helicopter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety. Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

95-11-14 Bell Helicopter Textron, Inc (BHTI): Amendment 39-9247 Docket No. 94-SW-08-AD.

Applicability: Model 206A, 206B, 206L, 206L-1, 206L-3, and 206L-4 helicopters, with crosstube assemblies (crosstubes), BHTI part numbers (P/N) 206-050-107, 206-050-119, 206-050-134, 206-050-157, 206-050-169, 206-053-109, 206-053-119, and 206-053-129 (all dash numbers), or Airborne Supply, Inc. P/N AB206-050-107, AB206-050-119, or AB206-053-109 (all dash numbers), installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously. To prevent failure of the crosstubes and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 90 calendar days after the effective date of this AD, remove any affected crosstube and replace it with an airworthy crosstube in accordance with the appropriate maintenance manual or service instructions. Any crosstubes removed as a result of this AD shall be permanently marked as unairworthy.

Note 2: For BHTI P/N 206-053-109 and 206-053-119, the P/N are vibro-etched on the upper cuff of the crosstube on the aft side on both forward and aft crosstubes; for BHTI P/N 206-053-129, the P/N is vibro-etched on the bottom of the cuff on the aft side on both forward and aft crosstubes; for BHTI P/N 206-050-107, 206-050-119, 206-050-134, 206-050-157, and 206-050-169, the P/N are stamped in ink on the crosstube, which is shipped without paint (once the helicopter is painted, the P/N are covered); and for Airborne Supply, Inc., P/N AB206-050-107, AB206-050-119, and AB206-053-109, the P/N are rubber stamped at the bottom end of the crosstube.

(b) If the crosstubes' P/N cannot be determined by reference to the crosstubes, if possible, determine the P/N by reference to the maintenance records or other aircraft records. If the crosstubes' P/N cannot be determined, replace the crosstubes with airworthy crosstubes within 90 calendar days after the effective date of this AD in accordance with the appropriate maintenance manual or service instructions.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used when approved by the Manager, Rotorcraft Certification Office, FAA, Rotorcraft Directorate. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Certification Office.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(e) This amendment becomes effective on June 30, 1995.

Issued in Fort Worth, Texas, on May 19, 1995.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 95-12957 Filed 5-25-95; 8:45 am]

BILLING CODE 4910-13-P

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14 CFR Part 71

[Airspace Docket No. 94-ASW-18]

Amendment of Class D Airspace; New Orleans NAS, Alvin Callender Field, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class D airspace at New Orleans Naval Air Station (NAS), Alvin Callender Field, New Orleans, LA. The decommissioning of the New Orleans NAS Non-directional Radio Beacon (NDB) removes the need for controlled airspace to protect the standard instrument approach for the NDB. This action is intended to eliminate the Class D airspace that is no longer necessary as a result of the decommissioning of the New Orleans NAS NDB at New Orleans NAS, Alvin Callender Field, New Orleans, LA.

EFFECTIVE DATE: 0901 UTC, July 20, 1995.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, System Management Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193-0530, telephone 817-222-5593.

SUPPLEMENTARY INFORMATION:

History

On December 16, 1994, a proposal to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the Class D airspace at New Orleans NAS, Alvin Callender Field, LA, was published in the **Federal Register** (59 FR 64877). Decommissioning of the NDB permits the amendment of Class D airspace at this airport. The proposal was to remove the controlled airspace that was no longer needed as a result of the decommissioning of the NDB and the associated NDB SIAP.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. Therefore the rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class D airspace designations are published in Paragraph 5000 of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) revises the Class D airspace located at New Orleans NAS, Alvin Callender, Field, LA, to that necessary to provide controlled airspace for IFR operations at the airfield.

The FAA has determined that this regulation only involves an established body of technical regulations that need frequent and routine amendments to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854; 24 FR 9565, 3 CFR 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, *Airspace Designations and Reporting Points*, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 5000 General

* * * * *

ASW LA D New Orleans NAS, Alvin Callender Field, LA [Revised]

New Orleans NAS, Alvin Callender Field, LA
(Lat. 29°049'31" N., long. 90°002'06" W.)
Harvey VORTAC
(Lat. 29°051'01" N., long. 90°000'10" W.)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 4.7-mile radius of New Orleans NAS Alvin Callender Field and within 1.3 miles each side of the 228° radial of the Harvey VORTAC extending from the 4.7-mile radius to 5.6 miles southwest of the airport and within 1.3 miles each side of the 058° radial of the Harvey VORTAC extending from the 4.7 mile radius to 6 miles northeast of the airport excluding that airspace within the New Orleans, LA, Class B airspace area.

* * * * *

Issued in Fort Worth, TX on May 11, 1995.

Larry D. Gray,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 95-13014 Filed 5-25-95; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 94-ASW-19]

Establishment and Revision of Class E Airspace; Fayetteville, AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace extending upward from the surface as an extension to the Class D airspace at Drake Field, Fayetteville, AR. Additionally, this action revises the Class E airspace extending upward from 700 fee above ground level (AGL) at Drake Field, Fayetteville, AR. The development of a new Microwave Landing System (MLS) standard instrument approach procedure (SIAP) has made this action necessary. This action is intended to provide adequate Class E airspace to contain instrument flight rule (IFR) operations for aircraft executing the MLS SIAP at Drake Field, Fayetteville, AR.

EFFECTIVE DATE: 0901 UTC, July 20, 1995.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, System Management Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193-0530, telephone 817-222-5593.

SUPPLEMENTARY INFORMATION:

History

On December 16, 1994, a proposal to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish and amend the Class E airspace at Fayetteville, AR, was published in the **Federal Register** (59 FR 64879). A MLS SIAP developed for Drake Field, Fayetteville, AR, requires additional Class E airspace from the surface to 700 feet AGL as an extension to the Class D airspace presently established at this airport. Additionally, the proposal was to revise the controlled airspace extending upward from 700 feet AGL to contain IFR operations in controlled airspace during portions of the terminal operation and while transitioning between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. Therefore the rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designations for airspace areas extending upward from 700 feet or more AGL are published in Paragraph 6005 of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes new controlled airspace and revises the Class E airspace

located at Drake Field, Fayetteville, AR, to provide controlled airspace for aircraft executing the MLS SIAP.

The FAA has determined that this regulation only involves an established body of technical regulations that need frequent and routine amendments to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, *Airspace Designations and Reporting Points*, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 6004 Class E airspace areas designated as an extension to a Class D surface area

* * * * *

ASW AR E4 Fayetteville, Drake Field, AK [New]

Fayetteville, Drake Field, AK
(Lat. 36°00'18" N., long. 94°10'12" W.)
Fayetteville MLS
(Lat. 35°59'59" N., long. 94°10'05" W.)

That airspace extending upward from the surface within 3 miles each side of the MLS 354° course inbound extending from the 4.1-mile radius of the airport to 12 miles south of the airport.

* * * * *

Paragraph 6005 Class E Airspace Areas Extending upward From 700 Feet or More Above the Surface of the Earth

* * * * *

ASW AR E5 Fayetteville, AR [Revised]

Point of Origin
(lat. 36°12'00" N., long. 94°14'01" W.)
Fayetteville MLS
(lat. 35°59'59" N., long. 94°10'05" W.)

That airspace extending upward from 700 feet above the surface within 8 miles west and 4 miles east of the MLS 354° course inbound extending from the 23.9-mile radius of the point of origin to the 33.4-mile radius of the point of origin.

* * * * *

Issued in Fort Worth, TX, on May 11, 1995.

Larry D. Gray,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 95–13015 Filed 5–25–95; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 94–ASW–20]

Revision of Class E Airspace; Laredo, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revised the Class E airspace extending upward from 700 feet above ground level (AGL) at Laredo International Airport, Laredo, TX. The development of a revised standard instrument approach procedure (SIAP) to Runway (RWY) 14 has made this action necessary. Controlled airspace extending upward from 700 feet AGL is needed to contain aircraft executing the SIAP. This action is intended to provide adequate Class E airspace to contain instrument flight rule (IFR) operations for aircraft executing the Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME) or Tactical Air Navigation (TACAN) or Global Positioning System (GPS) SIAP to RWY 14 at Laredo International Airport, Laredo, TX.

EFFECTIVE DATE: 0901 UTC, July 20, 1995.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, System Management Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0530, telephone 817–222–5593.

SUPPLEMENTARY INFORMATION:

History

On December 16, 1994, a proposal to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Class E airspace at Laredo, TX, was published in the **Federal Register** (59 FR 64880). A revised VOR/DME or TACAN or GPS RWY 14 SIAP developed for Laredo Municipal Airport, Laredo, TX, requires the revision of the Class E airspace at this airport. The proposal was to revise the controlled airspace extending upward from 700 feet AGL to contain IFR operations in controlled airspace during portions of the terminal operation and while transitioning between the enroute and terminal environments. However, the proposal was published with an incorrect bearing citation in the description of the airspace. The proposed description of Class E airspace referred incorrectly to the 189° bearing of the Laredo VORTAC. The correct bearing should have been the 181° bearing of the Laredo VORTAC. The description of the Class E airspace in this rule has been revised to reflect this change. The FAA has determined that this change is editorial in nature and will not increase the scope of this rule.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. Except for the non-substantive change just discussed, the rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designations for airspace areas extending upward from 700 feet or more AGL are published in Paragraph 6005 of the FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes the Class E airspace located at Laredo International Airport, Laredo, TX, to provide controlled airspace extending upward from 700 feet AGL for aircraft executing the VOR/DME or TACAN or GPS RWY 14 SIAP.

The FAA has determined that this regulation only involves an established body of technical regulations that need frequent and routine amendments to keep them operationally current. It, therefore—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule"; under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, *Airspace Designations and Reporting Points*, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth

* * * * *

ASW TX E5 Laredo, TX [Revised]

Laredo International Airport, TX
(Lat. 27°32'41" N, long. 99°27'41" W)
Laredo VORTAC
(Lat. 27°28'44" N, long. 99°25'04" W)
Laredo, Rancho Blanco Airport, TX
(Lat. 27°18'31" N, long. 99°28'53" W)
Laredo Auxiliary No. 2 Airport, TX
(Lat. 27°28'33" N, long. 99°13'32" W)

That airspace extending upward from 700 feet above the surface within a 7.8-mile radius of Laredo International Airport and within 4.0 miles each side of the 328° bearing of the Laredo VORTAC extending from the 7.8-mile radius to 18.0 miles northwest of the Laredo VORTAC and within a 6.6-mile radius of Rancho Blanco Airport and within 1.6 miles each side of the 181° bearing of the Laredo VORTAC extending from the 6.6-mile radius to 12.1 miles north of the airport and within a 6.8-mile radius of Laredo Auxiliary No. 2 Airport excluding that airspace in Mexico.

* * * * *

Issued in Forth Worth, TX, on May 11, 1995.

Larry D. Gray,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 95–13016 Filed 5–25–95; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 94–ASW–16]

Establishment of Class E Airspace; Ozona, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace extending upward from 700 feet above ground level (AGL) at Ozona Municipal Airport, Ozona, TX. The development of a Global Positioning System (GPS) standard instrument approach procedure (SIAP) to Runway (RWY) 16 has made this action necessary. Controlled airspace extending upward from 700 feet above ground level (AGL) is needed to contain aircraft executing the SIAP. This action is intended to provide adequate Class E airspace to contain instrument flight rule (IFR) operations for aircraft executing the SIAP at Ozona Municipal Airport, Ozona, TX.

EFFECTIVE DATE: 0901 UTC, July 20, 1995.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, System Management Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Forth Worth, TX 76193–0530, telephone 817–222–5593.

SUPPLEMENTARY INFORMATION:

History

On December 5, 1994, a proposal to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish the Class E airspace at Ozona, TX, was published in the **Federal Register** (59 FR 62364). A GPS SIAP developed for Ozona Municipal Airport, Ozona, TX, requires Class E airspace. The proposal was to revise the controlled airspace extending upward from 700 feet AGL to contain IFR operations in controlled airspace during portions of the terminal operation and while transitioning between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. Therefore, the rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designations for airspace areas extending upward from 700 feet or more AGL are published in Paragraph 6005 of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes the Class E airspace located at Ozona Municipal Airport, Ozona, TX, to provide controlled airspace extending upward from 700 feet AGL for aircraft executing the GPS RWY 16 SIAP.

The FAA has determined that this regulation only involves an established body of technical regulations that need frequent and routine amendments to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, *Airspace Designations and Reporting Points*, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth

* * * * *

ASW TX E5 Ozona, TX [New]

Ozona, Ozona Municipal Airport, TX
(lat. 30°44'06" N., long. 101°12'10" W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Ozona Municipal Airport.

* * * * *

Issued in Fort Worth, TX, on May 11, 1995.

Larry D. Gray,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 95–13017 Filed 5–25–95; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 2

[Docket No. RM93–19–001]

Inquiry Concerning the Commission's Pricing Policy for Transmission Services Provided by Public Utilities Under the Federal Power Act

Issued May 22, 1995.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule; order on reconsideration and clarifying policy statement.

SUMMARY: The Commission in its Transmission Pricing Policy Statement, issued on October 26, 1994, announced a new policy regarding the pricing of transmission services provided by public utilities and transmitting utilities under the Federal Power Act that allows greater transmission pricing flexibility than was allowed under previous Commission policies. The Commission traditionally had allowed only postage-stamp, contract-path pricing. the Policy Statement announced that the Commission also will allow a variety of other pricing methods that may be more suitable for competitive wholesale power markets, including distance-sensitive and flow-based pricing. In response to filings by certain entities, the Commission is denying requests for reconsideration of the Policy Statement; however, the Commission is clarifying certain matters concerning non-conforming transmission pricing proposals.

EFFECTIVE DATE: This order is effective as of May 22, 1995.

FOR FURTHER INFORMATION CONTACT:
Deborah B. Leahy, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE, Washington, D.C. 20426, Telephone: (202) 208–2039, (legal issues)
Stephen J. Henderson, Office of Economic Policy, Federal Energy Regulatory Commission, 825 North Capitol Street NE, Washington, D.C. 20426, Telephone: (202) 208–0100, (technical issues)

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 3104, at 941 North Capitol Street, N.E., Washington, D.C. 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400, 1200 or 300 bps, full duplex, no parity, 8 data bits and 1 stop bit. The full text of this document will be available on CIPS for 60 days from the date of issuance in ASCII and WordPerfect 5.1 format. After 60 days the document will be archived, but still accessible. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 3104, 941 North Capitol Street NE., Washington, D.C. 20426.

Order on Reconsideration and Clarifying Policy Statement

Issued May 22, 1995.

On October 26, 1994, the Commission issued a Transmission Pricing Policy Statement.[1] We announced a new policy regarding the pricing of transmission services provided by public utilities and transmitting utilities under the Federal Power Act (FPA) that allows greater transmission pricing flexibility than was allowed under previous Commission policies. The Commission traditionally had allowed only postage-stamp, contract-path pricing. The Policy Statement announced that the Commission also will allow a variety of other pricing methods that may be more suitable for competitive wholesale power markets, including distance-sensitive and flow-based pricing.

The Policy Statement identified five principles for evaluating transmission pricing proposals. The first principle is that transmission pricing should conform to the traditional embedded cost revenue requirement. However, the Commission also provided procedures whereby utilities can propose rates that do not conform to the traditional revenue requirement and thus do not meet the first principle, *i.e.*, non-conforming proposals. The second principle requires that any new transmission pricing proposal, conforming or non-conforming, must meet the Commission's comparability standard.[2] The remaining three principles (concerning economic efficiency, fairness, and practicality) reflect goals that an applicant must try to meet, but that may need to be balanced against one another in the Commission's determination of whether the proposed rates are just and reasonable.

On November 22, 1994, the Vermont Department of Public Service (Vermont Department) filed a request for reconsideration of the Commission's decision to treat opportunity cost pricing as a form of marginal cost pricing consistent with comparability principles. On November 23, 1994, the American Forest and Paper Association (American Forest and Paper) filed a request for rehearing and motion for reconsideration concerning several aspects of the Policy Statement. American Forest and Paper asks the Commission to replace the Policy Statement with a Notice of Proposed Rulemaking. Further, it opposes the Commission's decision to allow opportunity cost pricing and marginal cost pricing. In addition, it asks the Commission to clarify that non-conforming proposals are subject to the notice and filing requirements of the FPA. Also on November 23, 1994, Catex Vitol Electric, Inc. (Catex) filed a request for reconsideration. Catex argues, among other things, that a generic approach specifying a standard method of transmission pricing is preferable to a case-by-case approach that allows experimentation.[3]

As discussed below, the requests for reconsideration of the Policy Statement are denied.[4] However, the Commission clarifies certain matters concerning non-conforming transmission pricing proposals.

[1] *Inquiry Concerning the Commission's Pricing Policy for Transmission Services Provided by Public Utilities Under the Federal Power Act*, Policy Statement, III FERC Stats. & Regs. ¶ 31,005 (1994); 59 FR 55031, Nov. 3, 1994. (Policy Statement).

[2] *See* American Electric Power Service Corporation (*AEP*), 67 FERC ¶ 61,168 (1994), *reh'g pending*. The comparability standard generally provides that "[a]n open access tariff that is not unduly discriminatory or anticompetitive should offer third parties access on the same or comparable basis, and under the same or comparable terms and conditions, as the transmission provider's uses of its system." *Id.* at 61,490. The Commission explained in the Policy Statement that comparability of service applies to price as well as to terms and conditions. Policy Statement at 31,142. The Commission recently issued a Notice of Proposed Rulemaking in which it proposes to require all public utilities to have on file non-discriminatory open access transmission tariffs and provides guidance on the comparability standard. *See* Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Docket Nos. RM95–8–000 and RM94–7–001, Notice of Proposed Rulemaking, 60 FR 17662 (Apr. 7, 1995), IV FERC Stats. & Regs. ¶ 32,514 (1995) (Open Access NOPR).

Discussion

A. Policy Statement or Rulemaking

American Forest and Paper and Catex support a generic approach to transmission pricing in lieu of the case-by-case approach envisioned in the Policy Statement. American Forest and Paper argues that the Policy Statement will increase uncertainty concerning transmission rates and thus inhibit the development of competitive power markets. It contends that the Policy Statement will allow utilities to propose widely varying tariffs that will make it difficult for a prospective customer to calculate transmission rates. American Forest and Paper and Catex argue that the customer will be forced to bear litigation costs and to wait until the completion of rate proceedings and any court review to know with certainty what rates, terms and conditions will be in effect. By that time, the customer may have lost the opportunity to win a competitive bid or otherwise finalize a long-term power plant financing. American Forest and Paper also argues that the Policy Statement will create a heavy administrative burden because the Commission will be required to adjudicate a high number of transmission rate cases. It requests that the Commission replace the Policy Statement with a Notice of Proposed Rulemaking of greater specificity.

Catex similarly asks the Commission to consider adopting a generic approach to transmission pricing, arguing that transmitting utilities will use the case-by-case approach to file experimental tariffs that will inhibit the transition to competition and open access. It submits that power marketers may be foreclosed for economic reasons from participating in all of the rate cases that they deem important. Catex also argues that the case-by-case approach will create a patchwork of rate structures that will make it difficult for transmission customers to arrange multi-utility transactions or calculate rates.

While we understand the concerns voiced by American Forest and Paper and Catex, we nevertheless do not believe that a "simple, generic approach to transmission pricing"[5] is advisable. As we noted in the Policy Statement, there was a strong consensus among the 165 entities from whom the Commission received comments that we should allow greater pricing flexibility. We provided several reasons in the Policy Statement why greater pricing flexibility is required.[6] First, exclusive use of methods that worked reasonably well in the past does not provide sufficient flexibility to accommodate the evolving needs of transmission owners and users in a more competitive era. Second, our existing "or" pricing policy may not always encourage the most efficient investments in and use of the transmission grid. Third, regional differences, such as power flow patterns and population densities, justify a more flexible policy that can account for such differences. Fourth, a more flexible pricing policy may be necessary to implement effectively our regional transmission group (RTG) policy, which encourages RTGs to deal with a broad range of issues, including pricing, and which indicates that the Commission will afford deference to RTG decision-making.

Our conclusion at this juncture in the transition to competitive bulk power markets is that, if the pricing flexibility envisioned in the Policy Statement is to be achieved, a case-by-case approach to transmission pricing, not a generic approach, is appropriate. As a result, we will deny the requests of American Forest and Paper and Catex to replace the Policy Statement with a generic proceeding.

With regard to the concerns of American Forest and Paper and Catex as to transmission pricing certainty, as the Policy Statement makes clear, the Commission, too, supports pricing certainty. Indeed, the Policy Statement states that the comparability principle includes comparable pricing certainty.[7] In addition, the fifth pricing principle is that transmission pricing should be practical and as easy to administer as appropriate given the other pricing principles. The Policy Statement recognizes, however, that certain of the Commission's goals may have to be balanced against one another. For example, we recognize the inevitability of tradeoffs between the sometimes competing goals of simplicity and better price signals.[8] Some pricing proposals may be so complex that they are difficult to understand and analyze. The Policy Statement indicates that while such complexity is not fatal, it should be balanced by efficiency gains or other advantages.[9]

B. Opportunity Cost and Marginal Cost Pricing

In the Policy Statement, the Commission explained that when the transmission grid is constrained and a utility chooses not to expand its system, we have allowed the utility to charge transmission-only customers the higher of embedded costs or legitimate and verifiable opportunity costs, but not the sum of the two ("or" pricing). The opportunity costs are capped by incremental expansion costs.[10] The Policy Statement reflects the Commission's support for the use of marginal cost pricing to promote efficient decision-making by both transmission owners and users. It states that, to the extent practicable,

[3] On November 28, 1994, the Rural Utilities Service (RUS), a credit agency in the U.S. Department of Agriculture, filed comments in response to the Policy Statement. RUS asks the Commission to consider the impact of transmission pricing decisions on the RUS electric program, under which RUS provides low-cost financial assistance to rural electric distribution and power generation and transmission cooperatives pursuant to the Rural Electrification Act (RE-Act). RUS suggests, for example, that in considering pricing mechanisms involving RUS borrowers, the Commission should not permit non-RE-Act beneficiaries to get the benefit of RUS loan subsidies to the detriment of RUS borrowers. Although styled as comments, RUS's pleading was submitted after the deadline for comments in this proceeding had closed. Accordingly, we will treat RUS's pleading as a motion for reconsideration and deny it because we believe the issues raised by RUS are best addressed on a case-by-case basis as they may arise in connection with a particular transmission pricing proposal.

[4] We stated in the Policy Statement that we would accept motions for reconsideration to help us refine the principles established therein and to provide an opportunity to respond to any questions or clarify any ambiguity. Policy Statement at 31,150. Although American Forest and Paper styled its pleading as both a request for rehearing and a motion for reconsideration, we will treat it as a motion for reconsideration only, as we find that rehearing does not lie. First, contrary to American Forest and Paper's argument that the Policy Statement has the force of a final rule "because it changes the filing requirements for electric transmission rates" (American Forest and Paper pleading at 1 n.1), as discussed below, the Policy Statement makes no such change in the filing requirements. Second, we find that rehearing does not lie because the Policy Statement constitutes a general statement of policy to be applied to transmission pricing proposals submitted in individual cases. *See, e.g., Pacific Gas & Electric Company* v. *FPC*, 506 F.2d 33 (D.C. Cir. 1974).

[5] Catex pleading at 2.

[6] Policy Statement at 31,139.

[7] *Id.* at 31,143.

[8] *Id.* at 31,139.

[9] *Id.* at 31,144.

[10] *Id.* at 31,138.

transmission rates should be designed to reflect marginal costs, rather than embedded costs, in a manner consistent with the remaining pricing principles. As we explained, when lines are not congested, marginal transmission costs are primarily line losses. When lines are congested, marginal transmission costs are opportunity costs.[11]

The Vermont Department asks us to reconsider our holding that opportunity cost pricing is a form of marginal cost pricing consistent with comparability principles. It argues that opportunity cost pricing is not marginal cost pricing because marginal cost pricing contemplates that all customers will be assessed the same marginal cost price and because opportunity costs are inherently unverifiable. The Vermont Department further contends that opportunity cost pricing makes rates unpredictable, contrary to the comparability requirement.[12] The Vermont Department requests that the Commission either find that opportunity cost pricing is inconsistent with the comparability standard or provide that filings proposing opportunity cost pricing will be treated as non-conforming proposals.

American Forest and Paper similarly urges the Commission to reconsider whether utilities should be permitted to propose opportunity cost pricing. It argues that opportunity cost pricing is unfair and anticompetitive. According to American Forest and Paper, the requirement that the utility charge itself the same opportunity costs as it charges others is unenforceable because the determination that opportunity costs exist is a subjective decision made by the utility.

American Forest and Paper also opposes the use of marginal cost pricing, arguing that it will not create efficient transmission and generation siting decisions, as anticipated by the Policy Statement, in the absence of a competitive market for transmission. It suggests that the expansion of transmission capacity and the location of new generators and new load will be based on critical environmental, fuel supply, and siting factors rather than on marginal cost-based transmission rates.

We stand by our policy of allowing utilities to include opportunity cost charges in their transmission rates. The rationale for that policy is discussed in the Policy Statement, is set forth in prior Commission orders, and has been affirmed by the Court of Appeals for the District of Columbia Circuit.[13]

Moreover, because any new transmission pricing proposal, whether conforming or non-conforming, must meet the comparability standard, we will have ample opportunity to address any concerns that opportunity cost pricing may be unfair and anticompetitive or otherwise inconsistent with the comparability standard in the course of our evaluation of a particular transmission pricing proposal. With regard to the Vermont Department's argument that opportunity cost pricing is not the equivalent of marginal cost pricing because marginal cost pricing contemplates that all customers will be charged the same price, we do not agree that marginal cost pricing requires that all customers be charged the same price. [14]

With regard to American Forest and Paper's opposition to marginal cost pricing, while we agree that environmental, fuel supply, and siting factors are important considerations in the expansion of transmission capacity and the location of new generators and load, we also believe that providing more efficient price signals through the use of marginal cost pricing can influence efficient siting decisions. As we make clear in the Policy Statement, we believe that marginal cost pricing will promote efficient decision-making by both transmission owners and users. [15] As a result, we encourage experimentation regarding marginal cost pricing proposals, but we expect such proposals to be fully supported. In the end, the Commission will determine the appropriateness of marginal cost pricing proposals on a case-by-case basis.

C. Procedures For Filing Non-Conforming Proposals

American Forest and Paper argues that two of the procedures in the Policy Statement relating to non-conforming proposals may be inconsistent with the FPA. First, it notes that the Policy Statement would permit a utility to submit a non-conforming proposal in the form of a petition for declaratory order. However, American Forest and Paper suggests that the FPA requires utilities to file and support proposed changes in rates and requires "a hearing in which [the utilities'] customers can be afforded due process of law." [16] Second, American Forest and Paper objects that the Policy Statement would improperly exempt non-conforming proposals from the notice provisions of section 205. It asks the Commission to clarify that the FPA controls the notice and filing requirements for utilities submitting non-conforming proposals.

The clarification that American Forest and Paper seeks concerning non-conforming proposals submitted via a petition for declaratory order is unnecessary. A non-conforming proposal that is submitted in a petition for declaratory order will be subject to a notice and comment period. If, at the end of the declaratory order proceeding, the Commission finds that a non-conforming pricing proposal meets the statutory criteria, the Policy Statement provides that "the utility would still need to file a rate reflecting the proposal pursuant to FPA section 205." [17] As the Policy Statement suggests, "[p]resumably the section 205 proceeding would be straightforward (*i.e.* akin to a compliance filing) * * * since the Commission would have already addressed the merits of the proposal in the declaratory order." [18] However, such a non-conforming proposal would, in any event, be subject to the notice and filing requirements, and opportunity for hearing, under section 205.

With regard to non-conforming proposals submitted under section 205 in conjunction with conforming proposals, the Policy Statement provides that "[t]he conforming proposal would be subject to the notice and suspension procedures of section 205. The non-conforming proposal would not." [19] The phrase "notice and suspension procedures of section 205" was intended to refer to those provisions of section 205 that require a public utility to give 60 days' notice to the Commission and the public before making a rate change and that permit the Commission to suspend the effective

[11] *Id.* at 31,143.

[12] The Vermont Department notes that the Policy Statement provides that comparability of pricing includes certainty of pricing and that a transmission customer should have the same price certainty as does the transmitting utility. Policy Statement at 31,143. The Vermont Department (as well as American Forest and Paper) argue that price certainty is particularly important in light of the court's decision in *Cajun Electric Power Cooperative, Inc.* v. *FERC*, F.3d 173 (D.C. Cir. 1994).

[13] *See, e.g.*, Policy Statement at 31,137–38; Pennsylvania Electric Company, 58 FERC ¶ 61,278, *reh'g denied and pricing policy clarified*, 60 FERC ¶ 61,034, *reh'g denied*, 60 FERC ¶ 61,244 (1992), *affirmed sub nom. Pennsylvania Electric Company* v. *FERC*, 11 F.3d 207 (D.C. Cir. 1993).

[14] Marginal cost pricing could be implemented either by charging all customers the same price or by charging a customer for marginal costs at the time it signs a contract. Under the contract version of marginal cost pricing, customers who sign contracts at different times would be charged different prices.

[15] Policy Statement at 31,143.

[16] American Forest and Paper pleading at 7.

[17] Policy Statement at 31,148.

[18] Id.

[19] Id. at 31,147.

date of such rates. [20] These provisions are not applicable to non-conforming proposals because, as the Policy Statement indicates, a non-conforming proposal will be permitted to go into effect only prospectively from the date the Commission determines that such a pricing proposal meets the statutory requirements. [21] Although American Forest and Paper apparently has interpreted the statement that non-conforming proposals would not be subject to the notice and suspension procedures of section 205 to mean that public utilities would not be required to provide notice of the submission of non-conforming proposals, that was not the Commission's intention. Accordingly, we clarify that any non-conforming proposal submitted in conjunction with a conforming proposal must still be filed with the Commission. As with any rate filing under section 205, the Commission would notice the filing of both pricing proposals (*i.e.*, conforming and non-conforming) and provide a period for public comment.

We also wish to clarify the procedures for filing non-conforming pricing proposals. In the Policy Statement, the Commission described those procedures as follows:

> Any public utility that seeks non-conforming pricing must have on file with the Commission an open access transmission tariff offering comparable services. Such comparability tariff must have been accepted for filing by the Commission before a non-conforming pricing proposal will be considered. Moreover, utilities proposing non-conforming transmission pricing must submit such pricing proposals either: (a) in conjunction with a section 205 conforming transmission pricing proposal (the non-conforming proposal would be reflected as alternative "pro forma" rate sheets to the conforming proposal); or (b) in a petition for declaratory order.[22]

The Policy Statement states that, for alternative (a) above, the Commission and interested parties would review the non-conforming proposal in conjunction with review of the companion conforming pricing proposal.

The above-quoted language is somewhat unclear. On one hand, it states that the Commission will not consider a non-conforming proposal unless a comparability tariff has *already* been accepted for filing. On the other hand, it contemplates that a utility may file a non-conforming pricing proposal *simultaneously* with the filing of a conforming pricing proposal—one that has not already been accepted for filing.

We wish to clarify that if a public utility does not already have on file an open access comparability tariff, it may simultaneously file both a conforming pricing proposal and a non-conforming pricing proposal in conjunction with its filing of an open access comparability tariff;[23] however, the non-conforming proposal must consist of "pro forma" rate sheets that can take effect, if at all, only on a prospective basis at the end of the section 205 proceeding. If a public utility chooses to submit a non-conforming proposal via a petition for a declaratory order, it must already have a comparability tariff that has been accepted for filing by the Commission.

We also clarify that if a utility already has an open access comparability tariff on file and later seeks to file a non-conforming pricing proposal, the utility can submit the non-conforming proposal either in a section 205 filing or in a petition for a declaratory order. In other words, the utility may submit the non-conforming proposal alone in a section 205 filing, to take effect, if at all, only on a prospective basis at the end of the section 205 proceeding; it does not have to re-file the conforming proposal that already has been accepted or file a new conforming proposal. In any event, the open access comparability tariff must be filed before or simultaneously with the non-conforming proposal.

Similarly, we clarify that if a public utility already has an approved non-conforming proposal and seeks to submit a replacement non-conforming proposal, the utility can submit the new non-conforming proposal either in a section 205 filing, to take effect, if at all, only on a prospective basis at the end of the section 205 proceeding (the utility need not file a conforming proposal) or in a petition for a declaratory order. In those cases in which the utility chooses the declaratory order procedure, and the Commission finds that the utility's proposal meets the statutory criteria, the utility would still need to file a rate reflecting the proposal pursuant to FPA section 205.[24]

We hope that this clarification removes any uncertainty that may have existed regarding the procedures for filing non-conforming pricing proposals. As we noted in the Policy Statement, we believe that those procedures are flexible enough to permit utilities to propose non-conforming pricing innovations which they believe will benefit ratepayers and promote the development of a competitive bulk power market.[25]

In addition to allowing utilities to propose non-conforming pricing proposals, the Policy Statement also allows considerable flexibility in the types of conforming proposals that may be filed. As we stated in the Policy Statement, we anticipate that a wide variety of pricing proposals may be reconciled with the traditional revenue requirement.[26] However, only a few such proposals have been filed to date.[27] Accordingly, we reiterate here that many varieties of cost-based pricing are possible and encourage utilities to consider innovative pricing approaches that conform to the traditional revenue requirement. We anticipate that many utilities will consider filing such pricing proposals in conjunction with non-discriminatory open access (comparability) tariffs that could be filed either prior to issuance of a final rule on open access or in Stage Two proceedings following issuance of any final rule.[28]

D. Miscellaneous

Catex urges the Commission to: (1) emphasize that rates must be simple and predictable; (2) require a utility to give the same transmission rate discounts to a competitor as are given to the utility's affiliates or to support the utility's own sales; (3) avoid subsidies and the loading of fixed costs onto non-firm

[20] See 16 U.S.C. §§ 824d(d),(e); Policy Statement at 31,136.

[21] Policy Statement at 31,136. As the Policy Statement provides, if "the Commission determines that the alternative, non-conforming rate proposal is acceptable under the FPA, the Commission will allow the utility to make a compliance rate filing, and the rates will be put into effect prospectively." Id. at 31,147.

[22] *Id.*

[23] We note that in Entergy Services, Inc., *et al.*, 70 FERC ¶ 61,006 (1995) (*Entergy*), the Commission rejected the non-conforming pricing proposal that Entergy Services, Inc. (Entergy) filed simultaneously with a conforming pricing proposal. The Commission gave three reasons for its decision, one of which was that Entergy's non-conforming proposal was premature because Entergy did not have on file (*i.e.*, accepted by the Commission) an open access tariff offering comparable services. Although our clarification in this order of the procedures for submitting non-conforming pricing proposals eliminates prematurity as a basis for rejecting Entergy's non-conforming proposal, the other two bases remain valid. As a result, our clarification here does not require reversal of the *Entergy* result.

[24] *See* Policy Statement at 31,148.

[25] *Id.* at 31,150.

[26] *Id.* at 31,144–46.

[27] We are aware of only two pricing proposals filed since the issuance of the Policy Statement that propose an alternative to postage-stamp, contract-path pricing. *See* Jersey Central Power & Light Company, *et al.*, Docket No. ER95–791–000; Southern Company Services, Inc., Docket No. ER95–969–000.

[28] Under the Commission's recently proposed Open Access NOPR, if utilities have not filed open access comparability tariffs by the time a final rule is issued, the Commission in Stage One would place on file for such utilities open access tariffs reflecting postage-stamp embedded cost rates. Such utilities could seek a different rate methodology in Stage Two. *See* Open Access NOPR, IV FERC Stats. & Regs. ¶ 32,514 at ____, *mimeo* at 288–95.

transmission rates; and (4) require power pools to meet the comparability standard. We will deny Catex's motion for reconsideration with regard to these issues. The first three issues are already adequately addressed in the pricing principles set forth in the Policy Statement as discussed briefly below. The fourth (*i.e.*, that power pools be required to meet the comparability standard) has already been proposed by the Commission in the Open Access NOPR.[29]

With regard to Catex's request that the Commission emphasize simplicity and predictability in transmission rates, we note that the Policy Statement already reflects the Commission's support of transmission pricing that is simple and predictable. Indeed, one of the Policy Statement's pricing principles is that transmission pricing should be practical. To this end, the Policy Statement provides that a transmission user should be able to calculate how much it will be charged for transmission service.[30] At the same time, however, the Policy Statement recognizes that this principle may need to be balanced on a case-by-case basis against the other pricing principles, such as the principle that transmission pricing should promote economic efficiency. In addition, although Catex contends that charges to a transmission customer should not be raised after the fact, for example, to compensate for loop flows on other systems, the Commission believes that whether a transmission rate should be increased, as opposed to fixed for the term of a transaction, is a matter to be determined based on the facts and circumstances of a particular case.[31]

With regard to Catex's concern about discounts, we note that the Commission historically has prohibited preferential pricing to affiliates.[32] Moreover, such preferential pricing would be inconsistent with the requirement of non-discriminatory open access transmission.[33] As the Policy Statement makes clear, the requirement that transmission pricing must reflect comparability prohibits the transmission owner from selling itself transmission service at a discount.[34]

As to Catex's concern that subsidies be avoided, we reiterate that the Policy Statement provides that, consistent with the principle that transmission pricing must reflect comparability, a transmission owner that uses its own transmission system to make off-system sales should pay for transmission service at the same rate that third-party customers pay for the same service. As a result, a transmission owner is prohibited from selling itself transmission service at a discount that would be subsidized by native load and transmission-only customers.[35] With respect to Catex's concerns about appropriate pricing of non-firm transmission services, the Commission will consider on a case-by-case basis whether non-firm transmission customers are subsidizing other transmission users.

The Commission Orders

(A) The motions for reconsideration of American Forest and Paper, Catex, the Vermont Department, and RUS are hereby denied as set forth in the body of this order.

(B) The Commission's Policy Statement is hereby clarified as set forth in the body of this order.

By the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–12990 Filed 5–25–95; 8:45 am]

BILLING CODE 6717–01–P

[29] See Open Access NOPR, IV FERC Stats. & Regs. ¶ 32,514 at ____, *mimeo* at 96–97; 290–91.

[30] Policy Statement at 31,144.

[31] However, we note that our "or" policy permits transmission rates to reflect the higher of embedded or opportunity costs and that the calculation of such costs can be on an annual basis. *See* Florida Power & Light Company, 70 FERC ¶ 61,158 at 61,483 (1995), *rehearing pending.*

[32] *See, e.g.*, Heartland Energy Services, Inc., 68 FERC ¶ 61,223 at 62,062–63 (1994); Ocean State Power, 44 FERC ¶ 61,261 at 61,983–85 (1988).

[33] *See AEP*, 67 FERC at 61,490; Open Access NOPR, IV FERC Stats. & Regs. ¶ 32,514 at ____, *mimeo* at 87–88.

[34] Policy Statement at 31,142–43.

[35] *Id.* at 31,142–43.

18 CFR Part 34

[Docket No. RM92–12–000]

Streamlining of Regulations Pertaining to Parts II and III of the Federal Power Act and the Public Utility Regulatory Policies Act of 1978; Technical Amendment to Order No. 575

May 22, 1995.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule; technical amendment.

SUMMARY: The Federal Energy Regulatory Commission is amending the final rule issued on January 13, 1995 (60 FR 5831, Jan. 25, 1995) in this proceeding to correct an error in the "Worksheet for Computation of Interest Coverage" contained in 18 CFR 34.4(e).

EFFECTIVE DATE: May 22, 1995.

FOR FURTHER INFORMATION CONTACT: Wayne McDanal, Office of Chief Accountant, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, (202) 219–2622.

SUPPLEMENTARY INFORMATION:

List of Subjects in 18 CFR Part 34

Electric power, Electric utilities, Reporting and recordkeeping requirements, Securities.

Lois D. Cashell,

Secretary.

Accordingly, Part 34, Chapter I, Title 18 of the *Code of Federal Regulations* is amended as set forth below.

PART 34—APPLICATION FOR AUTHORIZATION OF THE ISSUANCE OF SECURITIES OR THE ASSUMPTION OF LIABILITIES

1. The authority citation for Part 34 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

§ 34.4 [Amended]

2. In the worksheet in § 34.4(e) the words

"Total Interest Expense + Income Before Interest and Income Taxes = Interest Coverage"

are removed and the words

"Income Before Interest and Income Taxes + Total Interest Expense = Interest Coverage"

are added in their place.

[FR Doc. 95–12988 Filed 5–25–95; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF THE TREASURY

United States Secret Service

31 CFR Part 413

[1505–AA68]

Closure of Streets

AGENCY: United States Secret Service, Treasury.

ACTION: Final rule.

SUMMARY: Pursuant to 31 U.S.C. 321, 18 U.S.C. 3056, 3 U.S.C. 202, and Treasury Order 170–09, the Secret Service has closed to public vehicular traffic the following streets in order to secure the perimeter of the White House: (i) the segment of Pennsylvania Avenue NW., between Madison Place and Seventeenth Street and; (ii) State Place and the segment of South Executive Avenue that connects into State Place.

DATES: 5:00 a.m. (local time), May 20, 1995.

FOR FURTHER INFORMATION CONTACT: Eric G. Harnischfeger, Special Agent, Office of Government Liaison and Public Affairs, United States Secret Service, 1800 G Street NW., Washington, D.C. 20223, (202) 435–5708.

SUPPLEMENTARY INFORMATION:

Background

In response to the September 12, 1994, plane crash on the South Grounds of the White House, then Secretary of the Treasury Lloyd Bentsen established the White House Security Review ("Review") to examine the White House security issues in light of this incident. The Review's scope was expanded to include a study of additional security issues raised by a number of subsequent incidents, including the shooting at the White House by Francisco Duran.

The Review issued a classified report that included a number of recommendations. One of the recommendations made by the Review was to close to vehicular traffic Pennsylvania Avenue, N.W., between Madison Place and Seventeenth Street, State Place and the segment of South Executive Avenue that connects into State Place. This recommendation was unanimously endorsed by the Review's Advisory Committee. The affected streets are contained in the National Capital Service Area, a federal enclave consisting of the White House and other federal buildings and property. *See* 40 U.S.C. 136.

This recommendation was based on extensive analysis of classified information by the Review, which ultimately was "not able to identify any alternative to prohibiting vehicular traffic [on those streets] that would ensure the protection of the President and others in the White House Complex from explosive devices carried by vehicles near the perimeter."

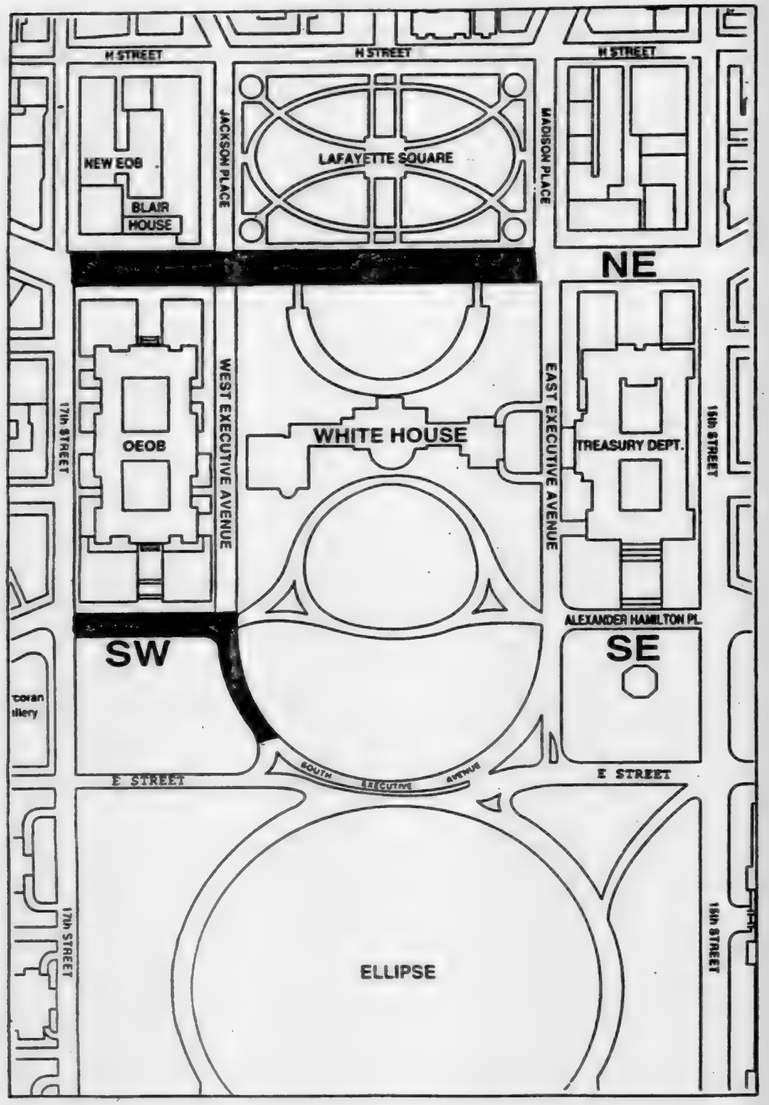
This final rule[1] implements that recommendation based on that conclusion.

As Director of the United States Secret Service, I find that this action is necessary to provide necessary and appropriate protection for the President, the First Family and those working in or visiting the White House Complex. This urgency has been accelerated by recent events, including the bombing of a Federal building in Oklahoma City.

The portions of those streets affected by this final rule are identified on the following map:

BILLING CODE 4810–42–P

[1] Without regard to whether this action constitutes a rule within the meaning of 5 U.S.C. 551(4), the Department has elected to treat it as such in order to inform the public fully regarding this action.



BILLING CODE 4810-42-C

Because this final rule involves a matter relating to public property, notice and public procedure and a delayed effective date are not required pursuant to 5 U.S.C. 553 (a)(2). In addition, pursuant to 5 U.S.C. 553(b)(B), I find that notice and public procedure on this rule is impracticable and contrary to the public interest because any delay in this action will result in an unacceptably high risk of danger to the President, the First Family, and others in the White House Complex. Moreover, any delay in implementing the street closures after the announcement of an intent to take such action would increase these risks. For the same reasons, I find pursuant to 5 U.S.C. 553(d) that there is good cause to waive the 30-day delayed effective date.

It has been determined that this final rule is not a significant regulatory action under Executive Order 12866.

Because no notice of proposed rulemaking is required for this rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601) do not apply.

List of Subjects in 31 CFR Part 413

Federal Buildings and Facilities, Security Measures.

For the reasons set out in the preamble, 31 CFR chapter IV is amended as set forth below.

1. Part 413 is added to read as follows:

PART 413—CLOSURE OF STREETS NEAR THE WHITE HOUSE

Sec.
413.1 Closure of Streets.
413.2 Coordination with other Authority.

Authority: 31 U.S.C. 321, 18 U.S.C. 3056, 3 U.S.C. 202, Treasury Order 170–09.

§ 413.1 Closure of Streets.

(a) *District of Columbia.* The following streets in the District of Columbia are closed to public vehicular traffic:

(1) The segment of Pennsylvania Avenue, Northwest, situated between Madison Place, Northwest, and Seventeenth Street, Northwest;

(2) The 1600 block of State Place, Northwest, situated between Seventeenth Street, Northwest, and the White House Complex; and

(3) The segment of South Executive Avenue that connects to the 1600 block of State Place, Northwest.

(b) *Authorized access.* The streets described in paragraph (a) shall remain open to public pedestrian use, official use of the United States, and authorized vehicular access for ingress and egress to the White House Complex and adjacent Federal Buildings.

§ 413.2 Coordination with other authorities.

Nothing in section 413.1 shall be in derogation of any authority conferred upon the Secretary of the Interior, the Secretary of the Treasury or the Director, United States Secret Service.

Dated: May 23, 1995.

Eljay B. Bowron,

Director.

[FR Doc. 95–13007 Filed 5–25–95; 8:45 am]

BILLING CODE 4810–42–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD01–95–017]

Special Local Regulation: Harvard-Yale Regatta, Thames River, New London, CT

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The annual Harvard-Yale Regatta is a rowing race event held on the Thames River in New London, Connecticut. This regulation temporarily amends the permanent regulation published in 33 CFR 100.101 by changing the time period for the event. These regulations are necessary to control vessel traffic within the immediate vicinity of the event due to the confined nature of the waterway and anticipated congestion at the time of the event, thus providing for the safety of life and property on the affected navigable waters.

EFFECTIVE DATES: This rule is effective from 3:30 p.m. to 8 p.m. on June 10, 1995. If the event is postponed for any reason, the regulations will be effective between the hours of 6 a.m. and 9 a.m. on June 11, 1995.

FOR FURTHER INFORMATION CONTACT: Lieutenant (Junior Grade) Benjamin M. Algeo, Chief Boating Affairs Branch, First Coast Guard District, (617) 223–8310.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are Lieutenant (Junior Grade) B.M. Algeo, project officer, Chief, Boating Affairs Branch, First Coast Guard District and Lieutenant Commander S.R. Watkins, project counsel, First Coast Guard District Legal Office.

Regulatory History

A notice of proposed rulemaking (NPRM) was published on April 24, 1995 proposing a permanent change to the effective period in the current regulation found in 33 CFR 100.101. The proposed change would provide for a flexible time period during which the event would be held because event times are dependent upon certain tidal conditions which vary from year to year. The comment period established in the April 24, 1995 NPRM extends beyond the date of this year's race, therefore a temporary final rule is necessary to change the event times for this year's race. No NPRM was published specifically for this temporary final rule and good cause exists for making it effective in less than 30 days after **Federal Register** publication. The Harvard-Yale Regatta is a long-standing and popular local event. The public is well aware of the general procedures followed to hold this annual event. This regulation simply changes the time of the event to allow the race committee to hold the event during optimal tidal conditions. Little commercial traffic is known to transit the area. Sufficient notice will be provided for any affected party to alter plans with minimal impact. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to respond to any potential hazards to the maritime public.

Background and Purpose

This temporary final rule changes the published time of the Harvard-Yale Regatta found in the permanent regulation at 100 CFR 100.101. The event sponsor has determined that optimal tidal conditions for this year's event exist between 3:30 p.m. and 8 p.m. on Saturday, June 10, 1995 (and between 6 a.m. and 9 a.m. on the alternate date, Sunday, June 11, 1995). These race times also will be published prior to the event in the Coast Guard Local Notice to Mariners. In order to provide for the safety of spectators and participants, the Coast Guard will restrict vessel movement in the race course area and will allow vessels to transit the regulated area under Coast Guard escort.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040,

February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation, under paragraph 10e of the regulatory policies and procedures of DOT, is unnecessary. This conclusion is based on the fact that this rule makes only a slight change to the effective period found in the permanent rule at 33 CFR 100.101. The public is fully aware of the terms and conditions of this annual event. Commercial traffic on the affected portion of the Thames River is infrequent. The race is popular and of short duration. Local commercial entities and the U.S. Navy have been notified of the race schedule. Vessel traffic may be allowed to transit the regulated area at the discretion of the patrol commander.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. Small entities include independently owned and operated small businesses that are not dominant in their field, and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). For the reasons set forth in the above Regulatory Evaluation, the Coast Guard expects the impact of this regulation to be minimal, and certifies under 5 U.S.C. 605(b) that this temporary final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This regulation contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612, and has determined that this regulation does not raise sufficient federalism implications to warrant the preparation of a Federal Assessment.

Environment

The Coast Guard has considered the environmental impact of this regulation and in accordance with paragraph 2.B.2.e(35)(3) of Commandant Instruction M16475.1B, the event is deemed to be categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Records and recordkeeping requirements, Waterways.

For the reasons set forth in the preamble, the Coast Guard temporarily amends part 100 of title 33, Code of Federal Regulations, as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. In § 100.101, paragraph (b) is suspended and a new paragraph (d) is temporarily added to read as follows:

§ 100.101 Harvard-Yale Regatta, Thames River, New London, CT.

* * * * *

(d) Effective period. This section is effective between the hours of 3:30 p.m. and 8 p.m. on June 10, 1995. If the races scheduled for June 10, 1995 are postponed, this section will be effective between the hours of 6 a.m. and 9 a.m. on June 11, 1995.

Dated: May 15, 1995.

J.L. Linnon,

Rear Admiral, U. S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 95–13024 Filed 5–25–95; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 100

[CGD 09–95–010]

Special Local Regulation; Geneva Offshore Grand Prix, Lake Erie, Geneva-on-the-Lake, OH

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: A special local regulation is being adopted for the Geneva Offshore Grand Prix. This event will be held on Lake Erie, Geneva-on-the-Lake, OH, on May 28, 1995. The Geneva Offshore Grand Prix will have an estimated 35 offshore race boats racing a closed course race on Lake Erie which could pose hazards to navigation in the area. This regulation will restrict general navigation on Lake Erie between Cowles Creek and the Redbrook Boat Club and is needed to provide for the safety of life, limb, and property on navigable waters during the event.

EFFECTIVE DATE: This regulation is effective from 11 a.m. (EDST) until 3 p.m. (EDST) on May 28, 1995.

FOR FURTHER INFORMATION CONTACT: Marine Science Technician Second Class Jeffrey M. Yunker, Ninth Coast Guard District, Aids to Navigation and Waterways Management Branch, Room 2083, 1240 East Ninth Street, Cleveland, Ohio, 44199–2060, (216) 522–3990.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a Notice of Proposed Rulemaking has not been published for this regulation and good cause exists for making it effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The application to hold this event was not received by the Commander, Ninth Coast Guard District, until May 4, 1995, and there was not sufficient time remaining to publish a proposed rule in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of this notice are Lieutenant Junior Grade Byron D. Willeford, Project Officer, Ninth Coast Guard District, Aids to Navigation and Waterways Management Branch, and Lieutenant Karen E. Lloyd, Project Attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulation

The Geneva Offshore Grand Prix will be held on Lake Erie between Cowles Creek and the Redbrook Boat Club on May 28, 1995. This event will have an estimated 35 offshore race boats racing a closed course race on Lake Erie which could pose hazards to navigation in the area. The effect of this rule will be to restrict general navigation on that portion of Lake Erie, in an area rectangular in shape, from the mouth of Cowles Creek, west along the shoreline approximately 4.4 statute miles, extending offshore approximately 0.7 statute miles, for the safety of spectators and participants. This regulation is necessary to ensure the protection of life, limb, and property on navigable waters during this event. Any vessel desiring to transit the regulated area may do so only with prior approval of the Patrol Commander (Officer in Charge, U.S. Coast Guard Station Ashtabula, OH).

This rule is issued pursuant to 33 U.S.C. 1233 as set out in the authority citation for all of Part 100.

Federalism Implications

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard is conducting an environmental analysis for this event in accordance with section 2.B.2.c of Coast Guard Commandant Instruction M16475.1B, and the Coast Guard Notice of final agency procedures and policy for categorical exclusions found at (59 FR 38654; July 29, 1994).

Economic Assessment and Certification

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this regulation to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of the DOT is unnecessary.

Collection of Information

This rule will impose no collection of information requirements under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Temporary Regulation

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary section 100.35–T09–010 is added to read as follows:

§ 100.35—T09–010 Geneva Offshore Grand Prix, Lake Erie, Geneva-on-the-Lake, OH.

(a) *Regulated Area:* That portion of Lake Erie from:

Latitude	*Longitude*
41°51.5'N	080°58.2'W, thence to
41°52.4'N	080°53.4'W, thence to
41°53'N	080°53.4'W, thence to
41°52.2'N	080°58.2'W, thence to
41°51.5'N	080°58.2'W.

Datum: NAD 83

(b) *Special local regulation:* This section restricts general navigation in the regulated area for the safety of spectators and participants. Any vessel desiring to transit the regulated area may do so only with prior approval of the Patrol Commander.

(c) *Patrol Commander:* (1) The Coast Guard will patrol the regulated area under the direction of a designated Coast Guard Patrol Commander (Officer in Charge, U.S. Coast Guard Station Ashtabula, OH). The Patrol Commander may be contacted on channel 16 (156.8 MHZ) by the call sign "Coast Guard Patrol Commander."

(2) The Patrol Commander may direct the anchoring, mooring, or movement of any boat or vessel within the regulated area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Any vessel so signaled shall stop and shall comply with the orders of the Patrol Commander. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(3) The Patrol Commander may establish vessel size and speed limitations and operating conditions.

(4) The Patrol Commander may restrict vessel operation within the regulated area to vessels having particular operating characteristics.

(5) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life, limb, or property.

(6) All persons in the area shall comply with the orders of the Coast Guard Patrol Commander.

(d) *Effective Date:* This section is effective from 11 a.m. (estd) until 3 p.m. (edst) on May 28, 1995, unless otherwise terminated by the Coast Guard Patrol Commander (Officer in Charge, U.S. Coast Guard Station Ashtabula, OH).

Dated: May 16, 1995.

Rudy K. Peschel,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 95–13028 Filed 5–25–95; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[COTP Louisville 95–002]

RIN 2115–AA97

Safety Zone; Ohio River, Cincinnati, OH

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the Ohio River. The regulation is needed to control commercial vessel traffic in the regulated area while transiting downbound at night during high water conditions. The regulation will restrict commercial navigation in the regulated area for the safety of vessel traffic and the protection of life and property along the river.

EFFECTIVE DATES: This regulation is effective on May 18, 1995, at 4 p.m. edst. It will terminate at 6 p.m. edst, on May 30, 1995, unless sooner terminated by the Captain of the Port, Louisville, Kentucky.

FOR FURTHER INFORMATION CONTACT: LT Paul D. Thorne, Supervisor, Coast Guard Marine Safety Detachment, Cincinnati, Ohio at (513) 922–3820.

SUPPLEMENTARY INFORMATION:

Background and Purpose

The situation requiring this rule is high water in the Ohio River in the vicinity of Cincinnati, Ohio. The Ohio River in the Cincinnati area is hazardous to transit under the best conditions. To transit the area, mariners must navigate through several sweeping turns and seven bridges. When the water level in the Ohio River reaches 45 feet, on the Cincinnati gauge, river currents increase and become very unpredictable, making it difficult for downbound vessels to maintain steerageway. During hours of darkness the background lights of the city of Cincinnati hamper mariners' ability to maintain sight of the front of their tow. The rule is intended to protect the public and the environment, at night during periods of high water, from a potential hazard of large downbound tows carrying hazardous material through the regulated area.

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for this regulation and good cause exists for making it effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. Specifically, the high water periods in the Cincinnati, Ohio area are natural events which cannot be predicted with any reasonable accuracy. The Coast Guard deems it to be in the public's best interest to issue a rule now, as the situation presents an immediate hazard to navigation, life, and property.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of

Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). Because the duration of this emergency situation is anticipated to be short, the Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

To avoid any unnecessary adverse economic impact on businesses which use the river for commercial purposes, Captain of the Port, Louisville, Kentucky will monitor river conditions and will authorize entry of restricted vessels into the regulated area as conditions permit. Changes will be announced by Marine Safety Information Radio broadcast (Broadcast Notice to Mariners) on VHF marine band radio, channel 22 (157.1 MHZ). Mariners may also call LT Paul D. Thorne, Supervisor, Coast Guard Marine Safety Detachment, Cincinnati, Ohio at (513) 922–3820 for current information.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*)

Federalism Assessment

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that it does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2. of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation.

Lists of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A new temporary § 165.T02–008 is added, to read as follows:

§ 165.T02–008 Safety Zone: Ohio River, Cincinnati, OH.

(a) *Location.* The following area is a safety zone: The Ohio River between miles 468.5 and 473.0.

(b) *Effective Dates.* This section becomes effective on May 18, 1995, at 4 p.m. EDST. It will terminate at 6 p.m. EDST on May 30, 1995, unless sooner terminated by the Captain of the Port, Louisville, Kentucky.

(c) *Regulations.* In accordance with the general regulations of § 165.23 of this part, entry into this zone by all downbound vessels towing cargoes regulated by Title 46, Code of Federal Regulations, Subchapters D and O, with a tow length exceeding 600 feet, excluding the tow boat, is prohibited from one-half hour before sunset to one-half hour after sunrise. The Captain of the Port will notify the maritime community of river conditions affecting the area covered by this safety zone by Marine Safety Information Radio Broadcast on VHF Marine Band Radio, Channel 22 (157.1 MHZ).

Dated: May 18, 1995.

W.J. Morani, Jr.,

Captain, U.S. Coast Guard, Captain of the Port, Louisville, Kentucky.

[FR Doc. 95–13027 Filed 5–25–95; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[COTP Paducah 95–001]

RIN 2115–AA97

Safety zone; Tennessee River, Mile 161.5 to 162.5

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the Tennessee River from mile 161.5 to 162.5. The zone is needed to protect life and property during the salvage of a highway bridge that collapsed into the river. The regulation restricts navigation into the zone.

EFFECTIVE DATE: This regulation becomes effective at 9:30 a.m. on May 19, 1995 and terminates at 8 p.m. on June 30, 1995.

FOR FURTHER INFORMATION CONTACT:

LTJG Patrick S. Reilly, Operations Officer, Captain of the Port, Paducah, Kentucky at (502) 442–1621.

SUPPLEMENTARY INFORMATION:

Background and Purpose

The situation requiring this rule is the reduction of the navigation channel at mile 161.9 on the Tennessee River due to the collapsing of a highway over the river. Construction equipment will be onscene to remove the obstruction to navigation and the remainder of the bridge in the water has reduced a navigable channel to approximately 150 feet. The rule is intended to limit commercial tows to no more than three barges long by one barge wide and to require tows to use the assist tug provided by the bridge construction company. Commercial tows can transit the safety zone only during daylight hours. Light commercial boats and recreational vessels will be allowed to transit the zone twenty four hours, but must contact the Coast Guard representative onscene for transiting instructions. All vessels must contract Coast Guard representative onsence via VHF–FM channel 13 or 16 for passing instructions.

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this rule and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Following normal rulemaking procedures would have been impracticable. Publication of a notice of proposed rulemaking and delay of effective date would be contrary to the public interest because immediate action is necessary to prevent injury to human life or damage to property of vessels that would be transiting the area.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary because of the short duration of the closure.

Collection of Information

This rule contains no information collection requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under paragraph 2.B.2.g[5] of Commandant Instruction M16475.1B, (as revised by 59 FR 38654; July 29, 1994) this rule is categorically excluded from further environmental documentation as an action to protect public safety. A Categorical Exclusion Determination has been prepared and placed in the rulemaking.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water) Reporting and recordkeeping, requirements Security measures, Waterways.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A temporary § 165.T02–017 is added to read as follows:

§ 165.T02–017 Safety Zone; Tennessee River mile 161.5 to 162.5.

(a) *Location.* The following area is a Safety Zone: Tennessee River mile 161.5 to 162.5.

(b) *Effective Dates.* This section becomes effective at 9:30 a.m. on May 19, 1995 and terminates at 8 p.m. on June 30, 1995.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited except as authorized by the Captain of the Port.

Dated: May 19, 1995.

Robert M. Segovis,

Commander, USCG, Captain of the Port.

[FR Doc. 95–13026 Filed 5–25–95; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DC15–1–6358; FRL–5178–7]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia—Emission Statement Program

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the District of Columbia. This revision consists of an emission statement program for stationary sources which emit volatile organic compounds (VOCs) and/or nitrogen oxides (NO_X) at or above specified actual emission threshold levels. The intended effect of this action is to approve a regulation for annual reporting of actual emissions by sources that emit VOC and/or NO_X within the District in accordance with section 182(a)(3)(b) of the 1990 Clean Air Act Amendments (CAAA). This action is being taken under section 110 of the Clean Air Act.

EFFECTIVE DATE: This action will become effective July 25, 1995 unless notice is received on or before June 26, 1995 that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments may be mailed to Thomas J. Maslany, Director, Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania, 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street. SW, Washington, DC 20460; and the Environmental Regulation Administration, District of Columbia Department of Consumer and Regulatory Affairs, 2100 Martin Luther King Ave, S.E., Washington, DC 20020.

FOR FURTHER INFORMATION CONTACT: Enid A. Gerena, U.S. Environmental Protection Agency, Air, Radiation, and Toxics Division, 841 Chestnut Building, Philadelphia, PA 19107, (215) 597–8239.

SUPPLEMENTARY INFORMATION: On October 22, 1993, the District of Columbia Department of Consumer and Regulatory Affairs (DCRA) submitted a formal revision to its SIP. One of those revisions is the District's Emission Statement program which requires owners of stationary sources that emit VOCs and/or NO_X, above specified actual emission applicability thresholds, to submit annual statements certifying emissions. This notice only addresses the District's Emission Statement SIP submittal. The other revisions submitted on October 22, 1993 are the subjects of separate rulemaking notices.

I. Background

The air quality planning and State Implementation Plan (SIP) requirements for ozone nonattainment and transport areas are set out in subparts I and II of Part D of Title I of the Clean Air Act, as amended by the Clean Air Act Amendments of 1990. EPA published a "General Preamble" describing EPA's preliminary views on how it intends to review SIP's and SIP revisions submitted under Title I of the CAA, including those State submittals for ozone transport areas within the States {see 57 FR 13498 (April 16, 1992) ["SIP: General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990"], 57 FR 18070 (April 28, 1992) ["Appendices to the General Preamble"], and 57 FR 55620 (November 25, 1992) ["SIP: NO_X Supplement to the General Preamble"]}.

EPA also issued a draft guidance document describing the requirements for the emission statement programs discussed in this action, entitled "Guidance on the Implementation of an Emission Statement Program" (July, 1992). The Agency is also conducting a rulemaking process to modify title 40, part 51 of the CFR to reflect the requirements of the emission statement program.

Section 182 of the Act sets out a graduated control program for ozone nonattainment areas. Section 182(a) sets out requirements applicable in marginal ozone nonattainment areas, which are also made applicable by section 182 (b), (c), (d), and (e) to all other ozone nonattainment areas. Among the requirements in section 182(a) is a program for stationary sources to prepare and submit to the State each year emission statements certifying their actual emissions of VOCs and NO_X. This section of the Act provides that the States or in this case the District, are to submit a revision to their SIPs by November 15, 1992 establishing this emission statement program.

If a source emits either VOCs or NO_X at or above the designated minimum reporting level, the other pollutant should be included in the emission statement, even if it is emitted at levels below the specified cutoffs.

States or the District may waive, with EPA approval, the requirement for an emission statement for classes or categories of sources with less than 25 tons per year of actual plant-wide NO_X or VOC emissions in nonattainment areas if the class or category is included in the base year and periodic inventories and emissions are calculated using emissions factors established by EPA (such as those found in EPA publication AP–42) or other methods acceptable to EPA. Emissions from stationary sources that emit less than 25 tons per year of VOC and NO_X are included in the District of Columbia's 1990 base year emission inventory and must also be included in the periodic emission inventories.

At minimum, the emission statement data should include:

—Certification of data accuracy;
—Source identification information;
—Operating schedule;
—Emissions information (to include annual and typical ozone season day emissions);
—Control equipment information; and
—Process data.

EPA developed emission statements data elements to be consistent with other source and State reporting requirements. This consistency is essential to assist States (or the District) with quality assurance for emission estimates and to facilitate consolidation of all EPA reporting requirements.

II. EPA's Evaluation of the District's Submittal

A. Procedural Background

The District of Columbia held a public hearing on October 27, 1992, for the purpose of soliciting public comment on proposed regulatory revisions concerning emission statements for stationary sources. The regulatory revisions were adopted on July 16, 1993, submitted to EPA on October 22, 1993 as a revision to the SIP, and became effective in the District on September 30, 1993.

B. Components of the District's Emission Statement Program

There are several key and specific components of an acceptable emission statement program. Specifically, the District must submit a revision to its SIP which consists of an emission statement program which meets the minimum requirements for reporting by the sources and the State (or the District). For the emission statement program to be approvable, the District's SIP revision must include, at a minimum, definitions and provisions for applicability, compliance, and specific source reporting requirements and reporting forms.

The District's revision consists of amendments to D.C. ACT 10–56 District of Columbia Air Pollution Control Act of 1984. These amendments revise Section 20 DCMR 199, Definitions and add Section 20 DCMR 500.7, Emission Statements.

Section 20 DCMR 199, Definitions, has been revised by adding the definitions of the following terms:

Annual process rate; Certifying individual; Control efficiency; Control equipment identification code; Emission factor; Emission statement; Estimated emission method code; Oxides of nitrogen; Percent annual throughput; Plant; Point; Process rate; Standard industrial classification code; Typical ozone season day; and Volatile organic compounds.

Section 20 DCMR 500.7, Emission Statements, requires that a person who owns or operates any installation, source, or premises located in areas designated by the CAA as marginal, moderate, serious, severe or extreme ozone nonattainment area to report the levels of emissions from the sources emitting 25 tons per year (TPY) or more of VOCs and NO_X, in order to track emission reductions necessary to attain the ozone National Ambient Air Quality Standards (NAAQS). Section 20 DCMR 500.7, Emission Statements, also requires that a certifying official for each facility provide the District with a statement reporting emissions by April 15 of each year, beginning with April 15, 1993, for the emissions discharged during the previous calendar year. Section 20 DCMR 500.7, Emission Statements, also defines specific requirements for the content of these annual emission statements.

C. Enforceability

The District of Columbia has provisions in its SIP which ensure that the emission statement requirements of Section 182(a)(3)(B) and Sections 184(b)(2) and 182(f) of the CAA as required by D.C. ACT 10–56, sections 20 DCMR 199, and section 20 DCMR 500.7 are adequately enforced. Once EPA completes the rulemaking process approving the District's Emission Statement program as part of the SIP, it will be federally enforceable.

EPA has determined that the submittal made by the District of Columbia satisfies the relevant requirements of the CAA and EPA's guidance document, "Guidance on the Implementation of an Emission Statement Program" (July 1992). EPA's detailed review of the District's Emission Statement Program is contained in a Technical Support Document (TSD) which is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this action.

EPA is approving this SIP revision without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective July 25, 1995 unless, within 30 days of publication, adverse or critical comments are received.

If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent notice that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on July 25, 1995.

III. Final Action

EPA is approving revisions to the District of Columbia SIP to include an Emission Statement Program. These revisions consist of amendments to D.C. ACT 10–56 District of Columbia Air Pollution Control Act by revising section 20 DCMR 199, Definitions, and the addition of section 20 DCMR 500.7, Emission Statements.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision of any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et. seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, Part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on small entities. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state or District action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. section 7410 (a)(2).

This action has been classified as a Table 2 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225) as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The OMB has exempted this regulatory action from E.O. 12866 review. Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 25, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action approving the District of Columbia Emission Statement SIP submittal may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Oxides of nitrogen, Ozone, Reporting and recordkeeping requirements, volatile organic compounds.

Dated: January 25, 1995.

Peter H. Kostmayer,

Regional Administrator, Region III.

40 CFR part 52, subpart J of chapter I, title 40 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart J—District of Columbia

2. Section 52.470 is amended by adding paragraph (c)(32) to read as follows:

§ 52.470 Identification of plan.

* * * * *

(c) * * *

(32) Revisions to the District of Columbia Regulations State Implementation Plan submitted on October 22, 1993 by the Government of the District of Columbia Department of Consumer and Regulatory Affairs.

(i) Incorporation by reference.

(A) Letter of October 22, 1993 from the Government of the District of Columbia Department of Consumer and Regulatory Affairs transmitting a revised regulation which require owners of stationary sources to submit emission statements annually.

(B) D.C. ACT 10–56 amendments to District of Columbia Air Pollution Control Act of 1984, Section 20 DCMR 199, specifically the addition of new definitions, and the addition of Section 20 DCMR 500.7. Effective on September 30, 1993.

[FR Doc. 95–12927 Filed 5–25–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[ID12–1–6992a; FRL –5206–6]

Approval and Promulgation of Implementation Plans: State of Idaho

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: On August 25, 1994, the Environmental Protection Agency (EPA) issued a direct final rule approving the State Implementation Plan for the Pinehurst, Idaho, PM–10 (particulate matter with an aerodynamic diameter of less than or equal to a nominal ten micrometers) nonattainment area (59 FR 43745 (August 25, 1994)). In this rulemaking action, EPA is approving the provisions of that plan for the area just outside the City of Pinehurst which was designated nonattainment in January 1994.

EFFECTIVE DATE: This direct final rule will be effective on July 25, 1995 unless adverse or critical comments are received by June 26, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be addressed to: Montel Livingston, SIP Manager, EPA, Air & Radiation Branch (AT–082), 1200 Sixth Avenue, Seattle, Washington 98101.

Copies of material submitted to EPA may be examined during normal business hours at the following locations: EPA, Region 10, Air & Radiation Branch, 1200 Sixth Avenue (AT–082), Seattle, Washington 98101, and the State of Idaho Division of Environmental Quality, 1410 N. Hilton, Boise, ID 83720.

FOR FURTHER INFORMATION CONTACT: Doug Cole, EPA, Idaho Operations Office, 1435 N. Orchard St., Boise, ID 83706, (208) 334–9555.

SUPPLEMENTARY INFORMATION:

I. Background

On August 25, 1994, EPA issued a direct final rule approving the State Implementation Plan (SIP) for the Pinehurst PM–10 nonattainment area in Shoshone County, Idaho. *See* 59 FR 43745. The rule became effective October 24, 1994. In that document, EPA described its approval action as covering the Pinehurst, Idaho nonattainment area that was designated nonattainment for PM–10 and classified as moderate under sections 107(d)(4)(B) and 188(a) of the Clean Air Act upon enactment of the 1990 Clean Air Act Amendments (citing 56 FR 56694 (November 6, 1991)).[1] The document inadvertently failed to explain, however, that, effective January 20, 1994, EPA approved the redesignation of an additional area in Shoshone County, adjacent to the Pinehurst nonattainment area, as nonattainment for PM–10. *See* 58 FR 67334, 67339 (December 21, 1993) and 40 CFR 81.313 (codified air quality designations for the State of Idaho). Further, the August 25, 1994 document did not explain that the SIP revision submitted by Idaho to address certain moderate PM–10 nonattainment planning requirements for Pinehurst also applied to the adjacent moderate PM–10 nonattainment area.

II. This Action

In this action, EPA is approving the PM–10 SIP submitted by the State of Idaho on April 14, 1992 and described in the August 25, 1994 **Federal Register**

[1] The 1990 Amendments to the Clean Air Act made significant changes to the Act. *See* Public Law No. 101–549, 104 Stat. 2399. References herein are to the Clean Air Act, as amended ("Act" or "CAA"). The Clean Air Act is codified, as amended, in the U.S. Code at 42 U.S.C. 7401, et seq.

document (59 FR 43745), as meeting certain Clean Air Act moderate PM–10 nonattainment area planning requirements for the portion of the Shoshone County, Idaho nonattainment area outside the City of Pinehurst.

In the **Federal Register** document approving the redesignation of the area just outside the City of Pinehurst (hereinafter, the "Pinehurst expansion area"), EPA noted that if the moderate area PM–10 SIP developed by the State for the City of Pinehurst also addressed the Pinehurst expansion area and was ultimately approved by EPA, it would satisfy the applicable planning requirements and therefore be unnecessary for the State to submit a separate moderate area plan addressing the Pinehurst expansion area. *See* 58 FR 67339. The control strategies, attainment demonstration and other plan elements of the SIP submitted by the State for the City of Pinehurst did in fact cover the nonattainment boundary as revised effective January 20, 1994, although EPA inadvertently failed to discuss this in its August 25, 1994 approval action. There are no differences in the manner in which the control strategies and other plan elements apply within the City of Pinehurst, on the one hand, and within the Pinehurst expansion area, on the other hand. The plan cites the resolution of the Pinehurst City Council supporting the voluntary wood burning curtailment program as a factor in the program's effectiveness. However, there is no reason to expect that the program would have less effect in the Pinehurst expansion area, which is just outside city limits. Additionally, the woodstove replacement and weatherizations programs are being applied to the Pinehurst expansion area. Therefore, the evaluation and conclusions in EPA's August 25, 1994 action approving the SIP for the City of Pinehurst apply equally to the Pinehurst expansion area. Thus, EPA is approving the Idaho SIP revision addressed in the August 25, 1994, **Federal Register** document as also satisfying certain moderate PM–10 nonattainment planning requirements for the additional PM–10 nonattainment area in Shoshone County referred to as the Pinehurst expansion area. *See* 40 CFR 81.313. EPA concludes that the State has satisfied the requirements calling for: reasonably available control measures (including reasonably available control technology); a demonstration that the area will attain the PM–10 national ambient air quality standards (NAAQS) as expeditiously as practicable; an accurate emissions inventory; and the other moderate PM–10 nonattainment planning requirements discussed in the August 25, 1994 **Federal Register** document and underlying documents. EPA is also determining that major stationary sources of PM–10 precursors do not contribute significantly to PM–10 levels in excess of the NAAQS in the Pinehurst expansion area and is therefore granting the exclusion from precursor control requirements set out at section 189(e) of the CAA. *See generally* CAA section 172 (c), 188 & 189; 57 FR 13498 (April 16, 1992) & 57 FR 18070 (April 28, 1992).

However, as indicated in the August 25, 1994 **Federal Register** document, the State has not satisfied the requirement for contingency measures for either the City of Pinehurst or the Pinehurst expansion area. *See* CAA section 172 (c)(9) and 59 FR at 43750–43751. Contingency measures for the City of Pinehurst were due on November 15, 1993 and the State has until July 13, 1995 to correct this deficiency for the City of Pinehurst or it will face federal highway or offset sanctions. *See* 57 FR 13543 & 59 FR 43751. Contingency measures for the Pinehurst expansion area are due July 20, 1995. *See* 58 FR 67341. The State's obligation to submit a permit program for the construction and operation of new and modified stationary sources of PM–10 (NSR program) in the Pinehurst expansion area by July 13, 1995, has been satisfied by the State's May 17, 1994 submittal of an NSR program covering all nonattainment areas in the State. EPA is currently in the process of reviewing the State's NSR program to determine if the program meets the requirements of the CAA. EPA intends to take action on Idaho's NSR program when EPA has completed its review.

For additional discussion of the control measures and other planning requirements contained in the SIP and EPA's analysis, please see the State submittal, EPA's approval of the plan for the City of Pinehurst (59 FR 43745) and the docket supporting that approval.

III. Administrative Review

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the state is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the Act, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S.E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective July 25, 1995 unless, within 30 days of its publication, adverse or critical comments are received.

If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent notice that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective July 25, 1995.

The EPA has reviewed this request for revision of the federally-approved SIP for conformance with the provisions of the 1990 Clean Air Act Amendments enacted on November 15, 1990. The EPA has determined that this action conforms with those requirements.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The OMB has exempted this regulatory action from E.O. 12866 review.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 25, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2), 42 U.S.C. 7607(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter.

Dated: April 28, 1995.

Chuck Clarke,

Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1.The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart N—Idaho

2. Section 52.670 is amended by revising paragraph (c)(28) introductory text to read as follows:

§ 52.670 Identification of plan.

* * * * *

(c) * * *

(28) On April 14, 1992, the State of Idaho submitted a revision to the SIP for Pinehurst, ID, for the purpose of bringing about the attainment of the national ambient air quality standards for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers. This submittal includes an additional area in Shoshone County adjacent to the City of Pinehurst which EPA designated nonattainment and moderate for PM–10 on January 20, 1994.

* * * * *

[FR Doc. 95–12929 Filed 5–25–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[SIPTRAX No. PA63–1–7032a; FRL–5211–1]

Approval and Promulgation of Air Quality Implementation Plans; Commonwealth of Pennsylvania: Determination of Attainment of Ozone Standard by the Pittsburgh-Beaver Valley and Reading Ozone Nonattainment Areas and Determination Regarding Applicability of Certain Reasonable Further Progress and Attainment Demonstration Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA has determined that the Pittsburgh-Beaver Valley and Reading ozone nonattainment areas have attained the National Ambient Air Quality Standard (NAAQS) for ozone. This determination is based upon three years of ambient air monitoring data for the years 1992–94 that demonstrate that the ozone NAAQS has been attained in these areas. On the basis of this determination, EPA is also determining that certain reasonable further progress and attainment demonstration requirements, along with certain other related requirements, of Part D of Title I of the Clean Air Act (CAA) are not applicable to these areas as long as these areas continue to attain the ozone NAAQS.

EFFECTIVE DATE: This action will become effective July 10, 1995 unless notice is received on or before June 26, 1995 that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments may be mailed to Marcia L. Spink, Associate Director, Air Programs, Mailcode 3AT00, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107.

FOR FURTHER INFORMATION CONTACT: Kathleen Henry, (215) 597–0545.

SUPPLEMENTARY INFORMATION:

I. Background

Subpart 2 of Part D of Title I of the Clean Air Act (CAA) contains various air quality planning and state implementation plan (SIP) submission requirements for ozone nonattainment areas. EPA believes it is reasonable to interpret provisions regarding reasonable further progress (RFP) and attainment demonstrations, along with certain other related provisions, so as not to require SIP submissions if an ozone nonattainment area subject to those requirements is monitoring attainment of the ozone standard (i.e., attainment of the NAAQS demonstrated with three consecutive years of complete, quality assured air quality monitoring data). As described below, EPA has previously interpreted the general provisions of subpart 1 of part D of Title I (sections 171 and 172) so as not to require the submission of SIP revisions concerning RFP, attainment demonstrations, or contingency measures. As explained in a memorandum dated May 10, 1995, from John S. Seitz, Director, Office of Air Quality Planning and Standards to the Regional Air Division Directors, entitled "Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard", EPA believes it is appropriate to interpret the more specific RFP, attainment demonstration and related provisions of subpart 2 in the same manner.

First, with respect to RFP, section 171(1) states that, for purposes of part D of Title I, RFP "means such annual incremental reductions in emissions of the relevant air pollutant as are required by this part or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable national ambient air quality standard by the applicable date." Thus, whether dealing with the general RFP requirement of section 172(c)(2), or the more specific RFP requirements of subpart 2 for classified ozone nonattainment areas (such as the 15 percent plan requirement of section 182(b)(1)), the stated purpose of RFP is to ensure attainment by the applicable attainment date.[1] If an area has in fact attained the standard, the stated purpose of the RFP requirement will have already been fulfilled and EPA does not believe that the area need submit revisions providing for the

[1] EPA notes that paragraph (1) of subsection 182(b) is entitled "PLAN PROVISIONS FOR REASONABLE FURTHER PROGRESS" and that subparagraph (B) of paragraph 182(c)(2) is entitled "REASONABLE FURTHER PROGRESS DEMONSTRATION," thereby making it clear that both the 15 percent plan requirement of section 182(b)(1) and the 3 percent per year requirement of section 182(c)(2) are specific varieties of RFP requirements.

further emission reductions described in the RFP provisions of section 182(b)(1).

EPA notes that it took this view with respect to the general RFP requirement of section 172(c)(2) in the General Preamble for the interpretation of Title I of the Clean Air Act Amendments of 1990 (57 FR 13498 (April 16, 1992)), and it is now extending that interpretation to the specific provisions of subpart 2. In the General Preamble, EPA stated, in the context of a discussion of the requirements applicable to the evaluation of requests to redesignate nonattainment areas to attainment, that the "requirements for RFP will not apply in evaluating a request for redesignation to attainment since, at a minimum, the air quality data for the area must show that the area has already attained. Showing that the State will make RFP towards attainment will, therefore, have no meaning at that point." (57 FR 13564)[2]

Second, with respect to the attainment demonstration requirements of section 182(b)(1), an analogous rationale leads to the same result. Section 182(b)(1) requires that the plan provide for "such specific annual reductions in emissions * * * as necessary to attain the national primary ambient air quality standard by the attainment date applicable under this Act." As with the RFP requirements, if an area has in fact monitored attainment of the standard, EPA believes there is no need for an area to make a further submission containing additional measures to achieve attainment. This is also consistent with the interpretation of certain section 172(c) requirements provided by EPA in the General Preamble to Title I, as EPA stated there that no other measures to provide for attainment would be needed by areas seeking redesignation to attainment since "attainment will have been reached." (57 FR 13564; *see also* September 1992 Calcagni memorandum at page 6.) Upon attainment of the NAAQS, the focus of state planning efforts shifts to maintenance of the NAAQS and the development of a maintenance plan under section 175A.

Similar reasoning applies to the contingency measure requirements of section 172(c)(9). EPA has previously interpreted the contingency measure requirement of section 172(c)(9) as no longer being applicable once an area has attained the standard since those "contingency measures are directed at ensuring RFP and attainment by the applicable date." (57 FR 13564; *see also* September 1992 Calcagni memorandum at page 6.) Similarly, as the section 172(c)(9) contingency measures are linked with the RFP requirements of section 182(b)(1), the requirement no longer applies once an area has attained the standard.

EPA emphasizes that the lack of a requirement to submit the SIP revisions discussed above exists only for as long as an area designated nonattainment continues to attain the standard. If EPA subsequently determines that such an area has violated the NAAQS, the basis for the determination that the area need not make the pertinent SIP revisions would no longer exist. The EPA would notify the State of that determination and would also provide notice to the public in the **Federal Register**. Such a determination would mean that the area would have to address the pertinent SIP requirements within a reasonable amount of time, which EPA would establish taking into account the individual circumstances surrounding the particular SIP submissions at issue. Thus, a determination that an area need not submit one of the SIP submittals amounts to no more than a suspension of the requirement for so long as the area continues to attain the standard.

The State must continue to operate an appropriate air quality monitoring network, in accordance with 40 CFR part 58, to verify the attainment status of the area. The air quality data relied upon to determine that the area is attaining the ozone standard must be consistent with 40 CFR part 58 requirements and other relevant EPA guidance and recorded in EPA's Aerometric Information Retrieval System (AIRS).

The determinations that are being made with this **Federal Register** notice are not equivalent to the redesignation of the area to attainment. Attainment of the ozone NAAQS is only one of the criteria set forth in section 107(d)(3)(E) that must be satisfied for an area to be redesignated to attainment. To be redesignated the state must submit and receive full approval of a redesignation request for the area that satisfies all of the criteria of that section, including the requirement of a demonstration that the improvement in the area's air quality is due to permanent and enforceable reductions and the requirements that the area have a fully-approved SIP meeting all of the applicable requirements under section 110 and Part D and a fully-approved maintenance plan.

Furthermore, the determinations made in this notice do not shield an area from future EPA action to require emissions reductions from sources in the area where there is evidence, such as photochemical grid modeling, showing that emissions from sources in the area contribute significantly to nonattainment in, or interfere with maintenance by, other nonattainment areas. EPA has authority under sections 110(a)(2)(A) and 110(a)(2)(D) to require such emission reductions as necessary and appropriate to deal with transport situations.

II. Analysis of Air Quality Data

EPA has reviewed the ambient air monitoring data for ozone (consistent with the requirements contained in 40 CFR part 58 and recorded in AIRS) for the Pittsburgh-Beaver Valley and Reading moderate ozone nonattainment areas in the Commonwealth of Pennsylvania from 1992 through the present time. On the basis of that review EPA has concluded that the area attained the ozone standard during the 1992–94 period and continues to attain the standard at this time.

The current design value for the Pittsburgh-Beaver Valley nonattainment area, computed using ozone monitoring data for 1992 through 1994, is 121 parts per billion (ppb). The average annual number of expected exceedances is 0.7 for that same time period. The current design value for the Reading nonattainment area, computed using ozone monitoring data for 1992 through 1994, is 105 ppb. The average annual number of expected exceedances is 0.3 for that same time period. An area is considered in attainment of the standard if the average annual number of expected exceedances is less than or equal to 1.0. Thus, these areas are no longer recording violations of the air quality standard for ozone. A more detailed summary of the ozone monitoring data for the area is provided in the Technical Support Document for this notice.

EPA is making these determinations without prior proposal. However, in a separate document in this **Federal Register** publication, EPA is proposing to make these determinations should adverse or critical comments be filed. This action will be effective July 10, 1995 unless, within 30 days of publication, adverse or critical comments are received.

If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent notice that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on July 10, 1995.

[2] *See also* "Procedures for Processing Requests to Redesignate Areas to Attainment," from John Calcagni, Director, Air Quality Management Division, to Regional Air Division Directors, September 4, 1992, at page 6 (stating that the "requirements for reasonable further progress * * * will not apply for redesignations because they only have meaning for areas not attaining the standard") (hereinafter referred to as "September 1992 Calcagni memorandum").

Final Action

EPA has determined that the Pittsburgh-Beaver Valley and Reading ozone nonattainment areas have attained the ozone standard and continue to attain the standard at this time. As a consequence of this determination, the requirements of section 182(b)(1) concerning the submission of the 15 percent plan and ozone attainment demonstration and the requirements of section 172(c)(9) concerning contingency measures are not applicable to the area so long as the area does not violate the ozone standard. Since these areas will not be required to submit 15 percent plans or attainment demonstrations, these areas will not be in the control strategy period for conformity purposes for so long as the areas do not violate the standard. However, the Pittsburgh-Beaver Valley and Reading areas, which are already demonstrating conformity to a submitted maintenance plan pursuant to 40 CFR Part 51, section 51.448(i), may continue to do so, or the Commonwealth may elect to withdraw the applicability of the submitted maintenance plan budget for conformity purposes until the maintenance plan is approved. The applicability may be withdrawn through the submission of a letter from the Governor or his or her designee. If the applicability of the submitted maintenance plan budget is withdrawn for transportation conformity purposes, the build/no-build and less-than-1990 tests will apply until the maintenance plan is approved.

EPA emphasizes that these determinations are contingent upon the continued monitoring and continued attainment and maintenance of the ozone NAAQS in the affected area. When and if a violation of the ozone NAAQS is monitored in the Pittsburgh-Beaver Valley or Reading nonattainment areas (consistent with the requirements contained in 40 CFR part 58 and recorded in AIRS), EPA will provide notice to the public in the **Federal Register**. Such a violation would mean that the area would thereafter have to address the requirements of section 182(b)(1) and section 172(c)(9) since the basis for the determination that they do not apply would no longer exist.

As a consequence of the determination that these areas have attained the NAAQS and that the RFP and attainment demonstration requirements of section 182(b)(1) do not presently apply, the sanctions clocks started by EPA on January 18, 1994, for failure to submit these requirements is hereby stopped since the deficiency for which the clock was started no longer exists.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000. Today's determination does not create any new requirements, but suspends the indicated requirements. Therefore, because this notice does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected.

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

EPA's final action does not impose any federal intergovernmental mandate, as defined in section 101 of the Unfunded Mandates Act, upon the State. No additional costs to State, local, or tribal governments, or to the private sector, result from this action, which suspends the indicated requirements. Thus, EPA has determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector.

This action has been classified as a Table 2 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The OMB has exempted this regulatory action from E.O. 12866 review.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 25, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone.

Dated: May 16, 1995.

Stanley Laskowski,

Acting Regional Administrator, Region III.

40 CFR part 52, subpart NN of chapter I, title 40 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart NN—Pennsylvania

2. Section 52.2037 is amended by adding paragraph (b) to read as follows:

§ 52.2037 Control Strategy: Carbon monoxide and ozone (hydrocarbons).

* * * * *

(b)(1) Determination—EPA has determined that, as of July 10, 1995, the Pittsburgh-Beaver Valley ozone nonattainment area has attained the ozone standard and that the reasonable further progress and attainment demonstration requirements of section 182(b)(1) and related requirements of section 172(c)(9) of the Clean Air Act do not apply to this area for so long as the area does not monitor any violations of the ozone standard. If a violation of the ozone NAAQS is monitored in the Pittsburgh-Beaver Valley ozone nonattainment area, these determinations shall no longer apply.

(2) Determination—EPA has determined that, as of July 10, 1995, the Reading ozone nonattainment area has attained the ozone standard and that the reasonable further progress and attainment demonstration requirements of section 182(b)(1) and related requirements of section 172(c)(9) of the Clean Air Act do not apply to this area for so long as the area does not monitor any violations of the ozone standard. If a violation of the ozone NAAQS is monitored in the Reading ozone nonattainment area, these determinations shall no longer apply.

[FR Doc. 95–13004 Filed 5–25–95; 8:45 am]
BILLING CODE 6560–50–P

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40 CFR Part 300

[FRL–5211–3]

National Priorities List for Uncontrolled Hazardous Waste Sites

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA" or "the Act"), as amended, requires that the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP") include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The National Priorities List ("NPL") constitutes this list.

This rule adds 1 new site to the NPL. The NPL is intended primarily to guide the Environmental Protection Agency ("EPA" or "the Agency") in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate.

EFFECTIVE DATE: June 26, 1995.

ADDRESSES: For addresses for the Headquarters and Regional dockets, as well as further details on what these dockets contain, see "Information Available to the Public" in Section I of the "Supplementary Information" portion of this preamble.

FOR FURTHER INFORMATION CONTACT: Terry Keidan, Hazardous Site Evaluation Division, Office of Emergency and Remedial Response (mail code 5204G), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC, 20460, or the Superfund Hotline, phone (800) 424–9346 or (703) 412–9810 in the Washington, DC, metropolitan area.

SUPPLEMENTARY INFORMATION:

I. Introduction.
II. Contents of This Final Rule.
III. Executive Order 12866.
IV. Unfunded Mandates.

I. Introduction

Background

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675 ("CERCLA" or "the Act"), in response to the dangers of uncontrolled hazardous waste sites. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act ("SARA"), Public Law No. 99–499, stat. 1613 *et seq.* To implement CERCLA, EPA promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 CFR Part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets forth the guidelines and procedures needed to respond under CERCLA to releases and threatened releases of hazardous substances, pollutants, or contaminants. EPA has revised the NCP on several occasions. The most recent comprehensive revision was on March 8, 1990 (55 FR 8666).

Section 105(a)(8)(A) of CERCLA requires that the NCP include "criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action* * * and, to the extent practicable taking into account the potential urgency of such action, for the purpose of taking removal action." "Removal" actions are defined broadly and include a wide range of actions taken to study, clean up, prevent or otherwise address releases and threatened releases. 42 USC 9601(23). "Remedial" actions" are those "consistent with permanent remedy, taken instead of or in addition to removal actions. * * *" 42 USC 9601(24).

Pursuant to section 105(a)(8)(B) of CERCLA, as amended by SARA, EPA has promulgated a list of national priorities among the known or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. That list, which is Appendix B of 40 CFR Part 300, is the National Priorities List ("NPL").

CERCLA section 105(a)(8)(B) defines the NPL as a list of "releases" and as a list of the highest priority "facilities." The discussion below may refer to the "releases or threatened releases" that are included on the NPL interchangeably as "releases," "facilities," or "sites."

CERCLA section 105(a)(8)(B) also requires that the NPL be revised at least annually. A site may undergo remedial action financed by the Trust Fund established under CERCLA (commonly referred to as the "Superfund") only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.425(b)(1). However, under 40 CFR 300.425(b)(2) placing a site on the NPL "does not imply that monies will be expended." EPA may pursue other appropriate authorities to remedy the releases, including enforcement action under CERCLA and other laws.

The purpose of the NPL is merely to identify releases that are priorities for further evaluation. Although a CERCLA "facility" is broadly defined to include any area where a hazardous substance release has "come to be located" (CERCLA section 101(9)), the listing process itself is not intended to define or reflect the boundaries of such facilities or releases.

It is the Agency's policy that, in the exercise of its enforcement discretion, EPA will not take enforcement actions against an owner of residential property to require such owner to undertake response actions or pay response costs, unless the residential homeowner's activities lead to a release or threat of release of hazardous substances, resulting in the taking of a response action at the site (OSWER Directive #9834.6, July 3, 1991). This policy includes residential property owners whose property is located above a ground water plume that is proposed to or on the NPL, where the residential property owner did not contribute to the contamination of the site. EPA may, however, require access to that property during the course of implementing a clean up.

Three mechanisms for placing sites on the NPL for possible remedial action are included in the NCP at 40 CFR 300.425(c) (55 FR 8845, March 8, 1990). Under 40 CFR 300.425(c)(1), a site may be included on the NPL if it scores sufficiently high on the Hazard Ranking System ("HRS"), which EPA promulgated as Appendix A of 40 CFR Part 300. On December 14, 1990 (55 FR 51532), EPA promulgated revisions to the HRS partly in response to CERCLA section 105(c), added by SARA. The revised HRS evaluates four pathways: ground water, surface water, soil exposure, and air. The HRS serves as a screening device to evaluate the relative potential of uncontrolled hazardous substances to pose a threat to human health or the environment. As a matter of Agency policy, those sites that score 28.50 or greater on the HRS are eligible for the NPL.

Under a second mechanism for adding sites to the NPL, each State may designate a single site as its top priority, regardless of the HRS score. This mechanism, provided by the NCP at 40 CFR 300.425(c)(2), requires that, to the extent practicable, the NPL include within the 100 highest priorities, one facility designated by each State representing the greatest danger to public health, welfare, or the environment among known facilities in the State.

The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be listed regardless of their HRS score, if all of the following conditions are met:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service has issued a health advisory that recommends dissociation of individuals from the release.
- EPA determines that the release poses a significant threat to public health.
- EPA anticipates that it will be more cost-effective to use its remedial authority (available only at NPL sites) than to use its removal authority to respond to the release.

EPA promulgated an original NPL of 406 sites on September 8, 1983 (48 FR 40658). The NPL has been expanded since then, most recently on April 25, 1995 (60 FR 20335).

The NPL includes two sections, one of sites that are evaluated and cleaned up by EPA (the "General Superfund Section"), and one of sites being addressed by other Federal agencies (the "Federal Facilities Section"). Under Executive Order 12580 (52 FR 2923, January 29, 1987) and CERCLA section 120, each Federal agency is responsible for carrying out most response actions at facilities under its own jurisdiction, custody, or control, although EPA is responsible for preparing an HRS score and determining whether the facility is placed on the NPL. EPA is not the lead agency at these sites, and its role at such sites is accordingly less extensive than at other sites. The Federal Facilities Section includes those facilities at which EPA is not the lead agency.

Deletions/Cleanups

EPA may delete sites from the NPL where no further response is appropriate under Superfund, as explained in the NCP at 40 CFR 300.425(e) (55 FR 8845, March 8, 1990). To date, the Agency has deleted 77 sites from the General Superfund Section of the NPL. EPA also has developed an NPL construction completion list ("CCL") to simplify its system of categorizing sites and to better communicate the successful completion of cleanup activities (58 FR 12142, March 2, 1993). Sites qualify for the CCL when:

(1) any necessary physical construction is complete, whether or not final cleanup levels or other requirements have been achieved;

(2) EPA has determined that the response action should be limited to measures that do not involve construction (e.g., institutional controls); or

(3) the site qualifies for deletion from the NPL.

Inclusion of a site on the CCL has no legal significance.

In addition to the 76 sites that have been deleted from the NPL because they have been cleaned up (the Waste Research and Reclamation site was deleted based on deferral to another program and is not considered cleaned up), an additional 216 sites are also in the NPL CCL, all but four from the General Superfund Section. Thus, as of May 1995, the CCL consists of 292 sites.

Cleanups at sites on the NPL do not reflect the total picture of Superfund accomplishments. As of March 31, 1995, EPA had conducted 661 removal actions at NPL sites, and 2,413 removal actions at non-NPL sites. Information on removals is available from the Superfund hotline.

Action In This Notice

This final rule adds 1 site, Southern Shipbuilding in Slidell, Louisiana, to the General Superfund Section of the NPL. This site is added to the NPL based on an HRS score of 28.5 or greater. This actions result in an NPL of 1,237 sites, 1,082 of them in the General Superfund Section and 155 of them in the Federal Facilities Section. On April 25, 1995 (59 FR 65206) EPA published the most recent complete list of NPL sites to which the Southern Shipbuilding site is being added. An additional 49 sites remain proposed, 42 in the General Superfund Section and 7 in the Federal Facilities Section, and are awaiting final Agency action. Final and proposed sites now total 1,286.

Clarification

The full name of the Fremont National Forest/White King and Lucky Lass Uranium Mines (USDA) site, which was added to the NPL on April 25, 1995 (60 FR 20330), was inadvertantly shortened in EPA's **Federal Register** notice. For the record, the full name of this site is Fremont National Forest/White King and Lucky Lass Uranium Mines (USDA). However, this name will continue to appear in its shortened version in Appendix B to part 300—The National Priorities List and other automated public information lists due to space limitations within the NPL database.

Information Available to the Public

The Headquarters and Regional public dockets for the NPL contain documents relating to the evaluation and scoring of the site in this final rule. The dockets are available for viewing, by appointment only, after the appearance of this action. The hours of operation for the Headquarters docket are from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Please contact the Regional Docket for hours.

Addresses and phone numbers for the Headquarters and Regional dockets follow:

Docket Coordinator, Headquarters, U.S. EPA CERCLA Docket Office, Crystal Gateway #1, 12th Floor, 1235 Jefferson Davis Highway, Arlington, VA 703/603–8917

(Please note this is viewing address only. Do not mail documents to this address.)

Bart Canellas, Region 6, U.S. EPA, 1445 Ross Avenue, Mail Code 6H–MA, Dallas, TX 75202–2733, 214/655–6740

The Headquarters docket for this rule contains HRS score sheets for the final site; the Documentation Record for the site describing the information used to compute the score; pertinent information regarding statutory requirements or EPA listing policies that affect the site; and a list of documents referenced in the Documentation Record. The Headquarters docket also contains comments received; and the Agency's responses to those comments. The Agency's responses are contained in the "Support Document for the Revised National Priorities List Final Rule—May 1995."

A general discussion of the statutory requirements affecting NPL listing, the purpose and implementation of the NPL, the economic impacts of NPL listing, and the analysis required under the Regulatory Flexibility Act is included as part of the Headquarters rulemaking docket in the "Additional Information" document.

The Regional docket contains all the information in the Headquarters docket, plus the actual reference documents containing the data principally relied

upon by EPA in calculating or evaluating the HRS score for the site. These reference documents are available only in the Regional docket.

Interested parties may view documents, by appointment only, in the Headquarters or Regional Dockets, or copies may be requested from the Headquarters or Regional Dockets. An informal written request, rather than a formal request under the Freedom of Information Act, should be the ordinary procedure for obtaining copies of any of these documents. If you wish to obtain documents by mail from EPA Headquarters Docket, the mailing address is as follows: Docket Coordinator, Headquarters, U.S. EPA CERCLA Docket Office (Mail Code 5201G), 1401 M Street, SW., Washington, DC 20460, 703/603–8917. (Please note this is the mailing address only. If you wish to visit the HQ Docket to view documents, see viewing address above.)

II. Contents of This Action

This action promulgates a final rule to add 1 site to the General Superfund Section of the NPL. This site is Southern Shipbuilding in Slidell, Louisiana which was proposed on February 13, 1995 in NPL Proposal #18 (60 FR 8212) based on an HRS score of 28.5 or greater. The group number identified for this site is 5/6. Group numbers are determined by arranging the NPL by rank and dividing it into groups of 50 sites. For example, a site in Group 4 has a score that falls within the range of scores covered by the fourth group of 50 sites on the NPL.

Public Comments

EPA reviewed all comments received on the site included in this notice. The formal comment period ended on April 14, 1995.

EPA's response to site-specific public comments and explanations of any score changes made as a result of such comments are addressed in the "Support Document for the Revised National Priorities List Final Rule—May 1995."

III. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

IV. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a written statement to accompany any rules that have "Federal mandates" that may result in the expenditure by the private sector of $100 million or more in any one year. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objective of such a rule and that is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly and uniquely affected by the rule.

The Unfunded Mandates Act defines a "Federal private sector mandate" for regulatory purposes as one that, among other things, "would impose an enforceable duty upon the private sector." EPA finds that today's listing decision does not impose any enforceable duties upon the private sector since inclusion of a site on the NPL does not itself impose any costs. It does not establish that EPA necessarily will undertake remedial action, nor does it require any action by a private party or determine its liability for site response costs. Costs that arise out of site responses result from site-by-site decisions about what actions to take, not directly from the act of listing itself. Therefore, today's rulemaking is not a "Federal private sector mandate" and is not subject to the requirements of sections 202 or 205 of the Unfunded Mandates Act. As to Section 203 of this Act, EPA finds that small governments will not be significantly and uniquely affected by this rulemaking.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous materials, Intergovernmental relations, Natural resources, Oil pollution, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

Dated: May 22, 1995.

Elliott P. Laws,

Assistant Administrator, Office of Solid Waste and Emergency Response.

40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for Part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

2. Appendix B to Part 300 is amended by adding the Southern Shipbuilding site in Slidell, Louisiana, to Table 1, General Superfund Section, in alphabetical order.

[FR Doc. 95–12995 Filed 5–25–95; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

45 CFR Part 60

RIN 0905–AE53

National Practitioner Data Bank for Adverse Information on Physicians and Other Health Care Practitioners; Payment of Fees

AGENCY: Health Resources and Services Administration, PHS, HHS.

ACTION: Final rule.

SUMMARY: This final rule amends the existing regulations governing the National Practitioner Data Bank for Adverse Information on Physicians and Other Health Care Practitioners (the Data Bank) authorizing the reporting and release of information concerning: Payments made for the benefit of physicians, dentists, and other health care practitioners as a result of medical malpractice actions or claims; and certain adverse actions taken regarding the licenses and clinical privileges of physicians and dentists. This final rule removes restrictions on allowed methods of payment for Data Bank fees.

EFFECTIVE DATE: This regulation is effective May 26, 1995.

FOR FURTHER INFORMATION CONTACT: Thomas C. Croft, Director, Division of Quality Assurance, Bureau of Health Professions, Health Resources and Services Administration, Room 8A–55, 5600 Fishers Lane, Rockville, Maryland 20857; telephone number (301) 443–2300.

SUPPLEMENTARY INFORMATION: This final rule amends the existing regulations for the National Practitioner Data Bank for Adverse Information on Physicians and Other Health Care Practitioners under 45 CFR part 60. Section 60.12(c)(1) and (2) currently state that requests to the Data Bank constitute an agreement to pay the established user fee and that the billing of such use will be made during established intervals. Section 60.12(c)(3) currently states that Data Bank fees must be paid by check or money order made payable to the U.S. Department of Health and Human Services. The Department has removed these regulatory restrictions on allowable methods of payment to permit the Secretary to announce alternate payment methods through periodic notice in the **Federal Register**. Paragraph (c)(4) is being redesignated as (c) and revised to allow the Data Bank the flexibility: (1) to streamline and automate its approach to fee collection; and (2) to offer a greater variety of payment options to its users, thereby improving customer service. Paragraphs (c)(1), (2), and (3) are deleted.

Justification for Omitting Notice of Proposed Rulemaking

Since these amendments to the Data Bank regulations are of a technical nature and only amend the regulations to reflect the fee payment practices of the Data Bank, the Secretary has determined, pursuant to 5 U.S.C. 553 and departmental policy that it is unnecessary and impractical to follow proposed rulemaking procedures or to delay the effective data of these regulations.

Economic Impact

Executive Order 12866 requires that all regulations reflect consideration of alternatives, of costs, of benefits, or incentives, of equity, and of available information. Regulations must meet certain standards, such as avoiding unnecessary burden. Regulations which are "significant" because of cost, adverse effects on the economy, inconsistency with other agency actions, effects on the budget, or novel legal or policy issue, require special analysis.

The Department believes that the resources required to implement the requirements in these regulations are minimal. This final rule simply removes restrictions on the number of options available to users of the Data Bank. Therefore, in accordance with the Regulatory Flexibility Act of 1980, the Secretary certifies that these regulations will not have a significant impact on a substantial number of small entities. For the same reasons, the Secretary has also determined that this is not a "significant" rule under Executive Order 12866.

Paperwork Reduction Action of 1980

These amendments do not affect the recordkeeping or reporting requirements in the existing regulations for the National Practitioner Data Bank for Adverse Information on Physicians and Other Health Care Practitioners.

List of Subjects in 45 CFR Part 60

Health professions, Insurance companies, Malpractice, Reporting and recordkeeping requirements.

Dated: April 11, 1995.

Philip R. Lee,

Assistant Secretary for Health.

Approved: May 19, 1995.

Donna E. Shalala,

Secretary.

Accordingly, 45 CFR part 60 is amended as set forth below:

PART 60— NATIONAL PRACTITIONER DATA BANK FOR ADVERSE INFORMATION PHYSICIANS AND OTHER HEALTH CARE PRACTITIONERS

1. The authority citation for 45 CFR part 60 continues to read as follows:

Authority: Secs. 401–432 of the Health Care Quality Improvement Act of 1986, Pub. L. 99–660, 100 Stat. 3784–3794, as amended by section 402 of Pub. L. 100–177, 101 Stat. 1007–1008 (42 U.S.C. 11101–11152.)

2. Section 60.12 is amended by revising paragraph (c) to read as follows:

§ 60.12 Fees applicable to requests for information.

* * * * *

(c) *Assessing and collecting fees.* The Secretary will announce through notice in the **Federal Register** from time to time the methods of payment of Data Bank fees. In determining these methods, the Secretary will consider efficiency, effectiveness, and convenience for the Data Bank users and the Department. Methods may include: credit card; electronic fund transfer; check; and money order.

[FR Doc. 95–12907 Filed 5–25–95; 8:45 am]

BILLING CODE 4160–15–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 94–51; RM–8466]

Radio Broadcasting Services; Mamou and Jonesville, LA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission adopts a petition for reconsideration filed by Simla B. Ellis, d/b/a SoTo Broadcasting, permittee of Station KAHK(FM), Channel 266A, Mamou, Louisiana. The Commission substitutes Channel 266C3 for Channel 266A at Mamou, Louisiana, and modifies the construction permit of Station KAHK(FM) to specify operation on the higher powered channel. To accommodate the upgrade at Mamou, the Commission also substitutes Channel 286A for vacant Channel 266A at Jonesville, Louisiana. *See* 59 FR 51153, October 7, 1994. Both channels can be allotted in compliance with the Commission's minimum distance separation requirements. Channel 266C3 at Mamou has a site restriction of 12.2 kilometers (7.6 miles) east to accommodate Ellis' desired site. The coordinates for Channel 266C3 at Mamou are North Latitude 30–39–42 and West Longitude 92–17–52. The coordinates for Channel 286A at Jonesville are North Latitude 31–35–38 and West Longitude 91–45–23.

With this action, this proceeding is terminated.

EFFECTIVE DATE: July 7, 1995.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Report*, MM Docket No. 94–51, adopted May 11, 1995, and released May 23, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: Sec. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Louisiana, is amended by removing Channel 266A and adding Channel 266C3 at Mamou; and by removing Channel 266A and adding Channel 286A at Jonesville.

Federal Communications Commission.

Douglas W. Webbink,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–12959 Filed 5–25–95; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 229

[Docket No. LI–7; Notice 6]

RIN 2130–AA53

Event Recorders

AGENCY: Department of Transportation (DOT), Federal Railroad Administration (FRA).

ACTION: Final rule; response to petitions for reconsideration.

SUMMARY: In response to petitions for reconsideration, FRA is amending its regulation on event recorders. FRA is removing the requirement that, following an accident reportable to the National Transportation Safety Board, the railroad must refrain from extracting or analyzing event recorder data for a period of 8 hours or until that agency notifies the railroad that it will not conduct an investigation, whichever comes first. FRA is also amending the definition of "lead locomotive" to provide greater latitude for the location of event recorders and is simplifying the requirements for removing event recorders from service.

DATES: This rule is effective May 26, 1995. The final rule, as published in the **Federal Register** for July 8, 1993 (58 FR 36605), was effective November 5, 1993. The date for compliance with the duty to have an in-service event recorder in the lead locomotive of any train operated faster than 30 miles per hour (§ 229.135(a)) is May 5, 1995.

FURTHER INFORMATION CONTACT: Rolf Mowatt-Larssen, Chief, Motive Power and Equipment Division, Office of Safety Enforcement, RRS–14, Room 8326, Federal Railroad Administration, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590 (telephone 202–366–4094), or Thomas A. Phemister, Trial Attorney, Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street SW., Washington, DC 20590 (telephone 202–366–0635).

SUPPLEMENTARY INFORMATION: On July 8, 1993, FRA published a Final Rule in this docket in the **Federal Register**. 58 FR 36605. That rule requires trains operated at speeds in excess of 30 miles per hour to be equipped with an event recorder in the lead locomotive, requires maintenance of event recorders, and requires post-accident security for data in the recorder. FRA received petitions for reconsideration and requests for clarification from several parties. This notice is the agency's response, arranged by topic.

Compliance Date

The original publication of this rule included a mistakenly calculated date for compliance with the duty to equip the lead locomotive on a train operated faster than 30 miles per hour. A correction was published in the **Federal Register** for July 28, 1993 (58 FR 40468), but that correction has not been published in the bound volume of the Code of Federal Regulations. The correct date for compliance with the duty to equip locomotives was 18 months after the effective date of the final rule in this docket, or May 5, 1995. This notice rewrites § 229.135(a) to include that date.

Post-Accident Data Security

On July 8, 1993, FRA published a Final Rule in this docket in the **Federal Register**. 58 FR 36605. That rule, at § 229.135(d)(1), stated

Accidents Reportable to the National Transportation Safety Board. If any locomotive equipped with an event recorder is involved in an accident that is required to be reported to the National Transportation Safety Board (see 49 CFR Part 840), the railroad using the locomotive shall make no attempt, except by the direction of a representative of the Board, or as may be necessary to preserve the data from destruction, to extract or analyze the recorded data until 8 hours have passed from the time the accident is reported to the National Response Center, or until the Board declares that it will not conduct an investigation of the accident, whichever comes first. If, within the 8- hour period, the Board notifies the railroad that an investigation will be conducted, the railroad will be governed by the Board's instructions; if the Board notifies the railroad that an investigation will not be conducted, or if the Board fails to give notification within the 8-hour period, the railroad may extract the data consistent with the preservation requirements of paragraph (d)(2) of this section.

FRA adopted this requirement in consideration of the comments made in writing in response to the Advance Notice of Proposed Rulemaking (November 23, 1988, 53 FR 47557) and the Notice of Proposed Rulemaking (June 18, 1991, 56 FR 27931) and at the hearings held as part of both earlier notices and after consulting with the National Transportation Safety Board (Safety Board). It was FRA's understanding that this provision advanced railroad transportation safety and met the Safety Board's needs.

The Association of American Railroads (AAR), in its petition for reconsideration, argues that FRA does not have the power to issue § 229.135(d)(1) and that, if it has the power, it has exercised that power unlawfully. AAR also urges FRA to facilitate the railroads' needs for access to event recorder data as soon as possible after an accident. Finally, AAR states its opinion that FRA's actions in this regard are "not a good idea" as a matter of policy.

Union Pacific Railroad Company (UP) also included the issue of post-accident data security in its petition for reconsideration, arguing that railroads should have immediate access to event recorder data at all times. UP buttresses its argument by stating that railroads need event recorder data to facilitate their own accident investigations. Quick access to event recorder data may, for instance, lead to immediate operational improvements or may aid in pinpointing physical evidence that needs to be examined before the track is restored to service or, presumably, before rail equipment is removed from the scene.

Canadian Pacific Legal Services, filing a petition for reconsideration on behalf of CP Rail System (CPRS), echoes the need to have immediate access to event recorder data in the wake of an accident.

While the Safety Board both urged and endorsed the data security rule quoted above, it has re-evaluated this language in light of its own Notice of Proposed Rulemaking, published June 19, 1991 (56 FR 28132). In a letter to FRA dated October 1, 1993, the Board said that it believes that the language of § 229.135(d)(1) "may place a regulatory burden on both the Safety Board and the railroad industry that goes beyond that required for the efficient discharge of the Safety Board's accident investigation program." In light of a reassessment of FRA's rule and considering the comments filed in response to its own notice, the Board has decided to explore a revision to its earlier proposal and has requested that FRA withdraw § 229.135(d)(1).

FRA finds no merit in AAR's arguments that FRA does not have the power to act as it did or that it exercised that power unlawfully. Because FRA is granting the relief sought by AAR and others, this issue need not be explored further, but AAR's statement about FRA's "power" misses the impact of the Federal railroad safety laws, and the delegations under them. These enactments, for instance, extend to FRA the authority to prescribe regulations for every area of railroad safety (49 U.S.C. 20103). Certainly post-accident data security is one such area.

FRA, however, agrees with railroads' need for early access to event recorder data and believes that the current

§ 229.135(d)(2) will provide the data security it needs while at the same time facilitating the railroad's own legitimate accident investigation priorities. For the reasons stated, FRA grants the petitions for reconsideration insofar as they request withdrawal of § 229.135(d)(1) and amends the regulations accordingly. The language now in § 229.135(d)(2) will survive as a new paragraph (d)(1) and the explanation of the relation of this regulation to other laws, now in paragraph (d)(3), will be preserved as a new § 229.135(d)(2).

Lead Locomotive

The final rule, at § 229.135(a), states:

(a) *Duty to equip.* Effective [insert a date 18 months after the effective date of a final rule in this docket], and except as provided in paragraph (b) of this section, any train operated faster than 30 miles per hour shall have an in-service event recorder in the lead locomotive. For the purpose of this section "train" includes a locomotive or group of locomotives with or without cars and "lead locomotive" means the locomotive from whose cab the crew is operating the train and, when cab control locomotives and/or MU locomotives are coupled together, is the first locomotive proceeding in the direction of movement.

Several interested parties, including the Association of American Railroads (AAR), the American Public Transit Association (APTA), Union Pacific Railroad Company (UP), Metro-North Commuter Railroad Company (MN), and The Long Island Rail Road Company (LIRR) requested FRA to clarify the term "lead locomotive" so that it would accommodate the operations of carriers using cab control cars, married pairs of cars, and other similar configurations.

FRA stated in the preamble (58 FR 36610–11) that the agency "has determined that the recorder will be most helpful if it records the events happening in the locomotive occupied by the engineer, that is, the lead locomotive." FRA also noted that it was

> Aware that push-pull commuter operations don't have a traditional 'locomotive' at the lead in one direction and that this may present problems in some cases. The ideal solution would be for the actions taken at the engineer's stand in the control car to be recorded on the device in the locomotive.

FRA's primary concern is still as it was when the preamble was written: to provide the best data for analysis, the recorder must capture what the engineer sees and does.

In light of the submissions since the final rule was published, FRA recognizes that its definition of "lead locomotive" is unnecessarily geographically strict. The definition in the current § 229.135(a) will be amended by adding the following sentence:

> The duty to equip the lead locomotive may be satisfied with an event recorder located elsewhere provided that such event recorder monitors and records the required data as though it were located in the lead locomotive.

Notice of Equipped Status/Removal from Service

Several parties requested clarification on the proper means for indicating that a locomotive is equipped with an event recorder or that the recorder is, or has been taken, out of service. These parties also asked whether a locomotive, once equipped with an event recorder, must always remain equipped with an event recorder.

FRA's final event recorder rule does not impose any burden to keep event recorders on locomotives merely because they were once so equipped. The rule very clearly mandates a recorder on the lead locomotive of all trains operated faster than 30 miles per hour. Thus, a railroad deciding to limit certain locomotives to slow speed service, where they would not operate faster than 30 miles per hour, is permitted to remove the recorders from that equipment.

The current rule contains no specific requirement that an *equipped* locomotive be marked in any way. FRA is aware that there are many ways to tell if a locomotive is recorder-equipped, from the physical presence of an apparatus to the "Canadian" method, in which the locomotive is limited so that it *cannot* assume the lead position unless the recorder is operative according to its own self-test. As noted in the next section on testing and maintaining recorders, block 15, item 5 of the cab card (FRA Form 6180–49A) will note the successful completion of periodic testing and maintenance on the event recorder. FRA believes that the best way to be certain that a locomotive has an event recorder is to note that fact on the reverse side of the cab card, under the "**REMARKS:**" section. Section 229.135(a) is amended to require annotating the cab card when a locomotive is equipped with an event recorder unless the recorder is designed to prohibit the locomotive from assuming the lead position if it is not functioning.

The current rule does, however, contain a requirement at § 229.135(c) that an out-of-service recorder be tagged, and the tag described in § 229.9(a)(3) is given as an example of a proper method of marking a malfunctioning recorder. While "tagging" may be suitable for older recorders, it does not serve a purpose where the recorder is buried within the electrical panel or fully integrated into the electrical system. Since the final rule was issued, it has become clear that more flexibility is necessary to accommodate different types of event recorders. Accordingly, FRA is amending current § 229.135(c) so that annotating the cab card (Form FRA F6180–49A), on the reverse side, under "**REMARKS:**" becomes the method of noting the out-of-service status of a recorder. Part 229 requires each locomotive to have a cab card to record the results of periodic inspections so there will be no burden to apply an extra tag. As a matter of enforcement policy, FRA will instruct its inspectors to look on the cab card first for notes about the event recorder status of a locomotive.

Once equipped, always equipped? The inquiries about departure testing at the conclusion of the periodic inspection also raise the issue about whether or not a locomotive, equipped with an event recorder, must always remain equipped. The primary requirement of the rule, as it relates to equipment, is that the lead locomotive of a train operated faster than 30 miles per hour must have an event recorder (from and after May 5, 1995). Section 21 of the Rail Safety Improvement Act of 1988 (RSIA), Pub.L. 100–342, 102 Stat. 624 (June 22, 1988), now codified at 49 U.S.C. 20138, prescribed rules "to prohibit the willful tampering with, or disabling of * * * railroad safety or operational monitoring devices," including event recorders. In its final rule proscribing tampering with safety devices, published February 3, 1989 (54 FR 5485) (the rules appear at Subpart D of Part 218), FRA required installed event recorders to be operative unless the locomotive was being hauled dead-in-tow or unless the event recorder became inoperative enroute, in which case FRA imposed a notification requirement similar to that used for certain signal-related equipment that controls or restricts train operations. The AAR filed a petition for reconsideration in that Docket. The final rule in this docket responded in part to that petition.

While this rule requires event recorders to be in operating order at the time the locomotive is cleared from the quarterly inspection, these devices, like any mechanical or electronic device, are subject to random failures. FRA sees no safety benefit in severely restricting the operation of a locomotive costing upwards of a million dollars because of the failure of a fifty-dollar part in a blackbox. The final rule in this docket permits operation of a locomotive with

an event recorder known to have failed, but it cannot be the sole power, nor the lead locomotive, on a train operated faster than 30 miles per hour. Section 229.135(c) is amended to read:

(c) *Removal from Service.* A railroad may remove an event recorder from service, and, if a railroad knows that an event recorder is not monitoring or recording the data specified in § 229.5(g), shall remove the event recorder from service. When a railroad removes an event recorder from service, a qualified person shall cause to be recorded the date the device was removed from service on Form FRA F6180–49A, under the REMARKS section. An event recorder designed to allow the locomotive to assume the lead position only if the recorder is properly functioning is not required to have its removal from service noted on Form FRA F6180–49A.

This rule will ensure the integrity of the periodic inspection because, when the person conducting the inspection on electrical equipment signs the cab card, that signature will attest to the fact that the event recorder is in working order. At the same time, the rule will permit railroads, for operational reasons of their own, to have event recorders in fewer than all of their locomotives. Simply put, if a locomotive is equipped with an event recorder, the recorder must be in operating order before the locomotive is released from the periodic inspection. If the flexibility FRA has designed into this rule is abused by the railroads, FRA will not hesitate to impose a stricter standard.

Testing and Maintaining Recorders

The current regulations require inspection at the quarterly intervals specified in § 229.25. The recorder must be tested prior to performing any maintenance work and, if it fails, must be repaired and tested until a subsequent test is successful. A record of the inspection and test, including a copy of the data verification results, must be maintained until the next quarterly interval.

APTA, the Southeast Pennsylvania Transit Authority (SEPTA), AAR, Canadian National Railways (CN), and CP Rail System expressed concern about these requirements as they relate to micro-processor based event recorders. Such recorders, and they appear to be the standard on Canadian locomotives, constantly self-test and, if a self-test fails, force a penalty brake application on the locomotive until it is taken out of the lead position. For these recorders, it is argued, a separate test in the shop conducting the periodic inspection is neither necessary nor productive. FRA agrees and is amending the requirements at § 229.25(e)(2) to count a self-testing micro-processor event recorder that has not indicated a failure as having "passed" the pre-maintenance inspection requirement.

Several interested parties have suggested that the results of the periodic inspections be simply noted on the cab card. While the *fact* that a recorder has been successfully inspected, tested, and maintained is noted on the cab card (FRA Form 6180–49A, Block 15, Item Code 5), the event recorder regulation also calls for a copy of the "data verification results." With a magnetic tape machine, the "results" are, physically, the printout of the tape reading; similarly with a micro-processor, the "results" are also a readable representation of what the machine has recorded. FRA agrees with those who urge the electronic filing of the "data verification results" and notes that the rule does not limit the means by which the results "shall be maintained." Electronic filing is permissible, but FRA requires that the electronic filing be reduced to writing upon demand.

Events To Be Recorded

The definition of an event recorder, at § 229.5(g), is of a device

That monitors and records data on train speed, direction of motion, time, distance, throttle position, brake applications and operations (including train brake, independent brake, and, if so equipped, dynamic brake applications and operations) and, where the locomotive is so equipped, cab signal aspect(s), over the most recent 48 hours of operation of the electrical system of the locomotive on which it is installed.

Derived data: A device that "monitors and records data on" various aspects of the operation of a train does not necessarily have to record data on each separate aspect of operations. "Train speed," "time," and "distance," for instance, are mutually dependent and any one of these parameters can be derived from the other two. The event recorder rule does not prohibit derived data, and whether an event is recorded directly or derived is largely a matter left to the railroad, so long as the calculated or derived data offer the same accuracy, reliability and precision as data recorded directly.

Throttle position/brake applications: Several interested parties requested clarification about the requirement to record throttle position and brake application and operations. In their powered phase of operations, diesel-electric locomotive event recorders typically capture several stages of throttle position, "idle" and notches 1 and 2 as a group and notches 3–8 individually. The heavy electric commuter railroads have referred to a 5-position controller on multiple-unit (MU) cars; while this has fewer positions than that of a diesel-electric locomotive, an event recorder that captured each of these positions would comply with the rule. A device that monitored and recorded only one position of forward motion would not. In the braking phase of operations, current diesel-electric locomotive recorders monitor dynamic brake set up and brake pipe pressure reductions if different amounts, depending on the railroad and the event recorder. Independent brake applications are, typically, recorded as "on/off" with 15 psi as the dividing line. An MU locomotive event recorder that records degrees or steps of braking power, and that shows the on/off application of the independent brake, complies with the event recorder rule. FRA does not see a problem just because certain heavy electric commuter equipment has "blended brakes," in which both air and dynamic braking occur automatically with the movement of a single lever.

Traction motor current/dynamic braking current: APTA and CN inquired about the recording of traction motor current and dynamic brake current. The rule does not require the recording of traction motor current in either the powered or the dynamic brake phase, although, on some commuter equipment, it is one way to provide the required data on brake operations and equivalent throttle position or motoring mode.

Direction of motion: Section 229.5(g) lists "direction of motion" as a required parameter. Unless the information can be derived from other data, it must be directly recorded. FRA notes that, in the typical freight locomotive, the position of the reverser handle is a recorded parameter.

The "48-hour" rule: Several parties asked FRA to reduce the interval for recording data. The regulation, at § 229.5(g), requires monitoring and recording data "over the most recent 48 hours of operation of the electrical system of the locomotive." There is an exception, not relevant here, for recorders installed prior to the effective date of the rule. Several types of recorders capture data at set intervals or whenever the operations of the locomotive change. A road locomotive used in switching, for instance, has frequent changes in direction, speed, and brake system actuation. The concern of those pushing for a shorter interval is that operations like switching will overtax the memory capacity of a recorder. FRA chose the 48-hour rule to be on the safe side of ensuring capture of the initial terminal brake test.

Information from the initial terminal test proved important in the investigation of the May 12, 1989, accident at San Bernardino, California, as discussed in the preamble to the final rule. (58 FR 36606). Other than the initially granted grandfather rights, FRA is not aware of any reason with an equivalent level of safety to reduce the required recording duration.

Cab signals—Northeast Corridor 9-aspect system: Cab signals, for locomotives so equipped, will continue to be a required parameter, including the new 9-aspect system on the Northeast Corridor.

Cab signals-joint operations: Several railroads operate over joint territory and use each other"s cab signals. An earlier practice was to marshall locomotives so that a unit belonging to the home railroad was always in the lead or was swapped into the lead at the border between the railroads. This method of operating allowed the "home" locomotive to respond to the signals controlling its operation. Union Pacific Railroad (UP) and Chicago and Northwestern Railway Company (CNW) currently conduct joint operations over hundreds of miles of each other"s cab signal territory. Their power pool arrangements are such that a locomotive of either railroad may be in the lead and it would be detrimental to service to change lead locomotives at the property line. The problem is that the two carriers have incompatible cab signal systems, a condition they have mitigated by having dual cab signals in the pooled locomotives. Either railroad"s locomotives can read the signals of the other, but their event recorders are not equipped with the capacity to record other than the signals of the home road. The rationale for requiring cab signal recording was that it was a vital part of accident investigation and that, because the signal was already on board, it would not be overly difficult to record it. That rationale is still valid, and FRA does not contemplate amending this portion of the event recorder rule. UP and CNW are welcome to petition for a waiver, or for an extension of time to expand the recording capacity of their event recorders, but this notice makes no change in the requirement as published.

Cab signals—separate recorders: Delaware and Hudson Railway Company operates a small number of locomotives with cab signal equipment. That equipment has a built-in device that records, in real time, date, speed, cab signal aspects, distance, and the status of the automatic equipment test. Proprietary software is used to download this information into a portable computer. This equipment complies with the event recorder rule, provided that the two recordings can be synchronized with a common parameter.

Speed

APTA requested clarification on the "over 30 miles per hour" parameter for requiring recorders; does it, for instance, exclude trains that are restricted by a railroad's operating rules and/or policy to speeds of 30 miles per hour or less? FRA does not restrict the methods railroads use to set the speeds of the trains they operate. Whether a train is restricted to 30 miles per hour or less by the class of track on which it operates or by company policy is immaterial. Effective May 5, 1995, if a train is operated faster than 30 miles per hour, it must have an event recorder in the lead locomotive—slower than that, the requirement does not apply.

Accuracy

Several parties requested clarification on accuracy and data resolution. FRA believes that accuracy, together with refinements in sampling intervals, are issues for future activity. As the agency said in the preamble to the final rule (58 FR 36609),

Some commenters raised issues about the recorder's sampling intervals and sampling accuracy. FRA certainly expects that event recorders will be as accurate as present standards for speed indicators and for air gauges, but the agency realizes that more developmental work needs to be done in this area. FRA has decided not to further delay the requirement to have event recorders on trains and will postpone for now standards that would require resolution of technological issues that are intertwined with the extended development of solid state recorders and with recommendations that event recorders be standardized as to size, location, and crash worthiness.

Event Recorder Maintenance

Remote inspection: Kansas City Southern (KCS), D&H, and Soo Line requested clarification of and relief from the blackbox maintenance rules. Some of their locomotives are maintained at facilities without the equipment to read and analyze the data tapes from the recorders, and they seek to perform the recorder pre-maintenance inspection at a location remote from the shop where the rest of the periodic inspection work is performed. The rule does not specify where periodic recorder maintenance must be done, but only that it be performed every periodic inspection. The operative principles are (1) locomotives shall not leave the periodic inspection point with an inoperative event recorder—unless the cab card is annotated to show the locomotive as "unequipped," (2) testing of recorders must precede maintenance work on them, and (3) trains operated over 30 miles per hour must have an in-service event recorder in the lead locomotive. In order to provide necessary flexibility, FRA will consider an event recorder test done up to 5 calendar days prior to the periodic inspection as complying with the requirements of this rule. If a railroad finds that it cannot complete testing and maintenance on an event recorder prior to the completion of the periodic inspection, it has the option of taking the recorder out of service and noting that fact on the cab card, following procedures allowed in § 229.135(c). FRA had been requested to allow a 5-day "grace" period—before or after the periodic inspection— for event recorder testing and maintenance where data analysis and/or recorder repair took place other than at the facility performing the period inspection. The agency understands the practical problems associated with providing every point performing periodic inspections with the sophisticated electronic equipment necessary to test and maintain event recorders. At the same time, FRA must maintain the integrity of its periodic inspection requirements. Section 229.23(d) has not been amended by this rule. The person conducting an inspection signs the card and that person's supervisor certifies that the work was done. In the case of event recorders, as noted earlier, the fact that a recorder has been successfully inspected, tested, and maintained is noted on the cab card (FRA Form 6180–49A, Block 15, Item Code 5). This means that a locomotive can depart the periodic inspection in one of three ways: without an event recorder, with a working event recorder, or with an event recorder properly taken out of service.

Ninety percent effective: In the preamble to the final rule, FRA stated:

FRA has no desire to create unnecessary maintenance burdens on the railroads on the one hand, but, on the other, it cannot condone event recorders which fail for lack of effective maintenance. Testimony and comments by representatives of the railroads and of the suppliers demonstrate agreement that a properly maintained recorder will operate from one quarterly inspection to the next without failure, virtually all of the time. The final rule recognizes what industry has said and, accordingly, requires event recorders to be maintained so well that 90 percent of them are still functioning as intended when they arrive at the quarterly inspection. If this level of performance cannot be met on a month-to-month basis, the final rule then requires maintenance

intervals and practices to be adjusted so that it can.

APTA asked if the "90 percent functional" requirement applied to all parameters recorded by a particular carrier's blackbox or only to those required by the rule. Because the rule defines event recorders in relation to particular, required parameters, and because pre-maintenance testing requires "cycling all required parameters," the rule clearly aims only at maintaining the operability of the required parameters. A recorder with a non-functioning, but non-defining parameter may still be both an "in-service" recorder under § 229.5(l) and "fully functional" under § 229.25.

Post-periodic inspection departure testing: The event recorder rule, at § 229.25(e)(3), states:

(3) If this test does not reveal that the device is recording all the specified data and that all recordings are within the designed recording parameters, this fact shall be noted on the data verification result required to be maintained by this section and maintenance and testing shall be performed as necessary until a subsequent test is successful.

The blackboxes used by the Canadian railroads are interchangeable, and if one is discovered with a fault, it is swapped out for a known good one and the defective unit is returned to the factory for repair. (Part of the installation procedure includes entry into the computer of the identification of the locomotive on which the unit is located.) Section 229.25(e)(3) could be read as requiring successful repair of the unit *currently installed on the locomotive* before that locomotive departs the 92-day inspection. Such an interpretation strains against industry practices and injects an unnecessary layer of regulation into the system. FRA supports the change-out of bad units for good as part of the post-periodic departure check-out.

Removal from service—calendar day inspection: One of the commuter railroads asked if a locomotive found at the Monday morning inspection with the recorder "fault light" on can be used as a lead locomotive until Tuesday morning. Assuming the railroad complies with the requirements for taking a recorder out of service, § 229.135(b) allows the use of the locomotive as a lead unit until the next calendar day inspection.

New and Rebuilt Locomotives

AAR and The American Short Line Railroad Association (ASLRA) seek to have the event recorder requirements apply to new and rebuilt locomotives only. This is in accord with industry practices, and according to data presented by the railroads during the rulemaking process, 62 percent of Class I road locomotives are currently equipped with a qualifying event recorder. Based on industry information and testimony presented before the final rule was issued, 90 percent or more of the road trains are equipped with a recorder. While it is not always clear exactly what types of trains are being counted in these figures, it is clear that not all locomotives need to be equipped to achieve full compliance with a rule requiring event recorders on the lead locomotive of all trains operated faster than 30 miles per hour.

FRA considered the new/rebuilt option and concluded, in concert with safety, policy, and legal offices at the agency and Departmental level, that a rule requiring event recorders on new and rebuilt locomotives only does not reflect the best interpretation of the mandate in RSIA to equip trains where doing so will enhance safety. FRA believes that the option it chose, requiring event recorders on the lead locomotive of trains operated faster than 30 miles per hour, does satisfy the best interpretation of a statutory mandate to "issue such rules, regulations, standards, and orders as may be necessary to enhance safety by requiring that trains be equipped with event recorders * * *." (RSIA, section 21) The safety enhancements of recorders were fully discussed in the preamble to the final rule and need not be repeated here. In addition, FRA became aware, during the development of this rule, that several railroads believe the number of recorder equipped locomotives in their fleets will enable them to comply with a requirement for an event recorder in the lead locomotive of every train operated faster than 30 miles per hour. For these railroads, a requirement to equip each new or rebuilt locomotive with an event recorder would be an unjustified burden.

Another party to this proceeding, NTSB, urged that *all* locomotives in a train should be equipped (the ultimate result of equipping new and rebuilt locomotives) in order to permit accident investigators to determine the performance of each locomotive in the consist. In addition to the obvious cost implications of this suggestion, there are sound reasons for not attempting to mandate equipping all locomotives at this time. FRA knows that event recorder technology is likely to advance rapidly. Accordingly, rather than establish a rule that would eventually require an event recorder meeting today's standard on every locomotive (except those traveling so slowly they do not even need speed indicators), FRA believes that it is wise to wait to see whether the recorders themselves become significantly better than they now are. FRA believes that, as recorder technology advances, standards will be set for sampling intervals, the ranges of recorded parameters, the accuracy of recording, accident survivability, and data extraction protocols. As good as these ideas are, FRA cannot bring them into being simply by mandating them; FRA's option of equipping fast trains rather that all new and rebuilt locomotives will allow time to bring these concepts to mature and practical fruition.

In analyzing costs, FRA used the best data it had. As noted in its "Final Rule Regulatory Impact Analysis,"

Under normal railroad operations, where many trains are powered by multiple power units, 100% coverage is possible with significantly less than 100% of the units being equipped with a recorder.

There is a point, however, at which the efforts to manage, reassign, and shift power to assure full coverage may cost more that the installation of additional recorders. Unfortunately, FRA does not have the type of individualized, proprietary information necessary to analyze these trade-offs and arrive at the perfect cost-minimalization strategy. We have therefore employed what we believe to be a conservative approach in a deliberate effort not to understate costs.

"Event Recorders Final Rule Regulatory Impact Analysis," February 12, 1993, p. 9.

Finally, as FRA discussed in the preamble to the final rule (58 FR 36607), the primary safety benefit of event recorders lies in their use as a tool to diagnose train handling accidents, to continue building a knowledge base of accident causation, and, through sampling actual train movements, to evaluate changes in methods of train operation. Event recorders also provide a way to sample the train-handling ability of an engineer in a real-world environment. FRA has determined that event recorders enhance railroad safety. Whether they are used to aid accident analysis, to monitor locomotive engineers' performance, or to monitor equipment performance, event recorders provide data that are free from bias, free from the inconsistent powers of human observation, and free from the possible taint of self-interest. The data extracted from recorders can be played over and over as part of the analysis process without losing their consistency. Event recorders provide FRA with a growing pool of verifiable factual information about how trains are operated and what happens when they become part of an accident. Even the presence of event recorder data will not ensure the discovery of the cause of every accident nor eliminate all sources of controversy about causation, but as shown in the Southern Pacific's San Bernardino derailment, event recorder data can help direct the attention of an accident investigator to possible causes not at first suspected. In addition, by reducing the potential for bias from accident investigations, the data from event recorders can help pinpoint operational changes that may prevent the next accident.

FRA does not find merit in the argument that event recorders should only be required on new and rebuilt locomotives and rejects the requests filed by AAR and ASLRA to so amend the final rule.

Recording While Stationary

FRA's event recorder rule states, at § 229.5(g),

"Event recorder" means a device, designed to resist tampering, that monitors and records data on train speed, direction of motion, time, distance, throttle position, brake applications and operations (including train brake, independent brake, and, if so equipped, dynamic brake applications and operations) and, where the locomotive is so equipped, cab signal aspect(s), over the most recent 48 hours of operation of the electrical system of the locomotive on which it is installed. A device, designed to resist tampering, that monitors and records the specified data only when the locomotive is in motion shall be deemed to meet this definition provided the device was installed prior to November 5, 1993, and records the specified data for the last eight hours the locomotive was in motion.

CN is concerned about the "installed prior to * * *" language, because its present recorders record only while the locomotive is in motion but, because its recorders are interchangeable, a particular unit may be "installed" and "uninstalled" as necessary to keep an operating recorder on the locomotive in the lead. The purpose of the cut-off date was to prevent additional purchases of "motion only" recorders and to give railroads owning such recorders time to phase out these units in the normal course of business. FRA is aware that CN has embarked on a program to upgrade their recorders when factory maintenance is performed. Unless a pattern of abuse comes to FRA's attention, FRA sees no need to change its flexible approach: "motion only" event recorders in a carrier's service, whether in inventory or installed on a locomotive, as of November 5, 1993, are deemed to comply.

Extensions of Time

APTA said that "it would be helpful for * * * FRA to elaborate on some of the general criteria it expects to use and the minimum supporting documentation it expects to receive in considering * * *" requests for an extension of time to comply with the event recorder rule. Unfortunately, there is no cookbook recipe for a petition for waiver of a safety rule, other than as published in 49 CFR Part 211. Railroads seeking waivers are advised to state their real needs as clearly as possible and to carefully follow the procedures in §§ 211.7 and 211.9.

Regulatory Impact

This rule has been evaluated under Executive Order 12688 and the DOT policies and procedures. Although the original rule met the criteria for being a significant rule under those policies and procedures, these amendments are not considered significant since they either delete requirements concerning procedural matters or allow for greater flexibility in complying with the rule.

The economic impact of this change will be to reduce the cost of compliance with FRA regulations. That cost reduction will be of a minimal nature and does not alter FRA's original analysis of the costs and benefits associated with the basic rule. FRA certifies that this amendment will not have a significant impact on small entities. Similarly, this amendment will not alter the information collection requirements of this regulation; will have no identifiable environmental impact; and will have no effect on the states or the distribution of power and responsibilities among various levels of government.

As provided for in 5 U.S.C. 553(d), FRA finds that there is good cause for making this rule effective in less that 30 days from publication. Efforts to comply with certain requirements being deleted by this rule might generate an undue burden on the Safety Board and the railroad industry. Prompt amendment of the provision dealing with post-accident data security will avoid unwarranted confusion within the regulated community concerning their legal obligation in the event of an accident. The other amendments made by this notice recognize the enforcement policy of the agency.

List of Subjects in 49 CFR Part 229

Penalties, Railroad safety, Reporting and recordkeeping requirements.

The Rule

Therefore, in consideration of the foregoing, FRA amends Part 229, Chapter II, Subtitle B of Title 49, Code of Federal Regulations as follows:

PART 229—RAILROAD LOCOMOTIVE SAFETY STANDARDS

1. The authority citation for part 229 is revised to read as follows:

Authority: 49 U.S.C. Chapters 201, 207, and 213; 49 U.S.C. 103; Pub. L. 100–342; Pub. L. 102–365; Pub. L. 102–533; Pub. L. 103–272; 49 CFR 1.49 (c), (g), and (m).

2. By revising § 229.5(i) to read as follows:

§ 229.5 Definitions.

(i) *In-service event recorder* means an event recorder that was successfully tested as prescribed in § 229.25(e) and whose subsequent failure to operate as intended, if any, is not actually known by the railroad operating the locomotive on which it is installed.

* * * * *

3. By revising § 229.25(e)(2) to read as follows:

§ 229.25 Tests: every periodic inspection.

* * * * *

(e) * * *

(2) The event recorder shall be tested prior to performing any maintenance work on it. At a minimum, the event recorder test shall include cycling all required recording parameters and determining the full range of each parameter by reading out recorded data. A micro-processor based event recorder, equipped to perform self-tests, has passed the pre-maintenance inspection requirement if it has not indicated a failure.

* * * * *

4. By revising § 229.135 (a) through (d) to read as follows:

§ 229.135 Event Recorders.

(a) *Duty to equip.* Effective May 5, 1995, and except as provided in paragraph (b) of this section, any train operated faster than 30 miles per hour shall have an in-service event recorder in the lead locomotive. The presence of the event recorder shall be noted on Form FRA F6180–49A, under the REMARKS section, except that an event recorder designed to allow the locomotive to assume the lead position only if the recorder is properly functioning is not required to have its presence noted on Form FRA F6180–49A. For the purpose of this section, "train" includes a locomotive or group of locomotives with or without cars, and "lead locomotive" means the locomotive from whose cab the crew is operating the train and, when cab control locomotives and/or MU locomotives are coupled together, is the first locomotive proceeding in the direction of movement. The duty to equip the lead locomotive may be met

with an event recorder located elsewhere than the lead locomotive provided that such event recorder monitors and records the required data as though it were located in the lead locomotive.

(b) *Response to defective equipment.* A locomotive on which the event recorder has been taken out of service as provided in paragraph (c) of this section may remain as the lead locomotive only until the next calendar-day inspection. A locomotive with an inoperative event recorder is not deemed to be in improper condition, unsafe to operate, or a non-complying locomotive under §§ 229.7 and 229.9, and notwithstanding any other requirements in this chapter, inspection, maintenance, and testing of event recorders is limited to the requirements set forth in § 229.25(e).

(c) *Removal from service.* A railroad may remove an event recorder from service and, if a railroad knows that an event recorder is not monitoring or recording the data specified in § 229.5(g), shall remove the event recorder from service. When a railroad removes an event recorder from service, a qualified person shall cause to be recorded the date the device was removed from service on Form FRA F6180–49A, under the REMARKS section. An event recorder designed to allow the locomotive to assume the lead position only if the recorder is properly functioning is not required to have its removal from service noted on Form FRA F6180–49A.

(d) *Preserving accident data.* For the purposes of this section, the term "event recorder" includes all locomotive-mounted recording devices designed to record information concerning the functioning of a locomotive or train regardless of whether the device meets the definition of "event recorder" in § 229.5.

(1) *Accidents required to be reported to the Federal Railroad Administration.* If any locomotive equipped with an event recorder is involved in an accident that is required to be reported to FRA, the railroad using the locomotive shall, to the extent possible, and to the extent consistent with the safety of life and property, preserve the data recorded by the device for analysis by FRA. This preservation requirement permits the railroad to extract and analyze such data; *provided* the original or a first-order accurate copy of the data shall be retained in secure custody and shall not be utilized for analysis or any other purpose except by direction of FRA or the National Transportation Safety Board. This preservation requirement shall expire 30 days after the date of the accident unless FRA or the Board notifies the railroad in writing that the data are desired for analysis.

(2) *Relationship to other laws.* Nothing in this section is intended to alter the legal authority of law enforcement officials investigating potential violation[s] of State criminal law[s] and nothing in this chapter is intended to alter in any way the priority of National Transportation Safety Board investigations under 49 U.S.C. 1131 and 1134, nor the authority of the Secretary of Transportation to investigate railroad accidents under 49 U.S.C. 5121, 5122, 20107, 20111, 20112, 20505, 20702, 20703, and 20902.

* * * * *

Issued in Washington, D.C., on May 19, 1995.

Jolene M. Molitoris,

Administrator.

[FR Doc. 95–12963 Filed 5–25–95; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 625

[Docket No. 950206038–5038–01; I.D. 051595E]

Summer Flounder Fishery; Adjustments to 1995 State Quotas

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of commercial quota adjustment.

SUMMARY: NMFS announces adjustments to the commercial quota for the 1995 summer flounder fishery. This action complies with regulations implementing the Fishery Management Plan for the Summer Flounder Fishery (FMP), which require that annual quota overages landed in any state be deducted from that state's quota for the following year. The public is advised that a quota adjustment has been made and is informed of the revised state quotas. The Director, Northeast Region, NMFS (Regional Director), has also determined that there is no Federal summer flounder quota available for those coastal states that did not receive a portion of the annual commercial summer flounder quota. Vessels issued a Federal moratorium permit for the summer flounder fishery may not land summer flounder in these states.

EFFECTIVE DATE: May 22, 1995.

FOR FURTHER INFORMATION CONTACT: Hannah Goodale, 508–281–9101.

SUPPLEMENTARY INFORMATION: Regulations implementing Amendment 2 to the FMP are found at 50 CFR part 625 (57 FR 57358, December 4, 1992). The regulations require annual specification of a commercial quota that is apportioned among the Atlantic coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state is described in § 625.20. The commercial summer flounder quota for the 1995 calendar year, adopted to ensure achievement of the appropriate fishing mortality rate of 0.53 for 1995, is set to equal 14,690,407 lb (6.7 million kg) (60 FR 8958, February 16, 1995).

Section 625.20(d)(2) provides that all landings for sale in a state shall be applied against that state's annual commercial quota. Any landings in excess of the state's quota will be deducted from that state's annual quota for the following year. Based on dealer reports and other available information, NMFS has determined that the States of Massachusetts and Rhode Island have exceeded their 1994 quota by 17,707 lb (8.8 kg) and 60,670 lb (27.4 kg), respectively. The remaining States of Maine, New Hampshire, Connecticut, New Jersey, New York, Delaware, Maryland, and North Carolina did not exceed their 1994 quotas. A complete summary of quota adjustments for 1995 is in Table 1.

The Commonwealth of Virginia collects landings data from the summer flounder fishery conducted in its waters, and the landings for the fourth quarter of 1994 have not yet been compiled. If those final figures result in landings in excess of the 1994 quota, a further adjustment will be required and a notification will be published in the **Federal Register**.

TABLE 1—ADJUSTED 1995 COMMERCIAL QUOTA FOR THE SUMMER FLOUNDER FISHERY

	1994 quota (lb)	1994 landings (lb)	1994 overage (lb)	Initial 1995 quota (lb)	Adjusted 1995 quota (lb)	Adjusted 1995 quota (kg)
ME	7,463	4,857		6,987	6,987	3,169
NH	74			67	67	30
MA	1,031,194	1,048,901	17,707	1,001,953	984,246	
					6,446	
RI	2,510,149	2,570,819	60,670	2,303,894	2,243,224	1,017,526
CT	384,247	370,413		331,574	331,574	150,399
NY	1,423,943	1,270,012		1,123,374	1,123,374	509,554
NJ	2,510,745	2,413,761		2,456,969	2,456,969	1,114,462
DE	4,681	3,635		2,614	2,614	1,186
MD	273,117	160,380		299,551	299,551	135,874
VA	3,240,192	3,100,801		3,131,519	3,131,519	1,420,433
NC	4,216,993	3,571,188		4,031,905	4,031,905	1,828,841

This notification also announces the Regional Director's determination that no quota is available for those coastal states that did not receive a distribution from the annual commercial summer flounder quota. The Regional Director's determination triggers the summer flounder moratorium permit condition that owners of federally permitted vessel agree not to land summer flounder in any state that did not receive any part of the annual commercial summer flounder quota. The purpose of this condition is to aid in maintaining the integrity of the overall quota, which is set to achieve a specific mortality reduction goal, as state quotas are filled.

Historically, measurable landings of summer flounder have occurred only in those coastal states from North Carolina northward to Maine. These are the states that have received distributions from the annual commercial summer flounder quota. Recent reports, however, indicate that harvesters intend to land summer flounder in other states, such as South Carolina, in response to the closures of Virginia and North Carolina to landings of summer flounder. States other than those specified in Table 1 do not have any available summer flounder quota because they did not receive a share of the annual commercial quota. Therefore, vessels with a Federal summer flounder moratorium permit may not land summer flounder in these states.

This notification serves to trigger the permit condition that prevents vessels that are issued a Federal summer flounder moratorium permit from landing summer flounder in any state that has no commercial summer flounder quota.

Classification

This action is required by 50 CFR part 625 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 22, 1995.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–12935 Filed 5–22–95; 4:58 pm]

BILLING CODE 3510–22–W

Proposed Rules

Federal Register
Vol. 60, No. 102
Friday, May 26, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1601

Participant Choices of Investment Funds

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Proposed rule.

SUMMARY: The Executive Director of the Federal Retirement Thrift Investment Board (Board) is publishing proposed amendments to interim regulations on participants' choices of Thrift Savings Plan (TSP) investment funds. The proposed amendments, to subparts A and C of 5 CFR Part 1601, reflect changes in the methods by which TSP participants may request interfund transfers, including use of an automated voice response system to make, change, or cancel interfund transfer requests. The proposed amendments also remove the investment and interfund transfer restrictions on accounts of participants who withdraw their accounts in one or more equal payments. Finally, the proposed amendments increase the number of interfund transfers permitted per year from four (4) to twelve (12). No amendments are proposed to subpart B.

DATES: Comments must be received on or before June 26, 1995.

ADDRESSES: Comments may be sent to: David L. Hutner, (202) 942–1661.

SUPPLEMENTARY INFORMATION: Interim rules governing participants' choices of investment funds were originally published in the **Federal Register** on March 29, 1990, as an amendment to title 5 of the Code of Federal Regulations, adding Part 1601, Participants' Choice of Investment Funds. Revised interim rules were published in the **Federal Register** on January 7, 1991, primarily to implement section 3 of the Thrift Savings Plan Technical Amendments Act of 1990 (TSPTAA), which removed investment restrictions that had been in place prior to the effective date of the TSPTAA. On December 28, 1994, the Board published a proposed rule in the **Federal Register** (59 FR 66796) setting forth changes in the procedures by which TSP participants may make, change, or cancel interfund transfer requests. The Board did not receive any comments on the proposed regulations. However, the December 28, 1994, proposed amendments to the interim rules are being withdrawn and replaced by these proposed amendments.

The present proposed rules, when adopted, will amend the interim rules by making changes to the procedures by which TSP participants may make, change, or cancel interfund transfer requests. The primary change in the procedures involves the availability of the automated voice response system, known as the "ThriftLine," for participants to make interfund transfer requests over the telephone. The ThriftLine provides services to participants in addition to enabling them to make interfund transfer requests, but those other functions are not addressed in these regulations. These proposed regulations also address two policy changes which have been adopted by the Board since the publication of the previous proposed amendments. The present proposed rules will amend the interim rules by removing the investment and interfund transfer restrictions on accounts of participants who withdraw their accounts in one or more equal payments. Such participants were previously required to invest their entire accounts in the G Fund. Finally, the proposed amendments will amend the interim rules by increasing the number of interfund transfers permitted per year from four (4) to twelve (12).

Section-by-Section Analysis

Subpart A

The proposed rule amends § 1601.1, which contains the definitions applicable to Part 1601, by revising one definition and adding three new ones.

The definition of "Interfund transfer request" has been amended to reflect that properly completing and submitting to the TSP recordkeeper an Interfund Transfer Request (Form TSP–30) is no longer the exclusive method to request an interfund transfer. A request may also be made by proper entry of the transaction on the automated ThriftLine.

Definitions of "Board" (the Federal Retirement Thrift Investment Board), "Acknowledgment of Risk," and "ThriftLine" have been added. Under 5 U.S.C. 8439(d), all participants who invest in the Common Stock Index Investment Fund (C Fund) or the Fixed Income Investment Fund (F Fund) must sign an acknowledgment that the investment is made at the participant's own risk and that the participant is not protected against losses on the investment or guaranteed a return on the investment. Under § 1601.5 (as amended by the proposed rule), the procedures for satisfying the requirements of 5 U.S.C. 8439(d) have been changed.

Instructions for use of the ThriftLine to make interfund transfer requests on the telephone will be widely available to all TSP participants.

Subpart B

Subpart B is unchanged by the proposed amendment.

Subpart C

The proposed amendments will remove § 1601.4(c) which requires that the account balance of a participant who withdraws his or her account balance in one or more equal payments be invested entirely in the G Fund. This change will allow a participant who receives equal payments to invest the remaining account balance in any of the TSP investment funds in which to invest the portion of the account that is remaining and to make interfund transfers under the same rules applicable to other TSP participants. The remainder of § 1601.4 is unchanged by the proposed amendment.

Proposed § 1601.5 sets forth the methods by which interfund transfer requests can be made. Section 1601.5(a) contains the general rules that interfund transfer requests may now be made either by submission of a properly completed Form TSP–30 or by entry of the transaction on the ThriftLine. Section 1601.5(a) also states explicitly that Forms TSP–30 generated prior to October 1990 cannot be used to make interfund transfer requests. Such forms can be readily identified because they were preprinted with participants' names and addresses, described restrictions on the amounts that could be invested in the C Fund and F Fund, and specified a particular effective date for the interfund transfer. Similarly, Form TSP–30–S, which was designed for use only by certain FERS participants to make interfund transfers effective as of the end of December 1990, cannot be used to make interfund transfer requests.

Section 1601.5(b) retains the rule that interfund transfer requests must include designations of percentages to be invested in each of the TSP investment funds in multiples of 5 percent that total 100 percent. This requirement applies regardless of whether the interfund transfer request is entered on the ThriftLine or is submitted on Form TSP–30. Section 1601.5 also retains from the previous rule the admonition that an interfund transfer request does not affect future contributions made by a participant. If a participant wishes to change the allocation of future contributions among the investment funds, that can only be accomplished by submission to his or her employing agency of a properly completed Election Form (TSP–1) during a TSP Open Season. The rules for submission of Election Forms are set forth in Subpart B, which is unchanged by the amendments.

Section 1601.5(c) retains the previous rule that percentages elected by the participant are applied to the account balance as of the effective date of the interfund transfer, which is established as provided in § 1601.6. The percentages are applied to the account in the same manner, whether submitted on Form TSP–30 or entered on the ThriftLine.

Section 1601.5(d) contains significant changes to the procedures governing the acknowledgment of risk required by 5 U.S.C. 8439(d). Under the previous rule, all participants requesting an interfund transfer were required to sign the acknowledgment of risk section on Form TSP–30 each time the form was submitted, unless the request was for investment of 100% of the account balance in the Government Securities Investment Fund (G Fund). The proposed rule is premised on a determination that each participant should only be required to acknowledge investment risk once. To date, participants who have invested any portion of their accounts in the C Fund or the F Fund at any time must have already signed an acknowledgment of risk, either on Form TSP–1 or on Form TSP–30, since those are the only two methods by which money could have been invested in the C Fund or F Fund. Accordingly, all participants whose account records indicate that they have invested in the C Fund or F Fund (regardless of whether they currently have money in those funds) are deemed to have satisfied the requirements of 5 U.S.C. 8439(d), and are permitted to use the ThriftLine to request interfund transfers without further acknowledgment of investment risk. Participants who have never invested in the C Fund or F Fund, and therefore have never been required to sign an acknowledgment of risk, will not be permitted to make interfund transfers on the ThriftLine until the TSP recordkeeper receives a signed acknowledgment of risk form from them. An Acknowledgment or Risk For ThriftLine Interfund Transfers (Form TSP–32) has been created for this purpose. The proposed rule treats participants who may continue to make their interfund transfer requests on paper, using Form TSP–30, consistently with those who use the ThirftLine. Since it is only necessary to acknowledge investment risk once, participants who use Form TSP–30 and fail to sign the acknowledgment of risk section will no longer have their forms rejected if they have previously invested any portion of their TSP account in the C Fund or F Fund, or if the TSP recordkeeper has received a properly completed Form TSP–32. Form TSP–30 has been amended to delete the statement that all forms requesting investment in the C Fund or F Fund will be rejected if the acknowledgment of risk section of the form is not signed. The proposed rule retains the requirement that the form itself (as opposed to the acknowledgment of risk section) must be signed and dated in all cases.

It is anticipated that some participants may continue to sign the acknowledgment of risk section even though they have already invested in the C Fund and/or F Fund and therefore do not need to sign again. This is not an area of concern to the Board, however, because the superfluous signature does not impose a significant burden on participants. Any participant who submits Form TSP–30 requesting investment in the C Fund or F Fund and is uncertain as to whether he or she has ever invested in those funds should sign the acknowledgment of risk section of the form to eliminate the possibility that the form will be rejected for lack of an acknowledgment of risk. For purposes of determining whether participants' interfund transfer requests should be processed, the TSP recordkeeping system will identify whether a participant has ever invested in the C Fund or F Fund, even if the participant subsequently transferred his or her entire account to the G Fund.

Section 1601.5(e) of the proposed rule, which addresses only use of Form TSP–30, remains virtually unchanged in substance from the previous rule, except that paragraph (2) has been amended to reflect the rules set forth in § 1601.5(d). The other changes to this section are designed to consolidate the language for ease of reading rather than to make substantive changes to the procedures for processing interfund transfer requests. In particular, the language "or otherwise is not properly completed in accordance with the instructions on the form" in proposed § 1601.5(e)(1) is a substitute for several of the specific bases for rejection of forms that were included in the previous rule. Since the instructions on Form TSP–30 include requirements that had been reflected in separate paragraphs of the previous rule, those paragraphs have been eliminated to avoid redundancy.

Section 1601.5(f) has not been changed in substance.

Section 1601.6 of the proposed rule governs the timing and effective dates of interfund transfers. The proposed rule sets forth the order of precedence with respect to multiple transfer requests and cancellations using the ThriftLine and/or Form TSP–30. Although the proposed rule permits interaction between entry of transactions on the ThriftLine and on paper (i.e., by Form TSP–30 or written cancellations), the Board notes that the rules governing that interaction are, in some cases, complex; therefore, participants are encouraged to avoid, if possible, mixing the two methods. The ThriftLine provides the most expeditious and certain method of entering all transactions, because it eliminates any delays caused by mail delivery and processing of documents.

Section 1601.6(a) of the proposal allows participants to make up to twelve interfund transfers per calendar year rather than the four interfund transfers per calendar year that were previously allowed.

Section 1601.6(b) contains the general rule governing the date on which an interfund transfer will be made effective, based on the date of receipt of the interfund transfer request. In the case of a request made on the ThriftLine, the date of receipt is the date the transaction is entered on the ThriftLine. In the case of a request made by Form TSP–30, the date of receipt is the date the form is delivered to the TSP recordkeeper. Apart from the fact that interfund transfer requests may now be received by two methods, the general rule adopted by this rule is identical to the previous rule: requests received on or before the 15th of a month (or next business day if the 15th is not a business day) are effective as of the end of the month of receipt; requests received after the 15th of a month are effective as of the end of the month following receipt.

Section 1601.6(c) sets forth the rules governing receipt of more than one interfund transfer request during the same one-month period after the 15th of one month (or next business day) and on or before the 15th of the next month. The basic rule, set forth in § 1601.6(c)(1), is that the request with the latest date of signature (if Form TSP–30 is used) or entry (if the ThriftLine is used) controls. Thus, if a properly completed Form TSP–30 was dated June 17 and received by NFC on June 25, and another interfund transfer request was entered on the ThriftLine on June 23, the ThriftLine transaction would supersede the request on Form TSP–30, because the June 23 ThriftLine transaction was later than the June 17 signature on the Form TSP–30.

The rules are based on the presumption that, when a participant enters a new transfer on the ThriftLine, he or she intends to supersede a form that was mailed on an earlier date. The rules also presume that a participant intends a later ThriftLine entry to supersede an earlier one. Similarly, where a Form TSP–30 is dated one day and another Form TSP–30 is dated on a subsequent day, it is presumed that the participant intends to override the earlier dated form, regardless of the order in which the forms may be received by the TSP recordkeeper, because that order can be affected by the uncertainties of mail delivery.

Therefore, under the proposed rules, the date of receipt of Form TSP–30 determines only the effective date for the interfund transfer that is requested. A Form TSP–30 dated June 8 and received by the TSP recordkeeper on June 12 cannot be superseded by a subsequent form dated June 13 but not received by the recordkeeper until June 17. The former will be processed as of the end of June; the latter as of the end of July. If participants using Form TSP–30 wish to control the month end for which a transfer is to be made effective, it is their responsibility to ensure that the form is actually delivered to NFC during the proper one-month period. This can be accomplished in most cases by allowing sufficient time to accommodate potential mail delays or by using overnight mail (or other guaranteed forms of delivery). Participants can also control the effective date of their interfund transfers by using the ThriftLine rather than Form TSP–30, because the ThriftLine provides immediate acceptance of properly entered interfund transfer requests.

Section 1601.6(c)(2) of the proposal provides more detailed rules governing receipt of multiple interfund transfer requests having the same date. Section 1601.6(c)(2)(i) provides that, as between a ThriftLine request and a Form TSP–30 dated the same day, the ThriftLine entry will be made effective. Thus, the ThriftLine entry will supersede a Form TSP–30 dated the same day.

Section 1601.6(c)(2)(ii) provides that as between two transactions entered the same day on the ThriftLine, the one entered later in the day supersedes the earlier request.

Finally § 1601.6(c)(2)(iii) provides that if more than one Form TSP–30 has the same date signed, then all shall be rejected, unless they contain an identical percentage allocation among the investment funds, in which case that allocation will be accepted. Unlike interfund transfer requests entered on the ThriftLine, where Forms TSP–30 bear the same date but different allocation elections, the Board has no way to determine which form represents the participant's latest request. What is most important to participants is that there be uniform rules that can be consistently applied in cases involving multiple interfund transfer requests. The proposed rule accomplishes that purpose.

Section 1601.6(c)(3) sets forth the rules for determining the date of an interfund transfer request. Under § 1601.6(c)(3)(i), if made on the ThriftLine, the date of the interfund transfer request is the date of the telephone entry of the transaction. Under § 1601.6(c)(3)(ii), if the interfund transfer request is made on Form TSP–30, the date of the request is the signature date entered on the form by the participant. As previously discussed, the date of receipt of the form is not the date of the request; the receipt date controls only the effective date for which the form is deemed to be a request. Finally, under § 1601.6(c)(3)(iii), the date on which a transaction is entered on the ThriftLine is determined by application of Central Time. For example, a transaction entered at 12:15 a.m. Eastern Time on the 16th of a month will be considered a transaction entered on the 15th, because it was 11:15 p.m. Central Time when the transaction occurred. Conversely, a transaction entered at 11:15 p.m. Pacific Time on the 15th, is entered at 1:15 a.m. Central Time and will therefore be considered a transaction entered on the 16th. The determination of the date on which a ThriftLine transaction was requested may be important for two purposes: (1) to determine whether the request was made by the applicable 15th of the month cutoff date, and (2) to determine whether the request supersedes or cancels another request.

Section 1601.6(d) of the proposed rule governs cancellation of interfund transfer requests. Under § 1601.6(d)(1), a signed and dated cancellation letter containing the required information must be received by the same cutoff date (15th of the month or next business day if the 15th is not a business day) that applies to receipt of an interfund transfer request that is to be effective as of the end of the month for which the transfer to be canceled is pending. For example, a letter to cancel a pending interfund transfer that is to be made effective as of the end of June must be received by June 15 (nor next business day). A cancellation letter will not cancel a transfer request with a date after the date of the cancellation letter. If a cancellation letter does not state unambiguously the specific interfund transfer request to be canceled, it will cancel any earlier dated interfund transfer request that is pending for the applicable effective date. If the letter does state unambiguously the interfund transfer request to be canceled, then only that request will be canceled by the letter.

The TSP recordkeeper will compare multiple interfund transfer requests to determine which is the controlling request prior to determining the effect of a written cancellation. For example, assume there are two interfund transfer requests received prior to June 15, one dated June 3 and one dated June 5. The June 5 request supersedes the June 3 request. If there is a cancellation letter dated June 10 (and received by June 15) specifying cancellation of the June 5 request, then no interfund transfer would be processed, because the June 3 request would be superseded and the June 5 request would be canceled. On the other hand, if the June 10 letter specified cancellation of the June 3 request, then the June 5 request would be processed, because it would not be superseded by the earlier June 3 request nor would it be canceled by the June 10 cancellation letter that specified cancellation of the June 3 request.

The last sentence of § 1601.6(d)(1) governs the rare situation where the written cancellation bears the same date as an interfund transfer request. A different rule applies depending upon whether the interfund transfer request was submitted on Form TSP–30 or entered on the ThriftLine. In the former case, it is presumed that the cancellation letter was intended to cancel a Form TSP–30 dated the same day. In the latter case, with one exception, the ThriftLine entry is presumed to supersede the cancellation letter, which may have been an attempt to cancel another Form TSP–30 that was received for a prior effective date or that has not yet been received or entered into the TSP system. The only exception is where the written cancellation specifically states that it is intended to cancel the ThriftLine entry of the same date; in that situation, the cancellation letter will be effective to cancel the ThriftLine request of the same date.

Under § 1601.6(d)(2), cancellation entered on the ThriftLine before the relevant 15th of the month cutoff date will cancel a pending interfund transfer request that had been entered previously on the ThriftLine. An interfund transfer request made using Form TSP–30 can be canceled using the ThriftLine only if it has been entered into the TSP recordkeeping system and is, therefore, at the time the cancellation is entered on the ThriftLine, a pending transfer. In that regard, participants are cautioned that in many cases Forms TSP–30 are not entered into the TSP recordkeeping system until after the 15th cutoff, even if they are received before that cutoff. If that is the case, then the participant cannot use the ThriftLine to cancel an interfund transfer request that was submitted on Form TSP–30. For that reason, participants who prefer to make interfund transfer requests by use of Form TSP–30 are encouraged to cancel only in writing. The Board will not be responsible for a participant's inability to cancel a Form TSP–30 by use of the ThriftLine. Participants are encouraged to use, in any one interfund transfer period, only one method to make, change, or cancel interfund transfer requests.

Section 1601.7 is unchanged by the proposed amendment.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

List of Subjects in 5 CFR Part 1601

Employee benefit plans, Government employees, Retirement, Pensions.

Dated: May 11, 1995.

John J. O'Meara,

Executive Director (Acting), Federal Retirement Thrift Investment Board.

For the reasons set out in the preamble, Part 1601 of chapter VI of title 5 of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 1601—[AMENDED]

1. The authority citation for Part 1601 continues to read as follows:

Authority: 5 U.S.C. 8351, 8438, 8474(b)(5) and (c)(1).

2. Section 1601.1 is amended by revising the definition "Interfund Transfer Request" and adding in alphabetical order definitions of "Acknowledgment of Risk", "Board", and "ThriftLine", to read as follows:

§ 1601.1 Definitions.

* * * * *

Acknowledgment of Risk means an acknowledgment that any investment in the C Fund or the F Fund is made at the participant's risk, that the participant is not protected by the United States Government or the Board against any loss on the investment, and that neither the United States Government nor the Board guarantees any return on the investment.

* * * * *

Board means the Federal Retirement Thrift Investment Board.

* * * * *

Interfund transfer request means submission of a properly completed Interfund Transfer Request (Form TSP–30) or proper entry of an interfund transfer through use of the ThriftLine.

* * * * *

ThriftLine means the automated voice response system by which TSP participants may, among other things, make interfund transfer requests by telephone.

* * * * *

3. Section 1601.4 is amended by removing paragraph (c).

4. Section 1601.5 is revised to read as follows:

§ 1601.5 Methods of requesting an interfund transfer.

(a) To make an interfund transfer, participants may either submit to the TSP recordkeeper a properly completed Interfund Transfer Request (Form TSP–30), or may enter the interfund transfer request over the telephone by using the ThriftLine. Forms TSP–30 generated prior to October 1990, which were preprinted with a participant's name and address, described restrictions on the amounts which could be invested in the C Fund and the F Fund, and specified an effective date for the interfund transfer, are obsolete forms. They will be rejected by the TSP recordkeeper if submitted to make an interfund transfer request. Similarly, Form TSP–30–S, which was designed for use only by certain FERS participants to make interfund transfers effective as of the end of December 1990, are obsolete forms which will be rejected by the TSP recordkeeper if submitted to make an interfund transfer request.

(b) To make an interfund transfer request, a participant must designate the percentages of his or her account balance that are to be invested in the C Fund, the F Fund, and/or the G Fund. The percentages selected by the participant must be in multiples of 5 percent and must total 100 percent. An interfund transfer request has no effect on contributions made by a participant after the effective date of the interfund transfer (as determined in accordance with § 1601.6); such subsequent contributions will continue to be allocated among the investment funds in accordance with the participant's election under subpart B of this part.

(c) The percentages elected by the participant will be applied to the participant's account balance attributable to each source of contributions as of the effective date of the interfund transfer, as determined in accordance with § 1601.6.

(d) Participants who have at any time in the past invested any portion of their TSP accounts in the C Fund or the F Fund are eligible to make interfund transfer requests using the ThriftLine since they must, at some previous time, have submitted an Acknowledgment of Risk; such participants need not, if using Form TSP–30 to make a written interfund transfer request, complete the section of the form that contains the acknowledgment of risk. Participants who have not at any time in the past invested any portion of their TSP accounts in the C Fund or the F Fund are not eligible to make interfund transfers using the ThriftLine until a properly completed Acknowledgment of Risk for ThriftLine Interfund Transfer (Form TSP–32) has been received by the TSP recordkeeper. Participants who have not at any time in the past invested any portion of their TSP accounts in the C Fund or the F Fund must complete the Acknowledgment of Risk section of Form TSP–30 if they make a written interfund transfer request, unless a properly completed Form TSP–32 has been received by the TSP recordkeeper.

(e) An Interfund Transfer Request (Form TSP–30) that has been submitted to the TSP recordkeeper will not be processed and will have no effect, if:

(1) it is not signed and dated, or otherwise is not properly completed in accordance with the instructions on the form; or

(2) in the case of a participant who has not previously invested any portion of his or her TSP account in the C Fund or the F Fund and for whom a properly completed Form TSP–32 has not been received by the TSP recordkeeper, the acknowledgment of risk section of the Form TSP–30 is not signed; or

(3) the participant is not otherwise eligible to make an interfund transfer (e.g., because he or she is scheduled for a withdrawal of the entire account balance).

(f) If a Form TSP–30 is rejected, the form will have no effect. The participant will be provided with a brief written statement of the reason the form was rejected.

5. Section 1601.6 is revised to read as follows:

§ 1601.6 Timing and effective dates of interfund transfers.

(a) *Annual Limit.* A participant may have twelve interfund transfers made effective during any calendar year, one in each calendar month.

(b) *Effective dates.* Interfund transfer requests received by the TSP recordkeeper (whether by Form TSP–30 or on the ThriftLine) on or before the 15th day of a month (or, if the 15th day is not a business day, by the next business day) shall be effective as of the end of the month during which the interfund transfer request was received. Interfund transfer requests received by the TSP recordkeeper after the 15th day of a month (or, if applicable, by the next business day) will be effective as of the end of the month following the month during which the interfund transfer request was received. Account balances that are reallocated among the investment funds effective as of the end of any month will reflect the effects of all other account activity posted to the account effective during or as of the end of that month.

(c) *Multiple interfund transfer requests.*

(1) If two or more properly completed interfund transfer requests with different dates (as determined by paragraph (c)(3) of this section) are received for the same participant after the 15th day of one month (or, if applicable, after the next business day), but on or before the 15th day of the next month (or, if applicable, the next business day), the interfund transfer request with the latest date (as determined by paragraph (c)(3) of this section) will be made effective and the earlier interfund transfer request(s) will be superseded.

(2) If two or more properly completed interfund transfer requests with the same dates are received for the same participant after the 15th day of one month (or, if applicable, after the next business day), but on or before the 15th day of the next month (or, if applicable, the next business day), the following rules shall apply:

(i) If one or more of the interfund transfer requests was submitted using the ThriftLine and one or more was made on Form TSP–30, the request(s) made on the ThriftLine will supersede the request(s) made on Form TSP–30;

(ii) If more than one of the interfund transfer requests were made on the ThriftLine, the request entered at the latest time of day will supersede the earlier request(s); and

(iii) If more than one of the interfund transfer requests were submitted using Form TSP–30, all such forms will be rejected, unless they all contain identical percentage allocations among the TSP investment funds, in which case one will be accepted.

(3) For purposes of determining the date of an interfund transfer request:

(i) The date of an interfund transfer request made on the ThriftLine is the date of its telephone entry;

(ii) The date of an interfund transfer request made on Form TSP–30 is the signature date set forth on the form by the participant; and

(iii) Central time will be used for determining the date on which a transaction is entered on the ThriftLine.

(d) *Cancellation of interfund transfer requests.* Interfund transfer requests may be canceled either in writing or by entering the cancellation on the ThriftLine.

(1) *Cancellation by letter.* A participant may cancel an interfund transfer request by submitting a letter to the TSP recordkeeper requesting cancellation. To be accepted, the cancellation letter must be signed and dated and must contain the participant's name, Social Security number, and date of birth. To be effective, the cancellation letter must be received on or before the 15th day of the month as of the end of which the interfund transfer is to be effective (or, if applicable, by the next business day). Unless the letter states unambiguously the specific interfund transfer request it seeks to cancel, the written cancellation will apply to any interfund transfer request with a date (as determined under paragraph (c)(3) of this section) before the date of the cancellation letter. If the date of a cancellation letter is the same as the date of an interfund transfer request and the request was made on Form TSP–30, the Form TSP–30 will be canceled; if the request was made on the ThriftLine it will only be canceled if the written cancellation specifies the date of the ThriftLine request to be canceled.

(2) *Cancellation on the ThriftLine.*

(i) An interfund transfer request may also be canceled by entering the cancellation on the ThriftLine on or before the 15th day of the month (or, if applicable, the next business day) as of the end of which the interfund transfer is to be effective. A cancellation entered on the ThriftLine will apply to a pending interfund transfer request entered on the ThriftLine before the entry of the cancellation. A cancellation entered on the ThriftLine can only apply to interfund transfer requests submitted on Forms TSP–30 that were:

(A) Dated on or before the date of the cancellation; and

(B) Received and entered into the TSP recordkeeping system before the cancellation is attempted on the ThriftLine.

(ii) The Board cannot guarantee that the TSP recordkeeper will enter Forms TSP–30 into the TSP recordkeeping system before the 15th day of the month, regardless of the date the Form TSP–30 may have been received. Thus, participants cannot rely on the ThriftLine to cancel an interfund transfer request that was submitted on Form TSP–30, and participants are discouraged from attempting to do so. The Board is not responsible for any consequences of a participant's inability to cancel on the ThriftLine an interfund transfer request submitted on Form TSP–30.

[FR Doc. 95–12942 Filed 5–25–95; 8:45 am]

BILLING CODE 6760–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 29

[Docket No. TB–95–12]

Tobacco Inspection; Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Department is proposing to revise the regulations for flue-cured tobacco to add a special factor to identify lots of tobacco that contain 25 percent of an adjacent stalk position. This rule will encourage producers to offer a more desirable product for market by separating stalk positions.

DATES: Comments are due on or before June 26, 1995.

ADDRESSES: Send comments to John P. Duncan III, Director, Tobacco Division, Agricultural Marketing Service (AMS), United States Department of Agriculture (USDA), Room 502 Annex Building, P.O. Box 96456, Washington, D.C. 20090–6456. Comments will be available for public inspection at this location during regular business hours.

FOR FURTHER INFORMATION CONTACT: John P. Duncan III, Director, Tobacco Division, AMS, USDA, Room 502 Annex Building, P.O. Box 96456, Washington, D.C. 20090–6456. Telephone (202) 205–0567.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Department proposes to revise the Official Standard Grades for Flue-Cured Tobacco, U.S. Types 11–14 and Foreign Type 92 pursuant to the authority contained in the Tobacco Inspection Act of 1935, as amended (49 Stat. 731; 7 U.S.C. 511 *et seq.*).

The proposed revision will add a special factor (subgrade) to describe mixing of adjacent stalk positions. Stalk positions or groups as defined in the current standards are a division of a type covering closely related grades based on certain characteristics such as shape, body, or the general quality of tobacco. The traditional practice of sorting tobacco in the flue-cured marketing area has changed dramatically during the past decade. Producers are combining adjacent stalk positions which makes grading more difficult and has made U.S. tobacco less desirable for certain customers in the world market. This new special factor would identify any lot of tobacco which contains 25 percent of an adjacent stalk position.

The Flue-Cured Tobacco Cooperative Stabilization Corporation, composed of all flue-cured producers, recommended the adoption of a new mixed grade definition in a letter to the Department dated April 18, 1995. Also, an Advisory Committee, appointed by Congress to study the government tobacco program in 1995, included a similar recommendation in their final report dated April 27, 1995. The committee was composed of 31 members representing tobacco producers, dealers and manufacturers.

This rule has been determined not significant for the purposes of Executive Order 12866, and therefore has not been reviewed by the Office of Management and Budget.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This proposed rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Additionally, in conformance with the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), full consideration has been given to the potential economic impact upon small business. All tobacco warehouses and producers fall within the confines of "small business" which are defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The Administrator of the Agricultural Marketing Service, has determined that this action would not have a significant economic impact on a substantial number of small entities. This proposed rule would not substantially affect the normal movement of the commodity in the marketplace. Compliance with this proposed rule would not impose substantial direct economic cost, recordkeeping, or personnel workload changes of small entities, and would not alter the market share or competitive positions of small entities relative to the large entities and would in no way affect normal competition in the marketplace.

All persons who desire to submit written data, views, or arguments for consideration in connection with this proposal may file them with the Director, Tobacco Division, AMS, USDA, Room 502 Annex Building, P.O. Box 96456, Washington, D.C., 20090–6456, not later than (30 days after publication).

List of Subjects in 7 CFR Part 29

Administrative practice and procedure, Advisory committees, Government publications, Imports, Pesticides and pests, Reporting and recordkeeping requirements, Tobacco.

For the reasons set forth in the preamble, it is proposed that the regulations at 7 CFR Part 29 be amended as follows:

PART 29—TOBACCO INSPECTION

Subpart C—Standards

1. The authority citation for Part 29, subpart C is revised to read as follows:

Authority: 7 U.S.C. 511b, 511m, and 511r.

2. Section 29.1059 is revised to read as follows:

§ 29.1059 Special factor.

A symbol or term authorized to be used with specified grades. Tobacco to which a special factor is applied may meet the general specifications but which has a peculiar side or characteristic which tends to modify the grade. (See Rules 10, 21, 22, 26, 28, and 29.)

3. A new § 29.1135 is added to read as follows:

§ 29.1135 Rule 29.

Any lot of tobacco containing 25 percent or more of an adjacent group, which otherwise meets the specifications of a grade shall be treated as a special factor grade by placing the special factor "M" preceding the grademark.

4. In § 29.1181, the first sentence in the paragraph immediately following table "13 Grades of Nondescript", is revised to read as follows:

§ 29.1181 Summary of standard grades.

* * * * *

Special factors "U" (unsound), "W" (doubtful-keeping order), "S" (strip), and "M" (mixed) may be applied to all grades. * * *

Dated: May 19, 1995.

Lon Hatamiya,

Administrator.

[FR Doc. 95–12813 Filed 5–25–95; 8:45 am]

BILLING CODE 3410–02–P

Animal and Plant Health Inspection Service

9 CFR Part 130

[Docket No. 92–174–1]

RIN 0579–AA67

Import/Export User Fees

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend existing user fees for certain import- and export-related services we provide for live animals and birds, animal products, organisms and vectors, and germ plasm and veterinary diagnostic services. We are also proposing to establish user fees for certain import- and export-related services we provide for live animals and birds, and animal products and byproducts. We are also proposing to make several miscellaneous changes, such as amending the definitions of certain words. These actions are necessary to help ensure that we recover our costs and to simplify and clarify the application of user fees for the public.

These actions are taken in accordance with the Food, Agriculture, Conservation, and Trade Act of 1990, as amended, which gives us the authority to set and collect these user fees.

DATES: Consideration will be given only to comments received on or before July 25, 1995.

ADDRESSES: Please send an original and three copies of your comments to Docket 92–174–1, Animal and Plant Health Inspection Service, Policy and Program Development, Regulatory Analysis & Development, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 92–174–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: For information concerning services provided for live animals and birds, and germ plasm, contact Dr. Robert Kahrs, Director, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–3294.

For information concerning services provided for animal products and byproducts, organisms and vectors, contact Dr. Kathleen Akin, Senior Staff Veterinarian, Import/Export Products, VS, APHIS, 4700 River Road Unit 40, Riverdale, MD 20737–1231; (301) 734–7830.

For information concerning services provided for veterinary diagnostics, contact Dr. Joan M. Arnoldi, Director, National Veterinary Services Laboratories, P.O. Box 844, Ames, IA 50010; (515) 239–8266.

For information concerning fees, contact Ms. Barbara Thompson, Chief, Financial Systems and Services Branch, Budget and Accounting Division, APHIS, 4700 River Road Unit 54, Riverdale, MD 20737–1232; (301) 734–5901.

SUPPLEMENTARY INFORMATION:

Background

The Food, Agriculture, Conservation and Trade Act of 1990, as amended (referred to below as the Farm Bill), authorizes the Secretary of Agriculture, among other things, to prescribe and collect fees to reimburse the Secretary for the cost of carrying out the provisions of the Federal animal quarantine laws that relate to the importation, entry, and exportation of animals, articles, or means of conveyance (section 2509(c)(1) of the Farm Bill). The Secretary of Agriculture is also authorized, under section 2509(c)(2) of the Farm Bill, to prescribe and collect fees to recover the costs of carrying out certain veterinary diagnostics services.

The user fee regulations in 9 CFR part 130 (referred to below as the regulations) prescribe user fees that the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture (USDA) collects for various services that we provide. The regulations currently include fees for: (1) Endorsing export certificates for animals; (2) providing quarantine services within the United States for imported animals; (3) providing certain inspection and supervision services within the United States for animals intended for export; (4) conducting certain veterinary inspections outside the United States; and (5) conducting certain veterinary diagnostics services.

Our user fees are calculated to cover the full cost of providing the service for which the fee is charged. The cost of providing a service includes direct labor and direct material costs. It also includes administrative support, agency overhead, and Departmental charges.

Direct labor costs are the costs of employee time spent specifically to provide the service. For example, at APHIS's Animal Import Centers, animal caretakers and veterinarians prepare for the arrival of animals or birds to be quarantined in the Center, care for them (feed, water, clean cages or stalls) while they are quarantined, observe them while they are quarantined, release them from quarantine, and clean the quarantine area afterwards. These are all direct labor costs. For other services, the direct labor costs would be different. For example, if the service is testing a tissue sample for disease-causing organisms, then direct labor costs include the time spent by laboratory personnel to prepare the sample, conduct the test, and read the test. Or, if the service is inspecting an animal, the direct labor costs include the time spent by the inspector to conduct the inspection. Direct labor costs vary with the type of service provided.

Direct material costs include the cost of any materials needed to supply the service. For example, among other things, animals in quarantine need feed, water and bedding, disinfectants, and pharmaceuticals (for preparation of any needed tranquilizers). These are all direct material costs. Again, direct material costs are different for different services. For example, direct material costs for conducting a laboratory test would include animals, eggs, glassware, chemicals, and other supplies necessary to perform the test.

Administrative support costs include local clerical and administrative activities; indirect labor hours (supervision of personnel and time spent doing work that is not directly connected with the service but which is nonetheless necessary, such as repairing equipment); travel and transportation for personnel; supplies, equipment, and other necessary items; training; general supplies for offices, washrooms, cleaning, etc.; contractual services (such as guard service, maintenance, trash pickup, etc.); grounds maintenance; chemicals and glassware; and utilities (such as water, trash pickup, telephone, electricity, natural and propane gas, heating and diesel oil). Some administrative support items may be contractual or not, depending on local circumstances. For example, trash pickup may be provided as a utility or a contractual service. However, the costs are all administrative support. As with direct labor and direct material costs, the type, amount and cost of administrative support vary with the type of service provided.

Agency overhead is the pro-rata share, attributable to a particular service, of the management and support cost for all agency activities. Included are the cost of providing budget and accounting services, management support, including the Administrator's office and support at the regional level, personnel services, public information service, and liaison with Congress.

The final cost item included in the calculation, Departmental charges, is APHIS's share, expressed as a percentage of the total cost, of services provided centrally by the Department of Agriculture (Department). Services the Department provides centrally include the Federal Telephone Service; mail; National Finance Center processing of payroll, billing, collections, and other money management; unemployment compensation; Office of Workers Compensation Programs; and central supply for storing and issuing commonly used supplies and Department forms. The Department notifies APHIS how much the agency owes for these services. We have included a pro-rata share of these Departmental charges, as attributable to a particular service, in our fee calculations. An outline of the basic process is shown below. The actual components, quantities, and costs used to calculate the fee are different for each service.

The basic steps in the calculation, for each particular service, are:

1. Determine the following costs:
direct labor;
direct material;
pro-rata share of administrative support;
pro-rata share of agency overhead; and
pro-rata share of Departmental charges;
2. Add all costs;
3. Estimate, based on past experience, the frequency of service, that is, the number of times the service will be performed in one year; and
4. Divide the total of all costs by the frequency of service.

The result of these calculations is the total cost to provide a particular service one time.

When we first adopted user fees, we determined that our user fees for import- and export-related services should be rounded up to the nearest quarter. The amended user fees proposed in this document are also rounded up to the nearest quarter. This is necessary in order to ensure that we collect enough revenue to cover the costs of providing these services. If we were to round down, many fees would be lower than the cost of the service. As we would not have a reserve fund, there would be no funds for us to draw on to make up the deficiency.

As we stated at the time we published our current user fees (see Docket 92–042–2, 58 FR 67647–67656, at p. 67649), we intend to review our user fees at least annually to ensure that they accurately reflect the cost of the services provided, and to publish any necessary adjustments in the **Federal Register**.

We have therefore reviewed our records of user fees collected during fiscal years (FYs) 1992 through 1994. Our current user fees are based on FY 1990 costs. In the four years since then, there has been an overall increase in all costs of providing services, due to inflation and general economic conditions. Additionally, we underestimated personnel costs when we set our current fees. For example, in addition to anticipated federal pay increases (4.2 percent in FY 1992 and 3.7 percent in FY 1993), in FY 1994 there were locality pay and cost of living increases of 3.09 to 8 percent for employees stationed in different parts of the United States. We also underestimated support costs, such as clerical support, office rent, telephone, etc., in setting our current user fees. It is also now apparent that we overestimated our anticipated revenues when setting our current fees. For example, unexpected drops in both the number of animals exported from the United States and the number of export certificates requested has resulted in a correspondingly unexpected drop in user fees collected for export-related services.

As a result of general cost increases, and our errors in estimating costs and revenues, we did not collect enough money in user fees during FYs 1992 through 1994 to cover the costs of providing the services for which we charged fees. In fact, for each of those fiscal years, we incurred a deficit of over $1 million. As our user fees are intended to recover full cost, it is apparent that our user fees are too low and must be raised to reflect changes in direct labor costs, direct material costs, administrative support costs, Agency overhead, and other expenses.

In addition, based upon our review, we believe certain existing user fees should be restructured. For example, some general fees need to be broken down into more specific fees. Also, some new fees need to be established to cover services which we provide, but for which we are not now charging a user fee. The specific proposed user fee changes are discussed below under "Revised Fees."

In addition, we are proposing to amend certain provisions of the regulations to clarify their intended meaning. The specific changes are discussed below under "Miscellaneous."

Revised Fees

Hourly and Minimum User Fees (§§ 130.3, 130.5, 130.6, 130.7, 130.9, 130.10, and 130.21)

Our user fees are calculated to recover our costs to provide routine services. Our personnel often conduct inspections and provide supervision for animals and birds within the United States that are different from or in addition to our flat fee services, which are discussed under "Flat Rate User Fees" below. In those instances, we charge an hourly rate user fee to recover these costs. However, these hourly rates do not ensure that our basic costs are always covered. We developed the minimum fee primarily to cover the costs of handling unusually small importations at ports of entry. Therefore, we charge an hourly rate user fee, with a minimum fee, for services in the following areas: APHIS Animal Import Centers; privately operated temporary import quarantine facilities; import or entry of live animals; miscellaneous import or entry services; endorsement of export health certificates; inspection and supervision provided within the United States for animals, birds, and animal products and byproducts intended for export; and veterinary diagnostics.

We are proposing to revise our hourly and minimum fees, which are listed in §§ 130.3, 130.5, 130.6, 130.7, 130.9, and 130.21, to reflect projected FY 1995 costs. These user fees need to be amended due to increased direct labor costs, direct material costs, agency overhead, administrative support, agency overhead, and Departmental charges.

For the reasons stated above, we are proposing to amend §§ 130.3, 130.5, 130.9, and 130.21 to increase the hourly and quarter-hour user fees from $50.00 to $56.00 and from $12.50 to $14.00, respectively. Additionally, we are proposing to amend §§ 130.5, 130.6, 130.7, 130.9, and 130.21 to increase the minimum user fee for any service provided on an hourly basis from $16.00 to $16.50.

Further, in many of these sections, we are proposing to make changes to clarify the application of the user fee. These proposed changes are discussed below.

User Fees for Exclusive Use of Space at APHIS Animal Import Centers (§ 130.3)

Section 130.3 includes a provision allowing importers, at their option, to request space at certain APHIS Animal Import Centers for the exclusive use of the animals for which the request was made. The user fee for this service is a single, monthly rate. Section 130.3(a)(1) designates the South Wing and North Wing at the Miami, FL, Animal Import Center and 5,904 sq. ft. (548.5 sq.m.) at the Newburgh, NY, Animal Import Center as available for exclusive use. The exclusive use space at Newburgh, NY, is designated in terms of square footage only because there are several buildings that meet those specifications. As a result, the buildings may be used interchangeably, depending upon the number and type of animals for which the space is being requested. However, any building that is utilized for this service will be occupied only by the specific animals for which the service was requested. The overall operating costs for these designated spaces have increased, mainly due to increases in locality pay, direct labor, and supplies. Therefore, we are proposing to revise the monthly user fee charged for this service.

Additionally, we are proposing to make an additional space available for exclusive use at the Newburgh, NY, Animal Import Center. This additional space, which would be designated as Space B, would provide 9,742 sq.ft. (905 sq.m.) for exclusive use. The proposed user fee for this service would be $78,555.00 per month. If this proposed amendment is adopted, we will designate the existing exclusive use

space currently being charged on a monthly basis at the Newburgh, NY, Animal Import Center as Space A to avoid confusion. As stated above, proposed newly-designated Spaces A and B would represent available square footage, not specific buildings.

User Fees for Services Conducted Outside an APHIS Employee's Normal Tour of Duty (§§ 130.5, 130.9, & 130.21)

We often receive requests for services outside of employees' normal tours of duty. Employees' normal tours of duty are those hours, during the business hours of the facility where the employees work, when employees are scheduled for duty. Employee's normal tours of duty do not include Federal holidays or holidays that are observed locally. For example, our facilities and employees in foreign countries observe local holidays. When we provide services outside employee's normal tours of duty, we charge reimbursable overtime in accordance with existing regulations, in addition to the APHIS user fee for each service. This action, which became effective on January 21, 1994 (58 FR 67647–67656, Docket No. 92–042–2), was necessary to fully recover our costs of providing user fee services on overtime.

When this action became effective, several importers and exporters raised concerns about paying the user fee plus reimbursable overtime when the user fee is charged at the hourly rate. In these cases, both the user fee and the reimbursable overtime fee are structured on a direct labor hourly basis, and consequently, some users perceived that they were being billed twice for the services.

We have re-examined this requirement and propose to revise it regarding charging reimbursable overtime in connection with the hourly user fees.

Consequently, we propose to amend §§ 130.5, 130.9, and 130.21 to charge a premium user fee rate of $65.00 per hour on weekdays and holidays and $74.00 per hour on Sundays for each employee required to conduct a service outside of the regular tour of duty. These rates were determined by calculating the average grade and step of APHIS field personnel and applying the Federal salary for an individual at that grade level. The rates for weekdays, holidays, and Sundays are different because the rate of basic pay for employees is different for these days [1]:

holiday pay is one-and-one-half times the hourly pay for regularly scheduled weekday duty; Sunday pay is twice the hourly pay for regularly scheduled weekday duty. If a holiday falls on a Sunday, the highest applicable rate of pay applies, that is, Sunday pay.

If this proposal is adopted, we will charge only the premium user fee for hourly user fee services performed outside an APHIS employee's normal tour of duty.

We charge hourly user fees for providing miscellaneous veterinary services related to the import, entry or export of live animals, animal products, organisms and vectors, and germ plasm. We charge hourly user fees in these cases as it would be difficult to establish a flat fee. This is because costs vary widely from one customer to another; consequently, a flat fee would be very inequitable to some importers and exporters. Because the hourly user fees are structured to more directly charge importers and exporters for the exact time required to provide the service, we believe we should establish hourly fees for work performed on overtime, rather than specify that two hourly rates be charged.

Other user fees that are charged on a flat rate basis, for example, per animal inspected or certificate issued, represent an average of the costs for providing the service during normal working hours. For example, the fee for issuing an export health certificate is calculated by determining the average time it takes to research the requirements of the destination country, advise an exporter, verify test results or certification statements or both, endorse a certificate, and complete the necessary paperwork. In these cases, we will continue to charge the flat rate user fee plus reimbursable overtime, or we would not recover our costs. In the example given above, an office may spend several hours during the normal working day to research the requirements of the destination country and advise the exporter. If the exporter comes in after normal working hours and only reimbursable overtime is charged for verifying the tests and endorsing the certificate, APHIS will not recover costs for related services performed during the day, or the time spent the next day to file the paperwork.

User Fees for Inspection and Supervision Services Provided Within the United States for Export Animals, Birds, and Animal Products and Byproducts (§ 130.21)

Section 130.21 covers user fees for APHIS services provided in the United States for the export of animals, birds, and animal products and byproducts. For the convenience of the public, this section lists examples of the types of services we perform. Therefore, we are proposing to amend § 130.21 to add the following service to the list of inspection and supervision services we provide within the United States for the export of animals, birds, and animal products and byproducts: Approving or inspecting an embryo or semen collection center or the animals in it. We currently charge a user fee for these services. We are proposing to add this service to the inspection and supervision services list to eliminate some recent confusion regarding our ability to charge for these particular services.

Because it is impracticable to list all the services that we provide, we are also proposing to add a statement that § 130.21 covers export or embarkation services not specified elsewhere in the regulations. This proposed change would make this section equivalent to § 130.9, which governs user fees for APHIS services provided for importation or entry of animals, birds, and animal products and byproducts.

Further, we are proposing to add a statement to make it clear that the user fees established in § 130.21 will be charged for each employee assigned to perform the service. We believe these proposed amendments will provide users further clarification of our user fees.

Flat Rate User Fees

We charge a flat rate user fee for services that do not vary widely in the amount of time needed to complete them. These user fees are based on time (daily, monthly, etc.); commodity (animal, animal product, germ plasm, etc.); service (endorsement, inspection, supervision); measurement (certificate, load, lot, etc.); or purpose (breeder, feeder, slaughter, etc.). The flat rate user fees also reflect the average cost of providing particular services on a nationwide basis. As with the hourly user fees, the flat rate fees must recover our costs for direct labor, direct material, agency overhead, administrative support, agency overhead, and Departmental charges. As with the hourly user fees (see discussion above), these costs have increased.

[1] See 5 U.S.C. 5542 and 5 CFR 550.113, and Salary Tables published by the United States Office of Personnel Management, Personnel Systems and Oversight Group, Office of Compensation Policy, Theodore Roosevelt Building, 1900 E Street NW, Washington, DC 20415–0001.

Therefore, we are proposing to revise the flat rate user fees contained in §§ 130.2, 130.3, 130.6, 130.7, 130.8, 130.10, and 130.20. We are also proposing to amend the flat rate user fee, contained in § 130.16, for virus isolation testing for certain diseases, due to the volume of testing done. This proposed change will clarify how we charge for those tests and will lower their costs. We are proposing other changes to some of these sections, which are discussed below.

User Fees for the Importation or Entry of Live Animals (§§ 130.6 and 130.7)

Section 130.6(a) provides for user fees for various services related to import or entry of live animals along the United States-Mexico border. These services include inspecting and supervising the following animals for import or entry into the United States: feeder animals; slaughter animals; horses other than slaughter; in-bond and in-transit animals; and any other ruminants. Sometimes, these animals are denied entry into the United States or importers withdraw their requests for importation after we have provided services. Despite these circumstances, APHIS employees must provide the same services that are provided to animals that enter the United States. In order to recover our costs for these services, we are proposing to amend § 130.6(a) to add a statement to make it clear that the user fees in this section apply to live animals presented for importation into the United States, whether or not the animals enter the United States.

Section 130.7 also includes inspecting and processing cattle, swine, sheep and goats that are imported in-bond or in-transit movement through the United States. Often, after our employees have performed these services, these animals are denied entry into the United States or the importer withdraws the request for entry. For the reason stated above, we are proposing to amend § 130.7(a) to add a statement to make it clear that the user fees in this section apply to live animals presented for importation into the United States, whether or not the animals are allowed entry into the United States.

Section 130.7 provides user fees for various services related to import or entry of live animals at ports other than along the United States-Mexico border. These services include inspecting and processing all types of animals that are imported and moved directly to slaughter, and poultry (including eggs) that are imported for any reason. We currently charge a user fee per load for services we provide to these animals. Consistent with industry usage of the term, we defined "load" to mean all the animals or birds carried on one vehicle. In practice, however, we have found that we do not recover our full costs when we charge for services per load because some importers or brokers share the use of a vehicle. When this happens, we perform at least two times the amount of services for one fee. Therefore, we are proposing to charge this user fee for slaughter animals and poultry that are presented for importation into the United States and that originate from the same importer address, are destined for the same address, and require one entry permit or authorization. This would allow us to charge importers or brokers individually for the services provided to them. This change would require revision of the definition for "load" in § 130.1 (see discussion below under "Miscellaneous").

The processing or supervision of in-bond or in-transit animals in accordance with § 130.7 of the regulations often occurs at locations other than an official port of entry, that is, the one listed on the import permit or accompanying document. For example, air traffic flight patterns or fueling needs may require an aircraft destined for Guam to land in Alaska. Although the official port of entry would be Guam, in this situation we would provide the necessary services in Alaska, and we would charge a user fee for the services provided in Alaska. To clarify this, we are proposing to amend § 130.7(a) to add a statement to note one in the table stating that the user fees in this section apply to services provided for the importation of in-bond or in-transit animals wherever the service is provided.

User Fee for Germ Plasm Containers (§ 130.8)

Among other things, § 130.8 contains user fees for each permit we issue for germ plasm being imported into the United States and each certificate we endorse for germ plasm being exported from the United States. These services include checking the accuracy of information submitted, completing various forms, maintaining files, and issuing or endorsing documents.

For germ plasm being imported into the United States, we charge this fee per permit; however, germ plasm is not imported under individual permit. Therefore, we are proposing to charge the user fee per load (see discussion below under "Miscellaneous").

For germ plasm being exported from the United States, we inspect and reseal the containers to confirm that the contents match what we have endorsed on the certificate. To recover our costs relating to this service, we are proposing to add a footnote to the table in § 130.8 to clarify that the user fee for germ plasm being exported from the United States includes a single inspection and resealing of the container in which the germ plasm is being exported. Any subsequent inspections and resealing of the container would be charged at the applicable hourly rate.

If germ plasm containers that had been exported are returned empty and presented for importation into the United States, we inspect the containers to ensure that they are adequately cleaned and disinfected. To recover our costs for this service, we are proposing to charge the applicable hourly rate. This would be clarified by a footnote, which would be added to the table in this section.

Section 130.8 also provides for a user fee for approving establishments, warehouses, and facilities under 9 CFR parts 94 through 96, to receive or treat various animal products and byproducts imported into the United States. As explained in the discussion under "Flat Rate User Fees" above, we are proposing to revise these fees to cover our increased direct labor costs to complete all paperwork, agreements, and inspections. Additionally, we are proposing to revise our regulations to clarify that these fees cover all program-required inspections during the year. For example, the yearly user fee for program inspections of a facility during a 3-year approval period would be $262.75 for the first year, $152.00 for the second year, and $152.00 for the third year, for a total of $566.75 for a 3-year period. However, if APHIS personnel determine that it is necessary to conduct additional special inspections, other than routine program inspections, they will charge the applicable hourly user fee.

User Fees for Pet Birds (Proposed new § 130.10)

We are proposing to add specific user fees for pet birds quarantined in an APHIS owned or supervised quarantine facility. Our current user fees for pet birds, contained in § 130.8, apply only to pet birds which are not required to be quarantined in an APHIS owned or supervised quarantine facility.

Regulations governing the importation of pet birds are contained in 9 CFR part 92. Pet birds are defined in § 130.1 as "birds which are imported for the personal pleasure of their individual owners and are not intended for resale." Pet birds which must be quarantined in an APHIS owned or supervised quarantine facility, in accordance with 9 CFR part 92, are normally quarantined

for 30 days. The proposed fee would be assessed per isolette, per day. That is, all the birds quarantined in one isolette would be covered by one fee, which would be assessed daily for the duration of the quarantine.

This proposed user fee would recover all costs involved with feed, housing, care, and handling of the birds. The proposed user fee would not recover the costs of testing the birds for which separate user fees apply. However, the proposed user fee would account for marginal decreases in our costs per bird when more than one bird is kept in an isolette. Based on the information provided by the person requesting the service, APHIS personnel at the APHIS owned or supervised quarantine facility would determine the appropriate number of birds that should be housed per isolette. For example, an isolette might house 5 small parakeets but only 1 large cockatoo, depending on the sizes of the individual birds. Birds belonging to different owners would not be housed in the same isolette. If individual owners of pet birds request that their birds be housed individually or in a smaller group of birds per isolette than that isolette could hold, the user fee would apply per isolette based upon the actual number of birds quarantined in each isolette. As another example, an individual pet bird owner may only have one pet bird to quarantine. Regardless of the size of the bird, the fee for one bird in an isolette would apply.

Section 130.2 provides user fees for individual animals and birds quarantined in APHIS Animal Import Centers. As discussed above, we are proposing to establish specific user fees for pet birds. To eliminate any possible confusion, we are proposing to change the heading and the table in paragraph (a) of § 130.2 to indicate that the user fees in this section do not apply to pet birds imported into the United States under 9 CFR part 92.

User Fees for Multiple and Subsequent Antigen Tests (§ 130.14)

Section 130.14 provides user fees for tests performed at the National Veterinary Services Laboratories (NVSL) in connection with the importation or exportation of animals or birds. These tests include Agar gel immunodiffusion, buffered acidified plate antigen presumptive, card, competitive enzyme linked immunosorbent assay, and complement fixation, among others. When necessary to expedite results, some of these tests may be performed at authorized sites other than NVSL. For example, card tests may be performed by APHIS personnel on cattle at certain U.S. border ports. In order to recover our costs related to conducting these tests, we are proposing to amend § 130.14 to make it clear that the user fees in this section apply to tests conducted at NVSL or at any authorized site, except the Foreign Animal Disease Diagnostic Laboratory (FADDL). The user fees for laboratory tests performed at FADDL are provided separately, because FADDL works with agents of diseases exotic to the United States, which require more expensive biosecurity measures.

In addition, § 130.14 provides tiered user fees for three tests—complement fixation (CF), hemagglutination inhibition (HI), and virus neutralization (VN). That is, there is one fee for the first CF, HI, and VN test on a sample, and a second, lower user fee for each additional test of the same type on the same sample. Paragraph (a) of § 130.14 contains an explanation and example of this tiered user fee. Some users have interpreted the example to mean the user fee is reduced for each additional test, regardless of type. We are proposing to amend this section to make it clearer that any reduction in cost for multiple antigen tests is for tests of the same type on the same sample.

User Fees for Virus Isolation Testing (§ 130.16)

Section 130.16 provides user fees for laboratory tests we perform as part of reference assistance testing. Reference assistance testing is defined in § 130.1 of the regulations as "tests conducted by APHIS at the request of a veterinarian, state animal health official, or university, to either establish or confirm a diagnosis." Section 130.16(a)(3) includes a user fee for virus isolation testing. This test is administered when various viral diseases, including avian diseases, are suspected. Because virus isolation tests for Newcastle disease are often administered in conjunction with bird quarantines, they are performed more often and in larger numbers than virus isolation tests for other avian or mammalian diseases. This larger volume results in lower costs per test for Newcastle disease. Therefore, we are proposing to charge a separate user fee for virus isolation tests for Newcastle disease. The proposed user fee would be $14.00 per test for this disease only. The user fee will remain at $29.75 for all other virus isolation tests, including tests for all other avian viral diseases. This would save users $15.75 per test for Newcastle disease.

Section 130.16 also provides tiered user fees for two tests—complement fixation (CF) and virus neutralization (VN). That is, there is one fee for the first CF and VN test on a sample, and a second lower user fee for each additional test of the same type on the same sample. As discussed above under "User Fees for Multiple and Subsequent Antigen Tests (§ 130.14)," some users found our explanation and example of reduced cost for multiple antigen tests to be confusing. For that reason, we are proposing to revise the note to make it clearer that any reduction in cost for multiple antigen tests is for tests of the same type on the same sample.

User Fees for the Johnin Diagnostic Reagent (§ 130.17)

Section 130.17 provides user fees for diagnostic reagents, slide sets, and tissue sets provided by APHIS. Section 130.17(a) lists the user fee for Johnin OT, a diagnostic reagent, as $12.25 per 10-ml unit. The 10-ml unit for Johnin OT is incorrect. The standard unit is 2 ml. Therefore, we are proposing to amend § 130.17(a) to correct the listing for Johnin OT to read $12.25 per 2-ml unit. Although this correction, if adopted, will increase user costs for this diagnostic reagent from $2.25 per ml to $6.13 per ml, it will make the Johnin OT user fee equivalent to the other similar diagnostic reagents and will allow us to recover the full cost for providing the Johnin OT.

User Fees for Special Shipping and Handling of Reagents (§§ 130.14, 130.15, 130.16, 130.17, and 130.18)

We charge user fees for certain veterinary diagnostic services, including providing certain diagnostic reagents, slide sets, and tissue sets. Veterinary diagnostics is the work performed in a laboratory to determine if a disease-causing organism or toxin is present in body tissues or cells. We also consider sterilization by gamma radiation to be a veterinary diagnostic service. Often, providing these veterinary diagnostic services requires special mail handling, such as express, overnight, or foreign mailing. The cost of this special mail handling is not included in the costs of providing diagnostic reagents, slide sets, and tissue sets. Therefore, we are proposing to charge the costs for special mail handling to the person who requests the service.

User Fees for Endorsing Export Health Certificates (§ 130.20)

Section 130.20 provides user fees for each export health certificate requested for the exportation of animals or birds. These user fees are intended to cover the many steps associated with endorsing the certificates. The steps include reviewing the health certificates; confirming that the importing country's requirements have been met; verifying laboratory test results for each animal if tests are required; reviewing any certification statements required by the importing country; and endorsing, or signing, the certificates. These user fees also cover our costs for administrative support (area office rent, utilities, supplies, etc), agency overhead, and Departmental charges.

Section 130.20(c) states that "* * * user fees prescribed in this section will not apply to an export health certificate if it is endorsed by an APHIS veterinarian in the course of performing inspection or supervision services for the animals listed on the certificate." * * *" As explained in a final rule published in the **Federal Register** on January 9, 1992 (57 FR 755–773, Docket No. 91–135), this means that when an APHIS veterinarian endorses an export health certificate in the course of conducting supervision or inspection services concerning the export animals listed on the certificate, only the hourly user fee applies. Since the publication of that rule, we have found that in some cases all the steps necessary to endorse the export health certificate, except signing the certificate, are performed at separate times from the hourly inspection services. Thus, we do not recover all our costs related to preparing the certificate for signature by charging the hourly user fee. Therefore, we are proposing to amend § 130.20 to exempt from the flat rate user fee only those export health certificates that are prepared for endorsement completely on site of the inspection as an integral part of the inspection service. In these cases, the appropriate hourly user fee (hourly, premium, reimbursable overtime) would apply.

Sometimes, our veterinarians are unable to endorse the export health certificates because importers withdraw their requests for export health certificates after services have been performed. Despite these circumstances, APHIS employees must provide the same services that are provided for animals that are exported from the United States. In order to recover our costs related to services for exporters requesting export health certificates that are not endorsed, we are proposing to charge the minimum user fee of $16.50, which was developed primarily to cover the costs of handling unusually small importations at ports of entry. The minimum user fee would apply for each export health certificate that meets this description.

The export health certificates discussed above are requested for various categories of animals and birds, including slaughter animals of all types moving to Canada or Mexico; non-slaughter horses moving to Canada; poultry; hatching eggs; animal products; and other animals and birds. Under the last category, we have included any other endorsements or certifications that may be needed for other animals and birds not already listed. However, we are often asked to endorse or certify articles that may not fall under the definitions of animals or birds. For example, we are frequently asked to issue export certificates for edible fish eggs. As our user fee regulations do not include a category for these articles, we are not recovering our costs for providing this service. Therefore, we are also proposing to amend § 130.20(a) to replace the "animals and birds" category with a category for "other endorsements or certifications."

Section 130.20(c) contains a CFR reference that was not corrected in a previous document when this section was redesignated. Therefore, we are proposing to amend § 130.20(c) to reference § 130.21 instead of § 130.7. This correction would align export services. It would not affect any costs.

Miscellaneous

We are also proposing to make several miscellaneous changes to clarify how certain user fees are to be applied. We believe these changes would make it easier for users to determine their costs.

Payment of User Fees (§ 130.50)

Section 130.50 provides procedures for the payment of user fees. Among other things, it provides that user fees may be paid, under certain circumstances, by cash, check, money order, or credit card. This section allows payment by all types of checks, including traveler's checks, but it does not specify to whom the checks must be made payable. Therefore, we are proposing to amend § 130.50 to allow payment of user fees by check, including traveler's check, drawn on a U.S. bank and made payable to the "U.S. Department of Agriculture" or "USDA." Additionally, we are proposing to allow payment by credit card (VISA [*Insert trademark symbol*] or MasterCard [*Insert trademark symbol*]) at any APHIS Animal Import Center or APHIS office that is equipped to handle credit cards. We would add a footnote advising the public that they may obtain a list of such offices or centers from the Animal and Plant Health Inspection Service, Veterinary Services, National Center for Import and Export, 4700 River Road Unit 38, Riverdale, MD 20737–1231.

Definitions (§ 130.1)

Section 130.1 defines various terms used in the regulations. Currently, the regulations include a definition of "load." As discussed under the "Flat Rate User Fees: User Fees for the Importation or Entry of Live Animals (§§ 130.6 and 130.7)" above, we are proposing to revise the basis by which we determine the user fee for certain live animals presented for importation into the United States. As discussed under "User Fee for Germ Plasm Containers (§ 130.8)" above, we are also proposing to revise the basis by which we determine the user fee for germ plasm presented for importation into or exportation from the United States. To accommodate these changes, we are proposing to amend the definition of "load" to read "Those animals, poultry, or germ plasm, presented for importation into the United States in a single shipment, that originate from the same importer address, are destined for the same address, and require one entry permit or authorization."

The regulations define "pet bird" to mean birds which are imported for the personal pleasure of their individual owners and are not intended for resale. We are proposing to amend this definition to make it consistent with the definition of pet birds found in 9 CFR part 92. The proposed definition for pet birds would read "Birds, except ratites, which are imported for the personal pleasure of their individual owners and are not intended for resale."

Additionally, the regulations do not define "test" or "United States." These omissions have led to misunderstandings. Defining these terms would help eliminate confusion. Therefore, we propose to amend § 130.1 by defining these terms as follows: (1) "Test" means a single analysis performed on a single specimen from an animal, animal product, commercial product, or animal feed; and (2) "United States" means the several States of the United States, the District of Columbia, Guam, the Commonwealth of Northern Mariana Islands, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, and all other territories and possessions of the United States.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. This rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the OMB. This proposed rule updates certain fees related to import/export inspection and certification, animal

quarantine, and veterinary diagnostics. Some of the current fees must be changed to ensure full recovery of APHIS' costs. The proposed amendments would also provide further clarification of the Agency's user fee collection process.

The proposed rule would, if adopted, increase user fee collections by about $2.5 million each year. This would result in an annual taxpayer savings of about $2.5 million, since these APHIS expenses would not be funded by general tax revenues.

Fee revisions included in this proposed rule could impact some importers/exporters of live animals, importers/exporters of animal byproducts, and firms that seek APHIS' veterinary diagnostic services. The revised fees are expected to have a relatively minor impact on "small" entities since the amount of increase represents only a small fraction (less than 1 percent) of the typical cost of purchasing and permanently importing a breeding grade registered animal into the United States. That cost is between $1,500 and $5,000. Purchase and import costs for feeder and slaughter animals are usually significantly lower per animal, but can easily exceed $1,500 per animal. The price increases included in this proposed rule range from $0.25 to $31.75 per animal. The average cost increase is about $4.89 per animal. That is less than 1 percent of purchase and import costs.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been approved by the Office of Management and Budget (OMB), and there are no new requirements. The assigned OMB control numbers are 0579–0015, 0579–0055, and 0579–0094.

List of Subjects in 9 CFR Part 130

Animals, Birds, Diagnostic reagents, Exports, Imports, Poultry, Quarantine, Reporting and recordkeeping requirements, Tests.

Accordingly, 9 CFR part 130 would be amended as follows:

PART 130—USER FEES

1. The authority citation for part 130 would continue to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114, 114a, 134a, 134b, 134c, 134d, 134f, 135, 136, and 136a; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 130.1, (the definition for "*Germplasm*" would be removed and added in its place; the definitions of *load* and *pet bird* would be revised; and definitions for "Germ plasm" "test" and "United States" would be added, in alphabetical order, to read as follows:

§ 130.1 Definitions.

* * * * *

Germ plasm. Semen, embryos, or ova.

* * * * *

Load. Those animals, poultry, or animal germ plasm, presented for importation into the United States in a single shipment, that originate from the same importer address, are destined for the same address, and require one entry permit or authorization.

* * * * *

Pet birds. Birds, except ratites, which are imported for the personal pleasure of their individual owners and are not intended for resale.

* * * * *

Test. A single analysis performed on a single specimen from an animal, animal product, commercial product, or animal feed.

United States. The several States of the United States, the District of Columbia, Guam, the Commonwealth of Northern Mariana Islands, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, and all other territories and possessions of the United States.

* * * * *

3. Section 130.2 would be amended as follows:

a. In the section heading, before the word "birds", by adding the word "certain".

b. In paragraph (a), by revising the table to read as set forth below.

§ 130.2 User fees for individual animals and certain birds quarantined in APHIS Animal Import Centers.

(a) * * *

Animal or bird	Daily user fee
Birds (including zoo birds, but excluding ratites and pet birds imported in accordance with Part 92 of this subchapter):	
0–250 grams	$1.00
251–1,000 grams	3.25
Over 1,000 grams, and any bird in nonstandard housing or receiving nonstandard care and handling	7.50
Ratites:	
Chicks (less than 3 months of age)	5.75
Juveniles (3 months through 10 months of age)	6.00
Adults (11 months of age and older)	16.25
Poultry (including zoo poultry):	
A. Doves, pigeons, quail	2.00
B. Chickens, ducks, grouse, guinea fowl, partridge, pea fowl, pheasants	3.50
C. Game cocks, geese, swans, turkeys, any poultry housed in nonstandard housing or receiving nonstandard care and handling	8.25
Equines (including zoo equines, but excluding miniature horses):	
1st through 3rd day	149.50
4th through 7th day	106.25
8th and later days	91.75
Miniature horses	40.25
Zoo animals (except equines, birds, and poultry)	32.25
Domestic animals:	
Camels, cattle, bison, buffalo	56.50
All others	15.00

* * * * *

4. Section 130.3 would be amended as follows:

a. In paragraph (a)(1), by revising the table to read as set forth below.

b. By revising paragraph (a)(3) to read as set forth below.

§ 130.3 User fees for exclusive use of space at APHIS Animal Import Centers.

(a)(1) * * *

Animal import center	Space available	Monthly user fee
Miami, Fl:		
South Wing	6,952 sq. ft. (645.9 sq.m.).	$30,285.00
North Wing	6,545 sq. ft. (608.1 sq.m.).	$29,377.00
Newburgh, NY:		
Space A	5,904 sq. ft. (548.5 sq.m.).	$47,609.00
Space B	9,742 sq. ft. (905 sq.m.).	$78,555.00

* * * * *

(c) * * *

(3) If the importer chooses to pay for additional services on an hourly basis, the user fees for each employee required to perform the service are:

(i) $56.00 per hour;

(ii) $14.00 per quarter-hour;

(iii) With a minimum of $16.50.

* * * * *

5. Section 130.4 would be amended as follows:

a. By designating the introductory paragraph as paragraph (a).

b. By adding a new paragraph (b) to read as set forth below.

§ 130.4 User fees for services at privately operated permanent import-quarantine facilities.

* * * * *

(b) If a service must be conducted on a Sunday or holiday or at any other time outside the normal tour of duty of the employee, then reimbursable overtime, as provided for in 9 CFR part 97, must be paid for each service, in addition to the user fee listed in this section.

6. Section 130.5 would be amended as follows:

a. In paragraph (b)(1), by removing "$50.00" and adding "$56.00" in its place.

b. In paragraph (b)(2), by removing "$12.50" and adding "$14.00" in its place.

c. In paragraph (b)(3), by removing "$16.00" and adding "$16.50" in its place.

d. By adding a new paragraph (c) to read as set forth below.

§ 130.5 User fees for services at privately operated temporary import-quarantine facilities.

* * * * *

(c) If a service must be conducted on a Sunday or holiday or at any other time outside the normal tour of duty of the employee, then the premium user fee rate, in lieu of the user fee listed in paragraph (b) of this section, must be paid for each employee required to perform each service:

(1) $65.00 per hour for weekdays and holidays; and

(2) $74.00 per hour for Sundays.

7. Section 130.6 would be amended as follows:

a. In paragraph (a), by removing the figure "$16.00" and adding "$16.50" in its place.

b. In paragraph (a), by removing the phrase "live animals imported into or entering the United States" and adding "live animals presented for importation into or entry into the United States" in its place.

c. In paragraph (a), by revising the table to read as set forth below.

§ 130.6 User fees for import or entry services for live animals at land border ports along the United States-Mexico border.

(a) * * *

Type of live animal	User fee (per head)
Feeder	$1.75
Slaughter	2.50
Horses, other than slaughter	29.25
In-bond or in transit	3.75
Any ruminants not covered above	6.00

* * * * *

8. Section 130.7 would be amended as follows:

a. In paragraph (a), by removing the figure "$16.00" and adding "$16.50" in its place.

b. In paragraph (a), by removing the phrase "live animals imported into or entering the United States" and adding "live animals presented for importation into or entry into the United States" in its place.

c. In paragraph (a), by revising the table to read as set forth below:

§ 130.7 User fees for import or entry services for live animals at all other ports of entry.

(a) * * *

Type of live animal	User fee
Animals being imported into the United States:	
Horses, other than slaughter and in transit horses.	$19.00 per head
Breeding animals, except horses—Grade animals:	
Swine	0.50 per head
Sheep and goats	0.50 per head
All others	2.25 per head
Registered animals, all types	4.00 per head
Feeder animals:	
Cattle (not including calves)	1.00 per head
Swine	0.50 per head
Sheep and calves	0.25 per head
Slaughter animals, all types	16.50 per load
Poultry (including eggs), imported for any purpose	33.00 per load
Animals transiting [1] the United States:	
Cattle	1.00 per head
Swine	0.25 per head
Sheep and goats	0.025 per head
Horses and all other animals	4.50 per head

[1] The user fee in this section will be charged for services provided to in-bond animals or animals transiting the United States, at the actual port of entry. For example, if the official port of entry is Guam, but the animals are actually provided import or entry services in Alaska, the user fee will be charged for services provided in Alaska. The hourly user fee will be charged for services provided at the port where the animals leave the United States.

* * * * *

9. In § 130.8, paragraph (a), by revising the table and adding a footnote at the end of the table to read as follows:

§ 130.8 User fees for other services.

(a) * * *

Service	User fee
Inspection for approval of slaughter establishment:	
Initial approval	$246.50 for all inspections required during year.
Renewal	213.50 for all inspections required during year.
Pet birds, except pet birds of U.S. origin entering the United States from Canada:	
Which have been out of United States more than 60 days	169.75 per lot.

Service	User fee
Which have been out of United States 60 days or less	71.25 per lot.
Germ Plasm—Being imported:[1]	
Semen	39.50 per load.
Embryo	39.50 per load.
Being exported:[2]	
Semen	33.50 per certificate.
Embryo (up to 5 donor pairs)	54.75 per certificate.
Embryo (each additional group of donor pairs, up to 5 pairs per group)	24.75 per group of donor pairs.
Processing VS form 16–3, "Application for Permit to Import Controlled Material/Import or Transport Organisms or Vectors":	
For permit to import fetal bovine serum when facility inspection is required	208.50 per application.
For all other permits	27.50 per application.
Amended application	11.50 per amended application.
Application renewal	15.00 per application.
Fetal Bovine Serum sample verification	666.00 per verification.
Import compliance assistance	24.00 per release.
Release from export agricultural hold	24.00 per release.
Inspection of approved establishments, warehouses, and facilities under 9 CFR parts 94 through 96:	
Approval (Compliance Agreement)	262.75 for first year of 3-year approval (for all inspections required during the year).
Renewed approval	152.00 per year for second and third years of 3-year approval (for all inspections required during the year).

[1] For inspection of empty containers being imported into the United States, the applicable hourly user fee would apply.
[2] This user fee includes a single inspection and resealing of the container. Each subsequent inspection and resealing requires the payment of an additional user fee.

* * * * *

10. Section 130.9 would be amended as follows:

a. In paragraph (a) introductory text, by removing the figure "$50.00" and adding "$56.00" in its place, and by removing the figure "$12.50" and adding "$14.00" in its place.

b. In paragraph (a) introductory text, by removing the figure "$16.00" and adding "$16.50, for each employee required to perform the service" in its place.

c. By revising paragraph (b) to read as set forth below.

§ 130.9 User fees for miscellaneous import or entry services.

* * * * *

(b) If a service must be conducted on a Sunday or holiday or at any other time outside the normal tour of duty of the employee, then the premium user fee rate, in lieu of the user fee listed in paragraph (a) of this section, must be paid for each employee required to perform each service:

(1) $65.00 per hour for weekdays and holidays; and

(2) $74.00 per hour for Sundays.

11. Section 130.10 would be added to read as follows:

§ 130.10 User fees for pet birds quarantined at APHIS-owned or supervised quarantine facilities.

(a) The person for whom the service is provided and the person requesting the service are jointly and severally liable for the following user fees, which include standard care, feed, and handling, and which must be paid for each animal or bird quarantined in an Animal Import Center.[7]

Number of birds in isolette	Daily Fee
1	$6.50
2	7.75
3	9.25
4	10.75
5	12.00

(b) Based on the information provided to APHIS personnel, APHIS personnel at the Animal Import Center or other APHIS owned or supervised quarantine facility will determine the appropriate number of birds that should be housed per isolette.

(c) If the person or persons for whom the service is provided or the person or persons requesting the service request additional services on an hourly basis, the user fees for each employee required to perform the service are:

(1) $56.00 per hour; and

(2) $14.00 per quarter-hour;

(3) With a minimum of $16.50.

12. Section 130.14 would be amended as follows:

a. By revising the section heading to read as set forth below.

b. In paragraph (a), after the term "NVSL", by adding the phrase "or at authorized import sites (excluding FADDL)".

[7] See footnote 5 to § 130.2(a).

c. In paragraph (a), by revising footnote 1 to the table to read as set forth below.

d. By adding a new paragraph (c) to read as set forth below.

§ 130.14 User fees for tests performed by the NVSL or at authorized import sites (excluding FADDL).

(a) * * *

[1] Because tests with multiple and subsequent antigens can be set up for a fraction of the cost of a single-antigen test, tests subsequent to the first antigen used for these assays are reduced down to 20% of the cost of using the first antigen. The following are examples of these cost savings: complement fixation (CF) tests for equine encephalomyelitis or vesicular stomatitis; hemagglutination inhibition (HI) for equine encephalomyelitis or equine influenza; virus neutralization (VN) tests for porcine respiratory and reproductive syndrome. For example, for CF tests for eastern equine encephalomyelitis (EEE), western equine encephalomyelitis (WEE), and Venezuelan equine encephalomyelitis (VEE) and for VN tests for the New Jersey and Indiana serovars of vesicular stomatitis (VS), the costs are as follows: EEE—$9.00, WEE and VEE—$2.00 each; VS New Jersey—$7.50, VS Indiana—$1.50. The total of these five assays is $22.00 for each specimen submitted.

* * * * *

(c) The user fees in this section do not include any costs that may be incurred due to special mail handling, such as express, overnight, or foreign mailing. If a test requires special mail handling, all costs incurred must be paid by the user as specified in paragraph (a) of this section, in addition to the user fee listed in paragraph (a) of this section.

13. Section 130.15 would be amended as follows:

a. In paragraph (a), by revising footnote 1 to the table to read as set forth below.

b. By adding a new paragraph (c) to read as set forth below.

§ 130.15 User fees for tests performed at FADDL.

(a) * * *

[1] Because tests with multiple and subsequent antigens can be set up for a fraction of the cost of a single-antigen test, tests subsequent to the first antigen used for these assays are reduced down to 20% of the cost of using the first antigen. The following assays are examples of these cost savings: complement fixation (CF) tests for foot-and-mouth disease or vesicular stomatitis; virus neutralization (VN) tests for foot-and-mouth disease or vesicular stomatitis. For example, for CF and VN tests for foot-and-mouth disease A, O, and C antigens, the costs are as follows: CF A antigen—$30.50, O antigen—$6.25, and C antigen—$6.25; VN A antigen—$22.00, O antigen—$4.50, and C antigen—$4.50. The total of these six assays is $74.00 for each specimen tested for these agents.

* * * * *

(c) The user fees in this section do not include any costs that may be incurred due to special mail handling, such as express, overnight, or foreign mailing. If a test requires special mail handling, all costs incurred must be paid by the user as specified in paragraph (a) of this section in addition to the user fee listed in paragraph (a) of this section.

14. Section 130.16 would be amended as follows:

a. In paragraph (a), in the table, by revising the entry for "Virus isolation" and by adding a new test in alphabetical order to read as set forth below.

b. By adding a new paragraph (c) to read as set forth below.

§ 130.16 User fees for reference assistance testing.

(a) * * *

Test	User fee
* * * * *	
(3) Other tests:	
* * * * *	
Virus isolation (except Newcastle disease virus)	$29.75
Virus isolation for Newcastle disease virus	14.00

* * * * *

(c) The user fees in this section do not include any costs that may be incurred due to special mail handling, such as express, overnight, or foreign mailing. If a test requires special mail handling, all costs incurred must be paid by the user as specified in paragraph (a) of this section in addition to the user fee listed in paragraph (a) of this section.

15. Section 130.17 would be amended as follows:

a. In paragraph (a), in the table, in the entry for Johnin: OT, under the Unit (ml.) column, by removing the numeral "10" and adding "2" in its place.

b. By adding a new paragraph (c) to read as set forth below.

§ 130.17 User fees for diagnostic reagents, slide sets, and tissue sets.

* * * * *

(c) The user fees in this section do not include any costs that may be incurred due to special mail handling, such as express, overnight, or foreign mailing. If a test requires special mail handling, all costs incurred must be paid by the user as specified in paragraph (a) of this section in addition to the user fee listed in paragraph (a) of this section.

16. Section 130.18 would be amended as follows:

a. By redesignating the existing text as paragraph (a).

b. By adding a new paragraph (b) to read as set forth below.

§ 130.18 User fees for sterilization by gamma radiation.

(a) * * *

(b) The user fees in this section do not include any costs that may be incurred due to special mail handling, such as express, overnight, or foreign mailing. If a test requires special mail handling, all costs incurred must be paid by the user as specified in paragraph (a) of this section in addition to the user fee listed in paragraph (a) of this section.

17. Section 130.20 would be amended as follows:

a. In paragraph (a), by redesignating footnote 7 as footnote 8, and by revising the table to read as set forth below.

b. In paragraph (b)(1), by revising the table to read as set forth below.

c. In paragraph (c), by removing the words "it is endorsed" and by adding the phrase "the export health certificate is prepared for endorsement completely at the site of the inspection" in their place.

d. In paragraph (c), by removing the reference "§ 130.7" and adding "§ 130.21" in its place.

e. By redesignating paragraph (d) as paragraph (e) and adding a new paragraph (d) to read as set forth below.

§ 130.20 User fees for endorsing export health certificates.

(a) * * *

Certificate categories	User fee
Slaughter animals, of any type, moving to	$24.50
Canada or Mexico	
Nonslaughter horses to Canada	26.25
Poultry	21.00
Hatching eggs	21.00
Animal products	21.50
Other endorsements or certifications	16.50

(b)(1) * * *

Number of tests/vaccinations required	Number of animals on certificate	Fee
1–2	First animal	$52.50
	Each additional animal.	3.00
3–6	First animal	64.75
	Each additional animal.	5.00
7 or more	First animal	75.75
	Each additional animal.	5.00

* * * * *

(d) The user fees prescribed in this section will not apply if a requested export health certificate is not endorsed by an APHIS veterinarian. The minimum user fee of $16.50 will be charged for each export health certificate that is requested but not endorsed.

18. Section 130.21 would be amended as follows:

a. By revising paragraphs (a)(1) through (a)(5) to read as set forth below.

b. By adding new paragraphs (a)(6) and (a)(7) to read as set forth below.

c. In paragraph (b), before the colon, by adding the phrase "charged per each employee required to perform the service".

d. In paragraph (b)(1), by removing the figure $50.00 and adding "$56.00" in its place.

e. In paragraph (b)(2), by removing the figure "$12.50" and adding "$14.00" in its place.

f. In paragraph (b)(3), by removing the figure "$16.00" and adding "$16.50" in its place.

g. By revising paragraph (c) to read as set forth below.

§ 130.21 User fees for inspection and supervision services provided within the United States for export animals, birds, and animal products and byproducts.

(a) * * *

(1) Inspecting an export isolation facility and animals in it;

(2) Supervising animal or bird rest periods prior to export;

(3) Supervising loading or unloading of animals or birds for export shipment;

(4) Inspecting means of conveyance used to export animals or birds;

(5) Conducting inspections under authority of part 156 of this chapter;

(6) Approving or inspecting an embryo or semen collection center or the animals in it; and

(7) Other export or embarkation services not specified elsewhere in this part.

* * * * *

(c) If a service must be conducted on a Sunday or holiday or at any other time outside the normal tour of duty of the employee, then the premium user fee rate, in lieu of the user fee listed in paragraph (b) of this section, must be paid for each employee required to perform each service:

(1) $65.00 per hour for weekdays and holidays; and

(2) $74.00 per hour for Sundays.

19. Section 130.50 would be amended as follows:

a. In paragraph (b)(1), by redesignating footnote 8 as footnote 9 and revising it to read as set forth below.

b. In paragraph (b)(2), at the end of the sentence, by adding "drawn on a U.S. bank in U.S. dollars and made payable to the U.S. Department of Agriculture or USDA".

c. In paragraph (b)(3), immediately before the word "or", by adding "drawn on a U.S. bank in U.S. dollars and made payable to the U.S. Department of Agriculture or USDA".

d. By revising paragraph (b)(4) to read as set forth below. § 130.50 Payment of user fees.

* * * * *

(b) * * *

(4) Credit cards (VISA [*Insert trademark symbol*] or MasterCard [*Insert trademark symbol*]) if payment is made at an Animal Import Center or an APHIS office that is equipped to process credit cards.[9]

* * * * *

Done in Washington, DC, this 22nd day of May 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–12999 Filed 5–25–95; 8:45 am]

BILLING CODE 3410–34–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Regulations; Non-Manufacturer Rule

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The Small Business Administration (SBA) proposes to amend its size regulations to require that small business non-manufacturers provide the product of a small business manufacturer on small business set-aside contracts or section 8(a) contracts, regardless of the dollar value of the contract. Under certain conditions, a waiver of this requirement may be granted by the SBA.

DATES: Comments must be submitted on or before July 25, 1995.

ADDRESSES: Send comments to: Gene VanArsdale, Acting Assistant Administrator for Procurement Policy and Liaison, U.S. Small Business Administration, 409 Third Street, SW, Mail Code 6252, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Gary M. Jackson, Assistant Administrator for Size Standards, (202) 205–6618.

SUPPLEMENTARY INFORMATION: In order to qualify as small for purposes of a small business set aside or section 8(a) procurement of manufactured or processed products, the Small Business Act (15 U.S.C. 637(a)(17)) and SBA's implementing size regulations (13 CFR 121.906 and 121.1106) require non-manufacturers to provide the product of a domestic small business manufacturer. An offeror which is not the manufacturer (1) must itself be a small business concern, *and* (2) must also supply a product manufactured by a domestic small business concern. This requirement is commonly referred to as SBA's "non-manufacturer rule." Compliance with the non-manufacturer rule has been a long-standing regulatory requirement for the small business set-aside and 8(a) programs, and a part of the Small Business Act since 1988. Pursuant to the Act, the non-manufacturer rule may be waived by the SBA if SBA determines that no small business manufacturer can reasonably be expected to offer a project meeting the specifications required by the solicitation, or if SBA determines that no small business manufacturer is available to participate in the Federal market. Under the SBA's existing size regulations, the non-manufacturer rule has not been extended to supply contracts processed under "Small Purchase Procedures."

Recent legislation, however, has rescinded the Small Purchase Procedures. Thus, the exemption to the non-manufacturer rule for procurements processed under those procedures no longer exists. This action was part of the Federal Acquisition Streamlining Act of 1994 (FASA) that was signed into law on October 13, 1994. Among its many changes, FASA requires that simplified acquisition procedures be developed for contracts between $2,500 and $100,000, and that all contracts between $2,500 and $100,000 be reserved exclusively for small concerns unless the contracting officer is unable to obtain offers from at least two small business concerns that are competitive in price and quality.

The SBA is proposing to apply the nonmanufacturer rule to supply contracts that are reserved for small business (i.e., set aside for small business or reserved for the 8(a) program) regardless of the dollar value of the contract. This policy, adopted, would consistently apply the non-manufacturer rule to small business set-aside and 8(a) contracts for supplies issued under all procurement methods, including those processed under the new Simplified Acquisition Procedures. The SBA believes that this rule would further the overall purpose of the FASA, which is to simplify Federal procurement procedures. Applying different rules according to dollar value of contracts would further complicate the procurement process. The impact of this proposed rule would effectively be limited to those procurements ranging in value between $2,500 and $25,000 that were previously exempt from the non-manufacturer rule as procurements processed under Small Purchases Procedures. (Note: Procurements of $2,500 and below will be processed under new micro-purchase procedures and will not be reserved for small business competition. Thus, the proposed rule would not apply.)

The SBA does not believe an exception to the non-manufacturer rule based on the dollar value of contract is needed. Public Law 100–656 amended the Small Business Act by statutorily requiring the non-manufacturer rule. As indicated above, the legislation also included a provision granting SBA the authority to waive the nonmanufacturer rule when (1) there is *no* small business manufacturer for that particular class of products in the federal market (class waiver); or when (2) there is *no* small business manufacturer which can meet the specifications of a particular contract (individual waiver). The waiver provision addresses those situations where the application of the nonmanufacturer rule is inappropriate due to the absence of small business manufacturers in the Federal market. By way of illustration, examples of waivers to the non-manufacturer rule are described by the two following cases.

1. *Example of class waiver.* There are no small business manufacturers of four-wheel drive utility trucks. Therefore, the SBA has issued a waiver to the nonmanufacturer rule for this class of product. Because there is no small business manufacturer in the Federal market, a small business offeror may provide a product of a large business manufacturer of four-wheel drive trucks on contracts set aside for small businesses.

2. *Example of an individual waiver.* There are occasional instances when the government requires a brand-name product. For example, a government office may need to purchase computers which are compatible with computers already used in that office. If there is no compatible unit manufactured by a small business concern in the Federal market, the SBA may grant an individual waiver at the request of the contracting officer so that a small business offeror may provide a product manufactured by a large business for that particular procurement even though set aside for small businesses.

The SBA believes that the implementation of the non-manufacturer rule contained in this proposed rule is the application which will best assist small business, minimize complexity for procurement, and most clearly comply with the congressional purposes of the Small Business Act. This proposed rule would ensure that, on procurements reserved for small business, a substantial value of the contract is performed by a small business. Absent the non-manufacturer rule, a small business non-manufacturer can obtain a small business contract and, in turn, provide a product produced by a large business manufacturer. In that case, the benefits to small business of such an award are limited to the mark-up of the small business non-manufacturer or dealer. On the other hand, when a small business provides the product, directly or through a dealer, most of the value of the contract is realized by a small business. This fosters increased employment and growth for small business manufacturers in the economy.

The SBA notes that the Federal government's implementation of electronic commerce will make it easier for small business manufacturers to enter into the government procurement arena. Through electronic commerce, they will be able to identify Federal contracting opportunities and become potential sources for Federal agencies and small business dealers. Requiring small business products on all set-aside and 8(a) contracts will help such manufacturers do a larger amount of business in the federal procurement arena.

Alternative Approaches

The SBA considered two alternatives with regard to application of the non-manufacturer rule to small business set-aside or 8(a) contracts that will be processed under the Simplified Acquisition Procedures:

(1) A rule that would not apply the non-manufacturer rule to small business set-aside and 8(a) contracts of $100,000 or less, and

(2) A rule that would not apply the non-manufacturer rule to small business set-aside and 8(a) contracts of $25,000 or less.

Each of these approaches has advantages and disadvantages which are discussed below.

The first alternative, which would not apply the non-manufacturer rule to supply contracts on "Simplified Acquisition Procedures" until the simplified acquisition threshold of $100,000, would expand the number of contracts in which a small business non-manufacturer or dealer could supply the product of any domestic manufacturer large or small. Existing rules exempt from the non-manufacturer rule only those contracts which are $25,000 or less in value, and which are processed under "Small Purchases Procedures." Under the first alternative, small business set-aside and 8(a) contracts of between $25,000 and $100,000, would no longer be subject to the nonmanufacturer rule.

This approach would appear to be consistent with a major purpose of the FASA, which is to simplify the formal procurement process. It would simplify procurement procedures on relatively low dollar value contracts and would facilitate the evaluation and award of these contracts (since the small business status of a subcontractor to a small offeror would no longer be relevant).

The SBA is concerned, however, that this alternative might have an adverse impact on small business manufacturers. Without the non-manufacturer rule, large manufacturers could simply supply their products to the government indirectly (through small business offerors that won the contract). Small manufacturers would then, in effect, be competing with large manufacturers on a large number of contracts ostensibly reserved for small business. Based on contract award data between fiscal years 1989 and 1993, the SBA estimates that over $500 million has been awarded annually to small manufacturers on small business set-aside and 8(a), contracts ranging in size between $25,000 and $100,000. A failure to apply the non-manufacturer rule to these contracts would cause a shift in contract revenues from small manufacturers to large manufacturers that is likely to be well into the multi-million dollar range. As a consequence, SBA elected not to propose this approach.

The second alternative is to not apply the non-manufacturer rule to small business set-aside and 8(a) contracts of $25,000 or less—the level of the former Small Business Purchase threshold. However, under this approach, all other small business set-aside and 8(a) contracts, including those processed under the new Simplified Acquisition Procedures, would be subject to the non-manufacturer rule (unless an administrative waiver were issued for the class of product or for specific procurement). This alternative would, in effect, maintain the current application of the non-manufacturer rule to small business set-aside procurements notwithstanding enactment of FASA.

Under this approach, small business manufacturers would not be subject to new competition from large business (as could occur under the first alternative approach) and small business offerors would continue to have contract opportunities below $25,000 exempt from the rule so they could supply the product of a large manufacturer. In addition, a new procurement requirement would not be added to smaller-sized procurements of up to $100,000 at a time when the Federal government is attempting to streamline all procurement procedures.

The disadvantage of this approach is that it would add unnecessary complexity to the new Simplified Acquisition Procedures. A contracting officer would have different requirements to follow depending upon whether the value of a contract exceeded $25,000 or not. This would undercut the overall purpose of FASA, which is to simplify the procurement process.

The SBA believes a uniform approach with regard to the application of the non-manufacturer rule to small business set-aside contracts is more in-line with the spirit of the procurement reform legislation. In this regard, it believes the proposed rule provides the best level of assistance to small businesses, especially for small business manufacturers.

The SBA welcomes public comments on the proposed rule, and will continue its evaluation of all of the alternative approaches to application of the non-manufacturer rule. Comments on any alternative to the proposal, including those discussed above, should present the reasons why it is preferable to the

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[9] A list of Animal Import Centers and APHIS offices that accept credit cards may be obtained from the Animal and Plant Health Inspection Service, Veterinary Services, National Center for Import and Export, 4700 River Road Unit 38, Riverdale, MD 20737–1231.

proposal, and should address the following concerns: (1) The interaction between SBA programs and the procurement process, including the various statutory authorities impacting this process; (2) the effect on small business participation; and (3) the prospects for significant new entrants into the Federal procurement market.

Compliance With Executive Orders 12866, 12778 and 12612, the Regulatory Flexibility Act (5 U.S.C. 601, et seq.), and the Paperwork Reduction Act (44 U.S.C. Chap. 35)

The SBA believes that this proposed rule, if finalized, would have a significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* In addition, this rule constitutes a significant rule for the purpose of Executive Order 12866. A regulatory flexibility analysis follows:

(1) Description of Entities to Which This Rule Applies

With eleven million small purchase contract actions during FY 1993, the SBA estimates that tens of thousands of small manufacturers active in Federal contracting potentially could be impacted by this rule. In addition, thousands of non-manufacturers or dealers providing manufactured products under small purchase procedures could be impacted by this rule since their product mix and small business status could be affected.

(2) Description of Potential Benefits of This Rule

A decision to apply the non-manufacturer rule to supply contracts in the $2,500 to $25,000 range of contract size would have an estimated impact on small business participation in excess of $100 million. During FY 1993, $7.9 billion was awarded to small business concerns under small purchase procedures. Although available data would not permit the SBA to determine the extent to which Federal agencies utilize small business non-manufacturers to satisfy contracts awarded as small purchases, or to identify which contracts are in the $2,500 to $25,000 range affected by this rule, the magnitude of the $7.9 billion figure suggests that a decision to apply the non-manufacturer rule waiver to small business procurements in this dollar range would likely have an annual small business impact exceeding $100 million.

(3) Description of the Potential Costs of This Rule

The SBA believes the procurement costs to the Federal government would be minimal. All set-aside and 8(a) contracts are expected to be awarded at no more than fair-market value. If reasonable pricing does not exist, the procuring agency should issue an unrestricted solicitation. There should be no significant increased costs to the government.

(4) Description of the Potential Net Benefits of the Rule

If the proposed rule is adopted, the SBA estimates that tens of thousands of small manufacturers would provide the products that formerly have been provided by large manufacturers. At a minimal cost to the government, small business participation in the Federal market would likely be increased. The direct impact would be entirely concentrated in the area of Federal procurement.

(5) Legal Basis for This Rule

The legal basis for this rule is sections 3(a), 5(a), 8(a), and 15(a) of the Small Business Act, 15 U.S.C. 632(a), 634(b)(6), 637(a) and 644(a).

(6) Federal Rules

There are no Federal rules which duplicate, overlap or conflict with this proposed rule. The SBA has been given exclusive statutory jurisdiction in establishing size standards.

(7) Significant Alternatives to This Rule

In compliance with the Regulatory Flexibility Act, the SBA has examined alternatives to the proposed application of the non-manufacturer rule. These are discussed in the supplementary information. The public is invited to comment on the proposed rule and alternative approaches to assist the SBA in developing a final rule.

For purpose of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA certifies that this rule contains no new reporting or recordkeeping requirements.

For purposes of Executive Order 12612, SBA certifies that this rule does not have any federalism implications warranting the preparation of a Federalism Assessment.

For the reasons set forth above, Title 13, Code of Federal Regulations (CFR), is amended as set forth below.

PART 121—[AMENDED]

1. The authority citation for 13 CFR Part 121 continues to read as follows:

Authority: 15 U.S.C. 632(a), 634(b)(6), 637(a), 644(c); and Pub. L. 102–486, 106 Stat. 2776, 3133.

§ 121.906 [Amended]

2. Section 121.906(d) is removed.

Dated: April 19, 1995.

Philip Lader,

Administrator.

[FR Doc. 95–12646 Filed 5–25–95; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–SW–06–AD]

Airworthiness Directives; Robinson Helicopter Company Model R22 Series Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to Robinson Helicopter Company Model R22 series helicopters, that currently requires an inspection and repetitive visual checks for slippage of the tail rotor (T/R) drive and replacement of the T/R gearbox, if necessary. This action would require disassembly of the T/R gearbox to verify the installation of the input and output shaft keys (keys) between the input and output pinions and their respective shafts. This proposal is prompted by two incidents in which the key was not installed between the output shaft and the output pinion during assembly of the T/R gearbox at Robinson Helicopter Company. The actions specified by the proposed AD are intended to prevent slippage of the T/R drive, loss of directional control, and subsequent loss of control of the helicopter.

DATES: Comments must be received by July 25, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–SW–06–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth Bumann, Aerospace Engineer, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Blvd., Lakewood, California 90712, telephone (310) 627–5265, fax (310) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 95–SW–06–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–SW–06–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

On August 25, 1994, the FAA issued priority letter AD 94–17–07, applicable to Robinson Helicopter Company Model R22 series helicopters, to require an inspection and repetitive visual checks for slippage of the T/R drive and replacement of the T/R gearbox, if necessary. On October 24, 1994, the FAA issued the final rule of the priority letter, AD 94–17–07, Amendment 39–9059 (59 FR 55203, November 4, 1994). Those actions were prompted by two incidents in which the key was not installed between the output shaft and the output pinion during assembly of the T/R gearbox. The key is required to prevent the output gear from rotating on the output shaft. Both incidents resulted in slippage of the T/R drive. The requirements of that AD are intended to prevent slippage of the T/R drive, loss of directional control, and subsequent loss of control of the helicopter. Owner/operator daily preflight checks for misalignment of the alignment dots that are installed on the tail cone skin and the drive shaft flange are allowed. These owner/operator checks do not require the use of tools, precision measuring equipment, training, pilot logbook endorsements, or the use of technical data not contained in the AD. Additionally, these owner/operator checks are considered part of the normal pilot "Before Takeoff" and "After Landing" checks. These owner/operator checks are additional measures to prevent slippage of the T/R drive until the installation of the keys is verified. These checks may be performed by an owner/operator holding at least a private pilot certificate, but must be entered into the aircraft records showing compliance with this AD in accordance with sections 43.11 and 91.417 (a)(2)(v) of the Federal Aviation Regulations.

Since the issuance of that AD, the FAA has determined that the required terminating action to AD 94–17–07 is verification of the presence of both keys through disassembly and reassembly of the T/R gearbox in accordance with the procedures contained in this notice, or other FAA-approved procedures.

Since an unsafe condition has been identified that is likely to exist or develop on other Robinson Helicopter Company Model R22 series helicopters of the same type design, the proposed AD would supersede AD 94–17–07 to require disassembly of the T/R gearbox to verify the installation of the key between the input and output pinions and their respective shafts.

The FAA estimates that 500 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 5 work hours per helicopter to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $150,000.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–9059 (59 FR 55203, November 4, 1994), and by adding a new airworthiness directive (AD), to read as follows:

Robinson Helicopter Company: Docket No. 95–SW–06–AD. Supersedes AD 94–17–07, Amendment 39–9059.

Applicability: Model R22 series helicopters, certificated in any category with tail rotor (T/R) gearboxes that were manufactured or overhauled by Robinson Helicopter Company prior to June 8, 1992. The following gearbox serial numbers have been determined to have the T/R input and output shaft keys installed and are therefore exempt from this AD: 0012, 0013, 0014, 0020, 0021, 0040, 0054, 0062, 0091, 0095, 0098, 0106, 0121, 0134, 0137, 0153, 0169, 0179, 0185, 0191, 0201, 0205, 0227, 0228, 0235, 0248, 0258, 0262, 0272, 0277, 0280, 0321, 0333, 0342, 0365, 0432, 0439, 0444, 0503, 0504, 0525, 0548, 0558, 0559, 0565, 0574, 0576, 0592, 0594, 0597, 0603, 0604, 0605, 0615, 0632, 0641, 0644, 0650, 0656, 0662, 0663, 0674, 0686, 0689, 0696, 0697, 0700, 0702, 0707, 0722, 0734, 0735, 0736, 0742, 0759, 0767, 0777, 0778, 0805, 0832, 0836, 0839, 0842, 0850, 0862, 0866, 0868, 0887, 0892, 0937, 0939, 0983, 0986, 0996, 0998,

1018, 1021, 1029, 1030, 1035, 1072, 1081, 1087, 1104, 1116, 1121, 1128, 1129, 1132, 1141, 1151, 1178, 1186, 1187, 1199, 1205, 1206, 1217, 1222, 1228, 1233, 1245, 1249, 1269, 1274, 1290, 1293, 1299, 1301, 1307, 1311, 1323, 1330, 1333, 1339, 1341, 1350, 1361, 1379, 1385, 1388, 1392, 1404, 1412, 1428, 1438, 1442, 1450, 1460, 1468, 1494, 1499, 1505, 1509, 1512, 1514, 1526, 1541, 1544, 1578, 1586, 1593, 1595, 1597, 1605, 1610, 1627, 1628, 1636, 1643, 1647, 1648, 1652, 1654, 1686, 1687, 1698, 1701, 1702, 1706, 1710, 1724, 1731, 1732, 1738, 1741, 1750, 1752, 1757, 1759, 1769, 1783, 1800, 1803, 1806, 1814, 1816, 1830, 1844, 1846, 1851, 1852, 1861, 1868, 1871, 1886, 1889, 1901, 1911, 1912, 1927, 1928, 1948, 1959, 1961, 1963, 1965, 1992, 2025, 2034, 2037, 2051, 2071, 2100, 2101, 2103, 2125, 2129, 2136, 2160, 2166, 2170, 2180, 2193, 2203, 2242, 2254, 2265, 2269, 2272, 2279, 2280, 2283, 2294, 2298, 2299, 2304, 2314, 2357, 2377, 2380, 2381, 2395, 2406, 2420, 2421, 2422, 2423, 2425, 2431, 2435, 2436, 2459, 2479, 2492, 2498, 2531, 2539, 2574, 2579, 2582, 2587, 2627, 2634, 2672, 2683, 2697, 2716, 2719, 2721, 2731, 2797, 2863, 2937, 2945.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent slippage of the T/R drive, loss of directional control, and subsequent loss of control of the helicopter, accomplish the following:

(a) Before further flight, install alignment dots as follows:

(1) Remove the transparent inspection cover on the tail cone and rotate the T/R blades so that one blade leading edge is aligned with the tail cone centerline. Mark a dot on the tail cone skin aligned with the tip of the blade leading edge. With the same alignment, mark a dot on the centerline of the tail cone skin at the edge of the inspection hole, and mark a corresponding dot on the drive shaft flange.

(2) Position the aft T/R blade with leading edge approximately 45-degrees above horizontal. Engage the clutch and rotor brake if the helicopter is so equipped. Use the engine ring gear holding tool, part number (P/N) MT091–1, or an FAA-approved equivalent, to keep the engine from rotating.

(b) Conduct the following daily preflight checks for misalignment of the alignment dots until compliance with paragraph (c) of this AD has been accomplished: Check for misalignment of the alignment dots installed on the tail cone skin and the drive shaft flange by rotating the T/R blade so that the alignment dot is visible in the inspection window and the tip of the T/R blade leading edge aligns with the dot on the tail cone skin. Ensure that the drive shaft flange dot is aligned with the dot on the centerline of the tail cone skin at the edge of the inspection window. If any misalignment is detected, before further flight, replace the T/R gearbox with an airworthy one that has been determined to have both the input and output keys installed in accordance with paragraph (c) of this AD or other FAA-approved procedures, or is exempt from the requirements of this AD as listed in the applicability section of this AD. The checks required by this AD may be performed by an owner/operator holding at least a private pilot certificate and must be entered into the aircraft records showing compliance with this AD, in accordance with sections 43.11 and 91.417(a)(2)(v) of the Federal Aviation Regulations.

(c) Within the next 100 hours time-in-service (TIS) after the effective date of this AD, or at the next annual inspection, whichever occurs first, verify installation of both the input and output shaft keys as follows:

(1) Cut and remove the safety wire securing the chip detector to the sight gage on the T/R gearbox. Place a container under the T/R gearbox to catch the drained oil and remove the chip detector. Remove and discard the gasket on the chip detector.

(2) Remove the T/R gearbox from the helicopter in accordance with the applicable maintenance manual.

(3) Cut and remove the safety wire securing the filler vent plug to the sight gage on the T/R gearbox and remove the filler vent plug and sight gage. Remove and discard the gasket on the filler vent plug and sight gage.

(4) Remove and disassemble the output cartridge, P/N A111–1, from the T/R gearbox case, P/N A109–1 (see figure 1) as follows:

(i) Place a mark across the gear case, P/N A109–1, and output cartridge, P/N A111–1, with a felt pen or grease pencil to ensure proper reassembly.

(ii) Cut and remove the safety wire around the four MS20074–04–06 bolts, securing the output cartridge to the gear case. Remove the four bolts and AN960–416L washer(s). Separate the output cartridge from the gear case (see figure 1).

(iii) Remove and discard the safety wire, MS16562–24 or 52–022–094–0437 roll pin, and MS14145L6 or LCN6M–624 retaining nut. Remove the AN960–616L washer(s) and the washer, P/N A141–2, noting the washer(s) location for reassembly. Do not damage the output shaft, P/N A107–1, or the shim(s), P/N A118–1 through -6, located next to the flange of the output cartridge when removing the retaining nut.

(iv) Visually inspect for the presence of the output shaft key, P/N A114–2, between the pinion gear, P/N A545–1, and the output shaft (see figure 2).

(v) If the output shaft key is missing, replace the T/R gearbox with an airworthy one that has been determined to have the output key installed. Report any T/R gearbox that has a missing key within 10 days after the inspection to the Manager, Los Angeles Manufacturing Inspection Office, FAA, Northwest Mountain Region, 3960 Paramount Blvd., Lakewood, California 90712, telephone (310) 627–5290, fax (310) 627–5293. Reporting requirements have been approved by the Office of Management and Budget and assigned OMB control number 2120–0056.

(vi) If the output key is installed, reinstall the washer, P/N A141–2, and AN960–616L washer(s). Install a MS14145L6 or LCN6M–624 retaining nut, and torque to 200–250 in.-lbs. plus 20–25 in.-lbs. nut drag (maximum 275 in.-lbs.). Install a MS16562–24 or 52–022–094–0437 roll pin, and safety wire using 0.032-inch stainless steel safety wire. The safety wire pigtail must be wrapped tightly around the retaining nut. Vibro-etch the final rule AD number on the output cartridge attachment flange.

(5) Remove and disassemble the input cartridge, P/N A110–1, from the T/R gear case, P/N A109–1, as follows:

(i) Place two marks across the gear case, P/N A109–1, and input cartridge, P/N A110–1, with a felt pen or grease pencil to ensure proper reassembly.

(ii) Cut and remove the safety wire around the four MS20074–04–06 bolts securing the input cartridge to the gear case. Remove the four bolts and AN960–416L washer(s). Separate the input cartridge from the gear case (see figure 1).

(iii) Secure the input cartridge to a block of wood through the two bolt holes in the input shaft assembly, P/N A116–1 (see figure 1). Place the block of wood in a vise. Remove and discard the safety wire, roll pin, and retaining nut. Remove the AN960–616L washer(s), and washer, P/N A141–1, noting the washer(s) location for reassembly. Do not damage the input shaft or shim(s), P/N A118–1 through –6, located next to the flange of the input cartridge.

(iv) Visually inspect for the presence of the input shaft key, P/N A114–1, between the gear, P/N A545–2, and the input shaft (see Note on figure 2).

(v) If the input shaft key is missing, replace the T/R gearbox with an airworthy one that has been determined to have the input key installed. Report any T/R gearbox that has a missing key within 10 days after the inspection to the Manager, Los Angeles Manufacturing Inspection District Office, FAA, Northwest Mountain Region, 3960 Paramount Blvd., Lakewood, California 90712, telephone (310) 627–5290, fax (310) 627–5293. Reporting requirements have been approved by the Office of Management and Budget, and assigned OMB control number 2120–0056.

(vi) If the input key is installed, reinstall the AN960–616L washer(s) and washer, P/N A141–1. Install a MS14145L6 or LCN6M–624 retaining nut, and torque to 200–250 in.-lbs. plus 20–25 in.-lbs. nut drag (maximum 275 in.-lbs.). Install a MS16562–24 or 52–022–094–0437 roll pin and safety wire using 0.032-inch stainless steel safety wire. The safety wire pigtail must be wrapped tightly around the retaining nut. Remove the two bolts securing the input shaft assembly to the block of wood. Vibro-etch the final rule AD number on the input cartridge attachment flange.

(6) Reassemble the input and output cartridges to the T/R case as follows:

(i) Color the "X" marked on the pinion gear, P/N A545–1, (one tooth only) of the output cartridge and on the gear, P/N A545–2, (located on two consecutive teeth) of the input cartridge with a red marker to make reinstallation easier. Note that these three gear teeth may already be colored (see figure 3).

(ii) Visually inspect the edge of the chamfers in the gear case, making sure they are round and smooth so that the O-ring will not be damaged upon installation.

(iii) Remove and discard the O-ring on both the input cartridge and output cartridge. Replace the O-ring with National P/N AS142 B46–70, or Parker P/N 2–142 N674–70 O-ring. Lubricate the replacement O-ring with oil, P/N A257–2, and install an O-ring on each cartridge.

(iv) Reinstall the output cartridge on the gear case with four MS20074–04–06 bolts and AN960–416L washers. Reinstall the input cartridge on the gear case with four MS20074–04–06 bolts and AN960–416L washers. Do not torque the bolts.

(v) Look through the sight gage opening while using a flashlight pointed into the filler vent hole to verify the gears are meshed properly. Gears are properly meshed when the "X" marked on the pinion gear of the output cartridge is between the two "X's" marked on the gear of the input cartridge (see figure 3). Do not torque the bolts until both cartridges are installed on the case and the gears are properly meshed. Torque the output cartridge first, then the input cartridge to 60 in.-lbs. Safety wire with 0.032-inch stainless steel safety wire.

(vi) Reinstall sight gage with MS35769–11 or AN900–10 gasket. Oil threads to prevent threads from locking up. Torque to 200 in.-lbs.

(vii) Reinstall the chip detector with a MS35769–8 or AN900–9 gasket after lubricating the threads with oil. Torque the chip detector to 150 in.-lbs. Safety wire the sight gage to the chip detector using 0.032-inch stainless steel safety wire.

(viii) Fill the T/R gearbox with oil to the level indicated on the T/R sight glass decal. Reinstall the filler vent plug, P/N A610–1, with a MS35769–9 or AN900–8 gasket, after lubricating the threads with oil.

(ix) Inspect the T/R gearbox assemoly to ensure that the shafts and gears rotate freely.

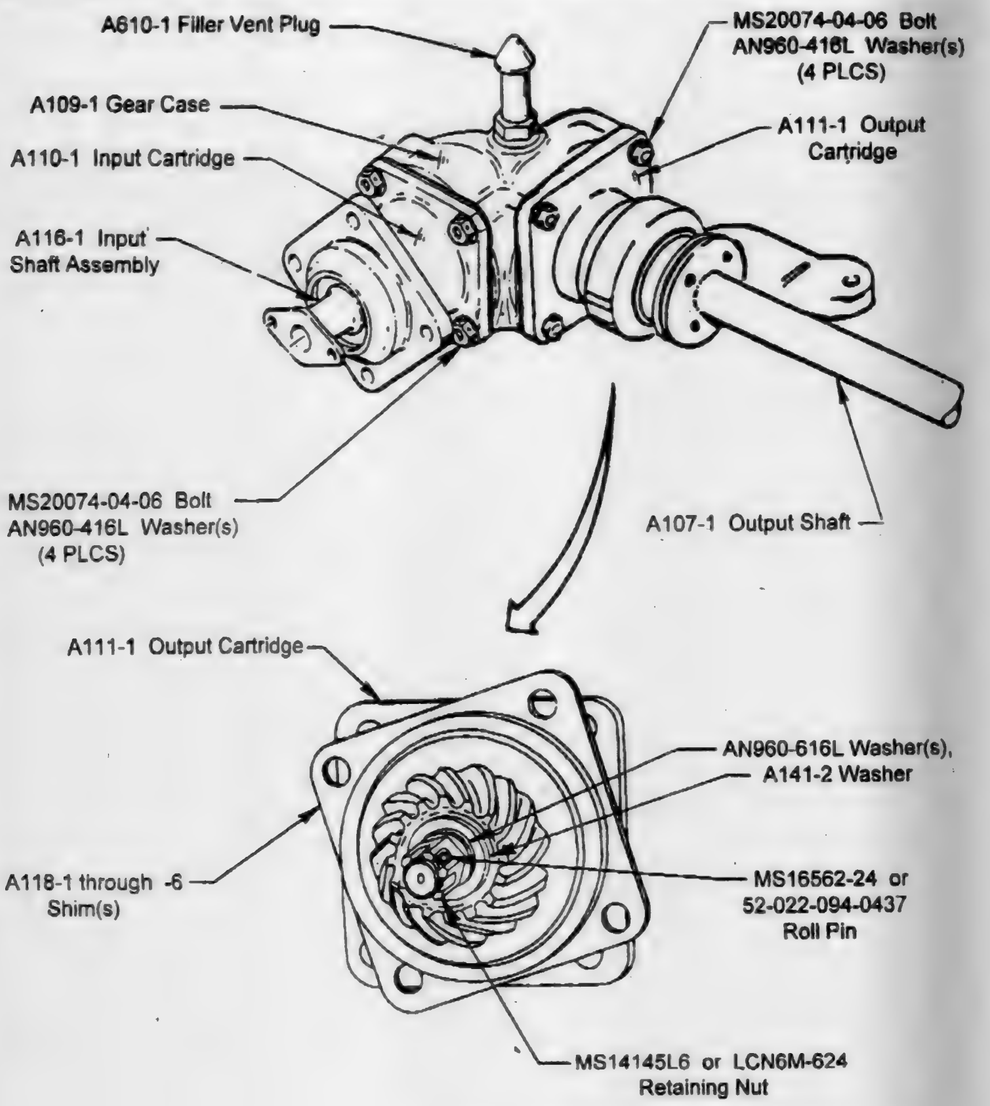
(7) Reinstall the T/R gearbox onto the helicopter in accordance with the applicable maintenance manual. Verify that the oil level of the T/R gearbox is at the recommended mark on the sight glass.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles Aircraft Certification Office.

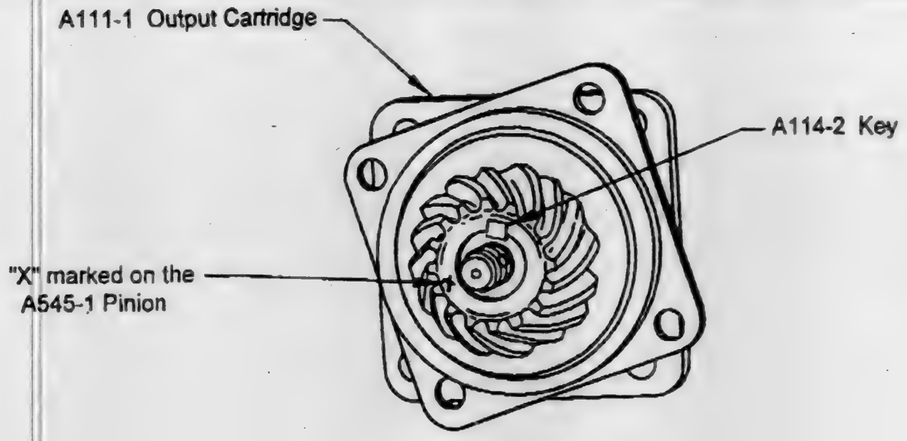
(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

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Note: The safety wire has been removed for clarity

Figure 1



Note: The A114-1 Key for the A110-1 Input Cartridge is located similar to the A111-1 Output Cartridge depicted above

Figure 2

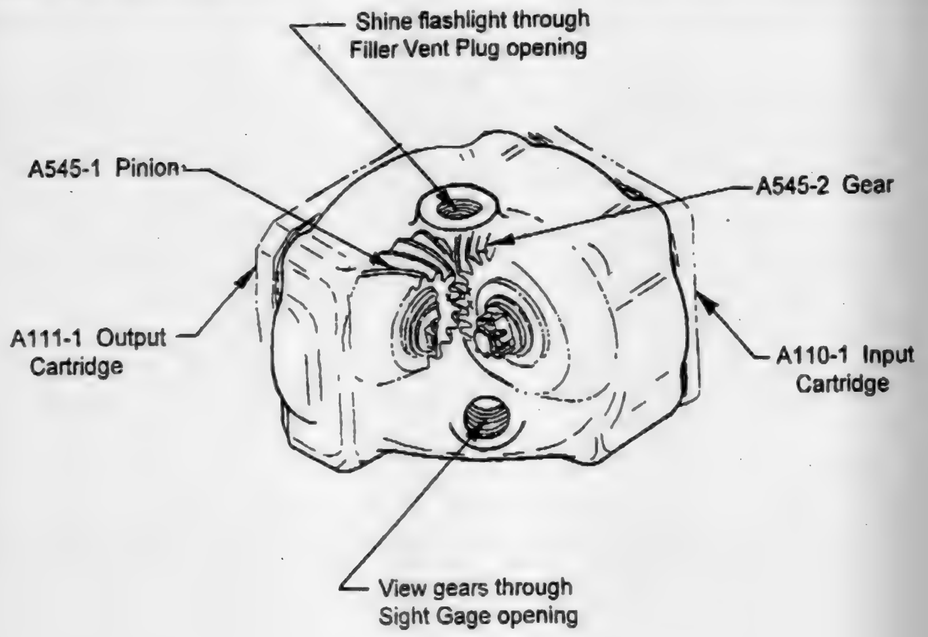


Figure 3

BILLING CODE 4910-13-C

Issued in Fort Worth, Texas, on May 19, 1995.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certificatin Service.

[FR Doc. 95-12955 Filed 5-25-95; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF JUSTICE

28 CFR PART 16

[AAG/A Order No. 104-95]

Exemption of Records System Under the Privacy Act; Extended Comment Period

AGENCY: Department of Justice.

ACTION: Extension of time to comment on proposed rule.

SUMMARY: On April 21, 1995, the Department of Justice, Bureau of Prisons, proposed to exempt a Privacy Act system of records, the "Telephone Activity Record System (JUSTICE/BOP-011)," from subsections (c)(3) and (4), (d), (e)(2) and (3), (e)(5) and (8), (f) and (g) of the Privacy Act, 5 U.S.C. 552a(j)(2) and (k)(2), 60 FR 19871-2. The notice of proposed rulemaking provided for a comment period ending May 22, 1995. 60 FR 19871. In response to a request for an extension of the comment period, the Department of Justice is hereby extending the comment period for an additional 30 days, until June 26, 1995.

DATE: The comment period is extended to June 26, 1995.

ADDRESS: Address all comments to Patricia E. Neely, Staff Assistant, Systems Policy Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (Room 850, WCTR Building).

FOR FURTHER INFORMATION CONTACT: Patricia E. Neely, (202-616-0178).

SUPPLEMENTARY INFORMATION: The Department of Justice provided a description of the "Telephone Activity Record System," JUSTICE/BOP-011," at 60 FR 19958-59 (April 21, 1995). In the notice section of today's **Federal Register**, the Department of Justice extends the time within which to comment on this system until June 26, 1995.

Dated: May 17, 1995.

Stephen R. Colgate,

Assistant Attorney General for Administration

[FR Doc. 95-12966 Filed 5-25-95; 8:45 am]

BILLING CODE 4410-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD01-95-058]

Special Local Regulations: Connecticut River Raft Race, Middletown, CT

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend the special local regulations governing the Connecticut River Raft Race. The regulated area would be moved upriver to coincide with a change in the race course. The effective date of the race also would be changed to the last Saturday in July or the first Saturday in August as published in an annual Local Notice to Mariners and **Federal Register** Notice. This regulation is necessary to control vessel traffic within the immediate vicinity of the event due to the confined nature of the waterway and anticipated congestion at the time of the event, thus providing for the safety of life and property on the affected navigable waterway.

DATES: Comments must be received on or before July 25, 1995.

ADDRESSES: Comments should be mailed to Commander (b), First Coast Guard District, Captain John Foster Williams Federal Building, 408 Atlantic Ave., Boston, Massachusetts 02110-3350. Comments also may be hand-delivered to room 428 at the same address between 8 a.m. and 4 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: LTJG Benjamin M. Algeo, Chief Boating Affairs Branch, First Coast Guard District, (617) 223-8311.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this notice [CGD01-95-058], the specific section of the proposal to which each comment applies, and give reasons for each comment. The Coast Guard requests that all comments and attachments be submitted in an 8½" x 11" unbound format suitable for copying and electronic filing. If that is not practical, a second copy of any bound material is requested. Persons requesting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments. The Coast Guard plans no public hearing. Persons may request a public hearing by writing to Commander (b), First Coast Guard District at the address under **ADDRESSES.** The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register.**

Drafting Information

The drafters of this notice are LTJG B. M. Algeo, Project Manager, Boating Affairs Branch and LCDR S. R. Watkins, Project Counsel, District Legal Office.

Background and Purpose

The Connecticut River Raft Race is in its twenty first year, and is a popular local event. A late decision was made by the race committee last year to move the race course upriver which necessitated temporarily amending the permanent regulation governing the race. Insufficient time was available before last year's race to publish a NPRM and permanently change the regulated area, therefore a permanent change is being proposed this year. This event will include up to 60 homemade rafts and is expected to draw up to 100 spectator craft. The Coast Guard expects no significant difference in the race from years past.

Discussion of Proposed Amendments

The Coast Guard proposes to permanently amend the special local regulation found in 33 CFR 100.102 governing the Connecticut River Raft Race. The existing regulation provides for a regulated area between the Salmon River (Marker no. 48) and Middle Haddam (Marker no. 72) and an effective period of the first Saturday in August between 9 a.m. until 2 p.m. The event sponsors have moved the race course a short distance upriver to facilitate spectator control on the shore. The race course and regulated areas will now consist of that portion of the Connecticut River between Marker nos. 92 and 73, Middletown, CT. The sponsor has also indicated the intention to hold future events on the last Saturday in July or first Saturday in August.

Because the race course coincides with a marked channel, vessel traffic will be temporarily restricted to provide for the safety of the participants. Little

commercial traffic is known to transit the area; however, sufficient notice will be provided for any affected party to alter plans with minimal impact.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation, under paragraph 10e of the regulatory policies and procedures of DOT, is unnecessary. Commercial traffic on the affected portion of the Connecticut River is infrequent. The race is popular and is anticipated to draw business to the local merchants. Local commercial entities have been notified of the race schedule.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their fields and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

For reasons set forth in the above Regulatory Evaluation, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612, and has determined that this proposal does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this proposal and in accordance with paragraph 2.B.2.e(35)(e) of Commandant Instruction M16475.1B, the event is deemed to be categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons set out in the preamble, the Coast Guard proposes to revise 33 CFR part 100 as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 USC 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Section 100.102 is revised to read as follows:

§ 100.102 Connecticut River Raft Race, Middletown, Ct.

(a) *Regulated area.* That section of the Connecticut River between Dart Island (Marker no. 73) and Portland Shoals (Marker no. 92), Middletown, CT.

(b) *Effective period.* This section will be effective from 9 a.m. to 2 p.m. annually on the last Saturday in July or the first Saturday in August, or as otherwise published in the annual, pre-event Coast Guard Local Notice to Mariners and Federal Register Notice.

(c) *Special Local Regulations.*

(1) The regulated area shall be closed to all vessels in excess of 20 meters (65.6 feet) in length during the effective period.

(2) All persons or vessels not registered with the sponsor as participants or not part of the regatta patrol are considered spectators.

(3) All spectator vessels shall be moored or anchored prior to the start of the event in such a way as to not interfere with the passage of the race participants. They shall remain anchored or moored until the end of the race or until directed by a patrol vessel.

(4) All persons and vessels shall comply with the instructions of U.S. Coast Guard patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon hearing five or more blasts from a U.S. Coast Guard vessel, the operator of a vessel shall stop immediately and proceed as directed. Members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation and other applicable laws.

(5) For any violation of this section, the following maximum penalties are authorized by law:

(i) $500 for any person in charge of the navigation of a vessel.

(ii) $500 for the owner of the vessel actually on board.

(iii) $250 for any other person.

(iv) Suspension or revocation of a license for a licensed officer.

May 15, 1995.

J.L. Linnon,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 95–13025 Filed 5–25–95; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 1, 2, and 7

[Docket No. 950501124–5124–01]

RIN 0651–AA74

Revision of Patent and Trademark Fees

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Patent and Trademark Office (PTO) proposes to amend the rules of practice in patent and trademark cases, Parts 1, 2 and 7 of title 37, Code of Federal Regulations, to adjust certain patent and trademark fee amounts to reflect fluctuations in the Consumer Price Index (CPI) and to recover costs of operation, and to amend the requirements for recording an assignment to apply to documents forwarded for recording on the Government Register. This notice also includes information relating to the availability of patent and trademark information products provided by the PTO.

DATES: Written comments must be submitted on or before June 29, 1995; a public hearing will be held on June 29, 1995, at 9 a.m. Requests to present oral testimony should be received on or before June 28, 1995.

ADDRESSES: Address written comments and requests to present oral testimony to the Commissioner of Patents and Trademarks, Washington, DC 20231, Attention: Robert Kopson, suite 507, Crystal Park 1, or by fax to (703) 305–8525. The hearing will be held in suite 912 of Crystal Park 2, located at 2121 Crystal Drive, Arlington, Virginia. Written comments and a transcript of the hearing will be available for public inspection in suite 507 of Crystal Park 1, located at 2011 Crystal Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Robert Kopson by telephone at (703) 305–8510, fax at (703) 305–8525, or by mail marked to his attention and addressed to the Commissioner of Patents and Trademarks, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: This proposed rule change is designed to adjust PTO fees in accordance with the applicable provisions of title 35, United States Code; section 31 of the Trademark (Lanham) Act of 1946 (15 U.S.C. 1113); and section 10101 of the Omnibus Budget Reconciliation Act of 1990 (as amended by section 8001 of Public law 103–66), all as amended by the Patent and Trademark Office Authorization Act of 1991 (Public Law 102–204).

Background

Statutory Provisions

Patent fees are authorized by 35 U.S.C. 41 and 35 U.S.C. 376. A fifty percent reduction in the fees paid under 35 U.S.C. 41 (a) and (b) by independent inventors, small business concerns, and nonprofit organizations who meet prescribed definitions is required by 35 U.S.C. 41(h).

Subsection 41(f) of title 35, United States Code, provides that fees established under 34 U.S.C. 41 (a) and (b) may be adjusted on October 1, 1992, and every year thereafter, to reflect fluctuations in the Consumer Price Index (CPI) over the previous 12 months.

Section 10101 of the Omnibus Budget Reconciliation Act of 1990 (amended by section 8001 of Public Law 103–66) provides that there shall be a surcharge on all fees established under 35 U.S.C. 41 (a) and (b) to collect $111 million in fiscal year 1996.

Subsection 41(d) of title 35, United States Code, authorizes the Commissioner to establish fees for all other processing, services, or materials related to patents to recover the average cost of providing these services or materials, except for the fees for recording a document affecting title, for each photocopy, and for each black and white copy of a patent.

Section 376 of title 35, United States Code, authorizes the Commissioner to set fees for Patent applications filed under the Patent Cooperation Treaty (PCT).

Subsection 41(g) of title 35, United States Code, provides that new fee amounts established by the Commissioner under section 41 may take effect thirty days after notice in the **Federal Register** and the Official Gazette of the Patent and Trademark Office.

Section 31 of the Trademark (Lanham) Act of 1946, as amended (15 U.S.C. 1113), authorizes the Commissioner to establish fees for the filing and processing of an application for the registration of a trademark or other mark, and for other services and materials relating to trademarks and other marks.

Section 31(a) of the Trademark (Lanham) Act of 1946 (15 U.S.C. 1113(a)), as amended, allows trademark fees to be adjusted once each year to reflect, in the aggregate, any fluctuations during the preceding 12 months in the CPI.

Section 31 also allows new trademark fee amounts to take effect thirty days after notice in the **Federal Register** and the Official Gazette of the United States Patent and Trademark Office.

Recovery Level Determinations

The proposed rule would adjust patent and trademark fees for a planned recovery of $643,014,000 in fiscal year 1996, as proposed in the Administration's budget request to the Congress.

The patent statutory fees established by 35 U.S.C. 41 (a) and (b) are proposed to be adjusted on October 1, 1995, to reflect any fluctuations occurring during the previous 12 months in the Consumer Price Index (CPI–U). In calculating these fluctuations, the Office of Management and Budget (OMB) has determined that the PTO should use CPI–U data as determined by the Secretary of Labor. However, the Department of Labor does not make public the CPI–U until approximately 21 days after the end of the month being calculated. Therefore, the latest CPI–U information available is for the month of February 1995. In accordance with previous rulemaking methodology, the PTO uses the Administration's projected CPI–U for the 12-month period ending September 30, 1995, which is 3.2 percent. Based on this projection, patent statutory fees are proposed to be adjusted by 3.2 percent. Before the final fee schedule is published, the fees may be slightly adjusted based on actual data available from the Department of Labor.

Certain non-statutory patent processing fees established under 35 U.S.C. 41(d) and PCT processing fees established under 35 U.S.C. 376 are proposed to be adjusted to recover their estimated average costs in fiscal year 1996. Three patent service fees that are set by statute will not be adjusted. The three fees that are not being adjusted are assignment recording fees, printed patent copy fees and photocopy charge fees.

Certain trademark service fees established under 15 U.S.C. 1113 are proposed to be adjusted to recover their estimated average costs in fiscal year 1996.

The proposed fee amounts were rounded by applying standard arithmetic rules so that the amounts rounded would be convenient to the user. Fees of $100 or more were rounded to the nearest $10. Fees between $2 and $99 were rounded to an even number so that the comparable small entity fee would be a whole number.

Workload Projections

Determination of workloads varies by fee. Principal workload projection techniques are as follows:

Patent application workloads are projected from statistical regression models using recent application filing trends. Patent issues are projected from an in-house patent production model and reflect examiner production achievements and goals. Patent maintenance fee workloads utilize patents issued 3.5, 7.5 and 11.5 years prior to payment and assume payment rates of 79 percent, 55 percent and 32 percent, respectively. Service fee workloads follow linear trends from prior years' activities.

General Procedures

Any fee amount that is paid on or after the effective date of the fee increase would be subject to the new fees then in effect. For purposes of determining the amount of the fee to be paid, the date of mailing indicated on a proper Certificate of Mailing or Transmission, where authorized under 37 CFR 1.8, will be considered to be the date of receipt in the PTO. A Certificate of Mailing or Transmission under Section 1.8 is not "proper" for items which are specifically excluded from the provisions of Section 1.8. Section 1.8 should be consulted for those items for which a Certificate of Mailing or Transmission is not "proper." Such items include, inter alia, the filing of national and international applications for patents and the filing of trademark applications. However, the provisions of 37 CFR 1.10 relating to filing papers and fees with an "Express Mail" certificate do apply to any paper or fee (including patent and trademark applications) to be filed in the PTO. If an application or fee is filed by "Express Mail" with a proper certificate dated on or after the effective date of the rules, as amended, the amount of the fee to be paid would be

the fee established by the amended rules.

A notice of final rulemaking was published at 60 FR 20195 (April 25, 1995) wherein several new fee provisions were made to implement the 20-year patent term and provisional applications. Language changes were made in 37 CFR 1.16 (a), (b), (d), (f), and (g) which are reproduced in this proposed rule package. In addition, fees involving 37 CFR 1.17 (r) and (s) are now proposed to be adjusted by changes in the CPI to remain equal to the basic filing fee for a utility patent application.

PTO Information Dissemination Products

The PTO provides information to the public in the Patent Search Room and the Trademark Search Library in Arlington, Virginia, and at 78 Patent and Trademark Depository Libraries around the country. A list of the libraries is included in each issue of the Official Gazette of the Patent and Trademark Office. In addition, a number of patent and trademark search tools and document-delivery products, published on paper and on various machine-readable media, are sold directly to the public.

Printed PTO publications may be ordered from the Government Printing Office or one of its Book Stores located throughout the country. A list of patent and trademark-related publications with current prices and ordering information is available from the GPO (Subject Bibliography SB 021)—Superintendent of Documents, P.O. Box 371984, Pittsburgh, PA 15250–7954, voice: 202–512–1800, fax: 202–512–2250.

Machine-readable publications, including magnetic tapes and CD–ROMs, may be ordered directly from the PTO. A printed-catalog of machine-readable products, including current prices and ordering information, is available from the Office of Information Products Development—US Patent & Trademark Office, Office of Information Products Development, Crystal Park 3, Room 412, Washington, DC 20231, voice: 703–308–0322, fax: 703–308–0493.

The catalog of machine-readable products is published in the Official Gazette of the Patent and Trademark Office in late December each year and may also be viewed on, or downloaded from, the PTO electronic bulletin board (703–305–8950, 8/no/1) or from the PTO's home page on the Internet (http://www.uspto.gov/).

Discussion of Specific Rules

37 CFR 1.16 National Application Filing Fees

Section 1.16, paragraphs (a), (b), (d), and (f)–(i), if revised as proposed, would adjust fees established therein to reflect fluctuations in the CPI.

Section 1.16, paragraphs (a), (b), (d), (f), and (g) include language changes relating to provisional patent applications (see 60 FR 20195, dated April 25, 1995).

37 CFR 1.17 Patent Application Processing Fees

Section 1.17, paragraphs (b)–(g), (m), (r), and (s), if revised as proposed, would adjust fees established therein to reflect fluctuations in the CPI.

Section 1.17, paragraphs (j) and (n)–(p), if revised as proposed, would adjust fees established therein to recover costs.

37 CFR 1.18 Patent Issue Fees

Section 1.18, paragraphs (a)–(c), if revised as proposed, would adjust fees established therein to reflect fluctuations in the CPI.

37 CFR 1.19 Document Supply Fees

Section 1.19, paragraphs (a)(1)(ii) and (a)(1)(iii), if revised as proposed, would amend the language to reflect the PTO's most recent business practices.

Section 1.19, paragraph (b)(1), if revised as proposed, would adjust fees established therein to reflect fluctuations in the CPI.

37 CFR 1.20 Post-Issuance Fees

Section 1.20, paragraphs (c), (i), and (j), if revised as proposed, would adjust fees established therein to recover costs.

Section 1.20, paragraphs (e)–(g), if revised as proposed, would adjust fees established therein to reflect fluctuations in the CPI.

37 CFR 1.21 Miscellaneous Fees and Charges

Section 1.21, paragraph (a)(1), if revised as proposed, would adjust fees established therein to recover costs.

37 CFR 1.445 International Application Filing, Processing, and Search Fees

Section 1.445, paragraph (a), if revised as proposed, would adjust the fees authorized by 35 U.S.C. 376 to recover costs.

37 CFR 1.482 International Preliminary Examination Fees

Section 1.482, paragraphs (a)(1)(i), (a)(1)(ii), and (a)(2)(ii), if revised as proposed, would adjust the fees authorized by 35 U.S.C. 376 to recover costs.

37 CFR 1.492 National Stage Fees

Section 1.492, paragraphs (a), (b) and (d), if revised as proposed, would adjust fees established therein to reflect fluctuations in the CPI.

37 CFR 2.6 Trademark Fees

Section 2.6, paragraphs (b)(1)(ii) and (b)(1)(iii), if revised as proposed, would amend the language to reflect the PTO's most recent business practices.

Section 2.6, paragraph (b)(2), if revised as proposed, would adjust fees therein to recover costs.

37 CFR 7.1 Requirements

Section 7.1, if revised as proposed, would designate the current language as paragraph (a), and would add new paragraphs (b)–(h) to clarify that the requirements for patent and patent application assignment documents, including the requirement for the fee set forth in § 1.21(h), submitted for recording also apply to instruments submitted for recording on the Government Register. Sections 7.1(b)–(h) contain language similar to that in §§ 3.21, 3.28, 3.31, 3.34, 3.26, 3.27, and 3.41, respectively.

Section 7.1(b), if revised as proposed, would provide that an instrument relating to a patent must identify the patent by the patent number, that an instrument relating to a national patent application must identify the national patent application by the application number (consisting of the series code and the serial number, e.g., 07/123,456) or the serial number and filing date, that an instrument relating to an international patent application which designates the United States of America must identify the international application by the international application number (e.g., PCT/US90/01234), and that if an assignment is executed concurrently with, or subsequent to, the execution of the patent application, but before the patent application is filed, it must identify the patent application by its date of execution, name of each inventor, and title of the invention so that there can be no mistake as to the patent application intended.

Section 7.1(c), if revised as proposed, would provide that each instrument submitted to the Office for recording must be accompanied by a cover sheet referring to those patent applications and patents against which the instrument is to be recorded, that one set of instruments and cover sheets to be recorded should be filed, and that if an instrument to be recorded is not accompanied by a completed cover sheet, the instrument and any incomplete cover sheet will be returned for proper completion of a cover sheet and resubmission of the instrument and a completed cover sheet.

Section 7.1(d), if revised as proposed, would provide that each cover sheet must contain: (1) the name of the party conveying the interest; (2) the name and address of the party receiving the interest; (3) a description of the interest conveyed or transition to be recorded; (4) each application number or patent number against which the instrument is to be recorded, or an indication that the instrument is filed together with a patent application; (5) the name and address of the party to whom correspondence concerning the request to record the instrument should be mailed; (6) the number of applications or patents identified in the cover sheet and the total fee; (7) the date the instrument was executed; (8) a statement by the party submitting the instrument that to the best of the person's knowledge and belief, the information contained on the cover sheet is true and correct and any copy submitted is a true copy of the original instrument; and (9) the signature of the party submitting the instrument.

Section 7.1(e), if revised as proposed, would provide for the correction of errors in the cover sheet. Specifically, § 7.1(e), as proposed, would provide that an error in a cover sheet recorded pursuant to this Part will be corrected only if: (1) the error is apparent when the cover sheet is compared with the recorded instrument to which it pertains, and (2) a corrected cover sheet accompanied by the recording fee set forth in § 1.21(h) of this chapter and either the original recorded instrument or a copy of the original recorded instrument is filed for recordation.

Section 7.1(f), if revised as proposed, would provide that the Office will accept and record non-English language instruments only if accompanied by a verified English translation signed by the individual making the translation.

Section 7.1(g), if revised as proposed, would provide that instruments and cover sheets to be recorded should be addressed to the Commissioner of Patents and Trademarks, Box Assignment, Washington, D.C. 20231.

Section 7.1(h), if revised as proposed, would provide that all requests to record instruments must be accompanied by the recording fee set forth in § 1.21(h) of this chapter, and that the fee set forth in § 1.21(h) of this chapter is required for each application and patent against which the instrument is recorded as identified in the cover sheet.

Other Considerations

This proposed rule change is in conformity with the requirements of Executive Order 12612, and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, et seq. This rulemaking contains one information collection entry relating to registration of Government patent interests in patents. This information collection has been approved by the Office of Management and Budget under Control Number 0651–0027. This proposed rule has been determined not to be significant for purposes of Executive Order 12866.

The PTO has determined that this proposed rule change has no Federalism implications affecting the relationship between the National Government and the States as outlined in Executive Order 12612.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy, Small Business Administration, that the proposed rule change would not have a significant impact on a substantial number of small entities (Regulatory Flexibility Act, Pub. L. 96–354). The proposed rule change increases fees to reflect the change in the CPI as authorized by 35 U.S.C. 41(f). Further, the principal impact of the major patent fees has already been taken into account in 35 U.S.C. 41(h), which provides small entities with a 50-percent reduction in the major patent fees.

A comparison of existing and proposed fee amounts is included as an Appendix to this notice of proposed rulemaking.

In order to ensure clarity in the implementation of the proposed fees, a discussion of specific sections is set forth below.

Lists of Subjects

37 CFR Part 1

Administrative practices and procedure, Inventions and patents, Reporting and record keeping requirements, Small businesses.

37 CFR Part 2

Administrative practice and procedure, Courts, Lawyers, Trademarks.

37 CFR Part 7

Administrative practice and procedure, Inventions and patents, Reporting and record keeping requirements.

For the Reasons set forth in the preamble, the PTO proposes to amend title 37 of the Code of Federal Regulations, Chapter 1, Part 1, as set forth below.

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR Part 1 would continue to read as follows:

Authority: 35 U.S.C. 6, unless otherwise noted.

2. Section 1.16 is proposed to be amended by revising paragraphs (a), (b), (d), and (f) through (i), to read as follows:

§ 1.16 National application filing fees.

(a) Basic fee for filing each application for an original patent, except provisional, design or plant applications:	
By a small entity (§ 1.9(f))	$375.00
By other than a small entity ...	750.00
(b) In addition to the basic filing fee in an original application, except provisional applications, for filing or later presentation of each independent claim in excess of 3:	
By a small entity (§ 1.9(f))	39.00
By other than a small entity ...	78.00
* * * * *	
(d) In addition to the basic filing fee in an original application, except provisional applications, if the application contains, or is amended to contain, multiple dependent claim(s), per application:	
By a small entity (§ 1.9(f))	125.00
By other than a small entity ...	250.00
(If the additional fees required by paragraphs (b), (c), and (d) of this section are not paid on filing or on later presentation of the claims for which the additional fees are due, they must be paid or the claims canceled by amendment prior to the expiration of the time period set for response by the Office in any notice of fee deficiency.)	
* * * * *	
(f) Basic fee for filing each design application:	
By a small entity (§ 1.9(f))	155.00
By other than a small entity ...	310.00
(g) Basic fee for filing each plant application, except provisional applications:	
By a small entity (§ 1.9(f))	255.00
By other than a small entity ...	510.00
(h) Basic fee for filing each reissue application:	
By a small entity (§ 1.9(f))	375.00
By other than a small entity ...	750.00

(i) In addition to the basic filing fee in a reissue application, for filing or later presentation of each independent claim which is in excess of the number of independent claims in the original patent:	
By a small entity (§ 1.9(f))	39.00
By other than a small entity	78.00

* * * * *

3. Section 1.17 is propose to amend by revising paragraphs (b) through (g), (j), (m) through (p), (r), and (s) to read as follows:

§ 1.17 Patent application processing fees.

* * * * *

(b) Extension fee for response within second month pursuant to § 1.136(a):	
By a small entity (§ 1.9(f))	$190.00
By other than a small entity	380.00
(c) Extension fee for response within third month pursuant to § 1.136(a):	
By a small entity (§ 1.9(f))	450.00
By other than a small entity	900.00
(d) Extension fee for response within fourth month pursuant to § 1.136(a):	
By a small entity (§ 1.9(f))	700.00
By other than a small entity	1,400.00
(e) For filing a notice of appeal from the examiner to the Board of Patent Appeals and Interferences:	
By a small entity (§ 1.9(f))	145.00
By other than a small entity	290.00
(f) In addition to the fee for filing notice of appeal, for filing a brief in support of an appeal:	
By a small entity (§ 1.9(f))	145.00
By other than a small entity	290.00
(g) For filing a request for an oral hearing before the Board of Patent Appeals and Interferences in an appeal under 35 U.S.C. 134:	
By a small entity (§ 19(f))	125.00
By other than a small entity	250.00

* * * * *

(j) For filing a petition to institute a pubic use proceeding under § 1.292	1,430.00

* * * * *

(m) For filing a petition:	
(1) For revival of an unintentionally abandoned application, or	
(2) For the unintentionally delayed payment of the fee for issuing a patent:	
By a small entity (§ 1.9(f))	625.00
By other than a small entity	1,250.00
(n) For requesting publication of a statutory invention registration prior to the mailing of the first examiner's action pursuant to § 1.104—$870.00 reduced by the amount of the application basic filing fee paid.	
(o) For requesting publication of a statutory invention registration after the mailing of the first examiner's action pursuant to § 1.104—$1,740.00 reduced by the amount of the application basic filing fee paid.	
(p) For submission of an information disclosure statement under § 1.97(c)	220.00

* * * * *

(r) For entry of a submission after final rejection under § 1.129(a):	
By a small entity (§ 1.9(f))	375.00
By other than a small entity	750.00
(s) For each additional invention requested to be examined under § 1.129(b):	
By a small entity (§ 1.9(f))	375.00
By other than a small entity	750.00

4. Section 1.18 is proposed to be revised to read as follows:

§ 1.18 Patent issue fees.

(a) Issue fee for issuing each original or reissue patent, except a design or plant patent:	
By a small entity (§ 1.9(f))	$625.00
By other than a small entity	1,250.00
(b) Issue fee for issuing a design patent:	
By a small entity (§ 1.9(f))	215.00
By other than a small entity	430.00
(c) Issue fee for issuing a plant patent:	
By a small entity (§ 1.9(f))	315.00
By other than a small entity	630.00

5. Section 1.19 is proposed to be amended by revising paragraphs (a)(1)(ii), (a)(1)(iii), and (b)(1) (i) and (ii) to read as follows:

§ 1.19 Document supply fees.

* * * * *

(a) * * *
(1) * * *

(ii) Overnight delivery to PTO Box or overnight fax	36.00
(iii) Expedited service for copy ordered by expedited mail or fax delivery service and delivered to the consumer within two work-days	25.00

* * * * *

(b) * * *
(1) * * *

(i) Regular service	15.00
(ii) Expedited regular service	30.00

* * * * *

6. Section 1.20 is proposed to be amended by revising paragraphs (c), (e) through (g), (i), (1), (i) (2) and (j) to read as follows:

§ 1.20 Post issuance fees.

* * * * *

(c) For filing a request for rexamination (§ 1.510(a))	$2,390.00

* * * * *

(e) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980, in force beyond four years, the fee is due by three years and six months after the original grant	
By a small entity § 1.9(f))	495.00
By other than a small entity	990.00
(f) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980, in force beyond eight years; the fee is due by seven years and six months after the original grant	
By a small entity (§ 1.9(f))	995.00
By other than a small entity	1,990.00
(g) For maintaining an original or reissue patent, except a design or plant patent, based on an application field on or after December 12, 1980, in force beyond twelve years; the fee is due by eleven years and six months after the original grant	
By a small entity (§ 1.9(f))	1,495.00
By other than a small entity	2,990.00

* * * * *

(i) * * *	
(1) unavoidable	660.00
(2) unintentional	1,550.00

* * * * *

(j) For filing an application for extension of the term of a patent (§ 1.740)	1,060.00

7. Section 1.21 is proposed to be amended by revising paragraph (a)(1) to read as follows:

§ 1.21 Miscellaneus fees and charges.

* * * * *

(a) * * *

(1) For admission to examination for registration to practices: fee payable upon application	310.00

* * * * *

8. Section 1.445 is proposed to be amended by revising paragraph (a) to read as follows:

§ 1.445 International application filing, processing and search fees.

(a) the following fees and charges for international applications are established by the Commissioner under the authority of 35 U.S.C. 376:	
(1) A transmittal fee (see 35 U.S.C. 361(d) and PCT Rule 14)	$220.00
(2) A search fee (see 35 U.S.C. 361(d) and PCT Rule 16) where:	
(i) No corresponding prior United States national application with basic filing fee has been filed	660.00
(ii) A corresponding prior United States national application with basic filing fee has been filed	430.00
(3) A supplemental search fee when required, per additional invention	190.00

* * * * *

9. Section 1.482 is proposed to be amended by revising paragraphs (a)(1)(i), (a)(1)(ii), and (a)(2)(ii) to read as follows:

§ 1.482 International preliminary examination fees.

(a) * * *

(1) A preliminary examination fee is due on filing the Demand:	
(i) Where an international search fee as set forth in § 1.445(a)(2) has been paid on the international application to the United States Patent and Trademark Office as an International Searching Authority, a preliminary examination fee of	$470.00
(ii) Where the International Searching Authority for the international application was an authority other than the United States Patent and Trademark Office, a preliminary examination fee of	710.00
(2) * * *	
(ii) Where the International Searching Authority for the international application was an authority other than the United States Patent and Trademark Office	250.00

* * * * *

10. Section 1.492 is proposed to be amended by revising paragraphs (a), (b), and (d) to read as follows:

§ 1.492 National Stage fees.

* * * * *

(a) The basic national fee:

(1) Where an international preliminary examination fee as set forth in § 1.482 has been paid on the international application to the United States Patent and Trademark Office:	
By a small entity (§ 1.9(f))	$340.00
By other than a small entity	680.00
(2) Where no international preliminary examination fee as set forth in § 1.482 has been paid to the United States Patent and Trademark Office, but an international search fee as set forth in § 1.445(a)(2) has been paid on the international application to the United State Patent and Trademark Office as an International Searching Authority:	
By a small entity (§ 1.9(f))	375.00
By other than a small entity	750.00
(3) Where no international preliminary examination fee as set forth in § 1.482 has been paid and no international search fee as set forth in § 1.445(a)(2) has been paid on the international application to the United States Patent and Trademark Office:	
By a small entity (§ 1.9(f))	505.00
By other than a small entity	1,010.00
(4) Where an international preliminary examination fee as set forth in § 1.482 has been paid to the United States Patent and Trademark Office and the international preliminary examination report states that the criteria of novelty, inventive step (non-obviousness), and industrial applicability, as defined in PCT Article 33 (1) to (4) have been satisfied for all the claims presented in the application entering the national stage (see § 1.496(b)):	
By a small entity (§ 1.9(f))	47.00
By other than a small entity	94.00
(5) Where a search report on the international application has been prepared by the European Patient Office or the Japanese Patent Office:	
By a small entity (§ 1.9(f))	440.00
By other than a small entity	880.00
(b) In addition to the basic national fee, for filing or later presentation of each independent claim in excess of 3:	
By a small entity (§ 1.9(f)).	39.00
By other than a small entity	78.00

* * * * *

(d) In addition to the basic national fee, if the application contains, or is amended to contain, a multiple dependent claim(s), per applicant:

By a small entity (§ 1.9(f))	125.00
By other than a small entity	250.00

* * * * *

PART 2—RULES OF PRACTICE IN TRADEMARK CASES

1. The authority citation for 37 CFR Part 2 would continue to read as follows:

Authority: 15 U.S.C. 1123; 35 U.S.C. 6, unless otherwise noted.

2. Section 2.6 is proposed to be amended by revising paragraphs (b)(1)(ii), (b)(1)(iii), (b)(2)(i) and (b)(2)(ii) to read as follows:

§ 2.6 Trademark fees.

* * * * *

(b) * * *	
(1) * * *	
(ii) Overnight delivery to PTO Box or overnight fax	$6.00
(iii) Expedited service for copy ordered by expedited mail or fax delivery service and delivered to the customer within two work days	25.00

* * * * *

(2) * * *	
(i) Regular service	15.00
(ii) Expedited local service	30.00

* * * * *

PART 7—REGISTER OF GOVERNMENT INTERESTS IN PATENTS

1. The authority citation for 37 CFR Part 7 would continue to read as follows:

Authority: E.O. 9424, February 18, 1944, 9 FR 1959; 3 CFR 1943–1948 comp.

2. Section 7.1 is proposed to be revised to read as follows:

§ 7.1 Requirements.

(a) Executive Order 9424 (3 CFR 1943–1948 Comp.) requires the several departments and other executive agencies of the Government, including Government-owned or Government-controlled corporations, to forward promptly to the Commissioner of Patents and Trademarks for recording all licenses, assignments, or other interests of the Government in or under patents or applications for patents.

(b) An instrument relating to a patent must identify the patent by the patent number. An instrument relating to a national patent application must identify the national patent application by the application number (consisting of the series code and the serial number, e.g., 07/123,456) or the serial number

and filing date. An instrument relating to an international patent application which designates the United States of America must identify the international application by the international application number, (e.g., PCT/US90/01234). If an assignment is executed concurrently with, or subsequent to, the execution of the patent application, but before the patent application is filed, it must identify the patent application by its date of execution, name of each inventor, and title of the invention so that there can be no mistake as to the patent application intended.

(c) Each instrument submitted to the Office for recording must be accompanied by at least one cover sheet as specified in paragraph (d) of this section referring to those patent applications and patents against which the instrument is to be recorded. Only one set of instruments and cover sheets to be recorded should be filed. If an instrument to be recorded is not accompanied by a completed cover sheet, the instrument and any incomplete cover sheet will be returned for proper completion of a cover sheet and resubmission of the instrument and a completed cover sheet.

(d) Each cover sheet required by paragraph (c) of this section must contain:

(1) the name of the party conveying the interest;

(2) the name and address of the party receiving the interest;

(3) a description of the interest conveyed or transaction to be recorded;

(4) each application number or patent number against which the instrument is to be recorded, or an indication that the instrument is filed together with a patent application;

(5) the name and address of the party to whom correspondence concerning the request to record the instrument should be mailed;

(6) the number of applications or patents identified in the cover sheet and the total fee;

(7) the date the instrument was executed;

(8) a statement by the party submitting the instrument that to the best of the person's knowledge and belief, the information contained on the cover sheet is true and correct and any copy submitted is a true copy of the original instrument; and

(9) the signature of the party submitting the instrument.

(e) An error in a cover sheet recorded pursuant to this Part will be corrected only if:

(1) the error is apparent when the cover sheet is compared with the recorded instrument to which it pertains, and

(2) a corrected cover sheet accompanied by the recording fee set forth in § 1.21(h) of this chapter and either the original recorded instrument or a copy of the original recorded instrument is filed for recordation.

(f) The Office will accept and record non-English language instruments only if accompanied by a verified English translation signed by the individual making the translation.

(g) Instruments and cover sheets to be recorded should be addressed to the Commissioner of Patents and Trademarks, Box Assignment, Washington, DC 20231.

(h) All requests to record instruments must be accompanied by the recording fee set forth in § 1.21(h) of this chapter. The fee set forth in § 1.21(h) of this chapter is required for each application and patent against which the instrument is recorded as identified in the cover sheet.

Dated: May 19, 1995.

Philip G. Hampton II,

Acting Assistant Secretary of Commerce and Acting Commissioner of Patents and Trademarks.

Note: The following appendix will not appear in the Code of Federal Regulations.

APPENDIX A.—COMPARISON OF EXISTING AND REVISED FEE AMOUNTS

37 CFR Sec.	Description	Pre-Oct 1995	Oct 1995
1.16(a)	Basic Filing Fee	$730	$750
1.16(a)	Basic Filing Fee (Small Entity)	365	375
1.16(b)	Independent Claims	76	78
1.16(b)	Independent Claims (Small Entity)	38	39
1.16(c)	Claims in Excess of 20	22	(1)
1.16(c)	Claims in Excess of 20 (Small Entity)	11	(1)
1.16(d)	Multiple Dependent Claims	240	250
1.16(d)	Multiple Dependent Claims (Small Entity)	120	125
1.16(e)	Surcharge—Late Filing Fee	130	(1)
1.16(e)	Surcharge—Late Filing Fee (Small Entity)	65	(1)
1.16(f)	Design Filing Fee	300	310
1.16(f)	Design Filing Fee (Small Entity)	150	155
1.16(g)	Plant Filing Fee	490	510
1.16(g)	Plant Filing Fee (Small Entity)	245	255
1.16(h)	Reissue Filing Fee	730	750
1.16(h)	Reissue Filing Fee (Small Entity)	365	375
1.16(i)	Reissue Independent Claims	76	78
1.16(i)	Reissue Independent Claims (Small Entity)	38	39
1.16(j)	Reissue Claims in Excess of 20	22	(1)
1.16(j)	Reissue Claims in Excess of 20 (Small Entity)	11	(1)
1.16(k)	Provisional Application Filing Fee	150	(1)
1.16(k)	Provisional Application Filing Fee (Small Entity)	75	(1)
1.16(l)	Surcharge—Incomplete Provisional App. Filed	50	(1)
1.16(l)	Surcharge—Incomplete Provisional App. Filed (Small Entity)	25	(1)
1.17(a)	Extension—First Month	110	(1)
1.17(a)	Extension—First Month (Small Entity)	55	(1)
1.17(b)	Extension—Second Month	370	380
1.17(b)	Extension—Second Month (Small Entity)	185	190
1.17(c)	Extension—Third Month	870	900
1.17(c)	Extension—Third Month (Small Entity)	435	450
1.17(d)	Extension—Fourth Month	1,360	1,400
1.17(d)	Extension—Fourth Month (Small Entity)	680	700
1.17(e)	Notice of Appeal	280	290

APPENDIX A.—COMPARISON OF EXISTING AND REVISED FEE AMOUNTS—Continued

37 CFR Sec.	Description	Pre-Oct 1995	Oct 1995
1.17(e)	Notice of Appeal (Small Entity)	140	145
1.17(f)	Filing a Brief	280	290
1.17(f)	Filing a Brief (Small Entity)	140	145
1.17(g)	Request for Oral Hearing	240	250
1.17(g)	Request for Oral Hearing (Small Entity)	120	125
1.17(h)	Petition—Not All Inventors	130	(1)
1.17(h)	Petition—Correction of Inventorship	130	(1)
1.17(h)	Petition—Decision on Questions	130	(1)
1.17(h)	Petition—Suspend Rules	130	(1)
1.17(h)	Petition—Expedited License	130	(1)
1.17(h)	Petition—Scope of License	130	(1)
1.17(h)	Petition—Retroactive License	130	(1)
1.17(h)	Petition—Refusing Maintenance Fee	130	(1)
1.17(h)	Petition—Refusing Maintenance Fee—Expired Patent	130	(1)
1.17(h)	Petition—Interference	130	(1)
1.17(h)	Petition—Reconsider Interference	130	(1)
1.17(h)	Petition—Late Filing of Interference	130	(1)
1.20(b)	Petition—Correction of Inventorship	130	(1)
1.17(h)	Petition—Refusal to Publish SIR	130	(1)
1.17(i)(1)	Petition—For Assignment	130	(1)
1.17(i)(1)	Petition—For Application	130	(1)
1.17(i)(1)	Petition—Late Priority Papers	130	(1)
1.17(i)(1)	Petition—Suspend Action	130	(1)
1.17(i)(1)	Petition—Divisional Reissues to Issue Separately	130	(1)
1.17(o)(1)	Petition—For Interference Agreement	130	(1)
1.17(i)(1)	Petition—Amendment After Issue	130	(1)
1.17(i)(1)	Petition—Withdrawal After Issue	130	(1)
1.17(i)(1)	Petition—Defer Issue	130	(1)
1.17(i)(1)	Petition—Issue to Assignee	130	(1)
1.17(i)(1)	Petition—Accord a Filing Date Under § 1.53	130	(1)
1.17(i)(1)	Petition—Accord a Filing Date Under § 1.62	130	(1)
1.17(i)(1)	Petition—Make Application Special	130	(1)
1.17(j)	Petition—Public Use Proceeding	1,390	1,430
1.17(k)	Non-English Specification	130	(1)
1.17(l)	Petition—Revive Abandoned Appl	110	(1)
1.17(l)	Petition—Revive Abandoned Appl.(Small Entity)	55	(1)
1.17(m)	Petition—Revive Unintentionally Abandoned Appl	1,210	1,250
1.17(m)	Petition—Revive Unintent Abandoned Appl. (Small Entity)	605	625
1.17(n)	SIR—Prior to Examiner's Action	840	870
1.17(o)	SIR—After to Examiner's Action	1,690	1,740
1.17(p)	Submission of an Information Disclosure Statement (§ 1.97)	210	220
1.17(q)	Petition—Correction of Inventorship (Prov. App.)	50	(1)
1.17(q)	Petition—Accord a filing date (Prov. App.)	50	(1)
1.17(r)	Filing a submission after final rejection (1.129(a))	730	750
1.17(r)	Filing a submission after final rejection (1.129(a)) (Small Entity)	365	375
1.17(s)	Per add'l invention to be examined (1.129(b))	730	750
1.17(s)	Per add'l invention to be examined (1.129(b)) (Small Entity)	365	375
1.18(a)	Issue Fee	1,210	1,250
1.18(a)	Issue Fee (Small Entity)	605	625
1.18(b)	Design Issue Fee	420	430
1.18(b)	Design Issue Fee (Small Entity)	210	215
1.18(c)	Plant Issue Fee	610	630
1.18(c)	Plant Issue Fee (Small Entity)	305	315
1.19(a)(1)(i)	Copy of Patent	3	(1)
1.19(a)(1)(ii)	Patent Copy—Overnight delivery to PTO Box or overnight fax	6	(1)
1.19(a)(1)(iii)	Patent Copy Ordered by Expedited Mail or Fax—Exp. service	25	(1)
1.19(a)(2)	Plant Patent Copy	12	(1)
1.19(a)(3)(i)	Copy of Utility Patent or SIR in Color	24	(1)
1.19(b)(1)(i)	Certified Copy of Patent Application as Filed	12	15
1.19(b)(1)(ii)	Certified Copy of Patent Application as Filed, Expedited	24	30
1.19(b)(2)	Cert of Uncert Copy of Patent-Related File Wrapper/Contents	150	(1)
1.19(b)(3)	Cert. or Uncert. Copies of Office Records, per Document	25	(1)
1.19(b)(4)	For Assignment Records, Abstract of Title and Certification	25	(1)
1.19(c)	Library Service	50	(1)
1.19(d)	List of Patents in Subclass	3	(1)
1.19(e)	Uncertified Statement—Status of Maintenance Fee Payment	10	(1)
1.19(f)	Copy of Non-U.S. Patent Document	25	(1)
1.19(g)	Comparing and Certifying Copies, Per Document, Per Copy	25	(1)
1.19(h)	Duplicate or Corrected Filing Receipt	25	(1)
1.20(a)	Certificate of Correction	100	(1)
1.20(c)	Reexamination	2,320	2,390

APPENDIX A.—COMPARISON OF EXISTING AND REVISED FEE AMOUNTS—Continued

37 CFR Sec.	Description	Pre-Oct 1995	Oct 1995
1.20(d)	Statutory Disclaimer	110	(1)
1.20(d)	Statutory Disclaimer (Small Entity)	55	(1)
1.20(e)	Maintenance Fee—3.5 Years	960	990
1.20(e)	Maintenance Fee—3.5 Years (Small Entity)	480	495
1.20(f)	Maintenance Fee—7.5 Years	1,930	1,990
1.20(f)	Maintenance Fee—7.5 Years (Small Entity)	965	995
1.20(g)	Maintenance Fee—11.5 Years	2,900	2,990
1.20(g)	Maintenance Fee—11.5 Years (Small Entity)	1,450	1,495
1.20(h)	Surcharge—Maintenance Fee—6 Months	130	(1)
1.20(h)	Surcharge—Maintenance Fee—6 Months (Small Entity)	65	(1)
1.20(i)(1)	Surcharge—Maintenance After Expiration—Unavoidable	640	660
1.20(i)(2)	Surcharge—Maintenance After Expiration—Unintentional	1,500	1,550
1.20(j)	Extension of Term of Patent	1,030	1,060
1.21(a)(1)	Admission to Examination	300	310
1.21(a)(2)	Registration to Practice	100	(1)
1.21(a)(3)	Reinstatement to Practice	15	(1)
1.21(a)(4)	Certificate of Good Standing	10	(1)
1.21(a)(4)	Certificat of Good Standing, Suitable Framing	20	(1)
1.21(a)(5)	Review of Decision of Director, OED	130	(1)
1.21(a)(6)	Regrading of Examination	130	(1)
1.21(b)(1)	Establish Deposit Account	10	(1)
1.21(b)(2)	Service Charge Below Minimum Balance	25	(1)
1.21(b)(3)	SErvice Charge Below Minimum Balance	25	(1)
1.21(c)	Filing a Disclosure Document	10	(1)
1.21(d)	Box Rental	50	(1)
1.21(e)	International Type Search Report	40	(1)
1.21(g)	Self-Service Copy Charge	.25	(1)
1.21(h)	Recording Patent Property	40	(1)
1.21(i)	Publication in the OG	25	(1)
1.21(j)	Labor Charges for Services	30	(1)
1.21(k)	Unspecified Other Services	(2)	(1)
1.21(k)	Terminal Use APS–CSIR (per hour)	50	(1)
1.21(m)	Processing Returned Checks	50	(1)
1.21(n)	Handling Fee—Incomplete Application	130	(1)
1.21(o)	Terminal Use APS–TEXT	40	(1)
1.24	Coupons for Patient and Trademark Copies	3	(1)
1.296	Handling Fee—Withdrawal SIR	130	(1)
1.445(a)(1)	Transmittal Fee	210	220
1.445(a)(2)(i)	PCT Search Fee—No U.S. Application	640	660
1.445(a)(2)(ii)	PCT Search Fee—Prior U.S. Application	420	430
1.445(a)(3)	Supplemental Search	180	190
1.482(a)(1)(i)	Preliminary Exam Fee	460	470
1.482(a)(1)(ii)	Preliminary Exam Fee	690	710
1.482(a)(2)(i)	Additional Invention	140	(1)
1.482(a)(2)(ii)	Additional Invention	240	250
1.492(a)(1)	Preliminary Examining Authority	660	680
1.492(a)(1)	Preliminary Examining Authority (Small Entity)	330	340
1.492(a)(2)	Searching Authority	730	750
1.492(a)(2)	Searching Authority (Small Entity)	365	375
1.492(a)(3)	PTO Not ISA nor IPEA	980	1,010
1.492(a)(3)	PTO Not ISA nor IPEA (Small Entity)	490	505
1.492(a)(4)	Claims—IPEA	92	94
1.492(a)(4)	Claims—IPEA (Small Entity)	46	47
1.492(a)(5)	Filing with EPO/JPO Search Report	850	880
1.492(a)(5)	Filing with EPO/JPO Search Report (Small Entity)	425	440
1.492(b)	Claims—Extra Individual (Over 3)	76	78
1.492(b)	Claims—Extra Individual (Over 3) (Small Entity)	38	39
1.492(c)	Claims—Extra Total (Over 20)	22	(1)
1.492(c)	Claims—Extra Total (Over 20) (Small Entity)	11	(1)
1.492(d)	Claims—Multiple Dependents	240	250
1.492(d)	Claims—Multiple Dependents (Small Entity)	120	125
1.492(e)	Surcharge	130	(1)
1.492(e)	Surcharge (Small Entity)	65	(1)
1.492(f)	English Translation—After 20 Months	130	(1)
2.6(a)(1)	Application for Registration, Per Class	245	(1)
2.6(a)(2)	Amendment to Allege Use, Per Class	100	(1)
2.6(a)(3)	Statement of Use, Per Class	100	(1)
2.6(a)(4)	Extension for Filing Statement of Use, Per Class	100	(1)
2.6(a)(5)	Application for Renewal, Per Class	300	(1)
2.6(a)(6)	Surcharge for Late Renewal, Per Class	100	(1)
2.6(a)(7)	Publication of Mark Under § 12(c), Per Class	100	(1)

APPENDIX A.—COMPARISON OF EXISTING AND REVISED FEE AMOUNTS—Continued

37 CFR Sec.	Description	Pre-Oct 1995	Oct 1995
2.6(a)(8)	Issuing New Certificate of Registration	100	(1)
2.6(a)(9)	Certificate of Correction of Registrant 's Error	100	(1)
2.6(a)(10)	Filing Disclaimer to Registration	100	(1)
2.6(a)(11)	Filing Amendment to Registration	100	(1)
2.6(a)(12)	Filing Affidavit Under Section 8, Per Class	100	(1)
2.6(a)(13)	Filing Affidavit Under Section 15, Per Class	100	(1)
2.6(a)(14)	Filing Affidavit Under Sections 8 & 15, Per Class	200	(1)
2.6(a)(15)	Petitions to the Commissioner	100	(1)
2.6(a)(16)	Petition to Cancel, Per Class	200	(1)
2.6(a)(17)	Notice of Opposition, Per Class	200	(1)
2.6(a)(18)	Ex Parte Appeal to the TTAB, Per Class	100	(1)
2.6(a)(19)	Dividing an Application, Per New Application Created	100	(1)
2.6(b)(1)(i)	Copy of Registered Mark	3	(1)
2.6(b)(1)(ii)	Copy of Registered Mark, overnight delivery to PTO box or fax	6	(1)
2.6(b)(1)(iii)	Copy of Reg. Mark Ordered Via Exp. Mail or Fax, Exp. Svc	25	(1)
2.6(b)(2)(i)	Certified Copy of TM Application as Filed	12	15
2.6(b)(2)(ii)	Certified Copy of TM Application as Filed, Expedited	24	30
2.6(b)(3)	Cert. or Uncert. Copy of TM-Related File Wrapper/Contents	50	(1)
2.6(b)(4)(i)	Cert. Copy of Registered Mark, Title or Status	10	(1)
2.6(b)(4)(i)	Cert. Copy of Registered Mark, Title or Status—Expedited	20	(1)
2.6(b)(5)	Certified or Uncertified Copy of TM Records	25	(1)
2.6(b)(6)	Recording Trademark Property, Per Mark, Per Document	40	(1)
2.6(b)(6)	For Second and Subsequent Marks in Same Document	25	(1)
2.6(b)(7)	For Assignment Records, Abstracts of Title and Cert	25	(1)
2.6(b)(8)	Terminal Use X–SEARCH	40	(1)
2.6(b)(9)	Self-Service Copy Charge	0.25	(1)
2.6(b)(10)	Labor Charges for Services	30	(1)
2.6(b)(11)	Unspecified Other Services	(2)	(1)

[1] These fees are not affected by this rulemaking.
[2] Actual cost.

[FR Doc. 95–12751 Filed 5–25–95; 8:45 am]
BILLING CODE 3510–16–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5212–3]

40 CFR Parts 51, 52, 60, 61, and 64

Enhanced Monitoring Rule

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; notice of public meeting.

SUMMARY: Notice is hereby given that EPA will hold a public meeting on May 31, 1995 to discuss EPA's proposed enhanced monitoring rule and potential approaches to restructuring this rulemaking. On October 22, 1993 (58 FR 54648), EPA published a notice of proposed rulemaking that contained proposed rules to govern a new enhanced monitoring program under section 114(a)(3) and related provisions of the Clean Air Act. 58 FR 54648. In light of the President's concerns regarding flexibility and cost-effectiveness, EPA believes that it may be inappropriate to take final action on the rule as proposed. Moreover, EPA believes that it can develop a more cost-effective method of enhanced monitoring that will also meet the statutory requirement of section 114(a)(3). The Agency will use this meeting to obtain the views of interested parties before taking further action in connection with this rulemaking.

DATES: This public meeting will be held on May 31, 1995 from 8:30 a.m. to 4:30 p.m. at the address set forth below.

ADDRESSES: *Meeing location*: The public meeting will be held at the DuPont Plaza Hotel, 1550 New Hampshire Avenue, Washington, DC 20036, telephone 202–483–6000. *Supporting Documents*: Documents related to discussions will be available at the meeting and in the docket discussed below. Subsequent to the meeting, these documents and a summary of the meeting will be available on the Technology Transfer Network, Emission Measurement Technical Information Center Electronic Bulletin Board, telephone 919–541–5742, Internet address TELNET ttnbbs.rtpnc.epa.gov. *Docket*: The Agency has established EPA Air Docket A–91–52 for this rulemaking. This docket is available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday, excluding Government holidays, and is located at EPA Air Docket (LE–131), Room M–1500, Waterside Mall, 401 M Street, SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Robin Segall, Office of Air Quality Planning and Standards, 919–541–0893.

SUPPLEMENTARY INFORMATION: On May 1 1995, EPA received a 60–day extension of the court-ordered deadline in *Sierra Club* v. *Browner*, No. 93–0564 NHJ (D.D.C.), for final promulgation of enhanced monitoring rules in order for the Agency to reassess the approach it has developed and to consider other, alternative approaches. EPA advised the court that during this 60-day period, EPA will determine the best means to accomplish the substantive goals of the enhanced monitoring requirements of the Clean Air Act in a cost-effective manner. EPA also advised the court that it anticipates that it will need a substantially longer extension beyond June 30, 1995, in order to promulgate rules embodying a new approach to enhanced monitoring.

The Agency plans to take a fresh look at enhanced monitoring in light of the President's reform efforts to design performance-based environmental programs that provide industry with the flexibility to comply in cost-effective ways, while requiring accountability for achieving results. EPA had prepared a draft notice of final rulemaking based

upon the proposed enhanced monitoring rule and submitted it to the Office of Management and budget for interagency review under Executive Order 12866. However, in order to provide an opportunity to reevaluate this rulemaking, on April 4, 1995, the Environmental Protection Agency withdrew the draft final enhanced monitoring rule from further review by the Office of Management and Budget. In addition, the Agency has withdrawn 13 proposed example enhanced monitoring protocols that had been placed upon the Technology Transfer Network in anticipation of promulgation of final enhanced monitoring rules, in order to avoid confusion.

One of the first steps the Agency is taking in considering a possible restructured rule is to hold the public meeting on May 31, 1995. At this meeting the Agency will continue to work with representatives from industry, State and local agencies, and environmental groups in developing a rule that meets the objectives of the President's Environmental Regulation Reinvention effort. The meeting will include a number of representative stakeholders that will sit at the main meeting table by invitation. The number of stakeholders who will sit at the table will be limited to 40; the Agency has invited a broad representation of industry, State and local agencies, and environmental organizations to sit at the table. Additional seating at the meeting will be on a first come, first served basis. It is important to note that the Agency is seeking the opinions of all individuals/organizations present and *not* seeking consensus. There will be opportunities for all parties present to offer their views.

The purpose of the meeting will be to explain the Agency's underlying principles and to solicit opinions from stakeholders for formulation of new approaches to enhanced monitoring rules. One approach being considered would be to issue a revised proposed rule in the from of a Compliance Assurance Monitoring (CAM) Rule that would focus on improving current operation and maintenance (O&M) monitoring requirements. An enhanced O&M monitoring protocol would require that a source owner document operation and maintenance of a control device or process operation in accordance with established, reliable operating and maintenance practices and implement any necessary corrective action to ensure that emissions have been reduced. The Agency is also considering combining the periodic monitoring requirements in 40 CFR part 70 with this CAM rule so that all compliance-related monitoring requirements would be integrated in one set of requirements. To facilitate that approach, EPA also will consider the option of using any proposed CAM rule (or publicly released draft of the rule) as interim Agency guidance for implementation of the current periodic monitoring provisions of part 70. EPA will also consider other approaches as part of this review.

Dated: May 22, 1995.

Mary D. Nichols,

Assistant Administrator, Office of Air and Radiation.

[FR Doc. 95–13137 Filed 5–25–95; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[DC15–1–6358b; FRL–5178–8]

Approval and Promulgation of Air Quality Implementation Plans; for the District of Columbia—Emission Statement Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the District of Columbia for the purpose of establishing an emission statement program for stationary sources of volatile organic compounds (VOCs) and/or nitrogen oxides (NOx). In the final rules section of this **Federal Register**, EPA is approving the District's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by June 26, 1995.

ADDRESSES: Written comments on this action should be addressed to Thomas J. Maslany, Director, Air, Radiation, and Toxics Division (3AT00), U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; and the District of Columbia Department of the Consumer and Regulatory Affairs, 2100 Martin Luther King Avenue SE., Washington, D.C. 20020.

FOR FURTHER INFORMATION CONTACT: Enid A. Gerena, (3AT14), U.S. Environmental Protection Agency, Air, Radiation, and Toxics Division, 841 Chestnut Building, Philadelphia, Pennsylvania, 19107, (215) 597–8239.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final action of the same title which is located in the rules and regulations section of this **Federal Register**.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Oxides of nitrogen, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: January 25, 1995.

Peter H. Kostmayer,

Regional Administrator, Region III.

[FR Doc. 95–12926 Filed 5–25–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[ID12–1–6992b; FRL -5206–7]

Approval and Promulgation of State Implementation Plans: Idaho

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Idaho on April 14, 1992 for the City of Pinehurst PM–10 nonattainment area (59 FR 43745 (August 25, 1994)) as satisfying certain PM–10 planning requirements for the area just outside the City of Pinehurst which was designated nonattainment in January 1994. In the final rules section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this notice.

DATES: Comments on this proposed rule must be received in writing by June 26, 1995.

ADDRESSES: Written comments should be addressed to Montel Livingston, Environmental Protection Specialist (AT–082), Air Programs Section, at the EPA Regional Office listed below. Copies of the documents relevant to this proposed rule are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

U.S. Environmental Protection Agency, Region 10, Air Programs Section, 1200 6th Avenue, Seattle, WA 98101.

The State of Idaho Division of Environmental Quality, 1410 N. Hilton, Boise, ID 83720.

FOR FURTHER INFORMATION CONTACT: Doug Cole, EPA, Idaho Operations Office, 1435 N. Orchard St., Boise, ID 83706, (208) 334–9555.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action which is located in the Rules Section of this **Federal Register**.

Dated: April 29, 1995.

Chuck Clarke,

Regional Administrator.

[FR Doc. 95–12928 Filed 5–25–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[SIPTRAX No. PA63–1–7032b FRL–5211–2]

Approval and Promulgation of Air Quality Implementation Plans; Commonwealth of Pennsylvania: Proposed Determination of Attainment of Ozone Standard by the Pittsburgh-Beaver Valley and Reading Ozone Nonattainment Areas and Determination Regarding Applicability of Certain Reasonable Further Progress and Attainment Demonstration Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to determine that the Pittsburgh-Beaver Valley and Reading ozone nonattainment areas have attained the National Ambient Air Quality Standard (NAAQS) for ozone and that certain reasonable further progress and attainment demonstration requirements, along with certain related requirements, of Part D of Title I of the Clean Air Act are not applicable for so long as these areas continue to attain the ozone standard. In the final rules section of this **Federal Register**, EPA is making these determinations without prior proposal. A detailed rationale for the action is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, EPA will withdraw the direct final rule and address the comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this notice. Any parties interested in commenting on this notice should do so at this time.

DATES: Comments must be received in writing by June 26, 1995.

ADDRESSES: Written comments on this action should be addressed to Marcia L. Spink, Associate Director, Air Programs, Mailcode 3AT00, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107.

FOR FURTHER INFORMATION CONTACT: Kathleen Henry, (215) 597–0545.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final action of the same title which is located in the Rules and Regulations Section of this **Federal Register**.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone.

Authority: 42 U.S.C. 7401–7671q.

Dated: May 16, 1995.

Stanley Laskowski,

Acting Regional Administrator, Region III.

[FR Doc. 95–13005 Filed 5–25–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Parts 55 and 71

[FRL–5211–7]

Federal Operating Permits Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of cancellation of public hearing.

SUMMARY: On April 27, 1995, the EPA gave notice of the proposed Federal Operating Permits rule and of the opportunity for a public hearing to present oral testimony concerning the proposed rule. Because the sole party that requested a public hearing has withdrawn its request, the public hearing scheduled for May 30, 1995 has been cancelled.

Written comments on the proposed rule will continue to be accepted until June 26, 1995. Send the written comments to the address given below.

Public hearing cancellation: Notice is hereby given that the public hearing originally scheduled for May 30, 1995 has been canceled.

ADDRESS: Comments should be mailed (in duplicate if possible) to: EPA Air Docket (Mail Code 6102), Attn: Docket No. A–93–51, Room M–1500, Waterside Mall, 401 M Street SW, Washington, DC 20460.

FOR FURTHER INFORMATION, CONTACT: Candace Carraway (telephone 919–541–3189), U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Information Transfer and Program Integration Division, Mail Drop 12, Research Triangle Park, NC 27711.

Dated: May 23, 1995.

Mary Henigan,

Acting Director, Information Transfer and Program Integration Division.

[FR Doc. 95–13139 Filed 5–25–95; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

[CC Docket No. 87–124]

Notice of Advisory Committee Meetings

AGENCY: Federal Communications Commission.

ACTION: Notice of meetings.

SUMMARY: This notice is to announce a change in one meeting date of the Federal Communications Commission's (FCC) Hearing Aid Compatibility Negotiated Rulemaking Committee

(Committee). A previous announcement in the **Federal Register** stated that the committee would meet on Tuesday, June 13, 1995. That meeting date has been changed to Thursday, June 15, 1995. The meetings for May 25 and May 30, 1995, are as previously announced.

The committee is meeting as part of the Commission's proceeding In the Matter of Access to Telecommunications Equipment and Services by the Hearing Impaired and Other Disabled Persons. The Committee will provide recommendations to the FCC to be used in the formulation of requirements for hearing aid compatible wireline telephones in work places, hospitals, certain other health care facilities, prisons, hotels and motels. Included among the recommendations will be one on whether to lift the suspension of enforcement of the Commission's rules regarding hearing aid-compatibility. Those rules require that all wireline telephones in all work places, hospitals, certain other health care facilities, prisons, hotels and motels be hearing aid compatible by May 1, 1993 for establishments with 20 or more employees and by May 1, 1994 for establishments with fewer than 20 employees. The scope of the activity of the Committee includes all steps necessary to assemble data, perform analyses, and provide advice to the FCC concerning all of the issues required to address the regulation of wireline telephones which need to be hearing aid-compatible, as discussed in the FCC's public notices.

DATES: May 25, 1995, 9:30 a.m. edt; May 30, 1995, 9:30 a.m, edt; June 15, 1995, 9:30 a.m. edt.

ADDRESSES: The addresses of the meetings are as follows, or as otherwise announced at the meetings: The meeting of May 25 will be held at the Federal Communications Commission, Room 856, 1919 M Street NW, Washington, D.C. 20554. The meeting of May 30 will be held at Eleanor Roosevelt High School, 7601 Hanover Parkway, Greenbelt, MD 20770. The meeting of June 15 will be held at the Federal Communications Commission, Office of Administrative Law Judges, Courtroom 1, Room 224, 2000 L Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Committee documents are available through I.T.S. at 202/857–3800. For further information, contact Greg Lipscomb, Designated Federal Officer of the Hearing Aid Compatibility Negotiated Rulemaking Committee, Domestic Services Branch, Domestic Facilities Division, Common Carrier Bureau, Federal Communications Commission, Mail Stop 1600B2, 2025 M Street, NW., Suite 6008, Washington, DC 20054; Voice (202 634–4216; TTY (202) 418–0484; Fax (202) 634–6625; Internet address: glipscom@fcc.gov

SUPPLEMENTARY INFORMATION: In accordance with the Federal Advisory Committee Act, Public law 92–463, as amended, this notice advises interested persons of the remaining meetings of the Committee. This Committee is necessary and in the public interest. The Committee was established by the Federal Communications Commission to bring together significantly affected entities to discuss and to recommend approaches to developing recommendations to the FCC for requirements for hearing aid-compatible wireline telephones in work places, hospitals, certain other health care facilities, prisons, hotels and motels. The FCC solicited nominations for membership on the Committee pursuant to the Negotiated Rulemaking Act of 1990, Public Law 101–648, November 28, 1990, and selected members which are significantly affected by the proposed rules. *See* FCC Public Notices in CC Docket No. 87–124, FCC 94–280, November 7, 1994, and DA 95–791, April 12, 1995; *see also* 59 FR 60343, November 23, 1994; 60 FR 15739, March 27, 1995; and the Commission's Rules at 47 CFR 68.112(b)(1), (3), and (5).

Members of the general public may attend the meetings. The FCC will attempt to accommodate as many people as possible. However, admittance will be limited to the seating available. The public may submit written comments to the Committee. The comments must be submitted two business days before the meeting in which the commenter desires his/her comments to be distributed. In addition, comments at the meeting by parties or entities not represented on the Committee will be permitted to the extent time permits. Comments will be limited to five minutes in length by any one party or entity, and request to make such comments to the Committee in person must be received two business days before the meeting in which the commenter desires to be heard. Requests for comment opportunity, and written comments, should be sent to Greg Lipscomb at the address under **FOR FURTHER INFORMATION CONTACT,** stated above.

Agenda

The planned agendas for the remaining meetings are as follows: Introductory Remarks, Approval of Agenda, Administrative Matters, Documents, Work Program, Decisions, Final Report, Meeting Schedule, Other Business.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–12958 Filed 5–25–95; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 10

RIN: 2105–AC05

[Docket No. 48438; Notice 95–6]

Privacy Act; Implementation

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: DOT proposes to amend its rules implementing the Privacy Act of 1974 to exempt from certain provisions of the Act the Coast Guard's Joint Maritime Information Element Support System. Public comment is invited.

DATES: Comments are due June 26, 1995.

ADDRESSES: Comments should be addressed to Documentary Services Division, Attention: Docket Section, Room PL401, Docket No. 48438, Department of Transportation, C–55, Washington, DC 20590. Any person wishing acknowledgment that his/her comments have been received should include a self-addressed stamped postcard. Comments received will be available for public inspection and copying in the Documentary Services Division, Room PL401, Department of Transportation Building, 400 Seventh Street, SW, Washington, DC, from 9 am to 5 pm et Monday through Friday except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Robert I. Ross, Office of the General Counsel, C-10, Department of Transportation, Washington, DC 20590, telephone (202) 366–9154, FAX (202) 366–9170.

SUPPLEMENTARY INFORMATION: *1. What is JMIE?* The Joint Maritime Information Element (JMIE) Support System is a multi-agency database of vessel movements around the world that can assist in virtually any maritime support mission, including petroleum traffic movement, sea and defense zone surveillance, fisheries operations, and emergency sealift management, as well as prevention of illegal technology transfer, general cargo/commodity smuggling, and illegal immigration. DOT's Coast Guard is one of the participating agencies and the agency that has been selected by the others as the Executive Agent to manage the database. All participating agencies will have access to data in the system.

Each record in the database will consist of two parts. The first will cover the vessel; every participating agency will have access to that. That record will refer to a record about the individuals (e.g., owner, master, crew) associated with that vessel. Only the law enforcement agencies will be able to access that second record. This part of each record comes within the Privacy Act, although the entire record does not. The computer that houses the database has been programmed to grant access only to the law enforcement agencies that are members of JMIE.

2. What agencies are members of JMIE? The following are the members of JMIE; each is designated below by whether it is a law enforcement agency (L), member of the intelligence community (I), or other (O), only those designated '(L)' having direct access to Privacy Act information:

1. Office of National Drug Control Policy—Executive Office of the President (I)
2. Bureau of International Narcotics Matters—Department of State (I)
3. Customs Service—Department of the Treasury (L)
4. Office of Naval Intelligence—Department of Defense (I)
5. Military Sealift Command—Department of Defense (O)
6. Defense Intelligence Agency—Department of Defense (I)
7. National Security Agency—Department of Defense (I)
8. Drug Enforcement Administration—Department of Justice (L)
9. Immigration and Naturalization Service—Department of Justice (L)
10. US National Central Bureau—INTERPOL—Department of Justice (O)
11. Bureau of the Census—Department of Commerce (O)
12. Coast Guard—Department of Transportation (L)
13. Maritime Administration—Department of Transportation (O)
14. Office of Intelligence and Port Security—Department of Energy (I)
15. Central Intelligence Agency (I)

The only members of JMIE that will have direct access to the Privacy Act information that will be maintained as part of JMIE are the following, all of which are criminal law enforcement agencies; shown with each is its principal criminal law enforcement authority:

(1) Customs Service—19 USC 1589a; [1]

(2) Immigration and Naturalization Service—8 USC 1324; [2]

(3) Drug Enforcement Administration—21 USC 878; [3]

(4) Coast Guard—14 USC 89 [4]

1. *General exemption.* Under subsection (j)(2) of the Privacy Act (5 USC 552a(j)(2)), a system of records may be exempted from almost all provisions of the Act, so long as the system: (1) Is maintained by an agency, or a component of an agency, that performs as its principal function any activity pertaining to the enforcement of criminal laws; and (2) contains: (A) Information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status; (B) information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or (C) reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision. Those provisions of the Act from which such a system may *not* be exempted are subsections (b) (Conditions of Disclosure); (c)(1) and (2) (Accounting of Certain Disclosures); (e)(4)(A) through (F) (Publication of Existence and Character of System); (e)(6) (Ensure Records are Accurate, Relevant, Timely, and Complete), (7) (Restrict Recordkeeping on First Amendment Rights), (9) (Rules of Conduct), (10) (Safeguards), and (11) (Routine Use Publication); and (i) (Criminal Penalties).

DOT proposes to exempt JMIE accordingly.

2. *Specific exemptions.* Under subsection (k) of the Privacy Act (5 USC 552a(k)), qualifying records may be exempted from various provisions of the Act. Among these provisions are the requirement in subsection (c)(3) to maintain an accounting of disclosures of information from a system of records and make that accounting available on request to the record subject; in subsection (d) to grant to a record subject access to information maintained on him/her under the Act; in subsection (e)(1) to maintain only such information as is relevant and necessary to accomplish a purpose of the agency under statute or Executive Order; in subsection (e)(4)(G), (H), and (I) to advise record subjects of the agency procedures to request if a system of records contains records pertaining to them, how they can gain access to such records and contest their content, and the categories of sources of such records; and in subsection (f) to establish rules governing the procedures above.

a. Under subsection (k)(1) of the Privacy Act (5 USC 552a(k)(1)), portions of a system of records that are subject to 5 USC 552(b)(1), in that they contain information that is properly classified in the interest of national security, may be exempted from these provisions, and DOT proposes to exempt JMIE accordingly.

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[1] Enforcement authority of customs officers.

Subject to the direction of the Secretary of the Treasury, an officer of the customs may—

(1) carry a firearm;

(2) execute and serve any order, warrant, subpoena, summons, or other process issued under the authority of the United States;

(3) make an arrest without a warrant for any offense against the United States committed in the officer's presence or for a felony, cognizable under the laws of the United States committed outside the officer's presence if the officer has reasonable grounds to believe that the person to be arrested has committed or is committing a felony;

(4) perform any other law enforcement duty that the Secretary of the Treasury may designate.

[2] Bringing in and harboring certain aliens.

(c) *Authority to arrest.* No officer or person shall have authority to make any arrest for a violation of any provision of this section except officers and employees of the [Immigration and Naturalization] Service designated by the Attorney General, either individually or as a member of a class, and all other officers whose duty it is to enforce criminal laws.

[3] Powers of enforcement personnel.

(a) Officers or employees of the Drug Enforcement Administration or any State or local law enforcement officer.

Any officer or employee of the Drug Enforcement Administration or any State or local law enforcement officer designated by the Attorney General may—

(1) carry firearms;

(2) execute and serve search warrants, arrest warrants, administrative inspection warrants, subpoenas, and summonses issued under the authority of the United States;

(3) make arrests without warrant (A) for any offense against the United States committed in his presence, or (B) for any felony, cognizable under the laws of the United States, if he has probable cause to believe that the person to be arrested has committed or is committing a felony;

(4) make seizures of property pursuant to the provisions of this subchapter; and

(5) perform such other law enforcement duties as the Attorney General may designate.

* * * * *

[4] Law enforcement.

(a) The Coast Guard may make inquiries, examinations, inspections, searches, seizures, and arrests upon the high seas and waters over which the United States has jurisdiction, for the prevention, detection, and suppression of violations of laws of the United States. * * * When * * * it appears that a breach of the laws of the United States rendering a person liable to arrest is being, or has been committed, by any person, such person shall be arrested or, if escaping to shore, shall be immediately pursued and arrested on shore, or other lawful and appropriate action shall be taken * * *.

* * * * *

b. Under subsection (k)(2) of the Privacy Act (5 USC 552a(k)(2)), investigatory material compiled for law enforcement purposes, other than material encompassed within subsection (j)(2), may be exempted from these provisions, and DOT proposes to exempt JMIE accordingly.

Analysis of regulatory impacts. This amendment is not a "significant regulatory action" within the meaning of Executive Order 12866. It is also not significant within the definition in DOT's Regulatory Policies and Procedures, 49 FR 11034 (1979), in part because it does not involve any change in important Departmental policies. Because the economic impact should be minimal, further regulatory evaluation is not necessary. Moreover, I certify that this proposal will not have a significant economic impact on a substantial number of small entities.

This proposal does not significantly affect the environment, and therefore an environmental impact statement is not required under the National Environmental Policy Act of 1969. It has also been reviewed under Executive Order 12612, Federalism, and it has been determined that it does not have sufficient implications for federalism to warrant preparation of a Federalism Assessment.

Finally, the proposal does not contain any collection of information requirements, requiring review under the Paperwork Reduction Act of 1980.

List of Subjects in 49 CFR Part 10:

Penalties; Privacy

In accordance with the above, DOT proposes to amend 49 CFR part 10 as follows:

PART 10—[AMENDED]

1. The authority citation to part 10 would remain as follows:

Authority: 5 USC 552a; 49 USC 322.

2. Part I of Appendix A would be amended by republishing the introductory text and by adding a new paragraph F; Part II.A would be amended by adding a new paragraph 14; and Part II.F would be amended by adding a new paragraph 4, all to read as follows:

Appendix A to Part 10—Exemptions

Part I. General exemptions. Those portions of the following systems of records that consist of (a) information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status; (b) information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or (c) reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision, are exempt from all parts of 5 USC 552a except subsections (b) (Conditions of disclosure); (c)(1) and (2) (Accounting of certain disclosures); (e)(4)(A) through (F) (Publication of existence and character of system); (e)(6) (Ensure records are accurate, relevant, timely, and complete before disclosure to person other than an agency and other than pursuant to a Freedom of Information Act request), (7) (Restrict recordkeeping on First Amendment rights), (9) (Rules of conduct), (10) (Safeguards), and (11) (Routine use publication); and (i) (Criminal penalties):

* * * * *

F. Joint Maritime Intelligence Element (JMIE) Support System, maintained by the Operations Systems Center, U.S. Coast Guard (DOT/CG 642).

Part II. Specific exemptions.

A. The following systems of records are exempt from subsection (c)(3) (Accounting of Certain Disclosures), (d) (Access to Records), (e)(4)(G), (H), and (I) (Agency Requirements), and (f) (Agency Rules) of 5 USC 552a, to the extent that they contain investigatory material compiled for law enforcement purposes in accordance with 5 USC 552a(k)(2):

* * * * *

14. Joint Maritime Intelligence Element (JMIE) Support System, maintained by the Operations Systems Center, U.S. Coast Guard (DOT/CG 642).

* * * * *

F. Those portions of the following systems of records that consist of information properly classified in the interest of national defense or foreign policy in accordance with 5 USC 552(b)(1) are exempt from sections (c)(3) (Accounting of Certain Disclosures), (d) (Access to Records), (e)(4)(G), (H), and (I) (Agency Requirements), and (f) (Agency Rules) of 5 USC 552a, to the extent that they contain investigatory material compiled for law enforcement purposes in accordance with 5 USC 552a(k)(1):

* * * * *

4. Joint Maritime Intelligence Element (JMIE) Support System, maintained by the Operations Systems Center, U. S. Coast Guard (DOT/CG 642).

Issued in Washington, DC, on May 19, 1995.

Federico Peña,

Secretary of Transportation.

[FR Doc. 95–12833 Filed 5–25–95; 8:45 am]

BILLING CODE 4910–62–P

Research and Special Programs Administration

49 CFR Part 195

[Docket PS–140]

RIN 2137–AC34

Areas Unusually Sensitive to Environmental Damage

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Public workshop notice.

SUMMARY: RSPA invites industry, State and local government representatives and the public to a workshop on unusually sensitive environmental areas. The workshop's purpose is to openly discuss the criteria being considered by RSPA to determine areas unusually sensitive to environmental damage from a hazardous liquid pipeline release. The criteria are needed to carry out statutory requirements.

DATES: The workshop will be held on June 15, 1995 from 8:30 a.m. to 4 p.m. and on June 16, 1995 from 8:30 a.m. to 12 p.m. Persons who want to participate in the workshop should call (703) 267–1666 or e-mail their name, affiliation, and phone number to jbusavag@walcoff.com as space is limited. Persons who are unable to attend may submit written comments in duplicate by June 26, 1995. Interested persons should submit as part of their written comments all material that is relevant to a statement of fact or argument.

ADDRESSES: The workshop will be held at the U.S. Department of Transportation, Nassif Building, 400 Seventh Street SW., Room 2230, Washington, DC. Non-federal employee visitors are admitted into the DOT headquarters building through the southwest entrance at Seventh and E Streets, SW.

Written comments must be submitted in duplicate and mailed or hand delivered to the Dockets Unit, Room 8421, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. Please refer to the docket and notice numbers stated in the heading of this notice.

All comments and materials cited in this document will be available for inspection and copying in Room 8421 between 8:30 a.m. and 4:30 p.m. each business day. A transcript of the workshop will be available from the Dockets Unit about three weeks after the workshop.

FOR FURTHER INFORMATION CONTACT: Christina Sames, (202) 366–4561, about this document, or the Dockets Unit, (202) 366–5046, for copies of this document or other materials in the docket.

SUPPLEMENTARY INFORMATION:

49 U.S.C. 60109 and 60102

49 U.S.C. 60109 requires the Secretary of Transportation (Secretary) to:

- Consult with the Environmental Protection Agency (EPA) and describe areas that are unusually sensitive to environmental damage if there is a hazardous liquid pipeline accident, and
- Establish criteria for identifying each hazardous liquid pipeline facility and gathering line, whether otherwise subject to regulation, located in an area unusually sensitive to environmental damage in the event of a pipeline accident.

In describing areas that are unusually sensitive to environmental damage, the Secretary is to consider:

- Earthquake zones and areas subject to substantial ground movements, such as landslides;
- Areas where ground water contamination would be likely if a pipeline facility ruptures;
- Freshwater lakes, rivers, and waterways; and
- River deltas and other areas subject to soil erosion or subsidence from flooding or other water action, where pipeline facilities are likely to be exposed or undermined.

Identification of these unusually sensitive environment areas will be used by RSPA in future rulemakings that are directed at such areas. For instance, 49 U.S.C. 60109 (a)(2) directs the Secretary to require operators to identify unusually sensitive environmental areas through maps and pipeline inventories. 49 U.S.C. 60102(f)(2) requires the Secretary to require each pipeline in an unusually sensitive environmental area to be inspected periodically and to prescribe when an instrumented internal inspection device should be used to inspect the pipeline.

Purpose of Workshop

The purpose of the public workshop is for RSPA and participants to interactively discuss areas unusually sensitive to environmental damage from a hazardous liquid pipeline release and will focus on the following:

1. How to establish criteria which will narrow the number of unusually sensitive environmental areas for pipeline safety purposes.
2. How to establish a process which operators can use to identify, using readily available data, which of their pipeline facilities are located in an unusually sensitive environmental area.
3. How can RSPA and other Federal and State agencies facilitate the identification of pipeline facilities in unusually sensitive environmental areas in a timely and cost beneficial manner.

Problem

There is not a national process to define environmentally sensitive areas for Federal, State, and local governments. Many Federal, State, and local laws refer to environmentally sensitive areas for protection from various actions. The environmentally sensitive area definitions these government agencies have created could be interpreted to include most of the United States.

To meet the intent of 49 U.S.C. 60109 without creating an undue burden on the pipeline industry, RSPA believes a narrow, risk-based definition for unusually sensitive areas is required. Therefore, RSPA is considering an approach that builds on values other Federal agencies have established for activities required under the Oil Pollution Act of 1990, but that more narrowly identifies areas that are unusually sensitive to environmental damage from a hazardous liquid pipeline release.

RSPA believes operators should be given credit for equipping their pipeline systems to quickly detect and respond to a hazardous liquid release. RSPA also believes operators should be allowed to determine the areas that could reasonably be expected to be significantly affected if there were a hazardous liquid release from their pipeline. Therefore, RSPA is considering including only those areas where a release of hazardous liquid would reach the area before the release was contained or before the area was protected as unusually sensitive to environmental damage from a hazardous liquid pipeline release.

To establish clear priorities for protecting a large number of areas, RSPA is considering three tiers of unusually sensitive areas. Tier One, areas that could affect human health if contaminated, would be considered the most sensitive and the highest priority areas. Tier Two, unusually sensitive areas along surface water, would be the second highest priority. Tier Three, unusually sensitive areas within terrestrial environments, would be the third highest priority. RSPA believes the three tiers could be phased in to give operators more time to determine the unusually sensitive areas that could be affected by a hazardous liquid pipeline release. This will reduce the burden on industry and will give RSPA time to work with other government agencies to help determine unusually sensitive areas.

The following explains the criteria under each of the tiers being considered for identifying areas unusually sensitive to environmental damage from a hazardous liquid pipeline release. RSPA invites discussion on all topics addressed in this public workshop notice.

1. Tier One: Areas That Could Affect Human Health if Contaminated

A. Intakes for Community Drinking Water Systems

Public safety is RSPA's number one concern. A hazardous liquid pipeline failure can threaten human health if the hazardous liquid enters a community's drinking water system. Therefore, intakes for community water systems, as defined in the Safe Drinking Water Act regulations, 40 CFR 141.2, that a hazardous liquid pipeline accident could reasonably be expected to affect, are the highest priority in the definition being considered.

The potential risk to a community water system is greatly reduced when a pipeline system is equipped to quickly detect and respond to a hazardous liquid release. A pipeline system's ability to contain a hazardous liquid release before the liquid reaches a community water system intake greatly minimizes the contamination risk. Prompt detection of a hazardous liquid release and prompt notification of water authorities allows for the shut down of the community water intakes that could reasonably be expected to be affected until the danger of hazardous liquid contamination passes. Therefore, only community water system intakes where water currents, topography, or other factors could carry a hazardous liquid release to the community water intake zone before the hazardous liquid is contained or before the community water system intake is closed would be considered unusually sensitive environmental areas.

B. Sole Source Aquifers

EPA defines a sole source aquifer as one that supplies at least half of the drinking water consumed in the area above the aquifer. EPA guidelines state that designated sole source aquifer areas have no alternative sources or combination of sources that could physically, legally, and economically supply all those who get their drinking water from the aquifer.

A hazardous liquid pipeline failure can threaten human health if the hazardous liquid enters a sole source aquifer. Therefore, RSPA believes that

EPA designated sole source aquifers should be considered when determining areas unusually sensitive to environmental damage from a hazardous liquid pipeline accident.

RSPA realizes that not all sole source aquifers could reasonably be expected to be significantly affected by a hazardous liquid pipeline accident. A hazardous liquid release's ability to affect a sole source aquifer will depend on many factors, including the aquifer's depth, the soil's permeability, the geologic formations surrounding the aquifer, and the amount of hazardous liquid that could be discharged. RSPA believes that only sole source aquifers that a hazardous liquid pipeline accident could reasonably be expected to significantly affect should be considered areas unusually sensitive to environmental damage from a hazardous liquid pipeline accident.

2. Tier Two: Unusually Sensitive Areas Along Surface Water

Surface water will carry a discharge from a hazardous liquid pipeline to community drinking water systems and to other areas unusually sensitive to environmental damage. Because surface water covers a large portion of the United States and not all areas in a body of water and along the water's edge have the same environmental sensitivity, RSPA is considering a risk-based approach to identify the areas along surface water that are unusually sensitive to environmental damage from a hazardous liquid pipeline release. In order to prioritize areas of greatest environmental concern, this approach takes into account the surface water habitat's natural ability to restore itself to the condition that existed before the release, and the biological and human use resources in the body of water and along the water's edge.

RSPA is considering two categories of surface water to determine areas unusually sensitive to environmental damage: (A) intertidal, large and medium rivers, and large lakes and (B) small rivers and lakes, streams, ponds, and other surface water. RSPA believes that Tier Two could be phased in after Tier One (The identification of areas that could affect human health if contaminated) is completed. This will reduce the burden on industry and will give RSPA time to work with other government agencies to help determine the unusually sensitive areas along surface water.

A. Intertidal, Large and Medium Rivers, and Large Lakes

The National Oceanic and Atmospheric Association (NOAA) and the EPA have developed a ten point scale that ranks estuarine, lacustrine, and medium and large sized riverine shoreline habitat sensitivity to oil spills (see Table 1). This scale is based on their studies of oil spills' effects on shoreline habitats. The ten point scale ranks habitats according to their sensitivity to an oil spill, natural persistence of oil, and ease of cleanup. RSPA believes this criteria should be used to rank the habitats along intertidal waters, large and medium rivers, and large lakes that a hazardous liquid pipeline release could affect. NOAA and EPA have identified large lakes as those large enough to form natural, wave built beaches (where the distance over which the wind blows to generate waves is long enough, and thus the wind-generated waves are large enough, to form beaches along the shoreline).

Resource areas, including biological and human-use, need to be considered to narrowly determine areas that are unusually sensitive to environmental damage from a hazardous liquid pipeline accident. Biological resource areas may include critical habitats for endangered or threatened species, critical nesting and spawning areas, and wilderness areas. Human-use resources may include officially designated natural resource management areas, resource extraction sites, high recreational use and access areas, and archeological and cultural sites.

RSPA believes that the shoreline habitat, the biological resource areas, and the human use resources should be evaluated to determine if an area is unusually sensitive to environmental damage. Table 2 outlines a list of areas to be considered. Directly below each area is a numerical sensitivity rating to be considered. An operator would determine if an area is unusually sensitive to environmental damage by determining the habitat's sensitivity ranking (Table 2, column 1), the biological resource area ranking (Table 2, column 2), and the human-use resource area ranking (Table 2, column 3). Combining the habitat, the biological resource area, and the human use resource area rankings determines if an area is unusually sensitive. RSPA believes that areas with a combined numerical ranking of 15 points or more should be considered unusually sensitive.

B. Small Rivers and Lakes, Streams, Ponds, and Other Surface Water

As one progresses landward up major rivers, the streams, ponds, and wetlands become so narrow and shallow that even small spills may contaminate the whole system. NOAA and EPA have recommended as a cut off the point where a 20,000 gallon spill would affect the water body from bank to bank and the entire water column. From this point on upstream, it is not useful to classify the habitat sensitivity of sections along the water way. Therefore, RSPA is considering the entire watershed upstream of the point on the main stream where the habitat sensitivity ranking is no longer useful as a single habitat sensitivity, and that the entire watershed upstream of this point be given a habitat ranking of 9 points.

RSPA believes that the biological resource areas and the human use resources within the watershed upstream of the cutoff point should be evaluated to determine if an area is unusually sensitive to environmental damage. Table 3 outlines a list of areas to be considered. This list of areas is identical to the list of areas in Table 2, columns 2 and 3. Directly below each area is a numerical sensitivity rating. An operator would determine if an area is unusually sensitive to environmental damage by determining the biological resource area ranking (Table 3, column 1) and human-use resource area ranking (Table 3, column 2) within the watershed area. Combining the habitat ranking of 9 points, the biological resource area ranking, and the human use resource ranking determines if an area is unusually sensitive; areas with a combined numerical ranking of 15 points or more would be considered unusually sensitive.

3. Unusually Sensitive Areas Within Terrestrial Environments

RSPA is considering an approach for identifying unusually sensitive environmental areas in terrestrial environments that is similar to the approach for identifying unusually sensitive environmental areas along surface water. RSPA believes that the biological resource areas and the human use resources should be studied to determine if a given area is unusually sensitive to environmental damage from a hazardous liquid pipeline accident. However, RSPA believes the terrestrial habitat's sensitivity should not be ranked for its natural ability to restore itself to the condition that existed before the release. Therefore, only the biological resource areas and the human use resource areas would be studied to determine if a given area is unusually sensitive to environmental damage from a hazardous liquid pipeline release.

Table 4 recommends a list of areas to consider. Directly below each area is a numerical sensitivity rating. An operator would determine if an area is unusually sensitive to environmental damage by evaluating the biological resource area and the human-use resource area rankings. Combining these two rankings, biological resource area ranking and human use resource area ranking, determines if an area is unusually sensitive. Areas with a combined numerical ranking of 11 points or more would be considered unusually sensitive to environmental damage from a hazardous liquid pipeline accident.

RSPA believes that Tier Three could be phased in after Tier One (the identification of areas that could affect human health if contaminated) and Tier Two (Unusually sensitive areas along surface water) are completed. This will reduce the burden on industry and will give RSPA time to work with other government agencies to help determine the unusually sensitive areas within terrestrial environments.

RSPA invites discussion on all topics addressed in this public workshop notice. Anticipated topics to be discussed at the public meeting include, but are not limited to:

(1) The three tiers of unusually sensitive environmental areas.

(2) The criteria being considered for community drinking water systems and sole source aquifers.

(3) The sensitivity ranking of the biological and human use resource areas.

(4) Whether the criteria are specific enough to allow operators to identify areas unusually sensitive to environmental damage from a release of hazardous liquid from their pipeline.

(5) Whether additional criteria are needed to identify unusually sensitive environmental areas.

Issued in Washington, DC on May 22, 1995.

Cesar DeLeon,

Acting Associate Administrator for Pipeline Safety.

TABLE 1.—HABITAT RANKINGS BEING CONSIDERED

Habitat ranking	Estuarine [1]	Lacustrine [2]	Riverine (Large rivers)
10A	Saltwater marshes		
10B	Mangroves		
10C	Freshwater marshes	Freshwater marshes	Freshwater marshes.
10D	Freshwater swamps	Freshwater swamps	Freshwater swamps.
9A	Sheltered tidal flats	Sheltered vegetated low banks	Vegetated low banks.
9B		Sheltered sand/mud flats	Muddy substances (unvegetated).
8A	Sheltered rocky shores	Sheltered scarps in bedrock	Vegetated, steeply sloping bluffs.
8B	Sheltered man-made structures	Sheltered man-made structures	Sheltered man-made structures.
7	Exposed tidal flats	Exposed flats	Not present.
6A	Gravel beaches	Gravel beaches	Gravel bars and gently sloping banks.
6B	Riprap structures	Riprap structures	Riprap structures.
5	Mixed sand and gravel beaches	Mixed sand and gravel beaches	Mixed sand and gravel beaches.
4	Course-grained sand beaches	Sand beaches	Sandy bars and gently sloping banks.
3	Fine-grained sand beaches	Eroding scarps in unconsolidated sediment.	Exposed, eroding banks in unconsolidated sediments.
2	Wave-cut platforms in bedrock	Shelving bedrock shores	Rocky shoals; bedrock ledges.
1A	Exposed rocky shores	Exposed rocky cliffs	Exposed rocky banks.
1B	Exposed seawalls	Exposed, hard man-made structures	Vertical, solid revetments.

[1] Semi-enclosed coastal waters that are under tidal influence and have a free connection to the adjacent ocean waters.
[2] Generally standing water, with open water exceeding 30% of the system.

TABLE 2.—CRITERIA BEING CONSIDERED FOR DETERMINING UNUSUALLY SENSITIVE AREAS ALONG INTERTIDAL, LARGE AND MEDIUM RIVERS, AND LARGE LAKES

Habitat rankings estuarine, lacustrine, and riverine environments	Biological resource areas	Human use resource areas
Estuarine Environments: Saltwater and freshwater marshes Freshwater swamps Mangroves Lacustrine and Riverine Environments: Freshwater marshes and swamps 10 points	Critical habitats for Federally designated Endangered or Threatened Species as defined in 50 CFR 424.02 10 points	
Estuarine Environments: Sheltered tidal flats Lacustrine Environments: Sheltered vegetated low banks Sheltered sand/mud flats Riverine Environments: Vegetated low banks Muddy substances 9 points	Critical areas identified under the Clean Lakes Program Sensitive areas identified under National Estuary Program or Near Coastal Waters Program 9 points	
Estuarine Environments: Sheltered rocky shores Sheltered man-made structures Lacustrine Environments: Sheltered scarps in bedrock Sheltered man-made structures Reverine Environments:	Habitats Federal or State designated Endangered or Threatened Species are known to use Spawning areas critical for maintaining fish or shellfish	

TABLE 2.—CRITERIA BEING CONSIDERED FOR DETERMINING UNUSUALLY SENSITIVE AREAS ALONG INTERTIDAL, LARGE AND MEDIUM RIVERS, AND LARGE LAKES—Continued

Habitat rankings estuarine, lacustrine, and riverine environments	Biological resource areas	Human use resource areas
Vegetated, steeply sloping bluffs		
8 points	8 points	
Estuarine Environments:	National Sanctuaries	Officially designated natural resource managed areas: National Parks.
Exposed tidal flats		
Lacustrine Environments:	National State and Wildlife Refuges	National Conservation Areas
Exposed flats		
Riverine Environments:	National Wildlife Management Areas	Natural Heritage Areas.
Not present		
	Terrestrial areas large or dense groups or numbers of animals use to breed	National Preserves and Reserves.
7 points	7 points	
Estuarine and Lacustrine Environments:	Designated Federal Wilderness Areas	Archeological and cultural sites a Federal or State government agency identifies and protects.
Gravel beaches		
Riprap structures		
Riverine Environments:	Federal or State designated Scenic or Wild River	Native lands.
Gravel bars and gently sloping banks		
Riprap structures		
6 points	6 points	
Estuarine and Lacustrine Environments:	State land designated for protecting and maintaining aquatic life	Resource extraction sites, such as subsistence sites, commercial fisheries areas, aquaculture sites, reservoirs, and other water resource areas.
Mixed sand and gravel beaches		
5 points	5 points	
Estuarine Environments:	State land designated to manage wildlife or game	High recreational use areas:
Coarse-grained sand beaches		National Recreational Areas.
Lacustrine Environments:		National Monuments.
Sand beaches		Sandy bars and gently sloping banks
4 points	4 points	
Estuarine Environments:	State designated natural areas	
Fine-grained sand beaches		
Lacustrine Environments:	National Forest System	
Eroding scarps in unconsolidated sediment		
Riverine Environments:		
Exposed, eroding banks in unconcolidated sediments		
3 points	3 points	
Estuarine Environments:		
Wave-cut platforms in bedrock		
Lacustrine Environments:		
Shelving bedrock shores		
Riverine Environments:		
Rocky shoals, bedrock ledges		
2 points		
Estuarine Environments:		
Exposed rocky shores		
Exposed seawalls		
Lacustrine Environments:		
Exposed rocky cliffs		
Exposed, hard man-made structures		
Riverine Environments:		
Exposed rocky banks		
Vertical, solid revetments		
1 point		

TABLE 3.—CRITERIA BEING CONSIDERED FOR DETERMINING UNUSUALLY SENSITIVE AREAS ALONG SMALL RIVERS AND LAKES, STREAMS, PONDS, ETC.

Biological resource areas	Human use resource areas
Critical habitats for Federally designated Endangered or Threatened Species as defined in 50 CFR 424.02	
10 points	
Critical areas identified under the Clean Lakes Program	
Sensitive areas identified under National Estuary Program or Near Coastal Waters Program	

TABLE 3.—CRITERIA BEING CONSIDERED FOR DETERMINING UNUSUALLY SENSITIVE AREAS ALONG SMALL RIVERS AND LAKES, STREAMS, PONDS, ETC.—Continued

Biological resource areas	Human use resource areas
9 points	
Habitats Federal or State designated Endangered or Threatened Species are known to use	
Spawning areas critical for maintaining fish or shellfish	
8 points	
National Sanctuaries	Officially designated natural resource management areas:
	National Parks.
	National Conservation Areas.
	Natural Heritage Areas.
	National Preserves and Reserves.
National and State Wildlife Refuges	
National Wildlife Management Areas	
Terrestrial areas large or dense groups or numbers of animals use to breed	
7 points	7 points
Designated Federal Wilderness Areas	Archeological and cultural sites a Federal or State government agency identifies and protects.
	Native lands.
Federal or State designated Scenic or Wild River	
6 points	6 points
State land designated for protecting and maintaining aquatic life	Resource extraction sites, such as subsistence sites, commercial fisheries areas, aquaculture sites, reservoirs, and other water resource areas.
Research natural areas.	
5 points	5 points
State land designated to manage wildlife or game	High recreational use areas:
	National Recreational Areas.
	National Monuments.
	State Parks.
4 points	4 points
State designated natural areas	
National Forest System	
3 points	

TABLE 4.—CRITERIA BEING CONSIDERED FOR DETERMINING UNUSUALLY SENSITIVE WITHIN TERRESTRIAL ENVIRONMENTS

Biological resource areas	Human use resource areas
Critical habitats for Federally designated Endangered or Threatened Species as defined in 50 CFR 424.02	
10 points	
Habitats Federal or State designated Endangered or Threatened Species are known to use	
Spawning areas critical for maintaining fish or shellfish	
8 points	
National Sanctuaries	Officially designated natural resource management areas:
National and State Wildlife Refuges	National Parks. National Conservation Areas.
National Wildlife Management Areas	Natural Heritage Areas.
Terrestrial areas large or dense groups or numbers of animals use to breed	National Preserves and Reserves.
7 points	7 points
Designated Federal Wilderness Areas	Archeological and cultural sites a Federal or State government agency identifies and protects.
	Native lands.
6 points	6 points
Research natural areas	
5 points	
State land designated to manage wildlife or game	High recreational use areas:
	National Recreational Areas.
	National Monuments.
	State Parks.
4 points	4 points
State designated natural areas	
National Forest System	
3 points	

[FR Doc. 95–12964 Filed 5–25–95; 8:45 am]
BILLING CODE 4910–60–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-day Finding for a Petition To List the Wood Turtle (Clemmys Insculpta) as Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 90-day finding for a petition to list the wood turtle (*Clemmys insculpta*) as a threatened species throughout its historic range in the coterminous United States under the Endangered Species Act of 1973, as amended. The Service finds that the petition does not present substantial scientific or commercial information indicating that listing this species may be warranted.

DATES: The finding announced in this document was made on May 16, 1995.

ADDRESSES: Submit data, information, comments or questions concerning this petition to the Field Supervisor, New England Field Office, U.S. Fish and Wildlife Service, 22 Bridge Street, Concord, New Hampshire 03301. The petition finding, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Michael Amaral at the above address (603–225–1411); Paul Nickerson at U.S. Fish and Wildlife Service, Regional Office, 300 Westgate Center Drive, Hadley, Massachusetts 01035 (telephone 413–253–8615); or Robert Adair, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota, 55111 (telephone 612–725–3500).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. This finding is to be based on all information available to the Service at the time. To the maximum extent practicable, this finding is to be made within 90 days of receipt of the petition, and the finding is to be published promptly in the **Federal Register**.

The Service has made a 90-day finding on a petition to list the wood turtle (*Clemmys insculpta*) as threatened and to determine critical habitat. The petition, dated December 27, 1994, was submitted to the Service by Restore The North Woods of Concord, Massachusetts, the Biodiversity Legal Foundation, and six individual co-petitioners and was received by the Service on December 29, 1994. In a letter dated January 10, 1995, Restore provided two additional documents to the petition record. This information was received by the Service on January 12, 1995. The petitioners contend that the species has undergone a precipitous decline throughout its range, that there are a number of threats to the species which will cause further declines, and, therefore, that urgent protective measures are necessary.

The Service has carefully reviewed the petition, the literature cited in the petition, recent information submitted by State wildlife agencies and other knowledgeable individuals, and all other information currently available in the Service's files. On the basis of the best scientific and commercial information available, the Service finds the petition does not present substantial information that listing this species may be warranted. This finding is based on the inadequacy of existing data to support the contention that the wood turtle has undergone rangewide decline or that the threats identified in the petition are affecting wood turtle populations across all or a significant portion of its range to the extent that the species is likely to become an endangered species in the foreseeable future.

The following is a summary of the information available on the species' current status. The wood turtle occurs in all of the States within its recent historic range (colonial settlement to present); appears to be well distributed within a number of those States, i.e., Connecticut, Pennsylvania, Maine, Vermont, Maryland, Massachusetts and New York; and is considered as threatened or endangered by State wildlife agencies in only 5 of the 17 States in which it occurs.

The petitioners stated that habitat loss and fragmentation, nest and hatchling predation, and collection for commercial markets, as well as other factors, have resulted in the wood turtle being "biologically threatened in its native habitat in the United States" (Restore *et. al.* 1994). However, information submitted by the petitioners and information otherwise available to the Service indicate that the status of the wood turtle is not sufficiently known for a significant portion of its range to determine the species' current, versus historic, distribution. Similarly, inadequate data was provided to determine whether the threats identified for specific study populations cited in the petition are likely to be causing rangewide declines in wood turtle populations.

Wood turtles continue to be widespread in a number of States, with viable populations reported from rural areas. In other States, numerous wood turtle occurrence records are reported but population and distribution data are insufficient to substantiate the need for State listing as threatened or endangered. Thus, the wood turtle is not State-listed as threatened or endangered throughout the majority of its range in the United States (Northeast Nongame Technical Committee 1994).

The petitioners presented information on the international trade in turtles of the genus *Clemmys*, as well as the domestic trade in wood turtles. This species was added to Appendix II of the Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES) on June 11, 1992. While addition to Appendix II does not prohibit all international trade in wood turtles, it does provide a means for strict regulation of trade in order to avoid use incompatible with the species' survival in the wild. The Service shares the concern of the petitioners that natural populations cannot sustain indefinitely the removal of adult, breeding-age turtles for the domestic commercial pet market. However, the Service finds that the petition fails to present substantial information indicating that the current commercial trade in wood turtles is so extensive that it threatens the species' existence across its range. The Service notes that with one exception, New Hampshire, all States within the range occupied by the wood turtle now have laws either prohibiting or severely restricting the collection of wood turtles from the wild for commercial trade. The State of New Hampshire is currently drafting rules that will limit the collection of wood turtles to educational and scientific purposes (James DiStefano, New Hampshire Department of Fish and Game, *in litt.*, 1995).

The petition provides information that some wood turtle populations are subject to high levels of predation on eggs, hatchlings and adult turtles. Raccoon, skunk, opossum, and fox are believed to be the primary predators of wood turtles and their nests. Predator populations are lower than they have been in recent years within the range of the wood turtle in the East (Krebs et al 1994). While predator populations may rebound at some point, wood turtles are currently under less predation pressure in several of the northeastern States.

Irrespective of the finding on this petition, the Service concurs with the petitioners that many aspects of the life history and breeding ecology of this species, as well as its popularity with collectors, could make it vulnerable to over-exploitation and population declines.

References Cited

Krebs, J.W., T.W. Strine, J.S. Smith, C.E. Rupprecht, and J.E. Childs. 1994. Rabies surveillance in the United States during 1993. Journal of the American Veterinary Medical Association. vol. 205(12):1695–1709.

Northeast Nongame Technical Committee. 1994. Legal categories of rare species in the northeastern states. Unpubl. rep., 25 pp.

Restore: the North Woods, S. Garber, J. Burger, C. Ernst, J. Harding, S. Tuttle, J. Davis, and the Biodiversity Legal Foundation. 1994. Petition for a rule to list the North American wood turtle (*Clemmys insculpta*) as threatened under the Endangered Species Act 16 U.S.C. Sec. 1531 *et seq.* (1993) as amended. Unpubl. doc., Concord, MA. 42 pp. and appendices.

Author. The primary author of this document is Michael Amaral of the Service's New England Field Office (see **ADDRESSES**).

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: May 16, 1995.

Mollie H. Beattie,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 95–12919 Filed 5–25–95; 8:45 am]
BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 60, No. 102
Friday, May 26, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Reel Livestock Center, Inc., Congerville, Illinois; Correction

On May 10, 1995, a letter was sent requesting a notice be published in the **Federal Register** (47 FR 32177) giving notice of the proposed posting for certain stockyards listing their facility number, name, and location.

This notice is to correct the posting number and the location assigned to Reel Livestock Center, Inc.

The notice should have read.

IL–174 Reel Livestock Center, Inc., Congerville, Illinois.

Done at Washington, D.C., this 23rd day of May, 1995.

Daniel L. Van Ackeren,
Acting Director, Livestock Marketing Division.

[FR Doc. 95–13003 Filed 5–25–95; 8:45 am]
BILLING CODE 3410–25–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

President's Export Council Subcommittee on Export Administration; Notice of Partially Closed Meeting

A partially closed meeting of the President's Export Council Subcommittee on Export Administration (PECSEA) will be held June 20, 1995, 1:30 p.m., at the U.S. Department of Commerce, Herbert C. Hoover Building, Room 4832, 14th & Pennsylvania Avenue, N.W., Washington, DC. The Subcommittee provides advice on matters pertinent to those portions of the Export Administration Act, as amended, that deal with United States policies of encouraging trade with all countries with which the United States has diplomatic or trading relations and of controlling trade for national security and foreign policy reasons.

Public Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Update on Bureau of Export Administration activities.
4. Discussion on working group programs.

Executive Session

5. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. export control program and strategic criteria related thereto.

A Notice of Determination to close meetings, or portions of meetings, of the Subcommittee to the public on the basis of 5 U.S.C. 522(c)(1) was approved Sept. 30, 1993, in accordance with the Federal Advisory Committee Act. A copy of the Notice of Determination is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, D.C. For further information, contact Ms. Lee Ann Carpenter on (202) 482–2583.

Dated: May 23, 1995.

John Richards,
Acting Assistant Secretary for Export Administration.

[FR Doc. 95–13021 Filed 5–25–95; 8:45 am]
BILLING CODE 3510–DT–M

Foreign-Trade Zones Board

[Docket 25–95]

Foreign-Trade Zone 146, Lawrence County, Illinois; Application for Subzone Status, Marathon Oil Company (Oil Refinery), Robinson, Illinois

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Bi-State Authority, grantee of FTZ 146, requesting special-purpose subzone status for the oil refinery of Marathon Oil Company (Marathon) (subsidiary of USX Corporation), located in Robinson, Illinois. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on May 19, 1995.

The refinery (890 acres) is located at Marathon Ave. and State Hwy 33 in Robinson, Crawford County, in southeastern Illinois, some 150 miles east of St. Louis. The refinery (180,000 barrels per day; 570 employees) is used to produce fuels and petrochemical feedstocks. Fuels produced include gasoline, jet fuel, kerosene, fuel oil and residual oil. Petrochemical feedstocks produced include butane and propane, and refinery by-products include petroleum coke and sulfur. Some 30 percent of the crude oil (some 80 percent of inputs) and some feedstocks used by the refinery are sourced from abroad.

Zone procedures would exempt the refinery from Customs duty payments on the foreign products used in its exports. On domestic sales, the company would be able to choose the finished product duty rate (nonprivileged foreign status—NPF) on certain petrochemical feedstocks and refinery by-products (duty-free). The duty on crude oil ranges from 5.25¢ to 10.5¢ barrel. Marathon indicates that some of the NPF finished products might be used as fuel in the refining process. The application indicates that the savings from zone procedures would help improve the refinery's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is July 25, 1995. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to August 9, 1995.

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

Lawrence County Industrial Development Council, County Courthouse, Lawrenceville, Illinois 62439.
Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: May 22, 1995.

Dennis Puccinelli,
Acting Executive Secretary.

[FR Doc. 95–13012 Filed 5–25–95; 8:45 am]
BILLING CODE 3510–DS–P

International Trade Administration

[A–821–807]

Notice of Final Determination of Sales at Less Than Fair Value: Ferrovanadium and Nitrided Vanadium From the Russian Federation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 26,1995.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger or Louis Apple, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C., 20230; telephone: (202) 482–4136 or (202) 482–1769, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department of Commerce (the Department) regulations are in reference to the provisions as they existed on December 31, 1994.

Final Determination: We determine that imports of ferrovanadium and nitrided vanadium from the Russian Federation (Russia) are being, or are likely to be, sold in the United States at less-than-fair-value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Continuation of Suspension of Liquidation" section of this notice.

Case History

Since the Department announced its preliminary determination on December 27, 1994, (60 FR 438, January 4, 1995) the following events have occurred:

In response to our request, on February 27, 1995, we received additional surrogate valuation data from Odermet Limited (Odermet), Galt Alloys, Inc. (Galt), SC Vanadium-Tulachermet (Tulachermet), and Chusavoy Metallurgical Works (Chusavoy).

On February 17, 1995, we amended our preliminary determination to correct a significant ministerial error (60 FR 10563, February 27, 1995).

From January through March , 1995, we conducted verifications at Galt, Tulachermet, Chusavoy, Odermet, Shieldalloy Metallurgical Corporation (Shieldalloy), and Gesellschaft fur Elektrometallurgie m.b.H. (GfE).[1] Verification reports were issued in February, March, and April, 1995.

On April 17, 1995, the petitioner, Shieldalloy, and respondents Odermet, Chusavoy, Galt, and Tulachermet filed case briefs. Rebuttal briefs were submitted by these parties on April 24, 1995. A public hearing was held on April 26, 1995.

Scope of Investigation

The products covered by this investigation are ferrovanadium and nitrided vanadium, regardless of grade, chemistry, form or size, unless expressly excluded from the scope of this investigation. Ferrovanadium includes alloys containing ferrovanadium as the predominant element by weight (*i.e.*, more weight than any other element, except iron in some instances) and at least 4 percent by weight of iron. Nitrided vanadium includes compounds containing vanadium as the predominant element, by weight, and at least 5 percent, by weight, of nitrogen. Excluded from the scope of this investigation are the vanadium additives other than ferrovanadium and nitrided vanadium, such as vanadium-aluminum master alloys, vanadium chemicals, vanadium waste and scrap, vanadium-bearing raw materials, such as slag, boiler residues, fly ash, and vanadium oxides.

The products subject to this investigation are currently classifiable under subheadings 2850.00.20, 7202.92.00, 7202.99.5040, 8112.40.3000, and 8112.40.6000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.

Period of Investigation

The period of investigation (POI) is December 1, 1993, through May 31, 1994.

Non-Market Economy Country Status

Russia has been treated as a non-market economy (NME) for the purpose of determining foreign market value (FMV) in all past antidumping investigations (see, e.g., Final Determinations of Sales at Less Than Fair Value: Pure Magnesium and Alloy Magnesium from Russia, 60 FR 16432 (March 30, 1995)) (Magnesium from Russia). No information has been provided in this proceeding that would lead us to consider changing this designation. Therefore, in accordance with section 771(18)(c) of the Act, we continue to treat Russia as a NME for purposes of this investigation.

Best Information Available (BIA)

In this investigation, three companies failed to respond to the Department's questionnaire, and we were unable to verify the sales response of a fourth company, Tulachermet (discussed below under Comment 1). Consistent with the Department's two-tiered methodology for assigning BIA, we have based the BIA margin on the highest margin in the petition (see, Final Determination of Sales at Less Than Fair Value: Antifriction Bearings (other than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany, 54 FR 1892, 19033 (1989)) and (*Allied Signal* v. *United States*, 996 F.2d 1185 (Fed. Cir. 1993) (June 22, 1993)).

Fair Value Comparisons

In cases involving imports from NMEs, we calculate a single antidumping duty margin for companies that do not demonstrate that they are entitled to separate rates. The Russia-wide margin in this case, which applies to all exporters other than Galt, GfE, and Odermet, is the BIA rate. Galt, GfE, and Odermet have received separate rates.

To determine whether sales to the United States of ferrovanadium and nitrided vanadium by Galt, GfE, and Odermet, were made at less than fair value, we compared the United States price (USP) to FMV, as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price (USP)

Pursuant to section 772 of the Act, USP was calculated on the basis of purchase price for Odermet, and exporter's sales price (ESP) for Galt and GfE, as described in the preliminary determination notice. Pursuant to findings at verification, we made the following adjustments to our margin calculations:

- For GfE, we deducted handling and repacking expenses incurred in Germany on certain sales. We revised the inland freight to customer expense incurred on certain sales to reflect verification findings. Finally, we revised the general and administrative expenses allocated to further manufacturing expenses to include environmental cleanup expenses omitted by GfE's U.S.

[1] Shieldalloy is the petitioner in this investigation and is related to GfE as both are wholly-owned subsidiaries of Metallurg, Inc.

affiliate, Shieldalloy, as derived from verification information.

• For Odermet, we revised ocean freight, brokerage, and containerization per-unit expenses on a contained vanadium weight basis, rather than gross weight basis (*see* Comment 12). We also revised inland insurance and marine insurance expenses, which Odermet had allocated on the basis of weight, to a value basis, reflecting the manner in which these expenses were incurred. Finally, we recalculated foreign inland freight using surrogate values, based on our verification finding that the actual freight services were provided by NME subcontractors (*see* Comment 10).

Foreign Market Value

In accordance with section 773(c) of the Act, we based FMV for ferrovanadium and nitrided vanadium on the factors of production reported by the two factories in Russia,(*i.e.*, Chusovoy and Tulachermet), which produced the subject merchandise for export to the United States. We calculated FMV based on factors of production as cited in the preliminary determination, making the following adjustments:

• We applied this methodology to Odermet's sales as well as to Galt's and GfE's sales as we have rejected Odermet's intermediate reseller claim (*see* Comment 5).

• We recalculated inland freight distances between each factory and various input suppliers, based on verified distances.

• We made minor revisions to many of Chusovoy's material and energy consumption factors, based on corrected verified data.

• We applied Chusovoy's public version reported vanadium pentoxide and ferrovanadium production labor factors for the corresponding labor inputs for Tulachermet, as discussed below in Comment 9. In addition, Odermet sold the subject merchandise produced by Tulachermet. Even though significant portions of Tulachermet's responses failed verification, Tulachermet's factors of production, with exception of labor, fully verified. Therefore, we continued to use Tulachermet's factors to calculate FMV for sales by Odermet.

To calculate FMV, the verified factor amounts for each company were multiplied by the appropriate surrogate values for the different inputs. In accordance with section 773(c)(4) of the Act, the Department must, to the extent possible, determine FMV by valuing the factors of production in one or more market economy countries that: (1) Are at a level of economic development comparable to that of the NME economy country, and (2) are significant producers of comparable merchandise. As discussed in the preliminary determination, the Department has determined that South Africa is the country that best meets the statutory criteria for purposes of this investigation. Accordingly, we have based FMV on the appropriate factors of production as valued in South Africa, except for those factors for which we were unable to obtain a suitable value from South Africa. In these instances, as discussed below, and in our preliminary determination, we used values from publicly-available, published information pertaining to Poland, Thailand, and Turkey, or values pertaining to Brazil and Germany as included in the petition. The selection of surrogate countries and certain surrogate values is discussed further below at Comment 6. We have obtained and relied upon published, publicly-available information, wherever possible, to value the factors of production. Following the surrogate value selection methodology outlined in our preliminary determination, we have used the same surrogate values used in the preliminary, with the following exceptions:

• For vanadium slag, we adjusted the surrogate value to account for differences between the grade of the surrogate and Russian materials, as discussed below in Comment 7.

• For additional raw materials identified subsequent to our preliminary determination, we used published price quotes for the South African material (fluorspar), or, in the absence of any available value from South Africa, unit values derived from Thai import statistics (fly ash, aluminum alloy, and cold-rolled steel sheet) or Thai export statistics (paint, thinner).

• For natural gas, we used the Polish natural gas rate published by the International Energy Agency.

As noted above, we relied on surrogate values from Thailand and Poland, countries identified as potential surrogates for Russia in the July 29, 1994, Memorandum from the Office of Policy to Gary Taverman, when no appropriate South African value was available for a particular factor. When no value was available from any potential surrogate country, we used values from Brazil and Germany, as described in our preliminary determination. The selection of the surrogate values for this determination is discussed further in the Valuation Memorandum dated May 19, 1995.

Currency Conversion

We made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank or, when unavailable, at the rates published by the International Monetary Fund in International Financial Statistics.

Verification

As provided in section 776(b) of the Act, we verified or attempted to verify all information submitted by respondents for use in our final determination. We used standard verification procedures, including examination of relevant accounting records and original source documents provided by respondents.

Interested Party Comments

Comment 1: Rejection of Tulachermet Sales Response

GfE and Shieldalloy argue that the Department should reject Tulachermet's sales response and apply BIA for the final determination because Tulachermet failed verification. The major reasons for the alleged verification failure cited by GfE and Shieldalloy are: (a) The Department's discovery at verification of an unreported sale accounting for a significant portion of the merchandise sold during the POI; (b) Tulachermet's refusal to allow the Department timely access to essential information at verification; (c) Tulachermet's inability to support or substantiate the questionnaire responses; and (d) inaccurate and omitted data. According to GfE and Shieldalloy, these verification failures establish the inaccuracy and unreliability of Tulachermet's response. Thus, BIA should be used for Tulachermet's margin.

Tulachermet claims that the sale in question was omitted inadvertently from the response and was not an attempt to impede the investigation. On the contrary, Tulachermet claims that reporting the sale would have been in its interest as the selling price was substantially higher than the prices of the reported sales. Tulachermet states that the initial refusal to allow the Department to view certain information at verification, which was subsequently permitted, was due to the staff involved with verification not having been given explicit authorization from the chief company official. Tulachermet states that, until recently, all factory output information was considered a state secret, with severe penalties for disclosure to outsiders. Nevertheless, Tulachermet asserts that the Department subsequently was able to review the information in question and confirm that there were no other discrepancies in Tulachermet's sales response. Accordingly, Tulachermet contends that BIA is unjustified under these circumstances.

Odermet adds that there is no basis to reject Tulachermet's factors of production response since there were no problems with that portion of the response except for labor factors and distances to input suppliers.

DOC Position

During verification, Tulachermet withheld access to a customer contract and correspondence file. Under 19 CFR 353.36(c)(1994), all parties are on notice that "[a]s part of the verification, employees of the Department will request access to all files, records, and personnel of the producers, resellers, importers, or unrelated purchasers which the [Department] considers relevant to factual information submitted." The verification outline presented to Tulachermet prior to verification specifically advised Tulachermet that complete sales records, contracts, and customer correspondence files would be reviewed at verification and should be made available for inspection at verification. While the verifiers were eventually granted access to the file in question, the delay in providing access compromised this critical component of verification. More importantly, the Department had no way to determine whether the file, when finally seen, was complete. As a result, the Department was unable to conclude that no further discrepancies exist. Section 776(b) of the Act provides that if the Department "is unable to verify the accuracy of the information submitted, it shall use the best information available to it as the basis for its action * * *." Section 776(c) of the Act further states that the Department shall use BIA "whenever a party or any other person refuses or is unable to produce information requested in a timely manner and in the form required, or otherwise significantly impedes an investigation."

While we recognize the attempt of Tulachermet to be responsive, the Department cannot consider a response to be verified when the respondent significantly impedes the investigation in the manner described above. The verifiers' discovery of a substantial quantity of unreported POI sales further undermined the integrity of Tulachermet's sales response. Under such circumstances, we were unable to verify Tulachermet's responses. Accordingly, we must reject its sales response and rely on BIA. Further, because Tulachermet's actions at verification significantly impeded the Department's investigation, as to Tulachermet, we have treated the company as an uncooperative respondent warranting the application of adverse BIA.

Comment 2: Sales Responses from Other Russian Companies

GfE and Shieldalloy claim that Chusovoy and a Russian trading company should have submitted sales responses because, pursuant to information GfE provided for the record, they knew at the time of invoice preparation, if not at the time of sale, that the ultimate destination of the merchandise sold was the United States. GfE and Shieldalloy cite an internal GfE memorandum as evidence that, at the time of sale, Chusovoy knew the ultimate destination of its nitrided vanadium shipment. Since Chusovoy and the trading company each failed to provide a sales questionnaire response for these sales transactions, GfE and Shieldalloy argue that these entities should be assigned a margin based on BIA.

Chusovoy states that knowledge of the ultimate destination at the time of sale is the determinant factor and that, at the time of the sale, Chusovoy did not know this information. Chusovoy asserts that none of the sales documentation between GfE and Chusovoy, including the nitrided vanadium agreement, give any indication as to the ultimate destination of the merchandise. According to Chusovoy, GfE's internal memorandum is a self-serving document, not signed by Chusovoy, which, moreover, indicates the merchandise could be sold to another market as well as the United States.

DOC Position

We agree with Chusovoy. Our verification confirmed that neither Chusovoy nor the Russian trading company had knowledge *at the time of sale* as to the ultimate destination of its merchandise. It is knowledge at the time of the sale, and not the date of shipment, that is relevant in determining the proper respondent for such sales (*see, Magnesium from Russia*). In this situation, GfE was the first party in the distribution channel to know the ultimate destination of the merchandise and is, therefore, the proper exporter respondent for these sales.

Comment 3: Rejection of GfE/Shieldalloy response

Chusovoy, Galt, and Tulachermet argue that the Department should reject GfE/Shieldalloy's sales response because sales reporting of Russian-sourced merchandise was based on quantity estimates drawn from inventory turnover records, rather than actual sales data. These respondents claim that this averaging approach methodology is counter to the Department's specific questionnaire instructions and creates the potential for minimizing margins from large quantity product sales at lower prices. Accordingly, these respondents contend that the Department should assign GfE/Shieldalloy a margin based on BIA.

GfE and Shieldalloy contend that their reporting methodology is reasonable and sound, given the manner in which the sales were conducted. These sales were not reported using averaged prices, according to GfE and Shieldalloy, but rather at the per-unit price of each sale. GfE and Shieldalloy add that the verification showed the methodology was consistent with the information presented throughout the proceeding.

DOC Position

We have used GfE's and Shieldalloy's questionnaire response in our final determination. Their methodology did not affect the prices reported but rather the quantity of subject merchandise reported. We verified that the sales reporting was complete and that the inventory turnover methodology provided a reasonable basis for determining the quantity of subject merchandise sold during the POI. Further, we found no indication of any sale-specific distortions deriving from the application of this methodology.

Comment 4: Proper Respondent for Galt Sales

GfE and Shieldalloy claim that the exporter for Galt's sales was Hascor BV, or the "Galt/Hascor" joint venture, not Galt, since according to GfE and Shieldalloy, the former was the first exporter with knowledge that the merchandise was destined for the United States. Since neither entity filed a questionnaire response, GfE and Shieldalloy contend that a BIA rate should be assigned to these entities, and that Galt should receive the "all others" rate. Alternatively, GfE and Shieldalloy claim that the Galt response should be rejected because of the number of revisions submitted seven days prior to verification and response errors identified at verification.

Galt responds that the record, including the verification results, demonstrates that Galt is the exporter in this investigation and is entitled to its own rate. Galt points to a variety of shipment documents, as examined at verification, which specifically identify it as the exporter of the merchandise. Further, Galt adds that, at verification, the Department was able to determine that Galt was the first party in the distribution chain to have knowledge of the destination of the merchandise and, in fact, was the party that determined that the merchandise was to be sent to the United States.

DOC Position

We agree with Galt. Our verification confirmed that Galt is the proper exporter-respondent for its sales because it determines that the merchandise is destined for sale in the United States. The Galt/Hascor joint venture was responsible for garnering the merchandise from Russia and shipping it to a bonded warehouse in the Netherlands. At that point Galt obtained the merchandise, sold it and shipped it to the United States. Revisions to its response were timely and verification discrepancies were relatively minor, affecting only its movement expenses.

Comment 5: Odermet's Intermediate Country Reseller Claim

Odermet claims that, in accordance with Section 773(f) of the Act, its U.S. sales should be compared to its sales to Germany for the following reasons: (1) Odermet was a reseller of the subject merchandise; (2) the Russian manufacturer, Tulachermet, did not know at the time of the sale to Odermet the country to which Odermet intended to export the merchandise; (3) the merchandise was exported by Odermet to a country other than the United States; (4) the merchandise entered the commerce of an intermediate country (Germany) but was not substantially transformed there; and (5) the merchandise was subsequently exported to the United States. Odermet states that verification corroborated its claim, demonstrating that it met all of the above statutory criteria to support its claim. In particular, Odermet states that it demonstrated that the merchandise entered the commerce of Germany and was not warehoused in bond, and that the merchandise could then be resold to customers in Germany and elsewhere, including the United States.

GfE and Shieldalloy contend that Odermet's intermediate reseller claim should be rejected because Odermet failed to establish at verification that the merchandise entered the commerce of Germany. GfE and Shieldalloy's contention rests on its assertion that Odermet failed to demonstrate that the warehouses used to store the merchandise were non-bonded and that, in nearly every case, merchandise ultimately shipped to the United States was stored in one warehouse in one city, while merchandise ultimately sold to German customers was stored in a different warehouse in a different city. Even if the warehouses were not bonded, GfE and Shieldalloy claim that, as established in Final Determination of Sales At Less Than Fair Value: Sulfur Dyes, Including Sulfur Vat Dyes, from the People's Republic of China, (58 FR 7537, February 8, 1993) (Sulfur Dyes), storage in a non-bonded warehouse in a third country alone does not demonstrate, in and of itself, that the merchandise enters the commerce of that country. The channel of distribution in this case, they continue, does not support a finding that the merchandise entered the commerce of Germany.

DOC Position

For the Department to accept Odermet's claim, Odermet must demonstrate that it satisfies each of the five statutory criteria under Section 773(f) of the Act, cited above. The Department agrees with Odermet that it has met four of these five criteria. However, we do not agree that Odermet has satisfied the criterion that the merchandise enter the commerce of the intermediate country. Verification revealed that Odermet maintains two distinct distribution channels: (a) Transportation of merchandise from Tulachermet to a warehouse in Duisburg, Germany, for prospective sale to German customers in that region; and (b) transportation of merchandise from Tulachermet to a warehouse in Bremerhaven, Germany, for prospective sale and ocean shipment from the port of Bremerhaven to customers in the United States and other countries outside of Germany. In each case, the sales agreement with the customer was made prior to shipment of the merchandise into Germany. Moreover, the shipment quantity and delivery dates correspond with the specifications in the sales agreements. While for each distribution channel we noted one exception to the pattern, in that one shipment to Duisburg was destined for delivery to overseas customers, and one shipment to Bremerhaven was destined to a German customer, all other shipments followed the above stated pattern. Furthermore, although the Bremerhaven warehouse may not have been a bonded warehouse (we have no evidence that it was or was not), we found no customs duties or German value-added taxes (VAT) were assessed on U.S. sales through the Bremerhaven warehouse—expenses that would support a finding that such merchandise entered Germany for commercial consumption—while duties and VAT were imposed on sales withdrawn from a bonded warehouse in Duisburg.

The sum of these facts indicates two very different and distinct patterns of distribution, with merchandise shipped to Bremerhaven normally not entering the commerce of Germany, as this merchandise is not intended to be made available to German customers. Under similar circumstances in Sulfur Dyes, where sales intended for U.S. export followed a different sales and distribution pattern from sales intended for domestic consumption in Hong Kong, we found the pattern for U.S. sales to be "most accurately characterized as transshipment." In this investigation, we reach the same conclusion for Odermet's sales. These transshipments do not enter the commerce of Germany and, accordingly, do not merit consideration under Section 773(f) of the Act.

Comment 6: Surrogate Country Selection

Odermet contends that South Africa is not appropriate for use as the surrogate country for Russia in this investigation because current economic data offered by Odermet indicates that South Africa is not economically comparable to Russia in terms of gross domestic product (GDP). Odermet argues that the Department should first attempt to value the factors of production from the "first tier" of comparable economies identified in the Department's surrogate country selection memorandum dated July 29, 1994,—Algeria, Poland, Thailand, Tunisia, and Turkey. Specifically, Odermet proposes the use of a surrogate value for natural gas from Poland. For values that could not be obtained from the above-mentioned countries, such as vanadium slag, Odermet suggests that then the Department would turn to allegedly noncomparable economies such as South Africa, following the methodology applied in Final Determination of Sales at Less Than Fair Value: Cased Pencils from the PRC (59 FR 55625, November 8, 1994) (Pencils).

Chusovoy, Galt, and Tulachermet agree with Odermet that South Africa is not economically comparable to Russia, but acknowledge that vanadium slag has to be valued in South Africa because of the lack of alternatives. However, they contend that values from the first tier countries should be used for the other factors. Specifically, they propose the use of a Polish labor rate and an Algerian value for natural gas.

GfE and Shieldalloy support the selection of South Africa as the appropriate surrogate country. This selection, they state, is consistent with the statutory requirement of Section 773(c)(4) of the Act that the surrogate country be economically comparable and a significant producer of comparable merchandise. They note that the Department, in its December 22, 1994, Office of Policy Memorandum, has recognized that South Africa is the only producer of comparable merchandise whose level of economic development is reasonably close to that of Russia. GfE and Shieldalloy further assert that none of the first tier countries should be considered as acceptable surrogates for Russia in valuing factors for this investigation because these countries produce neither the subject merchandise nor comparable merchandise. For those instances where values from these countries were used in the preliminary determination or may be considered for the final determination, GfE and Shieldalloy contend that the Brazilian data from the petition should be used. Brazil has been accepted as an appropriate surrogate country for purposes of the initiation of this investigation, and has also been used as the surrogate country in the Magnesium from Russia investigation The methodology employed in Pencils, they say, is not appropriate here because in Pencils the other countries used as surrogates were producers of comparable merchandise, while in this case the other countries do not produce comparable merchandise.

DOC Position

Section 773 (c)(4) of the Act requires that, to the extent possible, the factors be valued in one or more market economy countries that are: (a) At a comparable level of economic development, and (b) significant producers of comparable merchandise. In this investigation, none of the countries initially identified as potentia surrogate countries because of comparable levels of economic development produces comparable merchandise. Of those countries that produce comparable merchandise, only South Africa, which produces the subject merchandise, is the most comparable in terms of economic development, as stated in the December 22, 1994, Memorandum. We acknowledge that economic growth trends in South Africa and Russia are dissimilar, but these differences notwithstanding, the Department's selection of South Africa satifies both statutory criteria set forth above.

As for the specific factors cited by the parties, the respondents' claims that Russian wage levels are among the lowest in the world, are not relevant because information regarding specific NME prices or wage rates cannot be relied upon. Thus, the argument based on a comparison of purported Russian wage rates with South African wage rates is inappropriate.

We disagree with GfE and Shieldalloy's proposal to use Brazilian values from the petition where there are no South African values available because Brazil is not a producer of comparable merchandise—there is no information on the record that Brazil has been a significant producer of ferrovanadium or comparable merchandise since 1986.

Comment 7: Valuation of Vanadium Slag

Respondents contend that the Department should adjust the vanadium slag value, based on a price quote submitted in the petition for South African Highveld slag containing 24% vanadium pentoxide, to reflect the lower purity of the Russian slag in addition to the lower vanadium pentoxide content of 12 to 20%. Simply adjusting the value for vanadium pentoxide content ("straight-line proportionality" method) is not sufficient, respondents claim, because the additional impurities contained in the Russian slag add to the cost of extracting vanadium pentoxide from the raw material. They argue that this renders the Russian slag less valuable than the prime grade South African Highveld slag, even after adjusting for the different concentration levels of vanadium pentoxide. Chusovoy, Galt, and Tulachermet propose an adjustment to the Highveld slag value based on the price differential for processed vanadium pentoxide of Highveld 98% merchandise to 90% merchandise, according to price information published in the Metal Bulletin. These respondents claim that basing the price differential on this data is appropriate given the strong market linkage between vanadium pentoxide, the intermediate product, and ferrovanadium, the final product. Moreover, they contend it is appropriate to base the adjustment on the difference between Highveld vanadium pentoxide and other vanadium pentoxide prices because the surrogate value for slag is based on the Highveld slag value.

Odermet adds that the Metal Bulletin price-based adjustment methodology is the only reasonably sound basis for valuing vanadium slag, given that there is no source of publicly available published information for vanadium slag prices and that, as vanadium slag is the major input for processed vanadium pentoxide, the pricing of vanadium pentoxide is relevant to valuing vanadium slag. Finally, Odermet states that this case differs from the Final Determination of Sales at Less Than Fair Value: Refined Antimony Trioxide from the PRC (57 FR 6801, February 28, 1992) (Antimony) situation, where the Department used the straight-line proportionality method because it had no prices for different concentrate levels. Here, Odermet contends, the Department does have the information to make the appropriate adjustment.

GfE and Shieldalloy state that the adjustments, proposed by respondents, are not supported economically. GfE and Shieldalloy argue that respondents have failed to demonstrate the relationship between selected European transaction prices for processed vanadium pentoxide and any value differential between the South African and Russian raw materials. They cite a similar situation in Antimony where the Department made no adjustment to the raw material value because, without actual prices, the data was inconclusive as to the adjustment to be made. In addition, GfE and Shieldalloy contend that the respondents' price adjustment methodology is flawed because it utilizes price comparisons between an ultra-refined product manufactured from Highveld slag that is not likely to be used in ferrovanadium production, to the lowest prices published. After discounting those comparisons, GfE and Shieldalloy assert that the price differentials between processed grades are significantly less than those claimed by respondents.

DOC Position

Based on the submitted information, verification findings, and the Department's own research, we agree with the respondents that the South African vanadium slag value should be adjusted to reflect the lower purity of Russian vanadium slag. Our analysis and research suggest a strong relationship between vanadium pentoxide prices and vanadium slag value, particularly as vanadium slag is the principal raw material for vanadium pentoxide production and there are few, if any, other markets for vanadium slag. We have confirmed, through a South African publication, South Africa's Mineral Industry 1993/94, that the Highveld prices cited by Chusovoy, Galt, Odermet, and Tulachermet reflect

the typical Highveld product, while the prices for the other 98% products reflect Chinese origin, and the 90% products are of Russian slag. Based on this information, we have adjusted the vanadium slag surrogate value according to the Metal Bulletin vanadium pentoxide price differentials. Our methodology for adjusting both Tulachermet's and Chusovoy's slag values is detailed in the Valuation Memorandum.

Comment 8: Adjustment to Factory Overhead Percentage

Chusovoy, Galt, and Tulachermet claim that the surrogate value for factory overhead, which was derived from GfE's experience at its German facility and submitted in the petition, should be adjusted for the known differences between the GfE production plant and the Russian plants. These respondents contend that the Department verified that the Russian plants are fully depreciated and lack special environmental equipment. The respondents claim further that depreciation, including depreciation for environmental control equipment, accounts for the majority of the GfE factory overhead percentage. Accordingly, the respondents argue that the Department should reduce the factory overhead percentages by at least half to reflect the absence of any depreciation element in the Russian producers' factory overhead.

GfE and Shieldalloy state that factory overhead was properly calculated using the petition information derived from GfE experience, and this value remains the best available information. They assert that GfE's depreciation experience is likely to be the same as the Russian companies. Moreover, as there is no evidence of any known differences between the GfE's experience and the Russian producers', the respondents' claim for a factory overhead adjustment is unsubstantiated and the suggested adjustment methodology is arbitrary.

DOC Position

The Department has been unable to locate other, publicly available, data for the factory overhead surrogate value. (The Department's attempts to find factory overhead data is described in the *Valuation Memorandum*.) Thus, the only available data is the percentages stated in the petition. The respondents' assertions provide an insufficient basis for us to make any adjustments to these percentages.

Comment 9: BIA Labor Factors

GfE, Shieldalloy, and Odermet assert that the Department should use the labor factors reported by Chusovoy as BIA for the unreported Tulachermet labor factors. GfE and Shieldalloy state that Chusovoy's factors should be used because they are the highest available labor factors and, given Tulachermet's refusal to provide this information, the most adverse data should be applied. Odermet favors the use of Chusovoy labor factors because it believes these factors reflect more accurately the Russian approach to production of the subject merchandise.

DOC Position

Tulachermet failed to submit its production labor factors. Accordingly, it is appropriate to make adverse assumptions about its labor factors in assigning BIA. Thus, consistent with Department practice, we have applied the data from the public version of Chusovoy's response, because these factors are higher than that reported in the petition.

Comment 10: Freight Valuation for Odermet Exports

Odermet argues that its freight expenses from the Russian factory to German warehouses were paid in a market-economy currency to a market-economy freight forwarder and, thus, should be accepted as reported, even though the freight forwarder contracted with NME trucking companies to perform the actual service. Odermet claims that the subcontracting arrangement is irrelevant; all that is required for establishing the market price for the freight service is the convertible currency transaction to the market economy freight forwarder. To do otherwise and value the freight service using a surrogate value would lead, according to Odermet, to such "absurd" situations as finding surrogate values for PRC-origin inputs when calculating the cost of production for a Japanese producer.

DOC Position

We disagree with Odermet. In NME proceedings, our consistent methodology has been to determine whether a good or service obtained through a market economy transaction is, in fact, sourced from a market economy rather than merely purchased in it. For example, in Final Determination of Sales at Less Than Fair Value: Coumarin from the People's Republic of China (59 FR 66895, December 28, 1994), we did not value Chinese port charges according to the U.S. dollar price quote obtained from a market economy freight forwarder because of our assumption that such services were actually provided by Chinese sources. Instead, we valued port charges according to the information obtained from the surrogate country. Since such goods and services are produced in a NME, we cannot rely on the market economy payment transaction as the basis for valuing these charges because the costs upon which these expenses are based are not themselves market-based. Although Odermet arranges the freight transportation through its market economy freight forwarder, the forwarder's costs for contracting to NME trucking companies cannot be relied on and, thus, the price charged to Odermet cannot be relied upon.

Comment 11: Input Freight for Tulachermet's Vanadium Slag Factor

GfE and Shieldalloy allege that the Department erred in not including surrogate freight charges for the expense of transporting vanadium slag from the source to Tulachermet. Although the surrogate value is based on an FOB South African port price, which includes inland freight expenses, GfE and Shieldalloy claim that an additional amount for the freight expense should be added to Tulachermet's FMV calculation because the distance between Tulachermet's supplier and Tulachermet is four to five times greater than the distance from the South African supplier to the South African port.

Odermet states there is no support for GfE and Shieldalloy's contention regarding the source of the raw material and distance to it from the port.

DOC Position

When relying on a surrogate value that is freight-inclusive, the Department's consistent practice has been to accept that value as the surrogate value for the good as delivered to the NME consumer, without any attempt to adjust for alleged differences in freight costs (see, *e.g.*, Final Determination of Sales at Less Than Fair Value: Saccharin from the People's Republic of China, 59 FR 588818 (November 15, 1994). In most cases, we do not have sufficient information regarding the freight expense included in the surrogate value in order to make the adjustment. Moreover, a value inclusive of freight represents the level of the surrogate value we intend to reflect—the surrogate price of the good available to the producer at its factory gate. We add an additional value for freight from the supplier to the producer only when such freight is not included in the surrogate value. Since the surrogate value for vanadium slag is freight-inclusive, we have made no adjustment to the vanadium slag value for purported differences in freight expenses.

Comment 12: Odermet's Export Shipment Expenses

Odermet claims it correctly reported its per-unit freight expenses based on gross weight, rather than contained vanadium weight, because this methodology reflects the manner in which it is billed for freight services.

GfE and Shieldalloy contend that, as USP is reported in terms of contained vanadium weight, the freight expenses should be reported on the same basis and thus must be corrected.

DOC Position

We agree with GfE and Shieldalloy and have adjusted these expenses accordingly. Price adjustments are always made on the same basis upon which price is reported. Although Odermet is correct that expenses should be reported on the same basis on which they are incurred, since Odermet reported its sales prices on a contained vanadium weight basis, the proper basis for allocating movement expenses on a per-unit basis is contained vanadium weight. To allocate these expenses on a gross weight basis would understate the expense to Odermet, not overstate it as Odermet claims.

Comment 13: Inflation Adjustments and Exchange Rate Conversions for Surrogate Values

GfE and Shieldalloy contend that the Department erred by not properly inflating pre-POI surrogate values to the POI for raw materials where the value was based on 1993 data. These parties contend that the pre-POI surrogate values must be converted to U.S. dollar values using contemporaneous exchange rates in order to accurately reflect costs and market conditions during the time these costs were incurred. Thus, according to GfE and Shieldalloy, to value these factors properly, the Department should first convert the value to U.S. dollars using the average exchange rate for 1993, and then inflate the value to the POI using the ratio between the average price index for 1993 and the average price index for the POI.

Chusovoy, Galt, and Tulachermet contend that the exchange rate methodology used in preliminary determination was proper, and that GfE and Shieldalloy's methodology is internally inconsistent. If contemporaneous exchange rates must be used, they say, then contemporaneous prices must also be used. However, Chusovoy, Galt, and Tulachermet add that there is no reason to inflate these 1993 prices because the period during which the subject merchandise was produced includes months in 1993, and there is no basis to conclude that average prices for 1993 went up or down relative to average prices during the POI.

DOC Position

The Department's consistent practice has been to first inflate non-contemporaneous surrogate values to the POI, to reflect the economic trends in the surrogate country, and then convert the POI value to U.S. dollars according to the POI exchange rate (see, *e.g.*, *Pencils*). Converting to U.S. dollars first and then inflating the U.S. dollar-denominated prices risks pulling into the valuation equation variables that have no bearing on factor prices in the surrogate country. Moreover, our practice is not to inflate values when the time period of the value—in this case 1993—overlaps with any part of the POI—in this case December 1993. GfE and Shieldalloy offer no compelling arguments to change our practice; thus we have made no changes to our inflation rate and exchange rate adjustment methodologies.

Continuation of Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we directed the Customs Service to suspend liquidation of all entries of ferrovanadium and nitrided vanadium from the Russian Federation entered, or withdrawn from warehouse, for consumption on or after January 4, 1995, which is the date of publication of our notice of preliminary determination in the **Federal Register**. We shall instruct the Customs Service to require a cash deposit or posting of a bond equal to the estimated amount by which the FMV exceeds the USP as shown below, as of the effective date of this notice. The suspension of liquidation instructions will remain in effect until further notice.

The weighted-average margins are as follows:

Manufacturer/producer/exporter	Weighted-average margin
Galt Alloys, Inc.	3.75
Gesellschaft far Elektrometallurgie m.b.H. (and its related companies Shieldalloy Metallurgical Corporation, and Metallurg, Inc.)	11.72
Odermet	10.10
Russia-wide Rate	108.00

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. As our final determination is affirmative, the ITC will determine whether these imports are causing material injury, or threat of material injury, to the industry in the United States, within 45 days. If the ITC determines that material injury, or threat of material injury, does not exist, the proceeding will be terminated and all securities posted will be refunded or cancelled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Dated: May 19, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–13011 Filed 5–25–95; 8:45 am]

BILLING CODE 3510–DP–P

Countervailing Duty Order; Opportunity to Request a Section 753 Injury Investigation

AGENCY: Inport Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Opportunity to Request a Section 753 Injury Investigation for Countervailing Duty Orders.

SUMMARY: The Department of Commerce (the Department) is notifying domestic interested parties of their right to request an injury investigation under section 753 of the Tariff Act of 1930, as amended (the Act), for countervailing duty orders listed in the Appendix that were issued under former section 303 of the Act.

EFFECTIVE DATE: May 26, 1995.

FOR FURTHER INFORMATION CONTACT:

Cameron Cardozo, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–2786; or Vera Libeau, Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone: (202) 205–3176.

SUPPLEMENTARY INFORMATION:

Background

We have listed in the appendix to this notice countervailing duty orders issued under former section 303 of the Act. At the time these orders were issued, U.S. law did not require injury determinations as a prerequisite to their issuance. With the accession of the United States to the World Trade Organization (WTO) and the enactment of the Uruguay Round Agreements Act of 1994 (URAA), P.L. 103–465, U.S. law has changed. Under the URAA, the Government of the United States may not assess countervailing duties on imports from a WTO member country in the absence of an injury determination. Thus, as noted in the Statement of Administrative Action, new section 753 of the Act (as amended by the URAA) provides that for such orders ". . . a domestic interested party may request that the [International Trade] Commission initiate an investigation to determine whether an industry in the United States is likely to be materially injured by reason of imports of the merchandise subject to the CVD order if the order is revoked." *See* Statement of Administrative Action, URAA, p.272.

Opportunity to Request a Section 753 Injury Investigation

On January 1, 1995, the countries listed in the Appendix joined the WTO.[1] Therefore, for each countervailing duty order listed din the Appendix, we are notifying all domestic interested parties, as described in sections 771(9)(C), (D), (E), (F), or (G) of the Act, of their right to request an injury investigation under section 753(a) from the U.S. International Trade Commission (the Commission). In accordance with sections 753(b) (3) and (4) of the Act, outstanding section 303 orders for which the Commission has not previously made an affirmative injury determination will be revoked by the Department unless a request for an injury investigation is submitted to the Commission within six months of the date on which the country covered by the order joins the WTO, and the Commission renders an affirmative injury determination pursuant to section 753(a)(1) of the Act. For those countries which joined the WTO on January 1, 1995, requests must be filed with the Commission no later than June 30, 1995.

Requests for injury investigations under section 753 must be filed with the Commission in accordance with 19 CFR 207.46(b), added by 60 FR 18, 22–23 (January 3, 1995). All requests should be addressed to: Secretary, U.S. International Trade Commission, 500,E Street, NW., Washington, DC 20436.

If investigations under section 753(a) of the Act are requested with respect to more than one countervailing duty order covering the same or comparable subject merchandise, the Commission may conduct such investigations jointly. Domestic interested parties, in their requests under section 753(a), may propose for the Commission's consideration countervailing duty orders suitable for joint consideration.

In addition, domestic interested parties that request an injury investigation under section 753(a) of the Act may request under section 751(c) of the Act that "sunset reviews" of any outstanding antidumping or countervailing duty order involving the same or comparable subject merchandise be expedited so that these reviews are conducted contemporaneously with the investigation(s) under section 753(a). Requests for expedited sunset reviews must be submitted to the Department in accordance with the procedures and requirements established for administrative reviews in 19 CFR 355.31 on the same day as the request for an investigation under section 753(a) is filed with the Commission. If the Department, after consulting with Commission, commences an expedited sunset review under section 751(c), the Commission may conduct contemporaneous proceedings under sections 751(c) and 753(a) of the Act and may cumulate imports from the subject countries.

Dated: May 23, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

Argentina: Apparel (C–357–404)
Argentina: Carbon Steel—Cold-Rolled Flat Products (C–357–005)
Argentina: Leather (C–357–803)
Argentina: Leather Wearing Apparel (C–357–001)
Argentina: Line Pipe (C–357–801)
Argentina: Non-Rubber Footwear (C–357–052)
Argentina: OCTG (C–357–403)
Argentina: Standard Pipe (C–357–801)
Argentina: Textile Mill Products (C–357–404)
Argentina: Tubing, Heavy-Walled Rectangular (C–357–801)
Argentina: Tubing, Light-Walled Rectangular (C–357–801)
Argentina: Wool (C–357–002)
Israel: Roses (C–508–064)
Malaysia: Extruded Rubber Thread (C–557–806)
Malaysia: Wire Rod, Carbon Steel (C–557–701)
Mexico: Ceramic Tile (C–201–003)
Mexico: Leather Wearing Apparel (C–201–001)
Mexico: Textile Mill Products (C–201–405)
New Zealand: Brazing Copper Rod & Wire (C–614–501)
New Zealand: Steel Wire (C–614–601)
New Zealand: Steel Wire Nails (C–614–701)
New Zealand: Wire Rod, Carbon Steel (C–614–504)
Peru: Cotton Sheeting and Sateen (C–333–001)
Peru: Cotton Yarn (C–333–002)
Peru: Rebar (C–333–502)
Peru: Textile Mill Products (C–333–402)
South Africa: Ferrochrome (C–791–001)
Sri Lanka: Textile Mill Products (C–542–401)
Thailand: Apparel (C–529–401)
Thailand: Butt-Weld Pipe Fittings (C–549–804)
Thailand: Malleable Iron Pipe Fittings (C–549–803)
Thailand: Steel Wire Rope (C–549–806)
Thailand: Pipe and Tube (C–549–501)
Thailand: Rice (C–549–503)
Thailand: Steel Wire Nails (C–549–701)
Venezuela: Circular Welded Nonalloy Steel Pipe (C–307–806)
Venezuela: Ferrosilicon (C–307–808)[1]
Zimbabwe: Wire Rod, Carbon Steel (C–796–601)

[FR Doc. 95–13164 Filed 5–25–95; 8:45 am]
BILLING CODE 3510–DS–M

[1] Zimbabwe became a signatory to the WTO on March 3, 1995, and Israel became a signatory to the WTO on April 21, 1995.

Minority Business Development Agency

Business Development Center Applications: Charleston, South Carolina

AGENCY: Minority Business Development Agency.

ACTION: Amendment.

SUMMARY: On page 24838, issue dated Wednesday, May 10, 1995, solicitation to operate the Charleston Minority Business Development Center is amended to read: *Metropolitan Area: Charleston, South Carolina, office to be located in the Charleston Small Business Resource Center, 284 King Street, Charleston, South Carolina 29401, telephone Number (803) 853–3900.* The closing date for applications is June 16, 1995.

FOR FURTHER INFORMATION AND AN APPLICATION PACKAGE, CONTACT: Robert Henderson at (404) 730–3300.

[1] Applies only to the dutiable merchandise within the scope of the order.

11.800 Minority Business Development Center
(Catalog of Federal Domestic Assistance)

Dated: May 23, 1995.

Frances B. Douglas,

Alternate Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 95–13022 Filed 5–25–95; 8:45 am]
BILLING CODE 3510–21–P

National Institute of Standards and Technology

Notice of Prospective Grant of Exclusive Patent License

AGENCY: National Institute of Standards and Technology, Commerce.

SUMMARY: This is a notice in accordance with 35 USC 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Institute of Standards and Technology ("NIST"), U.S. Department of Commerce, is contemplating the grant of a field of use exclusive license in the following Countries: Australia, Austria, Brazil, Canada, France, Germany, Italy, Mexico, Norway, Spain, Sweden, Switzerland and the United Kingdom to practive the invention embodied in International Application Number PCT/US95/01063, titled, "A Method and Composition For Promoting Improved Adhesion To Substrates" to the American Dental Association Health Foundation, having a place of business in Chicago, Illinois. This invention was co-developed by the employees of the American Dental Association Health Foundation and NIST. The inventors' respective patent rights in this invention have been assigned to the American Dental Association Health Foundation and the United States of America.

FOR FURTHER INFORMATION CONTACT: Bruce E. Mattson, National Institute of Standards and Technology, Technology Development and Small Business Program, Building 221, Room B–256, Gaithersburg, MD 20899.

SUPPLEMENTARY INFORMATION: The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, NIST receives written evidence and argument which establish the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

International Application Number PCT/US95/01063 is directed to methods and compositions for the improvement of adhesive bonding of acrylic resins to substrates found in industrial, natural and dental environments, such as those involved in dental restorations and for protective sealants.

NIST may enter into a Cooperative Research and Development Agreement ("CRADA") to perform further research on the invention for purposes of commercialization. The CRADA may be conducted by NIST without any additional charge to any party that licenses the patent. NIST may grant the licensee an option to negotiate for royalty-free exclusive licenses to any jointly owned inventions which arise from the CRADA as well as an option to negotiate for exclusive royalty-bearing licenses for NIST employee inventions which arise from the CRADA.

The availability of the invention for licensing was published in the Federal Register, Vol. 59, No. 218 (November 14, 1994). A copy of the patent application may be obtained from NIST at the foregoing address.

Dated: May 22, 1995.

Samuel Kramer,

Associate Director.

[FR Doc. 95–12994 Filed 5–25–95; 8:45 am]
BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

[I.D. 051095A]

Atlantic Coastal Fisheries Cooperative Management Act; Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Coordination meeting.

SUMMARY: NMFS and the U.S. Fish and Wildlife Service will hold a joint meeting to discuss coordination of activities that support Atlantic States Marine Fisheries Commission coastal fisheries management plans under the Atlantic Coastal Fisheries Cooperative Act and the Atlantic Striped Bass Conservation Act.

DATES: The meeting will be held on June 14, 1995, at 10:00 a.m. to 3:00 p.m. and is open to the public.

ADDRESSES: The meeting will be held at the U.S. Fish and Wildlife Service Building, 4401 Fairfax Drive, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Paul Perra, NMFS; telephone: (301) 713–2347.

Authority: Public Law 103–206 and Public Law 102–103.

Dated: May 19, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–12934 Filed 5–25–95; 8:45 am]
BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Hong Kong; Correction

May 22, 1995.

In the letter to the Commissioner of Customs in the table under the heading "Category," make the following changes:

1. On page 17323, April 5, 1995, remove Categories 843 and 844 from Group II. The Group II designation will now read: 237, 239, 330–359, 431–459, 630–659, as a group;

2. On page 17324, April 5, 1995, add Categories 843 and 844 to Group III. The Group III designation will now read: 831–844 and 847–859, as a group.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–12945 Filed 5–25–95; 8:45 am]
BILLING CODE 3510–DR–F

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in Macau

May 22, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs reducing limits.

EFFECTIVE DATE: May 31, 1995.

FOR FURTHER INFORMATION CONTACT: Helen L. LeGrande, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6709. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being reduced for carryforward used during 1994.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Also see 60 FR 17331, published on April 5, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 22, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on March 30, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textile products, produced or manufactured in Macau and exported during the twelve-month period which began on January 1, 1995 and extends through December 31, 1995.

Effective on May 31, 1995, you are directed to amend the directive dated March 30, 1995 to reduce the limits for the following categories, as provided under the terms of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
333/334/335/833/834/835.	215,907 dozen of which not more than 119,802 dozen shall be in Categories 333/335/833/835.
336/836	52,948 dozen.
338	278,175 dozen.
339	1,158,109 dozen.
340	274,708 dozen.
347/348/847	654,440 dozen.
351/851	61,281 dozen.
359–V [2]	101,813 kilograms.
647/648	483,764 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

[2] Category 359–V: only HTS numbers 6103.19.2030, 6103.19.9030, 6104.12.0040, 6104.19.8040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.9044, 6110.90.9046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.9030, 6204.12.0040, 6204.19.8040, 6211.32.0070 and 6211.42.0070.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–12944 Filed 5–25–95; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of an Import Limit for Certain Cotton and Man-Made Fiber Textile Products Produced of Manufactured in Malaysia

May 22, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs reducing a limit.

EFFECTIVE DATE: May 31, 1995.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Categories 340/640 is being reduced for carryforward used during the previous period.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Also see 60 FR 17332, published on April 5, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 22, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on March 30, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in Malaysia and exported during the twelve-month period which began on January 1, 1995 and extends through December 31, 1995.

Effective on May 31, 1995, you are directed to amend the March 30, 1995 directive to reduce the limit for Categories 340/640 to 1,074,474 dozen [1], as provided under the terms of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing.

The Committee for the Implementatin of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C.553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementatin of Textile Agreements.

[FR Doc.95–12946 Filed 5–25–95; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in Thailand

May 22, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

[1] The limit has not been adjusted to account for any imports exported after December 31, 1994.

ACTION: Issuing a directive to the Commissioner of Customs reducing limits.

EFFECTIVE DATE: May 31, 1995.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6717. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being reduced for carryforward used in 1994. There may be further reductions later this year, if additional amounts of carryforward are used.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Also see 60 FR 17337, published on April 5, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 22, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on March 30, 1995 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textile products, produced or manufactured in Thailand and exported during the twelve-month period which began on January 1, 1995 and extends through December 31, 1995.

Effective on May 31, 1995, you are directed to reduce the current limits for the following categories, as provided under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
In Group I	
200	901,837 kilograms.
315	25,057,222 square meters.
604	562,665 kilograms of which not more than 382,173 kilograms shall be in Category 604–A [2].
619	5,411,024 square meters.
Group II	
237, 330–359, 431–459, 630–659 and 831–859, as a group.	231,664,280 square meters equivalent.
Sublevels in Group II	
334/634	478,949 dozen.
335/635/835	391,886 dozen.
336/636	245,815 dozen.
338/339	1,560,228 dozen.
351/651	180,367 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

[2] Category 604–A: only HTS number 5509.32.0000.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–12947 Filed 5–25–95; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED PROCUREMENT LIST

Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: June 26, 1995.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On December 16, 1994, February 10 and April 14, 1995, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (59 F.R. 65026, 60 F.R. 7945 and 19027) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services, fair market price, and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodity

Compound, Corrosion Preventive
8030–00–262–7358
8030–00–260–1053

Services

Customer Service Representatives, General Services Administration, Region 3, Federal Supply Service Bureau, Philadelphia, Pennsylvania
Janitorial/Custodial, Navy Family Housing Units, Naval Construction Battalion Center, Port Hueneme, California
Janitorial/Custodial, Headquarters, DLA Complex, Building 2462, 8725 John J. Kingman Road, Fort Belvoir, Virginia

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

E.R. Alley, Jr.,

Deputy Executive Director.

[FR Doc. 95–13010 Filed 5–25–95; 8:45 am]

BILLING CODE 6820–33–P

Proposed Additions and Deletion

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to and Deletion from Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List a commodity, military resale commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete a commodity previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: JUNE 26, 1995.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodity, military resale commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity, military resale commodities and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodity, military resale commodities and services.

3. The action will result in authorizing small entities to furnish the commodity, military resale commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity, military resale commodities and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodity, military resale commodities and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodity

Tape, Electronic Data Processing
7045–01–370–9678
NPA: North Central Sight Services, Inc., Williamsport, Pennsylvania

Military Resale Commodities

Christmas Textile Ensemble
M.R. 976
NPA: Chester County Branch of the Pennsylvania Association for the Blind, Coatesville, Pennsylvania

Military Resale Commodities

Pad, Scouring
M.R. 547
NPA: Beacon Lighthouse, Inc., Wichita Falls, Texas

Pad, Scouring
M.R. 560
NPA: Columbia Lighthouse for the Blind, Washington, DC
Beacon Lighthouse, Inc., Wichita Falls, Texas

Servces

Administrative Services, Naval Air Station, Cecil Field, Florida
NPA: CCAR Services, Inc., Green Cove Springs, Florida

Remanufacturing HP4 Laser Toner Cartridges, Malmstrom Air Force Base, Montana
NPA: Community Options Resource Enterprises, Inc., Billings, Montana

Deletion

The following commodity has been proposed for deletion from the Procurement List:

Candle, Illuminating
6260–00–840–5578

E.R. Alley, Jr.,

Deputy Executive Director.

[FR Doc. 95–13009 Filed 5–25–95; 8:45 am]

BILLING CODE 6820–33–P

COMMODITY FUTURES TRADING COMMISSION

Applications of the Coffee, Sugar & Cocoa Exchange as a Contract Market in Milk Futures and Options Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures and option contracts.

SUMMARY: The Coffee, Sugar & Cocoa Exchange (CSCE or Exchange) has applied for designation as a contract market in futures and options on milk. The Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by the Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before June 26, 1995.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the CSCE contract markets on milk.

FOR FURTHER INFORMATION CONTACT: Please contact Fred Linse of the Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, telephone 202–254–7303.

SUPPLEMENTARY INFORMATION: Copies of the terms and conditions will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

Other materials submitted by the CSCE in support of the applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed terms and conditions, or with respect to other materials submitted by the CSCE, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581 by the specified date.

Issued in Washington, DC, on May 19, 1995.

Blake Imel,

Acting Director.

[FR Doc. 95–12991 Filed 5–25–95; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF ENERGY

Environmental Management Site Specific Advisory Board, Hanford Site

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site Specific Advisory Board (EM SSAB). Hanford Site.

DATES: Thursday, June 1: 9:00 a.m.–5:00 p.m.; Friday, June 2: 8:30 a.m.–4:00 p.m

ADDRESSES: Red Lion Columbia River, 1401 N. Hayden Island Drive, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Jon Yerxa, Public Participation Coordinator, Department of Energy Richland Operations Office, P.O. Box 550, Richland, WA, 99352.

SUPPLEMENTARY INFORMATION: Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

June Meeting Topics

The Hanford Advisory Board will receive information on and discuss issues related to: Privatization, Risk Assessment, St. Louis Plan Implementation, the '97 Budget, the M&O Contract Rebid Process, and the USDOE–HQ Risk Report for Congress. The Committee will also receive updates from various Subcommittees, including reports on: the Board Progress Report, and the Board Schedule and Operating Plan for FY '96.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Jon Yerxa's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments. Due to programmatic issues that had to be resolved, the **Federal Register** notice is being published less than fifteen days before the date of the meeting.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to Jon Yerxa, Department of Energy Richland Operations Office, P.O. Box 550, Richland, WA 99352, or by calling him at (509)–376–9628.

Issued at Washington, DC on May 23, 1995

Rachel M. Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 95–13008 Filed 5–25–95; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. MG92–3–002]

Pacific Gas Transmission Company; Notice of Filing

May 22, 1995

Take notice that on May 12, 1995, Pacific Gas Transmission Company (PGT) submitted revised standards of conduct to incorporate the changes required by Order Nos. 566 *et seq.*[1] and the Commission's Order issued April 19, 1995 in Docket No. MG92–3–001.

PGT states that all parties of record in the above-referenced docket have been served with copies of this filing, as well as all jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214 (1991)). All such motion to intervene or protest should be filed on or before June 6, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–12923 Filed 5–25–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–503–000]

Tennessee Gas Pipeline Company; Notice of Request Under Blanket Authorization

May 22, 1995

Take notice that on May 18, 1995, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP95–503–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct and operate delivery point facilities in Humphreys County, Mississippi, in order to deliver gas to Producer Feed Company (PFC) under Tennessee's blanket certificate issued in Docket No. CP82–413–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Tennessee proposes to construct a delivery point to enable PFC to receive gas under various transportation arrangements. Tennessee states that the estimated cost of the proposed facilities will be $105,220, which will be reimbursed to Tennessee by PFC.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission

[1] Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27, 1994), III FERC Stats. & Regs. ¶30,997 (June 17, 1994); Order No. 566–A, *Order on rehearing*, 59 FR 52896 (October 20, 1994), 69 FERC ¶61,044 (October 14, 1994); Order No. 566–B, *order on rehearing*, 59 FR 65707, (December 21, 1994); 69 FERC ¶61,334 (December 14, 1994); *appeal docketed sub nom. Conoco, Inc.* v. *FERC*, D.C. Cir No. 94–1745 (December 13, 1994).

file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–12922 Filed 5–25–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. PL94–3–000]

City of Hamilton, Ohio; Order on Request for Designation of Market Center

Issued May 22, 1995.

On May 23, 1994, the City of Hamilton, Ohio (Hamilton) filed a Request to Designate Lebanon, Ohio a Market Center and to require Tariff Changes. The City of Hamilton,[1] a municipal gas system located in Butler County, Ohio, serves approximately 23,000 residential, commercial, and industrial customers. Hamilton is located approximately 16 miles from Lebanon, Ohio. Within a 20-mile radius of Lebanon, five interstate pipelines interconnect.[2]

Hamilton requests that the Commission issue a policy statement designating Lebanon, Ohio as a market center and requiring changes to the tariffs of the interstate pipelines which connect in the Lebanon Market Center. Hamilton asserts that certain tariff provisions currently impede the development of an efficient market center at Lebanon. Hamilton contends that use of a policy statement in this case is consistent with continued implementation of the Commission's mandate in Order No. 636[3] for pipelines to remove impediments to the development of market centers.

Discussion

We agree with the City of Hamilton that market centers should be encouraged to develop and allowed to operate so that both the industry and consumers of natural gas will benefit. The Commission has made clear its intent that market centers should develop and that rate structures not inhibit market centers. Consistent with the basic operational characteristics of the market, Order no. 636 states the Commission's belief that market centers should develop naturally and that the Commission should not designate market centers.[4] Market centers have developed since Order No. 636 without the Commission designating locations as market centers.

Hamilton specifies some of its concerns regarding the efficiency of the running of a market center at Lebanon and expresses concerns about the consideration of other issues in individual proceedings. There is more to be considered here than economy of administrative effort, however. The Commission's policy that market centers should evolve naturally does not compromise Hamilton's interests. Hamilton has raised and may raise tariff and rate issues in particular pipelines' individual rate cases.[5] Discussion among the pipelines to better coordinate their operations is also encouraged.

For these reasons, the Commission sees no reason to change its policy now. The market is better able than the Commission to determine where market centers should be located. As we have already stated, unless a market center proposal or specific rate and tariff terms violate the Commission's rules and regulations, the Commission is unlikely to intrude on the natural process of development of a market center. Accordingly, the Commission will not designate Lebanon a market center and Hamilton's request that the Commission generally review pipeline operations and tariffs is denied.

The Commission orders

The request for designation of Lebanon, Ohio as a market center and for a general review of pipeline tariffs and operations is denied.

By the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–12989 Filed 5–25–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EG95–51–000, et al.]

CNG Power Services Corporation, et al., Electric Rate and Corporate Regulation Filings

May 19, 1995.

Take notice that the following filings have been made with the Commission:

1. CNG Power Services Corporation

[Docket No. EG95–51–000]

On May 15, 1995, CNG Power Services Corporation ("CNGPS"), One Park Ridge Center, Box 15746, Pittsburgh, PA 15222, filed with the Federal Energy Regulatory Commission ("Commission") an application for a new determination of exempt wholesale generator status, due to changed circumstances resulting from certain proposed transactions, pursuant to Part 365 of the Commission's Regulations.

Comment date: May 30, 1995, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. California Department of Water Resources v. Nevada Power Company

[Docket No. EL95–43–000]

Take notice that on May 4, 1995, the California Department of Water Resources (Department) tendered for filing a complaint for refund, plus interest, of the excess transmission charges the Department has paid, under protest, for the period January 1, 1990 under the formula rate submitted by Nevada Power Company as part of its amnesty filing in Docket No. ER94–305–000.

Comment date: June 19, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. Commonwealth Edison Company

[Docket No. ER93–390–001]

Take notice that on May 5, 1995, Commonwealth Edison Company (ComEd) submitted an amendment to the Resource Power Service Schedule to the Interconnection Agreement, dated March 1, 1975, between ComEd and Wisconsin Power and Light Company (Wisconsin Power).

Copies of this filing were served upon Wisconsin Power, the Illinois Commerce Commission, and the Public Service Commission of Wisconsin.

Comment date: June 2, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. Howell Power Systems

[Docket No. ER94–178–005]

Take notice that on April 25, 1995, Howell Power Systems tendered for filing certain information as required by the Commission's order dated January 14, 1994. Copies of the informational filing are on file with the Commission and are available for public inspection.

5. Concord Electric Company

[Docket No. ER94–692–002]

Take notice that on April 21, 1995, Concord Electric Company tendered for filing its refund report in this docket pursuant to the Commission's letter order issued on March 23, 1995.

Comment date: June 2, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. AES Power, Inc.

[Docket No. ER94–890–005]

Take notice that on May 2, 1995, AES Power, Inc. tendered for filing certain information as required by the Commission's letter order dated April 18, 1994. Copies of the informational filing are on file with the Commission and are available for public inspection.

7. Eastern Power Distribution, Inc.

[Docket No. ER94–964–005]

Take notice that on April 25, 1995, Eastern Power Distribution, Inc. tendered for filing certain information as required by the Commission's letter order dated April 5, 1994. Copies of the informational filing are on file with the Commission and are available for public inspection.

8. Electric Clearinghouse, Inc.

[Docket No. ER94–968–006]

Take notice that on May 2, 1995, Electric Clearinghouse, Inc. filed certain information as required by the Commission's April 7, 1994, letter order. Copies of the informational filing are on file with the Commission and are available for public inspection.

9. Vesta Energy Alternatives Company

[Docket No. ER94–1168–004]

Take notice that on April 25, 1995, Vesta Energy Alternatives Company filed certain information as required by the Commission's orders dated July 8, July 20, November 28 and December 7, 1994 letter orders. Copies of the informational filing are on file with the Commission and are available for public inspection.

10. Ashton Energy Corporation

[Docket No. ER94–1246–003]

Take notice that on April 24, 1995, Ashton Energy Corporation tendered for filing certain information as required by the Commission's order dated August 10, 1994. Copies of the informational filing are on file with the Commission and are available for public inspection.

11. Midcon Power Services Corporation

[Docket No. ER94–1329–003]

Take notice that on April 28, 1995, Midcon Power Services Corporation tendered for filing certain information as required by the Commission's letter order dated August 11, 1994. Copies of the informational filing are on file with the Commission and are available for public inspection.

12. R. J. Dahnke & Association

[Docket No. ER94–1352–003]

Take notice that on May 1, 1995, R.J. Dahnke & Association tendered for filing certain information as required by the Commission's letter order dated August 13, 1994. Copies of the informational filing are on file with the Commission and are available for public inspection.

13. Morgan Stanley Capital Group, Inc.

[Docket No. ER94–1384–005]

Take notice that on April 28, 1995, Morgan Stanley Capital Group, Inc. tendered for filing certain information as required by the Commission's letter order dated November 18, 1994. Copies of the informational filing are on file with the Commission and are available for public inspection.

14. JEB Corporation

[Docket No. ER94–1432–003]

Take notice that on April 28, 1995, JEB Corporation tendered for filing certain information as required by the Commission's letter order dated September 8, 1994. Copies of the informational filing are on file with the Commission and are available for public inspection.

15. Coastal Electric Services Company

[Docket No. ER94–1450–003]

Take notice that on May 2, 1995, Coastal Electric Services Company filed certain information as required by the Commission's September 29, 1994 order. Copies of the informational filing are on file with the Commission and are available for public inspection.

16. Excel Energy Services, Inc.

[Docket No. ER94–1488–003]

Take notice that on May 5, 1995, Excel Energy Services, Inc. tendered for filing certain information as required by the Commission's letter order dated September 29, 1994. Copies of the informational filing are on file with the Commission and are available for public inspection.

17. Calpine Power Marketing Inc.

[Docket No. ER94–1545–001]

Take notice that on May 4, 1995, Calpine Power Marketing Inc. filed certain information as required by the Commission's March 9, 1995, letter order. Copies of the informational filing are on file with the Commission and are available for public inspection.

18. Hadson Electric, Inc.

[Docket No. ER94–1613–002]

Take notice that on May 1, 1995, Hadson Electric, Inc. filed certain information as required by the Commission's November 17, 1994 order. Copies of the informational filing are on

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[1] Hamilton states that it is directly connected to two interstate pipeline systems, Texas Gas Transmission Corporation (Texas Gas) and Texas Eastern Transmission Corporation (Texas Eastern), and has contracted for substantial storage capacity on ANR Pipeline Company (ANR); these three pipelines interconnect in the area of Lebanon, Ohio.

[2] Hamilton states that: (1) these pipelines are ANR, Columbia Gas Transmission Corporation, CNG Transmission Corporation, Texas Eastern, and Texas Gas; (2) Panhandle Eastern Pipe Line Company also delivers gas to Lebanon through facilities owned by Texas Eastern and ANR ("the Lebanon Lateral"); (3) all major producing areas, including Canada, are accessible through at least one of these pipelines; (4) several storage areas are accessible to the Lebanon area.

[3] Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, 57 Fed. Reg. 13,267 (April 16, 1992), III FERC Stats. & Regs. Preambles ¶ 30,939 (April 8, 1992); *order on reh'g*, Order No. 636–A, 57 Fed. Reg. 36,128 (August 12, 1992, III Stats. & Regs. Preambles ¶ 30,950 (August 3, 1992); *order on reh'g*, Order No. 636–B, 57 Fed. Reg. 57,911 (December 8, 1992), 61 FERC ¶ 61,272 (November 27, 1992) *appeal redocketed sub nom.*, Atlanta Gas Light Company and Chattanooga Gas Company, *et al.* v. *FERC*, No. 94–1171 (D.C. Cir. (May 27, 1994).

[4] The Commission stated that it was adopting Order No. 636

in order to facilitate the meeting of gas purchasers and gas sellers in a national gas market. Market centers may, in certain areas, create additional meeting places for gas purchasers and gas sellers. These inter-pipeline market centers would allow gas from production areas attached to different pipelines to meet where the pipelines intersect to create a market for gas purchasers from different market areas. The Commission believes that market centers should develop naturally and, therefore, will not mandate market centers. However, as stated above, the Commission is requiring in new Sections 284.8(b)(5) and 284.9(b)(5) that there must be nothing in a pipeline's tariff that inhibits the development of market centers. (Order No. 636, ¶ 30,939 at 30,427–28. *Emphasis added*; footnote omitted.)

The Commission provided specific examples of rate structures that may inhibit market centers. In various restructuring proceedings, the Commission provided examples of those rate structures which may impede the development of market centers. *See* Transcontinental Gas Pipe Line Corporation, 63 FERC ¶ 61,194 at 62,501 (1993), and Arkla Energy Resources Company, 62 FERC ¶ 61,076 at 61,461 (1993).

[5] In Texas Eastern Transmission Corporation's (Texas Eastern) one year restructuring report, Hamilton State that Texas Eastern's backhaul service was merely a transfer of gas within a market center and that a rate reduction was appropriate. Citing the Commission's earlier order on restructuring, the Commission said that:

The Commission continues to believe, as it previously advised Hamilton, that the appropriate place to discuss the maximum rate for backhaul services is in Texas Eastern's next rate case proceeding. 69 FERC ¶ 61,362, 62,370 (1994).

file with the Commission and are available for public inspection.

19. Texas Ohio Power Marketing, Inc.

[Docket No. ER94–1676–002]

Take notice that on May 16, 1995, Texas Ohio Power Marketing, Inc. tendered for filing certain information as required by the Commission's letter order dated December 2, 1994. Copies of the informational filing are on file with the Commission and are available for public inspection.

20. Associated Power Services, Inc.

[Docket No. ER95–7–003]

Take notice that on April 24, 1995, Associated Power Services, Inc. tendered for filing certain information as required by the Commission's order dated December 16, 1994. Copies of the informational filing are on file with the Commission and are available for public inspection.

21. Wisconsin Electric Power Company

[Docket No. ER95–771–000]

Take notice that Wisconsin Electric Power Company (Wisconsin) tendered for filing on May 16, 1995, an amendment of its filing in the above-referenced docket. The amendment reduces the transmission component of charges for services under FERC Electric Tariff, Original Volume No. II (the Coordination Sales Tariff).

Wisconsin Electric requests an effective date sixty days after its initial filing in this proceeding.

Copies of the filing have been served on all customers under the Coordination Sales Tariff, as well as the state commissions in which such customers distribute and sell electric energy.

Comment date: June 2, 1995, in accordance with Standard Paragraph E at the end of this notice.

22. New York State Electric & Gas Corporation

[Docket No. ER95–1012–000]

Take notice that on May 4, 1995, New York State Electric & Gas Corporation (NYSEG), tendered for filing pursuant to § 35.12 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR 35.12, as an initial rate schedule, an agreement with Atlantic City Electric Company (ACE). The agreement provides a mechanism pursuant to which the parties can enter into separately scheduled transactions under which NYSEG will sell to ACE and ACE will purchase from NYSEG either capacity and associated energy or energy only as the parties may mutually agree.

NYSEG requests that the agreement become effective on May 5, 1995, so that the parties may, if mutually agreeable, enter into separately scheduled transactions under the agreement. NYSEG has requested waiver of the notice requirements for good cause shown.

NYSEG served copies of the filing upon the New York State Public Service Commission and ACE.

Comment date: June 2, 1995, in accordance with Standard Paragraph E at the end of this notice.

23. Florida Power Corporation

[Docket No. ER95–1013–000]

Take notice that on May 4, 1995, Florida Power Corporation requested the Commission to disclaim jurisdiction over an Operation and Maintenance Agreement with Orange Cogeneration Limited Partnership executed on April 12, 1995. In the alternative, Florida Power Corporation requested that the agreement be accepted for filing and allowed to become effective on July 5, 1995.

Comment date: June 2, 1995, in accordance with Standard Paragraph E at the end of this notice.

24. Public Service Electric and Gas Company

[Docket No. ER95–1014–000]

Take notice that on May 5, 1995, Public Service Electric and Gas Company (PS), tendered for filing Supplemental Agreement Between Atlantic City Electric Company (ACE) and PS amending the original March 1, 1969 agreement, as supplemented (PS FERC Rate Schedule No. 43).

PS states that the reason for the filing is to cover the facilities, cost sharing, and payments associated with supplying service to ACE's Tabernacle Substation.

PS requests that the filing be permitted to become effective as of the date the Tabernacle supply facilities were placed in service December 20, 1994 and therefore requests waiver of the Commission's notice requirements.

PS states that a copy of this filing has been sent to ACE and to the New Jersey Board of Public Utilities.

Comment date: June 2, 1995, in accordance with Standard Paragraph E at the end of this notice.

25. Southwestern Public Service Company

[Docket No. ER95–1015–000]

Take notice that on May 5, 1995, Southwestern Public Service Company (Southwestern), tendered for filing the proposed amendments to its rate schedule for service to Lyntegar Electric Cooperative, Inc. (Lyntegar).

The proposed amendments reflect:

1. Two new delivery points and a temporary duplicated delivery point with an associated monthly service charge of $178 per month per delivery point;

2. Changes in the maximum commitment at various delivery points;

3. A CIAC agreement for a one time charge of $21,988 to recover Southwestern's expense in providing a service to one of the new delivery points;

4. A CIAC agreement for a one time charge of $13,137 to recover Southwestern's expense in providing a duplicative delivery point; and

5. Two CIAC agreements for a one time charge totaling $1,970.72 to recover costs Southwestern incurred in modifying its existing facilities to allow proper clearance for Lyntegar's new distribution facilities.

Comment date: June 2, 1995, in accordance with Standard Paragraph E at the end of this notice.

26. Southwestern Public Service Company

[Docket No. ER95–1016–000]

Take notice that on May 5, 1995, Southwestern Public Service Company (Southwestern), tendered for filing proposed amendments to contracts for service to Cap Rock Electric Cooperative, Inc. (Cap Rock).

The proposed amendments (1) Increases the commitment from 115,000 Kw to 120,000 Kw, (2) reduces the Dedicated Segment Charge and Dedicated Facilities Charge, and (3) assigns the contracts to New Corp Resources, Inc. (New Corp).

Comment date: June 2, 1995, in accordance with Standard Paragraph E at the end of this notice.

27. Alabama Power Company

[Docket No. ER95–1019–000]

Take notice that on May 8, 1995, Alabama Power Company tendered for filing a revised Delivery Point Specification Sheet dated as of April 20, 1995, reflecting the change in contracted voltage levels for a delivery point for electricity delivery to the City of Piedmont, Alabama. The delivery point will continue to be served under the terms and conditions of the Agreement for Partial Requirements Service and Complementary Services between Alabama Power Company and the Alabama Municipal Electric Authority dated February 24, 1986, being designated as FERC Rate Schedule No. 165. The parties request an effective date of April 20, 1995.

Comment date: June 2, 1995, in accordance with Standard Paragraph E at the end of this notice.

28. Louisville Gas and Electric Company

[Docket No. ER95–1020–000]

Take notice that on May 8, 1995, Louisville Gas and Electric Company, tendered for filing a copy of a service agreement between Louisville Gas and Electric Company and ENRON Power Marketing, Inc., under Rate GSS.

Comment date: June 2, 1995, in accordance with Standard Paragraph E at the end of this notice.

29. Energy Services, Inc.

[Docket No. ER95–1021–000]

Take notice that on May 8, 1995, Energy Services, Inc. (ESI), tendered for filing Electric Service Rate Schedule No. 1, together with a petition for waivers and blanket approvals of various Commission Regulations necessary for such Rate Schedule to become effective 60 days after the date of the filing.

ESI states that it intends to engage in electric power and energy transactions as a marketer and a broker, and that it proposes to make sales under rates, terms and conditions to be mutually agreed to with the purchasing party. ESI further states that it does not own any generation or transmission facilities.

Comment date: June 2, 1995, in accordance with Standard Paragraph E at the end of this notice.

30. Texas-New Mexico Power Company

[Docket No. ES95–32–000]

Take notice that on May 12, 1995, Texas-New Mexico Power Company filed an application under § 204 of the Federal Power Act seeking authorization to issue short-term promissory notes and other evidence of indebtedness aggregating not more than $25 million principal amount outstanding at any one time, during the period ending June 1, 1997, with final maturities not later than June 1, 1998.

Comment date: June 12, 1995, in accordance with Standard Paragraph E at the end of this notice.

31. Energy Resource Marketing, Inc.

[Docket No. ER94–1580–002]

Take notice that on May 15, 1995, Energy Resource Marketing, Inc. tendered for filing certain information as required by the Commission's order dated September 30, 1994. Copies of the informational filing are on file with the Commission and are available for public inspection.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–12921 Filed 5–25–95; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 11077–001]

Alaska Power and Telephone Company; Notice of Intent to Conduct Environmental Scoping Meetings and Site Visit

May 23, 1995.

The Federal Energy Regulatory Commission (FERC) has received an application for a license of the proposed Goat Lake Hydroelectric Project, Project No. 11077–001. The project is proposed by Alaska Power and Telephone Company (Alaska Power). The project would be located along Pitchfork Falls, a tributary to the Skagway River, about 7 miles northeast of Skagway, in southeast Alaska. The project lies almost exclusively on U.S. Forest (FS) property.

The FERC and FS (staff) intend to prepare an Environmental Assessment (EA) on the proposed Goat Lake Hydroelectric Project in accordance with the National Environmental Policy Act. In the EA, staff will consider both site-specific and cumulative environmental impacts of the project and reasonable alternatives, and will include an economic, financial, and engineering analysis.

The draft EA will be issued and circulated for review by all interested parties. All comments filed on the draft EA will be analyzed and considered by the staff in a final EA. The staff's conclusions and recommendations will then be presented for the consideration by the Commission in reaching its final licensing decision.

Scoping Meetings

Staff will hold two scoping meetings. A scoping meeting oriented towards the public will be held on June 20, 1995 at 7 p.m., at the Skagway School, Multipurpose Room, 15th Avenue and Main Street, Skagway, Alaska. A scoping meeting oriented towards the agencies will be held on June 22, 1995 at 9:30 a.m., at the U.S. Forest Service, Juneau Ranger District, Conference Room, 8465 Old Dairy Road, Juneau, Alaska.

Interested individuals, organizations, and agencies are invited to attend either or both meetings and assist the staff in identifying the scope of environmental issues that should be analyzed in the EA.

To help focus discussions at the meetings, a scoping document outlining subject areas to be addressed in the EA will be mailed to agencies and interested individuals on the FERC mailing list. Copies of the scoping document will also be available at the scoping meetings.

Objectives

At the scoping meetings the staff will: (1) Identify preliminary environmental issues related to the proposed project; (2) identify preliminary resource issues that are not important and do not require detailed analysis; (3) identify reasonable alternatives to be addressed in the EA; (4) solicit from the meeting participants all available information, especially quantified data on the resource issues; and (5) encourage statements from experts and the public on issues that should be analyzed in the EA, including points of view in opposition to, or in support of, the staff's preliminary views.

Procedures

The scoping meetings will be recorded by a court reporter and all statements (oral and written) will become part of the formal record of the FERC proceedings on the Goat Lake Hydroelectric Project. Individuals presenting statements at the meetings will be asked to clearly identify themselves for the record.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meetings and assist the staff in defining and clarifying the issues to be addressed in the EA.

Persons choosing not to speak at the meetings, but who have views on the issues or information relevant to the issues, may submit written statements for inclusion in the public record at the meetings. In addition, written scoping

comments may be filed with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, until July 22, 1995.

All written correspondence should clearly show the following caption on the first page: Goat Lake Hydroelectric Project, FERC Project No. 11077–001.

Intervenors—those on the FERC's service list for this proceeding (parties)—are reminded of the FERC's Rules of Practice and Procedure, requiring parties filing documents with FERC, to serve a copy of the document on each person whose name appears on the official service list. Further, if a party or interceder files comments or documents with FERC relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Site Visit

A site visit to the proposed Goat Lake Hydroelectric Project is planned for Tuesday, June 20, 1995, and is intended to provide interested parties a first hand observation of the project site. Because of the remoteness and difficulty of ground access at the proposed project site, we intend to provide helicopter shuttle to the site. To plan on helicopter use in advance of the visit, we must identify the number of parties interested in attending the site visit. Therefore, if you have a particular interest in visiting the proposed project site and plan on participating in scoping of this project as identified in section 3 of the Scoping Document 1, you *must* first register with Mr. Stan Selmer at (907) 983–2202, no later than June 5, 1995. Mr. Selmer will serve as the principle site visit coordinator.

We will meet at Alaska Power's office at 5th and Spring Street in Skagway, Alaska at 7:00 a.m., and promptly leave for the upper project area near Goat Lake located about 8 miles away, via helicopter.[1] Those in attendance will then hike down Pitchfork Falls along the alignment of proposed project features. Around 1:00 p.m., the participants will be picked up around milepost 9 by a flag train on the White Pass and Yukon Route Railroad, and will travel northbound across White Pass to Frazer, Canada to give participants a scenic overview of the Klondike area around the proposed project. There will be a cost of approximately $64.00 for the train ride to Frazer, and tickets would have to be purchased in advance. Vehicles will be parked at Frazer to provide transportation back to Skagway along the Klondike Highway.[2] Arrival in Skagway is expected around 4:00 p.m.[3]

In the event inclement weather precludes the site visit on June 20, on alternate site visit will be held on Wednesday, June 21, 1995, with the same itinerary.

Any questions regarding this notice may be directed to Mr. Carl Keller, FERC Environmental Coordinator, Washington, DC (202) 219–2831, or Ms. Margaret Beilharz, FS Project Manager at (907) 586–8800, Juneau, Alaska.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–13063 Filed 5–25–95; 8:45 am]

BILLING CODE 6717–01–M

[1] Because of the remote steep topography, shrub thickets, and abundant surface water in the project area, those attending the site visit should be physically fit and must wear appropriate clothing and footgear. In addition, those shuttled by helicopter to the project site not on official agency business, may need to sign a waiver of liability.

[2] To enter Canada, proof of U.S. citizenship will be required. Therefore, all participants must provide one of the following: birth certificate, voters registration card, social security card, or U.S. passport.

[3] One alternate for returning to Skagway would be for participants to board an 11:00 a.m. southbound flag train around milepost 9 on the WP&YR RR. This train would arrive in Skagway around 12:00 noon and the trip would cost $25.00. Another alternate for returning to Skagway would be for participants to board a 5:30 p.m. southbound flag train around milepost 9 on the WP&YR RR. Its arrival in Skagway would be around 6:30 p.m. at a cost of $25.00. All tickets would have to be purchased in advance.

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–4723–4]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared April 17, 1995 through April 21, 1995 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the **Federal Register** dated April 14, 1995 (72 FR 19047).

Draft EISs

ERP No. D–AFS–J61095–CO Rating EC2, Loveland Ski Area Master Development Plan, Implementation, Arapaho National Forest, Clear Creek Ranger District, Clear Creek County, CO.

Summary: EPA expressed environmental concerns regarding wetland impact analysis. EPA requested that the final document provide additional information on this issue.

ERP No. D–AFS–L65239–OR Rating LO, East Fork Deer Creek Long-Term Ecosystem Productivity Research Study, Implementation, Willamette National Forest, Blue River Ranger District, Lane County, OR.

Summary: EPA had no objection to the proposed action.

ERP No. D–BLM–J02030–WY Rating LO1, Texaco's Stagecoach Draw Unit Natural Gas Field Development Project, Implementation, Application for Permit to Drill, Right-of-Way Grant, Temporary Use-Permit and COE Section 404 Permit, Farson, Sweetwater County, WY.

Summary: EPA had no objection to the proposed action.

ERP No. D–BLM–K61135–AZ Rating EC2, Grand Canyon National Park General Management Plan, Implementation, Coconino and Mohave Counties, AZ.

Summary: EPA expressed environmental concerns regarding drinking water compliance, wastewater treatment, air quality and wetland. EPA requested addition information be included in the final document to address these issues.

ERP No. D–COE–D36072–VA Rating LO, Grundy Flood Damage Reduction/ Highway Upgrade Project, Implementation, Town of Grundy, Buchanan County, VA.

Summary: EPA had not identified any potential environmental impacts requiring substantive changes to the proposal. However, EPA requested additional information concerning cumulative impacts of the proposal.

ERP No. D–FTA–K40209–CA Rating EC2, Mid-Coast Corridor Mass Transit Improvement Project, Funding, San Diego County, CA.

Summary: EPA expressed environmental concerns about the local CO modeling, potential impacts to wetlands and runoff to surface waters impacts. EPA also suggested that the two best performing alternatives, the HOV and Light Rail Transit, should be examined together and discussed.

ERP No. D–IBR–L64044–OR Rating LO, Fish Passage Improvements, Savage Rapids Dam, Implementation, Grants Pass Irrigation District, Rogue River, Josephine and Jackson Counties, OR.

Summary: EPA had no objection to the proposed action.

ERP No. D–MMS–L02024–AK Rating EC2, Cook Inlet Planning Area, Alaska Outer Continental Shelf Oil and Gas Sale 149, Leasing Offering, AK.

Summary: EPA expressed environmental concerns that the proposed action does not provide a commitment to the stipulations and information to lessees (ITL's) and uncertainty about the effectiveness of mitigating spill risk. EPA requested additional information and clarification about the issues.

Final EISs

ERP No. F–BIA–J65220–SD, Rosebud and Cheyenne River Sioux Indian Reservations, Management of the Livestock Grazing and Prairie Dog Control, Funding, Todd and Mellette Counties, SD.

Summary: EPA had no objection to the proposed action at the Cheyenne River Sioux Reservations, it expressed environmental objections to the applicant preferred alternative for the Rosebud Reservation. EPA requests selection of the no action alternative at Rosebud until the Rosebud Sioux Tribe and BIA can develop a prairie management plan that regards both grazing need and biodiversity, with special emphasis on the Black Footed Ferrel.

ERP No. F–DOE–J08024–CO Flatiron-Erie 115-kV Electrical Transmission Line Replacement of Wood-Pole Structures, Construction, Operation and Right-of-Way Grant, City of Longmont, Larimer, Boulder and Weld Counties, CO.

Summary: EPA had no further comments or questions. WAPA had adequately addressed EPA's previous comments on the draft EIS.

ERP No. F–FHW–L40162–OR Mill Creek/West Sixth Street Bridge Replacement, Funding, City of The Dalles, Wasco County, OR.

Summary: EPA had no objection to the preferred alternative as described in the EIS. Review of the final EIS has been completed and the project found to be satisfactory.

ERP No. FS–AFS–K61103–CA Bear Mountain Ski Resort Expansion, (formerly known as Goldmine) New Information, Special Use Permit and Possible COE Section 404 Permit, San Bernardino National Forest, San Bernardino Co., CA.

Summary: EPA continued to express environmental objections to the proposed action due to the high level of development proposed and cumulative impact.

Dated: May 22, 1995.

William D. Dickerson,

Director, Office of Federal Activities.

[FR Doc. 95–12996 Filed 5–25–95; 8:45 am]

BILLING CODE 6560–50–U

[ER–FRL–4723–3]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260–5076 OR (202) 260–5075. Weekly receipt of Environmental Impact Statements Filed May 15, 1995 Through May 19, 1995 Pursuant to 40 CFR 1506.9.

EIS No. 950203, Draft EIS, SFW, CT, VT, MA, NH, Silvio O. Conte National Fish and Wildlife Refuge Act in the Connecticut River Watershed, Implementation, CT, VT, MA and NH, Due: July 31, 1995, Contact: Larry Bandolin (413) 863–0209.

EIS No. 950204, Draft EIS, FHW, PA, PA–26 Transportation Improvements, (College Avenue) between State College and Pleasant Gap, Funding, Appalachian Mountain, Centre County, PA, Due: July 13, 1995, Contact: Manuel A. Marks (717) 787–2222.

EIS No. 950205, Final EIS, COE, VA, Southeastern Public Service Authority of Virginia Regional Landfill Expansion Project, COE Section 404 Permit Issuance, Cities of Chesapeake, Norfolk, Portsmouth, Suffolk, and Virginia Beach, Isle of Wight and Southampton Counties, VA, Due: June 26, 1995, Contact: Pamela Painter (804) 441–7654.

EIS No. 950206, Draft EIS, AFS, ID, Fall Creek Post-Fire Project, Harvesting Fire-Killed and Damage Trees, Implementation, McCall Ranger District, Payette National Forest, Valley County, ID, Due: July 10, 1995, Contact: Cindy Tencick (208) 634–0400.

EIS No. 950207, Final EIS, AFS, CA, Oregon Creek Ecosystem Management Project, Implementation, Tahoe National Forest, Downieville Ranger District, Yuba and Sierra Counties, CA, Due: June 26, 1995, Contact: Jean Masquelier (916) 478–6253.

EIS No. 950208, Final EIS, AFS, OR, Santiam Pass Forest Health Project, Implementation, Willamette National Forest, McKenzie Ranger District, Linn County, OR, Due: June 26, 1995, Contact: John P. Allen (503) 822–3381.

EIS No. 950209, Final EIS, DOD, HI, Kauai Acoustic Thermometry of Ocean Climate (ATOC) Project and Marine Mammal Research Program (MMRP), Funding, Marine Manual Research Permit and COE Section 10 Permit Issuance, Kauai, HI, Due: June 26, 1995, Contact: Ralph W. Alewine (703) 696–2246.

Amended Notices

EIS No. 950125, Draft EIS, AFS, NV, CA, Heavenly Ski Resort Master Plan, Improvement, Expansion and Management, Lake Tahoe Basin Management Unit, Special-Use-Permit, Douglas County, NV and El Dorado and Alpine Counties, CA, Due: July 05, 1995, Contact: Virgil Anderson (916) 573–2600. Published FR 04–14–95—Review period extended.

Dated: May 22, 1995.

William D. Dickerson,

Director, Office of Federal Activities.

[FR Doc. 95–12997 Filed 5–25–95; 8:45 am]

BILLING CODE 6560–50–U

[OPP–00410; FRL–4956–5]

State FIFRA Issues Research and Evaluation Group (SFIREG) Working Committee on Water Quality & Pesticide Disposal; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The State FIFRA Issues Research and Evaluation Group (SFIREG) Working Committee on Water Quality and Pesticide Disposal will hold a 2–day meeting, beginning on Monday, June 5, 1995, and ending on Tuesday, June 6, 1995. This notice announces the location and times for the meeting and sets forth tentative agenda topics. The meeting is open to the public.

DATES: The SFIREG Working Committee on Water Quality and Pesticide Disposal will meet on Monday, June 5, 1995, from 8:30 a.m. to 5:00 p.m., and Tuesday, June 6, 1995, from 8:30 a.m. to 12:00 p.m.

ADDRESSES: The meeting will be held at: The DoubleTree Hotel, National Airport - Crystal City, 300 Army-Navy Drive, Arlington, VA, 22202, 703–892–4100.

FOR FURTHER INFORMATION CONTACT: By mail: Shirley M. Howard, Office of Pesticide Programs (7506C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1101, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, 703–305–5306.

SUPPLEMENTARY INFORMATION: The tentative agenda of the SFIREG Working Committee on Water Quality and Pesticide Disposal includes the following:

1. Reports from the SFIREG Working Committee members on State Water Quality and Pesticide Disposal projects.

2. Discussion on the guidelines for prospective groundwater studies.

3. Update on the State Management Plan (SMP) rule.

4. Status of the groundwater SMP program, review and teleconferences.

5. Discussion of the United States Geological Survey (U.S.G.S.) groundwater and surface water monitoring for pesticides and metabolites.

6. Update on Amber registration.

7. Discussion of cross contamination of bulk pesticides.

8. Status of the part 165 regulations.

9. Other topics as appropriate.

List of Subjects

Environmental protection.

Dated: May 18, 1995.

William L. Jordan,

Acting Director, Field Operations Division, Office of Pesticide Programs.

[FR Doc. 95–13138 Filed 5–25–95; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL DEPOSIT INSURANCE CORPORATION

Statement of Policy Regarding Treatment of Collateralized Letters of Credit After Appointment of the Federal Deposit Insurance Corporation as Conservator or Receiver

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Statement of policy.

SUMMARY: The FDIC has adopted a statement of policy that sets forth how the FDIC, as conservator or receiver for an insured depository institution, proposes to treat letters of credit backed by a pledge of collateral by the insured depository institution. Only those collateralized letters of credit (CLOCs) that were initially issued prior to the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) are covered by this policy.

EFFECTIVE DATE: May 19, 1995.

FOR FURTHER INFORMATION CONTACT:

Sharon Powers Sivertsen, Assistant General Counsel (202–736–0112), or Michael H. Krimminger, Senior Counsel (202–736–0336), Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

Statement of Policy Regarding Treatment of Collateralized Letters of Credit After Appointment of the Federal Deposit Insurance Corporation as Conservator or Receiver

This Statement of Policy sets forth the treatment that the Federal Deposit Insurance Corporation (FDIC) as the conservator or receiver of an insured depository institution will give certain collateralized letters of credit issued by insured depository institutions prior to August 9, 1989.

Background

On August 9, 1989, the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) was signed into law. This statute amended the Federal Deposit Insurance Act (FDI Act) to clarify the FDIC's rights as conservator or receiver to repudiate contracts and to limit claims for damages upon repudiation to those actual, direct compensatory damages determined as of the date of the appointment of the conservator or receiver. 12 U.S.C. 1821(e)(3)(A). With regard to secured contracts, the FDI Act provides that the repudiation provisions contained in 12 U.S.C. 1821(e) are not to be construed as permitting the avoidance of any legally enforceable or perfected security interest in any assets of the institution, except where such interest is taken in contemplation of the institution's insolvency or with the intent to hinder, delay, or defraud the institution or the institution's creditors. 12 U.S.C. 1821(e)(11).

Generally, contingent obligations do not give rise to provable claims against a receivership or conservatorship, and any claims based upon such obligations have no provable damages because the damages are not fixed and certain as of the date of the appointment of the receiver or conservator. Accordingly, no provable claims in a receivership or conservatorship can be based on contingent obligations unless the default by the account party conferring a right to draw under the obligations occurred prior to the appointment of the receiver or conservator.

Reading section 11(e) of the FDI Act, 12 U.S.C. 1821(e), as a whole, it is clear that even secured contracts may be repudiated; that damages are limited to the extent set forth in the statute; and that legally enforceable or perfected security agreements will be honored to the extent of such damages but no further or otherwise. In other words, if there is a repudiation, the collateral securing the contract may be liquidated and the proceeds paid to or retained by the creditor up to the damages allowed by the statute. The remaining collateral or proceeds will be remitted or returned to the conservator or receiver as property of the institution or its estate, or to a bona fide junior lienholder to the extent applicable.

Statement of Policy

The FDIC has considered a number of relevant policy factors with respect to the treatment of certain collateralized letters of credit after its appointment as conservator or receiver of insured depository institutions. Specifically, it has considered its legal rights and powers under FIRREA; the assurances provided by the Federal Home Loan Bank Board prior to the enactment of FIRREA; the assurances provided by the Resolution Trust Corporation in its September 15, 1990 statement of policy on the treatment of collateralized letters of credit; market reliance on these assurances; the need for market certainty and stability; and the potential long-term cost to the FDIC of the repudiation of certain collateralized letters of credit. Based on its consideration and balancing of such factors, the FDIC has determined to adopt and implement the following Policy on the treatment of certain collateralized letters of credit after its appointment as conservator or receiver of insured depository institutions. This Policy is substantively the same as the RTC's September 25, 1990 policy statement on collateralized letters of credit and conforms to the RTC and FDIC policy statements on collateralized put obligations. As a consequence, adoption of the proposed policy statement will promote market certainty and stability upon the transition of receivership responsibilities from the RTC to the FDIC on July 1, 1995. 12 U.S.C. 1441a(b)(3)(A)(ii).

This Policy will apply only to collateralized letters of credit utilized in capital markets financing transactions originally issued by insured depository institutions prior to August 9, 1989, and any subsequent renewal, replacement or extension of such letters of credit. In addition, this Policy will apply only in such transactions where the underlying security interest is in collateral owned and pledged by the insured depository institution to secure its obligations and the security interest is both perfected and legally enforceable under applicable law. These financing transactions include transactions involving publicly-offered obligations rated by one or more nationally-recognized credit rating agencies and transactions involving non-rated privately placed obligations structured in a manner substantially similar to such rated obligations. The policy does not apply to trade letters of credit or letters of credit issued for any other purpose.

After its appointment as conservator or receiver of any insured depository institution, the FDIC may either (1) continue any collateralized letters of credit as enforceable under the terms of the contract during the pendency of the conservatorship or receivership or (2) call, redeem or prepay any collateralized letters of credit by repudiation or disaffirmance.

If the FDIC as conservator or receiver exercises its right to call, redeem or prepay any collateralized letters of credit by repudiation or disaffirmance, it may do so either directly by cash payment in exchange for the release of the collateral or by repudiation of the contract followed by liquidation of the collateral by a trustee or other secured party. If the FDIC in its capacity as conservator or receiver accelerates the collateralized letters of credit by repudiation or disaffirmance, payment will be made to the extent of available collateral up to an amount equal to the outstanding principal amount or accreted value of the secured obligations, together with interest at the contract rate up to and including the date of payment and expenses of liquidation, if provided in the contract. If any collateral or proceeds remain after payment of such amounts, such collateral or proceeds then must be remitted or returned to the conservator or receiver as property of the institution or its estate, or to a bona fide junior lienholder to the extent applicable. If, however, the collateral securing the contract is insufficient to pay in full the amounts owing under the contract, the holder will receive a receivership certificate for any balance remaining due under the contract.

The FDIC shall have a reasonable time, generally no more than 180 days from the date of the appointment of the FDIC as conservator or receiver, to elect whether to disaffirm, repudiate, or accelerate a collateralized letter of credit. In the case of institutions for which the FDIC already has been so appointed, the period in which to make such an election shall begin to run as of the date of the adoption of this Policy and continue for 180 days.

This Policy Statement does not change or amend the FDIC's longstanding position that standby letters of credit are contingent obligations. Based on its consideration and balancing of the policy issues presented, however, the FDIC has adopted this statement of policy for collateralized letters of credit initially issued prior to August 9, 1989, and any subsequent renewal, replacement or extension of such letters of credit. It is understood that the persons involved in such secured transactions with insured depository institutions may reasonably rely upon this Policy Statement.

Dated at Washington, D.C., this 18th day of May, 1995.

By order of the Board of Directors.
Federal Deposit Insurance Corporation.

Robert E. Feldman,

Acting Executive Secretary.

[FR Doc. 95–12992 Filed 5–25–95; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL RESERVE SYSTEM

Union Planters Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than June 19, 1995.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Union Planters Corporation, Memphis, Tennessee; to acquire 100 percent of the voting shares of Union Planters Bank of Central Misissippi, Jackson, Mississippi, a *de novo* bank, and to acquire 100 percent of the voting shares of Union Planters Bank of Southern Mississippi, Hattiesburg, Mississippi, a *de novo* bank.

B. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Andrews Bancshares, Inc., Andrews, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Andrews Delaware Financial Corporation, Dover, Delaware, and thereby indirectly acquire National Bank of Andrews, Andrews, Texas.

In connection with this application, Andrews Delaware Financial Corporation, Dover, Delaware; has also applied to become a bank holding company by acquiring 100 percent of the voting shares of National Bank of Andrews, Andrews, Texas.

Board of Governors of the Federal Reserve System, May 22, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95-12976 Filed 05-25-95; 8:45 am]

BILLING CODE 6210-01-F

Farmers & Merchants Bank Employee Stock Ownership Plan; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 95–11754) published on page 25723 of the issue for Friday, May 12, 1995.

Under the Federal Reserve Bank of Atlanta heading, the entry for Farmers & Merchants Bank Employee Stock Ownership Plan, is revised to read as follows:

1. Farmers & Merchants Bank Employee Stock Ownership Plan, Forest, Mississippi; to acquire Bankers Capital Corporation, Forest, Mississippi, and thereby engage in making, acquiring or servicing loans or other extensions of credit, pursuant to § 225.25(b)(1) of the Board's Regulation Y. The proposed activity will be conducted throughout the United States.

Comments on this application must be received by May 26, 1995.

Board of Governors of the Federal Reserve System, May 22, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–11754 Filed 5–11–95; 8:45 am]

BILLING CODE 6210–01–F

Michael J. Corliss; Change in Bank Control Notice

Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12

CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than June 9, 1995.

A. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Michael J. Corliss (through the Corliss Valley Bancorporation Trust), Sumner, Washington; to retain 11.75 percent, and acquire an additional 2.35 percent, for a total of 14.10 percent of the voting shares of Valley Bancorporation, Sumner, Washington.

Board of Governors of the Federal Reserve System, May 22, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–12973 Filed 5–25–95; 8:45 am]

BILLING CODE 6210–01–F

The Bank of New York Company, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 9, 1995.

A. Federal Reserve Bank of New York (William L. Rutledge, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. The Bank of New York Company, Inc., New York, New York; to acquire Continental Trust Company, Chicago, Illinois, and thereby engage in trust activities, pursuant to § 225.25 (b)(3) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 22, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–12972 Filed 5–25–95; 8:45 am]

BILLING CODE 6210–01–F

MBNA Corporation; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 9, 1995.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. MBNA Corporation, Newark, Delaware; to engage *de novo*, through its newly formed subsidiary MBNA Community Development Corporation, Newark, Delaware, in community development activities, pursuant to § 225.25(b)(6) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 22, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–12975 Filed 5–25–95; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Announcement 540]

Development of State Health Promotion and Chronic Disease Prevention Databases/Clearinghouses

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1995 funds for a cooperative agreement program for the development of State health promotion and chronic disease prevention databases/clearinghouses that are compatible with Chronic Disease Prevention File (CDP) and the Combined Health Information Database (CHID). CDP File and CHID link health information and education resources into a national network of information on programs, interventions, and methods, and act as a mechanism for collecting, sharing, and distributing information, bibliographies, literature, and health promotion and chronic disease prevention information to professionals responsible for planning, developing, conducting, and evaluating health promotion and chronic disease prevention programs.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2000," a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority areas of Cancer, Clinical Preventive Services, Diabetes and Chronic Disabling Conditions, Educational and Community-Based Programs, HIV Infection, Family Planning, Heart Disease and Stroke, Physical Activity and Fitness, Nutrition, Tobacco, Maternal and Infant Health, Sexually Transmitted Diseases, and Surveillance and Data Systems. (For ordering a copy of "Healthy People 2000," see the section Where to Obtain Additional Information.)

Authority

This program is authorized under section 317(k)(2) [42 U.S.C. 247b(k)(2)] of the Public Health Service Act, as amended.

Smoke-Free Workplace

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Eligible Applicants

Eligible applicants are the official public health agencies of States or their bona fide agents. This includes the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of the Marshall Islands, the Republic of Palau, and federally recognized Indian tribal governments.

Funding is limited to one three-year project period to provide start-up costs for establishing a State database. Therefore, Colorado, Minnesota, and Missouri are not eligible applicants because they were funded September 1, 1991, for a three-year project period, under Program Announcement Number: 940, entitled "Assistance Program for Chronic Disease Prevention and Control" for the activities described in this program announcement. In addition, California, Florida, and Michigan are not eligible participants because they were funded September 30, 1993, for a three-year project period, under Program Announcement Number: 344, entitled "Development of State Health Promotion and Chronic Disease Prevention Databases/Clearinghouses."

Availability of Funds

Approximately $90,000 is available in FY 1995 to fund approximately three awards. It is expected that the average award will be $30,000. It is expected that the awards will begin on or about September 30, 1995, and will be made for a 12-month budget period within a project period of up to three years. Funding estimates may vary and are subject to change.

Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Purpose

This cooperative agreement will provide States with start-up funds and guidance to establish bibliographic databases that are compatible with CDP File and CHID. The databases may be used to support new or existing health information clearinghouses, thereby increasing health professionals' access to State health promotion and chronic disease prevention information.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under A., and CDC will be responsible for the activities under B.

A. Recipient Activities

1. Establish and maintain a bibliographic database compatible with CDP File and CHID.
2. Establish a database advisory committee.
3. Design and carry out a systematic needs assessment to determine specific needs, current resources, and communication networks of State and local health professionals.
4. Identify, acquire, track, promote, and provide access to State and local health promotion and chronic disease prevention program information and materials.
5. Design and implement a quality assurance plan to maintain accurate data entry, descriptive abstracts, and consistent indexing of database records.
6. Revise, update, and delete items in the database.
7. Develop a plan and conduct an evaluation to monitor program activity and use of the database.
8. Develop a plan for gaining administrative support, continuing activities beyond the project period, and for institutionalizing the database into the agency organizational structure.

B. CDC Activities

1. Collaborate in the design of the database to ensure compatibility with CDP File and CHID.
2. Collaborate in developing a needs assessment and information collection instruments.
3. Collaborate in developing plans for quality assurance, tracking, evaluation, and institutionalization.
4. Collaborate in training project staff.
5. Assist in promoting the State and national information systems.
6. Coordinate with other Federal agencies, States, and organizations to ensure a coordinated, cooperative effort to build a comprehensive information sharing system.

Evaluation Criteria

Applications will be reviewed and evaluated according to the following criteria:

A. Background and Need: The extent to which a database currently exists, the degree of need and administrative commitment to the project. (15 Points)

B. Goals and Objectives: The extent to which the stated goals and objectives are specific, measurable, time-framed and realistic; are derived from identified needs; and describe process, impact, and outcome objectives. (15 Points)

C. Database Development Plan: The appropriateness of the methodologies for (1) establishing a database advisory committee; (2) designing, implementing and analyzing a needs assessment; (3) identifying, collecting, selecting, and tracking information resources; (4) cataloging, abstracting, and indexing records; (5) promoting and providing access to users; and (6) revising, updating, and deleting items. (20 Points)

D. Institutionalization: The extent to which the applicant demonstrates the capacity to gain administrative support for the project, continue activities beyond the project period, and institutionalize the database into the agency organizational structure. (15 Points)

E. Management: The extent to which the applicant demonstrates the capacity to provide adequate and appropriate staff and equipment resources. (15 Points)

F. Quality Assurance: The extent to which the quality assurance plan is adequate and appropriate. (10 Points)

G. Evaluation: The extent to which the evaluation plan determines the effectiveness of the database. (10 Points)

H. Budget: The extent to which the budget is reasonable and consistent with the intended use of the program funds. (Not Weighted)

Executive Order 12372 Review

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order (E.O.) 12372. E.O. 12372 sets up a system for State and local government review of proposed Federal assistance applications. Applicants should contact their State Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current list of SPOCs is included in the application kit. If SPOCs have any State process recommendations on applications submitted to CDC, they should send them to Clara M. Jenkins, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 314, Mailstop E–18, Atlanta, GA 30305, no later than 60 days after the application deadline date. The Program Announcement Number and Program Title should be referenced on the document. The granting agency does not guarantee to "accommodate or explain" State process recommendations it receives after that date. Indian tribes are strongly encouraged to request tribal government review of the proposed application. If tribal governments have any tribal process recommendations on applications submitted to CDC, they should forward them to Clara M. Jenkins, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 314, Mailstop E–18, Atlanta, GA 30305. This should be done no later than 60 days after the application deadline date. The granting agency does not guarantee to "accommodate or explain" for tribal process recommendations it receives after that date.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 93.283.

Other Requirements

Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by the cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Application Submission and Deadline

The original and two copies of the application PHS Form 5161–1 (OMB Number 0937–0189) must be submitted to Clara M. Jenkins, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 314, Mailstop E–18, Atlanta, GA 30305 on or before July 14, 1995.

1. Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. Late Applications: Applications that do not meet the criteria in 1.(a) or 1.(b) above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where to Obtain Additional Information

A complete program description and information package on application procedures, an application package, and business management technical assistance may be obtained from Nealean K. Austin, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 314, Atlanta, GA 30305, telephone (404) 842–6512.

Programmatic technical assistance may be obtained from Kathryn Sunnarborg or William Thomas, Technical Information Specialist, Technical Information Services Branch, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention (CDC), Mailstop K–13, 4770 Buford Highway, NE., Atlanta, GA 30341–3724, telephone (404) 488–5080.

Please refer to Announcement Number 540 when requesting information and submitting an application.

Potential applicants may obtain a copy of "Healthy People 2000" (Full Report, Stock No. 017–001–00474–0) or "Healthy People 2000" (Summary Report, Stock No. 017–001–00473–1) referenced in the Introduction through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512–1800.

Dated: May 22, 1995.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and And Prevention (CDC).

[FR Doc. 95–12954 Filed 5–25–95; 8:45 am]

BILLING CODE 4163–18–P

Food and Drug Administration

[Docket Nos. 76N–0048 and 95D–0094]

Compliance Policy Guides (CPG's); Revocation

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the revocation of six CPG's because they contain outdated regulatory guidance. This action is being taken to ensure that FDA's CPG's reflect current FDA policy.

EFFECTIVE DATE: May 26, 1995.

FOR FURTHER INFORMATION CONTACT: Ronald C. Varsaci, Center for Food Safety and Applied Nutrition (HFS–22), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4251.

SUPPLEMENTARY INFORMATION: FDA is revoking the following six CPG's because they contain outdated regulatory guidance:

(1) CPG 7101.02—"Caffeine, Ingredient in Carbonated Beverages"

(2) CPG 7105.06—"Orgeat or 'Orzata' Sirup, Definition and Labeling"

(3) CPG 7105.08—"Sirup-Labeling—Use of Descriptive Statements"

(4) CPG 7105.10—"Candy Pills—Representation as Drugs"

(5) CPG 7128.01—"Bithionol in Cosmetics"

(6) CPG 7108.19—"Polychlorinated Biphenyls (PCB's) in Certain Freshwater Fish"

Dated: May 15, 1995.

Gary J. Dykstra,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 95–13034 Filed 5–25–95; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 95E–0055]

Determination of Regulatory Review Period for Purposes of Patent Extension; FRAGMIN®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for FRAGMIN® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product FRAGMIN® (dalteparin sodium). FRAGMIN® is indicated for prophylaxis against deep vein thrombosis, which may lead to pulmonary embolism, in patients undergoing abdominal surgery who are at risk for thromboembolic complications. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for FRAGMIN® (U.S. Patent No. 4,303,651) from Pharmacia Aktiebolag, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated March 23, 1995, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of FRAGMIN® represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the products's regulatory review period.

FDA has determined that the applicable regulatory review period for FRAGMIN® is 3,555 days. Of this time, 2,832 days occurred during the testing phase of the regulatory review period, while 723 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective*: March 31, 1985. The applicant did not state an investigational new drug application (IND) effective date, stating that foreign studies were used in lieu of an IND. However, FDA records indicate that certain studies material to the approval of the product were conducted under IND 25,924. Therefore, the IND effective date was March 31, 1985, which was 30 days after FDA receipt of IND 25,924.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act*: December 30, 1992. The applicant claims February 28, 1993, as the date the new drug application (NDA) for FRAGMIN® (NDA 20–287) was initially submitted, whereas it is actually the filing date. FDA records indicate that NDA 20–287 was refused to file on September 25, 1992. The correct resubmission date for NDA 20–287 is December 30, 1992, which was the date the resubmission was actually received by the agency. Therefore, the NDA initial submission date for NDA 20–287 is December 30, 1992, the same as the resubmission date.

3. *The date the application was approved*: December 22, 1994. FDA has verified the applicant's claim that NDA 20–287 was approved on December 22, 1994.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 661 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may on or before July 25, 1995, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before November 22, 1995, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 15, 1995

Stuart L. Nightingale,

Associate Commissioner for Health Afairs.

[FR Doc. 95–13032 Filed 5–25–95; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 95E–0046]

Determination of Regulatory Review Period for Purposes of Patent Extension; Neurolite®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Neurolite® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Neurolite®. Neurolite® (Technetium TC–99M Bicisate) single photon emission computerized tomography (SPECT) is indicated as an adjunct to conventional computed tomography (CT) or magnetic resonance imaging (MRI) in the localization of stroke in patients in whom stroke has already been diagnosed. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Neurolite® (U.S. Patent No. 5,279,811) from Dupont Merck Pharmaceutical Co., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated march 28, 1995, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of Neurolite® represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Neurolite® is 2,595 days. Of this time, 1,602 days occurred during the testing phase of the regulatory review period, while 993 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective*: October 18, 1987. The applicant claims September 18, 1987, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was October 18, 1987, which was 30 days after FDA receipt of the IND.

2. *The date the human drug was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act*: March 6, 1992. The applicant claims March 5, 1992, as the date the new drug application (NDA) for Neurolite® (NDA 20–256) was initially submitted. However, FDA records indicate that NDA 20–256 was submitted on March 6, 1992.

3. *The date the application was approved*: November 23, 1994. FDA has verified the applicant's claim that NDA 20–256 was approved on November 23, 1994.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 156 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before July 25, 1995, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before November 22, 1995, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 15, 1995.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 95–13033 Filed 5–25–95; 8:45 am]

BILLING CODE 4160–01–F

Health Resources and Services Administration

National Practitioner Data Bank; Change in Methods of Fee Payment

The Health Resources and Services Administration (HRSA), Public Health Service (PHS), Department of Health and Human Services (DHHS), is announcing a change in the method for payment of fees that are charged entities authorized to request information from the National Practitioner Data Bank (Data Bank).

The Data Bank is authorized by the Health Care Quality Improvement Act of 1986 (the Act), title IV of Public Law 99–660, as amended (42 U.S.C. 11101 et seq.). Regulations at 45 CFR Part 60 implementing the Data Bank authorize the reporting and release of information concerning: (1) Payments made for the benefit of physicians, dentists, and other health care practitioners as a result of medical malpractice actions or claims; and (2) certain adverse actions taken regarding the licenses and clinical privileges of physicians and dentists. Section 60.3 of these regulations should be consulted for the definition of terms used in this announcement.

Section 427(b)(4) of the Act authorizes the establishment of fees for the costs of processing requests for disclosure and of providing such information. A final rule published elsewhere in this issue of the **Federal Register** amends the existing Data Bank regulations (45 CFR part 60) to remove regulatory restrictions on allowable methods of payment to permit the Secretary to announce alternate payment methods through periodic notice in the **Federal Register**. Section 60.12(c)(3) of the regulations states that the Secretary shall announce the method of payment of fees payable to the Data Bank through periodic announcement in the **Federal Register**. In determining the method, the Secretary shall consider efficiency, effectiveness, and convenience for the Data Bank users and the Department.

An assessment of the full operating costs related to processing requests for disclosure of Data Bank information as required by the DHHS Appropriations Act of 1994 (title II of Pub. L. 103–112, dated October 21, 1993), as well as the comparative costs of the various methods for filing and paying for queries has resulted in a decision to expand the options for methods of payment of Data Bank fees available to users.

Effective upon publication, the following methods of fee payment will all be accepted by the Data Bank: credit card, electronic funds transfer, check or money order.

Allowable methods of fee payment will be reviewed periodically and revised as necessary, based upon experience. Any changes in the methods of fee payment accepted, and the effective date of the change, will be announced in the **Federal Register**.

Dated: March 14, 1995.

Ciro V. Sumaya,

Administrator.

[FR Doc. 95–12908 Filed 5–25–95; 8:45 am]

BILLING CODE 4160–15–P

Public Health Service

FIN 0905–ZA91

Notice Regarding Section 602 of the Veterans Health Care Act of 1992 New Drug Pricing

AGENCY: Public Health Service, HHS.

ACTION: Notice.

SUMMARY: Section 602 of Public Law 102–585, the "Veterans Health Care Act of 1992," enacted section 340B of the Public Health Service Act ("PHS Act"), "Limitation on Prices of Drugs Purchased by Covered Entities." Section 340B provides that a manufacturer who sells covered outpatient drugs to eligible entities must sign a pharmaceutical pricing agreement with the Secretary of Health and Human Services in which the manufacturer agrees to charge a price for covered outpatient drugs that will not exceed an amount determined under a statutory formula.

The purpose of this notice is to inform interested parties of the following proposed guidelines relative to new drug pricing. Public comment is invited.

DATES: The public is invited to submit comments on the proposed guidelines by June 26, 1995. After consideration of the comments submitted, the Secretary will issue the final guidelines.

FOR FURTHER INFORMATION CONTACT: Marsha Alvarez, R. Ph., Director, Drug Pricing Program, Bureau of Primary Health Care, Health Resources and Services Administration, 4350 East West Highway, 10th Floor, Bethesda, MD 20814, Phone (301) 594–4353, FAX (301) 594–4982.

SUPPLEMENTARY INFORMATION: The Office of Drug Pricing has developed the following guidelines to facilitate program implementation:

New Drug Pricing

Calculation of the current quarter PHS ceiling price for each covered outpatient drug, as provided in section 340B(a)(1) of the PHS Act, is based upon data supplied to the Medicaid Drug Rebate Program (i.e., average manufacturer price, "AMP," and Best Price, "BP"). The manufacturer calculates pricing information for all of its covered outpatient drugs and sends this pricing data to the Health Care Financing Administration (HCFA) within 30 days after the end of the quarter. HCFA provides PHS with the data necessary for PHS to determine the ceiling price. PHS determines the ceiling price based on the rebate required under the Medicaid drug rebate program. For calendar year 1995, the Medicaid basic rebate for single source and innovator multiple source drugs is the greater of 15.2 percent of the AMP or the AMP minus best price. In calendar year 1996 and thereafter, the rebate percentage decreases to 15.1 percent. An additional rebate must also be paid for single source and innovator multiple source drugs in the amount by which the increase in the AMP exceeds the increase in the Consumer Price Index—Urban (CPI–U). The PHS ceiling price is computed based on the combined basic and additional rebate amounts under the Medicaid program. For non-innovator multiple source drugs, the rebate percentage is 11 percent of the AMP.

For PHS pricing purposes, the timeframe for reporting the pricing data is a problem with respect to new drugs because there is a two quarter lag for new drug pricing information. For new drugs, AMP is not available until after the end of the first full quarter after the day on which the drug was first sold. For example, if a new drug was first sold on January 15, the AMP for the first full quarter would not be available until after June 30. Manufacturers would report the baseline AMP for this new drug to HCFA by July 31.

This time lag is not a problem for the State Medicaid agencies because they bill manufacturers for a rebate after the covered outpatient drugs are dispensed to Medicaid beneficiaries. However, to comply with the requirements of section 340B of the PHS Act, the PHS ceiling price must be determined before the covered outpatient drug is sold to the covered entity.

Because there is no sales data for a new drug from which to determine the PHS ceiling price, the Office of Drug Pricing is proposing to utilize a ceiling price estimated by the manufacturer until sufficient data is available to calculate the AMP and BP of the new drug. Any adjustments necessary to reconcile differences between the estimated and the actual ceiling price will be in the form of a retroactive charge back or rebate after the actual ceiling price is established.

Because the manufacturer calculates the PHS ceiling price using a two quarter data lag, the manufacturer could estimate the new drug ceiling price for three quarters. For example, a new drug that comes on the market in February (January–March quarter) will have an estimated PHS ceiling price for that quarter. AMP and BP data will be collected during the second quarter (April–June) and submitted to HCFA within 30 days after the third quarter (July–September) for calculation of the rebate percentage. Because pricing needs to be transmitted to wholesalers two weeks before the beginning of the quarter, an accurate PHS ceiling price for the third quarter will not be available at that time. The manufacturer must continue to estimate the PHS ceiling price for the second and third quarters, and will be able to calculate an accurate PHS ceiling price for the fourth

quarter (October–December). All retroactive charge back or rebate adjustments necessary to reconcile the estimated ceiling price with the actual ceiling price must be completed by the end of the next quarter (i.e., March 31 of the next year).

Dated: May 10, 1995.

Ciro V. Sumaya,

Administrator, Health Resources and Services Administration.

[FR Doc. 95–13031 Filed 5–25–95; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

[Docket No. N–95–3762; FR–3613–N–03]

Announcement of Funding Awards for Preservation Support Grants and Partial Cancellation

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Announcement of funding awards and notice of partial cancellation.

SUMMARY: The Notice of Funding Availability (NOFA) published in the **Federal Register** on June 14, 1994 (59 FR 30640), announced the availability of up to $6 million in funding for Preservation Support Grants. Eligible applicants could apply in one of two categories. First, Outreach and Training; and second, Preservation Activity Grants. This announcement notifies the public of the cancellation of the Preservation Activity Grant, in part, because the language of the NOFA did not allow HUD to select the types of activities it wished to fund. The Department would have been required to fully fund applicants in rank order, even if part or all of a high ranking application contained activities that the Department did not find appropriate for the current needs of the Preservation program.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department under the Preservation Support Grants NOFA. This announcement contains the names and addresses of the award winners and the amounts of the awards for the Outreach and Training Grants.

FOR FURTHER INFORMATION CONTACT: Kerry J. Mulholland, Acting Director, Preservation Division, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708–2300, extension 2649. The TDD number for the hearing impaired is (202) 708–9300. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The Outreach and Training grant funds were made available to resident-controlled or community-based nonprofit organizations with experience in resident education and organizing to conduct community-, city-, or county-wide outreach to identify, organize and deliver training to residents of eligible low-income housing.

The 1995 awards announced in this Notice were selected for funding based on applications submitted pursuant to the NOFA published in the **Federal Register** on June 14, 1994 (59 FR 30640). Applications were reviewed and selected for funding on the basis of selection criteria contained in that Notice.

A total of $3.4 million was awarded to 10 grantees who will aid residents in organizing and in possibly pursuing the purchase of developments where affordable status is threatened. In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989), the Department is publishing the names, addresses, and amounts of those awards as follows:

LOW INCOME HOUSING: PRESERVATION SUPPORT GRANTS FOR OUTREACH AND TRAINING

Tides Foundation/Coalition for Low Income Housing, 1388 Sutter Street, San Francisco, CA	$358,500
Boston Affordable Coalition, 353 Columbus Avenue, Boston, MA	450,000
Antidisplacement Project, 57 School Street, Springfield, MA	395,257
Metropolitan Tenants Organization, 2125 W. North Avenue, Chicago, IL	288,000
L. A. Center for Affordable Tenant Housing, 1296 N. Fairfax Avenue, Los Angeles, CA	450,000
Ironbound Community Corporation, 95 Fleming Avenue, Newark, NJ	144,000
Reston Interfaith Housing, 2329 Hunter Woods Plaza, Reston, VA	216,000
Texas Tenants Union, 5405 East Grand Avenue, Dallas, TX	297,000
Metropolitan Tenants Organization, 2125 West North Avenue, Chicago, IL	288,000
California Coalition for Rural Housing, 926 J Street, Suite 422, Sacramento, CA	450,000
New York State Tenant & Neighborhood Information Service, 248 Hudson Avenue, Albany, NY	450,000

Dated: May 17, 1995.

Nicolas Retsinas,

Assistant Secretary for Housing, Federal Housing Commissioner.

[FR Doc. 95–12920 Filed 5–25–95; 8:45 am]

BILLING CODE 4210–27–M

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–95–1917; FR–3778–N–38]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: May 26, 1995.

ADDRESSES: For further information, contact David Pollack, Department of Housing and Urban Development, Room 7254, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1234; TDD number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless V. Veterans Administration*, No 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Correction

The Navy Family Housing in Chicopee, Massachusetts, water and electrical services, will be inoperable once the military vacates the property. A substantial and costly utility systems modifications will be necessary. These properties appeared in the May 19, 1995 **Federal Register**.

Dated: May 19, 1995.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 95–12799 Filed 5–25–95; 8:45 am]

BILLING CODE 4210–25–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Notice for Publication, AA–6986–A and AA–6986–C Alaska Native Claims Selection; Alaska

[AK–962–1410–00–P]

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 16(b) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1615(b), will be issued to the Cape Fox Corporation for certain lands in the vicinity of Ketchikan, Alaska.

Copper River Meridian, Alaska

Tps. 74 S., Rs. 90 and 91 E.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Ketchikan Daily News. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until June 26, 1995 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Jerri E. Sansone,

Land Law Examiner, Branch of Gulf Rim Adjudication.

[FR Doc. 95–12956 Filed 5–25–95; 8:45 am]

BILLING CODE 4310–JA–P

[AZ–040–7122–00–5513; AZA 28793]

Notice of Proposed Exchange of Lands in Cochise County, Graham, Pima, and Santa Cruz Counties, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Bureau of Land Management is considering a proposal to exchange land pursuant to Section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716), as amended. The exchange has been proposed by the Phelps Dodge Corporation and is referred to as the Safford Exchange Project. The following described public land is being considered for disposal by the United States:

Gila and Salt River Meridian, Arizona

T. 6 S., R. 25 E.,
- Sec. 13, N½;
- Sec. 14, NE¼.

T. 5 S., R. 26 E.,
- Sec. 19, SE¼;
- Sec. 20, lot 1, SW¼, N½SE¼, SW¼SE¼;
- Sec. 22, part of SE¼;
- Sec. 23, part of W½W½SW¼;
- Sec. 26, part of W½;
- Sec. 27, part of E½E½;
- Sec. 28, lots 1–5, inclusive;
- Sec. 29, lots 1 and 2, W½NE¼, NW¼, S½;
- Sec. 30, lots 3 and 4, E½, E½SW¼;
- Sec. 33, lots 1–5, inclusive, S½SW¼;
- Sec. 34, lots 1–7, inclusive, NE¼SE¼;
- Sec. 35, lots 4–9, inclusive, SE¼NE¼, E½SE¼;

T. 6 S., R. 26 E.,
- Sec. 1, lots 3–10, inclusive, lots 13, 14, 16, 17 and 18, SW¼NW¼, NW¼SW¼, S½SW¼, Part of Tract 37, part of MS4590;
- Sec. 2, lots 5–10, inclusive, SW¼NW¼, S½;
- Sec. 3, lots 1, 2, 3 and 6, S½N½, S½;
- Sec. 4, lots 1–4, inclusive, S½NE¼, SE¼NW¼, S½;
- Sec. 5, lot 1, E½SW¼, SE¼;
- Sec. 8, E½, E½NW¼, E½W½NW¼, NE¼SW¼, E½NW¼SW¼, E½SE¼SW¼;
- Sec. 9, All;
- Sec. 10, All;
- Sec. 11, All;
- Sec. 12, lots 5–13, inclusive, NW¼, part of Tract 37, Tract 38;
- Sec. 14, All;
- Sec. 15, All;
- Sec. 16, N½;
- Sec. 17, N½;
- Sec. 18, lots 1 and 2, NE¼, E½NW¼;
- Sec. 23, NE½.

T. 5 S., R. 27 E.,
- Sec. 31, lots 1 and 2, NE¼, E½NW¼;
- Sec. 32, lots 1 and 2, N½, N½SW¼, SE½;
- Sec. 33, All.

T. 6 S., R. 27 E.,
- Sec. 3, lots 3 and 4, S½NW¼, SW¼;
- Sec. 6, lots 5, 12, 13 and 14, Part of MS4590;
- Sec. 7, lots 9 and 12, part of Tract 37;
- Sec. 9, lots 1, 2, 3, 5, 6 and 7, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
- Sec. 10, NW¼;
- Sec. 17, lots 1, 3, 4 and 5, E½NE¼, S½;
- Sec. 18, lots 5–9, inclusive, part of tract 37;
- Sec. 20, N½.

The areas described aggregate approximately 15,000 acres.

Subject to valid existing rights, the public land identified above has been segregated from appropriation under the public land laws, mineral laws, and mineral leasing laws for a period of five years beginning on December 15, 1994. In exchange the United States will acquire the following described land from Phelps Dodge Corporation:

Gila and Salt River Meridian, Arizona

T. 18 S., R. 16 E.,
- Sec. 24, lots 1–4, inclusive, W½NE¼, NW¼, W½SE¼.

T. 18 S., R. 18 E.,
- Sec. 5, lots 1 and 2, S½NE¼, SE¼;

T. 20 S., R. 18 E.,
- Sec. 9, SE¼;
- Sec. 10, S½SW¼.

T. 5 S., R. 22 E.,
- Sec. 25, SW¼, SW¼SE¼.

T. 5 S., R. 23 E.,
- Sec. 30, NE¼NE¼, W½NE¼, E½NW¼.

T. 5 S., R. 27 E.,
- Sec. 3, S½SW¼NW¼, N½SW¼, NW¼SE¼;
- Sec. 10, S½NE¼ excluding 5 acres, NE¼SE¼;
- Sec. 11, NW¼SW¼;
- Sec. 14, W½;
- Sec. 23, W½.

T. 14 S., R. 28 E.,
- Sec. 9, E½SE¼;
- Sec. 10, NE¼, E½NW¼, S½.

The areas described aggregate approximately 2,963.00 acres.

More detailed information concerning the proposed exchange may be obtained by contacting Tom Terry, Project Manager, Safford District Office, 711 14th Avenue, Safford, Arizona 85546, (520) 428–4040 or, William J. Ruddick, Team Leader, Arizona Exchange Team, Phoenix District office, 2015 West Deer Valley Road, Phoenix, Arizona 85027, (602) 780–8090.

Interested parties may submit comments concerning the proposed exchange to the District Manager, Safford District Office, at the above Safford address. In order to be considered in the environmental analysis of the proposed exchange, comments must be in writing to the District Manager and be postmarked within 45 days after the initial publication of this notice.

Dated: May 9, 1995.

William T. Civish,

District Manager.

[FR Doc. 95–12918 Filed 5–25–95; 8:45 am]

BILLING CODE 4310–32–M

[WY–923–1400; WYW 123107]

Notice of Conveyance and Opening Order; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of exchange of public land in Park County for private land in Big Horn and Park Counties, and order providing for opening of public land.

SUMMARY: This notice advises the public of completion of a two-phased, equal value exchange of land between the Bureau of Land Management and Hunt Oil Company, under the authority of Section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716, as amended by the Federal Land Exchange Facilitation Act of 1988, Public Law 100-409. The order opens the land acquired by the United States to the operation of the public land and mining laws, and additionally opens lands which were initially segregated and not selected for the final exchange transaction.

EFFECTIVE DATE: May 26, 1995.

FOR FURTHER INFORMATION CONTACT: Tamara Gertsch, BLM Wyoming State Office, P.O. Box 1828, 2515 Warren Avenue, Cheyenne, Wyoming 82003, 307–775–6115.

SUPPLEMENTARY INFORMATION:

1. The following Federal land has been conveyed to Hunt Oil Company:

Sixth Principal Meridian

T. 49 N., R. 99 W.,
Sec. 4, lot 5;
Sec. 7, lots 5 and 23;
Sec. 9, W½NW¼, NW¼SW¼;
Sec. 17, lot 8, SW¼SE¼;
Tract 41, lots 26, 32, 34, and 37.
T. 50 N., R. 99 W.,
Sec. 30, lots 13 and 14;
Sec. 31, lot 37;
Sec. 32, lot 8;
Sec. 33, lots 4 and 23, SE¼SW¼, S½SE¼.
Tract 41.
T. 53 N., R. 99 W.,
Sec. 27, NW¼, NW¼SW¼;
Sec. 28, E½, E½W½;
Sec. 30, lot 1;
Sec. 32, NW¼NW¼.
T. 50 N., R. 101 W.,
Sec. 1, SW¼NW¼, W½SW¼;
Sec. 2, lots 1-3, S½NE¼, E½SE¼;
Sec. 4, lot 5, NE¼SW¼;
Sec. 6, lots 3-7;
Sec. 10, NE¼, E½NW¼, NE¼SW¼, N½SE¼;
Sec. 12, NW¼, NW¼SW¼;
Sec. 14, NE¼NE¼, S½NE¼;
Sec. 16, lot 1;
Lot 52.
T. 51 N., R. 101 W.,
Sec. 18, lot 12;
Sec. 19, lot 5, NW¼NE¼, S½NE¼, SE¼;
Sec. 20, lots 7-9;
Sec. 22, lots 2-6, S½SW¼, SW¼SE¼;
Sec. 27, NE¼, NE¼SE¼, E½SW¼;
Sec. 28, lot 2, S½SE¼;
Sec. 30, lots 1 and 2;
Sec. 31, lots 1-5, W½NE¼, SE¼NE¼, E½W½, NW¼SE¼;
Sec. 32, lots 2-4;
Sec. 34, lots 1 and 2;
Sec. 35, lot 7, SE¼SW¼;
Tract 38A, Tract 38B, Tract 38C, and Tract 71J.
T. 50 N., R. 102 W.,
Sec. 1, lot 1, SE¼NE¼;
Sec. 9, lot 1;
Sec. 10, lots 1 and 2;
Sec. 12, lots 1, 2, and 5;
Sec. 13, lot 3;
Sec. 15, lot 1;
Sec. 22, lot 9.
T. 51 N., R. 102 W.,
Sec. 16, lot 4;
Sec. 19, SE¼NW¼;
Sec. 36, lots 1 and 6, SE¼NE¼, E½SE¼;
Tract 80A.
T. 50 N., R. 103 W.,
Sec. 5, lots 1 and 2.
T. 51 N., R. 103 W.,
Sec. 14, lot 6, SW¼SW¼;
Sec. 15, lot 5, SE¼SW¼, SE¼;
Sec. 21, lots 1–4;
Sec. 22, N½, N½SW¼, SE¼;
Sec. 23, SW¼;
Sec. 27, N½NE¼;
Sec. 33, lot 2;
Sec. 35, lot 12.
T. 50 N., R. 104 W.,
Sec. 1, lots 10, 11, and 14;
Sec. 2, lot 6;
Sec. 10, lots 8 and 10;
Sec. 11, lots 13 and 16, NE¼NE¼;
Sec. 14, lots 7, 11, and 14.
The land described contains 6,784.00 acres.

2. The above described land in addition to other land was segregated from appropriation under the public land and mining laws by Notices of Proposed Exchanges (WYW 123107), which published in the **Federal Register** on July 28, 1992, and on April 1, 1993, at (57 FR 33365 and 58 FR 17279), respectively, and were corrected by publication in the **Federal Register** on May 11, 1993, at (58 FR 27740).

3. In exchange for the land described in paragraph 1, the U.S. acquired the following non-Federal land from Hunt Oil Company:

Sixth Principal Meridian

T. 49 N., R. 96 W.,
Sec. 32, E½, E½NW¼;
Sec. 33, W½NW¼, SW¼.
T. 49 N., R. 97 W.,
Sec. 22, S½;
Sec. 23, SW¼, W½SE¼.
T. 53 N., R. 98 W.,
Sec. 18, lots 1, 2, and E½NW¼.
T. 53 N., R. 99 W.,
Sec. 17, lots 1–3, NW¼, N½SW¼;
Sec. 18, NE¼NE¼, SE¼NE¼;
Sec. 21, NE¼SE¼NE¼;
Sec. 22, SW¼NW¼, E½NW¼SW¼;
Sec. 27, N½NE¼, SE¼NE¼.
T. 53 N., R. 100 W.,
Sec. 12, NE¼SE¼;
Sec. 22, SE¼SE¼;
Sec. 33, SE¼NE¼;
Sec. 34, S¼NW¼, SW¼NE¼.
T. 49 N., R. 103 W.,
Sec. 4, lots 1–5, SW¼NE¼, SE¼NW¼, SW¼, W½SE¼, SE¼SE¼;
Sec. 5, lots 1–5, 8, 9, S½NW¼, SW¼, S½SE¼;
Sec. 6, SE¼NE¼, SE¼SW¼;
Sec. 7, NE¼, NE¼NW¼;
Sec. 8, W½NE¼, SE¼NE¼, NW¼;
Sec. 9, N½;
Lot 43, Lot 44A, and Lot 44B.
The land described contains 4,371.18 acres.

4. At 9 a.m. on May 26, 1995, the land described in paragraph 3 shall be open to the operation of the public land and mineral laws, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on May 26, 1995, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

5. At 9 a.m. on May 26, 1995, the following land which was segregated as described in paragraph 2, but was not part of the final selected Federal land in the exchange, shall be open to the operation of the public land and mining laws, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on May 26, 1995, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Sixth Principal Meridian

T. 53 N., R. 99 W.,
Sec. 18, lots 9 and 10;
Sec. 19, lots 1 and 2.
T. 53 N., R. 100 W.,
Sec. 25, E½NE¼, W½W½, SE¼.
T. 51 N., R. 101 W.,
Sec. 18, lot 11.
T. 50 N., R. 102 W.,
Sec. 7, lot 14;
Sec. 17, SW¼SW¼;
Sec. 18, lots 5, 7, 8, 9, 10 and SE¼SE¼;
Sec. 19, lots 3, 4, 5, 6, and W½NE¼, SE¼NE¼, E½W½;
Sec. 20, NE¼SE¼.
T. 51 N., R. 102 W.,
Sec. 23, SW¼SE¼;
Sec. 26, W½NE¼.

Melvin Schlagel,

Realty Specialist.

[FR Doc. 95–12949 Filed 5–25–95; 8:45 am]

BILLING CODE 4310–22–P

[AK–042–05–1220–00]

Limited Use to Dog Mushing Wheeled Carts or Vehicles on Public Lands in the Anchorage District, AL

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of limited use to dog mushing wheeled carts or vehicles on public lands in the Anchorage District, Anchorage, Alaska.

SUMMARY: Closure of all lands and waters, within the 730 acre Campbell Tract Facility, Anchorage District, to dog mushing wheeled carts or vehicles during the snow free season. This snow free season closure is being established to reduce degradation of the trails and conflicts with other user groups. The intended effect is a safer, more natural environment.

EFFECTIVE DATE: The limited use of dog mushing wheeled carts or vehicles on Campbell Tract is effective July 1, 1995.

ADDRESSES: For further information contact Nicholas Douglas, Bureau of Land Management (BLM), Anchorage District Office, 6881 Abbott Loop Road, Anchorage, Alaska 99507; Telephone (907) 267–1248.

FOR FURTHER INFORMATION CONTACT: Janelle Eklund, (907) 267–1278.

SUPPLEMENTARY INFORMATION: Authority for this limited use of dog mushing wheeled carts or vehicles is contained in CFR Title 43, Chapter II, Part 8360, Subparts 8365.1, and 8365.1–6.

Dated: May 17, 1995.

Tom Allen,

State Director.

[FR Doc. 95–12952 Filed 5–25–95; 8:45 am]

BILLING CODE 4310–JA–M

Fish and Wildlife Service

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications.

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

Permit No. PRT–802776

Applicant: 3D/Environmental, Cincinnati, Ohio.

The applicant requests a permit to conduct mussel surveys which involve non-lethal take of the Eastern fanshell mussel (*Cyprogenia stegaris*) in the Wabash River, Wabash County, Indiana, for enhancement of propagation or survival of the species.

Permit No. PRT–802777

Applicant: John O. Whitaker, Jr., Terre Haute, Indiana.

The applicant requests a permit to bank Indiana bats (*Myotis sodalis*) and gray bats (*Myotis grisescens*) in the States of Indiana, Ohio, Illinois, and Kentucky for enhancement of propagation or survival of the species.

Written data or comments should be submitted to the Regional Director, U.S. Fish and Wildlife Service, Division of Endangered Species, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056, and must be received within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Division of Endangered Species, 1 Federal Drive, Fort Snelling, Minnesota 55111–5046. Telephone: (612/725–3536, x250); FAX: (612/725–3526).

Dated: May 19, 1995.

John A. Blankenship,

Assistant Regional Director, Ecological Services, Region 3, Fish and Wildlife Service, Fort Snelling, Minnesota.

[FR Doc. 95–12953 Filed 5–25–95; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

Notice of Intent To Issue a Prospectus for the Operation and Management of Two Full-Service Gymnasiums and Swimming Pool

SUMMARY: The National Park Service is seeking a concessioner to operate, under a ten year contract, two full-service gymnasiums and an indoor swimming pool facility at the Presidio of San Francisco, Golden Gate National Recreation Area. These facilities would be operated for the public under the provisions of a Concession Contract to be issued through a two part concessioner selection process. Phase One of the selection process is to establish a list of experienced and financially able organizations. Those selected organizations will be asked to make offers under the terms of a Phase Two Prospectus. This notice is the formal announcement of the availability of this business opportunity, the initiation of the contracting process, and of Phase One of that process.

SUPPLEMENTAL INFORMATION: The Presidio has been transferred from the Department of the Army to the National Park Service and is a component of Golden Gate National Recreation Area. A number of facilities will now become available for public use under the administration of the National Park Service. The two gymnasiums and an indoor swimming pool are some of these facilities.

The National Park Service is seeking organizations to qualify under the Phase One process for the management and operation of the two gymnasiums and indoor swimming pool facilities being deactivated by the Department of the Army, place them in effective operation for the public promptly, finance daily operations, and finance and make such repairs and improvements as may be necessary to conduct safe, quality operations and meet the operational needs of the operators.

In this regard the requirements that must be met in Phase One in order for an offeror to be asked to participate in Phase Two include demonstrated current experience in operating health club and recreational facilities similar to those offered by this notice and a demonstrated financial ability to start operations promptly and to make the needed improvements.

Those organizations that do not participate in or qualify under the Phase One process will not be eligible to participate in the Phase Two process.

If you feel that your organization would be interested in this business opportunity and could demonstrate the necessary operational experience and financial stability and strength, please ask to be placed on the mailing list for the Phase One Prospectus by writing or calling: National Park Service, Concession Program Management Division, 600 Harrison Street, Suite 600, San Francisco, CA 94107–1327, or call: (415) 744–3981—Teresa Jackson.

When the Phase I Prospectus is issued, submittals will be accepted for a Thirty (30) day period under terms

that will be described in the Phase I Prospectus. The release of the Phase I Prospectus is expected to occur shortly after the publication of this notice.

Dated: May 16, 1995.

Stanley T. Albright,

Regional Director, Western Region.

[FR Doc. 95–12940 Filed 5–25–95; 8:45 am]

BILLING CODE 4310–70–P

Pea Ridge National Military Park Advisory Team; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Pea Ridge National Military Park Advisory Team will be held at 7 p.m., on Thursday, June 15, 1995, in the park visitor center auditorium, 15930 Highway 62, Garfield, Arkansas.

The Pea Ridge National Military Park Advisory Team was established under authority of section 3 of Public Law 91–383 (16 U.S.C. 1a–2(c)) to provide a forum for dialogue between community representatives and the Pea Ridge National Military Park on management issues affecting the park and the community.

The matter to be discussed at this meeting includes:

—Boundary Study

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come-first served basis. Any member of the public may file a written statement concerning the matters to be discussed with the Superintendent, Pea Ridge National Military Park.

Persons wishing further information concerning this meeting, or who wish to submit written statements may contact Steve Adams, Superintendent, Pea Ridge National Military Park, P.O. Box 700, Pea Ridge, AR 72751–0700, Telephone 501/451–8122.

Minutes of the meeting will be available for public inspection four weeks after the meeting at the office of Pea Ridge National Military Park.

Dated: May 15, 1995.

Jerry Rogers,

Regional Director Southwest Region.

[FR Doc. 95–12993 Filed 5–25–95; 8:45 am]

BILLING CODE 4310–70–M

Subsistence Resource Commission Meeting

AGENCY: National Park Service, Interior.

ACTION: Subsistence Resource Commission meeting.

SUMMARY: The Superintendent of Denali National Park and the Chairperson of the Subsistence Resource Commission for Denali National Park announce a forthcoming meeting of the Denali National Park Subsistence Resource Commission.

The following agenda items will be discussed:

(1) Call to order by Chair.

(2) Roll call and confirmation of quorum.

(3) Superintendent's welcome and introductions.

(4) Review of SRC function and purpose.

(5) Minutes of February 17, 1995, meeting: approval.

(6) Additions and corrections to agenda.

(7) Old business:

a. Roster regulations.

b. Hunting Plan Proposal #7.

c. Northern access routes to Kantishna.

d. Customary and traditional determination issues related to the Parks Highway.

e. Park planning.

f. Agency reports.

(8) Federal Subsistence Management Program update.

a. Federal Subsistence Board actions.

b. Katie John court case update.

(9) New business:

a. NPS trapping regulations.

b. ATV use.

c. Subsistency workgroup report.

(10) Public and other agency comments.

(11) Set time and place of next SRC meeting.

(12) Adjournment.

DATES: The meeting will be held Friday, June 16, 1995. The meeting will begin at 9 a.m. and end at approximately 6 p.m.

LOCATION: The meeting will be held at the McKinley Village Community Center in Denali Park, Alaska.

FOR FURTHER INFORMATION CONTACT: Steve Martin, Superintendent, Denali National Park, PO Box 9, Denali Park, Alaska 99755. Phone (907) 683–2294.

SUPPLEMENTARY INFORMATION: The Subsistence Resource Commissions are authorized under Title VIII, Section 808, of the Alaska National Interest Lands Conservation Act, Pub. L. 96–487, and operate in accordance with the provisions of the Federal Advisory Committees Act.

Paul R. Anderson,

Acting Regional Director.

[FR Doc. 95–13030 Filed 5–25–95; 8:45 am]

BILLING CODE 4310–70–M

Agenda for the June 17, 1995 Meeting of the Advisory Commission for the San Francisco Maritime National Historical Park; Public Meeting Fort Mason, Building F (Firehouse) 9:00 AM–1:15 PM

9:00 AM
Welcome—Neil Chaitin, Chairman
Opening Remarks—Neil Chaitin, Chairman, Marc Hayman, Acting Superintendent
Old Business
Approval of Minutes
9:15 AM East Coast Trip Report, Neil Chaitin, Chairman
9:30 AM
Orientation to Park Departments
Education, John Cunnane, Supervisory Park Ranger, Revell Carr, Interpretive Specialist, Nancy Martling, Director, Environmental Living Program
Exhibits, Richard Everett, Curator of Exhibits
10:00 AM Update—General Management Plan, Marc Hayman, Acting Superintendent
10:15 AM Advisory Commission Committee Reports, Committee Chairmen
10:30 AM Break
11:00 AM Report on the General Condition of the Historic Ships, Steve Hyman, Acting Ships Manager
11:45 AM Mandated Preservation Methods and Techniques, Cultural Resources Representative, Western Regional Office
12:15 PM Restoration Materials: Historically accurate vs contemporary substitutes, Stephen Canright, Curator of History
12:45 PM Public question and comments
1:00 PM Agenda Items/Date for next meeting
1:15 PM Adjournment

Dated: May 19, 1995.

Bruce M. Kilgore,

Regional Director, Western Region.

[FR Doc. 95–13029 Filed 5–25–95; 8:45 am]

BILLING CODE 4310–70–P

INTERSTATE COMMERCE COMMISSION

Notice of Intent To Engage In Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office: Casey's General Stores, Inc., P.O. Box 3001, Ankeny, IA 50021–8045.

2. Wholly owned subsidiary which will participate in the operations, and State(s) of incorporation: Casey's Services Company, Iowa.

Vernon A. Williams,

Secretary.

[FR Doc. 95–12977 Filed 5–25–95; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 32702]

Eastern Idaho Railroad, Inc.—Trackage Rights Exemption—Union Pacific Railroad Company

Union Pacific Railroad Company (UP) has agreed to grant overhead trackage rights to Eastern Idaho Railroad, Inc. (EIRR) over approximately 23.4 miles of UP trackage located between milepost 274 at Minidoka and milepost 297.4 west of Senter, ID, including the sidings at Senter (milepost 295), Max (milepost 276), and Hawley (milepost 267). The purpose of this transaction is to provide EIRR alternate interchange opportunities with UP during periods of traffic congestion at Minidoka. The trackage rights were to become effective on or after May 16, 1995.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Karl Morell, Suite 1035, 1101 Pennsylvania Avenue, N.W., Washington, DC 20004.

As a condition to use of this exemption, any employees adversely affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: May 22, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–12979 Filed 5–25–95; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–55 (Sub-No. 489X)]

CSX Transportation, Inc.—Abandonment Exemption—in Ben Hill and Irwin Counties, GA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903–10904 the abandonment by CSX Transportation, Inc., of 2.71 miles of rail line from milepost SLA–660.6, near Fitzgerald, to milepost SLA–663.31, near Wiggins, in Ben Hill and Irwin Counties, GA, subject to standard labor protective conditions.

DATES: Provided no former expression of intent to file an offer of financial assistance has been received, this exemption will be effective on June 25, 1995. Formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2)[1] are due June 5, 1995. Petitions to stay must be filed by June 12, 1995. Requests for a public use condition in conformity with 49 CFR 1152.28(a)(2) are due June 15, 1995. Petitions for reconsideration must be filed by June 20, 1995.

ADDRESSES: Send pleadings, referring to Docket No. AB–55 (Sub-No. 489X), to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Avenue N.W., Washington, D.C. 20423; and (2) Petitioner's representative: Charles M. Rosenberger, 500 Water Street, Jacksonville, FL 32202.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5610. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Interstate Commerce Commission Building, 1201 Constitution Avenue, N.W., Room 2229, Washington, D.C. 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services at (202) 927–5721.]

Decided: May 11, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioners Simmons and McDonald.

Vernon A. Williams,

Secretary.

[FR Doc. 95–12980 Filed 5–25–95; 8:45 am]

BILLING CODE 7035–01–M

[1] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[Docket No. AB–32 (Sub-No. 69)]

Boston and Maine Corporation—Abandonment and Discontinuance of Service—Middlesex County, MA

AGENCY: Interstate Commerce Commission.

ACTION: Exemption from time limit requirements.

SUMMARY: Under 49 U.S.C. 10505, the Commission is exempting Boston and Maine Corporation in this proceeding from the requirements that it post and serve its "notice of intent" not more than 30 days prior to filing its application to abandon and discontinue rail service. The Commission is extending the time limit to June 15, 1995 to enable the carrier to conduct additional negotiations with state and local officials aimed at forestalling abandonment or discontinuance.

DATES: The exemption will take effect on May 26, 1995. Petitions to reopen must be filed by June 15, 1995.

ADDRESSES: Send pleadings referring to Docket No. AB–32 (Sub-No. 69) to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Avenue, NW, Washington, DC 20423; and (2) petitioner's representative: John R. Nadolny, General Counsel, Boston & Maine Corporation, Iron Horse Park, N. Billerica, MA 01862.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660. (TDD for the hearing impaired: (202) 927–5721.)

SUPPLEMENTARY INFORMATION: Under 49 U.S.C. 10904(a)(3)(E), a rail carrier must certify that it has satisfied specified public notice requirements within 30 days prior to filing an application to abandon or discontinue service. Having intended to file its application in this proceeding on May 5, 1995, Boston and Maine Corporation satisfied the notice requirements on or about April 5, 1995. The rail carrier, however, has commenced negotiating with state and local officials and wishes to postpone the date for filing its application until June 15, 1995, to permit additional time for negotiations. Therefore, the Commission is granting the carrier an exemption and extending the time in this proceeding for filing an application after notice is given to June 15. 1995.

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Interstate Commerce Commission Building, 1201 Constitution Avenue, NW, Room 2229, Washington, DC 20423. Telephone:

(202) 289–4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 927–5721.)

Decided: May 19, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioners Simmons and McDonald.

Vernon A. Williams,

Secretary.

[FR Doc. 95–12978 Filed 5–25–95; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with 42 U.S.C. 9622(d)(2) and 6973(d), and Departmental policy, 28 C.F.R. 50.7, notice is hereby given that a proposed consent decree in *United States* v. Broderick Investment Company, et al., Civil Action No. 86–Z–369, was lodged on May 22, 1995 with the United States District Court for the District of Colorado.

The settlement concerns the Broderick NPL Superfund Site north of Denver, Colorado. The predecessor of the owner of the Site operated a wood treatment plant where wood was treated with creosote, pentachlorophenol, and other hazardous substances. Process wastes and associated sludges were disposed of in impoundments or on the ground at the Site, contaminating soils and groundwater. Pursuant to an earlier partial consent decree, defendants conducted a remedial investigation/feasibility study and EPA completed some of the remedial action at the Site. By the terms of this consent decree, settling defendants (Broderick Investment Company and Tom H. Connolly as trustee for those trusts associated with Broderick Investment) will perform all remaining remedial action at the Site and pay EPA's oversight and related future response costs at the Site. Settling defendants, along with the former trustees of the Broderick Investment Company trusts (Colorado National Bank of Denver, N.A. and First Interstate Bank of Denver, N.A.) will reimburse the United States $10.7 million for past response costs incurred at the Site. In return, settling defendants will receive certain covenants not to sue under Sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, and Section 7003 of RCRA, 42 U.S.C. 6973.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Broderick Investment Company, et al.*, DOJ REf. #90–7–1–254. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of RCRA.

The proposed consent decree may be examined at the Office of the United States Attorney, 1961 Stout Street, Suite 1200, Federal Building, Denver, Colorado 80294; the Region VIII Office of the Environmental Protection Agency, 999 18th Street, Suite 700 South, Denver, Colorado 80202; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $23.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Acting Chief, Environment and Natural Resources Division, Environmental Enforcement Section.

[FR Doc. 95–13006 Filed 5–25–95; 8:45 am]

BILLING CODE 4410–01–M

[AAG/A Order No. 103–95]

Privacy Act of 1974; New System of Records; Extension of Comment Period

AGENCY: Department of Justice.

ACTION: Notice of new system of records; extension of comment period.

SUMMARY: On April 21, 1995, the Department of Justice, Bureau of Prisons, published in the **Federal Register** a notice of a new system of records entitled "Telephone Activity Record System (JUSTICE/BOP–011)." 60 FR 19958–59. The system notice provided for a comment period ending May 22, 1995. 60 FR 19958. In response to a request for an extension of the comment period, the Department of Justice is hereby extending the comment period for an additional 30 days, until June 26, 1995.

DATES: The comment period is extended to June 26, 1995.

ADDRESSES: Comments should be addressed to Patricia E. Neely, Staff Assistant, Systems Policy Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (Room 850, WCTR Building).

Dated: May 17, 1995.

Stephen R. Colgate,

Assistant Attorney General for Administration.

[FR Doc. 95–12965 Filed 5–25–95; 8:45 am]

BILLING CODE 4410–05–M

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue

current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Withdrawn General Wage Determination Decision

This is to advise all interested parties that the Department of Labor is withdrawing, from the date of this notice, General Wage Determination No. OK950033 dated February 10, 1995.

Agencies with construction projects pending, to which this wage decision would have been applicable, should utilize the project determination procedure by submitting a SF–308. Contracts for which bids have been opened shall not be affected by this notice. Also, consistent with 29 CFR 1.6(c)(2)(i)(A), when the opening of bids is less than ten (10) days from the date of this notice, this action shall be effective unless the agency finds that there is insufficient time to notify bidders of the change and the finding is documented in the contract file.

Modification to General Wage Determinations Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

New York
- NY950002 (Feb. 10, 1995)
- NY950007 (Feb. 10, 1995)
- NY950013 (Feb. 10, 1995)
- NY950018 (Feb. 10, 1995)
- NY950021 (Feb. 10, 1995)
- NY950026 (Feb. 10, 1995)
- NY950076 (Feb. 10, 1995)

Volume II

District of Columbia
- DC950001 (Feb. 10, 1995)

Maryland
- MD950017 (Feb. 10, 1995)
- MD950025 (Feb. 10, 1995)
- MD950034 (Feb. 10, 1995)
- MD950035 (Feb. 10, 1995)
- MD950036 (Feb. 10, 1995)
- MD950048 (Feb. 10, 1995)
- MD950053 (Feb. 10, 1995)

Pennsylvania
- PA950014 (Feb. 10, 1995)

Virginia
- VA950025 (Feb. 10, 1995)
- VA950104 (Feb. 10, 1995)
- VA950105 (Feb. 10, 1995)

Volume III

South Carolina
- SC950023 (Feb. 10, 1995)

Volume IV

Illinois
- IL950018 (Feb. 10, 1995)

Indiana
- IN950036 (Feb. 10, 1995)
- IN950041 (Feb. 10, 1995)

Michigan
- MI950023 (Feb. 10, 1995)
- MI950026 (Feb. 10, 1995)
- MI950027 (Feb. 10, 1995)

Minnesota
- MN950008 (Feb. 10, 1995)

Volume V

Iowa
- IA950005 (Feb. 10, 1995)

Oklahoma
- OK950027 (Feb. 10, 1995)
- OK950030 (Feb. 10, 1995)
- OK950032 (Feb. 10, 1995)
- OK950035 (Feb. 10, 1995)

Volume VI

Colorado
- CO950001 (Feb. 10, 1995)
- CO950002 (Feb. 10, 1995)
- CO950006 (Feb. 10, 1995)
- CO950007 (Feb. 10, 1995)
- CO950008 (Feb. 10, 1995)
- CO950009 (Feb. 10, 1995)

Nevada
- NV950001 (Feb. 10, 1995)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which included all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 19th day of May 1995.

Alan L. Moss,

Director, Division of Wage Determination.

[FR Doc. 95–12718 Filed 5–25–95; 8:45 am]

BILLING CODE 4510–27–M

Office of the Secretary

Secretary's Task Force on Excellence in State and Local Government Through Labor-Management Cooperation: Meeting

AGENCY: Office of the Secretary, Labor.

ACTION: Notice of public meeting.

SUMMARY: The Secretary's Task Force on Excellence in State and Local Government Through Labor-Management Cooperation was established in accordance with the

Federal Advisory Committee Act (FACA) (Pub. L. 82–463). Pursuant to Section 10(a) of FACA, this is to announce that the Task Force will meet at the time and place shown below.

TIME AND PLACE: The meeting will be held on Thursday, June 22, 1995, from approximately 9 a.m. to 4 p.m. and on Friday, June 23, 1995, from approximately 9 a.m. to 3 p.m. in Conference Room N–3437 B–D in the Department of Labor, 200 Constitution Avenue, NW, Washington, DC.

Agenda

At this meeting, the Task Force intends to hear testimony on and discuss the following topics, among others: (1) Effects on finance, budget, and pension trends on labor-management-cooperation and (2) experiences of state or local elected officials in implementing workplace changes through labor-management cooperation.

Public Participation

The meeting will be open to the pubic. Seating will be available on a first-come, first-served basis. Individuals with disabilities wishing to attend should contact the Task Force if special accommodations are necessary. Individuals or organizations wishing to submit written statements should send 20 copies on or before June 14 to Mr. Charles A. Richards, Designated Federal Official, Secretary of Labor's Task Force on Excellence in State and Local Government through Labor-Management Cooperation, U.S. Department of labor, 200 Constitution Avenue, NW, Room S–2203, Washington, DC 20210. These statements will be thoroughly reviewed and become part of the record.

For the purposes of this meeting, the Task Force is primarily interested in statements that address the topics mentioned above under the heading "Agenda." However, the Task Force continues to welcome submissions that address the questions in the mission statement and the following eight general areas: (1) Finding Models, Ingredients, and Barriers to Service Excellence and Labor-Management Cooperation and, as the following relate to promotion workplace cooperation and excellence; (2) Bargaining and Related Institutions and Practices; (3) Conflict Resolution Skills, Practices, and Institutions; (4) Legal and Regulatory Issues; (5) Effects of Civil Service; (6) Ensuring a High-Performance Work Environment; (7) Political and Electoral Considerations and Relationships; and (8) Financial Background, Financial Security, and Budget Systems.

FOR FURTHER INFORMATION CONTACT: Mr. Charles A. Richards, Designated Federal Official, Secretary of Labor's Task Force on Excellence in State and Local Government through Labor-Management Cooperation, U.S. Department of labor, Room S–2203, Washington, DC 20210, (202) 219–6231.

Signed at Washington, DC, this 22nd day of May 1995.

Robert B. Reich,

Secretary of Labor.

[FR Doc. 95–12961 Filed 5–25–95; 8:45 am]

BILLING CODE 4510–85–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–334 and 50–412]

Beaver Valley Power Station, Unit Nos. 1 and 2; Environmental Assessment and Finding of No Significant Impact

In the matter of Duquesne Light Company; Ohio Edison Company; Pennsylvania Power Company; The Cleveland Electric Illuminating Company; and The Toledo Edison Company.

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of its regulations to Facility Operating Licenses No. DPR–66 and NPF–73, issued to Duquesne Light Company, et al. (the licensee), for operation of the Beaver Valley Power Station, Unit Nos. 1 and 2, located in Beaver County, Pennsylvania.

Environmental Assessment

Identification of the Proposed Action

The proposed action is in accordance with the licensee's application dated February 8, 1995, for exemption from certain requirements of 10 CFR 73.55, "Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage." The exemption would allow implementation of a hand geometry biometric system for site access control such that combined picture badges/keycards for certain non-employees can be taken offsite.

The Need for the Proposed Action

Pursuant to 10 CFR 73.55, paragraph (a), the licensee shall establish and maintain an onsite physical protection system and security organization.

Paragraph (1) of 10 CFR 73.55(d), "Access Requirements," specifies that "licensee shall control all points of personnel and vehicle access into a protected area." Paragraph (5) of 10 CFR 73.55(d) specifies that "A numbered picture badge identification system shall be used for all individuals who are authorized access to protected areas without escort." Paragraph (5) of 10 CFR 73.55(d) also states that an individual not employed by the licensee (i.e., contractors) may be authorized access to protected areas without escort provided the individual "receives a picture badge upon entrance into the protected area which must be returned upon exit from the protected area * * *."

Currently, employee and contractor combined identification badges/keycards are issued and retrieved on the occasion of each entry to and exit from the protected areas of the Beaver Valley Power Station site. Station security personnel are required to maintain control of the badges while the individuals are offsite. This practice has been in effect at the Beaver Valley Power Station since the operating license was issued. Security personnel retain each identification badge/keycard, when not in use by the authorized individual, within appropriately designed storage receptacles inside a bullet-resistance enclosure. An individual who meets the access authorization requirements is issued an individual picture identification card/keycard which allows entry into preauthorized areas of the station. While entering the plant in the present configuration, an authorized individual is "screened" by the required detection equipment and by the issuing security officer. Having received the badge/keycard, the individual proceeds to the access portal, inserts the badge/keycard into the card reader and passes through the turnstile which unlocks if the badge/keycard is valid.

This present procedure is labor intensive since security personnel are required to verify badge/keycard issuance, ensure badge/keycard retrieval, and maintain the badges/keycards in orderly storage until the next entry into the protected area. The regulations permit employees to remove their badges from the site, but an exemption from 10 CFR 73.55(d)(5) is required to permit contractors to take their badges offsite instead of returning them when exiting the site.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the licensee's application. Under the proposed system, all individuals authorized to gain unescorted access will have the physical characteristics of their hand (hand geometry) recorded with their badge/keycard number. Since the hand geometry is unique to each individual and its application in the entry screening function would preclude unauthorized use of a badge/keycard, the requested exemption would allow employees and contractors to keep their badges at the time of exiting the protected area. The process of verifying badge/keycard issuance, ensuring badge/keycard retrieval, and maintaining badges/keycards, could be eliminated while the balance of the access procedure would remain intact. Firearm, explosive, and metal detection equipment and provisions for conducting searches will remain as well. The security officer responsible for the last access control function (controlling admission to the protected area) will also remain isolated within a bullet-resistant structure in order to assure his or her ability to respond or to summon assistance.

Use of a hand geometry biometrics system exceeds the present verification methodology's capability to discern an individual's identity. Unlike the combined photograph identification badge/keycard, hand geometry is nontransferable. During the initial access authorization or registration process, hand measurements are recorded and the template is stored for subsequent use in the identity verification process required for entry into the protected area. Authorized individuals insert their badge/keycard into the card reader and the biometrics system records an image of the hand geometry. The unique features of the newly recorded image are then compared to the template previously stored in the database. Access is ultimately granted based on the degree to which the characteristics of the image match those of the "signature" template.

Since both the badge/keycard and hand geometry would be necessary for access into the protected area, the proposed system would provide for a positive verification process. Potential loss of a badge/keycard by an individual, as a result of taking the badge offsite, would not enable an unauthorized entry into protected areas.

The access process will continue to be under the observation of security personnel. The system of identification badges/keycards will continue to be used for all individuals who are authorized access to protected areas without escorts. Badges/keycards will continue to be displayed by all individuals while inside the protected area. Addition of a hand geometry biometrics system will provide a significant contribution to effective implementation of the security plan at the site.

The change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does involve features located entirely within the restricted area as defined in 10 CFR Part 20. It does not effect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statements for the Beaver Valley Power Station Units Nos. 1 and 2.

Agencies and Persons Consulted

In accordance with its stated policy, on April 18, 1995, the staff consulted with the Pennsylvania State official, Robert C. Maiers of the Bureau of Radiation Protection. Department of Environmental Resources, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated February 8, 1995, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the B.F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Dated at Rockville, Maryland, this 22nd day of May 1995.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I–2, Division of Reactor Projects–I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–12970 Filed 5–25–95; 8:45 am]

BILLING CODE 7590–01–M

Supplement 1 to Revision 1 to Generic Letter 92–01, "Reactor Vessel Structural Integrity"; Issued

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of issuance.

SUMMARY: The Nuclear Regulatory Commission (NRC) issued Supplement 1 to Revision 1 to Generic Letter 92–01, "Reactor Vessel Structural Integrity," on May 19, 1995. This generic letter supplement will be available in the NRC Public Document Room under accession number 9505090312. This generic letter supplement was issued on an expedited basis in accordance with NRC procedures. This generic letter supplement is discussed in Commission information paper SECY–95–118 which will also be available in the NRC Public Document Room.

DATES: The generic letter supplement was issued on May 19, 1995.

ADDRESSES: Not applicable.

FOR FURTHER INFORMATION CONTACT: Edwin M. Hackett, (301) 415–2751.

SUPPLEMENTARY INFORMATION: Not applicable.

Dated at Rockville, Maryland, this 19th day of May 1995.

For the Nuclear Regulatory Commission

Brian K. Grimes,

Director, Division of Project Support, Office of Nuclear Reactor Regulation.

[FR Doc. 95–12969 Filed 5–25–95; 8:45 am]

BILLING CODE 7590–01–M

Uranium Recovery Facilities: Availability of Staff Technical Position on Effluent Disposal at Licensed Uranium Recovery Facilities

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The Nuclear Regulatory Commission is announcing the availability of "Staff Technical Position on Effluent Disposal at License Uranium Recovery Facilities." This Staff Technical Position (STP) is a NRC staff guidance document that provides guidance and discusses the technical and regulatory basis for review and evaluation of proposals for disposal of liquid waste at licensed uranium recovery facilities, including conventional mills and in situ leach facilities. The STP is primarily intended to guide NRC staff reviews of site-specific proposals for disposal of liquid waste, but it can also be used by licensees and applicants for preparation of such proposals.

ADDRESSES: Copies of the STP on effluent disposal at licensed uranium recovery facilities may be requested by writing to: Dr. John H. Austin, Chief, Performance Assessment and Hydrology Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, Mailstop 7–D–13 TWFN, U.S. Nuclear Regulatory Commission, Washington DC 20555, or by calling (301) 415–7252.

FOR FURTHER INFORMATION CONTACT: Dr. Latif S. Hamdan, Performance Assessment and Hydrology Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, Mailstop 7–D–13 TWFN, U.S. Nuclear Regulatory Commission, Washington DC 20555. Telephone: (301) 415–6639.

SUPPLEMENTARY INFORMATION: Persons interested in commenting on the STP on effluent disposal at licensed uranium recovery facilities may provide written comments to Chief, Performance Assessment and Hydrology Branch, Mail Stop TWFN 7–D–13, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Comments received will be considered in any future revisions of the STP. There is no date set for expiration of the comment period.

Dated at Rockville, Maryland, this 19th day of May, 1995.

For the Nuclear Regulatory Commission.

John H. Austin,

Chief, Performance Assessment and Hydrology Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 95–12971 Filed 5–25–95; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

The National Partnership Council; Meeting

AGENCY: Office of Personnel Management.

ACTION: Notice of meeting.

SUMMARY: The Office of Personnel Management (OPM) announces the next meeting of the National Partnership Council (the Council). Notice of this meeting is required under the Federal Advisory Committee Act.

TIME AND PLACE: The Council will meet June 13, 1995, from 1:00 to 3:00 p.m., in the Strom Auditorium of the Richard B. Russell Federal Building, 75 Spring Street, SW., Atlanta, GA 30303.

TYPE OF MEETING: This meeting will be open to the public. Seating will be available on a first-come, first-served basis. Handicapped individuals wishing to attend should contact OPM at the number shown below to obtain appropriate accommodations.

POINT OF CONTACT: Douglas K. Walker, National Partnership Council, Executive Secretariat, Office of Personnel Management, Theodore Roosevelt Building, 1900 E Street, NW., Room 5315, Washington, DC 20415–0001, (202) 606–1000.

SUPPLEMENTARY INFORMATION: The Council is holding meetings outside the Washington, DC Metropolitan area in an effort to get the labor-management partnership message out to as many people as possible. This will be an interactive meeting. There will be presentations on partnership experiences followed by an audience participation segment. Persons seated in the audience will be invited to ask questions from the floor. The meeting will end with a discussion of various Council workplan items.

PUBLIC PARTICIPATION: We invite interested persons and organizations to submit written comments or recommendations. Mail or deliver your comments or recommendations to Mr. Douglas K. Walker at the address shown above. Comments should be received by June 9, in order to be considered at the june 13, meeting.

Office of Personnel Management.

James B. King,

Director.

[FR Doc. 95–12939 Filed 5–25–95; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 33–7170; 34–35750; IC–21086]

Securities Transactions Settlement

AGENCY: Securities and Exchange Commission.

ACTION: Grant of exemption.

SUMMARY: The Securities and Exchange Commission ("Commission" or "SEC") is exempting certain transactions in foreign securities from Rule 15c6–1 under the Securities Exchange Act of 1934, which requires settlement of transactions in three days.

EFFECTIVE DATE: The exemption from rule 15c6–1 for certain transactions in foreign securities will be effective on June 7, 1995.

FOR FURTHER INFORMATION CONTACT: Jerry W. Carpenter, Assistant Director, or Christine Sibille, Senior Counsel, at 202/942–4187, Office of Securities Processing Regulation, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 5–1, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: On October 6, 1993, the Commission adopted Rule 15c6–1 [1] which establishes three business days after the trade date ("T+3") instead of five business days ("T+5") as the standard settlement time frame for most broker-dealer securities transactions. Rule 15c6–1 becomes effective June 7, 1995.[2]

Rule 15c6–1 covers all securities other than exempted securities (including government securities and municipal securities),[3] commercial paper, bankers' acceptances, or commercial bills. In addition, the rule contains specific exemptions for sales of unlisted limited partnership interests and for sales of securities pursuant to a firm commitment offering.[4]

As adopted, Rule 15c6–1 covers purchases and sales of securities between U.S. broker-dealers and their customers even if these securities do not generally trade in the United States. This may create difficulties for broker-dealers that purchase or sell securities in foreign markets to satisfy their obligations to their customers for transactions in the United States because the purchase or sale executed in the foreign market will settle in accordance with the local market's settlement period. If this period is longer than three business days, the broker-dealer will be unable to meet its obligations to its customer in the United States by T+3.

The Securities Industry Association ("SIA") has requested that the Commission permit broker-dealers to settle trades of certain foreign securities executed in a foreign market in accordance with the standard settlement cycle in such foreign market.[5] According to the SIA, customers with delivery vs. payment ("DVP") accounts expect to settle transactions in accordance with local settlement time frames. With respect to all other customers, the SIA states, "The general practice with these accounts is that, once settlement under local rules is agreed as the norm, the trades are automatically booked and confirmed for settlement on the foreign market settlement date."

The Commission notes that many securities that are commonly considered to be foreign securities are settled in the United States because the securities are eligible for deposit at a registered securities depository or there are transfer agents for the securities in the U.S. (*i.e.*, transfer or delivery facilities exist for the securities in the U.S.).[6] Even if there are transfer or delivery facilities in the U.S. available for a security, however, a broker-dealer may be required to purchase and settle the security in a foreign market because there is limited trading in the U.S. in such security.

The Commission believes that it is appropriate to provide a limited exemption for securities that do not generally trade in the U.S. from the scope of Rule 15c6–1. Under the exemption, all transactions in securities that do not have transfer or delivery facilities in the U.S. will be exempt from the scope of Rule 15c6–1.[7] Furthermore, if less than 10% of the annual trading volume in a security that has U.S. transfer or delivery facilities occurs in the U.S., transactions in such security will be exempted from Rule 15c6–1 [8] unless the parties clearly intend T+3 settlement to apply. If a foreign security is not exempted from Rule 15c6–1 under either of these two exemptions, the parties may arrange to settle the transaction in more than three business days if the parties expressly agree to the alternate settlement time frame at the time of the transaction pursuant to paragraph (a) of Rule 15c6–1.

The Commission also is granting an exemption to make clear that Rule 15c6–1 does not apply to transactions that occur outside the United States. For example, if a U.S. broker-dealer were to execute a trade on a foreign exchange with a U.S. or foreign broker-dealer, the contract will not be subject to the rule.[9]

Nevertheless, if the parties intend a transaction to be executed on a registered securities exchange or through a registered securities association, the transaction will be subject to both the rules of the exchange or association and Rule 16c6–1.[10] Further, such transaction will still be subject to the provisions in Regulation T [11] for obtaining customer payment for purchases of foreign securities.[12]

It is hereby ordered that a contract for the purchase or sale of securities for which there is no transfer agent in the United States and which is not eligible for deposit at a registered clearing agency (collectively referred to as "transfer or delivery facilities") shall be exempt from the requirements of Rule 15c6–1.

It is further ordered that if there exists transfer or delivery facilities both in the United States and outside of the United States for a security, a contract for the purchase or sale of such security shall be exempt from the requirements of Rule 15c6–1 if annual trading in such securities in the United States constitutes less than 10% of the aggregate worldwide trading volume.

It is further ordered that a contract executed by a United States broker-dealer outside of the United States for the purchase or sale of securities the terms of which provide for delivery or payment outside of the United States shall be exempt from the requirements of Rule 15c6–1.

This order does not apply to any contract or class of contracts for the purchase or sale of a security which is intended by the parties to be executed by the broker-dealer on a registered securities exchange or through the facilities of a registered securities associations subject to the rules of a national securities exchange or registered securities association and settled through the facilities of a registered clearing organization.

These exemptions are subject to modification or revocation at any time the Commission determines that such modification or revocation is consistent with the public interest or the protection of investors.

Dated: May 22, 1995.

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[1] 17 CFR 240.15c6–1 (1994).

[2] As adopted, Rule 15c6–1 was to become effective June 1, 1995. In order to provide for an efficient conversion, the Commission changed the effective date to June 7, 1995. Securities Exchange Act Release No. 34952 (November 9, 1994), 59 FR 59137.

[3] The Commission approved a proposed rule change of the Municipal Securities Rulemaking Board that requires transactions in municipal securities to settle by T+3. Securities Exchange Act Release No. 35427 (February 28, 1995), 60 FR 12798.

[4] On May 10, 1995, the Commission adopted amendments to Rule 15c6–1 that eliminated the exemption for firm commitment offerings. Securities Exchange Act Release No. 35705 (May 10, 1995), 60 FR 26604.

[5] Letter from Michael T. Reddy, Adviser to the Clearance and Settlement Committee, SIA, to Jonathan Kallman, Associate Director, Commission (October 17, 1994).

[6] For example, a security listed on an exchange or quoted on Nasdaq must have transfer facilities in the U.S. Under Section 6 of the New York Stock Exchange's ("NYSE") Listed Company Manual, an issuer listed on the exchange must provide facilities in New York City for the transfer of securities, and such facilities must complete routine transfers within 48 hours. Under Schedule D, Part V, Section 7 of the National Association of Securities Dealers' ("NASD") By-laws, all market makers must use the facilities of a registered clearing corporation to clear trades in securities quoted on the Nasdaq Stock Market or on the OTC Bulletin Board.

[7] For purposes of this order, a depository receipt will be considered a separate security from the underlying security. Thus, if there are no transfer facilities in the U.S. for a foreign security but there are transfer facilities for a depository receipt based on such foreign security, only the foreign security and not the depositary receipt will be exempt from Rule 15c6–1. A depositary receipt is a security which represents an ownership interest in a specified number of securities that have been deposited with a depositary. Such securities are sometimes called American Depositary Receipts or Global Depositary Receipts.

[8] Broker-dealers may calculate the annual trading volume once a year based on publicly available figures and rely on such calculation for the following year. Most foreign exchanges provide data on trading volume in securities listed on such exchanges.

[9] It is important to note that this exemption only applies to the contract between the U.S. broker-dealer and the foreign broker-dealer. If the U.S. broker-dealer is executing the trade on the foreign exchange to satisfy its obligations to a U.S. customer, the contract with the U.S. customer is still subject to T+3 settlement unless that contract also is exempted. Such contract may come under the exemptions discussed above or may have an alternate settlement cycle by agreement of the two parties.

[10] Effective June 7, 1995, the rules of all registered securities exchanges and the NASD will establish three business days as the settlement cycle for all transactions executed as "regular way."

[11] 12 CFR 220.1 *et seq.*

[12] Under Section 220.8(b) of Regulation T, a creditor (*i.e.*, a broker-dealer) generally must obtain full cash payment for customer purchases in a cash account within one payment period of the date any security was purchased. A "payment period" is defined as the number of days in the standard securities settlement cycle in the United States, as defined in Rule 15c6–1, plus two business days. Until June 1, 1995, payment period means seven business days. 12 CFR 220.2(w). However, in the case of a purchase of a foreign security, a creditor must obtain full cash payment within one payment period of the date of purchase or by the date on which settlement is required to occur by the rules of the foreign securities market provided that this period does not exceed the maximum time permitted by Regulation T for delivery against payment transactions (*i.e.*, thrity-five days).

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–12986 Filed 5–25–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35740 ; File No. SR–PSE–95–14]

Self-Regulatory Organizations; The Pacific Stock Exchange, Incorporated; Notice of Filing of Proposed Rule Change Regarding Depository Eligibility Requirements

May 19, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on May 15, 1995, The Pacific Stock Exchange, Incorporated ("PSE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by PSE. The Commission is publishing this notice to solicit comments from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

PSE proposes to adopt a rule which will set forth depository eligibility requirements for issuers that apply to list their securities on PSE.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

Self-Regultory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Under the proposed rule change, PSE will adopt a uniform depository eligibility rule for issuers that desire to list their securities on PSE. The uniform rule has been developed by the Legal and Regulatory Subgroup of the U.S. Working Committee of the Group of Thirty in coordination with each of the national securities exchanges and the National Association of Securities Dealers ("NASD"). It is anticipated that each national securities exchange and the NASD will file rule changes proposing adoption of depository eligibility standards substantially similar to PSE's proposed rule and will seek to make such changes effective contemporaneously with the effective date of the transition from a five-day ("T+5") to a three-day ("T+3") settlement cycle. The transition is set to occur June 7, 1995.[3]

The proposed rule change will require domestic issuers to represent to PSE before issues of securities are listed that the CUSIP numbers identifying the securities have been included in the file of eligible issues maintained by a securities depository registered as a clearing agency under Section 17A of the Act.[4] This requirement will not apply to a security if the terms of such security cannot be reasonably modified to meet the criteria for depository eligibility at all securities depositories. In addition, the rule will not apply to American Depository Receipts for securities of a foreign issuer.

The proposed rule change sets forth additional requirements that must be met before a security will be deemed to be "depository eligible" within the meaning of PSE Rule 5.9(c)(4). The proposed rule specifies different requirements for depository eligibility depending upon whether a new issue is distributed by an underwriting syndicate before or after the date a securities depository system is available for monitoring repurchases of the distributed shares by syndicate members ("flipping tracking system").

Currently, a flipping tracking system is being developed that will include a securities depository service that (i) can be activated upon the request of the managing underwriter for a period of time that the managing underwriter specifies, (ii) in certain circumstances, will require the delivering participant to provide to the depository information sufficient to identify the seller of such shares as a precondition to the processing of book-entry delivery instructions for distributed shares, and (iii) will report to the managing underwriter the identity of any other syndicate member or selling group member whose customer(s) sold distributed shares (but will not report to the managing underwriter the identity of such customer[s]) and, in certain circumstances, will report to such syndicate member or selling group member the identity of such customer(s). Prior to the availability of a flipping tracking system, the managing underwriter may delay the date a security is deemed "depository eligible" for up to three months after trading has commenced in the security. After the availability of a flipping tracking system, a new issue will be deemed to be depository eligible upon commencement of trading on PSE.

The proposed rule change is consistent with Section 6(b)(5) of the Act[5] in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

(B) Self-Regulatory Organization's Statement on Burden on Competition

PSE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which PSE consents, the Commission will:

(a) By order approve such proposed rule change or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

PSE has requested accelerated effectiveness of the proposed rule change in order that the rule can become effective on June 7, 1995.[6]

[1] 15 U.S.C. §78s(b)(1) (1988).

[2] The Commission has modified the language in these sections.

[3] Securities Exchange Act Releases Nos. 33023 (October 6, 1993), 58 FR 52891 (adoption of Rule 15c6–1) and 34952 (November 9, 1994), 59 FR 59137 (change of effective date of Rule 15c6–1 from June 1, 1995 to June 7, 1995).

[4] 15 U.S.C. §78q–1 (1988).

[5] 15 U.S.C. § 78f(b)(5) (1988).

[6] *Supra* note 3 and accompanying text.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 5th Street, NW., Washington, DC 20549. Copies of such filings will also be available for inspection and copying at the principal office of PSE. All submissions should refer to file number SR–PSE–95–14 and should be submitted by June 15, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Jonathan G. Katz,

Secretary.

[FR Doc. 95–12925 Filed 5–25–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35751; File No. SR–NASD–94–62]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Limit Order Protection and Nasdaq

May 22, 1995.

On November 22, 1994, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed a proposed rule change with the Securities and Exchange Commission ("SEC" or "Commission")[1] pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[2] and Rule 19b–4 thereunder.[3] The proposed rule change amends the NASD's Interpretation to Article III, Section 1 of the NASD Rules of Fair Practice ("Interpretation")[4] to prohibit a member firm that accepts and holds an unexecuted limit order from its own customer or from a customer of another member in a Nasdaq security from trading ahead of the customer's limit order—that is to trade the subject security for its own market-making account at prices that would satisfy the customer's limit order—unless it also executes that limit order.

Notice of the proposed rule change, together with the substance of the proposal as initially filed, was provided by issuance of a Commission release (Securities Exchange Act Release No. 35122, Dec. 20, 1994) and by publication in the **Federal Register** (59 FR 66389, Dec. 23, 1994, "Release 34–35122"). Two comment letters were received.[5]

On February 15, 1995, the NASD filed Amendment No. 1 with the Commission. Amendment No. 1 clarified that the "terms and conditions" exception to the Interpretation applies only to limit orders from institutional accounts, as defined in Article III, Section 21(c)(4) of the NASD Rules of Fair Practice,[6] whether such limit orders originate with a firm's own customers or are sent to it for execution by another member firm.

Notice of the proposed rule change, as amended, together with the substance of the proposal, was provided by issuance of a Commission release (Securities Exchange Act Release No. 35391, Feb. 16, 1995) and by publication in the **Federal Register** (60 FR 9878, Feb. 22, 1995, "Release 34–35391"). No comment letters were received in response to Amendment No. 1.

On March 7, 1995, the NASD filed Amendment No. 2 with the Commission. Amendment No. 2 amended the proposed rule change to extend the "terms and conditions" exception to the Interpretation to limit orders for 10,000 shares or more, unless such orders are less than $100,000 in value, as well as to limit orders from institutional accounts.

Notice of the proposed rule change, as amended, together with the substance of the proposal, was provided by issuance of a Commission release (Securities Exchange Act Release No. 35454, Mar. 8, 1995) and by publication in the **Federal Register** (60 FR 13199, Mar. 10, 1995, "Release 34–35454"). One comment letter was received in response to Amendment No. 2.[7] This order approves the proposed rule change.

I. Introduction and Background

Last year, the NASD submitted to the Commission a proposed Interpretation to its Rules of Fair Practice to prohibit member firms from trading ahead of their customers' limit orders in their market making capacity.[8] The Commission approved the NASD Interpretation on June 29, 1994, but expressed concern that the prohibition did not extent to trading ahead of limit orders of other firm's customers that have been sent to the market maker for execution.[9] In fact, the Commission's Division of Market Regulation, in its Market 2000 Study, previously had examined this practice and recommended that a ban apply to trading of all customer limit orders, not just those of a firm's own customer.[10] The Study noted that the adverse effects of trading ahead exist whether the customer's order is handled by the customer's firm or by another market maker.[11]

Upon Commission approval the NASD Interpretation, the NASD convened a special task force ("Task Force") to study the potential effect of expanded limit order protection on market liquidity and market maker capital commitment and to report to the NASD Board of Directors in September 1994. At the time, the Commission

[7] 17 CFR 200.30–3(a)(12) (1994).

[1] On February 15, 1995, the NASD filed Amendment No. 1 with the Commission on March 7, 1995 the NASD filed Amendment No. 2 with the Commission. *See infra* notes 6–7 and accompanying text.

[2] 15 U.S.C. 78s(b)(1).

[3] 17 CFR 240.19b–4.

[4] *NASD Manual*, Rules of Fair Practice, Art. III, Sec. 1 (CCH) ¶ 2151.07.

[5] *See* Letter from James T. Halverson, Esq., Shearman & Sterling, on behalf of Herzog, Heine, Geduld, Inc. ("Herzog") to Jonathan G. Katz, Secretary, SEC, dated January 12, 1995 ("January Herzog Letter"); and Letter from James F. Duffy, Executive Vice President and General Counsel, Legal & Regulatory Policy, American Stock Exchange ("Amex") to Jonathan G. Klatz, Secretary SEC, dated January 18, 1995 ("Amex Letter").

[6] *NASD Manual*, Rules of Fair Practice, Art. III, Sec. 21 (CCH) ¶ 2171.

[7] *See* Letter from James T. Halverson, Esq., Shearman & Sterling, on behalf of Herzog, to Jonathan G. Katz, Secretary, SEC, dated March 27, 1995 ("March Herzog Letter") (the January Herzog Letter and the March Herzog Letter are referred to collectively as "Herzog Letters").

[8] Securities Exchange Act Release No. 33697 (March 1, 1994), 59 FR 10842 (March 8, 1994).

The Commission first addressed the issue of customer limit order protection in the Nasdaq market in the co-called *Manning* decision in 1988. In that decision, the Commission affirmed, based on principles of agency law, an NASD determination that it is inconsistent with just and equitable principles of trade for a market maker to trade ahead of a customer limit order unless the customers is first informed of the firm's limit order policy. *See In re E.F. Hutton & Co.* (the so-called "*Manning* decision"), Securities Exchange Act Release No. 25887 (July 6, 1988), 41 SEC Doc. 473, appeal filed *sub nom Hutton & Co. Inc.* v. *SEC*, Dec. No. 88–1649 (D.C. Cir. Sept. 2, 1988), (Stipulation of Dismissal Filed, Jan. 11, 1989).

[9] Securities Exchange Act Release No. 34279 (June 29, 1994), 59 FR 34883 (July 7, 1994) ("Release 34–34279").

[10] Division of Market Regulation, SEC, Market 2000: An Examination of Current Equity Market Developments ("Market 2000 Study"), V–8 (1994).

[11] *Id.*

stated that while such a study could be helpful to future consideration of this issue, the Commission believed that member-to-member trades raise significant concerns that should be addressed and, if necessary, the Commission would consider instituting its own rulemaking proceeding for that purpose.[12]

The Task Force's report ("Task Force proposal") recommended that market makers be prohibited from trading ahead to customer limit orders only when such trades occurred at prices superior to the limit order price. The NASD Board of Directors reviewed the Task Force Proposal and proposed for member comment on amended proposal that would have restricted a market maker from trading ahead of a customer limit order at a price equal to or better than the price of the customer limit order if the size of that order was 1,000 shares or less, and from trading to prices better than a customer's limit order if the size of that order was greater than 1,000 shares ("Board Proposal").[13]

The Commission then published for comment its own proposed rule to prohibit any market maker in Nasdaq National Market securities from trading ahead of the orders of other firms' customers sent to it for execution without regard to the size of the order ("Commission Proposal").[14] The Commission wished to solicit public comment on alternatives that would provide more extensive limit order protection for public customers than those alternatives that the NASD had then proposed. The Commission also was motivated in part by a desire to solicit comment from public investors and non-NASD members.

II. Description and Scope of the Proposed Rule Change

The rule change we are considering today provides that a member firm cannot accept a customer[15] limit order in a Nasdaq security and continue to trade that security for its own account at prices that would satisfy the customer limit order without filing that order at the limit order price or a price more favorable to the customer. The Interpretation no longer distinguishes between customer limit orders accepted from a member's own customer and customer limit orders sent to it for execution from another member (so-called "member-to-member" limit orders). In either situation, such "trading ahead" activity would constitute a violation of just and equitable principles of trade.

The NASD requested that the Commission allow the rule change to be implemented on a phased-in-basis. During the time period between the rule's adoption and September 1, 1995, member-to-member limit orders that are greater than 1,000 shares would be protected when the member firm accepting the order trades for its own account at prices that are superior to the limit order price, but not at prices equal to the limit order price. The NASD requested the phase-in-period to provide NASD member firms an opportunity to adjust their order handling procedures for orders over 1,000 shares to the requirements of the Interpretation and to reassess their existing revenue structure.

The rule change also amends the Interpretation by limiting the "terms and conditions" exception of the Interpretation to: (a) limit orders from "institutional accounts" as that term is defined in Article III, Section 21(c)(4) of the Rules of Fair Practice ("institutional orders"),[16] regardless of whether such institutional orders come from a firm's own customers or are member-to-member limit orders; and (b) limit orders from accounts other than institutional accounts ("retail orders") if the order is for: (i) 10,000 shares or more; and (ii) has a value of $100,000 or greater ("institution-sized retail orders.").[17] The rule change does not permit a market maker to accept and hold other retail orders subject to terms and conditions, but does permit a market maker to accept and hold an institutional order subject to terms and conditions even if that order is for less than 10,000 shares or is less than $100,000 in value.

The NASD's rule would continue to permit a market maker to charge its customers or an order entry firm commissions or commission equivalents for handling a limit order, provided those charges previously are disclosed in a clear fashion to the customer, and provided those charges otherwise comply with applicable law.[18] Furthermore, an individual Nasdaq market maker is not obligated to accept any limit orders and is not required to accept limit orders from any particular customer.[19]

III. Summary of Comments

As noted above, the Commission received three comment letters (one commenter two letters) concerning the rule change. These comment letters raised the same types of arguments that were raised in comment letters received on the Commission Proposal.

A. Amex Letter

The Amex Letter addressed three aspects of the rule proposal. First, Amex stated that broker-dealers should be included within the universe of customers entitled to the benefits of limit order protection in the Nasdaq market.[20] Amex reasoned that options market makers, for example, would not be able to hedge their positions in listed options on Nasdaq stocks efficiently if broker-dealers are not protected by the Interpretation.

Second, the Amex Letter requested that the NASD elaborate on the terms and conditions that a market maker is permitted to impose, with a view to guarding against discrimination among customers. As noted above, the rule change was amended after the Commission received the Amex Letter to permit a market maker to negotiate limit order terms and conditions only with respect to institutional orders and institution-sized retail orders, and the rule change specifies that any terms and conditions under which institutional orders or institution-sized retail orders are accepted must be made clear to customers at the time an order is accepted.

Third, Amex expressed a concern regarding the scope of the limit order protection proposed, stating that the protection afforded by the Interpretation was not an extensive as that provided by exchange markets. Amex recommended that the Interpretation be extended to trigger limit order protection whenever a Nasdaq market making firm executed a trade in any firm account or for any person associated with the firm, rather than limiting the Interpretation to trades executed in a market making account. The Amex Letter also noted that the rule change would entitle a customer only to an execution at the limit price, and not to a better price that a market maker might have obtained by trading ahead. Amex recommended amending the rule change to require market makers to execute a limit order at a price better than the limit price if obtainable, in accordance with principles of agency law.

B. Herzog Letters

Herzog opposed the rule change, asserting that it is wholly unsuited to the nature of the Nasdaq market. Herzog stated that much market making activity on Nasdaq is carried out by wholesale firms, who do not conduct a retail business. The sole source of revenue for these firms is the "spread" between their bid and their ask. Herzog noted that wholesale firms must provide the capital to maintain inventories in each stock in which they make markets.

Herzog asserted that if the rule change is approved, market makers would be required to fill limit orders to sell (or buy) stocks at the same price at which they buy (or sell) for their own account. Sophisticated traders would use limit orders to buy and sell stocks at the same price as market makers, without incurring the obligations of market makers. Herzog asserted that market makers would be able to recover their costs only if they widened spreads or increased fees for traders who do not enter limit orders. The impact of the increased fees and widened spreads would fall disproportionately on less sophisticated investors who continue to use market orders and who would continue to pay the spread.

Although Herzog stated that the rule would cause spreads to widen, it also asserted that the rule change would artificially restrict dealers from recovering a competitive "spread" in relatively illiquid stock, causing reduced liquidity for those stocks. This, in turn, would disproportionately harm small issuers. Herzog also predicted reduced liquidity for more liquid stocks, because dealers would be less willing to commit capital when institutions wish to move blocks of stock that the market cannot accommodate. Herzog asserted that by imposing limit order obligations on market makers, the rule change would restrict market makers' ability to dispose of the stock acquired in such transactions. The January Herzog Letter also claimed that the rule change would reduce liquidity by reducing a market maker's ability to charge different prices for different transactions—market makers would be less willing to trade in between the spread for certain customers because the transactions would impose costly limit order obligations upon those market makers.

Herzog also forecasted that the rule change would lead to increased concentration of market makers, because vertically integrated firms, unlike wholesale firms, possess the greatest ability to directly charge customers higher commissions, markups or other fees to compensate for the loss of spread income. It stated that less sophisticated customers would be adversely affected by these changes. Herzog predicted that those market makers who cease making markets would continue to trade for their own account without incurring the obligations that a market maker must undertake.

Herzog also asserted that the rule change violated the statutory criteria imposed under the Act.[21] It asserted that the rule change would undermine competition and harm customers because it would reduce competition among different types of markets to obtain listings from companies and among market makers to fill orders, and would reduce the ability of small issuers of stock to raise capital by having their less liquid shares trade at competitive prices on Nasdaq. As an alternative, Herzog recommended that the NASD permit market makers to establish a minimum spread and fully disclose to customers a suitable net price at which they would execute limit orders.[22]

Herzog stated that the terms and conditions exceptions were unduly limited.[23] It stated that many professional investment funds do not qualify as institutional accounts as defined in Article III, Section 21(c)(4). Herzog stated that these funds are no less sophisticated or in need of protection than are accounts that meet the terms of the definition. Herzog also believes that the exception for institution-sized retail orders will protect parties beyond the small retail investors that the NASD wishes to protect. Herzog stated that the NASD will need to monitor carefully to ensure that a single large order is not broken up into multiple orders that qualify for limit order protection.

IV. Discussion

The Commission believes that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the NASD and, in particular, Sections 15A(b)(6), 15A(b)(9) and 11A(a)(1)(C) of the Act. Section 15A(b)(6) requires that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling and processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and in general to protect investors and the public interest. Section 15A(b)(9) requires that the rules of the association not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Section 11A(a)(1)(C) (i) and (iv) sets forth the objectives of assuring economically efficient execution of securities transactions and the practicability of brokers executing investors' orders in the best market.[24]

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[12] Release 34–34279, *supra* n. 9.

[13] *See* Special NASD Notice to Members 94–79 (September 23, 1994).

[14] Securities Exchange Act Release No. 34753 (Sept. 29, 1994), 59 FR 50867 (Oct. 6, 1994) ("Release 34–34753") (proposing 17 CFR 240.15c5–1).

[15] Article II, Section 1(f) of the NASD Rules of Fair Practice defines "customer" to exclude a broker or dealer. *See NASD Manual*, Rules of Fair Practice, Art. II, Sec. I (CCH) ¶2101.

[16] An "institutional account" is defined as an account of: (1) a bank, savings and loan association, insurance company, or registered investment company; (2) an investment company; (2) an investment adviser registered under Section 203 of the Investment Advisers Act of 1940, 15 U.S.C. § 80b–3; or (3) any other entity (whether a natural person, corporation, partnership, trust, or otherwise) with total assets of at least $50 million. *NASD Manual*, Rules of Fair Practice, Art. III, Sec. 21 (CCH § 2171.

[17] The value of a limit order is calculated by multiplying the price per share specified in that order by the number of shares specified in the order. Thus, the value of a limit order does not include any markup, markdown, commission, commission equivalent, sales credit or other internal credit.

[18] *See* Release 34–35391. Article III, Section 4 of the NASD Rules of Fair Practice states in part that, if a member acts as agent for a customer in any transaction, the customer shall not be charged more than a fair commission or service charge, taking into consideration all relevant circumstances. *See also* NASD Regulatory & Compliance Alert, Vol. 7, no. 4 (December 1993) at 1.

[19] *See* Release 34–34279, *supra* n. 9; Market 2000 Study, *supra* n. 10, at V–8–9.

The Commission notes that Sections 15A(b)(6) and 19(b)(2) of the Act, 15 U.S.C. §§ 78o–3(b)(6), 78s(b)(2), together require, among other things, that a rule change approved by the Commission not be designed to permit unfair discrimination between customers. The Commission expects that the NASD will exercise its oversight authority to ensure that market makers do not refuse to accept certain limit orders in a manner that unfairly discriminates among customers.

[20] Broker-dealers are not deemed to be customers for purposes of the NASD Rules of Fair Practice. *See supra* n. 15.

[21] Herzog claims that the rule change would violate, *inter alia*, Section 6(b)(5) of the Act, 15 U.S.C. § 78f(b)(5) (requiring that the rules of national securities exchanges not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers); and Section 15A(b)(9) of the Act, 15 U.S.C. § 78o–3(b)(9) (requiring that the rules of registered securities associations not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act).

The Commission notes that Section 6(b) of the Act is inapplicable to the rules of the NASD, which is not a national securities exchange. However, Section 15A(b)(6) of the Act, 15 U.S.C. § 78o–3(b)(6), imposes requirements upon NASD rules that are virtually identical to those imposed upon the rules of national securities exchanges by Section 6(b)(5).

[22] Herzog did not address whether a rule establishing a minimum spread would violate Section 15A(b)(6) of the Act, which requires, *inter alia*, that NASD rules not be designed to fix minimum profits or to impose any schedule or fix rates of commission, allowances, discounts or other fees to be charged by NASD members.

[23] *See* March Herzog Letter.

[24] Although the Commission is required to evaluate the proposed rule change for consistency with Section 15A of the Act, the Commission believes the goals of Section 11A are equally served by this proposed rule change.

A. Enhanced Limit Order Protection

The Commission recognizes that prior to adoption of the Interpretation in June 1994, the practice of Nasdaq market makers trading ahead of their customers' limit orders was widespread and longstanding. These practices generally are not in the interests of customers. The Interpretation is approved in June 1994 recognized the need to enhance customer limit order protection on Nasdaq. The current proposed rule change fosters fair and open markets and investor protection by extending limit order protection for investors to member-to-member trades.

Market makers argue that extending customer limit order priority to member-to-member orders would deny market makers their customary compensation for being at risk. It is not clear, however that the risk associated with market making in Nasdaq securities requires compensation derived from trading ahead of the customer. Market makers will continue to be able to derive trading profits in executing orders, including limit orders, and are entitled to receive compensation for handling limit orders, provided that the method of compensation chosen is clearly disclosed to the customer, such as by charging a commission for handling the limit order. Accordingly, the Commission believes that extending the prohibition against the practice of trading ahead of customer limit orders to member-to-member trades will not result in a "mass exodus" of market makers from Nasdaq. Indeed, experience with customer limit order priority since last June suggests that such concerns are overstated. Firms that refuse to accept limit orders because they may not trade ahead of such orders may find their customers gravitating toward other firms that are willing to provide limit order protection.

The Commission also believes that disclosure is not an adequate remedy for the practice of trading ahead of customer limit orders. In a typical agency relationship, disclosure often is relied upon as an adequate means of resolving a conflict of interest between an agent and its principal.[25] Investors enjoy greater protection under the federal securities laws, however, than that afforded by common law; a general common law remedy of disclosure does not always suffice.[26] A stricter duty may be imposed where, as here, the principals are investors and the agents control access to the trading market. The NASD already has recognized this obligation in the context of customer limit order priority for a member's own customers. The NASD also has a similar prohibition that applies to its members trading in the third market.[27]

Disclosure does not protect the interests of many customers affected by trading ahead. The cost of the customer each time a market maker fails to execute a customer's limit order it is holding is not removed by disclosure. A customer cannot receive the most timely execution or best price if the dealer handling the customer's order trades at superior prices without executing the limit order. The broker trading ahead of a public limit order is competing with public customers for an execution. To derive any benefit from disclosure, a customer must find a broker that will route orders to market makers that do not trade ahead of customer limit orders. Because the practice of market makers trading ahead of customer limit orders sent to them form other market makers is widespread in the over-the-counter market, the choices of market makers are limited.[28]

In extending customer limit order priority to member-to-member trades, the Commission does not intend to suggest that trading of Nasdaq securities must conform to all auction market principles.[29] Nevertheless, just as the Commission believes that the dealers in exchange-listed securities must adhere to certain minimum standards with respect to order handling procedures, it also believes that market makers in Nasdaq securities should adhere to certain minimum standards of fair treatment of customers.

The Commission believes that certain current Nasdaq limit order practices have created confusion in the minds of investors and are inconsistent with the growth and maturity of the Nasdaq market. The Commission believes that a customer's limit order should be protected from trading ahead regardless of whether that order is entered in an auction or dealer market, and regardless of whether the order accepted and handled by the firm is that of the firm's own customer or is a member-to-member limit order.

The Commission recently stated that it is reasonable for customers to expect that the quality of the execution received will not vary from trade to trade.[30] NASD rules currently allow the quality of the execution of a customer limit order to vary depending on whether the customer's firm or an affiliate makes a market in a security or whether that firm sends the order to another market maker for execution. The rule change approved today will assure that the quality of execution of customer limit orders will not depend upon whether the agency chosen by a customer to handle its limit order also makes a market in a security in which that customer is interested.

The Commission believes that the rule change will improve significantly the timeliness of customer executions. By providing a customer's limit order priority over the market maker's propriety trading, more trade volume will be available to be matched with the customer's order, resulting in quicker and more frequent executions for customers. More expeditious handling of customer limit orders will, in turn, provide all investors with a more accurate indication of the buy and sell interest at a given moment. The rule change also will encourage dealers to execute customer limit orders promptly so that they may continue their proprietary trading activities.

The rule change also will improve the price discovery process in Nasdaq securities. Limit orders contribute to price discovery by disclosing preferred customer trading prices and by tightening the spread between the bid and ask price of a security. In the past, customers may have refrained from placing limit orders because of the uncertainty of and difficulty in obtaining an execution for such orders until the inside price reached the limit order price. The practice of delaying executions until the inside price reaches the customer's limit order price also impedes price discovery by artificially delaying or preventing execution and reporting of customer limit orders.

Customers also incur costs in terms of inferior or missed executions for limit orders when a market maker delays execution of customer limit orders until the inside price reaches the customer's limit order price. The rule change approved today enhances the ability of customers to monitor the cost of a

[25] Market 2000 Study, *supra* n. 10, at V–8.

[26] *See, e.g., Herman & MacLean* v. *Huddleston*, 459 U.S. 375, 389 (1983) ("An important purpose of the federal securities statutes was to rectify perceived deficiencies in the available common law protection by establishing higher standards of conduct in the securities industry.").

[27] Third market dealers operate similarly to Nasdaq market makers. The NASD's rules already prohibit trading ahead of customer limit orders in the third market. *NASD Manual*, Schedules to the By-Laws, Schedule G, Section 4(f) (CCH) ¶ 1921. Despite this prohibition, statistics compiled by the Consolidated Tape Association indicate that third market dealers currently account for better than 10% of listed stock orders as a percentage of share volume.

[28] Unlike institutional customers, most retail customers do not submit orders of a character which enables them to negotiate effectively execution parameters.

[29] Market 2000 Study, *supra* n. 10, at V–9.

[30] Release 34–34753, *supra* n. 14.

transaction and choose a broker-dealer on that basis.[31] This imposes a competitive discipline on market makers to achieve the best possible execution for customers or risk losing business. Unlike institutional clients who are in a better position to negotiate their own protection with market makers, public customers have less viable alternatives in determining where their orders are ultimately sent for execution. The rule change provides market makers with a necessary incentive to provide superior executions to public customers.

B. Scope of the Rule Change

The NASD has determined to extend limit order protection to Nasdaq SmallCap securities. The Commission Proposal also requested comment on including within the rule Nasdaq SmallCap securities and over-the counter Bulletin Board-eligible securities. Lehman recommended that the Commission Proposal be limited to Nasdaq National Market securities, because the markets for non-National Market securities are less developed.[32] Lehman stated that the adverse liquidity consequences of extending limit order protection to non-National Market securities is more severe. Nonetheless, there has not been any evidence offered to the Commission of adverse liquidity consequences caused by the limit order protection currently extended to Nasdaq SmallCap securities. Indeed, the Commission believes that the positive effects of increased trading volume from customer limit orders on liquidity will surpass the negative effect, if any, from lost market maker profits. Furthermore, the NASD has stated that it will evaluate carefully any impact the new Interpretation may have on market maker participation or market quality during the rule's phase-in period. Therefore, the Commission believes that the benefits of uniform treatment of customer limit orders for Nasdaq SmallCap securities outweigh speculative concerns about adverse liquidity consequences.

The Commission also does not believe it is necessary to amend the Interpretation to expressly trigger limit order protection whenever a Nasdaq market making firm executes a trade in any firm account or for any person associated with the firm. Although the Interpretation by its terms applies only to trades executed in a market making account, the Commission notes that the NASD interprets a member's best execution obligation to prohibit a market maker from knowingly trading ahead of a customer's limit order when it is not acting as a market maker in the security.[33]

The Commission is not persuaded that the rule is deficient because, as suggested by Amex, it does not guarantee a customer limit order a superior priced execution in the circumstance where a market maker trades for its own account at a price better than the customer's limit price.[34] The Interpretation will benefit the customer by requiring execution of the limit order if the market maker trades for its own account even if the limit price is inside the Nasdaq best bid and offer.[35]

The Commission also believes that it is appropriate to provide a "terms and conditions" exception for certain types of orders. As noted above, the rule change permits a market maker to accept and hold a customer limit order subject to terms and conditions only if it is an institutional order or an institution-sized retail order.

The rule distinguishes between retail orders and institutional orders because firms and institutions typically have developed business practices pursuant to which they negotiate the conditions under which their limit orders are to be handled. In approving the NASD's rule to prohibit member firms from trading ahead of their own customers, the Commission noted its agreement with an analysis provided in the Market 2000 Study that:

> Because most market makers cannot typically fill institution-size orders out of inventory, institutions generally only hold market makers to a "best efforts" standard in return for the willingness of the market maker to put up substantial capital to provide liquidity for large orders. In order to permit a member firm to employ the necessary trading strategy without being subjected to the requirements of the proposed ban, the Interpretation allows the parties to set the specific "terms and conditions" for acceptance of institutional orders.[36]

Given that most market makers cannot typically fill institution-sized retail orders out of inventory, the rule permits market makers to negotiate with retail customers the terms and conditions under which an institution-sized retail limit order is to be handled. This provision will permit customers to negotiate separate execution parameters with market makers on a trade-by-trade basis.

The terms and conditions exception is tailored to apply to limit orders which require market makers to employ special strategies to execute and to limit orders from customers who have the ability to monitor the market for the security and to negotiate alternative execution procedures with another market maker. The Commission believes that the 10,000 share/$100,000 threshold for institution-sized retail orders appropriately distinguishes between: (1) Those orders that do not require market makers to exhaust their inventory or commit large amounts of capital and those orders that do; and (2) customers who have the ability to negotiate effectively the execution parameters of their trades and those who do not.

Market makers must protect an institutional order unless they have negotiated specific terms and conditions regarding the order. As a general matter, all limit order should be entitled to limit order protection. The Commission recognizes, however, that market makers may require some flexibility with respect to larger orders and institutional investors. Accordingly, it is appropriate to permit market makers to negotiate specific terms and conditions for handling certain orders. The exception for institutional orders recognizes the ability of institutions to negotiate specific order handling procedures and their desire to have the ability to negotiate special procedures for orders of less than 10,000 shares or less than $100,000 in value. In this regard, the Commission notes that the NASD interprets the "institutional account" definition in Article III, Section 21(c)(4) of the NASD Rules of Fair Practice to apply to any account managed by a registered investment adviser.

[31] Dealers may attempt to compensate for lost income with wider spreads or with higher commissions. Customers would be able to compare such charges among dealers. *See* Market 2000 Study, *supra* n. 10, at V–8–9.

[32] *See* Letter from Richard T. Chase, Senior Vice President and Chief Counsel, Lehman Brothers Inc. ("Lehman") to Jonathan G. Katz, Secretary, SEC, dated November 16, 1994 ("Lehman Letter"). The Lehman Letter was submitted in response to the Commission Proposal.

[33] *See* Letter from Richard G. Ketchum, Executive Vice President, NASD to Holly H. Smith, Associate Director, Division of Market Regulation, SEC, dated March 31, 1995 (available in Commission's Public Reference Room). *See also* Special NASD Notice to Members 94–58, Answer to Question #11 (July 15, 1994) ("[i]t has never been the NASD's position that members can trade ahead of their customer's limit orders when not acting as a market maker.").

[34] The Commission Proposal would require a superior priced execution in the circumstance where a market maker trades for its own account at a price better than the customer's limit order price. *See* Release 34–34753, *supra* n. 14.

[35] The Commission notes that a market maker may have executed a trade for its own account at a price better than the customer's limit price because the inside market has moved. Under these circumstances, the limit order may have become marketable. A market maker's best execution obligations in such circumstances may require the marker maker to execute the limit order at a price more favorable to the customer than the limit price.

[36] *See* Release 34–34279, *supra* n. 9.

Nonetheless, the Commission would be concerned if market makers uniformly attempt to negotiate the terms and conditions for execution of smaller-sized institutional orders in order to trade ahead of these orders. In addition, it may be appropriate to reconsider at a later date whether the proposed rule change approved today provides sufficient protection to market participants and, if necessary, to extend the scope of limit order protection beyond the classes of orders and customers protected by the rule change approved today.[37]

In this regard, the Commission also is sensitive to the concerns expressed by Amex about extending the protections envisaged by the rule to limit orders placed with Nasdaq market makers by other broker-dealers, including options specialists and registered options traders. The Commission recognizes the importance in terms of price discovery and market efficiency and liquidity for options specialists and market makers to have efficient and economical opportunities for laying off risk in the Nasdaq market.[38] Given that market makers can refuse to accept a limit order, and recognizing that the NASD could allow market makers the flexibility to negotiate terms and conditions for the handling of options market maker limit orders, the Commission questions why, once accepted, a market maker should not be required to protect that limit order. Accordingly, the Commission also expects the NASD to consider extending the scope of limit order protections to orders of options specialists and market makers.

C. Other Issues

Key to Herzog's objection to the rule change is its assertion that wholesale firms do not charge commissions and do not have the retail customer relationships that would permit them to charge commissions. The Commission notes that there are no legal impediments that prevent wholesale firms from charging commissions or establishing other clearly disclosed compensation arrangements with respect to limit order execution. Furthermore, Herzog neither asserted nor offered evidence to demonstrate that wholesale firms would be precluded from utilizing other methods, apart from widening spreads, to ensure that they are compensated for executing limit orders.

The Commission notes that market makers are not required to accept limit orders to buy at the bid or limit orders to sell at the offer. Market makers are not precluded from acting in an agency capacity by matching incoming limit orders with market orders. Indeed, the Commission notes that to the extent that market makers act in an agency capacity, their inventory and capital requirements are lessened.

The Commission also does not believe that market makers would be required to fill limit orders at spreads narrower than those naturally resulting from competition. As noted above, the Commission believes that limit order protection will enhance quote competition in the Nasdaq market; therefore, the rule change should facilitate narrower spreads that reflect a full range of competition. The Commission believes that limit orders will provide market makers with increased competition. Indeed, if market makers expanded their spreads beyond what was reasonable for a particular security, the rule approved today enhances the ability of customers to enter limit orders to improve the market.

The Commission also believes that the rule change approved will not have a significant deleterious impact upon market participation. The Commission notes that market makers who cease market making also must forego certain legal benefits available only to market makers.[39] Furthermore, as broker-dealers, these market makers would not be entitled to limit order price protection.[40]

The Commission also does not believe that the rule change will reduce competition for listings among different types of markets. Rather, the Commission believes that limit order protection is a feature that will attract investors and ultimately issuers to the Nasdaq market; the rule may in fact increase competition among market makers to attract limit orders so that they can match incoming limit orders on an agency basis and reduce the amount of capital that they must commit to transactions. This, in turn, may permit market makers to make markets in a larger number of securities, which would lead to enhanced opportunities for small issuers to raise capital.

The Commission does not agree with Herzog that the rule change will favor more sophisticated limit order traders over traders who enter market orders. The Commission believes that market orders will benefit if they have the opportunity to interact with limit orders as well as market maker quotes. Thus, small investors maybe among the primary beneficiaries of the rule change, contrary to Herzog's assertions.

The Commission does not believe that a market maker is required to execute a limit order without compensation. The Commission does believe, however, that the terms of compensation should be clear to the customer. The Commission believes that a market maker who accepts and holds a limit order from a customer must execute the transaction at the limit order price set by the customer, not at a "net" price that obfuscates the amount of compensation that the market maker is receiving.[41]

For example, assume that the best inter-dealer market for a particular security is $10 bid, $10¼ ask. A market maker accepts and holds a retail limit order to sell that security at 10^{3}/_{16}$. The Commission believes that if that market maker sells the security to another person at $10¼, it must also fill the limit order to sell at 10^{3}/_{16}$, because the sale at $10¼ constitutes a transaction at a price that would satisfy the customer's limit order. Any costs incurred by the market maker in connection with the execution of the transaction are irrelevant in determining whether a transaction has occurred at a price that would satisfy the customer's limit order. The Interpretation calls for market makers to execute limit orders whenever they execute a transaction for their market making account at a *price* that would satisfy the customer's limit order. The Commission emphasizes that "price" is determined from the vantage point of the customer, not by reference to "net proceeds" received by the firm on a sale or the purchase price paid plus costs incurred in connection with a purchase.[41]

Finally, the Commission believes that the rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. As noted above, Herzog asserted that the rule change will have a disparate impact upon wholesale firms, because such firms allegedly lack the ability of vertically integrated firms to directly charge customers higher commissions, markups or other fees to compensate for the loss of spread income. The Commission recognizes that as a consequence of the rule change, some wholesale firms may seek to establish alternative sources of revenue, including charging commissions. The Commission believes that any burden imposed by shifts in fee structures is outweighed by the improved price discovery, execution and pricing advantages that customers will realize as a result of the rule change. In addition more customers will be accorded treatment that satisfies reasonable expectations of fairness and investor protection.

V. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the NASD and, in particular, Sections 15A(b)(6), and 15A(b)(9) and 11A(a)(1)(C) of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change SR–NASD–94–62 be, and hereby is, approved, effective June 21, 1994.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–12987 Filed 5–25–95; 8:45 am]

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[37] The Commission has determined not to withdraw the Commission Proposal at this time. It will review the operation of the rule change approved today before it determines whether to approve, amend or withdraw the Commission Proposal.

[38] *See, e.g.*, Securities Exchange Act Release No. 34277 (June 29, 1994), 59 FR 34885 (July 7, 1994) (approving short-sale rule for Nasdaq National Market securities); Division of Market Regulation, SEC, The October 1987 Market Break, 8–18–20 (1988).

[39] *See, e.g.*, 17 CFR 200.12(d) (providing favorable margin treatment for market makers).

In addition, Rule 15c3–1(a)(6)(i) provides favorable net capital treatment for wholesale market makers. A wholesale firm that withdraws from market maker status no longer would be entitled to compute its net capital pursuant to that provision. 17 CFR 240.15c3–1(a)(6)(i).

[40] *See supra* text an accompanying note 15.

[41] See Special NASDA Notice to Members 94–58, *supra* n. 29, Answer to Question #2.

[42] The Commission believes it is permissible for a customer to instruct a market maker to purchase (sell) a security for it such that the total costs (proceeds) to the customer (including any commissions, markups or other charges) are not greater (less) than a single net price per share. Thus, for example, if a customer enters a limit order to purchase security XYZ and requests that its total costs not exceed $10 per share, and the customer is informed that the market maker charges a markup of ¼, then a market maker may continue to purchase for its own account at $10 without also executing the customer order. The customer order would be deemed a limit order at $9¾. The Commission emphasizes that "the price at which the limit order is to be protected must be clearly explained to the customer." *See id.*

[Release No. 34–35745; File No. SR–CBOE–95–26]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to the Content Outline for the General Securities Sales Supervisor (Series 8) Examination

May 19, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 12, 1995, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to use a revised Content Outline for the General Securities Sales Supervisor (Series 8) Examination ("Series 8").

The text of the proposed rule change is available at the CBOE and the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Series 8 examination is an industry-wide qualification examination for securities sales supervisors. The Series 8 examination is generally required under rules of the self-regulatory organizations ("SROs") for persons who are engaged in the supervision of general securities branch offices (*i.e.*, branch office managers) and of general securities registered representatives. The Series 8 examination tests a candidate's knowledge of securities industry rules and regulations and certain statutory provisions applicable to general securities sales supervision. The Series 8 Content Outline details the subject coverage and question allocation of the examination.

Revision of the Series 8 examination and Content Outline was recently undertaken by an industry committee composed of representatives from SROs (the New York Stock Exchange, the American Stock Exchange, the Chicago Board Options Exchange, the Municipal Securities Rulemaking Board, the National Association of Securities Dealers, and the Philadelphia Stock Exchange) and representatives from broker-dealers, including branch office managers, compliance personnel, and corporate executives, in order to update the examination in view of changes in relevant laws, rules, and regulations, the development of new products, and to reflect various changes in industry practices. The committee reviewed the examination specifications, content areas, and item bank and developed some new questions in new areas.

The revised examination continues to cover the areas of knowledge required to supervise sales activities in securities. However, the focus of the content of the examination has been shifted to concentrate more closely on supervisory duties. Accordingly, certain questions have been deleted from the examination that deal with routine calculations and basic product knowledge, and questions on new federal and SRO rules and regulations have been incorporated into the examination, as well as questions on new products, supervision, and changes in industry practices. The Content Outline reflects the revised content of the examination. The examination will remain a six-hour, two-part, 200 question examination.

2. Statutory Basis

The statutory basis for the Series 8 examination lies in Section 6(c)(3)(B) of the Act. Under that Section, it is the Exchange's responsibility to prescribe standards of training, experience, and competence for persons associated with Exchange members and member organizations. Pursuant to this statutory obligation, the Exchange has developed examinations that are administered to establish that persons associated with Exchange members and member organizations have attained specific levels of competence and knowledge.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from May 12, 1995, the date on which it was filed, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five days prior to the filing date, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(e)(6) thereunder.[1]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CBOE–95–26 and should be submitted by June 16, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–12985 Filed 5–25–95; 8:45 am]

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[1] The proposed rule change is identical to the rule change previously approved by the Commission for the New York Stock Exchange, Inc. and the National Association of Securities Dealers. *See* Securities Exchange Act Release No. 34967 (Nov. 10, 1994), 59 FR 59803 (Nov. 18, 1994) (File Nos. SR–NYSE–94–23; SR–NYSE–94–24); Securities Exchange Act Release No. 35208 (Jan. 10, 1995), 60 FR 3688 (Jan. 18, 1995) (File No. SR–NASD–94–66).

[Release No. 34–35743; File No. SR–CBOE–95–24]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to the Content Outline for the General Securities Registered Representative (Series 7) Examination

May 19, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 12, 1995, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to use a revised Content Outline for the General Securities Registered Representative (Series 7) Examination ("Series 7").

The text of the proposed rule change is available at the CBOE and the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to revise and update the Content Outline for the Series 7 examination. The Series 7 examination was created in 1974 as an industry-wide qualification examination for persons seeking registration as general securities representatives. The Series 7 examination is generally required under rules of the self-regulatory organizations ("SROs") for persons who are engaged in the solicitation, purchase, and/or sale of securities for the accounts of customers. The purpose of the Series 7 examination is to ensure that registered representatives have the basic knowledge necessary to perform their functions and responsibilities. The Series 7 Content Outline details the subject coverage and questions allocation of the Series 7 examination.

Revision of the Series 7 examination and Content Outline was initiated in April 1993 by an industry committee of SROs and broker-dealers representatives[1] in order to update the examination in view of changes in the securities industry, including changes in relevant rules and regulations, the development of new securities products, and changes in the job of registered representatives as firms offer an increasingly wide range of financial services. The Content Outline for the Series 7 examination has not been revised since 1986.

The industry committee updated the existing statements of the critical functions of registered representatives to ensure current relevance and appropriateness, drafted statements of tasks expected to be performed by entry-level registered representatives, and conformed the existing Content Outline to the task statements. The Content Outline reflects the revised content of the Series 7 examination. Under the proposed rule change, the total number of questions in the Series 7 examination will remain at 250, and the revised examination will cover all financial product areas covered on the present Series 7 examination as well as several new products, including collateralized mortgage obligations ("CMOs"), long term equity anticipation securities ("LEAPS"), and CAPS, with reduced emphasis on direct participation programs.

[1] SROs on the committee include the New York Stock Exchange, American Stock Exchange, Chicago Board Options Exchange, Municipal Securities Rulemaking Board, National Association of Securities Dealers, and Philadelphia Stock Exchange. Broker-dealer representatives include branch office managers, compliance officers, training personnel, and registered representatives.

2. Statutory Basis

The statutory basis for the Series 7 examination lies in Section 6(c)(3)(B) of the Act. Under that Section, it is the Exchange's responsibility to prescribe standards of training, experience, and competence for persons associated with Exchange members and member organizations. Pursuant to this statutory obligation, the Exchange has developed examinations that are administered to establish that persons associated with Exchange members and member organizations have attained specified levels of competence and knowledge.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from May 12, 1995, the date on which it was filed, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five days prior to the filing date, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(e)(6) thereunder.[2]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CBOE–95–24 and should be submitted by June 16, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–12984 Filed 5–25–95; 8:45 am]

BILLING CODE 8010–01–M

[2] The proposed rule change is identical to the rule change previously approved by the Commission for the New York Stock Exchange, Inc. and the National Association of Securities Dealers. *See* Securities Exchange Act Release No. 34853 (Oct. 18, 1994), 59 FR 53694 (Oct. 25, 1994) (File Nos. SR–NYSE–94–26; SR–NYSE–94–27); Securities Exchange Act Release No. 35401 (Feb. 22, 1995), 60 FR 10886 (Feb. 28, 1995) (File No. SR–NASD–95–04).

[Release No. 34–35744; File No. SR–CBOE–95–25]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated, Relating to the Examination Specifications for the General Securities Registered Representative (Series 7) Examination

May 19, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 12, 1995, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to use a revised version of the General Securities Registered Representative (Series 7) Examination ("Series 7") and corresponding specifications.

The text of the proposed rule change is available at the CBOE and the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to revise, update, and seek approval for the Series 7 examination and specifications. The Series 7 examination was created in 1974 as an industry-wide qualification examination for persons seeking registration as general securities representatives. The Series 7 examination is generally required under rules of the self-regulatory organizations ("SROs") for persons who are engaged in the solicitation, purchase, and/or sale of securities for the accounts of customers. The purpose of the Series 7 examination is to ensure that registered representatives have the basic knowledge necessary to perform their functions and responsibilities. The Series 7 examination specifications detail the areas covered by the examination and break down the number of examination questions culled from each area.

Revision of the Series 7 examination and specifications was initiated in April

1993 by an industry committee of SROs and broker-dealers representatives[1] in order to update the examination in view of changes in the securities industry, including changes in relevant rules and regulations, the development of new securities products, and changes in the job of registered representatives as firms offer an increasingly wide range of financial services. The examination specifications for the Series 7 examination have not been revised since 1986.

The industry committee updated the existing statements of the critical functions of registered representatives to ensure current relevance and appropriateness and drafted statements of tasks expected to be performed by entry-level registered representatives. Under the proposed rule change, the total number of questions in the Series 7 examination will remain at 250, and the revised examination will cover all financial product areas covered on the present Series 7 examination as well as several new products, including collateralized mortgage obligations ("CMOs"), long term equity anticipation securities ("LEAPS"), and CAPS, with reduced emphasis on direct participation programs.

2. Statutory Basis

The statutory basis for the Series 7 examination lies in Section 6(c)(3)(B) of the Act. Under that Section, it is the Exchange's responsibility to prescribe standards of training, experience, and competence for persons associated with Exchange members and member organizations. Pursuant to this statutory obligation, the Exchange has developed examinations that are administered to establish that persons associated with Exchange members and member organizations have attained specified levels of competence and knowledge.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

[1] SROs on the committee include the New York Stock Exchange, American Stock Exchange, Chicago Board Options Exchange, Municipal Securities Rulemaking Board, National Association of Securities Dealers, and Philadelphia Stock Exchange. Broker-dealer representatives include branch office managers, compliance officers, training personnel, and registered representatives.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from May 12, 1995, the date on which it was filed, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five days prior to the filing date, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 129b–(e)(6) thereunder.[2]

At any time written 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary of appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Socitiation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submiss9ions should refer to File No. SR–CBOE–95–25 and should be submitted by June 16, 1995.

[2] The proposed rule change is identical to the rule change previously approved by the Commission for the New York Stock Exchange, Inc. and the National Association of Securities Dealers. *See* Securities Exchange Act Release No. 34853 (Oct. 18, 1994), 59 FR 53694 (Oct. 25, 1994) (File Nos. SR–NYSE–94–26; SR–NYSE–94–27); Securities Exchange Act Release No. 35401 (Feb. 22, 1995), 60 FR 10886 (Feb. 28, 1995) (File No. SR–NASD–95–04).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Kartz,

Secretary.

[FR Doc. 95–12983 Filed 5–28–95; 8:45 am]

BILLING CODE 8510–01–M

[Release No. 34–35746; File No. SR–CBOE–95–27]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated, Relating to the Examination Specifications for the General Securities Sales Supervisor (Series 8) Examination

May 19, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 12, 1995, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to use a revised version of the General Securities Sales Supervisor (Series 8) Examination ("Series 8") and corresponding specifications.

The text of the proposed rule change is available at the CBOE and the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Propose Rule Change

1. Purpose

The Series 8 examination is an industry-wide qualification examination for securities sales supervisors. The Series 8 examination is generally required under rules of the self-regulatory organizations ("SROs") for persons who are engaged in the supervision of general securities branch offices (*i.e.*, branch office managers) and of general securities registered representatives. The Series 8 examination tests a candidate's knowledge of securities industry rules and regulations and certain statutory provisions applicable to general securities sales supervision. The Series 8 examination specifications detail the areas covered by the examination and break down the number of examination questions culled from each area.

Revision of the Series 8 examination and specifications was recently undertaken by an industry committee composed of representatives from SROs (the New York Stock Exchange, the American Stock Exchange, the Chicago Board Options Exchange, the Municipal Securities Rulemaking Board, the National Association of Securities Dealers, and the Philadelphia Stock Exchange) and representatives from broker-dealers, including branch office managers, compliance personnel, and corporate executives, in order to update the examination in view of changes in relevant laws, rules, and regulations, the development of new products, and to reflect various changes in industry practices. The committee reviewed the examination specifications, content areas, and item bank and developed some new questions in new areas.

The revised examination continues to cover the areas of knowledge required to supervise sales activities in securities. However, the focus of the content of the examination has been shifted to concentrate more closely on supervisory duties. Accordingly, certain questions have been deleted from the examination that deal with routine calculations and basic product knowledge, and questions on new federal and SRO rules and regulations have been incorporated into the examination, as well as questions on new products, supervision, and changes in industry practices. The revised examination and specifications include coverage of these new areas. The examination will remain a six-hour, two-part, 200 question examination.

2. Statutory Basis

The statutory basis for the Series 8 examination lies in Section 6(c)(3)(B) of the Act. Under that Section, it is the Exchange's responsibility to prescribe standards of training, experience, and competence for persons associated with Exchange members and member organizations. Pursuant to this statutory obligation, the Exchange has developed examinations that are administered to establish that persons associated with Exchange members and member organizations have attained specific levels of competence and knowledge.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from May 12, 1995, the date on which it was filed, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five days prior to the filing date, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(e)(6) thereunder.[1]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CBOE–95–27 and should be submitted by June 16, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[1] The proposed rule change is identical to the rule change previously approved by the Commission for the New York Stock Exchange, Inc. and the National Association of Securities Dealers. *See* Securities Exchange Act Release No. 34967 (Nov. 10, 1994), 59 FR 59803 (Nov. 18, 1994) (File Nos. SR–NYSE–94–23; SR–NYSE–94–24); Securities Exchange Act Release No. 35208 (Jan. 10, 1995), 60 FR 3688 (Jan. 18, 1995) (File No. SR–NASD–94–66).

[Release No. 34–35753; File No. SR–CHX–95–08]

Self-Regulatory Organizations; Chicago Stock Exchange, Incorporated; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 Relating to Order Execution Guarantees

May 22, 1995.

I. Introduction

On March 2, 1995, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt new Rule 37(d), Article XX to allow specialists on the Exchange to provide order execution guarantees that are more favorable than those currently required under CHX Rule 37(a), Article XX ("BEST Rule")[3] through the Exchange's automated execution system ("MAX").

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[3] *See* CHX 37(a), Article XX.

The proposed rule change was published for comment in Securities Exchange Act Release No. 35547 (Mar. 29, 1995), 60 FR 17375 (Apr. 5, 1995). No comments were received on the proposal. On April 13, 1995, the Exchange submitted Amendment No. 1 to the proposed rule change.[4] This order approves the proposed rule change, including Amendment No. 1 on an accelerated basis.

II. Description of Proposal

At the present time, under the BEST Rule, Exchange specialists are required to guarantee executions of market and limit orders under certain circumstances. Under the rule, specialists must accept and guarantee execution of all agency orders, other than limit orders in Nasdaq/NMS Securities, from 100 up to and including 2099 shares. For all agency market orders, the specialist must fill the orders at the best bid or best offer disseminated pursuant to Rule 11Ac1–1 under the Act.[5] For all agency limit orders in Dual Trading System issues,[6] the specialist must fill the order if the bid or offer at the limit price has been exhausted in the primary market, there has been a price penetration of the limit in the primary market (trade through of a CHX limit order), or the issue is trading at the limit price on the primary market unless it can be demonstrated that such order would not have been executed if it had been transmitted to the primary market or the broker and specialist agree to a specific volume related or other criteria for requiring a fill.

Moreover, pursuant to current Rule 37(b), Article XX, the Exchange's MAX system provides for the automatic execution of orders that are eligible for execution under the Exchange's BEST Rule as discussed above and certain other orders as long as such orders are less than or equal to the auto-execution threshold. The specialist must set the auto-execution threshold at 1099 shares or greater on a stock-by-stock basis.

The Exchange proposes to amend Rule 37, Article XX by adding new subsection (d) to allow specialists to provide guarantees that are more favorable than those required under the BEST Rule. Moreover, under Rule 37(d), the Exchange, at the request of a specialist, may provide for automatic execution of orders through MAX in accordance with the additional guarantees that the specialists decide to provide. The Exchange expects to file with the Commission at a later time the specific modifications to the parameters of the automated execution system that are required to implement the additional guarantees.[7]

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[8] The Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest.

The Commission believes that the proposed rule change to allow specialists to provide more favorable guarantees than those currently required under CHX's Best Rule will benefit investors. For example, public customers may benefit by receiving executions at a better price or for a greater size than the minimum requirements under the Best Rule. The Commission believes that the proposal also would enhance competition on the Exchange by providing specialists with the opportunity to compete based upon the additional guarantees they offer.

The Commission notes, however, that the Exchange has indicated that this proposal is intended to be an "enabling rule." Accordingly, the Commission expects that the future filings proposing further modifications to MAX will describe in detail the more favorable guarantees being offered. Moreover, the Commission will review such proposals to ensure that they do not detract from order exposure.

The Commission finds good cause for approving amendment No. 1 to the proposed rule change prior to the thirteenth day after the date of publication of notice of filing thereof. The Exchange's original proposal was published in the **Federal Register** for the full statutory period and no comments were received.[9] Amendment No. 1 amends the text of the rule to delete extraneous language and to make clear that the guarantee is not "promised" to a particular individual, but provided for issues chosen by the specialist. Moreover, Amendment No. 1 clarifies the intent and scope of the proposed rule change and the options that the Exchange anticipates for the automated system.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CHX–95–08 and should be submitted by June 16, 1995.

V. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–CHX–95–08) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–12981 Filed 5–25–95; 8:45 am]

BILLING CODE 8010–01–M

[4] *See* letter from David Rusoff, Foley & Lardner, to Glen Barrentine, Senior Counsel, SEC, dated April 12, 1995. Amendment No. 1 amends the text of the proposed rule change and clarifies its intent and scope.

[5] 17 CFR 240.11Ac1–1 (1994).

[6] The Dual Trading System of the Exchange allows the execution of both round-lot and add-lot orders in certain issues assigned to specialists on the Exchange and listed on either the New York Stock Exchange or the American Stock Exchange.

[7] Some examples provided by the Exchange of the different options that may be available to specialists include SuperMAX and, if reactivated, Enhanced MAX. *See* letter from David Rusoff, Foley & Lardner, to Glen Barrentine, Senior Counsel, SEC, dated April 12, 1995.

[8] 15 U.S.C. 78f(b) (1988 & Supp. v 1993).

[9] *See* Securities Exchange Act Release No. 35547 (Mar. 29, 1995), 60 FR 17375 (Apr. 5, 1995).

[10] 15 U.S.C. 78s(b)(2) (1988).

[11] 17 CFR 200.30–34(a)(12) (1004).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2777]

Texas, Declaration of Disaster Loan Area

Dallas, Parker, and Tarrant Counties and the contiguous counties of Collin, Dention, Ellis, Hood, Jack, Johnson, Kaufman, Palo Pinto, Rockwall, and Wise in the State of Texas constitute a disaster area as a result of damages caused by severe storms and flooding which occurred on May 5–8, 1995. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on July 20, 1995 and for economic injury until the close of business on February 20, 1996 at the address listed below: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suit 102, FT. Worth, TX 76155, or other locally announced locations.

The interest rates are:

For Physical Damage:
- Homeowners with credit available elsewhere, 8.000%
- Homeowners without credit available elsewhere, 4.000%
- Businesses with credit available elsewhere, 8.000%
- Businesses and non-profit organizations without credit available elsewhere 4.000%
- Others (including non-profit organizations) with credit available elsewhere, 7.125%

For Economic Injury:
- Businesses and small agricultural cooperatives without credit available elsewhere, 4.000%

The number assigned to this disaster for physical damage is 277706 and for economic injury the number is 852600.

(Catalog of Federal domestic Assistance Program Nos. 59002 and 59008)

Dated: May 19, 1995.

Philip Lader,

Administrator.

[FR Doc. 95–12968 Filed 5–25–95; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

[Public Notice 2212]

Overseas Security Advisory Council; Closed Meeting

The Department of State announces a meeting of the U.S. State Department—Overseas Security Advisory Council on Wednesday, June 14, 1995, at the Marriott Hotel in Salt Lake City, Utah. Pursuant to section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552b(c) (1) and (4), it has been determined the meeting will be closed to the public. Matters relative to classified national security information as well as privileged commercial information will be discussed. The agenda calls for the discussion of classified and corporate proprietary/security information as well as private sector physical and procedural security policies and protective programs at sensitive U.S. Government and private sector locations overseas.

For more information contact Marsha Thurman, Overseas Security Advisory Council, Department of State, Washington, DC 20522–1003, phone: 202–663–0869.

Dated: May 11, 1995.

Mark Mulvey,

Director of the Diplomatic Security Service.

[FR Doc. 95–12917 Filed 5–25–95; 8:45 am]

BILLING CODE 4710–24–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 95–045]

Merchant Marine Personnel Advisory Committee; Meetings

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: The Merchant Marine Personnel Advisory Committee (MERPAC) and working groups will meet to discuss various issues. Agenda items include discussions of certified instructors, approved training, the National Research Council report, "Minding the Helm: Marine Navigation and Piloting", and manning on U.S. vessels. All meetings will be open to the public.

DATES: The working groups will meet on July 13, 1995, from 8:30 a.m. to 4 p.m. The full committee will meet on July 14, 1995, from 9 a.m. to 4 p.m. Written material should be submitted not later than July 5, 1995.

ADDRESSES: The meetings will be held in Room 2415, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593. Written material should be submitted to CDR Scott J. Glover, MERPAC Executive Director, Commandant (G–MVP), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593.

FOR FURTHER INFORMATION CONTACT: Commander Scott J. Glover, Commandant (G–MVP), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593, telephone (202) 267–0224.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2 § 1 et seq. The agenda will include discussion of the following topics:

(1) "Licensing 2000 and Beyond" recommendations to certify instructors and designated examiners, and to increase the focus on approved training as one of the Coast Guard's guarantors of competency;

(2) National Research Council report, *Minding the Helm: Marine Navigation and Piloting*; and,

(3) Revision of federal laws affecting watchkeeping and manning on U.S. vessels.

Attendance is open to the public. With advance notice, and the Chairman's discretion, members of the public may make oral presentations during the meeting. Persons wishing to make oral presentations should notify the Executive Director, listed above under "ADDRESSES", no later than the day before the meeting. Written material may be submitted at any time for presentation to the Committee. However, to ensure advance distribution to each Committee member, persons submitting written material are asked to provide 20 copies to the Executive Director no later than July 5, 1995.

Dated: May 22, 1995.

J.C. Card,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 95–13023 Filed 5–25–95; 8:45 am]

BILLING CODE 4910–14–M

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended May 19, 1995

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (see 14 CFR 302.1701 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 50354.

Date filed: May 15, 1995.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 12, 1995.

Description: Application of United Air Lines, Inc. pursuant to 49 U.S.C. Section 41101, and Subpart Q of the Regulations, applies for renewal of its Certificate of Public Convenience and Necessity for Route 588 authorizing services between Chicago, Illinois and Tokyo, Japan and of the six (6) weekly U.S.-Japan frequencies allocated to United by Order 90–10–15.

Docket Number: 50358.
Date filed: May 18, 1995.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 15, 1995.

Description: Application of Delta Air Lines, Inc., pursuant to 49 U.S.C. Section 41101 and Subpart Q of the Regulations, applies for renewal of its Certificate of Public Convenience and necessity for Route 586, authorizing Delta to engage in foreign air transportation of persons, property and mail between the terminal point Portland, Oregon and the terminal point Nagoya, Japan. Delta's certificate for Route 586 expires on November 15, 1995. Delta requests renewal of its certificate for a period of five years.

Docket Number: 50359.
Date filed: May 18, 1995.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 15, 1995.

Description: Application of Delta Air Lines, Inc. pursuant to 49 U.S.C. Section 41101 and Subpart Q of the Regulations, applies for renewal of its Certificate of Public Convenience and Necessity for Route 585, authorizing Delta to engage in foreign air transportation of persons, property and mail between the terminal point Los Angeles, California and the terminal point Tokyo, Japan.

Docket Number: 50360.
Date filed: May 19, 1995.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 16, 1995.

Description: Application of Seaborne Aviation, Inc., pursuant to 49 U.S.C. Section 41101 and Subpart Q of the Regulations, applies for a certificate of public convenience and necessity for an indefinite term to perform scheduled, interstate air transportation of persons, property and mail between the terminal points of Ketchikan and Waterfall, Alaska.

Paulette V. Twine,
Chief, Documentary Services Division.

[FR Doc. 95–12962 Filed 5–25–95; 8:45 am]
BILLING CODE 4910–62–P

Federal Aviation Administration

[Summary Notice No. PE–95–22]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before June 15, 1995.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

Comments may also be sent electronically to the following internet address:

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT:

Mr. D. Michael Smith, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7470.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC., on May 22, 1995.

Donald P. Byrne,
Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 28197
Petitioner: U.S. Department of Agriculture (Forest Service)
Sections of the FAR Affected: 14 CFR 91.203 and part 125
Description of Relief Sought: To permit the USDA Forest Service to operate its Shorts C–23A Sherpa aircraft to transport passengers and cargo in civil aircraft operations without possessing a current and appropriate airworthiness certificate. Additionally, the request, if granted, would allow the USDA Forest Service to operate its Basler DC–3 aircraft, which have either a seating configuration of 20 or more passenger seats or a payload capacity of 6,000 pounds or more, in civil aircraft operations, without meeting the requirements of part 125.

Dispositions of Petitions

Docket No.: 25126
Petitioner: Executive Air Fleet, Inc.
Sections of the FAR Affected: 14 CFR 135.165(b) (6) and (7)
Description of Relief Sought/Disposition: To extend Exemption No. 4821, as amended, which permits Executive Air Fleet, Inc., to operate turbojet airplanes in extended overwater operations with one long-range navigation system (LRNS) and one high-frequency (HF) communication system within certain named areas subject to certain conditions and limitations.
GRANT, April 20, 1995, Exemption No. 4821D

Docket No.: 27227
Petitioner: World Airways, Inc.
Sections of the FAR Affected: 14 CFR 121.434
Description of Relief Sought/Disposition: To extend Exemption No. 5640, which permits World Airways, Inc., on certain flights, to use flight attendants who have not completed operating experiences under part 121 of the FAR.
GRANT, May 9, 1995, Exemption No. 5640A

Docket No.: 27230
Petitioner: Era Aviation, Inc.
Sections of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/Disposition: To extend Exemption No. 5718, which permits Era Aviation, Inc., to operate certain helicopters without a TSO–C112 (Mode S) transponder, subject to certain conditions and limitations.

GRANT, May 3, 1995, Exemption No. 5718A

Docket No.: 27345
Petitioner: Life Lion Aeromedical Service
Sections of the FAR Affected: 14 CFR 135.213 (a) and (b)
Description of Relief Sought/Disposition: To allow Life Lion Aeromedical Service to conduct instrument flight rule departures during patient transport flights from 13 airports in Pennsylvania when weather observations from the U.S. National Weather Service (NWS), or a source approved by the NWS, or a source approved by the Administrator are not available.
DENIAL, May 3, 1995, Exemption No. 6077

Docket No.: 27822
Petitioner: Milwaukee General Aviation, Inc.
Sections of the FAR Affected: 14 CFR 91.119
Description of Relief Sought/Disposition: To permit Milwaukee General Aviation, Inc., to conduct flights in fixed-wing aircraft at approximately 800 feet above ground level over congested areas in certain meteorological conditions, for the purpose of conducting its aerial traffic observation program.
DENIAL, May 5, 1995, Exemption No. 6079

Docket No.: 27874
Petitioner: The University of Oklahoma
Sections of the FAR Affected: 14 CFR 141.67(a)(2)
Description of Relief Sought/Disposition: To permit The University of Oklahoma to recommend for issuance of pilot's certificates those students who have not completed all appropriate training at the University of Oklahoma.
GRANT, May 16, 1995, Exemption No. 6085

Docket No.: 27907
Petitioner: American Jet International Corporation
Sections of the FAR Affected: 14 CFR 43.3(g)
Description of Relief Sought/Disposition: To allow pilots employed by American Jet International Corporation to reconfigure company airplane cabins as required for particular flights.
GRANT, May 3, 1995, Exemption No. 6078

Docket No.: 28029
Petitioner: Boeing Commercial Airplane Group
Sections of the FAR Affected: 14 CFR 25.841(a) and 25.1447(c)(1)
Description of Relief Sought/Disposition: To allow the Boeing Commercial Airplane Group exemption from the cabin pressure altitude limit requirement of § 25.841(a), as well as the § 25.1447(c)(1) requirement that the passenger oxygen masks be automatically presented before the cabin pressure altitude exceeds 15,000 feet, for Boeing Model 757–200 series airplanes operating into Bamda, China.
GRANT, April 26, 1995, Exemption No. 6076

Docket No.: 28033
Petitioner: Continental Airlines
Sections of the FAR Affected: 14 CFR 121.433(c)(1)(iii), 121.441(a)(1), 121.441(b)(1), and appendix F of part 121
Description of Relief Sought/Disposition: To permit Continental Airlines regulatory relief to the extent necessary to conduct a single visit training program (SVTP) for flight crewmembers, and eventually transition into the Advanced Qualification Program (AQP) codified in Special Federal Aviation Regulation (SFAR) 58.
GRANT, May 11, 1995, Exemption No. 6081

Docket No.: 28092
Petitioner: B2W Corporation
Sections of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/Disposition: To permit B2W to operate without a TSO–C112 (Mode S) transponder installed on its aircraft operating under the provisions of part 135.
GRANT, May 9, 1995, Exemption No. 6083

Docket No.: 28101
Petitioner: Wings West Aviation
Sections of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/Disposition: To permit Wings West Aviation to operate without a TSO–C112 (Mode S) transponder installed on its aircraft operating under the provisions of part 135.
GRANT, May 9, 1995, Exemption No. 6082

Docket No.: 28115
Petitioner: Aero Flight Service, Inc.
Sections of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/Disposition: To permit Aero Flight Service, Inc., to operate without a TSO–C112 (Mode S) transponder installed on its aircraft operating under the provisions of part 135.
GRANT, May 9, 1995, Exemption No. 6084

[FR Doc. 95–13013 Filed 5–25–95; 8:45 am]
BILLING CODE 4910–13–M

Federal Railroad Administration

Petition for Waivers of Compliance

In accordance with 49 CFR 211.9, 211.41 and 211.45, notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance with certain requirements of the Federal safety laws and regulations. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested and the petitioner's arguments in favor of relief.

National Railroad Passenger Corporation (Amtrak)

Docket Number H–95–1

Amtrak requests waivers of compliance with certain provisions of the Federal Railroad Administration (FRA) railroad safety regulations. It is seeking relief from sections of Railroad Safety Appliance Standards (49 CFR Part 231), Railroad Safety Glazing Standards (49 CFR Part 223) and Railroad Track Safety Standards (49 CFR Part 213). The relief is being sought in order to demonstrate the IC3 "Flexiliner", a three-car, articulated, diesel hydraulic, multiple unit trainset built by ABB Scandia A/S for the Danish State Railway (DSB).

The demonstration is a joint project by Amtrak and ABB Traction, Inc. (ABB), and a number of potential sponsors, including state departments of transportation and commuter agencies. Amtrak is serving as the host agency and is acting as liaison with the FRA. The Flexiliner which will be demonstrated was built for the DSB and is presently in revenue service in Denmark. Modifications will be made to the equipment in Denmark to ensure the trainset meets Amtrak and FRA requirements, where practical.

Amtrak anticipates that the Flexiliner trainset will arrive at the Port of Baltimore in July 1995, and be taken to Washington, DC for commissioning tests. After completion of the tests, it is intended that the Flexiliner will operate across the country and be placed in revenue service in the Portland-Eugene, Oregon corridor. This is contingent upon ABB receiving a contract award from Oregon, following a competitive proposal evaluation. Demonstration runs in Amtrak's Northeast Corridor, at a maximum speed of 110 mph, may be scheduled for dignitaries before shipment to Oregon. The train may also operate in either demonstration service or revenue service between other city pairs in other parts of the country.

The Flexiliner will be comprised of three units. The front and rear unit each have two air cooled diesel engines and hydraulic transmissions. The two bogies of the end units are powered and the trailing bogie supports one end of the intermediate non-powered unit. The train is equipped with spring-loaded parking brakes, which replaces the handbrakes.

Amtrak seeks a temporary waiver from compliance with the Railroad Glazing Standards, Section 223.15 (a) and (b), which requires that all front and rear facing windows on passenger cars must meet the FRA Type I testing criteria and all side facing glazing on passenger cars must meet the FRA Type II testing criteria.

The front and rear facing windshields, manufactured by the Triplex Aircraft and Special Products, Limited (TASP), Birmingham, England, is comprised of three sheets of glazing interlayered with soft PVB resulting in a thickness of approximately 22.9 mm (.916 inch). The front and rear facing glazing material was subjected to the British Railways Board (BRB) Specification No. 566 for Type 2 windows, for locomotives and multiple units operating at speeds up 180 km/hr. The glazing material is designed to resist the penetration into the vehicle of a sharp cornered hollow steel cube having sides of a dimension of 70 to 75 mm (2.76″ to 2.95″) and a mass of .9 kg (≈2 lbs), traveling at a speed of 290 km/hr (≈180 mph) per hour, the window to be vertically mounted in an ambient temperature of not more than 10 degrees C and with the window heater turned off. The result of the impact test was that all glass plies broke, some spalling off inner glass face, small split in PVB interlayer, and no penetration of the missile. The test specimen of TASP glazing adequately met the impact requirements for BRB test No. 566 for Type 2 windows.

The side glazing is manufactured according to the National Standards Institute Code ANSI Z97.1–1984. The side window glazing outer pane is 6 mm (.24″) thick, heat-reflecting (coated), hardened, clear "Antelio". The space in between panes is 12 mm (.48″), Argon gas-filled to improve insulation. The inner pane is 4 mm (.16″) thick, specially hardened clear float glass. In general, the ANSI Test Code for Z97.1 simulates the load from a 100 pound person running at a speed of 22 feet/second hitting the glazing. The test is simulated with an impactor made of a punching bag filled with lead shot weighing a total of 100 pounds. The impactor is swung in a pendulum arc from a distance of 12, 18, and 48 inches from the vertically supported glazing test specimen. Interpretation of the test results depends upon the breakage of the test specimen, but the details are not included in this notice. Neither the front and rear facing glazing, nor the side facing glazing materials are in compliance with Part 223 because none of it was tested according to the testing criteria found in Appendix A to Part 223, Certification of Glazing Materials.

Section 223.15(c) requires that each passenger car be equipped with minimum of four (4) emergency [side] windows. The Flexiliner has no emergency side windows per se, and the escape method is to break the windows with emergency hammers strategically located in the passenger compartments. Further, ABB states that wide aisles lead passengers to the four wide entrance doors located in the side of the three unit trainset. The entrance doors are normally electrically activated and pneumatically operated, and in an emergency can be manually opened in the absence of pneumatic pressure or electricity. The two side cab doors at each end of the trainset may also be used as emergency exits.

Amtrak also seeks a temporary waiver from Section 231.12(c), which requires that each passenger car with wide vestibules have two (2) horizontal handholds located near each end on each side of the vestibule end sill. The Flexiliner has no horizontal handholds at either end of the trainset. Modifying the vehicle structure for handholds is impractical for such a short duration test, according to Amtrak.

Section 231.12(d) requires uncoupling levers. The Flexiliner does not have a conventional uncoupling lever, since it was designed to be uncoupled electrically by yard or operating crews. A manually operated emergency lever is provided which does not meet FRA requirements. Amtrak is seeking a temporary waiver because to design and install a manual uncoupling lever is not practical for this [test] program. Further, the Flexiliner has a European style automatic coupler at each end. ABB stated that an adaptor would be provided so that the trainset's automatic coupler can be coupled to a standard AAR coupler.

Amtrak states that during all tests, demonstration service, and revenue service, the train will not exceed the authorized speed for the class of track over which it is operating. However, Amtrak desires to explore cant deficient curving operation of this non-tilt trainset at speeds developing cant deficiency values in excess of the three inch limit defined in the track safety standards. The track safety standards in Section 213.57(b) prescribe a speed limit, not distinguishing between freight and passenger rolling stock, at which trains may operate over curved track as a function of curve radius (curvature) and the installed superelevation. In the general case, for any combination of curvature and superelevation there is a specific ("balanced") speed at which the effect of centrifugal force is cancelled and in the case of passenger cars the result is passenger insensitivity to actual curve negotiation. This is an ideal outcome for passenger trains which usually operate considerably faster than freight trains and, as a consequence, would demand greater superelevation to produce the balanced effect. The track standards permit the operation of trains on curves at speeds producing a conservative underbalance (or, put another way, "cant deficiency") in line with historic industry practice. On the other hand, successful passenger train operation in many places overseas is predicated on curve negotiation at train speeds developing significantly higher cant deficiencies than permitted by the U.S. track regulations. This practice has been followed abroad without incident for many years. State railroad authorities in Western Europe and Japan approved curving speeds for specifically designed rolling stock that produce cant deficiencies at the upper end of the acceptable range without passengers incurring centrifugal force-induced discomfort (for a detailed discussion of cant deficiency, see 52 FR 38035, October 13, 1987).

Amtrak and FRA have worked together in the conduct of cant-deficiency-related analyses for four trainsets of foreign origin up to now. In its petition, Amtrak outlines the now standard procedural steps it intends to take in arriving at a safety qualification of the IC3 trainset in the mode of cant deficient operation at values above three inches. If the petition is granted it would be FRA's responsibility to assure that Amtrak follows these procedures rigorously in this case just as was done in the past.

Interested parties are invited to participate in this proceeding by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with this proceeding since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number H–95–1) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, S.W., Washington, D.C., 20590. Communications received by July 1, 1995 will be considered before final action is taken. Comments received after that date will be considered as far as practicable.

All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) in Room 8201, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590.

Issued in Washington, D.C. on May 23, 1995.

Phil Olekszyk,

Deputy Associate Administrator for Safety Compliance and Program Implementation.

[FR Doc. 95–13018 Filed 5–25–95; 8:45 am]

BILLING CODE 4910–06–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

May 18, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512–0119.
Form Number: ATF F 2149/2150 (5200.14).
Type of Review: Extension.
Title: Notice of Removal of Tobacco Products, Cigarette Papers, or Cigarette Tubes.
Description: Tobacco manufacturers or export warehouse proprietors are liable for tax on tobacco products on their premises. Tobacco products, cigarette papers and tubes may be removed without payment of tax, for specific and verifiable purposes. This form documents and verifies these removals.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 314.
Estimated Burden Hours Per Respondent: 15 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 21,195 hours.

OMB Number: 1512–0162.
Form Number: ATF F 3067 (5210.9).
Type of Review: Extension.
Title: Inventory—Manufacturer of Tobacco Products.
Description: This form is necessary to determine the beginning and ending inventories of tobacco products at the premises of a tobacco products manufacturer. The inventory is recorded on this form by the proprietor and is used to determine tax liability, compliance with regulations and for protection of the revenue.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 34.
Estimated Burden Hours Per Respondent: 30 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 170 hours.

OMB Number: 1512–0345.
Recordkeeping Requirement ID Number: ATF REC 5150/12.
Type of Review: Extension.
Title: Manufacturers Recovering Taxpaid Alcohol.
Description: Apothecaries, pharmacists and manufacturers of certain nonbeverage products may use and recover taxpaid alcohol in the manufacture of such products. The manufacturer then may claim drawback of the taxpaid on the alcohol used. Records of the recovered spirits protect against duplication of claims or diversion to beverage use.
Respondents: Business or other for-profit.
Estimated Number of Recordkeepers: 20.
Estimated Burden Hours Per Recordkeeper: 90 hours.
Frequency of Response: On occasion.
Estimated Total Recordkeeping Burden: 1,800 hours.

OMB Number: 1512–0358.
Recordkeeping Requirement ID Number: ATF REC 5210/1.
Type of Review: Extension.
Title: Tobacco Products Manufacturers—Records of Operations.
Description: Tobacco Products manufacturers must maintain a system of records that provide accountability over the tobacco products received and produced. Needed to ensure tobacco transactions to be traced, and ensure that tax liabilities have been satisfied.
Respondents: Business or other for-profit.
Estimated Number of Recordkeepers: 101.
Estimated Burden Hours Per Recordkeeper: 150 hours.
Frequency of Response: Other.
Estimated Total Recordkeeping Burden: 15,150 hours.
OMB Number: 1512–0363.
Recordkeeping Requirement ID Number: ATF REC 5210/6.
Type of Review: Extension.
Title: Tobacco Products Manufacturers—Supporting Records for Removals for the Use of the United States.
Description: Use of Tobacco Products Manufacturers to record removals of tobacco products for the use of the United States. Used by ATF to verify that removal was tax exempt. Needed to maintain accountability over removals; allows transactions to be traced. Protects tax revenue.
Respondents: Business or other for-profit.
Estimated Number of Recordkeepers: 101.
Estimated Burden Hours Per Recordkeeper: 5 hours.
Frequency of Response: Other.
Estimated Total Recordkeeping Burden: 505 hours.
OMB Number: 1512–0368.
Recordkeeping Requirement ID Number: ATF REC 5230/1.
Type of Review: Extension.
Title: Tobacco Products Importer or Manufacturer—Records of Large Cigar Wholesale Prices.
Description: Used by tobacco products importers or manufacturers who import or make large cigars. Records needed to verify wholesale prices on those cigars; tax is based on those prices. Ensures that all tax revenues due the government are collected.
Respondents: Business or other for-profit.
Estimated Number of Recordkeepers: 108.
Estimated Burden Hours Per Recordkeeper: 2 hours, 20 minutes.
Frequency of Response: Other.
Estimated Total Recordkeeping Burden: 252 hours.
OMB Number: 1512–0391.
Recordkeeping Requirement ID Number: ATF REC 5210/10.
Type of Review: Extension.
Title: Tobacco—Record of Disposition More Than 60,000 Cigarettes in a Single Transaction.
Description: Records must be maintained by Tobacco Products manufacturers and cigarette distributors showing details of large cigarette transactions; used to trace the

movement of contraband cigarettes. Helps curtail illicit traffic in cigarettes between states.

Respondents: Business or other for-profit.

Estimated Number of Recordkeepers: 9,500.

Estimated Burden Hours Per Recordkeeper: 120 hours.

Frequency of Response: Other.

Estimated Total Recordkeeping Burden: 1,140,000 hours.

Clearance Officer: Robert N. Hogarth (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, N.W., Washington, DC 20226.

OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 95–12932 Filed 5–25–95; 8:45 am]

BILLING CODE 4810–31–P

Public Information Collection Requirements Submitted to OMB for Review

May 18, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–1342.

Form Number: IRS Form W–5.

Type of Review: Revision.

Title: Earned Income Credit Advance Payment Certificate.

Description: Form W–5 is used by employees to see if they are eligible for the earned income credit and to request part of the credit in advance with their pay. Eligible employees who want advance payments must give Form W–5 to their employers.

Respondents: Individuals or households.

Estimated Number of Respondents/Recordkeepers: 35,200.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping, 7 min.

Learning about the law or the form, 9 min.

Preparing the form, 27 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 24,992 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 95–12931 Filed 5–25–95; 8:45 am]

BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review

May 19, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–1318.

Regulation ID Number: INTL–0018–92 NPRM.

Type of Review: Extension.

Title: Earnings and Profits of Foreign Corporations.

Description: Application of the proposed regulations may result in accounting method changes which ordinarily require the filing of Form 3115. However, the proposed regulations waive this filing requirement if certain conditions are met, with the net result that no burdens are imposed.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 1.

Estimated Burden Hours Per Respondent: 1 hour.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 1 hour.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 95–12933 Filed 5–25–95; 8:45 am]

BILLING CODE 4830–01–M

Public Information Collection Requirements Submitted to OMB for Review

May 15, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Special Request: In order to conduct the focus group interviews described below in a timely manner, the Department of Treasury is requesting Office of Management and Budget (OMB) review and approval of this information collection by May 25, 1995. To obtain a copy of this survey, please write to the IRS Clearance Officer at the address listed below.

Internal Revenue Service (IRS)

OMB Number: 1545–1432.

Project Number: PC:V 95–007–G.

Type of Review: Revision.

Title: Focus Group Interviews for Gathering Records.

Description: The objective of the study is to gather taxpayers' opinions on the burden associated with learning which records are needed, and gathering and maintaining the necessary records for the purpose of filing their Federal tax returns. Results of these focus groups will help IRS identify what they can do to decrease the burden of recordkeeping.

Respondents: Individuals or households, Business or other for-profit.

Estimated Number of Respondents: 57.

Estimated Burden Hours Per Respondent:

Interview, 2 hours.

Travel time, 1 hour.

Frequency of Response: Other.

Estimated Total Reporting Burden: 292 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer

[FR Doc. 95–12936 Filed 5–25–95; 8:45am]

BILLING CODE: 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review

May 15, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Special Request: In order to conduct the focus group interviews described below in a timely manner, the Department of Treasury is requesting Office of Management and Budget (OMB) review and approval of this information collection by May 25, 1995. To obtain a copy of this survey, please write to the IRS Clearance Officer at the address listed below.

Internal Revenue Service (IRS)

OMB Number: 1545–1432.

Project Number: PC:V 95–009–G.

Type of Review: Revision.

Title: 1995 IRS Small Business Customer Satisfaction Survey.

Description: The purpose of this survey to collect information from small businesses (owners, partners, and corporate officials) in order to determine their opinions about the quality of service provided by the IRS and to understand the relative importance they place on the various aspects of quality service. Information from this survey will be used for three major reasons: (1) to assess satisfaction with the IRS' performance; (2) to assess the IRS's progress against the benchmark 1994 survey; and (3) to guide development of strategic actions to improve customer satisfaction.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 2,000.

Estimated Burden Hours Per Respondent: 15 minutes.

Frequency of Response: Other.

Estimated Total Reporting Burden: 500 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer

[FR Doc. 95–12937 Filed 5–25–95; 8:45am]

BILLING CODE: 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review

May 16, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0042.

Form Number: IRS Form 970.

Type of Review: Extension.

Title: Application to Use Last-In, First-Out (LIFO) Inventory Method.

Description: Form 970 is filed by individuals, partnerships, trusts, estates, or corporations to elect to use the LIFO inventory method or to extend the LIFO inventory method to additional goods. The IRS uses Form 970 to determine if the election was properly made.

Respondents: Business or other for-profit, Individuals or households, Farms.

Estimated Number of Respondents/Recordkeepers: 3,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping, 8 hr., 37 min.

Learning about the law or the form, 1 hr., 35 min.

Preparing the form, 1 hr., 48 min.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 36,000 hours.

OMB Number: 1545–0055.

Form Number: IRS Form 1001.

Type of Review: Extension.

Title: Ownership, Exemption, or Reduced Rate Certificate.

Description: This form is used by owners of certain types of income to report to a withholding agent, both the ownership and any reduced or exempt tax rate under tax conventions or treaties, and if appropriate, to claim a release of tax withheld at source. The withholding agent uses the information to determine the appropriate withholding.

Respondents: Individuals or households, Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 100,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping, 4 hr., 32 min.

Learning about the law or the form, 1 hr., 0 min.

Preparing and sending the form to the IRS, 1 hr., 7 min.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 665,000 hours.

OMB Number: 1545–0240.

Form Number: IRS Form 6118.

Type of Review: Extension.

Title: Claim of Income Tax Return Preparers.

Description: Form 6118 is used by preparers to file for a refund of penalties incorrectly charged. The information enables the IRS to process the claim and have the refund issued to the tax return preparer.

Respondents: Individuals or households, Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 10,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping, 13 min.

Learning about the law or the form, 11 min.

Preparing the form, 8 min.

Copy, assembling, and sending the form to the IRS, 20 min.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 8,900 hours.

OMB Number: 1545–0242.

Form Number: IRS Form 6197.

Type of Review: Extension.

Title: Gas Guzzler Tax.

Description: Form 6197 is used to compute the gas guzzler tax on automobiles whose fuel economy does not meet certain standards for fuel economy. The tax is reported quarterly on Form 720. Form 6197 is filed each

quarter with Form 720 for manufacturers. Individuals can make a one-time filing if they import a gas guzzler auto for personal use. The IRS uses the information to verify computation of the tax and compliance with the law.

Respondents: Individuals or households, Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 485.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping, 4 hr., 18 min.

Learning about the law or the form, 12 min.

Preparing and sending the form to the IRS, 17 min.

Frequency of Response: Quarterly, Annually.

Estimated Total Reporting/Recordkeeping Burden: 2,892 hours.

OMB Number: 1545–0715.

Form Number: IRS Form 1099–B.

Type of Review: Extension.

Title: Proceeds From Broker and Barter Exchange Transactions.

Description: Form 1099–B is used by brokers and barter exchanges to report proceeds from transactions to the Internal Revenue Service.

Respondents: Individuals or households.

Estimated Number of Respondents: 50,000.

Estimated Burden Hours Per Respondent: 15 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 12,925,000 hours.

OMB Number: 1545–0895.

Form Number: IRS Form 3800.

Type of Review: Extension.

Title: General Business Credit.

Description: Internal Revenue Code (IRC) section 38 permits taxpayers to reduce their income tax liability by the amount of their general business credit, which is an aggregation of their investment credit, jobs credit, alcohol fuel credit, research credit, low-income housing credit, disabled access credit, enhanced oil recovery credit, etc. Form 3800 is used to figure the correct credit.

Respondents: Business or other for-profit, Farms.

Estimated Number of Respondents/Recordkeepers: 247,500.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping, 11 hr., 43 min.

Learning about the law or the form, 1 hr., 0 min.

Preparing and sending the form to the IRS, 1 hr., 14 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 3,452,625 hours.

OMB Number: 1545–0930.

Form Number: IRS Form 8396.

Type of Review: Extension.

Title: Mortgage Interest Credit.

Description: Form 8396 is used by individual taxpayers to claim a credit against their tax for a portion of the interest paid on a home mortgage in connection with a qualified mortgage credit certificate. Internal Revenue Code (IRC) section 25 allows the credit and IRC section 163(g) provides that the interest deduction on Schedule A will be reduced by the credit.

Respondents: Individuals or households.

Estimated Number of Respondents/Recordkeepers: 30,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping, 46 min.

Learning about the law or the form, 6 min.

Preparing the form, 42 min.

Copying, assembling, and sending the form to the IRS, 20 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 54,300 hours.

OMB Number: 1545–0971.

Form Number: IRS Form 1041–ES.

Type of Review: Extension.

Title: Estimated Income Tax for Estates and Trusts.

Description: Form 1041–ES is used by fiduciaries of estates and trusts to make estimated tax payments if their estimated tax is $500 or more. IRS uses the data to credit taxpayers' accounts and to determine if the estimated tax has been properly computed and timely paid.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 300,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping, 20 min.

Learning about the law or the form, 8 min.

Preparing the form, 1 hr., 16 min.

Copying, assembling, and sending the form to the IRS, 20 min.

Frequency of Response: Quarterly, Annually.

Estimated Total Reporting/Recordkeeping Burden: 2,484,000 hours.

OMB Number: 1545–1010.

Form Number: IRS Form 1120–RIC.

Type of Review: Extension.

Title: U.S. Income Tax Return for Regulated Investment Companies.

Description: Form 1120–RIC is filed by a domestic corporation electing to be taxed as a RIC in order to report its income and deductions and to compute its tax liability. IRS uses Form 1120–RIC to determine whether the RIC has correctly reported its income, deductions, and tax liability.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 3,277.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping, 58 hr., 10 min.

Learning about the law or the form, 17 hr., 49 min.

Preparing the form, 34 hr., 25 min.

Copying, assembling, and sending the form to the IRS, 4 hr., 17 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 372,562 hours.

OMB Number: 1545–1054.

Form Number: IRS Form 8736.

Type of Review: Extension.

Title: Application for Automatic Extension of Time To File U.S. Return for a Partnership, REMIC, or for Certain Trusts.

Description: Form 8736 is used by partnerships, REMICs, and by certain trusts to request automatic 3-month extension of time to file Form 1065, Form 1041, or Form 1066. Form 8736 contains data needed by the IRS to determine whether or not a taxpayer qualifies for such an extension.

Respondents: Business or other for-profit, Farms.

Estimated Number of Respondents/Recordkeepers: 36,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping, 3 hr., 7 min.

Learning about the law or the form, 24 min.

Preparing, copying, assembling, and sending the form to the IRS, 28 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 142,920 hours.

OMB Number: 1545–1190.

Form Number: IRS Form 8824.

Type of Review: Extension.

Title: Like-Kind Exchanges.

Description: Form 8824 is used by individuals, corporations, partnerships, and other entities to report the exchange of business or investment property, and the deferral of gains from such transactions under section 1031. It is also used to report the deferral of gain under section 1043 by members of the executive branch of the Federal government.

Respondents: Individuals or households, Business or other for profit.

Estimated Number of Respondents/Recordkeepers: 200,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping, 26 min.

Learning about the law or the form, 28 min.

Preparing the form, 1 hr., 2 min.

Copying, assembling, and sending the form to the IRS, 27 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 353,884 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 95–12938 Filed 5–25–95; 8:45 am]

BILLING CODE 4830–01–P

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1979), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to the included in the exhibit "MINGEI: Japanese Folk Art from the Montgomery Collection" (see list*), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with a foreign lender. I also determine that the temporary exhibition or display of the listed exhibit objects at The Frick Art Museum, Pittsburgh, Pennsylvania, beginning on or about June 15, 1995, to on or about August 27, 1995; at the Cincinnati Art Museum, Cincinnati, Ohio, beginning on or about October 1, 1995, to on or about January 1, 1996; at the Meadows Museum, Southern Methodist University, Dallas, Texas, beginning on or about August 22, 1996, to on or about October 6, 1996; at the Flint Institute; Fling, Michigan, beginning on or about October 20, 1996, to on or about December 8, 1996; at the Society of Four Arts, Palm Beach, Florida, beginning on or about January 10, 1997, to on or about February 10, 1997; at the Fresno Metropolitan Museum, Fresno, California, beginning on or about September 13, 1997, to on or about November 30, 1997, and at other locations as yet to be determined, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register**.

Dated: May 23, 1995.

Les Jin,

General Counsel.

[FR Doc. 95–13091 Filed 5–25–95; 8:45 am]

BILLING CODE 8230–01–M

* A copy of this list may be obtained by contacting Lorie J. Nierenberg of the Office of the General Counsel, U.S. Information Agency. The telephone number is 202/619–6084; the address is U.S.I.A., 301–4th Street, S.W., Room 700, Washington, D.C. 20547.

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit "THE GOLDEN AGE OF DANISH ART: Drawings from the Royal Museum of Fine Arts Copenhagen" (see list*), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with a foreign lender. I also determine that the temporary exhibition or display of the listed exhibit objects at The Frick Collection, New York, New York, beginning on or about June 13, 1995, to on or about August 13, 1995; at the Frick Art Museum, Pittsburgh, Pennsylvania, beginning on or about September 8, 1995, to on or about October 22, 1995; and at the Crocker Art Museum, Sacramento, California, beginning on or about January 18, 1996, to on or about March 10, 1996, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register**.

Dated: May 23, 1995.

Les Jin,

General Counsel.

[FR Doc. 95–13092 Filed 5–25–95; 8:45 am]

BILLING CODE 8230–01–M

* A copy of this list may be obtained by contacting Lorie J. Nierenberg of the Office of the General Counsel, U.S. Information Agency. The telephone number is 202/619–6084; the address is U.S.I.A., 301–4th Street, S.W., Room 700, Washington, D.C. 20547.

Sunshine Act Meetings

Federal Register
Vol. 60, No. 102
Friday, May 26, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

UNITED STATES INTERNATIONAL TRADE COMMISSION

TIME AND DATE: June 12, 1995 at 10:00 a.m.

PLACE: Room 101, 500 E Street S.W. Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting
2. Minutes
3. Ratification List
4. Inv. Nos. 731–TA–732–733 (Preliminary) (Circular Welded Non-Alloy Steel Pipe from Romania and South Africa)
5. Outstanding action jackets: none

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: May 23, 1995.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–13145 Filed 5–24–95; 8:45 am]

BILLING CODE 7020–02–P

UNITED STATES INTERNATIONAL TRADE COMMISSION

TIME AND DATE: June 29, 1995 at 2:30 p.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting
2. Minutes
3. Ratification List
4. Inv. No. 731–TA–706 (Canned Pineapple Fruit from Thailand)—briefing and vote.
5. Outstanding action jackets: none

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: May 23, 1995.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–13146 Filed 5–24–95; 2:12 pm]

BILLING CODE 7020–02–P

POSTAL RATE COMMISSION

TIME AND DATE: 2:00 p.m., May 30, 1995.

PLACE: Conference Room, 1333 H Street, NW., Suite 300, Washington, DC 20268.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Docket No. R94–1 On Reconsideration.

CONTACT PERSON FOR MORE INFORMATION: Margaret P. Crenshaw, Secretary, Postal Rate Commission, Suite 300, 1333 H Street, NW., Washington, DC 20268–0001, Telephone (202) 789–6840.

Margaret P. Crenshaw,

Secretary.

[FR Doc. 95–13184 Filed 5–24–95; 8:45 am]

BILLING CODE 7710–FW–P

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Notice of a Meeting

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 C.F.R. Section 7.5) and the Government in the Sunshine Act (5 U.S.C. Section 552b), hereby gives notice that it intends to hold a meeting at 10:00 a.m. on Monday, June 5, 1995, and at 9:00 a.m. on Tuesday, June 6, 1995, in Austin, Texas.

The June 5 meeting is closed to the public. (See 60 FR 24673, May 9, 1995, and 60 FR 27151, May 22, 1995.) The June 6 meeting is open to the public and will be held at The Four Seasons Hotel, 98 San Jacinto Boulevard, in the San Jacinto Ballroom. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary for the Board, David F. Harris, at (202) 268–4800.

Agenda

Monday Session

June 5—10:00 a.m. (Closed)

1. Consideration of Additional Funding Request for the Chicago, Illinois, Processing & Distribution Center. (Rudolph K. Umscheid, Vice President, Facilities)
2. Briefing on the Acquisition of Leased Postal Facilities. (Mr. Umscheid)
3. Consideration of Changes in International Mail Rates. (John F. Alepa, Manager, Pricing, Marketing Systems)

Tuesday Session

June 6—9:00 a.m. (Open)

1. Minutes of the Previous Meeting, May 1–2, 1995.
2. Remarks of the Postmaster General/Chief Executive Officer. (Marvin Runyon)
3. Postal Inspection Service Semiannual Report. (Kenneth J. Hunter, Chief Postal Inspector)
4. Capital Investments.
   a. South River, New Jersey, Material Distribution Center. (Final Decision, Rudolph K. Umscheid, Vice President, Facilities)
   b. 47 Small Parcel and Bundle Sorters (Information Briefing). (William J. Dowling, Vice President, Engineering)
5. Briefing on the International Business Unit. (James F. Grubiak, Executive Director, International Postal Relations)
6. Report on the Southwest Area. (Charles K. Kernan, Vice President, Southwest Area Operations)
7. Tentative Agenda for the July 10–11, 1995, meeting in Washington, D.C.

David F. Harris,

Secretary.

[FR Doc 95–13062 Filed 5–24–95; 9:33 am]

BILLING CODE 7710–12–M

Corrections

Federal Register
Vol. 60, No. 102
Friday, May 26, 1995

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 95M–0057]

Medtronic CardioRhythm; Premarket Approval of Atakr Radio Frequency Catheter Ablation System

Correction

In notice document 95–10429 appearing on page 20999 in the issue of Friday, April 28, 1995, make the following correction:

In the second column, in the second full paragraph, beginning in the second line, "*(insert date 30 days after date of publication in the* **Federal Register**) should read "May 30, 1995".

BILLING CODE 1505–01–D

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

Digital Audio Recording Devices and Media: Access to and Confidentiality of Statements of Account and Verification Audit Filings

Correction

In rule document 95–12012 beginning on page 25995 in the issue of Tuesday, May 16, 1995, make the following correction:

Appendix [Corrected]

On page 25999, in the third column, in paragraph (2), in the fourth line, "important" should read "importing".

BILLING CODE 1505–01–D

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

RIN 3206–AG31

Federal Employees Health Benefits Program: Limitation on Physician Charges and FEHB Program Payments

Correction

In rule document 95–12169 beginning on page 26667 in the issue of Thursday, May 18, 1995, make the following correction:

§ 890.905 [Corrected]

1. On page 26668, in the second column, in § 890.905, in paragraph (b), in the second line, "for" should read "from".

2. On the same page, in the same column, in § 890.905, in paragraph (c), in the fifth line, following "amount" insert "determined".

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–35710; File No. SR-Phlx-95–14]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Extension of Market Marker Margin Treatment to Certain Market Marker Orders Entered From Off the Trading Floor

Correction

In notice document 95–12259 beginning on page 26754 in the issue of Thursday, May 18, 1995, make the following correction:

On page 26756, in the second column, before the FR document line, the signature line was omitted and should have appeared as follows:

Margaret H. McFarland,

Deputy Secretary.

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 21066; 811–5691]

Value Line Intermediate Bond Fund; Notice of Application

Correction

In notice document 95–12316 beginning on page 26913 in the issue of Friday, May 19, 1995, make the following correction:

On page 26913, in the first column, in the heading, above the entry for **AGENCY**, the date "May 12, 1995." should appear.

BILLING CODE 1505–01–D

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federal register

Friday
May 26, 1995

Part II

Federal Emergency Management Agency

Changes to the Hotel and Motel Fire Safety Act National Master List; Notice

FEDERAL EMERGENCY MANAGEMENT AGENCY

Changes to the Hotel and Motel Fire Safety Act National Master List

AGENCY: United States Fire Administration, FEMA.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA or Agency) gives notice of additions and corrections/changes to, and deletions from, the national master list of places of public accommodations which meet the fire prevention and control guidelines under the Hotel and Motel Fire Safety Act.

EFFECTIVE DATE: June 26, 1995.

ADDRESSES: Comments on the master list are invited and may be addressed to the Rules Docket Clerk, Federal Emergency Management Agency, 500 C Street, SW., room 840, Washington, D.C. 20472, (fax) (202) 646–4536. To be added to the National Master List, or to make any other change to the list, please see Supplementary Information below.

FOR FURTHER INFORMATION CONTACT: John Ottoson, Fire Management Programs Branch, United States Fire Administration, Federal Emergency Management Agency, National Emergency Training Center, 16825 South Seton Avenue, Emmitsburg, MD 21727, (301) 447–1272.

SUPPLEMENTARY INFORMATION: Acting under the Hotel and Motel Fire Safety Act of 1990, 15 U.S.C. 2201 note, the United States Fire Administration has worked with each State to compile a national master list of all of the places of public accommodation affecting commerce located in each State that meet the requirements of the guidelines under the Act. FEMA published the national master list in the **Federal Register** on Friday, December 2, 1994, 59 FR 61932, with corrections published Monday, February 27, 1995, 60 FR 10636, and published changes approximately monthly since then.

Parties wishing to be added to the National Master List, or to make any other change, should contact the State office or official responsible for compiling listings of properties which comply with the Hotel and Motel Fire Safety Act. A list of State contacts was published in 59 FR 50132 on September 30, 1994. If the published list is unavailable to you, the State Fire Marshal's office can direct you to the appropriate office. Periodically FEMA will update and redistribute the national master list to incorporate additions and corrections/changes to the list, and deletions from the list, that are received from the State offices.

Each update contains or may contain three categories: "Additions;" "Corrections/changes;" and "Deletions." For the purposes of the updates, the three categories mean and include the following:

"Additions" are either names of properties submitted by a State but inadvertently omitted from the initial master list or names of properties submitted by a State after publication of the initial master list;

"Corrections/changes" are corrections to property names, addresses or telephone numbers previously published or changes to previously published information directed by the State, such as changes of address or telephone numbers, or spelling corrections; and

"Deletions" are entries previously submitted by a State and published in the national master list or an update to the national master list, but subsequently removed from the list at the direction of the State.

Copies of the national master list and its updates may be obtained by writing to the Government Printing Office, Superintendent of Documents, Washington, DC 20402–9325. When requesting copies please refer to stock number 069–001–00049–1.

The update to the national master list follows below.

Dated: May 22, 1995.

John P. Carey,
General Counsel.

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST 05/17/95 UPDATE

	Index/Property name	PO Box/Rt. No. and street address	City	State/Zip	Telephone
	ADDITIONS				
AL0241	HAMPTON INN	1488 THRASHER BLVD	ATHENS	AL 35611	(205) 232–0030
AL0246	SUPER 8 BIRMINGHAM NORTH	624 DECATUR HWY	BIRMINGHAM	AL 35068	(205) 841–2200
AL0244	RAMADA LIMITED	1317 HWY. 67 E	DECATUR	AL 35603	(205) 353–0333
AL0245	SHONEY'S INN BIRMINGHAM HOMEWOOD.	226 SUMMIT PKWY	HOMEWOOD	AL 35209	(205) 916–0464
AL0240	ECONO LODGE UNIVERSITY	3772 UNIVERSITY DR	HUNTSVILLE	AL 35816	(205) 534–7061
AL0242	HAMPTON INN	32988 PERDIDO BEACH BLVD.	ORANGE BEACH	AL 36561	(334) 981–6242
AL0243	HOLIDAY INN SHEFFIELD	4900 HATCH BLVD	SHEFFIELD	AL 35660	(205) 381–4710
AL0239	COMFORT INN	4501 MCFARLAND BLVD. E	TUSCALOOSA	AL 35405	(205) 345–1434
AZ:					
AZ0254	WAHWEAP LODGE AND MARINA.	PO BOX 1597, 100 LAKESHORE DRIVE.	PAGE	AZ 86040	(520) 645–2433
KY:					
KY0416	HATFIELD INN	640 SECOND STREET	CENTRAL CITY	KY 42330	(502) 754–1224
KY0414	DAYS INN OF HAZARD	359 MORTON BLVD	HAZARD	KY 41701	(606) 436–1900
KY0417	COMFORT INN	4447 ASHTON AVE	LOUISVILLE	KY 40216	(502) 361–5008
MO:					
MO0301	BOXCAR WILLIE MOTEL #II	360 SCHAFFER DR	BRANSON	MO 65616	(417) 336–3837
MO0305	FRIENDSHIP INN	3015 GREEN MOUNTAIN DRIVE.	BRANSON	MO 65616	(417) 335–4248
MO0296	HAMPTON INN-WEST	36950W. HWY 76	BRANSON	MO 65616	(417) 337–5762
MO0294	QUALITY INN-76 COUNTRY MUSIC BLVD.	245 JESS JO PRKWY	BRANSON	MO 65616	(417) 336–6288
MO0299	WELK RESORT CENTER	1984 STATE HIGHWAY 165	BRANSON	MO 65616	(417) 336–3575
MO0306	HOLIDAY INN CLAYTON PLAZA.	7730 BONHOMME AVENUE	CLAYTON	MO 63105	(314) 863–0400
MO0297	RAMADA INN	3320 RANGELINE	JOPLIN	MO 64804	(417) 781–0500

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST 05/17/95 UPDATE—Continued

	Index/Property name	PO Box/Rt. No. and street address	City	State/Zip	Telephone
MO0304	HOLIDAY INN CITI CENTRE	1215 WYNADOTTE STREET	KANSAS CITY	MO 64105	(816) 471–1333
MO0302	BEST WESTERN UNIVERSITY INN.	2817 SOUTH MAIN	MARYVILLE	MO 64468	(816) 562–2002
MO0300	MARYVILLE SUPER 8 MOTEL	222 SUMMIT DRIVE	MARYVILLE	MO 64468	(816) 582–8088
MO0298	STUDIO PLUS AT WESTPORT	2030 CRAIG RD	ST LOUIS	MO 63145	(314) 576–3001
MO0295	COMFORT INN WENTZVILLE	1400 CONTINENTAL DR	WENTZVILLE	MO 63385	(314) 327–5515
MS:					
MS0095	DAYS INN	RT 3 BOX 16, HWY 49 NORTH.	COLLINS	MS 39428	(601) 765–6531
MS0094	CABOT LODGE HATTIESBURG.	6541 HWY 49	HATTIESBURG	MS 39401	(601) 264–1881
MS0093	WILSON INN—JACKSON	310 GREYMONT AVE	JACKSON	MS 39202	(601) 944–466
ND:					
ND0081	COUNTRY SUITES BY CARLSON.	3316 13TH AVE. S	FARGO	ND 58103	(701) 234–0565
ND0080	GLADSTONE SELECT HOTEL	112 NE 2	JAMESTOWN	ND 58401	(701) 252–0700
NE:					
NE0113	RAMADA INN-KEARNEY	110 S SECOND AV	KEARNEY	NE 68847	(308) 237–5971
NE0112	DAYS INN-SIDNEY	3042 SILVERBERG DR	SIDNEY	NE 69162	(308) 254–2121
NY:					
NY0611	HOWARD JOHNSON LODGE	450 MORELAND ROAD	COMMACK	NY 11725	(516) 864–8820
NY0612	COMFORT INN CARRIER CIRCLE.	6491 THOMPSON ROAD	SYRACUSE	NY 13206	(315) 437–0222
OK:					
OK0100	COMFORT INN EAST	5653 TINKER DIAGONAL	MIDWEST CITY	OK 73110	(405) 733–1339
TN:					
TN0276	HOLIDAY INN CHATTANOOGA WEST.	3800 CUMMINGS HWY	CHATTANOOGA	TN 37419	(615) 821–3531
TN0274	KING'S LODGE MOTEL	2400 WESTSIDE DR	CHATTANOOGA	TN 37404	(615) 698–8944
TN0275	CLUBHOUSE INN KNOXVILLE	208 MARKET PLACE LN	KNOXVILLE	TN 37922	(615) 531–1900
TX:					
TX0639	SUPER 8 MOTEL & RV PARK	3800 IH 20 E	EASTLAND	TX 76448	(817) 629–2336
TX0638	COMFORT INN	1906 HOUSTON HWY	VICTORIA	TX 77901	(512) 574–9393
VA:					
VA0630	DAYS INN—MILITARY CIRCLE	5701 CHAMBERS ST	NORFOLK	VA 23502	(804) 461–0100
	CORRECTIONS/CHANGES				
AL:					
AL0005	QUALITY INN UNIVERSITY CENTER.	1577 S. COLLEGE ST	AUBURN	AL 36830	(334) 821–7001
AL0207	RAMADA INN	3001 ROSS CLARK CIR	DOTHAN	AL 36301	(334) 792–0031
AL0158	RODEWAY INN	7725 MOBILE HWY	HOPE HULL	AL 36043	(334) 281–7151
AL0118	ADAM'S MARK HOTEL	64 S. WATER ST	MOBILE	AL 36602	(334) 438–4000
AL0097	MIDTOWN ECONO LODGE	1 S. BELTLINE HWY	MOBILE	AL 36606	(334) 479–5333
AL0194	THE DOWNTOWNER	PO BOX 519, HWY 21 S.	MONROEVILLE	AL 36480	(334) 575–3101
AL0209	HOLIDAY INN ANNISTON OXFORD.	215 HWY. 78 & AL 21 S	OXFORD	AL 36203	(205) 831–3410
AZ:					
AZ0206	SUPER 8 MOTEL	1105 E. SHELDON ST	PRESCOTT	AZ 86301	(602) 776–1282
KS:					
KS0001	SUPER 8 MOTEL, INC ABILENE.	2207 N. BUCKEYE	ABILENE	KS 67410	(913) 263–4545
KS0009	SUPER 8 MOTEL COLBY	1040 ZELFER AVE	COLBY	KS 67701	(913) 462–8248
KS0109	ECONO LODGE LANSING	504 N. MAIN ST	LANSING	KS 66043	(913) 727–2777
KS0050	SUPER 8 LIBERAL	747 E. PANCAKE	LIBERAL	KS 67901	(316) 624–8880
KS0051	INN 4 LESS LYONS	817 W. MAIN	LYONS	KS 67554	(316) 257–5185
KS0058	RED COACH INN INC	2111 E. KANSAS	MCPHERSON	KS 67460	(316) 241–2460
KS0154	CLUB HOUSE INN	10610 MARTY	OVERLAND PARK	KS 662120000.	(913) 648–5555
KS0074	SUPER 8 PRATT	PO BOX 347, 1906 E. 1ST	PRATT	KS 67124	(316) 672–5945
KS0157	CLUB HOUSE INN	924 SOUTH WEST HENDERSON.	TOPEKA	KS 666150000.	(913) 273–8888
KS0116	COMFORT INN TOPEKA	1518 SW WANAMAKER RD	TOPEKA	KS 66604	(913) 273–5365
KS0117	DAYS INN TOPEKA	1510 SW WANAMAKER RD	TOPEKA	KS 66604	(913) 222–8538
KS0096	HERITAGE HOUSE	3535 SW 6TH	TOPEKA	KS 66606	(913) 233–3800
KS0087	SUPER 8 MOTEL TOPEKA	5968 SW 10TH	TOPEKA	KS 66604	(913) 273–5100
KS0141	CLUB HOUSE INN WICHITA	515 S. WEBB RD	WICHITA	KS 67207	(316) 684–1111
KS0106	MARRIOTT WICHITA	9100 CORPORATE HILLS DR	WICHITA	KS 67207	(316) 651–0333
KY:					
KY0374	QUALITY MOTEL	4646 SCOTTSVILLE RD	BOWLING GREEN	KY 42101	(502) 843–1163
KY0412	COMFORT SUITES	1918 W. 192 BY-PASS REGENCY PK.	LONDON	KY 40741	(606) 877–7848

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST 05/17/95 UPDATE—Continued

Index/Property name	PO Box/Rt. No. and street address	City	State/Zip	Telephone
MO:				
MO0254 COMFORT INN—NORTH	2550 NORTH GLENSTONE	SPRINGFIELD	MO 65803	(417) 866–5255
MS:				
MS0013 RAMADA INN—UNIVERSITY	PO BOX 2201, W. JACKSON AVE.	OXFORD	MS 38655	(601) 234–7013
NE:				
NE0087 HAWTHORN SUITES	11025 M ST	OMAHA	NE 68137	(402) 331–0101
VA:				
VA0547 ECONO LODGE CHESAPEAKE BEACH.	2968 SHORE DRIVE	VIRGINIA BEACH	VA 23451	(804) 481–0666
DELETIONS				
AL:				
AL0223 ECONO LODGE UNIVERSITY	3772 UNIVERSITY DR	DECATUR	AL 35603	(205) 353–9194
MS:				
MS0055 LA FONT INN	PO BOX 2703, DENNY AVE	PASCAGOULA	MS 39568	(601) 762–7111
VA:				
VA0465 ECONO LODGE CHESAPEAKE BEACH.	2968 SHORE DRIVE	VIRGINIA BEACH	VA 23451	(804) 481–0666

[FR Doc. 95–12943 Filed 5–25–95; 8:45 am]
BILLING CODE 6718–26–U

federal register

Friday
May 26, 1995

Part III

Department of Agriculture

Cooperative State Research, Education, and Extension Service

Small Business Innovation Research Grants Program for Fiscal Year 1996; Solicitation of Applications; Notice

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

Small Business Innovation Research Grants Program for Fiscal Year 1996; Solicitation of Applications

Notice is hereby given that under the authority of the Small Business Innovation Development Act of 1982 (Pub. L. 97–219), as amended (15 U.S.C. 638) and Section 630 of the Act making appropriations for Agriculture, Rural Development, and Related Agencies programs for fiscal year ending September 30, 1987, and for other purposes, as made applicable by Section 101(a) of Public Law 99–591, 100 Stat. 3341, the U.S. Department of Agriculture (USDA) expects to award project grants for certain areas of research to science-based small business firms through Phase I of its Small Business Innovation Research (SBIR) Grants Program. This program will be administered by the Office of Grants and Program Systems, Cooperative State Research, Education, and Extension Service. Firms with strong scientific research capabilities in the topic areas listed below are encouraged to participate. Objectives of the three-phase program include stimulating technological innovation in the private sector, strengthening the role of small businesses in meeting Federal research and development needs, increasing private sector commercialization of innovations derived from USDA-supported research and development efforts, and fostering and encouraging participation of women-owned and socially and economically disadvantaged small business concerns in technological innovation.

The total amount expected to be available for Phase I of the SBIR Program in fiscal year 1996 is approximately $3,500,000. The solicitation is being announced to allow adequate time for potential recipients to prepare and submit applications by the closing date of September 1, 1995. The research to be supported is in the following topic areas:

1. Forests and Related Resources
2. Plant Production and Protection
3. Animal Production and Protection
4. Air, Water and Soils
5. Food Science and Nutrition
6. Rural and Community Development
7. Aquaculture
8. Industrial Applications
9. Marketing and Trade

The award of any grants under the provisions of this solicitation is subject to the availability of appropriations.

This program is subject to the provisions found at 7 CFR Part 3403, as amended. These provisions set forth procedures to be followed when submitting grant proposals, rules governing the evaluation of proposals and the awarding of grants, and regulations relating to the post-award administration of grant projects. In addition, USDA Uniform Federal Assistance Regulations, as amended (7 CFR Part 3015), Governmentwide Debarment and Suspension (Non-procurement) and Governmentwide Requirements for Drug-free Workplace (Grants) (7 CFR Part 3017), New Restrictions on Lobbying (7 CFR Part 3018), and Managing Federal Credit Programs (7 CFR Part 3) apply to this program. Copies of 7 CFR Part 3403, 7 CFR Part 3015, 7 CFR Part 3017, 7 CFR Part 3018, and 7 CFR Part 3 may be obtained by writing or calling the office indicated below.

The solicitation, which contains research topic descriptions and detailed instructions on how to apply, may be obtained by writing or calling the office indicated below. Please note that applicants who submitted SBIR proposals for fiscal year 1995 or who have recently requested placement on the list for fiscal year 1996 will automatically receive a copy of the fiscal year 1996 solicitation.

Proposal Services Branch, Awards Management Division, Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture, Ag Box 2245, Washington, D.C. 20250–2245, Telephone: (202) 401–5048.

Done at Washington, D.C., this 22nd day of May 1995.

William D. Carlson,

Acting Administrator, Cooperative State Research, Education, and Extension Service.

[FR Doc. 95–13002 Filed 5–25–95; 8:45 am]

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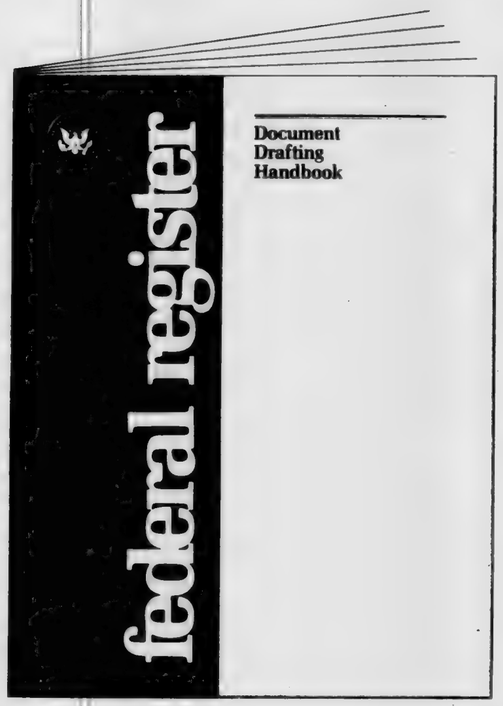
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 506, 510

[No. 95–100]

RIN 1550–AA66

Release of Unpublished Information

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision (OTS) is issuing its final regulation pertaining to the release of unpublished OTS information. The rule is based upon the OTS's experience and practices developed during the last five years in responding to the large volume of requests by the public for unpublished OTS information.

The final rule describes the procedures that requesters must follow in requesting the release of unpublished information by document or testimony and the criteria on which the OTS will evaluate requests for unpublished information. The records covered include those created or obtained in connection with the OTS's performance of its statutory responsibilities, such as supervision, regulation, examination, and law enforcement duties.

EFFECTIVE DATE: July 1, 1995.

FOR FURTHER INFORMATION CONTACT: Valerie J. Lithotomos, Counsel (Banking and Finance), (202) 906–6439, Regulations and Legislation Division; Donna Miller, Program Manager, (202) 906–7488, Affiliates Programs; Francis Raue, Program Analyst, (202) 906–5750, Thrift Policy; Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background

The OTS is today issuing a final rule amending its current rule concerning the release of unpublished information.[1] The final rule includes requests for release of records that are exempt from disclosure under the Freedom of Information Act (FOIA), such as examination and related reports, information relating to the business operations and finances of individual savings associations, savings and loan holding companies, other affiliates, and their customers, and information compiled in connection with the OTS's enforcement investigations. It also includes requests for testimony. The testimony covered in the final rule includes requests for current and former OTS employees, officers, and agents (and for former employees, officers and agents of the OTS's predecessor, the Federal Home Loan Bank Board) to testify in judicial and administrative proceedings, including depositions and informal interviews, about information obtained in their official OTS capacities.

The final rule in no way affects the rights and procedures governing access to records that are required under the FOIA. Indeed, the final rule does not apply to requests for records under the FOIA; FOIA requests remain governed by Part 505 of the OTS's regulations and the Treasury Department's FOIA regulations. However, the final rule may permit the OTS to make records available that are exempt from disclosure under the FOIA.

The final rule provides that in considering requests for disclosure of unpublished information, the OTS must weigh carefully the need demonstrated by a member of the public for access to the OTS's records and testimony against the public interest in maintaining the confidentiality of the unpublished information. Among the factors the OTS will consider in weighing the public interest in confidentiality is the impact on the OTS's supervisory, examination, and enforcement responsibilities of releasing such information. The OTS will balance these and other appropriate considerations with a requester's interest and expressed need in obtaining such information.

While the vast majority of requests for unpublished records and testimony arise in the course of litigation to which the OTS is not a party, this final rule also provides for the evaluation of requests that arise in a non-litigation context. A non-litigation request must demonstrate as great a need for release of the information as that shown by a request made in the course of litigation.

In addition, the final rule, for the first time, authorizes savings associations to release their examination reports and related supervisory correspondence to their holding companies, and similarly authorizes holding companies to release their examination reports and related supervisory correspondence to their subsidiary savings associations. Also, reports and other information released under this rule remain the property of the OTS, regardless of where such reports or information are physically located.

The final rule also provides for the imposition of fees for searches for records, copying, certifications and witness fees and allowances.

A. Revisions to Existing Section 510.5

The final rule completely revises much of existing 12 CFR 510.5. In particular, the final rule adds detailed procedures for the public to follow in requesting release of unpublished OTS information and describes criteria on which the OTS will evaluate such requests. Also, as noted above, the final rule for the first time authorizes savings associations to release their examination reports and related supervisory correspondence to their parent holding companies, and similarly authorizes holding companies to release their examination reports and related supervisory correspondence to their subsidiary savings associations. The final rule also provides for reimbursement to the OTS for producing records and witnesses. A more detailed description, section by section, of the revisions made to current § 510.5 is contained below in "B. Description of the Proposal".

B. Description of the Proposal

On December 9, 1993, the OTS published in the **Federal Register** a

[1] The OTS's authority to govern the custody and use of its records and the testimony of its personnel derives from 12 U.S.C. 1462a, 1463(a) 1464 and 5 U.S.C. 301. In particular, section 1462a(b)(2) authorizes the Director of the OTS to prescribe such regulations as he may determine to be necessary for carrying out his responsibilities. Also, section 301 authorizes an agency head to prescribe regulations governing the conduct of its employees and the custody, use and preservation of its records.

notice of proposed rulemaking describing amendments to its current § 510.5. 58 FR 64695 (December 9, 1993).[2] The public comment period closed on February 7, 1994. The proposal is described section by section below:

Section 510.5(a): Paragraph (a) identifies the types of requests covered under this rule. This paragraph provides that the rule applies to requests from the public for unpublished OTS information; the term "unpublished information" includes records and testimony. The covered records include those created or obtained in connection with the OTS's performance of its responsibilities such as its supervisory, regulatory, examination, and enforcement-related duties. The covered testimony includes that of present and former employees, officers, and agents for information obtained in their official OTS capacities. The paragraph states that this rule does not apply to records required to be released under the FOIA, nor does it apply to requests for information by other government agencies or requests for information that arise in proceedings in which the OTS is a party.

Section 510.5(b): Paragraph (b) sets out the purpose of this regulation. The purpose of this rule is to provide an orderly mechanism for expeditiously processing requests for OTS's unpublished information while preserving the OTS's need to maintain confidentiality of certain information.

Section 510.5(c): Paragraph (c) describes the procedures that must be followed when making a request for unpublished OTS information. Paragraph (1) describes general procedures that apply to all requests by members of the public for unpublished information (i.e., records and testimony). It sets forth the types of information that must be contained in such requests, including a showing by the requester that the information sought is *highly relevant* to the purpose for which it is sought. In addition, the requester must demonstrate that the information requested is not available from another source. The requester must also demonstrate that the need for such information clearly outweighs the need to maintain the confidentiality of OTS unpublished information and the burden on the OTS in producing the information, such as the disruption to the OTS's supervisory and other responsibilities that is occasioned by reviewing a large volume of records and loss to the OTS of the services of employees while they testify at depositions or hearings. This paragraph also requires a requester who seeks a response in less than 30 days to include an explanation of why the request was not submitted earlier and why the expedited handling of the request is necessary.

Paragraphs (2) and (3) set forth additional requirements for certain types of requests. Paragraph (2) pertains to requests for records. It requires that requesters of unpublished OTS records specifically list the types and categories of records sought and the relevant time period. Paragraph (3) describes special requirements for requests for testimony from OTS employees. This paragraph states that requests for testimony by OTS employees or former employees must specifically describe the substance of the testimony sought and show a compelling need for the testimony. Such requests shall also include a demonstration that the information sought is not available from any other source. This paragraph also prohibits OTS employees from testifying as expert witnesses for private parties, requests that litigants anticipate their need for OTS testimony in time for such testimony to be taken in deposition form, and states that the OTS shall specify the scope of any authorized testimony.

Paragraph (4) specifies that unpublished OTS information made available to savings associations, state and Federal agencies and requesters shall remain the property of the OTS and shall not be disclosed to any other party without OTS authorization. In addition, the paragraph authorizes a savings association to provide a copy of its examination report and related supervisory correspondence to parent holding companies. Similarly, a savings and loan holding company is authorized to provide a copy of its examination report and related supervisory correspondence to its subsidiary savings association(s) without further authorization from the OTS.

Paragraph (5) provides that requests for unpublished OTS information shall be sent to the OTS at 1700 G Street, NW., Washington, D.C. 20552, to the attention of the Corporate Secretary.

Section 510.5(d): Paragraph (d) describes the process by which the OTS will consider requests for unpublished information, both records and testimony, and the factors the OTS may consider in denying such requests.

Section 510.5(e): Paragraph (e) sets forth restrictions on the dissemination of unpublished OTS information. Paragraph (1) provides that except as authorized by this regulation or as otherwise authorized by the Director or his delegate, no current or former OTS employee may disclose any unpublished OTS information to anyone other than an employee or agent of the OTS properly entitled to such information for the performance of their official duties.

Paragraph (2) requires any person with unpublished OTS information who is served with a subpoena, order, or other process requiring their attendance as a witness or for production of records, to advise the issuer of such notice of the substance of this regulation. In addition, this paragraph prohibits any person with unpublished OTS information from disclosure of such information in response to a subpoena without prior OTS authorization.

Paragraph (3) provides that if a person is required to appear in response to a subpoena or other legal process and is asked to disclose unpublished OTS information, that person shall decline to produce such information or give any testimony concerning such information. Upon receiving such a request or subpoena to testify, the individual is required to contact promptly the OTS Litigation Division.

Paragraph (4) specifies that the possession of unpublished OTS information by savings associations, their holding companies, and state and Federal agencies shall not waive any privilege the OTS might have to such information.

Section 510.5(f): Paragraph (f) imposes requirements to protect the confidentiality of unpublished OTS information that is made available to requesters. Paragraph (1) provides that the release of records will normally be conditioned upon entry of an acceptable protective order by the court or administrative tribunal presiding in a particular case or, in non-litigated matters, upon execution of an acceptable confidentiality agreement. Paragraph (2) states that the OTS may condition its authorization of deposition testimony on an agreement of the parties that the transcript of the testimony shall remain confidential. This paragraph also requires the party who requested the testimony to furnish the OTS with a copy of the transcript of the testimony at its expense.

Section 510.5(g): Paragraph (g) sets forth procedures designed to limit the burden on the OTS in connection with releasing records. Paragraph (1) states that requesters who require authenticated records should request certified copies at least 30 days prior to the date the records are needed.

[2] The reader is also directed to the preamble discussion in the proposal for a more detailed discussion of the background of this regulation.

Paragraph (2) specifies the responsibility of litigants to share and safeguard OTS records. This paragraph provides that the party to whom records are released has the responsibility of notifying the other parties, providing them with copies of the records, retrieving any records from the court's file when they are no longer required, and returning such records to the OTS.

Section 510.5(h): Paragraph (h) sets forth the fees for records searches, records copying and records certification. Specifically, it provides that the fees charged to the requester of OTS records shall be the fees set forth in the Treasury Department regulations, 31 CFR 1.7. Paragraph (2) requires that witness fees and allowances will be paid by the requester of testimony of current OTS employees in accordance with 28 U.S.C. 1821.

II. Summary of Comments

A. General Summary

The OTS received a total of 20 letters of comment from 4 types of sources. Those who submitted comments included 14 savings associations; 5 trade associations; 1 co-operative savings bank; and 1 holding company (one thrift submitted its comment letter on behalf of itself and its parent holding company).

Generally, several commenters expressed concern that the proposed rule would have a "chilling effect" on the examination process. They asserted that the possibility that the OTS might subsequently release information provided in an examination may impede the free flow of information from a savings association to the OTS examiners. Some commenters expressed concern that the proposal was an impermissible expansion of the FOIA and urged that deviations from the FOIA requirements be considered cautiously. Also, five commenters supported the portion of the proposal permitting holding companies to release their examination reports to their thrifts and thrifts to release examination reports to their holding companies.

B. Specific Issues Discussion

1. Possible "Chilling Effect" on Examination Process

Several commenters speculated that this rule will be detrimental to the industry in that it will inhibit cooperation and candid communication between savings associations and the OTS examiners. Certain of these commenters stated that the examination process and the supervisory process would be adversely affected by this rule because institutions may attempt to protect confidential information which could reasonably be expected to harm the institution if disclosed.

The commenters did not point to any particular situation where such problems have arisen. In fact, OTS has been following these practices for several years, and its experience indicates that the integrity of the examination process will not in any way be compromised by this rule. In hundreds of instances OTS has produced non-public information about institutions in response to demands made by litigants in law suits in which OTS is not a party ("third-party litigation"). In responding to such requests, OTS has developed a practice over a period of five years, which is incorporated into this regulation, that balances confidentiality concerns with the disclosure obligations in the Federal Rules of Civil Procedure. (Under the Federal Rules of Civil Procedure, a litigant is generally entitled to discover non-privileged relevant information.) Specifically, in responding to a request for release of non-public information, OTS considers the following three factors: (1) The relevance of the information, (2) the availability of the information from other sources and (3) whether the need for the information outweighs the need to keep it confidential and the burden on OTS. These criteria are set forth in the regulation issued today. Sec. 510.5(c)(1). Further, in keeping with existing practice, the regulation provides that if OTS grants a request for disclosure of non-public information, it will generally condition the release of the information on the entry of a confidentiality order or agreement that places limits on the extent to which the recipient may disclose the information. Sec. 510.5(f).

By selectively releasing information in third-party litigation only when these criteria are met, and by requiring that a confidentiality order or agreement be in place before non-public information is released, OTS has minimized any potential adverse consequence occasioned by the release of the information. As noted, following these procedures, OTS has disclosed non-public information in hundreds of cases in which it has received production demands under the Federal Rules of Civil Procedure, and it is not aware that this practice has had any adverse effect on the examination process.

2. Freedom of Information Act Considerations

Six commenters expressed concern that the FOIA specifically exempts from disclosure certain records, such as OTS's examination reports, and that the release of such records would be a "violation" of the FOIA. First, the FOIA does not prohibit the release of information; rather, it requires the disclosure of certain types of records and exempts from mandatory release other records. The FOIA gives the agency discretion to release information that it is not otherwise required to release under FOIA. Among the categories of records that are exempt from mandatory release are records related to examination, operating or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions.[3] Thus, while the FOIA exempts these records from the mandatory disclosure requirements, it in no manner prevents the OTS from disclosing this information under the OTS's authority to govern the custody and the use of its records and the testimony of its personnel.[4] The OTS will continue to exercise its authority to release such information in a prudent manner by applying the procedures set forth in the final rule and the relevant federal case law.

3. An Interagency Process Should be Established

The recommendation was made by some commenters that the OTS should work with the other banking agencies to establish interagency procedures to provide for consistent application of criteria governing release of unpublished information concerning financial institutions. One commenter stated that this is a matter for resolution under the auspices of the Federal Financial Institutions Examination Council (FFIEC), and recommended that the OTS refer the issues arising out of the proposal to the FFIEC.

The nature of requests, the volume of requests and the needs of the agency may vary from one federal agency to another. While the OTS agrees with the merits of developing a uniform set of procedures for responding to requests for unpublished information, the public interest would not be served by delaying the issuance of this rule while the prospect of developing uniform procedures on an interagency basis is explored. Because the existing rule does not describe many of the practices that OTS has developed over the last several years, it is preferable to amend the rule now so that the public is informed of the disclosure process OTS currently uses.

[3] 5 U.S.C. 552(b)(8).

[4] 12 U.S.C. 1462a; 5 U.S.C. 301.

4. Violation of the Right to Privacy

Three commenters asserted that the release of confidential information without the knowledge and consent of the savings association violates a general right to privacy of the thrift, its customers, and its personnel. The commenters identified no statutory basis for this assertion. In releasing unpublished OTS information, the OTS has observed and will continue to observe the requirements of the Privacy Act of 1974, 5 U.S.C. 552a, and the Right to Financial Privacy Act, 12 U.S.C. 3401 *et seq.*

5. Source of Information Should be Permitted to Comment

Three commenters suggested that the source or subject of the confidential information should be permitted to express its views regarding the release of unpublished information. The OTS has on occasion contacted the source of the information for its views on release of the information. However, in the vast majority of cases, the OTS has been able to evaluate the necessity to maintain the confidentiality of OTS information without consulting the subject or source of the OTS information. Therefore, a requirement that the OTS obtain the subject's or source's views in all instances would result in unnecessary delays in processing requests. For this reason, the OTS declines to include a provision requiring that the source's views be sought, but the OTS will retain, on a case-by-case basis, the practice of contacting the source of information for input when the circumstances and timing warrant.

6. Information Shared With Holding Company

Five commenters supported the new provision authorizing a savings association to provide a copy of its examination report and related supervisory correspondence to its parent holding company. The commenters also supported the provision whereby the holding company would similarly be authorized to provide a copy of its examination report and related supervisory correspondence to its subsidiary thrift. This information would enhance the ability of a holding company to assess its subsidiary thrift's operations and compliance with regulatory standards, and would permit the holding company to provide managerial or financial resources when needed. Similarly, a subsidiary thrift could use this information to address issues it may have with the holding company and to avoid potential conflicts of interest.

7. Increased Litigation and Increased Costs

Three commenters expressed concern that the final rule will lead to an increase in shareholder and other lawsuits against savings associations. Also, two commenters expressed concern that this rule would greatly increase the amount of OTS employee time and taxpayer money that would be expended in evaluating requests for information, as well as increase costs generally. The OTS does not agree with these concerns. The final rule simply codifies the OTS's existing practices in evaluating requests from the public for unpublished OTS information. The OTS's experience over the past five years has not shown that these practices resulted in increased litigation against savings associations or increased costs to the OTS. In fact, the final rule should help reduce costs by decreasing the amount of time that OTS personnel devote to answering questions from the public about the OTS's procedures for releasing non-public information. Unlike the current rule, the final rule specifies in detail the procedures that must be followed and the information that must be provided when the public requests unpublished OTS information.

III. Description of the Final Rule

The final rule does not differ materially from the proposal. Certain non-substantive changes have been made to section 510.5(a)(2) for clarification purposes. Section 510.5(a)(3) was changed to clarify that this rule does not apply to other government agencies except where specifically provided. Also, section 510.5(c)(4)(v) was changed to clarify that requesters who obtain unpublished OTS information may not disclose such information without the OTS's authorization.

Certain minor changes have been made to section 510.5(c)(2)(ii) in response to a comment that was submitted. As proposed, that subsection provided that if a party to a lawsuit has a claim of privilege regarding the information in OTS records and the records are in the possession of that party, the OTS may respond to the request by authorizing the party to release the records pursuant to an appropriate confidentiality order rather than by releasing the records directly to the requesting party, so that the party possessing the records may argue the issue of privilege in the appropriate court. In the final rule, the term "another party to the lawsuit" has been changed to "person" in order to clarify that a person (*e.g.*, an individual, corporation, partnership) may assert a privilege for non-public OTS records in its possession or control if it receives a subpoena for such information in litigation in which it is not a party. The final rule also clarifies that the privilege may be asserted by the person who has either possession or control of the records, rather than just possession of the records.

Section 510.5(c)(5) was also changed to specify that requests submitted under this regulation should be sent to the attention of the Corporate Secretary.

Section 510.5(d)(4), which describes the grounds for denying requests, was modified to include two criteria that are identified in section 510.5(c), the section that explains the issues that must be addressed in a request for unpublished OTS information. The additional criteria for denying a request are (1) the need for the information does not clearly outweigh the need to maintain the confidentiality of the information, and (2) the requester has not shown a compelling need for the testimony. While these criteria are implicit in the grounds for denial that appeared in the proposed rule and that have been retained in the final rule (i.e., that OTS may deny requests that are overly burdensome or contrary to the public interest), OTS is explicitly including these criteria in the interests of completeness.

Readers are referred to the preamble[5] in the proposal for additional discussion of provisions that have not been revised in the final rule.

IV. Paperwork Reduction Act

The reporting requirements contained in this final rule have been submitted for review and approved by the Office of Management and Budget, in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)) under control number 1550–0081. Comments on the collection of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (1550), Washington, D.C. 20503, with copies to the Office of Thrift Supervision, 1700 G Street, NW., Washington, D.C. 20552.

The reporting requirements in this final rule are found in 12 CFR 510.5(c)–(g). The information is needed by the OTS to provide a more efficient mechanism for expeditiously processing requests for unpublished information.

V. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601), it is certified that this regulation will not have a significant economic impact on a substantial number of small savings associations, small service corporations, or other small entities. This regulation simply sets forth the procedures utilized by the OTS in its handling of requests for unpublished OTS information and imposes fees in connection with such requests. Accordingly, a regulatory flexibility analysis is not required.

[5] 58 FR 64695 (December 9, 1993).

VI. Executive Order 12866

The OTS has determined that this regulation does not constitute a "significant regulatory action" for purposes of Executive Order 12866.

List of Subjects

12 CFR Part 506

Reporting and recordkeeping requirements.

12 CFR Part 510

Administrative practice and procedure.

Accordingly, the Office of Thrift Supervision hereby amends parts 506 and 510, subchapter A, chapter V, title 12 of the Code of Federal Regulations as set forth below.

SUBCHAPTER A—ORGANIZATION AND PROCEDURES

PART 506—INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT

1. The authority citation for part 506 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

2. Section 506.1 is amended by adding in numerical order one new entry to the table in paragraph (b) to read as follows:

§ 506.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) *Display.*

12 CFR part or section where identified and described	Current OMB control No.
• • • • •	
510.5(c) through (g)	1550–0081
• • • • •	

PART 510—MISCELLANEOUS ORGANIZATIONAL REGULATIONS

3. The authority citation for part 510 is revised to read as follows:

Authority: 5 U.S.C. 301; 12 U.S.C. 1462a, 1463, 1464.

4. Section 510.5 is revised to read as follows:

§ 510.5 Release of unpublished OTS information.

(a) *Scope.* (1) This section applies to requests by the public for unpublished OTS information, such as requests for records or testimony from parties to lawsuits in which the OTS is not a party.

(2) Unpublished OTS information includes records created or obtained in connection with the OTS's performance of its responsibilities, such as records concerning supervision, regulation, and examination of savings associations, their holding companies, and affiliates, and records compiled in connection with the OTS's enforcement responsibilities. Unpublished OTS information also includes information that current and former employees, officers, and agents obtained in their official capacities. Examples of unpublished information include:

(i) Information in the memory of a current or former employee, officer, or agent of the OTS (or the Federal Home Loan Bank Board, the predecessor agency of the OTS), by testimony or informal interview, that was acquired in the course of performing official duties or because of the employee's, officer's or agent's official status;

(ii) Reports of examination, supervisory correspondence, internal agency memoranda and investigatory files compiled in connection with an investigation, whether such records are in the possession of the OTS or some other individual or entity; and

(iii) Unpublished OTS records obtained by or in the possession of third parties, including other government agencies.

(3) This section does not apply to:

(i) Requests for records or testimony in proceedings in which the OTS is a party;

(ii) Requests for information by other government agencies, except when specifically provided; and

(iii) Requests for records that are required to be disclosed under the Freedom of Information Act, *see* 5 U.S.C. 552, and 31 CFR 1.1–1.6.

(b) *Purpose.* The purposes of this section are:

(1) To afford an orderly mechanism for the OTS to expeditiously process requests for unpublished OTS information and, where appropriate, for the OTS to assert evidentiary privileges in litigation;

(2) To balance the need for confidentiality of unpublished OTS information with the private party's interest in obtaining disclosure of that information;

(3) To ensure that the time of OTS employees is utilized in the most efficient manner consistent with the OTS's statutory mission;

(4) To prevent undue burdens on the OTS;

(5) To limit the expenditure of the OTS's funds for private purposes; and

(6) To maintain the impartiality of the OTS among private litigants.

(c) *Procedure.*—(1) *Requests for records and testimony in general.* A request for unpublished OTS information must be in writing, furnish the caption of the lawsuit if the request arises in the course of litigation, and support the requester's claim that the information sought is highly relevant to the purpose for which it is sought. In demonstrating that the information is highly relevant, the requester must explain in detail how the requested OTS information relates to the issues in the case or the matter.

(i) For requests arising in lawsuits, the submission also must include:

(A) A copy of the complaint or equivalent document in the case and any other pleadings necessary to show relevance;

(B) A description of any prior decisions or pending motions in the case that may bear on the asserted relevance of the information being sought from the OTS; and

(C) The names, addresses and phone numbers of counsel to all other parties in the case.

(ii) In all instances, in addition to demonstrating that the information sought is highly relevant to the purpose for which it is sought, the requester must:

(A) Demonstrate that the information sought is not available from any other source; and

(B) Demonstrate that the need for the information clearly outweighs the need to maintain the confidentiality of the OTS information and the burden on the OTS to produce the information.

(iii) If a request seeks a response in fewer than 30 days, it must include an explanation of why the requester was unable to submit the request earlier and why expediting the request is required.

(2) *Additional provisions relating to requests for records.* In addition to the requirements of paragraph (c)(1) of this section, the provisions in paragraphs (c)(2)(i) and (c)(2)(ii) of this section apply to requests for disclosure of records.

(i) A request for records must list the categories of records sought and describe the specific information sought, including the relevant time period.

(ii) When the OTS believes that another person has a claim of privilege regarding the information in the records

and the records are in the possession or control of that person, such as reports prepared by a savings association's attorneys that are shared with the OTS, the OTS may respond to the request by authorizing that person to release the records pursuant to an appropriate confidentiality order rather than by the OTS releasing the records directly to the requesting party. This will enable the person possessing or controlling the records to argue any issues of privilege to the appropriate court.

(3) *Additional provisions relating to requests for testimony from OTS employees.* In addition to the requirements of paragraph (c)(1) of this section, the provisions in paragraphs (c)(3)(i) through (c)(3)(iv) of this section apply to requests that current or former OTS employees be authorized to give testimony.

(i) The request must specifically describe the substance of the testimony sought and show a compelling need for the testimony. A showing of compelling need should include a demonstration that the requested information is not available from any other source, such as the books and records of other persons or entities, OTS records that have been or might be released, or the testimony of other non-OTS persons, including retained experts.

(ii) OTS employees will not be authorized to provide expert or opinion testimony for private parties.

(iii) The OTS expects litigants to anticipate their need for OTS testimony in sufficient time to request and obtain that testimony in deposition form. A request for testimony at a trial or hearing may not be granted unless the requester shows that properly developed deposition testimony could not be used or would not be adequate at the trial or hearing.

(iv) The OTS shall specify the scope of any authorized testimony and may take steps to ensure that the scope of testimony taken adheres to the scope authorized. Parties to the case who did not join in the request and who wish to question the witness beyond the authorized scope should request expanded authorization pursuant to this regulation. The OTS will attempt to render decisions on such requests in an expedited manner.

(4) *Information available to savings associations, holding companies, state and Federal agencies and requesters.* (i) The regular report of examination of a savings association, savings and loan holding company, or other affiliate of a savings association is made available by the appropriate Regional Office to the entity examined.

(ii) A subsidiary savings association of a savings and loan holding company may reproduce and furnish a copy of its report of examination and related supervisory correspondence of the savings association to its parent holding company(ies) without prior approval of the OTS. A savings and loan holding company may reproduce and furnish a copy of its report of examination and related supervisory correspondence to another affiliated savings and loan holding company that controls the same savings association or its subsidiary savings association(s) without prior approval of the OTS. This paragraph does not require such disclosure by a parent savings and loan holding company or subsidiary savings association.

(iii) Reports of examination and other information relating to state-chartered savings associations and affiliates are made available, upon request, by the OTS to the state governmental authority having general supervision of such state-chartered savings associations.

(iv) Reports of examination and other information may be made available by the OTS to other agencies of the United States, a state agency, or to the Federal Home Loan Banks, for use where necessary in the performance of their official duties.

(v) All reports or other information made available to savings associations, holding companies, affiliates, other governmental agencies or requesters shall remain the property of the OTS and, except as permitted by this section or otherwise by the Director or his delegate, no person, company, agency, or authority to whom the information is made available, or any officer, director, employee or agent thereof, shall disclose any such information except published statistical material that would not disclose the identity of any individual or corporation.

(5) *Where to submit requests.* In all matters covered by this section, notification of the issuance of subpoenas or compulsory process and requests for records or testimony covered by this section must be sent to the OTS at 1700 G Street NW., Washington, DC 20552, to the attention of the Corporate Secretary, and should be labelled "Request for Release of Unpublished Information Under Section 510.5." Requesters may furnish copies of the request or subpoenas simultaneously to the appropriate OTS Regional Office, but the furnishing of such copies does not constitute service on the OTS.

(d) *Consideration of requests*—(1) *In general.* The OTS will generally process requests in the order in which they are received. The OTS will endeavor to respond to requests within 30 days, but this may vary depending on the scope and precision of the request. The OTS will weigh requests for processing in less than 30 days against the burden to the OTS of expedited processing and the unfairness to other parties whose pending requests may be delayed.

(2) *Consultation with requester.* The OTS may consult with the requester to:

(i) Refine and limit the scope of the request so as to reduce the burden and expense on the OTS; or

(ii) Obtain additional information necessary for the OTS to make an informed determination on the request. To the extent necessary to reach an informed determination on the request, the OTS may inquire into the circumstances of the underlying matter and rely on sources of information beyond the requester, including other interested parties.

(3) *Final determinations.* Final determinations on requests will be made by the Director or his delegate. All such determinations are the sole discretion of the Director or his delegate. Requesters will be notified in writing of the disposition of the request.

(4) *Denial of requests.* (i) The OTS may deny requests for records or testimony that seek information that the OTS deems to be:

(A) Not highly relevant;

(B) Privileged;

(C) Available from other sources; or

(D) Information that should not be disclosed for reasons that warrant restriction of discovery under the Federal Rules of Civil Procedure (28 U.S.C. appendix).

(ii) The OTS may also deny a records or testimony request when it considers production of the information to be overly burdensome or contrary to the public interest, or where OTS determines that the need for the information does not clearly outweigh the need to maintain the confidentiality of the information, or where the requester seeks testimony and has not shown a compelling need for the testimony.

(5) *Confidentiality Orders and Agreements.* As is set forth in paragraph (f) of this section, the OTS may condition release of information on the entry by the relevant tribunal of an order satisfactory to the OTS or, in a non-litigated matter, the execution of a confidentiality agreement that limits access of third parties to the unpublished OTS information. It shall be the duty of the requesting party to obtain such an order or to execute a confidentiality agreement.

(e) *Parties with access to OTS information; restriction on dissemination*—(1) *Current and former employees.* Except as authorized by this section or as otherwise authorized by the Director or his delegate, no current or former employee, officer or agent of the OTS or a predecessor agency shall disclose or permit the disclosure of any unpublished information of the OTS to anyone (other than an employee, officer or agent of the OTS properly entitled to such information for the performance of their official duties), whether by giving out or furnishing such information or a copy thereof or by allowing any person to inspect, examine, or copy such information or copy thereof, or otherwise.

(2) *Duty of person served.* If any person, whether or not a current or former employee, officer or agent of the OTS, has information of the OTS that may not be disclosed under the regulations of the OTS or other applicable law, and in connection therewith is served with a subpoena, order, or other process requiring personal attendance as a witness or production of records or information in any proceeding, that person shall promptly advise the OTS of such service or request for information. Upon such notice the OTS will take appropriate action to advise the court or tribunal that issued the process and the attorney for the party at whose instance the process was issued, if known, of the substance of this section. Such notice to the OTS shall be made by contacting the Litigation Division, Office of Chief Counsel, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552. As provided in paragraph (e)(3) of this section, a person so served with process may not disclose OTS information without OTS authorization. To obtain OTS authorization, a request must be sent to the OTS in Washington, DC, in accordance with paragraph (c) of this section.

(3) *Appearance by person served.* Except as the OTS has authorized disclosure of the relevant information, or except as authorized by law, any person who has information of the OTS that may not be disclosed under this section and is required to respond to a subpoena or other legal process shall attend at the time and place therein mentioned and respectfully decline to produce such records or give any testimony with respect thereto, basing such refusal on this part. If, notwithstanding, the court or other body orders the disclosure of such records or the giving of such testimony, the person having such information of the OTS shall continue respectfully to decline to produce such information and shall promptly advise the Litigation Division of the Chief Counsel's Office, Office of Thrift Supervision. Upon such notice the OTS will take appropriate action to advise the court or tribunal which issued the order, of the substance of this section.

(4) *Non-waiver of privilege.* The possession by any entity or individual described in paragraph (c)(4) of this section of OTS records covered by this section shall not waive any privilege of the OTS or the OTS's right to supervise the further dissemination of these records.

(f) *Orders and agreements protecting the confidentiality of unpublished OTS information*—(1) *Records.* Unless otherwise permitted by the OTS, release of records authorized pursuant to this section will be conditioned by the OTS upon entry of an acceptable protective order by the court or administrative tribunal presiding in the particular case, or, in non-litigated matters, upon execution of an acceptable confidentiality agreement. In cases where protective orders have already been entered, the OTS reserves the right to condition approval for release of information upon the inclusion of additional or amended provisions.

(2) *Testimony.* The OTS may condition its authorization of deposition testimony on an agreement of the parties that the transcript of the testimony will be kept under seal, or will be made available only to the parties, the court and the jury, except to the extent that the OTS may allow use of the transcript in related litigation. The party who requested the testimony shall, at its expense, furnish to the OTS a copy of the transcript of testimony of the OTS employee or former employee.

(g) *Limitation of burden on the OTS in connection with released records*—(1) *Authentication for use as evidence.* The OTS will authenticate released records to facilitate their use as evidence. Requesters who require authenticated records should request certified copies at least 30 days prior to the date they will be needed. The request should be sent to the OTS Public Disclosure Branch and shall identify the records, giving the office or record depository where they are located (if known) and include copies of the records and payment of the certification fee.

(2) *Responsibility of litigants to share released records.* The party who has sought and obtained OTS records has the responsibility of:

(i) Notifying other parties to the case of the release and, after entry of a protective order, providing copies of the records to the other parties who are subject to the protective order; and

(ii) Retrieving any records from the court's file as soon as the records are no longer required by the court and returning them to the OTS. Where a party may be involved in related litigation, the OTS may, upon a request made to it pursuant to this section, authorize such party to transfer the records for use in that related case.

(h) *Fees*—(1) *Fees for records searches, copying and certifications.* Requesters shall be charged fees in accordance with Treasury Department regulations, 31 CFR 1.7. With certain exceptions, the regulations in 31 CFR 1.7 provide for recovery of the full direct costs of searching, reviewing, certifying and duplicating the records sought. An estimate of the statement of charges will be sent to requesters, and fees shall be remitted by check payable to the OTS prior to release of the requested records. Where it deems appropriate, the OTS may contract with commercial copying concerns to copy the records, with the cost billed to the requester.

(2) *Witness fees and allowances.* (i) Litigants whose requests for testimony of current OTS employees are approved shall, upon completion of the testimonial appearance, promptly tender a check payable to the OTS for witness fees and allowances in accordance with 28 U.S.C. 1821.

(ii) All litigants whose requests for testimony of former OTS employees are approved, shall also promptly tender witness fees and allowances to the witness in accordance with 28 U.S.C. 1821.

Dated: May 22, 1995.

By the Office of Thrift Supervision.

Jonathan L. Fiechter,

Acting Director.

[FR Doc. 95–12967 Filed 5–26–95; 8:45 am]

BILLING CODE 6720–01–P

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12 CFR Part 509

[No. 95–102]

RIN 1550–AA80

Rules of Practice and Procedure in Adjudicatory Proceedings

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision (OTS) is amending its Rules

of Practice and Procedure in Adjudicatory Proceedings. The final rule is intended to clarify provisions relating to *ex parte* communications to conform to the requirements of the Administrative Procedure Act (APA). In particular, the amendment clarifies that the *ex parte* provisions do not apply to intra-agency communications, which are governed by a separate provision of the APA.

EFFECTIVE DATE: July 1, 1995.

FOR FURTHER INFORMATION CONTACT: Karen Osterloh, Counsel, Banking and Finance, Regulations and Legislation Division, Chief Counsel's Office (202/906–6639), Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background

In August, 1991, the Office of Thrift Supervision (OTS), the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board of Governors), the Federal Deposit Insurance Corporation (FDIC), and the National Credit Union Administration (NCUA) adopted Uniform Rules of Practice and Procedure for agency adjudicatory proceedings.[1] The OTS codified these uniform rules in its Rules of Practice and Procedure in Adjudicatory Proceedings at 12 CFR Part 509, Subpart A.

By notice published December 5, 1994 (59 FR 62354), the OTS proposed to amend one aspect of its rules on *ex parte* communications to clarify that the rules parallel the requirements of the Administrative Procedure Act (APA). The other banking agencies have issued identical proposals.[2] The Board of Governors has published a final rule on this matter.[3]

Currently, section 509.9 prohibits "a party, his or her counsel, or another interested person" from making an *ex parte* communication to the Director or other decisional official concerning the merits of an adjudicatory proceeding. When the uniform rules were proposed and adopted in 1991, the joint notice of proposed rulemaking explained that the proposed rule regarding *ex parte* communications "adopts the rules and procedures set forth in the APA regarding *ex parte* communications."[4] There was no intention to impose a rule more restrictive than that imposed by the APA.

The APA contains two provisions relating to communications with agency decision-makers. The APA's *ex parte* communication provision, 5 U.S.C. 557(d), restricts communications between "interested person[s] outside the agency" and the agency head, the administrative law judge (ALJ), or the agency decisional employees. *Intra-agency* communications are governed by the APA's separation-of-functions provision, 5 U.S.C. 554(d). That section prohibits investigative or prosecutorial personnel at an agency from "participat[ing] or advis[ing] in the decision, recommended decision, or agency review" of an adjudicatory matter pursuant to section 557 of the APA except as witness or counsel. The same separation-of-functions provision provides that the ALJ in an adjudicatory matter may not consult any party on a fact in issue unless the other parties have an opportunity to participate.[5] It does not prohibit agency investigatory or prosecutorial staff from seeking the amendment of a notice or the settlement or termination of a proceeding.

The rule as proposed and adopted in 1991, however, neglected to mention the separation-of-functions concept explicitly, and appeared to apply the *ex parte* communication prohibition to all communications concerning the merits of an adjudicatory proceeding between the Director, ALJ or decisional personnel on the one hand, and any "party, his or her counsel, or another person interested in the proceeding" on the other. The OTS and the other banking agencies have never interpreted this provision as limiting agency enforcement staff's ability to seek approval of amendments to or terminations of existing enforcement actions. As drafted, however, the provision could be misinterpreted to expand the *ex parte* communication prohibition beyond the scope of the APA. The OTS and the other banking agencies did not intend this result.

The amendment clarifies that the regulation is intended to conform to the provisions of the APA by limiting the prohibition on *ex parte* communications to communications to or from "interested persons outside the agency," 5 U.S.C. 557(d), and by incorporating explicitly the APA's separation-of-functions provision, 5 U.S.C. 554(d). This approach is also consistent with the most recent Model Adjudication Rules prepared by the Administrative Conference of the United States.

The OTS received two comments on the proposed rule. One commenter argued that the separation-of-functions provision of the APA prohibits agency investigatory or prosecutorial staff from seeking the amendment of a notice or termination of a proceeding, without notice and opportunity for other parties to be heard. The commenter further suggests that the separation-of-functions provision prohibits the Director from acting on such a request. The case law, however, does not support the commenter's assertions. Prosecuting staff may advise agency heads *ex parte* with respect to initiating a new action against a party in a pending proceeding, adding new parties to an ongoing case, enlarging or clarifying issues in a pending case, and reopening a closed proceeding.[6]

Another commenter suggested that the OTS explain the so-called "Chinese wall" between staff members who prosecute an administrative proceeding and staff members who advise the Director on disposition of that matter. The amended rule specifically sets out the APA separation-of-functions provision that prohibits agency prosecutorial personnel in one case from participating in the Director's decision on that or a factually related case. This provision clearly prevents prosecutorial staff from communicating about the merits of a case with those staff members who advise the Director on the final decision in the case. It is unnecessary to set out internal procedures implementing this statutory prohibition in a formal rulemaking. To do so may limit the OTS's flexibility with regard to its internal operations.

II. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, the OTS hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

The final rule makes a minor amendment to conform an existing rule of procedure to current intra-agency practices. Because the change affects intra-agency procedures only, it should not result in additional burden for regulated institutions. The purpose of the revised regulation is to conform the provisions of the regulation to those imposed by statute.

[1] OTS, 56 FR 38302, Aug. 12, 1991; OCC, 56 FR 38024, Aug. 9, 1991; Board of Governors, 56 FR 38046, Aug. 9, 1991; FDIC, 56 FR 37968, Aug. 9, 1991; and NCUA, 56 FR 37762, Aug. 8, 1991.

[2] Board of Governors, 59 FR 60094, Nov. 22, 1994; FDIC, 59 FR 60921, Nov. 29, 1994; OCC, 59 FR 63936, Dec. 12, 1994; and NCUA, 59 FR 67655, Dec. 30, 1994.

[3] 59 FR 65244, Dec. 19, 1994.

[4] 56 FR 27790, 27793, June 17, 1991.

[5] 5 U.S.C. 554(d)(1).

[6] See RSR Corp. v. F.T.C., 656 F.2d 718 (D.C. Cir. 1981); Environmental Defense Fund v. E.P.A., 548 F.2d 998, 1006, n.20 (D.C. Cir. 1976), cert. denied, 431 U.S. 925 (1977); Environmental Defense Fund v. E.P.A., 510 F.2d 1292, 1305 (D.C. Cir. 1975).

III. Executive Order 12866

The OTS has determined that this final rule is not a significant regulatory action as defined in Executive Order 12866.

IV. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, 104 Pub. L. 104–4 (signed into law on March 22, 1995) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more in one year. If the budgetary impact statement is required, section 205 of the Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. As discussed in the preamble, this final rule is limited in application to the internal procedures of OTS. The OTS has therefore determined that the final rule will not result in expenditure by State, local, or tribal governments or by the private sector of more than $100 million. Accordingly, the OTS has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

List of Subjects in 12 CFR Part 509

Administrative practice and procedures, Penalties.

For the reasons set forth in the preamble, the Office of Thrift Supervision hereby amends part 509, chapter V, title 12, Code of Federal Regulation as set forth below:

SUBCHAPTER A—ORGANIZATION AND PROCEDURES

PART 509—RULES OF PRACTICE AND PROCEDURE IN ADJUDICATORY PROCEEDINGS

1. The authority citation for part 509 continues to read as follows:

Authority: 5 U.S.C. 556; 12 U.S.C. 1464, 1467, 1467a, 1813; 15 U.S.C. 78*l*.

2. Section 509.9 is amended by revising paragraphs (a) and (b) and by adding a new paragraph (e) to read as follows:

§ 509.9 Ex parte communications.

(a) *Definition*—(1) *Ex parte communication* means any material oral or written communication relevant to the merits of an adjudicatory proceeding that was neither on the record nor on reasonable prior notice to all parties that takes place between:

(i) An interested person outside the Office (including such person's counsel); and

(ii) The administrative law judge handling that proceeding, the Director, or a decisional employee.

(2) *Exception.* A request for status of the proceeding does not constitute an *ex parte* communication.

(b) *Prohibition of ex parte communications.* From the time the notice is issued by the Director until the date that the Director issues the final decision pursuant to § 509.40(c) of this subpart:

(1) No interested person outside the Office shall make or knowingly cause to be made an *ex parte* communication to the Director, the administrative law judge, or a decisional employee; and

(2) The Director, administrative law judge, or decisional employee shall not make or knowingly cause to be made to any interested person outside the Office any *ex parte* communication.

* * * * *

(e) *Separation-of-functions.* Except to the extent required for the disposition of *ex parte* matters as authorized by law, the administrative law judge may not consult a person or party on any matter relevant to the merits of the adjudication, unless on notice and opportunity for all parties to participate. An employee or agent engaged in the performance of investigative or prosecuting functions for the Office in a case may not, in that or a factually related case, participate or advise in the decision, recommended decision, or agency review of the recommended decision under § 509.40 of this subpart, except as witness or counsel in public proceedings.

Dated: May 23, 1995.

By the Office of Thrift Supervision.

Jonathan L. Fiechter,

Acting Director.

[FR Doc. 95–13117 Filed 5–26–95; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–74–AD; Amendment 39–9241; AD 95–09–03]

Airworthiness Directives; Jetstream Model 4101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 95–09–03, that was sent previously to all known U.S. owners and operators of Jetstream Model 4101 airplanes by individual letters. This AD requires inspection to determine the number of hours time-in-service on the landing gear control unit, and modification of the cable (electrical wiring circuit) of the landing gear control unit. This amendment is prompted by a report of failure of a micro-switch in the landing gear control unit. The actions specified by this AD are intended to prevent uncommanded retraction of a landing gear, which could adversely affect airplane controllability.

DATES: Effective June 14, 1995, to all persons except those persons to whom it was made immediately effective by priority letter AD 95–09–03, issued on April 18, 1995, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 14, 1995.

Comments for inclusion in the Rules Docket must be received on or before July 31, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–74–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The applicable service information may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: On April 18, 1995, the FAA issued priority letter AD 95–09–03, which is applicable to Jetstream Model 4101 airplanes. That action was prompted by a report of failure of a micro-switch in the landing gear control unit. This failure was apparently due to a manufacturing defect. Investigation revealed that the micro-switch failure caused the units to

produce spurious signals, which resulted in an uncommanded retraction of the landing gear while the airplane was on the ground. This condition, if not corrected, could result in uncommanded retraction of a landing gear, which could adversely affect airplane controllability.

Jetstream has issued Alert Service Bulletin J41–A32–042, dated April 13, 1995, which describes procedures for inspection to determine the number of hours time-in-service on the landing gear control unit. This alert service bulletin also describes procedures for a modification of the cable (electrical wiring circuit) of the landing gear control unit, which will preclude uncommanded retraction of a landing gear in the event of a micro-switch failure. The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design registered in the United States, the FAA issued priority letter AD 95–09–03 to require inspection to determine the number of hours time-in-service on the landing gear control unit, and modification of the cable (electrical wiring circuit) of the landing gear control unit. The actions are required to be accomplished in accordance with the alert service bulletin previously described.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on April 18, 1995 to all known U.S. owners and operators of Jetstream Model 4101 airplanes. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective as to all persons.

This is considered interim action. The manufacturer has advised that it currently is developing a modification that will further address the unsafe condition addressed by this AD. Once this modification is developed, approved, and available, the FAA may consider additional rulemaking.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–NM–74–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–09–03 Jetstream Aircraft Limited: Amendment 39–9241. Docket 95–NM–74–AD.

Applicability: Model 4101 airplanes, constructor numbers 41001 through 41046 inclusive, and 41048 through 41052 inclusive; having either landing gear control unit part number 717701–1 or 717701 modification A; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent uncommanded retraction of the landing gear, which can adversely affect airplane controllability, accomplish the following:

(a) Within 8 hours time-in-service after the effective date of this AD, perform an inspection to determine the number of hours time-in-service on the landing gear control unit, in accordance with Jetstream Alert Service Bulletin J41–A32–042, dated April 13, 1995.

(1) For those airplanes on which the control unit has accumulated less than 200 hours time-in-service: Prior to further flight, modify the cable (electrical wiring circuit) of the landing gear control unit in accordance with the alert service bulletin.

(2) For those airplanes on which the control unit has accumulated 200 hours or more time-in-service: Within 50 hours time-in-service or within 7 days after the effective date of this AD, whichever occurs earlier, modify the cable (electrical wiring circuit) of the landing gear control unit in accordance with the alert service bulletin.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The inspection and modification shall be done in accordance with Jetstream Alert Service Bulletin J41–A32–042, dated April 13, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on June 14, 1995, to all persons except those persons to whom it was made immediately effective by priority letter AD 95–09–03, issued April 18, 1995, which contained the requirements of this amendment.

Issued in Renton, Washington, on May 18, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–12711 Filed 5–26–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–NM–79–AD; Amendment 39–9242; AD 95–11–07]

Airworthiness Directives; McDonnell Douglas Model DC–10 Series Airplanes and KC–10A (Military) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all McDonnell Douglas Model DC–10 series airplanes and KC–10A (military) airplanes, that requires inspections to detect cracking of H–11 attach bolts of the upper vertical stabilizer and replacement of these bolts and associated nuts with Inconel bolts and nuts. This amendment is prompted by failure of the attach bolts of the upper vertical stabilizer due to stress corrosion. The actions specified by this AD are intended to prevent undetected cracked or failed attach bolts that may lead to reduced structural integrity of the vertical stabilizer.

DATES: Effective June 29, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 29, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California ; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Maureen Moreland, Aerospace Engineer, Airframe Branch, ANM–121L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5238; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all McDonnell Douglas Model DC–10 series airplanes and KC–10A (military) airplanes was published in the **Federal Register** on September 19, 1994 (59 FR 47825). That action proposed to require inspections to detect cracking of H–11 attach bolts of the upper vertical stabilizer and replacement with Inconel attach bolts and associated nuts.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposed rule.

The Air Transport Association of America, on behalf of one of its member operators, requests that the 18-month compliance time for the repetitive inspections required by proposed paragraph (a)(1) be extended to 24 months. The commenter states that this extension in the compliance time would coincide with regularly scheduled maintenance visits, and would result in savings of over $2,800 per airplane if operators were not required to "special schedule" these airplanes for the inspection.

The FAA does not concur with the commenter's request to extend the compliance time. The FAA has determined that the compliance time, as proposed, represents the maximum interval of time allowable for the affected airplanes to continue to operate prior to accomplishing the required inspections without compromising safety. Further, the FAA's intent is to have the compliance time for the repetitive inspections coincide with the 18-month interval recommended by the manufacturer. Additionally, since the FAA has received an additional report of bolt failure, the FAA finds that the 18-month interval for the repetitive inspections is appropriate to ensure safety of the fleet.

Additionally, the Service Action Requirements Document (SARD) that is referenced in this final rule was developed by McDonnell Douglas only after extensive and detailed consultations with large numbers of operators of Model DC–10 series airplanes. The compliance times were based on these consultations and developed in order to minimize the economic impact on operators without compromising the safety objectives of

this AD. Further, the FAA has received no data substantiating that an extension of the compliance time to 24 months would provide an acceptable level of safety.

One commenter requests that the requirement to replace all H–11 attach bolts and associated nuts within 5 years as proposed in paragraph (c) be revised to be an option. The commenter asserts that these bolts need not be replaced within 5 years since the cause of the failed bolts has been attributed to stress corrosion, not fatigue. Further, the commenter contends that the bolts are easily inspected and that damage would be easily detectable. Finally, the commenter believes that service history (three incidents of one failed bolt per airplane in over 20 years) supports its assertion that mandatory replacement of these bolts is unnecessary.

The FAA does not concur. The FAA finds that bolt failure due to stress corrosion is less predictable than failure due to fatigue; therefore, the requirement to replace these bolts is even more crucial. Furthermore, the FAA does not consider that these inspections are easy to perform. Finally, although only one bolt has failed per airplane, thus far, the FAA has no technical data to substantiate preclusion of potential multiple failures of this bolt on any Model DC–10 series airplane. Additionally, the FAA has determined that long term continued operational safety will be better assured by actual modification of the airframe to remove the source of the problem, rather than by repetitive inspections. Long term inspections may not be providing the degree of safety assurance necessary for the transport airplane fleet. This, coupled with a better understanding of the human factors associated with numerous repetitive inspections, has led the FAA to consider placing less emphasis on special procedures and more emphasis on design improvements. The replacement requirement is in consonance with these considerations.

Two commenters request that the cost estimate be revised, since it seems to be unrealistic. One of these commenters requests that the estimated cost of accomplishing the proposed actions include the time necessary to obtain access to the area, remove and re-install access doors, remove sealant from bolts, and remove and re-install bolts. The FAA does not concur. The appropriate number of work hours to accomplish the required actions (specified as 2 for the inspection and 8 for the replacement of the bolts) in the economic impact information, below, was provided to the FAA by the manufacturer based on the best data available to date. This number does not include the time required to gain access, remove parts, remove sealant from parts, and close up. The cost analysis in AD rulemaking actions typically does not include these costs, since there may be great variations in them from operator to operator.

The FAA has recently reviewed the figures it has used over the past several years in calculating the economic impact of AD activity. In order to account for various inflationary costs in the airline industry, the FAA has determined that it is necessary to increase the labor rate used in these calculations from $55 per work hour to $60 per work hour. The economic impact information, below, has been revised to reflect this increase in the specified hourly labor rate.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been added to this final rule to clarify this long-standing requirement.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 426 McDonnell Douglas Model DC–10 series airplanes and KC–10A (military) airplanes of the affected design in the worldwide fleet. The FAA estimates that 269 airplanes of U.S. registry will be affected by this AD.

It will take approximately 2 work hours per airplane to accomplish the required inspections at an average labor rate is $60 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $32,280, or $120 per airplane.

It will take approximately 8 work hours per airplane to accomplish the required replacements at an average labor rate of $60 per work hour. Required parts will cost approximately $9,009 per airplane. Based on these figures, the total cost impact of the replacements requirements of this AD on U.S. operators is estimated to be $2,552,541, or $9,489 per airplane.

Based on the above figures, the total cost impact of the inspection and replacement requirements of this AD on U.S. operators is estimated to be $2,584,821, or $9,609.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–11–07 McDonnell Douglas: Amendment 39–9242. Docket 94–NM–79–AD.

Applicability: Model DC–10–10, –10F, –15, –30, –30F, –40, and –40F series airplanes, and KC–10A (military) airplanes; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent undetected cracked or failed attach bolts that may lead to reduced structural integrity of the vertical stabilizer, accomplish the following:

(a) Within 12 months after the effective date of this AD, perform an ultrasonic inspection to detect cracking in the attach bolts of the upper vertical stabilizer, in accordance with McDonnell Douglas DC–10 Service Bulletin 55–20, Revision 2, dated August 4, 1994, unless accomplished within the last 18 months prior to the effective date of this AD in accordance with McDonnell Douglas DC–10 Service Bulletin 55–20, Revision 1, dated March 8, 1991, or Revision 2, dated August 4, 1994.

(1) If no cracking is detected in any bolt, repeat the inspection of the uncracked bolt thereafter at intervals not to exceed 18 months, until the requirements of paragraph (c) of this AD are accomplished.

(2) If cracking is detected in any bolt, prior to further flight, replace the cracked bolt and associated nut with a new Inconel attach bolt and associated nut, in accordance with the service bulletin. No further action is required by this AD for the new Inconel bolts and associated nuts.

(b) Compliance with the inspections required by paragraph (a) of this AD constitutes compliance with the inspections and reports required by paragraph (b) of AD 93–17–09, amendment 39–8680, for Principal Structural Element (PSE) 55.10.001/002. However, after installation of new Inconel bolts and associated nuts, in accordance with the requirements of paragraphs (a) and (c) of this AD, PSE 55.10.001/002 must continue to be inspected in accordance with AD 93–17–09.

(c) Within 5 years after the effective date of this AD, replace all H–11 attach bolts and associated nuts of the upper vertical stabilizer with new Inconel attach bolts and associated nuts, in accordance with McDonnell Douglas DC–10 Service Bulletin 55–20, Revision 1, dated March 8, 1991; or Revision 2, dated August 4, 1994. Such replacement constitutes terminating action for the requirements of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The inspections and replacement shall be done in accordance with McDonnell Douglas DC–10 Service Bulletin 55–20, Revision 1, dated March 8, 1991, or McDonnell Douglas DC–10 Service Bulletin 55–20, Revision 2, dated August 4, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on June 29, 1995.

Issued in Renton, Washington, on May 18, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–12713 Filed 5–26–95; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 10

[T.D. 95–45]

Reciprocal Privileges Extended to Aircraft Registered in Abu Dhabi, Bahrain, Oman and Qatar

AGENCY: U.S. Customs Service. Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by adding Abu Dhabi, Bahrain, Oman and Qatar to the list of countries whose registered commercial aircraft are entitled to certain privileges that exempt from Customs duties and internal revenue taxes their supplies and equipment that are withdrawn from Customs or Internal Revenue custody. Customs has been duly informed that the Governments of these countries allow exemption privileges to U.S.-registered aircraft in connection with international commercial operations that are substantially reciprocal to the exemption privileges that may be allowed under U.S. law to aircraft of foreign registry. Accordingly, Customs is extending reciprocal privileges.

DATES: This amendment is effective May 30, 1995. These reciprocal privileges were granted on June 1, 1994.

FOR FURTHER INFORMATION CONTACT: William G. Rosoff, Entry Rulings Branch, (202) 482–7040.

SUPPLEMENTARY INFORMATION:

Background

Section 309 (a)(3) and (d) and 317, Tariff Act of 1930, as amended (19 U.S.C. 1309 (a)(3) and (d) and 1317), provide that foreign-registered aircraft engaged in foreign trade may withdraw from Customs or Internal Revenue custody, free of customs duties and internal revenue taxes imposed by reason of importation, articles of foreign or domestic origin for supplies (including equipment), ground equipment, maintenance, or repair of the aircraft. The privileges granted by these sections are allowed only if the Secretary of Commerce finds and advises the Secretary of the Treasury that the foreign country in question affords substantially reciprocal privileges to U.S.-registered aircraft. The regulations implementing these reciprocal duty-free customs and internal revenue tax exemptions are found at § 10.59(f), Customs Regulations (19 CFR 10.59(f)), which enumerates

those countries entitled to reciprocal privileges and designates the extent of the exemptions allowed.

In accordance with 19 U.S.C. 1309(d), the Deputy Assistant Secretary for Service Industries and Finance, International Trade Administration, Department of Commerce, has advised the Customs Service by letter dated April 17, 1995, that following an appropriate investigation, it has been found that the Governments of Abu Dhabi, Bahrain, Oman and Qatar allow or would allow to aircraft of United States registry exemption privileges, in connection with international commerce operations, substantially reciprocal to those exemption privileges provided to aircraft of foreign registry by sections 309 and 317 of the Tariff Act of 1930, as amended. The effective date of this finding is June 1, 1994.

This document amends the list in § 10.59(f), Customs Regulations (19 CFR 10.59(f)) by adding Abu Dhabi, Bahrain, Oman and Qatar to the list of countries entitled to reciprocal privileges.

Authority to amend this section of the Customs Regulations has been delegated to the Chief, Regulations Branch.

Inapplicability of Public Notice and Comment Requirements, Delayed Effective Date Requirements, the Regulatory Flexibility Act, and Executive Order 12866

Because the subject matter of this document does not constitute a departure from established policy or procedures, but merely announces the granting of an exemption for which there is a statutory basis, it has been determined, pursuant to 5 U.S.C. 553(b)(B), that the notice and public comment procedures thereon are unnecessary. Further, for the same reasons and because Abu Dhabi, Bahrain, Oman and Qatar have been found to be presently granting reciprocal exemption privileges to U.S.-registered aircraft, it has been determined, pursuant to 5 U.S.C. 553(d)(1) and (3), that a delayed effective date is not required. Because this document is not subject to the notice and public procedure requirements of 5 U.S.C. 553, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This document does not meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

List of Subjects in 19 CFR Part 10

Aircraft, Customs duties and inspection, Exports, Imports, Reporting and recordkeeping requirements.

Amendment to the Regulations

To reflect the reciprocal privileges granted to aircraft registered in Abu Dhabi, Bahrain, Oman and Qatar, part 10, Customs Regulations (19 CFR part 10) is amended as set forth below:

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The authority citation for part 10 continues to read, in part, as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1321, 1481, 1484, 1498, 1508, 1623, 1624;

* * * * *

Section 10.59 also issued under 19 U.S.C. 1309, 1317;

* * * * *

§ 10.59 [Amended]

2. Section 10.59(f) is amended in the table by adding to the column headed "Country", in appropriate alphabetical order, "Abu Dhabi", "Bahrain", "Oman", and "Qatar" and by adding "95–45" adjacent to the names of the above-listed countries in the column headed "Treasury Decision(s)".

Dated: May 23, 1995.

Harold M. Singer,

Chief, Regulations Branch.

[FR Doc. 95–13070 Filed 5–26–95; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 944

Utah Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving, with an exception and additional requirements, a proposed amendment to the Utah regulatory program (hereinafter referred to as the "Utah program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Utah proposed revisions to and additions of rules pertaining to retention of highwalls in the postmining landscape. Utah submitted the amendment with the intent of revising its program to be consistent with the corresponding Federal regulations, clarifying ambiguities, and improving operational efficiency.

EFFECTIVE DATE: May 30, 1995.

FOR FURTHER INFORMATION CONTACT: Arthur W. Abbs, Acting Director, Albuquerque Field Office, Telephone: (505) 766–1486.

SUPPLEMENTARY INFORMATION:

I. Background on the Utah Program

On January 21, 1981, the Secretary of the Interior conditionally approved the Utah program. General background information on the Utah program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Utah program can be found in the January 21, 1981, **Federal Register** (46 FR 5899). Subsequent actions concerning Utah's program and program amendments can be found at 30 CFR 944.15, 944.16, and 944.30.

II. Proposed Amendment

By letter dated November 12, 1993, Utah submitted a proposed amendment to its program pursuant to SMCRA (administrative record No. UT–875). Utah submitted the proposed amendment at its own initiative and in response to the required State program amendments codified at 30 CFR 944.16 (a), (b), (c), and (d). The provisions of the Utah Administrative Rules (Utah Admin. R.) that Utah proposed to revise were: Utah Admin. R. 645–301–553.200, spoil and waste; Utah Admin. R. 645–301–553.252, refuse piles; Utah Admin. R. 645-301–553.500, previously mined areas (PMA's), continuously mined areas (CMA's), and areas subject to the approximate original contour (AOC) requirements; Utah Admin. R. 645–301–553.520, exception from complete highwall elimination for CMA's; Utah Admin. R. 645–301–553.523, stability criteria for highwall remnants and retained highwalls; Utah Admin. R. 654–301–553.600 and .620, AOC variances for incomplete elimination of highwalls in PMA's or CMA's; Utah Admin. R. 654–301–553.631, mountaintop removal operations; Utah Admin. R. 654–301–553.650, required showing by the operator and required findings by the regulatory authority necessary for approval of a retained highwall; Utah Admin. R. 645–301–651, height restrictions for retained highwalls; Utah Admin. R. 645–301–553.652, the applicability date of Utah's AOC standards at Utah Admin. R. 645–301.553.651 through .655; Utah Admin. R. 645–301–553.653, the restoration of retained highwalls to cliff-type habitats required by the flora and fauna existing prior to mining; and Utah Admin. R. 645–301–553.654, compatibility of retained highwalls with both the approved postmining land use and the visual attributes of the area.

OSM announced receipt of the proposed amendment in the December 8, 1993, **Federal Register** (58 FR 64529), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (administrative record No. UT–879). Because no one requested a public hearing or meeting, none was held. The public comment period ended on January 7, 1994.

During its review of the amendment, OSM identified concerns relating to the provisions of Utah Admin. R. 645.–301–553.110, backfilling and grading of disturbed areas; Utah Admin. R. 645–301–553.500 and .600, the organization of Utah's rules pertaining to retained highwalls; Utah Admin. R. 645–301–553.510 and .522, general backfilling and grading requirements; Utah Admin. R. 645–301–553.522, slope stability and drainage; Utah Admin. R. 645–301–553.500 and .523, stability criteria for retained highwalls; Utah Admin. R. 645–301–553.620, AOC variances; Utah Admin. R. 645–301–553.650, AOC and stability requirements for highwall retention; Utah Admin. R. 645–301–553.651, height and length of retained highwalls; Utah Admin. R. 645–301–553.652, the applicability date of Utah's AOC alternative; and various editorial comments concerning Utah Admin. R. 645–301–553.120, .631, .650, and .655. By letter dated March 31, 1994, OSM notified Utah of the concerns (administrative record No. UT–908).

By letter dated April 18, 1994, Utah requested a meeting between the Utah Division of Oil, Gas and Mining (Division) and OSM for the purpose of addressing the issues set forth by OSM in the March 31, 1994, letter (administrative record No. UT–918). On May 12, 1994, the Division and OSM held an executive session at the Western Support Center in Denver, Colorado. OSM posted a notice of the executive session in the Western Support Center (administrative record No. UT–925). OSM summarized the session and entered the summary into the administrative record (administrative record UT–942).

By letter dated June 29, 1994, Utah submitted a revised amendment in response to OSM's March 31, 1994, letter as clarified at the May 12, 1994, session (administrative record No. UT–941). In this submittal, Utah, at its own initiative, also proposed to (1) create a definition of the term "continuously mined areas" and (2) not use the terms "highwall remnant" and "retained highwall."

OSM announced receipt of the proposed revised amendment in the July 14, 1994, **Federal Register** (59 FR 35871) and reopened and extended the public comment period (administrative record No. UT–951). The public comment period ended on July 29, 1994.

During its review of the revised amendment, OSM identified additional concerns relating to the provisions of Utah Admin. R. 645–100–200, definition of the term "continuously mined areas;" Utah Admin. R. 645–301–553, general provisions on highwalls and backfilling and grading; Utah Admin. R. 645–301–553.110, backfilling and grading of disturbed areas; Utah Admin. R. 645–301–553.120, backfilling and grading of spoil and waste; Utah Admin. R. 645–301–553.130, slope stability requirements; Utah Admin. R. 645–301–553.510, remining operations on PMA's, CMA's, and areas with remaining highwalls subject to AOC provisions; Utah Admin. R. 645–301–553.550, .551, and .552, AOC exceptions; Utah Admin. R. 645–301–553.650, highwall management under the AOC provisions; Utah Admin. R. 645–301–553.651, nonmountaintop removal mining on steep slopes; Utah Admin. R. 645–301–553.652, remaining highwalls under the AOC provisions; and Utah Admin. R. 645–301–553.653, applicability date. By letter dated August 24, 1994, OSM notified Utah of the concerns (administrative record No. UT–967).

By telephone conversation on August 30, 1994, Utah requested a meeting between the Division and OSM for the purpose of addressing the date of applicability of Utah's rules that allow the replacement of preexisting cliffs or similar natural premining features with retained highwalls (administrative record No. UT–1010). On September 7, 1994, the Division and OSM held an executive session at the Western Support Center in Denver, Colorado. OSM posted a notice of the executive session in the Western Support Center (administrative record No. UT–969). OSM summarized the session and entered the summary into the administrative record (administrative record UT–970).

By letter dated November 3, 1994, Utah submitted a revised amendment in response to OSM's August 24, 1994, letter, as clarified at the September 7, 1994, session (administrative record No. UT–990).

OSM announced receipt of the proposed revised amendment in the December 2, 1994, **Federal Register** (59 FR 61855) and reopened and extended the comment period (administrative record No. UT–996). The public comment period ended on December 19, 1994.

III. Director's Findings

As discussed below, the Director, in accordance with SMCRA and 30 CFR 732.15 and 732.17, finds, with an exception and additional requirements, that the proposed program amendment submitted by Utah on November 12, 1993, and as revised by it on June 28 and November 3, 1994, is no less stringent than SMCRA and no less effective than the corresponding Federal regulations. Accordingly, the Director approves, with one exception, the proposed amendment and requires Utah to revise its program.

The Director notes that in a December 13, 1982, final rule **Federal Register** notice (47 FR 55672, 55673), the Secretary of the Interior approved as part of the Utah program a provision that the Director in a subsequent September 17, 1993, final rule **Federal Register** notice (58 FR 48600) referred to as the Utah "AOC alternative." OSM created the term "AOC alternative" and Utah does not define it in its program. In this proposed amendment, Utah used the terminology "areas with remaining highwalls subject to the AOC provisions," which is the Utah counterpart terminology to what OSM referred to in the past as the "AOC alternative." Accordingly, and throughout the remainder of this **Federal Register** notice, the Director refers to what was previously called the "AOC alternative" in the September 17, 1993, final rule **Federal Register** notice as "areas with remaining highwalls subject to the AOC provisions."

Also, in the September 17, 1993, final rule **Federal Register** notice (58 FR 48600), the Director placed upon the Utah program four required State program amendments at 30 CFR 944.16 (a), (b), (c), and (d) (administrative record No. UT–872). Specifically, the **Federal Register** notice revised 30 CFR 944.16 to read as follows:

Section 944.16 Required Program Amendments

* * * * *

(a) By November 16, 1993, Utah shall submit a proposed amendment for highwall retention and approximate original contour (AOC) at Utah Admin. R. 645–301–553.650 to require that, prior to obtaining Utah's approval for highwalls to be retained, the operator must establish and Utah must find in writing that any proposed highwall will comply with the approximate original contour criteria at Utah Admin. R. 645–301–553.651 through 655 and the stability requirement at Utah Admin. R. 645–301–553.523.

(b) By November 16, 1993, Utah shall submit a proposed amendment for highwall

retention and approximate original contour at Utah Admin. R. 645–301–553.651 restricting the height of retained highwalls to the height of cliffs or cliff-like escarpments that were replaced or disturbed by the mining operations.

(c) By November 16, 1993, Utah shall submit a proposed amendment stating that its requirement at Utah Admin. R. 645–301–553.652 has an applicability date of December 13, 1982, and applies to any highwall retained pursuant to the approximate original contour alternative.

(d) By November 16, 1993, Utah shall submit a proposed amendment for Utah Admin. R. 645–301–553.523 (1) eliminating the inconsistency between the title "previously mined areas" at Utah Admin. R. 645–301–553.500 and the content of subsection Utah Admin. R. 645–301–553.523, and clarifying that the stability criteria of proposed Utah Admin. R. 645–301–553.523 apply to the AOC alternative at Utah Admin. R. 645–301–553.650, (2) specifying that a highwall remnant or retained highwall must not pose a hazard to the environment, and (3) deleting the phrase "not to exceed either the angle of repose or such lesser slope as is necessary to."

However, in an April 7, 1994, final rule **Federal Register** notice (59 FR 16538), OSM inadvertently removed the above required State program amendments from 30 CFR 944.16 (administrative record No. UT–913). In addition, and subsequent to this inadvertent removal of the required State program amendments originally codified at 30 CFR 944.16 (a), (b), (c), (d), OSM published two final rule **Federal Register** notices (July 11, 1994, 59 FR 35255; September 27, 1994, 59 FR 49185) and placed new required State program amendments on the Utah program at 30 CFR 944.15 (a) and (b) respectively (administrative record Nos. UT–947 and UT–977). Throughout this notice, OSM refers to the required amendments associated with this proposed amendment and originally codified as 30 CFR 944.16 (a), (b), (c), and (d) as "the required amendments previously codified at 30 CFR 944.16 (a), (b), (c), and (d) (September 17, 1993, 58 FR 48600)."

1. Nonsubstantive Revisions to Utah's Rules

Utah proposed revisions to the following previously-approved rules that are nonsubstantive in nature and consist of minor editorial, grammatical, and recodification changes (corresponding Federal provisions are listed in parentheses):

Utah Admin. R. 645–301–553 (30 CFR 816.102 and 817.102), contemporaneous reclamation for backfilling and grading;

Utah Admin. R. 645–301–553.130 (30 CFR 816.102(a)(3)), 1.3 static safety factor;

Utah Admin. R. 645–301–553.150 (30 CFR 816.102(a)(5) and 817.102(a)(5)), postmining land use;

Utah Admin. R. 645–301–553.200 (30 CFR 816.102(c) and 817.102(c)) backfilling and grading of spoil and waste;

Utah Admin. R. 645–301–553.210 (30 CFR 816.71 and 817.71), general requirements for disposal of excess spoil;

Utah Admin. R. 645–301–553.220 (30 CFR 816.102(d) and 817.102(d)), placement of spoil;

Utah Admin. R. 645–301–553.252 (30 CFR 816.83(c)(4) and 817.83(c)(4)), final grading of refuse piles and coal mine waste;

Utah Admin. R. 645–301–553.300 (30 CFR 816.102(f) and 817.102(f)), covering of exposed coal seams;

Utah Admin. R. 645–301–553.510 (30 CFR 816.106(a) and 817.106(a)), remining operations on PMA's, CMA's, and areas with remaining highwalls subject to AOC provisions;

Utah Admin. R. 645–301–553.540, previously codified as Utah Admin. R. 645–301–553.524 (30 CFR 816.106(b)(4) and 817.106(b)(4)), spoil placement;

Utah Admin. R. 645–301–553.300, previously codified as Utah Admin. R. 645–301–553.653 (30 CFR Parts 816 and 817 concerning backfilling and grading requirements for both surface and underground mining operations and sections 515 (b)(2) and (b)(3) of SMCRA), modifications to retained highwalls restoring cliff-type habitats required by premining flora and fauna;

Utah Admin. R. 645–301–553.650.400, previously codified as Utah Admin. R. 645–301–553.654 (30 CFR 784.15 and sections 515 (b)(2) and (b)(3) of SMCRA), compatibility of retained highwalls with the approved postmining land use and visual attributes of the area; and

Utah Admin. R. 645–301–553.650.500, previously codified as Utah Admin. R. 645–301–553.655, exemption from obtaining a variance from AOC requirements.

Because the proposed revisions to these previously-approved rules are nonsubstantive in nature, the Director finds that these proposed Utah rules are no less effective than the Federal regulations and no less stringent than SMCRA. The Director approves these proposed rules.

2. Substantive Revisions to Utah's Rules That Are Substantively Identical to the Corresponding Provisions of the Federal Regulations and SMCRA

Utah proposed revisions to the following rules that are substantive in nature and contain language that is substantively identical to the requirements of the corresponding Federal regulations (listed in parentheses):

Utah Admin. R. 645–301–553.100 (30 CFR 816.102(a) and 817.102(a)), section entitled "disturbed areas;" and

Utah Admin. R. 645–301–553.230 (30 CFR 816.102(j) and 817.102(j)), general requirements for backfilling and grading.

Because these proposed Utah rules are substantively identical to the corresponding provisions of the Federal regulations, the Director finds that they are no less effective than the Federal regulations. The Director approves these proposed rule.

3. Utah Admin. R. 645–100–200, Definition of "Continuously Mined Areas"

Utah proposed to define "continuously mined areas" (CMA's) at Utah Admin. R. 645–100–200 to mean "land which was mined for coal by underground mining operations prior to August 3, 1977, the effective date of the Federal Act, and where mining continued after that date." The "Federal Act" is SMCRA.

The Federal backfilling and grading regulations at 30 CFR 817.106(a), (b), and (b)(1) allow an exception from the requirement for complete highwall elimination for underground mining operations that remine highwalls in PMA's, which means land affected by surface coal mining operations prior to August 3, 1977, the effective date of SMCRA, that have not been reclaimed to the standards of SMCRA (January 8, 1993, 58 FR 3466). These regulations allow for the incomplete elimination of such highwalls where the volume of all reasonably available spoil is insufficient to completely backfill the reaffected or enlarged highwall.

As part of the Utah program, the Director approved, in a September 17, 1993, final rule **Federal Register** notice (58 FR 48600, 48603), a limited exception to the requirement to completely eliminate all highwalls for CMA's. Utah's approved CMA rules differ from the Federal PMA regulations in that they extend the exception for incomplete highwall elimination to underground mining operations where the highwall was created prior to August 3, 1977, but continued to be used thereafter.

In approving Utah's CMA provisions, the Director reasoned, in part, that they provide equitable treatment for pre-SMCRA mines that have operated continuously since before the effective date of SMCRA and afford the same variance from AOC requirements as is provided in the PMA regulations at 30 CFR 817.106 for remaining sites where operation of a pre-SMCRA mine has been interrupted and mining was begun again at the sites after the effective date of SMCRA.

Utah's proposed definition of "continuously mined areas" is limited in accordance with the Director's approval in the September 17, 1993, final rule **Federal Register** notice. That is, Utah's newly-proposed definition at Utah Admin. R. 645–100–200 limits the term to underground mining operations. In the aforementioned final rule **Federal Register** notice, OSM approved Utah's CMA provisions at Utah Admin. R./645–301–553.510, .520, and .521 "[i]nsofar as they apply to underground mining operations that operated prior to August 3, 1977, and have continuously operated since that time." Therefore, Utah's proposed definition of the term "continuously mined areas" is not inconsistent with the Federal regulations at 30 CFR 817.106(a); (b), and (b)(1) and is in accordance with Utah's previously approved CMA provisions. On this basis, the Director approves Utah's proposed rule.

However, with respect to CMA's, the Director wishes to emphasize that the exception to the requirement to completely eliminate all highwalls should, like the similar Utah exception for PMA's, be narrowly construed and should ensure that the highwall is removed to the maximum extent technically practical (September 16, 1983, 48 FR 41720, 41729). Thus, for example, where an underground mining operation has been continuously mined since before the effective date of SMCRA (August 3, 1977) and contains both pre- and post-SMCRA face-up or portal areas, this exception must be understood as applying *only* to the pre-SMCRA face-up areas. Any post-SMCRA portal areas within the same mining operation must comply with the requirement to completely eliminate all highwalls. The Director interprets Utah's proposed definition of the term "continuously mined areas" in this limited fashion.

4. Utah Admin. R. 645–301–553.110, Exceptions to the Requirement That Disturbed Areas Achieve AOC

Utah proposed to revise existing Utah Admin. R. 645–301–553.110 to require that disturbed areas achieve AOC except as provided for in the reorganized and recodified provisions at Utah Admin. R. 645–301–500 through Utah Admin. R. 645–301–540 (PMA's, CMA's, and areas subject to the AOC provisions), Utah Admin. R. 645–301–553.600 through Utah Admin. R. 645–301–553.612 (PMA's and CMA's), Utah Admin. R. 645–302–270 (nonmountaintop removal on steep slopes), Utah Admin. R. 645–302–220 (mountaintop removal mining), Utah Admin. R. 645–301–553.700 (thin overburden), and Utah Admin. R. 645–301–553.800 (thick overburden). In conjunction with consolidating these exceptions into one provision, Utah also proposed to delete provisions that formerly existed at Utah Admin. R. 645–301–553.600 (introductory language), .610 (nonmountaintop removal on steep slopes), .620 (PMA's), .630 (mountaintop removal mining), .640 (introductory language), .641 (thin overburden), and .642 (thick overburden).

The Federal regulations at 30 CFR 816.102(k) provide variances from AOC for (1) steep-slope mining operations, (2) PMA's, (3) mountaintop removal operations, (4) thin overburden areas, and (5) thick overburden areas. The provisions at 30 CFR 817.102(k) provide variances from AOC for (1) steep-slope mining operations and (2) PMA's.

Utah's proposed revisions to Utah Admin. R. 645–301–553.110, which create a general AOC provision that references all exceptions to the requirement that disturbed areas must be backfilled and graded to achieve AOC, are consistent with the corresponding Federal regulations at 30 CFR 816.102(k) and 817.103(k) and clarify and improve the organizational nature of Utah's AOC rules. However, the cross-referenced provisions contain citation errors. Specifically, Utah's cross-referenced provisions in the phrase "R645–301–500 through R645–301–540," regarding PMA's, CMA's, and areas subject to the AOC provisions, should read "R645–301–*553*.500 through R645–301–*553*.540." Utah's incorrectly cross-referenced citations create a regulatory inconsistency within the Utah program.

For the reasons discussed above, the Director approves Utah's proposed consolidation of all exceptions to the requirement that disturbed areas must be backfilled and graded to achieve AOC into Utah Admin. R. 645–301–553.110. In addition, the Director approves Utah's proposed deletion of existing Utah Admin. R. 645–301–553.600 and those provisions identified above that formerly existed elsewhere in Utah's rules prior to the consolidation. However, the Director further requires Utah to revise the cross-referenced provisions in the phrase "R645–301–500 through R645–301–540," regarding PMA's, CMA's, and areas subject to the AOC provisions, to read "R645–301–*553*.500 through R645–301–*553*.540."

5. Utah Admin. R. 534–301–553.120, Backfilling and Grading of Spoil and Waste

Utah proposed to revise existing Utah Admin. R. 645–301–553.120 to require that disturbed areas be backfilled and graded to "[e]liminate all highwalls, spoil piles, and depressions, except as provided in R645–301–552.100 (small depressions); R645–301–553.500 through R645–301–540 (PMA's, CMA's, and areas subject to approximate original contour (AOC) provisions; R645–301–553.600 through R645–301–553.612 (PMA's and CMA's); and in R645–301–553.650 through R645–301–553.653 (highwall management under the AOC provisions)."

The Director notes that the exceptions listed at proposed Utah Admin. R. 645–301–553.120 for PMA's, CMA's, and areas subject to AOC provisions are exceptions only to the requirement to completely eliminate all highwalls, and are not exceptions to the separate requirements to completely eliminate all spoil piles and depressions.

The Federal regulations at 30 CFR 816.102(a)(2) and 817.102(a)(2) require that disturbed areas be backfilled and graded to eliminate all highwalls, spoil piles, and depressions except as provided in 30 CFR 816.102(h) (small depressions) and (k)(3)(iii) (previously mined highwalls).

Utah's proposed revisions to Utah Admin. R. 645–301–553.120, which create a general provision that cross-references all exceptions to the requirement that disturbed areas must be backfilled and graded to eliminate all highwalls, spoil piles, and depressions, are consistent with the corresponding Federal regulations at 30 CFR 816.102(a)(2) and 817.102(a)(2) and clarify and improve the organizational nature of Utah's rules. However, the cross-referenced provisions contain citation inconsistencies. Specifically, Utah's cross-referenced provisions in the phrase "R645–301–553.500 through R645–301–540," regarding PMA's, CMA's, and areas subject to the AOC provisions, should read "R645–301–553.500 through R645–301–*533*.540." In

addition Utah cross-references provisions in the phrase "R645–301–553.650 through R645–301–553.653." However, Utah Admin. R. 645–301–553.653 no longer exists in Utah's reorganized rules and has now been recodified as Utah Admin. R. 645–301–553.651. Utah's incorrectly cross-referenced citations create a regulatory inconsistency within the Utah program.

For the reasons discussed above, the Director approves proposed Utah Admin. R. 645–301–553.120 but further requires Utah to (1) revise the cross-referenced provisions in the phrase "R645–301–553.500 through R645–301–540," regarding PMA's, CMA's, and areas subject to the AOC provisions, to read "R645–301–553.500 through R645–301–*553.*540" and (2) revise the cross-referenced provisions in the phrase "R645–301–553.650 through R645–301–553.653" to read "R645–301–553.650 through R645–301–553.*651.*"

6. Utah Admin. R. 634–301–553.500, PMA's, CMA's, and Areas With Remaining Highwalls Subject to AOC Provisions

In partial response to the required amendment previously codified at 30 CFR 994.16(d)(1) (September 17, 1993, 58 FR 48600), Utah proposed to revise the existing title of section Utah Admin. R. 645–301–553.500 to make it consistent with the content of subsections Utah Admin. R. 645–301–553.510 through .540. Specifically, Utah proposed to revise the title of section Utah Admin. R. 645–301–553.500 from "Previously Mined Areas" to "Previously mined areas (PMA's), Continuously Mined Areas (CMA's), and Areas with Remaining Highwalls Subject to the AOC Provisions."

Utah proposed this change to eliminate the inconsistency between the title "Previously Mined Areas" at Utah Admin. R. 645–301–553.500 and the content of recodified subsection Utah Admin. R. 645–301–553.530 (previously codified as .523), which addresses highwall stability criteria (see finding No. 9). The proposed title "Previously mined areas (PMA's), Continuously Mined Areas (CMA's), and Areas with Remaining Highwalls Subject to the AOC Provisions" for Utah Admin. R. 645–301–553.500 is consistent with the term "remaining highwalls," which Utah uses at Utah Admin. R. 645–301–553.530 in place of the terms "retained highwall" and "highwall remnant."

The Director finds that Utah's proposed revisions to the title of section Utah Admin. R. 645–301–553.500 are not inconsistent with the Federal AOC, PMA, and CMA provisions at 30 CFR 816.102, 817.102, 816.106, and 817.106. The Director also finds that the proposed revisions satisfy the part of the required amendment previously codified at 30 CFR 944.16(d)(1) that applied to Utah Admin. R. 645–301–553.500. For these reasons, the Director approves Utah's proposed revisions to the title of section Utah Admin. R. 645–301–553.500.

7. Utah Admin. R. 634–301–553.520, Backfilling and Grading of Remaining Highwalls

Utah proposed to revise existing Utah Admin. R. 645–301–553.520 to make it consistent with the requirements for remaining operations on PMA's, operations on CMA's, and operations on areas with remaining highwalls subject to the AOC provisions. Specifically, Utah proposed to consolidate a phrase from original Utah Admin. R. 645–301–553.520 with the text of Utah Admin. R. 645–301–553.522 to create new Utah Admin. R. 645–301–553.520 which states that "[t]he backfill of all remaining highwalls will be graded to a slope that is compatible with the approved postmining land use and which provides adequate drainage and long-term stability." In conjunction with this consolidation, Utah deleted the citation previously codified at Utah Admin. R. 645–301–553.522.

The Federal regulations at 30 CFR 816.106(b)(2) and 817.106(b)(2) require that "the backfill [from remaining operations on PMA's] shall be graded to a slope which is compatible with the approved postmining land use and which provides adequate drainage and long-term stability." The Federal regulations at 30 CFR 816.106(b)(2) and 817.106(b)(2) apply only to remaining operations on PMA's. Utah's proposed rule differs from the Federal regulations in that Utah proposes to extend its rules concerning the backfilling and grading requirements for remaining highwalls to operations on CMA's and operations on areas with remaining highwalls subject to the AOC provisions. Although there are no Federal regulations that directly correspond to Utah's application of its rule to operations on CMA's and operations on areas with remaining highwalls subject to the AOC provisions, the Federal regulations at 30 CFR 816.106(b)(2) and 817.106(b)(2), as discussed in the September 17, 1993, final rule **Federal Register** notice, are analogous to this Utah provision.

Utah's proposed revisions to Utah Admin. R. 645–301–553.520, regarding the requirements for remaining operations on PMA's, CMA's, and areas with remaining highwalls subject to the AOC provisions, are not inconsistent with the corresponding Federal regulations at 30 CFR 816.106(b)(2) and 817.106(b)(2). For this reason, the Director approves Utah's proposed revision to Utah Admin. R. 645–301–553.520.

8. Utah Admin. R. 645–301–553.530, Stability Criteria for Backfilling and Grading

In partial response to the required amendment previously codified at 30 CFR 944.16(d) (September 17, 1993, 58 FR 48600), Utah proposed to revise existing Utah Admin. R. 645–301–553.523, regarding highwall retention stability criteria. Utah proposed recodifying the rule as Utah Admin. R. 645–301–553.530 and relocating it under the reorganized section of its rules at Utah Admin. R. 645–301–553.500 entitled "PMA's, CMA's and Areas with Remaining Highwalls Subject to the AOC Provisions," which was previously entitled "previously mined areas" (see finding No. 6). Utah also proposed to delete the phrase "not to exceed either the angle of repose or such lesser slope as is necessary to" from recodified Utah Admin. R. 645–301–553.530. Lastly, Utah proposed to revise the rule to require that (1) any remaining highwall will be stable and not pose a hazard to the public health or safety or to the environment, and (2) remaining highwalls must achieve a minimum long-term static safety factor of 1.3 and prevent slides, or meet an alternative criterion that the operator proposes and demonstrates to the satisfaction of the Division that the remaining highwall is stable does not pose a hazard to the public health and safety or to the environment.

By changing the PMA title of Utah Admin. R. 645–301–553.530 to include CMA's and areas with remaining highwalls subject to the AOC provisions, Utah in effect proposed that remaining highwalls on PMA's and CMA's and areas with remaining highwalls subject of the AOC provisions comply with the proposed stability criteria of Utah Admin. R. 645–301–553.530.

The Federal general backfilling and grading regulations at 30 CFR 816.102(a)(3) and 817.102(a)(3) require that disturbed areas be backfilled and graded to achieve a postmining slope that does not exceed either the angle of repose or such lesser slope as is necessary to achieve a minimum long-term static safety factor of 1.3 and to prevent slides. The Federal regulations at 30 CFR 816.106(b)(3) and 817.106(b)(3) concerning backfilling and grading of PMA's require that any highwall remnant be stable and not pose a hazard to the public health and safety or to the environment and that the operator shall demonstrate, to the satisfaction of the regulatory authority, that the highwall remnant is stable. The Federal regulations at 30 CFR 816.106(b)(3) and 817.106(b)(3) apply only to remaining operations on PMA's. Utah's proposed rule differs from the Federal regulations in that Utah proposes to extend its rules concerning the stability criteria for backfilling and grading of remaining highwalls to operations on CMA's and operations on areas with remaining highwalls subject to the AOC provisions. Although there are no Federal regulations that directly correspond to Utah's application of its rule to operations on CMA's and operations on areas with remaining highwalls subject to the AOC provisions, the Federal regulations at 30 CFR 816.106(b)(3) and 817.106(b)(3), as discussed in the September 17, 1993, final rule **Federal Register** notice, are analogous to this Utah provision.

The Director emphasizes that, in all cases, the Federal regulations at 30 CFR 816.102(a)(3) and 817.102(a)(3) require the backfill material at the base or against a highwall to have a minimum long-term static safety factor of 1.3 and prevent slides. The Director recognizes that a highwall remnant extending above the backfill material does not have to achieve the 1.3 minimum long-term static safety factor. However, the Federal regulations at 30 CFR 816.106(b)(3) and 817.106(b)(3) and require (1) that any highwall remnant be stable and not pose a hazard to the public health and safety or to the environment and (2) that an operator demonstrate to the satisfaction of the regulatory authority that the highwall remnant is stable.

Utah's proposed revisions to recodified Utah Admin. R. 645–301–553.530 to require that its stability criteria apply to any remaining highwall left in accordance with the approved State program, whether in connection with a PMA, a CMA or an area with remaining highwalls subject to Utah's AOC provisions is not inconsistent with the Federal regulations at 30 CFR 816.102(a)(3), 817.102(a)(3), 816.106(b)(3) and 817.106(b)(3).

The portion of Utah's proposed revisions to recodified Utah Admin. R. 645–301–553.530 deleting the phrase "not to exceed either the angle of repose or such lesser slope as is necessary to," as previously required by 30 CFR 944.16(d), is not inconsistent with the Federal regulations at 30 CFR 816.102(a)(3) and 817.102(a)(3).

The portion of Utah's proposed revisions at Utah Admin. R. 645–301–553. 530 that allows an operator to provide alternative stability criterion to establish that a highwall remnant or retained highwall is stable and does not pose a hazard to the public health and safety or to the environment is not inconsistent with the Federal regulations at 30 CFR 816.106(b)(3) and 817.106(b)(3).

For the reasons discussed above, the Director approves Utah's proposed rule revisions to recodified Utah Admin. R. 645–301–553.530. The Director also finds that the proposed revisions satisfy the part of the required amendment previously codified at 30 CFR 944.16(d)(1) that applied to recodified Utah Admin. R. 645–301–553.530 and satisfy in total the required amendments previously codified at 30 CFR 944.16(d)(2) and (3).

9. Utah Admin. R. 634–301–553.600, PMA's and CMA's

Utah proposed to delete existing Utah Admin. R. 645–301–553.650 and create new Utah Admin. R. 645–301–553.600, which serves as the section title and introduction to Utah's reorganized rule requirements at Utah Admin. R. 645–301–553.610 through .612 for PMA's and CMA's (see finding Nos. 11 and 12).

The counterpart Federal regulations at 30 CFR 816.106 and 817.106 pertain to backfilling and grading requirements for PMA's. The Federal regulations at 30 CFR 816.106 and 817.106 apply only to backfilling and grading requirements for remaining operations PMA's. Utah's proposed rule differs from the Federal regulations in that Utah proposes to extend its rules concerning the backfilling and grading requirements for remaining highwalls to operations on CMA's. Although there are no Federal regulations that directly correspond to Utah's application of its rule to CMA's, the Federal regulations at 30 CFR 816.106 and 817.106, as discussed in the September 17, 1993, final rule **Federal Register** notice, are analogous to this Utah provision.

Newly-created Utah Admin. R. 645–301–553.600 is consistent with Utah's proposed rule reorganization and is not inconsistent with the corresponding Federal regulations at 30 CFR 816.106 and 817.106. Accordingly, the Director approves Utah's proposed rule revision.

10. Utah Admin. R. 634–301–553.610, Exceptions for PMA's and CMA's From the Requirement for Complete Highwall Elimination

Utah proposed to revise the text of the existing provision at Utah Admin. R. 645–301–553.520 and relocate it at new Utah Admin. R. 645–301–553.610 under the newly-created section of Utah's rules at Utah Admin. R. 645–301–553.600 addressing PMA's and CMA's (see finding No. 10). Specifically, proposed Utah Admin. R. 645–301–553.610 states that highwalls on PMA's or CMA's must be eliminated to the maximum extent technically practical, but are not required to be completely eliminated where the volume of all reasonably available spoil is demonstrated in writing to the Division to be insufficient to completely backfill the reaffected or enlarged highwall.

Newly-created Utah Admin. R. 645–301–553.610, which allows an exception for PMA's and CMA's to the requirement that highwalls be completely eliminated, is consistent with the proposed reorganization of Utah's rules. In addition, because operations on both PMA's and CMA's must eliminate the highway to the maximum extent technically practical and make a written demonstration that all reasonably available spoil was used, proposed Utah Admin. R. 645–301–553.610 is not inconsistent with the Federal regulations at 30 CFR 816.106(b)(2) and 817.106(b)(2). For this reason, the Director approves newly-created Utah Admin. R. 645–301–553.610.

11. Utah Admin. R. 634–301–553.611 and .612, Backfilling and Grading of Reasonably Available Spoil

Utah proposed to delete existing Utah Admin. R. 645–301–553.521 and create new provisions at Utah Admin. R. 645–301–553.611 and .612 respectively, which consist of the revised text of former Utah Admin. R. 645–301–553.521. Newly-created Utah Admin. R. 645–301–553.611 requires that all spoils generated by the remining operation or CMA and any other reasonably available spoil will be used to backfill the area. Newly-created Utah Admin. R. 645–301–553.612 requires that reasonably available spoil in the immediate vicinity of the remining operation or CMA will be included within the permit area.

The Federal regulations at 30 CFR 816.106(b)(1) and 817.106(b)(1) require that all spoil generated by the remining operation on PMA's and any other reasonably available spoil will be used to backfill the area, and reasonably available spoil in the immediate vicinity of the remining operation shall be included within the permit area. The Federal regulations at 30 CFR 816.106(b)(1) and 817.106(b)(1) apply only to backfilling and grading requirements for remining operations on PMA's. Utah's proposed rules differ from the Federal regulations in that Utah proposes to extend its rules concerning the requirements for backfilling and grading of reasonably

available spoil to operations with remaining highwalls on CMA's. Although there are no Federal regulations that directly correspond to Utah's application of its rules to CMA's, the Federal regulations at 30 CFR 816.106(b)(1) and 817.106(b)(1), as discussed in the September 17, 1993, final rule **Federal Register** notice, are analogous to these Utah provisions.

Utah's newly-created provisions at proposed Utah Admin. R. 645–301–553.611 and .612 are in accordance with Utah's proposed rule reorganization and are not inconsistent with the Federal requirements. Accordingly, the Director approves Utah's newly-created provisions at Utah Admin. R. 645–301–553.611 and .612.

12. Utah Admin. R. 645–301–553.650, Highwall Management Under the AOC Provisions

In response to the required amendment previously codified at 30 CFR 944.16(a) (September 17, 1993, 58 FR 48600), Utah proposed to create new Utah Admin. R. 645–301–553.650 by proposing a section entitled "Highwall Management Under the Approximate Original Contour Provisions." Newly-created Utah Admin. R. 645–301–553.650 requires that for situations where a permittee seeks approval for a remaining highwall under the AOC provisions, the permittee will establish and the Division will find in writing that the remaining highwall will achieve the stability and AOC requirements of certain cited applicable rules.

While there are no Federal regulations that directly correspond to newly-created Utah Admin. R. 645–301–553.650, the Federal regulations at 30 CFR 816.102(k)(3)(ii) and 817.102(k)(1) explicitly require operators to obtain the regulatory authority's approval for determinations relating to AOC. Because Utah's proposed rule at Utah Admin. R. 645–301–553.650 does explicitly require that, prior to the Division approving the retention of a highwall, the permittee will establish and the Division will find in writing that the remaining highwall will achieve the applicable stability requirements and will meet the applicable AOC criteria, it is not inconsistent with the Federal regulations at 30 CFR 816.102(k)(3)(ii) and 817.102(k)(1).

Accordingly, the Director approves newly-created Utah Admin. R. 645–301–553.650. The Director also finds that the proposed rule satisfies the required amendment previously codified at 30 CFR 944.16(a).

13. Utah Admin. R. 645–301–553.650.100, Height and Length of Remaining Highwalls

In response to the required amendment previously codified at 30 CFR 944.16(b) (September 17, 1993, 58 FR 48600), Utah proposed to revise existing Utah Admin. R. 645–301–553.651 by recodifying it as Utah Admin. R. 645–301–553.650.100 and revising it to require that a remaining highwall will not be greater in height or length than the cliffs and cliff-like escarpments that were replaced or disturbed by the mining operations.

Beacuse proposed Utah Admin. R. 645–301–553.650.100 restricts the height and length of remaining highwalls to those cliffs and cliff-like escarpments that were replaced or disturbed by the mining operations, it is consistent with the replacement criterion for areas with remaining highwalls subject to the AOC provisions at Utah Admin. R. 645–301–553.650.200, and is no less stringent than section 515(b)(3) of SMCRA, which requires mining operations to restore the land to AOC. In addition, Utah Admin. R. 645–301–553.650.100 is in accordance with Utah's proposed rule reorganization.

For these reasons, the Director approves proposed Utah Admin. R. 645–301–553.650.100. The Director also finds that the proposed rule satisfies the required amendment previously codified at 30 CFR 944.16(b).

14. Utah Admin. R. 645–301–553.650.200, Replacement of Preexisting Cliffs or Similar Natural Premining Features With a Remaining Highwall

Utah proposed to recodify existing Utah Admin. R. 645–301–553.652 as Utah Admin. R. 645–301–553.650.200 and revise it to require that a highwall may remain only when it replaces a preexisting cliff or similar natural premining feature and resembles the structure, composition, and function of the natural cliff it replaces.

As discussed in the September 17, 1993, final rule **Federal Register** notice (58 FR 48600, 48604–5), the Secretary of the Interior harmonized the inherent contradiction that exists when applying section 515(b)(3) of SMCRA, which requires operators to restore land to AOC with all highwalls eliminated, to specific areas of Utah involving natural benches and steep topography by approving a carefully limited exception in the Utah program to SMCRA's requirement for the complete elimination of all highwalls. Because proposed Utah Admin. R. 645–301–553.650.200 allows highwalls to remain only when they replace preexisting cliffs or similar natural premining features and resemble the structure, composition, and function of the natural cliffs they replace, it is in accordance with the Secretary's approval of Utah's provisions for areas with remaining highwalls subject to the AOC provisions and is no less stringent than section 515(b)(3) of SMCRA, which requires mining operations to restore the land to AOC. In addition, Utah Admin. R. 645–301–553.600.200 is consistent with Utah's proposed rule reorganization. Accordingly, the Director approves Utah's proposed rule.

15. Utah Admin. R. 645–301–553.651, Applicability Date

In response to the required amendment previously codified at 30 CFR 944.16(c) (September 17, 1993, 58 FR 48600), Utah proposed to create new Utah Admin. R. 645–301–553.651, which states the following.

Applicability. Where final backfilling and grading was completed and the phase one bond was released prior to June 2, 1992, no redisturbance of a reclaimed highwall will be required. Highwalls which were approved under R645–301–553.652, the rule commonly referred to as the "AOC alternative," after December 13, 1982 are subject to the retroactive application of current rule R645–301–552.650, providing the subject highwall has not been reclaimed and phase one bond was not released prior to June 2, 1992.

Utah incorporates by reference the provisions of Utah Admin. R. 645–301–552.650. No such citation exists in Utah's rules. For the purposes of the following finding, OSM assumes that the proposed reference is a typographical error and that Utah intended to cite Utah Admin. R. 645–301–553.650.*200*, which is pertinent to the proposed applicability section at Utah Admin. R. 645–301–553.651 and the required amendment previously codified at 30 CFR 944.16(c).

At Utah Admin. R. 645–301–553.651, Utah proposes that the requirements of Utah Admin. R. 645–301–553.650.200 (incorrectly cited by Utah as Utah Admin. R. 645–301–552.650) do not retroactively apply to highwalls which were retained under existing Utah Admin. R. 645–301–553.652 and for which final backfilling and grading was completed and the phase one bond was released prior to June 2, 1992.

Existing Utah Admin. R. 645–301–553.652 provides in part that a highwall may be retained if it is similar in structural composition to the preexisting cliffs "in the surrounding area." As discussed in the September 17, 1993, final rule **Federal Register** notice (58 FR 48600, 48605; finding No. 3), Utah interpreted the quoted phrase to allow the retention of highwalls when no similar natural features existed in the disturbed area prior to mining. By letter dated January 9, 1991, and sent to Utah in accordance with 30 CFR 732.17, OSM notified Utah that this interpretation was not consistent with SMCRA and the Secretary's assumptions in approving the provisions of the Utah program that allow for the incomplete elimination of highwalls for areas with remaining highwalls subject to the AOC provisions.

With respect to the June 2, 1992, date that Utah uses in proposed Utah Admin. R. 645–301–553.651, the Director, as also discussed in the September 17, 1993, final rule **Federal Register** notice (58 FR 48600, 48605–6; finding No. 3(C)(3)(b)), found that an applicability date of December 13, 1982, rather than June 2, 1992, is mandated by SMCRA. In that discussion, the Director made clear that the replacement criterion, now codified at Utah Admin. R. 645–301–553.650.200, has an applicability date of December 13, 1982, and *must* apply to *any* highwall retained pursuant to the AOC provisions of the Utah program at Utah Admin. R. 645–301–553.650 regardless of the date that the highwall was created.

For these reasons, the Director finds that proposed Utah Admin. R. 645–301–553.651 is less stringent than section 515 of SMCRA, not in accordance with the Secretary's assumptions in approving the provisions of the Utah program that allow for the incomplete elimination of highwalls for areas with remaining highwalls subject to the AOC provisions, and not in accordance with the Director's previous finding in the September 17, 1993, final rule **Federal Register** notice (58 FR 48600, 48605–6; finding No. 3(C)(3)(b)). Therefore, the Director does not approve Utah's proposed rule at Utah Admin. R. 645–301–553.651. In addition, the Director will continue to interpret the replacement criterion at Utah Admin. R. 645–301–553.650.200 as having an applicability date of December 13, 1982, and as applying to any highwall retained pursuant to the AOC provisions of the Utah program at Utah Admin. R. 645–301–553.650. The Director is not requiring Utah, as was done previously at 30 CFR 944.16(c), to revise its rules to require that the replacement criterion provision at Utah Admin. R. 645–301–553.650.200 has an applicability date of December 13, 1982, and applies to any highwall retained pursuant to the AOC provisions of the Utah program. OSM has decided that it is not necessary to require Utah to so revise its rules because OSM has already made clear, in the September 17, 1993, final rule **Federal Register** notice (58 FR 48600, 48605–6; finding No. 3(C)(3)(b)), and again in this finding, that the Director will interpret the Utah replacement criterion at Utah Admin. R. 645–301–553.650.200 as having an applicability date of December 13, 1982, and as applying to any highwall retained pursuant to the AOC provisions of the Utah program at Utah Admin. R. 645–301–553.650. OSM will utilize this interpretation of the replacement criterion at Utah Admin. R. 645–301–553.650.200 in its oversight of the Utah program, regardless of whether or not Utah's program explicitly addresses the applicability of the replacement criterion.

IV. Summary and Disposition of Comments

Following are summaries of all substantive written comments on the proposed amendment that were received by OSM, and OSM's responses to them.

1. Public Comments

OSM invited public comments on the proposed amendment, but none were received.

2. Federal Agency Comments

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Utah program.

The U.S. Army Corps of Engineers responded on December 15, 1993, and August 1 and December 9, 1994, that the changes to the Utah program were satisfactory (administrative record Nos. UT–884, UT–958, and UT–998).

The U.S. Fish and Wildlife Service responded on December 16, 1993, that it found nothing of significant concern and on August 9, 1994, that it had no further comments (administrative record Nos. UT–885 and UT–961).

The U.S. Forest Service (USFS) responded on December 27, 1993, that "the State of Utah uses a safety factor of 1.3 for long-term stability of highwalls whereas the Forest Service requires a safety factor of 1.5" (administrative record No. UT–886).

Utah Admin. R. 645–301–553.130, in pertinent part, requires that disturbed areas will be backfilled and graded to achieve a postmining slope that does not exceed either the angle of repose or such lesser slope as is necessary to achieve a long-term static safety factor of 1.3 and prevent slides. In addition, Utah Admin. R. 645–301–553.530 requires, in pertinent part, that a Utah operator will demonstrate, to the satisfaction of the Division, that a remaining highwall must achieve a minimum long-term static safety factor of 1.3 and prevent slides.

As discussed in finding No. 8, the Federal regulations at 30 CFR 816.102(a)(3) and 817.102(a)(3) require that disturbed areas shall be backfilled and graded to achieve a postmining slope that does not exceed either the angle of repose or such lesser slope as is necessary to achieve a long-term static safety factor of 1.3 and prevent slides. Therefore, Utah's use of a 1.3 static safety factor for long-term stability of highwalls is "in accordance with and no less effective than" the Federal backfilling and grading standards set forth in title 30 of the Code of Federal Regulations. Because the Federal regulations at 30 CFR 730.5(b) only require that a State's laws be "in accordance with" and "no less effective than" the Federal regulations in meeting the requirements of SMCRA, the Director does not have the authority to require standards in excess of the Federal regulations that implement SMCRA. One this basis, the Director does not require Utah to revise its program in response to USFS's comment. However, if USFS has a 1.5 static safety factor that applies to highwalls on land under USFS's jurisdiction, this does not preclude USFS from enforcing this standard on such highwalls.

The Mine Safety and Health Administration responded on June 20, 1994, and January 12, 1995, that the proposed amendment did not appear to conflict with the requirements of 30 CFR, which includes its safety regulations (administrative record Nos. UT–940 and UT–1006).

The U.S. Bureau of Mines responded on July 18 and December 6, 1994, by telephone conversation, that it had no comments on the proposed amendment (administrative record Nos. UT–948 and UT–995).

3. Environmental Protection Agency (EPA) Concurrence and Comments

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to solicit the written concurrence of EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

None of the revisions that Utah proposed to make in its amendment pertain to air or water quality standards. Therefore, OSM did not request EPA's concurrence.

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from EPA (administrative record Nos. UT–876, UT–946, and UT–993). It responded on December 9, 1993, July 19, 1994, and December 22, 1994, that it had no comments on the proposed amendment and did not believe that there would be any impacts to water quality standards promulgated under the Clean Water Act (administrative record Nos. UT–880, UT–954, and UT–1000).

4. State Historic Preservation Officer (SHPO)

Pursuant to 30 CFR 732.17(h)(4), OSM solicited comments on the proposed amendment from the SHPO (administrative record Nos. UT–876, UT–946, and UT–993). the SHPO did not respond to OSM's request.

V. Director's Decision

Based on the above findings, the Director approves, with an exception and additional requirements, Utah's proposed amendment as submitted on November 12, 1993, and as revised on June 28 and November 3, 1994.

The Director does not approve, as discussed in: finding No. 15, Utah Admin. R. 645–301–553.651, concerning the applicability date of Utah's replacement criterion for areas with remaining highwalls subject to the AOC provisions at Utah Admin. R. 645–301–553.650.200.

The Director approves, as discussed in: finding No. 1, Utah Admin. R. 645–301–553, concerning contemporaneous reclamation requirements for backfilling and grading; Utah Admin. R. 645–301–553.130, concerning the requirements for a 1.3 static safety factor; Utah Admin. R. 645–301–553.150, concerning the requirements for post mining land use; Utah Admin. R. 645–301–553.200, concerning the backfilling and grading requirements for spoil and waste; Utah Admin. R. 645–301–553.210, concerning the general requirements for disposal of excess spoil; Utah Admin. R. 645–301–553.220, concerning the requirements for placement of spoil; Utah Admin. R. 645–301–553.252, concerning the requirements for final grading of refuse piles and coal mine waste; Utah Admin. R. 645–301–553.300, concerning the requirements for covering of exposed coal seams; Utah Admin. R. 645–301–553.510, concerning remaining operations on PMA's, operations on CMA's, and operations on areas with remaining highwalls subject to AOC provisions; Utah Admin. R. 645–301–553.540, concerning the requirements for spoil placement; Utah Admin. R. 645–301–553.650.300, concerning the requirement for modifications to retained highwalls restoring cliff-type habitats required by premining flora and fauna; Utah Admin. R. 645–301–553.650.400, concerning the requirement for compatibility of retained highwalls with the approved postmining land use and visual attributes of the area; and Utah Admin. R. 645–301–553.650.500, concerning the exemption from obtaining a variance from AOC requirements; finding No. 2, Utah Admin. R. 645–301–553.100, concerning the section entitled "disturbed areas," and Utah Admin. R. 645–301–553.230, concerning the general requirements for backfilling and grading; finding No. 3, Utah Admin. R. 645–100–200, concerning the definition of "Continuously Mined Areas;" finding No. 6, Utah Admin. R. 645–301–553.500, concerning PMA's, CMA's, and areas with remaining highwalls subject to AOC provisions; finding No. 7, Utah Admin. R. 634–301–553.520, concerning backfilling and grading of remaining highwalls; finding No. 8, Utah Admin. R. 645–301–553.530, concerning stability criteria for backfilling and grading and resulting in partial removal of the required amendment previously codified at 30 CFR 944.16(d)(1) and total removal of the required amendments previously codified at 30 CFR 944.16(d) (2) and (3); finding No. 9, Utah Admin. R. 634–301–553.600, concerning Utah's newly-created section title for its reorganized rule requirements for PMA's and CMA's; finding No. 10, Utah Admin. R. 634–301–553.610, concerning exceptions for PMA's and CMA's from the requirement for complete highwall elimination; finding No. 11, Utah Admin. R. 634–301–553.611 and .612, concerning backfilling and grading of reasonably available spoil; finding No. 12, Utah Admin. R. 645–301–553.650, concerning highwall management under the AOC provisions and removal of the required amendment previously codified at 30 CFR 944.16(a); finding No. 13, Utah Admin. R. 645–301–553.650.100, concerning the height and length of remaining highwalls and removal of the required amendment previously codified at 30 CFR 944.16(b); and finding No. 14, Utah Admin. R. 645–301–553.650.200, concerning the replacement of preexisting cliffs or similar natural premining features with a remaining highwall.

With the requirement that Utah further revise its rules, the Director approves, as discussed in: finding No. 4, Utah Admin. R. 645–301–553.110, concerning exceptions to the requirement that disturbed areas achieve AOC; and finding No. 5, Utah Admin. R. 534–301–553.120, concerning backfilling and grading of spoil and waste.

The Director approves, with one exception, the rules as proposed by Utah with the provision that they be fully promulgated in identical form to the rules submitted to and reviewed by OSM and the public.

The Federal regulations at 30 CFR Part 944, codifying decisions concerning the Utah program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to the State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In the oversight of the Utah program, the Director will recognize only the statutes, regulations and other materials approved by OSM, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Utah of only such provisions.

VI. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and had determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

The rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared with certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

VII. List of Subjects in 30 CFR 944

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 23, 1995.

Richard J. Seibel,

Regional Director, Western Regional Coordinating Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 944—UTAH

1. The authority citation for Part 944 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 944.15 is amended by adding paragraph (ee) to read as follows:

§ 944.15 Approval of amendments to the Utah regulatory program.

* * * * *

(ee) With the exception of Utah Admin. R. 645–301–553.651, concerning the applicability date of Utah's replacement criterion for areas with remaining highwalls subject to the AOC provisions at Utah Admin. R. 645–301–553.650.200 (formerly the "AOC alternative"), the following rules, as submitted to OSM on November 12, 1993, and as revised on June 28 and November 3, 1994, are approved effective May 30, 1995.

645–100–200	Definition of "Continuously Mined Areas" (CMA's).
645–301–553	Contemporaneous Reclamation Requirements for Backfilling and Grading.
645–301–553.100	Section Entitled "Disturbed Areas."
645–301–553.110	Exceptions to the Requirement That Disturbed Areas Achieve Approximate Original Contour (AOC).
645–301–553.120	Backfilling and Grading of Spoil and Waste.
645–301–553.130	Requirements for a 1.3 Static Safety Factor.
645–301–553.150	Requirements for Postmining Land Use.
645–301–553.200	Backfilling and Grading Requirements for Spoil and Waste.
645–301–553.210	General Requirements for Disposal of Excess Spoil.
645–301–553.220	Requirements for Placement of Spoil.
645–301–553.230	General Requirements for Backfilling and Grading.
645–301–553.252	Final Grading of Refuse Piles and Coal Mine Waste.
645–301–553.300	Covering of Exposed Coal Seams.
645–301–553.500	Previously Mined Area's (PMA's), CMA's, and Areas With Remaining Highwalls Subject to AOC Provisions.
645–301–553.510	Remining Operations on PMA's, Operations on CMA's, and Operations on Areas With Remaining Highwalls Subject to AOC Provisions.
645–301–553.520	Backfilling and Grading of Remaining Highwalls.
645–301–553.530	Stability Criteria for Backfilling and Grading.
645–301–553.540	Spoil Placement.
645–301–553.600	Newly-Created Section Title for Utah's Reorganized Rule Requirements for PMA's and CMA's.
645–301–553.610	Exceptions for PMA's and CMA's From the Requirement for Complete Highwall Elimination.
645–301–553.611 and .612	Backfilling and Grading of Reasonably Available Spoil.
645–301–553.650	Highwall Management Under the AOC Provisions.
645–301–553.650.100	Height and Length Requirements of Remaining Highwalls.
645–301–553.650.200	Replacement of Preexisting Cliffs or Similar Natural Premining Features With a Remaining Highwall.
645–301–553.650.300	Modifications to Retained Highwalls Restoring Cliff-Type Habitats Required by Premining Flora and Fauna.
645–301–553.650.400	Compatibility of Retained Highwalls With the Approved Postmining Land Use and Visual Attributes of the Area.
645–301–553.650.500	Exemption from Obtaining a Variance From AOC Requirements.

3. Section 944.16 is amended by adding paragraphs (c) and (d) to read as follows:

§ 944.16 Required program amendments.

* * * * *

(c) By July 31, 1995, Utah shall revise Utah Admin. R. 645–301–553.110, or otherwise modify its program, by correcting the cross-referenced provisions in the phrase "R645–301–500 through R645–301–540," regarding previously mined area's continuously mined area's, and areas subject to the AOC provisions, to read "R645–301–553.500 through R645–301–553.540."

(d) By July 31, 1995, Utah shall revise Utah Admin. R. 645–301–553–120, or otherwise modify its program, by correcting the cross-referenced provisions in the phrase "R645–301–553.500 through R645–301–540." regarding previously mined area's, continuously mined area's, and areas

subject to the AOC provisions, to read "R645–301–553.500 through R645–301–553.540" and correcting the cross-referenced provisions in the phrase "R645–301–553.650 through R645–301–553.653" to read "R645–301–553.650 through R645–301–553.651."

[FR Doc. 95–13156 Filed 5–26–95; 8:45 am]
BILLING CODE 4310–05–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 216

Military Recruiting at Institutions of Higher Education

AGENCY: Office of the Secretary, DoD.

ACTION: Interim rule.

SUMMARY: The Department of Defense adopts this interim rule to implement the "National Defense Authorization Act for Fiscal Year 1995. It updates policy, procedures, and responsibilities for identifying and taking action against any institution of higher education that has a policy of denying, or, that effectively prevents, the Secretary of Defense from obtaining for military recruiting purposes: Entry to campuses, access to students on campuses, or access to student directory information. No funds available to the Department of Defense (DoD) may be provided by grant or contract to any such institution. The new law allows no basis for waivers.

DATES: This interim rule is effective on May 30, 1995. Written comments on this rule must be received by July 31, 1995.

ADDRESSES: Forward comments to the Director for Accession Policy, Office of the Assistant Secretary of Defense for Force Management Policy, 4000 Defense Pentagon, Washington, DC 20301–4000.

FOR FURTHER INFORMATION CONTACT: Ronald G. Liveris, (703) 697–9268.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This interim rule is not a "significant regulatory action," as defined by Executive Order 12866. The Department of Defense believes that it will not: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising our of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b))

This interim rule will not have a significant adverse impact on a substantial number of small entities.

Paperwork Reduction Act of 1980 (44 U.S.C., Chapter 35)

This interim rule will not impose any additional reporting or record keeping requirements under the Paperwork Reduction Act.

List of Subjects in 32 CFR Part 216

Armed Forces, Colleges and universities, Recruiting personnel.

Accordingly, 32 CFR part 216 is revised to read as follows:

PART 216—MILITARY RECRUITING AT INSTITUTIONS OF HIGHER EDUCATION

Sec.
216.1 Purpose.
216.2 Applicability.
216.3 Definitions.
216.4 Responsibility.

Appendix A to part 216—Sample Letter of Inquiry

Authority: 10 U.S.C. 503 note.

§ 216.1 Purpose.

This part implements section 558, The National Defense Authorization Act for Fiscal Year 1995, Pub. L. 103–337 (See 10 U.S.C. section 503 note). It updates policy and responsibilities for identifying and taking action regarding institutions of higher education that either have a policy of denying or effectively bar military recruiting personnel from entry to their campuses, or from access to student directory information.

§ 216.2 Applicability.

This part applies to the Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff, the Unified and Specified Combatant Commands, the Uniformed Services University of Health Sciences (USUHS), the Defense Agencies, and DoD Field Activities (hereafter referred to collectively as "the DoD Components"). The term "Military Services," as used herein, refers to the Army, the Navy, the Air Force, and the Marine Corps.

§ 216.3 Definitions.

(a) *Directory information.* Referring to a student means the student's name, address, telephone listing, date and place of birth, level of education, degrees received, and the most recent previous educational institution enrolled in by student.

(b) *Institution of higher education.* A domestic college, university, or sub-element of a university providing post-secondary school courses of study, including foreign campuses of such institutions. This includes junior colleges, community colleges, and institutions providing courses leading to undergraduate and post-graduate degrees. The term "institution of higher education" does not include entities that operate exclusively outside the United States, its territories, and possessions.

(c) *Student.* An individual who is 17 years of age or older and enrolled in an institution of higher education.

§ 216.4 Policy.

(a) Under section 558 of the National Defense Authorization Act for Fiscal Year 1995, no funds available to the Department of Defense (DoD) may be provided by grant or contract to any institution of higher education that either has a policy of denying or that effectively prevents the Secretary of Defense from obtaining, for military recruiting purposes, entry to campuses or access to students on campuses or access to directory information pertaining to students. This prohibition on use of DoD funds applies only to sub-elements of an institution of higher education that are determined to have such a policy or practice.

(b) An evaluation to determine whether an institution of higher education has a policy of denying, or is effectively preventing, the Secretary of Defense from obtaining entry to the campuses, access to students on campuses, or access to student directory information shall be undertaken when:

(1) Military recruiting personnel cannot obtain permission to recruit on the premises of the institution or when they are refused directory information. Military recruiting personnel shall accommodate an institution's reasonable preferences as to times and places for scheduling on-campus recruiting, provided that any such restrictions are not based on the policies or practices of the Department of Defense and the Military Services are provided entry to the campus and access to students on campus and directory information; or

(2) The institution is unwilling to declare in writing as a prerequisite to an education and training award that the institution does not have a policy of denying, and that it does not effectively prevent, the Secretary of Defense from obtaining for military recruiting purposes entry to campuses or access to students on campuses, or access to student directory information.

(3) The institution does not accept terms or conditions of a DoD contract or grant specified under § 216.5(b)(2).

(c) A determination that military recruiting personnel are denied access will not be made when the institution:

(1) Excludes all employers from recruiting on the premises of the institution.

(2) Permits employers to recruit on the premises of the institution only in response to an expression of student interest, and the institution:

(i) Provides the Military Services with the same opportunities to inform the students of military recruiting activities as are available to other employers.

(ii) Certifies that too few students have expressed an interest to warrant accommodating military recruiters, applying the same criteria that are applicable to other employers.

(3) In the case of not providing any directory information, certifies that this information is not collected by the institution.

(4) In the case of not providing directory information for specific students, certifies that each student concerned (or his or her parent, in the case of a 17-year old) has formally requested the institution to withhold providing this information from military recruiting personnel for military recruiting purposes.

§ 216.5 Responsibilities.

(a) The Assistant Secretary of Defense for Force Management Policy, under the Under Secretary of Defense for Personnel and Readiness, shall:

(1) Not later than 30 days after receipt of the name(s) of institutions of higher education under §§ 216.5(d)(2) and 216.5(e)(1):

(i) Make a final determination about the eligibility of each such institution to receive funds available to the Department of Defense by grant or contract under section 558 of the National Defense Authorization Act for Fiscal Year 1995 and this part.

(ii) Notify each institution determined under § 216.5(a)(1)(i), that it is ineligible to receive DoD funds under section 558 and this part. This notification shall reflect the basis of this determination.

(iii) Disseminate the names of institutions of higher education identified under § 215.5(a)(1)(i), to all DoD Components and to the General Services Administration (GSA) for inclusion in the Federal list of parties excluded from Federal procurement or nonprocurement programs.

(iv) Inform each institution identified under § 216.5(d)(2), or § 216.5(e)(1), that its eligibility to receive DoD funds may be restored upon the institution providing sufficient new information to enable the Assistant Secretary of Defense for Force Management Policy (ASD(FMP)) to determine that the institution provides entry to its campus(es), access to students on the campus(es), and access to directory information on students.

(2) Not later than 45 days after receipt of an institution's request to restore its eligibility:

(i) Determine whether the institution is qualified to receive DoD funds under section 558 of the National Defense Authorization Act for Fiscal Year 1995 and this part.

(ii) Inform the institution of this determination.

(iii) Provide the DoD Components and GSA with the name of this institution if its eligibility has been restored.

(3) Provide policy and procedures to:

(i) Cease education and training awards of DoD funds (other than those made by procurement grant or contract subject to § 216.5(b)(1)) to institutions identified under § 216.5(a)(1)(i).

(ii) Identify institutions unwilling to declare in writing, as a prerequisite to such an award of DoD funds for education and training, that the institution does not have a policy of denying and that it does not effectively prevent the Secretary of Defense from obtaining for military recruiting purposes: entry to campuses, access to students on campuses, or access to student directory information.

(b) The Under Secretary of Defense for Acquisition and Technology shall establish policy and procedures to:

(1) Deny DoD grant and contract awards to all institutions identified under § 216.5 (a)(1)(i).

(2) Include appropriate terms or conditions in DoD grants and contracts awarded to institutions of higher education, to make payments under such awards contingent upon the institution's not being one so identified.

(c) The Under Secretary of Defense (Comptroller)/Chief Financial Officer shall implement procedures to stop payment of DoD funds through contracts, grants, and other applicable agreements made by the DoD or other Federal Agencies to applicable institutions identified under § 216.5(a)(1)(i).

(d) The Secretaries of the Military Departments shall:

(1) Identify institutions that, by policy or practice, deny military recruiting personnel entry to the campus(es) of those institutions, access to students, or access to student directory information. When repeated requests to schedule recruiting visits or to obtain student directory information are unsuccessful, the Military Service concerned shall seek written confirmation of the institution's present policy from the head of the institution through a letter of inquiry. The sample letter in enclosure 1 shall be followed as closely as possible. If written confirmation cannot be obtained, oral policy statements or attempts to obtain such statements from an appropriate official of the institution shall be documented.

(2) Evaluate the responses to the letter of inquiry and of such other evidence obtained in accordance with this Part as may be appropriate and submit to the ASD(FMP) the names and addresses of institutions of higher education that are recommended to be declared ineligible to receive funds available to the Department of Defense under section 558 of the National Defense Authorization Act for Fiscal Year 1995 and this Part. Full documentation shall be furnished to the ASD(FMP) for each such institution, including the institution's formal response to the letter of inquiry, or oral response or evidence showing attempts to obtain written confirmation or an oral statement of the institution's policies.

(e) The Heads of the DoD Components shall:

(1) Provide the ASD(FMP) with the names and addresses of institutions:

(i) Identified as a result of implementing policies and procedures promulgated under § 216.5(a)(3)(ii).

(ii) that do not accept terms or conditions of a DoD grant or contract specified under § 215.5(b)(2).

(2) Take immediate action to deny DoD funds to institutions identified under § 216.5(a)(1)(i) and to restore eligibility of institutions identified under § 216.5(a)(2)(i).

Appendix A to Part 216—Sample Letter of Inquiry

Dr. John Doe
President
XYZ College
Anywhere, USA 12345–0123

Dear Dr. Doe: I understand that military recruiting personnel are unable to recruit on the campus of XYZ College and have been refused directory information on XYZ College students for military recruiting by official policy of the College. Section 558 of Public Law 103–337, the National Defense Authorization Act for Fiscal Year 1995, October 5, 1994, which is codified at 10 U.S.C. section 503 note, prohibits grant and

contract awards of DoD funds to any institution of higher education that has a policy of denying, or that effectively denies, military recruiting personnel entry to campuses, access to students on campuses, or access to directory information on students. DoD Directive 1322.13, "Military Recruiting at Institutions of Higher Education," codified at 32 CFR part 216, implements section 558. A copy of section 558 and DoD Directive 1322.13 is enclosed.

Under DoD Directive 1322.13, this letter provides you an opportunity to clarify your institution's policy on military recruiting on the campus of XYZ College. In this regard, I request the official written policy of the institution about visits of civilian employers (public or private) and military recruiting personnel to the campus for recruiting college students, and access to directory information on students.

Based on this information, a determination shall be made by the Assistant Secretary of Defense for Force Management Policy as to your institution's eligibility to receive DoD funds by grant or contract. Should it be determined that XYZ College is not qualified to receive such funds, all current programs requiring payment to XYZ College shall be stopped, and it shall be ineligible to receive future payments of DoD funds through grants, contracts, and other applicable agreements.

I regret that this action may have to be taken. Successful recruiting requires that the Department's recruiters have reasonable access to students on the campuses of colleges and universities, and at the same time to have effective relationships with the officials and student bodies of these institutions. I hope it will be possible for military recruiters to schedule recruiting visits at XYZ College in the near future. I am available to answer any questions.

Sincerely,

Enclosures

Dated: May 22, 1995.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–13176 Filed 5–26–95; 8:45 am]

BILLING CODE 5000–04–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 9

[FRL–5211–6]

OMB Approval Numbers Under the Paperwork Reduction Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Technical amendment.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA), this technical amendment amends the table in 40 CFR part 9 that displays the Office of Management and Budget (OMB) control numbers issued under the PRA. This technical amendment amends the table of OMB control numbers to include the OMB control number for the information collection requirements in the rule entitled "Mandatory Patent Licenses Under Section 308 of the Clean Air Act."

EFFECTIVE DATE: This final rule is effective June 29, 1995.

FOR FURTHER INFORMATION CONTACT:

Thomas Eagles, Office of Policy Analysis and Review (Mail Code 6103), Office of Air and Radiation, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Telephone: (202) 260–5585.

SUPPLEMENTARY INFORMATION: EPA is today amending the table of currently approved information collection request (ICR) control numbers issued by OMB for various EPA regulations. Today's amendment updates the table to display accurately the information requirements promulgated under the rule entitled "Mandatory Patent Licenses Under Section 308 of the Clean Air Act" which appeared in the **Federal Register** on December 30, 1994 (59 FR 67636–9). The affected regulation is codified at 40 CFR part 95.

EPA will continue to present OMB control numbers in a consolidated table format to be codified in 40 CFR part 9 of the Agency's regulations. The table lists the CFR section numbers with reporting and recordkeeping requirements, and the current OMB control numbers. This display of the OMB control numbers and its subsequent codification in the Code of Federal Regulations satisfies the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and OMB's implementing regulations at 5 CFR 1320.

A final rule entitled "Mandatory Patent Licenses Under Section 308 of the Clean Air Act" was published in the **Federal Register** on December 30, 1994. Notice of the ICR for this rule was previously published for comment on August 29, 1994 (59 FR 44392). OMB approved the ICR on October 3, 1994. The OMB approval of the ICR and the associated OMB control number were published in the **Federal Register** on December 30, 1994 (59 FR 67637). As a result, EPA finds that there is "good cause" under section 553(b)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(B)) to amend the table of OMB control numbers without prior notice and comment. Due to the technical nature of the table, further notice and comment would be unnecessary.

List of Subjects in 40 CFR Part 9

Reporting and recordkeeping requirements.

Dated: May 19, 1995.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, chapter 1, title 40 of the Code of Federal Regulations, is amended as follows:

PART 9—[AMENDED]

In part 9:

The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6,300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

Section 9.1 is amended by adding a new heading and a new entry to the table under the new heading to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
• • • • •	
Mandatory Patent Licenses:	
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95.2	2060–0307
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[FR Doc. 95–13151 Filed 5–26–95; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 51

[AD–FRL–5211–6]

RIN 2060–AE33

Preparation, Adoption, and Submittal of State Implementation Plans; Test Method 205, Appendix M

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The purpose of this rule is to add a test method which would be used to verify the performance and accuracy of gas dilution systems during a field test. The test method is entitled, "Verification of Gas Dilution Systems for Field Instrument Calibrations," and will be added to 40 CFR part 51, appendix M, as Test Method 205. This method will allow the facility greater flexibility while assuring the Administrator of the quality of the calibration of the field analyzers.

EFFECTIVE DATE: This method is effective May 30, 1995.

ADDRESSES: *Background Information Document.* The background information document (BID) for the promulgated test method may be obtained from: Air Docket Section (MC–6102), Attention: Docket Number A–93–36, U.S. Environmental Protection Agency, Room M–1500, First Floor, Waterside Mall, 401 M Street, S.W., Washington, D.C. 20460. The BID contains a summary of all the public comments made on the proposed test method and the Administrator's response to the comments.

Docket. Docket No. A–93–36, containing materials relevant to this rulemaking, is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Air and Radiation Docket and Information Center (formerly known as the Air Docket), Room M–1500, First Floor, Waterside Mall, 401 M Street, S.W., Washington, D.C. 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Rima N. Dishakjian, Source Characterization Group A (MD–19), Emissions, Modeling and Analysis Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–0443.

SUPPLEMENTARY INFORMATION:

I. The Rulemaking

A. Summary of Proposed Method

A verification procedure for gas dilution systems has been proposed. Gas dilution systems allow the user to dilute a high level certified gaseous standard to the concentration levels needed for multi-point calibration. The instrumental test methods in 40 CFR part 60, appendix A (e.g., Methods 3A, 6C, 7E, 10, 15, 16, 20, 25A, and 25B) require on-site, multi-point calibration using gases of known concentrations. An extensive field test can require the tester to transport dozens of high pressure gas cylinders to a test site. If a gas dilution system were available, the number of gas cylinders to be transported to the test site would be greatly reduced. This procedure provides a mechanism for the tester to avoid the cost and risk associated with transport of multiple gas cylinders, while also providing assurances to the on-site Administrator that the calibration gases produced by the gas dilution system will be precise and accurate.

EFFECTIVE DATE: This method is effective May 30, 1995.

ADDRESSES: *Background Information Document.* The background information document (BID) for the promulgated test method may be obtained from: Air Docket Section (MC–6102), Attention: Docket Number A–93–36, U.S. Environmental Protection Agency, Room M–1500, First Floor, Waterside Mall, 401 M Street, S.W., Washington, D.C. 20460. The BID contains a summary of all the public comments made on the proposed test method and the Administrator's response to the comments.

Docket. Docket No. A–93–36, containing materials relevant to this rulemaking, is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Air and Radiation Docket and Information Center (formerly known as the Air Docket), Room M–1500, First Floor, Waterside Mall, 401 M Street, S.W., Washington, D.C. 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Rima N. Dishakjian, Source Characterization Group A (MD–19), Emissions, Modeling and Analysis Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–0443.

SUPPLEMENTARY INFORMATION:

I. The Rulemaking

A. Summary of Proposed Method

A verification procedure for gas dilution systems has been proposed. Gas dilution systems allow the user to dilute a high level certified gaseous standard to the concentration levels needed for multi-point calibration. The instrumental test methods in 40 CFR part 60, appendix A (e.g., Methods 3A, 6C, 7E, 10, 15, 16, 20, 25A, and 25B) require on-site, multi-point calibration using gases of known concentrations. An extensive field test can require the tester to transport dozens of high pressure gas cylinders to a test site. If a gas dilution system were available, the number of gas cylinders to be transported to the test site would be greatly reduced. This procedure provides a mechanism for the tester to avoid the cost and risk associated with transport of multiple gas cylinders, while also providing assurances to the on-site Administrator that the calibration gases produced by the gas dilution system will be precise and accurate.

B. Comments on the Proposed Method

Comments on the proposed method were received from three commenters; two commenters are vendors of instruments, while the other commenter has conducted studies on gas dilution instruments in the past. A detailed discussion of these comments and responses can be found in the promulgation BID, which is referred to in the ADDRESSES section of this preamble. Many of the comments dealt with the wording used in the proposed method: two commenters thought the specific mention of gas dilution systems utilizing mass flow controllers implied an Agency endorsement of such systems. Although the original wording actually set more stringent testing requirements for mass flow controller systems and thus was not an endorsement of such systems, the wording of the method has been modified to make it more generic. Another commenter stated that not enough evaluation has been conducted on gas dilution systems' performance capabilities. While the Agency agrees that a large body of data is not available for all the various gas dilution systems currently available, the Agency believes the performance-based format of the method and the stringent requirements of the method will insure that any gas dilution system being used will be precise and accurate for the purposes of the field test. Since the performance test in the method must be conducted during each field test, the gas dilution system's performance will be documented for each set of compliance test data.

II. Administrative Requirements

A. Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered by EPA in the development of this proposed rulemaking. The principal purposes of the docket are to: (1) allow interested parties to identify and locate documents so that they can effectively participate in the rulemaking process, and (2) serve as the record in case of judicial review except for interagency review materials [Section 307(d)(7)(A)].

B. Administrative Designation and Regulatory Analysis

Under Executive Order 12866 (58 FR 51735, October 4, 1993)), the EPA is required to judge whether a regulation is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of this Executive Order to prepare a regulatory impact analysis (RIA). The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligation of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is not "significant" because none of the listed criteria apply to this action. Consequently, this action was not submitted to OMB for review under Executive Order 12866.

C. Regulatory Flexibility Act Compliance

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this attached rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because no additional costs will be incurred.

This rule does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: May 22, 1995.

Carol M. Browner,

Administrator.

The EPA proposes to amend title 40, chapter I, part 51 of the Code of Federal Regulations as follows:

PART 51—[AMENDED]

1. The authority citation for part 51 continues to read as follows:

Authority: Section 110 of the Clean Air Act as amended. 42 U.S.C. 7410.

2. Appendix M, Table of Contents is amended by adding an entry to read as follows:

Method 205—Verification of Gas Dilution Systems for Field Instrument Calibrations.

3. By adding Method 205 to appendix M to read as follows:

Method 205—Verification of Gas Dilution Systems for Field Instrument Calibrations

1. Introduction

1.1 Applicability. A gas dilution system can provide known values of calibration gases through controlled dilution of high-level calibration gases with an appropriate dilution gas. The instrumental test methods in 40 CFR part 60—e.g., Methods 3A, 6C, 7E, 10, 15, 16, 20, 25A and 25B—require on-site, multi-point calibration using gases of known concentrations. A gas dilution system that produces known low-level calibration gases from high-level calibration gases, with a degree of confidence similar to that for Protocol [1] gases, may be used for compliance tests in lieu of multiple calibration gases when the gas dilution system is demonstrated to meet the requirements of this method. The Administrator may also use a gas dilution system in order to produce a wide range of Cylinder Gas Audit concentrations when conducting performance specifications according to appendix F, 40 CFR part 60. As long as the acceptance criteria of this method are met, this method is applicable to gas dilution systems using any type of dilution technology, not solely the ones mentioned in this method.

1.2 Principle. The gas dilution system shall be evaluated on one analyzer once during each field test. A precalibrated analyzer is chosen, at the discretion of the source owner or operator, to demonstrate that the gas dilution system produces predictable gas concentrations spanning a range of concentrations. After meeting the requirements of this method, the remaining analyzers may be calibrated with the dilution system in accordance to the requirements of the applicable method for the duration of the field test. In Methods 15 and 16, 40 CFR part 60, appendix A, reactive compounds may be lost in the gas dilution system. Also, in Methods 25A and 25B, 40 CFR part 60, appendix A, calibration with target compounds other than propane is allowed. In these cases, a laboratory evaluation is required once per year in order to assure the Administrator that the system will dilute these reactive gases without significant loss.

Note: The laboratory evaluation is required only if the source owner or operator plans to utilize the dilution system to prepare gases mentioned above as being reactive.

2. Specifications

2.1 Gas Dilution System. The gas dilution system shall produce calibration gases whose measured values are within ±2 percent of the predicted values. The predicted values are calculated based on the certified concentration of the supply gas (Protocol gases, when available, are recommended for their accuracy) and the gas flow rates (or dilution ratios) through the gas dilution system.

2.1.1 The gas dilution system shall be recalibrated once per calendar year using NIST-traceable primary flow standards with an uncertainty ≤0.25 percent. A label shall be affixed at all times to the gas dilution system listing the date of the most recent calibration, the due date for the next calibration, and the person or manufacturer who carried out the calibration. Follow the manufacturer's instructions for the operation and use of the gas dilution system. A copy of the manufacturer's instructions for the operation of the instrument, as well as the most recent recalibration documentation shall be made available for the Administrator's inspection upon request.

2.1.2 Some manufacturers of mass flow controllers recommend that flow rates below 10 percent of flow controller capacity be avoided; check for this recommendation and follow the manufacturer's instructions. One study has indicated that silicone oil from a positive displacement pump produces an interference in SO_2 analyzers utilizing ultraviolet fluorescence; follow laboratory procedures similar to those outlined in Section 3.1 in order to demonstrate the significance of any resulting effect on instrument performance.

2.2 High-Level Supply Gas. An EPA Protocol calibration gas is recommended, due to its accuracy, as the high-level supply gas.

2.3 Mid-Level Supply Gas. An EPA Protocol gas shall be used as an independent check of the dilution system. The concentration of the mid-level supply gas shall be within 10 percent of one of the dilution levels tested in Section 3.2.

3. Performance Tests

3.1 Laboratory Evaluation (Optional). If the gas dilution system is to be used to formulate calibration gases with reactive compounds (Test Methods 15, 16, and 25A/25B (only if using a calibration gas other than propane during the field test) in 40 CFR part 60, appendix A), a laboratory certification must be conducted once per calendar year for each reactive compound to be diluted. In the laboratory, carry out the procedures in Section 3.2 on the analyzer required in each respective test method to be laboratory certified (15, 16, or 25A and 25B for compounds other than propane). For each compound in which the gas dilution system meets the requirements in Section 3.2, the source must provide the laboratory certification data for the field test and in the test report.

3.2 Field Evaluation (Required). The gas dilution system shall be evaluated at the test site with an analyzer or monitor chosen by the source owner or operator. It is recommended that the source owner or operator choose a precalibrated instrument with a high level of precision and accuracy for the purposes of this test. This method is not meant to replace the calibration requirements of test methods. In addition to the requirements in this method, all the calibration requirements of the applicable test method must also be met.

3.2.1 Prepare the gas dilution system according to the manufacturer's instructions. Using the high-level supply gas, prepare, at a minimum, two dilutions within the range of each dilution device utilized in the dilution system (unless, as in critical orifice systems, each dilution device is used to make only one dilution; in that case, prepare one dilution for each dilution device). Dilution device in this method refers to each mass flow controller, critical orifice, capillary tube, positive displacement pump, or any other device which is used to achieve gas dilution.

3.2.2 Calculate the predicted concentration for each of the dilutions based on the flow rates through the gas dilution system (or the dilution ratios) and the certified concentration of the high-level supply gas.

3.2.3 Introduce each of the dilutions from Section 3.2.1 into the analyzer or monitor one at a time and determine the instrument response for each of the dilutions.

3.2.4 Repeat the procedure in Section 3.2.3 two times, i.e., until three injections are made at each dilution level. Calculate the average instrument response for each triplicate injection at each dilution level. No single injection shall differ by more than ±2 percent from the average instrument response for that dilution.

3.2.5 For each level of dilution, calculate the difference between the average concentration output recorded by the analyzer and the predicted concentration calculated in Section 3.2.2. The average concentration output from the analyzer shall be within ±2 percent of the predicted value.

3.2.6 Introduce the mid-level supply gas directly into the analyzer, bypassing the gas dilution system. Repeat the procedure twice more, for a total of three mid-level supply gas injections. Calculate the average analyzer output concentration for the mid-level supply gas. The difference between the certified concentration of the mid-level supply gas and the average instrument response shall be within ±2 percent.

3.3 If the gas dilution system meets the criteria listed in Section 3.2, the gas dilution system may be used throughout that field test. If the gas dilution system fails any of the criteria listed in Section 3.2, and the tester corrects the problem with the gas dilution system, the procedure in Section 3.2 must be repeated in its entirety and all the criteria in Section 3.2 must be met in order for the gas dilution system to be utilized in the test.

4. References

1. "EPA Traceability Protocol for Assay and Certification of Gaseous Calibration Standards," EPA–600/R93/224, Revised September 1993.

[FR Doc. 95–13152 Filed 5–26–95; 8:45 am]
BILLING CODE 6560–50–P

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40 CFR Part 52

[CO9–3–5603; FRL–5201–6]

Approval and Promulgation of Air Quality Implementation Plans; Colorado; Regulation 7

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving revisions to the Colorado Ozone State Implementation Plan (SIP) submitted by the Governor on September 27, 1989, and August 30, 1990. The revisions consisted of amendments to Regulation No. 7, "Regulation To Control Emissions of Volatile Organic Compounds." In its review of the September 27, 1989 State submittal, EPA identified several areas where the regulation still did not meet EPA requirements. On August 30, 1990, the State submitted additional revisions to Regulation No. 7 to address these deficiencies. This **Federal Register** action applies to both of these submittals. The amendments were made to conform Regulation No. 7 to federal requirements, and to improve the clarity and enforceability of the regulation. EPA's approval will serve to make the revisions federally enforceable and was requested by the State of Colorado.

EFFECTIVE DATE: This action will be effective on June 29, 1995.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection between 8 a.m. and 4 p.m., Monday through Friday at the following office:

United States Environmental Protection Agency, Region VIII, Air Programs Branch, 999 18th Street, Suite 500, Denver, Colorado 80202–2466.

FOR FURTHER INFORMATION CONTACT: Tim Russ, Air Programs Branch (8ART–AP), United States Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466, (303) 293–1814.

SUPPLEMENTARY INFORMATION: Section 110(a)(2)(H)(i) of the Clean Air Act (CAA), as amended in 1990, provides the State the opportunity to amend its SIP from time to time as may be necessary. The State is utilizing this authority of the CAA to update and revise existing regulations which were promulgated pursuant to section 172 of the pre-amendment Act and are a part of the current SIP. In addition, these submittals are in fulfillment of the RACT requirement of amended section 172.

I. Background

On March 3, 1978, EPA designated the Denver-Boulder metropolitan area as nonattainment for the National Ambient Air Quality Standards (NAAQS) for ozone (43 FR 8976). This designation was reaffirmed by EPA on November 6, 1991 (56 FR 56694) pursuant to section 107(d)(1) of the CAA, as amended in 1990. Furthermore, since the Denver-Boulder area had not shown a violation of the ozone standard during the three-year period from January 1, 1987 to December 31, 1989, the Denver-Boulder area was classified as a "transitional" ozone nonattainment area under section 185A of the amended Act. In order to meet the Reasonably Available Control Technology (RACT) requirements of the CAA, transitional areas must correct any RACT deficiencies regarding enforceability.

The current Colorado Ozone SIP was approved by EPA in the **Federal Register** on December 12, 1983 (48 FR 55284). The SIP contains Regulation No. 7 (Reg. 7), which applies RACT to stationary sources of Volatile Organic Compounds (VOC). Reg. 7 was adopted to meet the requirements of section 172(b) (2) and (3) of the 1977 CAA (concerning the application of RACT to stationary sources [1].) However, the approved Ozone SIP did not rely on the emissions reduction credit that Reg. 7 would produce in order to demonstrate attainment; rather, the SIP relied only on mobile source controls in order to demonstrate attainment.

During 1987 and 1988, EPA Region VIII conducted a review of Reg. 7 for consistency with the Control Techniques Guidelines documents (CTGs) and regulatory guidance, for enforceability and for clarity. The CTGs, which are guidance documents issued by EPA, set forth measures that are presumptively RACT for specific categories of sources that emit VOCs. A substantial number of deficiencies were identified in Reg. 7. In 1987, EPA published a proposed policy document that included, among other things, an interpretation of the RACT requirements as they applied to VOC nonattainment areas (52 FR 45044, November 24, 1987, Post-87 Policy). On May 25, 1988, EPA published a guidance document entitled "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of the November 24, 1987 **Federal Register** Notice" (the "Blue Book"). A review of Reg. 7 against these documents uncovered additional deficiencies in the regulation.

On May 26, 1988, EPA notified the Governor of Colorado that the Carbon Monoxide (CO) SIPs for Colorado Springs and Fort Collins were inadequate to achieve the CO NAAQS. In that letter, EPA also notified the Governor that the Ozone SIP had significant deficiencies in design and implementation, and requested that these deficiencies be remedied. EPA did not make a formal call for a revised Ozone SIP in the May 1988 letter,[2] even though the Denver-Boulder area was,

[1] The requirement to apply RACT to existing stationary sources of VOC emissions was carried forth under the amended Act in section 172(c)(1).

[2] Under the pre-amended Act, EPA had the authority under section 110(a)(2)(H) to issue a "SIP Call" requiring a State to correct deficiencies in an existing SIP. Section 110(a)(2)(H) was not modified by the 1990 Amendments. In addition, the amended Act contains new section 110(k)(5) which also provides authority for a SIP Call.

and continues to be, designated nonattainment for ozone. The reason for this decision was that no violations of the ozone NAAQS had been recorded in the nonattainment area for the previous three years. However, EPA indicated that the deficiencies, if uncorrected, could jeopardize the area's ability to obtain eventual redesignation as an attainment area for ozone.

1. 1989 SIP Revision Submittal

In a letter dated September 27, 1989, the Governor of Colorado submitted revisions to Reg. 7 to partially address EPA's concerns with the Ozone SIP. A detailed description of the specific revisions to the regulation is contained in the Docket for this **Federal Register** document. Revisions were made to the following sections of Reg. 7:

7.I Applicability
7.II General Provisions
7.III General Requirements for Storage and Transfer of Volatile Organic Compounds
7.IV Storage of Highly Volatile Organic Compounds
7.V Disposal of Volatile Organic Compounds
7.VI Storage and Transfer of Petroleum Liquid
7.VIII Petroleum Processing and Refining
7.IX Surface Coating Operations
7.X Use of Solvents for Degreasing and Cleaning
7.XI Use of Cutback Asphalt
7.XII Control of VOC Emissions from Dry Cleaning Facilities Using Perchloroethylene As a Solvent
7.XIII Graphic Arts
7.XIV Pharmaceutical Synthesis
7.XV Control of Volatile Organic Compound Leaks from Vapor Collection Systems Located At Gasoline Terminals, Bulk Plants, and Gasoline Dispensing Facilities
Appendix A Criteria for Control of Vapors from Gasoline Transfer to Storage Tanks
Appendix B Criteria for Control of Vapors from Gasoline Transfer at Bulk Plants (Vapor Balance System)
Appendix D Test Procedures for Annual Pressure/Vacuum Testing of Gasoline Transport Trucks

In addition, the following new emission sources and appendices were added to Reg. 7:

7.IX.A.7 Fugitive Emission Control
7.IX.N. Flat Wood Paneling Coating
7.IX.O. Manufacture of Pneumatic Rubber Tires
7.XI.D. Coal Tar
Appendix E Emission Limit Conversion Procedure

In a letter dated September 27, 1989, the Governor of Colorado submitted revisions to Reg. 7 to address EPA's concerns with how the State was addressing RACT for major non-CTG sources of VOC. A detailed description of the specific revisions to the regulation is contained in the Docket for this **Federal Register** document. In summary, Section 7.II.C. of Reg. 7 applies this new non-CTG RACT requirement to sources not specifically covered by the regulation as follows:

(a) Sources with actual emissions of 100 tons per year or more of VOCs must apply RACT.

(b) Sources with potential emissions of 100 tons per year or more of VOCs, but with actual emissions of less than 100 tons per year, may avoid having to apply RACT by obtaining a federally enforceable permit to limit production or hours of operation to keep actual emissions below 100 tons per year.

(c) Sources with potential emissions of 100 tons per year or more of VOCs, but with actual emissions of less than 50 tons per year on a 12-month rolling average, may avoid RACT and permit requirements by: (1) Submitting a report each year demonstrating that the 50 tons per year threshold has not been exceeded and (2) maintaining monthly records of VOC usage and emissions to enable the State to verify these reports.

EPA is approving section 7.II.C. of the State's rules for its strengthening effect on the SIP.

2. 1990 SIP Revision Submittal

In general, the revised Reg. 7 (as submitted by the Governor on September 27, 1989) met the CAA requirements, which were interpreted in the CTGs, the Blue Book, and the Post-87 Policy. However, in its review, EPA identified two remaining issues where the regulation was not consistent with EPA guidance: A. The compliance schedule, and B. Clarification of the Graphic Arts definition for potential to emit. These remaining two issues were addressed by the State in its August 30, 1990 submittal.

In a letter dated August 30, 1990, the Governor of Colorado submitted revisions to Reg. 7 to address EPA's remaining concerns with the September 27, 1989 Ozone SIP revision. A detailed description of the additional specific revisions to Reg. 7 is contained in the Docket for this **Federal Register** document. Revisions were made to the following sections of Reg. 7:

7.I Applicability
7.XI Use of Cutback Asphalt
7.XIII Graphic Arts

A. Compliance Schedule: Reg. 7 did not contain an explicit deadline for compliance with the revised regulation. In response to EPA comments, the State adopted additional revisions (Section 7.I.B. and 7.I.C.) to Section 7.I. (Applicability) of Reg. 7, requiring all sources to come into compliance with the revised Reg. 7 by October 30, 1991.

B. Graphic Arts definition: The Graphic Arts definition of potential to emit, contained in Section 7.XIII.A.2. of Reg. 7, was somewhat unclear. The definition referenced the EPA requirement that potential to emit be determined at maximum capacity before control (per the Appendix D Clarification document), but also included a requirement that potential emissions be based on historical records of solvent and ink consumption (per the previous regulatory guidance document, *Guidance to State and Local Agencies in Preparing Regulations to Control Volatile Organic Compounds from Ten Stationary Source Categories*, September, 1979). As a result, the definition could have been interpreted to require potential to emit to be calculated at both maximum and historical operating rates, which in most cases will be different. The Reg. 7 revisions, submitted by the Governor on August 30, 1990, addressed this concern by not including a reference to the historical records.

C. Capture Efficiency: As a final issue, on January 13, 1992, EPA notified the State that, prior to proposing this action, it was necessary to document the State's position with regard to capture efficiency (CE) determination. The CE provision adopted by the State in Section IX.A.5.e of Reg. 7 does address the requirement that testing for CE be performed on a case-by-case basis, and that this testing be consistent with EPA guidance. In a letter dated February 5, 1992, from John Leary, Acting Director, Colorado Air Pollution Control Division, to Douglas Skie, Chief, Air Programs Branch, EPA Region VIII, the State committed to adopt and use all new CE methods as they are developed and promulgated by EPA's rule-making process. In that same letter, the State indicated that until changes are promulgated, the Air Pollution Control Division will use the CE protocols that were published by EPA on June 29, 1990 (55 FR 26814, codified at 40 CFR 52.741(a)(4)(iii) and Appendix B).

Due to additional information received after the adoption of revisions to Reg. 7 in September, 1989, the State reconsidered its regulation of coal tar under Section 7.XI. (Use of Cutback Asphalt). In revisions submitted on August 30, 1990, Section 7.XI.D., covering coal tar, was deleted. Regulation of coal tar is not covered by the CTG for cutback asphalt use; EPA believes that it is not needed to meet the RACT requirement of the CAA.

In this action, EPA is also approving the State's VOC definition as submitted in the 1989 and 1990 revisions to Reg. 7. However, on February 3, 1992, EPA published a revised definition of volatile organic compounds (57 FR 3941). This definition was further revised on October 5, 1994, (59 FR 50693) and became effective on December 5, 1994. EPA's definition excludes a number of organic compounds from the definition of VOC on the basis that they are of negligible reactivity and do not contribute to tropospheric ozone formation. The State's definition excludes some, but not all, of these compounds. Therefore, the State's definition of VOC provides for the regulation of some compounds which are no longer considered VOCs by EPA. In light of EPA's most recent definition of VOC, EPA will not enforce against sources for failure to control the emission of compounds that are exempt from the federal VOC definition. EPA has informed the Region VIII States of the revised definition of VOC and has requested that future SIP revisions reflect the most recent federal VOC definition.

This action was previously published as a Direct Final Rule on June 26, 1992 (57 FR 28614). This Direct Final Rule was withdrawn on August 12, 1992 (57 FR 36004) as EPA Region VIII received a letter, dated July 16, 1992, from William Owens, Executive Director of the Colorado Petroleum Association (CPA), to Jeff Houk of EPA Region VIII, expressing adverse comments. EPA published a Proposed Rule on November 16, 1994 (59 FR 59189) proposing approval of these revisions to Reg. 7. Comments regarding the November 16, 1994, Proposed Rule were received from Stanley Dempsey Jr. on behalf of the Colorado Association of Commerce and Industry (CACI). These comments, in addition to those received earlier, are hereby addressed in this Final Rule as follows:

CPA Comment 1: In its first comment, CPA states that "EPA was required by the amended Clean Air Act to determine by June 30, 1992, whether the transitional area had attained the NAAQS. EPA failed to issue this determination by the required date. This determination will re-establish the purpose of the SIP and, therefore, should be considered prior to any SIP approval. At a minimum, the SIP approval should be proposed to allow the opportunity for comment based on the required determination of current attainment status."

Response to CPA Comment 1: As indicated in the proposed rule for this action (59 FR 59189, dated November 16, 1994), EPA had previously reviewed the available ambient air quality data. In a letter dated October 22, 1992, from Jack McGraw, EPA Region VIII Acting Regional Administrator, to Governor Roy Romer, EPA advised the State that the Agency had reviewed the ambient air quality data which had been entered by the State into the Aerometric Information and Retrieval System (AIRS) national database. EPA further advised that these data indicated that the Denver-Boulder metropolitan transitional ozone nonattainment area had not violated the ozone NAAQS during the period beginning January 1, 1987, and ending December 31, 1991. EPA's October 22, 1992, letter was not a determination that the Denver-Boulder nonattainment area had met the CAA's section 107(d)(3)(E) criteria for redesignation to attainment, but rather served as an affirmation that no violation of the ozone standard for this area was found. EPA cannot make a determination under section 107(d)(3)(E) until the State submits a complete redesignation request and maintenance plan. One criterion for redesignation to attainment for transitional ozone nonattainment areas, is that to satisfy section 172(c)(1), transitional areas must ensure that any deficiencies regarding enforceability of an existing RACT rule are corrected (refer to 57 FR 13525 dated April 16, 1992).

CPA Comment 2: In its second comment, CPA states "In addition, the basis for the EPA's determination of deficiencies in Regulation No. 7 is based on the "Post-87" policy which includes the proposed policy regarding the application of RACT in non-attainment areas. CPA questions the application of this policy to areas designated transitional under the amended Clean Air Act."

Response to CPA Comment 2: The Denver-Boulder area, while classified as transitional, continues to be a designated ozone nonattainment area. Therefore, the Post-87 policy retains its validity for the Denver-Boulder area. Although the Denver-Boulder transitional ozone nonattainment area was not subject to the RACT fix-up requirement, section 182(a)(2)(A), of the amended CAA, the RACT requirement of section 172(c)(1) is applicable. Pursuant to that provision, EPA has determined that it is necessary for the State to correct previously identified significant deficiencies in design, implementation and enforcement in the provisions of Reg. 7.

In a letter dated May 26, 1988, from James Scherer, Regional Administrator for EPA Region VIII, to Governor Roy Romer, EPA notified the State that the Carbon Monoxide SIPs for Colorado Springs and Fort Collins were inadequate to achieve the CO NAAQS. In that same letter, EPA also notified the Governor that the Ozone SIP for the Denver-Boulder metropolitan area had significant deficiencies in design and implementation and requested that those deficiencies be remedied. These specific deficiencies were subsequently documented to the State in a letter, dated June 17, 1988, from Irwin L. Dickstein, Director of the Air and Toxics Division for EPA Region VIII, to Thomas M. Vernon Jr. M.D., the Executive Director of the Colorado Department of Health. The General Preamble to Title I of the 1990 amended CAA (57 FR 13525, dated April 16, 1992) reaffirmed EPA's RACT policy. It provides that to satisfy requirements in section 172(c)(1) of the CAA ("NONATTAINMENT PLAN PROVISIONS IN GENERAL"), transitional ozone nonattainment areas must ensure that any deficiencies regarding enforceability of an existing rule are corrected. The General Preamble to Title I continues by stating that States should be aware that in order to be redesignated to attainment, such transitional ozone nonattainment areas need to correct any RACT deficiencies regarding enforceability prior to redesignation. For the reasons stated above, EPA believes that the 1989 and 1990 revisions to Reg. 7 that have been adopted by the State, are necessary in order to ensure that the RACT requirements of the CAA are met.

CPA Comment 3: In its third comment, CPA states "The provisions for application of RACT under the revisions to Regulation No. 7 will have a direct impact on CPA's membership. Such revisions may not be needed to demonstrate maintenance of the ozone NAAQS and may result in unreasonable requirements in light of current regulatory developments."

Response to CPA Comment 3: EPA is convinced that the revisions to Reg. 7 strengthen the Ozone SIP and are necessary for the Denver-Boulder metropolitan area to continue to achieve the ozone NAAQS as the area continues to experience the significant growth which has occurred in the past few years. EPA believes the benefits from the 1989 and 1990 revisions to Reg. 7 are likely contributing to the improvement in ozone levels that have been observed when compared to prior years. However, the ambient air quality data in AIRS indicates there were still ozone NAAQS exceedences in 1989 (0.130 ppm) and 1993 (0.128 ppm) with near-exceedence values in 1990 (0.120 ppm) and 1992 (0.123 ppm). The above values do appear to be improving, however, when compared to the 28 ozone NAAQS exceedences that were observed from 1980 through 1988.

CACI Comment 1: In its first comment, CACI states "The Denver-Boulder area has not exceeded the ozone National Ambient Air Quality Standards since 1987. The current SIP has, therefore, appropriately allowed the area to attain the NAAQS. Therefore, there is no need for more stringent control of stationary source emissions of volatile organic compounds (VOC)."

Response to CACI Comment 1: CACI's comment is not correct. Based on data archived in the AIRS national database, the Denver-Boulder ozone nonattainment area has exceeded the ozone NAAQS as follows: 1988 (twice, 0.125 ppm and 0.136 ppm), 1989 (0.130 ppm), and 1993 (0.128 ppm). Although exceedences of the ozone standard have been recorded, EPA believes that the 1989 and 1990 revisions to Reg. 7 likely contributed to the decreased frequency of exceedences after 1990 and the fact that the Denver-Boulder nonattainment area has not violated the ozone standard.

CACI Comment 2: In its second comment, CACI provides an ozone emission inventory, whose source is not referenced, of "Mobile sources, Minor stationary sources, Consumer products, and Major point sources." CACI then states "Major stationary sources contribute only ten percent to an approximate daily inventory of 200 tons per day. Attachment 4 shows the Denver VOC emissions contributions. We question why Reg 7 is a SIP requirement for stationary sources, whose daily contribution is minor compared to mobile sources, while mobile sources have little or no control."

Response to CACI Comment 2: Under both the pre-amended Act and the Act as amended in 1990, certain stationary sources are required to implement RACT. The purpose of the 1989 and 1990 revisions to Reg. 7 was that EPA required the State to correct identified concerns within Reg. 7, which was already part of Colorado's SIP, that involved significant design, implementation, and enforceability problems. With regard to the CACI provided emissions inventory, EPA cannot validate this emissions inventory as, to date, no current ozone emissions inventory has been submitted by the State. Correspondence in EPA's files indicates the State prepared a preliminary ozone emission inventory in 1987–1988, which was submitted to EPA in 1989. This inventory was not finalized. CACI's comment implies that mobile sources have little or no control of emissions. EPA disagrees as Colorado has had an inspection and maintenance program, for on-road vehicles, since 1983. This program was replaced with an enhanced inspection and maintenance program which began implementation on January 1, 1995. Also, mobile source emission reductions have been realized with the implementation of Federal Motor Vehicle Control Programs (FMVCP).

CACI Comment 3: CACI's third comment states "The current Colorado Ozone SIP was approved by EPA in 1983 (48 FR 55284). The SIP contains a 1981 version of Reg 7 which applies RACT to stationary sources of VOC. The approved Ozone SIP did not rely on the emissions reduction credit that Reg 7 would produce in order to demonstrate attainment; rather, the SIP relied only on mobile source controls in order to demonstrate attainment. There is no ozone attainment demonstration which requires any Reg 7 emission reductions from stationary sources, based on our information and belief. Therefore, there is no demonstrated need for a more stringent revision to the Ozone SIP."

Response to CACI Comment 3: The reader is referred to EPA's response to CPA Comment 2 above as it is directly applicable to CACI's Comment 3. It should be noted that the Denver-Boulder ozone nonattainment area exceeded the ozone NAAQS 25 times during the years 1981 through 1988. This fact was also considered when EPA sent the Governor the May 16, 1988, letter referenced above. Therefore, although the 1981 attainment demonstration relied solely on the mobile source controls, the Denver-Boulder area failed to attain the ozone standard in accordance with that demonstration. In addition, the Denver-Boulder area retained its nonattainment designation under the amended CAA and EPA believes the continued applicability of the RACT requirement makes it necessary for the State to correct existing deficiencies in its RACT rules.

CACI Comment 4: CACI's fourth comment states "The current Ozone SIP contains a definition of VOC that was based on a threshold vapor pressure of 0.1 mm Hg vapor cutoff. EPA modified this definition of VOC (40 CFR 51.100(s)) in 1988. The current Ozone SIP approval of Reg 7 was written with the 0.1 mm Hg vapor cutoff in mind as de minimis threshold. In 1991 the AQCC modified the VOC definition in Colorado Regulations, which inadvertently removed the Reg 7 de minimis threshold. A comparison of other state's de minimis voc thresholds is shown in Attachment 1. A comparison of other state's de minimis size cutoffs and vapor pressure cutoffs is shown in Attachment 2. An example of the extreme cost and minimal air quality benefit of Reg 7 without correcting the inadvertent error of eliminating the de minimis cutoffs is shown in Attachment 3. Therefore, revising the Ozone SIP by adopting the 1989 and 1990 Reg 7 submittal is without legal basis and is more stringent than EPA requires or the AQCC intended."

Response to CACI Comment 4: As an initial matter, EPA cannot disapprove a SIP revision merely because it may be more stringent than required by the CAA. *See* CAA section 116. Similarly, EPA cannot unilaterally determine that a rule will have a more stringent effect than the State intended and rely on such a determination for disapproval. With respect to the comment that there is no legal basis, EPA notes that EPA's approved definition of a Volatile Organic Compound (VOC) is found in 40 CFR Part 51, Subpart F—Procedural Requirements, at 51.100 Definitions, (s) Volatile organic compounds (VOC). In 51.100(s), a VOC is defined as ". . . any compound of carbon, excluding . . . which participates in atmospheric photochemical reactions." As stated in 40 CFR 51.100(s), a VOC is defined based upon atmospheric photochemical reactivity. There is no provision for a VOC to be defined, or exempted, based upon vapor pressure. This vapor cutoff provision was rescinded by EPA in 1988, as such a definition for VOCs would exempt compounds of low volatility, which, under certain processes, could volatilize and, therefore, participate in atmospheric photochemical reactions (refer to EPA's "ISSUES RELATING TO VOC REGULATION CUTPOINTS, DEFICIENCIES, AND DEVIATIONS, Clarification to Appendix D of [the] November 24, 1987 **Federal Register**", dated May 25, 1988 and revised November 11, 1990. This document is more commonly referred to as the "Blue Book"). The only acceptable method to exempt a carbon compound from being classified as a VOC is that it must be determined that the compound has negligible photochemical reactivity (refer to 40 CFR 51.100(s)(1), (2), (3), and (4)).

As stated above and in the proposed rule (59 FR 59189) for this action, EPA is approving the State's VOC definition as submitted in the 1989 and 1990 revisions to Reg. 7. However, on February 3, 1992, EPA published a revised definition of volatile organic compounds (57 FR 3941) with a further revision on October 5, 1994 (59 FR 50693, effective December 5, 1994). The definition excludes a number of organic compounds from the definition of VOC on the basis that they are of negligible reactivity and do not contribute to tropospheric ozone formation. The State's definition excludes some, but not all, of these compounds. Therefore, the State's definition of VOC provides for the regulation of some compounds which are no longer considered VOCs by EPA. In light of EPA's most recent definition of VOC, EPA will not enforce against sources for failure to control the emission of compounds that are exempt from the federal VOC definition.

CACI Comment 5: CACI's fifth comment states "The 1989 Reg 7 rulemaking which took place over five years ago did not anticipate the lack of de minimis thresholds for a federally enforceable condition. Upon information and belief, since 1988 there has been no ozone attainment demonstration to examine the impact of this revised Reg 7 on our area, i.e., do not know the need for or the impact of Reg 7. However, now that the program is largely self-administering, if Reg 7 becomes a federally enforceable condition, CACI believes many sources in the Denver-Boulder area will be out of compliance with their Title V permits. Therefore, without knowing the impacts of revised Reg 7, we are putting Denver-Boulder industry at risk of enforcement action. To prevent this result, we propose the submittal be delayed until the AQCC can address this issue through rulemaking."

Response to CACI Comment 5: EPA does not understand CACI's comment that the 1989 rulemaking did not anticipate the lack of de minimis thresholds. EPA believes that the 1989 and 1990 revisions to Reg. 7 contain "de minimis thresholds" in that exemptions and/or applicability thresholds do appear in Sections II., III., IV., VI., VII., VIII., IX., X., XI., XII., XIII., XIV., and XV. of Reg. 7. These exemptions and applicability thresholds were developed by the State and determined appropriate in consideration of the RACT requirement of the CAA and EPA policy and guidance. With respect to enforcement, EPA notes the 1989 and 1990 revisions to Reg. 7 were legally adopted by the State. Therefore, as stated in Section I. "APPLICABILITY, B., 2. Existing Sources, c." of the revised Reg. 7, all applicable existing sources were required to be in compliance with Reg. 7 on or after October 30, 1991. Additionally, Section I. "APPLICABILITY, B., 1. New Sources" provides that "New sources, defined as any sources which * * * commence operation on or after October 30, 1989, must comply with the provisions of this regulation upon commencement of operation." Based on the above, the 1989 and 1990 revisions have been State-enforceable since November 1, 1991, for existing sources, and November 1, 1989, for new sources. Therefore, the impacts from the enforcement of the 1989 and 1990 revisions to Reg. 7 have already been realized by applicable sources in the Denver-Boulder area.

It is unclear to EPA the intent of CACI's statement that sources would be out of compliance with their Title V permits when EPA fully approves the 1989 and 1990 revisions to Reg. 7. The Title V permits will not include any new VOC control requirements, but they will include all federally enforceable requirements and State enforceable requirements. As stated above, compliance with Reg. 7 should have already occurred as existing sources and new sources were required to comply with the applicable provisions of Reg. 7 since November 1, 1991, and November 1, 1989, respectively. Moreover, to the extent that these new requirements are not included in a Title V permit that has been issued prior to the effective date of this final action, the approval of these requirements into the SIP will not in and of itself render such a source out of compliance with its Title V permit. However, consistent with 40 CFR 70.7(f)(1)(i), a source with three or more years remaining on the term of its permit would need to reopen the permit to incorporate these requirements, while a Title V source with less than three years remaining on the permit could incorporate them at renewal. Finally, EPA does note, however, that sources which are subsequently discovered, during the process of applying for a Title V permit, that are not complying with the applicable provisions of Reg. 7, may receive an enforcement action by either the State or EPA depending upon the situation.

Also, approval by EPA of the 1989 and 1990 revisions to Reg. 7 additionally make these revisions federally enforceable and officially revises and updates the State's SIP.

CACI Comment 6: In its sixth comment, CACI states "Finally, EPA's approval of Reg 7 without de minimis thresholds does not meet the spirit of President Clinton's Common Sense Initiative, and it is inconsistent with the Economic Incentive Program (EIP) Rule. CACI urges the AQCC and EPA to review Reg 7 to determine proper de minimis threshold provisions prior to adopting Reg 7 into the SIP."

Response to CACI Comment 6: As stated above in EPA's response to CACI's Comment 5, the 1989 and 1990 revisions to Reg. 7 contain "de minimis thresholds" in that exemptions and/or applicability thresholds appear in Sections II., III., IV., VI., VII., VIII., IX., X., XI., XII., XIII., XIV., and XV. of Reg. 7. These exemptions and applicability thresholds were developed by the State and determined appropriate in consideration of the RACT requirement of the CAA and EPA policy and guidance. EPA also participated in the development and review of these revisions to Reg. 7 and has determined the 1989 and 1990 Reg. 7 revisions to the SIP to be fully federally approvable.

EPA disagrees with the CACI statement that approval of the 1989 and 1990 revisions to Reg. 7 is inconsistent with the EIP rules. The 1989 and 1990 Reg. 7 revisions were required by EPA to address design, implementation, and enforceability problems with Reg. 7. The EIP rules, promulgated on April 7, 1994 (59 FR 16710), and codified at 40 CFR Part 51, "Subpart U-Economic Incentive Programs", do not determine source specific or category specific RACT requirements. Instead, the EIP rules set forth an alternative program, in this particular reference, for implementing new and/or previously existing RACT requirements through emissions trading (reference 40 CFR 51.493). EIPs were required as a SIP revision for certain ozone and carbon monoxide nonattainment areas as indicated in sections 182(g)(3), 182(g)(5), 187(d)(3), and 187(g) of the CAA. The Denver-Boulder transitional ozone nonattainment area was not required to submit an EIP. EPA notes, however, as provided in 40 CFR 51.490(b), the Denver-Boulder area may elect to submit a discretionary EIP revision to the Colorado SIP.

CACI Comment 7: In its seventh comment CACI states "The Denver-Boulder area, as indicated above, has had no exceedences of the ozone standard since 1987. The area is designated transitional and it is subject to redesignation as attainment. In the 'Background' statements to the proposed rule (59 FR 59191) EPA states: 'For a maintenance plan to be approved and the Denver-Boulder metropolitan area to be redesignated as attainment pursuant to section 107(d)(3)(E), the State, may have to develop specific RACT regulations for major non-CTG sources. Information available to EPA suggests that there has been growth in emissions from some non-CTG sources in the area; RACT regulations for these sources may be necessary to ensure maintenance of the NAAQS for the initial 10-year redesignation attainment period, as is required by section 175A of the ACT.' CACI asks that EPA not act on the Governor's 1989 and 1990 proposal until after a request for redesignation is submitted so that [the] current Reg 7 can

be reviewed and modified as part of the maintenance plan."

Response to CACI Comment 7: The reader is referred to EPA's responses to CACI's Comment 1 and CPA's Comment 2. In addition, EPA notes that it does not have the discretion to unilaterally withhold action on the submittals of the 1989 and 1990 Reg. 7 revisions until the State submits its redesignation request and maintenance plan. EPA will work with the State in developing its redesignation request and maintenance plan, if so requested, to determine if any modifications to Reg. 7 are legally supported.

Final Action

EPA is approving Colorado's Ozone SIP revisions, submitted by the Governor on September 27, 1989, and August 30, 1990. These revisions consist of amendments to Reg. 7.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State Implementation Plan. Each request for revision to any State Implementation Plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and Subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 31, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

Approval of this specific revision to the SIP does not indicate EPA approval of the SIP in its entirety.

Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Section 6 of Executive Order 12866.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the State Implementation Plan for the State of Colorado was approved by the Director of the Federal Register on July 1, 1980.

Authority: 42 U.S.C. 7401–7671q.

Dated: April 19, 1995.

William P. Yellowtail,

Regional Administrator.

40 CFR part 52, subpart G, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart G—Colorado

2. Section 52.320 is amended by adding paragraph (c)(70) to read as follows:

§ 52.320 Identification of plan.

* * * * *

(c) * * *

(70) Revisions to the Colorado State Implementation Plan were submitted by the Governor on September 27, 1989, and August 30, 1990. The revisions consist of amendments to the Ozone provisions in Regulation No. 7, "Regulation To Control Emissions of Volatile Organic Compounds."

(i) Incorporation by reference.

(A) Revisions to Regulation No. 7, Sections 7.I (Applicability), 7.II (General Provisions), 7.III (General Requirements for Storage and Transfer of Volatile Organic Compounds), 7.IV (Storage of Highly Volatile Organic Compounds), 7.V (Disposal of Volatile Organic Compounds), 7.VI (Storage and Transfer of Petroleum Liquid), 7.VIII (Petroleum Processing and Refining), 7.IX (Surface Coating Operations), 7.X (Use of Solvents for Degreasing and Cleaning), 7.XI (Use of Cutback Asphalt), 7.XII (Control of VOC Emissions from Dry Cleaning Facilities Using Perchloroethylene as a Solvent), 7.XIII (Graphic Arts), 7.XIV (Pharmaceutical Synthesis), 7.XV (Control of Volatile Organic Compound Leaks from Vapor Collection Systems Located at Gasoline Terminals, Bulk Plants, and Gasoline Dispensing Facilities), and Appendices A (Criteria for Control of Vapors from Gasoline Transfer to Storage Tanks), B (Criteria for Control of Vapors from Gasoline Transfer at Bulk Plants-Vapor Balance System), and D (Test Procedures for Annual Pressure/Vacuum Testing of Gasoline Transport Trucks). The following new emission sources and appendices were added to Regulation No. 7: 7.IX.A.7 (Fugitive Emission Control), 7.IX.N. (Flat Wood Paneling Coating), 7.IX.O. (Manufacture of Pneumatic Rubber Tires), and Appendix E (Emission Limit Conversion Procedure). These revisions became effective on October 30, 1989, and August 30, 1990.

(ii) Additional material.

(A) February 5, 1992, letter from John Leary, Acting Director, Colorado Air Pollution Control Division, to Douglas Skie, EPA. This letter contained the State's commitment to conduct capture efficiency testing using the most recent EPA capture efficiency protocols, and the commitment to adopt federal capture efficiency test methods after they are officially promulgated by EPA.

[FR Doc. 95–13118 Filed 5–26–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 60

[AD–FRL–5211–4]

RIN 2060–AF92

Standards of Performance for New Stationary Sources: Industrial-Commercial-Institutional Steam Generating Units; Kentucky

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final revision of rule.

SUMMARY: New source performance standards (NSPS) limiting emissions of nitrogen oxides (NO_X) from industrial-commercial-institutional steam generating units capable of combusting more than 100 million Btu per hour were proposed on June 19, 1984 and were promulgated on November 25, 1986. These standards limit NO_X emissions from the combustion of fossil fuels, as well as the combustion of fossil fuels with other fuels or wastes. The standards include provisions for facility-specific NO_X standards for steam generating units which simultaneously combust fossil fuel and chemical by-product waste(s) under certain conditions. This document promulgates a facility-specific NO_X standard for a steam generating unit which simultaneously combusts fossil fuel and chemical by-product waste at the Rohm & Haas Kentucky Plant located in Louisville, Kentucky.

EFFECTIVE DATE: May 30, 1995.

ADDRESSES: *Docket.* Docket Number A–94–49, containing supporting information used in developing the proposed revision, is available for public inspection and copying between the hours of 8 a.m. and 5:30 p.m., Monday through Friday (except for government holidays), at The Air and Radiation Docket and Information Center, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. George Smith at (919) 541–1549, Combustion Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION:

I. Background

The objective of the NSPS, promulgated on November 25, 1986, is to limit NO_X emissions from the combustion of fossil fuel. For steam generating units combusting by-product waste, the requirements of the NSPS vary depending on the operation of the steam generating units.

During periods when only fossil fuel is combusted, the steam generating unit must comply with the NO_X emission limits in the NSPS for fossil fuel. During periods when only by-product waste is combusted, the steam generating unit may be subject to other requirements or regulations which limit NO_X emissions, but it is not subject to NO_X emission limits under the NSPS. In addition, if the steam generating unit is subject to Federally enforceable permit conditions limiting the amount of fossil fuel combusted in the steam generating unit to an annual capacity factor of 10 percent or less, the steam generating unit is not subject to NO_X emission limits under the NSPS when it simultaneously combusts fossil fuel and by-product waste.

With the exception noted above, during periods when fossil fuel and by-product waste are simultaneously combusted in a steam generating unit, the unit must generally comply with NO_X emission limits under § 60.44b(e) of the NSPS. Under § 60.44b(e) the applicable NO_X emission limit depends on the nature of the by-product waste combusted. In some situations, however, "facility-specific" NO_X emission limits developed under § 60.44b(f) may apply. The order for determining which NO_X emission limit applies is as follows.

A steam generating unit simultaneously combusting fossil fuel and by-product waste is expected to comply with the NO_X emission limit under § 60.44b(e); only in a few situations may NO_X emission limits developed under § 60.44b(f) apply. Section 60.44b(e) includes an equation to determine the NO_X emission limit applicable to a steam generating unit when it simultaneously combusts fossil fuel and by-product waste.

Only where a steam generating unit which simultaneously combusts fossil fuel and by-product waste is unable to comply with the NO_X emission limit determined under § 60.44b(e), might a facility-specific NO_X emission limit under § 60.44b(f) apply. This section permits a steam generating unit to petition the Administrator for a facility-specific NO_X emission limit. A facility-specific NO_X emission limit will be proposed and promulgated by the Administrator for the steam generating unit, however, only where the petition is judged to be complete.

To be considered complete, a petition for a facility-specific NO_X standard under § 60.44b(f) consists of three components. The first component is a demonstration that the steam generating unit is able to comply with the NO_X emission limit for fossil fuel when combusting fossil fuel alone. The purposes of this provision are to ensure that the steam generating unit has installed best demonstrated NO_X control technology, to identify the NO_X control technology installed, and to identify the manner in which this technology is operated to achieve compliance with the NO_X emission limit for fossil fuel.

The second component of a complete petition is a demonstration that this NO_X control technology does not enable compliance with the NO_X emission limit for fossil fuel when the steam generating unit simultaneously combusts fossil fuel with chemical by-product waste under the same conditions used to demonstrate compliance on fossil fuel alone. In addition, this component of the petition must identify what unique and specific properties of the chemical by-product waste(s) are responsible for preventing the steam generating unit from complying with the NO_X emission limit for fossil fuel.

The third component of a complete petition consists of data and/or analysis to support a facility-specific NO_X standard for the steam generating unit when it simultaneously combusts fossil fuel and chemical by-product waste and operates the NO_X control technology in the same manner in which it would be operated to demonstrate and maintain compliance with the NO_X emission limit for fossil fuel, if only fossil fuel were combusted. This component of the petition must identify the NO_X emission limit(s) and/or operating parameter limits, and appropriate testing, monitoring, reporting and recordkeeping requirements which will ensure operation of the NO_X control technology and minimize NO_X emissions at all times.

Upon receipt of a complete petition, the Administrator will propose a facility-specific NO_X standard for the steam generating unit when it simultaneously combusts chemical by-product waste with fossil fuel. The NO_X standard will include the NO_X emission limit(s) and/or operating parameter limit(s) to ensure operation of the NO_X control technology at all times, as well as appropriate testing, monitoring, reporting and recordkeeping requirements.

II. Comments on the Proposed Standards

Two comment letters were received on the proposed standards. In general, most of the comments in these letters were not within the scope of this rulemaking. Today's action in the **Federal Register**, as was pointed out in the proposal that preceded it (59 FR

66852, [December 28, 1994]), is simply implementing provisions in the 1984 NSPS. The 1984 NSPS contains provisions for approval of facility-specific NO_X standards. The proposal preceding today's action was not intended to reconsider the 1984 NSPS; it was only intended to implement the provisions in the NSPS that allows for facility-specific NO_X standards.

Comments were received on employing the best NO_X control, the effects these NO_X levels would have on local ozone attainment, evaluation of dioxin formation as a result of the allowed NO_X levels, what level of NO_X under what conditions would be appropriate, and revisions to other parts of the 1984 NSPS. It appears the commenters misunderstood the narrow focus of this rulemaking.

The focus of this rulemaking is to adopt a facility-specific NO_X standard for the steam generating unit when it simultaneously combusts fossil fuel and chemical by-product waste which effectively requires that the NO_X control technology be operated in the same manner in which it would be operated to demonstrate and maintain compliance with the NO_X emission limit for fossil fuel, if only fossil fuel were combusted.

One commenter expressed concern that the facility-specific standard be strictly limited to those instances in which the high nitrogen waste is being combusted. The standard does this. Section 60.49b(t)(2)(i) states that when fossil fuel alone is combusted, the lower NO_X emission limit of 0.2 pounds per million Btu for fossil fuel in section 60.44b(a) applies. Only, when the high nitrogen waste is being combusted with the fossil fuel does the facility-specific standard apply.

Another commenter believed that a measurement of the position of the air ratio control damper would be more appropriate inside the boiler, rather than outside of the boiler by the position of the tee handle. While the Administrator would agree with the commenter that a measurement inside the boiler, rather than outside, would provide a more direct indication of compliance with the intent of the standard, it would be much more burdensome to check, particularly given the requirement to check this parameter during each 8-hour operating shift. If a change is made to the boiler tee handle, the change must be reported to the EPA or the delegated local agency, and an appropriate alternative compliance method will need to be determined. Consequently, this aspect of the proposed standard has not been revised.

III. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, [October 4, 1993]), the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

1. Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

2. Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

3. Materially alter the budgetary impact of entitlements, grants, user fees, or land programs, or the rights and obligations of recipients thereof; or

4. Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This rule was classified "non-significant" under Executive Order 12866 and therefore was not reviewed by the Office of Management and Budget.

B. Paperwork Reduction Act

The information collection requirements of the previously promulgated NSPS under 40 CFR Part 60, Subpart Db were submitted to and approved by the Office of Management and Budget. A copy of this Information Collection Request (ICR) document (OMB control number 2060–0135) may be obtained from Sandy Farmer, Information Policy Branch (PM–223Y); U.S. Environmental Protection Agency; 401 M Street, SW; Washington, DC 20460 or by calling (202) 260–2740. Today's changes to the NSPS do not affect the information collection burden estimates made previously. The information that is required to be collected for this facility-specific NO_X standard is the same as for all other affected facilities subject to these NSPS. Therefore, the ICR has not been revised.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980 requires the identification of potentially adverse impacts of federal regulations upon small business entities. The RFA specifically requires the completion of a Regulatory Flexibility Analysis in those instances where small business impacts are possible. Because this rulemaking imposes no adverse economic impacts, a Regulatory Flexibility Analysis has not been prepared.

D. Judicial Review

Under section 307(b)(1) of the Act, judicial review of the actions taken by this final rule is available only by the filing of a petition for review in the U. S. Court of Appeals for the District of Columbia Circuit within 60 days of publication of this action. Under section 307(b)(2) of the Act, the requirements that are the subject of this final rule may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this rule will not have a significant economic impact on a substantial number of small business entities.Q

Dated: May 22, 1995.

Crael M. Browner,

Administrator.

List of Subjects in 40 CFR 60

Environmental protection, Administrative practice and procedure, Air pollution control, Electric power plants, Gasoline, Heaters, Intergovernmental relations, Nitrogen dioxide, Petroleum, Reporting and recordkeeping requirements.

Title 40, chapter I, part 60, of the Code of Federal Regulations is amended to read as follows:

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7411, 7414, and 7601(a).

Subpart Db—Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units

2. Section 60.49b is amended by reserving paragraph (s) and adding paragraph (t) as follows:

§ 60.49b Reporting and recordkeeping requirements.

* * * * *

(s) [Reserved]

(t) Facility-specific nitrogen oxides standard for Rohm and Haas Kentucky Incorporated's Boiler No. 100 located in Louisville, Kentucky:

(1) Definitions.

Air ratio control damper is defined as the part of the low nitrogen oxides burner that is adjusted to control the split of total combustion air delivered to the reducing and oxidation portions of the combustion flame.

Flue gas recirculation line is defined as the part of Boiler No. 100 that recirculates a portion of the boiler flue gas back into the combustion air.

(2) Standard for nitrogen oxides. (i) When fossil fuel alone is combusted, the nitrogen oxides emission limit for fossil fuel in § 60.44b(a) applies.

(ii) When fossil fuel and chemical by-product waste are simultaneously combusted, the nitrogen oxides emission limit is 473 ng/J (1.1 lb/million Btu), and the air ratio control damper tee handle shall be at a minimum of 5 inches (12.7 centimeters) out of the boiler, and the flue gas recirculation line shall be operated at a minimum of 10 percent open as indicated by its valve opening position indicator.

(3) Emission monitoring for nitrogen oxides. (i) The air ratio control damper tee handle setting and the flue gas recirculation line valve opening position indicator setting shall be recorded during each 8-hour operating shift.

(ii) The nitrogen oxides emission limit shall be determined by the compliance and performance test methods and procedures for nitrogen oxides in § 60.46b.

(iii) The monitoring of the nitrogen oxides emission limit shall be performed in accordance with § 60.48b.

(4) Reporting and recordkeeping requirements. (i) The owner or operator of Boiler No. 100 shall submit a report on any excursions from the limits required by paragraph (b)(2) of this section to the Administrator with the quarterly report required by § 60.49b(i).

(ii) The owner or operator of Boiler No. 100 shall keep records of the monitoring required by paragraph (b)(3) of this section for a period of 2 years following the date of such record.

(iii) The owner of operator of Boiler No. 100 shall perform all the applicable reporting and recordkeeping requirements of § 60.49b.

[FR Doc. 95–13154 Filed 5–26–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 721

[OPPTS–50601E; FRL–4919–7]

Pentaerythritol, Mixed Esters With Carboxylic Acids; Revocation of a Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is revoking the significant new use rule (SNUR) promulgated under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for pentaerythritol, mixed esters with carboxylic acids, based on receipt of toxicity data. The data indicate that, for purposes of TSCA section 5, the substance will not present an unreasonable risk to health.

EFFECTIVE DATE: The effective date of this rule is June 29, 1995.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543A, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 23, 1992 (57 FR 44050), EPA issued a SNUR establishing significant new uses for pentaerythritol, mixed esters with carboxylic acids (P–91–1250). Because of additional data EPA has received for this substance, EPA is revoking this SNUR.

I. Background

The Agency proposed the revocation of the SNUR for this substance in the **Federal Register** of August 2, 1994 (59 FR 40001). The background and reasons for the revocation of the SNUR are set forth in the preamble to the proposed revocation. The Agency received no public comments concerning the proposed revocation. As a result, EPA is revoking the SNUR.

II. Rationale for Revocation of the Rule

During review of the PMN submitted for the chemical substance that is the subject of this revocation, EPA concluded that regulation was warranted under section 5(e) of TSCA pending the development of information sufficient to make a reasoned evaluation of the health effects of the substance, and that the substance is expected to be produced in substantial quantities and there may be significant or substantial environmental exposure. EPA identified the tests necessary to make a reasoned evaluation of the risks posed by the substance to human health. Based on these findings, a section 5(e) consent order was negotiated with the PMN submitter and a SNUR was promulgated.

EPA reviewed testing conducted by the PMN submitter pursuant to the section 5(e) consent order for the substance and determined that the information available was sufficient to make a reasoned evaluation of the health effects of the substance. EPA concluded that, for the purposes of TSCA section 5, the substance will not present an unreasonable risk and consequently revoked the section 5(e) consent order. The revocation of SNUR provisions for the substance designated herein is consistent with the revocation of the section 5(e) order.

In light of the above, EPA is revoking the SNUR provisions for this chemical substance. EPA will no longer require notice of any company's intent to manufacture, import, or process this substance. In addition, export notification under section 12(b) of TSCA will no longer be required.

III. Rulemaking Record

The record for the rule which EPA is revoking was established at OPPTS–50601 (P–91–1250). This record includes information considered by the Agency in developing this rule and includes the test data that formed the basis for this revocation.

IV. Regulatory Assessment Requirements

EPA is revoking the requirements of this rule. Any costs or burdens associated with this rule will also be eliminated when the rule is revoked. Therefore, EPA finds that no costs or burdens must be assessed under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 605(b)), or the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous materials, Reporting and recordkeeping requirements, Significant new uses.

Dated: May 16, 1995.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

Therefore, 40 CFR part 721 is amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

§ 721.5660 [Removed]

2. By removing § 721.5660.

[FR Doc. 95–13134 Filed 5–26–95; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 721

[OPPTS–50575E; FRL–4919–7]

Substituted Ethylenediamine, Methyl Sulfate Quaternized; Revocation of Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is revoking a significant new use rule (SNUR) promulgated under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for substituted ethylenediamine, methyl sulfate quaternized, based on receipt of new data. The data indicate that, for purposes of TSCA section 5, the substance will not present an unreasonable risk to the environment.

EFFECTIVE DATE: The effective date of this rule is June 29, 1995.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543A, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 24, 1990 (55 FR 17376), EPA issued a SNUR establishing significant new uses for substituted ethylenediamine, methyl sulfate quaternized. Because of additional data EPA has received for this substance, EPA is revoking this SNUR.

I. Background

The Agency proposed the revocation of the SNUR for this substance in the **Federal Register** of June 6, 1994 (59 FR 29258). The background and reasons for the revocation of the SNUR are set forth in the preamble to the proposed revocation. The Agency received no public comments concerning the proposed revocation. As a result, EPA is revoking this SNUR.

II. Rationale for Revocation of the Rule

During review of the PMN submitted for the chemical substance that is the subject of this revocation, EPA concluded that regulation was warranted under section 5(e) of TSCA pending the development of information sufficient to make a reasoned evaluation of the environmental effects of the substance, and that the substance is expected to be produced in substantial quantities and there may be significant or substantial environmental exposure. EPA identified the tests necessary to make a reasoned evaluation of the risks posed by the substance to the environment. Based on these findings, a section 5(e) consent order was negotiated with the PMN submitter and a SNUR was promulgated.

EPA reviewed testing conducted by the PMN submitter pursuant to the consent order for the substance and determined that the information available was sufficient to make a reasoned evaluation of the environmental effects of the substance. EPA concluded that, for the purposes of TSCA section 5, the substance will not present an unreasonable risk and consequently revoked the section 5(e) consent order. The revocation of SNUR provisions for the substance designated herein is consistent with the revocation of the section 5(e) order.

In light of the above, EPA is revoking the SNUR provisions for this chemical substance. When this revocation becomes final, EPA will no longer require notice of any company's intent to manufacture, import, or process this substance. In addition, export notification under section 12(b) of TSCA will no longer be required.

III. Rulemaking Record

The record for the rule which EPA is revoking was established at OPPTS–50575 (P–89–650). This record includes information considered by the Agency in developing this rule and includes the test data that formed the basis for this revocation.

IV. Regulatory Assessment Requirements

EPA is revoking the requirements of this rule. Any costs or burdens associated with this rule will also be eliminated when the rule is revoked. Therefore, EPA finds that no costs or burdens must be assessed under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 605(b)), or the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous materials, Reporting and recordkeeping requirements, Significant new uses.

Dated: May 16, 1995.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

Therefore, 40 CFR part 721 is amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

§ 721.3580 [Removed]

2. By removing § 721.3580.

[FR Doc. 95–13143 Filed 5–26–95; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 721

[OPPTS–50583J; FRL–4919–8]

Substituted Triazine Isocyanurate; Revocation of a Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is revoking a significant new use rule (SNUR) promulgated under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for substituted triazine isocyanurate, based on receipt of new data. The data indicate that, for purposes of section 5 of TSCA, the substance will not present an unreasonable risk to the environment.

EFFECTIVE DATE: The effective date of this rule is June 29, 1995.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543A, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404. TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 9, 1990 (55 FR 32406), EPA issued a SNUR establishing significant new uses for substituted triazine isocyanurate. Because of additional data EPA has received for this substance, EPA is revoking this SNUR.

I. Background

The Agency proposed the revocation of the SNUR for this substance in the **Federal Register** of August 2, 1994 (59 FR 39311). The background and reasons for the revocation of the SNUR are set forth in the preamble to the proposed revocation. The Agency received no public comments concerning the proposed revocation. As a result EPA is revoking this SNUR.

II. Rationale for Revocation of the Rule

During review of the PMN submitted for the chemical substance that is the subject of this revocation, EPA concluded that regulation was warranted under section 5(e) of TSCA pending the development of information sufficient to make a reasoned evaluation of the health effects of the substance, and that the substance may present an unreasonable risk of injury to human health. EPA identified the tests considered necessary to make a reasoned evaluation of the risks posed by the substance to human health. Based on these findings, a section 5(e) consent order was negotiated with the PMN submitter and a SNUR was promulgated.

EPA reviewed the testing which was conducted by the PMN submitter to address the potential neurotoxicity of the substance and determined that the information available was sufficient to make a reasoned evaluation of the health effects of the substance. EPA concluded that, for the purposes of TSCA section 5, the substance will not present an unreasonable risk and consequently revoked the section 5(e) consent order. The revocation of SNUR provisions for the substance designated herein is consistent with the revocation of the section 5(e) order.

In light of the above, EPA is revoking the SNUR provisions for this chemical substance. EPA will no longer require notice of any company's intent to manufacture, import, or process this substance. In addition, export notification under section 12(b) of TSCA will no longer be required.

III. Rulemaking Record

The record for the rule which EPA is revoking was established at OPPTS–50583 (P–86–66). This record includes information considered by the Agency in developing this rule and includes the test data that formed the basis for this revocation.

IV. Regulatory Assessment Requirements

EPA is revoking the requirements of the rule. Any costs or burdens associated with the rule will also be eliminated when the rule is revoked. Therefore, EPA finds that no costs or burdens must be assessed under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 605(b)), or the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous materials, Reporting and recordkeeping requirements, Significant new uses.

Dated: May 16, 1995.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

Therefore, 40 CFR part 721 is amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

§ 721.9760 [Removed]

2. By removing § 721.9760.

[FR Doc. 95–13141 Filed 5–26–95; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 57

RIN 0905–AE17

Grants for the Establishment of Departments of Family Medicine

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Final rule.

SUMMARY: This final regulation amends the existing regulations governing the program for Grants for the Establishment of Departments of Family Medicine authorized by section 747(b) of the Public Health Service Act (the Act), to bring the regulations into conformity with technical amendments made by the Health Professions Extension Amendments of 1992 and to include other changes for consistency with current grant program policies.

EFFECTIVE DATE: This regulation is effective May 30, 1995.

FOR FURTHER INFORMATION CONTACT: Marc L. Rivo, M.D., Director, Division of Medicine, Bureau of Health Professions, HRSA, Room 9A–27, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857; telephone (301) 443–6190.

SUPPLEMENTARY INFORMATION: This final rule amends the existing regulations for Grants for the Establishment of Departments of Family Medicine, authorized under section 747(b) of the Public Health Service Act (the Act) (42 U.S.C. 293k). The Health Professions Education Extension Amendments of 1992 (Pub. L. 102–408) amended and renumbered former section 780 of the Act (42 U.S.C. 295g) to section 747.

Section 747(b) of the Act, as amended, authorizes the Secretary to make grants to and enter into contracts with accredited schools of medicine or osteopathic medicine to meet the costs of projects to establish, maintain, or improve academic administrative units (which may be departments, divisions, or other units) to provide clinical instruction in family medicine. The primary purpose of the program is to assist family medicine academic administrative units to achieve comparability in status, faculty, and curriculum with those of other clinical units at the applying schools.

The Notice of Proposed Rulemaking (NPRM), published on July 19, 1994 in the **Federal Register** (59 FR 36733), proposed amendments to implement several statutory provisions made by Pub. L. 102–408 to section 747(b) by: (1) Revising the definitions of "academic administrative unit" and "other major clinical units", and add the term "clinical campus"; (2) revising and clarifying some program requirements—to permit a program applicant to use a program director from the clinical campus rather than the parent medical school, to extend a requirement to control a residency program to the clinical campus program, and to clarify that training to all medical students can be met by the combined effort of the parent family medicine administrative unit and the clinical campus administrative unit.

The public comment period on the proposed regulations closed August 18, 1994. The Department received 4 public comments. The comments received on the proposed rule to section 747 and the Department's responses to the comments are discussed below according to the section numbers and the headings of the regulations affected.

Section 57.1702 "Definitions"

The Department proposed to revise the following terms in this section:

Academic administrative unit or *unit* means a department, division, or other formal academic unit of a school of medicine or osteopathic medicine or clinical campuses of such schools that provides clinical instruction in family medicine.

The Department received positive response to this definition.

Clinical campus means a geographically separate educational entity of an accredited medical school that has been given the responsibility to coordinate or provide all clinical training for at least 10 percent of the school's third-year students.

The Department received 2 comments on this definition. One respondent favorably indicated that this definition "would give small programs the

autonomy necessary to respond to the demand for primary care practitioners in rural America."

Another respondent requested that the clinical training requirement of 10 percent for third-year students be changed to 8 percent.

In response to this comment, the Department has reexamined this definition and has removed the phrase "for at least 10 percent of the school's third-year students". The Department has subsequently determined that there is a potential for a serious problem in determining and monitoring the eligibility of those clinical campuses that apply for funding based on the 10 percent criteria. The NPRM proposed that in order to be considered eligible for funding as a clinical campus, at least 10 percent of the third-year class must be in training at that clinical campus. The Department now believes that this criterion does not constitute an adequate basis for the identification of a clinical campus. This 10 percent of a small third-year class in a small school would not constitute a critical mass of students and educational structures necessary for the resources to plan an academic unit, comparable to other units, and therefore, the Department is removing this phrase from the definition.

The Department further modified this definition by adding the requirement that the clinical campus must be "recognized and identified as such by the American Academy of Family Physicians," after the words "accredited medical school" as an objective method of determining those eligible. The American Academy of Family Physicians (AAFP) publishes annually the activities and status of family medicine teaching and training programs at medical schools. The publication is used as a valid reference work on the accreditation status of family medicine programs. Over the last several decades, PHS has relied upon the accessibility and accuracy of information on the current status of accreditation of family practice training and teaching programs through the AAFP data base.

Other major clinical units means formal academic units at the applicant school or its clinical campus that offer clinical instruction in internal medicine, obstetrics and gynecology, pediatrics, psychiatry, or surgery.

The phrase "or its clinical campus" was added to reflect the change to the definition of "academic administrative unit" cited above.

Section 57.1704 "Program Requirement."

The Department revised paragraph (a) of this section. The phrase "in an administrative unit" was added to permit a program applicant to use a program director from the clinical campus rather than the parent medical school. In many instances the level of medical school involvement in the remote campus is not sufficient to exercise effective management of the training provided at the clinical campus.

The Department deleted a parenthetical phrase in paragraph (d) of this section, "(or in the case of a school of osteopathic medicine, have control over or be closely affiliated with)", to remove the redundancy within this paragraph. The phrase "or clinical campus" was added to extend the requirement to control a residency program so that a residency program controlled by the parent medical school department would meet the residency requirement for an application for assistance for a clinical campus.

The parenthetical phrase in paragraph (e) of this section was added, "(or units in the case of schools with one or more decentralized units)", to clarify that the requirement to provide training to all medical students can be met by the combined efforts of the parent family medicine administrative unit and the clinical campus administrative unit.

The Department added the phrase "or clinical campus" in paragraph (f) of this section to clarify that in comparing numbers of clinical faculty, the clinical campus family medicine administrative unit should be compared to other clinical campus units.

In addition to the changes proposed above, a number of technical and ministerial revisions were included to conform the existing regulations with amendments made by Pub. L. 102–408. The following changes were made to the regulations:

1. The section number of the Act was revised from "780" to "747" wherever it appeared in subpart R, as renumbered, and the United States Code citation was revised from "(42 U.S.C. 295g)" to "(42 U.S.C. 293k)", in accordance with Pub. L. 102–408.

2. Section 57.1702, entitled "*Definitions.*", was amended to revise the section number of the Act in the definition of "School of medicine or school of osteopathic medicine" from "701(5)" to "799(1)(E)", in accordance with Pub. L. 102–408.

3. Section 57.1704, entitled "*Program requirements.*", was amended to revise the section number "786(a)" in paragraph (h) to "747", in accordance with Pub. L. 102–408.

4. Section 57.1705, entitled "*How will applications be evaluated?*", was further revised to reflect current statutory language, as required by section 798(a) of the Act, regarding the evaluation and recommendation process of awarding grant applications by removing the reference to the National Advisory Council on Health Professions Education and the section of the Act which established it. Pub. L. 102–408 repealed the Advisory Council effective October 1, 1992.

The Department further revised § 57.1709, entitled "*What other audit and inspection requirements apply to grantees?*", to:

(a) Remove the reference to "section 705 of the PHS Act" concerning audit and inspection requirements because it is redundant to the requirements that are already covered under 45 CFR part 74; and

(b) Remove the parenthetical phrase at the end of the section text citing the OMB approval number regarding information collection requirements as no longer necessary.

Further, PHS strongly encourages all grant recipients to provide a smoke-free workplace and to promote the nonuse of all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Economic Impact

Executive Order 12866 requires that all regulations reflect consideration of alternatives, of costs, of benefits, of incentives, of equity, and of available information. Regulations must meet certain standards, such as avoiding unnecessary burden. Regulations which are "significant" because of cost, adverse effects on the economy, inconsistency with other agency actions, effects on the budget, or novel legal or policy issues, require special analysis.

This final rule governs a financial assistance training grant program in which participation is voluntary. The Department believes that the resources required to implement the requirements in these regulations are minimal. Because this final rule makes minor changes in an existing grant program, and in accordance with the Regulatory Flexibility Act of 1980, the Secretary certifies that this rule will not have a significant economic impact on small entitites. For the same reasons, the Secretary has also determined that this rule is not a "significant" rule under Executive Order 12866.

Paperwork Reduction Act of 1980

This final rule does not affect the recordkeeping or reporting requirements in the existing regulations for the Grants for the Establishment of Departments of Family Medicine.

List of Subjects in 42 CFR Part 57

Aged, Dental health, Education of disadvantaged, Educational facilities, Education study programs, Grant programs—education, Grant programs—health, Health facilities, Health professions, Loan programs—health, Medical and dental schools, Reporting and recordkeeping requirements, Scholarships and fellowships, Student aid.

(*Catalog of Federal Domestic Assistance*, No. 93.984, Grants for the Establishment of Departments of Family Medicine)

Dated: April 4, 1995.

Philip R. Lee,

Assistant Secretary for Health.

Approved: May 19, 1995.

Donna E. Shalala,

Secretary.

Accordingly, 42 CFR part 57, subpart R is amended as set forth below:

PART 57—GRANTS FOR CONSTRUCTION OF TEACHING FACILITIES, EDUCATIONAL IMPROVEMENTS, SCHOLARSHIPS AND STUDENT LOANS

1. The authority citation for subpart R is revised to read as follows:

Authority: Sec. 215, Public Health Service Act, 58 Stat. 690, as amended by 63 Stat. 35 (42 U.S.C. 216); sec. 780, Public Health Service Act, 90 Stat. 2311, as amended by 95 Stat. 221 and 102 Stat. 3146 (42 U.S.C. 295g); renumbered as sec. 747, as amended by Pub. L. 102–408, 106 Stat. 2042–2043 (42 U.S.C. 293k).

§ 57.1701 [Amended]

2. Section 57.1701 introductory text is amended by revising the section number of the Act "780" to read "747" and the United States Code "(42 U.S.C. 295g)" to read "(42 U.S.C. 293k)".

3. Section 57.1702 is amended by revising the section number of the Act "701(5)" in the definition of "*School of medicine or osteopathic medicine*" to read "799(1)(E)"; by revising the definitions of "*Academic administrative unit* or *unit*" and "*Other major clinical units*"; and by adding the definition "*Clinical campus*" to read as follows:

§ 57.1702 Definitions.

Academic administrative unit or *unit* means a department, division, or other formal academic unit of a school of medicine or osteopathic medicine or clinical campuses of such schools that provides clinical instruction in family medicine.

* * * * *

Clinical campus means a geographically separate educational entity of an accredited medical school that is recognized and identified as a clinical campus by the American Academy of Family Physicians and that has been given the responsibility to coordinate or provide all clinical training for that clinical campus.

* * * * *

Other major clinical units means formal academic units at the applicant school or its clinical campus that offer clinical instruction in internal medicine, obstetrics and gynecology, pediatrics, psychiatry, or surgery.

* * * * *

4. Section 57.1704 is amended by revising the section number "786(a)" in paragraph (h) to read "747"; and by revising paragraphs (a), (d), (e), and (f) to read as follows:

§ 57.1704 Program requirements.

* * * * *

(a) Each project must have a project director, who works at the grantee institution in an administrative unit of the grantee institution on an appointment consistent with other major departments, heads or will head the unit, and has relevant training and experience in family medicine.

* * * * *

(d) The unit must have control over a residency training program. The program must have the capacity to enroll a total of at least 9 interns or residents annually. A unit whose applicant school or clinical campus does not have a residency program accredited under its direct authority will be considered as meeting this requirement if it has a written affiliation agreement with a hospital which conducts a residency program as described.

(e) The unit (or units in the case of schools with one or more decentralized units) must have responsibility for providing instruction to each member of the student body who is engaged in an education program leading to a degree in doctor of medicine or doctor of osteopathic medicine. The amount of mandatory and elective curriculum must be comparable to the amount of mandatory and elective curriculum time required for other major clinical units at the school.

(f) The unit must have, in the judgment of the Secretary, a sufficient number of full-time faculty to conduct the instruction. The number of family medicine faculty in the unit must be comparable to that of full-time faculty responsible for conducting the instruction of one of the other major clinical units either at the school or at the clinical campus, whichever is the same as the unit receiving the grant funds.

* * * * *

5. Section 57.1705 is amended by revising the introductory text to read as follows:

§ 57.1705 How will applications be evaluated?

As required by section 798(a) of the Act, each application for a grant under this subpart shall be submitted to a peer review group, composed principally of non-Federal experts, for an evaluation of the merits of the proposals made in the application. The Secretary may not approve such an application unless a peer review group has recommended the application for approval. The Secretary will award grants to applicants whose projects will best promote the purposes of section 747 of the Act and this subpart. The Secretary will consider, among other factors:

* * * * *

6. Section 57.1709 is revised to read as follows:

§ 57.1709 What other audit and inspection requirements apply to grantees?

Each entity which receives a grant under this subpart must meet the requirements of 45 CFR part 74 concerning audit and inspection.

(Approved by the Office of Management and Budget under conrol number 0915–0060)

[FR Doc. 95–13130 Filed 5–26–95; 8:45 am]

BILLING CODE 4160–15–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[ET Docket No. 92–165; FCC 93–250]

Restricted Bands of Operation

AGENCY: Federal Communications Commission.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to the final regulations which were published June 21, 1993 (58 FR 33774). The regulations relate to the expansion of the restricted bands of operation for international radiators.

EFFECTIVE DATE: May 30, 1995.

FOR FURTHER INFORMATION CONTACT:

Errol Chang, Office of Engineering and Technology, (202) 739–0714.

SUPPLEMENTARY INFORMATION: The final regulations that are the subject of this correction were amended in ET Docket 92–165, modifying 47 CFR Section 15.205. As published in the CFR, the final regulations contain errors which may prove to be misleading and are in need of correction.

List of Subjects in 47 CFR Part 15

Communication equipment, Radio.

Accordingly, 47 CFR Part 15 is corrected by making the following correction amendments:

PART 15—RADIO FREQUENCY DEVICES

1. The authority citation for Part 15 continues to read as follows:

Authority: Secs. 4(i), 302, 303, 304, 307 and 624A of the Communications Act of 1934, as amended, 47 U.S.C. 154, 302, 303, 304, 307 and 544A.

§ 15.205 [Amended]

2. In § 15.205, paragraph (a), column two of the table the first entry "16.42–423" is revised to read "16.42–16.423".

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–13114 Filed 5–26–95; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 94–152; RM–8565]

Radio Broadcasting Services; Bells, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Thomas S. Desmond, allots Channel 225A to Bells, Texas, as the community's first local FM service. *See* 59 FR 66884, December 28, 1994. Channel 225A can be allotted to Bells in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates 33–36–37 North Latitude and 96–24–38 West Longitude. With this action, this proceeding is terminated.

DATES: Effective July 10, 1995. The window period for filing applications will open on July 10, 1995, and close on August 10, 1995.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 94–152, adopted May 17, 1995, and released May 24, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Bells, Channel 225A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–13113 Filed 5–26–95; 8:45 am]

BILLING CODE 6712–01–F

Proposed Rules

Federal Register

Vol. 60, No. 103

Tuesday, May 30, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Chapter I

[Summary Notice No. PR–95–1]

Petition for Rulemaking; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received July 31, 1995.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Ave., SW., Washington, DC 20591; telephone (202) 267–3132. Comments may also be sent electronically to the following internet address: nprmcmts@mail.hq.faa.gov.

FOR FURTHER INFORMATION CONTACT: Mr. D. Michael Smith, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7470.

This notice is published pursuant to paragraph (b) and (f) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC on May 23, 1995.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions For Rulemaking

Docket No.: 28050
Petitioner: Mr. Richard D. Henry
Regulations Affected: 14 CFR 121.305(f)
Description of Rulechange Sought: To delete paragraph (f) of § 121.305 and replace it with a new paragraph (f), to read as follows: A gyroscopic rate of turn indicator combined with an integral slip-skid indicator (turn and bank indicator).
Petitioner's Reason for the Request: The petitioner feels that such a change reflects several things: Graveyard spirals, spins, rolls, and split "S" upsets continue to plague the industry; reliable means for the stopping of the turn is essential; turn needle is still the most trustworthy gyro to guarantee that the turn is stopped; new laser gyro's on occasion do tumble, notwithstanding the fact that they are rate gyro driven; turn needle is the only gyro that is sage for use following an in-flight power restoration during dynamic gravity influence, the only one to guarantee proper erection.

Docket No.: 28111
Petitioner: Mr. Alankar Gupta
Sections of the FAR Affected: 14 CFR parts 121 and 135
Description of Rulechange Sought: To prevent any person from transporting, storing, displaying, or using, on the flight deck, any visual or audible material that is unnecessary for safe operation of the airplane or is offensive to any crewmember.
Petitioner's Reason for the Request: The petitioner feels that such material has caused a number of instances of unpleasant, tense, stressful, or confusing situations within the cockpits aboard commercial aircraft. Such conditions can lead to reduced crew performance capabilities. Also, tense, stressful, unpleasant, or bewildering conditions can cause the crew to respond slowly (or wrongly) during emergency situations. This can lead to accidents.

Dispositions of Petitions

Docket No.: 25063
Petitioner: Air Line Pilots Association
Sections of FAR Affected: 14 FR 121.437
Description of Rulechange Sought: To increase the basic flight time and experience requirements for persons acting as pilots in command of air carrier aircraft having a passenger seating capacity, excluding any pilot seat, of more than 30 seats or a payload capacity of more than 7500 pounds. It would also increase the basic flight time and experience requirements of persons acting as second in command of large aircraft or turbojet-powered multiengine aircraft type certificated for more than one required flight crewmember.
Petitioner's Reason for the Request: The petitioner feels that because of the growing complexity and changes in operations within commercial aviation a continually escalating need for new pilots has meant rapid pilot progression from the position of second in command to pilot in command.
Denial, March 22, 1995.

[FR Doc. 95–13133 Filed 5–26–95; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

[IN–122, IN–123, IN–124]

Indiana Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing receipt of three proposed amendments to the Indiana regulatory program (hereinafter

referred to as the "Indiana program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). All three proposed amendment packages revise the Indiana Administrative Code (IAC) regulations. The first amendment package amends the Indiana program at both 310 IAC 0.6 and 310 IAC 12 by revising the response to petitions for review and the suspension or revocation of permits under Indiana law at IC 13–4.1. The second amendment revises revegetation standards for success for nonprime farmland for surface and underground coal mining and reclamation operations under IC 13–4.1. The third amendment revises the Small Operator Assistance Program (SOAP) regulations. The proposed amendments are intended to revise the Indiana program to be consistent with the corresponding Federal regulations. The amendments also incorporate changes desired by the State that address various parts of the State regulations.

DATES: Written comments must be received by 4 p.m., E.D.T., June 29, 1995. If requested, a public hearing on the proposed amendment will be held on June 26, 1995. Requests to speak at the hearing must be received by 4 p.m., E.D.T. on June 14, 1995.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand delivered to Roger W. Calhoun, Director, Indianapolis Field Office at the first address listed below.

Copies of the Indiana program, the proposed amendments, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendments by contacting OSM's Indianapolis Field Office.

Roger W. Calhoun, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, Room 301, Indianapolis, Indiana 46204, telephone: (317) 226–6166.

Indiana Department of Natural Resources, 402 West Washington Street, Room C256, Indianapolis, Indiana 46204, telephone: (317) 232–1547.

FOR FURTHER INFORMATION CONTACT:

Roger W. Calhoun, Director, Indianapolis Field Office, Telephone: (317) 226–6166.

SUPPLEMENTARY INFORMATION:

I. Background on the Indiana Program

On July 29, 1982, the Secretary of the Interior conditionally approved the Indiana program. Background information on the Indiana program, including the Secretary' findings, the disposition of comments, and the conditions of approval can be found in the July 26, 1982, **Federal Register** (47 FR 32107). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 914.10, 914.15, and 914.16.

II. Discussion of the Proposed Amendments

A. Indiana Program Amendment Number 95–1

By letter dated May 3, 1995 (Administrative Record No. IND–1459), the Indiana Department of Natural Resources (IDNR) submitted to OSM State program amendment number 95–1 consisting of revisions to 310 IAC 0.6–1–5 and 310 IAC 12–6–6.5 concerning the response to petitions for review and the suspension or revocation of permits under IC 13–4.1.

310 IAC 0.6–1–5 Petition for Review; Response

Indiana proposes several nonsubstantive wording changes, subsection and regulation reference changes, and paragraph notation changes to reflect the organizational changes made throughout this section.

Indiana is proposing to amend subsection (c) to require the director of IDNR or a delegate to issue an order "of permit suspension or revocation pursuant to IC 13.4.1–11–6" in place of an order "to show cause why the permit should not be revoked or suspended." In conjunction with this proposed change, Indiana proposes to amend subsections (c), (c)(2), (d), (e), (e)(1)(A), (e)(4), (f), and existing (g)(2) [proposed (h)(2)] by changing existing language from "an order to show cause" to "an order of permit suspension or revocation."

At subsection (d), Indiana is clarifying that an order of permit suspension or revocation is governed by IC 4–21.5–3–6.

Indiana is proposing to amend the language of subsection (e) to allow a permittee who desires to contest an order of permit suspension or revocation to file "a petition for review pursuant to IC 4–21.5–3–7" rather than filing "an answer specifically denying those allegations of the order to show cause which the permittee desires to contest." In conjunction with this proposed revision, Indiana proposes to amend subsections (f), (g)(1), existing (g)(3) [proposed (i)(2)], and existing (h)(3) [proposed (k)(2)] by changing the existing language from "an answer" to "a petition for review."

Indiana is proposing to revise subsection (f) to read as follows:

If a petition for review is not filed by the permittee under subsection (e), the order of permit suspension or revocation shall become an effective and final order of the commission without a proceeding pursuant to IC 13–4.1–11–6(b).

Indiana is proposing to revise the existing language at subsection (g)(1) and to add new provisions at subsections (g)(1)(A), (g)(1)(B), (g)(1)(B)(A) and (B), and new (g)(2) as follows:

(g)(1) If a petition for review is filed by the permittee under subsection (e), and a hearing on the order is desired by the permittee, the matter shall be assigned to an administrative law judge for a proceeding under IC 4–21.5–3. The proceeding is commenced when the permittee files a petition for review under subsection (e). In a hearing conducted under this section, the director has the burden of going forward with evidence demonstrating that the permit in question should be suspended or revoked. This burden shall be satisfied if the director establishes a prima facie case that: (A) A pattern of violations of any requirements of IC 13–4.1, 310 IAC 12, or any permit conditions required under IC 13–4.1 or 310 IAC 12 exists or has existed; and (B) the violations were: (A) willfully caused by the permittee; or (B) caused by the unwarranted failure of the permittee to comply with any requirements of IC 13–4.1, 310 IAC 12, or any permit conditions required under IC 13–4.1 or 310 IAC 12. For the purposes of this subsection, the unwarranted failure of the permittee to pay any fee required under IC 13–4.1 or 310 IAC 12 constitutes a pattern of violations and requires the issuance of an order of permit suspension or revocation. (2) If the director demonstrates that the permit in question should be suspended or revoked, the permittee has the ultimate burden of persuasion to show cause why the permit should not be suspended or revoked. A permittee may not challenge the fact of any violation that is the subject of a final order of the director.

Indiana is proposing to relocate the provisions of existing subsections (g)(2) and (g)(2) (A) through (D) to new subsections (h) and (h) (1) through (4); to amend the provisions of new subsection (h) by requiring the administrative law judge to issue findings and a written recommendation to the commission "to affirm, modify, or vacate the order of permit suspension or revocation"; and to relocate the reference to "the administrative law judge" to the last sentence in new subsection (h) and to delete this reference from new subsections (h)(1) through (4).

Indiana is proposing to move the provisions of subsection (g)(3) to new subsection (i).

Indiana is proposing to relocate the provisions of existing subsection (g)(4) to new subsection (j) and to amend the provisions by deleting the first sentence.

In response to a required amendment at 30 CFR 914.16(ff), Indiana proposes the deletion of the provision immediately following existing subsection (g)(4)(B). This provision allows issuance of the administrative law judge's findings and nonfinal order within sixty (60) days after conclusion of a permit suspension or revocation hearing.

Existing subsection (h) is proposed to be moved to new subsection (k) and the following revisions are proposed. At new subsection (k), the language "the director issues a recommended order under subsection (f) or" is deleted; the final order of the commission shall be entered within "forty-five (45)" days rather than "fifty (50)" days; and the language "director's recommended order or the" is deleted. The language in existing subsection (h)(1) "ninety (90) days following receipt of the order to show cause by the permittee, where the permittee does not comply with the requirements of subsection (c)" is deleted.

310 IAC 12–6–6.5 Suspension or Revocation of Permits

Indiana is proposing to amend the language of subsection (a) to require the director of IDNR to issue "to the permittee an order of permit suspension or revocation" in place of "an order to the permittee requiring the permittee to show cause why the permit and a right to mine under IC 13–4.1 should not be suspended or revoked."

At subsection (c), Indiana is proposing to revise the language which requires the director to issue "a show cause order as provided in 310 IAC 0.6–1–5(c)" by replacing it with language which requires the director to issue "an order of permit suspension or revocation as provided in 310 IAC 0.6–1–5. In conjunction with the above revisions, Indiana is proposing to amend subsections (d), (e), and (g) by changing the type of order from "show cause order" to "order of permit suspension or revocation" and by revising regulation references.

At subsection (f), Indiana is changing the phrase "[i]f the committee suspends or revokes a permit" to "[i]f a permit is suspended or revoked."

B. Indiana Program Amendment Number 95–2

By letter dated May 3, 1995 (Administrative Record Number IND–1460), the IDNR submitted program amendment number 95–2. This amendment revises 310 IAC 12–5–64.1 and 310 IAC 12–5–128.1 pertaining to revegetation standards for success for nonprime farmland for surface and underground coal mining operations under IC 13–4.1.

310 IAC 12–5–64.1+ (Surface Mining) and 12–5–128.1 (Underground Mining) Revegetation; Standards for Success for Nonprime Farmland

Since the revisions being proposed for surface mining at § 12–5–64.1 are identical to those being proposed for underground mining at § 12–5–128.1, they will be combined for ease of discussion.

Indiana proposes paragraph notation changes to reflect the organizational changes made throughout subsections (c).

Indiana is, also, proposing to revise subsections (c) by correcting its reference to the "Soil Conservation Service" to the "Natural Resources Conservation Service" throughout.

Subsections (c)(3) concern the production success standards for revegetated pastureland areas. Indiana is proposing to relocate the provision in existing subsections (c)(4), which requires that if the current Natural Resources Conservation Service predicted yield by soil map units is used to determine production of living plants then the standard for success shall be a weighted average of the predicted yields for each unmined soil type which existed on the permit areas at the time the permit was issued, to subsections (c)(3)(B).

Indiana is proposing to delete the existing provision in subsections (c)(3)(C) for determining production of living plants on pastureland and is proposing to add the following provision.

(C) A target yield determined by the following formula: Target Yield=NRCS Target Yield × (CCA/10 Year CA) where: NRCS Target Yield=the average yield per acre, as predicted by the Natural Resources Conservation Service, for the crop and the soil map units being evaluated. The most current yield information at the time of permit issuance shall be used, and shall be contained in the appropriate sections of the permit application. CCA=the county average for the crop for the year being evaluated as reported by the United States Department of Agriculture crop reporting service, the Indiana Agricultural Statistics Service. 10 Year CA=the ten (1) Year Indiana Agricultural Statistics Service county average, consisting of the year being evaluated and the nine (9) preceding years.

Indiana is proposing to add new subsections (c)(3)(D) which allow other methods approved by the director of IDNR to be used in determining success of production of living plants on the revegetated area.

Existing subsections (c)(6) are redesignated subsections (c)(5). These subsections concern the success standards for production on revegetated cropland areas. Indiana is proposing to relocate the provision in existing subsections (c)(7), which requires that if the current Natural Resources Conservation Service predicted yield by soil map units is used to determine production of living plants then the standard for success shall be a weighted average of the predicted yields for each unmined soil type which existed on the permit areas at the time the permit was issued, to redesignated subsections (c)(5)(B).

Indiana is proposing to delete the provision in existing subsections (c)(6)(C) for determining production of living plants on cropland and is proposing to add the following provision to redesignated subsections (c)(5)(C).

(C) A target yield determined by the following formula: Target Yield=CCA × (NRCSP/NRCSC) where; CCA=the county average for the crop for the year being evaluated as reported by the United States Department of Agriculture crop reporting service, the Indiana Agricultural Statistics Service. NRCSP=the weighted average of the current Natural Resources Conservation Service predicted yield for each croppable, unmined soil which existed on the permit at the time the permit was issued. NRCSC=the weighted average of the current Natural Resources Conservation Service predicted yield for each croppable, unmined soil which is shown to exist in the county on the most current county soil survey. A croppable soil is any soil which the Natural Resources Conservation Services has defined as being in capability class I, II, III, or IV.

Indiana is proposing to add new subsections (c)(5)(D) which would allow other methods approved by the director

of IDNR to be used in determining success of production of living plants on revegetated areas.

Indiana is proposing to move from existing subsections (c)(7) to new subsections (c)(5)(E) the provision which requires that once the method for establishing the standards has been selected, it may not be modified without the approval of the director.

C. Indiana Program Amendment Number 95–3

By letter dated May 3, 1995 (Administrative Record Number IND–1461), Indiana submitted State program amendment number 95–3. This amendment revises the SOAP regulations at 310 IAC 12–3 to more closely reflect the latest changes to 30 CFR Part 795.

310 IAC 12–3–130 Small Operator Assistance; Definitions

Indiana proposes to add two new definitions to this section as follows:

Program administrator means the state or federal official within the regulatory authority who has the authority and responsibility for overall management of the Small Operator Assistance Program; and

Qualified laboratory means a designated public agency, private firm, institution, or analytical laboratory that can provide the required determination of probable hydrologic consequences or statement of results of test boring or core samplings or other services as specified at 30 IAC 12–3–133 under the Small Operator Assistance Program and that meets the standards of 310 IAC 12–3–134.

310 IAC 12–3–131 Small Operator Assistance; Eligibility for Assistance

Indiana is proposing the following revisions to its regulations pertaining to eligibility for assistance.

In the introductory sentence of § 12–3–131, the language "who establishes the following" is replaced with the language "if he or she."

At § 12–3–131(1), the language "[a]n intention" is replaced by the word "intends."

At § 12–3–131(2), the criteria for eligibility for assistance is revised by providing that the probable total attributed annual production for all locations will not exceed three hundred thousand (300,000) tons.

At § 12–3–131(2)(B) and (C), the percentage of ownership of applicant is changed from five percent to ten percent with respect to the pro rata share which ownership will play in determining attributed coal production.

310 IAC 12–3–132.5 Small Operator Assistance; Application Approval and Notice

Indiana is proposing to add the following new § 12–3–132.5 pertaining to application approval and notice.

(a) If the program administrator finds the applicant eligible, he or she shall inform the applicant in writing that the application is approved. (b) If the program administrator finds the applicant ineligible, he or she shall inform the applicant in writing that the application is denied and shall state the reasons for denial.

310 IAC 12–3–133 Small Operator Assistance; Program Services and Data Requirements

Indiana is proposing to amend 310 IAC 12–3–133 as follows:

At subsection (a), the existing language is deleted and the following language is added.

(a) To the extent possible with available funds, the program administrator shall select and pay a qualified laboratory to make the determination and statement and provide other services referenced in paragraph (b) of this section for eligible operators who request assistance. Data collection and analysis may proceed concurrently with the development of mining and reclamation plans by the operator.

At subsection (b), the existing language is revised to read as follows:

(b) The program administrator shall determine the data needed for each applicant or group of applicants. Data collected and the results provided to the program administrator shall be sufficient to satisfy the requirements for: (1) The determination of the probable hydrologic consequences of the surface mining and reclamation operation in the proposed permit area and adjacent areas, including the engineering analyses and designs necessary for the determination in accordance with 310 IAC 12–3–47 and 310 IAC 12–3–81, and any other applicable provisions of the Act; (2) the drilling and statement of the results of test borings or core samplings from the proposed permit area, in accordance with 310 IAC 12–331 and 310 IAC 12–369 and any other applicable provisions of the Act; (3) the development of cross-section maps and plans required by 310 IAC 12–3–39 and 310 IAC 12–3–76; (4) the collection of archaeological and historic information and related plans required by 310 IAC 12–3–29, 310 IAC 12–3–67, 310 IAC 12–3–38, 310 IAC 12–3–75, and any other archaeological and historic information required by the regulatory authority; (5) pre-blast surveys required by 310 IAC 12–3–43; and (6) the collection of site-specific resources information, the production of protection and enhancement plans for fish and wildlife habitats required by 310 IAC 12–3–46.5 and 310 IAC 12–3–68.5 and information and plans for any other environmental values required by the regulatory authority under the Act.

310 IAC 12–3–134 Small Operator Assistance; Qualified Laboratories

Indiana proposed several revisions to subsections (a) and (b). These subsections, as revised, read as follows:

(a) To be designated a qualified laboratory, a firm shall demonstrate that it—(1) Is staffed with experienced, professional personnel in the fields applicable to the work to be performed; (2) has adequate space for material preparation, cleaning, and sterilizing equipment, and has stationary equipment, storage, and space to accommodate work loads during peak periods; (3) meets applicable federal or state safety and health requirements; (4) has analytical, monitoring and measuring equipment capable of meeting the applicable standards; (5) has the capability of collecting necessary field samples and making hydrologic field measurements and analytical laboratory determinations by acceptable hydrologic, geologic, or analytical methods in accordance with the requirements of 310 IAC 12–3–30 through 310 IAC 12–3–33, 310 IAC 12–3–47, 310 IAC 12–3–68 through 310 IAC 12–3–71, and any other applicable provisions of the ACT. Other appropriate methods or guidelines for data acquisition may be approved by the program administrator; and (6) has the capability of performing services for either the determination or statement referenced in 310 IAC 12–3–133.

(b) Subcontractors may be used to provide some of the required services provided their use is identified at the time a determination is made that a firm is qualified and they meet requirements specified by the program administrator.

310 IAC 12–3–135 Small Operator Assistance; Applicant Liability

Indiana is proposing to redesignate the introductory paragraph of § 12–3–135 as subsection (a), to revise the existing applicant reimbursement requirements in subdivisions (1) through (4), and to add a waiver of reimbursement provision at subsection (b). Revised subdivisions (1) through (4) and new subsection (b) reads as follows:

(a)(1) submits information, fails to submit a permit application within one (1) year from the date of receipt of the approved laboratory report, or fails to mine after obtaining a permit; (2) the program administrator finds that the operator's actual and attributed annual production of coal for all locations exceeds three hundred thousand (300,000) tons during the twelve (12) months immediately following the date on which the operator is issued the surface coal mining and reclamation permit; (3) the permit is sold, transferred, or assigned to another person and the transferee's total actual and attributed production exceeds the three hundred thousand (300,000) ton production limit during the twelve (12) months immediately following the date on which the permit was originally issued. Under this subdivision, the applicant and its successor are jointly and severally obligated to reimburse the regulatory authority; or (4) the applicant does not begin mining within six (6) months after obtaining the permit.

(b) The program administrator may waive the reimbursement obligation if he or she finds that the applicant at all times acted in good faith.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Indiana program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Indianapolis Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., E.D.T. on June 14, 1995. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests and opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Public Meeting

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards or subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject to this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relief upon the data and assumptions for the corresponding Federal regulations.

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 23, 1995.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 95–13157 Filed 5–26–95; 8:45 am]

BILLING CODE 4310–05–M

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

[IN–126; Amendment Number 95–9]

Indiana Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Indiana regulatory program (hereinafter referred to as the "Indiana program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of the addition of six definitions to the Indiana Administrative Code (IAC) at 310 IAC 12. These definitions pertain to acid mine drainage; augmented seeding, fertilization, or irrigation; high level management; public building; randomly located; and support facility. The proposed amendment is intended to revise the Indiana program to be consistent with the corresponding Federal regulations.

DATES: Written comments must be received by 4:00 p.m., e.d.t. June 29, 1995. If requested, a public hearing on the proposed amendment will be held on June 26, 1995. Requests to speak at the hearing must be received by 4:00 p.m., e.d.t. on June 14, 1995.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand delivered to Roger W. Calhoun, Director, Indianapolis Field Office at the first address listed below.

Copies of the Indiana program, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Indianapolis Field Office.

Roger W. Calhoun, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, Room 301, Indianapolis, Indiana 46204, Telephone: (317) 226–6166

Indiana Department of Natural Resources, 402 West Washington Street, Room C256, Indianapolis, Indiana 46204, Telephone: (317) 232–1547

FOR FURTHER INFORMATION CONTACT: Roger W. Calhoun, Director, Indianapolis Field Office, Telephone: (317) 226–6166.

SUPPLEMENTARY INFORMATION:

I. Background on the Indiana Program

On July 29, 1982, the Secretary of the Interior conditionally approved the Indiana program. Background information on the Indiana program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the July 26, 1982, **Federal Register** (47 FR 32107). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 914.10, 914.15, and 914.16.

II. Discussion of the Proposed Amendments

By letter dated May 11, 1995, the Indiana Department of Natural Resources (IDNR) submitted a proposed amendment to its program pursuant to SMCRA (State program amendment number 95–9, administrative record No. IND–1469). Indiana submitted the proposed amendment at its own initiative. Amendment number 95–9 consists of the addition of six definitions to article 310 IAC 12–0.5. The full text of the six definitions is shown below.

1. 310 IAC 12–0.5–2 "Acid Drainage" defined

"Acid drainage" means water with a Ph of less than six (6.0) and in which total acidity exceeds total alkalinity, discharged from an active, inactive, or abandoned surface coal mine and reclamation operation or from an area affected by surface coal mining and reclamation operations.

2. 310 IAC 12–0.5–14 "Augmented Seeding, Fertilization, or Irrigation" Defined

"Augmented seeding, fertilization, or irrigation" means seeding, fertilizing, or irrigating in excess of normal agronomic practices within the region.

3. 310 IAC 12–0.5–57 "High Level Management" defined

"High level management" means that the following agronomic practices must be implemented:

(1) Using cropping systems that help maintain good tilth and high organic matter content.

(2) Controlling erosion through conservation and water management practices so that the quality of the soil is maintained or improved rather than reduced.

(3) Applying lime and fertilizer in accordance with soil test recommendations of the state agricultural experiment station for targeted yields of reference crops.

(4) Using crop residue to the fullest extent practicable to protect and improve the soil.

(5) Following conservation tillage practices were needed to reduce the hazards of soil compaction and erosion.

(6) Using only the crop varieties that are adapted to the climate and the soil.

(7) Controlling weeds, plant diseases, and harmful insects by currently accepted management techniques.

(8) Draining wet areas using surface or subsurface drainage systems so that excess water on or in the soil does not restrict yields of adapted crops.

310 IAC 12–0.5–95 "Public Building" defined

"Public building" means a structure that is owned by a public agency or used principally for public business meetings or other group gatherings.

310 IAC 12–0.5–99 "Randomly Located" defined

"Randomly located" means the selection of a location that is statistically independent of all previous and future location selections.

310 IAC 12–0.5–123 "Support Facility" defined

(a) "Support facility" means a facility resulting from, or incidental to, an activity identified in section 125(1) of this rule and the area upon which the facility is located.

(b) As used in subsection (a), "resulting from or incidental to" connotes an element of proximity to the activity.

(c) A support facility includes the following:

(1) Mine buildings.
(2) Bath houses.
(3) Coal loading facilities.
(4) Coal crushing and sizing facilities.
(5) Coal storage facilities.
(6) Equipment and storage facilities.
(7) Fan buildings.
(8) Hoist buildings.
(9) Sheds, shops, and other buildings.
(10) Facilities used to treat and store water for mine consumption.
(11) Railroads, surface conveyor systems, chutes, aerial tramways, and other transportation facilities, but not including roads.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Indiana program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Indianapolis Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., e.d.t. on June 14, 1995. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Public Meeting

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES.** A written summary of each meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 has been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed States regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 23, 1995.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 95–13158 Filed 5–26–95; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPPTS–50582L; FRL–4919–6]

RIN 2070–AB27

1,3-Propanediamine, *N,N'*-1,2-Ethanediylbis-, Polymer with 2,4,6-Trichloro-1,3,5-triazine, Reaction Products with *N*-butyl-2,2,6,6-tetramethyl-4-piperidinamine; Proposed Modification of Significant New Use Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to modify the significant new use rules (SNUR) promulgated under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for 1,3-propanediamine, *N,N'*-1,2-ethanediylbis-, polymer with 2,4,6-trichloro-1,3,5-triazine, reaction products with *N*-butyl-2,2,6,6-tetramethyl-4-piperidinamine, based on a modification to the TSCA 5(e) consent order regulating the substance.

DATES: Written comments must be received by EPA on or before June 29, 1995.

ADDRESSES: All comments must be sent in triplicate to: TSCA Document Receipt Office (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–G99, 401 M St., SW., Washington, DC 20460. Comments that are confidential must be clearly marked confidential business information (CBI). If CBI is claimed, three additional sanitized copies must also be submitted. Nonconfidential versions of comments on this proposed rule will be placed in the rulemaking record and will be available for public inspection. Comments should include the docket control number. The docket control number for the chemical substance in this SNUR is Unit IV. of this preamble contains additional information on submitting comments containing CBI.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: ncic@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special

characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number OPPTS–50582L. No CBI should be submitted through e-mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in Unit III. of this document.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, TSCA Assistance Office (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 20, 1990 (55 FR 33296), EPA issued a SNUR establishing significant new uses for 1,3-propanediamine, *N,N'*-1,2-ethanediylbis-, polymer with 2,4,6-trichloro-1,3,5-triazine, reaction products with *N*-butyl-2,2,6,6-tetramethyl-4-piperidinamine based on the section 5(e) consent order for the substance. Because of additional data EPA has received for this substance, EPA is proposing to modify the SNUR.

I. Background

EPA is proposing to modify the significant new use requirements for the following chemical substance under 40 CFR part 721, subpart E. In this unit, EPA provides a brief description for the substance, including its PMN number, chemical name (generic name if the specific name is claimed as CBI), CAS number (if assigned), basis for the modification of the section 5(e) consent order for the substance, and the CFR citation in the regulatory text section of this proposed rule. Further background information for the substance is contained in the rulemaking record referenced in Unit IV., of this preamble.

PMN Number P–88–632

Chemical name: 1,3-Propanediamine, *N,N'*-1,2-ethanediylbis-, polymer with 2,4,6-trichloro-1,3,5-triazine, reaction products with *N*-butyl-2,2,6,6-tetramethyl-4-piperidinamine

CAS number: Not available.

Effective date of modification of section 5(e) consent order: September 23, 1994.

Basis for modification of section 5(e) consent order: Based on the results of a 90–day oral toxicity study on the PMN substance, the Company petitioned EPA to reconsider the consent order's worker protection and hazard communication requirements. The Company petitioned the Agency to modify the consent order and SNUR to (1) Broaden the choice of workplace protective equipment to include two 21C air-purifying respirators with high efficiency particulate filters and (2) remove "reproductive effects" from the list of human health hazards to be included on the Material Safety Data Sheet or label accompanying shipments of the PMN substance. EPA, through written correspondence, negotiations, and meetings with the Company, recalculated the risk assessment of the PMN based on the test data provided by the Company. Based on this risk assessment, the Agency determined that the broader choice of respirators would provide adequate protection against an unreasonable risk of systemic effects to workers who may be exposed to the PMN substance via inhalation. The Agency also believes that there was no evidence of reproductive toxicity in the results of the submitted data. This SNUR had incorrectly listed "birth defects" rather than "reproductive effects" in the Hazard Communication Program at 40 CFR 721.72. Accordingly, the "birth defects" SNUR requirement (§ 721.72(a)(v)) is being removed, effective this modification, and "reproductive effects" is being removed from the consent order. Finally, in response to the Company's submission of aquatic toxicity testing protocols to the Agency for review, the Company was informed that such testing would no longer be required and related prohibitions on release of the PMN substance to water would also be removed from the consent order. This action is being taken based on test data on polycationic polymers structurally similar to the PMN substance which have been submitted to the Agency in the intervening period between the December 1989 signature of the consent order and the Company's submission of the aquatic toxicity testing protocols. These test data indicate that the PMN substance, because of its physical/chemical properties (i.e., charge density of 4.8 percent amine nitrogen, low water solubility (<10 mg/L), and does not appear to be self-dispersing in water), will bind quickly to naturally-occurring dissolved organic carbon in surface waters and settle in sediment, where it is not expected to be bioavailable. As a result, the toxicity to aquatic and sediment-dwelling organisms is expected to be mitigated significantly, such that the Agency no longer finds that the PMN substance will pose an unreasonable risk of injury to the environment. Accordingly, the testing requirement for toxicity to aquatic organisms and the associated hazard communication language, prohibition on release to water, and recordkeeping provisions related to these restrictions are also removed by this modification to the consent order. The Agency has determined, therefore, that modifying the consent order and SNUR would not pose an unreasonable risk to human health or the environment.

CFR citation: 40 CFR 721.7280.

II. Objectives and Rationale of Proposing Modification of the Rule

During review of the PMN submitted for the chemical substance that is the subject of this proposed modification, EPA concluded that regulation was warranted under section 5(e) of TSCA pending the development of information sufficient to make a reasoned evaluation of the health and environmental effects of the substance. EPA identified the tests considered necessary to evaluate the risks of the substance and identified the protective equipment necessary to protect any workers who may be exposed to the substance. The basis for such findings is in the rulemaking record referenced in Unit III. of this preamble. Based on these findings, a section 5(e) consent order modification was negotiated with the PMN submitter.

In light of the petition to modify the consent order and SNUR, the 90–day subchronic test, the data on structurally similar polycationic polymers, and the recalculation of the risk assessment of the PMN substance based on information provided by the petitioner, the Agency determined that modifying the consent order and SNUR would not pose an unreasonable risk to human health or the environment. The proposed modification of SNUR provisions for the substance designated herein is consistent with the provisions of the section 5(e) order.

III. Rulemaking Record

The record for the rule which EPA is proposing to modify was established at OPPTS–50582. This record includes information considered by the Agency in developing this rule (including comments and data submitted electronically as described below) and includes the modification to consent orders to which the Agency has responded with this proposal.

A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center, Rm. NE–B607, 401 M St., SW., Washington, DC 20460.

Electronic comments can be sent directly to EPA at:
ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in **ADDRESSES** at the beginning of this document.

IV. Comments Containing Confidential Business Information

Any person who submits comments claimed as CBI must mark the comments as "confidential," "trade secret," or other appropriate designation. Comments not claimed as confidential at the time of submission will be placed in the public file. Any comments marked as confidential will be treated in accordance with the procedures in 40 CFR part 2. Any party submitting comments claimed to be confidential must prepare and submit a public version of the comments that EPA can place in the public file.

V. Regulatory Assessment Requirements

EPA is modifying the requirements of the rule by eliminating several requirements. Any costs or burdens associated with the rule will be reduced when the rule is modified. Therefore, EPA finds that no additional assessments of costs or burdens are necessary under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 605(b)), or the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous materials, Reporting and recordkeeping requirements, Significant new uses.

Dated: May 16, 1995.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

Therefore, it is proposed that 40 CFR part 721 be amended to read as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 would continue to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

2. In § 721.7280 by revising paragraphs (a)(2)(i) and (a)(2)(ii), removing paragraphs (a)(2)(iii) and (a)(2)(iv), and revising paragraph (b)(1) to read as follows:

§ 721.7280 1,3-Propanediamine, *N,N'*-1,2-ethanediylbis-, polymer with 2,4,6-trichloro-1,3,5-triazine, reaction products with *N*-butyl-2,2,6,6-tetramethyl-4-piperidinamine

(a) * * *

(2) * * *

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(iii), (a)(3), (a)(4), (a)(5)(i), (a)(5)(ii), (a)(5)(iv), (a)(5)(v), (a)(6)(i), (a)(6)(ii), (b)(concentration set at 0.1 percent) and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a) through (f), (g)(1)(iv), (g)(1)(viii), (g)(2)(i), (g)(2)(ii), (g)(2)(iii), (g)(?)(iv), (g)(2)(v), and (g)(5).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) are applicable to manufacturers, importers, and processors of this substance.

* * * * *

[FR Doc. 95–13135 Filed 5–26–95; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 298

[Docket No. R–154]

RIN 2133–AB14

Obligations Guarantees; Program Administration

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Extension of comment period.

SUMMARY: The Maritime Administration (MARAD) is hereby extending the period for submitting comments on the NPRM that was published on April 26, 1995. The original comment period was to end on May 26, 1995. This rulemaking is intended to improve the administration of the entire Title XI loan guarantee program that is essential to the re-entry of United States shipbuilders into the commercial market. This extension is being granted at the request of the American Shipbuilding Association, which represents shipyards that employ a large percentage of the workers employed in private U.S. shipbuilding facilities and which is vitally interested in the Title XI program.

DATES: Written comments are requested and must be received on or before June 13, 1995.

ADDRESSES: Comments may be mailed or otherwise delivered to the Secretary, Maritime Administration, Room 7210, Department of Transportation, 400 Seventh Street SW., Washington, D.C. 20590. All comments will be made available for inspection during normal business hours at the above address. Commenters wishing MARAD to acknowledge receipt of comments should enclose a stamped self-addressed envelope or postcard.

FOR FURTHER INFORMATION CONTACT: David A. Lippold, Examiner, Division of Capital Assets Management, Office of Ship Financing, Maritime Administration, Room 8122, 400 Seventh Street SW., Washington, D.C. 20590. Telephone 202–366–1907.

Dated: May 25, 1995.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 95–13253 Filed 5–26–95; 8:45 am]

BILLING CODE 4910–81–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[IB Docket No. 95–59; FCC 95–180]

Preemption of Local Zoning Regulations

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission has proposed revisions to its rule preempting local regulation of satellite earth stations. These revisions are being proposed in response to two Petitions for Declaratory Ruling filed by Satellite Broadcasting and Communications Association and Hughes Network Systems, Inc. and as a result of the decision of the U.S. Court of Appeals of the Second Circuit where the court invalidated the requirement that satellite-antenna users exhaust all other legal remedies before petitioning the Commission for a declaratory ruling.

The revised rule modifies the exhaustion of remedies requirement to permit Commission interpretation of the rule prior to judicial review; modifies the reasonableness test in the current rule including establishing presumption of unreasonableness; provides a waiver process by which communities may request a waiver of some or all of this rule in recognition of local interests; and provides for immediate relief in particular cases by entertaining petitions for declaratory relief under the current rule on an interim basis pending completion of this rulemaking.

DATES: Comments are due by July 14, 1995; reply comments are due by August 15, 1995.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rosalee Chiara, International Bureau, Satellite and Radiocommunication Division, Satellite Policy Branch, (202) 739–0730.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making in IB Docket No. 95–59; FCC 95–180, adopted April 27, 1995 and released May 15, 1995. The complete text of this Notice of Proposed Rule Making is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, D.C., and also may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Notice of Proposed Rule Making

In 1986, the Commission adopted a rule preempting local regulation of satellite earth stations that differentiated between satellite receive-only antennas and other types of antenna facilities unless the regulations (a) have a reasonable and clearly defined health, safety, or aesthetic objective and (b) do not put unreasonable limitations on, or prevent, reception or impose unreasonable costs on users. The rule also preempted local regulation of satellite transmitting antennas in the same manner except that health and safety regulation was not preempted (47 CFR 25.104). Since that time, consumers, satellite system operators, local governments, and the Commission have gained significant experience working with this rule. Based in part on this experience, the Satellite Broadcasting and Communications Association ("SBCA") and Hughes Network Systems, Inc. ("Hughes") filed petitions for declaratory rulings on our satellite-antenna preemption rule. In addition, the U.S. Court of Appeals for the Second Circuit invalidated the requirement that satellite-antenna users exhaust all other legal remedies before petitioning the Commission for relief. *Town of Deerfield, New York* v. *FCC*, 1992 F.2d 420 (2d Cir. 1992) ("*Deerfield*"). In 1993, we sought comment on the SBCA and Hughes petitions, as well as on the appropriate action for the Commission to take in response to the Second Circuit's decision.

Based on the petitions, the comments received in this proceeding, and our experience administering Commission preemption policies since 1986, we tentatively concluded that, in light of the Second Circuit's *Deerfield* decision, we should modify our exhaustion of remedies requirement to permit us to interpret our preemption rule prior to any judicial review. We also tentatively conclude that in order to facilitate application of the Commission's interpretations in varied factual settings, to minimize intrusion upon local prerogatives in land-use regulation, and to promote full and fair competition between satellite services and other means of communication, we must revise the preemption rule itself. Accordingly, we are denying both petitions for declaratory relief and issuing this Notice of Proposed Rulemaking, which proposes changes in § 25.104. In addition, we announce our willingness to entertain petitions for declaratory relief with respect to particular zoning disputes during the pendency of this proceeding.

We also propose revisions of the current rule's "reasonableness" test. These include elimination of the requirement that preemptable local ordinance differentiate in the treatment of antennas. In addition, the NPRM proposes changes in how the rule applies to regulations that increase users' costs or diminish reception. The proposed rule also establishes presumptions of unreasonableness for regulations that affect antennas less than one meter in size and those that affect antennas less than 2 meters in size in an area where commercial or industrial use is permitted. The proposals include several other modifications of the rule and also provide that local government can request waivers of the rule under certain circumstances.

We solicit comments from all interested parties, including service providers, equipment manufacturers, consumers, programmers, land-use managers, and other representatives of local governments. A full and complete record in this matter will ensure that our final rule takes into consideration the views of all these persons.

Ordering Clauses

Accordingly, *it is ordered* That, pursuant to sections 1.4(i), 4(j) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), and 303(r) notice is hereby given of the proposed amendments to § 25.104 of the Commission's rules, 47 CFR 25.104, in accordance with the proposals in this Notice of Proposed Rulemaking, and that comment is sought regarding such proposals.

It is further ordered. That the petitions for declaratory relief filed by SBCA and Hughes are denied.

It is further ordered That the Secretary shall send a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act, Pub. L. No. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981).

Administrative Matters

Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before July 14, 1995 and reply comments on or before August 15, 1995. To file formally in this proceeding, you must file an original plus four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC 20554.

This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission Rules. See generally 47 CFR 1.1202, 1.1203, and 1.1206(a).

Initial Regulatory Flexibility Act Statement

As required by section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Notice, but they must have a separate and distinct heading designating them as responses to the Initial Regulatory Flexibility Analysis.

List of Subjects in 47 CFR Part 25

Satellites.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Proposed Rules

Part 25 of Title 47 of the Code of Federal Regulations is proposed to be amended, as follows:

PART 25—SATELLITE COMMUNICATIONS

1. The authority citation for part 25 continues to read as follows:

Authority: Sections 25.101 to 25.601 issued under Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interpret or apply secs. 101–104, 76 Stat. 416–427, 47 U.S.C. 701–744; 47 U.S.C. 554.

2. Section 25.104 is revised to read as follows:

§ 25.104 Preemption of local zoning of earth stations.

(a) Any state or local land-use, building, or similar regulation that substantially limits reception by receive-only antennas, or imposes substantial costs on users of such antennas, is preempted unless the promulgating authority can demonstrate that such regulation is reasonable in relation to:

(1) A clearly defined, and expressly stated health, safety, or aesthetic objective; and

(2) The federal interest in fair and effective competition among competing communications service providers.

(b) Any regulation covered by paragraph (a) of this section shall be presumed unreasonable if it affects the installation, maintenance, or use of:

(1) A satellite receive-only antenna that is two meters or less in diameter and is located or proposed to be located in any area where commercial or industrial uses are generally permitted by local land-use regulation: or

(2) A satellite receive-only antenna that is one meter or less in diameter in any area.

(c) Any presumption arising from paragraph (b) of this section may be rebutted upon a showing that the regulation in question:

(1) Is necessary to accomplish a clearly defined and expressly stated health or safety objective;

(2) Is no more burdensome to satellite users than is necessary to achieve the health or safety objective;

(3) Is specifically applicable to antennas of the class mentioned in paragraph (b) of this section.

(d) Regulation of satellite transmitting antennas is preempted to the same extent as provided in paragraph (a) of this section, except that state and local health and safety regulations relating to radio frequency radiation of transmitting antennas are not preempted by this rule.

(e) Any person aggrieved by the application or potential application of a state or local zoning or other regulation in violation of paragraph (a) of this section may, after exhausting all nonfederal administrative remedies, file a petition with the Commission requesting a declaration that the state or local regulation in question is preempted by this section. Nonfederal administrative remedies, which do not include judicial appeals of administrative determinations, shall be deemed exhausted when

(1) The petitioner's application for a permit or other authorization required by the state or local authority has been denied and any administrative appeal has been exhausted;

(2) The petitioner's application for a permit or other authorization required by the state or local authority has been pending with that authority for ninety days;

(3) The petitioner has been informed that a permit or other authorization required by the state or local authority will be conditioned upon the petitioner's expenditure of an amount greater than the aggregate purchase and installation costs of the antenna; or

(4) A state or local authority has notified the petitioner of impending civil or criminal action in a court of law and there are no more nonfederal administrative steps to be taken.

(f) Any state or local authority that wishes to maintain and enforce zoning or other regulations inconsistent with this section may apply to the Commission for a full or partial waiver of this section. Such waivers may be granted by the Commission in its sole discretion, upon a showing by the applicant that local concerns of a highly specialized or unusual nature create an overwhelming necessity for regulation inconsistent with this section. No application for waiver shall be considered unless it includes the particular regulation for which waiver is sought. Waivers granted according to this rule shall not apply to later-enacted or amended regulations by the local authority unless the Commission expressly orders otherwise.

[FR Doc. 95–13116 Filed 5–26–95; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Parts 80, 90, and 95

[WT Docket No. 95–56, FCC 95–174]

Low Power Radio and Automated Maritime Telecommunications Systems Operations in the 216–217 MHz Band

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission had adopted a Notice of Proposed Rule Making which seeks to permit the shared use of the 216–217 MHz band, on a secondary, non-interference basis, for a new Low Power Radio Service to include law enforcement tracking systems, auditory assistance devices for the hearing-impaired, and health care assistance devices for disabled and ill persons. Further, the Commission seeks to permit Automated Maritime Telecommunications Systems (AMTS) coast stations to also share this band on a secondary, non-interference basis for point-to-point network control communications. This action stems from the Commission's Notice of Proposed Rule Making and Notice of Inquiry in PR Docket 92–257 which sought to compile a record of viable, alternative uses for this one megahertz of maritime mobile spectrum. Thus, the proposed rules should aid law enforcement efforts in the recovery of stolen goods, further the goals of the Americans With Disabilities Act of 1990 (ADA), increase access to educational and health care opportunities for persons with disabilities and illnesses, increase the number of channels available to the AMTS for operational control communications, and promote the efficient use of maritime spectrum.

DATES: Comments must be filed on or before July 18, 1995, and reply comments must be filed on or before August 17, 1995.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Roger Noel of the Wireless Telecommunications Bureau at (202) 418–0680.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, WT Docket No. 95–56, FCC 95–174, adopted April 25, 1995, and released, May 16, 1995. The

full text of this Notice of Proposed Rule Making is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239) 1919 M Street, NW. Washington, DC. The complete text may be purchased from the Commission's copy contractor, International Transcription Services, 2100 M Street, NW., Washington, DC 20037, telephone (202) 857–3800.

Summary of Notice of Proposed Rule Making

1. The Commission initiated the instant proceeding to explore alternative uses of the 216–217 MHz band. Presently, this one megahertz of spectrum is allocated on a primary basis to the AMTS. In 1992, however, the Commission reallocated one megahertz of radio spectrum from the AMTS to the Interactive Video and Data Service (IVDS), effectively "orphaning" the 216–217 MHz band. Thus, in PR Docket 92–257, the Commission sought alternative uses for the spectrum that would not cause harmful interference to adjacent Television Channel 13 operations 9210–216 MHz).

2. The Commission proposes to permit a new Low Power Radio Service and AMTS coast station to share this one megahertz of spectrum on a secondary basis. Low Power Radio Services would include law enforcement tracking system, auditory assistance devices for the hearing impaired, and health care assistance devices for disabled and ill persons. A law enforcement tracking system includes extremely small radio transmitters attached to money and goods that are likely to be stolen. When activated, the small transmitters emit a low power signal that can be tracked by direction finding equipment, allowing authorities to quickly recover the stolen money or goods. An auditory assistance system consists of a short range transmitter and special receivers that allow persons with hearing disabilities to enjoy educational or entertaining audio presentations. Similarly, low power health care aids could be used for short range, one-way medical telemetry. Finally, AMTS coast stations could utilize highly directional antennas to transmit network control communications, thereby increasing system efficiencies.

3. There are forty, 25 kHz channels available in the 216–217 MHz band. The Commission proposes to allocate thirty channels (216.0125–216.7375 MHz) to the Low Power Radio Service and ten channels (216.7625–216.9875 MHz) for AMTS point-to-point communications. The twenty channels closest to TV Channel 13 would be limited to 100 milliwatts transmitter output power, and the other twenty channels would be limited to 1 watt. The Low Power Radio Service (excluding two channels set aside exclusively for law enforcement tracking systems) would be administered under Part 95 of the Commission's Rules, 47 CFR part 95. The exclusive tracking system channels would be administered under the Police Radio Service in Part 90. Further, the AMTS channels would be administered under the maritime service rules in Part 80.

4. Under the proposed rules, authorizations in the Low Power Radio Service would be granted based on Metropolitan Statistical Areas (MSAs) and Rural Statistical Areas (RSAs). The Commission did not propose to place a limit on the number of licensees per MSA and RSA or the total number of licenses a single entity could obtain. AMTS coast stations would simply add the new channels to their current station authorization. The Commission seeks specific comments concerning the proposed rule amendments.

5. Initial Regulatory Flexibility Analysis

Reason for Action

The Commission proposes to allow low power devices to share Automated Maritime Traffic System frequencies in the 216–217 MHz band.

Objectives

We seek to make better use of currently unused portions of the spectrum while taking advantage of alternative low power technologies.

Legal Basis

The proposed action is authorized under Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r).

Reporting, Recordkeeping and Other Compliance Requirements

Our proposed addition of 47 CFR 95.1031 would require the low power transmitters to be type accepted by the Commission.

Federal Rules Which Overlap, Duplicate or Conflict with These Rules

None.

Description, Potential Impact, and Small Entities Involved

Allowing low power devices to be licensed in the 216–217 MHz band would use the radio spectrum more efficiently, assist law enforcement organizations, and facilitate implementation of the provisions of the Americans with Disabilities Act of 1990.

Any Significant Alternatives Minimizing the Impact on Small Entities Consistent With the Stated Objectives

None.

Lists of Subjects

47 CFR Part 80

Communications equipment, Radio, Reporting and recordkeeping requirements.

47 CFR Part 90

Communications equipment, Radio, Reporting and recordkeeping requirements.

47 CFR Part 95

Communications equipment, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–13115 Filed 5–26–95; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 580

Petition for Rulemaking; Iowa Automobile Dealers Association

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Denial of petition for rulemaking.

SUMMARY: This notice denies a petition by the Iowa Automobile Dealers Association to amend the provision of the agency's Odometer Disclosure regulations (49 CFR part 580) requiring both the buyer and seller of a vehicle to print their names, along with their written signatures on the odometer statements made on the vehicle title in connection with the transfer of ownership of the vehicle. 49 CFR 580.5(c). The petition is denied because the agency finds that the hand-printing requirement serves a law enforcement need and because the petitioner cited no particular burden arising from the requirement.

FOR FURTHER INFORMATION CONTACT: Eileen T. Leahy, Attorney, Office of the Chief Counsel, NHTSA, 400 Seventh Street, SW., Room 5219, Washington, DC 20590; 202–366–5263.

SUPPLEMENTARY INFORMATION:

Background

Chapter 327 of Title 49 of the United States Code (formerly Title IV of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. 1981–1991) ("the Act") sets forth certain requirements concerning odometers in motor vehicles. Among other things, the Act prohibits disconnecting, resetting, or altering motor vehicle odometers and requires the execution of an odometer disclosure statement incident to the transfer of ownership of a motor vehicle. The Act also subjects violators to civil and criminal penalties, and provides for enforcement through civil action by the United States in Federal courts (for injunctive relief), by State attorneys general (for damages and injunctive relief), and by private individuals (for damages). The provisions requiring odometer disclosure statements to be included on vehicle titles were added by the Truth in Mileage Act of 1986 (Pub. L. 99–579) ("TIMA"), and reflect Congress' intent to address the growing national problem of odometer tampering in motor vehicles.

Section 32705 of the title 49 directs the Secretary of Transportation to promulgate rules governing the making of odometer disclosure statements. In accordance with that mandate, NHTSA published a regulation (49 CFR part 580) which requires, in connection with the transfer of ownership of a motor vehicle, that each transferor must discloses the mileage to the transferee in writing on the title (or in some cases on the document being used to reassign the title). The regulation details the minimum contents of the disclosure, requires the disclosure to be signed by both the transferor and the transferee, and provides that no person shall sign the disclosure statement as both the transferor and transferee in the same transaction, except in limit circumstances.

The regulation requires that the handwritten signatures of both the transferor and transferee be accompanied by their respective printed names. 49 CFR 580.5(c), (f). In both the preamble to the rule promulgating 580.5 and subsequent written interpretations, the agency has stated that the printed name requirement means that the name must be entered by hand by the same person who signed the form. 53 FR 29470 (Aug. 5, 1988).

The Petition

By letter of October 4, 1994, petitioner Iowa Automobile Dealers Association (hereinafter petitioner) asked NHTSA to change the requirement that the transferee and transferor hand print their names on the odometer disclosure. Because this requirement is contained in the regulation, and therefore could only be amended by rulemaking, the agency decided to treat petitoner's letter as a request for rulemaking. The petition does not cite any burden that requirement imposes on petitioner or its members as a basis for the change it requests. The only concern expressed by petitioner is that when a state that enforces the requirement sends back to an out-of-state dealer a title on which the transferor's name that has not been hand-printed, the dealer will print the transferor's name rather than sending it back to the seller to have the name hand-printed. This practice, as petitioner notes, violates NHTSA's regulation.

Discussion

When it adopted the printed name requirement, the agency stated that it is needed because "it is helpful in the course of an investigation (of odometer fraud) to identify the person signing the statement where signatures are difficult to read." 53 FR 29470. In subsequent interpretations, the agency has further explained the necessity of having the names printed by hand rather than by electronic or mechanical means.

The hand-printing requirement enables investigators to perform handwriting analysis to identify the signers of the disclosure in those instances in which the written signature is not sufficiently legible to provide a sample adequate for analysis. It is known to the agency that it is a common practice for individuals involved in odometer fraud schemes to transfer motor vehicle titles to automobile dealers and individuals without their knowledge, to make it appear that the other person or dealer was responsible for rolling back the odometer. In many cases, the other dealer or individual does not exist. In these instances, the perpetrators forge the signatures on the odometer disclosure statement, taking care that the signatures on the odometer disclosure and title transfer documents contain few or no characteristics or individualities for a handwriting analyst to use to identify the perpetrator as the actual signer. Commonly, the cursive "signature" in such cases will consist of nothing more than a curve or straight line.

In such situations, the cursive "signature" alone is obviously useless to the handwriting analyst. But analysts are able to use the printed name, either alone or in combination with the cursive signature, to establish proof of the identity of the signer. This is because it is impossible to hand-print letters without distinguishing characteristics or individualities, which are the essential elements used by handwriting analysts to prove the true identity of a writer.

From its long experience in the investigation of odometer fraud, the agency is aware of how common it is for the perpetrators to sign disclosure and title documents illegibly to avoid detection. Therefore, the ability to identify signers by handwriting analysis is critical to the Government's ability to investigate and prosecute cases of odometer fraud. This essential tool would be lost if the agency were to drop the requirement for hand-printed names and permit use of mechanical or electronic printing.

The importance of having the proper tools available for successful prosecution of those responsible for odometer fraud cannot be overstated. There were an estimated 12 million used cars sold in 1993. Thus, at least 24 million persons were required to sign and hand-print their names as either buyer or seller in these transactions. During 1993, 48 individuals were convicted of odometer fraud in the Federal courts alone. These cases were prosecuted by the United States Department of Justice (USDOJ). The USDOJ concentrates its criminal prosecution efforts on large-scale, interstate odometer tampering schemes. NHTSA estimates that the 48 individuals convicted of odometer fraud in Federal court in 1993 were responsible for the odometers being rolled back on more than 40 thousand vehicles, accounting for approximately $160 million in consumer fraud.

In almost all cases that go to a grand jury, the Federal prosecutors obtain handwriting and handprinting exemplars. For cases that go to trial, this type of evidence is nearly always available if needed. There was no trial in most of the 48 Federal cases resulting in convictions in 1992 because the defendants entered guilty pleas. It is not possible to measure precisely the role of handwriting analysis based on handprinting in either the decisions to plead guilty or the fact-finder's decisions to find the defendant guilty. Nevertheless, the frequency with which perpetrators of odometer fraud attempt to hide their identity by using a cursive signature with no identifying characteristics strongly suggests that the availability of handwriting analysis often would play a decisive role in a defendant's decision whether or not to go to trial, and in a judge's or jury's decision to convict.

In addition to the cases prosecuted by the USDOJ in Federal court, there were numerous criminal and civil convictions in odometer fraud cases in State and local courts. For instance, the Iowa Attorney General's office referred 30 odometer fraud cases to County Attorneys for prosecution, and the California Department of Motor Vehicles reported 660 convictions for odometer fraud in 1993. These figures represent only a fraction of the total number of odometer fraud cases prosecuted nationwide.

Petitioner has cited no burden that the hand-printing requirement imposes on itself or its members. The only concern it expresses is that a dealer that receives a title from state authorities who have rejected it because of failure to meet the hand-printing requirement will hand-print the name of the person from whom it purchased the vehicle rather than sending it back to that person to hand-print their name. This practice is of concern to NHTSA because it is a violation of its regulations. However, the better solution to the problem seems to be to educate dealers on the importance of obtaining hand-printed names in the first instance, rather than dispensing with the requirement altogether. Dealer organizations such as that represented by petitioner can play an important role in ensuring that dealers are fully informed of the requirements of the Federal odometer disclosure law.

For the foregoing reasons, the petition is denied.

Issued on: May 24, 1995.

John Womack,

Acting Chief Counsel.

[FR Doc. 95–13157 Filed 5–26–95; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 625

[Docket No. 950522140–5140–01; I.D. 050595E]

RIN 0648–XX22

Summer Flounder Fishery; 1995 Recreational Fishery Measures

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule.

SUMMARY: NMFS issues this proposed rule to amend the regulations implementing the Fishery Management Plan for the Summer Flounder Fishery (FMP). This rule proposes season dates, a possession limit, and a minimum fish size for the 1995 recreational fishery. The recreational season would be open from January 1 through December 31, with a possession limit of 6 fish per person and a minimum fish size of 14 inches (35.6 cm). The proposed 1995 season, possession limit, and minimum fish size are specified to achieve the 1995 coastwide recreational harvest limit, which is 7.8 million lbs (3.5 million kg).

DATES: Public comments are invited through June 23, 1995.

ADDRESSES: Comments should be sent to, and copies of the environmental assessment (EA) prepared for the 1995 summer flounder specifications are available from the Regional Director, NMFS, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Hannah Goodale, 508-281-9101.

SUPPLEMENTARY INFORMATION:

Section 625.20 of the regulations implementing the FMP outlines the process for determining annual commercial and recreational catch quotas and other restrictions for the summer flounder fishery. The Summer Flounder Monitoring Committee (Committee), made up of representatives from the Atlantic States Marine Fisheries Commission, the Mid-Atlantic Fishery Management Council (Council), the New England Fishery Management Council, and NMFS, is required to review, on an annual basis, scientific and other relevant information and to recommend a quota and other restrictions necessary to achieve a fishing mortality rate of 0.53 in 1993 through 1995, and 0.23 in 1996 and thereafter. This schedule of fishing mortality rates is mandated by the FMP to prevent overfishing and to rebuild the summer flounder resource. The Committee reviews the following information annually: (1) Commercial and recreational catch data; (2) current estimates of fishing mortality; (3) stock status; (4) recent estimates of recruitment; (5) virtual population analysis, a method for analyzing fish stock abundance; (6) levels of regulatory noncompliance by fishermen or individual states; (7) impact of fish size and net mesh regulations; (8) impact of gear, other than otter trawls, on the mortality of summer flounder; and (9) other relevant information. Pursuant to § 625.20, after this review the Committee recommends management measures to ensure achievement of the appropriate fishing mortality rate. These measures include: (1) Commercial quota, (2) commercial minimum fish size, (3) minimum mesh size, (4) recreational possession limit within the range of 0 to 15 fish per person per day, (5) recreational minimum fish size, (6) recreational season, and (7) restrictions on gear other than otter trawls.

Measures (1), (2), (3), and (7) above were implemented on February 10, 1995 (60 FR 8958, February 16, 1995). The management measures contained in the final specifications were: (1) A coastwide commercial quota of 14.7 million lbs (6.7 million kg), (2) a coastwide recreational harvest limit of 7.8 million lbs (3.5 million kg), (3) no change from the present minimum commercial fish size of 13 inches (33 cm), and (4) no change in the present minimum mesh-size restriction of 5½-inch diamond (14.0 cm) or 6-inch square (15.2 cm).

The recreational season, possession limit, and minimum size were not established as part of the final specifications because recreational catch data for 1994 was not available for the Committee's use in evaluating the effectiveness of the 1994 season and possession limit. Shortly after this data became available, the Committee met to review the 1994 data and to recommend measures for 1995. The Committee recommended elimination of the closed season, an individual possession limit of 6 fish per person, and a minimum fish size of 14 inches (35.6 cm).

These recommendations were adopted by the Council's Demersal Species Committee on March 14, 1995, but the possession limit was revised by the "full" Council at its meeting of March 15–16, 1995. The Council's recommendation to the Director, Northeast Region, NMFS (Regional Director) was for elimination of the closed season in 1995, an individual possession limit of 8 fish per person, and a minimum fish size of 14 inches (35.6 cm).

On April 12, 1995, the Regional Director disapproved the Council's recommendation, citing inconsistency with the Council's earlier recommendation to the Regional Director to take all appropriate actions to ensure that the target fishing mortality rate is not exceeded in 1995. The Regional Director informed the Council that their recommendation, being less restrictive than measures imposed in 1994, was inconsistent with their earlier expressed concern. The Regional Director invited the Council to reconsider and develop a proposal that would address the inconsistency without compromising conservation.

On April 19, 1995, the Council adopted the original recommendation of the Committee and submitted it to the Regional Director for review. This recommendation, which is proposed in this action, contains the following measures: Elimination of the closed season, an individual possession limit of 6 fish per person, and a minimum fish size of 14 inches (35.6 cm).

Upon publication of the final rule, the recreational fishing measures for 1995 that are contained in the rule are likely to become effective with less than a 30-day delay in effective date, because the season has already started and measures that would be imposed either would remove a restriction or do not require time to come into compliance.

Classification

This action is authorized by 50 CFR part 625 and complies with the National Environmental Policy Act. An EA, which analyzed the impacts and consequences of the alternative harvest levels, was prepared as part of the rulemaking that established the 1995 fishery specifications, including the coastwide recreational harvest level. This proposed rule contains the recreational season and possession limit that can best achieve the specified harvest level, and has no effects that were not previously analyzed in the EA.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities, such as the charter boats and head boats that serve the recreational fishery. The combination of management measures (minimum fish size, lack of a closed season, and the six-fish possession limit) should allow recreational fishermen to harvest summer flounder at a level close to, or slightly below the coastwide harvest limit for this fishery. As a result, a regulatory flexibility analysis was not prepared.

List of Subjects in 50 CFR Part 625

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: May 23, 1995.

Richard H. Schaefer,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS proposes that 50 CFR part 625 be amended to read as follows:

PART 625—SUMMER FLOUNDER FISHERY

1. The authority citation for part 625 continues to read as follows:

Authority: 16 U.S.C. 1801, *et seq.*

2. Section 625.22 is revised to read as follows:

§ 625.22 Time restrictions.

Vessels that do not possess a moratorium permit under § 625.4 and fishermen subject to the possession limit may fish for summer flounder during the period January 1 through December 31. This time period may be adjusted pursuant to the procedures in § 625.20.

3. In § 625.25, the first sentence of paragraph (a) is revised to read as follows:

§ 625.25 Possession limit.

(a) No person shall possess more than six summer flounder in or harvested from the EEZ unless that person is the owner or operator of a fishing vessel issued a moratorium permit under § 625.4. * * *

* * * * *

[FR Doc. 95–13097 Filed 5–24–95; 12:23 pm]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 60, No. 103
Tuesday, May 30, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Aspen Highlands EIS, Ski Area Improvement and Expansion Analysis, White River National Forest; Pitkin County, Colorado

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS).

SUMMARY: The U.S. Department of Agriculture, Forest Service will prepare an Environmental Impact Statement to disclose effects of alternative decisions it may make to allow upgrading and/or expansion of recreational facilities within the existing permit boundaries of the Aspen Highlands Ski Area, on the Aspen Ranger District of the White River National Forest.

DATES: Written comments concerning the scope of the analysis should be received on or before July 28, 1995.

ADDRESSES: Send written comments to Rob Iwamoto, Aspen District Ranger, White River National Forest, 806 West Town, Aspen, CO 81611. Veto J. LaSalle, Forest Supervisor, White River National Forest, is the Responsible Official for this EIS.

FOR FURTHER INFORMATION CONTACT: Arthur Bauer, Project Coordinator, Aspen Ranger District—(970) 544–0082 or (303) 925–3445.

SUPPLEMENTARY INFORMATION: On May 12, 1995, Special Use Permittee Aspen Skiing Company submitted a proposal to amend their Master Development Plan for the Aspen Highlands Ski Area. The scope of the proposal includes replacing two lifts with a new moderate capacity, high speed quad chairlift; extending a catwalk to serve additional expert terrain within the Loge Bowl area; adding a new lift and additional terrain to the Steeplechase area; replacing the existing mid-mountain restaurant with a new restaurant in the same location; relocating the Ski Patrol Headquarters; adding two new ski lifts into two separate Bowl Areas; and the addition of approximately 300 acres of snowmaking. Actions proposed on National Forest System Lands fall within the existing permit area boundary. The applicant's proposal also would involve development on adjacent private lands which have land use jurisdictions outside of Forest Service control.

The applicant's proposal is consistent with governing programmatic management direction contained in the *Rocky Mountain Regional Guide* and FEIS for Standards and Guidelines (1983) and in the final EIS and *Land and Resource Management Plan for the White River National Forest* ("LMP," 1984). These documents direct that first priority for ski area development is the expansion of existing areas. The LMP allocated the proposed expansion area to downhill skiing use and assigned a potential development capacity of 4,500 skiers-at-one-time (SAOT). The site-specific environmental analysis provided by the EIS will assist the Responsible Official in determining which improvements are needed to meet the following objectives: Accommodate predicted short and long-term demand for skiing; continue the supply of high quality recreational opportunities at Aspen Highlands; maintain the attractiveness and viability of the permittee's operation; and, sustain the resource uses and amenity values which local communities depend on and enjoy. Alternative development plans will be carefully examined for their potential impacts on the physical, biological, and social environments so that tradeoffs are apparent to the decisionmaker.

Public participation will be fully incorporated into preparation of the EIS. The first step is the scoping process, during which the Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies, and other individuals or groups who may be interested or affected by the proposed action. This information will be used in preparing the EIS.

Several public meetings will be held in the Aspen, CO area throughout the public involvement process. The exact dates and locations of these meetings will be published in local newspapers at least two weeks in advance. The first scoping meeting is currently slated for late-June.

Preliminary issues include the potential effects of proposed actions and related off-site developments on the following elements of the biological, physical and social environments: Wildlife populations, big game habitats, and overall biological diversity; vegetation, wetlands and riparian areas; streamflow and fisheries habitat; scenic quality; air quality; noise levels; wilderness resource values; four-season recreational resource opportunities; surface erosion and landslide hazards; quality of and capacity for downhill skiing; traffic and transportation systems; the cost and supply of public utilities and services; local commercial establishments; housing availability and cost; personal income and revenue base to local and state governments; development in surrounding areas; health and human safety; and, the overall quality of life for local residents. The direct, indirect, cumulative, short-term, and long-term aspects of impacts on national forest lands and resources, and those of connected or related effects off-site, will be fully disclosed.

Preliminary alternatives include the applicant's proposal (described above) and No Action, which in this case is continuing current administration of the ski area. Additional alternatives will be developed after the significant issues are clarified and management objectives carefully defined. The Responsible Official will be presented with a range of feasible and practical alternatives.

Permits and licenses required to implement the proposed action will, or may, include the following: Amended Special Use Permit from the Forest Service; Section 404 Permit from the Army Corps of Engineers; consultation with U.S. Fish and Wildlife Service for compliance with section 7 of the Threatened & Endangered Species Act; certification from the Colorado Department of Health Air Pollution Control Division that air quality standards would be met; certification from the Water Quality Control Division for Section 401 compliance and permit for Pollution Discharge Elimination System, certification from the Tram Board; review from the Colorado Department of Natural Resources Division of Wildlife, Colorado Geologic Survey, Colorado Natural Area Office, Water Conservation Board, and Division of Water Resources; approval from Colorado Department of Highways for any state highway redesign or access improvement; clearance from the Colorado State Historic Preservation Office; and various review, zoning, subdivision and permit approvals from Pitkin County and the Town of Snowmass Village.

The Forest Service predicts the draft environmental impact statement will be filed during the winter of 1995/96 and the final environmental impact statement during the summer of 1996.

The Forest Service predicts the draft environmental impact statement will be filed during the winter of 1995/96 and the final environmental impact statement during the summer of 1996.

The Forest Service will seek comments on the draft environmental impact statement for a period of 45 days after its publication. Comments will then be summarized and responded to in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft environmental impact statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 is addressing these points.)

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statement must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the DEIS stage but that are not raised until after completion of the Final EIS may be waived or dismissed by the courts. *City of Anqoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when they can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: May 23, 1995.

Veto J. LaSalle,

Forest Supervisor.

[FR Doc. 95–13112 Filed 5–26–95; 8:45 am]

BILLING CODE 3510-11-M

Rural Housing and Community Development Service

Industry Interface Pilot

AGENCY: Rural Housing and Community Development Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Housing and Community Development Service (RHCDS) announces a pilot test of software to provide an automated interface between RHCDS and borrowers with Multiple Family Housing (MFH) projects to exchange MFH tenant information. The objective of the automated interface is to dramatically reduce reporting burden and streamline internal processing.

DATES: Borrowers who have projects in the pilot servicing offices and wish to participate in the pilot should contact their servicing office after June 1, 1995. Servicing offices participating in the pilot will receive informational packages for distribution by June 1, 1995.

ADDRESSES: RECD servicing offices participating in the pilot are as follows:

RECD State Office, 3003 North Central Avenue, Suite 900, Phoenix, Arizona 85012.

RECD District Office, 4362 North Lake Boulevard, Suite 105, Palm Beach Gardens, Florida 33410.

RECD District Office, 3260 Eagle Park Drive, Suite 101C, Grand Rapids, Michigan 49505.

RECD District Office, 1600 Valley River Drive, Suite 270, Eugene, Oregon 97401.

RECD District Office, PO Box Drawer 1328, 1809 Furgeson Road, Suite E, Mt. Pleasant, Texas 75456.

FOR FURTHER INFORMATION CONTACT: Larry Anderson, Senior Loan Specialist, Multiple Family Housing Servicing and Property Management Division (MHSPM), RHCDS, Room 5321 South Agriculture Building, Washington, DC 20250, telephone (202) 720–1611. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: The pilot test is scheduled to begin during June 1995, and will be conducted in five local servicing offices. The pilot will determine if software developed by RHCDS can effectively transmit tenant data from borrower management sites to the servicing office. No ending date for the pilot has been established at this time.

During a later phase of the pilot, software developed by private vendors will be permitted to transmit information through the pilot system. To assist private software developers who wish to participate in the second phase of the pilot, the RHCDS National Office will provide a copy of the official information transmission format upon request. On June 1, 1995, at 2:00 PM, a meeting with RHCDS and interested software and housing industry representatives will be held in Room 0204, South Agriculture Building, 14th and Independence Avenue, Washington, DC, to discuss the pilot and other automation issues. Any individual or group interested in MFH automation is welcome to attend.

During the pilot period, RHCDS will work closely with borrowers to assure the successful completion of the pilot. Administrative flexibility will be provided to accommodate tenant data submission in a pilot environment. Borrowers interested in participating in the pilot may contact the appropriate servicing office address above for more information.

Dated: May 19, 1995.

Maureen Kennedy,

Acting Administrator, Rural Housing and Community Development Service.

[FR Doc. 95–13162 Filed 5–26–95; 8:45 am]

BILLING CODE 3410-07-M

Rural Utilities Service

Pioneer Electric Cooperative, Inc.; Finding of No Significant Impact

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS) has made a finding of no significant impact (FONSI) with respect to the potential environmental impact related to the construction of a new headquarters facility proposed by Pioneer Electric Cooperative, Inc. (Pioneer), of Ulysses, Kansas. The proposed project will be located on a site 0.5 miles west of the City of Ulysses near the intersection of State Highway 160 and County Road I in Grant County, Kansas.

RUS has concluded that the environmental impacts from the proposed project would not be significant and that the proposed action is not a major Federal action significantly affecting the quality of the human environment. Therefore, the preparation of an environmental impact statement is not required.

FOR FURTHER INFORMATION CONTACT: Lawrence R. Wolfe, Chief, Environmental Compliance Branch, Electric Staff Division, room 1246, Ag Box 1569, South Agriculture Building, RUS, Washington, DC 20250, telephone (202) 720–1784.

SUPPLEMENTARY INFORMATION: RUS, in accordance with its environmental policies and procedures, required that Pioneer prepare a Borrower's Environmental Report (BER) reflecting the potential impacts of the proposed facilities. The BER, which includes input from Federal, State and local agencies and the public, has been adopted as RUS' Environmental Assessment for the project in accordance with 7 CFR 1794.61. RUS has concluded that the BER represents an accurate assessment of the environmental impacts of the project. The proposed project should have no impact on cultural resources, floodplains, wetlands, important farmland, and federally listed or proposed for listing threatened or endangered species or their critical habitat.

Alternatives considered to the project included no action, expansion of Pioneer's existing headquarters facility, and alternative construction sites. RUS has considered these alternatives and concluded that the project as proposed meets the needs of Pioneer to reduce overcrowding at the present facility and provide increased space for equipment storage.

Copies of the BER and FONSI are available for review at RUS at the address provided herein; or can be reviewed at or obtained from the offices of Pioneer, West Highway 160, Ulysses, Kansas 67880, telephone (316) 356–1211, during normal business hours.

Dated: May 22, 1995.

Adam M. Golodner,

Deputy Administrator, Program Operations.

[FR Doc. 95–13163 Filed 5–26–95; 8:45 am]

BILLING CODE 3410–15–M

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of Application.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the application and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: W. Dawn Busby, Director, Office of Export Trading Company Affairs, International Trade Administration, 202–482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. An original and five (5) copies should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1800H, Washington, D.C. 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 95–00003." A summary of the application follows.

Summary of the Application:

Applicant: U.S. Textile Export Co., Inc. d/b/a TEXPORT, Inc., 510 King Street, Suite 415, Alexandria, Virginia 22314, Contact: Charles V. Bremer, Telephone: 202–862–0533,
Application No.: 95–00003
Date Deemed Submitted: May 15, 1995.

Members (in addition to applicant): Arkwright Mills, Spartanburg, SC; Armtex, Inc., Pilot Mountain, NC; Cleyn & Tinker, Inc., Huntingdon, Quebec, Canada; CMI Industries, Inc., Columbia, SC; Copland, Inc., Burlington, NC; Cranston Print Works Company, Cranston, RI; Greenwood Mills, Inc., Greenwood, SC; Hamrick Mills, Gaffney, SC; Inman Mills, Inman, SC; Mayfair Mills, Inc., Arcadia, SC; The New Cherokee Corporation, Spindale, NC; Southern Mills, Inc., Union City, GA; Spartan Mills, Inc., Spartanburg, SC.

U.S. Textile Export Co., Inc. ("TEXPORT Inc."), seeks a Certificate to cover the following specific Export Trade, Export Markets, and Export Trade Activities and Methods of Operations.

Export Trade

1. Products

Broadwoven Fabric, Cotton (SIC 2211); Broadwoven Fabric, Man-made Fiber (SIC 2221); Broadwoven Fabric, Wool (SIC 2231); Narrow woven fabric and other small wares (SIC 1224); Weft Knit Fabric (SIC 2257); Warp Knit Fabric (SIC 2258); Finishers of Broadwoven Fabric of Cotton (SIC 2261); Finishers of Broadwoven Fabrics of Man-made Fiber (SIC 2262); Nonwoven Fabrics (SIC 2297).

2. Export Trade Facilitation Services (as they relate to the Export of Products and Services)

Export Trade Facilitation Services including professional services in the areas of government relations, foreign trade and business protocol, marketing, marketing research, negotiations, shipping, export management, documentation, insurance and financing.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

1. To engage in Export Trade in the Export Markets, as an Export Intermediary, TEXPORT, Inc. may:
   a. Solicit orders from foreign customers.
   b. Arrange for transportation of merchandise sold from Members' plants, warehouses, etc. to cutomers' premises.
   c. Arrange for financing of sales, collect accounts receivable and disburse funds to Members.
   d. Arrange for customs clearance and, where applicable and permitted, assist Members in filing claims for drawback of duties paid on imported raw materials.
   e. Collaborate with one or more of its Members or on its own, to conduct market research in foreign markets; purchase or commission studies and reports of foreign markets; participate in trade shows and missions; secure and provide advertising and promotional services; engage legal, accounting, customs brokerage and other services required to facilitate the applicant's ongoing business activity; and solicit, from private or public sector sources, monetary grants and funding to assist the applicant in the conduct of its business.
   f. Quote prices to potential customers from Members' price lists. Members will agree that selling prices may be negotiated between applicant and customers with Member's prior approval.
   g. Confer, from time to time, with one or more of its Members regarding a potential sale with regard to the quantities, price, delivery schedule and other pertinent matters pertaining thereto. Members may agree to share in a sale or submit joint bids. The applicant and one or more of its Members may refuse to quote prices or solicit or make a sale for reasons they deem fit.
   h. Require that active membership in the American Textile Manufacturers Institute be a condition for membership in TEXTPORT, Inc.
   i. Receive a commission on final sales by the Member(s) for whose account the sale was made, the percentage of such commission to be mutually agreed between applicant and Member(s).
2. It will be agreed that the applicant will not divulge the prices or quantities of goods sold for any Member's account to other Members but reserves the right to divulge the total of sales commissions paid by an individual Member during any fiscal year.

Definitions

1. "Export Intermediary" means a person who acts as a distributor, sales representative, sales or marketing agent, or broker, or who performs similar functions, including providing or arranging for the provision of Export Trade Facilitation Services.
2. "Member" means a person who has a membership in TEXPORT, Inc. and who has been certified as a "Member" within the meaning of Section 325.2(1) of the Regulations.

Dated: May 23, 1995.

W. Dawn Busby,

Director, Office of Export Trading Company Affairs.

[FR Doc. 95–13101 Filed 5–26–95; 8:45 am]

BILLING CODE 3510–DR–P

National Oceanic and Atmospheric Administration

[I.D. 051195B]

North Pacific Fishery Management Council; Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The North Pacific Fishery Management Council (Council) and its advisory bodies will meet during the month of June 1995, according to the schedule published below.

FOR FURTHER INFORMATION CONTACT: North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION:

Scientific and Statistical Committee (SSC)

The SSC will meet on June 8–9, 1995, at the Holiday Inn, 239 W. 4th Avenue, in the Ketchikan Room, Anchorage, AK. The meeting will begin at 8 a.m., and will end at approximately 5 p.m., each day. Its agenda is as follows:

1. Review revised analysis for extension of the inshore/offshore allocations and pollock community development quotas;
2. Review revised analysis for the license limitation program for the Gulf of Alaska and Bering Sea/Aleutian Islands groundfish and crab fisheries;
3. Review of proposed observer specifications for 1996;
4. Review of Scallop Fishery Management Plan and proposed amendments;
5. Review halibut discard mortality rates used for Prohibited Species Cap attainment;
6. Review of trawl closure areas in Bristol Bay to reduce red king crab bycatch; and
7. Review electronic reporting requirements for fishing vessels/processors.

Advisory Panel (AP)

The AP will meet on June 11–15, 1995, at the Grand Aleutian Hotel in Dutch Harbor, AK. The AP meeting will begin at 8 a.m., and will end at approximately 5 p.m, each day. The agenda will be the same as that for the Council (see following section).

North Pacific Fishery Management Council (Council)

The Council will meet on June 13–18, 1995, at the Grand Aleutian Hotel in Dutch Harbor, AK. The meeting will begin at 8 a.m., and will end at approximately 5 p.m., each day. There may be other workgroup and/or committee meetings held during the week. Notice of meetings will be posted. The Council will address, and may take appropriate action on, the following agenda items, time permitting:

1. Reports from NMFS on current status of fisheries and regulations, from the Alaska Department of Fish and Game on domestic fisheries, and from NMFS and the U.S. Coast Guard on enforcement and surveillance activities;
2. Consider final action on groundfish and crab license alternatives for the Gulf of Alaska and Bering Sea/Aleutian Islands groundfish and crab fisheries;
3. Consider final action on the continuation of inshore/offshore allocations and the pollock community development quota program;
4. Review proposed observer specifications for 1996, prioritize observer deployments, discuss potential use of supplemental and voluntary observer programs, and receive a report from the Observer Oversight Committee;
5. Status report on the Sablefish and Halibut Individual Fishery Quota Program and review several proposed amendments;
6. Receive a progress report on the Scallop Fishery Management Plan and take action on an amendment for scallop management measures not now included in the plan;
7. Review halibut discard mortality rates specified for 1995;

8. Review trawl closure areas in Bristol Bay to reduce red king crab bycatch; and

9. Take final action on electronic reporting requirements for fishing vessels/processors.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Helen Allen, telephone: (907) 271–2809, at least 5 working days prior to the meeting date.

Dated: May 23, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–13090 Filed 5–26–95; 8:45 am]

BILLING CODE 3510–22–F

National Telecommunications and Information Administration

Advisory Council on the National Information Infrastructure

AGENCY: National Telecommunications and Information Administration (NTIA).

ACTION: Notice of open meeting.

SUMMARY: The President established the Advisory Council on the National Information Infrastructure (NII) to advise the Secretary of Commerce on matters related to the development of the NII. In addition, the Council shall advise the Secretary on a national strategy for promoting the development of the NII. The NII will result from the integration of hardware, software, and skills that will make it easy and affordable to connect people, through the use of communication and information technology, with each other and with a vast array of services and information resources. Within the Department of Commerce, the National Telecommunications and Information Administration has been designated to provide secretariat services to the Council.

DATES: The NII Advisory Council meeting will be held on Wednesday, June 14, 1995 from 9 a.m. until 4:30 p.m.

ADDRESSES: The NII Advisory Council meeting will take place in the Mumford Room, 6th Floor, at the Library of Congress, 101 Independence Avenue, SE. (Madison Building), Washington, DC 20540–1000.

FOR FURTHER INFORMATION CONTACT: Ms. Celia Nogales (or Ms. Tiffani Burke, alternate), Designated Federal Officer for the Advisory Council on the National Information Infrastructure, National Telecommunications and Information Administration (NTIA); U.S. Department of Commerce, Room 4892; 14th Street and Constitution Avenue, NW.; Washington, DC 20230. Telephone: 202–482–1835; Fax: 202–482–0979; E-mail: nii@ntia.doc.gov.

Authority: Executive Order 12864, signed by President Clinton on September 15, 1993, and amended on December 30, 1993 and June 13, 1994.

SUPPLEMENTARY INFORMATION: The NII Advisory Council will hold a public forum in the Mumford Room on Tuesday, June 13, 1995 from 4 p.m. to 5:30 p.m. The theme of the forum is information superhighway success stories, that is, real life examples of how technology can improve the quality of life in communities across the country. Mr. Derek McGinty will moderate the public forum and presenters include Ms. Annette Kaplan, Union City School District, Mr. Sanyakhu-Sheps Amare, Higher Education Development Fund, and Mr. Patrick O'Brien, Alexandria Public Library.

Agenda

1. *Opening Remarks by the Co-Chairs (Delano Lewis, Ed McCracken)*
2. *Government Information Service Principles*
3. *Public Safety Principles*
4. *Remarks by Secretary of Education Richard Riley*
5. *KickStart Review and Progress*
6. *Public Discussion, Questions and Answers*
7. *Next Meeting Date and Agenda Items*

Public Participation

The meeting will be open to the public, with limited seating available on a first-come, first-served basis. Any member of the public requiring special services, such as sign language interpretation, should contact Tiffani Burke at 202–482–1835.

Any member of the public may submit written comments concerning the Council's affairs at any time before or after the meetings. Comments should be submitted through electronic mail to nii@ntia.doc.gov or to the Designated Federal Officer at the mailing address listed above.

Within thirty (30) days following the meeting, copies of the minutes of the Advisory Council meeting may be obtained through Bulletin Board Services at 202–501–1920, 202–482–1199, over the Internet at iitf.doc.gov, or from the U.S. Department of Commerce, National Telecommunications and Information Administration, Room 4892, 14th Street and Constitution Avenue, NW.; Washington, DC 20230, Telephone 202–482–1835.

Larry Irving,

Assistant Secretary for Communications and Information.

[FR Doc. 95–13069 Filed 5–26–95; 8:45 am]

BILLING CODE 3510–60–P

THE COMMISSION OF FINE ARTS

Notice of Meeting

The Commission of Fine Arts' next meeting is scheduled for 15 June 1995 at 10 a.m. in the Commission's offices in the Pension Building, Suite 312, Judiciary Square, 441 F Street NW., Washington, DC 20001 to discuss various projects affecting the appearance of Washington, DC, including buildings, memorials, parks, etc.; also matters of design referred by other agencies of the government.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, 411 F Street, NW., Suite 312, Washington, DC 20001 or call 202–504–2200.

Dated in Washington, DC 19 May 1995.

Charles H. Atherton,

Secretary.

[FR Doc. 95–13055 Filed 5–26–95; 8:45 am]

BILLING CODE 6330–01–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Guatemala

May 23, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: May 31, 1995.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being increased for carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Also see 60 FR 14931, published on March 21, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 23, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on March 15, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Guatemala and exported during the twelve-month period which began on January 1, 1995 and extends through December 31, 1995.

Effective on May 31, 1995, you are directed to increase the limits for the following categories, as provided under the provisions of the current bilateral agreement, as amended, between the Governments of the United States and Guatemala:

Category	Adjusted twelve-month limit [1]
340/640	1,122,129 dozen.
347/348	1,308,776 dozen.
351/651	252,969 dozen.
448	47,531 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

The guaranteed access levels remain unchanged.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–13100 Filed 5–26–95; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

Membership of the Commission's Performance Review Board

AGENCY: Commodity Futures Trading Commission.

ACTION: Membership change of performance review board.

SUMMARY: In accordance with the Office of Personnel Management guidance under the Civil Service Reform Act of 1978, notice is hereby given that the following employees will serve as members of the Commission's Performance Review Board.

Chairperson: Susan Baumann, Executive Director.

Members: Stephen Luparello, Executive Assistant to the Chairman, Office of the Chairman; Andrea Corcoran, Director, Division of Trading and Markets; Elisse Water, General Counsel, Office of General Counsel.

DATES: This action was effective May 23rd, 1995.

ADDRESSES: Commodity Futures Trading Commission, Office of Personnel, Room 202, 2033 K Street NW., Washington, DC 20581.

FOR FURTHER INFORMATION CONTACT: Jayne Seidman, Director, Office of Personnel, Commodity Futures Trading Commission, Room 202, 2033 K Street NW., Washington, DC 20581, (202) 254–3275.

SUPPLEMENTARY INFORMATION: This action which changes the membership of the Board supersedes the previously published **Federal Register** Notice, June 21, 1994.

Issued in Washington, DC on May 23, 1995.

Jean A. Webb,

Secretary to the Commission.

[FR Doc. 95–13119 Filed 5–26–95; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Homeless Assistance Act; Base Closure and Realignment

AGENCY: Department of Defense Economic Security.

ACTION: Notice.

SUMMARY: This notice provides points of contact and addresses for the Local Redevelopment Authorities (LRAs) for the closing and realigning bases listed below. They have elected to be covered under the "Base Closure Community Redevelopment and Homeless Assistance Act of 1994" (Homeless Assistance Act). All other closing or realigning installations will be screened in accordance with the "Stewart B. McKinney Homeless Assistance Act" (McKinney Act). Representatives of state and local governments and other parties interested in using base closure properties in this Notice for the needs of the homeless should contact the person or organization listed.

EFFECTIVE DATE: May 30, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Hertzfeld, Office of the Assistant Secretary of Defense for Economic Security, Pentagon, Room 1D760, Washington, DC 20301–4000, (703) 695–1470.

SUPPLEMENTARY INFORMATION: The Homeless Assistance Act exempts military installations approved for closure or realignment after the date of enactment of the Homeless Assistance Act from compliance with section 501 of the McKinney Act. Further, the Homeless Assistance Act affords LRAs for installations approved for closure pursuant to earlier base closure rounds the opportunity to elect the new procedures for addressing homeless needs, rather than using the McKinney Act procedures. Whereas the McKinney Act gives priority use of underutilized, excess, or surplus Federal real property to homeless assistance providers independent of other reuse plans for property, the Homeless Assistance Act establishes procedures by which local homeless assistance needs are incorporated into the overall reuse plan for the closing installation. Under the new law, LRAs are responsible for developing a reuse plan that incorporates homeless assistance; the plan subsequently must be approved by the Department of Housing and Urban Development to ensure that the needs of the homeless are adequately considered.

Base Realignment and Closure Communities Electing New Planning Process U.S. Army

CALIFORNIA

Novato

Hamilton Army Airfield

Hamilton Reuse Planning Authority, 900 Sherman Avenue, Novato, CA 94945, Mr. Ken H. Bell

COLORADO

Pueblo

Pueblo Depot Activity

Pueblo Depot Activity Development Authority, 1120 Court Street, Room 102, Pueblo, CO 81003–2819, Mr. Charles J. Finley

MASSACHUSETTS

Ayer

Fort Devens

Massachusetts Government Land Bank, One Court Street, Suite 200, Boston, MA 02108, Mr. Timothy A. Bassett

NEW JERSEY

East Hanover

Nike Missile Battery 80

Township of East Hanover, 411 Ridgedale Avenue, East Hanover, NJ 07936, Honorable Lawrence J. Colasurdo, Mayor

Wall

Camp Evans/Fort Monmouth

Marconi Park Complex Advisory Committee, Township of Wall, 2700 Allaire Road, P.O. Box 1166, Wall, NJ 07719–1166, Mr. Joseph L. Verruni

NEW YORK

Brooklyn

Manhattan Beach

Manhattan Beach Community Group, Inc., 174 Dover Street, Brooklyn, NY 11235, Mr. Oliver Klapper

OREGON

Umatilla Army Depot

Installation is covered under Pub. L. 103–421 Point of contact and organization will be provided at a later date.

PENNSYLVANIA

Philadelphia

Defense Personnel Support Center

City of Philadelphia, Department of Commerce, 1600 Arch Street, 13th Floor, Philadelphia, PA 19103, Ms. Terry Gillen

VIRGINIA

Warrenton

Vint Hill Farms Station

Vint Hill Economic Adjustment Task Force, 26B John Marshall Street, Warrenton, VA 22186, Mr. Owen Bludau

CALIFORNIA

Alameda

Naval Air Station Alameda/Naval Aviation Depot

Alameda Reuse and Redevelopment Authority, Naval Air Station, Post Director, Bldg 90, Alameda, CA 94501–5012, Mr. Dave Louk

Long Beach

Naval Station Long Beach

City of Long Beach, Office of the City Manager, 333 West Ocean Boulevard, Long Beach, CA 90802, Mr. James C. Hankla

Los Angeles

Naval Station Long Beach (Los Angeles Property)

City of Los Angeles, City Clerk, Room 395, City Hall, Los Angeles, CA 90012, Mr. Elias Martinez

Novato, Defense Housing Facility, Hamilton Field

Hamilton Reuse Planning Authority, 900 Sherman Avenue, Novato, CA 94945, Mr. Ken H. Bell

Oakland

Naval Hospital Oakland

Oakland Base Reuse Authority, 530 Water Street, 5th Floor, Oakland, CA 94607, Mr. Barry Cromardie

Orange County

Marine Corps Air Station El Toro

Chairman of the Board of Supervisors, County of Orange, 10 Civic Center Plaza, Santa Ana, CA 92701–3330, Mr. Gaddi H. Vasquez

Port Hueneme

Naval Civil Engineering Laboratory Port Hueneme

City of Port Hueneme, 250 North Venture Road, Port Hueneme, CA 93041, Mr. Thomas E. Figg

San Diego

Naval Training Center San Diego

City of San Diego, 1200 Third Avenue, Suite 1700, San Diego, CA 92101, Mr. Michael Stepner

San Francisco

Naval Station Treasure Island

San Francisco Redevelopment Authority, 770 Golden Gate Avenue, San Francisco, CA 94102, Mr. Larry Florin

Tustin

Marine Corps Air Station Tustin

City of Tustin, Mayor, 300 Centennial Way, Tustin, CA 92681–3539, Honorable Thomas R. Saltarelli

Vallejo

Naval Ship Yard Mare Island

City of Vallejo, 555 Santa Clara Street, Vallejo, CA 94590, Mr. Walter Graham

FLORIDA

Miami

Naval Reserve Center Coconut Grove

City of Miami, City Manager, P.O. Box 330700, Miami, FL 33233–0708, Mr. Cesar H. Odio

Orlando

Naval Training Center Orlando

NTC Reuse Commission of the City of Orlando, Planning and Development Department, 400 South Orange Avenue, Orlando, FL 32801–3302, Mr. Herbert E. Smetheram

GUAM

Agana

Naval Air Station Agana

Komitea Para Tiyan (NAS Agana Reuse Committee), Bureau of Planning, Government of Guam, Agana, Guam 969910, Mr. Frank Toves

HAWAII

Honolulu

Naval Air Station Barbers Point

Barbers Point Naval Air Station Redevelopment Commission, Office of State Planning, PO Box 3540, Honolulu, HI 96811–3540, Mr. Paul O'Connor

MASSACHUSETTS

New Bedford

Naval Reserve Center New Bedford

City of New Bedford, Mayor, 133 William Street, New Bedford, MA 02740, Honorable Rosemary S. Tierney

Pittsfield

Naval Reserve Center Pittsfield

City of Pittsfield, Mayor, City Hall, 70 Allen Street, Pittsfield, MA 01201, Honorable Edward M. Reilly

Quincy

Naval Reserve Center Quincy

City of Quincy, Mayor, Quincy City Hall, 1305 Hancock St., Quincy, MA 02169, Honorable James A. Sheets

NEW JERSEY

Perth Amboy

Naval Reserve Center Perth Amboy

City of Perth Amboy, Mayor, City Hall, Perth Amboy, NJ 08861, Honorable Joseph Vas

Ewing

Naval Air Warfare Center Aircraft Division Trenton

Ewing Township Local Reuse Committee, Township of Ewing, Ewing Municipal Complex, 2 Municipal Drive, Ewing, NJ 08628, Mr. Fred Walters

NEW YORK

Jamestown

Naval Reserve Center Jamestown

City of Jamestown Mayor, Municipal Building, Jamestown, NY 14701, Honorable Richard A. Kimball, Jr.

New York

Naval Station New York (Brooklyn)

City of New York, Office of the Mayor, Planning and Community Relations, New York, NY 10007, Deputy Mayor Fran Reiter

Naval Station New York (Staten Island)

City of New York, NYC Economic Development Corporation, 110 Williams Street, New York, NY 10038, Mr. Christopher O. Ward

PENNSYLVANIA

Philadelphia

Naval Base Philadelphia

City of Philadelphia, Office of Defense Conversion, 1600 Arch Street, 13th Floor, Philadelphia, PA 19103, Ms. Terry Gillen

Warminster

Naval Air Warfare Center Aviation Division Warminister

Bucks County NAWC Economic Adjustment Committee, 622 Mary Street, Suite 1A, Warminister, PA 18974, Ms. Sheila Bass

VIRGINIA

Staunton

Naval Reserve Center Staunton

City of Staunton, City Manager, P.O. Box 58, Staunton, VA 22402–0058, Bernard J. Murphy, Jr.

Suffolk

Naval Radio Test Facility Driver Suffolk

City of Suffolk, P.O. Box 1858, 428 West Washington Street, Suffolk, VA 23439, Mr. Robert Baldwin

TEXAS

Dallas

Naval Air Station Dallas

City of Duncanville, Office of the City Manager, P.O. Box 38020, Duncanville, TX 75138–0280, Mr. Larry Shaw

WASHINGTON

Seattle

Naval Station Puget Sound (Sand Point)

City of Seattle, Intergovernmental Relations, 1200 Municipal Building, 600 Fourth Avenue, Seattle, WA 98104–1873, Ms. Linda Cannon.

CALIFORNIA

Morena Valley

March Air Force Base

March Joint Powers Authority, P.O. Box 7480, Morena Valley, CA 92552, Mr. Stephen A. Albright

San Bernardino

Norton Air Force Base

Inland Valley Development Authority, 201 North E Street, Suite 203, San Bernardino, CA 92401–1507, Mr. William Bopf

Victorville

George Air Force Base

Victor Valley Economic Development Authority, 13246 Eagle Street, Victorville, CA 92394, Mr. Ken Hobbs

MICHIGAN

Oscoda

Wurtsmith Air Force Base

Charter Township of Oscoda, 110 South State Street, Oscoda, MI 48750, Mr. Carl Sachs

NEW HAMPSHIRE

Portsmouth

Pease Air Force Base

Pease Development Authority, Suite 1, 601 Spaulding Turnpike, Portsmouth, NH 03801–2833, Mr. L. Eugene Schneider

OHIO

Heath

Newark Air Force Base

Newark-Heath Air Force Base Reuse Commission, City of Heath, 1287 Hebron, Heath, OH 43056, Mr. Wallace L. Horton

TEXAS

Dallas

Carswell AFB

Carswell Redevelopment Authority, Executive Director, P.O. Box 27136, Carswell AFB, TX 76127, Mr. Derrick Curtis.

Dated: May 24, 1995.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–13178 Filed 5–26–95; 8:45 am]

BILLING CODE 5000–04–M

Meeting of the President's Advisory Board on Arms Proliferation Policy

AGENCY: Defense Security Assistance Agency, Department of Defense.

ACTION: Notice.

SUMMARY: Notice is hereby given of a meeting of the President's Advisory Board on Arms Proliferation Policy. The Advisory Board was formed under the authority of section 1601 of the National Defense Authorization Act, Fiscal Year 1994 (Public Law 103–160), and Executive Order 12946, January 20, 1995. The purpose of the meeting is to assist the Board in ensuring that all view points are taken into consideration The meeting will be open to the public.

DATES: June 12, 1995.

ADDRESSES: The RAND Corporation, 2100 M Street NW, Washington, DC 20037–1270.

FOR FURTHER INFORMATION CONTACT: Ms. Deanna Powers, Defense Security Assistance Agency, Crystal Gateway North, 1111 Jefferson Davis Highway, Suite 303, Arlington, VA 22202–4306; telephone (703) 604–6617; or contact RAND, Ms. Kathy Webb, at the above address; telephone (202) 296–5000, ext 5250.

SUPPLEMENTARY INFORMATION: The meeting will be held from 9:00 am until 12:00 pm. Several organizations and individuals have been asked by the Board to make presentations. Written comments received before the meeting will be considered by the Board. Address such comments to the Board in care of RAND, at the above address. Seating is limited.

Dated: May 23, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–13036 Filed 5–26–95; 8:45 am]

BILLING CODE 5000–04–M

Meeting of the Military Health Care Advisory Committee

AGENCY: Department of Defense, Military Health Care Advisory Committee.

ACTION: Notice.

SUMMARY: Notice is hereby given of the forthcoming meeting of the Military Health Care Advisory Committee. This is the first meeting of the new Committee. The purpose of the meeting is to advise the Secretary of Defense, the Deputy Secretary of Defense, the Under Secretary of Defense (Personnel and Readiness), the Assistant Secretary of Defense (Health Affairs), and the Military Departments with respect to problems and opportunities and potential solutions and strategies for the military health care system. Meeting sessions will be held daily and will be open to the public.

DATES: June 13–14, 1995.

ADDRESSES: The Uniformed Services University of the Health Sciences, 4301 Jones Bridge Road, Bethesda, Maryland, unless otherwise published.

FOR FURTHER INFORMATION CONTACT: Major Calvin Williams, Acting Special Assistant to the Assistant Secretary of Defense (Health Affairs), Office of the Assistant Secretary of Defense (Health affairs), Room 3E346, The Pentagon, Washington, DC 20301–1200; telephone (703) 697–2111.

SUPPLEMENTARY INFORMATION: Business sessions are scheduled between 9:00 a.m. and 5:30 p.m. Tuesday, June 13, and between 9:00 a.m. and 11:45 a.m. on Wednesday, June 14, 1995.

Dated: May 23, 1995.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense

[FR Doc. 95–13040 Filed 5–26–95; 8:45 am]

BILLING CODE 5000–04–M

Defense Science Board 1995 Summer Study Task Force on Technology Investments for 21st Century Military Superiority, Industrial Base Team; Notice of Advisory Committee Meetings

SUMMARY: The Defense Science Board 1995 Summer Study Task Force on Technology Investments for 21st Century Military Superiority, Industrial Base Team will meet in closed session on June 5–6, 1995 at Science Applications International Corporation, McLean, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will focus on those R&D investments that must be made now so as to assure a technology base in the year 2000 capable of providing U.S. military superiority in the 21st century.

In accordance with Section 10(d) of the Federal Advisory Committee Act, P.L. No. 92–463, as amended (5 U.S.C. App. II, (1988)), it has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. § 552b(c)(1) (1988), and that accordingly this meeting will be closed to the public.

Dated: May 23, 1995.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–13035 Filed 5–26–95; 8:45 am]

BILLING CODE 5000–04–M

Defense Science Board 1995 Summer Study Task Force on Technology Investments for 21st Century Military Superiority, Hostile Capabilities Team; Notice of Advisory Committee Meetings

SUMMARY: The Defense Science Board 1995 Summer Study Task Force on Technology Investments for 21st Century Military Superiority, Hostile Capabilities Team will meet in closed session on June 6–7, June 21–22, and July 12–13, 1995 at Science Applications International Corporation, 1525 Wilson Boulevard, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will focus on those R&D investments that must be made now so as to assure a technology base in the year 2000 capable of providing U.S. military superiority in the 21st century.

In accordance with Section 10(d) of the Federal Advisory Committee Act, P.L. No. 92–463, as amended (5 U.S.C. App. II, (1988)), it has been determined that these DSB Task Force meetings concern matters listed in 5 U.S.C. § 552b(c)(1) (1988), and that accordingly these meetings will be closed to the public.

Dated: May 23, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–13037 Filed 5–26–95; 8:45 am]

BILLING CODE 5000–04–M

Defense Science Board; Notice of Advisory Committee Meetings

SUMMARY: The Defense Science Board 1995 Summer Study Task Force on Technology Investments for 21st Century Military, Technology Team will meet in closed session on June 1–2, 1995 at Strategic Analysis, Inc., 4001 North Fairfax Drive, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition and Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At that meeting time the Task Force will focus on those R&D investment that must be made now so as to assure a technology base in the year 2000 capable of providing U.S. military superiority in the 21st century.

In accordance with Section 10(d) of the Federal Advisory Committee Act, P.L. No. 92–463, as amended (5 U.S.C. App. II, (1998)), it has been determined that this DSB meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1998), and that accordingly this meeting will be closed to the public.

Dated: Dated: May 23, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–13038 Filed 5–26–95; 8:45 am]

BILLING CODE 5000–04–M

Defense Science Board/Defense Policy Board Task Force on Theater Missile Defense (TMD); Notice of Advisory Committee Meeting

SUMMARY: The Defense Science Board/Defense Policy Board Task Force on Theater Missile Defense (TMD) will meet in closed session on June 12–13, 1995 at Science Applications International Corporation (SAIC), McLean, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will review the purposes of the U.S. theater missile defense effort, including the nature of the threat (types and quantities of missiles and payloads); how might it evolve; the degree of defense we seek; what we wish to defend; under what circumstances; and to what levels.

In accordance with Section 10(d) of the Federal Advisory Committee Act, P.L. No. 92–463, as amended (5 U.S.C. App. II, (1988)), it has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. § 552b(c)(1) (1988), and that accordingly this meeting will be closed to the public.

Dated: May 23, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–13039 Filed 5–26–95; 8:45 am]

BILLING CODE 5000–04–M

Defense Science Board Task Force on Breakthrough Technologies; Notice of Advisory Committee Meeting

SUMMARY: The Defense Science Board Task Force on Breakthrough Technologies will meet in closed session on June 8, 1995 at the New York Academy of Sciences, New York, New York.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will examine a cross section of scientific areas with an eye to identifying potentially high payoff research that should be pursued by the Advanced Research Projects Agency (ARPA) directly, or in collaboration with other elements of the Department of Defense.

In accordance with Section 10(d) of the Federal Advisory Committee Act, P.L. No. 92–463, as amended (5 U.S.C. App. II, (1988)), it has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. 552b(c) (1) (1988), and that accordingly this meeting will be closed to the public.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–13042 Filed 5–26–94; 8:45 am]

BILLING CODE 5000–04–M

Department of the Navy

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Naval Research Advisory Committee Panel on Reduced Manning will meet June 6-7, 1995. The meeting will be held at the Boeing Company, Seattle, Washington. The meeting will commence at 8:45 a.m. and terminate at 4:30 p.m. on June 6; and commence at 9:30 a.m. and terminate at 2 p.m. on June 7, 1995. All sessions will be closed to the public.

The purpose of this meeting will be to provide the Navy with an assessment of the force structure and ship concepts which would require a minimum manning level with a goal of 25% reduction of current manning. The agenda will include briefings, discussions, demonstrations, and technical examination of information on the Boeing Company and Department of the Navy initiatives related to simulation based design, life cycle cost estimation, engineering for reduced operating and maintenance costs, and relevant technology developments and issues. Enclosure (1) is a tentative meeting agenda. These technical briefings, discussions, and demonstrations will contain sensitive company proprietary information and classified information and that is specifically authorized under criteria established by Executive Order to be kept secret in the interest of national defense and are in fact properly classified pursuant to such Executive Order. The sensitive compant proprietary information and classified and non-classified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting.

Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c) (1) and (4) of title 5, United States Code.

This Notice is being published late because of administrative delays which constitute an exceptional circumstance, not allowing Notice to be published in the **Federal Register** at least 15 days before the date of the meeting.

For further information concerning this meeting, contact: Ms. Diane Mason-Muir, Office of Naval Research, Naval Research Advisory Committee, 800 North Quincy Street, Arlington, VA 22217-5660, Phone: (703) 696-5660.

Dated: May 23, 1995.

L. R. McNees,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 95–13128 Filed 5–26–95; 8:45 am]

BILLING CODE 3810–FF–F

DEPARTMENT OF EDUCATION

[CFDA No.: 84.160A]

Training of Interpreters for Individuals Who Are Deaf and Individuals Who Are Deaf-Blind; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1995

Purpose of Program: The purpose of the Training of Interpreters for Individuals Who Are Deaf and Individuals Who Are Deaf-Blind program is to establish interpreter training programs or to assist ongoing programs to train a sufficient number of skilled interpreters to meet the communication needs of individuals who are deaf and individuals who are deaf-blind.

Eligible Applicants: Public and private nonprofit agencies and organizations, including institutions of higher education, are eligible for assistance under this program. Eligibility for this particular competition is restricted to those entities in Rehabilitation Services Administration (RSA) Region IV, which includes the following States: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee.

SUPPLEMENTARY INFORMATION: On December 5, 1994, the Secretary published in the **Federal Register** a notice inviting applications under the Training of Interpreters for Individuals Who Are Deaf and Individuals Who Are Deaf-Blind program (59 FR 62511). The intent was to provide an award in each of the 10 RSA regions.

Two applications were received from RSA Region IV, and neither application was found acceptable. The Secretary believes that, by reopening the competition in this region, improved applications will be submitted. Also, the unsuccessful applicants from the December competition have been provided with peer review comments so that they may strengthen their proposals and resubmit them for consideration with other applications that may be submitted in response to this notice.

Deadline for Transmittal of Applications: July 14, 1995.

Deadline for Intergovernmental Review: September 13, 1995.

Applications Available: May 30, 1995.

Available Funds: $160,000.

Estimated Range of Award: $120,000–$160,000.

Estimated Size of Award: $140,000.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR parts 385 and 396.

Project Budget: The Department plans to have a project directors' meeting for this program this fiscal year and expects to have annual meetings in future years. The Department, therefore, recommends that travel costs to attend an annual meeting be included in the application budget for the project period.

For Applications or Information Contact: George Kosovich, U.S. Department of Education, 600 Independence Avenue, SW., Room 3221, Switzer Building, Washington, DC 20202–2736. Telephone: (202) 205–9698. Individuals who use a telecommunication device for the deaf (TDD) may call the TDD number at (202) 205–8919.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 29 U.S.C. 771a(f).

Dated: May 23, 1995.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 95–13065 Filed 5–26–95; 8:45 am]

BILLING CODE 4000–01–P

National Assessment Governing Board; Meetings

AGENCY: National Assessment Governing Board; Department of Education.

ACTION: Notice of closed teleconference meetings.

SUMMARY: This notice sets forth the schedule and proposed agenda of forthcoming closed teleconference meetings of the Executive and the Subject Area #2 committees of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act.

DATES: June 12, 1995.

TIME: 11:00 a.m. to 11:30 a.m., Joint Meeting, Executive Committee and Subject Area Committee #2, (closed); 11:30 a.m. to 1:00 p.m., Executive Committee (closed).

LOCATION: 800 North Capitol Street, N.W., Suite 825, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Mary Ann Wilmer, Operations Officer, National Assessment Governing Board, Suite 825, 800 North Capitol Street, N.W., Washington, D.C., 20002–4233, Telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 412 of the National Education Statistics Act of 1994 (Title IV of the Improving America's Schools Act of 1994(, (Pub. L. 103–382).

The Board is established to formulate policy guidelines for the National Assessment of Educational Progress. The Board is responsible for selecting subject areas to be assessed, developing assessment objectives, identifying appropriate achievement goals for each grade and subject tested, and establishing standards and procedures for interstate and national comparisons.

On June 12, the Executive Committee and the Subject Area Committee #2 will meet in a joint teleconference from 11:00 a.m. until 11:30 a.m. The purpose of this meeting is to decide on whether to conduct the grade 12 arts field test in 1996. This meeting will be closed to the public to permit the committees to review and discuss confidential government cost estimates related to the procurement of the arts field test. The discussion of this information will involve proprietary information about funding levels for proposed procurements and would be likely to significantly frustrate implementation of a proposed agency action if considered in open session. Such matters are protected by exemption (9(B)) of Section 552(b(c) of Title 5 U.S.C.

At the conclusion of the joint meeting, the Executive Committee will continue to meet in closed session to review and act on two agenda items: (1) The performance of National Assessment Governing Board excepted-appointment staff in their respective positions, and (2) confidential government cost-estimate issues related to the procurement of future NAEP assessments.

The reviews and subsequent personnel actions of the excepted-appointment staff will relate solely to the internal rules and practices of an agency and disclose information of a personal nature, which disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session. Such matters are protected by exemptions (2) and (6) of Section 552b(c) of Title 5 U.S.C.

The committee's deliberations regarding the government cost-estimates for future NAEP assessments will involve discussions of proprietary information about funding levels for proposed procurements. Premature public disclosure of this information would affect private decisions by third parties and damage the financial interests of the NAEP program. The premature disclosure of this information would be likely to significantly frustrate implementation of a proposed agency action if considered in open session. Such matters are protected by exemption (9(B)) of Section 552b(c) of Title 5 U.S.C.

A summary of the activities and related matters, which are informative to the public and consistent with the policy of Section 5 U.S.C. 552b, will be available to the public within 14 days after the meetings. Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite 825, 800 North Capitol Street, N.W., Washington, D.C., from 8:30 a.m. to 5:00 p.m.

Dated: May 23, 1995.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 95–13054 Filed 5–26–95; 8:45 am]

BILLING CODE 4000–01–M

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board, Education.

ACTION: Amendment to notice of a teleconference meeting.

SUMMARY: This amends the notice of a meeting of the Achievement Levels Committee of the National Assessment Governing Board published on May 23, 1995 in 60 FR 27279. The date and time of the June 12, 1995 teleconference meeting of the Achievement Levels Committee of the National Assessment Governing Board has been changed. The Committee will meet on June 15, 1995, between the hours of 12 noon to 2 p.m., (et). The meeting location is unchanged.

DATES: June 15, 1995.

TIME: 12 Noon to 2 p.m. (et).

LOCATION: 800 North Capitol Street, NW., Suite 825, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mary Ann Wilmer, Operations Officer, National Assessment Governing Board, Suite 825, 800 North Capitol Street, NW., Washington, DC 20002–4233. Telephone—202–357–6938.

Dated: May 24, 1995.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 95–13169 Filed 5–26–95; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG95–52–000, et al.]

HIE OPCO S.A., et al.; Electric Rate and Corporate Regulation Filings

May 22, 1995.

Take notice that the following filings have been made with the Commission:

1. HIE OPCO S.A.

[Docket No. EG95–52–000]

On May 17, 1995, HIE OPCO S.A. ("HIE OPCO"), 611 Walker, 11th Floor, Houston, Texas 77002, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

HIE OPCO intends to operate a natural gas-fired electric generation facility with a maximum net power production capacity of approximately 165 MW to be located in the vicinity of San Nicolas, Argentina.

Comment date: June 14, 1995, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. HIE Argener S.A.

[Docket No. EG95–53–000]

On May 17, 1995, HIE Argener S.A. ("HIE Argener"), 611 Walker, 11th Floor, Houston, Texas 77002, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

HIE Argener intends to own a natural gas-fired electric generation facility with a maximum net power production capacity of approximately 165 MW to be located in the vicinity of San Nicolas, Argentina.

Comment date: June 14, 1995, in accordance with Standard Paragraph E at the end of this notice. The Commission will limits consideration of comments to those that concern the adequacy or accuracy of the application.

3. DC Tie, Inc.

[Docket No. ER91–435–015]

Take notice that on April 28, 1995, DC Tie, Inc. tendered for filing certain information as required by the Commission's order dated July 11, 1991. Copies of informational filing are on file with the Commission and are available for public inspection.

4. Enron Power Marketing, Inc.

[Docket No. ER94–24–008]

Take notice that on May 1, 1995, Enron Power Marketing, Inc. tendered for filing certain information as required by the Commission's order dated December 2, 1993. Copies of informational filing are on file with the Commission and are available for public inspection.

5. CMEX Energy, Inc.

[Docket No. ER94–1328–003]

Take notice that on April 24, 1995, CMEX Energy, Inc. tendered for filing certain information as required by the Commission's letter order dated July 12, 1994. Copies of informational filing are on file with the Commission and are available for public inspection.

6. ACME Power Marketing, Inc.

[Docket No. ER94–1530–002]

Take notice that on April 28, 1995, ACME Power Marketing, Inc. tendered for filing certain information as required by the Commission's order dated October 18, 1994. Copies of informational filing are on file with the Commission and are available for public inspection.

7. Engelhard Power Marketing Inc.

[Docket No. ER94–1690–003]

Take notice that on April 26, 1995, Engelhard Power Marketing, Inc. tendered for filing certain information as required by the Commission's order dated December 29, 1994. Copies of informational filing are on file with the Commission and are available for public inspection.

8. Power Exchange Corporation

[Docket No. ER95–72–001]

Take notice that on May 9, 1995, Power Exchange Corporation (PXC) filed certain information as required by the Commission's February 1, 1995 order. Copies of PXC's informational filing are on file with the Commission and are available for public inspection.

9. National Power Management Co.

[Docket No. ER95–192–001]

Take notice that on May 8, 1995, National Power Management Company tendered for filing certain information as required by the Commission's letter order. Copies of informational filing are on file with the Commission and are available for public inspection.

10. Howard Energy Company, Inc.

[Docket No. ER95–252–001]

Take notice that on May l, 1995, Howard Energy Company, Inc. tendered for filing certain information as required by the Commission's order dated February 24, 1995. Copies of informational filing are on file with the Commission and are available for public inspection.

11. Stand Energy Corp.

[Docket No. ER95–362–001]

Take notice that on May 10, 1995, Stand Energy Corporation, tendered for filing certain information as required by the Commission's letter order dated February 24, 1995. Copies of informational filing are on file with the Commission and are available for public inspection.

12. Rig Gas Inc.

[Docket No. ER95–480–001]

Take notice that on April 24, 1995, Rig Gas Inc. (Rig) filed certain information as required by the Commission's March 16, 1995 letter order in docket No. ER95–480–000. Copies of Rig's informational filing are on file with the Commission and are available for public inspection.

13. Western Resources, Inc.

[Docket No. ER95–615–000]

Take notice that on May 3, 1995, Western Resources, Inc. (Western Resources) tendered for filing an amendment to its February 16, 1995, filing in this docket. The filing modifies a proposed Participation Power Agreement between Western Resources and The Empire District Electric Company (EDE).

14. Pennsylvania Power & Light Co.

[Docket No. ER95–782–000]

Take notice that on May 11, 1995, Pennsylvania Power & Light Company (PP&L), tendered for filing with the Federal Energy Regulatory Commission supplemental material relating to the above docket.

15. Wisconsin Power & Light Co.

[Docket No. ER95–861–000]

Take notice that on May 3, 1995, Wisconsin Power & Light Company (WP&L) tendered for filing an amendment to its filing dated April 3, 1995 relating to a revised Wholesale Power Agreement dated January 18, 1995, between the Village of Mazomanie and WP&L. WP&L states that this amendment corrects the April 3 filing with respect to two facts included erroneously in that filing. Those facts, and the amendments to them, are as follows:

The April 3 filing referred to the date of the previous agreement between the parties as December 4, 1980—the actual date of the previous agreement between the parties was December 4, 1990—and the April 3 filing is amended to reflect the correct date; and

The April 3 filing referred to the FERC Rate Schedule Number 140—the correct FERC Rate Schedule Number is 162 which superseded 140—and the April 3 filing is amended to refer to FERC Rate Schedule 162.

All other factors with respect to the April 3 filing are correct. WP&L states that copies of the amended Wholesale Power Agreement and this filing have been provided to the Village of Mazomanie and the Public Service Commission of Wisconsin.

Comment date: June 2, 1995, in accordance with Standard Paragraph E at the end of this notice.

16. Rainbow Energy Marketing Corp.

[Docket No. ER95–918–000]

Take notice that on May 8, 1995, Rainbow Energy Marketing Corporation (REMC) filed a Withdrawal of a service agreement between Rainbow Energy Marketing Corporation and the Rochester Gas and Electric Corporation.

Rainbow Energy Marketing Corporation hereby wishes to withdraw the service agreement between Rainbow Energy Marketing Corporation and the

Rochester Gas and Electric Corporation which was filed with FERC Docket No. ER95–918. This request is being made because REMC was not required to file the agreement.

Copies of this filing have been sent to Rochester Gas and Electric Corporation and the New York Public Service Commission.

Comment date: June 5, 1995, in accordance with Standard Paragraph E at the end of this notice.

17. Rainbow Energy Marketing Corp.

[Docket No. ER95–921–000]

Take notice that on May 8, 1995, Rainbow Energy Marketing Corporation (REMC) filed a Withdrawal of a service agreement between Rainbow Energy Marketing Corporation and the City of Anaheim.

Rainbow Energy Marketing Corporation hereby wishes to withdraw the service agreement between Rainbow Energy Marketing Corporation and the City of Anaheim which was filed with FERC Docket No. ER95–921. This request is being made because REMC was not required to file the agreement.

Copies of this filing have been sent to the City of Anaheim and the California Public Utility Commission.

Comment date: June 5, 1995, in accordance with Standard Paragraph E at the end of this notice.

18. Rainbow Energy Marketing Corp.

[Docket No. ER95–922–000]

Take notice that on May 8, 1995, Rainbow Energy Marketing Corporation (REMC) filed a Withdrawal of a service agreement between Rainbow Energy Marketing Corporation and Southern Municipal Power Agency.

Rainbow Energy Marketing Corporation hereby wishes to withdraw the service agreement between Rainbow Energy Marketing Corporation and Southern Minnesota Municipal Power Agency which was filed with FERC Docket No. ER95–922. This request is being made because REMC was not required to file the agreement.

Copies of this filing have been sent to Southern Minnesota Municipal Power Agency and the Minnesota Public Service Commission.

Comment date: June 5, 1995, in accordance with Standard Paragraph E at the end of this notice.

19. Rainbow Energy Marketing Corp.

[Docket No. ER95–923–000]

Take notice that on May 2, 1995, Rainbow Energy Marketing Corporation (REMC) filed a Withdrawal of a service agreement between Rainbow Energy Marketing Corporation and Minnkota Power Cooperative, Inc.

Rainbow Energy Marketing Corporation hereby wishes to withdraw the service agreement between Rainbow Energy Marketing Corporation and Minnkota Power Cooperative, Inc. which was filed with FERC Docket No. ER95–923. This request is being made because REMC was not required to file the agreement.

Copies of this filing have been sent to Minnkota Power Cooperative, Inc. and the North Dakota Public Service Commission.

Comment date: June 5, 1995, in accordance with Standard Paragraph E at the end of this notice.

20. Florida Power & Light Co.

[Docket No. ER95–938–000]

Take notice that on April 21, 1995, Florida Power & Light Company (FPL) tendered for filing proposed Service Agreement with the City of Tallahassee for transmission service under FPL's Transmission Tariff Nos. 2 and 3.

FPL requests that the proposed Service Agreement be permitted to become effective May 1, 1995, as soon thereafter as practicable.

Comment date: June 5, 1995, in accordance with Standard Paragraph E at the end of this notice.

21. Idaho Power Co.

[Docket No. ER95–1022–000]

Take notice that on May 8, 1995, Idaho Power Company (IPC), tendered for filing a term extension for specified transmission services provided pursuant to the Restated Transmission Service Agreement between Idaho Power Company and PacifiCorp Electric Operations.

Comment date: June 5, 1995, in accordance with Standard Paragraph E at the end of this notice.

22. Entergy Services, Inc.

[Docket No. ER95–1023–000]

Take notice that on May 8, 1995, Entergy Services, Inc. (Entergy Services) on behalf of Arkansas Power & Light Company, Gulf States Utilities Company, Louisiana Power & Light Company, Mississippi Power & Light Company, and New Orleans Public Service Inc., tendered for filing a Transmission Service Agreement (TSA) between Entergy Services and Central and South West Services, Inc., acting as agent for Southwestern Electric Power Company (SWEPCO). Entergy Services states that the TSA sets out the transmission arrangements under which the Entergy Operating Companies' will provide SWEPCO firm and non-firm transmission service under Entergy Services Transmission Service Tariff, in connection with service by SWEPCO to the City of Minden, Louisiana.

Comment date: June 5, 1995, in accordance with Standard Paragraph E at the end of this notice.

23. Entergy Services, Inc.

[Docket No. ER95–1024–000]

Take notice that on May 8, 1995, Entergy Services, Inc. (Entergy Services), on behalf of Arkansas Power & Light Company, Gulf States Utilities Company, Louisiana Power & Light Company, Mississippi Power & Light Company, and New Orleans Public Service Inc., tendered for filing a Transmission Service Agreement (TSA) between Entergy Services and Central Louisiana Electric Company (CLECO). Entergy Services states that the TSA sets out the transmission arrangements under which the Entergy Operating Companies' will provide CLECO firm transmission service under Entergy Services Transmission Service Tariff, in connection with service by CLECO to the City of St. Martinville, Louisiana.

Comment date: June 5, 1995, in accordance with Standard Paragraph E at the end of this notice.

24. Orange and Rockland Utilities, Inc.

[Docket No. ER95–1026–000]

Take notice that on May 9, 1995, Orange and Rockland Utilities, Inc. (Orange and Rockland), tendered for filing as a rate schedule an executed agreement dated November 11, 1994, between Orange and Rockland and Enron Power Marketing, Inc. for the sale of interruptible power and energy by and between Orange and Rockland and Enron Power Marketing, Inc.

The rate schedule provides for an economy reservation charge for Orange and Rockland not to exceed $14.79/MWH scheduled and an energy charge equal for the seller's marginal system cost.

Orange and Rockland requests waiver of the notice requirements of § 35.3 of the Commission's regulations so that the proposed rate schedule can be made effective April 15, 1995 in accordance with the anticipated utilization by the parties.

Orange and Rockland states that a copy of its filing was served on Enron Power Marketing, Inc.

Comment date: June 5, 1995, in accordance with Standard Paragraph E at the end of this notice.

25. Orange and Rockland Utilities, Inc.

[Docket No. ER95–1027–000]

Take notice that on May 9, 1995, Orange and Rockland Utilities, Inc. (Orange and Rockland), tendered for filing as a rate schedule an executed agreement dated December 1, 1994, between Orange and Rockland and Long Island Lighting Company (LILCO) for the sale of interruptible power and energy by Orange and Rockland to LILCO.

The rate schedule provides for an economy reservation charge for Orange and Rockland not to exceed $14.79/MWH scheduled and an energy charge equal to the Orange and Rockland's marginal system cost.

Orange and Rockland requests waiver of the notice requirements of § 35.3 of the Commission's Regulations so that the proposed rate schedule can be made effective April 15, 1995 in accordance with the anticipated utilization by the parties.

Orange and Rockland states that a copy of its filing was served on Long Island Lighting Company.

Comment date: June 5, 1995, in accordance with Standard Paragraph E at the end of this notice.

26. Consolidated Edison Company of New York, Inc.

[Docket No. ER95–1028–000]

Take notice that on May 9, 1995, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing an agreement with Engelhard Power Marketing, Inc. (Engelhard) to provide for the sale of energy and capacity. For energy sold by Con Edison the ceiling rate is 100 percent of the incremental energy cost plus up to 10 percent of the SIC (where such 10 percent is limited to 1 mill per kWhr when the SIC in the hour reflects a purchased power resource). The ceiling rate for capacity sold by Con Edison is $7.70 per megawatt hour. All energy and capacity sold by Engelhard will be at market-based rates.

Con Edison states that a copy of this filing has been served by mail upon Engelhard.

Comment date: June 5, 1995, in accordance with Standard Paragraph E at the end of this notice.

27. Pacific Gas and Electric Co.

[Docket No. ER95–1029–000]

Take notice that on May 9, 1995, Pacific Gas and Electric Company (PG&E), tendered for filing a Power Scheduling Agreement dated May 1, 1995, (the Agreement), between the M-S-R Public Power Agency (M-S-R) and PG&E. M-S-R is a joint exercise of powers agency organized under California law with the Cities of Santa Clara and Redding and the Modesto Irrigation District as its members. The Agreement enables M-S-R to act as agent for its members for the purpose of scheduling certain electric power into, out of, or through the PG&E control area.

Copies of this filing have been served upon M-S-R and the California Public Utilities Commission.

Comment date: June 5, 1995, in accordance with Standard Paragraph E at the end of this notice.

28. El Paso Electric Co.

[Docket No. ES94–18–003]

Take notice that on May 19, 1995, El Paso Electric Company (El Paso) filed an application under section 204 of the Federal Power Act seeking authorization through the remaining term of its Maricopa County Adjustable Tender Pollution Control Revenue Bonds, 1994 Series A ($63.5 million principal amount):

- To enter into extensions of an existing letter of credit issued by Citibank, N.A., or
- To enter into replacement letters of credit with the same or different financial institutions, and
- To undertake any necessary and appropriate actions in connection with any such extensions and replacements for the letter of credit.

Also, El Paso requests exemption from the Commission's competitive bidding and negotiated placement regulations.

Comment date: June 2, 1995, in accordance with Standard Paragraph E at the end of this notice.

29. Peter W. Likins

[Docket No. ID–2884–000]

Take notice that on May 1, 1995, Peter W. Likins (Applicant) tendered for filing an application under section 305(b) of the Federal Power Act to hold the following positions:

Trustee, Consolidated Edison Company of New York
Director, Parker-Hannifin Corporation

Comment date: June 5, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs.

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–13082 Filed 5–26–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket Nos. ST95–2080–000 et al.]

ANR Pipeline Co.; Self-Implementing Transactions

May 23, 1995.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to part 284 of the Commission's Regulations, sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA) and section 7 of the NGA and section 5 of the Outer Continental Shelf Lands Act.[1]

The "Recipient" column in the following table indicates the entity receiving or purchasing the natural gas in each transaction.

The "Part 284 Subpart" column in the following table indicates the type of transaction.

A "B" indicates transportation by an interstate pipeline on behalf of an intrastate pipeline or a local distribution company pursuant to § 284.102 of the Commission's regulations and section 311(a)(1) of the NGPA.

A "C" indicates transportation by an intrastate pipeline on behalf of an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.122 of the Commission's regulations and section 311(a)(2) of the NGPA.

A "D" indicates a sale by an intrastate pipeline to an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.142 of the Commission's regulations and section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to § 284.147(d) of the Commission's regulations.

An "E" indicates an assignment by an intrastate pipeline to any interstate pipeline or local distribution company pursuant to § 284.163 of the Commission's Regulations and section 312 of the NGPA.

A "G" indicates transportation by an interstate pipeline on behalf of another

[1] Notice of a transaction does not constitute a determination that the terms and conditions of the proposed service will be approved or that the noticed filing is in compliance with the Commission's regulations.

interstate pipeline pursuant to § 284.222 and a blanket certificate issued under § 284.221 of the Commission's regulations.

A "G–I" indicates transportation by an intrastate pipeline company pursuant to a blanket certificate issued under § 284.227 of the Commission's regulations.

A "G–S" indicates transportation by interstate pipelines on behalf of shippers other than interstate pipelines pursuant to § 284.223 and a blanket certificate issued under § 284.221 of the Commission's regulations.

A "G–LT" or "G–LS" indicates transportation, sales or assignments by a local distribution company on behalf of or to an interstate pipeline or local distribution company pursuant to a blanket certificate issued under § 284.224 of the Commission's regulations.

A "G–HT" or "G–HS" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under § 284.224 of the Commission's regulations.

A "K" indicates transportation of natural gas on the Outer Continental Shelf by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.303 of the Commission's regulations.

A "K–S" indicates transportation of natural gas on the Outer Continental Shelf by an intrastate pipeline on behalf of shippers other than interstate pipelines pursuant to § 284.303 of the Commission's regulations.

Linwood A. Watson, Jr.,

Acting Secretary.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST95–2080	ANR PIPELINE CO ..	TENNECO GAS MARKETING CO.	04–03–95	G–S	10,000	N	F	04–01–94	INDEF.
ST95–2081	ANR PIPELINE CO ..	ENRON GAS MARKETING INC.	04–03–95	G–S	7,407	N	F	04–01–94	INDEF.
ST95–2082	ANR PIPELINE CO ..	AMGAS INC	04–03–95	G–S	1,300	N	F	05–02–94	INDEF.
ST95–2083	ANR PIPELINE CO ..	TEXACO NATURAL GAS INC.	04–03–95	G–S	150,000	N	F	07–01–94	INDEF.
ST95–2084	ANR PIPELINE CO ..	CYPRESS GAS PIPELINE.	04–03–95	G–S	180,000	N	F	10–01–94	INDEF.
ST95–2085	ANR PIPELINE CO ..	TENASKA MARKETING VENTURES.	04–03–95	G–S	20,000	N	F	10–02–94	INDEF.
ST95–2086	ANR PIPELINE CO ..	KAZTEX ENERGY MANAGEMENT.	04–03–95	G–S	65,000	N	F	09–06–94	INDEF.
ST95–2087	ANR PIPELINE CO ..	KANSOK	04–03–95	B	20,000	N	F	12–01–94	INDEF.
ST95–2088	ANR PIPELINE CO ..	CENERGY INC	04–03–95	G–S	5,000	N	F	10–07–94	INDEF.
ST95–2089	ANR PIPELINE CO ..	BRING GAS SERVICES CORP.	04–03–95	G–S	1,000	Y	F	11–01–94	INDEF.
ST95–2090	ANR PIPELINE CO ..	ALRECO METALS INC.	04–03–95	G–S	1,200	N	F	11–01–94	INDEF.
ST95–2091	ANR PIPELINE CO ..	EASTERN ENERGY MARKETING INC.	04–03–95	G–S	35,000	N	F	10–26–94	INDEF.
ST95–2092	ANR PIPELINE CO ..	PACKERLAND ENERGY SERVICES INC.	04–03–95	G–S	8,000	N	F	11–01–94	INDEF.
ST95–2093	ANR PIPELINE CO ..	KERR-MCGEE NATURAL GAS INC.	04–03–95	G–S	5,000	N	F	11–01–94	INDEF.
ST95–2094	ANR PIPELINE CO ..	HADSON GAS SYSTEMS.	04–03–95	G–S	30,000	N	F	11–01–94	INDEF.
ST95–2095	ANR PIPELINE CO ..	SEAGULL MARKETING SERVICES.	04–03–95	G–S	10,000	N	F	11–01–94	INDEF.
ST95–2096	ANR PIPELINE CO ..	MILWAUKEE METROPOLITAN SEWER DIST.	04–03–95	G–S	2,400	N	F	11–10–94	INDEF.
ST95–2097	ANR PIPELINE CO ..	TRISTAR GAS MARKETING.	04–03–95	G–S	10,000	N	F	10–28–94	INDEF.
ST95–2098	ANR PIPELINE CO ..	PRIMIER GAS CO ...	04–03–95	G–S	8,000	N	F	11–02–94	INDEF.
ST95–2099	WILLISTON BASIN INTER. P/L CO.	MONTANA-DAKOTA UTILITIES CO.	04–03–95	G–S	50,000	A	I	03–04–94	02–28–97
ST95–2100	TEJAS GAS PIPELINE CO.	SABINE PIPELINE CO.	04–03–95	C	10,000	N	I	03–22–95	INDEF.
ST95–2101	TEXAS-OHIO PIPELINE, INC.	TEXAS-OHIO GAS, INC.	04–03–95	G–S	90,000	N	I	03–01–95	INDEF.
ST95–2102	ANR PIPELINE CO ..	AMOCO ENERGY TRADING.	04–04–95	G–S	50,000	N	F	07–01–94	INDEF.
ST95–2103	ANR PIPELINE CO ..	TORCH GAS LC	04–04–95	G–S	10,000	N	F	07–01–94	INDEF.
ST95–2104	ANR PIPELINE CO ..	ENRON CAPITAL & TRADE RESOURCES.	04–04–95	G–S	20,000	N	F	07–01–94	INDEF.
ST95–2105	ANR PIPELINE CO ..	UNION OIL CO. DBA UNOCAL.	04–04–95	G–S	32,500	N	F	07–01–94	INDEF.
ST95–2106	ANR PIPELINE CO ..	CMS GAS MARKETING.	04–04–95	G–S	30,000	N	F	07–01–94	INDEF.
ST95–2107	ANR PIPELINE CO ..	NOBLE GAS MARKETING INC.	04–04–95	G–S	22,500	N	F	07–01–94	INDEF.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST95–2108	ANR PIPELINE CO ..	SEMCO ENERGY SERVICES.	04–04–95	G–S	43,576	N	F	07–01–94	INDEF.
ST95–2109	ANR PIPELINE CO ..	VASTAR GAS MARKETING INC.	04–04–95	G–S	100,000	N	F	07–01–94	INDEF.
ST95–2110	ANR PIPELINE CO ..	CONOCO INC	04–04–95	G–S	50,000	N	F	07–01–94	INDEF.
ST95–2111	ANR PIPELINE CO ..	NORTHWESTERN MUTUAL LIFE.	04–04–95	G–S	5,000	N	F	07–01–94	INDEF.
ST95–2112	ANR PIPELINE CO ..	TRIDENT NGL INC ..	04–04–95	G–S	50,000	N	F	07–01–94	INDEF.
ST95–2113	ANR PIPELINE CO ..	OHIO GAS CO	04–04–95	B	40,000	N	F	07–01–94	INDEF.
ST95–2114	ANR PIPELINE CO ..	AQUILA ENERGY MARKETING.	04–04–95	G–S	16,328	N	F	07–01–94	INDEF.
ST95–2115	ANR PIPELINE CO ..	ASSOCIATED GAS SERVICES.	04–04–95	G–S	100,000	N	F	07–01–94	INDEF.
ST95–2116	ANR PIPELINE CO ..	EQUITABLE RESOURCES MARKETING.	04–04–95	G–S	50,000	N	F	07–01–94	INDEF.
ST95–2117	ANR PIPELINE CO ..	AIG TRADING CORP.	04–04–95	G–S	100,000	N	F	07–02–94	INDEF.
ST95–2118	ANR PIPELINE CO ..	KOCH GAS SERVICES CO.	04–04–95	G–S	100,000	N	F	07–01–94	INDEF.
ST95–2119	ANR PIPELINE CO ..	OHIO GAS CO	04–04–95	B	250,000	Y	F	07–01–94	INDEF.
ST95–2120	ANR PIPELINE CO ..	PEOPLES GAS LIGHT & COKE CO.	04–04–95	G–S	100,000	Y	F	12–22–94	INDEF.
ST95–2121	ANR PIPELINE CO ..	CHEVRON USA INC	04–04–95	G–S	50,000	N	F	11–19–94	INDEF.
ST95–2122	WILLIAMS NATURAL GAS CO.	TARTAN ENERGY CO., L.C.	04–04–95	B	10,100	N	F	04–01–95	INDEF.
ST95–2123	K N INTERSTATE GAS TRANS. CO.	K N GAS SUPLY SERVICES, INC.	04–04–95	G–S	16,000	A	F	02–11–95	02–28–95
ST95–2124	KENTUCKY WEST VIRGINIA GAS CO.	PREMIER ELKHORN COAL CO.	04–04–95	G–S	100	N	I	12–01–94	INDEF.
ST95–2125	PANHANDLE EASTERN PIPE LINE CO.	DAYTON POWER & LIGHT CO.	04–04–95	B	46,080	N	F	04–01–95	03–31–04
ST95–2126	FLORIDA GAS TRANSMISSION CO.	KOCH GAS SERVICES CO.	04–05–95	G–S	75,000	N	I	03–07–95	INDEF.
ST95–2127	ANR PIPELINE CO ..	NORCEN EXPLORER.	04–05–95	G–S	50,000	N	F	09–01–94	INDEF.
ST95–2128	ANR PIPELINE CO ..	SHELL GAS TRADING.	04–05–95	G–S	40,000	N	F	09–01–94	INDEF.
ST95–2129	ANR PIPELINE CO ..	BATTLE CREEK GAS.	04–05–95	G–S	4,500	Y	F	11–12–94	INDEF.
ST95–2130	ANR PIPELINE CO ..	MIDCON GAS SERVICES CORP.	04–05–95	G–S	17,000	N	F	10–01–94	INDEF.
ST95–2131	ANR PIPELINE CO ..	MERIDIAN OIL TRADING.	04–05–95	G–S	150,000	N	F	10–01–94	INDEF.
ST95–2132	ANR PIPELINE CO ..	SHELL OFFSHORE INC.	04–05–95	G–S	50,000	N	F	09–01–94	INDEF.
ST95–2133	ANR PIPELINE CO ..	AMOCO ENERGY TRADING.	04–05–95	G–S	25,000	N	F	09–01–94	INDEF.
ST95–2134	ANR PIPELINE CO ..	NGC TRANSPORTATION INC.	04–05–95	GS	10,000	N	F	07–30–94	INDEF.
ST95–2135	ANR PIPELINE CO ..	UTILICORP UNITED INC.	04–05–95	G–S	20,243	N	F	08–15–94	INDEF.
ST95–2136	ANR PIPELINE CO ..	O&R ENERGY INC ..	04–05–95	G–S	50,000	N	F	08–01–94	INDEF.
ST95–2137	ANR PIPELINE CO ..	FINA NATURAL GAS CO.	04–05–95	GS	10,000	N	F	08–01–94	INDEF.
ST95–2138	ANR PIPELINE CO ..	MOBIL NATURAL GAS INC.	04–05–95	G–S	50,000	N	F	08–01–94	INDEF.
ST95–2139	ANR PIPELINE CO ..	MOBIL NATURAL GAS INC.	04–05–95	G–S	50,000	N	F	08–01–94	INDEF.
ST95–2140	ANR PIPELINE CO ..	CONOCO INC	04–05–95	G–S	20,000	N	F	08–01–94	INDEF.
ST95–2141	ANR PIPELINE CO ..	GGR ENERGY	04–05–95	G–S	1,500	N	F	08–01–94	INDEF.
ST95–2142	ANR PIPELINE CO ..	CATEX VITOL GAS INC.	04–05–95	G–S	10,000	N	F	07–01–94	INDEF.
ST95–2143	ANR PIPELINE CO ..	OLYMPIC FUELS CO.	04–05–95	G–S	20,000	N	F	07–01–94	INDEF.
ST95–2144	ANR PIPELINE CO ..	MICHIGAN CONSOLIDATED GAS CO.	04–05–95	G–S	35,000	N	F	07–01–94	INDEF.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST95–2145	ANR PIPELINE CO ..	MG NATURAL GAS CORP.	04–05–95	G–S	10,000	N	F	07–01–94	INDEF.
ST95–2146	ANR PIPELINE CO ..	TENNECO GAS MARKETING CO.	04–05–95	G–S	100,000	N	F	07–01–94	INDEF.
ST95–2147	ANR PIPELINE CO ..	NITEX INC	04–05–95	G–S	36,586	N	F	07–07–94	INDEF.
ST95–2148	ANR PIPELINE CO ..	LIG CHEMICAL CO .	04–05–95	G–S	60,000	N	F	08–01–94	INDEF.
ST95–2149	SEA ROBIN PIPELINE CO.	SONAT MARKETING CO.	04–05–95	G–S	6,211	Y	F	04–01–95	04–30–95
ST95–2150	PACIFIC GAS TRANSMISSION CO.	SAN DIEGO GAS & ELECTRIC.	04–05–95	G–S	52,508	N	F	10–13–94	10–31–23
ST95–2151	PACIFIC GAS TRANSMISSION CO.	CANSTATES MARKETING (U.S. LTD.	04–06–95	G–S	50,000	N	F	03–10–95	INDEF.
ST95–2152	PACIFIC GAS TRANSMISSION CO.	CASCADE NATURAL GAS CORP.	04–06–95	G–S	3,637	N	I	03–17–95	INDEF.
ST95–2153	ANR PIPELINE CO ..	CNG ENERGY SERVICES CORP.	04–06–95	G–S	50,000	N	F	01–01–95	INDEF.
ST95–2154	ANR PIPELINE CO ..	ANR GAS SUPPLY CO.	04–06–95	G–S	75,000	Y	F	01–08–94	INDEF.
ST95–2155	ANR PIPELINE CO ..	EASTEX HYDROCARBONS INC.	04–06–95	G–S	20,000	N	F	02–02–95	INDEF.
ST95–2156	ANR PIPELINE CO ..	GASLANTIC CORP .	04–06–95	G–S	20,000	N	F	01–27–95	INDEF.
ST95–2157	ANR PIPELINE CO ..	COASTAL GAS MARKETING CO.	04–06–95	G–S	500	A	F	11–01–94	INDEF.
ST95–2158	ANR PIPELINE CO ..	MOBIL NATURAL GAS INC.	04–06–95	G–S	963	N	F	01–01–95	INDEF.
ST95–2159	ANR PEIPELIE CO ..	TRANSCO GAS MARKETTING LCO.	04–06–95	G–S	50,000	N	F	01–01–95	INDEF.
ST95–2160	ANR PIPELINE CO ..	CARGILL INC	04–06–95	G–S	50,000	N	F	01–05–95	INDEF.
ST95–2161	ANR PIPELINE CO ..	VASTAR GAS MARKETING INC.	04–06–95	G–S	100,000	N	F	01–01–95	INDEF.
ST95–2162	ANR PIPELINE CO ..	CONSUMERS POWER GAS.	04–06–95	B	24,400	N	F	01–01–95	INDEF.
ST95–2163	ANR PIPELINE CO ..	UTILICORP UNITED INC.	04–06–95	G–S	15,000	N	F	01–03–95	INDEF.
ST95–2164	ANR PIPELINE CO ..	CHESAPEAK ENERGY CORP.	04–06–95	G–S	30,000	N	F	01–04–95	INDEF.
ST95–2165	ANR PIPELINE CO ..	UTILICORP UNITED INC.	04–06–95	G–S	25,000	N	F	09–03–94	INDEF.
ST95–2166	ANR PIPELINE CO ..	OHIO GAS CO	04–06–95	B	2,000	A	F	12–01–94	INDEF.
ST95–2167	ANR PIPELINE CO ..	KERR-MCGEE NATURAL GAS INC.	04–06–95	G–S	2,100	N	F	11–01–94	INDEF.
ST95–2168	ANR PIPELINE CO ..	TENNECO GAS MARKETING CO.	04–06–95	G–S	3,780	N	F	11–01–94	INDEF.
ST95–2169	ANR PIPELINE CO ..	COAST ENERGY GROUP INC.	04–06–95	G–S	50,000	N	F	09–01–94	INDEF.
ST95–2170	ANR PIPELINE CO ..	CNG ENERGY SERVICES CORP.	04–06–95	G–S	67,429	N	F	09–01–94	INDEF.
ST95–2171	ANR PIPELINE CO ..	H&N GAS LTD	04–06–95	G–S	5,000	N	F	01–02–95	INDEF.
ST95–2172	ANR PIPELINE CO ..	ENERGY SEARCH INC.	04–06–95	G–S	25,000	N	F	02–01–95	INDEF.
ST95–2173	GULF COAST NATURAL GAS CO.	TENNESSEE GAS PIPELINE CO.	04–06–95	C	10,000	N	I	02–01–95	02–01–97
ST95–2174	GULF COAST NATURAL GAS CO.	TRANSCONTINENTAL GAS PIPELINE CO.	04–06–95	C	10,000	N	I	02–01–95	02–01–97
ST95–2175	GULF COAST NATURAL GAS CO.	KOCH GATEWAY PIPELINE CO.	04–06–95	C	10,000	N	I	02–01–95	02–01–97
ST95–2176	WILLISTON BASIN INTER. P/L CO.	POCO PETROLEUM LTD.	04–07–95	G–S	100,000	A	I	03–09–95	02–28–97
ST95–2177	TRUNKLINE GAS CO.	SHELL WESTERN E&P, INC.	04–07–95	G–S	45,000	N	F	04–01–95	INDEF.
ST95–2178	QUESTAR PIPELINE CO.	UNIVERSAL RESOURCES CORP.	04–07–95	G–S	10,000	Y	F	04–01–95	10–31–95
ST95–2179	TRUNKLINE GAS CO.	PEOPLES GAS, LIGHT AND COKE CO.	04–07–95	G–S	118,000	N	F	04–01–95	INDEF.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST95–2180	TEXAS EASTERN TRANSMISSION CORP.	ZILKHA ENERGY CO.	04–07–95	G–S	3,500	N	I	03–12–95	INDEF.
ST95–2181	PANHANDLE EASTERN PIPE LINE CO.	EASTERN ENERGY MARKETING, INC.	04–07–95	G–S	1,200	N	I	04–01–95	02–28–97
ST95–2182	PANHANDLE EASTERN PIPE LINE CO.	PPG INDUSTRIES, INC.	04–07–95	G–S	8,400	N	F	04–01–95	03–31–00
ST95–2183	PANHANDLE EASTERN PIPE LINE CO.	OXY USA INC	04–07–95	G–S	16,000	N	F	04–01–95	04–30–95
ST95–2184	PANHANDLE EASTERN PIPE LINE CO.	WESTFIELD GAS CORP.	04–07–95	G–S	2,500	N	I	04–01–95	03–31–96
ST95–2185	NORTHERN BORDER PIPELINE CO.	KOCH GAS SERVICES CO.	04–07–95	G–S	200,000	Y	I	04–01–95	03–31–97
ST95–2186	COLUMBIA GAS TRANSMISSION CORP.	US ENERGY DEVELOPMENT CORP.	04–07–95	G–S	100	N	I	03–01–95	INDEF.
ST95–2187	MONTANA POWER CO.	COLORADO INTERSTATE GAS CO.	04–07–95	G–HT	1,000	N	I	03–01–94	10–31–02
ST95–2188	MONTANA POWER CO.	COLORADO INTERSTATE GAS CO.	04–07–95	G–HT	1,000	N	I	03–01–94	10–31–02
ST95–2189	PANHANDLE EASTERN PIPE LINE CO.	NATIONAL STEEL CORP.	04–10–95	G–S	100,000	N	F	04–01–95	03–31–05
ST95–2190	COLORADO INTERSTATE GAS CO.	MOUNTAIN GAS RESOURCES, INC.	04–10–95	G–S	10,225	N	I	03–23–95	INDEF.
ST95–2191	GULF STATES PIPELINE CORP.	SOUTHERN NATURAL GAS CO., ET AL.	04–10–95	C	30,000	N	I	03–21–95	12–01–95
ST95–2192	NORTHERN ILLINOIS GAS CO.	ANR PIPELINE CO., ET AL.	04–10–95	G–HT	305	N	I	03–25–95	04–03–95
ST95–2193	TRANSOK, INC	ANR PIPELINE CO., ET AL.	04–10–95	C	25,000	N	F	04–01–95	11–30–95
ST95–2194	TRANSOK, INC	ANR PIPELINE CO., ET AL.	04–10–95	C	5,000	N	I	04–01–95	INDEF.
ST95–2195	TRANSOK, INC	ANR PIPELINE CO., ET AL.	04–10–95	C	5,000	N	I	04–01–95	INDEF.
ST95–2196	TRANSOK, INC	ANR PIPELINE CO., ET AL.	04–10–95	C	10,000	N	I	04–01–95	INDEF.
ST95–2197	EAST TEXAS GAS SYSTEMS.	TENNESSEE GAS PIPELINE CO.	04–10–95	C	50,000	N	I	02–01–95	INDEF.
ST95–2198	GAS CO. OF NEW MEXICO.	TRANSWESTERN PIPELINE CO.	04–11–95	G–HT	35,000	N	I	04–01–95	INDEF.
ST95–2199	K N INTERSTATE GAS TRANS. CO.	WESTERN GAS RESOURCES, INC.	04–11–95	G–S	2,000	N	F	03–22–95	02–28–96
ST95–2200	K N INTERSTATE GAS TRANS. CO.	HS RESOURCES, INC.	04–11–95	G–S	2,500	N	F	04–01–95	04–01–00
ST95–2201	K N INTERSTATE GAS TRANS. CO.	CIBOLA CORP	04–11–95	G–S	3,200	N	F	04–02–95	04–03–95
ST95–2202	K N INTERSTATE GAS TRANS. CO.	WESTERN GAS RESOURCES, INC.	04–11–95	G–S	8,000	N	F	04–01–95	08–31–95
ST95–2203	K N INTERSTATE GAS TRANS. CO.	COLORADO SPRINGS UTILITIES.	04–11–95	G–S	12,000	N	F	03–25–95	09–30–96
ST95–2204	K N INTERSTATE GAS TRANS. CO.	ASTRA RESOURCES MARKETING, INC.	04–11–95	G–S	5,000	N	F	04–01–95	04–30–95
ST95–2205	NATIONAL FUEL GAS SUPPLY CORP.	GATEWAY ENERGY INC.	04–11–95	G–S	3,500	N	I	04–01–95	04–01–15
ST95–2206	KERN RIVER GAS TRANSMISSION CO.	PREMIER ENTERPRISES, INC.	04–11–95	G–S	25,000	N	I	03–12–94	INDEF.
ST95–2207	ANR PIPELINE CO ..	DETROIT EDISON ..	04–11–95	G–S	100,000	N	F	03–01–95	INDEF.
ST95–2208	ANR PIPELINE CO ..	WICKFORD ENERGY MARKETING.	04–11–95	G–S	30,000	N	F	03–07–95	INDEF.

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ST95–2209	ANR PIPELINE CO ..	NATURAL GAS RESOURCES, LP.	04–11–95	G–S	N/A	N	F	03–01–95	INDEF.
ST95–2210	ANR PIPELINE CO ..	EASTERN ENERGY MARKETING INC.	04–11–95	G–S	N/A	N	F	03–01–95	INDEF.
ST95–2211	NORAM GAS TRANSMISSION CO.	CATEX VITOL GAS, INC.	04–11–95	G–S	30,000	N	F	03–01–95	03–31–96
ST95–2212	NORAM GAS TRANSMISSION CO.	NGC TRANSPORTATION, INC.	04–11–95	G–S	25,000	N	F	04–01–95	03–31–96
ST95–2213	NORAM GAS TRANSMISSION CO.	ASSOCIATED GAS SERVICES, INC.	04–11–95	G–S	55,000	N	F	04–01–95	04–30–95
ST95–2214	NORAM GAS TRANSMISSION CO.	NORAM ENERGY SERVICES, INC.	04–11–95	G–S	70,000	N	F	03–01–95	03–31–95
ST95–2215	NORAM GAS TRANSMISSION CO.	TIDEWEST TRADING & TRANSPORT CO.	04–11–95	G–S	40,000	N	F	04–01–95	03–31–96
ST95–2216	EL PASO NATURAL GAS CO.	TEXACO GAS MARKETING INC.	04–12–95	G–S	25,750	N	I	03–13–95	INDEF.
ST95–2217	COLORADO INTERSTATE GAS CO.	MERIDIAN OIL INC .	04–12–95	G–S	8,850	N	F	04–01–95	11–30–04
ST95–2218	TENNESEE GAS PIPELINE CO.	KCS ENERGY MARKETING INC.	04–12–95	G–S	6,652	N	F	03–24–95	INDEF.
ST95–2219	ALGONQUIN GAS TRANSMISSION CO.	CATEX VITOL GAS, INC.	04–12–95	G–S	2,000	N	F	03–16–95	03–31–95
ST95–2220	ALGONQUIN GAS TRANSMISSION CO.	CHESAPEAKE ENERGY CORP.	04–12–95	G–S	3,000	N	F	03–20–95	03–24–95
ST95–2221	PANHANDLE EASTERN PIPE LINE CO.	NATURAL GAS RESOURCES LP.	04–12–95	G–S	225,000	N	I	04–01–95	04–30–98
ST95–2222	PANHANDLE EASTERN PIPE LINE CO.	CHESAPEAKE ENERGY CORP.	04–12–95	G–S	50,000	N	I	04–01–95	01–18–96
ST95–2223	PANHANDLE EASTERN PIPE LINE CO.	CENTRAL ILLINOIS PUBLIC SERVICE CO.	04–12–95	G–S	25,000	N	F	04–01–95	03–31–00
ST95–2224	PANHANDLE EASTERN PIPE LINE CO.	TENASKA MARKETING VENTURES.	04–12–95	G–S	10,148	N	F	04–01–95	04–30–95
ST95–2225	PANHANDLE EASTERN PIPE LINE CO.	ANADARKO PETROLEUM CORP.	04–12–95	G–S	30,000	N	F	04–01–95	04–30–95
ST95–2226	PANHANDLE EASTERN PIPE LINE CO.	AIG TRADING CORP.	04–12–95	G–S	33,000	N	F	04–01–95	04–30–95
ST95–2227	PANHANDLE EASTERN PIPE LINE CO.	HOWARD ENERGY CO., INC.	04–12–95	G–S	25,000	N	F	04–01–95	04–30–95
ST95–2228	PANHANDLE EASTERN PIPE LINE CO.	COASTAL GAS MARKETING CO.	04–12–95	G–S	23,643	N	F	04–01–95	04–30–95
ST95–2229	PANHANDLE EASTERN PIPE LINE CO.	NATURAL GAS CLEARINGHOUSE.	04–12–95	G–S	5,783	N	F	04–01–95	04–30–95
ST95–2230	PANHANDLE EASTERN PIPE LINE CO.	CATEX VITOL GAS, INC.	04–12–95	G–S	20,000	N	F	04–01–95	04–30–95
ST95–2231	ONG TRANSMISSION CO.	NORAM GAS TRANSMISSION CO.	04–12–95	C	2,000	N	I	03–26–95	INDEF.
ST95–2232	LONE STAR GAS CO.	ARKLA ENERGY RESOURCES, ET AL.	04–13–95	C	20,000	N	I	03–14–95	INDEF.
ST95–2233	TEXAS GAS TRANSMISSION CORP.	INDIANA NATURAL GAS CORP.	04–13–95	G–S	1,000	N	F	04–01–95	INDEF.

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ST95–2234	TEXAS GAS TRANSMISSION CORP.	CITY OF LEITCHFIELD.	04–13–95	G–S	500	N	F	04–01–95	INDEF.
ST95–2235	TEXAS GAS TRANSMISSION CORP.	SWITZERLAND COUNTY NATURAL GAS CO.	04–13–95	G–S	200	N	F	04–01–95	INDEF.
ST95–2236	TEXAS GAS TRANSMISSION CORP.	VOLUNTEER ENERGY CORP.	04–13–95	G–S	10,000	N	I	04–01–95	INDEF.
ST95–2237	COLORADO INTERSTATE GAS CO.	WESTERN GAS RESOURCES, INC.	04–13–95	G–S	10,000	N	F	04–01–95	10–21–95
ST95–2238	COLORADO INTERSTATE GAS CO.	WESTERN GAS RESOURCES, INC.	04–13–95	G–S	5,000	N	F	04–01–95	10–31–95
ST95–2239	COLORADO INTERSTATE GAS CO.	AQUILA ENERGY MARKETING CORP.	04–13–95	G–S	30,000	N	F	04–01–95	10–31–95
ST95–2240	COLORADO INTERSTATE GAS CO.	ASSOCIATED GAS SERVICES, INC.	04–13–95	G–S	8,500	N	F	04–01–95	03–31–96
ST95–2241	COLUMBIA GULF TRANSMISSION CO.	PENNUNION ENERGY SERVICES, LLC.	04–13–95	G–S	100,000	N	I	04–01–95	INDEF.
ST95–2242	COLUMBIA GULF TRANSMISSION CO.	CORPUS CHRISTI GAS MARKETING, LP.	04–13–95	G–S	15,000	N	I	04–01–95	INDEF.
ST95–2243	COLUMBIA GULF TRANSMISSION CO.	CNG ENERGY SERVICES CORP.	04–13–95	G–S	50,000	N	F	04–01–95	INDEF.
ST95–2244	COLUMBIA GULF TRANSMISSION CO.	ANR PIPELINE CO ..	04–13–95	G–S	11,657	N	I	04–01–95	INDEF.
ST95–2245	NORTHWEST PIPELINE CORP.	IGI RESOURCES, INC.	04–13–95	G–S	25,000	N	F	04–01–95	INDEF.
ST95–2246	SEA ROBIN PIPELINE CO.	ENERGY SOURCE INC.	04–14–95	G–S	20,000	Y	I	04–12–95	INDEF.
ST95–2247	MISSISSIPPI RIVER TRANS. CORP.	VASTAR GAS MARKETING, INC.	04–17–95	G–S	150,000	Y	I	03–14–95	INDEF.
ST95–2248	WILLIAMS NATURAL GAS CO.	BROCK GAS SYSTEMS, INC.	04–17–95	G–S	75	N	I	02–28–95	01–14–96
ST95–2249	WILLIAMS NATURAL GAS CO.	GEDI, INC	04–17–95	G–S	100	N	I	02–01–95	7–31–95
ST95–2250	TEXAS GAS TRANSMISSION CORP.	LOUISVILLE GAS AND ELECTRIC CO.	04–17–95	G–S	8,000	N	F	04–01–95	INDEF.
ST95–2251	TEXAS GAS TRANSMISSION CORP.	LOUISVILLE GAS AND ELECTRIC CO.	04–17–95	G–S	8,000	N	F	04–01–95	INDEF.
ST95–2252	TEXAS GAS TRANSMISSION CORP.	LOUISVILLE GAS AND ELECTRIC CO.	04–17–95	G–S	6,000	N	F	04–01–95	INDEF.
ST95–2253	GULF COAST NATURAL GAS CO.	TRANSCONTINENTAL GAS PIPELINE CO.	04–17–95	C	10,000	N	I	04–05–95	04–05–97
ST95–2254	TRANSOK, INC	MISS. RIVER TRANS. CORP., ET AL.	04–17–95	C	10,000	N	I	04–01–95	INDEF.
ST95–2255	CNG TRANSMISSION CORP.	PERRY GAS COMPANIES, INC.	04–21–95	G–S	5,000	N	I	03–21–95	05–31–95
ST95–2256	CNG TRANSMISSION CORP.	HOPE GAS, INC	04–21–95	G–S	91,241	N	F	04–02–95	03–31–01
ST95–2257	SOUTHERN NATURAL GAS CO.	CITY OF TRUSSVILLE.	04–21–95	G–S	50,000	N	I	03–22–95	INDEF.
ST95–2258	NATURAL GAS P/L CO. OF AMERICA.	COASTAL GAS MARKETING CO.	04–21–95	G–S	15,000	N	F	04–01–95	10–31–95
ST95–2259	PANHANDLE EASTERN PIPE LINE CO.	PREMIER ENTERPRISES, INC.	04–21–95	G–S	500	N	I	04–01–95	03–31–97
ST95–2260	PANHANDLE EASTERN PIPE LINE CO.	CHESAPEAKE ENERGY.	04–21–95	G–S	20,000	N	I	04–01–95	03–31–97

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ST95-2261	PANHANDLE EASTERN PIPE LINE CO.	KOCH GAS SERVICES CO.	04-21-95	G-S	50,000	N	I	04-01-95	03-31-97
ST95-2262	COLORADO INTERSTATE GAS CO.	YOUNG GAS STORAGE CO., LTD.	04-21-95	G-S	24,260	Y	I	04-01-95	INDEF.
ST95-2263	FLORIDA GAS TRANSMISSION CO.	MOBIL NATURAL GAS, INC.	04-21-95	G-S	100,000	N	I	04-01-95	INDEF.
ST95-2264	KERN RIVER GAS TRANSMISSION CO.	DESERT PALACE, INC.	04-21-95	G-S	700	N	I	03-27-95	INDEF.
ST95-2265	TRAILBLAZER PIPELINE CO.	MIDCON GAS SERVICES CORP.	04-19-95	G-S	72,500	Y	F	04-01-95	04-30-95.
ST95-2266	COLORADO INTERSTATE GAS CO.	ASSOCIATED GAS SERVICES, INC.	04-19-95	G-S	4,958	N	I	04-01-95	INDEF.
ST95-2267	FLORIDA GAS TRANSMISSION CO.	EXXON CORP	04-24-95	G-S	100,000	N	I	04-01-95	INDEF.
ST95-2268	FLORIDA GAS TRANSMISSION CO.	NGC TRANSPORTATION, INC.	04-24-95	G-S	500,000	N	I	04-01-95	INDEF.
ST95-2269	TENNESSEE GAS PIPELINE CO.	CHEVRON USA, INC.	04-24-95	G-S	3	N	F	03-25-95	INDEF.
ST95-2270	TENNESSEE GAS PIPELINE CO.	DIRECT GAS SUPPLY CORP.	04-24-95	G-S	4	N	F	03-23-95	INDEF.
ST95-2271	TRANSOK, INC	ANR PIPELINE CO., ET AL.	04-24-95	C	5,000	N	I	04-01-95	INDEF.
ST95-2272	TRANSOK, INC	ANR PIPELINE CO., ET AL.	04-24-95	C	80,000	N	I	04-01-95	INDEF.
ST95-2273	CORPUS CHRISTI TRANSMISSION CO.	REYNOLDS METALS CO.	04-21-95	G-S	21,000	N	I	01-01-95	06-30-95.
ST95-2274	NORTHERN ILLINOIS GAS CO.	ANR PIPELINE CO., ET AL.	04-24-95	G-HT	18,267	N	I	04-04-95	04-13-95.
ST95-2275	CENTANA INTRASTATE PIPELINE CO.	UNITED GAS TRANSMISSION CORP.	04-21-95	C	25,000	N	I	03-22-95	INDEF.
ST95-2276	NATURAL GAS P/L CO. OF AMERICA.	SUPERIOR NATURAL GAS CORP.	04-25-95	G-S	10,000	N	I	03-25-95	INDEF.
ST95-2277	TEXAS EASTERN TRANSMISSION CORP.	KOCH GAS SERVICES CO.	04-25-95	G-S	15,000	N	I	04-01-95	INDEF.
ST95-2278	TEXAS EASTERN TRANSMISSION CORP.	COASTAL GAS MARKETING CO.	04-25-95	G-S	23,640	N	F	04-01-95	INDEF.
ST95-2279	TEXAS EASTERN TRANSMISSION CORP.	ALATENN ENERGY MARKETING CO.	04-25-95	G-S	80,000	N	I	03-31-95	INDEF.
ST95-2280	TEXAS EASTERN TRANSMISSION CORP.	ENERGY SOURCE INC.	04-25-95	G-S	100,000	N	I	04-10-95	INDEF.
ST95-2281	TEXAS EASTERN TRANSMISSION CORP.	NATIONAL GAS RESOURCES, LP.	04-25-95	G-S	100,000	N	I	04-01-95	INDEF.
ST95-2282	TENNESSEE GAS PIPELINE CO.	CENERGY, INC	04-25-95	G-S	4	N	F	04-01-95	INDEF.
ST95-2283	TENNESSEE GAS PIPELINE CO.	PITTSBURGH CORNING CORP.	04-25-95	G-S	700	N	F	04-01-95	INDEF.
ST95-2284	TENNESSEE GAS PIPELINE CO.	GULF COAST ENERGY, INC.	04-25-95	G-S	4	N	F	04-01-95	INDEF.
ST95-2285	TENNESSEE GAS PIPELINE CO.	CHANNEL GAS MARKETING CO.	04-25-95	G-S	100,000	A	I	04-04-95	INDEF.
ST95-2286	TENNESSEE GAS PIPELINE CO.	COASTAL GAS MARKETING CO.	04-25-95	G-S	4	N	F	04-01-95	INDEF.
ST95-2287	TENNESSEE GAS PIPELINE CO.	HADSON GAS SYSTEMS INC.	04-25-95	G-S	4	N	F	04-01-95	INDEF.
ST95-2288	MIDWESTERN GAS TRANSMISSION CO.	MOBIL NATURAL GAS INC.	04-25-95	G-S	7,000	N	F	04-01-95	INDEF.

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ST95-2289	COLUMBIA GAS TRANSMISSION CORP.	CORNING, INC	04-25-95	G-S	1,010	N	F	04-01-95	10-31-95.
ST95-2290	COLUMBIA GAS TRANSMISSION CORP.	STAND ENERGY CORP.	04-25-95	G-S	1,000	N	F	04-01-95	INDEF.
ST95-2291	COLUMBIA GAS TRANSMISSION CORP.	ATLAS ENERGY GROUP, INC.	04-25-95	G-S	25,000	N	I	04-11-95	INDEF.
ST95-2292	COLUMBIA GAS TRANSMISSION CORP.	TRISTAR VENTURES CORP.	04-25-95	G-S	3,000	N	I	04-01-95	INDEF.
ST95-2293	COLUMBIA GAS TRANSMISSION CORP.	SOUTHEASTERN NATURAL GAS CO.	04-25-95	B	10,000	N	I	04-01-95	INDEF.
ST95-2294	COLUMBIA GAS TRANSMISSION CORP.	TRISTAR VENTURES CORP.	04-25-95	G-S	N/A	N	I	04-01-95	INDEF.
ST95-2295	TENNESSEE GAS PIPELINE CO.	NATIONAL GAS RESOURCES LP.	04-26-95	G-S	4	N	F	04-01-95	INDEF.
ST95-2296	TENNESSEE GAS PIPELINE CO.	GGR ENERGY	04-26-95	G-S	4	N	F	04-01-95	INDEF.
ST95-2297	TENNESSEE GAS PIPELINE CO.	TEXAS-OHIO GAS, INC.	04-26-95	G-S	4	N	F	04-01-95	INDEF.
ST95-2298	IROQUOIS GAS TRANSMISSION SYSTEM.	CNG ENERGY SERVICES CORP.	04-27-95	G-S	35,000	N	F	04-01-95	05-01-95
ST95-2299	NATURAL GAS P/L CO. OF AMERICA.	PETRO SOURCE GAS VENTURES.	04-27-95	G-S	50,000	N	I	04-01-95	INDEF.
ST95-2300	NATURAL GAS P/L CO. OF AMERICA.	UNITED STATES GYPSUM CO.	04-27-95	G-S	1,400	N	F	04-01-95	04-30-96.
ST95-2301	TENNESSEE GAS PIPELINE CO.	TRANSCO GAS MARKETING CO.	04-27-95	G-S	4	N	F	04-02-95	INDEF.
ST95-2302	TENNESSEE GAS PIPELINE CO.	SCANA HYDROCARBONS, INC.	04-27-95	G-S	1	N	F	04-01-95	INDEF.
ST95-2303	TENNESSEE GAS PIPELINE CO.	PHIBRO DIVISION OF SALOMON, INC.	04-27-95	G-S	4	N	F	04-01-95	INDEF.
ST95-2304	COLUMBIA GULF TRANSMISSION CO.	HADSON GAS SYSTEMS, INC.	04-27-95	G-S	12,288	N	F	04-01-95	01-10-98.
ST95-2305	EL PASO NATURAL GAS CO.	ARCO PERMIAN, UNIT OF ARCO.	04-27-95	G-S	4,120	N	I	04-01-95	INDEF.
ST95-2306	EL PASO NATURAL GAS CO.	OASIS PIPE LINE CO.	04-27-95	B	100,000	N	I	04-01-95	INDEF.
ST95-2307	TENNESSEE GAS PIPELINE CO.	POLARIS PIPELINE CORP.	04-28-95	G-S	4	N	F	04-01-95	INDEF.
ST95-2308	TENNESSEE GAS PIPELINE CO.	WESTERN GAS RESOURCES, INC.	04-28-95	G-S	4	N	F	04-01-95	INDEF.
ST95-2309	TENNESSEE GAS PIPELINE CO.	PENNZOIL EXPLORATION AND PRODUCTION.	04-28-95	G-S	44	N	I	04-01-95	INDEF.
ST95-2310	TENNESSEE GAS PIPELINE CO.	MOBIL NATURAL GAS, INC.	04-28-95	G-S	545	N	I	04-01-95	INDEF.
ST95-2311	TENNESSEE GAS PIPELINE CO.	H & N GAS, LTD	04-28-95	G-S	4	N	F	04-01-95	INDEF.
ST95-2312	NATURAL GAS P/L CO. OF AMERICA.	WESTERN GAS RESOURCES, INC.	04-28-95	G-S	5,000	N	F	04-01-95	08-31-95.
ST95-2313	PACIFIC GAS TRANSMISSION CO.	PANCANADIAN PETROLEUMS LTD.	04-28-95	G-S	200,000	N	I	03-30-95	INDEF.
ST95-2314	PACIFIC GAS TRANSMISSION CO.	CONTINENTAL ENERGY MARKETING LTD.	04-28-95	G-S	10,000	N	I	04-14-95	INDEF.
ST95-2315	DELHI GAS PIPELINE CORP.	ANR PIPELINE CO., ET AL.	04-28-95	C	70,000	N	I	04-01-95	INDEF.

[1] NOTICE OF TRANSACTIONS DOES NOT CONSTITUTE A DETERMINATION THAT FILINGS COMPLY WITH COMMISSION REGULATIONS IN ACCORDANCE WITH ORDER NO. 436 (FINAL RULE AND NOTICE REQUESTING SUPPLEMENTAL COMMENTS, 50 FR 42,372, 10/10/85).
[2] ESTIMATED MAXIMUM DAILY VOLUMES INCLUDES VOLUMES REPORTED BY THE FILING COMPANY IN MMBTU, MCF AND DT.
[3] AFFILIATION OF REPORTING COMPANY TO ENTITIES INVOLVED IN THE TRANSACTION. A "Y" INDICATES AFFILIATION, AN "A" INDICATES MARKETING AFFILIATION, AND A "N" INDICATES NO AFFILIATION.

[FR Doc. 95–13081 Filed 5–26–95; 8:45 am]
BILLING CODE 6717–01–P–M

[Docket No. RP94–43–012]

ANR Pipeline Co., In FERC Gas Tariff

May 23, 1995.

Take notice that on May 18, 1995, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets, required by the Commission to be effective March 1, 1995:

Third Revised Sheet No. 176
Third Revised Sheet No. 187
First Revised Sheet No. 187.1
Original Sheet No. 187.2

ANR states that the above-referenced tariff sheets are being filed in compliance with the Commission's May 3, 1995, "Order on Compliance Filing" in Docket No. RP94–43–011.

ANR states that all of its FERC Gas Tariff, Second Revised Volume No. 1 customers and interested State Commissions have been mailed a copy of this filing.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426 in accordance with rule 211 of the Commission's Rules of practice and procedure (18 CFR 385.211). All such protests should be filed on or before May 31, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this application are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 95–13083 Filed 5–26–95; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. SA95–4–000]

Lee 8 Storage Partnership; Petition for Adjustment

May 23, 1995.

Take notice that on May 5, 1995, Lee 8 Storage Partnership (Lee 8) filed pursuant to section 502(c) of the Natural Gas Policy Act of 1978 (NGPA), a petition for adjustment from § 284.123(b)(1)(ii) of the Commission's regulations to permit Lee 8 to use its tariff on file with the Michigan Public Service Commission (MPSC) for services performed pursuant to NGPA section 311.

In support of its petition, Lee states that it is an intrastate gas storage service in the State of Michigan and is a gas utility subject to the jurisdiction of the MPSC. The sole operating asset of Lee 8 Storage Field. The Lee 8 Storage Field is located adjacent to the Lee 3 Storage Field, which is owned and operated by Michigan Gas Utilities, a Michigan local distribution company (MGU) and may be directly interconnected with the facilities of MGU at minimal cost. Lee 8's storage rates are subject to regulation by the MPSC. Lee 8 anticipates providing section 311 storage service on behalf of interstate pipeline companies or local distribution companies served by interstate pipeline companies for a charge not to exceed the rates on file with the MPSC, as follows:

	Minimum	Maximum
1. Based on 100 day firm storage service.	$0.25 per Mcf	$1.75 per Mcf.

The regulations applicable to this proceeding are found in subpart K of the Commission's rules of practice and procedure. Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with §§ 385.211 and 385.214 of the Commission's rules of practice and Procedures. All motions must be filed with the Secretary of the Commission within 15 days after publication of this notice in the **Federal Register**. The petition for adjustment is on file with the Commission and is available for public inspection.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 95–13084 Filed 5–26–95; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. TM95–4–25–002]

Mississippi River Transmission Corp.; Refund Report

May 23, 1995.

Take notice that on May 11, 1995, Mississippi River Transmission Corporation (MRT), tendered for filing a refund report reflecting the distribution of refund amounts by MRT to its affected customers pursuant to section 17.1(b) of MRT's tariff. The amounts being refunded are the flowthrough of excess revenues derived from providing services under Rate Schedules ITS and ISS and certain revenues derived from authorized overrun service (AOS) received during the twelve month period ended October 31, 1994, including interest from November 1, 1994, through April 12, 1995.

MRT states that the refunds were paid on April 13, 1995. MRT states that the total refunds covered by the instant filing amount to $333,462.07, inclusive of principal and interest.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington DC 20426, in accordance with § 385.211 of the Commission's regulations. All such protests should be filed on or before May 31, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 95–13085 Filed 5–26–95; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. RP95-300-000]

Questar Pipeline Co.; Termination of Gathering Service

May 23, 1995.

Take notice that on May 18, 1995, Questar Pipeline Company (Questar) filed, pursuant to Section 4 of the Natural Gas Act, a notice of termination of gathering service it provides to Chevron U.S.A. Production Company (Chevron).

Questar states that by letter of April 21, 1995, Chevron notified Questar of its election to terminate Contract No. TH–112OH (Questar's Contract No. 00702 G–2) effective May 31, 1995, pursuant to Article 3 of the contract. Questar states that under the contract, it provided gathering service from Chevron's Government FS Prince #1 well through Questar's gathering Lateral Nos. 523–1 and 521. According to Questar, Chevron has expressed interest in purchasing Lateral No. 523–1 so that it could gather its own gas. The parties are currently negotiating a purchase and sale agreement for Lateral No. 523–1 and expect to execute the agreement in the near future. Questar asserts that Lateral No. 523–1 was never certificated and that Chevron is the only customer receiving gathering service over this facility. Questar explains that Chevron's well is the only one attached to this facility, and since Chevron will be providing its own gathering service after the sale of the lateral, there are no continuity of service issues in connection with the proposed termination of this gathering service by Questar.

Any Person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's rules of practice and procedure, All such motions or protests should be filed on or before May 31, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. And person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 95–13086 Filed 5–26–95; 8:45 am]
BILLING CODE 6717–01–M

[Docket Nos. RP94–119–000, et al.]

Texas Gas Transmission Corp.; Informal Settlement Conference

May 23, 1995.

Take notice that an informal settlement conference will be convened in the above-captioned proceeding on May 25, 1995, at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC, for the purpose of exploring the possible settlement of the above-referenced dockets.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information please contact Michael D. Cotleur, (202) 208–1076, or Russell B. Mamone (202) 208–0744.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 95–13087 Filed 5–26–95; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. RP95–299–000]

Viking Gas Transmission Co.; Proposed Changes In FERC Gas Tariff

May 23, 1995.

Take notice that on May 16, 1995, Viking Gas Transmission Company (Viking) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheet, proposed to be effective May 4, 1995:

Second Revised Sheet No. 72

Viking states that the purpose of the filing is to conform its tariff to the requirements of Order No. 577. In particular, Viking proposes to modify the capacity release provisions of its tariff by: (1) Increasing from 30 days to one calendar month the period during which capacity can be released at less than the maximum rate without prior posting or bidding; and (2) decreasing from 30 days to 28 days the period during which such "short term" releases cannot be rolled-over, without prior posting and bidding, at less than the maximum rate. Viking also notes that its existing tariff already provides for prearranged releases at the maximum rate, without prior posting or bidding.

Viking states that copies of the filing have been mailed to all of its jurisdictional customers and to affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure. All such motions or protests should be filed on or before May 31, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 95–13088 Filed 5–26–95; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. RP95–302–000]

Young Gas Storage Company, Ltd.; Tariff Filing

May 23, 1995.

Take notice that on May 19, 1995, Young Gas Storage Company, Ltd. (Young) tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheets, to be effective June 1, 1995:

First Revised Sheet No. 9
First Revised Sheet No. 14
First Revised Sheet No. 15
First Revised Sheet No. 16
First Revised Sheet No. 24
First Revised Sheet No. 28
First Revised Sheet No. 30
First Revised Sheet No. 31
First Revised Sheet No. 36
First Revised Sheet No. 41
First Revised Sheet No. 47
First Revised Sheet No. 48
First Revised Sheet No. 50
First Revised Sheet No. 53
First Revised Sheet No. 54
First Revised Sheet No. 55
First Revised Sheet No. 56
First Revised Sheet No. 57
First Revised Sheet No. 58
First Revised Sheet No. 59
First Revised Sheet No. 60
First Revised Sheet No. 61
First Revised Sheet No. 62
First Revised Sheet No. 63
First Revised Sheet No. 64
First Revised Sheet No. 65
First Revised Sheet No. 66
First Revised Sheet No. 67
First Revised Sheet No. 68
First Revised Sheet No. 71
First Revised Sheet No. 74
First Revised Sheet No. 76
First Revised Sheet No. 77
First Revised Sheet No. 84
First Revised Sheet No. 105

Young states that it proposes housekeeping and other revisions to its tariff. Young states that this includes, in part, title, phone number, reference and definition changes. In addition, changes also included are: (1) Deliveries will be made non a thermal equivalent basis upon receipt volumes less fuel reimbursement, (ii) firm customers will be credited with interruptible revenues, net of variable costs as required by the March 3, 1994, Order Granting Preliminary Determination in Docket

No. CP93–541–000, and (iii) modified the capacity release portion to more closely reflect that of Colorado Interstate Gas Company, the operator of Young, and also to reflect changes associated with Order No. 577 issued March 29, 1995, in Docket No. RP95–5–000.

Young states that copies of this filing were served upon all holders of its FERC tariff, which becomes effective June 1, 1995.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's rules of practice and procedure (18 CFR 385.214 or 385.211). All such petitions or protests should be filed on or before May 31, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–13089 Filed 5–26–95; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–211041; FRL–4954–3]

Response to TSCA Section 21 Petition for Regulations Requiring Public Notice and Comment Prior to the Issuance of Certain PCB Commercial Storage or Disposal Approvals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; Denial of TSCA Section 21 Petition.

SUMMARY: This notice responds to a citizen's petition submitted by FulCircle Ballast Recyclers under section 21 of the Toxic Substances Control Act (TSCA) to initiate a rulemaking to require public notice and comment prior to granting approvals under section 6(e) of TSCA for certain facilities handling fluorescent lighting ballasts that contain Polychlorinated Biphenyls (PCBs). EPA is denying this petition because EPA does not believe that issuing a rule to require public notice and comment prior to approval of commercial storage facilities and alternate destruction methods which handle fluorescent lighting ballasts is necessary. However, EPA does agree that public notice and comment should be part of the approval process. To that end, EPA will clarify to the approving authorities that public notice and an opportunity for comment must be provided prior to decision on all storage and disposal approvals. The first step of this process has been accomplished by a letter from the Assistant Administrator from the Office of Prevention, Pesticides, and Toxic Substances (OPPTS) to the Regional Administrators clearly stating the substance of and rationale for EPA's policy. Further, EPA will revise its existing TSCA approval guidance to more clearly define the notice and comment procedures which are to be followed when conducting a review of an application for a PCB storage or disposal approval.

ADDRESSES: Copies of the petition and all related information used by the Agency to develop this response are located in the TSCA Non-Confidential Information Center (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. B–607, Northeast Mall, 401 M St., SW., Washington, DC 20460. They are available for review and copying from 12 noon to 4 p.m., Monday through Friday, except for legal holidays.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: In this notice, EPA is responding to the petition of FulCircle Ballast Recyclers under section 21 of TSCA, 15 U.S.C. 2620, requesting that rules be issued under 40 CFR part 761 to require public notice and comment prior to the issuance of certain approvals to commercially store and dispose of fluorescent lighting ballasts.

I. Background

A. TSCA Section 21

Section 21 of TSCA provides that any person may petition the Administrator of EPA to initiate a proceeding for the issuance, amendment, or repeal of a rule under section 4, 6, or 8, or an order under section 5(e) or 6(b)(2) of TSCA. Section 21(b)(3) requires that EPA grant or deny a petition within 90 days of its filing. If EPA grants a section 21 petition, EPA must promptly commence an appropriate proceeding in accordance with the relevant TSCA section. If EPA denies the petition, the reasons for denial must be published in the **Federal Register**.

If EPA denies a petition within 90 days of the filing date, or fails to grant or deny within the 90–day period, the petitioner may commence a civil action in a Federal district court to compel EPA to initiate the requested action. This suit must be filed within 60 days of the denial, or within 60 days of the expiration of the 90–day period if EPA fails to grant or deny the petition within that period.

B. Summary of Petition

By petition dated February 14, 1995 (EPA received the petition on February 17, 1995), FulCircle Ballast Recyclers (herein referred to as "petitioner") requested EPA, under section 21 of TSCA, to initiate rulemaking to require public notice and comment prior to granting approvals under 40 CFR part 761 for certain facilities handling fluorescent lighting ballasts that contain PCBs. Specifically, there are two parts to the petition. First, the petitioner requested that there should be public notice and comment in connection with EPA approvals under the following sections:

(1) Section 761.65(d), approval of commercial storers of PCB waste, where the waste involved is fluorescent lighting ballasts containing PCBs.

(2) Section 761.60(e), approval of alternative methods of destruction of PCBs, if the proposal involves fluorescent lighting ballasts containing PCBs at a facility where the alternative technology will be operated.

Second, the petitioner requested a ruling by EPA temporarily holding in abeyance regulatory approval action by EPA's Regional offices on any applications under the sections mentioned above dealing with fluorescent lighting ballasts containing PCBs until there has been a reasonable opportunity for public notice and comment on those applications.

The petitioner is currently in the business of recycling PCB-containing lighting ballasts for disposal and has an approval issued by EPA Region II to do so. The petitioner removes the PCB-containing capacitors and potting materials from the ballasts, which are disposed of at an approved PCB disposal facility, and recycles the copper, aluminum and steel components. It is the petitioner's position that there should be nationally uniform rules assuring notice and an opportunity for the public to comment on applications pursuant to § 761.65(d) and § 761.60(e) for facilities handling fluorescent lighting ballasts containing PCBs and that EPA should respond to those comments before acting on the applications.

In support of the petition, the petitioner states that public notice and comment allows for those knowledgeable about the management of PCBs to review an application from a sophisticated point of view, and therefore raise pertinent questions based on that knowledge. In addition, it allows for those living and working in the vicinity of the facility's location to review the application from a local point of view, allowing for sensitivity to problems not readily apparent to someone outside the locality of the operation.

In further support of its request, the petitioner cites 40 CFR part 124, which establishes procedures, including notice and comment requirements, for issuing RCRA, UIC, PSD and NPDES permits and asks that EPA apply the appropriate provisions of these regulations to TSCA approvals for PCBs. In addition, the petitioner asserts that the Superfund program requires extensive public involvement in connection with site cleanups. Also, in the case of commercial storers of PCB waste, EPA published a **Federal Register** notice on June 10, 1991 (56 FR 26673) soliciting comments on the qualifications of the applicants and their principals and key employees to engage in PCB commercial storage activities.

Lastly, the petitioner points out that it is already a "widely held practice" in many EPA Regions to provide for public notice and a public comment period for applications involving PCB recycling, storage and disposal operations and cites three examples of this common practice by EPA, including the petitioner's own approval recently issued by Region II.

II. EPA's Decision

EPA agrees with the petitioner's underlying premise that there should be public notice and comment prior to issuing commercial storage or disposal approvals under the TSCA PCB regulations. However, EPA is denying the petition because it does not believe it is necessary to write a Federal regulation to achieve this end.

EPA believes it is important to have public notice and comment prior to the issuance of certain commercial storage and disposal approvals for many of the reasons the petitioner has stated in its request. In fact, EPA's existing TSCA approval guidance (Guidance Manual for Writers of PCB Disposal Permits for Alternate Technologies, October 1, 1988 (Ref. 2)) requires public notice and comment prior to the issuance of an alternate disposal technology approval. The failure to follow this guidance for one disposal approval was an isolated instance resulting from a misunderstanding between Headquarters and the Regional office and is not to be considered as reflecting EPA's philosophy or practice as a whole.

The input of the public, especially those in the vicinity of a proposed commercial storage or disposal facility, must play a role in the issuance of an approval to operate such a facility. By informing the public and receiving public input, EPA can achieve its goal of protecting public health and the environment while at the same time not unfairly subjecting any citizen to unjust or disproportionate environmental impacts.

In the PCB program, most approval applications mentioned by the petitioner are granted or denied by the Regional Administrators; however, the Director of CMD at Headquarters also has the authority to act on such requests. Therefore, the review process is under EPA's control and direction. With this in mind, EPA will revise its existing TSCA approval guidance to more clearly define the notice and comment procedures which are to be followed when conducting a review of an application for a PCB storage or disposal approval. The revised guidance that approving authorities have been directed to follow will include specific procedures to follow when conducting public notice and comment. The procedures will include such things as the format and content of the public notice, timing of the notice, length of time it should appear, length of comment period, and procedures for responding to and incorporating comments into the final approval. Not only will the procedures be revised, but the scope of the guidance will be expanded to include public notice and an opportunity for comment prior to a decision on not only approvals relating to fluorescent light ballast, but on all fixed-site storage and disposal approvals issued pursuant to 40 CFR 761.60(a)(5), 761.60(e), 761.65(d), 761.70 and 761.75.

Amending EPA's existing guidance as opposed to initiating rulemaking will be a quick and relatively economical way to implement the petitioner's request for a consistent national policy. Given EPA's firm commitment to the principle of notice and comment prior to issuance of PCB approvals, we do not see what added value is provided by implementing this principle through more costly, and ultimately less flexible rulemaking procedures.

As a matter of record, and as evidence in support of EPA's commitment to adhere to the guidance, EPA Headquarters has notified the Regional Administrators that public notice and comment must be part of the approval process and has received written assurances from all ten of its Regional offices that they heartily endorse and will implement EPA's policy to provide public notice and an opportunity for comment prior to the issuance of fixed-site commercial storage or disposal approvals.

Lastly, on February 21, 1995, the President announced a new initiative mandating a line-by-line review of all existing regulations in the Code of Federal Regulations (CFR). The intent of this initiative is to move towards a regulatory system that focusses on results rather than procedures and, towards that end, to eliminate any unnecessary Federal regulatory language that appears in the CFR. EPA believes that it would be at odds with this Presidential initiative if it were to add to the CFR procedural rules for issuing commercial storage and disposal approvals when the same result can be achieved through issuance of clear guidance to Regional and Headquarters decisionmakers on precisely what notice and comment opportunities must be provided in connection with the issuance of PCB storage and disposal approvals.

III. Record

EPA has established a record for its response to this petition under Docket number OPPTS–211041. The record contains the basic information considered by EPA in reaching this decision.

The following references are included in the record for this action:

(1) Petition submitted to USEPA by Karl R. Morthole representing FulCircle Ballast Recyclers (February 14, 1995) and attachments.

(2) Guidance Manual for Writers of PCB Disposal Permits for Alternate Technologies (October 1, 1988).

(3) Reinventing Environmental Regulation, President Bill Clinton and Vice President Al Gore, March 16, 1995.

(4) Letter from Lynn R. Goldman, M.D., Assistant Administrator, OPPTS, to the Regional Administrators requesting public notice and comment be part of their PCB commercial storage and disposal approval process (April 11, 1995).

(5) Replies to Dr. Goldman's April 11, 1995 letter from the Regional Administrators affirming their support for public notice and comment being a part of their PCB commercial storage and disposal approval process.

Region I, May 1, 1995

Region II, May 11, 1995
Region III, May 4, 1995
Region IV, May 3, 1995
Region V, April 28, 1995
Region VI, April 24, 1995
Region VII, May 1, 1995
Region VIII, May 2, 1995
Region IX, May 2, 1995
Region X, April 18, 1995

IV. Conclusion

For the reasons detailed above, EPA is denying the petition filed by FulCircle Ballast Recyclers under section 21 of TSCA.

Authority: 15 U.S.C. 2620.

Dated: May 22, 1995.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 95–13136 Filed 5–26–95; 8:45 am]

BILLING CODE 6560–50–F

[FRL–5212–9]

Georgia Transformer Site; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: Under Section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Environmental Protection Agency (EPA) has agreed to settle claims for response costs at the Georgia Transformer Site (Site) located in Thomasville, Georgia, with approximately 80 potentially responsible parties (PRPs) at the Site. EPA will consider public comments on the proposed settlement for thirty days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate. Copies of the proposed settlement and a list of proposed settling parties are available from: Mr. Greg Armstrong, Enforcement Project Manager, U.S. Environmental Protection Agency, Region IV, Waste Programs Branch, Waste Management Division, 345 Courtland Street, N.E., Atlanta, Georgia 30365, (404) 347–5059 ext. 6188.

Written comment may be submitted to the person above within 30 days of the date of publication.

Dated: May 19, 1995.

Richard D. Green

Acting Director, Waste Management Division.

[FR Doc. 95–13245 Filed 5–26–95; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Semiannual Report of Payment Accepted From Non-Federal Sources Under 31 U.S.C. 1353; for the Period Beginning October 1, 1994 and Ending March 31, 1995; Summary Report

Reimbursement/In-kind Payments In Excess of $250

Total Number of Sponsored Events: 65.

Total Number of Sponsoring Organizations: 59.

Total Number of Different Commissioners/Employees Attending: 67.

Total Amount of Reimbursement Received

	Check	In-kind
In excess of $250	$63,591.98	$29,472.74
Under $250 (Detail not included)	568.25	321.48
Total	64,160.23	29,794.22

1. *Agency:* Federal Communications Commission.
2. *Employee:* Ralph A. Haller.
Government position: Chief, Private Radio Bureau.
3. *Event:* Annual Technical Conference of the Communication and Signal Division of AAR.
4. *Sponsor of Event:* Association of American Railroads—AAR.
5. *Sponsor Address:* 50 F Street, N.W., Washington, D.C. 20001.
6. *Location of Event:* New Orleans, Louisiana.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 08/22–24/94.
9. *Travel Dates:* 08/20–27/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$416.00	
2. Hotel Room		$122.52
3. Meals	161.50	
4. Parking, Mileage & Taxi	48.00	
	625.50	122.52

(b) *Non-Fed Source:* Same as No. 4.

1. *Agency:* Federal Communications Commission.
2. *Employee:* Catherine K. Sandoval.
Government position: Attorney, Office of International Communications.
3. *Event:* Panel on "Regulatory Regimes and the Global Information Infrastructure".
4. *Sponsor of Event:* American Bar Association—ABA.
5. *Sponsor Address:* 750 North Lake Shore Drive, Chicago, IL 60611.
6. *Location of Event:* New Orleans, Louisiana.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 08/07/94.
9. *Travel Dates:* 08/05–07/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$416.00	
2. Hotel Room	198.00	
3. Meals	68.00	
4. Fax, Telephone & Taxi	78.70	
	760.70	

(b) *Non-Fed Source:* Same as No. 4.

1. *Agency:* Federal Communications Commission.
2. *Employee:* Michael L. Katz.
Government position: Chief Economist, Office of Plans and Policy.
3. *Event:* Panel Discussion "Regulatory Regimes and the Global Information Infrastructure".
4. *Sponsor of Event:* American Bar Association—ABA.
5. *Sponsor Address:* Young Lawyers Division, 750 North Lake Shore Drive, Chicago, IL 60611.
6. *Location of Event:* New Orleans, Louisiana.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 08/07/94.
9. *Travel Dates:* 08/06–07/94.
10. (a)

Nature of benefit:	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation	$416.00	
2. Hotel Room	66.00	
3. Meals	42.50	
4. Parking, Mileage & Taxi	57.00	
	591.50	

(b) *Non-Fed Source:* Same as No. 4.

1. *Agency:* Federal Communications Commission.
2. *Employee:* Fred L. Thomas.
Government position: Electronics Engineer, Office of Engineering & Technology.
3. *Event:* PCS Conference.
4. *Sponsor of Event:* AIC Conference.
5. *Sponsor Address:* 50 Broad Street, 19th Floor, New York, NY 10004.
6. *Location of Event:* New York, New York.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 06/09–10/94.
9. *Travel Dates:* 06/08–09/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In-kind
1. Roundtrip Transportation		$232.00
2. Hotel Room		147.00
3. Meals	$49.00	
4. Parking, Mileage & Taxi	67.50	
	116.50	379.00

(b) *Non-Fed Source:* Same as No. 4.

1. *Agency:* Federal Communications Commission.
2. *Employee:* Carol Mattey.
Government position: Deputy Chief, Policy & Planning Division, Common Carrier Bureau.
3. *Event:* Semi-Annual Conference ACTA.
4. *Sponsor of Event:* America's Carriers Telecommunication Association—ACTA.
5. *Sponsor Address:* Attn: Jennifer Durst-Jarrell, 240 Spring Wind Way, Casselberry, FL 32707.
6. *Location of Event:* New Orleans, Louisiana.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 09/12/94.
9. *Travel Dates:* 09/12–13/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In kind
1. Roundtrip Transportation	$416.00	
2. Hotel Room		$110.00
3. Meals	42.50	
4. Parking, Mileage & Taxi	57.00	
	515.50	110.00

(b) *Non-Fed Source:* Same as No. 4.

1. *Agency:* Federal Communications Commission.
2. *Employee:* Dan D. Abeyta.
Government position: Attorney, Common Carrier Bureau.
3. *Event:* International Wireless Communications Expo.
4. *Sponsor of Event:* ARGUS Trade Shows.
5. *Sponsor Address:* 6151 Power Ferry Road, N.W., Suite 300, Atlanta, GA 30339.
6. *Location of Event:* Las Vegas, Nevada.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 04/13–15/94.
9. *Travel Dates:* 04/13–15/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In kind
1. Roundtrip Transportation	$316.00	
2. Hotel Room	170.64	
3. Meals	95.40	
4. Parking, Mileage & Taxi	29.40	
5. Telephone	1.00	
	612.04	

(b) *Non-Fed Source:* Same as No. 4.

1. *Agency:* Federal Communications Commission.
2. *Employee:* Rosalind K. Allen.
Government position: Attorney, Private Radio Bureau.
3. *Event:* International Wireless Communications Expo.
4. *Sponsor of Event:* ARGUS Trade Shows.
5. *Sponsor Address:* 6151 Powers Ferry Road, N.W., Suite 300, Atlanta, GA 30339.
6. *Location of Event:* Las Vegas, Nevada.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 04/13–15/94.
9. *Travel Dates:* 04/13–15/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In kind
1. Roundtrip Transportation	$316.00	
2. Hotel Room	170.64	
3. Meals	87.00	
4. Parking, Mileage & Taxi	80.00	
5. Telephone	19.43	
	673.07	

(b) *Non-Fed Source:* Same as No. 4.

1. *Agency:* Federal Communications Commission.
2. *Employee:* W. Riley Hollingsworth.
Government position: Attorney, Private Radio Bureau.
3. *Event:* International Wireless Communications Expo.
4. *Sponsor of Event:* ARGUS Trade Shows.
5. *Sponsor Address:* 6151 Powers Ferry Road, N.W., Suite 300, Atlanta, GA 30339.
6. *Location of Event:* Las Vegas, Nevada.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 04/13–15/94.
9. *Travel Dates:* 04/12–16/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In kind
1. Roundtrip Transportation	$926.29	
2. Hotel Room	341.28	
3. Meals	180.50	
4. Parking, Mileage & Taxi	100.30	
5. Telephone	12.25	
	1,560.62	

(b) *Non-Fed Source:* Same as No. 4.

1. *Agency:* Federal Communications Commission.
2. *Employee:* Richard M. Smith.
Government position: Chief, Field Operations Bureau.
3. *Event:* International Wireless Communications Expo.
4. *Sponsor of Event:* ARGUS Trade Shows.
5. *Sponsor Address:* 6151 Powers Ferry Road, N.W., Suite 300, Atlanta, GA 30339.
6. *Location of Event:* Las Vegas, Nevada.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 04/13–15/94.
9. *Travel Dates:* 04/13–15/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In kind
1. Roundtrip Transportation	$304.00	
2. Hotel Room	170.64	
3. Meals	104.50	
4. Parking, Mileage & Taxi	26.00	
5. Telephone	104.19	
	709.33	

(b) *Non-Fed Source:* Same as No. 4.

1. *Agency:* Federal Communications Commission.
2. *Employee:* Ralph A. Haller.
Government position: Chief, Private Radio Bureau.
3. *Event:* International Wireless Communication Expo.
4. *Sponsor of Event:* ARGUS Business.
5. *Sponsor Address:* 214 Massachusetts Avenue N.E., Suite 360, Washington, D.C. 20002.

6. *Location of Event:* Tampa, Florida.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 10/19–20/94.
9. *Travel Dates:* 10/18–21/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In kind
1. Roundtrip Transportation	$320.00	
2. Hotel Room		$375.00
3. Meals	105.00	
4. Parking & Taxi	53.00	
5. Car Rental	60.87	
	538.87	375.00

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Stephen L. Markendorff.
Government position: Chief, Cellular Radio Branch, Common Carrier Bureau.
3. *Event:* International Wireless Communications Expo.
4. *Sponsor of Event:* ARGUS Business.
5. *Sponsor Address:* 214 Massachusetts Avenue N.E., Suite 360, Washington, D.C. 20002.
6. *Location of Event:* Tampa, Florida.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 10/19–20/94.
9. *Travel Dates:* 10/19–20/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In kind
1. Roundtrip Transportation	$390.00	
2. Hotel Room	57.00	
3. Meals	45.50	
4. Telephone & Taxi	37.80	
	530.30	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* David M. Szypulski.
Government position: Electronics Engineer, Office of Engineering & Technology.
3. *Event:* EMF Regulation & Litigation Institute Conference.
4. *Sponsor of Event:* Business Development Associates—BDA.
5. *Sponsor Address:* Mike Ryan, 1200 G Street, N.W., Suite 700, Washington, D.C. 20005.
6. *Location of Event:* Orlando, Florida.
7. *Employee's Role:* Presentation at Conference.
8. *Dates of Event:* 04/14–15/94.
9. *Travel Dates:* 04/13–15/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In kind
1. Roundtrip Transportation	$450.00	
2. Hotel Room		$396.00
3. Meals		
4. Parking, Mileage & Taxi		
	450.00	396.00

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Roderick K. Porter.
Government position: Deputy Chief, Mass Media Bureau.
3. *Event:* CBA Summer Convention.
4. *Sponsor of Event:* California Broadcasters Association—CBA.
5. *Sponsor Address:* 1127 11th Street, Suite 730, Sacramento, CA 95814.
6. *Location of Event: Monterey, California.*
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 07/16–18/94.
9. *Travel Dates:* 07/17–19/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In kind
1. Roundtrip Transportation	$552.00	
2. Hotel Room	246.00	
3. Meals	140.25	
4. Parking, Mileage & Taxi		
5. Telephone	15.00	
	1.50	
	954.75	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Roy J. Stewart.
Government position: Chief, Mass Media Bureau.
3. *Event:* CBA Summer Convention.
4. *Sponsor of Event:* California Broadcasters Association—CBA.
5. *Sponsor Address:* 1127 11th Street, Suite 730, Sacramento, CA 95814.
6. *Location of Event:* Monterey, California.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 07/16–18/94.
9. *Travel Dates:* 07/17–19/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In kind
1. Roundtrip Transportation	$552.00	
2. Hotel Room	246.00	
3. Meals	140.25	
4. Parking, Mileage & Taxi	55.00	
	993.25	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Lenworth Smith.
Government position: Attorney, Cable Services Bureau.
3. *Event:* Great Lakes Cable Expo.
4. *Sponsor of Event:* Continental Cablevision of Michigan—CCM.
5. *Sponsor Address:* 21900 Melrose Avenue, Suite 6, Southfield, MI 48075.
6. *Location of Event:* Indianapolis, Indiana.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 09/19–21/94.
9. *Travel Dates:* 09/20/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In kind
1. Roundtrip Transportation	$404.00	
2. Hotel Room	.00	
3. Meals	25.50	
4. Parking, Mileage & Taxi	38.00	
	467.50	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Linda B. Dubroof.
Government position: Attorney, Common Carrier Bureau.
3. *Event:* CFCA Ninth Annual Meeting & Conference.
4. *Sponsor of Event:* Communications Fraud Control Association—CFCA.
5. *Sponsor Address:* 1990 M Street, NW., Washington, DC 20036.
6. *Location of Event:* Boston, Massachusetts.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 06/02/94.
9. *Travel Dates:* 06/02–03/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In kind
1. Roundtrip Transportation	$206.00	
2. Hotel Room	101.00	
3. Meals	.00	
4. Parking, Mileage & Taxi	.00	
	309.00	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* John R. Hudak.
Government position: Electronics Engineer, Compliance and Information Bureau.
3. *Event:* China Telecommunication Modernization Program.
4. *Sponsor of Event:* China International Centre for Economic & Technical Exchanges—CICETE.
5. *Sponsor Address:* Attn: Cheng Dayan, Ministry of Foreign Trade & Economic Cooperation, The People's Republic of China, No. 18 Bei San Huan Zhong Lu, Beijing, China, Post Code: 100011.
6. *Location of Event:* Beijing, China.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 10/14–30/94.
9. *Travel Dates:* 10/13–30/94
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In kind
1. Roundtrip Transportation	$1,970.95	
2. Hotel Room	1,639.36	
3. Meals	1,349.00	
4. Parking, Mileage & Taxi	121.03	
	5,080.34	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Charles W. Kelley.
Government Position: Chief, Enforcement Division, Mass Media Bureau.
3. *Event:* Colorado Broadcasters Convention.
4. *Sponsor of Event:* Colorado Broadcasters Association—CBA.
5. *Sponsor Address:* 1660 Lincoln Street, Suite 2202, Denver, CO 80264.
6. *Location of Event:* Grand Junction, Colorado.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 06/16–18/94.
9. *Travel Dates:* 06/16–18/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In kind
1. Roundtrip Transportation	$528.00	
2. Hotel Room	88.00	
3. Meals	90.00	
4. Parking, Mileage & Taxi		
	706.00	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Linda L. Haller.
Government Position: Attorney, Common Carrier Bureau.
3. *Event:* Convergence '94 Conference.
4. *Sponsor of Event:* CommPerspectives.
5. *Sponsor Address:* Richard Purcell, Program & Editorial Director, 600 South Cherry Street, Suite 400, Denver, CO 80222.
6. *Location of Event:* Atlanta, Georgia.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 04/18–19/94.
9. *Travel Dates:* 04/17–18/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In kind
1. Roundtrip Transportation	$341.00	
2. Hotel Room	158.20	
3. Meals	.00	
4. Parking, Mileage & Taxi	.00	
	499.20	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Bruce A. Franca.
Government Position: Deputy Chief Engineer, Office of Engineering & Technology.
3. *Event:* 1994 Summer International, Consumer Electronics Show.
4. *Sponsor of Event:* Electronic Industries Association—EIA.
5. *Sponsor Address:* 2001 Pennsylvania Avenue, NW., Washington, DC 20006.
6. *Location of Event:* Chicago, Illinois.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 06/23–25/94.
9. *Travel Dates:* 06/23–24/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In kind
1. Roundtrip Transportation		$309.00
2. Hotel Room		160.86
3. Meals		68.50
4. Parking, Mileage & Taxi	$24.00	
	24.00	536.36

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Leslie A. Wall.
Government position: Electronics Engineer, Office Engineering & Technology.
3. *Event:* 1994 International Symposium on Electromagnetic Compatibility.
4. *Sponsor of Event:* 94 EMC Symposium Committee.
5. *Sponsor Address:* c/o Mr. M. Okamura, JQA, 21–25 Kinuta, 1-chome, Setagaya-ku, Tokyo 157, Japan.
6. *Location of Event:* Tokyo, Japan.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 05/16–20/94.
9. *Travel Dates:* 05/14–27/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In kind
1. Roundtrip Transportation	$956.95	
2. Hotel Room		$3,370.00
3. Meals	299.75	2,021.00
4. Parking, Mileage & Taxi	30.00	
	1,286.70	5,391.00

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Roderick K. Porter.
Government position: Deputy Bureau Chief, Operations, Mass Media Bureau.
3. *Event:* FAB Annual Convention.
4. *Sponsor of Event:* Florida Association of Broadcasters—FAB.
5. *Sponsor Address:* 109 East College, Tallahassee, FL 32301.
6. *Location of Event:* Palm Beach, Florida.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 06/22–26/94.
9. *Travel Dates:* 06/22–24/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In kind
1. Roundtrip Transportation	$284.00	
2. Hotel Room	.00	
3. Meals	.00	
4. Parking, Mileage & Taxi	.00	
	284.00	

(b) *Non-Fed Source:* Same as No. 4.

1. *Agency:* Federal Communications Commission.
2. *Employee:* James H. Quello.
Government position: Commissioner.
3. *Event:* FAB Annual Convention.
4. *Sponsor of Event:* Florida Association of Broadcasters—FAB.
5. *Sponsor Address:* 109 East College, Tallahassee, FL 32301.
6. *Location of Event:* Palm Beach, Florida.
7. *Employee's Role:* Attendance & Participation.
8. *Dates of Event:* 06/22–26/94.
9. *Travel Dates:* 06/22–26/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In kind
1. Roundtrip Transportation	$326.00	
2. Hotel Room	328.00	
3. Meals	230.00	
4. Parking, Mileage & Taxi	41.00	
5. Telephone	111.90	
	1,036.90	

(b) *Non-Fed Source:* Same as No. 4.

1. *Agency:* Federal Communications Commission.
2. *Employee:* Karen Brinkman.
Government position: Special Assistant to Chairman Reed E. Hundt.
3. *Event:* FCBA 1994 Annual Seminar.
4. *Sponsor of Event:* Federal Communications Bar Association—FCBA.
5. *Sponsor Address:* 1722 Eye Street, N.W., Suite 300, Washington, D.C. 20006.
6. *Location of Event:* Farmington, Pennsylvania.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 05/13–15/94.
9. *Travel Dates:* 05/13–15/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In kind
1. Roundtrip Transportation	$75.00	
2. Hotel Room		$185.50
3. Meals		40.00
4. Parking, Mileage & Taxi		
	75.00	225.50

(b) *Non-Fed Source;* Same as No. 4.

1. *Agency:* Federal Communications Commission.
2. *Employee:* Andrew C. Barrett.
Government position: Commissioner.
3. *Event:* World Telecommunications Conference.
4. *Sponsor of Event:* Financial Times.
5. *Sponsor Address:* 102–108 Clerkenwell Road, London EC1M 55A.
6. *Location of Event:* London, England.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 12/3–7/94.
9. *Travel Dates:* 12/02–07/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In kind
1. Roundtrip Transportation		$1,252.55
2. Hotel Room		
3. Meals		170.15
4. Taxi & Telephone		164.98
		1,587.68

(b) *Non-Fed Source:* Same as No. 4.

1. *Agency:* Federal Communications Commission.
2. *Employee:* Edythe S. Wise.
Government position: Attorney, Mass Media Bureau.
3. *Event:* IBA Summer Convention.
4. *Sponsor of Event:* Iowa Boadcasters Association—IBA.
5. *Sponsor Address:* P.O. Box 71186, Des Moines, IA 50325.
6. *Location of Event:* West Des Moines, Iowa.
7. *Employee's Role:* Speaker/Panelist.
8. *Dates of Event:* 06/15–17/94
9. *Travel Dates:* 06/15–17/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In kind
1. Roundtrip Transportation	$226.00	
2. Hotel Room	110.00	
3. Meals	67.50	
4. Parking, Mileage & Taxi	30.75	
	434.25	

(b) *Non-Fed Source:* Same as No. 4.

1. *Agency:* Federal Communications Commission.
2. *Employee:* Kenneth M. Ackerman.
Government position: Chief, Accounting Systems Branch, Cable Services Bureau.
3. *Event:* Utilities Conference.
4. *Sponsor of Event:* Indiana CPA Society—ICPAS.
5. *Sponsor Address:* 8250 Woodfield Crossing Blvd., Suite 305, P.O. Box 40069, Indianapolis, IN 46240–0069.
6. *Location of Event:* Indianapolis, Indiana.
7. *Employee's Role:* Speaker.
8. *Date of Event:* 10/27/94.
9. *Travel Dates:* 10/26–27/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In kind
1. Roundtrip Transportation	$284.00	
2. Hotel Room	71.00	
3. Meals	42.50	
4. Mileage, Parking & Telephone	42.00	
	439.50	

(b) *Non-Fed Source:* Same as No. 4.

1. *Agency:* Federal Communications Commission.
2. *Employee:* Robert M. Pepper.
Government position: Chief, Office of Plans & Policy.
3. *Event:* IIC Telecom Forum.
4. *Sponsor of Event:* International Institute of Communications—IIC;
5. *Sponsor Address:* Tavistock House South, Tavistock Square, London WC1H 9 LF.
6. *Location of Event:* London, England.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 01/23–24/95.
9. *Travel Dates:* 01/23–25/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In kind
1. Roundtrip Transportation		$150.00
2. Hotel Room		306.00
3. Meals		
4. Parking, Mileage & Taxi.		
		456.00

(b) *Non-Fed Source:* Same as No. 4.

1. *Agency:* Federal Communications Commission.
2. *Employee:* Byron F. Marchant.
Government position: Senior Legal Advisor to Commissioner Andrew C. Barrett.
3. *Event:* Telecommunications Conference.
4. *Sponsor of Event:* IIR—Institute for International Research.
5. *Sponsor Address:* 60 Bloor Street West, Suite 1101, Toronto, M4W 3B8
6. *Location of Event:* Montreal, Canada.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 03/30–31/94.
9. *Travel Dates:* 03/30–31/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In kind
1. Roundtrip Transportation	$391.75	
2. Hotel Room	77.48	
3. Meals	91.50	
4. Ground Transportation	52.75	
5. Telephone	.76	
	614.24	

(b) *Non-Fed Source:* Same as No. 4.

1. *Agency:* Federal Communications Commission.
2. *Employee:* Andrew C. Barrett.
Government position: Commissioner.
3. *Event:* Telecommunications Conference.
4. *Sponsor of Event:* IIR - Institute for International Research.
5. *Sponsor Address:* 60 Bloor Street West, Suite 1101, Toronto, M4W 3B8.
6. *Location of Event:* Toronto, Canada.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 03/28–29/94.
9. *Travel Dates:* 03/26–28/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In kind
1. Roundtrip Transportation	$225.45	
2. Hotel Room	138.26	
3. Meals	167.50	
4. Ground Transportation	45.00	
5. Telephone	2.96	
	579.17	

(b) *Non-Fed Source:* Same as No. 4.

1. *Agency:* Federal Communications Commission.
2. *Employee:* Robert M. Pepper.
Government position: Chief, Office of Plans & Policy.
3. *Event:* Global Telecoms '94 Conference.
4. *Sponsor of Event:* IIR Limited.
5. *Sponsor Address:* Attn: Bridget D. Fitzgerald, Conference Pro, IT Division, IIR Limited, Glenn House, 200/208 Tottenham Court Road, London, WIP 9LA.
6. *Location of Event:* London, England.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 09/12/94.
9. *Travel Dates:* 09/09–13/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In kind
1. Roundtrip Transportation		$740.95
2. Hotel Room		292.50
3. Meals	$57.81	172.00
4. Parking, Mileage & Taxi	9.75	
	67.56	1205.45

(b) *Non-Fed Source:* Same as No. 4.

1. *Agency:* Federal Communications Commission.
2. *Employee:* Kathleen B. Levitz.
Government Position: Deputy Bureau Chief, Policy, Common Carrier Bureau.
3. *Event:* ITA Annaul Convention
4. *Sponsor of Event:* Illinois Telephone Association—ITA.
5. *Sponsor Address:* P.O. Box 730, 300 East Monroe Street, Springfield, IL 62705.
6. *Location of Event:* Osage Beach, Missouri.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 06/12–14/94.
9. *Travel Dates:* 06/12–13/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In kind
1. Roundtrip Transportation	$484.0	
2. Hotel Room		$112.00
3. Meals	45.00	
4. Parking, Mileage & Taxi	25.00	
5. Car Rental & Gas	54.32	
	608.32	112.00

(b) *Non-Fed Source:* Same as No. 4.

1. *Agency:* Federal Communications Commission.
2. *Employee:* James M. Roop.
Government Position: Electronics Engineer, Compliance & Information Bureau.
3. *Event:* Spectrum Administration Course.
4. *Sponsor of Event:* Instituto Mexicano de Comunicaciones—IMC.
5. *Sponsor Address:* Av. de las Telecomunicaciones, S/N Col Leyes de Reforma, Deleg. Iztapalapa C.P. 09310, Mexico, D.F.
6. *Location of Event:* Mexico City, Mexico.
7. *Employee's Role:* Instructor.
8. *Dates of Event:* 10/07–11/94.
9. *Travel Dates:* 10/05–12/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In kind
1. Roundtrip Transportation	$696.45	
2. Hotel Room	327.17	$75.00
3. Meals	483.00	
4. Parking, Mileage & Taxi	52.31	
	1,558.93	75.00

(b) *Non-Fed Source:* Same as No. 4.

1. *Agency:* Federal Communications Commission.
2. *Employee:* Ruth Milkman.
Government Position: Senior Legal Advisor to Chairman Reed E. Hundt.
3. *Event:* 98th Annual Fall, Convention.
4. *Sponsor of Event:* Iowa Telephone, Association—ITA.
5. *Sponsor Address:* 1601 22nd Street, Suite 209, West Des Moines, IA 50265.
6. *Location of Event:* Des Moines, Iowa.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 10/31–11/02/94.

9. *Travel Dates:* 10/30–11/01/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In kind
1. Roundtrip Transportation	$256.00	
2. Hotel Room		
3. Meals	45.00	
4. Taxi & Telephone	20.35	
	321.35	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Ralph A. Haller.
Government Position: Chief, Private Radio Bureau.
3. *Event:* ITA's 1994 Annual Conference.
4. *Sponsor of Event:* Industrial Telecommunications Association Inc—ITA.
5. *Sponsor Address:* 110 North Glebe Road, Suite 500, Arlington, VA 22201–5720.
6. *Location of Event:* Williamsburg, Virginia.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 11/03–05/94.
9. *Travel Dates:* 11/02–03/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In kind
1. Roundtrip Transportation	$88.00	
2. Hotel Room	49.00	
3. Meals	51.00	
4. Taxi & Telephone		
	188.00	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Richard M. Smith.
Government Position: Chief, Office of Engineering & Technology.
3. *Event:* ITA's 1994 Annual Conference.
4. *Sponsor of Event:* Industrial Telecommunications Association Inc—ITA.
5. *Sponsor Address:* 110 North Glebe Road, Suite 500, Arlington, VA 22201–5720.
6. *Location of Event:* Williamsburg, Virginia.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 11/03–05/94.
9. *Travel Dates:* 11/03–05/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In kind
1. Roundtrip Transportation	$77.50	
2. Hotel Room		$59.00
3. Meals	42.50	
4. Taxi & Telephone	1.50	
	121.50	59.00

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Thomas P. Stanley.
Government position: Chief Engineer, Office Plans & Policy.
3. *Event:* IA's 1994 Annual Conference.
4. *Sponsor of Event:* Industrial Telecommunications Association Inc—ITA.
5. *Sponsor Address:* 110 North Glebe Road, Suite 500, Arlington, VA 22201–5720.
6. *Location of Event:* Williamsburg, Virginia.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 11/03–05/94.
9. *Travel Dates:* 11/03–04/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In kind
1. Roundtrip Transportation	$80.50	
2. Hotel Room	49.00	
3. Meals	17.00	
4. Taxi & Telephone		
	146.50	

(b) *Non-Fed Source: Same as No. 4.*
1. *Agency:* Federal Communications Commission.
2. *Employee:* Robert H. Ratcliffe.
Government position: Attorney, Mass Media Bureau.
3. *Event:* MAB Annual Convention.
4. *Sponsor of Event:* Maine Association of Broadcasters—MAB.
5. *Sponsor Address:* P.O. Box P, 128 State Street, Suite 301, Augusta, ME 04332–0631.
6. *Location of Event:* Bar Harbor, Maine.
7. *Employee's Role:* Speaker.
8. *Date of Event:* 09/09–10/94.
9. *Travel Dates:* 09/09–11/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In kind
1. Roundtrip Transportation	$405.00	
2. Hotel Room		196.88
3. Meals	48.31	
4. Parking, Mileage & Taxi	20.50	
5. Car Rental	80.03	
	553.84	196.88

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* James H. Quello.
Government position: Commissioner.
3. *Event:* MAB's Annual Convention.
4. *Sponsor of Event:* Michigan Association of Broadcasters.
5. *Sponsor Address:* 619 North Washington Avenue, Lansing, MI 48906.
6. *Location of Event:* Harbor Springs, Michigan.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 08/19–21/94.
9. *Travel Dates:* 08/15–24/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In kind
1. Roundtrip Transportation	$485.23	
2. Hotel Room		$437.40
3. Meals	126.00	
4. Parking, Mileage & Taxi	59.98	
	671.21	437.40

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Thomas C. Spavins.
Government position: Attorney, Office General Counsel
3. *Event:* Conference on telecommunications Competition & Choice.
4. *Sponsor of Event:* Ministry of Energy Telecommunications & Post and the Regulatory Department, Jabatan Telekom, Malaysia.
5. *Sponsor Address:* Wisma Damansara, Jalan Semantan, 50668 Kuala Lumpur, Malaysia.
6. *Location of Event:* Kuala Lumpur, Malaysia.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 05/19/94.
9. *Travel Dates:* 05/16–21/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In kind
1. Roundtrip Transportation		$2,865.00
2. Hotel Room		375.00
3. Meals		270.00
4. Parking, Mileage & Taxi		75.00
		3,585.00

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Rachelle B. Chong.
Government Position: Commissioner.
3. *Event:* NAB Radio Show.
4. *Sponsor of Event:* National Association of Broadcasters—NAB.
5. *Sponsor Address:* 1771 N Street, NW., Washington, DC 20036–2891.
6. *Location of Event:* Los Angeles, California.
7. *Employee's Role:* Speaker/Panelist.
8. *Dates of Event:* 10/12–15/94.
9. *Travel Dates:* 10/11–14/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In kind
1. Roundtrip Transportation	$196.00	
2. Hotel Room	202.92	
3. Meals	114.00	
4. Parking, Mileage & Taxi	22.00	
	534.92	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Larry D. Eads.
Government Position: Chief, Audio Services Division, Mass Media Bureau.
3. *Event:* NAB Radio Show.
4. *Sponsor of Event:* National Association of Broadcasters—NAB.
5. *Sponsor Address:* 1771 N Street, NW., Washington, DC 20036.
6. *Location of Event:* Los Angeles, California.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 10/12–15/94.
9. *Travel Dates:* 10/12–16/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In kind
1. Roundtrip Transportation	$392.00	

Nature of benefit	(c) Type & amount of payment	
	Check	In kind
2. Hotel Room	304.38	
3. Meals	171.00	
4. Parking, Mileage & Taxi	85.00	
5. Telephone & Copying	27.02	
	979.40	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Reed E. Hundt.
Government Position: Chairman.
3. *Event:* NAB Radio Show.
4. *Sponsor of Event:* National Association of Broadcasters—NAB.
5. *Sponsor Address:* 1771 N Street, NW., Washington, DC 20036–2891.
6. *Location of Event:* Los Angeles, California.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 10/12–15/94.
9. *Travel Dates:* 10/10–14/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In kind
1. Roundtrip Transportation	$237.00	
2. Hotel Room	202.92	
3. Meals	95.00	
4. Telephone & Faxes	84.88	
	619.80	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* William E. Kennard.
Government Position: General Counsel.
3. *Event:* NAB Radio Show.
4. *Sponsor of Event:* National Association of Broadcasters—NAB.
5. *Sponsor Address:* 1771 N Street, NW., Washington, DC 20036–2891.
6. *Location of Event:* Los Angeles, California.
7. *Employee's Role:* Speaker/Panelist.
8. *Dates of Event:* 10/12–15/94.
9. *Travel Dates:* 10/11–16/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In kind
1. Roundtrip Transportation	$392.00	

Nature of benefit	(c) Type & amount of payment	
	Check	In kind
2. Hotel Room		
3. Meals		
4. Parking, Mileage & Taxi	51.00	
	443.00	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Jane Mago.
Government position: Legal Advisor to Commissioner Rachelle B. Chong.
3. *Event:* NAB Radio Show.
4. *Sponsor of Event:* National Association of Broadcasters—NAB.
5. *Sponsor Address:* 1771 N Street, N.W., Washington, D.C. 20036–2891.
6. *Location of Event:* Los Angeles, California.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 10/12–15/94.
9. *Travel Dates:* 10/11–14/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In kind
1. Roundtrip Transportation	$392.00	
2. Hotel Room	202.92	
3. Meals	114.00	
4. Parking, Mileage & Taxi	22.00	
	730.92	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Susan Ness.
Government position: Commissioner.
3. *Event:* NAB Radio Show.
4. *Sponsor of Event:* National Association of Broadcasters—NAB.
5. *Sponsor Address:* 1771 N Street, N.W., Washington, D.C. 20036–2891.
6. *Location of Event:* Los Angeles, California.
7. *Employee's Role:* Speaker/Panelist.
8. *Dates of Event:* 10/12–15/94.
9. *Travel Dates:* 10/12–14/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In kind
1. Roundtrip Transportation	$196.00	
2. Hotel Room	202.92	
3. Meals	114.00	

Nature of benefit	(c) Type & amount of payment	
	Check	In kind
4. Telephone	14.00	
	526.92	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Maureen O'Connell.
Government position: Legal Advisor to Commissioner James H. Quello.
3. *Event:* NAB Radio Show.
4. *Sponsor of Event:* National Association of Broadcasters—NAB.
5. *Sponsor Address:* 1771 N Street, N.W., Washington, D.C. 20036–2891.
6. *Location of Event:* Los Angeles, California.
7. *Employee's Role:* Speaker/Panelist.
8. *Dates of Event:* 10/12–15/94.
9. *Travel Dates:* 10/13–15/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In kind
1. Roundtrip Transportation	$392.00	
2. Hotel Room	101.46	
3. Meals	85.50	
4. Parking, Mileage & Taxi	54.50	
5. Telephone	.75	
	634.21	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Roderick K. Porter.
Government position: Deputy Chief, Mass Media Bureau.
3. *Event:* NAB Radio Show.
4. *Sponsor of Event:* National Association of Broadcasters—NAB.
5. *Sponsor Address:* 1771 N Street, N.W., Washington, D.C. 20036–2891.
6. *Location of Event:* Los Angeles, California.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 10/12–15/94.
9. *Travel Dates:* 10/12–15/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In kind
1. Roundtrip Transportation	$392.00	
2. Hotel Room	304.38	
3. Meals	142.50	
4. Parking, Mileage & Taxi	87.50	

Nature of benefit	(c) Type & amount of payment	
	Check	In kind
5. Telephone	1.78	
	928.16	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Lisa B. Smith.
Government position: Legal Advisor to Commissioner Andrew C. Barrett.
3. *Event:* NAB Radio Show.
4. *Sponsor of Event:* National Association of Broadcasters—NAB.
5. *Sponsor Address:* 1771 N Street, NW., Washington, DC 20036–2891.
5. *Location of Event:* Los Angeles, California.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 10/12–15/94.
9. *Travel Dates:* 10/13–16/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In kind
1. Roundtrip Transportation	$392.00	
2. Hotel Room	202.92	
3. Meals	104.50	
4. Parking, Mileage & Taxi	185.00	
Telephone	23.03	
	907.45	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Merrill S. Spiegel.
Government position: Legal Advisor to Chairman Reed Hundt.
3. *Event:* NAB Radio Show.
4. *Sponsor of Event:* National Association of Broadcasters—NAB.
5. *Sponsor Address:* 1771 N Street, NW., Washington, DC 20036–2891.
6. *Location of Event:* Los Angeles, California.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 10/12–15/94.
9. *Travel Dates:* 10/12–15/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In kind
1. Roundtrip Transportation	$357.00	
2. Hotel Room	202.92	
3. Meals	114.00	

Nature of benefit	(c) Type & amount of payment	
	Check	In kind
4. Parking, Mileage & Taxi	84.00	
	757.92	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Roy J. Stewart.
Government position: Chief, Mass Media Bureau.
3. *Event:* NAB Radio Show.
4. *Sponsor of Event:* National Association of Broadcasters—NAB.
5. *Sponsor Address:* 1771 N Street, NW., Washington, DC 20036–2891.
6. *Location of Event:* Los Angeles, California.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 10/12–15/94.
9. *Travel Dates:* 10/12–15/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In kind
1. Roundtrip Transportation	$392.00	
2. Hotel Room	304.38	
3. Meals	142.50	
4. Parking, Mileage & Taxi	46.00	
	884.88	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Brian F. Fontes.
Government position: Senior Advisor, to Commission James H. Quello.
3. *Event:* NABER's Mobile Communications Conference.
4. *Sponsor of Event:* National Association of Business & Educational Radio—NABER.
5. *Sponsor Address:* 1501 Duke Street, Alexandria, VA 22314.
6. *Location of Event:* Orlando, Florida.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 05/11–14/94.
9. *Travel Dates:* 05/11–15/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In kind
1. Roundtrip Transportation	$460.00	
2. Hotel Room		
3. Meals	82.50	

Nature of benefit	(c) Type & amount of payment	
	Check	In kind
4. Parking, Mileage & Taxi	24.00	
	566.50	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Ralph A. Haller.
Government position: Chief, Private Radio Bureau.
3. *Event:* NABER's Mobile Communications Conference.
4. *Sponsor of Event:* National Association of Business & Eductional Radio—NABER.
5. *Sponsor Address:* 1501 Duke Street, Alexandria, VA 22314.
6. *Location of Event:* Orlando, Florida.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 05/11–14/94.
9. *Travel Dates:* 05/13–14/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In kind
1. Roundtrip Transportation	$416.00	
2. Hotel Room		$143.19
3. Meals	45.00	
4. Parking, Mileage & Taxi	40.00	
5. Telephone	2.25	
	503.25	143.19

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Lisa L. Stover.
Government position: Work Unit Supervisor, Private Radio Bureau.
3. *Event:* NABER's Mobile Communications Conference.
4. *Sponsor of Event:* National Association of Business & Educational Radio—NABER.
5. *Sponsor Address:* 1501 Duke Street, Alexandria, VA 22314.
6. *Location of Event:* Orlando, Florida.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 05/11–14/94.
9. *Travel Dates:* 05/12–18/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In kind
1. Roundtrip Transportation	$460.00	

Nature of benefit	(c) Type & amount of payment	
	Check	In kind
2. Hotel Room		$286.38
3. Meals	45.00	
4. Parking, Mileage & Taxi	76.00	
5. Telephone	6.90	
	587.90	286.38

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Mary E. Burns.
Government position: Chief, Consumer Protection Division, Cable Services Bureau.
3. *Event:* 1994 NATOA Annual Conference.
4. *Sponsor of Event:* National Association of Telecommunications Officers & Advisors—NATOA.
5. *Sponsor Address:* 1301 Pennsylvania Avenue, NW., Washington, DC 20004.
6. *Location of Event:* Reno-Sparks, Nevada.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 09/18–21/94.
9. *Travel Dates:* 09/17–21/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In kind
1. Roundtrip Transportation	$586.00	
2. Hotel Room		$275.40
3. Meals	90.00	
4. Parking, Mileage & Taxi	19.70	
	697.70	275.40

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Lisa M. Higginbotham.
Government position: Attorney, Cable Services Bureau.
3. *Event:* 1994 NATOA Annual Conference.
4. *Sponsor of Event:* National Association of Telecommunications Officers & Advisors—NATOA.
5. *Sponsor Address:* 1301 Pennsylvania Avenue, NW., Washington, DC 20004.
6. *Location of Event:* Reno-Sparks, Nevada.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 09/18–21/94.
9. *Travel Dates:* 09/17–23/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In kind
1. Roundtrip Transportation	$617.00	
2. Hotel Room		$188.60
3. Meals	50.00	
4. Parking, Mileage & Taxi	40.00	
	717.00	188.60

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* John Spencer.
Government position: Attorney, Cable Services Bureau.
3. *Event:* 1994 NATOA Annual Conference.
4. *Sponsor of Event:* National Association of Telecommunications Officers & Advisors—NATOA.
5. *Sponsor Address:* 1301 Pennsylvania Avenue, NW., Washington, DC 20004.
6. *Location of Event:* Reno-Sparks, Nevada.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 09/18–21/94.
9. *Travel Dates:* 09/17–23/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In kind
1. Roundtrip Transportation	$404.00	
2. Hotel Room		$275.40
3. Meals	105.00	
4. Parking, Mileage & Taxi	15.56	
	524.56	275.40

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Blair S. Levin.
Government position: Chef of Staff to the Chairman.
3. *Event:* NCTA 43rd Annual Convention & Exposition.
4. *Sponsor of Event:* National Cable Television Association—NCTA.
5. *Sponsor Address:* 1724 Massachusetts Avenue, NW., Washington, DC 20036.
6. *Location of Event:* New Orleans, Louisiana.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 05/22–25/94.
9. *Travel Dates:* 05/23–25/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In kind
1. Roundtrip Transportation	$416.00	
2. Hotel Room	132.00	
3. Meals	68.00	
4. Parking, Mileage & Taxi	44.95	
	660.95	

(b) *Non-Fed Source:* Same as No. 4.

1. *Agency:* Federal Communications Commission.
2. *Employee:* Diane L. Hofbauer.
Government position: Attorney Advisor, Cable Services Bureau.
3. *Event:* NCTVC's 10th Annual Members Meeting.
4. *Sponsor of Event:* National Cable Television Cooperative Inc.—NCTVC.
5. *Sponsor Address:* 14809 West 95th Street, Lenexa, KS 66215.
6. *Location of Event:* Squaw Valley, California.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 06/27–29/94.
9. *Travel Dates:* 06/28–30/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In kind
1. Roundtrip Transportation	$462.00	
2. Hotel Room		$273.00
3. Meals	133.00	
4. Parking, Mileage & Taxi	17.50	
5. Telephone	14.12	
	626.62	273.00

(b) *Non-Fed Source:* Same as No. 4.

1. *Agency:* Federal Communications Commission.
2. *Employee:* Maureen O'Connell.
Goverment Position: Attorney Advisor, to Commissioner James H. Quello.
3. *Event:* NECTA Annual Convention & Exhibition.
4. *Sponsor of Event:* New England Cable Television Association—NECTA.
5. *Sponsor Address:* 100 Grandview Road, Suite 201, Braintree, MA 02184.
6. *Location of Event:* Newport, Rhode Island.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 07/09–13/94.
9. *Travel Dates:* 07/11–12/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In kind
1. Roundtrip Transportation	$54.00	
2. Hotel Room	187.68	
3. Meals	85.50	
4. Parking, Mileage & Taxi	11.40	
5. Telephone	4.00	
	342.58	

(b) *Non-Fed Source:* Same as No. 4.

1. *Agency:* Federal Communications Commission.
2. *Employee:* Roy J. Stewart.
Goverment Position: Chief, Mass Media Bureau.
3. *Event:* NJBA Annual Convention.
4. *Sponsor of Event:* New Jersey Broadcasters Association—NJBA.
5. *Sponsor Address:* 7 Centre Drive, Suite One, Jamesburg, NJ 08831.
6. *Location of Event:* Atlantic City, New Jersey.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 06/06–08/94.
9. *Travel Dates:* 06/06–08/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In kind
1. Roundtrip Transportation	$267.50	
2. Hotel Room		$300.00
3. Meals	95.00	
4. Parking, Mileage & Taxi	130.00	
5. Telephone & Baggage	54.27	
	546.77	300.00

(b) *Non-Fed Source:* Same as No. 4.

1. *Agency:* Federal Communications Commission.
2. *Employee:* William H. Johnson.
Government position: Deputy Chief for Policy, Cable Services Bureau.
3. *Event:* NECTA Convention & Exhibition.
4. *Sponsor of Event:* New England Cable Television Association—NECTA.
5. *Sponsor Address:* 100 Grandview Road, Suite 201, Braintree, MA 02184.
6. *Location of Event:* Newport, Rhode Island.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 07/09–13/94.
9. *Travel Dates:* 07/09–12/94
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In kind
1. Roundtrip Transportation	$462.00	
2. Hotel Room	184.80	
3. Meals	27.53	
4. Parking, Mileage & Taxi	16.90	
5. Telephone	32.03	
	723.26	

(b) *Non-Fed Source:* Same as No. 4.

1. *Agency:* Federal Communications Commission.
2. *Employee:* Roderick K. Porter.
Goverment Position: Deputy Bureau Chief, Operations, Mass Media Bureau.
3. *Event:* NJBA Annual Convention.
4. *Sponsor of Event:* New Jersey Broadcasters Association—NJBA.
5. *Sponsor Address:* 7 Centre Drive, Suite One, Jamesburg, NJ 08831.
6. *Location of Event:* Atlantic City, New Jersey.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 06/06–08/94.
9. *Travel Dates:* 06/06–08/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In kind
1. Roundtrip Transportation	$54.00	
2. Hotel Room	187.68	
3. Meals	85.50	
4. Parking, Mileage & Taxi	14.00	
	341.18	

(b) *Non-Fed Source:* Same as No. 4.

1. *Agency:* Federal Communications Commission.
2. *Employee:* Kathleen M.H. Wallman.
Goverment Position: Deputy Bureau Chief, Cable Services Bureau.
3. *Event:* Rocky Mountain Cable Television Expo.
4. *Sponsor of Event:* New Mexico Cable Television Association—NMCTA.
5. *Sponsor Address:* P.O. Box 2264, Sante Fe, NM 87504.
6. *Location of Event:* Keystone, Colorado.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 07/17–20/94.
9. *Travel Dates:* 07/16–20/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In kind
1. Roundtrip Transportation	$368.00	
2. Hotel Room	427.47	$142.49
3. Meals	171.00	
4. Telephone	106.79	
	1,073.26	142.49

(b) *Non-Fed Source:* Same as No. 4.

1. *Agency:* Federal Communications Commission.
2. *Employee:* Richard L. Swanson.
Government position: Chief of International Liasion, Private Radio Bureau.
3. *Event:* NMEA 1994 Annual Convention.
4. *Sponsor of Event:* National Marine Electronics Assoication—NMEA.
5. *Sponsor Address:* P.O. Box 3435, New Bern, NC 28564–3435.
6. *Location of Event:* Orlando, Florida.
7. *Employee's Role:* Participate in Meetings.
8. *Dates of Event:* 10/18–22/94.
9. *Travel Dates:* 10/20–21/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In kind
1. Roundtrip Transportation	$304.00	
2. Hotel Room	69.00	
3. Meals	42.50	
4. Taxi & Mileage	25.00	
	$440.50	

(b) *Non-Fed Source:* Same as No. 4.

1. *Agency:* Federal Communications Commission.
2. *Employee:* Rachelle B. Chong.
Government position: Commissioner.
3. *Event:* Unity '94 Convention.
4. *Sponsor of Event:* Washington Post and Unity '94.
5. *Sponsor Address:* 1150 15th Street, NW., Washington, DC 20071.
6. *Location of Event:* Atlanta, Georgia.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 07/30/94.
9. *Travel Dates:* 07/29–30/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In kind
3. Meals	66.50	
4. Parking, Mileage & Taxi	54.50	
5. Telephone	3.00	
	$460.96	

(b) *Non-Fed Source:* Same as No. 4.

1. *Agency:* Federal Communications Commission.
2. *Employee: Government position:* Michael L. Katz, Chief Economist, Office of Plans & Policy.
3. *Event:* Conference on Telecoms and Information.
4. *Sponsor of Event:* Strategy Assistance Services.
5. *Sponsor Address:* 64 Baskin Road, Lexington, MA 02173.
6. *Location of Event:* Monterrey, Mexico.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 09/28–30/94.
9. *Travel Dates:* 09/27–29/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In kind
1. Roundtrip Transportation	$341.00	
2. Hotel Room	113.00	
3. Meals	57.00	
4. Parking, Mileage & Taxi	14.00	
	$525.00	

(b) *Non-Fed Source:* Same as No. 4.

1. *Agency:* Federal Communications Commission.
2. *Employee:* Stephen L. Markendorff.
Government position: Electronics Engineer, Common Carrier Bureau.
3. *Event:* Second Annual Cellular Conference.
4. *Sponsor of Event:* Rural Cellular Association.
5. *Sponsor Address:* 2120 L Street, NW., Suite 810, Washington, DC 20037.
6. *Location of Event:* Las Vegas, Nevada.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 04/26–27/94.
9. *Travel Dates:* 04/27–28/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In kind
1. Roundtrip Transportation		$559.00
2. Hotel Room		240.00
3. Meals	$34.00	158.00
4. Parking, Mileage & Taxi	9.00	
	43.00	957.00

(b) *Non-Fed Source:* Same as No. 4.

1. *Agency:* Federal Communications Commission.
2. *Employee: Government position:* James L. Ball. Attorney Advisor, Office of International Communications.
3. *Event:* 4th Satel Conseil Symposium.
4. *Sponsor of Event:* Satel Conseil.
5. *Sponsor Address:* 5, Rue Louis Lejeune, 92128 Montrouge Cedex, France.
6. *Location of Event:* Versailles, France.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 06/06–08/94.
9. *Travel Dates:* 06/04–09/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In kind
1. Roundtrip Transportation	$408.00	
2. Hotel Room		$129.00
3. Meals	60.00	
4. Bus, Parking & Mileage	76.05	
	$544.05	$129.00

(b) *Non-Fed Source:* Same as No. 4.

1. *Agency:* Federal Communications Commission.
2. *Employee:* Charles W. Kelley.
Government Position: Chief, Enforcement Division, Mass Media Bureau.
3. *Event:* OAB Annual Convention.
4. *Sponsor of Event:* Ohio Assoication of Broadcasters—OAB.
5. *Sponsor Address:* 88 East Broad Street, Suite 1780, Columbus, Ohio 43215.
6. *Location of Event:* Columbus, Ohio.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 10/26–28/94.
9. *Travel Dates:* 10/25–26/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In kind
1. Roundtrip Transportation	$290.00	
2. Hotel Room	45.95	

Nature of benefit	(c) Type & amount of payment	
	Check	In kind
1. Roundtrip Transportation	$660.05	

Nature of benefit	(c) Type & amount of payment	
	Check	In kind
2. Hotel Room		$625.00
3. Meals	150.50	120.00
4. Parking, Mileage & Taxi	96.52	
5. Telephone	1.96	
	909.03	745.00

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee: Government position:* Jonathan D. Levy. Economist, Office of Plans Policy.
3. *Event:* Orlando Trade Show.
4. *Sponsor of Event:* Satellite Broadcasting & Communications Associate—SBCA.
5. *Sponsor Address:* 225 Reinekers Lane, Alexandria, Va 22314.
6. *Location of Event:* Orlando, Florida.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 08/04/94.
9. *Travel Dates:* 08/03–06/94
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In kind
1. Roundtrip Transportation	$438.00	
2. Hotel Room		$171.00
3. Meals	110.50	
4. Parking, Mileage & Taxi	115.75	
	664.25	171.00

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. **EMPLOYEE: GOVERNMENT POSITION:** James W. Olson. Chief, Competition Division Cable Services Bureau.
3. *Event:* '94 Satellite Show.
4. *Sponsor of Event:* Satellite Broadcasting & Communications Association—SBCA.
5. *Sponsor Address:* 225 Reinekers Lane, Suite 600, Alexandria, VA 22314.
6. *Location of Event:* Orlando, Florida.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 08/04/94.
9. *Travel Dates:* 08/03–94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In kind
1. Roundtrip Transportation	$377.27	

Nature of benefit	(c) Type & amount of payment	
	Check	In kind
2. Hotel Room		$126.54
3. Meals	64.74	
4. Parking, Mileage & Taxi	70.00	
Telephone	38.53	
	550.54	126.54

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Merrill Spiegel.
Government position: Attorney Office of the Chairman.
3. *Event:* Orlando Trade Show.
4. *Sponsor of Event:* Satellite Broadcasting & Communications Association—SBCA.
5. *Sponsor Address:* 225 Reinekers Lane, Suite 600, Alexandria, VA 22314.
6. *Location of Event:* Orlando, Florida.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 08/06/94.
9. *Travel Dates:* 08/05–06/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In kind
1. Roundtrip Transportation	$416.00	
2. Hotel Room		57.00
3. Meals	52.50	
4. Parking, Mileage & Taxi	85.00	
	553.50	57.00

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Richard M. Smith.
Government position: Chief, Office of Engineering & Technology.
3. *Event:* SBE's National Convention.
4. *Sponsor of Event:* Society of Broadcast Engineers, Inc.—SBE.
5. *Sponsor Address:* 8445 Keystone Crossing, Suite 140, Indianapolis, IN 46240.
6. *Location of Event:* Los Angeles, California.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 10/13/94.
9. *Travel Dates:* 10/13–17/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In kind
1. Roundtrip Transportation	$392.00	

Nature of benefit	(c) Type & amount of payment	
	Check	In kind
2. Hotel Room		180.12
3. Meals	123.50	
4. Parking, Mileage & Taxi	49.60	
5. Telephone	31.05	
	$596.15	$180.12

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Meredith J. Jones.
Government position: Chief, Cable Services Bureau.
3. *Event:* Eastern Cable Show.
4. *Sponsor of Event:* Southern Cable Television Association—SCTA.
5. *Sponsor Address:* 6175 Barfield Road, Suite 220, Atlanta, Georgia 30328.
6. *Location of Event:* Atlanta, Georgia.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 08/03/94.
9. *Travel Dates:* 08/02–03/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In kind
1. Roundtrip Transportation	$331.00	
2. Hotel Room	77.29	
3. Meals	24.82	
4. Parking, Mileage & Taxi	52.50	
5. Telephone	41.60	
	527.21	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Michael L. Lance.
Government position: Electronics Engineer, Cable Services Bureau.
3. *Event:* Cable-Tec Expo '94.
4. *Sponsor of Event:* Society of Cable Television Engineers—SCTE.
5. *Sponsor Address:* 669 Exton Commons, Exton, PA 19341.
6. *Location of Event:* St. Louis, Missouri.
7. *Employee's Role:* Participate in Workshop.
8. *Dates of Event:* 06/16–17/94.
9. *Travel Dates:* 06/13–18/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In kind
1. Roundtrip Transportation	$484.00	

Nature of benefit	(c) Type & amount of payment	
	Check	In kind
2. Hotel Room	335.85	
3. Meals	218.50	
4. Parking, Mileage & Taxi	31.20	
	1069.55	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* John M. Spencer.
Government position: Attorney, Cable Services Bureau.
3. *Event:* Cable-Tec Expo '94.
4. *Sponsor of Event:* Society of Cable Television Engineers—SCTE.
5. *Sponsor Address:* 669 Exton Commons, Exton, PA 19341.
6. *Location of Event:* St. Louis, Missouri.
7. *Employee's Role:* Participate in Workshop.
8. *Dates of Event:* 06/16–17/94.
9. *Travel Dates:* 06/15–18/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In kind
1. Roundtrip Transportation	$484.00	
2. Hotel Room		201.51
3. Meals	133.00	
4. Parking, Mileage & Taxi	28.60	
	645.60	$201.51

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* R. Alan Stillwell.
Government position: Industry Economist, Office Engineering & Technology.
3. *Event:* Cable-Tec Expo '94.
4. *Sponsor of Event:* Society of Cable Television Engineers—SCTE.
5. *Sponsor Address:* 669 Exton Commons, Exton, PA 19341.
6. *Location of Event:* St. Louis, Missouri.
7. *Employee's Role:* Panel Discussion.
8. *Dates of Event:* 06/15–17/94.
9. *Travel Dates:* 06/13–16/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In kind
1. Roundtrip Transportation	$484.00	

Nature of benefit	(c) Type & amount of payment	
	Check	In kind
2. Hotel Room		$201.51
3. Meals	152.00	
4. Parking, Mileage & Taxi	23.40	
	659.40	201.51

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* John P. Wong.
Government position: Electronic Engineer, Cable Services Bureau.
3. *Event:* Cable-Tec Expo '94.
4. *Sponsor of Event:* Society of Cable Television Engineers —SCTE.
5. *Sponsor Address:* 669 Exton Commons, Exton, PA 19341.
6. *Location of Event:* St. Louis, Missouri.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 06/15–17/94.
9. *Travel Dates:* 06/13–18/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In kind
1. Roundtrip Transportation	$484.00	
2. Hotel Room	335.85	
3. Meals	218.50	
4. Parking, Mileage & Taxi	75.00	
	1113.35	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Michael J. Marcus.
Government position: Assistant Bureau Chief, Technology Field Operations Bureau.
3. *Event:* Seminar on Spread Spectrum.
4. *Sponsor of Event:* Spread Spectrum Study Group.
5. *Sponsor Address:* Masao Nakagawa, Dept. of Elec. Eng., Keio University, 3–14–1 Hiyoshi Kohoku-ku, Yokohama, Japan.
6. *Location of Event:* Tokyo & Karuizawa, Japan.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 04/10–13/94.
9. *Travel Dates:* 04/08–16/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In kind
1. Roundtrip Transportation	$953.95	
2. Hotel Room	102.00	
3. Meals	643.25	
4. Parking, Mileage & Taxi	101.68	
5. Train	91.65	
	1892.53	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Christopher J. Wright.
Government Position: Deputy General Counsel.
3. *Event:* Symposium on "Violence in the Media."
4. *Sponsor of Event:* Stanford Law School.
5. *Sponsor Address:* Crown Quadrangle, Stanford, CA 94305–8610.
6. *Location of Event:* Stanford, California.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 04/23/94.
9. *Travel Dates:* 04/23/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In kind
1. Roundtrip Transportation	$643.00	
2. Hotel Room		$126.00
3. Meals	56.50	
4. Parking, Mileage & Taxi	57.00	
	776.50	126.00

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Rachelle B. Chong.
Government Position: Commissioner.
3. *Event:* World Summit on TV & Children.
4. *Sponsor of Event:* Telstra.
5. *Sponsor Address:* 199 Grattan Street, Victoria, 3053, Australia.
6. *Location of Event:* Melbourne, Australia.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 03/11–17/95.
9. *Travel Dates:* 03/09–17/95.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In kind
1. Roundtrip Transportation		$4919.98
2. Hotel Room		1255.20
3. Meals		
4. Taxi		
		6175.18

(b) *Non-Fed Source:* Same as No. 4.

1. *Agency:* Federal Communications Commission.
2. *Employee:* Marian R. Gordon.
Government Position: Attorney, Common Carrier Bureau.
3. *Event:* Consultative Committee—Telecommunications Conference.
4. *Sponsor of Event:* Telecommunications Industry Association—TIA.
5. *Sponsor Address:* 2001 Pennsylvania Avenue, NW., Suite 900, Washington, DC 20005.
6. *Location of Event:* Ottawa, Canada.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 6/27–30/94.
9. *Travel Dates:* 06/26–30/94
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In kind
1. Roundtrip Transportation	$433.490	
2. Hotel Room	353.92	
3. Meals	233.75	
4. Parking, Mileage & Taxi	22.00	
5. Telephone	23.00	
	$1066.16	

(b) *Non-Fed Source:* Same as No. 4.

1. *Agency:* Federal Communications Commission.
2. *Employee:* Michael L. Katz.
Government Position: Chief Economist, Office of Plans & Policy.
3. *Event:* 1994 Annual Meeting of TTFG.
4. *Sponsor of Event:* Telecommunication Technology Forecasting Group—TTFG.
5. *Sponsor Address:* 1333 New Hampshire Avenue, NW., Suite 1070, Washington, DC 20036.
6. *Location of Event:* San Francisco, California.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 06/23–24/94.
9. *Travel Dates:* 06/22–24/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In kind
1. Roundtrip Transportation	$643.00	
2. Hotel Room	326.00	
3. Meals	95.00	
4. Parking, Mileage & Taxi	162.00	
	1226.00	

(b) *Non-Fed Source:* Same as No. 4.

1. *Agency:* Federal Communications Commission.
2. *Employee:* Kathleen B. Levitz.
Government position: Deputy Bureau Chief—Policy, Common Carrier Bureau.
3. *Event:* Panel on "Universal Service—What Is It, What Should It Be?
4. *Sponsor of Event:* Texas Statewide Telephone Cooperative Inc.'s—TSTCI.
5. *Sponsor Address:* 2711 LBJ Freeway, Suite 560, Dallas, TX 75234–7321.
6. *Location of Event:* Lake Tahoe, Stateline, Nevada.
7. *Employee's Role:* Panelist.
8. *Date of Event:* 08/04/94.
9. *Travel Dates:* 08/03–05/94.
10. (a)

Nature of benefit	(c) Type of amount of payment	
	Check	In kind
1. Roundtrip Transportation	$489.00	
2. Hotel Room	270.00	
3. Meals	114.00	
4. Parking, Mileage & Taxi	26.00	
5. Telephone & Car Rental	68.79	
	967.79	

(b) *Non-Fed Source:* Same as No. 4.

1. *Agency:* Federal Communications Commission.
2. *Employee:* W. Riley Hollingsworth.
Government position: Attorney, Private Radio Bureau.
3. *Event:* Cellular Mobile Telephone Network Conference.
4. *Sponsor of Event:* United States Cellular.
5. *Sponsor Address:* 292 Route 101, Bedford, NH 03110.
6. *Location of Event:* Manchester, New Hampshire.
7. *Employee's Role:* Speaker at Conference.
8. *Dates of Event:* 06/28–29/94.
9. *Travel Dates:* 06/27–29/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In kind
1. Roundtrip Transportation	$344.00	
2. Hotel Room		$151.20
3. Meals	45.00	
4. Parking, Mileage & Taxi	57.00	
	446.00	151.20

(b) *Non-Fed Source:* Same as No. 4.

1. *Agency:* Federal Communications Commission.
2. *Employee:* Linda B. Dubroof.
Government position: Attorney, Common Carrier Bureau.
3. *Event:* Symposium on Toll Fraud Issues.
4. *Sponsor of Event:* United States Telephone Association—USTA.
5. *Sponsor Address:* 1401 H Street, NW., Suite 600, Washington, DC 20005.
6. *Location of Event:* Chicago, Illinois.
7. *Employee's Role:* Speaker.
8. *Date of Event:* 04/25/94.
9. *Travel Dates:* 04/24–25/94.
10. (a)

Nature of benefit	(c) Type of amount of payment	
	Check	In kind
1. Roundtrip Transportation	$298.00	
2. Hotel Room	119.00	
3. Meals	57.00	
4. Parking, Mileage & Taxi	50.00	
	524.00	

(b) *Non-Fed Source:* Same as No. 4.

1. *Agency:* Federal Communications Commission.
2. *Employee:* Kenneth M. Ackerman.
Government position: Chief, Accounting Systems Branch, Common Carrier Bureau.
3. *Event:* Capitol Recovery Seminar.
4. *Sponsor of Event:* United States Telephone Association—USTA.
5. *Sponsor Address:* 1401 H Street, NW., Suite 600, Washington, DC 20005.
6. *Location of Event:* Phoenix, Arizona.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 09/12–13/94.
9. *Travel Dates:* 09/10–14/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In kind
1. Roundtrip Transportation		$400.00
2. Hotel Room		617.96
3. Meals	$81.50	
4. Parking, Mileage & Taxi	94.00	
5. Telephone	6.50	
	182.00	1017.96

(b) *Non-Fed Source:* Same as No. 4.

1. *Agency:* Federal Communications Commission.
2. *Employee:* Fatina K. Franklin.
Government position: Chief, Depreciation Rates Section, Common Carrier Bureau.
3. *Event:* Capital Recovery Seminar.
4. *Sponsor of Event:* United States Telephone Association—USTA.
5. *Sponsor Address:* 1401 H Street, N.W., Suite 600, Washington, D.C. 20005–2136.
6. *Location of Event:* Phoenix, Arizona.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 09/12–13/94.
9. *Travel Dates:* 09/11–14/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In kind
1. Roundtrip Transportation		$870.00
2. Hotel Room		463.47
3. Meals	$127.50	
4. Parking, Mileage & Taxi	69.00	
	196.50	1333.47

(b) *Non-Fed Source:* Same as No. 4.

1. *Agency:* Federal Communications Commission.
2. *Employee:* Kenneth M. Ackerman.
Government position: Chief, Accounting Systems Branch, Common Carrier Bureau.
3. *Event:* Capitol Recovery Seminar.
4. *Sponsor of Event:* United States Telephone Association—USTA.
5. *Sponsor Address:* 1401 H Street, N.W., Suite 600, Washington, D.C. 20005–2136.
6. *Location of Event:* Phoenix, Arizona.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 09/12–13/94.
9. *Travel Dates:* 09/10–14/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In kind
1. Roundtrip Transportation		
2. Hotel Room		
3. Meals	$80.00	
	$80.00	

(b) *Non-Fed Source:* Same as No. 4.

1. *Agency:* Federal Communications Commission.
2. *Employee:* Kenneth P. Moran.
Government position: Chief, Accounting & Audits Division, Common Carrier Bureau.
3. *Event:* Accounting Seminar.
4. *Sponsor of Event:* United States Telephone Association—USTA.
5. *Sponsor Address:* 1401 H Street, N.W., Suite 600, Washington, D.C. 20005–2136.
6. *Location of Event:* Boone, North Carolina.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 10/06–07/94.
9. *Travel Dates:* 10/06–07/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In kind
1. Roundtrip Transportation		$540.00
2. Hotel Room		68.00
3. Meals	$45.50	
4. Taxi, Mileage & Telephone	34.00	
	79.50	608.00

(b) *Non-Fed Source:* Same as No. 4.

1. *Agency:* Federal Communications Commission.
2. *Employee:* Robert W. Spangler.
Government position: Deputy Chief, Enforcement Division, Common Carrier Bureau.
3. *Event:* Pay-Per-Call 800 Service Symposium.
4. *Sponsor of Event:* United States Telephone Association—USTA.
5. *Sponsor Address:* 1401 H Street, N.W., Suite 600, Washington, D.C. 20005–2136.
6. *Location of Event:* Chicago, Illinois.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 09/26/94.
9. *Travel Dates:* 09/26/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In kind
1. Roundtrip Transportation	$162.00	
2. Hotel Room	103.99	
3. Meals	57.00	
4. Parking, Mileage & Taxi	15.00	
	337.99	

(b) *Non-Fed Source:* Same as No. 4.

1. *Agency:* Federal Communications Commission.
2. *Employee:* Sharon M. Bertelsen.
Government position: Attorney, Mass Media Bureau.
3. *Event:* 1994 Wireless Cable, Association International Exposition & Convention.
4. *Sponsor of Event:* Wireless Cable Association International—WCAI.
5. *Sponsor Address:* 1155 Connecticut Avenue, NW., Suite 700, Washington, DC 20036.
6. *Location of Event:* Las Vegas, Nevada.
7. *Employee's Role:* Participate Convention.
8. *Dates of Event:* 6/20–23/94.
9. *Travel Dates:* 6/21–26/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In kind
1. Roundtrip Transportation	$303.00	
2. Hotel Room	.00	
3. Meals	104.00	
4. Parking, Mileage & Taxi	54.50	
	461.50	

(c) *Non-Fed Source:* Same as No. 4.

1. *Agency:* Federal Communications Commission.
2. *Employee:* Diane L. Hofbauer.
Government position: Attorney, Cable Services Bureau.
3. *Event:* 1994 Wireless Cable Association International Exposition & Convention.
4. *Sponsor of Event:* Wireless Cable Association International—WCAI.
5. *Sponsor Address:* 1155 Connecticut Avenue, NW., Suite 700, Washington, DC 20036.
6. *Location of Event:* Las Vegas, Nevada.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 6/20–23/94.
9. *Travel Dates:* 6/20–23/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In kind
1. Roundtrip Transportation	$267.50	
2. Hotel Room	255.96	
3. Meals	133.00	
4. Parking, Mileage & Taxi	23.00	
Telephone	92.74	
	772.20	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* James W. Olson.
Government position: Chief, Competition Division, Cable Service Bureau.
3. *Event:* 1994 Wireless Cable Association International Exposition & Convention.
4. *Sponsor of Event:* Wireless Cable Association International—WCAI.
5. *Sponsor Address:* 1155 Connecticut Avenue, NW., Suite 700, Washington, DC 20036.
6. *Location of Event:* Las Vegas, Nevada.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 06/20–23/94.
9. *Travel Dates:* 06/20–23/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In kind
1. Roundtrip Transportation		
2. Hotel Room	$170.64	
3. Meals	47.30	
4. Parking, Mileage & Taxi	73.00	
5. Fax	22.00	
	312.94	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Phillip M. Inglis.
Government position: Electronics Engineer, Office of Engineering & Technology.
3. *Event:* First Annual WINForm User PCS Workshop.
4. *Sponsor of Event:* Wireless Information Networks Forum—WINForm.
5. *Sponsor Address:* Attn: Nancy Buker, 1200 19th St. NW., Suite 300, Washington, DC 20036–2401.
6. *Location of Event:* Dallas, Texas.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 10/17–19/94.
9. *Travel Dates:* 10/17–19/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In kind
1. Roundtrip Transportation	$446.00	
2. Hotel Room	122.10	
3. Meals	102.00	
4. Car Rental	275.24	
5. Mileage & Telephone	33.50	
	978.84	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Julius P. Knapp.
Government position: Chief, Authorization & Evaluation Division, Office of Engineering & Technology.
3. *Event:* First Annual WINFourm User PCS.
4. *Sponsor of Event:* Wireless Information Networks Forum—WINForum.
5. *Sponsor Address:* Attn: Nancy Buker, 1200 19th St. N.W., Suite 300, Washington, D.C. 20036–2401.
6. *Location of Event:* Dallas, Texas.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 10/17–19/94.
9. *Travel Dates:* 10/17–18/94.
10. (a)

Nature of Benefit	(c) Type & amount of payment	
	Check	In kind
1. Roundtrip Transportation	$446.00	
2. Hotel Room	61.05	
3. Meals	59.50	
4. Car Rental	101.18	
5. Mileage & Parking	22.00	
	689.73	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Byron F. Marchant.
Government position: Senior Legal Advisor to Commissioner Andrew C. Barret.
3. *Event:* Seminar on Personal Communications Services.
4. *Sponsor of Event:* Women Investors for Tourism, Education & Entertainment—WITEE.
5. *Sponsor Address:* Marilyn Miglin Institute, Attn: Dan Davis, 112 East Oak Street, Chicago, IL 60611.
6. *Location of Event:* Chicago, Illinois.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 07/22/94.
9. *Travel Dates:* 07/22/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In kind
1. Roundtrip Transportation	$298.00	
2. Hotel Room		
3. Meals		
4. Parking, Mileage & Taxi		
	298.00	

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Michael L. Katz.
Government position: Chief Economist, Office Plans & Policy.
3. *Event:* The Americas, Telecommunications Congress.
4. *Sponsor of Event:* World Congress.
5. *Sponsor Address:* 1000 Winter Street, Suite 3600, Waltham, MA 02154.
6. *Location of Event:* Miami, Florida.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 12/05–06/94.
9. *Travel Dates:* 12/04–06/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In kind
1. Roundtrip Transportation	$390.00	
2. Hotel Room		158.00
3. Meals	68.00	
4. Taxi	99.00	
	557.00	158.00

(b) *Non-Fed Source:* Same as No. 4.
1. *Agency:* Federal Communications Commission.
2. *Employee:* Roderick K. Porter.
Government position: Deputy Bureau Chief, Operations, Mass Media Bureau.
3. *Event:* WSAB 1994 Annual Conference.
4. *Sponsor of Event:* Washington State Association of Broadcaster—WSAB.
5. *Sponsor Address:* Olympia Trade Center, 924 Capitol Way South, Suite 104, Olympia, WA 98501.
6. *Location of Event:* Paco, Washington.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 06/03–05/94
9. *Travel Dates:* 06/03–05/94.
10. (a)

Nature of benefit	(c) Type & amount of payment	
	Check	In kind
1. Roundtrip Transportation	$620.00	
2. Hotel Room	92.00	
3. Meals	93.50	
4. Parking, Mileage & Taxi	38.00	
5. Fax	27.16	
	$870.66	

(b) *Non-Fed Source:* Same as No. 4.
Federal Communication Commission.
William F. Caton,
Acting Secretary.
[FR Doc. 95–12792 Filed 5–26–95; 8:45 am]
BILLING CODE 6712-01-M

FEDERAL HOUSING FINANCE BOARD

[No. 95–N–04]

Prices for Federal Home Loan Bank Services

AGENCY: Federal Housing Finance Board.

ACTION: Notice of prices for Federal Home Loan Bank services.

SUMMARY: The Federal Housing Finance Board (Board) is publishing the prices charged by the Federal Home Loan Banks (Banks) for processing and settlement of items (negotiable order of withdrawal or NOW), and demand deposit accounting (DDA) and other services offered to member and other eligible institutions.

EFFECTIVE DATE: May 30, 1995.

FOR FURTHER INFORMATION CONTACT: Edward J. Reedy, Acting Associate Director, Regulatory Oversight Division, (202) 408–2959; or Edwin J. Avila, Financial Analyst, (202) 408–2871; Federal Housing Finance Board, 1777 F Street NW., Washington, D.C. 20006.

SUPPLEMENTARY INFORMATION: Section 11(e) of the Federal Home Loan Bank Act (Bank Act) (12 U.S.C. 1431(e)) authorizes the Banks (1) to accept demand deposits from member institutions, (2) to be drawees of payment instruments, (3) to engage in collection and settlement of payment instruments drawn on or issued by members and other eligible institutions, and (4) to engage in such incidental activities as are necessary to the exercise of such authority. Section 11(e)(2)(B) of the Bank Act (12 U.S.C. 1431(e)(2)(B)) requires the Banks to make charges for services authorized in that section, which charges are to be determined and regulated by the Board.

Section 943.6(c) of the Board's regulations provides for the annual publication in the **Federal Register** of all prices for Bank services. The following fee schedules are for the five Banks which offer item processing services to their members and other qualified financial institutions. Most of the remaining Banks provide other Correspondent Services which may include securities safekeeping, disbursements, coin and currency, settlement, and electronic funds transfer, etc. However, these Banks do not provide services related to processing of items drawn against or deposited into third party accounts held by their members or other qualified financial institutions.

District 1.—Federal Home Loan Bank of Boston (1995 NOW/DDA Services)

(Services not provided)

District 2.—Federal Home Loan Bank of New York (1995 NOW/DDA Services)

(Does not provide item processing services for third party accounts)

District 3.—Federal Home Loan Bank of Pittsburgh (1995 NOW/DDA Services)

DPS Deposit Tickets—$0.5500 Per Deposit, Printing of Deposit Tickets

Deposit items processed for volumes of:	Pass-through pricing varies-tiered by monthly volume
Deposit Processing Service (DPS)	
1–25,000	0.0355 per item (transit)
25,001–58,500	0.0349 per item
58,501–91,500	0.0344 per item
91,501–125,000	0.0338 per item
125,001–158,500	0.0333 per item
158,501–191,500	0.0327 per item
191,501–over	0.0322 per item
Deposit Items Encoded (West)	Pricing varies-tiered by monthly volume for volumes of:
1–25,000	$0.0292 per item
25,001–58,500	0.0287 per item
58,501–91,500	0.0282 per item
91,501–125,000	0.0277 per item
125,001–158,500	0.0272 per item
158,501–191,500	0.0267 per item
191,501–over	0.0262 per item
Deposit Items Encoded (East)	Pricing varies-tiered by monthly volume for volumes of:
1–25,000	$0.0313 per item
25,001–58,500	0.0308 per item
58,501–91,500	0.0303 per item
91,501–125,000	0.0298 per item
125,001–158,500	0.0293 per item
158,501–191,500	0.0288 per item
191,501–over	0.0283 per item
Deposit Items Returned	1.8500 per item
Deposit Items Photocopied	3.6500 per photocopy

Deposit items processed for volumes of:	Pass-through pricing varies-tiered by monthly volume
DPS Photocopies-Subpoena	18.0000 per hour of processing time,
plus	0.2000 per photocopy
Deposit Items Rejected	0.2300 per rejected item
(applicable to pre-encoded deposits only)	
DPS Transportation (West)	8.3500 per pickup
DPS Transportation (East)	8.3500 per pickup
Return Check Courier Service	120.0000 per month
Depository Account Services	
Mail Deposits "On-Us" Returns Deposited:	$5.2500 per deposit
Qualified Returns	0.4500 per item
Raw Returns	1.9500 per item
Bond Coupon Collection	5.7500 per envelope
Bond Coupon Returns	14.0000 per coupon
Bond Collection:	
Bearer	23.0000 per bond
Registered	31.0000 per bond
Deposit Transfer Vouchers	5.2500 per item Pass-through
Foreign Item Collection.	
Electronic Funds Transfers	
Incoming Wire Transfers	$6.0000 per transfer
Outgoing Wire Transfers	9.0000 per transfer
Foreign Wire Surcharge	30.0000 per transfer*
Expected Wires Not Received	Penalty Assessed**
ACH Transaction Settlement (CR)	0.2500 per transaction
ACH Transaction Settlement (DR)	0.2500 per transaction
ACH Origination Items (CR)	0.1500 per item
ACH Origination Items (DR)	0.1500 per item
ACH Origination Record Set-Up	1.5500 per record
ACH Origination Items Returned	5.0000 per returned item
ACH Returns/NOC's-Facsimile	2.0000 per transaction
ACH Returns/NOC's-Telephone	3.2500 per transaction
ACH/FRB Priced Service Charges	0.2500 per transaction

*Note: The amount of this surcharge will be added to the amount of the outgoing funds transfer to produce a single total debit to be charged to the customer's account on the date of transfer.

**Note: Standard penalty is equivalent to the amount of the wire(s) times the daily IOD rate, divided by 360. If the wire not received causes the Bank to suffer any penalty, deficiency, or monetary loss, any and all related costs will also be assessed.

Federal Reserve Settlement	
FRB Statement Transaction (CR)	$0.5300 per transaction
FRB Statement Transaction (DR)	0.5300 per transaction
Reserve Requirement Pass-Thru	20.0000 per month (active)
Correspondent Transaction (DR)	0.5300 per transaction
Direct Send Settlement	140.0000 per month
FRB Inclearing Settlement	140.0000 per month
Demand Deposit Services	
Clearing Items Processed	$0.1400 per item
Clearing Items Fine Sorted (for return with Bank statements)	0.0700 per item
Reconcilement Copies—Manual	0.0820 per copy
Reconcilement Copies—14 MagTape	0.0480 per copy
Reconcilement MagTape Processing	Pass-through
Reconcilement Copies—Voided	0.0350 Pass-through
Check Photocopies—Mail	3.6500 per photocopy
Check Photocopies—Telephone/Fax	4.4000 per photocopy
Check Photocopies—Subpoena	0.5220 per photocopy
Stop Payment Orders	16.2500 per item
FRB Return Items	0.4500 per item
FRB Return Items Over $2,500	6.0000 per item
Collections & Forgeries	15.0000 per item
Imprinting of Standard Checks	0.1000 per item
Non-Standard Imprinting	Pass-through
Microfiche Copies	5.0000 per copy
Request for Fax/Photocopy	3.0000 per document

Deposit items processed for volumes of:	Pass-through pricing varies-tiered by monthly volume
Proof Of Deposit (POD) Service	
Provides for outsourcing of all over-the-counter MICR document processing.	
Pricing is customer-specific, based upon individual service requirements; please call your Marketing representative at (800) 288–3400 for further information.	
Coin & Currency Service: Western Service Area	
Currency Orders	$0.3550 per $1,000*
Coin Orders	2.2500 per box
Currency Deposits	1.2000 per $1,000
Coin Deposits	1.8000 per standard bag
Coin Deposits (Non-Standard)	2.7500 per non-standard bag
Coin Deposits (Unsorted)	8.5000 per mixed bag
Food Stamp Deposits	1.8000 per $1,000*
Coin Shipment Surcharge	0.2500 per excess bag**
C&C Transportation (Zone W1)	15.7500 per stop
C&C Transportation (Zone W2)	27.2500 per stop
C&C Transportation (Zone W3)	36.0000 per stop
C&C Transportation (Zone W4)	Negotiable***
Coin & Currency Service: Eastern Service Area	
Currency Orders	$0.2800 per $1,000*
Coin Orders	2.7500 per box
Currency Deposits	1.2000 per $1,000*
Coin Deposits	1.8000 per standard bag
Coin Deposits (Non-Standard)	2.7500 per non-standard bag
Coin Deposits (Unsorted)	8.5000 per mixed bag
Food Stamp Deposits	1.8000 per $1,000*
Coin Shipment Surcharge	0.2500 per excess bag**
C&C Transportation (Zone E1)	24.2500 per stop
C&C Transportation (Zone E2)	34.5000 per stop
C&C Transportation (Zone E3)	52.5000 per stop
C&C Transportation (Zone E4)	Negotiable***

*Note: Charges will be applied to each $1,000 ordered or deposited, and to any portion of a shipment not divisible by that standard unit.

**Note: A surcharge will apply to each container (box/bag) of coin in an order/delivery after the first 20 containers.

***Note: Reserved for remote locations: delivery charges will be negotiated with the courier service on an individual basis.

Checks Processed for volumes of:	Pricing varies-tiered by monthly volume
Check Processing (Inclearing)	
1–25,000	$0.0422 per item
25,001–58,500	0.0397 per item
58,501–91,500	0.0372 per item
91,501–125,000	0.0347 per item
125,001–158,500	0.0322 per item
158,501–191,500	0.0297 per item
191,501–350,000	0.0272 per item
350,001–500,000	0.0247 per item
500,001–over	0.0222 per item
Full Backroom Service (Item Processing Charges)	
Truncated Checks for volumes of:	Pricing varies-tiered by monthly volume
Non-Truncated Checks for volumes of:	Pricing varies-tiered by monthly volume
1–25,000	$0.0555 per item
25,001–58,500	0.0540 per item
58,501–91,500	0.0525 per item
91,501–125,000	0.0510 per item
125,001–158,500	0.0495 per item
158,501–191,500	0.0480 per item
191,501–350,000	0.0465 per item
350,001–500,000	0.0440 per item
500,001–over	0.0415 per item
Truncated Checks for volumes of:	Pricing varies-tiered by monthly volume
1–25,000	$0.0455 per item
25,001–58,500	0.0440 per item
58,501–91,500	0.0425 per item
91,501–125,000	0.0410 per item

Deposit items processed for volumes of:	Pass-through pricing varies-tiered by monthly volume
125,001–158,500	0.0395 per item
158,501–191,500	0.0380 per item
191,501–350,000	0.0365 per item
350,001–500,000	0.0340 per item
500,001–over	0.0315 per item

Modified Backroom Service (Item Processing Charges)

Non-Truncated Checks for volumes of:	Pricing varies-tiered by monthly volume
1–25,000	$0.0446 per item
25,001–58,500	0.0431 per item
58,501–91,500	0.0416 per item
91,501–125,000	0.0401 per item
125,001–158,500	0.0386 per item
158,501–191,500	0.0371 per item
191,501–350,000	0.0356 per item
350,001–500,000	0.0331 per item
500,001–over	0.0306 per item
Truncated Checks for volumes of:	**Pricing varies-tiered by monthly volume**
1–25,000	$0.0346 per item
25,001–58,500	0.0331 per item
58,501–91,500	0.0316 per item
91,501–125,000	0.0301 per item
125,001–158,500	0.0286 per item
158,501–191,500	0.0271 per item
191,501–350,000	0.0256 per item
350,001–500,000	0.0231 per item
500,001–over	0.0206 per item

Check Processing (Associated Services)

Over-The-Counter Items	$0.1800 per item
Special Cycle Sorting	0.0210 per item
Mid-Cycle Statement (Purged)	0.5200 per item (Min $2.60)
Mid-Cycle Stmt. (Non-Purged)	2.6000 per statement
Check (NOW) Statement Processing:	
Statements using Small Envelopes	0.0575 per envelope
Statements using Custom Envelopes	0.0940 per envelope
Statements using Large Envelopes	0.5435 per envelope
Additional Stuffer Processing	0.0250 per stuffer
(One stuffer per statement free—applicable to all additional stuffers)	
Selective Stuffer Processing	0.0680 per statement
Daily Report Postage	Pass-through
Statement Postage	Pass-through
Standard Return Calls	1.1000 per item
Automated Return Calls	0.2600 per item
FHLBLink Return Calls	0.9000 per item
Late Return Calls	2.2000 per item
FRB Return Items	0.4500 per item
FRB Return Items Over $2,500	6.0000 per item
Check Photocopies-Mail	3.6500 per photocopy
Check Photocopies-Telephone/Fax	4.4000 per photocopy
Check Photocopies-Subpoena	0.5220 per photocopy
Signature Verification Copies	0.7500 per copy
Check Retrieval	1.5000 per item
MICRSort Option (Fixed Fee)	26.0000 per month
MICRSort Option (per item)	0.0300 per item
Check Reconcilement Service	*(See Separate Section)*
Collections & Forgeries	15.0000 per item
MCPJ Microfiche Service	0.0010 per item (Min. $15.00, Max $50.00)
Microfiche Copies	5.0000 per copy
Microfilm Processing	5.2500 per roll
Microfilm Duplication	10.7500 per roll
Transportation	Pass-through

Statement Savings Processing

Statements using Small Envelopes	$0.0900 per envelope
Statements using Custom Envelopes	0.1211 per envelope

Deposit items processed for volumes of:	Pass-through pricing varies-tiered by monthly volume
Statements using Large Envelopes	0.5511 per envelope

Check Reconcilement Service

Reconcilement Items Processed	$0.2250 per item
Stop Payment Orders	10.0000 per item
Microfiche Copies	3.0000 per copy
Account Reconcilement	15.0000 per account

*Note: Individual service charges are detailed in a monthly statement provided specifically for this service. The net of these charges is posted to Check Processing and appears as a single line item on the monthly billing statement.

Account Maintenance

Demand Deposit Accounts	$21.5000 per month, per account
Audit Confirmation	10.0000 per request, per account
Cut-Off Statements	10.0000 per statement
Paper Advice of Transactions (DTS)	1.0000 per statement

Account Overdraft Penalty

Greater of $75.00 and interest on the amount of the overdraft
(Rate used for calculation equal to the highest posted advance rate plus 3.0%)
Attention: Customers Receiving Transportation Charges Under Any Service
Rates and charges relative to transportation vary depending on the location of the office(s) serviced. Details regarding the pricing for the transportation to/from specific institutions or individual locations will be provided upon their subscription to that service.
Surcharges may be applicable and will be applied to the customers as effective and without prior notice.

District 4.—Federal Home Loan Bank of Atlanta (1995 NOW/DDA Services)

(Does not provide item processing services for third party accounts.)

District 5.—Federal Home Loan Bank of Cincinnati (1995 NOW/DDA Services)

Demand Deposit Account

Paid Items	$0.14
Advice Reconciliation	0.05
Magnetic Tape Reconciliation	0.05
Stop Payments	10.00
Wire Transfers—In	2.00
Wire Transfers—In with Telephone Confirmation	4.00
Wire Transfers—Out	5.00
Charges	0.15
Credits	0.15
Photocopies	1.00
Fine Sorting	0.01
Large Dollar Return Notification	2.00
Check and Money Order Truncation	No charge
ACH Return and Notification of Change	1.00
Facsimile Transmission of ACH Detail and Advices	1.00 per page ($10.00 monthly minimum)
Custodial Account Maintenance	10.00/mo./acct.
Settlement Agent with Federal Reserve:	
ACH	$100.00/active month
Treasury Tax and Loan	100.00/active month
Bond Activity	100.00/active month
Currency and Coin	100.00/active month
Security Purchases	100.00/active month
Check Deposit Activity	300.00/active month
Check Deposit Returns Only	50.00/active month
NOW Activity	300.00/active month
Credit Card Activity	100.00/active month
Contemporaneous Reserve	50.00/active month

Basic service items/month	Contractural fees	Daily return—sorted
Inclearings/Now Accounts		
a. 1–50,000		$0.0320
b. 50,001–100,000		.0200
c. 100,001–200,000		.0100

Basic service items/month	Contractural fees	Daily return—sorted
d. 200,001–400,000		.0085
e. 400,001–and over*		.0070

Truncation	Without statement stuffing	Statement stuffing
a. $.0340	$0.0370	$0.0530
b. .0240	.0270	.0510
c. .0140	.0180	.0470
d. .0090	.0110	.0400
e. .0070	.0090	.0250

*Subject to regional operations considerations.

Special Services

1. Check Retrieval or Inspection of Original Item	$1.50
2. Photocopy	$1.00
3. Advertising Insertion	$0.02 per item
4. Posted—On Us	
a. With FHLB encoding	$0.03 per item
b. Without FHLB encoding	$0.01 per item
5. Statement Stuffing Service for Truncated Statement	$0.01 per statement
6. Additional Sorting Upon Request	
a. Fine Sorting	$0.005 per item
b. Cycle Sorting	$0.005 per item
7. Large Dollar Return Notification	$2.00 per item
8. Return Items Processed by Bank	
a. First 1,000	$1.75
b. All Others	$0.75
c. Qualification Requirements of EFAA	No Charge
9. Return Items Processed by NOW User Qualification Requirements of EFAA	$.50 per item
10. Return Item Clearing Fee	$FRB Pass-Thru
11. Special Processing Requests	Negotiable
12. Discount for Check Deposit Users	5% off Basic Service Fees
13. Discount for Credit and Disbursement Users	5% off Basic Service Fees

Check Deposits

Nashville Operations Center:	
Nashville City/RCPC	.02
U.S. Treasury Checks/Savings Bonds	.02
Louisville City/RCPC	.025
Memphis City/RCPC	.0475
Other FRB	.0575
Cleveland Operations Center:	
Cleveland City/RCPC	.02
U.S. Treasury Checks/Savings Bonds	.02
Columbus City/RCPC	.03
Other FRB	.0575
Cincinnati Operations Center:	
Cincinnati City/RCPC	.02
U.S. Treasury Checks/Savings Bonds	.02
Louisville City/RCPC	.02
Columbus City/RCPC	.025
Other FRB	.0575

Volume Discount

Volume discounts on all items when total deposited items fall within below listed categories:

Discount	Monthly Volume Range
10%	100,001–200,000
20%	200,001 and over

Additional Services

1. Encoding by FHLB Operations Center	
*Cincinnati & Cleveland	$.0225 per item
*Nashville	$.0250 per item
2. Photocopy	$1.00 per item

3. Dishonored Item Returned by Bank	$.25 per item
4. Large Dollar Return Notification	$2.00
5. Non-Cash Collection Minimum Service Fees, In Addition to Collecting Bank Fees	
a. Non-Cash Item	$5.00 per item
b. Security Coupon Collection	$5.00 per envelope
c. Coupon Return Item	$10.00 per item
d. Foreign Item	$5.00 per item
e. Food Stamp Cash Letter	$1.00 per cash letter
f. Municipal Bonds	$5.00 per item
g. Government Coupons	No Charge
6. Depository Transfer Checks (DTC)	$5.00 per item
7. Cash Letter Fee	
a. Less than 100,000 items per month	$1.00 per cash letter
b. 100,000 or more items per month	$.25 per cash letter
8. Funds Availability	
a. See regional availability schedules	
b. No deduction for fractional availability or reserve requirements	

Northern Ohio Institutions

Preparation Charge
$12.00 per currency order
$2.00 per box wrapped coin

Kentucky and Southern Ohio Institutions

Preparation Charge
$10.50 per currency order
$2.00 per box wrapped coin

Ohio and Kentucky Institutions

Pick-up of Currency and Coin
$5.00 per starpped currency deposit
$6.00 per mixed or unfilled straps of currency
$2.50 per bag of loose coin (same denomination)
$5.00 per bag of loose coin (mixed denomination)
$5.00 per bag of wrapped coin (same denomination)
$8.00 per bag of wrapped coin (mixed denomination)

Note: Preparation charge for later notification of order requiring special pick-up or registered mail delivery will be increased in the amount of 10%.

Memphis Federal Reserve Territory Institutions

Preparation Charge
$4.00 per currency and/or loose coin order
Pick-up of Currency and Coin
$2.00 per occurrence

Nashville Federal Reserve Territory Institutions

Preparation Charge
$4.00 per currency and/or loose coin order
$.0375 per roll—wrapped coin
Pick-up of Currency and Coin
$2.00 per occurence
Transportation Charge
Please contact the Bank for the specific fee relative to your area.

Lockbox

OCR Standard Per Item Fee	.25

Includes: Courier Pick-up at Lockbox Microfilming of Check and Document Transmission to Service Bureau Management Reports Check Deposit Fee (Encoding and Clearing) Certain Exception Handling	

Additional Services

Lockbox Rental	Actual Cost
Photocopies	1.00
Hot File Update (Add or Delete)	.50 per update
Hot File Update (Magnetic Tape)	10.00 per tape
Courier/Postage	Actual—Outgoing
Dishonored Item Returned by Bank	.25
Large Dollar Return Notification	2.00 per item
Reject or Unmatched Item	.15
Other Desired Services	Cost Basis

Settlement options	Money orders and dividend checks	Official checks
Alternative Disbursement Service		
Processing Fees	1-Day 2-Day. Tuesday Weekly. Based on settlement option and check volume.	1-Day.
Earnings Incentive*	Not Applicable	Based on settlement option and float balances.

*The earning incentive is a monthly interest payment to the ADS customer based on its actual check activity. The earnings incentive interest rate is indexed to the 91-Day Treasury Bill rate.

District 6.—Federal Home Loan Bank of Indianapolis (1995 NOW/DDA Services)

Cash Management Services

Transaction Charges

Paid Check Charge	$0.16 per item
Paper Advice	.065 per item
Tape Advice	.040 per item
Stop Payments	6.00 per stop
Photo copies	2.50 per copy
Find Sort Numeric Sequence	.025 per item
Collection/Return/Exception	5.00
Daily Statement	2.00
Maintenance	30.00 per month
Debit Entries	no charge
Credit Entries	no charge
Checks (Administration Fee)	.02 per item
Special Cutoff	no charge
Infoline	50.00 per month
VRU (Voice Response)	1.00 per inquiry

Collected Balances Will Earn Interest at the CMS daily posted rate.

Now Account Services

Transaction Charges

Monthly volume	Safekeeping		Turnaround (daily or cycled)		Complete		Image	
	Per item	Cost	Per item	Cost	Per item	Cost	Per item	Per Stmt
0–5,000	.048	240.	.056	280.	.080	400.	.06	.40
5–10,000	.040	200.	.051	255.	.078	390.	.06	.40
10–15,000	.039	195.	.047	235.	.076	380.	.06	.40
15–25,000	.034	340.	.040	400.	.075	750.	.06	.40
25–50,000	.033	825.	.036	900.	.073	1,825.	.06	.40
50–75,000	.029	725.	.033	825.	.069	1,725.	.06	.40
75–100,000	.026	650.	.030	750.	.068	1,700.	.06	.40
100–and up	.024		.027		.067		.06	.40

Ancillary Service Fees

Large Dollar Signature Verification	$0.50
Over-the-Counters and Microfilm	0.035
Return Items	2.15
Photocopies ** and Facsimiles	2.50
Certified Checks	1.00
Invalid Accounts	.50
Invalid Returns	0.50
Late Returns	0.50
No MICR/OTC	0.50
Settlement Only	100.00 per month
+ Journal Entries	3.00 each
Encoding Errors	2.75
Fine Sort Numeric Sequence	0.02
Access to Infoline	50.00 per month
High Dollar Return Notification	no charge
Debit Entries	no charge
Crdit Entries	no charge
Standard Stmt. Stuffers (up to 2)***	no charge

Minimum processing fee of $40.00 per month will apply for total NOW services.

Also included in the above fees—at *no* additional cost are Federal Reserve fees, incoming courier fees, software changes, disaster recovery, envelope discount and inventory.

*Image Monthly Maintenance Fee of $500.00 for 0–32% of accounts; $300.00 for 33–49% of accounts; and $200.00 for 50%+ will be assessed for Image Statements.

**Photocopy request of 50 or more are charged at an hourly rate of $15.00.

***Each additional (over 2) will be charged at $.02 per statement.

	Fee
Wire Transfer Services	
In (Per transfer) Domestic	$4.00
Out (Per transfer) Domestic	7.50
International Wires	25.00
Depository Transfer Checks	
Per Check	$2.00
Treasury Tax and Loan Settlement Service	
Per Transaction	$2.00
Charge Card Transaction	
Per Transaction	$1.50
Automated Clearing House (ACH) Service	
Tape Transmission	$8.50
or Origination	.045 per item
MACHA, INDEX	Actual Federal Reserve Changes
ACH Entries Clearing through our R&T Number	$.25 per item
Settlement Only	$65.00 per month
ACH Returns/NOC	$2.50 per item
Coin and Currency	

Deliveries—Indiana and Michigan Prices based on delivery location, excess bag fee (courier) and order preparation.

Cost will vary per institution:	
Returns	$12.50
Non-Transit Customer	$10.00
Orders (Member uses own courier)	$15.00
Special Order*	$15.00

*Any order placed after normal order has been received and processed by Federal Home Loan Bank.

Proof and Transit Processing	
Pre-encoded Items:	
City	$0.04 per item

	Fee
RCPC	$0.05 per item
Other Districts	$0.085 per item
Unencoded	$0.165 per item
Food Stamp	$0.14 per item
Photocopies*	$2.50 per copy
Adjustments on pre-encoded work	$2.75 per error
E Z Clear	$0.14 per item
Coupons	$8.25 per envelope
Collections	$6.00 per item
Cash Letter	$2.00 per cash letter
Deposit Adjustments	$0.30 per adjustment
Debit Entries	no charge
Credit Entries	no charge
Microfilming	no charge
Mortgage Remittance (Basic Service)	$0.35
Settlement Only	$100.00 per month
+ Journal Entries	$3.00 each
Third Party Fedline	$.50 each
Courier**	
Marion County	$8.25 per location, per day, per pickup
Other	Prices vary per location

*Multiple Photocopies (more than 50 per request) $15.00 hour
**Includes branch work transfer and correspondence to and from Federal Home Loan Bank.
All Fees Subject to Change

District 7.—Federal Home Loan Bank of Chicago (1995 NOW/DDA Services)

(Does not provide item processing services for third party accounts)

District 8.—Federal Home Loan Bank of Des Moines (1995 NOW/DDA Services)

Demand Account Analysis Fee Schedule

Account Maintenance	$12.00
Account Reconciliation	35.00
Daily Statements:	
Via SMARTS	No Charge
Paper Daily Advice (Per day)	2.50
Balance Reporting (Phone—manual)	75.00
Drafts Paid:	
Truncated	0.045
Non-Truncated	0.055
Stop Payments	7.00
Ledger Entries—Credits	0.35
Ledger Entries—Debits	0.15
Bank Wires In	3.00
Bank Wires Out:	
Without Phone Advice	4.00
With Phone Service	6.00
ACH Settlement Charges	1.00
Special Cut-Off Statements	10.00
Account Reconciliation Tape Issues	0.015
Issue Encoding	0.0225
Pre-Encoded Issues	0.015
Collections:	
Bonds/Coupons Per Envelope	
Local/Government	5.00
Out-of-Town	7.00
Domestic/Checks	15.00 (Plus Actual)
Foreign	25.00 (Plus Actual)
Miscellaneous	Actual

ACH Fee Schedule

ARB/ACH Pass Thru	Actual
FRB/ACH Settlement	$1.00
Origination service:	
Set Up New Account (One Time Charge)	50.00
Formatted Tape	10.00
Reformat Tape	10.00
Per Item On Tape*	.05
Paper input:	
Monthly Maintenance	20.00

Data Entry Per Item*	.25
Day Cycle Deposit Charge:	
Local DB/CR	.0550
Out-of-State DB/CR	.0550
Prenotes	.0550
Addendas	.0550
Night Cycle Deposit Charge Premium:	
Local DB/CR	.07
Out-of-State DB/CR	.07
Prenotes	.07
Addendas	.07
Warehousing Per Item	.0050
Originator Volume Discount—Monthly	
5,000 to 20,000	−.005
20,000–Over	−.01
Return Items	1.50
Transportation Charges	Negotiable
Special Service/Handling	Negotiable
Telephone Advice:	
Per Call	2.00
Miscellaneous	Actual
Minimum Monthly Billing	50.00

*Plus ACH Origination Fee.

DES MOINES REGIONAL CENTER DEPOSIT PROCESSING FEE SCHEDULE

Description	Below 50,000	50,000–100,000	100,000–300,000	Over 300,000
Deposited Item Charges				
Local	.02	.015	.014	.011
RCPC	.030	.025	.022	.020
RCPC—Premium	.045	.045	.045	.045
Transit	.0525	.051	.05	.049

Other Fees

Encoding	$.0225
Return Items:	
Return Items	.75/item
Special Handling	
Subtotal by Office	1.50/office total
Individual Entries	.50/entry
Telephone Notification less than $2,500	.60/item
Large Dollar Notification (Reg. J.)	3.00/item
Collection/Settlement Services:	
Bonds/Coupons Per Envelope	
Local/Government	5.00
Out-of-Town	7.00
Domestic/Checks	15.00 (Plus Actual)
Canadian Items	.25/item
Foreign	25.00 (Plus Actual)
Miscellaneous	Actual
Federal Reserve Settlement Entries	1.00/entry
Food Coupons	.02
Non-Processable Items	.15/item
Cash Services:	
Currency/Coin Orders	2.00/order
Special Orders	Standard order fee
Foreign Currency Orders	2.50/order
Coin—per roll	.0385/roll
Currency/Coin Deposits:	
Standard Packaging	.50
Non-Standard Packaging	10.00
Foreign Currency Deposits	5.00/deposit
Currency Per Strap	.25
Delivery Charge (includes return delivery to FRB Chicago)	42.61/stop
Balance/Availability Reporting	30.00/month
Endpoint Analysis	20.00/day
Photocopies	2.75/copy
Research	20.00/hour

KANSAS CITY REGIONAL CENTER DEPOSIT PROCESSING FEE SCHEDULE

Description	Below 25,000	25,000–50,000	50,000–250,000	Over 250,000
Deposited Item Charges				
Local	0.0170	0.0160	0.0150	0.0075–0.0140
Regional	0.0280	0.0250	0.0220	0.0150–0.021
Country	0.0280	0.0250	0.0220	0.0150–0.021
Transit	0.0540	0.0530	0.0510	0.0435–0.050

Other Services	
Encoding:	
Below 25,000	$0.0300
25,000–50,000	0.0250
50,000–250,000	0.0225
Over 250,000	0.0200
Return Items:	
0–999	0.75
1,000 and Over	0.65
Special handling:	
Subtotal by Office	1.50/office total
Selected Account Chargeback	.025/item
Individual Entries	.50/entry
Telephone Notification less than $2,500	.60/item
Large Dollar Notification (Reg. J.)	3.00/item
Collection/Settlement Services:	
Bonds/Coupons Per Envelope	
Local/Government	5.00
Out-of-Town	7.00
Domestic/Checks	15.00 (Plus Actual)
Canadian Items	.25/item
Foreign	25.00 (Plus Actual)
Miscellaneous	Actual
Federal Reserve Settlement Entries	1.00/entry
Food Coupons	.02
Non-Processable Items	0.15
Cash Services:	
Currency/Coin Orders	3.00/order
Special Orders	3.00/order, actual charges
Foreign Currency Orders	5.50/order
Currency/Coin Deposits:	
Standard Packaging	.50/deposit
Non-Standard Packaging	10.00/deposit
Foreign Currency Deposits	5.00/deposit
Balances/Availability Reporting	30.00/month
Endpoint Analysis	30.00/each, over two per year
Photocopies/Microfilm Copies	2.75/copy
Audit	2.75/copy or 20.00/hour+.50 copy, whichever is less
Research	20.00/hour

MINNEAPOLIS REGIONAL CENTER DEPOSIT PROCESSING FEE SCHEDULE

Description	Below 25,000	25,000–50,000	50,000–250,000	Over 250,000
Deposited Item Charges				
Local	.02	.016	.014	.013
RCPC	.032	.025	.018	.016
RCPC—Premium	.045	.04	.035	.03
Country	.04	.038	.036	.035
Transit	.063	.058	.054	.032
Out-of-District Customers—Deposited Item Charges				
Local	.0250	.0210	.0160	.0150
RCPC	.0370	.0300	.0200	.0180
RCPC—Premium	.0500	.0450	.0400	.0350
Country	.0450	.0430	.0380	.0370
Transit	.0730	.0680	.0580	.0560

Other Services	
Encoding:	
1 to 250,000	$.0250
Over 250,000 items	.0225
Return Items:	
Return Items	.75/item
Special Handling Subtotal by Office	1.50/office total
Individual Entries	.50/entry
Telephone Notification less than $2,500	.60/item
Large Dollar Notification (Reg. J.)	3.00/item
Collection/Settlement Services:	
Bonds/Coupons Per Envelope	
Local/Government	5.00
Out-of-Town	7.00
Domestic/Checks	15.00 (Plus Actual)
Canadian Items	.25/item
Foreign	25.00 (Plus Actual)
Miscellaneous	Actual
Federal Reserve Settlement Entries	1.00/entry
Food Coupons	.04
Non-Processale Items	.15/item
Cash Services:	
Currency/Coin Orders	2.00/order
Special Orders	Standard order fee plus actual charges
Foreign Currency Orders	2.50/order
Currency/Coin Deposits	2.00/order
Standard Packaging	.50
Non-Standard Packaging	10.00
Foreign Currency Deposits	5.00/deposit
Balance/Availability Reporting	30.00/month
Endpoint Analysis	20.00/day
Photocopies	2.75/copy
Research	20.00/hour

ST. LOUIS REGIONAL CENTER DEPOSIT PROCESSING FEE SCHEDULE

Description	Below 25,000	25,000–50,000	50,000–100,000	100,000–200,000	Over 200,000
Deposited Item Charges					
Local	.024	.022	.020	.018	.017
RCPC	.028	.025	.023	.021	.018
Country	.028	.025	.023	.021	.020
Transit	.058	.055	.053	.051	.050
Package Sort:					
Local	.021	.018	.017	.015	.011
RCPC	.025	.022	.020	.018	.017
Country	.025	.022	.020	.019	.018
Transit	.055	.052	.050	.048	.047

Note: Package Sort prices are available to customers who present deposits separated by item type.

Description	Below 25,000	25,000–50,000	50,000–100,000	100,000–200,000	Over 200,000
Out-of-District Customers—Deposited Item Charges					
Local	.029	.027	.022	.020	.019
RCPC	.033	.030	.025	.023	.020
Country	.033	.030	.025	.023	.022
Transit	.068	.065	.057	.055	.054
Package Sort:					
Local	.026	.023	.019	.017	.013
RCPC	.030	.027	.022	.020	.019
Country	.030	.027	.022	.021	.020
Transit	.065	.062	.054	.052	.051

Note: Package Sort prices are available to customers who present deposits separated by item type.

Other Services	
Encoding	$.025

Return Items:	
Return Items	.75/item
Special Handling	
Subtotal by Office	1.50/office total
Individual Entries	.50/entry
Telephone Notification less than $2,500	.60/item
Large Dollar Notification (Reg. J.)	3.00/item
Collection/Settlement Services:	
Bonds/Coupons Per Envelope	
Local/Governemnt	5.00
Out-of-Town	7.00
Domestic/Checks	15.00 (Plus Actual)
Canadian Items	.25/item
Foreign	25.00 (Plus Actual)
Miscellaneous	Actual
Federal Reserve Settlement Entries	1.00/entry
Food Coupons	.02
Non-Processable Items	.15/item
Cash Services:	
Currency/Coin Orders	4.00/order
Special Orders	Standard order fee plus actual charges
Currency/Coin Deposits Standard Packaging	.50
Non-Standard Packaging	2.00
Balance/Availability Reporting	30.00/month
Endpoint Analysis	20.00/day
Photocopies	2.75/copy
Research	20.00/hour

DES MOINES REGIONAL CENTER

Monthly capture volume	Basic fee (capture)	Daily sort (1) (2)	Cycle/monthly sort (2)
Inclearing Processing Fee Schedule			
1–25,000	.020	.017	.020
25,001–50,000	.016	.013	.016
50,001–75,000	.014	.011	.014
75,001–175,000	.012	.009	.012
175,001–400,000	.010	.007	.010
400,001–750,000	.009	.006	.009
750,001–Over	.007	.004	.007
Reject Reentry	.04/item		
Posting File	.0005/item		

Volume levels	Basic service[3]	Telephone request[3]	Forward collection only[4]	
			Unqualified	Qualified[5]
Return Items:				
1–500	$2.65	$3.50	$0.60	$0.25
501–750	2.10	NA	.60	.25
751–1,00	1.85	NA	.60	.25
1,001–3,000	1.15	NA	.60	.25
3,001–Over	.75	NA	.55	.25
Regulation J Notification	3.00/item			

[1] Surcharge for same-day return: 15%.
[2] Fees for daily and cycle/monthly return are in addition to the basic fee.
[3] Full service processing. Excludes Large Dollar notification.
[4] Return items received for forward collection.
[5] Items must be fully qualified using heat sensitive strips.

Other Services

Support Services:	
Certified Checks	.50/item
Facsimile Transmission	1.50/transmission
Microfiche Monthly Reports	25.00/month
Microfilm of Checks Captured	.01/item
Original Item Return	2.75/item
Research	20.00/hour
Stop Payments	5.00/stop

Telephone Check Inquiry	1.00/inquiry
Signature Verification	.35/item
Counter Items:	
With MICR Encoding	.04/item
Without MICR Encoding	.10/item
Photocopies/Microfilm Copies	2.75/item
Audit	2.75/item or 20.00/hour + .50/copy, whichever is less
Settlement:	
Daily Reporting	25.00/month
Settlement Only (Inclearings or returns)	100.00/month
Third Party Settlement	350.00/month
Special Sorting Options:	
Account Separators	.003/item ($175.00 minimum)
Truncated Items Returned Unsorted	.002/item
Truncated Items Returned Sorted	.012/item ($250.00 minimum)
Sequence Number Order	.005/item
Other Miscellaneous Fine Sorting	.005/item

Special Services

Backup Service:	
Set-Up Charge	500.00–1,500.00 one time
Monthly Maintenance	Negotiable plus actual monthly usage
File Maintenance	
Mergers/Acquisitions	500.00/each
Multiple R/T Numbers	50.00/number/month
Parameter File Maintenance	25.00/change
Multiple Sorter Pockets	300.00/pocket/month
Data Servicer Conversion	500.00/conversion
Minimum Monthly Charge (Excluding Actual Charges)	250.00

Kansas City Regional Center

Inclearing Processing Fee Schedule

Monthly capture volume	Basic fee (capture)	Daily sort[1 2]	Cycle/monthly sort[2]
1–50,000	.016	.013	.016
50,001–100,000	.014	.011	.014
100,001–175,000	.012	.009	.012
175,001–400,000	.010	.007	.010
400,001–750,000	.009	.006	.009
750,001–Over	.007	.004	.007
Reject Reentry	.04/item		
Posting File	.0005/item		

Return Items

Volume levels	Basic service[3]	Telephone request[3]	Forward collection only[4]	
			Unqualified	Qualified[5]
1–750	$1.60–2.65	$3.50	$.75	$.27
751–2,500	0.95–1.85	NA	.70	.27
2,501–Over	0.65–1.55	NA	.65	.23
Regulation J Notification	3.00/item			

[1] Surcharge for same-day daily return: 15%.
[2] Fees for daily and cycle/monthly return are in addition to the basic fee.
[3] Full service processing. Excludes Large Dollar notification required under Regulations CC and J.
[4] Return items received for forward collection.
[5] Items must be fully qualified using heat sensitive strips.

Other Services

Support Services:	
Certified Checks	.50/item.
Facsimile Transmission	1.50/transmission.
Microfiche Monthly Reports	25.00/month.
Microfilm of Checks Captured	.01/item.
Original Item Return	2.75/item.
Research	20.00/hour.
Stop Payments	5.00/stop.
Telephone Check Inquiry	1.00/inquiry.

Signature Verification	.35/item.
Counter Items:	
With MICR Encoding	.04/item.
Without MICR Encoding	.10/item.
Photocopies/Microfilm Copies:	
Audit	2.75/item.
	2.75/item or 20.00/hour+.50/copy, whichever is less.
Settlement:	
Daily Reporting	25.00/month.
Settlement Only (inclearings or Returns)	100./month.
Third Party Settlement	350.00/month.
Special Sorting Options:	
Account Separators	.003/item ($175.00 minimum).
Truncated Items Returned Unsorted	.002/item.
Truncated Items Returned Sorted	0.12/item ($250.00 minimum).
Sequence Number Order	.005/item.
Other Miscellaneous Fine Sorting	.005/item.

Special Services

Backup Service:	
Set-Up Charge	500.00–1,500.00 one time.
Monthly Maintenance	Negotiable plus actual monthly usage.
File Maintenance:	
Mergers/Acquisitions	500.00/each.
Multiple R/T Numbers	50.00/number/month.
Parameter File Maintenance	25.00/change.
Multiple Sorter Pockets	300.00/pocket/month.
Data Servicer Conversion	500.00/conversion.
Minimum Monthly Charge (Excluding Actual Charges)	250.00.

Minneapolis Regional Center

Inclearing Processing Fee Schedule

Monthly capture volume	Basis fee (capture)	Daily sort[1 2]	Cycle/monthly sort[2]
1–25,000	.020	.017	.020
25,001–50,000	.016	.013	.016
50,001–75,000	.014	.011	.014
75,001–175,000	.012	.009	.012
175,001–400,000	.010	.007	.010
400,001–750,000	.009	.006	.009
750,001–Over	.007	.004	.007
Reject Renentry	.04/item		
Posting File	.005/item		

[1] Surcharge for same-day return: 15%.
[2] Fees for daily and cycle/monthly return are in addition to the basic fee.

Return Items

Volume levels	Basic service[3]	Telephone forward collection only[4]			
		Request[3]	Qualified	Qualified[5]	Premium
1–2,000	$.65–2.65	$3.50	$.70	$.28	$.34
2,001–4,000	1.15–1.90	NA	.70	.28	.34
4,001–Over	.75–1.65	NA	.65	.28	.34
Regulation J. Notification	3.00/item				

[3] Full service processing. Excludes large dollar notification required under Regulation CC an J.
[4] Return times received for forward collection.
[5] Items must be fully qualified using that sensitive strips.

Other Services

Support Services:	
Certified Checks	.50/item.
Facsmile Transmission	1.50/transmission.
Microfiche Monthly Reports	25.00/month.
Microfilm of Checks Captured	.01/item.
Original Item Return	2.75/item.
Research	20.00/hour.
Stop Payments	5.00/stop.
Telephone Check Inquiry	1.00/inquiry.

Signature Verification	.35/item.
Counter Items:	
With MICR Encoding	.04/item.
Without MICR Encoding	.10/item.
Photocopies/Microfilm Copies:	
Audit	2.75/item.
	2.75/item or 20.00/hour+.50/copy, whichever is less.
Settlement:	
Daily Reporting	25.00/month.
Settlement Only (inclearings or Returns)	100.00/month.
Third Party Settlement	350.00/month.
Special Sorting Options:	
Account Separators	.003/item ($175.00 minimum).
Truncated Items Returned Unsorted	.002/item.
Truncated Items Returned Sorted	.012/item ($250.00 minimum).
Sequence Number Order	.005/item.
Other Miscellaneous Fine Sorting	.005/item.

Special Services

Backup Service:	
Set-Up Charge	500.00—1,500.00 one time.
Monthly Maintenance	Negotiable plus actual monthly usage.
File Maintenance:	
Mergers/Acquistiions	500.00/each.
Multiple R/T Numbers	50.00/number/month.
Parametef File Maintenance	25.00/change.
Multiple Sorter Pockets	300.00/pocket/month.
Data Servicer Conversion	500.00/conversion.
Minimum Monthly charge (Excluding Actual Charges)	250.00.

St. Louis Regional Center

Inclearing Processing Fee Schedule

Monthly capture volume	Basic fee (capture)	Daily sort[1 2]	Cycle/monthly sort[2]
1–25,000	.020	.017	.020
25,001–50,000	.016	.013	.016
50,001–75,000	.014	.011	.014
75,001–175,000	.012	.009	.012
175,001–400,000	.010	.007	.010
400,001–750,000	.009	.006	.009
750,001–Over	.007	.004	.007
Reject Reentry	.04/item		
Posting File	.0005/item		

Return Items

Volume levels	Basic service[3]	Telephone request[3]	Forward collection only[4]	
			Unqualified	Qualified[5]
1–500	$2.25	$3.50	$.60	$.20
501–1,000	2.00	NA	.50	.20
1,001–2,500	1.75	NA	.50	.20
2,501–Over	1.25	NA	.50	.20
Regulation J Notification	3.00/item			

[1] Surcharge for same-day daily return: 15%.
[2] Fees for daily and cycle/monthly return are in addition to the basic fee.
[3] Full service processing. Excludes Large Dollar notification required under Regulations CC and J.
[4] Return items received for forward collection.
[5] Items must be fully qualified using heat sensitive strips.

Other Services

Support Services:	
Certified Checks	.50/item.
Facsimile Transmission	1.50/transmission.
Microfiche Monthly Reports	25.00/month.
Microfilm of Checks Captured	.01/item.
Original Item Return	2.75/item.
Research	20.00/hour.
Stop Payments	5.00/stop.

Telephone Check Inquiry	1.00/inquiry.
Signature Verification	.35/item.
Counter Items:	
With MICR Encoding	.04/item.
Without MICR Encoding	.10/item.
Photocopies/Microfilm Copies:	
Audit	2.75/item.
	2.75/item or 20.00/hour+.50/copy, whichever is less.
Settlement:	
Daily Reporting	25.00/month.
Settlement Only (Inclearing or Returns)	100.00/month.
Third Party Settlement	350.00/month.
Special Sorting Options:	
Account Separators	.003/item ($175.00 minimum).
Truncated Items Returned Unsorted	.002/item.
Truncated Items Returned Sorted	.012/item ($250.00 minimum).
Sequence Number Order	.005/item.
Other Miscellaneous Fine Sorting	.005/item.

Special Services

Backup Service:	
Set-Up Charge	500.00–1,500.00 one time.
Monthly Maintenance	Negotiable plus actual monthy usage.
File Maintenance:	
Mergers/Acquisitions	500.00/each.
Multiple R/T Numbers	50.00/number/month.
Parameter File Maaaintenance	25.00/change.
Multiple Sorter Pockets	300.00/pocket/month.
Data Servicer Conversion	500.00/conversion.
Minimum Monthly Charge (Excluding Actual Charges)	250.00.

Minneapolis/St. Louis Regional Center—Out-of-District Customers

Inclearing Processing Fee Schedule

Monthly capture volume	Basic fee (capture)	Daily sort[1 2]	Cycle/monthly sort[2]
1–25,000	.021	.018	.021
25,001–50,000	.017	.014	.017
50,001–75,000	.015	.012	.015
75,001–175,000	.013	.010	.013
175,001–400,000	.011	.008	.011
400,001–750,000	.010	.007	.010
750,001–Over	.008	.005	.008
Reject Reentry	.04/item		
Posting	.005/item		

Return Items

Minneapolis

Volume levels	Basic service[3]	Telephone request[3]	Forward collection only[4]		
			Qualified	Qualified[5]	Premium
1–2,000	1.65–2.65	3.50	.70	.28	.34
2,001–4,000	1.15–1.90	NA	.70	.28	.34
4,001–Over	.75–1.65	NA	.65	.28	.34
Regulation J Notification	3.00/item				

St. Louis

Volume levels	Basic service[3]	Telephone request[3]	Forward collection only[4]	
			Qualified	Qualified[5]
1–500	2.25	3.50	.60	.20
501–1,000	2.00	NA	.60	.20
1,001–2,000	1.75	NA	.60	.20
2,501–Over	1.25	NA	.50	.20
Regulation J Notification	3.00/item			

Other Services

Minneapolis/St. Louis

Support Services:	
Certified Checks	50/item.
Facsimile Transmission	1.50/transmission.
Microfiche Monthly Reports	25.00/month.
Microfilm of Checks Captured	.01/item.
Original Item Return	2.75/item.
Research	20.00/hour.
Stop Payments	5.00/stop.
Telephone Check Inquiry	1.00/inquiry.
Signature Verification	.35/item.
Counter Items:	
With MICR Encoding	.04/item.
Without MICR Encoding	.10/item.
Photocopies/Microfilm Copies:	
Audit	2.75/item.
	2.75/item or 20.00/hour + .50/copy whichever is less.
Settlement:	
Daily Reporting	25.00/month.
Settlement Only (Inclearings or Returns)	100.00/month.
Third Party Settlement	350.00/month.
Special Sorting Options:	
Account Separators	.003/item ($175.00 minimum).
Truncated Items Returned Unsorted	.002/item.
Truncated Items Returned Sorted	.012/item ($250.00 minimum).
Sequence Number Order	.005/item.
Other Miscellaneous Fine Sorting	.005/item.

Special Services

Backup Services:	
Set-Up Charge	500.00–1,500 one time.
Monthly Maintenance	Negotiable plus actual monthly usage.
File Maintenance:	
Mergers/Acquisitions	500.00/each.
Multiple R/T Numbers	50.00/number/month.
Parameter File Maintenance	25.00/change.
Multiple Sorter Pockets	300.00/pocket/month.
Data Servicer Conversion	500.00/conversion.
Minimum Monthly Charge (Excluding Actual Charges)	250.00.

[1] Surcharge for same day daily return: 15%.
[2] Fees for daily and cycle/monthly return are in addition to the basic fee.
[3] Full service processing. Excludes Large Dollar notification required under Regulations CC and J.
[4] Return items received for forward collection.
[5] Items must be fully qualified using heat sensitive strips.

Des Moines Regional Center—Proof-of-Deposit (POD) Fee Schedule

Processing Fees

Monthly processing volume*	Encoding	POD capture	Inclearings capture	Account sequence sort	Exception pull/cycle sort	Rejects
1–250,000	.018	.012	.008	.00600	.00200	.04
250,001–500,000	.016	.011	.007	.00525	.00175	.04
500,001–1,500,000	.014	.010	.006	.00450	.00150	.04
1,500,001–3,000,000	.012	.009	.005	.00375	.00125	.04
3,000,00–Over	.010	.008	.004	.00300	.00100	.04

*Monthly processing volume represents the sum of POD Capture and Inclearings Capture.

Other Fees

Return processing and other existing ancillary, inclearing services	Available upon request.

Relationship Fees

Account Maintenance	$12.00
Daily Statements:	
Via SMARTS	No Charge.
Paper Daily Advice (per day)	2.50
Balance Reporting—Manual	75.00
Credit Transactions	0.35

Debit Transactions	0.15
SMARTS Electronic Connection, Basic	No Charge.
Wire Transfer:	
Incoming	3.00
Outgoing	4.00
Internal Transfer	No Charge.
Collections:	
Bonds/Coupons Per Envelope:	
Local/Government	5.00
Out-of-Town	7.00
Domestic/Checks	15.00 (Plus Actual).
Canadian Items	.25
Foreign Collections	25.00 (Plus Actual).
Food Coupons—Loose	0.03
Food Coupons—Full Straps	0.15

Clearing Fees

Deposited items	Local—$.01 RCPC—$.018 RCPC-Prem.—$.043 Transit—$.049

Terms of Account

Payment of Processing Fees and Clearing Fees are made by a direct charge to the account or by payment of our invoice. Payment of Relationship Fees are made only by balance compensation.

The earnings credit rate is indexed to the Bank's yield on overnight Fed Funds for the current month. Interest that approximates the Fed Funds rate will be paid to the account for excess balances, and deficient balances will be charged at the average Fed Funds rate of the current month.

Kansas City Regional Center—Proof-of-Deposit (POD) Fee Schedule

Processing Fees

Monthly processing volume*	Encoding	POD capture	Inclearings capture	Account sequence sort	Exception pull/cycle sort	Rejects
1–250,000	.022	.012	.008	.00600	.00200	.04
250,001–500,000	.020	.011	.007	.00525	.00175	.04
500,001–1,500,000	.018	.010	.006	.00450	.00150	.04
1,500,001–3,000,000	.016	.009	.005	.00375	.00125	.04
3,000,00–Over	.014	.008	.004	.00300	.00100	.04

*Monthly processing volume represents the sum of POD Capture and Inclearings Capture.

Other Fees

Return processing and other existing ancillary, inclearing services	Available upon request.

Relationship Fees

Account Maintenance	$12.00
Daily Statements:	
Via SMARTS	No Charge.
Paper Daily Advice (per day)	2.50
Balance Reporting—Manual	75.00
Credit Transactions	0.35
Debit Transactions	0.15
SMARTS Electronic Connection, Basic	No Charge.
Wire Transfer:	
Incoming	3.00
Outgoing	4.00
Internal Transfer	No Charge.
Collections:	
Bonds/Coupons Per Envelope:	
Local/Government	5.00
Out-of-Town	7.00
Domestic/Checks	15.00 (Plus Actual).
Canadian Items	.25
Foreign Collections	.25.00 (Plus Actual).
Food Coupons—Loose	0.0225
Food Coupons—Full Straps	0.15

Clearing Fees

Deposit Items	Local—$.01

	Country—$.021 Transit—$.045

Terms of Account

Payment of Processing Fees and Clearing Fees are made by a direct charge to the account or by payment of our invoice. Payment of Relationship Fees are made only by balance compensation.

The earnings credit rate is indexed to the Bank's yield on overnight Fed Funds for the current month. Interest that approximates the Fed Funds rate will be paid to the account for excess balances, and deficient balances will be charged at the average Fed Funds rate of the current month.

Minneapolis Regional Center—Proof-of-Deposit (POD) Fee Schedule

Processing Fees

Monthly processing volume*	Encoding	POD caputre	Inclearings capture	Account sequence sort	Exception pull cycle sort	Rejects
1–250,000	.022	.012	.008	.00600	.00200	.04
250,001–500,000	.020	.011	.007	.00525	.00175	.04
500,001–1,500,000	.018	.010	.006	.00450	.00150	.04
1,500,001–3,000,000	.016	.009	.005	.00375	.00125	.04
3,000,001–Over	.014	.008	.004	.00300	.00100	.04

*Monthly processing volume represents the sum of POD Capture and Inclearings Capture.

Other Fees

Return processing and other existing ancillary inclearing services	Available upon request.

Relationship Fees

Account Maintenance	$12.00
Daily Statements:	
Via SMARTS	No Charge.
Paper Daily Advice (per day)	2.50
Balance Reporting—Manual	75.00
Credit Transactions	0.35
Debit Transactions	0.15
SMARTS Electronic Connection, Basic	No. Charge.
Wire Transfer:	
Incoming	3.00
Outgoing	4.00
Internal Transfer	No Charge.
Collections:	
Bonds/Coupons Per Envelope:	
Local/Government	5.00
Out-of-Town	7.00
Domestic/Checks	15.00 (Plus Actual).
Canadian Items	.25
Foreign Collections	25.00 (Plus Actual).
Food Coupons—Loose	0.04

Clearing Fees

Deposited items	City—$.005 RCPC—$.0175 County—$.025 Transit—$.05

Terms of Account

Payment of Processing Fees and Clearing Fees are made by a direct charge to the account or by payment of our invoice. Payment of Relationship Fees are made only by balance compensation.

The earnings credit rate is indexed to the Bank's yield on overnight Fed Funds for the current month. Interest that approximates the Fed Funds rate will be paid to the account for excess balances, and deficient balances will be charged at the average Fed Funds rate of the current month.

St. Louis Regional Center—Proof-of-Deposit (POD) Fee Schedule

Processing Fees

Monthly processing volume*	Encoding	POD capture	Inclearings capture	Account sequence sort	Exception pull cycle sort	Rejects
1–250,000	.020	.012	.008	.00600	.00200	.04
250,001–500,000	.018	.011	.007	.00525	.00175	.04

Monthly processing volume*	Encoding	POD capture	Inclearings capture	Account sequence sort	Exception pull cycle sort	Rejects
500,001–1,500,000	.016	.010	.006	.00450	.00150	.04
1,500,001–3,000,000	.014	.009	.005	.00375	.00125	.04
3,000,001–Over	.012	.008	.004	.00300	.00100	.04

*Monthly processing volume represents the sum of POD Capture and Inclearings Capture.

Other Fees

Return processing and other existing ancillary inclearing services	Available upon request.

Relationship Fees

Account Maintenance	$12.00
Daily Statements:	
Via SMARTS	No Charge.
Paper Daily Advice (per day)	2.50
Balance Reporting—Manual	75.00
Credit Transactions	0.35
Debit Transactions	0.15
SMARTS Electronic Connection, Basic	No Charge.
Wire Transfer:	
Incoming	3.00
Outgoing	4.00
Internal Transfer	No Charge.
Collections:	
Bonds/Coupons Per Envelope:	
Local/Government	5.00
Out-of-Town	7.00
Domestic/Checks	15.00 (Plus Actual).
Canadian Items	.25
Foreign Collections	25.00 (Plus Actual).
Food Coupons—Loose	0.02

Clearing Fees

Deposited items	Local—$.0075 RCPC—$.016 Country—$.015 Transit—$.046

Terms of Account

Payment of Processing Fees and Clearing Fees are made by a direct charge to the account or by payment of our invoice. Payment of Relationship Fees are made only by balance compensation.

The earnings credit rate is indexed to the Bank's yield on overnight Fed Funds for the current month. Interest that approximates the Fed Funds rate will be paid to the account for excess balances, and deficient balances will be charged at the average Fed Funds rate of the current month.

Des Moines, Minneapolis, Kansas City and St. Louis Regional Centers

Lockbox Fee Schedule

Basic Service

Open envelope; screen per instructions; verify payee, signature and amount. Record data on check, remittance, envelope, or correspondence as requested. Balance checks to remittances and post credits to account specified.

Mortgage	$.12–.25
Consumer	.09–.15
Retail-Commercial	.07–.15
Wholesale-Commercial	.15–.55
Credit Card	.07–.15
Data Capture and Transmit Includes use of derogatory file as required. Rejects pulled, balanced and returned per instructions.	.015–/.030
Item Preparation Charge; Data Entry As required. Includes preparation of new or substitute machine-readable documents.	.05/item.
Microfilm Remittances or Checks	.01/item.
Credit/Posting Advice	.25/advice.
Photocopies:	
Recurring	.05/copy.
On Request	.25/copy.
Facsimile Transmissions:	
Recurring	.85/page.
On Request	1.50/page.
Microfilm Copies	2.75/copy.

Payment Discounts Calculated	.25/discount.
Telephone Inquiry or Notification	1.00/call.
Foreign Item Processing:	
U.S. Dollars	.75/check.
Foreign Currency	3.50/check.
Process Cash Payment	5.00/each.
Daily Reporting	50.00/month.
Courier/Postage	Actual.
Storage: Envelopes and remittance material retained unsorted for 14 days and destroyed Safekeeping beyond 14 days.	Negotiated.
Minimum Monthly Billing (Excludes Actual Charges)	175.00
New Account Set-Up	50.00–500.00
Special Services	Negotiated.

Statement Rendering Fee Schedule

Statements Per Month, Non-Truncated:	
First 5,000	$.18
Next 5,000	.165
Over 10,000	.15
Statements Per Month, Truncated	.05
Statement Inserts	.01
Other Mailings	.05
Surcharge for One Cycle Per Month	10%
Fine Sort Counter Items for Statement Insertion	.005
Sort Counter Items Without MICR	.02
Courier, Postage and Envelopes	Actual.
Pre-Sort Only	.02/item.
Statement Printing (Laser Printer):	
Customer Provider Paper	.03/page.
FHLB Provided Paper	.04/page.
Custom Forms/Logos	Actual cost.

Note: Members that have changed Data Processors or have more than one MICR account number corresponding to one statement account number are subject to additional fees.

Pricing to Forward Cycle Items to Data Processor for Statement Handling

Insertion of Trigger/Separator Tickets:	
Sorting	$.003/item.
Trigger Ticket Expense	.012/account.
Insertion of Rejects	.040/reject.
Photocopies of Missing Items	2.75/copy.
Courier, Postage and Boxes	Actual.
Monthly fee for Special Handling	25.00/cycle. $(75.00 minimum).

District. 10.—Federal Home Loan Bank of Topeka (1995 NOW/DDA Services)

Deposit Processing Fees: (All Fees Per Item Unless Other Indicated)

Processing center	Local item	Other local	Transit	Other transit
Colorado	$0.015	$0.029	$0.040	$.057
Nebraska	0.015	0.039	0.040	.067
Oklahoma	0.015	0.038	0.040	.067
Kansas	0.015	0.038	0.040	.067

Other Cash Letter

Encoding Fee	0.023 per item.
Rejects on Encoded Items	0.15 per item.
Returns/Redeposits	0.80 per item.
Collections	6.50 per item.
Coin and Currency	2.50 per phone call.
Courier/Armored Car Cost	At Cost.
Research	0.15 per item plus $12/hour.
ACH Settlement	.50 per trans.
Photocopy	2.25 per item.
Facsimile	1.75 per page.
Postage	At Cost.

Proof of Deposit Processing Fees: (All Fees Per Item Unless Other Indicated)

Items per month	Data capture	Archival	Cycle	Account sort
1–50,000	$0.011	$0.012	$0.009	$0.008

Items per month	Data capture	Archival	Cycle	Account sort
50,001–100,000	0.008	0.012	0.006	0.008
100,001–150,000	0.006	0.010	0.004	0.006
150,001–250,000	0.005	0.010	0.003	0.006
250,001–500,000	0.004	0.010	0.002	0.006
500,001–Above	0.004	0.009	0.002	0.006

Inclearing Processing Fees: (All Fees Per Item Unless Other Indicated)

1–50,000	$0.009	$0.012	$0.009	$0.008
50,001–100,000	0.006	0.012	0.006	0.008
100,001–150,000	0.004	0.010	0.004	0.006
150,001–250,000	0.003	0.010	0.003	0.006
250,001–500,000	0.002	0.010	0.002	0.006
500,001–Above	0.002	0.009	0.002	0.006

Inclearing return items	City	RCPC	Country	Transit
Colorado	$0.19	$0.29	$0.35	$0.73
Kansas	0.15	0.15	0.30	0.73
Nebraska	0.25	0.31	0.37	0.73
Oklahoma	0.16	0.20	0.22	0.73

Return Item Pull	$0.86
Return item Qualification	0.25
Large Item Return Notification	3.00
Settlement Only	100.00 per month.
Facsimile	1.75
Postage	At cost.
Photocopy	2.25
Research	0.15 plus $12 per hour.
Over the Counter Items	0.03

Statement Processing Fees: (All Fees Per Item Unless Other Indicated)

Truncated Statement	$0.06 per statement.
Imaged Statement	0.12 per statement.
Cycled Statement	0.20 per statement.
Per Insert	0.01 per insert.
Postage	At Cost.
Imaged Check Printing	0.07 per page.
Statement Data Printing	0.07 per page.
Maintenance Fee	250.0 per month.

DDA Processing Fees: (All Fees Per Item Unless Other Indicated)

Full Cycled	$0.15
Full Truncated	0.12
Basic Cycled	0.11
Basic Truncated	0.08
Maintenance Fee	25.00 per month.
Debit	0.15
Credit	0.15
Large Item Return Notification	3.00
Research	0.15 plus $12 per hour.
Additional Statements	2.00
Photocopy	2.25
Facsimile	1.75
Postage	At Cost.

Lockbox Processing Fees: (All Fees Per Item Unless Other Indicated)

1–50,000 items per month	$0.110
50,001–80,000 items per month	0.105
80,001–120,000 items per month	0.100
120,001–160,000 items per month	0.095
160,001–above items per month	0.090
Processing Fee	100.00 per month.
Exception Items	0.07
Photocopy	2.25

Facsimile	1.75
Postage	At Cost.

District 11.—Federal Home Loan Bank of San Francisco (1995 NOW/DDA Services)

(Does not provide item processing services for third party accounts)

District 12.—Federal Home Loan Bank of Seattle (1995 NOW/DDA Services)

(Does not provide item processing services for third party accounts)

By the Federal Housing Finance Board.

Rita I. Fair,

Managing Director.

[FR Doc. 95–12930 Filed 5–26–95; 8:45 am]

BILLING CODE 6725–01–M

FEDERAL RESERVE SYSTEM

Aspen Bancshares, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than June 23, 1995.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198

1. Aspen Bancshares, Inc., Aspen, Colorado; to acquire 100 percent of the voting shares of Val Cor Bancorporation, Inc., Cortez, Colorado, and thereby indirectly acquire Valley National Bank, Cortez, Colorado.

Board of Governors of the Federal Reserve System, May 23, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–13106 Filed 5–26–95; 8:45 am]

BILLING CODE 6210–01–F

First Dakota Financial Corporation Employee Stock Ownership Plan; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 95-11228) published on page 22580 of the issue for Monday, May 8, 1995.

Under the Federal Reserve Bank of Minneapolis heading, the entry for First Dakota Financial Corporation Employee Stock Ownership Plan, is revised to read as follows:

1. First Dakota Financial Corporation Employee Stock Ownership Plan, Yankton, South Dakota; to become a bank holding company by acquiring 26.08 percent of the voting shares of First Dakota Financial Corporation, Yankton, South Dakota.

Comments on this application must be received by June 1, 1995.

Board of Governors of the Federal Reserve System, May 23, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95-13107 Filed 5–26–95; 8:45 am]

BILLING CODE 6210-01-F

The First National Company, Storm Lake, Iowa; Notice to Engage in Certain Nonbanking Activities

The First National Company, Storm Lake, Iowa (Applicant), has given notice pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (BHC Act) and section 225.23 of the Board's Regulation Y (12 CFR 225.23), to indirectly acquire Buena Vista Abstracting, Storm Lake, Iowa, and thereby engage in real estate title abstracting. Real estate title abstracting includes the reporting of information on the interests or ownership of selected real property. Applicant would obtain information from public records and prepare a written report reciting the property's ownership history, including any liens held against such property. The report would assist lenders and their counsel in determining the status of the property to be mortgaged. In connection with this activity, Applicant would not provide any insurance against title defects, guarantee any title, or provide any certification with respect to a title. Applicant seeks approval to conduct the proposed activities throughout Buena Vista County, Iowa.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto." In determining whether a proposed activity is closely related to banking for purposes of the BHC Act, the Board considers, *inter alia*, the matters set forth in *National Courier Ass.* v. *Board of Governors of the Federal Reserve System*, 516 F.2d 1229 (D.C. Cir. 1975). These considerations are (1) Whether banks generally have in fact provided the proposed services, (2) whether banks generally provide services that are operationally or functionally so similar to the proposed services as to equip them particularly well to provide the proposed services, and (3) whether banks generally provide services that are so integrally related to the proposed services as to require their provision in a specialized form. *See* 516 F.2d at 1237. In addition, the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking or managing or controlling banks. *Board Statement Regarding Regulation Y*, 49 Fed. Reg. 806 (1984).

Applicant indicates that the proposed real estate title abstracting activities are incidental to the business of lending and consistent with the provision of real estate settlement services previously approved by the Board. *See e.g., Norwest Corporation*, 76 Federal Reserve Bulletin 1058 (1990). Because Applicant would not provide any insurance against title defects or

guarantee any title, Applicant argues that the proposed activities are not the equivalent of title insurance.

In order to approve the proposal, the Board must determine that the proposed activities "can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." 12 U.S.C. 1843(c)(8).

Applicant believes that the proposed activities would produce public benefits that outweigh any potential adverse effects. These public benefits include more accurate and faster preparation of abstracts and lower costs. In addition, Applicant indicates that the proposed activities would not result in adverse effects such as an undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.

In publishing the proposal for comment, the Board does not take a position on issues raised by the proposal. Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the notice, and does not represent a determination by the Board that the proposal meets or is likely to meet the standards of the BHC Act.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than June 13, 1995. Any request for a hearing on this proposal must, as required by section 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. The notice may be inspected at the offices of the Board of Governors, the Federal Reserve Bank of Chicago.

Board of Governors of the Federal Reserve System, May 23, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–13108 Filed 5–26–95; 8:45 am]

BILLING CODE 6210–01–F

GOVERNMENT PRINTING OFFICE

The "Federal Register" Online Via GPO Access; Public Meeting for Federal, State and Local Agencies, and Others Interested in a Demonstration of GPO Access, the Online Service Providing the "Federal Register" and Other Federal Databases

The Superintendent of Documents will hold a public meeting for Federal, state and local government agencies, and any others interested in an overview and demonstration of the Government Printing Office's online service, *GPO Access*, provided under the Government Printing Office Electronic Information Access Enhancement Act of 1993 (Public Law 103–40).

Sessions will be held at the University of Illinois at Chicago, the Chicago Illini Union, Chicago Room A, 828 South Walcott, Chicago, Illinois, on Monday, June 26, from 9 a.m. to 10:30 a.m. and 11 a.m. to 12:30 p.m. There is no charge to attend.

The online **Federal Register** Service offers access to the daily issues of the **Federal Register** by 6 a.m. on the day of publication. All notices, rules and proposed rules, Presidential documents, executed orders, separate parts, and reader aids are included in the database as ASCII text files and as Adobe Acrobat Portable Document Format (PDF) files, with graphics provided in TIFF format. The online **Federal Register** is available via the Internet or as a dial-in service. Historical data is available from January 1994 forward.

Other databases currently available online through *GPO Access* include the Congressional Record; Congressional Record Index, including the History of Bills; Congressional Bills; Public Laws; U.S. Code; and GAO Reports.

Individuals interested in attending may reserve a space by contacting John Berger, Product Manager at the GPO's Office of Electronic Information Dissemination Services, by telephone: 202–512–1525; by fax: 202–512–1262; or by Internet e-mail at john@eids05.eids.gpo.gov. Seating reservations will be accepted through Wednesday, June 21, 1995.

Michael F. DiMario,

Public Printer.

[FR Doc. 95–13166 Filed 5–26–95; 8:45 am]

BILLING CODE 1505–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Announcement 558]

Center for Agricultural Disease and Injury Research, Education, and Prevention

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1995 funds for a cooperative agreement program with universities or university-affiliated medical centers for the establishment of a Center for Agricultural Disease and Injury Research, Education, and Prevention. The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Occupational Safety and Health. (For ordering a copy of Healthy People 2000, see Section WHERE TO OBTAIN ADDITIONAL INFORMATION.)

Authority

This program is authorized under Sections 20(a) and 22(e)(7) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 669 (a) and 671(e)(7)).

Smoke-Free Workplace

The PHS strongly encourages all grant recipients to provide a smoke-free workplace and promote the nonuse of all tobacco products, and Pub .L. 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Eligible Applicants

Eligible applicants include State and private universities and university-affiliated, not-for-profit medical centers within the United States (U.S.). The restriction of eligible applicants is due to the FY 1990 appropriations language which initiated this program and States that centers for agricultural occupational safety and health will be established at universities. Because of programmatic and regional differences throughout agriculture in the U.S., only one center will be established in any Department of Health and Human Services (DHHS) region. Currently, there are centers in DHHS Regions II, IV, V, VII, VIII and IX. Region II is now providing coverage for Regions I and III, thereby leaving Regions VI and X without coverage. Migrant populations are being targeted for this intervention program because they are one of the most under-served populations among agriculture workers. Therefore, the regional emphasis for this announcement is limited to DHHS Region VI, which is a major point of entry for the migrant stream. Region VI includes the States of Arkansas, Louisiana, New Mexico, Oklahoma, and Texas.

Availability of Funds

Approximately $500,000 will be available in FY 1995 to fund one new center. It is expected that the award will begin on or about September 30, 1995, and will be made for a 12-month budget period within a project period of up to 5 years. Funding estimates may vary and are subject to change.

Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Purpose

This cooperative agreement program will significantly strengthen the occupational public health infrastructure by integrating resources for occupational safety and health research and public health prevention programs at the State and local levels. It is designed to address the research, education, and intervention activities that are unique to agriculture in the Region. To achieve this objective, the program will establish a center for agricultural disease and injury research, education, and prevention. The program objectives are as follows:

1. Develop and conduct research related to the prevention of occupational disease and injury of agricultural workers and their families, with emphasis on migrant/seasonal workers, women and children, and ranchers.

2. Develop and implement model educational, outreach, and intervention programs promoting agricultural health and safety for agricultural workers and their families, including bilingual materials and multi-media presentations.

3. Develop and implement model programs for the prevention of illness and injury among agricultural workers and their families.

4. Develop and implement a pilot sentinel-event surveillance program within the Region through public health nurses.

5. Evaluate agricultural injury and disease prevention and educational materials and programs implemented by the Center.

6. Provide consultation and/or training to researchers, health and safety professionals, graduate/professional students, and agricultural extension agents and others in a position to improve the health and safety of agricultural workers.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for conducting activities under A. (Recipient Activities) below, and CDC/NIOSH will be responsible for conducting activities under B. (CDC/NIOSH Activities) below:

A. Recipient Activities

1. Develop and conduct applied research related to the prevention of occupational disease and injury in agricultural workers and their families, with emphasis on migrant/seasonal workers, women and children, and ranchers.

2. Develop and conduct education, training, outreach and intervention programs promoting agricultural health and safety. Target audiences should include agricultural workers and their families, extension/outreach personnel, and personnel in graduate/professional education programs that are specializing in agricultural health. The program should include bilingual materials and multi-media presentations.

3. Develop and implement a pilot program for a sentinel-event surveillance program within the Region through public health nurses.

4. Develop a research protocol(s) for the center for agricultural disease and injury research, education, and prevention. Obtain peer review of the protocol and revise and finalize it as required for final approval by CDC/NIOSH.

5. Where appropriate, collaborate with NIOSH and other CDC scientists on complementary research areas.

6. Assist in reporting and disseminating research results and relevant health and safety education and training information to appropriate Federal, State, and local agencies, health care providers, the scientific community, agricultural workers and their families, management and union or other worker representatives, and other CDC/NIOSH centers for agricultural disease and injury research, education, and prevention.

7. Develop and utilize an evaluation scheme for research, education/training, and outreach/intervention activities.

B. CDC/NIOSH Activities

1. Provide technical assistance through site visits and correspondence in the areas of program development, implementation, maintenance, and priority setting related to the cooperative agreement.

2. Provide scientific collaboration where needed.

3. Assist in the reporting and dissemination of research results and relevant health and safety education and training information to appropriate Federal, State, and local agencies, health-care providers, the scientific community, agricultural workers and their families, management and union representatives, and other CDC/NIOSH centers for agricultural disease and injury research, education, and prevention.

Evaluation Criteria

Applications will be reviewed and evaluated according to the following criteria:

1. Responsiveness to the objectives of the cooperative agreement program, including the applicant's understanding of the objectives of the proposed cooperative agreement and the relevance of the proposal to the objectives. (20%)

2. Feasibility of meeting the proposed goals of the cooperative agreement program including the proposed schedule for initiating and accomplishing each of the activities of the cooperative agreement and the proposed method for evaluating the accomplishments. (20%)

3. Strength of the program design in addressing the distinct characteristics, specific populations, and needs in agricultural research and education for the region. (20%)

4. Strength of the proposed program for agricultural health and safety in the areas of prevention, research, education, and multi-disciplinary approach. (10%)

5. Efficiency of resources and novelty of program. This includes the efficient use of existing and proposed personnel with assurances of a major time commitment of the Project Director to the program and the novelty of program approach. (15%)

6. Training and experience of proposed Program Director and staff, including a Program Director who is a distinguished scientist and technical expert and staff with training or experience sufficient to accomplish proposed program. (15%)

7. The extent to which the program budget is reasonable, clearly justified, and consistent with the intended use of funds. (Not Scored)

Funding Priority

The regional emphasis for this announcement is limited to DHHS Region VI. Therefore, applications will be accepted from only those States within the region: Arkansas, Louisiana, New Mexico, Oklahoma, and Texas.

Interested persons are invited to comment on the proposed funding priority. Comments received within 30 days after publication in the **Federal Register** will be considered before the final funding priority is established. If the funding priority should change as a result of any comments received, a revised announcement will be published in the **Federal Register**, and revised applications will be accepted prior to final selection of awards.

Written comments should be addressed to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–13, Atlanta, GA 30305.

Executive Order 12372 Review

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order (E.O.) 12372. E.O. 12372 sets up a system for State and local government review of proposed Federal assistance applications. Applicants should contact their State Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC for each affected State. A current list of SPOCs is included in the application kit.

If SPOCs have any State process recommendations on applications submitted to CDC, they should send them to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Atlanta, GA 30305, no later than 60 days after the application deadline date. The Program Announcement Number and Program Title should be referenced on the document. The granting agency does not guarantee to "accommodate or explain" State process recommendations it receives after that date.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number for this program is 93.262.

Other Requirements

Paperwork Reduction Act

Projects funded through the cooperative agreement mechanism of this program involving the collection of information from 10 or more individuals will be subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the DHHS Regulations, 45 CFR part 46, regarding the protection of human subjects. Assurance must be provided to demonstrate the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

Application Submission and Deadline

The original and two copies of the application PHS Form 5161–1 (Revised 7/92, OMB Number 0937–0189) must be submitted to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), Mailstop E–13, 255 East Paces Ferry Road, NE., Room 300, Atlanta, GA 30305, on or before June 30, 1995.

1. Deadline: Applications will be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date, or

(b) Sent on or before the deadline date and received in time for submission to the independent review group. Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailings.

2. Late Applications: Applications which do not meet the criteria in 1.(a) or 1.(b) above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where To Obtain Additional Information

To receive additional written information call (404) 332–4561. You will be asked to leave your name, address, and telephone number and will need to refer to Announcement 558. You will receive a complete program description, information on application procedures, and application forms.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from Oppie Byrd, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–13, Atlanta, GA 30305, telephone (404) 842–6546.

Programmatic technical assistance may be obtained from Dr. Stephen A. Olenchock, Division of Respiratory Disease Studies, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC), 1095 Willowdale Road, Morgantown, WVA 26505–2888, telephone (304) 285–5847.

Please refer to announcement 558 when requesting information and submitting an application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512–1800.

Dated: May 23, 1995.

Diane D. Porter

Acting Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–13111 Filed 5–26–95; 8:45 am]

BILLING CODE 4163–19–P

[Announcement 555]

Promoting Health Among the Nation's Health-Care Workers by Implementing Employee-Management Advisory Committees

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1995 funds for a cooperative agreement program to conduct a demonstration project on the effectiveness of using participatory task forces for reducing risk of injury and implementing workplace improvements in health-care facilities. The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Occupational Safety and Health. (For ordering a copy of Healthy People 2000 see the Section Where to Obtain Additional Information.)

Authority

This program is authorized under sections 20(a) and 22(e)(7) of the Occupational Safety and Health Act (29 U.S.C. 669 (a) and 671(e)(7)).

Smoke-Free Workplace

The PHS strongly encourages all grant recipients to provide a smoke-free workplace and promote the nonuse of all tobacco products, and Pub. L. 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Eligible Applicants

Applications may be submitted by public and private, non-profit and for-profit organizations and governments and their agencies. Thus, universities, colleges, research institutions, hospitals, other public and private organizations, State and local governments or their bona fide agents, federally recognized Indian tribal governments, Indian tribes or Indian tribal organizations, and small, minority- and/or women-owned businesses are eligible to apply.

Availability of Funds

Approximately $135,000 is available in FY 1995 to fund one or more cooperative agreements. If awards for multiple cooperative agreements are made, it is expected the awards will range from $40,000 to $80,000. If a single award is made, the award will be approximately $135,000. The awards are expected to begin on or before September 30, 1995, for a 12-month budget period within a project period of one to two years. Funding estimates may vary and are subject to change.

Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Purpose

The purpose of this cooperative agreement is to support one or more demonstration studies to evaluate the effectiveness of "participatory task forces" in the health-care industry.

A participatory approach, using "employee-management advisory teams" (E-MATs), has been shown to provide an effective and practical way to identify and solve occupational safety and health problems in industrial settings. (For ordering a copy of Participatory Ergonomic Interventions in Meatpacking Plants see the Section Where to Obtain Additional Information.)

Teams established as true labor-management partnerships have been successful in industrial settings because they take advantage of the skills, knowledge, motivation, and communication networks already available in the workforce. In health-care settings, the workforce has the additional advantage of being highly knowledgeable and sensitive to health and safety problems, but they have not had sufficient opportunity to provide input in problem-solving. Because E–MATs are based on employee participation and partnership, they foster a proactive approach to workplace health and safety. E–MATs established in the automotive industry, for example, have been successful in: (1) Conducting ongoing surveillance of health and safety problems; (2) exploring avenues to abatement of such problems; and (3) identifying control technology and training needs to prevent additional problems.

This cooperative agreement will provide the first opportunity in the health-care industry to evaluate the effectiveness of the "participatory task-force," (i.e., E–MAT model). This model can serve as a means for enhancing awareness by employees and management of the hazards and health risks in the health-care industry, while ensuring sustained and active programs of prevention and control.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for conducting activities under A. (Recipient Activities), and CDC/NIOSH will be responsible for conducting activities under B. (CDC/NIOSH Activities).

A. Recipient Activities

1. Secure and sustain a formal relationship with the management of a health-care facility and its worker representatives which will serve to assure the commitment for the recipient of both management and staff for the project period.

2. Plan and implement a demonstration project to evaluate the E–MAT model of the participatory task force. The intent should be to use principles of organizational change that incorporate employee participation. The project should include the following elements:

a. *Targeting one or more occupational hazards that exist within the facility that are amenable for intervention.* The hazards selected will be those which have a known high risk of injury or illnesses, such as manual lifting of patients, slips and falls, excessive overtime and night work.

b. *Establishing the participatory task-force teams (E–MATs).* The teams should comprise technical and non-technical staff and supervisors from the selected job area and other facility personnel such as engineering, management, and medical staff, as appropriate.

c. *Training the team members to recognize safety and health risks.* Introduce safety, health, and ergonomic concepts that enable the team to recognize environmental hazards, recognize risk factors, analyze tasks, and refine and implement controls.

d. *Developing controls.* The recipient will conduct, with the full participation of team members, the development of engineering, work practice, and/or administrative controls to reduce safety, health, and ergonomic hazards associated with the selected jobs and hazards.

e. *Implementing controls.* The recipient will provide technical support to the teams to ensure proper implementation of the controls.

Note: Cooperative agreement funds are not available to be spent by the health-care facility for implementing the controls.

3. Monitor and evaluate the success of the team approach. Measures of team success may include effectiveness of implemented controls, whether the team activity is continued, and whether controls are sustained and improved.

4. Develop a written case study report of the effectiveness of the E–MAT model of the participatory team approach in the health-care industry for effecting and sustaining reductions in occupational hazards.

B. CDC/NIOSH Activities

1. Provide technical information and support concerning the implementation of the E–MAT model of the participatory team approach.

2. Provide technical assistance in at least the following areas:

a. Choice of the hazard or series of hazards for the interventions.

b. Development of E–MAT awareness training.

c. Development of engineering and/or organizational controls.

d. Development of measures for project success.

e. Development of a case study report.

Evaluation Criteria

Applications will be reviewed and evaluated according to the following criteria:

1. Understanding of health, safety, and ergonomic problems of health-care facilities and understanding of participatory task force interventions. (15%)

2. Ability to provide the staff, knowledge and other resources and experience to carry out the project. The staff is competent and experienced in the skills required in the scope of work. Resumes of staff should reflect not only academic qualifications but also length and variety of experience with similar tasks. (15%)

3. Commitment to a participatory-team approach to implement improvements and is representative of at least one sector of the health-care industry. (30%)

4. Extent description is provided of approach or goals consistent with the activities or suggestion of alternative approaches to achieve the same purpose. Extent to which application outlines reasonable approaches for identifying hazards in the facility, participatory team building and training, and control development, implementation, and refinement. (30%)

5. Extent proposed schedule is reasonable and consistent with the proposed approach. Specify how the project will be administered, and the name of the individual who will be responsible for its day-to-day administration. (10%)

6. Extent to which a detailed budget is provided which indicates anticipated costs for staff, equipment, facilities, travel, supplies, and all sources of funds to meet those needs. (Not Scored.)

Executive Order 12372 Review

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order 12372. Executive Order 12372 sets up a system for State and local government review of proposed Federal assistance applications. Applicants (other than federally-recognized Indian tribal governments) should contact their State Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. Indian tribes are strongly encouraged to request tribal government review of the proposed application. For proposed projects serving more than one State, the applicant is advised to contact the SPOC for each affected State. A current list of SPOCs is included in the application kit.

If SPOCs or Indian tribal governments have any State process recommendations on applications submitted to the CDC, they should forward them to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Atlanta, GA 30305, no later than 60 days after the application deadline date. The granting agency does not guarantee to "accommodate or explain" for State or tribal process recommendations it receives after that date.

Public Health System Reporting Requirements

This program is subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number for this program is 93.956.

Other Requirements

Paperwork Reduction Act

Projects that involve the collection of information from ten or more individuals and funded by this cooperative agreement will be subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations, 45 CFR part 46, regarding the protection of human subjects. Assurance must be provided to demonstrate the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

In addition to other applicable committees, Indian Health Service (IHS) institutional review committees also must review the project if any component of IHS will be involved or will support the research. If any American Indian community is involved, its tribal government must also approve that portion of the project applicable to it.

Application Submission and Deadline

The original and two copies of the application PHS Form 5161–1 (Revised 7/92, OMB Number 0937–0189) must be submitted to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), Mailstop E–13, 255 East Paces Ferry Road, NE., Room 300, Atlanta, GA 30305, on or before July 5, 1995.

1. Deadline: Applications will be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date, or

(b) Sent on or before the deadline date and received in time for submission to the objective review group. (The applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks will not be acceptable as proof of timely mailing.)

2. Late Applicants: Applications that do not meet the criteria in 1.(a) or 1.(b) above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicants.

Where to Obtain Additional Information

To receive additional written information, call (404) 332–4561. You will be asked to leave your name, address, and telephone number, and will need to refer to Announcement 555. You will receive a complete program description, information on application procedures, and application forms.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from Oppie M. Byrd, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–13, Atlanta, GA 30305, telephone (404) 842–6546.

Programmatic technical assistance may be obtained from Vern Putz-Anderson, Ph.D., Chief, Psychophysiology and Biomechanics Section, Applied Psychology and Ergonomics Branch, Division of Biomedical and Behavioral Science, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC), Mailstop C–24, 4676 Columbia Parkway, Cincinnati, Ohio 45226–1998, telephone (513) 533–8291. Additional technical assistance may be obtained from Drs. Michael Colligan and Ray Sinclair (at the same address), telephone (513) 533–8225.

Please refer to Announcement 555 when requesting information and submitting an application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) referenced in the Introduction Section through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512–1800.

A copy of Participatory Ergonomics Interventions in Meatpacking Plants, (DHHS/NIOSH) Publication No. 94–124, referenced in the Purpose Section, can be obtained from the Publication Dissemination office of CDC/NIOSH, Cincinnati, OH 45226, telephone (513) 533–8573.

Dated: May 23, 1995.

Diane D. Porter,

Acting Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–13110 Filed 5–26–95; 8:45 am]

BILLING CODE 4163–19–P

[Announcement 555]

Work Organization Interventions to Prevent Work-Related Musculoskeletal Disorders in Office and Video Display Terminal Work

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1995 funds for a cooperative agreement program to develop work organization interventions to prevent musculoskeletal disorders in office and video display terminal (VDT) workers. The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Occupational Safety and Health. (For ordering a copy of Healthy People 2000, see the Section Where to Obtain Additional Information.)

Authority

This program is authorized under sections 20 (a) and 22(e)(7) of the Occupational Safety and Health Act (29 U.S.C. 669(a) and 671(e)(7)).

Smoke-Free Workplace

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and promote the nonuse of all tobacco products, and Pub. L. 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Eligible Applicants

Applications may be submitted by public and private, non-profit and for-profit organizations and governments, and their agencies. Thus, universities, colleges, research institutions, hospitals, other public and private organizations, State and local health departments or their bona fide agents, federally recognized Indian tribal governments, Indian tribes or Indian tribal organizations, and small, minority-, and/or women-owned businesses are eligible to apply.

Availability of Funds

Approximately $140,000 is available in FY 1995 to fund one award. It is expected that the award will begin on or about September 30, 1995, and will be made for a 12-month budget period within a project period of one to two years. Funding estimates may vary and are subject to change. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Purpose

The purpose of this cooperative agreement is to utilize the special resources of the extramural research community to conduct studies, in cooperation with CDC/NIOSH, to demonstrate the effectiveness of work organization interventions in reducing work- related musculoskeletal disorders (WRMD), and in improving productivity, among VDT workers. The funded project will focus on worksite primary prevention efforts, replicating and extending the CDC/NIOSH interventions. This could include: (a) Replication/validation of CDC/NIOSH findings on work-rest schedules and task rotation, (b) extension of these interventions to other types of VDT and office tasks, and (c) examination of other types of work organization interventions.

Prior studies have indicated that some types of VDT jobs may pose higher risk for stress and WRMDs, particularly jobs involving highly repetitive and narrow tasks (e.g., data entry or teleoperator tasks). Such jobs are of particular interest for this project. Both physical and psychological symptoms will be evaluated. Project results, in combination with NIOSH findings, will provide the basis for recommendations regarding effective work organization strategies for reducing WRMDs, and improving performance in repetitive VDT work. Project results will also improve our understanding of mechanisms mediating between work organization variables and musculoskeletal disorders in VDT work.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under A.(Recipient Activities) and CDC/NIOSH will be responsible for activities under B.(CDC/NIOSH Activities).

A. Recipient Activities

1. Identify suitable study site(s); i.e., with large, stable populations of workers performing repetitive VDT work. Secure cooperation of management and labor representatives at the site(s) to participate in an intervention study.

2. Develop a study protocol that reviews the pertinent literature on VDT-related musculoskeletal disorders and work organization, describes the study methodology, the data to be collected, and the proposed analysis of the data. Present the protocol to a panel of peer reviewers and revise the protocol as required for final approval.

3. Prepare necessary documentation for reviews and/or clearances required by PHS/CDC/NIOSH.

4. Perform data collection and management. Data is to include measures of worker symptomatology and performance and can additionally include records data on factors such as absenteeism, health care utilization, etc. Symptomatology can include musculoskeletal discomfort, upper extremity musculoskeletal disorders, and indicators of negative mental health (e.g., depression, anxiety, tension). Performance indicators can include measures such as keystrokes/hour, forms/hour, and errors.

5. Prepare a final report summarizing the study methodology, results obtained, and conclusions reached. Develop recommendations regarding effective work organization interventions to reduce stress, fatigue, and WRMDs among VDT workers.

6. Report study results to the scientific community via presentations at professional conferences and articles in peer-reviewed journals.

B. CDC/NIOSH Activities

1. Provide scientific, epidemiologic, work organization, ergonomic, and medical collaboration for the successful completion of this project.

2. Identify reviews and/or clearances that must be fulfilled by the recipient, and identify and convene a Peer Review Panel to review draft study protocol.

3. Provide assistance in all stages of the study including study design, survey instrument design, the collection, tabulation, and analysis of data, interpretation of the results and preparation of the written reports.

4. Provide instrumentation and resources to investigate physiological mechanisms in VDT WRMDs.

Evaluation Criteria

The application will be reviewed and evaluated according to the following criteria:

1. Understanding of the Problem (25%)

Responsiveness to the objective of the cooperative agreement including: (a) Applicant's understanding of the general objectives of the proposed cooperative agreement, and (b) evidence of ability to understand the problem and to conceive/design effective interventions.

2. Program Personnel (30%)

(a) Applicant's technical experience (e.g., in the areas of work organization, WRMDs and office and VDT ergonomics); (b) the qualifications (e.g., in the areas of industrial engineering, psychology and occupational safety and health) and time allocation of the professional staff to be assigned to this project, and (c) the applicant's ability to describe the approach to be used in carrying out the responsibilities of the applicant in this project.

3. Study Design (20%)

Steps proposed in planning and implementing this project and the respective responsibilities of the applicant for carrying out those steps. Also, the adequacy of the applicant's evidence of access to study populations.

4. Project Planning (15%)

The applicant's schedule proposed for accomplishing the activities to be carried out in this project and for evaluating the accomplishments.

5. Facilities and Resources (10%)

The adequacy of the applicant's facilities, equipment, and other resources available for performance of this project.

6. Budget Justification (not scored)

The budget will be evaluated to the extent that it is reasonable, clearly justified, and consistent with the intended use of funds.

Executive Order 12372 Review

This program is not subject to the Executive Order 12372 review.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number for this project is 93.283.

Other Requirements

Paperwork Reduction Act

Projects that involve the collection of information from ten or more individuals and funded by this cooperative agreement will be subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations, 45 CFR part 46, regarding the protection of human subjects. Assurance must be provided to demonstrate the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

In addition to other applicable committees, Indian Health Service (IHS) institutional review committees also must review the project if any component of IHS will be involved or will support the research. If any American Indian community is involved, its tribal government must also approve that portion of the project applicable to it.

Application Submission and Deadline

The original and two copies of the application PHS Form 5161–1 (Revised 7/92, OMB Number 0937–0189) must be submitted to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), Mailstop E–13, 255 East Paces Ferry Road, NE., Room 300, Atlanta, GA 30305, on or before June 30, 1995.

1. Deadline: Applications will be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date, or

(b) Sent on or before the deadline date and received in time for submission to the objective review group. (The applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks will not be acceptable as proof of timely mailing.)

2. Late Applicants: Applications that do not meet the criteria in 1.(a) or 1.(b) above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicants.

Where To Obtain Additional Information

A complete program description and information on application procedures are contained in the application package. Business management technical assistance may be obtained from Oppie Byrd, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–13, Atlanta, GA 30305, telephone (404) 842–6546.

Programmatic technical assistance may be obtained from Naomi G. Swanson, Ph.D., Chief, Motivation and Stress Research Section, Applied Psychology and Ergonomics Branch, Division of Biomedical and Behavioral Science, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC), Mailstop C–24, 4676 Columbia Parkway, Cincinnati, OH 45226–1998, telephone (513) 533–8291, FAX (513) 533–8510.

Please refer to Announcement 556 when requesting information and submitting an application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) referenced in the Introduction Section through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512–1800.

Dated: May 23, 1995.

Diane D. Porter,

Acting Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–13109 Filed 5–26–95; 8:45 am]

BILLING CODE 4163–19–P

Advisory Committee to the Director, Centers for Disease Control and Prevention; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Advisory Committee to the Director, CDC.

Time and Date: 8:30 a.m.–3 p.m., June 23, 1995.

Place: CDC, Auditorium A, 1600 Clifton Road, NE, Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available.

Purpose: This committee advises the Director, CDC, on policy issues and broad strategies that will enable CDC, the Nation's prevention agency, to fulfill its mission of promoting health and quality of life by preventing and controlling disease, injury, and disability. The committee recommends ways to incorporate prevention activities more fully into health care. It also provides guidance to help CDC work more effectively with its various constituents, in both the private and public sectors, to make prevention a practical reality.

Matters To Be Discussed: The agenda will include updates from CDC Director, David Satcher, M.D., Ph.D., followed by committee discussion on CDC's evolving relationship with managed care and major challenges to public health science and to CDC programs.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Martha F. Katz, Executive Secretary, Advisory Committee to the Director, CDC, 1600 Clifton Road, NE, Mailstop D–23, Atlanta, Georgia 30333, telephone 404/639–3243.

Dated: May 23, 1995.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–13122 Filed 5–26–95; 8:45 am]

BILLING CODE 4163–18–M

Advisory Committee for Injury Prevention and Control: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), announces the following committee meeting.

Name: Advisory Committee for Injury Prevention and Control (ACIPC).

Times and Dates: 1 p.m.–4 p.m., July 10, 1995; 8:30 a.m.–3:15 p.m., July 11, 1995.

Place: Atlanta Airport Hilton and Towers, 1031 Virginia Avenue, Atlanta, Georgia 30354.

Status: Closed 1 p.m.–4 p.m., July 10, and 8:30 a.m.–9 a.m., July 11; Open 9 a.m.–3:15 p.m., July 11.

Purpose: The committee will continue to make recommendations on policy, strategy, objectives, and priorities including the balance and mix of intramural and extramural research; advise on the implementation of a national plan for injury prevention and control, the development of new technologies and their application; and review progress toward injury prevention and control.

Matters to be Discussed

The meeting will convene in closed session from 1 p.m. to 4 p.m. on July 10, 1995. The purpose of this closed session is for the Science and Program Review Work Group to consider injury control research grant applications recommended for further consideration by CDC's Injury Research Grant Review Committee. On July 11, 1995, from 8:30 a.m. to 9 a.m., the meeting will convene in closed session in order for the full committee to vote on a funding recommendation. These portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c) (4) and (6) title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant Pub. L. 92–463. Following the closed sessions, the committee will discuss (1) an update from the Director, National Center for Injury Prevention and Control (NCIPC), (2) updates on injury issues form other Federal agencies, (3) overview of the Consumer Product Safety Commission, (4) issues in traumatic brain injury, and (5) a report from the ad hoc work group.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Mr. Tom Bartenfeld, Acting Executive Secretary, ACIPC, NCIPC, Mailstop K–60, CDC, 4770 Buford Highway, NE, Atlanta, Georgia 30341–3724, telephone 404/488–4690.

Dated: May 23, 1995.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–13170 Filed 5–26–95; 8:45 am]

BILLING CODE 4163–18–M

Savannah River Site Environmental Dose Reconstruction Project: Public Meetings

The National Center for Environmental Health (NCEH) of the Centers for Disease Control and Prevention (CDC), the Agency for Toxic Substances and Disease Registry (ATSDR), and the Radiological Assessments Corporation announce the following meetings.

Name: Savannah River Site Environmental Dose Reconstruction Project.

Date: Tuesday, June 27, 1995—Wednesday, June 28, 1995

Time: 7 p.m.–9 p.m.—7 p.m.–9 p.m.

Place: Holiday Inn Coliseum at the University of South Carolina, 630 Assembly Street, Columbia, South Carolina 29201—Radisson Riverfront Augusta Hotel, Two Tenth Street, Augusta, Georgia 30901.

Date: Thursday, June 29, 1995

Time: 7 p.m.–9 p.m.

Place: Savannah DeSoto Hilton, 15 East Liberty Street, Savannah, Georgia 31401

Status: Open to the public for observation and comment, limited only by the space available. Seating space for 50 individuals will be available at each meeting.

Background: Under a Memorandum of Understanding (MOU) signed in December 1990 with the Department of Energy (DOE), the Department of Health and Human Services (HHS) has been given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production use. HHS delegated program responsibility to CDC.

In addition, an MOU was signed in October 1990 and renewed in November 1992 between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or "Superfund"). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

Community involvement is a critical part of the HHS energy-related research and activities. With an environmental dose reconstruction for DOE's Savannah River Site (SRS) near Augusta, Georgia, as well as a worker study at the same site, the availability of a formal site-specific advisory committee composed of citizens of the communities surrounding the DOE sites is necessary to provide consensus advice regarding these projects. On December 1, 1994, the "Citizens Advisory Committee on Public Health Service Activities and Research at DOE Sites" was chartered. This charter is in response to the requests by representatives of the communities surrounding DOE sites to provide consensus advice and recommendations on community concerns related to CDC's and ATSDR's activities related to the sites. Committee members will be representatives of the concerned and affected community, Native American Tribes,

and labor; they shall bring valuable experiential qualifications and scientific/technical knowledge.

The purpose of these public meetings is to provide a final update on the completion of Phase I: Data Assessment and Retrieval for the SRS Dose Reconstruction Study. The objective of Phase I is to locate, evaluate, and catalog historical records that can be used to reconstruct contaminant releases and public exposures from the SRS. Phase I will be completed on June 30, 1995. Meeting agenda items will include: review of the key records found in both classified and unclassified repositories; summaries of task reports; a demonstration of the final computerized database; updates on the proposed SRS Health Effects Subcommittee and the SRS Phase II Contract; and public comments and suggestions.

Agenda items are identical for each meeting, and subject to change as priorities dictate.

Contact Persons for a copy of the Charter or More Information: Paul G. Renard or Nadine Dickerson, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, National Center for Environmental Health, CDC, 4770 Buford Highway, NE, MailStop F–35, Atlanta, Georgia 30341–3724, telephone 404/488–7040.

Dated: May 23, 1995.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–13123 Filed 5–26–95; 8:45 am]

BILLING CODE 4163–18–M

National Institutes of Health

National Center for Human Genome Research; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

Name of Committee: Genome Research Review Committee

Date: June 27 and 28, 1995

Time: Tuesday, June 27, 8:30 to recess; Wednesday, June 28, 8:30 to adjournment

Place: Embassy Suites Hotel, Chevy Chase Pavilion, Washington, D.C.

Contact Person: Ms. Linda Engel, Chief, Office of Scientific Review, National Center for Human Genome Research, National Institutes of Health, Building 38A, Room 604, Bethesda, Maryland 20892, (301) 402–0838

Purpose/Agenda: To review and evaluate grant applications and/or contract proposals.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Discussions, applications, and/or contract proposals could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalogue of Federal Domestic Assistance Program No. 93.172, Human Genome Research)

Dated: May 18, 1995.

Anna Snouffer,

Committee Management Specialist, NIH.

[FR Doc. 95–13047 Filed 5–26–95; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Notice of a Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Heart, Lung, and Blood Special Emphasis Panel (SEP) meeting:

Name of SEP: Behavioral Interventions for Control of Tuberculosis.

Date: June 12–13, 1995.

Time: 9:00 a.m.

Place: Holiday Inn, Chevy Chase, Maryland.

Contact Person: Louise Corman, Ph.D., 6701 Rockledge Drive, Room 7180, Bethesda, Maryland 20892–7924, (301) 435–0270.

Purpose/Agenda: To review and evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in sec. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: May 18, 1995.

Anna Snouffer,

Committee Management Specialist, NIH.

[FR Doc. 95–13049 Filed 5–26–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Dental Research; Notice of a Meeting of the National Advisory Dental Research Council and its Subcommittee

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the National Advisory Dental Research Council, National Institute of Dental Research and its subcommittee, on June 13–14, 1995. The meeting of the full Council will be open to the public on June 13 from 10:00 a.m. to recess, Conference Room 10, Building 31C, National Institutes of Health, Bethesda, Maryland, for general discussion and program presentations. The Subcommittee on Minority Activities meeting will be open to the public on June 13 from 8:45 a.m. to approximately 9:45 a.m., Conference Room 7, Building 31C. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting of the Council will be closed to the public on June 13, 8 a.m to 8:45 a.m. and on June 14, 8:30 a.m. to adjournment, for the review, discussion and evaluation of individual grant applications and for the discussion, review and evaluation of the Board of Scientific Counselors' report. These applications and discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications and reports, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Lois K. Cohen, Executive Secretary, National Advisory Dental Research Council, and Director, Extramural Programs, National Institute of Dental Research, National Institutes of Health, Building 31, Room 2C39, Bethesda, Maryland 20892, (telephone (301) 496–9469) will furnish a roster of committee members, a summary of the meeting, and other information pertaining to the meeting. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Secretary listed above in advance of the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.121, Oral Diseases and Disorders Research)

Dated: May 18, 1995.

Anna Snouffer,

Committee Management Specialist, NIH.

[FR Doc. 95–13050 Filed 5–26–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute of General Medical Sciences; Notice of Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following advisory committee meetings of the National Institute of General Medical Sciences.

These meetings will be open to the public as indicated below with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify Mrs. Ann Dieffenbach, Public Information Officer, National Institute of General Medical Sciences, National Institutes of Health, Building 45, Room 3AS–43, Bethesda, Maryland 20892, (301) 495–7031, in advance of the meeting.

Mrs. Dieffenbach will provide a summary of each meeting and a roster of committee members upon request. Substantive program information may be obtained from the contact listed below:

Committee Name: Minority Access to Research Careers Review Subcommittee, Minority Programs Review Committee

Meeting Date: June 15–16, 1995

Place: 45 Center Drive, Conference Room C, Bethesda, MD 20892–6200

Open: June 15, 8:30 a.m.–9:30 a.m.

Agenda: Special reports related to committee activities

Closed: June 15, 9:30 a.m.–5 p.m.; June 16, 8:30 a.m.—adjournment

Agenda: Review and evaluation of grant applications

Contact: Dr. Richard Martinez, Scientific Review Admin., Building 45, Room 1AS–19G, National Institutes of Health, Bethesda, MD 20892, Telephone (301) 594–2849.

Committee Name: Minority Biomedical Research Support Review Subcommittee, Minority Programs Review Committee

Meeting Date: July 15–16, 1995

Place: Holiday Inn Chevy Chase, 5522 Wisconsin Avenue, Chevy Chase, MD 20815

Open: July 15, 8:30 a.m.–9:30 a.m.

Agenda: Special reports related to committee activities

Closed: July 15, 9:30 a.m.–5 p.m.; July 16, 8:30 a.m.—adjournment

Agenda: Review and evaluation of grant applications

Contact: Dr. Michael Sesma, Building 45, Room 1AS–19H, National Institutes of Health, Bethesda, MD 20892, Telephone (301) 594–2048.

These meetings will be closed in accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal property.

(Catalog of Federal Domestic Assistance Program No. 93.859, 93.862, 93.863, 93.880, National Institute of General Medical Sciences, National Institutes of Health)

Dated: May 18, 1995.

Anna Snouffer,

Committee Management Specialist, NIH.

[FR Doc. 95–13052 Filed 5–26–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Nursing Research; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Name of Committee: Nursing Science Review Committee.

Date: June 22–23, 1995.

Time: 8:30 a.m. until adjournment.

Place: Holiday Inn Chevy Chase, Palladian West Conference Room, 5520 Wisconsin Avenue, Bethesda, Maryland 20815.

Contact Person: Dr. Mary Stephens-Frazier, 9000 Rockville Pike, Building 45, Room 3An.12, Bethesda, Maryland 20892, (301) 594–5971.

Purpose: To review and evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in sec. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.361, Nursing Research, National Institutes of Health)

Dated: May 18, 1995.

Anna Snouffer,

Committee Management Specialist, NIH.

[FR Doc. 95–13051 Filed 5–26–95; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications

Name of SEP: Multidisciplinary Sciences

Date: June 14–16, 1995

Time: 6:00 p.m.

Place: Chapel Hill, NC

Contact Person: Dr. Bill Bunnag, Scientific Review Admin., 6701 Rockledge Drive, Room 5212, Bethesda, MD 20892, (301) 594–7360

Name of SEP: Behavioral and Neurosciences

Date: June 15, 1995

Time: 7:30 a.m.

Place: Georgetown Inn, Washington, DC

Contact Person: Dr. Carol Jelsema, Scientific Review Administrator, 6701 Rockledge Drive, Room 5176, Bethesda, MD 20892, (301) 594–7311

Name of SEP: Multidisciplinary Sciences

Date: June 23, 1995

Time: 8:00 a.m.

Place: Ramada Inn, Bethesda, MD

Contact Person: Dr. Donald Schneider, Scientific Review Administrator, 6701 Rockledge Drive, Room 5104, Bethesda, MD 20892, (301) 594–7053

Purpose/Agenda: To review Small Business Innovation Research Program grant applications

Name of SEP: Multidisciplinary Sciences

Date: June 19–21, 1995

Time: 7:00 a.m.

Place: Bethesda Marriott Hotel, Bethesda, MD

Contact Person: Dr. Nabeeh Mourad, Scientific Review Admin., 6701 Rockledge

Drive, Room 5110, Bethesda, MD 20892, (301) 594–7213

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.383–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 18, 1995.

Anna Snouffer,

Committee Management Specialist, NIH.

[FR Doc. 95–13053 Filed 5–26–95; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

[Docket No. N–95–3901; FR–3878–N–02]

NOFA for Fair Housing Initiatives Program; FY 1995 Competitive Solicitation; Notice of Amendment and Clarification

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of Funding Availability (NOFA); Notice of amendment and clarification.

SUMMARY: On April 11, 1995 (60 FR 18444), HUD published a NOFA announcing the availability of up to $14,580,530 in Fiscal Year 1995 funding for the Fair Housing Initiatives Program (FHIP). This document amends the April 11, 1995 NOFA by removing certain FY 95 funding restrictions and extending the application due date. Additionally, this notice clarifies several of the NOFA's provisions in order to better assist potential applicants in the preparation of their applications. This notice also corrects two typographical errors contained in the April 11, 1995 NOFA.

ADDRESSES: To obtain a copy of the application kit, please write the Fair Housing Information Clearinghouse, Circle Solutions, Inc., 8201 Greensboro Drive, Suite 600, McLean VA 22102 or call the toll-free number 1–800–343–3442 (voice) or 1–800–290–1617 (TDD). Please also contact this number if information concerning this NOFA is needed in an accessible format.

FOR FURTHER INFORMATION CONTACT: Sharon Bower, Office of Fair Housing Initiatives and Voluntary Programs, Room 5234, 451 Seventh Street SW., Washington, DC 20410–2000. Telephone number (202) 708–0800. A telecommunications device (TDD) for hearing and speech impaired persons is available at (202) 708–0800. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

I. NOFA Amendments

A Notice of Funding Availability (NOFA) announcing the Fiscal Year (FY) 95 availability of $14,580,530 under the Fair Housing Initiatives Program (FHIP) was published by HUD on April 11, 1995 (60 FR 18444). FHIP assists projects and activities designed to enforce and enhance compliance with the Fair Housing Act and substantially equivalent State and local fair housing laws. The body of the April 11, 1995 NOFA contains information concerning the purpose of the NOFA, eligibility, available amounts, how to apply for funding, and how selections will be made.

The April 11, 1995 NOFA establishes limitations on the number and types of FY 95 FHIP awards for which an applicant may apply and receive. Paragraph I.(d)(4) of the April 11, 1995 NOFA limits applicants to a single award under the FY 95 NOFA. Further, the April 11, 1995 NOFA does not permit recipients of FY 93/94 multi-year awards to apply for FY 95 multi-year funds under the same initiative as their FY 93/94 award. Additionally, paragraph I.(c)(4)(ii)(C) of the April 11, 1995 NOFA, concerning the Establishing New Organizations component of the Fair Housing Organizations Initiative, states that preference will be given to proposed projects in targeted unserved and underserved areas.

Because of the growing uncertainty regarding the funding level of FHIP in future years, the Department has determined to amend the FY 1995 NOFA to remove the above described restrictions. These amendments are intended to increase the number of organizations that are eligible to seek funding and the number of awards that a single organization may receive in the competition for FHIP funds in FY 1995. In order to assure that newly eligible applicants have sufficient time to prepare their applications for FY 95 FHIP funding, the Department is also extending the application deadline by thirty days.

II. NOFA Clarifications

Since the publication of the April 11, 1995 NOFA, several potential applicants have contacted HUD with questions regarding some of the NOFA provisions. HUD is publishing this notice, clarifying several provisions of the April 11, 1995 NOFA, in order to better assist potential applicants in the preparation of their applications.

a. Use of the Term Nonprofit

Paragraphs I.(c)(2)(i)(D) and I.(c)(4)(i)(A) (2) and (3) of the April 11, 1995 NOFA include certain nonprofit organizations in the lists of eligible applicants for the Education and Outreach Initiative and the Continued Development of Existing Organizations component of the Fair Housing Organizations Initiative.

As used in paragraphs I.(c)(2)(i)(D) and I.(c)(4)(i)(A) (2) and (3) of the April 11, 1995 NOFA, the term "nonprofit" applies to those organizations, institutions or groups organized for purposes other than making a profit or gain for themselves. However, the use of the term "nonprofit" does not imply tax-exempt status under section 501(c)(3) of the Internal Revenue Code. Accordingly, eligible applicants under paragraphs I.(c)(2)(i)(D) and I.(c)(4)(i)(A) (2) and (3) of the April 11, 1995 NOFA are not required to be tax-exempt. Where an applicant must be both tax exempt and nonprofit, this is explicitly indicated in the NOFA, for example, in the definitions of "fair housing enforcement organization" and "qualified fair housing enforcement organization."

b. Private Enforcement Initiative Funds Utilized to Promote Awareness

Some potential applicants have expressed concerns that education and outreach efforts necessary to support enforcement activities would not be possible without submitting separate applications for enforcement projects and education and outreach projects. However, the NOFA does permit such supporting efforts. As provided in paragraph I.(c)(3)(ii) of the April 11, 1995 NOFA, applicants under the Private Enforcement (PE) Initiative may utilize 20 percent of requested funds to promote awareness of the services provided by the project. However, such promotion must be necessary for the successful implementation of the project. In addition, this notice removes the single award provision which prompted this concern.

c. Award Caps on Multi-Year Awards

The April 11, 1995 NOFA establishes caps on multi-year awards under the Private Enforcement (PE) Initiative and the Establishing New Organizations Component of the Fair Housing Organizations (FHO) Initiative. Recipients of multi-year PE Initiative awards will receive a maximum, total amount of $600,000 for the entire four-year award period. Similarly, recipients of multi-year awards under the Establishing New Organizations Component of the FHO Initiative will receive a maximum, total amount of $500,000 for the entire three-year award period. Recipients of multi-year awards are not required to budget funding equally for each year of the award period; however, the award must sustain grant activities over the entire multi-year period.

d. Independence of Awards

Paragraph I.(d)(5) of the April 11, 1995 NOFA states that "each project or activity proposed in an application must be independent and capable of being implemented without reliance on the selection of other applications submitted by the applicant or other applicants." Paragraph I.(d)(5) does not preclude an applicant from submitting a proposal which includes other organizations as subcontractors to the proposed project or activity.

e. Eligible Activities Under the Education and Outreach Initiative

Paragraph I.(c)(2)(ii) of the April 11, 1995 NOFA states that "each application for Education and Outreach Initiative funding must identify if it proposes a national, Fair Housing Month, regional or local, or community-based program." Paragraphs I.(c)(2)(ii)(1)–(16) set forth a list of eligible activities that may be funded through the Education and Outreach Initiative. This list is not an exclusive, complete list of eligible activities, but only serves to demonstrate examples of eligible activities. However, the scope of the eligible activity is limited to the level (national, regional or local, or community-based) at which funding is sought. For example, an applicant proposing to develop a community-based media campaign would apply under the community-based component, while an applicant proposing to develop a national media campaign would apply under the national program component.

f. Eligible Activities Under the Private Enforcement Initiative

Paragraph I.(c)(3)(ii) of the April 11, 1995 NOFA sets forth examples of the types of activities that may be funded through the PE Initiative. These are only examples and none of these activities, nor any other activities, have been singled out for any form of preferential consideration.

III. Technical Corrections

The third sentence of paragraph I.(c)(4) of the April 11, 1995 NOFA, *Fair Housing Organizations (FHO) Initiative*, reads: " The amount of $945,482 is made available under this NOFA for the continued development of new organizations." The sentence should read "for the continued development of existing organizations. This notice deletes the word "new" and replaces it with the word "existing."

On page 18448, in column 1, the two paragraphs immediately following paragraph I.(c)(4)(ii)(A), *Eligible applicants*, are designated as paragraphs I.(c)(4)(ii)(A) (A) and (B), respectively. These paragraphs should be designated as I.(c)(4)(ii)(A) (*1*) and (*2*), respectively. This notice makes the necessary correction.

Accordingly, FR Doc. 95–3901, the FY 95 NOFA for the Fair Housing Initiatives Program (FHIP), published in the **Federal Register** on April 11, 1995 (60 FR 18444) is corrected and amended as follows:

1. On page 18444, in column 1, the second paragraph, DATES, is amended as follows:

Dates: Applications are due July 20, 1995. Applications will be accepted if they are received on or before the application due date, or are received within 7 days after the application due date, but with a U.S. postmark or receipt from a private commercial delivery service (such as Federal Express or DHL) that is dated on or before the application due date.

2. Under the heading of "I. Purpose and Substantive Description" beginning on page 18444, the following amendments are made:

a. On page 18445, in columns 1 and 2, the last two sentences of the second paragraph of paragraph I.(b) are removed;

b. On page 18445, in column 2, the second paragraph of paragraph I.(b)(3) is removed;

c. On page 18445, in column 3, the third sentence of paragraph I.(b)(4) is corrected;

d. On page 18445, in column 3, the third paragraph of paragraph I.(b)(4) is removed;

e. On page 18447, in column 3, the second sentence of paragraph I.(c)(3)(iii)(B) is removed;

f. On page 18448, in column 1, the designations of paragraphs I.(c)(4)(ii)(A) (A) and (B), respectively, are corrected;

g. On page 18448, in column 2, paragraph I.(c)(4)(ii)(C) are amended and a conforming amendment is made on page 18448, in column 1, paragraph I.(c)(4)(ii)(B);

h. On page 18448, in column 2, the second sentence of paragraph I.(c)(4)(ii)(D)(1) is removed; and

i. On page 18449, in column 3, paragraph I.(d)(4) is removed and paragraph I.(d)(5) is redesignated as paragraph I.(d)(4), as follows:

I. Purpose and Substantive Description

* * * * *

(b) * * *

(4) *Fair Housing Organizations (FHO) Initiative.* The amount of $7,250,000 in FY 1995 funds is being used for the FHO Initiative. Of this amount, $1,945,482 is being made available through this NOFA. The amount of $945,482 is made available under this NOFA for the continued development of existing organizations. * * *

* * * * *

(c) * * *

(4) * * *

(ii) * * *

(A) * * *

(*1*) Qualified fair housing enforcement organizations.

(*2*) Fair housing enforcement organizations with at least 1 year of experience in complaint intake, complaint investigation, testing for fair housing violations and enforcement of meritorious claims.

(B) *Eligible activities.* Eligible for funding under the purpose of the FHO Initiative are three-year projects that help establish, organize, and build the capacity of fair housing enforcement organizations in the targeted areas identified in section I.(c)(4)(ii)(C)(*1*) or other underserved area identified by the applicant in accordance with section I.(c)(4)(ii)(c)(*2*), below, of this NOFA. * * *

(C) *Target Areas.* (1) Areas within States which lack State fair housing laws which are substantially equivalent to the Fair Housing Act or private fair housing enforcement agencies:

(i) Alabama;

(ii) Delaware;

(iii) New Hampshire;

(iv) Oregon;

(v) Utah;

(vi) Puerto Rico; and

(vii) Wyoming.

(2) A locality within a State, not listed above which the applicant identifies. The applicant must submit sufficient evidence to establish the proposed area as being currently underserved by fair housing enforcement organizations and as containing large concentrations of protected classes. An applicant may provide additional evidence of the need to establish a fair housing organization in a locality by citing data and studies

that indicate the presence of housing discrimination and/or segregation in the locality. An example of evidence that may be used for this purpose is provided in (but is not limited to) the study, *American Apartheid: Segregation and the Making of the Underclass*, by Nancy A. Denton and Douglas S. Massey (Harvard University Press, 1993).

* * * * *

Dated: May 23, 1995.

Elizabeth K. Julian,

Acting Deputy Assistant Secretary for Policy and Initiatives.

[FR Doc. 95–13185 Filed 5–24–95; 4:16 pm]

BILLING CODE 4210–35–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–060–05–7122–6502; CACA 33207]

Termination of Recreation and Public Purposes Classification, San Diego County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates the existing Recreation and Public Purposes Classification. All of the public lands under this act have been found suitable for disposal under section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716):

EFFECTIVE DATE: May 11, 1995.

FOR FURTHER INFORMATION CONTACT: Diane Gomez, Palm Springs-South Coast Resource Area, Bureau of Land Management, 63–500 Garnet Avenue, P.O. Box 2000, North Palm Springs, California 92258–2000, (619) 251–4852.

SUPPLEMENTARY INFORMATION: On August 1, 1983, the land described below was classified as suitable for lease or sale pursuant to the Recreation and Public Purposes Act of June 14, 1926 (44 Stat. 741) as amended and pursuant to regulations found in 43 CFR 2740:

San Bernardino Meridian, California

T. 12 S., R. 3 W.,
Sec. 33: W½SW¼SE¼, SE¼SW¼SE¼.
E½NE¼SW¼SE¼, SE¼SE¼.
75.00 Acres, more or less.

On April 11, 1994, Olivenhain Municipal Water District voluntarily relinquished their lease for Recreation and Public Purposes for the above described public lands.

On January 12, 1995, the public lands described above were segregated from appropriation under the public land and mineral laws for a period of five years.

Dated: May 12, 1995.

Joan Oxendine,

Acting Area Manager.

[FR Doc. 95–13096 Filed 5–26–95; 8:45 am]

BILLING CODE 4310–40–M

[NM–070–5101–00–G014; NMNM93652]

Modification of Federal Register Notice; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Modification of scope of Notice of Intent and public comment period.

SUMMARY: The Notice of Intent, and notice of public scoping meetings with a public comment period published in the **Federal Register**/Vol. 60, No. 40/ Wednesday, March 1, 1995/ pages 11108 and 11109 is modified. The Mid-American Pipeline Company (MAPCO) Four Corners Loop Project is extended approximately twelve miles westerly from its original northern end at the MAPCO Huefano Pump Station to the El Paso Natural Gas Chaco Plant. The additional pipeline would have a ten inch diameter. The additional segment will be incorporated into the environmental document being prepared.

DATES: Written comments on the additional segment of the proposed project will be accepted until June 29, 1995.

ADDRESSES: Any comments should be sent to the Bureau of Land Management, Farmington District Office, Attention: Jerry Crockford, 1235 LaPlata Highway, Farmington, NM 87401.

FOR FURTHER INFORMATION CONTACT: Jerry Crockford, (505) 599–6333.

Dated: May 23, 1995.

Joel E. Farrell,

Assistant District Manager for Lands and Renewable Resources.

[FR Doc. 95–13121 Filed 5–26–95; 8:45 am]

BILLING CODE 4310–FB–M

Bureau of Reclamation

Requesting Documents Under the Freedom of Information Act Through Internet

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation (Reclamation) is accepting requests for documents under the Freedom of Information Act (FOIA), via Internet. This action is being taken to provide more accessibility for the public to Reclamation documents. Reclamation's Internet address for FOIA requests is: borfoia@usbr.gov

FOR FURTHER INFORMATION CONTACT: Marilyn Rehfeld, Bureau of Reclamation, P.O. Box 25007, Denver, Colorado 80225–0007, telephone: (303) 236–0305 extension 459.

Dated: May 23, 1995.

Murlin Coffey,

Leader, Property and Office Services.

[FR Doc. 95–13124 Filed 5–26–95; 8:45 am]

BILLING CODE 4310–94–P

Availability of Proposed and Final Rulemakings in Electronic Format Through Internet

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation (Reclamation) is making available to the public, via Internet, its proposed and final rulemakings. These documents have been published in the **Federal Register** and include the rule as well as the preamble. This action is being taken to provide more accessibility for the public to Reclamation documents. Reclamation's Internet address for rulemaking is: borregs@usbr.gov

FOR FURTHER INFORMATION CONTACT: Marilyn Rehfeld, Bureau of Reclamation, P.O. Box 25007, Denver, Colorado 80225–0007, telephone: (303)236–0305 extension 459.

Dated: May 23, 1995.

Murlin Coffey,

Leader, Property and Office Services.

[FR Doc. 95–13125 Filed 5–26–95; 8:45 am]

BILLING CODE 4310–94–P

National Park Service

Isle Royale National Park; Notice

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Public notice is hereby given that the National Park Service proposes to award a concession permit authorizing continued operation of boat transportation services between Grand Portage National Monument and Isle Royale National Park, Michigan for the public at Isle Royale National Park for a period of approximately five (5) years from date of execution through December 31, 2000.

EFFECTIVE DATE: July 31, 1995.

ADDRESSES: Interested parties should contact the Superintendent, Isle Royale National Park, 800 East Lakeshore Drive, Houghton, Michigan 49931 to obtain a copy of the prospectus describing the requirements of the proposed permit.

SUPPLEMENTARY INFORMATION: This permit renewal has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared. The existing concessioner has performed its obligations to the satisfaction of the Secretary under an existing permit which expired by limitation of time on December 31, 1994, and therefore pursuant to the provision of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. § 20), is entitled to be given preference in the negotiation of a new proposed permit providing that the existing concessioner submits a responsive offer (a timely offer which meets the terms and conditions of the Prospectus). This means that the permit will be awarded to the party submitting the best offer, provided that if the best offer was not submitted by the existing concessioner, then the existing concessioner will be afforded the opportunity to match the best offer. If the existing concessioner agrees to match the best offer, then the permit will be awarded to the existing concessioner.

If the existing concessioner does not submit a responsive offer, the right of preference in renewal shall be considered to have been waived, and the permit will then be awarded to the party that has submitted the best responsive offer.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be received by the Superintendent not later than the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Dated: May 23, 1995.

Robert K. Yearout,

Chief, Concessions Division.

[FR Doc. 95–13044 Filed 5–26–95; 8:45 am]

BILLING CODE 4310–70–M

Isle Royale National Park, MI; Notice

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Public notice is hereby given that the National Park Service proposes to award a concession permit authorizing continued operation of boat transportation services to and from Isle Royale National Park for the public at Isle Royale National Park, Michigan, for a period of approximately five (5) years from date of execution through December 31, 2000.

EFFECTIVE DATE: July 31, 1995.

ADDRESSES: Interested parties should contact the Superintendent, Isle Royale National Park, 800 East Lakeshore Drive, Houghton, Michigan 49931 to obtain a copy of the prospectus describing the requirements of the proposed permit.

SUPPLEMENTARY INFORMATION: This permit renewal has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared. The existing concessioner has performed its obligations to the satisfaction of the Secretary under an existing permit which expired by limitation of time on December 31, 1994, and therefore pursuant to the provision of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. § 20), is entitled to be given preference in the negotiation of a new proposed permit providing that the existing concessioner submits a responsive offer (a timely offer which meets the terms and conditions of the Prospectus). This means that the permit will be awarded to the party submitting the best offer, provided that if the best offer was not submitted by the existing concessioner, then the existing concessioner will be afforded the opportunity to match the best offer. If the existing concessioner agrees to match the best offer, then the permit will be awarded to the existing concessioner.

If the existing concessioner does not submit a responsive offer, the right of preference in renewal shall be considered to have been waived, and the permit will then be awarded to the party that has submitted the best responsive offer.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be received by the Superintendent not later than the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Dated: May 23, 1995.

Robert K. Yearout,

Chief, Concessions Division.

[FR Doc. 95–13045 Filed 5–26–95; 8:45 am]

BILLING CODE 4310–70–M

Extension of Public Comment Period on the Draft 2(a)(ii) Wild and Scenic River Study Report for the Wallowa River, Oregon

AGENCY: National Park Service, Interior.

ACTION: Extension of public comment period.

SUMMARY: The National Park Service is extending the public review and comment period by 15 days for the draft study report on designating the Wallowa River, Oregon, into the National Wild and Scenic Rivers System.

DATES: Comments must be postmarked by June 22, 1995.

ADDRESSES: Copies of the draft report are available for public inspection at: National Park Service, 909 First Avenue, 4th Floor, Seattle, Washington 98104–1060; National Park Service, 800 North Capitol Street, NW., Suite 490, Washington, DC 20013–7127; and U.S. Forest Service, Wallowa-Whitman National Forest, 1550 Dewey Avenue, Baker City, Oregon 97814. Hours of availability are between 8:30 a.m. and 4:30 p.m., Monday through Friday, except holidays. Additional copies for review are located in the Baker City, Elgin, Enterprise, Joseph, and La Grande, Oregon, libraries during normal hours of operation. Copies of the draft report may be obtained from Dan Haas, National Park Service, at the address below. Comments should be directed to the National Park Service, Pacific Northwest Regional Office, attention Dan Haas at the address below.

FOR FURTHER INFORMATION CONTACT: Dan Haas, National Park Service, Pacific Northwest Regional Office, 909 First Avenue, Seattle, Washington 98104–1060, (206) 220–4120.

Dated: May 17, 1995.

William C. Walters,

Interim Deputy, Field Director, National Park Service, Pacific West Field Area.

[FR Doc. 95–12941 Filed 5–26–95; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–731 (Preliminary)]

Bicycles From China; Import Investigation

Determination

On the basis of the record [1] developed in the subject investigation, the

[1] The record is defined in § 207.2(f) of the Commission's rules of practice and procedure (19 CFR 207.2(f)).

Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports from China of bicycles,[2] provided for in subheadings 8712.00.15, 8712.00.25, 8712.00.35, 8712.00.44, and 8712.00.48 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Background

On April 5, 1995, a petition was filed with the Commission and the Department of Commerce by Huffy Bicycle Co., Dayton, OH; Murray Ohio Manufacturing Co., Brentwood, TN; and Roadmaster Corp., Olney, IL, alleging that an industry in the United States is materially injured and threatened with material injury by reason of LTFV imports of bicycles from China. Accordingly, effective April 5, 1995, the Commission instituted antidumping investigation No. 731–TA–731 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of April 12, 1995 (60 FR 18611). The conference was held in Washington, DC, on April 26, 1995, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on May 22, 1995. The views of the Commission are contained in USITC Publication 2893 (May 1995), entitled "Bicycles from China: Investigation No. 731–TA–731 (Preliminary)."

Issued: May 23, 1995.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–13148 Filed 5–26–95; 8:45 am]

BILLING CODE 7020–02–P

[2] Commissioner Carol T. Crawford determines that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from China of bicycles.

[Investigation No. 337–TA–374]

Certain Electrical Connectors and Products Containing Same; Order Designating TEO Investigation "More Complicated" (Order No. 1)

At the prehearing conference on May 15, 1995, I proposed a hearing schedule that would require the temporary relief part of this investigation to be designated "more complicated." Rule 210.60 provides that the administrative law judge may designate a case more complicated by an order "on the basis of the complexity of the issues raised in the motion for temporary relief or the responses thereto, or for other good cause shown."

In a temporary relief case that is not designated more complicated, the initial determination is due 70 days after publication of the notice of investigation, and the Commission's determination is due 90 days after publication of the notice of investigation. In a more complicated case, the deadlines are extended to 120 days and 150 days, respectively.

It is found that there is good cause to designate the temporary relief part of this case "more complicated." In order to file an initial determination within 70 days (i.e., by July 20), it would be necessary to hold the hearing in early June. This would conflict with a federal district court trial beginning on June 5 which involves the same product. One of the respondents active in the case here is a party in the district court case. Although that case does not involve the same patent that is in issue here, many of the witnesses will be the same, and some of the lawyers in the district court case are also in this case.

The temporary relief part of this investigation is designated "more complicated" to permit the hearing in this case to begin on June 26, a week after the district court trial is scheduled to end. Two weeks have been reserved for the hearing in this case, although I expect that it will be completed earlier. I have another hearing scheduled to begin on July 10, so a TEO hearing in this case cannot be scheduled later in July. The parties will have time for post-hearing briefs and the initial determination will be due on September 8, 1995.

This order will be published in the **Federal Register** as required by 19 U.S.C. 1337(e)(2).

Issued: May 23, 1995.

Janet D. Saxon,

Chief Administrative Law Judge.

[FR Doc. 95–13144 Filed 5–26–95; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 731–TA–730 (Preliminary)]

Certain Light-Walled Rectangular Pipe and Tube From Mexico

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports from Mexico of certain light-walled rectangular pipe and tube,[2] provided for in subheading 7306.60.50 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Background

On March 31, 1995, a petition was filed with the Commission and the Department of Commerce by Southwestern Pipe, Inc., Houston, TX, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of certain light-walled rectangular pipe and tube from Mexico. Accordingly, effective March 31, 1995, the Commission instituted antidumping investigation No. 731–TA–730 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of April 11, 1995 (60 FR 18422). The conference was held in Washington, DC, on April 21, 1995, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on May 15, 1995. The views of the Commission are contained in USITC Publication 2892 (May 1995), entitled "Light-walled rectangular pipe and tube from Mexico: Investigation No. 731–TA–730 (Preliminary)."

Issued: May 23, 1995.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–13149 Filed 5–26–95; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in § 207.2(f) of the Commission's rules of practice and procedure (19 CFR 207.2(f)).

[2] The subject products are welded pipes and tubes of nonalloy steel, having a wall thickness of less than 4 millimeters (0.156 inch), of rectangular (including square) cross section. These light-walled rectangular pipes and tubes are supplied with rectangular cross sections ranging from 0.375×0.625 inch to 2×6 inches or with square sections ranging from 0.375 to 4 inches.

[Investigation No. 337–TA–366]

Notice of Commission Determinations to Review Certain Portions of the Presiding Administrative Law Judge's Final Initial Determination and To Remand the Initial Determination to the ALJ for Clarification and Additional Findings; Denial of Request for Oral Argument

In the Matter of: Certain microsphere adhesives, process for making same, and products containing same, including self-stick repositionable notes.

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Commission has determined to review certain portions of the final initial determination (ID) issued by the presiding administrative law judge (ALJ) on March 23, 1995, in the above-captioned investigation. The Commission has also determined to remand the ID to the ALJ for additional findings and for clarification of certain findings made in the ID concerning the issues under review. The Commission also determined to deny complainant's request for oral argument.

FOR FURTHER INFORMATION CONTACT: Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436, telephone 202–205–3104.

SUPPLEMENTARY INFORMATION: This investigation was instituted by the Commission on June 8, 1994, based on a complaint filed by Minnesota Mining and Manufacturing Co. (3M). On March 23, 1995, the ALJ issued her final ID in this investigation. The ALJ determined that a violation of section 337 of the Tariff Act of 1930, as amended, has occurred by reason of infringement of certain claims of U.S. Letters Patent 4,166,152 (the '152 patent) in the importation or sale of certain products containing microsphere adhesives by Kudos Finder Tape Industrial Ltd. and Kudos Finder Trading Co. (collectively, Kudos). The finding of violation as to Kudos was based on adverse inferences drawn from Kudos' failure to cooperate in discovery. The ID found no violation as to respondents Taiwan Hopax Chemicals Manufacturing, Co., Ltd.; Yuen Foong Paper Co., Ltd.; Beautone Specialties Co., Ltd.; and Beautone Specialties Co. (collectively, Beautone).

On April 17, 1995, 3M, Beautone, and the Commission investigative attorney filed petitions for review of the ID. On April 27, 1995, the parties filed responses to each other's petitions. Under Commission interim rule 210.53(h), the ID would have become the determination of the Commission on May 8, 1995, unless review were ordered or the review deadline were extended. However, the Commission had previously extended the review deadline until May 23, 1995. 60 FR 17806 (April 7, 1995). The statutory deadline for completing this investigation is December 8, 1995.

Having examined the record in this investigation, including the ID, the Commission determined to review the issues of (1) claim interpretation, (2) patent infringement by Beautone and Kudos, (3) patent validity under 35 U.S.C. 102(f), 102(g), and 112, and (4) domestic industry. The Commission has determined not to review the remainder of the ID. The Commission also determined to remand the ID to the presiding ALJ to make additional findings and to clarify certain other findings made in the ID, and has directed the ALJ to issue her ID on remand on or before August 8, 1995. The ID on remand will be processed in accordance with Commission interim rules 210.53 and 210.54.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and §§ 210.53, 210.56, and 210.58 of the Commission's Interim Rules of Practice and Procedure (19 C.F.R. 210.53, 210.56, and 210.58).

Copies of the nonconfidential version of the ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

Issued: May 23, 1995.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–13147 Filed 5–26–95; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 337–TA–376]

Certain Variable Speed Wind Turbines and Components Thereof; Investigation

AGENCY: International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on April 21, 1995, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Kenetech Windpower, Inc., 6952 Preston Avenue, Livermore, California 94550. The complaint alleges a violation of section 337 based on the importation, the sale for importation, and/or the sale within the United States after importation of certain variable speed wind turbines and components thereof, by reason of alleged induced and contributory infringement of claim 131 of U.S. Letters Patent 5,083,039 and claim 51 of U.S. Letters Patent 5,223,712. The complaint further alleges that there exists an industry in the United States as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after a hearing, issue a permanent exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW, Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's T.D.D. terminal on 202–205–1810.

FOR FURTHER INFORMATION CONTACT: Thomas S. Fusco, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2571.

Authority

The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in § 210.10 of the Commission's

Final Rules of Practice and Procedure, 59 FR 39020, 39043 (August 1, 1994).

Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on May 22, 1995, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of section 337(a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain variable speed wind turbines and components thereof, by reason of alleged infringement of claim 131 of U.S. Letters Patent 5,083,039 or claim 51 of U.S. Letters Patent 5,225,712, and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—

Kenetech Windpower, Inc., 6952 Preston Avenue, Livermore, California 94550.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Enercon GmbH, Dreekamp 5, D–26605, Aurich, Germany

The New World Power Corporation, 558 Lime Rock Road, Lime Rock, Connecticut 06039.

(c) Thomas S. Fusco, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW, Room 401–O, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with § 210.13 of the Commission's Final Rules of Practice and Procedure, 59 FR 39022, August 1, 1994. Pursuant to 19 CFR 201.16(d) and § 210.13(a) of the Commission's Final Rules, 59 FR 39022, August 1, 1994, such responses will be considered by the Commission if received no later than 20 days after the date of service of the complaint. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondents, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

Issued: May 23, 1995.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–13150 Filed 5–26–95; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32695]

CSX Transportation, Inc.—Trackage Rights Exemption—Vaughan Railroad Company

Vaughan Railroad Company (Vaughan) has agreed to grant nonexclusive trackage rights to CSX Transportation, Inc. (CSXT) over approximately 14.63 miles of its rail line between Rich Creek Junction and Vaughan, WV. The trackage rights begin at Rich Creek Junction, V.S. 364+32, extend to the station of Vaughan, V.S. 643+00=0+00, and continue to the end of Vaughan's ownership at V.S. 482+00. The trackage rights were scheduled to become effective on or after May 17, 1995.[1]

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Charles M. Rosenberger, 500 Water Street J150, Jacksonville, FL 32202.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected under *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: May 23, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–13159 Filed 5–26–95; 8:45 am]

BILLING CODE 7035–01–P

[1] Under 49 CFR 1180.4(g), a verified notice of exemption must be filed with the Commission at least one week before the transaction is consummated. Because the notice of exemption was not filed until May 10, 1995, consummation should take place on or after May 17, 1995, rather than May 15, 1995, as indicated in the verified notice of exemption. Applicant's representative has confirmed that the correct consummation date is on or after May 17, 1995.

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Topa Equities (V.I.), Ltd.; Public Comments and Response on Proposed Final Judgment

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), the United States publishes below the comments received on the proposed Final Judgment in *United States* v. *Topa Equities (V.I.), Ltd*, Civil Action No. 1994–179, United States District Court for the District of the Virgin Islands St. Thomas/St. John Division, together with the response of the United States to the comments.

Copies of the response and the public comments are available on request for inspection and copying in room 3233 of the Antitrust Division, U.S. Department of Justice, Tenth Street and Pennsylvania Avenue, NW, Washington, DC 20530, and for inspection at the Office of the Clerk of the United States District Court for the District of the Virgin Islands, United States Courthouse, Federal Building and U.S. Courthouse, 5500 Veterans Drive, St. Thomas, United States Virgin Islands 00802.

Rebecca P. Dick,

Acting Deputy Director of Operations, Antitrust Division.

United States' Response to Public Comments

[Civil No: 1994–179]

Introduction

Pursuant to section 2(d) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. 16(d), the United States responds to public comments on the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

This action began on December 7, 1994, when the United States filed a Complaint alleging that Topa Equities (V.I.), Ltd. (hereinafter "Topa") had violated section 3 of the Sherman Act (15 U.S.C. 3). The Complaint alleges that through a series of exclusive distribution agreements with all major suppliers of distilled spirits, Topa holds a monopoly on the wholesale distribution in the Virgin Islands of almost every major brand of distilled spirits. The Complaint further alleges that these exclusive distribution rights, taken together, are contracts in restraint of trade within the meaning of the Sherman Act.

Simultaneously with the filing of the Complaint, the United States filed a proposed Final Judgment, a Competitive Impact Statement ("CIS"), and a Stipulation signed by Topa for entry of the proposal Final Judgment. The proposed Final Judgment resolves the antitrust violation alleged in the Complaint by enjoining Topa from taking any action to prevent its suppliers of distilled spirits from canceling their distribution arrangements with Topa and appointing new wholesalers instead. The proposed Final Judgment also imposes a number of restrictions on Topa's business practices in order to prevent Topa from unreasonably interfering with the operations of a competitor.

A summary of the terms of the proposed Final Judgment and CIS and directions for the submission of written comments relating to the proposal were published in *The Washington Post* for seven consecutive days beginning December 25, 1994, and in *The Virgin Islands Daily News* on December 21–24 and December 27–29, 1994. The proposed Final Judgment and CIS were published in the **Federal Register** on December 30, 1994. 59 FR 67728 (1994).

The 60-day period for public comments commenced on December 30, 1994, and expired on March 2, 1995. The United States received two comments on the proposed Final Judgment, from St. Thomas Food Products Corp. ("St. Thomas Foods") and IPV, Inc. trading as A.H. Riise Liquor Stores ("A.H. Riise"). Those comments are being filed with the Court along with this response. Upon careful consideration of these comments, as fully explained below, the United States urges that the proposed Final Judgment be entered as originally submitted to the Court.

I. Legal Standards Governing the Court's Public Interest Determination

The procedural requirements of the APPA are intended to eliminate secrecy from the consent decree process, to ensure that the Justice Department has access to public comments bearing on the consent decree, and to create a public record of the reasoning behind the government's consent to the decree. *Hearings on H.R. 9203, H.R. 9947, and S. 782, Consent Decree Bills Before the Subcomm. on Monopolies and Commercial Law of the House Judiciary Committee*, 93rd Cong. 1st. Sess. 39–40 (1973) (Statement of Senator Tunney). *See also United States* v. *American Tel. and Tel. Co.*, 552 F. Supp. 131, 148 (D.D.C. 1982), *aff'd sub nom. Maryland* v. *United States*, 460 U.S. 1001 (1983).

The APPA requires the Court to determine whether the entry of the decree is "in the public interest." 15 U.S.C. 16(e). The Court's role is not to make a *de novo* determination of facts and issues, but "to determine whether the Department of Justice's explanations were reasonable under the circumstances," for "[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General." *United States* v. *Western Electric Co.*, 993 F.2d 1572, 1577 (D.C.Cir.), *cert. denied*, 114 S.Ct. 487 (1993), quoting *United States* v. *Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir.), *cert. denied*, 544 U.S. 1083 (1981). Thus, the "court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is 'within the reaches of the public interest.'" *Bechtel Corp.*, 648 F.2d at 666.

Congress did not intend to require the courts to follow elaborate procedures in making the public interest determination under the APPA. To the contrary, Congress was concerned that unduly protracted proceedings might interfere with the consent decree process. Thus, "the court is adjured to adopt 'the least complicated and least time-consuming means possible.'" *United States* v. *Gillette Co.*, 406 F.Supp. 713, 715 (D.Mass. 1975), (quoting S. Rep. No. 93–298, 93d Cong., 1st Sess. 6 (1973); H. Rep. No. 93–1463, 93d Cong., 2d Sess. 8 (1974)).

The Court's public interest inquiry must be conducted in light of the "violations set forth in the complaint." 15 U.S.C. 16(e)(2). The enforcement agency's decision about what charges to bring in its complaint is a matter generally "committed to the agency's absolute discretion." *Heckler* v. *Chaney*, 470 U.S. 821, 831 (1985).

II. Public Comments

A. Comment of St. Thomas Foods

St. Thomas Foods, a Virgin Island wholesaler of beer, wine, distilled spirits, and other products, commented that the proposed Final Judgment should be rejected because it does not address the wine and beer markets, in which St. Thomas Foods alleges that Topa also has a monopoly, and because it does not require Topa to abandon all rights to distribute certain brands of distilled spirits. The proposed Final Judgment should not be amended in response to this comment.

The Complaint alleges that Topa maintained, through an anticompetitive series of contracts, a monopoly in the wholesale distribution of distilled spirits in the Virgin Islands, but it does not allege maintenance of a monopoly in the wholesale distribution of beer or wine. The United States fully reviewed all of Topa's distribution businesses and determined to challenge only conduct relating to its distribution of distilled spirits. The determination of what conduct to challenge and the scope of any complaint is a matter solely within the discretion of the United States. Thus St. Thomas Foods' initial comment falls outside the scope of Tunney Act review.

St. Thomas also questions the relief the United States has negotiated with Topa relating to the wholesale market for distilled spirits. This *is* a matter properly before this Court under the Tunney Act. As noted in the CIS filed with the Complaint and proposed Final Judgment, the United States considered whether to pursue litigation in order to win structural relief terminating some of Topa's exclusive distribution arrangements with suppliers of distilled spirits. The United States concluded that this alternative would place an unacceptably large burden on some suppliers, which are among the victims of Topa's conduct. The competitive problem in this case arises from the fact that Topa has had exclusive distribution agreements with *all* major suppliers of distilled spirits. If some suppliers shift to other distributors, exclusive contracts between Topa and remaining suppliers would not be anticompetitive; competition among brands would mitigate the lack of intra-brand competition in brands sold exclusively through a single wholesaler. The Untied States did not have a basis for determining which suppliers should be shifted to other distributors, nor for urging a court to single out certain suppliers for such treatment. Thus the United States concluded that the better course would be to permit each supplier to determine, for itself, whether to

continue to deal through Topa exclusively. The relief imposed by the proposed Final Judgment presents an effective means to invigorate competition in the wholesale distribution of distilled spirits in the Virgin Islands without establishing unnecessary regulatory constraints that would interfere with free market forces.

B. Comment of A.H. Riise

A.H. Riise owns four retail liquor stores in the Virgin Islands and probably is the largest retailer of distilled spirits in the territory. The defendant, Topa, is A.H. Riise's principal source for distilled spirits. A.H. Riise objected that the proposed remedies do not bar Topa from interfering with suppliers that want to sell directly to retailers. Thus, A.H. Riise urges adoption of a provision prohibiting Topa from communicating with any supplier for the purpose, or with the effect, of urging, compelling, or coercing the supplier to refrain from bypassing the wholesale level of distribution altogether and selling directly to a retailer. This suggested provision would allow suppliers to violate their exclusive distribution arrangements with Topa in order to sell directly to retailers. In addition, A.H. Riise suggests that price regulation be imposed, forcing Topa to offer lower prices to A.H. Riise and thus enabling A.H. Riise to compete more effectively in the tourist duty-free market. Finally, A.H. Riise wants to extend the term of the Final Judgment form five years to ten.

A.H. Riise may be the only retailer large enough to attract direct sales from even a small supplier. Conceivably, a supplier might want to deal directly with A.H. Riise while distributing through a wholesaler to other retailers. Nothing in the proposed Final Judgment impedes this type of arrangement, and the provisions A.H. Riise proposes are not needed to achieve the full relief in this action of enabling distillers to break free of their exclusive agreements with Topa.

There is no reason to provide for special relief for the duty-free market. The interbrand competition that will result from the relief in this case will benefit the duty-free market as well as the retail market for Virgin Islands consumers.

A.H. Riise has also urged that the term of the proposed Final Judgment be changed to ten years. The five-year duration of the proposed Final Judgment is adequate to accomplish its objective. The time needed for a supplier of distilled spirits to switch wholesalers is limited, probably no more than thirty to sixty days. All that is necessary to accomplish the switch is the transfer of existing inventory from one warehouse to another. In wholesaling as opposed to manufacturing, start-up times are short. In wholesaling, there is no need to build a factory, assemble complicated machinery, or arrange for supplies of raw materials; basically, all that is needed is a warehouse and a truck. Thus, even a new-entrant wholesaler could have its business up and running quickly. Sufficient capital to finance inventory is necessary, of course. But the necessary level of capital, while not trivial, is far from prohibitive. Also, the proposed Final Judgment provides that Topa must furnish a copy of the Judgment to each supplier, so its term will be well-known in the industry within days of its entry by the Court. For these reasons, the term of the proposed Final Judgment need be no longer than five years.

The United States also notes statements, cited by A.H. Riise and attributed to the defendant and its counsel in this action, stating that the decree is ineffective. This talk is more wishful than accurate: The decree is carefully designed to ensure full and effective relief. Moreover, the United States assures the Court, the people of the Virgin Islands, and the defendant that we will vigorously enforce this decree and monitor its success. Should competitive problems in the distribution of alcoholic beverages in the Virgin Islands recur, the United States stands ready to address them.

The proposed Final Judgment will make it attractive for certain suppliers to find new wholesalers that will more vigorously promote their products in the Virgin Islands, thereby correcting the competitive harms resulting from Topa's past conduct and increasing competition in the local wholesale distilled spirits market. Therefore, the proposed Final Judgment should be entered as proposed by the parties.

Conclusion

For the reasons set forth above, entry of the decree as submitted by the parties to the Court is in the public interest. St. Thomas Foods' comment, A.H. Riise's comment, and this response will be published in the **Federal Register**.

Dated: May 5, 1995.

Respectfully submitted,

Anne K. Bingaman,

Assistant Attorney General.

John T. Orr,

Justin M. Nicholson,

James L. Weis,

Attorneys, Antitrust Division, Department of Justice, Richard B. Russell Building, Suite 1176, 75 Spring Street, SW., Atlanta, GA 30303, (404) 331–7100.

Certificate of Service

I hereby certify that I have caused a copy of the foregoing UNITED STATES' RESPONSE TO PUBLIC COMMENTS to be served upon Ernest Gellhorn, 2907 Normanstone Lane NW., Suite 100, Washington, DC 20008–2725, by first class mail, postage prepaid.

Dated: May 5, 1995.

Justin M. Nicholson,

Antitrust Division, U.S. Department of Justice, Richard B. Russell Building, Suite 1176, 75 Spring Street, SW., Atlanta, GA 30303, (404) 331–7100.

January 19, 1995

Mr. John T. Orr,
Chief, Atlanta Field Office,
Antitrust Division, Dept. of Justice,
Richard B. Russell Federal Building,
75 Spring Street, SW.,—Suite 1176,
Atlanta, Georgia 30303.

Re: U.S. v. Topa Equities (V.I.), Civil No. 1994–179

Dear Mr. Orr: I have read with great interest the Complaint, Stipulation and proposed Final Judgment in the above referenced case, which was provided to me by Mr. James L. Weis of your office. This letter is being written to give you my comments on the proposed Final Judgment.

To say the least I am simply amazed at the conclusion of this case. Justice has accomplished absolutely nothing after many years of investigation and I am sure the expenditure of several hundreds of thousands of dollars.

The Topa Equities (V.I.), Ltd., monopoly remains intact. There is no provision in the proposed Final Judgment for any kind of divestiture of liquor brands where Topa has an exclusive agency arrangement. Therefore Topa remains is full control of 90% plus of all the liquor imported and sold in the Virgin Islands. This leaves Topa with the same monopoly position they enjoyed prior to the extensive investigation of the Dept. of Justice. The fact that the Final Judgment precludes Topa from interfering with a supplier moving liquor brands from Topa to another agent is simply a joke. Topa being fully aware of their mononuclear position in the liquor market never would have sued or interfered with a supplier moving brands because they are fearful of their monopolistic practices becoming public in open court.

Another observation I have on the proposed Final Judgment is that it does not address the Wine and Beer business in the Virgin Islands. I am sure that your investigation revealed that Topa also controls and monopolizes the Wine and Beer importing/distributing business in the Virgin Islands. Topa has the exclusive agency rights for all the major brands of United States beers, Anheuser Busch, Coors and Miller Brewing. Topa also represents many of the major brands of imported beers, Becks, Corona, Carlsberg, Caribe, Guiness, Tennants, and Red Stripe. This then gives Topa 85% market share of all beers of U.S. manufacturer and 70% market share of all imported beers. Yet your Final Judgment makes no mention of the beer business in the Virgin Islands.

The same is true of the Wine importing/distribution business in the Virgin Islands. Topa owned companies have control of over 80% of this business and again the Final Judgment makes no provisions to address this monopoly.

In my opinion the proposed Final Judgment should not be accepted by the District Court of the Virgin Islands. The Judgment should be sent back to the Dept. of Justice and the investigation reopened to address the oversights that I have made above. Topa should be forced to divest itself of brands it controls to once and for all end the monopoly it has enjoyed for all these years. These brands should not only be liquor agencies but should include beer as well as wine. Further Topa should be assessed money damages to at least cover the costs of the investigation and whatever fines the Court deems appropriate.

All in all I am very dissatisfied with the results of your investigation and the proposed Final Judgment. I feel that your investigation was a waste of your time, my time and great deal of tax payer money.

Sincerely.

St. THOMAS FOOD PRODUCT CORP.

Bruce Kimelman.

President

BK/lf

cc. District Court of the Virgin Islands, Division of St. Thomas-St. John

February 24, 1995

John T. Orr, Chief, Atlanta Field Office, Antitrust Division, U.S. Department of Justice, Richard B. Russell Federal Building, Suite 1176, 75 Spring Street, Atlanta, GA 30303

Re: United States of America v. Topa Equities (V.I.), Ltd., D.V.I. Civil No. 1994–179

Dear Chief Orr: In response to the Notice published in the **Federal Register** on December 30, 1994 (59 FR 67728), I am submitting herewith, on behalf of my client IPV, Inc. trading as A.H. Riise Liquor Stores, the enclosed "Comments of A.H. Riise Liquor Stores on Proposed Final Judgment" in the above case.

Very truly yours,

Samuel H. Seymour.

SHS/ced

Enclosures

cc: Justin M. Nicholson, Esq., James L. Weis, Esq.

Comments of A.H. Riise Liquor Stores on Proposed Final Judgment

Moore & Bruce

Samuel H. Seymour, Jonathon R. Moore, 1627 Eye Street, NW., Suite 880, Washington, DC 20006, Tel: (202) 775–5980, Counsel for IPV, Inc., trading as A.H. RIISE LIQUOR SHOPS

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TOPA Press Release.
"Red-lined" Proposed Final Judgment Showing Recommended Revisions to be in the Public Interest.

Comments of A.H. Riise Liquor Stores on Proposed Final Judgment

IPV, Inc., trading as A.H. Riise Liquor Stores, P.O. Box 6280, St. Thomas, U.S. Virgin Islands 00804–6280 ("A.H. Riise"), through its attorneys, hereby responds to the **Federal Register** notice soliciting public comments on the Proposed Final Judgment and Competitive Impact Statement ("CIS") in the above-captioned case, 59 FR 67728 (Dec. 30, 1994). A.H. Riise respectfully submits that adoption of the Final Judgment in the form proposed is not in the public interest, because the remedies proposed provide no tangible or immediate prospect for achieving the goals set forth in the CIS: The restoration of competition in the wholesale market for distilled spirits in the Virgin Islands.

I. The Defendant's Own Comments Demonstrate That the Proposed Final Judgment Is Not in the Public Interest

As a threshold matter, before we describe A.H. Riise or analyze the Proposed Final Judgment, it is incumbent upon us to bring to the attention of the Court and the Department the contemptuous manner in which the Defendant holds the Proposed Final Judgment. A Press Release issued by Defendant Topa upon the announcement of the settlement with the Department states:

> According to Ernest Gellhorn, an antitrust lawyer from Washington, D.C. retained by Topa, "the proposed remedy is all bark and no bite." Pointing to the decree's "meaningless provisions that would modify contract terms written by suppliers or would make supposed scarce warehouse space available to new entrants," Gellhorn called "this *probably the weakest consent decree ever negotiated by the Department of Justice.*" (Emphasis added.)

A copy of Defendant's Press release is attached hereto as Exhibit 1.

Significantly, the Defendant distributed this Press Release to its suppliers two days *before* the Department filed the Complaint and the Proposed Final Judgment with the Court. The message is clear: Nothing will change.

The Court—and the Department—should scrutinize the motives and substance behind Defendant's Press Release. It is a red flare. It sends a vivid warning: something is seriously wrong with the Proposed Final Judgment. The Press Release belies any assertion in the CIS that the Proposed Final Judgment is in the public interest.

Under the circumstances, the only proper course is for the Department to withdraw its consent to the Proposed Final Judgment. Should it fail to do so, the Court should not rubber stamp the apparent oversights or miscalculations that have brought this case to the brink of approval, lest it, too, be the subject of Defendant's derision.

II. A.H. Riise is an Interested Party

A.H. Riise owns and operates four retail stores for distilled spirits [1] in St. Thomas, Virgin Islands. It is among the class of retailers of distilled spirits in the Virgin Islands which has "been deprived of the benefits of free and open competition" by Defendant's actions. Complaint, ¶ 19(c). A.H. Riise is a family-owned business, whose current owners are the third and fourth generations of the family to be involved

[1] Unless otherwise noted, the defined terms from Section III of the Complaint are utilized in these comments.

in the ownership and management of retail liquor businesses in the Virgin Islands.

Defendant Topa is A.H. Riise's major source of supply of distilled spirits. Based upon the description of Defendant's business in Paragraph 3 of the Complaint, A.H. Riise purchases represent at least 20% of Defendant's sales in the Virgin Islands. As such, A.H. Riise is a significant participant in the market which is the subject of the Complaint in this action.

A.H. Riise is also a major factor in the tourist market for distilled spirits in the Virgin Islands. Although conspicuously omitted from the Complaint, the Proposed Final Judgment and the CIS, the tourist submarket for duty-free distilled spirits in the Virgin Islands may represent as much as 60% of the relevant market. On information and belief, A.H. Riise's sales constitute more than half of the sales of distilled spirits to this submarket. A.H. Riise is among the class of retailers most adversely effected by Defendant's monopolistic pricing practices and anti-competitive efforts to dissuade suppliers from selling directly to retailers.

III. The Court Has the Authority To Reject the Proposed Final Judgment if Competition Will Not Be Restored

The Antitrust Procedures and Penalties Act (the "Tunney Act") provides in pertinent part that "before entering any consent judgment proposed by the United States * * *, the court shall determine that entry of such judgment is in the public interest." 15 U.S.C. 16(e). The power of the courts in connection with determining the public interest and the legal standard of review to be applied is comprehensively set forth in *United States* v. *American Tel. & Tel. Co.*, 552 F. Supp. 131, 147–153 (D.D.C. 1982), *aff'd sub nom Maryland* v. *United States*, 460 U.S. 1001 (1983).

In reviewing the purposes of the Tunney Act, the *AT&T* Court referred to the legislative history, which asserted that previously "consent decrees often fail(ed) to provide appropriate relief, either because of miscalculations by the Justice Department or because of the 'great influence and economic power' wielded by antitrust violators." *Id* at 148. In support, the Court cited Senator Tunney: "Regardless of the ability and negotiating skill of the Government's attorneys, they are neither omniscient nor infallible." *Id* at 148, note 70, citing 119 Cong. Rec. 3452 (1973). In response, the public comment procedure was added to the antitrust laws, along with judicial review based on the public interest standard. The express purpose of such review is to "eliminate judicial rubber-stamping" of proposed consent orders submitted to courts by the Department. *Id* at 149.

Senator Tunney's comments are particularly appropriate in this case. As discussed below, it is apparent that the Complaint, the Proposed Final Judgment and the CIS overlook highly relevant and significant facts relating to the Defendant's anti-competitive practices. The legislative history makes it clear that the Court here, as the Court did in the recent decision in the *United States* v. *Microsoft Corporation*, C.A. No. 94–1564 (Memorandum Order dated Feb. 14, 1995), can and should look beyond the four corners of the complaint in determining whether the public interest is being served by the Proposed Final Judgment.

In examining the legal standard to be applied in determining the public interest, the *AT&T* Court stated that antitrust "decisions granting relief after a finding of liability form the most relevant yardstick for determining whether the proposed consent decree will further antitrust policies." After noting that the purpose of antitrust remedies is to restore competition and end monopoly power, the Court stated that proposed decrees "must leave the Defendant without the ability to resume the action which constituted the antitrust violation in the first place. For these reasons, the decree should not be limited to past violations; it must also effectively foreclose the possibility that antitrust violations will occur or reoccur." *Id* at 150. As discussed below, the Proposed Final Judgment is particularly deficient in addressing restoration of competition in the future. When evaluated under the standards articulated by the *AT&T* Court, the Proposed Final Judgment will be found to be inconsistent with the public interest.

The *AT&T* Court premised its analysis upon the fundamental purpose of the Tunney Act to "fully promote the goals of the antitrust laws and further public confidence in their fair enforcement." The Court noted that the consent order procedure prior to the enactment of the Tunney Act was essentially secret, and thereby "undermin(ed) confidence in the legal system." It is submitted that the Defendant's arrogant and disparaging characterizations of the Proposed Final Judgment should be the catalyst that brings these fundamental concerns into sharp focus in the Court's determination of the public interest.

IV. The Proposed Final Judgment Is Not in the Public Interest

A. The Proposed Final Judgment Is Premised on a Complaint That Overlooks Material Factors in the Relevant Markets

Both the Complaint and the Proposed Final Judgment are based on an incorrect view of the market for distilled spirits in the Virgin Islands. The Department apparently has misunderstood or overlooked important facts concerning the channels of distribution in the Virgin Islands market, the important of the submarket for distilled spirits sold to tourists, and, most importantly, the Defendant's monopolistic pricing practices. Accordingly, the Complaint and Proposed Final Judgment overlook the only way in which existing market forces can be used to restore competition: By permitting suppliers and retailers to deal directly with each other without interference from the Defendant.

1. The Proposed Final Judgment Defines Away the Most Immediate Prospect for Restoring Competition

Deficiencies in the Proposed Final Judgment's analysis are first evident in the definitional provisions in the Complaint and the Proposed Final Judgment. The term "retailer" is defined in Paragraph 7 of the Complaint and Paragraph IID of the Proposed Final Judgment to mean "any person engaged in the business of purchasing distilled spirits *from wholesalers* as defined herein, and reselling them to consumers in establishments located in the Virgin Islands * * *" (Emphasis added.) Significantly, however, some retailers, including A.H. Riise, purchase directly from suppliers, and would do so to a greater extent if it were not for the Defendant's active interference. Yet the possibility that retailers can purchase from suppliers is not even recognized by this definition. Accordingly, the one present and tangible means by which Defendant's monopoly power can be reduced under existing competitive conditions is obviated definitionally.

The definition of "supplier" in Paragraph 8 of the Complaint and Paragraph IIE of the Proposed Final Judgment is similarly deficient. This definition provides that supplier means "any licensed manufacturer, distiller, or importer of distilled spirits from which *Defendant or any other licensed wholesaler*, as defined herein, purchases or has purchased distilled spirits." (Emphasis added.) Again, the Complaint and the Proposed Final Judgment do not even recognize that suppliers do sell directly to retailers and would do so to a greater extent if Defendant's interference were eliminated. Although Virgin Islands law does not permit vertical integration of retailers and wholesalers, Complaint ¶ 10 and ¶ CIS II, there is no prohibition against retailers dealing directly with suppliers.

In fact, Defendant's monopoly power has enabled it to prevent most retailers from obtaining distilled spirits directly from suppliers. This interference occurs particularly where Defendant has exclusive arrangements with suppliers, and even where it does not. The Proposed Final Judgment, as drafted, could be understood by the Defendant to sanction its activities in this regard, which could well intensify as a result. Failure to recognize that retailers can purchase directly from suppliers, and that such arrangements require protection from Defendant's monopoly power, are glaring deficiencies in the Complaint.

2. The Complaint, Proposed Final Judgment and CIS Overlook the Significance of the Tourist Submarket to the Public Interest

The Complaint, the Proposed Final Judgment and the CIS also conspicuously omit any mention of the tourist market for distilled spirits. Tourism is a significant part of the Virgin Islands economy. The duty-free rules, which allow visitors from the United States mainland to enter up to five bottles per person duty-free into the United States from the Virgin Islands,[2] are important enhancements for tourism in the Virgin Islands and, indeed, are a substantial feature of the competitive landscape of the market defined by the Complaint. Tourists, however, will only purchase distilled spirits "duty-free" in the Virgin Islands if they are priced competitively with products that they can purchase on cruise ships and at other Caribbean destinations, and, of course, in the continental United States.

Defendant's monopolistic pricing practices have had a material adverse impact on commerce in distilled spirits in the Virgin Islands in the tourist market, but no one would ever know this from the Complaint, the Proposed Final Judgment and the CIS.[3] Without any competition at the wholesale level, Defendant Topa is able to take far larger wholesale mark-ups than are customary. Retailers like A.H. Riise have had no alternative other than to accept Defendant's monopolistic pricing, except in instances where they have been able to by-pass Topa and purchase directly from suppliers. Even after cutting their margins to the bone, retailers often cannot compete with prices of distilled spirits on cruise ships, other Caribbean Islands and, even sometimes on the U.S. mainland, since monopolistic margins are exacted by Defendant at the wholesale level. Thus, A.H. Riise's sales—and those of other retailers—are far lower than they otherwise would be. Accordingly, tourists buy less in the Virgin Islands, and the Virgin Islands economy loses substantial excise and gross receipts tax revenues, as well as lost employment opportunities for retailers and others who serve the tourists trade.

3. It is Contrary to the Public Interest To Permit Defendant's Monopolistic Pricing to Continue

Since the Complaint does not allege anti-competitive pricing practices on the part of Defendant, it is hardly surprising that such practices are not remedied in the Proposed Final Judgment. It is remarkable that after citing injury to suppliers and retailers, Complaint ¶ 19 (c) and (d), CIS ¶ IIB, there is no mention of injury to consumers. Yet there is no single factor that has a greater bearing on the Court's determination of the public interest in this case than Defendant's pricing practices. Defendant's monopolistic pricing damages consumers—both Virgin Islands residents and tourists—to the detriment of the Virgin Islands economy.

On those occasions when suppliers have been willing to sell directly to A.H. Riise, often over interference from the Defendant, A.H. Riise has been able to substantially reduce prices offered to tourists so that they are more competitive with prices offered by cruise ship stores, on other Caribbean islands and in the U.S. As a result, sales increased dramatically, as did profits. Further, A.H. Riise was able to spend considerably more on advertising and promotion to encourage cruise ship passengers to purchase distilled spirits in the Virgin Islands, rather than at foreign ports.

These results were demonstrated again recently when A.H. Riise was finally able to conclude arrangements to purchase directly from a supplier, which had previously sold only through Defendant Topa. Without excessive wholesale margins, A.H. Riise was able to lower the per unit price by $5.00, which increased the gap between its prices and U.S. mainland prices from $1–$2 to $6–$7 per unit. In only a two week period, sales increased 500% and profits increased 100%. Corresponding increases were realized in revenues paid to the Virgin Islands taxing authority.

Conversely, when the prices it receives from Defendant Topa compel retail pricing that a higher, the same or only slightly lower than competing sources available to tourists, sales decline, profits are non-existent, and resources available for promotion are marginal. In A.H. Riise's experience, tourists are generally well-educated on the subject of distilled spirits prices. Accordingly, when they can purchase distilled spirits at substantial savings, they are inclined to make most of their duty-free purchases from retailers in the Virgin Islands. Moreover, once tourists see that duty-free prices for distilled spirits are lower, they tend to purchase greater amounts of other duty-free merchandise in the Virgin Islands as well. Thus, it is not difficult to see how monopolistic pricing at the wholesale level has an immediate negative and depressing impact on sales, profits and promotional activities, with a corresponding impact on employment, tax revenues and the Virgin Islands economy.

In its review of the proposed consent order in *United States* v. *Microsoft, supra*, the Court recognized that the failure of the Department to address significant anti-competitive practices by the defendant was grounds for a determination that the proposed order was not in the public interest. Notwithstanding the vehement objections of the defendant and the Department in that case, the Court refused to accept an order that was limited to operating systems software for X86 microprocessors. There, as here, the proposed Complaint and relief are too narrow, and for that reason must be found not to be in the public interest.

B. The Remedies in the Proposed Final Judgment Do Not Adequately Address the Competitive Harm Identified

The Complaint and the CIS correctly point out that the Defendant has virtual monopoly in the wholesale distilled spirits market in the Virgin Islands. Complaint ¶ 17; CIS ¶ II B. Certain effects of this monopoly are then identified: (1) Retailers are deprived of alternative sources for competing products; and (2) suppliers are deprived

[2] Persons returning to the United States mainland from the Virgin Islands are exempted from duty on four liters (the equivalent of five fifths) of distilled spirits, plus an additional liter of any such product produced in the Virgin Islands. Heading 9804.00.70, Harmonized Tariff Schedule of the United States (1995).

[3] The impact of Defendant's monopolistic practices is far more significant in the tourist market for distilled spirits than in the local market. This is because residents of the Virgin Islands have no choice but to purchase locally, whereas tourists can buy distilled spirits on board cruise ships, on other Caribbean Islands or on the U.S. mainland.

of the benefits of free and open competition, in part because Defendant Topa has inherent conflicts of interest in the representation of competing products and cannot represent all competing brands equally. Complaint, ¶ 19 (c) and (d); CIS ¶ II B. The CIS then states that the purpose of the Proposed Final Judgment is to remedy these effects. But not only are the Complaint and Proposed Final Judgment drafted too narrowly, the remedies proposed are also ineffective.

Rather than ordering a breakup of the Defendant, divestiture of the acquisitions by which it obtained its monopoly, Complaint ¶ 17, or unilateral termination of its distribution agreements, CIS ¶ VI, the Proposed Final Judgment merely attempts to establish new ground rules for the distilled spirits wholesale market in the Virgin Islands that purport to make it more likely for new entrants to dilute the Defendant's monopoly power and thereby restore a competitive environment. There are two main features of the Proposed Final Judgment: (1) Permitting suppliers to break exclusive contracts with Defendant, but only to deal with another wholesaler; and (2) enjoining Defendant from enforcing its rights under Title 12A, Sections 131 and 132, of the Virgin Islands Code for "wrongful termination." Once new entrants appear, the Defendant would be enjoined from (1) interfering with any of the potential new entrants' employees and (2) from acquiring any stock or interest in such new entrants.[4] Proposed Final Judgment ¶¶ IV (b), (c), (f) and (g).

In a moment of candor, the Defendant characterized the foregoing as "meaningless provisions" that are "all bark and no bite." Press Release, Exhibit 1. A.H. Riise agrees.

Rather than providing a mechanism for existing market forces to restore competitiveness, the proposed remedies depend on new entrants coming into the wholesale distilled spirits business in the Virgin Islands. The relief proposed, therefore, is merely hopeful. At best, it poses a theoretical framework for competition to develop in the future. Whether the proposed remedies will in fact have any immediate and tangible effect on the competitive environment in the Virgin Islands must depend totally on extrinsic factors, the existence of which are unknown or speculative.

How likely is it that "new players" will arrive to compete on the new theoretical "level playing field" constructed by the Proposed Final Judgment? Not likely at all.[5] To become viable, potential entrants will need very substantial capital for inventory and warehouse facilities, employees who know the business, and the ability to attract suppliers' business. Each of these factors is far more significant to entering the market than the elements of the proposed remedies. In determining whether the remedies in the Proposed Final Judgment have a reasonable chance of achieving their stated goals, the Court should not overlook the fact that every potential entrant that has tried to come into this market in the last decade has failed. CIS ¶ 2. At the present time, A.H. Riise knows of no company or individual with the necessary capital, personnel and know-how that could enter the Virgin Islands wholesale market for distilled spirits. Further, based on discussions with wholesalers outside the Virgin Islands, little incentive to enter the Virgin Islands market is perceived.

The lack of confidence that the proposed remedies will achieve their stated goals is seen in the CIS. For example, the CIS states: "qualified personnel, with the necessary connections with the retail trade, are difficult to find in the Virgin Islands. Paragraphs IV(b) and IV(c) *may* help an entrant to hire and retain qualified personnel to run a distilled spirits business in the Virgin Islands without undue interference from Topa." (Emphasis added.) CIS ¶ III. They also may not. Indeed, potential entrants will need substantial capital to succeed much more than Topa's noninterference with their employees.

Moreover, as a practical matter, once suppliers are freed from exclusive arrangements with the Defendant, it does not necessarily follow that suppliers will switch to new entrants. Indeed, without a strong track record, why should a major supplier of distilled spirits trust a new entrant to develop its market in the Virgin Islands? The CIS recognizes this problem: "Any *disatisfied* supplier will be free to find an alternative distributor *if the supplier chooses to do so** * *" (Emphasis added.) CIS ¶ III. The CIS candidly admits that suppliers will have to be dissatisfied with Topa before they would switch to new, unknown wholesalers.

Because any decision to switch must lie with the suppliers, there can be no guarantee that the model in the Proposed Final Judgment will restore competition.

In fact, the ingredients needed to restore this market to a competitive one are already in place, but have been overlooked in the Proposed Final Judgment. Existing retailers already know the products, the suppliers, and the markets. It is the retailers, in their pricing and promotion, that make markets for each brand. But for the on-going interference by the Defendant, retailers would be in the position *now* to restore competition to the distilled spirits market in the Virgin Islands by dealing directly with suppliers. It is therefore contrary to the public interest to rely solely upon speculative, future, unknown, external factors to enter the wholesale market, as posited by the Proposed Final Judgment. Instead, suppliers' and retailers' rights to deal with each other need to be recognized—and protected.

V. At a Minimum, Any Final Judgment Should Expressly Recognize and Protect Retailers' Rights To Deal Directly With Suppliers, Without Interference From Defendant

Even though the Proposed Final Judgment is deficient in its theoretical approach to restoration of competition, A.H. Riise does not believe that divestiture or the termination of exclusivity arrangements with suppliers are the only remedies that can help erode Defendant's monopoly. With slight modifications, the Proposed Final Judgment can be rectified to achieve the stated goal of providing retailers with alternative sources and freeing suppliers from a single wholesaler that also represents their competitors. That remedy is to recognize—and protect—suppliers and retailers' rights to deal directly with one another without interference from the Defendant. We have attached as Exhibit 2 a "red-lined" copy of the Proposed Final Judgment on which we have made recommended revisions that, with minor modifications, would permit the Proposed Final Judgment to achieve the competitive goals set forth in the CIS.

The following language, which could be added after Paragraph IV A of the Proposed Final Judgment, would implement this approach: (Topa is enjoined and restrained from:)

Communicating with any supplier, wholesaler or other person for the purpose or with the effect of urging, compelling, or coercing any supplier or wholesaler to refrain from selling distilled spirits to any retailer in the Virgin Islands. Nothing in this paragraph of Section IV shall be construed to inhibit Topa from negotiating, entering into and adhering to a contract dealing with a supplier on an exclusive basis; provided, that such designation shall not directly or indirectly prevent any retailer in the Virgin Islands from acquiring distilled spirits directly from any supplier.

The suggested language is derived from the consent order issued in *United States* v. *Maryland State Licensed Beverage Association, Inc.*, CCH Trade Reg. Rep. ¶ 69,261 (D. Md., 1958). In that case, distributors and wholesalers were charged with collusion in attempting to keep retailers from dealing directly with suppliers. The appropriate remedy to enjoin such anti-competitive practices was to recognize retailers' and suppliers' rights to deal directly with each other, while continuing to permit exclusive arrangements between wholesalers and suppliers. The same approach is appropriate here.

In addition, the current Paragraph D of Section IV of the Proposed Final Judgment should be amended as follows:

(Topa is enjoined and restrained from:)

D. Refusing to deal with any retailer because that retailer deals with another wholesaler *or directly with a supplier.*" (Suggested revision emphasized.)

In commenting on Paragraph IVD of the Proposed Final Judgment, the CIS points out: "Even if Topa loses some brands to a new or existing wholesaler, Topa will retain enormous influence over retailers. This provision (as drafted) will prevent Topa from abusing that position in the retail trade * * *." However, unless language is added to Paragraph IVD expressly protecting retailers' and suppliers' rights to deal directly with each other, the Proposed Final Judgment could be read by Defendant Topa to sanction refusals to deal in circumstances where suppliers deal directly with retailers.

It is imperative that the Proposed Final Judgment expressly prohibit Topa's interference with efforts on the part of retailers to deal directly with suppliers. It is this omission that poses the greatest threat to competition in the Virgin Islands. As one of Defendant's attorneys points out in the Press Release, Exhibit 1: "nor will (the Proposed Final Judgment) change how Topa does business 'because the company is not being asked to anything different from what it has been doing over the past five years.'" One of the things Topa has been doing over the past five years is interfering with direct supplier-retailer relationships. Unless Topa's behavior changes, competition will not be restored to the wholesale distilled spirits market in the Virgin Islands.

Only by recognizing and protecting suppliers' and retailers' rights to deal directly with each other can the discipline of competition be restored. For example, if A.H. Riise is able to purchase from suppliers, there is nothing to prevent the Defendant or other wholesalers from selling to A.H. Riise if they can provide better price/service/delivery than can be obtained from suppliers directly. Presumably the wholesale prices that Defendant and other wholesalers can obtain for providing wholesaler functions will be lower than the prices retailers will be able to obtain directly. Therefore, there will always be a role for the Defendant to play in the Virgin Islands distilled spirits wholesale market, provided the Defendant prices competitively.

VI. The Five Year Duration for the Proposed Final Judgment Is Patently Inadequate

There is probably no other area that more accurately demonstrates Defendant's characterization that the Proposed Final Judgment is the "weakest * * * ever negotiated by the Department of Justice" than the five-year term proposed for the order. Proposed Final Judgment ¶ VIII. Defendant has enjoyed its monopoly power for over a decade. Old habits die hard. Even if A.H. Riise's recommended modifications in the Proposed Final Judgment were to be adopted, such an order should remain in effect for a minimum of ten years to give competitive forces an opportunity to develop and become viable and effective.

Conclusion

The Proposed Final Judgment is not in the public interest, because it is too narrowly drawn and its remedies will not restore competition in the distilled spirits market in the Virgin Islands. The Complaint and the proposed remedies totally overlook Defendant's monopolistic pricing practices. Moreover, the terms of the Proposed Final Judgment which purport to provide fertile soil for potential new entrants to enhance competition, in the words of the Defendant, are "meaningless provisions." Topa Press Release, Exhibit 1.

Price competition will be quickly restored if suppliers are freed to deal directly with retailers. Competitive pricing in this market is in the public interest, because it will boost tourism and tourism-related commerce, thereby enhancing employment and tax revenues in the Virgin Islands. Unfortunately, the Proposed Final Judgment does not promote this goal. It should therefore be rejected.

Conversely, adoption of the Proposed Final Judgment as drafted will permit Defendant's monopoly power to go unchecked. Since, as correctly characterized by Defendant's Press Release, Exhibit 1, Defendant is not required to change its behavior, adoption of the Proposed Final Judgment will legitimize and institutionalize its anti-competitive practices and monopolistic power. A continuation of these practices would be detrimental to suppliers, retailers, the consuming public, and, more generally, the economy of the Virgin Islands, and thus, the public interest. Therefore, the Proposed Final Judgment should be withdrawn and modified as suggested in Exhibit 2.

Respectfully submitted,

Samual H. Seymour

Jonathan R. Moore

Note: Retyped by Department of Justice

TOPA Press Release

Topa Equities (V.I.), Ltd. today announced that it had reached a settlement with the Department of Justice closing down the government's drawn out investigation of acquisitions by Topa of distilled spirits distributors in the early 1980's.

"Topa conceded nothing nor did it acknowledge that these acquisitions had any effect on competition," said Maria Hodge, counsel for Topa. "The case was settled and a proposed consent decree was accepted for one reason—to end the five-year investigation."

Hodge further stated that "the decree would have no effect on Topa's business activities" even though the investigation "had examined all of its on-going business activities. Apparently they couldn't find anything wrong that could be challenged under the antitrust laws except some acquisitions over a decade ago."

According to Ernest Gellhorn, an antitrust lawyer from Washington, DC retained by Topa, "the proposed decree is all bark and no bite." Pointing to the decree's "meaningless provisions that would modify contract terms written by suppliers or that would make supposed scare warehouse space available to new entrants," Gellhorn called "this probably the weakest consent decree ever negotiated by the Department of Justice."

Gellhorn also said that the reason that the Department of Justice was willing to accept this "moral defeat" was that "after combing through ten years of Topa's records and interviewing scores

[4] We have deliberately omitted any analysis of the problem of the scarcity of warehouse space, which is given inordinate attention. Complaint at ¶ 16, Proposed Final Judgment ¶ IV E, CIS ¶ II. Defendant's reference to this issue as "supposed scarce warehouse space" in its Press Release, Exhibit 1, suggests that this issue is be a straw man.

[5] *See* CIS ¶ VI. The only reason that unilateral termination of Defendant's exclusive arrangements with suppliers might "place an unacceptably large burden" on them is if no other wholesaler entered the market, notwithstanding the proposed relief.

of others, the government could not find anything to object to about how Topa conducts its business."

Topa's decision to settle this matter "involves no finding or acknowledgment of any wrong-doing," attorney Hodge emphasized. Nor will it change how Topa does business "because the Company is not being asked to do anything different from what it has been doing over the past five years."

All the government has complained about is that Topa's acquisitions resulted in it being the sole wholesale distributor for major distilled spirits in the U.S. Virgin Islands. "What the government fails to note," according to Ms. Hodge, "is that Topa has been successful because it has served both its suppliers and its customers so well." Nonetheless, "it has accepted this settlement in order to end what has been a significant drain on the company's resources," Hodge said.

Topa owns West Indies Corp. and Bellows International, Ltd. in the U.S. Virgin Islands. "None of the acquisitions we have made in the Virgin Islands have been sought out by us," said Topa Chairman, John Anderson. "In several cases, we were asked to help a failing company, which in turn allowed many employees to keep their jobs. Our only aim has been to be a good employer and a good corporate citizen in the V.I. community and a solid performer for our many quality brands." Topa employees (sic) over 225 employees in the Territory.

For additional information, please call Maria Hodge (809–774–6845).

December _____, 1994

Note: Retyped by Department of Justice. Brackets ("[ ]") substituted by Department of Justice for redlining in the original.

Final Judgment

Plaintiff, United States of America, filed its Complaint on December 7, 1994. Plaintiff and defendant, by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law. This Final Judgment shall not constitute any evidence against, or any admission by, any party with respect to any issue of fact or law. Defendant has agreed to be bound by the provisions of this Final Judgment pending its approval by the Court. Therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law, and upon the consent of the parties, it is hereby ordered, adjudged and decreed as follows:

I

This Court has jurisdiction over the subject matter of this action and each of the parties consenting to this Final Judgment. The Complaint states a claim upon which relief may be granted against defendant under Section 3 of the Sherman Act (15 U.S.C. § 3).

II

As used in this Final Judgment:

A. "Distilled spirits" means liquor products of all types intended for human consumption, including, but not limited to, whiskey, gin, vodka, rum, tequila, brandy, liqueurs and cordials, but excluding wine and malt beverages and non-alcoholic beverages.

B. "Person" means any individual, association, cooperative, partnership, corporation or other business or legal entity.

C. "Virgin Islands" means the Territory of the Virgin Islands of the United States.

D. "Retailer" means any person engaged in the business of purchasing distilled spirits from wholesalers [or suppliers], as defined herein, and reselling them to consumers in establishments located in the Virgin Islands, including such Virgin Islands-located establishments as retail liquor stores, grocery stores, convenience stores, restaurants and hotels.

E. "Supplier" means any licensed manufacturer, distiller or importer of distilled spirits from which defendant or any other wholesaler [or any retailer], as defined herein, purchases distilled spirits or has purchased distilled spirits within one year prior to this Final Judgment.

F. "Wholesaler" means any person holding a wholesaler's license for distilled spirits from the government of the Virgin Islands and who is engaged in the business of purchasing distilled spirits from suppliers and reselling them to other wholesalers or to retailers located in the Virgin Islands.

G. "Topa Equities (V.I.), Ltd." (hereinafter referred to as "Topa") means defendant and its parent (but only to the extent of its effective supervision of, or direct involvement in, defendant's wholesale distribution of distilled spirits in the Virgin Islands), wholesaler subsidiaries, wholesaler affiliates, successors and assigns (excluding any independent purchasers), directors, officers, managers, agents and employees and any other person acting for or on behalf of them.

III

The provisions of this Final Judgment shall apply to Topa and to all other persons in active concert or participation with Topa who shall have received actual notice of this Final Judgment by personal service or otherwise.

IV

Topa is enjoined and restrained from:

A. Taking any action under any contract or under Title 12A, Sections 131 and 132, of the Virgin Islands Code to prevent its suppliers from canceling their distribution arrangements for distilled spirits, whether written or not, with Topa upon thirty days' written notice and appointing another wholesaler in its stead. In the event of such cancellation of distribution arrangements for distilled spirits by a supplier, Topa shall, at the supplier's request, sell back to the supplier, at the prices Topa paid to the supplier to purchase the products, plus storage, handling and transportation costs, as well as all taxes and duties paid by Topa, all distilled spirits that Topa then has in its possession that were purchased by Topa from the supplier and that have not been sold or otherwise committed, and otherwise assist in the orderly disposition of such existing inventory;

[B.] Communicating with any supplier, wholesaler or other person for the purpose or with the effect of urging, compelling, or coercing any supplier or wholesaler to refrain from selling distilled spirits to any retailer in the Virgin Islands. Nothing in this paragraph of Section IV shall be construed to inhibit Topa from negotiating, entering into, and adhering to a contract dealing with a supplier on an exclusive basis; provided, that such designation shall not directly or indirectly prevent any retailer in the Virgin Islands from acquiring distilled spirits directly from any supplier.]

[C.] Entering into with, of enforcing or attempting to enforce against, any officer of Topa, any written contract, agreement or covenant not to compete in the distilled spirits industry in the Virgin Islands; and countering an offer of employment to any officer of Topa from any wholesaler with which a Topa supplier has entered into any arrangement to distribute its distilled spirits in the Virgin Islands. Otherwise, Topa may give its officers raises, bonuses and promotions in the ordinary course of business, counter offers of employment from distributors not engaged in the distribution of distilled spirits and take action against its former officers for the unlawful disclosure of trade secrets;

[D.] Making unsolicited offers of employment to any executive employee of any wholesaler with which a supplier has entered into any arrangement to distribute its distilled spirits in the Virgin Islands for two years following the opening for business of such wholesaler, unless such employee has previously resigned from or been terminated by such wholesaler;

[E.] Refusing to deal with any retailer because that retailer deals with another wholesaler [or directly with a supplier];

[F.] Intentionally preventing, or attempting to prevent, any wholesaler with which a supplier has entered into any arrangement to distribute its distilled spirits in the Virgin Islands from obtaining warehouse space for the distribution of distilled spirits. Topa may, in the ordinary course of business, seek, retain and acquire warehouse space to meet its ordinary and necessary business requirements;

[G.] Directly or indirectly merging or consolidating with, or acquiring securities of, any other wholesaler without obtaining the prior written consent of the Antitrust Division of the Department of Justice; and

[H.] Acquiring, without obtaining the prior written consent of the Antitrust Division of the Department of Justice, either any quantity in excess of 5% of a wholesaler's assets, excluding inventory, applied to the wholesale distribution of distilled spirits in the Virgin Islands, or any quantity in excess of 30% of a wholesaler's inventory of distilled spirits.

Within thirty days of the entry of this Final Judgment, Topa shall cause to be delivered to all suppliers who have contracts then in existence with Topa, written or otherwise, by certified letter or its equivalent, a copy of this Final Judgment.

V

For the purpose of determining or securing compliance with this Final Judgment and subject to any recognized privilege, from time to time:

A. Duly authorized representatives of the Department of Justice shall, upon written request by the Attorney General or by the Assistant Attorney General in charge of the Antitrust Division, and on reasonable written notice to defendant made to its principal office in Los Angeles, California, be permitted:

1. Access during the office hours of defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of defendant, which may have counsel present, relating to any of the matters contained in the Final Judgment; and

2. Subject to the reasonable convenience of defendant and without restraint or interference from it, to interview officers, employees and agents of defendant, any of whom, together with defendant, may have counsel present, regarding any such matters.

B. Upon written request by the Attorney General or the Assistant Attorney General in charge of the Antitrust Division made to defendant's principal office in Los Angeles, California, defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment, as may be requested.

C. No information obtained by the means provided in this Final Judgment shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

D. If at the time information or documents are furnished by defendant to plaintiff, defendant represents and identifies in writing the material in any such information or documents to be that to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure or as otherwise provided by statute, and the defendant marks each pertinent page of such material, "Subject to Claim of Protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," or as otherwise provided by statute, then ten days' notice shall be given by the United States to defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which defendant is not a party.

VI

Topa shall:

A. Establish and implement a plan for monitoring compliance by its officers, directors, agents, managers and other employees with the terms of the Final Judgment; and

B. File with this Court and serve upon plaintiff, within ninety days after the date of entry of this Final Judgment, an affidavit as to the fact and manner of its compliance with this Final Judgment.

VII

Jurisdiction is retained by this Court for the purpose of enabling either of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or modification of any of the provisions hereof, for the enforcement of compliance herewith and for the punishment of violations hereof.

VIII

This Final Judgment will expire on the [delete "fifth"] [tenth] anniversary of its date of entry.

IX

Entry of this Final Judgment is in the public interest.

Dated:

United States District Judge, District of the Virgin Islands.

[FR Doc. 95–12561 Filed 5–26–95; 8:45 am]

BILLING CODE 4410–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (95–032)]

Intent to Grant a Partially Exclusive License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant a patent license.

SUMMARY: NASA hereby gives notice of intent to grant ICI Composites Inc., 2055 East Technology Circle, Tempe, AZ 85284; and Imitec, Inc., 990 Maxon road, Schenectady, NY 12308, a partially exclusive license to practice the invention protected by the U.S. Patent Application Numbers 08/209,512 entitled "PHENYLETHNYL TERMINATED IMIDE OLIGOMERS," which was filed on March 3, 1994; and 08/330,773 entitled "IMIDE OLIGOMERS ENDCAPPED WITH PHENYLETHYNYL PHTHALIC ANHYDRIDES AND POLYMERS THEREFORM," which was filed on October 28, 1994, by the United States of America as represented by the Administrator of the National Aeronautics and Space Administration.

The partially exclusive license will contain appropriate terms and conditions to be negotiated in accordance with the Department of Commerce Licensing Regulations (37 CFR Part 404). NASA will negotiate the final terms and conditions and grant the license unless, within 60 days of the date of this notice, the Director of Patent Licensing receives written objections to the grant, together with supporting documentation. The Director of Patent Licensing will review all written responses to the notice and then

recommend to the Associate General Counsel (Intellectual Property) whether to grant the license.

DATES: Comments to the notice must be received by July 31, 1995.

ADDRESSES: National Aeronautics and Space Administration, Code GP, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Harry Lupuloff, NASA, Director of Patent Licensing at (202) 358–2041.

Dated: May 19, 1995.

Edward A. Frankle,

General Counsel.

[FR Doc. 95–13043 Filed 5–26–95; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL SCIENCE FOUNDATION

Collection of Information Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting an expedited notice of information collection that will affect the public. Interested persons are invited to submit comments by June 30, 1995. Copies of materials may be obtained at the NSF address or telephone number shown below.

(A) *Agency Clearance Officer.* Herman G. Fleming, Division of Contracts, Policy and Oversight, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, or by telephone (703) 306–1243. Comments may also be submitted to:

(B) *OMB Desk Officer.* Office of Information and Regulatory Affairs, ATTN: Jonathan Winer, Desk Officer, OMB, 722 Jackson Place, Room 3208, NEOB, Washington, DC 20503.

Title: Education and Human Resources Impact Database.

Affected Public: State or local governments.

Respondents/Reporting Burden: 19 respondents: average 110 hours per response.

Abstract: An Integrated data system that will contain data for all programs managed by the NSF's Directorate for Education and Human Resources. Data will be used to support program studies and evaluations and also for effective program assessments and evaluations throughout the Directorate.

Dated: May 24, 1995.

Herman G. Fleming,

Reports Clearance Officer.

[FR Doc. 95–13129 Filed 5–26–95; 8:45 am]

BILLING CODE 7555–01–M

Notice of Permit Applications Received Under the Antarctic Conservation Act

AGENCY: Notice is hereby given that the National Science Foundation (NSF) has received a waste management permit application from Mr. Skip Novak, owner and operator of the *Pelagic* (a 54-foot steel sloop), for management of materials and wastes for camping and climbing activities in the Antarctic Peninsula, submitted to NSF pursuant to regulations issued under the Antarctic Conservation Act of 1978.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application on or before June 29, 1995. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

FOR FURTHER INFORMATION CONTACT: Robert S. Cunningham or Peter R. Karasik at the above address or (703) 306–1031.

SUPPLEMENTARY INFORMATION: NSF's Antarctic Waste Regulation, 45 CFR Part 671, requires all U.S. citizens and entities to obtain a permit for the use or release of banned substances or designated pollutants in Antarctica, and for the release of waste in Antarctica. NSF has received a permit application under this Regulation which covers materials and waste management associated with two planned expeditions per year by the *Pelagic,* which accommodates a total of eight people on board, for camping and climbing activities along the Antarctic peninsula. The permit applicant is: Mr. Skip Novak, PELAGIC, 92 Stachell Lane, Hamble, Hampshire, S031 4HL ENGLAND. The proposed duration of the permit is from December 27, 1995 through December 26, 2000.

Activity for Which Permit Requested

The PELAGIC is planned to make two 35-day trips per year to the Antarctic Peninsula. Passengers will be making one to two day outings on shore at various landing locations and will be using gasoline or kerosene in camping stoves during camping and climbing trips. All garbage including food wastes, plastics, tins, and bottles will be packed out of Antarctica and returned to South America on the ship. Conditions of the permit will include requirements to avoid Antarctic Specially Protected Areas (SPAs) and Sites of Special Scientific Interest (SSSIs), educate participants with the requirements of the Antarctic Conservation Act (ACA), report on the removal of materials and any accidental releases, and manage human waste in accordance with antarctic waste regulations.

Robert S. Cunningham,

NEPA Compliance Manager, Office of Polar Programs, National Science Foundation.

[FR Doc. 95–13056 Filed 5–26–95; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–424 and 50–425]

Georgia Power Company, et al; Vogtle Electric Generating Plant, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of its regulations to Facility Operating License Nos. NPF–68 and NPF–84, issued to Georgia Power Company, et al. (the licensee) for operation of the Vogtle Electric Generating Plant (Vogtle), Units 1 and 2, located at the licensee's site in Burke County, Georgia.

Environmental Assessment

Identification of Proposed Action

The proposed action would grant an exemption from certain requirements of 10 CFR 50.60, "Acceptance Criteria for Fracture Prevention Measures for Light-Water Nuclear Power Reactors for Normal Operation," to allow application of an alternate methodology to determine the low temperature overpressure protection (LTOP) setpoint for Vogtle. The proposed alternate methodology is consistent with guidelines developed by the American Society of Mechanical Engineers (ASME) Working Group on Operating Plant Criteria (WGOPC) to define pressure limits during LTOP events that avoid certain unnecessary operational restrictions, provide adequate margins against failure of the reactor pressure vessel, and reduce the potential for unnecessary activation of pressure-relieving devices used for LTOP. These guidelines have been incorporated into Code Case N–514, "Low Temperature Overpressure Protection," that has been approved by the ASME Code Committee. The content of this Code case has been incorporated into Appendix G of Section XI of the ASME Code and published in the 1993 Addenda to Section XI. The NRC staff is revising 10 CFR 50.55a that will

endorse the 1993 Addenda and Appendix G of Section XI into the regulations.

The philosophy used to develop Code Case N–514 guidelines is to ensure that the LTOP limits are still below the pressure/temperature (P/T) limits for normal operation, but allow the pressure that may occur with activation of pressure-relieving devices to exceed the P/T limits, provided acceptable margins are maintained during these events. This philosophy protects the pressure vessel from LTOP events, and still maintains the Technical Specification P/T limits applicable for normal heatup and cooldown in accordance with Appendix G to 10 CFR Part 50 and Sections III and XI of the ASME Code.

The proposed action is in accordance with the licensee's application for an exemption to 10 CFR 50.60 dated October 3, 1994, as supplemented by letter dated March 1, 1995.

The Need for the Proposed Action

Section 50.60 states that all light-water nuclear power reactors must meet the fracture toughness and material surveillance program requirements for the reactor coolant pressure boundary as set forth in Appendices G and H to 10 CFR part 50. Appendix G to 10 CFR Part 50 defines P/T limits during any condition of normal operation, including anticipated operational occurrences and system hydrostatic tests, to which the pressure boundary may be subjected over its service lifetime. Section 50.60(b) specifies that alternatives to the described requirements in Appendices G and H to 10 CFR part 50 may be used when an exemption is granted by the Commission under 10 CFR 50.12.

To prevent transients that would produce pressure excursions exceeding the Appendix G P/T limits while the reactor is operating at low temperatures, the licensee installed an LTOP system. The LTOP system includes pressure relieving devices in the form of Power-Operated Relief Valves (PORVs) that are set at a pressure low enough that if a transient occurred while the coolant temperature is below the LTOP enabling temperature, they would prevent the pressure in the reactor vessel from exceeding the Appendix G P/T limits. To prevent these PORVs from lifting as a result of normal operating pressure surges (e.g., reactor coolant pump starting, and shifting operating charging pumps) with the reactor coolant system in a water solid condition, the operating pressure must be maintained below the PORV setpoint.

In addition, in order to prevent cavitation of a reactor coolant pump, the operator must maintain a differential pressure across the reactor coolant pump seals. Therefore, the licensee must operate the plant in a pressure window that is defined as the difference between the minimum required pressure to start a reactor coolant pump and the operating margin to prevent lifting of the PORVs due to normal operating pressure surges. The licensee's proposed LTOP analysis includes changes to account for the non-conservatism identified in Westinghouse Nuclear Safety Advisory Letter 93005A and Information Notice 93–58. The new analysis accounts for the static head due to elevation differences and the dynamic head effect of four reactor coolant pumps (RCP) operation. By including these factors and using the Appendix G safety margins, the licensee determined that the operating margin to the PORV setpoint would be depleted at approximately 120°F for Unit 1 and 145°F for Unit 2. Therefore, operating with these limits could result in the lifting of the PORVs and cavitation of the RCPs during normal operation.

The licensee proposed that in determining the PORV setpoint for LTOP events for Vogtle Units 1 and 2, the allowable pressure be determined using the safety margins developed in an alternate methodology, in lieu of the safety margins required by Appendix G to 10 CFR Part 50. Designated Code Case N–514, the proposed alternate methodology is consistent with guidelines developed by the American Society of Mechanical Engineers (ASME) Working Group on Operating Plant Criteria to define pressure limits during LTOP events that avoid certain unnecessary operational restrictions, provide adequate margins against failure of the reactor pressure vessel, and reduce the potential for unnecessary activation of pressure-relieving devices used for LTOP. Code Case N–514, "Low Temperature Overpressure Protection," has been approved by the ASME Code Committee. The content of his Code case has been incorporated into Appendix G of Section XI of the ASME Code and published in the 1993 Addenda to Section XI. The NRC staff is revising 10 CFR 50.55a, which will endorse the 1993 Addenda and Appendix G of Section XI into the regulations.

An exemption from 10 CFR 50.60 is required to use the alternate methodology for calculating the maximum allowable pressure for the LTOP setpoint. By letter dated October 3, 1994, as supplemented by letter dated March 1, 1995, the licensee requested an exemption from 10 CFR 50.60 for this purpose.

In addition to requesting the exemption from 10 CFR 50.60, the licensee proposed an amendment to the Technical Specifications revising the LTOP analysis. The new analysis removes the non-conservatism as described previously. The amendment will be evaluated separate from this exemption request.

Environmental Impacts of the Proposed Action

Appendix G of the ASME Code requires that the P/T limits be calculated: (a) Using a safety factor of 2 on the principal membrane (pressure) stresses, (b) assuming a flaw at the surface with a depth of one-quarter (¼) of the vessel wall thickness and a length of six (6) times its depth, and (c) using a conservative fracture toughness curve that is based on the lower bound of static, dynamic, and crack arrest fracture toughness tests on material similar to the McGuire reactor vessel material.

In determining the PORV setpoint for LTOP events, the licensee proposed to use safety margins based on an alternative methodology consistent with the proposed ASME Code Case N–514 guidelines. The ASME Code Case N–514 allows determination of the setpoint for LTOP events such that the maximum pressure in the vessel would not exceed 110% of the P/T limits of the existing ASME Appendix G requirements. This results in a safety factor of 1.8 on the principal membrane stresses. All other factors, including assumed flaw size and fracture toughness, remain the same. Although this methodology would reduce the safety factor on the principal membrane stresses, use of the proposed criteria will provide adequate margins of safety to the reactor vessel during LTOP transients and will satisfy the underlying purpose of 10 CFR 50.60 for fracture toughness requirements.

The change will not increase the probability or consequences of accidents, no changes are being made in the type of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed change involves use of more realistic safety margins for determining the PORV setpoint during LTOP events. It does not affect non-radiological plant

effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemption.

Alternative to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action did not involve the use of any resources not previously considered in the Final Environmental Statement related to operation of the Vogtle Electric Generating Plant.

Agencies and Persons Consulted

In accordance with its stated policy, on May 23, 1995, the staff consulted with the Georgia State official, Mr. James L. Setser of the Georgia Department of Natural Resources, regarding the environmental impact of the proposed action. The state official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to this action, see the licensee's letter dated October 3, 1994, as supplemented by letter dated March 1, 1995, which are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the local public document room located at the Burke County Library, 412 Fourth Street, Waynesboro, Georgia 30830.

Dated at Rockville, Maryland, this 22nd day of May 1995.

For the Nuclear Regulatory Commission.

Herbert N. Berkow,

Director, Project Directorate II–2, Division of Reactor Projects—I/II Office of Nuclear Reactor Regulation.

[FR Doc. 95–13103 Filed 5–26–95; 8:45 am]

BILLING CODE 7590–01–M

Revelw of NRC Inspection Report Content, Format, and Style

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for public comment.

SUMMARY: The Nuclear Regulatory Commission (NRC) is revising its procedures on inspection reports and requests public comment on whether the content, format and style of inspection reports as currently issued are appropriate, and how they may be improved.The NRC is soliciting comments from interested public interest groups, the regulated industry, States, and concerned citizens. Comments are requested from both reactor and materials licensees. This request is intended to assist the NRC in making the inspection report a more effective tool for communicating with the regulated industry and the public, and in meeting the NRC's responsibility for public health and safety.

DATES: The comment period expires June 29, 1995. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Submit written comments to: David Meyers, Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publication Services, Office of Administration, Mail Stop: T–6D–59, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. on Federal workdays. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Laban Coblentz, Mail Stop: O–12E–4, Inspection Program Branch, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 415–2619.

SUPPLEMENTARY INFORMATION:

Background

The Office of Nuclear Reactor Regulation (NRR) has begun a review of the content, format, and style of NRC inspection reports, as a preliminary step to revising internal inspection report procedures. The review is being led by Laban Coblentz, Inspection Program Branch, NRR, and is being supplemented by contacts in other NRC Headquarters offices and the regions.

This review will attempt, through discussion, review, and consensus-building, to define the characteristics of the ideal NRC inspection report, and to revise internal procedures to produce reports meeting those characteristics. As such, it involves understanding the results of other assessments, learning from inspection report users, and evaluating the interfaces of the report with other agency processes and systems. The scope of the review applies only to documenting inspection results, and does not encompass the focus, scope, or frequency of inspections.

NRC inspection reports are primarily designed to communicate the results of an NRC inspection to the licensee inspected. They:

(1) Briefly describe the areas inspected, with more detail given to support more significant findings;

(2) Give general conclusions about the effectiveness of the Program or activity inspected;

(3) Provide a basis for other NRC action, including Enforcement actions, Plant Performance Reviews, Systematic Assessments of Licensee Performance (SALPs), and other assessments.

In addition to the primary addressee, inspection reports communicate relevant information on licensee performance to other NRC offices, other licensees, public interest groups, Congressional oversight committees, other Federal agencies, State and local governments, and the public. Unless exempted from pubic disclosure (e.g., because of containing proprietary or safeguards information), copies of NRC inspection reports are placed in the NRC Public Document Room (PDR).

Scope of the Review

This review will attempt to approach the NRC inspection report from two perspectives. The first is that of the initial readers—primarily the licensee to whom the report is addressed, but also the other readers listed above. This viewpoint should highlight questions such as, "Is the message clear?" "Is the information presented in a logical, consistent manner?" "Is the tone appropriate?" etc.

The second viewpoint is that of subsequent users (e.g., a manager preparing a SALP report, an inspector scanning old reports for past problems, a group of local citizens reviewing a licensee's history of issues, or an external agency evaluating the effectiveness of NRC inspection in a particular area). This viewpoint should emphasize the ease of information retrieval, consistency of format from report to report, effective report

summaries, accurate and usable cross-references, and appropriate level of detail.

Additional detail on the scope of the review is given in the questions below. Public comments are sought on these issues to assist the NRC in its review. Although the NRC is interested in as many comments as possible, commenters are not obligated to and need not address every issue.

In providing comments, please key your responses to the number of the applicable question (e.g., "Response to A.3"). Section D should be used for additional or miscellaneous comments. Comments should be as specific as possible. The use of examples is encouraged.

Comments are requested on the following specific issues:

A. Inspection Report Content

1. Focus on safety:

a. Are inspection reports appropriately focused on safety issues? Should report writers be required to articulate the safety significance of each finding?

b. Is the level of detail for a given issue generally commensurate with the significance of that issue?

c. What threshold of significance should be used to determine whether or not an observation should be documented in the inspection report? Do existing reports generally use an appropriate threshold of significance?

d. Are reports, as currently written, too negative in their focus? Should "equal time" be given to discussions of licensee strengths and successes? If so, what criteria should be used to include such findings in inspection reports?

2. Supporting Details:

a. Do inspection reports generally contain an appropriate level of detail to describe technically complex issues?

b. What level of detail should be included for describing an event when that event has already been described separately in a licensee event report?

c. What level of detail should be used to describe inspection activities when little or no findings have resulted from those activities?

d. What are the costs and benefits of including, as enclosures to the report, all referenced material to support report findings (e.g., licensee procedures, supporting calculations, or independent studies)?

3. Enforcement Issues:

a. What information should be included in inspection reports to support taking enforcement actions?

b. Are reports generally clear in stating the circumstances of the violation (e.g., what requirement was violated, how it was violated, who identified it, etc.)?

c. Is sufficient detail generally given to substantiate enforcement-related conclusions?

d. Should all minor and non-cited violations be documented in inspection reports? What threshold should be used to determine the significance of compliance items that must be documented?

4. Clear Conclusions:

a. Are report conclusions generally well-supported by facts? Is the progression of logic generally clear?

b. Is a conclusion statement always necessary for each section of the report (e.g., when limited observations or findings were made in a given area)?

B. Inspection Report Format

1. Consistency:

a. Should inspection report formats be consistent from region to region? What benefits or problems would result from adopting a standardized report outline?

b. What are the advantages and disadvantages of combined or integrated inspection reports (e.g., one report per six weeks, per reactor site, covering all areas)?

c. When is the use of "boilerplate" appropriate (i.e., standard phrases or sentences used from report to report to describe similar inspection methods, purposes, or conclusions)? Should more or less boilerplate be used?

2. Readability:

a. What features increase or decrease a report's readability or effectiveness in communication?

b. Do you prefer a narrative or a "bulletized" appearance?

3. Usefulness:

a. What features increase or decrease the efficiency of later efforts to retrieve information from a report (e.g., for SALP reviews, regional studies, or external reviews)?

b. Are there particular parts of the report that could be deleted without decreasing the report quality or detracting from its function?

4. Report Summaries: What information should be included in a report summary? How should it be presented?

5. Cover Letters: How might cover letters be modified to express more clearly the level of concern, or to better convey a particular performance message to a licensee?

C. Inspection Report Style

1. Style variations: In what ways do variations in writing style influence the effectiveness of inspection reports?

2. NRC style: Are there particular features of standard NRC style (e.g., consistent use of past tense or third-person form) that make inspection reports more readable? Less readable?

3. Tone: Are inspection reports generally written in an appropriate tone?

4. Grammatical Construction: Are inspection reports generally acceptable in sentence and paragraph construction? Do they give evidence of careful proofreading?

D. Additional Comments

In addition to the above specific issues, commenters are invited to provide any other views on NRC inspection reports that could assist the NRC in improving their effectiveness.

Dated at Rockville, Maryland, this 23rd day of May 1995.

For the Nuclear Regulatory Commission.

Richard W. Borchardt,

Chief, Inspection Program Branch, Directorate for Inspection & Support Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 95–13104 Filed 5–26–95; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Nuclear Waste; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 75th meeting on June 21 and 22, 1995, in Room T–2B3, at 11545 Rockville Pike, Rockville, Maryland.

The meeting will be open to public attendance, with the exception of portions that may be closed to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy pursuant to 5 U.S.C. 552b(c)(6).

The agenda for this meeting shall be as follows:

Wednesday, June 21, 1995–8:30 a.m. until 6 p.m. and

Thursday, June 22, 1995–8:30 a.m. until 4 p.m.

During this meeting the Committee plans to consider the following:

A. *Final PRA Policy Statement*—The Committee will discuss the NRC staff's proposed Probabilistic Risk Assessment Policy Statement and Implementation Plan with representatives of the NRC staff.

B. *Technical Site Suitability Process*—Representatives from the U.S. Department of Energy (DOE) will discuss the major elements of the technical site suitability process being applied at the proposed high-level waste repository at Yucca Mountain, Nevada.

C. *Seismic Hazard Analyses*—The Committee will review the NRC staff and Center for Nuclear Waste

Regulatory Analyses' strategy for evaluating the DOE's seismic hazard analyses program. This review will include discussions of the use of the SEISMO–1 code, related key technical uncertainties, and the status of topical reports under review.

D. *Meeting with the Director, NRC's Division of Waste Management, Office of Nuclear Material Safety and Safeguards*—The Director will provide information to the Committee on the status of current waste management issues, which will include the progress on the integration of key technical uncertainties, the status of DOE technical basis report reviews, and the results of alcove tests at the proposed Yucca Mountain high-level waste repository.

E. *Preparation of ACNW Reports*—The Committee will discuss proposed reports including regulatory issues on low-level-radioactive waste performance assessment, and Seismic Hazard Analyses for the proposed high-level waste repository at Yucca Mountain, Nevada. Additional topics will be considered as time permits.

F. *Use of Expert Judgment*—The Committee will hear presentations by and hold discussions with the NRC staff on draft technical guidance on the use of expert judgment in performance assessment for licensing a radioactive waste repository.

G. *Recent Report by the National Academy of Sciences*—The Committee will hold discussions with members of the Academy and their staff on a recent Academy report on the Ward Valley, California low-level-waste disposal site.

H. *Committee Activities/Future Agenda*—The Committee will consider topics proposed for future consideration by the full Committee and Working Groups. The Committee will also discuss ACNW-related activities of individual members. The Committee will elect officers for the next twelve months.

I. *Miscellaneous*—The Committee will discuss miscellaneous matters related to the conduct of Committee activities and organizational activities and complete discussion of matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on October 7, 1994 (59 FR 51219). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify the ACNW Executive Director, Dr. John T. Larkins, as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the ACNW Executive Director prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACNW Executive Director if such rescheduling would result in major inconvenience.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the ACNW Executive Director, Dr. John T. Larkins (telephone 301/415–7360), between 7:30 a.m. and 4:15 p.m. EDT.

Dated: May 23, 1995.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 95–13105 Filed 5–26–95; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Board Meeting: Waste Isolation Strategy, Thermal Management Strategy, the Engineered Barrier System

Pursuant to its authority under section 5051 of Public Law 100–203, the Nuclear Waste Policy Amendments Act of 1987, the Nuclear Waste Technical Review Board will hold its summer meeting on July 11–12, 1995, in Salt Lake City, Utah. The meeting will be held at the Little America Hotel, 500 South Main Street, Salt Lake City, Utah 84101; (Tel) 801–363–6781; (Fax) 801–596–5911. The meeting is open to the public and will begin at 8:30 a.m. both days. Presentations during the meeting will focus on the Department of Energy's (DOE) advanced conceptual design for a potential deep geologic repository for spent nuclear fuel and defense high-level radioactive waste at Yucca Mountain, Nevada; new radionuclide release standards for Yucca Mountain (based on the National Academy of Sciences studies); and updates on environmental impact statement scoping studies for the DOE's high-level nuclear waste program and exploratory facility construction at Yucca Mountain (including tunnel boring machine operations). The Board also will hear about the annotated outline being developed by the DOE for license application to construct a repository, should the Yucca Mountain site be found suitable.

Time will be set aside on the agenda for comments and questions from the public. To ensure that everyone wishing to speak is provided time to do so, the Board encourages those who have comments to sign the Public Comment Register, which will be located at the sign-in table. Those signing up are advised that, depending on the number of people wishing to speak, a speaking limit may have to be set on the length of individual remarks. However, written comments of any length may be submitted for the record.

The Nuclear Waste Technical Review Board was created by Congress in the Nuclear Waste Policy Amendments Act of 1987 to ealuate the technical and scientific validity of activities undertaken by the DOE in its program to manage the disposal of the nation's spent nuclear fuel and defense high-level waste. In that same legislation, Congress directed the DOE to characterize a site at Yucca Mountain, Nevada, for its suitability as a potential location for a permanent repository for the disposal of that waste.

Transcripts of the meeting will be available on computer disk or on a library-loan basis in paper format from Davonya Barnes, Board staff, beginning September 6, 1995. For further information, contact Frank Randall, External Affairs, 1100 Wilson Boulevard, Suite 910, Arlington, Virginia 22209; (Tel) 703–235–4473; (Fax) 703–235–4495.

Dated: May 24, 1995.

William Barnard,

Executive Director, Nuclear Waste Technical Review Board.

[FR Doc. 95–13127 Filed 5–26–95; 8:45 am]

BILLING CODE 6820–AM–M

OFFICE OF PERSONNEL MANAGEMENT

Notice of Request for Reclearance of OPM Form 2809

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces a request for a reclearance of an information collection. OPM Form 2809, Health Benefits Registration Form, is used by annuitants and former spouses to elect, cancel, or change health benefits enrollment during periods other than open season.

Approximately 34,800 OPM Form 2809's are completed annually. We estimate that it takes 45 minutes to fill out the form. The annual burden is 26,100 hours.

For copies of this proposal, contact Doris R. Benz on (703) 908–8464.

DATES: Comments on this proposal should be received on or before June 29, 1995.

ADDRESSES: Send or deliver comments to—

Lorraine E. Dettman, Retirement and Insurance Service, Operations Support Division, U.S. Office of Personnel Management, 1900 E. Street, NW, Room 3349, Washington, DC 20415

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW, Room 10235, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Mary Beth Smith-Toomey, Team Leader, Forms Analysis and Design (202) 606–0623.

U.S. Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

[FR Doc. 95–13057 Filed 5–26–95; 8:45 am]

BILLING CODE 6325–01–M

[OPM Form 2809–EZ1]

Notice of Request for Review of a Revised Information Collection

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces a request for review of a revised information collection. OPM Form 2809–EZ1, Enrollment Change and Brochure Request, is used only at Open Season to request an enrollment change, insurance plan brochures and other information materials. If OPM Form 2809–EZ1 is used to request plan brochures, an OPM Form 2809–EZ2 is furnished to the enrollee for use if a plan change is desired.

Approximately 74,200 OPM Forms 2809–EZ1 are completed annually. Each form takes approximately 30 minutes to complete. The annual burden is 37,100 hours.

For copies of this proposal, contact Doris R. Benz on (703) 908–8564.

DATES: Comments on this proposal should be received on or before June 29, 1995.

ADDRESSES: Send or deliver comments to—

Lorraine E. Dettman, Chief, Retirement and Insurance Group, Operations Support Division, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3349, Washington, DC 20415

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Mary Beth Smith-Toomey, Management Services Division, (202) 606–4025.

U.S. Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

[FR Doc. 95–13060 Filed 5–26–95; 8:45 am]

BILLING CODE 6325–01–M

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A and B, and placed under Schedule C in the excepted service, as required by Civil Service Rule VI, Exceptions From the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Patricia Paige, (202) 606–0830.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR part 213 on April 28, 1995 (60 FR 21012). Individual authorities established or revoked under Schedules A and B and established under Schedule C between April 1, 1995, and April 30, 1995, appear in the listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30, will also be published.

Schedule A

No Schedule A authorities were established or revoked during April 1995.

Schedule B

No Schedule B authorities were established or revoked during April 1995.

Schedule C

The following Schedule C positions were established during April 1995.

Consumer Product Safety Commission

Special Assistant to the Chairman. Effective April 13, 1995.

Special Assistant to the Chairman. Effective April 28, 1995.

Staff Assistant to the Commissioner. Effective April 28, 1995.

Department of Agriculture

Confidential Assistant to the Executive Assistant to the Secretary. Effective April 13, 1995.

Deputy Press Secretary to the Director, Office of Public Affairs. Effective April 13, 1995.

Confidential Assistant to the Secretary of Agriculture. Effective April 21, 1995.

Department of the Air Force (DOD)

Secretary (Steno/OA) to the General Counsel of the Air Force. Effective April 21, 1995.

Department of the Army (DOD)

Staff Assistant to the Secretary of the Army. Effective April 21, 1995.

Confidential Assistant to the Assistant Secretary of the Army (Manpower and Reserve Affairs). Effective April 24, 1995.

Department of Commerce

Confidential Assistant to the Assistant Secretary and Commissioner of Patents and Trademarks. Effective April 4, 1995.

Special Assistant to the Director Effective April 12, 1995.

Special Assistant to the Director, General of the U.S. and Foreign Commercial Service. Effective April 14, 1995.

Special Assistant to the Deputy Under Secretary for Export Administration. Effective April 14, 1995.

Deputy Director of Advance to the Deputy Director of External Affairs. Effective April 14, 1995.

Press Secretary to the Secretary of Commerce. Effective April 14, 1995.

Confidential Assistant to the Press Secretary. Effective April 14, 1995.

Special Assistant to the Director, Office of Sustainable Development and Intergovernmental Affairs. Effective April 14, 1995.

Confidential Assistant to the Deputy Director, Office of Public Affairs. Effective April 14, 1995.

Confidential Assistant to the Press Secretary. Effective April 14, 1995.

Confidential Assistant to the Press Secretary. Effective April 14, 1995.

Deputy Director to the Director, Office of Public Affairs. Effective April 14, 1995.

Deputy Press Secretary to the Press Secretary. Effective April 14, 1995.

Confidential Assistant to the Press Secretary. Effective April 14, 1995.

Department of Defense

Secretary (OA) to the Inspector General, Department of Defense. Effective April 21, 1995.

Special Assistant to the Inspector General. Effective April 21, 1995.

Confidential Assistant to the Assistant to the Secretary of Defense for Public Affairs. Effective April 24, 1995.

Personal and Confidential Assistant to the Director Operational Test and Evaluation. Effective April 25, 1995.

Paralegal Specialist to the Judge, U.S. Court of Appeals for Armed Forces. Effective April 26, 1995.

Paralegal Specialist to the Judge, U.S. Court of Military Appeals. Effective April 26, 1995.

Department of Education

Director, Congressional Affairs Staff to the Assistant Secretary for Legislation and Congressional Affairs. Effective April 12, 1995.

Confidential Assistant to the Senior Advisor on Education Reform. Effective April 12, 1995.

Special Assistant to the Assistant Secretary, Office of Special Education and Rehabilitative Services. Effective April 13, 1995.

Special Assistant to the Assistant Secretary, Office of Postsecondary Education. Effective April 14, 1995.

Department of Energy

Special Assistant to the Assistant Secretary for Energy and Renewable Energy. Effective April 7, 1995.

Department of Health and Human Services

Speechwriter to the Director of Speechwriting. Effective April 14, 1995.

Department of Housing and Urban Development

Field Operations Officer to the Secretary's Representative. Effective April 14, 1995.

Special Assistant to the Deputy Assistant Secretary for Distressed and Troubled Housing. Effective April 24, 1995.

Department of Justice

Confidential Assistant to the Assistant Attorney General. Effective April 3, 1995.

Deputy Director, Office of Public Liaison and Intergovernmental Affairs to the Assistant Attorney General for the Office of Legislative Affairs. Effective April 14, 1995.

Legislative Liaison Officer to the Director of Congressional Relations. Effective April 14, 1995.

Department of Labor

Special Assistant to the Assistant Secretary for the Office of Congressional and Intergovernmental Affairs. Effective April 7, 1995.

Secretary's Representative to the Associate Director. Effective April 13, 1995.

Department of the Navy (DOD)

Staff Assistant to the Assistant Secretary of Navy (Manpower and Reserve Affairs). Effective April 21, 1995.

Department of State

Legislative Management Officer to the Assistant Secretary for Legislative Affairs. Effective April 7, 1995.

Department of Transportation

Associate Director for Speechwriting and Research to the Assistant to the Secretary and Director of Public Affairs. Effective April 14, 1995.

Congressional Liaison Officer to the Director, Office of Congressional Affairs. Effective April 21, 1995.

Department of the Treasury

Policy Advisor to the Deputy Under Secretary, Government Financial Policy. Effective April 13, 1995.

Special Assistant to the Chief of Staff. Effective April 13, 1995.

Director, Office of Public Correspondence to the Executive Secretary. Effective April 27, 1995.

Federal Maritime Commission

Administrative Assistant to the Counsel to the Chairman. Effective April 3, 1995.

Interstate Commerce Commission

Confidential Assistant to the Commissioner. Effective April 21, 1995.

Confidential Assistant to the Chairman. Effective April 21, 1995.

National Endowment for the Arts

Special Assistant to the Chairman. Effective April 25, 1995.

Office of Management and Budget

Executive Assistant to the Director, Office of Management and Budget. Effective April 25, 1995.

Small Business Administration

Regional Administrator, Region V, Chicago, IL, to the Administrator, Small Business Administration. Effective April 14, 1995.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., P.218.

Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

[FR Doc. 95–13059 Filed 5–26–95; 8:45 am]

BILLING CODE 6325–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences (GSP); Announcement of the Competitive Need Limits and Per Capita GNP Limits for 1994; Announcement of the Countries/Products That Exceeded the Competitive Need Limits in 1994

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of the competitive need limits and per capita GNP limits for 1994 and notice of the countries/products that will lose GSP privileges on July 1, 1995 because they exceeded the competitive need limits in 1994.

SUMMARY: This notice announces the competitive need limits and the per capita GNP limits for 1994. It also lists the countries/products that will become ineligible for GSP on July 1, 1995 because they exceeded the competitive need limits in 1994.

FOR FURTHER INFORMATION CONTACT: GSP Subcommittee, Office of the United States Trade Representative, 600 17th Street, NW., Room 518, Washington, DC 20506. The telephone number is (202) 395–6971.

SUPPLEMENTARY INFORMATION:

I. Competitive Need Limits

Section 504(c) of the Trade Act of 1974 ("1974 Act") (19 U.S.C. 2464(c)) provides that any beneficiary developing country that exports to the United States during the most recent calendar year a quantity of any one GSP eligible article in excess of (1) $25 million indexed to the nominal growth of U.S. gross national product (GNP) since 1974, or (2) 50 percent of the value of total U.S. imports of the article, must lose GSP privileges for that article not later than July 1 of the next calendar year, unless the President decides to use his discretionary authority to grant a waiver. The competitive need limit for 1994 is $114,099,912.

II. Reduced Competitive Need Limits

Section 504(c)(2) of the 1974 Act (19 U.S.C. 2464(c)(2)) provides that periodically the President shall conduct a general review of the GSP program. The purpose of the general review is to determine whether any beneficiary developing country has demonstrated a sufficient degree of competitiveness with respect to any eligible article. If a beneficiary is found to be sufficiently competitive with respect to an article, then the President should apply so-called "reduced competitive need limits." The reduced limits are set at 25 percent of imports instead of 50 percent and a dollar limit indexed to nominal growth of U.S. GNP since 1984, instead of 1974. The reduced competitive need limit for 1994 is $44,250,296.

III. De Minimis Limits

Section 504(d)(2) of the 1974 Act (19 U.S.C. 2464(d)(2)) provides that the President may disregard the 50-percent competitive need limit with respect to any eligible article if the value of the total imports of the article during the most recent calendar year did not exceed $5 million, adjusted annually to reflect changes in the U.S. GNP. The *de minimis* limit for 1994 is $13,346,358.

IV. Per Capita GNP Limits

Section 504(f) of the 1974 Act (19 U.S.C. 2464(f)) sets forth per capita GNP limits, which are adjusted annually. If, in any calendar year, the per capita GNP of a beneficiary developing country exceeds the per capita GNP limits, then that country must lose GSP privileges, following a two-year phase-out. The per capita GNP limit for 1994 is $11,831.

V. The Implementation of the Competitive Need Limits

The GSP program offers duty-free access to the U.S. market for eligible products that are imported from designated beneficiary developing countries. Section 504(c) of the 1974 Act (19 U.S.C. 2464(c) sets forth competitive need limits, which are adjusted annually (see above). If, in any calendar year, exports of an eligible article from a beneficiary developing country exceed the competitive need limits, then that country must lose GSP privileges for that product on July 1 of the next calendar year, unless the President decides to use his discretionary authority to grant a competitive need limit waiver or a *de minimis* waiver.

No annual GSP review process was conducted for 1994, and no competitive need limit waivers or *de minimis* waivers were granted. Therefore, all eligible articles from beneficiary countries that exceeded the competitive need limits in 1994 will lose GSP on July 1, 1995. Accordingly, in Proclamation 6804 of May 22, 1995 (60 FR 27657), the President removed from the GSP program all eligible articles from beneficiary countries that exceeded the competitive need limits in 1994, effective July 1, 1995.

Annexes I and II list the countries that will become ineligible for GSP privileges for certain eligible articles on July 1, 1995 because they exceeded the competitive need limits. While all the countries/products in annexes I and II exceeded the competitive need limits in 1994, the countries/products in annex II were low-trade products that exceeded the 50-percent competitive need limit, but for which the value of total U.S. imports in 1994 were less than the *de minimis* limit of $13,346,358.

ANNEX I: GSP COUNTRIES EXCEEDING THE COMPETITIVE NEED LIMITS IN 1994

HTSUS	Partner	Description
2905.11.20	Trinidad and Tobago	Methanol.
2933.29.45	Slovenia	Nonaromatic drugs.
2933.71.00	Russia	6-Hexanelactam.
3823.90.40	Malaysia	Fatty substances.
4107.90.60	South Africa	Leather of anamals.
7106.92.00	Chile	Silver.
7115.90.20	Argentina	articles of silver.
7604.10.50	Russia	Aluminum bars, rods.
7605.11.00	Russia	Alluminum wire.
7615.10.10	Thailand	Aluminum cooking ware.
8401.10.00	Russia	Nuclear reactors.
8419.90.20	Brazil	Parts of machinery.
8469.10.80	Indonesia	Automatic typewriters.
8517.82.40	Thailand	Facsimile machines.
8519.99.00	Malaysia	Sound apparatus.
8521.10.90	Malaysia	Video apparatus.
8527.90.90	Philippines	Reception apparatus.
8528.10.11	Malaysia	Color tv receivers.
8528.10.13	Malaysia	Color tv receivers.
9006.53.00	Malaysia	Cameras.
9009.12.00	Thailand	Photocopy apparatus.

ANNEX II: GSP COUNTRIES EXCEEDING THE 50-PERCENT COMPETITIVE NEED LIMIT IN 1994 AND TOTAL U.S. IMPORTS WERE LESS THAN $13,346,358

HTSUS	Partner	Description
0304.20.50	Argentina	Hake fillets.
0703.10.20	Chile	Onion sets.
0708.10.20	Guatemala	Peas.
0708.10.40	Guatemala	Peas.

ANNEX II: GSP COUNTRIES EXCEEDING THE 50-PERCENT COMPETITIVE NEED LIMIT IN 1994 AND TOTAL U.S. IMPORTS WERE LESS THAN $13,346,358—Continued

HTSUS	Partner	Description
0709.10.00	Chile	Artichokes.
0709.20.10	Peru	Asparagus.
0710.22.15	Guatemala	Lima beans.
0710.29.05	Turkey	Chickpeas.
0710.29.30	Dominican Republic	Pigeon peas.
0710.80.50	Dominican Republic	Tomatoes.
0710.80.65	Guatemala	Brussels sprouts.
0710.80.93	Guatemala	Okra.
0711.30.00	Turkey	Capers.
0711.40.00	Sri Lanka (Ceylon)	Cucumbers.
0714.10.00	Costa Rica	Cassava.
0714.20.00	Dominican Republic	Sweet potatoes.
0714.90.10	Costa Rica	Fresh dasheens.
0802.50.20	Turkey	Pistachios.
0802.50.40	Turkey	Pistachios.
0804.50.80	Thailand	Guavas, mangoes.
0811.20.20	Chile	Raspberries.
0811.20.40	Chile	Blackberries.
0811.90.50	Costa Rica	Pineapples.
0811.90.55	Guatemala	Melons.
0813.40.10	Thailand	Papayas.
0813.40.80	Thailand	Tamarinds.
1106.30.20	Ecuador	Banana flour.
1519.11.00	Malaysia	Stearic acid.
1519.12.00	Malaysia	Oleic acid.
1601.00.40	Brazil	Sausages.
1604.14.50	Thailand	Tunas, skipjack.
1604.16.30	Morocco	Anchovies.
1604.30.20	Russia	Caviar.
1605.10.05	Thailand	Crab products.
1701.99.05	Colombia	Cane/beet sugar.
1701.99.10	Colimbia	Cane/beet sugar.
1702.90.35	Belize	Invert molasses.
1703.90.30	Lebanon	Molasses.
1902.11.40	Thailand	Uncooked pasta.
2005.60.00	Thailand	Sweet corn.
2007.99.40	Thailand	Pineapple jam.
2007.99.48	Argentina	Apple pastes.
2008.19.30	Turkey	Pignolia.
2008.50.20	Argentina	Apricot pulp.
2008.99.28	Turkey	Figs.
2008.99.35	Thailand	Lychees.
2106.90.52	Philippines	Juices.
2202.90.36	Colimbia	Juice.
2202.90.37	Dominican Republic	Mixed juices.
2207.10.30	Ecuador	Ethyl alcohol.
2208.90.10	Trinidad and Tobago	Bitters.
2208.90.70	Russia	Vodka.
2309.90.70	Hungary	Vitamin B12 feed.
2401.10.21	Dominican Republic	Wrapper tobacco.
2401.10.29	Honduras	Tobacco.
2401.20.45	Indonesia	Tobacco.
2401.20.55	Indonesia	Tobacco.
2516.90.00	South Africa	Building stone.
2804.29.00	Ukraine	Rare gases.
2805.40.00	Russia	Mercury.
2825.30.00	South Africa	Vanadium oxides.
2825.70.00	Chile	Molybdenum oxides.
2840.11.00	Turkey	Refined borax.
2843.21.00	Chile	Silver nitrate.
2903.14.00	Brazil	Carbon tetrchlrde.
2903.23.00	Brazil	Tetrachloro.
2907.15.10	Russia	alpha-Naphthol.
2910.20.00	Brazil	Methyloxirane.
2915.34.00	Venezuela	Isobutyl aceta.
2915.35.00	Venezuela	2-Ethoxyethyl.
2917.14.10	Brazil	Maleic anhydrid.
2917.37.00	Romania	Dimethyl teroph.
2933.40.08	Hungary	4,7-Dichlor.
2938.10.00	Brazil	Rutoside.
3806.30.00	Argentina	Ester gums.

ANNEX II: GSP COUNTRIES EXCEEDING THE 50-PERCENT COMPETITIVE NEED LIMIT IN 1994 AND TOTAL U.S. IMPORTS WERE LESS THAN $13,346,358—Continued

HTSUS	Partner	Description
3920.93.00	India	Plates, sheets.
4006.10.00	Brazil	Rubber.
4104.39.20	Thailand	Buffalo leather.
4106.19.30	Pakistan	Goat leather.
4106.20.60	Pakistan	Goat leather.
4202.22.35	Philippines	Handbags.
4205.00.60	Argentina	Reptile leather.
4412.19.30	Russia	Plywood.
4412.19.40	Indonesia	Plywood.
4412.99.40	Indonesia	Plywood.
4421.90.10	Honduras	Wood dowel pins.
4823.90.20	Philippines	Papier-mache.
5209.51.30	India	Cotton fabrics.
5307.20.00	India	Yarn of jute.
5607.30.20	Philippines	Twine, cordage.
5609.00.20	Philippines	Article of yarn.
5702.99.20	India	Carpets.
5703.90.00	India	Carpets.
6501.00.60	Czech Republic	Hat forms.
7002.10.20	Malaysia	Glass in balls.
7109.00.00	Chile	Base metals.
7113.20.21	Oman	Rope necklace.
7114.19.00	Chile	Goldsmith wares.
7202.21.10	Macedonia (Skopje)	Ferrosilicon.
7319.20.00	Malaysia	Safety pins.
7403.12.00	Peru	Wire bars.
7407.29.15	Chile	Copper profiles.
7603.10.00	Bahrain	Aluminum powders.
7614.90.20	Venezuela	Electrical cable.
7614.90.50	Venezuela	Stranded wire.
8107.90.00	Bulgaria	Cadmium.
8112.11.60	Kazakhstan	Beryllium.
8112.91.50	Chile	Rhenium.
.8213.00.60	Brazil	Pinking Shears.
8402.20.00	Colombia	Water boilers.
8414.90.30	Slovenia	Stators, rotors.
8450.90.40	Brazil	Furniture.
8483.50.40	Malaysia	Awning pulleys.
8519.21.00	Malaysia	Record players.
8519.31.00	Malaysia	Turntables.
8528.10.04	Hungary	TV receivers.
8528.10.34	Malaysia	TV receivers.
8802.50.90	Russia	Spacecraft.
9018.11.60	Argentina	Circuit assemblies.
9102.29.04	Philippines	Wrist watchhead.
9303.90.80	Russia	Firearms.
9401.90.15	Czech Republic	Parts of seats.
9506.61.00	Philippines	Lawn-tennis balls.
9606.29.20	Thailand	Button of resin.
9614.20.60	Turkey	Smoking pipes.
9614.20.80	Turkey	Smoking pipes.

Frederick L. Montgomery,
Chairman, Trade Policy Staff Committee.
[FR Doc. 95–13282 Filed 5–25–95; 3:44 pm]
BILLING CODE 3901–01–M

POSTAL RATE COMMISSION

[Order No. 1055]

[Docket No. A95–12]

Rowletts, Kentucky 42772 (C.W. Richardson, et al., Petitioners; Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. 404(b)(5)

Issued May 23, 1995.

Docket Number: A95–12.

Name of Affected Post Office: Rowletts, Kentucky 42772.

Name(s) of Petitioner(s): C.W. Richardson, *et al.*

Type of Determination: Closing.

Date of Filing of Appeal Papers: May 15, 1995.

Categories of Issues Apparently Raised:

1. Effect on postal services (39 U.S.C. 404(b)(2)(C)).

2. Effect on the community (39 U.S.C. 404(b)(2)(A)).

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues

than those set forth above. Or, the Commission may find that the Postal Service's determination disposes of one or more of those issues.

The Postal Reorganization Act requires that the Commission issue its decision within 120 days from the date this appeal was filed (39 U.S.C. 404 (b)(5)). In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service to submit memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request and the Postal Service shall serve a copy of its memoranda on the petitioners. The Postal Service may incorporate by reference in its briefs or motions, any arguments presented in memoranda it previously filed in this docket. If necessary, the Commission also may ask petitioners or the Postal Service for more information.

The Commission orders:

(a) The Postal Service shall file the record in this appeal by May 30, 1995.

(b) The Secretary of the Postal Rate Commission shall publish this Notice and Order and Procedural Schedule in the **Federal Register**.

By the Commission.

Margaret P. Crenshaw,

Secretary.

Appendix

Rowletts, Kentucky 42772 Docket No. A95–12

May 15, 1995—Filing of Appeal letter.

May 23, 1995—Commission Notice and Order of Filing of Appeal.

June 9, 1995—Last day of filing of petitions to intervene (*see* 39 CFR 3001.111(b)).

June 19, 1995—Petitioners' Participant Statement or Initial Brief (*see* 39 CFR 3001.115(a) and (b)).

July 10, 1995—Postal Service's Answering Brief (*see* 39 CFR 3001.115(c)).

July 24, 1995—Petitioners' Reply Brief should Petitioner choose to file one (*see* 39 CFR 3001.115(d)).

July 31, 1995—Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings (*see* 39 CFR 3001.116).

September 12, 1995 Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(b)(5))

[FR Doc. 95–13093 Filed 5–26–95; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–35742; File No. SR–CBOE–95–04]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the Chicago Board Options Exchange, Incorporated, Relating to Certain Procedures Regarding Trading Rotations and Opening Procedures

May 19, 1995.

I. Introduction

On January 18, 1995, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed the following proposed rule changes with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder:[2] (1) Granting two concurring Floor Officials the discretion to call for one or more trading rotations on any business day pursuant to Rule 6.2; (2) codifying in Rule 6.2, the current practice of allowing two concurring Floor Officials the discretion to delay commencement of the opening rotation in any class of options; (3) granting two concurring Floor Officials the discretion to delay the commencement of the opening rotation for index options, and deleting the requirement that any delays in the opening rotation must be in five minute intervals, pursuant to Interpretation .03 to Rule 24.13; (4) granting Order Book Officials the discretion to determine the appropriate rotation order and manner, or to deviate from a previously established rotation policy or procedure, pursuant to Rule 6.2; (5) adding Interpretation .04 to Rule 6.2 to specify that the decision to conduct an abbreviated rotation is one, but not the only example of a type of rotation modification that may be employed; (6) granting the Order Book Official the authority to prescribe that two or more trading rotations be employed simultaneously pursuant to Rule 6.2; (7) granting two concurring Floor Officials the authority to commence more than one trading rotation after 3:10 p.m. (central time) pursuant to Interpretation .02 to Rule 6.2; (8) clarifying that the factors, provided in Interpretation .02 to Rule 6.2, to consider in determining whether to commence more than one trading rotation after 3:10 p.m., are not limited to those enumerated; (9) clarifying that although closing rotations are not ordinarily conducted in expiring series of index options, such closing rotations are not absolutely prohibited pursuant to Interpretation .03 to Rule 6.2; (10) granting two concurring Floor Officials the authority to deviate from the procedures for closing rotations pursuant to Interpretation .03 to Rule 6.2; (11) granting Order Book Officials the discretion to determine the appropriate rotation order and manner, or to deviate from a previously established rotation policy or procedure for index options pursuant to Rule 24.13; and (12) deleting a portion of Rule 24.13 that requires an Order Book Official to open the nearest expiration series of index options before opening the remaining series in a manner she or he deems appropriate.

Notice of the proposal was published for comment and appeared in the **Federal Register** on February 21, 1995.[3] No comment letters were received on the proposed rule changes. This order approves the Exchange's proposal.

II. Description of Proposal

The CBOE proposes to amend its rules relating to certain procedures regarding trading rotations[4] and opening procedures.[5] First, CBOE proposes to amend Rule 6.2 to grant two concurring Floor Officials discretion to direct that one or more trading rotations be employed on any business day. Currently, Rule 6.2 grants only the Floor Procedures Committee this discretion. CBOE believes that it is impractical to assemble the entire Floor Procedures Committee for such as intra-day decision. CBOE states that under Rule 6.6(b)(iii), two concurring Floor Officials already have the discretion to call a trading rotation after the declaration of a fast market. By amending Rule 6.2, this discretion would not be limited to fast market situations.

CBOE proposes to further amend Rule 6.2 by codifying the current practice of allowing two concurring Floor Officials to delay commencement of the opening rotation in any class of options in the interests of a fair and orderly market. CBOE believes that the rules should expressly grant Floor Officials the power to react to market conditions and circumstances by delaying an opening rotation when it is in the interests of a fair and orderly market. Interpretation .01(b) to Rule 6.2 currently grants two concurring Floor Officials the authority to conduct the rotation in a manner other than that set forth in the Rule, but Rule 6.2 does not state expressly that the Floor Officials may also delay the opening rotation.

Similarly, CBOE proposes to amend Interpretation .03 to Rule 24.13, by granting two concurring Floor Officials greater discretion to delay the commencement of the opening rotation for index options, and by deleting the requirement that any delays in the opening rotation must be in five (5) minute intervals. Rather than limiting the circumstances and the time period in which two concurring Floor Officials may delay the opening, amended Interpretation .03 would permit Floor Officials to delay the opening rotation at their discretion in the interests of a fair and orderly market. The circumstances outlined in current Interpretation .03 to Rule 24.13, in which two concurring Floor Officials may delay the opening, would remain as factors that Floor Officials may consider in deciding whether to delay the opening rotation. If Floor Officials do in fact delay the opening rotation, CBOE believes that these officials should be granted greater discretion to end the delay and commence the opening before the five (5) minute interval has lapsed, if the circumstances warrant that decision. In addition, CBOE believes that for lengthy delays, it is impractical to require two Floor Officials to remain at the index options post for the sole purpose of declaring successive five minute delays.

CBOE believes that these amendments are consistent with the amendments proposed for Rule 6.2, which grant two Floor Officials the authority to delay the opening rotation in any class of options in the interests of a fair and orderly market. CBOE argues that because current Interpretation .01 to Rule 24.13 provides that the procedures for modification of a rotation and other aspects of the rotation set forth in Rule 6.2 are applicable to index options, the authority regarding delays in opening contained in Rule 6.2 likewise should apply to index options.

CBOE also proposes to amend Rule 6.2 to grant Order Book Officials more discretion regarding the rotation order and manner. CBOE proposes that if the appropriate Floor Procedures Committee[6] has not acted to establish any policy applicable to the particular class of options in question, then the Order Book Official would be authorized to determine the appropriate order and manner for conducting the rotation. CBOE believes this aspect of the rule change would allowed Order Book Officials to respond to particular circumstances the Floor Procedures Committee has not considered and to conduct the rotation as is appropriate under those circumstances.

CBOE also proposes to further amend Rule 6.2, granting the Order Book Official, with the approval of two concurring Floor Officials, the authority to deviate from a rotation policy or procedure previously established by the appropriate Floor Procedures Committee. The Exchange believes that in certain circumstances, it may be appropriate to deviate from the established procedure, but it would be impractical to assemble the Floor Procedure Committee for an intra-day decision allowing such a deviation. Rule 6.2, as amended, would allow two concurring Floor Officials to act for the entire committee and approve or disapprove an Order Book Official's proposed deviation from the previously established rotation policy or procedure. Currently, pursuant to Interpretation .01(b) to Rule 6.2, the Order Book Official, with the approval of two concurring Floor Officials or the Floor Procedures Committee, may conduct an *opening* rotation in a manner other than that set forth in Interpretation .01(b). By amending Rule 6.2, CBOE proposes to extend this existing policy to *all* rotations.

CBOE also proposes to add Interpretation .04 to Rule 6.2 to specify that the decision to conduct an abbreviated rotation is one of the deviations permitted under the amended rule. Interpretation .04 provides an example of a type of rotation modification, or deviation from rotation policy or procedure that may be employed, but it is not intended to be an exclusive list.

CBOE proposes to further amend Rule 6.2 so that the Order Book Official, or the Floor Procedures Committee, may prescribe that two or more trading rotations be employed simultaneously. CBOE believes that it would be impractical to assemble the Floor Procedures Committee for an intra-day decision regarding simultaneous trading rotations.

CBOE proposes to amend Interpretation .02 to Rule 6.2 to grant two concurring Floor Officials the authority to commence more than one trading rotation after 3:10 p.m. (central time), and to clarify that the reasons stated for allowing two concurring Floor Officials to conduct a rotation after the close of trading are not exclusive. While the amended interpretation indicates that, in general, no more than one trading rotation will be commenced after 3:10 p.m., CBOE believes that it is in the interests of a fair and orderly market to grant two concurring Floor Officials the discretion to exercise their judgment in response to market conditions or circumstances. The amended interpretation does not enumerate all the possible underlying conditions and circumstances for commencing more than one trading rotation after the close of trading. Those listed include the current practice of employing a trading rotation after the end of normal trading hours in connection with a year-end rotation or due to the restart of a rotation which is already in progress. CBOE believes it may be necessary to continue the rotation after the normal close of trading in order to complete the rotation for circumstances including, but not limited to, those stated in the amended interpretation.

Interpretation .03 to Rule 6.2 currently provides that "a closing rotation for an expiring series of index options *shall* not be employed." (Emphasis Added.) Although closing rotations are not ordinarily employed in expiring series of index options, CBOE believes it is inappropriate to prohibit closing rotations for such series. CBOE, therefore, proposes to amend the interpretation to state that a closing rotation for such expiring series "is not ordinarily" employed. CBOE believes the proposed amendment to Interpretation .03 is necessary to clarify that, unlike the case with equity options, closing rotations are not ordinarily conducted in expiring series of index options, but that such closing rotations are not absolutely prohibited.[7]

Interpretation .03 to Rule 6.2 would also be amended to grant two concurring Floor Officials the authority to deviate from the procedures for closing rotations if they determine such deviation is in the interests of a fair and orderly market. Again, CBOE believes that it is in the interests of a fair and orderly market to allow two concurring Floor Officials to exercise their

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 35369 (February 14, 1995), 60 FR 9702 (February 21, 1995).

[4] A "trading rotation" is a series of very brief time periods during each of which bids, offers, and transactions in only a single, specified option contract can be made. *See* CBOE Rule 6.2.

[5] *See* CBOE Rules 6.2 and 24.13.

[6] The "appropriate" Floor Procedures Committee is the committee that makes policy regarding the particular class of options in question. *See* Securities Exchange Act Release No. 35369 (February 14, 1995), 60 FR 9702 (February 21, 1995).

[7] CBOE believes that a system malfunction or a major announcement in the markets late in the trading day, among other things, may require a closing rotation for expiring series of index options in order to accommodate any order flow problems resulting from such occurrences. Telephone conversation between Edward Joyce, CBOE, Michael Meyer, Attorney, Schiff, Hardin, and Waite, Michael Walinskas, Branch Chief, and John Ayanian, Attorney, Office of Market Supervision ("OMS"), Division of Market Regulation ("Market Regulation"), Commission, on February 13, 1995.

judgment in response to market conditions and circumstances.

Consistent with the above changes to Rule 6.2 regarding the order and manner of the rotation, CBOE proposes to amend Rule 24.13 to give the Order Book Official greater discretion to determine the appropriate order and manner for conducting the rotation for index options. Similar to amended Rule 6.2, the Floor Procedures Committees that make policy for an index option would have the authority to set policy regarding the order and manner of the opening rotation. If the Floor Procedures Committee has not acted to establish a policy applicable to a particular situation, then the Order Book Official would be permitted to determine the appropriate order and manner for conducting the opening rotation. Again, as similarly proposed in amended Rule 6.2, CBOE proposes to further amend Rule 24.13 to grant the Order Book Official the authority to deviate from the appropriate Floor Procedures Committee's established procedure regarding the order and manner of the opening rotation so long as two concurring Floor Officials approve such as a deviation. CBOE believes that it would be impractical to assemble a Floor Procedures Committee for an intra-day decision allowing a deviation from established opening rotation policy or procedure.

CBOE would further amend Rule 24.13 by deleting the provisions that require the Order Book Official to open the nearest expiration series first and thereafter open the remaining series in a manner he deems appropriate. CBOE believes that the Order Book Official should have the discretion not to open with the nearest expiration series if a different order would be appropriate under the circumstances.

III. Commission Finding and Conclusions

The Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5) of the Act.[8] Specifically, the Commission believes that the proposed rule changes are designed to facilitate transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to promote just and equitable principles of trade.

First, the Commission believes that it is appropriate to amend Rules 6.2 and 24.13 to grant the Order Book Official greater discretion regarding the rotation order and manner. The Commission notes, however, that the discretion of the Order Book Official is not absolute. The Order Book Official may determine, without subsequent approval, the appropriate order and manner for conducting the rotation only if the appropriate Floor Procedures Committee has not acted to establish any policy applicable to the particular class of options in question. The Order Book Official must otherwise obtain approval from two concurring Floor Officials to deviate from the order and manner for conducting the rotation for a particular class of options already established by the appropriate Floor Procedures Committee. The Commission believes the proposed amendments to Rule 6.2 and Rule 24.13 are reasonable in view of the CBOE's intended goal to allow Order Book Officials and Floor Officials the discretion to exercise their judgment in response to market conditions or circumstances.

The Commission also believes that it is appropriate to add Interpretation .04 to Rule 6.2 to state that the decision to conduct an abbreviated rotation is one example of a deviation from rotation policy or procedure and one of the modifications of rotation order and manner that is permitted under Rule 6.2.

Further, the Commission believes that it is appropriate to amend Rule 6.2 to afford an Order Book Official the discretion to authorize two or more simultaneous trading rotations. The Commission also finds that it is appropriate to amend Rule 6.2 to grant two concurring Floor officials the discretion to direct that one or more trading rotations be employed on any given business day. Both situations involve an intra-day decision that, under current Rule 6.2, would require the entire Floor Procedures Committee to assemble. The Commission agrees that it may be impractical to assemble the Floor Procedures Committee for such intra-day decisions. The Commission also believes that by granting Order Book Officials and Floor Officials the discretion to evaluate current market conditions and employ the appropriate number of rotations in response to these conditions, these officials will be positioned to make informed decisions regarding the manner in which a rotation can maintain or contribute to the maintenance of a fair and orderly market.

Further, the Commission believes that the Exchange's proposal to amend Interpretation .02 to Rule 6.2 to grant two concurring Floor Officials the authority to commence more than one trading rotation after 3:10 p.m. (central time) to maintain a fair and orderly market, is a reasonable response to the Exchange's attempt to respond to current market conditions. The interpretation is further amended to clarify that the factors to be considered in determining whether to commence more than one trading rotation after 3:10 p.m. are not limited to those enumerated. Although the amended interpretation grants two concurring Floor Officials the discretion to exercise their judgment in response to market conditions or circumstances, the Commission supports CBOE's policy that, in general, no more than one trading rotation will be commenced after 3:10 p.m.

The Commission also believes that it is reasonable to amend Rule 6.2 by codifying the current practices of allowing two concurring Floor Officials to delayed commencement of the opening rotation in any class of options to maintain a fair and orderly market. The proposed amendment to Rule 6.2 will expressly grant two concurring Floor Officials the power to react to market conditions and circumstances by delaying the opening rotation. The Commission believes that the proper exercise of this authority should contribute to the protection of investors and the public interest by enabling Floor Officials to respond to current market conditions in a timely manner.

For the same reason, the Commission also believes that it is appropriate to amend Interpretation .03 to Rule 24.13 to grant two concurring Floor Officials greater discretion to delay the commencement of the opening rotation for index options by deleting the requirement that any delays in the opening rotation for index options be in five minute intervals. Specifically, the Commission notes that by deleting this five minute interval requirement, Floor Officials will be able to react more promptly to current market conditions and commence the opening rotation in an interval shorter than five minutes if the circumstances warrant. By granting Floor Officials the flexibility to immediately commence an opening rotation, investors may be able to reduce their exposure to price fluctuations occurring when the index options markets have a delayed opening and the stock and futures markets are open. The Commission further notes that for lengthy delays, it may be impractical to require two Floor Officials to continuously remain at the index options post for the purpose of declaring successive five minute delays. The proposed rule change will provide the Exchange's Floor Officials more flexibility to declare delayed openings in index options in appropriate circumstances.

Furthermore, the Commission believes it is appropriate to amend Interpretation .03 to Rule 6.2 to state that a closing rotation for expiring series of index options "is not ordinarily" employed. Under the current interpretation, a closing rotation for an expiring series of index options "*shall* not be employed." The Commission believes that the proposed amendment to Interpretation .03 should provide CBOE Floor Officials the opportunity to respond to extraordinary circumstances including, but not limited to, a system malfunction or a major announcement in the markets late in the trading day.[9]

For the same reasons, the Commission also believes that it is appropriate to amend Interpretation .03 to Rule 6.2 to grant two concurring Floor Officials the authority to deviate from the procedures for closing rotations if they determine such deviation is to maintain a fair and orderly market.

Finally, the Commission believes it is appropriate to delete from Rule 24.13 the requirement that an Order Book Official open the nearest expiration series of index options before opening the remaining series. The Commission believes that the proposed rule change, by permitting the Order Book Official to exercise his judgment in response to market conditions or circumstances, is consistent with the purposes of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule changes (File No. SR–CBOE–95–04) are approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–13072 Filed 5–26–95; 8:45 am]

BILLING CODE 8010–01–M

[8] 15 U.S.C. 78ff(b)(5).

[9] *See supra* note 7.

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

[Release No. 34–35752; file No. SR–PTC–95–04]

Self-Regulatory Organizations; Participants Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Changing Custodians for the Safekeeping of Physical Certificates on Deposit With the Participants Trust Company

May 22, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on May 1, 1995, the Participants Trust Company ("PTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–PTC–95–04) as described in Items I, II, and III below, which Items have been prepared primarily by PTC. On May 9, 1995, PTC filed an amendment to the proposed rule change.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change concerns PTC's change in custodians for the safekeeping of physical certificates on deposit with PTC.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, PTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. PTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On April 18, 1995, PTC entered into a custody agreement with The Depository Trust Company ("DTC") providing for the safekeeping by DTC of physical certificates on deposit with PTC. On the same date, PTC amended its custody agreement with Chemical Bank providing for the termination of the current custody arrangements with Chemical Bank. DTC began providing custodial services upon the completion of the transfer of the physical certificates to DTC on May 8, 1995. The custodial services to be provided by DTC are substantially similar to the services previously provided by Chemical Bank at considerable savings to PTC and its participants. The change in custodians was authorized by PTC's Board of Directors after completion of a due diligence review of DTC's facilities and procedures. DTC currently has approximately $8.3 trillion in securities under its custody and control in connection with the custodial services it offers to its own participants.

PTC believes that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act[4] and the rules and regulations thereunder because it provides for the safeguarding of securities and funds in PTC's custody or control or for which PTC is responsible.

(B) Self-Regulatory Organization's Statements on Burden on Competition

PTC does not believe that the proposed rule change imposes any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

PTC has neither solicited nor received comments on this proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[5] and subparagraph (e)(3) of Rule 19b–4[6] thereunder because the proposed rule change concerns the administration of PTC. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] As originally filed, the proposal incorrectly stated that the effective date of the transfer of securities was to be completed on or about May 8, 1996. The amendment set forth the correct date as May 8, 1995. Letter from Leopold S. Rassnick, Senior Vice President, General Counsel, and Secretary, PTC, to Jonathan Katz, Secretary, Commission (May 9, 1995).

[3] The Commission has modified the text of the summaries prepared by PTC.

[4] 15 U.S.C. 78q–1(b)(3)(F) (1988).

[5] 15 U.S.C. 78s(b)(3)(A)(iii) (1988).

[6] 17 U.S.C. 240.19b–4(e)(3) (1994).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of PTC. All submissions should refer to File No. SR–PTC–95–04 and should be submitted by June 20, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–13073 Filed 5–26–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35739; File No. SR–PHILADEP–95–02]

Self-Regulatory Organizations; Philadelphia Depository Trust Company; Notice of Filing and Order Granting Accelerated Approval of A Proposed Rule Change to Modify the Philadelphia Depository Trust Company's Interface With The Depository Trust Company's Institutional Delivery System

May 19, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on April 24, 1995, the Philadelphia Depository Trust Company ("PHILADEP") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–PHILADEP–95–02) as described in Items I and II below, which Items have been prepared primarily by PHILADEP. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

PHILADEP proposes to modify its interface with The Depository Trust Company's ("DTC") Institutional Delivery ("ID") system to provide PHILADEP participants with the ability to send and receive trade confirmations and affirmations on an interactive basis and to provide participants greater control over certain risks resulting from incorrectly inputted trade data.[2] PHILADEP also proposes to modify the interface to facilitate the interactive transmission of certain trade reports between DTC and PHILADEP.

II. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, PHILADEP included statements concerning the purpose of and the basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. PHILADEP has prepared summaries, as set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[3]

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

DTC's ID system allows the parties involved in an institutional trade (*e.g.*, broker-dealer, institution, and custodian bank) to confirm, affirm, and settle the trade. The confirmation and affirmation process helps to reduce the circumstances where trades will not settle because a party "does not know" ("DKs") the trade. PHILADEP has been operating an interface with DTC for the settlement of institutional trades for several years, and its interface with DTC's ID system provides PHILADEP participants a single channel to electronically coordinate all post-trade activity among broker-dealers, institutions, and custodians from trade confirmation through final settlement. DTC recently implemented enhancements to its ID system to provide users with the capability of accomplishing all ID system processing on an interactive basis throughout a business day while also providing participants with the option to continue transmissions in batch mode.[4]

The purpose of PHILADEP's proposed rule change is to modify its interface with DTC's ID system to provide PHILADEP participants with the ability to send and receive trade confirmations and affirmations on an interactive basis and to provide participants greater control over certain risks resulting from incorrectly inputted trade data. When entering trade data into the ID system, PHILADEP broker-dealer participants will have to assign and enter a unique broker-dealer confirm number corresponding to each ID trade that the broker-dealer submits. The ID system will not accept duplicate broker-dealer confirm numbers, and it will reject the trade if (i) the PHILADEP participant omits the confirmation number or (ii) the confirmation number matches an existing ID trade. ID system users that are participants of both DTC and PHILADEP will continue to have the ability to initially submit the trade details to PHILADEP and to affirm directly with DTC or with PHILADEP.

PHILADEP participants also will be required to comply with the modified procedures for cancelling a trade previously entered into the ID system. The ID system does not allow participants to "back-out" a trade; therefore, participants must cancel it by providing the confirmation number of the existing ID trade being cancelled and by entering the appropriate reason code for cancelling the trade. PHILADEP participants can no longer enter a numerical value of all nines in the "Other Charges" data field to signify a trade cancellation.

Finally, PHILADEP also proposes to modify the interface to facilitate the interactive transmission of certain trade reports between DTC and PHILADEP. PHILADEP will be able to receive reports of affirmed and unaffirmed trades as often as needed from DTC and will provide such reports to its participants.

PHILADEP believes the proposed rule change is consistent with Section 17A of the Act and the rules and regulations thereunder because modifying PHILADEP's interface with DTC's ID system to allow for the interactive receipt and delivery of trade confirmations and affirmations and for the interactive receipt and distribution of certain trade reports will facilitate the prompt and accurate clearance and settlement of securities transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

PHILADEP does not believe that the proposed rule change will impact or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments have been solicited or received. PHILADEP will notify the Commission of any written comments received.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Section 17A(b)(3)(F)[5] of the Act requires the rules of a clearing agency be designed to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions and to provide for the prompt and accurate clearance and settlement of securities transactions. The Commission believes that PHILADEP's proposal to modify its interface with DTC's ID System to enable interactive communication should help cooperation and coordination among PHILADEP and DTC and the parties involved in institutional trades. The Commission further believes that the proposed interactive capability is consistent with PHILADEP's obligation to provide for the prompt and accurate clearance and settlement of securities transactions because it should help PHILADEP participants to settle institutional trades in a T+3 settlement cycle, which will be the standard settlement time for most broker dealer trades beginning June 7, 1995.[6] Currently, institutional trades settle on a T+5 cycle.

PHILADEP has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing. The Commission finds good cause for so approving the proposed rule change because timely settlement of institutional trades is critical to the successful conversion to T+3 and accelerated approval of the proposed rule change will allow PHILADEP participants to utilize and become familiar with the interactive capabilities available through PHILADEP's modified interface with DTC's ID system prior to the implementation of T+3 settlement.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making such submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filings will also be available for inspection and copying at the principal office of PHILADEP. All submissions should refer to File No. SR–PHILADEP–95–02 and should be submitted by June 20, 1995.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–PHILADEP–95–02) be, and hereby is, approved.

For the Commission by the Division of Market Regulation pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–13074 Filed 5–26–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–21087; International Series Release No. 812; 812–7846]

Citibank, N.A., et al.; Notice of Application

May 22, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

APPLICANTS: Citibank, N.A. ("Citibank") and Citicorp.

RELEVANT 1940 ACT SECTIONS: Exemption requested under section 6(c) from section 17(f) and rule 17F–5.

SUMMARY OF APPLICATION: Applicants seek conditional exemptive relief from section 17(f) of the 1940 Act and rule 17f–5 thereunder with respect to two forms of foreign custody arrangements. The requested exemption would amend an existing order (the "1992 Order")[1] allowing Citibank, acting as custodian or subcustodian, to deposit the securities of United States investment companies with certain foreign subsidiaries of the Applicants. The requested exemption also would allow Citibank to make available direct custody arrangements between United States investment companies and certain foreign subsidiaries of the Applicants.

FILING DATES: The application was filed on January 7, 1992, and was amended and restated on September 8, 1992, May 19, 1993, November 21, 1994, April 24, 1995, and May 22, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 16, 1995, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, c/o Caroline F. Marks, Esq., GTS-Legal, 111 Wall Street, 15th Floor, Zone 9, New York, New York 10043.

FOR FURTHER INFORMATION CONTRACT: H.R. Hallock, Jr., Special Counsel, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

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[1] 17 CFR 200.30–3(a)(12) (1994).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Some participants may continue to transmit to PHILADEP in batch mode; however, PHILADEP will process interactively with DTC.

[3] The Commission has modified the text of the summaries submitted by PHILADEP.

[4] For a description of DTC's enhancements to its ID system to provide for interactive processing capabilities, refer to Securities Exchange Act Release No. 34199 (June 10, 1994), 59 FR 31660 [File No. SR–DTC–94–04] (granting accelerated approval of a proposed rule change).

[5] 15 U.S.C. 78q–1(b)(3)(F) (1988).

[6] For a detailed description and discussion of the conversion to a three business day settlement cycle, refer to Securities Exchange Act Release Nos. 33023 (October 13, 1993) 58 FR 52891 [File No. S7–5–93] (adoption of Commission Rule 15c6–1) and 34952 (November 9, 1994), 59 FR 59137 (changing effective date from June 1, 1995, to June 7, 1995).

[7] 17 CFR 200.30–3(a)(12) (1994).

[1] Investment Company Act Release Nos. 18710 (May 15, 1992) (notice) and 18782 (June 12, 1992) (order).

Applicants' Representations

A. Background

1. Citibank, a United States national banking association, is a wholly-owned subsidiary of Citicorp, a Delaware bank holding company. Citibank operates an extensive custodian network through its branches and through its own subsidiaries and subsidiaries of Citicorp, as well as unaffiliated correspondent banks. As of December 31, 1993, Citibank had approximately $648 billion in assets under custody.

2. In 1987, the SEC exempted Citibank (the "1987 Order")[2] from section 17(f) of the 1940 Act to permit it, as the custodian of the securities and other assets (the "Securities") of any registered management investment company, other than an investment company registered under section 7(d) of the 1940 Act, or as subcustodian of the Securities of such investment companies for which any other entity is acting as custodian, to deposit such Securities under custodial arrangements (the "Agency Custody Arrangements") with certain specified foreign subsidiaries of Citibank (the "Citibank Subsidiaries") or Citicorp (the "Citicorp Subsidiaries" and, together with the Citibank Subsidiaries, the "Foreign Subsidiaries").

3. In 1990, the SEC exempted Citibank (the "1990 Order")[3] from section 17(f) to permit it, acting as custodian or subcustodian, to maintain the Securities of such investment companies with several additional Foreign Subsidiaries. In the 1992 Order, the SEC exempted Citibank to permit it to maintain the Securities of such investment companies with certain additional Foreign Subsidiaries and to eliminate the requirement of the 1987 and 1990 Orders that each Foreign Subsidiary be a signatory to the custody agreement.

4. Each of the Foreign Subsidiaries currently providing custodial services to U.S. Investment Companies is, and any additional Foreign Subsidiary providing such services in the future will be, a banking institution or trust company incorporated under the laws of a country other than the United States and regulated as such by that country's government or an agency thereof. Each of these Foreign Subsidiaries is, or will be, experienced, capable and well qualified to provide such services.

[2] Investment Company Act Release Nos. 15580 (Feb. 13, 1987) (notice) and 15617 (Mar 11, 1987) (order).

[3] Investment Company Act Release Nos. 17329 (Feb. 1, 1990) (notice) and 17360 (Feb. 28, 1990) (order).

B. Relief Requested

1. Applicants seek exemptive relief to allow 14 Citibank Subsidiaries that were granted relief in the 1992 Order[4] to act as custodians for any registered management investment company, incorporated or organized under the laws of the United States or a state thereof (a "U.S. Investment Company") under direct contractual arrangements with such U.S. Investment Companies or their custodians (the "Direct Custody Arrangements"), as well as under the Agency Custody Arrangements referred to above. Applicants also seek exemptive relief for the Direct and Agency Custody Arrangements with respect to one additional Citibank Subsidiary, Citibank a.s. in the Czech Republic. Each of these 15 Citibank Subsidiaries is a majority-owned or wholly-owned subsidiary of Citibank.

2. In addition, Applicants seek relief to modify the Agency Custody Arrangements permitted by the 1992 Order to provide for the Citicorp guarantee described in paragraphs 9 through 11 below and set forth in Conditions 3(b), 5(c) and 9 below. Finally, Applicants seek to have any order granting relief with respect to the Agency or Direct Custody Arrangements apply to any other Foreign Subsidiary in the future that does not meet the minimum shareholders' equity requirement of rule 17f-5,[5] except that the Direct Custody Arrangements would apply to the Citicorp Subsidiaries only at such time as direct custody services are to be offered by them in accordance with applicable law.[6]

3. Applicants intend that may order granting the relief requested by the application supersede the 1987, 1990, and 1992 Orders and provide a single comprehensive order covering both the Direct and Agency Custody Arrangements.

[4] Citibank (Channel Islands) Limited; Citibank, S.A. in France; Citicorp Investment Bank (The Netherlands) N.V.; Citibank (Zaire) S.A.R.L., Citibank Zambia Limited; Citicorp Nominees Pty. Limited in Australia; Citibank, Nominees (New Zealand) Limited; Citibank Portugal, S.A., Banco de Honduras S.A.; Citibank Budapest Rt.; Citibank-Maghreb in Morocco; Citibank (Trinidad & Tobago) Limited; Cititrust Colombia S.A. Sociedad Fiduciaria; and Citibank (Poland) S.A.

[5] Applicants do not request any relief with respect to Citibank T/O or any other subsidiary or affiliate of Citibank located in the Russian Federation. Should the Applicants request exemptive relief in the future with respect to Citibank T/O, such request would be the subject of a separate application.

[6] Citibank is subject to certain constraints imposed by the Federal Reserve Act with respect to its transactions with Citicorp and its subsidiaries. Accordingly, Applicants presently intend to permit only the existing and any additional Citibank Subsidiaries, but not the Citicorp Subsidiaries, to offer Direct Custody Arrangements.

4. Under the Agency Custody Arrangements, the Securities are maintained in the custody of the Foreign Subsidiaries only in accordance with a custody agreement among (a) the U.S. Investment Company or its custodian, (b) Citibank, and (c) Citicorp (the "Agency Custody Agreement"). Citibank acts as the custodian or subcustodian of the Securities and delegates its responsibilities to the Foreign Subsidiaries in accordance with the terms of a subcustodian agreement (the "Subcustodian Agreement").

5. The Agency Custody Agreement provides that the delegation by Citibank to a Foreign Subsidiary does not relieve Citibank of any responsibility to the U.S. Investment Company or its custodian for any loss due to such delegation except such loss as may result from political risk (*e.g.*, exchange control restrictions, confiscation, expropriation, nationalization, insurrection, civil strife or armed hostilities), and other risk of loss for which neither Citibank nor the Foreign Subsidiary would be liable under rule 17f-5 (*e.g.*, despite the exercise of reasonable care, loss due to Act of God, nuclear incident and the like). The Agency Custody Agreement also provides that Citicorp is liable, in accordance with the terms of the guarantee described below, for losses of Securities resulting from the bankruptcy or insolvency of the Foreign Subsidiaries.

6. There may be instances in which a U.S. Investment Company would prefer having a Foreign Subsidiary be engaged as a direct custodian, receive direct instruction, and maintain separate accounts for it without the involvement of Citibank. In addition, certain United States banks that serve as custodians of U.S. Investment Companies do not require the custody services of another United States custodian, but nonetheless do require the services of foreign subcustodians in certain foreign countries.

7. The Direct Custody Arrangements for which an exemption is being sought would enable the Citibank Subsidiaries referred to in paragraph 1 and note 4 above to act as direct custodians in accordance with either a master custody agreement under which a U.S. Investment Company or its custodian would enter into a direct custodian relationship with a number of Citibank Subsidiaries or an individual custody agreement under which a U.S. Investment Company or its custodian would enter into a direct custodial relationship with a particular Citibank Subsidiary (either, a "Direct Custody Agreement"). The Direct Custody Agreement would be among (i) the U.S. Investment Company or custodian for which the Foreign Subsidiary acts as custodian or subcustodian, (ii) the Foreign Subsidiary, (iii) Citicorp, and (iv) Citibank. The terms of each Direct Custody Agreement would include a confirmation by the Foreign Subsidiary that it will act as the custodian or subcustodian, as the case may be, of the Securities under the requested order, an agreement by Citicorp that it is liable, in accordance with the terms of its guarantee, for losses of Securities resulting from the bankruptcy or insolvency of the Foreign Subsidiary, and an agreement by Citibank to be liable for any loss resulting from the performance of the Foreign Subsidiary, except such loss as may result from political risk (*e.g.*, exchange control restrictions, confiscation, expropriation, nationalization, insurrection, civil strife or armed hostilities), and other risk of loss for which neither Citibank nor the Foreign Subsidiary would be liable under rule 17f-5 (*e.g.*, despite the exercise of reasonable care, loss due to Act of God, nuclear incident and the like).

8. The extent of Citibank's liability for losses attributable to a Foreign Subsidiary under the Direct Custody Arrangements would be the same as that provided for under the Agency Custody Arrangements. Under both the Agency Custody Arrangements and the Direct Custody Arrangements, Citibank would be liable for the negligent acts or omissions of the Foreign Subsidiaries.

9. Both the Agency and Direct Custody Agreements would provide that Citicorp will be liable in accordance with the terms of a guarantee for losses of Securities resulting from bankruptcy or insolvency of any of the Foreign Subsidiaries. Under the 1987, 1990, and 1992 Orders, Citicorp has issued a guarantee for losses resulting from the bankruptcy or insolvency of each Foreign Subsidiary (the "Guarantee"). If the requested order is issued, the Guarantee will be amended to cover all the Securities held by the Foreign Subsidiaries pursuant to an Agency Custody Agreement or a Direct Custody Agreement. The dollar amount of the Guarantee applicable to all Foreign Subsidiaries will equal or exceed the aggregate market value of the Securities held in the custody of the Foreign Subsidiaries.

10. The value of the Securities held under Agency Custody Agreement will be calculated by Citibank based on records maintained by Citibank, as custodian, and reports by the Foreign Subsidiaries. The total amount also will be reported to Citicorp. In addition, each Foreign Subsidiary will submit to Citicorp monthly its calculation, and the basis on which it was made, of the value of the Securities held by it under Direct Custody Agreements. After review of the results of the monthly monitoring, Citicorp will take the necessary steps to adjust the amount of the Guarantee to cover the aggregate value of the Securities.

11. In the event that at the time of an insolvency a Foreign Subsidiary holds Securities having an aggregate value in excess of the aggregate value of Securities which such Foreign Subsidiary held at the time of the previous adjustment of the Guarantee, Citicorp will immediately take such steps as may be necessary to increase the size of the Guarantee to cover the amount of such excess. This coverage will remain in place until such time as the Foreign Subsidiary's bankruptcy estate is settled, the amount of any loss to the U.S. Investment Company attributable to the bankruptcy or insolvency is calculated, and payment under the Guarantee, if necessary, is made.

Applicants' Legal Analysis

1. Applicants seek the requested exemptive relief because the Foreign Subsidiaries do not qualify to serve as custodians for U.S. Investment Companies under the terms of section 17(f) of the 1940 Act or rule 17f–5 thereunder. Section 17(f) provides, in relevant part, that a registered management investment company may place and maintain its securities and similar assets in the custody of a bank or banks meeting the requirements of section 26(a) of the 1940 Act. The Foreign Subsidiaries, however, do not fall within the definition of a "bank" as that term is defined in section 2(a)(5) of the 1940 Act.

2. Rule 17f–5 would permit a U.S. Investment Company to deposit securities, cash and cash equivalents with an "eligible foreign custodian," a term that is defined to include, as here relevant, a majority-owned direct or indirect subsidiary of a qualified U.S. bank or bank holding company that is incorporated or organized under the laws of a country other than the United States and that has shareholders' equity in excess of $100,000,000 (U.S. $ or equivalent). None of the Foreign Subsidiaries currently meets or in the future will meet the minimum shareholders' equity requirement of rule 17f–5.

3. Citibank believes that permitting U.S. Investment Companies and their custodians to enter into direct custodial arrangements with the Foreign Subsidiaries adequately would protect U.S. Investment Companies and their shareholders against loss while permitting the Foreign Subsidiaries to serve the needs of U.S. Investment Companies more efficiently by being able to interact directly with the U.S. Investment Company or its custodian. The proposed arrangements would enable the Foreign Subsidiaries, as direct custodians, to carry out their custodial duties and to respond to their customers' instructions, inquiries and other operational needs without communications being processed through Citibank, thereby reducing the cost and time involved in administering custodial accounts.

4. Although Citibank would not be in an agency relationship with the Foreign Subsidiaries under the Direct Custody Arrangements, it nonetheless would provide the necessary review and independent oversight of their performance and capabilities. Applicants submit that Citibank's ongoing review insures that safeguards substantially equal to those provided by its United States operations are in place and provides for uniformity in procedures for custodial administration. Because Citibank would be a party to each Direct Custody Agreement and would agree to be responsible for negligent acts or omissions of the Foreign Subsidiaries, Citibank would have a vested interest in verifying that each Foreign Subsidiary maintained adequate standards for the safekeeping of securities.

5. Under the Direct Custody Arrangements, Citibank will be in privity of contract with the U.S. Investment Company or its custodian. While it would be necessary for a U.S. Investment Company or its custodian to establish the negligence of the applicable Foreign Subsidiary in the action against Citibank, obtaining a judgment against the particular Foreign Subsidiary would not be a condition precedent to bringing an action against Citibank.

6. Under the Agency Custody Arrangements, Citibank, in its capacity as custodian, would have custodial obligations to the U.S. Investment Company or its custodian. In that case, the Foreign Subsidiary would be the subcustodian and an agent of Citibank. Applicants assert that any distinction between the agency and direct custodial relationships, however, is not of consequence to U.S. Investment Companies and their custodians, since in either case they would be able to seek recovery for losses caused by the Foreign Subsidiaries' negligence from,

and bring an action directly against, Citibank.

7. Applicants assert that provision of the Guarantee by Citicorp (rather than by Citibank) under the Agency and Direct Custody Arrangements does not negatively affect the level of protection afforded the U.S. Investment Companies and custodians whose Securities are held in the custody of the Foreign Subsidiaries. Since the total Guarantee amount is available to cover one or more Foreign Subsidiaries, Applicants assert that the Guarantee should be more than sufficient to cover losses attributable to the bankruptcy of any one particular Foreign Subsidiary.

8. Applicants submit that, as required by section 6(c) of the 1940 Act, the exemptions requested are (i) necessary or appropriate in the public interest, (ii) consistent with the protection of investors, and (iii) consistent with the purposes fairly intended by the policy and provisions of the 1940 Act.

Applicants' Conditions

If the requested order is granted, Applicants agree to the following conditions:

1. The foreign custody arrangements proposed with respect to the Foreign Subsidiaries will satisfy the requirements of rule 17f–5 in all respects other than with regard to shareholders' equity.

2. Securities of U.S. Investment Companies and their custodians entering into Direct Custody Arrangements will be maintained with a Foreign Subsidiary only in accordance with a Direct Custody Agreement, required to remain in effect at all times during which the Foreign Subsidiary fails to satisfy the requirements of rule 17f–5 relating to shareholders' equity.

3. The Direct Custody Agreement will be among (i) each U.S. Investment Company or custodian for which the Foreign Subsidiary serves as custodian or subcustodian, (ii) the Foreign Subsidiary, (iii) Citibank, and (iv) Citicorp. The Direct Custody Agreement will provide the following:

(a) confirmation by the Foreign Subsidiary that it will act as the custodian or subcustodian, as the case may be, of the Securities of the U.S. Investment Company pursuant to the requested order;

(b) Citicorp will be liable, in accordance with the terms of the Guarantee, for losses of the Securities of the U.S. Investment Companies resulting from the bankruptcy or insolvency of the particular Foreign Subsidiary; and

(c) Citibank will be liable for any loss resulting from the performance of the Foreign Subsidiary, except such loss as may result from (i) political risk (*e.g.*, exchange control restrictions, confiscation, expropriation, nationalization, insurrection, civil strife, or armed hostilities) and (ii) other risks of loss for which the Foreign Subsidiary would not be liable under rule 17f–5.

4. Under the Direct Custody Arrangements, U.S. Investment Companies or their custodians, as the case may be, will be entitled to seek relief directly against Citibank or the particular Foreign Subsidiary.

5. Securities of U.S. Investment Companies custodied pursuant to Agency Custody Arrangements will be maintained with a Foreign Subsidiary only in accordance with an Agency Custody Agreement, required to remain in effect at all times during which the foreign Subsidiary fails to satisfy the requirements of rule 17f–5 relating to shareholders' equity.

6. The Agency Custody Agreement will be among (i) the U.S. Investment Companies or custodians for which Citibank serves as custodian or subcustodian, (ii) Citibank, and (iii) Citicorp. The Agency Custody Agreement will provide the following:

(a) Citibank will act as the custodian or subcustodian, as the case may be, of the Securities of the U.S. Investment Companies and will be able to delegate its responsibilities to the Foreign Subsidiaries;

(b) Citibank's delegation of duties to a Foreign Subsidiary would not relieve Citibank of any responsibility to the U.S. Investment Company or its custodian for any loss due to such delegation except such loss as may result from (i) political risk (*e.g.*, exchange control restrictions, confiscation, expropriation, nationalization, insurrection, civil strife or armed hostilities) and (ii) other risks of loss for which neither Citibank nor the Foreign Subsidiary would be liable under rule 17f–5; and

(c) Citicorp will be liable, in accordance with the terms of the Guarantee, for losses of U.S. Investment Company Securities resulting from the bankruptcy or insolvency of the Foreign Subsidiary.

7. With respect to the Agency Custody Arrangements, Citibank has entered, or will enter, into a Subcustodian Agreement with each Foreign Subsidiary pursuant to which Citibank will delegate to the Foreign Subsidiary such of its duties and obligations as would be necessary to permit the Foreign Subsidiary to hold in custody, in the country in which it operates, the Securities of the U.S. Investment Company. The Subcustodian Agreement provides, or will provide, an acknowledgement by the Foreign Subsidiary that it is acting as a foreign custodian for U.S. Investment Companies and their custodians pursuant to the terms of the exemptive order requested by the application. The Subcustodian Agreement provides explicitly, or will explicitly provide, that U.S. Investment Companies or their custodians, as the case may be, that have entered into an Agency Custody Agreement with Citibank will be third party beneficiaries of the Subcustodian Agreement, will be entitled to enforce the terms thereof, and will be entitled to seek relief directly against the Foreign Subsidiary or against Citibank.

8. Each Subcustodian Agreement is or will be governed by New York law; or, if any Subcustodian Agreement were governed by the local law of the foreign jurisdiction in which the Foreign Subsidiary is located, Citibank has obtained or shall obtain an opinion of counsel from such foreign jurisdiction opining as to the enforceability of the rights of a third party beneficiary under the laws of such foreign jurisdiction.

9. The dollar value of the Guarantee applicable to the Foreign Subsidiaries shall be at least equal to the aggregate value of the Securities of U.S. Investment Companies held in the custody of the Foreign Subsidiaries pursuant to the Direct Custody Agreements and the Agency Custody Agreements, calculated at the close of the previous calendar month. The value of U.S. Investment Company Securities held in the custody of the Foreign Subsidiaries as Citibank's subcustodians will be calculated by Citibank based on records maintained by Citibank and reports by the Foreign Subsidiaries at the end of each calendar month, and such amount will be reported to Citicorp. In addition each Foreign Subsidiary will submit to Citicorp monthly its calculation, and the basis on which it was made, of the market value of U.S. Investment Company Securities held in custody by it under Direct Custody Agreements. After reviewing the results of the monthly monitoring, Citicorp will take such steps as may be necessary to adjust the amount of the Guarantee to cover the aggregate value of the Securities held under Agency and direct Custody Agreements. In the event of the insolvency of a Foreign Subsidiary at a time when the aggregate value of U.S. Investment Company Securities held by such Foreign Subsidiary is in excess of the amount of such Securities which such Foreign Subsidiary held at the prior month's end, Citicorp will immediately take such steps as may be necessary to increase the size of the Guarantee to cover the amount of such excess.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–13075 Filed 5–26–95; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 21088; 811–5501]

Kidder, Peabody Corporate Income Fund; Notice of Application

May 22, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Kidder, Peabody Corporate Income Fund.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring it has ceased to be an investment company.

FILING DATE: The application was filed on May 4, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 16, 1995, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 60 Broad Street, New York, New York 10004–2350.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 942–0584, or H.R. Hallock, Jr., Senior Special Counsel, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end, non-diversified management investment company, organized as a business trust under the laws of the Commonwealth of Massachusetts. On March 15, 1988, applicant registered under the Act and filed a registration statement under the Act and the Securities Act of 1933. Applicant's registration statement was never declared effective, an applicant has made no public offering of its shares.

2. Applicant never issued or sold any securities, except to its sole shareholder and sponsor, Kidder Peabody Asset Management, Inc. As of the date of filing of the application, applicant had no shareholders, liabilities or assets. Applicant is not a party to any litigation or administrative proceeding.

3. Pursuant to written consent, applicant's sole Trustee determined that it was advisable and in the best interests of the applicant to withdraw its registration statement with the SEC, cease to be registered as an investment company and terminate its existence as a Massachusetts business trust and liquidate any assets and that the proceeds from the liquidation of the shares be returned to Kidder Peabody Asset Management, Inc.

4. Applicant is not now engaged, nor does it propose to engage in any business activities other than those necessary for the winding-up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–13076 Filed 5–26–95; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 21090; 811–7756]

Kidder, Peabody Series Trust; Notice of Application

May 22, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Kidder, Peabody Series Trust.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring it has ceased to be an investment company.

FILING DATE: The application was filed on May 4, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 16, 1995, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 60 Broad Street, New York, New York 10004–2350.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 942–0584, or H.R. Hallock, Jr., Senior Special Counsel, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end, non-diversified management investment company, organized as a business trust under the laws of the Commonwealth of Massachusetts. On May 27, 1993, applicant registered under the Act and filed a registration statement under the Act and under the Securities Act of 1933. Applicant's registration statement was never declared effective, and applicant has made no public offering of its shares.

2. Applicant never issued or sold any securities, except to its sole shareholder and sponsor, Kidder Peabody Asset Management, Inc. As of the date of filing of the application, applicant had no shareholders, liabilities or assets. Applicant is not a party to any litigation or administrative proceeding.

3. Pursuant to written consent, applicant's sole Trustee determined that it was advisable and in the best interests of the applicant to withdraw its registration statement with the SEC, cease to be registered as an investment company and terminate its existence as a Massachusetts business trust and liquidate any assets and that the proceeds from the liquidation of the shares be returned to Kidder Peabody Asset Management, Inc.

4. Applicant is not now engaged, nor does it propose to engage in any business activities other than those necessary for the winding-up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–13077 Filed 5–26–95; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 21089; 811–6371]

Kidder, Peabody U.S. Treasury Securities Fund; Notice of Application

May 22, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Kidder, Peabody U.S. Treasury Securities Fund.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring it has ceased to be an investment company.

FILING DATE: The application was filed on May 4, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 16, 1995, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 60 Broad Street, New York, New York 10004–2350.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 942–0584, or H.R. Hallock, Jr., Senior Special Counsel, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end, diversified management investment company, organized as a business trust under the laws of the Commonwealth of Massachusetts. On August 7, 1991, applicant registered under the Act and filed a registration statement under the Act and the Securities Act of 1933. Applicant's registration statement was never declared effective, and applicant has made no public offering of its shares.

2. Applicant never issued or sold any securities, except to its sole shareholder and sponsor, Kidder Peabody Asset Management, Inc. As of the date of filing of the application, applicant had no shareholders, liabilities or assets. Applicant is not a party to any litigation or administrative proceeding.

3. Pursuant to written consent, applicant's sole Trustee determined that it was advisable and in the best interests of the applicant to withdraw its registration statement with the SEC, cease to be registered as an investment company and terminate its existence as a Massachusetts business trust and liquidate any assets and that the proceeds from the liquidation of the shares be returned to Kidder Peabody Asset Management, Inc.

4. Applicant is not now engaged, nor does it propose to engage in any business activities other than those necessary for the winding-up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–13078 Filed 5–26–95; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21091; 812–9554]

Nations Fund, Inc., et al.; Notice of Application

May 23, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Nations Fund, Inc., Nations Fund Trust, Nations Fund Portfolios, Inc. and The Capitol Mutual Funds (collectively, the Investment Companies"), and NationsBank, N.A. (the "Adviser").

RELEVANT ACT SECTIONS: Order requested under section 6(c) of the Act for an exemption from sections 13(a)(2), 18(f)(1), 22(f), and 22(g) and rule 2a–7 thereunder, under sections 6(c) and 17(b) of the Act for an exemption from section 17(a)(1), and pursuant to rule 17d–1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order that would permit the Investment Companies to enter into deferred compensation arrangements with their directors.

FILING DATE: The application was filed on March 28, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 19, 1995, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, Marco E. Adelfio, Morrison & Foerster, 2000 Pennsylvania Avenue, N.W., Washington, D.C. 20006.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Staff Attorney, at (202) 942–0574, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Each Investment Company is a registered open-end management investment company comprised of several investment portfolios. Nations Fund trust and Capitol Mutual Funds are organized as Massachusetts business trusts. Nations Fund, Inc. and Nations Fund Portfolios, Inc. are organized as Maryland corporations. The Adviser serves as the investment adviser for each investment portfolio of each Investment Company. Applicants request that the proposed relief apply to the Investment Companies and all subsequent registered open-end investment companies advised by the Adviser (such registered open-end

investment companies, together with the Investment Companies, are referred to collectively as the "Funds").

2. The board of directors of each Investment Company currently consists of seven persons, five of whom are not "interested persons" of that Investment Company. The membership of each of the boards is identical. Each director[1] is entitled to receive annual fees plus meeting attendance fees from each Investment Company. The chairman of the board receives an additional fee from each Investment Company. A deferred fee arrangement for the directors that has been adopted by the existing Funds is implemented through a deferred compensation plan (the "Plan"). The purpose of the Plan is to permit individual directors to elect to defer receipt of all or a portion of the fees otherwise payable for their services, to enable them to defer payment of income taxes on such fees or for other reasons.

3. The Plan became effective with respect to each Investment Company upon adoption by its board of directors. The Plan was adopted prior to the receipt of any exemptive relief requested. An exemptive order is required for the Plan because the Funds wish to use returns on portfolios of the Fund to determine the amount of earnings and gains or losses allocated to a director's deferred compensation account ("Deferral Account"); this feature will not be implemented without the issuance of an order. Pending receipt of an order, the Plan provides that the compensation deferred by a participant ("Compensation Deferrals") will be credited to the participant's Deferral Account in the form of cash and credited with earnings in an amount equal to the yield on 90-day U.S. Treasury Bills.

4. Under the Plan, Compensation Deferrals will be credited, as of the date such fees would have been paid, to a separate book reserve account established with respect to each participating Fund. The director may select one or more investment portfolios from a list of available portfolios of the Funds that will be used to measure the hypothetical investment performance of the director's Deferral Account. The value of a Deferral Account will be equal to the value such account would have had if the amount credited to it had been invested and reinvested in shares of the investment portfolios designated by the director (the "Designated Shares"). Each Deferral Account will be credited or charged with book adjustments representing all interest, dividends and other earnings and all gains and losses that would have been realized had the amounts credited to such account actually been invested in the Designated Shares.

5. A participating Fund's obligation to make payments with respect to a Deferral Account is and will remain a general obligation of the Fund to be made from the general assets and property of each portfolio. With respect to the obligations created under the Plan, each director will remain a general unsecured creditor. The Plan does not create an obligation of any Fund to any director to purchase, hold or dispose of any investments, and if a Fund or portfolio should choose to purchase investments in order to exactly "match" its obligations, all such investments will continue to be part of the general assets and property of such Fund.

6. Each Fund may, and with respect to any money market fund that values its assets by the amortized cost method will, purchase and maintain Designated Shares in an amount equal to the deemed investments of the Deferral Accounts. Except in the case of money market funds, applicants expected to effect matching transactions only if circumstances warrant, based upon a consideration of a Fund's total assets and the amount of deferred compensation subject to the Plan.

Applicants' Legal Analysis

1. Applicants request an order that would exempt the Funds under section 5(c) of the Act from sections 13(a)(2), 18(f)(1), 22(f), and 22(g) of the Act, and rule 2a–7 thereunder to the extent necessary to permit the Funds to enter into deferred fee arrangements with their directors; under sections 6 (c) and 17(b) of the Act from section 17(a)(1) of the Act to the extent necessary to permit the Funds to sell securities issued by them to participating Funds; and pursuant to rule 17d–1 under the Act to permit the Funds to engage in certain joint transactions incident to such deferred fee arrangements.

2. Section 18(f)(1) generally prohibits a registered open-end investment company from issuing senior securities. Section 13(a)(2) requires that a registered investment company obtain shareholder authorization before issuing any senior security not contemplated by the recitals of policy in its registration statement. Applicants state that the Plan does not give rise to any of the "evils" that led to Congress' concerns. No participating Fund will be "borrowing" from the directors. The Plan will not induce speculative investments or provide opportunities for manipulative allocation of any Fund's expenses or profits, affect control of any Fund, confuse investors or convey a false impression as to the safety of their investments, or be inconsistent with the theory of mutuality of risk.

3. Section 22(f) prohibits undisclosed restrictions on transferability or negotiability of redeemable securities issued by open-end investment companies. The Plan sets forth any restrictions or transferability or negotiability, and such restrictions are primarily to benefit the participating directors and would not adversely affect the interests of the director or of any shareholder of any Fund.

4. Section 22(g) prohibits registered open-end investment companies from issuing any of their securities for services or for property other than cash or securities. The legislative history of the Act suggests Congress was concerned with the dilutive effect on the equity and voting power that may result when securities are issued for consideration that is not readily valued. The Plan would not have this effect. Applicants believe that the Plan merely would provide for deferral of payment of fees and thus should be viewed as being issued not in return for services but in return for a Fund not being required to pay such fees on a current basis.

5. Rule 2a–7 imposes certain restrictions on the investments of "money market funds," as defined under the rule, that would prohibit a Fund that is a money market fund from investing in the shares of any other Fund. Applicants believe that the requested exemption would permit the Funds to achieve an exact matching of Designated Shares with the deemed investments of the Deferred Fee Accounts, thereby ensuring that the deferred fee arrangements would not affect net asset value.

6. Section 17(a)(1) generally prohibits an affiliated person of a registered investment company from selling any security to such registered investment company, except in limited circumstances. Funds that are advised by the same entity may be "affiliated persons" under section 2(a)(3)(C) of the Act. Applicants believe that an exemption from this provision would not implicate Congress' concerns in enacting section 17(a)(1) but would facilitate the matching of each Fund's liability for Compensation Deferrals with Designated Shares that would determine the amount of such Fund's liability. Applicants believe that the proposed transaction satisfies the criteria of sections 6(c) and 17(b).

[1] "Director" refers to a trustee or director of a Fund, as the case may be.

7. Section 17(d) and rule 17d–1 generally prohibit a registered investment company's joint or joint and several participation with an affiliated person in a transaction in connection with any joint enterprise or other joint arrangement without SEC approval. Under the Plan, participating directors will not receive a benefit that otherwise would inure to a Fund or its shareholders. Deferral of a director's fees in accordance with the Plan would essentially maintain the parties, viewed both separately and in their relationship to one another, in the same position (apart from tax effects) as would occur if the fees were paid on a current basis and then invested by the director directly in Designated Shares.

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. With respect to the requested relief from rule 2a–7, any money market Fund that values its assets by the amortized cost method will buy and hold Designated Shares that determine the performance of Deferral Accounts to achieve an exact match between the liability of such Fund to pay Compensation Deferrals and the assets that offset that liability.

2. If a Fund purchases Designated Shares issued by an affiliated Fund, the Fund will vote such shares in proportion to the votes of all other holders of shares of such affiliated Fund.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–13079 Filed 5–26–95; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2775 Amendment #1]

Louisiana; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended, effective May 17, 1995, to establish the incident period for this disaster as beginning on May 8, 1995 and continuing through May 16, 1995.

All other information remains the same i.e., the termination date for filing applications for physical damage is July 10, 1995, and for loans for economic injury the deadline is February 12, 1996.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: May 22, 1995.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 95–13099 Filed 5–26–95; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2776; Amendment #1]

Mississippi; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended, effective May 19, 1995, to include Jackson County, Mississippi as a disaster area due to damages caused by severe storms, tornadoes, and flooding. In addition, effective May 17, 1995, the declaration is amended to establish the incident period for this disaster as beginning on May 8, 1995 and continuing through May 17, 1995.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of George in the State of Mississippi, and Mobile in the State of Alabama may be filed until the specified date at the previously designated location.

All other information remains the same, i.e., termination date for filing applications for physical damage is July 10, 1995, and for loans for economic injury the deadline is February 12, 1996.

The economic injury number for the State of Alabama is 852900.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: May 22, 1995.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 95–13098 Filed 5–26–95; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

[Public Notice 2213]

United States International Telecommunications Advisory Committee (ITAC): Study Group B; Meeting Notice

The Department of State announces that the United States International Telecommunications Advisory Committee (ITAC), Study Group B Group will meet on Thursday, June 22, 1995 at 9:30 a.m., Room 1912 of the Department of State.

The Agenda for Study Group B will include a review of the results of the ITU–T Study Group 11 meeting (May 1995) as well as the results of the June Study Group 9 meeting. Consideration of contributions to upcoming meetings of ITU–T Study Group 13 in July, 1995 and the ITU–T Study Group 10 meeting, in September of 1995 will also be considered on the agenda of this meeting. Other matters within the purview of Study Group B may be raised at the meeting. Persons presenting contributions to the meeting of Study Group B should bring 35 copies to the meeting.

Members of the General Public may attend the meetings and join in the discussions, subject to the instructions of the chair. Admittance of public members will be limited to the seating available. In this regard, entrance to the Department of State is controlled. If you are not presently named on the mailing list of the Telecommunications Standardization Sector Study Group, and wish to attend please call 202–647–0201 not later than 5 days before the scheduled meetings. Enter from the "C" Street Main Lobby. One of the following valid photo ID's will be required for admittance: U.S. driver's license with picture, U.S. passport, U.S. Government ID (company ID's are no longer accepted by Diplomatic Security).

Dated: May 16, 1995.

Earl S. Barbely,

Chairman, U.S. ITAC for Telecommunication Standardization.

[FR Doc. 95–13058 Filed 5–26–95; 8:45 am]

BILLING CODE 4710–45–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Airborne Windshear Warning and Escape Guidance Systems for Transport Airplanes

AGENCY: Federal Aviation Administration, DOD.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of and requests comments on a proposed technical standard order (TSO) pertaining to airborne windshear warning and escape guidance systems for transport airplanes. The proposed TSO prescribes the minimum performance standards that airborne windshear warning and escape guidance systems for transport airplanes must meet to be identified with the marking "TSO–C117a.".

DATES: Comments must identify the TSO file number and be received on or before August 31, 1995.

ADDRESSES: Send all comments on the proposed technical standard order to: Technical Analysis Branch, AIR–120, Aircraft Engineering Division, Aircraft Certification Service—File No. TSO–C117a, Federal Aviation Administration (FAA), 800 Independence Avenue, SW., Washington, DC 20591. Or deliver comments to: Federal Aviation Administration, Room 804, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Bobbie J. Smith, Technical Programs and Continued Airworthiness Branch, AIR–120, Aircraft Engineering Division, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267–9546.

Comments Invited

Interested persons are invited to comment on the proposed TSO listed in this notice by submitting such written data, views, or arguments as they desire to the above specified address. Comments received on the proposed technical standard order may be examined, before and after the comment closing date, in Room 804, FAA Headquarters Building (FOB–10A), 800 Independence Avenue, SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m., and 4:30 p.m. All communications received on or before the closing date for comments specified above will be considered by the Director of the Aircraft Certification Service before issuing the final TSO.

Background

Revised TSO–C117a, Airborne Windshear Warning and Escape Guidance Systems for Transport Airplanes, requires the applicant to show by analysis, or other suitable means, that the system threshold is above a point at which nuisance warnings would be objectionable under conditions of severe turbulence, or aircraft change of configuration, i.e. flaps and/or gear retraction. If electronics techniques are used to reduced nuisance warnings by turbulence or aircraft configuration change, it must be shown that the system response to windshear detection is acceptable.

A Douglas DC–9–31 airplane crashed while executing a missed-approach following an instrument landing system approach. The NTSB report identifies the probable contriving factor for the missed-detection of the presence of a wind shear in the flight path was a warning delay designed into the wind shear detection system. This delay of warning was designed to reduce nuisance warnings from severe turbulence or aircraft configuration change, i.e., change of flap setting. This TSO revision will require test to demonstrate that wind shear detection is within acceptable limits.

How To Obtain Copies

A copy of the proposed TSO–C117a may be obtained by contacting the individual listed under "FOR FURTHER INFORMATION CONTACT."

Issued in Washington, DC, on May 23, 1995.

John K. McGrath,

Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 95–13132 Filed 5–26–95; 8:45 am]

BILLING CODE 4910–13–M

National Highway Traffic Safety Administration

[Docket No. 95–44; Notice 1]

Receipt of Petition for Decision That Nonconforming 1989 Honda Civic DX Hatchback Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1989 Honda Civic DX Hatchback passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that a 1989 Honda Civic DX Hatchback that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily altered to conform to the standards.

DATE: The closing date for comments on the petition is June 29, 1995.

ADDRESS: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9:30 am to 4 pm]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

J.K Motors of Kingsville, Maryland ("J.K.") (Registered Importer 90–006) has petitioned NHTSA to decide whether 1989 Honda Civic DX Hatchback passenger cars are eligible for importation into the United States. The vehicle which J.K. believes is substantially similar is the 1989 Honda Civic DX Hatchback that was manufactured for importation into, and sale in, the United States and certified by its manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1989 Honda Civic DX Hatchback to its U.S. certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

J.K. submitted information with its petition intended to demonstrate that the non-U.S. certified 1989 Honda Civic DX Hatchback, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being

readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1989 Honda Civic DX Hatchback is identical to its U.S. certified counterpart with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence * * *,* 103 *Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 105 *Hydraulic Brake Systems,* 106 *Brake Hoses,* 107 *Reflecting Surfaces,* 109 *New Pneumatic Tires,* 113 *Hood Latch Systems,* 116 *Brake Fluid,* 124 *Accelerator Control Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 203 *Impact Protection for the Driver From the Steering Control System,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 211 *Wheel Nuts, Wheel Discs and Hubcaps,* 212 *Windshield Retention,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* 301 *Fuel System Integrity,* and 302 *Flammability of Interior Materials.*

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp; (b) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model headlamps and front sidemarkers; (b) installation of U.S.-model taillamp assemblies which incorporate rear sidemarkers; (c) installation of a high mounted stop lamp.

Standard No. 110 *Tire Selection and Rims:* Installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* Replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection:* Installation of a key microswitch and a warning buzzer in the steering lock assembly.

Standard No. 115 *Vehicle Identification Number:* Installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 118 *Power Window Systems:* Installation of a relay in the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection:* Installation of a seat belt warning buzzer, wired to the seat belt latch. The petitioner states that the vehicle is equipped with U.S.-model shoulder belts in both front and rear outboard seating positions.

Standard No. 214 *Side Impact Protection:* Installation of reinforcing beams.

Additionally, the petitioner states that the bumpers on the non-U.S. certified 1989 Honda Civic DX Hatchback must be reinforced with steel support structures to comply with the Bumper Standard found in 49 CFR part 581.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: May 24, 1995.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 95–13168 Filed 5–26–95; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 95–46]

Country of Origin Marking for the Former Yugoslav Republic of Macedonia

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: On February 8, 1994, the United States extended formal recognition to The Former Yugoslav Republic of Macedonia as an independent state. This document notifies the public of the name and the English spelling that is to be used for country of origin marking on merchandise imported into the United States from the Former Yugoslav Republic of Macedonia. It also grants a grace period to permit the continued importation of merchandise marked "Yugoslavia."

EFFECTIVE DATE: July 31, 1995.

FOR FURTHER INFORMATION CONTACT: Monika Rice, Office of Regulations and Rulings, (202–482–6980).

SUPPLEMENTARY INFORMATION:

Background

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), provides that, unless excepted, every article of foreign origin imported into the U.S. shall be marked in a conspicuous place as legibly, indelibly and permanently as the nature of the article (or its container) will permit, in such a manner as to indicate to the ultimate purchaser in the U.S. the English name of the country of origin of the article. Customs has authority pursuant to 19 U.S.C. 1304 to determine the character of the words and phrases or abbreviations thereof which shall be acceptable as indicating the country of origin and to require the addition of any other words or symbols which may be appropriate to prevent deception or mistake as to the origin of an article.

On February 8, 1994, the United States extended formal recognition to The Former Yugoslav Republic of Macedonia as an independent state. Accordingly, products of The Former Yugoslav Republic of Macedonia imported into the U.S. are subject to marking with the English name of the independent state. The United States Department of State has indicated that the English name and the correct spelling of this independent state is:

Long form name	Short form name
The Former Yugoslav Republic of Macedonia.	(No current short form)

Instead of marking a product of The Former Yugoslav Republic of Macedonia with the long form name, the abbreviations "FYR Macedonia," "Macedonia (FYR)," "F.Y.R.O.M. (Macedonia)," or similar markings may be used, provided the abbreviations "FYR" or "F.Y.R.O.M." are adjacent to the word "Macedonia," and the words are in a comparable size. However, the Department of State has advised that the markings "Macedonia," "Republic of Macedonia", or "Made in Macedonia," are not appropriate at this time.

Customs recognizes that manufacturers and importers may need time to adjust to this change and that an abrupt change in the marking requirements could cause undue hardship. In Headquarters Ruling Letter 735526 dated April 28, 1994, Customs held that until February 8, 1995, merchandise produced in The Former Yugoslav Republic of Macedonia could be marked "Yugoslavia" as was previously required by a notice published at 57 FR 23455 (1992). However, since the general public was not given notice of this effective date, Customs will continue to accept products of The Former Yugoslav Republic of Macedonia with the marking "Yugoslavia," "Yugoslavia/Skopje," or "Yugoslavia/Macedonia" until 60 days from date of publication of this notice in the **Federal Register**. If the marking "Yugoslavia" is used, in order to avoid sanctions against products produced in Yugoslavia, importers should be prepared to demonstrate to the satisfaction of Customs that the country of origin of the product is The Former Yugoslav Republic of Macedonia and not Yugoslavia. All products of The Former Yugoslav Republic of Macedonia entered or withdrawn from warehouse for consumption on or after 60 days from the date this document is published in the **Federal Register** will be required to be marked "The Former Yugoslav Republic of Macedonia" or with one of the abbreviations set forth above.

Dated: May 22, 1995.

Stuart P. Seidel,

Assistant Commissioner, Office of Regulations and Rulings.

[FR Doc. 95–13071 Filed 5–26–95; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Claims Adjudication Commission, Notice of Meeting

The Department of Veterans Affairs (VA), in accordance with Public Law 92–463, gives notice that the Veterans' Claims Adjudication Commission will meet on Wednesday, June 7, 1995, and Thursday, June 8, 1995, at the Washington, DC. office of the Disabled American Veterans (1st floor), 807 Maine Avenue, SW., Washington, DC. The Commission shall meet on June, from 9 a.m. to 3:30 p.m. and on June 8 from 9 a.m. to 12 noon.

The major focus of this meeting will be to provide Commission members with an overview of remaining statutory reporting areas the Commission is mandated to study. The Commission will receive presentations from individuals who have been designated to assist the Commission in its study and evaluation in each statutory area. The Commission will also receive presentations on certain recommendations of the VA Inspector General with regard to appeals processing, customer service issues, the DOD/VA Reinvention Partnership, ethical considerations for Advisory Committee members, and will address its future agenda.

The meeting is open to the public; however, no specific amount of time is allocated for the purpose of receiving oral presentations from the public. The Commission will accept appropriate written comments from interested parties on the subject matter addressed during the meeting. Such comments may be referred to the Commission at the following address: Veterans' Claims Adjudication Commission (20C), U.S. Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC.

Additional information concerning this meeting may be obtained by contacting the Commission at (202) 275–2142.

Dated: May 19, 1995.

By Direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 95–13068 Filed 5–26–95; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register

Vol. 60, No. 103

Tuesday, May 30, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

U.S. COMMISSION ON CIVIL RIGHTS

DATE AND TIME: Friday, June 9, 1995, 9:30 a.m.

PLACE: U.S. Commission on Civil Rights, 624 Ninth Street, NW, Room 540, Washington, DC 20425.

STATUS: Open and Closed.

Agenda

I. Approval of Agenda
II. Approval of Minutes of May 12, 1995 Meeting
III. Announcements
IV. Executive Session to Discuss Personal Rules and Practices of the Commission
V. Staff Director's Report
VI. "Federal Title VI Enforcement to Ensure Nondiscrimination in Federally Assisted Programs" Report
VII. State Advisory Committee Report: "Rising Racial Tensions in Logan County, West Virginia"
VIII. State Advisory Committee Appointments for Hawaii, New Mexico, North Carolina, South Carolina, Virginia (interim), and Wisconsin
IX. Future Agenda Items

Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact Betty Edmiston, Administrative Services and Clearinghouse Division (202) 376-8116 at least five (5) days before the scheduled date of the hearing.

CONTRACT PERSON FOR FURTHER INFORMATION: Barbara Brooks, Press and Communications (202) 376-8312.

Miguel A. Sapp,

Acting Solicitor.

[FR Doc. 95-13201 Filed 5-25-95; 9:19 am]

BILLING CODE 6335-01-M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

TIME AND DATE: June 16, 1995, 10:00 am-3:00 pm.

PLACE: The Presidio, Building 135, Fisher Loop, San Francisco, California, 94129.

STATUS: The meeting will be open to the public up to the seating capacity of the room.

MATTERS TO BE CONSIDERED: The Board of Directors of the Corporation for National and Community Service will meet on June 16, 1995, to review reports from Committees of the Board of Directors on Corporation activities, review the report from the Chief Executive Officer, and to review the status of various Corporation initiatives. There will be a period devoted to public comment at the end of the meeting.

CONTACT PERSON FOR FURTHER INFORMATION: Rhonda Taylor, Associate Director of Special Projects and Initiatives, The Corporation For National Service, 8th Floor, Room 8619, 1201 New York Avenue, NW., Washington, DC 20525. Phone (202) 606-5000 ext. 282. Fax (202 565-2794.

Dated: May 24, 1995.

Terry Russell,

General Counsel.

[FR Doc. 95-13229 Filed 5-25-95; 1:10 pm]

BILLING CODE 6050-28-M

FEDERAL ENERGY REGULATORY COMMISSION NOTICE

May 24, 1995.

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. 94-409), 5 U.S.C. 552b:

DATE AND TIME: May 31, 1995, 10:00 a.m.

PLACE: 825 North Capitol Street, N.E., Room 9306, Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

* **Note:** Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 208-0400. For a recording listing items stricken from or added to the meeting, call (202) 208-1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

Consent Agenda—Hydro 631ST Meeting—May 31, 1995 Regular Meeting (10:00 a.m.)

CAH-1.
Docket Nos. HB08-95A-075-001 and HB08-95A-076-001, Virginia Electric and Power Company
CAH-2.
Project No. 4797-039, Cogeneration, Inc.
CAH-3.
Project No. 11521-001, Skokomish Indiana Tribe
CAH-4.
Project No. 2392-009, Simpson Paper (Vermont) Company
CAH-5.
Omitted
CAH-6.
Docket No. EL85-42-002, Guy M. Carlson
CAH-7.
Project Nos. 4678-018 and 4679-021, Power Authority of the State of New York
CAH-8.
Project No. 10934-004, William B. Ruger, Jr.
CAH-9.
Project No. 7888-010, Comtu Falls Corporation
CAH-10.
Omitted

Consent Agenda—Electric

CAE-1.
Docket Nos. ER95-836-000 and ER95-851-000, Maine Public Service Company
CAE-2.
Docket No. ER95-852-000, Tampa Electric Company
CAE-3.
Docket No. ER95-854-000, Kentucky Utilities Company
CAE-4.
Docket No. ER94-478-000, Medina Power Company
Docket No. EL94-87-000, Niagara Mohawk Power Corporation
CAE-5.
Docket No. ER95-735-000, Central Maine Power Company
CAE-6.
Omitted
CAE-7.
Docket No. ES95-26-000, Citizens Utilities Company
CAE-8.
Docket No. ER95-634-000, Florida Power Corporation
CAE-9.
Docket Nos. ER93-465-007 and ER93-922-006, Florida Power & Light Company
CAE-10.
Docket No. ER95-59-002, Southern Company Services, Inc.
CAE-11.
Docket No. ER95-135-000, Allegheny Power Service Corporation
Docket No. ER95-486-000, Midwest Power Systems, Inc.
Docket No. ER95-497-000, American Electric Power Service Corporation
Docket No. ER95-498-000, Toledo Edison Company
Docket No. ER95-499-000, Centerior Energy
Docket No. ER95-507-000, Ohio Edison Company and Pennsylvania Power Company
Docket No. ER95-559-000, Wisconsin Electric Power Company
Docket No. ER95-576-000, Wisconsin Public Service Corporation

Docket No. ER95-736-000, Wisconsin Power and Light Company
Docket Nos. ER95-564-000 through ER95-568-000, PJM Interconnection Association
CAE-12.
Docket No. EC95-8-000, Southwestern Public Service Company and Texas-New Mexico Power Company
Docket No. ER95-538-000, Southwestern Public Service Company
CAE-13.
Docket Nos. EC93-6-003 and ER94-1015-002, Cincinnati Gas & Electric Company and PSI Energy, Inc.
CAE-14.
Docket No. ER94-1518-001, Commonwealth Electric Company
CAE-15.
Docket No. EG95-42-000, GVK Industries Limited
CAE-16.
Docket No. EG95-43-000, Jegurupadu Operating and Maintenance Company
CAE-17.
Docket No. EG95-40-000, Dabhol Power Company
CAE-18.
Docket No. EG95-41-000, Entergy Power Development Corporation
CAE-19.
Docket No. EL93-35-000, City of Cleveland v. Cleveland Electric Illuminating Company
CAE-20.
Docket No. EL94-93-000, American Municipal Power-Ohio, Inc. v. Cleveland Electric Illuminating Company
CAE-21.
Docket No. RM95-9-000, Real-time Information Networks
CAE-22.
Docket No. ER92-517-000, Southern Company Services, Inc.

Consent Agenda—Gas and Oil

CAG-1.
Docket No. RP95-257-000, Equitrans, Inc.
CAG-2.
Docket Nos. TM94-4-34-006, 007, RP95-259-000 and 001, Florida Gas Transmission Company
CAG-3.
Docket Nos. RP95-263-000 and RP95-149-000, ANR Pipeline Company
CAG-4.
Docket No. RP95-268-000, Tennessee Gas Pipeline Company
CAG-5.
Docket No. RP95-274-000, Transcontinental Gas Pipe Line Corporation
CAG-6.
Docket No. RP95-281-000, South Georgia Natural Gas Company
CAG-7.
Docket No. RP95-283-000, Southern Natural Gas Company
CAG-8.
Docket No. RP93-49-001, Paiute Pipeline Company
CAG-9.
Docket Nos. RP95-55-001 and RP95-269-000, Paiute Pipeline Company
CAG-10.
Docket No. RP95-173-001, Koch Gateway Pipeline Company
CAG-11.
Docket No. RP95-236-000, Kern River Gas Transmission Company
CAG-12.
Docket No. RP95-254-000, Williams Natural Gas Company
CAG-13.
Docket No. RP95-260-000, Natural Gas Pipeline Company of America
CAG-14.
Docket No. RP95-279-000, Transwestern Pipeline Company
CAG-15.
Docket No. RP95-285-000, Natural Gas Pipeline Company of America
CAG-16.
Docket No. PR95-4-000, Arkansas Oklahoma Gas Corporation
CAG-17.
Docket Nos. PR94-18-000 and 001, Cranberry Pipeline Corporation
CAG-18.
Docket Nos. RP93-148-004 and RP95-62-001, Tennessee Gas Pipeline Company
CAG-19.
Docket No. RP94-425-002, Tennessee Gas Pipeline Company
CAG-20.
Docket No. TM95-2-17-000, Texas Eastern Transmission Corporation
CAG-21.
Docket No. RP94-3-000, KansOk Partnership
CAG-22.
Docket No. RP85-209-000, Koch Gateway Pipeline Company
CAG-23.
Docket Nos. RP95-143-000 and 001, Northwest Pipeline Corporation
CAG-24.
Docket Nos. RP94-149-004 and RP94-145-002, Pacific Gas Transmission Company
CAG-25.
Docket No. RP94-285-000, Williston Basin Interstate Pipeline Company
CAG-26.
Docket No. RP95-6-000, Northwest Pipeline Corporation
CAG-27.
Omitted
CAG-28.
Omitted
CAG-29.
Docket No. RP95-199-001, NorAm Gas Transmission Company
CAG-30.
Docket No. RP95-180-001, ANR Pipeline Company
CAG-31.
Docket No. RP95-182-002, ANR Pipeline Company
CAG-32.
Docket Nos. RP95-187-003 and TM95-2-37-003, Northwest Pipeline Corporation
CAG-33.
Omitted
CAG-34.
Docket Nos. RS92-16-012, CP92-182-012, RP91-135-002 and RP95-103-003, Florida Gas Transmission Company
CAG-35.
Docket Nos. PR93-4-001 and 000, Transok, Inc.
CAG-36.
Docket Nos. RP94-86-010, RP94-213-007 and TM95-2-22-002, CNG Transmission Corporation
CAG-37.
Docket Nos. IS90-21-003, IS90-31-003, IS90-32-003, IS90-40-003, IS91-1-003, SP91-3-003, SP91-5-003, IS91-28-003, IS91-33-003, OR93-1-001, IS92-26-000, IS95-2-000 and IS95-7-000, Williams Pipe Line Company
Docket Nos. IS90-39-003, IS91-3-001 and IS91-32-001 (Phase I), Enron Liquids Pipeline Company
CAG-38.
Omitted
CAG-39.
Docket No. RP93-186-003, Carnegie Interstate Pipeline Company
CAG-40.
Docket No. RP94-273-002, Columbia Gas Transmission Corporation
CAG-41.
Omitted
CAG-42.
Docket No. RP92-137-033, Transcontinental Gas Pipe Line Corporation
CAG-43.
Docket No. OR95-4-000, Union Oil Company of California, dba Unocal v. Cook Inlet Pipe Line Company
CAG-44.
Docket No. OR95-1-000, Sinclair Oil Corporation v. CITGO Products Pipeline Company, CITGO Petroleum Corporation and Lyondell-CITGO Refining Company, Ltd.
CAG-45.
Omitted
CAG-46.
Docket No. RM95-12-000, Minimum Filing Requirements for FERC Form No. 6, Annual Report for Oil Pipelines
CAG-47.
Docket Nos. IS95-28-000 and IS92-26-000, et al., Williams Pipe Line Company
CAG-48.
Docket No. IS95-29-000, Amoco Pipeline Company
Docket No. IS92-26-000, Williams Pipe Line Company
CAG-49.
Docket Nos. IS92-27-000, IS93-4-000 and IS93-33-001, Lakehead Pipe Line Company, Limited Partnership
CAG-50.
Docket No. MG88-5-005, Koch Gateway Pipeline Company
CAG-51.
Docket No. MG88-15-005, Southern Natural Gas Company
Docket No. MG88-16-004, South Georgia Natural Gas Company
CAG-52.
Docket No. RP95-267-000, Transwestern Pipeline Company
CAG-53.
Docket No. CP94-267-002, NorAm Gas Transmission Company
CAG-54.
Docket No. CP94-329-001, El Paso Natural Gas Company
CAG-55.
Docket Nos. CP93-361-002, 001 and 000, SunShine Interstate Transmission Company
CAG-56.

Docket Nos. CP93–618–003 and 004, Pacific Gas Transmission Company
CAG–57.
Docket No. CP94–36–006, Arkla Gathering Services Company
Docket Nos. CP94–628–003, RP95–94–003 and 005, NorAm Gas Transmission Company
CAG–58.
Omitted
CAG–59.
Docket Nos. CP93–548–000 and 001, Wallkill Transport Company, L.P.
CAG–60.
Docket Nos. CP92–184–004, 007 and 009, Texas Eastern Transmission Corporation
CAG–61.
Docket No. CP95–74–000, Texas Eastern Transmission Corporation
CAG–62.
Docket No. CP95–237–000, Greeley Gas Company
CAG–63.
Docket No. CP95–264–000, Iowa-Illinois Gas and Electric Company and MidAmerican Energy Company
CAG–64.
Docket Nos. CP94–130–000 and 001, Northern Natural Gas Company
Docket Nos. CP95–162–000 and CP95–179–000, Havre Pipeline Company
CAG–65.
Docket No. CP94–339–000, Midwestern Gas Transmission Company and Tenneco Midwest Natural Gas, L.P.
CAG–66.
Docket No. CP94–340–000, East Tennessee Natural Gas Company and Tenneco East Natural Gas, L.P.
CAG–67.
Docket Nos. CP94–577–000 and 001, Natural Gas Pipeline Company of America
CAG–68.
Docket No. CP94–715–000, Koch Gateway Pipeline Company
CAG–69.
Docket No. CP94–732–000, Tennessee Gas Pipeline Company
CAG–70.
Docket No. CP95–91–000, ANR Pipeline Company
CAG–71.
Docket No. CP95–156–000, Washington Natural Gas Company
CAG–72.
Docket Nos. CP93–685–000 and 001, Tuscarora Gas Transmission Company
CAG–73.
Docket No. CP95–168–000, Sea Robin Pipeline Company
CAG–74.
Docket No. RP95–262–000, Kern River Gas Transmission Company
CAG–75.
Docket No. RP95–265–000, Texas Gas Transmission Corporation
CAG–76.
Docket No. RM95–5–001, Release of Firm Capacity on Interstate Natural Gas Pipelines

Hydro Agenda

H–1.
Reserved

Electric Agenda

E–1.
Docket No. EL95–16–001, Southern California Edison Company
Docket No. EL95–19–001, San Diego Gas & Electric Company. Order on reconsideration.
E–2.
Docket No. RM94–14–000, Nuclear Plant Decommissioning Trust Fund Guidelines. Final Rule.

Oil and Gas Agenda

I. Pipeline Rate Matters

PR–1. (A)
Docket No. PL94–4–000, Pricing Policy For New and Existing Facilities Constructed by Interstate Natural Gas Pipelines. Pricing Policy for New and Existing Facilities.
(B) Docket Nos. CP94–6–000 and 002, Texas Eastern Transmission Corporation Docket Nos. CP94–89–000 and 001, CNG Transmission Corporation. Order on rehearing.
(C) Docket No. CP94–679–001, Great Lakes Gas Transmission Limited Partnership. Order on rehearing.
(D) Docket Nos. RP93–5–000, 001 and RP93–96–000, Northwest Pipeline Corporation. Opinion and Order on Initial Decision.

I. Pipeline Certificate Matters

PC–1.
Docket No. RP95–212–000, KansOk Partnership, Kansas Pipeline Partnership, Kansas Natural Partnership and Riverside Pipeline Company, L.P.. Order to show cause.

Lois D. Cashell,

Secretary.

[FR Doc. 95–13224 Filed 5–25–95; 1:09 pm]

BILLING CODE 6717–01–P

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of May 29, June 5, 12, and 19, 1995.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of May 29

Thursday, June 1

10:00 a.m.
Briefing on Electricity Forecast from Energy Information Administration (EIA) Annual Energy Outlook (Public Meeting)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting)
(Please Note: These items will be affirmed immediately following the conclusion of the preceding meeting.)
a. Kenneth G. Pierce (Shorewood, Illinois), Initial Decision (Vacating Staff Order), LBP–95–04, Docket Nos. 55–30662–EA, IA–94–007 (Tentative)
b. Final Amendments to 10 CFR Part 72 to Establish the Emergency Preparedness Licensing Regulations for Independent Spent Fuel Storage Facilities (ISFSI) and Monitored Retrievable Storage Facilities (MRS) (Tentative)
(Contact: Andrew Bates, 301–415–1963)
1:00 p.m.
Briefing by Executive Branch (Closed—Ex. 1)
2:00 p.m.
Briefing on Steam Generator Issues (Public Meeting)
(Contact: Brian Sheron, (301–415–2722)

Week of June 5—Tentative

Thursday, June 8

9:30 a.m.
Meeting with Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting)
(Contact: John Larkins, 301–415–7360)
11:00 a.m.
Affirmation/Discussion and Vote (Public Meeting) (If needed)

Friday, June 9

9:00 a.m.
Briefing by DOE High Level Waste Program (Public Meeting)
10:30 a.m.
Briefing by DOE on Status of Multi-Purpose Canisters (MPC) (Public Meeting)

Week of June 12—Tentative

Wednesday, June 14

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of June 19—Tentative

Wednesday, June 21

9:00 a.m.
Discussion of Management Issues (Closed—Ex. 2 and 6)
10:30 a.m.
Briefing on NRC Use of Expert Elicitation in HLW Performance Assessments (Public Meeting) (Contact: Janet Kotra, 301–415–6674)

Thursday, June 22

9:30 a.m.
Briefing on Results of Senior Management Review of Operating Reactors, Fuel Facilities, and Related Activities (Public Meeting) (Contact: Victor McCree, 301–415–1711)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

The schedule for commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292.

CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415–1661.

* * * * *

This notice is distributed by mail to several hundred subscribes; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, DC 20555 (301–415–1963).

In addition, distribution of this meeting notice over the internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to alb@nrc.gov or gkt@nrc.gov.

* * * * *

Dated: May 25, 1995.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 95–13285 Filed 5–25–95; 2:58 pm]

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federal register

Tuesday
May 30, 1995

Part II

Environmental Protection Agency

40 CFR Part 433, et al.
Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards: Metal Products and Machinery; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 433, 438 and 464

[FRL–5186–6]

RIN 2040–AB79

Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards: Metal Products and Machinery

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This proposed regulation establishes technology-based limits for the discharge of pollutants into waters of the United States and into publicly owned treatment works by existing and new facilities that manufacture, maintain or rebuild finished metal parts, products or machines.

This proposed regulation will reduce the discharge of toxic pollutants from Metal Products and Machinery (MP&M) facilities by almost a million pounds per year, thereby reducing violations of water quality standards (which were established to protect aquatic life and/or human health) in water bodies across the country. This proposed regulation will also reduce the metals content of municipal sludge, thereby allowing approximately 184 additional POTWs to land apply another 439,000 dry metric tons of sewage sludge rather than incinerating or landfilling the sludge.

As a result of consultations with numerous stakeholders, the preamble solicits comments and data not only on issues raised by EPA, but also on those raised by environmental groups, by state and local governments who will be implementing these regulations, and by industry representatives who will be affected by them. As indicated elsewhere throughout this proposal, the Agency welcomes comment on all options, issues, and proposed decisions and encourages commentors to submit additional data during the comment period (See Section XIX of this preamble). The Agency plans to have additional discussions with interested parties during the comment period to help ensure that the Agency has the views of such parties and the best possible data upon which to base decisions for the final rule. EPA's final rule may be based upon any technologies, rationale or approaches that are a logical outgrowth of this proposal, including any options discussed in this or subsequent documents.

DATES: Comments on the proposal must be received by August 28, 1995. In addition, EPA will conduct a workshop covering this rulemaking, in conjunction with a public hearing on the pretreatment standards portion of the rule. The public hearing and the workshop will be held on June 28, 1995. Persons wishing to present formal comments at the public hearing should have a written copy for submittal.

ADDRESSES: Submit comments in writing, and if possible on a 3.5 inch disk in Word Perfect 5.1 format to: Mr. Steven Geil, Engineering & Analysis Division (4303), U.S. EPA, 401 M Street, SW., Washington, DC 20460.

The public hearing and the workshop will be held starting at 9 a.m. at the Hall of States, room 333, 444 North Capital Street, Washington, DC 20001.

The public record for this rulemaking is available for review at the EPA's Water Docket; 401 M Street, SW., Washington, DC 20460; call between 9 a.m. and 3:30 p.m. Eastern Standard Time for an appointment. The EPA public information regulation (40 CFR part 2) provides that a reasonable fee may be charged for copying. For access to Docket materials, call (202) 260–3027.

FOR FURTHER INFORMATION CONTACT: For additional technical information, contact Mr. Steven Geil at (202) 260–9817. Additional economic information may be obtained by contacting Dr. Lynne G. Tudor at (202) 260–5834. Background documents supporting the proposed regulations are described in the "Background Documents" section below. Some of the documents are available from the Office of Water Resource Center, Mail Code RC–4100, US EPA, 401 M Street SW., Washington, DC 20460; telephone (202) 260–7786 for the voice mail publication request line.

SUPPLEMENTARY INFORMATION:

Overview

This preamble describes the scope, purpose, legal authority and background of this rule, the technical and economic bases, and the methodology used by the Agency to develop these effluent limitations guidelines and standards.

Abbreviations, acronyms, and other terms used in the Supplementary Information Section are defined in Appendix A to this notice.

Background Documents

The regulation proposed today is supported by the major documents listed below. (1) EPA's technical conclusions concerning the regulations are detailed in the "Development Document for Proposed Effluent Limitations Guidelines and Standards for the Metal Products and Machinery Phase I Point Source Category," hereafter referred to as the Technical Development Document (EPA 821–R–95–021). (2) The Agency's economic and regulatory flexibility analyses are found in the "Economic Impact of Proposed Effluent Limitations Guidelines and Standards For The Metal Products And Machinery Industry Phase I," hereafter referred to as the Economic Impact Analysis (EPA 821–5–95–022). (3) The industry profile is described in the "Industry Profile Of The Metal Products And Machinery Industry Phase I," (EPA 821–R–95–024). (4) The regulatory impact analysis (including the Agency's assessment of environmental benefits) is detailed in the "Regulatory Impact Assessment of Proposed Effluent Limitations Guidelines and Standards for the Metal Products and Machinery Industry Phase I," hereafter referred to as the Regulatory Impact Assessment (EPA 821–R–95–023). (5) An analysis of the incremental costs and pollutant removals is presented in "Cost Effectiveness Analysis of Proposed Effluent Limitations Guidelines and Standards for the Metal Products and Machinery Phase I Point Source Category," (EPA 821–R–95–025). (6) The statistical support for today's proposal is found in reports on the information screener survey (called the Mini Data Collection Portfolio), the detailed questionnaire (call the Data Collection Portfolio), and the calculation of limits.

Outline: This preamble is organized according to the following outline:

I. Legal Authority

II. Background

A. Statutory Requirements of Regulation
1. Best Practicable Control Technology Currently Available (BPT)
2. Best Available Technology Economically Achievable (BAT)
3. Best Conventional Pollutant Control Technology (BCT)
4. New Source Performance Standards (NSPS)
5. Pretreatment Standards for Existing Sources (PSES)
6. Pretreatment Standards for New Sources (PSNS)
7. Best Management Practices (BMP)
B. Litigation History
C. Pollution Prevention Act
D. Common Sense Initiative
E. Consultation (Executive Order 12875)
F. Prior Regulation for Metals Industries
G. Scope of Today's Proposed Rule

III. Summary of Proposed Regulations

A. BPT
B. BCT
C. BAT
D. NSPS
E. PSES
F. PSNS

IV. Overview of the Industry
A. Industry Description
B. Estimation of Number of Metal Products & Machinery Phase I Sites
C. Source Reduction Review Project

V. Data Gathering Efforts
A. Existing Databases
B. Survey Questionnaire
C. Waste water Sampling and Site Visits
D. EPA Bench Scale Treatability Studies (Terpene Study)

VI. Industry Subcategorization

VII. Water Use and Waste water Characteristics
A. Waste water Sources and Characteristics
B. Pollution Prevention, Recycle, Reuse and Water Conservation Practices

VIII. Approach for Estimating Costs and Pollution Reductions Achieved by Waste water Control Technology

IX. Best Practicable Control Technology Currently Available
A. Need for BPT Regulation
B. BPT Technology Options and Selection
C. Calculation of BPT Limitations
D. Applicability of BPT
E. BPT Pollutant Removals, Costs, and Economic Impacts

X. Best Conventional Pollutant Control Technology
A. July 9, 1986 BCT Methodology
B. BCT Options Identified

XI. Best Available Technology Economically Achievable
A. Need for BAT Regulation
B. BAT Technology Options and Selection
C. Calculation of BAT Limitations
D. Applicability of BAT
E. BAT Pollutant Removals, Costs, and Economic Impacts

XII. Pretreatment Standards for Existing Sources
A. Need for Pretreatment Standards
B. PSES Technology Options and Selection
C. Calculation of PSES
D. Applicability of PSES Limitations
E. Removal Credits
F. Compliance Date
G. PSES Pollutant Removals, Costs and Economic Impacts

XIII. New Source Performance Standards (NSPS) and Pretreatment Standards for New Sources (PSNS)

XIV. Economic Considerations
A. Introduction
B. Overview of the Facilities Subject to Regulation
C. Overview of Options Considered for Proposal and Selection of the Proposed Options
D. Economic Impact Methodology
E. Estimated Facility Economic Impacts
F. Labor Requirements and Possible Employment Benefits of Regulatory Compliance
G. Community Impacts
H. Impacts on Firms Owning Metal Products & Machinery Facilities
I. Foreign Trade Impacts
J. Impacts on NSPS and PSNS
K. Regulation Flexibility Analysis
L. Cost Effectiveness Analysis

XV. Executive Order 12866
A. Introduction
B. Benefits Associated with the Proposed Effluent Guidelines
C. Costs to Society
D. Benefit-Cost Comparison

XVI. Water Quality and Other Environmental Benefits of Proposed Rule for the Metal Products and Machinery (MP&M) Industry

XVII. Non-Water Quality Environmental Impacts
A. Air Pollution
B. Solid Waste
C. Energy Requirements

XVIII. Regulatory Implementation
A. Upset and Bypass Provisions
B. Variances and Modifications
1. Fundamentally Different Factors Variances
2. Economic Variances
3. Water Quality Variances
4. Permit Modifications
C. Relationship to NPDES Permits and Monitoring Requirements
D. Best Management Practice

XIX. Solicitation of Data and Comments

XX. Guidelines for Comment Submission of Analytical Data
A. Types of Data Requested
B. Analytes Requested
C. Quality Assurance/Quality Control (QA/QC) Requirements

XXI. Unfunded Mandates Reform Act

Appendix A Abbreviations, Acronyms, and Other Terms Used in This Notice

I. Legal Authority

This regulation is being proposed under the authorities of sections 301, 304, 306, 307, 308, and 501 of the Clean Water Act, 33 U.S.C. Sections 1311, 1314, 1316, 1317, 1318, and 1361; and under authority of the Pollution Prevention Act of 1990 (PPA), 42 U.S.C. 13101 et seq., Pub. L. 101-508, November 5, 1990.

II. Background

A. Statutory Requirements of Regulation

The objective of the Clean Water Act ("Act") is to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters," (section 101(a)). To assist in achieving this objective, EPA is to issue effluent limitations guidelines, pretreatment standards, and new source performance standards for industrial dischargers.

These guidelines and standards are summarized briefly below:

1. Best Practicable Control Technology Currently Available (BPT) (Section 304(b)(1) of the Act)

BPT effluent limitations guidelines are generally based on the average of the best existing performance by plants of various sizes, ages, and unit processes within the category or subcategory for control of pollutants.

In establishing BPT effluent limitations guidelines, EPA considers the total cost of achieving effluent reductions in relation to the effluent reduction benefits, the age of equipment and facilities involved, the processes employed, process changes required, engineering aspects of the control technologies, non-water quality environmental impacts (including energy requirements) and other factors as the EPA Administrator deems appropriate (section 304(b)(1)(B) of the Act). The Agency considers the category or subcategory-wide cost of applying the technology in relation to the effluent reduction benefits. Where existing performance is uniformly inadequate, BPT may be transferred from a different subcategory or category.

2. Best Available Technology Economically Achievable (BAT) (Section 304(b)(2) of the Act)

In general, BAT effluent limitations represent the best existing economically achievable performance of plants in the industrial subcategory or category. The Act establishes BAT as the principal national means of controlling the direct discharge of toxic pollutants and nonconventional pollutants to navigable waters. The factors considered in assessing BAT include the age of equipment and facilities involved, the process employed, potential process changes, and non-water quality environmental impacts (including energy requirements) (section 304(b)(2)(B)). The Agency retains considerable discretion in assigning the weight to be accorded these factors. As with BPT, where existing performance is uniformly inadequate, BAT may be transferred from a different subcategory or category. BAT may include process changes or internal controls, even when these technologies are not common industry practice.

3. Best Conventional Pollutant Control Technology (BCT) (Section 304(b)(4) of the Act)

The 1977 Amendments to the Act established BCT for discharges of conventional pollutants from existing industrial point sources. Section 304(a)(4) designated the following as conventional pollutants: Biochemical oxygen demanding pollutants (BOD), total suspended solids (TSS), fecal coliform, pH, and any additional pollutants defined by the Administrator as conventional. The Administrator designated oil and grease as an

additional conventional pollutant on July 30, 1979 (44 FR 44501).

BCT replaces BAT for the control of conventional pollutants for certain facilities. In addition to other factors specified in section 304(b)(4)(B), the Act requires that BCT limitations be established in light of a two part "cost-reasonableness" test. EPA's current methodology for the general development of BCT limitations was issued in 1986 (51 FR 24974; July 9, 1986).

4. New Source Performance Standards (NSPS) (Section 306 of the Act)

NSPS are based on the best available demonstrated treatment technology. New plants have the opportunity to install the best and most efficient production processes and waste water treatment technologies. As a result, NSPS should represent the most stringent numerical values attainable through the application of the best available control technology for all pollutants (i.e., conventional, nonconventional, and toxic pollutants). In establishing NSPS, EPA is directed to take into consideration the cost of achieving the effluent reduction and any non-water quality environmental impacts and energy requirements.

5. Pretreatment Standards for Existing Sources (PSES) (Section 307(b) of the Act)

PSES are designed to prevent the discharge of pollutants that pass through, interfere with, or are otherwise incompatible with the operation of publicly owned treatment works (POTWs). The Act requires pretreatment standards for pollutants that pass through POTWs or interfere with POTWs' treatment processes or sludge disposal methods. The Act requires industry to achieve PSES within three years of promulgation. Pretreatment standards are technology-based and analogous to the BAT effluent limitations guidelines. For the purpose of determining whether to promulgate national category-wide pretreatment standards, EPA generally determines that there is pass-through of a pollutant and thus a need for categorical standards if the nation-wide average percent removal of a pollutant removed by well-operated POTWs achieving secondary treatment is less than the percent removed by the BAT model treatment system.

The General Pretreatment Regulations, which set forth the framework for the implementation of categorical pretreatment standards, are found at 40 CFR Part 403. Those regulations contain a definition of pass-through that addresses localized rather than national instances of pass-through and does not use the percent removal comparison test described above. See 52 FR 1586 (January 14, 1987.)

6. Pretreatment Standards for New Sources (PSNS) (Section 307(b) of the Act)

Like PSES, PSNS are designed to prevent the discharges of pollutants that pass through, interfere with, or are otherwise incompatible with the operation of POTWs. PSNS are to be issued at the same time as NSPS. New indirect dischargers, like the new direct dischargers, have the opportunity to incorporate into their plants the best available demonstrated technologies. The Agency considers the same factors in promulgating PSNS as it considers in promulgating NSPS.

7. Best Management Practices (BMP)

The Agency is not proposing BMPs for MP&M. However, we are soliciting comment on whether BMPs could be promulgated in lieu of numeric limitations for low discharge volume sites. EPA has defined BMPs broadly (40 CFR 122.2) and is considering whether numeric limitations are infeasible for such sites because of the administrative burdens imposed on permitting authorities to develop, implement, and monitor necessary permits. BMP's could also cause pretreatment permitting to be more efficient and less costly for both control authorities and dischargers. The use of BMP's instead of flow monitoring associated with mass-based limits could result in greater efficiencies and cost savings for both control authorities and discharges. Properly implemented, BMP's could provide environmental protection equivalent to mass-based limits at a lower cost. Since some Control Authorities pass their costs along to industrial users in the form of service fees, cost savings to Control Authorities could be passed along to industrial users. BMPs could include any of the in-process pollution prevention or flow reduction technologies discussed in the MP&M public record and pollution prevention bibliography section of the Technical Development Document.

B. Litigation History

Section 304(m) of the Act (33 U.S.C. 1314(m)), added by the Water Quality Act of 1987, requires EPA to establish schedules for (i) reviewing and revising existing effluent limitations guidelines and standards ("effluent guidelines"), and (ii) promulgating new effluent guidelines. On January 2, 1990, EPA published an Effluent Guidelines Plan (55 FR 80), in which schedules were established for developing new and revised effluent guidelines for several industry categories. One of the industries for which the Agency established a schedule was the Machinery Manufacturing and Rebuilding Category (the name was changed to Metal Products and Machinery in 1992).

Natural Resources Defense Council, Inc. (NRDC) and Public Citizen, Inc. challenged the Effluent Guidelines Plan in a suit filed in U.S. District Court for the District of Columbia (*NRDC et al* v. *Reilly*, Civ. No. 89–2980). The plaintiffs charged that EPA's plan did not meet the requirements of section 304(m). A Consent Decree in this litigation was entered by the Court on January 31, 1992. The terms of the Consent Decree are reflected in the Effluent Guidelines Plan published on September 8, 1992 (57 FR 41000). This plan requires, among other things, that EPA propose effluent guidelines for the Metal Products and Machinery (MP&M) category by November, 1994 and take final action on these effluent guidelines by May, 1996. The most recent Effluent Guidelines Plan was published on August 26, 1994 (59 FR 44235). EPA filed a motion with the court on September 28, 1994, requesting an extension of time until March 31, 1995, for the EPA Administrator to sign the proposed regulation and a subsequent four month extension for signature of the final regulation in September 1996.

C. Pollution Prevention Act

The Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13101 et seq., Pub. L. 101–508, November 5, 1990) makes pollution prevention the national policy of the United States. The PPA identifies an environmental management hierarchy in which pollution "should be prevented or reduced whenever feasible; pollution that cannot be prevented should be recycled in an environmentally safe manner, whenever feasible; pollution that cannot be prevented or recycled should be treated in an environmentally safe manner whenever feasible; and disposal or release into the environment should be employed only as a last resort * * *" (42 U.S.C. 13103). In short, preventing pollution before it is created is preferable to trying to manage, treat or dispose of it after it is created. According to the PPA, source reduction reduces the generation and release of hazardous substances, pollutants, wastes, contaminants or residuals at the source, usually within a process. The term source reduction "* * * includes equipment or technology modifications, process or procedure modifications, reformulation or redesign of products, substitution of raw materials, and improvements in housekeeping, maintenance, training, or inventory control. The term 'source reduction' does not include any practice which alters the physical, chemical, or biological characteristics or the volume of a hazardous substance, pollutant, or contaminant through a process or activity which itself is not integral to or necessary for the production of a product or the providing of a service." In effect, source reduction means reducing the amount of a pollutant that enters a waste stream or that is otherwise released into the environment prior to out-of-process recycling, treatment, or disposal.

The PPA directs the Agency to, among other things, "* * * review regulations of the Agency prior and subsequent to their proposal to determine their effect on source reduction" (42 U.S.C. 13103). This directive led the Agency to implement a pilot project called the Source Reduction Review Project that would facilitate the integration of source reduction in the Agency's regulations, including the technology based effluent guidelines and standards. (see Section IV. B. for a more complete discussion of the Source Reduction Review Project.) The MP&M Phase I category effluent guideline was included in the Source Reduction Review Project.

D. Common Sense Initiative

On October 17, 1994, the Administrator established the Common Sense Initiative (CSI) Council in accordance with Federal Advisory Committee Act (U.S.C. App. 2, Section 9(c)) requirements. One of the goals of the CSI is to develop recommendations for optimal multi-media approaches to address environmental problems associated with six industrial sectors including Metal Plating and Finishing, Electronics and Computers, Auto Assembly, and Iron and Steel Manufacturing. The current Clean Water Act MP&M rulemaking studies, which were initiated in 1989, overlap to varying degrees these six CSI pilot industrial sectors.

The following are the six elements of the CSI program, as stated in the "Advisory Committee Charter."

1. *Regulation.* Review existing regulations for opportunities to get better environmental results at less cost. Improve new rules through increased coordination.

2. *Pollution Prevention.* Actively promote pollution prevention as the standard business practice and a central ethic of environmental protection.

3. *Recordkeeping and Reporting.* Make it easier to provide, use, and publicly disseminate relevant pollution and environmental information.

4. *Compliance and Enforcement.* Find innovative ways to assist companies that seek to comply and exceed legal requirements while consistently enforcing the law for those that do not achieve compliance.

5. *Permitting.* Improve permitting so that it works more efficiently, encourages innovation, and creates more opportunities for public participation.

6. *Environmental Technology.* Give Industry the incentives and flexibility to develop innovative technologies that meet and exceed environmental standards while cutting costs.

In addition, it is the intent of the Agency to work with the CSI's sector teams and further integrate their consensus recommendations applicable to the MP&M Phase I proposal as they are developed. Even though the MP&M Phase I data collection and analysis efforts were completed before the CSI program was announced, many aspects of the CSI objectives are reflected in the MP&M proposal. As part of the development of this proposal, EPA took advantage of several opportunities to gain the involvement of various stakeholders. For example, a public meeting was held in March of 1994 to present the technology options under consideration by the Agency. We have addressed industry trade associations, the Association of Metropolitan Sewerage Authorities, pretreatment coordinators from the Regions, States, and municipalities, and the Effluent Guidelines Task Force, and we have met with environmental interest group representatives. We have used comments and concerns raised at these meetings to frame solicitations for data and comment on aspects of this regulation ranging from pollution prevention to implementation issues. The MP&M Phase I proposal was based in part on pollution prevention for the largest dischargers, and the technical documents that support the proposal provide guidance on pollution prevention techniques applicable to this industry for use by all facilities. This proposal is performance-based and does not stipulate the use of specific control or treatment technologies. Industry retains the flexibility to develop or select innovative technologies that meet or exceed the performance-based standards proposed today. EPA considered cost effectiveness as part of the overall MP&M Phase I effluent guideline development process. The MP&M Phase II effluent guideline development process will further support the CSI.

E. Consultation (Executive Order 12875)

Executive Order 12875, "Enhancing the Intergovernmental Partnership" requires Federal Agencies to consider the impacts of unfunded mandates on state, local, or tribal governments. Agencies, such as the EPA, that can impose unfunded mandates on state, local, or tribal governments are required by Executive Order 12875 to ensure that the Federal government either allocates the funds necessary for compliance or involves the affected agencies in the regulatory development process. The proposed MP&M Phase I regulation establishes effluent limitations guidelines and pretreatment standards that will directly impact the state and local waste water permitting process. The primary impact of the proposed MP&M Phase I regulation on state and local regulatory agencies will be that an increased number of permits will have to be issued. The cost associated with writing additional permits for direct dischargers based on national guidelines may be partially offset by a decrease in the expenses associated with writing individual permits based on local conditions or best professional judgment (BPJ). In general, EPA believes that the cost of individual permits for direct dischargers may be reduced by the MP&M Phase I rule, because fewer resources are required to issue effluent-guideline-based permits than to issue BPJ-based permits.

The proposed MP&M Phase I effluent guidelines will be implemented as part of the National Pollutant Discharge Elimination System (NPDES) and pretreatment permitting processes. An estimated 1,895 direct and 8,706 indirect discharging facilities will require permits under the proposed MP&M Phase I regulation. Although existing effluent guidelines such as metal finishing (40 CFR 433) and electroplating (40 CFR 413) cover some of these facilities (approximately 2,000), EPA expects a substantial net increase in the number of permits state and local regulatory agencies are required to write. The economic impact on industry associated with the additional permits is not expected to adversely affect industries that dominate local economies in a manner that would significantly alter state or local government revenues.

The administrative burden created by the proposed MP&M Phase I effluent guidelines may be partially offset by anticipated savings in the costs associated with writing individual permits. Currently, many permits are written based on BPJ criteria. The development of such permits is often

contentious and can require a significant investment in resources. The proposed MP&M Phase I guidelines are expected to require fewer resources to develop permits than those based on BPJ, since MP&M Phase I includes specific effluent guidelines and pretreatment standards. EPA solicits comments on the administrative burden associated with permits based on BPJ, permits based on effluent guidelines, and the relationship between the two.

The MP&M Phase I regulatory development process was closely coordinated with the public, industry groups, and other interested parties. MP&M regulation development summaries were presented at technical symposia and two public outreach meetings. In addition, comments regarding several implementation issues are included in today's notice (See Section XIX). Based on public comments, concerns will be addressed and, if applicable, incorporated into the final MP&M regulation.

EPA plans to continue the data collection and public outreach programs for MP&M Phase I. Consultation with other governmental activities will also be initiated early in MP&M Phase II regulation development to allow continued, effective compliance with E.O. 12875 requirements.

F. Prior Regulation for Metals Industries

EPA has established effluent guidelines regulations for thirteen industries which may perform operations that are sometimes found in MP&M Phase I facilities. These effluent guidelines are:

- Electroplating (40 CFR Part 413);
- Iron & Steel Manufacturing (40 CFR Part 420);
- Nonferrous Metals Manufacturing (40 CFR Part 421);
- Ferroalloy Manufacturing (40 CFR Part 424);
- Metal Finishing (40 CFR Part 433);
- Battery Manufacturing (40 CFR Part 461);
- Metal Molding & Casting (40 CFR Part 464);
- Coil Coating (40 CFR Part 465);
- Porcelain Enameling (40 CFR Part 466);
- Aluminum Forming (40 CFR Part 467);
- Copper Forming (40 CFR Part 468);
- Electrical & Electronic Components (40 CFR Part 469); and
- Nonferrous Metals Forming & Metal Powders (40 CFR Part 471).

These existing effluent guidelines generally apply to the production of semi-finished products, while the MP&M Phase I category applies to finished metal parts, products, and machines. EPA recognizes that unit operations performed in industries covered by the existing effluent guidelines generate waste water similar to unit operations performed at MP&M Phase I sites. A discussion of how these guidelines are integrated with the regulations proposed today is continued in the following section.

G. Scope of Today's Proposed Rule

The MP&M Phase I category applies to industrial sites engaged in the manufacturing, maintaining or rebuilding of finished metal parts, products or machines. Today's proposed effluent guideline (MP&M Phase I) applies to process waste water discharges from sites performing manufacturing, rebuilding or maintenance on a metal part, product or machine to be used in one of the following industrial sectors:

- Aerospace;
- Aircraft;
- Electronic Equipment;
- Hardware;
- Mobile Industrial Equipment;
- Ordnance; and
- Stationary Industrial Equipment.

MP&M Phase II will be proposed and promulgated approximately three years after the MP&M Phase I schedule. EPA currently intends to cover the following eight industrial sectors in MP&M Phase II:

- Bus and Truck;
- Household Equipment;
- Instruments;
- Motor Vehicle;
- Office Machine;
- Precious and Nonprecious Metals;
- Railroad; and
- Ships and Boats.

EPA has identified these fifteen industrial sectors in the MP&M category; these sectors manufacture, maintain and rebuild products under more than 200 different SIC codes. In order to make the regulation more manageable, EPA has divided it into the two phases discussed above; lists of typical products manufactured within the two MP&M phases are included as appendices to the proposed regulation. Although EPA believes that it has clearly defined what the fifteen sectors are and how they have been divided into two phases for the purposes of regulation, EPA expects that some products will clearly fit within certain industry sectors while others will be more difficult to define. Some examples of how the proposed MP&M Phase I regulation would apply are provided below for clarification.

An example of a clear fit would be a site which manufactures aircraft engines. The site would be considered to be within the aircraft industrial sector of MP&M. Since aircraft is an MP&M Phase I industry, the aircraft engine manufacturer would be covered by MP&M Phase I.

Another example of a clear fit would be a site which manufactures school buses. The site would be considered to be within the bus and truck industrial sector of MP&M. Since bus and truck is an MP&M Phase II industry, the school bus manufacturer would be covered by MP&M Phase II.

An example of a site which produces products which would fall under more than one MP&M Phase I industry would be a site which manufacturers farm tractors and farm conveyors. The site would be considered to be within the mobile industrial equipment and the stationary industrial equipment sectors. Since both mobile industrial equipment and stationary industrial equipment are MP&M Phase I industries, the farm tractor and farm conveyor manufacturer would be covered by MP&M Phase I. Although MP&M Phase I covers seven industrial categories, the proposed rule is not subcategorized by industrial sector (See Section VI). Instead, all seven MP&M Phase I industries are grouped together under one MP&M Phase I category.

An example of a site that produces products within an MP&M Phase I industry and an MP&M Phase II industry would be a site which manufactures hand tools and household cooking equipment. The site would be considered to be within the hardware and household equipment sectors. Since hardware is an MP&M Phase I industry and household equipment is an MP&M Phase II industry, the site has operations in both MP&M phases. As discussed further below, EPA proposes to apply the MP&M Phase I rule to sites with operations in both MP&M Phase I and MP&M Phase II. As a result, all of the site's operations (including those performed to manufacture the cooking equipment) would be covered under MP&M Phase I. The coverage of sites that might be assigned to either Phase I or II is discussed further below.

An example of a site which manufactures products which could be difficult to assign to a specific MP&M industrial sector would be a car door handle manufacturing site. If a car door handle were considered a piece of hardware, then the site would fit under MP&M Phase I (hardware industrial sector). If, on the other hand, the door handle were considered a motor vehicle part, then the site would fit under MP&M Phase II (motor vehicle industrial sector). In cases where products could be viewed under different industrial sectors, EPA proposes that the industrial sector(s) which most accurately matches the market into which the product is sold be assigned. In addition, if a metal part has a specific use in one of the fifteen MP&M industrial sectors, then the sector in which it is intended to be used is the industrial sector that should be assigned to that site. In this example, the car door handle has no other uses than operating the door of a car, and this site would be considered a motor vehicle site (MP&M Phase II).

Another example of a site which produces products which could be difficult to assign to a specific MP&M industrial sector would be a site which manufactures pistons for use in internal combustion engines, stationary generators, automotive engines, aircraft engines, truck engines, etc. Since the pistons are used in a wide variety of industrial applications and are not produced for use in a specific MP&M industry, the piston manufacture should be considered to be making a fabricated metal product and be covered under MP&M Phase I (hardware).

EPA is soliciting comment from any industrial site which has the potential to be covered by MP&M but is uncertain as to their appropriate industrial sector and phase (MP&M Phase I or MP&M Phase II) classification. These sites are requested to supply information about what operations they are performing, what products they are manufacturing, and to what industries they are selling their products.

As discussed above, some MP&M sites will have operations in both MP&M Phase I and Phase II industries. EPA proposes to apply the MP&M Phase I regulation to combined waste water discharges when a site is manufacturing, rebuilding or maintaining finished metal products in both Phase I and Phase II sectors.

For example, a site manufacturing aircraft components and discharging process waste water in the process is included in the aircraft sector and thus its waste water discharges would be regulated by MP&M Phase I effluent guidelines. Another site which manufactures components that are used in aircraft and ships and generates waste water in the process which is combined and discharged would also be regulated by the MP&M Phase I effluent guidelines for the combined discharge. This proposal should alleviate burdens on the permit writers and allow the site to achieve compliance more cost effectively, since they will have to comply with one set of limits.

EPA's data collection and analysis of MP&M sites included MP&M Phase I and Phase II overlap sites and processing of both Phase I and II parts at these sites. Many of these sites use the same equipment to manufacture, maintain, and rebuild goods for both Phase I and Phase II sectors, making it impossible to separate the two phases, and in many cases impossible to distinguish among the sectors, for these sites.

Typical MP&M unit operations include any one or more of the following: abrasive blasting, abrasive jet machining, acid treatment, adhesive bonding, alkaline treatment, anodizing, assembly, barrel finishing, brazing, burnishing, calibration, chemical conversion coating, chemical machining, corrosion preventive coating, disassembly, electrical discharge machining, electrochemical machining, electrolytic cleaning, electroplating, electron beam machining, electropolishing, floor cleaning, grinding, heat treating, hot-dip coating, impact deformation, laminating, laser beam machining, machining, metal spraying, painting, plating, plasma arc machining, polishing, pressure deformation, rinsing, salt bath descaling, soldering, solvent degreasing, sputtering, stripping, testing, thermal cutting, thermal infusion, ultrasonic machining, vacuum metalizing, welding and numerous sub-operations within those listed above. In addition to waste water that is generated from these operations, these operations also frequently have associated rinses and water-discharging air pollution control devices which are also included under the scope of today's proposed regulation.

Waste water from noncontact, nondestructive testing is also included under the scope of today's proposed regulation. A common source of "testing" waste water is photographic waste from nondestructive X-ray examination of parts.

Many MP&M sites will also have operations covered by one of the existing metal processing effluent guidelines listed above in Section II.D. In general, with the exception of the metal finishing regulations, the existing effluent guideline will continue to apply to those operations judged to be covered by it. MP&M will provide the basis for establishing permit limitations for the unit operations which at present are not covered, covered by the metal finishing effluent guidelines regulation, or covered by best professional judgment. EPA is proposing to require that the MP&M Phase I effluent guidelines regulation replace the metal finishing regulation for sites with operations in an MP&M Phase I industrial sector. Both MP&M and metal finishing apply to the same types of unit operations. EPA has included the metal finishing sites in its data collection and study of the MP&M industry and has estimated the costs and impacts on these sites to comply with the proposed MP&M regulation. EPA anticipates that today's proposed limitations will impose more stringent requirements on waste water discharges from MP&M/metal finishing sites without undue economic impacts (see Section XIV), and therefore is proposing that MP&M replace metal finishing regulations for sites satisfying the MP&M Phase I criteria. Today's proposal does not apply to surface finishing job shops and independent circuit board manufacturers as defined in this regulation; they will continue to be covered by 40 CFR Part 413 and 40 CFR Part 433.

"Surface finishing job shops" defined in the proposed MP&M regulation are identical to "job shops" defined in the metal finishing category (40 CFR 433). Indirectly discharging job shops which were considered existing for the metal finishing category (existing prior to August 31, 1982) and independent printed circuit board manufacturers will continue to be covered by the electroplating category (40 CFR 413). Indirectly discharging jobs shops which were considered new sources for the metal finishing category and directly discharging job shops will continue to be covered by the metal finishing category.

III. Summary of Proposed Regulations

A. BPT

EPA is proposing to establish concentration-based BPT limitations which reflect the best practicable technology performance. EPA proposes to require permit writers to convert the concentration-based limitations into mass-based limitations based on MP&M flow guidance in the MP&M Phase I Technical Development Document. This document provides guidance to permit writers on identifying sites with pollution prevention and water conservation technologies equivalent to those listed above (e.g., electrodialysis, reverse osmosis). EPA recognizes that there are many different pollution prevention and water conservation technologies that may achieve the same performance as those listed above; therefore, the Agency has provided permit writers guidance on assessing these technologies.

EPA recommends that, for sites with pollution prevention and water

conservation technologies in place that are equivalent to those included as the basis for BPT, permit writers use historical flow as a basis for converting the concentration-based limitations to mass-based. For sites without these types of technologies in place, EPA recommends that permit writers do not use historical flow, but use other tools listed in the development document (e.g., measuring production through unit operations, measuring the concentration of total dissolved solids (TDS) in rinse waters) to convert the concentration-based limitations to mass-based. This approach encourages sites to implement good water use practices and investigate and install pollution prevention and water conservation technologies. By recommending use of historical flow only when sites have pollution prevention and water conservation technologies in place, EPA expects that permits based on BPT will reflect pollution prevention and water conservation technologies. If mass-based limitations have not been developed as required, the source shall achieve discharges not exceeding the concentration limitations listed in the regulation.

The technology basis for BPT is end-of-pipe treatment using chemical precipitation and sedimentation (commonly referred to as lime and settle technology), used in conjunction with flow reduction and pollution prevention technologies. EPA has also included the following as a basis for BPT limits: oil-water separation through chemical emulsion breaking and either skimming or coalescing; cyanide destruction through alkaline chlorination; chemical reduction of hexavalent chromium; chemical reduction of chelated metals; and contract hauling of organic solvent-bearing waste waters. The technology basis of BPT is to apply these preliminary treatment technologies when necessary based on waste water characteristics.

The following in-process pollution prevention and water conservation technologies were included as a basis for BPT:

—Flow reduction using flow restrictors, conductivity meters, and/or timed rinses, for all flowing rinses, plus countercurrent cascade rinsing for all flowing rinses;
—Flow reduction using bath maintenance for all other process water-discharging operations;
—Centrifugation and 100 percent recycling of painting water curtains;
—Centrifugation and pasteurization to extend the life of water-soluble machining coolants, reducing discharge volume by 80 percent; and
—In-process metals recovery with ion exchange followed by electrolytic recovery of the cation regenerants for selected electroplating rinses. This includes first stage drag-out rinsing with electrolytic metal recovery.

The discharge limitations included in today's proposal are based on the technology discussed above. However, it is important to note that these technologies are not mandated under effluent guidelines and pretreatment standards. Sites which would be covered by this proposed rule would be required to meet the discharge limitations but would not be required to use the technology basis discussed above.

B. BCT

EPA is proposing to establish BCT limitations equivalent to BPT limitations.

C. BAT

EPA is proposing to establish BAT limitations equivalent to BPT limitations.

D. NSPS

EPA is proposing to establish NSPS equivalent to BAT limitations.

E. PSES

EPA is proposing to establish PSES equivalent to BAT limitations. Facilities with an annual discharge volume less than 1,000,000 gallons are proposed to be exempt from PSES. For a site operating 250 days per year, 1,000,000 gallons per year translates into an average discharge flow rate of 4,000 gallons per day.

F. PSNS

EPA is proposing to establish PSNS equivalent to BAT.

IV. Overview of the Industry

A. Industry Description

As discussed above, the MP&M Phase I Category covers sites that generate waste water while manufacturing, maintaining or rebuilding finished metal parts, metal products, and machinery EPA within 7 industrial sectors. See the discussion under Section II.G. of this notice for the scope of today's proposed rule.

MP&M sites perform a wide variety of process unit operations on metal parts. For a given MP&M site, the specific unit operations performed and the sequence of operations depend on many factors, including the activity (i.e., manufacturing, rebuilding, or maintenance), industrial sector, and type of product processed. MP&M sites that repair, rebuild, or maintain products often perform preliminary operations that may not be performed at manufacturing facilities (e.g., disassembly, cleaning, or degreasing to remove dirt and oil accumulated during use of the product). Sites that manufacture products required to meet very strict performance specifications (e.g., aerospace or electronic components) often perform unit operations such as gold electroplating or magnetic flux testing that may not be performed when manufacturing other products.

EPA identified 47 unit operations as typical operations performed at MP&M Phase I sites. The following general types of unit operations are included in Phase I of the MP&M Category:

- Metal shaping operations;
- Surface preparation operations;
- Metal deposition operations;
- Organic deposition operations;
- Surface finishing operations; and
- Assembly operations.

Metal shaping operations (e.g., machining, grinding, impact and pressure deformation) are mechanical operations that alter the form of raw materials into intermediate and final product forms. Surface preparation operations (e.g., alkaline treatment, barrel finishing and etching) are chemical and mechanical operations that remove unwanted materials from or alter the chemical or physical properties of the surface prior to subsequent MP&M operations. Metal deposition operations (e.g., electroplating, metal spraying) apply a metal coating to the part surface by chemical or physical means. Organic deposition operations (e.g., painting, corrosion preventive coating) apply an organic material to the part by chemical or physical means. Metal and organic deposition operations may be performed for reasons such as protecting the surface from wear or corrosion, altering the electrical properties of the surface, or altering the appearance of the surface. Surface finishing operations (e.g., chromate conversion coating, anodizing, sealing) protect and seal the surface of the treated part from wear or corrosion by chemical means. Assembly operations (e.g., welding, soldering, testing, assembly) are performed to complete the manufacturing, rebuilding, or maintenance process.

Revenues at Phase I MP&M sites range from less than $10,000 to more than $50 million (in 1989 dollars) annually. Phase I MP&M sites range in size from less than 10 employees and waste water discharge flows of less than 100 gallons per year to sites with tens of thousands of employees and waste water discharge flows exceeding 100 million gallons per year. Table 1 presents information on the waste water discharge flow ranges for Phase I MP&M sites based on responses to EPA's survey (See Section V.B. below).

TABLE 1.—ESTIMATED DISTRIBUTION OF SITES BY BASELINE RANGE OF FLOW

Flow range (gal/yr/site)	Estimated number of sites	Estimated total flow in range (millions of gal/year)	Estimated total load in range (millions of lbs/year)	Estimated percent of total sites	Estimated percent of total flow	Estimated percent of total load
0–10,000	3,216	4.6	3.5	30	<1	1
10,000–1,000,000	5,109	800	150	48	3	8
Greater than 1,000,000	2,276	22,000	1,500	22	97	91
Totals	10,601	23,000	1,600	100	100	100

Source: 1989 Data Collection Portfolio.

As shown in Table 1, sites discharging more than 1,000,000 gallons per year (approximately 22% of the total Phase I sites) account for approximately 97% of the total waste water discharge and 91% of the pollutant load from the industry. For a site operating 250 days per year, 1,000,000 gallons per year translates into an average discharge flow rate of 4,000 gallons per day. In contrast, sites discharging less than 10,000 gallons per year (approximately 30% of the total Phase I sites) account for less than one percent of the overall waste water discharge flow and approximately one percent of the pollutant load for the industry. For a site operating 250 days per year, 10,000 gallons per year translates into an average discharge flow rate of 40 gallons per day.

This regulation applies to process wastewater discharges from plants or portions of plants within the MP&M Phase I industries that manufacture, maintain, or rebuild finished metal parts, products or machines from any basis metal. A "plant or portion of a plant" is defined to include all activities or facilities located in a single building or on a contiguous parcel of property that are engaged in performing an MP&M-related industrial function. For instance, if an entity operates a chrome plating operation and, on a non-adjoining parcel of property and within the same fence line, operates a runway or vehicle maintenance shop, discharges resulting from these different activities would not be considered discharges from a single plant.

EPA seeks comments on how to define which parcels of property within the same fence line on a mixed use property are contiguous. For example, should properties be divided into a system of grids with all discharges from sites within a single sector considered contiguous? Should discharges from a single building be treated as a plant or portion of a plant for purposes of determining the volume of discharge subject to regulation? Another option would be for permit writers to make the determination case-by-case based on some degree of proximity between industrial operations and a practical application of the requirements for MP&M Phase I industries (with due consideration to the amount of MP&M Phase I wastestream and its concentration in the overall wastestream discharged to the treatment works), the degree to which functions are related, and such other factors as EPA considers relevant to the determination.

This definition is relevant in the determination of the amount of wastewater generated by a plant and the applicability of the provisions for small volume indirect dischargers. It is particularly important in the case of federal, state, and local government agencies or entities that perform highly varied function, more than one of which may be an MP&M Phase I or II activity located in separate areas of the same facility. For instance, one of the military services may operate an airfield, a metal plating facility, and a motor pool. While each of these facilities would be considered a plant, it would be illogical to consider the entire mixed use facility to be a single plant and to calculate its discharges collectively.

Unlike the typical industrial plant, such as an aircraft or electronic equipment manufacturing plant with one primary manufacturing activity, the majority of military installations are mixed use facilities and more like municipalities with several small industries as well as other operations within their boundaries; they support a unique and wide variety of functions and activities, including residential housing, schools, churches, recreational parks, shopping centers, industrial operations, training ranges, airports, gas stations, utility plants, police and fire departments, and hospitals. Installations also include a variety of tenant activities, including contractor and other Department of Defense federal agency activities. Finally, the geographic size of many military installations (for example, over 300 square miles at Fort Hood, TX and over 1.1 million acres at the China Lake Naval Air Warfare Center, CA) makes it difficult to treat them as a single plant. Treating military installations or other mixed use facilities as multiple plants or portions of plants allows them to take advantage of any less stringent requirements for small volume indirect dischargers without significantly increasing the threat to human health or the environment. EPA seeks information from other facilities that believe they would fall within this mixed use facility category.

B. Estimation of Number of MP&M Phase I Sites

Between 1986 and 1989, EPA conducted a preliminary study of the MP&M industry. For this study, EPA identified over 200 SIC codes pertaining to sites that would be included in the MP&M category (including Phase I and Phase II). Using information from Dun & Bradstreet, EPA estimated that there were 970,000 sites within these SIC codes, including 278,000 with more than nine employees. This estimate did not quantify the number of water-discharging MP&M sites. The basis for these estimates and a discussion of how EPA identified the SIC codes included in the MP&M category are presented in the *Preliminary Data Summary For The Machinery Manufacturing and Rebuilding Industry* (EPA 440/1–89/106, October 1989).

As discussed above, to make the regulatory process for such a large number of sites more manageable, EPA decided to divide the MP&M category into two segments and to develop effluent guidelines regulations in phases. This is also described in EPA's regulatory plan published on January 2, 1990 (55 FR 80). The industrial sectors

in each phase are listed in Section II.G. Based on the Dun & Bradstreet estimates, Phase I sectors included approximately 195,000 sites. EPA used the information collected from Dun & Bradstreet to conduct a screener survey of Phase I manufacturing, rebuilding, and maintenance sites and Phase II manufacturing sites. This survey is described in Section V.B. The results of this survey indicated that there were approximately 80,000 MP&M Phase I sites. The difference between the two estimates (195,000 sites versus 80,000 sites) was caused primarily by sites misclassified by Dun & Bradstreet and sites that had gone out of business. Approximately 20,000 of the MP&M Phase I sites were identified by the screener survey as water-discharging sites.

EPA used the data collected by the screener survey to conduct a detailed survey of water-discharging MP&M Phase I sites. This questionnaire is described in Section V.B. This survey requested detailed information on unit operations and water use practices. The results of this survey indicated that there were an estimated 10,601 MP&M Phase I water-discharging sites. The difference between the two estimates of water-discharging sites was primarily caused by sites that had misinterpreted questions on the screener survey.

C. Source Reduction Review Project

Section 6604 of the PPA directs the Administrator to set up an office for the purpose, among other things, of reviewing for the EPA Administrator the impact that Agency regulations would have on source reduction (See 42 U.S.C. 13103). This office is to "consider" the effect of Agency programs on source reduction efforts and to "review" EPA's regulations prior and subsequent to their proposal to determine their effect on source reduction.

The Source Reduction Review Project (SRRP) is a pilot program of the EPA to promote a source reduction approach in designing environmental regulations. The project's goal is to ensure that source reduction measures and implications of rules to other regulatory programs are fully considered during development of regulations. To the extent practicable and consistent with existing law, and considering cost-effectiveness as appropriate, the Agency will emphasize source reduction as the basis of its rules. Where source reduction cannot be implemented, the Agency will consider recycling, then treatment and if necessary disposal technologies and practices as the basis of its rules. Even in cases where EPA cannot base its rule on source reduction practices, the Agency may encourage the regulated community to consider using source reduction measures to comply with rules by providing information and economic incentives. To investigate opportunities for source reduction, EPA will consider source reduction in every phase of rule development: data collection, site visits, bench-scale technology testing, economic and technical analysis, multi-media impacts and agency and public reporting.

Since initial data collection for MP&M preceded the PPA, the Agency did not collect much information about source reduction in the industry survey. Since the survey, the Agency has considered and evaluated opportunities for source reduction. In addition, the Office of Water has coordinated this rule with efforts by the Office of Air and Radiation to develop regulations for halogenated solvents, chromium electroplating, and others.

The primary sources of waste waters generated by this industry are water-based lubricants used in the metal working (machining or deformation operations) or process solutions and rinses associated with surface treatment operations (cleaning, chemical etching or surface finishing). These waste waters afford considerable opportunities for pollution prevention and water conservation. As described in Section VII of this preamble, EPA has studied and observed a number of pollution-preventing and/or waste water conserving practices at a wide range of metal products and machinery facilities. This information is included in the Technical Development Document for MP&M Phase I. Because of the pollution prevention opportunities demonstrated by this industry, the Agency has included this rule in the SRRP. Some of the research on waste water treatment described in the next section focuses on waste water treatment that also allows for product recovery.

The SRRP designation for the MP&M effluent guidelines has prompted EPA to look more closely at what some of the likely outcomes would be of applying the identified candidate BAT technologies. The Agency has looked beyond the usual estimation of the cost expected to be incurred by the industry to comply with this rule and the pollutants expected to be removed from the waste water stream. EPA also has estimated the savings that might be realized due to the water conservation and product recovery practices that are part of the best available technology. For example, EPA estimated the savings in water cost through flow reduction, as well as the reduction in costs for end-of-pipe treatment associated with flow reduction. EPA also estimated the cost savings from recovery of metals through electrolytic recovery, and savings in virgin coolant from reduction of coolant discharge through centrifugation and pasteurization.

V. Data Gathering Efforts

A. Databases

In developing the MP&M effluent guidelines, EPA evaluated the following data sources:

- EPA/EAD databases from development of effluent guidelines for other metals industries;
- The Office of Research and Development (ORD) Risk Reduction Engineering Laboratory (RREL) treatability database;
- The Fate of Priority Pollutants in Publicly Owned Treatment Works (50 POTW Study) database;
- The Domestic Sewage Study; and
- The Toxics Release Inventory (TRI) database.

These data sources and their uses for the development of the MP&M Phase I effluent guidelines are discussed below.

EPA has promulgated effluent guidelines for 13 metals industries (See Section II.F. above). In developing these effluent guidelines, EPA collected waste water samples to characterize the unit operations and treatment systems at sites in these industries. Many of the sampled unit operations and treatment systems are operated at MP&M sites; therefore, EPA evaluated these data for transfer to the MP&M effluent guidelines development effort.

For the MP&M Phase I pollutant loading and waste water characterization efforts, EPA reviewed the data collected for unit operations performed at both MP&M sites and at sites in other metals industries. EPA reviewed the Technical Development Documents (TDDs), sampling episode reports (SERs), and supporting record materials for the other metals industries to identify available data. EPA transferred data for unit operations that met the following two criteria:

- The unit operation was performed at MP&M Phase I sites; and
- EPA had not collected data for the unit operation from MP&M sites.

EPA keypunched the data into a database, which was combined with the data collected from the MP&M sampling program.

For the MP&M technology effectiveness assessment effort, EPA reviewed data collected to characterize treatment systems sampled for the development of effluent guidelines for other metals industries. For several previous effluent guidelines, EPA used treatment data from metals industries to develop the Combined Metals Data Base (CMDB), which served as the basis for developing limits for these industries. EPA also developed a separate database used as the basis for limits for the Metal Finishing category. EPA used the CMDB and Metal Finishing data as a guide in identifying well-designed and well-operated MP&M treatment systems. EPA did not use these data in developing the MP&M technology effectiveness concentrations, since sufficient data were collected from MP&M Phase I sites to develop technology effectiveness concentrations.

EPA's Office of Research and Development (ORD) developed the Risk Reduction Engineering Laboratory (RREL) treatability database to provide data on the removal and destruction of chemicals in various types of media, including water, soil, debris, sludge, and sediment. This database contains treatability data from publicly owned treatment works (POTWs) for various pollutants. This database includes physical and chemical data for each pollutant, the types of treatment used to treat the specific pollutants, the type of waste water treated, the size of the POTW, and the treatment concentrations achieved. EPA used this database to assess removal by POTWs of MP&M pollutants of concern.

In September, 1982, EPA published the *Fate of Priority Pollutants in Publicly Owned Treatment Works* (EPA 440/1–82/303), referred to as the 50 POTW Study. The purpose of this study was to generate, compile, and report data on the occurrence and fate of the 129 priority pollutants in 50 POTWs. The report presents all of the data collected, the results of preliminary evaluations of these data, and the results of calculations to determine:

- The quantity of priority pollutants in the influent to POTWs;
- The quantity of priority pollutants discharged from the POTWs;
- The quantity of priority pollutants in the effluent from intermediate process streams; and
- The quantity of priority pollutants in the POTW sludge streams.

EPA used the data from this study to assess removal by POTWs of MP&M pollutants of concern.

In February, 1986, EPA issued *The Report to Congress on the Discharge of Hazardous Wastes to Publicly Owned Treatment Works* (EPA 530-SW-86-004), referred to as the Domestic Sewage Study (DSS). This report, which was based in part on the 50 POTW Study, revealed a significant number of sites discharging pollutants to POTWs which are a threat to the treatment capability of the POTW. These pollutants were not regulated by national effluent regulations. Some of the major areas identified were in the metals industries areas, particularly an area called "equipment manufacturing and assembly." This category included sites which manufacture such products as office machines, household appliances, scientific equipment, and industrial machine tools and equipment. The DSS estimated that the "equipment manufacturing and assembly" category discharges 7,715 metric tons per year of priority hazardous organic pollutants which are presently unregulated. Data on priority hazardous metals discharges were unavailable for this category. Further review of the DSS revealed other categories which were related to metals industries, namely the motor vehicle category, which includes servicing of new and used cars and engine and parts rebuilding; and the transportation services category, which includes railroad operations, truck service and repair, and aircraft servicing and repair. EPA used the information in the DSS in development of the Preliminary Data Summary (PDS) for the MP&M category.

The Toxics Release Inventory (TRI) database contains specific toxic chemical release and transfer information from manufacturing facilities throughout the United States. This database was established under the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), which Congress passed to promote planning for chemical emergencies and to provide information to the public about the presence and release of toxic and hazardous chemicals. Each year, manufacturing facilities meeting certain activity thresholds must report the estimated releases and transfers of listed toxic chemicals to EPA and to the state or tribal entity in whose jurisdiction the facility is located. The TRI list includes more than 300 chemicals in 20 chemical categories.

EPA considered use of the TRI database for development of the MP&M effluent guidelines. However, EPA did not use TRI data on waste water discharges from MP&M sites because sufficient data were not available for effluent guidelines development. For example, in development of the MP&M effluent guidelines, production data were used that could be linked directly to pollutant loadings. This information was used to normalize pollutant loadings to production. The linked production and pollutant loadings data are not available in the TRI database. EPA also did not use the data on waste water discharges because many MP&M Phase I sites do not meet the reporting thresholds for the TRI database.

B. Survey Questionnaires

EPA surveyed the metal products and machinery industry through two survey instruments pursuant to Section 308 of the Act. The first survey was titled "1989 Machinery Manufacturing and Rebuilding Mini Data Collection Portfolio" (OMB No. 2040-0148) or MDCP. The MDCP was sent to a random sample of 8,342 MP&M facilities, stratified within sector by Standard Industrial Classification (SIC) code. Facilities were classified by SIC code strata based on Dun & Bradstreet data. The sample size determination for each strata was based on the use of a coefficient of variation (CV) minimization procedure. The basic goal of the CV procedure was to minimize the number of facilities needed for the survey, subject to the condition that the separate strata variances would not be too large. The CV minimization procedure is described in the "Data Base Summary Report for the Metal Products and Machinery Mini Data Collection Portfolio." A name and address list of sites was purchased from Dun & Bradstreet. This list included more than twice the number of sites specified by the CV procedure (for a total of approximately 22,110 sites). Within each SIC code, Dun & Bradstreet randomly selected the requested number of sites from the Dun & Bradstreet data base.

EPA reviewed the Sites listed for each SIC code and deleted sites from the mailing list for the following three reasons: (1) Sites had SIC codes which were inconsistent with company names, (2) sites were corporate headquarters, or (3) sites had insufficient mailing addresses. After this review, EPA randomly selected sites to receive the MDCP.

The purpose of the MDCP was to characterize the industry, help in the selection of sites to receive a more detailed questionnaire, and to estimate the number of MP&M sites in the country. To characterize sites engaged in MP&M activities, the MDCP requested the following site-specific information:

- Name and address;
- Contact person;
- Parent company;
- Industrial sectors in which the site manufactures, rebuilds or maintains machines or metal components;
- SIC codes corresponding to products at the site;

- Number of employees;
- Annual revenues;
- Unit operations performed at the site;
- Process water use and waste water discharge for each unit operation performed at the site; and
- Base metals on which each unit operation is preformed.

EPA sent the MDCP to randomly selected MP&M Phase I sites engaged in manufacturing, rebuilding, or maintenance operations. The MDCP was also sent to selected MP&M Phase II manufacturing sites to characterize the interfaces between MP&M phases. The MDCP was not sent to sites with SIC codes indicating that the sites were engaged in MP&M Phase II rebuilding or maintenance operations.

The MDCP survey estimated that approximately 80,000 sites were engaged in Phase I sector activities. The majority of these sites were engaged only in Phase I sectors, since the majority of the MDCPs were sent to sites within Phase I sectors. The remainder of the sites were phase overlapped sites (engaged in industrial sectors in both Phase I and II) or Phase II only sites. Some of the smaller sites could have been misclassified as to their industrial sector based on the results of the MDCP, because the sites did not know their SIC code. Uncertainty as to SIC code is one of the reasons that EPA is not proposing to define the MP&M Phase I applicability in terms of SIC codes. Less than half of all engaged sites were estimated to be water users, and less than one-fourth were estimated to be water dischargers. Sites with operations in both Phase I and II ("overlap sites") were more likely to use water than sites engaged only in Phase I activities (50% vs. 35%). This may be partly because overlap sites were on average larger with respect to number of employees and revenues than sites engaged in Phase I activities only. In general, larger sites were more likely to use water than smaller sites. Nonconfidential information from the MDCPs is included in the MP&M public record.

The second questionnaire, entitled "1989 Machinery Manufacturing and Rebuilding Data Collection Portfolio (DCP)" (OMB No. 2040–0148), was designed to collect detailed technical and financial information from water-using MP&M sites. Eight hundred ninety-six questionnaires were mailed in January 1991. Because a number of questionnaires were returned undelivered, an additional 124 questionnaires were mailed in January and February 1991, for a total of 1,020. EPA assumed that the undelivered DCP questionnaires represented sites that had gone out of business since the MDCP survey.

The DCP was divided into six parts:

- General information;
- Process information;
- Water supply;
- Waste water treatment and discharge;
- Process and hazardous wastes; and
- Financial and economic information.

The general information was requested to identify the site, to characterize the site by certain parameters (including number of employees, age, and location), and to confirm that the site was engaged in MP&M activities.

The process information requested included details on products, production levels, unit operations, activity, water use for unit operations, waste water discharge from unit operations, miscellaneous waste water sources, pollution prevention or water conservation practices, and air pollution control for unit operations.

The water supply section requested the site to specify the source of water, average intake flow, average intake operating hours, and the percentage of water used for MP&M operations.

EPA requested detailed information on the waste water treatment systems used and the discharge volumes (including residuals), including a block diagram of the waste water treatment system; self-sampling monitoring data; and capital and operating cost data (including treatment chemical usage).

The fifth section of the questionnaire requested detailed information on the types, amounts and composition of solid/hazardous wastes generated during production to evaluate the types and amounts of pollutants currently discharged, the amount of pollutants that are contract-hauled off-site, and the cost of hauling pollutants.

The sixth section requested information on the site's finances and corporate structure.

EPA selected sites to receive the DCP based on the responses obtained by the MDCP and other factors. Three population groups formed the basis of the survey of this industry.

1. Water-discharging Phase I and overlap MDCP sites;
2. Water-using Phase I and overlap MDCP sites that do not discharge process water; and
3. Key water-discharging MP&M Phase I and overlap sites that did not receive the MDCP (discussed further below).

EPA sent DCP's to all 860 Phase I and overlap water-discharging MDCP sites to characterize the potential variations in unit operations performed and water use practices among sites in the MP&M industry.

In addition, a random sample of 50 MDCP recipients that use but do not discharge process water was selected by EPA to receive the DCP in order to provide information on potential zero-discharge unit operations. EPA selected these sites to obtain information on water-use practices from sites that use but do not discharge process water, and to determine if "zero-discharge" practices employed at those sites may be used at other MP&M sites. An additional 24 MDCP recipients that use but do not discharge process water were selected by EPA. These sites were selected to provide information on specific unit operations expected at each site.

Eighty-six sites that did not receive the MDCP were selected by EPA to receive the DCP. These sites represent key MP&M companies that were not selected as DCP recipients based on the MDCP responses. EPA's intent in selecting these sites was to characterize leading companies in the MP&M category. The key companies were identified from the Dun & Bradstreet company listings, the Thomas Register, and MP&M site visits. These key companies reported annual revenues of $50 million or more or were recognized by the EPA to be leading companies in their particular sector. Each company was contacted to identify sites within the company that were engaged in MP&M activities and used process water to perform MP&M unit operations. The one or two sites believed to perform the most water-using MP&M unit operations from each key company were selected to receive the DCP. Non-confidential information contained in the DCPs are included in the public record.

C. Waste Water Sampling and Site Visits

EPA visited 98 MP&M sites between 1986 and 1993 to collect information about MP&M unit operations, water use practices, pollution prevention and treatment technologies and waste disposal methods, and to evaluate sites for potential inclusion in the MP&M sampling program. In general, EPA selected sites for visits to encompass the range of sectors, unit operations, in-process source reduction and recycling practices, and treatment operations within the MP&M industry. EPA's site visits encompassed sites in both Phase I and II but focused primarily on Phase I sites. EPA also performed site visits at military installations, government owned and operated sites, and government owned contractor operated sites. In addition, EPA visited four job shop electroplating sites that performed in-process source reduction and recycling technologies.

EPA selected sites from information contained in the MDCPs and DCPs, and also through contacts with EPA regional personnel, state environmental agency personnel, local pretreatment coordinators, and pollution prevention and technical assistance providers. These personnel helped EPA identify MP&M sites believed to be operating in-process source reduction and recycling technologies or end-of-pipe waste water treatment technologies.

To ensure that EPA selected sites that encompassed the range of sectors and unit operations within the MP&M industry, the Agency used the following general criteria as part of the basis for selecting sites for visits:

1. The site performed MP&M unit operations in an industrial sector in which sites had not previously been visited.
2. The site performed MP&M unit operations that had not been observed during previous site visits.
3. The site had water use practices that were believed to be representative of the site's industrial sector.
4. The site operated in-process source reduction, recycling, or end-of-pipe treatment technologies considered in the development of the MP&M technology options.

EPA visited sites of various sizes, with waste water flows ranging from less than 200 gallons/day to more than 1,000,000 gallons/day.

EPA collected detailed information from the sites visited such as unit operations performed and the types of metals processed through these operations, purpose of the unit operation and any waste water associated with it, and in-process source reduction and water conservation practices as well as whether these source reduction practices caused any cross-media impacts. Also collected during the site visits were information on the end-of-pipe treatment technologies and, if the facility was a candidate for sampling, the logistics of collecting samples. All nonconfidential information collected during site visits are included in the public record.

The Agency conducted waste water sampling at 27 sites between 1986 and 1993. EPA sampled at least two sites in each of the seven MP&M Phase I sectors, as well as several sites in Phase II sectors. EPA also sampled waste water at one job shop electroplating site to characterize surface treatment operations and end-of-pipe treatment systems that were comparable to MP&M unit operation and treatment systems. EPA selected sites for sampling for reasons such as the following:

- The site performed MP&M unit operations that had not been sampled at other sites;
- The site processed metals through MP&M unit operations for which the metal/unit operation combination had not been sampled at other sites;
- The site performed in-process source reduction recycling, or end-of-pipe treatment technologies that were considered for technology option development; or
- The site performed unit operations in a sector in which samples had not previously been collected.

EPA sampled sites with waste water flows ranging from less than 200 gallons/day to greater than 600,000 gallons/day.

During sampling, EPA collected samples of both raw (untreated) waste water and treated waste water, frequently across individual unit treatment operations, to characterize the performance of the entire treatment system. In addition, EPA gathered flow data corresponding to each sample, and design and operating parameters for source reduction, recycling and treatment technologies. EPA also collected samples of unit operations to determine pollutant loadings at the unit operation level as well as flow and production data corresponding to each sample. All data collected during the sampling episodes are included in the sampling reports which are in the rulemaking record.

D. EPA Bench Scale Treatability Studies (Terpene Study)

Terpenes are a broad classification of 10, 15, 20 or 30 carbon-atom compounds and derivatives produced from citrus fruits, wood turpentine, and wood pulp byproducts. Increasingly, these compounds are being used in industrial cleaning formulations designed for printed circuit board defluxing and metal degreasing operations. The popularity of these terpene-based cleaners is based primarily on their ability to replace the usage of suspected ozone-depleting chemicals such as 1,1,1-trichloroethane and 1,1,2-trichloro-1,2,2-trifluoroethane (e.g., CFC-113).

In general, the use of terpene-based cleaners in these applications is considered environmentally preferable to chlorinated solvents. However, studies conducted by EPA's Office of Toxic Substances (OTS) indicate that substitution of chlorinated solvents with terpene-based cleaners will result in increased discharges of these chemicals to waste water from these industrial operations. The OTS studies also identified potential aquatic toxicity concerns associated with several specific terpene compounds. These concerns, combined with the fact that most industrial facilities engaged in printed circuit board defluxing and metal cleaning operations discharge their waste water into public sewers, created the need to better understand the fate of terpene compounds in a typical municipal waste water treatment system.

EPA's Risk Reduction Engineering Laboratory (RREL) conducted a study to quantify the fate of specific terpene compounds in the activated sludge waste water treatment process. The study was conducted using pilot-scale equipment at EPA's Test and Evaluation (T&E) Facility in Cincinnati, Ohio. The specific goal of the research was to establish the percentage of the terpene mass entering a typical activated sludge process that is (1) biodegraded, (2) partitioned to waste sludge, (3) volatilized to air, and/or (4) passed through the treatment process unchanged.

This study on the fate of specific terpene compounds in the activated sludge waste water treatment process produced the following conclusions:

- The primary fate of d-limonene and terpinolene in a typical municipal waste water treatment process (primary clarifier/activated sludge) is biodegradation followed by sorption onto primary clarifier solids and volatilization.
- The activated sludge process typically produces d-limonene and terpinolene effluent concentrations below 10 µg/L, corresponding to influent concentrations as high as 10,000 µg/L.

EPA's terpene study was conducted to determine the treatability of terpene in municipal waste water treatment systems. The results of the study indicate that the primary removal mechanism for the terpenes studied in the activated sludge process is biodegradation. EPA studied terpenes because they represent one broad class of compounds in use as replacements for ozone depleting chlorinated solvents. A wide variety of non-terpene compounds are also being used as solvent substitutes, but these compounds were not examined in this study.

VI. Industry Subcategorization

EPA is not proposing to subcategorize the MP&M Phase I category. EPA considered a number of potential subcategorization schemes as described below, but concluded that no basis exists for creating subcategories and the only way to establish a categorical regulation that could be implemented to ensure the most effective treatment and removal of waste water pollutants was

to not subcategorize this industrial category.

The subcategorization factors considered were based on subcategorization factors required by the Clean Water Act, as well as factors that have been used as a basis for subcategorization in other metals industry regulations. These factors include:

- unit operation;
- activity;
- raw materials;
- products;
- size of site;
- location;
- age;
- economic impacts;
- total energy requirements;
- air pollution control methods; and
- solid waste generation and disposal.

EPA considered subcategorizing the MP&M Phase I category by unit operation. EPA identified 47 unit operations, subsets of which are typically performed at MP&M sites. These unit operations can use differing amounts of water, generate different pollutant loadings, and can be performed in different combinations; however, the resulting waste waters exhibit general characteristics that allow the waste waters to be treated by the technologies on which this proposed rule is based (See Section IX.). Subcategorization by unit operation is technically feasible, but would result in approximately 47 subcategories with facilities operating under numerous subcategories. This would result in a very complex and unmanageable regulatory structure. The waste water characteristics for a given unit operation are expected to be similar across the other subcategorization factors listed above. As a result, EPA is not proposing to subcategorize by unit operation.

EPA also considered subcategorizing this industry by activity; i.e., manufacturing, rebuilding, and maintenance. Manufacturing is defined as the series of unit operations necessary to produce metal products, generally performed in a production environment. Rebuilding is defined as the series of unit operations necessary to disassemble used metal products into components, replace one or more components or subassemblies or restore them to original function, and reassemble the metal product. Rebuilding is generally performed in a production environment. Maintenance is defined as the series of unit operations, on original or replacement components, required to keep metal products in operating condition. Maintenance is generally performed in a non-production environment.

Based on the results of the DCP survey, the estimated percentages of water discharging Phase I sites performing each activity are listed below:

	Percent
Manufacturing only	71
Rebuilding only	1
Maintenance only	8
Manufacturing and rebuilding	13
Manufacturing and maintenance	2
Rebuilding and maintenance	2
Manufacturing, rebuilding & maintenance	3

With the exception of the initial cleaning steps for rebuilding and maintenance (discussed below), waste water characteristics do not vary across activity. Results of analyses of the DCP database indicate that the production-normalized flow (volume of waste water discharged per unit of production) for each unit operation does not depend on the activity. Additionally, for sites performing multiple activities, the same unit operations are often used for multiple activities (e.g., a machining process may be used to both manufacture and rebuild parts). Information collected during site visits at MP&M Phase I sites supports these conclusions.

The initial cleaning steps associated with rebuilding and maintenance may have unique waste water characteristics because of the presence of oil, grease, and grime not present in cleaning during manufacturing. These pollutants are present in waste waters generated by other operations at manufacturing, rebuilding, and maintenance sites (e.g., machining and grinding), and a technology used to remove these pollutants (oil-water separation) is included in the technology options considered for MP&M Phase I. Based on analytical data collected at rebuilding sites, the waste waters from initial cleaning require additional preliminary treatment capacity for oil-water separation, but do not impact the overall treatability of waste water from rebuilding sites. The impact of the oil and grime in the initial cleaning steps was accounted for in the development of compliance cost estimates and pollutant loading estimates. Because the initial cleaning steps do not impact waste water treatability, sites performing these cleaning steps can achieve the same effluent concentrations as sites that don't perform these steps.

Subcategorization by raw material may be appropriate when sites process similar types of raw materials, and these raw materials dictate a site's overall waste water characteristics. Raw materials at MP&M sites consist of base metals processed (e.g., bar stock, sheet stock, ingots, formed parts) and applied materials (e.g., paint, corrosion preventive coatings, metal applied during electroplating, electroless plating, and metal spraying).

Data from the DCP database and site visits indicate that the waste water discharge rates from unit operations are not dependent on the base metal processed or material applied. The base metal or material applied affects the site's waste water characteristics; however, EPA accounted for this in calculating technology effectiveness concentrations and pollutant loading estimates.

Based on the DCP results it is estimated that more than half of the MP&M Phase I sites process more than one type of base metal or metal applied. The estimated percentages of sites by the number of metal types processed are as follows:

	Percent
Zero metal types	<1
One metal type	43
Two metal types	32
Three metal types	15
Four metal types	4
Five or more metal types	6

The metal types processed at MP&M sites are diverse, and sites periodically change metal types. At sites processing multiple metal types, individual unit operations frequently process more than one metal type (e.g., a machining operation can process nickel, aluminum, and iron parts). Additionally, not all metal types processed at a site are processed through all unit operations. For example, a site may process aluminum and iron base metals. Anodizing is performed on the aluminum, and electroplating on the iron. Both metals share the same alkaline and acid treatments. Subcategorizing by base metal type would place the anodizing operation in the aluminum subcategory, the electroplating operation in the iron subcategory, and the alkaline and acid treatments in both subcategories. While this subcategorization scheme is possible, the Agency did not select this approach because the waste water discharge rates from unit operations are not dependent on metal type. Also, EPA considered the effect of metal type on waste water characteristics in calculating technology effectiveness concentrations and pollutant loadings.

EPA considered subcategorizing the MP&M category by industrial sector (e.g., aerospace, aircraft, electronic equipment, hardware, mobile industrial equipment, ordnance, and stationary industrial equipment). However, waste water characteristics, unit operations, and raw materials used to produce products within a given sector are not always the same from site to site, and they are not always different from sector to sector. Within each sector, sites can perform a variety of unit operations on a variety of raw materials. For example, a site in the aerospace sector may primarily machine aluminum missile components and not perform any surface treatment other than alkaline cleaning. Another site in that sector may electroplate iron parts for missiles and perform little or no machining. Waste water characteristics from these sites may differ because of the different unit operations performed and different raw materials used.

Based on the analytical data collected for this rule, EPA has found no statistically significant difference in industrial waste water discharge among industrial sectors for cadmium, chromium, copper, cyanide, lead, nickel, oil & grease, silver, TSS and zinc. The analytical data are available in the public record for this rulemaking.

Most MP&M unit operations are not unique to a particular sector and are performed across all sectors. Major waste water-generating unit operations (e.g., alkaline treatment, acid treatment, machining, electroplating) are performed in all sectors. The unit operations that are rarely performed (e.g., abrasive jet machining) are not performed in all sectors, but are also not limited to a single sector. Based on the information obtained from engineering site visits and sampling episodes, these unit operations do not affect the overall treatability of waste waters generated at sites performing these unit operations. Therefore, the raw waste waters are expected to have similar treatability across the MP&M Phase I sectors.

EPA considered subcategorization of the MP&M Phase I category on the basis of site size. Three parameters were identified as relative measures of MP&M site size: number of employees, production, and waste water discharge flow rate.

Raw materials, unit operations, and waste water characteristics are independent of the number of site employees. A review of the DCP database shows that production-normalized flows do not depend on the number of employees. A correlation between the number of employees and waste water generation can be difficult to develop due to variations in staff. Fluctuations can occur for many reasons, including shift differences, clerical and administrative support, maintenance workers, efficiency of site operations, degree of automation, and market fluctuations. For these reasons, EPA did not subcategorize by number of employees.

EPA did not subcategorize by site production, since the production through an MP&M Phase I site does not reflect the production through process waste water-generating unit operations. For example, two sites may each process 100 tons of steel annually. One site may process all of the steel through an electroplating line, while the other may perform dry assembly for 95 tons, and process five tons through a machining operation. If production through the entire site were used for subcategorization, these two sites would be placed in the same subcategory while their waste water characteristics would be different.

EPA did not subcategorize by site waste water discharge flow rate because the waste water characteristics for a site are independent of the overall waste water discharge flow rate from a site. Waste water characteristics are primarily a function of the raw materials and unit operations at a site, and not the site's waste water discharge flow. For example, a site performing one machining operation on steel and discharging 100 gallons per year (gpy) of waste water would have similar waste water characteristics as a site with 1,000 machining operations on steel discharging 100,000 gpy, provided the sites have similar water use practices. A review of the DCP database shows that water use practices, as measured by production-normalized flow rates, do not depend on the overall waste water discharge flow rate from a site. The raw materials and unit operations also do not vary by site discharge flow rate.

For sites discharging to publicly owned treatment works (POTWs), EPA divided the MP&M Phase I population by waste water discharge rate to facilitate implementation (see Section III.E).

EPA also considered subcategorizing MP&M facilities on the basis of economic characteristics of these facilities. If a group of facilities with common economic characteristics, such as revenue size, was in a much better or worse financial condition than others, then it might be appropriate to subcategorize based on economics. However, analyses of the financial conditions of facilities showed no significant pattern of variation across possible subcategories.

While any group of facilities is likely to differ from any other group of facilities, the relevant issue is whether these differences were random differences due to the normal variation characteristic of all MP&M businesses, or whether these differences were systematically and predictably related to some shared economic characteristic. Linear regression and logistic regression were used to test for systematic variations in the financial condition and performance of subcategories of facilities grouped according to the following kinds of economic characteristics:

- Primary Line of Business: Facilities were assigned to MP&M sectors according to the sector in which they earned most of their revenues. The financial condition and performance of facilities across sectors did not vary in a statistically significant way.
- Customer Type: Responding facilities indicated the percentage of revenues they earned from three customer types, government, domestic non-government and foreign customers. When facilities were grouped according to their dependence on each of these customer types, statistical analyses found no significant differences in the financial condition or performance of the various groups.
- MP&M Activity: Responding facilities indicated the percentage of revenues they earned from each of three categories of activities (manufacturing, repairing and rebuilding). Facility financial performance and condition did not vary systematically with variations in dependence on the three categories of activities.
- Revenue Size: Facilities subcategorized by revenue size did not differ in financial condition or performance in a statistically significant way.

Appendix D of the Industry Profile of the Metal Products and Machinery Industry Phase I documents the methodology and findings in detail. This document is in the MP&M public record. Based on these analyses, EPA found no reasonable economic basis for subcategorizing MP&M facilities.

EPA is directed by the Clean Water Act to consider geographic location as a potential factor in subcategorizing an industrial category. The MP&M sites are generally located all over the country, however, almost two-thirds are located east of the Mississippi, with pockets of sites in Texas and California. EPA generally found that the sites located in California had installed more water conservation equipment and were generally more sensitive to water consumption concerns than the sites located in the rest of the country. EPA expects this is due to the nearly decade long drought suffered by California

during the 1980's, as well as local regulations that are often stricter than other areas of the country. However, EPA did not find this limited water conservation a sufficient basis for subcategorization.

Other factors that EPA is directed to consider by the Clean Water Act include total energy requirements, non-water quality considerations, and age of facilities. Energy requirements vary widely throughout the MP&M Phase I category; however, EPA did not subcategorize by this factor because the energy requirements are not directly related to waste water characteristics. Energy costs resulting from this regulation were accounted for in the economic impact assessment for this regulation. Non-water quality considerations include solid waste and air pollution generation. EPA did not subcategorize by these factors because solid waste and air pollution characteristics and generation rates depend on the raw materials processed and unit operations performed at MP&M sites, and are not directly related to waste water characteristics. The non-water quality impacts and costs of solid waste and air pollution control associated with this regulation were considered in the economic analysis and regulatory impact analysis for this regulation.

EPA did not subcategorize by age of facility because site age does not account for differences in raw waste water characteristics. The percentage of sites by the decade in which they were built is listed below. This information is based on the DCP respondents that reported the date in which their facility was built:

	Percent
Before 1920	4
1920 through 1929	3
1930 through 1939	2
1940 through 1949	8
1950 through 1959	8
1960 through 1969	13
1970 through 1979	40
1980 through 1989	21
1990*	1

* The DCP was mailed on January 2, 1991.

The majority of the sites have been built since 1960. The DCP respondents reported a wide range of ages; however, based on information in the DCPs and from site visits, MP&M Phase I sites continually modernize to remain competitive. For example, several sites visited that were built before 1960 had recently installed either new electroplating lines with in-process pollution control technologies or in-process pollution control technologies on existing electroplating lines. Another site which was initially built before 1940 had recently installed a new heat treating process. This type of modernization is typical in the MP&M Phase I industry. Modernization of production processes and pollution control equipment produces similar wastes among all sites of various ages that are performing similar types of operations; therefore, site age does not account for differences in the raw waste water characteristics and was not selected as a basis for subcategorization.

VII. Water Use and Waste Water Characteristics

A. Waste Water Sources and Characteristics

The unit operations included in the MP&M category can be classified by water use practices into those that typically use process water and discharge process waste water, unit operations that typically either do not use process water or use process water but do not discharge waste water, and miscellaneous operations reported in DCP responses by fewer than five MP&M sites.

Process waste water includes any water that, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw materials, intermediate products, finished products, by-products, or waste products. Process waste water includes waste water from wet air pollution control devices. Non-contact cooling water is not considered a process waste water. Non-aqueous wastes used as processing liquids, such as spent solvents or quench oil, are also not considered process waste waters.

As discussed below, waste waters from the operations that use process water have different characteristics depending on the unit operation from which they are derived. First, oil-bearing waste waters are typically metal shaping coolants and lubricants, surface preparation solutions used to remove oil and dirt from components, and associated rinses. Some examples of oil-bearing waste waters are: machining and grinding coolants and lubricants; pressure and impact deformation lubricants; dye penetrant and magnetic flux testing; and alkaline cleaning solutions and rinses used to remove oil and dirt. These waste waters typically require preliminary treatment to remove oil. Chemical emulsion breaking followed by oil skimming is typically used for this treatment. Membrane separation technologies are also used for oil removal.

Second, hexavalent chromium-bearing waste water typically consists of concentrated surface preparation or metal deposition solutions, sealants, and associated rinses. Some examples of hexavalent chromium-bearing waste waters are: chromic acid treatment solutions and rinses; chromate conversion coating solutions and rinses; and chromium electroplating solutions and rinses. These waste waters typically require preliminary treatment to reduce the hexavalent chromium to trivalent chromium for subsequent chemical precipitation and settling. Sodium metabisulfite is typically used for this reduction.

Third, process waste waters that contain cyanide are typically generated by surface preparation or metal deposition solutions and their associated rinses. Two examples of cyanide-bearing waste waters are: cyanide-bearing alkaline treatment solutions and rinses (typically used as a surface treatment step prior to electroplating with cyanide solutions) and cyanide-bearing electroplating solutions and rinses. These waste waters typically require preliminary treatment to destroy cyanide and facilitate subsequent chemical precipitation and settling. Sodium hypochlorite is typically used for this treatment.

Fourth, process waste waters that contain complexed metals are typically concentrated surface preparation or metal deposition solutions and their associated rinses. Complexed metal-bearing waste waters are usually generated at MP&M sites by electroless plating operations and their rinses. These waste waters require preliminary treatment to break the complexes for subsequent chemical precipitation and settling.

Finally, virtually all of the MP&M process waste waters contain some metallic pollutants. The most concentrated metal bearing waste waters include metal shaping solutions, surface preparation solutions, metal deposition solutions, and surface finishing solutions. Chemical precipitation (usually with either lime or sodium hydroxide) and settling is typically used for metals removal. Coagulants and flocculants may be added to assist chemical precipitation and settling.

B. Pollution Prevention, Recycle, Reuse and Water Conservation Practices

The data gathered to support this rule indicate that a number of pollution prevention and water conservation practices exist in the MP&M industries. Some of these pollution prevention, recycling, and water conservation practices were determined to be broadly applicable to the MP&M category, and these were included in the technology options (see Section III.A.).

A large number of additional pollution prevention practices were site specific and could not be used as the basis for a national standard. However, EPA considers it important to make this site specific pollution prevention information available for possible use by MP&M sites. Therefore, the Technical Development Document contains a bibliography of the pollution prevention practices identified during the development of this rule. EPA's proposed flow guidance also discusses the applicability of the more prevalent pollution practices identified in this category.

VIII. Approach for Estimating Costs and Pollution Reductions Achieved by Waste Water Control Technology

EPA estimated industry-wide compliance costs and pollutant loadings using model sites based on DCP respondents and a computerized design and cost model for the MP&M technology options. Industry-wide costs and pollutant loadings were estimated for three technology options based on technologies designed for 396 model sites. Statistically calculated weights were used to scale those results to the estimated 10,601 MP&M Phase I sites nationwide which are expected to incur costs under the regulation.

The 396 model sites were a subset of the 860 sites which indicated that they were water dischargers on their MDCP survey response. Six hundred seventy five of these sites returned the subsequent DCP and their responses were entered into the DCP database. Of these 675 sites in the DCP database, 396 were chosen to be model sites for the following reasons:

- The site generated revenue from a Phase I sector, as determined from the economic section of the DCP (for some sites, an economic sector was not identified; therefore, the sector identified in the technical section of the DCP was used); and
- The site supplied sufficient economic and technical data to estimate compliance costs and pollutant loadings of the MP&M technology options.

Each of the 396 sites selected was assessed to determine the unit operations, waste water characteristics and treatment technologies currently in place at the sites.

Based on the information provided by the sites in their DCP responses, follow-up letters, and phone calls, each waste water stream was classified by the type of unit operation (e.g., machining, electroplating, acid treatment, etc.) and base metal type (e.g., steel, aluminum, zinc, etc.). The following additional DCP data were used to characterize process waste water streams: waste water discharge flow rate, production rate, operating schedule, and discharge destination. Many of the 396 sites provided these data for all waste water streams generated on site. For sites that did not provide complete data, the missing data were either estimated based on technical considerations specific to the site, or were statistically imputed. The concentration of each pollutant in each waste water stream was modelled from field sampling of waste water discharges from the unit operation/metal type combinations at other MP&M sites. DCP responses were used to identify the following information about end-of-pipe technologies in place at MP&M sites: the types of treatment units in place; the unit operations discharging process waste water to each treatment unit; and the operating schedule of each treatment unit.

A computerized design and cost model was developed to estimate compliance costs and pollutant loadings for the MP&M technology options, taking into account each site's level of treatment in place. The model was programmed with technology-specific modules which calculated the costs for various combinations of technologies as required by the technology options and the model site waste water stream characteristics. Design and cost data were based on MP&M site data, literature data, and vendor data.

Technology-specific cost modules were developed for the in-process pollution prevention and water use reduction technologies and end-of-pipe treatment technologies discussed in Section IX below. The model provided the following types of information for each technology designed for a model site:

- Capital costs;
- Operating and maintenance costs;
- Electricity used and associated cost;
- Sludge generation and associated disposal costs;
- Waste oil generation and associated disposal costs;
- Water use reduction and associated cost credit;
- Metal reclaimed and associated cost credit;
- Chemical usage reduction and associated cost credit;
- Effluent flow rate; and
- Effluent pollutant concentrations.

If contract hauling of waste water for off-site treatment and disposal was less costly than on-site treatment, EPA estimated costs assuming the model site would contract haul the waste water. EPA made this assessment on a technology-specific basis.

After estimation of capital and operating and maintenance costs, the total capital investment (TCI), total annualized cost (TAC), and monitoring costs were calculated. Sites that reported being regulated by categorical limitations and standards were assumed to currently incur some monitoring cost.

IX. Best Practicable Control Technology Currently Available

A. Need for BPT Regulation

The MP&M Phase I regulation is estimated to potentially apply to 10,601 facilities nationwide. Although there are a number of metal processing categorical effluent guidelines that also apply to some operations performed at MP&M sites, these other effluent guidelines only affect approximately 2,000 MP&M Phase I sites. Thus, a large number of MP&M Phase I facilities do not have any effluent limitations guidelines. EPA estimates that 1,895 MP&M sites that are direct dischargers currently discharge substantial quantities of pollutants into the surface waters of the United States, including 18 million pounds per year of oil and grease, 2.6 million pounds per year of total suspended solids, 0.56 million pounds per year of priority pollutants, and 0.6 million pounds per year of nonconventional metal pollutants. EPA estimates that the proposed BPT limitations will reduce these quantities to 150,000 pounds per year of oil and grease, 360,000 pounds per year of total suspended solids, 40,000 pounds per year of priority metal pollutants, and 130,000 pounds per year of nonconventional metal pollutants.

B. BPT Technology Options and Selection

EPA considered three regulatory options on which to base BPT limitations.

1. *Option 1: Lime and Settle Treatment.* Option 1 consists of preliminary treatment for specific pollutants and end-of-pipe treatment with chemical precipitation (usually accomplished by raising the pH with an alkaline chemical such as lime or caustic to produce insoluble metal hydroxides) followed by clarification. This treatment, which is also commonly referred to as lime and settle treatment, has been widely used throughout the metals industry and is well documented to be effective for removing metal pollutants. As with a number of previously promulgated regulations, EPA has established BPT on the basis

that all process waste waters, except solvent bearing waste waters, will be treated through lime and settle end-of-pipe treatment.

All of the regulatory options considered for the MP&M category are based on a commingled treatment of process waste waters through lime and settle with preliminary treatment when needed for specific waste streams. Preliminary treatment is performed to remove oil and grease through emulsion breaking and oil skimming; to destroy cyanide using sodium hypochlorite; to reduce hexavalent chromium to the trivalent form of chromium which can subsequently be precipitated as chromium hydroxide; or to break metal complexes by chemical reduction. EPA has also included the contract hauling of any waste waters associated with organic solvent degreasing as part of the Option 1 technology.

Through sampling episodes and site visits, EPA has determined that some waste waters, usually alkaline cleaning waste waters and water-based metal working fluids (e.g., machining and grinding coolants, deformation lubricants), may contain significant amounts of oil and grease. These waste waters require preliminary treatment to remove oil and grease and organic pollutants. Chemical emulsion breaking followed by either skimming or coalescing is an effective technology for removing these pollutants.

EPA has identified MP&M waste waters that may contain significant amounts of cyanide, such as plating and cleaning waste waters. These waste waters require preliminary treatment to destroy the cyanide. This is typically performed using alkaline chlorination with sodium hypochlorite or chlorine gas. EPA has also identified hexavalent chromium-bearing waste waters, usually generated by anodizing, conversion coating, acid treatment, and electroplating operations and rinses. These waste waters require chemical reduction of the hexavalent chromium to trivalent chromium. Sodium metabisulfite or gaseous sulphur dioxide are typically used as reducing agents. Several surface treatment waste waters typically contain significant amounts of chelated metals. These chelated metals require chemical reduction to break down the chelated metals prior to lime and settle. Sodium borohydride, hydrazine, and sodium hydrosulfite can be used as reducing agents. These preliminary treatment technologies are more effective and less costly on segregated waste waters, prior to adding waste waters that do not contain the pollutants being treated with the preliminary treatment technologies. Thus, EPA includes these preliminary treatment steps whenever it refers to lime and settle treatment.

2. *Option 2: In-process Flow Control, Pollution Prevention, and Lime and Settle Treatment.* Option 2 builds on Option 1 by adding in-process pollution prevention, recycling, and water conservation methods which allow for recovery and reuse of materials. Techniques or technologies, such as centrifugation or skimming for metal working fluids, or ion exchange for electroplating rinses, can save money for companies by allowing materials to be used over a longer period before they need to be disposed. These techniques and technologies also can be used to recover metal or metal treatment solutions. Using these techniques along with water conservation also leads to the generation of less pollution and results in more effective treatment of the waste water that is generated. As has been demonstrated by numerous industrial treatment systems, the treatment of metal bearing waste waters is relatively independent of influent concentration. For example, the well-operated lime and settle treatment system can achieve the same effluent concentration with an influent stream of 1,000 gallons per minute (gpm) and 10 parts per million (ppm) as it can achieve with an influent stream which is 500 gpm and 20 ppm. In fact, within a broad range of influent concentrations, the more highly concentrated waste water influent, when treated down to the technology effectiveness concentrations of a lime and settle treatment system, results in better pollutant removals and less mass of pollutant in the discharge. In addition, the cost of a treatment system is largely dependent on the size, which in turn is largely dependent on flow. As a result, the lower the flow of water to the treatment system the less costly the system. Option 2 in-process technologies include:

- Flow reduction using flow restrictors, conductivity meters, and/or timed rinses, for all flowing rinses, plus countercurrent cascade rinsing for all flowing rinses;
- Flow reduction using bath maintenance for all other process water-discharging operations;
- Centrifugation and 100 percent recycling of painting water curtains;
- Centrifugation and pasteurization to extend the life of water-soluble machining coolants reducing discharge volume by 80%; and
- In-process metals recovery using ion exchange followed by electrolytic recovery of the cation regenerant for selected electroplating rinses. This includes first-stage drag-out rinsing with electrolytic metal recovery.

The flow reduction practices included in Option 2 are widely used by MP&M sites and are also included as part of the regulatory basis for a number of effluent guidelines regulations in the metals industry.

3. *Option 3: Advanced End-of-Pipe Treatment.* Option 3 includes all of the Option 2 technologies plus advanced end-of-pipe treatment. Advanced end-of-pipe treatment could be either reverse osmosis or ion exchange to remove suspended and dissolved solids yielding a treated waste water that can be partially recycled as process water. This technology is not widely used but has been demonstrated by some MP&M sites, particularly in instances where the water supply is contaminated and requires clean-up before it can be used. For the purposes of modelling the cost of compliance and resulting pollutant removals, Option 3 technology is expected to achieve a sufficiently clean treated waste water such that 90 percent of the treated waste water can be recycled back to the facility to be reused in the processing area.

Selected Option. EPA proposes to establish BPT effluent limitations guidelines based on Option 2 technologies. Lime and settle treatment used in conjunction with flow reduction and pollution prevention technologies represents the best technology widely practiced by MP&M sites. EPA proposes to require permit writers to convert the concentration-based effluent limitations guidelines into mass-based permit limitations based on MP&M flow guidance from the Technical Development Document. This document provides guidance to permit writers on identifying sites with pollution prevention and water conservation technologies equivalent to those included in Option 2 (e.g., electrodialysis, reverse osmosis). EPA recognizes that there are many different pollution prevention and water conservation technologies that may achieve the same performance as those included in Option 2; therefore, the Agency has provided permit writers guidance on assessing these technologies.

EPA recommends that, for sites with pollution prevention and water conservation technologies in place that are equivalent to those included as the basis for BPT, permit writers use historical flow as a basis for converting the concentration-based limitations to mass-based. For sites without these types of technologies in place, EPA recommends that permit writers do not use historical flow, but use other tools listed in the Technical Development Document (e.g., measuring production through unit operations, measuring the concentration of total dissolved solids (TDS) in rinse waters) to convert the concentration-based limitations to mass-based. This approach encourages sites to implement good water use practices and investigate and install pollution prevention and water conservation technologies. By recommending use of historical flow only when sites have pollution prevention and water conservation technologies in place, EPA expects that permits based on BPT will reflect pollution prevention and water conservation technologies. If mass-based limitations have not been developed as required, the source shall achieve discharges not exceeding the concentration limitations listed in the regulation.

EPA did not select Option 1 as it does not reflect the average of the best technology performance in the industry. EPA did not select Option 3 technology as the basis for BPT because the costs do not justify the removals achieved.

C. Calculation of BPT Limitations

EPA visited 98 sites and sampled waste waters from 27 MP&M Phase I sites. In addition to sampling to characterize the process waste waters, EPA sampled 23 lime and settle treatment systems. EPA reviewed the treatment data gathered and identified data considered appropriate for calculating BPT limitations for the MP&M Phase I industry. EPA identified data from well-designed and well-operated treatment systems and focused on data for specific pollutants processed and treated on site. The data editing provides guidance used for this assessment consisted of four major steps:

1. Assessment of the performance of the entire treatment system;
2. Identification of process upsets during sampling that impacted the treatment effectiveness of the system;
3. Identification of pollutants not present in the raw waste water at sufficient concentrations to evaluate treatment effectiveness; and
4. Identification of treatment chemicals used in the treatment system.

The evaluation criteria used for each of these steps are described below. Data that failed one or more of the evaluation criteria were excluded from calculation of the BPT limitations.

1. *Assessment of Treatment System Performance.* EPA assessed the performance of the entire treatment system during sampling. Data for systems identified as not being well-designed or well-operated were excluded from use in calculating BPT limitations. EPA first identified the metals processed on site, as well as if the site performed unit operations likely to generate oil and grease and cyanide. EPA focused on these pollutants because the treatment trains used as a basis for the limitations are designed to treat and remove these pollutants. EPA then performed the following technical analyses of the treatment systems:

- —Based on the pollutants processed or treated on site, EPA excluded data from systems that were not operated at the proper pH for removal of the pollutants.
- —EPA excluded data from lime and settle systems that did not have solids removal indicative of effective treatment. In general, EPA identified as having poor solids removal systems that did not achieve 90% removal of total suspended solids (TSS) and had effluent TSS concentrations greater than 50 milligrams per liter. Site-specific exceptions were made to this rule depending on influent concentrations of TSS.
- —EPA excluded data from lime and settle systems at which the concentration of most of the metals present in the influent stream did not decrease, indicating poor treatment.

2. *Identification of Process Upsets Occurring During Sampling.* EPA reviewed the sampling episode reports for each of the sampled sites, and identified any process upsets that resulted in poor treatment during one or more days of the sampling episode. EPA excluded the data affected by the process upsets.

3. *Identification of Pollutants Not Present in the Raw Waste water at Sufficient Concentrations to Evaluate Removal.* EPA excluded data for pollutants that were not detected in the treatment influent streams at a site, or were detected at concentrations less than 0.1 milligram per liter. EPA also excluded data for pollutants that were not processed on site. EPA reviewed the water use practices for the sampled sites and excluded data from sites that may have been diluting the raw waste water and reducing the concentration of pollutants processed on site. Because the MP&M Phase I effluent guidelines include water conservation practices and pollution prevention technologies, EPA reviewed the data to ensure that the BPT limitations were based on sites that had these practices and technologies in place.

4. *Identification of Waste water Treatment Chemicals.* EPA identified treatment chemicals used in each of the sampled treatment systems to determine if the removal of the metals used as treatment chemicals were consistent with removal of other metals on site, indicating a well-designed and well-operated system. If a metal was used as a treatment chemical, and the site treated the metal to a concentration consistent with other metals removed on site, the metal was included in calculation of the BPT limitations. If the metal was used as a treatment chemical and was not removed to a concentration consistent with other metals removed on site, the treatment chemical was excluded from calculation of the limitations. The data remaining after these data editing procedures were used to calculate the BPT limitations.

A detailed description of the statistical methodology used for the calculation of limitations is described in the Technical Development Document. A summary of the methodology follows.

The calculation of the BPT daily maximum limitations for pollutants was performed by the following steps. The arithmetic long-term mean concentration was calculated for each facility representing BPT treatment technology, and the median of the means was determined. A modified delta-lognormal distribution was fit to daily concentration data from each facility that had enough detected concentration values for parameter estimation. This is the same distributional model used by EPA in the final rulemakings for the Organic Chemicals, Plastics and Synthetic Fibers (OCPSF) and Pesticides Manufacturing categories and the proposed rulemaking for the Pulp and Paper category. Variability factors were then computed for each facility distribution, and the average variability factor was determined. Finally, the daily maximum limitation was calculated by multiplying the median long-term mean by the average variability factor. The monthly maximum limitation was calculated similarly except that the variability factor corresponding to the 95th percentile of the distribution of monthly averages was used instead of the 99th percentile of daily concentration measurements.

The daily variability factor is a statistical entity defined as the ratio of the estimated 99th percentile of the distribution of daily values divided by the expected value, or mean, of the distribution. Similarly, the monthly variability factor is defined as the estimated 95th percentile of the distribution of four-day averages divided by the expected value of the monthly averages.

The modified delta-lognormal distribution models the data as a mixture of non-detect observations and measured values. This distribution was selected because the data for most analytes consisted of a mixture of measured values and non-detects. The modified delta-lognormal distribution assumes that all non-detects have a

value equal to the detection limit and that the detected values follow a lognormal distribution.

Table 2 presents the proposed daily and monthly limitations. In Table 2, the term "T", as in "cyanide(T)", shall mean total. The values calculated by the above procedures were rounded off to the next highest tenths place for metals, to the next highest hundredths place for cyanide, and to the next highest unit place for TSS and oil and grease.

EPA identified 24 metal types processed at MP&M Phase I sites. Because EPA did not have sufficient data to set limits for all of these metal types, EPA is regulating aluminum and iron as indicator metals for removal of non-regulated metals that may be processed at MP&M sites. Aluminum is most effectively removed in lime and settle systems at a pH between 7.5 and 8 standard units, while iron is most effectively removed at a pH of approximately 10.5 standard units. Most metals that may be present in MP&M waste waters are effectively removed in this pH range. Therefore, removal of aluminum and iron will indicate effective removal of other metal types. Although iron and aluminum can be used as water treatment chemicals, EPA believes that regulation of these pollutants will control discharges of non-regulated metals that are processed at MP&M sites.

EPA is proposing a pH range limit in order to assure that the pH of the waste water is within the neutral range.

EPA is also proposing to use oil and grease as an indicator for monitoring for organic pollutants that have the potential to be present in MP&M waste waters. EPA is using oil and grease as an indicator since most of the organic pollutants detected in MP&M waste waters during the MP&M sampling program are more soluble in oil than in water, and as such would partition to the oil layer. Thus, removal of oil and grease will result in significant removal of these pollutants. Data for oil-water separation systems collected during the MP&M sampling program show removals between 63 and 90 percent for organic pollutants across the oil-water separation systems. These data support the conclusion that the organic pollutants will partition to the oil layer. In addition, most of the organic pollutants detected in MP&M waste waters are insoluble in water, further supporting that these pollutants will partition to the oil layer.

EPA considered establishing limitations for Total Toxic Organics (TTO), which would reflect the sum of concentrations achieved for several specific organic pollutants identified during the MP&M sampling program. However, because of the diversity in the types of cleaners, coolants, paints, etc., used in the MP&M industry, as well as the current industry trends in identifying substitutes for organic solvent degreasing, EPA did not have sufficient analytical data to identify and regulate all organic pollutants in use at MP&M sites. Therefore, EPA rejected TTO as an approach to controlling organic pollutant discharges. EPA believes that use of oil and grease as an indicator will provide regulatory control of organic pollutants while allowing the flexibility to control organic pollutants that are used by MP&M sites but not identified during the MP&M sampling program.

EPA also considered establishing limitations for lead, since lead is known to have several adverse human health effects. Although lead was analyzed for in nearly all samples collected during the development of the MP&M Phase I rule, lead was rarely found at treatable concentrations in the influent to the treatment systems sampled. As discussed above, treatable concentration was defined as 0.1 milligram per liter in the raw waste water prior to treatment. The majority of lead data were non-detects or detects at very low concentrations. Since lead was rarely found at treatable concentrations in the raw waste water, prior to treatment, EPA decided not to propose a limit for lead. EPA is soliciting additional data and comments on the possibility of setting a limit for lead in the final rule (see Section XIX).

TABLE 2.—PROPOSED EFFLUENT CONCENTRATION LIMITATIONS

[Milligrams per liter (mg/l)]

Pollutant or pollutant parameter	Maximum for any 1 day	Monthly average shall not exceed
Aluminum (T)	1.4	1.0
Cadmium(T)	0.7	0.3
Chromium(T)	0.3	0.2
Copper(T)	1.3	0.6
Iron(T)	2.4	1.3
Nickel(T)	1.1	0.5
Zinc(T)	0.8	0.4
Cyanide(T)	0.03	0.02
Oil & Grease	35	17
TSS	73	36
pH	(1)	(1)

[1] Within 6.0 to 9.0.

D. Applicability of BPT

The Agency is proposing BPT limitations guidelines for the MP&M Phase I category to apply to all MP&M process waste waters that are generated by sites performing manufacturing, rebuilding or maintenance of metal parts, products, or machinery in one of the seven industrial sectors (i.e., aerospace, aircraft, electronic equipment, hardware, mobile industrial equipment, ordnance and stationary industrial equipment).

E. BPT Pollutant Removals, Costs, and Economic Impacts

EPA estimates that the proposed BPT limitations will remove annually an estimated 20 million pounds of conventional pollutants (TSS and oil and grease), 1 million pounds of metals and cyanide, and 67,000 pounds of organic pollutants. BPT is estimated to require a capital expenditure of $63 million (in 1994$), which will require an annualized cost of $18 million. In addition, as a result of this regulation, EPA estimates that 18 sites may close with an accompanying job loss of 158 full time employees (FTEs). EPA estimates that compliance activities may generate annual labor requirements which could more than offset these job losses. EPA believes that the effluent reduction benefits achieved by this proposed BPT justify the costs and that all statutory factors have been satisfied. (See further discussion of costs and benefits below).

X. Best Conventional Pollutant Control Technology

A. July 9, 1986 BCT Methodology

The BCT methodology, promulgated in 1986 (51 FR 24974), discusses the Agency's consideration of costs in establishing BCT effluent limitations guidelines. EPA evaluates the reasonableness of BCT candidate technologies (those that are technologically feasible) by applying a two-part cost test:

(1) The POTW test; and

(2) The industry cost-effectiveness test.

In the POTW test, EPA calculates the cost per pound of conventional pollutant removed by industrial dischargers in upgrading from BPT to a BCT candidate technology and then compares this cost to the cost per pound of conventional pollutant removed in upgrading POTWs from secondary treatment. The upgrade cost to industry must be less than the POTW benchmark of $0.25 per pound (in 1976 dollars).

In the industry cost-effectiveness test, the ratio of the incremental BPT to BCT cost divided by the BPT cost for the industry must be less than 1.29 (i.e., the cost increase must be less than 29 percent).

B. BCT Options Identified

For today's proposed rule, EPA considered whether or not to establish BCT effluent limitation guidelines for MP&M sites that would attain incremental levels of effluent reduction beyond BPT for TSS. The only technology option identified to attain further TSS reduction is the addition of multimedia filtration to existing BPT systems.

EPA applied the BCT cost test to use of multimedia filtration technology as a means to reduce TSS loadings. The MP&M sites were split into three flow categories: low flow (generally less than 10,000 gallons per year (gpy)); medium flow (between 10,000 gpy and 1,000,000 gpy); and high flow (greater than 1,000,000 gpy). For each of these three flow categories a representative site was chosen for which EPA had estimated the costs of installing the Option 2 technologies discussed under BPT (See Section IX.B. above). The Agency evaluated the costs of installing a polishing multimedia filter to remove an estimated additional 45 percent of the TSS discharged after lime and settle treatment. This estimated removal reflects the reduced TSS concentrations seen when filters are used in the MP&M industry. The cost per pound of the high flow case was $28/lb of TSS (in 1976 dollars), the cost per pound removed of the medium flow case was $131/lb and the cost of the low flow case was $813/lb of TSS (in 1976 dollars). All of these cases individually as well as combined exceed the $0.25/lb (in 1976 dollars) POTW cost test value. Because these costs exceed the POTW benchmark, the first part of the cost test fails; therefore, the second part of the test was unnecessary. It was therefore determined that multi-media filtration does not pass the cost test for BCT regulations development. In light of the above, BCT limitations for MP&M are proposed to be set equal to BPT limitations.

Therefore, EPA is proposing to establish BCT limitations on the basis of Option 2 technology, equivalent to BPT.

XI. Best Available Technology Economically Achievable

A. Need for BAT Regulation

The need for BAT regulation is the same as the need for BPT regulation (see Section IX.A.).

B. BAT Technology Options and Selection

The factors considered in establishing the best available technology economically achievable (BAT) level of control include: the age of process equipment and facilities, the processes employed, process changes, the engineering aspects of applying various types of control techniques, the costs of applying the control technology, economic impacts imposed by the regulation, non-water quality environmental impacts such as energy requirements, air pollution and solid waste generation, and other such factors as the Administrator deems appropriate (sec

tion 304(b)(2)(B) of the Act). In general, the BAT technology level represents the best existing economically achievable performance among plants with shared characteristics. In making the determination about economic achievability, the Agency takes into consideration factors such as plant closures and product line closures. Where existing waste water treatment performance is uniformly inadequate, BAT technology may be transferred from a different subcategory or industrial category. BAT may also include process changes or internal plant controls which are not common industry practice.

EPA is today proposing BAT effluent limitations guidelines for all parameters listed in Table 2 except TSS and pH. Oil and grease is an indicator for 2-methylnaphthalene, 2-propanone, N-octadecane, and N-tetradecane.

The three regulatory options which EPA considered for BAT are identical to the three options discussed under BPT. Like BPT, EPA is proposing BAT on the basis of Option 2. This technology represents the best available technology economically achievable. Option 1 was rejected because it does not include the pollution prevention and water conservation technologies which are widely demonstrated at MP&M sites. Option 3 was rejected because the costs do not justify the removals achieved.

EPA did not include the application of filters, discussed under BCT, as a BAT option. Data collected during sampling at MP&M facilities demonstrated no additional removals of many metal pollutants resulting from the use of filters as compared to concentrations of the same metals after the lime and settle treatment included in Option 2. Thus, although filtration is demonstrated to be effective in achieving additional removals of suspended solids, and as such was considered for the basis of BCT, multimedia or sand filtration does not reflect the best available technology performance for priority and nonconventional pollutants.

C. Calculation of BAT Limitations

The calculation of the BAT limitations were performed by using the same methodology used for calculating BPT limitations (see Section IX.C.)

D. Applicability of BAT

The applicability of BAT is the same as that for BPT.

E. BAT Pollutant Removals, Costs, and Economic Impacts

The pollutant removals for BAT are the same as those for BPT except that BAT does not cover TSS (see Section IX.E.). The estimated cost of BAT is the same as BPT (see Section IX.E.). The economic impacts of BAT are the same as BPT (see Section IX.E.). EPA believes that the effluent reduction benefits achieved by this proposed BAT justify the costs and that all statutory factors have been satisfied. (See further discussion of costs and benefits below.)

XII. Pretreatment Standards for Existing Sources

A. Need for Pretreatment Standards

Indirect dischargers in the MP&M Phase I category, like the direct dischargers, use raw materials that contain many priority pollutant and nonconventional metal pollutants. As in the case of direct dischargers, they may be expected to discharge many of these pollutants to POTWs at significant mass or concentration levels, or both. EPA estimates that indirect dischargers annually discharge approximately 12 million pounds of priority and nonconventional metals, and 2.4 million pounds of priority and nonconventional organic pollutants.

EPA determines which pollutants to regulate in PSES on the basis of whether or not they pass through, interfere with, or are incompatible with the operation of POTWs (including interference with sludge practices). The Agency evaluates pollutant pass through by comparing the pollutant percentage removed by well operated POTWs achieving secondary treatment with the percentage removed by BAT technology applied by direct dischargers. A pollutant is deemed to pass through POTWs when the average percentage removed nationwide by well-operated POTWs (those meeting secondary treatment requirement) is less than the percentage removed by directly discharging MP&M sites applying BAT for that pollutant.

To evaluate the need for PSES, EPA followed the procedures established by the Organic Chemicals, Plastics and Synthetic Fibers (OCPSF) regulation to determine the degree to which well-operated POTWs are capable of removing pollutants. Prior to promulgation of the OCPSF effluent guidelines, EPA conducted a study of

well-operated POTWs that use secondary (biological) treatment (the "50–POTW Study"). The 50–POTW study determined the extent to which priority pollutants are removed by POTWs. The principal means by which the Agency evaluated pollutant pass-through was to compare the pollutant percentage removed by POTWs with the percentage removed to comply with BAT limitations.

Because some of the data collected for evaluating POTW removals included influent levels of priority pollutants that were close to the detection limit, the POTW data were edited to eliminate influent values less than 10 times the nominal method detection limit (MDL) and the corresponding effluent values, except in cases where none of the influent concentrations exceeded 10 times the MDL. In the latter case, where there were no influent data exceeding 10 times the MDL, the data were edited to eliminate influent values less than twice the MDL and the corresponding effluent values. These editing rules were used to allow for the possibility that low POTW removals simply reflected the low influent levels.

EPA then averaged the remaining influent data and also averaged the remaining effluent data for the POTWs. The percent removal achieved for each priority pollutant was determined from these averaged influent and effluent levels. This percent removal was then compared to the percent removal achieved by BAT treatment technology. Based on this analysis, EPA determined that four nonconventional organic pollutants, seven priority metal pollutants, five nonconventional metal pollutants, cyanide, and chemical oxygen demand pass through POTWs. POTW removals for ten of the nonconventional organic pollutants were calculated using a data base developed by EPA's Risk Reduction Engineering Laboratory (RREL) and data transferred from other pollutants based on physical similarities (e.g., straight-chained hydrocarbons, ketones, etc.).

B. PSES Technology Options and Selection

Indirect discharging MP&M sites generate waste waters with similar pollutant characteristics to direct discharging facilities. Hence, the same treatment technologies discussed previously for BPT and BAT are considered applicable to PSES. However, as described below, the application of the technology options has resulted in the addition of a new option that applies to indirect dischargers.

EPA is today proposing PSES for all parameters listed in Table 2 except TSS and pH. EPA is proposing PSES for oil and grease as an indicator for monitoring for organic pollutants which have the potential to be present.

The Agency considered the following five options in developing PSES for MP&M Phase I.

1. *Option 1: Lime and Settle Treatment.* This option is equivalent to BPT Option 1.

2. *Option 1a: Tiered PSES for "Low" Flow and "Large" Flow Sites.* This option would establish a tiered PSES requirement depending on the annual discharge volume at a given MP&M site. For "low" flow sites, sites with a discharge volume of less than 1,000,000 gallons per year (gpy), PSES would require that sites comply with concentration standards based on Option 1. For a site operating 250 days per year, 1,000,000 gallons per year translates into an average discharge flow rate of 4,000 gallons per day. For "large" flow sites, sites with a discharge volume of 1,000,000 gpy or greater, PSES would require that mass-based standards be imposed based on Option 2 (i.e. the conversion of Option 1 concentration-based standards using an appropriate flow which reflects good pollution prevention and water conservation practices such as those included in BPT Option 2). The flow basis would be determined by the Control Authority using site-specific factors and flow guidance (see the Technical Development Document for a detailed presentation of flow guidance aimed at water conservation and good housekeeping practices). If mass-based limitations have not been developed as required, the source would have to achieve discharges not exceeding the concentration limitations listed in the regulation. The technology basis for PSES for large flow sites is the same as BPT Option 2.

3. *Option 2a: In-process Flow Reduction and Pollution Prevention and Lime and Settle Treatment for "Large" Flow sites.* This option would require that mass-based standards be imposed based on Option 2 for sites with a discharge volume of 1,000,000 gpy or greater. Sites with a discharge volume of less than 1,000,000 gpy would not be subject to PSES requirements. For a site operating 250 days per year, 1,000,000 gallons per year translates into an average discharge flow rate of 4,000 gallons per day.

In order to fully implement the mass-based permits, it is important for Control Authorities to issue permits in a timely manner. Dischargers are reminded of their responsibilities under the General Pretreatment Regulations (40 CFR 403) to provide, among other things, Baseline Monitoring Reports. The Agency expects Control Authorities to place a priority on issuing needed mass-based permits, and those permits should be issued within a year after the Baseline Monitoring Report deadline. Control Authorities that do not meet these permitting timelines may not be in compliance with their pretreatment programs under 40 CFR 123.45.

4. *Option 2: In-Process Flow Reduction & Pollution Prevention and Lime and Settle Treatment.* This option is equivalent to BPT Option 2.

5. *Option 3: Advanced End-of-Pipe Treatment.* This option is equivalent to BPT Option 3.

Selected Option: EPA is proposing Option 2a technologies as the basis for the proposed PSES for MP&M Phase I. Option 2a is economically achievable (see Section XIV) and greatly reduces pollutants discharged into the environment. Compared to Option 2, which would require that all MP&M indirect dischargers be controlled by mass standards, Option 2a achieves significant pollutant reduction without imposing undue administrative burden on the Control Authorities. Whereas Option 2 would require an estimated 8,706 facilities to have permits or similar control mechanisms written incorporating the proposed standards into a mass-based permit, Option 2a reduces this burden, requiring only an estimated 1,998 facilities to have mass-based permits, the rest of the facilities would not be subject to PSES requirements. EPA believes this approach would allow Control Authorities to focus their efforts on the facilities discharging the vast majority of the pollutants, rather than dissipating their limited resources on sites contributing much less to the overall problem. An indication of relative pollutant loadings by size of facility is provided in Table 26 below. The low flow sites could also be expected to reduce their discharges of pollutants, but they would do so by meeting local limits. EPA has consulted with representatives from EPA Regions, States and Municipalities, the majority of whom favor this approach to regulating the MP&M industry.

C. Calculation of PSES

The proposed pretreatment standards for existing sources in the MP&M Phase I category are presented in today's proposed rule. The pretreatment standards are shown for cyanide and priority and nonconventional metal pollutants.

An oil and grease standard is proposed as an indicator for specific organic pollutants. The specific organic pollutants for which oil and grease is an indicator are 2-methylnaphthalene, 2-propanone, N-octadecane, and N-tetradecane. EPA identified these pollutants in MP&M waste water and determined that these pollutants will pass through a POTW. These pollutants are more likely to partition to the oily phase than the water phase, thus EPA believes that the treatment and removal of oil and grease in waste water will also result in significant removals of these pollutants. EPA's sampling results show higher percent removals are achieved through oil and grease treatment (BAT technology) than at a well-operated secondary POTW. EPA considered and rejected establishing a pretreatment standard for Total Toxic Organics (TTO) which would reflect the sum of concentrations achieved for several organic pollutants. The reason EPA rejected TTO as an approach to controlling organic pollutant discharges is that EPA knows that the industry is in the midst of a significant shift in the solvents it is using. Accordingly, EPA has no reason to believe that regulation of the specific list of organics identified as of today would reflect the organics that will be present in waste water when this regulation is promulgated. EPA is planning to continue to study the sources and concentrations of organic pollutants in MP&M waste water, particularly as sites switch from ozone-depleting solvents to aqueous-based cleaners. Accordingly, EPA may propose a different approach to controlling organic pollutant discharges for both Phase I and Phase II in conjunction with the MP&M Phase II rulemaking.

As with BAT proposed standards, the pretreatment standards are expressed in terms of concentration-based standards. As described above, EPA is proposing that MP&M sites be required to comply with a mass-based permit if their annual discharge volume equals or exceeds 1,000,000 gallons. The proposed PSES would require dischargers to meet "maximum for any one day" and "maximum monthly average" standards. The proposed PSES limitations for cyanide, priority and nonconventional metal pollutants, and oil and grease are identical to those limits established for these pollutants under proposed BAT Option 2.

Considering the large number of indirect dischargers which have the potential to be covered by this proposed regulation, an important issue to the affected industry and to permit writers is the potentially enormous administrative burden. Therefore, in developing this proposal, EPA has looked for means of reducing the administrative burden, reducing monitoring requirements, and reducing reporting requirements. The proposed exemption of existing indirect dischargers discharging less than one million gallons per year is one means by which EPA is proposing to reduce the administrative burden.

D. Applicability of PSES Limitations

The Agency is proposing PSES under the MP&M Phase I category to apply to all MP&M process waste waters that are generated by sites performing manufacturing, rebuilding, or maintenance of metal parts, products, or machinery in one of the seven industrial sectors (i.e., aerospace, aircraft, electronic equipment, hardware, mobile industrial equipment, ordnance and stationary industrial equipment). The Combined Wastestream Formula will apply to sites which have operations covered by MP&M Phase I, existing effluent guidelines, or not covered by existing regulations.

E. Removal Credits

As described previously, many industrial facilities discharge large quantities of pollutants to POTWs where their wastes mix with waste water from other sources, domestic wastes from private residences and run-off from various sources prior to treatment and discharge by the POTW. Industrial discharges frequently contain pollutants that are generally not removed as effectively by waste water treatment at the POTWs as by the industries themselves.

The introduction of pollutants to a POTW from industrial discharges poses several problems. These include potential interference with the POTW's operation or pass-through of pollutants if inadequately treated. As discussed, Congress, in section 307(b) of the Act, directed EPA to establish pretreatment standards to prevent these potential problems. Congress also recognized that, in certain instances, POTWs could provide some or all of the treatment of an industrial user's wastestream that would be required pursuant to the pretreatment standard. Consequently, Congress established a discretionary program for POTWs to grant "removal credits" to their indirect dischargers. The credit, in the form of a less stringent pretreatment standard, allows an increased amount of pollutants to flow from the indirect discharger's facility to the POTW.

Section 307(b) of the CWA establishes a three-part test for obtaining removal credit authority for a given pollutant. Removal credits may be authorized only if (1) The POTW "removes all or any part of such toxic pollutant," (2) the POTW's ultimate discharge would "not violate that effluent limitation, or standard which would be applicable to that toxic pollutant if it were discharged" directly rather than through a POTW and (3) the POTW's discharge would "not prevent sludge use and disposal by such [POTW] in accordance with section [405]. * * *" Section 307(b).

EPA has promulgated removal credit regulations in 40 CFR part 403.7. The United States Court of Appeals for the Third Circuit has interpreted the statute to require EPA to promulgate comprehensive sewage sludge regulations before any removal credits could be authorized. *NRDC* v. *EPA*, 790 F.2d 289, 292 (3rd Cir. 1986) *cert. denied*. 479 U.S. 1084 (1987). Congress made this explicit in the Water Quality Act of 1987 which provided that EPA could not authorize any removal credits until it issued the sewage sludge use and disposal regulations required by section 405(d)(2)(a)(ii).

Section 405 of the CWA requires EPA to promulgate regulations which establish standards for sewage sludge when used or disposed for various purposes. These standards must include sewage sludge management standards as well as numerical limits for pollutants which may be present in sewage sludge in concentrations which may adversely affect public health and the environment. Section 405 requires EPA to develop these standards in two phases. On February 19, 1993, EPA promulgated the Round One sewage sludge regulations establishing standards, including numerical pollutant limits, for the use and disposal of sewage sludge. 58 FR 9248. EPA established pollutant limits for ten metals when sewage sludge is applied to land, for three metals when it is disposed of at surface disposal sites and for seven metals and total hydrocarbons, a surrogate for organic pollutant emissions, when sewage sludge is incinerated. These requirements are codified at 40 CFR part 503.

The Phase One regulations partially fulfilled the Agency's commitment under the terms of a consent decree that settled a citizens suit to compel issuance of the sludge regulations. *Gearhart, et al.* v. *Reilly*, Civil No. 89–6266–JO (D.Ore). Under the terms of that decree, EPA must propose and take final action on Round Two sewage sludge regulations by December 15, 2001.

At the same time EPA promulgated the Round One regulations, EPA also amended its pretreatment regulations to provide that removal credits would be available for certain pollutants regulated in the sewage sludge regulations. *See* 58 FR at 9386. The amendments to part 403 provide that removal credits may be made potentially available for the following pollutants:

(1) If a POTW applies its sewage sludge to the land for beneficial uses, disposes of it on surface disposal sites or incinerates it, removal credits may be available, depending on which use or disposal method is selected (so long as the POTW complies with the requirements in part 503). When sewage sludge is applied to land, removal credits may be available for ten metals. When sewage sludge is disposed of on a surface disposal site, removal credits may be available for three metals. When the sewage sludge is incinerated, removal credits may be available for seven metals and for 57 organic pollutants. *See* 40 CFR 403.7(a)(3)(iv)(A).

(2) In addition, when sewage sludge is used on land or disposed of on a surface disposal site or incinerated, removal credits may also be available for additional pollutants so long as the concentration of the pollutant in sludge does not exceed a concentration level established in part 403. When sewage sludge is applied to land, removal credits may be available for two additional metals and 14 organic pollutants. When the sewage sludge is disposed of on a surface disposal site, removal credits may be available for seven additional metals and 13 organic pollutants. When the sewage sludge is incinerated, removal credits may be available for three other metals. *See* 40 CFR 403.7(a)(3)(iv)(B).

(3) When a POTW disposes of its sewage sludge in a municipal solid waste landfill that meets the criteria of 40 CFR part 258 (MSWLF), removal credits may be available for any pollutant in sewage sludge. *See* 40 CFR 403.7(a)(3)(iv)(C).

Thus, given compliance with the requirements of EPA's removal credit regulations,[1] following promulgation of the pretreatment standards being proposed here, removal credits may be authorized for any pollutant subject to pretreatment standards if the applying POTW disposes of its sewage sludge in a MSWLF that meets the requirements of 40 CFR part 258. If the POTW uses or disposes of its sewage sludge by land application, surface disposal or incineration, removal credits may be available for the following metal pollutants (depending on the method of use or disposal): arsenic, cadmium, chromium, copper, iron, lead, mercury, molybdenum, nickel and zinc. Given compliance with section 403.7, removal credits may be available for the following organic pollutants (depending on the method of use or disposal) if the POTW uses or disposes of its sewage sludge: benzene, 1,1-dichloroethane, 1,2-dibromoethane, ethylbenzene, methylene chloride, toluene, tetrachloroethene, 1,1,1-trichloroethane, 1,1,2-trichloroethane and trans-1,2-dichloroethene.

Some facilities may be interested in obtaining removal credit authorization for other pollutants being considered for regulation in this rulemaking for which removal credit authorization would not otherwise be available under part 403. As discussed in the sewage sludge regulations (58 FR 9382–83), EPA has concluded that removal credits should *not* be authorized for pollutants other than the pollutants specifically regulated by the final part 503 regulation. The Agency has determined that the CWA, as amended, removal credit eligibility is limited to those pollutants regulated specifically in Part 503 and to pollutants that the Agency determines do not threaten human health and the environment when used or disposed of in sewage sludge. When read together, sections 307(b) and 405 permit removal credits only when it can be determined that the increased concentrations or amounts allowed by the removal credit will not affect sewage sludge use or disposal adversely. EPA determined that a categorical pretreatment standard pollutant is eligible for removal credits only when EPA has either established a specific numerical limit for that pollutant or has evaluated it and concluded that it does not threaten public health or the environment. 58 FR 9382–83.

Consequently, in the case of a pollutant for which EPA did not perform a risk analysis in developing the Phase One sewage sludge regulations, removal credit for pollutants will only be available when the Agency determines either a safe level for the pollutant in sewage sludge or that regulation of the pollutant is unnecessary to protect public health and the environment from the reasonably anticipated adverse effects of such a pollutant.[2] Therefore, any person seeking to add additional categorical pollutants to the list for which removal credits are now available would need to submit information to the Agency to support such a determination. The basis for such a determination may include information showing the absence of risks for the pollutant (generally established through an environmental pathway risk assessment such as EPA used for Phase One) or data establishing the pollutant's presence in sewage sludge at low levels relative to risk levels or both. Parties, however, may submit whatever information they conclude is sufficient to establish either the absence of any potential for harm from the presence of the pollutant in sewage sludge or data demonstrating a "safe" level for the pollutant in sludge. Following submission of such a demonstration, EPA will review the data and determine whether or not it should propose to amend the list of pollutants for which removal credits would be available.

EPA has already begun the process of evaluating a number of pollutants for adverse potential to human health and the environment when present in sewage sludge. In May, 1993, pursuant to the terms of the consent decree in the *Gearhart* case, the Agency notified the United States District Court for the District of Oregon that, based on the information then available at that time, it intended to propose 31 pollutants for regulation in Round Two sewage sludge regulations. These are acetic acid (2, 4, -dichlorophenoxy), aluminum, antimony, asbestos, barium, beryllium, boron, butanone (2-), carbon disulfide, cresol (p-), cyanides (soluble salts and complexes), dioxins/dibenzofurans (all monochloro to octochloro congeners), endsulfan-II, fluoride, manganese, methylene chloride, nitrate, nitrite, pentachloronitrobenzene, phenol, phthalate (bis-2-ethylhexyl), polychlorinated biphenyls (co-planar), propanone (2-), silver, thallium, tin, titanium, toluene, trichlorophenoxyacetic acid (2, 4, 5-), trichlorphenoxypropionic acid ([2- (2, 4, 5-)], and vanadium.

The Round Two regulations are not scheduled for proposal until December, 1999 and promulgation in December 2001. However, given the necessary factual showing, as detailed above, EPA could conclude before the contemplated proposal and promulgation dates that regulation of some of these pollutants is not necessary. In those circumstances, EPA could propose that removal credits should be authorized for such pollutants before promulgation of the Round Two sewage sludge regulations. However, because of the Agency's commitment to promulgation of effluent limitations and guidelines under the consent decree with NRDC, it may not be possible to complete review of removal credit authorization requests by the time EPA must promulgate these guidelines and standards.

EPA's proposal to establish pretreatment standards for oil and grease as an indicator for organic pollutants means that oil and grease is not subject to removal credits.

F. Compliance Date

EPA is proposing to establish a three-year deadline for compliance with PSES. Design and construction of systems adequate for compliance with PSES will be a substantial undertaking for many MP&M sites. In addition, Control Authorities will need the time to develop the mass-permits for their industrial users with annual discharge volumes greater than 1,000,000 gallons.

G. PSES Pollutant Removals, Costs and Economic Impacts

EPA estimates that the proposed PSES regulation will result in the removal of 14 million pounds per year of pollutants including 9.1 million pounds of priority and nonconventional metal pollutants and 2.1 million pounds of priority and nonconventional organic pollutants and cyanide. PSES is estimated to result in capital costs of approximately $ 351 million and annualized costs of $ 142 million (in 1994 dollars). EPA projects that 7 sites may be closed as a result of PSES, and job losses will affect 540 full-time employees (FTEs). However, EPA estimates that compliance activities may generate annual labor requirements which could more than offset these job losses.

XIII. New Source Performance Standards (NSPS) and Pretreatment Standards for New Sources (PSNS)

Section 307(c) of the Act calls for EPA to promulgate pretreatment standards for new sources (PSNS) at the same time that it promulgates new source performance standards (NSPS). New facilities have the opportunity to incorporate the best available demonstrated technologies including process changes, in-plant controls, and end-of-pipe treatment technologies.

The same technologies discussed previously for BAT and PSES are available as the basis for NSPS and PSNS. Option 2 was the selected option for BAT and for large flow PSES, and the only higher technology option identified by EPA was Option 3. Option 3 includes advanced end-of-pipe treatment with significant reuse of process water. Since new sites have the potential to install pollution prevention and pollution control technologies more cost effectively then existing sources, Option 3 was considered for NSPS and PSNS. However, EPA did not select Option 3 technology as the basis for NSPS and PSNS because the costs do not justify the removals achieved. Therefore, EPA is proposing NSPS and PSNS for MP&M Phase I are based on the proposed Option 2 BAT technologies identified above. All NSPS and PSNS limits are expected to be mass-based. If mass-based limitations have not been developed as required, the source shall achieve discharges not exceeding the concentration limitations listed in the regulation.

XIV. Economic Considerations

A. Introduction

EPA's economic impact assessment is set forth in the report titled "Economic Impact Analysis Of Proposed Effluent Limitations Guidelines And Standards For The Metal Products And Machinery Industry, Phase I" (hereinafter "EIA"). This report estimates the expected economic effect of compliance with the proposed regulatory options in terms of facility closures and associated losses in employment. Firm-level impacts, local community impacts, international trade effects, labor requirements of compliance, and effects on new Metal Products and Machinery Industry (MP&M) facilities are also presented in this report. A Regulatory Flexibility Analysis detailing the small business impacts for this industry is also included in the EIA. In addition, EPA conducted an analysis of the cost-effectiveness of the regulatory options. The report, "Cost-Effectiveness Analysis of Proposed Effluent Limitations Guidelines and Standards of Performance for the Metal Products and Machinery Industry, Phase I" is included in the record of this rule-making. EPA also prepared a background analysis of the economic conditions in the MP&M industry, "Industry Profile Of the Metal Products and Machinery Industry, Phase I." The following discussion summarizes material from the Economic Impact Analysis, Cost-Effectiveness Analysis, and Industry Profile reports. The reader is referred to these reports for the full details of these analyses.

Analysis of the economic impacts of effluent guidelines for the MP&M industry relies heavily on the responses to the questionnaire distributed to MP&M facilities by EPA under the authority of Section 308 of the Clean Water Act (the DCP). As discussed above, EPA sent the questionnaire, requesting both technical and economic information, to 1,020 MP&M industry facilities (See Section V.A.2 for details). After detailed data cleaning and validation activities, the responses for 396 facilities, representing 10,601 water-discharging facilities in the MP&M industry population, were used in the industry impact analysis. EPA analyzed the economic impacts of the regulatory options applicable to MP&M Phase I facilities on the basis of data for the 396 sample facilities. The impacts assessed for these sample facilities were extrapolated to the level of the MP&M industry population using facility sample weights that are based on the sample design for the Section 308 survey. Unless otherwise indicated, the remainder of this discussion reports the estimated economic impacts for the MP&M industry population.

B. Overview of the Facilities Potentially Subject to Regulation

From secondary source data (Department of Commerce), EPA estimates that approximately 90,000 establishments or facilities participated in the MP&M Phase I business sectors as of 1987. Thus, the estimated 10,601 water-discharging facilities (from Section 308 Survey data) that would potentially be affected by this regulation represent about 11 percent of the total facilities in the MP&M Phase I business sectors. Of the 10,601 water-discharging facilities, EPA estimates that 8,706 facilities are indirect dischargers (i.e., they discharge effluent to a POTW) and would thus be subject to Pretreatment Standards for Existing Sources (PSES). The remaining 1,895 facilities are estimated to be direct dischargers (i.e., they discharge effluent directly to a waterway under a NPDES permit) and will thus be subject to Best Available Technology Economically Achievable (BAT) and Best Practicable Control Technology Currently Available (BPT) requirements as herein proposed.

The MP&M facilities that are expected to be subject to this regulation contribute significantly to the U.S. economy. Table 3, below, summarizes important economic data for the estimated 10,601 water-discharging facilities that are potentially subject to regulation and on which the economic

[1] Under Section 403.7, a POTW is authorized to give removal credits only under certain conditions. These include applying for, and obtaining, approval from the Regional Administrator (or Director of a State NPDES program with an approved pretreatment program), a showing of consistent pollutant removal and an approved pretreatment program. *See* 40 CFR 403.7(a)(3) (i), (ii), and (iii).

[2] In the Round One sewage sludge regulation, EPA concluded, on the basis of risk assessments, that certain pollutants (*see* Appendix G to Part 403) did not pose an unreasonable risk to human health and the environment and did not require the establishment of sewage sludge pollutant limits. As discussed above, so long as the concentration of these pollutant in sewage sludge are lower than a prescribed level, removal credits are authorized for such pollutants.

impact analysis for this regulation is based.

TABLE 3.—SUMMARY DATA FOR 1989 FOR FACILITIES SUBJECT TO REGULATION IN MP&M PHASE I SECTORS ESTIMATED REVENUE, VALUE ADDED AND PAYROLL IN MILLIONS OF 1989 DOLLARS

Sector	Facilities	Employment	Revenue	Value added	Payroll
Hardware	4,197	379,000	44,327	9,463	5,845
Aircraft	856	552,000	96,715	24,858	15,148
Electronic Equipment	1,280	700,000	155,101	80,502	12,503
Stationary Industrial Equipment	2,769	419,000	52,918	12,815	6,306
Ordnance	190	131,000	21,666	7,059	4,006
Aerospace	545	580,000	54,430	19,454	9,660
Mobile Industrial Equipment	764	275,000	65,914	14,101	8,151
All Phase I Sectors	10,601	3,036,000	491,071	168,252	61,620
Total U.S. Manufacturing	.....	19,492,000	2,793,000	1,308,000	533,000
Phase I Facilities as a Percent of Total U.S. Manufacturing	.....	15.58%	17.58%	12.86%	11.56%

Source: U.S. Environmental Protection Agency, Section 308 Survey Data, 1989, and Statistical Abstract of the United States, 1992, Department of Commerce.

These data show that the 10,601 facilities potentially subject to regulation employed over 3,000,000 persons in 1989 or approximately 16 percent of the total U.S. manufacturing employment of 19.5 million in 1989.[3] Total revenues for the 10,601 facilities are estimated at $491 billion or about 18 percent of the total shipments for U.S. manufacturing in 1989 of $2,793 billion. A more meaningful measure of the value of production activity in these facilities is provided by value added,[4] which is estimated to amount to about $168 billion or approximately 13 percent of the total value added of $1,308 billion for U.S. manufacturing in 1989. The estimated payroll for the 10,601 facilities is about $62 billion or approximately 12 percent of the total of $533 billion for U.S. manufacturing in 1989.

Table 3 also shows these economic activity data for the seven MP&M Phase I business sectors. On the basis of number of facilities, the Hardware, Stationary Industrial Equipment, and Electronic Equipment sectors are the largest sectors subject to regulation. These three sectors account for over 75 percent of the total of 10,601 facilities expected to be subject to regulation. However, on the basis of employment and dollar measures of economic activity, the Hardware sector is less dominant. A ranking on both employment and value added shows that Electronic Equipment is the largest sector in terms of economic contribution followed by Aircraft, Aerospace, Stationary Industrial Equipment, Mobile Industrial Equipment, Hardware, and Ordnance.

[3] Although the MP&M Phase I sectors include non-manufacturing activities and employment, nearly 95 percent of the revenue received by facilities affected by the regulation is estimated to be derived from manufacturing activities. Thus, the comparison of employment and other economic values with totals for the U.S. manufacturing sector provides a relevant basis for understanding the economic significance of the industries and facilities expected to incur costs under the regulation.

[4] Value Added is the difference between the output price of a good or service and the price of all material inputs used in producing the good or service, and is generally considered a better measure than revenue of the value of production that occurs in a given economic activity.

C. Overview of Options Considered for Proposal and Selection of the Proposed Options

In developing the regulatory proposals presented herein, EPA defined and evaluated a number of PSES regulatory options for indirect dischargers and BAT/BPT options for direct dischargers. The following discussion defines the options that were considered for proposal and outlines the rationale for the regulatory proposals.

1. PSES Options for Indirect Dischargers

As discussed previously in Sections IX, XI, and XII, EPA initially evaluated three PSES regulatory options for indirect dischargers:

Option 1: Lime and Settle Treatment. Under this option, Pretreatment Standards for Existing Sources (PSES) would be established on the basis of the application of lime and settle treatment without any pollution prevention and flow controls imposed. The implementation of this option would likely result in concentration-based standards imposed on facilities by Control Authorities.

Option 2: In-Process Flow Reduction and Pollution Prevention and Lime and Settle Treatment. This option would establish PSES on the basis that all facilities should comply with mass-based standards that are the based on the Lime and Settle technology and associated concentration limits as specified for Option 1. However, the mass-based standards would be calculated from a flow volume that reflects good pollution prevention and water conservation practices. Thus, this option embodies a requirement for pollution prevention and water conservation in conjunction with the Lime and Settle Treatment process. The flow basis would be determined by the relevant Control Authority using site-specific factors and flow guidance.

Option 3: Advanced End-of-Pipe Treatment. This option would establish PSES based on the same technology and mass-based limit specifications as set forth for in Option 2 *plus* additional end-of-pipe treatment through reverse osmosis or ion exchange to achieve additional removals and produce a treated wastewater that can be recycled back to the facility for reuse as process waters.

From its preliminary analysis of these options, EPA initially selected Option 2, In-Process Flow Reduction and Pollution Prevention and Lime and Settle Treatment, as the preferred PSES regulatory option for indirect dischargers. Stated simply, EPA preferred Option 2 because it would apply to all indirect discharging facilities, mass-based standards that embody best available technology based on a combination of treatment systems and pollution prevention measures. Moreover, EPA found that Option 2 would impose relatively modest economic impacts in terms of expected facility closures and employment losses in the MP&M industry and thus concluded that Option 2 would be economically achievable. However, upon further analysis and consideration, EPA reached additional findings that weighed against the proposal of Option 2 and caused the Agency to define and evaluate modifications to Option 2 as the basis for a PSES proposal. These findings involved three issues as follows:

Impact on small business. In its Regulatory Flexibility Analysis, EPA found that Option 2 would be expected to disproportionately burden small business-owned facilities in terms of facility closures and financial requirements. In particular, by embodying technology requirements for pollution prevention as well as treatment systems, Option 2 was found to impose greater financial burden on MP&M small business-owned, indirect discharging facilities than would result from the treatment system-only basis of Option 1. As discussed in Section K., Regulatory Flexibility Analysis, below, EPA considered modifications to Option 2 in an effort to mitigate financial and economic burdens on small business-owned facilities. These modifications differentiated among facilities based on the annual volume of facility discharge; however, EPA anticipated that reducing regulatory requirements for small discharge volume facilities would also mitigate the regulatory burden among small business entities.

Cost effectiveness. For indirect discharging facilities with smaller discharge volumes, EPA found that Option 2 would not be cost effective (see Section L, below). That is, for facilities with smaller discharge volumes, Option 2 would not achieve sufficient additional reductions in pollutant discharges beyond those achieved by Option 1 to support its higher cost relative to Option 1. In view of this finding, EPA considered modifications to Option 2 that would be more cost effective for indirect discharging facilities with smaller discharge volumes.

Impact on permitting authorities. EPA was concerned that Option 2, by requiring mass-based permits for all indirect discharging facilities, regardless of discharge volume, would substantially burden the authorities that administer the permit requirements. In particular, as part of the public participation in the regulation development process, the Association of Metropolitan Sewerage Agencies (AMSA) commented that the permit administration requirements of covering small discharge facilities under mass-based limitations would unduly burden permitting authorities. In its analysis of the MP&M Phase I industry, EPA estimated that a large percentage of indirect discharging facilities had relatively small annual discharge: over 75 percent of the estimated 6,700 indirect discharging facilities discharge less than 1 million gallons annually. Thus, EPA acknowledged that Option 2 would require a large number of permits to be written for these smaller discharge volume facilities and could therefore impose a substantial burden on permitting authorities. In response to this concern, EPA undertook a limited analysis of the likely costs to permitting authorities of issuing mass-based and concentration-based permits. This analysis indicated that the cost to permitting authorities of covering smaller discharge volume facilities (less than 1 million gallons per year) could vary considerably among permitting authorities but, in aggregate, might not be excessive: EPA estimated a total annual cost of $1.9 to $3.2 million ($1994) for writing and administering permits for indirect discharging facilities with effluent discharge of less than 1 million gallons per year. Still, in view of the limited nature of EPA's analysis of permitting costs and, moreover, in view of the findings with regard to small business impact and cost effectiveness (which also argued for moderating requirements among smaller facilities), EPA decided to define and evaluate modifications to Option 2 that would reduce the number of mass-based permits needed for implementing the regulation. Because of the conflicting information and findings regarding the burden of permit administration, EPA requests that permitting authorities comment on this issue.

On the basis of these findings, EPA defined and evaluated two additional PSES regulatory options for indirect discharging facilities: Option 1a and Option 2a. EPA found that both options addressed the issues described above and presented superior alternatives to Options 1, 2, or 3, alone, for regulatory proposal. However, with respect to each of the issues noted above—impact on small business, cost effectiveness, and burden on permit writing authorities—EPA found that Option 2a provided a better solution than Option 1a. Accordingly, EPA is proposing Option 2a as the preferred PSES option for indirect discharging facilities. Option 1a and Option 2a, together with the basis of their selection for regulatory proposal, are discussed below:

Option 1a: Tiered PSES for "Low" Flow and "Large" Flow Sites. This option would establish a tiered PSES requirement and blends elements of Option 1 and Option 2 depending on a site's annual discharge volume. Sites with a discharge volume of less than 1,000,000 gallons per year ("low" flow sites) would meet the concentration-based standard set forth in Option 1. Sites with a discharge volume of at least 1,000,000 gallons per year ("large" flow sites) would meet the mass-based standards that embody pollution prevention as well as the Lime and Settle Treatment process as set forth in Option 2.

By adopting the concentration-based requirements of Option 1 for "low" flow sites, Option 1a reduces the number of facilities for which mass-based permits would need to be written. In addition, Option 1a reduces the expected compliance costs and financial burdens for the smaller discharge volume facilities, many of which are small businesses. Finally, because of the reduced requirements on smaller discharge volume facilities, Option 1a achieves better cost effectiveness than Option 2.

Option 2a: In-Process Flow Reduction and Pollution Prevention and Lime and Settle Treatment for "Large" Flow Sites. This option would establish the same PSES requirements as specified for Option 2. However, these requirements would apply to only "large" flow sites—that is, indirect discharge sites with a discharge volume of at least 1,000,000 gallons per year. All such sites would comply with mass-based standards based on the Lime and Settle Treatment process coupled with a requirement for pollution prevention and water conservation as specified for Option 2. "Low" flow indirect discharge sites—that is, with a discharge volume of less than 1,000,000 gallons per year—would not be subject to PSES requirements. EPA estimates that, of the 8,706 indirect discharge facilities in the MP&M Phase I industry, 6,708 would qualify as low flow discharge sites and thus would not be subject to the Option 2a PSES requirement.

By exempting low flow discharge sites from PSES regulatory requirements, Option 2a, even more than Option 1a, mitigates the difficulties of Option 2. Specifically, because of the regulation's reduced coverage in terms of number of facilities, Option 2a would substantially reduce the burden on permit-writing authorities. In addition, low flow indirect discharging facilities would bear no costs as a result of regulation, substantially reducing financial burdens and closure impacts among small business-owned facilities. Finally, as discussed below at Section L, EPA found that Option 2a would be expected to achieve substantially better cost effectiveness than the other regulatory

options considered for indirect discharging facilities.

Thus, EPA found that Option 2a addresses the limitations of Option 2 while imposing even fewer economic impacts than Option 2 or Option 1a in terms of facility closures and financial burdens. Moreover, Option 2a embodies best available technology for reducing the industry's effluent discharges. Accordingly, EPA judges that Option 2a presents a balanced regulatory approach for reducing effluent discharges from the MP&M Phase I indirect discharging facilities while not imposing undue burdens on industry or on the permit-writing authorities that will be directly responsible for administering the regulation.

2. BAT/BPT Options for Direct Dischargers

As discussed previously in Sections IX, XI, and XII, EPA evaluated three BAT/BPT regulatory options for direct discharging facilities:

Option 1: Lime and Settle Treatment. Under this option, BAT/BPT would be established on the basis of the application of lime and settle treatment without any pollution prevention and flow controls imposed.

Option 2: In-Process Flow Reduction and Pollution Prevention and Lime and Settle Treatment. Option 2 includes the same technology basis as Option 1, lime and settle treatment, but adds in-process pollution prevention and flow controls.

Option 3: Advanced End-of-Pipe Treatment. Option 3 includes the same treatment technology and in-process pollution prevention and flow controls as set forth in Option 2 *plus* additional end-of-pipe treatment through reverse osmosis or ion exchange to achieve additional removals and produce a treated wastewater that can be recycled back to the facility for reuse as process waters.

Of these options, EPA selected Option 2 as the proposed BPT/BAT regulation for direct existing discharging facilities. Like Option 2a for indirect discharging facilities, Option 2 embodies best available technology for reducing effluent discharges. Moreover, EPA found that Option 2 would impose modest economic impacts in terms of facility closures, employment losses, and financial requirements. As discussed in Section L, below, EPA also found that Option 2 is cost effective. Finally, EPA concluded that Option 2 (in combination with Option 2a for indirect dischargers) would impose a modest and manageable burden among small business-owned, direct discharging facilities.

The following sections summarize the specific analyses and findings leading to EPA's selection of Option 2a for indirect dischargers and Option 2 for direct dischargers as the proposed regulatory alternatives for existing facilities in the MP&M Phase I industries.

D. Economic Impact Methodology

The promulgation of a BAT effluent guideline rests on a finding of economic achievability. As described earlier in Section III of this Preamble, EPA is proposing to establish BAT equal to BPT. BPT effluent limitations do not face the same economic achievability test as BAT. Therefore, the following discussion of economic achievability describes the regulatory approach in terms of BAT economic achievability. The analyses supporting the determination of economic achievability for this proposed regulation include a facility impact analysis, which assesses how facilities are expected to be affected financially by the proposed regulation. Key outputs of the facility impact analysis include expected facility closures in the MP&M industry and the associated losses in employment and value of economic activity in those facilities. The findings from the facility impact analysis provide the basis for the other analyses regarding the economic achievability of the regulation. These include:

- A *firm-level analysis*, which assesses the impact of effluent guidelines on the financial performance and condition of firms owning MP&M facilities subject to regulation;
- A *labor requirements analysis*, which assesses the likely demands for labor that will accompany the activities of facilities to comply with effluent guidelines.
- A *community impact analysis*, which assesses the local employment impact of possible facility closures;
- A *foreign trade analysis*, which assesses the effect of effluent guidelines on the international competitiveness and balance of trade of the MP&M industries.
- A *new source impact analysis*, which assesses the effect of effluent guidelines on the costs and financial viability of new facilities in the MP&M industries; and
- The *Regulatory Flexibility Analysis*, which assesses the economic and financial impacts of effluent guidelines for the MP&M industries on small businesses.

The following section of the preamble addresses the facility impact analysis. This discussion is followed by the other analyses of the economic impact of effluent guidelines for the MP&M industries.

1. Structure of the Facility Impact Analysis

The facility-level impact analysis involves a series of financial analyses to assess the expected occurrence of significant financial impacts as the result of an MP&M effluent guideline. Several considerations define the structure of the facility impact analysis, including: the impact categories analyzed; baseline and post-compliance analyses; assumptions regarding the ability of facilities to pass compliance costs on to customers; and whether facilities were expected to discharge effluent to a publicly owned treatment works (POTW) (i.e., indirect dischargers) or directly to a waterway (i.e., direct dischargers). Each of these considerations is discussed briefly below.

a. Impact Categories Analyzed

Two categories of significant impact are assessed: (1) *facility closure*, which is judged as a severe economic impact, in that all employment and production at the facility are assumed to be terminated; and (2) *financial stress short of closure*, which is judged to be a moderate economic impact. The estimates of facility closures and associated employment and production losses underlie the other analyses required for the assessment of economic achievability. The second impact category, financial stress short of closure, signifies that facilities may experience difficulty in financing the pollution prevention and treatment systems needed for compliance or that, because of compliance, may subsequently experience difficulty in financing other capital needs.

b. Baseline and Post-Compliance Analyses

The facility closure analyses were undertaken on both a pre-compliance, or baseline, basis, and a post-compliance basis. The purpose of the Baseline Analysis is to identify facilities that are currently experiencing or are projected to experience significant financial stress following the period for which the Survey was completed. These facilities are having or are expected to have serious financial difficulties *regardless of the promulgation of effluent guidelines.* Attribution of these financial difficulties to the effluent guidelines rather than to facilities' current financial problems would inaccurately represent the burden of the effluent guidelines. Accordingly, facilities that failed the baseline analysis were excluded from the subsequent, post-compliance analyses that measure the impact of compliance on financial performance and condition.

The Post-Compliance Analyses differ from the Baseline Analysis by accounting for the capital and operating costs of pollution prevention and discharge treatment systems needed to comply with regulatory options. The post-compliance analyses thus indicate how facility financial performance and condition are likely to be affected by the proposed regulation and provide the basis for identifying whether facilities may be expected to incur a significant financial impact.

c. Pass Through of Compliance Costs to Customers

The analyses of Post-Compliance Closure and Financial Stress Short Of Closure were performed under assumptions of both zero-cost-pass-through and partial-cost-pass-through of compliance costs to customers. The zero-cost-pass-through case provides a conservative assessment of regulatory impacts in that facilities are assumed to pass none of the costs of compliance through to customers. That is, both quantities and prices—and therefore revenues—for each facility's production were assumed to remain constant after compliance *even though costs were increased on the basis of the estimated equipment and operating requirements for effluent guidelines compliance.* Because it is likely that companies would both attempt and be able to recover some of the compliance costs by increasing prices, the no-cost-pass-through case represents an extremely conservative, worst case assessment of the effects of the regulation.

For a more realistic assessment of impacts, EPA also analyzed the impact of regulatory options under an assumption of partial-cost-pass-through. For the partial-cost-pass-through analysis, EPA estimated the ability of firms in each of the MP&M sectors to recover compliance costs from customers. The assessment of cost pass-through potential was based on an econometric analysis of historical pricing and cost trends in the MP&M industries over a fifteen-year period coupled with an analysis of market structure factors that provide additional insight into the likely ability of firms to pass on higher costs to customers. Market structure factors considered in the analysis include: market power based on horizontal and vertical integration; extent of competition from foreign suppliers (both in domestic and export markets); barriers to competition as indicated by higher than normal profitability; and the long term growth trend in the industry. The analysis of pass-through potential yielded a pass-through parameter applicable to each MP&M industry sector indicating the fraction of compliance costs that firms subject to regulation are expected to recover from customers through increased revenues. The partial-cost-pass-through analysis yielded modestly lower impacts in terms of expected facility closures and losses in employment and production.

d. Facility Discharge Status

Whether facilities discharge effluent streams to a publicly owned treatment works (POTW) (i.e., indirect dischargers) or directly to a waterway (i.e., direct dischargers) is relevant to the structure of the economic impact analysis because these facilities and their effluent streams are regulated under different technology standards. Indirect dischargers are subject to Pretreatment Standards for Existing Sources (PSES) while direct dischargers are subject to Best Available Technology Economically Achievable (BAT), Best Practicable Control Technology Currently Available (BPT), and Best Conventional Pollutant Control Technology (BCT) requirements. For this regulation, different sets of regulatory options were considered for indirect and direct dischargers. As discussed above, five PSES regulatory options were considered for indirect dischargers and three BAT/BPT options were considered for direct dischargers. EPA performed the facility impact analyses separately for these two classes of facilities and the regulatory options that were considered for them. In the following discussion, economic impact analysis results are presented separately for the two classes of facilities and are also summed for the proposed options for both facility classes.

2. Data Supporting the Facility Impact Analysis

The most important source of data for the facility impact analysis is the facility-level financial data obtained by the DCP. These data include: three years (1987–89) of income statements and balance sheets at the level of the facility; the composition of revenues by customer type and MP&M business sector; estimated value of facility assets and liabilities in liquidation; borrowing costs; and ownership of the facility business and total revenues of the owning entity (if separate from the facility).

In addition to the DCP data, several secondary sources provided data for the analysis. In most cases, secondary source data were used to characterize a background economic or financial condition, in the economy as a whole or in the particular industries subject to the MP&M effluent guideline. For example, secondary source data were used to define capital market conditions, underlying the cost-of-capital analysis. Secondary source data also figured prominently in the analysis of cost pass-through potential for the MP&M sectors. Secondary sources used in the analysis include:[5]

- Department of Commerce economic census and survey data including the *Censuses of Manufacturers, Annual Surveys of Manufacturers*, and international trade data;
- The *Benchmark Input-Output Tables of the United States*, published by the Bureau of Economic Analysis in the Department of Commerce;
- Price index series from the Bureau of Labor Statistics, Department of Labor;
- *U.S. Industrial Outlook*, published by the Department of Commerce;
- Industry trade publications; and
- Financial publications, including the Value Line Investment Survey and Robert Morris Associates annual data summaries.

Other vital data for the analysis of facility impacts include the estimates of capital and operating costs for complying with regulatory options. These cost estimates were developed by EPA from engineering studies of sample MP&M industry facilities. These studies took into account the characteristics of effluent discharges and existing treatment systems at the facilities and estimated the additional pollution prevention and treatment system needs for complying with the alternative regulatory options. The estimated capital costs and annual operating and maintenance costs for pollution prevention and treatment systems provided the basis for assessing how an effluent guideline would be likely to affect the financial performance and condition of MP&M facilities and whether those facilities might be expected to incur significant economic impacts.

3. Methodology for Calculating Facility Impacts

The estimation of facility impacts is based on the following analyses: the Baseline Closure Analysis, the Post-Compliance Closure Analysis, and the Financial Stress Short of Closure Analysis. Each analysis is described briefly in the following section. Table 4,

[5] See the Public Record for a detailed listing of the secondary information sources used in the economic impact analysis.

below, summarizes the methodology for each impact category.

a. Baseline Closure Analysis

The Baseline Facility Closure Analysis is based on two financial tests, both of which must be failed for the facility to be deemed a closure:

1. *After-Tax Cash Flow Test.* This test examines whether a facility has lost money on a cash basis for the three years covered by the DCP. If the facility's cash flow is negative when averaged over the period of analysis, then the facility's management and ownership is presumed to be under pressure to change operations or business practices to eliminate future losses. One possible change is to terminate operations at the facility. Whether it may be financially advantageous to the facility's ownership to terminate facility operations is the subject of the second financial test.

2. *Liquidation Value and Going-Concern Value Comparison Test.* This test examines whether the liquidation value of facility assets exceeds the going concern value of the facility based on a discounted value analysis of the facility's after-tax cash flow. The liquidation value of facility assets was calculated from information provided by facilities in the DCP and reflects the market value of facility assets less expenses associated with closure and liquidation. The financial question underlying this comparison is whether the facility is worth more in liquidation or in its current operation (i.e., as a going concern). If the liquidation value exceeded the going-concern value, then facility ownership is presumed to see a reward for terminating the facility's business and liquidating its assets.

If a facility failed both tests, then the facility was presumed to be in jeopardy of financial failure independent of the application of the MP&M effluent guideline and was excluded from further consideration in the analysis of effluent guideline impacts. Failure of the after-tax cash flow tests means that the facility is incurring a cash loss and is thus under financial pressure to alter its business to prevent future losses. Failure of the liquidation value/going-concern value test means that facility ownership would benefit financially by terminating operations and liquidating facility assets. The combination of these two circumstances leads to the expectation that facility management and ownership may decide to cease business at the facility independent of the application of an MP&M effluent guideline. Facilities failing only one test were carried forward to the post-compliance analysis; because of their more fragile condition, these facilities were more likely to fail that analysis.

b. Post-Compliance Closure Analysis

The Post-Compliance Closure analysis is identical in structure to the Baseline Closure Analysis with the exception that the after-tax cash flow amounts used in the After-Tax Cash Flow test and in the Liquidation Value and Going-Concern Value Comparison test are adjusted to reflect the annual cash outlays for financing and operating the pollution prevention and treatment systems needed to comply with an MP&M effluent guideline. The adjustments to cash flow reflect the annualized costs of purchasing and financing equipment for compliance with the alternative regulatory options and include allowances for the cost of debt and equity financing. In addition, the cash flow adjustments reflect the annual costs incurred by facilities for operating and maintaining the pollution prevention and treatment systems needed for compliance. The capital cost and operating and maintenance costs that underlie these cash flow adjustments were estimated by EPA on the basis of engineering studies of pollution prevention and treatment system needs at sample MP&M facilities for complying with alternative regulatory options.

In the same way as for the Baseline Closure Analysis, a facility was judged likely to close as a result of regulation only if the facility fails both the After-Tax Cash Flow Test and the Liquidation Value and Going-Concern Value Comparison Test. The requirement to fail both tests again rests on the logic that negative cash flow provides the impetus for considering facility closure to avoid future losses and the excess of liquidation value over going concern value provides the reward for doing so.

The analysis of post-compliance facility closures was undertaken for the sample facilities that were not assessed as baseline closures. These results were then extrapolated to the facility population using sample weights. As discussed above, facility closure is considered a severe economic impact as all employment and production from the facility is assumed to be lost as a result of closure. Moreover, for this analysis, none of the production or employment losses were assumed to be offset by possible increases in MP&M production activity at other facilities that remain in production. Thus, the assumption of full loss of employment and production in closing facilities is conservative and overstates possible employment and production impacts.

c. Analysis of Financial Stress Short of Closure

The analysis of Financial Stress Short of Closure identifies facilities whose financial condition is so weak as to imply difficulty in financing the treatment system investments for compliance with an MP&M effluent guideline. This analysis was undertaken only for those facilities that passed the preceding Facility Closure analysis. Facilities that fail the Financial Stress analysis were judged as likely to experience a financial impact that is less severe than closure as the result of efforts to comply with an MP&M effluent guideline. However, they would be expected to incur significant financial stress from undertaking compliance-related investments and/or incurring the operating cost burdens of compliance. Financing assistance might be required from the parent firm or through an equity infusion or other financial restructuring. These facilities or firms are projected to become among the poorer, but still viable, financial performers in an industry. Although they are not projected to fail or otherwise terminate operations directly because of compliance requirements, the deterioration in their financial performance would presumably leave them at greater risk of failure from other factors in their business environment.

The analysis of Financial Stress Short of Closure was based on two tests of financial performance and condition calculated at the facility level. The measures of financial performance and condition—pre-tax return on assets and interest coverage ratio—are among the more important criteria reviewed by creditors and equity investors in determining whether and under what terms to provide financing to a firm. These measures also provide insight into the ability of firms to generate funds for compliance investments from internally generated equity—that is, from after-tax cash flow. The basis for evaluating these measures was by comparison of the facility values with industry norms obtained from secondary sources.

The analyses of pre-tax return on assets (ROA) and interest coverage ratio (ICR) were performed by first calculating ROA and ICR values for facilities independent of the financial effects of complying with an effluent guideline. The ROA and ICR values were then adjusted to reflect the expected changes in facility finances resulting from installing and operating the pollution prevention and treatment systems needed for effluent guidelines compliance. As a result of the compliance-related outlays, if a facility's ROA *or* ICR fell below industry norms, the facility was judged likely to incur a moderate impact (i.e., financial stress short of closure) as a result of regulatory compliance. The industry norms for evaluating ROA and ICR were developed from data reported in Robert Morris Associates Annual Statement Summaries (RMA).[6] Specifically, facility ROA and ICR values were compared with the lowest quartile (i.e., 25th percentile) value for the respective financial measures as calculated from RMA data for the relevant industries over the period 1985–1992.

TABLE 4.—SUMMARY OF FACILITY IMPACT METHODOLOGY

Impact category	Description	Analysis	Significance of negative finding
1. Baseline Closure	Identifies facilities that are in jeopardy of financial failure regardless of the promulgation of effluent guidelines.	Two tests: 1. After-tax cash flow negative? *and* 2. Liquidation value exceed going concern value?	Facilities failing *both* tests are considered a baseline closure and excluded from subsequent analyses.
2. Post-Compliance Closure	Identifies facilities that are likely to close instead of implementing the pollution prevention and treatment systems needed for effluent guidelines compliance.	Two tests: 1. *Post-compliance* after-tax cash flow negative? *and* 2. Liquidation value exceed post-compliance going concern value?	Facilities failing *both* tests are projected to close as the result of regulation, a severe economic impact.
3. Financial Stress Short of Closure.	Identifies facilities with limited ability to finance the pollution prevention and treatment systems needed for effluent guidelines compliance.	Two tests: 1. Decline in pre-tax ROA to a level that jeopardizes access to financing? *or* 2. Decline in ICR to a level that jeopardizes access to financing?	Facilities failing *either* test are likely to experience financial weakness as the result of regulation, a moderate economic impact.

E. Estimated Facility Economic Impacts

The findings from the facility impact analysis are summarized below.

1. Baseline Closure Analysis

The estimated baseline closures for both indirect and direct discharge facilities are summarized in Table 5. Of the estimated 10,601 discharging facilities, 13.9 percent or 1,471 facilities were assessed as baseline closures from the financial analyses outlined above. The 1,471 baseline closures include 1,413 indirect dischargers, or 16.2 percent of indirect dischargers, and 58 direct dischargers, or 3.1 percent of direct dischargers. The facilities estimated to close in the baseline analysis are in jeopardy of financial failure independent of the promulgation of the MP&M regulation. The estimated baseline closures are removed from the subsequent post-compliance analysis of regulatory impacts.

TABLE 5.—SUMMARY OF BASELINE CLOSURE ANALYSIS

	Total	Indirect dischargers	Direct dischargers
Facilities in Analysis (dischargers only)	10,601 100.0%	8,706 82.1%	1,895 17.9%
Baseline Failures (percent failing in class)	1,471 13.9%	1,413 16.2%	58 3.1%
Facilities in Analysis (percent in class)	9,130 86.1%	7,293 83.8%	1,837 96.9%

[6] RMA provides financial statistics based on bank credit reports from public-reporting and non-public-reporting firms in a variety of industries.

TABLE 5.—SUMMARY OF BASELINE CLOSURE ANALYSIS—Continued

	Total	Indirect dischargers	Direct dischargers
Baseline Failures (percent failing in class)	1,471 13.9%	1,413 16.2%	58 3.1%
Facilities in Analysis (percent in class)	9,130 86.1%	7,293 83.8%	1,837 96.9%

2. Post-Compliance Impact Analysis

The findings from the Post-Compliance Impact Analyses are summarized below. Findings are presented first for the PSES options considered for indirect discharging facilities, and then for the BAT/BPT options considered for direct discharging facilities. A third section presents aggregate findings for the proposed PSES and BAT/BPT options for both discharger classes. In each discussion, findings in terms of estimated facility closure and lost employment and production are presented for both the highly unlikely zero-cost-pass-through case and the more realistic partial-cost-pass-through case. The expected impacts of compliance in terms of estimated total capital cost and total annual costs are also summarized. In addition, the numbers of facilities expected to incur moderate impacts are discussed.

a. Indirect Dischargers

For indirect discharging facilities, EPA analyzed the impacts of five possible PSES regulatory options—Options 1, 2, 3, 1a, and 2a—as discussed in Section XIV.C., above, and as described in Section XII of the technical discussion. Of the options considered, EPA is proposing Option 2a as the preferred PSES regulatory option. As discussed in Section XII, Option 2a embodies best available technology for reducing the industry's effluent discharges. In addition, EPA estimates that Option 2a will impose very modest economic impacts and is thus economically achievable. The estimated facility-level impacts associated with each of the regulatory options are discussed below and presented in Table 6. The discussion first reviews the impact findings for the three PSES options that EPA initially evaluated for proposal: Options 1, 2, and 3. The discussion then reviews the impact findings for the two PSES options that were subsequently developed: Option 1a and the PSES proposal, Option 2a. As described previously, Option 1a applies the requirements of Option 1 *or* Option 2 to facilities based on whether facilities are "low" flow (i.e., discharge volume of less than 1,000,000 gallons per year) or "large" flow (i.e., discharge volume of at least 1,000,000 gallons per year), while

Option 2a applies the requirements of Option 2 to only "large" flow facilities.

i. Impacts of Option 1: Lime and Settle Treatment

Zero-Cost-Pass-Through Analysis

Of the 7,293 indirect discharging facilities subject to regulation, EPA estimates that 161 facilities or 2.2 percent could be expected to close as the result of the Option 1 regulation. The employment and shipments losses associated with these facility closures are estimated at 3,001 full-time equivalent (FTE) positions and $370 million, respectively (all amounts in 1994 dollars). The estimated employment and shipments losses amount to 0.14 percent and 0.08 percent, respectively, of the total values for indirect discharging facilities *that pass the baseline closure analysis* and are thus the basis for the post-compliance analysis. The estimates of possible facility closures and associated losses in employment and shipments are probably substantial overestimates because of the assumption of zero-cost-pass-through and because the analysis does not account for the likelihood that non-closing facilities will absorb some of the lost production and employment from closing facilities. In addition to the facility closure impacts, another 42 facilities would be expected to incur financial stress short of closure, a moderate economic impact, under Option 1. EPA estimates that industry would incur capital costs of $276 million for complying with Option 1. The estimated total annualized, after-tax cash cost to industry, which reflects private costs of capital and expected tax treatment of capital outlays and annual expenses, amounts to $202 million.

TABLE 6.—ESTIMATED IMPACTS OF REGULATORY COMPLIANCE, INDIRECT DISCHARGERS

[Dollar values in $000, 1994]

	Options initially considered for proposal			Subsequent options	
	Option 1	Option 2	Option 3	Option 1a	Option 2a
Facilities in Analysis	7,293	7,293	7,293	7,293	1,792
Severe Impacts (closing facilities) Zero-Cost-Pass-Through Analysis (unrealistic worst case)					
Number of Facilities	161	151	227	151	7
Percent of Class	2.20%	2.07%	3.11%	2.07%	0.39%
Employment (FTEs)	3,001	2,354	18,215	2,354	540
Value of Shipments	$369,997	$235,852	$2,350,346	$235,852	$133,678
Moderate Impacts (financial stress short of closure)					
Number of Facilities	42	124	184	54	12
Financial Impacts on Complying Facilities:					
Capital Cost	$275,798	$436,293	$1,174,721	$437,209	$350,853
Total Annual Compliance Cost:					
Tax-adjusted*	$202,115	$213,530	$615,530	$208,639	$142,467
No adjustments†	$271,020	$267,544	$783,691	$259,994	$171,134
Severe Impacts (closing facilities) Partial-Cost-Pass-Through Analysis					
Number of Facilities	91	52	160	82	7
Percent of Class	1.25%	0.72%	2.20%	1.12%	0.39%
Employment (FTEs)	1,714	892	7,710	1,068	540
Value of Shipments	$325,895	$177,109	$858,207	$191,751	$133,678
Moderate Impacts (financial stress short of closure)					
Number of Facilities	0	41	66	12	12
Financial Impacts on Complying Facilities:					
Capital Cost	$279,029	$439,840	$1,195,482	$440,441	$350,853
Total Annual Compliance Cost:					
Tax-adjusted*	$203,647	$215,274	$629,618	$210,171	$142,467
No adjustments†	$272,914	$269,717	$802,156	$261,888	$171,134

*"Tax-adjusted" compliance costs are an estimate of the annual cash compliance cost *to industry* and reflect private costs of capital and expected tax treatment of capital outlays and annual expenses.

†Compliance costs with "No adjustments" are an estimate of the total annual cost of compliance without tax adjustments and with capital costs annualized on the basis of a real social discount rate.

Partial-Cost-Pass-Through Analysis

The more realistic, partial-cost-pass-through analysis shows fewer impacts under Option 1. Among indirect dischargers, 91 facilities or 1.3 percent would be expected to close as a result of such regulation and no additional facilities are expected to incur moderate economic impacts. Employment and shipments losses associated with closing facilities are estimated at 1,714 FTEs (0.08 percent of total for indirect discharging facilities in the post-compliance analysis) and $326 million (0.07 percent of total) respectively. Because additional facilities are expected to come into compliance (instead of closing) under the partial-cost-pass-through analysis, the costs of compliance are estimated to be modestly higher. Total capital costs of compliance are estimated at $279 million and total annualized compliance costs are estimated at $204 million, tax-adjusted.

ii. Impacts of Option 2: In-Process Flow Reduction and Pollution Prevention and Lime and Settle Treatment

Zero-Cost-Pass-Through Analysis

Under Option 2, EPA estimates that 151 facilities or 2.1 percent could be expected to close as the result of regulation. The employment and shipments losses associated with these facility closures are conservatively estimated at 2,354 FTEs (0.11 percent of total) and $236 million (0.05 percent of total), respectively. In addition to the facility closure impacts, another 124 facilities are expected to incur financial stress short of closure because of regulation. EPA estimates that industry will incur capital costs of $436 million for complying with Option 2. The estimated total annualized, after-tax cash cost to industry, which reflects private costs of capital and expected tax treatment of capital outlays and annual expenses, amounts to $214 million.

Partial-Cost-Pass-Through Analysis

Under the more realistic, partial-cost-pass-through analysis, 52 facilities or 0.7 percent of indirect dischargers passing the baseline analysis are expected to close as a result of regulation and another 41 facilities are expected to incur moderate economic impacts. Employment and shipments losses associated with closing facilities are estimated at 892 FTEs (0.04 percent of total) and $177 million (0.04 percent of total) respectively. Total capital costs of compliance are estimated at $440 million and total annualized compliance costs are estimated at $215 million, tax-adjusted.

iii. Impacts of Option 3: Advanced End-of-Pipe Treatment

Zero-Cost-Pass-Through Analysis

Impacts under Option 3 are estimated to be markedly higher than those for Options 1 or 2. Under Option 3, EPA estimates that 227 facilities or 3.1 percent could be expected to close as the result of regulation. The employment and shipments losses associated with these facility closures are conservatively estimated at 18,215 FTEs (0.87 percent of total) and $2,350 million (0.52 percent of total), respectively. In addition to the facility closure impacts, another 184 facilities are expected to incur financial stress short of closure because of regulation, again considerably higher than for the other options considered. Compliance costs are also considerably higher for Option 3. EPA estimates that industry will incur capital costs of $1,175 million for complying with Option 3. The estimated total annualized, after-tax cash cost to industry, which reflects private costs of capital and expected tax treatment of capital outlays and annual expenses, amounts to $616 million.

Partial-Cost-Pass-Through Analysis

Although impacts are moderated under the more realistic partial-cost-pass-through analysis (in relation to the zero-cost-pass-through analysis), they still remain considerably higher than the impacts estimated for the other options. Among indirect dischargers, 160 facilities or 2.2 percent of facilities passing the baseline analysis are expected to close as a result of regulation and another 66 facilities are expected to incur moderate economic impacts. Employment and shipments losses associated with closing facilities are estimated at 7,710 FTEs and $858 million respectively. Total capital costs of compliance are estimated at $1,195 million and total annualized compliance costs are estimated at $630 million, tax-adjusted.

iv. Impacts of Option 1a: Tiered PSES for "Low" Flow and "Large" Flow Sites

Zero-Cost-Pass-Through Analysis

Under Option 1a, which applies the limitations of Option 1 or Option 2 based on facility discharge volume, EPA estimates that 151 facilities or 2.1 percent could be expected to close as the result of regulation. The employment and shipments losses associated with these facility closures are conservatively estimated at 2,354 FTEs (0.11 percent of total) and $236 million (0.05 percent of total), respectively. All these values are the same as estimated for Option 2. Under Option 1a, 54 facilities are expected to incur financial stress short of closure, a moderate economic impact. EPA estimates that industry will incur capital costs of $437 million for complying with Option 1a, or very slightly greater than for Option 2. However, the estimated total annualized, after-tax cash cost to industry, which reflects private costs of capital and expected tax treatment of capital outlays and annual expenses, amounts to $209 million, which is about $5 million less than estimated for Option 2.

Partial-Cost-Pass-Through Analysis

The more realistic, partial-cost-pass-through analysis again shows fewer impacts than the zero-cost-pass-through analysis. Among indirect dischargers, 82 facilities or 1.1 percent are expected to close as a result of regulation and only 12 facilities are expected to incur moderate economic impacts. Employment and shipments losses associated with closing facilities are estimated at 1,068 FTEs (0.05 percent of total) and $192 million (0.04 percent of total), respectively. Total capital costs of compliance are estimated at $440 million and total annualized compliance costs are estimated at $210 million, tax-adjusted.

v. Impacts of Option 2a: In-Process Flow Reduction and Pollution Prevention and Lime and Settle Treatment for "Large" Flow Sites

Zero-Cost-Pass-Through Analysis

Among the five PSES options that EPA analyzed, the proposed Option 2a, which applies the limitations of Option 2 to large flow facilities and exempts low flow facilities from regulation, achieves the lowest impacts in terms of facility closures, employment losses, and financial burdens. Under Option 2a, EPA estimates that a minimal number of facilities—7—would be expected to close as the result of regulation. These 7 facilities represent 0.1 percent of the 7,293 indirect discharge facilities found to pass the baseline closure analysis and 0.4 percent of the 1,792 indirect discharge facilities that both have a discharge volume of at least 1,000,000 gallons per year and pass the baseline closure analysis. The employment and shipments losses associated with these facility closures are conservatively estimated at 540 FTEs (0.03 percent of total) and $134 million (0.03 percent of total), respectively. In addition to the facility closure impacts, 12 facilities are expected to incur financial stress short of closure because of regulation. EPA estimates that industry will incur capital costs of $351 million to comply with Option 2a. The estimated total annualized, after-tax cash cost to industry, which reflects private costs of capital and expected tax treatment of capital outlays and annual expenses, amounts to $142 million.

Partial-Cost-Pass-Through Analysis

The estimated impacts of Option 2a under the partial-cost-pass-through case are the same as the already modest values estimated for the zero-cost-pass-through case. The estimated closure and financial impact values remain the lowest among the five PSES options analyzed for indirect discharging facilities.

b. Direct Dischargers

For direct discharging facilities, EPA analyzed the impacts of three possible

BAT/BPT regulatory options—Options 1, 2, and 3—as previously described. Of these options, EPA is proposing Option 2 because, as discussed above, it represents the performance achievable with the best available technology and, in view of its comparatively modest economic impacts, is economically achievable. The estimated facility-level impacts associated with each of the regulatory options are discussed below and presented in Table 7. For direct dischargers, EPA estimated the same level of facility closure and compliance cost impacts under both the zero-cost-pass-through and partial-cost-pass-through analyses. Thus, these results for these two cases are not presented separately. The estimated moderate impacts—that is, financial stress short of closure—did vary between the two cost pass-through cases and these differences are noted in the summary table and accompanying discussion.

i. Impacts of Option 1: Lime and Settle Treatment

Of the 1,837 direct discharging facilities subject to regulation, EPA estimates that 18 facilities or 1.0 percent could be expected to close as the result of regulation. The employment and shipments losses associated with these facility closures are estimated at 158 FTEs (0.03 percent of total employment for direct discharging facilities passing the baseline closure analysis) and $6 million (0.01 percent of total shipments for direct discharging facilities passing the baseline closure analysis), respectively. As noted above, the estimates of possible facility closures and associated losses in employment and shipments overstate likely impacts because the analysis does not account for the likelihood that non-closing facilities will absorb some of the lost production and employment from closing facilities. Under the zero-cost-pass-through analysis, an additional 6 facilities are expected to incur financial stress short of closure because of regulation, a moderate economic impact; no facilities are estimated to incur moderate economic impacts under the partial-cost-pass-through case. EPA estimates that industry will incur capital costs of $47 million for complying with Option 1. The estimated total annualized, after-tax cash cost to industry, which reflects private costs of capital and expected treatment of capital outlays and annual expenses, amounts to $16 million.

TABLE 7.—ESTIMATED IMPACTS OF REGULATORY COMPLIANCE, DIRECT DISCHARGERS

[Dollar values in $000, 1994]

	Option 1	Option 2	Option 3
Facilities in Analysis	1,837	1,837	1,837
Severe Impacts (closing facilities) Zero-Cost-Pass-Through and Partial-Cost-Pass-Through Analyses (same results)			
Number of Facilities	18	18	90
Percent of Class	0.96%	0.96%	4.92%
Employment (FTEs)	158	158	7,339
Value of Shipments	$6,161	$6,161	$883,577
Moderate Impacts (financial stress short of closure)			
Zero-Cost-Pass-Through Number of Facilities	6	0	0
Partial-Cost-Pass-Through Number of Facilities	0	0	0
Financial Impacts on Complying Facilities Zero-Cost-Pass-Through and Partial-Cost-Pass-Through Analyses (same results)			
Capital Cost	$47,363	$63,269	$127,369
Total Annual Compliance Cost:			
Tax-adjusted*	$16,297	$18,136	$63,979
No adjustments†	$18,181	$19,137	$80,523

*"Tax-adjusted" compliance costs are an estimate of the annual cash compliance cost *to industry* and reflect private costs of capital and expected tax treatment of capital outlays and annual expenses.

† Compliance costs with "No adjustments" are an estimate of the total annual cost of compliance without tax adjustments and with capital costs annualized on the basis of a real social discount rate.

ii. Impacts of Option 2: In-Process Flow Reduction and Pollution Prevention and Lime and Settle Treatment

Under the proposed Option 2, EPA estimated the same level of facility closures and associated impacts as for Option 1; however, moderate facility impacts are modestly lower and compliance costs are modestly higher. Closing facilities are estimated at 18 facilities or 1.0 percent of direct dischargers passing the baseline analysis. Associated employment and shipments losses are again estimated at 158 FTEs (0.03 percent of total) and $6 million (0.01 percent of total), respectively. In both the zero-cost-pass-through and partial-cost-pass-through analyses, no additional facilities were assessed as likely to incur financial stress short of closure. EPA estimates that industry will incur capital costs of $63 million for complying with Option 2. The estimated total annualized, after-tax cash cost to industry, which reflects private costs of capital and expected tax treatment of capital outlays and annual expenses, amounts to $18 million.

iii. Impacts of Option 3: Advanced End-of-Pipe Treatment

In a similar way as for indirect dischargers, impacts under Option 3 for direct dischargers are estimated to be markedly higher than those for Options 1 and 2. Under Option 3, EPA estimates that 90 facilities or 4.9 percent of direct dischargers passing the baseline analysis could be expected to close as the result of regulation. The employment and shipments losses associated with these facility closures are conservatively estimated at 7,339 FTEs (1.24 percent of total) and $884 million (1.26 percent of total), respectively. In both the zero-cost-pass-through and partial-cost-pass-through analyses, no additional facilities were assessed as likely to incur financial stress short of closure, the same result as estimated for Option 2. Compliance costs are estimated to be considerably higher for Option 3 than for Options 1 and 2. EPA estimates that industry will incur capital costs of $127 million for complying with Option 3. The estimated total annualized, after-tax cash cost to industry, which reflects private costs of capital and expected tax treatment of capital outlays and annual expenses, amounts to $64 million.

c. Aggregate Impacts for the Combined Regulatory Proposal for Existing Facilities: Option 2a for Indirect Discharging Facilities and Option 2 for Direct Discharging Facilities

Aggregate impacts for both indirect and direct discharging facilities are summarized in Table 8, below, for the proposed regulatory options applicable to existing facilities: Option 2a for indirect dischargers (PSES) and Option 2 for direct dischargers (BAT/BPT).

Overall, 3,629 facilities passed the Baseline Closure analysis (1,837 direct discharging facilities and 1,792—large flow—indirect discharging facilities) and thus are expected to be subject to regulation. Of this population, 25 facilities or 0.7 percent are expected to close as a result of regulation in both the zero-cost-pass through and partial-cost-pass-through analyses.[7] The total associated employment impact amounts to 698 FTEs (0.03 percent of the total employment in facilities passing the baseline analysis and thus potentially subject to regulation) and the associated value of lost shipments amounts to $140 million (0.03 percent of the total shipments in facilities passing the baseline analysis and thus potentially subject to regulation).[8] In addition to the estimated closure impacts, a modest 12 facilities are expected to encounter financial stress short of closure as a result of the proposed regulation. Summed over both indirect and direct discharging facilities, the total capital costs of compliance amount to $414 million. Total annualized costs of compliance are estimated at $161 million, when calculated on an after-tax basis using private costs of capital.

TABLE 8.—ESTIMATED AGGREGATE IMPACTS OF REGULATORY COMPLIANCE-PROPOSED REGULATORY OPTIONS 2A AND 2 FOR INDIRECT AND DIRECT DISCHARGERS

[Dollar values in $000, 1994]

	Option 2a (indirect dischargers)	Option 2 (direct dischargers)	Sum for both classes of facilities
Facilities in Analysis	1,792	1,837	3,629
Severe Impacts (closing facilities) Zero-Cost-Pass-Through and Partial-Cost-Pass-Through Analysis			
Number of Facilities	7	18	25
Percent of Class	0.39%	0.96%	0.69%
Employment (FTEs)	540	158	698
Value of Shipments	$133,678	$6,161	$139,839
Moderate Impacts (financial stress short of closure)			
Number of Facilities	12	0	12
Financial Impacts in Complying Facilities:			
Capital Cost	$350,853	$63,269	$414,122
Total Annual Compliance Cost:			
Tax-adjusted	$142,467	$18,136	$160,602
No adjustments†	$171,134	$19,137	$190,270

*"Tax-adjusted" compliance costs are an estimate of the annual cash compliance cost to industry and reflect private costs of capital and expected tax treatment of capital outlays and annual expenses.

† Compliance costs with "No adjustments" are an estimate of the total annual cost of compliance without tax adjustments and with capital costs annualized on the basis of a real social discount rate.

F. Labor Requirements and Possible Employment Benefits of Regulatory Compliance

Firms will need to install and operate compliance systems to comply with an effluent limitations guideline for the MP&M industry. The manufacture, installation, and operation of these systems will require use of labor resources. To the extent that these labor needs translate into employment increases in affected firms, a MP&M rule has the potential to generate employment benefits. If realized, these employment benefits may partially offset the employment losses that are expected to occur in facilities impacted by the rule. The employment effects that would occur in the manufacture, installation, and operation of treatment systems are termed the "direct" employment benefits of the rule. Because these employment effects are directly attributable to the MP&M rule, they are conceptually parallel to the employment losses that were estimated for the facilities that are expected to incur significant impacts as a result of the MP&M rule.

In addition to direct employment benefits, the MP&M rule may generate other employment benefits through two mechanisms. First, employment effects

[7] The impact analysis results for Option 2a/2 are the same throughout for both the zero-cost-pass-through and partial-cost-pass-through cases.

[8] An analysis of possible employment increases that may partially offset these losses is presented in the next section.

may occur in the industries that are linked to the industries that manufacture and install compliance equipment; these effects are termed "indirect" employment benefits. For example, a firm that manufactures the pumps, piping and other hardware that comprise a treatment system will purchase intermediate goods and services from other firms and sectors of the economy. Thus, increased economic activity in the firm that manufacturers the treatment system components has the potential to increase activity and employment in these linked firms and sectors. Second, the increased payments to labor in the directly and indirectly affected industries will lead to increased purchases from consumer-oriented service and retail businesses, which in turn lead to additional labor demand and employment benefits in those businesses. These effects are termed "induced" employment benefits.

In view of these possible employment benefits, EPA estimated the labor requirements associated with compliance with the proposed MP&M Phase I regulatory option: Option 2a for indirect dischargers and Option 2 for direct dischargers. Labor requirements—and thus the possible employment benefits— were estimated in two steps. EPA first estimated the direct employment effects associated with the manufacture, installation, and operation of compliance equipment. Second, EPA considered the additional employment effects that might occur through the indirect and induced effect mechanisms outlined above.

1. Direct Labor Requirements of Complying With the Proposed Regulation

EPA separately analyzed each component of the direct labor requirements: manufacturing, installing, and operating compliance equipment. The analysis is based on the compliance cost estimates developed for the economic impact analysis of the MP&M regulation. Compliance requirements and associated costs were estimated for each facility in the Survey that was assessed as incurring costs. For the labor requirements analysis, compliance costs and their associated labor requirements were considered only for those facilities that were not assessed as a baseline or compliance related closure. That is, the analysis considered the labor requirement effects associated only with those facilities that, upon compliance with the rule, would be likely to continue MP&M production activities.

EPA estimated the direct labor requirements for manufacturing and installing compliance equipment based on the cost of the equipment and its installation, and labor's expected share of cost in manufacturing and installing the equipment. The labor input was estimated in dollars based on information contained in the National Input-Output Tables assembled by the Bureau of Economic Analysis in the Department of Commerce. In particular, the direct requirements matrix identifies the value of each input, including labor, that is required to produce a one dollar value of output for a subject industry. The industries in the input-output tables that were used as the basis for this analysis are: the Heating, Plumbing, and Fabricated Structural Metal Products Industry (Bureau of Economic Analysis industry classification 40) for compliance equipment manufacturing; and the Repair and Maintenance Construction Industry (Bureau of Economic Analysis industry classification 12) for compliance equipment installation. The dollar value of labor's contribution was converted to a full-time employment equivalent based on a yearly labor cost of $56,244 in 1994 dollars (including benefits and payroll taxes). Because compliance equipment purchase and installation are considered one-time outlays, the labor requirements for these activities were annualized over a 15-year period at the seven percent social discount rate.

For the analysis of the labor required to operate compliance equipment, EPA used the estimates of annual labor hours that were developed as the basis for assessing the annual operating and maintenance costs of the MP&M regulatory options.

From these analyses, EPA estimated an annual direct labor requirement of 1,594 full-time equivalent positions (FTEs) for complying with the combined regulatory proposal for existing facilities: Option 2a for indirect dischargers and Option 2 for direct dischargers (Option 2a/2). Of this total, the annualized labor requirements for manufacturing and installing compliance equipment are 187 and 85 FTEs, respectively. Compliance equipment operation is estimated to require 1,322 FTEs annually. The corresponding annual estimated payments to labor is $89,664,000 (1994 dollars) (see Table 9).

TABLE 9.—ANALYSIS OF POSSIBLE EMPLOYMENT GENERATION EFFECTS OF PROPOSED REGULATORY OPTIONS FOR THE MP&M INDUSTRY

[All dollar amounts in thousands of 1994 dollars]

	Total weighted expenditures	Labor cost share of production value[1]	Labor cost component		Direct labor requirements[3]	
			One-time basis	Annual basis[2]	One-time basis	Annual basis
Option 2a for Indirect Dischargers and Option 2 for Direct Dischargers						
Direct Labor Effects From Compliance Equipment:						
Manufacturing	$308,981	31.02%	$95,833	$10,522	1,704	187
Installation	$102,994	42.23%	$43,497	$4,776	773	85
Operation	.....	.....	.....	$74,367	.....	1,322
Total Direct Labor Effects	.....	.....	.....	$89,664	.....	1,594

[1] Source: U.S. Department of Commerce, *The 1982 Benchmark Input-Output Accounts of the United States*, December 1991. The labor cost share of production value for compliance equipment manufacturing is based on the input-output composition of the Heating, Plumbing, and Fabricated Structural Metal Products Industry (Bureau of Economic Analysis industry classification 40). The labor share of production value for compliance equipment installation is based on information for the Repair and Maintenance Construction Industry (Bureau of Economic Analysis industry classification 12).

[2] Annualized over 15 years at the social discount rate of 7 percent.

[3] Number of jobs calculated on the basis of an average hourly labor cost of $24.00 ($1989) and 2,000 hours per labor-year. The annual labor cost of $48,000 ($1989) was brought forward as $56,244 for 1994.

2. Indirect and Induced Labor Requirements of Complying With the MP&M Rule

In addition to its direct labor effects, an MP&M effluent guideline may also generate labor requirements through the indirect and induced effect mechanisms described above. EPA assessed the indirect and induced employment effects of the proposed regulatory options by use of multipliers that relate aggregate economic effects, including indirect and induced effects, to direct economic effects. Using a range of multipliers from previous studies of the aggregate employment effects of general water treatment and pollution control expenditures, EPA estimated that the total labor requirement effect would range from 3,900 to 6,400 FTEs for the proposed Option 2a/2 . The lower end of this range reflects the use of lower multiplier values and conservative assumptions regarding effects on economic activity in industries linked to the MP&M industry. The higher end of the range reflects the higher multiplier values and assumes full incurrence of indirect economic effects in industries linked to the MP&M industry.

G. Community Impacts

EPA expects that the employment losses resulting from MP&M facility closures will not have a significant impact on the national economy. However, employment losses may be significant at the local level if facility closures are concentrated regionally or if they occur in smaller communities. Therefore, EPA examined the community level employment impacts that may result from the proposed regulatory options for the MP&M industry. Community impacts were assessed by estimating the expected change in employment in communities with MP&M facilities that are affected by regulation. Possible community employment effects include the lost employment in facilities that are expected to close because of regulation, and related employment losses in other businesses in the affected community. These employment losses are considered significant if they are expected to exceed one percent of the pre-regulation level of employment in the affected communities. For such comparisons, a community is generally defined as the area in which employees may reasonably commute to work—typically a Metropolitan Statistical Area (MSA), or county if the affected community is not contained within a MSA.

To understand the significance of community employment impacts from the proposed regulation, Option 2a/2, EPA performed two analyses of expected community employment impacts. First, EPA examined the community employment impacts based on the known location of the sample facility closures estimated to result from each of the proposed regulatory options. Because the location of these sample facilities is known, it is possible to compare the expected employment loss from closure, including losses in related businesses, with the pre-regulation employment in the affected community, defined as either the MSA or the county in which the sample facility closure is located. This analysis directly tests the significance of employment losses in the communities in which the estimated closing sample facilities are located.

Second, EPA examined the significance of expected facility closures taking into account the employment losses from the closing facilities in the underlying facility population that are represented by the sample facility closures. Because the locations of these non-sample closing facilities are not known, it was not possible to measure the significance of the associated employment losses in specific communities. Instead, EPA distributed these employment losses among states and assessed their significance at the state level, taking into account the estimated job losses in both MP&M facilities and in related businesses.

In addition to these analyses of the impact of employment losses, EPA also considered the effect of possible employment gains as discussed in the preceding section at the state level. Specifically, EPA distributed the possible employment gains among states and calculated a net potential employment impact by state taking into account the expected effect of both facility closures and labor demands from compliance-related outlays.

1. Assessment of Community Impacts for Estimated Sample Facility Closures

To assess the significance of facility closures and associated employment losses in specific communities, EPA compared the employment loss from estimated sample facility closures, including losses in related businesses, to the pre-regulation level of employment in the communities in which the sample facilities are located.

For the proposed Option 2a/2 (Option 2a for indirect dischargers and Option 2 for direct dischargers), the facility closure analysis indicated that three sample facilities would be expected to close as a result of regulation. Two of the three sample facilities are located in California: 1 in Merced County, 1 in the Los Angeles-Long Beach MSA. The third facility is located in Virginia, in the Norfolk-Virginia Beach-Newport News MSA. The total of employment losses in these sample facilities amounts to 168 FTEs, or an average of 56 FTEs per closing sample facility (see Table 10).

TABLE 10.—COMMUNITY EMPLOYMENT IMPACTS IN ESTIMATED SAMPLE CLOSING FACILITIES

MSA or county	Pre-regulation employment	Facilities affected		MP&M state multiplier	Total employment loss in MSA	
		Number	Empl. (FTEs)		FTEs	As % of pre-regulation employment
Los Angeles-Long Beach	4,173,000	1	97	2.72	264	0.01%
Merced County	64,617	1	62	2.72	169	0.26%
Norfolk-Virginia Beach-Newport News	594,463	1	9	2.27	20	0.00%

Source: U.S. Environmental Protection Agency.

In addition to the primary employment losses (i.e., those that occur in the estimated MP&M facility closures), employment losses may also occur through the secondary impact mechanism. Such secondary employment losses may occur in: (1) Industries that are economically linked to MP&M industries and (2) consumer businesses whose employment is affected by changes in the earnings and expenditures of the employees in the directly and indirectly affected industries. To assess these secondary employment losses, EPA calculated

state-specific, composite MP&M employment multipliers that are based on the estimated relationship of employment in MP&M industry sectors to total state employment, and the composition of employment within a state among the seven MP&M Phase I sectors. These state-specific composite employment multipliers were calculated from Regional Input-Output Modeling System (RIMS) multipliers developed by the Bureau of Economic Analysis (BEA) within the Department of Commerce.

To calculate the expected total employment loss (i.e., considering both primary and secondary employment impacts) in the communities in which estimated sample facility closures are located, EPA multiplied the employment loss in the estimated sample facility closures by the composite multiplier for the particular state. The total losses by MSA ranged from 20 to 264 FTEs. To assess the significance of these losses, EPA compared the estimated total employment loss with the pre-regulation employment in the community, based on 1990 Census data. For the two facilities that are located in an MSA, the pre-regulation employment is the 1990 employment for the MSA. For the facility that is not located within a MSA, the pre-regulation employment is the 1990 civilian employment for the county in which the facility is located. This comparison indicated that none of the estimated sample facility closures would be expected to have a significant impact on total community employment. The largest of the percentage impacts is estimated for Merced County, California and amounts to 0.26 percent. The estimated impact in the Los Angeles-Long Beach MSA amounts to only 0.01 percent, while the impact in the Norfolk-Virginia Beach-Newport News MSA rounds to zero when calculated to the nearest hundredth of a percent (see Table 10).

2. Assessment of State-Level Employment Impacts

To capture the effect of employment losses in the non-sample facilities that are represented by the estimated sample facility closures, EPA performed a second analysis in which the employment loss in these non-sample facilities was distributed among states in proportion to pre-regulation levels of MP&M industry employment. Because the community locations of these non-sample, represented facilities is not known, it is not possible to analyze the impact of these employment losses in specific communities as defined by MSAs or counties.

In addition to the 168 FTE losses in the 3 sample facility closures, EPA estimated that another 530 FTE employment losses and 22 facility closures would occur in the underlying population that is represented by the sample facilities. EPA distributed these losses among states in proportion to each state's estimated MP&M Phase I sector employment as calculated from Department of Commerce employment data. To estimate the total employment loss by state (i.e., both primary and secondary losses), EPA multiplied the primary losses for each state by the state's composite employment impact multiplier as developed from BEA state- and industry-specific multipliers. The estimated loss by state averaged 36 FTEs and ranged from a low of zero to a high of 621; 32 states and the District of Columbia had a total estimated loss of less than 25 FTEs. Table 11 summarizes the estimated facility closures and associated primary and total employment losses for the 9 states in which the total employment loss is estimated to exceed 50 FTEs. To evaluate the significance of the estimated total employment loss by state, EPA compared the employment loss values with estimated total civilian employment for each state, as reported by the Department of Commerce for 1991.

From these calculations, the estimated total employment loss as a percent of total state employment rounds to zero when calculated to the nearest hundredth of a percent for all 50 states and the District of Columbia. The maximum estimated employment loss as a percentage of total state employment amounts to less than one-half of one-hundredth of one percent of total state employment (Table 12 lists the estimated employment loss results for the 10 states with the highest percentage impacts). Thus, on the basis of the findings from this and the preceding analysis, EPA expects that the proposed regulation for the MP&M industry will not cause significant employment impacts at the local level.

TABLE 11.—ESTIMATED FACILITY CLOSURES AND TOTAL EMPLOYMENT LOSSES FOR STATES WITH LARGEST TOTAL LOSS

State	Estimated total facility closures	Employment losses in facilities (FTEs)	Total employment loss (FTEs)
California	4.9	228	621
Ohio	1.6	38	116
Illinois	1.6	38	116
Pennsylvania	1.3	31	89
Texas	1.3	32	89
Michigan	1.1	27	74
New York	1.2	30	64
Wisconsin	0.8	20	53
Indiana	0.7	17	52

Loss in all other states is less than 50 FTEs.
Source: U.S. Environmental Protection Agency.

TABLE 12.—TOTAL EMPLOYMENT LOSS BY STATE, 10 STATES WITH HIGHEST PERCENTAGE LOSS

State	Estimated total facility closures	Employment loss in facilities (FTEs)	Total employment loss (FTEs)	Total state employment (1990)	Loss as a percent of total
California	4.9	228	621	13,714,000	0.005%
Ohio	1.6	38	116	5,094,000	0.002%
Wisconsin	0.8	20	53	2,453,000	0.002%
Connecticut	0.6	15	35	1,679,000	0.002%
Illinois	1.6	38	116	5,598,000	0.002%

TABLE 12.—TOTAL EMPLOYMENT LOSS BY STATE, 10 STATES WITH HIGHEST PERCENTAGE LOSS—Continued

State	Estimated total facility closures	Employment loss in facilities (FTEs)	Total employment loss (FTEs)	Total state employment (1990)	Loss as a percent of total
Indiana	0.7	17	52	2,632,000	0.002%
Michigan	1.1	27	74	4,125,000	0.002%
Pennsylvania	1.3	31	89	5,524,000	0.002%
Massachusetts	0.7	17	45	2,847,000	0.002%
New Hampshire	0.1	3	9	589,000	0.001%

Total percentage employment loss for all states rounds to zero at the nearest hundredth of a percent.
Source: U.S. Environmental Protection Agency.

3. Assessment of State-Level Employment Impacts Including Possible Employment Gains

As a final part of the analysis of community level employment impacts, EPA considered total state-level employment effects taking into account possible employment gains. Possible labor gains, as discussed in the previous section, were distributed by state in proportion to MP&M employment by state, and state-level employment multipliers were applied to these gains to estimate the total potential state-level employment gain. The multipliers used for this analysis were selected to correspond to the industries in which primary labor effects are expected to occur. These values were subtracted from the total employment loss values calculated in the preceding section to calculate a net employment loss by state, taking into account the possible employment gains from compliance-related activities.

The estimated employment gain values range from a low of zero for the District of Columbia, which has a very low estimated employment in MP&M industry activity, to a high of 552 for California, the state with the largest estimated MP&M industry employment. The average possible gain by state amounted to 81 FTEs. These values were subtracted from the estimated total loss values calculated in the preceding section to yield an estimated net employment loss by state for the proposed regulation. For all states but California, which has an estimated net employment loss of 69 FTEs, the estimated potential gain exceeds the estimated loss from facility closures (Table 13 summarizes these values for the 10 states with the highest estimated loss from facility closures). Thus, the potential employment gains associated with compliance activities could substantially offset the local employment losses expected to result from facility closures.

TABLE 13.—EMPLOYMENT LOSS AND POSSIBLE GAIN BY STATE, 10 STATES WITH HIGHEST ESTIMATED LOSS FROM FACILITY CLOSURES

State	Total loss from facility closures	Employment gain, primary impact only	Total gain with multiplier	Net employment loss
California	621	209	552	69
Ohio	116	115	345	(229)
Illinois	116	113	344	(228)
Pennsylvania	89	93	265	(176)
Texas	89	97	261	(171)
Michigan	74	82	222	(148)
New York	64	90	187	(124)
Wisconsin	53	59	155	(102)
Indiana	52	51	153	(101)
Massachusetts	45	52	130	(86)

Source: U.S. Environmental Protection Agency.

H. Impacts on Firms Owning MP&M Facilities

The assessment of economic achievability of the MP&M regulation is based primarily on the facility-level impact analysis. However, because the impacts at the level of the firm may exceed those assessed at the level of the facility, particularly when a firm owns more than one facility that will be subject to regulation, EPA also conducted a firm-level impact analysis for the MP&M regulation. The firm-level analysis estimates the impact of regulatory compliance on firms owning facilities subject to MP&M effluent guidelines.

Secondary financial sources and DCP responses provided income statement and balance sheet data for 255 firms that own 290 of the 396 sampled facilities. Sufficient data were not available to analyze compliance impacts on the parent firms of the remaining 106 facilities.

EPA conducted the firm-level impact analysis under the zero-cost-pass-through scenario. Because the DCP sample was not designed as a random sample of firms, but was instead directed toward estimating national characteristics of facilities, the DCP sample data used in this analysis is not sample weighted. The findings apply only to the firms that own sample facilities and do not represent national estimates of firm-level impacts.

EPA assessed firm-level impacts on the basis of changes in measures of profitability and interest coverage, as calculated from firm financial statements. These measures, Pre-Tax Return on Assets (ROA) and Interest Coverage Ratio (ICR), are the same as those used in the facility-level Analysis of Financial Stress Short of Closure. When applied at the level of the firm, these measures indicate the firm's ability to attract the capital needed for expansion in the normal course of business or for pollution control

investments associated with effluent guidelines compliance. EPA used the same thresholds of minimum financial performance for these two measures in the facility-level Financial Stress Short of Closure analysis. These thresholds are based on a weighted average of the first quartile values for ROA and ICR for the relevant MP&M industries as reported in the Robert Morris Associates publication *Annual Statement Studies.*

In the same way as for the facility closure analysis, EPA performed the firm-level analysis in two steps: (1) a baseline analysis, which evaluates the firm's financial condition independent of the costs of regulatory compliance; and (2) a post-compliance analysis, which accounts for the effects of compliance costs on the firm-level financial measures. In the baseline analysis, firms whose ROA or ICR were below the industry standards were considered financially weak independent of regulation and were eliminated from further analysis. Firms that pass both of the thresholds were subjected to a post-compliance test, in which their financial measures were changed to reflect the impact of the MP&M effluent guideline. Firms that failed either threshold post-compliance but pass both pre-compliance are expected to incur significant financial stress as a result of compliance with the regulation.

The firms consist of both single and multiple facility firms. In the case of single facility firms, the impact on each firm's ROA and ICR is identical to the impact calculated on the basis of the responding facility's financial statements and estimated compliance costs, alone. The impacts for single facility firms correspond to those calculated in the facility level analysis.

Analysis of firm impacts for multiple facility firms, however, involves aggregating and extrapolating financial and compliance cost data for sample facilities to the level of the firm. If all of a firm's revenues come from activities subject to the MP&M regulation, the impact of regulation on that firm will clearly be greater than the impact on a firm that participates minimally in activities subject to the MP&M regulation, all other things being equal. Similarly, a firm whose production is heavily concentrated in foreign facilities would also experience less significant impacts than firms primarily producing in the U.S. (i.e., with more facilities subject to the MP&M effluent guideline).

The analysis of firm-level impacts for multiple facility firms is made difficult because compliance-related information is available only for the sample facilities owned by these firms. That is, information is not available for the non-sample facilities owned by a firm in terms of whether or not those facilities would be subject to the MP&M regulation and, if so, the costs that they would incur to achieve compliance with the proposed regulation. Lacking this information, the firm-level analysis estimated impacts based on two scenarios that cover the full range of possible regulatory applicability to the non-sample facilities owned by a firm. The first scenario is based on the minimum applicability of the regulation and assumes that the sampled facilities are the only facilities that engage in activities subject to regulation in a firm. In this scenario, the firm level impact of the regulation is calculated by adjusting the firm-level financial measures for the compliance costs incurred by the firm's sampled facility(ies).

The second scenario is based on the maximum applicability of the regulation and assumes that all of a firm's activities are subject to regulation, whether associated with a sampled facility or not. In this scenario, EPA calculated a firm-level impact by extrapolating the estimated costs of compliance for the firm's sample facility(ies) to the level of the firm assuming that all of the firm's revenues are subject to regulation. Specifically, the compliance costs for the sample facility (or the sum of costs over facilities, for those firms owning more than one sample facility) were scaled upward by the ratio of firm revenue to the sum of sampled facility revenues. This method presumes a uniform relationship between compliance costs and revenue over all the facilities owned by a firm. EPA then used these estimated firm-level compliance costs under the scenario in which all revenue is subject to regulation to adjust the pre-compliance measures of financial performance.

Of the 255 firms analyzed, 73 firms, or slightly less than 29 percent, failed one or both of the firm financial tests pre-compliance and therefore failed the baseline firm-level impact analysis. These firms are assessed as being financially weak based on current circumstances and independent of the effects of the MP&M regulation. Of these 73 firms, 39 own facilities that were projected to close under the facility-level baseline closure test.

Of the 182 firms that pass the baseline firm financial test, only one failed either test under Option 2a/2, even under the conservative zero-cost-pass-through assumption (see Table 14). The single adversely affected firm is a single facility firm and accounts for less than 0.0001 percent of revenues earned by all 255 sampled firms in the firm-level impact analysis. These results are independent of the assumptions about the share of firm revenue subject to regulation. The minimum and maximum impact scenarios yielded identical results, in terms of financial test failures. From this analysis, EPA finds that firm-level impacts are not likely to be significant.

TABLE 14.—SUMMARY OF FIRM IMPACT ANALYSIS RESULTS

Number of Firms in Analysis	255
Baseline Failures	73
Incremental Post-Compliance Failures	1

Source: U.S. Environmental Protection Agency.

I. Foreign Trade Impacts

Products of the MP&M industry are traded internationally. Therefore, changes in domestic production resulting from effluent regulations may affect the balance of trade. In particular, some of the production from facilities estimated to close because of regulation may be replaced by foreign producers, thus changing the U.S. foreign trade balance. The foreign trade analysis examines the trade balance effects of Option 2a/2 under the zero-cost-pass-through assumption. This assumption is conservative in the sense that it projects the most post-compliance closures. Even under this assumption, EPA estimates that the MP&M industry will experience less than a 0.01 percent loss in its trade balance. Therefore, EPA finds that the proposed effluent guidelines will not have a significant adverse impact on the international trade status of the MP&M Phase I industry.

The foreign trade impact analysis identifies three scenarios that span the likely range of foreign trade responses to post-compliance closures. Each scenario describes a possible outcome of the competition between domestic and foreign producers to replace the production loss from closure of domestic facilities. The three scenarios are as follows:

1. Worst case. In the worst case scenario, all production for domestic consumption and for export by domestic facilities subject to post-compliance closure is replaced by foreign sources. Therefore, the net trade balance deteriorates by the total amount of production lost by post-compliance incremental closures.

2. Best case. In the best case scenario, all production for domestic consumption and for export by facilities subject to closure are replaced in full by production and exports from other domestic facilities. The net trade balance is unaffected by regulation.

3. Proportional case. Domestic production of facilities subject to closure is replaced both by remaining domestic facilities and by foreign imports in the same proportions as the baseline ratio of imports and exports to the total domestic market. In this scenario, if, in the baseline case, imports accounted for half of the domestic market, then a closing facility's production for domestic sales would be replaced half by imports and half by other domestic producers. This scenario is meant to reflect the historical performance of the MP&M Phase I industries in competing with foreign producers for import and domestic markets.

In the foreign trade impact analysis, EPA assigned each sample facility that is expected to close—and its associated revenue—to one of the three scenarios, depending on the findings from two assessments of the facility's exposure to competition from foreign producers. The first assessment is based on sample facilities' responses to DCP questions concerning the magnitude and source of competition in various markets, including export and domestic markets. The second assessment is based on secondary source data provided by the Department of Commerce and used in the industry profile. This assessment considers the overall competitiveness of the MP&M industries in import and export markets, with respect to foreign competitors.

On the basis of the two assessments, facilities with significant exposure to foreign competition were assigned to the worst case trade impact scenario while facilities with little expected exposure to foreign competition were assigned to the best case trade impact scenario. Facilities with moderate exposure to foreign competition were assigned to the proportional case trade impact scenario.

After assigning each sample facility closure to a trade impact scenario, EPA allocated the export and import market revenues from estimated facility closures between foreign and domestic producers according to the rules for the three trade scenarios. The changes in exports and imports accruing from all incrementally closing facilities were multiplied by their sample weights and summed to yield an estimate of the aggregate impact on imports, exports and the trade balance resulting from promulgation of the effluent guideline.

Table 15 presents the results from the foreign trade impact analysis. As shown in the table, even under the conservative zero-cost-pass-through assumption, the proposed effluent guideline will have a negligible impact on U.S. imports, exports and the trade balance.

On the basis of sample-weighted national estimates, EPA estimates that exports will not be measurably affected by compliance with the proposed regulation, while imports are estimated to increase by approximately $5.3 million, or 0.01 percent of the 1991 imports of the MP&M Phase I industry commodities, according to Department of Commerce data. The net effect on the trade balance is therefore a decline of $5.3 million, or approximately 0.01 percent of the current trade balance in MP&M Phase I industry commodities.

TABLE 15.—MP&M PHASE I EFFLUENT GUIDELINE IMPACTS ON FOREIGN TRADE

[Sample Weighted National Estimates for Option 2a/2 ($ millions)]

	Exports	Imports	Trade balance
Baseline	112,565.1	72,157.1	40,408.0
Post-Compliance Change	0.0	5.3	−5.3
Percent Change From Baseline	0.00%	0.01%	−0.01%

Source: U.S. Environmental Protection Agency and Department of Commerce.

J. Impacts of New Source Performance Standards and Pre-Treatment Standards for New Sources

The proposed regulation includes limitations that will apply to new direct and indirect discharging sources within the MP&M Phase I category. EPA examined the impact of these regulations for new dischargers to determine if they would impose an undue economic and financial burden on new sources seeking to enter the MP&M Phase I industry.

As documented in Part 438.16–17 and Section XIII, EPA proposes to set New Source Performance Standards (NSPS), which apply to new facilities that discharge directly to receiving waters, on the basis of the Best Achievable Technology (BAT) limitations as specified by the proposed Option 2 for existing direct dischargers. Thus, the new source limitations for direct dischargers are the same as those proposed for existing direct discharge facilities.

In addition, EPA proposes to set Pretreatment Standards for New Sources (PSNS), which apply to new indirect discharging facilities (i.e., that will discharge to POTWs), on the basis of the discharge limitations in PSES Option 2, as analyzed for existing indirect discharging facilities. Thus, the new source limitations for indirect discharging facilities will differ from the PSES limitations proposed for existing indirect discharge facilities. Specifically, the proposed PSES option for existing indirect discharge facilities, Option 2a, applies the mass-based limitations of Option 2 to large flow indirect discharge facilities (i.e., facilities discharging at least 1,000,000 gallons per year) but applies no limitations to low flow indirect discharge facilities (i.e., facilities discharging less than 1,000,000 gallons per year). However, for new indirect dischargers, the proposed PSNS limitations will apply the mass-based limitations of Option 2 regardless of the new facility's discharge volume.

In general, EPA estimates that, when new and existing sources face the same discharge limitations, new sources will be able to comply with those limitations at the same or lower costs than those incurred by existing sources. Engineering analysis indicates that the cost of installing pollution control systems during new construction is generally less than the cost of retrofitting existing facilities. Thus, a finding that discharge limitations are economically achievable by existing facilities will also mean that those same discharge limitations will be economically achievable to new facilities.

On the basis of this argument alone, EPA concludes that those elements of the effluent limitations that are the same for both new and existing facilities will be economically achievable. In fact, the new source and existing source limitations are identical except for the limitations applicable to new indirect discharging sources with a discharge volume of less than 1,000,000 gallons per year. As stated above, these new

sources must meet the mass-based limitations of PSES Option 2, while existing, low flow indirect discharging facilities would not be subject to effluent limitations under the proposed guideline. Therefore, the only issue concerning economic achievability of the new source limitations involves the application of the PSES Option 2 limitation to new indirect discharging sources with a discharge volume of less than 1,000,000 gallons per year.

However, in its analysis of regulatory impacts on existing facilities, EPA found that the mass-based limitations of PSES Option 2 would be economically achievable by indirect discharging facilities regardless of discharge volume. For this reason, EPA additionally concludes that the new source limitations applicable to new indirect discharging facilities will also be economically achievable by indirect discharging facilities with flow of less than 1,000,000 gallons per year. Therefore, EPA finds that the proposed NSPS and PSNS limitations will be economically achievable.

EPA notes that an important reason for exempting the low flow class of existing indirect dischargers (less than 1,000,000 gallons per year) from regulatory requirements is to reduce the administrative burden to permit writers that would result from writing mass-based permits for the large number of existing low flow indirect dischargers. EPA estimates that approximately 63 percent of the existing facilities to which the regulation could have applied are low flow indirect dischargers. However, applying the mass-based concentration requirements of Option 2 to new facilities will not impose so great an administrative burden, because new facilities enter gradually over time.

K. Regulatory Flexibility Analysis

In accordance with the requirements of the Regulatory Flexibility Act (Public Law 96-354), the Agency performed a Regulatory Flexibility Analysis of the proposed regulation. The purpose of the Regulatory Flexibility Act is to ensure that, while achieving statutory goals, government regulations do not impose disproportionate impacts on small entities. The Regulatory Flexibility Analysis for the proposed regulation is contained in Chapter 10 of the Economic Impact Analysis report referenced above, "Economic Impact Analysis Of Proposed Effluent Limitations Guidelines And Standards For The Metal Products And Machinery Industry, Phase I." On the basis of the Regulatory Flexibility Analysis and as summarized herein, the Administrator certifies, pursuant to Section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that the proposed regulation will not have a significant economic impact on a substantial number of small entities.

In developing the proposed regulation, EPA sought from the outset to define a regulation that would not unreasonably burden small entities. In particular, EPA considered a number of regulatory alternatives for indirect and direct dischargers, each of which was assessed to have varying degrees of impact on small entities. In selecting the proposed regulation from among these alternatives, EPA balanced several factors, including: the need for additional reduction in effluent discharges from the MP&M industry; the fact that the MP&M industry is largely comprised of small business entities; and the need to achieve additional reduction in effluent discharges without imposing unreasonable burdens on small entities. As a result of these considerations, EPA expressly framed the proposed regulation to reduce impacts on small entities.

Specifically, as discussed in Section XIV. C., above, EPA settled on the proposed regulation for indirect dischargers, Option 2a, after considering and rejecting the initial Option 2. On the basis of the facility impact analyses presented above, EPA determined that Option 2 would be economically achievable by indirect discharging facilities. In accordance with this finding, EPA initially considered adopting the mass-based requirements of Option 2 for all indirect discharging facilities. However, further analysis indicated that Option 2 would place substantial financial burdens on smaller facilities and, moreover, would substantially burden permitting authorities by requiring that mass-based standards be written for all indirect discharging facilities, regardless of size and amount of discharge reduction to be achieved. For these reasons, EPA defined and evaluated two additional options: Option 1a, which applies the Option 2 requirements to large flow facilities and the modestly less stringent Option 1 requirements to low flow facilities; and Option 2a, which applies the requirements of Option 2 to large flow facilities while exempting low flow indirect discharging facilities from regulation. EPA found that both of these additional options would mitigate the burden of regulation on small businesses and permitting authorities. However, EPA found that the latter option, Option 2a, much more substantially reduced the closure impacts and financial burdens among MP&M facilities owned by small business and, as well, the regulatory implementation burden on permitting authorities. After considering other factors that also favored Option 2a—namely, cost effectiveness—EPA decided to propose Option 2a as the PSES option for indirect discharging facilities.

The following sections summarize the analyses underlying the Agency's conclusion that the proposed regulation will not have a significant economic impact on a substantial number of small entities

1. Small Business in the MP&M Industry

EPA analyzed the role of small entities in the MP&M industry and the associated impacts that would be caused by the proposed regulation. These analyses showed that the MP&M industry is largely comprised of small business entities and, accordingly, the regulation is expected to apply to a substantial number of small entities. Specifically, on the basis of Small Business Administration (SBA) firm-employment size criteria, EPA estimates that over 75 percent of the estimated 10,601 water discharging facilities in the MP&M Phase I industries are owned by a small business. With over 75 percent of the facilities to which the regulation is expected to apply defined as small businesses, EPA also examined the employment size distribution of the MP&M facilities to gain provide additional insight into how smaller facilities are likely to be affected by the proposed regulation. From the analysis of the facility employment distribution, EPA estimated that 25 percent of water-discharging facilities have 9 or fewer employees and that 50 percent of water-discharging facilities have 79 or fewer employees.

EPA also found that small facilities play a substantial role in the economic performance and contributions of the MP&M industry. From Department of Commerce data for 1989, EPA estimates that over 97 percent of facilities in the MP&M Phase I industries (including both water-discharging and non-discharging facilities) have fewer than 250 employees. These relatively small facilities account for about 49 percent of total MP&M industry employment, 40 percent of total shipments, and 40 percent of the MP&M industry's tribution to gross domestic product.

2. Impacts of the Proposed Regulation on Small Business

To gauge whether the proposed regulation would have a significant impact on a substantial number of small entities, EPA considered the level of impacts and compliance costs expected to be imposed on small entities. From these analyses, EPA found that the proposed regulation will impose significant economic impacts (i.e., facility closures) more frequently among small business entities than among MP&M facilities generally. In addition, these analyses indicated that the compliance cost burden (as measured by total annual compliance costs as a percent of facility revenue) is expected to be greater among small business entities than among MP&M facilities generally. However, for both of these measures of small business impact—frequency of facility closures and compliance cost burden—EPA found that the absolute levels of impacts were so slight as to not constitute a significant economic impact on small entities. Moreover, the impact levels under the proposed regulation are much lower than those that would be expected under any of the other options that EPA considered for proposal.

a. Facility Closure Impacts by Business Size

Table 16 summarizes the findings from the facility closure analysis according to business size classification. The first three columns—Option 1, Option 2, and Option 3—combine the results for indirect and direct dischargers for each of those options. The latter two columns reflect the additional options that were developed for indirect dischargers—Option 1a and Option 2a—combined with Option 2 for direct dischargers. Specifically, the rightmost column, which is labeled Option 2a/2, combines results for Option 2a for indirect dischargers and Option 2 for direct dischargers and thus represents the proposed regulatory option. The next column to the left, which is labeled Option 1a/2, combines results for Option 1a for indirect dischargers and Option 2 for direct dischargers and represents the other option that EPA defined as an alternative to the initially selected Option 2 for indirect and direct dischargers.

As shown in the table, all estimated facility closures for Options 1, 2, 1a/2, and 2a/2 occur among small business-owned facilities, as defined on the basis of SBA criteria. Only under Option 3 are closures estimated to occur among facilities not owned by small businesses. The analysis according to facility employment size gives similar results with estimated facility closures occurring more frequently in the 1–9 and 10–79 employee size classes.

TABLE 16.—FACILITY CLOSURE IMPACTS BY BUSINESS SIZE

Facility classifications	Regulatory option				
	Initial options			Subsequent options	
	Option 1	Option 2	Option 3	Option 1a/2	Option 2a/2
Total Estimated Facility Closures	178	169	317	169	25
(as percent of facilities in impact analysis)	2.0%	1.8%	3.5%	1.8%	0.3%
Closures By SBA Firm-Size Criteria:					
Small Business-Owned	178	169	248	169	25
(as percent of class†)	2.6%	2.5%	3.6%	2.5%	0.4%
Other (not Small Business-Owned)	0	0	69	0	0
(as percent of class)	0.0%	0.0%	3.1%	0.0%	0.0%
Closures By Facility Employment Class:					
1–9 Employees	83	83	83	83	18
(as percent of class)	4.1%	4.1%	4.1%	4.1%	0.9%
10–79 Employees	95	84	132	84	5
(as percent of class)	4.0%	3.5%	5.5%	3.5%	0.2%
80 or more Employees	0	2	102	2	2
(as percent of class)	0.0%	0.1%	2.2%	0.1%	0.1%

†"Class" refers to the indicated sub-group of facilities (e.g., Small Business-Owned Facilities) and "percent of class" means the percentage of that group expected to incur facility closure impacts.

Source: Environmental Protection Agency.

Although closure impacts are concentrated among small entities, the expected level of closures under the proposed option is extremely low for the small entity categorizations analyzed: 0.4 percent of small business-owned facilities; 0.9 percent of facilities with 9 or fewer employees; and 0.2 percent of facilities with 10 to 79 employees. Notably, closures among the small entity categorizations are substantially higher for all the other options analyzed. To illustrate, for small business-owned facilities, the closure rate ranges from 2.5 percent to 3.6 percent for the other four composite options presented in the table. Overall, EPA finds that the rate of expected facility closures among small business entities is well within acceptable bounds.

b. Compliance Cost Impacts by Business Size

EPA also considered the compliance costs likely to be incurred by facilities in complying with the proposed regulation. EPA assessed compliance costs in terms of (1) the total annual compliance costs expected to be imposed on facilities according to business size and (2) total annual compliance cost as a percentage of facility revenue as a measure of the relative burden of compliance costs.

i. Analysis of Total Annual Compliance Costs

Table 17 summarizes total annual compliance costs by business size classification of facility for the alternative regulatory options. Total annual compliance costs are calculated as the annual after-tax cash flow impact on facilities and reflect private costs of capital and the expected tax treatment of capital outlays and operating costs of compliance. This analysis shows that the aggregate compliance costs to small entities are substantially lower under the proposed Option 2a/2 than under all the other options analyzed. At $63.9 million ($1994), the estimated annual compliance cost for small business-owned facilities under the proposed Option 2a/2 is approximately 40 percent less than the cost estimated for either the initially selected Option 2 or the other secondarily defined option, Option 1a/2. The analysis based on facility employment size class further confirms the reduced impact of the proposed Option 2a/2 on small entities:

the total costs of Option 2a/2 among facilities with 9 or fewer employees are only about 9 percent of the costs for Option 2 or Option 1a/2; and the costs for Option 2a/2 among facilities with 10 to 79 employees are about half of the costs for Option 2 or Option 1a/2. That the cost burden of Option 2a/2 on small business entities is so much lower than that estimated for the other options supports EPA's choice of Option 2a/2 as the proposed regulatory option and the finding that Option 2a/2 will not impose a significant economic impact on small entities.

TABLE 17.—TOTAL ANNUAL COMPLIANCE COSTS BY BUSINESS SIZE, ALL DISCHARGERS ($000, 1994)

Facility classification	Regulatory option				
	Initial options			Subsequent options	
	Option 1	Option 2	Option 3	Option 1a/2	Option 2a/2
All Facilities	218,412	231,666	679,509	226,781	160,607
By SBA Firm-Size Criteria:					
Small Business-Owned	91,414	107,062	330,215	105,431	63,906
Other (not Small Business-Owned)	126,998	124,602	349,293	121,349	96,702
By Facility Employment Class:					
1–9 Employees	10,996	11,264	11,781	10,935	974
10–79 Employees	34,449	37,907	87,482	37,294	18,642
80 or more Employees	172,967	182,494	580,245	178,550	140,991

Source: Environmental Protection Agency.

ii. Analysis of Compliance Costs Relative to Facility Revenue

Table 18 summarizes the relative compliance cost burden among facilities by business size classification. For this analysis, the compliance cost burden was assessed as the ratio of total annual compliance cost to facility revenue. Table 18 indicates for each option the average value of compliance costs as a percentage of revenue for facilities by size class, and lists the percentage of facilities in each size class expected to incur compliance costs exceeding 5 percent of revenue. For several previous regulations, EPA judged annual compliance costs that are less than five percent of facility revenue as not likely to impose a significant financial burden on the complying entity.

As shown in Table 18, EPA estimates that compliance costs as a percentage of facility revenue will be higher for small entities than for MP&M facilities generally both for the proposed Option 2a/2 and, as well, for the other options considered. However, among small business-owned facilities, total annual compliance costs are estimated to average only 0.11 percent of revenue for the proposed Option 2a/2. Moreover, in comparing compliance costs with the 5 percent of revenue threshold, EPA found that a very small percentage of small business-owned facilities, only 0.26 percent, are expected to incur total annual compliance costs exceeding 5 percent of revenue under the proposed regulatory option. Accordingly, EPA judges that the proposed regulation's cost burden on small entities would be manageable based on accepted standards of cost severity.

TABLE 18.—TOTAL ANNUAL COMPLIANCE COSTS AS A PERCENTAGE OF FACILITY REVENUE

[All Dischargers, by Business Size Criteria]

Facility size classes	Regulatory option				
	Initial options			Subsequent options	
	Option 1	Option 2	Option 3	Option 1a/2	Option 2a/2
Compliance Costs as a Percentage of Facility Revenue, Average Values by Facility Class					
All Facilities	0.41	0.42	0.65	0.41	0.10
By SBA Firm-Size Criteria:					
Small Business-Owned Facilities	0.51	0.53	0.78	0.51	0.11
Other (not Small Business-Owned)	0.11	0.11	0.26	0.11	0.06
By Facility Employment Class:					
1–9 Employees	1.09	1.12	1.20	1.08	0.10
10–79 Employees	0.41	0.42	0.79	0.42	0.12
80 or more Employees	0.12	0.13	0.36	0.13	0.09
Percentage of Facilities by Class with Compliance Costs Exceeding Five Percent of Revenue					
All Facilities	0.52	0.47	1.35	0.52	0.19
By SBA Firm-Size Criteria:					
Small Business-Owned Facilities	0.69	0.63	1.79	0.69	0.26
Other (not Small Business-Owned)	0.00	0.00	0.00	0.00	0.00
By Facility Employment Class:					
1–9 Employees	1.27	1.27	2.78	1.27	0.00
10–79 Employees	0.94	0.76	2.49	0.93	0.73
80 or more Employees	0.00	0.00	0.17	0.00	0.00

Source: Environmental Protection Agency.

3. Small Business Impact Finding

In view of this analysis and in recognition of the Agency's efforts, as summarized above, to define the proposed option in a way that would reduce impacts to small entities, EPA concluded that the facility closure impacts and compliance cost burdens of the proposed option will not constitute an undue impact on small business entities. Pursuant to Section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies that the proposed regulation will not have a significant economic impact on a substantial number of small entities.

L. Cost Effectiveness Analysis of MP&M Regulatory Options

In addition to the foregoing analyses, EPA performed a cost-effectiveness analysis of the alternative regulatory options for indirect dischargers (PSES) and direct dischargers (BPT/BAT). This analysis is detailed in "Cost-Effectiveness Analysis of Proposed Effluent Limitations Guidelines and Standards for the Metal Products and Machinery Industry, Phase I" (hereinafter "Cost Effectiveness Report"). Cost-effectiveness analysis is used in the development of effluent limitations guidelines to evaluate the relative efficiency of alternative regulatory options in removing pollutants from the effluent discharges to the nation's waters, and to compare the efficiency of a proposed regulation with that estimated for previous regulations.

The cost effectiveness of a regulatory option is defined as the incremental annual cost (in 1981 constant dollars) per incremental toxic-weighted pollutant removal for that option. This definition embodies the following concepts:

Toxic-weighted removals. Because pollutants differ in their toxicity, the reductions in pollution discharges, or pollutant removals, are adjusted for toxicity by multiplying the estimated removal quantity for each pollutant by a normalizing toxic weight (Toxic Weighting Factors). The toxic weight for each pollutant measures its toxicity relative to copper, with more toxic pollutants having higher toxic weights. The use of toxic weights allow the removals of different pollutants to be expressed on a constant toxicity basis in toxic pounds-equivalent (lb-eq). The removal quantities for the different pollutants may then be summed to yield an aggregate measure of the reduction in toxicity normalized pollutant discharges that is achieved by a given regulatory option. Note that cost-effectiveness analysis does not address the removal of conventional pollutants (oil and grease, biological oxygen demand, and total suspended solids).

Annual costs. The costs used in the cost-effectiveness analysis are the estimated annual costs to industry for complying with the alternative regulatory options. The annual costs include the annual expenses for operating and maintaining compliance equipment and for meeting monitoring requirements, and an annual allowance for the capital outlays for pollution prevention and treatment systems needed for compliance. However, unlike the costs used in the facility impact analysis, the costs used in the cost-effectiveness analysis are calculated on a pre-tax basis and capital costs are annualized using an estimated real opportunity cost of capital to society of 7 percent. Thus, these costs represent the costs incurred by industry on behalf of society for compliance with the proposed regulation. In the facility impact analysis, costs were considered on an after-tax basis and reflected the estimated private after-tax cost of capital to MP&M firms. In addition, the costs used in the cost-effectiveness analysis are calculated in 1981 dollars so that the cost-effectiveness values for regulations applying to different industries and that were developed at different times may be consistently compared.

Incremental calculations. The incremental values that are calculated for a given option are the change in total annual compliance costs and change in removals from the next less stringent option, or the baseline if there is no less stringent option, where regulatory options are ranked by increasing levels of toxic-weighted removals. Thus, the cost-effectiveness values for a given option are relative to another option or, for the least stringent option considered, the baseline.

The question posed in a cost-effectiveness analysis is: what is the cost to industry of the additional toxic-weighted pollutant removals achieved by a given option relative to the next less stringent option or the baseline? The result of the cost-effectiveness calculation represents the unit cost of removing the next pound-equivalent of pollutants and is expressed in constant 1981 dollars per toxic pound-equivalent removed ($/lb-eq). The cost-effectiveness values for a given option may be compared with those of other options being considered for a given regulation and also with those calculated for other industries or regulatory settings. Although not required by the Clean Water Act, cost-effectiveness analysis is a useful tool for evaluating regulatory options for the removal of toxic pollutants.

EPA performed the cost-effectiveness analysis for the MP&M regulation separately for indirect dischargers (subject to PSES) and direct dischargers (subject to BAT/BPT). For each of the regulatory options, the pounds-equivalent removed were calculated by multiplying the estimated pounds removed of each pollutant by its toxic weighting factor and summing the toxic-weighted removals over all toxic (i.e., excluding conventional) pollutants. The estimated annual compliance costs for each option (as reported in Section XIV.D., above) were deflated to 1981 dollars. As discussed above, the cost-effectiveness values were then calculated as the change in compliance cost, in moving to a given option from the next less stringent option, divided by the change in toxic-weighted removals. The following sections summarize the results for the two classes of facilities.

1. Cost-Effectiveness Analysis for Indirect Dischargers

Table 19 summarizes the cost-effectiveness analysis for the PSES regulatory options applicable to indirect dischargers. Annual compliance costs are shown in 1994 dollars and also in 1981 dollars. In addition, pollutant removals are reported on both an unweighted and toxic-weighted basis. The regulatory options are listed in order of increasing stringency on the basis of the estimated toxic-weighted pollutant removals.

As shown in Table 19, Option 2a/2 achieves approximately 12.8 million pounds of toxic pollutant removals, on an unweighted basis and 881,300 pounds-equivalent on a toxic-weighted basis. Because Option 2a/2 is the least stringent option in terms of pollutant removals, the cost-effectiveness of this option is the same as its average cost per pounds-equivalent removed, $127. EPA considers this value to be acceptable when compared to values calculated for previous regulations.

The next more stringent option, Option 1, is estimated to achieve approximately 14.6 million pounds of toxic pollutant removals on an unweighted basis and 988,900 pounds-equivalent on a toxic-weighted basis, which is a 107,100 pounds-equivalent increment over Option 2a/2. With an estimated annual compliance cost of $137 million ($1981), or $65 million more than Option 2a/2, the calculated cost effectiveness for Option 1's removals is $607 per pound-equivalent of pollutant removed. This cost-effectiveness value is higher than the

values calculated for other industrial discharge limitations previously promulgated by EPA.

In moving from Option 1 to Option 1a, toxic-weighted pollutant removals increase by 22,100 pounds-equivalent while costs decrease by $7.2 million. Thus, the cost effectiveness of Option 1a relative to Option 1 is a negative $327 per pound-equivalent of additional pollutant removed. Because Option 1a is estimated to impose lower cost on industry and society than Option 1 while, at the same time, achieving greater toxic-weighted removals, Option 1a may be said to dominate Option 1 from an economic efficiency perspective. That is, within the context of the cost-effectiveness analysis, society would always be better off by choosing the more stringent Option 1a over Option 1 because greater toxic-weighted pollutant removals would be achieved by Option 1a but at a lower total pre-tax cost of compliance.

TABLE 19.—COST EFFECTIVENESS OF REGULATORY OPTIONS FOR THE METAL PRODUCTS AND MACHINERY INDUSTRY

[Indirect Dischargers (PSES)]

Regulatory option	Annual compliance costs		Unweighted pollutant removals (000, lbs)	Weighted pollutant removals		Incremental cost ($000,000, 1981)	Cost effectiveness ($/lb-eq, $1981)
	($000,000, 1994)	($000,000, 1981)		(000, lbs-eq)	Incremental (000, lbs-eq)		
Option 2a	171.1	111.9	12,769.7	881.3	881.3	111.9	127
Option 1	271.0	177.2	14,611.7	988.9	107.6	65.3	607
Option 1a	260.0	170.0	14,872.8	1,011.0	22.1	(7.2)	(327)
Option 2	267.5	174.9	14,878.8	1,011.6	0.6	4.9	8,537
Option 3	783.7	512.3	15,612.1	1,105.4	93.8	337.4	3,596

The cost effectiveness for a regulatory option is defined as the incremental cost per incremental removal in toxic pounds equivalent ($/lb-eq) for that option. The "increment" for a given option is the change in costs or removals from the next less stringent option, or the baseline if there is no less stringent option (i.e., Baseline to Option 2a, Option 2a to Option 1, . . .). Regulatory options are ranked by increasing levels of toxic-weighted removals. Cost effectiveness-values are calculated in 1981 dollars to permit consistent comparison of cost-effectiveness values among regulations promulgated at different times.

Source: U.S. Environmental Protection Agency.

Stepping beyond Option 1a to Option 2 is clearly not cost effective for existing indirect dischargers in comparison to values calculated for previous regulations. Stepping from Option 1a to Option 2 yields very little additional toxic-weighted pollutant removals, 600 pounds-equivalent, at an additional estimated cost of $4.9 million. Because the increase in removals is so small, the cost-effectiveness value for moving from Option 1a to Option 2 is extremely high at $8,537 per pound-equivalent of additional pollutant removed. The only difference between Option 1a and Option 2 is that Option 2 applies the mass-based limitations of Option 2 to low-flow indirect dischargers while Option 1a applies the somewhat less stringent, concentration-based limitations of Option 1 to these facilities. Thus, the high cost-effectiveness value of $8,537 stems entirely from the increased stringency of regulatory requirements for these low-flow indirect discharging facilities and demonstrates the poor cost effectiveness of applying the Option 2 requirements to this class of facilities. As noted in Section XIV.C, above, the finding of such a high cost-effectiveness value for Option 2 for low-flow indirect discharging facilities was an important factor in EPA's decision to define and evaluate alternatives to Option 2 for these facilities in developing the PSES regulatory proposal.

Moving from Option 2 to Option 3 was also found to yield a high cost-effectiveness value. Although the incremental removals for this step are relatively substantial at 93,800 pounds-equivalent, the large increase in cost of $337.4 million yields a cost-effectiveness value of $3,596 per pound-equivalent of additional pollutant removed, thus rendering this option unacceptable from the standpoint of cost effectiveness.

On the basis of this analysis, EPA determined that the proposed option, Option 2a, is cost effective. The cost-effectiveness analysis supports the choice of Option 2a as the proposed PSES regulatory option for indirect dischargers.

2. Cost-Effectiveness Analysis for Direct Dischargers

Table 20 summarizes the cost-effectiveness analysis for the BPT/BAT regulatory options applicable to direct dischargers. As before, annual compliance costs are shown in 1994 dollars and also in 1981 dollars; and pollutant removals are reported on both an unweighted and toxic-weighted basis. The regulatory options are listed in order of increasing stringency on the basis of estimated toxic-weighted pollutant removals. The ranking of annual compliance costs matches the ranking of option stringency.

As shown in Table 20, Option 1 is estimated to achieve approximately 1.2 million pounds of toxic pollutant removals on an unweighted basis and 58,200 pounds-equivalent on a toxic-weighted basis. With an estimated annual compliance cost of $11.9 million ($1981), the calculated cost effectiveness for Option 1—s removals is $204 per pound-equivalent of pollutant removed. In moving from Option 1 to Option 2, toxic-weighted pollutant removals increase by 12,500 pounds-equivalent at a cost increase of $0.6 million. Thus, the cost effectiveness of stepping to Option 2 is a comparatively low $50 per pound-equivalent of additional pollutant removed. EPA considers both of these cost-effectiveness values to be acceptable in relation to the values calculated for previous regulations.

TABLE 20.—COST EFFECTIVENESS OF REGULATORY OPTIONS FOR THE METAL PRODUCTS AND MACHINERY INDUSTRY

[Direct Dischargers (BPT/BAT)]

Regulatory option	Annual compliance costs		Unweighted pollutant removals (000, lbs)	Weighted pollutant removals		Incremental cost ($000,000, 1981)	Cost effectiveness ($/lb-eq, $1981)
	($000,000, 1994)	($000,000, 1981)		(000, lbs-eq)	Incremental (000, lbs-eq)		
Option 1	18.2	11.9	1,152.5	58.2	58.2	11.9	204
Option 2	19.1	12.5	1,232.2	70.7	12.5	0.6	50
Option 3	80.5	52.6	1,446.7	133.6	62.9	40.1	638

The cost effectiveness for a regulatory option is defined as the incremental cost per incremental removal in toxic pounds equivalent ($/lb-eq) for that option. The "increment" for a given option is the change in costs or removals from the next less stringent option, or the baseline if there is no less stringent option (i.e., Baseline to Option 1, Option 1 to Option 2, . . .). Regulatory options are ranked by increasing levels of toxic-weighted removals. Cost effectiveness-values are calculated in 1981 dollars to permit consistent comparison of cost-effectiveness values among regulations promulgated at different times.

Source: U.S. Environmental Protection Agency.

Option 3's cost effectiveness of $638 per pound-equivalent of additional pollutant removed is substantially poorer than the cost effectiveness of Options 1 and 2. Stepping from Option 2 to Option 3 nearly doubles the total toxic-weighted removals with a substantial increase of 62,900 pounds-equivalent. However, Option 3's annual compliance costs are more than four times those estimated for Option 2 and the resulting additional cost of $40.1 million yields the relatively high cost-effectiveness value of $638 per pound-equivalent.

From this analysis, EPA determined that Option 2 is cost effective, and the cost-effectiveness analysis supports the choice of Option 2 as the proposed BPT/BAT regulatory option for direct dischargers.

EPA also performed the cost-effectiveness analysis with an additional set of weighting factors called Pollutant Weighting Factors, which are a modification of the Toxic Weighting Factors on which the preceding analyses are based. Pollutant Weighting Factors are not related to a benchmark pollutant (i.e., copper) and normalize toxicity on a different scale. This additional analysis can be found in Appendix A of the Cost Effectiveness Report.

XV. Executive Order 12866

A. Introduction

Under Executive Order 12866 [58 Federal Register 51, 735 (October 4, 1993)], the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations or recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, EPA has determined that this rule is a "significant regulatory action" because it is expected to impose an annual cost on the economy exceeding $100 million. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

Because of the finding that the MP&M regulation is a "significant regulatory action" within the meaning of Executive Order 12866, the Agency has prepared a Regulatory Impact Assessment (RIA) for the proposed regulatory alternative. The RIA responds to the requirements in Executive Order 12866 to assess both the benefits and costs to society of significant regulatory actions. The RIA is detailed in, "Regulatory Impact Assessment of Proposed Effluent Guidelines for the Metal Products and Machinery Industry, Phase I," (see Section II. for availability of this and other supporting documents).

1. Overview of Benefits Analyzed

The RIA assesses the benefits of proposed regulations to reduce effluent discharges in the MP&M industry. Three broad classes of benefits are considered: human health, ecological, and economic productivity benefits. Each class is comprised of a number of more narrowly defined benefits categories. EPA expects that benefits will accrue to society in all of these categories. Because of data limitations and imperfect understanding of how society values some of these benefit categories, however, EPA was not able to analyze all of these categories with the same level of rigor. At the highest level of analysis, EPA was able to quantify the expected effects for some benefit categories and attach monetary values to them. Benefit categories for which EPA developed dollar estimates include reduction in cancer risk from fish consumption, increased value of recreational fishing opportunities, and reduced costs of managing and disposing of POTW sewage sludges. For other benefit categories, EPA was able to quantify expected effects but not able to estimate monetary values for them. Examples of these benefit categories include change in the frequency with which certain aquatic species are exposed to lethal concentrations of certain pollutants, and change in certain human health risk indicators. Finally, EPA was able to identify and qualitatively describe certain benefit effects but was not able to assess them on either a quantitative or an economic value basis. These benefit categories include but are not limited to: enhanced diversionary uses, improved aesthetic quality of waters near discharge outfalls, enhanced water-dependent recreation other than fishing, and benefits to wildlife and to threatened or endangered species, option and existence values, cultural values, tourism benefits, and biodiversity benefits. Table 21 summarizes the benefit categories discussed above and identifies those that were monetized, those that were quantitatively assessed (but not monetized), and those that are expected to result from the regulation but were neither quantitatively assessed nor monetized.

TABLE 21.—BENEFIT CATEGORIES ASSOCIATED WITH WATER QUALITY IMPROVEMENTS RESULTING FROM THE METAL PRODUCTS AND MACHINERY EFFLUENT GUIDELINE

Benefit category	Quantified and monetized	Quantified and nonmonetized	Nonquantified and nonmonetized
Human Health Benefits:			
Reduced cancer risk due to consumption of chemically-contaminated fish	X		
Reduced cancer risk due to ingestion of chemically-contaminated drinking water		X	
Reduced systemic health hazards (e.g. reproductive, immunological, neurological, circulatory, or respiratory toxicity) from consumption of chemically-contaminated fish.		X	
Reduced systemic health hazards (e.g. reproductive, immunological, neurological, circulatory, or respiratory toxicity) due to ingestion of chemically-contaminated drinking water.		X	
Reduced cancer risk from exposure to unregulated contaminants in chemically-contaminated sewage sludge.			X
Reduced systemic health hazards from exposure to unregulated contaminants in chemically-contaminated sewage sludge.			X
Reduced health hazards from exposure to contaminants in waters used recreationally (e.g., swimming and boating).			
Ecological Benefits:			
Enhanced recreational fishing	X		
Reduced risk to aquatic life		X	
Enhanced in-stream recreation such as swimming, boating, hunting, rafting, subsistence fishing.			X
Improved water enhanced recreation such as hiking, picnicking, birdwatching, photography.			X
Increased aesthetic benefits such as enhancement of adjoining site amenities (e.g. residing, working, traveling, and owning property near the water).			X
Existence value			X
Option value			X
Reduced risk to terrestrial wildlife including endangered species			X
Protection of biodiversity			X
Protection of cultural valuation			X
Reduced non-point source nitrogen contamination of water if sewage sludge is used as a substitute for chemical fertilizer on agricultural land.			X
Satisfaction of a public preference for beneficial use of sewage sludge*			X
Economic Productivity Benefits:			
Reduced sewage sludge disposal costs	X		
Enhanced tourism			X
Improved commercial fisheries yields			X
Addition of fertilizer to crops (nitrogen content of sewage sludge is available as a fertilizer when sludge is land applied)*.			X
Improved crop yield (the organic matter in land-applied sewage sludge increases soil's water retention)*.			X
Reduced management practice and recordkeeping costs for appliers of sewage sludge meeting exceptional quality criteria.			X
Reduced management and disposal costs for "cleaner" sewage sludge that does not meet land application criteria.			X
Avoidance of costly siting processes for more controversial sewage sludge disposal methods (e.g., incinerators) because of greater use of land application.			X
Reduced water treatment costs for municipal drinking water, irrigation water, and industrial process and cooling water.			X

*Some double counting between this benefit category and "reduced sewage sludge disposal costs" is present.

The monetary assessment of benefits is inevitably incomplete. As mentioned above, monetary values were estimated for only a few of the likely benefit categories. In addition, because of data and measurement limitations, some of the available valuation measures do not fully account for all of the mechanisms by which society is likely to value a given benefit event. As a result, the estimated dollar values that are attached to certain of the estimated benefit events may understate society's willingness-to-pay to achieve those benefit events. For example, reduced sewage sludge disposal costs may understate society's willingness-to-pay for less polluted sewage sludge because public preferences as revealed through political decision-making processes indicate that some communities would be willing to pay for beneficial sewage sludge use (land application) even when it is more costly than other disposal options. As a result, the estimate of the dollar value of benefits to society is a partial, noncomprehensive estimate and, in all likelihood, understates the economic benefits that will accrue from the proposed regulation.

2. Overview of Costs Analyzed

The RIA compares EPA's best estimate of the monetized benefits of the proposed MP&M regulation to the estimated costs to society for achieving those benefits. To assess the economic costs to society of the MP&M regulation, EPA relied foremost on the estimated costs to MP&M facilities for the labor, equipment, material, and other economic resources needed to meet the discharge limitations specified by the proposed regulation. These cost estimates are the same as those used for the zero-cost-pass-through analysis of facility impacts described in Section XIV of this document (i.e., in which firms must absorb all of the regulatory compliance costs). In the societal cost-benefit analysis, however, accounting for these costs differs from that in the facility impact analysis. In the facility impact analysis, costs and their impacts are considered in terms of their effects on the financial performance of the firms and facilities affected by regulation. To understand the significance of those costs to affected firms and facilities and their likely responses to the proposed regulation, the analyses explicitly considered the expected tax treatment of the annual expenses and capital outlays for compliance. In addition, the annual charges for the capital outlays were calculated using private costs of capital. Thus, the total annual compliance costs reported earlier in this document are the costs *to industry* and are presented on an after-tax basis reflecting private costs of capital. In the analysis of the costs to society, however, these compliance costs are considered on a before-tax basis and the annualization of capital outlays is based on an opportunity cost of capital *to society*. In general, because of the elimination of tax considerations, the estimated compliance costs are greater from the perspective of society than from the perspective of private industry.

In addition to the estimated resource costs to society of regulatory compliance, the estimate of social cost used in this analysis includes two other cost elements: the cost to governments (federal, state, and local) of administering the permitting and compliance monitoring activities under the proposed regulation (as discussed above at Section XIV.C.1); and the costs associated with unemployment that may result from the proposed regulation. The unemployment-related costs include: the cost of administering unemployment programs for workers who are estimated to lose employment (but not the cost of unemployment benefits, which are a transfer payment within society); and an estimate of the amount that workers would be willing to pay to avoid involuntary unemployment. In much the same way that society may value the benefits of avoided adverse health effects stemming from the regulation on the basis of willingness-to-pay, society may also value the incurrence of unemployment as a cost of the regulation using the same willingness-to-pay principle of valuation.

3. Organization of Following Discussion

The following sections of this preamble discuss the estimated benefits and costs to society of the proposed MP&M regulation. The next section, Section B, describes the broad categories of benefits associated with the MP&M rule as well as the estimation of these benefits while Section C summarizes the estimated costs. Section D summarizes the comparison of estimated national benefits and costs for the proposed regulation.

B. Benefits Associated With the Proposed Effluent Guidelines

MP&M industry effluents contain priority and non-conventional metals, organics and conventional pollutants. Discharge of these pollutants into freshwater, estuarine, and marine ecosystems may alter aquatic habitats, affect aquatic life and terrestrial wildlife, and adversely affect human health. Many of these pollutants are human carcinogens, human systemic toxicants, aquatic life toxicants, or all of the above. In addition, many of these pollutants persist in the environment, resist biodegradation, and bioaccumulate in aquatic organisms.

The Agency's analysis of these environmental and human health risk concerns and of the water-related benefits resulting from the proposed effluent guidelines is contained in the "Environmental Assessment of the Metal Products and Machinery Industry (Phase I)", hereafter called the Environmental Assessment (see Section II. for availability of this document). This assessment qualitatively and quantitatively evaluates the potential human health benefits and water quality benefits of controlling the discharges of 66 pollutants from the MP&M industry group. (see the Environmental Assessment and the RIA for a discussion of the pollutants).

In this analysis, benefits were assessed by identifying the various ways in which the reduction in discharges from the MP&M industry would be expected to provide benefits. Regulations that improve water quality will generally provide benefits in several broad categories, which are summarized below. Please refer to Table 21 for a list of the different types of benefits that fall under each category.

Human health benefits. Reduced pollutant discharges to the nation's waterways will generate human health benefits by a number of mechanisms. The most important and readily analyzed of the human health benefits stem from reduced risk of illness associated with the consumption of water, fish or other food that is taken from waterways affected by effluent discharges. Human health benefits are typically analyzed by estimating the change in the expected number of adverse human health events in the exposed population resulting from a reduction in effluent discharges. While some health effect mechanisms such as cancer are relatively well understood and thus may be quantified in a benefits analysis, others are less well understood and may not be assessed with the same rigor or at all. For example, this analysis quantitatively examines only two health effect categories: incidence of cancer and a composite indicator of systemic, non-cancer health risk. However, in this analysis, only incidence of cancer is translated into an expected number of avoided adverse health events (i.e., avoided cancer cases) and, on that basis, monetized. Dose-response relationships are not available for other health events that might also be avoided by reduced pollutant exposures. The economic valuation of these health effect events is generally based on estimates of the monetary value that society is willing to pay for their avoidance. Such "willingness-to-pay" valuations are generally considered to provide a fairly comprehensive measure of society's valuation of the health-related benefit in that they account for such factors as the costs of health care,[9] loss in income, and pain and suffering (both among affected individuals and family and friends). In some cases, less comprehensive valuations are used that are based only on the estimated costs of health care, remedial treatments, or forgone income.

Ecological benefits. Ecological benefits stem from improvements in habitats or ecosystems that are affected by effluent discharges. For example, spawning grounds for important recreationally or commercially caught fish species may be restored in response to a reduction in MP&M effluent discharges. It is frequently quite difficult, however, to quantify and attach economic values to benefit categories that are referred to as ecological benefits. The difficulty in quantifying benefit categories results from imperfect understanding of the relationship between changes in effluent discharges and the benefit events. In addition, it is often difficult to attach monetary values to these benefit categories because the benefit events do not occur in markets in which prices or costs are readily observed. Ecological benefits may be loosely classified as non-market, use benefits, and non-market, non-use benefits.

[9] Individuals with health insurance, however, would not include the part of medical care cost covered by insurance in their willingness-to-pay to avoid adverse health effects.

Non-market, use *benefits* stem from improvements in ecosystems and habitats that, in turn, lead to enhanced human use and enjoyment of the affected areas. For example, reduced discharges may lead to increased recreational use and enjoyment of affected waterways in such activities as fishing, swimming, boating, hunting or birdwatching. Such uses can be classified as either consumptive or non-consumptive. Consumptive uses can be distinguished from non-consumptive uses in that the former excludes other uses of the same resource. For example, if recreational anglers consume their fish catch, the stock of the natural resource is at least temporarily depleted. With non-consumptive uses, however, the resource base generally remains in the same state before and after use (e.g., birdwatching).[10]

In some cases, it may be possible to quantify and attach partial economic values to such benefit events on the basis of market values (e.g., an increase in tourism activity associated with improved recreational fishing opportunities); in this case, these benefit events might better be classified as economic productivity related events as explained in the next section. These events, however, are often not able to be fully valued using information from economic markets. In this case, they are more appropriately classified as non-market use ecological benefits since economic markets will only capture related expenditures made by recreational users such as food and lodging and will not capture the value placed on the experience itself.

The second broad class of ecological benefits, non-market, non-use benefits, includes benefit events that are not associated with current use of the affected ecosystem or habitat but arise from the realization of the improvement in the affected ecosystem or habitat resulting from reduced effluent discharges. This class of benefits also includes the value that individuals place on the potential for use sometime in the future either by themselves or future generations. As an example of the former, people may attach a value to protecting habitats and species that are otherwise detrimentally affected by effluent discharges even when they do not use or anticipate future use of the affected waterways for recreational or other purposes. The latter can be described as a combination of insurance and speculative value which reflects individuals' wish to protect the option to use and enjoy a resource at some later date. From an ecosystem standpoint, pristine habitats and wildlife refuges are often preserved under the assumption that plant or animal species that may yield pharmaceutical, genetic, or ecosystem benefits yet to be discovered. These benefits may also manifest by other valuation mechanisms, such as: cultural valuation, philanthropy, and bequest valuation. It is often extremely difficult or even impossible to quantify the relationship between changes in discharges and the improvements in societal well-being associated with such valuation mechanisms. That these valuation mechanisms exist, however, is indisputable as evidenced, for example, by society's willingness to contribute to organizations whose mission is to purchase and preserve lands or habitats for the sole purpose of averting development.

Economic productivity benefits. Reduced pollutant discharges may also generate benefits through improvements in economic productivity. For example, economic productivity gains may occur through reduced costs to public sewage systems (publicly owned treatment works or POTWs) for managing and disposing of the sewage sludge that results from treatment of effluent discharges. With less pollutant contamination of industry's discharges to POTWs, the POTWs in turn incur lower costs in managing and disposing of their treatment residuals. Similarly, economic productivity may be enhanced due to reduced treatment costs associated with irrigation water, industrial cooling water and municipal drinking water supplies. Other economic productivity gains may result from improved tourism opportunities in areas that are affected by effluent discharges. In addition, ecological benefits such as improved species survival will be translated into economic productivity benefits such as increases in commercially caught fish populations and yield. When such economic productivity effects can be identified and quantified, they are generally straightforward to value because they often involve market-place events for which prices or unit costs are readily available.

As indicated above, some of these improvements reduce societal costs. As such, these improvements (i.e. reduced treatment and disposal costs) could be described as a reduced cost and be included in the economic cost analysis rather than in the benefits analysis. For this analysis, they are treated as a benefit of the effluent guideline.

1. Qualitative Description of the Benefits

Benefits to human health associated with the proposed rule include reductions in cancer risk and systemic health problems (e.g. reproductive, immunological, neurological, circulatory, or respiratory toxicity) that are caused by consuming chemically-contaminated fish and ingesting chemically-contaminated drinking water. With respect to fish consumption, benefits will accrue to recreational and subsistence fishermen and to their families. In addition, populations served by drinking water intakes located on river reaches to which MP&M facilities discharge will benefit from reduced pollutant concentrations in MP&M wastewater discharges.

Benefits to aquatic life include reduction of priority and non-conventional metals, organics, and conventional pollutants to levels below those considered to negatively affect receiving water's biota. Such impacts include acute and chronic toxicity, sublethal effects on metabolic and reproductive functions, physical destruction of spawning and feeding habitats, and loss of prey organisms. Chemical contamination of aquatic biota may also directly or indirectly impact local terrestrial wildlife. Reductions in such impacts will enhance recreational fishing opportunities in terms of both the quality and abundance of species caught. As a result, more persons may fish a given area and the value of their fishing experience may increase on a per fishing event basis.

Benefits from changes in sewage sludge disposal practices will be realized as publicly owned treatment works (POTWs) are able to dispose of cleaner (i.e. less toxic) sewage sludge by less expensive and more environmentally beneficial methods. For example, cleaner sewage sludge may be applied to agricultural land rather than being incinerated or disposed of in landfills and other land sites. In addition to the direct cost savings that may accrue to POTWS, when sewage sludge is beneficially applied to land, its nitrogen content is available as a valuable fertilizer. In addition, the organic matter in sludge will generally improve the soil structure for plant growth and increase the ability of soil to retain water. As a result, land application of sewage sludge may yield benefits in terms of overall improvements in soil quality and crop yields. Benefits may also accrue through greater flexibility in managing and disposing of POTW sewage sludges and shifts into beneficial reuse of sewage sludge even when the reduction in sludge contamination levels does not yield direct cost savings to POTWs. These latter components of economic benefits from less contamination of POTW sewage sludges are not addressed in this analysis.

[10] Even some so-called non-consumptive uses may temporarily deplete the natural resource or reduce the potential value to other users. For example, over-use of the habitat or crowding in such pursuits as bird-watching may diminish the value of the natural resource to other users.

2. Quantitative Estimate of Benefits

EPA quantified and monetized human health, aquatic life, recreational fishing, and sewage sludge disposal benefits using a site-specific analysis for baseline conditions and for the conditions that are expected to be achieved by BAT/PSES process changes. Quantified but not monetized benefits include reductions in excursions of health-based water quality toxic effects levels and aquatic life criteria as well as reductions in the frequency with which certain aquatic species are exposed to lethal concentrations of MP&M pollutants. It should be noted that the benefit categories that were able to be quantified and monetized in this analysis represent only a few of the benefits that are likely to be achieved by the proposed regulation (see Table 21).Q

Quantified human health benefits are estimated by:

- Estimating the potential reduction of carcinogenic risk and systemic hazards from fish consumption;
- Estimating the potential reduction of carcinogenic risk and systemic hazards from ingestion of drinking water; and
- Comparing estimated in-stream concentrations to health-based water quality toxic effect levels.

Quantified aquatic life benefits are estimated by:

- Comparing modeled in-stream concentrations to aquatic life water quality criteria or toxic effect values (AWQCs); and
- Comparing in-stream concentrations to estimated lethal threshold concentrations for selected aquatic species.

Quantified recreational fishing benefits are calculated on the basis of the estimated increase in the value per person-day of fishing in a waterbody from which all MP&M AWQC excursions are eliminated. Sewage sludge disposal benefits are calculated on the basis of the incremental quantity of sludge that, as a result of reduced pollutant discharges to POTWs, meets criteria for the generally less expensive disposal methods, namely land application and surface disposal. The methodologies used in these analyses, including all assumptions and limitations, are explained in the Regulatory Impact Analysis.

a. Cancer Risk and Systemic Hazards and Benefits

Aggregate cancer risk, and systemic hazards from drinking contaminated water were estimated for populations served by drinking water intakes on waterbodies to which MP&M facilities discharge. In-stream concentrations of 4 carcinogenic and 33 systemic toxicants were estimated for 396 facilities discharging directly or indirectly to 326 receiving waterways using a model of the instream pollutant mixing and dilution process. In-stream concentrations were estimated for the initial discharge reach and for downstream reaches taking into account the various mechanisms by which pollution concentrations diminish below the initial point of discharge (e.g., dilution, adsorption, volatilization, and hydrolysis). The calculated in-stream concentrations were used to estimate the change in cancer risk and systemic hazards resulting from the proposed and alternative MP&M regulatory options for populations served by drinking water intakes.

In addition, aggregate cancer risk and systemic hazards from consuming contaminated fish were estimated for recreational and subsistence anglers and their families. This analysis relied on the same estimates of instream pollutant concentrations as used for the drinking water health effects analysis. Pollutant contamination of fish flesh was estimated using biological uptake factors. Data on licensed fishing population by state and county, presence of fish advisories, fishing activity rates, and average household size were used to estimate the population of recreational and subsistence anglers and their families that would benefit from reduced contamination of fish. Fish consumption rates for recreational and subsistence anglers were used to estimate the change in cancer risk and systemic hazards among these populations.

For combined recreational and subsistence angler populations, the proposed BAT and PSES options are projected to eliminate approximately 2.7 cancer cases per year from a baseline of about 11.1 cases estimated at the current discharge level, representing a reduction of about 25 percent. For the drinking water population, EPA estimated that reduced pollutant discharges under the proposed BAT and PSES options would reduce cancer risk by approximately 3.0 cancer cases per year. However, EPA has published drinking water criteria for all of the chemicals for which these avoided cancer cases were estimated. As a result, these avoided cancer cases were excluded from the benefits evaluation because it is assumed that public drinking water treatment systems will remove these pollutants from the public water supply.

In addition to the estimated changes in cancer risk in exposed populations, EPA also estimated the change in an indicator of systemic, non-cancer risk of illness. This composite risk indicator, or systemic hazard score, which is based on the change in exposure to pollutants through fish and water consumption relative to pollutant-specific health effects thresholds, yields an additional measure of the human health benefits that are likely to result from the proposed regulation. Specifically, the systemic hazard score is calculated as the sum of the ratios of quantities of pollutants ingested into the human body relative to the daily reference dose for each pollutant. Values above or near one are highly suggestive of a risk of systemic health hazard. The hazard score assumes that the combined effect of ingesting multiple pollutants is proportional to the sum of their effects individually.

The distribution of hazard scores was calculated for drinking water and fish consumption populations on the basis of baseline and post-compliance exposures. For each exposed population category, the change in the distribution from baseline to the post-compliance case provides a measure of the reduced risk of systemic health hazard from reduced MP&M industry discharges. Analytic tractability issues prevented this analysis from being able to be done on a sample-weighted basis. The results are for sample discharge locations only. The results for both the fish and drinking water analysis show movement in populations from higher risk values to lower risk values. In addition, both analyses show substantial increments in the percentage of exposed population that would be exposed to no risk of systemic health hazard associated with discharges by MP&M facilities.

b. Excursions of Health-Based Water Quality Toxic Effect Levels

In addition to the estimated changes in cancer and systemic risk in exposed populations, EPA also estimated the effect of facility discharges of regulated pollutants on pollutant concentrations in affected waterways relative to ambient water criteria for protection of human health. The estimated concentrations were compared, on both a baseline and post-compliance basis, with EPA ambient water quality criteria (AWQCs) for protection of human health through consumption of

organisms and consumption of organisms and water. Pollutant concentrations in excess of these values indicate potential risks to human health. EPA modeling results show that 137 reaches exceed AWQC values at baseline discharge levels. Proposed BAT and PSES options are projected to eliminate concentrations in excess of the criteria on 40 of these reaches, leaving an estimated 97 reaches with concentrations in excess of AWQC values for protection of human health.

The analyses pertaining to change in human health risk described in this and the preceding section ignore the potential for joint effects of more than one pollutant. Each pollutant is dealt with in isolation and the individually estimated effects are added together. The analyses do not account for the possibility that several pollutants may combine in a synergistic fashion to yield more adverse effects to human health than indicated by the simple sum of the individual effects.

c. Aquatic Life Benefits

To assess aquatic life benefits, EPA estimated the effect of facility discharges of regulated pollutants on pollutant concentrations in affected waterways. The estimated concentrations were compared, on both a baseline and post-compliance basis, with EPA ambient water quality criteria (AWQCs) for acute and chronic exposure impacts to aquatic life. Pollutant concentrations in excess of these values indicate potential impacts to aquatic life. EPA modeling results show that 130 reaches exceed AWQC values at baseline discharge levels. Proposed BAT and PSES options are projected to eliminate concentrations in excess of the criteria on 88 of these reaches, leaving an estimated 41 reaches with concentrations in excess of AWQC values for aquatic life.

EPA also analyzed aquatic life benefits on the basis of the change in frequency with which certain aquatic species may be expected to be exposed to lethal concentrations of pollutants discharged by MP&M facilities. As such, this analysis focuses solely on acute (short-term) toxicity and does not consider chronic (long-term) toxicity. This analysis examined the effects of specific pollutants on selected aquatic species with a relatively wide range of sensitivity to MP&M pollutants. Specifically, thirteen MP&M pollutants thought to be among those having the greatest potential to cause risks to aquatic life were analyzed. Species with socioeconomic importance such as trout, bass, and catfish were highlighted, but all species for which data were available, including those of less socioeconomic importance, were evaluated. This analysis uses a species sensitivity distribution rather than a single toxicity threshold concentration in comparison to in-stream pollutant concentrations for the following three reasons:

1. Species sensitivity distributions, which are used by EPA to set water quality criteria, can be used to relate exposure concentrations to the proportion of species whose toxicological effect concentrations (e.g., LC50 , the lethal concentration for fifty percent of a species, or some lower lethal threshold such as an LC10 or LC1) are exceeded. This proportion provides an indication of the percentage of aquatic species that would be directly affected [11] at the exposure concentration. Unlike comparisons to water quality criteria, which usually yield ratios of the exposure concentration to the criterion concentration, the proportion of species that are likely to be directly affected provides a more intuitive indicator of ecological risk. It should be noted, however, that both indicators of ecological risk (water quality criteria and proportion of species impacted) suffer from the inability to account for indirect impacts on aquatic ecosystems, such as those that result from interruption of predator-prey relationships. Therefore, neither approach should be considered to provide absolute measures of ecological risk.

2. The variation in chemical sensitivity over a group of species is known to vary among chemicals (Erickson and Stephan, 1988). For example, consider two chemicals both of which are at lethal effect concentrations for five percent of a habitat's species. A given percentage increase (e.g., doubling) of both pollutants' concentrations will not necessarily lead to the same increase in the proportion of the species that are exposed to lethal effect concentrations. That is, doubling one chemical's concentration might increase the proportion of species affected from five percent to 25 percent while doubling the other chemical's concentration might increase the proportion of species affected from five percent to 50 percent. This diversity of species' response to changes in concentrations of different pollutants is better captured by use of distributions of response over the group of species in the habitat.

3. Because the identities of the tested species comprising the species sensitivity distributions are known, the use of species sensitivity distributions allowed EPA to identify which of the tested species are at risk from exposure to regulated pollutants and which are likely to benefit from reduced discharges.

Using species sensitivity distributions, EPA estimated the proportion of tested species whose lethal threshold concentrations would be exceeded at various exposure concentrations. In interpreting these results, EPA assumed that a greater proportion of species affected signifies a greater risk of lethal effects in the population of species present in a habitat. This analysis found that the proposed regulation will yield significant reductions in the expected frequency with which certain aquatic species may be exposed to lethal concentrations of pollutants. The reduced exposure translates into benefits such as increased species diversity and abundance which would, in turn, enhance recreational and commercial fishing opportunities (see the RIA for additional discussion of this analysis and its findings in terms of benefits to specific species).

d. Recreational Fishing Benefits

As described above, the proposed BAT and PSES options will reduce the number of excursions of aquatic life criteria or toxic effect values. EPA assumes that elimination of criteria excursions for *all* regulated pollutants in a waterbody will achieve water quality that is protective of aquatic life. This improvement in water quality, in turn, generates benefits to recreational anglers by increasing the value of their experience or the number of days they subsequently choose to fish the waterbody. These benefits, however, do not include all of the benefits that are associated with improvements in aquatic life. For example, recreational benefits do not capture the benefit of increased assimilative capacity of a receiving waterbody, improvements in the taste and odor of the instream flow, or improvements to other recreational activities such as swimming and wildlife observation that may be enhanced by improved water quality. Modeling results show that, under the proposed regulatory option, criteria excursions for all pollutants whose discharges are affected by the MP&M regulation are eliminated in 123 discharge locations.

[11] The term "directly affected" is used here to reflect impacts from direct exposure to a pollutant, rather than "indirect" effects such as those that occur due to the loss of important predator or prey species.

e. Avoided Sewage Sludge Disposal Costs

To estimate the quantity of sewage sludge that will be disposed of using a less expensive method due to the proposed regulatory requirements, EPA calculated baseline and post-compliance sewage sludge quality and compared sewage sludge pollutant concentrations to criteria for land application and surface disposal.[12] POTWs are assumed to choose the least expensive sewage sludge use or disposal option for which the sludge meets pollutant criteria. For many POTWs, the least expensive or "preferred" option is generally agricultural application (a type of land application) or surface disposal of sewage sludge. As a result of the proposed regulation, many POTWs are expected to achieve substantial cost savings by disposing of sewage sludge through agricultural application or surface disposal. For POTWs with limited access to agricultural land and surface disposal sites, the cost savings resulting from sewage sludge with lower pollutant concentrations are expected to be less substantial. However, disposal of sewage sludge that meets agricultural application limits through distributing and marketing methods may achieve some cost savings for these facilities. In the baseline, an estimated 5,559 of 6,950 POTWs meet criteria for surface disposal or land application. Of the 5,559 POTWs meeting surface disposal or land application criteria, 5,309 meet the more stringent criteria for beneficial land application while 250 meet only the more lenient surface disposal criteria. Under the proposed regulation, the total of POTWs that are expected to meet criteria for surface disposal or land application increases to 5,743. Of this total that meet criteria for surface disposal or land application, 5,493 POTWs (or an increase of 184 POTWs) are expected to meet criteria for beneficial land application, while 250 POTWs continue to meet criteria for surface disposal.

3. Monetization of Benefits

For this regulation, EPA estimated the monetary value of benefits for three benefit categories: human health benefits from reduced exposure to carcinogens in fish taken from waterways affected by MP&M discharges; enhanced recreational fishing opportunities in waterways affected by MP&M discharges; and reduced costs to POTWs in managing and disposing of sewage sludge that is affected by MP&M discharges.

a. Valuation of Human Health Benefits

EPA estimated the value of a limited set of possible human health benefits from the human health risk assessment discussed above. These benefits are attributed to reductions in cancer risks associated with consuming chemically-contaminated fish. The valuation of benefits is based on estimates of society's willingness-to-pay to avoid the risk of cancer associated with consuming chemically-contaminated fish. Little data, however, is available regarding both dose-response relationships for non-cancer systemic health outcomes and the monetary value of avoiding such health outcomes. As a result, it was not possible to monetize the systemic health effects that might be associated with exposures to pollutants emanating from the MP&M industry such as reproductive, immunological, neurological, or circulatory problems.

To value mortality, EPA used a range of values recommended by EPA's Office of Policy Analysis from a review of studies quantifying individuals' willingness to pay to avoid increased risks to life (Fisher, Chestnut, and Violette, 1989; and Violette and Chestnut, 1986). The reviewed studies used hedonic wage or contingent valuation analyses in labor markets to estimate the amounts that individuals would be willing to pay to avoid slight increases in risk of mortality (i.e., the question analyzed in these studies is: how much more must a worker be paid to accept an occupation with a slightly higher risk of mortality?). The willingness-to-pay values estimated in these studies are associated with small changes in the probability of mortality; to estimate a willingness-to-pay value for avoiding certain or high probability mortality events, they are extrapolated to the value for a 100 percent probability event. The resulting estimates of the value of a "statistical life saved" are used in analyses such as this regulatory analysis to value regulatory effects that are expected to reduce the incidence of mortality. From this review, the Office of Policy Analysis recommended a range of $1.6 to $8.5 million (1986 dollars) for valuing an avoided event of premature mortality or a statistical life saved. For this analysis, EPA adjusted the recommended figures to 1994 using the relative change in nominal Gross Domestic Product from 1986 to 1994 (57.2 percent) to account for increases in society's willingness to pay to avoid risk of mortality as national income increases. Updating to 1994 yields a range of $2.5 to $13.4 million. For this analysis, the low-point of the range is used as a "low" estimate while the top of the range is used as a "high" estimate. For the proposed Option 2a/2, the benefits associated with reduced incidence of cancer from fish consumption are estimated to range from $6.8 million to $36.2 million per year ($1994), depending on the choice of willingness-to-pay value that is used to value the avoided cancer events. Although EPA estimated the change in cancer risk resulting from reduced exposure to MP&M pollutants via the drinking water pathway, these effects were not included in the monetary estimate of benefits because EPA has published drinking water criteria for the four pollutants for which the cancer analysis was completed. Thus, the total estimated value for human health benefits ranges from $6.8 million to $36.2 million per year ($1994).

b. Valuation of Enhanced Recreational Fishing Opportunities

EPA also estimated the value of enhanced recreational fishing opportunities. This valuation provides a limited measure of the value to society of improvements in aquatic habitats that are used for recreational purposes. The estimate of benefits is limited because it focuses on only one mechanism, enhanced recreational fishing, by which society may value improved aquatic habitats; it ignores other recreational effects as well as valuation mechanisms that are separate from recreation.

EPA calculated the value of enhanced recreational fishing opportunities by first estimating the baseline value of those fisheries in which all instances in which AWQCs are exceeded would be eliminated. Second, EPA estimated the value of improving the water quality in these fisheries based on the incremental value to anglers of eliminating all contaminants from a fishery (Lyke, 1992). Estimates of the increase in value of recreational fishing to anglers range from $23.6 million to $84.3 million annually ($1994).

c. Reduced Costs to POTWs in Managing and Disposing of Sewage Sludge

On the basis of the estimated reduced contamination of sewage sludge, EPA estimated that 184 POTWs will be able to select the lower-cost land application methods for sewage sludge disposal. The cost savings associated with the selection of lower cost sewage sludge management and disposal methods are

[12] Industrial sludge" which results from the operation of treatment systems at MP&M facilities, will increase both in quantity and in level of contamination as a result of the proposed regulation. The cost of managing and disposing of this industrial sludge is included in the estimated costs of regulatory compliance used in the economic and regulatory impact analyses.

estimated to range from $39.1 to $86.0 million annually ($1994).

d. Total Estimated Value of Benefits

For the proposed regulatory option, total benefits for the three categories for which monetary estimates were possible range from $69.6 to $206.5 million annually. As noted above, this benefit estimate is necessarily incomplete because it omits numerous mechanisms by which society is likely to benefit from reduced effluent discharges from the MP&M industry. Examples of benefit categories not reflected in this estimate include: non-cancer related health benefits, other water dependent recreational benefits, existence and option values, and benefits to wildlife and endangered species.

4. Limitations and Uncertainties Associated With Estimating Benefits

The estimation of benefits is inevitably incomplete in that only a small set of the categories by which the proposed regulation is expected to generate benefits are able to be quantified and monetized. Beyond this broad and overriding limitation to the assessment of benefits, the methodologies used to assess the benefit categories that were quantitatively analyzed and for which monetary values were estimated also involve significant simplifications and uncertainties. Whether these simplifications and uncertainties are likely to lead to an understatement or overstatement of the estimated economic values for the benefit categories that were analyzed is uncertain. Several of these simplifications and uncertainties are noted below.

The methodology used to estimate water quality criteria excursions assumes that MP&M facilities are the only source of each of the regulated pollutants in the waterbody; the methodology does not incorporate background contributions either from other upstream sources or, in the case of water quality criteria, contaminated sediments due to previous discharge practices. Furthermore, although the discharge of these contaminants may cease or be minimized, sediment contamination and subsequent accumulation of the regulated pollutants in aquatic organisms may continue for years. Actual water quality improvements, in terms of eliminating excursions above criteria may, therefore, be over- or under-estimated depending on the relative magnitude of background contributions of regulated pollutants.

In this analysis, the estimates of human health and ecological benefits are based on the estimated changes in in-stream concentrations of regulated pollutants. In-stream concentrations under baseline conditions and under the proposed option are modeled for all waterbodies to which MP&M facilities discharge. Certain data underlying these analyses are site specific, including: flow rates under average and low flow conditions, and flow depth. However, other basic assumptions in the model are not site specific, including: chemistry of the water body, mixing processes, longitudinal dispersion, flow geometry, suspension of solids and reaction rates. Where these assumptions differ from actual conditions, modeled results will approximate in-stream concentrations with varying degree of accuracy. The effect of these assumptions on benefit estimates, however, is indeterminate.

In the analysis of benefits associated with consumption of fish taken from affected waterways, EPA estimated the exposed population—that is, the population expected to fish an affected waterway—from county fishing license and fishing activity data. Some data are specific to the counties in which MP&M sample facilities are located; however, for some counties in which MP&M facilities are located, it was necessary to estimate fishing population and activity rates from state-level data or from data for nearby counties or states (see Chapter 9 of the RIA for a detailed description of this methodology). These approaches are necessarily approximations and may lead to an over- or underestimates of the exposed population. The effect of these estimation procedures on the benefits estimate, however, is not known.

A related issue involves the assumption made regarding the number of subsistence fishermen in the exposed population. In this analysis, subsistence fishermen are assumed to account for an additional 5 percent of the fishing population. The magnitude of subsistence fishing in the United States or in individual states, however, is not known. As a result, this estimate may understate or overstate the actual number of subsistence fishermen.

Finally, recreational fishing benefits are based on the assumption that anglers place the same value on reducing concentrations of MP&M pollutants to levels considered protective of aquatic life as they do on eliminating all contaminants from a fishery. While the former level of pollutant reduction is assumed to be protective of aquatic life, some level of contamination would still exist in a fishery. As such, benefits of recreational fishing may be overstated.

EPA acknowledges the unavoidable uncertainty associated with estimating benefits. EPA believes that it has used the best methodology available for estimating benefits. EPA is soliciting comments on the reliability and accuracy of the methods used and suggestions on alternative methods which could be used for the final rule (see Section XIX).

C. Costs To Society

The social costs of regulatory actions are the opportunity costs to society of employing scarce resources in pollution control activity. The social costs of regulation include both monetary and non-monetary outlays made by society. Monetary outlays include private-sector compliance costs, government administrative costs, and other adjustment costs, such as the cost of relocating displaced workers. Non-monetary outlays, some of which can be assigned monetary values, include losses in consumers' and producers' surpluses in affected product markets, discomfort or inconvenience, loss of time, and a slowdown in the rate of innovation.

For this analysis, EPA based its estimate of the cost to society on the following components of social cost: the cost of society's economic resources for achieving compliance with the proposed regulatory option; the cost to governments of administering the proposed regulation; the cost of administering unemployment programs for job losses resulting from regulation; and worker dislocation costs.

1. Resource Cost of Compliance

The chief component of the estimated annual social cost is the cost of complying with the proposed regulation. The portion of this cost that is expected *to be borne directly by the MP&M Phase I industries* amounts to $160.6 million ($1994). This amount is the same as that used for the facility impact analysis and reflects the cost of pollution prevention and treatment systems needed to achieve compliance with the proposed discharge limitations (see Section XIV. D. and E.). In addition, this amount reflects the expected tax treatment of capital outlays and annual expenses and is also based on private costs of capital. However, as discussed in the introduction to this section, the appropriate measure of cost of compliance to society will omit these tax effects and will also reflect the opportunity cost of capital to society or social discount rate. The combined effect of these adjustments is to add an estimated $29.7 million to the estimated private industry cost of the regulation, bringing the cost of compliance to society to $190.3 million ($1994). This amount may be interpreted as the value of society's productive resources—including labor, equipment, and other material—that is needed annually to achieve the reductions in effluent discharges specified by the proposed regulatory option.

2. Cost of Administering the Proposed Regulation

In addition to the resource costs for achieving effluent discharge reductions, EPA also estimated the cost to all levels of governments for administering the proposed regulation. The main component of this administrative cost category is the cost of labor and material resources for writing permits under the regulation and for compliance monitoring and enforcement activities. EPA estimates that these costs will range from $2.1 to $3.4 million ($1994) annually.

3. Cost of Unemployment

To account for the total social cost of unemployment, EPA estimated the cost of worker dislocation (exclusive of cash benefits) to the individual as well as the additional cost to governments to administer unemployment benefits. The cost of worker dislocation is estimated based on incremental willingness-to-pay to avoid job dislocation in a hedonic wage framework. This framework has been used in the past to impute a trade-off between wages and job security (Topel, 1984, Adams, 1985). Specifically, this estimate approximates a one-time willingness-to-pay to avoid an involuntary episode of unemployment and reflects all monetary and non-monetary impacts of involuntary unemployment incurred by the worker. It does not include any offsets to the cost of unemployment such as unemployment compensation or the value of increased leisure time.

For the MP&M industry, the implied one time statistical cost of an involuntary layoff is estimated at $83,000 to $110,000 ($1994). To calculate the annual cost of employment displacement for the proposed regulatory option, EPA annualized this value over the 15-year analysis period at a social opportunity cost of deferred consumption of three percent and multiplied the resulting annual value by the total number of displaced workers (698 FTEs) estimated in the facility impact analysis. In the labor requirements analysis (see Section XIV.E, above), EPA estimated that the demand for labor for compliance with the proposed regulation would exceed the estimated loss in employment from facility closures. As a result, when the total number of displaced workers is adjusted to account for compliance-related labor demand, the net loss in employment is negative. For this analysis, EPA considered a range of cost for displaced workers with the high end of the range based on the cost of worker displacement considering only the job losses in estimated facility closures and with the low end of the range set at zero. Setting the low end of the range at zero recognizes that labor demands for compliance may equal or exceed job losses but, to be conservative, does not enter a negative cost based on the possible net reduction in unemployment resulting from the regulation. On this basis, EPA estimated that annualized worker displacement costs for the proposed regulation would range from zero to $6.6 million.

Unemployment as the result of regulation may also impose costs to society through the additional administrative burdens placed on the unemployment system (the cost of unemployment benefits per se is not a social cost but instead a transfer payment within society). Administrative costs include the cost of processing unemployment claims, retraining workers, and placing workers in new jobs. Using data from the Interstate Conference of Employment Security Agencies, EPA estimated that the per unemployed worker cost of administering unemployment programs for job losses amounts to approximately $100 per job loss. Multiplying this figure by the 698 job losses and annualizing the result over the 15-year analysis period yields an annual unemployment administration cost of less than $10,000 per year. Again, considering that the net employment loss from the regulation may be negative, EPA used a range of from zero to $10,000 for the additional annual cost of unemployment administration.

Summing across all social costs results in a total social cost estimate of $192.4 to $200.3 million annually ($1994). These social cost estimates do not include losses in consumers' and producers' surpluses resulting from the change in quantity of goods and services sold in affected product markets. However, under the zero-cost-pass-through framework in which compliance costs have been tallied, MP&M industry product prices are assumed not to increase as a result of the proposed regulation. In this case, the estimated resource costs of compliance will approximate the loss in producers' surplus and, with no increase in prices, consumers' surplus will not change.

D. Benefit-Cost Comparison

Because not all of the benefits resulting from the proposed regulatory alternative can be valued in dollar terms, a complete cost-benefit comparison cannot be performed. The social cost of the proposed rule is estimated at $192.4 to $200.3 million annually ($1994). The sum total of benefits that can be valued in dollar terms ranges from $69.6 million to $206.5 million annually ($1994).

As shown in Table 22, combining the estimates of social benefits and social costs yields a net monetizable benefit ranging from negative $130.7 million to positive $14.1 million annually. This assessment of the relationship between costs and benefits is subject to severe limitations on the ability to estimate comprehensively the expected benefits of the proposed regulation. If all of the benefits of regulation could be quantified and monetized, EPA estimates that in all likelihood the benefits of regulation would exceed the social costs.

TABLE 22.—COMPARISON OF NATIONAL ANNUAL MONETIZABLE BENEFITS TO COSTS FOR EFFLUENT LIMITATION GUIDELINES AND STANDARDS FOR THE METAL PRODUCTS AND MACHINERY INDUSTRY, PHASE I

[Millions of 1994 dollars]

Benefit and cost categories	Dollar value
Benefit Categories:	
Human Health Benefits: Fish Consumption	$6.8–$36.2
Human Health Benefits: Water Consumption	0.0–0.0
Recreational Fishing Benefits	23.6–84.3
Avoided Sewage Sludge Disposal Costs	39.1–86.0
Total Estimated Benefits	86.4–208.9
Cost Categories:	

TABLE 22.—COMPARISON OF NATIONAL ANNUAL MONETIZABLE BENEFITS TO COSTS FOR EFFLUENT LIMITATION GUIDELINES AND STANDARDS FOR THE METAL PRODUCTS AND MACHINERY INDUSTRY, PHASE I—Continued

[Millions of 1994 dollars]

Benefit and cost categories	Dollar value
Cost to Industry for the Proposed Regulatory Option	160.6
Adjustments for Tax Code and Use of Social Discount Rate	29.7
Costs of Administering the Proposed Regulation	2.1–3.4
Unemployment Administration and Worker Displacement Costs	0.0–6.6
Total Social Cost	192.4–200.3
Net Benefits (Benefits less Costs)	*($130.7)–$14.1

*For calculating the range of net benefits, the low net benefit value is calculated by subtracting the high value of costs from the low value of benefits. The high net benefit value is calculated by subtracting the low value of costs from the high value of benefits.
Source: U.S. Environmental Protection Agency.

XVI. Water Quality and Other Environmental Benefits of Proposed Rule for the Metal Products and Machinery (MP&M) Industry

The U.S. Environmental Protection Agency (EPA, Agency) evaluated the environmental benefits of controlling the discharges of toxic and nonconventional pollutants from metal products and machinery (MP&M) facilities (Phase 1) to surface waters and publicly-owned treatment works (POTWs) in national analyses of direct and indirect discharges. Discharges of these pollutants into freshwater and estuarine ecosystems may alter aquatic habitats, adversely affect aquatic biota, and adversely impact human health through the consumption of contaminated fish and water. Furthermore, these pollutants may also interfere with POTW operations in terms of inhibition of activated sludge or biological treatment and contamination of sludges, thereby limiting the method of disposal. Many of these pollutants have at least one toxic effect (human health carcinogen and/or systemic toxicant or aquatic toxicant). In addition, many of these pollutants bioaccumulate in aquatic organisms and persist in the environment. Various studies demonstrate the environmental impact of discharges from MP&M facilities on aquatic life, human health, and the quality of receiving waters and sediments. The National Sediment Contaminant Point Source Inventory ranks MP&M as one of the largest ongoing sources of potentially toxic pollutants to sediment (nearly 10 percent of the total load of potential sediment contaminants from point sources). Forty-six (46) direct MP&M facilities are identified by States as being point sources causing water quality problems and are included on their 304(l) Short List. Cases of human health impacts (production worker exposure); aquatic life impacts (lethal and sublethal); a State fish consumption advisory; and contamination of surface waters, ground water, and sediments are also documented.

EPA evaluated the effects of direct wastewater discharges on receiving stream water quality at current levels of treatment and at proposed BAT treatment levels. EPA predicted steady-state in-stream pollutant concentrations after complete immediate mixing with no loss from the system, and compared these levels to EPA-published water quality criteria or to documented toxic effect levels for those chemicals for which EPA has not published water quality criteria. EPA performed this analysis for a representative sample set of 55 direct facilities discharging 61 pollutants to 55 receiving streams. This set of 55 facilities includes 12 facilities that currently are both direct and indirect dischargers, but are projected to become solely indirect dischargers at the proposed option. However, the set of 55 facilities excludes four facilities that EPA's cost model predicts to close based on current economic conditions. EPA then extrapolated the results of this analysis to the entire population of direct MP&M facilities nationwide (approximately 2,035 facilities discharging to 2,035 receiving streams) with each sample facility representing a varying number of additional facilities of the same approximate size engaged in similar activities under similar economic conditions.

In-stream concentrations for two pollutants are projected to exceed human health criteria (developed for consumption of water and organisms) in 6 percent of the receiving streams nationwide at current discharge levels. The proposed BAT regulated discharge levels will reduce the excursions of human health criteria to 2 percent of the receiving streams. The percentage of receiving streams nationwide with in-stream pollutant concentrations projected to exceed chronic aquatic life criteria or toxic effect levels will be reduced from 9 percent at current discharge levels to 4 percent at proposed BAT discharge levels. Thirty-nine (39) pollutants at current and six pollutants at BAT discharge levels are projected to exceed in-stream chronic aquatic life criteria or toxic effect levels. These projected water quality benefits are achieved through a 17 percent reduction in current direct loadings for the 61 evaluated pollutants by the proposed BAT regulatory option. Including loadings of oil and grease and total suspended solids (TSS), current pollutant loadings are reduced 36 percent by the proposed BAT regulatory option. Current pollutant loadings (including all conventional pollutants) are also reduced 36 percent by the proposed BAT regulatory option.

EPA also evaluated the effects of POTW wastewater discharges of 61 pollutants on receiving stream water quality at current and proposed pretreatment levels for a representative sample of 307 indirect discharging MP&M facilities. This set of 307 facilities includes 10 facilities that currently are both direct and indirect dischargers, but are projected to become solely direct dischargers at the proposed option. As with the direct dischargers, the set of 307 facilities excludes 52 facilities that EPA's cost model predicts to close based on current economic conditions. These 307 facilities discharge to 264 POTWs with outfalls located on 249 receiving streams. EPA extrapolated the results to a nationwide population of approximately 7,387 facilities which discharge to 7,016 POTWs on 6,864 receiving streams using the same facility weighting approach described above for the direct dischargers. EPA predicted steady-state in-stream pollutant concentrations after complete immediate mixing with no loss from the system, and compared these levels to EPA-published water quality criteria or to documented toxic effect levels for those chemicals for which EPA has not published water quality criteria.

EPA projects that in-stream concentrations of five pollutants will exceed human health criteria (developed for consumption of water and organisms) in 7 percent of the receiving streams nationwide at current discharge levels. The proposed pretreatment regulatory option reduces excursions of human health criteria to three pollutants at 5 percent of the receiving streams nationwide. The percentage of receiving streams with in-stream pollutant concentrations projected to exceed chronic aquatic life criteria or toxic effect levels are reduced from 8 percent at current discharge levels to 5 percent at the proposed pretreatment. A total of 19 pollutants at current and ten pollutants at proposed pretreatment levels are projected to exceed in-stream aquatic life criteria or toxic effect levels. Current loadings of the 61 pollutants evaluated for water quality impacts are reduced 32 percent by the proposed pretreatment regulatory options. Including oil and grease and TSS, current pollutant loadings are reduced 50 percent by the proposed pretreatment regulatory options. Including all conventional pollutants, current pollutant loadings are also reduced 50 percent by the proposed pretreatment regulatory options.

EPA also evaluated the potential adverse impacts on POTW operations (inhibition of microbial activity during biological treatment) and contamination of sludge at the 7,016 POTWs that receive wastewater from the national projected population of 7,387 indirect discharging MP&M facilities. Inhibition of POTW operations is estimated by comparing predicted POTW influent concentrations to available inhibition levels. Potential contamination of sludge is estimated by comparing projected pollutant concentrations in POTW sludge to available EPA sludge criteria. EPA evaluated 37 pollutants for potential POTW operation inhibition and nine pollutants for potential sludge contamination. At current discharge levels, EPA projects inhibition problems at 16 percent of the POTWs nationwide caused by 11 different pollutants. At the proposed pretreatment, EPA projects inhibition problems at 15 percent of the POTWs nationwide caused by six pollutants. The Agency projects sludge contamination at 13 percent and 9 percent of the POTWs nationwide at current and proposed pretreatment regulatory option levels, respectively. EPA projects that all nine evaluated pollutants at current and proposed pretreatment levels exceed sludge criteria levels.

For the analysis of contamination of sewage sludge EPA included other industrial discharges in the sewage sludge model. EPA evaluated the benefits of reducing contamination of sludge in its analysis of projected POTW sludge disposal practices at current and proposed pretreatment levels. EPA performed analyses for a representative sample set of 80 POTWs with projected sludge contamination limiting its use for land application, and extrapolated to a nationwide population of 1920 POTWs. Under the proposed pretreatment regulatory option, 184 of the facilities will shift into qualifying for land application of sewage sludge. Land application quality sludge meets ceiling pollutant concentration limits, class B pathogen requirements, and vector attraction reduction requirements. Because costs for land application tend to be lower than those for other disposal methods, this shift away from incineration, co-disposal, and surface disposal results in a cost savings.

The POTW inhibition and sludge values used in this analysis are not, in general, regulatory values. EPA based these values upon engineering and health estimates contained in guidance or guidelines published by EPA and other sources. Therefore, EPA does not intend to base its regulatory approach for proposed pretreatment discharge levels upon the finding that some pollutants interfere with POTWs by impairing their treatment effectiveness or causing them to violate applicable limits for their chosen disposal methods. However, the values used in this analysis help indicate the potential benefits for POTW operations and sludge disposal that may result from the compliance with proposed pretreatment discharge levels.

XVII. Non-Water Quality Environmental Impacts

Sections 304(b) and 306 of the Act require EPA to consider non-water quality environmental impacts (including energy requirements) associated with effluent limitations guidelines and standards. In accordance with these requirements, EPA has considered the potential impact of the proposed regulation on energy consumption, air emissions, and solid waste generation. The Agency has also considered the impacts of other ongoing EPA rulemaking efforts on MP&M Phase I sites.

This regulation was reviewed by EPA personnel responsible for non-water quality environmental programs. While it is difficult to balance environmental impacts across all media and energy use, the Agency has determined that the impacts identified below are justified by the benefits associated with compliance with the limitations and standards.

A. Air Pollution

The Agency believes that the in-process and end-of-pipe technologies included in the technology options for this regulation do not generate air emissions.

The Agency is developing National Emission Standards for Hazardous Air Pollutants (NESHAPs) under section 112 of the Clean Air Act (CAA) to address air emissions of the hazardous air pollutants (HAPs) listed in Title III of the CAA Amendments of 1990. Current and upcoming NESHAPs that may potentially affect MP&M sites are listed below.

- Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks;
- Halogenated Solvent Cleaning;
- Aerospace Manufacturing; and
- Miscellaneous Metal Parts and Products (Surface Coating).

These NESHAPs will define maximum achievable control technology (MACT). Like effluent guidelines, MACT standards are technology based. The CAA set maximum control requirements on which MACT can be based for new and existing sources.

The use of chlorinated solvents in the MP&M industry can create a source of hazardous emissions. The Agency believes this regulation will not affect the use of chlorinated solvents in the MP&M industry. This regulation neither requires nor discourages the use of aqueous cleaners in lieu of chlorinated solvents.

EPA is addressing emissions of volatile organic compounds (VOCs) from industrial waste water through a Control Techniques Guideline (CTG) for industrial waste water under section 110 of the CAA (Title I of the 1990 CAA Amendments). The MP&M industry is one of several industries that would be covered by the industrial waste water CTG. The industrial waste water CTG will provide guidance to states in recommending reasonably available control technologies (RACT) for VOC emissions from industrial waste water at sites located in areas failing to attain the National Ambient Air Quality Standard for ozone.

B. Solid Waste

Solid waste generation includes hazardous and nonhazardous waste water treatment sludge as well as waste

oil removed in waste water treatment. EPA estimates that compliance with this regulation will result in a decrease in waste water treatment sludge and an increase in waste oil generated at MP&M Phase I sites.

EPA estimates that MP&M Phase I sites generated 33 million gallons of waste water treatment sludge and 8.1 million gallons of waste oil in 1989 from the treatment of waste water. The amount of waste water treatment sludge and waste oil expected to be generated at each of the technology options is presented in Table 23.

TABLE 23.—WASTE TREATMENT SLUDGE AND OIL GENERATION BY OPTION

Option	Waste water treatment sludge generated (million gallons/year)	Waste oil generated (million gallons/year)
Baseline (1989)	33	8.1
Option 1	31	38
Option 2	21	36
Option 3	21	36

Source: U.S. Environmental Protection Agency.

As shown in Table 23, waste water treatment sludge generation decreased from baseline to Option 1 (which consists of end-of-pipe treatment without in-process flow control). The net decrease is attributed to the fact that Option 1 includes sludge dewatering, which may result in a significant decrease in sludge generation for sites that have chemical precipitation and settling technologies without sludge dewatering in place at baseline. Sludge reduction is not expected at sites which already have sludge dewatering in the baseline. An increase of sludge is expected to occur at sites which do not have treatment in place but are expected to install treatment under the MP&M options.

The sludge reduction from Option 1 to Option 2 is attributed to the water conservation and pollution prevention technologies included in Option 2. EPA expects these technologies to result in sludge reduction for the following reasons:

—In-process metals recovery for electroplating rinses, recycling of coolants, and recycling of paint curtains reduce the mass of metal pollutants in treatment system influent streams, which in turn reduces the amount of sludge generated during metals removal;

—Bath maintenance practices included in Option 2 reduce the mass of metal pollutants discharged to treatment, which in turn reduces the amount of sludge generated during metals removal; and

—Water conservation technologies included in Option 2 reduces the discharge mass of metals present in the source water to a site (e.g., calcium, sodium), which in turn reduces the amount of sludge generated during removal of these metals.

EPA does not expect Option 3 to result in additional sludge generation or reduction over Option 2.

Sludges generated at MP&M sites are often determined to be hazardous under the Resource Conservation and Recovery Act (RCRA) as either a listed or characteristic waste based on the following information:

- If the site performs electroplating operations, and this waste water is mixed with the other waste water treated on site, the resulting sludge is a listed hazardous waste F006 (40 CFR 261.31), or
- If the sludge or waste oil from waste water treatment exceeds the standards for the Toxicity Characteristic Leaching Procedure (i.e. is hazardous), or exhibits other RCRA-defined hazardous characteristics (i.e., reactive, corrosive, or flammable) it is considered a characteristic hazardous waste. (40 CFR 261.24).

Additional federal, state, and local regulations may result in MP&M sludges being classified as hazardous wastes. Determinations on whether a waste is hazardous are made by permitting authorities on a case-by-case basis.

Based on information collected during site visits and sampling episodes, the Agency believes that some of the solid waste generated would not be classified as hazardous. However, for purposes of compliance cost estimation, the Agency assumed that all solid waste generated as a result of the technology options would be hazardous.

The increase in waste oil generation from baseline to Option 1 is attributed to removal of oil from MP&M waste waters prior to discharge to POTWs or surface waters. Option 1 includes oil-water separation for oil-bearing waste waters. This technology removes oil from the waste water. The waste oil is usually either recycled on site or off site, or contract hauled for disposal as either a hazardous or nonhazardous waste. The increase of waste oil generation reflects a transfer of oil from the waste water to a more concentrated waste oil, and does not reflect an increase in overall oil generation at MP&M Phase I sites. For the purpose of compliance cost estimation, EPA assumed that all waste oil was contract hauled for disposal; however, EPA expects that some of the waste oil can be recycled either on site or off site.

The decrease in waste oil generation from Option 1 to Option 2 is attributed to the 80% reduction of coolant discharge using the recycling technology included in the Option 2 technology train. This system recovers and recycles oil-bearing machining coolants at the source, reducing the generation of spent coolant.

EPA does not expect Option 3 to result in additional waste oil generation or reduction over Option 2.

The in-process technologies of ion-exchange/and electrolytic recovery included in both Options 2 and 3 provide the pollution prevention benefits of reclaiming 1.7 million pounds of metal annually. This reuse reduces the solid waste generation at the end-of-pipe for the treatment of waste water from operations using these technologies. In addition, as stated above, the rule is expected to reduce metal contaminants in the sludges generated by POTWs. This is expected to allow POTWs to dispense of the lower metal content sludge by more environmentally beneficial methods (See Section XV).

C. Energy Requirements

EPA estimates that compliance with this regulation will result in a net increase in energy consumption at MP&M Phase I sites. Estimates of increased energy usage by option are presented in Table 24. Option 1 requires the greatest energy usage. The in-process flow control and recycling technologies included in Option 2 reduce the amount of water use. While these technologies require some energy, net energy consumption is reduced under Option 2 since the reduced hydraulic loading reduces the end-of-pipe treatment energy required. This results in an overall decrease in energy requirements from Option 1 to Option 2. The additional end-of-pipe technology included in Option 3 (ion-exchange) increases energy consumption from Option 2 to Option 3.

TABLE 24.—ENERGY REQUIREMENTS BY OPTION

Option	Energy required (million kilowatt hrs/yr)
Baseline (1989)	610
Option 1	810
Option 2	740
Option 3	760

Source: U.S. Environmental Protection Agency.

By comparison, 2,805 billion kilowatt hours of electric power were generated in the United States in 1990. Additional energy requirements for Option 1 (which has the greatest energy requirements) correspond to approximately 0.007 percent of national requirements. The increase in energy requirements due to the implementation of MP&M technologies will in turn cause an air emissions impact from the electric power generation facilities. The increase in air emissions is expected to be proportional to the increase in energy requirements or approximately 0.007 percent.

XVIII. Regulatory Implementation

A. Upset and Bypass Provisions

A "bypass" is an intentional diversion of the streams from any portion of a treatment facility. An "upset" is an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. EPA's regulations concerning bypasses and upsets are set forth at 40 CFR §§ 122.41(m) and (n).

B. Variances and Modifications

The CWA requires application of effluent limitations established pursuant to section 301 or pretreatment standards of section 307 to all direct and indirect dischargers. However, the statute provides for the modification of these national requirements in a limited number of circumstances. Moreover, the Agency has established administrative mechanisms to provide an opportunity for relief from the application of the national effluent limitations guidelines and pretreatment standards for categories of existing sources for toxic, conventional, and nonconventional pollutants.

1. *Fundamentally Different Factor Variances.* EPA will develop effluent limitations or standards different from the otherwise applicable requirements if an individual discharging facility is fundamentally different with respect to factors considered in establishing the limitation of standards applicable to the individual facility. Such a modification is known as a "fundamentally different factors" (FDF) variance.

Early on, EPA, by regulation provided for the FDF modifications from the BPT effluent limitations, BAT limitations for toxic and non-conventional pollutants and BCT limitations for conventional pollutant for direct dischargers. For indirect dischargers, EPA provided for modifications from pretreatment standards. FDF variances for toxic pollutants were challenged judicially and ultimately sustained by the Supreme Court. *Chemical Manufacturers Assn* v. *NRDC*, 479 U.S. 116 (1985).

Subsequently, in the Water Quality Act of 1987, Congress added new section 301(n) of the Act explicitly to authorize modifications of the otherwise applicable BAT effluent limitations or categorical pretreatment standards for existing sources if a facility is fundamentally different with respect to the factors specified in section 304 (other than costs) from those considered by EPA in establishing the effluent limitations or pretreatment standard. Section 301(n) also defined the conditions under which EPA may establish alternative requirements. Under Section 301(n), an application for approval of FDF variance must be based solely on 1) information submitted during rulemaking raising the factors that are fundamentally different or 2) information the applicant did not have an opportunity to submit. The alternate limitation or standard must be no less stringent than justified by the difference and must not result in markedly more adverse non-water quality environmental impacts than the national limitation or standard.

EPA regulations at 40 CFR part 125 subpart D, authorizing the Regional Administrators to establish alternative limitations and standards, further detail the substantive criteria used to evaluate FDF variance requests for direct dischargers. Thus, 40 CFR § 125.31(d) identifies six factors (e.g., volume of process waste water, age and size of a discharger's facility) that may be considered in determining if a facility is fundamentally different. The Agency must determine whether, on the basis of one or more of these factors, the facility in question is fundamentally different from the facilities and factors considered by the EPA in developing the nationally applicable effluent guidelines. The regulation also lists four other factors (e.g., infeasibility of installation within the time allowed or a discharger's ability to pay) that may not provide a basis for an FDF variance. In addition, under 40 CFR 125.31(b) (3), a request for limitations less stringent than the national limitation may be approved only if compliance with the national limitations would result in either (a) a removal cost wholly out of proportion to the removal cost considered during development of the national limitations, or (b) a non-water quality environmental impact (including energy requirements) fundamentally more adverse than the impact considered during development of the national limits. EPA regulations provide for an FDF variance for indirect dischargers at 40 CFR 403.13. The conditions for approval of a request to modify applicable pretreatment standards and factors considered are the same as those for direct dischargers.

The legislative history of Section 301(n) underscores the necessity for the FDF variance applicant to establish eligibility for the variance. EPA's regulations at 40 CFR 125.32(b) (1) are explicit in imposing this burden upon the applicant. The applicant must show that the factors relating to the discharge controlled by the applicant's permit which are claimed to be fundamentally different are, in fact, fundamentally different from those factors considered by the EPA in establishing the applicable guidelines. The pretreatment regulation incorporate a similar requirement at 40 CFR 403.13(h) (9).

2. *Economic Variances.* Section 301(c) of the CWA authorizes a variance from the otherwise applicable BAT effluent guidelines for nonconventional pollutants due to economic factors. The request for a variance from effluent limitations developed from BAT guidelines must normally be filed by the discharger during the public notice period for the draft permit. Other filing time periods may apply, as specified in 40 CFR 122.21(1) (2). Specific guidance for this type of variance is available from EPA's Office of Waste Water Management.

3. *Water Quality Variances.* Section 301(g) of the CWA authorizes a variance from BAT effluent guidelines for certain nonconventional pollutants due to localized environment factors. These pollutants include ammonia, chlorine, color, iron, and total phenols.

4. *Permit Modifications.* Even after EPA (or an authorized State) has issued a final permit to a direct discharger, the permit may still be modified under certain conditions. (When a permit modification is under consideration, however, all other permit conditions remain in effect.) A permit modification may be triggered in several circumstances. These could include a regulatory inspection or information submitted by the permittee that reveals the need for modification. Any interested person may request that a permit modification be made. There are two classifications of modifications; major and minor. From a procedural standpoint, they differ primarily with respect to the public notice requirements. Major modifications require public notice while minor modifications do not. Virtually any modification that results in less stringent conditions is treated as a major modifications, with provisions for public notice and comment. Conditions that would necessitate a major modification of a permit are described

in 40 CFR 122.62. Minor modifications are generally non-substantive changes. The conditions for minor modification are described in 40 CFR 122.63.

C. Relationship to NPDES Permits and Monitoring Requirements

The BPT, BAT and NSPS limitations in today's proposed rule would be applied to individual MP&M Phase I plants through NPDES permits issued by EPA or approved State agencies under section 402 of the Act. The preceding section of this preamble discussed the binding effect of this regulation on NPDES permits, except when variances and modifications are expressly authorized. This section adds more detail on the relationship between this regulation and NPDES permits.

One issue is how this regulation will affect the powers of NPDES permit-issuing authorities. EPA has developed the limitations and standards in the proposed rule to cover the typical facility for this point source category. This regulation does not restrict the power of any permitting authority to act in any manner consistent with law or these or any other EPA regulations, guideline, or policy.

Even if a facility is totally without waste water discharge, an NPDES permit may be requested by the facility to provide upset provisions which would not apply to discharge in the absence of a permit.

Another concern is the operation of EPA's NPDES enforcement program, which was an important consideration in developing today's proposal. The Agency emphasizes that although the Clean Water Act is a strict liability statute, EPA can initiate enforcement proceedings at its discretion. EPA has exercised and intends to exercise that discretion in a manner that recognizes and promotes good faith compliance.

D. Best Management Practices

Section 304(e) of the Act authorizes the Administrator to prescribe "best management practices" (BMPs). EPA may develop BMPs that apply to all industrial sites or to a designated industrial category and may offer guidance to permit authorities in establishing management practices required by unique circumstances at a given plant. Dikes, curbs, and other control measures are being used at some MP&M sites to contain leaks and spills as part of good "housekeeping" practices. However, on a facility-by-facility basis a permit writer may choose to incorporate BMPs into the permit.

XIX. Solicitation of Data and Comments

EPA invites and encourages public participation in this rulemaking. The Agency asks that comments address any perceived deficiencies in the record of this proposal and that suggested revisions or corrections be supported by data where possible.

EPA particularly requests comments and information on the following issues:

1. Oil & Grease as Indicator for Organics. EPA believes that today's proposal of an oil and grease pretreatment standard as a indicator for specific organic pollutants will ensure that there is adequate treatment and removal of the organic pollutants found in MP&M waste water. The organic constituents originate in waste waters such as metal working fluids, corrosion prevention coating solutions, paints and solutions developed to clean the oils from the metal surface. EPA believes that treatment and removal of oil and grease will effectively remove the organics. Nonetheless, EPA's data are incomplete for all organics, and EPA can not predict what products may serve as substitutes for solvents that EPA is in the process of regulating under EPA's ozone depletion policy.

Further, in recognition of the present state of changeover occurring in the industry, it may be premature to set limits based on today's practices. Therefore, EPA at promulgation may defer control of organic waste water pollutants until the MP&M Phase II rule is proposed. EPA requests comments on the establishment of oil and grease as an indicator parameter for specific organics and on the current practices and where industry is moving with respect to solvent cleaners and their substitution in industrial processes. EPA is interested in available information about current substitutions and their effectiveness.

2. Flow Cut-offs and Administrative Burden. EPA divided the population of existing indirect dischargers into two flow categories for the purpose of data analysis and implementation. The existing indirect discharger flow cut-off of 1,000,000 gallons per year was based on a careful review of the data. For a site operating 250 days per year, 1,000,000 gallons per year translates into an average discharge flow rate of 4,000 gallons per day.

This approach is in response to concerns raised by Control Authorities and Regional and state Pretreatment Coordinators regarding the burden that would be imposed on them, if they were required to establish mass-based discharge permits for all MP&M Phase I sites within a three-year period.

EPA requests comments on the proposed indirect discharger flow cut-off which was used to define the two flow categories established for PSES. EPA requests comments on the possibility of a different cut-off at 25,000 gallons per day to define large flow existing indirect discharger sites (25,000 gallons per day equals approximately 6,250,000 gallons per year). The 25,000 gallons per day figure is currently used by the Agency as one definition for a significant industrial user (SIU). EPA requests comments on revising the flow cut-off and requiring mass-based permits for existing sites indirectly discharging more than 25,000 gallons per day. Existing indirect sites discharging less than 25,000 gallons per day could be exempt or covered by concentration based limits. Tables 25 and 26 compare the distribution of total annual flow and pollutant loadings discharged from MP&M Phase I indirect discharging sites using the 25,000 gallons per day (6,250,000 gallons per year) cut off to the distribution using the 1,000,000 gallons per year cut off.

TABLE 25.—ESTIMATED DISTRIBUTION OF INDIRECTLY DISCHARGING SITES BY BASELINE FLOW AND LOAD[a]

Flow Range (gal/yr/site)	Estimated No. of sites	Estimated total flowin range (millions of gal/year)	Estimated total load in range (millions of lbs/year)	Estimated percent of total sites	Estimated percent of total flow	Estimated percent of total load
0-6,250,000	8,065	4,600	550	93	23	38
Greater than 6,250,000	641	15,000	900	7	77	62
Totals	8,706	19,000	1,400	100	100	100

Source: U.S. Environmental Protection Agency.

[a] An estimated 364 MP&M sites discharged both directly and indirectly in the baseline. In order to evaluate indirect and direct discharges separately, the expected post compliance discharge status was used to assign these sites to either direct or indirect for the purpose of this table. The assignment was based on technical factors which are included in the public record.

[a] An estimated 364 MP&M sites discharged both directly and indirectly in the baseline. In order to evaluate indirect and direct discharges separately, the expected post compliance discharge status was used to assign these sites to either direct or indirect for the purpose of this table. The assignment was based on technical factors which are included in the public record.

TABLE 26.—ESTIMATED DISTRIBUTION OF INDIRECTLY DISCHARGING SITES BY BASELINE FLOW AND LOAD[a]

Flow range (gal/yr/site)	Estimated No. of sites	Estimated total flow in range (millions of gal/year)	Estimated total load in range (millions of lbs/year)	Estimated percent of total sites	Estimated percent of total flow	Estimated percent of total load
Less than 1,000,000	6,708	744	138	78	4	10
Greater than 1,000,000	1,998	18,000	1,300	22	96	90
Totals	8,706	19,000	1,400	100	100	100

Source: U.S. Environmental Protection Agency.

EPA also requests comments from Control Authorities and Pretreatment Coordinators regarding the burden alleviated by this proposal. Specifically, how many labor hours are estimated to be saved by the proposed exemption, and how much money would be saved by municipalities.

EPA understands that accurate flow measurement can be difficult and costly, especially at sites with widely varying flow rates and at sites with very low flow rates. Therefore, EPA also solicits comments on the accuracy and cost of available flow monitoring devices.

EPA also solicits comments, particularly from Control Authorities or Pretreatment Coordinators, on whether the proposed approach would be harmful to the environment. Specifically, is there evidence that some of the sites that would be exempt are currently causing problems at POTWs? Secondly, would mass-based requirements alleviate the problem?

3. Exemption of Low Discharge Volume Indirect Sources. EPA is soliciting comments on proposed exemption of existing low discharge volume indirect sources from the MP&M Phase I categorical pretreatment standards.

EPA considered a number of different flow cutoffs that could be used for the proposed exemption The number of sites which discharge less than 1,000,000 gallons per year and their contribution to the waste water discharge flow rate from the MP&M category (only 4%of the total) are provided in Table 26. Instead of the 1,000,000 gallons per year flow cutoff, other flow cutoffs could be used. For a site operating 250 days per year, 1,000,000 gallons per year would translate into 4,000 gallons per day.

As an alternative to exempting existing low discharge volume indirect discharges, EPA could reduce the 40 CFR part 403 requirements on frequency of monitoring and reporting by industrial users and frequency of inspections and testing by the Control Authorities for these sites. If the requirements of 40 CFR part 403 were reduced instead of exempting low volume dischargers, this change could be tied to certain objective criteria (e.g. demonstrated compliance over time). EPA solicits comments on whether monitoring and inspections should be required more frequently in situations of continued non-compliance, planned expansion, etc.

EPA solicits comments and data on the environmental impact the proposed exemption would cause. EPA also solicits comments and data on the burden imposed on Control Authorities by the possible inclusion of these low discharge volume sites under this rule.

Finally, EPA solicits comments on the proposed exemption of low discharge volume indirect dischargers in relation to possible changes to the Clean Water Act that may reflect on the Domestic Sewage Exclusion provided for under RCRA section 1007 [27] (40 CFR 261.4 (a)(1)). In the bill before the last Congress to amend the Clean Water Act, the Agency took the position that the Domestic Sewage Exclusion provisions should be limited and apply only under the following conditions:

1. the source and wastestream are subject to or are scheduled to be subject to a categorical pretreatment standard;

2. the pollutant and source are subject to a technically based local limit developed by a POTW, or a technology based local limit developed by EPA or a State;

3. the waste is generated in de minimis amounts by a household or similar non-commercial entity; or

4. the source and wastestream are covered by a Toxicity Reduction Action Plan (TRAP), as defined by the statute.

Considering these conditions could be included in future amendments to the Clean Water Act, EPA solicits comments on the impact these amendments could have on proposed exemption of low discharge volume indirect dischargers.

4. Alternative to Mass-Based Compliance. EPA requests comments on an alternate compliance approach for large volume existing indirect dischargers under PSES. EPA is considering an alternate compliance approach for the existing indirect discharging large volume sites (sites defined in this proposal as having an annual discharge volume greater than 1,000,000 gallons). For a site operating 250 days per year, 1,000,000 gallons per year translates into an average discharge flow rate of 4,000 gallons per day. These sites would have to comply with a mass-based permit or choose the alternative of establishing compliance with the pretreatment standards by certifying in writing to the Control Authority that they have installed in-process technologies equivalent to those costed as the basis of the BPT Option 2 technology. The in-process control technologies of Option 2 include:

- Flow reduction using flow restrictors, conductivity meters, and/or timed rinses for all flowing rinses, plus countercurrent cascade rinsing for all flowing rinses;
- Flow reduction using bath maintenance for all other process water-discharging operations;
- Centrifugation and 100 percent recycling of painting water curtains;
- Centrifugation and pasteurization to extend the life of water-soluble machining coolants reducing discharge volume by 80%; and
- In-process metals recovery using ion exchange followed by electrolytic recovery of cation regenerants for selected electroplating rinses. This includes first-stage drag-out rinsing with electrolytic metal recovery.

EPA solicits comments on the list of in-process technologies above: should

additional in-process technologies be added, should any of the in-process technologies listed above not be included, would problems arise with how these technologies are defined, etc. If the alternative compliance approach is included in the final rule, the list of in-process technologies may differ somewhat from the list above based on public comment. EPA may include this approach of an alternate PSES requirement in the final rule and thus requests comments on this approach. EPA's purpose for offering this as an alternate compliance approach is to provide relief to Control Authorities from the burden associated with the development of mass-based permits. EPA is not proposing this alternative compliance approach, since a decision as to whether or not to offer this alternative will rely on comments and additional data as to the utility of such an approach.

Specifically, EPA encourages MP&M sites to offer comments regarding the technical feasibility of the in-process control measures that would be required to be eligible for the alternate compliance approach, as well as an estimate of the burden (in labor hours) associated with submitting a certification.

EPA also solicits comments from Control Authorities and Pretreatment Coordinators on the benefits and savings in time and manpower expected to be achieved whenever a site takes advantage of this alternate compliance approach. Comments should account for any burden associated with maintaining certifications and conducting inspections.

EPA has considered another option of requiring all indirect dischargers to comply with concentration-based permits and mandatory pollution prevention practices. Some Control Authorities have indicated a preference for this type of approach for ease of enforcement and implementation, therefore, EPA seeks comments on this option as well.

5. Cyanide Monitoring Waiver. Although cyanide is essential in many electroplating operations, the Agency is aware that some metal products and machinery plants do not use cyanide. In some existing regulations, this issue has been addressed by allowing plants to only monitor annually for cyanide if the annual waste water sample is below the regulatory long term average and if the plant owner or operator certifies in writing to the POTW authority or permit issuing authority that cyanide is not and will not be used on site. For example, see 40 CFR 467.03. For MP&M, the regulatory long term average for cyanide is 0.02 mg/l.

The Agency is soliciting comments on the possibility of including such a provision to allow plants to not monitor for cyanide. The comments should address the utility of this provision, the amount of unnecessary monitoring avoided, the economic impacts, the environmental impacts, and any other information relevant to the decision. EPA also solicits comments as to what form the certification should take and at what frequency it should be required.

6. Other Pollutant Monitoring Waivers. Similar to the alternate approach for cyanide discussed above, the Agency is also considering allowing sites to opt out from monitoring specific metals if the site can certify that the metal is not used in any way at their site. This may be restricted to metals such as cadmium, chromium and nickel, which are frequently plated onto a base metal or used in the surface treatment of metals. EPA solicits comments on this approach, specifically whether it should be limited to certain metals such as those mentioned, or whether it could apply to all regulated metal pollutants. EPA also solicits comments as to what form the certification should take and at what frequency it should be required.

7. Additional Unit Operations. EPA has identified 47 unit operations which are typically performed at MP&M sites. EPA requests comments on additional operations which may be performed at MP&M sites and which have not been listed in today's notice. Please specify whether these operations have a waste water stream associated with them, what is the estimated volume of the waste water, what is the frequency of the operation, and whether it is similar to any of the 47 operations already identified.

8. Assignment of Industrial Sectors. EPA has discussed the assignment of industrial sector to MP&M plants in today's notice and has provided several examples of how to assign sites to industrial sectors based on the products produced. EPA is soliciting comment from any industrial site which has the potential to be covered by MP&M but is uncertain as to their appropriate industrial sector and phase (MP&M Phase I or MP&M Phase II) classification. Sites are requested to supply information about what operations they are performing, what products they are manufacturing, rebuilding or maintaining, and to what industries they are selling their products or providing their services.

9. Possible Addition of Lead as Regulated Parameter. Lead is a regulated parameter under several existing metals regulations (e.g. metal finishing 40 CFR part 433), but lead was rarely found at treatable concentrations in the raw waste water, prior to treatment, at the sites sampled for MP&M Phase I. As a result, EPA is not proposing a lead limitation. EPA is considering collecting additional data or transferring data from the metal finishing category in order to regulate lead in the final MP&M Phase I regulation. If lead were regulated based on data transferred from the metal finishing rule, then the limits would be similar to those listed in metal finishing. The metal finishing daily maximum limit for lead is 0.69 milligrams per liter, and the monthly average limit for lead is 0.43 milligrams per liter. If lead were regulated based on the collection of additional data, then the MP&M Phase I lead limits could be lower than the lead limits in the metal finishing regulation. EPA is soliciting comments and data on the possibility of adding lead to the list of regulated parameters for MP&M Phase I. EPA is soliciting comments on the use of lead in the MP&M Phase I category (e.g. in what operations is lead used, how much is used, do these operations discharge process waste water, how prevalent are these operations, etc.).

10. Possible Addition of Other Regulated Parameters. The list of parameters which EPA proposes to regulate under MP&M Phase I are shown in Table 2 of this document. EPA is soliciting comments and data on additional parameters that should be considered for regulation. EPA is proposing a total cyanide limit for MP&M Phase I. In other rules such as metal finishing (40 CFR part 433), EPA has set a total cyanide limit and included an alternative amenable cyanide limit. EPA is soliciting comments on whether or not an amenable cyanide limit should be offered as an alternative to the proposed total cyanide limit.

11. Possible Deletion of Regulated Parameters. The list of parameters which EPA proposes to regulate under MP&M Phase I are shown in Table 2 of this document. EPA is soliciting comments and data on parameters that should be deleted from consideration for regulation.

12. Additional Technology Data. In this document, the Agency proposes a new source standard equivalent to BAT, in part because, given the available data, the Agency concludes there is no add-on technology that is cost-effective for the entire Metal Products and Machinery category suitable for a more stringent new source standard. However, the Agency solicits comments on other technologies and pollution prevention techniques that may be appropriate and cost-effective for new sources in subcategories of the Metal Products and Machinery category.

For each technology or pollution prevention technique, the Agency is particularly interested in receiving data on: (1) Technology performance, including pollutant reduction/elimination and flow reduction/elimination; (2) economics, including initial capital investment, operation and maintenance costs, payback period, waste disposal savings, material input savings, and other savings; (3) overall energy use; (4) sludge generation, including metals recoverability and the ability of sludge to be recycled on or off-site; (5) applicability of a given technique across the whole MP&M Phase I population or across a particular MP&M sector, SIC code, or other industrial sector breakdown; and (6) air quality impacts and emissions. In addition, as some technologies and pollution prevention techniques eliminate or reduce discharges to water, but not to other media, the Agency solicits comments on the environmental impacts and regulatory costs associated with each technology's impact on other environmental media.

Specifically, the Agency solicits information and comments concerning the pollution prevention performance, cross-media environmental impacts, and economic effects associated with the following technologies and pollution prevention techniques, even if the technology can only be applied to a subcategory of the MP&M category:

(1) Ion Exchange;
(2) Electrodialysis / Electrowinning;
(3) Reverse Osmosis;
(4) Evaporation (low pressure, conventional);
(5) Diffusion dialysis;
(6) Conductive polymer films;
(7) Alternatives to electroplating (e.g. powder coating, aqueous soaks, ultrasonics);
(8) Flow-through barrel plating; and
(9) Micro-filtration.

The Agency particularly welcomes comments on technology performance and cost from technology vendors and developers, in addition to comments from industrial users.

13. Technical Assistance. The Agency is soliciting comments on the degree to which technical assistance would help MP&M facilities identify and choose compliance strategies which include pollution prevention technologies and practices that are most cost-effective and protective of the environment.

If commenters believe technical assistance would be valuable, EPA invites comments and data to address the following questions. What would be the most productive source (e.g. EPA, state, or local environmental agencies; departments of commerce or development; universities; non-profit organizations; private trade associations) of technical assistance? What would be the most productive form (e.g. printed material, electronic bulletin boards, telephone hotlines, on-site visits) of technical assistance? Commenters who currently use the technical assistance services provided in most states are requested to respond as to the utility of the services which they use. Would commenters be willing to pay a reasonable fee for such services?

14. Consolidated Reporting and Permitting. EPA understands that MP&M facilities often must comply with several different reporting and permitting requirements for different media (i.e. air, water, and solid waste). These separate requirements could inhibit the development of comprehensive site-wide environmental compliance strategies. For example, some pollution prevention strategies which reduce overall environmental impact can be complicated by having to comply with separate media requirements. The Agency is soliciting comments on the degree to which separate reporting and permitting programs for different media hinder comprehensive site-wide environmental compliance strategies or pollution prevention approaches at MP&M facilities. EPA is soliciting data related to specific examples.

15. Impact of Procurement Practices. EPA is soliciting comments on the degree to which certain government and private procurement practices (product specifications) inhibit MP&M facilities from using pollution prevention technologies and practices, especially in cases where such technologies and practices could yield a cost effective, quality product with less risk to the environment. EPA is soliciting data related to specific examples.

16. Pollution Prevention Planning. Several states require MP&M facilities to develop various types of pollution prevention plans. EPA is soliciting comments from MP&M facilities which are currently required to develop pollution prevention plans as to whether or not the planning requirements were productive in identifying cost-effective pollution prevention practices, whether the permit process inhibited the use of such pollution prevention practices developed in the plans, and how the permit process could be changed to encourage the use of such pollution prevention practices.

17. Financing Pollution Prevention. EPA is soliciting comments as to the degree to which MP&M facilities have encountered difficulty in acquiring capital for pollution prevention projects. EPA is soliciting data related to specific examples.

18. Contiguous Site Definition. EPA seeks comments on how to define which parcels of property within the same fence line on a mixed use property are contiguous. For example, should properties be divided into a system of grids with all discharges from sites within a single sector considered contiguous? Should discharges from a single building be treated as a plant or portion of a plant for purposes of determining the volume of discharge subject to regulation? Another option would be for permit writers to make the determination case-by-case based on some degree of proximity between industrial operations and a practical application of the requirements for MP&M Phase I industries (with due consideration to the amount of MP&M Phase I wastestream and its concentration in the overall wastestream discharged to the treatment works), the degree to which functions are related, and such other factors as EPA considers relevant to the determination.

19. Flow Definition. In this proposal, EPA has defined existing small volume indirect dischargers as existing indirect sites which discharge less than one million gallons per year. EPA is soliciting comments on whether the flow cut off for this exemption should be provided as a daily flow rate. For example, for a site operating 250 days per year, one million gallons discharge per year is equivalent to an average discharge of 4,000 gallons per day.

20. Municipalities. EPA has not examined the potential cost of compliance or environmental benefit from regulating municipal facilities which manufacture, maintains or rebuilds finished metal parts, products or machines within one of the seven industrial sectors in MP&M Phase I. EPA believes most municipal MP&M facilities would be existing indirect dischargers discharging less than one million gallons per year and would therefore be exempt from this regulation. However, EPA is seeking comment from municipalities which would qualify as MP&M Phase I sites and which would not qualify for the low flow exemption. Depending on the comments and data received, EPA could perform additional analyses to specifically cover municipal MP&M facilities, or EPA could specifically

exempt municipal MP&M facilities, especially if regulating such facilities is determined to be an unfunded mandate.

21. Subcategorization. In today's notice, the Agency proposes to treat the Metal Products and Machinery industry as one category with a uniform BAT and new source standard. A single standard provides simplicity and clarity in compliance, permitting, and enforcement and, thus, may reduce compliance and implementation costs.

However, the Agency recognizes that subcategorization may provide additional environmental benefits. Certain treatment technologies, for example, may reduce effluent loadings but may only be economically feasible for a subset of the regulated community. Since, according to available data, such technologies are not applicable to the entire industry category, the Agency has not selected such a technology for either the BAT or new source standards. The Agency solicits comments on how to balance the potential regulatory impacts of subcategorization against the potential environmental benefits of a more stringent BAT or new source standard for a subset of the Metal Products and Machinery category.

22. Innovative Approaches to Reduce Regulatory Burden. The Agency solicits comments on innovative regulatory approaches that offer incentives for users to employ more effective pollution prevention or treatment technologies by reducing their regulatory burden. For example, a more stringent new source standard for a subcategory of the industry could include reduced monitoring or reporting requirements that could offset potentially higher compliance costs. In addition, the Agency could include a program that would offer similar regulatory flexibility to existing users who opt into permit conditions equal to a more stringent new sources standard. Similarly, a voluntary program that allows users to opt to meet more stringent technology standards in return for reduced monitoring and other requirements could be offered to both new and existing users even in the absence of either a more stringent new source standard or BAT standard. The Agency welcomes comments on these and other innovative approaches that could simultaneously improve water quality and ease regulatory burdens.

23. Data Collection. With today's notice, the Agency wishes to communicate to the regulated community its strong interest in providing incentives for incorporating the best technologies into the final rule using approaches that reduce regulatory burdens. The Agency hopes that its consideration of these possible innovative approaches reduces any potential disincentives for collecting and submitting technology cost and performance data. While the Agency retains its authority under section 308(q) of the Act, the Agency hopes that its consideration of innovative and voluntary approaches will maximize voluntary data submissions during the comment period following today's proposal.

24. Benefits Methodology. EPA acknowledges the unavoidable uncertainty associated with estimating benefits. EPA believes that it has used the best methodology available for estimating benefits. EPA is soliciting comments on the reliability and accuracy of the methods used and suggestions on alternative methods which could be used for the final rule.

25. Unfunded Mandates. EPA believes that the proposed regulation represents the most cost effective approach. EPA acknowledges that the proposed regulation may not be the least burdensome, but EPA believes that the additional costs are justified due to the additional pollutant removals achieved. With respect to the Unfunded Mandates Act, EPA is soliciting comments and data on cost effective alternatives which are less burdensome. In addition, EPA solicits comment on how to interpret "most cost effective" in the context of the effluent guideline program.

XX. Guidelines for Comment Submission of Analytical Data

EPA requests that commentors to today's proposed rule submit analytical, flow, and production data to supplement data collected by the Agency during the regulatory development process. To ensure that commentor data may be effectively evaluated by the Agency, EPA has developed the following guidelines for submission of data.

A. Types of Data Requested

1. EPA requests paired influent and effluent treatment data for each of the technologies identified in the technology options, as well as any additional technologies applicable to the treatment of MP&M waste waters. This includes end-of-pipe treatment technologies and in process treatment, recycling, water reuse, or metal recovery technologies. Submission of effluent data only is not sufficient for full analysis; the corresponding influent data must be provided.

For submissions of paired influent and effluent treatment data, a minimum of four days of data are required for EPA to assess variability. Submissions of paired influent and effluent treatment data should include: a process diagram of the treatment system; treatment chemical addition rates; sampling point locations; sample collection dates; influent and effluent flow rates for each treatment unit during the sampling period; sludge or waste oil generation rates; a brief discussion of the treatment technology sampled; and a list of unit operations contributing to the sampled wastestream. EPA requests data for systems that are treating only process waste water. Systems treating non-process waste water (e.g., sanitary waste water or non-contact cooling water) will not be evaluated by EPA. In addition to data for the analytes discussed below, data for total suspended solids (TSS) and pH must be included with submissions of treatment data. If available, information on capital cost, annual (operation and maintenance) cost, and treatment capacity should be included for each treatment unit within the system.

2. EPA also requests flow, production, and analytical data from MP&M unit operations, rinses, and wet air pollution control devices. Submissions of analytical data for MP&M unit operations and rinses should include a process diagram of the unit operation; a description of the purpose and performance of the operation; production data associated with the sampling period; flow rates associated with the sampling period (i.e., continuous discharge flow rates, intermittent discharge rates and frequencies, or volume of bath and time of last discharge for stagnant baths); sample type (grab or composite); temperature and pH of each sample; sample collection dates; known process bath constituents; sampling point locations; and, the volume, discharge frequency, and destination of all process waste water, waste oil, or sludge generated by the unit operation.

Associated production data should be provided in the following units: mass of metal removed (for abrasive jet machining, electrical discharge machining, grinding, machining, and plasma arc machining operations), in standard cubic feet of air flow (for wet air pollution control operations), or surface area of parts processed (for all other unit operations). Flow, production, and analytical data should all correspond to the same period of time. When applicable, a description of any pollution prevention technologies used at the site for the unit operations, including cost savings and pollution reduction estimates should be provided.

B. Analytes Requested

EPA considered 342 metal, organic, conventional, and other nonconventional pollutant parameters for regulation under the MP&M Category. Based on analytical data collected by the Agency, 69 pollutant parameters were identified as MP&M "pollutants of concern". Complete lists of pollutant parameters considered for regulation and pollutants of concern (as well as the criteria used to identify each of these pollutant parameters) are available in the Technical Development Document for this proposal. The Agency requests analytical data for any of the 69 pollutants of concern and for any other pollutant parameters which commentors believe are of concern in the MP&M industry. TSS and pH data are requested for all samples. For submissions of data including organic pollutants, data for oil and grease (O&G) is requested. Table 27 presents the EPA analytical methods for these pollutants. Commentors should use these methods or equivalent methods for analyses, and should document the method used for all data submissions.

C. Quality Assurance/Quality Control (QA/QC) Requirements

Today's proposed regulations were based on analytical data collected by EPA using rigorous QA/QC checks. These QA/QC checks include procedures specified in each of the analytical methods, as well as procedures used for the MP&M sampling program in accordance with EPA sampling and analysis protocols. The Agency requests that submissions of analytical data include documentation that QA/QC procedures similar to those listed below were observed.

EPA followed the QA/QC procedures specified in the analytical methods listed in Table 27. These QA/QC procedures include sample preservation and the use of method blanks, matrix spikes, matrix spike duplicates, laboratory duplicate samples, and Q standard checks (e.g., continuing calibration blanks). EPA requests that sites provide detection limits for all non-detected pollutants. EPA also requests that composite samples be collected for all flowing waste water streams (except for analyses requiring grab samples, such as oil and grease), sites collect and analyze 10% field duplicate samples to assess sampling variability, and sites provide data for equipment blanks for volatile organic pollutants when automatic compositors are used to collect samples.

TABLE 27.—EPA ANALYTICAL METHODS FOR USE WITH MP&M

Parameter	EPA method	Sample type
Metals	1620	Composite/Grab.
Volatile Organics	1624	Composite/Grab.
Semivolatile Organics	1625	Grab.
pH	150.1	Composite/Grab.
Total Dissolved Solids (TDS)	160.1	Composite/Grab.
Total Suspended Solids (TSS)	160.2	Composite/Grab.
Chloride, Fluoride, and Sulfate	300.0 or 325.2, 340.2, and 375.4	Composite/Grab.
Acidity	305.1	Composite/Grab.
Alkalinity	310.2	Composite/Grab.
Cyanide, Total	335.2	Grab.
Nitrogen, Ammonia	350.1	Composite/Grab.
Nitrogen, Total Kjeldahl	351.2	Composite/Grab.
Phosphorus, Total	365.4	Composite/Grab.
Chemical Oxygen Demand	410.1 or 410.2	Composite/Grab.
Oil and Grease, Total Recoverable	413.2	Grab.
Phenolics, Total Recoverable	420.2	Composite/Grab.

XXI. Unfunded Mandates Reform Act

Section 201 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, requires each agency, unless prohibited by law, to assess the effects of federal regulations on State, local, and tribal governments and the private sector. Under Section 202 of the Unfunded Mandates Act, EPA must prepare an unfunded mandate statement to accompany any proposed rule where the estimated costs to State, local, or tribal governments, or to the private sector, will be $100 million or more in any one year. Under Section 205, EPA must select the most cost-effective or least burdensome alternative that achieves the requirements, or explain why this was not possible. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly impacted by the rule.

The unfunded mandate statement under Section 202 must include: (1) a citation of the statutory authority under which the rule is proposed, (2) an assessment of the costs and benefits of the rule and the federal resources available to defray the costs, (3) where feasible, estimates of future compliance costs and disproportionate impacts upon particular geographic or social segments of the nation or industry, (4) where relevant, an estimate of the effect on the national economy, and (5) a description of EPA's prior consultation with State, local, and tribal officials.

Since this proposed rule is estimated to impose costs to the private sector in excess of $100 million, EPA has prepared the following statement with respect to budgetary impacts. EPA does not expect that this rule will impose significant costs on State, local, or tribal governments; although EPA has taken several steps to reduce the administrative burden of this proposed rule.

1. Statutory Authority

The statutory authority for this rulemaking is identified and described in Sections I and II of the preamble. As required by Section 205 of the Unfunded Mandates Act and as discussed in Section IX of the preamble, EPA has chosen to propose a rule that is the most cost-effective alternative for regulation of these sources that meets the statutory requirements under the Clean Water Act. EPA acknowledges that the proposed regulation may not be the least burdensome, but EPA believes that the additional costs are justified due to the additional pollutant removals achieved.

2. Costs and Benefits

The assessment of costs and benefits for this rule, including the assessment of costs and benefits to State, local, and tribal governments, is discussed in the Regulatory Impact Assessment for this proposal and in Section XV of the preamble.

3. Future and Disproportionate Costs

The Unfunded Mandates Act requires that EPA estimate, where accurate estimation is reasonably feasible, future compliance costs imposed by the rule and any disproportionate budgetary effects. EPA's estimates of the future compliance costs of this rule are discussed in the Regulatory Impact Assessment for this proposal and in Section XIV of the preamble.

EPA does not expect that there will be any disproportionate budgetary effects of the proposed rule on any particular areas of the country, particular governments or types of communities. This is because the affected population of MP&M facilities is distributed throughout the country in settings from urban to rural. The estimated annual impact of this proposed rule on the affected industry is $161 million ($1994) as discussed in Section XIV of this preamble. A discussion of community impacts is also included in Section XIV. The annual administrative burden on State and local governments is estimated to be $1.9 to 3.2 million ($1994) as discussed in Section XIV.C. of the preamble and in the Regulatory Impact Assessment. The administrative burden was estimated for State and local governments combined due to the way in which direct and indirect discharge permits are administered. The impact on tribal governments is expected to be zero.

4. Effects on National Economy

The Unfunded Mandates Act requires that the EPA estimate the effect of this rule on the national economy where (1) accurate estimates are feasible and (2) the rule will have a "material" effect on the economy. EPA's estimates of the impact of this proposal on the national economy are described in Section XIV of this preamble. The Federal resources which are generally available for financial assistance to States are included in Section 106 of the Clean Water Act.

5. Consultation With Government Officials

The Unfunded Mandates Act requires that EPA describe the extent of the Agency's prior consultation with affected State, local, and tribal officials, summarize the officials' comments or concerns, and summarize EPA's response to those comments or concerns. In addition, Section 203 of the Act requires that EPA develop a plan for informing and advising small governments that may be significantly or uniquely impacted by a proposal.

In the development of this rule, EPA has conducted over a dozen technical presentations to explain the content of the MP&M proposal. Included among these presentations was a public meeting held on February 23, 1994. Also included among these presentations were several meetings with State and local governments. In summary, the comments and concerns raised by government officials had to do with the potential administrative burden of this proposed rule. EPA has addressed these concerns by evaluating the characteristics of the industry in order to determine if the potential administrative burden could be reduced without significantly changing the environmental benefits of the proposed rule. After carefully evaluating the number and size of MP&M facilities, the estimated cost of compliance and the estimated pollutant loadings, EPA decided to exempt existing indirect dischargers which discharge less than one million gallons per year. This addresses the concerns of State and local governments by significantly reducing the administrative burden while continuing to cover the majority of the pollutant loadings from this industry. Small governments are not significantly impacted by this rule as discussed in Sections XIV and XV if this preamble, and therefore no plan is required.

Appendix A To The Preamble—Abbreviation, Acronyms, and Other Terms Used in This Notice

Act—The Clean Water Act
Agency—U.S. Environmental Protection Agency
BAT—Best available technology economically achievable, as defined by section 304(b)(2)(B) of the Act.
BCT—Best conventional pollutant control technology, as defined by section 304(b)(4) of the Act.
BMP—Best management practices, as defined by section 304(e) of the Act.
BPT—Best practicable control technology currently available, as defined by section 304(b)(1) of the Act.
CAA—Clean Air Act (42 U.S.C. 7401 et. seq., as amended *inter alia* by the Clean Air Act Amendments of 1990 (Pub. L. 101–549, 104 stat. 2394).
Clean Water Act—The Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1251 et seq.), as amended by the Clean Water Act of 1977 (Pub. L. 95–217), and the Water Quality Act of 1987 (Pub. L. 100–4).
Conventional Pollutants—Constituents of waste water as determined by section 304(a)(4) of the Act and the regulations thereunder 40 CFR 401.16, including, but not limited to, pollutants classified as biochemical oxygen demand, suspended solids, oil and grease, fecal coliform, and pH.
CTG—Control Techniques Guideline (applicable to NESHAPs)
DCP—Data Collection Portfolio (detailed questionnaire for MP&M)
Direct Discharger—An industrial discharger that introduces waste water to a water of the United States with or without treatment by the discharger.
Effluent Limitation—A maximum amount, per unit of time, production, volume or other unit, of each specific constituent of the effluent from an existing point source that is subject to limitation. Effluent limitations may be expressed as a mass loading or as a concentration in milligrams of pollutant per liter discharged.
End-of-Pipe Treatment (EOP)—Refers to those processes that treat a plant waste stream for pollutant removal prior to discharge.
HAP—Hazardous Air Pollutant
Indirect Discharger—An industrial discharger that introduces waste water into a publicly owned treatment works.
In-Plant Control or Treatment Technologies—Controls or measures applied within the manufacturing process to reduce or eliminate pollutant and hydraulic loadings of raw waste water. Typical in-plant control measures include process modification, instrumentation, recovery of raw materials, solvents, products or by-products, and water recycle.
MDCP—Mini Data Collection Portfolio (screener survey for MP&M)
MP&M—Metal Products and Machinery point source category
NESHAP—National Emission Standards for Hazardous Air Pollutants
MACT—Maximum Achievable Control Technology (applicable to NESHAPs)
Nonconventional Pollutants—Pollutants that have not been designated as either conventional pollutants or priority pollutants.
NPDES—National Pollutant Discharge Elimination system, a Federal Program requiring industry dischargers, including municipalities, to obtain permits to discharge pollutants to the nation's water, under section 402 of the Act.
OCPSF—Organic chemicals, plastics, and synthetic fibers manufacturing point source category (40 CFR part 414).
POTW—Publicly owned treatment works.
Priority Pollutants—The 126 pollutants listed in 40 CFR part 423, appendix A.
PSES—Pretreatment Standards for existing sources of indirect discharges, under section 307(b) of the Act.
PSNS—Pretreatment standards for new sources of indirect discharges, under sections 307 (b) and (c) of the Act.
RACT—Reasonably Available Control Technology (applicable to NESHAPs)
SIC—Standards Industrial Classification, a numerical categorization scheme used by the U.S. Department of Commerce to denote segments of industry.
Technical Development Document—Development Document for Effluent Limitations Guidelines and Standards for the Metal Products and Machinery Phase I Point Source Category.
VOC—Volatile Organic Compound

List of Subjects

40 CFR Part 433

Environmental protection, Metals, Waste treatment and disposal, Water pollution control.

40 CFR Part 438

Environmental protection, Metals, Water pollution control, Water treatment and disposal.

40 CFR Part 464

Environmental protection, Metals, Waste treatment and disposal, Water pollution control.

Dated: March 31, 1995.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I is proposed to be amended as follows:

PART 433—[AMENDED]

1. The authority citation for part 433 continues to read as follows:

Authority: Secs. 301, 304(b), (c), (e), and (g), 306(b) and (c), 307(b) and (c), 308 and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1971, as amended by the Clean Water Act of 1977) (the "Act"); 33 U.S.C. 1311, 1314(b) (c), (e), and (g), 1316(b) and (c), 1317(b) and (c), 1318, and 1361; 86 Stat. 816, Pub. L. 92–500; 91 Stat. 1567, Pub. L. 95–217.

2. Section 433.10 is amended by adding "Metal Products and Machinery (40 CFR Part 438)" to the list in paragraph (b) to read as follows:

§ 433.10 Applicability; description of the metal finishing point source category.

* * * * *

(b) * * *

Metal Products and Machinery (40 CFR Part 438)

* * * * *

3. A new part 438 is proposed to be added as follows:

PART 438—METAL PRODUCTS AND MACHINERY POINT SOURCE CATEGORY

Subpart A—Metal Products and Machinery Phase I Category

Sec.
438.10 Applicability; description of the Metal Products and Machinery Phase I point source category.
438.11 Specialized definitions.
438.12 Monitoring Requirements
438.13 Effluent limitations representing the degree of effluent reduction attainable by applying the best practicable control technology currently available (BPT).
438.14 Effluent limitations representing the degree of effluent reduction attainable by applying the best conventional pollutant control technology (BCT).
438.15 Effluent limitations representing the degree of effluent reduction attainable by applying the best available technology economically achievable (BAT).
438.16 Pretreatment standards for existing sources (PSES).
438.17 New source performance standards (NSPS).
438.18 Pretreatment standards for new sources (PSNS).

Subpart B—Metal Products and Machinery Phase II Category

438.20 [Reserved]

Authority: Secs. 301, 304, 306, 307, 308, and 501 of the Clean Water Act (33 U.S.C. 1311, 1314, 1316, 1317, 1318, and 1361) and 42 U.S.C. 13101 et seq.

Subpart A—Metal Products and Machinery Category

§ 438.10 Applicability; description of the Metal Products and Machinery Phase I point source category.

(a) Except as provided in paragraphs (b), (c), and (d) of this section, the provisions of this subpart apply to process wastewater discharges from plants or portions of plants within the Metal Products and Machinery (hereafter referred to as MP&M) Phase I industries which manufacture, maintain or rebuild finished metal parts, products or machines from any basis metal.

(b) The following existing effluent limitations and standards generally apply to the production of semi-finished products, although wastewater from similar operations is generated within MP&M Phase I. These part 438 limits shall not apply in cases in which one or more of the following regulations specifically applies, nor in cases in which either MP&M Phase I or one of the following regulations could apply to the wastewater discharge from the same operations; in these cases, the following regulations shall apply:

Iron and steel manufacturing (40 CFR Part 420)
Nonferrous metals manufacturing (40 CFR Part 421)
Ferroalloy manufacturing (40 CFR Part 424)
Battery manufacturing (40 CFR Part 461)
Plastic molding and forming (40 CFR Part 463)
Metal molding and casting (40 CFR Part 464)
Coil coating (40 CFR Part 465)
Porcelain enameling (40 CFR Part 466)
Aluminum forming (40 CFR Part 467)
Copper forming (40 CFR Part 468)
Electrical and electronic components (40 CFR Part 469)
Nonferrous metals forming and metal powders (40 CFR Part 471)

(c) This subpart does not apply to plants which manufacture, maintain or rebuild finished metal parts, products or machines only within MP&M Phase II industries.

(d) This subpart does not apply to existing indirect discharging surface finishing job shops and independent printed wiring board manufacturers (which are covered by 40 CFR parts 413 and 433).

§ 438.11 Specialized definitions.

(a) The term *semi-finished* shall mean mill products and other metal products specifically covered by one of the existing regulations listed in § 438.10 (b).

(b) The term *finished* shall mean metal parts, products or machines which are not specifically covered by one of the existing regulations listed in § 438.10 (b).

(c) The term *T*, as in *Cyanide, T*, shall mean total.

(d) The term *surface finishing job shop* shall mean a facility which owns not more than 50% (annual area basis) of the materials undergoing surface finishing operations.

(e) The term *TSS* shall mean total suspended solids.

(f) The term *MP&M Phase I industries* shall mean any one or more of the following seven industries: aircraft, aerospace, electronic equipment, hardware, mobile industrial equipment, ordnance, and stationary industrial equipment. A list of typical products within these seven industries is included in Appendix A of this part. If a plant generates wastewater from operations performed in both MP&M Phase I and MP&M Phase II industries and the wastewater from both phases is discharged to a combined outfall, then the plant is considered MP&M Phase I and the combined outfall is covered by this subpart. If the plant segregates Phase I wastewater from Phase II

wastewater, and discharges these wastewaters to separate outfalls, then only the Phase I wastewater is covered by this subpart.

(g) The term *MP&M Phase II industries* shall mean any one or more of the following eight industries: bus and truck, household equipment, instruments, motor vehicles, office machines, railroad, ships and boats, and precious and non-precious metals. A list of typical products within these eight industries is included in Appendix B of this part.

(h) The term *independent printed wiring board manufacturer* shall mean a facility which manufactures printed wiring boards (also referred to as printed circuit boards) principally for sale to other companies.

(i) The term *plant or portion of a plant* is defined to include an activity, facility, or mixed use facility that is engaged in performing an MP&M-related industrial function and either located in a single building or located on a contiguous parcel of property. For purposes of this definition, mixed use facilities are those that have a mixture of non-related industrial, residential, or office types of activities. Sources or point sources located within the same fence line or property boundary are not necessarily considered contiguous.

(j) the terms *source* and *point source* are defined as process wastewater discharges from plants or portions of plants.

§ 438.12 Monitoring requirements.

Self monitoring for cyanide must be conducted after cyanide treatment and before combining with other streams. Alternatively, samples may be taken of the final effluent, if the plant limitations are adjusted based on the dilution ratio of the cyanide waste stream flow to the effluent flow.

§ 438.13 Effluent limitations representing the degree of effluent reduction attainable by applying the best practicable control technology currently available (BPT).

(a) Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve discharges not exceeding the quantity (mass) of pollutant determined by multiplying the process wastewater discharge flow subject to this subpart times the concentration listed in Table 1 of this part.

(b) No user subject to the provisions of this subpart shall augment the use of process wastewater or otherwise dilute the wastewater as a partial or total substitute for adequate treatment to achieve compliance with this limitation.

§ 438.14 Effluent limitations representing the degree of effluent reduction attainable by applying the best conventional pollutant control technology (BCT).

(a) Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve discharges not exceeding the quantity (mass) of pollutant determined by multiplying the process wastewater discharge flow subject to this subpart times the concentration listed in Table 1 for oil & grease, TSS and pH.

(b) No user subject to the provisions of this subpart shall augment the use of process wastewater or otherwise dilute the wastewater as a partial or total substitute for adequate treatment to achieve compliance with this limitation.

§ 438.15 Effluent limitations representing the degree of effluent reduction attainable by applying the best available technology economically achievable (BAT).

(a) Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve discharges not exceeding the quantity (mass) of pollutant determined by multiplying the process wastewater discharge flow subject to this subpart times the concentration listed in Table 1 for all parameters except TSS and pH.

(b) No user subject to the provisions of this subpart shall augment the use of process wastewater or otherwise dilute the wastewater as a partial or total substitute for adequate treatment to achieve compliance with this limitation.

(c) An existing source subject to this subpart shall comply with the oil & grease standard which serves as an indicator for the organic pollutants which have the potential to be present in the wastewater.

§ 438.16 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 through 403.13, any existing source subject to this subpart that introduces pollutants into a publicly owned treatment works must comply with 40 CFR part 403 and by [3 years from date the final rule is promulgated] and achieve the following pretreatment standards for existing sources (PSES):

(a) Any source discharging 1,000,000 gallons or more per calendar year of MP&M process wastewater must achieve discharges not exceeding the quantity (mass) of pollutant determined by multiplying the process wastewater discharge flow subject to this subpart times the concentration listed in Table 1 of this part for all parameters except TSS and pH. If mass limitations have not been developed as required, the source shall achieve discharges not exceeding the concentration limitations listed in Table 1 for all parameters except TSS and pH.

(b) Any source discharging less than 1,000,000 gallons per calendar year of MP&M process wastewater is exempt from this subpart.

(c) No user introducing wastewater pollutants into a publicly owned treatment works under the provisions of this subpart shall augment the use of process wastewater or otherwise dilute the wastewater as a partial or total substitute for adequate treatment to achieve compliance with this section.

(d) An existing source subject to this subpart shall comply with the oil & grease standard which serves as an indicator for the organic pollutants which have the potential to be present in the wastewater and which would pass through the publicly owned treatment works. Since oil and grease serves as an indicator for organic pollutants, POTW removal credits under 40 CFR 403.7 are not available for oil and grease.

§ 438.17 New source performance standards (NSPS).

(a) Any new source subject to this subpart must achieve discharges not exceeding the quantity (mass) of pollutant determined by multiplying the process wastewater discharge flow subject to this subpart times the concentration listed in Table 1 of this part.

(b) No user subject to the provisions of this subpart shall augment the use of process wastewater or otherwise dilute the wastewater as a partial or total substitute for adequate treatment to achieve compliance with this limitation.

§ 438.18 Pretreatment standards for new sources (PSNS).

(a) Except as provided in 40 CFR 403.7, any new source subject to this subpart that introduces pollutants into a publicly owned treatment works must comply with 40 CFR part 403 and achieve discharges not exceeding the quantity (mass) of pollutant determined by multiplying the process wastewater discharge flow subject to this subpart times the concentration listed in Table 1 of this part for all parameters except TSS and pH. If mass limitations have not been developed as required, the source shall achieve discharges not exceeding the concentration limitations listed in Table 1 of this part for all parameters except TSS and pH.

(b) No user introducing wastewater pollutants into a publicly owned treatment works under the provisions of this subpart shall augment the use of process wastewater or otherwise dilute the wastewater as a partial or total substitute for adequate treatment to achieve compliance with this section.

(c) A new source subject to this subpart shall comply with the oil & grease standard which serves as an indicator for the organic pollutants which have the potential to be present in the wastewater and which would pass through the publicly owned treatment works. Since oil and grease serves as an indicator for organic pollutants, POTW removal credits under 40 CFR 403.7 are not available for oil and grease.

Subpart B—Metal Products and Machinery Phase II Category

§ 438.20 [Reserved]

TABLE 1 TO PART 438.—MP&M CONCENTRATION LIMITATIONS

[Milligrams per liter (mg/l)]

Pollutant or pollutant property	Maximum for 1 day	Monthly average shall not exceed
Aluminum (T)	1.4	1.0
Cadmium (T)	0.7	0.3
Chromium (T)	0.3	0.2
Copper (T)	1.3	0.6
Iron (T)	2.4	1.3
Nickel (T)	1.1	0.5
Zinc (T)	0.8	0.4
Cyanide (T)	0.03	0.02
Oil & Grease	35	17
TSS	73	36
pH	[1]	[1]

[1] Within 6.0 to 9.0.

Appendix A to Part 438—Typical Products Within MP&M Phase I Industries

Aerospace

Guided Missiles & Space Vehicle
Guided Missile & Space Vehicle Prop.
Other Space Vehicle & Missile Parts

Aircraft

Aircraft Frames Manufacturing
Aircraft Engines & Engine Parts
Aircraft Parts & Equipment
Airports, Flying Fields, & Services

Electronic Equipment

Telephone & Telegraph Apparatus
Radio & TV Communications Equipment
Communications Equipment
Electron Tubes
Electronic Capacitors
Electronic Coils & Transformers
Connectors for Electronic Applications
Electronic Components
Electric Lamps

Hardware

Cutlery
Hand & Edge Tools
Hand Saws & Saw Blades
Hardware
Screw Machine Products
Bolts, Nuts, Screws, Rivets & Washers
Metal Shipping Barrels, Drums Kegs, Pails
Iron & Steel Forgings
Crowns & Closures
Metal Stampings
Steel Springs
Wire Springs
Miscellaneous Fabricated Wire Products
Fasteners, Buttons, Needles & Pins
Fluid Power Valves & Hose Fittings
Valves & Pipe Fittings
Fabricated Pipe & Fabricated Pipe Fittings
Fabricated Metal Products
Machine Tools, Metal Cutting Types
Machine Tools, Metal Forming Types
Special Dies & Tools, Die Sets, Jigs, Etc.
Machine Tool Accessories & Measuring Devices
Power Driven Hand Tools
Heating Equipment, Except Electric
Industrial Furnaces & Ovens
Fabricated Structural Metal
Fabricated Plate Work (Boiler Shops)
Sheet Metal Work
Architectural & Ornamental Metal Work
Prefabricated Metal Buildings & Components
Miscellaneous Metal Work

Mobile Industrial Equipment

Farm Machinery & Equipment
Garden Tractors & Lawn & Garden Equipment
Construction Machinery & Equipment
Mining Machinery & Equipment, Except Oil Field
Hoist, Industrial Cranes & Monorails
Industrial Trucks, Tractors, Trailers
Tanks & Tank Components

Ordnance

Small Arms Ammunition
Ammunition
Small Arms
Ordnance & Accessories

Stationary Industrial Equipment

Steam, Gas, Hydraulic Turbines, Generator Units
Internal Combustion Engines
Oil Field Machinery & Equipment
Elevators & Moving Stairways
Conveyors & Conveying Equipment
Industrial Patterns
Rolling Mill Machinery & Equipment
Metal Working Machinery
Textile Machinery
Woodworking Machinery
Paper Industries Machinery
Printing Trades Machinery & Equipment
Food Product Machinery
Special Industry Machinery
Pumps & Pumping Equipment
Ball & Roller Bearings
Air & Gas Compressors
Blowers & Exhaust & Ventilation Fans
Packaging Machinery
Speed Changers, High Speed Drivers & Gears
Industrial Process Furnaces & Ovens
Mechanical Power Transmission Equipment
General Industrial Machinery
Automatic Vending Machines
Commercial Laundry Equipment
Refrigeration & Air & Heating Equipment
Measuring & Dispensing Pumps
Service Industry Machines
Fluid Power Cylinders & Actuators
Fluid Power Pumps & Motors
Scales & Balances, Except Laboratory
Industrial Machinery
Welding Apparatus
Transformers
Switchgear & Switchboard Apparatus
Motors & Generators
Relays & Industrial Controls
Electric Industrial Apparatus
Heavy Construction Equipment Rental
Equipment Rental & Leasing

Appendix B to Part 438—Typical Products Within MP&M Phase II Industries

Bus & Truck

Truck & Bus Bodies
Motor Vehicle Parts & Accessories
Truck Trailers
Local & Suburban Transit (Bus & subway)
Local Passenger. Trans. (Lim., Amb., Sight See)
Intercity & Rural Highways (Buslines)
School Buses
Bus Terminal & Service Facilities
Local Trucking Without Storage
Trucking
Local Trucking With Storage
Courier Services, Except by Air
Freight Truck Terminals, W/ or W/O Maintenance.
Truck Rental & Leasing, Without Drivers

Household Equipment

Household Cooking Equipment
Household Refrig. & Home & Farm Freezers
Household Laundry Equipment
Electric Housewares & Fans
Household Vacuum Cleaners
Household Appliances
Electric Lamps
Current-Carrying Wiring Devices
Noncurrent-Carrying Wiring Devices
Residential Electrical Lighting Fixtures
Commercial, Ind. & Inst. Elec. Lighting Fixtures
Lighting Equipment
Radio & Television Sets Except Commn. Types
Radio & Television Repair Shops
Refrig. & Air Cond. Serv. & Repair Shops

Instruments

Coating, Engraving, & Allied Services
Search & Navigation Equipment
Laboratory Apparatus & Furniture
Automatic Environmental Controls
Process Control Instruments
Fluid Meters & Counting Devices
Instruments to Measure Electricity
Analytical Instruments
Measuring & Controlling Devices
Optical Instruments & Lenses
Surgical & Medical Instruments & Apparatus
Orthopedic, Prosthetic, & Surgical Supplies
Dental Equipment & Supplies
Ophthalmic Goods
Watches, Clocks, Associated Devices & Parts
Pens, Mechanical Pencils, & Parts
Manufacturing Industries
Miscellaneous repair Shops & Related Services

Motor Vehicle

Carburetors, Pistons Rings, Valves

Vehicular Lighting Equipment
Electrical Equipment for Motor Vehicles
Motor Vehicle Parts & Accessories
Motorcycles
Miscellaneous Transportation Equipment
Automotive Stampings
Motor Vehicle & Automotive Bodies
Mobile Homes
Travel Trailers & Campers
Taxicabs
Automotive Equipment
Automobile Dealers (new & used)
Gasoline Service Stations
Recreational & Utility Trailer Dealers
Motorcycle Dealers
Auto. Dealers (Dunebuggy, Go-cart, Snowmobile)
Passenger Car Rental
Passenger Car Leasing
Utility Trailer & Recreational Vehicle Rental
Top & Body Repair & Paint Shops
Auto Exhaust System Repair Shops
Automotive Glass Replacement Shops
Automotive Transmission Repair Shops
General Automotive Repair Shops
Automotive Repairs Shops
Automobile Service (includes Diag. & Insp. Cntrs.)
Welding Shops (includes Automotive)

Office Machine

Electronic Computers
Computer Storage Devices
Computer Terminals
Computer Peripheral Equipment
Calculating & Accounting Equipment
Office Machines
Photographic Equipment & Supplies
Compute Rental & Leasing
Compute Maintenance & Repair
Computer Related Services
Electrical & Electronic Repair

Precious & Nonprecious Metals

Jewelry, Precious Metal
Silverware, Plated Ware, & Stainless
Jewelers' Materials & Lapidary Work
Musical Instruments
Costume Jewelry

Railroad

Railcars, Railway Systems
Line-Haul Railroads
Switching & Terminal Stations

Ships and Boats

Ship Building & Repairing
Boat Building & Repairing
Marines
Deep Sea Domestic Transportation of Freight
Freight Transportation on the Great Lakes
Water Transportation of Freight
Deep Sea Passenger Transportation, Except by Ferry
Water Passenger Transportation
Ferries
Towing & Tugboat Service
Water Transportation Services

PART 464—[AMENDED]

4. The authority citation for part 464 continues to read as follows:

Authority: Secs. 301, 304(b), (c), (e), and (g), 306(b) and (c), 307, 308, and 501 of the Clean Water Act (Federal Water Pollution Control Act Amendments of 1972, as amended by the Clean Water Act of 1977) (the "Act"); 33 U.S.C. 1311, 1314(b), (c), (e) and (g), 1316(b) and (c), 1317 (b) and (c), 1318, and 1361; 86 Stat. 816, Pub. L. 92–500; 91 Stat. 1567, Pub. L. 95–217.

5. Section 464.02 is amended by revising the last sentence of paragraphs (a), (b), (c), and (d) to read as follows:

§ 464.02 General definitions.

* * * * *

(a) * * * Processing operations following the cooling of castings not covered under aluminum forming, except for grinding scrubber operations which are covered in this section, are covered under the electroplating, metal finishing, and metal products and machinery point source categories (40 CFR parts 413, 433 and 438).

(b) * * * Except for grinding scrubber operations which are covered in this section, processing operations following the cooling of castings are covered under the electroplating, metal finishing, and metal products and machinery point source categories (40 CFR parts 413, 433 and 438).

(c) * * * Except for grinding scrubber operations which are covered in this section processing operations following the cooling of castings are covered under the electroplating, metal finishing, and metal products and machinery point source categories (40 CFR parts 413, 433 and 438).

(d) * * * Processing operations following the cooling of castings not covered under nonferrous metals forming are covered under the electroplating, metal finishing, and metal products and machinery point source categories (40 CFR parts 413, 433 and 438).

* * * * *

[FR Doc. 95–8885 Filed 5–26–95; 8:45 am]
BILLING CODE 6560-50-P

federal register

Tuesday
May 30, 1995

Part III

Department of Education

Knowledge Dissemination and Utilization Program for Fiscal Year 1995; Notices

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research

Knowledge Dissemination and Utilization (D&U) Program; Notice of Final Funding Priority for Fiscal Years 1995–1996 for the Knowledge Dissemination and Utilization Program

SUMMARY: The Secretary announces a final funding priority for the Knowledge Dissemination and Utilization (D&U) Program under the National Institute on Disability and Rehabilitation Research (NIDRR) for fiscal years 1995–1996. The Secretary takes this action to ensure that rehabilitation knowledge generated from projects and centers funded by NIDRR and others is utilized fully to improve the lives of individuals with disabilities and their families.

EFFECTIVE DATE: This priority takes effect on June 29, 1995.

FOR FURTHER INFORMATION CONTACT: David Esquith, U.S. Department of Education, 600 Independence Avenue, SW., Switzer Building, room 3424, Washington, DC 20202–2601. Telephone: (202) 205–8801. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8133.

SUPPLEMENTARY INFORMATION: This notice contains one final priority under the D&U program, in the area of community integration for individuals with mental retardation. Authority for the D&U program of NIDRR is contained in sections 202 and 204(a) and 204(b)(6) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 760–762). This priority supports the National Education Goal that calls for all Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

On March 31, 1955, the Secretary published a notice of proposed priority in the **Federal Register** at 60 FR 16760. The comments received in response to that notice, and the Secretary's responses to them, are discussed in the following section of this notice.

Analysis of Comments and Responses

The Secretary received 13 letters of comment prior to the deadline date for receipt of comments. All but one of these comments supported the idea of an information center on community integration and mental retardation, but several made suggestions for additional activities. These comments are synopsized below, along with the Secretary's responses and any changes to the priority.

Comment: One commenter pointed out that the Background statement was misleading in stating that "48 percent of all individuals with mental retardation nationwide resided in large congregate care settings."

Discussion: The Secretary agrees that the statement should be revised to clarify that the percentage refers to all persons residing in other than their family homes.

Changes: The statement has been revised to read, "of the 347,000 persons with mental retardation who resided in out-of-home care, 48 percent were in settings of 16 or more beds."

Comment: A number of commenters urged NIDRR to continue research in the area of community integration and mental retardation, and many suggested specific research topics or areas for investigation.

Discussion: NIDRR currently maintains support for four Rehabilitation Research and Training Centers (RRTCs) in community integration for persons with developmental disabilities, including mental retardation, and supports additional work in this area in centers on families, ADA technical assistance and training projects, and discrete research projects. NIDRR expects to initiate a number of activities to review these programs, the state-of-the-art, and opportunities for future research in order to establish a timely and coherent agenda of research in community integration. However, the Secretary has determined that there is a need for information and technical assistance to community-based service providers, State and local agencies, consumer advocates, and consumers and their families about the findings of research, best practices, and integration strategies. This priority addresses that need.

Changes: None.

Comment: One commenter urged that the Department include information to facilitate community integration for individuals with mental illness in the activities under this priority.

Discussion: While the Secretary does not dispute the possible value of such an activity, he declines to add it to this priority for several reasons. First, the knowledge base on community integration is different for the two disability categories, as are the populations that would be the targets of the information dissemination and technical assistance activities. In addition, NIDRR has just announced a priority for an RRTC on long-term mental illness that will work to further develop and disseminate a knowledge base in the specific area of peer support and community integration.

Changes: None.

Comment: One commenter stated that it is not clear that consumers and their families are dissatisfied with the Intermediate Care Facilities (ICFs) that now exist, and also noted that studies show ICFs of four to six residents have favorable integration outcomes.

Discussion: The Secretary agrees that the dissemination Center must provide information and assistance that addresses a range of consumer and family goals. The background statement to the proposed priority expressed agreement with this commenter's point in that it did endorse the residential facility serving "six or fewer individuals" as a positive model.

Changes: None.

Comment: The same commenter noted that there are different concerns among different segments of the consumer and family populations, contending that some parent groups value health and safety while others focus on inclusion and integration, and stating that it would be important to address the range of concerns.

Discussion: The Secretary agrees that the range of concerns of self advocates and family advocates should be taken into consideration, but the primary focus of this Center is on community integration because that is one of NIDRR's statutorily-mandated objectives. The Secretary believes that maintenance of healthy and safe environments is a component of successful community integration.

Changes: None.

Comment: One commenter stated that NIDRR grantees should establish training and technical assistance resources with sophisticated knowledge of local conditions in each State and that are easily accessed by local providers.

Discussion: The Secretary believes this is one strategy grantees could use to disseminate information, but prefers to let the applicants present those approaches to dissemination that they believe will be most effective.

Changes: None.

Comment: One commenter suggested that the new Center be required to inform all State and local government agencies dealing with mental retardation of its existence and the type of services it offers.

Discussion: The Secretary agrees that it is important that the Center address the information needs of State and local government agencies, but believes that the phrase "all state and local government agencies dealing with mental retardation" is too vague and could pose a potential burden on the grantee to identify all agencies

regardless of their role. Therefore, the Secretary has revised the statement of priority to require that the Center advise all State Developmental Disabilities Councils and all State Protection and Advocacy Systems of its existence and proposed services.

Changes: The phrase, "The Center must advise every State Developmental Disabilities Council and every State Protection and Advocacy System of its existence and proposed services", has been added at the end of the bullet requiring broad coordination.

Comment: One commenter stated that it is inappropriate for NIDRR to limit the work of this Center to community integration for individuals with mental retardation since Congress has stated that "supported employment" is for people with various types of disabilities, and people with mental retardation have resources for extended on-going support services that people with other disabilities do not have.

Discussion: The Secretary points out that the dissemination Center will not focus primarily on supported employment and will not provide resources for extended support services. NIDRR supports ongoing research and demonstrations on supported employment, and on community integration and independent living, for persons with physical, sensory, and emotional disabilities. The purpose of the Center to be established under this priority is to compile and disseminate what has been learned in previous research and demonstration projects about community integration strategies for a population that has often been institutionalized. Research to promote community integration is a statutorily-authorized objective of NIDRR.

Changes: None.

Comment: One commenter recommended that the priority specifically detail responsibilities related to lifelong learning and literacy education.

Discussion: The Secretary agrees that literacy and opportunities for lifelong learning often are important components of community integration. However, the Secretary intentionally elected not to require that any specific components be addressed, but to encourage applicants to address those components that they believe are most critical and in which there is a substantial knowledge base for dissemination. The peer review panel will assess the appropriateness of the scope presented by the applicants.

Changes: None.

Comment: One commenter stated that the priority should require the grantee to address bankers, lenders, and financial policymakers in the private and public sectors to promote mortgage availability for individuals with mental retardation.

Discussion: The Secretary elects to allow applicants to address those components of community integration which it believes are most critical and likely to have the greatest impact on community integration.

Changes: None.

Note: This notice does not solicit applications. A notice inviting applications under this competition is published in the this issue of the **Federal Register**.

Priority

Under 34 CFR 75.105(c)(3) the Secretary gives an absolute preference to applications that meet the following priority. The Secretary will fund under this program only applications that meet this absolute priority:

Facilitating Community Integration for Individuals with Mental Retardation

Background

NIDRR has supported Rehabilitation Research and Training Centers in the area of mental retardation and developmental disabilities since 1965. In addition, NIDRR has supported a number of research projects targeted on this population in areas such as transition from school to work, public policy and expenditures for developmental disabilities in the U.S., and successful transitions from nursing homes into the community. As a result of such research and training efforts over many years, a large body of knowledge now exists relative to enabling individuals with mental retardation to live in their communities.

The population in public institutions for persons with mental retardation has decreased from 195,000 in 1967 to 81,200 persons in 1991, (Lakin, 1993) as a result of public policy decisions and vigorous efforts of public leadership groups to effect deinstitutionalization. However, successful integration into communities that includes residential, employment, and full participation components is not easily achieved.

During the past eight years there have been major developments in the understanding of community integration needs and strategies, including: funding models that allow for individualized options; systems for assessing support needs for an individual and in a community; models for both formal and informal support systems, and for integrating the two approaches; and model strategies for systems change within States. (Horner, 1994). Yet in nearly every State, policy and practice do not reflect these advances in knowledge and understanding, and do not take advantage of the best practices models and implementation strategies that have evolved through research and practice.

As a result, innovative supports for living in their own home or community are available to very few of those who potentially could benefit from them. Many thousands of people with developmental disabilities continue to live in private and public institutions and "mini-institutions" in the community. In many cases, "deinstitutionalization has resulted in trans-institutionalization" (Taylor, 1994). There are approximately 64,800 persons with mental retardation and related conditions who are not receiving any form of residential services and who are now on waiting lists for community residential services (Lakin et al., 1993). And, of the 347,000 persons with mental retardation who resided in out-of-home care, 48 percent were in settings of 16 or more beds. However, in 1992, there were 8 States that provided services to more than 60 percent of consumers in family-scale settings serving six or fewer individuals, while conversely, six States served fewer than 10 percent of their clients in such small settings (Braddock, 1994).

Thus, there is a demand for community integration assistance, coupled with a tremendous variation in State ability to meet those demands. This variation in services indicates that there is a critical need for information about innovative, state-of the-art practices and for training and technical assistance on how to improve policies and practices on community integration at the State and community levels.

NIDRR received substantial public comment on its 1995 proposed priorities, contending that there is a national need for information on best practices for community integration and a demand for training of service providers and consumers to help communities overcome the challenges of fully including all of their citizens and their families, and to make community integration a reality. State and local policy makers, regulators, and service agencies, as well as community service providers require training and technical assistance to enable them to address the issues that will emerge as States and localities move toward a system of individualized supports. States and communities require information and training on policies and strategies that could assist them in shifting from a provider-driven to a consumer-driven service delivery system. The quality of community

services delivered to persons with disabilities and their families will also depend on the ability of educational, employment and residential service agencies to effectively address the training needs of their approximately 250,000 direct service personnel (Wallace, T. & Johnson, D., 1992 and Braddock, 1994).

The Secretary believes that there is a critical need for dissemination of information on model programs, integrated statewide systems of service delivery, exemplary practices, and systems change strategies. In addition, there is a need to develop more effective mechanisms for training community-level service providers to ensure the implementation of best practices, and to provide training and technical assistance to consumer-directed self-advocacy organizations and parent organizations.

Priority

Under this priority, the Secretary supports a dissemination and technical assistance Center that—(1) Identifies and disseminates exemplary practices in community integration for individuals with mental retardation; and (2) provides training and technical assistance to State and local agencies, community-based service providers, and consumer-controlled advocacy organizations to facilitate the adoption of exemplary practices in community integration for individuals with mental retardation. In addition to activities proposed by the applicant to carry out these purposes, the Center must conduct the following activities:

- Design and implement a national information resource on community integration to serve policymakers and administrators, community-based service providers, consumer-controlled advocacy organizations, and individuals with mental retardation and their families, ensuring that information is available in accessible formats appropriate to individuals with a range of sensory, cognitive, and other disabilities;
- Prepare materials on important topical issues, which might include for example: strategies to address social and cultural barriers to full inclusion; strategies for cross-agency collaboration in the development of individualized services or case management practices; and reasonable accommodations to facilitate community inclusion, and use them in information dissemination, training, and technical assistance activities as appropriate; and
- Coordinate with existing NIDRR-funded projects and centers, and build upon the products of past NIDRR projects and similar efforts funded by other Federal agencies, to ensure that the best and most current information on needs and best practices is incorporated into the information dissemination, training, and technical assistance of this Center. The Center must advise every State Developmental Disabilities Council and every State Protection and Advocacy System of its existence and proposed services.

Applicable Program Regulations

34 CFR parts 350 and 355.

Program Authority: 29 U.S.C. 760–762.

(Catalog of Federal Domestic Assistance Number 84.133D, Knowledge Dissemination and Utilization Program)

Dated: May 23, 1995.

Howard R. Moses,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 95–13066 Filed 5–26–95; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.133D]

Office of Special Education and Rehabilitative Services; National Institute on Disability and Rehabilitation Research Notice Inviting Applications Under the Knowledge Dissemination and Utilization Program for Fiscal Year (FY) 1995

Purpose of Program: The Knowledge Dissemination and Utilization Program is designed to support activities that will ensure that rehabilitation knowledge generated from projects and centers funded by NIDRR and from other sources is fully utilized to improve the lives of individuals with disabilities and their families. The final priority for this award, entitled "Information and Technical Assistance Center to Facilitate Community Integration," is published in this issue of the **Federal Register**. Potential applicants should consult the statement of the final priority published in this issue to ascertain the substantive requirements for their application.

This notice supports the National Education Goal that calls for all Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Eligible Applicants: Parties eligible to apply for grants under this program are public and private nonprofit and for-profit agencies and organizations, including institutions of higher education and Indian tribes and tribal organizations.

Applications Available: June 7, 1995.
Application Deadline: July 28, 1995.
Available Funds: $400,000 per year.
Estimated Number of Awards: 1.

Note: The estimates of funding levels and awards in this notice do not bind the Department of Education to a specific level of funding or number of grants.

Project Period: Up to 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR), 34 CFR parts 74, 75, 77, 78, 80, 81, 82, 85, 86; (b) the regulations for this program in 34 CFR parts 350 (amended April 5, 1995, (60 FR 17426)) and 355 (amended September 22, 1993 (58 FR 49419)); and the notice of final priority published elsewhere in this issue of the **Federal Register**.

For Further Information Contact: In order to obtain an application package, contact William H. Whalen, U.S. Department of Education, 600 Independence Avenue SW., Switzer Building, room 3411, Washington, DC 20202. Telephone: (202) 205–9141. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8887.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 29 U.S.C. 761a and 762.

Dated: May 23, 1995.

Howard R. Moses,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 95–13067 Filed 5–26–95; 8:45 am]

BILLING CODE 4000–01–P

federal register

Tuesday
May 30, 1995

Part IV

Department of Education

Office of Special Education and Rehabilitative Services

National Institute on Disability and Rehabilitation Research; Notice Inviting Applications for New Awards Under Certain Programs for Fiscal Year 1996

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

[CFDA Nos.: 84.133F and 84.133G]

National Institute on Disability and Rehabilitation Research; Notice Inviting Applications for New Awards Under Certain Programs for Fiscal Year (FY) 1996

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the programs and applicable regulations governing the programs, including the Education Department General Administrative Regulations (EDGAR), this notice contains information, application forms, and instructions needed to apply for a grant under these competitions.

These programs support the National Education Goal that calls for all Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Note: The estimated funding levels in this notice do not bind the Department of Education to make awards in any of these categories, or to any specific number of awards or funding levels, unless otherwise specified in statute.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR), 34 CFR parts 74, 75, 77, 80, 81, 82, 85, and 86; and the following program regulations:

Research Fellowships—34 CFR part 356 (amended September 22, 1993 (58 FR 49419) and April 5, 1995 (60 FR 17431)).

Field Initiated Research—34 CFR parts 350 (amended April 5, 1995 (60 FR 17426)) and 357 (amended September 22, 1993 (58 FR 49419)).

Program Title: Rehabilitation Research Fellowships

CFDA Number: 84.133F

Purpose: The purpose of this program is to build research capacity by providing support to highly qualified individuals to perform research on the rehabilitation of disabled persons.

Note: The Secretary requires all research fellows to work full time on authorized fellowship activities (see 34 CFR 356.41).

Selection Criteria: The Secretary evaluates applications for fellowships according to the following criteria in 34 CFR 356.30.

(a) Quality and level of formal education, previous work experience, and recommendations of present or former supervisors or colleagues that include an indication of the applicant's ability to work creatively in scientific research; and

(b) The quality of a research proposal of no more than 12 pages containing the following information:

(1) The importance of the problem to be investigated to the purpose of the Act and the mission of NIDRR.

(2) The research hypotheses or related objectives and the methodology and design to be followed.

(3) Assurance of the availability of any necessary data resources, equipment, or institutional support, including technical consultation and support where appropriate, required to carry out the proposed activity.

Eligible Applicants: Individuals only are eligible to apply for research fellowships under this program.

Program Authority: 29 U.S.C. 761a(d).

APPLICATION NOTICE FOR FISCAL YEAR 1996

[Research Fellowships, CFDA No. 84.133F]

Funding priority	Deadline for transmittal of applications	Estimated No. of awards	Estimated size of awards (per year)	Project period (months)
Research fellowships	10/20/95	10	40,000	12

Applications Available: May 30, 1995.

Program Title: Field-Initiated Research (CFDA Number: 84.133G).

Purpose: This program is designed to encourage eligible parties to originate valuable ideas for research and demonstration, development, or knowledge dissemination projects to improve the lives of individuals with disabilities, and to support research and demonstration, development, or knowledge dissemination projects as described in program regulations that address important activities not supported by Institute-funded research or that complement that research in a promising way.

Selection Criteria: The Secretary uses the following criteria to evaluate an application under this program.

(a) *Importance of the problem.* (20 points) The Secretary reviews each application to determine the extent to which—

(1) The proposed project addresses a problem that is significant to persons with disabilities or to those who provide services to them; and

(2) The proposed project is likely to produce new and useful knowledge, techniques, or devices that will develop or disseminate solutions to problems confronting persons with disabilities.

(3) The application addresses the needs of individuals with disabilities from minority backgrounds.

(b) *Design of the project.* (45 points)

(1) The Secretary reviews each application for a research and demonstration project to determine the extent to which—

(i) The review of the literature is appropriate and indicates familiarity with the relevant current research;

(ii) The research hypotheses are theoretically sound and based on current knowledge;

(iii) The sample populations are adequate and appropriately selected;

(iv) The data collection instruments and methods are appropriate and likely to be successful;

(v) The data analysis measures are appropriate; and

(vi) The application discusses the anticipated research results and demonstrates how those results would satisfy the original hypotheses.

(2) The Secretary reviews each application for a knowledge dissemination project to determine the extent to which—

(i) The need for the information has been demonstrated;

(ii) The target populations are appropriately specified;

(iii) The dissemination methods are appropriate to the target population;

(iv) The materials for dissemination are prepared in media accessible to the target population;

(v) There are adequate means of documenting and evaluating the effectiveness of the dissemination activity.

(3) The Secretary reviews each application for a development project to determine the extent to which—

(i) The proposed project will use the most effective and appropriate technology available in developing the new device or technique;

(ii) The proposed development is based on a sound conceptual model that demonstrates an awareness of the state-of-the-art in technology;

(iii) Devices or techniques will be developed and tested in an appropriate environment;

(iv) The applicant considers the cost-effectiveness and usefulness of the device or technique to be developed for persons with disabilities; and

(v) The applicant discusses the potential for commercial or private manufacture, marketing, and distribution of the product.

(c) *Personnel.* (20 points) The Secretary reviews each application to determine the extent to which—

(1) The key personnel have adequate training and experience in the required discipline to conduct the proposed activities;

(2) The allotment of staff time is adequate to accomplish the proposed activities; and

(3) The applicant ensures that personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping conditions.

(d) *Management and Evaluation.* (15 points) The Secretary reviews each application to determine the extent to which—

(1) The resources of the applicant are adequate, appropriate, and accessible to individuals with disabilities;

(2) The proposed budget is adequate and appropriate for the activities to be carried out;

(3) There is a plan, appropriate to the type of field-initiated project, to evaluate the effectiveness of the project in accomplishing its goals and objectives;

(4) The applicant provides a plan of operations, appropriate to the type of field-initiated project, indicating that it will achieve the project objectives in a timely and effective manner; and

(5) Appropriate collaboration with other agencies is assured.

Eligible Applicants: Public and private organizations, including institutions of higher education and Indian tribes and tribal organizations, are eligible to apply for awards under this program.

Program Authority: 29 U.S.C. 762.

APPLICATION NOTICE FOR FISCAL YEAR 1996

[Field-Initiated Research, CFDA No. 84.133G]

Funding Priority	Deadline for transmittal of applications	Estimated No. of awards	Estimated size of awards (per year)	Project period (months)
Field-initiated research	9/29/95	15–20	125,000	36

Applications Available: May 30, 1995.

Instructions For Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # [Applicant must insert number and letter]), Washington, DC 20202–4725, or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. [Washington, DC time] on the deadline date to: U.S. Department of Education, Application Control Center, Attention: _____(CFDA # [Applicant must insert number and letter]), Room #3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) An applicant wishing to know that its application has been received by the Department must include with the application a stamped self-addressed postcard containing the CFDA number and title of this program.

(3) The applicant must indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and letter, if any—of the competition under which the application is being submitted.

Application Forms and Instructions

The appendix to this application is divided into four parts. These parts are organized in the same manner that the submitted application should be organized. These parts are as follows:

PART I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

PART II: Budget Form—Non-Construction Programs (Standard Form 524A) and instructions.

PART III: Application Narrative.

Additional Materials

Estimated Public Reporting Burden.

Assurances—Non-Construction Programs (Standard Form 424B).

Certification Regarding Lobbying, Debarment, Suspension, and Other Responsibility Matters: and Drug-Free Work-Place Requirements (ED Form 80–0013).

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form 80–0014) and instructions.

(**Note:** ED Form GCS–014 is intended for the use of primary participants and should not be transmitted to the Department.)

Disclosure of Lobbying Activities (Standard Form LLL (if applicable) and instructions; and Disclosure Lobbying Activities Continuation Sheet (Standard Form LLL–A).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. No grant may be awarded unless a completed application form has been received.

FOR FURTHER INFORMATION CONTACT: In order to obtain an application package,

contact William H. Whalen, U.S. Department of Education, 600 Independence Avenue S.W., Switzer Building, Room 3411, Washington, D.C. 20202. Telephone: (202) 205–9141. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8887.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 29 U.S.C. 760–762.

Dated: May 23, 1995.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

Appendix

Application Forms and Instructions

Applicants are advised to reproduce and complete the application forms in this Section. Applicants are required to submit an original and two copies of each application as provided in this Section.

FREQUENT QUESTIONS

1. CAN I GET AN EXTENSION OF THE DUE DATE?

No! On rare occasions the Department of Education may extend a closing date for all applicants. If that occurs, a notice of the revised due date is published in the **Federal Register**. However, there are no extensions or exceptions to the due date made for individual applicants.

2. WHAT SHOULD BE INCLUDED IN THE APPLICATION?

The application should include a project narrative, vitae of key personnel, and a budget, as well as the Assurances forms included in this package. Vitae of staff or consultants should include the individual's title and role in the proposed project, and other information that is specifically pertinent to this proposed project. The budgets for both the first year and all subsequent project years should be included.

If collaboration with another organization is involved in the proposed activity, the application should include assurances of participation by the other parties, including written agreements or assurances of cooperation. It is *not* useful to include general letters of support or endorsement in the application.

If the applicant proposes to use unique tests or other measurement instruments that are not widely known in the field, it would be helpful to include the instrument in the application.

Many applications contain voluminous appendices that are not helpful and in many cases cannot even be mailed to the reviewers. It is generally not helpful to include such things as brochures, general capability statements of collaborating organizations, maps, copies of publications, or descriptions of other projects completed by the applicant.

3. WHAT FORMAT SHOULD BE USED FOR THE APPLICATION?

NIDRR generally advises applicants that they may organize the application to follow the selection criteria that will be used. The specific review criteria vary according to the specific program, and are contained in this Consolidated Application Package.

4. MAY I SUBMIT APPLICATIONS TO MORE THAN ONE NIDRR PROGRAM COMPETITION OR MORE THAN ONE APPLICATION TO A PROGRAM?

Yes, you may submit applications to any program for which they are responsive to the program requirements. You may submit the same application to as many competitions as you believe appropriate. You may also submit more than one application in any given competition.

5. WHAT IS THE ALLOWABLE INDIRECT COST RATE?

The limits on indirect costs vary according to the program and the type of application.

Applicants in the FIR and SCI grants programs should limit indirect charges to the organization's approved rate. If the organization does not have an approved rate, the application should include an estimated actual rate. Applicants for projects in the Research Training and Career Development program are limited to an indirect rate of 8 percent. There are no indirect charges permitted in the Fellowship program.

6. CAN PROFITMAKING BUSINESSES APPLY FOR GRANTS?

Yes. However, for-profit organizations will not be able to collect a fee or profit on the grant, and in some programs will be required to share in the costs of the project.

7. CAN INDIVIDUALS APPLY FOR GRANTS?

No. Only organizations are eligible to apply for grants under NIDRR programs. However, individuals are the only entities eligible to apply for fellowships.

8. CAN NIDRR STAFF ADVISE ME WHETHER MY PROJECT IS OF INTEREST TO NIDRR OR LIKELY TO BE FUNDED?

No. NIDRR staff can advise you of the requirements of the program in which you propose to submit your application. However, staff cannot advise you of whether your subject area or proposed approach is likely to receive approval.

9. HOW DO I ASSURE THAT MY APPLICATION WILL BE REFERRED TO THE MOST APPROPRIATE PANEL FOR REVIEW?

Applicants should be sure that their applications are referred to the correct competition by clearly including the competition title and CFDA number, including alphabetical code, on the Standard Form 424, and including a project title that describes the project.

10. HOW SOON AFTER SUBMITTING MY APPLICATION CAN I FIND OUT IF IT WILL BE FUNDED?

The time from closing date to grant award date varies from program to program. Generally speaking, NIDRR endeavors to have awards made within five to six months of the closing date. Unsuccessful applicants generally will be notified within that time frame as well. For the purpose of estimating a project start date, the applicant should estimate approximately six months from the closing date, but no later than the following September 30.

11. CAN I CALL NIDRR TO FIND OUT IF MY APPLICATION IS BEING FUNDED?

No! When NIDRR is able to release information on the status of grant applications, it will notify applicants by letter. The results of the peer review cannot be released except through this formal notification.

12. IF MY APPLCIATION IS SUCCESSFUL, CAN I ASSUME I WILL GET THE REQUESTED BUDGET AMOUNT IN SUBSEQUENT YEARS?

No. Those budget projections are necessary and helpful for planning purposes. However, a complete budget and budget justificaiton must be submitted for each year of the project and there will be negotiations on the budget each year.

13. WILL ALL APPROVED APPLICATIONS BE FUNDED?

No. It often happens that the peer review panels approve for funding more applications than NIDRR can fund within available resources. Applicants who are approved but not funded are encouraged to consider submitting similar applications in future competitions.

BILLING CODE 4000–01–P

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐
A. State; B. County; C. Municipal; D. Township; E. Interstate; F. Intermunicipal; G. Special District; H. Independent School Dist.; I. State Controlled Institution of Higher Learning; J. Private University; K. Indian Tribe; L. Individual; M. Profit Organization; N. Other (Specify): _____

8. TYPE OF APPLICATION: ☐ New ☐ Continuation ☐ Revision
If Revision, enter appropriate letter(s) in box(es): ☐ ☐
A. Increase Award; B. Decrease Award; C. Increase Duration; D. Decrease Duration; Other (specify): _____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ – ☐☐☐
TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING:		16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. Federal	$ .00	a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON: DATE _____
b. Applicant	$ .00	b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372
c. State	$ .00	☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW
d. Local	$ .00	
e. Other	$ .00	
f. Program Income	$ .00	17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT? ☐ Yes If "Yes," attach an explanation. ☐ No
g. TOTAL	$ .00	

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED FORM NO. 524

U.S. DEPARTMENT OF EDUCATION

BUDGET INFORMATION

NON-CONSTRUCTION PROGRAMS

OMB Control No. 1875-0102

Expiration Date: 9/30/95

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

Name of Institution/Organization

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

ED FORM NO. 524

Public reporting burden for these collections of information is estimated to average 30 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding this burden estimate or any other aspect of these collections of information, including suggestions for reducing this burden, to: the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and to the Office of Management and Budget, Paperwork Reduction Project 1820-0027, Washington, D.C. 20503.

Research Fellowships (CFDA No. 84.133F) 34 CFR Part 356.

Field-Initiated Research (CFDA No. 84.133G) 34 CFR Parts 350 and 357.

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

Standard Form 424B (4-88)
Prescribed by OMB Circular A-102

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).
14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.
18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

SF 424B (4-88) Back

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion — Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV. 12/88), which is obsolete)

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

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2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 —

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

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3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 —

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about—

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3),

Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

_____

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013, 6/90 (Replaces ED 80-0008, 12/89; ED Form GCS-008, (REV. 12/88); ED 80-0010, 5/90; and ED 80-0011, 5/90, which are obsolete)

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action: ☐ a. contract ☐ b. grant ☐ c. cooperative agreement ☐ d. loan ☐ e. loan guarantee ☐ f. loan insurance	2. Status of Federal Action: ☐ a. bid/offer/application ☐ b. initial award ☐ c. post-award	3. Report Type: ☐ a. initial filing ☐ b. material change For Material Change Only: year _____ quarter ____ date of last report _____
4. Name and Address of Reporting Entity: ☐ Prime ☐ Subawardee Tier ____, *if known:* Congressional District, *if known:*		5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime: Congressional District, *if known:*
6. Federal Department/Agency:		7. Federal Program Name/Description: CFDA Number, *if applicable:* _____
8. Federal Action Number, *if known:*		9. Award Amount, *if known:* $
10. a. Name and Address of Lobbying Entity (*if individual, last name, first name, MI*):		b. Individuals Performing Services (*including address if different from No. 10a*) (*last name, first name, MI*):
(*attach Continuation Sheet(s) SF-LLL-A, if necessary*)		
11. Amount of Payment (*check all that apply*): $ _____ ☐ actual ☐ planned		13. Type of Payment (*check all that apply*): ☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. Form of Payment (*check all that apply*): ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____		
14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:		
(*attach Continuation Sheet(s) SF-LLL-A, if necessary*)		
15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No		
16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.		Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____
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INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OMB 0348-0046

Reporting Entity: _____ Page ____ of ____

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[FR Doc. 95–3064 Filed 5–26–95; 8:45 am]
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federal register

Tuesday
May 30, 1995

Part V

Department of Commerce

Economic Development Administration

Economic Development Assistance Program for Disaster Relief Activities, Southeast Floods of 1994, Availability of Funds; Notice

DEPARTMENT OF COMMERCE

Economic Development Administration

[Docket No. 95–0522136–5138–01]

Economic Development Assistance Program for Disaster Relief Activities, Southeast Floods of 1994, Availability of Funds

AGENCY: Economic Development Administration (EDA), Department of Commerce, (DoC).

ACTION: Notice.

SUMMARY: The Economic Development Administration (EDA) announces the policies and the application procedures for funds available to support disaster relief programs designed to assist affected states and local communities to recover from the consequences of the Southeast Floods of 1994, and for other disasters.

EDA offers a variety of program tools to assist affected communities. The primary emphasis of EDA's program will be to assist flood-impacted areas with the development and implementation of strategies that are needed for long-term economic relief, including planning and technical assistance; the capitalization and recapitalization of Revolving Loan Funds; the construction of new and expanded infrastructure and development facilities required for economic development of the area; and other economic development programs designed to alleviate the economic distress of the areas.

DATES: This announcement is effective May 30, 1995. Funds shall remain available until expended.

ADDRESSES: To establish merits of project proposals, interested parties should contact the Atlanta Regional Office or the appropriate Economic Development Representative for the area (see listing in Appendix A).

FOR FURTHER INFORMATION CONTACT: See listing in Appendix A of this Notice.

SUPPLEMENTARY INFORMATION: *Buy American-Made Equipment or Products*—Applicants are hereby notified that they will be encouraged, to the greatest extent practicable, to purchase American-made equipment and products with funding provided under this program in accordance with Congressional intent as set forth in the resolution contained in Public Law 103–317, Sections 607 (a) and (b).

Refer to the Notice published on March 14, 1995, in the **Federal Register** (60 FR 13866) for information on EDA's general policies and other requirements.

Authority: Support for this program is authorized under the contingency fund provided to EDA under Title VII, Public Law 103–317 (Fiscal Year 1994 Supplemental Appropriations).

Catalog of Federal Domestic Assistance (CFDA)

The Special Economic Development and Adjustment Assistance Program—Long-Term Economic Deterioration (LTED) and Sudden and Severe Economic Dislocation (SSED) is listed under CFDA 11.307 (13 CFR Part 308). Planning and Technical Assistance are listed under CFDA 11.302, 11.305 and 11.303 (13 CFR Part 307, Subpart A; and 13 CFR Part 307, Subpart D).

Funding Availability

Funds in the amount of $50 million are available for this disaster relief program and shall remain available until expended. The funds are available for awarding disaster assistance grants pursuant to the Public Works and Economic Development Act of 1965, as amended.

Grant Rates

Grant rates, as established by the Public Works and Economic Development Act of 1965, as amended (PWEDA) and its implementing regulations at 13 CFR chapter III, may vary if permitted by PWEDA and its implementing regulations, and depending on the relative needs and financial capacity of applicants. In most cases, a nonfederal local share will be required. In rare and extenuating circumstances, EDA may waive the local share requirement where permitted by the PWEDA and its implementing regulations at 13 CFR chapter III. Local share requirements are discussed in the **Federal Register** of March 14, 1995, (60 FR 13866) announcing the policies and application procedures for EDA's FY 1995 programs.

Eligible Applicants

Eligible applicants include any of the states or political subdivisions thereof, including municipalities, and economic development districts, Indian tribes, and nonprofit corporations representing an EDA designated redevelopment area or part thereof located in areas affected by the Southeast Floods of 1994, and other disasters. Eligible applicants are further identified in the **Federal Register** of March 14, 1995, (60 FR 13866).

Proposal Submission Procedures

Proposals for assistance authorized under Title VII, Chapter I, of Public Law 103–317 shall be submitted to the Atlanta Regional Office or Economic Development Representative for the area, as noted in Appendix A. Applicants must clearly demonstrate how the EDA assistance will help the area recover from the economic hardship and other problems caused by the floods, or other disasters, and that such assistance has been preceded by sound planning. Interested parties should contact the appropriate office for a proposal package.

Application Procedures

A determination of whether to invite a grant application for EDA assistance will be issued based upon the outcome of the Agency's review of the applicant's preliminary application/proposal. Application procedures, competitive selection criteria and post approval project implementation information for the applicable assistance are described in the **Federal Register** of March 14, 1995, (60 FR 13866) announcing EDA's Notice of Availability of Funds for FY 1995.

Funding Instrument:

Funds will be awarded as grants in accordance with the requirements of Title III and Title IX of the Public Works and Economic Development Act of 1965, as amended (Public Law 89–136; 42 U.S.C. 3121 et seq.) (PWEDA). The appropriate title for grant application and award will be determined by EDA based on the nature of the project and the eligibility of the area.

Dated: May 15, 1995.

Wilbur F. Hawkins,

Acting Assistant Secretary for Economic Development.

Appendix A

For further information contact the Atlanta Regional Office or the appropriate Economic Development Representative (EDR) listed below: Atlanta Regional Office, 401 West Peachtree Street, N.W., Suite 1820, Atlanta, Georgia 30308–3510, Telephone: (404) 730–3002.

EDRs	States covered
Wayne F. Burnette, Aronov Building, Room 134, 474 South Court Street, Montgomery, AL 36104, Telephone: (205) 223–7008.	Alabama.
Lola B. Smith, Federal Bldg., Room 423, 80 North Hughey Avenue, Orlando, FL 32801, Telephone: (407) 648–6572.	Florida.
William J. Day, Jr., 401 West Peachtree Street, N.W., Atlanta, GA 30308–3510, Telephone: (404) 730–3000.	Georgia.

[FR Doc. 95–13102 Filed 5–26–95; 8:45 am]

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federal register

Tuesday
May 30, 1995

Part VI

Department of Housing and Urban Development

NOFA for Youth Development Initiative Under Public and Indian Housing Family Investment Centers; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Public and Indian Housing

[FR-3841-N-01]

NOFA for Youth Development Initiative Under Public and Indian Housing Family Investment Centers

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of funding availability.

SUMMARY: HUD is announcing the availability of up to $10 million in funding for Fiscal Year 1995 for a Youth Development Initiative under the Family Investment Center Program (FIC). The Youth Development Initiative under FIC will provide up to approximately 10 grants for innovative violence abatement strategies that have been developed by youth for public housing. The Youth Development Initiative advances the goals of the Clinton Administration's Operation Safe Home, a major initiative that addresses the larger problem of violence in America's low-income communities. The Youth Development Initiative will provide young individuals (ages 13–25), including noncustodial parents with child support agreements for children that are public housing residents and who would be capable of meeting their obligations by being provided such services, with better access to comprehensive education and employment opportunities and supportive services. The grants will be for up to 3 to 5 years in duration, depending upon the activities undertaken, and will involve youth as active partners, to provide leadership opportunities and improve the capacity for long-term training and services for young residents. The final rule on this program was published in the **Federal Register** on August 24, 1994, as subpart D of 24 CFR part 964.

In the body of this document is information concerning the purpose of the NOFA, eligibility, available amounts, rating factors, and application processing, including how to apply and how selections will be made.

DATES: Application kits will be available beginning May 30, 1995. The application deadline will be 3:00 p.m., local time, on June 29, 1995.

ADDRESSES: An application kit may be obtained from the local HUD Field Office with delegated responsibilities over an applicant public housing agency (see Appendix for listing; applicants in the State of Oklahoma should either contact the HUD office in Denver, Colorado or call the Clearinghouse), or by calling the HUD Community Relations and Involvement Clearinghouse toll-free number 1–800–955–2232. Telephone requests must include your name, mailing address, or post office address (including zip code), telephone number (including area code), and should refer to document FR–3841. This NOFA cannot be used as the application.

FOR FURTHER INFORMATION CONTACT: Bertha M. Jones, Office of Community Relations and Involvement (OCRI), Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4112, Washington, DC 20410; telephone number: (202) 708–3611 (this is not a toll-free number). Hearing- or speech-impaired persons may use the Telecommunications Devices for the Deaf (TDD) by contacting the Federal Information Relay Service on 1–800–877–TDDY (1–800–877–8339) or 202–708–9300 (not a toll-free number) for information on the program.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this notice have been approved by the Office of Management and Budget, under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), and assigned OMB control number 2577–0189.

I. Purpose and Substantive Description

A. Authority

Section 22 of the United States Housing Act of 1937 (42 U.S.C. 1437t) provides for the establishment of Family Investment Centers (FIC). The final rule implementing the FIC Program for public housing was published on August 24, 1994 (59 FR 43622), as part 964, subpart D.

B. Allocation Amounts

In this NOFA, up to $10 million is being made available to public housing agencies (PHAs) for the Youth Development Initiative to further Operation Safe Home. The Department's intention to use the total of $10 million for Youth Development Initiative activities was announced in the NOFA for Public and Indian Housing Family Investment Centers, published on February 15, 1995 (60 FR 8900).

The FIC Youth Development Initiative grants awarded under this NOFA will be targeted to assist youth in gaining access to education, employment, and supportive services. HUD expects that this funding will demonstrate the importance of comprehensive supportive services in contributing to the reduction of unemployment among our youth and crime and violence in public housing communities. This Youth Development Initiative requires that the funded actions be designed and implemented by the targeted youth, in partnership with the PHA.

Each applicant may submit only one application under this NOFA. The maximum grant amount per applicant under this NOFA is $1 million. As explained in the February 15, 1995, FIC NOFA, both PHAs and IHAs are eligible applicants in the main FIC NOFA, but only PHAs may apply for the set-aside funds announced in this Youth Initiative NOFA.

C. Overview and Policy

The stated purpose of Section 22 for FIC is:

[T]o provide families living in public housing with better access to educational and employment opportunities to achieve self-sufficiency and independence by: (a) Developing facilities in or near public housing for training and support services; (b) mobilizing public and private resources to expand and improve the delivery of such services; (c) providing funding for such essential training and support services that cannot otherwise be funded; and (d) improving the capacity of management to assess the training and service needs of families, coordinate the provision of training and services that meet such needs, and ensure the long-term provision of such training and services.

Although Section 22 is phrased in terms of "families" living in public housing, because of section 527 of the National Affordable Housing Act (104 Stat. 4216; 42 U.S.C. 1437aa note) (NAHA), the definition of "families" may be used interchangeably as individuals. This special Initiative is being made available to individuals (youths, ages 13–25), including noncustodial parents with child support agreements for children living in public housing and who would be made capable of meeting their obligations by being provided these services.

The Department envisions that this Initiative under FIC will complement other youth programs, drug elimination efforts, and Youth Sports activities to increase the rates of school completion, enrollment in advanced education, or training and employment. PHAs that are recipients of or applicants for other programs with youth training opportunities must coordinate this FIC Youth Development Initiative with these programs. As an incentive to becoming self-sufficient, the earnings of public housing youths participating in this Youth Development Initiative shall not be treated as income for the purpose of rent calculation, and services are not treated as income for the purposes of any other program or provision of State or Federal law, including rent assistance, subject to the limitations set out in Section I.F(5), "Treatment of Income," of this NOFA. This Initiative is administered by the Department's Office of Community Relations and Involvement in the Office of Public and Indian Housing, with assistance from a network of Community Relations and Involvement Specialists in HUD Field Offices.

D. Definitions

For purposes of this NOFA, the following definitions apply:

Eligible Residents means public housing residents aged 13–25 of a participating PHA, including noncustodial parents with child support agreements for children living in public housing when those parents would be made capable of meeting their obligations by being provided services.

Secretary means the Secretary of Housing and Urban Development.

Service Coordinator means any person, including youth, who is responsible for:

(1) Determining the eligibility of individuals to be served by this Youth Development Initiative;

(2) Assessing training and service needs of eligible residents;

(3) Working with service providers to coordinate the provision of services on a PHA-wide or less-than-PHA-wide basis, and to tailor the services to the needs and characteristics of eligible residents;

(4) Mobilizing public and private resources to ensure that the supportive services identified can be funded over the 5-year period, at least, following the initial receipt of funding under this NOFA;

(5) Monitoring and evaluating the delivery, impact, and effectiveness of any supportive service funded with capital or operating assistance under this program;

(6) Coordinating the development and implementation of this Youth FIC Initiative with other self-sufficiency programs and other education and employment programs; or

(7) Performing other duties and functions that are appropriate for providing eligible residents with better access to educational and employment opportunities.

Supportive Services means new or significantly expanded services essential to providing youth in public housing with better access to educational and employment opportunities to achieve self-sufficiency and independence. (PHAs applying for funds to provide supportive services must demonstrate that the services will be provided at a higher level than currently provided). Program funds may be used for the provision of not more than 15 percent of the cost of any supportive services (which may be provided directly to eligible residents by the public housing agency or by contract or lease through other appropriate agencies or providers). Supportive services may include:

(1) Child care, of a type that provides sufficient hours of operation and serves appropriate ages as needed to facilitate parental access to education and job opportunities;

(2) Employment training and counseling (*e.g.*, job training, preparation and counseling, job development and placement, business management training and entrepreneurship development, and follow-up assistance after job placement);

(3) Computer skills training;

(4) Entrepreneurship training;

(5) Education (*e.g.*, remedial education, literacy training, completion of secondary or post-secondary education, and assistance in the attainment of certificates of high school equivalency);

(5) Transportation as necessary to enable any participating youth to receive available services or to commute to his or her place of employment;

(6) Personal welfare (*e.g.*, substance/alcohol abuse treatment and counseling, self-development counseling, etc.);

(7) Supportive Health Care Services (*e.g.*, outreach and referral services); and

(8) Any other services and resources, including case management, that are determined to be appropriate in assisting eligible residents.

Vacant Unit means a dwelling unit that is not under an effective lease to an eligible family. An effective lease is a lease under which an eligible family has a right to possession of the unit and is being charged rent, even if the amount of any utility allowance equals or exceeds the amount of a total tenant payment that is based on income and, as a result, the amount paid by the family to the PHA is zero.

E. Eligibility

(1) Eligible Applicants

Funding for this program is limited to public housing authorities. Housing Authorities with Section 8 oversight (only) are *not* eligible to apply for funds under this NOFA. Facilities assisted shall be on or near the premises of public housing. For all families using FIC services, other than eligible residents (as defined in Section I.D of this NOFA), any additional costs incurred are to be borne by other resources.

To be eligible under this NOFA, a PHA cannot have serious unaddressed, outstanding Inspector General audit findings; fair housing and equal opportunity monitoring review findings; or Field Office management review findings. In addition, the PHA must be in compliance with civil rights laws and equal opportunity requirements. A PHA will be considered to be in compliance if:

(a) As a result of formal administrative proceedings, there are no outstanding findings of noncompliance with civil rights laws unless the PHA is operating in compliance with a HUD-approved compliance agreement designed to correct the area(s) of noncompliance;

(b) There is no adjudication of a civil rights violation in a civil action brought against it by a private individual, unless the PHA demonstrates that it is operating in compliance with a court order, or implementing a HUD-approved resident selection and assignment plan or compliance agreement, designed to correct the area(s) of noncompliance;

(c) There is no deferral of Federal funding based upon civil rights violations;

(d) HUD has not deferred application processing by HUD under Title VI of the Civil Rights Act of 1964, the Attorney General's Guidelines (28 CFR 50.3) and HUD's Title VI regulations (24 CFR 1.8) and procedures (HUD Handbook 8040.1) or under Section 504 of the Rehabilitation Act of 1973 and HUD regulations (24 CFR 8.57);

(e) There is no pending civil rights suit brought against the PHA by the Department of Justice; and

(f) There is no unresolved charge of discrimination against the PHA issued by the Secretary under Section 810(g) of the Fair Housing Act, as implemented by 24 CFR 103.400.

(2) Eligible Activities

To develop such a Youth Development Initiative, program funds may be used for the following activities to guarantee youth access to comprehensive services:

(a) The renovation, conversion, or combination of vacant dwelling units in a PHA development to create common areas to accommodate the provision of supportive services;

(b) The renovation of existing common areas in a PHA development to

accommodate the provision of supportive services;

(c) The renovation, acquisition, or construction of facilities located near the premises of one or more PHA developments to accommodate the provision of supportive services. Under this NOFA, acquisition and new construction will be treated the same as substantial rehabilitation (renovation/conversion) activities, for such purposes as rating and submission requirements.

(d) The provision of not more than 15 percent of the total cost of supportive services (which may be provided directly to eligible residents by the PHA or by contract or lease through other appropriate agencies or providers), but only if the PHA demonstrates that:

(i) The supportive services are appropriate to improve the access of eligible residents for employment and educational opportunities; and

(ii) The PHA has made diligent efforts to use or obtain other available resources to fund or provide such services.

(3) Eligible Costs

Costs that may be covered for activities funded and carried out by a housing authority include, but are not limited to, the following:

(a) *Administrative Costs.* No cap. Costs that are reasonable and include maintenance, utility costs (telephone, fax, light, gas), postage, printing, copier, building leasing/rent costs, accounting staff, and initial equipment purchase (i.e., desks, chairs, computer equipment, tools, etc.);

(b) *Other Program Costs.* Costs that include advertisement, reimbursement for participants of Youth FIC, insurance liability costs (personal property/property off housing authority site), and Technical Assistance (T/A) contractor fees, etc.;

(c) *Supportive Services.* Grant funds may be used to fund a maximum of 15 percent of the total cost of providing supportive services. Direct service delivery includes the costs of training programs, day care services, manpower, etc.;

(d) *Site Facility/Renovation/Conversion/Construction/Acquisition Costs.* Costs include: Renovation/conversion/construction/acquisition, architectural and engineering (and related professional services required to prepare architectural plans or drawings, write-ups, specifications, or inspections); and

(e) The employment of service coordinators.

(4) Other Eligibility Related Requirements

(a) Grants used solely for renovation/conversion/acquisition/new construction activities listed in paragraphs (a), (b), or (c) of Section I.E(2), "Eligible Activities," of this NOFA, shall be completed within 3 years of the effective date of the grant. Other eligible activities may be funded over a maximum 5-year period.

(b) Each applicant should submit a description of the supportive services activities and/or the renovation or conversion to be conducted, along with a budget and timetable for those activities. This description should include the PHA's plans to:

(i) Ensure provision of employment, on-the-job training and work experience, education, child care, transportation, and assistance in resolving personal or family crises;

(ii) Encourage the active involvement of local labor unions, junior and senior high schools, 2- and 4-year post-secondary institutions, and community agencies; and

(iii) Ensure outreach and recruitment efforts and integrate service delivery, intake assessment, and case management.

(c) Each applicant must submit a budget, timetable, and list of milestones for the 5-year period (following initial receipt of funding), at least, covered by the applicant's description of supportive services. Milestones shall include the number of youth to be served, types of services, and dollar amounts to be allocated over the 5-year period.

(d) Each applicant must demonstrate a firm commitment of assistance from one or more sources ensuring that supportive services will be provided for not less than 1 year following the completion of activities funded under this NOFA.

(e) When a grant application is approved, the PHA must receive approval from HUD to conduct renovation or conversions. Approval must be provided prior to drawing down funds.

(f) If a renovation is done off-site, the PHA must provide documentation that it has control of the proposed property. Control can be evidenced through a lease agreement, ownership documentation, or other appropriate documentation (see Sections III.B(4) and III.C(14) of this NOFA).

F. Other Program Requirements

(1) *Youth/Resident Involvement.* The Department has a longstanding policy of encouraging PHAs to promote resident involvement and to facilitate cooperative partnerships to achieve specific and mutual goals. Therefore, youth/residents must be included in the planning and implementation of this program. The PHA shall develop a process that assures that public housing youth, through their Resident Councils, if feasible, are active partners in the development of the content of the PHA's application in response to this NOFA. The PHA shall give full consideration to the comments and concerns of the youth representatives. The Department envisions that the youth representatives will work in concert with the duly elected Resident Council. The process shall include:

(a) Informing youth of the selected developments regarding the preparation of the application and providing for residents to become active partners in the development of the application.

(b) Once a draft application has been prepared, the PHA shall make a copy available for reading in the management office; provide copies of the draft to the duly-elected resident organization representing the residents of the developments involved; and provide adequate opportunity for comment by all residents, including youth, of the development and their representative organizations prior to making the application final. A copy of all comments shall be kept on file for review, at the residents' request, by the duly elected Resident Council and HUD.

(c) After HUD approval of a grant, notify youth and other residents of the development, and any representative organizations, of approval of the grant; notify the youth of the availability of the HUD-approved implementation schedule in the management office for reading; and develop a system to facilitate a regular youth role in all aspects of program implementation.

(2) *Training/Employment of PHA Youth Residents.* (a) Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (Section 3) requires that programs of direct financial assistance administered by HUD provide, to the greatest extent feasible, opportunities for job training and employment to lower income residents in connection with projects in their neighborhoods. The requirements of Section 3 have been implemented in 24 CFR part 135 by an interim rule published on June 30, 1994 (59 FR 33866). At a minimum each PHA, and each of its contractors and subcontractors receiving funds under this program, shall make best efforts to employ PHA residents in connection with housing rehabilitation, housing construction, and other public construction projects.

(b) For purposes of the requirements under Section 3, a best effort means that the PHA shall:

(1) Attempt to recruit PHA youth from the appropriate areas through Resident/Youth Councils, local advertising media, signs placed at the proposed FIC project site, and community organizations and public or private institutions operating within the development area. The PHA shall include in its outreach and marketing efforts, procedures to attract the least likely to apply for this program because it includes construction/renovation/conversion types of activities, *i.e.,* low-income households headed by women and persons with disabilities; and

(2) Determine the qualifications of PHA residents when they apply, either on their own or on referral from any source, and employ PHA youth if their qualifications are satisfactory and the contractor has openings. If the PHA is unable to employ youth determined to be qualified, those residents shall be listed for the first available openings.

(3) *Davis-Bacon Requirements.* All laborers and mechanics employed by contractors or the PHA in renovation or conversion (including combining of units) on the premises of the PHA development to accommodate the provision of supportive services under this program shall be paid not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a–276a–5). All architects, technical engineers, draftsmen, and technicians employed with respect to such work shall be paid not less than the wages prevailing in the locality as determined by HUD. These requirements do not apply to volunteers under the conditions set out in 24 CFR part 70.

(4) *Youth/Resident Compensation.* Residents employed to provide services funded under this program or described in the application shall be paid at a rate not less than the highest of:

(a) The minimum wage that would be applicable to the employees under the Fair Labor Standards Act of 1938 (FLSA), if section 6(a)(1) of the FLSA applied to the resident and if the resident were not exempt under section 13 of the FLSA;

(b) The State or local minimum wage for the most nearly comparable covered employment; or

(c) The prevailing rate of pay for persons employed in similar public occupations by the same employer.

(5) *Treatment of Income.* (a) *1937 Act.* As provided in section 22(i) of the United States Housing Act of 1937 (1937 Act), no service provided to a PHA resident under this program may be treated as income for the purpose of any other program or provision of State, or Federal law. Program participation shall begin on the first day the resident enters training or begins to receive services. Furthermore, the earnings of and benefits to any PHA youth resulting from participation in the FIC program shall not be considered as income in computing the tenant's total annual income that is used to determine the tenant rental payment during:

(i) The period that the youth participates in the program; and

(ii) The period that begins with the commencement of employment of the youth in the first job acquired by the youth after completion of the program that is not funded by assistance under the 1937 Act, and ends on the earlier of:

(*A*) The date the youth ceases to continue employment without good cause; or

(*B*) The expiration of the 18-month period beginning on the date of commencement of employment in the first job not funded by assistance under this program.

(6) *Reports.* Each PHA receiving a grant shall submit to HUD an annual progress report, participant evaluation and assessment data, and other information, as needed, regarding the effectiveness of the Youth Development Initiative in providing youth with access to education and job opportunities and supportive services.

G. Rating Factors

Each application for grant award will be evaluated if it is submitted as required under Section II.B of this NOFA and meets the eligibility requirements in Section I.E of this NOFA. Applications will be placed in three funding categories, but ranked using Rating Factors for either Combination Funding Requests or Supportive Services Only. The three funding categories are as follows: (1) Supportive Services Only; (2) Renovation/Conversion/Acquisition/New Construction; and (3) Combination Supportive Services/Renovation/Conversion/Acquisition/New Construction Activities. Applications submitted for funds solely to implement supportive services will be competitively selected based on the highest scores out of a possible 100 points, using Rating Factors for Supportive Services Only. Applications submitted for funds that include renovation/conversion (including acquisition and new construction) or combination of dwelling unit activities will be competitively selected based on the highest scores out of a possible 100 points, using Rating Factors for Combination Funding Requests. Grants will be awarded to approximately the 10 highest-ranked eligible applicants in the nation. All of the funds will be awarded based on project size and geographical diversity. HUD reserves the right to select applications out of rank order, if necessary to achieve geographic diversity.

HUD will review and evaluate the application as follows, according to whether the application seeks funds for Supportive Services Only, or for renovation, conversion, acquisition, or new construction activities, or for Combination Funding:

Combination Funding Requests—Renovation/Conversion/Acquisition/New Construction/Supportive Services Activities (Maximum 100 points). If the applicant is proposing to build or rehabilitate a facility to render programmatic services, applications will be scored on the following factors:

(a) *Evidence of the need for supportive services by eligible residents (Maximum: 35 points):*

• A high score of 26–35 points is achieved where the applicant provides a detailed needs assessment of eligible residents, clearly identifies specific target areas of concern, and documents milestone results and benefits to be derived from resident participation in Youth FIC services.

• A medium score of 13–25 points is achieved where the applicant provides a general needs assessment of eligible residents, identifies target areas, but does not provide milestone results to be derived from resident participation in Youth FIC services.

• A low score of 1–12 points is achieved where the applicant merely mentions there is a need for services, but does not clearly address specific areas of concern.

(b) *Youth Resident Involvement/Local Partnerships (Maximum: 25 points):* The extent to which the housing authority has demonstrated that it has partnered with residents in the implementation phase (evidence of such a partnership may be in the form of a resident council board resolution or letter), and will contract with or employ youth residents to provide services and conduct renovation/conversion/construction activities. In assigning points for this factor, HUD shall also consider the extent of the involvement of social service agencies in the development of the application. The commitment of these agencies may be demonstrated through evidence of intent to provide direct financial assistance or other resources, such as social services (i.e., counseling and training); funds

available through existing State and local programs; or other commitments.

• A high score of 18–25 points is received where the applicant provides evidence that it has a strong and cooperative partnership with its youth residents and that youth residents were involved in the development of the application; the applicant will continue its involvement throughout the implementation stages of the Youth FIC, including providing input identifying resident needs; and the applicant will contract with or employ youth residents to provide services and conduct renovation/conversion/construction activities. The applicant also provides evidence in a resolution or by certification in a letter that social service agencies intend to provide various resources to the Youth FIC; i.e., sources committed, availability of funds, etc.

• A medium score of 9–17 points is received where the applicant mentions its partnership with youth residents. While the residents were notified of the Youth FIC (although not involved in the development of the application), the applicant ensures that their role will be increased during the implementation stages of the Youth FIC and states its intent to provide services (even though the plan for hiring and contracting is not specific). The applicant provides certification in letter or a resolution that it is currently implementing a similar program (volunteer) utilizing partnerships with service agencies in its locality. Evidence also is provided of social service agencies' intent to provide various resources to the Youth FIC; i.e., source committed, availability of funds, etc.; and

• A low score of 1–8 points is received where the applicant mentions a partnership, but evidence of such support is not provided. The applicant mentions its efforts at coordinating the Youth FIC facility in a target area, but does not include evidence of commitments from existing local, State, or Federal sources.

(c) *Capability (Maximum: 20 points)*: (1) The capability of the housing authority or designated service provider to provide the supportive services; (2) the extent to which the housing authority has demonstrated success in modernization activities under the Comprehensive Grant/Comprehensive Improvement Assistance (CIAP) Programs (see CFR part 968); and (3) the extent to which the housing authority has a good record of maintaining and operating public housing, as determined by the Public Housing Management Assessment Program (PHMAP) (see 24 CFR part 901), and has utilized innovative and workable strategies to improve management.

• A high score of 14–20 points is received where the applicant: (a) Demonstrates success in providing similar supportive services programs and has clearly detailed how the services were coordinated and complemented with other programs; and (b) the applicant's PHMAP score is in the "high performer" range.

• A medium score of 7–13 points is received where the applicant does not currently provide similar programs, but demonstrates how the services will be coordinated and complemented with other programs. The applicant's PHMAP score is in the "standard" range (60 or greater, but less than 90). In addition, the housing authority has clearly identified innovative strategies to improve management of its developments.

• A low score of 1–6 points is received where it is unclear if the applicant or designated service provider has experience in providing similar supportive services programs. The applicant's PHMAP score is in the "troubled" range (less than 60); however, it is currently implementing local, State, or Federal partnerships in efforts to develop effective strategies to improve its management capacity.

(d) *Sustainability/Program Quality (Maximum: 20 points)*: (1) The extent to which the housing authority and each service provider have evidenced that supportive services and other resources will be provided for 5 years following the receipt of funding for supportive services under this NOFA, or 3 years following the completion of renovation/conversion/construction/acquisition activities; (2) the extent to which the housing authority has demonstrated that it will commit to its Youth FIC part of its formula allocation of Comprehensive Grant Program (CGP)/Comprehensive Improvement Assistance Program (CIAP) funds for CGP/CIAP eligible activities that result in employment, training, and contracting opportunities for eligible residents; and (3) the extent to which the envisioned renovation/conversion/construction/acquisition and combination activities are appropriate to facilitate the provision of Youth FIC supportive services.

• A high score of 14–20 points is received where the applicant provides letters from service providers that contain a strong commitment to providing services and other resources (i.e., direct financial staff, training/educational) over the grant period; clearly documents its current use of CGP/CIAP funds toward eligible Youth FIC activities; and provides the following:

—A detailed description of the location of the Youth FIC, the coordination of services proposed at the facility, and the area to be served by the Youth FIC; and

—Evidence that the facility is appropriate for the proposed Youth FIC Activity. This evidence should clearly indicate the facility's accessibility to residents, including its distance and the transportation necessary to receive services.

• A medium score of 7–13 points is received where the applicant provides letters or narrative language regarding the commitment of service providers, but the providers are limiting in their commitment to providing services; does not currently have CGP/CIAP funding, but has made clear its intention to use part of future CGP/CIAP funding toward eligible Youth FIC activities; and provides a good description of the facility location, however its accessibility to residents is somewhat unclear.

• A low score of 1–6 points is received where the applicant merely mentions that services will be provided, but does not provide letters; does not make clear any intention to use part of its current or future CGP/CIAP funding toward eligible Youth FIC activities; and mentions the location of the Youth FIC facility, but does not provide specific details regarding the appropriateness or accessibility or distance to residents.

Supportive Services Only

(a) *Evidence of Need for supportive services [Maximum: 35 points]*:

• A high score of 26–35 points is achieved where the applicant provides a detailed needs assessment of eligible residents, clearly identifies specific target areas of concern, and documents milestone results and benefits to be derived from resident participation in Youth FIC services.

• A medium score of 13–25 points is achieved where the applicant provides a general needs assessment of eligible residents, identifies target areas, but does not provide milestone results to be derived from resident participation in FIC services.

• A low score of 1–12 points is achieved where the applicant merely mentions there is a need for services, but does not clearly address specific areas of concern.

(b) *Youth Resident Involvement/Local Partnerships (Maximum: 25 points)*: The extent to which the housing authority has demonstrated that it has partnered with youth residents in the planning phase of the Youth FIC, will further include the residents in the implementation phase (evidence of such a partnership may be in the form of a resident council board resolution or letter), and will contract with or employ youth residents to provide services. In addition, HUD shall consider the extent of the involvement of social services agencies in the development of the application and the commitment of those agencies to providing direct financial assistance or other resources, such as social services (i.e., counseling and training), funds available through existing State and local programs, or other commitments.

• A high score of 18–25 points is received where the applicant provides evidence that it has a strong and cooperative partnership with its youth residents and that youth residents were involved in the development of the application; the applicant will continue its involvement throughout the implementation stages of the Youth FIC, including providing input identifying resident needs; and the applicant will contract with or employ residents to provide services. The applicant also provides evidence by resolution or certification in a letter that social service agencies intend to provide various resources to the Youth FIC; i.e., sources committed, availability of funds, etc.

• A medium score of 9–17 points is received where the applicant mentions its partnership with residents. While the residents were notified of the Youth FIC (although not involved in the development of the application), the applicant ensures that the residents' role will be increased during the implementation stages of the Youth FIC and states its intent to provide services (even though the plan for hiring and contracting is not specific). The applicant provides certification in a letter or a resolution that it is currently implementing a similar program (volunteer) utilizing partnerships with service agencies in its locality. Evidence also is provided of social service agencies' intent to provide various resources to the Youth FIC; i.e., source committed, availability of funds, etc.; and

• A low score of 1–8 points is received where applicant mentions a partnership, but evidence of such support is not provided. The applicant mentions its efforts at coordinating the Youth FIC facility in a target area, but does not include evidence of commitments from existing local, State, Federal sources.

(c) *Capability (Maximum: 20 points)*: (1) The capability of the housing authority or designated service provider to provide the supportive services; and (2) the extent to which the housing authority has a good record of maintaining and operating public housing, as determined by the Public Housing Management Assessment Program (PHMAP) (see 24 CFR part 901), and has utilized innovative and workable strategies to improve management.

• A high score of 14–20 points is received where the applicant: (a) Demonstrates success in providing similar supportive services programs and has clearly detailed how the services were coordinated and complemented with other programs; (b) the applicant's PHMAP score is in the "high performer" range.

• A medium score of 7–13 points is received where the applicant does not currently provide similar programs, but demonstrates how the services will be coordinated and complemented with other programs. The applicant's PHMAP score is in the "standard" range (60 or greater but less than 90). In addition, the housing authority has clearly identified innovative strategies to improve management of its developments.

• A low score of 1–6 points is received where it is unclear if the applicant or designated service provider has experience in providing similar supportive services programs. The applicant's PHMAP score is in the "troubled" range (less than 60); however, it is currently implementing local, State, or Federal partnerships in efforts to develop effective strategies to improve its management capacity.

(d) *Sustainability/Program Quality (Maximum: 20 points)*: (1) The extent to which the housing authority and each service provider have evidenced that supportive services and other resources will be provided for 5 years following the receipt of funding for supportive services under this NOFA; and (2) the extent to which the housing authority has demonstrated that it will commit to its Youth FIC part of its formula allocation of Comprehensive Grant Program (CGP)/Comprehensive Improvement Assistance Program (CIAP) funds for eligible activities that result in employment, training, and contracting opportunities that are appropriate to facilitate the provision of Youth FIC supportive services.

• A high score of 14–20 points is received where the applicant provides letters from service providers that contain their strong commitment to providing services and other resources (i.e., direct financial staff, training/educational) over the grant period; clearly documents its current use of CGP/CIAP funds toward eligible Youth FIC activities; and provides the following:

—A detailed description of the location of the Youth FIC, the coordination of services proposed at the facility, and the area to be served by the Youth FIC; and

—Evidence clearly indicating the accessibility of the FIC facility to residents, including the distance to the facility and the transportation necessary to receive services.

• A medium score of 7–13 points is received where the applicant provides letters or narrative language regarding commitment of service providers, but the providers are limiting in their commitment to providing services; does not currently have CGP/CIAP funding, but has made clear its intention to use part of future CGP/CIAP funding toward eligible Youth FIC activities; and provides a description of the facility location, but its accessibility to residents is somewhat unclear.

• A low score of 1–6 points is received where the applicant merely mentions that services will be provided, but does not provide letters; does not make clear any intention to use part of its current or future CGP/CIAP funding toward eligible Youth FIC activities; and mentions the location of the Youth FIC facility, but does not provide specific details regarding its accessibility or distance to residents.

H. Environmental Review

Any environmental impact regarding eligible activities will be addressed through an environmental review of that activity as required by 24 CFR part 50, including the applicable related laws and authorities under § 50.4, to be completed by HUD, to ensure that any environmental impact will be addressed before assistance is provided to the PHA. Grantees will be expected to adhere to all assurances applicable to environmental concerns as contained in this NOFA and grant agreements.

II. Application Submissions Process

A. Application Kit

An application kit is required as the formal submission to apply for funding. The kit includes information and guidance on preparation of a Plan and Budget for activities proposed by the applicant. This process facilitates the execution of the grant for those selected to receive funding. An application may be obtained from the local HUD Field Offices with delegated responsibilities over an applying PHA (See Appendix A for listing; applicants in the State of Oklahoma should either contact the HUD office in Denver, Colorado or call

the Clearinghouse), or by calling HUD's Community Relations and Involvement Clearinghouse toll free number 1–800–955–2232. Requests for application kits must include your name, mailing address or P.O. Box (including zip code), and telephone number (including area code), and should refer to document FR–3841. Applications may be requested beginning May 30, 1995.

B. Application Submission

The original and two copies of the application must be submitted. The Appendix lists addresses of HUD Field Offices that will accept the completed application. Applications for the Youth FIC Program should not exceed 30 pages. Each applicant should provide the name of its congressional Representative and District in its narrative description of the proposed project.

The application must be physically received by 3:00 p.m., local time, on June 29, 1995. This application deadline is firm as to date and hour. In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their applications to avoid any risk of loss of eligibility brought on by unanticipated delays or other delivery-related problems. Facsimile and telegraphic applications are not authorized and shall not be considered.

III. Checklist of Application Submission Requirements

The Application Kit will contain a checklist of all application submission requirements to complete the application process.

A. *Applications for Supportive Services Only* must contain the following information:

(1) Name and address (or P.O. Box) of the PHA. Name and telephone number of contact person (in the event further information or clarification is needed during the application review process);

(2) SF–424A, Budget Information, Non-Construction Programs, and SF–424B, Assurances, Non-Construction Programs;

(3) A description of the need for supportive services by eligible youth residents;

(4) A description of the supportive services that are to be provided over at least a 5-year period after the initial receipt of funding under this NOFA, and 1 year following the completion of activities funded under this NOFA, and how the supportive services will enhance education and job opportunities for youth residents;

(5) Evidence of a firm commitment of assistance from one or more sources ensuring that the supportive services will be provided for not less than three years following the completion of activities funded under this NOFA. Evidence shall be in the form of a letter or resolution. A cost allocation plan shall be submitted outlining the 1-year commitment;

(6) A description of public or private sources of assistance that can reasonably be expected to fund or provide supportive services, including evidence of any intention to provide assistance expressed by State and local governments, private foundations, and other organizations (including profit and nonprofit organizations);

(7) A description of the plan for continuing operation of the Youth FIC, and the provision of services to youth after completion of the later of: (i) 5 years following the initial receipt of funding under this NOFA; or (ii) 1 year following the completion of activities funded under this NOFA;

(8) A certification from an appropriate service agency (in the case of FSS, the certification may be from the Coordinating Committee) that:

(a) The provision of supportive services is well designed to provide youth with better access to educational and employment opportunities; and

(b) There is a reasonable likelihood that such services will be funded or provided for the entire 5-year period, at least, after the initial receipt of funding under this NOFA.

(9) A description of assistance for which the PHA is applying;

(10) A narrative on the location of the Youth FIC facility. Provide the precise location of the facility to be used for Youth FIC, and indicate its accessibility to residents, including distance from the development(s), and transportation necessary to receive services;

(11) Evidence that the PHA has control of the Youth FIC site. If the facility is off-site, the PHA shall include copies of the negotiated lease and the terms, an option to lease, indicating that the facility is available to the PHA for use as a Youth FIC for the period ending the later of: (1) 5 years following the initial receipt of funding under this NOFA, or (ii) 1 year following the completion of activities funded under this NOFA;

(12) A certification that funds used to pay for a Service Coordinator are not duplicate expenses from any other program;

(13) A description of the youth involvement and participation in the planning and implementation phases of this program;

(14) A description of the services that PHA residents will be employed to provide;

(15) Letters of commitment. The letters should identify all commitments for additional resources to be made available to the program from the applicant and other State, local, or private entities. The description shall include, but is not limited to, the commitment source, source committed, availability and use of funds, and other conditions associated with the loan, grant, gift, donation, contribution, etc. Commitments from State or local agencies may include, but are not limited to, vocational, adult, and bilingual education; Job Training Partnership Act (JTPA) and Family Support Act of 1988 job training programs; child care; and social services assistance, counseling or drug addiction services. Commitments may include in-kind contributions, on-site journeymen or equivalent instructors, transportation, or other resources for use by participants of the Youth FIC;

(16) Certification that efforts were made to use or obtain other resources to fund or provide the services proposed;

(17) Certification of the extent to which the PHA will commit to its Youth FIC part of its formula allocation of Comprehensive Grant Program (CGP) funds/Comprehensive Improvement Assistance (CIAP) funds for CGP/CIAP eligible activities that result in employment, training, and contracting opportunities for eligible residents, if applicable;

(18) A project budget, timetable and narrative;

(19) Certification that Youth FIC funding will not duplicate any other HUD funding, including CGP funding.

(20) Equal Opportunity Requirements. The PHA must certify that it will carry out activities assisted under the program in compliance with:

(a) The requirements of the Fair Housing Act (42 U.S.C. 3601–3619) and implementing regulations at 24 CFR parts 100, 107, 109, 110, and 121; and Executive Order 11063 (Equal Opportunity Housing implementing regulations at 24 CFR part 107; and Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR part 1;

(b) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–07) and implementing regulations at 24 CFR part 146; the prohibition against discrimination against individuals with a disability under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8; and the requirements of Executive Order 11246 and the implementing regulations issued at 41 CFR chapter 60;

(c) The requirements of section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u and implementing regulations at 24 CFR part 135; and

(d) The requirements of Executive Orders 11625, 12432, and 12138. Consistent with HUD's responsibilities under these Orders, the grantee must make efforts to encourage the use of minority and women's business enterprises in connection with activities funded under this notice.

(21) Form HUD–2880, Applicant/Recipient Disclosure Update Report must be completed in accordance with 24 CFR part 12, Accountability in the Provision of HUD Assistance. A copy is provided in the application kit.

(22) Drug-Free Workplace Certification. The Drug-Free Workplace Act of 1988 (42 U.S.C. 701) requires grantees of federal agencies to certify that they will provide drug-free workplaces. Each potential recipient under this NOFA must certify that it will comply with drug-free workplace requirements in accordance with the Act and with HUD's rules at 24 CFR part 24, subpart F.

(23) Certification regarding Lobbying. Section 319 of the Department of the Interior Appropriations Act, Pub. L. 101–121, approved October 23, 1989 (31 U.S.C. 1352) (the "Byrd Amendment") generally prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant or loan. The Department's regulations on these restrictions on lobbying are codified at 24 CFR part 87. To comply with 24 CFR 87.110, any PHA submitting an application under this announcement for more than $100,000 of budget authority must submit a certification and, if applicable, a Disclosure of Lobbying Activities (SF–LLL form).

(24) A certification that:

(a) The PHA will include in any contract for renovation or conversion (including combining of units) on the premises of the PHA development to accommodate the provision of supportive services under this program, a requirement that all laborers and mechanics (other than volunteers under the conditions set out in 24 CFR part 70) shall be paid not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a—276a–5);

(b) The PHA will include in such contracts a requirement that all architects, technical engineers, draftsmen, and technicians (other than volunteers) shall be paid not less than the wages prevailing in the locality as determined by HUD; and

(c) The PHA will pay such wage rates to its own employees engaged in this work.

B. *Applications for Renovation/Conversion/Construction/Acquisition Activities Only* must contain the following information:

(1) Name and address (or P.O. Box) of the PHA. Name and telephone number of contact person (in the event further information or clarification is needed during the application review process);

(2) A narrative on the location of the off-site facility, if applicable. Provide the precise location of the Youth FIC facility (street address) and indicate its accessibility to residents, including distance from the development(s), and transportation necessary to receive services;

(3) A narrative description of how the funds will be used;

(4) Evidence that the PHA has control of the proposed premises. This shall include copies of the negotiated lease and the terms, an option to lease, indicating that the facility will be available to the PHA for use as a Youth FIC for the period ending the later of: (i) 5 years following the initial receipt of funding under this NOFA; or (ii) 1 year following the completion of activities funded under this NOFA;

(5) A description of services that the PHA expects to be provided, to the greatest extent practicable, by youth residents, as described in Section I.F(2) of this NOFA. The Description shall include the position titles and numbers of youth expected to be employed for renovation/conversion/construction activities;

(6) Certification of the extent to which the PHA will commit to its Youth FIC part of its formula allocation of Comprehensive Grant Program (CGP) funds for CGP eligible activities that result in employment, training, and contracting opportunities for eligible residents;

(7) A project budget, timetable and narrative;

(8) Certification that Youth FIC funding will not duplicate any other HUD funding, including CGP funding.

(9) *Equal Opportunity Requirements.* The PHA must certify that it will carry out activities assisted under the program in compliance with:

(a) The requirements of the Fair Housing Act (42 U.S.C. 3601–3619) and implementing regulations at 24 CFR parts 100, 107, 109, 110, and 121; and Executive Order 11063 (Equal Opportunity Housing implementing regulations at 24 CFR part 107; and Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR part 1;

(b) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–07) and implementing regulations at 24 CFR part 146; the prohibition against discrimination against individuals with a disability under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8 and Title II or the Americans with Disabilities Act of 1009 (42 U.S.C. 12131) and implementing regulation at 28 CFR part 35; and the requirements of Executive Order 11246 and the implementing regulations issued at 41 CFR chapter 60;

(c) The requirements of section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u and implementing regulations at 24 CFR part 135; and

(d) The requirements of Executive Orders 11625, 12432, and 12138. Consistent with HUD's responsibilities under these Orders, the grantee must make efforts to encourage the use of minority and women's business enterprises in connection with activities funded under this notice.

(10) Evidence of a firm commitment of assistance from one or more sources ensuring that the supportive services will be provided for not less than 1 year following the completion of activities funded under this NOFA. Evidence shall be in the form of a letter or resolution. A cost allocation plan shall be submitted outlining the 1-year commitment;

(11) Form HUD–2880, Applicant/Recipient Disclosure Update Report must be completed in accordance with 24 CFR part 12, Accountability in the Provision of HUD Assistance. A copy is provided in the application kit.

(12) Drug-Free Workplace Certification. The Drug-Free Workplace Act of 1988 (42 U.S.C. 701) requires grantees of federal agencies to certify that they will provide drug-free workplaces. Each potential recipient under this NOFA must certify that it will comply with drug-free workplace requirements in accordance with the Act and with HUD's rules at 24 CFR part 24, subpart F.

(13) Certification regarding Lobbying. Section 319 of the Department of the Interior Appropriations Act, Pub. L. 101–121, approved October 23, 1989 (31 U.S.C. 1352) (the "Byrd Amendment") generally prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant or loan. The Department's regulations on these restrictions on lobbying are codified at 24 CFR part 87. To comply with 24 CFR 87.110, any PHA submitting an application under this announcement for more than $100,000 of budget authority must submit a certification and, if applicable, a Disclosure of Lobbying Activities (SF–LLL form).

(14) A certification that:

(a) The PHA will include in any contract for renovation or conversion (including combining of units) on the premises of the PHA development to accommodate the provision of supportive services under this program, a requirement that all laborers and mechanics (other than volunteers under the conditions set out in 24 CFR part 70) shall be paid not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a—276a–5);

(b) The PHA will include in such contracts a requirement that all architects, technical engineers, draftsmen, and technicians (other than volunteers) shall be paid not less than the wages prevailing in the locality as determined by HUD;

(c) The PHA will pay such wage rates to its own employees engaged in this work; and

(d) If new construction is undertaken, the PHA has looked at other appropriate facilities and cannot make those usable for FIC purposes.

C. *Applications for Both Supportive Services and Renovation/Conversion/Construction/Acquisition Activities* must contain the following information:

(1) Name and address (or P.O. Box) of the PHA. Name and telephone number of contact person (in the event further information or clarification is needed during the application review process);

(2) SF–424A, Budget Information, Non-Construction Programs, and SF–424B, Assurances, Non-Construction Programs;

(3) A description of assistance for which the PHA is applying;

(4) A description of the need for supportive services by eligible residents;

(5) Evidence of a firm commitment of assistance from one or more sources ensuring that the supportive services will be provided for not less than 1 year following the completion of activities funded under this NOFA. Evidence shall be in the form of a letter or resolution. A cost allocation plan shall be submitted outlining the 1-year commitment;

(6) A description of the plan for continuing operation of the Youth FIC and the provision of supportive services to families after the later of: (i) 5 years following the initial receipt of funding under this NOFA; or (ii) 1 year following the completion of activities funded under this NOFA;

(7) A description of services that the PHA expects to be provided, to the greatest extent practicable by PHA residents as provided under Section I.F(2) of this NOFA;

(8) A description of the positions and numbers of residents expected to be employed for renovation, conversion, and other eligible activities;

(9) A description of the youth involvement in the planning and implementation phases of this program;

(10) Certification of the extent to which the PHA will commit to its Youth FIC part of its formula allocation of Comprehensive Grant Program (CGP) funds for CGP eligible activities that result in employment, training, and contracting opportunities for eligible residents;

(11) A project budget, timetable, and narrative;

(12) Letters of commitment. Identify all commitments for additional resources to be made available to the program from the applicant and other State, local, or private entities. The description shall include, but is not limited to, the commitment source, source committed, availability and use of funds, and other conditions associated with the loan, grant, gift, donation, contribution, etc. Commitments from State or local agencies may include, but are not limited to, vocational, adult, and bilingual education; JTPA and Family Support Act of 1988 job training programs; child care; and social services assistance, counseling or drug addiction services. Commitments may include in-kind contributions, on-site journeymen or equivalent instructors, transportation, or other resources for use by participants of the FIC.

(13) A narrative on the location of the facility. Provide the precise location of the Youth FIC facility (street address) and its accessibility to residents including distance from the development(s), and transportation necessary to receive services;

(14) Evidence that the PHA has control of the proposed off-site premises. This shall include copies of the negotiated lease and the terms, an option to lease, indicating that the facility will be available to the PHA for use as a Youth FIC for the period ending the later of: (i) 5 years following the initial receipt of funding under this NOFA; or (ii) 1 year following the completion of activities funded under this NOFA;

(15) Certification that Youth FIC funding will not duplicate any other HUD funding, including CGP funding;

(16) *Equal Opportunity Requirements.* The PHA must certify that it will carry out activities assisted under the program in compliance with:

(a) The requirements of the Fair Housing Act (42 U.S.C. 3601–3619) and implementing regulations at 24 CFR parts 100, 107, 109, 110, and 121; and Executive Order 11063 (Equal Opportunity Housing implementing regulations at 24 CFR part 107; and Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR part 1;

(b) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–07) and implementing regulations at 24 CFR part 146; the prohibition against discrimination against individuals with a disability under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8 and Title II or the Americans with Disabilities Act of 1009 (42 U.S.C. 12131) and implementing regulation at 28 CFR part 35; and the requirements of Executive Order 11246 and the implementing regulations issued at 41 CFR chapter 60;

(c) The requirements of section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u and implementing regulations at 24 CFR part 135; and

(d) The requirements of Executive Orders 11625, 12432, and 12138. Consistent with HUD's responsibilities under these Orders, the grantee must make efforts to encourage the use of minority and women's business enterprises in connection with activities funded under this notice.

(17) Form HUD–2880, Applicant/Recipient Disclosure Update Report must be completed in accordance with 24 CFR part 12, Accountability in the Provision of HUD Assistance. A copy is provided in the application kit.

(18) Drug-Free Workplace Certification. The Drug-Free Workplace Act of 1988 (42 U.S.C. 701) requires grantees of federal agencies to certify that they will provide drug-free workplaces. Each potential recipient under this NOFA must certify that it will comply with drug-free workplace requirements in accordance with the Act and with HUD's rules at 24 CFR part 24, subpart F.

(19) Certification regarding Lobbying. Section 319 of the Department of the Interior Appropriations Act, Pub. L. 101–121, approved October 23, 1989 (31 U.S.C. 1352) (the "Byrd Amendment") generally prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant or loan. The Department's regulations on these restrictions on lobbying are codified at 24 CFR part 87. To comply with 24 CFR 87.110, any PHA submitting an application under this announcement for more than $100,000 of budget authority must submit a certification and, if applicable, a Disclosure of Lobbying Activities (SF–LLL form).

(20) A certification that:

(a) The PHA will include in any contract for renovation or conversion (including combining of units) on the premises of the PHA development to accommodate the provision of supportive services under this program, a requirement that all laborers and mechanics (other than volunteers under the conditions set out in 24 CFR part 70) shall be paid not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a—276a–5);

(b) The PHA will include in such contracts a requirement that all architects, technical engineers, draftsmen, and technicians (other than volunteers) shall be paid not less than the wages prevailing in the locality as determined by HUD.

(c) If new construction is undertaken, the PHA has looked at other appropriate facilities and cannot make those usable for FIC purposes.

IV. Corrections to Deficient Applications

After the submission deadline date, HUD will screen each application to determine whether it is complete. If an application lacks certain technical items, such as certifications or assurances, or contains a technical error, such as an incorrect signatory, HUD will notify the applicant in writing that it has 14 calendar days from the date of HUD's written notification to cure the technical deficiency. If the applicant fails to submit the missing material within the 14-day cure period, HUD will disqualify the application.

This 14-day cure period applies only to nonsubstantive deficiencies or errors. Deficiencies capable of cure will involve only items not necessary for HUD to assess the merits of an application against the rating factors specified in this NOFA.

V. Other Matters

A. Other Federal Requirements

In addition to the Equal Opportunity Requirements set forth in Section III, Checklist of Application Submission Requirements, of this NOFA, grantees must comply with the following requirements:

(1) *Ineligible contractors.* The provisions of 24 CFR part 24 relating to the employment, engagement of services, awarding of contracts, or funding of any contractors or subcontractors during any period of debarment, suspension, or placement in ineligibility status.

(2) *Flood insurance.* No building proposed for acquisition, construction, reconstruction, repair, or improvement to be assisted under this program may be located in an area that has been identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless the community in which the area is situated is participating in the National Flood Insurance Program and the regulations thereunder (44 CFR parts 59–79), or less than a year has passed since FEMA notification regarding such hazards, and the grantee ensures that flood insurance on the structure is obtained in compliance with section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 et seq.).

(3) *Lead-based paint.* The requirements, as applicable, of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), and implementing regulations at 24 CFR parts 35, 965, and 968.

(4) *Applicability of OMB Circulars.* The policies, guidelines, and requirements of OMB Circular Nos. A–110 (and implementing regulations at 24 CFR part 84) and A–122 with respect to the acceptance and use of assistance by private nonprofit organizations.

(5) *Relocation and Real Property Acquisition.* The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and HUD Handbook 1378, Tenant Assistance, Relocation and Real Property Acquisition, apply to the acquisition of real property for an assisted project and the displacement of any person (family, individual, business, nonprofit organization, or farm) as a direct result of acquisition, rehabilitation, or demolition for the project.

B. Environmental Review

A finding of no significant impact with respect to the environment has been made for the NOFA for Public and Indian Housing Family Investment Centers, in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332); this finding applies equally to this NOFA. The finding of no significant impact is available for public inspection and copying Monday through Friday during regular business hours at the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

C. Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this notice will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the notice is not subject to review under the Order. The notice announces the availability of funds to provide youth living in public housing, or with children living in public housing, with better access to education and job opportunities to achieve self-sufficiency and independence.

D. Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this notice has potential for a significant impact on family formation, maintenance, and general well-being. The purpose of the notice is to provide funding to assist youth living in public housing, or with children living in public housing, with better access to education and job opportunities to achieve self-sufficiency and independence, and, thus, could benefit families. However, because the impact on families is beneficial, no further review is considered necessary.

E. Section 102 HUD Reform Act: Documentation and Public Access Requirements

HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a 5-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its quarterly **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these requirements.)

F. Section 103 of the HUD Reform Act

HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a) is codified as 24 CFR part 4 and applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are restrained by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815 (voice/TDD). (This is not a toll-free number.) The Office of Ethics can provide information of a general nature to HUD employees, as well. However, a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact his or her Field Office Counsel, or Headquarters counsel for the program to which the question pertains.

G. Section 112 of the Reform Act

Section 13 of the Department of Housing and Urban Development Act (42 U.S.C. 3537b) contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by regulations published at 24 CFR part 86. If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in Appendix A of that part. Any questions about part 86 should be directed to the Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–3000. Telephone: (202) 708–3815 (voice/TDD) (This is not a toll-free number.) Forms necessary for compliance with the rule may be obtained from the local HUD office.

H. Freedom of Information Act

Applications submitted in response to this NOFA are subject to disclosure under the Freedom of Information Act (FOIA). To assist the Department in determining whether to release information contained in an application in the event a FOIA request is received, and applicant may, through clear earmarking, or otherwise, indicate those portions of its application that it believes should not be disclosed. The applicant's views will be used solely to aid the Department in preparing its response to a FOIA request; however, the Department is required by the FOIA to make an independent evaluation of the information.

HUD suggests that an applicant provide a basis, when possible, for its belief that confidential treatment is appropriate; general assertions or blanket requests for confidentiality, without more information, are of limited value to the Department in making determinations concerning the release of information under FOIA. The Department is required to segregate disclosable information from nondisclosable items, so an applicant should be careful to identify each portion of the application for which confidential treatment is requested.

The Department emphasizes that the presence or absence of comments or earmarking regarding confidential information will have no bearing on the evaluation of applications submitted in response to this solicitation.

I. Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act of Fiscal Year 1990 (31 U.S.C. 1352) (the "Byrd Amendment") and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative branches of the Federal government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no federal funds have been or will be spent on lobbying activities in connection with the assistance.

Authority: 42 U.S.C. 1437t and 3535(d).

Dated: May 4, 1995.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

Appendix—Names, Addresses, and Telephone Numbers of HUD Field Offices Accepting Applications for Youth Development Initiative Under Family Investment Centers

HUD—New England Area—Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont

Boston, Massachusetts HUD Field Office

Public Housing Division, Thomas P. O'Neill, Jr. Federal Building,10 Causeway Street, Room 375, Boston, MA 02222–1092, (617) 565–5234, TDD Number: (617) 565–5453 Office hours: 8:30am–5:00pm local time

Hartford, Connecticut HUD Field Office

Public Housing Division, 330 Main Street, Hartford, Connecticut 06106–1860, (203) 240–4522, TDD Number: (203) 240–4665, Office hours: 8:00am–4:30pm local time

Manchester, New Hampshire HUD Field Office

Public Housing Division, Norris Cotton Federal Building, 275 Chestnut Street, Manchester, New Hampshire 03101–2487, (603) 666–7681, TDD Number: (603) 666–7518, Office hours: 8:00am–4:30pm local time

Providence, Rhode Island HUD Field Office

Public Housing Division, 10 Weybosset Street, Sixth Floor, Providence, Rhode Island 02903–2808, (401) 528–5351, TDD Number: (401) 528–5364, Office hours: 8:00am–4:30pm local time

HUD—New York, New Jersey Area—New York, New Jersey

New York HUD Field Office

Public Housing Division, 26 Federal Plaza, New York, New York 10278–0068, (212) 264–6500, TDD Number: (212) 264–0927, Office hours: 8:30am–5:00pm local time

Buffalo, New York HUD Field Office

Public Housing Division, Lafayette Court, 5th Floor, 465 Main Street, Buffalo, New York 14203–1780, (716) 846–5755, TDD Number: Number not available, Office hours: 8:00am–4:30pm local time

Newark, New Jersey HUD Field Office

Public Housing Division, One Newark Center—12th Floor, Newark, New Jersey 07102–5260, (201) 622–7900, TDD Number: (201) 645–6649, Office hours: 8:30am–5:00pm local time

HUD—Midatlantic Area—Pennsylvania, Washington DC, Maryland, Delaware, Virginia, West Virginia

Philadelphia, Pennsylvania HUD Field Office

Public Housing Division, Liberty Square Building, 105 South 7th Street, Philadelphia, Pennsylvania 19106–3392, (215) 597–2560, TDD Number: (215) 597–5564, Office hours: 8:00am–4:30pm local time

Washington, D.C. HUD Field Office

Public Housing Division, 820 First Street NE., Washington, DC 20002–4502, (202) 275–9200, TDD Number: (202) 275–0967, Office hours: 8:00am–4:30pm local time

Baltimore, Maryland HUD Field Office

Public Housing Division, 10 South Howard Street, 5th Floor, Baltimore, Maryland 21201–2505, (401) 962–2520, TDD Number: (410) 962–0106, Office hours: 8:00am–4:30pm local time

Pittsburgh, Pennsylvania HUD Field Office

Public Housing Division, Old Post Office Courthouse Building, 700 Grant Street, Pittsburgh, Pennsylvania 15219–1939, (412) 644–6428 TDD Number: (412) 644–5747, Office hours: 8:00am–4:30pm local time

Richmond, Virginia HUD Field Office

Public Housing Division, The 3600 Centre, 3600 West Broad Street, P.O. Box 90331, Richmond, Virginia 23230–0331, (804) 278–4507,TDD Number: (804) 278–4501, Office hours: 8:00am–4:30pm local time

Charleston, West Virginia HUD Field Office

Public Housing Division, 405 Capitol Street, Suite 708, Charleston, West Virginia 25301–1795, (304) 347–7000, TDD Number: (304) 347–5332, Office hours: 8:00am–4:30pm local time,

HUD—Southeast Area—Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, Caribbean, Virgin Islands

Atlanta, Georgia HUD Field OFfice

Public Housing Division, Richard B. Russell Federal Building, 75 Spring Street, SW., Atlanta, Georgia 30303–3388, (404) 331–5136, TDD Number: (404) 730–2654, Office hours: 8:00am–4:30pm local time

Birmingham, Alabama HUD Field Office

Public Housing Division, 600 Beacon Parkway West, Suite 300, Birmingham, Alabama 35209–3144, (205) 290–7601, TDD Number: (205) 290–7624, Office hours: 7:45am–4:30pm local time

Louisville, Kentucky HUD Field Office

Public Housing Division, 601 West Broadway, P.O. Box 1044, Louisville, Kentucky 40201–1044, (502) 582–6161, TDD Number: (502) 582–5139

Jackson, Mississippi HUD Field Office

Public Housing Division, Doctor A.H. McCoy Federal Building, 100 West Capitol Street, Room 910, Jackson, Mississippi 39269–1096, (601) 975–4746, TDD Number: (601) 975–4717, Office hours: 8:00am–4:45pm local time

Greensboro, North Carolina HUD Field Office

Public Housing Division, 2306 West Meadowview Road, Greensboro, North Carolina 27407, (919) 547–4000, TDD Number: 919–547–4055, Office hours: 8:00am–4:45pm local time

Caribbean HUD Field Office

Public Housing Division, New San Office Building, 159 Carlos East Chardon Avenue, San Juan, Puerto Rico 00918–1804, (809) 766–6121, TDD Number: Number not available, Office hours: 8:00am–4:30pm local time

Columbia, South Carolina HUD Field Office

Public Housing Division, Strom Thurmond Federal Building, 1835 Assembly Street, Columbia, South Carolina 29201–2480, (803) 765–5592, TDD Number: Number not available, Office hours: 8:00am–4:45pm local time

Knoxville, Tennessee HUD Field Office

Public Housing Division, John J. Duncan Federal Building, 710 Locust Street, SW., Room 333, Knoxville, Tennessee 37902–2526, (615) 545–4384, TDD Number: (615) 545–4379, Office hours: 7:30am–4:15pm local time

Nashville, Tennessee HUD Field Office

Public Housing Division, 251 Cumberland Bend Drive, Suite 200, Nashville, Tennessee 37228–1803, (615) 736–5213, TDD Number: (615) 736–2886, Office hours: 7:45am–4:15pm local time

Jacksonville, Florida HUD Field Office

Public Housing Division, Southern Bell Towers, 301 West Bay Street, Suite 2200, Jacksonville, Florida 32202–5121, (904) 232–2626, TDD Number: (904) 232–2357, Office hours: 7:45am–4:30pm local time

HUD—Midwest Area Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin

Chicago, Illinois HUD Field Office

Public Housing Division, Ralph H. Metcalfe Federal Building, 77 West jackson Boulevard, Chicago, IL 60604, (312) 353–5680, TTD Number: (312) 353–7143, Office hours: 8:15am–4:45pm local time

Detroit, Michigan HUD Field Office

Public Housing Division, Patrick V. McNamara Federal Building, 477 Michigan Avenue, Room 1645, Detroit, Michigan 48226–2592, (313) 226–6880, TDD Number: (313) 226–7812, Office hours: 8:00am–4:30pm local time

Indianapolis, Indiana HUD Field Office

Public Housing Division, 151 North Delaware Street, Suite 1200, Indianapolis, Indiana 46204–2526, (317) 226–6303, TDD Number: (317)226–7081, Office hours: 8:00am–4:45pm local time

Grand Rapids, Michigan HUD Field Office

Public Housing Division, 2922 Fuller Avenue, N.E., Grand Rapids, Michigan 49505–3499, (616) 456–2127, TDD Number: Number not available, Office hours: 8:00am–4:45pm local time

Minneapolis—St. Paul, Minnesota HUD Field Office

Public Housing Division, Bridge Place Building, 220 2nd Street South, Minneapolis, Minnesota 55401–2195, (612) 370–3000, TTD Number: (612) 370–3186, Office hours: 8:00am–4:30pm local time

Cincinnati, Ohio HUD Field Office

Public Housing Division, 525 Vine Street, Suite 700, Cincinnati, Ohio 45202–3188, (513) 684–2884, TDD Number: (513) 684–6180, Office hours: 8:00am–4:45pm local time

Cleveland, Ohio HUD Field Office

Public Housing Division, Renaissance Building, 1375 Euclid Avenue, Fifth Floor, Cleveland, Ohio 44115–1815, (216) 522–4065, TTD Number: Number not available, Office hours: 8:00am–4:40pm local time

Columbus, Ohio HUD Field Office

Public Housing Division, 200 North High Street, Columbus, Ohio 43215–2499, (614) 469–5737, TDD Number: Number not available, Office hours: 8:30am–4:45pm local time

Milwaukee, Wisconsin HUD Field Office

Public Housing Division, Henry S. Reuss Federal Plaza, 310 West Wisconsin Avenue, Suite 1380, Milwaukee, Wisconsin 53203–2289, (414) 291–3214, TDD Number: Number not available, Office hours: 8:00am–4:30pm local time

HUD—Southwest Area—Arkansas, Louisiana, New Mexico, Oklahoma, Texas

Fort Worth, Texas HUD Field Office

Public Housing Division, 1600 Throckmorton Street, Room 304, P.O. Box 2905, Fort

Worth, Texas 76113–2905, (817) 885–5934, TDD Number: (817) 885–5447, Office hours: 8:00am–4:30pm local time

Houston, Texas HUD Field Office

Public Housing Division, Norfolk Tower, 2211 Norfolk, Suite 300, Houston, Texas 77098–4096, (713) 834–3235, TDD Number: Number not available, Office hours: 7:45am–4:30pm local time

San Antonio, Texas HUD Field Office

Public Housing Division, Washington Square, 800 Dolorosa Street, Room 206, San Antonio, Texas 78207–4563, (512) 229–6783, TDD Number: (512) 229–6783, Office hours: 8:00am–4:30pm local time

Little Rock, Arkansas HUD Field Office

Public Housing Division, TCBY Tower, 425 West Capitol Avenue, Room 900, Little Rock, Arkansas 72201–3488, (501) 324–5935, TDD Number: (501) 324–5931, Office hours: 8:00am–4:30pm local time

New Orleans, Louisiana HUD Field Office

Public Housing Division, Fisk Federal Building, 1661 Canal Street, Suite 3100, New Orleans, Louisiana 70112–2887, (504) 589–7251, TDD Number: Number not available, Office hours: 8:00am–4:30pm local time

Oklahoma City, Oklahoma HUD Field Office

(Applications for the State of Oklahoma are to be submitted to the Denver, Colorado, HUD Office:

Public Housing Division, First Interstate Tower North, 633 17th Street, Denver, CO 80202–3607, (303) 672–5248, TDD Number: (303) 672–5248, Office hours: 8:00am–4:30pm local time)

Albuquerque, New Mexico HUD Field Office

Public Housing Division, 625 Truman Street N.E., Albuquerque, NM 87110–6472, (505) 262–6463, TDD Number: (505) 262–6463, Office hours: 7:45am–4:30pm local time

Great Plains—Iowa, Kansas, Missouri, Nebraska

Kansas City, Kansas HUD Field Office

Public Housing Division, Gateway Tower II, 400 State Avenue, Room 400, Kansas City, Kansas 66101–2406, (913) 551–5488, TDD Number: (913) 551–5815, Office hours: 8:00am–4:30pm local time

Omaha, Nebraska HUD Field Office

Public Housing Division, 10909 Mill Valley Road, Omaha, Nebraska 68154–3955, (402) 492–3100, TDD Number: (402) 492–3183, Office hours: 8:00am–4:30pm local time

St. Louis, Missouri HUD Field Office

Public Housing Division, 1222 Spruce Street, St. Louis, Missouri 63103–2836, (314) 539–6583, TDD Number: (314) 539–6331, Office hours: 8:00am–4:30pm local time

Des Moines, Iowa HUD Field Office

Public Housing Division, Federal Building, 210 Walnut Street, Room 239, Des Moines, Iowa 50309–2155, (515) 284–4512, TDD Number: (515) 284–4728, Office hours: 8:00am–4:30pm local time

HUD—Rocky Mountains Area—Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming

Denver, Colorado HUD Field Office

Public Housing Division, First Interstate Tower North, 633 17th Street, Denver, CO 80202–3607, (303) 672–5248, TDD Number: (303) 672–5248, Office hours: 8:00am–4:30pm local time

HUD—Pacific/Hawaii Area—Arizona, California, Hawaii, Nevada, Guam, America Samoa

San Francisco, California HUD Field Office

Public Housing Division, Philip Burton Federal Building and U.S. Courthouse, 450 Golden Gate Avenue, P.O. Box 36003, San Francisco, California 94102–3448, (415) 556–4752, TDD Number: (415) 556–8357, Office hours: 8:15am–4:45pm local time

Honolulu, Hawaii HUD Field Office

Public Housing Division, 7 Waterfront Plaza, 500 Ala Moana Boulevard, Room 500, Honolulu, Hawaii 96813–4918, (808) 541–1323, TDD Number: (808) 541–1356, Office hours: 8:00am–4:00pm local time

Los Angeles, California HUD Field Office

Public Housing Division, 1615 West Olympic Boulevard, Los Angeles, California 90015–3801, (213) 251–7122, TDD Number: (213) 251–7038, Office hours: 8:00am–4:30pm local time

Sacramento, California HUD Field Office

Public Housing Division, 777 12th Avenue, Suite 200, P.O. Box 1978, Sacramento, California 95814–1997, (916) 498–5270, TDD Number: (916) 498–5220, Office hours: 8:00am–4:30pm local time

Phoenix, Arizona HUD Field Office

Public Housing Division, Two Arizona Center, 400 North 5th Street, Suite 1600, Phoenix, Arizona 85004–2361, (602) 261–4434, TDD Number: (602) 379–4461, Office hours: 8:00am–4:30pm local time

HUD—Northwest/Alaska Area—Alaska, Idaho, Oregon, Washington

Seattle, Washington HUD Field Office

Public Housing Division, Seattle Federal Office Building, 909 First Avenue, Suite 200, Seattle, WA 98104–1000, (206) 220–5292, TDD Number: (206) 220–5185, Office hours: 8:00am–4:30pm local time

Portland, Oregon HUD Field Office

Public Housing Division, 520 S.W. 6th Avenue, Portland, Oregon 97203–1596, (503) 326–2561, TDD Number: (503) 326–3656, Office hours: 8:00am–4:30pm local time

Anchorage, Alaska HUD Field Office

Public Housing Division, University Plaza Building, 949 East 36th Avenue, Suite 401, Anchorage, Alaska 99508–4399, (907) 271–4170, TDD Number: (907) 271–4328

[FR Doc. 95–13094 Filed 5–26–95; 8:45 am]

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[2] The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

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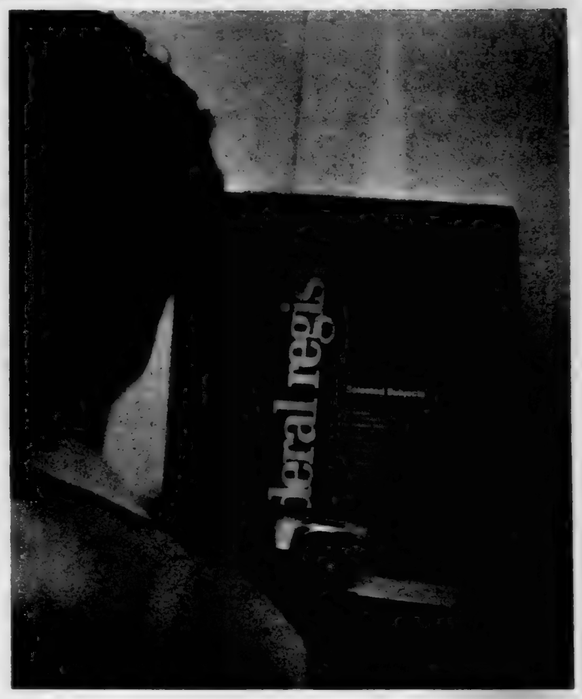
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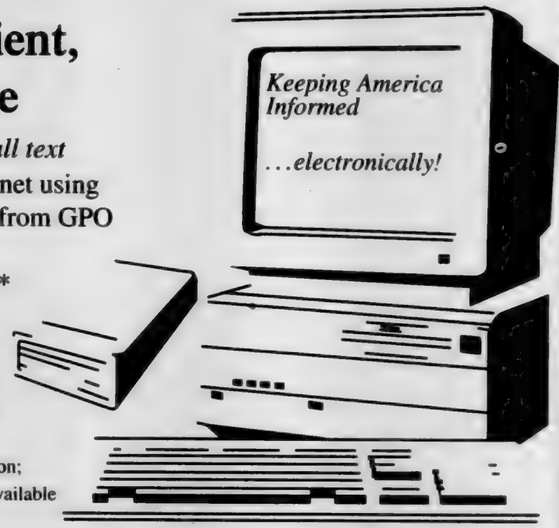
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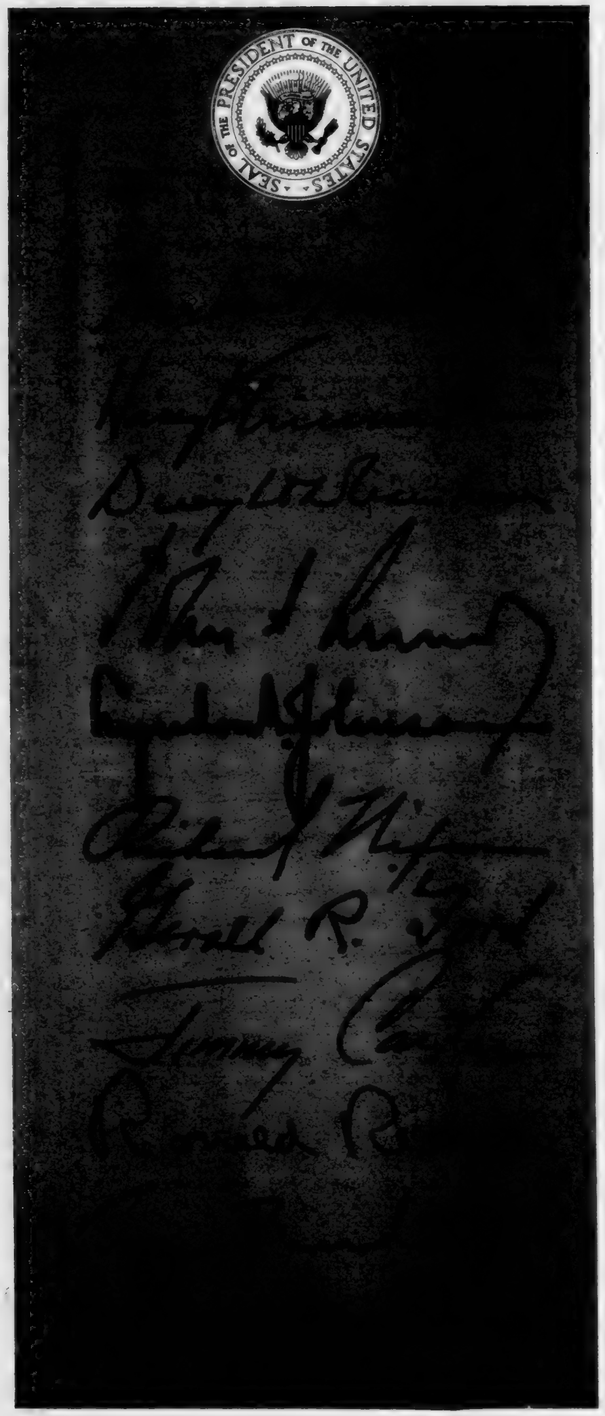
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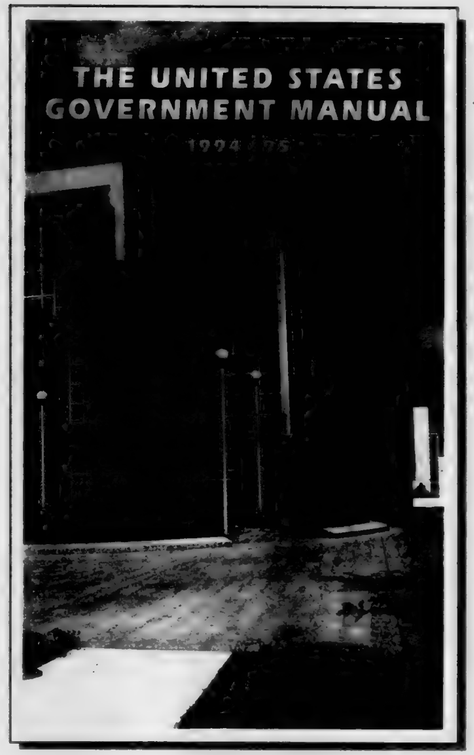
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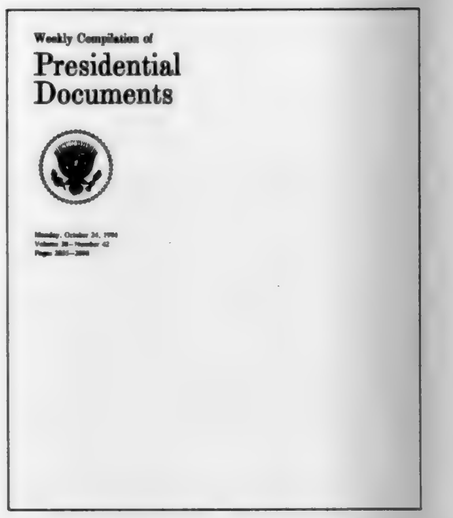
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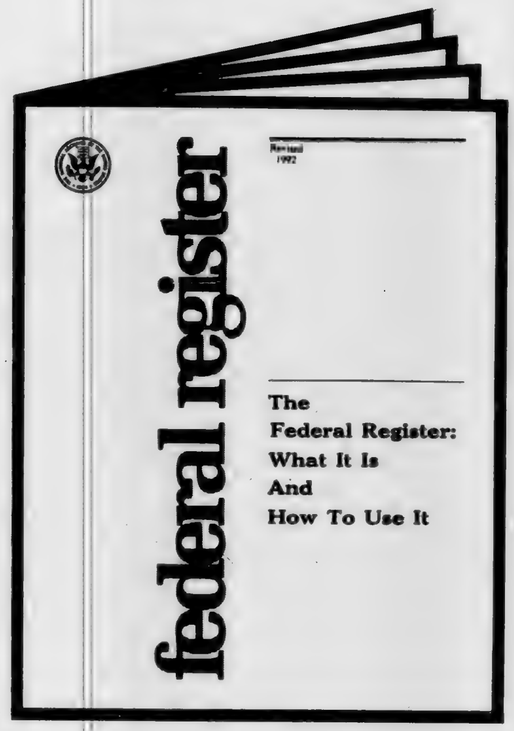
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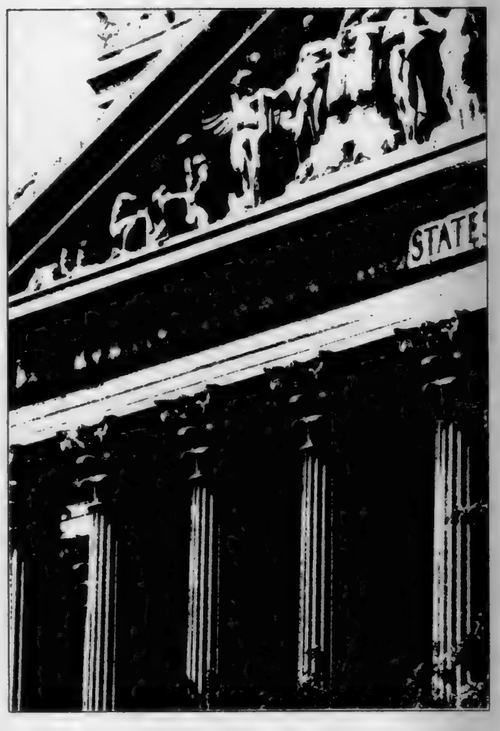
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No. 104

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 946

[Docket No. FV95-946-1FIR]

Irish Potatoes Grown in Washington; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule that authorized expenses and established an assessment rate that generated funds to pay those expenses. Authorization of this budget enables the State of Washington Potato Committee (Committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATE: July 1, 1995, through June 30, 1996.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918, or Dennis L. West, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, Green-Wyatt Federal Building, room 369, 1220 Southwest Third Avenue, Portland, OR 97204, telephone 503–326–2724.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 113 and Order No. 946, both as amended (7 CFR part 946), regulating the handling of Irish potatoes grown in Washington. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the provisions of the marketing order now in effect, Washington potatoes are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable potatoes handled during the 1995–96 fiscal period, which begins July 1, 1995, and ends June 30, 1996. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued hereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 450 producers of Washington potatoes under this marketing order, and approximately 50 handlers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of Washington potato producers and handlers may be classified as small entities.

The budget of expenses for the 1995–96 fiscal period was prepared by the State of Washington Potato Committee, the agency responsible for local administration of the marketing order, and submitted to the Department for approval. The members of the Committee are producers and handlers of Washington potatoes. They are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Washington potatoes. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the Committee's expenses.

The Committee met February 22, 1995, and unanimously recommended a 1995–96 budget of $42,300, $4,200 more than the previous year. Budget items for 1995–96 which have increased compared to those budgeted for 1994–95 (in parentheses) are: Miscellaneous, $2,000 ($1,500), audit, $1,500 ($1,000), and compliance audits, $6,000 ($5,200). The Committee also recommended $400 for social security tax expenses for which no funding was recommended separately last year and $17,400 for an agreement with the Washington State Potato Commission to provide certain services to the Committee as specified in the agreement. Included in the $17,400 for this year are salaries and salary expenses which were budgeted separately last year at $11,200 and $1,800 and other expenses which were $2,400 for last year. In this year's

budget, these items are included under the Commission agreement.

The Committee also unanimously recommended an assessment rate of $0.003 per hundredweight, $0.002 less than last season. This rate, when applied to anticipated shipments of 9 million hundredweight, will yield $27,000 in assessment income. This, along with $15,300 from the Committee's authorized reserve will be adequate to cover budgeted expenses. Funds in the reserve as of March 31, 1995, were $75,025, which is within the maximum permitted by the order of two fiscal periods' expenses.

An interim final rule was published in the **Federal Register** on April 6, 1995 (60 FR 17433). That interim final rule added § 946.247 to authorize expenses and establish an assessment rate for the Committee. That rule provided that interested persons could file comments through May 8, 1995. No comments were received.

While this rule will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 946

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 946 is amended as follows:

PART 946—IRISH POTATOES GROWN IN WASHINGTON

Accordingly, the interim final rule adding § 946.247 which was published at 60 FR 17433, is adopted as a final rule without change.

Dated: May 24, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–13238 Filed 5–30–95; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 948

[Docket No. FV95–948–1IFR]

Irish Potatoes Grown in Colorado; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule authorizes expenditures and establishes an assessment rate under Marketing Order No. 948 for the 1995–96 fiscal period. Authorization of this budget enables the Colorado Potato Administrative Committee, Northern Colorado Office (Area III) (Committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

DATES: Effective July 1, 1995, through June 30, 1996. Comments received by June 30, 1995, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this interim final rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, FAX 202–720–5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918, or Dennis L. West, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, Green-Wyatt Federal Building, room 369, 1220 Southwest Third Avenue, Portland, OR 97204, telephone 503–326–2724.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 97 and Marketing Order No. 948, both as amended (7 CFR part 948), regulating the handling of Irish potatoes grown in Colorado. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order now in effect, Colorado potatoes are subject to assessments. Funds to administer the Colorado potato marketing order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable potatoes during the 1995–96 fiscal period, which begins July 1, 1995, and ends June 30, 1996. This interim final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 85 producers of Colorado Area III potatoes under the marketing order and approximately 15 handlers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of Colorado Area III potato producers and handlers may be classified as small entities.

The budget of expenses for the 1995-96 fiscal period was prepared by the Colorado Potato Administrative Committee, Northern Colorado Office (Area III), the agency responsible for local administration of the marketing order, and submitted to the Department for approval. The members of the Committee are producers and handlers of Colorado Area III potatoes. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Colorado Area III potatoes. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the Committee's expenses.

In Colorado, both a State and a Federal marketing order operate simultaneously. The State order authorizes promotion, including paid advertising, which the Federal order does not. All expenses in this category are financed under the State order. The jointly operated programs consume about equal administrative time and the two orders continue to split administrative costs equally.

The Committee met on April 13, 1995, and unanimously recommended a 1995-96 budget of $27,362.50, $3,037.50 more than the previous year. Budget items for the 1995-96 Federal portion of the administrative budget which have increased compared to those budgeted for 1994-95 (in parentheses) are: Audit, $450 ($400), medical insurance, $685 ($620), office equipment, $4,500 ($2,000), payroll tax, $902.50 ($880), Federal meetings, $500 ($400), and $300 for other salary for which no funding was recommended last year.

The Committee also unanimously recommended an assessment rate of $0.02 per hundredweight, the same as last season. This rate, when applied to anticipated potato shipments of 1,200,500 hundredweight, will yield $24,010 in assessment income. This, along with $1,500 in interest income, $1,200 in rent from the sublease of office space to the State inspection service, and $652.50 from the Committee's authorized reserve will be adequate to cover budgeted expenses. Funds in the reserve at the end of the 1995-96 fiscal period, estimated at $35,195, will be within the maximum permitted by the order of two fiscal periods' expenses.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the fiscal period begins on July 1, 1995, and the marketing order requires that the rate of assessment for the fiscal period apply to all assessable potatoes handled during the fiscal period; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other budget actions issued in past years; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 948

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 948 is amended as follows:

PART 948—IRISH POTATOES GROWN IN COLORADO

1. The authority citation for 7 CFR part 948 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new § 948.213 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 948.213 Expenses and assessment rate.

Expenses of $27,362.50 by the Colorado Potato Administrative Committee, Northern Colorado Office (Area III) are authorized, and an assessment rate of $0.02 per hundredweight of assessable potatoes is established for the fiscal period ending June 30, 1996. Unexpended funds may be carried over as a reserve.

Dated: May 24, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–13237 Filed 5–30–95; 8:45 am]

BILLING CODE 3410–02–P

Rural Housing and Community Development Service

Rural Business and Cooperative Development Service

Rural Utilities Service

Consolidated Farm Service Agency

7 CFR Parts 1965, 1962, and 1965

Administrative Changes to Provide Authority to Approve Releases of Liability in Connection with Voluntary Liquidations

AGENCIES: Rural Housing and Community Development Service, Rural Business and Cooperative Development Service, Rural Utilities Service, and Consolidated Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: The Consolidated Farm Service Agency (CFSA) is the successor to the Farmers Home Administration pursuant to Section 226 of the Department of Agriculture Reorganization Act of 1994 (Pub. L. 103–354, October 13, 1994). The CFSA amends its Property Management, Chattel Property, and Real Property regulations to conform with changes made to its debt settlement regulations in April 1993. These conforming changes are made to give State Directors release of liability authority for borrowers whose total indebtness is less than one million dollars. The intended effect is to expedite the processing of requests from borrowers who are unable to repay all of their CFSA debts.

EFFECTIVE DATE: May 31, 1995.

FOR FURTHER INFORMATION CONTACT: Edward R. Yaxley, Jr., Senior Loan Officer, Farm Credit Programs Loan Servicing and Property Management Division, Consolidated Farm Service Agency, USDA, room 5449, South Agriculture Building, 14th and Independence Avenue SW.,

Washington, DC 20250, telephone (202) 720–4572.

SUPPLEMENTARY INFORMATION:

Classification

This action is not subject to the provisions of Executive Order 12866 because it involves only internal agency management and it has no impact on CFSA borrowers or other members of the public. This action is not published for notice and comment under the Administrative Procedure Act since the changes only involve internal processing of documents by CFSA employees which will expedite the administrative review process for releases of liability, permitting more timely debt relief to CFSA borrowers, and consequently reducing the Agency's portfolio of inactive uncollectible accounts. It is published so that CFSA borrowers will be aware of the authority of State Directors to execute releases from liability for certain debts.

Paperwork Reduction Act

The information collection requirements contained in these regulations have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB control numbers 057–0109 and 057–0086. This final rule does not revise or impose any new information collection requirement from those previously approved by OMB.

Background

The CFSA amends its Property Management, Chattel Property, and Real Property regulations to conform with changes made to its debt settlement regulations on April 21, 1993 (58 FR 21344). These conforming changes are made to give State Directors release of liability authority for borrowers whose total indebtness (including principal, interest and other charges) is less than one million dollars. This action only involves internal processing of documents by CFSA employees which will expedite the administrative review process for releases of liability, permitting more timely debt relief to CFSA borrowers, and consequently reducing the Agency's portfolio of inactive uncollectible accounts. It is helpful to CFSA borrowers to know the authority levels for releases of liability by State Directors. The procedure for the release in all cases is set forth in 7 CFR part 1956, subpart B.

CFSA amends subpart A of part 1955:

(1) Section 1955.10(f)(2) to give State Directors authority to accept and process offers to convey real property when the unsatisfied CFSA indebtness is less than $1,000,000.

(2) Section 1955.20(b)(2) to give State Directors authority to accept and process offers to convey chattel property when the unsatisfied CFSA indebtness is less than $1,000,000.

CFSA amends subpart A of part 1962:

(1) Section 1962.34(h) to give State Directors authority to approve the transfer and assumption of CFSA accounts to eligible and ineligible transferees and release the transferors of liability when the CFSA debt secured by chattels minus their market value is less than $1,000,000.

CFSA amends subpart A of part 1965:

(1) Section 1965.26(f)(5)(ii) to give State Directors authority to approve release of liability for borrowers whose outstanding CFSA debt after a cash sale of real property is less than $1,000,000.

(2) Section 1965.27(f) to give State Directors authority to approve the transfer and assumption of CFSA accounts to eligible and ineligible transferees and release the transferors of liability when the CFSA debt secured by real property minus its market value is less than $1,000,000.

Programs Affected

The programs are listed in the Catalog of Federal Domestic Assistance (CFDA) under:

10.404 Emergency Loans
10.406 Farm Operating Loans
10.407 Farm Ownership Loans
10.410 Low Income Housing Loans
10.411 Rural Housing Site Loans
10.415 Rural Rental Housing Loans
10.416 Soil and Water Loans
10.417 Very Low-Income Housing Repair Loans and Grants

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." CFSA has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

List of Subjects

7 CFR Part 1955

Foreclosure, Government acquired property.

7 CFR Part 1962

Crops, Government property, Livestock, Loan programs—Agriculture, Rural areas.

7 CFR Part 1965

Foreclosure, Loan programs—Agriculture, Rural areas.

Therefore, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1955—PROPERTY MANAGEMENT

1. The authority citation for part 1955 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

Subpart A—Liquidation of Loans Secured by Real Estate and Acquisition of Real and Chattel Property

2. Section 1955.10 is amended by revising the third and the last sentences of paragraph (f)(2)(ii) to read as follows:

§ 1955.10 Voluntary conveyance of real property by the borrower to the Government.

* * * * *

(f) * * *

(2) * * *

(ii) * * * When the Agency debt less the market value and prior liens is $1 million or more (including principal, interest and other charges), release of liability must be approved by the Administrator or designee; otherwise, the State Director must approve the release of liability. All cases requiring a release of liability will be submitted for review in accordance with exhibit A of subpart B of part 1956 of this chapter (available in any CFSA office).

* * * * *

3. Section 1955.20 is amended by revising the third sentence of paragraph (b)(2) to read as follows:

§ 1955.20 Acquisition of chattel property.

* * * * *

(b) * * *

(2) * * * When the Agency debt less the market value and prior liens is $1 million or more (including principal, interest and other charges), release of liability must be approved by the Administrator or designee; otherwise, the State Director must approve the release of liability. * * *

* * * * *

PART 1962—PERSONAL PROPERTY

4. The authority citation for part 1962 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Servicing and Liquidation of Chattel Security

5. Section 1962.34 is amended by revising the second sentence of paragraph (h) to read as follows:

§ 1962.34 Transfer of chattel security and EO property and assumption of debts.

* * * * *

(h) * * * When the Agency debt less the market value and prior liens is $1 million or more (including principal, interest and other charges), release of liability must be approved by the Administrator or designee; otherwise, the State Director must approve the release of liability. * * *

PART 1965—REAL PROPERTY

6. The authority citation for part 1965 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Servicing of Real Estate Security for Farmer Program Loans and Certain Note-Only Cases

7. Section 1965.26 is amended by revising the first sentence of paragraph (f)(5)(ii) to read as follows:

§ 1965.26 Liquidation action.

* * * * *

(f) * * *

(5) * * *

(ii) When the Agency debt less the market value and prior liens is $1 million or more (including principal, interest and other charges), release of liability must be approved by the Administrator or designee; otherwise, the State Director must approve the release of liability. * * *

* * * * *

8. Section 1965.27 is amended by revising the second sentence of paragraph (f) to read as follows:

§ 1965.27 Transfer of real estate security.

* * * * * *

(f) * * * When the Agency debt less the market value and prior liens is $1 million or more (including principal, interest and other charges), release of liability must be approved by the Administrator or designee; otherwise, the State Director must approve the release of liability. * * *

* * * * *

Dated: May 3, 1995.

Eugene Moos,

Under Secretary, Farm and Foreign Agricultural Services.

Dated: May 3, 1995.

Michael V. Dunn,

Acting Under Secretary, Rural Economic and Community Development.

[FR Doc. 95–13243 Filed 5–30–95; 8:45 am]

BILLING CODE 3410–07–V

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7 CFR Part 1956

Reporting Discharged Debts to the Internal Revenue Service

AGENCIES: Rural Housing and Community Development Service, Rural Business and Cooperative Development Service, Rural Utilities Service, and Consolidated Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: The Rural Housing and Community Development Service (RHCDS), Rural Business and Cooperative Development Service (RBCDS), Rural Utilities Service (RUS), and Consolidated Farm Service Agency (CFSA), amends their debt settlement regulations. The intended effect is to remove debt settlement regulations concerning the Internal Revenue Service (IRS) requirement that certain agency discharges of indebtedness be reported to the IRS. This action is necessary to remove strictly internal procedural requirements from the debt settlement regulation.

EFFECTIVE DATE: May 31, 1995.

FOR FURTHER INFORMATION CONTACT: Debra A. Deters, Accountant, Operations Division, Rural Housing and Community Development Service, USDA, Finance Office, Room 3529, 1520 Market Street, St. Louis, Missouri 63103, Telephone (314) 539–2492.

SUPPLEMENTARY INFORMATION:

Classification

This final rule has been determined to be not-significant for purposes of Executive Order 12866 because it has no adverse impact on borrowers or other members of the public and involves only internal Agency management. Since this rule relates only to internal agency procedures, notice of proposed rulemaking and opportunity for comment are not required. For the same reason, this rule is exempt from the provisions of Executive Order No. 12778, 56 FR 55195 (1991), and the Regulatory Flexibility Act, Pub. L. No. 96–354. This rule is being made effective immediately upon publication in the **Federal Register** since it concerns internal management and public loans, grants, benefits, or contracts. These subjects are exempted from 5 U.S.C. 553 requirements. The Agencies are amending their debt settlement regulations to remove internal procedures for reporting discharges of indebtedness to the Internal Revenue Service (IRS). These procedures will be covered by internal instructions consistent with IRS policy.

Paperwork Reduction Act

The information collection requirements contained in these regulations have been previously approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB control numbers 0575–0118 and 0575–0124 in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). This rule does not revise or impose any new information collection requirement from those approved by OMB.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of RHCDS, RBCDS, RUS, and CFSA that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

Intergovernmental Consultation

1. This activity is not subject to Executive Order (EO) 12372 which requires intergovernmental consultation with State and local officials and is not listed in the Catalog of Federal Domestic Assistance, however, affected programs 10.411, 10.416, and 10.437 are subject to the provisions of EO 12372.

Program Affected

These changes affect the following USDA programs listed in the Catalog of Federal Domestic Assistance under numbers:

10.404 Emergency Loans
10.406 Farm Operating Loans
10.407 Farm Ownership Loans
10.411 Rural Housing Site

10.416 Soil and Water Loans
10.417 Very Low-Income Housing Repair Loans and Grants
10.421 Indian Tribes and Tribal Corporation Loans
10.435 Agricultural Loan Mediation Program
10.437 Interest Assistance Program

List of Subjects in 7 CFR Part 1956

Accounting, Loan programs—Agriculture, Rural areas. Therefore, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1956—DEBT SETTLEMENT

1. The authority citation for part 1956 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 31 U.S.C. 3711; 7 CFR 2.23; 7 CFR 2.70

Subpart B—Debt Settlement—Farmer Programs and Housing

§ 1956.86 [Removed]

2. Section 1956.86 is removed and reserved.

Subpart C—Debt Settlement—Community and Business Programs

§ 1956.146 [Removed]

3. Section 1956.146 is removed and reserved.

Dated: April 20, 1995.

Dallas R. Smith,

Acting Under Secretary for Farm and Foreign Agricultural Services.

Dated: April 6, 1995.

Michael V. Dunn,

Acting, Under Secretary for Rural Economic and Community Development.

[FR Doc. 95–13242 Filed 5–30–95; 8:45 am]

BILLING CODE 3410–07–U

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 95–033–1]

Brucellosis in Cattle; State and Area Classifications; Nebraska

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the brucellosis regulations concerning the interstate movement of cattle by changing the classification of Nebraska from Class A to Class Free. We have determined that Nebraska meets the standards for Class Free status. This action relieves certain restrictions on the interstate movement of cattle from Nebraska.

DATES: Interim rule effective May 31, 1995. Consideration will be given only to comments received on or before July 31, 1995.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 95–033–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 95–033–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Michael J. Gilsdorf, Senior Staff Veterinarian, Cattle Diseases and Surveillance Staff, VS, APHIS, Suite 3B08, 4700 River Road Unit 36, Riverdale, MD 20737–1231, (301) 734–7708.

SUPPLEMENTARY INFORMATION:

Background

Brucellosis is a contagious disease affecting animals and humans, caused by bacteria of the genus *Brucella*.

The brucellosis regulations, contained in 9 CFR part 78 (referred to below as the regulations), provide a system for classifying States or portions of States according to the rate of *Brucella* infection present, and the general effectiveness of a brucellosis control and eradication program. The classifications are Class Free, Class A, Class B, and Class C. States or areas that do not meet the minimum standards for Class C are required to be placed under Federal quarantine.

The brucellosis Class Free classification is based on a finding of no known brucellosis in cattle for the 12 months preceding classification as Class Free. The Class C classification is for States or areas with the highest rate of brucellosis. Class B and Class A fall between these two extremes. Restrictions on moving cattle interstate become less stringent as a State approaches or achieves Class Free status.

The standards for the different classifications of States or areas entail (1) maintaining a cattle herd infection rate not to exceed a stated level during 12 consecutive months; (2) tracing back to the farm of origin and successfully closing a stated percent of all brucellosis reactors found in the course of Market Cattle Identification (MCI) testing; (3) maintaining a surveillance system that includes testing of dairy herds, participation of all recognized slaughtering establishments in the MCI program, identification and monitoring of herds at high risk of infection (including herds adjacent to infected herds and herds from which infected animals have been sold or received), and having an individual herd plan in effect within a stated number of days after the herd owner is notified of the finding of brucellosis in a herd he or she owns; and (4) maintaining minimum procedural standards for administering the program.

Before the effective date of this interim rule, Nebraska was classified as a Class A State.

To attain and maintain Class Free status, a State or area must (1) remain free from field strain *Brucella abortus* infection for 12 consecutive months or longer; (2) trace back at least 90 percent of all brucellosis reactors found in the course of MCI testing to the farm of origin; (3) successfully close at least 95 percent of the MCI reactor cases traced to the farm of origin during the 12 consecutive month period immediately prior to the most recent anniversary of the date the State or area was classified Class Free; and (4) have a specified surveillance system, as described above, including an approved individual herd plan in effect within 15 days of locating the source herd or recipient herd.

After reviewing the brucellosis program records for Nebraska, we have concluded that the State meets the standards for Class Free status. Therefore, we are removing Nebraska from the list of Class A States in § 78.41(b) and adding it to the list of Class Free States in § 78.41(a). This action relieves certain restrictions on moving cattle interstate from Nebraska.

Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. Immediate action is warranted to remove unnecessary restrictions on the interstate movement of cattle from Nebraska.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon publication in the **Federal Register**. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

Cattle moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Changing the brucellosis status of Nebraska from Class A to Class Free will promote economic growth by reducing certain testing and other requirements governing the interstate movement of cattle from the State. Testing requirements for cattle moved interstate for immediate slaughter or to quarantined feedlots are not affected by this change. Cattle from certified brucellosis-free herds moving interstate are not affected by this change.

The groups affected by this action will be herd owners in Nebraska, as well as buyers and importers of cattle from the State.

There are an estimated 24,000 cattle herds in Nebraska that would be affected by this rule. Ninety-eight percent of these are owned by small entities. Test-eligible cattle offered for sale interstate from other than certified-free herds must have a negative test under present Class A status regulations, but not under regulations concerning Class Free status. If such testing were distributed equally among all herds affected by this rule, Class Free status would save approximately $4.60 per herd.

Therefore, we believe that changing the brucellosis status of Nebraska would not have a significant economic impact on the small entities affected by this interim rule.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This document contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 78

Animal diseases, Bison, Cattle, Hogs, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 9 CFR part 78 is amended as follows:

PART 78—BRUCELLOSIS

1. The authority citation for part 78 continues to read as follows:

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, and 134f; 7 CFR 2.17, 2.51, and 371.2(d).

§ 78.41 [Amended]

2. In § 78.41, paragraph (a) is amended by adding "Nebraska," immediately after "Montana,".

3. In § 78.41, paragraph (b) is amended by removing "Nebraska,".

Done in Washington, DC, this 25th day of May 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–13365 Filed 5–30–95; 8:45 am]

BILLING CODE 3410–34–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 34

RIN 3150–AF28

Performance Requirements for Radiography Equipment

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending the regulations pertaining to performance requirements for radiography equipment. The amended provision permits a licensee to use an alternate value of torque for the performance testing criteria. The specified torque test for the drive cable that is currently in the regulations is not practical to meet, given the design of radiographic equipment. Further, the amendment allows for the use of engineering analysis to demonstrate that a modest change in an already approved design is acceptable without the need to perform prototype tests. The amendment is necessary to relieve licensees from compliance with an impractical and unnecessary test criterion.

EFFECTIVE DATE: June 30, 1995.

FOR FURTHER INFORMATION CONTACT: Thomas Rich or J. Bruce Carrico, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–7893 or (301) 415–7826.

SUPPLEMENTARY INFORMATION:

Background

On January 10, 1990 (55 FR 843) the U.S. Nuclear Regulatory Commission published a revision to 10 CFR 34.20. This regulation required that significant safety improvements be made to radiography equipment. Some of these are stated explicitly in the regulation and some are required through an incorporation by reference of American National Standards Institute N432–1980 (ANSI–N432). All newly manufactured radiographic exposure devices and associated equipment acquired by NRC licensees after January 10, 1992, must meet the requirements specified in 10 CFR 34.20, including the provisions of ANSI–N432. All equipment in use after January 10, 1996, must meet these requirements. Vendors of source assemblies, associated equipment, and radiography exposure devices have registered their designs with the NRC or an Agreement State. This process allows both the user and regulatory agency to determine if the equipment meets the applicable safety requirements. Two vendors are located in Agreement States and three are under NRC jurisdiction.

It has come to the attention of the NRC staff that one of the test criteria specified in section 8.9.2(c) of ANSI–N432 is not practical and cannot be implemented. This test criterion is also not needed for demonstration of safety, given the current design and use of radiography equipment. The test in question is a prototype endurance test of the entire radiography system and, in particular, is intended to ensure the integrity of the source assembly for 20,000 operating cycles. The tests have been performed for the specified number of cycles and at the proper rotational speed, but not at the value of

torque specified in ANSI–N432. The specific torque translates to approximately 1345 newtons (300 pounds-force) tensile/compressive load on the teleflex cable. It is apparently not possible to actually test at the torque values specified in the ANSI standard.

The torque requirement specified in the ANSI test is not a reasonable standard. First, it exceeds by a considerable amount the torque that a human can exert on the radiography system while cranking the source in and out by hand. Second, it would require that the drive cable (Type 187 teleflex cable used in radiography cameras for the past decade) be operated beyond the working load recommended by the supplier of that component. The recommended working load for the standard cable for 10,000 cycles is less than 583 newtons (130 pounds-force). For 20,000 cycles, which the ANSI endurance test specifies, the working load would be lower.

The design of the drive cable system in most radiography cameras has been unchanged for more than a decade. The NRC staff is not aware of any cable failures as a result of fatigue. Cable failures of this type would be clearly visible to the radiographer and 10 CFR 34.30 requires reporting to NRC. Based on the good operating experience with the standard cable and the fact that an individual is highly unlikely to generate 1345 newtons of force continuously on the cable, the NRC staff believes that testing equipment to the high torque requirement of ANSI–N432 is not needed to ensure system safety.

The NRC staff requested the American National Standards Institute Committee N43, the organization responsible for development of the standard, to clarify the basis for the test criterion. The committee's response indicates that the requirement was adopted from an International Standards Organization standard, that it was not aware of the severity of the requirement, and that it was not aware of any manufacturer that has tested equipment to this requirement. Based on further discussion with the N43's working group subcommittee chairman, the NRC staff understands that the working group intends to revise the standard to incorporate a more realistic torque requirement for the endurance test. However, considering the approval and publication process, a revised standard would not be issued for at least 18 months. At that time the NRC staff will evaluate the revised ANSI standard and consider revising its regulations, if necessary and appropriate for maintaining public safety, when radiography equipment is used.

The Amendment

Section 34.20 is being amended, first, by inserting a new sentence in paragraph (a) that will permit an applicant or licensee to submit an engineering analysis to demonstrate the applicability of previously performed testing on similar individual radiography equipment components. This addition codifies a long-standing staff practice in evaluating radiography equipment. For example, an engineering analysis can demonstrate that a modest change in design is acceptable without repeating a prototype test.

Second, because of the flaw in the ANSI standard criteria, the Commission is amending its regulation in 10 CFR 34.20 to eliminate the impractical torque test. In its place, a radiography exposure device and associated systems will be considered to be in compliance with the performance requirements if the prototype equipment was tested using a value of a torque representative of the torque that an individual using the radiography equipment can realistically exert, provided the exposure device and associated equipment are in compliance with all other criteria in the referenced ANSI standard. To accomplish this objective, a new paragraph (f) is being added to 10 CFR 34.20, to specify that compliance with the ANSI-N432–1980 torque value for the endurance test is not required, and that use of a realistic torque value will satisfy the performance requirement. Furthermore, all radiography equipment currently shown and sold by vendors meeting the current part 34 requirements, will meet the revised § 34.20. These vendors have previously provided test results or engineering analysis to either the Agreement State or NRC to demonstrate the products meet § 34.20. The revision imposes a practical performance requirement that is consistent with industry practice while meeting NRC's objective to provide radiographers with safe equipment. Therefore, the filing of additional information with the Commission to demonstrate compliance with the revised § 34.20 requirement is not necessary.

The Commission finds that public comment on this rule is unnecessary because the purpose of the rule is to remove from the regulations an impractical requirement and to stipulate in its stead a practical standard that will permit continued use of a specific component, the drive cable, of industrial radiography equipment long in use without violating the Commission's regulation. The rule change preserves the status quo for the particular component.

Compatibility of Agreement State Regulations

Section 34.20 is currently designated as a Division II Matter of Compatibility for Agreement State regulations. The revisions addressed in this rule correct a flaw in the regulations. The rule does not affect the current compatibility designations and therefore, 10 CFR 34.20 continues to be designated as a Division II Matter of Compatibility.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(2). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this rule.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget approval number 3150–0007.

Regulatory Analysis

The NRC has prepared this final rule to cure a defect in its regulations that places an unnecessary and unwarranted burden on certain of its licensees that use sources and devices for radiography. There is no other procedure available to the NRC to efficiently and effectively rectify the matter. There is no cost to the licensed and regulated community in the promulgation of this rule. This discussion constitutes the regulatory analysis for this rule.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule, and therefore, that a backfit analysis is not required for this final rule because these amendments do not involve any provisions that would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects in 10 CFR Part 34

Criminal penalties, Incorporation by reference, Packaging and containers, Radiation protection, Radiography, Reporting and recordkeeping requirements, Scientific equipment, Security measures.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the Commission is adopting the following amendments to 10 CFR Part 34.

PART 34—LICENSES FOR RADIOGRAPHY AND RADIATION SAFETY REQUIREMENTS FOR RADIOGRAPHIC OPERATIONS

1. The authority citation for Part 34 continues to read as follows:

Authority: Secs. 81, 161, 182, 183, 68 Stat. 935, 948, 953, 954, as amended (42 U.S.C. 2111, 2201, 2232, 2233); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Section 34.32 also issued under sec. 206, 88 Stat. 1246 (42 U.S.C. 5846).

2. Section 34.20 is amended by revising paragraph (a) and adding a new paragraph (f) to read as follows:

§ 34.20 Performance requirements for radiography equipment.

* * * * *

(a) Each radiographic exposure device and all associated equipment must meet the requirements specified in American National Standards Institute N432–1980, "Radiological Safety for the Design and Construction of Apparatus for Gamma Radiography," (published as NBS Handbook 136, issued January 1981). This publication has been approved for incorporation by reference by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a). This publication may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Copies of the document are available for inspection at the Nuclear Regulatory Commission library, 11545 Rockville Pike, Rockville, Maryland, 20852–2738. A copy of the document is also on file at the Office of the **Federal Register**, 800 North Capitol Street NW., Suite 700, Washington, DC 20408.

Engineering analyses may be submitted by an applicant or licensee to demonstrate the applicability of previously performed testing on similar individual radiography equipment components. Upon review, the Commission may find this an acceptable alternative to actual testing of the component pursuant to the referenced standard.

* * * * *

(f) Notwithstanding paragraphs (a), (d), and (e) of this section, equipment used in industrial radiographic operations need not comply with section 8.9.2(c) of the Endurance Test in American National Standards Institute N432–1980, if the prototype equipment has been tested using a torque value representative of the torque that an individual using the radiography equipment can realistically exert on the lever or crankshaft of the drive mechanism.

Dated at Rockville, MD, this 17th day of May, 1995.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 95–13205 Filed 5–30–95; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

24 CFR Part 135

[Docket No. R–95–1677; FR–2896–F–03]

RIN 2529–AA49

Economic Opportunities for Low- and Very Low-Income Persons; Notice of Extension of Effective Date for Interim Rule

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Final rule; Extension of effective period of interim rule.

SUMMARY: This rule extends the effective period for HUD's interim rule that amended part 135 to implement the comprehensive changes made to section 3 of the Housing and Urban Development Act of 1968 by the Housing and Community Development Act of 1992, until HUD publishes the final rule for this program.

EFFECTIVE DATE: This rule, which extends the effective period of the interim rule, is effective June 30, 1995.

The effective period for 24 CFR part 135 is extended from June 30, 1995 until the final rule implementing the comprehensive changes made to section 3 of the Housing and Urban Development Act of 1968 by the Housing and Community Development Act of 1992, is published and becomes effective.

FOR FURTHER INFORMATION CONTACT: John Waller, Office of Economic Opportunity, Room 5232, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708–2251 (voice/TDD). (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

I. Justification for Final Rulemaking

In general, HUD publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking, 24 CFR part 10. However, part 10 provides for exceptions from that general rule where the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is "impracticable, unnecessary, or contrary to the public interest" (24 CFR 10.1). HUD finds that good cause exists to publish this rule for effect without first soliciting public comment, because prior public procedure is unnecessary. This final rule is technical, in that it merely extends the effective period for existing regulations, and it effects no substantive change to those regulations. The public has had an opportunity to comment on the substance of the regulations, as the interim rule for this program was published subject to the normal 60-day public comment period, and the interim rule was preceded by a proposed rule which also provided a 60-day public comment period.

II. Background

On June 30, 1994 (59 FR 33866), HUD published an interim rule that amended 24 CFR part 135 to implement comprehensive changes made to section 3 of the Housing and Urban Development Act of 1968 by the Housing and Community Development Act of 1992. Section 3, as amended, requires that economic opportunities generated by certain HUD financial assistance for housing (including public and Indian housing) and community development programs shall, to the greatest extent feasible, be given to low- and very low-income persons, particularly those who are recipients of government assistance for housing, and to businesses that provide economic opportunities for these persons.

The preamble to the interim rule described HUD's policy of setting an expiration date for an interim rule that is effective unless a final rule is published before that date. This "sunset" provision appears in § 135.2 of the interim rule, and provides that the interim rule will expire on June 30, 1995, which is 12 months after the publication date.

The final rule amending 24 CFR part 135 to implement the comprehensive changes made to section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), by the Housing and Community Development Act of 1992, is in its last stages of review, and publication is anticipated in June 1995. However, in order to prevent a period in which the Department will be without effective regulations, HUD is extending the effective period of the interim rule

until the final rule is published and becomes effective.

III. Other Matters

National Environmental Policy Act

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50 implementing section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the Office of Rules Docket Clerk, 451 Seventh Street, SW, room 10276, Washington, DC 20410–0500.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that the rule will not have a significant economic impact on a substantial number of small entities. The rule merely extends the effective period for the interim rule.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that the rule may have the potential to promote family formation, maintenance, and general well-being. If the revised part 135 regulations, implemented by this rule, contribute to successful implementation of section 3, an increased number of low-income persons will be employed which may promote family unification and general well-being. Since the impact of this rule is anticipated to be beneficial, no further review under the Order is necessary.

Executive Order 12611, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12611, Federalism, has determined that the rule will not have a substantial, direct effect on the States or on the relationship between the Federal government and the States, or on the distribution of power or responsibilities among the various levels of government. The rule provides, consistent with section 3, that the preference requirements of section 3 are to be carried out consistent with existing Federal, State, and local laws and regulations.

Semiannual Agenda of Regulations

The rule implementing this program was listed as sequence number 1511 in the HUD's Semiannual Agenda of Regulations published on May 8, 1995 (60 FR 23368, 23399) under Executive Order 12866 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 135

Administrative practice and procedure, Community development, Equal employment opportunity, Government contracts, Grant programs—housing and community development, Housing, Loan programs—housing and community development, Reporting and recordkeeping requirements, Small businesses.

In accordance with the reasons set forth in the preamble, 24 CFR part 135 is amended as follows:

PART 135—ECONOMIC OPPORTUNITIES FOR LOW- AND VERY LOW-INCOME PERSONS

1. The authority citation for 24 CFR part 135 continues to read as follows:

Authority: 12 U.S.C. 1701u; 42 U.S.C. 3535(d).

2. Section 135.2 is revised to read as follows:

§ 135.2 Effective date of regulation.

The regulations of this part will remain in effect until the date the final rule adopting the regulations of this part with or without changes is published and becomes effective, at which point the final rule will remain in effect.

Dated: May 23, 1995.

Elizabeth K. Julian,

Acting Deputy Assistant Secretary for Policy and Initiatives.

[FR Doc. 95–13221 Filed 5–30–95; 8:45 am]

BILLING CODE 4210–28–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 26, 161, 162, and 165

[CGD 95–033]

RIN 2115–AF12

National Vessel Traffic Services Regulations

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending its Vessel Traffic Services (VTS) regulations to clarify certain sections and correct inaccurate geographic information. In addition, the final rule is deleting certain sections and adding existing vessel traffic management information which was inadvertently omitted in a separate final rule published in the **Federal Register** (59 FR 36316) on July 15, 1994. This rule is intended to promote safe vessel movement by reducing the potential for collisions, rammings, and groundings and their attendant loss of lives, property and environmental harm.

EFFECTIVE DATE: This rule is effective on May 31, 1995.

ADDRESSES: Unless otherwise indicated, documents referred to in this preamble are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G–LRA/3406), U.S. Coast Guard Headquarters, 2100 Second Street, SW., room 3406, Washington, DC 20593–0001 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

FOR FURTHER INFORMATION CONTACT: Ms. Irene Hoffman, Project Manager, Vessel Traffic Services Division (G–NVT), at (202) 267–6277.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Ms. Irene Hoffman, Project Manager, and CDR Thomas Cahill, Project Counsel, Office of Chief Counsel.

Regulatory History

On August 1, 1991, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled "National Vessel Traffic Services Regulations" in the **Federal Register** (58 FR 36910). On July 15, 1994, the Coast Guard published the final rule in the **Federal Register** (59 FR 36316).

Background and Purpose

Under the Ports and Waterways Safety Act of 1972, as amended by the Port and Tanker Safety Act (PTSA) and the Oil Pollution Act (OPA 90), the Secretary of Transportation may construct, operate, maintain, improve, or expand VTSs in any port or place under the jurisdiction of the United States, including the navigable waters of the United States, or in any area covered by an international agreement negotiated under 33 U.S.C. 1230. The Act requires certain vessels which operate in a VTS area to use and comply with the VTS.

In response to this mandate, the final rule published on July 15, 1994, amended the VTS regulations to make participation in all VTSs mandatory. This rule also simplified existing VTS regulations by amending 33 CFR part 161 to incorporate: (1) Standard national vessel traffic management rules applicable to all VTSs; (2) vessel movement reporting requirements for certain vessels operating in the VTS areas; and (3) geographic descriptions and local regulations pertaining to specific VTS areas. Additionally, the rule redesignated other regulations, not unique to VTS operations, into more appropriate parts within Title 33.

Discussion of Changes

The National Vessel Traffic Services Regulations contain inaccurate latitudes, longitudes, geographic location descriptions, VTS area descriptions, and administrative omissions in tables 26.03(f) (Radiotelephone Required), 161.12(b) (Vessel Operating Requirements), 161.35(b) (Vessel Traffic Service Houston/Galveston), 161.35(c) (Vessel Traffic Service Houston/Galveston), 161.45(b) (Vessel Traffic Service St. Marys River), 161.60(d) (Vessel Traffic Service Prince William Sound), 165.811(e) (Atchafalaya River, Berwick Bay, LA—regulated navigation area) and § 161.50 (Vessel Traffic Service San Francisco). These inaccuracies and omissions are being addressed in this rule.

Minor editorial changes have been made to §§ 26.04 (Use of the designated frequency), 26.07 (Communications), 162.117(g) (St. Marys River, Sault Ste. Marie, Michigan), 165.811(f) (Atchafalaya River, Berwick Bay, LA—regulated navigation area), and tables 161.40(c) (Vessel Traffic Service Berwick Bay) and 162.117(g) (St. Marys River, Sault Ste. Marie, Michigan).

Sections 161.60 (c)(2) and (c)(3) (Vessel Traffic Service Prince William Sound), are being rewritten in order to clarify intent and §§ 161.60(c)(4) (Vessel Traffic Service Prince William Sound). Sections 165.1704(c)(4) (Prince William Sound, Alaska—regulated navigation area) is being deleted and sections 165.1704(c)(5), (c)(6), and (c)(7) are being redesignated.

On April 19, 1994 the Coast Guard published an interim final rule in the **Federal Register** (59 FR 18486) establishing a Regulated Navigation Area at the Oliver Lock and Dam at MM 338 of the Black Warrior River. That rule was codified at 33 CFR 165.809. Due to a change in conditions on the Black Warrior River that Regulated Navigation Area is no longer necessary and has been rescinded. In the final rule, "National Vessel Traffic Services Regulations", published July 15, 1994, 33 CFR 165.809 set forth a Purpose and Applicability section for vessel operating rules contained in § 165.810. Those vessel operating rules were previously contained in 33 CFR 161.402. For ease of use, this rule combines both §§ 165.809 and 165.810 in § 165.810.

Additionally, the final rule published on July 15, 1994 inadvertently omitted a vessel traffic management information section which was previously included in the NPRM published on August 1, 1991. Section 162.117(c) (St. Marys River, Sault Ste. Marie, Michigan) is being added.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the Regulatory Policies and Procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full regulatory evaluation is unnecessary.

Regulatory Justification

This rule corrects geographic and editorial inaccuracies and adds material included in the NPRM but inadvertently omitted in the Final Rule. Therefore, the Coast Guard finds under 5 U.S.C. 553 (c) and (d) that good cause exists to publish this as a final rule, effective upon publication, without notice and opportunity to comment.

Small Entities

This rule only makes editorial changes and minor additions to existing vessel traffic management regulations. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection-of-information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. These VTS operating procedures are a matter for which regulations should be developed on the national level, to avoid unreasonably burdensome variances and confusion in applicability and operating requirements. These regulations which provide uniform VTS operating requirements preempt States from adopting similar requirements.

Environment

The Coast Guard considered the environmental impact of this final rule and concluded that under section 2.B.2. of Commandant Instruction M16475.1B, this final rule is categorically excluded from further environmental documentation. While the Coast Guard recognizes that this rule will have a positive effect on the environment by minimizing the risk of environmental harm resulting from collisions, groundings, and rammings, the impact is not expected to be significant enough to warrant further documentation. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects

33 CFR Part 26

Communications equipment, Navigation (water), Marine safety, Radio, Telephone, Vessels.

33 CFR Part 161

Harbors, Navigation (water), Reporting and recordkeeping requirements, Vessels, Waterways.

33 CFR Part 162

Navigation (water), Waterways.

33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons set out in the preamble, the Coast Guard is amending 33 CFR parts 26, 161, 162, and 165, as follows:

PART 26—VESSEL BRIDGE-TO-BRIDGE RADIOTELEPHONE REGULATIONS

1. The authority citation for part 26 continues to read as follows:

Authority: 33 U.S.C. 1201–1208; 49 CFR 1.46. Sections 26.04 and 26.09 also issued under sec. 4118, Pub. L. 101–380, 104 Stat. 523 (33 U.S.C. 1203 note).

2. In § 26.03(f), table 26.03(f) is revised to read as follows:

TABLE 26.03(f)—VESSEL TRAFFIC SERVICES (VTS) CALL SIGNS, DESIGNATED FREQUENCIES, AND MONITORING AREAS

Vessel traffic services[1] (call sign)	Designated frequency[2] (channel designation)	Monitoring area
New York		
New York Traffic[3]	156.700 MHz (Ch. 14).	The waters of the Lower New York Bay west of a line drawn from Norton Point to Breezy Point and north of the line drawn from Ambrose Entrance Lighted Gong Buoy #1 to Ambrose Channel Lighted Gong Buoy #9 thence to West Bank Light and thence to Great Kills Light. The waters of the Upper New York Bay, south of 40°42.40'N. (Brooklyn Bridge) and 40°43.70'N. (Holland Tunnel Ventilator Shaft); and in Newark Bay, north of 40°38.25'N. (Arthur Kill Railroad Bridge), and south of 40°41.95'N. (Lehigh Valley Draw Bridge); and the Kill Van Kull.
	156.550 MHz (Ch. 11).	The waters of Raritan Bay east of a line drawn from Great Kills Light to Point Comfort in New Jersey and south of a line drawn from Great Kills Light to West Bank Light, thence to Ambrose Channel Lighted Gong Buoy #9, and thence to Ambrose Channel Lighted Gong Buoy #1 and west of a line drawn from Ambrose Channel Lighted Gong Buoy #1 to the Sandy Hook Channel Entrance Buoys (Sandy Hook Lighted Gong Buoy #1 and Sandy Hook Lighted Bell Buoy #2).
	156.600 MHz (Ch. 12).	Each vessel at anchor within the above areas.
Houston[3]		
Houston Traffic	156.550 MHz (Ch. 11).	The navigable waters north of 29°N., west of 94°20'W., south of 29°49'N., and east of 95°20'W.: The navigable waters north of a line extending due west from the southern most end of Exxon Dock #1 (29°43.37'N., 95°01.27'W.).
	156.600 MHz (Ch. 12).	The navigable waters south of a line extending due west from the southern most end of Exxon Dock #1 (29°43.37'N., 95°01.27'W.).
Berwick Bay		
Berwick Traffic	156.550 MHz (Ch. 11).	The navigable waters south of 29°45'N., west of 91°10'W., north of 29°37'N., and east of 91°18'W.
St. Marys River		
Soo Control	156.600 MHz (Ch. 12).	The navigable waters of the St. Marys River between 45°57'N. (De Tour Reef Light) and 46°38.7'N. (Ile Parisienne Light), except the St. Marys Falls Canal and those navigable waters east of a line from 46°04.16'N. and 46°01.57'N. (La Pointe to Sims Point in Potagannissing Bay and Worsley Bay and Worsley Bay).
San Francisco[3]		
San Francisco Traffic	156.600 MHz (Ch. 12).	The waters within a 38 nautical mile radius of Mount Tamalpais (37°55.8'N., 122°34.6'W.) excluding the San Francisco Offshore Precautionary Area.
	156.700 MHz (Ch. 14).	The waters of the San Francisco Offshore Precautionary Area eastward to San Francisco Bay including its tributaries extending to the ports of Stockton, Sacramento and Redwood City.
Puget Sound[4]		
Seattle Traffic[5]	156.700 MHz (Ch. 14).	The navigable waters of Puget Sound, Hood Canal and adjacent waters south of a line connecting Marrowstone Point and Lagoon Point in Admiralty Inlet and south of a line drawn due east from the southernmost tip of Possession Point on Whidbey Island to the shoreline.
	156.250 MHz (Ch. 5A).	The navigable waters of the Strait of Juan de Fuca east of 124°40'W. excluding the waters in the central portion of the Strait of Juan de Fuca north and east of Race Rocks; the navigable waters of the Strait of Georgia east of 122°52'W.; the San Juan Island Archipelago, Rosario Strait, Bellingham Bay: Admiralty Inlet north of a line connecting Marrowstone Point and Lagoon Point and all waters east of Whidbey Island north of a line drawn due east form the southernmost tip of Possession Point on Whidbey Island to the shoreline.
Tofino Traffic[6]	156.725 MHz (Ch. 74).	The waters west of 124°40'W. within 50 nautical miles of the coast of Vancouver Island including the waters north of 48°N., and east of 127°W.

TABLE 26.03(f)—VESSEL TRAFFIC SERVICES (VTS) CALL SIGNS, DESIGNATED FREQUENCIES, AND MONITORING AREAS—Continued

Vessel traffic services[1] (call sign)	Designated frequency[2] (channel designation)	Monitoring area
Vancouver Traffic	156.550 MHz (Ch. 11).	The navigable waters of the Strait of Georgia west of 122°52'W., the navigable waters of the central Strait of Juan de Fuca north and east of Race Rocks, including the Gulf Island Archipelago, Boundary Pass and Haro Strait.
Prince William Sound[7]		
Valdez Traffic	156.650 MHz (Ch. 13).	The navigable waters south of 61°05'N., east of 147°20'W., north of 60°N., and west of 146°30'W.; and, all navigable waters in Port Valdez.
Louisville[7]		
Louisville Traffic	156.650 MHz (Ch. 13).	The navigable waters of the Ohio River between McAlpine Locks (Mile 606) and Twelve Mile Island (Mile 593), only when the McAlpine upper pool gauge is at approximately 13.0 feet or above.

Notes:
[1] VTS regulations are denoted in 33 CFR Part 161. All geographic coordinates (latitude and longitude) are expressed in North American Datum of 1983 (NAD 83).
[2] In the event of a communication failure either by the vessel traffic center or the vessel or radio congestion on a designated VTS frequency, communications may be established on an alternate VTS frequency. The bridge-to-bridge navigational frequency, 156.650 MHz (Channel 13), is monitored in each VTS area; and it may be used as an alternate frequency, however, only to the extent that doing so provides a level of safety beyond that provided by other means.
[3] Designated frequency monitoring is required within U.S. navigable waters. In areas which are outside the U.S. navigable waters, designated frequency monitoring is voluntary. However, prospective VTS Users are encouraged to monitor the designated frequency.
[4] A Cooperative Vessel Traffic Service was established by the United States and Canada with adjoining waters. The appropriate vessel traffic center administers the rules issued by both nations; however, it will enforce only its own set of rules within its jurisdiction.
[5] Seattle Traffic may direct a vessel to monitor the other primary VTS frequency 156.250 MHz or 156.700 MHz (Channel 5A or 14) depending on traffic density, weather conditions, or other safety factors, rather than strictly adhering to the designated frequency required for each monitoring area as defined above. This does not require a vessel to monitor both primary frequencies.
[6] A portion of Tofino Sector's monitoring area extends beyond the defined CVTS area. Designated frequency monitoring is voluntary in these portions outside of VTS jurisdiction, however, prospective VTS Users are encouraged to monitor the designated frequency.
[7] The bridge-to-bridge navigational frequency, 156.650 MHz (Channel 13), is used in these VTSs because the level of radiotelephone transmissions does not warrant a designated VTS frequency. The listening watch required by §26.05 of this chapter is not limited to the monitoring area.

§26.04 [Amended]

3. In § 26.04, paragraph (e) is revised to read as follows:

* * * * *

(e) On those navigable waters of the United States within a VTS area, the designated VTS frequency is an additional designated frequency required to be monitored in accordance with § 26.05.

* * * * *

§26.07 [Amended]

4. In § 26.07, insert a comma after "no person may serve as"

PART 161—VESSEL TRAFFIC MANAGEMENT

5. The authority citation for part 161 continues to read as follows:

Authority: 33 U.S.C. 1231; 33 U.S.C. 1223; 49 CFR 1.46.

6. In § 161.12, table 161.12(b) is revised to read as follows:

TABLE 161.12(b)—VESSEL TRAFFIC SERVICES (VTS) CALL SIGNS, DESIGNATED FREQUENCIES, AND MONITORING AREAS

Vessel traffic services (call sign)	Designated Frequency[1] (Channel designation)	Monitoring area
New York		
New York Traffic[2]	156.700 MHz (Ch. 14).	The waters of the Lower New York Bay west of a line drawn from Norton Point to Breezy Point and north of a line drawn from Ambrose Entrance Lighted Gong Buoy #1 to Ambrose Channel Lighted Gong Buoy #9 thence to West Bank Light and thence to Great Kills Light. The waters of the Upper New York Bay, south of 40°42.40'N. (Brooklyn Bridge) and 40°43.70'N. (Holland Tunnel Ventilator Shaft); and in Newark Bay, north of 40°38.25'N. (Arthur Kill Railroad Bridge), and south of 40°41.95'N (Lehigh Valley Draw Bridge); and the Kill Van Kull.

TABLE 161.12(b)—VESSEL TRAFFIC SERVICES (VTS) CALL SIGNS, DESIGNATED FREQUENCIES, AND MONITORING AREAS—Continued

Vessel traffic services (call sign)	Designated Frequency[1] (Channel designation)	Monitoring area
	156.550 MHz (Ch. 11).	The waters of Raritan Bay east of a line drawn from Great Kills Light to Point Comfort in New Jersey and south of a line drawn from Great Kills Light to West Bank Light. Thence to Ambrose Channel Lighted Gong Buoy #9, and thence to Ambrose Channel Lighted Gong Buoy #1 and west of a line drawn from Ambrose Channel Lighted Gong Buoy #1 to the Sandy Hook Channel Entrance Buoys (Sandy Hook Lighted Gong Buoy #1 and Sandy Hook Lighted Bell Buoy #2).
	156.600 MHz (Ch. 12).	Each vessel at anchor within the above areas.
Houston[2]		
Houston Traffic	156.550 MHz (Ch. 11).	The navigable waters north of 29°N., west of 94°20'W., south of 29°49'N., and east of 95°20'W.: The navigable waters north of a line extending due west from the southern most end of Exxon Dock #1 (29°43.37'N., 95°01.27'W.).
	156.600 MHz (Ch. 12).	The navigable waters south of a line extending due west from the southern most end of Exxon Dock #1 (29°43.37'N., 95°01.27'W.).
Berwick Bay		
Berwick Traffic	156.550 MHz (Ch. 11).	The navigable waters south of 29°45'N., west of 91°10'W., north of 29°37'N., and east of 91°18'W.
St. Marys River		
Soo Control	156.600 MHz (Ch. 12).	The navigable waters of the St. Marys River between 45°57'N. (De Tour Reef Light) and 46°38.7'N. (Ile Parisienne Light), except the St. Marys Falls Canal and those navigable waters east of a line from 46°04.16'N. and 48°01.57'N. (La Pointe to Sims Point in Potagannissing Bay and Worsley Bay).
San Francisco[2]		
San Francisco Traffic	156.600 MHz (Ch. 12).	The waters within a 38 nautical mile radius of Mount Tamalpais (37°55.8'N., 122°34.6'W.) excluding the San Francisco Offshore Precautionary Area.
	156.700 MHz (Ch. 14).	The waters of the San Francisco Offshore Precautionary Area eastward to San Francisco Bay including its tributaries extending to the ports of Stockton, Sacramento and Redwood City.
Puget Sound[3]		
Seattle Traffic[4]	156.700 MHz (Ch. 14).	The navigable waters of Puget Sound, Hood Canal and adjacent waters south of a line connecting Marrowstone Point and Lagoon Point in Admiralty Inlet and south of a line drawn due east from the southernmost tip of Possession Point on Whidbey Island to the shoreline.
	156.250 MHz (Ch. 5A).	The navigable waters of the Strait of Juan de Fuca east of 124°40'W. excluding the waters in the central portion of the Strait of Juan de Fuca north and east of Race Rocks; the navigable waters of the Strait of Georgia east of 122°52'W.; the San Juan Island Archipelago, Rosario Strait, Bellingham Bay; Admiralty Inlet north of a line connecting Marrowstone Point and Lagoon Point and all waters east of Whidbey Island north of a line drawn due east from the southernmost tip of Possession Point on Whidbey Island to the shoreline.
Tofino Traffic[5]	156.725 MHz (Ch. 74).	The waters west of 124°40'W. within 50 nautical miles of the coast of Vancouver Island including the waters north of 48°N., and east of 127°W.
Vancouver Traffic	156.550 MHz (Ch. 11).	The navigable waters of the Strait of Georgia west of 122°52'W., the navigable waters of the central Strait of Juan de Fuca north and east of Race Rocks, including the Gulf Island Archipelago, Boundary Pass and Haro Strait.
Prince William Sound[6]		
Valdez Traffic	156.650 MHz (Ch. 13).	The navigable waters south of 61°05'N., east of 147°20'W., north of 60°N., and west of 146°30'W.; and, all navigable waters in port Valdez.

TABLE 161.12(b)—VESSEL TRAFFIC SERVICES (VTS) CALL SIGNS, DESIGNATED FREQUENCIES, AND MONITORING AREAS—Continued

Vessel traffic services (call sign)	Designated Frequency[1] (Channel designation)	Monitoring area
Louisville[6]		
Louisville Traffic	156.650 MHz (Ch. 13).	The navigable waters of the Ohio River between McAlpine Locks (Mile 606) and Twelve Mile Island (Mile 593), only when the McAlpine upper pool gauge is at approximately 13.0 feet or above.

Notes:

[1] In the event of a communication failure either by the vessel traffic center or the vessel or radio congestion on a designated VTS frequency, communications may be established on an alternate VTS frequency. The bridge-to-bridge navigational frequency, 156.650 MHz (Channel 13), is monitored in each VTS area; and it may be used as an alternate frequency, however, only to the extent that doing so provides a level of safety beyond that provided by other means.

[2] Designated frequency monitoring is required within U.S. navigable waters. In areas which are outside the U.S. navigable waters, designated frequency monitoring is voluntary. However, prospective VTS Users are encouraged to monitor the designated frequency.

[3] A Cooperative Vessel Traffic Service was established by the United States and Canada within adjoining waters. The appropriate vessel traffic center administers the rules issued by both nations; however, it will enforce only its own set of rules within its jurisdiction.

[4] Seattle Traffic may direct a vessel to monitor the other primary VTS frequency 156.250 MHz or 156.700 MHz (Channel 5A or 14) depending on traffic density, weather conditions, or other safety factors, rather than strictly adhering to the designated frequency required for each monitoring area as defined above. This does not require a vessel to monitor both primary frequencies.

[5] A portion of Tofino Sector's monitoring area extends beyond the defined CVTS area. Designated frequency monitoring is voluntary in these portions outside of VTS jurisdiction, however, prospective VTS Users are encouraged to monitor the designated frequency.

[6] The bridge-to-bridge navigational frequency, 156.650 MHz (Channel 13), is used in these VTSs because the level of radiotelephone transmissions does not warrant a designated VTS frequency. The listening watch required by § 26.05 of this chapter is not limited to the monitoring area.

7. In § 161.35(b), table 161.35(b) is revised to read as follows:

TABLE 161.35(b)—VTS HOUSTON/GALVESTON PRECAUTIONARY AREAS

Precautionary area name	Radius (yds.)	Center point	
		Latitude	Longitude
Bolivar Roads	4000	29°20.9'N	94°47.0'W
Red Fish Bar	4000	29°29.8'N	94°51.9'W
Bayport Channel	4000	29°36.7'N	94°57.2'W
Morgans Point	2000	29°41.0'N	94°59.0'W
Upper San Jacinto Bay	1000	29°42.3'N	95°01.1'W
Baytown	1000	29°43.6'N	95°01.4'W
Lynchburg	1000	29°45.8'N	95°04.8'W
Carpenters Bayou	1000	29°45.3'N	95°05.5'W
Jacintoport	1000	29°44.8'N	95°06.0'W
Greens Bayou	1000	29°44.8'N	95°10.2'W
Hunting Bayou	1000	29°44.3'N	95°12.1'W
Sims Bayou	1000	29°43.1'N	95°14.4'W
Brady Island	1000	29°43.5'N	95°16.4' W
Buffalo Bayou	1000	29°45.0'N	95°17.3'W

Note: Each Precautionary Area encompasses a circular area of the radius denoted.

8. In § 161.35(c), table 161.35(c) is revised to read as follows:

TABLE 161.35(c)—VTS HOUSTON/GALVESTON REPORTING POINTS

Designator	Geographic name	Geographic description	Latitude/longitude	Notes
1	Galveston Bay Entrance Channel.	Galveston Bay Entrance CH Lighted Buoy (LB) "GB".	29°18.4'N; 94°37.6'W.	
2	Galveston Bay Entrance Channel.	Galveston Bay Entrance Channel LB 11 and 12.	29°20.6'N; 94°44.6'W.	
E	Bolivar Land Cut	Mile 349 Intracoastal Waterway (ICW).	29°22.5'N; 94°46.9' W	Tows entering HSC also report at HSC LB 25 & 26.
W	Pelican Cut	Mile 351 ICW	29°21.4'N; 94°48.5' W	Tow entering HSC also report at HSC LB 25 & 26.
GCG	Galveston Harbor	USCG Base. At the entrance to Galveston Harbor.	29°20.0'N; 94°46.5'W.	
T	Texas City Channel	Texas City Channel LB 12	29°22.4'N; 94°50.9'W.	

TABLE 161.35(c)—VTS HOUSTON/GALVESTON REPORTING POINTS—Continued

Designator	Geographic name	Geographic description	Latitude/longitude	Notes
X	Houston Ship Channel ICW Intersection.	Houston Ship Channel (HSC) LB 25 and 26.	29°22.1'N; 94°48.1'W.	Tow entering HSC from ICW or Texas Cut Only.
3	Lower Galveston Bay	HSC LB 31 and 32	29°23.5'N; 94°48.8'W.	
4	Red Fish Bar	HSC Lt. 53A & 54A	29°30.3'N; 94°52.4'W.	
P	Bayport Ship Channel	Bayport Ship Channel Lt. 7 and 8.	29°36.8'N; 94°59.5' W;	Report at the North Land Cut.
4A	Upper Galveston Bay	HSC Buoys 69 and 70	29°34.7'N; 94°55.8' W	Tows only.
5	Morgan's Point	Barbour's Cut	29°41.0'N; 94°58.9'W.	Abeam Barbours Cut.
6	Exxon	Baytown Bend	29°43.5'N; 95°01.4'W.	
7	Lynchburg	Ferry crossing	29°45.8'N; 95°04.8'W.	
8	Shell Oil	Boggy Bayou	29°44.1'N; 95°08.0'W.	
9	Greens Bayou	Greens Bayou	29°44.8'N; 95°10.1'W.	
10	Hess Turning Basin	Hunting Bayou Turning Basin	29°44.3'N;95°12.1'W.	
11	Lyondell Turning Basin	Sims Bayou Turning Basin	29°43.2'N; 95°14.4'W.	
12	I–610 Bridge	I–610 Bridge	29°43.5'N; 95°16.0'W.	
13	Houston Turning Basin	Buffalo Bayou	29°45.0'N; 95°17.4'W.	

§ 161.40 [Amended]

9. In § 161.40(c), table 161.40(c) is amended by adding the heading "Table 161.40(c)—VTS Berwick Bay Reporting Points".

10. In § 161.45(b), table 161.45(b) is revised to read as follows:

TABLE 161.45(b)—VTS ST. MARYS RIVER REPORTING POINTS

Designator	Geographic name	Geographic description	Latitude/longitude	Notes
1	Ile Parisienne	Ile Parisienne Light	46°37.3'N; 84°45.9' W	Downbound Only.
2	Gros Cap Reef	Gros Cap Reefs Light	46°30.6'N; 84°37.1' W	Upbound Only.
3	Round Island	Round Island Light 32	46°26.9'N; 84°31.7'W.	
4	Pointe Louise	Pointe Louise Light	46°27.8'N; 84°28.2'W.	
5*	West End of Locks	West Center Pierhead Light	46°30.2'N; 84°22.2' W	Upbound Only.
6	East End of Locks	East Center Pierhead Light	46°30.1'N; 84°20.3' W	Downbound Only.
7	Mission Point	Light 99	46°29.2'N; 84°18.1'W.	
8	Six Mile Point	Six Mile Point	46°26.1'N; 84°15.4'W.	
9	Ninemile Point	Light 80	46°23.5'N; 84°14.1'W.	
10	West Neebish Channel	Light 29	46°16.9'N; 84°12.5' W	Downbound Only.
11	Munuscong Lake Junction	Lighted Junction Buoy	46°10.8'N; 84°05.6'W.	
12	De Tour Reef	De Tour Reef Light	46°56.9'N; 83°53.7'W.	

§ 161.50 [Amended]

11. In § 161.50, remove "(a)" at the beginning of the section; remove the words "Petaluma River Entrance Lights '1' and '2' " and add, in their place, the words "Petaluma River Entrance Channel Daybeacon 19 and Petaluma River Entrance Channel Light 20"; and remove the words "Redwood City" and add, in their place, "the Dumbarton Bridge."

12. In § 161.60, paragraph (c)(4) is removed; and paragraphs (c)(2) and (c)(3) and the table in paragraph (d) are revised to read as follows:

§ 161.60 Vessel Traffic Service Prince William Sound

* * * * *

(c) * * *

(1) * * *

(2) For a vessel listed in paragraph (c)(3) of this section—

(i) Approval to enter this area will not be granted to a vessel when a tank vessel of more than 20,000 deadweight tons is navigating therein;

(ii) A northbound vessel shall remain south of 61°N. until the VTS has granted permission to proceed; and

(iii) A southbound vessel shall remain in Port Valdez east of 146°35'W. and north of 61°06'N. until the VTS has granted permission to proceed.

(3) Paragraph (c)(2) of this section applies to—

(i) A vessel of 1600 gross tons or more; and

(ii) A towing vessel of 8 meters or more in length, except for a vessel performing duties as an escort vessel as defined in 33 CFR Part 168.

(d) Reporting Points.

TABLE 161.60(d)—VTS PRINCE WILLIAM SOUND REPORTING POINTS

Designator	Geographic name	Geographic description	Latitude/longitude	Notes
1A	Cape Hinchinbrook	Cape Hinchinbrook	60°16'18"N; 146°45'30" W	Northbound Only.
1B	Schooner Rock	Schooner Rock	60°18'42"N; 146°51'36" W	Southbound Only.

TABLE 161.60(d)—VTS PRINCE WILLIAM SOUND REPORTING POINTS—Continued

Designator	Geographic name	Geographic description	Latitude/longitude	Notes
2A	Naked Island	Naked Island	60°40'00"N; 147°01'24" W	Northbound Only.
2B	Naked Island	Naked Island	60°40'00"N; 147°05'00" W	Southbound Only.
3A	Bligh Reef	Bligh Reef Light (Pilot Embark)	60°50'36"N; 146°57'30" W	Northbound Only.
3B	Bligh Reef	Bligh Reef Light (Pilot Disembark)	60°51'00"N; 147°01'24" W	Southbound Only.
4A	Rocky Point	Rocky Point	60°57'48"N; 146°47'30" W	Northbound Only.
4B	Rocky Point	Rocky Point	60°57'48"N; 146°50'00" W	Southbound Only.
5	Entrance Island	Entrance Island Light	61°05'24"N; 146°37'30"W..	

PART 162—INLAND WATERWAYS NAVIGATION REGULATIONS

13. The authority citation for part 162 continues to read as follows:

Authority: 33 U.S.C. 1231; 49 CFR 1.46.

§ 162.117 [Amended]

14. In 162.117, paragraph (c) is revised to read as follows:

* * * * *

(c) Anchoring Rules

(1) A vessel must not anchor:

(i) within the waters between Brush Point and the waterworks intake crib off Big Point southward of the Point Aux Pins range; or

(i) within 0.2 nautical miles of the intake crib off Big Point.

(2) In an emergency, vessels may anchor in a dredged channel. Vessels shall anchor as near to the edge of the channel as possible and shall get underway as soon as the emergency ceases, unless otherwise directed. Vessel Traffic Services St. Marys River must be advised of any emergency anchoring as soon as is practicable.

(3) Vessels collected in any part of the VTS Area by reason of temporary closure of a channel or an impediment to navigation shall get underway and depart in the order in which they arrived, unless otherwise directed by Vessel Traffic Service St. Marys River. Vessel Traffic Service St. Marys River may advance any vessel in the order of departure to expedite the movement of mails, passengers, cargo of a perishable nature, to facilitate passage of vessels through any channel by reason of special circumstance, or to facilitate passage through the St. Marys Falls Canal.

* * * * *

15. In § 162.117(g), Table 162.117(g), add the heading "Table 162.117(g)—St. Marys River Speed Rules"; and in paragraph (g)(2), add the words "Commanding Officer" before "Vessel Traffic Service St. Marys River."

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

16. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

§ 165.809 [Removed]

17. Section 165.809 is removed.

§ 165.810 [Amended]

18. In § 165.810 redesignate paragraphs (a), (b) and (c) as paragraphs (b), (c) and (d) respectively; and add paragraph (a) to read as follows:

(a) *Purpose and Applicability.* This section prescribes rules for all vessels operating in the Mississippi River below Baton Rouge, LA, including South and Southwest Passes, to assist in the prevention of collisions and groundings and to protect the navigable waters of the Mississippi River from environmental harm resulting from those incidents.

* * * * *

§ 165.811 [Amended]

19. In § 165.811, in paragraph (e), amend the table heading by adding "Table 165.812(e)—" before the words "Minimum Available Horsepower Requirement"; and in paragraph (f)(4)(ii), remove the word "horizontally" and add, in its place, the word "vertically."

§ 165.1704 [Amended]

20. In § 165.1704 remove paragraph (c)(4) and redesignate paragraphs (c)(5), (c)(6) and (c)(7) as paragraphs (c)(4), (c)(5) and (c)(6), respectively.

Dated: May, 16, 1995.

G.A. Penington,

Rear Admiral, U.S. Coast Guard Chief, Office of Navigation Safety and Waterways Services.

[FR Doc. 95–13268 Filed 5–30–95; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region II Docket No. 136, PR3–2–6731, FRL–5206–5]

Approval and Promulgation of PM_{10} Implementation Plan for the Commonwealth of Puerto Rico

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is approving the State Implementation Plan (SIP) revision submitted by the Commonwealth of Puerto Rico for the purpose of attaining the National Ambient Air Quality Standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM_{10}). The SIP addresses sources impacting the Municipality of Guaynabo, Puerto Rico which has been designated nonattainment.

EFFECTIVE DATE: This action will be effective June 30, 1995.

ADDRESSES: Copies of the state submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region II Office, Library, 290 Broadway, 16th Floor, New York, New York, 10007–1866.

Environmental Protection Agency, Region II, Caribbean Field Office, Centro Europa Building, Suite 417, 1492 Ponce De Leon Avenue, Stop 22, Santurce, Puerto Rico, 00909.

Commonwealth of Puerto Rico, Environmental Quality Board, Banco National Plaza, 8th Floor, 431 Ponce De Leon Avenue, Hato Rey, Puerto Rico, 00917.

Environmental Protection Agency, Air and Radiation Docket and Information

Center (MC 6102), 401 M. Street, S.W. Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

Kirk J. Wieber, Air Programs Branch, Environmental Protection Agency, Region II Office, 290 Broadway, 20th Floor, New York, New York 10007–18666 (212) 637–4249.

or

Carl Soderberg, Director, Environmental Protection Agency, Region II, Caribbean Field Office, Centro Europa Building, Suite 417, 1492 Ponce De Leon Avenue, Stop 22, Santurce, Puerto Rico, 00909, (809) 729–6951.

SUPPLEMENTARY INFORMATION:

I. Background

The Clean Air Act, as amended in 1990 (the Act), requires all areas that have measured a violation of the NAAQS for PM_{10} before January 1, 1989 be designated nonattainment. On November 15, 1990 by operation of law the Municipality of Guaynabo, Puerto Rico was designated nonattainment for PM_{10} and classified as moderate based on violations measured in 1987 in the Municipality. [see 56 FR 11101 (March 15, 1991)]. The Act requires state or territorial governments to revise their SIP for all areas that are designated as nonattainment to ensure that the NAAQS will be attained. Under the Act, the Commonwealth of Puerto Rico is regarded as a state. The reader should refer to the "General Preamble" [see generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)] for a more detailed discussion of the designation of PM_{10} nonattainment areas.

II. Today's Action

Section 110(k) of the Act sets out provisions governing EPA's review of SIP submittals. (See 57 FR 13565–13566.) In this action, EPA is approving the Puerto Rico PM_{10} implementation plan revision submitted to EPA on November 14, 1993. This submittal was intended to satisfy those moderate PM_{10} nonattainment area SIP requirements due November 15, 1991 and the moderate PM_{10} nonattainment area New Source Review requirements due June 30, 1992. EPA proposed to approve the submittal on August 11, 1994, 57 FR 41265. The reader is referred to the proposal for a detailed explanation of Puerto Rico's PM_{10} SIP and EPA's evaluation. In response to the **Federal Register** notice and a Public Meeting held by EPA Region II on September 11, 1994 in the Municipality of Cataño, comments were received from ten interested parties. EPA's response to these comments are discussed in IV. Public Comment.

III. Analysis of Puerto Rico's SIP Submission

A. Administrative Requirements

The Commonwealth of Puerto Rico held a public hearing on October 15, 1993 to accept public comments on the implementation plan for the Municipality of Guaynabo PM_{10} nonattainment area. Following the public hearing the plan was adopted by Puerto Rico and was submitted to EPA as a revision to the SIP on November 14, 1994. The submittal was supplemented with administrative documents on March 18, 1994 and March 30, 1994. The SIP submittal included revisions to the Puerto Rico Regulations for the Control of Atmospheric Pollution which include the following: Part I; Rule 102, "Definitions," Part II; Rule 201, "Location Approval," Rule 202, "Air Quality Impact Analysis," Rule 203, "Permit to Construct a Source," and Part IV; Rule 401, "Generic Prohibitions," Rule 402, "Open Burning," Rule 403, "Visible Emissions," Rule 404, "Fugitive Dust," and Rule 423, "Limitations for the Guaynabo PM_{10} Nonattainment Area," which became effective on April 2, 1994. The entire SIP revision was reviewed by EPA to determine completeness in accordance with the completeness criteria set out at 40 CFR 51, and found to be administratively complete.

B. Emissions Inventory

Puerto Rico submitted an emissions inventory for base year 1990. EPA is approving the emissions inventory because it is accurate and comprehensive, and provides a sufficient basis for determining the adequacy of the attainment demonstration for this area consistent with the requirements of sections 172(c)(3) and 110(a)(2)(K) of the Act.

C. New Source Review (NSR) PM_{10} Permit Program

The statutory permit requirements for moderate PM_{10} nonattainment areas are contained in section 173 and section 189 of the Act. For all moderate PM_{10} nonattainment areas, states must adopt the appropriate major source threshold, offset ratio, significance level for modifications, and provisions for PM_{10} precursors. Puerto Rico's PM_{10} implementation plan submittal addressed all NSR Act requirements, therefore, EPA is approving the PM_{10} NSR permit program SIP revision.

D. Reasonably Available Control Measures (RACM) including Reasonably Available Control Technology (RACT)

Moderate PM_{10} nonattainment areas were required to submit provisions to assure that RACM (including RACT) would have been implemented no later than December 10, 1993 or four years after designation in the case of an area classified as moderate nonattainment after November 15, 1990. [see sections 172(c)(1) and 189(a)(1)(C)]. The Municipality of Guaynabo was designated and classified as moderate nonattainment for PM_{10} on November 15, 1990 by operation of law, therefore, the Puerto Rico PM_{10} implementation plan needed to assure that RACT/RACM would have been implemented no later than December 10, 1993. The SIP contains enforceable commitments by the Puerto Rico Environmental Quality Board (EQB) to achieve various RACM requirements through regulations as well as through Memoranda of Understanding (MOU). These were effective upon adoption. The EQB has signed MOU's with various entities which include details of how the various RACM requirements would be implemented.

EPA has reviewed Puerto Rico's SIP documentation and concluded that its choice of control measures has provided for attainment of the PM_{10} NAAQS by December 31, 1994. By this notice, EPA is determining that the control strategies are consistent with the RACM and RACT requirements contained in the Act.

E. Contingency Measures

As provided in section 172(c)(9) of the Act, all PM_{10} nonattainment area SIP's must include contingency measures (see generally 57 FR 13543–44). These measures were required to be submitted by November 15, 1993 for the moderate PM_{10} nonattainment areas. [see 57 FR 13543 (April 16, 1992)]. Contingency measures should consist of other available measures, not already part of the area's control strategy, that take effect without further action by the Commonwealth or EPA upon a determination by EPA that the area has failed to make Reasonable Further Progress (RFP) or attain the PM_{10} NAAQS by the applicable statutory deadline. The Municipality of Guaynabo PM_{10} nonattainment area SIP contains contingency measures which are included in Rule 423(D).

After review of the contingency measures contained in the SIP, EPA has determined they meet the requirements of the Act.

F. Demonstration of Attainment

Moderate PM_{10} nonattainment areas were required to submit a demonstration (including air quality modeling) showing that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994 [see sections 188(c)(1) and 189(a)(1)(B) of the Act).

EQB performed an attainment demonstration using the Industrial Source Complex (ISC2) dispersion model and five years of National Weather Service meteorological data. EPA recommends that implementation plans show maintenance of the PM_{10} NAAQS for at least three years beyond the attainment date. Puerto Rico's demonstration, included in their PM_{10} implementation plan, indicates the NAAQS for PM_{10} were attained by December 31, 1994 in the Municipality of Guaynabo. In addition, Puerto Rico went beyond EPA's recommendation of demonstrating maintenance of the PM_{10} NAAQS for three years and demonstrated they would be maintained at least until 1999. EPA is approving the attainment demonstration.

G. Quantitative Milestones and RFP

The moderate PM_{10} nonattainment area plan revisions demonstrating attainment must contain quantitative milestones which are to be achieved every three years until the area is redesignated attainment and which demonstrate reasonable further progress (RFP) toward attainment by December 31, 1994 (see section 189(c)(1) of the Act). RFP is defined in section 171(1) as such annual incremental reductions in emissions of the relevant air pollutant as are required by Part D or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable NAAQS by the applicable date.

The assurance that milestones and RFP will be achieved is based upon the Commonwealth adopting and implementing the particular control measures contained in the PM_{10} SIP, RACM (including RACT).

H. Enforceability

The SIP must include enforceable emission limitations and other control measures, means or techniques necessary or appropriate to meet the requirements of the Act. [see section 110(a)(2)(A) of the Act]. Nonattainment plan provisions must also include enforceable emission limitations and other control measures, means or techniques necessary or appropriate to provide for attainment of the NAAQS by the applicable attainment date. [see section 172(b)(6)]. The SIP must also contain a program which provides for enforcement of the control measures and other elements in the SIP and the regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that the NAAQS are achieved, including a permit program required under Part C or D of Title I of the Act. [see, section 110(a)(2)(C)]. All measures and other elements in the SIP must be enforceable by the Commonwealth and EPA [see sections 172(c)(6), 110(a)(2)(A) and 57 FR 13556]. Moderate PM_{10} nonattainment area plan provisions must also contain a program which provides for enforcement of the control measures and other elements in the SIP [see section 110(a)(2)(C)].

The SIP requires that all affected stationary sources must be in full compliance with the applicable RACT requirements by December 10, 1993. However, if a physical alteration of the stationary source is necessary to achieve compliance, the SIP requires that construction of the alteration must have been commenced by February 15, 1994, and must have been completed by November 30, 1994. EQB has prepared a compliance schedule for those sources that still need to make alterations. Compliance with these RACT requirements must be demonstrated using the applicable EPA Reference Test Methods. Puerto Rico has an enforcement program that will ensure that these RACT requirements are adequately enforced. There are civil penalties for noncompliance with the Regulation containing these RACT requirements.

In addition to the RACT requirements for stationary sources, the SIP contains enforceable commitments by EQB to achieve various RACM requirements. To implement these measures, EQB has signed an MOU with the Puerto Rico Department of Transportation, the Puerto Rico Electric Power Authority, the Municipality of Guaynabo, and the Port Authority that contain details on how each of these entities will meet these RACM commitments. The commitments to implement the RACM requirements are in the SIP itself, and thus are enforceable as requirements of the SIP. In addition, the MOU's, having gone through public review and comment, will be incorporated into the SIP by reference, and are effective as of the date each was signed. The attainment demonstration, which shows attainment of the PM_{10} NAAQS by December 31, 1994, uses emissions reductions from the identified RACM measures, and thus EPA expects them to be implemented pursuant to the MOU's. Once incorporated into the approved SIP, the requirements of the MOU may not be changed except by a revision to the SIP that has been submitted to and approved by EPA.

Puerto Rico's revisions to the regulations include a new definition for "PM_{10}" in Rule 102. Although test methods are not contained in Puerto Rico's definition of "PM_{10}" as they are in 40 CFR 51.100 (qq), EPA is approving Puerto Rico's definition of "PM_{10}," since the relevant test methods are found in other provisions of the regulations.

I. PM_{10} Precursors

The Act states that "control requirements applicable to major stationary sources of PM_{10} must also apply to major stationary sources of PM_{10} precursors except where the Administrator determines that such sources do not contribute significantly to PM_{10} levels which exceed the NAAQS in the area." Based on filter analyses of the Guaynabo nonattainment area, the relatively minor contribution of precursors to overall nonattainment, and the effectiveness of the Commonwealth's RACT/RACM strategies, EPA agrees with EQB's determination that no controls of PM_{10} precursors beyond what are already controlled in the Puerto Rico SIP are needed for attainment. Nonetheless, Puerto Rico has chosen to include within the NSR provisions a requirement for control of PM_{10} precursors unless EPA and EQB determine otherwise.

IV. Public Comment

EPA proposed to approve the Puerto Rico PM_{10} implementation plan on August 11, 1994, 57 FR 41265. Comments were received from ten interested parties. Comments were also received during the Public Meeting held by EPA Region II on September 11, 1994 in the Municipality of Cataño. EPA evaluated all the comments with respect to EPA's proposed approval. Due to the large number of comments, EPA prepared a separate "Responsiveness Document" which summarizes each comment and includes EPA's evaluation and detailed response. This document is available from EPA upon request. In this **Federal Register** notice EPA has summarized major comments and responses.

The following summaries of comments and responses is divided into several major areas; the designation of the nonattainment area, the SIP attainment demonstration, and RACT determinations.

Designation of Nonattainment

Comment: Puerto Rico's plan is based on air quality data which is incomplete and insufficient for determining that the Municipality of Guaynabo was not in attainment of the air quality standards. Air quality now meets the NAAQS.

Response: The Commonwealth presented no information which invalidates the air quality data previously collected which indicated nonattainment. Section 107(d)(4)(B) of the Act mandated the designation of areas as nonattainment for PM_{10} by operation of law:

"(B) PM_{10} Designations.—By operation of law, * * * (ii) any area containing a site for which air quality monitoring data show a violation of the national ambient air quality standard for PM_{10} before January 1, 1989 (as determined under part 50, appendix K of title 40 of the Code of Federal Regulations) is hereby designated nonattainment for PM_{10}."

This section of the Act confines the EPA to review air quality data prior to January 1, 1989, not after January 1, 1989, in designating an area for PM_{10}. The designation of the Municipality of Guaynabo as nonattainment for PM_{10} was based on the PM_{10} concentration of 285 $\mu g/m^3$, recorded at the Electrical Substation #24 on August 1, 1987. There was no evidence presented by the Commonwealth that showed this reading to be invalid. Further, air quality data available to the Administrator indicated that there were violations of the annual standard in 1987 and 1988. EPA does not find any evidence to conclude that the nonattainment designation was made in error.

If indeed the area is attaining the PM_{10} NAAQS in the Municipality of Guaynabo as a result of permanent reductions in emission, the Commonwealth can request a redesignation to attainment. Section 107 (d)(3) of the Act specifies the procedures and requirements for changing an area's designation. The redesignation of an area from nonattainment to attainment is an entirely separate procedure from today's SIP approval action. However, one requirement of a redesignation is that the Commonwealth has an approved PM_{10} attainment SIP. A redesignation request, which may be submitted at any time, would be processed expeditiously by EPA as a separate rulemaking.

Comment: The location of EQB's PM_{10} air quality monitors are not representative of the air in the remainder of the nonattainment area and in the surrounding areas of Guaynabo. Monitors should be located in the center and southern end of the Municipality of Guaynabo and in the Municipality of Cataño.

Response: EPA believes the current PM_{10} monitoring network in Puerto Rico is representative of the highest PM_{10} concentrations in the entire nonattainment area. This design is consistent with the monitoring objectives and methodologies described in Part 58 of the Code of Federal Regulations, Appendix D. They are sited immediately downwind of major point and area sources in locations where a long record of total suspended particulate monitors had measured the highest levels in Puerto Rico. Thus they meet the monitor-siting objective of measuring air quality in the area where the highest concentrations of a pollutant can be expected to occur.

Locations in southern Cataño and Guaynabo do not have the same potential to measure high concentrations due to the lack of major sources of particulate matter, as demonstrated by the emission inventory of the Municipality of Guaynabo. Consequently, their absence should not make the Commonwealth's plan any less approvable.

Attainment Demonstration

Comments: The dispersion model used in the attainment demonstration is not conservative. Wrong meteorological data being used. The Puerto Rico Electrical Power Authority (PREPA) Palo Seco plant should have been included in the Plan.

Response: The dispersion model is conservative because it predicts higher concentrations than observed for almost the entire set of observed data. The graph in the Commonwealth's PM_{10} plan comparing concentrations predicted by the model with the observed data may not demonstrate this fact because the plotted predicted concentrations lack the background contribution from outside the modeled area of (approximately 31 ug/m^3). When the concentrations predicted by the model are correctly included, however, the predicted concentrations are higher than the observed concentrations. Thus, EPA concludes that the model generally over predicts PM_{10} concentrations and is conservative. This is further supported by recent air quality measurements which show annual concentrations significantly well below concentrations predicted by the model, even after control measures have been enacted.

The San Juan Airport site is representative of the industrialized area of Guaynabo since it is also located on the north coast of Puerto Rico and subject to the same land-sea effects on the wind. The terrain in the Puerto Nuevo area where the largest emitting sources are located is mainly flat like the area near the Airport. Comparison between the San Juan Airport data and data collected at a meteorological tower in the Municipality of Guaynabo confirm that they are subject to the same meteorological patterns.

In reference to the PREPA Palo Seco issue, the attainment demonstration did consider the impact of the Palo Seco Power Plant's PM_{10} emissions on the Cataño—Guaynabo area. The atmospheric dispersion model used in the attainment demonstration showed that the greatest impact of the power plant's emissions remained over water. The plants contribution to the Guaynabo nonattainment area (only about three and one half percent of the time) is less than the deminimis impact levels contained in EPA regulations. Since the power plant is located outside of the Guaynabo nonattainment area, EPA's guidance to the states is that RACT strategies need only be applied to those sources which have a significant impact on the nonattainment area. Thus RACT at the Palo Seco Power Plant would have no real benefit to attainment of PM_{10} standards in the Guaynabo. However, all power plants in Puerto Rico are subject to the same 20 percent opacity limit that is required of the power plant in Puerto Nuevo.

RACT Determinations for Electrical Utilities

Comment: A mass emissions limit should be adopted by Puerto Rico. The 1.5 percent sulfur-in-fuel limit is not cost effective nor stringent enough to show attainment. EQB has no independent way of verifying sulfur-in-fuel limits.

Response: There is no requirement that a mass emission limit be used exclusively in state clean air plans. EPA can approve a SIP revision as long as it contains emission limits which are enforceable and which provide for attainment of the standards. The Act states "each implementation plan submitted by a State * * * shall include enforceable emission limitations and other control measures, means, or techniques * * * as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of this Act, section 110(a)(2)(A)."

The Puerto Rico SIP relies on a sulfur-in-fuel limit and a 20% opacity limitation, both of which are enforceable. Further, the Agency has collected emission data from a variety of fuel oil burning power plants from which the particulates can be calculated. These factors are contained in the *Compilation of Air Pollutant Emission Factors* (AP–42), Supplement F, emissions factor equation. These emissions were factored into the Puerto Rico plan and attainment with health related ambient air quality standards was demonstrated.

EQB included in their SIP submittal an Economic Feasibility Analysis of Alternative Emission Control Strategies in the Guaynabo Municipality. This document presented an analysis of the cost of reducing emissions in Guaynabo and the cost effectiveness of alternative control strategies.

EPA reviewed the document and determined the costs of low sulfur residual oil were accurate to determine the cost effectiveness of controls applicable to PREPA. The analysis showed that 1.0, 1.5, and 2.0 percent sulfur oils cost about the same for each ton of sulfur reduced, however, according to the Economic Feasibility Analysis provided with the SIP, it will cost more than $6.6 million per year to reduce the sulfur content from 1.5 to 1.0 percent at the PREPA San Juan plant.

EQB has informed EPA that it has the necessary equipment to analyze fuel samples. Compliance of the sulfur-in-fuel limit will be verified by a variety of methods. In accordance with the January 31, 1994 Memorandum Of Understanding (MOU), PREPA and its fuel supplier will send sampling data to EQB. When the fuel supplier delivers the fuel, it will send its analysis of the fuel content to EQB. EQB can compare the supplier's analysis against reports from the facility.

In summary, the two procedures set forth in the PM_{10} SIP, the sulfur-in-fuel limit that correlates to a 0.08 #/MMBtu mass emission rate, and the 20% opacity restriction are easily measured, readily enforceable, and when combined with the other control measures adopted by the Commonwealth, can demonstrate attainment of the PM_{10} NAAQS. The Agency therefore has determined that the limits provided can and should be approved.

RACT Determinations for Grain Handling Facilities

Comment: Puerto Rico's ban on the use of clamshell unloading of ships is not supportable as RACT. The 99.9% filtration efficiency required of grain mills is not technically achievable.

Response: The *General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990* defines RACT as "the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility." Congress specified that nonattainment area plans were to "require * * * reasonable further progress * * * including such reduction in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of RACT."

Through modeling, EQB's contractor demonstrated that emissions from the grain mills contributed in a large way to the violations of the PM_{10} air quality standard predicted by the model. Taking this into consideration, EQB determined that stringent RACT measures were needed at these facilities to show attainment.

EPA guidance identifies that Industrial process fugitive particulate emissions are produced during all phases of grain handling and processing including: unloading, receiving, handling, drying, cleaning, milling, and land-out. EPA's *Control Techniques for Particulate Emissions from Stationary Sources* recommends that for grain handling and storage "the most common control strategy is to enclose and hood the processing equipment or area with ventilation to cyclones and filters." Thus, the emission reductions that can be obtained from this strategy depend upon both process modifications to optimize the capture efficiency of the ventilation system and the installation of control devices.

EQB determined that for a very dusty process such as Clamshell loading and unloading, RACT for this process would be the prohibition of Clamshell loading and unloading and the utilization of telescopic loading spouts in a fully enclosed area with a ventilation system. This control strategy is considered both technologically and economically feasible. EPA has verified this in discussions with grain facilities in the United States who are currently using the telescopic loading spouts.

EPA has not been able to conclude that a ban on loading/unloading using clamshells is not an acceptable RACT determination. Telescoping loading spouts are used in the industry to load and unload grain or grain products. However, EPA would object to a RACT determination that is less stringent than could be technologically and economically justified. Should the Commonwealth decide in the future to propose an alternative to a ban on the use of clamshells, the SIP could be revised accordingly.

The SIP requires the installation of control equipment with a 99.5% efficiency. Upon review EPA has concluded that this is achievable even in warm climates. In other parts of the country, (PM_{10} attainment and nonattainment areas), 99.9% is routinely required. One commenter argued that conditions at grain handling facilities in Puerto Rico would prevent 99.5% efficiency from being achieved. EPA has reviewed permits issued to grain mills in warm climates and determined that the 99.5% limit proposed in the SIP is achievable on a continuous basis providing there is proper operation and maintenance of the control systems.

Environmental Justice Concerns

Comment: Several commenters raised environmental justice concerns in their comments.

Response: EPA recognizes that air pollution sources in the SIP area raise environmental justice issues, and EPA has taken steps to address these concerns in the SIP process. In particular, EPA has had meetings and contacts with affected communities and organizations, and intends to continue these contacts as air programs are implemented and enforced. In addition, EPA and other agencies such as the Centers for Disease Control have been assessing environmental health factors in these communities. EPA will continue to review progress in implementing the SIP and other environmental programs with respect to Executive Order 12898 and the EPA Environmental Justice Strategy.

V. Summary

In this action, EPA is approving the SIP revision submitted to EPA on November 14, 1993 and supplemented on March 18, 1994 and March 30, 1994 by Puerto Rico for the Municipality of Guaynabo PM_{10} nonattainment area. Specifically, EPA is approving the emissions inventory, the control strategy including RACM and RACT, the demonstration that the Municipality of Guaynabo PM_{10} nonattainment area will attain the PM_{10} NAAQS by December 31, 1994 and maintain the PM_{10} NAAQS through 1999, the NSR permit provisions and the contingency measures. EPA determined that PM_{10} precursor controls are not needed for attainment. EPA is approving the revisions to the Puerto Rico Regulations for the Control of Atmospheric Pollution which include the following: Part I; Rule 102, "Definitions," Part II; Rule 201, "Location Approval," Rule 202, "Air Quality Impact Analysis," Rule 203, "Permit to Construct a Source," and Part IV; Rule 401, "Generic Prohibitions," Rule 402, "Open Burning," Rule 403, "Visible Emissions," Rule 404, "Fugitive Dust,"

and Rule 423, "Limitations for the Guaynabo PM_{10} Nonattainment Area." EPA is approving this PM_{10} SIP submittal in relation to its satisfying all Act requirements.

Previously, the Governor of Puerto Rico was notified on December 16, 1991 by the EPA Regional Administrator that Puerto Rico had not submitted the PM_{10} SIP requirements due on November 15, 1991. This action formally started both an 18-month Sanction clock and a 24-month Federal Implementation Plan (FIP) clock. In a January 15, 1993 letter, the Governor was notified that another 18-month Sanction clock and 24-month FIP clock, for the failure to submit a permit program for the NSR requirements by June 30, 1992, had begun. Since the November 14, 1993 submittal was found to be complete, the findings made on December 16, 1991 and January 15, 1993 of non-submittal have been corrected and no sanctions will be imposed. With the approval of this SIP revision, all Clean Air Act requirements have been met and it is no longer necessary for EPA to adopt a FIP to address the PM_{10} deficiencies.

This notice is issued as required by Section 110 of the Clean Air Act, as amended. The Administrator's decision regarding the approval of this plan revision is based on its meeting the requirements of Section 110 of the Clean Air Act, and 40 CFR Part 51.

The Agency has reviewed this request for revision of the federally-approved SIP for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements irrespective of the fact that the submittal preceded the date of enactment.

Nothing in this rule should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to any SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a federal mandate that may result in estimated annual costs of $100 million or more to the private sector, or to state, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the state and any affected local or tribal governments have elected to adopt the program provided for under sections 110(a)(2), 172(c), 173 and 189(a) of the Clean Air Act. These rules may bind state, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being approved by this action would impose any mandate upon the state, local or tribal governments either as the owner or operator of a source or as a regulator, or would impose any mandate upon the private sector, EPA's action would impose no new requirements; such sources are already subject to these regulations under state law. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that this final action does not include a mandate that may result in estimated annual costs of $100 million or more to state, local, or tribal governments in the aggregate or to the private sector.

The Office of Management and Budget has exempted this action from review under Executive Order 12866.

Under section 307(b)(1) of the Act, petitions for judicial review of this rule must be filed in the United States Court of Appeals for the appropriate circuit within 60 days from date of publication. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This rule may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: May 14, 1995.

William J. Muszynski,

Acting Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart BBB—Puerto Rico

2. Section 52.2720 is amended by adding new paragraph (c)(35) to read as follows:

§ 52.2720 Identification of plan.

* * * * *

(c) * * *

(35) A revision submitted on November 14, 1993 by the Chairman of the Puerto Rico Environmental Quality Board (EQB) for the Municipality of Guaynabo. The submittal was made to satisfy those moderate PM_{10} nonattainment area SIP requirements due for the Municipality of Guaynabo as outlined in the Clean Air Act of 1990.

(i) Incorporation by reference:

(A) Regulations:

(1) Amendments to Part I, Rule 102, "Definitions," of the Puerto Rico Regulations for the Control of Atmospheric Pollution, effective April 2, 1994.

(2) Amendments to Part II, Rule 201, "Location Approval," Rule 202, "Air Quality Impact Analysis," and Rule 203, "Permit to Construct a Source," of the Puerto Rico Regulations for the Control of Atmospheric Pollution, effective April 2, 1994.

(3) Amendments to Part IV, Rule 401, "Generic Prohibitions," Rule 402, "Open Burning," Rule 403, "Visible Emissions," Rule 404, "Fugitive Dust," and Rule 423, "Limitations for the Guaynabo PM_{10} Nonattainment Area," of the Puerto Rico Regulations for the Control of Atmospheric Pollution, effective April 2, 1994.

(B) Memoranda of Understanding (MOU):

(1) MOU signed by the Chairman of EQB and the Executive Director of Puerto Rico Electrical Power Authority, San Juan plant, limiting the sulfur-in-fuel level, annual operation capacity, and requiring the submittal of monthly sampling reports of its fuel's sulfur content, effective January 31, 1994.

(2) MOU signed by the Chairman of EQB and the Secretary of Puerto Rico Department of Transportation and Public Works and the Executive Director of the Highway Authority to maintain and control the reconstruction of existing roads and the construction of new roads, effective July 2, 1993.

(3) MOU signed by the Chairman of EQB and the Mayor of the Municipality of Guaynabo to pave and maintain the streets, roads and parking areas located in the Municipality of Guaynabo, effective December 13, 1993.

(4) MOU signed by the Chairman of EQB and the Executive Director of the Puerto Rico Port Authority to pave and maintain the streets, roads, and parking areas that lead into the port area in Puerto Nuevo, Guaynabo and San Juan, effective October 14, 1993.

[FR Doc. 95–13181 Filed 5–30–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[SIPTRAX NO. DC23–1–6790a; FRL–5213–1]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; Withdrawal of the Final Rule Pertaining to the Promulgation of the GSA Central and West Heating Plants Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of Notice of Direct Final Rulemaking.

SUMMARY: On May 2, 1995, EPA published a final rule approving a revision to the State implementation plan for the District of Columbia. The revision limits air pollution from two steam-generating facilities operated by the General Services Administration (GSA) in the District of Columbia. This action was published without prior proposal because EPA anticipated no adverse comment. Because EPA received adverse comments on this action, EPA is withdrawing the May 2, 1995 final rulemaking action pertaining to the State implementation plan for the District of Columbia.

EFFECTIVE DATE: May 31, 1995.

FOR FURTHER INFORMATION CONTACT: David J. Campbell, Technical Assessment Section (3AT22), U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107, phone: 215 597–9781.

SUPPLEMENTARY INFORMATION: On May 2, 1995, EPA published a final rule to approve a revision to the District of Columbia State implementation plan (SIP) (60 FR 21453). The revision consists of a September 8, 1994 operating permit issued by the District of Columbia to GSA for its Central and West Heating Plants. The permit establishes general operating procedures and emission limitations at GSA's Central Heating Plant (CHP) and West Heating Plant (WHP). EPA approved this direct final rulemaking without prior proposal because the Agency viewed it as non-controversial and anticipated no adverse comments. The final rule was published in the **Federal Register** with a provision for a 30 day comment period. At the same time, EPA published a proposed rule which announced that this final rule would convert to a proposed rule in the event that adverse comments were submitted to EPA within 30 days of publication of the rule in the **Federal Register** (60 FR 21489). By publishing a notice announcing withdrawal of the final rulemaking action, this action would be withdrawn. EPA received adverse comment within the prescribed comment period. Therefore, EPA is withdrawing the May 2, 1995 final rulemaking action pertaining to the District of Columbia SIP. All public comments received will be addressed in a subsequent rulemaking action based on the proposed rule.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Reporting and recordkeeping requirements, Sulfur Oxides.

Dated: May 18, 1995.

William T. Wisniewski,

Acting Regional Administrator, Region III.

[FR Doc. 95–13283 Filed 5–30–95; 8:45 am]

BILLING CODE 6560–60–P

40 CFR Parts 52 and 81

[MN–36–1–6752a; FRL–5202–1]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes: Minnesota

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Direct final rule.

SUMMARY: On September 7, 1994, the Minnesota Pollution Control Agency (MPCA) submitted a request for redesignation to attainment for particulate matter (PM) in the Rochester portion of Olmsted County and sulfur dioxide (SO_2) in the Air Quality Control Region (AQCR) 131 Twin Cities and Pine Bend areas (excluding the St. Paul Park area). A revision to the administrative order for Rochester Public Utilities (RPU) was also submitted in support of the Olmsted County redesignation request. The USEPA is approving, through the use of direct final rulemaking procedures, the redesignation requests and the administrative order revision for RPU.

EFFECTIVE DATES: This action will be effective July 31, 1995 unless notice is received by June 30, 1995, that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be addressed to: William L. MacDowell, Chief, Regulation Development Section, Air Enforcement Branch (AE–17J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the redesignation request and USEPA's analysis are available for public inspection during normal business hours at the following address: United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard (AE–17J), Chicago, Illinois 60604; and Office of Air and Radiation (OAR), Docket and Information Center (Air Docket (6102) Room M1500, United States Environmental Protection Agency, 401 M Street, S.W. Washington, D.C., 20460.

FOR FURTHER INFORMATION CONTACT: Randy Robinson, Air Enforcement Branch, Regulation Development Section (AE–17J), United States Environmental Protection, Region 5, Chicago, Illinois 60604, (312) 353–6713.

SUPPLEMENTARY INFORMATION:

I. Summary of State Submittal

A request for redesignation to attainment for PM for the Rochester area of Olmsted County and for SO_2 for the Twin Cities area (excluding the St. Paul Park area) was submitted by the MPCA on September 7, 1994. The submittal was received by USEPA on September 12, 1994. In addition to the redesignation requests, a revision to the administrative order for RPU was submitted to support the request for the Rochester area.

The Rochester area was designated as a moderate nonattainment area for PM upon enactment of the Clean Air Act Amendments (CAAA) of 1990 (56 FR 56694, November 6, 1991). As required in the CAAA, revisions to the State Implementation Plan (SIP) were submitted on November 26, 1991, August 31, 1992, and November 13, 1992. These revisions were approved by USEPA on February 15, 1994 (59 FR 7218).

The AQCR 131 area of Minnesota was designated primary nonattainment for SO_2 on March 3, 1978 (43 FR 8692). In response to the redesignation, the MPCA submitted a SO_2 plan in August 1980. The USEPA published a final rule approving the State's SO_2 Part D plan on April 8, 1981 (46 FR 20997). Subsequent monitored violations of the SO_2 National Ambient Air Quality Standards (NAAQS) prompted a 1982 notice of SIP inadequacy for the Dakota County area of AQCR 131. Also, as a result of the promulgation of the Good Engineering stack height rule in 1985, the MPCA identified modeled attainment problems in other areas of AQCR 131. The submittal of a revised plan for the area was further delayed by the passage of the CAAA in 1990. Final SO_2 SIP revisions were submitted to USEPA in

three parts. The plan for the majority of the AQCR 131 area was submitted May 29, 1992, and approved by USEPA on April 14, 1994 (59 FR 17703). The plan for the Pine Bend area (including the Koch Refining Company) of Dakota County was submitted on July 29, 1992, and approved by USEPA on September 9, 1994 (59 FR 46553). The plan for the St. Paul Park area (Ashland Petroleum Company) of AQCR 131 was submitted on December 22, 1992, and was approved on January 18, 1995 (60 FR 3544), effective March 20, 1995.

The remainder of this rulemaking will (1) evaluate the PM request for redesignation including the revised administrative order, (2) detail a review of the SO_2 request for redesignation, and (3) present the final rulemaking action.

II. Analysis of Submittal

Particulate Matter Request

The State PM redesignation request submittal consisted primarily of a maintenance plan and air quality monitoring data. An administrative order was also included in the submittal in support of the maintenance demonstration. The submittal contained text describing how the statutory requirements were met. These requirements are detailed in Title I, section 107(d)(3)(E) of the CAA. The specific criteria and how the State complied with the requirements are detailed below.

Section 107(d)(3)(E)(i) requires a determination of whether the area has attained the NAAQS. The State used both air quality monitoring data and a dispersion modeling analysis to show that the area has attained the 24-hour and annual NAAQS of 150 $\mu g/m^3$ and 50 $\mu g/m^3$, respectively. The modeling demonstration was included in the proposed SIP revision initially submitted to USEPA on November 26, 1991, and August 31, 1992. The modeling was performed in accordance with the USEPA document entitled "Guideline on Air Quality Models, (Revised), including Supplement A," 1987. The Industrial Source Complex-Short Term (ISCST) model was used for the analysis. The modeling utilized urban dispersion coefficient, 5 years of National Weather Service meteorological data, regulatory default modeling options, and 100 meter spacing in high predicted impact areas. The demonstration explicitly modeled impacts from Rochester Public Utilities, and added in a concentration representative of local background sources. The analysis showed that, with all control measures in operation, modeled plus background concentrations of PM did not violate the NAAQS. A more detailed discussion of the modeling demonstration can be found in the June 25, 1993, notice of proposed rulemaking on the Rochester PM SIP revision (58 FR 34297). That proposed rulemaking concluded that the air dispersion modeling met the appropriate requirements.

Ambient air monitoring data for the years 1988 through the first quarter of 1994, was submitted from a PM monitor located at 7th Street and West Silver Lake Drive. This data has been quality assured and is available for review in the Aerometric Information Retrieval System (AIRS), monitor number 271090015. No monitored exceedances of the PM NAAQS have occurred in Olmsted County since the violation on June 14, 1988, which precipitated the redesignation to nonattainment for the Rochester area.

Section 107(d)(3)(E)(ii) states that USEPA may not promulgate a redesignation to attainment unless USEPA has fully approved the area SIP under section 110(k). The PM SIP for the Rochester area of Olmsted County was approved by USEPA on February 15, 1994. The revised administrative order for RPU, submitted with the redesignation requests and discussed more fully in a later section, is being approved in this direct final rulemaking.

Section 107(d)(3)(E)(iii) states that USEPA may not promulgate a redesignation request to attainment unless USEPA determines that "the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan and applicable Federal air pollutant control regulations and other permanent and enforceable reductions."

The primary source of PM emissions in the Rochester nonattainment area is RPU. An administrative order, which does not expire and which was approved by USEPA on February 15, 1994, imposes emission limits and operating restrictions upon the Company. The initial order became effective at the State level in November 1992. The attainment demonstration submitted with the proposed SIP revision showed that the NAAQS for PM were not violated with the limits and restrictions in effect. Ambient air monitoring data shows there have been no exceedances since June 1988. Additionally, in 1988, RPU emitted 14.0 tons of PM, compared to 1992 annual emissions of 8.9 tons. The information presented by the State adequately demonstrates that the improvement in air quality can reasonably be attributed to reductions in emissions which are permanent and enforceable.

Section 107(d)(3)(E)(iv) states that USEPA may not promulgate a redesignation request to attainment unless USEPA has fully approved a maintenance plan for the area as meeting the requirements of section 175A.

Section 175A defines the general framework of a maintenance plan as a SIP revision and that it must provide for maintenance of the NAAQS in the area for at least 10 years after redesignation. Section 175A further states that the plan shall contain such additional measures, as may be necessary to ensure such maintenance. In addition, the maintenance plan must contain contingency measures to promptly correct a violation of the NAAQS.

Maintenance Plan

The primary components of a maintenance plan are (1) the attainment inventory; (2) the maintenance demonstration; (3) verification of continued attainment; (4) the monitoring network; and (5) the contingency plan.

Attainment Inventory

The SIP revision submittal, approved on February 15, 1994, included a PM emission inventory as part of the modeling demonstration. The modeling analysis showed that the level of emissions in the area was sufficient to attain the PM NAAQS.

Maintenance Demonstration

As stated previously, RPU is the primary source of PM in the nonattainment area. An administrative order, issued to RPU, contains emission limits and operating restrictions which were shown through the modeling demonstration to provide for attainment of the NAAQS. The administrative order does not expire, therefore assuring that emissions from RPU will not increase over the next 10 years. A significant part of the modeled attainment demonstration is the contribution made from sources not included in the modeling inventory. The contribution from these sources is called the background concentration and is added to the modeled concentration for a total PM concentration. The background concentrations for the 24-hour and annual values were approximately 24 $\mu g/m^3$ and 12 $\mu g/m^3$, respectively. Vehicle emissions represent a background source of PM that change over time. The submittal projected a 14 percent increase in vehicle miles traveled (VMT) for the period from 1990 to 2005, based on information from

Olmsted County. This percentage increase, when applied entirely to VMT results in a 24-hour background value of 27 $\mu g/m^3$, which results in a total area concentration of about 132 $\mu g/m^3$. This is well below the NAAQS of 150 $\mu g/m^3$. The new annual total area concentration would be about 34 $\mu g/m^3$, also well below the NAAQS. To account for future industrial growth, the State permitting process requires any PM source potentially emitting 25 tons a year to demonstrate, through dispersion modeling, that attainment is met before the source may obtain a permit. Minor source growth will be checked through ambient air monitoring, but is unlikely to be significant enough to threaten the NAAQS given the current level of modeled and monitored concentrations.

Verification of Continued Attainment

Growth in the area will be monitored by use of the following: tracking new permit applications; tracking requests for permit amendments; review of annual emission inventories required by all permitted facilities.

Monitoring Network

The monitor currently in operation in the Rochester nonattainment area will remain operating to verify the attainment status of the area. The monitor will continue to operate in accordance with 40 Code of Federal Regulations Part 58, and the data will continue to be reported in AIRS.

Contingency Plan

Section 175(A)(d) of the CAA requires the submission of contingency provisions to assure that the State will promptly correct any violation of the PM standard which occurs after the area has been redesignated to attainment. The administrative order for RPU contains a contingency plan. A proposed amendment to the order was submitted so that the contingency plan shall be implemented if a violation of the NAAQS is determined from monitoring the area after the area has been designated attainment. Prior to the amendment, the plan would be implemented if timely attainment failed to occur. Thus, the amendment changes the triggering criteria but not the substance of the contingency measures that were approved in the February 15, 1994, final rulemaking. The contingency plan consists of applying a chemical binding agent to the coal pile, along with appropriate recordkeeping, and, if the violation is severe enough, wheel washing of vehicles leaving the coal yard. These measures become enforceable without further legislative or rulemaking action by either the State or USEPA and are to be implemented immediately upon a violation of the PM NAAQS.

Section 107(d)(3)(E)(v) states that USEPA may not promulgate a redesignation request to attainment unless the State has met all the requirements applicable to the nonattainment area under section 110 and part D. The State initially submitted revisions to its SIP for the Rochester nonattainment area on November 26, 1991. The submittal was reviewed against the requirements of the CAA, including section 110, section 189, and section 172. A final approval rulemaking, dated February 15, 1994, concluded that the submittal met the applicable requirements.

Sulfur Dioxide Request

The request for redesignation to attainment for the Twin Cities and Pine Bend area of AQCR 131 included technical support information such as ambient air monitoring data and air dispersion modeling summaries. The request package referenced the attainment demonstration which supported the recently approved SIP revision submittals for the Twin Cities and Pine Bend areas. The request also describes how it meets the requirements of Section 107, Title I, of the CAA. The specific requirements, although listed above, are summarized again in this section along with details of how the State complies with those requirements.

Section 107(d)(3)(E)(i) states that the Administrator may not promulgate a redesignation of a nonattainment area to attainment unless the Administrator determines that the area has attained the NAAQS. On May 29, 1992, and July 29, 1992, the MPCA submitted SIP revisions for the Twin Cities and Pine Bend areas of AQCR 131. The SIP revision submittals demonstrated attainment with the SO_2 NAAQS through the use of air dispersion modeling. These modeling demonstrations were found to meet the applicable requirements (59 FR 17703 and 59 FR 46553). In addition to the modeled attainment demonstration, ambient air monitoring data from the area network was included which showed no violations. The most recent exceedances occurred in 1987.

Section 107(d)(3)(E)(ii) states that an area may not be redesignated to attainment unless it has a fully approved SIP under section 110(k). The SIP for the Twin Cities area was approved by USEPA on April 14, 1994. The SIP revision for the Pine Bend area was approved by USEPA on September 9, 1994. The combination of these two area SIPs comprises the region requested to be redesignated to attainment.

Section 107(d)(3)(E)(iii) states that an area may not be redesignated to attainment unless it is determined that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from the implementation of applicable SIP limits and operating restrictions. The AQCR 131 Twin cities area was originally designated nonattainment based on monitored violations of the NAAQS which occurred in the late seventies. Many factors could have contributed to the improvement in air quality since that time (e.g., better technology, lower sulfur fuels, reduction in number of sources). However, it can reasonably be determined that the enforceable emission limits, fuel quality specifications, and operating restrictions that have been imposed on the significant sources in the Twin Cities area have contributed greatly to, and are the primary reason for, the continued attainment of the SO_2 NAAQS in the area. The State submitted data showing the percent reductions in emissions for the facilities which were issued administrative orders as part of the SIP revision. Those facilities are Federal Hoffman, Incorporated, GAF Building Materials Corporation, Minneapolis Energy Center, Incorporated, Northern States Power Company-Riverside, United Defense, L.P., Koch Refining Company and Sulfur Acid Unit Plant, Continental Nitrogen and Resources Company, and Northern States Power Company-Inver Hills. The reductions are primarily the result of tighter emission limits imposed by the administrative orders.

Section 107(d)(3)(E)(iv) states that the Administrator may not promulgate a redesignation to attainment unless the area has a fully approved maintenance plan. The maintenance plan must meet the requirements of section 175(A) as mentioned previously. The primary requirement is for the SIP to provide for maintenance of the NAAQS for at least 10 years after the redesignation.

Maintenance Plan

The basic components needed to ensure proper maintenance of the NAAQS are: attainment inventory, maintenance demonstration, verification of continued attainment, ambient air monitoring network, and a contingency plan.

Attainment Inventory

The air dispersion modeling included in the May 29, 1992, and July 29, 1992, SIP submittals contained an emission inventory of the significant SO_2 sources

in the Twin Cities and Pine Bend areas. The inventory was used in the computer dispersion modeling analyses to demonstrate attainment. The modeling demonstrations met the appropriate requirements.

Maintenance Demonstration and Verification

The critical component of a maintenance demonstration is the ability to project attainment for a period of at least 10 years following the redesignation. The MPCA relied on the dispersion modeling, submitted with the earlier SIP revisions, to demonstrate that the limits and operating restrictions contained in the administrative orders were adequate to reach attainment. The administrative orders are Federally enforceable and do not expire. Future growth in the area will be monitored on a regular basis through the State's permitting process. The permitting threshold for SO_2 is 50 tons a year. Emission inventories must be submitted to the State on an annual basis. This will allow for monitoring of inventory changes and growth in the area.

There are several reasons to expect that future actual and estimated emissions of SO_2 will not increase in the Twin Cities and Pine Bend areas; production and use of lower sulfur diesel fuel, reducing SO_2 emissions to avoid the permitting process, and the conservative nature of the air dispersion modeling demonstration.

Ambient Air Monitoring

The SO_2 ambient air monitoring network, currently in place in the Twin Cities and Pine Bend areas, will remain in operation in order to continue verification of attainment status and the data will continue to be reported in AIRS.

Contingency Plan

Section 175A of the CAA requires that the maintenance plan include contingency provisions to correct any violation of the NAAQS after redesignation of the area. However, in the proposed General Preamble for the Implementation of Title I of the CAA Amendments of 1990, (57 FR 13498), it states that SO_2 provisions require special considerations. A primary reason is that SO_2 control methods are well established and understood. This results in less uncertainty in the modeled attainment demonstrations. It is considered unlikely that an area would fail to attain the standards after it has demonstrated, through modeling, that attainment is reached after the limits and restrictions are fully enforced. Therefore, contingency measures for SO_2 need only consist of a comprehensive program to identify sources of violations of the SO_2 NAAQS and to undertake an aggressive followup for compliance and enforcement. The MPCA has the necessary enforcement and compliance programs, as well as means by which to identify violators.

Section 107(d)(3)(E)(v) states that the Administrator may not redesignate an area to attainment unless the area has met the applicable requirements under section 110 and Part D. It was determined in the final rulemaking approval of the Twin Cities and Pine Bend area plans that the requirements under section 110 and Part D were met.

III. Rulemaking Action

The USEPA has evaluated the approvability of a request for redesignation to attainment for PM for Rochester, MN, (including an amendment to the administrative order for Rochester Public Utilities-Silver Lake Plant), and for SO_2 for the Twin Cities area and the Pine Bend area of AQCR 131. The submittal is being approved based on the determination that it meets the applicable requirements of Title I of the CAA. The USEPA is also using this publication to correct codification information for the Dakota County, MN lead SIP revision and redesignation approved on October 18, 1994 (59 FR 52431).

The USEPA is publishing this action without prior proposal because USEPA views this action as a noncontroversial revision and anticipates no adverse comments. However, USEPA is publishing a separate document in this **Federal Register** publication, which constitutes a "proposed approval" of the requested SIP revision and clarifies that the rulemaking will not be deemed final if timely adverse or critical comments are filed. The "direct final" approval shall be effective on July 31, 1995, unless USEPA receives adverse or critical comments by June 30, 1995.

If USEPA receives comments adverse to or critical of the approval discussed above, USEPA will withdraw this approval before its effective date, and publish a subsequent **Federal Register** notice which withdraws this final action. All public comments received will then be addressed in a subsequent rulemaking notice.

Any parties interested in commenting on this action should do so at this time. If no such comments are received, USEPA hereby advises the public that this action will be effective on July 31, 1995.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. USEPA shall consider each request for revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The Office of Management and Budget exempted this regulatory action from Executive Order 12866 review.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids USEPA to base its actions concerning SIPS on such grounds. Union Electric Co. v. USEPA, 427 U.S. 246, 256–66 (S.CT. 1976); 42 U.S.C. 7410(a)(2).

Under Section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 31, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Particulate matter.

List of Subjects in 40 CFR Part 81

Air pollution control.

Note—Incorporation by reference of the State Implementation Plan for the State of Minnesota was approved by the Director of the Federal Register on July 1, 1982.

Dated: April 19, 1995.

Valdas V. Adamkus,

Regional Administrator.

Title 40 of the Code of Federal Regulations, Chapter I, parts 52 and 81, are amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. Section 52.1220 is amended by adding paragraph (c)(42) to read as follows.

§ 52.1220 Identification of plan.

* * * * *

(c) * * *

(42) On September 7, 1994, the State of Minnesota submitted a revision to its State Implementation Plan (SIP) for particulate matter for the Rochester area of Olmsted County, Minnesota.

(i) Incorporation by reference.

(A) Amendment Two to the administrative order for the Silver Lake Plant of Rochester Public Utilities, located in Rochester, Minnesota, dated and effective August 31, 1994, submitted September 7, 1994.

3. Section 52.1229 is revised to read as follows: § 52.1229 Maintenance of national standards.

(a) USEPA has approved the following maintenance plans:

(1) The maintenance plan for lead for Dakota County, submitted June 22, 1993.

(2) The maintenance plan for particulate matter for Rochester, submitted September 7, 1994.

(3) The maintenance plan for sulfur dioxide for the Twin Cities area except for the Ashland Refinery area, submitted September 7, 1994.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. In § 81.324, the table "Minnesota SO_2" is amended by revising the entry for "AQCR 131" to read as follows:

§ 81.324 Minnesota.

* * * * *

MINNESOTA—SO_2

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
AQCR 131:				
Anoka County				X
Carver County				X
Dakota County				X
Hennepin County				X
Ramsey County				X
Scott County (part) The area bounded on the north by Interstate 494; on the west by Highway 52; on the south by a line from the intersection of Highway 52 and 56 east to the County Line; on the east by the County line	X			
Rest of Scott County				X
Washington County (part) The area bounded on the west by the County line; on the south by a line extending from the County line east to 100th Street; on the east by Jamaica Avenue; on the north by Military Road and Interstate 494	X			
Rest of Washington County				X

* * * * *

3. In § 81.324 the table "Minnesota PM_{10}" is amended by revising the entry for "Olmstead County" to read as follows:

§ 81.324 Minnesota.

* * * * *

MINNESOTA—PM_{10}

Designated area	Designation		Classification	
	Date	Type	Date	Type
Olmsted County	July 31, 1995	Attainment		

* * * * *

4. In § 81.324 the table "Minnesota Lead" is revised to read as follows:

§ 81.324 Minnesota

* * * * *

MINNESOTA—LEAD

Designated area	Designation		Classification	
	Date	Type	Date	Type
Dakota County	12/19/94	Attainment		
Rest of State not designated.				

* * * * *

[FR Doc. 95–13179 Filed 5–30–95; 8:45 am]
BILLING CODE 6560–50–P

40 CFR Part 180

[PP 8F3671/R2137; FRL–4955–7]

RIN 2070–AB78

Alachlor; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes an increased tolerance for residues of the herbicide alachlor (2-chloro-2',6'-diethyl-*N*-(methoxymethyl) acetanilide) and its metabolites in or on the raw agricultural commodity (RAC) sorghum forage at 2.0 parts per million (ppm). The Monsanto Co. requested the establishment of this maximum permissible residue of the herbicide pursuant the Federal Food, Drug and Cosmetic Act (FFDCA).

EFFECTIVE DATE: This regulation becomes effective May 31, 1995.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 8F3671/R2137], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [PP 8F3671/R2137]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Robert J. Taylor, Product Manager, (PM 25), Registration Division (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 241, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6800; e-mail: taylor.robert@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 12, 1995 (60 FR 18558), EPA issued a proposed rule that gave notice that the Monsanto Co., 1101 17th St., NW., Washington, DC 20036, proposed amending 40 CFR 180.249 by establishing a regulation to permit the residues of the herbicide alachlor (2-chloro-2',6'-diethyl-*N*-(methoxymethyl) acetanilide) and its metabolites in or or sorghum forage at 2.0 part per million (ppm).

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted with the proposal and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register,** file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

A record has been established for this rulemaking under docket number [PP 8F3671/R2137] (including any objections and hearing requests submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Written objections and hearing requests, identified by the document control number [PP 8F3671/R2137], may be submitted to the Hearing Clerk (1900), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

A copy of electronic objections and hearing requests filed with the Hearing Clerk can be sent directly to EPA at: opp-Docket@epamail.epa.gov

A copy of electronic objections and hearing requests filed with the Hearing Clerk must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all objections and hearing requests submitted directly in writing. The official rulemaking record is the paper record maintained at the address in **ADDRESSES** at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of the Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 18, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.249, by amending the table therein by revising the entry for sorghum forage, to read as follows:

§ 180.249 Alachlor; tolerances for residues.

* * * * *

Commodity	Parts per million
. . . . .	
Sorghum, forage	2.0
. . . . .	

[FR Doc. 95–13249 Filed 5–30–95; 8:45 am]
BILLING CODE 6560–50–F

40 CFR Part 180

[PP 4F4280/R2135; FRL–4954–4]

RIN 2070–AB78

Benzoic Acid; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes a tolerance for residues of the insecticide benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl)hydrazide, in or on the raw agricultural commodity walnuts. The Rohm & Haas Co. requested this regulation pursuant to the Federal Food, Drug and Cosmetic Act (FFDCA). The regulation establishes a maximum permissible level for residues of benzoic acid in or on the commodity.

EFFECTIVE DATE: This regulation becomes effective May 31, 1995.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 4F4280/R2135], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [PP 4F4280/R2135]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Richard P. Keigwin, Jr., Product Manager (PM) 10, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 214, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-305-7001; e-mail: Keigwin.rick@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of April 5, 1995 (60 FR 17357), which announced that Rohm & Haas Co. had submitted pesticide petition PP 4F4280 to EPA requesting that the Administrator, pursuant to section 408(d) of the Federal Food,

Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), establish a tolerance for residues of the insecticide benzoic acid, 3,5-dimethyl-1,1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl)hydrazide, in or on the raw agricultural commodity walnuts at 0.1 part per million (ppm).

The scientific data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the tolerance include:

1. A 1-year dog feeding study with a lowest observable-effect level (LOEL) of 250 ppm (9 mg/kg/day for male and female dogs) based on decreases in RBC, HCT, and HGB, increases in Heinz bodies, methemoglobin, MCV, MCH, reticulocytes, platelets, plasma total bilirubin, spleen weight, and spleen/body weight ratio, and liver weight and liver/body weight ratio. Hematopoiesis and sinusoidal engorgement occurred in the spleen, and hyperplasia occurred in the marrow of the femur and sternum. The liver showed an increased pigment in the Kupffer cells. The no-observable-effect level (NOEL) for systemic toxicity (n both sexes is 50 ppm (1.9 mg/kg/day).

2. An 18-month mouse carcinogenicity study with no carcinogenicity observed at dosage levels up to and including 1,000 ppm.

3. A 2-year rat carcinogenicity study with no carcinogenicity observed at dosage levels up to and including 2,000 ppm (97 mg/kg/day and 125 mg/kg/day for males and females, repectively).

4. A two-generation rat reproduction study with a NOEL of 150 ppm (12.1 mg/kg/day) for reproductive effects compared to a systemic NOEL of 10 ppm (0.85 mg/kg/day).

5. A rat developmental study with a NOEL of 1,000 mg/kg/day for developmental toxicity.

6. A rabbit developmental study with a NOEL of 1,000 mg/kg/day for developmental toxicity.

7. Several mutagenicity tests which were all negative. These include an Ames assay with and without metabolic activation, an *in vivo* cytogenetic assay in rat bone marrow cells, an *in vitro* chromosome aberration assay in CHO cells, a CHO/HGPRT assay, a reverse mutation assay with *E. coli*, and an unscheduled DNA synthesis assay (UDS) in rat hepatocytes.

The reference dose (RfD), for chronic toxicity as defined in a 1-year chronic dog study is 0.019 mg/kg/day based upon a NOEL of 1.9 mg/kg/day in dogs of both sexes and applying an uncertainty factor of 100. The theoretical maximum residue contribution (TMRC) for this first food use of benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl)hydrazide on walnuts for the overall U.S. population is less than 0.000001 mg/kg/day and represents 0.003% of the RfD. The TMRC for the highest exposed subgroup, children (ages 1 6 years old), is less than 0.000001 mg/kg/day and represents 0.008% of the RfD.

The metabolism of benzoic acid, 3,5-dimethyl-1-(1,1dimethylethyl)-2-(4-ethylbenzoyl)hyrazide, is adequately understood. An adequate analytical method, HPLC separation with UV detection, is available for enforcement purposes and is being provided to FDA for inclusion in the Pesticide Analytical manual, Vol. II.

There are currently no actions pending against the registration of this chemical. There is no expectation of residues occurring in meat, milk, poultry, or eggs from this tolerance.

Based on the information and data considered, the Agency has determined that the tolerance established by amending 40 CFR part 180 will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections to the regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

A record has been established for this rulemaking under docket number [PP 4F4280/R2135] (including objections and hearing requests submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Written objections and hearing requests, identified by the document control number [PP 4F4280/R2135], may be submitted to the Hearing Clerk (1900), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

A copy of electronic objections and hearing requests can be sent directly to EPA at:

opp-Docket@epamail.epa.gov

A copy of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all objections and hearing requests submitted directly in writing. The official rulemaking record is the paper record maintained at the address in **ADDRESSES** at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines "significant" as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as "economically significant"); (2) creating

serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 12, 1995.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. By adding new § 180.842, to read as follows:

§ 180.842 Benzoic acid; tolerances for residues.

A tolerance is established for residues of the insecticide benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl)hydrazide, in or on the following raw agricultural commodity:

Commodity	Parts per million
Walnuts	0.1

[FR Doc. 95–13250 Filed 5–30–95; 8:45 am]
BILLING CODE 6560–50–F

40 CFR Part 180

[PP 2E4051/R2136; FRL–4955–5]

RIN 2070–AB78

Difenoconazole; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes import tolerances for residues of the fungicide difenoconazole in or on the raw agricultural commodities barley grain, rye grain, and wheat grain at 0.1 part per million (ppm); fat, meat, and meat byproducts of cattle, goats, hogs, horses, poultry, and sheep and eggs at 0.05 ppm; and milk at 0.01 ppm. Ciba-Geigy Corp. requested this regulation pursuant to the Federal Food, Drug and Cosmetic Act (FFDCA). The regulation establishes the maximum permissible level for residues of the fungicide in or on the commodities.

EFFECTIVE DATE: This regulation becomes effective May 31, 1995.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 2E4051/R2136], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [PP 2E4051/R2136]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: James Stone, Acting Product Manager (PM) 22, Registration Division (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 259, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-7391; e-mail: stone.james@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 12, 1995 (60 FR 18555), EPA issued a proposed rule that gave notice that Ciba-Geigy Corp., P.O. Box 18300, Greensboro, NC 27419-8300, had petitioned EPA under section 408 of the FFDCA, 21 U.S.C. 346a, to establish import tolerances under 40 CFR 180.475 for residues of the fungicide difenoconazole, [(2*S*,4*R*)/(2*R*,4*S*)]/[(2*R*,4*R*/2*S*,4*S*)] 1-(2-[4-(4-chlorophenoxy)-2-chlorophenyl]-4-methyl-1,3-dioxolan-2-yl-methyl)-1*H*-1,2,4-triazole, in or on the raw agricultural commodities (RACs) barley grain, rye grain, and wheat grain at 0.1 ppm; fat, meat, and meat byproducts (mbyp) of cattle, goats, hogs, horses, poultry, and sheep and eggs at 0.04 ppm; and milk at 0.01 ppm.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted with the proposal and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerances will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by

40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

A record has been established for this rulemaking under docket number [PP 2E4051/R2136] (including any objections and hearing requests submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Written objections and hearing requests, identified by the document control number [PP 2E4051/R2136], may be submitted to the Hearing Clerk (1900), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

A copy of electronic objections and hearing requests filed with the Hearing Clerk can be sent directly to EPA at:

opp-Docket@epamail.epa.gov

A copy of electronic objections and hearing requests filed with the Hearing Clerk must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all objections and hearing requests submitted directly in writing. The official rulemaking record is the paper record maintained at the address in **ADDRESSES** at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of the Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 18, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.475, by adding new paragraph (c), to read as follows:

§ 180.475 Difenoconazole; tolerances for residues.

* * * * *

(c) Tolerances are established for difenoconazole, [(2*S*,4*R*)/(2*R*,4*S*)]/[(2*R*,4*R*/2*S*,4*S*)] 1-(2-[4-(4-chlorophenoxy)-2-chlorophenyl]-4-methyl-1,3-dioxolan-2-yl-methyl)-1*H*-1,2,4-triazole, in or on the following raw agricultural commodities:

Commodity	Parts per million
Barley, grain[1]	0.1
Cattle, fat	0.05
Cattle, meat	0.05
Cattle, mbyp	0.05
Eggs	0.05
Goats, fat	0.05
Goats, meat	0.05
Goats, mbyp	0.05
Hogs, fat	0.05
Hogs, meat	0.05
Hogs, mbyp	0.05
Horses, fat	0.05
Horses, meat	0.05
Horses, mbyp	0.05
Milk	0.01
Poultry, fat	0.05
Poultry, meat	0.05
Poultry, mbyp	0.05
Rye, grain[1]	0.1
Sheep, fat	0.05
Sheep, meat	0.05
Sheep, mbyp	0.05
Wheat, grain	0.1

[1]There are no U.S. registrations as of April 12, 1995.

[FR Doc. 95-13248 Filed 5-30-95; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Part 180

[PP 3F4167/R2129; FRL-4952-2]

RIN 2070-AB78

Tebuconazole; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance of 0.05 part per million (ppm) for residues of the fungicide tebuconazole (*alpha*-[2-(4-chlorophenyl)-ethyl]-*alpha*-(1,1-dimethylethyl)-1*H*-1,2,4-triazole-1-ethanol) in or on the raw agricultural commodity bananas. Miles, Inc., submitted a petition pursuant to the Federal Food, Drug and Cosmetic Act (FFDCA) for the regulation to establish a maximum permissible level for residues of the fungicide.

EFFECTIVE DATE: This regulation becomes effective May 31, 1995.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 3F4167/R2129], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [PP 3F4167/R2129]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in of this document.

FOR FURTHER INFORMATION CONTACT: By mail: Connie B. Welch, Product Manager (PM) 21, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6900; e-mail: welch.connie@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of October 21, 1993 (58 FR 54353), which announced that Miles, Inc., Agricultural Division (formerly Mobay Corp., Agricultural Chemicals Division), P.O. Box 4913, Kansas City, MO 64120-0013, had submitted pesticide petition (PP) 3F4167 to EPA requesting that the Administrator, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), establish a tolerance for residues of the fungicide tebuconazole (*alpha*-[2-(4-chlorophenyl)-ethyl]-*alpha*-(1,1-dimethylethyl)-1*H*-1,2,4-triazole-1-ethanol) in or on the raw agricultural commodity bananas at 0.05 ppm.

There were no comments received in response to the notice of filing. The scientific data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the tolerance include:

1. A 90-day rat feeding study with a no-observed-effect-level (NOEL) of 34.8 milligrams per kilogram of body weight per day (mg/kg bw/day) (400 ppm) and a lowest-effect-level (LEL) of 171.7 mg/kg bw/day (1,600 ppm) in males, based on decreased body weight gains and histological changes in the adrenals. For females, the NOEL was 10.8 mg/kg bw/day (100 ppm), and the LEL was 46.5 mg/kg bw/day (400 ppm) based on decreased body weights, decreased body weight gains, and histological changes in the adrenals.

2. A 90-day dog feeding study with a NOEL of 200 ppm (73.7 mg/kg bw/day in males and 73.4 mg/kg bw/day in females) and a LEL of 1,000 ppm (368.3 mg/kg bw/day in males and 351.8 mg/kg bw/day in females). The LEL was based on decreases in mean body weights, body weight gains, and food consumption, and an increase in liver *N*-demethylase activity.

3. A 1-year dog feeding study with a NOEL of 1 mg/kg bw/day (40 ppm) and a LEL of 5 mg/kg bw/day (200 ppm), based on lenticular and corneal opacity and hepatic toxicity in either sex (the current Reference Dose was determined based on this study). A subsequent 1-year dog feeding study, using lower doses to further define the NOEL for tebuconazole, defines a systemic LOEL of 150 ppm (based on adrenal effects in both sexes) and a systemic NOEL of 100 ppm.

4. A 2-year rat chronic feeding study defined, a NOEL of 7.4 mg/kg bw/day (100 ppm), and a LEL of 22.8 mg/kg bw/day (300 ppm) based on body weight depression, decreased hemoglobin, hematocrit, MCV and MCHC, and increased liver microsomal enzymes in females. Tebuconazole was not oncogenic at the dose levels tested (0, 100, 300, 1,000 ppm).

5. A rat oral developmental toxicity study with a maternal NOEL of 30 mg/kg bw/day and a LEL of 60 mg/kg bw/day based on elevation of absolute and relative liver weights. For developmental toxicity, a NOEL of 30 mg/kg bw/day and an LEL of 60 mg/kg bw/day was determined, based on delayed ossification of thoracic, cervical and sacral vertebrae, sternum, fore and hind limbs and increase in supernumerary ribs.

6. A rabbit oral developmental toxicity study with a maternal NOEL of 30 mg/kg bw/day and an LEL of 100 mg/kg bw/day based on depression of body weight gains and food consumption. A developmental NOEL of 30 mg/kg bw/day and an LEL of 100 mg/kg bw/day were based on increased post-implantation losses, from both early and late resorptions and frank malformations in eight fetuses of five litters.

7. A mouse oral developmental toxicity study with a maternal NOEL of 10 mg/kg bw/day and an LEL of 20 mg/kg bw/day based on a supplementary study indicating reduction in hematocrit and histological changes in liver. A developmental NOEL of 10 mg/kg bw/day and an LEL of 30 mg/kg bw/day based on dose-dependent increases in runts/dam at 30 and 100 mg/kg bw/day.

8. A mouse dermal developmental toxicity study with a maternal NOEL of 30 mg/kg bw/day and an LEL of 60 mg/kg bw/day based on a supplementary study indicating increased liver microsomal enzymes and histological changes in liver. The NOEL for developmental toxicity in the dermal study in the mouse is 1,000 mg/kg bw/day, the highest dose tested (HDT).

9. A two-generation rat reproduction study with a dietary maternal NOEL of 15 mg/kg bw/day (300 ppm) and a LEL of 50 mg/kg bw/day (1,000 ppm) based on depressed body weights, increased spleen hemosiderosis, and decreased liver and kidney weights. A reproductive NOEL of 15 mg/kg bw/day (300 ppm) and an LEL of 50 mg/kg bw/day (1,000 ppm) were based on neonatal birth weight depression.

10. An Ames mutagenesis study in Salmonella that showed no mutagenicity with or without metabolic activation.

11. A micronucleus mutagenesis assay study in mice that showed no genotoxicity.

12. A sister chromatid exchange mutagenesis study using CHO cells that was negative at dose levels 4 to 30 micrograms per milliliter without activation or 15 to 120 micorgrams per milliliter with activation.

13. An unscheduled DNA synthesis (UDS) study that was negative for UDS in rat hepatocytes.

Additionally, a mouse oncogenicity study at dietary levels of 0, 20, 60, and 80 ppm for 21 months did not reveal any oncogenic effect for tebuconazole at any dose tested. Because the Maximum Tolerated Dose (MTD) was not reached in this study, the study was classified as supplementary. A followup mouse study at higher doses (0, 500, and 1,500 ppm in the diet), with an MTD at 500 ppm, revealed statistically significant incidences of hepatocellular adenomas and carcinomas in males and carcinomas in females. The initial and followup studies, together with supplementary data submitted by Miles, Inc., were classified as core minimum.

The Office of Pesticide Programs' Health Effects Division's Carcinogenicity Peer Review Committee (CPRC) has classified tebuconazole as a Group C carcinogen (possible human carcinogen). This classification is based on the Agency's "Guidelines for Carcinogen Risk Assessment" published in the **Federal Register** of September 24, 1986 (51 FR 33992). The Agency has chosen to use the reference dose calculations to estimate human dietary risk from tebuconazole residues. The decision supporting classification of tebuconazole as a possible carcinogen (Group C) rather than a probable carcinogen (Group B) was primarily based on the statistically significant increase in the incidence of hepatocellular adenomas, carcinomas, and combined adenomas/carcinomas in both sexes of NMRI mice both by positive trend and pairwise comparison at the HDT, and the structural correlation with at least six other related triazole pesticides that produce liver tumors.

The Reference Dose (RfD) is established at 0.01 mg/kg of body weight (bwt)/day, based on a no-observed-effect level (NOEL) of 1.00 mg/kg bwt/day and an uncertainty factor of 100. The NOEL is based on a 1-year dog feeding study that demonstrated lenticular and corneal opacity and hepatic toxicity as an endpoint effect. The Theoretical Maximum Residue Contribution (TMRC) from the current action is estimated at 0.000019 mg/kg bwt/day and utilizes 0.19% of the RfD for the general population of the 48 States. The TMRCs for the most highly exposed subgroups, children (1 to 6 years old) and children (7 to 12 years old) are 0.000060 mg/kg bwt/day (0.60% of the RfD) and 0.000032 mg/kg bwt/day (0.32% of the RfD), respectively.

The nature of the residue in bananas is adequately understood. An adequate analytical method using gas chromatography is available for enforcement purposes.

The enforcement methodology has been submitted to the Food and Drug Administration for publication in the Pesticide Analytical Manual, Volume II (PAM II). Because of the long lead time for publication of the method in PAM II, the analytical methodology is being made available in the interim to anyone interested in pesticide enforcement when requested from: Calvin Furlow, Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-305-5232.

There is no reasonable expectation that secondary residues will occur in milk, eggs, or meat of livestock and poultry since there are no livestock feed items associated with this action.

There are presently no actions pending against the continued registration of this chemical.

Based on the information and data considered, the Agency has determined that the tolerance established by amending 40 CFR part 180 will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections to the regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

A record has been established for this rulemaking under docket number [PP 3F4167/R2129] (including objections and hearing requests submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Written objections and hearing requests, identified by the document control number [PP 3F4167/R2129], may be submitted to the Hearing Clerk (1900), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

A copy of electronic objections and hearing requests can be sent directly to EPA at:

opp-Docket@epamail.epa.gov

A copy of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all objections and hearing requests submitted directly in writing. The official rulemaking record is the paper record maintained at the address in **ADDRESSES** at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines "significant" as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 18, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.474, by amending the table therein by adding and alphabetically inserting an entry for bananas, to read as follows:

§ 180.474 Tebuconazole (alpha-[2-(4-chlorophenyl)-ethyl]-alpha-(1,1-dimethylethyl)-1H-1,2,4-triazole-1-ethanol); tolerances for residues.

* * * * *

Commodity	Parts per million
Bananas	0.05
* * * * *	

[FR Doc. 95–13251 Filed 5–30–95; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Parts 180 and 186

[PP 8F3646 and FAP 8H5558/R2138; FRL–4955–8]

RIN 2070–AB78

Sethoxydim; Pesticide Tolerance and Feed Additive Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes an increased tolerance for residues of the herbicide sethoxydim (2-[1-(ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one) and its metabolites containing the 2-cyclohexen-1-one moiety (calculated as the herbicide) in or on the raw agricultural commodity sugar beet roots to 1.0 part per million (ppm) and an increase in the established feed additive regulation on the animal feed commodity sugarbeet molasses to 10.0 ppm. The BASF Corp. requested these regulations pursuant to the Federal Food, Drug and Cosmetic Act (FFDCA). These regulations establish the maximum permissible levels for residues of the pesticide in or on the above commodities.

EFFECTIVE DATE: This regulation becomes effective May 31, 1995.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 8F3646 and FAP 8H5558/R2138], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [PP 8F3646 and FAP 8H5558/R2138]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Robert J. Taylor, Product Manager, (PM 25), Registration Division (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 241, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6800; e-mail: taylor.robert@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 12, 1995 (60 FR 18560), EPA issued a proposed rule that gave notice that the BASF Corp., P.O. Box 13528, Research Triangle Park, NC 27709-3528, had submitted a pesticide petition, PP 8F3646, and a feed additive petition, FAP 8H5558, to EPA. PP 8F3646 requests that the Administrator, pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), amend 40 CFR part 180 by establishing a tolerance for the combined residues of the herbicide sethoxydim (2-[1-ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one) and its metabolites containing the 2-cyclohexen-1-one moiety (calculated as the herbicide)) in or on the raw agricultural commodity (RAC) sugarbeet roots at 1.0 part per million (ppm). Feed additive petition (FAP) 8H5558 requests that the Administrator, pursuant to section 409(e) of the FFDCA (21 U.S.C. 348), amend 40 CFR part 186 by establishing a feed additive regulation for the combined residues of the herbicide

sethoxydim and its metabolites containing the 2-cyclohexen-1-one moiety (calculated as the herbicide) in or on the animal feed sugar beet molasses at 10.0 ppm.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted with the proposal and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance and animal feed regulation will protect the public health. Therefore, the tolerance and animal feed regulation are established as set forth below.

Any person adversely affected by these regulations may, within 30 days after publication of this document in the **Federal Register,** file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

A record has been established for this rulemaking under docket number [PP 8F3646 and FAP 8H5558/R2138] (including any objections and hearing requests submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Written objections and hearing requests, identified by the document control number [PP 8F3646 and 8H5558/R2138], may be submitted to the Hearing Clerk (1900), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

A copy of electronic objections and hearing requests filed with the Hearing Clerk can be sent directly to EPA at:

opp-Docket@epamail.epa.gov

A copy of electronic objections and hearing requests filed with the Hearing Clerk must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all objections and hearing requests submitted directly in writing. The official rulemaking record is the paper record maintained at the address in **ADDRESSES** at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of the Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Parts 180 and 186

Environmental protection, Administrative practice and procedure, Agricultural commodities, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 18, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, chapter I of title 40 of the Code of Federal Regulations is amended as follows:

PART 180—[AMENDED]

1. In part 180:

a. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

b. In § 180.412(a), by amending the table therein by revising the entry for sugar beet, roots, to read as follows:

§ 180.412 2-[1-(Ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one; tolerances for residues

(a) * * *

Commodity	Parts per million
. . . . .	
Sugar beet, roots	1.0
. . . . .	

* * * * *

PART 186—[AMENDED]

2. In part 186:

a. The authority citation for part 186 continues to read as follows:

Authority: 21 U.S.C. 348.

b. In § 186.2800, by revising the section heading and introductory text and by amending the table therein by revising the entry for sugar beet molasses, to read as follows:

§ 186.2800 2-[1-(Ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one.

Tolerances are established for the combined residues of the herbicide 2-[1-(ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one and its metabolites containing the 2-cyclohexen-1-one moiety (calculated as the herbicide) in or on the following commodities:

Food	Parts per million
. . . . .	
Sugar beet molasses	10.0
. . . . .	

[FR Doc. 95-13247 Filed 5-30-95; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Parts 180, 185, and 186

[PP 9F3731 and FAP 9H5574/R2139; FRL-4955-9]

RIN 2070-AB78

Cyfluthrin; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes time-limited tolerances, with an expiration date of November 15, 1997, for residues of the synthetic pyrethroid cyfluthrin in or on the raw agricultural commodities (RAC's) tomatoes; carrots; peppers; radishes; meat, fat, and meat byproducts of cattle, goats, hogs, horses, poultry, and sheep; milkfat; and eggs and in the food/feed additive commodities tomato, pomace (dry and wet) and tomato concentrated products. Bayer Corp., Agricultural Division (formerly Miles Corp., Animal Products), requested the tolerances and regulations pursuant to the Federal Food, Drug and Cosmetic Act (FFDCA). The tolerances and regulations establish maximum permissible levels for residues of the pesticide in or on the commodities.

EFFECTIVE DATE: This regulation becomes effective May 31, 1995.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 9F3731 and FAP 9H5574/R2139], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [PP 9F3731 and FAP 9H5574/R2139]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: George T. LaRocca, Product Manager (PM 13), Registration Division (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 204, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6100; e-mail: larocca.george@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 12, 1995 (60 FR 18561), EPA issued a proposed rule that gave notice that pesticide petition (PP) 9H5574 submitted to EPA under section 408(d) of the FFDCA proposed to amend 40 CFR 180.436 by establishing time-limited tolerances for residues of the insecticide cyfluthrin, cyano(4-fluoro-3-phenoxyphenyl)-methyl-3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate, in or on the RAC's tomatoes at 0.20 part per million (ppm); carrots at 0.20 ppm; peppers at 0.50 ppm; radishes at 1.00 ppm; meat, fat, and meat byproducts of cattle, goats, hogs, horses, and sheep at 0.40 ppm; meat, fat, and meat byproducts of poultry at 0.01 ppm; milkfat (reflecting 0.08 ppm in whole milk) at 2.50 ppm; and eggs at 0.01 ppm; and pursuant to food/feed additive petition (FAP) 9H5574 submitted to EPA under section 409(e) of the FFDCA, EPA proposed to amend 40 CFR 185.1250 to establish a time-limited food additive regulation for tomato, concentrated products at 0.5 ppm and to amend 40 CFR 186.1250 to establish a time-limited feed additive regulation for tomato, pomace (dry and wet) at 5.0 ppm.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted with the proposal and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance, food additive regulation, and animal feed regulation will protect the public health. Therefore, the tolerance, food additive regulation, and animal feed regulation are established as set forth below.

Any person adversely affected by these regulations may, within 30 days after publication of this document in the **Federal Register,** file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual

issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

A record has been established for this rulemaking under docket number [PP 9F3731 and FAP 9H5574/R2139] (including any objections and hearing requests submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Written objections and hearing requests, identified by the document control number [PP 9F3731 and FAP 9H5574/R2139], may be submitted to the Hearing Clerk (1900), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

A copy of electronic objections and hearing requests filed with the Hearing Clerk can be sent directly to EPA at:
opp-Docket@epamail.epa.gov

A copy of electronic objections and hearing requests filed with the Hearing Clerk must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all objections and hearing requests submitted directly in writing. The official rulemaking record is the paper record maintained at the address in **ADDRESSES** at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of the Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Parts 180, 185, and 186

Environmental protection, Administrative practice and procedure, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 19, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, chapter I of title 40 of the Code of Federal Regulations is amended as follows:

PART 180—[AMENDED]

1. In part 180:

a. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

b. By amending § 180.436 by revising the table therein, to read as follows:

§ 180.436 Cyfluthrin; tolerances for residues

* * * * *

Commodity	Parts per million	Expiration date
Carrots	0.20	Nov. 15, 1997.
Cattle, fat	0.40	Do.
Cattle, meat	0.40	Do.
Cattle, mbyp	0.40	Do.
Cottonseed	1.0	Do.
Eggs	0.01	Do.
Goats, fat	0.40	Do.
Goats, meat	0.40	Do.
Goats, mbyp	0.40	Do.
Hogs, fat	0.40	Do.
Hogs, meat	0.40	Do.
Hogs, mbyp	0.40	Do.
Hops, fresh	4.0	None.
Horses, fat	0.40	Nov. 15, 1997.
Horses, meat	0.40	Do.
Horses, mbyp	0.40	Do.
Milkfat (reflecting 0.08 ppm in whole milk).	2.50	Do.
Peppers	0.50	Do.
Poultry, fat	0.01	Do.
Poultry, meat	0.01	Do.
Poultry, mbyp	0.01	Do.
Radishes	1.00	Do.
Sheep, fat	0.40	Do.
Sheep, meat	0.40	Do.
Sheep, mbyp	0.40	Do.
Tomato	0.20	Do.

PART 185—[AMENDED]

2. In part 185:

a. The authority citation for part 185 continues to read as follows:

Authority: 21 U.S.C. 346a and 348.

b. In § 185.1250, by revising paragraph (a) and removing paragraph (b) and designating it as reserved, as follows:

§ 185.1250 Cyfluthrin.

(a) A time-limited tolerance, to expire on November 15, 1997, is established for residues of the insecticide cyfluthrin (cyano(4-fluoro-3-phenoxyphenyl)methyl-3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate) in or on the following food commodities:

Commodity	Parts per million	Expiration date
Cottonseed oil	2.0	Nov. 15, 1997.
Tomato, concentrated products.	0.5	Do.

(b) [Reserved]

* * * * *

PART 186—[AMENDED]

3. In part 186:

a. The authority citation for part 186 continues to read as follows:

Authority: 21 U.S.C. 348.

b. In § 186.1250, by revising paragraph (a) and removing paragraph (b) and designating it as reserved, as follows:

§ 186.1250 Cyfluthrin.

(a) A time-limited tolerance, to expire on November 15, 1997, is established for residues of the insecticide cyfluthrin (cyano(4-fluoro-3-phenoxyphenyl)methyl-3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate) in or on the following feed commodities:

Commodity	Parts per million	Expiration date
Cottonseed, hulls	2.0	Nov. 15, 1997.
Tomato, pomace (dry and wet)	5.0	Do.

(b) [Reserved]

* * * * *

[FR Doc. 95–13261 Filed 5–30–95; 8:45 am]

BILLING CODE 6560–50–F

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

45 CFR Part 2544

RIN 3045–AA13

Solicitation and Acceptance of Donated Property and Services.

AGENCY: Corporation for National and Community Service.

ACTION: Final rule.

SUMMARY: The Corporation for National Service (the Corporation) is issuing uniform rules and regulations regarding the solicitation and acceptance or rejection of property and services. Pursuant to the National and Community Service Act of 1990, as amended, the Corporation has the authority to solicit and accept donations. The Corporation is adopting these rules and regulations to eliminate the possibility of confusion for individuals who wish to donate property or services to the Corporation. In addition, the Corporation wants to insure that no situations arise involving a real or apparent conflict of interest with respect to a donation or an individual or group who offers a donation.

EFFECTIVE DATE: May 31, 1995.

FOR FURTHER INFORMATION CONTACT: Stewart Davis, Office of the General Counsel, The Corporation for National Service, 1201 New York Ave. NW., Washington DC, 20525. (202) 606–5000 x. 265.

SUPPLEMENTARY INFORMATION: The Corporation published in the **Federal Register** on April 7, 1995 (60 FR 17761) a notice of proposed rule making on the Solicitation and Acceptance of Donated Property and Services. The proposed rule established uniform rules and regulations regarding the solicitation and acceptance or rejection of property and services. The Corporation did not receive any comments in response to the April 7, 1995, notice. Accordingly, the Corporation is submitting the regulations as a Final Rule.

Miscellaneous Requirements

The Corporation has determined that this is not a "significant regulatory action" within the meaning of Executive Order 12866 and accordingly this rule has not been reviewed by the Office of Management and Budget. This rule will not have a substantial impact on a significant number of small entities, thus a regulatory flexibility analysis has not been prepared pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. Because this rule does not involve collection of information or impose record keeping requirements, the Paperwork Reduction Act of 1980 does not apply. The Corporation has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment pursuant to Executive Order 12612. In addition, the Corporation has determined that implementation of this action will not have any significant impact on the quality of the human environment pursuant to the National Environmental Policy Act.

List of Subjects in 45 CFR Part 2544

Administrative practice and procedure, Gifts to government, Government property.

Dated: May 24, 1995.

Terry Russell,

General Counsel, Corporation for National Service.

Accordingly, as set forth in the preamble, the Corporation amends title 45, chapter XXV of the Code of Federal Regulations by adding part 2544 to read as follows:

PART 2544—SOLICITATION AND ACCEPTANCE OF DONATIONS

Sec.

2544.100 What is the purpose of this part?
2544.105 What is the legal authority for soliciting and accepting donations to the Corporation?
2544.110 What definitions apply to terms used in this part?
2544.115 Who may offer a donation?
2544.120 What personal services from a volunteer may be solicited and accepted?
2544.125 Who has the authority to solicit and accept or reject a donation?
2544.130 How will the Corporation determine whether to solicit or accept a donation?
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2544.140 How will the Corporation accept or reject an offer?
2544.145 What will be done with property that is not accepted?
2544.150 How will accepted donations be recorded and used?

Authority: 42 U.S.C. 12501 *et seq.*

§ 2544.100 What is the purpose of this part?

This part establishes rules to ensure that the solicitation, acceptance, holding, administration, and use of property and services donated to the Corporation:

(a) Will not reflect unfavorably upon the ability of the Corporation or its officers and employees, to carry out their official duties and responsibilities in a fair and objective manner; and

(b) Will not compromise the integrity of the Corporation's programs or its officers and employees involved in such programs.

§ 2544.105 What is the legal authority for soliciting and accepting donations to the Corporation?

Section 196(a) of the National and Community Service Act of 1990, as amended (42 U.S.C. 12651g(a)).

§ 2544.110 What definitions apply to terms used in this part?

(a) *Donation* means a transfer of money, property, or services to or for the use of the Corporation by gift, devise, bequest, or other means.

(b) *Solicitation* means a request for a donation.

(c) *Volunteer* means an individual who donates his/her personal service to the Corporation to assist the Corporation in carrying out its duties under the national service laws, but who is not a participant in a program funded or sponsored by the Corporation under the National and Community Service Act of 1990, as amended. Such individual is not subject to provisions of law related to Federal employment, including those relating to hours of work, rates of compensation, leave, unemployment compensation and Federal employee benefits, except that—

(1) Volunteers will be considered Federal employees for the purpose of the tort claims provisions of 28 U.S.C. chapter 171;

(2) Volunteers will be considered Federal employees for the purposes of 5 U.S.C. chapter 81, subchapter I, relating to compensation to Federal employees for work injuries; and

(3) Volunteers will be considered special Government employees for the purpose of ethics and public integrity under the provisions of 18 U.S.C. chapter 11, part I, and 5 CFR chapter XVI, subchapter B.

(d) *Inherently governmental function* means any activity that is so intimately related to the public interest as to mandate performance by an officer or employee of the Federal Government, including an activity that requires either the exercise of discretion in applying the authority of the Government or the use of value judgment in making a decision for the Government.

§ 2544.115 Who may offer a donation?

Anyone, including an individual, group of individuals, organization, corporation, or association may offer a donation to the Corporation.

§ 2544.120 What personal services from a volunteer may be solicited and accepted?

A donation in the form of personal services from a volunteer may be solicited and accepted to assist the Corporation in carrying out its duties. However, volunteers may not perform an inherently governmental function.

§ 2544.125 Who has the authority to solicit and accept or reject a donation?

The Chief Executive Officer (CEO) of the Corporation has the authority to solicit, accept, or reject a donation offered to the Corporation and to make the determinations described in § 2544.130 (c) and (d). The CEO may delegate this authority in writing to other officials of the Corporation.

§ 2544.130 How will the Corporation determine whether to solicit or accept a donation?

(a) The Corporation will solicit and accept a donation only for the purpose of furthering the mission and goals of the Corporation.

(b) In order to be accepted, the donation must be economically advantageous to the Corporation, considering foreseeable expenditures for matters such as storage, transportation, maintenance, and distribution.

(c) An official or employee of the Corporation will not solicit or accept a donation if the solicitation or acceptance would present a real or apparent conflict of interest. An apparent conflict of interest is presented if the solicitation or acceptance would raise a question in the mind of a reasonable person, with knowledge of the relevant facts, about the integrity of the Corporation's programs or operations.

(d) The Corporation will determine whether a conflict of interest exists by considering any business relationship, financial interest, litigation, or other factors that may indicate such a conflict. Donations of property or voluntary services may not be solicited or accepted from a source which:

(1) Is a party to a grant or contract with the Corporation or is seeking to do business with the Corporation;

(2) Has pecuniary interests that may be substantially affected by performance or nonperformance of the Corporation; or

(3) Is an organization a majority of whose members are described in paragraphs (d)(1) and (2) of this section.

(e) Any solicitation or offer of a donation that raises a question or concern of a potential, real, or apparent conflict of interest will be forwarded to the Corporation's Designated Ethics Official for an opinion.

§ 2544.135 How should an offer of a donation be made?

(a) In general, an offer of donation should be made by providing a letter of tender that offers a donation. The letter should be directed to an official authorized to accept donations, describe the property or service offered, and specify any purpose for, or condition on, the use of the donation.

(b) If an offer is made orally, the Corporation will send a letter of acknowledgment to the offeror. If the donor is anonymous, the Corporation will prepare a memorandum to the file acknowledging receipt of a tendered donation and describing the donation including any special terms or conditions.

(c) Only those employees or officials with expressed notice of authority may accept donations on behalf of the Corporation. If an offer is directed to an unauthorized employee or official of the Corporation, that person must immediately forward the offer to an appropriate official for disposition.

§ 2544.140 How will the Corporation accept or reject an offer?

(a) In general, the Corporation will respond to an offer of a donation in writing and include in the response:

(1) An acknowledgment of receipt of the offer;

(2) A brief description of the offer and any purpose or condition that the offeror specified for the use of the donation;

(3) A statement either accepting or rejecting the donation; and

(4) A statement informing the donor that any acceptance of services or property can not be used in any manner, directly or indirectly, that endorses the donor's products or services or appears to benefit the financial interests or business goals of the donor.

(b) If a purpose or condition for the use of the donation specified by the offeror can not be accommodated, the Corporation may request the offeror to modify the terms of the donation.

§ 2544.145 What will be done with property that is not accepted?

In general, property offered to the Corporation but not accepted will be returned to the offeror. If the offeror is unknown or the donation would spoil if returned, the property will either be disposed of in accordance with Federal Property Management regulations (41 CFR chapter 101) or given to local charities determined by the Corporation.

§ 2544.150 How will accepted donations be recorded and used?

(a) All accepted donations of money and other property will be reported to the Chief Financial Officer (CFO) of the Corporation for recording and appropriate disposition.

(b) All donations of personal services of a volunteer will be reported to the CFO and to the Personnel Division of the Corporation for processing and documentation.

(c) Donations not designated for a particular purpose will be used for an authorized purpose described in § 2544.125.

(d) Property will be used as nearly as possible in accordance with the terms of the donation. If no terms are specified; or the property can no longer be used for its original purpose, the property will be converted to another authorized use or sold in accordance with Federal regulations. The proceeds of the sale will be used for an authorized purpose described in § 2544.125.

[FR Doc. 95–13236 Filed 5–30–95; 8:45 am]

BILLING CODE 6055–28–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 94–142; RM–8546]

Radio Broadcasting Services; Knoxville, IL

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document contains a correction to the final regulation document which was published Monday, April 24, 1995 (60 FR 20052).

EFFECTIVE DATE: May 31, 1995.

FOR FURTHER INFORMATION CONTACT: Gayle Shifflett, Publications Branch, (202) 418–0310.

SUPPLEMENTARY INFORMATION:

Need of Correction

As published, the final regulation document contains an error in the effective date, the window period and closing date.

Correction of Publication

Accordingly, the publication on April 24, 1995 of the final regulations, which were the subject of FR Doc. 95–10026 is corrected as follows:

On page 20052, in the second column, in the **DATES** section, the effective date, the window period for filing applications should be June 5, 1995 in lieu of May 29, 1995.

The closing date for filing applications should be July 6, 1995 in lieu of June 13, 1995.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–13215 Filed 5–30–95; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 94–68; RM 8486]

Radio Broadcasting Services; Billings, MT

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document contains a correction to the final regulation document which was published Monday, April 24, 1995 (60 FR 20052).

EFFECTIVE DATE: May 31, 1995.

FOR FURTHER INFORMATION CONTACT: Gayle Shifflett, Publications Branch, (202) 418–0310.

SUPPLEMENTARY INFORMATION:

Need of Correction

As published, the final regulation document contains an error in the effective date, the window period and closing date.

Correction of Publication

Accordingly, the publication on April 24, 1995 of the final regulations, which were the subject of FR Doc. 95–10025 is corrected as follows:

On page 20052, in the third column, in the **DATES** section, the effective date, the window period for filing applications should be June 5, 1995 in lieu of May 29, 1995.

The closing date for filing applications should be July 6, 1995 in lieu of June 13, 1995.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–13214 Filed 5–30–95; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 76

[CS Docket No. 94–95; DA 95–1121]

Cable Television Service; List of Major Television Markets

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, through this action, amends its rules regarding the listing of major television markets to change the designation of the Tampa-St. Petersburg-Clearwater, Florida television market to include the community of Lakeland, Florida. This action is taken at the request of Public Interest Corporation, licensee of television station WTMV(TV), channel 32, Lakeland, Florida.

EFFECTIVE DATE: Rule provisions of Part 76 shall be effective June 30, 1995.

FOR FURTHER INFORMATION CONTACT: Leora Hochstein, Cable Services Bureau, (202) 416–0800.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, CS Docket No. 94–95, adopted May 16, 1995 and released May 25, 1995. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street NW., Washington, DC 20554, and may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 1919 M Street NW., Washington, DC 20554.

Synopsis of the Report and Order

1. Before the Commission is the *Notice of Proposed Rule Making* adopted on August 12, 1994 and released on August 15, 1994, 59 FR 43805 (1994), issued in response to a petition filed by Public Interest Corporation, licensee of television station WTMV(TV), channel 32, Lakeland, Florida ("WTMV"). The *Notice* proposed to amend § 76.51 of the Commission's Rules, to change the designation of the Tampa-St. Petersburg-Clearwater, Florida television market to "Tampa-St. Petersburg-Clearwater-Lakeland, Florida." No comments in opposition to this proposal have been filed.

Background

2. Section 76.51 of the Commission's Rules enumerates the top 100 television markets and the designated communities within those markets. Among other things, this market list is used to determine the scope of territorial exclusivity rights that television broadcast stations may purchase and, in addition, may help define the scope of compulsory copyright license liability for cable operators in certain circumstances. Certain cable television syndicated exclusivity and network nonduplication rights are also determined by the presence of broadcast station communities of license on this list. Some of the markets consist of more than one named community (a "hyphenated market"). Such "hyphenation" of a market is based on the premise that stations licensed to any of the named communities in the hyphenated market do, in fact, compete with all stations licensed to such communities. Market hyphenation "helps equalize competition" where portions of the market are located beyond the Grade B contours of some stations in the area yet the stations compete for economic support.

3. Section 4 of the Cable Television Consumer Protection and Competition Act of 1992 ("Cable Act"), which amended Section 614 of the Communications Act of 1934, as amended ("Act"), requires the Commission to make revisions needed to update the list of top 100 television markets and their designated communities in § 76.51 of the Commission's Rules.

Rule Making Comments

4. The petitioner contends that WTMV in Lakeland competes directly with television stations in the Tampa-St. Petersburg-Clearwater hyphenated market for audience share and advertising revenues. Although Lakeland is located inside the Tampa-St. Petersburg "area of dominant influence" ("ADI"), the petitioner argues that because Lakeland is not a designated community in the above market, WTMV is considered a "distant signal" for purposes of compulsory copyright license liability if carried on cable systems more than 35 miles from Lakeland. According to the petitioner, the consequence of being classified as a "distant signal" is that cable systems will have to pay significant copyright

royalties in order to carry WTMV, and WTMV, in turn, will have to indemnify the cable systems for these royalties. In contrast, stations licensed to communities specifically designated in § 76.51 are considered local for all cable systems within the 35-miles zones of the listed communities in a given hyphenated market and are not subject to copyright liability. The petitioner asserts that because WTMV may have to pay copyright fees attendant to its carriage as a "distant signal" that stations in Tampa, St. Petersburg and Clearwater do not, WTMV is disadvantaged in its competition with these stations.

5. In support of its proposal, the petitioner states that it meets all of the criteria stipulated by the Commission for redesignation of the hyphenated market. The petitioner contends that Lakeland is sufficiently proximate to Tampa, St. Petersburg and Clearwater to be considered part of the Tampa-St. Petersburg-Clearwater hyphenated market. According to the petitioner, Lakeland is only 31 miles from Tampa, 47 miles from St. Petersburg, and 50 miles from Clearwater. The petitioner maintains that because of this geographic proximity, Lakeland, Tampa, St. Petersburg and Clearwater have shared economic, social and cultural interests which link them together as a single television market. The petitioner submits a contour map showing that WTMV provides city grade contour coverage to part of Tampa, Grade A contour coverage to virtually all of Tampa, and Grade B contour coverage to all of St. Petersburg. Clearwater is just beyond WTMV's Grade B contour, however, it is part of the Tampa-St. Petersburg ADI. A map delineating the Grade B contours of stations in the Tampa area reveals that the signal contours of WTMV substantially overlap with the signal contours of other stations in the Tampa-St. Petersburg ADI. To further support its contention that WTMV competes directly with Tampa market stations and is an integral part of the Tampa-St. Petersburg ADI, the petitioner asserts that WTMV is widely recognized as a Tampa market station. In particular, the petitioner notes the following: Tampa newspapers and magazines include WTMV in television program listings; Tampa-based publications have recognized the station for its programming and commitment to local service; program syndicators charge WTMV Tampa market rates for programming; and Tampa businesses as well as regional and national advertisers buy time on WTMV. In addition, the petitioner states that WTMV carries many ABC, NBC and CBS programs when the Tampa network affiliates preempt their network programming and that WTMV is the Tampa television affiliate for the Florida Marlins major league baseball club. The petitioner urges the Commission to add Lakeland to the Tampa-St. Petersburg-Clearwater hyphenated market in order to redress what the petitioner perceives as a competitive imbalance between WTMV and stations licensed to Tampa, St. Petersburg and Clearwater.

Discussion

6. A "hyphenated market" has been described by the Commission as a television market that contains more than one major population center supporting all stations in the market, with competing stations licensed to different cities within the market area. In evaluating past requests for hyphenation of a market, the Commission has considered the following as relevant to its examination: (1) The distance between the existing designated communities and the community proposed to be added to the designation; (2) whether cable carriage, if afforded to the subject station, would extend to areas beyond its Grade B signal coverage area; (3) the presence of a clear showing of a particularized need by the station requesting the change of market designation; and (4) an indication of benefit to the public from the proposed change. Each of these factors helps the Commission to evaluate individual market conditions consistent "with the underlying competitive purpose of the market hyphenation rule to delineate areas where stations can and do, both actually and logically, compete."

7. Based on the facts presented here, we believe that a case for redesignation of the subject market has been set forth so that this proposal should be adopted. It appears from the information before us that television stations licensed to Tampa, St. Petersburg, Clearwater and Lakeland do compete for programming, audience and advertisers in the proposed combined market area, and that sufficient evidence has been presented to demonstrate commonality between the proposed community to be added to the market designation and the market as a whole. In addition, no oppositions to the proposed rehyphenation have been filed.

8. We note that the issue raised by the petitioner regarding WTMV's copyright license liability has largely been resolved with the passage of the Satellite Home Viewer Act of 1994, which amended Section 111(f) of title 17, United States Code. Under this Act, a station located within the same ADI as a cable system is no longer considered a "distant signal" on that system for purposes of compulsory copyright license liability and, therefore, is not subject to the additional copyright fees attendant to "distant signal" carriage within the market. Applying the Act to the facts of this proceeding, WTMV would not be considered a "distant signal" if carried on cable systems located in the Tampa-St. Petersburg ADI and, therefore, would not face additional copyright fees relative to other stations located within the same ADI. Nevertheless, we find that the equalization of the regulatory status of WTMV with stations in Tampa St. Petersburg and Clearwater through the inclusion of Lakeland as a named community in the market is warranted given that WTMV competes with these stations for programming, audience and advertisers. Such a rationalization of the competitive situation appears to be the public benefit which congress anticipated by instructing the Commission, in Section 614(f) of the Cable Television Consumer Protection and Competition Act of 1992, to make necessary revisions to update the market list.

9. This proceeding is not intended to address the specific mandatory cable carriage, syndicated exclusivity or network nonduplication obligations of individual cable systems. Redesignation of the market reflects in the rules the general competitive situation that in fact exists in the local area, allowing the application of the more specific rules, including those relating to "area of dominant influence" changes, to be addressed from the perspective of a properly defined market area. Accordingly, the proposed rule change will be adopted.

10. Accordingly, it is ordered, that effective June 30, 1995, § 76.51 of the Commission's Rules is amended to include Lakeland, Florida, as follows: Tampa-St. Petersburg-Clearwater-Lakeland, Florida.

11. It is further ordered, that this proceeding IS TERMINATED.

12. This action is taken by the Cable Services Bureau pursuant to authority delegated by § 0.321 of the Commission's rules. 47 CFR 0.321.

List of Subjects in 47 CFR Part 76

Cable television.

Part 76 of Chapter I of title 47 of the Code of Federal Regulations is amended as follows:

PART 76—CABLE TELEVISION SERVICE

1. The authority citation for Part 76 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

2. Section 76.51 is amended by revising paragraph (a)(28) to read as follows:

§ 76.51 Major television markets.

* * * * *

(a) * * *

(28) Tampa-St. Petersburg-Clearwater-Lakeland, Florida

* * * * *

Federal Communications Commission.

William H. Johnson,

Deputy Chief, Cable Services Bureau.

[FR Doc. 95–13213 Filed 5–30–95; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 673

[Docket No. 950223058–5058–01; I.D. 022395A]

Scallop Fishery off Alaska; Closure of Federal Waters to Protect Scallop Stocks

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Emergency interim rule; extension of effective date; response to comments.

SUMMARY: An emergency interim rule that closed Federal waters off Alaska to fishing for scallops is in effect through May 30, 1995. NMFS extends the emergency rule for an additional 90-day period (through August 28, 1995) to prevent overfishing of scallop stocks in an uncontrolled fishery for scallops in Federal waters by vessels fishing outside Alaska State's regulatory authority to govern the scallop fishery. This emergency closure is intended to control an unregulated scallop fishery in Federal waters until a Federal fishery management plan can be implemented. NMFS also responds to comments submitted on the interim emergency rule as published in the **Federal Register** on March 1, 1995, for comment. No change to the emergency rule was made as a result of NMFS' response to comments.

EFFECTIVE DATE: The interim regulations published on March 1, 1995 (60 FR 11054, as corrected at 60 FR 12825, March 8, 1995) are extended from May 31, 1995, through August 28, 1995.

FOR FURTHER INFORMATION CONTACT: Susan Salveson, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS published an emergency interim rule in the **Federal Register** on March 1, 1995 (60 FR 11054) that closed Federal waters off Alaska to fishing for scallops. The closure was intended to prevent unregulated and uncontrolled fishing for scallops in Federal waters during the period of time the North Pacific Fishery Management Council (Council) prepared a Fishery Management Plan for the Scallop Fishery off Alaska (FMP). Although the State of Alaska has implemented regulations to manage the scallop fishery off Alaska, these regulations can be applied by the State only to vessels registered under the laws of the State of Alaska (section 306 (a)(3) of the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.* (Magnuson Act). Continued fishing for scallops by one or more vessels not registered with the State of Alaska poses significant conservation and management concerns that can be effectively addressed in a timely manner only through emergency closure of Federal waters off Alaska. Further background and descriptive information is contained in the preamble to the emergency rule published in the **Federal Register** March 1, 1995.

The Council has submitted a proposed FMP to the Secretary of Commerce for review and approval. Proposed regulations to implement the FMP were published in the **Federal Register** May 10, 1995 (60 FR 24822). Given the statutory review and implementation schedule for FMPs set out under sections 303 and 304 of the Magnuson Act, the Council requested NMFS to reimplement the emergency closure of Federal waters off Alaska for an additional 90 days as authorized under section 305(c)(3)(B) of the Magnuson Act. NMFS concurs that this period of time is necessary for the preparation and implementation of a Federal management program for scallops in Federal waters and reimplements this emergency rule for the maximum period of time authorized under the Magnuson Act.

Two letters of comments on the emergency rule as published in the **Federal Register** March 1, 1995, were received within the comment period and are summarized in the Response to Comments section, below. After review of the comments received, NMFS determined that no change to the emergency rule is warranted.

This emergency interim rule has been determined to be not significant for purposes of E.O. 12866.

Response to Comments

Two letters of comments were received within the comment period that ended March 10, 1995. A summary of the comments and NMFS' response follows.

Comment 1. NMFS' implementation of the emergency rule was based upon a recommendation from the Council that was contrived at an illegally constituted teleconference meeting in violation of specific procedural requirements set forth in the Magnuson Act, 16 U.S.C. 1852(j).

Response. The Chairman of the North Pacific Fishery Management Council (Council) had very little time to respond to the emergency situation resulting from uncontrolled fishing for scallops off Alaska that precipitated the emergency rule. If necessary, NMFS was prepared to take action to promulgate emergency regulations without Council involvement to address the emergency in as timely manner as possible. The Council's ability to convene an emergency meeting and its recommendation to proceed with the emergency rule simply lent further indication of the widespread support for closure of Federal waters to protect scallop stocks.

Furthermore, NMFS conducted an independent review of the emergency action recommended by the Council. Based on the administrative record, NMFS concurred with the Council's determination that immediate closure of Federal waters off Alaska was necessary to address the scallop management void and to address concerns of localized overfishing of scallop stocks. NMFS followed the appropriate procedures and established the rational basis for the decision to implement the emergency rule. Any alleged procedural irregularities at the Council level did not affect the Agency's independent determination to proceed with this action.

Comment 2. Absolutely no justification exists for issuance of an emergency rule closing Federal waters off Alaska to fishing for scallops given that a single vessel operating outside Alaska State's regulatory authority could not cause overfishing of the scallop resource off Alaska.

Response. NMFS disagrees. Recent participation in the scallop fishery by at least one vessel not registered with the State of Alaska, contemplation by other vessel owners of fishing in Federal

waters outside State regulations governing the scallop fishery, and the possibility uncontrolled fishing for scallops could occur anywhere off Alaska by the highly mobile scallop processor fleet, justified emergency rule action to prevent localized overfishing of scallop stocks. This approach is warranted given the limited information on stock structure and biological productivity of scallops off Alaska, coupled with recent scientific evidence that suggests that scallop resources may consist of multiple, discrete, self-sustaining populations that should be viewed as separate stock units for management. If this is the case, prudent management of these stocks is necessary to prevent localized depletion in order to maintain the integrity of these stocks and protect their long-term productivity.

The single vessel used to participate in the unregulated fishery for scallops that precipitated the emergency rule was fishing in the Prince William Sound (PWS) area, for which the State's guideline harvest level (GHL) was 50,000 lb (22.68 mt) shucked scallop meat. The 1995 harvest amounts of scallops reported by observers on board other vessels fishing in this area under the laws of the State resulted in closure of the area to fishing for scallops on January 26, 1995, when the State's GHL was reached. The single vessel fishing outside the State's regulatory authority did not have an observer on board to monitor catch and continued to fish once the PWS area was closed. When the vessel was boarded by the U.S. Coast Guard almost a month later, the vessel operator informed the Coast Guard that 54,000 lb (24.49 mt) of shucked scallop meat was on board. This amount exceeded Alaska State's GHL for PWS by over 100 percent. Exceeding the GHL by this order of magnitude, combined with the potential for discrete stock structure, creates a very real concern for localized overfishing of scallop stocks that the emergency rule was intended to prevent.

Comment 3. The issuance of the emergency rule was based on political and personal assumptions which were unreasonable and not based on reliable scientific data as required by the Magnuson Act.

Response. NMFS disagrees. See the response to Comment 2. NMFS has acknowledged that information on scallop stock structure, abundance, and population dynamics are limited. However, as stated in the preamble to the emergency rule, reasons exist to manage the Alaska scallop stocks with special caution given evidence that these stocks are susceptible to overfishing. NMFS expects that careful management of this resource will be necessary until more information becomes available to improve understanding of the dynamics of the scallop resource and the effect of exploitation on the biological productivity of scallop stocks off Alaska.

Comment 4. The emergency rule is not consistent with any of the national standards. In particular National Standard 1 is violated given that NMFS has not taken any action to achieve the optimum yield (OY) from the Alaska scallop fishery. Furthermore, NMFS has no idea what the OY for this fishery should be because no scientific data exist upon which to base the OY.

Response. NMFS disagrees. The emergency interim closure of Federal waters to fishing for scallops was intended as a short-term conservation measure to control fishing effort and prevent overfishing of scallop stocks until an alternative management regime may be implemented. The interim closure could be effective for up to a 180-day period. Prevention of overfishing during this interim period would help guarantee achievement of OY from a healthy, productive scallop resource when the fishery is authorized to open under a future management regime. Furthermore, OY would be achieved on a continuing basis, given that Weathervane scallops, the primary commercial species off Alaska, are a long-lived species with a low natural mortality rate. As a result, NMFS believes the scallop harvest foregone during the period Federal waters are closed largely would be available to the fishery once Federal waters are opened to fishing for scallops under a future FMP.

NMFS recognizes that the economic impact of the closure of Federal waters to fishing for scallops will be substantial to participants in the scallop fishery. The State of Alaska has announced that it will open up State waters in its Dutch Harbor and Adak registration areas on July 1 to fishing for scallops, although available fishing grounds are limited and harvest amounts are not expected to be significant. The harvest amounts from these two registration areas in 1993 and 1994 totaled only 40,000 lb and 2,000 lb, respectively. The short-term foregone opportunity to harvest scallops in Federal waters is justified by the need to prevent overfishing of the scallop resource and ensure the long-term productivity of the scallop resource necessary to support the harvest of OY on a continuing basis under a future management regime that authorizes a regulated fishery in Federal waters.

The emergency rule did not specify an OY for the scallop fishery off Alaska and comments on the appropriateness of any OY level for this fishery is outside the scope this action. Nonetheless, the preamble to the proposed rule to implement the FMP (60 FR 24822, May 10, 1995), presents a discussion on an appropriate OY for the scallop fishery in Federal waters off Alaska. The preamble also discusses the consistency of an interim closure of these waters to fishing for scallops with the national standards.

Although scientific data are limited, no evidence suggests that an unregulated and uncontrolled harvest of scallops off Alaska is supportable as a means of achieving OY. The Council is scheduled to consider alternative options for an OY for the scallop fishery off Alaska at its June 1995 meeting, as well as a suite of other management measures under consideration by the Council for a Federally managed fishery.

Comment 5. The emergency rule meets none of the criteria for emergency rulemaking set out in NMFS policy guidelines, which define an emergency situation as one that (1) results from unforeseen events; (2) presents serious conservation and management problems; and (3) can be addressed through emergency regulations for immediate benefits outweigh the value of advance notice, public comment and deliberative consideration of the impacts on participants to the same extent as would be expected under the normal rule making process. Furthermore, these guidelines preclude NMFS from using emergency rulemaking to close a fishery if the action is controversial and has serious economic effects.

Response. NMFS disagrees. NMFS policy guidelines for emergency rulemaking published in the **Federal Register** January 6, 1992 (57 FR 375), would authorize controversial emergency action with serious economic effects under certain circumstances. NMFS believes that the events and overfishing concerns leading up to the emergency interim closure of Federal waters to fishing for scallops are such circumstances that warranted emergency rulemaking.

Although the potential always existed for one or more vessels to fish for scallops in Federal waters outside Alaska State's regulatory authority, no vessel had ever done so. Neither NMFS nor the Council anticipated this activity when it occurred, nor the conservation concerns that ensued from uncontrolled and unregulated fishing for scallops in Federal waters. Although closure of Federal waters to fishing for scallops

poses substantial costs to current participants in this fishery, these costs are justified to prevent localized overfishing of scallop stocks and protect the long-term productivity of the Alaska scallop resource. NMFS believes that the time it would have taken to complete notice-and-comment rulemaking would have jeopardized severely NMFS' ability to take action to prevent overfishing of scallop stocks.

Comment 6. The emergency interim rule should be rescinded as an illegal action. No scientific evidence exists that can prove overfishing concerns are warranted and the vessel fishing in Federal waters outside Alaska State laws and regulations had a Federal scallop permit and was fishing legally.

Response. NMFS disagrees that the emergency interim rule was an illegal action. Rather, this action was justified to prevent overfishing of scallop stocks and protect the long-term productivity of this resource. NMFS concurs that fishing for scallops in Federal waters outside the laws and regulations of the State of Alaska did not, in itself, constitute illegal activity. Prior to the emergency rule, however, no Federal regulations existed to control fishing for scallops in Federal waters. NMFS believes that unregulated fishing, including the potential for other vessels joining an uncontrolled fishery, poses a serious overfishing concern (see responses to comments 2 and 3). NMFS does not claim that it has "proved" overfishing is occurring in this fishery; rather, the emergency rule is an attempt to prevent such a problem from occurring while long-term management measures are being developed. Finally, the vessel used to fish for scallops in Federal waters outside Alaska State's regulatory authority was not issued a Federal permit to fishing for scallops off Alaska. The fact that the vessel may have been issued a Federal permit to fish for scallops in Federal waters elsewhere off the continental United States is immaterial to the legality of the closure of Federal waters off Alaska.

Comment 7. Under section 306(a)(3) of the Magnuson Act, NMFS should not rely on the Alaska State scallop management program as a basis for managing the fishery in Federal waters.

Response. Any future Federal management program for the scallop fishery of Alaska would consider State management measures for the scallop fishery and the justification for those measures. However, neither the Council nor NMFS would automatically incorporate State management measures into Federal regulations without adequate assessment and justification. Such measures must be consistent with the national standards set out in the Magnuson Act and other applicable law.

Dated: May 24, 1995.

Richard H. Schaefer,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 95–13262 Filed 5–25–95; 4:30 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register

Vol. 60, No. 104

Wednesday, May 31, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF DEFENSE

Office of the Secretary

[DoD Instruction 1342.12]

32 CFR Part 57

Provision of Early Intervention and Special Education Services to Eligible DoD Dependents in Overseas Areas

AGENCY: Department of Defense.

ACTION: Proposed rule.

SUMMARY: Prior to 1991, the Department of Defense Dependents Schools (DoDDS) was required by "Defense Dependents' Education Act of 1978," as amended, to adhere to the provisions of the "Education of All Handicapped Children Act. With the enactment of "Individuals With Disabilities Education Act Amendment of 1991," the Department of Defense was required to modify the Department's existing special education program for children with disabilities, ages 3 through 21, and to provide early intervention services to children birth through 2 years. The provision of early intervention services will be phased in, with all services in place by the beginning of school year 1995–96. This proposed rule includes the following revisions: Assigns responsibility for the implementation of the rule to the Under Secretary for Personnel and Readiness, reflecting a reorganization of the Department of Defense; requires the Department of Defense to provide early intervention services to children with disabilities from birth through 2 years of age, effective at the start of school year 1995–96; requires the Department of Defense Dependents Schools (DoDDS) to extend special education services to students from 3 through 21 years of age rather than from 5 through 21 years of age; expands the categories of disability to include both autism and traumatic brain injury; expands special education services to include both assistive technology and transition; expands the role of the DoD Coordinating Committee to include early intervention as well as special education and related services; establishes a DoD Inter-Component Coordinating Council on Early Intervention; expands the enclosure on definitions to include terminology not contained in the original rule; and transfers the administrative responsibility for conducting hearings pursuant to this rule to the Defense Office of Hearings and Appeals.

DATES: Comments must be postmarked by July 31, 1995.

ADDRESSES: Forward comments to the Department of Defense Dependents Schools, 4040 North Fairfax Drive, Arlington, VA 22203–1635.

FOR FURTHER INFORMATION CONTACT: Dr. Rebecca Posante, (703) 696–4493.

SUPPLEMENTARY INFORMATION: It is necessary to revise 32 CFR Part 57 to reflect updated policy, responsibilities, and procedures of early intervention and special education services to eligible DoD Dependents overseas.

Executive Order 12866, "Regulatory Planning and Review"

It has been determined that this proposed rule will not, if issued as a final rule, be significant as defined by Executive Order 12866.

Public Law 96–354, "Regulatory Flexibility Act" (5 U.S.C. Chapter 6)

It has been determined that this proposed rule will not, if issued as a final rule, have a significant economic impact on substantial numbers of small entities because it affects only eligible DoD dependents in overseas areas.

Public Law 96–511, "Paperwork Reduction Act" (44 U.S.C. Chapter 44)

It has been certified that this proposed rule will not, if issued as a final rule, impose any reporting or recordkeeping requirements under the Paperwork Reducation Act of 1980.

List of Subjects in 32 CFR Part 57

Education of individuals with disabilities, Elementary and secondary education, Government employees, Military personnel.

Accordingly, 32 CFR part 57 is revised to read as follows:

PART 57—PROVISION OF EARLY INTERVENTION AND SPECIAL EDUCATION SERVICES TO ELIGIBLE DOD DEPENDENTS IN OVERSEAS AREAS

Sec.

57.1 Purpose.
57.2 Applicability and scope.
57.3 Definitions.
57.4 Policy.
57.5 Responsibilities.
57.6 Procedures.

Appendix A to Part 57—Procedures for the Provision of Early Intervention Services for Infants and Toddlers With Disabilities and their Families

Appendix B to Part 57—Procedures for Educational Programs and Services for Children With Disabilities, Aged 3 to 21, Inclusive

Appendix C to Part 57—The National Advisory Panel (NAP) on the Education of Dependents With Disabilities

Appendix D to Part 57—DoD Coordinating Committee on Early Intervention, Special Education, and Medically Related Services

Appendix E to Part 57—DoD Inter-Component Coordinating Council (ICC) on Early Intervention

Appendix F to Part 57—Mediation and Hearing Procedures

Authority: 20 U.S.C. 921 and 1400.

§ 57.1 Purpose.

This part:

(a) Implements policy and updates responsibilities and procedures under 20 U.S.C. 921–932, 20 U.S.C. 1400 *et seq.*, 32 CFR part 347, and 32 CFR part 71 for providing the following:

(1) A free appropriate public education (FAPE) for children with disabilities who are eligible to enroll in the Department of Defense Dependents Schools (DoDDS).

(2) Early intervention services for infants and toddlers birth through age 2 years who, but for their age, would be eligible to enroll in the DoDDS under 32 CFR part 71.

(3) A comprehensive and multidisciplinary program of early intervention services for infants and toddlers with disabilities and their families.

(b) Establishes a National Advisory Panel (NAP) on Education for Children with Disabilities, aged 3 to 21, inclusive, and a DoD Inter-Component Coordinating Council (ICC) on Early Intervention, in accordance with DoD Directive 5105.4.[1]

(c) Establishes a DoD Coordinating Committee (DoD-CC) on Early Intervention, Special Education, and Medically Related Services (MRS).

(d) Authorizes implementation instructions consistent with DoD 5025.1–M,[2] and DoD forms consistent with DoD 8320.1–M,[3] DoD 8910.1–M,[4] and DoD Instruction 7750.7.[5]

§ 57.2 Applicability and scope.

This part:

(a) Applies to the Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff, the Unified Combatant Commands, the Inspector General of the Department of Defense, the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as "the DoD Components").

(b) Does not apply to schools operated by the Department of Defense in the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Marianna Islands, and the possessions of the United States (excluding the Trust Territory of the Pacific Islands and Midway Islands).

(c) Applies to infants, toddlers, and children receiving or entitled to receive early intervention services or special educational instruction and related services from the Department of Defense, and their parents.

§ 57.3 Definitions.

Asessment. Techniques, procedures, and/or instruments used to measure the individual components of an evaluation.

Assistive technology device. Any item, piece of equipment, or product system that is used to increase, maintain, or improve functional capabilities of children with disabilities.

Assistive technology service. Any service that directly assists an individual with a disability in the selection, acquisition, or use of an assistive technology device. That term includes the following:

(1) The evaluation of the needs of an individual with a disability, including a functional evaluation in the individual's customary environment.

(2) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by individuals with disabilities.

(3) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices.

(4) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing educational and rehabilitative plans and programs.

(5) Training or technical assistance for an individual with disabilities, or, where appropriate, the family of an individual with disabilities.

(6) Training or technical assistance for professionals (including individuals providing educational rehabilitative services), employers, or other individuals who provide services to employ, or are otherwise substantially involved in the major life functions of an individual with a disability.

Audiology. A service that includes the following:

(1) Identification of children with auditory impairments.

(2) Determination of the range, nature, and degree of hearing loss, and communication functions including referral for medical or other professional attention for the habilitation of hearing.

(3) Provision of habilitative activities, such as language habilitation, auditory training, speech-reading (lip-reading), hearing evaluation, and speech conservation.

(4) Creation and administration of programs for the prevention of hearing loss.

(5) Counseling and guidance of pupils for the prevention of hearing loss.

(6) Determination of the child's need for group and individual amplification, selecting and fitting an aid, and evaluating the effectiveness of amplification.

Autism. A developmental disability significantly affecting verbal and nonverbal communication and social interaction generally evident before age 3 that adversely affects educational performance. That term does not include a child with characteristics of the disability termed "serious emotional disturbance."

Case study committee (CSC). A school-level team comprised of, among others, the principal, other educators, parents, and MRS providers who do the following:

(1) Oversee screening and referral of children who may require special education.

(2) Oversee the multidisciplinary evaluation of such children.

(3) Determine the eligibility of the student for special education and related services.

(4) Formulate an individualized education curriculum reflected in an Individualized Education Program (IEP), in accordance with this part.

(5) Monitor the development, review, and revision of IEPs. In addition to the required members of the CSC, other membership will vary depending on the purpose of the meeting. A regional CSC, appointed by the DoDDS regional director, acts in the absence of a school CSC. Members of a regional CSC may be assigned to augment a school CSC. The regional CSC must have at least two members in addition to the parent. One of the DoDDS members must have the authority to commit DoDDS resources; one shall be qualified to provide, or supervise the provision of special education. Other members may be selected from the following groups:

(i) DoDDS regular education personnel.

(ii) DoDDS special education personnel.

(iii) MRS personnel.

Child-find. The ongoing process used by the DoDDS, the Military Departments, and the other DoD Components to seek and identify children from birth to age 21, inclusive, who may require early intervention services or special education and related services. Child-find activities include the dissemination of information to the public, the identification and screening of children, and the use of referral procedures.

Children with disabilities (aged 3 to 21, inclusive). Children, before graduation from high school or completion of the General Education Degree, who have one or more impairments, as determined by a CSC and who need special education and related services.

Consent. That term means the following:

(1) The parent is fully informed of all information about the activity for which consent is sought in the native language or in another mode of communication.

(2) The parent understands and agrees in writing to the implementation of the activity for which permission is sought. That consent describes the activity, lists the child's records (if any) to be released outside the Department of Defense, and specifies to whom the records shall be sent. The signed consent acknowledges the parent's understanding that the parental consent is voluntary and may be revoked at any time.

Counseling service. A service provided by a qualified social worker, psychologist, guidance counselor, or other qualified personnel.

Deaf-blindness. Concomitant hearing and visual impairments. That disability caused such severe communication, developmental, and educational

[1] Copies may be obtained, at cost, from the National Technical Information Service 5285 Port Royal Road, Springfield, VA 22161.

[2] See footnote 1 to § 57.1(b).

[3] See footnote 1 to § 57.1(b).

[4] See footnote 1 to § 57.1(b).

[5] See footnote 1 to § 57.1(b).

problems that it cannot be accommodated in special education programs solely for children with deafness or blindness.

Deafness. A severe hearing loss or deficit that impairs a child's ability to process linguistic information through hearing, with or without amplification, and affects the educational performance adversely.

Developmental delay. That terms means the following:

(1) A significant discrepancy in the actual functioning of an infant; toddler; or child, birth through age 5, when compared with the functioning of a nondisabled infant, toddler, or child of the same chronological age in any of the following areas: physical, cognitive, communication, social or emotional, and adaptive development as measured using standardized evaluation instruments and confirmed by clinical observation and judgment.

2. *High probability for developmental delay.* An infant or toddler, birth through age 2, with a diagnosed physical or mental condition, such as chromosomal disorders and genetic syndromes, that places the infant or toddler at substantial risk of evidencing a developmental delay without the benefit of early intervention services.

Early identification. The implementation of a formal plan for identifying a disability as early as possible in a child's life.

Early intervention services.

(1) Developmental services that meet the following criteria:

(i) Are provided under the supervision of a military medical department.

(ii) Are provided using Military Health Services System resources at no cost to the parents. Parents may be charged in those instances where Federal law provides for a system of payments by families including a schedule of sliding fees, if any, (and incidental fees; identified in Service guidance) that are normally charged to infants, toddlers, and children without disabilities or to their parents.

(iii) Are designed to meet the developmental needs of an infant or toddler with a disability in any one or more of the following areas:

(A) Physical.

(B) Cognitive.

(C) Communication.

(D) Social or emotional.

(E) Adaptive development.

(iv) Meet the standards developed or adopted by the Department of Defense.

(v) Are provided by qualified personnel including early childhood special educators, speech and language pathologists and audiologists, occupational therapists, physical therapists, psychologists, social workers, nurses, nutritionists, family therapists, orientation and mobility specialists, and pediatricians and other physicians.

(vi) Maximally, are provided in natural environments including the home and community settings where infants and toddlers without disabilities participate.

(vii) Are provided in conformity with an Individualized Family Service Plan (IFSP).

(2) Developmental services include, but are not limited to, the following services: family training, counseling, and home visits; special instruction; speech pathology and audiology; occupational therapy; physical therapy; psychological services; service coordination services; medical services only for diagnostic or evaluation purposes; early identification, screening and assessment services; vision services; and social work services. Also included are assistive technology devices and assistive technology services; health services necessary to enable the infant or toddler to benefit from the above early intervention services; and transportation and related costs necessary to enable an infant or toddler and the family to receive early intervention services.

Eligible. That term refers to children who meet the age, command sponsorship, and dependency requirements established by the DDEA, as amended, 20 U.S.C. § 921 *et seq.*, and 32 CFR part 71. When those conditions are met, children without disabilities, aged 5 to 21, and children with disabilities, aged 3 to 21, inclusive, are authorized to receive educational instruction from the DoDDS. Additionally, an eligible infant or toddler with disabilities is a child from birth through age 2 years who meets all of the DoDDS eligibility requirements except for the age requirement. In school year 1994–95, multi-disciplinary assessments, IFSPs, and case management services shall be required and beginning in school year 1995–96, an eligible infant or toddler is entitled to receive early intervention services, in accordance with 20 U.S.C., § 1400 *et seq.*

Evaluation. The synthesis of assessment information by a multi-disciplinary team used to determine whether a particular child has a disability, the nature and extent of the disability, and the child's eligibility to receive early intervention or special education and/or related services.

Family training, counseling and home visits. Services provided by social workers, psychologists, and other qualified personnel to assist the family of an infant or toddler eligible for early intervention services. Those services assist a family in understanding the special needs of the child and enhancing the child's development.

Free appropriate public education (FAPE). Special education and related services that:

(1) Are provided at no cost to parents of a child with a disability, and are under the general supervision and direction of the DoDDS.

(2) Are provided in the least restrictive environment at a preschool, elementary, or secondary school.

(3) Are provided in conformity with an IEP.

(4) Meet the requirements of this part.

Functional vocational evaluation. A student-centered appraisal process for vocational development and career decision-making. It allows students, educators, and others to gather information about such development and decision making. Functional vocational evaluation activities are directly related to transitional, vocational, and career planning; instructional goals; objectives; and implementation.

Health services. Services necessary to enable an infant or toddler to benefit from the other early intervention services being received under this part. That term includes the following:

(1) Services such as clean intermittent catheterization, tracheotomy care, tube feeding, changing of dressings or colostomy collection bags, and other health services.

(2) Consultation by physicians with other service providers about the special healthcare needs of infants and toddlers with disabilities that shall need to be addressed in the course of providing other early intervention services.

(3) That term does not include the following:

(i) Services that are surgical in nature or solely medical.

(ii) Devices necessary to control or treat a medical condition.

(iii) Medical or health services routinely recommended for all infants or toddlers.

Hearing impairment. An impairment in hearing, whether permanent or fluctuating, which adversely affects a child's educational performance, but is not included under deafness.

Independent evaluation. An evaluation conducted by a qualified examiner who is not employed by the DoDDS.

Individualized education program (IEP). A written document defining specially designed instruction for a student with a disability, aged 3 to 21, inclusive. That document is developed and implemented, in accordance with this part.

Individualized family service plan (IFSP). A written document for an infant or toddler, ages birth through 2, with a disability and the family of such infant or toddler that is based on a multidisciplinary assessment of the unique needs of the child and concerns and priorities of the family, and identifies the early intervention and other services appropriate to meet such needs, concerns, and priorities.

Infants and toddlers with disabilities. Children, age birth through 2, who need early intervention services because they:

(1) Are experiencing a developmental delay; or

(2) Have a diagnosed physical or mental condition that has high probability of resulting in a developmental delay.

Inter-component. Cooperation among DoD organizations and programs, ensuring coordination and integration of services to infants, toddlers, children with disabilities and to their families.

Medically related services.

(1) Medical services (as defined in definition "Medical services") are those services provided under professional medical supervision, which are required by a CSC to determine a student's eligibility for special education and, if the student is eligible, the special education and related services required by the student under this part.

(2) Direct or indirect services pursuant to the development or implementation of an IEP necessary for the student to benefit from the educational curriculum. Those services may include: medical services for diagnostic or evaluative purpose, social work, community health nursing, dietary, occupational therapy, physical therapy, audiology, ophthalmology, and psychological testing and therapy.

Medical services. Those evaluative, diagnostic, therapeutic, and supervisory services provided by a licensed and/or credentialed physician to assist CSCs and to implement IEPs. Medical services include diagnosis, evaluation, and medical supervision of related services that, by statute, regulation, or professional tradition, are the responsibility of a licensed and credentialed physician.

Meetings. All parties attending a meeting to determine eligibility or placement of a child shall appear personally at the meeting site on issuance of written notice and establishment of a date convenient to the concerned parties. When a necessary participant is unable to attend, electronic communication suitable to the occasion may be used to involve the unavailable party. Parents generally shall be responsible for the cost of travel to personally attend meetings bout the eligibility or placement of their child.

Mental retardation. Significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior. That disability is manifested during the developmental period and adversely affects a child's educational performance.

Multidisciplinary. The involvement of two or more disciplines or professions in the integration and coordination of services, including evaluation and assessment activities, and development of an IFSP or an IEP.

Native language. When used with reference to an individual of limited English proficiency, the home language normally used by such individuals, or in the case of a child, the language normally used by the parent of the child.

Natural environments. Settings that are natural or normal (e.g., home, day care setting) for the infant, toddler, or child's same-age peers who have no disability.

Non-DoDDS placement. An assignment by the DoDDS of a child with a disability to a non-DoDDS school or facility.

Non-DoDDS school or facility. A public or private school or other institution not operated by the DoDDS.

Nutrition services. Those services to infants and toddlers include the following:

(1) Conducting individual assessments in nutritional history and dietary intake; anthropometric, biochemical, and clinical variables; feeding skills and feeding problems; and food habits and food preferences.

(2) Developing and monitoring plans to address the nutritional needs of infants and toddlers eligible for early intervention services.

(3) Making referrals to community resources to carry out nutrition goals.

Occupational therapy. That term includes services to address the functional needs of children (birth to age 21, inclusive) related to adaptive development, adaptive behavior and play; and sensory, motor, and postural development. Those services are designed to improve the child's functional ability to perform tasks in home, school, and community settings, and include the following:

(1) Identification, assessment, and intervention.

(2) Adaptation of the environment and selection, design, and fabrication of assistive and orthotic devices to facilitate development and promote the acquisition of functional skills.

(3) Prevention or minimization of the impact of initial or future impairment, delay in development, or loss of functional ability.

Orthopedic impairment. A severe physical impairment that adversely affects a child's educational performance. That term includes congenital impairments such as club foot and absence of some member; impairments caused by disease, such as poliomyelitis and bone tuberculosis; and impairments from other causes such as cerebral palsy, amputations, and fractures or burns causing contractures.

Other health impairment. Limited strength, vitality, or alertness due to chronic or acute health problems that adversely affect a child's educational performance. Such impairments include heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, seizure disorder, lead poisoning, leukemia, diabetes, or attention deficit disorder.

Parent. The biological father or mother of a child; a person who, by order of a court of competent jurisdiction, has been declared the father or mother of a child by adoption; the legal guardian of a child; or a person in whose household a child resides, provided that such person stands in loco parentis to that child and contributes at least one-half of the child's support.

Parent counseling and training. A service to assist parents in understanding the special needs of their child's development and by providing them with information on child development and special education.

Personally identifiable information. Information that would make it possible to identify the infant, toddler, or child with reasonable certainty. Examples include name, parent's or guardian's name, address, social security number, or a list of personal characteristics.

Physical therapy. That term includes services to children (birth to age 21, inclusive) to address the promotion of sensorimotor function through enhancement of musculoskeletal status, neurobehavioral organization, perceptual and motor development, cardiopulmonary status, and effective environmental adaptation. Those services include the following:

(1) Screening, evaluation, and assessment to identify movement dysfunction.

(2) Obtaining, interpreting, and integrating information appropriate to program planning to prevent, alleviate, or compensate for movement

dysfunction and related functional problems.

(3) Providing individual and group services or treatment to prevent, alleviate, or compensate for movement dysfunction and related functional problems.

Primary referral source. Parents and the DoD Components, including child development centers, pediatric clinics, and newborn nurseries, that suspect an infant or toddler has a disability and brings the child to the attention of the EIP.

Psychological services. A service that includes the following:

(1) Administering psychological and educational tests and other assessment procedures.

(2) Interpreting test and assessment results.

(3) Obtaining, integrating, and interpreting information about a child's behavior and conditions relating to the learning.

(4) Consulting with other staff members, including service providers, to plan programs to meet the special needs of children, as indicated by psychological tests, interviews, and behavioral evaluations.

(5) Planning and managing a program of psychological services, including psychological counseling for children and parents, family counseling, consultation on child development, parent training, and education programs.

Public awareness program. Activities or print materials focusing on early identification of infants and toddlers with disabilities. Materials may include information prepared and disseminated by a military medical department to all primary referral sources and information for parents on the availability of early intervention services. Procedures to determine the availability of information on early intervention services to parents are also included in that program.

Qualified. A person who meets the DoD-approved or recognized certification, licensing, or registration requirements or other comparable requirements in the area in which the person provides special education or related services or early intervention services to an infant, toddler, or child with a disability.

Recreation. A related service that includes the following:

(1) Assessment of leisure activities.

(2) Therapeutic recreational activities.

(3) Recreational programs in schools and community agencies.

(4) Leisure education.

Regional director. The Director of a DoDDS region, or designee.

Rehabilitation counseling. Services provided by a rehabilitation counselor or other qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of the student with a disability.

Related services. Transportation and such developmental, corrective, and other supportive services as required to assist a child, aged 3 to 21, inclusive, with a disability to benefit from special education under the child's IEP. That term includes: speech therapy and audiology, psychological services, physical and occupational therapy, recreation, early identification and assessment of disabilities in children, counseling services, and medical services for diagnostic or evaluative purposes. The term also includes: rehabilitation counseling services, school health services, social work services in schools, and parent counseling. The sources for those services are school, community, and medical treatment facilities (MTFs).

School health services. Services provided by a qualified school nurse or other qualified person.

Separate facility. A school or a portion of a school, regardless of whether it is operated by the DoDDS, attended exclusively by children with disabilities.

Serious emotional disturbance. A condition confirmed by clinical evaluation and diagnosis and that, over a long period of time and to a marked degree, adversely affects educational performance, and exhibits one or more of the following characteristics:

(1) Inability to learn that cannot be explained by intellectual, sensory, or health factors.

(2) Inability to build or maintain satisfactory interpersonal relationships with peers and teachers.

(3) Inappropriate types of behavior under normal circumstances.

(4) A tendency to develop physical symptoms or fears associated with personal or school problems.

(5) A general pervasive mood of unhappiness or depression. Includes children who are schizophrenic, but does not include children who are socially maladjusted unless it is determined they are seriously emotionally disturbed.

Service coordination. Activities of a service coordinator to assist and enable an infant or toddler and the family to receive the rights, procedural safeguards, and services that are authorized to be provided under the DoD EIP. Those activities include the following: coordinating the performance of evaluations and assessments; assisting families to identify their resources, concerns, and priorities; facilitating and participating in the development, review, and evaluation of IFSPs; assisting in identifying available service providers; coordinating and monitoring the delivery of available services; informing the family of support or advocacy services; coordinating with medical and health providers and facilitating the development of a transition plan to preschool services.

Service provider. Any individual who provides services listed in an IEP or an IFSP.

Social work services in schools. A service that includes the following:

(1) Preparing a social or developmental history on an child with a disability.

(2) Counseling a child and the family on a group or individual basis.

(3) Working with those problems in a child's home, school, or community that adversely affect adjustment in school.

(4) Using school and community resources to enable a child to receive maximum benefit from the educational program.

Special education. Instruction and related services for which a child, aged 3 to 21, inclusive, becomes entitled when a CSC determines a child's educational performance is adversely affected by one or more disabling conditions.

(1) Special education is specially designed instruction, including physical education, which is provided at no cost to the parent or guardians to meet the unique needs of a child with a disability, including instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings.

(2) That term includes speech therapy or any other related service if the service consists of specially designated instruction, at no cost to the parents, to meet the unique needs of a child with a disability.

(3) The term also includes vocational education if it consists of specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability.

(4) *At no cost.* With regard to a child eligible to attend the DoDDS without paying tuition, specially designed instruction and related services are provided without charge. Incidental fees normally charged to nondisabled students or their parents as a part of the regular educational program may be imposed.

(5) *Physical education.* The development of the following:

(i) Physical and motor fitness.

(ii) Fundamental motor skills and patterns.

(iii) Skills in aquatics, dance, and individual and group games and sports, including intramural and lifetime sports.

(iv) A program that includes special physical education, adapted physical education, movement education, and motor development.

(6) *Vocational education.* Organized educational programs for the preparation of individuals for paid or unpaid employment or for additional preparation for a career requiring other than a baccalaureate or advanced degree.

Special instruction. That term includes the following:

(1) The design of learning environments and activities to promote acquisition of skills in a variety of developmental areas, including cognitive processes and social interaction.

(2) Curriculum planning, including the planned interaction of personnel, materials, time, and space, that leads to achieving the outcomes in an IEP or an IFSP

(3) Providing families with information, skills, and support to enhance skill development.

(4) Working with a child to enhance development and cognitive processes.

Specific learning impairment. A disorder in one or more of the basic psychological processes involved in understanding or in using spoken or written language that may manifest itself as an imperfect ability to listen, think, speak, read, write, spell, remember, or do mathematical calculations. The term includes such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term, commonly called, "specific learning disability," does not include learning problems that are primarily the result of visual, hearing, or motor disabilities; mental retardation; emotional disturbance; or environmental, cultural, or economic differences.

Speech and language impairments. A communication disorder, such as stuttering, impaired articulation, voice impairment, or a disorder in the receptive or expressive areas of language that adversely affects a child's educational performance.

Speech therapy. That related service includes the following:

(1) Identification of children with communicative or oropharyngeal disorders and delays in development of communication skills.

(2) Diagnosis and appraisal of specific speech or language impairments.

(3) Referral for medical or other professional attention to correct or habilitate speech or language impairments.

(4) Provision of speech and language services for the correction, habilitation, and prevention of communicative impairments.

(5) Counseling and guidance of children, parents, and teachers for speech and language impairments.

Transition services. That term means the following:

(1) A coordinated set of activities for a student that may be required to promote movement from early intervention, pre-school, and other educational programs into different educational settings or programs.

(2) For students 14 years of age and older, transition services are designed in an outcome-oriented process which promotes movement from school to post-school activities; including, post-secondary education, vocational training, integrated employment; and including supported employment, continuing and adult education, adult services, independent living, or community participation. The coordinated set of activities shall be based on the individual student's needs, considering the student's preferences and interests, and shall include instruction, community experiences, the development of employment and other post-school adult living objectives, and acquisition of daily living skills and functional vocational evaluation.

Transportation. A service that includes the following:

(1) Services rendered under the IEP of a child with a disability:

(i) Travel to and from school and between schools, including travel necessary to permit participation in educational and recreational activities and related services.

(ii) Travel in and around school buildings.

(iii) Specialized equipment, including special or adapted buses, lifts, and ramps, if required to provide transportation for a child with a disability.

(2) Transportation and related costs for early intervention services includes the cost of travel (e.g., mileage or travel by taxi, common carrier, or other means) and other costs (e.g., tolls and parking expenses) that are necessary to enable an eligible child and the family to receive early intervention services.

Traumatic brain injury. An acquired injury to the brain caused by an external physical force resulting in total or partial functional disability or psychosocial impairment that adversely affects educational performance. That term includes upon or closed head injuries resulting in mild, moderate, or severe impairments in one or more areas including cognition, language, memory, attention, reasoning, abstract thinking, judgment, problem solving, sensory, perceptual and motor abilities, psychosocial behavior, physical function, information processing, and speech. That term does not include brain injuries that are congenital or degenerative, or brain injuries that are induced by birth trauma.

Vision services. Services necessary to habilitate or rehabilitate the effects of sensory impairment resulting from a loss of vision.

Visual impairment. An impairment of vision that, even with correction, adversely affects a child's educational performance. That term includes both partially seeing and blind children.

§ 57.4 Policy.

It is DoD policy that:

(a) Eligible infants and toddlers with disabilities and their families shall be entitled to receive early intervention services consistent with Appendix A to this part.

(b) Eligible children with disabilities, aged 3 to 21, inclusive, shall be provided a FAPE in the least restrictive environment, consistent with Appendix B to this part.

(c) Parents of eligible infants, toddlers, and children with disabilities from birth to age 21, inclusive, shall be full participants in early intervention and special education services.

§ 57.5 Responsibilities.

(a) The Under Secretary of Defense for Personnel and Readiness (USD(P&R)) shall:

(1) Establish a NAP consistent with Appendix C to this part.

(2) Establish and chair, or designate a "Chair", of the DoD–CC on Early Intervention, Special Education, and MRS consistent with Appendix D to this part.

(3) Establish and chair, or designate a "Chair", of the DoD Inter-Component Coordinating Council (ICC) on Early Intervention consistent with Appendix E to this part.

(4) Ensure compliance with this part in the provision of early intervention services, special education, and related services through the DoD–CC in accordance with DoD Instruction

1342.14[6] and other appropriate guidances.

(b) The USD(P&R), in consultation with the General Counsel of the Department of Defense (GC, DoD) and the Secretaries of the Military Departments, shall:

(1) Ensure that eligible infants and toddlers with disabilities and their families are provided early intervention services under IDEA, 20 U.S.C. 921 *et seq.*, and 20 U.S.C. 1400 *et seq.*

(2) Ensure the coordination of early intervention, special education, and related services.

(3) Ensure the development of a DoD-wide comprehensive child-find system to identify eligible infants, toddlers, and children age birth to age 21, inclusive, under 20 U.S.C. 921 and 1400 who may require early intervention or special education services.

(4) Ensure that DoD personnel are trained to provide the mediation services specified in Appendix F to this part.

(5) Ensure that transition services are available to promote movement from early intervention, preschool, and other educational programs into different educational settings and postsecondary environments.

(6) Ensure that DoD personnel who provide services (e.g., child care, medical care, and recreation) to infants and toddlers and their families are participants in a comprehensive inter-Component system for early intervention services.

(7) Assign functions and geographic regions of responsibility to the Military Departments for providing MRS and early intervention services.

(8) Ensure that the Military Departments deliver the following:

(i) A comprehensive, coordinated and multidisciplinary program of early intervention services for eligible infants and toddlers with disabilities.

(ii) MRS for eligible children with disabilities, age 3 to 21, inclusive.

(9) Ensure that qualified personnel participate in providing transition services for eligible infants, toddlers, and children with disabilities from birth to age 21, inclusive.

(10) Ensure the development and implementation of a comprehensive system of personnel development for the DoDDS and the Military Departments. That system shall include professionals, paraprofessionals, and primary referral source personnel in the areas of early intervention, special education, and MRS. That system may include the following:

(i) Implementing innovative strategies and activities for the recruitment and retention of providers of early intervention services, special education, and MRS.

(ii) Ensuring that personnel requirements are established consistent with recognized certification, licensing, registration, or other comparable requirements for personnel providing early intervention services, special education, or MRS.

(iii) Ensuring that training is provided in and across disciplines.

(iv) Training providers of early intervention services, special education, and MRS to work overseas.

(11) Develop procedures to compile data on the numbers of eligible infants and toddlers with disabilities and their families in need of early intervention services in accordance with 32 CFR parts 285 and 310. Those data elements shall include the following:

(i) The number of infants and toddlers and their families served.

(ii) The types of services provided.

(iii) Other information required to evaluate the implementation of early intervention programs (EIPs).

(12) Resolve disputes in the DoD Components arising under Appendix A to this part.

(c) The Secretaries of the military departments shall:

(1) Provide MRS for eligible children with disabilities, aged 3 to 21, inclusive.

(2) Plan, develop, and implement a comprehensive, coordinated, intra-Component, and community-based system of early intervention services for eligible infants and toddlers with disabilities and their families.

(3) Design and implement activities to ensure compliance through technical assistance and program evaluation for early intervention and MRS.

(d) The Director, Department of Defense Education Activity (DoDEA), shall ensure that the Director DoDDS, does the following:

(1) Ensures that eligible children with disabilities, aged 3 to 21, inclusive, are provided a FAPE.

(2) Ensures that the educational needs of children with and without disabilities are met comparably, consistent with Appendix B to this part.

(3) Ensures that educational facilities and services operated by the DoDDS for children with and without disabilities are comparable.

(4) Maintains records on special education and related services provided to eligible children with disabilities, aged 3 to 21, inclusive, consistent with 32 CFR part 310.

(5) Provides any or all special education and related services required by a child with a disability, aged 3 to 21, inclusive, other than those furnished by the Secretaries of the Military Departments. The Director, DoDDS, may act through inter-agency, intra-agency, and inter-service arrangements, or through contracts with private parties when funds are authorized and appropriated.

(6) Participates in the development and implementation of a comprehensive system of personnel development.

(7) Undertakes activities to ensure compliance by the DoDDS with this part through monitoring, technical assistance, and program evaluation of special education and those related services provided by the DoDDS.

(e) The Director, Defense Office of Hearings and Appeals (DOHA) shall ensure impartial due process hearings are provided consistent with Appendix F to this part.

§ 57.6 Procedures.

(a) The procedures for early intervention services for infants and toddlers with disabilities and their families are prescribed in Appendix A to this part.

(b) The procedures for educational programs and services for children with disabilities, aged 3 to 21, inclusive, are prescribed in Appendix B to this part.

(c) The procedures for conducting hearings are prescribed in Appendix F to this part.

Appendix A to Part 57—Procedures for the Provision of Early Intervention Services for Infants and Toddlers With Disabilities and Their Families

A. Requirements for an Early Intervention Program (EIP)

(1) All eligible infants and toddlers with disabilities from birth through age 2 and their families shall receive early intervention services, as follows:

a. In school years 1991 through 1994, the Department of Defense planned and continues to develop a comprehensive, coordinated, multidisciplinary program of early intervention services for infants and toddlers with disabilities among DoD entities involved in providing such services.

b. In school year 1994 through 1995, the Department of Defense shall implement the following program components described in paragraph A.1.a., of this Appendix:

(1) Multidisciplinary assessments.

(2) IFSPs.

(3) Service coordination.

C. In school year 1995 through 1996, the Department of Defense will implement the program described in paragraph A.1.a. of this Appendix.

2. Early intervention services shall be provided in the natural environment.

[6] See footnote 1 to § 57.1(b).

3. Parents of infants and toddlers with disabilities are to be full and meaningful participants in the EIP.

B. Military Department Responsibilities

Each Military Department shall develop and implement in its assigned geographic area a system to provide for the following:

1. A comprehensive Child-Find procedure coordinated with the DoDDS Child-Find system and primary referral sources such as the child development center and the pediatric clinic.

2. Administration and supervision of EIPs and services.

3. Identification of available resources and coordination with those resource providers, including the DoD Components, who routinely provide services to infants and toddlers without disabilities and their families.

4. Procedures to provide timely services for infants and toddlers with disabilities and their families.

5. Procedures to resolve inter-Component disputes regarding the delivery of early intervention services.

6. Procedures to collect and report data reflecting the number of infants and toddlers and their families served, the types of services provided, and other information required by the USD(P&R) implementation of early intervention services.

7. Multidisciplinary, comprehensive, and functional assessment of the unique strengths and needs of infants or toddlers and the identification of services to meet those needs.

8. Procedures for a family-directed assessment to determine resources, priorities, and concerns of a family and to identify services necessary to enhance a family's capacity to meet the child's needs.

9. An IFSP that details the early intervention services and the coordination of those services.

10. A public awareness program focusing on early identification of infants and toddlers with disabilities.

11. A central directory that includes a description of the early intervention services and other relevant resources available in each military community overseas.

12. Information to parents about their EIP procedural safeguards.

13. Establishment of ICCs at appropriate levels. Memberships shall include parents and the DoD Components who are involved in the delivery of early intervention services.

14. Policies and procedures for the establishment and maintenance of standards to ensure that personnel necessary to carry out the EIP are prepared and trained.

C. Eligibility

Infants and toddlers with disabilities from birth through age 2 are eligible for early intervention services because they meet one of the following criteria:

1. The child is experiencing a developmental delay as measured by diagnostic instruments and procedures of 25 percent (or 2 standard deviations below the mean) in one or more areas, or 20 percent (or 1½ standard deviations below the mean) in two or more of the following areas of development; cognitive, physical, communication, social or emotional, or adaptive.

2. The child has a diagnosed physical or mental condition which has a high probability of resulting in developmental delay; e.g., chromosomal disorders or genetic syndromes.

D. IFSP

1. Each military medical department shall develop and implement procedures to ensure that an IFSP is developed by a multidisciplinary team including the parents of each infant or toddler with a disability who meets the eligibility criteria in section C.1. of this Appendix.

2. Meetings to develop and review the IFSP must include the following participants:

a. The parent or parents of the child.

b. Other family members, as requested by the parent, if feasible.

c. An advocate outside of the family if the parent requests that person's participation.

d. The EIP services coordinator who has worked with the family since the initial referral of the child or who has been designated as "responsible for the implementation of the IFSP."

e. The person(s) directly involved in conducting the evaluations and assessments.

f. As appropriate, persons who will provide services to the child or family.

3. if a person listed in section D.2. of this Appendix, is unable to attend a meeting, arrangements must be made for the person's involvement through other means, including the following:

a. Participating in a telephone conference call.

b. Having a knowledgeable representative attend the meeting.

c. Making pertinent records available at the meeting.

4. The IFSP shall be written within a reasonable time after assessment and shall contain the following:

a. A statement of the child's current developmental levels including physical, cognitive, communication, social or emotional, and adaptive behaviors based on acceptable objective criteria.

b. A statement of the family's resources, priorities, and concerns relating to enhancing the child's development.

c. A statement of the major outcomes expected to be achieved for the child and the family. Additionally,the statement shall contain the criteria,procedures,and timelines used to determine the degree to which progress toward achieving the outcomes is being made and whether modification or revision of the outcomes and services are necessary.

d. A statement of the specific early intervention services necessary to meet the unique needs of the child and the family including the frequency, intensity, and method of delivering services.

e. A statement of the natural environments in which early intervention services shall be provided.

f. The projected dates for initiation of services and the anticipated duration of those services.

g. The name of the EIP service coordinator.

h. The steps to be taken supporting the transition of the toddler with a disability to reschool or other services.

5. The IFSP shall be evaluated at least once a year and the family shall be provided an opportunity to review the plan at 6-month intervals (or more frequently, based on the child and family needs).

6. The contents of the IFSP shall be explained to the parents and an informed, written consent from the parents shall be obtained before providing early intervention services described in that plan.

7. With the parent's consent, early intervention services may begin prior to completion of the evaluation and assessment when it has been determined by a multidisciplinary team that a service is needed immediately by the child and/or the child's family. An IFSP must be developed prior to the start of services and the remaining assessments must be completed in a timely manner.

8. If a parent does not provide consent for participation in all early intervention services, the services shall be provided for those interventions to which a parent does give consent.

E. Procedural Safeguards in the EIP

1. Parents of infants and toddlers with disabilities are afforded the following procedural safeguards to ensure that their children receive appropriate early intervention services:

a. Timely administrative resolution of parental complaints, including hearing procedures in Appendix F to this part.

b. The right to confidentiality of personally identifiable information under 32 CFR part 310.

c. The right to written notice and consent to the release of relevant information outside the Department of Defense.

d. The right to determine whether they, their child, or other family members shall accept or decline any early intervention services without jeopardizing the other early intervention services.

e. The opportunity to examine records relating to assessment, screening, eligibility determinations, and the development and implementation of the IFSP.

f. The right to prior written notice when the EIP multidisciplinary team proposes, or refuses to initiate or change the identification, evaluation, placement, or provision of early intervention services to the infant or toddler with a disability.

g. The right to prior written notice in their native language, unless it clearly is not feasible to do so, which informs them of all procedural safeguards.

h. During the pendency of any proceeding or action involving a complaint, unless the EIP and the parents otherwise agree, the child shall continue to receive the appropriate early intervention services currently being provided, or, if applying for initial services, shall receive the services not in dispute.

2. Parents shall be advised of their rights to due process, as defined in Appendix F to this part.

Appendix B to Part 57—Procedures for Educational Programs and Services for Children With Disabilities, Aged 3 to 21, Inclusive

A. Identification and Screening

It is the responsibility of school officials of the DoDDS to locate, identify, and with the consent of a child's parent, evaluate all children who are eligible to enroll in the DoDDS under 32 CFR part 71 who may require special education and related services.

1. Procedures for Identification and Screening. The DoDDS officials shall conduct the following activities to determine if a child needs special education and related services:

a. Screen educational records.

b. Screen students using system-wide or other basic skill tests in the areas of reading, math, and language arts.

c. Screen school health data such as reports of hearing, vision, speech, or language tests and reports from healthcare personnel regarding the health status of a child.

d. Analyze school records to obtain pertinent information regarding the basis for suspensions, exclusions, withdrawals, and disciplinary actions.

e. In cooperation with the Military Departments, conduct on-going child-find activities and publish, periodically, any information, guidelines, and direction regarding child-find activities for eligible children with disabilities, aged 3 to 21, inclusive.

f. Coordinate the transition of children from early intervention to preschool with the Military Services.

2. Referral of a Child for Special Education or Related Services. The DoDDS officials, MRS providers, or others who suspect that a child has a possible disabling condition shall refer that child to the CSC.

B. Assessment and Evaluation

Any eligible child who is referred to a CSC shall receive a full and comprehensive diagnostic evaluation of educational needs. An evaluation shall be conducted before an IEP is developed or placement is made in a special education program.

1. *Procedures for Assessment and Evaluation.* A CSC shall ensure that the following elements are included in a comprehensive assessment and evaluation of a child:

a. Assessment of visual and auditory acuity.

b. A plan to assess the nature and extent of the disability. A child shall be assessed in all areas related to the suspected disability. When necessary, the assessment plan shall include the following:

(1) Assessment of the level of functioning academically, intellectually, emotionally, socially, and in the family.

(2) Observation in an educational environment.

(3) Assessment of physical status including perceptual and motor abilities.

(4) Assessment of the need for transition services for students 14 years and older, the acquisition of daily living skills, and functional vocational assessment.

c. The involvement of parents, as provided in this part.

d. The use of all locally available community, medical, and school resources to accomplish the assessment. At least one specialist with knowledge in the area of the suspected disability shall be a member of the multidisciplinary assessment team.

e. The requirement that each assessor prepare an individual assessment report that describes the instruments and techniques used, the results of the testing, and the relationship of those findings to educational functioning.

f. The inclusion of a description of the problem area constituting the basis for an MRS referral.

2. *Standards for Assessment Selection and Procedures.* All DoD elements, including the CSC and MRS providers, shall ensure that assessment materials and evaluation procedures comply, as follows:

a. Selected and administered so as not to be racially or culturally discriminatory.

b. Administered in the native language or mode of communication of the child, unless it clearly is not feasible to do so.

c. Validated for the specific purpose for which they are used or intended to be used.

d. Administered by trained personnel in compliance with the instructions of the testing instrument.

e. Administered such that no single procedure is the sole criterion for determining an appropriate educational program for a child with a disability.

f. Selected to assess specific areas of educational needs and strengths and not merely to provide a single general intelligence quotient.

g. Administered to a child with impaired sensory, motor, or communication skills so that the results reflect a child's actual ability or level of achievement, and simply not the impaired skill itself.

3. *Determination of Eligibility for Special Education and Related Services.* The CSC shall be convened to determine the eligibility of a child for special education and related services. The CSC shall do the following:

a. Ensure that the full comprehensive evaluation of a child is accomplished by a multidisciplinary team. The team shall be comprised of teachers or other specialists with knowledge in the area of the suspected disability.

b. Meet as soon as possible after a child has been assessed to determine the eligibility of the child for services.

c. Afford the child's parents the opportunity to participate in the CSC eligibility meeting.

d. Issue a written eligibility report that contains the following:

(1) A description of the nature of the child's disabling condition.

(2) A synthesis of the formal and informal finding of the multidisciplinary assessment team as they relate to the child's current academic progress.

(3) A summary of information from the parents, the child, or other persons having significant previous contact with the child.

(4) A determination of eligibility statement.

(5) A list of the educational areas affected by a child's disability and a description of a child's educational needs.

4. Reevaluation for eligibility for Special Education and Related Services. School officials shall provide a comprehensive reevaluation of a child with a disability every 3 years, or more frequently, if conditions warrant. The scope and nature of the comprehensive reevaluation shall be determined individually based on a child's performance, behavior, and needs at the time of the reevaluation.

C. Individualized Education Program (IEP)

The DoDDS officials shall ensure that the CSC develops and implements an IEP for each child with a disability who is enrolled in the DoDDS or is placed in another institution by the DoDDS.

1. *The CSC Meeting for the Development and Implementation of an IEP.* The CSC shall establish and convene at meeting to develop, review, or revise the IEP of a child with a disability. The meeting shall be scheduled as soon as possible following a determination by the school or regional CSC that the child is eligible for special education and related services. The meeting participants shall, minimally, include the following:

a. A principal or school representative other than the child's teacher who is qualified to provide or supervise the provision of special education.

b. The child's teacher.

c. A special education teacher.

d. One or both of the child's parents.

e. The child, if appropriate.

f. For a child with a disability who has been evaluated for the first time, a representative of the evaluation team who is knowledgeable about the evaluation procedures used and is familiar with the results of the evaluation.

g. Other individuals invited at the discretion of the parent or school.

2. *Requirements for the Development of the IEP. The CSC shall prepare the IEP with the following:*

a. A statement of the child's present levels of educational performance.

b. A statement of annual goals including short-term instructional objectives.

c. Objective criteria for determining, at least annually, whether the educational objectives are being achieved.

d. A statement of the physical education program provided in one of the following settings:

(1) In the regular education program.

(2) In the regular education program with adaptations, modifications, or the use of assistive technology.

(3) Through specially designed instruction based on the goals and objectives included in the IEP.

e. A statement of the transition services beginning at age 14 and annually, thereafter. When appropriate, include a statement of the inter-Agency responsibilities or linkages (or both) before the student leaves the school setting. If a specially designed instructional program is required, include the goals and objectives in the IEP.

f. A statement of special transportation requirement.

g. A statement of the amount of time per week that each special education and related service shall be provided to the child.

h. The extent to which the child shall participate in regular educational programs, including the following:

(1) The projected date for the initiation and the anticipated length of IEP activities and services.

(2) Any statements requiring an adjusted school day or an extended school year program.

i. A statement of the vocational education program for secondary students. If a specially designed instructional program is required, the necessary goals and objectives in the IEP shall be included.

3. *Requirements for the Implementation of the IEP.* The DoDDS CSC shall:

a. Obtain parental agreement and signature before implementation of the IEP.

b. Provide a copy of the child's IEP to the parents.

c. Ensure that the IEP is in effect before a child receives special education and related services.

d. Review and revise the IEP for each child at least annually in a CSC meeting.

e. Accept a child's current IEP when he or she transfers to the DoDDS provided that the CSC of the gaining school or the regional CSC does the following:

(1) Notifies and obtains consent of the parents to the use the current IEP and all elements contained in it.

(2) Involves the local DoD Component responsible for the delivery of the MRS of the medical requirements in the IEP.

(3) Initiates a CSC meeting to revise the current IEP.

(4) If necessary, initiates an evaluation of the child.

f. Afford the child's parents the opportunity to participate in every CSC meeting to determine their child's initial or continuing eligibility for special education and related services, or to prepare or change the child's IEP or to determine or change the child's placement.

g. Ensure that at least one parent understands the special education procedures including the due process procedures described in Appendix F of this part and the importance of the parent's participation in those processes. School officials will use devices or hire interpreters or other intermediaries who might be necessary to foster effective communications between the school and the parent concerning the child.

h. Provide special education and related services, in accordance with the IEP. The Department of Defense and its constituent elements and personnel are not accountable if a child does not achieve the growth projected in the IEP.

i. Ensure that all provisions developed for any child entitled to an education by the DoDDS are fully implemented in schools or in non-DoDDS schools or facilities including those requiring special facilities, other adaptations, or assistive devices.

D. Placement Procedures and Least Restrictive Environment

1. A child shall not be placed by the DoDDS in any special education program unless the CSC has developed an IEP. If a child with a disability is applying for initial admission to a school, the child shall enter on the same basis as a child without a disability. However, a child with a disability and with the consent of a parent and school officials may receive an initial placement in a special education program under procedures listed in paragraph C.3.e. of this Appendix.

2. A placement decision requires the following:

a. A parent consent to the placement before actual placement of the child, except as otherwise provided herein.

b. Delivery of educational instruction and related services in the least restrictive environment. To the maximum extent, a child with a disability should be placed with children who are not disabled. Special classes, separate schooling, or other removal of a child with a disability from the regular education environment shall occur only when the nature or severity of the disability is such that the child cannot be educated satisfactorily in regular cases with the use of supplementary aids and services.

c. The CSC to base placements on the IEP and to review the IEP at least annually.

d. A child shall participate, to the maximum extent, in school activities including meals, assemblies, recess periods, and field trips with children who are not disabled.

e. Consideration of factors affecting the child's well-being including the effects of separation from parents.

f. A child attends a DoDDS school that is located as close as possible to the residence of the parent who is sponsoring the child's attendance. Unless otherwise required by the IEP, the school should be the same school that the child would have attended had he or she not been disabled.

E. Children With Disabilities Who Are Placed in a Non-DoD School or Facility

Children with disabilities who are eligible to receive a DoDDS education, but are placed in a non-DoDDS school or facility by the DoDDS, shall have all the rights of children with disabilities who are enrolled in a DoDDS school. A child with a disability may be placed in a non-DoDDS school or facility only if required by the IEP.

1. Requirements For a Non-DoDDS School or Facility Placement

a. Placement in a non-DoDDS school or facility shall be made under the host-nation requirements.

b. Placement in a non-DoDDS school or facility is subject to all treaties, Executive agreements, and status of forces agreements between the United States and the host nations, and all DoD and DoDDS regulations.

c. If the DoDDS places a child with a disability in a non-DoDDS school or facility as a means of providing special education and related services, the program of that institution including nonmedical care and room and board, as in the child's IEP, must be provided at no cost to the child or the child's parents. The DoDDS or the responsible DoD Component shall pay the costs in accordance with DoD Instruction 1010.13.[1]

d. Local school officials shall initiate and conduct a meeting to develop an IEP for the child before placement. A representative of the non-DoDDS school or facility should attend the meeting. If the representative cannot attend, the DoDDS officials shall communicate in other ways to ensure participation including individual or conference telephone calls. The IEP must meet the following standards:

(1) Be signed by an authorized DoDDS official before it becomes valid.

(2) Include a determination that the DoDDS does not currently have or cannot reasonably create an educational program appropriate to meet the needs of the child with a disability.

(3) Include a determination that the non-DoDDS school or facility and its educational program and related services conform to the requirements of this Instruction.

2. *Cost of Tuition For Non-DoDDS School or Facility.* The Department of Defense is not authorized to fund a non-DoDDS placement unless it is directed by the DoDDS Regional Director in coordination with the Director, DoDDS; or it is directed by an impartial hearing officer or court of competent jurisdiction. A valid IEP must document the necessity of the placement in a non-DoDDS school or facility.

F. Procedural Safeguards for Children and Parents

Parents of children with disabilities are afforded procedural safeguards to ensure that their children receive a free public education consistent with Appendix F of this part.

1. Notice of Procedural Safeguards

a. Parents shall be provided a written notice in a reasonable time before one of the following:

(1) Receiving a proposal to initiate or change the identification, evaluation, or educational placement of the child or the provision of free public education to the child.

(2) Receiving refusal from the DoDDS to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free public education.

b. The notice shall inform the parent of the following:

(1) Parental procedural rights detailed in Appendix F of this part.

(2) A description of the action proposed or refused by the DoDDS with a brief explanation for the decision.

c. The notice shall be provided so as to ensure the parent's understanding. That may be achieved by using simplified language, delivering the notice in the parent's native language, or using an interpreter or other person selected by the parents.

2. Parental Consent

a. The consent of a parent of a child with a disability or suspected of having a disability shall be obtained before any of the following:

(1) Initiation of formal evaluation procedures.

(2) Initial educational placement.

(3) Change in educational placement.

b. If the parent refuses consent to any formal evaluation or initial placement in a special education program, the DoDDS or the parent may do the following:

(1) Request a conference between the school and parents.

(2) Request mediation.

(3) Initiate an impartial due process hearing under Appendix F of this part to show cause as to why an evaluation or placement in a special education program should or should not occur without such consent. If the hearing officer sustains the DoDDS position in the impartial due process hearing, the DoDDS may evaluate or provide special education and related services to the child without the consent of a parent, subject to the further exercise of due process rights.

3. Independent Evaluation

a. A parent is entitled to an independent evaluation at the expense of the DoDDS if the parent disagrees with the DoDDS evaluation of the child and successfully challenges the evaluation in an impartial due process hearing. An independent evaluation provided at the DoDDS expense must do the following:

(1) Conform to the requirements of this part.

(2) Be conducted, when possible, in the area where the child resides.

(3) Follow all DoD Regulations regarding the host nation.

(4) Meet DoD standards governing persons qualified to conduct an educational evaluation including an evaluation for MRS.

b. If the final decision rendered in an impartial due process hearing sustains the DoDDS evaluation, the parent has the right to an independent evaluation, but not at the DoDDS expense.

c. The DoDDS, the CSC, and a hearing officer appointed under this part shall consider any evaluation report presented by a parent.

4. Access to Records

The parents of a child with a disability shall be afforded an opportunity to inspect and review educational records concerning the identification, evaluation, and educational placement of the child, and the provision of a free public education for the child.

5. Due Process Rights

a. The parent of a child with a disability or the DoDDS has the opportunity to file a written petition for an impartial due process hearing at the DoDDS expense under Appendix F of this part. The dispute may concern issues affecting a particular child's identification, evaluation, or placement, or the provision of a free, appropriate, public education.

b. While an impartial due process hearing or judicial proceeding is pending, unless the DoDDS and a parent of the child agree otherwise, the child shall remain in the present educational setting, subject to the disciplinary procedures prescribed in section H of this Appendix.

6. Dispute Resolution—Other Complaints

A parent, teacher, or other person covered by this part may file a written complaint concerning any aspect of this part that is not a proper subject for adjudication by a due process hearing officer, in accordance with DSR 2500.10.[2]

G. Confidentiality of Records

The DoDDS officials shall maintain all student records in accordance with 32 CFR part 310.

H. Disciplinary Procedures

All regular disciplinary rules and procedures applicable to children receiving educational instruction in the DoDDS shall apply to children with disabilities who violate school rules and regulations or disrupt regular classroom activities, subject to the following provisions:

1. Before suspending or expelling a child with a disability, the CSC or, in the case of a child with a disability in a non-DoDDS school, authorized DoDDS officials, shall determine the following:

a. Whether the behavioral conduct is the result of the child's disability.

b. If any change in the educational placement is needed.

2. If it is determined that the child's conduct results in whole or part from the disability, the child may not be subject to any regular disciplinary rules and procedures and the following procedures must be followed:

a. The child's parents shall be notified of the right to have an IEP meeting before any change in the child's educational placement.

b. The CSC or authorized DoDDS officials shall ensure that a meeting is held to determine the appropriate educational placement for the child in consideration of the child's conduct.

3. A child with a disability may be suspended on an emergency basis when it reasonably appears that the child's behavior may endanger the health, welfare, or safety of self or any other child, teacher, or school personnel. The following conditions apply:

a. The child's parents shall be notified immediately of that suspension and of the time, purpose, and location of the CSC meeting and of their right to attend the meeting.

b. That suspension remains in effect only for the duration of the emergency.

4. If it is determined that the child requires a change in educational placement, the CSC or, in the case of a child with a disability in a non-DoDDS school, authorized DoDDS officials shall ensure that a meeting is held to determine the appropriate educational placement for the child in consideration of the child's conduct.

Appendix C to Part 57—The National Advisory Panel (NAP) on the Education of Dependents With Disabilities

A. Membership

The NAP shall meet as needed in publicly announced, accessible meetings open to the general public and shall comply with DoD Directive 5105.4.[1] The NAP members, appointed by the Secretary of Defense, or designee, shall include at least one representative from each of the following groups:

1. Persons with disabilities.

2. The DoDDS special education teachers.

3. The DoDDS regular education teachers.

4. Parents of children, aged 3 to 21, inclusive, who are receiving special education from the DoDDS.

5. The staff personnel of the DoDDS headquarters.

6. Special education program managers from the DoDDS field activities.

7. Representatives of the Military Departments and overseas commands, including providers of related services.

8. Providers of the DoD early intervention services.

9. Other appropriate persons.

B. Activities

1. The NAP shall perform the following activities:

a. Review information regarding improvements in service provided to children with disabilities, aged 3 to 21, inclusive, in the Department of Defense.

b. Receive and consider comments from parents, students, professional groups, and individuals with disabilities.

c. When necessary establish committees for short-term purposes comprised of representatives from parent, student, professional groups, and individuals with disabilities.

d. Review the findings of fact and decisions of each impartial due process hearing conducted under Appendix F to this part.

e. Assist in developing and reporting such information and evaluations as may assist the Department of Defense.

f. Make recommendations based on program and operational information for changes in policy and procedures and in the budget, organization, and general management of the special education program.

g. Comment publicly on rules or standards regarding the education of children with disabilities, aged 3 to 21, inclusive.

h. Perform such other tasks as may be requested by the USD(P&R) or the Director, DoDDs.

2. The NAP members shall serve under appointments that shall be for a term not to exceed 3 years.

C. Reporting Requirements

Submit an annual report of the NAP's activities and suggestions to the USD(P&R) and the Director, DoDDS, by July 31 of each year. That report is exempt from formal review and licensing under section E. of DoD Instruction 7750.7.[2]

Appendix D to Part 57—DoD Coordinating Committee on Early Intervention, Special Education, and Medically Related Services

A. Committee Membership

The committee shall meet at least twice yearly to facilitate collaboration in the provision of early intervention, special education, and MRS in the Department of Defense. The committee shall consist of the following members:

1. A representative of the USD(P&R) or designee, who shall serve as the Chair.

2. Representatives of the Secretaries of the Military Departments.

3. Representatives of the Assistant Secretary of Defense (Health Affairs) (ASD(HA)).

4. Representatives from the DoD school systems (domestic and overseas).

5. Representatives from the GC, DoD.

B. Responsibilities

1. Advise and assist the USD(P&R) in the performance of his or her responsibilities.

2. At the direction of the USD(P&R), advise and assist the Military Departments, and the DoD school systems (overseas and domestic) in the coordination of services among

[1] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal, Springfield, VA 22161.

[2] Copies of the appropriate forms are available at every school office.

[1] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

[2] See footnote 1 to section A. of this Appendix.

providers of early intervention, special education, and MRS.

3. Ensure compliance in the provision of early intervention services for infants and toddlers and special education and related services for children aged 3 to 21, inclusive.

4. Oversee the coordination of early intervention, special education, and related services.

5. Review the recommendations of the NAP and the Early Intervention ICC to identify common concerns, ensure coordination of effort, and forward issues requiring resolution to the USD(P&R).

6. Promote the coordination of services and information sharing among the providers of early intervention, special education, and MRS.

7. Assist in the coordination of assignments of sponsors of children with disabilities who are or who may be eligible for special education and MRS in the DoDDS or the EIP through the Military Departments.

Appendix E to Part 57—DoD Inter-Component Coordinating Council (ICC) on Early Intervention

A. Committee Membership

The USD(P&R) will appoint members to the ICC. The Council shall meet at least yearly in publicly announced, open meetings that are accessible to the general public and shall comply with DoD Directive 5105.4.[1] The Council shall be comprised of the following:

1. Parents. At least 20 percent of the members shall be parents with infants or toddlers with disabilities or children aged 12 or younger with disabilities, with knowledge of, or experience with, programs for infants and toddlers with disabilities. At least one such member shall be a parent of an infant or toddler or a child aged 6 or younger.

2. Representatives of the Surgeons General of the Military Departments.

3. Representatives of the family support programs of the Military Departments.

4. Representatives from the ASD(HA)

5. Representative(s) from the DoDDS.

6. A representative from the GC, DoD.

B. Responsibilities

1. Advise and assist the Military medical Departments in the performance of their responsibilities, particularly the identification of appropriate resources and Agencies for providing early intervention services and the promoting of inter-Component agreements.

2. Advise and assist the DoDDS on the transition of toddlers with disabilities to preschool services.

3. Identify strategies to address areas of conflict, overlap, duplication, or omission of early intervention services.

4. Review policy memoranda on effective inter-Department and inter-Component collaboration.

5. Review reports of technical assistance and monitoring activities and make recommendations to improve the policies, procedures, programs, and delivery of early intervention services.

6. Make recommendations based on program and operational information for changes in the policy, procedures, budget, organization, and general management of the EIPs.

7. Provide advice and technical assistance in the establishment, membership, and operation of installation or command level ICCs.

8. When necessary, establish committees for short-term purposes comprised of parents of children with disabilities, service providers, and representatives of professional groups.

9. Submit an annual report of its activities and suggestions to the USD(P&R) by July 31 of each year. That report is exempt from formal review and licensing under section E. of DoD 7750.7.[2]

C. Procedures

1. The USD(P&R) shall nominate and select all members to the ICC to include those listed in paragraph A.1 of this Appendix.

2. Appointments shall be for a term not to exceed 3 years except for DoD personnel who are not representing the parent category of membership.

3. The USD(P&R), or designee, shall call and conduct the meeting of the Council.

Appendix F to Part 57—Mediation and Hearing Procedures

A. Purpose

This Appendix establishes requirements for the resolution of conflicts through mediation and impartial due process hearings. Parents of infants, toddlers, and children who are covered by this part and, as the case may be, the cognizant Military Department or the DoDDS are afforded impartial mediation and/or impartial due process hearings and administrative appeals concerning the provision of early intervention services, or the identification, evaluation, educational placement of, and the FAPE provided to, such children by the Department of Defense, in accordance with 20 U.S.C., § 921 *et seq.* and 20 U.S.C., § 1400 *et seq.*

B. Mediation

1. Mediation may be initiated by either a parent or, as appropriate, the Military Department concerned, or the DoDDS to resolve informally a disagreement on the early intervention services for an infant or toddler or the identification, evaluation, educational placement of, or the FAPE provided to, a child aged 3 to 21, inclusive. The cognizant Military Department, rather than the DoDDS, shall participate in mediation involving early intervention services. Mediation shall consist of, but not be limited to, an informal discussion of the differences between the parties in an effort to resolve those differences. The parents and the appropriate school or Military Department officials may attend mediation sessions.

2. Mediation must be conducted, attempted, or refused in writing by a parent of the infant, toddler, or child whose early intervention or special education services (including related services) are at issue before a request for, or initiation of, a formal due process hearing authorized by this Appendix. Any request by the DoDDS or the Military Department for a hearing under this Appendix shall state how that requirement has been satisfied. No stigma may be attached to the refusal of a parent to mediate or to an unsuccessful attempt to mediate.

C. Hearing Administration

1. The Defense Office of Hearings and Appeals (DOHA) shall have administrative responsibility for the proceedings authorized by sections D. through G. of this Appendix.

2. This Appendix shall be administered to ensure that the findings, judgments, and determinations made are prompt, fair, and impartial.

3. Impartial hearing officers who shall be DOHA Administrative Judges, shall be appointed by the Director, DOHA, and shall be attorneys in good standing of the bar of any State, the District of Columbia, or a territory or possession of the United States who are independent of the DoDDS or the Military Department concerned in proceedings conducted under this Appendix. A parent shall have the right to be represented in such proceedings, at no cost to the Government, by counsel, and by persons with special knowledge or training with respect to the problems of individuals with disabilities. The DOHA Department counsel normally shall appear and represent the DoDDS in proceedings conducted under this

[1] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

[2] See footnote 1 to section A. of this Appendix.

Appendix, when such proceedings involve a child aged 3 to 21, inclusive. When an infant or toddler is involved, the Military Department responsible under this Instruction for delivering early intervention services shall either provide its own counsel or request counsel from DOHA.

D. Hearing Practice and Procedure

1. Hearing

a. Should mediation be refused or otherwise fail to resolve the issues on the provision of early intervention services to an infant or toddler or the identification or evaluation of such an individual, the parent may request and shall receive a hearing before a hearing officer to resolve the matter. The parents of an infant or toddler and the Military Department concerned shall be the only parties to a hearing conducted under this enclosure.

b. Should mediation be refused or otherwise fail to resolve the issues on the provision of a FAPE to a child with a disability, aged 3 to 21, inclusive, or the identification, evaluation, or educational placement of such an individual, the parent or the school principal, on behalf of the DoDDS, may request and shall receive a hearing before a hearing officer to resolve the matter. The parents of a child aged 3 to 21, inclusive, and the DoDDS shall be the only parties to a hearing conducted under this enclosure.

c. The party seeking the hearing shall submit a written request, in the form of a petition, setting forth the facts, issues, and proposed relief, to the Director, DOHA. The petitioner shall deliver a copy of the petition to the opposing party (i.e., the parent or the school principal, on behalf of the DoDDS, or the military MTF commander, on behalf of the Military Department), either in person or by first-class mail, postage prepaid. Delivery is complete upon mailing. When the DoDDS or the Military Department petitions for a hearing, it shall inform the other parties of the deadline for filing an answer under paragraph D.1.c. of this section and shall provide the other parties with a copy of this appendix.

d. An opposing party shall submit an answer to the petition to the Director, DOHA, with a copy to the petitioner, within 15 calendar days of receipt of the petition. The answer shall be as full and complete as possible, addressing the issues, facts, and proposed relief. The submission of the answer is complete upon mailing.

e. Within 10 calendar days after receiving the petition, the Director, DOHA, shall assign a hearing officer, who then shall have jurisdiction over the resulting proceedings. The Director, DOHA, shall forward all pleadings to the hearing officer.

f. The questions for adjudication shall be based on the petition and the answer, provided that a party may amend a pleading if the amendment is filed with the hearing officer and is received by the other parties at least 5 calendar days before the hearing.

g. The Director, DOHA, shall arrange for the time and place of the hearing, and shall provide administrative support. Such arrangements shall be reasonably convenient to the parties.

h. The purpose of a hearing is to establish the relevant facts necessary for the hearing officer to reach a fair and impartial determination of the case. Oral and documentary evidence that is relevant and material may be received. The technical rules of evidence shall be relaxed to permit the development of a full evidentiary record, with the Federal Rules of Evidence (28 U.S.C.) serving as a guide.

i. The hearing officer shall be the presiding officer, with judicial powers to manage the proceeding and conduct the hearing. Those powers shall include the authority to order an independent evaluation of the child at the expense of the DoDDS or the Military Department concerned and to call and question witnesses.

j. Those normally authorized to attend a hearing shall be the parents of the individual with disabilities, the counsel and personal representative of the parents, the counsel and professional employees of the DoDDS or the Military Department concerned, the hearing officer, and a person qualified to transcribe or record the proceedings. The hearing officer may permit other persons to attend the hearing, consistent with the privacy interests of the parents and the individual with disabilities, provided the parents have the right to an open hearing upon waiving in writing their privacy rights and those of the individual with disabilities.

k. A verbatim transcription of the hearing shall be made in written or electronic form and shall become a permanent part of the record. A copy of the written transcript or electronic record of the hearing shall be made available to a parent upon request and without cost. The hearing officer may allow corrections to the written transcript or electronic recording for the purpose of conforming it to actual testimony after adequate notice of such changes is given to all parties.

l. The hearing officer's decision of the case shall be based on the record, which shall include the petition, the answer, the written transcript or the electronic recording of the hearing, exhibits admitted into evidence, pleadings or correspondence properly filed and served on all parties, and such other matters as the hearing officer may include in the record, provided that such matter is made available to all parties before the record is closed under paragraph D.1.m. of this section.

l. The hearing officer shall make a full and complete record of a case presented for adjudication.

m. The hearing officer shall decide when the record in a case is closed.

n. The hearing officer shall issue findings of fact and render a decision in a case not later than 50 calendar days after being assigned to the case, unless a discovery request under section D.2. of this section is pending.

2. Discovery

a. Full and complete discovery shall be available to parties to the proceeding, with the "Federal Rules of Civil Procedure" (28 U.S.C.) serving as a guide.

b. If voluntary discovery cannot be accomplished, a party seeking discovery may file a motion with the hearing officer to accomplish discovery, provided such motion is founded on the relevance and materiality of the proposed discovery to the issues. An order granting discovery shall be enforceable as is an order compelling testimony or the production of evidence.

c. A copy of the written or electronic transcription of a deposition taken by the DoDDS or the Military Department concerned shall be made available free of charge to a parent.

3. Witnesses; Production of Evidence

a. All witnesses testifying at the hearing shall be advised that it is a criminal offense knowingly and willfully to make a false statement or representation to a Department or Agency of the U.S. Government as to any matter within the jurisdiction of that Department or Agency. All witnesses shall be subject to cross-examination by the parties.

b. A party calling a witness shall bear the witness' travel and incidental expenses associated with testifying at the hearing. The DoDDS or the Military Department concerned shall pay such expenses when a witness is called by the hearing officer.

c. The hearing officer may issue an order compelling the attendance of witnesses or the production of evidence upon the hearing officer's own motion or, if good cause be shown, upon motion of a party.

d. When the hearing officer determines that a person has failed to obey an order to testify or to produce evidence, and such failure is in knowing and willful disregard of the order, the hearing officer shall so certify.

e. The party or the hearing officer seeking to compel testimony or the production of evidence may, upon the certification provide for in paragraph D.3.d. of this section, file an appropriate action in a court of competent jurisdiction to compel compliance with the hearing officer's order.

4. Hearing Officer's Findings of Fact and Decision

a. The hearing officer shall make written findings of fact and shall issue a decision setting forth the questions presented, the resolution of those questions, and the rationale for the resolution. The hearing officer shall file the findings of fact and decision with the Director, DOHA, with a copy to the parties.

b. The Director, DOHA, shall forward to the Director, DoDDS, or to the Military Department concerned, and to the NAP or the JCC, as appropriate, copies with all personally identifiable information deleted, of the hearing officer's findings of fact and decision or, in cases that are administratively appealed, of the final decision of the DOHA Appeal Board.

c. The hearing officer shall have the authority to impose financial responsibility for early intervention services, educational placements, evaluations, and related services under his or her findings of fact and decision.

d. The findings of fact and decision of the hearing officer shall become final unless a notice of appeal is filed under section F.1. of this Appendix. The DoDDS or the Military Department concerned shall implement a decision as soon as practicable after it becomes final.

E. Determination Without Hearing

1. At the request of a parent of an infant, toddler, or child aged 3 to 21, inclusive, when early intervention or special educational (including related) services are at issue, the requirement for a hearing may be waived, and the case may be submitted to the hearing officer on written documents filed by the parties. The hearing officer shall make findings of fact and issue a decision within the period fixed by paragraph D.1.n., of this Appendix.

2. The DoDDS or the Military Department concerned may oppose a request to waive that hearing. In that event, the hearing officer shall rule on that request.

3. Documents submitted to the hearing officer in a case determined without a hearing shall comply with paragraph D.1.g. of this appendix. A party submitting such documents shall provide copies to all other parties.

F. Appeal

1. A party may appeal the hearing officer's findings of fact and decision by filing a written notice of appeal with the Director, DOHA, within 5 calendar days of receipt of the findings of fact and decision. The notice of appeal must contain the appellant's certification that a copy of the notice of appeal has been provided to all other parties. Filing is complete upon mailing.

2. Within 10 calendar days of the filing the notice of appeal, the appellant shall submit a written statement of issues and arguments to the Director, DOHA, with a copy to the other parties. The other parties shall submit a reply or replies to the Director, DOHA, within 15 calendar days of receiving the statement, and shall deliver a copy of each reply to the appellant. Submission is complete upon mailing.

3. The Director, DOHA, shall refer the matter on appeal to the DOHA Appeal Board. It shall determine the matter, including the making of interlocutory rulings, within 60 calendar days of receiving timely submitted replies under section F.2. of this Appendix. The DOHA Appeal Board may require oral argument at a time and place reasonably convenient to the parties.

4. The determination of the DOHA Appeal Board shall be a final administrative decision and shall be in written form. It shall address the issues presented and set forth a rationale for the decision reached. A determination denying the appeal of a parent in whole or in part shall state that the parent has the right under 20 U.S.C. 921 *et seq.* and 20 U.S.C., 1400 *et seq.* to bring a civil action on the matters in dispute in a district court of the United States without regard to the amount in controversy.

5. No provision of this part or other DoD guidance may be construed as conferring a further right of administrative review. A party must exhaust all administrative remedies afforded by this Appendix before seeking judicial review of a determination made under this Appendix.

G. Publication and Indexing of Final Decisions

The Director, DOHA, shall ensure that final decisions in cases arising under this Enclosure are published and indexed to protect the privacy rights of the parents who are parties in those cases and the children of such parents, in accordance with 32 CFR part 310.

Dated: May 24, 1995.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–13177 Filed 5–30–95; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Ch. I

46 CFR Ch. I

[CGD 95–022]

Presidential Regulation Review

AGENCY: Coast Guard, DOT.

ACTION: Reopening of comment period.

SUMMARY: The Coast Guard is announcing an initial policy determination on regulatory reform initiatives. The Coast Guard is also reopening the comment period for public comment on the Coast Guard's regulatory process and its response to the President's Regulatory Reinvention Initiative.

DATES: Written comments must be received not later than December 8, 1995.

ADDRESSES: Written comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments will become part of this docket ad will be available for inspection or copying at room 3406, Coast Guard Headquarters, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Bruce P. Novak, Regulations Coordinator, Oil Pollution Act (OPA 90) Staff, U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001, telephone (202) 267–6819. This telephone is equipped to record messages on a 24-hour basis.

SUPPLEMENTARY INFORMATION: On March 10, 1995 (60 FR 16423) the Coast Guard announced it would be holding a public meeting in Washington, DC on April 20, 1995, to take comments on the President's recently announced Regulatory Reinvention Initiative and the Coast Guard's regulatory development process. The deadline for written comments was May 1, 1995. On April 5, 1995 the Coast Guard published a second notice in the **Federal Register** (60 FR 17287) announcing a series of regional public meetings to be held on the same topics. The deadline for written comments in this notice was June 5, 1995.

At the April 20, 1995 public meeting and in written comments to the docket, several commentors requested an extension of the May 1, 1995 comment period. The issues discussed in the notice and at the public meeting are important and require careful thought and evaluation. Since the regulatory reform initiative is an ongoing process, a longer comment period can be accommodated. In addition to receiving comments on the regulatory policy announced in this notice, comments on the issues raised in the two prior notices may be submitted. To provide maximum value on this notice, comments should be received by December 8, 1995. However, late comments will be accepted and evaluated to the extent practicable.

In response to the **Federal Register** notice and public meetings, the Coast Guard has received and is still receiving comments suggesting specific regulations for review and identifying reasons why those regulations should be either amended or eliminated. The Coast Guard will fully evaluate each suggestion and may initiate appropriate rulemaking projects at a later date. However, the Coast Guard has already made a preliminary determination to proceed immediately with at least two regulatory reinvention initiatives. The first is to purge the Code of Federal Regulations of obsolete and out-of-date regulations. A Notice of Proposed Rulemaking (NPRM) proposing a wide range of recissions was published in the **Federal Register** of May 9, 1995 (60 FR 24748). This first set of obsolete and out-of-date regulations has minimal impact on the public and no controversy or objection is expected. Additional obsolete and out-of-date regulations will be proposed for elimination or revision in later rulemaking documents.

Second, the Coast Guard has established a goal of eliminating any Coast Guard induced differential between requirements that apply to U.S. vessels in international trade and those that apply to similar vessels in international trade that fly the flag of responsible foreign nations. The Coast Guard will carefully evaluate every existing and newly proposed regulation. To the maximum extent possible, requirements that create an unwarranted differential between U.S. and responsible international standards will be eliminated. There are several new rulemaking projects under development that reflect this new Coast Guard policy.

The U.S. maritime industry conducted several studies, some of which indicated that industry competitiveness has been adversely impacted by the cost differential between building a vessel to U.S. standards and building it to some foreign standards. The industry reported that differential was from 0% to 15% of the total construction cost. However, all of these industry studies were conducted prior to implementation of the 1981 and 1983 amendments to the 1974 Safety of Life at Sea (SOLAS) Convention. The Convention and its amendments have greatly reduced the gap between U.S. and international standards.

The U.S. has sometimes unilaterally adopted more stringent standards than the international regulations promulgated by the International Maritime Organization (IMO), a specialized agency of the United Nations. A Maritime Administration sponsored study conducted in 1979 reported that the portion of the total construction cost differential directly attributable to discretionary requirements imposed by the Coast Guard was less than one-half of one percent. However, even a one-half of one percent differential in construction costs should be avoided if it does not result in needed additional safety or environmental protection.

In the past, international standards were in large part inadequate or nonexistent which required the United States to adopt high quality standards of its own. This situation has changed in recent years. Great strides have been taken by the responsible members of the international community to adopt standards that provide levels of safety and environmental protection that are generally equivalent to U.S. standards. The IMO has adopted a wide range of safety and environmental protection requirements that parallel many of the standards that apply to U.S. vessels. However, the IMO requirements are in some cases general in nature and need amplifying national regulations. In addition, IMO requirements do not constitute a complete ship construction standard. They must be used together with classification society standards and flag state requirements. Responsible foreign flag states and classification societies now have standards that are equivalent to U.S. standards. Because these responsible flag states and classification societies now assure high levels of protection, it is no longer desirable for the United States to apply different requirements to U.D. vessels. Accordingly, in cooperation with the American Bureau of Shipping, the Coast Guard has identified various U.S. regulations that differ from the best international standards. The Coast Guard is now carefully evaluating each of those regulations to determine if it makes necessary additional safety or environmental protection contributions. Those regulations that do not provide necessary added levels of protection will be proposed for elimination.

Because of the global nature of maritime commerce, it is seldom effective for an individual nation to require substantially different standards for its vessels engaged in international trade. Ships of every nationality call at ports all over the world. Substandard performers pose a risk to their host nations everywhere. For this reason, IMO recently formed the Flag State Implementation Subcommittee (FSI) to develop strong international standards for nations that flag vessels (flag states) and for nations that host vessels (port states). By working closely with the FSI the Coast Guard will assure both a high and a level playing field for U.S. flag vessels in international trade.

The Coast Guard invites comment on this initial regulatory policy.

Dated: May 22, 1995.

J.C. Card,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 95–13269 Filed 5–30–95; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[MN–36–1–6752b; FRL–5020–2]

Approval and Promulgation of Implementation Plans and Designation of Area for Air Quality Planning Purposes: Minnesota

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: The USEPA proposes to approve the request for redesignation to attainment for particulate matter (PM) in Olmsted County and sulfur dioxide (SO_2) in the Air Quality Control Region (AQCR) 131 Twin Cities and Pine Bend areas (excluding the St. Paul Park area). In addition, USEPA proposes to approve a State Implementation Plan (SIP) revision to the administrative order for PM for Rochester Public Utilities,

located in Rochester, Minnesota. The Minnesota Pollution Control Agency (MPCA) submitted the proposed SIP revision and redesignation requests on September 7, 1994. In the final rules section of this **Federal Register**, USEPA is approving the SIP revision and requests to redesignation as a direct final rule because the Agency views this as noncontroversial and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule no further activity is contemplated in relation to this proposed rule. If USEPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The USEPA will not institute a second comment period on this notice.

DATES: Comments on this proposed rule must be received on or before June 30, 1995.

ADDRESSES: Written comments should be mailed to: William L. MacDowell, Chief, Regulation Development Section, Air Enforcement Branch (AE–17J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State submittal and USEPA's analysis are available for public inspection during normal business hours at the following address: United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard (AR–17J), Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT:

Randy Robinson, Air Enforcement Branch, Regulation Development Section (AE–17J) United States Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 353–6713.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the rules section of the **Federal Register**.

Dated: April 19, 1995.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 95–13180 Filed 5–30–95; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 60

[AD–FRL–5211–5]

RIN 2060–AF00

Standards of Performance for New Stationary Sources Appendix A , Test Method 23

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This rule amends Method 23, entitled "Determination of Polychlorinated Dibenzo-p-Dioxins and Polychlorinated Dibenzofurans from Stationary Sources," to correct existing errors in the method, to eliminate the methylene chloride rinse of the sampling train, and to clarify the quality assurance requirements of the method.

DATES: *Comments.* Comments must be received on or before August 29, 1995.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by June 14, 1995 a public hearing will be held on June 28, 1995, beginning at 10 a.m.

Request to Speak at Hearing. Persons wishing to present oral testimony must contact EPA by June 14, 1995.

ADDRESSES: Comments should be submitted (in duplicate if possible) to Public Docket No. A–94–2 at the following address: U. S. Environmental Protection Agency, Air and Radiation Docket and Information Center, Mail Code: 6102, 401 M Street SW., Washington, DC 20460. The Agency requests that a separate copy also be sent to the contact person listed below. The docket is located at the above address in room M–1500 Waterside Mall (ground floor), and may be inspected from 8:30 a.m.–12 p.m. and 1:30 p.m.–3 p.m., Monday through Friday. The proposed regulatory text and other materials related to this rulemaking are available for review in the docket or copies may be mailed on request from the Air Docket by calling 202–260–7548. A reasonable fee may be charged for copying docket materials.

Public Hearing. If anyone contacts EPA requesting a public hearing, it will be held at EPA's Emission Measurement Laboratory, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should notify Ms. Lala Cheek (MD–19), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5545.

Docket. A Docket, A–94–22, containing materials relevant to this rulemaking, is available for public inspection and copying between 8:30 a.m.–12 p.m. and 1:30 p.m.–3 p.m., Monday through Friday, in at EPA's Air Docket Section (LE–131), Room M–1500 Waterside Mall (ground floor) 401 M Street SW., Washington, DC. 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Gary McAlister, Emission Measurement Branch (MD–19), Emissions, Monitoring, and Analysis Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–1062.

SUPPLEMENTARY INFORMATION: The proposed regulatory text of the proposed rule is not included in this **Federal Register** document, but is available in Docket No. A–94–22 or by written or telephone request from the Air Docket (see **ADDRESSES**). If necessary, a limited number of copies of the Regulatory Text are available from the EPA contact persons designated earlier in this document. This document with the proposed regulatory language is also available on the Technology Transfer Network (TTN), one of EPA's electronic bulletin boards. TTN provides information and technology exchange in various areas of air pollution control. The service is free except for the cost of the phone call. Dial (919) 541–5742 for up to a 14400 bps modem. If more information on TTN is needed, call the HELP line at (919) 541–5384.

I. Summary

Method 23 was promulgated along with the New Source Performance Standard for municipal waste combustors (Subpart Ea). As promulgated, the method contained some errors. This action would correct those errors and would clarify some of the existing quality assurance requirements. In addition, the current procedure requires rinsing of the sampling train with two separate solvents which must be analyzed separately. Based on data the Agency has collected since promulgation of Method 23, we believe that one of these rinse steps and the resulting sample fraction can be eliminated. This could save as much as $2000 per test run in analytical costs.

II. The Rulemaking

This rulemaking does not impose emission measurement requirements beyond those specified in the current regulations nor does it change any emission standard. Rather, the rulemaking would simply amend an existing test method associated with emission measurement requirements in the current regulations that would apply irrespective of this rulemaking.

III. Administrative Requirements

A. Public Hearing

A public hearing will be held, if requested, to discuss the proposed amendment in accordance with section 307(d)(5)of the Clean Air Act. Persons wishing to make oral presentations should contact EPA at the address given in the ADDRESSES section of this preamble. Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement with EPA before, during, or within 30 days after the hearing. Written statements should be addressed to the Air Docket Section address given in the **ADDRESSES** section of this preamble.

A verbatim transcript of the hearing and written statements will be available for public inspection and copying during normal working hours at EPA's Air Docket Section in Washington, DC (see **ADDRESSES** section of this preamble).

B. Docket

The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to identify and locate documents readily so that they may effectively participate in the rulemaking process. Along with the statement of basis and purpose of the proposed and promulgated test method revisions and EPA responses to significant comments, the contents of the docket, except for interagency review materials, will serve as the record in case of judicial review [Section 307(d)(7)(A)].

C. Executive Order 12866 Review

Under Executive Order (E.O.) 12866, the EPA must determine whether the proposed regulatory action is "significant" and therefore, subject to the Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant" regulatory action as one that is likely to lead to a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety in State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, OMB has determined that this proposed rule is not "significant" because the annual effect on the economy will not exceed $100 million.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980 requires the identification of potentially adverse impacts of Federal regulations upon small business entities. The RFA specifically requires the completion of an analysis in those instances where small business impacts are possible. This rulemaking does not impose emission measurement requirements beyond those specified in the current regulations, nor does it change any emission standard. Because this rulemaking imposes no adverse economic impacts, an analysis has not been conducted.

Pursuant to the provision of 5 U.S.C. 605(b), I hereby certify that the promulgated rule will not have an impact on small entities because no additional costs will be incurred.

E. Paperwork Reduction Act

This rule does not change any information collection requirements subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

F. Statutory Authority

The statutory authority for this proposal is provided by sections 111 and 301(a) of the Clean Air Act, as amended: 42 U.S.C., 7411 and 7601(a).

List of Subjects in 40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Aluminum, Ammonium sulfate plants, Batteries , Beverages, Carbon monoxide, Cement industry, Coal, Copper, Dry cleaners, Electric power plants, Fertilizers, Fluoride, Gasoline, Glass and glass products, Grains, Graphic arts industry, Heaters, Household appliances, Insulation, Intergovernmental relations, Iron, Labeling, Lead, Lime, Metallic and nonmetallic mineral processing plants, Metals, Motor vehicles, Natural gas, Nitric acid plants, Nitrogen dioxide, Paper and paper products industry, Particulate matter, Paving and roofing materials, Petroleum, Phosphate, Plastics materials and synthetics, Polymers, Reporting and recordkeeping requirements, Sewage disposal, Steel, Sulfur oxides, Sulfuric acid plants, Tires, Urethane, Vinyl, Volatile organic compounds, Waste treatment and disposal, Zinc.

Dated: May 22, 1995.

Carol M. Browner,

Administrator.

[FR Doc. 95–13153 Filed 5–30–95; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 228

[Docket No. 950504128–5128–01; I.D. 031095A]

RIN 0648–AG80

Small Takes of Marine Mammals; Harassment Takings Incidental to Specified Activities

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: The Marine Mammal Protection Act (MMPA) Amendments of 1994 established an expedited process by which citizens of the United States can apply for an authorization to take incidentally, but not intentionally, small numbers of marine mammals by harassment. This proposed rule sets forth the process for applying for and obtaining an authorization; the time limits set by the statute for NMFS review, publication, and public notice and comment on any applications for authorization that would be granted; and the requirements for submission of a plan of cooperation and for scientific peer review of an applicant's monitoring plans (if that activity may affect the availability of a species or stock of marine mammal for taking for subsistence purposes). This rule also proposes changes to the existing regulations to clarify the requirements for obtaining a small take authorization. If implemented, this rule would result in a more streamlined and cost-effective method for obtaining small take by incidental harassment authorizations, without lessening the MMPA's

protection of species and stocks of marine mammals.

DATES: Comments must be received no later than July 17, 1995.

ADDRESSES: Written comments on the proposed rule should be addressed to Chief, Marine Mammal Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3226. A copy of the Environmental Assessment (EA) may be obtained by writing to this address or by telephoning the contact listed below.

Comments regarding the burden-hour estimate or any other aspect of the collection of information requirement contained in this rule should be sent to the above individual and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: NOAA Desk Officer, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, Office of Protected Resources, NMFS, (301) 713–2055.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*), as enacted in 1981, directs the Secretary of Commerce to allow, upon request by U.S. citizens engaged in a specific activity (other than commercial fishing) in a specified geographical region, the incidental, but not intentional, taking of small numbers of marine mammals, if certain findings are made and regulations are issued. Under the MMPA, the term "taking" means to harass, hunt, capture or kill. Pursuant to implementing regulations published on May 18, 1982 (47 FR 21248), permission may be granted for periods up to 5 years if NMFS finds, after notice and opportunity for public comment, that the taking will have a negligible impact on the species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. In addition, NMFS must prescribe activity-specific regulations that include permissible methods of taking and other means effecting the least practicable adverse impact on the species and its habitat, and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating grounds and areas of similar significance. These regulations must include requirements pertaining to the monitoring and reporting of such taking.

In 1986, the MMPA and the Endangered Species Act (16 U.S.C. 1531 *et seq.*) were amended to authorize incidental takings of depleted, endangered, or threatened marine mammals. Prior to the 1986 amendments, section 101(a)(5) of the MMPA applied only to non-depleted marine mammals. On September 29, 1989 (54 FR 40338), NMFS and the U.S. Fish and Wildlife Service, jointly published regulations expanding the scope of the 1982 regulations to include depleted marine mammals, revising the definition of negligible impact, and adding a new definition for unmitigable adverse impact.

However, concern was expressed by some during Congressional oversight on the MMPA that the regulatory process for authorizing small takes remained lengthy, cumbersome, and with little correlation to the level of interaction between the activity and marine mammals or the degree of potential harm to the species or stock. The net result, these commenters believed, was that scarce Government resources were being misallocated and that compliance with the MMPA was not encouraged because of the length of time necessary to obtain an authorization.

On April 30, 1994, the President signed Public Law 103–238, the Marine Mammal Protection Act Amendments of 1994. One part of this law amended section 101(a)(5) of the MMPA to establish an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. It established specific time limits for public notice and comment on any requests for authorization which would be granted under this new provision. The legislative history noted however, that in some instances, requests will be made for authorizations identical to ones issued in the previous year. According to the legislative history, in such circumstances Congress expects NMFS to act expeditiously in complying with the notice and comment requirements. There is no need in such a case, the legislative history notes, for NMFS to use the full 120 days allowed. The legislative history also notes that NMFS should use the general rulemaking authority available under section 112 of the MMPA to establish a process for granting authorization in the case of small takes by harassment in the Arctic Ocean (H.R. Rep. No. 439, 103d Cong., 2d Sess. 29, 30 (Mar. 21, 1994)).

Proposed Action

NMFS is proposing to modify existing regulations found at 50 CFR part 228, subpart A to include the simplified process for authorizing the incidental taking of small numbers of marine mammals by harassment without the need to issue specific regulations governing the taking of marine mammals for each and every activity. The proposed rule sets forth: (1) The process for obtaining an authorization; (2) the specific time limits imposed by the statute for NMFS review and publication, and public notice and comment, on any requests for authorization that would be granted under this paragraph; and (3) the requirements for scientific peer review of an applicant's monitoring plans and submission of a plan of cooperation (if the subject activity may affect the availability of a species or stock of marine mammal for taking for subsistence purposes). The proposed rule also incorporates the definition of "harassment" added by statute and would make minor changes to the existing regulations to clarify the requirements for obtaining a small take authorization.

Discussion

Scope of Incidental Harassment Authorizations

In the 1994 Amendments to the MMPA, Congress defined the term "harassment" as: "any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild" (Level A harassment); or "(ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering" (Level B harassment). For the purpose of incidental harassment authorizations, NMFS proposes to limit the use of those authorizations for harassment involving the "potential to injure" to only incidental harassment that may involve non-serious injury. Serious injury for marine mammals, such as permanent hearing or eyesight loss, or severe trauma, could lead fairly quickly to the animal's death. NMFS does not believe that Congress intended to allow "incidental harassment" takings to include injuries that are likely to result in mortality, even where such incidental harassment involves only small numbers of marine mammals. Therefore, if the review of an application for incidental harassment indicates that there is a potential for serious injury or death, NMFS proposes that it would either (1) determine that the potential for serious injury can be negated through mitigation requirements that could be required under the authorization or (2) deny the incidental harassment authorization and require

the applicant to petition for a regulated small take authorization under 50 CFR 228.5. For example, if an application indicates that an acoustic source at its maximum output level has the potential to cause a temporary threshold shift in a marine mammal's hearing ability, that taking would constitute a "harassment" take, since the animal's hearing ability would recover and the section 101(a)(5)(D) application would be appropriate. However, if the acoustic source at its maximum level had the potential to cause a permanent threshold shift in a marine mammal's hearing ability, that activity would be considered to be capable of causing serious injury to a marine mammal and would therefore not be appropriate for an incidental harassment authorization.

Applications

New section 101(a)(5)(D)(iii) of the MMPA requires NMFS to publish a proposed authorization not later than 45 days after receiving an application under this subparagraph. However, NMFS does not publish notices, but rather files notices with the Office of the Federal Register (OFR) for publication. Actual publication normally occurs in the **Federal Register** 3 to 4 days after receipt at the OFR. The occurrence of weekends and holidays after the receipt date of the application at NMFS, coupled with the days between delivery of a notice of proposed authorization at the OFR and the actual date of publication in the **Federal Register**, often would compress NMFS' review time to less than 30 working days. As a result, in order for NMFS to accept an incidental harassment application, such application must be complete, accurate (to the extent possible), and address in some detail the information items requested as part of the application. If an application does not provide documentary evidence sufficient for NMFS to make a preliminary determination that the activity is likely to result in only a small take (by harassment) of marine mammals and have no more than a negligible impact on the species or stocks impacted or their habitat, NMFS will return the application as incomplete.

NMFS will make a final determination on the application within 45 days after the close of the public review period and will publish notice of the final disposition in the **Federal Register** within 30 days of issuance of that determination.

Also, since the MMPA limits the comment period for incidental harassment authorizations to a maximum of 30 days and a final decision on the application to 45 days after the close of the public comment period, NMFS expects that Federal, federally-funded, or federally-permitted applicants will have completed their responsibilities under the National Environmental Policy Act (NEPA) and its implementing regulations (40 CFR parts 1500–1508) prior to submitting an application for an incidental harassment authorization.

Monitoring Plans

Consistent with the requirements of the MMPA, NMFS proposes to require applicants to monitor the impact of their activity on marine mammals and to submit monitoring plans for all applications for incidental harassment authorizations under part 228. Without appropriate monitoring, NMFS would be unable to ensure that authorizations over time have only a negligible impact on species or stocks of marine mammals and no unmitigable adverse impact on the availability of species or stocks for taking for subsistence uses. NMFS recognizes however, that in some cases the level of monitoring necessary to ensure that the requirements of this section of the MMPA are met may be low. In such cases, NMFS would strive to seek a balance between the need to ensure, through monitoring, that the activity is not having more than a negligible impact on the marine mammals or on the health and stability of the ecosystem of which marine mammals are a part and the logistical burden of the monitoring requirements on the applicant.

Under these proposed regulations, when applying for an incidental harassment authorization under 50 CFR 228.7, the applicant would be required to include a site-specific plan to monitor the effects on stocks of marine mammals that are expected to be present while conducting activities. This plan, whose adequacy must be approved by NMFS, at a minimum, would have to include information regarding: (1) The survey techniques, and/or other methods to be used, to determine whether the behavior (including, if appropriate, vocalizations) of marine mammals near the activity site is being affected, and (2) how the number of marine mammals affected (i.e., taken by harassment) by the planned activity would be determined, including the expected precision of that estimated number. If requested, NMFS would provide guidelines to applicants for development of site-specific monitoring plans.

Requirements for Activities Impacting Arctic Subsistence Needs

Section 101(a)(5)(D)(ii)(III) of the MMPA requires independent peer review of proposed monitoring plans or other research proposals where the proposed activity may affect the availability of a species or stock for taking for subsistence uses * * *.

To minimize potential conflicts among user groups over whether a proposed Monitoring Plan (Plan) is adequate for determining the effects of the proposed activity on stocks of marine mammals, the applicant would be required to submit a draft Plan either along with an incidental harassment application or no later than 120 days prior to the date an incidental harassment authorization is expected to be issued. Upon receipt of the draft Plan, NMFS would establish an independent peer-review panel to critique the Plan and, if appropriate, to provide NMFS and the applicant with suggestions for improvement of monitoring. It is anticipated that the applicant would consider any comments and recommendations made by the panel or NMFS prior to submitting a final proposed Plan to NMFS. This final plan should be submitted a minimum of 30 days prior to the date an incidental harassment authorization is expected to be issued.

As an example of a peer-reviewed process, applicants involved in oil and gas exploration activities in the Beaufort Sea cooperate with NMFS and North Slope residents and usually a workshop is scheduled to peer-review their Plan. That procedure is likely to continue under this rule. For this activity, the workshop normally includes 6-10 experts in the fields of population ecology, survey design, acoustics, and marine mammal behavior. Panelists are selected by NMFS, in consultation with the Marine Mammal Commission (MMC), the Alaskan Eskimo Whaling Commission (AEWC) and/or other Alaskan native organizations as appropriate, and the applicant. Selected panelists are experts who are not currently employed or contracted by either the affected Alaskan native organization or the applicant. Normally, the workshop is chaired by either a NMFS or MMC employee and minutes from the workshop are prepared within 2 weeks by a rapporteur, assigned to assist the Chair, and made available to the general public upon request.

If a plan proposes to continue, without significant modification, the approved plan from the previous year, the Assistant Administrator for Fisheries, NOAA (AA) may waive the requirement for peer-review. This determination would be announced in either the proposed authorization notice for an incidental harassment authorization or the notice of issuance

of an annual Letter of Authorization (LOA) under 50 CFR 228.6 and would be made available to the general public.

Also, when applying for either an incidental harassment authorization or an LOA, for an activity that has the potential to affect the availability of a species or stock of marine mammal for taking by subsistence uses, the applicant would also be required to submit a plan of cooperation that identifies what measures have been taken and would be taken to minimize the adverse effects on the availability of marine mammals for subsistence users. This cooperation plan would have to include: (1) A statement that the applicant has notified and met with the affected subsistence communities to discuss proposed activities and to resolve potential conflicts regarding siting, timing and methods of operation; (2) a description of what measures the applicant has taken and would take to ensure that activities would not interfere with subsistence hunting; and (3) a statement that the applicant would continue to meet with the affected communities up to and during the activities to resolve conflicts and notify the native communities of any changes in plans or operation.

Reporting

Consistent with the MMPA, NMFS proposes to require the holder of an incidental harassment authorization to submit a report to the AA within 90 days of completion of any activities or 120 days prior to expiration of the incidental harassment authorization, whichever is earlier. This report would include information on the dates and types of activities, dates and locations of any monitoring activities, and results of the monitoring activities (e.g., estimate of actual number of animals taken by species by take-type and a description of any observed changes in behavior attributable to the exploratory activities).

Monitoring reports would be reviewed by the AA and if determined to be incomplete or inaccurate, would be returned to the holder of the authorization with an explanation of why the report is being returned. If the authorization holder disagrees with the findings of the AA, the holder would have an opportunity to request an independent peer review of the report. A failure to submit a complete report may result in a delay in processing subsequent authorization requests.

Other Regulatory Amendments

In this rule, NMFS is also proposing to amend existing regulations to streamline and clarify the process for issuing regulations and/or LOAs. In addition, NMFS is proposing to require any Federal agencies that apply for authorization under this part to provide to the AA, as part of the application process, any documentation such agency has prepared under NEPA. Any delay in submission of appropriate NEPA documentation could cause a delay in small take authorization under these regulations. Private entities either funded or permitted by Federal agencies for the applied activity would need to submit NEPA documentation prepared by the funding agency with their small take application. Private organizations not funded by Federal agencies would need to provide sufficient information in their application for NMFS to perform an appropriate NEPA analysis. Applicants would be expected to give consideration to, and fully discuss, alternatives to their activity that would involve a lesser impact on marine mammals or their habitat, including seasonal or diel alternatives. Agencies could formally provide a NEPA document as part of their application at the following junctures: (1) At any time subsequent to publication and release of a final environmental impact statement or analysis, provided the document reflected the situation as described in the small take application and had undergone public review and comment; or (2) upon notification in the **Federal Register** that the document is available for public review.

Agencies requesting NMFS to be a "cooperating agency" as defined in Council on Environmental Quality regulations (40 CFR 1501.6) would have to notify the AA in writing a minimum of 18 months prior to expected initiation of the proposed activity in order for NMFS to assess program commitments and research requirements (if any), for cooperating in the joint completion of the NEPA document. Although NMFS would make every attempt to cooperate with other agencies, it cannot guarantee its ability to cooperate with agencies not meeting this criterion.

National Environmental Policy Act

The general regulations in subpart A would implement section 101(a)(5)(D) of the MMPA, as added by the 1994 Amendments, by providing a mechanism to authorize the incidental, but not intentional, taking by harassment of small numbers of marine mammals by U.S. citizens engaged in a specified activity in a specified geographic region. Also included are proposed amendments to the existing subpart A. The AA has determined, based upon an EA prepared for this action under NEPA, that implementation of these general regulations would not have a significant impact on the human environment. As a result of this determination, an environmental impact statement is not required. A copy of the EA is available upon request (see **ADDRESSES**).

In addition, while each proposed incidental harassment authorization will be reviewed independently to determine its impact on the human environment, NMFS believes that, because the finding required for incidental harassment authorizations is that the taking (by harassment) have a negligible impact on marine mammals and their habitat, the majority of the authorizations should be "categorically excluded" (as defined in 40 CFR 1508.4) from the preparation of either environmental impact statements or environmental assessments under NEPA and section 6.02.c.3(i) of NOAA Administrative Order 216–6 for Environmental Review Procedures (published August 6, 1991).

Classification

This action has been determined to be not significant for purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities since it would simply establish an expedited process for the review and issuance of authorizations for the incidental taking of small numbers of marine mammals by harassment while conducting activities (other than commercial fishing) in and near marine waters. Without these authorizations, the taking of marine mammals, even by harassment, is prohibited.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

This proposed rule contains collection-of-information requirements subject to the provisions of the Paperwork Reduction Act. Although this collection has been approved previously by the Office of Management and Budget (OMB) under OMB control number 0648–0151, because of new collection requirements for activities taking place in Arctic waters, this rule is being resubmitted to OMB for review and approval. The average reporting burden for this collection is estimated to be approximately 252 hours per activity (range 96–563 hours depending upon complexity), including the time for gathering and maintaining the data needed, and completing and reviewing the collection of information including annual reports.

List of Subjects in 50 CFR Part 228

Marine mammals, Reporting and recordkeeping requirements.

Dated: May 23, 1995.

Richard H. Schaefer,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For reasons set out in the preamble, 50 CFR part 228 is proposed to be amended as follows:

PART 228—REGULATIONS GOVERNING SMALL TAKES OF MARINE MAMMALS INCIDENTAL TO SPECIFIED ACTIVITIES

1. The authority citation for part 228 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

2. Subpart A is revised to read as follows:

Subpart A—General

Sec.
228.1 Purpose.
228.2 Scope.
228.3 Definitions.
228.4 Submission of requests.
228.5 Specific regulations.
228.6 Letter of authorization.
228.7 Incidental harassment authorization.
228.8 Requirements for monitoring and reporting under incidental harassment authorizations.

Subpart A—General

§ 228.1 Purpose.

The regulations in this part implement section 101(a)(5)(A) through (D) of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1371(a)(5)), which provides a mechanism for allowing, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographic region.

§ 228.2 Scope.

The taking of small numbers of marine mammals under section 101(a)(5) of the Marine Mammal Protection Act may be allowed only if the National Marine Fisheries Service:

(a) Finds, based on the best scientific evidence available, that the total taking by the specified activity during the specified time period will have a negligible impact on species or stock of marine mammal(s) and will not have an unmitigable adverse impact on the availability of those species or stocks of marine mammals intended for subsistence uses;

(b) Prescribes either regulations under § 228.5, or requirements and conditions contained within an incidental harassment authorization issued under § 228.7, setting forth permissible methods of taking and other means of effecting the least practicable adverse impact on the species or stock of marine mammal and its habitat and on the availability of the species or stock of marine mammal for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance; and

(c) Prescribes either regulations or requirements and conditions contained within an incidental harassment authorization, as appropriate, pertaining to the monitoring and reporting of such taking. The specific regulations governing certain specified activities are contained in subsequent subparts to this part.

§ 228.3 Definitions.

In addition to definitions contained in the Act, and unless the context otherwise requires, in this part 228:

Act means the Marine Mammal Protection Act of 1972, as amended, 16 U.S.C. 1361 *et seq.*

Assistant Administrator means the Assistant Administrator for Fisheries, NOAA, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3226.

Citizens of the United States and *U.S. citizens* mean individual U.S. citizens or any corporation or similar entity if it is organized under the laws of the United States or any governmental unit defined in 16 U.S.C. 1362(13). U.S. Federal, state and local government agencies shall also constitute citizens of the United States for purposes of this part.

Harassment means any act of pursuit, torment, or annoyance that:

(1) Has the potential to injure a marine mammal or marine mammal stock in the wild; or

(2) Has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.

Incidental harassment, incidental taking and *incidental, but not intentional, taking* all mean an accidental taking. This does not mean that the taking is unexpected, but rather it includes those takings which are infrequent, unavoidable or accidental. (A complete definition of take is contained in § 216.3 of this chapter).

Negligible impact is an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Small numbers means a portion of a marine mammal species or stock whose taking would have a negligible impact on that species or stock.

Specified activity means any activity, other than commercial fishing, that takes place in a specified geographical region and potentially involves the taking of small numbers of marine mammals.

Specified geographical region means an area within which a specified activity is conducted and that has certain biogeographic characteristics.

Unmitigable adverse impact means an impact resulting from the specified activity:

(1) That is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by:

(i) Causing the marine mammals to abandon or avoid hunting areas;

(ii) Directly displacing subsistence users; or

(iii) Placing physical barriers between the marine mammals and the subsistence hunters; and

(2) That cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.

§ 228.4 Submission of requests.

(a) In order for the National Marine Fisheries Service to consider authorizing the taking by U.S. citizens of small numbers of marine mammals incidental to a specified activity (other than commercial fishing), or to make a finding that an incidental take is unlikely to occur, a written request must be submitted to the Assistant Administrator. All requests must include the following information for their activity:

(1) A detailed description of the specific activity or class of activities that can be expected to result in incidental taking of marine mammals;

(2) The specific date(s) and duration of such activity and the specific geographical region where it will occur;

(3) The species and numbers of marine mammals likely to be found within the activity area and those marine mammals that may be taken by the activity by age, sex, and reproductive condition;

(4) A description of the status, distribution, and seasonal distribution (when applicable) of the affected species or stocks of marine mammals likely to be affected by such activities;

(5) The type of incidental taking authorization that is being requested (i.e., takes by harassment only; takes by harassment, injury and/or death), the method of incidental taking (e.g., disturbance by anthropogenic noise such as construction, seismic activities, or ship traffic; serious injury or death resulting from explosives or collisions between marine mammals and ships), and the number of times such taking is likely to occur;

(6) The anticipated impact of the activity upon the species or stock of marine mammal;

(7) The anticipated impact of the activity on the availability of the species or stocks of marine mammals for subsistence uses;

(8) The anticipated impact of the activity upon the habitat and food sources of the marine mammal populations, and the likelihood of restoration of the affected habitat or food sources;

(9) The anticipated impact of the loss or modification of the habitat or food sources on the marine mammal populations involved;

(10) The availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse impact upon the affected species or stocks, their habitat, and on their availability for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance.

(11) Where the proposed activity would take place in or near a traditional subsistence hunting area and/or may affect the availability of a species or stock of marine mammal for subsistence uses, the applicant must submit a plan of cooperation that identifies what measures have been taken and will be taken to minimize any adverse effects on the availability of marine mammals for subsistence uses. A plan must include the following:

(i) A statement that the applicant has notified and met with the affected subsistence communities to discuss proposed activities and to resolve potential conflicts regarding any aspects of the operation;

(ii) A description of what measures the applicant has taken and will take to ensure that proposed activities will not interfere with subsistence whaling or sealing; and

(iii) What plans the applicant has to continue to meet with the affected communities, both prior to and while conducting the activity, to resolve conflicts and to notify the communities of any changes in the operation.

(12) The suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species, the level of taking or impacts on populations of marine mammals that are expected to be present while conducting activities and suggested means of minimizing burdens by coordinating such reporting requirements with other schemes already applicable to persons conducting such activity. Monitoring plans should include a description of the survey techniques that would be used to determine the movement and activity of marine mammals near the activity site(s) including migration and other habitat uses, such as feeding. Guidelines for developing a site-specific monitoring plan may be obtained by writing to the Assistant Administrator.

(13) Suggested means of learning of, encouraging, and coordinating research opportunities, plans, and activities relating to reducing such incidental taking and evaluating its effects.

(b)(1) The Assistant Administrator shall determine the adequacy and completeness of a request, and, if determined to be adequate, complete, and in full compliance with the Act and other existing laws and regulations (in particular, the National Environmental Policy Act and the Endangered Species Act), will egin the public review process by publishing in the **Federal Register** either:

(i) A proposed incidental harassment authorization; or

(ii) A notice of receipt of a request for the promulgation or repromulgation of regulations governing the incidental taking.

(2) Through notice in the **Federal Register**, newspapers of general circulation, and appropriate electronic media in the coastal areas that may be affected by such activity, NMFS will invite information, suggestions, and comments for a period not to exceed 30 days from the date of publication in the **Federal Register**. All information and suggestions will be considered by the National Marine Fisheries Service in developing, if appropriate, the most effective regulations governing the issuance of letters of authorization or conditions governing the issuance of an incidental harassment authorization.

(3) Applications that are determined to be incomplete, or inappropriate for the type of taking requested, will be returned to the applicant with an explanation of why the application is being returned.

(c) The Assistant Administrator shall evaluate each request to determine, based upon the best available scientific evidence, whether the taking by the specified activity within the specified geographic region will have a negligible impact on the species or stock and, where appropriate, will not have an unmitigable adverse impact on the availability of such species or stock for subsistence uses. If the Assistant Administrator finds that the mitigating measures would render the impact of the specified activity negligible when it would not otherwise satisfy that requirement, the Assistant Administrator may make a finding of negligible impact subject to such mitigating measures being successfully implemented. Any preliminary findings of "negligible impact" and "no unmitigable adverse impact" shall be proposed for public comment along with either the proposed incidental harassment authorization or the proposed regulations for the specific activity.

(d) If, subsequent to the public review period, the Assistant Administrator finds that the taking by the specified activity would have more than a negligible impact on the species or stock of marine mammal or would have an unmitigable adverse impact on the availability of such species or stock for subsistence uses, the Assistant Administrator shall publish in the **Federal Register** the negative finding along with the basis for denying the request.

§ 228.5 Specific regulations.

(a) For all petitions for regulations under this paragraph, applicants must provide the information requested in § 228.4(a) on their activity as a whole, which includes, but is not necessarily limited to, an assessment of total impacts by all persons conducting the activity.

(b) For allowed activities that may result in incidental takings of small numbers of marine mammals by harassment, serious injury, death or combination thereof, specific regulations shall be established for each allowed activity which set forth:

(1) Permissible methods of taking;

(2) Means of effecting the least practicable adverse impact on the species and its habitat and on the availability of the species for subsistence uses; and

(3) Requirements for monitoring and reporting, including requirements for the independent peer-review of proposed monitoring plans where the proposed activity may affect the availability of a species or stock for taking for subsistence uses.

(c) Regulations will be established based on the best available information. As new information is developed, through monitoring, reporting, or research, the regulations may be modified, in whole or in part, after notice and opportunity for public review.

§ 228.6 Letter of authorization.

(a) A Letter of Authorization, which may be issued only to U.S. citizens, is required to conduct activities pursuant to any regulations established under § 228.5. Requests for letters of authorization shall be submitted to the Assistant Administrator. The information to be submitted in a request will be specified in the regulations authorizing the incidental take or may be obtained by writing to the Assistant Administrator.

(b) Issuance of a Letter of Authorization will be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under the specific regulations.

(c) Letters of Authorization will specify the period of validity and any additional terms and conditions appropriate for the specific request.

(d) Notice of issuance of all Letters of Authorization will be published in the **Federal Register** within 30 days of issuance.

(e) Letters of Authorization shall be withdrawn or suspended, either on an individual or class basis, as appropriate, if, after notice and opportunity for public comment, the Assistant Administrator determines that:

(1) The regulations prescribed are not being substantially complied with; or

(2) The taking allowed is having, or may have, more than a negligible impact on the species or stock, or where relevant, an unmitigable adverse impact on the availability of the species or stock for subsistence uses.

(f) The requirement for notice and opportunity for public review in § 228.6(e) shall not apply if the Assistant Administrator determines that an emergency exists that poses a significant risk to the wellbeing of the species or stocks of marine mammals concerned.

(g) A violation of any of the terms and conditions of a Letter of Authorization or of the specific regulations shall subject the Holder and/or any individual who is operating under the authority of the Holder's Letter of Authorization to penalties provided in the Act.

§ 228.7 Incidental harassment authorization.

(a) Except for activities that have the potential to result in serious injuries (that may be authorized under § 228.5), following a 30-day public review period, incidental harassment authorizations may be issued to allowed activities that may result in only the incidental harassment of a small number of marine mammals. Each such incidental harassment authorization shall set forth:

(1) Permissible methods of taking by harassment;

(2) Means of effecting the least practicable adverse impact on the species, its habitat, and on the availability of the species for subsistence uses; and

(3) Requirements for monitoring and reporting, including requirements for the independent peer-review of proposed monitoring plans where the proposed activity may affect the availability of a species or stock for taking for subsistence uses.

(b) Issuance of an incidental harassment authorization will be based on a determination that the number of marine mammals taken by harassment will be small, will have a negligible impact on the species or stock of marine mammal(s), and will not have an unmitigable adverse impact on the availability of species or stocks for taking for subsistence uses.

(c) An incidental harassment authorization will be either issued or denied within 45 days after the close of the public review period.

(d) Notice of issuance or denial of an incidental harassment authorization will be published in the **Federal Register** within 30 days of issuance of a determination.

(e) Incidental harassment authorizations will be valid for 1 year.

(f) An incidental harassment authorization shall be modified, withdrawn, or suspended, if, after notice and opportunity for public comment, the Assistant Administrator determines that:

(1) The conditions and requirements prescribed in the authorization are not being substantially complied with, or

(2) The authorized taking, either individually or in combination with other authorizations, is having, or may have, more than a negligible impact on the species or stock, or, where relevant, an unmitigable adverse impact on the availability of the species or stock for subsistence uses.

(g) The requirement for notice and opportunity for public review in § 228.7(f) shall not apply if the Assistant Administrator determines that an emergency exists that poses a significant risk to the well being of the species or stocks of marine mammals concerned.

(h) A violation of any of the terms and conditions of an incidental harassment authorization shall subject the Holder and/or any individual who is operating under the authority of the Holder's Incidental Harassment Authorization to penalties provided in the Act.

§ 228.8 Requirements for monitoring and reporting under incidental harassment authorizations.

(a) Holders of an incidental harassment authorization and their employees, agents, and designees must cooperate with the National Marine Fisheries Service and other designated Federal, state, or local agencies to monitor the impacts of their activity on marine mammals. Unless stated otherwise within an incidental harassment authorization, the Holder of an incidental harassment authorization must notify the appropriate Regional Director, National Marine Fisheries Service, of any activities that may involve a take by incidental harassment at least 14 calendar days prior to commencement of the activity.

(b) Holders of incidental harassment authorizations may be required by their authorization to designate at least one qualified biological observer or another appropriately experienced individual to observe and record the effects of activities on marine mammals. The number of observers required for monitoring the impact of the activity on marine mammals will be specified in the incidental harassment authorization. If required, the observer(s) must be approved in advance by the National Marine Fisheries Service.

(c) The monitoring program must, if appropriate, document the effects (including acoustical) on marine mammals and document or estimate the actual level of take. The requirements for monitoring plans, as specified in the incidental harassment authorization, may vary depending on the activity, the location, and the time.

(d) Where the proposed activity may affect the availability of a species or stock of marine mammal for taking for subsistence purposes, proposed monitoring plans or other research proposals must be independently peer reviewed prior to final approval of the applicant's submission of a request for an incidental harassment authorization under this subpart. In order to complete the peer-review process within the time frames mandated by the Act for an incidental harassment authorization, a proposed monitoring plan submitted under this paragraph must be submitted to the Assistant Administrator no later than the date of submission of the application for an incidental harassment authorization. Upon receipt of a complete monitoring plan, and at its

discretion, the National Marine Fisheries Service will either submit the plan to members of a peer-review panel for review or within 60 days of receipt of the proposed monitoring plan, schedule a workshop to review the plan. The applicant must submit a final monitoring plan to the Assistant Administrator prior to the issuance of an incidental harassment authorization.

(e) At its discretion, the National Marine Fisheries Service may place an observer on board vessels, platforms, aircraft, etc., to monitor the impact of activities on marine mammals.

(f) *Reporting.* (1) The holder of an incidental harassment authorization must submit a report to the Assistant Administrator within either 90 days of completion of any activities or 120 days prior to expiration of the incidental harassment authorization, whichever is earlier. This report must include the following information:

(i) Dates and type(s) of activity;

(ii) Dates and location(s) of any activities related to monitoring the effects on marine mammals; and

(iii) Results of the monitoring activities, including an estimate of the actual level and type of take, species name and numbers of each species observed, direction of movement of species, and any observed changes or modifications in behavior.

(2) Monitoring reports will be reviewed by the Assistant Administrator and, if determined to be incomplete or inaccurate, will be returned to the holder of the authorization with an explanation of why the report is being returned. If the authorization holder disagrees with the findings of the Assistant Administrator, the holder may request an independent peer review of the report. Failure to submit a complete and accurate report may result in a delay in processing future authorization requests.

(g) Results of any behavioral, feeding, or population studies, that are conducted supplemental to the monitoring program, should be made available to the National Marine Fisheries Service before applying for an incidental harassment authorization for the following year.

[FR Doc. 95–13265 Filed 5–30–95; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 60, No. 104

Wednesday, May 31, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Opta Food Ingredients, Inc. of Bedford, Massachusetts, and to American Maize-Products Company of Hammond, Indiana, co-exclusive licenses to U.S. Patent Application Serial No. 07/991,811 filed December 17, 1992, "Starch-Natural Gum Composite Compositions as Thickening and Suspending Agents." Notice of Availability was published in the **Federal Register** on April 19, 1993.

DATES: Comments must be received on or before July 31, 1995.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, Room 401, Building 005, BARC–West, Baltimore Boulevard, Beltsville, Maryland 20705–2350.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights to this invention are assigned to the United States of America, as repesented by the Secretary of Agriculture. It is in the public interest to so license this invention as Opta Food Ingredients, Inc. and American Maize-Products Company have submitted complete and sufficient applications for a license. The prospective co-exclusive licenses will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective co-exclusive licenses may be granted unless, within sixty days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the licenses would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

R.M. Parry, Jr.,

Assistant Administrator.

[FR Doc. 95–13240 Filed 5–30–95; 8:45 am]

BILLING CODE 3410–03–M

Animal and Plant Health Inspection Service

[Docket No. 95–038–1]

International Sanitary and Phytosanitary Standard-Setting Activities

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice and solicitation of comments.

SUMMARY: In accordance with legislation implementing the Uruguay Round of the General Agreements on Tariffs and Trade, we are informing the public of international standard-setting activities of the Office International des Epizooties and the Secretariat of the International Plant Protection Convention, and we are soliciting public comment on the standards to be considered.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 95–038–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state in your letter that your comments refer to Docket No. 95–038–1, and state the name of the committee or working group to which your comments are addressed. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Douglas Barnett, Assistant Director, International Activities, International Services, APHIS, 4700 River Road Unit 67, Riverdale, MD 20737–1233, (301) 734–8892; or Mr. John Greifer, Trade Support Team, International Services, APHIS, room 1128, South Building, 14th Street and Independence Avenue SW., Washington, DC 20250.

SUPPLEMENTARY INFORMATION: Legislation implementing the Uruguay Round of the General Agreements on Tariffs and Trade (the Uruguay Round Agreements Act) was signed into law (Pub. L. 103–465) by the President on December 8, 1994. The Uruguay Round Agreements Act amended title IV of the Trade Agreements Act of 1979 (19 U.S.C. 2531 *et seq.*) by adding a new subtitle F, "International Standard-Setting Activities." Subtitle F requires the President to designate an agency to be responsible for informing the public of the sanitary and phytosanitary standard-setting activities of each international standard-setting organization. The designated agency must inform the public by publishing a notice in the **Federal Register** no later than June 1 of each year, which provides the following information: (1) The sanitary or phytosanitary standards under consideration or planned for consideration by the international standard-setting organization; and (2) for each sanitary or phytosanitary standard specified, a description of the consideration or planned consideration of the standard; whether the United States is participating or plans to participate in the consideration of the standard; the agenda for United States participation, if any; and the agency responsible for representing the Untied States with respect to the standard.

Subtitle F defines "international standard" as a standard, guideline, or recommendation: (1) Adopted by the Codex Alimentarius Commission regarding food safety; (2) developed under the auspices of the International Office of Epizootics regarding animal health and zoonoses; (3) developed under the auspices of the Secretariat of the International Plant Protection Convention in cooperation with the North American Plant Protection Organization regarding plant health; or (4) established by or developed under any other international organization agreed to by the member countries of the North American Free Trade Agreement or by member countries of the World Trade Organization.

The Codex Alimentarius Commission (Codex) was created in 1962 by two United Nations organizations, the Food

and Agriculture Organization (FAO) and the World Health Organization. It is the major international organization for encouraging international trade in food and protecting the health and economic interests of customers.

The Office International des Epizooties (OIE) was created in Paris, France, in 1924, with the signing of an international agreement by 28 countries. Today, 143 countries are members. The OIE facilitates intergovernmental cooperation to prevent the spread of contagious diseases in animals, assists in the development of animal production through improved health information, and shares scientific progress among its members. The OIE provides the major international forum for discussion and agreement on recommendations and proposals on topics such as disease control, technical cooperation, trade standards, and the exchange of research and disease information.

The Secretariat of the International Plant Protection Convention (IPPC) was established within the FAO in 1952 in response to demands from members for development of global standards for plant quarantine. The IPPC works with plant protection organizations at national and regional levels, including the North American Plant Protection Organization (NAPPO), to harmonize plant quarantine activities worldwide, facilitate the dissemination of phytosanitary information, strengthen international cooperation, and support technical assistance to developing countries.

The World Trade Organization (WTO) was established on January 1, 1995, as the common international institution for the conduct of trade relations among the members in matters related to the Uruguay Round of the General Agreements on Tariffs and Trade. U.S. membership in the WTO was approved by Congress when it enacted the Uruguay Round Agreements Act.

The President, pursuant to Proclamation No. 6780 of March 23, 1995 (60 FR 15845), designated the Secretary of Agriculture as the official responsible for informing the public of the sanitary and phytosanitary standard-setting activities of each international standard-setting organization. This responsibility has been delegated to the Food Safety and Inspection Service of the United States Department of Agriculture (USDA) for Codex activities, and to the USDA's Animal and Plant Health Inspection Service (APHIS) for OIE and IPPC activities.

Accordingly, in this notice, APHIS announces the following OIE and IPPC (including NAPPO) activities related to international standards. The United States is a participant in each of the following activities and APHIS is the agency responsible for representing the United States with respect to these standards. In some cases, working groups and committees have not yet set meeting dates and places or determined specific standards to be discussed. Also, because working groups and the issues they address are not static, this list may not present a complete picture of the OIE and IPPC sanitary and phytosanitary standard-setting activities during the coming year.

1. *Committee/Working Group:* Standards Commission of the OIE
   Agency Participant: Dr. James Pearson
   General Purpose: Establish standards for methods of diagnosing animal disease and testing biologics used for control programs.
   Dates of Meetings: September 19–22, 1995, February 1996
   Location of Meetings: Paris, France
   Major Discussion/Agenda: Review of OIE reference laboratories; diagnostic test standardization; OIE reference sera; laboratory quality assurance; review of new edition of OIE *Manual of Standards of Diagnostic Tests and Vaccines;* provide advice to OIE Animal Health Code Commission
2. *Committee/Working Group:* OIE General Session
   Agency Participant(s): Dr. Lonnie King (delegate); Dr. Alex Thiermann (alternate delegate and coordinator)
   General Purpose: Establish and adopt international standards dealing with animal health.
   Date of Meeting: May 1996
   Location of Meeting: Paris, France
   Major Discussion/Agenda: Animal health standards as they relate to trade; including risk assessment standards (including criteria for evaluating veterinary infrastructure) and regionalization
3. *Committee/Working Group:* IPPC Certification Standards
   Agency Participant: Mr. Robert Griffin
   General Purpose: Development of standards for phytosanitary certification.
   Date of Meeting: To be announced
   Location of Meeting: To be announced
   Major Discussion/Agenda: Model certification system
4. *Committee/Working Group:* IPPC Inspection Methodologies Standards
   Agency Participant: Mr. Robert Griffin
   General Purpose: Development of standards for inspection methodology.
   Date of Meeting: To be announced
   Location of Meeting: To be announced
   Major Discussion/Agenda: Statistical basis for inspection
5. *Committee/Working Group:* IPPC/Foreign Agricultural Organization Working Group on Pest Risk Analysis
   Agency Participant: Mr. Richard Orr
   General Purpose: Development of international standards for pest risk analysis.
   Date of Meeting: To be announced
   Location of Meeting: To be announced
   Major Discussion/Agenda: To be announced
   Other: The following standards have been completed in draft form:
   Standards for Pest Categorization (Bangkok, Thailand, Sept. 1994); standards for determining whether an organism qualifies as a quarantine pest.
   Standards on Economic Impact Assessment (Ottawa, Canada, Nov. 1994); standards for performing an economic evaluation, including environmental and social impacts) within a pest risk assessment.
   Standards on the Probability of Introduction (Geneva, Switzerland, Jan. 1995); standards for determining the probability of introduction (entry resulting in establishment) of a pest.
   Standard on Risk Management (Yokohama, Japan, Mar. 1995); standards for making risk management decisions based on data from quarantine pest risk assessments.
6. *Committee/Working Group:* NAPPO Biological Control Committee
   Agency Participant: Dr. Dale Meyerdirk
   General Purpose: Facilitate cooperation among NAPPO member countries regarding biological control issues, through information exchange, coordination, and harmonization of recommendations, regulations, and guidelines.
   Date of Meeting: February 19–13, 1996
   Location of Meeting: Mexico
   Major Discussion/Agenda: To be announced
7. *Committee/Working Group:* NAPPO Fruit Tree and Grapevine Nursery Stock Certification Standards Panel
   Agency Participant: Dr. Joseph Foster
   General Purpose: Set minimum standards for pathogen testing and propagation of fruit trees and grapevines so certified nursery stock can be shipped safely throughout North America.
   Date of Meeting: June 21–24, 1995
   Location of Meeting: Victoria, British Columbia, Canada
   Major Discussion/Agenda: Pathogen lists for each crop and pathogen testing procedures for quarantine programs
8. *Committee/Working Group:* NAPPO Working Group
   Agency Participant: Mr. Robert Griffin
   General Purpose: Provide general leadership, director, and support to NAPPO activities.
   Date of Meeting: July and October, 1995; January and April, 1996
   Location of Meeting: To be announced
   Major Discussion/Agenda: All new and ongoing NAPPO business, including standards
9. *Committee/Working Group:* NAPPO Ad Hoc Irradiation Panel
   Agency Participant: Mr. Robert Griffin
   General Purpose: Develop NAPPO standards for the application of irradiation to phytosanitary problems.
   Date of Meeting: To be announced
   Location of Meeting: To be announced
   Major Discussion/Agenda: Continuing development of trilateral policy
10. *Committee/Working Group:* NAPPO Ad Hoc Fruit Flies Panel
    Agency Participant: Mr. Michael Stefan and Mr. Alan Green
    General Purpose: Develop quarantine pest list for NAPPO region; develop NAPPO standards for monitoring fruit fly species; develop NAPPO standard for phytosanitary measures.
    Date of Meeting: To be announced
    Location of Meeting: To be announced
    Major Discussion/Agenda: Regional pest list; monitoring standards; phytosanitary measures standards; rationale on how to proceed with issues not of direct concern to one of the three members
11. *Committee/Working Group:* NAPPO Pest Risk Analysis Panel
    Agency Participant: Dr. Matthew Royar
    General Purpose: To implement NAPPO pest risk analysis standard.
    Date of Meeting: October 1995
    Location of Meeting: Saskatchewan, Canada
    Major Discussion/Agenda: To be announced
12. *Committee/Working Group:* NAPPO Executive Committee
    Agency Participant: Mr. Alfred S. Elder
    General Purpose: To harmonize plant quarantine regulations and import requirements among Canada, Mexico, and the United States
    Date of Meeting: August 15, 1995; October 1995; April 1996
    Location of Meeting: Saskatchewan, Canada; Ottawa, Ontario, Canada
    Major Discussion/Agenda: Standards development process; area freedom standard; pest surveillance/monitoring standard; pest risk analysis standard.

Comments on standards being considered or to be considered by any of the committees or working groups listed above may be sent to us as directed under the heading **ADDRESSES.**

Done in Washington, DC, this 25th day of May 1995.

Terry L. Medley

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–13241 Filed 5–30–95; 8:45 am]

BILLING CODE 3410–34–M

Forest Service

Olympic Provincial Interagency Executive Committee (PIEC), Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Olympic PIEC Advisory Committee will meet on June 21, 1995 at the Olympic Natural Resources Center, 1455 S. Forks Avenue, Forks, Washington. The meeting will begin at 9 a.m. and continue until 3 p.m. Agenda items to be covered include: (1) Review Long Term Vision from May meeting; (2) Discuss and Identify Tasks and Working Groups; (3) Review Watershed Analysis Priority Criteria—Recommend criteria for PIEC; (4) Intergovernmental Data and Information Sharing; (5) Adaptive Management Area Planning; (6) Summary of Ecosystem Research in the Hoh; (7) Open public forum. All Olympic Province Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Kathy Snow, Province Liaison, USDA, Quilcene Ranger District, P.O. Box 280, Quilcene, WA 98376, (36) 765–2211 or Ronald R. Humphrey, Forest Supervisor, at (360) 956–2301.

Dated: May 24, 1995.

Ronald R. Humphrey,

Forest Supervisor.

[FR Doc. 95–13203 Filed 5–30–95; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Open Meeting Florida Keys National Marine Sanctuary Advisory Committee

AGENCY: Sanctuaries and Reserves Division (SRD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Florida Keys National Marine Sanctuary Advisory Council notice of open meeting.

SUMMARY: The Council was established in December 1991 to advise and assist the Secretary of Commerce in the development and implementation of the comprehensive management plan for the Florida Keys National Marine Sanctuary.

TIME AND PLACE: June 20, 1995, from 9:00 a.m. until adjournment. The meeting location will be at the Hawk's Cay Resort, Mile Marker 61, Duck Key, Florida.

AGENDA:

1. Elect new officers.
2. Outline procedures for the advisory council's involvement in the review of draft management plan.
3. Schedule next meeting.

PUBLIC PARTICIPATION: The meeting will be open to public participation. Public comment will be received from 11:30 until noon and 4:30 to 5:30. Seats will be set aside for the public and the media. Seats will be available on a first-come first-served basis.

FOR FURTHER INFORMATION CONTACT: June Cradick at (305) 743–2437.

Federal Domestic Assistance Catalog Number 11.429, Marine Sanctuary Program.

Dated: May 25, 1995.

David L. Evans,

Acting Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 95–13281 Filed 5–30–95; 8:45 am]

BILLING CODE 3510-08-M

[I.D. 050695D]

Permits; Foreign Fishing

In accordance with a memorandum of understanding with the Secretary of State, the National Marine Fisheries Service publishes for public review and comment summaries of applications received by the Secretary of State requesting permits for foreign fishing vessels to operate in the exclusive

economic zone, under provisions of the Magnuson Fishery Conservation and Management Act (Magnuson Act, 16 U.S.C. 1801 *et seq.*). This notice concerns the receipt of an application from the Government of Poland requesting authorization to conduct a joint venture (JV) in the Northwest Atlantic Ocean. The application requests 10,000 metric tons (mt) of Atlantic sea herring and 5,000 mt of Atlantic mackerel be made available for the JV. The freezer trawler MANTA is identified as the vessel that will receive sea herring and mackerel from U.S. vessels. Based on receipt of a foreign JV application for Atlantic sea herring, and in accordance with section 201(h) of the Magnuson Act, necessary regulatory actions are being effected and a Preliminary Fishery Management Plan (PMP) for Atlantic sea herring is being developed. Specifications for the Atlantic Mackerel, Squid and Butterfish Fishery Management Plan presently include 35,000 mt of Atlantic mackerel as available for JV processing. Approvability of the JV's, as proposed in the Polish application, will be contingent on development of a PMP for sea herring with specifications that include an amount of U.S.-harvested herring for such operations, and on other issues that bear on the approval of foreign fishing permits. Send comments on this application to:

NOAA—National Marine Fisheries Service, Office of Fisheries Conservation and Management, 1315 East-West Highway, Silver Spring, MD 20910 and/or, to one or both of the Regional Fishery Management Councils listed below:

Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906; (617) 231–0422.

David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, Federal Building, Room 2115, 300 South New Street, Dover, DE 19901–6790; (302) 674–2331.

For further information contact Robert A. Dickinson, Office of Fisheries Conservation and Management; (301) 713–2337.

Dated: May 23, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–13263 Filed 5–30–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D.052295A]

Marine Mammals and Endangered Species

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application for a scientific research permit (P557E).

SUMMARY: Notice is hereby given that Scripps Institution of Oceanography, Institute for Geophysics and Planetary Physics, Acoustic Thermometry of Ocean Climate Program, 9500 Gilman Drive, La Jolla, CA 92093–0225, has applied in due form for a permit to take several species of marine mammals and sea turtles for purposes of scientific research. The subject application supersedes a previous application published at 58 FR 60426, then modified and re-published at 59 FR 7983, and a subsequent revision to that application which was never published, both of which have been withdrawn.

DATES: Written comments must be received on or before June 30, 1995.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289); and

Director, Southwest Region, NMFS, NOAA, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213 (301/980–4016).

Written data or views, or requests for a public hearing on this request, should be submitted to the Director, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

FOR FURTHER INFORMATION CONTACT: Jeannie Drevenak, Permits Division, 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222).

The permit application requests authorization to harass marine mammals and sea turtles by a low frequency sound source (peak frequency 75 Hz, 35 Hz bandwidth; 195 dB level (re 1 μPa at 1 m)) which would be located approximately 14 km north of Kauai, at a depth of 850 m. The proposed research would be conducted over a 2-year period.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: May 23, 1995.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–13196 Filed 5–30–95; 9:22 am]

BILLING CODE 3510–22–F

[I.D. 052295B]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application to modify permit no. 927 (P79I).

SUMMARY: Notice is hereby given that Institute of Marine Science, University of California, Santa Cruz, CA 95064, has requested a modification to permit No. 927.

ADDRESSES: The modification request and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Director, Southwest Region, NMFS, 310 W. Ocean Blvd., Long Beach, CA 90802–4213 (310/980–4001); and

Director, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668 (907/586–7221).

Written data or views, or requests for a public hearing on this request should be submitted to the Director, Office of Protected Resources, NMFS, NOAA, U.S. Department of Commerce, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular modification request would be appropriate.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

SUPPLEMENTARY INFORMATION: The subject modification to permit No. 927, issued on June 17, 1994 (publ. June 23, 1994, 59 FR 32419) is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*), and fur seal regulations at 50 CFR part 215.

Permit No. 927 authorizes the permit holder to capture, tag, and sample up to 220 fur seals (*Callorhinus ursinus*) and to incidentally harass up to 69,000 annually during research activities. The permit holder requests authorization to increase the sample size of adult females from 60 to 120 and pups from 160 to 560. The increase is requested for: comparison of St. Paul vs St. George Island with regard to foraging ecology and its possible influence in explaining differences in the rate of recovery of populations of fur seals; continuation of studies of milk intake, metabolism, growth, thermoregulation and condition at weaning; and determine if pups with greater mass prior to weaning have a different fatty acid composition from pups of lower mass.

Dated: May 23, 1995.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–13264 Filed 5–30–95; 8:45 am]

BILLING CODE 3510–22–F

COMMODITY FUTURES TRADING COMMISSION

New York Mercantile Exchange: Proposed Amendments to the Gulf Coast Unleaded Regular Gasoline Futures Contract Relating to the Delivery Procedures and Delivery Period

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed contract market rule changes.

SUMMARY: The New York Mercantile Exchange (NYMEX or Exchange) has submitted proposed amendments to its Gulf Coast unleaded regular gasoline futures contract that, among other things, would: (1) Require that all futures deliveries regardless of size be made on the Colonial Pipeline system at an injection point from Pasadena, Texas to Moundville, Alabama; (2) eliminate the public terminal delivery alternative; (3) require the buyer receiving less than 25 contracts to reimburse the seller for any Colonial Pipeline shipping charges incurred for making such deliveries; and (4) for a particular delivery month restrict all futures deliveries to the third cycle of the Colonial Pipeline for that month, provided that deliveries of less than 25 contracts would be further restricted to the back-half of such third Colonial Pipeline cycle.

In accordance with Section 5a(12) of the Commodity Exchange Act and acting pursuant to the authority delegated by Commission Regulation 140.96, the Acting Director of the Division of Economic Analysis (Division) of the Commodity Futures Trading Commission (Commission) has determined, on behalf of the Commission, that the proposed amendments are of major economic significance. On behalf of the Commission, the Division is requesting comment on these proposals.

DATES: Comments must be received on or before June 30, 1995.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581. Reference should be made to the proposed amendments to the New York Mercantile Exchange Gulf Coast unleaded regular gasoline futures contract.

FOR FURTHER INFORMATION CONTACT: John Forkkio, Jr., Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581, telephone (202) 254–7303.

SUPPLEMENTARY INFORMATION: Under current provisions of the Gulf Coast unleaded regular gasoline (gasoline) futures contract, for all positions involving 25 contracts or more, delivery must be F.O.B. at a Colonial Pipeline injection station selected by the seller in the delivery area. The delivery area for pipeline deliveries encompasses the area along the Colonial Pipeline from Pasadena, Texas upstream to Moundville, Alabama. For all positions involving deliveries of less than 25 contracts, deliveries must be f.o.b. at one of the three public terminal facilities located in the region around Pasadena, Texas—GATX Terminals Corporation, OilTanking Houston Inc., or Amerada Hess Corporation. Such deliveries can be made by intra-facility or inter-facility transfer of product or by barge shipment. All public terminal deliveries are assessed a surcharge of 1.75¢ per gallon, payable by any party receiving or delivering less than 25 contracts.

Under existing provisions, for a particular delivery month, pipeline deliveries must be made during either the second or third Colonial Pipeline delivery cycle for that month. This essentially provides a delivery period of about 21 days.[1]

Under the proposed amendments, all deliveries on the gasoline futures contract, regardless of position size, must be by pipeline delivery into the Colonial Pipeline system in the existing delivery area as noted above.[2] Additionally, under the proposed amendments, all deliveries in a particular delivery month would be restricted to the third cycle of the Colonial Pipeline for that month; provided that deliveries with respect to positions involving less than 25 contracts would be further restricted to the back-half of such third cycle. Proposed amendments also would require the seller making delivery on a position involving less than 25 contracts to make all the required arrangements for shipment of the product on the Colonial Pipeline, and the buyer to reimburse the seller for any Colonial Pipeline shipping charges incurred by the seller in making such deliveries.

The Exchange proposes to apply the proposed amendments to newly listed contract months only following its receipt of notice of Commission approval.

According to the Exchange, the proposed amendments were proposed to conform the futures delivery rules with cash market practices in the Gulf and to provide more certainty in the timing of deliveries on the futures contract. Specifically, the NYMEX stated:

> The Contract will remain unchanged for "round" deliveries where delivery is made directly into the Colonial Pipeline * * * * * * Deliveries of less than 25,000 barrels are not directly deliverable into the Pipeline, and hence, the existing Gulf Coast Contract has specified delivery of odd-lots into public terminals. The proposed amendments are based on the fact that Colonial allows for a shipper to designate beneficial owners of product through what is known as a "consignee" relationship * * *
>
> The "consignee" relationship allows shippers to consign smaller portions of gasoline shipments to one or more beneficial owners, so that odd-lot batches of less than 25,000 barrels can be accommodated on the

[1] To efficiently transport product through its pipeline system, Colonial divides the year into 36 cycles. Each month has three cycles; each with a duration of about ten days. Additionally, each cycle is subdivided into a front half and a back half, each of five days duration.

[2] As a result of this proposal, public terminal deliveries on the contract will no longer be permitted. As a consequence, intra and inter-facility transfers and barge shipments will not be permissible methods of delivery on the contract.

Colonial Pipeline. An authorized shipper on Colonial is allowed to break up a batch of 25,000 barrels, and allocate odd-lot batches to various consignees, who then specify a delivery point along the Colonial Pipeline. The beneficial owner, or consignee, can be changed on Colonial's records. Thus, an odd-lot delivery of gasoline can be shipped on the Colonial Pipeline, as long as the odd-lot seller finds a shipper in the cash market to add the seller's odd-lot batch to his existing shipment of at least 25,000 barrels on Colonial. The "consignee" relationship provides the mechanism to perform the odd-lot delivery directly into Colonial Pipeline * * *

With respect to the Exchange proposal to change the delivery period so that all deliveries will occur in either the front-half or back-half of the third cycle of the Colonial Pipeline, the NYMEX stated that:

> In the cash market, prices are negotiated for products delivered in each half-cycle increment on Colonial Pipeline, and prices typically vary between each half-cycle, depending on market conditions. Narrowing the delivery period to the third cycle of the month provides sufficient capacity on the Colonial Pipeline to accommodate NYMEX deliveries. In addition, narrowing the delivery period to the third cycle would provide greater certainly in terms of the timing for the pricing of the commodity. The most actively traded cash market instrument in the Gulf Coast is for delivery in the third cycle of Colonial Pipeline.

The Division requests comment on the proposed changes to the NYMEX gasoline futures contract. The Commission is specifically requesting comments on the effect of the proposed restrictions regarding deliveries involving less than 25 contracts. The Division also requests comment on the effect of the proposal to restrict deliveries to one Colonial Pipeline cycle per month on the economically deliverable supply of gasoline available for the contract.

Copies of the proposed amendments will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581. Copies of the amended terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by telephone at (202) 254–6314.

The materials submitted by the Exchange in support of the proposed amendments may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1987)). Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the proposed amendment should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20481 by the specified date.

Issued in Washington, D.C. on May 23, 1995.

Blake Imel,

Acting Director.

[FR Doc. 95–13188 Filed 5–30–95; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Department of the Army

Local Redevelopment Authority (LRA) for the Available Surplus Camp Evans Facility, Fort Monmouth, Located at Wall, New Jersey

AGENCY: U.S. Army Corps of Engineers, New York District.

ACTION: Notice.

SUMMARY: This notice provides information regarding the LRA that has been established to plan the reuse of the Camp Evans Facility, Fort Monmouth, located on Marconi and Monmouth Roads in Wall Township, New Jersey, as set forth in the new procedures under the Base Closure Community Redevelopment and Homeless Assistance Act of 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Verruni, Town Administrator—Wall Township, ATTN: MPCA, 2700 Allaire Road, Wall, New Jersey 07719–1168, phone: (908) 449–8444, ext. 216.

SUPPLEMENTARY INFORMATION: In 1993 the Camp Evans area of Fort Monmouth, Wall Township, New Jersey was designated for closure pursuant to Title II Section 204 of Public Law 100–526, Defense Base Closure and Realignment Act, supplemented by paragraph 7 of section 2905(b) of the 1990 Base Closure Act, 10 U.S.C. 2687, as amended by subsection (a) of the Base Closure and Community Redevelopment and Homeless Assistance Act of 1994, Public Law 103–421.

1. *Election to proceed under procedures established by Public Law 102–421.* The Base Closure Community Redevelopment and Homeless Assistance Act of 1994 Public Law 103–421, subsection (e)(1)(b) of the 1994 Act gives a redevelopment authority at base closure sites the option of employing new procedures with regard to the manner in which the redevelopment plan for Camp Evans is formulated and how requests are made for future use of the property by homeless assistance providers and non-federal public agencies.

2. *Redevelopment authority.*

a. The Redevelopment Authority for Camp Evans for purposes of implementing the provisions of the Defense Base Closure and Realignment Act of 1990 as amended is the Marconi Park Complex Advisory Committee (MPCAC) which was appointed by the Township Committee of Wall Township, New Jersey. The Township Committee is the governing body of Wall Township. The Marconi Park Complex Advisory Committee conducted one public meeting to receive comments from individuals and organizations interested in the reuse of the base.

b. The MPCAC is assisted by a full time Township Administrator, Mr. Joseph L. Verruni. Comments for proposals regarding the development of the site for consideration by the MPCAC as the Local Redevelopment Authority should be addressed to Mr. Verruni, Township Administrator, ATTN: MPCA, 2700 Allaire Road, Wall, New Jersey 07719–1168.

3. *Take notice.* Pursuant to the Base Closure and Community Redevelopment and Homeless Assistance Act of 1994, the Marconi Park Complex Advisory Committee (LRA) of Wall Township extends until June 30, 1995 the period in which State and local governments, representatives of the homeless and other interested parties located in the communities in the vicinity of the Camp Evans may submit notices of interest to the MPCAC in all or part of the property and/or buildings located at Camp Evens.

4. *Surplus property description.* The Camp Evans site consists of 215 acres of land of which 91 acres more or less are improved with buildings utilized for communications and electronics research and development facilities and storage. The site includes a two story administrative building, two single family detached residences, radio and signal towers, Quonset buildings, "H" type storage building used for research facilities and numerous pre-1945 frame structures utilized for storage for electronics equipment and other materials and maintenance facilities. The site includes three buildings which are eligible for the National Register of Historic sites.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 95–13197 Filed 5–30–95; 8:45 am]

BILLING CODE 3710–08–M

Intent To Prepare a Draft Environmental Impact Statement to Evaluate a Permit Application for a Confined Dredged Material Disposal Facility in Newark Bay, New Jersey

AGENCY: U.S. Army Corps of Engineers—New York District, Department of the Army, Department of Defense.

ACTION: Notice of intent to prepare a draft environmental impact statement.

SUMMARY: The construction of a Confined Dredged Material Disposal Facility in navigable waters of the United States requires a Department of the Army Permit pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) and Section 404 of the Clean Water Act (33 U.S.C. 1344). The EIS process will assist the U.S. Army Corps of Engineers' (USACE) in determining whether to issue a permit for the project under these authorities. This action is taking place in accordance with the USACE procedures for implementing the National Environmental Policy Act (33 CFR Part 325).

FOR FURTHER INFORMATION CONTACT: Mr. Joseph J. Seebode, Chief, Regulatory Branch New York District Corps of Engineers, 26 Federal Plaza, Room 1937, New York, New York 10278–0090, telephone (212) 264–3996.

SUPPLEMENTARY INFORMATION:

1. Projected Description

The proposed Newark Bay Confined Disposal Facility (CDF) would provide an alternate regional disposal site for contaminated dredged material that is unsuitable for ocean disposal, or that requires special management procedures at the federally designated Mud Dump Site located six miles off the coast of Sandy Hook, New Jersey. The CDF would be constructed by excavating two large subaqueous pits, to a maximum depth of approximately 90 feet below the plane of Mean Low Water, by clamshell bucket dredge. The two pits would occupy a surface area of approximately 160 acres and have a total volume capacity of approximately 14 million cubic yards. The larger of the two pits would measure approximately 100 acres in size and have a capacity of approximately 9.3 million cubic yards, while a second, smaller pit would have a surface area of approximately 60 acres and a capacity of 4.7 million cubic yards.

2. Reasonable Alternatives

In addition to the no action alternative, reasonable alternatives to be considered include the following:

a. Alternative pit location

b. Alternative methods of filling pit(s):

(1) Fill completely

(2) Partially fill so that some depression remains

(3) Capping alternative (sand vs. mud vs. no cap)

c. Alternative methods of dredged material disposal:

(1) Ocean disposal

(2) Containment islands and areas (land extension)

(3) Upland disposal

(4) Sanitary landfill cover

(5) Wetlands Creation

3. EIS Scoping

As part of the EIS scoping process, comments on the proposed scope of the EIS will be accepted until 45 days after the publication of this NOI in the **Federal Register**; all comments should be addressed to the contact person indicated above. In addition to receiving written comments, the USACE will receive oral comments during a public scoping meeting scheduled for the latter part of the scoping period. Formal notice of this meeting will be made through mailings and/or legal notices in local newspapers.

4. Public Participation in the EIS Process

The EIS process will provide opportunities for full participation by interested federal, state, and local agencies, as well as other interested organizations and the general public. These opportunities will include periodic public meetings and agency availability sessions. All interested parties are encouraged to submit their names and addresses to the contact person indicated above for inclusion on the distribution list for the draft and final EIS and any related public notices.

5. Federal Agency Participation in the EIS Process

Federal agencies with an interest in this EIS effort are requested to participate as cooperating agencies pursuant to 40 CFR Part 1501.6. All interested federal agencies are requested to submit a letter of intent to Colonel Thomas A. York, Corps of Engineers District Engineer.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 95–13198 Filed 5–30–95; 8:45 am]

BILLING CODE 3710–08–M

Department of the Navy

Notice of Public Hearing for the Draft Environmental Impact Statement for the Disposal and Reuse of the Naval Training Center (NTC), Orlando, FL

Pursuant to Council on Environmental Quality Regulations (40 CFR parts 1500–1508) implementing procedural provisions of the National Environmental Policy Act, the Department of the Navy has prepared and filed with the U.S. Environmental Protection Agency the Draft Environmental Impact Statement (DEIS) for the Proposed Disposal and Reuse of the NTC Orlando, Florida.

In response to the recommendations of the 1993 Department of Defense Base Realignment and Closure Commission (BRAC–93) and to legislative requirements of the 1990 Base Realignment and Closure Act (Public Law 101–510), the Naval Training Center (NTC), Orlando, Florida, is to be closed and the property to be made available for disposal and reuse. The Navy has prepared a DEIS which addresses the environmental impacts of disposing NTC Orlando and of its potential reuse. The purpose of the DEIS is to assist the Secretary of the Navy in making a decision concerning the disposition of NTC property. It is the Navy's policy to adopt the community's redevelopment plan as its preferred alternative. The preferred alternative presented in the DEIS is the NTC Reuse Plan approved by the City of Orlando.

The preferred alternative for the Main Base is a combination of land uses, featuring a Village Center, which would provide pedestrian-oriented retail, office, and residential uses. The Village Center would be surrounded by offices, a business park, education, recreation, and open space. The primary use of McCoy Annex would be warehouse/distribution and residential. Open space uses would include retention of the nine-hole golf course and other non-developed areas. Area C would be used for warehouse and industrial, and the Herndon Annex would be developed as a distribution facility associated with the Orlando Executive Airport. The preferred alternative would generate more than 15,500 jobs at full buildout in 2015, and increase traffic in the area substantially.

The DEIS has been distributed to various federal, state, and local agencies, elected officials, special interest groups, and the media. A limited number of single copies are available at the address listed at the end of this notice.

A public hearing to inform the public of the DEIS findings and to solicit comments will be held at the Audobon Elementary School, 1500 Falcon Drive, Orlando, Florida, on Thursday evening, June 15, 1995, from 7 p.m. until the end of pubic comment or 12 midnight.

The public hearing will be conducted by the Navy. Federal, state and local agencies, and interested parties are invited and urged to be present or represented at the hearing. Oral statements will be heard and transcribed by a legal stenographer; however, to ensure accuracy of the record, all statements should be submitted in writing. All statements, oral and written, will become a part of the pubic record of this study, and will be responded to in the Final Environmental Impact Statement. Equal weight will be given to both oral and written statements.

In the interest of available time, each speaker will be asked to limit his/her comments to five minutes. If longer statements are to be presented, they should be summarized for the public hearing and submitted in long-form at the hearing or mailed to the address listed at the end of this announcement. All written comments must be postmarked by 26 June 1995, to become a part of the official record.

Additional information concerning this notice may be obtained by contacting Ronnie Lattimore (Code 064RL), Southern Division, Naval Facilities Engineering Command, PO Box 190010, North Charleston, South Carolina, 29419–9010, telephone (803) 743–0888.

Dated: May 25, 1995.

L.R. McNees,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 95–13223 Filed 5–30–95; 8:45 am]

BILLING CODE 3810–FF–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Group, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by June 30, 1995.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street NW., Room 3208, New Executive Office Building, Washington, D.C. 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue SW., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill, (202) 708–9915. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Resources Group, publishes this notice with the attached proposed information collection request prior to submission of this request to OMB. This notice contains the following information: (1) Type of review requests, e.g., expedited; (2) Title; (3) Abstract; (4) Additional information; (5) Frequency of collection; (6) Affected public, and (7) Reporting and/or Recordkeeping burden. Because an expedited review has been requested, a description of the information to be collected is also included as an attachment to this notice.

Dated: May 24, 1995.

Gloria Parker,

Director, Information Resources Group.

Office of Elementary and Secondary Education

Type of Review: Expedited

Title: Notice of Final Priority Under Section 1308(a) of the Elementary and Secondary Education Act

Frequency: One time

Affected Public: State, Local and Tribal Governments

Reporting Burden:

Responses: 51

Burden Hours: 13

Recordkeeping Burden:

Recordkeepers: 0

Burden Hours: 0

Abstract: Information will be used to make grant awards, on a one-time basis in FY 1995, to provide additional resources to State Educational Agencies to assist them in the transfer for educational and health records of migratory children.

Additional Information: Clearance for this information collection is requested by June 30, 1995. The Department must obligate these funds by September 30, 1995 because this priority was originally set aside for FY 1994 Migrant Education Program appropriation.

[FR Doc. 95–13189 Filed 5–30–95; 8:45 am]

BILLING CODE 4000–01–M

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before June 30, 1995.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–9915. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Group, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: May 24, 1995.

Gloria Parker,

Director, Information Resources Group.

Office of Educational Research and Improvement

Type of Review: Reinstatement

Title: Application for Field-Initiated Studies Educational Research Grant Program

Frequency: Annually

Affected Public: Individual or households; Not for profit Institutions; State, Local or Tribal Government

Reporting Burden:

Responses: 750

Burden Hours: 11,250

Recordkeeping Burden:

Recordkeepers: 0

Burden Hours: 0

Abstract: This information collection allows institutions of higher education; state and local education agencies; public and private organizations; institutions, and agencies; and individuals to apply for grants under the Field-Initiated Studies Program supported by five National Research Institutes. Funds will support educational research that will improve American education.

[FR Doc. 95–13190 Filed 5–30–95; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP94–67–020]

Southern Natural Gas Company; Notice of Refund Report

May 24, 1995.

Take notice that on May 22, 1995, Southern Natural Gas Company (Southern) tendered for filing a refund report pursuant to the Commission's order dated March 2, 1995, in the above-captioned proceeding. Southern states that these refund levels result from the restatement of Southern's GSR billing units effective from January 1, 1994, through January 1, 1995.

Southern seeks in this filing to support the derivation of its principal refund levels by customer and the accrued interest through the refund date of May 2, 1995.

Southern states that copies of the refund report are being mailed to all applicable Southern shippers and interest state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Rules 211 of the Commission's Rules of Practice and Procedure (§ 385.211). All such protests should be filed on or before June 1, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–13193 Filed 5–30–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–301–000]

Southern Natural Gas Company; Notice of Petition for Limited Waiver of Transportation Tariff Provisions

May 24, 1995.

Take notice that on May 19, 1995, Southern Natural Gas Company (Southern) filed a petition for a limited waiver of certain provisions of its FERC Gas Tariff, Seventh Revised Volume No. 1, in compliance with § 161.3(b) of the Commission's Regulations.

Southern is requesting a limited waiver of Section 3(b) of Rate Schedules FT and FT–NN of its tariff to allow Northwest Alabama Gas District (Northwest) to subscribe to additional firm transportation (FT) service on Southern's system at a two-part rate as a part of a proposed expansion project while retaining its existing firm transportation services subject to a one-part rate.

Southern states that a copy of the filing is being served on all of Southern's shippers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 1, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–13194 Filed 5–30–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP89–34–015]

Williston Basin Interstate Pipeline Company; Notice of Refund Report

May 24, 1995.

Take notice that on May 19, 1995, Williston Basin Interstate Pipeline Company (Williston) tendered for filing a refund report. Williston states that the report documents refunds of amounts due customers under Williston's Docket Nos. RP89–34–000, RP89–257–000, and RP90–2–000 for the locked-in period from June 1, 1989, through May 31, 1992.

Williston states that it is filing the refund report pursuant to the Commission's Order on Rehearing issued April 5, 1995, in the above referenced dockets. Williston also states that the refunds are being mailed to its customers on May 19, 1995, and the total refunds covered by the instant filing amount to $3,543,062.65, inclusive of principal and interest.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E. Washington D.C. 20426, in accordance with § 385.211 of the Commission's Regulations. All such protests should be filed on or before June 1, 1995. Protests

will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–13195 Filed 5–30–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EC95–12–000, et al.]

Century Power Corporation, et al., Electric Rate and Corporate Regulation Filings

May 23, 1995.

Take notice that the following filings have been made with the Commission:

1. Century Power Corporation

[Docket No. EC95–12–000]

Take notice that on May 19, 1995, Century Power Corporation filed an application under § 203 of the Federal Power Act for an order authorizing it to terminate its status as a public utility under the Act as of the later of (1) January 2, 1996, or such other date as it sells its 8.2% ownership interest in San Juan Unit 3 and ceases making sales for resale of electric power, or (2) the expiration of appeal rights under the last of the final Commission orders in Docket Nos. ER79–97 or EL93–19, in which Century serves as a conduit to pay over to San Diego Gas & Electric Company any refunds received from Tucson Electric Power Company. Upon the later of these events, Century expects to no longer perform any function subject to the Commission's jurisdiction under the Act.

Comment date: June 8, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. The Cleveland Electric Illuminating Company and The Toledo Edison Company

[Docket No. EC94–14–000]

Take notice that on May 9, 1995, The Cleveland Electric Illuminating Company (Cleveland Electric) and The Toledo Edison Company (Toledo Edison)(together, the Applicants), pursuant to § 203 of the Federal Power Act, 16 U.S.C. § 824b, and Part 33 of the Rules and Regulations of the Federal Energy Regulatory Commission (Commission), tendered for filing an amendment to the application for an order from the Commission authorizing the merger of Toledo Edison into Cleveland Electric.

The Applicants are public utilities organized and existing under the laws of the State of Ohio, and both Applicants are engaged in the business of supplying electric energy to wholesale and retail customers within the State of Ohio. Cleveland Electric generates, transmits, distributes and sells electric energy to approximately 748,000 customers in Northeastern Ohio. Toledo Edison generates, transmits, distributes and sells electric energy to approximately 285,000 customers in Northwestern Ohio. Cleveland Electric's and Toledo Edison's operations are subject to regulation by The Public Utilities Commission of Ohio. Centerior Energy Corporation (Centerior), which is organized and existing under the laws of the State of Ohio, is the 100% owner of the common stock of both Cleveland Electric and Toledo Edison. Each of Cleveland Electric and Toledo Edison has outstanding serial preferred shares that are held by the public.

Under the terms and conditions of a definitive Agreement of Merger entered into by Cleveland Electric and Toledo Edison, 100% of the common shares of Toledo Edison will be converted into newly-issued common shares of Cleveland Electric, the Toledo Edison preferred shares will be exchanged for newly-issued preferred shares of Cleveland Electric, and any dissenting preferred shareholders of Toledo Edison will be paid cash for their shares upon exercise of applicable dissenters' rights. Upon the occurrence of these events, Toledo Edison will be merged into Cleveland Electric, and the separate corporate existence of Toledo Edison will cease. Cleveland Electric will, by operation of law, acquire title to and interest in all facilities of Toledo Edison that are currently under the jurisdiction of the Commission, and Cleveland Electric will operate such facilities without change.

Cleveland Electric and Toledo Edison believe that the proposed corporate reorganization is consistent with the public interest, and that it will be in the best interest of the customers, share owners and employees of both Applicants.

Comment date: June 8, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. Central Power and Light

[Docket No. ER95–853–000 Company]

Take notice that on May 16, 1995, Central Power and Light Company (CPL) tendered for filing an amendment to its Coordination Sales Tariff, filed March 31, 1995. Under the Coordination Sales Tariff, CPL will make Economy Energy, Short-Term Power and Energy, General Purpose Energy and Emergency Energy Service available to customers upon mutual agreement. The amendment lowers the rate for purchase and resale transactions.

CPL has asked for an effective date of April 1, 1995. Copies of this filing were served on the Public Utility Commission of Texas and all customers presently established under the Tariff. Copies are also available for public inspection at CPL's offices in Corpus Christi, Texas.

Comment date: June 6, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell

Secretary.

[FR Doc. 95–13225 Filed 5–30–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. ER95–595–000, et al.]

Kentucky Utilities Company, et al., Electric Rate and Corporate Regulation Filings

May 24, 1995.

Take notice that the following filings have been made with the Commission:

1. Kentucky Utilities Company

[Docket No. ER95–595–000]

Take notice that on May 12, 1995, Kentucky Utilities Company (KU) filed an Amendment to the modified Letter Agreement between KU and Wabash Valley Power Association, Inc. (Wabash Valley).

Comment date: June 7, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. Northeast Utilities Service Company

[Docket No. ER95–781–000 Company]

Take notice that on May 1, 1995, Northeast Utilities Service Company (NUSCO) submitted for filing, on behalf of the Northeast Utilities (NU) System Companies, supplemental information relating to the Fourth Amendment to a System Power Sales Agreement between NUSCO and Bozrah Light and Power Company (BL&P). NUSCO renews its request that the Agreement be permitted to become effective April 1, 1995.

Comment date: June 7, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. Consolidated Edison Company of New York, Inc.

[Docket No. ER95–1030–000]

Take notice that on May 10, 1995, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing an agreement with Rainbow Energy Marketing Corporation, Inc. (REMC) to provide for the sale of energy and capacity. For energy sold by Con Edison the ceiling rate is 100 percent of the incremental energy cost plus up to 10 percent of the SIC (where such 10 percent is limited to 1 mill per MWhr when the SIC in the hour reflects a purchased power resource). The ceiling rate for capacity sold by Con Edison is $7.70 per megawatt hour. All energy and capacity sold by REMC will be at market-based rates.

Con Edison states that a copy of this filing has been served by mail upon REMC.

Comment date: June 7, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. Boston Edison Company

[Docket No. ER95–1031–000]

Take notice that on May 10, 1995, Boston Edison Company (Edison) tendered for filing for informational purposes a letter agreement dated March 20, 1995, with Wellesley Municipal Light Plant (WMLP) implementing the terms and conditions of Exhibit C, Section V, of the October 26, 1992 Agreement between Edison and WMLP, which was approved by the Commission in Docket Nos. ER86–562–000, ER87–122–000 and ER91–149–000.

Edison states that it has served a copy of this filing on WMLP and the Massachusetts Department of Public Utilities.

Comment date: June 7, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Wisconsin Public Service Corporation

[Docket No. ER95–1032–000]

Take notice that on May 10, 1995, Wisconsin Public Service Corporation tendered for filing an executed service agreement with Enron Power Marketing, Inc. under its CS–1 Coordination Sales Tariff.

Comment date: June 7, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Minnesota Power & Light Company

[Docket No. ER95–1033–000]

Take notice that on May 11, 1995, Minnesota Power & Light Company tendered for filing signed Service Agreements with CENERGY, Rainbow Energy Marketing Corporation and Heartland Energy Services Inc. under its Wholesale Coordination Sales Tariff to satisfy its filing requirements under this tariff.

Comment date: June 7, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Nevada Power Company

[Docket No. ER95–1035–000]

Take notice that on May 11, 1995, Nevada Power Company (Nevada Power) tendered for filing the proposed Power Sale Agreement (Agreement) between Nevada Power and the Colorado River Commission (CRC) having a proposed effective date of June 1, 1995.

The Agreement proposes that Nevada Power will make available to the CRC, when pre-scheduled by the CRC, up to 15 MW of on-peak firm capacity and energy during the summer season (May through September) and up to 45 MW during the non-summer season. Nevada Power will make available to the CRC up to 100 MW of firm capacity and energy off-peak year round. An annual minimum energy scheduled of 50,000 Mwh on-peak and 85,000 Mwh off-peak will be required. The term of the Agreement is from June 1, 1995 through May 31, 1996. The rate for sales under the Agreement contains a Capacity Charge component and an Energy Charge component.

Copies of this filing have been served on the CRC and the Nevada Public Service Commission.

Comment date: June 7, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. New England Power Company

[Docket No. ER95–1040–000]

Take notice that on May 12, 1995, New England Power Company filed Service Agreements and Certificates of Concurrence with three power marketers under NEP's FERC Electric Tariff, Original Volume No. 5.

Comment date: June 7, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Pacific Gas and Electric Company

[Docket No. ER95–1041–000]

Take notice that on May 12, 1995, Pacific Gas and Electric Company (PG&E), Southern California Edison Company (Edison), and San Diego Gas & Electric Company (SDG&E) (collectively the California Companies), tendered for filing Rate Schedule changes to: (1) Amendment No. 1 to the July 31, 1967 contract between the California Companies and Western, Central Valley Project, California, for Extra High Voltage Transmission and Exchange Service (Contract No. 2947A), and (2) Ruling No. 44, Revision 2 as an addendum to the August 25, 1966 California Companies Pacific Intertie Agreement (CCPIA).

Amendment No. 1 to Contract No. 2947A and Ruling No. 44, Revision 2 to the CPPIA change certain of the transmission loss factors used under Contract No. 2947A and the CCPIA, in order to be similar to those established in the Coordinated Operations Agreement previously submitted to FERC and designated PG&E Rate Schedule FERC No. 146, Edison Rate Schedule FERC No. 270 and SDG&E Rate Schedule FERC No. 78.

Copies of this filing have been served upon the parties on the service list and the California Public Utilities Commission.

Comment date: June 7, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. System Energy Resources, Inc.

[Docket No. ER95–1042–000]

Take notice that on May 12, 1995, Entergy Services, Inc. (ESI), tendered for filing on behalf of System Energy Resources, Inc. (SERI) amendments to SERI Rate Schedule No. 2 (the Unit Power Sale Agreement and related Billing Format) applicable to Arkansas Power & Light Company, Louisiana Power & Light Company, Mississippi Power & Light Company, and New Orleans Public Service Inc. The proposed changes would increase revenue from jurisdictional sales and service by approximately $65,537,000 based on the 12-month period ending December 31, 1994.

The proposed changes will, among other things, increase the rate of return on equity, increase the revenue requirement associated with decommissioning costs, and increase the depreciation accrual rate. ESI requests that the proposed changes become effective 50 days after the filing date, but be suspended until September 1, 1995.

Copies of the filing were served upon the appropriate state and local regulators in Arkansas, Louisiana, Mississippi, and Tennessee.

Comment date: June 7, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell

Secretary.

[FR Doc. 95–13226 Filed 5–30–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP95–327–000]

Transwestern Pipeline Company; Notice of Intent to Prepare an Environmental Assessment for Transwestern Pipeline Company's Proposed Rio Grande River Crossing Project and Request for Comments on Environmental Issues

May 24, 1995

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss environmental impacts of the construction and operation of the facilities proposed in the Rio Grande River Crossing Project. This EA will be used by the Commission in its decision-making process to determine whether an environmental impact statement is necessary and whether to approve the project.[1]

Summary of the Proposed Project

Transwestern Pipeline Company (Transwestern) proposes to construct and operate approximately 3,200 feet of 30-inch-diameter pipeline under the Rio Grande River in Valencia County, New Mexico. The proposed pipeline segment would replace one of Transwestern's two 30-inch-diameter pipelines that originally crossed over the Rio Grande River on a steel structure pipeline bridge. On August 20, 1994, an explosion ruptured one of these two pipelines and the bridge were replaced under § 2.55 of the Commission's Regulations but the second pipeline was not replaced at that time.

The proposed segment would be installed from an existing block valve on Transwestern's existing pipeline located about 1,100 feet southeast of the Upper San Juan Riverside Drain. It would cross the Upper San Juan Riverside Drain, the Rio Grande River, and the Upper Sabinal Riverside Drain, and end at another existing block valve located about 350 feet northwest of the Upper Sabinal Riverside Drain.

The general location of the project facilities is shown in appendix 1.[2]

Land Requirements for Construction

Transwestern proposes to use an existing 150-foot-wide pipeline corridor for construction but may require up to a 250-foot-wide construction work space. Based on a 150-foot-wide construction work space, about 11 acres of land would be affected by construction.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are taken into account during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project. These impacts may include, but are not limited to:

- Geology and soils.
- Water resources, fisheries, and wetlands.
- Vegetation and wildlife.
- Endangered and threatened species.
- Land use.
- Cultural resources.
- Public safety.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we recommend that the Commission approve or not approve the project.

Currently Identified Environmental Issues

We have already identified three issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Transwestern. Keep in mind that this is a preliminary list. The list of issues may be added to, subtracted from, or changed based on your comments and our analysis. Issues are:

- The proposed project would cross three waterbodies, the Upper Sabinal Riverside Drain, the Rio Grande River and the Upper San Juan Riverside Drain.
- Two federally listed and two state endangered species may occur in the proposed project area.
- The proposed project would cross the Casa Colorado Waterfowl Management Area.

Public Participation

You can make a difference by sending a letter addressing your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please follow the instructions below to ensure that your comments are received and properly recorded:

- Address your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426.
- Reference Docket No. CP95–327–000;
- Send a *copy* of your letter to: Ms. Mary Hertling, EA Project Manager, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Room 7312, Washington, D.C. 20426; and.
- Mail your comments so that they will be received in Washington, D.C. on or before July 5, 1995.

If you wish to receive a copy of the EA, you should request one from Ms. Hertling at the above address.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding or become an "intervenor". Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor you must file a Motion to Intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2).

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by § 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your scoping comments considered.

Additional information about the proposed project is available from Ms. Mary Hertling, EA Project Manager, at (202) 208–0874.

Lois D. Cashell,

Secretary.

[FR Doc. 95–13192 Filed 5–30–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–498–000, et al.]

Colorado Interstate Gas Company, et al.; Natural Gas Certificate Filings

May 24, 1995.

Take notice that the following filings have been made with the Commission:

1. Colorado Interstate Gas Company

[Docket No. CP95–498–000]

Take notice that on May 15, 1995, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP95–498–000 an abbreviated application pursuant to Section 7(c) of the Natural Gas Act and Part 157 of the Commission's Regulations for a certificate of public convenience and necessity to change the deliverability of the Flank and Latigo Storage Fields all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Pursuant to Commission orders issued in Docket No. CP92–154–000, et al., CIG constructed certain facilities at its Flank and Latigo Storage Fields designed to enhance the deliverability from these two storage fields. CIG estimated that the additional facilities would increase the maximum deliverability of each field to 150 Mmcf per day. After construction and operation of the facilities authorized in Docket No. CP92–154, et al., CIG claims that the deliverability of Flank and Latigo Storage Fields is actually 165 Mmcf per day and 140 Mmcf per day, respectively. Therefore, CIG requests a change in the certificated deliverability for these two storage fields. No new facilities are required to effect the proposed deliverability changes.

Comment date: June 14, 1995, in accordance with Standard Paragraph F at the end of this notice.

2. Northern Natural Gas Company

[Docket No. CP95–499–000]

Take notice that on May 15, 1995, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000 filed in Docket No. CP95–944–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to install and operate five (5) new small volume customer delivery points to accommodate natural gas deliveries to UtiliCorp United, Inc. (UCU), under Northern's blanket certificate issued in Docket No. CP82–401–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern states that it requests authority to install and operate these small volume delivery points to accommodate natural gas deliveries for UCU under Northern's existing transportation rate schedules. It is said that the estimated total volumes proposed to be delivered to UCU at the proposed new delivery points are expected to result in an increase in Northern's peak day deliveries of approximately 49 MMBtu per day and 5,123 MMBtu on an annual basis.

Northern states further that the estimated cost to install the delivery points is $10,975. UCU, it is said, would reimburse Northern for the cost to install the facilities.

Comment date: July 10, 1995, in accordance with Standard Paragraph G at the end of this notice.

3. Southern Natural Gas Company

[Docket No. CP95–505–000]

Take notice that on May 19, 1995, Southern Natural Gas Company ("Southern") filed in the above-captioned docket an application pursuant to the provisions of Section 7 of the Natural Gas Act ("NGA"), as amended, and pursuant to the Federal Energy Regulatory Commission's ("Commission") Regulations under the NGA for a certificate of public convenience and necessity authorizing the construction, installation, modification and operation of compressor stations, meter stations and related appurtenant facilities, more fully set forth in the application which is on file with the Commission and open to public inspection.

In order to provide incremental firm transportation services totaling 26,810 Mcf per day for fifteen (15) customers on Southern's system in Alabama, Georgia and Tennessee, Southern requests authorization to (1) construct and install a new compressor station consisting of a turbine compressor, ISO-rated at 5,680 horsepower, to be located in Tuscaloosa and Jefferson Counties, Alabama, at or around mile post 286 on Southern's north pipeline system, (2) install compressor cylinder unloaders at its Tarrant Compressor Station in Jefferson County, Alabama, (3) install an additional turbine compressor unit, ISO-rated at 1,452 horsepower, at Southern's existing Pell City Compressor Station in St. Clair County, Alabama, and (4) uprate an existing turbine compressor engine at Southern's DeArmanville Compressor Station in Calhoun County, Alabama, from 1,080 rated horsepower to 1,200 ISO-rated horsepower. In addition, Southern will uprate the pressure at one meter station serving one of the customers in this expansion project and uprate the pressure of its Gadsden Branch Line to accommodate the increased firm contract quantities of four other customers. The total cost of these facilities is estimated to be $13,055,800.

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[1] Transwestern Pipeline Company's application was filed with the Commission pursuant to Section 7 of the Natural Gas Act and Part 157 of the Commission's Regulations.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference and Files Maintenance Branch, Room 3104, 941 North Capitol Street, N.W., Washington, D.C. 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

Southern requests Commission approval of the application by no later than May 1, 1996, so that the facilities will be in service to provide the additional firm transportation service by November 1, 1996.

Comment date: June 14, 1995, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–13227 Filed 5–30–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP95–500–000, et al.]

Southern Natural Gas Company, et al.; Natural Gas Certificate Filings

May 23, 1995.

Take notice that the following filings have been made with the Commission:

1. Southern Natural Gas Company

[Docket No. CP95–500–000]

Take notice that on May 15, 1995, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP95–500–000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction, installation and operation of certain compression facilities and related pipeline interconnection, measurement, and appurtenant facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern states that the proposed facilities will provide the capacity needed to perform firm transportation service on its pipeline system in its production area south of its Franklinton Compressor Station. It is stated that Southern has an extensive supply system in the offshore Louisiana area and receives approximately 900,000 Mcf per day (Mcdf) or nearly 60 percent of its annual throughput from the "east leg" of its South Louisiana supply system that accesses the Main Pass, Viosca Knoll and Mississippi Canyon areas. Southern contends that its efforts to connect new gas supplies in this area and increase throughput have been hampered recently as a result of capacity constraints which exist at Southern's Toca Compressor Station. If it is unable to increase its capacity to move gas from the offshore areas, Southern states that the markets and customers served by Southern's system will not have the opportunity to gain access to the significant number of new sources of supply announced and under development in this area.

Southern states that its recent gas supply attachment efforts have been focused on supply prospects which are near Southern's existing facilities. It is stated that a large number of such prospects are located in the offshore Louisiana are upstream of Southern's Toca Compressor Station. Southern states that its supply system in south Louisiana has two separate main lines, the "east Leg" which extends in to the Main Pass area and the "west leg" which extends from the Franklinton Compressor Station to the Shadyside Compressor Station. It is stated that the "west leg" has traditionally received gas from interconnections with other interstate pipelines, and supply prospects in the area are limited. Therefore, Southern states that its "east leg" upstream of the Toca Compressor Station has experienced the most activity in connecting new gas supplies. It is stated that gas supply prospects in this area are believed to be substantial. Southern states that Exhibit Z to its application contains a map and a list of known prospects in the vicinity of Southern's existing facilities which could be attached either through jurisdictional pipeline extensions or through nonjurisdictional gathering lines to Southern's system. While the potential of many of these prospects is still emerging, Southern believes that the substantial financial expenditures by producers and technological advances in the development of deepwater prospects ensure that the expansion of Southern's facilities to provide access to downstream markets from this supply area is necessary. It is stated that the gas supply prospects listed in Exhibit Z are estimated to contain over 2 Tcf of reserves which could be attached to Southern's system. Southern also believes that the location of these prospects make them the most economical gas supplies available to Southern's system in the near term and foreseeable future. However, in order to compete with other pipelines for these shippers and customers, Southern states that it must expand its existing capacity at Toca to enable these supplies to flow into downstream markets.

It is stated that prior to the recent industry restructuring under Order No. 636, pipelines generally constructed gas supply facilities and included the cost of the facilities in future rate filings on a rolled-in basis. In a post-636 environment, Southern states that the issue of who should bear the financial responsibility for this type of project is more complicated. It is stated that this expansion project is not a traditional market area expansion. Southern states that this expansion is an enhancement of its current facilities to enable Southern to transport an additional 140 MMcfd through its Toca Compressor Station, which is currently operated at or near full capacity. Southern contends that it has determined that the gas supply is available and has identified the facilities modifications required to relieve its system bottleneck at Toca. According to Southern, the major unresolved issue in the post-636 environment is which industry segment should initially pay the cost of this type of system enhancement. Southern states that the distribution segment of the industry believes that producers should contribute to the cost of expanding facilities in order to make their gas supplies available to the market. It is stated that producers have taken the lead in constructing facilities to attach gas supply to the existing pipeline infrastructure but do not believe that they should bear the additional cost of expanding jurisdictional pipeline capacity required to move new supplies downstream. At the same time, Southern argues that it would be unfair to expect interstate pipelines to make substantial investments in new facilities without an opportunity to earn a reasonable return on their investments.

To strike an appropriate balance, Southern states that its proposal is an effort to allocate among the stakeholders the cost of this expansion project that benefits the system as a whole. It is stated that the cost sharing proposal represents a reasonable sharing—between the producers for the first 10 years and the transportation customers thereafter—of the costs required to expand Southern's production area capacity. By adding additional compression at its Toca Compressor Station, Southern states that it will increase its capacity to transport gas supplies through Toca by 140 MMcfd. In addition, Southern submits that it will require, as part of the transportation agreement, a commitment from the producers to attach 150 Bcf of new reserves for every 50 MMcfd of Transportation Demand, or approximately 400 BCF of additional reserves to Southern's system. Based upon extensive discussions with producers that have prospects in the areas near Southern's supply system and with Southern's transportation customers, Southern believes that an expansion of its Toca Compressor Station as proposed would benefit the system as a whole and is in the public interest.

It is stated that producers would benefit from obtaining firm transportation service in Southern's production area at a competitive rate. With firm service to the interconnections Southern has with other interstate pipelines in this area, Southern contends that the producers will have assured access to a substantial portion of the natural gas markets in the eastern United States. It is stated that they can elect to sell any of the new gas supplies they connect to the Southern system to markets served by the Southern system, and in such case, those gas supplies would likely be transported under the purchaser's firm and/or interruptible transportation service agreements.

Southern states that the requirement that producers commit to attach new reserves to the Southern system provides a substantial benefit to Southern's firm and interruptible transportation customers. It is stated that they will have the opportunity to compete for these new sources of supply without incurring, under Southern's proposed rate treatment, any increase in their transportation costs as a result of the construction of the facilities for an initial 10-year period. Whether these new supplies are transported in the production area under one of the new 10 year service agreements or to a market on the Southern system, Southern submits that the proposed expansion of the Toca Compressor Station will eliminate a capacity constraint and enable an additional 140 MMcfd to flow into the Southern system via the "east leg". It is stated that this increase in the "east leg", however, will not cause an increase in capacity on Southern's main line.

Southern requests that the Commission act on its request in two steps. First, Southern requests that the Commission issue an initial determination that the construction and operation of the proposed facilities to provide capacity necessary for the performance of firm production area transportation services on the terms and conditions described in the application are required by the present or future public convenience and necessity. Southern states that it is willing to accept an at-risk condition in the initial determination because its application does not include the requisite showing of market demand. Second, after it has submitted executed Firm Transportation Service Agreements for 100 percent of the additional capacity containing the terms and conditions described herein and after completion of the environmental review of the proposed facilities, Southern requests that the Commission issue an order adopting the initial decision as its final action in this proceeding and removing the at-risk condition.

Comment date: June 13, 1995, in accordance with Standard Paragraph F at the end of this notice.

2. ANR Storage Company

[Docket No. CP95–504–000]

Take notice that on May 18, 1995, ANR Storage Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP95–504–000, pursuant to Section 7(b) of the Natural Gas Act (NGA), as amended, and §§ 157.7 and 157.18 of the Commission's Regulations thereunder, an application requesting permission and approval for abandonment of storage service performed for United Cities Gas Company (United Cities), all as more fully set forth in the application on file with the Commission.

ANR states that it is requesting authorization for retroactive abandonment of storage service that it provides for United Cities under Rate Schedule X–6 and contained in Original Volume No. 2 of its FERC Gas Tariff. This service was authorized in Docket No. CP79–453–000. ANR requests the abandonment of Rate Schedule X–6 effective April 1, 1995, the date of the termination agreement between ANR and United Cities. ANR further states that at United Cities' request, commencing April 1, 1995, this service would be provided under ANR's FERC Gas Tariff, Original Volume No. 1.

ANR states that no facilities are proposed to be abandoned.

Comment date: June 13, 1995, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to

the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–13228 Filed 5–30–95; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5212–8]

Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses; Approval of an Application for Certification of Equipment

AGENCY: Environmental Protection Agency.

ACTION: Notice of Agency approval of an application for equipment certification.

SUMMARY: The Agency received an application dated August 2, 1994 from the Engelhard Corporation (Engelhard) with principal place of business at 101 Wood Avenue, Iselin, New Jersey for certification of urban bus retrofit/rebuild equipment pursuant to 40 CFR 85.1401–85.1415. On September 16, 1994 EPA published notification that the application had been received and made the application available for public review and comment for a period of 45 days (59 FR 47581). EPA has completed its review of this application and the Director of the Manufacturers Operations Division has determined that it meets all the requirements for certification. Accordingly, EPA approves the certification of this equipment effective May 31, 1995.

The candidate equipment provides a 25 percent or greater reduction in emissions of particulate matter (PM) for certain petroleum fueled diesel engines relative to the original engine configuration and on engines that have been retrofit/rebuilt with certified new rebuild kits that do not include aftertreatment devices. In addition, this equipment will be offered to all parties for $2,151 or less (2,000 or less in 1992 dollars). The certification of this equipment triggers requirements for all operators utilizing Program 1 that have engines in their fleet that are covered by this certification.

ADDRESSES: The Engelhard application, as well as other materials specifically relevant to it, are contained in Public Docket A–93–42, entitled "Certification of Urban Bus Retrofit/Rebuild Equipment". This docket is located in room M–1500, Waterside Mall (Ground Floor), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Docket items may be inspected from 8:00 a.m. until 4:00 p.m., Monday through Friday. As provided in 40 CFR Part 2, a reasonable fee may be charged by the Agency for copying docket materials.

DATES: The date of this document May 31, 1995 is the official certification date for this application. The equipment is immediately available for installation.

FOR FURTHER INFORMATION CONTACT: Anthony Erb, Technical Support Branch, Manufacturers Operations Division (6405J), U.S. Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. Telephone: (202) 233–9259.

SUPPLEMENTARY INFORMATION:

I. Background

On August 2, 1994 Engelhard submitted an application under EPA's Urban Bus/Retrofit program [1] for certification of a catalytic converter muffler (CCM) for use on 2-cycle and 4-cycle petroleum fueled diesel urban bus engines for 1993 and earlier model years. Engelhard has since withdrawn the 4-cycle engines from consideration pending development of additional test data.

The CCM functions as a catalytic converter and a muffler. It takes the place of the original muffler in the engine exhaust system. Engelhard documented that the candidate equipment provides a 25 percent or greater reduction in emissions of particulate matter (PM) for petroleum fueled diesel heavy-duty urban bus engines as listed in Table A.

TABLE A. CERTIFICATION LEVELS

Engine model	Model year	PM level with standard rebuild and addition of CCM	Code	Family designation
DDC 6V92TA MUI	1979–1987	[1].38	ALL	ALL
DDC 6V92TA MUI	1988–1989	.22	ALL	ALL
DDC 6V92TA MUI	1979–1989	[2].18	ALL	ALL
DDC 6V92TA DDEC I	1986–1989	.23	ALL	ALL
DDC 6V92TA DDEC II	1988–1991	.23	ALL	ALL
	1992	.19	ALL	ALL

[1] EPA promulgated the Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses on April 23, 1993 (58 FR 21359). This final rule established the provisions for an urban bus retrofit/rebuild program as required by section 219(d) of the Clean Air Act Amendments (CAAA) of 1990.

TABLE A. CERTIFICATION LEVELS—Continued

Engine model	Model year	PM level with standard rebuild and addition of CCM	Code	Family designation
	1993	.19	ALL	ALL
DDC 6V71N	1973–1989	.38	ALL	ALL
DDC 6V71T	1985–1986	.38	ALL	ALL
DDC 8V71N	1973–1984	.38	ALL	ALL
DDC 6L71TA	1990	.44	ALL	ALL
	1988–1989	.23	ALL	ALL
DDC 6L71TA DDEC	1990–1991	.23	ALL	ALL
DDC–8V–92TA	1979–1987	.40	ALL	8V–92TA
	1988	.29	ALL	ALL
DDC–8V–92TA–DD	1988	.31	ALL	8V–92TA–DDEC II
DDC–8V–92TA	1989	.35	9E70	KDD0736FW8 9
DDC–8V–92TA	1989	.29	9A90	KDD0736FW8 9
DDC–8V–92TA	1989	.26	9G85	KDD0736FW8 9
DDC–8V–92TA–DDEC	1989	.31	1A	KDD0736FZH 4
DDC–8V–92TA	1990	.35	9E70	LDD0736FAH 9
DDC–8V–92TA–DDEC	1990	.37	1A	LDD0736FZH 3
DDC–8V–92TA–DDEC	1991	.19	1A OR 5A	MDD0736FZH 2
DDC–8V–92TA	1992–1993	.16	1D	NDD0736FZH 1 & PDD0736FZH X
DDC–8V–92TA–DDEC	1992–1993	.22	6A	NDD0736FZH 1 & PDD0736FZH X
DDC–8V–92TA–DDEC	1992–1993	.15	5A	NDD0736FZH 1 & PDD0736FZH X
DDC–8V–92TA–DDEC	1992–1993	.19	1A	NDD0736FZH 1 & PDD0736FZH X

[1] To attain these levels of PM reduction engines must be rebuilt to original manufacturers specifications, or in cases where the operator finds the engines meet certain performance specifications as stated by Engelhard in the instructions to purchasers of the CCM kit, rebuild of the engine in order to claim the listed PM reduction would not be required. This applies to all engines listed in the table with the exception of those covered by footnote 2.

[2] If the CCM is installed on these engines after rebuild using the "Engelhard Emission Rebuild/Retrofit Kit" in conjunction with the CCM, the emission level certified to by Engelhard is 0.18 g/bhp-hr PM.

Emission test results supplied by Engelhard in the application are shown in Table B. The test data show a greater than 25% reduction in PM. Hydrocarbon (HC), carbon monoxide (CO), oxides of nitrogen (NO_x) and smoke emissions were within the applicable emission standards with the CCM installed.

TABLE B.—CERTIFICATION EMISSION TEST RESULTS (GM/BHP–HR)

	Baseline engine before rebuild	Baseline engine before rebuild with catalyst	Baseline rebuilt engine	Rebuilt engine with catalyst
HC	1.19	0.64	0.48	0.24
CO	2.53	1.32	1.53	1.00
NO_x	9.55	9.70	10.31	10.46
PM	0.87	0.51	0.21	0.15
Smoke Test				
Accel				6.0%
Lug				3.4%
Peak				7.6%

Urban bus operators who choose to comply with Program 1 will be required to use this equipment (or other equipment certified in the meantime) beginning six months after the date of this certification approval. Urban bus operators who choose to comply with Program 2 and use the Engelhard equipment will use the PM emissions values from Table A when calculating their average fleet PM level.

The emission levels of the Engelhard rebuild kit will be used to modify the Program 2 post rebuild levels in July 1996.

II. Summary and Analysis of Comments

EPA received a variety of comments on the Engelhard application during the comment period. The comments generally fall into the areas of equipment effects and design, durability and cost. Copies of the original comments are to be found in EPA Docket A–93–42.

An abbreviated summary of the major comments is provided below. Additional discussion of comments for this decision can be found in the Final Decision Document for the Engelhard Application #1 (FDDEA1) which has been placed in Docket A–93–42. A limited number of copies of the FDDEA1 are also available form the contact person listed above (see **FOR FURTHER INFORMATION CONTACT**).

The most frequently raised concern among commenters was the effect of the

CCM on engine backpressure and the effect the backpressure could have on the remaining life of the engine.

Backpressure with the CCM installed will generally be higher than the backpressure with the original muffler. However, Engelhard has designed the CCM to ensure that the engine manufacturer's maximum allowable backpressure will not be exceeded for any engine/exhaust combination. Since backpressure will remain below the manufacturer's allowable limit, EPA does not believe that engine life will be diminished as a result of installing a CCM. Furthermore, Engelhard has recently reconfigured the catalyst that will be marketed under this program to provide a lower backpressure as compared to the catalyst used in the certification test.

Catalyst sizing, packaging and installation applicability were raised as issues by several commenters. Specifically, commenters questioned whether the catalyst would be adequately packaged to fit the wide range of engines and bus models, and whether proper installation and mounting hardware would be available for each combination of bus /engine.

Clear instructions and proper installation for each bus/engine combination will be required to ensure proper operation of the CCM. Engelhard has designed specific installation instructions and hardware for most applications already. The CCM takes the place of the muffler in the exhaust system and each kit will contain all components necessary to complete the installation. Engelhard continues to work with operators to develop appropriate hardware and packaging for specific applications.

The last major group of comments centered around life cycle cost of the CCM. One commenter proposed that field data be collected to support fuel economy impact claims contained in the application for certification. Another commenter noted that operators might use the equipment beyond the 150,000 mile useful life, and questioned how the costs associated with use beyond 150,000 miles are accounted for in the life cycle cost.

Regarding field data to demonstrate fuel economy claims, the regulations do not require that life cycle fuel cost be calculated using field data. At the time of application for certification, a certifier that is applying for certification within life cycle cost limitations must provide information on the fuel economy impact of rebuild/retrofit equipment. Engelhard provided brake-specific fuel consumption (BSFC) data from transient tests performed on a baseline engine and on an engine equipped with a CCM. This data shows the BSFC difference between these tests to be within normal test to test variability, and EPA does not find that this equipment will have an impact on fuel economy.

Regarding the second comment, operators may indeed continue to use certified equipment beyond the statutory useful-life of 150,000 miles. However, for the purpose of calculating life cycle costs, only those costs incurred within the useful-life are relevant. Operators who operate equipment beyond the useful-life are responsible for costs to maintain the equipment in proper operating condition, and assume in-use emissions performance liability.

III. Certification Approval

The Agency has reviewed this application, along with comments received from the interested parties, and finds that this application meets the requirements for certification under the Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses (40 CFR 85.1401 and 85.1415). Thus, the Agency hereby approves the certification of this equipment.

IV. Operator Requirements and Responsibilities

Operators who have chosen to comply with Program 1 will be required to utilize this equipment for any engines that are listed in Table A that undergo rebuild on or after December 1, 1995. Under Program 2, this equipment is immediately available to operators for use and those who use this certified kit may claim the PM emissions reduction as stated in Table A when calculating their Fleet Level Attained.

As stated in the regulations, operators should maintain records for each engine in their fleet to demonstrate that they are in compliance with either program 1 or program 2 beginning in January 1, 1995. These records include purchase records, receipts, and part numbers for the parts and components used in the rebuilding of urban bus engines.

Dated: May 10, 1995.

Mary D. Nichols,

Assistant Administrator for Air and Radiation.

[FR Doc. 95–13246 Filed 5–30–95; 8:45 am]

BILLING CODE 6560–50–P

[OPPTS–62145; FRL–4947–6]

Instruction Manual on Interim Controls and the Operation and Maintenance of Lead-Based Paint for Abatement Workers and Maintenance Personnel; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Request for preproposals.

SUMMARY: EPA issued a proposed rule *Lead: Requirements for Lead-Based Paint Activities* on September 2, 1994. The objective of the proposed rule is to provide standards for the training of a workforce qualified to assist in the evaluation and reduction of hazards associated with lead-based paint. To further the goal of improved training for the workforce engaged in lead-based paint activities, the U.S. Department of Housing and Urban Development (HUD) has provided funds for the development of a training curriculum and an accompanying video on interim controls and operations and maintenance for lead-based paint. HUD has transferred these funds to EPA for the management of this project. EPA is requesting the submission of preproposals from qualified organizations that are interested in developing a training course and a video on these subjects. This notice describes the eligibility and criteria for the selection of preproposals.

DATES: All preproposals must be submitted to EPA by June 30, 1995.

ADDRESSES: Preproposals should be sent to the following address: Betty Weiner, Chemical Management Division (7404), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Betty Weiner at (202) 260–2924 or write to the address listed under the ADDRESSES unit.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 2, 1994 (59 FR 45872), EPA issued a proposed rule regarding regulations governing lead-based paint activities. The purpose of this document is to announce the availability of funds to be administered by EPA in the form of a cooperative agreement with an organization with demonstrated experience in lead-based paint training activities. Any nonprofit organization with such experience is eligible to apply. These funds are to be used for the development of a 1–day course in interim controls for lead-based paint and routine maintenance activities. The basic elements of interim controls are: paint stabilization, dust removal, treatment of friction and impact surfaces, and soil interim controls. The course should also introduce the worker to the importance of monitoring and reevaluation, and the role of maintenance in preserving the integrity of interim controls during routine activities and minimizing contamination of housing. The course should include a worker's manual and an instructor's manual as well as a video consisting of work demonstrations accompanied by explanatory narration. The course will be used to train both certified and noncertified individuals involved in the control of lead-based paint that is not undergoing removal.

Model courses in lead-based paint activities have already been developed or are in the process of development for the five disciplines specified in the regulations. These courses are: inspector technician, inspector/risk assessor, supervisor, planner/project designer, and lead abatement worker. Required course content for four of the five disciplines includes instruction in methods of risk reduction. In addition, inspector/risk assessors must learn how to develop an interim control plan and the minimum training curricula requirements for the planner/project designer course includes instruction in operation and maintenance planning. Because of the hazards to workers, residents and the environment associated with lead-based paint, training of specialists in the field and maintenance workers should include the most up-to-date methods of control to assure that exposure will be minimized in areas where abatement is not initially contemplated.

I. Administrative Requirements

This program is subject to matching share requirements. Awards shall be given only to applicants who can fund at least 5 percent of their programs from non-Federal sources, excluding in-kind contributions. (In-kind contributions are defined as the value of a non-cash contribution to meet a recipient's cost-sharing requirements. An in-kind contribution may consist of charges for real property and equipment, or the value of goods and services directly benefiting the EPA-funded project.) The recipient's matching share may exceed 5 percent.

The applicant must also provide proof of the organization's not-for-profit status.

II. Evaluation Process and Criteria

Preproposals submitted for the cooperative agreement solicited in this notice will be evaluated on a competitive basis by a review panel composed of EPA and HUD staff members. The following factors will be considered in the evaluations of the preproposals.

A. Program Design

The course length should be approximately 8 hours, focusing on teaching workers the fundamentals of appropriate interim controls as well as hands-on demonstrations of the application and maintenance of these controls.

Preproposals should be developed in conformance with the HUD *Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing.* Another relevant source soon to be available is a document currently under development by the National Institute of Building Sciences titled *Lead-Based Paint Operations and Maintenance Work Practices Manual.*

B. Program Experience

The applicant must include the following organizational information:

1. Experience with lead-related issues with an emphasis on lead-based paint.

2. Experience with the development of adult education courses particularly for workers with limited education or with language difficulties.

3. A summary of any lead-related courses taught and a description of the materials used to teach those courses.

4. Experience with providing hands-on training.

5. Qualifications of key personnel.

C. Budget

A detailed budget should be included that specifies the amount of money proposed for each element of the course curriculum as well as the non-federal share of the budget (at least 5 percent of the total excluding in-kind contributions).

III. Application Procedures and Notification of Selection

Preproposals are due by June 30, 1995. Preproposals should be approximately 10 pages in length and 7 copies of the proposal should be provided. Notice of selection as a possible award recipient will not constitute approval of the final proposal as submitted. Prior to the actual awarding of the cooperative agreement, representatives of the potential recipient and EPA will begin negotiations concerning various components of the program, such as funding levels and course materials. The project budget is anticipated to be in the range of $200,000 to $400,000.

Dated: May 10, 1995.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 95–13266 Filed 5–30–95; 8:45 am]

BILLING CODE 6560–50–F

[FRL–5213–2]

Science Advisory Board; Notification of Two Public Advisory Committee Meetings

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that two committees of the Science Advisory Board (SAB) will meet on the dates and times described below. All times noted are Eastern Time. All meetings are open to the public. Due to limited space, seating at meetings will be on a first-come basis. For further information concerning specific meetings, please contact the individuals listed below. Documents that are the subject of SAB reviews are normally available from the originating EPA office and are *not* available from the SAB Office.

1. Research Strategies Advisory Committee (RSAC)

The Research Strategies Advisory Committee (RSAC) will meet on June 15–16, 1995, at the Holiday Inn, 550 C Street SW., Washington, DC. The meeting will begin at 8:30 a.m. and end no later than 5:00 p.m. The RSAC routinely reviews broad issues related to the planning and management of research activities within the Agency. At this meeting, RSAC will receive briefings from the Office of Research and Development (ORD) on its process for developing priorities for the FY 1997 Budget and the Research Priorities that the Agency will consider in the formulation of that Budget. Based on these presentations, RSAC may offer recommendations to the Agency on the process, the overall directions of the research and the specific priorities that the Agency is currently considering. In addition, RSAC will discuss its own mission and function statement and criteria that may be used to develop priorities for research.

Members of the public desiring additional information about the meeting, including an agenda (after May 30), should contact Ms. Mary Winston, Staff Secretary, Science Advisory Board (1400F), U.S. EPA, 401 M Street SW., Washington, DC 20460, by telephone at (202) 260–6552, fax at (202) 260–7118, or to the Designated Federal Official, Dr. Edward Bender at (202) 260–2562, or

via the INTERNET at: Bender.Edward@EPAMAIL.EPA.GOV.

Anyone wishing to submit written comments should forward at least 35 copies to Dr. Bender no later than June 9th for distribution to the Committee and the interested public. Members of the public wishing to make an oral presentation at the meeting must contact Dr. Bender by noon on the same deadline in order to have time reserved on the agenda. See below for additional information on providing comments to the SAB.

2. Environmental Engineering Committee (EEC)

The Environmental Engineering Committee (EEC) will meet June 22–23, 1995 at the One Washington Circle Hotel, One Washington Circle NW., Washington, DC. The meeting will begin each day at 8:30 a.m. and end no later than 6:00 p.m.

The Committee will consider four draft Science Advisory Board subcommittee reports: (1) A review of the Office of Pollution Prevention and Toxics draft Use Cluster Scoring System, (2) the OSWER Exposure Model Subcommittee review of EPA's Composite Model for Leachate Migration with Transformation Products (EPACMTP) and the Finite Source Methodology, (3) the Hazardous Air Pollutant Monitoring Subcommittee review of a proposed research program on continuous emissions monitoring, and (4) the Innovative Technology Subcommittee's review of the Environmental Technology Innovation and Commercialization Enhancement Program (EnTICE), a technology verification program. Please contact one of the Committee Staff members listed below for availability of these draft documents. The Committee also plans to begin preparation of a commentary on modeling, and will discuss review options and priorities for future meetings.

Any member of the public wishing further information, such as a proposed agenda, should contact Mrs. Dorothy Clark, Staff Secretary, Science Advisory Board (1400F), U.S. EPA, Washington, DC 20460, telephone (202) 260–6552 or fax (202) 260–7118. Written comments of any length (at least 35 copies) may be provided up until the meeting. Members of the public who wish to make a brief oral presentation should contact the Designated Federal Official, Mrs. Kathleen Conway by phone at (202) 260–2558, or INTERNET at: CONWAY.KATHLEEN@epamail.epa.gov, no later than noon (eastern time), Monday, June 19, in order to have time reserved on the agenda .

Providing Oral or Written Comments at SAB Meetings

The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes. Requests for public comment time should identify the name of the individual who will make the presentation, requirements for audio visual equipment (e.g., overhead projector, 35mm projector, chalk board, etc.), and an outline of the issues to be addressed. At least 35 copies of the oral presentation (including overhead slides) must be provided to the SAB no later than the meeting. Written comments (at least 35 copies) received in the SAB Staff Office sufficiently prior to a meeting date may be mailed to the relevant SAB committee or subcommittee prior to its meeting; comments received too close to the meeting date will normally be provided to the committee at its meeting. Written comments may be provided to the relevant committee or subcommittee up until the time of the meeting.

Dated: May 18, 1995.

A. Robert Flaak,

Acting Staff Director, Science Advisory Board.

[FR Doc. 95–13244 Filed 5–30–95; 8:45 am]

BILLING CODE 6560–50–P

[OPP–30388; FRL–4956–6]

Mycogen Corp.; Application To Register a Pesticide Product

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application to register a pesticide product containing an active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments must be submitted by June 30, 1995.

ADDRESSES: By mail, submit written comments identified by the document control number [OPP–30388] and the file symbol (53219–RG) to: Public Response and Program Resources Branch, Field Operations Divisions (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Environmental Protection Agency, Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will be accepted on disks in Wordperfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–30388] No "Confidential Business Information" (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submission can be found below in this document.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Linda Hollis, Biopesticides and Pollution Prevention Division (7501W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. CS51B6, Westfield Building North Tower, 2800 Crystal Drive, Arlington, VA 22202, (703) 308–8733; e-mail: hollis.linda@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA received an application from Mycogen Corporation, 4980 Carroll Canyon Road, San Diego, CA 92121, to register the pesticide product MYX 910 Bioinsecticide (EPA File Symbol 53219–RG), containing the active ingredient *Bacillus thuringiensis* variety *japonensis* strain *buibui* at 13 percent, an ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(4) of FIFRA. This product is for the control of larvae of soil dwelling beetles on or in turfgrass, landscape ornamentals, soil, transporation facilities, and interior plantscapes. Notice of receipt of this application does not imply a decision by the Agency on the application.

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

A record has been established for this notice under docket number [OPP–30388] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

Written comments filed pursuant to this notice, will be available in the Public Response and Program Resources Branch, Field Operations Division at the address provided from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. It is suggested that persons interested in reviewing the application file, telephone this office at (703–305–5805), to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: May 22, 1995.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 95–13142 Filed 5–30–95; 8:45 am]

BILLING CODE 6560–50–F

[OPP–30387; FRL–4956–1]

Certain Companies; Applications to Register Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments must be submitted by June 30, 1995.

ADDRESSES: By mail submit comments identified by the document control number [OPP–30387] and the registration/file number, attention Product Manager (PM) named in each application at the following address: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, In person, bring comments to: Environmental Protection Agency, Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–30387]. No "Confidential Business Information" (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submission can be found below in this document.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (7505C), Attn: (Product Manager (PM) named in each registration), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460.

In person: Contact the PM named in each registration at the following office location/telephone number:

Product manager	Office location/ telephone number	Address
PM 25 Robert Taylor,	Rm. 241, CM #2 (703–305–6800).	Environmental Protection Agency 1921 Jefferson Davis Hwy Arlington, VA 22202
PM 10 Richard Keigwin,	Rm. 713, CM #2 (703–305–7618).	-Do-

SUPPLEMENTARY INFORMATION: EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Products Containing Active Ingredients Not Included in Any Previously Registered Products

1. File Symbol: 264–LLL. Applicant: Rhone-Poulenc AG Company, P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709. Product name: Regent 1.5G Insecticide. Insecticide. Active ingredient: Fipronil 5-amino-1-(2,6-dichloro-4-(trifluoromethyl) phenyl)-4-((1,R,S)-(trifluoromethyl)sulfinyl)-1 H-pyrazole-3-carbonitrile at 1.5 percent. Proposed classification/Use: None. For use on corn to control northern and western

corn, rootworm larvae, and wireworms. (PM 10)

2. File Symbol: 264–LLU. Applicant: Rhone-Poulenc Co. Product name: Fipronil Technical. Insecticide. Active ingredient: Fipronil 5-amino-1-(2,6-dichloro-4-(trifluoromethyl) phenyl)-4-((1,R,S)-(trifluoromethyl)sulfinyl)-1 H-pyrazole-3-carbonitrile at 96.5 percent. Proposed classification/Use: None. For formulation into an insecticide. (PM 10)

3. File Symbol: 264–LLN. Applicant: Rhone-Poulenc Co. Product name: Chipco Gauntlet 0.1G. Insecticide. Active ingredient: Fipronil 5-amino-1-(2,6-dichloro-4-(trifluoromethyl) phenyl)-4-((1,R,S)-(trifluoromethyl)sulfinyl)-1 H-pyrazole-3-carbonitrile at 0.1 percent. Proposed classification/Use: None. For use on golf and commercial turfgrass and to control mole crickets in turfgrass. (PM 10)

4. File Symbol: 352–LAO. Applicant: E.I. duPont de Nemours and Co. Product name: Upbeet Herbicide. Herbicide. Active ingredient: Triflusulfuron methyl methyl 2-[-[-[[[4-(dimethylamino)-6-(2,2,2-trifluoroethoxy)-1,3,5-triazin-2-yl]amino]carbonyl]amino[sulfonyl]-3-methylbenzoate at 50 percent. Proposed classification/Use: None. For selective postemergence control of broadleaf and grass weeds in sugar beets. (PM 25)

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

A record has been established for this notice under docket number [OPP–30387] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-Docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in **ADDRESSES** at the beginning of this document.

Written comments filed pursuant to this notice, will be available in the Public Response and Program Resources Branch, Field Operations Division at the address provided from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. It is suggested that persons interested in reviewing the application file, telephone this office at (703–305–5805), to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: May 18, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 95–13140 Filed 5–30–95; 8:45 am]

BILLING CODE 6560–50–F

[PP 3G4161/T673; FRL 4948–8]

Triflusulfuron Methyl; Establishment of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established temporary tolerances for residues of the herbicide triflusulfuron methyl in or on certain raw agricultural commodities. These temporary tolerances were requested by E.I. DuPont de Nemours & Company, Inc.

DATES: These temporary tolerances expire September 30, 1997.

FOR FURTHER INFORMATION CONTACT: By mail: Robert Taylor, Product Manager (PM) 25, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 245, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–6800; e-mail: taylor.robert@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: E.I. DuPont de Nemours & Company, Inc., Agricultural Products, Walkers Mill, Barley Mill Plaza, P.O. Box 80038, Wilmington, DE 19880–0038, has requested in pesticide petition (PP) 3G4161, the establishment of temporary tolerances for residues of the herbicide triflusulfuron methyl (methyl-2-[[[[[4-(dimethylamino)-6-(2,2,2-trifluoroethoxy)-1,3,5-triazin-2-yl]carbonyl]amino]sulfonyl]-3-methylbenzoate) in or on the raw agricultural commodities sugar beet roots and tops at 0.05 part per million (ppm). These temporary tolerances will permit the marketing of the above raw agricultural commodities when treated in accordance with the provisions of the experimental use permit 352–EUP–160, which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (Pub. L. 95–396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that establishment of the temporary tolerances will protect the public health. Therefore, the temporary tolerances have been established on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. DuPont must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire September 30, 1997. Residues not in excess of these amounts remaining in or on the raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirement of section 3 of Executive Order 12866.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Authority: 21 U.S.C. 346a(j).

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 22, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 95– 13271 Filed 5–30–95; 8:45 am]

BILLING CODE 6560–50–F

[PF–627; FRL–4956–9]

Troy Biosciences, Inc.; Notice of Filing of Pesticide Petition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received from Troy Biosciences, Inc., a petition to establish a regulation to exempt from the requirement of a tolerance residues of the insecticide *Beauvaria bassiana* ATCC 74040, in or on all raw agricultural commodities.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA. Information submitted and any comment(s) concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment(s) that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Information on the proposed test and any written comments will be available for public inspection in Rm. 1132 at the Virginia address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [PF-627]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Phil Hutton, Product Manager (PM-90), Biopesticides and Pollution Prevention Division (7501W), Office of Prevention, Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 5th Floor, CS#1, 2805 Jefferson Davis Hwy., Arlington, VA, (703)-308-8260; e-mail: hutton.phil@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: This notice announces that EPA has received from Troy Biosciences, Inc., 2620 North 37th Drive, Phoenix, AZ 85009, the filing of a pesticide petition, PP 5F4483, pursuant to the Federal Food, Drug and Cosmetic Act (FFDCA), proposing that 40 CFR part 180 be amended by establishing a regulation to exempt from the requirement of a tolerance residues of the insecticide *Beauvaria bassiana* ATCC 74040 in or on all raw agricultural commodities.

A record has been established for this rulemaking under docket number [PF-627] (including any comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-Docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in **ADDRESSES** at the beginning of this document.

List of Subjects

Enviormental protection, Administrative practice and procedure, Agricultual commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Authority: 21 U.S.C. 346a and 348.

Dated: May 22, 1995.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. 95–13270 Filed 5–30–95; 8:45 am]

BILLING CODE 6560–50–F

[OPPTS–44617; FRL–4956–7]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of test data on ethyl acetate (CAS No. 141–78–6) submitted pursuant to a testing consent order under the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: Under 40 CFR 790.60(a)(10), all TSCA section 4 consent orders must contain a statement

that results of testing conducted pursuant to testing consent orders will be announced to the public in accordance with section 4(d).

I. Test Data Submissions

Test data for ethyl acetate were submitted by The Chemical Manufacturers Association Oxo Process Panel pursuant to a testing consent order at 40 CFR 799.5000. They were received by EPA on April 5, 1995. The submission includes a final report entitled "Ethyl Acetate: An Acute Vapor Inhalation Neurotoxicity Study in the Rat." This chemical is used as a solvent for lacquers and enamel coatings, as a solvent for inks, as a plastics solvent, and in chemical synthesis.

EPA has initiated its review and evaluation process for this data submission. At this time, the Agency is unable to provide any determination as to the completeness of the submission.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPPTS–44617). This record includes copies of all studies reported in this notice. The record is available for inspection from 12 noon to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, Rm. B–607 Northeast Mall, 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

List of Subjects

Environmental protection, Test data.

Dated: May 22, 1995.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 95–13267 Filed 5–30–95; 8:45 am]

BILLING CODE 6560–50–F

[OPPT–62146; FRL–4952–1]

Accredited Training Programs Under the Asbestos Hazard Emergency Response Act (AHERA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: National Directory of AHERA Accredited Courses (NDAAC); notice of availability of new edition.

SUMMARY: Effective May 31, 1995, the EPA is announcing the availability of a new edition of its National Directory of AHERA Accredited Courses (NDAAC). This publication, updated quarterly, provides information to the public about training providers and courses approved for accreditation purposes pursuant to the Asbestos Hazard Emergency Response Act (AHERA). As a nationwide listing of approved asbestos training programs and courses, the NDAAC has replaced the similar listing which was formerly published quarterly by EPA in the **Federal Register**. The May 31, 1995, directory, which supersedes the version released on February 28, 1995, may be ordered through the NDAAC Clearinghouse along with a variety of related reports.

ADDRESSES: Parties interested in receiving a brochure which describes the national directory and provides ordering information should contact: EPA AHERA - NDAAC, c/o VISTA Computer Services, 3rd Floor, 6430 Rockledge Drive, Bethesda, MD 20817, Telephone: 1–800–462–6706.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543B, 401 M St. SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: Pursuant to AHERA, as amended by the Asbestos School Hazard Abatement Reauthorization Act (ASHARA), contractors who prepare management plans for schools, inspect for asbestos in schools or public and commercial buildings, or design or conduct response actions with respect to friable asbestos-containing materials in schools of completing prescribed training requirements. EPA therefore maintains a current national listing of AHERA-accredited courses and approved training providers so that this information will be readily available to assist the public accessing these training programs and obtaining the necessary accreditation. This information is also maintained so that the Agency and approved state accreditation and licensing programs will have a reliable means of identifying and verifying the approval status of training courses and organizations.

Previously, EPA had published this listing in the **Federal Register** on a quarterly basis. The last **Federal Register** listing required by law was published on August 30, 1991. EPA recognized the need to continue publication of this document even though the legislative mandate has expired. The NDAAC fulfills the public need for this information while at the same time, it reduces EPA cost and improves the service's capabilities.

List of Subjects

Environmental protection.

Dated: May 18, 1995.

William H. Sanders III,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 95–12896 Filed 5–30–95; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203–011171–004.

Title: P&O Containers/Nedlloyd/Sea-Land Agreement.

Parties: P&O Containers Limited, Nedlloyd Lijnen BV, Sea-Land Service, Inc.

Synopsis: The proposed amendment revises the Membership and Withdrawal provision to allow a party to withdraw as a member upon 24-hours notice. It also complies with the terms of the Settlement Agreement in Docket No. 94–28—*Vessel Sharing Agreements Order to Show Cause.*

Agreement No.: 203–011394–001.

Title: Space Charter and Sailing Agreement Between Orient Overseas Container Line (U.K.) Ltd. and Sea-Land Service, Inc., P&O Containers Ltd. and Nedlloyd Lijnen BV.

Parties: Orient Overseas Container Line (U.K.), P&O Containers Limited, Nedlloyd Lijnen BV, Sea-Land Service, Inc.

Synopsis: The proposed amendment revises the Membership and Withdrawal provision to allow a party to withdraw as a member upon 24-hours notice. It also complies with the terms of the Settlement Agreement in Docket No. 94–28—*Vessel Sharing Agreements Order to Show Cause.* In addition, it also deletes the requirement that the member belong to the applicable Conference.

Agreement No.: 203–011395–001

Title: Space Charter and Sailing Agreement Between A.P. Moller-Maersk Line and P&O Containers Limited, Sea-land Service, Inc. and Nedlloyd Lijnen.

Parties: A.P. Moller-Maersk Line, P&O Containers Limited, Sea-Land Service, Inc., Nedlloyd Lijnen BV.

Synopsis: The proposed amendment revises the Membership and Withdrawal provision to allow a party to withdraw as a member upon 24-hours notice. It also complies with the terms of the Settlement Agreement in Docket No. 94–28—*Vessel Sharing Agreements Order to Show Cause.* In addition, it also deletes the requirement that the member belong to the applicable Conference.

Agreement No.: 203–011396–001

Title: Cooperative Working Agreement Among Orient Overseas Container Line (U.K.) Ltd., A.P. Moller-Maersk Line and Sea-Land Service, Inc., P&O Containers, Ltd., Nedlloyd Lijnen BV.

Parties: Orient Overseas Container Line (U.K.) Ltd., A.P. Moller-Maersk Line, Sea-land Service, Inc., P&O Containers Limited, Nedlloyd Lijnen VB.

Synopsis: The proposed amendment revises the Membership and Withdrawal provision to allow a party to withdraw as a member upon 24-hours notice. It also complies with the terms of the Settlement Agreement in Docket No. 94–28—*Vessel Sharing Agreements Order to Show Cause.* In addition, it deletes the requirement that the member belong to the applicable Conference.

Agreement No.: 232–011501.

Title: Hanjin/Tricon Panama Agreement.

Parties: Hanjin Shipping Co., Ltd. ("Hanjin"), Tricon Parties, Cho Yang Shipping Co. Ltd., DSR-Senator Lines.

Synopsis: The proposed Agreement authorizes Hanjin to charter space from the Tricon parties and for the parties to maintain a fixed day port sailing scheduled in both directions in the trade between U.S. West Coast ports and ports in Panama.

Dated: May 24, 1995.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 95–13174 Filed 5–30–95; 8:45 am]

BILLING CODE 6730–01–M

Security for the Protection of the Public Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Notice of Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of Section 2, Public Law 89–777 (46 U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 CFR Part 540, as amended:

Carnival Corporation, 3655 NW 87th Avenue, Miami, Florida 33178–2428

Vessel: IMAGINATION

Dated: May 24, 1995.

Joseph C. Polking,

Secretary.

[FR Doc. 95–13173 Filed 5–30–95; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Ocean Customs Brokers, 8554 Katy Freeway, Suite 123, Houston, TX 77024, Eldon D. Spencer, Sole Proprietor

Atlant (USA), Inc., 5777 West Century Blvd., Los Angeles, CA 90045, Officer: Bolko Kissling, President

Amerstar Shipping Incorporated, 277 Broadway, New York, NY 10007, Officers: Belford Saltos, President, Madukwe E. Ukaegbu, Secretary

International Freight Systems (of Oregon), Inc., d/b/a International Freight Systems, 604 NE 20th Ave., Portland, Oregon 97232, Officers: Robert C. Hansen, President, William D. Woodward, Vice President

Dated: May 24, 1995.

By the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 95–13175 Filed 5–30–95; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

H. Glenn Barker, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 13, 1995.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. H. Glenn Barker, Dunlap, Tennessee; to acquire an additional 5.7 percent, for a total of 28.4 percent, and L. Thomas Austin, Dunlap, Tennessee, to acquire an additional 5.4 percent, for a total of 26.9 percent, of the voting shares of Sequatchie Valley Bancshares, Inc., Dunlap, Tennessee, and thereby indirectly acquire Citizens Tri-County Bank, Dunlap, Tennessee.

Board of Governors of the Federal Reserve System, May 24, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–13210 Filed 5–30–95; 8:45 am]

BILLING CODE 6210–01–F

The Berens Corporation; Notice of Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise

noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 13, 1995.

A. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. The Berens Corporation, Houston, Texas; To engage *de novo* through its subsidiary, Berens Credit Corporation, Houston, Texas, in making and arranging loans and other extensions of credit, pursuant to § 225.25(b)(1); and leasing activities, pursuant to § 225.25(b)(5) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 24, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–13211 Filed 5–30–95; 8:45 am]

BILLING CODE 6210–01–F

Societe Generale; Notice To Engage in Nonbanking Activities

Societe Generale, Paris, France (Notificant), has provided notice pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (BHC Act) and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)), to acquire through its subsidiary, FIMAT Futures USA, Inc., Chicago, Illinois (Company), substantially all of the assets of Brody, White & Company, Inc., New York, New York (Brody White). Company currently engages in a variety of futures commission merchant and foreign exchange-related activities. *See Societe Generale*, 80 Federal Reserve Bulletin 649 (1994) (Societe Generale I) and *Societe Generale*, 80 Federal Reserve Bulletin 646 (1994) (Societe Generale II). Upon acquisition of Brody White, Company would expand its activities to include becoming a clearing member of the New York Cotton Exchange, Commodity Exchange, Inc., Financial Exchange, New York Futures Exchange and the Coffee, Sugar & Cocoa Exchange; purchasing and selling through omnibus accounts futures and options on futures on the London Commodity Exchange and Winnipeg Commodity Exchange; and acting as riskless principal in connection with spot, forward and over-the-counter option transactions in the foreign exchange market.

Notificant has stated that upon acquisition of Brody White, Company would continue to provide futures commission merchant execution, clearance and advisory services subject to the same limitations, conditions and commitments relied on by the Board in Societe Generale I, with one exception. In particular, Notificant proposes that Company provide execution, clearance and advisory services to commercial hedger customers with net worths of less than $1 million. The Board previously has relied on commitments that clearing-only services and futures commission merchant services provided with respect to futures and options on futures on nonfinancial commodities would be provided solely to institutional customers, as defined in § 225.2(g) of Regulation Y. Notificant has represented that these customers would not be unsophisticated retail investors. Notificant also has stated that in order to address suitability and credit risk issues, as well as any other possible adverse effects, noninstitutional customers would have to represent in writing that they are engaged in bona fide hedging transactions for purposes of CFTC regulation 1.3(z) (17 CFR 1.3(z)), and Company would have a system in place to detect any unauthorized trading by these customers in commodities other than those as to which hedge margin status has been granted. In addition, there would be an initial credit review process to determine whether a customer's proposed hedging activities are appropriate in light of the customer's net worth and business activities, as well as periodic reviews on actual trading activities in the account. Based on these facts, Notificant maintains that providing the proposed futures commission merchant services to certain noninstitutional customers is so closely related to banking as to be a proper incident thereto.

Notificant also has stated that upon acquisition of Brody White, Company would purchase and sell, on the order of investors as riskless principal, foreign exchange in the spot, forward and over-the-counter option markets. Notificant maintains that the Board previously has determined that purchasing and selling foreign exchange as riskless principal is closely related to banking. *See Banca Commerciale Italiana*, 76 Federal Reserve Bulletin 649 (1990) (BCI). Notificant has stated that Company would provide the proposed riskless principal services in accordance with the limitations, commitments and conditions relied on by the Board in BCI. Notificant also has stated that Company would continue to comply with commitments made to the Board in Societe Generale II that relate to providing foreign exchange execution and advisory services on a combined basis.

In order to approve the proposal, the Board must determine that the proposed activities to be conducted by Company "can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." 12 U.S.C. 1843(c)(8). Notificant maintains that the proposal would not produce any adverse effects. Notificant also maintains that the proposal would lead to increased competition in the relevant markets, better customer service, lower costs and greater efficiency.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than June 30, 1995. Any request for a hearing on this notice must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This notice may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, May 24, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–13212 Filed 5–30–95; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee on Immunization Practices; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting:

Name: Advisory Committee on Immunization Practices (ACIP).

Times and Dates: 8:30 a.m.–6 p.m., June 28, 1995; 8:15 a.m.–3:30 p.m., June 29, 1995.

Place: CDC, Auditorium A, Building 2, 1600 Clifton Road, NE, Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available.

Purpose: The committee is charged with advising the Director, CDC, on the appropriate uses of immunizing agents.

Matters to be discussed: The committee will discuss the polio vaccine policy; the approach to developing ACIP vaccine recommendations; hepatitis A vaccine—use in high endemic populations; varicella update; "Vaccines for Children Program": Hepatitis A, hepatitis B, varicella; adolescent immunization visit; measles elimination update; vaccine safety update: preference of DTaP for 4th and 5th doses; ACIP participation in the National Vaccine Advisory Committee and the Advisory Commission on Childhood Vaccines Subcommittee on Vaccine Safety; measles vaccine inflammatory bowel disease; large-linked database (LLDB) results; acellular pertussis vaccine trial results; programmatic strategies to increase immunization coverage; pneumococcal conjugate vaccine; harmonization of immunization recommendations; update on progress towards disease elimination goals; ACIP recommendations and package inserts; diphtheria and the New Independent States update: the U.S. contingency plan; electronic updating of ACIP recommendations; an Injury Compensation Program update; and a National Vaccine Program update. Other matters of relevance among the committee's objectives may be discussed.

Agenda items are subject to change as priorities dictate.

Contact person for more information: Gloria A. Kovach, Committee Management Specialist, CDC (1–B72), 1600 Clifton Road, NE, Mailstop A20, Atlanta, Georgia 30333, telephone 404/639–3851.

Dated: May 24, 1995.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–13209 Filed 5–30–95; 8:45 am]

BILLING CODE 4163–18–M

Food and Drug Administration

[Docket No. 95N–0097]

New Monographs and Revisions of Certain Food Chemicals Codex Monographs; Opportunity for Public Comment

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on pending changes to certain Food Chemicals Codex specifications monographs from the third edition and its four supplements. One new monograph and additions, revisions, and corrections to current monographs for certain substances used as food ingredients are being prepared by the National Academy of Sciences/Institute of Medicine (NAS/IOM) Committee on Food Chemicals Codex (the committee). This material will be published in the fourth edition of the Food Chemicals Codex, which is scheduled for release in March 1996. When the committee completes its review of the comments, it will incorporate any changes that it makes in response to comments in monographs published in supplements to the fourth edition.

DATES: Written comments by August 14, 1995.

ADDRESSES: Submit written comments and supporting data and documentation to the NAS/IOM Committee on Food Chemicals Codex, National Academy of Sciences, 2101 Constitution Ave., NW., Washington, DC 20418. Copies of the new monographs and proposed revisions to current monographs may be obtained from NAS (address above) or the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. Requests for copies should specify the monographs desired.

FOR FURTHER INFORMATION CONTACT:

Fatima N. Johnson, Committee on Food Chemicals Codex, Food and Nutrition Board, National Academy of Sciences, 2101 Constitution Ave., NW., Washington, DC 20418, 202–334–2580; or

Paul M. Kuznesof, Center for Food Safety and Applied Nutrition (HFS–247), Food and Drug Administration, 200 C Street, SW., Washington, DC 20204, 202–418–3009.

SUPPLEMENTARY INFORMATION: By contract with NAS/IOM, FDA supports the preparation of the Food Chemicals Codex, which is a compendium of specifications for substances used as food ingredients. Before any specifications are included in a Food Chemicals Codex publication, public announcement is made in the **Federal Register**.

FDA previously announced that the committee was considering new monographs and monograph revisions for inclusion in the fourth edition of the Food Chemicals Codex, which NAS/IOM is now preparing. In addition, FDA has given notice and an opportunity for public comment on the policies adopted by the committee for the fourth edition on lead and heavy metals specifications (58 FR 38129, July 15, 1993), and on arsenic specifications (59 FR 11789, March 14, 1994).

The committee will continue to provide the opportunity for public comment on intended changes in monographs by means of **Federal Register** notices before their inclusion in supplements to the fourth edition. Interested parties should submit all suggestions with supporting documentation to the National Academy of Sciences at the above address.

FDA now gives notice that the committee is soliciting comments and information on certain proposed new monographs and revisions to certain additional current monographs. These new monographs and revisions will be published in the fourth edition of the Food Chemicals Codex. The proposed new monographs and revisions to current monographs may be seen at the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. Because the publication timeframe for the fourth edition, comments on monographs that are the subject of this notice cannot be considered for incorporation in the fourth edition, which is scheduled for release in March 1996, but will be considered for incorporation in supplements to the fourth edition. Copies of the new monographs and proposed revisions to current monographs may be obtained from NAS or the Dockets Management Branch. Requests for copies should be identified with the docket number found in brackets in the heading of this

document and should specify the monographs desired.

FDA emphasizes, however, that it will not consider adopting and incorporating any of the committee's new monographs or monograph revisions into FDA regulations without ample opportunity for public comment. If FDA decides to propose the adoption of new monographs and changes that have received final approval of the committee, it will announce its intention, and provide an opportunity for public comment in the **Federal Register**.

The committee invites comments and suggestions on specifications by all interested parties on the proposed new monographs and revisions of current monographs that follow:

I. Proposed New Monograph

Food Starch, Unmodified

II. Current Monographs to which the Committee Proposes to Make Revisions

Aluminum Potassium Sulfate (Assay, Heavy Metals, Lead)
Aluminum Sulfate (Heavy Metals)
Ammonium Carbonate (Heavy Metals, Sulfur Compounds)
Azodicarbonamide (Assay, Heavy Metals)
Beeswax, White (Heavy Metals)
Beeswax, Yellow (Heavy Metals)
Caffeine (Description, Identification, Assay, Heavy Metals, Lead, Water)
Calcium Acetate (Assay, Heavy Metals, Lead)
Calcium Bromate (Assay, Heavy Metals)
Calcium Chloride (Description, Labeling, Assay, Acid-Insoluble Matter,
Magnesium and Alkali Salts)
Calcium Citrate (Assay, Loss on Drying)
Calcium Hydroxide (Assay, Acid-Insoluble Substances, Heavy Metals, Magnesium and Alkali Salts)
Calcium Oxide (Assay, Acid-Insoluble Substances, Alkalies or Magnesium, Heavy Metals, Lead, Loss on Ignition)
Calcium Propionate (Identification, Assay)
Calcium Saccharin (Assay)
Calcium Sorbate (Lead)
Candelilla Wax (Identification, Heavy Metals)
Carrageenan (Delete monograph from the Food Chemicals Codex)
Castor Oil (Saponification Value, Specific Gravity)
Cellulose Gel (formerly Microcrystalline Cellulose, Description, Identification, Loss on Drying, pH, Water-Soluble Substances)
Chlorine (Assay, Heavy Metals, Moisture and Residue)
Dextrin (Heavy Metals, Lead, pH of Dispersions)
Disodium EDTA (Identification, Assay, Calcium, Nitrilotriacetic Acid)
Erythorbic Acid (Assay, Heavy Metals, Lead, Loss on Drying)
Ethyl Cellulose (Heavy Metals, Lead)
Food Starch, Modified (Numerous Changes)
Fumaric Acid (Identification, Assay, Heavy Metals, Maleic Acid)
Hydrochloric Acid (Numerous Changes)
Hydroxypropyl Cellulose (Heavy Metals, Lead)
Iron, Carbonyl (Arsenic, Lead)
Iron, Electrolytic (Arsenic, Lead)
Iron, Reduced (Arsenic, Lead, Acid-Insoluble Substances)
Isobutylene-Isoprene Copolymer (Identification, Heavy Metals, Total Unsaturation)
Lactic Acid (Labeling, Chloride, Sulfate)
Magnesium Carbonate (Heavy Metals, Acid-Insoluble Substances, Calcium Oxide)
Magnesium Hydroxide (Assay, Calcium Oxide, Heavy Metals, Oxide, Loss on Ignition)
Magnesium Oxide (Assay, Acid-Insoluble Substances, Calcium Oxide, Heavy Metals, Loss on Ignition)
Malic Acid (Identification, Assay, Fumaric and Maleic Acids, Heavy Metals, Lead, Residue on Ignition, Specific Rotation)
Maltodextrin (Labeling, Assay, Protein, Sulfur Dioxide, Total Solids)
Methyl Ethyl Cellulose (Heavy Metals, Lead)
Nisin Preparation (Lead)
Nitrous Oxide (Identification)
Phosphoric Acid (Labeling, Heavy Metals)
Poloxamer 331 (1,4-Dioxane; Ethylene Oxide, Propylene Oxide, and 1,4-Dioxane)
Poloxamer 407 (1,4-Dioxane; Ethylene Oxide, Propylene Oxide, and 1,4-Dioxane)
Polydextrose (Description, Lead, Monomers, Molecular Weight Limit, Residue on Ignition)
Polydextrose Solution (Monomers)
Polyethylene (Identification, Heavy Metals)
Polyethylene Glycols (1,4-Dioxane, Ethylene Glycol and Diethylene Glycol,
Ethylene Oxide, Heavy Metals)
Polysorbate 20 (1,4-Dioxane)
Polysorbate 60 (1,4-Dioxane, Stearic and Palmitic Acids)
Polysorbate 65 (1,4-Dioxane)
Polysorbate 80 (1,4-Dioxane)
Polyvinyl Acetate (Loss on Drying, Heavy Metals, Volatiles)
Polyvinylpolypyrrolidone (Extractable Substances, Soluble Substances, Unsaturation, Water)
Potassium Bromate (Chloride, Heavy Metals, Loss on Drying, Sulfate)
Potassium Hydroxide (Assay, Heavy Metals, Mercury)
Potassium Sorbate (Lead)
Potassium Sulfate (Description, Assay)
Propylene Glycol Alginate (Ash, Esterified Carboxyl Groups, Heavy Metals, Lead, Neutralized Carboxyl Groups)
Rice Bran Wax (Heavy Metals)
Silicon Dioxide (Heavy Metals, Lead, Loss on Drying)
Sodium Carboxymethylcellulose (Heavy Metals, Lead)
Sodium Hydroxide (Assay, Heavy Metals)
Sodium Hydroxide Solution (Labeling, Heavy Metals)
Sodium Metabisulfite (Assay, Heavy Metals, Lead)
Sodium Potassium Tartrate (Assay)
Titanium Dioxide (Identification, Assay, Lead, Water-Soluble Substances)
Vitamin A (Assay)

Interested persons may, on or before August 14, 1995, submit to NAS written comments regarding the monographs listed in this notice. Those wishing to make comments are encouraged to submit supporting data and documentation with their comments. Two copies of any comments are to be submitted. Comments and supporting data or documentation are to be identified with the docket number found in brackets in the heading of this document and should include a statement that the comment is in response to this **Federal Register** notice. NAS will forward a copy of each comment to the Dockets Management Branch (address above). Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 18, 1995.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 95–13204 Filed 5–30–95; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

Statement of Organization, Functions, and Delegations of Authority

Office of the Associate Administrator for External Affairs

Part F of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA), (**Federal Register**, Vol. 59, No. 60, pp. 14637–14638, dated Tuesday, March 29, 1994) is amended to reflect changes in the

organizational structure of the Office of the Associate Administrator for Customer Relations and Communications (AACRC). AACRC is being renamed the Office of the Associate Administrator for External Affairs (AAEA) and is being reorganized to more accurately reflect the customer relations and communication areas.

The specific amendments to Part F are as follows:

- Section F.10. (Organization) is amended by deleting F.10.B. in its entirety and replacing it with the following:

B. Office of the Associate Administrator for External Affairs (FC)

1. Office of Media Relations (FCA)
2. Office of Professional Relations (FCB)
3. Office of Beneficiary Relations (FCC)
4. Freedom of Information and Privacy Office (FCE)

- Section F.20.B. (Functions) is amended by deleting the statement and substructure in their entirety and replacing them with the new functional statements. The new functional statements read as follows:

B. Office of the Associate Administrator for External Affairs (FC)

- Advises the Administrator, senior staff, and components on HCFA communications and customer relations' policies, procedures, and programs.
- Promotes an awareness of customer and partner perceptions of HCFA policies and programs and participates in ensuring that HCFA activities meet customer needs and standards of service.
- Promotes an awareness within and outside of HCFA determining the scope and diversity of HCFA's customer base and their needs.
- Develops and maintains channels of communication and mechanisms for feedback between HCFA and its customers and partners. Develops, coordinates, and advises the Administrator, senior staff, and components on outreach, customer service, and survey strategies, policies, and procedures.
- Directs and coordinates a coherent communications strategy with HCFA leadership and components and ensures an effective implementation of this strategy. Directs communication of HCFA policies and initiatives to the media, advocacy groups, and provider, professional, and educational organizations and institutions.
- Designs, conducts, and advises the Administrator, senior staff, and components on information campaigns and initiatives to educate customers and partners on HCFA policies, programs, and services. Advises and participates in the production of customer-oriented print and multi-media materials.
- Manages the interaction of the Administrator, senior staff, and components with the Department, other government entities, the media, and external parties interested in HCFA's public affairs' programs and activities (including interviews, public appearances, and speeches).
- Directs and advises the Administrator, senior staff, and components on the requirements, policies, and administration of the Freedom of Information Act and Privacy Act.

1. Office of Media Relations (FCA)

- Serves as the principal spokesperson for HCFA to the news media.
- Prepares and edits appropriate materials about HCFA, its policies, actions and findings, and provides them to the public through the print and broadcast media; develops and directs public information and media relations' strategies for HCFA.
- Provides consultation, advice and training to HCFA senior staff with respect to relations with the news media.
- Responds to inquires from a broad variety of news media including major newspapers, national television and radio networks, national news magazines, local newspapers and radio and television stations, publications directed toward HCFA's beneficiary populations and newsletters serving the health care industry.
- Arranges formal interviews for journalists with the HCFA Administrator or other appropriate senior HCFA staff; identifies for interviewees the issues to be addressed, and prepares or obtains background materials as needed.
- Maintains a broad based knowledge of HCFA's structure, responsibilities, mission, goals, programs and initiatives in order to provide or arrange for rapid and accurate response to news media needs.
- For significant HCFA initiatives, issues media advisories and arranges press conferences as appropriate; coordinates material and personnel as necessary.

2. Office of Professional Relations (FCB)

- Serves as the focal point in HCFA for external health care professional, institutional, and related organizations.
- Provides consultation and technical assistance to organizations and agencies representing the health professional, business, and academic communities.
- Contributes to the development of HCFA policies, regulations, procedures, and legislative proposals taking into consideration the views of the affected parties.
- Promotes within HCFA an awareness of the concerns of the health care community.
- Provides technical assistance and support services in the operations of the Practicing Physicians Advisory Council.
- Services as a contact in HCFA for international visitors. Responds to requests from intergovernmental agencies and the international community for information related to the United States health care system.
- Maintains a close working relationship with other Federal agencies on health related matters.
- Manages speaker and meeting requests for the Administrator. Receives and develops requests, identifies issues, and negotiates topics. Makes recommendations to the Administrator to accept or decline requests. Initiates search for Senior level speakers, when invitations are declined. Explores feasibility of meeting with senior staff, when meeting requests are declined.
- Manages the Speakers Bureau. Responds to requests from outside organizations for senior level HCFA speakers (other than the Administrator).
- Seeks speaker opportunities for the Administrator to present HCFA goals and objectives.
- Manages the Administrator's public appearances, and meetings. Serves as liaison between HCFA and the leadership of professional and beneficiary organizations in coordinating the preparations surrounding public appearances and meetings.
- Conducts follow-up activities. After each event a follow up call is made to the group to see if their issues were addressed. A call is also made to the Administrator's office to get the Administrator's comments on the effectiveness of the event.
- Develops briefing material for use by the Administrator, the Deputy, the Associate, and the Secretary, including identifying and researching issues of concern to both HCFA and outside organizations.
- Researches and writes the speeches given by the Administrator.
- Researches and prepares articles and other public statements for the Administrator's signature.
- Advises the Office of Media Relations on potential news opportunities stemming from public appearances and speaking engagements.

3. Office of Beneficiary Relations (FCC)

- Advises the Associate Administrator, HCFA senior staff and HCFA components on HCFA's policies and actions affecting Medicare and Medicaid beneficiaries.
- Promotes within HCFA an awareness of the needs and concerns of HCFA's beneficiaries (including those segments of the beneficiary population with special information or service needs), their families, caregivers and representatives.
- Maintains a close working relationship with other Federal and State agencies, and beneficiary representative organizations.
- Identifies the need for changes in information, benefits and services, and assesses the impact of proposed HCFA actions on current and future beneficiaries.
- Conducts and coordinates within HCFA the assessment of beneficiary needs, the measurement of beneficiary satisfaction with HCFA programs, policies and operations, and the development of customer service standards; serves as a resource with respect to these activities and the information collected through them.
- Participates with other HCFA components in the development and implementation of strategies and program objectives affecting beneficiary services.
- Responds to beneficiary inquiries involving access to and utilization of the Medicare and Medicaid programs and related issues.
- Plans, directs, and coordinates the production of audio and film products such as public service announcements and informational films, and the preparation and publication of general purpose publications such as *The Medicare Handbook, The Guide to Nursing Homes*, etc.
- Reviews and clears print, audiovisual, and exhibit plans and materials intended for use with beneficiary populations, and secures such clearances as needed through the Office of the Assistant Secretary for Public Affairs.
- Administers a wide variety of contracts, grant programs and interagency agreements, within HCFA, to assist in the conduct of its beneficiary service responsibilities.
- Works in cooperation with the Office of Media Relations to determine and meet the information needs of the public with respect to issues of concern to beneficiaries and their representatives.
- Coordinates other HCFA activities directly related to beneficiary services as they arise.

4. Freedom of Information and Privacy Office (FCE)

- Conducts activities necessary to the receipt, management, response, and reporting requirements of the Department under the Freedom of Information Act (FOIA) regarding all requests received by HCFA.
- Maintains a log of all FOIA requests received by the central office, refers requests to the appropriate components within headquarters, the regions or among carriers and intermediaries for the collection of the documents requested. Makes recommendations and prepares replies to requesters, including denials of information as permitted under FOIA, and drafts briefing materials and responses in connection with appeals of denials decisions.
- Consults with the Office of the General Counsel and the Department of Health and Human Services' Freedom of Information Officer and external agencies regarding denials, releases, and appeals.
- Provides in house training, internal and external work plans, and guidance for FOIA coordinators and management officials in HCFA central and regional office components, and maintains up-to-date knowledge of Federal Court decisions interpreting FOIA.
- Prepares guidelines and Medicare/Medicaid manual changes regarding FOIA program, keeps track of any changes levied for FOIA research process activities, and assures prompt payment.
- Establishes and monitors HCFA's policies and guidelines for the implementation of Privacy Act safeguards of records. This is accomplished by utilizing the administrative issuances system (AIS) guides and training.
- Directs the maintaining and amending of HCFA-wide records for confidentially and disclosure to the Privacy Act to include: planning, organizing, initiating and controlling privacy matching assignments.
- Develops HCFA comments and recommendations for reports, proposed policy and proposed legislation; coordinates appropriate privacy issues for FOIA requests; and responds to congressional, public and other agencies on Privacy Act issues.
- Publishes notices describing Privacy Act records systems and provides advice and guidance to HCFA components on issues as required by the Privacy Act.
- Follows necessary clearance procedures for proposals, and new system integrations.
- Maintains case records and the FOIA filing system, monitors and reviews FOIA office production reports and administrative responsibilities.
- Plans, directs, and coordinates studies to ascertain trends and developments in disclosures of information requested under the Freedom of Information Act. Develops these findings into various alternatives and recommendations for the more effective handling of FOI requests and presents them to management prior to implementation. Provides input to the Department on any proposed changes to FOI procedures.
- Defines the scope of requests and adequacy of records available.

Dated: May 19, 1995.

Donna E. Shalala,

Secretary.

[FR Doc. 95–13182 Filed 5–30–95; 8:45am]

BILLING CODE 4120–01–M

National Institutes of Health

National Cancer Institute; Notice of Meetings

Pursuant to Pub. L. 92–463, notice is hereby given of the meetings of the National Cancer Institute for June 1995.

These meetings will be open to the public to discuss administrative details or other issues relating to committee activities as indicated in the notice and for the review of concepts being considered for funding. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, for the review, discussion and evaluation of individual grant applications, previous site visit reports, and for the critique and evaluation of extramural/intramural programmatic and personnel policies, including consideration of personnel qualifications and performance and the competence of individual investigators. These applications, reports and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, programs, and projects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Carole Frank, the Committee Management Officer, National Cancer Institute, Executive Plaza North, Room 630E, 6130 Executive Blvd MSC 7405, Bethesda, Maryland 20892–7405, (301–496–5708) will provide a summary of the meetings and the roster of committee members, upon request. Other information pertaining to the meetings may be obtained from the contact person indicated below.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the contact person listed for that particular meeting.

Committee Name: Cancer Research Manpower and Education Review Committee (Subcommittee A).

Contact Person: Dr. Mary Bell, Scientific Review Administrator, National Cancer Institute, NIH, Executive Plaza North, Rm. 611A, 6130 Executive Blvd., Rockville, MD 20892–7094, Telephone: (301) 496–7978.

Date of Meeting: June 11–13, 1995.

Place of Meeting: The Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 2081.

Closed: June 11, 1995, 7:30 pm to recess, June 12, 1995, 8 am to recess, June 13, 1995, 8 am to adjournment.

Agenda: Review, discussion, and evaluation of individual grant applications.

Committee Name: Board of Scientific Counselors, Division of Cancer Treatment.

Contact Person: Dr. Robert Wittes, Acting Executive Secretary National Cancer Institute, NIH, Building 31A, Room 3A44, 9000 Rockville Pike, Bethesda, MD 20892, Telephone: (301) 496–4291.

Date of Meeting: June 19, 1995.

Place of Meeting: Building 31C, Conference Room 10, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20892.

Open: 8 am to approximately 1 pm.

Agenda: Review program plans, concepts of contract recompetiions and budget for the DCT program.

Closed: 1 pm to adjournment.

Agenda: Review, discussion and evaluation of individual extramural/intramural programmatic and personnel policies including consideration of personnel qualifications and the performance and competence of individual investigators.

This notice is being published less than fifteen days prior to the meeting due to the urgent need to meet timing limitations imposed by the review cycle.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control.)

Dated: May 24, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–13272 Filed 5–30–95; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Heart, Lung, and Blood Special Emphasis Panel (SEP) meetings:

Name of SEP: RFA for Specialized Centers of Research on Hematopoietic Stem Cell Biology.

Date: June 13–15, 1995

Time: 8:00 p.m.

Place: Holiday Inn, Chevy Chase, Maryland

Contact Person: Eric H. Brown, Ph.D., 6701 Rockledge Drive, Room 7204, Bethesda, Maryland 20892–7924, (301) 435–0299.

Purpose/Agenda: To review and evaluate grant applications.

Name of SEP: Demonstration and Education Research Grants.

Date: July 18–19, 1995.

Time: 9:00 a.m.

Place: Stouffer Concourse Hotel, Arlington, Virginia.

Contact Person: Louise Corman, Ph.D., 6701 Rockledge Drive, Room 7180, Bethesda, Maryland 20892–7924, (301) 435–0270.

Purpose/Agenda: To review and evaluate grant applications.

These meetings will be closed in accordance with the provisions set forth in sec. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: May 24, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–13273 Filed 5–30–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Mental Health; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Mental Health Initial Review Group, Psychobiology, Behavior, and Neuroscience Review Committee, which was published in the **Federal Register** on April 17, 1995 (60 CFR 19268).

This committee was to have convened at 9 a.m. on June 19 at the Ramada Inn Rockville in Rockville, Maryland. The location has been changed to the Crowne Plaza Holiday Inn, 1750 Rockville Pike, Rockville, MD 20857.

Dated: May 24, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–13274 Filed 5–30–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Mental Health; Notice of Meeting

Pursuant to Pub. L. 92–463, notice is hereby given to the meeting of the Extramural Science Advisory Board of the National Institute of Mental Health (NIMH) for July 1995.

The entire meeting will be open to the public for discussion of the NIMH grant portfolio. Attendance by the Public will be limited to space available. If individuals who plan to attend need special assistance, such as sign language interpretation or other reasonable accommodations, or need other information pertaining to the meeting, notify the contact person named below in advance of the meeting.

Name of Committee: Extramural Science Advisory Board, NIMH.

Date: July 24, 1995; 8:30 a.m.—Recess. July 25, 1995; 8:30 a.m.—Adjournment.

Place: Conference Room 6, Building 31, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20892.

Contact Person: Andrea Baruchin, Ph.D., Executive Secretary, Parklawn Building, Room 17C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–4335.

Purpose/Agenda: To discuss the Institute's portfolio.

(Catalog of Federal Domestic Assistance Program Numbers 93.126, Small Business Innovation Research; 93.176, ADAMHA Small Instrumentation Program Grants; 93.242, Mental Health Research Grants; 93.281, Mental Research Scientist Development Award and Research Scientist Development Award for Clinicians; 93.282, Mental Health Research Service Awards for Research Training; and 93.921, ADAMHA Science Education Partnership Award.)

Dated: May 24, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–13275 Filed 5–30–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting of the National Institute of Mental Health Special Emphasis Panel:

Agenda/Purpose: To review and evaluate grant applications.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: July 18, 1995.

Time: 1:30 p.m.
Place: Parklawn Building, Room 9C–101, 5600 Fishers Lane, Rockville, MD 20857.
Contact Person: Rehana A. Chowdhury, Grant Technical Assistant, Parklawn Building, Room 9C–101, 5600 Fishes Lane, Rockville, MD 20857, Telephone: 301, 443–6470.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers 93.126, Small Business Innovation Research; 93.176, ADAMHA Small Instrumentation Program Grants; 93.242, Mental Health Research Grants; 93.281, Mental Research Scientist Development Award and Research Scientist Development Award for Clinicians; 93.282, Mental Health Research Service Awards for Research Training; and 93.921, ADAMHA Science Education Partnership Award.)

Dated: May 24, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–13276 Filed 5–30–95; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications
Name of SEP: Chemistry and Related Sciences.
Date: June 22, 1995.
Time: 1:00 p.m.
Place: NIH, Rockledge II, Room 5154, Telephone Conference.
Contact Person: Dr. Alec Liacouras, Scientific Review Admin., 6701 Rockledge Drive, Room 5154, Bethesda, MD 20892, (301) 435–1740.

Name of SEP: Clinical Sciences.
Date: June 28, 1995.
Time: 8:30 a.m.
Place: Holiday Inn, Chevy Chase, MD.
Contact Person: Ms. Josephine Pelham, Scientific Review Admin., 6701 Rockledge Drive, Room 4106, Bethesda, MD 20892, (301) 435–1786.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.829, 93.893, National Institutes of Health, HHS)

Dated: May 24, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–13277 Filed 5–30–95; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications
Name of SEP: Clinical Sciences.
Date: June 28, 1995.
Time: 9:00 a.m.
Place: American Inn, Bethesda, MD.
Contact Person: Dr. Joseph Kaiser, Scientific Review Admin., 6701 Rockledge Drive, Room 4132, Bethesda, MD. 20892, (301) 435–1211.

Name of SEP: Clinical Sciences.
Date: June 28, 1995.
Time: 8:30 a.m.
Place: Natcher Conference Center, NIH, Bethesda, MD.
Contact Person: Dr. Lawrence Pinkus, Scientific Review Admin., 6701 Rockledge Drive, Room 4140, Bethesda, MD 20892, (301) 435–1214.

Name of SEP: Multidisciplinary Sciences.
Date: June 28, 1995.
Time: 11:00 a.m.
Place: ANA Hotel, Washington, DC.
Contact Person: Dr. Marjam Behar, Scientific Review Admin., 6701 Rockledge Drive, Room 5218, Bethesda, MD 20892, (301) 435–1180.

Name of SEP: Biological and Physiological Sciences.
Date: June 30, 1995.
Time: 8:00 a.m.
Place: Embassy Suites, Washington, DC.
Contact Person: Dr. Sandy Warren, Scientific Review Administrator, 6701 Rockledge Drive, Room 5134, Bethesda, MD 20892, (301) 435–1019.

Name of SEP: Clinical Sciences.
Date: July 6, 1995.
Time: 9:00 a.m.
Place: Crowne Plaza, Rockville, MD.
Contact Person: Dr. Mushtaq Khan, Scientific Review Administrator, 6701 Rockledge Drive, Room 4124, Bethesda, MD 20892, (301) 435–1778.

Name of SEP: Behavioral and Neurosciences.
Date: July 7, 1995.
Time: 9:00 a.m.
Place: Holiday Inn, Chevy Chase, MD.
Contact Person: Dr. Jane Hu, Scientific Review Administrator, 6701 Rockledge Drive, Room 5168, Bethesda, MD 20892, (301) 435–1245.

Name of SEP: Multidisciplinary Sciences.
Date: July 10–12, 1995.
Time: 8:00 a.m.
Place: Holiday Inn, Gaithersburg, MD.
Contact Person: Dr. Dharam Dhindsa, Scientific Review Admin., 6701 Rockledge Drive, Room 5206, Bethesda, MD 20892, (301) 435–1174.

Name of SEP: Multidisciplinary Sciences.
Date: July 12, 1995.
Time: 8:00 a.m.
Place: Embassy Suites, Washington, DC.
Contact Person: Dr. Eileen Bradley, Scientific Review Admin., 6701 Rockledge Drive, Room 5120, Bethesda, MD 20892, (301) 435–1179.

Name of SEP: Behavioral and Neurosciences.
Date: July 14, 1995.
Time: 9:00 a.m.
Place: Holiday Inn, Chevy Chase, MD.
Contact Person: Dr. Jane Hu, Scientific Review Administrator, 6701 Rockledge Drive, Room 5168, Bethesda, MD 20892, (301) 435–1245.

Name of SEP: Multidisciplinary Sciences.
Date: July 19–21, 1995.
Time: 8:15 a.m.
Place: Crowne Plaza, Rockville, MD.
Contact Person: Dr. Nadarajen Vydelingum, Scientific Review Admin., 6701 Rockledge Drive, Room 5210, Bethesda, MD 20892, (301) 435–1176.

Name of SEP: Multidisciplinary Sciences.
Date: July 23–24, 1995.
Time: 6:00 p.m.
Place: Holiday Inn, Chevy Chase, MD.
Contact Person: Dr. Lee Rosen, Scientific Review Administrator, 6701 Rockledge Drive, Room 5116, Bethesda, MD 20892, (301) 435–1171.

Name of SEP: Multidisciplinary Sciences.
Date: July 30–31, 1995.
Time: 6:00 p.m.
Place: Holiday Inn, Chevy Chase, MD.
Contact Person: Dr. Lee Rosen, Scientific Review Administrator, 6701 Rockledge Drive, Room 5116, Bethesda, MD 20892, (301) 435–1171.

Purpose/Agenda: To review Small Business Innovation Research Program grant applications.
Name of SEP: Multidisciplinary Sciences.
Date: July 29–30, 1995.
Time: 8:00 a.m.
Place: ANA Hotel, Washington, DC.
Contact Person: Dr. Marjam Behar, Scientific Review Administrator, 6701 Rockledge Drive, Room 5218, Bethesda, MD 20892, (301) 435–1180.

Name of SEP: Behavioral and Neurosciences.
Date: July 10, 1995.
Time: 9:00 a.m.
Place: Holiday Inn, Chevy Chase, MD.
Contact Person: Dr. Jane Hu, Scientific Review Administrator, 6701 Rockledge Drive, Room 5168, Bethesda, MD 20892, (301) 435–1245.

Name of SEP: Multidisciplinary Sciences.
Date: July 10–11, 1995.
Time: 8:00 a.m.
Place: Crowne Plaza, Rockville, MD.
Contact Person: Dr. Nadarajen Vydelingum, Scientific Review Admin., 6701 Rockledge Drive, Room 5210, Bethesda, MD 20892, (301) 435–1176.

Name of SEP: Multidisciplinary Sciences.
Date: July 10–11, 1995.
Time: 8:30 a.m.
Place: Crowne Plaza, Rockville, MD.
Contact Person: Dr. Harish Chopra, Scientific Review Administrator, 6701 Rockledge Drive, Room 5112, Bethesda, MD 20892, (301) 435–1169.

Name of SEP: Multidisciplinary Sciences.
Date: July 12–14, 1995.
Time: 8:00 a.m.
Place: Crowne Plaza, Rockville, MD.
Contact Person: Dr. Bill Bunnag, Scientific Review Administrator, 6701 Rockledge Drive, Room 5212, Bethesda, MD 20892, (301) 435–1177.

Name of SEP: Multidisciplinary Sciences.
Date: July 17–18, 1995.
Time: 8:00 a.m.
Place: Ritz-Carlton, Tysons Corner, VA.
Contact Person: Dr. Eileen Bradley, Scientific Review Admin., 6701 Rockledge Drive, Room 5120, Bethesda, MD 20892, (301) 435–1179.

Name of SEP: Behavioral and Neurosciences.
Date: July 21, 1995.
Time: 8:30 a.m.
Place: Hyatt Regency Hotel, Bethesda.
Contact Person: Dr. Peggy McCardle, Scientific Review Admin., 6701 Rockledge Drive, Room 5198, Bethesda, MD 20892, (301) 435–1258.

Name of SEP: Multidisciplinary Sciences.
Date: July 24, 1995.
Time: 8:00 a.m.
Place: Embassy Suites, Washington, DC.
Contact Person: Dr. Eileen Bradley, Scientific Review Admin., 6701 Rockledge Drive, Room 5120, Bethesda, MD 20892, (301) 435–1179.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 24, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–13278 Filed 5–30–95; 8:45 am]

BILLING CODE 4145–01–M

Office of the Secretary

Office of the Assistant Secretary for Planning and Evaluation; Linking State Administrative Data

AGENCY: Office of the Assistant Secretary for Planning and Evaluation, HHS.

ACTION: Request for applications for grants to support State efforts to link case-level administrative data across multiple low-income assistance programs.

SUMMARY: Recent state efforts to link longitudinal, administrative data across programs have proven extremely successful. Linked databases have provided a more thorough understanding of many aspects of both program participation and the characteristics of individuals who receive benefits from multiple anti-poverty programs. State-supported efforts have also provided valuable insight into both inter- and intra-state variations in program participation. Much of this information would not have been accessible through national panel data.

While the efforts of individual states have been extremely valuable, they have been limited to relatively few states. Factors such as prohibitive cost, lack of necessary staff expertise, and insufficient time and computational resources have precluded many interested states from linking their administrative data. Total funding of up to $200,000 is available to provide one to two interested states with resources needed to successfully link administrative data and use it for program management, research and scholarly analysis. It is not expected that the funding available in this grant will be sufficient for any state to complete a project that links micro-level administrative data. Rather, this grant is intended to assist those states which are interested in linking their administrative data, but currently lack the resources to successfully complete the project on their own.

Part I. Linking State Administrative Data

A. Background:

In the last five years, several states have begun assembling administrative data from income-maintenance and other programs targeted toward low-income individuals and families for use in policy research and program evaluation. Most notably, administrative data that has been linked from a variety of anti-poverty programs has been used to study characteristics of program participation, multi-service usage, and caseload dynamics. The results from many of these research initiatives have provided an extremely useful insight into the characteristics of program participants, the patterns of multi-service utilization, and the interactions between multiple programs that provide assistance to low-income families.

Administrative data also offer more possibilities for in-depth analysis than do other forms of data, such as national panel data. Many national studies do not give reliable state-level estimates, particularly in smaller states with relatively few sampling points. As a result, it is generally quite difficult to estimate the state-level effects of national anti-poverty programs. State administrative data offer the opportunity to study inter- and intra-state comparisons of government programs, and to examine the extent to which variations in state anti-poverty programs are successful in serving various client populations.

Usefulness of Project

The research that has been conducted to date has illustrated the efficacy in using linked administrative data for research and evaluation. In the vast majority of states, however, the use of linked data still remains either untouched or far below what is technically possible. A study funded by the Department surveyed fifteen states and determined that, for the majority of the states surveyed, linked administrative data is a potentially rich source of information about programs targeted toward low-income populations.

Despite the potential of state administrative data, the Department's previous findings indicate that linked, state-level program data still remains a vastly under-utilized source of information. Many states have both the interest and raw administrative data necessary to produce longitudinally-linked files at the case or client level. However, as the process of linking data across programs and over time is an expensive, iterative process that requires significant time and expertise, many states lack the capacity to link their data. Some states lack the computer hardware, software, disk space, and memory necessary to actually perform the process of linking data. Other states lack the expertise and staff-time to devote energy to a research project. Many states face both of these obstacles.

This grant will help the selected states overcome the obstacles that hinder the process of linking administrative data. For example, states with limited data-

linking experience and capacity could add the hardware and software needed to link and store data. States with more experience (such as those which currently operate linked, research data bases) could use the funds to add administrative data from additional anti-poverty programs.

Part II. Awardee Responsibilities

Due to the substantial variation among states in the level of experience and expertise in working with linked administrative data, we fully expect a wide range of proposals to be submitted. Proposals from states which currently have linked administrative databases will obviously differ dramatically from proposals submitted by states with which have never worked with linked data. Given this, the specific responsibilities of the awardees may vary. Each state will, however, be expected to follow the following guidelines:

1. Each applicant must develop the computer systems and technical capacity necessary to produce longitudinal, linked administrative micro-level data. The focus of the data may be on cases, households, clients, filing units, etc., or any combination thereof. For those applicants which currently have linked data bases, it is expected that this grant will provide the resources necessary to significantly enhance their current data systems.

2. Each applicant must link administrative data from at least two programs that primarily benefit low-income individuals or families. The states that currently operate linked, administrative research databases began by focusing on data from the AFDC, Medicaid and Food Stamps computer systems, largely because these data operating systems for these programs were fairly compatible due to the interactions between the programs. States in the early stages of data linking may choose to focus on these programs, but links between other programs are also strongly encouraged. Other administrative data that states may choose to link include: Child welfare and foster care, child support enforcement, unemployment insurance, vital statistics, disability, SSI and income tax data. Linkages between these programs are especially encouraged, as they will likely provide fresh insight into the interactions over time among these programs.

3. Each applicant must develop the capacity and knowledge necessary to prepare and standardize data for program management and scholarly analysis. The data resulting from this grant should be able to support policy research and program evaluation, and should provide insight into a variety of policy relevant concerns. Data-sets should support research into questions concerning (but not limited to) multi-program participation and usage, interactions between various anti-poverty programs, caseload dynamics, recidivism, fraud and abuse, and the demographic, economic and social characteristics of multi-program participants.

4. In addition to preparing the data in a manner suitable for program administration and scholarly research, applicants must demonstrate an ability to actually utilize the data analytically. Linked administrative data allow for a great variety of analysis. For example, files linked longitudinally can be studied with event-history and survivor analysis, methods which are used to understand caseload dynamics and determine how the sequence of service events affects a client's outcomes. Additionally, since administrative data typically have more complete and detailed information than panel data, administrative data analysis can more accurately assess the demographic and social characteristics of multi-service users. Administrative data can also be used to do detailed geographic analysis, which is helpful in studying whether there are significant variations in service usage across different administrative regions or across neighborhoods.

It is necessary for applicants to detail exactly how their linked data can be used for scholarly analysis. States with larger social service departments may have researchers on staff who possess the skills necessary to fully explore the data. Other states may wish to combine their efforts with an academic or policy research organization with expertise in data analysis. Both of these alternatives, as well as others, would be acceptable. It is not our intent to limit the analytical choices of applicants, but rather to ensure that the data sets created under this grant are used to their full potential.

5. Applicants must obtain written agreements with all state or county social service departments that will supply the source data. The agreement should clearly indicate the responsibilities of both the applicants and the state or county agency, and the willingness of the parties to work cooperatively. Applicants must also include a plan which ensures that the resulting linked Data ensure client confidentiality.

6. Applicants must demonstrate an ongoing commitment to the project. A principal use of these data is to study current policy relevant questions about programs for low-income populations. Data for answering current questions are most useful when they capture current effects of such programs. Consistent with their on-going commitment to data linking and analysis, applicants must ensure that both recent historical data and new case data will be added after the Federal funding for this project expires.

Part III. Prerequisites, Content of Application, Review Process, and Evaluation Criteria

A. Prerequisites

Who may apply? We will only accept applications from state agencies, large urban county agencies, or universities working with them. This announcement is aimed primarily at states that can link statewide data bases. Applications will also be considered from large urban county governments that can clearly demonstrate the ability to link administrative databases in a way that could provide data of national policy relevance. University-based research teams that are working with state agencies to develop linked data bases may apply but must provide assurances from the state that they are intimately involved in developing and utilizing the data base for policy purposes.

What data bases? Applicants must clearly demonstrate the ability to link at least two micro (person, family, or case) files and at least be in the midst of analyzing data for policy research or evaluation purposes. Examples of files that have been linked in other situations are: AFDC, Medicaid, Child Welfare and Foster care, Unemployment Insurance, Child Support, Individual Income Tax, Vital Statistics, and Juvenile Courts. At a minimum, linked data bases must allow for at least three years of longitudinal analysis.

On-going commitment? The state agency responsible for establishing the linked data system must provide evidence of an on-going commitment to developing the data base and using it to understand poverty, program utilization, caseload dynamics, program effectiveness, and other important aspects of administration of anti-poverty, employment, and welfare programs. Applicants that do not provide assurances that all three of these prerequisites will be fulfilled will be unacceptable.

B. Applicant Content

The application shall include the following elements:

1. Abstract

A one page abstract of the project and its objectives.

2. Goals and Justification for Project

This section will discuss why the agency wishes to undertake the project and what the short and long-term goals of the project are. The applicant should discuss the background of what it has been doing to support linking administrative data bases, the current status of data base development, and what it expects to accomplish with this project. It should discuss what analysis will be completed given completion of the project, the analytical report that will be produced, and what policy relevance it will have. States should also present their plans, if any, to produce a public use dataset as a result of this project.

Linking two or more administrative data bases for analytical purposes is a complicated and difficult endeavor. It often can take several iterations of refinement to produce a data base that supports analysis of more than simple descriptive statistics about the caseload. This section should discuss where the agency is in the evolution of the linking and embedding policy analysis in the administrative management of the programs involved. It should contain a discussion of how the agency will carry on after this funding is exhausted. For applicants who are not currently linking databases, they should clearly demonstrate their knowledge of the process, as well as their plans to obtain the necessary expertise to successfully carry out their proposed project.

3. Project Design and Approach

In this section, the applicant will discuss what, if any, data are currently linked, what will be added through this grant, and how it will be accomplished. This section should describe what variables are available and will be added, what length of time period is covered, what kind of data analysis currently can be done, and what analytical capability will be added by this project. The discussion should make it clear to the reader what is the structure of the data, what are the building blocks (individuals, families, households, cases, filing units, etc.), the universe of state population covered, the types of variables (demographic, program participation, program dynamics, costs, etc.) that can be used for analysis. The applicant should also clearly specify how the micro-level data will be linked and how the retrospective case files will be assembled. Does a unique identifier exist that will allow data to be easily linked across programs? If not, what variable or record-matching technique will be employed? It also should make clear what information is not available, and the limitations this poses for policy-relevant analysis.

If applicants are not currently linking any administrative data, then they should assure reviewers that they have adequate access to at least three years of recent historical administrative data. Applicants should also convince reviewers that they have the expertise needed to complete the project, and also have the commitment to continue linking administrative data for research, analysis, and program management purposes.

The treatment of confidentiality and proper disclosure is a very important issue related to linking data and analyzing it. The applicants will discuss how they will protect data from improper disclosure, and how they will facilitate analytical use of sensitive data. This section will discuss the time table to accomplish this project. Who will do what, when, and how? It also will discuss what will be the end product of this project. What sort of report will be produced? What policy relevance will it have to the state and to DHHS?

4. Organization and Staffing

The application will describe the organization applying for the grant. If the applicant is a state agency, where does it fit in the state organization? What are its responsibilities? What are its capabilities and limitations? How can it assure that this project will be embedded in the state's policy analysis system?

The applicant will discuss the staffing for the project. Who will be the project leader? What are the qualifications of the staff and who will be involved? What are their time commitments to the project and what other time commitments do they have that might interfere with successful completion of the project? Personal vita and job descriptions should be attached as an appendix to the application.

If a university group is involved in the project, the application will clearly delineate what the responsibilities of the group will be and how the state agency will exercise control over their work. It will describe the mechanism (subcontract, etc.) used to procure the university group services.

5. Budget

This section will include a budget summary and narrative which describes how the budget supports the research plan. It should show the financial contribution made or expected by other funding sources, and the share of total project costs covered by ASPE's grant. It will discuss how the overall funding level and federal contribution relate to the successful completion of the project. The actual budget will be presented on the forms and in accordance with the requirements discussed in the section entitled "Components of a Complete Application."

6. Commitment of State

Applicants should use this section to completely describe the resources the state has already committed to the project. If the state has not yet established support for the project, then applicants should discuss any future involvement expected of the state. Resources contributed by the state could include any financial assistance (and whether it is an outright cash grant or is targeted for a specific purchase such as computing equipment), allocation of staff or computing time, technical assistance, and any other relevant contribution.

C. Review Process and Evaluation Criteria

A technical panel of at least three people will review and score those applications which are submitted by the deadline, and which meet the screening and prerequisite requirements. The review will be based on the criteria listed below. The review of the technical proposal and budget will be used by the Assistant Secretary in making funding decisions. ASPE reserves the option to discuss the application and the state agency record of performance with other agencies, Regional Office staff, and experts who may have information that could assist the selection process.

The evaluation criteria correspond to the outline for the development of the Program Narrative Statement of the application. Although not mandatory, it is strongly recommended that applications be prepared with the format indicated by this outline.

Selection of the successful applicant(s) will be based on the technical and financial criteria laid out in this announcement. Reviewers will determine the strengths and weaknesses of each application in terms of the evaluation criteria listed below, provide comments and assign numerical scores. The review panel will prepare a summary of all applicant scores and strengths/weaknesses and recommendations and submit it to the Assistant Secretary for Planning and Evaluation for final decisions on the award.

The point value following each criterion heading indicates the maximum numerical weight that each section will be given in the review

process. An unacceptable rating on any individual criterion may render the application unacceptable. Consequently, applicants should take care to ensure that all criteria are fully addressed in the applications. Applications will be reviewed as follows:

(a) Quality of the goals and Project Justification. (See Part B, Type of Application Requested, Section 2.) (15 points) Applications will be judged on whether they provide a thoughtful and coherent discussion of the need for the project and what it will accomplish. Reviewers will judge applicant's past, current, and future commitment to linking administrative data for policy analysis, research, and evaluation. Particular attention will be given to the agency's commitment to scholarly, policy-relevant work, and their commitment to producing a public use dataset as a result of this project.

(b) Quality of the project design and approach. (See Part B, Section 3.) (35 points) Reviewers will judge this section on the basis of whether the research agenda is scientifically sound and policy relevant. They will also consider whether the applicant is likely to make a significant contribution to understanding such important issues as program utilization and effectiveness, caseload dynamics, types of clients, and multiple program participation. Applications will be rated on their plans to conduct policy relevant research and interact with various levels of government to research and evaluate significant government initiatives and policies.

Reviewers will assess the completeness of the data bases linked, population coverage, and the extensiveness of the variables in the data base. A proposal with more data bases linked will be rated higher than one with only two program databases, all other factors being constant. Evidence of data quality control and validity is also extremely important. Ratings will consider the thoroughness of the discussion of the database strengths and weaknesses. Reviewers will assess whether there is appropriate use and protection of sensitive or confidential data. The type and quality of end product anticipated from this project will be considered and rated. Finally, reviewers will rate the feasibility of the workplan and time schedule.

(c) Quality of the staffing proposal and proposed organizational arrangements. (See Part B, Section 4.) (35 points) Reviewers will judge applicant's staff on research experience, demonstrated research skills, public administration experience, and relevant policy-research and policy-making skills. Ratings may consider references on prior research projects. Staff time commitments to the project also will be a factor in the evaluation. Furthermore, reviewers will rate the applicant's pledge and ability to produce a database capable of supporting policy-relevant analysis.

Reviewers will evaluate the track record of the lead agency ability to support scholarly, policy relevant research that can meet the demands of the academic, research, and policy communities.

If a university group is involved in the project, raters will judge the administrative relationships between the group and the state agency and whether the administrative arrangements can assure quality data and analysis.

(d) Appropriateness of the budget to carry out the planned staffing and activities. (See Part B, Section 5.) (15 points) Ratings will consider whether: (a) The budget assures an efficient and effective allocation of funds to achieve the objectives of this solicitation and (2) the applicant has appropriate financial commitment from the state and the university, if one is involved.

State Single Point of Contact (E.O. No. 12372): The Department of Health and Human Services has determined that this program is not subject to Executive Order No. 12372, Intergovernmental Review of Federal Programs, because it is a program that is national in scope and the only impact on State and local governments would be through subgrants. Applicants are not required to seek intergovernmental review of their applications within the constraints of E.O. No. 12372.

Deadline for Submission of Applications: The closing date for submission of applications under this announcement is July 31, 1995. Applications must be postmarked or hand-delivered to the application receipt point no later than 4:30 p.m. on July 31, 1995.

Hand-delivered applications will be accepted Monday through Friday prior to and on July 31, 1995 during the hours of 9 a.m. to 4:30 p.m. in the lobby of the Hubert H. Humphrey building located at 200 Independence Avenue, SW., in Washington, DC. When hand-delivering an application, call 690–8794 from the lobby for pick-up. A staff person will be available to receive applications.

An application will be considered as meeting the deadline if it is either: (1) Received at, or hand-delivered to, the mailing address on or before July 31, 1995, or (2) postmarked before midnight five days prior to the deadline date July 31, 1995, and received in time to be considered during the competitive review process (within two weeks of the deadline date).

When mailing application packages, applicants are strongly advised to obtain a legibly dated receipt from a commercial carrier (such as UPS, Federal Express, etc.), or from the U.S. Postal Service as proof of mailing by the deadline date. If there is a question as to when an application was mailed, applicants will be asked to provide proof of mailing by the deadline date. When proof is not provided, an application will not be considered for funding. Private metered postmarks are not acceptable as proof of timely mailing.

Applications which do not meet the July 31, 1995, deadline are considered late applications and will not be considered or reviewed in the current competition. HHS will send a letter to this effect to each late applicant.

HHS reserves the right to extend the deadline for all applications due to acts of God, such as floods, hurricanes or earthquakes; due to acts of war; if there is widespread disruption of the mail; or if HHS determines a deadline extension to be in the best of the Government. However, HHS will not waive or extend the deadline for any applicant unless the deadline is waived or extended for all applicants.

Applications forms. See section entitled "Components of a Complete Application." All of these documents must accompany the application package.

Length of Application. Applications should be brief and concise as possible, but assure successful communication of the applicant's proposal to the reviewers. In no case shall an applicant (excluding the resume appendix and other appropriate attachments) be longer than 25 double-spaced pages; it should neither be unduly elaborate not contain voluminous supporting documentation.

Disposition of Applications.

1. *Approval, disapproval, or deferral.* On the basis of the review of an application, the ASPE will either (a) approve the application in whole, as revised, or in part for such amount of funds and subject to such conditions as are deemed necessary or desirable for the initiation and operation of the data linking project; (b) disapprove the application; or (c) defer action on the application for such reasons as lack of funds or a need for further review.

2. *Notification of disposition.* The ASPE will notify the applicants of the disposition of their application. A signed notification of award will be issued to notify the applicant of the approved application.

Components of a Complete Application. A complete application consists of the following items in this order:

1. Application for Federal Assistance (Standard Form 424, Revised 4–88);
2. Budget Information—Non-construction Programs (Standard Form 424A, Revised 4–88);
3. Assurances—Non-construction Programs (Standard Form 424B, Revised 4–88);
4. Table of Contents;
5. Budget Justification for Section B—Budget Categories;
6. Proof of non-profit status, if appropriate;
7. Copy of the applicant's approved indirect cost rate agreement if necessary;
8. Project Narrative Statement, organized in five sections addressing the following topics:
   (a) Understanding of the Effort,
   (b) Project Approach,
   (c) Staffing Utilization, Staff Background, and Experience,
   (d) Organizational Experience, and
   (e) Budget Narrative;
9. Any appendices/attachments;
10. Certification Regarding Drug-Free Work place;
11. Certification Regarding Debarment, Suspension and Other Responsibility Matters; and
12. Certification and, if necessary, Disclosure Regarding Lobbying;
13. Supplement to Section II—Key Personnel; and
14. Application for Federal Assistance Checklist.

Dated: May 22, 1995.

David T. Ellwood,

Assistant Secretary for Planning and Evaluation.

[FR Doc. 95–13220 Filed 5–30–95; 8:45 am]

BILLING CODE 4151–04–M

Public Health Service

National Toxicology Program; Board of Scientific Counselors' Meeting

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the National Toxicology Program (NTP) Board of Scientific Counselors, U. S. Public Health Service, in the Conference Center, Building 101, South Campus, National Institute of Environmental Health Sciences (NIEHS), 111 Alexander Drive, Research Triangle Park, North Carolina, on June 29, 1995.

The primary agenda topic will be concerned with the report and recommendations of the *ad hoc* working group of the NTP Board from their review of the criteria for listing substances in the *Biennial Report on Carcinogens* (BRC) (formerly *Annual Report on Carcinogens*) on April 24 and 25, 1995. Specifically, the Board will:

(1) review the report and recommendations of the *ad hoc* working group;

(2) receive public comments on the report; and

(3) develop Board recommendations concerning the selection criteria.

The preliminary agenda topics with approximate times are as follows:

8:30 a.m.–8:45 a.m.—Report of the Director, NTP.

8:45 a.m.–9:15 a.m.—Report of the Director, Environmental Toxicology Program (ETP).

9:15 a.m.–9:45 a.m.—Report of the NTP Workshop on "Mechanism-Based Toxicology in Cancer Risk Assessment: Implications for Research, Regulation, and Legislation," held January 11–13, 1995.

10:00 a.m.–10:20 a.m.—Report on the Meeting of the *Ad Hoc* Working Group to Review Criteria for Listing of Substances in the BRC.

10:20 a.m.–11:00 a.m.—Board Discussion of the Working Group Report.

11:00 a.m.–12:00 p.m.—Public Comments on the Report.

1:15 p.m.–2:15 p.m.—Further Discussion and Development of Recommendations by the Board Concerning the BRC Selection Criteria.

2:15 p.m.–2:25 p.m.—Report on Technical Reports Review Subcommittee Activities.

2:25 p.m.–2:55 p.m.—Chemicals Nominated and Recommended for Study by the Interagency Committee for Chemical Evaluation and Coordination (ICCEC) on December 14, 1994, will be presented for discussion and time will be allowed for public comment. Chemicals evaluated by the ICCEC were (with CAS Nos. in parentheses): (1) Arsenic Trioxide (1327–53–3); (2) Ethidium Bromide (1239–45–8); (3) 5-(Hydroxymethyl)furfural (67–47–0); (4) Isoamyl Acetate (123–92–2); and (5) MX [3-chloro-4-(dichloromethyl) 5-hydroxy-2-(5H)-furanone] (77439–76–0). One chemical previously evaluated was re-reviewed: Hexamethyldisilazane (999–97–3).

3:15 p.m.–3:45 p.m.—Concept Review: *In Vitro* and *In Vivo* Genetic Toxicology Testing.

3:45 p.m.–4:30 p.m.—Alternative Methods—Status and Plans:

—RFA for Research in "Mechanistically Based Alternative Methods in Toxicology."

—Proposed Workshop on "Alternative Test Methods in Toxicology: Validation and Regulatory Acceptance."

Adjournment

Public Comments Encouraged

The meeting is open to the public, and public input concerning the criteria for listing a substance in the *Biennial Report on Carcinogens* is encouraged. A brief summary of the *ad hoc* working group meeting, including the current and proposed revised criteria, is available on request from the NTP Liaison Office, P.O. Box 12233, MD B3–01, Research Triangle Park, NC 27709, phone: (919) 541–0530, FAX: (919) 541–0295. This summary also will be published in the **Federal Register** in late May or early June. Written comments can be submitted to Dr. Larry G. Hart, Executive Secretary. Formal oral comments during the meeting will be limited to five minutes to permit maximum participation. Written comments accompanying oral statements are encouraged. To assure consideration by the Board at the meeting, written comments must be received by June 23, 1995. Registration to attend is not required; however, to ensure adequate seating, we ask that those planning to attend let us know. To register, submit written comments or announce intention to make oral comments, receive information on the agenda, or be put on the mailing list for summary minutes subsequent to the meeting, please contact: Dr. L. G. Hart, P.O. Box 12233, Research Triangle Park, NC 27709; telephone: (919) 541–3971; FAX: (919) 541–0719.

Dated: May 18, 1995.

Kenneth Olden,

Director, National Toxicology Program.

[FR Doc. 95–13284 Filed 5–30–95; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–95–3922]

Notice of Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of

Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received on or before June 30, 1995. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (7) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: May 12, 1995.

David S. Cristy,

Director, Information Resources Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Mortgage Lender/Servicer EDI Profile Survey.

Office: Administration.

Description of The Need For The Information And Its Proposed Use: HUD is seeking Mortgage Lenders and Servicer of FHA-insured mortgage portfolios to participate in an Electronic Data Interchange (EDI) Program that will enable submission of mortgage insurance claims directly to HUD via EDI. An EDI Profile Survey is proposed for use in determining the interest and capability of mortgage lenders to join this program.

Form Number: None.

Respondents: Businesses or Other For-Profit.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Survey	13,125		1		1		13,125

Total Estimated Burden Hours: 13,125.

Status: Extension, no changes.

Contact: Rex D. Gavin, HUD (202) 708–0306; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: May 12, 1995.

[FR Doc. 95–13186 Filed 5–30–95; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. N–95–3921]

Notices of Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESSES: Interested persons are invited to submit comments regarding these proposals. Comments must be received on or before June 30, 1995. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collections of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (7) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: May 16, 1995.

David S. Cristy,

Acting Director, Information Resources Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Requisition for Disbursement of Section 202 Loan Funds.

Office: Housing.

Description Of The Need For The Information And Its Proposed Use: Form HUD–92403–EH will be used by the non-profit borrower entity to obtain disbursement on its HUD-funded building loan under the Section 202 Housing Program for the Elderly or Handicapped. Its use during the construction period will enable the borrower to obtain funds to settle his obligations or reimbursements in a timely manner.

Form Number: HUD–92403–EH.

Respondents: Not-For-Profit Institutions.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–92403–EH	310		3		.5		465

Total Estimated Burden Hours: 465.

Status: Reinstatement with changes.

Contact: Aretha Williams, HUD, (202) 708–2866; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: May 16, 1995.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Compliance Inspection Report—Mortgagee's Assurance of Completion.

Office: Housing.

Description of The Need For The Information And its Proposed Use: Form HUD–92051 is used by HUD staff and private inspectors to report the status of repair requirements on existing or proposed construction cases. Form HUD–92300 will be used by mortgage companies to establish escrow accounts for incomplete repairs or constructions.

Form Number: HUD–92051 and HUD–92300.

Respondents: Businesses or Other For-Profit.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–92051	14,500		250		.25		906,250
HUD–92300	14,500		1		.25		3,625

Total Estimated Burden Hours: 909.875.

Status: Extension with changes.

Contact: David Dwyer, HUD (202) 708–2121; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: May 16, 1995.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Contract for Development A/E Services and Contract for CIAP A/E Services.

Office: Public and Indian Housing.

Description Of The Need For The Information And Its Proposed Use: Public Housing Agencies and Indian Housing Authorities (PHA/IHA) use Forms HUD–51915 and HUD 51915–A to contract for professional architect/engineer (A/E) services and to prepare the necessary documents for construction, rehabilitation, and modernization of housing developments.

Form Number: HUD–51915 and HUD–51915–A.

Respondents: State, Local, or Tribal Government and Not-For-Profit Institutions.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	2,630		1		3.5		9,205
Recordkeeping	2,630		1		.25		557

Total Estimated Burden Hours: 9,862.

Status: Revision.

Contact: William C. Thorson, HUD, (202) 708–4703; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: May 16, 1995.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Questionnaire—Types of Technical Assistance Services Provided by Individuals and Small Businesses.

Office: Public and Indian Housing.

Description of the Need for the Information and Its Proposed Use: This questionnaire will be used to identify the types of services, i.e., contractual, professional, general management, financial and/or legal which individuals and/or small businesses can provide to

Indian Housing Authorities as technical assistance.

Form Number: None.

Respondents: Individual or Households and Businesses or Other For-Profit.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Questionnaire	500		1		.16		80

Total Estimated Burden Hours: 80.

Status: New.

Contact: Joan Ladesh, HUD (202) 755–0066; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: May 16, 1995.

[FR Doc. 95–13187 Filed 5–30–95; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs—Proposed Finding For Federal Acknowledgment of Huron Potawatomi, Inc.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of proposed finding.

SUMMARY: Pursuant to 25 CFR 83.10(h), notice is hereby given that the Assistant Secretary—Indian Affairs (Assistant Secretary) proposes to acknowledge that Huron Potawatomi, Inc., 2221 1 ½ Mile Road, Fulton, Michigan 49052, exists as an Indian tribe within the meaning of Federal law. This notice is based on a determination that the tribe satisfies all of the criteria set forth in 25 CFR 83.7 as modified by 25 CFR 83.8, and, therefore, meets the requirements for a government-to-government relationship with the United States.

DATES: As provided by 25 CFR 83.10(i), any individual or organization wishing to challenge the proposed finding may submit arguments and evidence to support or rebut the evidence relied upon. This material must be submitted within 180 calendar days from the date of publication of this notice. As stated in the regulations, 25 CFR 83.10(i), interested and informed parties who submit arguments and evidence to the Assistant Secretary must also provide copies of their submissions to the petitioner.

ADDRESSES: Comments on the proposed finding and/or request for a copy of the report of evidence should be addressed to the Office of the Assistant Secretary, 1849 C Street, NW., Washington, DC 20240, Attention: Branch of Acknowledgment and Research. Mailstop 2611–MIB.

FOR FURTHER INFORMATION CONTACT: Holly Reckord, Chief, Branch of Acknowledgment and Research, (202) 208–3592.

SUPPLEMENTARY INFORMATION: This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary by 209 DM 8.

The petitioner, also known as the Nottawaseppi Huron Potawatomi Band, consists of descendants of the historical Potawatomi tribe of Michigan. Its members are descendants specifically of the Potawatomi of Huron, a band which signed treaties with the Federal Government from the Treaty of Greenville in 1795 through the Articles Supplementary to the Treaty of Chicago in 1833. After the War of 1812, this group moved from the Detroit area to the Nottawaseppi Reserve, established by the Federal treaty of 1821, in southwestern Michigan. Because of these treaties, the petitioner meets the requirements of § 83.8 as having unambiguous previous Federal acknowledgment and has been considered under the modifications of § 83.7 that are prescribed by § 83.8. The date of the last treaty, 1833, has been used as the date of latest Federal acknowledgment for purposes of this finding to enable the petitioner to proceed under the provisions of § 83.8. Because the petitioner had already completed documentation of the petition before the present regulations became effective, it was not necessary to determine if there was a later date of unambiguous Federal acknowledgment.

Between 1833 and 1840, the petitioner's ancestors continued to reside on the Nottawaseppi Reserve. In 1840, the ancestors of the petitioner either avoided attempts of the Federal Government to remove the Potawatomi to Kansas or returned to Michigan within a few years after removal. The community was reestablished by 1842. Huron Potawatomi, Inc. is centered at the Pine Creek Indian Reservation in Calhoun County, Michigan. This 120-acre tract of land was purchased by the founders of the community in 1845 with Federal annuity monies and placed in trust with the State of Michigan, in which status it has remained until the present day. During the second half of the 19th century, the original population was augmented by the migration into the settlement of a few additional Michigan Potawatomi families, which was in accordance with the traditionally permeable boundaries of Potawatomi villages.

From the date of its reestablishment (1842) until the present, the petitioner's community has consistently been identified as a settlement of Michigan Potawatomi in Federal, state, and local documents, which include Federal census records, Bureau of Indian Affairs census records and annuity rolls, county realty records and vital records, Methodist Indian mission records, and local histories. No ethnicity for the community other than Potawatomi has been suggested by any scholar or observer. The identification is as the same tribal entity that was previously acknowledged or as a portion that has evolved from that entity. Therefore, we conclude that the petitioner meets criterion 83.7(a) as modified by criterion 83.8(d).

The petitioner presented evidence that it maintained usage of the Potawatomi language and had a level of in-group or culturally appropriate patterned out-group marriages to other Michigan Indians of over 50 percent of total marriages from 1842 through 1960. At least through 1934, the petitioner had over 50 percent of the group's population resident at or near the Pine Creek site, thus meeting the requirements of criterion 83.7(b), for community up to 1960 under the provisions of § 83.7(b)(2).

Although since the Depression, to the present, younger members of the group have moved off the reservation site in search of housing and employment, there emerged a defined pattern of migration to specific locations in Michigan. Evidence indicates that the emigrants not only maintain close social and kinship ties with the central Pine Creek settlement area, but also maintain close social and kinship ties among the five external settlement areas. Thus, we conclude that the petitioner meets criterion 83.7(b) as modified by section 83.8(d), which requires a showing that the group constitutes a distinct, cohesive community at present.

Because the Huron Potawatomi meet the requirements of the community criterion 83.7(b) between 1833 and 1934 by showing a sufficient level of evidence under 83.7(b)(2), pursuant to 83.7(c)(3) they also meet criterion 83.7(c) for that time period. Between 1833 and 1840 (the date the Federal Government attempted to remove all Potawatomi on the Nottawaseppi Reserve to Kansas), anecdotes and reminiscences of pioneer settlers mention leaders and chiefs of the Potawatomi of Huron on the Nottawaseppi Reserve, and the Potawatomi of Huron continued during this period of time to collect Federal annuities under the Treaty of 1807. From 1842 through the present day, the Pine Creek settlement, which is incorporated as Huron Potawatomi, Inc., the petitioner, has had an unbroken sequence of documented leadership.

After the reestablishment of the community at Pine Creek in 1842, the band continued to choose traditional chiefs through 1934. From 1934 through 1970, the leadership was by a committee closely associated with the Methodist Indian mission on the Pine Creek reservation. In 1970, the petitioner incorporated and has since been administered by an elected chairman and council. These leaders regularly represented the group in its interaction with the Bureau of Indian Affairs and to the public, as well as supervising internal reservation activities. Therefore, we conclude that the petitioner meets criterion 83.7(c) as modified by criterion 83.8(d).

The petitioning group has provided a copy of its governing document, which describes its membership criteria. Thus, we conclude that the petitioner meets criterion 83.7(d).

With the exception of one adopted child, all of the 819 members on the petitioner's 1994 membership list have been documented to descend from persons listed on the 1904 Taggart Roll, compiled by the Bureau of Indian Affairs in connection with the issuance of Potawatomi annuity payments under Federal treaties. Thus we conclude that the petitioner meets criterion 83.7(e).

A portion of the membership of Huron Potawatomi, Inc. (171 individuals)—persons who had dual ancestry from both the Huron Potawatomi and the Pokagon Potawatomi—was determined to be dually enrolled with the Pokagon Potawatomi Band (aka Potawatomi of Michigan and Indiana, Inc.), which was federally acknowledged through the legislative process in 1994, while the petition from Huron Potawatomi, Inc., was being evaluated through the administrative process. At the time the Huron Potawatomi, Inc. membership roll was compiled and submitted, the Pokagon Potawatomi were not federally acknowledged. Neither the Huron nor the Pokagon constitutions prohibit dual enrollment with other unacknowledged Indian groups. The proportion of individuals enrolled in a recognized tribe (21 percent in the Pokagon Potawatomi and five percent in other tribes) is small enough that the Huron Potawatomi membership is not principally composed of persons who are members of an acknowledged North American Indian tribe. Therefore, we find that the petitioner meets criterion 83.7(f) within the purpose of the regulation, which is designed to prevent the splintering and break-up of federally acknowledged tribes through the Federal acknowledgment process.

No evidence was found that the petitioner or its members are the subject of congressional legislation which has expressly terminated or forbidden the Federal relationship. Therefore, we find that the petitioner meets criterion 83.7(g).

In October 1994, 126 Taggart Roll descendants who have dual ancestry in both the Huron Potawatomi and in the Potawatomi settlement centered around Bradley and Salem in Allegan County, Michigan, notified the Bureau of Indian Affairs that they wish to have their names removed from the Huron Potawatomi, Inc. membership list in order to be part of the petition for Federal acknowledgment of the Match-e-be-nash-she-wish Potawatomi Band (#9A). Removal of these 126 individuals from the petitioner's membership does not affect the ability of the petitioner to meet the mandatory criteria of the Federal acknowledgment regulations.

Based on this preliminary factual determination, we conclude that the Huron Potawatomi, Inc. should be granted Federal acknowledgment under 25 CFR part 83.

As provided by 25 CFR 83.10(h) of the revised regulations, a report summarizing the evidence, reasoning, and analyses that are the basis for the proposed decision will be provided to the petitioner and interested parties, and is available to other parties upon written request. Comments on the proposed finding and/or requests for a copy of the report of evidence should be addressed to the Office of the Assistant Secretary, Bureau of Indian Affairs, 1849 C Street, NW., Washington, DC 20240, Attention; Branch of Acknowledgment and Research, Mailstop 2611—MIB. Third parties must simultaneously supply copies of their comments to the petitioner in order for them to be considered by the Department of the Interior.

During the response period, the Assistant Secretary shall provide technical advice concerning the proposed finding and shall make available to the petitioner in a timely fashion any records used for the proposed finding not already held by the petitioner, to the extent allowable by Federal law (83.10(j)(1)). In addition, the Assistant Secretary shall, if requested by the petitioner or any interested party, hold a formal meeting for the purpose of inquiring into the reasoning, analyses, and factual bases for the proposed finding. The proceedings of this meeting shall be on the record. The meeting record shall be available to any participating party and become part of the record considered by the Assistant Secretary in reaching a final determination (83.10(j)(2)).

If third party comments are received during the regular response period, the petitioner shall have a minimum of 60 days to respond to these comments. This period may be extended at the Assistant Secretary's discretion if warranted by the nature and extent of the comments (83.10(k)).

At the end of the response periods the Assistant Secretary shall consider the written arguments and evidence submitted during the response periods and issue a final determination. The Assistant Secretary shall consult with the petitioner and interested parties to determine an equitable timeframe for preparation of the final determination and notify the petitioner and interested parties of the date such consideration begins. The Assistant Secretary may conduct any necessary additional research and may request additional information from the petitioner and third parties. A summary of the final determination will be published in the **Federal Register** within 60 days from the date on which the consideration of the written arguments and evidence rebutting or supporting the proposed finding begins, as provided in 25 CFR 83.10(l)(2).

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 95–13172 Filed 5–30–95; 8:45 am]

BILLING CODE 4310–02–P

Bureau of Land Management

[WO–350–09–1430–00]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been

submitted to the office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the information and collection requirement and related forms and explanatory material may be obtained by contacting the Bureau's clearance Officer at phone number listed below. Comments and suggestions on the requirements should be made to the Bureau Clearance Officer and to the Office of Management and Budget, Paperwork Reduction Project (1004–0107), Washington, DC 20503, telephone number 202–395–7340.

Title: 43 CFR 2800 and 2880, Rights-of-Way.

OMB Approval Number: (1004–0107).

Abstract: This information, supplied by an applicant for a right-of-way, is needed for the authorized officer to determine whether or not a right-of-way may be granted, establish terms and conditions of the grant, and administer the grant when made.

Bureau Form Number: None.

Frequency: Once when an application is filed.

Description of Respondents: Applicants needing a right-of-way on Federal Lands.

Estimated Completion Time: 16.8 hours.

Annual Responses: 1,000.

Annual Burden Hours: 16,800.

Bureau Clearance Officer: Wendy Spencer 303–236–6642.

Dated: April 15, 1995.

W. Hord Tipton,

Assistant Director, Resource Use & Protection.

[FR Doc. 95–13231 Filed 5–30–95; 8:45 am]

BILLING CODE 4310–84–M

Fish and Wildlife Service

Availability of an Environmental Assessment and Receipt of an Application for an Incidental Take Permit From Aronov Realty Management Incorporated, in Baldwin County, Alabama

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Aronov Realty Management Incorporated, (Applicant), has applied to the Fish and Wildlife Service (Service) for an incidental take permit pursuant to Section 10(a)(1)(B) of the Endangered Species Act (Act). The proposed permit would authorize for a period of 30 years the incidental take of an endangered species, the Alabama beach mouse *(Peromyscus polionotus ammobates)*, known to occupy a 52-acre tract of land owned by the Applicant in Baldwin County, Alabama. The Application proposed to construct a project known as Martinique, which will include two 18-unit mid-rise residential buildings, their associated landscaped grounds and parking areas, a beach club recreation amenity, and two dune walkover structures (Project).

The Service also announces the availability of an environmental assessment (EA) and habitat conservation plan (HCP) for the incidental take application. Copies of the EA or HCP may be obtained by making requests to the addresses below. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act Regulations (40 CFR 1506.6).

DATES: Written comments on the permit application, EA and HCP should be received on or before June 30, 1995.

ADDRESSES: Persons wishing to review the application may obtain a copy *by writing* the Service's Southeast Regional Office, Atlanta, Georgia. Persons wishing to review the EA or HCP may obtain a copy *by writing* the Regional Office or the Jackson, Mississippi, Field Office. Requests must be in writing to properly process requests. Documents will also be available for public inspection, by appointment, during normal business hours at the Regional Office, or the Field Office. Written data or comments concerning the application, EA, or HCP should be submitted to the Regional Office. Please reference permit under PRT—802986 in such comments.

Regional Permit Coordinator (TE), U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 210, Atlanta, Georgia 30345, (telephone 404/679–7110, FAX 404/679–7280).

Field Supervisor, U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, Suite A, Jackson, Mississippi 39213 (telephone 601/965–4900, FAX 601/965–4340).

FOR FURTHER INFORMATION CONTACT: Mr. Will McDearman at the above Jackson, Mississippi, Field Office.

SUPPLEMENTARY INFORMATION: The Alabama beach mouse (ABM), *Peromyscus polionotus ammobates*, is a subspecies of the common oldfield mouse *Peromyscus polionotus* and is restricted to the dune systems of the Gulf Coast of Alabama. The known current range of ABM extends from Fort Morgan eastward to the western terminus of Alabama Highway 182, including the Perdue Unit on the Bon Secour National Wildlife Refuge (BSNWR). The sand dune systems inhabited by this species are not uniform; several habitat types are distinguishable. The species inhabits primary dunes, interdune areas, secondary dunes, and scrub dunes. The depth and area of these habitats from the beach inland varies. Population surveys indicate that this subspecies is usually more abundant in primary dunes that in secondary dunes, and usually more abundant in secondary dunes than in scrub dunes. Optimal habitat consists of dune systems with all dune types. Though fewer ABM inhabit scrub dunes, these high dunes can serve as refugia during devastating hurricanes that overwash, flood, and destroy or alter secondary and frontal dunes. ABM surveys on the Applicant's property reveal habitat occupied by ABM. The Applicant's property contains designated critical habitat for the ABM. Construction of the Project may result in the death of, or injury to, ABM. Habitat alterations due to house placement and its subsequent use may reduce available habitat for food, shelter, and reproduction. Further, the Applicant's property borders the BSNWR, and is considered Priority I lands for inclusion into the Perdue Unit (of BSNWR).

The EA considers the environmental consequences of several alternatives. One action proposed is the issuance of the incidental take permit. This alternative provides for restrictions that include placing landward of the designated ABM critical habitat, establishment of a walkover structure across that scrub dune, a prohibition against housing or keeping pet cats, ABM competitor control and monitoring measures, scavenger-proof garbage containers, restoration of dune systems impacted by the construction, and the minimization and control of outdoor lighting. The HCP provides a funding source for these mitigation measures. Another alternative is Service acquisition of the property for inclusion into the BSNWR. A third alternative is no-action, or deny the request for authorization to incidentally take the ABM.

Dated: May 23, 1995.

Noreen K. Clough,

Regional Director.

[FR Doc. 95–13207 Filed 5–30–95; 8:45 am]

BILLING CODE 4310–55–P

Receipt of Application(s) for Permit

The following Applicant(s) have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*)

PRT–798900

Applicant: Mr. Andy G. Grubbs, San Marcos, Texas.

The Applicant requests a permit amendment to take the listed Texas cave invertebrates from previously unknown locations in Texas, for the purpose of scientific research, recovery actions, and survival of the species as prescribed by Service recovery documents.

PRT–802708

Applicant: Mr. Karl Stephan, Red Oak, Oklahoma.

The Applicant requests a permit to take the American burying beetle (*Nicrophorus americanus*) at specified locations in Oklahoma, for the purpose of scientific research, recovery actions, and survival of the species as prescribed by Service recovery documents.

PRT–802731

Applicant: Mr. Kenneth D. Heil, San Juan College, Farmington, New Mexico.

The Applicant requests a permit to take several threatened and endangered plant species within the San Juan Basin and drainages in Arizona, New Mexico, Colorado, and Utah, for the purposes of scientific research and recovery actions, and survival of the species as prescribed by Service recovery documents.

PRT–802744

Applicant: Ms. Karen Baud, The S.M. Stoller Corporation, Boulder, Colorado.

The Applicant requests a permit to take southwestern willow flycatcher (*Empidonax traillii extimus*) and Mexican spotted owl (*Strix occidentalis lucida*) north of Pecos, New Mexico, for the purpose of scientific research and recovery actions, and survival of the species as prescribed by Service recovery documents.

ADDRESSES: Written data or comments should be submitted to the Assistant Regional Director, Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103, and must be received by the Assistant Regional Director within 30 days for the date of this publication.

Documents and other information submitted with this application are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the above office within 30 days of the date of publication of this notice. (See **ADDRESSES** above.)

James A. Young,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 95–13208 Filed 5–30–95; 8:45 am]

BILLING CODE 4310–55–M

U.S. Geological Survey

Indonesia; Comprehensive Geographic Information System Development

SUMMARY: Notice is hereby given that the U.S. Geological Survey (USGS) is planning to enter into a Cooperative Research and Development Agreement (CRADA) with a consortium of U.S. industries and academic institutions. The purpose of the CRADA is to develop a comprehensive geographic information system for the Government of Indonesia. Any other parties interested in pursuing the possibility of a CRADA for similar kinds of activities should contact the USGS.

DATES: This notice is effective immediately.

ADDRESSES: Information on the proposed CRADA is available to the public upon request at the following location: U.S. Geological Survey, Office of International Geology, 12201 Sunrise Valley Drive, Reston, Virginia 22092.

FOR FURTHER INFORMATION CONTACT: Dr. Jack Medlin of the U.S. Geological Survey, Office of International Geology, at the address given above; telephone (703) 648–6062; fax (703) 648–4227.

Dated: May 22, 1995.

P. Patrick Leahy,

Chief, Geologist.

[FR Doc. 95–13230 Filed 5–30–95; 8:45 am]

BILLING CODE 4310–31–M

National Park Service

Native American Graves Protection and Repatriation Review Committee: Meeting

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice.

Notice is hereby given in accordance with the Federal Advisory Committee Act (FACA), 5 U.S.C. Appendix (1988), that a meeting of the Native American Graves Protection and Repatriation Act Review Committee will be held on October 16, 17, and 18, 1995, in Anchorage, Alaska.

The Committee will meet in the Dillingham room at the Anchorage Hilton, 500 West 3rd Ave., Anchorage, AK 99510–9953. The final day of the meeting may be held in the Eagan Center, Anchorage, AK, in conjunction with the Alaska Federation of Natives annual convention. Meetings will begin each day at 8:30 a.m. and conclude not later than 5:00 p.m.

The Native American Graves Protection and Repatriation Review Committee was established by Public Law 101–601 to monitor, review, and assist in implementation of the inventory and identification process and repatriation activities required under the statute.

On the agenda for this meeting will be comments to the Committee's draft recommendations regarding the disposition of culturally unidentifiable human remains in museums and Federal collections. The Committee with also hear public comment and discuss the application of the statute in Alaska.

Culturally unidentifiable human remains are those in museum or Federal agency collections for which, following the completion of inventories by November 16, 1995, no lineal descendants or culturally affiliated Indian tribe has been determined.

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited. Persons will be accommodated on a first-come, first-served basis. In addition, due to the presence of Alaska Federation of Natives delegates, hotel rooms in Anchorage may be scarce. Any member of the public may file a written statement concerning the matters to be discussed with Dr. Francis P. McManamon, Departmental Consulting Archeologist.

Persons wishing further information concerning this meeting, or who wish to submit written statements may contact Dr. Francis P. McManamon, Departmental Consulting Archeologist, Archeological Assistance Division (MS0436), National Park Service, P.O. Box 37127 Washington, D.C. 20013–7127, Washington D.C. 20002, Telephone (202) 343–4101. Draft summary minutes of the meeting will be available for public inspection about eight weeks after the meeting at the office of the Departmental Consulting Archeologist, Suite 210, 800 North Capital Street, Washington, D.C.

Dated: May 16, 1995.

Francis P. McManamon,

Departmental Consulting Archeologist and Chief, Archeological Assistance Division.

[FR Doc. 95–13200 Filed 5–30–95; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Cable Television Laboratories, Inc.; NHK Science and Technical Research Laboratories

Notice is hereby given that, on March 17, 1995, pursuant to the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* ("the Act"), Cable Television Laboratories, Inc., ("CableLabs"); and NHK Science and Technical Research Laboratories ("NHK"), have filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plantiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are CableLabs, Louisville, CO; and NHK, Tokyo, JAPAN.

The general area of planned activity is to exchange information and ideas about high definition television, multi-user shared spectrum transmission of video and the technical possibilities for general television and audio visual services in the future.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–13232 Filed 5–30–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993 the Frame Relay Forum

Notice is hereby given that, on March 20, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* ("the Act"), The Frame Relay Forum ("FRF") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purposes of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the identity of the additional member of FRF is: CellAccessTechnology, Inc. Milpitas, CA.

Deutsche Bundespost Telekom, a member of FRF, has changed its name to Deutsche Telekom and Ascom Timeplex, a member of FRF, has changed its name to AsCOM Enterprise Networks.

No other changes have been made in either the membership or planned activities of FRF. Membership remains open, and FRF intends to file additional written notifications disclosing all changes in membership.

On April 10, 1992, FRF filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on July 2, 1992 (57 FR 29537).

The last notification was filed with the Department of December 20, 1994. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on February 24, 1995 (60 FR. 10408).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–13233 Filed 5–30–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Health Data Sciences Corporation

Notice is hereby given that, on May 9, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* ("the Act"), Health Data Sciences Corporation for itself and on behalf of its members, has filed written notification simultaneous with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities to the parties are Health Data Sciences Corporation, San Bernardino, CA; Arthur D. Little, Inc., Cambridge, MA; and New York City Health and Hospitals Corporation, New York, NY. The purpose of this Joint Venture is to develop and demonstrate enhanced health care information systems. The activities of this Joint Venture project will be partially funded by an award from the Advanced Technology Program, National Institute of Standards and Technology, Department of Commerce.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–13234 Filed 5–30–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—PowerOpen Association, Inc.

Notice is hereby given that, on March 27, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* ("the Act"), Poweropen Association, Inc. ("PowerOpen"), has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to acquire damages under specified circumstances. Specifically, the identities of the new members of PowerOpen are: Electro Sonic, Inc., Ontario, CANADA, AIB Software Corporation, Dulles, VA; Liant Software Corporation, Austin, TX; PFU Limited, San Jose, CA; and Cheyenne Software, Roslyn Heights, NY.

No other changes have been made in either the membership or planned activity of the joint venture. Membership remains open and PowerOpen intends to file additional written notification disclosing all changes in membership.

On April 21, 1993, PowerOpen filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 22, 1993 (58 FR 33954).

The last notification was filed with the Department on December 28, 1994. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on March 14, 1995 (60 FR 13733).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–13235 Filed 5–30–95; 8:45 am]

BILLING CODE 4410–01–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Advisory Committee on the Records of Congress; Meeting

AGENCY: National Archives and Records Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the National Archives and Records Administration (NARA) announces a meeting of the Advisory Committee on the Records of Congress. The committee advises NARA on the full range of programs, policies, and plans for the Center for Legislative Archives in the Office of Special and Regional Archives.

DATES: June 19, 1995, from 9 a.m. to 10:30 a.m.

ADDRESSES: United States Capitol Building, LBJ Room (S–211).

FOR FURTHER INFORMATION CONTACT: Michael L. Gillette, Director, Center for Legislative Archives, (202) 501–5350.

SUPPLEMENTARY INFORMATION:

Agenda

Review of Committee Activities
Five-Year Plan for the Management and Preservation of the Records of Congress
Update—Legislative Support Agency Task Force Online Access to Legislative Records
Videotaped Floor Proceedings
Other current issues and new business

The meeting is open to the public.

Dated: May 19, 1995.

Ralph C. Bledsoe,

Acting Archivist of the United States.

[FR Doc. 95–13280 Filed 5–30–95; 8:45 am]

BILLING CODE 7515–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–499]

Houston Lighting & Power Company City Public Service Board of San Antonio Central Power and Light Company City of Austin, Texas; South Texas Project, Unit 2 Environmental Assessment And Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from Facility Operating License No. NPF–80, issued to Houston Lighting & Power Company (HL&P) acting on behalf of itself and for the City Public Service Board of San Antonio (CPS), Central Power and Light Company (CPL), and City of Austin, Texas (COA) (the licensees), for operation of the South Texas Project, Unit 2, located in Matagorda County, Texas.

Environmental Assessment

Identification of the Proposed Acting

The proposed action would grant an exemption from a requirement of Section III.D.1.(a) of appendix J to 10 CFR part 50, which requires a set of three type A tests (Containment Integrated Leak Rate Test or CILRT) be performed, at approximately equal intervals during each 10-year service period. This licensee request for an exemption would delay the next scheduled containment integrated leak rate test for one outrage, from the fourth refueling outage to the fifth refueling outage.

The proposed action is in accordance with the licensee's application for exemption dated March 16, 1995.

The Need for the Proposed Action

The proposed action is needed because the licensee's current schedule would require the second CILRT to be performed during the fourth refueling outage (Fall 1995). Minimal safety benefit would be realized by performing the scheduled CILRT, since the majority of primary containment leakage has previously been identified through the biennial performance of the Local Leak Rate Test (LLRT). Without this exemption, the licensee would not be allowed to reduce a regulatory burden that has minimal impact on safety.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the exemption would not significantly increase the probability or amount of expected containment leakage, and that containment integrity would thus be maintained.

The change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does involve features located entirely within the restricted area as defined in 10 CFR part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the "Final Environmental Statement related to the operation of South Texas Project, Units 1 and 2," dated August 1986.

Agencies and Persons Consulted

In accordance with its stated policy, on April 25, 1995, the staff consulted with the Texas State official, Arthur C. Tate of the Bureau of Radiation Control, Texas Department of Health, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated March 16, 1995, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Wharton County Junior College, J.M. Hodges Learning Center, 911 Boling Highway, Wharton, TX 77488.

Dated at Rockville, Maryland, this 23rd day of May 1995.

For The Nuclear Regulatory Commission.

George Kalman,

Project Manager, Project Directorate IV–1, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–13206 Filed 5–30–95; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Pure Tech International, Inc., Common Stock, $.01 Par Value) File No. 1–11025

May 24, 1995.

Pure Tech International, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities and

Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security ("Security") from listing and registration on the Boston Stock Exchange, Inc. ("BSE").

The reasons alleged in the application for withdrawing the Security from listing and registration include the following:

According to the Company, it is voluntarily requesting that the Security be delisted from the BSE due to low trading volumes.

Any interested person may, on or before June 15, 1995 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–13216 Filed 5–30–95; 8:45 am]

BILLING CODE 8010–01–M

[Release Nos. 33–7172; 34–37560; File No. 265–20]

Advisory Committee on the Capital Formation and Regulatory Processes

AGENCY: Securities and Exchange Commission.

ACTION: Notice of meeting.

SUMMARY: This is to give notice that the Securities and Exchange Commission Advisory Committee on the Capital Formation and Regulatory Processes will meet on June 15, 1995 in room 1C30 at the Commission's main offices, 450 Fifth Street, N.W., Washington, D.C., beginning at 2:00 p.m. The meeting will be open to the public, and the public is invited to submit written comments to the Committee.

ADDRESSES: Written comments should be submitted in triplicate and should refer to File No. 265–20. Comments should be submitted to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: David A. Sirignano, Committee Staff Director, at 202–942–2870; Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: In accordance with section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. 10a, notice is hereby given that the Committee will meet on June 15, 1995 in room 1C30 at the Commission's main offices, 450 Fifth Street, N.W., Washington, D.C., beginning at 2:00 p.m. The meeting will be open to the public.

The Committee was formed in February 1995, and its responsibilities include advising the Commission regarding the informational needs of investors and the regulatory costs imposed on the U.S. securities markets.

The purpose of this meeting will be to discuss the progress of the Committee's work, begin evaluation of possible alternative approaches to the capital formation and regulatory processes, as well as to discuss general organizational matters.

Dated: May 24, 1995.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–13217 Filed 5–30–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35759; File No. SR–CBOE–95–22]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Members' Compliance With Position and Exercise Limits for Non-CBOE Listed Options

May 24, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 20, 1995, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend CBOE Rules 4.11, "Position Limits," and 4.12, "Exercise Limits," to require CBOE members who trade on-CBOE listed option contracts and who are not members of the exchange where the options are traded to comply with the option position and exercise limits set by the exchange where the transactions are effected.[1] In addition, the CBOE proposes to amend the text of CBOE Rule 4.12 to replace references to the Exchange's previous equity option position limits with references to the Exchange's current equity position limits, which were excluded inadvertently from the text of CBOE Rule 4.12 when the equity option position limits were increased in December 1993.[2] Finally, the CBOE proposes to amend CBOE Rules 4.11 and 4.12 to indicate that the Exchange's position and exercise limits are now established by the staff of the CBOE, rather than by the CBOE's Board of Directors ("Board").

The text of the proposal is available at the Office of the Secretary, CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

According to the CBOE, one purpose of the proposal is to eliminate a jurisdictional loophole whereby a CBOE member, who exceeds position or exercise limits on another options exchange in an option class not listed on the CBOE and who is not a member of the other exchange, falls outside of both the CBOE's and the other options

[1] Position limits impose a ceiling on the number of option contracts in each class on the same side of the market *i.e.*, aggregating long calls and short puts or long puts and short calls) that can be held or written by an investor or group of investors acting in concert. Exercise limits prohibit an investor or group of investors acting in concert from exercising more than a specified number of puts or calls in a particular class within five consecutive business days.

[2] *See* Securities Exchange Act Release No. 33283 (December 3, 1993), 58 FR 65204 (December 13, 1993) (order approving File No. SR–CBOE–93–43) ("Position Limit Approval Order").

exchange's jurisdiction for position and exercise limit purposes. The CBOE notes that while CBOE Rules 4.11 and 4.12 prohibit excessive positions or exercises in CBOE listed option contracts, the CBOE's rules do not currently prohibit a CBOE member from exceed applicable limits set by another exchange for non-CBOE listed option contracts. If the CBOE member is not a member of the other exchange which lists the option contracts, then the other exchange cannot enforce its position and exercise requirements against the CBOE member either.

The proposed amendments will extend CBOE Rules 4.11 and 4.12 to apply to option contracts dealt in on any exchange (rather than only to option contracts dealt in on the CBOE) by requiring a CBOE member who is effecting transactions in non-CBOE listed option contracts on another exchange, of which he or she is not a member, to comply with the position and exercise limits set by the exchange on which the transaction is effected. Thus, a CBOE members's customer transactions in non-Exchange listed options will be brought within the CBOE's jurisdiction for position and exercise limit purposes, if and when the other exchange on which the excessive transactions are effected does not have member jurisdiction over the CBOE member.

According to the CBOE, other national securities exchange have noted a similar jurisdictional shortfall. The CBOE anticipates that other exchanges will propose similar options position and exercise limit rule changes so that jurisdiction will be expanded uniformly and coherently among the exchanges.

In addition, the CBOE proposes to amend CBOE Rule 4.12 exercise limits to correlate to current CBOE position limits. Accordingly, the exercise limits will be increased to 4,500, 7,500, or 10,500 option contracts. Inadvertently, the CBOE's exercise limits were not increased when the equity option position limits were increased in December 1993.[3]

Finally, the CBOE proposes to amend CBOE Rules 4.11 and 4.12 to reflect that position and exercise limits are not fixed by the staff of the Exchange, rather than by the Board.[4]

The CBOE believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of section 6(b)(5), in particular, in that it is designed to remove impediments to a free and open market and to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days after the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) by order approve such proposed rule change, or

(b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit w~itten data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by June 21, 1995.

[3] *See* Position Limit Approval Order, Supra note 2.

[4] The Commission notes that any proposal to revise the Exchange's position and exercise limits must be filed with the Commission pursuant to Section 19(b)(2) under the Act.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–13219 Filed 5–30–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35757; File No. SR–PSE–95–15

Self Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Stock Exchange, Inc. Relating to Administrative "Late" Charges

May 24, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 16, 1995, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE is proposing to amend its Schedule of Rates to establish a late charge, applicable to members and member organizations, for the failure to pay Exchange dues, fees, fines or charges that are past due.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[5] 17 CFR 200.30–3(a)(12) (1994).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. *Purpose*

The Exchange is proposing to establish an administrative charge applicable to members and member organizations that are substantially late in making payments to the Exchange of dues, fees, fines, or other charges. The purpose of the rule change is to recover the Exchange's costs in seeking to collect such payments when they are past due and to encourage members and member organizations to make such payments in a timely manner.

Currently, the Exchange provides invoices and related notices to members as follows: An initial invoice is sent to members approximately five days after a given month in which dues, fees and other charges are accrued (*e.g.*, on March 5, a member is billed for fees and charges accrued in February). If no payment is made on the invoice within one month, the Exchange sends the member a "late" notice on the tenth day of the month following the month in which the invoices was issued (*e.g.*, on April 10). Thereafter, if no payment is made by the 20th of that same month (*i.e.*, April 20), the Exchange sends such member a second "late" notice. Under the proposal, the Exchange would apply a late charge concurrently with the issuance of the second "late" notice.

The amount of the late charge would be as follows: $250.00 or 1.0 percent of the invoice amount (whichever is greater) upon the first occurrence of a second "late" notice within a 12-month period; and $500 or 1.5 percent of the invoice amount (whichever is greater) if the member receives two or more second "late" notices within a 12-month period. For purposes of this provision, a member is "late" if the Exchange has sent such member a "second late notice" on a previous occasion.

Although Article XIV, Section 1(b) of the PSE Constitution permits the Exchange to suspend members and member organizations for such non-payment, the Exchange believes that the proposed charge will help to encourage members to pay their bills promptly, before a suspension is necessary.

2. *Statutory Basis*

The Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act in that it provides for the equitable allocation of reasonable charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange and therefore has become effective pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Intereste persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR–PSE–95–15 and should be submitted by June 21, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–13218 Filed 5–30–95; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Pipeline Safety User Fees

AGENCY: Research and Special Programs Administration, (RSPA), DOT.

ACTION: Notice.

SUMMARY: This notice announces that the fiscal year 1995 user fee assessments for pipeline facilities were mailed to pipeline operators the week of April 3, 1995.

FOR FURTHER INFORMATION CONTACT: Lisa Kokoszka, (202) 366–4554, U.S. Department of Transportation, RSPA, Office of Pipeline Safety, 400 Seventh Street SW., Washington, DC, 20590, regarding the subject matter of this notice.

SUPPLEMENTARY INFORMATION: The fee to be assessed for Natural Gas Transmission, Hazardous Liquid and Liquefied Natural Gas (LNG) are as indicated below:

Natural gas transmission pipelines: $95.57 per mile (based on 299,077 miles of pipeline).

Hazardous liquid pipelines: $47.03 per mile (based on 154,233 miles of pipeline).

LNG is based on the number of plants and total storage capacity:

Total storage capacity BBLS	Assessment/plant
<10,000	= $1,250
10,000–100,000	= 2,500
100,000–250,000	= 3,750
250,000–500,000	= 5,000
>500,000	= 7,500

Section 60301 of Title 49, U.S.C.,[1] authorizes the assessment and collection of pipeline user fees to fund the pipeline safety activities conducted under 49 U.S.C. 60101 *et seq.* The Research and Special Program Administration (RSPA) assesses each operator of regulated interstate and intrastate natural gas transmission pipelines (as defined in 49 CFR Part 192), and hazardous liquid pipelines carrying petroleum, petroleum products, anhydrous ammonia and carbon dioxide (as defined in 49 CFR Part 195) a share of the total Federal pipeline safety program costs in proportion to the number of miles of pipeline each operator has in service. Operators of LNG facilities are assessed based on total storage capacity (as defined in 49 CFR Part 193).

A final rule on hazardous liquid pipelines operating at 20 percent or less of specified minimum yield strength (low stress pipelines), was published in the **Federal Register** on July 12, 1994 (58 FR 12213, July 12, 1994). This rule became effective on August 11, 1994. Because of this regulation, low stress pipeline mileage must be included in the fiscal year 1995 user fee assessments. Low Stress Pipelines include pipelines that carry highly volatile liquids (HVL), pipelines or pipeline segments in populated areas, and pipelines or pipeline segments in navigable waterways. Onshore rural gathering pipelines, pipelines that operate at less than 20% of SMYS (non-HVL located outside populated areas and navigable waterways), and other pipelines excluded from regulation by 49 CFR 195, should not be included.

In accordance with the provisions of 49 U.S.C. 60301, Departmental resources were taken into consideration for determining total program costs. The apportionment ratio between gas and liquid is shown below:

Year(s)	General program costs (gas)	General program costs (liquid)
1986–1990	80%	20%
1991–1992	75%	25%
1993	75% (¾ yr.)	25% (¾ yr.)
	60% (¼ yr.)	40% (¼ yr.)
1994	60%	40%
1995	75%	25%

Comments: On Friday, February 3, 1995, a notice of agency action and request for comments was issued (60 FR 6767, Feb. 3, 1995), regarding proposed changes in administering user fee assessments. Seven pipeline operators, one commenter acting as an agent for several operators, and two major gas pipeline trade organizations opposed collecting the fee twice within calendar year 1995. These commenters stated that the budgets of most companies are prepared by calendar year, and that companies have planned for only one assessment in 1995. The commenters recommended moving the two assessment dates to 1996, which would give companies time to plan their budgets.

Response: RSPA agrees that assessing the user fee twice in calendar year 1995 may be burdensome for the pipeline operators. Therefore, RSPA will assess only once in 1995. In 1996, RSPA will send out two assessments. The first assessment in 1996 will be January 31, 1996, and the second will be in the October-December 1996 timeframe. This should provide ample budgetary preparation time.

Additional comments received by RSPA in response to the February 3, 1995, notice are currently being reviewed and will be addressed in the near future.

Collection Dates: In accordance with the regulations of the Department of the Treasury, user fees will be due 30 days after the date of the assessment. Interest, penalties, and administrative charges will be assessed on delinquent debts in accordance with 31 U.S.C. 3717.

Issued in Washington, DC on May 24, 1995.

Ana Sol Gutiérrez,

Deputy Administrator, Research and Special Programs Administration.

[FR Doc. 95–13222 Filed 5–30–95; 8:45 am]

BILLING CODE 4910–60–P

[1] Formally section 7005 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub.L. 99–272). The change in citation is the result of the enactment, on July 5, 1994, of Pub. L. 103–272, which codified various transportation laws.

DEPARTMENT OF THE TREASURY

[Treasury Order Number 170–09]

Direction to the Director, United States Secret Service, to Close Streets Necessary To Make the White House Perimeter Secure; Delegation of Authority

May 19, 1995.

As Secretary of the Treasury, I am authorized to direct the Secret Service to take any and all appropriate action to protect the President of the United States and other protectees as described in 18 U.S.C. 3056(a). In furtherance of these responsibilities, Secretary Bentsen commenced a review of the security arrangments at the White House (the Review). The Review is not able to identify any alternative to prohibiting vehicular traffic on Pennsylvania Avenue that would ensure the protection of the President and others in the White House Complex from explosive devices carried by vehicles near the perimeter.

Therefore, I have determined based upon the Review's work and conclusions that it is necessary to make secure the perimeter of the White House.

By virtue of the authority vested in the Secretary of the Treasury, including, but not limited to, the authority vested by 31 U.S.C. 321, 18 U.S.C. 3056 and 3 U.S.C. 202, it is ordered that:

1. The Director, United States Secret Service, is directed to close to vehicular traffic the following streets in order to secure the perimeter of the White House: (i) The segment of Pennsylvania Avenue, Northwest, in front of the White House between Madison Place, Northwest, and 17th Street, Northwest; and (ii) State Place, Northwest, and the segment of South Executive Avenue, Northwest, that connects into State Place, Northwest (see attached map).

2. I hereby delegate to the Director, United States Secret Service, all necessary authority to carry out such street closings.

3. This Order shall take effect May 19, 1995.

Robert E. Rubin,

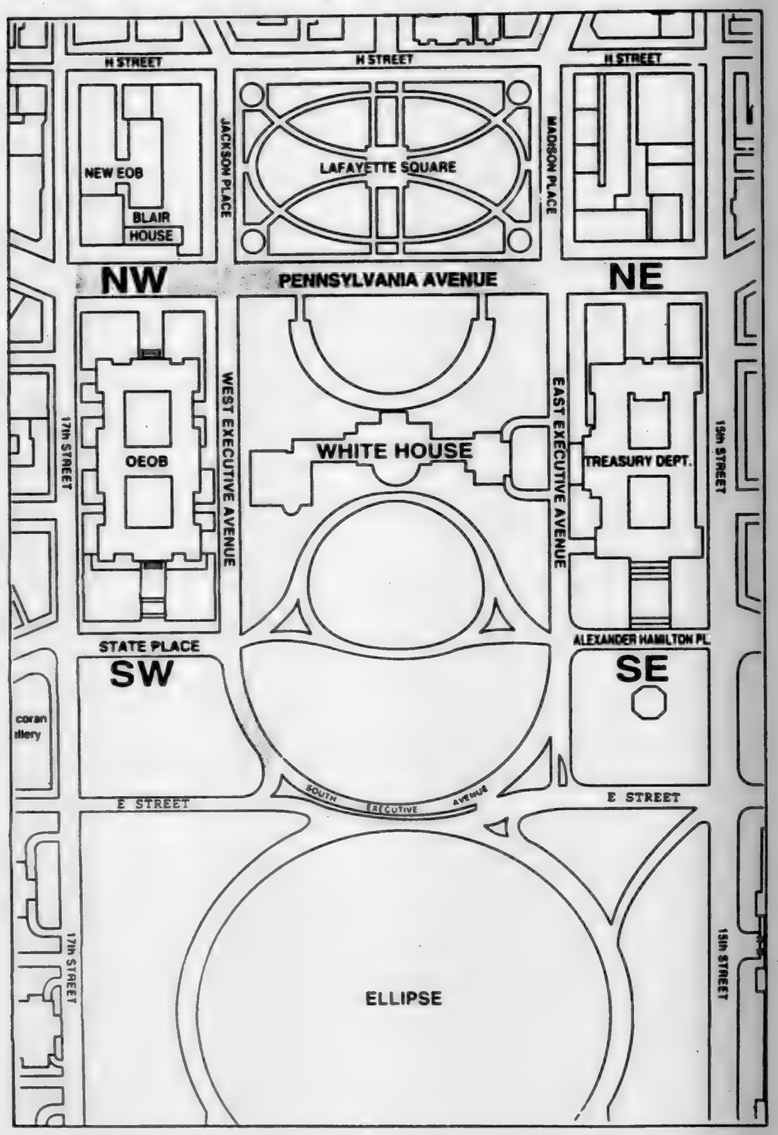
Secretary of the Treasury.

BILLING CODE 4810–25–F

TO 170-09
05-19-95

Attachment

PEDESTRIAN ACCESS AREAS



[FR Doc. 95-13155 Filed 5-30-95; 8:45 am]
BILLING CODE 4810-25-C

Sunshine Act Meetings

Federal Register
Vol. 60, No. 104
Wednesday, May 31, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, June 5, 1995.

PLACE: William McChesney Martin, Jr. Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: May 26, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95-0000 Filed 5-30-95; 8:45 am]

BILLING CODE 6210-01-M

UNITED STATES INTERNATIONAL TRADE COMMISSION

TIME AND DATE: June 2, 1995, at 11:00 a.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting.
2. Minutes.
3. Ratification List.
4. Inv. No. 731-TA-700 (Final) (Disposable Lighters from the People's Republic of China)—briefing and vote.
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: May 25, 1995.

Donna R. Koehnke,

Secretary.

[FR Doc. 95-13348 Filed 5-30-95; 8:45 am]

BILLING CODE 7020-02-M

UNITED STATES INTERNATIONAL TRADE COMMISSION

TIME AND DATE: June 6, 1995 at 2:30 p.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting.
2. Minutes.
3. Ratification List.
4. Inv. No. 731-TA-703-704 (Final) (Furfuryl Alcohol from the People's Republic of China and South Africa)—briefing and vote.
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: May 25, 1995.

Donna R. Koehnke,

Secretary.

[FR Doc. 95-13349 Filed 5-30-95; 8:45 am]

BILLING CODE 7020-02-M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m., Tuesday, June 6, 1995.

PLACE: The Board Room, 5th Floor, 490 L'Enfant Plaza, S.W., Washington, D.C. 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

6405B Special Investigation Report: Robinson R22 Helicopter Loss of Main Rotor Control and In-flight Breakup Accidents.

6458A Briefs of Highway Accidents: Weatherford, Texas, 7/3/94 and Hooks, Texas, 8/8/94.

NEWS MEDIA CONTACT: Telephone: (202) 382-0660.

FOR MORE INFORMATION CONTRACT: Bea Hardesty, (202) 382-6525.

Dated: May 26, 1995.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 95-13450 Filed 5-30-95; 8:45 am]

BILLING CODE 7533-01-M

federal register

Wednesday
May 31, 1995

Part II

Department of Justice

Office of Justice Programs; Office of Juvenile Justice and Delinquency Prevention

28 CFR Part 31

Formula Grants; Final Rule

DEPARTMENT OF JUSTICE

Office of Justice Programs

Office of Juvenile Justice and Delinquency Prevention

28 CFR Part 31

[OJP No. 1000F]

RIN 1121–AA28

Formula Grants

May 22, 1995.

AGENCY: Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Republication.

SUMMARY: This document is published to consolidate the Formula Grants Regulation for ease of use by grantees. This document reflects the consolidation of the revisions to the Formula Grants Regulation published in the **Federal Register** on March 10, 1995 and corrections published on April 21, 1995.

EFFECTIVE DATE: The final regulation became effective on March 10, 1995.

FOR FURTHER INFORMATION CONTACT: Roberta Dorn, Director, State Relations and Assistance Division, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue, NW., Room 543, Washington, DC 20531; (202) 307–5924.

SUPPLEMENTARY INFORMATION: This document contains the entire text of the Formula Grants Regulation, 28 CFR Part 31, including recently made changes and corrections. On March 10, 1995, the Office of Juvenile Justice and Delinquency Prevention (OJJDP) published in the **Federal Register** the final Formula Grants Regulation revising 28 CFR part 31. The regulation revisions provided clarification and guidance to States in the formulation, submission and implementation of the State Formula Grants Program under Part B of Title II of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended by the Juvenile Justice and Delinquency Prevention Amendments of 1992 (Pub. L. 102–586, November 18, 1992). On April 21, 1995 (60 FR 19847), OJJDP published in the **Federal Register** corrections to the final Regulation because the Final Regulation, as published on March 10, 1995 (60 FR 13330), was an earlier draft version that was materially different from the final draft that was intended to be published.

The major changes to the Final Regulation made in the March 10, 1995 revision and subsequent April 21, 1995 correction implemented the 1992 reauthorization statutory amendments that impact the Formula Grants Program. These statutory changes include: a formula grant fund allocation minimum base for participating States and territories; elimination of the "substantial compliance criteria" with respect to the deinstitutionalization of status offenders and jail and lockup removal requirements because full compliance is required; a requirement that there be separate juvenile and adult staff with respect to management, security and direct care in juvenile detention facilities that are collocated with an adult jail or lockup. The final Regulation includes the requirement that collocated juvenile detention facilities approved by the State and concurred with by OJJDP on or before June 30, 1995, be reviewed against the regulatory criteria and OJJDP policies in effect at the time of the initial approval and concurrence. Facilities approved after the effective date of the Regulation and prior to July 1, 1995, will be reviewed against the regulatory criteria in effect on the day before the effective date of the Regulation. For collocated juvenile detention facilities considered after June 30, 1995, OJJDP's concurrence is limited to one year and, thereafter, will be reviewed on an annual basis. The Regulation eliminated the requirement that in order for a collocated juvenile detention facility to receive OJJDP's initial and subsequent concurrences, the facility could only provide secure custody for juvenile criminal-type offenders, status offenders accused of violating a valid court order, and adjudicated delinquents and valid court order violators who are awaiting disposition hearings or transfer to a long term juvenile correctional facility.

Executive Order 12866

This final regulation in not a "significant regulatory action" for purposes of Executive Order 12866 because it does not result in: (1) an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; and (4) does not raise novel legal or policy issues arising out of legal mandates, the President's priorities or the principles of Executive Order 12866.

Regulatory Flexibility Act

This final regulation, does not have a "significant" economic impact on a substantial number of small "entities", as defined by the Regulatory Flexibility Act (Pub. L. 96–354).

Paperwork Reduction Act

No collection of information requirements are contained in or effected by this regulation (See the Paperwork Reduction Act, 44 U.S.C. 3504(h)).

Intergovernmental Review of Federal Programs

In accordance with Executive Order 12372 and the Department of Justice's implementing regulation 28 CFR Part 31, States must submit formula grant applications to the State "Single Point of Contact," if one exists. The State may take up to 60 days from the application date to comment on the application.

List of Subjects in 28 CFR Part 31

Grant programs—law, Juvenile delinquency, Reporting and recordkeeping r equirements.

For the reasons set out in the preamble, Title 28, Chapter I, Part 31 of the Code of Federal Regulations is republished for the convenience of the reader as follows:

PART 31–FORMULA GRANTS

Subpart A—General Provisions

Sec.
31.1 General.
31.2 Statutory authority.
31.3 Formula Grant Plan and Applications.

Subpart B—Eligible Applicants

31.100 Eligibility.
31.101 Designation of State Agency.
31.102 State agency structure.
31.103 Membership of supervisory board.

Subpart C—General Requirements

31.200 General.
31.201 Audit.
31.202 Civil rights.
31.203 Open meetings and public access to records.

Subpart D—Juvenile Justice Act Requirements

31.300 General.
31.301 Funding.
31.302 Applicant State agency.
31.303 Substantive requirements.
31.304 Definitions.

Subpart E—General Conditions and Assurances

31.400 Compliance with statute.
31.401 Compliance with other Federal laws, orders, circulars.
31.402 Application on file.
31.403 Civil rights requirements.

Authority: 42 U.S.C. 5601 et seq.

Subpart A—General Provisions

§ 31.1 General.

This part defines eligibility and sets forth requirements for application for and administration of formula grants to State governments authorized by part B, subpart I, of the Juvenile Justice and Delinquency Prevention Act.

§ 31.2 Statutory authority.

The Statute establishing the Office of Juvenile Justice and Delinquency Prevention and giving authority to make grants for juvenile justice and delinquency prevention improvement programs is the *Juvenile Justice and Delinquency Prevention Act of 1974*, as amended (42 U.S.C. 5601 *et seq.*).

§ 31.3 Formula grant plan and applications

Formula Grant Applications for each Fiscal Year should be submitted to OJJDP by August 1st (60 days prior to the beginning of the fiscal year) or within 60 days after the States are officially notified of the fiscal year formula grant allocations. Beginning with FY 1995 and each subsequent fiscal year, all Formula Grant Applications are due no later than March 31 of the fiscal year for which the funds are allocated.

Subpart B—Eligible Applicants

§ 31.100 Eligibility.

All States as defined by section 103(7) of the JJDP Act.

§ 31.101 Designation of State agency.

The Chief Executive of each State which chooses to apply for a formula grant shall establish or designate a State agency as the sole agency for supervising the preparation and administration of the plan. The plan must demonstrate compliance with administrative and supervisory board membership requirements established by the OJJDP Administrator pursuant to Section 299 (c) of the JJDP Act. States must have available for review a copy of the State law or executive order establishing the State agency and its authority.

§ 31.102 State agency structure.

The State agency may be a discrete unit of State government or a division or other component of an existing State crime commission, planning agency or other appropriate unit of State government. Details of organization and structure are matters of State discretion, provided that the agency:

(a) Is a definable entity in the executive branch with the requisite authority to carry out the responsibilities imposed by the JJDP Act;

(b) Has a supervisory board (i.e., a board of directors, commission, committee, council, or other policy board) which has responsibility for supervising the preparation and administration of the plan and its implementation; and

(c) Has sufficient staff and staff capability to carry out the board's policies and the agency's duties and responsibilities to administer the program, develop the plan, process applications, administer grants awarded under the plan, monitor and evaluate programs and projects, provide administration/support services, and perform such accountability functions as are necessary to the administration of Federal funds, such as grant close-out and audit of subgrant and contract funds. At a minimum, one full-time Juvenile Justice Specialist must be assigned to the Formula Grants Program by the State agency. Where the State does not currently provide or maintain a full-time Juvenile Justice Specialist, the plan must clearly establish and document that the program and administrative support staff resources currently assigned to the program will temporarily meet the adequate staff requirement, and provide an assurance that at least one full-time Juvenile Justice Specialist will be assigned to the Formula Grants Program by the end of FY 1995 (September 30, 1995).

§ 31.103 Membership of supervisory board.

The State advisory group appointed under section 223(a)(3) may operate as the supervisory board for the State agency, at the discretion of the Governor. Where, however, a State has continuously maintained a broad-based law enforcement and criminal justice supervisory board (council) meeting all the requirements of section 402(b)(2) of the Justice System Improvement Act of 1979, and wishes to maintain such a board, such composition shall continue to be acceptable provided that the board's membership includes the chairman and at least two additional citizen members of the State advisory group. For purposes of this requirement a citizen member is defined as any person who is not a full-time government employee or elected official. Any executive committee of such a board must include the same proportion of juvenile justice advisory group members as are included in the total board membership. Any other proposed supervisory board membership is subject to case by case review and approval of the OJJDP Administrator and will require, at a minimum, "balanced representation" of juvenile justice interests.

Subpart C—General Requirements

§ 31.200 General.

This subpart sets forth general requirements applicable to formula grant recipients under the JJDP Act of 1974, as amended. Applicants must assure compliance or submit necessary information on these requirements.

§ 31.201 Audit.

The State must assure that it adheres to the audit requirements enumerated in the "Financial and Administrative Guide for Grants, Guide Manual 7100.1 (current edition). Chapter 8 of the Manual contains a comprehensive statement of audit policies and requirements relative to grantees and subgrantees.

§ 31.202 Civil rights.

(a) To carry out the State's Federal civil rights responsibilities the plan must:

(1) Designate a civil rights contact person who has lead responsibility in insuring that all applicable civil rights requirements, assurances, and conditions are met and who shall act as liaison in all civil rights matters with OJJDP and the OJP Office of Civil Rights Compliance (OCRC); and

(2) Provide the Council's Equal Employment Opportunity Program (EEOP), if required to maintain one under 28 CFR 42.301, et seq., where the application is for $500,000 or more.

(b) The application must provide assurance that the State will:

(1) Require that every applicant required to formulate an EEOP in accordance with 28 CFR 42.201 et seq., submit a certification to the State that it has a current EEOP on file, which meets the requirement therein;

(2) Require that every criminal or juvenile justice agency applying for a grant of $500,000 or more submit a copy of its EEOP (if required to maintain one under 28 CFR 42.301, et seq.) to OCRC at the time it submits its application to the State;

(3) Inform the public and subgrantees of affected persons' rights to file a complaint of discrimination with OCRC for investigation;

(4) Cooperate with OCRC during compliance reviews of recipients located within the State; and

(5) Comply, and that its subgrantees and contractors will comply with the requirement that, in the event that a Federal or State court or administrative agency makes a finding of

discrimination of the basis of race, color, religion, national origin, or sex (after a due process hearing) against a State or a subgrantee or contractor, the affected recipient or contractor will forward a copy of the finding to OCRC.

§ 31.203 Open meetings and public access to records.

The State must assure that the State agency, its supervisory board established pursuant to section 299(c) and the State advisory group established pursuant to section 223(a)(3) will follow applicable State open meeting and public access laws and regulations in the conduct of meetings and the maintenance of records relating to their functions.

Subpart D—Juvenile Justice Act Requirements

§ 31.300 General.

This subpart sets forth specific JJDP Act requirements for application and receipt of formula grants.

§ 31.301 Funding.

(a) *Allocation to States.* Funds shall be allocated annually among the States on the basis of relative population of persons under age eighteen. If the amount allocated for Title II (other than parts D and E) of the JJDP Act is less than $75 million, the amount allocated to each State will not be less than $325,000, nor more than $400,000, provided that no State receives less than its allocation for FY 1992. The territories will receive not less than $75,000 or more than $100,000. If the amount appropriated for Title II (other than parts D and E) is $75 million or more, the amount allocated for each State will be not less than $400,000, nor more than $600,000, provided that parts D and E have been funded in the full amounts authorized. For the Territories, the amount is fixed at $100,000. For each of FY's 1994 and 1995, the minimum allocation is established at $600,000 for States and $100,000 for Territories.

(b) *Funds for Local Use.* At least two-thirds of the formula grant application to the state (other than the section 222(d) State Advisory Group set aside) must be used for programs by local government, local private agencies, and eligible Indian tribes, unless the State applies for and is granted a waiver by the OJJDP. The proportion of pass-through funds to be made available to eligible Indian tribes shall be based upon that proportion of the state youth population under 18 years of age who reside in geographical areas where the tribes perform law enforcement functions. Pursuant to section 223(a)(5)(C) of the JJDP Act, each of the standards set forth in paragraphs (b)(1)(i) through (111) of this section must be met in order to establish the eligibility of Indian tribes to receive pass through funds:

(1) (i) The tribal entity must be recognized by the Secretary of the Interior as an Indian tribe that performs law enforcement functions as defined in paragraph (b) (2) of this section.

(ii) The tribal entity must agree to attempt to comply with the requirements of section 223(a)(12)(A), (13), and (14) of the JJDP Act; and

(iii) The tribal entity must identify the juvenile justice needs to be served by these funds within the geographical area where the tribe performs law enforcement functions.

(2) "Law enforcement functions" are deemed to include those activities pertaining to the custody of children, including, but not limited to, police efforts to prevent, control, or reduce crime and delinquency or to apprehend criminal and delinquent offenders, and/or activities of adult and juvenile corrections, probation, or parole authorities.

(3) To carry out this requirement, OJJDP will annually provide each state with the most recent Bureau of Census statistics on the number of persons under age 18 living within the state, and the number of persons under age 18 who reside in geographical areas where Indian tribes perform law enforcement functions.

(4) Pass-through funds available to tribal entities under section 223(a)(5)(C) shall be made available within states to Indian tribes, combinations of Indian tribes, or to an organization or organizations designated by such tribe(s), that meet the standards set forth in paragraphs (b)(1)(i)–(iii) of this section. Where the relative number of persons under age 18 within a geographic area where an Indian tribe performs law enforcement functions is too small to warrant an individual subgrant or subgrants, the state may, after consultation with the eligible tribe(s), make pass-through funds available to a combination of eligible tribes within the state, or to an organization or organizations designated by and representing a group of qualifying tribes, or target the funds on the larger tribal jurisdictions within the state.

(5) Consistent with section 223(a)(4) of the JJDP Act, the state must provide for consultation with Indian tribes or a combination of eligible tribes within the state, or an organization or organizations designated by qualifying tribes, in the development of a state plan which adequately takes into account the juvenile justice needs and requests of those Indian tribes within the state.

(c) *Match.* Formula grants under the JJDP Act shall be 100% of approved costs, with the exception of planning and administration funds, which require a 100 percent cash match (dollar for dollar), and construction projects funded under section 299C(a)(2) which also require a 100 percent cash match.

(d) *Funds for Administration.* Not more than ten percent of the total annual Formula Grant award may be utilized to develop the annual juvenile justice plan and pay for administrative expenses, including project monitoring. These funds are to be matched on a dollar for dollar basis. The State shall make available needed funds for planning and administration to units of local government on an equitable basis. Each annual application must identify uses of such funds.

(e) *Nonparticipating States.* Pursuant to section 223(d), the OJJDP Administrator shall endeavor to make the fund allotment under section 222(a), of a State which chooses not to participate or loses its eligibility to participate in the formula grant program, directly available to local public and private nonprofit agencies within the nonparticipating State. The funds may be used only for the purpose(s) of achieving deinstitutionalization of status offenders and nonoffenders, separation of juveniles from incarcerated adults, removal of juveniles from adult jails and lockups, and reducing the disproportionate confinement of minority youth in secure facilities. Absent a request for extension which demonstrates compelling circumstances justifying the reallocation of formula grant funds back to the State to which the funds were initially allocated, or the proceedings under section 223(d), formula grant funds allocated to a State which has failed to submit an application, plan, or monitoring data establishing its eligibility for the funds will, beginning with FY 1995 be reallocated to the nonparticipating State program on September 30 of the fiscal year for which the funds were appropriated. Reallocated funds will be competitively awarded to eligible recipients pursuant to program announcements published in the **Federal Register**.

§ 31.302 Applicant State agency.

(a) Pursuant to section 223(a)(1), section 223(a)(2) and section 299(c) of the JJDP Act, the State must assure that the State agency approved under section 299(c) has been designated as the sole agency for supervising the preparation and administration of the plan and has the authority to implement the plan.

(b) *Advisory Group.* Pursuant to section 223(a)(3) of the JJDP Act, the Chief Executive:

(1) Shall establish an advisory group pursuant to section 223(a)(3) of the JJDP Act. The State shall provide a list of all current advisory group members, indicating their respective dates of appointment and how each member meets the membership requirements specified in this section of the Act.

(2) Should consider, in meeting the statutory membership requirements of section 223(A)(3) (A)–(E), appointing at least one member who represents each of the following: A locally elected official representing general purpose local government; a law enforcement officer; representatives of juvenile justice agencies, including a juvenile or family court judge, a probation officer, a prosecutor, and a person who routinely provides legal representation to youth in juvenile court; a public agency representative concerned with delinquency prevention and treatment; a representative from a private, non-profit organization, such as a parents group, concerned with teenage drug and alcohol abuse; a high school principal; a recreation director; a volunteer who works with delinquent or at risk youth; a person with a special focus on the family; a youth worker experienced with programs that offer alternatives to incarceration; persons with special competence in addressing programs of school violence and vandalism and alternatives to expulsion and suspension; and persons with knowledge concerning learning disabilities, child abuse, neglect, and youth violence.

(c) The State shall assure that it complies with the Advisory Group financial support requirement of section 222(d) and the composition and function requirements of section 223(a)(3) of the JJDP Act.

§ 31.303 Substantive requirements.

(a) *Assurances.* The State must certify through the provision of assurances that it has complied and will comply (as appropriate) with sections 223(a)(1), (2), (3), (4), (5), (6), (7), (8), (9), (10), (11), (16), (17), (18), (19), (20), (21), (22), and (25), and sections 229 and 261(d), in formulating and implementing the State plan. The Formula Grant Application kit provides a form and guidance for the provision of assurances. OJJDP interprets the section 223(a)(16) assurance as satisfied by an affirmation that State law and/or policy clearly require equitable treatment on the required bases; or by providing in the State plan that the State agency will require an assurance of equitable treatment by all Formula Grant subgrant and contract recipients, and establish as a program goal, in conjunction with the State Advisory Group, the adoption and implementation of a statewide juvenile justice policy that all youth in the juvenile justice system will be treated equitably without regard to gender, race, family income, and mentally, emotionally, or physically handicapping conditions. OJJDP interprets the section 223(a)(25) assurance as satisfied by a provision in the State plan for the State agency and the State Advisory Group to promulgate policies and budget priorities that require the funding of programs that are part of a comprehensive and coordinated community system of services as set forth in section 103(19) of the JJDP Act. This requirement is applicable when a State's formula grant for any fiscal year exceeds 105 percent of the State's formula grant for FY 1992.

(b) *Serious Juvenile Offender Emphasis.* Pursuant to sections 101(a)(10) and 223(a)(10) of the JJDP Act, OJJDP encourages States that have identified serious and violent juvenile offenders as a priority problem to allocate formula grant funds to programs designed for serious and violent juvenile offenders at a level consistent with the extent of the problem as identified through the State planning process. Particular attention should be given to improving prosecution, sentencing procedures, providing resources necessary for effective rehabilitation, and facilitating the coordination of services between the juvenile justice and criminal justice systems.

(c) *Deinstitutionalization of Status Offenders and Non-Offenders.* Pursuant to section 223(a)(12)(A) of the JJDP Act, the State shall:

(1) Describe its plan, procedure, and timetable covering the three-year planning cycle, for assuring that the requirements of this section are met. Refer to § 31.303(f)(3) for the rules related to the valid court order exception to this Act requirement.

(2) Describe the barriers the State faces in achieving full compliance with the provisions of this requirement.

(3) *Federal Wards.* Apply this requirement to alien juveniles under Federal jurisdiction who are held in State or local facilities.

(4) *DSO compliance.* Those States which, based upon the most recently submitted monitoring report, have been found to be in full compliance with section 223(a)(12)(A) may, in lieu of addressing paragraphs (c)(1) and (2) of this section, provide an assurance that adequate plans and resources are available to maintain full compliance.

(5) Submit the report required under section 223(a)(12)(B) of the Act as part of the annual monitoring report required by section 223(a)(15) of the Act.

(d) *Contact with incarcerated adults.*

(1) Pursuant to section 223(a)(13) of the JJDP Act the State shall:

(i) *Separation.* Describe its plan and procedure, covering the three-year planning cycle, for assuring that the requirements of this section are met. The term "contact" is defined to include any sight and sound contact between juveniles in a secure custody status and incarcerated adults, including inmate trustees. Sound contact is further defined to mean any oral communication between incarcerated adults and juveniles. Separation must be accomplished in all secure areas of the facility which include, but are not limited to: sallyports within the secure perimeter of the facility, other entry areas, all passageways (hallways), admissions, sleeping, toilet and shower, dining, recreational, educational, vocational, health care, and other areas as appropriate.

(ii) In those instances where accused juvenile criminal-type offenders are authorized to be temporarily detained in facilities where adults are confined, the State must set forth the procedures for assuring no sight or sound contact between such juveniles and confined adults.

(iii) Describe the barriers which may hinder the separation of alleged or adjudicated criminal type offenders, status offenders and non-offenders from incarcerated adults in any particular jail, lockup, detention or correctional facility.

(iv) Those States which, based upon the most recently submitted monitoring report, have been found to be in compliance with section 223(a)(13) may, in lieu of addressing paragraphs (d)(1)(i), (ii), and (iii) of this section, provide an assurance that adequate plans and resources are available to maintain compliance.

(v) Assure that adjudicated offenders are not reclassified administratively and transferred to an adult (criminal) correctional authority to avoid the intent of segregating adults and juveniles in correctional facilities. This does not prohibit or restrict waiver of juveniles to criminal court for prosecution, according to State law. It does, however, preclude a State from administratively transferring a juvenile offender to an adult correctional authority or a transfer within a mixed

juvenile and adult facility for placement with adult criminals either before or after a juvenile reaches the statutory age of majority. It also precludes a State from transferring adult offenders to juvenile correctional authority for placement.

(2) *Implementation.* The requirement of this provision is to be planned and implemented immediately by each State.

(e) *Removal of Juveniles From Adult Jails and Lockups.* Pursuant to section 223(a)(14)of the JJDP Act, the State shall:

(1) Describe its plan, procedure, and timetable for assuring that requirements of this section will be met beginning after December 8, 1985. Refer to § 31.303(f)(4) to determine the regulatory exception to this requirement.

(2) Describe the barriers which the State faces in removing all juveniles from adult jails and lockups. This requirement excepts only those juveniles formally waived or transferred to criminal court and against whom criminal felony charges have been filed, or juveniles over whom a criminal court has original or concurrent jurisdiction and such court's jurisdiction has been invoked through the filing of criminal felony charges.

(3) *Collocated facilities.*

(i) Determine whether or not a facility in which juveniles are detained or confined is an adult jail or lockup. The JJDP Act prohibits the secure custody of juveniles in adult jails and lockups, except as otherwise provided under the Act and implementing OJJDP regulations. Juvenile facilities collocated with adult facilities are considered adult jails or lockups unless the paragraph (e)(3)(i)(D)(*1*)–(*4*) criteria established in this section are complied with and the determinations and concurrences set forth in paragraph (e)(3)(ii), (iii), and (iv) of this section have been made.

(A) A collocated facility is a juvenile facility located in the same building as an adult jail or lockup, or is part of a related complex of buildings located on the same grounds as an adult jail or lockup. A complex of buildings is considered "related" when it shares physical features such as walls and fences, or services beyond mechanical services (heating, air conditioning, water and sewer), or the specialized services that are allowable under paragraph (e)(3)(i)(D)(*3*) of this section.

(B) The State, with OJJDP concurrence, must determine whether a collocated facility qualifies as a separate juvenile detention facility under the four criteria set forth in Paragraph (e)(3)(i)(D)(*1*)–(*4*) of this section for the purpose of monitoring compliance with section 223(a)12(A), (13) and (14) of the JJDP Act.

(C) A needs based analysis must precede a jurisdiction's request for State approval and be included with the request for OJJDP concurrence that a collocated facility qualifies as a juvenile detention facility. The needs based analysis should include, but is not limited to, consideration of such factors as excessive travel time to an existing juvenile detention center, crowding in an existing facility (despite the use of objective detention criteria), obsolescence of an existing facility, and, in areas where there are no juvenile detention facilities, a measurable increase in the need for juvenile detention beds. OJJDP's technical assistance provider to the States should be involved in the needs based analysis (without cost to the State or local jurisdiction). The needs based analysis must take into consideration and be coordinated with the State's plans and programs designed to establish a continuum of detention care and to assist detention facilities to provide a full range of services for juvenile offenders.

(D) Each of the following four criteria must be met in order to ensure the requisite separateness of a juvenile detention facility that is collocated with an adult jail or lockup:

(*1*) Total separation between juvenile and adult facility spatial areas such that there could be no sight or sound contact between juveniles and incarcerated adults in the facility. Total separation of spatial areas can be achieved architecturally, and must provide for no common use areas (time-phasing is not permissible).

(*2*) Total separation in all juvenile and adult program areas, including recreation, education, counseling, dining, sleeping, and general living activities. There must be an independent and comprehensive operational plan for the juvenile detention center which provides for a full range of separate program services. No program activities may be shared by juveniles and incarcerated adults. However, equipment and other resources may be used by both populations subject to security concerns and the criterion in paragraph (e)(3)(i)(D)(*1*) of this section.

(*3*) Separate staff for the juvenile and adult populations, including management, security, and direct care staff. Staff providing specialized services (food service, laundry, maintenance and engineering, etc.) who are not normally in contact with detainees, or whose infrequent contacts occur under conditions of separation of juveniles and adults, can serve both populations (subject to State standards or licensing requirements). The day to day management, security and direct care functions of the juvenile detention center must be vested in a totally separate staff, dedicated solely to the juvenile population within the collocated facilities; and

(*4*) In States that have established standards or licensing requirements for juvenile detention facilities, the juvenile facility must meet the standards (on the same basis as a free-standing juvenile detention center) and be licensed as appropriate. If there are no State standards or licensing requirements, then the jurisdiction must cooperate in a preapproval review of its physical plant, staffing patterns, and programs by an organization selected and compensated by OJJDP. This review will be based on prevailing national juvenile detention standards, and will inform the State's approval process and concurrence by OJJDP.

(ii) The State must initially determine that the four criteria are fully met. Upon such determination, the State must submit to OJJDP a request for concurrence with the State's finding that a separate juvenile detention facility exists. To enable OJJDP to assess the separateness of the two facilities, sufficient documentation must accompany the request to demonstrate that each criterion has been met. It is incumbent upon the State to make the initial determination through an on-site facility (or full construction and operations plan) review and, through the exercise of its oversight responsibility, to ensure that the separate character of the juvenile detention facility is maintained by continuing to fully meet the four criteria set forth above in paragraphs (e)(3)(i)(D)(*1*)–(*4*) of this section.

(iii) Collocated juvenile detention facilities approved by the State and concurred with by OJJDP on or before June 30, 1995 are to be reviewed against the regulatory criteria and OJJDP policies in effect at the time of the initial approval and concurrence, except that facilities approved after the effective date of this regulation, but prior to July 1, 1995, shall be reviewed against the regulatory criteria in effect on the day before the effective date of this regulation, and except that all collocated facilities are subject to the separate staff requirement established by the 1992 Amendments to the JJDP Act, and set forth in paragraph (e)(3)(i)(D)(*3*) of this section. Unless otherwise indicated, review of previously approved collocated facilities is expected to occur as part of the State's regularly scheduled monitoring activities.

(iv) OJJDP's concurrence for facilities considered after June 30, 1995 is limited to one year and thereafter, will be reviewed on an annual basis. An annual on-site review of the facility must be conducted by the compliance monitoring staff person(s) representing or employed by the State agency administering the JJDP Act Formula Grants Program. OJJDP's concurrence is required annually, and may involve on-site review by OJJDP staff. The purpose of the annual review is to determine if compliance with the criteria set forth in paragraphs (e)(3)(i)(D)(*1*)–(*4*) of this section is being maintained, and to assess the continuing need for the collocated facility and the jurisdiction's long term plan to move to a free-standing facility (single jurisdiction or regional) or other detention alternative, unless the juvenile detention center is part of a justice center, in which case the annual review will look solely at the four regulatory criteria. An example of a justice center is a building or a set of buildings in which various agencies are housed, such as law enforcement, courts, State's attorneys, public defenders, and probation, in addition to an adult jail or lockup, and a juvenile detention facility.

(4) Those States which, based upon the most recently submitted monitoring report, have been found to be in full compliance with section 223(a)(14) may, in lieu of addressing paragraphs (e) (1) and (2) of this section, provide an assurance that adequate plans and resources are available to maintain full compliance.

(f) *Monitoring of Jails, Detention Facilities and Correctional Facilities.*

(1) Pursuant to section 223(a)(15) of the JJDP Act, and except as provided by paragraph (f)(7) of this section, the State shall:

(i) Describe its plan, procedure, and timetable for annually monitoring jails, lockups, detention facilities, correctional facilities and non-secure facilities. The plan must at a minimum describe in detail each of the following tasks including the identification of the specific agency(s) responsible for each task.

(A) *Identification of monitoring universe:* This refers to the identification of all residential facilities which might hold juveniles pursuant to public authority and thus must be classified to determine if it should be included in the monitoring effort. This includes those facilities owned or operated by public and private agencies.

(B) *Classification of the monitoring universe:* This is the classification of all facilities to determine which ones should be considered as a secure detention or correctional facility, adult correctional institution, jail, lockup, or other type of secure or nonsecure facility.

(C) *Inspection of facilities:* Inspection of facilities is necessary to ensure an accurate assessment of each facility's classification and record keeping. The inspection must include:

(*1*) A review of the physical accommodations to determine whether it is a secure or non-secure facility or whether adequate sight and sound separation between juvenile and adult offenders exists and

(*2*) a review of the record keeping system to determine whether sufficient data are maintained to determine compliance with section 223(a) (12), (13) and/or (14).

(D) *Data collection and data verification:* This is the actual collection and reporting of data to determine whether the facility is in compliance with the applicable requirement(s) of section 223(a) (12), (13) and/or (14). The length of the reporting period should be 12 months of data, but in no case less than 6 months. If the data is self-reported by the facility or is collected and reported by an agency other than the State agency designated pursuant to section 223(a)(1) of the JJDP Act, the plan must describe a statistically valid procedure used to verify the reported data.

(ii) Provide a description of the barriers which the State faces in implementing and maintaining a monitoring system to report the level of compliance with section 223(a) (12), (13), and (14) and how it plans to overcome such barriers.

(iii) Describe procedures established for receiving, investigating, and reporting complaints of violation of section 223(a) (12), (13), and (14). This should include both legislative and administrative procedures and sanctions.

(2) For the purpose of monitoring for compliance with section 223(a)(12)(A) of the Act a secure detention or correctional facility is any secure public or private facility used for the lawful custody of accused or adjudicated juvenile offenders or non-offenders, or used for the lawful custody of accused or convicted adult criminal offenders.

(3) *Valid Court Order.* For the purpose of determining whether a valid court order exists and a juvenile has been found to be in violation of that valid order all of the following conditions must be present prior to secure incarceration:

(i) The juvenile must have been brought into a court of competent jurisdiction and made subject to an order issued pursuant to proper authority. The order must be one which regulates future conduct of the juvenile. Prior to issuance of the order, the juvenile must have received the full due process rights guaranteed by the Constitution of the United States.

(ii) The court must have entered a judgment and/or remedy in accord with established legal principles based on the facts after a hearing which observes proper procedures.

(iii) The juvenile in question must have received adequate and fair warning of the consequences of violation of the order at the time it was issued and such warning must be provided to the juvenile and to the juvenile's attorney and/or legal guardian in writing and be reflected in the court record and proceedings.

(iv) All judicial proceedings related to an alleged violation of a valid court order must be held before a court of competent jurisdiction. A juvenile accused of violating a valid court order may be held in secure detention beyond the 24-hour grace period permitted for a noncriminal juvenile offender under OJJDP monitoring policy, for protective purposes as prescribed by State law, or to assure the juvenile's appearance at the violation hearing, as provided by State law, if there has been a judicial determination based on a hearing during the 24-hour grace period that there is probable cause to believe the juvenile violated the court order. In such case the juveniles may be held pending a violation hearing for such period of time as is provided by State law, but in no event should detention prior to a violation hearing exceed 72 hours exclusive of nonjudicial days. A juvenile alleged or found in a violation hearing to have violated a Valid Court Order may be held only in a secure juvenile detention or correctional facility, and not in an adult jail or lockup.

(v) Prior to and during the violation hearing the following full due process rights must be provided:

(A) The right to have the charges against the juvenile in writing served upon him a reasonable time before the hearing;

(B) The right to a hearing before a court;

(C) The right to an explanation of the nature and consequences of the proceeding;

(D) The right to legal counsel, and the right to have such counsel appointed by the court if indigent;
(E) The right to confront witnesses;
(F) The right to present witnesses;
(G) The right to have a transcript or record of the proceedings; and
(H) The right of appeal to an appropriate court.

(vi) In entering any order that directs or authorizes disposition of placement in a secure facility, the judge presiding over an initial probable cause hearing or violation hearing must determine that all the elements of a valid court order (paragraphs (f)(3) (i), (ii) and (iii) of this section) and the applicable due process rights (paragraph (f)(3)(v) of this section) were afforded the juvenile and, in the case of a violation hearing, the judge must determine that there is no less restrictive alternative appropriate to the needs of the juvenile and the community. This determination must be preceded by a written report to the judge that: reviews the behavior of the juvenile and the circumstances under which the juvenile was brought before the court and made subject to such order; determines the reasons for the juvenile's behavior; and determines whether all dispositions other than secure confinement have been exhausted or are clearly inappropriate. This report must be prepared and submitted by an appropriate public agency (other than a court or law enforcement agency). A multidisciplinary review team that operates independently of courts or law enforcement agencies would satisfy this requirement even if some individual members of the team represent court or law enforcement agencies.

(vii) A non-offender such as a dependent or neglected child cannot be placed in secure detention or correctional facilities for violating a valid court order.

(4) *Removal exception (section 223(a)(14)).* The following conditions must be met in order for an accused juvenile criminal-type offender, awaiting an initial court appearance, to be detained up to 24 hours (excluding weekends and holidays) in an adult jail or lockup:

(i) The State must have an enforceable State law requiring an initial court appearance within 24 hours after being taken into custody (excluding weekends and holidays);

(ii) The geographic area having jurisdiction over the juvenile is outside a metropolitan statistical area pursuant to the Bureau of Census' current designation;

(iii) A determination must be made that there is no existing acceptable alternative placement for the juvenile pursuant to criteria developed by the State and approved by OJJDP;

(iv) The adult jail or lockup must have been certified by the State to provide for the sight and sound separation of juveniles and incarcerated adults; and

(v) The State must provide documentation that the conditions in paragraphs(f)(4)(i) through (iv) of this section have been met and received prior approval from OJJDP. OJJDP strongly recommends that jails and lockups that incarcerate juveniles be required to provide youth specific admissions screening and continuous visual supervision of juveniles incarcerated pursuant to this exception.

(vi) Pursuant to section 223(a)(14) of the JJDP Act, the non-MSA (low population density) exception to the jail and lockup removal requirements as described in paragraphs (f)(4)(i) through (v) of this section shall remain in effect through 1997, and shall allow for secure custody beyond the twenty four hours period described in paragraph (f)(4)(i) of this section when the facility is located where conditions of distance to be traveled or the lack of highway, road, or other ground transportation do not allow for court appearances within twenty four hours, so that a brief (not to exceed an additional forty eight hours) delay is excusable; or the facility is located where conditions of safety exist (such as severely adverse, life-threatening weather conditions that do not allow for reasonably safe travel), in which case the time for an appearance may be delayed until twenty four hours after the time that such conditions allow for reasonably safe travel. States may use these additional statutory allowances only where the precedent requirements set forth in paragraphs (f)(4)(i) through (v) of this section have been complied with. This may necessitate statutory or judicial (court rule or opinion) relief within the State from the twenty four hours initial court appearance standard required by paragraph (f)(4)(i) of this section. States must document and describe in their annual monitoring report to OJJDP, the specific circumstances surrounding each individual use of the distance/ ground transportation, and weather allowances.

(5) Reporting requirement. The State shall report annually to the Administrator of OJJDP on the results of monitoring for section 223(a)(12),(13), and (14) of the JJDP Act. The reporting period should provide 12 months of data, but shall not be less than six months. The report shall be submitted to the Administrator of OJJDP by December 31 of each year.

(i) To demonstrate the extent of compliance with section 223(a)(12)(A) of the JJDP Act, the report must include, at a minimum, the following information for the current reporting period:

(A) Dates covered by the current reporting period;

(B) Total number of public and private secure detention and correctional facilities, the total number reporting, and the number inspected on-site;

(C) The total number of accused status offenders and nonoffenders, including out-of-State runaways and Federal wards, held in any secure detention or correctional facility for longer than twenty four hours (not including weekends or holidays), excluding those held pursuant to the valid court order provision as set forth in paragraph (f)(3) of this section or pursuant to section 922(x) of title 18, United States Code, or a similar State law;

(D) The total number of accused status offenders (including valid court order violators, out of state runaways, and Federal wards, but excluding Title 18 922(x) violators) and nonoffenders securely detained in any adult jail, lockup, or nonapproved collocated facility for any length of time;

(E) The total number of adjudicated status offenders and nonoffenders, including out-of-state runaways and Federal wards, held for any length of time in a secure detention or correctional facility, excluding those held pursuant to the valid court order provision or pursuant to title 18 U.S.C. section 922(x);

(F) The total number of status offenders held in any secure detention or correctional facility pursuant to the valid court order provision set forth in paragraph (f)(3) of this section; and

(G) The total number of juvenile offenders held pursuant to title 18 U.S.C. section 922(x).

(ii) To demonstrate the extent to which the provisions of section 223(a)(12)(B) of the JJDP Act are being met, the report must include the total number of accused and adjudicated status offenders and nonoffenders placed in facilities that are:

(A) Not near their home community;

(B) Not the least restrictive appropriate alternative; and

(C) Not community-based.

(iii) To demonstrate the extent of compliance with section 223(a)(13) of the JJDP Act, the report must include, at a minimum, the following information for the current reporting period:

(A) Dates covered by the current reporting period;

(B) The total number of facilities used to detain or confine both juvenile offenders and adult criminal offenders during the past 12 months and the number inspected on-site;

(C) The total number of facilities used for secure detention and confinement of both juvenile offenders and adult criminal offenders which did not provide sight and sound separation;

(D) The total number of juvenile offenders and nonoffenders not separated from adult criminal offenders in facilities used for the secure detention and confinement of both juveniles and adults;

(E) The total number of juvenile detention centers located within the same building or on the same grounds as an adult jail or lockup that have been concurred with by OJJDP, including a list of such facilities;

(F) The total number of juveniles detained in collocated facilities concurred with by OJJDP that were not separated from the management, security or direct care staff of the adult jail or lockup;

(G) The total number of juvenile detention centers located within the same building or on the same grounds as an adult jail or lockup that have not been concurred with by OJJDP, including a list of such facilities; and

(H) The total number of juveniles detained in collocated facilities not approved by the State and concurred with by OJJDP, that were not sight and sound separated from adult criminal offenders.

(iv) To demonstrate the extent of compliance with section 223(a)(14) of the JJDP Act, the report must include, at a minimum, the following information for the current reporting period:

(A) Dates covered by the current reporting period;

(B) The total number of adult jails in the State AND the number inspected on-site;

(C) The total number of adult lockups in the State AND the number inspected on-site;

(D) The total number of adult jails holding juveniles during the past twelve months;

(E) The total number of adult lockups holding juveniles during the past twelve months;

(F) The total number of accused juvenile criminal-type offenders held securely in adult jails, lockups, and collocated facilities not concurred with by OJJDP, in excess of six hours (including those held pursuant to the "removal exception" as set forth in paragraph (f)(4) of this section);

(G) The total number of accused juvenile criminal-type offenders held securely in adult jails, lockups and collocated facilities not concurred with by OJJDP for less than six hours for purposes other than identification, investigation, processing, release to parent(s), transfer to court, or transfer to a juvenile facility following initial custody;

(H) The total number of adjudicated juvenile criminal-type offenders held securely in adult jails or lockups and collocated facilities not concurred with by OJJDP for any length of time;

(I) The total number of accused and adjudicated status offenders (including valid court order violators) and nonoffenders held securely in adult jails, lockups and collocated facilities not concurred with by OJJDP, for any length of time;

(J) The total number of adult jails, lockups, and collocated facilities not concurred with by OJJDP, in areas meeting the "removal exception" as noted in paragraph (f)(4) of this section, including a list of such facilities and the county or jurisdiction in which each is located;

(K) The total number of juveniles accused of a criminal-type offense who were held in excess of six hours but less than 24 hours in adult jails, lockups and collocated facilities not concurred with by OJJDP pursuant to the "removal exception" as set forth in paragraph (f)(4) of this section;

(L) The total number of juveniles accused of a criminal-type offense who were held in excess of 24 hours but not more than an additional 48 hours in adult jails, lockups and collocated facilities not concurred with by OJJDP pursuant to the "removal exception" as noted in paragraph (f)(4) of this section, due to conditions of distance or lack of ground transportation; and

(M) The total number of juveniles accused of a criminal-type offense who were held in excess of 24 hours, but not more than an additional 24 hours after the time such conditions as adverse weather allow for reasonably safe travel, in adult jails, lockups and collocated facilities not concurred with by OJJDP, in areas meeting the "removal exception" as noted in paragraph (f)(4) of this section.

(6) *Compliance.* The State must demonstrate the extent to which the requirements of sections 223(a)(12)(A), (13), (14), and (23) of the Act are met. If the State fails to demonstrate full compliance with sections 223(a)(12)(A) and (14), and compliance with sections 223(a)(13) and (23) by the end of the fiscal year for any fiscal year beginning with fiscal year 1994, the State's allotment under Section 222 will be reduced by twenty five percent for each such failure, provided that the State will lose its eligibility for any allotment unless: the State agrees to expend all remaining funds (except planning and administration, State advisory group set-aside funds and Indian tribe pass-through funds) for the purpose of achieving compliance with the mandate(s) for which the State is in noncompliance; or the Administrator makes discretionary determination that the State has substantially complied with the mandate(s) for which there is noncompliance and that the State has made through appropriate executive or legislative action, an unequivocal commitment to achieving full compliance within a reasonable time. In order for a determination to be made that a State has substantially complied with the mandate(s), the State must demonstrate that it has: Diligently carried out the plan approved by OJJDP; demonstrated significant progress toward full compliance; submitted a plan based on an assessment of current barriers to DMC; and provided an assurance that added resources will be expended, be it formula grants or other funds, to achieve compliance. Where a State's allocation is reduced, the amount available for planning and administration and the required pass-through allocation, other than State advisory group set-aside, will be reduced because they are based on the reduced allocation.

(i) Substantial compliance with section 223(a)(12)(A) can be used to demonstrate eligibility for FY 1993 and prior year formula grant allocations if, within three years of initial plan submission, the State has achieved a seventy five percent reduction in the aggregate number of status offenders and nonoffenders held in secure detention or correctional facilities, or removal of 100 percent of such juveniles from secure correctional facilities only. In addition, the State must make an unequivocal commitment, through appropriate executive or legislative action, to achieving full compliance by FY 1994. Full compliance is achieved when a State has removed 100 percent of such juveniles from secure detention and correctional facilities or can demonstrate full compliance with de minimis exceptions pursuant to the policy criteria contained in the **Federal Register** of January 9, 1981 (46 FR 2566–2569).

(ii) Compliance with section 223(a)(13) has been achieved when a State can demonstrate that:

(A) The last submitted monitoring report, covering a full 12 months of data, demonstrates that no juveniles were incarcerated in circumstances that

were in violation of section 223(a)(13); or

(B) (*1*) State law, regulation, court rule, or other established executive or judicial policy clearly prohibits the incarceration of all juvenile offenders in circumstances that would be in violation of section 223(a)(13);

(*2*) All instances of noncompliance reported in the last submitted monitoring report were in violation of, or departures from, the State law, rule, or policy referred to in paragraph (f)(6)(ii)(B)(*1*) of this section;

(*3*) The instances of noncompliance do not indicate a pattern or practice but rather constitute isolated instances; and

(*4*) Existing mechanisms for the enforcement of the State law, rule, or policy referred to in paragraph (f)(6)(ii)(B)(*1*) of this section are such that the instances of noncompliance are unlikely to recur in the future.

(iii) (A) Full compliance is achieved when a state demonstrates that the last submitted monitoring report, covering 12 months of actual data, demonstrates that no juveniles were held in adult jails or lockups in circumstances that were in violation of section 223(a)(14).

(B) Full compliance with de minimis exceptions is achieved when a State demonstrates that it has met the standard set forth in either of paragraphs (f)(6)(iii)(B) (*1*) or (*2*) of this section:

(*1*) *Substantive De Minimis Standard.* To comply with this standard the State must demonstrate that each of the following requirements have been met:

(*i*) State law, court rule, or other statewide executive or judicial policy clearly prohibits the detention or confinement of all juveniles in circumstances that would be in violation of section 223(a)(14);

(*ii*) All instances of noncompliance reported in the last submitted monitoring reported were in violation of or departures from, the State law, rule, or policy referred to In paragraph (f)(6)(iii)(B)(*1*)(*i*) of this section;

(*iii*) The instances of noncompliance do not indicate a pattern or practice but rather constitute isolated instances;

(*iv*) Existing mechanisms for the enforcement of the State law, rule or policy referred to in paragraph (f)(6)(iii)(B)(*1*)(*i*) of this section are such that the instances of noncompliance are unlikely to recur in the future; and

(*v*) An acceptable plan has been developed to eliminate the noncompliant incidents and to monitor the existing mechanism referred to in paragraph (f)(6)(iii)(B)(*1*)(*iv*) of this section.

(*2*) *Numerical De Minimis Standard.* To comply with this standard the State must demonstrate that each of the following requirements under paragraphs (f)(6)(iii)(B)(2) (*i*) and (*ii*) of this section have been met:

(*i*) The incidents of noncompliance reported in the State's last submitted monitoring report do not exceed an annual rate of 9 per 100,000 juvenile population of the State; and

(*ii*) An acceptable plan has been developed to eliminate the noncompliant incidents through the enactment or enforcement of State law, rule, or statewide executive or judicial policy, education, the provision of alternatives, or other effective means.

(*iii*) *Exception.* When the annual rate for a State exceeds 9 incidents of noncompliance per 100,000 juvenile population, the State will be considered ineligible for a finding of full compliance with de minimis exceptions under the numerical de minimis standard unless the State has recently enacted changes in State law which have gone into effect and which the State demonstrates can reasonably be expected to have a substantial, significant and positive impact on the state's achieving full (100%) compliance or full compliance with de minimis exceptions by the end of the monitoring period immediately following the monitoring period under consideration.

(*iv*) *Progress.* Beginning with the monitoring report due by December 31, 1990, any State whose prior full compliance status is based on having met the numerical de minimis standard set forth in paragraph (f)(6)(iii)(B)(*2*)(*i*) of this § 31.303, must annually demonstrate, in its request for a finding of full compliance with de minimis exceptions, continued and meaningful progress toward achieving full (100%) compliance in order to maintain eligibility for a continued finding of full compliance with de minimis exceptions.

(*v*) Request Submission. Determinations of full compliance and full compliance with de minimis exceptions are made annually by OJJDP following submission of the monitoring report due by December 31 of each calendar year. Any State reporting less than full (100%) compliance in any annual monitoring report may request a finding of full compliance with de minimis exceptions under paragraph (f)(6)(iii)(B) (*1*) or (*2*) of this section. The request may be submitted in conjunction with the monitoring report, as soon thereafter as all information required for a determination is available, or be included in the annual State plan and application for the State's formula grant award.

(C) *Waiver.* Failure to achieve full compliance as defined in this section shall terminate any State's eligibility for FY 1993 and prior year formula grant funds unless the Administrator of OJJDP waives termination of the State's eligibility. In order to be eligible for this waiver of termination, a State must request a waiver and demonstrate that it meets the standards set forth in paragraphs (f)(6)(iii)(C) (1)–(7) of this section:

(*1*) Agrees to expend all of its formula grant award except planning and administration, advisory group set-aside, and Indian tribe pass-through funds, to achieve compliance with section 223(a)(14); and

(*2*) Removed all status and nonoffender juveniles from adult jails and lockups. Compliance with this standard requires that the last submitted monitoring report demonstrate that no status offender (including those accused of or adjudicated for violating a valid court order) or nonoffender juveniles were securely detained in adult jails or lock-ups for any length of time; or that all status offenders and nonoffenders securely detained in adult jails and lock-ups for any length of time were held in violation of an enforceable State law and did not constitute a pattern or practice within the State; and

(*3*) Made meaningful progress in removing juvenile criminal-type offenders from adult jails and lockups. Compliance with this standard requires the State to document a significant reduction in the number of jurisdictions securely detaining juvenile criminal-type offenders in violation of section 223 (a)(14) of the JJDP Act; or a significant reduction in the number of facilities securely detaining such juveniles; or a significant reduction in the average length of time each juvenile criminal-type offender is securely detained in an adult jail or lock-up; or State legislation has recently been enacted and taken effect and which the State demonstrates will significantly impact the secure detention of juvenile criminal-type offenders in adult jails and lock-ups; and

(*4*) Diligently carried out the State's jail and lockup removal plan approved by OJJDP. Compliance with this standard requires that actions have been undertaken to achieve the State's jail and lock-up removal goals and objectives within approved time lines, and that the State Advisory Group, required by section 223 (a)(3) of the JJDP Act, has maintained an appropriate involvement in developing and/or implementing the State's plan; and

(*5*) Submitted an acceptable plan, based on a assessment of current jail and lockup removal barriers within the State, to eliminate noncompliant incidents; and

(*6*) Achieved compliance with section 223(a)(15) of the JJDP Act; and

(*7*) Demonstrates an unequivocal commitment, through appropriate executive or legislative action, to achieving full compliance.

(D) *Waiver Maximum.* A State may receive a waiver of termination of eligibility from the Administrator under paragraph (f)(6)(iii)(C) of this section for a combined maximum of four Formula Grant Awards through Fiscal Year 1993. No additional waivers will be granted.

(*7*) *Monitoring report exemption.* States which have been determined by the OJJDP Administrator to have achieved full compliance with sections 223(a)(12)(A), (a)(14), and compliance with section 223(a)(13) of the JJDP and wish to be exempted from the annual monitoring report requirements must submit a written request to the OJJDP Administrator which demonstrates that:

(i) The State provides for an adequate system of monitoring jails, law enforcement lockup, detention facilities, to enable an annual determination of State compliance with sections 223(a)(12)(A), (13), and (14) of the JJDP Act;

(ii) State legislation has been enacted which conforms to the requirements of Sections 223(a)(12)(A), (13), and (14) of the JJDP Act; and

(iii) The enforcement of the legislation is statutorily or administratively prescribed, specifically providing that:

(A) Authority for enforcement of the statute is assigned;

(B) Time frames for monitoring compliance with the statute are specified; and

(C) Adequate procedures are set forth for enforcement of the statute and the imposition of sanctions for violations.

(g) *Juvenile crime analysis.* Pursuant to section 223(a)(8), the State must conduct an analysis of juvenile crime problems, including juvenile gangs that commit crimes, and juvenile justice and delinquency prevention needs within the State, including those geographical areas in which an Indian tribe performs law enforcement functions. The analysis and needs assessment must include educational needs, gender specific services, delinquency prevention and treatment services in rural areas, and mental health services available to juveniles in the juvenile justice system. The analysis should discuss barriers to accessing services and provide a plan to provide such services where needed.

(1) *Analysis.* The analysis must be provided in the multiyear application. A suggested format for the analysis is provided in the Formula Grant Application Kit.

(2) *Product.* The product of the analysis is a series of brief written problem statements set forth in the application that define and describe the priority problems.

(3) *Programs.* Applications are to include descriptions of programs to be supported with JJDP Act formula grant funds. A suggested format for these programs is included in the application kit.

(4) *Performance Indicators.* A list of performance indicators must be developed and set forth for each program. These indicators show what data will be collected at the program level to measure whether objectives and performance goals have been achieved and should relate to the measures used in the problem statement and statement of program objectives.

(h) *Annual Performance Report.* Pursuant to section 223(a) and section 223(a)(22) the State plan shall provide for submission of an annual performance report. The State shall report on its progress in the implementation of the approved programs, described in the three-year plan. The performance indicators will serve as the objective criteria for a meaningful assessment of progress toward achievement of measurable goals. The annual performance report shall describe progress made in addressing the problem of serious juvenile crime, as documented in the juvenile crime analysis pursuant to section 223(a)(8)(A). The annual performance report must be submitted to OJJDP no later than June 30 and address all formula grant activities carried out during the previous complete calendar year, federal fiscal year, or State fiscal year for which information is available, regardless of which year's formula grant funds were used to support the activities being reported on, e.g., during a reporting period, activities may have been funded from two or more formula grant awards.

(i) *Technical Assistance.* States shall include, within their plan, a description of technical assistance needs. Specific direction regarding the development and inclusion of all technical assistance needs and priorities will be provided in the "Application Kit for Formula Grants under the JJDPA."

(j) *Minority Detention and Confinement.* Pursuant to section 223(a)(23) of the JJDP Act, States must demonstrate specific efforts to reduce the proportion of juveniles detained or confined in secure detention facilities, secure correctional facilities, jails and lockups who are members of minority groups if such proportion exceeds the proportion such groups represent in the general population, viz., in most States, youth between ages ten-seventeen are subject to secure custody. It is essential that States approach this statutory mandate in a comprehensive manner. Compliance with this provision is achieved when a State meets the requirements set forth in paragraphs (j)(1) through (3) of this section:

(1) *Identification.* Provide quantifiable documentation (State, county and local level) in the State's FY 1994 Formula Grant Plan (and all subsequent Multi-Year Plans) Juvenile Crime Analysis and Needs Assessment to determine whether minority juveniles are disproportionately detained or confined in secure detention and correctional facilities, jails and lockups in relation to their proportion of the State juvenile population. Guidelines are provided in the OJJDP Disproportionate Minority Confinement Technical Assistance Manual (see Phase I Matrix). Where quantifiable documentation is not available to determine if disproportionate minority confinement exists in secure detention and correctional facilities, jails and lockups, the State must provide a time-limited plan of action, not to exceed six months, for developing and implementing a system for the ongoing collection, analysis and dissemination of information regarding minorities for those facilities where documentation does not exist.

(2) *Assessment.* Each State's FY 1994 Formula Grant Plan must provide a completed assessment of disproportionate minority confinement. Assessments must, at minimum, identify and explain differences in arrest, diversion and adjudication rates, court dispositions other than incarceration, the rates and periods of prehearing detention in and dispositional commitments to secure facilities of minority youth in the juvenile justice system, and transfers to adult court (see Phase II Matrix). If a completed assessment is not available, the State must submit a time-limited plan (not to exceed twelve months from submission of the Formula Grant Application) for completing the assessment.

(3) *Intervention.* Each State's FY 1995 Formula Grant Plan must, where disproportionate confinement has been demonstrated, provide a time-limited plan of action for reducing the disproportionate confinement of minority juveniles in secure facilities. The intervention plan shall be based on the results of the assessment, and must

include, but not be limited to the following:

(i) *Diversion.* Increasing the availability and improving the quality of diversion programs for minorities who come in contact with the juvenile justice system, such as police diversion programs;

(ii) *Prevention.* Providing developmental, operational, and assessment assistance (financial and/or technical) for prevention programs in communities with a high percentage of minority residents with emphasis upon support for community-based organizations (including non-traditional organizations) that serve minority youth;

(iii) *Reintegration.* Providing developmental, operational, and assessment assistance (financial and/or technical) for programs designed to reduce recidivism by facilitating the reintegration of minority youth in the community following release from dispositional commitments to reduce recidivism;

(iv) *Policies and procedures.* Providing financial and/or technical assistance that addresses necessary changes in statewide and local, executive, judicial, and legal representation policies and procedures; and

(v) *Staffing and training.* Providing financial and/or technical assistance that addresses staffing and training needs that will positively impact the disproportionate confinement of minority youth in secure facilities.

(4) The time-limited plans of action set forth in paragraphs (j)(1), (2) and (3) of this section must include a clear indication of current and future barriers; which agencies, organizations, or individual(s) will be responsible for taking what specific actions; when; and what the anticipated outcomes are. The interim and final outcomes from implementation of the time-limited plan of action must be reported in each State's Multi-Year Plans and Annual Plan Updates. Final outcomes for individual project awards are to be included with each State's annual performance report (See Paragraph (h) of this Section).

(5) Technical assistance is available through the OJJDP Technical Assistance Contract to help guide States with the data collection and analysis, and with programmatic elements of this requirement. Information from the OJJDP Special Emphasis Initiative on Disproportionate Minority Confinement pilot sites will be disseminated as it becomes available.

(6) For purposes of this statutory mandate, minority populations are defined as: African-Americans, American Indians, Asians, Pacific Islanders, and Hispanics.

(k) Pursuant to section 223(a)(24) of the JJDP Act, states shall agree to other terms and conditions as the Administrator may reasonably prescribe to assure the effectiveness of programs assisted under the Formula Grant.

§ 31.304 Definitions.

(a) *Private agency.* A private non-profit agency, organization or institution is:

(1) Any corporation, foundation, trust, association, cooperative, or accredited institution of higher education not under public supervision or control; and

(2) Any other agency, organization or institution which operates primarily for scientific, education, service, charitable, or similar public purposes, but which is not under public supervision or control, and no part of the net earnings of which inures or may lawfully inure to the benefit of any private shareholder or individual, and which has been held by IRS to be tax-exempt under the provisions of section 501(c)(3) of the 1954 Internal Revenue Code.

(b) *Secure.* As used to define a detention or correctional facility this term includes residential facilities which include construction features designed to physically restrict the movements and activities of persons in custody such as locked rooms and buildings, fences, or other physical structures. It does not include facilities where physical restriction of movement or activity is provided solely through facility staff.

(c) *Facility.* A place, an institution, a building or part thereof, set of buildings or an area whether or not enclosing a building or set of buildings which is used for the lawful custody and treatment of juveniles and may be owned and/or operated by public and private agencies.

(d) *Juvenile who is accused of having committed an offense.* A juvenile with respect to whom a petition has been filed In the juvenile court or other action has occurred alleging that such juvenile is a juvenile offender, i.e., a criminal-type offender or a status offender, and no final adjudication has been made by the juvenile court.

(e) *Juvenile who has been adjudicated as having committed an offense.* A juvenile with respect to whom the juvenile court has determined that such juvenile is a juvenile offender, i.e., a criminal-type offender or a status offender.

(f) *Juvenile offender.* An individual subject to the exercise of juvenile court jurisdiction for purposes of adjudication and treatment based on age and offense limitations by defined as State law, i.e., a criminal-type offender or a status offender.

(g) *Criminal-type offender.* A juvenile offender who has been charged with or adjudicated for conduct which would, under the law of the jurisdiction in which the offense was committed, be a crime if committed by an adult.

(h) *Status offender.* A juvenile offender who has been charged with or adjudicated for conduct which would not, under the law of the jurisdiction in which the offense was committed, be a crime if committed by an adult.

(i) *Non-offender.* A juvenile who is subject to the jurisdiction of the juvenile court, usually under abuse, dependency, or neglect statutes for reasons other than legally prohibited conduct of the juvenile.

(j) *Lawful custody.* The exercise of care, supervision and control over a juvenile offender or non-offender pursuant to the provisions of the law or of a judicial order or decree.

(k) *Other individual accused of having committed a criminal offense.* An individual, adult or juvenile, who has been charged with committing a criminal offense in a court exercising criminal jurisdiction.

(l) *Other individual convicted of a criminal offense.* An individual, adult or juvenile, who has been convicted of a criminal offense in court exercising criminal jurisdiction.

(m) *Adult jail.* A locked facility, administered by State, county or local law enforcement and correctional agencies, the purpose of which is to detain adults charged with violating criminal law, pending trial. Also considered as adult jails are those facilities used to hold convicted adult criminal offenders sentenced for less than one year.

(n) *Adult lockup.* Similar to an adult jail except that an adult lockup is generally a municipal or police facility of a temporary nature which does not hold persons after they have been formally charged.

(o) *Valid court order.* The term means a court order given by a juvenile court judge to a juvenile who has been brought before the court and made subject to a court order. The use of the word "valid" permits the incarceration of juveniles for violation of a valid court order only if they received their full due process rights as guaranteed by the Constitution of the United States.

(p) *Local private agency.* For the purposes of the pass-through requirement of section 223(a)(5), a local private agency is defined as a private non-profit agency or organization that provides program services within an identifiable unit or a combination of units of general local government.

Subpart E—General Conditions and Assurances

§ 31.400 Compliance with statute.

The applicant State must assure and certify that the State and its subgrantees and contractors will comply with applicable provisions of the Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. 90–351, as amended, and with the provisions of the Juvenile Justice and Delinquency Prevention Act of 1974, Pub. L. 93–415, as amended, and the provisions of the current edition of OJP Financial and Administrative Guide for Grants, M7100.1.

§ 31.401 Compliance with other Federal laws, orders, circulars.

The applicant State must further assure and certify that the State and its subgrantees and contractors will adhere to other applicable Federal laws, orders and OMB circulars. These general Federal laws and regulations are described in greater detail in the Financial and Administrative Guide for Grants, M7100.1, and the Formula Grant Application Kit.

§ 31.402 Application on file.

Any Federal funds awarded pursuant to an application must be distributed and expended pursuant to and in accordance with the programs contained in the applicant State's current approved application. Any departures therefrom, other than to the extent permitted by current program and fiscal regulations and guidelines, must be submitted for advance approval by the Administrator of OJJDP.

§ 31.403 Civil rights requirements.

The State assures that it will comply, and that subgrantees and contractors will comply, with all applicable Federal non-discrimination requirements, including:

(a) Section 809(c) of the Omnibus Crime Control and Safe Streets Act as 1968, as amended, and made applicable by section 299(A) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended;

(b) Title VI of the Civil Rights Act of 1964, as amended;

(c) Section 504 of the Rehabilitation Act of 1973, as amended;

(d) Title IX of the Education Amendments of 1972;

(e) The Age Discrimination Act of 1975;

(f) The Department of Justice NonDiscrimination regulations, 28 CFR part 42, subparts C, D, E, and G;

(g) The Department of Justice regulations on disability discrimination, 28 CFR parts 35 and 39; and

(h) Subtitle A, title II of the Americans with Disabilities Act (ADA) of 1990.

Shay Bilchik,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 95–13046 Filed 5–30–95; 8:45 am]

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May 31, 1995

Part III

Department of Education

Federal Pell Grant Program; Need Analysis Methodology for 1996–97 Award Year, Revision; Notice

DEPARTMENT OF EDUCATION

Federal Pell Grant, Federal Perkins Loan, Federal Work-Study, Federal Supplemental Educational Opportunity Grant, Federal Family Education Loan, and William D. Ford Federal Direct Loan Programs; Revision of the Need Analysis Methodology for the 1996–97 Award Year

AGENCY: Department of Education.

ACTION: Notice.

SUMMARY: The Secretary of Education announces the annual update to the tables used in the need analysis methodology that an institution of higher education must use in calculating expected family contributions for the 1996–97 award year under the Federal Pell Grant, campus-based (Federal Perkins Loan, Federal Work-Study, and Federal Supplemental Educational Opportunity Grant), Federal Family Education Loan and William D. Ford Federal Direct Loan programs. The Secretary takes this action under the authority of Title IV of the Higher Education Act of 1965, as amended (HEA).

FOR FURTHER INFORMATION CONTACT: Ms. Edith Bell, Program Specialist, General Provisions Branch, Policy Development Division, U.S. Department of Education, 600 Independence Avenue, S.W. (Room 3053, ROB–3), Washington, DC. 20202–5444, telephone (202) 708–7888. Deaf and hearing impaired individuals may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The need analysis methodology is used to determine student eligibility for assistance under Title IV of the HEA. This methodology, referred to as the Federal Needs Analysis Methodology, is used to calculate the expected family contribution (EFC) for the Federal Pell Grant, the campus-based (Federal Perkins Loan, Federal Work-Study, and Federal Supplemental Educational Opportunity Grant), Federal Family Education Loan, and William D. Ford Federal Direct Loan programs. This methodology is established by statute.

Federal Needs Analysis Methodology

Part F of Title IV of the HEA specifies the criteria, data elements, calculations, and tables for the computation of expected family contributions for the Federal Pell Grant, campus-based, Federal Family Education Loan, and William D. Ford Federal Direct Loan programs. In addition, section 478 requires the Secretary to adjust four of the tables—the Income Protection Allowance, the Adjusted Net Worth of a Business or Farm, the Education Savings and Asset Protection Allowance, and the Assessment Schedules and Rates—each award year to take into account inflation for the 12 months between December 31 of the previous year and December 31 of the current year. The changes are based, in general, upon increases in the Consumer Price Index.

For the award year 1996–97, the Secretary is charged with updating the income protection allowances, adjusted net worth of a business or farm, and the assessment schedules and rates to account for inflation that took place between December 1994 and December 1995. However, since the Secretary must publish these tables before December 1995, the increases in the tables must be based upon a percentage equal to the estimated percentage increase in the Consumer Price Index for all Urban Consumers for 1994. The Secretary estimates that the increase in the Consumer Price Index for all Urban Consumers for the period December 1994 through December 1995 will be 3.0 percent. The updated tables for the 1996–97 award year are set forth in sections 1, 2, and 4.

The Secretary must also revise, for each award year, the table on asset protection allowance as provided for in section 478(d) of the HEA. The Education Savings and Asset Protection Allowance table for the award year 1996–97 has been updated below in section 3.3.

Section 477(b)(5) also requires the Secretary to increase the amount specified for the Employment Expense Allowance to account for inflation based upon increases in the Bureau of Labor Statistics budget of the marginal costs for a two-earner compared to a one-earner family for meals away from home, apparel and upkeep, transportation, and housekeeping services. Therefore, the Secretary is increasing this allowance as described in section 5.

The HEA provides for the following annual updates:

1. Income Protection Allowance

This allowance is the amount of reasonable living expenses that would be associated with the maintenance of an individual or family. The allowance is offset against the family's income and varies by family size. The income protection allowances for parents of dependent students and independent students with dependents other than a spouse for the award year 1996–97 are:

Family size (including student)	Number in College				
	1	2	3	4	5
2	$11,480	$9,510	.....	.....	.....
3	$14,290	$12,340	$10,380	.....	.....
4	$17,650	$15,690	$13,740	$11,770	.....
5	$20,830	$18,860	$16,910	$14,950	$12,990
6	$24,360	$22,400	$20,450	$18,480	$16,530

For each additional family member add $2,750.
For each additional college student subtract $1,950.

2. Adjusted Net Worth (NW) of a Business or Farm

A portion of the full net value of a farm or business is excluded from the calculation of an expected contribution since: (1) The income produced from such assets is already assessed in another part of the formula; and (2) the formula protects a portion of the value of the assets. The portion of these assets included in the contribution calculation is computed according to the following schedule. This schedule is used for parents of dependent students, independent students without dependents other than a spouse, and independent students with dependents other than a spouse.

If the net worth of a business or farm is—	Then the adjusted net worth is:
Less than $1	$0.
1 to $80,000	0+40% of NW.
80,001 to $245,000	32,000+50% of NW over $80,000.
245,001 to $410,000	114,500+60% of NW over $245,000.
410,001 or more	213,500+100% of NW over $410,000.

3. Education Savings and Asset Protection Allowance

This allowance protects a portion of net worth (assets less debts) from being considered available for postsecondary educational expenses. There are three asset protection allowance tables—one for parents of dependent students, one for independent students without dependents other than a spouse, and one for independent students with dependents other than a spouse.

DEPENDENT STUDENTS

If the age of the older parent is	And there are	
	two parents	one parent
		Then the education savings and asset protection allowance is—
25 or less	0	0
26	2,300	1,600
27	4,600	3,300
28	7,000	4,900
29	9,300	6,500
30	11,600	8,200
31	13,900	9,800
32	16,200	11,400
33	18,600	13,100
34	20,900	14,700
35	23,200	16,300
36	25,500	18,000
37	27,800	19,600
38	30,200	21,200
39	32,500	22,900
40	34,800	24,500
41	35,500	25,000
42	36,400	25,600
43	37,300	26,100
44	38,300	26,700
45	39,200	27,200
46	40,300	27,900
47	41,300	28,600
48	42,300	29,300
49	43,700	29,800
50	44,800	30,500
51	45,900	31,300
52	47,400	32,000
53	48,500	33,000
54	50,100	33,700
55	51,600	34,500
56	53,200	35,500
57	54,800	36,400
58	56,500	37,400
59	58,200	38,300
60	60,000	39,400
61	62,100	40,500
62	64,300	41,700
63	66,200	42,900
64	68,400	44,100
65 and older	70,800	45,500

INDEPENDENT STUDENTS WITHOUT DEPENDENTS OTHER THAN A SPOUSE

If the age of the student is	And the student is	
	Married	Single: Then the education savings and asset protection allowance is—
25 or less	0	0
26	2,300	1,600
27	4,600	3,300
28	7,000	4,900
29	9,300	6,500
30	11,600	8,200
31	13,900	9,800
32	16,200	11,400
33	18,600	13,100
34	20,900	14,700
35	23,200	16,300
36	25,500	18,000
37	27,800	19,600
38	30,200	21,200
39	32,500	22,900
40	34,800	24,500
41	35,500	25,000
42	36,400	25,600
43	37,300	26,100
44	38,300	26,700
45	39,200	27,200
46	40,300	27,900
47	41,300	28,600
48	42,300	29,300
49	43,700	29,800
50	44,800	30,500
51	45,900	31,300
52	47,400	32,000
53	48,500	33,000
54	50,100	33,700
55	51,600	34,500
56	53,200	35,500
57	54,800	36,400
58	56,500	37,400
59	58,200	38,300
60	60,000	39,400
61	62,100	40,500
62	64,300	41,700
63	66,200	42,900
64	68,400	44,100
65 and older	70,800	45,500

INDEPENDENT STUDENTS WITH DEPENDENTS OTHER THAN A SPOUSE

If the age of the student is	And the student is	
	Married	Single: Then the education savings and asset protection allowance is—
25 or less	0	0
26	2,300	1,600
27	4,600	3,300
28	7,000	4,900
29	9,300	6,500
30	11,600	8,200
31	13,900	9,800
32	16,200	11,400
33	18,600	13,100
34	20,900	14,700
35	23,200	16,300

INDEPENDENT STUDENTS WITH DEPENDENTS OTHER THAN A SPOUSE—Continued

If the age of the student is	And the student is	
	Married	Single: Then the education savings and asset protection allowance is—
36	25,500	18,000
37	27,800	19,600
38	30,200	21,200
39	32,500	22,900
40	34,800	24,500
41	35,500	25,000
42	36,400	25,600
43	37,300	26,100
44	38,300	26,700
45	39,200	27,200
46	40,300	27,900
47	41,300	28,600
48	42,300	29,300
49	43,700	29,800
50	44,800	30,500
51	45,900	31,300
52	47,400	32,000
53	48,500	33,000
54	50,100	33,700
55	51,600	34,500
56	53,200	35,500
57	54,800	36,400
58	56,500	37,400
59	58,200	38,300
60	60,000	39,400
61	62,100	40,500
62	64,300	41,700
63	66,200	42,900
64	68,400	44,100
65 and older	70,800	45,500

4. Assessment Schedules and Rates

Two separate assessment schedules—one for dependent students, and one for independent students with dependents other than a spouse—are used in determining the expected family contribution toward educational expenses from family financial resources.

For dependent students, the expected parental contribution is derived from an assessment of the parents' adjusted available income (AAI). For independent students with dependents other than a spouse, the expected contribution is derived from an assessment of the family's AAI. The AAI represents a measure of financial strength which considers both income and assets.

INDEPENDENT STUDENTS

If AAI is—	Then the contribution is—
Less than −$3,409	−$750.
$3,409 to $10,300	22% of AAI.
$10,301 to $12,900	$2,266 +25% of AAI over $10,300.
$12,901 to $15,500	$2,916 +29% of AAI over $12,900.
$15,501 to $18,100	$3,670 +34% of AAI over $15,500.
$18,101 to $20,700	$4,554 +40% of AAI over $18,100.
$20,701 or more	$5,594 +47% of AAI over $20,700.

INDEPENDENT STUDENTS WITH DEPENDENTS OTHER THAN A SPOUSE

If AAI is—	Then the contribution is—
Less than −$3,409	−$750.
$3,409 to $10,300	22% of AAI.
$10,301 to $12,900	$2,266 +25% of AAI over $10,300.
$12,901 to $15,500	$2,916 +29% of AAI over $12,900.
$15,501 to $18,100	$3,670 +34% of AAI over $15,500.
$18,101 to $20,700	$4,554 +40% of AAI over $18,100.
$20,701 or more	$5,594 +47% of AAI over $20,700.

5. Employment Expense Allowance

This allowance for employment-related expenses, which is used for the parents of dependent students and for married independent students with dependents, recognizes additional expenses incurred by working spouses and single-parent households. The allowance is based upon the marginal differences in costs for a two-earner family compared to a one-earner family for meals away from home, apparel and upkeep, transportation, and housekeeping services.

The employment expense allowance for parents of dependent students, married independent students without

dependents other than a spouse, and independent students with dependents other than a spouse is the lesser of $2,600 or 35 percent of earned income.

6. Allowance for State and Other Taxes

This allowance for state and other taxes protects a portion of the parents' and student's income from being considered available for postsecondary education expenses. There are four tables for state and other taxes, one each for parents of dependent students, dependent students, independent students without dependents other than a spouse, and independent students with dependents other than a spouse.

PARENTS OF DEPENDENT STUDENTS

If parents' State or territory of residence is	And parents' total income is—	
	less than $15,000 or	$15,000 or more
		Then the percentage is—
Wyoming, Tennessee, Nevada, Alaska, Texas	3	2
Louisiana, Florida, Washington, South Dakota	4	3
Alabama, Mississippi	5	4
North Dakota, Illinois, Connecticut, New Mexico, Missouri, West Virginia, Arizona, Indiana, Oklahoma, Arkansas	6	5
New Hampshire, Pennsylvania, Colorado, Georgia, Kansas, Kentucky, Idaho	7	6
North Carolina, Virginia, Delaware, South Carolina, Ohio, Utah, Nebraska, Montana, California, New Jersey, Iowa, Vermont, Hawaii	8	7
Massachusetts, Rhode Island, Michigan, Minnesota, Maine, Maryland	9	8
District of Columbia, Wisconsin, Oregon	10	9
New York	11	10
Other	4	3

INDEPENDENT STUDENTS WITH DEPENDENTS OTHER THAN A SPOUSE

If student's State or territory of residence is	And student's total income is—	
	less than $15,000 or	$15,000 or more
		Then the percentage is—
Wyoming, Tennessee, Nevada, Alaska, Texas	3	2
Louisiana, Florida, Washington, South Dakota	4	3
Alabama, Mississippi	5	4
North Dakota, Illinois, Connecticut, New Mexico, Missouri, West Virginia, Arizona, Indiana, Oklahoma, Arkansas	6	5
New Hampshire, Pennsylvania, Colorado, Georgia, Kansas, Kentucky, Idaho	7	6
North Carolina, Virginia, Delaware, South Carolina, Ohio, Utah, Nebraska, Montana, California, New Jersey, Iowa, Vermont, Hawaii	8	7
Massachusetts, Rhode Island, Michigan, Minnesota, Maine, Maryland	9	8
District of Columbia, Wisconsin, Oregon	10	9
New York	11	10
Other	4	3

DEPENDENT STUDENTS

If student's State or territory of residence is	The percentage is—
Alaska, Texas, South Dakota, Wyoming, Washington, Tennessee, Nevada	0
Florida, New Hampshire	1
Connecticut, Louisiana, Illinois, North Dakota	2
Mississippi, Arizona, Alabama, Pennsylvania, New Jersey, Missouri	3
Nebraska, Indiana, Colorado, New Mexico, Oklahoma, Kansas, West Virginia, Rhode Island, Virginia, Georgia, Arkansas, Vermont, Michigan	4
Montana, Idaho, Utah, Kentucky, Massachusetts, California, North Carolina, South Carolina, Ohio, Iowa, Delaware, Maine, Wisconsin	5
Oregon, Maryland, Minnesota, Hawaii	6
District of Columbia, New York	7
Other	2

INDEPENDENT STUDENTS WITHOUT DEPENDENTS OTHER THAN A SPOUSE

If student's State or territory of residence is	The percentage is—
Alaska, Texas, South Dakota, Wyoming, Washington, Tennessee, Nevada	0
Florida, New Hampshire	1
Connecticut, Louisiana, Illinois, North Dakota	2
Mississippi, Arizona, Alabama, Pennsylvania, New Jersey, Missouri	3
Nebraska, Indiana, Colorado, New Mexico, Oklahoma, Kansas, West Virginia, Rhode Island, Virginia, Georgia, Arkansas, Vermont, Michigan	4
Montana, Idaho, Utah, Kentucky, Massachusetts, California, North Carolina, South Carolina, Ohio, Iowa, Delaware, Maine, Wisconsin	5
Oregon, Maryland, Minnesota, Hawaii	6
District of Columbia, New York	7
Other	2

(Catalog of Federal Domestic Assistance Numbers: 84.007 Federal Supplemental Educational Opportunity Grant; 84.032 Federal Family Education Loan Program; 84.033 Federal Work-Study Program; 84.038 Federal Perkins Loan Program; 84.063 Federal Pell Grant Program; William D. Ford Federal Direct Loan Program, 84.268)

Dated: May 24, 1995.

David A. Longanecker

Assistant Secretary for Postsecondary Education

[FR Doc. 95–13199 Filed 5–30–95; 8:45 am]

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Wednesday
May 31, 1995

Part IV

Department of Housing and Urban Development

Office of the Secretary

Regulatory Waiver Requests Granted; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[FR-3864-N-01]

Notice of Regulatory Waiver Requests Granted

AGENCY: Office of the Secretary, HUD.

ACTION: Public Notice of the Granting of Regulatory Waivers. Request: October 1, 1994 through December 31, 1994.

SUMMARY: Under the Department of Housing and Urban Development Reform Act of 1989 (Reform Act), the Department (HUD) is required to make public all approval actions taken on waivers of regulations. This notice is the sixteenth in a series, being published on a quarterly basis, providing notification of waivers granted during the preceding reporting period. The purpose of this notice is to comply with the requirements of section 106 of the Reform Act.

FOR FURTHER INFORMATION CONTACT: For general information about this Notice, contact Camille E. Acevedo, Assistant General Counsel for Regulations, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410; telephone 202–708–3055; TDD: (202) 708–3259. (These are not toll-free numbers.) For information concerning a particular waiver action, about which public notice is provided in this document, contact the person whose name and address is set out, for the particular item, in the accompanying list of waiver-grant action.

SUPPLEMENTARY INFORMATION: As part of the Housing and Urban Development Reform Act of 1989, the Congress adopted, at HUD's request, legislation to limit and control the granting of regulatory waivers by the Department. Section 106 of the Act (Section 7(q)(3)) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(q)(3), provides that:

1. Any waiver of a regulation must be in writing and must specify the grounds for approving the waiver;

2. Authority to approve a waiver of a regulation may be delegated by the Secretary only to an individual of Assistant Secretary rank or equivalent rank, and the person to whom authority to waive is delegated must also have authority to *issue* the particular regulation to be waived;

3. Not less than quarterly, the Secretary must notify the public of all waivers of regulations that the Department has approved, by publishing a Notice in the **Federal Register**. These Notices (each covering the period since the most recent previous notification) shall:

a. Identify the project, activity, or undertaking involved;

b. Describe the nature of the provision waived, and the designation of the provision;

c. Indicate the name and title of the person who granted the waiver request;

d. Describe briefly the grounds for approval of the request;

e. State how additional information about a particular waiver grant action may be obtained.

Section 106 also contains requirements applicable to waivers of HUD handbook provisions that are not relevant to the purposes of today's document.

Today's document follows publication of HUD's Statement of Policy on Waiver of Regulations and Directives Issued by HUD (56 FR 16337, April 22, 1991). This is the sixteenth Notice of its kind to be published under Section 106. It updates HUD's waiver-grant activity from October 1, 1994 through December 31, 1994.

For ease of reference, waiver requests grant by departmental officials authorized to grant waivers are listed in a sequence keyed to the section number of the HUD regulation involved in the waiver action. For example, a waiver-grant action involving exercise of authority under 24 CFR 24.200 (involving the waiver of a provision in Part 24) would come early in the sequence, while waivers in the Section 8 and Section 202 programs (24 CFR Chapter VIII) would be among the last matters listed. Where more than one regulatory provision is involved in the grant of a particular waiver request, the action is listed under the section number of the first regulatory requirement in Title 24 that is being waived as part of the waiver-grant action. (For example, a waiver of both § 811.105(b) and § 811.107(a) would appear sequentially in the listing under § 811.105(b).) Waiver-grant actions involving the same initial regulatory citation are in time sequence beginning with the earliest-dated waiver grant action.

Should the Department receive additional reports of waiver actions taken during the period covered by this report before the next report is published, the next updated report will include these earlier actions, as well as those that occur between April 1, 1995 through June 30, 1995.

Accordingly, information about approved waiver requests pertaining to regulations of the Department is provided in the Appendix that follows this Notice.

Dated: May 22, 1995.

Henry G. Cisneros,

Secretary.

Appendix—Listing of Waivers of Regulatory Requirements Granted by Officers of the Department of Housing and Urban Development October 1, 1994 through December 31, 1994

Note to Reader: The person to be contacted for additional information about these waiver-grant items in this listing is: James B. Mitchell, Director, Financial Services Division, Office of Housing, Department of Housing and Urban Development, 470 L'Enfant Plaza East, room 3119, Washington, DC 20024, Phone: (202) 755–7450.

1. REGULATION: 24 CFR Sections 811.106(d) and 811.107(d) of 1977 Regulations.

PROJECT/ACTIVITY: The Louisville Housing Authority refunding of bonds which financed an uninsured Section 8 assisted project, Carrousel Apartments, Project Number 083–35365.

NATURE OF REQUIREMENT: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation.

GRANTED BY: Nicolas P. Retsinas, Assistant Secretary for Housing-FHA Commissioner

DATE GRANTED: December 28, 1994

REASONS WAIVED: The Part 811 regulations cited were intended for original bond financing transactions and do not fit the terms of refunding transactions. This refunding proposal was approved by HUD on December 1, 1994. Refunding bonds have been priced to an average yield of 7.49%. The tax-exempt refunding bond issue of $6,120,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 11%–12% at the call date in 1994 with tax-exempt bonds at a substantially lower interest rate. The refunding will also substantially reduce the mortgage interest rate at expiration of the HAP contract from 12% to 8.28%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower income families after subsidies expire, a priority HUD objective.

2. REGULATION: 24 CFR Sections 811.106(d) and 811.107(d) of 1977 Regulations.

PROJECT/ACTIVITY: Cuyahoga Metropolitan (Ohio) HA refunding of bonds which financed an uninsured Section 8 assisted project: Ambleside Elderly Apartments, HUD Project Number OH16–0013–012, in Cleveland, Ohio.

NATURE OF REQUIREMENT: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation.

GRANTED BY: Nicolas P. Retsinas, Assistant Secretary for Housing-FHA Commissioner

DATE GRANTED: December 28, 1994

REASONS WAIVED: The Part 811 regulations cited above prohibited refundings and required that excess reserve balances be used for project purposes. The issuer has requested HUD permission to release excess reserve balances from the 1977 Trust Indenture for use in providing newly constructed or rehabilitated housing for low-income families. Issuance of 1994 refunding bonds under Section 103 of the Tax Code will not reduce project debt service nor generate Section 8 savings. The Housing Authority will agree to extend low-income occupancy in this project for 10 years after expiration of the Housing Assistance Payments Contract.

3. REGULATION: 24 CFR Sections 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

PROJECT/ACTIVITY: Cuyahoga County (Ohio) Metropolitan Housing Authority refunding of bonds which financed Section 8 assisted projects, Rock Glen and Chester Village Apartments (FHA No. 042–35394 and 042–35407).

NATURE OF REQUIREMENT: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

GRANTED BY: Nicolas P. Retsinas, Assistant Secretary for Housing-Federal Housing Commissioner

DATE GRANTED: October 19, 1994

REASONS WAIVED: The Part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refunding bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR Section 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on October 12, 1994. Refunding bonds have been priced to an average yield of 7.12%. The tax-exempt refunding bond issue of $3,110,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 9.25%–10.5% at the call date with tax-exempt bonds yielding 7.12%. The refunding will also substantially reduce the FHA mortgage interest rate at expiration of the HAP contract from 10.5% and 9.75% to 8.5% and 7.25%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for low-income families after subsidies expire, a priority HUD objective.

4. REGULATION: 24 CFR Sections 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

of multifamily housing revenue bonds from Federal income taxation.

GRANTED BY: Nicolas P. Retsinas, Assistant Secretary for Housing-FHA Commissioner

DATE GRANTED: December 28, 1994

REASONS WAIVED: The Part 811 regulations cited above prohibited refundings and required that excess reserve balances be used for project purposes. The issuer has requested HUD permission to release excess reserve balances from the 1977 Trust Indenture for use in providing newly constructed or rehabilitated housing for low-income families. Issuance of 1994 refunding bonds under Section 103 of the Tax Code will not reduce project debt service nor generate Section 8 savings. The Housing Authority will agree to extend low-income occupancy in this project for 10 years after expiration of the Housing Assistance Payments Contract.

3. REGULATION: 24 CFR Sections 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

PROJECT/ACTIVITY: Cuyahoga County (Ohio) Metropolitan Housing Authority refunding of bonds which financed Section 8 assisted projects, Rock Glen and Chester Village Apartments (FHA No. 042–35394 and 042–35407).

NATURE OF REQUIREMENT: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

GRANTED BY: Nicolas P. Retsinas, Assistant Secretary for Housing-Federal Housing Commissioner

DATE GRANTED: October 19, 1994

REASONS WAIVED: The Part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refunding bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR Section 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on October 12, 1994. Refunding bonds have been priced to an average yield of 7.12%. The tax-exempt refunding bond issue of $3,110,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 9.25%–10.5% at the call date with tax-exempt bonds yielding 7.12%. The refunding will also substantially reduce the FHA mortgage interest rate at expiration of the HAP contract from 10.5% and 9.75% to 8.5% and 7.25%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for low-income families after subsidies expire, a priority HUD objective.

4. REGULATION: 24 CFR Sections 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

PROJECT/ACTIVITY: Berne, Indiana, HDC refunding of bonds which financed Section 8 assisted project, the Swiss Meadows Apartments (FHA No. 073–35378).

NATURE OF REQUIREMENT: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

GRANTED BY: Nicolas P. Retsinas, Assistant Secretary for Housing-Federal Housing Commissioner

DATE GRANTED: October 24, 1994

REASONS WAIVED: The Part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refunding bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR Section 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on September 8, 1994. Refunding bonds have been priced to an average yield of 7.45%. The tax-exempt refunding bond issue of $1,875,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 10¼% at the call date with tax-exempt bonds yielding 7.45%. The refunding will also substantially reduce the FHA mortgage interest rate at expiration of the HAP contract from 10.5% and 8.3%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for low-income families after subsidies expire, a priority HUD objective.

5. REGULATION: 24 CFR Sections 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

PROJECT/ACTIVITY: Greensboro, North Carolina HDC refunding of bonds which financed two Section 8 assisted projects, Gatewood Manor Apartments, FHA No. 053–35404 and Laurence Manor, FHA No. 053–35427.

NATURE OF REQUIREMENT: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

GRANTED BY: Nicolas P. Retsinas, Assistant Secretary for Housing-Federal Housing Commissioner

DATE GRANTED: October 25, 1994

REASONS WAIVED: The Part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refunding bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR Section 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on August 23, 1994. Refunding bonds have been priced to an average yield of 6.65%. The tax-exempt refunding bond issue of $1,910,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 11.8% at the call date in 1994 with tax-exempt bonds yielding 6.65%. The refunding will also substantially reduce project debt service at expiration of the HAP contracts, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower income families after subsidies expire, a priority HUD objective.

6. REGULATION: 24 CFR Sections 811.107(a)(2), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

PROJECT/ACTIVITY: The Housing Finance Corporation of Paterson, New Jersey refunding of bonds which financed a Section 8 assisted project, Aspen-Hamilton Apartments, FHA No. 031–35233.

NATURE OF REQUIREMENT: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

GRANTED BY: Nicolas P. Retsinas, Assistant Secretary for Housing-Federal Housing Commissioner

DATE GRANTED: October 25, 1994

REASONS WAIVED: The Part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refunding bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR Section 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on August 9, 1994. Refunding bonds have been priced to an average yield of 7.25%. The tax-exempt refunding bond issue of $3,175,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 10.5% at the call date in 1994 with tax-exempt bonds at a substantially lower interest rate. The refunding will also substantially reduce the FHA mortgage interest rate at expiration of the HAP contract from 10.75% to 7.9%, thus reducing FHA mortgage insurance risk, and will provide funds of $50,000 for project repairs. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for low-income families after subsidies expire, a priority HUD objective.

7. REGULATION: 24 CFR Sections 811.107(a)(2), 811.107(b), 811.108(A)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

PROJECT/ACTIVITY: The Akron (Ohio) Metropolitan Housing Authority refunding of bonds which financed a Section 8 assisted project, Briarwood Estates Apartments, FHA No. 042–35337.

NATURE OF REQUIREMENT: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

GRANTED BY: Nicolas P. Retsinas, Assistant Secretary for Housing-Federal Housing Commissioner

DATE GRANTED: November 10, 1994

REASONS WAIVED: The Part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refunding bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR Section 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on August 23, 1994. Refunding bonds have been priced to an average yield of 7.19%. The tax-exempt refunding bond issue of $3,750,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 9.5% at the call date in 1994 with tax-exempt bonds at a substantially lower interest rate. The refunding will also substantially reduce the FHA mortgage interest rate at expiration of the HAP contract from 9.375% to 6.52%, thus reducing FHA mortgage insurance risk, and will provide funds of $44,544 for project repairs. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for low-income families after subsidies expire, a priority HUD objective.

8. REGULATION: 24 CFR Sections 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

PROJECT/ACTIVITY: The Raleigh (North Carolina) Housing Authority refunding of bonds which financed a Section 8 assisted project, Pine Village Apartments FHA No. 053–35551.

NATURE OF REQUIREMENT: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

GRANTED BY: Nicolas P. Retsinas, Assistant Secretary for Housing-Federal Housing Commissioner

DATE GRANTED: November 16, 1994

REASONS WAIVED: The Part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refunding bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR Section 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on February 7, 1994. Refunding bonds have been priced to an average yield of 7.41%. The tax-exempt refunding bond issue of $1,300,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 10.45% at the call date in 1994 with tax-exempt bonds at a substantially lower interest rate. The refunding will also substantially reduce the FHA mortgage interest rate at expiration of the HAP contract from 10.73% to 7.9%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for low-income families after subsidies expire, a priority HUD objective.

9. REGULATION: 24 CFR Sections 811.107(a)(2), 811.107(b), 811.108(A)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

PROJECT/ACTIVITY: The Elizabeth City (North Carolina) Housing Authority refunding of bonds which financed a Section 8 assisted project, Virginia Dare Apartments (FHA No. 053–35371).

NATURE OF REQUIREMENT: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

GRANTED BY: Nicolas P. Retsinas, Assistant Secretary for Housing-Federal Housing Commissioner

DATE GRANTED: December 27, 1994

REASONS WAIVED: The Part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refunding bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR Section 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on December 20, 1994. Refunding bonds have been priced to an average yield of 7.11%. The tax-exempt refunding bond issue of $2,150,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 11.9% at the call date in 1994 with tax-exempt bonds at a substantially lower interest rate. The refunding will also substantially reduce the FHA mortgage interest rate at expiration of the HAP contract, from(12% to 7.87%, thus reducing FHA mortgage insurance risk, and will provide funds of $198,000 for project repairs. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for low-income families after subsidies expire, a priority HUD objective.

10. REGULATION: 24 CFR Sections 811.107(a)(2), 811.107(b), 811.108(A)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

PROJECT/ACTIVITY: The Erie County (Pennsylvania) Housing Authority refunding of bonds which financed a Section 8 assisted project, Edinlake Apartments (FHA No. 033–35148).

NATURE OF REQUIREMENT: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

GRANTED BY: Nicolas P. Retsinas, Assistant Secretary for Housing-Federal Housing Commissioner

DATE GRANTED: December 28, 1994

REASONS WAIVED: The Part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refunding bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR Section 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on December 20, 1994. Refunding bonds have been priced to an average yield of 7.15%. The tax-exempt refunding bond issue of $1,410,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 11.5% at the call date in 1994 with tax-exempt bonds at a substantially lower interest rate. The refunding will also substantially reduce the FHA mortgage interest rate at expiration of the HAP contract from 11.78% to 7.6%, thus reducing FHA mortgage insurance risk, and will provide funds of $100,000 for project repairs. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for low-income families after subsidies expire, a priority HUD objective.

11. REGULATION: 24 CFR Sections 811.114(d), 811.115(b), 811.117.

PROJECT/ACTIVITY: The Housing Finance Corporation of Newark, New Jersey refunding of bonds which financed a Section 8 assisted project, Broadway Manor Apartments (FHA No. 031–35235).

NATURE OF REQUIREMENT: The Regulations set conditions under which HUD may grant a Section 11(h) letter of exemption of multifamily housing revenue bonds from Federal income taxation.

GRANTED BY: Nicolas P. Retsinas, Assistant Secretary for Housing-Federal Housing Commissioner

DATE GRANTED: November 16, 1994

REASONS WAIVED: The Part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions under Section 103 of the Tax Code. This refunding proposal was approved by HUD on October 21, 1994. Refunding bonds have been priced to an average yield of 7.51%. The tax-exempt refunding bond issue of $3,824,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 10.8% at the call date in 1994 with tax-exempt bonds at a substantially lower interest rate. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for low-income families after subsidies expire, a priority HUD objective.

Note to the reader: The person to be contacted for additional information about these waiver-grant items is:

Debbie Ann Wills, Field Management Officer, U.S. Department of Housing & Urban Development, Office of Community Planning and Development, 451 7th Street, S.W., Washington, D.C. 20410–7000, Telephone: (202) 708–2565.

12. REGULATION: CFR 51.102(e)(3) and 51.104(b)(2)

PROJECT/ACTIVITY: Leland Apartments a Section 811 project containing 24 units designed for the handicapped.

NATURE OF REQUIREMENT: The regulations require that for a project exposed to unacceptable noise levels an environmental impact statement must be conducted.

GRANTED BY: Andrew Cuomo, Assistant Secretary for Community Planning and Development

DATE GRANTED: October 14, 1994.

REASONS WAIVED: It was determined that the project met the requirements of Section 51.104(b)(2) of the noise regulation in that noise is the only environmental issue and no outdoor noise sensitive use will take place.

13. REGULATION: 24 CFR 91.60(c)

NATURE OF REQUIREMENT: The Assistant Secretary used the waiver authority of 24 CFR 91.99 to waive the provision of 24 CFR 91.60 (c) that requires a 30-day public comment period on the proposed CHAS for all FY 1995 New York HUD-administered Small Cities applicants.

GRANTED BY: Andrew Cuomo, Assistant Secretary for Community Planning and Development

DATE GRANTED: December 5, 1994

REASONS WAIVED: The waiver will give Small Cities applicants time to prepare the required CHAS and apply for funding under the Small Cities Program in a more timely manner.

14. REGULATION: 24 CFR 92.214(a)(8)

PROJECT/ACTIVITY: The City of Homestead, Florida requested a waiver to allow HOME funds to be used to reimburse the City's general fund for the cost of land which it had previously donated to the Homestead Housing Authority.

NATURE OF REQUIREMENT: The new regulations at 92.214(a)(8) prohibit the use of HOME funds "to pay for the acquisition of property owned by the participating jurisdiction."

GRANTED BY: Andrew Cuomo, Assistant Secretary for Community Planning and Development

DATE GRANTED: November 18, 1994

REASONS WAIVED: The waiver was granted because the City of Homestead was in a unique situation due to Hurricane Andrew and the waiver was granted for good cause.

15. REGULATION: 24 CFR 92.216 and 24 CFR 92.252(a)(3)

PROJECT/ACTIVITY: The City of Santa Monica is requesting a waiver of 24 CFR 92.216 and 92.252(a)(3) of the HOME program regulations.

NATURE OF REQUIREMENT: The regulations at 92.216 and 92.252(a)(3) state income targeting requirements allow HOME funds to be used only in units where the occupants are or will be low-income families.

GRANTED BY: Andrew Cuomo, Assistant Secretary for Community Planning and Development

DATE GRANTED: December 27, 1994

REASON WAIVED: The City of Santa Monica determined that many of the tenants whose homes were damaged by the earthquake were low-income but not all those displaced were low-income. To further the completion of the project and to allow former tenants to return to the project the income determination requirements of the HOME program were waived.

16. REGULATION: 24 CFR 92.221(a)(3)

PROJECT/ACTIVITY: The State of California requested a waiver of the match credit under 24 CFR 92.221(a)(3).

NATURE OF REQUIREMENT: The regulations at 24 CFR 92.221(a)(3) require a match of HOME funds with local funds.

GRANTED BY: Andrew Cuomo, Assistant Secretary of Community Planning and Development

DATE GRANTED: October 14, 1994

REASON WAIVED: Good cause was found to grant a waiver of 24 CFR 92.221(a)(3) for HOME projects owned by California non-profit organizations to allow the present discounted value of the welfare tax exemption to be counted up front as match for the HOME program.

17. REGULATION: 24 CFR 92.222(b)

PROJECT/ACTIVITY: The State of Alabama requested that the match reduction made because the area was declared a natural disaster area be extended for Fiscal 1995.

NATURE OF REQUIREMENT: Under the HOME Program, each participating jurisdiction must match its allocation of HOME Program funds. Jurisdictions designated federal "natural disaster areas" are given relief from the match requirements for one year.

GRANTED BY: Andrew Cuomo, Assistant Secretary for Community Planning and Development

REASON WAIVED: To relieve the jurisdiction of coming up with matching funds that would delay the use of HOME funds in an emergency situation.

18. REGULATION: 24 CFR 92.251(a)

PROJECT/ACTIVITY: The State of Arizona requested a waiver for Navajo County to permit rehabilitation which utilizes HOME funds, without bringing the unit into compliance with HUD housing quality standards (HQS) due to remote location and/or inaccessible utilities.

NATURE OF REQUIREMENT: Section 92.251(a) provides that housing assisted with HOME funds meet, at a minimum, HUD housing quality standards, and provides other minimum standards for substantial rehabilitation and new construction.

GRANTED BY: Andrew Cuomo, Assistant Secretary for Community Planning and Development

DATE GRANTED: November 18, 1994

REASON WAIVED: The waiver was granted because housing stock and cultural conditions are quite different in the remote area of the Navajo County and it would be prohibitively expensive to meet HQS. This waiver applies only to those instances where rehabilitation will not bring the unit to the level of HQS requirements due to the remote location and/or inaccessibility of utilities.

19. REGULATION: 24 CFR 92.252(a)(2)

NATURE OF REQUIREMENT: Developers of the Spring Homes Project requested a waiver of the HOME Program rent limitations.

GRANTED BY: Andrew Cuomo, Assistant Secretary for Community Planning and Development

DATE GRANTED: December 27, 1994

REASONS WAIVED: The Department recognizes that a difference exists between the rent requirement of the HOME program and the project-based rent structure of the Section 811 program consequently it was determined that there was good cause to waive the 24 CFR 92.252(a)(2).

20. REGULATION: 24 CFR 92.502(g)

PROJECT/ACTIVITY: The State of Rhode Island is requesting a waiver of Section 92.502(g) of the HOME program regulations on behalf of the City of Providence.

NATURE OF REQUIREMENT: The regulations at 92.502(g) state that a State and local participating jurisdiction (PJ) may jointly fund a project within the boundaries of the PJ, however, the State must designate the local PJ as a state recipient and that recipient must set up the project on the Cash and Management Information System.

GRANTED BY: Andrew Cuomo, Assistant Secretary for Community Planning and Development

DATE GRANTED: November 17, 1994

REASONS WAIVED: Because the State is responsible for overall administration of both projects and the bulk of the financing is from the State it is more reasonable for the State to set up the project on the CMI system. It was determined that failure to grant the waiver would adversely impact the purposes of Title II of the National Affordable Housing Act.

21. REGULATION: 24 CFR 291.400

PROJECT/ACTIVITY: The Anoka County Community Action Program requested a waiver of the 24 month residency for a tenant in a single family property leased under the single family property disposition homeless program.

NATURE OF THE REQUIREMENT: The regulations at 291.400 prohibit a nonprofit organization or a community participating in the Single Family Property Disposition Leasing Program from extending a lease to the same tenant for a period beyond 24 months.

GRANTED BY: Andrew Cuomo, Assistant Secretary for Community Planning and Development

DATED GRANTED: October 27, 1994

REASONS WAIVED: The waiver will allow a formerly homeless family with three minor children more time to find permanent housing.

22. REGULATION: 24 CFR 511.76(b) and 24 CFR 92.220(a)(1)(i)

PROJECT/ACTIVITY: The City of Hickory North Carolina requested a waiver of program closeout requirements of the Rental Rehabilitation program.

NATURE OF REQUIREMENT: The regulations at 24 CFR 511.76(h) and the HOME match requirements of 24 CFR 92.220(a)(1)(i) state that program income from Rental Rehabilitation grant can only be used as HOME match only after closeout of the applicable Rental Rehabilitation grant.

GRANTED BY: Andrew Cuomo, Assistant Secretary for Community Planning and Development

DATE GRANTED: November 1994

REASONS WAIVED: The North Carolina Housing Finance Agency (NCHFA), the Rental Rehabilitation grantee, had not yet met the requirements for program closeout. However, the City of Hickory, as a subrecipient of the State, has closed out all of its RRP grants and was receiving program income from them. The waiver allowed the City to use its program income to provide affordable rental housing to low-income residents.

23. REGULATION: 24 CFR 570.200(h)

PROJECT/ACTIVITY: The City of West Allis, Wisconsin requested a waiver of 24 CFR 570.200(h) regarding reimbursement of pre-agreement costs for the Veteran's Park Redevelopment Project.

NATURE OF REQUIREMENT: Under the regulations, a locality is precluded from obligating CDBG funds before grant award.

GRANTED BY: Andrew Cuomo, Assistant Secretary for Community Planning and Development

DATE GRANTED: December 6, 1994

REASONS WAIVED: HUD determined that failure to grant the waiver would cause hardship and adversely affect the purposes of the Act. The waiver of the limitations on pre-agreement costs at 24 CFR 570.200(h) will permit the reimbursement of local funds for the Veteran's Park Redevelopment Project with FY 1995 and 1996 CDBG funds.

24. REGULATION: 24 CFR 570.208(a)(3)

PROJECT/ACTIVITY: The City of Oakland, California requested a waiver of the CDBG regulations at 24 CFR 570.208(a)(3).

NATURE OF THE REQUIREMENT: The regulations at 24 CFR 570.208(a)(3) require, as a general rule, that CDBG-assisted housing structures principally benefit low- and moderate-income households.

GRANTED BY: Andrew Cuomo, Assistant Secretary for Community Planning and Development

DATE GRANTED: November 18, 1994

REASONS WAIVED: The waiver would allow less than 100 percent of single family homes at a 36-unit Planned Unit Development to be sold to low- and moderate-income households. The Department has determined that the City has demonstrated that application of 24 CFR 570.208(a)(3) would create undue hardship and adversely affect the purposes of the Act because it would impose an economic hardship on low- and moderate-income buyers other than the number to be subsidized.

25. REGULATION: 24 CFR 570.208(a)(3)

PROJECT/ACTIVITY: The City of Dallas, Texas requested a waiver of the CDBG regulations at 24 CFR 570.208(a)(3)

NATURE OF REQUIREMENT: The regulations at 24 CFR 570.208(a)(3) require, as a general rule, that CDBG-assisted housing structures principally benefit low- and moderate-income households.

GRANTED BY: Andrew Cuomo, Assistant Secretary for Community Planning and Development

DATE GRANTED: November 18, 1994

REASON WAIVED: The waiver would allow less than 51 percent low- and moderate-income occupancy of 3 projects rehabilitated through the Section 108 program, as long as the percentage of Section 108 funds applied to each project will not constitute a greater percentage of funds than the percentage of units occupied by low- and moderate-income households.

26. REGULATION: 24 CFR 576.55(b)

PROJECT/ACTIVITY: The City of Binghamton, New York requested a waiver of the Emergency Shelter Grants regulations at 24 CFR 576.21.

NATURE OF REQUIREMENT. The community requested a waiver of the cap of essential services placed on ESG funds.

GRANTED BY: Andrew Cuomo, Assistant Secretary for Community Planning and Development

DATE GRANTED: December 27, 1994

REASONS WAIVED: Under the Stewart B. McKinney Homeless Assistance Act, amended by the National Affordable Housing Act, the 30 percent cap on essential services may be waived if the grantee "demonstrates that the other (eligible activities under the program are already being carried out in the locality with other resources." The City provided an analysis that demonstrated that other categories of ESG activities will be carried out locally with other resources, therefore, it was determined that the waiver was appropriate.

27. REGULATION: 24 CFR 576.55(b)(1)

PROJECT/ACTIVITY: The City of Cleveland Ohio requested a waiver of the Emergency Shelter Grants regulations at 24 CFR 576.55(b)(1).

NATURE OF THE REQUIREMENT: The regulations at 24 CFR 576.55(b)(1) require that the city obligate its current year's ESG grant within 180 days.

GRANTED BY: Andrew Cuomo, Assistant Secretary for Community Planning and Development

DATE GRANTED: November 18, 1994

REASONS WAIVED: The City entered into a contract with a nonprofit agency to develop a program design and business plan to implement the continuum of care approach to serving the homeless. Budgetary details of the contract were not finalized by the end of the obligation deadline. HUD determined that enforcing the regulatory requirements would cause undue hardship on the grantee and adversely affect the purposes of the ESG program.

28. REGULATION: 24 CFR 576.55(b)(1) and 24 CFR 576.21

PROJECT/ACTIVITY: The State of Massachusetts requested a waiver of the Emergency Shelter Grants regulations at 24 CFR 576.21.

NATURE OF REQUIREMENT: The community requested a waiver of the cap of essential services placed on ESG funds.

GRANTED BY: Andrew Cuomo, Assistant Secretary for Community Planning and Development

DATE GRANTED: November 9, 1994

REASONS WAIVED: Under the Stewart B. McKinney Homeless Assistance Act, amended by the National Affordable Housing Act, the 30 percent cap on essential services may be waived if the grantee "demonstrates that the other eligible activities under the program are already being carried out in the locality with other resources." The State certified that its own shelters and nonprofit shelters have developed sufficient capacity to provide for every family that needs shelter, therefore, it was determined that the waiver was appropriate.

29. REGULATION: 24 CFR 576.55(b)(2) and 24 CFR 576.21

PROJECT/ACTIVITY: Jersey City, New Jersey requested a waiver of the requirement to spend its ESG funds within 24 months of grant award. The community also requested a waiver of the cap of essential services placed on ESG funds.

NATURE OF REQUIREMENT: The regulations at 24 CFR 576.55 state that each formula city or county must spend all its ESG grant amount within 24 months of the grant awarded by HUD. The Stewart B. McKinney Homeless Assistance Act imposes a cap on ESG expenditures for essential services.

GRANTED BY: Andrew Cuomo, Assistant Secretary for Community Planning and Development

DATE GRANTED: October 25, 1994

REASONS WAIVED: The two waivers were granted to further the purposes of the Act. Because ESG monies were returned to the line-of-credit, the time extension waiver was granted. The essential services waiver was granted because the city could demonstrate that the other eligible activities under the program are already being carried out in the locality with other resources.

30. REGULATION: 24 CFR 808.408(b)

PROJECT/ACTIVITY: The Allen Metropolitan Housing Authority of the State of Ohio requested a waiver which would allow the PHA to utilize a gross rent for one of its SRO projects that would exceed the applicable Fair Market Rent limitation permitted in its agreement with HUD.

NATURE OF REQUIREMENT: The SRO regulations at 24 CFR 882.408(b) state that the initial gross rent for any project must not exceed the moderate rehabilitation FMR applicable to the unit on the date the agreement is executed.

GRANTED BY: Andrew Cuomo, Assistant Secretary for Community Planning and Development

DATE GRANTED: November 21, 1994

REASON WAIVED: It was determined that the PHA had taken all reasonable actions to reduce the gross rents to within the applicable FMR. So for project development to proceed, the FMR was increased beyond the amount stated in the agreement.

Note to Reader: The person to be contacted for additional information about the waiver-grant items in this listing: Gary VanBuskirk, Director Homeownership Division, Office of Resident Initiatives, Department of Housing and Urban Development, 451 Seventh Street, S.W., Room 4112, Washington, D.C. 20410, Phone: (202) 708–4233, (This is not a toll-free number).

31. REGULATION: HOPE for Public and Indian Housing Homeownership (HOPE 1) Program, Guidelines, Section 301(b)(3) as published on January 14, 1992 (57 FR 1522).

PROJECT/ACTIVITY: To permit a HOPE 1 mini-planning grantee, the Nashua, New Hampshire Housing Authority (NHA), a time extension to carry out the activities specified in its grant agreement. This extension would be of benefit to the residents participating in homeownership planning under its HOPE 1 mini-planning grant.

NATURE OF REQUIREMENT: Section 301(b)(3) of the HOPE 1 Program Guidelines limits a HOPE 1 mini-planning grantee to carrying out activities funded under its grant within eighteen (18) months of the effective date of the mini-planning grant agreement.

GRANTED BY: Joseph Shuldiner, Assistant Secretary for Public and Indian Housing

DATE GRANTED: October 17, 1994

REASON WAIVED: Pursuant to Section 901 of the HOPE 1 Guidelines, a regulatory provision that is "not otherwise required by law" may be waived by the Assistant Secretary for Public and Indian Housing upon a determination of good cause, and upon documentation of the pertinent facts and grounds supporting the waiver.

Good cause was exhibited as follows:

The authority proposed to utilize unobligated funds for a Career Path Program in conjunction with Girl's Inc., N.H. Vocational Technical College and the N.H. Job Training Partnership Council for the residents of their public housing projects. They have taken great care in planning properly to insure that the unobligated funds provide maximum benefits as well as an excellent opportunity for resident self-sufficiency. The NHA will submit a request to revise its budget allocation to conform to the proposed additional activities. Further action on the grant, however, was contingent on the extension being granted.

32. REGULATION: HOPE for Public and Indian Housing Homeownership (HOPE 1) Program, Guidelines, Section 301(b)(3) as published on January 14, 1992 (57 FR 1522).

PROJECT/ACTIVITY: To permit a HOPE 1 mini-planning grantee, the New Bern, North Carolina Housing Authority (NBHA), a time extension to carry out the activities specified in its grant agreement. This extension would be of benefit to the residents participating in homeownership planning under its mini-planning grant NC19HM10050192.

NATURE OF REQUIREMENT: Section 301(b)(3) of the HOPE 1 Program Guidelines limits a HOPE 1 mini-planning grantee to carrying out activities funded under its grant within eighteen (18) months of the effective date of the mini-planning grant agreement.

GRANTED BY: Joseph Shuldiner, Assistant Secretary for Public and Indian Housing

DATE GRANTED: October 17, 1994

REASON WAIVED: Pursuant to Section 901 of the HOPE 1 Guidelines, a regulatory provision that is "not otherwise required by law" may be waived by the Assistant Secretary for Public and Indian Housing upon a determination of good cause, and upon documentation of the pertinent facts and grounds supporting the waiver.

Good cause was exhibited as follows:

The NBHA noted that it was impeded in carrying out grant activities due primarily to the reassignment of staff administering the grant as well as an unanticipated delay in incorporating resident groups at the two sites covered by the grant. The NBHA wished to proceed to continue to work with the resident councils which have been formed as well as to develop economic sufficiency programs to assist the residents in utilizing the unexpended funds remaining. Further action on the grant, however, was contingent on the extension being granted.

33. REGULATION: HOPE for Public and Indian Housing Homeownership (HOPE 1) Program, Guidelines, Section 301(b)(3) as published on January 14, 1992 (57 FR 1522).

PROJECT/ACTIVITY: To permit a HOPE 1 mini-planning grantee, the Dover, New Hampshire Housing Authority (DHA), a time extension to carry out the activities specified in its grant agreement. This extension would be of benefit to the residents participating in homeownership planning under its HOPE 1 mini-planning grant.

NATURE OF REQUIREMENT: Section 301(b)(3) of the HOPE 1 Program Guidelines limits a HOPE 1 mini-planning grantee to carrying out activities funded under its grant within eighteen (18) months of the effective date of the mini-planning grant agreement.

GRANTED BY: Joseph Shuldiner, Assistant Secretary for Public and Indian Housing

DATE GRANTED: October 17, 1994

REASON WAIVED: Pursuant to Section 901 of the HOPE 1 Guidelines, a regulatory provision that is "not otherwise required by law" may be waived by the Assistant Secretary for Public and Indian Housing upon a determination of good cause, and upon documentation of the pertinent facts and grounds supporting the waiver.

Good cause was exhibited as follows:

The DHA noted that it had completed all of the activities originally proposed and still had remaining funds. The DHA wished to proceed with revised activities more in line with the current desires of the residents under the grant. After taking into consideration the diminished prospects of obtaining future HOPE funding, the DHA concluded that it needed to concentrate more on economic development planning activities. Towards that end, the DHA will submit a request to revise its budget allocation to conform to the proposed additional activities. Further action on the grant was contingent, however, on the extension being granted.

34. REGULATION: HOPE for Public and Indian Housing Homeownership (HOPE 1) Program, Guidelines, Section 301(b)(3) as published on January 14, 1992 (57 FR 1522).

PROJECT/ACTIVITY: To permit a HOPE 1 mini-planning grantee, the Lawrence, Massachusetts Housing Authority (LHA), a time extension to carry out the activities specified in its grant agreement. This extension would be of benefit to the residents participating in homeownership planning under its HOPE 1 mini-planning grant.

NATURE OF REQUIREMENT: Section 301(b)(3) of the HOPE 1 Program Guidelines limits a HOPE 1 mini-planning grantee to carrying out activities funded under its grant within eighteen (18) months of the effective date of the mini-planning grant agreement.

GRANTED BY: Joseph Shuldiner, Assistant Secretary for Public and Indian Housing

DATE GRANTED: October 17, 1994

REASON WAIVED: Pursuant to Section 901 of the HOPE 1 Guidelines, a regulatory provision that is "not otherwise required by law" may be waived by the Assistant Secretary for Public and Indian Housing upon a determination of good cause, and upon documentation of the pertinent facts and grounds supporting the waiver.

Good cause was exhibited as follows:

The LHA noted that it had encountered unexpected delays due to a change in the outlook of the residents as the grant progressed. The LHA wished to proceed with revised activities more in line with the current desires of the residents under the grant. After taking into consideration the diminished prospects of obtaining future HOPE funding, the LHA concluded that it needed to alter the emphasis of its efforts under the grant to concentrate more on economic development planning activities. Towards that end, the LHA would submit a request to revise its budget allocation to conform to the change in emphasis. Further action on the grant, however, would be contingent on the extension being granted.

35. REGULATION: HOPE for Public and Indian Housing Homeownership (HOPE 1) Program, Guidelines, Section 301(b)(1) as published on January 14, 1992 (57 FR 1522).

PROJECT/ACTIVITY: To permit a HOPE 1 mini-planning grantee, the Knox County Housing Authority (KCHA), a time extension to carry out the activities specified in its grant agreement. This extension would be of benefit to the residents participating in homeownership planning under its HOPE 1 mini-planning grant.

NATURE OF REQUIREMENT: Section 301(b)(3) of the HOPE 1 Program Guidelines limit a HOPE 1 mini-planning grantee to carrying out activities funded under its grant within eighteen (18) months of the effective date of the mini-planning grant agreement.

GRANTED BY: Joseph Shuldiner, Assistant Secretary for Public and Indian Housing

DATE GRANTED: October 17, 1994

REASON WAIVED: Pursuant to Section 901 of the HOPE 1 Guidelines, a regulatory provision that is "not otherwise required by law" may be waived by the Assistant Secretary for Public and Indian Housing upon a determination of good cause, and upon documentation of the pertinent facts and grounds supporting the waiver.

Good cause was exhibited as follows:

The KCHA noted that it had encountered unexpected delays due to a change in the outlook of the residents as the grant progressed. The KCHA wished to proceed with revised activities more in line with the current desires of the residents under the grant. After taking into consideration the diminished prospects of obtaining future HOPE funding, the KCHA concluded that it needed to alter the emphasis of its efforts under the grant to concentrate more on economic development planning activities. Towards that end, the KCHA would submit a request to revise its budget allocation to conform to the change in emphasis. Further action on the grant, however, would be contingent on the extension being granted.

36. REGULATION: HOPE for Public and Indian Housing Homeownership (HOPE 1)

Program, Guidelines, Section 301(b)(3) as published on January 14, 1992 (57 FR 1522).

PROJECT/ACTIVITY: To permit a HOPE 1 mini-planning grantee, the Charleston Human Rights Commission of Charleston, West Virginia (CHRC), a time extension to carry out the activities specified in its grant agreement. This extension would be of benefit to the residents participating in homeownership planning under its HOPE 1 mini-planning grant.

NATURE OF REQUIREMENT: Section 301(b)(3) of the HOPE 1 Program Guidelines limit a HOPE 1 mini-planning grantee to carrying out activities funded under its grant within eighteen (18) months of the effective date of the mini-planning grant agreement.

GRANTED BY: Joseph Shuldiner, Assistant Secretary for Public and Indian Housing

DATE GRANTED: October 17, 1994

REASON WAIVED: Pursuant to Section 901 of the HOPE 1 Guidelines, a regulatory provision that is "not otherwise required by law" may be waived by the Assistant Secretary for Public and Indian Housing upon a determination of good cause, and upon documentation of the pertinent facts and grounds supporting the waiver.

Good cause was exhibited as follows:

The CHRC noted that it had encountered unexpected delays due to a change in the leadership of the Littlepage Terrace Resident Management Corporation (LTRMC). The CHRC wished to proceed with revised activities more in line with the current desires of the residents under the grant. After taking into consideration the diminished prospects of obtaining future HOPE funding, the CHRC had concluded that it needed to extend its activities which were building the capacity of the residents as well as to plan for additional self-sufficiency activities. Further action on the grant, however, was contingent on the extension being granted.

37. REGULATION: HOPE for Public and Indian Housing Homeownership (HOPE 1) Program, Guidelines, Section 301(b)(3) as published on January 14, 1992 (57 FR 1522).

PROJECT/ACTIVITY: To permit a HOPE 1 mini-planning grantee, the Glendale Resident Management Corporation (GRMC) of Minneapolis, Minnesota, a time extension to carry out the activities specified in its grant agreement. This extension would be of benefit to the residents participating in homeownership planning under its HOPE 1 mini-planning grant MN46HM0020192.

NATURE OF REQUIREMENT: Section 301(b)(3) of the HOPE 1 Program Guidelines limit a HOPE 1 mini-planning grantee to carrying out activities funded under its grant within eighteen (18) months of the effective date of the mini-planning grant agreement.

GRANTED BY: Joseph Shuldiner, Assistant Secretary for Public and Indian Housing

DATE GRANTED: October 17, 1994

REASON WAIVED: Pursuant to Section 901 of the HOPE 1 Guidelines, a regulatory provision that is "not otherwise required by law" may be waived by the Assistant Secretary for Public and Indian Housing upon a determination of good cause, and upon documentation of the pertinent facts and grounds supporting the waiver.

Good cause was exhibited as follows:

The GMRC noted that although it had made substantial progress in carrying out the grant, it has experienced difficulty in obtaining accurate information from the local housing authority resulting in unexpected delays in carrying out activities under the grant. The GMRC, though, desired to continue to move forward with grant activities. The extension would permit the GRMC to complete a proper physical analysis and financial feasibility study of homeownership. Further action on the grant, however, was contingent on the extension being granted.

38. REGULATION: HOPE for Public and Indian Housing Homeownership (HOPE 1) Program, Guidelines, Section 301(b)(3) as published on January 14, 1992 (57 FR 1522).

PROJECT/ACTIVITY: To permit a HOPE 1 mini-planning grantee, the Division of Housing of the City of Indianapolis, Indiana (DHCI) and the Rowney Terrace Resident Management Corporation (RTRMC), a time extension to carry out the activities specified in its grant agreement. This extension would be of benefit to the residents participating in homeownership planning at its Rowney Terrace development.

NATURE OF REQUIREMENT: Section 301(b)(3) of the HOPE 1 Program Guidelines limit a HOPE 1 mini-planning grantee to carrying out activities funded under its grant within eighteen (18) months of the effective date of the mini-planning grant agreement.

GRANTED BY: Joseph Shuldiner, Assistant Secretary for Public and Indian Housing

DATE GRANTED: October 17, 1994

REASON WAIVED: Pursuant to Section 901 of the HOPE 1 Guidelines, a regulatory provision that is "not otherwise required by law" may be waived by the Assistant Secretary for Public and Indian Housing upon a determination of good cause, and upon documentation of the pertinent facts and grounds supporting the waiver.

Good cause was exhibited as follows:

The DHCI/RTRMC noted that they had encountered unexpected delays due to a change in the leadership of the RTRMC. The DHCI/RTRMC wished to proceed with revised activities more in line with the current desires of the residents under the grant. After conducting a needs assessment under the grant, the DHCI/RTRMC had concluded that they need to alter the emphasis of their efforts under the grant to concentrate more on economic development planning activities. Towards that end, the DHCI/RTRMC submitted a request to revise their budget allocations to conform to the change in emphasis. Further action on the grant, however, was contingent on the extension being granted.

39. REGULATION: HOPE for Public and Indian Housing Homeownership (HOPE 1) Program, Guidelines, Section 301(b)(1) as published on January 14, 1992 (57 FR 1522).

PROJECT/ACTIVITY: To permit a HOPE 1 mini-planning grantee, the Winston-Salem, North Carolina Housing Authority (WSHA), a time extension to carry out the activities specified in its grant agreement. This extension would be of benefit to the residents participating in homeownership planning at its Townview development (NC19HM10120192).

NATURE OF REQUIREMENT: Section 301(b)(3) of the HOPE 1 Program Guidelines limit a HOPE 1 mini-planning grantee to carrying out activities funded under its grant within eighteen (18) months of the effective date of the mini-planning grant agreement.

GRANTED BY: Joseph Shuldiner, Assistant Secretary for Public and Indian Housing

DATE GRANTED: October 18, 1994

REASON WAIVED: Pursuant to Section 901 of the HOPE 1 Guidelines, a regulatory provision that is "not otherwise required by law" may be waived by the Assistant Secretary for Public and Indian Housing upon a determination of good cause, and upon documentation of the pertinent facts and grounds supporting the waiver.

Good cause was exhibited as follows:

The WSHA wished to proceed with activities designed to further analyze and present possible options for homeownership to residents as well as to build the capacity of the resident organization. Further action on the grant, however, was contingent on the extension being granted.

40. REGULATION: HOPE for Public and Indian Housing Homeownership (HOPE 1) Program, Guidelines, Section 301(b)(1) as published on January 14, 1992 (57 FR 1522).

PROJECT/ACTIVITY: To permit a HOPE 1 mini-planning grantee, the City of Little Rock, Arkansas (HACLR), a time extension to carry out the activities specified in its grant agreement. This extension would be of benefit to the residents participating in homeownership planning at its Amelia B. Ives development.

NATURE OF REQUIREMENT: Section 301(b)(3) of the HOPE 1 Program Guidelines limit a HOPE 1 mini-planning grantee to carrying out activities funded under its grant within eighteen (18) months of the effective date of the mini-planning grant agreement.

GRANTED BY: Joseph Shuldiner, Assistant Secretary for Public and Indian Housing

DATE GRANTED: October 18, 1994

REASON WAIVED: Pursuant to Section 901 of the HOPE 1 Guidelines, a regulatory provision that is "not otherwise required by law" may be waived by the Assistant Secretary for Public and Indian Housing upon a determination of good cause, and upon documentation of the pertinent facts and grounds supporting the waiver.

Good cause was exhibited as follows:

The HACLR noted that it had encountered unexpected delays in securing approval of its project management plan and its staff becoming familiar with what is permissible under the grant. The HACLR wished to proceed with revised activities. After taking into consideration the diminished prospects of obtaining future HOPE funding, the HACLR concluded that it needed to alter the emphasis of its efforts under the grants to consider alternative approaches to pursuing homeownership and to increase its emphasis on economic development planning activities. Further action on the grant, however, was contingent upon the extension being granted.

41. REGULATION: HOPE for Public and Indian Housing Homeownership (HOPE 1) Program, Guidelines, Section 301(b)(1) as published on January 14, 1992 (57 FR 1522).

PROJECT/ACTIVITY: To permit a HOPE 1 mini-planning grantee, the Jacksonville, Florida Department of Housing and Urban Development (JDHUD), a time extension to carry out the activities specified in its grant agreement. This extension would be of benefit to the residents participating in homeownership planning at its Centennial Towers development (FL29HM10010992).

NATURE OF REQUIREMENT: Section 301(b)(3) of the HOPE 1 Program Guidelines limit a HOPE 1 mini-planning grantee to carrying out activities funded under its grant within eighteen (18) months of the effective date of the mini-planning grant agreement.

GRANTED BY: Joseph Shuldiner, Assistant Secretary for Public and Indian Housing

DATE GRANTED: October 25, 1994

REASON WAIVED: Pursuant to Section 901 of the HOPE 1 Guidelines, a regulatory provision that is "not otherwise required by law" may be waived by the Assistant Secretary for Public and Indian Housing upon a determination of good cause, and upon documentation of the pertinent facts and grounds supporting the waiver.

Good cause was exhibited as follows:

The JDHUD noted that it had encountered unexpected delays due to difficulties in obtaining required approval from Jacksonville, Florida city government as well as an initial lack of participation on the part of the residents and changes in staff administering the grant. The JDHUD wished to proceed with planning activities designed to increase resident capacity and develop the resident management corporation. Further action on the grant, however, was contingent upon the extension being granted.

42. REGULATION: HOPE for Public and Indian Housing Homeownership (HOPE 1) Program, Guidelines, Section 301(b)(1) as published on January 14, 1992 (57 FR 1522).

PROJECT/ACTIVITY: To permit a HOPE 1 mini-planning grantee, the Pompano Beach, Florida Community Development Corporation (PBCDC), a time extension to carry out the activities specified in its grant agreement. This extension would be of benefit to the residents participating in homeownership planning under its HOPE 1 mini-planning grant (FL29HM10280192).

NATURE OF REQUIREMENT: Section 301(b)(3) of the HOPE 1 Program Guidelines limit a HOPE 1 mini-planning grantee to carrying out activities funded under its grant within eighteen (18) months of the effective date of the mini-planning grant agreement.

GRANTED BY: Joseph Shuldiner, Assistant Secretary for Public and Indian Housing

DATE GRANTED: October 25, 1994

REASON WAIVED: Pursuant to Section 901 of the HOPE 1 Guidelines, a regulatory provision that is "not otherwise required by law" may be waived by the Assistant Secretary for Public and Indian Housing upon a determination of good cause, and upon documentation of the pertinent facts and grounds supporting the waiver.

Good cause was exhibited as follows:

The PBCDC noted that it had encountered unexpected delays due to unexpected difficulty in completing the feasibility study and a lack of resident participation. The PBCDC wished to proceed with planning activities designed to foster resident self-sufficiency and economic development. Further action on the grant, however, was contingent upon the extension being granted.

43. REGULATION: HOPE for Public and Indian Housing Homeownership (HOPE 1) Program, Guidelines, Section 301(b)(3) as published on January 14, 1992 (57 FR 1522).

PROJECT/ACTIVITY: To permit a HOPE 1 mini-planning grantee, the Ocala, Florida Housing Authority (OHA), a time extension to carry out the activities specified in its grant agreement. This extension would be of benefit to the residents participating in homeownership planning at its N.H. Jones development (FL29HM10320192).

NATURE OF REQUIREMENT: Section 301(b)(3) of the HOPE 1 Program Guidelines limits a HOPE 1 mini-planning grantee to carrying out activities funded under its grant within eighteen (18) months of the effective date of the mini-planning grant agreement.

GRANTED BY: Joseph Shuldiner, Assistant Secretary for Public and Indian Housing

DATE GRANTED: October 25, 1994

REASON WAIVED: Pursuant to Section 901 of the HOPE 1 Guidelines, a regulatory provision that is "not otherwise required by law" may be waived by the Assistant Secretary for Public and Indian Housing upon a determination of good cause, and upon documentation of the pertinent facts and grounds supporting the waiver.

Good cause was exhibited as follows:

The OHA noted that it had encountered unexpected delays due to lack of interest in homeownership for the units at the development, structural deficiencies in the development's units, and a lack of resident self-sufficiency. The OHA wished to proceed with planning activities designed to foster resident self-sufficiency and economic development. Further action on the grant, however, was contingent upon the extension being granted.

44. REGULATION: HOPE for Public and Indian Housing Homeownership (HOPE 1) Program, Guidelines, Section 301(b)(1) as published on January 14, 1992 (57 FR 1522).

PROJECT/ACTIVITY: To permit a HOPE 1 mini-planning grantee, the Jacksonville, Florida Tenant Advisory Council (JTAC), a time extension to carry out the activities specified in its grant agreement. This extension would be of benefit to the residents participating in homeownership planning under its HOPE 1 mini-planning grants FL29HM10010292, FL29HM10010392, FL29HM10010492, FL29HM10010592, FH29HM10010892, FL29HM10011092, FL29HM10011192, FL29HM10011392, FL29HM10011492.

NATURE OF REQUIREMENT: Section 301(b)(3) of the HOPE 1 Program Guidelines limit a HOPE 1 mini-planning grantee to carrying out activities funded under its grant within eighteen (18) months of the effective date of the mini-planning grant agreement.

GRANTED BY: Joseph Shuldiner, Assistant Secretary for Public and Indian Housing

DATE GRANTED: October 25, 1994

REASON WAIVED: Pursuant to Section 901 of the HOPE 1 Guidelines, a regulatory provision that is "not otherwise required by law" may be waived by the Assistant Secretary for Public and Indian Housing upon a determination of good cause, and upon documentation of the pertinent facts and grounds supporting the waiver.

Good cause was exhibited as follows:

The JTAC noted that it had encountered unexpected delays due to a changeover in a number of leadership positions and difficulty in dealing with a troubled housing agency. The JTAC wished to proceed with activities designed to further resident training and economic development planning. Further action on the grant, however, was contingent upon the extension being granted.

45. REGULATION: 24 CFR 904 Subpart B (Turnkey III Homeownership Opportunity Program) and Corresponding Provisions of the Turnkey III Handbook (7495.3)

PROJECT/ACTIVITY: Housing Opportunities Commission of Montgomery County (HOC), Maryland Turnkey III Homeownership Opportunity Program Projects MD 4–3 (Bel Pre Square), MD 4–6 Scattered Sites, MD 4–10 Scattered Sites, MD 4–11 (Tobytown). Conversion to low-income rental status.

NATURE OF REQUIREMENT: 24 CFR Subpart B and the Turnkey III Handbook define and govern the Turnkey III Homeownership Opportunity Program.

GRANTED BY: Joseph Shuldiner, Assistant Secretary for Public and Indian Housing

DATE GRANTED: November 21, 1994

REASON WAIVED: The Housing Opportunities Commission of Montgomery County, Maryland requested the ability to convert certain housing units of the HOC's projects MD 4–3, 4–6, 4–10, 4–11 to low-rent public housing' status.

The Department of Housing and Urban Development has established certain criteria and procedures by which to judge the efficacy of such a conversion on a case-by-case basis. After investigation of the circumstances, and in an attempt to assist the HOC to better serve its low-income tenants, the Department decided that granting this conversion was in the best interests of all concerned.

The conversion of Turnkey III units to low-income rental is implemented according to existing HUD procedures.

The housing authority has shown good cause and demonstrated compliance with all applicable regulatory requirements for this conversion.

46. REGULATION: 24 CFR 904 Subpart B (Turnkey III Homeownership Opportunity Program) and Corresponding Provisions of the Turnkey III Handbook (7495.3)

PROJECT/ACTIVITY: East St. Louis, Illinois Housing Authority (ESLHA), Turnkey III Homeownership Opportunity Program Projects IL001–014, 016, 018, 020, 022, 023, 024.

NATURE OF REQUIREMENT: 24 CFR Subpart B and the Turnkey III Handbook require that upon sale of a homeownership unit that the monies received be remitted to HUD to reduce the capital indebtedness on the project. Excess Residual Receipts and or Operating Reserves are also to be remitted to HUD.

GRANTED BY: Joseph Shuldiner, Assistant Secretary for Public and Indian Housing

DATE GRANTED: November 22, 1994

REASON WAIVED: Project debt forgiveness was authorized by the provisions of Section 3004 of the Housing and Community Development Reconciliation Amendments of 1985 (the Amendments), P.L. 99–272 (April 7, 1986), which amends Section 4 of the United States Housing Act of 1937. The Amendments authorized the Secretary of HUD to forgive outstanding principal and interest on loans made by the Secretary to Public Housing Agencies (PHAs)/Indian Housing Authorities (IHAs) and to cancel the terms of any contract with respect to repayment.

Turnkey III debt forgiveness, as authorized above, is implemented according to existing HUD procedures.

The housing authority has shown good cause and demonstrated compliance with all applicable regulatory requirements for debt forgiveness.

47. REGULATION: 24 CFR 904 Subpart B (Turnkey III Homeownership Opportunity Program) and Corresponding Provisions of the Turnkey III Handbook (7495.3)

PROJECT/ACTIVITY: Lubbock, Texas Housing Authority (LHA), Turnkey III Homeownership Opportunity Program Project TX018–003

NATURE OF REQUIREMENT: 24 CFR Subpart B and the Turnkey III Handbook require that upon sale of a homeownership unit that the monies received be remitted to HUD to reduce the capital indebtedness on the project. Excess Residual Receipts and or Operating Reserves are also to be remitted to HUD.

GRANTED BY: Joseph Shuldiner, Assistant Secretary for Public and Indian Housing

DATE GRANTED: December 14, 1994

REASON WAIVED: Project debt forgiveness was authorized by the provisions of Section 3004 of the Housing and Community Development Reconciliation Amendments of 1985 (the Amendments), P.L. 99–272 (April 7, 1986), which amends Section 4 of the United States Housing Act of 1937. The Amendments authorized the Secretary of HUD to forgive outstanding principal and interest on loans made by the Secretary to Public Housing Agencies (PHAs)/Indian Housing Authorities (IHAs) and to cancel the terms of any contract with respect to repayment.

Turnkey III debt forgiveness, as authorized above, is implemented according to existing HUD procedures.

The housing authority has shown good cause and demonstrated compliance with all applicable regulatory requirements for debt forgiveness.

48. REGULATION: 24 CFR 904 Subpart B (Turnkey III Homeownership Opportunity Program) and Corresponding Provisions of the Turnkey III Handbook (7495.3)

PROJECT/ACTIVITY: Prince Georges County, Maryland Department of Housing and Community Development (DHCD), Turnkey III Homeownership Opportunity Program Project MD15–5.

NATURE OF REQUIREMENT: 24 CFR Subpart B and the Turnkey III Handbook require that upon sale of a homeownership unit that the monies received be remitted to HUD to reduce the capital indebtedness on the project. Excess Residual Receipts and or Operating Reserves are also to be remitted to HUD.

GRANTED BY: Joseph Shuldiner, Assistant Secretary for Public and Indian Housing

DATE GRANTED: December 15, 1994

REASON WAIVED: Project debt forgiveness was authorized by the provisions of Section 3004 of the Housing and Community Development Reconciliation Amendments of 1985 (the Amendments), P.L. 99–272 (April 7, 1986), which amends Section 4 of the United States Housing Act of 1937. The Amendments authorized the Secretary of HUD to forgive outstanding principal and interest on loans made by the Secretary to Public Housing Agencies (PHAs)/Indian Housing Authorities (IHAs) and to cancel the terms of any contract with respect to repayment.

Turnkey III debt forgiveness, as authorized above, is implemented according to existing HUD procedures.

The housing authority has shown good cause and demonstrated compliance with all applicable regulatory requirements for debt forgiveness.

49. REGULATION: 24 CFR 904 Subpart B (Turnkey III Homeownership Opportunity Program) and Corresponding Provisions of the Turnkey III Handbook (7495.3)

PROJECT/ACTIVITY: Atlanta, Georgia Housing Authority, Turnkey III Homeownership Opportunity Program Projects GA6–38, GA6–39; GA6–40, GA6–46, and GA6–51.

NATURE OF REQUIREMENT: 24 CFR Subpart B and the Turnkey III Handbook require that upon sale of a homeownership unit that the monies received be remitted to HUD to reduce the capital indebtedness on the project. Excess Residual Receipts and or Operating Reserves are also to be remitted to HUD.

GRANTED BY: Joseph Shuldiner, Assistant Secretary for Public and Indian Housing

DATE GRANTED: December 23, 1994

REASON WAIVED: Project debt forgiveness was authorized by the provisions of Section 3004 of the Housing and Community Development Reconciliation Amendments of 1985 (the Amendments), P.L. 99–272 (April 7, 1986), which amends Section 4 of the United States Housing Act of 1937. The Amendments authorized the Secretary of HUD to forgive outstanding principal and interest on loans made by the Secretary to Public Housing Agencies (PHAs)/Indian Housing Authorities (IHAs) and to cancel the terms of any contract with respect to repayment.

Turnkey III debt forgiveness, as authorized above, is implemented according to existing HUD procedures.

The housing authority has shown good cause and demonstrated compliance with all applicable regulatory requirements for debt forgiveness.

Note to Reader: The person to be contacted for additional information about these waivers is: MaryAnn Russ, Director, Office of Assisted Housing, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, Phone: (202) 708–1380 (This is not a toll-free number).

50. REGULATION: 24 CFR Part 913.107(a)

PROJECT/ACTIVITY: A request was made by the Allen Metropolitan Housing Authority (AMHA) of Lima, OH, to permit the establishment of ceiling rents for its entire low-rent inventory.

NATURE OF REQUIREMENT: The total tenant payment a public housing agency (PHA) must charge shall be the highest of the following, rounded to the nearest dollar: (1) 30% of Monthly Adjusted Income; (2) 10% of Monthly Income; or (3) if the Family receives Welfare Assistance from a public agency and a part of such payments, adjusted in accordance with the Family's actual housing costs, is specifically designated by such agency to meet the Family's housing costs, the monthly portion of such payments which is so designated.

GRANTED BY: Joseph Shuldiner, Assistant Secretary for Public and Indian Housing

DATE GRANTED: October 3, 1994

REASON WAIVED: AMHA has experienced vacancy problems due to families moving out when their rents begin to exceed those on the private market. The AMHA is developing a homeownership plan with its HOPE III Planning Grant, and ceiling rents is a key ingredient in maintaining eligible families as their income increases while awaiting completion of the homeownership plan and approval for its implementation.

51. REGULATION: 24 CFR Part 913.107(a)

PROJECT/ACTIVITY: A request was made by the Newman Grove Housing Authority (NGHA) of Newman Grove, Nebraska, to permit the establishment of ceiling rents for seven of its one-bedroom units that are approximately 780 square feet.

NATURE OF REQUIREMENT: The total tenant payment a public housing agency (PHA) must charge shall be the highest of the following, rounded to the nearest dollar: (1) 30% of Monthly Adjusted Income; (2) 10% of Monthly Income; or (3) if the Family receives Welfare Assistance from a public agency and a part of such payments, adjusted in accordance with the Family's actual housing costs, is specifically designated by such agency to meet the Family's housing costs, the monthly portion of such payments which is so designated.

GRANTED BY: Joseph Shuldiner, Assistant Secretary for Public and Indian Housing

DATE GRANTED: October 12, 1994

0REASON WAIVED: The NGHA has experienced a vacancy problem. Six of the seven small one-bedroom units in its 20-unit project were vacant most of the time. Non-elderly applicants were unwilling to pay 30% of their income for such a small apartment. The waiver was granted to enable NGHA to address its vacancy problem by improving its marketability to potential applicants.

52. REGULATION: 24 CFR Part 913.107(a)

PROJECT/ACTIVITY: A request was made by the Housing and Redevelopment Authority of Tracy, Minneapolis (HRAT), to permit the establishment of ceiling rents for its 59 1-bedroom units.

NATURE OF REQUIREMENT: The total tenant payment a public housing agency (PHA) must charge shall be the highest of the following, rounded to the nearest dollar: (1) 30% of Monthly Adjusted Income; (2) 10% of Monthly Income; or (3) if the Family receives Welfare Assistance from a public agency and a part of such payments, adjusted in accordance with the Family's actual housing costs, is specifically designated by such agency to meet the Family's housing costs, the monthly portion of such payments which is so designated.

GRANTED BY: Joseph Shuldiner, Assistant Secretary for Public and Indian Housing

DATE GRANTED: October 12, 1994

REASON WAIVED: HRAT began to experience high vacancy rates after the construction of other housing in the area, which offered larger units and more amenities. Due to the size of its units, the HRAT could not attract a sufficient number of applicants willing to pay 30% of income. The establishment of ceiling rents will enable HRAT to address its vacancy problem by improving its marketability to potential applicants.

53. REGULATION: 24 CFR Part 913.107(a)

PROJECT/ACTIVITY: A request was made by the Pawnee City Housing Authority (PHA) of Pawnee City, NE, to permit the establishment of ceiling rents for its entire inventory.

NATURE OF REQUIREMENT: The total tenant payment a public housing agency (PHA) must charge shall be the highest of the following, rounded to the nearest dollar: (1) 30% of Monthly Adjusted Income; (2) 10% of Monthly income; or (3) if the Family receives Welfare Assistance from a public agency and a part of such payments, adjusted in accordance with the Family's actual housing costs, is specifically designated by such agency to meet the Family's housing costs, the monthly portion of such payments which is so designated.

GRANTED BY: Joseph Shuldiner, Assistant Secretary for Public and Indian Housing

DATE GRANTED: October 12, 1994

REASON WAIVED: The PCHA has experienced vacancy problems and has several families paying rents higher than those in the private market. In order to prevent turnovers due to rent increases and to attract applicants to vacant units, the PCHA was allowed to establish ceiling rents.

54. REGULATION: 24 CFR Part 913.107(a)

PROJECT/ACTIVITY: A request was made by the Oshkosh Housing Authority (OHA) of Oshkosh, Nebraska, to permit the establishment of ceiling rents for its entire low-rent inventory.

NATURE OF REQUIREMENT: The total tenant payment a public housing agency (PHA) must charge shall be the highest of the following, rounded to the nearest dollar: (1) 30% of Monthly Adjusted Income; (2) 10% of Monthly income; or (3) if the Family receives Welfare Assistance from a public agency and a part of such payments, adjusted in accordance with the Family's actual housing costs, is specifically designated by such agency to meet the Family's housing costs, the monthly portion of such payments which is so designated.

GRANTED BY: Joseph Shuldiner, Assistant Secretary for Public and Indian Housing

DATE GRANTED: October 12, 1994

REASON WAIVED: OHA has had a sustained vacancy problem for several years. The establishment of ceiling rents will enable OHA to address its vacancy problem by improving its marketability to potential applicants.

55. REGULATION: 24 CFR Part 913.107(a)

PROJECT/ACTIVITY: A request was made by the Puerto Rico Public Housing Administration (PRPHA), to permit the establishment of ceiling rents for all of its public housing units.

NATURE OF REQUIREMENT: The total tenant payment a public housing agency (PHA) must charge shall be the highest of the following, rounded to the nearest dollar: (1) 30% of Monthly Adjusted Income; (2) 10% of Monthly income; or (3) if the Family receives Welfare Assistance from a public agency and a part of such payments, adjusted in accordance with the Family's actual housing costs, is specifically designated by such agency to meet the Family's housing costs, the monthly portion of such payments which is so designated.

GRANTED BY: Joseph Shuldiner, Assistant Secretary for Public and Indian Housing

DATE GRANTED: November 7, 1994

REASON WAIVED: The PRPHA has experienced unequitable rents in comparison with private market housing due to the economic disparity among various localities in the Commonwealth. The establishment of ceiling rents will provide for the statutory minimum rent levels as required by statute, and reflect the economic disparity which exists between various Fair Market Rent (FMR) areas throughout the Commonwealth.

56. REGULATION: 24 CFR Part 913.107(a)

PROJECT/ACTIVITY: A request was made by the Boulder County Housing Authority (BCHA) of Boulder, CO, to permit the establishment of ceiling rents for its entire inventory.

NATURE OF REQUIREMENT: The total tenant payment a public housing agency (PHA) must charge shall be the highest of the following, rounded to the nearest dollar: (1) 30% of Monthly Adjusted Income; (2) 10% of Monthly income; or (3) if the Family receives Welfare Assistance from a public agency and a part of such payments, adjusted in accordance with the Family's actual housing costs, is specifically designated by such agency to meet the Family's housing costs, the monthly portion of such payments which is so designated.

GRANTED BY: Joseph Shuldiner, Assistant Secretary for Public and Indian Housing

DATE GRANTED: November 15, 1994

REASON WAIVED: The establishment of ceiling rents for BCHA will assist families living in BCHA's developments who are making the transition from welfare to employment, or who have obtained higher-paying jobs. In order to prevent turnovers due to rent increases and to attract applicants to vacant units, the BCHA was allowed to establish ceiling rents.

57. REGULATION: 24 CFR Part 913.107(a)

PROJECT/ACTIVITY: A request was made by the Housing and Redevelopment Authority of Detroit Lakes, Minnesota (HRA), to permit the establishment of ceiling rents for its sole project, MN107001.

NATURE OF REQUIREMENT: The total tenant payment a public housing agency (PHA) must charge shall be the highest of the following, rounded to the nearest dollar: (1) 30% of Monthly Adjusted Income; (2) 10% of Monthly income; or (3) if the Family receives Welfare Assistance from a public agency and a part of such payments, adjusted in accordance with the Family's actual housing costs, is specifically designated by such agency to meet the Family's housing costs, the monthly portion of such payments which is so designated.

GRANTED BY: Joseph Shuldiner, Assistant Secretary for Public and Indian Housing

DATE GRANTED: November 22, 1994

REASON WAIVED: The HRA has experienced a vacancy problem. The HRA has experienced frequent turnover and refusals by applicants as 30 percent of their adjusted monthly income would be higher than the rents in the private market. In order to prevent turnovers due to rent increases and to attract applicants to vacant units, the HRA was allowed to establish ceiling rents.

58. REGULATION: 24 CFR Part 913.107(a)

PROJECT/ACTIVITY: A request was made by the St. Edward Housing Authority (SEHA) of St. Edward, Nebraska, to permit the establishment of ceiling rents for its 18-unit project NE 26P059001.

NATURE OF REQUIREMENT: The total tenant payment a public housing agency (PHA) must charge shall be the highest of the following, rounded to the nearest dollar: (1) 30% of Monthly Adjusted Income; (2) 10% of Monthly income; or (3) if the Family receives Welfare Assistance from a public agency and a part of such payments, adjusted in accordance with the Family's actual housing costs, is specifically designated by such agency to meet the Family's housing costs, the monthly portion of such payments which is so designated.

GRANTED BY: Joseph Shuldiner, Assistant Secretary for Public and Indian Housing

DATE GRANTED: December 23, 1994

REASON WAIVED: SEHA has had a sustained vacancy problem for several years. The establishment of ceiling rents will enable SEHA to address its vacancy problem by improving its marketability to potential applicants.

59. REGULATION: 24 CFR Part 970

PROJECT/ACTIVITY: A request was made by the Housing Authority of the City of Dumas, Arkansas to temporarily convert one 3-bedroom unit for tenant services activities for a 4-year period.

NATURE OF REQUIREMENT: Under the terms of the Annual Contributions Contract (ACC), public housing agencies (PHAs) are required to maintain and operate its property as housing for low-income families. A PHA may not take any action to demolish or dispose of a public housing project or a portion of a public housing project without obtaining HUD approval.

GRANTED BY: Joseph Shuldiner, Assistant Secretary for Public and Indian Housing

DATE GRANTED: December 23, 1994

REASON WAIVED: The Authority received a $10,000 grant from the Bureau of Alcohol and Drug Abuse Prevention, Arkansas Department of Health, for a range of counseling activities for young people. The dwelling will serve as a meeting and counseling center for teenagers. There will be no structural change to the unit nor additional cost for the conversion.

Note to reader: The person to be contacted for additional information about these waiver-grant items in this listing is: Madeline Hastings, Director, Moderate Rehabilitation Division, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, Phone: (202) 708–3887, TDD: (202) 708–4594 (These are not toll-free numbers).

60. REGULATION: 24 CFR 984.306(b)

PROJECT/ACTIVITY: Housing Authority of Salt Lake City, Utah, Initial Occupancy Requirement for the Section 8 Family Self-Sufficiency (FSS) Program

NATURE OF REQUIREMENT: The regulation prohibits a Section 8 portability move by an FSS family within the first year of execution of the FSS contract of participation.

GRANTED BY: Joseph Shuldiner, Assistant Secretary for Public and Indian Housing

DATE GRANTED: October 19, 1994

REASON WAIVED: Waivers were granted for two families because it was determined that the move outside the jurisdiction of the public housing agency would help each family to achieve its FSS program goals.

61. REGULATION: 24 CFR 982.201

PROJECT/ACTIVITY: Waiver of Very Low-Income Requirement for Section 8 Certificate assistance for 48 families residing in the Mariner's Village complex in Portsmouth, New Hampshire.

NATURE OF REQUIREMENT: The regulation provides that eligible applicants for admission to the tenant-based Section 8 programs must either be very low-income families or fall within certain specified categories of low-income families.

GRANTED BY: Joseph Shuldiner, Assistant Secretary for Public and Indian Housing

DATE GRANTED: November 25, 1994

REASON WAIVED: Mariner's Village housing complex had been poorly maintained and was on the verge of bankruptcy when the City of Portsmouth became involved. The City is committed to assuring revitalization of the complex and its continued availability as affordable housing. The waiver was granted to protect in place families by ensuring that they do not become rent burdened or economically displaced as a result of the rent increases anticipated after rehabilitation of the complex.

62. REGULATION: 24 CFR 984.306(b)

PROJECT/ACTIVITY: Island County, Washington, Housing Authority, Initial Occupancy Requirement for the Section 8 Family Self-Sufficiency (FSS) Program

NATURE OF REQUIREMENT: The regulation prohibits a Section 8 portability move by an FSS family within the first year of execution of the FSS contract of participation.

GRANTED BY: Joseph Shuldiner, Assistant Secretary for Public and Indian Housing

DATE GRANTED: December 19, 1994

REASON WAIVED: The waiver allowed the Section 8 FSS program participant to move closer to her job which increased her chances of becoming financially self-sufficient and fully successful under the FSS program.

Note to Reader: The person to be contacted for additional information about the waiver-grant items in this listing is: John Comerford, Director, Financial Management Division, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410, Phone: (202) 708–1872 (This is not a toll-free number).

63. REGULATION: 24 CFR 990.109(b)(3)(iv)

PROJECT/ACTIVITY: Housing Authority of the City of Little Rock AR.-In determining operating subsidy eligibility, a request was made to use an occupancy percentage of 67% for its fiscal years ending in 1994 and 1995.

NATURE OF REQUIREMENT: The regulation defines the term of a Comprehensive Occupancy Plan (COP) and requires (that a PHA that completes its COP without achieving a 97% occupancy percentage use a projected occupancy percentage of 97%.

GRANTED BY: Joseph Shuldiner, Assistant Secretary for Public and Indian Housing

DATE GRANTED: November 4, 1994

REASON WAIVED: The housing authority stated that there were circumstances beyond its control that were responsible for its high vacancy levels, including gang activity, high crime, and vandalism throughout the developments. The housing authority had submitted an application for the Vacancy Reduction Program. They have taken positive actions to develop a plan that addresses the vacancy problems and have sought funding to carry out that plan. In order to be supportive of the efforts and progress made to date, permission was granted to the actual occupancy percentage for the fiscal year ending in 1994, with the requirement that at least 60% of the resulting increase in operating subsidy is to be used for specific, identifiable actions to increase occupancy. The Housing Authority is responsible for developing a vacancy reduction strategy which will be approved by HUD. The request for a waiver for the fiscal year ending in 1995 was not approved. Under the provisions of the PFS regulation, the authority will be able to adjust its occupancy percentage for that year by the number of vacant units that are in a funded on-schedule modernization (vacancy reduction) program.

64. REGULATION: 24 CFR 990.109(b)(3)(iv)

PROJECT/ACTIVITY: Youngstown OH Metropolitan Housing Authority.

NATURE OF REQUIREMENT: The regulation requires a Low Occupancy PHA without an approved Comprehensive Occupancy Plan (COP) to use a projected occupancy percentage of 97 percent.

GRANTED BY: Joseph Shuldiner, Assistant Secretary for Public and Indian Housing

DATE GRANTED: November 4, 1994

REASON WAIVED: The PHA didn't submit a Comprehensive Occupancy Plan when first eligible but has been addressing its vacancy problems thought its Improvement Plan. It was able to exceed the goal established for its fiscal year ending 6/30/94, and is expected to do so again for its fiscal year ending 6/30/95. Both an Improvement Plan and a COP provide a format in which strategies and actions, as well as desired results, can be identified and measured. Both Plans also require the involvement of the Local HUD Office through monitoring and oversight. Because of these similarities, and in order to provide the same incentives to continue to achieve or exceed the occupancy goals of its Improvement Plan, the PHA was permitted to use 87% as the occupancy percentage for its fiscal year ending 6/30/94 and 88% for its fiscal year ending 6/30/95.

65. REGULATION: 24 CFR 990.109(b)(3)(iv)

PROJECT/ACTIVITY: Blue Earth City, MN HRA. A request was made by the Blue Earth City, MN Housing and Redevelopment Authority to use its actual occupancy rate of 78% in determining its operating subsidy eligibility for its fiscal year ending 6/30/95.

NATURE OF REQUIREMENT: A Housing Authority that has completed a Comprehensive Occupancy Plan (COP) without achieving a 97% occupancy percentage or having an average of five or fewer vacant units must use a projected occupancy rate of 97%.

GRANTED BY: Joseph Shuldiner, Assistant Secretary for Public and Indian Housing

DATE GRANTED: November 17, 1994

REASON WAIVED: The Blue Earth City Housing and Redevelopment Authority is a small Authority with 59 units of elderly housing. It has been experiencing a vacancy problem for the past several years attributable to small unit size, lack of upgrades, and competition from other subsidized projects. The housing authority has developed an Implementation Plan with a 5-year timetable in which it will seek funding for needed renovations and will undertake other vacancy reduction strategies such as increasing advertising and improving maintenance practices.

66. REGULATION: 24 CFR 990.109(b)(3)(iv)

PROJECT/ACTIVITY: Housing Authority of Kansas City, MO. In determining operating subsidy eligibility, a request was made to use an occupancy percentage of 60% for its fiscal year ending in 1994 and to use 59% for 1995.

NATURE OF REQUIREMENT: The regulations defines the term of a Comprehensive Occupancy Plan (COP) and requires that a PHA that completes its COP without achieving a 97% occupancy percentage use a projected occupancy percentage of 97%.

GRANTED BY: Joseph Shuldiner, Assistant Secretary for Public and Indian Housing

DATE GRANTED: December 23, 1994

REASON WAIVED: The housing authority has been placed into receivership and it has taken over a year for the Special Master to appoint a person to take effective control and be responsible and accountable for the operation. They have subsequently taken steps to develop vacancy reduction strategies which they will be implementing with oversight from both the Court and the Area Office. In order to be supportive of the efforts and progress made to date, permission was granted to use an occupancy percentage of 60% for the fiscal year ending in 1994 and 59% for the year ending in 1995 with the requirement that at least 60% of the resulting increase in operating subsidy is to be used for specific, identifiable actions to increase occupancy. The Housing Authority is responsible for developing a vacancy reduction strategy which will be approved by HUD. In the fall of 1995, the local HUD office will conduct an on-site review to check and compare actual accomplishments to date against expected occupancy goals. A decision on the occupancy percentage for the fiscal year ending in 1996 will be based on the results of that review.

67. REGULATION: 24 CFR 990.110(d)

PROJECT/ACTIVITY: Seattle, WA Housing Authority. In determining the operating subsidy eligibility, a request was made to extend the deadline for submission of a request for adjustment to rental income.

NATURE OF REQUIREMENT: The PFS regulation imposes a 12-month deadline on submission of requests for rental income adjustments.

GRANTED BY: Joseph Shuldiner, Assistant Secretary for Public and Indian Housing

DATE GRANTED: October 19, 1994

REASON WAIVED: The previous administration of the Housing Agency was not aware of their right to request this adjustment. This waiver was granted based on the Housing Agency's eligibility for an adjustment.

[FR Doc. 95–13191 Filed 5–30–95; 8:45 am]

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federal register

Wednesday
May 31, 1995

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Part 91

Prohibition Against Certain Flights Between the United States and the Federal Republic of Yugoslavia (Serbia and Montenegro); Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. 26903; Special Federal Aviation Regulation (SFAR) No. 66–2]

RIN 2120–AF72

Prohibition Against Certain Flights Between the United States and the Federal Republic of Yugoslavia (Serbia and Montenegro)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule replaces the flight prohibition implemented by the FAA in SFAR 66–1, which was made effective on August 26, 1993, and expired on August 26, 1994. This action prohibits the takeoff from, landing in, or overflight of the territory of the United States by an aircraft on a flight to or from the territory of Federal Republic of Yugoslavia (Serbia and Montenegro). This action further prohibits the landing in, takeoff from, or overflight of the territory of the United States by any aircraft on a flight from or to any intermediate destination, if the flight's origin or ultimate destination is Serbia and Montenegro. Exceptions are made for particular flights approved by the United States Government and for certain emergency operations. This action is necessary to implement Executive Order 12810 (1992) and UN Security Council Resolution 757 (1992) mandating an embargo of air traffic with Serbia and Montenegro.

DATES: *Effective date.* The removal of SFARs 66 and the addition of SFAR 66–2 are effective May 31, 1995. *Expiration date.* SFAR 66–2 expires June 2, 1997.

FOR FURTHER INFORMATION CONTACT: Mark W. Bury, International Affairs and Legal Policy Staff, AGC–7, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: 202–267–3515.

SUPPLEMENTARY INFORMATION:

Availability of Document

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Public Inquiry Center, APA–230, 800 Independence Avenue SW., Washington, DC 20591, or by calling 202–267–3484. Communications must identify the number of this SFAR. Persons interested in being placed on a mailing list for future rules should also request a copy of the Advisory Circular No. 11–2A, which describes the application procedure.

Background

The FAA is responsible for the safety of flight in the United States and the safety of U.S.-registered aircraft and U.S. operators throughout the world. Section 40101(d)(1) of Title 49, United States Code, requires the Administrator of the FAA to consider the regulation of air commerce in a manner that best promotes safety and fulfills the requirements of national security as being in the public interest. In addition, 49 U.S.C. 40105(b)(A) requires the Administrator to exercise his authority consistently with the obligations of the United States Government under an international agreement.

One such international agreement is the Charter of the United Nations (the Charter) (59 Stat. 1031; 3 Bevans 1153 (1945)). Under Article 25 of the Charter, "the members of the Untied Nations agree to accept and carry out the decision of the Security Council in accordance with the present Charter." Article 48(1) of the Charter further provides, in pertinent part, that "[t]he action required to carry out the decisions of the Security Council for the maintenance of international peace and security shall be taken by all members of the United Nations. * * *"

On May 30, 1992, acting under Chapter VII of the Charter, the Security Council adopted Resolution 757, mandating an embargo of certain air traffic with Serbia and Montenegro. Paragraph 7(a) of Resolution 757 requires all states to deny permission to any aircraft to take off from, land in, or overfly their territory if the aircraft is destined to land in or has taken off from the territory of Serbia and Montenegro. An exception to this prohibition is made for flights that have been approved on the grounds of urgent humanitarian need by the Security Council Committee established by Security Council Resolution 724 (1991).

The United States Government has taken several actions to restrict air transportation between the United States, Serbia and Montenegro in accordance with Security Council Resolution 757. Section 2(d) of Executive Order 12810, issued by the President on June 5, 1992, prohibits "[a]ny transaction by a United States person, or involving the use of U.S.-registered vessels and aircraft, relating to transportation to or from the Federal Republic of Yugoslavia (Serbia and Montenegro) * * * or the sale in the United States by any person holding authority under the Federal Aviation Act * * * of any transportation by air which includes any stop in the Federal Republic of Yugoslavia (Serbia and Montenegro)." Section 2(e) of the Executive Order further prohibits:

> The granting of permission to any aircraft to take off from, land in, or overfly the United States, if the aircraft, as part of the same flight or a continuation of that flight, is destined to land in or has taken off from the territory of the Federal Republic of Yugoslavia (Serbia and Montenegro).

Executive Order 12810 cites the President's authority under the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), Section 1114 of the Federal Aviation Act of 1958, as amended (49 U.S.C. app. 1514), Section 301 of Title 3, United States Code (3 U.S.C. 301), and Section 5 of the United Nations Participation Act of 1945, as amended (22 U.S.C. 287(c)). In particular, the United Nations Participation Act provides that:

> Notwithstanding the provisions of any other law, whenever the United States is called upon by the [UN] Security Council to apply measures which said Council has decided * * * to be employed to give effect to its decisions under the [United Nations] Charter, the President may, to the extent necessary to apply such measures, through any agency which he may designate, and under such orders, rules, or regulations as may be prescribed by him, investigate, regulate, and prohibit, in whole or in part, economic relations of rail, sea, [and] air * * * between any foreign country or to any nation thereof or any person therein and the United States or any person subject to the jurisdiction thereof. * * *

On June 12, 1992, the Office of the Secretary of Transportation issued Order 92–6–27, which implements Executive Order 12810 by amending all Department of Transportation (DOT) certificates issued under Section 401 of the Act, all permits issued under Section 402 of the Act, and all exemptions from Section 401 and 402 accordingly.

On June 23, 1992, the FAA published SFAR 66, prohibiting the takeoff from, landing in, or overflight of the territory of the United States by an aircraft on a flight to or from the territory of the Serbia and Montenegro (57 FR 28031). SFAR 66 also prohibited the landing in, takeoff from, or overflight of the territory of the United States by any aircraft on a flight from or to any intermediate destination, if the flight is destined to land in or take off from the Serbia and Montenegro. After SFAR 66 expired on June 19, 1993, the FAA reinstated the prohibition against certain flights between the United States and the Serbia and Montenegro through the issuance of SFAR 66–1 (58 FR 45220). SFAR No. 66–1 became effective on August 26, 1993, and expired on August 26, 1994.

Copies of Resolution 757 of the United National Security Council, Executive Order 12810, and DOT Order 92–6–27, all of which remain in effect, have been placed in the docket for this rulemaking.

Prohibition Against Certain Flights Between the United States, Serbia and Montenegro

On the basis of the above, and in support of the Executive Order of the President of the United States, I find that immediate action by the FAA is required to implement Executive Order 12810 and to meet the obligations of the United States under international law as evidenced by U.N. Security Council Resolution No. 757. Accordingly, I am ordering a prohibition on the takeoff from, landing in, or overflight of the territory of the United States by an aircraft on a flight that has Serbia and Montenegro as its origin or ultimate destination. Operations approved by the United States Government for approved purposes and certain emergency operations shall be expected from this prohibition. For the reasons stated above, I also find that notice and public comment under 5 U.S.C. 553(b) are impracticable and contrary to the public interest. Further, I find that good cause exists for making this rule effective immediately upon publication. I also find that this action is fully consistent with my obligations under section 1102(a) of the Federal Aviation Act to ensure that I exercise my duties consistently with the obligations of the United States under international agreements.

The rule contains an expiration date of June 2, 1997 but may be terminated sooner or extended through the publication of a corresponding document if circumstances so warrant.

Regulatory Evaluation

The potential cost of this regulation is limited to the net revenue of commercial flights between the United States, Serbia and Montenegro and the cost of having to circumnavigate the territory by U.S.-registered aircraft. Revenue flights to Serbia and Montenegro are currently prohibited by DOT Order 92–6–27, and the FAA is unaware of any U.S.-registered private aircraft currently operating over Serbia and Montenegro. Accordingly, this action will impose no additional burden on commercial or private operators.

Paperwork Reduction Act

This rule contains no information collection requests requiring approval of the Office of Management and Budget pursuant to the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

International Trade Impact Assessment

DOT Order 92–6–27 prohibits U.S. and foreign air carriers from engaging in the sale of air transportation to or from Serbia and Montenegro. This SFAR does not impose any restrictions on commercial carriers beyond those imposed by the DOT Order. Therfore, the SFAR will not create a competitive advantage or disadvantage for foreign companies in the sale of aviation products or services in the United States, nor for domestic firms in the sale of aviation products or services in foreign countries.

Federalism Determination

The amendment set forth herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612 (52 FR 4168; October 30, 1987), it is determined that this regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

Conclusion

For the reasons set forth above, the FAA has determined that this action is not a "significant regulatory action" under Executive Order 12866. This action is considered a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Because revenue flights to Serbia and Montenegro are already prohibited by DOT Order 92–6–27, the FAA certifies that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 91

Aircraft, Airmen, Airports, Air traffic control, Aviation safety, Federal Republic of Yugoslavia, Freight, Montenegro, Serbia.

The Amendment

For the reasons set forth above, the Federal Aviation Administration is amending 14 CFR Part 91 as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for Part 91 continues to read as follows:

Authority: 49 U.S.C. app. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 *et seq.*; E.O. 11514, 35 FR 4247, 3 CFR, 1966–1970 Comp., p. 902; 49 U.S.C. 106(g).

2. SFAR 66 which expired June 19, 1993, and SFAR 66 which expired August 26, 1994, are removed.

3. Special Federal Aviation Regulation (SFAR) No. 66–2 is added to read as follows:

Special Federal Aviation Regulation No. 66–2—Prohibition Against Certain Flights between the United States and the Federal Republic of Yugoslavia (Serbia and Montenegro)

1. *Applicability.* This Special Federal Aviation Regulation (SFAR) applies to all aircraft operations originating from, destined to land in, or overflying the territory of the United States.

2. *Special flight restrictions.* Except as provided in paragraphs 3 and 4 of this SFAR No. 66–2—

(a) No person shall operate an aircraft from any point in the United States to any point in the Federal Republic of Yugoslavia (Serbia and Montenegro) (hereinafter "Serbia and Montenegro"), a flight having any intermediate or ultimate destination in Serbia and Montenegro, or a flight that includes a landing at any point in Serbia and Montenegro in its intended itinerary;

(b) No person shall operate an aircraft to any point in the United States from any point in Serbia and Montenegro, or a flight from any intermediate point of departure where the origin of the flight is in Serbia and Montenegro, or a flight that includes a departure from any point in Serbia and Montenegro in its intended itinerary; or

(c) No person shall operate an aircraft over the territory of the United States if that aircraft's flight itinerary includes any landing at or departure from any point in Serbia and Montenegro.

3. *Permitted operations.* This SFAR shall not prohibit the flight operations between the United States, Serbia and Montenegro described in section 2 of this SFAR by an aircraft authorized to conduct such operations by the United States Government.

4. *Emergency situations.* In an emergency that requires immediate decision and action for the safety of the flight, the pilot in command of an aircraft may deviate from this SFAR to

the extent required by that emergency. Any deviation required by an emergency shall be reported as soon as possible to the air traffic control facility having jurisdiction.

5. *Expiration.* This Special Federal Aviation Regulation expires June 2, 1997.

Issued in Washington, DC, on May 23, 1995.

David R. Hinson,

Administrator.

[FR Doc. 95–13131 Filed 5–30–95; 8:45 am]

BILLING CODE 4910–13–M

federal register

Wednesday
May 31, 1995

Part VI

Department of the Interior

Bureau of Indian Affairs

Indian Tribes, Acknowledgement of Existence Determinations for the Jena Band of Choctaw Indians and the Huron Potawatomi, Inc.; Notices

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Final Determination for Federal Acknowledgment of the Jena Band of Choctaw Indians

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Final Determination.

SUMMARY: This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs (Assistant Secretary) by 209 DM 8.

Pursuant to 25 CFR § 83.10(m), notice is hereby given that the Assistant Secretary acknowledges that the Jena Band of Choctaw Indians (Jena Choctaw), c/o Mr. Jerry D. Jackson, P.O. Box 14, Jena, Louisiana 71342–0014, exists as an Indian tribe within the meaning of Federal law. This notice is based on a determination that the group satisfies the criteria set forth in 25 CFR § 83.7.

DATES: This determination is final and will become effective 90 days from publication of the final determination, pursuant to 25 CFR 83.10 (l)(4), unless a request for reconsideration is filed pursuant to 25 CFR 83.11.

A notice of the proposed finding to acknowledge the Jena Choctaw was published in the **Federal Register** on October 31, 1994 (Vol. 59, pt. II, No. 209, pp. 54496–7). The 180-day period provided for in the regulations for comment on the proposed finding closed April 29, 1995. This determination is made following a review of the public comments on the proposed finding to acknowledge the tribe.

The Jena Choctaw submitted a new membership roll during the comment period. There were no substantial comments or evidence submitted by interested parties or informed parties during the comment period. A letter supporting the proposed finding and recognition of the Jena Choctaw was submitted by the Mississippi Band of Choctaw Indians. Limited comments, not containing substantive new evidence or arguments, were received from two other parties. None of the comments refuted the proposed finding. The comments were considered but were determined to have no effect on the findings of fact or the decision to acknowledge the tribe. The Jena Choctaw by tribal council resolution of April 29, 1995, stated they had no response to the comments received and requested that the BIA waive the 60-day response period provided under 25 CFR 83.10 (k).

The proposed finding to acknowledge the Jena Choctaw determined that the petitioner fully met all seven of the criteria. The final determination affirms the proposed finding. It is based on the extensive evidence submitted by the Jena Choctaw or generated by the Branch of Acknowledgment and Research in the conduct of its own research in preparing the proposed finding and on a consideration of the new membership roll.

The Jena Choctaw directly descends from Choctaws who left the historic Mississippi Choctaw tribe and settled in Catahoula Parish, now LaSalle Parish, in the vicinity of Jena, Louisiana, prior to 1880 when they were first identified by the Federal census. The linguist Albert Gatschet reported finding three Choctaw families living in log huts on Trout Creek, Catahoula Parish in 1886. They were known locally as the Eden Indians, the Choctaw Indians on Trout Creek, and the Whatley Indians in reference to their residences or to the land owners with whom they were associated. After World War II, most of the tribe moved into the nearby town of Jena, Louisiana. They formally incorporated in 1974 as the Jena Band of Choctaw Indians, but usually refer to themselves as the Jena Choctaw. They have been identified as an Indian entity throughout their history until the present by the Federal Government, the State government, local authorities, scholars, the Mississippi Band of Choctaw, and other sources.

The Jena Choctaw maintained a separate and distinct Indian group through a high degree of in-group marriage. Before 1950, 85 percent of the marriages of members were to other members, and 50 percent of the existing marriages in 1969 were between members of the tribe. The Choctaw language was used almost exclusively by members of this Indian community until the late 1930's. The use of the Choctaw language continued in many households until the late 1950's, sustained in part by the high degree of in-group marriage. Close family ties, living in close proximity to one another, and shared community activities such as maintenance of the Indian cemetery have demonstrated that the group maintained a distinct, cohesive community in the last three decades to the present.

A traditional leader or chief conducted the affairs of the Indian community, led the group in burial practices, and conducted marriages until the late 1930's. Although the traditional leader's role was less active after World War II, he continued to organize community support to meet the needs of the membership. In addition, informal leaders exhibited political influence within the Choctaw community during the 1950's and 1960's which continued after the death of the last traditional leader in 1968. Since 1974, the Jena Choctaw have elected their leaders and members have continued to participate in the governance of the tribe.

The Jena Choctaw have a constitution and by-laws which define the membership and reflect how they govern themselves.

The revised membership roll submitted during the comment period has an additional 32 members who were not listed on the membership roll dated October 1993, which was used for the proposed finding. The additional individuals are the children and grandchildren of individuals on the previous roll. All members on the October 1993 roll had ¼ or more Choctaw blood quantum. All of the new members have ⅛ or more Choctaw blood quantum, and thus they meet the membership requirements prescribed in the Jena constitution.

Every member descends from at least one ancestor who was identified as a Choctaw Indian on the Federal censuses and/or who was identified as a full-blood Mississippi Choctaw on the 1903 preliminary roll of the Dawes Commission. Thus, they continue to meet the requirements of the regulations for descent from the historic tribe.

Although the new list increases the membership by approximately 20 percent (from 157 to 189), it does not change the basic community of the Jena Choctaw. Of the 32 new members, 9 are children born since October 1993, and 13 more are children under the age of 21. The other 10 are grandchildren of members listed in 1993. Sixty-five percent of the new members live in Jena and the surrounding area.

Under 25 CFR 83.12(b), the revised roll dated April 3, 1995, and approved by the Jena tribal council, will be considered as the base roll of the Jena Choctaw for Federal funding and other administrative purposes.

Members of the Jena Choctaw were not found to be members of any other acknowledged Indian tribe. Neither the tribe nor its members have been the subject of Congressional legislation which has expressly forbidden a relationship with the Federal Government.

The Jena Choctaw has met all seven criteria under 25 CFR 83.7 for Federal acknowledgment as an Indian tribe.

This determination is final and will become effective 90 days from the date of publication, unless a request for reconsideration is filed pursuant to § 83.11. The petitioner or any interested party may file a request for reconsideration of this determination with the Interior Board of Appeals (§ 83.11(a)(1)). The petitioner's or interested party's request must be received no later than 90 days after publication of the Assistant Secretary's determination in the **Federal Register** (§ 83.11(a)(2)).

Dated: May 18, 1995.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 95–13171 Filed 5–30–95; 8:45 am]

BILLING CODE 4310–02–P

federal register

Wednesday
May 31, 1995

Part VII

Department of Justice

Americans With Disabilities Act; Technical Assistance Grants To Promote Voluntary Compliance With the Act; Notice

DEPARTMENT OF JUSTICE

Civil Rights Division

The Americans With Disabilities Act; Technical Assistance Grants To Promote Voluntary Compliance With the Act

AGENCY: Disability Rights Section, Civil Rights Division, U.S. Department of Justice.

ACTION: Notice of availability of funds and of solicitation for grant applications.

PURPOSE: The Disability Rights Section (formerly the Public Access Section) of the Civil Rights Division, United States Department of Justice (DOJ), announces the availability of up to $1.2 million to fund projects to inform and educate covered entities about their responsibilities under title II and title III of the Americans With Disabilities Act of 1990 (ADA). The term "covered entities" refers to businesses, commercial properties, institutions, State and local governments or their agencies, and other organizations or enterprises that have responsibilities under title II or title III of the ADA. The primary objective of this program is to encourage and facilitate voluntary compliance with titles II and III of the ADA and the Department's implementing regulations through education and information sharing.

This year, the Department is seeking grant applications in the following two (2) priority areas:

(1) Statewide pilot projects to educate small businesses about the basic requirements of title III of the ADA. The projects, utilizing local business and professional organizations, will make businesses aware of the ADA and the ADA resources available locally, within the State, and from the Federal government; and promote the exchange of ideas and information on successful compliance efforts within their communities. The Department anticipates funding up to eight projects, with projects in larger States receiving up to $100,000 and projects in smaller States receiving up to $50,000.

(2) Pilot projects to conduct statewide ADA information-sharing conferences for State and local government officials. These conferences will provide information on the requirements of title II of the ADA and the ADA resources available locally, within the State, regionally, and from the Federal government; and promote the exchange of ideas and information on successful compliance efforts within the State. The Department anticipates that up to eight projects will be funded in amounts up to $40,000 each.

Detailed information regarding these specific priorities may be found in the *Program Priorities* section of this solicitation.

Grants will be awarded to selected applicants who propose cost-effective and efficient methods for carrying out projects related to this year's priorities. The Department is particularly interested in receiving proposals that: reflect an ability to begin project activities in an expedited manner; demonstrate an ability to reach and work effectively with established business, professional, trade, or municipal organizations; utilize materials already developed by Federal agencies and their grantees or contractors; draw on people within the State who have ADA expertise; represent long-term joint ventures between business, professional, trade, or municipal organizations and organizations that represent persons with disabilities; and specifically address how members of minority communities will be included within the population targeted by the applicant for receipt of technical assistance.

ELIGIBLE APPLICANTS: This grant competition is open to non-profit organizations, including trade and professional associations or their subsidiaries, organizations representing State and local governments or their employees, other organizations representing entities covered by the ADA, State and local government agencies, organizations representing persons with disabilities, and individuals. Preference will be given to the specific types of organizations described under Priority 1 and Priority 2 in the *Program Priorities* section of this solicitation.

GRANT PERIOD AND AWARD AMOUNT: The period of performance will be twelve months from the date of the grant award. A total of up to $1.2 million is available for this solicitation. It is anticipated that Priority 1 grants will be awarded in amounts up to $100,000 in larger States and up to $50,000 in smaller States. Priority 2 grants will be awarded in amounts up to $40,000. However, the estimated funding level announced in this notice does not bind the Department of Justice to make any awards or to any specific number of awards or funding levels.

APPLICATION DEADLINE: Applications must be received by the close of business (5:30 p.m. EST) on July 31, 1995 at the Disability Rights Section, Civil Rights Division, U.S. Department of Justice, 1425 New York Ave., NW, Room 4039, Washington, DC 20005 (overnight, express, or hand deliveries), P.O. Box 66738, Washington, D.C. 20035–6738 (U.S. Postal Service mail). Applications may not be sent by facsimile. Applications received after 5:30 p.m. on July 31, 1995 will not be considered for award, even if the application was postmarked before that date. Incomplete applications will not be considered for award. In order to be considered complete, one bound original and two unbound copies of the application packet described in the *Application Requirements* section of this solicitation must be submitted.

FOR FURTHER INFORMATION CONTACT: Ruth Hall Lusher, ADA Technical Assistance Program Manager, Disability Rights Section, Civil Rights Division, U.S. Department of Justice, P.O. Box 66738, Washington, D.C. 20035–6738; 1–800–514–0301 (Voice) or 1–800–514–0383 (TTY). This Notice and other related information, with the exception of standard forms, are available in alternate formats, e.g., large print, braille, audiotape, and computer disk. With the exception of standard forms, this information may also be accessed through the Disability Rights Section's electronic bulletin board at (202) 514–6193.

Background and Program Description

On January 26, 1992, the major provisions of titles II and III of the Americans with Disabilities Act (ADA) went into effect. The ADA provides legal protection to individuals with disabilities in the areas of public accommodations, commercial facilities, State and local government services, transportation, employment, and telecommunications. Title III prohibits discrimination on the basis of disability in a broad range of public accommodations, commercial facilities and certain transportation services. Title II prohibits discrimination on the basis of disability in State and local government programs, activities, and services, including transportation, and State and local government employment. The employment (title I), transportation (title II, Subpart B), and telecommunications (title IV) provisions of the ADA are regulated by other Federal agencies and are not the subject of this Notice.

Section 506 of the ADA requires the Department of Justice to provide technical assistance to entities and individuals that have responsibilities or rights under title II (subtitle A, State and local government services) and title III (public accommodations and commercial facilities) of the ADA.

Pursuant to this requirement, the Department provides a variety of ADA-related services and information, including:

—a toll-free ADA Information Line (for voice and TTY callers) through which the public may obtain recorded information and place orders for ADA materials 24 hours/day. ADA Specialists are available to answer questions about the ADA during business hours. The line, which fields up to 2,000 calls per week, also provides on-line service for Spanish-speaking callers;

—a speakers bureau through which organizations can arrange to have ADA experts from the Civil Rights Division speak on a variety of ADA topics;

—distribution of written materials, including the Department's regulations implementing titles II and III, technical assistance manuals for titles II and III, an ADA Questions and Answers booklet, and other reference materials. These materials are available in standard print, large print, braille, audiotape, and computer disk. They may also be obtained through the Disability Rights Section's electronic bulletin board and through FedWorld on the Internet; and

—an outreach program to identify, inform, and work with covered entities and persons with disabilities, including disseminating information on the ADA and the Department's ADA Information Line to 6 million businesses through the IRS quarterly mailing, distributing television and radio Public Service Announcements on the ADA featuring the Attorney General to broadcast stations, placing ADA pamphlets and cards to order free materials in 7,600 grocery stores through the "Good Neighbor" program, and disseminating ADA information and technical assistance materials to national advocacy and service organizations representing African Americans, Hispanics, and other interest groups.

Under section 506(d) of the Act, the Department has authority to award grants to individuals and non-profit entities for the purpose of supplementing the Department's technical assistance efforts. The Technical Assistance Grant Program is designed to develop and implement cost effective strategies to disseminate information about the responsibilities or rights of covered entities and individuals under titles II and III of the ADA and to provide practical information on effective ways to achieve compliance with the ADA. Through this program, the Department works with organizations and individuals representing the many constituencies affected by the ADA to develop educational programs and materials targeted to these audiences nationwide. The goal of the program is to foster voluntary compliance with the ADA.

Because the grant program is educational in nature, the Department does not fund projects to research or resolve issues that are outside the scope of the Department's current ADA regulations and court interpretations. The program is not intended to fund or support site-specific compliance implementation (e.g., funding to make specific facilities more accessible), or to fund or support inspections, reviews, or tests to determine whether an entity is meeting its compliance obligations.

Since the initiation of the grant program in 1991, the Department has awarded grants to over 40 non-profit organizations. Previous recipients have included a wide range of groups conducting a variety of projects, including: projects to develop and disseminate educational materials specifically tailored to address the needs of targeted audiences to help them comply with the ADA; projects to disseminate existing information to targeted audiences across the country; projects to develop and conduct ADA training programs and seminars; projects to operate telephone information lines; and projects to develop and incorporate ADA materials into professional educational curricula and programs in schools of architecture and design.

Title III projects have been directed toward educating owners and operators of hotels and motels, retail stores, grocery stores, restaurants and bars, professional offices, recreation and fitness centers, museums and other places of public display or collection, travel and tour agents, hospitals and health care providers, service providers for elderly persons, day care centers, small shops and stores, and large commercial properties.

Title II projects have worked toward educating mayors of medium and large cities and small towns, law enforcement personnel, 911/emergency response operators, officers of State courts, State social service agencies, persons involved in testing for licensure and certification purposes, and members and staff of local historic preservation commissions.

Other projects have been directed toward persons who can assist others in complying with the ADA, including professors and students in architecture, interior design, industrial design, and landscape architecture schools and programs; State and local building code officials; disability advocates; librarians; local historic preservation commissions; community and professional mediators; and building contractors and construction tradespeople. Simple, easy to understand materials about the ADA have been translated into Spanish and other languages.

The Department has undertaken other initiatives to ensure that materials developed under the grant program are available in localities across the country. An ADA Information File, which contains 38 ADA technical assistance documents, has been placed in 15,000 libraries throughout the country. Additional materials will be added to the ADA Information File in the coming months. The Department also disseminated similar informational packets to 6,000 Chambers of Commerce nationwide. As a result, a wealth of resources and educational information exists today in local communities. (A listing of materials contained in the ADA Information File will be included in the Grant Application Packet.)

The Department of Justice and other agencies have also taken steps to ensure that ADA technical assistance is available nationally, regionally, and locally. The Department, the Equal Employment Opportunity Commission (EEOC), and the Architectural and Transportation Barriers Compliance Board (Access Board) all operate toll-free ADA Information Lines to provide direct technical assistance to the public. The Department and the EEOC jointly funded a project to create the ADA Training and Implementation Network, a network of approximately 400 individuals who completed an intensive ADA training course. Members of the Network are currently located in every State in the country to serve as local resources for businesses, governments, and persons with disabilities. The U.S. Department of Education funds ten Regional Disability and Business Technical Assistance Centers (DBTACs) to provide technical assistance to covered entities and individuals with disabilities at the local, State, and regional level.

Despite these efforts and the availability of ADA information and resources, the Department has learned—through calls to its ADA Information Line, meetings with the public, Congressional inquiries, and studies conducted by the Government Accounting Office and by Lou Harris for the National Organization on Disability—that:

—many people continue to be unaware of what the ADA requires and how easy it can be to comply;
—many people believe that the ADA's requirements are more stringent than they are, or are unaware of cost-effective solutions for achieving compliance with the ADA;
—some people who are trying in good faith to comply with the ADA are making needless and costly mistakes; and
—this lack of understanding can lead people to resist making efforts to comply, or make them vulnerable to hard-sell tactics by individuals who would profiteer from their lack of knowledge.

For these reasons, the Department intends to use the grant program this year to reach out to groups at the State and local level to undertake educational projects as described in the following section.

Program Priorities

For fiscal year 1995, the Department will establish two absolute funding priorities and fund multiple pilot projects under each priority. The goal is to increase voluntary compliance with title III and title II of the ADA as easily, comprehensively, and cost-effectively as possible. The objective of both funding priorities is (1) to increase awareness of the ADA; (2) to increase knowledge of existing materials and resources available locally, within the State, regionally, and from the Federal government to assist people in understanding and complying with titles II and III of the ADA; and (3) to promote the exchange of ideas and information on successful compliance efforts.

The Department is soliciting proposals that address the following two (2) priority areas:

Priority 1: Statewide Pilot Projects To Educate Small Businesses About Basic Requirements of Title III of the ADA

The ADA provides a general framework to eliminate discrimination against people with disabilities while providing flexibility to address the unique circumstances of the estimated 6 million businesses in the United States. While this flexibility allows business owners and managers to make their own decisions about exactly how they can comply, many do not know where to turn for accurate, practical information and assistance within their own communities. Business owners and managers may attempt to comply and yet not be successful, or they may be reluctant to implement any kind of strategy for compliance.

Studies show that business owners can comply with the ADA easily and reasonably if provided with adequate information and support. These projects are intended to use existing business and professional organizations to increase awareness of the ADA and the availability of ADA resources, and to engage members of local business communities in helping each other find practical, successful ways to comply with the ADA.

Preference will be given to state-based organizations that demonstrate an established relationship with the business community across that particular State. Examples include, but are not limited to, state-based private, non-profit professional and trade organizations (e.g., a State association of small business owners, a State Chamber of Commerce, a statewide retail or hospitality association, etc.), or State government agencies that work with the business community (e.g., Departments of Resource and Economic Development, Small Business Development Centers, a State Bureau of Travel or Tourism, etc.).

Proposed projects must use established local business and professional organizations and their regular meetings, local and regional ADA resources and individuals with ADA expertise, and ADA publications and materials available free from the Department of Justice to reach and educate small businesses, non-profit groups, and others who must comply with title III of the ADA.

Project activities must be conducted in all regions of the State, reach a diverse representation of title III entities statewide, represent a joint venture with organizations representing people with disabilities, and have the potential for replication in other States.

Statewide pilot projects to educate small businesses about basic requirements of title III of the ADA shall include the following major components:

—Conduct ADA educational programs in all regions of the State, using established local business and professional organizations and their regularly scheduled meetings. A minimum of 50 programs must be conducted in larger States and a minimum of 25 programs must be conducted in smaller States. Letters of cooperation or support from groups such as Merchant Associations, Jaycees, Kiwanis, Lions, Rotary Clubs, or similar organizations must be included with the grant application;
—Programs must provide: basic information on the requirements of title III of the ADA using approved technical assistance materials available from the Department of Justice (including the "Open for Business" videotape, the Checklist for Readily Achievable Barrier Removal, the ADA Questions and Answers booklet, the IRS Tax Credit form, etc.); a list of technical assistance resources available locally, within the State, and from the Federal government that participants may use to obtain technical assistance at a later time; and time for local businesses to discuss issues, share ideas, and identify practical, cost-effective solutions that they have used successfully to comply with the ADA. An outline of a model program (one to two hours in length) must be included with the grant application;
—Use local, State, and regional ADA resources and individuals knowledgeable about the ADA for assistance to conduct the educational programs. It is anticipated that speakers and presenters will voluntarily provide their services. Grant funds may be used to reimburse individual travel expenses, but may not be used to provide honoraria for speakers. Letters of cooperation or support from groups such as the regional Disability and Business Technical Assistance Center (DBTAC) or local DBTAC affiliates, Independent Living Centers, other organizations representing people with disabilities, or members of the ADA Training and Implementation Network must be included with the grant application;
—Develop a marketing pamphlet or flyer that can be easily tailored, reproduced, and used by local business groups hosting the programs;
—Ensure that businesses owned or operated by people who are members of racial and ethnic minority groups will be included within the audiences reached;
—Provide a brief final report on the project, including an identification of the strengths and weaknesses of the project, the number and types of participants involved, examples of known positive changes that may have occurred as a result of the project, and suggestions for improvement that the Department will be able to use as guidance for other organizations seeking to conduct similar projects in the future.

Priority 2: Statewide ADA Information-Sharing Conferences for Government Officials

In the United States today, an estimated 86,000 units of State, county, and municipal governments are working to understand and meet their obligations under title II of the ADA. The ADA provides the general framework to eliminate discrimination against people with disabilities, but also the flexibility to address the unique circumstances encountered by State and local government programs and activities. While this allows State and local government officials with ADA compliance responsibilities to decide exactly how to comply, many may not know where to turn for accurate, practical information and assistance within their own communities and may be reluctant to take needed action.

While many State and local governments have been successful in making their programs and activities accessible to people with disabilities, misinformation about the requirements of the ADA continues to exist, making voluntary compliance more confusing and burdensome for some than it need be. For example, many believe the ADA requires that all buildings must be accessible, when, in fact, the ADA actually requires that a public entity make its programs accessible to people with disabilities through relocation of programs to an accessible location, structural modifications, or other alternatives. For those State and local government officials having the authority and the responsibility for developing and implementing ADA compliance strategies, access to information and other assistance is paramount if compliance efforts are to be successful. Yet, the significant resources that exist at the State and local level are often overlooked and underutilized, including other State and local governments that have already successfully resolved compliance issues.

One of the Department's primary roles and responsibilities is to assist local communities, both small and large, to understand the ADA's requirements through education and technical assistance. To accomplish this, the Department will fund pilot projects to conduct statewide ADA information-sharing conferences for State and local government officials. These conferences will provide information on the requirements of the ADA, the ADA resources available locally, regionally and from the Federal government, and promote the exchange of ideas and information on successful compliance efforts within the State.

Proposed projects should target participants with decision-making authority over programs that serve the public, particularly those with responsibility for ADA compliance activities. Preference will be given to State agencies or state-based organizations that demonstrate the existence of an established relationship with the target audience across that particular State. Examples include, but are not limited to, a State office on accessibility and ADA compliance, a State building code council, or state-based organizations that represent or work with local and State government officials such as a State municipal association, association of counties, association of cities or towns, council of mayors or city managers, etc.

Proposed projects must bring State and local government officials from across the State together with individuals knowledgeable about the ADA from local, regional, and Federal sources, use approved ADA publications and materials available free from the Department or other sources, and provide a mechanism for the continuing exchange of information and ideas among the conference participants.

The statewide conference must reach a diverse representation of title II entities statewide and have the potential for replication in other States.

A pilot project to conduct statewide ADA information-sharing conferences for local and State government officials shall include the following major components:

—Working with State and local government agencies, officials, and employees, plan and promote the ADA conference to ensure representation from local and State agencies and programs from around the State. An outline plan for promoting the conference and its goals, including use of the media, must be included with the grant application;
—Identify and develop a list of local, State, regional, and Federal ADA resources that serve the State (e.g., regional DBTAC and local DBTAC affiliates, Centers for Independent Living, other organizations representing people with disabilities, members of the ADA Training and Implementation Network, local and State officials with ADA expertise, Federal ADA information lines, electronic bulletin boards, the ADA Information File in local libraries, etc.);
—Plan and conduct one statewide conference that will provide: information on the requirements of title II of the ADA specifically tailored to the needs of the targeted audience; information about technical assistance resources available locally, within the State, and from the Federal government; a variety of workshops or break-out sessions tailored to address specific issues and to enable participants to discuss issues, share ideas, and learn of practical, cost-effective solutions that have been used successfully to comply with the ADA; and a mechanism for the continuing exchange of information and ideas among the conference participants (such as distributing lists of ADA resources and the names and addresses of conference participants to all conference attendees). An outline of the proposed agenda for the conference must be included with the grant application;
—In carrying out the conference, the grant recipient must use existing ADA publications and materials reviewed by the Federal government that are available from the Department and other agencies, and the local, State, regional, and Federal ADA resources that serve the State, as described above. Letters of cooperation or support from groups or individuals who will be participating as speakers must be included with the grant application;
—Provide a final report on the project, including an identification of the strengths and weaknesses of the project, the number and types of participants involved, examples of known positive changes that may have occurred as a result of the project, and suggestions for improvement that the Department will be able to use as guidance for other organizations seeking to conduct similar statewide conferences in the future.

Selection Criteria

Applicants will be evaluated in each of the following four selection criteria areas for a total of 100 points:

Project Strategy and Plan of Action (50 points)

Applicants must demonstrate a thorough understanding of the grant proposal priority, including the background, intended audience, and intended approach. Applicants must also demonstrate an ability to reach as diverse a segment of the target audience as possible in a cost-efficient manner. Project goals and expected outcomes should be clearly articulated. Clarity, quality, and appropriateness of the plans, methodologies, and procedures to achieve the goals listed in the application will be carefully considered. Proposals should reflect the involvement of State and local business and government organizations with

local, State, and regional organizations that provide ADA technical assistance and organizations that represent people with disabilities. Proposals must include letters of commitment as previously described under each program priority.

The plan of action must be sound and well-reasoned, with evidence of the ability to implement the plan immediately and complete the project within the period of performance. Project strategy must include a plan for documenting known positive changes that may occur as a result of the project and for evaluating the strengths and weaknesses of the project, as previously described under each program priority.

Staff Capability (25 points)

Applicants must provide evidence of qualified personnel to undertake the project. The application must contain necessary position description(s), resume(s), and assurances of availability of key staff (salaried or contract staff) with appropriate competencies and experience. Duties outlined for grant-funded position(s) must be clearly appropriate to the scope of the work being carried out under the project.

Organizational Capability and Management Plan (20 points)

Applicants must demonstrate the ability to reach and work effectively with the targeted audience and offer evidence of proven organizational ability to provide high quality results utilizing appropriate key personnel. Applications must include a management plan that provides evidence of project control by management, efficient and timely use of staff and other resources, and effective quality control mechanisms.

Resources/Facilities/Equipment (5 points)

Applicants must demonstrate the availability and appropriateness of resources (other than personnel), physical facilities, and equipment proposed to be used to carry out the project.

General Requirements for Grant Recipients

The following general grant program requirements should be considered by each applicant in developing both its project timeline and budget. Successful applicants must adhere to all conditions as specified; any deviation from the requirements in this section must be negotiated with DOJ.

Coordination With Other Agencies and Organizations

Grantees are expected to coordinate their project activities with the Department of Justice, and, where appropriate, with other Federally sponsored ADA technical assistance activities, such as the Department of Education's Disability and Business Technical Assistance Centers (DBTACs). Grantees will utilize existing technical assistance materials developed by the Department, its grantees, other Federal agencies and their grantees.

Grantee Orientation and Post-Award Monitoring

The Department intends to provide grant recipients with the maximum amount of post-award guidance and technical assistance possible within budget and staff constraints. Applicants are advised that DOJ staff may make site visits to provide grant recipients with guidance and technical assistance and to monitor the progress of the grant. The Office of Justice Programs (OJP), a component of the Department of Justice, will provide financial management and other services in support of the Disability Rights Section in the administration of this program. Applicants are advised that copies of both the quarterly progress reports and quarterly financial reports sent to OJP must also be sent to the Disability Rights Section.

DOJ Review of Grantee Materials

All materials used or developed by grant recipients must be approved by DOJ in advance of use. This includes media releases, scripts, program outlines/agendas, and handouts. However, it is not anticipated that grant recipients will develop new technical assistance materials under these priorities.

Availability of Existing Materials

Publications and resource lists that are currently available to the public from the Department of Justice (DOJ) will be provided, in bulk, to grant recipients free of charge. Grantees are not responsible for the duplication of DOJ materials. If an applicant wishes to use materials produced by previous DOJ grant recipients or recipients of grants from other Federal agencies, including the National Institute on Disability and Rehabilitation Research, it should coordinate such requests with DOJ.

Copyrights

The grantor agency reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal government purposes: (1) The copyright in any work developed under a grant, subgrant, or contract under a grant or subgrant; and (2) any rights of copyright to which a grantee, subgrantee, or a contractor purchases ownership with grant support.

Program Income

Grantee recipients may charge for grant-related activities and products (e.g., new materials developed and disseminated, conference registration fees), as long as all income derived from such activities and products is added to funds committed to the grant and its activities. Specifically, this program income (gross income earned by the grantee, during the funding period, as a direct result of the grant award or its activities) must be used "to further the eligible project or program objectives" or "to finance the non-Federal share of the project or program" (e.g., obtaining equipment or other assets required for the project). Program income may not be used to support or further a grantee's general organization, its programs or its services.

Costs associated with the provision of refreshments may not be paid for with grant funds. It is anticipated that speakers and presenters will voluntarily provide their services. Grant funds may be used to reimburse individual travel and accommodation expenses, but may not be used to provide honoraria for speakers. Fees charged by grantees (if any) must be nominal and there shall be no charge for materials provided to audience participants.

Alternate Formats (Print and Audiovisual)

All materials produced in standard print must also be produced in large print, in Braille, and on audiotape in proportion to anticipated demand by persons with vision impairments in the targeted population(s). Audiotapes of lengthy materials must be voice- or tone-indexed.

Effective Communication and Accessibility Requirements

Applicants who plan to list a voice telephone number on correspondence or promotional materials concerning the grant activities, or on materials produced under the grant, must also list a TTY telephone number. Applicants who plan to use an automated telephone information system to respond to voice calls concerning grant activities must provide comparable service for TTY users. The cost of establishing an automated TTY information system or purchasing a TTY may not be included in the proposed project budget.

All grant activities must be held in accessible facilities. All programs must be accessible to attendees with communication disabilities.

Materials To Be Provided to DOJ

If grant project activities are videotaped, one copy must be submitted to DOJ. If videotapes are intended for commercial use, all must be captioned.

A copy of the final text of each document or videotape script produced must be provided to DOJ on computer disk in ASCII or Wordperfect.

Application Requirements

Under Section 506(d) of the Americans with Disabilities Act, the Department is authorized to award grants to individuals and non-profit organizations to supplement its ADA technical assistance efforts. All applicants must submit, in the order given, one bound original and two unbound copies of the following information:

1. A signed SF 424 and SF 424A (Rev. 4/88) application form. The grant priority number under which the applicant is submitting the proposal must be clearly identified in box number 11 on form SF 424.

2. A one-page Abstract that summarizes the goals of the project, the nature and size of the population(s) to be reached through the project, and the project strategy. Applicants should state explicitly the number of people expected to be served in the course of the project's activities.

3. A Project Strategy and Plan of Action (maximum length 15 pages) that:
—addresses each major component identified in the program priority for which applicant is applying;
—describes major activities and events;
—provides a description of the applicant's plan for working with other local, State, regional, and Federal ADA resources; and
—provides a plan for evaluating the effectiveness of the project, as described under the program priorities.

4. A Management Plan that includes a timeline for completion of all project objectives, activities, events, and products.

5. A Budget Narrative required by the SF 424 (Rev. 4/88), which includes the basis for all costs presented in the budget.

6. A brief statement identifying the facilities, equipment, and other resources available for carrying out the project.

7. Job description(s) for key position(s) that are proposed to be funded under the grant.

8. Resume(s) or qualification(s) of the key individual(s) who will fill the grant position(s), including consultants, if any (maximum length 3 pages each).

9. Letters of commitment from organizations that will be involved in the project. (Letters of reference are not required and, if submitted, will not be considered.)

10. A certification regarding lobbying, debarment, suspension, other responsibility matters, and drug-free workplace requirements, OJP Form 4061/6.

11. A disclosure of lobbying activities, SF LLL.

Please Note: Non-profit applicants who have not previously received Federal financial assistance from the Department of Justice may also be required to submit a disclosure of financial capability statement or other documentation prior to the grant award.

Dated: May 18, 1995.

Deval L. Patrick,

Assistant Attorney General, Civil Rights Division.

[FR Doc. 95–13202 Filed 5–30–95; 8:45 am]

BILLING CODE 4410–01–P

federal register

Wednesday
May 31, 1995

Part VIII

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Chapter I, et al.
Federal Acquisition Regulation (FAR): Summary Presentation, et al.; Final Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Circular 90–27; Introduction

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of final and interim rules with request for comment.

SUMMARY: This document summarizes the FAR rules which follow it in the order listed below. The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are issuing Federal Acquisition Circular (FAC) 90–27 to amend the Federal Acquisition Regulation (FAR).

DATES: For effective dates and comment dates, see separate documents which follow. Please cite FAC 90–27 and the appropriate FAR case number(s) in all correspondence related to the following documents.

FOR FURTHER INFORMATION CONTACT: The analyst whose name appears (in the table above) in relation to each FAR case or subject area. For general information, contact the FAR Secretariat, Room 4037, GS building, Washington, DC 20405, (202) 501–4755. Please cite FAC 90–27 and specific FAR case number(s).

SUPPLEMENTARY INFORMATION: Federal Acquisition Circular 90–27 amends the Federal Acquisition Regulation (FAR) as specified below:

Item and subject	FAR Case	Analyst
I: Double-Sided Copying (Interim)	92–50	DeStefano.
II: Environmentally Preferable Products (Interim)	92–54	DeStefano.
III: Ozone Executive Order (Interim)	93–307	DeStefano.
IV: Addition of Three European Community Countries	95–601	McAndrew.
V: Trade Sanctions-Germany	94–5	O'Such.
VI: Interdivisional Transfers (Interim)	94–9	Olson.

Item I—Double-Sided Copying (FAR Case 92–50)

This interim rule amends FAR Part 4 and a new contract clause, Printing/Copying Double-Sided on Recycled Paper, is added at 52.204–4 to encourage contractors to maximize the use of double-sided copying on recycled paper when submitting written documents related to an acquisition.

Item II—Environmentally Preferable Products (FAR Case 92–54)

This interim rule amends FAR Parts 7, 10, 11, 15, 23, 36, 42, and 52 to clearly reflect the Government's preference for the acquisition of environmentally-sound and energy-efficient products and services and to establish an affirmative procurement program favoring items containing the maximum practicable content of recovered materials. Changes include addition of: (1) Definitions of "new" and "other than new" at 10.001, in the clauses at 52.210–5 and 52.210–7, and in the provision at 52.210–6; (2) a new section at 23.4040(b) requiring that acquisitions of certain items meet the Environmental Protection Agency's minimum standards for recovered material content, unless approval is granted by an official designated by the agency head; (3) a new provision and clause at 52.223–8 and 52.223–9 requiring offerors and contractors to provide information regarding the percentage of recovered materials in certain items proposed for use and actually used in contract performance; and (4) a new clause at 52.223–10 requiring contractors operating Government-owned or leased facilities to establish cost-effective waste reduction programs.

Item III—Ozone Executive Order (FAR Case 93–307)

This interim rule implements Executive Order 12843, Procurement Requirements and Policies for Federal Agencies for Ozone-Depleting Substances, and Environmental Protection Agency Clean Air Act Title VI regulations, Protection of Stratospheric Ozone (40 CFR Part 82). A new subpart is added at FAR 23.8 to provide policy for the acquisition of items which contain, use, or are manufactured with ozone-depleting substances. Two new clauses are added: 52.223–11, Ozone—Depleting Substances, and 52.223–12, Refrigeration Equipment and Air Conditioners. The clause at 52.223–11 requires contractors to label products which contain or are manufactured with class I or class II ozone-depleting substances. The clause at 52.223–12 requires contractors to comply with Sections 608 and 609 of the Clean Air Act (42 U.S.C. 7671g and 7671h) as each or both apply to the contract. 42 U.S.C. 7671g addresses a national recycling and emission reduction program, and 42 U.S.C. 7671h addresses servicing of motor vehicle air conditioners.

Item IV—Addition of Three European Community Countries (FAR Case 95–601)

This final rule adds three countries, Austria, Finland and Sweden, to the definition of "EC Country" in section 25.401 and in the clauses at 52.225–15 and 52.225–17, and adds the definition of "sanctioned member state of the EC" in section 25.1001 and in the clauses at 52.225–18 and 52.225–19 of the FAR. These countries joined the EC on January 1, 1995.

Item V—Trade Sanctions—Germany

This final rule amends the definition of "sanctioned member state of the European Community" to remove the "Federal Republic of Germany" from FAR 25.1001 and the clauses at 52.225–18 and 52.225–19. These revisions are based on the Office of the United States Trade Representative's determination, which was published in the **Federal Register** at 59 FR 11360, March 10, 1994.

Item VI—Interdivisional Transfers (FAR Case 94–9)

This interim rule amends the cost principle criteria for the cost of interdivisional transfers to permit interdivisional transfers at price rather than cost under criteria that more closely approximate those applied to subcontracts eligible for exemption or waiver of cost or pricing data.

Dated: May 24, 1995.

C. Allen Olson,

Director, Office of Federal Acquisition Policy.

Federal Acquisition Circular

Number 90–27

Federal Acquisition Circular (FAC) 90–27 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 90–27 are effective May 31, 1995.

Dated: May 2, 1995.

Ida M. Ustad,

Associate Administrator for Acquisition Policy, General Services Administration.

Eleanor R. Spector,

Director, Defense Procurement Department of Defense.

Dated: April 24, 1995.

Tom Luedtke,

Deputy Associate Administrator for Procurement, NASA.

[FR Doc. 95–13254 Filed 5–30–95; 8:45 am]

BILLING CODE 6820–EPO–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 4 and 52

[FAC 90–27, FAR Case 92–50, Item I]

RIN 9000–AG41

Federal Acquisition Regulation; Double-Sided Copying

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comment.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to an interim rule amending the Federal Acquisition Regulation (FAR) to encourage contractors to maximize the use of double-sided copying on recycled paper when submitting documents related to an acquisition. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

DATES: Effective Date: May 31, 1995.

Comment Date: Comments should be submitted to the FAR Secretariat at the address shown below on or before July 31, 1995 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW, Room 4035, Attn: Ms Beverly Fayson, Washington, DC 20405.

Please cite FAC 90–27, FAR case 92–50 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph DeStefano at (202) 501–1758 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–27, FAR case 92–50.

SUPPLEMENTARY INFORMATION:

A. Background

Executive Order 12873, Federal Acquisition, Recycling, and Waste Prevention, dated October 20, 1993 (58 FR 54911), encourages the use of double-sided copying on recycled paper for documents printed within the Government and under Government contracts.

B. Regulatory Flexibility Act

This interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the requirements under the rule are best efforts requirements. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAC 90–27, FAR Case 92–50), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DOD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because the rule implements Executive Order 12873, which required FAR revisions by April 18, 1994. However, pursuant to Public Law 98–577 and FAR 1.501, public comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Parts 4 and 52

Government procurement.

Dated: May 24, 1995.

C. Allen Olson,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR Parts 4 and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 4 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 4—ADMINISTRATIVE MATTERS

2. Section 4.000 is revised to read as follows:

4.000 Scope of part.

This part prescribes policies and procedures relating to the administrative aspects of contract execution, contractor-submitted paper documents, distribution, reporting, retention, and files.

3. Subpart 4.3 is added to read as follows:

Subpart 4.3—Paper Documents

Sec.

4.300 Scope of subpart.
4.301 Authority.
4.302 Definition.
4.303 Policy.
4.304 Contract clause.

Subpart 4.3—Paper Documents

4.300 Scope of subpart.

This subpart provides policies and procedures on contractor-submitted paper documents.

4.301 Authority.

The authority for this subpart is established in Executive Order 12873, Sections 402(d) and 504, October 20, 1993.

4.302 Definition.

Printing/copying double-sided, as used in this subpart, means printing or reproducing a document so that information is on both sides of a sheet of paper.

4.303 Policy.

It is the policy of the Government that a contractor submitting paper documents to the Government relating to an acquisition should, if possible, submit those documents printed/copied double-sided on recycled paper. If the contractor can only print/copy double-sided or use recycled paper, the contractor should accomplish whichever one the contractor has the ability to achieve.

4.304 Contract clause.

The contracting officer shall insert the clause at 52.204–4, Printing/Copying Double-Sided on Recycled Paper, in solicitations and contracts.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Section 52.204 is added to read as follows:

52.204–4 Printing/Copying Double-Sided on Recycled Paper.

As prescribed in 4.304, insert the following clause:

PRINTING/COPYING DOUBLE-SIDED ON RECYCLED PAPER (MAY 1995)

(a) In accordance with Executive Order 12873, dated October 20, 1993, the Offeror/Contractor is encouraged to submit paper documents, such as offers, letters, or reports, that are printed/copied double-sided on recycled paper that has at least 20% postconsumer material.

(b) The 20% standard applies to high-speed copier paper, offset paper, forms bond, computer printout paper, and carbonless paper. A higher standard of 50% recovered material, with 20% postconsumer material, applies to other uncoated printing and writing papers such as writing and office paper, book paper, cotton fiber paper, and cover stock. An alternative standard for either of the standards specified in this clause is 50% recovered material content of certain industrial by-products.

(End of clause)

[FR Doc. 95–13255 Filed 5–30–95; 8:45am]

BILLING CODE 6820–EPD–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 7, 10, 11, 15, 23, 36, 42, and 52

[FAC 90–27, FAR Case 92–54, Item II]

RIN 9000–AG40

Federal Acquisition Regulation; Environmentally Preferable Products

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comment.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to an interim rule amending the Federal Acquisition Regulation (FAR) to incorporate policies for the acquisition of environmentally preferable and energy-efficient products and services. This regulatory action was subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

DATES: Effective Date: May 31, 1995.

Comment Date: Comments should be submitted to the FAR Secretariat at the address shown below on or before July 31, 1995. To be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW, Room 4035, Attn: Ms. Beverly Fayson, Washington, DC 20405.

Please cite FAC 90–27, FAR case 92–54 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph DeStefano at (202) 501–1758 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–27, FAR case 92–54.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule implements the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6901, *et seq.*); Executive Order 12873, Federal Acquisition, Recycling, and Waste Prevention (58 FR 54911, October 22, 1993); and Office of Federal Procurement Policy (OFPP) Policy Letter 92–4, Procurement of Environmentally-Sound and Energy-Efficient Products and Services (57 FR 53362, November 9, 1992).

The rule amends FAR Parts 7, 10, 11, 15, 23, 36, 42, and 52 to clearly reflect the Government's preference for the acquisition of environmentally-sound and energy-efficient products and services and to establish an affirmative procurement program favoring items containing the maximum practicable content of recovered materials. Definitions of "new" and "other than new" are added at 10.001, in the clauses at 52.210–5 and 52.210–7, and in the provision at 52.210–6. A new provision and clause are added at 52.223–8 and 52.223–9 requiring offerors and contractors to provide information regarding the percentage of recovered materials in certain items proposed for use and actually used in contract performance. A new clause is added at 52.223–10 requiring contractors operating Government-owned or leased facilities to establish cost-effective waste reduction programs.

B. Regulatory Flexibility Act

This interim rule may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the rule establishes a preference for the acquisition of environmentally-sound and energy-efficient products and services and requires that contracts for certain items specify minimum percentages of recovered material content. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and will be provided to the Chief Counsel for Advocacy for the Small Business Administration. A copy of the IRFA may be obtained from the FAR Secretariat. Comments are invited. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *se seq.* (FAC 90–27, FAR Case 92–54), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) is deemed to apply because the interim rule contains information collection requirements. Accordingly, a request for approval of a new information collection requirement concerning environmentally sound products was submitted to the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* Public comments concerning this request were invited through a **Federal Register** notice published at 59 FR 60357, November 23, 1994.

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DOD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because Executive Order 12873 required implementation and incorporation of its policies into the FAR by April 18, 1994. However, pursuant to Public Law 98–577 and FAR 1.501, public comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Parts 7, 10, 11, 15, 23, 36, 42, and 52

Government procurement.

Dated: May 24, 1995.

C. Allen Olson,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR parts 7, 10, 11, 15, 23, 36, 42, and 52 are amended as set forth below:

1. The authority citation for 48 CFR part 7, 10, 11, 15, 23, 36, 42, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 7—ACQUISITION PLANNING

2. Section 7.102 is revised to read as follows:

7.102 Policy.

Agencies shall perform acquisition planning and conduct market surveys for all acquisitions. This planning shall integrate the efforts of all personnel responsible for significant aspects of the acquisition. The purpose of this planning is to ensure that the Government meets its needs in the most effective, economical, and timely manner.

3. Section 7.103 is amended by redesignating paragraphs (a) through (l) as (b) through (m) and adding new paragraphs (a) and (n) to read as follows:

7.103 Agency-head responsibilities.

* * * * *

(a) Promoting and providing for full and open competition (see part 6) or, when full and open competition is not required in accordance with part 6, for obtaining competition to the maximum extent practicable, with due regard to the nature of the supplies and services to be acquired (41 U.S.C. 253a(a)(1)).

* * * * *

(n) Ensuring that agency planners specify needs and develop plans, drawings, work statements, specifications, or other product descriptions promoting the use of environmentally preferable and energy-efficient products and services (e.g., promoting energy conservation and the use of recovered material content and the elimination or reduction of ozone-depleting substances usage), and that these are considered in the evaluation and award of contracts, as appropriate (see part 23).

4. Section 7.105 is amended by revising paragraph (b)(15), and in paragraph (b)(17) by removing the words "energy conservation measures". The revised text reads as follows:

7.105 Contents of written acquisition plans.

* * * * *

(b) * * *

(15) *Environmental and energy conservation objectives.* Discuss all applicable environmental and energy conservation objectives associated with the acquisition (see part 23), the applicability of an environmental assessment or environmental impact statement (see 40 CFR part 1502), the proposed resolution of environmental issues, and any environmentally-related requirements to be included in solicitations and contracts.

* * * * *

PART 10—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

5. Section 10.001 is amended by adding, in alphabetical order, the following definitions:

10.001 Definitions.

* * * * *

Material, as used in this part, includes, but is not limited to, raw material, parts, items, components, and end products.

New, as used in this part, means previously unused or composed of previously unused materials and may include unused residual inventory or unused former Government surplus property.

Other than new, as used in this part, includes, but is not limited to, recycled, recovered, remanufactured, used, and reconditioned.

* * * * *

Reconditioned, as used in this part, means restored to an earlier normal operating condition by readjustments and replacement of parts.

Remanufactured, as used in this part, means factory rebuilt to new equipment performance specification and unused subsequent to rebuilding.

* * * * *

6. Section 10.002 is amended by redesignating paragraph (e) as (f) and adding a new (e) to read as follows:

10.002 Policy.

* * * * *

(e) The Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901, *et seq.*), as amended, and Executive Order 12873, dated October 20, 1993, establish requirements for the procurement of products containing recovered materials, and environmentally preferable and energy-efficient products and services. Requiring activities shall prepare plans, drawings, specifications, standards (including voluntary standards), and purchase descriptions that consider the requirements set forth in part 23.

* * * * *

7. Section 10.004 is amended in paragraph (a)(1) by adding a sentence at the end of the paragraph to read as follows:

10.004 Selecting specifications or descriptions for use.

(a)(1) * * * Agencies should prepared product descriptions to achieve maximum practicable use of recovered material and other materials that are environmentally preferable (see subparts 23.4 and 23.7).

* * * * *

8. Section 10.010 is revised to read as follows:

10.010 Acquiring other than new material, former Government surplus property, and residual inventory.

(a) Agencies shall allow offers of other than new material, former Government surplus property, or residual inventory unless it is determined that such materials are unacceptable. When only new material is acceptable, the solicitation shall clearly identify the material that must be new. Offerors providing other than new material shall be required to comply with the clause at 52.210–5, New Material, the provisions at 52.210–6, Listing of Other Than New Material, Residual Inventory, and Former Government Surplus Property, and the clause at 52.210–7, Other Than New Material, Residual Inventory, and Former Government Surplus Property, as appropriate.

(b) Agencies shall specify products, including packaging, that contain the highest practicable percentage of recovered and environmentally preferable materials, and where applicable, postconsumer material, consistent with performance requirements, availability, price reasonableness, and cost-effectiveness.

(c) Contracting officers shall consider the following when determining whether other than new materials, former Government surplus property, or residual inventory are acceptable:

(1) Safety of persons or property.

(2) Specification and performance requirements.

(3) Price reasonableness.

(4) Total cost to the Government (including maintenance, inspection, testing, and useful life).

(d) When a contract calls for material to be furnished at cost, the allowable charge for former Government surplus property shall not exceed the cost at which the contractor acquired the property.

9. Section 10.011 is amended by revising paragraphs (f)(1) and (g)(1) to read as follows:

10.011 Solicitation provisions and contract clauses.

* * * * *

(f)(1) The contracting officer shall insert the provision at 52.210–6, Listing of Other Than New Material, Residual Inventory, and Former Government Surplus Property, in solicitations containing the clause at 52.210–5.

* * * * *

(g)(1) The contracting officer shall insert the clause at 52.210–7, Other Than New Material, Residual Inventory, and Former Government Surplus Property, in contracts containing the clause at 52.210–5.

* * * * *

PART 11—ACQUISITION AND DISTRIBUTION OF COMMERCIAL PRODUCTS

10. Section 11.004 is amended by revising paragraph (b); and by redesignating paragraphs (c)(2) through (c)(6) as (c)(4) through (c)(8) and adding new paragraphs (c)(2) and (c)(3) to read as follows:

11.004 Market research and analysis.

* * * * *

(b) *Requirements.* Agencies shall conduct market research and analysis as needed to—

(1) Ensure full and open competition;

(2) Ensure maximum practicable use of recovered materials (see subpart 23.4);

(3) Promote energy conservation and efficiency; and

(4) Meet the Government's needs in a cost-effective manner.

(c) * * *

(2) The availability of the same or similar products that contain recovered materials.

(3) The availability of the same or similar products that are energy-efficient.

* * * * *

PART 15—CONTRACTING BY NEGOTIATION

11. Section 15.601 is amended by adding, in alphabetical order, the definition "source reduction" to read as follows:

15.601 Definition.

* * * * *

Source reduction, as used in this subpart, means any practice which (a) reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment prior to recycling, treatment, or disposal; and (b) reduces the hazards to public health and the environment associated with the release of such substances, pollutants, or contaminants.

* * * * *

12. Section 15.605 is amended by adding paragraph (b)(1)(iv) to read as follows:

15.605 Evaluation factors.

* * * * *

(b)(1) * * *

(iv) Environmental objectives, such as promoting waste reduction, source reduction, energy efficiency, and maximum practicable recovered material content (see part 23), shall also be considered in every source selection, when appropriate.

* * * * *

PART 23—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

13. Section 23.201 is revised to read as follows:

23.201 Authorities.

(a) Energy Policy and Conservation Act (42 U.S.C. 6361(a)(1)) and Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6901, *et seq.*).

(b) National Energy Conservation Policy Act (42 U.S.C. 8253 and 8262g).

(c) Executive Order 11912, April 13, 1976.

(d) Executive Order 12759, Sections 3, 9, and 10, April 17, 1991.

(e) Executive Order 12902, March 8, 1994.

14. Section 23.203 is revised to read as follows:

23.203 Policy.

Agencies shall consider energy-efficiency in the procurement of products and services. Energy conservation and efficiency data shall be considered along with estimated cost and other relevant factors in the preparation of plans, drawings, specifications, and other product descriptions.

15. Subpart 23.4 is revised to read as follows:

Subpart 23.4—Use of Recovered Materials

Sec.

23.400 Scope of subpart.
23.401 Authorities.
23.402 Definitions.
23.403 Policy.
23.404 Procedures.
23.405 Solicitation provisions and contract clause.

Subpart 23.4—Use of Recovered Materials

23.400 Scope of subpart.

This subpart prescribes policies and procedures for acquisition of:

(a) Environmental Protection Agency (EPA) designated items for which agencies must develop and implement affirmative procurement programs pursuant to 42 U.S.C. 6901, *et seq.*, and E. O. 12873;

(b) Agency designated items specifying recovered material; and

(c) Other products when preference is given to offers of products containing recovered material.

23.401 Authorities.

(a) The statutory basis for this program is the Resource Conservation and Recovery Act of 1976 (RCRA), as amended (Solid Waste Disposal Act, 42 U.S.C. 6901, *et seq.*). With limited exceptions, the statute requires agencies responsible for drafting or reviewing specifications to ensure that they:

(1) Do not exclude the use of recovered materials,

(2) Do not require the items to be manufactured from virgin materials, and

(3) Do require, for EPA designated items, the use of recovered materials to the maximum extent practicable without jeopardizing the intended end use of the item. The statute further requires agencies to develop and implement affirmative procurement programs for EPA designated items within one year after EPA's designation.

(b) The statute also requires the EPA to prepare guidelines on the availability, sources, and potential uses of recovered materials and associated items, including solid waste management services.

(c) Executive Order 12873, dated October 20, 1993, requires that the Federal Government assume leadership in making more efficient use of natural resources through the acquisition of items made with recovered materials and work to increase and expand markets for recovered materials through greater Federal Government preference and demand for such items. Executive Order 12873 also provides direction for agency development and implementation of affirmative procurement programs.

23.402 Definitions.

EPA designated item means an item that is or can be made with recovered materials and is listed by EPA in a procurement guideline (40 CFR, chapter 1, subchapter I).

Postconsumer material means a material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item. Postconsumer material is a part of the broader category of "recovered material."

Recovered material means waste materials and by-products which have been recovered or diverted from solid waste including postconsumer material, but such term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.

23.403 Policy.

The Government's policy is to aquire, in a cost-effective manner, items composed of the highest percentage of recovered materials practicable consistent with maintaining a satisfactory level of competition without adversely affecting performance requirements or exposing suppliers' employees to undue hazards from the recovered materials.

23.404 Procedures.

(a) *Applicability.* These procedures apply to all agency acquisitions where the agency requires minimum percentages of recovered materials. For EPA designated items, these procedures apply

(1) When the price of the item exceeds $10,000 or

(2) When the aggregate amount paid for items, or for functionally equivalent items, in the preceding fiscal year was $10,000 or more.

(b) *EPA designated items.* (1) EPA has designated items that are or can be made with recovered materials in 40 CFR chapter 1, subchapter I.

(2) For EPA designated items, agencies shall establish an affirmative procurement program. The responsibilities for preparation, implementation and monitoring of affirmative procurement programs shall be shared between technical or requirements personnel and procurement personnel. As a minimum, such programs shall include—

(i) A recovered materials preference program;

(ii) An agency promotion program;

(iii) A program for requiring reasonable estimates, certification, and verification of recovered material used in the performance of contracts; and

(iv) Annual review and monitoring of the effectiveness of the program.

(3) Acquisition of EPA designated items which do not meet the EPA or agency minimum recovered material standards shall be approved by an official designated by the agency head based on a written determination that the items—

(i) Are not available within a reasonable period of time;

(ii) Are available only at unreasonable prices;

(iii) Are not available from a sufficient number of sources to maintain a satisfactory level of competition; or

(iv) Based on technical verification, fail to meet performance standards in the specifications. Technical or requirements personnel shall provide a written determination when this determination is used partially or totally as a basis for an exemption. This determination shall be made on the basis of National Institute of Standards and Technology guidelines in any case in which the material is covered by these guidelines.

(4) Annual contractor certifications required by the clause at 52.223–9 shall be consolidated and reported in accordance with agency procedures.

(c) *Agency designated items.* Agency designated items specifying recovered material content shall be acquired pursuant to agency procedures.

23.405 Solicitation provisions and contract clause.

(a) The contracting officer shall insert the provision at 52.223–4, Recovered Material Certification, in solicitations requiring the use of recovered materials.

(b)(1) The contracting officer shall insert the provision at 52.223–8, Estimate of Percentage of Recovered Material for Designated Items to be Used in the Performance of the Contract, in solicitations containing a requirement for an EPA designated item.

(2) The contracting officer shall use Alternate I of the provision at 52.223–8 in solicitations that do not require EPA designated items, but do require agency designated items requiring recovered materials.

(3) The contracting officer shall use Alternate II of the provision at 52.223–8 in solicitations containing a requirement for both EPA designated and agency designated items.

(c) When the basic provision or Alternate II at 52.223–8 is used, the contracting officer shall also insert the clause at 52.223–9, Certification of Percentage of Recovered Material Content for EPA Designated Items Used in Performance of the Contract.

16. Subpart 23.7 is added to read as follows:

Subpart 23.7—Contracting for Environmentally Preferable and Energy-Efficient Products and Services

Sec.

23.701 Applicability.
23.702 Authorities.
23.703 Definitions.
23.704 Policy.
23.705 Application to Government-owned or leased facilities.
23.706 Contract clause.

23.701 Applicability.

This subpart prescribes policies for obtaining environmentally preferable and energy-efficient products and services.

23.702 Authorities.

(a) Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6901, *et seq.*).

(b) National Energy Conservation Policy Act (42 U.S.C. 8262g).

(c) Pollution Prevention Act of 1990 (42 U.S.C. 13101, *et seq.*).

(d) Executive Order 12873, October 20, 1993.

(e) Executive Order 12856, August 3, 1993.

(f) Executive Order 12902, March 8, 1994.

23.703 Definitions.

Environmentally preferable means products or services that have a lesser negative effect on human health or the environment when compared with competing products or services that serve the same purpose. This comparison should use principles recommended in guidance issued by EPA (see Executive Order 12873, Section 503), and may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the product or service.

Recycling means the series of activities, including collection, separation, and processing, by which products or other materials are recovered from the solid waste stream for use in the form or raw materials in the manufacture of products other than fuel for producing heat or power by combustion.

Waste prevention also known as "source reduction" means any change in the design, manufacturing, purchase, or use of materials or products (including packaging) to reduce their amount or toxicity before they become municipal solid waste. Waste prevention also refers to the reuse of products or materials.

Waste reduction means preventing or decreasing the amount of waste being generated through waste prevention, recycling, or purchasing recycled and environmentally preferable products.

23.704 Policy.

(a) Agencies shall implement cost-effective contracting preference programs favoring the acquisition of environmentally preferable and energy-efficient products and services.

(b) The following environmental objectives shall be addressed through the acquisition process:

(1) Obtaining products and services considered to be environmentally preferable (based on EPA-issued guidance) and energy-efficient.

(2) Eliminating or reducing the generation of hazardous waste and the need for special material processing (including special handling, storage, treatment, and disposal).

(3) Promoting the use of nonhazardous and recovered materials.

(4) Realizing life-cycle cost savings.

(5) Promoting cost effective waste reduction when creating plans, drawings, specifications, standards, and other product descriptions authorizing material substitutions, extensions of shelf-life, and process improvements; and

(6) Otherwise employing acquisition strategies that affirmatively implement the objectives in paragraph (b) of this section.

23.705 Application to Government-owned or leased facilities.

Pursuant to Executive Order 12873, Section 701, every new contract for contractor operation of a Government-owned or leased facility shall require contractor programs to promote and implement cost-effective waste reduction in performing the contract. In addition, where economically feasible, existing contracts for contractor operation of Government-owned or leased facilities should be modified to provide for cost-effective waste reduction in contract performance.

23.706 Contract clause.

The contracting officer shall insert the clause at 52.223–10, Waste Reduction Program, in all solicitations and contracts for contractor operation of Government-owned or leased facilities.

PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

17. and 18. Section 36.601–3 is amended by redesignating paragraphs (a) through (c) as (b) through (d) and adding a new paragraph (a) to read as follows:

36.601–3 Applicable contracting procedures.

(a) Prior to announcing a requirement for architect-engineering services for the design of a facility, the contracting officer shall ask the technical official responsible for the facility being designed to specifically identify any areas where recovered materials cannot be used in the facility construction. In those areas where recovered materials may be used, the architect-engineer shall specify use of the maximum practicable amount of recovered materials in the construction design specifications consistent with 10.010(b).

* * * * *

19. Section 36.602–1 is amended by redesignating paragraph (a)(6) as (a)(7) and adding a new (a)(6) to read as follows:

36.602–1 Selection criteria.

(a) * * *

(6) Demonstrated success in prescribing the use of recovered materials and achieving waste reduction and energy efficiency in facility design.

* * * * *

20. Section 36.602–3 is amended by revising paragraph (c) to read as follows:

36.602–3 Evaluation board functions.

* * * * *

(c) Hold discussions with at least three of the most highly qualified firms regarding concepts, the relative utility of alternative methods, and feasible ways to prescribe the use of recovered materials and achieve waste reduction and energy-efficiency in facility design (see part 23).

* * * * *

PART 42—CONTRACT ADMINISTRATION

21. Section 42.302 is amended by adding paragraph (a)(68) to read as follows:

42.302 Contract administration functions.

(a) * * *

(68) Monitor the contractor's compliance with the requirements of environmental laws including the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6901, *et seq.*) and other environmental requirements as specified in the contract (see part 23). Responsibilities of the contracting officer shall include—

(i) Verification of contractor compliance with specifications requiring the use of environmentally preferable and energy-efficient materials and the use of materials or delivery of end items with the specified recovered material content. This shall occur as part of the quality assurance procedures set forth in part 46.

(ii) As required in the contract, ensuring that the contractor complies with the reporting requirements relating to recovered material content utilized in contract performance.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

22. Sections 52.210–5, 52.210–6, and 52.210–7 are revised to read as follows:

52.210–5 New Material.

As prescribed in 10.011(e), insert the following clause:

NEW MATERIALS (MAY 1995)

(a) *Definitions.*

Material, as used in this clause, includes, but is not limited to, raw material, parts, items, components, and end products.

New, as used in this clause, means previously unused or composed of previously unused materials and may include unused residual inventory or unused former Government surplus property.

Other than new, as used in this clause, includes, but is not limited to, recycled, recovered, remanufactured, used, and reconditioned.

(b) Unless this contract specifies otherwise, the Contractor represents that the supplies, including any residual inventory and former Government surplus property identified under the Other Than New Material, Residual Inventory, and Former Government Surplus Property clause of this contract, are new and are not of such age or so deteriorated as to impair their usefulness or safety.

(c) If the Contractor believes that furnishing other than new material will be in the Government's interest, the Contractor shall so notify the Contracting Officer in writing and request authority to use such material. The Contractor's notice shall include the reasons for the request along with a proposal for any consideration due the Government if the Contracting Officer authorizes the use of other than new material.

(End of clause)

52.210–6 Listing of Other Than New Material, Residual Inventory, and Former Government Surplus Property.

As prescribed in 10.011(f), insert the following provision:

LISTING OF OTHER THAN NEW MATERIAL, RESIDUAL INVENTORY, AND FORMER GOVERNMENT SURPLUS PROPERTY (MAY 1995)

(a) *Definitions.*

Material, as used in this provision, includes, but is not limited to, raw material, parts, items, components, and end products.

New, as used in this provision, means previously unused or composed of previously unused materials and may include unused residual inventory or unused former Government surplus property.

Other than new, as used in this provision, includes, but is not limited to, recycled, recovered, remanufactured, used, and reconditioned.

(b) If the offeror proposes to furnish other than new material, residual inventory resulting from terminated Government contracts, or former Government surplus property, the offeror shall provide the following information as an attachment to the offer:

(1) A complete description of the materials.

(2) Quantity.

(3) Name of Government agency from which acquired.

(4) Date of acquisition, if applicable.

No other than new material, residual inventory or former Government surplus property other than that listed on the attachment shall be furnished under the resulting contract unless authorized in writing by the Contracting Officer.

(c) All material to be furnished under the resultant contract must comply with the terms and specifications contained in the contract.

(End of provision)

52.210–7 Other Than New Material, Residual Inventory, and Former Government Surplus Property.

As prescribed in 10.011(g), insert the following clause:

OTHER THAN NEW MATERIAL, RESIDUAL INVENTORY, AND FORMER GOVERNMENT SURPLUS PROPERTY (MAY 1995)

(a) *Definitions.*

Material, as used in this clause, includes, but is not limited to, raw material, parts, items, components, and end products.

New, as used in this clause, means previously unused or composed of previously unused materials and may include unused residual inventory or unused former Government surplus property.

Other than new, as used in this clause, includes, but is not limited to, recycled, recovered, remanufactured, used, and reconditioned.

(b) The Contractor shall not furnish any other than new material, residual inventory resulting from terminated Government contracts, or former Government surplus property, unless such materials were listed in the applicable attachment to the offer and approved by the Contracting Officer or unless otherwise authorized in writing by the Contracting Officer.

(c) All materials furnished under this contract shall comply with the terms and specifications contained in the contract.

(End of clause)

23. Section 52.223–4 is revised to read as follows:

52.223–4 Recovered Material Certification.

As prescribed in 23.405(a), insert the following provision:

RECOVERED MATERIAL CERTIFICATION (MAY 1995)

The offeror certifies, by signing this offer, that recovered materials, as defined in FAR 23.402, will be used as required by the applicable purchase descriptions.

(End of provision)

24. Sections 52.223–8 through 52.223–10 are added to read as follows:

52.223–8 Estimate of Percentage of Recovered Material for Designated Items To be Used in the Performance of the Contract.

As prescribed in 23.405(b)(1), insert the following provision:

ESTIMATE OF PERCENTAGE OF RECOVERED MATERIAL FOR DESIGNATED ITEMS TO BE USED IN THE PERFORMANCE OF THE CONTRACT (MAY 1995)

(a) By signing this offer, the offeror estimates that the total percentage(s) of recovered material for EPA Designated Items (see 40 CFR, Chapter 1, Subchapter I) to be used in the products and services to be provided under the terms and specifications set forth in this solicitation shall be as follows:

Item	Estimated percentage of recovered material—*

*In addition, for paper products, include the percentage of postconsumer material.

(b) Prospective offerors are cautioned that the Government will conclude that the percentage(s) of recovered materials to be used in products and services to be provided under any resulting contract shall be "0%" if the estimate(s) requested in this solicitation provision are left blank.

(c) Prospective offerors are further cautioned that estimated percentage(s) of recovered materials to be used in products and services to be provided under any resulting contract that are less than the requirements set forth in this solicitation may render a prospective offeror's offer nonresponsive.

(End of provision)

Alternate I (MAY 1955). As prescribed in 23.405(b)(2), used the basic provision and replace the words "EPA Designated Items" with "Agency Designated Items" in paragraph (a) of the basic provision.

Alternate II (MAY 1995). As prescribed in 23.405(b)(3), substitute the following paragraph (a) for paragraph (a) of the basic provision:

(a) By signing this offer, the offeror—

(1) Estimates that the total percentage(s) of recovered material for EPA Designated Items to be used in the products and services to be provided under the terms and specifications set forth in this solicitation shall be as follows:

Item	Estimated percentage of recovered material*

*In addition, for paper products, include the percentage of postconsumer material.

(2) Estimates that the total percentage(s) of recovered material for Agency Designated Items to be used in the products and services to be provided under the terms and specifications set forth in this solicitation shall be as follows:

Item	Percentage of recoverd material content utilized*	Total dollar amount of of item used
		$
		$
		$

*In addition, for paper products, include the percentage of postconsumer material content utilized.

52.223–9 Certification of Percentage of Recovered Material Content for EPA Designated Items Used in Performance of the Contract.

As prescribed in 23.405(c), insert the following clause:

CERTIFICATION OF PERCENTAGE OF RECOVERED MATERIAL CONTENT FOR EPA DESIGNATED ITEMS USED IN PERFORMANCE OF THE CONTRACT (MAY 1995)

(a) As required under Section 6962 of the Solid Waste Disposal Act, an officer or employee of the Contractor shall execute the following certification annually as required in paragraph (b) of this clause:

CERTIFICATION

I, _____ (name of certifier), am an officer or employee responsible for the performance of this contract and hereby certify that the following minimum recovered material content for EPA Designated Items was actually used in the performance of this contract during the preceding Government fiscal year (October 1-September 30, _____):

Item	Percentage of recovered material content utilized*	Total dollar amount of item used
		$
		$
		$

*In addition, for paper products, include the percentage of postconsumer material content utilized.

Signature of the Officer or Employee

Typed Name of the Officer or Employee

Title

Name of Company, Firm, or Organization

Date

(End of certification)

(b) The Contractor shall submit this certification annually to _____ * _____ by November 1, for the previous Government fiscal year (October 1 through September 30).

*To be completed in accordance with agency procedures.

(End of clause)

52.223–10 Waste Reduction Program.

As prescribed in 23.706, insert the following clause:

WASTE REDUCTION PROGRAM (MAY 1995)

(a) *Definition. Waste reduction*, as used in this clause, means preventing or decreasing the amount of waste being generated through waste prevention, recycling, or purchasing recycled and environmentally preferable products.

(b) Consistent with the requirements of Section 701 of Executive Order 12873, the Contractor shall establish a program to promote cost-effective waste reduction in all

operations and facilities covered by this contract. Any such program shall comply with applicable Federal, state, and local requirements.

(End of clause)

[FR Doc. 95–13256 Filed 5–30–95; 8:45 am]

BILLING CODE 6820–EPD–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 23 and 52

[FAC 90–27, FAR Case 93–307, Item III]

RIN 9000–AG42

Federal Acquisition Regulation; Ozone Executive Order

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comment.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to an interim rule which amends the Federal Acquisition Regulation (FAR) to provide policy for the acquisition of items that contain, use, or are manufactured with ozone-depleting substances. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

DATES: *Effective Date:* May 31, 1995.

Comment Date: Comments should be submitted to the FAR Secretariat at the address shown below on or before July 31, 1995 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW., Room 4035, Attn: Ms. Beverly Fayson, Washington, DC 20405.

Please cite FAC 90–27, FAR case 93–307 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph DeStefano at (202) 501–1758 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–27, FAR case 93–307.

SUPPLEMENTARY INFORMATION:

A. Background

The Environmental Protection Agency (EPA) promulgated 40 CFR Part 82, Subpart D (rule) to satisfy EPA's obligation under Section 613, Title VI of the Clean Air Act Amendments of 1990. The EPA rule requires each department, agency, and instrumentality of the United States to conform its procurement regulations to the policies and requirements of Title VI of the Clean Air Act and to maximize the substitution of safe alternatives for ozone-depleting substances as identified under Section 612 of the Act. The EPA rule also requires each department, agency, and instrumentality of the United States to certify to OMB, within twelve months of the final publication of the rule, that its procurement regulations have been modified in accordance with the rule. The EPA rule complements Executive Order 12843, Procurement Requirements and Policies for Federal Agencies for Ozone-Depleting Substances (58 FR 21881, April 23, 1993). Both the Executive Order and the EPA rule require that new contracts provide that any acquired products containing or manufactured with class I or class II ozone-depleting substances, or containers of class I or class II ozone-depleting substances, be labeled in accordance with Section 611 of the 1990 amendments to the Clean Air Act.

This interim FAR rule implements the requirements of Executive Order 12843 and 40 CFR Part 82. The rule contains two clauses; one clause requires contractors to label products containing ozone-depleting substances, and the other clause requires contractors to comply with Sections 608 and 609 of the Clean Air Act (42 U.S.C. 7671g and 7671h) as each or both apply to the contract. 42 U.S.C. 7671g addresses a national recycling and emission reduction program, and 42 U.S.C. 7671h addresses servicing of motor vehicle air conditioners.

B. Regulatory Flexibility Act

This interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the Clean Air Act requirements are already applicable to companies in industries supplying goods and services made with or containing ozone-depleting substances. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAC 90–27, FAR Case 93–307), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DOD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because this rule implements Executive Order 12843, which required FAR revisions by October 18, 1993, and 42 CFR Part 82, which required agency acquisition regulation revisions by October 24, 1994. Further, 42 CFR 82.84 states that, for agencies subject to the FAR (48 CFR Chapter 1), amendment of the FAR consistent with 42 CFR 82.84 shall satisfy, for those agencies, the requirement of 42 CFR 82.84 to revise agency acquisition regulations. However, pursuant to Public Law 98–577 and FAR 1.501, public comments received in response to this interim rule will be considered in the formation of a final rule.

List of Subjects in 48 CFR Parts 23 and 52

Government procurement.

Dated: May 24, 1995.

C. Allen Olson,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR Parts 23 and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 23 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 23—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

2. Subpart 23.8 is added to read as follows:

Subpart 23.8—Ozone-Depleting Substances

Sec.

23.800 Scope of subpart.
23.801 Authorities.
23.802 Definitions.
23.803 Policy.
23.804 Contract clauses.

23.800 Scope of subpart.

This subpart sets forth policies and procedures for the acquisition of items which contain, use, or are manufactured with ozone-depleting substances. This subpart does not apply to contracts performed outside the United States, its possessions, and Puerto Rico.

23.801 Authorities.

(a) Title VI of the Clean Air Act (42 U.S.C. 7671, *et seq.*).

(b) Executive Order 12843, April 21, 1993.

(c) Environmental Protection Agency (EPA) regulations, Protection of Stratospheric Ozone (40 CFR part 82).

23.802 Definitions.

Class I substance means any substance designated as class I by EPA (40 CFR part 82), including but not limited to chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform.

Class II substance means any substance designated as class II by EPA (40 CFR part 82), including but not limited to hydrochlorofluorocarbons.

23.803 Policy.

(a) It is the policy of the Federal Government that Federal agencies:

(1) Implement cost-effective programs to minimize the procurement of materials and substances that contribute to the depletion of stratospheric ozone; and

(2) Give preference to the procurement of alternative chemicals, products, and manufacturing processes that reduce overall risks to human health and the environment by lessening the depletion of ozone in the upper atmosphere.

(b) In preparing specifications and purchase descriptions, and in the acquisition of supplies and services, agencies shall ensure that acquisitions:

(1) Comply with the requirements of Title VI of the Clean Air Act, Executive Order 12843, and 40 CFR 82.84(a) (2), (3), (4), and (5); and

(2) Substitute safe alternatives to ozone-depleting substances, as identified under 42 U.S.C. 7671k, to the maximum extent practicable, as provided in 40 CFR 82.84(a)(1).

23.804 Contract clauses.

(a) The contracting officer shall insert the clause at 52.223–11, Ozone-Depleting Substances, in solicitations and contracts for supplies containing or manufactured with class I or class II ozone-depleting substances or containers of class I or class II ozone-depleting substances.

(b) The contracting officer shall insert the clause at 52.223–12, Refrigeration Equipment and Air Conditioners, in solicitations and contracts for services when the contract includes the maintenance, repair, or disposal of any equipment or appliance using class I or class II ozone-depleting substances as a refrigerant, such as air conditioners, including motor vehicle, refrigerators, chillers, or freezers.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. and 4. Section 52.223–11 and 52.223–12 are added to read as follows:

52.223–11 Ozone-Depleting Substances.

As prescribed in 23.804(a), insert the following clause:

OZONE-DEPLETING SUBSTANCES (MAY 1995)

(a) *Definitions.*

Class I substance, as used in this clause, means any substance designated as class I by the Environmental Protection Agency (EPA) (40 CFR Part 82), including but not limited to chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform.

Class II substance, as used in this clause, means any substance designated as class II by EPA (40 CFR Part 82), including but not limited to hydrochlorofluorocarbons.

(b) As required by 42 U.S.C. 7671j (b), (c), and (d) and 40 CFR Part 82, Subpart E, the Contractor shall label products which contain a class I or class II ozone-depleting substance or are manufactured with a process that uses class I or class II ozone-depleting substances, or containers of class I or class II ozone-depleting substances, as follows:

"WARNING: Contains (or manufactured with, if applicable) _____* _____, a substance(s) which harm(s) public health and environment by destroying ozone in the upper atmosphere."

*The Contractor shall insert the name of the substance(s).

(End of clause)

52.223–12 Refrigeration Equipment and Air Conditioners.

As prescribed in 23.804(b), insert the following clause:

REFRIGERATION EQUIPMENT AND AIR CONDITIONERS (MAY 1995)

The Contractor shall comply with the applicable requirements of Sections 608 and 609 of the Clean Air Act (42 U.S.C. 7671g and 7671h) as each or both apply to this contract.

(End of clause)

[FR Doc. 95–13256 Filed 5–30–95; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 25 and 52

[FAC 90–27, FAR Case 95–601, Item IV]

RIN 9000–AG43

Federal Acquisition Regulation; Addition of Three New European Community Countries

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to a final rule to add Austria, Finland, and Sweden to the FAR definition of "European Community (EC) Country" and to the definition of "sanctioned member state of the EC". The United States Trade Representative has requested this action be taken as soon as possible because these countries have joined the EC on January 1, 1995. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

DATES: Effective Date: May 31, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Edward McAndrew at (202) 501–1474 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–27, FAR case 95–601.

SUPPLEMENTARY INFORMATION:

A. Background

By letter, dated December 21, 1994, the General Counsel, United States Trade Representative Office, requested that three countries, Austria, Finland and Sweden, be added to sections 25.401 and 25.1001 because these countries became members of the European Union on January 1, 1995. The General Counsel requested these changes as quickly as possible after the new year.

B. Regulatory Flexibility Act

This final rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory

Flexibility Act, 5 U.S.C. 601, *et seq.*, because it merely adds three countries to the definition of European country in section 25.401 and the same three countries are added to the definition of sanctioned member state of the EC. This is mostly a ministerial rule. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAC 90–27, FAR Case 95–601), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 25 and 52

Government procurement.

Dated: May 24, 1995.

C. Allen Olson,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR parts 25 and 52 are amended as set forth below:

1. The authority citation for 48 CFR parts 25 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 25—FOREIGN ACQUISITION

2. Section 25.401 is amended by revising the definition "EC country" to read as follows:

25.401 Definitions.

* * * * *

EC country, as used in this subpart, means Austria, Belgium, Denmark, Federal Republic of Germany, Finland, France, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden, and the United Kingdom.

* * * * *

3. Section 25.1001 is amended by revising the definition "Sanctioned member state of the EC" to read as follows:

25.1001 Definitions.

* * * * *

Sanctioned member state of the EC means Austria, Belgium, Denmark, Finland, France, Ireland, Italy, Luxembourg, the Netherlands, Sweden, and the United Kingdom.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.225–15 [Amended]

4. Section 52.225–15 is amended by revising the date in the clause heading to read "(MAY 1995)"; and in the definition of "EC country" by adding in alphabetical order the countries "Austria", "Finland", and "Sweden".

52.225–17 [Amended]

5. Section 52.225–17 is amended by revising the date in the clause heading to read "(MAY 1995)"; and in the definition of "European Community country" by adding in alphabetical order the countries "Austria", "Finland", and "Sweden".

52.225–18 [Amended]

6. Section 52.225–18 is amended by revising the date in the clause heading to read "(MAY 1995)"; and in the definition of "Sanctioned member state of the EC" by adding in alphabetical order the countries "Austria", "Finland", and "Sweden".

52.225–19 [Amended]

7. Section 52.225–19 is amended by revising the date in the clause heading to read "(MAY 1995)"; and in the definition of "Sanctioned member state of the European Community (EC" by adding in alphabetical order the countries "Austria", "Finland", and "Sweden".

[FR Doc. 95–13258 Filed 5–30–95; 8:45 am]

BILLING CODE 6820–EPO–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 25 and 52

[FAC 90–27; FAR Case 94–5; Item V]

Federal Acquisition Regulation; Trade Sanctions—Germany

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule to amend the Federal Acquisition Regulation (FAR) to reflect the termination of the trade sanctions on the Federal Republic of Germany that had been imposed in May 1993. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

EFFECTIVE DATE: May 31, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Peter O'Such at (202) 501–1759 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–27, FAR case 94–5.

SUPPLEMENTARY INFORMATION:

A. Background

A U.S. Trade Representative determination, published in the **Federal Register** at 59 FR 11360, March 10, 1994, terminated the sanctions that had been imposed on the Federal Republic of Germany, published at 58 FR 31136, May 28, 1993, on the basis of assurance from Germany that it would not apply the discriminatory provisions of the Utilities Directive of the European Union to procurement of U.S. goods by its telecommunications utilities.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAC 90–27, FAR case 94–5), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 25 and 52

Government procurement.

Dated: May 24, 1995.

C. Allen Olson,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR Parts 25 and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 25 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 25—FOREIGN ACQUISITION

25.1001 [Amended]

2. Section 25.1001 is amended in the definition of "Sanctioned member state of the EC" by removing "Federal Republic of Germany,".

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.225–18 [Amended]

3. Section 52.225–18 is amended by removing "Federal Republic of Germany," from the definition "Sanctioned member state of the EC".

52.225–19 [Amended]

4. Section 52.225–19 is amended by removing "Federal Republic of Germany," from the definition "Sanctioned member state of the European Community (EC)".

[FR Doc. 95–13259 Filed 5–30–95; 8:45 am]

BILLING CODE 6820–EPO–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

[FAC 90–27; FAR Case 94–9; Item VI]

RIN 9000–AC14

Federal Acquisition Regulation; Interdivisional Transfers

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comment.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to an interim rule amending the Federal Acquisition Regulation (FAR). The cost principle criteria for cost of interdivisional transfers are amended to permit interdivisional transfers at price rather than cost under criteria that more closely approximate those applied to subcontracts eligible for exemption or waiver of cost or pricing data.

This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

DATES: *Effective Date:* May 31, 1995.

Comment Date: Comments should be submitted to the FAR Secretariat at the address shown below on or before July 31, 1995 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW, Room 4035, Attn: Ms. Beverly Fayson, Washington, DC 20405.

Please cite FAC 90–27, FAR case 94–9 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy Olson at (202) 501–3221 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–27, FAR case 94–9.

SUPPLEMENTARY INFORMATION:

A. Background

This interim FAR rule revises FAR 31.205–26, Material Costs, to make it clear that interdivisional transfers made at price should be treated in the same manner as subcontracts for purposes of applying the requirements of FAR 15.804–3.

B. Regulatory Flexibility Act

This interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities are awarded on a competitive, fixed-price basis and the cost principles do not apply. The cost principles only apply to contracts for which cost or pricing data has been submitted. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610 of the Act. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAC 90–27, FAR case 94–9), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DOD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary to provide an immediate benefit to Government and Industry. The rule will permit interdivisional transfers at price rather than cost for commercial items, under criteria identical to those used in applying the exception provisions of the Truth in Negotiations Act to subcontracts. However, pursuant to Public Law 98–577 and FAR 1.501, public comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Part 31

Government procurement.

C. Allen Olson,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR part 31 is amended as set forth below:

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

1. The authority citation for 48 CFR part 31 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 31.205–26 is amended by revising paragraph (e) to read as follows:

31.205–26 Material costs.

* * * * *

(e) Allowance for all materials, supplies, and services that are sold or transferred between any divisions, subsidiaries, or affiliates of the contractor under a common control shall be on the basis of cost incurred in accordance with this subpart. However, allowance may be at a price when it is the established practice of the transferring organization to price interorganizational transfers at other than cost for commercial work of the contractor or any division, subsidiary, or affiliate of the contractor under a common control, and when—

(1)(i) The price is based on an "established catalog or market price of commercial items sold in substantial quantities to the general public" in accordance with 15.804–3;

(ii) The price is based on "adequate price competition" in accordance with 15.804–3; or

(iii) A waiver is granted in accordance with 15.804–3(i); and

(2) The contracting officer has not determined the price to be unreasonable.

* * * * *

[FR Doc. 95–13260 Filed 5–30–95; 8:45 am]
BILLING CODE 6820–EPO–M

federal register

Wednesday
May 31, 1995

Part IX

The President

Executive Order 12961—Presidential Advisory Committee on Gulf War Veterans' Illnesses

Federal Register
Vol. 60, No. 104
Wednesday, May 31, 1995

Presidential Documents

Title 3—

The President

Executive Order 12961 of May 26, 1995

Presidential Advisory Committee on Gulf War Veterans' Illnesses

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Establishment.* (a) There is hereby established the Presidential Advisory Committee on Gulf War Veterans' Illnesses (the "Committee"). The Committee shall be composed of not more than 12 members to be appointed by the President. The members of the Committee shall have expertise relevant to the functions of the Committee and shall not be full-time officials or employees of the executive branch of the Federal Government. The Committee shall be subject to the Federal Advisory Committee Act, as amended, 5 U.S.C. App. 2.

(b) The President shall designate a Chairperson from among the members of the Committee.

Sec. 2. *Functions.* (a) The Committee shall report to the President through the Secretary of Defense, the Secretary of Veterans Affairs, and the Secretary of Health and Human Services.

(b) The Committee shall provide advice and recommendations based on its review of the following matters:

(1) *Research:* epidemiological, clinical, and other research concerning Gulf War veterans' illnesses.

(2) *Coordinating Efforts:* the activities of the Persian Gulf Veterans Coordinating Board, including the Research Coordinating Council, the Clinical Working Group, and the Disability and Compensation Working Group.

(3) *Medical Treatment:* medical examinations and treatment in connection with Gulf War veterans' illnesses, including the Comprehensive Clinical Evaluation Program and the Persian Gulf Registry Medical Examination Program.

(4) *Outreach:* government-sponsored outreach efforts such as hotlines and newsletters related to Gulf War veterans' illnesses.

(5) *External Reviews:* the steps taken to implement recommendations in external reviews by the Institute of Medicine's Committee to Review the Health Consequences of Service During the Persian Gulf War, the Defense Science Board Task Force on Persian Gulf War Health Effects, the National Institutes of Health Technology Assessment Workshop on the Persian Gulf Experience and Health, the Persian Gulf Expert Scientific Committee, and other bodies.

(6) *Risk Factors:* the possible risks associated with service in the Persian Gulf Conflict in general and, specifically, with prophylactic drugs and vaccines, infectious diseases, environmental chemicals, radiation and toxic substances, smoke from oil well fires, depleted uranium, physical and psychological stress, and other factors applicable to the Persian Gulf Conflict.

(7) *Chemical and Biological Weapons:* information related to reports of the possible detection of chemical or biological weapons during the Persian Gulf Conflict.

(c) It shall not be a function of the Committee to conduct scientific research. The Committee shall review information and provide advice and

recommendations on the activities undertaken related to the matters described in (b) above.

(d) It shall not be a function of the Committee to provide advice or recommendations on any legal liability of the Federal Government for any claims or potential claims against the Federal Government.

(e) As used herein, "Gulf War Veterans' Illnesses" means the symptoms and illnesses reported by United States uniformed services personnel who served in the Persian Gulf Conflict.

(f) The Committee shall submit an interim report within 6 months of the first meeting of the Committee and a final report by December 31, 1996, unless otherwise provided by the President.

Sec. 3. *Administration.* (a) The heads of executive departments and agencies shall, to the extent permitted by law, provide the Committee with such information as it may require for purposes of carrying out its functions.

(b) Members of the Committee shall be compensated in accordance with Federal law. Committee members may be allowed travel expenses, including per diem in lieu of subsistence, to the extent permitted by law for persons serving intermittently in the Government service (5 U.S.C. 5701–5707).

(c) To the extent permitted by law, and subject to the availability of appropriations, the Department of Defense shall provide the Committee with such funds as may be necessary for the performance of its functions.

Sec. 4. *General Provisions.* (a) Notwithstanding the provisions of any other Executive order, the functions of the President under the Federal Advisory Committee Act that are applicable to the Committee, except that of reporting annually to the Congress, shall be performed by the Secretary of Defense, in accordance with the guidelines and procedures established by the Administrator of General Services.

(b) The Committee shall terminate 30 days after submitting its final report.

(c) This order is intended only to improve the internal management of the executive branch and it is not intended to create any right, benefit or trust responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, or any person.

William J. Clinton

THE WHITE HOUSE,
May 26, 1995.

[FR Doc. 95–13464
Filed 5–30–95; 10:36 am]
Billing code 3195–01–P

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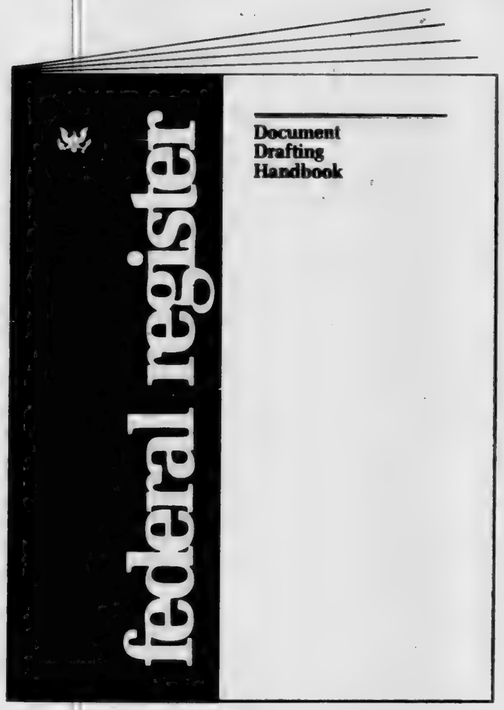
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federal register

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Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

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Vol. 60, No. 105
Thursday, June 1, 1995

Presidential Documents

Title 3—

The President

Proclamation 6806 of May 26, 1995

Time for the National Observance of the Fiftieth Anniversary of World War II, 1995

By the President of the United States of America

A Proclamation

In remembering the nightmare we now know as World War II, it is natural and fitting that we pause to mourn our loss. Eleven million service members—more than 400,000 of them American—perished in that war. Countless more civilians died in its awful course. We Americans retain a special bond to all of these heroes. We've seen pictures of their faces and told stories of their courage. For when the darkest days of fear seemed to tear our world apart, the brave millions we now honor kept liberty alive.

As the forces of oppression sought to extinguish freedom's light, Americans from every walk of life heard the call to service. Women joined our Nation's factories, and farmers doubled their efforts in our fields. Victory gardens flourished across the land, and although the rationing of goods made our dinners less than feasts, the sharing of a cause filled our hearts with hope. Hand in hand, our parents and grandparents led our Nation on to victory, and together with our allies, we prevailed.

Like the men and women who fought half a century ago, Americans today are just as bound to defend the cause of freedom. Now as then, we are privileged to see the triumph of democracy in nations too long oppressed. Now as then, we know that service is our highest call. And still today, we pray for lasting peace.

May the spirit of those prayers forever grace our land. May they guide relations between citizens and friendships among nations. May our children remember our cause well, and may they one day see a time when harmony fills the Earth.

The Congress, by Public Law 103–291, has designated May 29, 1995, through June 6, 1995, as a "Time for the National Observance of the Fiftieth Anniversary of World War II."

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim May 29, 1995, through June 6, 1995, as a Time for the National Observance of the Fiftieth Anniversary of World War II. I call upon all Americans to celebrate these days with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-sixth day of May, in the year of our Lord nineteen hundred and ninety-five, and of the Independence of the United States of America the two hundred and nineteenth.

William J. Clinton

[FR Doc. 95–13539
Filed 5–30–95; 1:43 pm]
Billing code 3195–01–P

Rules and Regulations

Federal Register
Vol. 60, No. 105
Thursday, June 1, 1995

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

RIN 3206–AG33

Federal Employees Health Benefits Program: Procedures for Direct Payment of Premiums

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations to eliminate the requirement for the use of certified mail, return receipt requested, when notifying certain enrollees that their enrollment in the Federal Employees Health Benefits (FEHB) Program will be terminated due to nonpayment of premiums unless the payment is received within 15 calendar days. The purpose of these regulations is to reduce the cost of administering the FEHB enrollments of enrollees who make payments directly rather than through payroll or annuity deductions.

EFFECTIVE DATE: July 3, 1995.

FOR FURTHER INFORMATION CONTACT: Margaret Sears (202) 606–0004.

SUPPLEMENTARY INFORMATION: On December 30, 1994, OPM published interim regulations in the **Federal Register** (59 FR 67605) eliminating the requirement for using certified mail, return receipt requested, when notifying FEHB enrollees that their coverage is about to be terminated due to nonpayment of premiums. Most individuals enrolled under the FEHB Program pay their share of the premiums through withholding from pay or annuity. However, in some cases enrollees may make direct payments. These include: (1) Certain annuitants and compensationers (individuals who are entitled to compensation from the Office of Workers' Compensation Programs based on a job-related injury or disease) whose annuity or compensation has been waived or suspended; (2) former spouses whose enrollment is based on a qualifying court order under subpart H of 5 CFR part 890 governing FEHB; and (3) former employees, former spouses, and children enrolled under the Temporary Continuation of Coverage (TCC) provisions.

Under regulations in effect before we issued the interim regulations, if an employing office did not receive the payment by the due date, it was required to notify the enrollee by certified mail, return receipt requested, that continuation of coverage rests upon payment being made within 15 days (or 45 days for some enrollees living overseas) after receipt of the notice.

The interim regulations eliminated the requirement for sending the nonpayment notice by certified mail, return receipt requested. Further, they clarified that there must be a delay of 60 days (90 days for overseas enrollees) before employing offices take action to terminate enrollments for nonpayment of premiums. We believe that the interim regulations are much more convenient for the enrollee because the enrollees no longer need to sign for the notice. If no one is at home when a letter carrier delivers a return-receipt-requested letter, the addressee must go to the post office to sign for it. Under the interim regulations, the letter is left in the enrollee's mailbox and the enrollee has the information without making an unnecessary trip to the post office.

OPM received no comments on the interim regulations.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they primarily affect individuals enrolled under the Federal Employees Health Benefits Program.

List of Subjects in 5 CFR Part 890

Administrative practice and procedure, Government employees, Health facilities, Health insurance, Health professions, Hostages, Iraq, Kuwait, Lebanon, Reporting and recordkeeping requirements, Retirement.

Office of Personnel Management.

James B. King,

Director.

Accordingly, under authority of 5 U.S.C. 8913, the interim rule amending 5 CFR Part 890 published on December 30, 1994, (59 FR 67605) is adopted as final without any change.

[FR Doc. 95–13316 Filed 5–31–95; 8:45 am]
BILLING CODE 6325–01–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

7 CFR Chapter VI and Part 620

RIN 0578–AA15

Wetlands Reserve Program

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: Title XIV of the Food Agriculture, Conservation, and Trade Act of 1990 (the 1990 Act), enacted on November 28, 1990, amended the Food Security Act of 1985 to provide for the establishment of the Wetlands Reserve Program (WRP). Under the WRP, the secretary of Agriculture is authorized to purchase easements from owners of eligible land who voluntarily agree to restore and protect farmed wetlands or converted wetlands and eligible adjacent acres. The Department of Agriculture Reorganization Act of 1994, authorized the establishment of the Natural Resources Conservation service (NRCS) and transferred responsibility for the WRP from the Consolidated Farm Service Agency to the NRCS, formerly the Soil Conservation Service (SCS). This interim rule provides the process by which the WRP will be administered within the NRCS. This rule also amends 7 CFR Chapter VI to reflect the establishment of the NRCS and the abolishment of the SCS.

DATES: Effective date: June 1, 1995.

Comments should be received on or before July 31, 1995.

ADDRESSES: Comments should be sent to National Wetlands Team, Natural Resources Conservation Service, Cotton Annex, Mezzanine One, Post Office Box 2890, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT:
Bob Misso (202) 720–3534.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this interim rule is significant.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this rule because the NRCS is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Environmental Evaluation

It has been determined through an environmental review that this action is a modification of the existing WRP and is covered under the NRCS 1990 Environmental Assessment entitled, "Wetlands Reserve Program-Environmental Assessment: Wetlands Reserve Provision of the Conservation Program Improvements Act of 1990." Copies of the environmental assessment are available upon request from: Bob Misso, Program Manager, National Wetlands Team, Natural Resources Conservation Service, Mezzanine One, Cotton Annex, Post Office Box 2890, Washington, DC 20250.

Executive Order 12372

This program/activity is not subject to the provisions of Executive Order 12372 because it involves direct payments to individuals and not to State and local officials. See notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

Federal Domestic Assistance Program

The title and number of the Federal Domestic Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are: Wetlands Reserve Program—10.072.

Paperwork Reduction Act

The information collection requirements contained in this interim rule will be submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980.

Executive Order 12778

This interim rule has been reviewed in accordance with Executive Order 12778. The provisions of this interim rule are not retroactive. Furthermore, except as provided at 16 U.S.C. 3837a(e)(2), the provisions of this interim rule preempt State and local laws to the extent such laws are inconsistent with this interim rule. Before an action may be brought in a Federal court of competent jurisdiction, the administrative appeal rights afforded persons at 7 CFR Part 614 must be exhausted.

Unfunded Mandates Reform Act of 1995

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995, which the President signed into law on March 22, 1995, the affects of this rulemaking action on State, local, and tribal governments, and the public have been assessed. This action does not compel the expenditure of $100 million or more by any State, local or tribal governments, or anyone in the private sector, and therefore a statement under section 202 of the Unfunded Mandates Reform act of 1995 is not required.

Discussion of Program

Under the WRP, the Natural Resources Conservation Service (NRCS) will purchase easements from persons voluntarily agreeing to allow for the restoration of farmed or converted wetlands. The 1990 Act (16 U.S.C. 3837 et seq.) created an umbrella program called the Agricultural Resource Conservation Program which includes the Environmental Conservation Acreage Reserve Program. The Environmental Conservation Acreage Reserve Program includes the Conservation Reserve Program (CRP) and the WRP.

The current regulations implementing the WRP were published by the Consolidated Farm Service Agency as a final rule on November 23, 1994 (59 FR 60297) and are codified at 7 CFR Part 703. This rule establishes a new part (7 CFR part 620) for WRP, and pursuant to the Department of Agriculture Reorganization Act of 1994, Public Law 103–354, the NRCS assumes responsibility for administrating the WRP. Funds will be allocated based on landowner interest, amount of restorable wetland acres, environmental benefits, cost of acquisition and restoration, and other factors as determined by the Chief, NRCS, in consultation with the U.S. Fish and Wildlife Service.

Section 3837 of Title 16, United States Code, specifies that eligible land will include farmed or converted wetlands, but not wetlands converted after December 23, 1985, together with adjacent lands on which the wetlands are functionally dependent so long as the likelihood of successful restoration of such land and the wetland values merit inclusion in the program taking into account the cost of restoring the wetlands. NRCS is also permitted to include in the program: (1) farmed or converted wetlands and adjoining lands that are enrolled in the CRP with the highest wetland functions and values and that are likely to return to production at the end of the CRP contract; (2) other wetlands that would not otherwise be eligible if it is determined that inclusion in the program would significantly add to the value of the easement; and (3) riparian areas that link wetlands that are protected by easements or by some other device or circumstance that achieves the same purpose as an easement.

The NRCS shall not enroll lands that: (1) are converted wetlands if the conversion was commenced after December 23, 1985, (2) contain timber stands established under a CRP contract, (3) are owned by an agency of the United States, (4) are subject to a deed restriction of 30 years or more prohibiting the production of agricultural commodities, or (5) are subject to on-site or off-site conditions that preclude successful long term restoration.

With respect to owner eligibility, 16 U.S.C. 3837e provides that no WRP easement shall be created on land that has changed ownership in the preceding 12 months unless: (1) the new ownership was acquired by will or succession as a result of the death of the previous owner; or, (2) the Secretary determines that the land was acquired under circumstances that give adequate assurances that such land was not acquired for the purpose of placing it in the WRP.

In return for participation in the program, a landowner will receive financial compensation from the NRCS for the easement itself, and the NRCS will bear all or a portion of the cost of restoring the functions and values of the enrolled land. In each State, the State Conservationist, with the assistance of the State Technical Committee, shall determine easement payment rates to be applied to specific geographic areas within the State or to individual easement areas. In order to provide for better uniformity among States, the Regional Conservationist may review and adjust, as appropriate, any easement payment rates established within a region.

Compensation for easements acquired by the Secretary under the WRP must be an agreed upon amount, but not to exceed the fair market value of the land less the fair market value of such land encumbered by the easement, a method of valuation known as the before and after value of the land. In response to this requirement and the further desire to ensure that the program focus is

largely to maximize net environmental benefits per expenditure of federal funds, the compensation for the easements is limited to the agricultural value of the lands. Based upon acquisition experience, the effect of the WRP easement is largely to eliminate agricultural uses of the land. Therefore, to utilize the agricultural value of the land is equivalent to the value of the easement utilizing the traditional before and after method of valuation. Under this calculation of compensation, other speculative and higher uses are not considered in the determination of compensation rates. Furthermore, any compatible agricultural use of the easement area is limited to such level and timing of use as is integral to achieving and maintaining optimum wetland restoration benefits, and not for the purpose of achieving economic profit.

Therefore, the easement value rates will be determined using the best information which is readily available for assessing the values of land for agricultural purposes. Such information may include soil types, cropping histories, production histories, location, real estate market values, appraisals and market analyses, and tax rates and assessments.

To achieve program cost efficiency in relation to the ecological benefits to be achieved, the restoration of wetlands which maximize net environmental benefits per expenditure of federal funds will be emphasized. One source of accomplishing this cost-efficiency goal is to establish maximum easement payments for the State or geographic areas of the State. Maximum easement payment limitations may be available for public review prior to the sign-up period. No easement payment shall exceed the fair market value of the land rights being acquired.

Section 3837a of Title 16, United States Code, provides that the easements purchased under the WRP shall be in a recordable form and shall be for 30 years, permanent, or the maximum duration allowed under applicable State laws. Section 3837c(c) provides that in determining the acceptability of offers, consideration may be given to the extent to which the purposes of the program can be accomplished on the land, the productivity of the land, and the on-farm and off-farm environmental threats if the land is used for the production of agricultural commodities. In addition, section 3837c(d) provides that to the extent practicable, taking into consideration costs and future agricultural and food needs, the Secretary shall give priority to obtaining permanent easements before shorter term easements and, in consultation with the Secretary of the Interior, shall place priority on acquiring easements based on the value of the easement for restoring and protecting habitat for migratory birds and other wildlife. In order to accomplish this goal, § 620.6 and § 620.8(b)(5) of the interim rule provide that permanent easements will be preferred whenever possible.

Before proceeding to acquire a non-permanent easement, the State Conservationist will first seek to acquire any permanent easement offer that is determined to have the ecological and cost characteristics that warrant acquisition. After the effort to acquire permanent easements is completed, and provided that funding continues to be available, the State Conservationist, following review and approval of the request by the Regional Conservationist and the Chief, may pursue the acquisition of non-permanent easements.

The Regional Conservationist and the Chief, when considering the request of the State Conservationist, will simultaneously consider any backlog of unaccepted permanent easements offers that may exist in other areas of the region and Nation before approval of the acquisition of non-permanent easements is granted.

On land encumbered by permanent easements, the law establishing WRP allows for the Secretary to pay all the restoration costs or to cost-share with the landowner. The cost-share formula recognizes that the ecological benefits associated with a non-permanent easement is significantly less than that which would be associated with a permanent easement on the same land. Thus, 16 U.S.C. 3837c(b) provides for a smaller cost-share payment-rate on land encumbered with non-permanent easements than on land encumbered with permanent easements. In particular, section 3837c(b) provides for cost-share payments on non-permanent easements to range from 50 percent to 75 percent of restoration costs, whereas the cost-share payments on areas with permanent easements range from 75 percent to 100 percent of restoration costs (16 U.S.C. 3837c(b)). These restoration cost-share rates apply to NRCS expenditures and do not prohibit the landowner from obtaining cost-share assistance from other entities.

Under this rule, this statutory distinction between cost-share payments made for permanent versus non-permanent easements is replicated in the payment for the easements. For a given easement on a particular area of land, payments for non-permanent easements will be between 50 percent and 75 percent of that which would be paid for a permanent easement. Easement payments for a short-term, 30-year easement will be 50 percent of that which would have been paid for a permanent easement. Such reduced easement payments are consistent with the significant reduction in ecological benefits and cost efficiency associated with non-permanent easements.

Landowners will be allowed to apply for transfer of eligible land from the CRP to WRP. Enrollment in WRP will not require the refund of past payments or require a reduced WRP easement payment. CRP contracts will be terminated at the time of enrollment in WRP.

This is a voluntary program designed to achieve cost-effective, long-lasting wetland restoration, and the NRCS shall not acquire easements by eminent domain or other non-voluntary acquisition procedures. As a means of improving selection competitiveness, landowners may accept cost-share or easement payments less than that which may be determined applicable for the particular easement.

During announced sign-up periods, interested landowners will be able to apply for enrollment by stating on an NRCS form their intention to participate. This Application for Participation must be submitted during an announced period for submissions. Sign-up periods may be announced periodically by the NRCS.

The State Conservationist, with the assistance of the State Technical Committee, will develop a ranking process. Each of the applications that are submitted by eligible landowners for eligible lands shall be evaluated according to the following factors: (1) Duration of the easement, (2) wetland functions and values, (3) habitat for migratory birds and other wildlife, particularly at risk species, (4) location significance, (5) wetland management requirements, (6) likelihood of success of restoration, (7) easement purchase and restoration costs borne by the NRCS, and (8) other environmental (*e.g.* water quality) or cost factors determined appropriate by the NRCS.

It is the intention of the NRCS in ranking the applications to enroll the wetlands that provide the greatest environmental benefits while taking into consideration the cost of restoration, easement purchase, and associated costs. The ranking process will emphasize factors that (1) Ensure the effectiveness of the restored wetland functions and values, and (2) incorporate regional and State ecological priorities. The Chief, NRCS, may identify and accept certain

easements that advance the national goals of the WRP, even if such lands would not otherwise receive priority under the regional or State ranking procedures. For example, the Chief may allocate funds for purposes related to special pilot programs for wetland management and monitoring, cooperative agreements with other Federal or State agencies for program implementation, or for coordination of easement enrollment across State boundaries.

All landowners who want to enroll land in the WRP shall: (1) Grant to the United States a reserved interest easement on the land; (2) agree to the implementation of a Wetlands Reserve Plan of Operation (WRPO); (3) provide for the creation and recordation of a deed restriction covering the easement area; and (4) ensure consent to the easement from persons holding a security interest in the property. The WRPO will be completed in consultation with the U.S. Fish and Wildlife Service and the Conservation District. The WRPO specifies the manner in which the enrolled land will be restored, operated, and maintained to accomplish the goals of the program.

Section 3837a(b) of Title 16, United States Code, requires, in addition, that the easement allow: (1) Repairs, improvements, and inspections on such lands that are necessary to maintain existing public drainage systems; and (2) landowners to control public access on the easement area while identifying access routes to be used for wetland restoration activities, management and monitoring. Section 3837a(b) also requires that the terms of the easement prohibit such activities as spraying with chemicals or mowing of the land except as allowed to comply with Federal or State noxious weed laws or Federal or State emergency pest treatment programs. These provisions have been incorporated into § 620.10 of this interim rule.

A major program participation requirement contained in § 620.10 is the inclusion in the easement of the right of the United States to determine if a specific use of the easement area may be permitted as compatible. For a use to be considered compatible, the Chief or designee must determine that the use is consistent with the long term protection and enhancement of the wetland resources for which the easement was established.

The uses commonly considered compatible include hunting and fishing, haying, grazing, and harvest of timber. Hunting and fishing are generally considered compatible where the activities are carried out under the established State and Federal regulations that govern such uses. Haying, grazing, and timbering, because of the potential for substantial and adverse impacts upon the vegetative conditions of the easement area, may only be considered compatible under specifically prescribed circumstances that are directly associated with site-specific conditions as influenced by soil productivity, time of year, short and long term weather patterns, and other factors that may from time to time be pertinent. The type, method, timing, duration, and extent of a use, to be deemed compatible, must be an integral and positive part of the overall management plan for the easement area. For example, in a restored forested wetland easement area, a salvage cut to remove diseased or damaged trees may be appropriate. A selective harvest of overstory trees which opens up the canopy to provide for understory vegetative diversity may also be compatible in specific cases. A clear cutting approach to timber harvest, however, for the purpose of achieving economic gain at the expense of wetland functions and values would not be compatible with forested wetland functions and values.

Section 3837a(g) of Title 16, United States Code, provides that in the case of any violation of the terms and conditions of the easement or WRPO, the easement shall remain in force and the owner may be required to refund all or part of the payments made together with interest. Accordingly, this requirement has been incorporated into § 620.14 of this interim rule.

Once an easement has been recorded, a landowner can request modifications that do not adversely affect the functions and values for which the easement was established. Any modification, however, must result in equal or greater environmental and economic values to the United States, as determined by the NRCS in consultation with the U.S. Fish and Wildlife Service.

During the 1994 WRP sign-up, landowners in only 20 States could participate in the WRP. In fiscal year 1995 and subsequent years, no specific geographic limitation is required and eligible landowners in all 50 States and territories and possessions of the United States may, subject to a determination by the Chief, be given the opportunity to participate in the WRP.

This interim rule establishes a new part in chapter VI, title 7 of the Code of Federal Regulations, and makes the following changes to the administration of the program:

(1) Identifies possible enrollment availability in all 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands;

(2) Expands land eligibility to certain agricultural lands that do not have a cropping history, such as former or degraded wetlands presently used for pasture and hayland;

(3) Provides a non-permanent easement option;

(4) Makes other changes to the administration of the program to become consistent with NRCS structure, policies, and procedures; and

(5) Delegates additional decision-making authority to the NRCS Regional Conservationists and State Conservationists with assistance provided by the State Technical Committees.

List of Subjects in 7 CFR Part 620

Administrative practices and procedures, Natural resources, Wetlands.

CHAPTER VI—NATURAL RESOURCES CONSERVATION SERVICE, DEPARTMENT OF AGRICULTURE

Accordingly, 7 CFR chapter VI is amended as follows:

1. The heading of Chapter VI is revised to read as set forth above.

2. In 7 CFR Chapter VI (consisting of parts 600–663), all references to "Soil Conservation Service" are revised to read "Natural Resources Conservation Service," and all references to "SCS" are revised to read "NRCS."

3. A new part 620 is added to read as follows:

PART 620—WETLANDS RESERVE PROGRAM

Sec.

620.1 Purpose and scope.
620.2 Definitions.
620.3 Administration.
620.4 Program requirements.
620.5 Application procedures.
620.6 Establishing priority for enrollment of properties in WRP.
620.7 Enrollment.
620.8 Compensation for easements.
620.9 Cost-share payments.
620.10 Program participation requirements.
620.11 The WRPO development.
620.12 Modifications.
620.13 Transfer of land.
620.14 Violations and remedies.
620.15 Payments not subject to claims.
620.16 Assignments.
620.17 Appeals.
620.18 Scheme and device.

Authority: 16 U.S.C. 590a *et seq.*, 3837 *et seq.*

§ 620.1 Purpose and scope.

(a) The regulations in this part set forth the policies, procedures, and requirements for the Wetlands Reserve Program (WRP) as administered by the Natural Resources Conservation Service (NRCS) for program implementation and processing outstanding and new applications for enrollment during calendar year 1995 and thereafter.

(b) The Chief, NRCS, may implement WRP in any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territories of the Pacific Islands.

§ 620.2 Definitions.

The following definitions shall be applicable to this part:

Agricultural commodity means any crop planted and produced by annual tilling of the soil or on an annual basis by one trip planters, or alfalfa and other multi-year grasses and legumes in rotation as approved by the Secretary. Land shall be considered planted to an agricultural commodity during a crop year if, as determined by the NRCS, an action of the Secretary prevented land from being planted to the commodity during the crop year.

Chief means the Chief of the Natural Resources Conservation Service or the person delegated authority to act for the Chief.

Commenced conversion wetland means a wetland or converted wetland for which the Consolidated Farm Service Agency has determined that the wetland manipulation was contracted for, started, or for which financial obligation was incurred before December 23, 1985.

Conservation District is a subdivision of a State or local government organized pursuant to applicable State law to promote soil and water conservation practices.

Conservation Reserve Program (CRP) means the program administered by the Secretary of Agriculture and referenced at 7 CFR Parts 704 and 1410.

Consolidated Farm Service Agency (CFSA) is an agency of the United States Department of Agriculture.

Contract means the NRCS document that specifies the obligations and rights of any person who has been accepted for participation in the program.

Converted wetland means a wetland that has been drained, dredged, filled, leveled, or otherwise manipulated (including the removal of woody vegetation, or any activity that results in impairing or reducing the flow, circulation, or reach of water) for the purpose, or that has the effect, of making the production of an agricultural commodity possible if such production would not have been possible but for such action.

Cost-share payment means the payment made by the NRCS to achieve the restoration of the wetland functions and values of the easement area in accordance with the WRPO.

Easement means a reserved interest easement which is an interest in land defined and delineated in a deed whereby the landowner conveys all rights, title, and interests in a property to the grantee, but the landowner retains those rights, title, and interests in the property which are specifically reserved to the landowner in the easement deed.

Easement area means the land encumbered by an easement.

Easement payment means the consideration paid to a landowner for an easement conveyed to the United States under the WRP.

Farmed wetland means wetlands that were manipulated and used to produce an agricultural commodity prior to December 23, 1985, but had not been converted prior to that date and, therefore, are not prior converted croplands. These areas include potholes, playas, and pocosins that still meet the wetland criteria, and other wetlands that are seasonally ponded or flooded for an extended period of time during the growing season.

Farmed wetland pasture means wetlands that were manipulated and managed for pasture or hayland prior to December 23, 1985, but still meet wetland criteria and are not abandoned, or were prior converted croplands or farmed wetlands that were not cropped for 5 successive years, but were used for forage production during that time and have not been abandoned.

Forest Service is an agency of the United States Department of Agriculture.

Landowner means a person or persons having legal ownership of farmland, including those who may be buying farmland under a purchase agreement. Landowner may include all forms of collective ownership including joint tenants, tenants in common, and life tenants and remaindermen in a farm property.

Lands substantially altered by flooding means areas where flooding has created wetland hydrologic conditions which, with a high degree of certainty, will develop wetland soil and vegetation characteristics over time.

Natural Resources Conservation Service (NRCS) is an agency of the United States Department of Agriculture, formerly called the Soil Conservation Service.

Permanent easement means an easement that lasts in perpetuity.

Person means one or more individuals, partnerships, associations, corporations, estates or trusts, or other business enterprises or other legal entities and, whenever applicable, a State, a political subdivision of a State, or any agency thereof.

Practice means a restoration measure necessary or desirable to accomplish the desired program objectives.

Prior converted cropland means wetlands that before December 23, 1985, were drained, dredged, filled, leveled, or otherwise manipulated including the removal of woody vegetation, for the purpose, or to have the effect, of making the production of an agricultural commodity possible and an agricultural commodity has been produced at least once before December 23, 1985.

Riparian areas means areas of land that occur along streams, channels, rivers, and other water bodies. These areas are normally distinctly different from the surrounding lands because of unique soil and vegetation characteristics, may be identified by distinctive vegatative communities which are reflective of soil conditions normally wetter than adjacent soils, and generally provide a corridor for the movement of wildlife.

State Technical Committee means a committee established by the Secretary of the U.S. Department of Agriculture in a State pursuant to 16 U.S.C. 3861. For the purposes of the WRP, the State Conservationist will be the chairperson of the State Technical Committee.

U.S. Fish and Wildlife Service is an agency of the United States Department of the Interior.

Wetland means land that:

(1) Has a predominance of hydric soils;

(2) Is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions; and

(3) Does support a prevalence of such vegetation under normal circumstances. For purposes of WRP, wetland shall also refer to adjacent lands that contribute to wetland functions and values.

Wetland functions and values means the hydrological and biological characteristics of wetlands and the social worth placed upon these characteristics, including:

(1) Habit for migratory birds and other wildlife, in particular at risk species;

(2) Protection and improvement of water quality;

(3) Attenuation of water flows due to flood;
(4) The recharge of ground water;
(5) Protection and enhancement of open space and aesthetic quality;
(6) Protection of flora and fauna which contributes to the Nation's natural heritage; and
(7) Contribution to educational and scientific scholarship.

Wetland restoration means the rehabilitation of degraded or lost habitat in a manner such that:
(1) The original vegetation community and hydrology are, to the extent practical, re-established; or
(2) A community different from what likely existed prior to degradation of the site is established. The hydrology and native self-sustaining vegetation being established will substantially replace original habitat functions and values but does not involve more than 30 percent of the wetland restoration area.

WRP means the Wetlands Reserve Program.

WRPO means the Wetlands Reserve Plan of Operations.

§ 620.3 Administration.

(a) The regulations in this part will be administered under the general supervision and direction of the Chief.

(b) The Chief is authorized to modify or waive a provision of this part if the Chief deems the application of that provision to a particular limited situation to be inappropriate and inconsistent with the environmental and cost-efficiency goals of the WRP. This authority cannot be further delegated. The Chief may not modify or waive any provision of this part which is required by applicable law.

(c) As determined by the Chief and the Administrator of the Consolidated Farm Service Agency, the NRCS will seek the agreement of the Consolidated Farm Service Agency in establishing policies, priorities, and guidelines related to the implementation of this part.

(d) The State Conservationist will consult with the State Technical Committee on the development of the rates of compensation for an easement, a priority ranking process, and related policy matters.

(e) The NRCS may delegate at any time easement management, monitoring, and enforcement responsibilities to other Federal or State agencies.

(f) The NRCS may enter into cooperative agreements with Federal or State agencies and with private conservation organizations to assist the NRCS with educational efforts, easement management and monitoring, and program implementation assistance.

(g) The NRCS shall consult with the U.S. Fish and Wildlife Service in the implementation of the program and in establishing program policies. The NRCS may consult with other Federal and State agencies and other organizations in program administration. No determination by the U.S. Fish and Wildlife Service, Federal, or State agency shall compel the NRCS to take any action which the NRCS determines will not serve the purposes of the program established by this part.

(h) The Chief may allocate funds for such purposes related to special pilot programs for wetland management and monitoring, emergencies, cooperative agreements with other Federal or State agencies for program implementation, coordination of easement enrollment across State boundaries, or for other goals of the WRP found in this part.

§ 620.4 Program requirements.

(a) *General.* Under the WRP, the NRCS will purchase conservation easements from eligible landowners who voluntarily cooperate in the restoration and protection of wetlands and associated lands. To participate in WRP, a landowner will agree to the implementation of a Wetlands Reserve Plan of Operations (WRPO), the effect of which is to restore, protect, enhance, maintain, and manage the hydrologic conditions of inundation or saturation of the soil, native vegetation, and natural topography of eligible lands. The NRCS may provide cost-share assistance for the activities that promote the restoration, protection, enhancement, maintenance, and management of wetland functions and values. Specific restoration, protection, enhancement, maintenance, and management actions may be undertaken by the landowner or other NRCS designee.

(b) *Acreage limitations.*
(1) Except for areas devoted to windbreaks or shelterbelts after November 28, 1990, no more than 25 percent of the total cropland in any county, as determined by the Consolidated Farm Service Agency, may be placed in the Environmental Conservation Acreage Reserve Program, 16 U.S.C. 3830, and no more than 10 percent of the total cropland in the county may be subject to an easement.
(2) The NRCS and the Consolidated Farm Service Agency shall concur before a waiver of either the 25 percent limit or the 10 percent limit of this subsection can be approved for an easement proposed for enrollment in the WRP. Such a waiver will only be approved if it will not adversely affect the local economy.

(c) *Landowner eligibility.* To be eligible to participate in the WRP, a person must:
(1) Be the landowner of eligible land for which enrollment is sought;
(2) Have been the landowner of such land for the 12 months prior to the time the intention to participate is declared unless it is determined by the State Conservationist that the land was acquired by will or succession as a result of the death of the previous landowner, or that adequate assurances have been presented to the State Conservationist that the new landowner of such land did not acquire such land for the purpose of placing it in the WRP; and
(3) Agree to provide such information to the NRCS as the agency deems necessary or desirable to assist in its determination of eligibility for program benefits and for other program implementation purposes.

(d) *Eligible land.*
(1) The NRCS shall determine whether land is eligible for enrollment and whether, once found eligible, the lands may be included in the program based on the likelihood of successful restoration of wetland functions and values when considering the cost of acquiring the easement and restoration, protection, enhancement, maintenance, and management costs.
(2) Land which meets the eligibility requirements of this section shall only be considered for enrollment in WRP if the NRCS determines, in consultation with the U.S. Fish and Wildlife Service, that the wetland functions and values can and will be restored, protected, enhanced, maintained, and managed.
(3) The following land is eligible for enrollment in the WRP, which land may have been determined by the NRCS pursuant to regulations and implementing policies is pertaining to wetland conservation found at 7 CFR 12.30–12.33, as:
(i) Wetlands farmed under natural conditions, farmed wetlands, prior converted cropland, commenced conversion wetlands, farmed wetland pastures, and lands substantially altered by flooding so as to develop wetland functions and values;
(ii) Former or degraded wetlands that occur on lands that have been used or are currently being used for the production of food and fiber, including rangeland and forest production lands, where the hydrology has been significantly degraded or modified and will be substantially restored;
(iii) Riparian areas along streams or other waterways that link or, after restoring the riparian area, will link wetlands which are protected by an easement or other device or circumstance that achieves the same objectives as an easement;
(iv) Land adjacent to the restored wetland which would contribute significantly to wetland functions and values including buffer areas, wetland creations, and non-cropped neutral wetlands, but not more than the State Conservationist, in consultation with the State Technical Committee, determines is necessary for such contribution;
(v) Other wetlands that would not otherwise be eligible but would significantly add to the wetland functions and values; and
(vi) Wetlands that have been restored under a private, State, or Federal restoration program with an easement or deed restriction with a duration of less than 30 years.
(4) To be enrolled in the program, eligible land must be configured in a size and with boundaries that allow for the efficient management of the area for easement purposes and otherwise promote and enhance program objectives.

(e) *Ineligible land.* The following land is not eligible for enrollment in the WRP:
(1) Converted wetlands if the conversion was commended after December 23, 1985;
(2) Land that contains timber stands established under a CRP contract;
(3) Lands owned by an agency of the United States;
(4) Land subject to an easement or deed restriction with a duration of 30 years or more prohibiting the production of agricultural commodities; and,
(5) Lands where implementation of restoration practices would be futile due to on-site or off-site conditions.

(f) *Enrollment of CRP lands.* Land subject to an existing CRP contract may be enrolled into the WKP only if the land and landowner meet the requirements of this part, and the enrollment is requested by the landowner and agreed to by the NRCS. To enroll in WRP, the CRP contract for the property shall be terminated or otherwise modified subject to such terms and conditions as are mutually agreed upon by the Consolidated Farm Service Agency and the landowner.

§ 620.5 Application procedures.

(a) *Application for participation.* To apply for enrollment, a landowner must submit an Application for Participation in the WRP. The application must be submitted during an announced period for such submissions.

(b) *Preliminary agency actions.* By filing an Application for Participation, the landowner consents to an NRCS representative entering upon the land for purposes of assessing the wetland functions and values, and for other activities such as the development of the preliminary WRPO that are necessary or desirable for the NRCS to make offers of enrollment. The landowner is entitled to accompany an NRCS representative on any site visits.

(c) *Voluntary reduction in compensation.* In order to enhance the probability of enrollment in WRP, a landowner may voluntarily offer to accept a lesser payment than is being offered by the NRCS.

§ 620.6 Establishing priority for enrollment of properties in WRP.

(a) *Ranking considerations.* Based on applications for participation, the State Conservationist, in consultation with the U.S. Fish and Wildlife Service and the State Technical Committee, will rank properties based on: estimated costs of restoration and easement acquisition, availability of matching funds, significance of wetland functions and values, estimated success of restoration measures, and the duration of a proposed easement with permanent easements being given priority over non-permanent easements.

(b) The NRCS may place higher priority on certain geographic regions of the State where restoration of wetlands may better achieve NRCS State and regional goals and objectives.

(c) Notwithstanding any limitation of this part, the State Conservationist may enroll eligible lands at any time in order to encompass total wetland areas subject to multiple ownership or otherwise to achieve program objectives. Similarly, the State Conservationist may, at any time, exclude otherwise eligible lands if the participation of the adjacent landowners is essential to the successful restoration of the wetlands and those adjacent landowners are unwilling to participate.

§ 620.7 Enrollment.

(a) *Offers of enrollment.* Based on the priority ranking, the NRCS will notify an affected landowner of tentative acceptance into the program for which the landowner has 15 calendar days to sign a letter of intent to continue. NRCS will select lands to maximize environmental benefits per expenditure of Federal funds.

(b) *Effect of letter of intent to continue (tentative acceptance).* An offer of tentative acceptance into the program does not bind the NRCS or the United States to acquire an easement, nor does it bind the landowner to convey an easement or agree to WRPO activities. However, receipt of an executed letter of intent to continue will authorize the NRCS to proceed.

(c) *Acceptance of offer of enrollment.* A contract will be presented by the NRCS to the landowner, which will describe the easement area; the easement terms and conditions; and other terms and conditions for participation that may be required by the NRCS. A landowner accepts enrollment in the WRP by signing contract.

(d) *Effect of the acceptance of the offer.* After the contract is executed by NRCS and the landowner, the NRCS will proceed with various easement acquisition activities, which may include conducting a survey of the easement area, securing necessary subordination agreements, procuring title insurance, and conducting other activities necessary to record the easement or implement the WRPO.

(e) *Withdrawal of offers.* Prior to execution by the United States and the landowner of the contract, the NRCS may withdraw its offer anytime due to availability of funds, inability to clear title, or other reasons. The offer to the landowner shall be void if not executed by the landowner within the time specified. The date of the offer shall be the date of notification to the landowner of tentative acceptance.

§ 620.8 Compensation for easements.

(a) *Establishment of rates.*
(1) The State Conservationist, in consultation with the State Technical Committee, shall determine easement payment rates to be applied to specific geographic areas within the State or to individual easement areas.
(2) In order to provide for better uniformity among States, the Regional Conservationist and Chief may review and adjust, as appropriate, State or other geographically based easement payment rates.

(b) *Determination of easement payment rates.*
(1) Easement payment rates will be based upon analyses of the values of the lands when used for agricultural purposes. The landowner will receive the lesser of the following:
(i) the geographic area rate;
(ii) the value based on a market appraisal analysis/assessment; or
(iii) the landowner offer.
(2) Each State Conservationist will determine the easement payment rates using the best information which is readily available in that State for assessing the values of land for agricultural purposes. Such information may include: soil types, type(s) of crops capable of being grown, production

history, location, real estate market values, appraisals and market analyses, and tax rates and assessments. The State Conservationist may consult with other Federal agencies, real estate market experts, appraisers, local tax authorities, and other entities or persons which may provide information on productivity and market conditions.

(3) Easement payments for non-permanent easements will be less than those for permanent easements because the quality and duration of the ecological benefits derived from a non-permanent easement are significantly less than those derived from a permanent easement on the same land. Easement payments for a non-permanent easement shall be determined by the Chief at between 50 percent and 75 percent of that which would have been paid for a permanent easement, with the actual percentage of compensation being determined by the Chief based upon the extent to which full restoration and ecological benefits can be achieved when compared to a permanent easement. Easement payments for the short-term 30-year easements shall be 50 percent of that which would have been paid for a permanent easement.

(4) Before proceeding to acquire a non-permanent easement, the State Conservationist shall first seek to acquire any permanent easement offer that is determined to have the ecological and cost characteristics that warrant acquisition. After the effort to acquire permanent easements is completed, and provided that funding continues to be available, the State Conservationist, in consultation with the State Technical Committee and following review and approval of the request by the Regional Conservationist and the Chief, may pursue the acquisition of non-permanent easements.

(5) The Regional Conservationist and the Chief, when considering the request of the State Conservationist for approval to acquire a non-permanent easement, will simultaneously consider any backlog of unaccepted permanent easement offers that may exist in other areas of the region and Nation before approval of the acquisition of non-permanent easements is granted.

(c) *Maximum payments.* In order to ensure that limited program funds are expended to maximize program benefits, the State Conservationist, in consultation with the State Technical Committee, may establish a maximum easement payment for any one easement within a State or for geographic areas within a State.

(d) *Preliminary estimates of easement payments.* Upon request of the landowner prior to filing an application for enrollment, a landowner may be appraised of the maximum easement payment rates.

(e) *Acceptance of offered easement compensation.*

(1) The NRCS will not acquire any easement unless the landowner accepts the amount of the easement payment which is offered by the NRCS. The easement payment may or may not equal the fair market value of the interests and rights to be conveyed by the landowner under the easement. By voluntarily participating in the program, a landowner waives any claim to additional compensation based on fair market value.

(2) For permanent easements, the NRCS may make one lump-sum cash easement payment after the easement is recorded.

(3) For non-permanent easements, the easement payment shall be made in no less than 5 annual payments or no more than 20 annual payments.

(f) *Reimbursement of a landowner's expenses.* For completed easement conveyances, the NRCS will reimburse landowners for their fair and reasonable expenses, if any, incurred for surveying and related costs, as determined by the NRCS. The State Conservationist, in consultation with the State Technical Committee, may establish maximum payments to reimburse landowners for reasonable expenses.

(g) *Tax implications of easement conveyances.* Subject to applicable regulations of the Internal Revenue Service, a landowner may be eligible for a bargain sale tax deduction which is the difference between the fair market value of the easement conveyed to the United States and the easement payment made to the landowner. The NRCS disclaims any representations concerning the tax implications of any easement or cost-share transaction.

(h) *Payment limitation on non-permanent easements.* With respect to non-permanent easements, the annual amount of easement payments to any person shall not exceed $50,000.

(i) If easement payments are calculated on a per acre basis, adjustment to stated easement payment will be made based on final determination of acreage.

§ 620.9 Cost-share payments.

(a) In addition to easement payments, the NRCS may share the cost with landowners of restoring the enrolled land as provided in the WRPO after the easement is recorded. The amount and terms and conditions of the cost-share assistance shall be subject to the following restrictions on the costs of establishing or installing practices specified in the WRPO:

(1) On enrolled land subject to a permanent easement, the NRCS shall offer to pay not less than 75 percent nor more than 100 percent of such costs; and

(2) On enrolled land subject to a non-permanent easement, the NRCS shall offer to pay not less than 50 percent nor more than 75 percent of such costs. Cost-share payments offered by NRCS for the short-term, 30-year easements shall be 50 percent.

(b) Cost-share payments may be made only upon a determination by the NRCS that an eligible practice or an identifiable unit of the practice has been established in compliance with appropriate standards and specifications. Identified practices may be implemented by the landowner or other designee.

(c) Cost-share payments may be made for the establishment and installation of additional eligible practices, or the maintenance or replacement of an eligible practice, but only if NRCS determines the practice is needed to meet the objectives of the easement, and the failure of the original practices was due to reasons beyond the control of the landowner.

(d) A landowner may seek additional cost-share assistance from other public or private organizations as long as the activities funded are in compliance with this part. In no event shall the landowner receive an amount which exceeds 100 percent of the total actual cost of the restoration.

§ 620.10 Program participation requirements.

(a) To enroll land in WRP, a landowner shall grant an easement to the United States. The easement shall require that the easement area be maintained in accordance with WRP goals and objectives for the duration of the term of the easement, including the restoration, protection, enhancement, maintenance, and management of wetland and other land functions and values.

(b) For the duration of its term, the easement shall require, at a minimum, that the landowner, and the landowner's heirs, successors and assigns, shall cooperate in the restoration, protection, enhancement, maintenance, and management of the land in accordance with the easement and with the terms of the WRPO. In addition, the easement shall grant to the United States, through the NRCS:

(1) A right of access to the easement area;

(2) The right to permit compatible uses of the easement area, including such activities as hunting and fishing, managed timber harvest, or periodic haying or grazing, if such use is consistent with the long-term protection and enhancement of the wetland resources for which the easement was established;

(3) All rights, title and interest in the easement area subject to compatible uses reserved to the landowner; and,

(4) The right to perform restoration, protection, enhancement, maintenance, and management activities on the easement area.

(c) The landowner shall convey title to the easement which is acceptable to the NRCS. The landowner shall warrant that the easement granted to the United States is superior to the rights of all others, except for exceptions to the title which are deemed acceptable by the NRCS.

(d) The landowner shall:

(1) Comply with the terms of the easement;

(2) Comply with all terms and conditions of any associated contract;

(3) Agree to the permanent retirement of any existing cropland base and allotment history for the easement area under any program administered by the Secretary, as determined by the Consolidated Farm Service Agency;

(4) Agree to the long-term restoration, protection, enhancement, maintenance, and management of the easement in accordance with the terms of the easement and related agreements;

(5) The landowner may have the option to enter into an agreement with governmental or private organizations to assist in carrying out any landowner responsibilities on the easement area; and,

(6) Agree that each person who is subject to the easement shall be jointly and severally responsible for compliance with the easement and the provisions of this part and for any refunds or payment adjustment which may be required for violation of any terms or conditions of the easement or the provisions of this part.

§ 620.11 The WRPO development.

(a) The NRCS shall prepare the WRPO in consultation with the U.S. Fish and Wildlife Service and the Conservation District. At the local level, the NRCS must reach agreement with the U.S. Fish and Wildlife Service. If agreement cannot be reached, the WRPO will be forwarded to the State Conservationist, who, giving consideration to the information provided by the U.S. Fish and Wildlife Service, will develop the WRPO. In all cases of disagreement at the local level, the NRCS and the U.S. Fish and Wildlife Service will file a report with their respective national offices.

(b) The WRPO shall specify the manner in which the enrolled land shall be restored, protected, enhanced, maintained, and managed to accomplish the goals of the program.

§ 620.12 Modifications.

(a) *Easements.*

(1) After an easement has been recorded, no modification will be made in the easement except by manual agreement with the Chief and the landowner. The Chief will consult with the U.S. Fish and Wildlife Service and the Conservation District prior to making any modifications to easements.

(2) Approved modifications will be made only in an amended easement which is duly prepared and recorded in conformity with standard real estate practices, including requirements for title approval, subordination of liens, and recordation.

(3) The Chief may approve modifications to facilitate the practical administration and management of the easement area or the program so long as the modification will not adversely affect the wetland functions and values for which the easement was acquired.

(4) Modifications must result in equal or greater environmental and economic values to the United States.

(b) *WRPO.* Insofar as is consistent with the easement and applicable law, the Chief may approve modifications to the WRPO after consultation with the U.S. Fish and Wildlife Service. Any WRPO modification must meet WRP program objectives, and must result in equal or greater environmental and economic values to the United States. Modifications to the WRPO which are substantial and affect provisions of the easement may require agreement from the landowner and require execution of an amended easement.

§ 620.13 Transfer of land.

(a) *Offers voided.* Any transfer of the property prior to the landowner acceptance into the program shall void the offer of enrollment. At the option of the State Conservationist, an offer can be extended to the new landowner if the new landowner agrees to the same or more restrictive easement and contract terms and conditions.

(b) *Payments to landowners.*

(1) For non-permanent easements with multiple annual payments, any remaining easement payments will be made to the original landowner unless the NRCS receives an assignment of proceeds from the original landowner to a successor in title.

(2) The new landowner or purchaser shall be held responsible for assuring completion of all measures and practices required by the contract. Eligible cost-share payments shall be made to the new landowner upon presentation of an assignment of rights or other evidence that title had passed.

(c) *Claims to payments.* With respect to any and all payments owed to landowners, the United States shall bear no responsibility for any full payments or partial distributions of funds between the original landowner and the landowner's successor. In the event of a dispute or claim on the distribution of cost-share payments, the NRCS may withhold payments without the accrual of interest pending an agreement or adjudication on the rights to the funds.

§ 620.14 Violations and remedies.

(a) In the event of a violation of the easement or any associated contract directly involving the landowner, the landowner shall be given reasonable notice and an opportunity to voluntarily correct the violation within 30 days of the date of the notice, or such additional time as the State Conservationist may allow.

(b) Notwithstanding paragraph (a) of this section, the NRCS reserves the right to enter upon the easement area at any time to remedy deficiencies or easement violations. Such entry may be made at the discretion of the NRCS when such actions are deemed necessary to protect important wetland functions and values or others rights of the United States under the easement. The landowner shall be liable for any costs incurred by the United States as a result of the landowner's negligence or failure to comply with easement or contractual obligations.

(c) In addition to any and all legal and equitable remedies as may be available to the United States under applicable law, the NRCS may withhold any easement and cost-share payments owing to landowners at any time there is a material breach of the easement covenants or any associated contract. Such withheld funds may be used to offset costs incurred by the United States in any remedial actions or retained as damages pursuant to court order or settlement agreement.

(d) The United states shall be entitled to recover any and all administrative and legal costs, including attorney's fees or expenses, associated with any enforcement or remedial action.

§ 620.15 Payments not subject to claims.

Any cost-share or easement payment or portion thereof due any person under this part shall be allowed without regard to any claim or lien in favor of any creditor, except agencies of the United States Government.

§ 620.16 Assignments.

Any person entitled to any cash payment under this program may assign the right to receive such cash payments, in whole or in part.

§ 620.17 Appeals.

(a) A person participating in the WRP may obtain a review of any administrative determination concerning eligibility for participation utilizing the administrative appeal procedures pursuant to Title II, Subtitle B and Subtitle H of the Department of Agriculture Reorganization Act of 1994, Public Law 103–354.

(b) Before a person may seek judicial review of any action taken under this part, the person must exhaust all administrative appeal procedures set forth in paragraph (a) of this section, and for purposes of judicial review, no decision shall be a final agency action except a decision of the Chief of NRCS under these procedures.

(c) Any appraisals, market analysis, or supporting documentation that may be used by the NRCS in determining property value are considered confidential information, and shall only be disclosed as determined at the sole discretion of the NRCS in accordance with applicable law.

§ 620.18 Scheme and device.

(a) If it is determined by the NRCS that a landowner has employed a scheme or device to defeat the purposes of this part, any part of any program payment otherwise due or paid such landowner during the applicable period may be withheld or be required to be refunded with interest thereon, as determined appropriate by the NRCS.

(b) A scheme or device includes, but is not limited to, coercion, fraud, misrepresentation, depriving any other person of payments for cost-share practices or easements for the purpose of obtaining a payment to which a person would otherwise not be entitled.

(c) A landowner who succeeds to the responsibilities under this part shall report in writing to the NRCS any interest of any kind in enrolled land that is held by a predecessor or any lender. A failure of full disclosure will be considered a scheme or device under this section.

Signed at Washington, DC on May 19, 1995.

Gary A. Margheim,

Acting Chief, Natural Resources Conservation Service.

[FR Doc. 95–13161 Filed 5–31–95; 8:45 am]

BILLING CODE 3410–16–M

Agricultural Marketing Service

7 CFR Part 981

[FV94–981–3IFR]

Almonds Grown in California; Release of the Reserve Established for the 1994–95 Crop Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This document relaxes volume regulations imposed on California almond handlers for the 1994–95 crop year by releasing reserve almonds into salable channels. Volume regulations were imposed under the authority of the Federal marketing order which regulates the handling of almonds grown in California and is locally administered by the Almond Board of California (Board). During the 1994–95 season, handlers were required to withhold as a reserve, from normal competitive markets, 10 percent of the almonds which they received from growers. The remaining 90 percent of the crop could be sold by handlers to any market at any time. This rule relaxes these regulations on handlers by releasing the reserve percentage to the salable category and is necessary to provide a sufficient quantity of almonds to meet anticipated trade demand and carryover needs.

DATES: Effective on May 25, 1995; comments received by July 3, 1995 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Kathleen M. Finn, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2522–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–1509, or fax (202) 720–5698; or Martin Engeler, Assistant Officer-in-Charge, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (209) 487–5901, or fax (209) 487–5906.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 981 (7 CFR part 981), both as amended, hereinafter referred to as the "order," regulating the handling of almonds grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in accordance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the provisions of the marketing order now in effect, salable and reserve percentages may be established for almonds during any crop year. This rule revises the salable and reserve percentages for marketable California almonds during the 1994–95 crop year. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 115 handlers of almonds who are subject to regulation under the marketing order and approximately 7,000 producers in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those whose annual receipts are less than $500,000. The majority of handlers and producers of California almonds may be classified as small entities.

This rule relaxes volume regulations imposed on California almond handlers for the 1994–95 crop year (July 1 through June 30). During the 1994–95 season, handlers were required to withhold, from normal domestic and export markets, 10 percent of the merchantable almonds which they received from growers (reserve percentage). The remaining 90 percent of almonds received by handlers could be sold to any market at any time (salable percentage). Volume regulations were recommended by the Board and imposed on handlers to lessen the impact of a large almond supply for the 1994–95 season. Salable and reserve percentages were established through publication of a final rule in the **Federal Register** on December 9, 1994 (59 FR 63693). The Board now believes that volume regulations on almond handlers are no longer necessary and that the entire reserve should be released to provide a sufficient quantity of almonds to meet anticipated trade demand and carryover needs.

Section 981.47 of the almond marketing order provides authority for the Secretary, based on recommendations by the Board and the analysis of other available information, to establish salable and reserve percentages for almonds during a crop year. To aid the Secretary in fixing the salable and reserve percentages, section 981.49 of the order requires the Board to submit information to the Department on estimates of the marketable production of almonds, combined domestic and export trade demand for the year, carryin inventory at the beginning of the year, and the desirable carryover inventory at the end of the year. Authority for the Board to recommend revisions in the volume regulation percentages is provided in section 981.48 of the order. Such revisions must be recommended by May 15.

The Board met in July of 1994 to review projected crop estimates and marketing conditions for the 1994–95 almond season. A very large crop of 640 million kernelweight pounds was projected for the season. Estimated shipments for the two prior seasons were 535.9 million pounds for 1992 crop almonds and 497.7 million pounds for 1993 crop almonds.

Variations in production from season-to-season can cause wide fluctuations in prices. For example, the Board estimated that grower prices increased from $1.26 per pound for 1992 crop almonds to $2.00 per pound for the smaller, 1993 crop almonds. The large 1994 California almond crop estimate caused early speculation of grower prices in the $1.15 per pound range. Such swings in supplies and price levels can result in market instability and uncertainty for growers, handlers, buyers, and consumers. The long term goal of the almond industry is to increase almond consumption and demand, and the Board believes this is best achieved in the presence of stable and orderly market conditions. Thus, the Board recommended that the volume regulation provisions of the order be utilized for the 1994–95 season as a supply management tool, with 10 percent of the 1994 crop almonds being held by handlers as a reserve.

On May 12, 1995, the Board met in Modesto, California, and unanimously recommended releasing the reserve established for the 1994–95 crop year. Thus, the salable percentage will increase from 90 to 100 percent and the reserve percentage will decrease from 10 to 0 percent. The Board considered a number of factors in arriving at its recommendation to release the reserve. The 1994–95 almond crop is now estimated at 727 million pounds, far above the initial 640 million pound estimate. Shipments for the year are expected to exceed 600 million pounds. Further, it appears that production in the rest of the world is well below normal. Production in Spain, the world's second largest producer of almonds, fell well below usual and is estimated to have been about 75 million pounds. Spain, California's biggest competitor in the world almond markets, became the United States' fourth largest export market.

At the meeting, the Board also considered a crop estimate for California almonds for the 1995–96 season provided by the California Agricultural Statistics Service (CASS). CASS released its crop estimate of 430 million kernelweight pounds on May 11. The estimate is relatively small compared with normal almond production for a year. An extremely wet spring that prohibited successful pollination of almond trees during the critical bloom period as well as crop losses due to trees having been blown over by high winds have resulted in the predicted small yield in California. Very short carryin inventories of 1993 crop almonds into the current season combined with reduced production from California competitors resulted in higher than anticipated demand for California almonds.

As required under the order, the Board revised a number of estimates that had been considered when volume regulation was first recommended in July 1994. The Board's current estimates of marketable supply, combined domestic and export trade demand for 1994–95, and desirable carryover to be available for the 1995–96 crop year are shown below. The Board considered these revised estimates in arriving at its recommendation to release the 1994–95 reserve. The estimates used by the Board to establish the original volume regulations for the year are shown for comparison.

MARKETING POLICY ESTIMATES—1994 CROP

[Kernelweight basis in millions of pounds]

	12/9/94 Initial estimates	5/12/95 Revised estimates
Estimated Production:		
1. 1994 Production	640.0	727.1
2. Loss and Exempt—3.0%	19.2	21.8
3. Marketable Production	620.8	705.3
Estimated Trade Demand:		
4. Domestic	175.0	152.8
5. Export	381.4	449.0
6. Total	556.4	601.8
Inventory Adjustment:		
7. Carryin 7/1/94	99.6	102.6
8. Desirable Carryover 6/30/95	100.0	206.1
9. Adjustment (Item 8 minus item 7)	0.4	103.5
Salable/Reserve:		
10. Adjusted Trade Demand (Item 6 plus item 9)	556.8	705.3
11. Reserve (Item 3 minus item 10)	64.0	0
12. Salable % (Item 10 divided by item 3×100)	90%	100.0
13. Reserve % (100% minus item 12)	10%	0

As previously mentioned and reflected in the table, estimated almond crop production for the 1994–95 season increased from 640 to 727.1 million kernelweight pounds. Estimated weight losses resulting from the removal of inedible kernels by handlers and losses during manufacturing also increased from 19.2 to 21.8 million kernelweight pounds. Therefore, marketable production is expected at 705.3 million kernelweight pounds.

The Board's estimated trade demand (or shipments) also increased from 556.5 million kernelweight pounds to a total of 601.8 kernelweight pounds. If the estimates are achieved, this would set a new record for the California almond industry. Although estimated domestic trade demand decreased from 175 to 152.8 million kernelweight pounds, estimated export trade demand increased sharply from 381.4 to 449 million kernelweight pounds. Almond production in the rest of the world was well below normal, contributing to a significant increase in the amount of California almonds shipped into export markets.

The Board also revised its inventory estimates. The carryin figure—supplies of salable almonds carried in from the 1993–94 crop year—was slightly revised from 99.6 to 102.6 million kernelweight pounds. The desirable carryout figure—supplies of salable almonds to be carried out on June 30 for early season shipment during the 1995–96 crop year—was revised from 100 to 206.1 million kernelweight pounds. With the projected short crop for the upcoming season, the carryout figure was significantly increased to provide a more adequate supply of almonds available to meet early market needs. After taking into account the carryin and desirable carryover figures, the adjusted trade demand was increased from 556.8 to 705.3 million kernelweight pounds, an amount equal to the Board's estimate of marketable production.

The order also permits the Board to recommend the establishment of a percentage of reserve almonds that can be exported. However, export is currently the largest market for California almonds and is not considered a secondary or noncompetitive outlet. For the 1994–95 crop year, exports were included in the trade demand and the export market was not an authorized reserve outlet. The percentage of reserve almonds available for export was established at 0 percent in the final rule previously cited that established volume regulation for the 1994–95 crop. The export percentage is not changed as a result of this action.

The Board believes that immediate release of the reserve will positively impact market stability by increasing the amount of almonds available to the market prior to the harvest of the 1995 crop, and by augmenting the overall supply available for the upcoming season. This action is expected to facilitate a smooth transition into the 1995–96 season. Since market stability is of paramount importance in achieving long-term industry health, the Board concluded that there are no viable alternatives to its recommendation.

This action is not expected to impose any additional costs on handlers or producers because immediate release of the reserve will eliminate the need for handlers to continue to store almonds and will allow the product to enter an eager market in a smooth fashion. Therefore, the Administrator of the AMS has determined that the issuance of this interim final rule will not have a significant economic effect on a substantial number of small entities.

After consideration of all relevant material presented, including the Board's recommendation, and other available information, it is found that revision of section 981.239 so as to change the salable percentage from 90 to 100 percent and the reserve percentage from 10 to 0 percent will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This rule relaxes requirements currently in effect by increasing the quantity of almonds that may be marketed; (2) this rule was discussed at a public meeting and interested persons had an opportunity to provide input; (3) the rule was unanimously recommended by the Board; and (4) this rule provides a 30-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 981

Almonds, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 981 is amended as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 981 continues to read as follows:

Authority: 7 U.S.C. 601–674.

Note: This section will not appear in the Code of Federal Regulations.

Subpart—Salable, Reserve, and Export Percentages

2. Section 981.239 is revised to read as follows:

§ 981.239 Salable, reserve, and export percentages for almonds during the crop year beginning on July 1, 1994.

The salable, reserve, and export percentages during the crop year beginning on July 1, 1994, shall be 100 percent, 0 percent, and 0 percent, respectively beginning on May 25, 1995.

Dated: May 25, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–13339 Filed 5–31–95; 8:45 am]

BILLING CODE 3410–02–P

Commodity Credit Corporation

7 CFR Part 1468

RIN 0560–AD40

Support Prices for Shorn Wool, Wool on Unshorn Lambs, and Mohair for the 1995 Marketing Year

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The National Wool Act of 1954, as amended (Wool Act), requires the Secretary of Agriculture, through the Commodity Credit Corporation (CCC), to make loans and payments available to producers of wool and mohair through December 31, 1995. The Wool Act further provides that, in the case of the 1995 marketing year, the payments shall be 50 percent of the amount otherwise determined in accordance with section 704(a) of the Wool Act. On September 16, 1994, CCC issued a proposed rule (59 FR 47564) with respect to the support prices for shorn wool, wool on unshorn lambs, and mohair for the 1995 marketing year. The 1995 payment rate formula for wool on unshorn lambs has been determined to be 80 percent of the difference between the 1995 support price for shorn wool and the 1995 national average market price for shorn wool, multiplied by 5 (the quantity of wool on an average 100-pound unshorn lamb). The mohair support level has been determined to be $4.657, which is equal to 85 percent of the comparable percentage of parity at which shorn wool is supported for the 1995 marketing year. Payments to producers for the 1995 marketing year shall be 50 percent of the amount otherwise determined in accordance with section 704(a). These actions are required by sections 703 and 704 of the Wool Act.

EFFECTIVE DATE: June 1, 1995.

FOR FURTHER INFORMATION CONTACT: Janise A. Zygmont, Consolidated Farm Service Agency, United States Department of Agriculture, room 3756–S, PO Box 2415, Washington, DC 20013–2415 or call 202–720–8841.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be significant and was reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since the CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of these determinations.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will not have a significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are: National Wool Act Payments—10.059.

Executive Order 12778

This final rule has been reviewed in accordance with Executive Order 12778. The provisions of this final rule do not preempt State laws, are not retroactive, and do not involve administrative appeals.

Executive Order 12372

This program/activity is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Paperwork Reduction Act

The amendments to 7 CFR part 1468 set forth in this final rule will not result in any change in the public reporting burden. Therefore, the information collection requirements of the Paperwork Reduction Act are not applicable to this amendment.

Final Regulatory Impact Analysis

The Final Regulatory Impact Analysis describing the options considered in developing this final rule and the impact of the implementation of each option is available on request from the above-named individual.

Background

This final rule amends 7 CFR part 1468 to set forth determinations with respect to the support prices for shorn wool, wool on unshorn lambs, and mohair for the 1995 marketing year. Shorn wool, unshorn lamb, and mohair payments to producers will be reduced by 50 percent of the amount otherwise determined under the Wool Act as required by section 704(a) of the Wool Act.

A general description of the statutory basis for such determinations in this final rule was set forth in the proposed rule at 59 FR 47564 (September 16, 1994). The proposed rule requested comments with respect to determinations for the support prices for wool on unshorn lambs and mohair. Comments were not requested concerning the support price for shorn wool because that price is determined in accordance with a formula mandated by section 703(b) of the Wool Act.

The support programs conducted pursuant to the Wool Act are subject to the provisions of the Balanced Budget and Deficit Reduction Act of 1985, as amended. As a result, the support levels announced in this rule may be recalculated to comply with this Act.

Comments

A total of 24 comments were received during the 30-day public comment period that ended October 17, 1994. Respondents included 18 wool and/or mohair producers, one producer organization, one State legislator, one peanut producer, and three others.

Mohair. Eight respondents addressed the mohair support level. Two recommended that mohair be supported at the maximum allowed by law—115 percent of the wool parity percentage or $6.300 per pound. Five recommended that mohair be supported at the 100-percent level or $5.478 per pound, and one respondent recommended either the 100 or 115 percent level. The reasons cited for these recommendations were that such support levels would:

(a) Somewhat offset the 50-percent reduction in 1995 payments required by the Wool Act and, as such, help ease the transition to the eventual elimination of the program.

(b) Lessen the negative impact of the Wool Act phase-out on those rural economies which are based on sheep and/or goats with few available employment or land use alternatives;

(c) Help maintain the infrastructure of the industry by slowing the sale of goats which has occurred in anticipation of loss of the support program. The U.S. mohair industry, which contributes to a positive U.S. trade balance, would be jeopardized if goat numbers fell below the critical mass necessary to remain viable.

These comments were considered and rejected because the level of price support determined under this rule is consistent with the intent of recent legislation to phase out support for the wool and mohair programs.

Wool on Unshorn Lambs. No comments specifically addressed the level of support for wool on unshorn lambs. The formula selected in this final rule provides a payment rate comparable to the shorn wool support price which helps to maintain normal marketing practices.

Other. Although comments were not solicited on this issue, 12 wool/mohair producers and one peanut producer offered comments relating to the Wool Act phase-out and the need for a program after 1995. Two other respondents wrote in support of the Wool Act phase-out and another expressed displeasure that the support program was still operating. It should be noted that the price support programs authorized by the Wool Act will end when the Wool Act expires on December 31, 1995.

After considering these comments, the following determinations have been made with respect to the support prices for wool on unshorn lambs and mohair for the 1995 marketing year.

Payment Rate—Wool on Unshorn Lambs. In accordance with section 703 of the Wool Act, the payment rate for wool on unshorn lambs shall be determined by multiplying 80 percent of the difference between the 1995 support price for shorn wool and the 1995 national average market price for shorn wool by 5 pounds (the quantity of wool on an average 100-pound unshorn lamb).

Support Price—Mohair. In accordance with section 703 of the Wool Act, the support price for mohair for the 1995 marketing year shall be $4.657, which is

equal to 85 percent of the comparable percentage of parity at which shorn wool is supported for the 1995 marketing year.

List of Subjects in 7 CFR Part 1468

Assistance grant programs—agriculture, Livestock, Mohair, Reporting and recordkeeping requirements, Wool.

Accordingly, 7 CFR part 1468 is amended as follows:

PART 1468—WOOL AND MOHAIR

1. The authority citation for 7 CFR part 1468 continues to read as follows:

Authority: 7 U.S.C. 1781–1787; 15 U.S.C. 714b and 714c.

2. Section 1468.4 is amended by adding paragraphs (b)(1)(ii)(E), (b)(2)(v), and (b)(3)(v) to read as follows:

§ 1468.4 Eligibility for payments.

* * * * *

(b)(1) * * *

(ii) * * *

(E) 1995—$2.12 per pound.

(2) * * *

(v) 1995—an amount equal to 80 percent of the difference between the national average price received by producers for shorn wool for the 1995 marketing year and the 1995 shorn wool support price, multiplied by 5.

(3) ** * *

(v) 1995—$4.657 per pound.

* * * * *

Signed at Washington, DC, on May 24, 1995.

Bruce R. Weber,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 95–13383 Filed 5–31–95; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–176–AD; Amendment 39–9244; AD 95–11–11]

Airworthiness Directives; McDonnell Douglas Model DC–10–10, –15, –30, –40, and KC–10 (Military) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas DC–10 and KC–10 series airplanes, that requires repetitive eddy current inspections to detect fatigue cracking of the pylon aft bulkhead flange, upper pylon box web, fitting radius, and adjacent tangent areas; and repair, if necessary. This amendment is prompted by fatigue cracking found in the wing pylon aft bulkheads on two airplanes. The actions specified by this AD are intended to prevent failure of the wing pylon aft bulkhead due to fatigue cracking, which could lead to separation of the engine and pylon from the airplane.

DATES: Effective July 3, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 3, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Maureen Moreland, Aerospace Engineer, Airframe Branch, ANM–120L, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5238; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas DC–10 and KC–10 series airplanes was published in the **Federal Register** on January 18, 1995 (60 FR 3590). That action proposed to require repetitive eddy current inspections to detect fatigue cracking of the pylon aft bulkhead flange, upper pylon box web, fitting radius, and adjacent tangent areas; and repair, if necessary.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposal.

Another commenter expresses concern that enough spare parts may not be available to affected operators to comply with the proposed rule. This commenter requests that the FAA require the McDonnell Douglas Corporation to stock enough spare aft bulkheads and attachment hardware prior to release of the final rule in order to accommodate operators that may need to replace cracked parts. The FAA does not concur with this request. The FAA has received no indication that a problem exists with regard to the availability of parts associated with the requirements of this AD action. This AD mandates inspections to detect cracks in various items, and repair of any items that are found to be cracked. Such repair would be required in order to keep the airplane airworthy, regardless of whether or not this AD is issued. If the availability of repair parts should become a problem, paragraph (d) of this final rule provides operators with the opportunity to request use of an alternative method of compliance with the AD until parts can be located.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 436 Model DC–10 and KC–10 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 269 airplanes of U.S. registry will be affected by this AD, that it will take approximately 8 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $129,120, or $480 per airplane, per inspection cycle.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–11–11 McDonnell Douglas: Amendment 39–9244. Docket 94–NM–176–AD.

Applicability: Model DC–10–10, –15, –30, –40, and KC–10 (military) series airplanes; as listed in McDonnell Douglas Alert Service Bulletin A54–106, Revision 2, dated November 3, 1994; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the wing pylon aft bulkhead due to fatigue cracking, which could lead to separation of the engine and pylon from the airplane, accomplish the following:

(a) Prior to the accumulation of 1,800 landings after the effective date of this AD, conduct an eddy current inspection to detect fatigue cracks in the pylon aft bulkhead flange, upper pylon box web, fitting radius, and adjacent tangent areas, in accordance with McDonnell Douglas Alert Service Bulletin A54–106, Revision 2, dated November 3, 1994. Repeat this inspection thereafter at intervals not to exceed 1,800 landings.

(b) If any crack(s) is found during any inspection required by paragraph (a) of this AD, prior to further flight, repair in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(c) Accomplishment of the gap inspection and necessary shimming in accordance with "Phase III," as specified in McDonnell Douglas Alert Service Bulletin A54–106, Revision 2, dated November 3, 1994, constitutes terminating action for the inspections required by paragraph (a) of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles ACO, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The inspection shall be done in accordance with McDonnell Douglas Alert Service Bulletin A54–106, Revision 2, dated November 3, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on July 3, 1995.

Issued in Renton, Washington, on May 19, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–12826 Filed 5–31–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 94–NM–194–AD; Amendment 39–9245; AD 95–11–12]

Airworthiness Directives; McDonnell Douglas Model DC–9, DC–9–80, and C–9 (Military) Series Airplanes, and Model MD–88 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9, DC–9–80, and C–9 (military) series airplanes, and Model MD–88 airplanes, that requires repetitive replacement of the emergency power switch in the overhead switch panel with a new switch. This amendment is prompted by a report of heavy smoke in the cockpit coming from the overhead switch panel on a Model DC–9–81 series airplane. The actions specified by this AD are intended to ensure replacement of the emergency power switch when it has reached its maximum life limit; an emergency power switch that is not replaced could fail and lead to a short in the electrical circuit, which could result in a fire in the overhead switch panel and smoke in the cockpit.

DATES: Effective July 3, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 3, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Elvin Wheeler, Aerospace Engineer,

Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5344; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9, DC–9–80, and C–9 (military) series airplanes, and Model MD–88 airplanes was published in the **Federal Register** on December 20, 1994 (59 FR 65518). That action proposed to require repetitively replacing the emergency power switch in the overhead switch panel with a new switch at regular intervals.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposed rule.

Two commenters request that the compliance time for accomplishment of the replacement be extended from the proposed 12 months to 18 months. One of these commenters states that such an extension will allow the replacement to be accomplished during a regularly scheduled maintenance check. The FAA does not concur. In developing an appropriate compliance time for this action, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but the availability of required parts and the practical aspect of installing the required replacement with a maximum interval of time allowable for all affected airplanes to continue to operate without compromising safety. Since maintenance schedules vary from operator to operator, there would be no assurance that the replacement will be accomplished during that time. The manufacturer has advised that an ample number of required parts will be available for replacement of the emergency power switch on the U.S. fleet within the proposed compliance period. However, under the provisions of paragraph (b) of the final rule, the FAA may approve requests for adjustments to the compliance time if data are presented to justify such an adjustment.

Several commenters request that the compliance time for accomplishing the proposed replacement be based on switch cycle usage, rather than calendar time. Two commenters note that a compliance time based on a calendar time would impose a severe penalty on operators that cycle the switch only once a day and would also impose a somewhat lesser penalty on operators who cycle the switch on the first flight of the day and at crew changes. One commenter states that, due to the fact that the switches do not have counters to record actual switch cycles, it is critical that operators have the flexibility to establish an equivalent calendar time or airplane cycle limit based on their individual procedures for exercising these switches.

The FAA does not concur with the commenters' request to base the compliance time on switch cycles. Compliance times for AD's are normally based on a parameter related to failure of a particular component. In this case, the failure of the emergency power switch is undoubtedly related to the number of switch cycles. However, because switch cycles are not recorded, referencing switch cycles in the compliance time would make it impossible to verify compliance at the required time. Therefore, the FAA has selected a compliance time that equates to the approximate number of switch cycles specified in McDonnell Douglas DC–9 Service Bulletin 24–150, assuming that the switch is cycled once for each flight cycle. Under provisions of paragraph (b) of the final rule, however, operators may apply for the approval of an extension of the compliance time if sufficient justification is presented to the FAA. For example, such justification may consist of data demonstrating that the operator only cycles the switch once a day, or at each crew change, rather than once per flight cycle.

Since issuance of the proposal, the FAA has reviewed and approved McDonnell Douglas DC–9 Service Bulletin 24–150, Revision 1, dated April 7, 1995, which describes the appropriate procedures for repetitively replacing the emergency power switch in the overhead switch panel with a new switch at regular intervals. Therefore, the final rule has been revised to reference this revision of the service bulletin as an additional source of service information.

The FAA points out that it inadvertently used the phrase "time-in-service" after the term "3 years" in paragraph (a) of the proposal when referring to the compliance threshold for installation of the emergency power switch. Since that phrase is inappropriate, the FAA has removed it from the final rule. Likewise, the FAA has removed that phrase from the reference to the repetitive replacement interval.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 1,990 Model DC–9, DC–9–80, and C–9 (military) series airplanes and Model MD–88 airplanes of the affected design in the worldwide fleet. The FAA estimates that 992 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $1,434 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,541,568, or $1,554 per airplane, per replacement cycle.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–11–12 McDonnell Douglas: Amendment 39–9245. Docket 94–NM–194–AD.

Applicability: Model DC–9–10, –20, –30, –40, and –50 series airplanes; Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) series airplanes; Model MD–88 airplanes; and C–9 (military) series airplanes; as listed in McDonnell Douglas DC–9 Service Bulletin 24–150, dated March 28, 1994; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To ensure replacement of the emergency power switch that have reached the maximum life limit, accomplish the following:

(a) Prior to the accumulation of 3 years since installation of the emergency power switch in the overhead switch panel, or within 12 months after the effective date of this AD, whichever occurs later, replace the emergency power switch with a new switch in accordance with the procedures specified in McDonnell Douglas DC–9 Service Bulletin 24–150, dated March 28, 1994, or Revision 1, dated April 7, 1995. Thereafter, replace the emergency power switch at intervals not to exceed 3 years.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The replacement shall be done in accordance with McDonnell Douglas DC–9 Service Bulletin 24–150, dated March 28, 1994; or McDonnell Douglas DC–9 Service Bulletin 24–150, Revision 1, dated April 7, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on July 3, 1995.

Issued in Renton, Washington, on May 22, 1995.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–12951 Filed 5–31–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–NM–96–AD; Amendment 39–9246; AD 95–11–13]

Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes Equipped With Pratt & Whitney Model PW4460 and PW4462 Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–11 series airplanes. This action requires a visual inspection to detect cracks or discrepancies in the aft mount beam assembly of the engines; and replacement of the cracked or discrepant aft mount beam assembly with a new assembly, or a previously inspected and re-identified assembly. This amendment is prompted by reports of cracking in a certain aft mount beam assembly on Airbus Model A310 series airplanes. The actions specified in this AD are intended to prevent cracks in the aft mount beam assembly of the engines, which could result in loss of the capability of the aft mount beam assembly to support engine loads, and possible separation of the engine from the airplane.

DATES: Effective June 16, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 16, 1995.

Comments for inclusion in the Rules Docket must be received on or before July 31, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–96–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Wahib Mina, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5324; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION: The FAA has received reports of cracking in an aft mount beam assembly having part number (P/N) 221–0261–501 installed on Airbus Model A310 series airplanes. Metallurgical analysis and close examination of the cracked aft mount beam assembly has indicated this cracking is the result of physical defects, which were caused during the forging process by one supplier. Cracks in the aft mount beam assembly of the engines, if not detected and corrected in a timely

manner, could result in loss of the capability of the aft mount beam assembly to support engine loads, and possible separation of the engine from the airplane.

Aft mount beam assemblies having P/N 221–0261–501 are also installed on McDonnell Douglas Model MD–11 series airplanes equipped with Pratt & Whitney PW4460 and PW4462 engines. The FAA has determined that these airplanes are also subject to the addressed unsafe condition.

The FAA may consider similar rulemaking action that is applicable to Airbus Model A310 series airplanes on which the suspect mount beam assembly also may be installed.

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin MD11–71A073, Revision 1, dated May 16, 1995, which describes procedures for a one-time visual inspection to detect cracks or discrepancies in the aft mount beam assembly, P/N 221–0261–501, of engine numbers 1, 2, and 3. This alert service bulletin also describes procedures for replacement of the cracked or discrepant aft mount beam assembly with a new assembly having P/N 221–0261–503, or a previously inspected and re-identified assembly having P/N 221–0261–501.

Since an unsafe condition has been identified that is likely to exist or develop on certain other McDonnell Douglas Model MD–11 series airplanes of the same type design, this AD is being issued to prevent loss of the capability of the aft mount beam assembly to support engine loads, and possible separation of the engine from the airplane. This AD requires a one-time visual inspection to detect cracks or discrepancies in the aft mount beam assembly of the engines; and replacement of the cracked or discrepant aft mount beam assembly with a certain new assembly, or a certain previously inspected and re-identified assembly. The actions are required to be accomplished in accordance with the alert service bulletin described previously.

This AD also requires that operators report results of inspection findings, positive or negative, to the FAA.

The FAA is considering further rulemaking action to require fluorescent penetrant and eddy current inspections of the aft mount beam assembly, P/N 221–0261–501, of the engines within 4,000 flight cycles after accomplishing the visual inspection required by this AD. However, the proposed compliance time for the one-time visual inspection is sufficiently long so that notice and time for public comment would not be impracticable.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been added to this final rule to clarify this long-standing requirement.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–NM–96–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–11–13 McDonnell Douglas: Amendment 39–9246. Docket 95–NM–96–AD.

Applicability: Model MD–11 series airplanes, equipped with Pratt & Whitney Model PW4460 and PW4462 engines; as listed in McDonnell Douglas Alert Service Bulletin MD11–71A073, Revision 1, dated May 16, 1995; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of the capability of the aft mount beam assembly to support engine loads, and possible separation of the engine from the airplane, accomplish the following:

(a) Within 60 days after the effective date of this AD, perform a visual inspection to detect cracks or discrepancies in the aft mount beam assembly, part number (P/N) 221–0261–501, of engine numbers 1, 2, and 3, in accordance with McDonnell Douglas Alert Service Bulletin MD11–71A073, Revision 1, dated May 16, 1995.

(1) If no cracks or discrepancies are detected, no further action is required by this AD.

(2) If any crack or discrepancy is detected, prior to further flight, replace the cracked or discrepant aft mount beam assembly with a new assembly having P/N 221–0261–503, or an assembly having P/N 221–0261–501 that has been previously inspected and re-identified, in accordance with paragraph 3.B., Phase 2, of the Accomplishment Instructions of the alert service bulletin. Replacement shall be accomplished in accordance with the procedures specified in the alert service bulletin.

(b) Within 10 days after accomplishing the inspection required by this AD, report inspection results, positive or negative, to the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California 90712; fax (310) 627–5210. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(c) As of the effective date of this AD, no person shall install an aft mount beam assembly, P/N 221–021–501, on any airplane, unless it has been previously inspected and re-identified in accordance with the paragraph 3.B., Phase 2, of the Accomplishment Instructions of McDonnell Douglas Alert Service Bulletin MD11–71A073, Revision 1, dated May 16, 1995.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles ACO, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The inspection, replacement, and re-identification shall be done in accordance with McDonnell Douglas Alert Service Bulletin MD11–71A073, Revision 1, dated May 16, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on June 16, 1995.

Issued in Renton, Washington, on May 22, 1995.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–12950 Filed 5–31–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 90–CE–67–AD; Amendment 39–9250; AD 95–11–17]

Airworthiness Directives; Jetstream Aircraft Limited (Formerly British Aerospace, Regional Aircraft Limited) Jetstream Models 3101 and 3201 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes Airworthiness Directive (AD) 90–13–12, which currently requires modifying the airplane electrical system and revising the emergency procedures section of the Airplane Flight Manual (AFM) on certain Jetstream Aircraft Limited (JAL) Jetstream Models 3101 and 3201 airplanes. This action retains the requirements of AD 90–13–12 for those airplanes that do not have modified inverters installed and the inverted transfer function restored. The Federal Aviation Administration (FAA) has determined that installing modified inverters along with restoring the inverter transfer function corrects the problems in the power supply addressed by AD 90–13–12. The actions specified by this AD are intended to prevent alternating current system failures, which, if not detected and corrected, could result in damage to the airplane navigational systems.

DATES: Effective July 19, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 19, 1995.

ADDRESSES: Service information that applies to this AD may be obtained from Jetstream Aircraft Limited, Manager Product Support, Prestwick Airport, Ayrshire, KA9 2RW Scotland; telephone (44–292) 79888; facsimile (44–292) 79703; or Jetstream Aircraft Inc., Librarian, P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029; telephone (703) 406–1161; facsimile (703) 406–1469. This information may also be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond A. Stoer, Program Officer, Brussels Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B–1000 Brussels, Belgium; telephone (322) 513.3830; facsimile (322) 230.6899; or Mr. Sam Lovell, Project Officer, Small Airplane Directorate, Airplane Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6934; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain JAL Models 3101 and 3201 airplanes was published in the **Federal Register** on February 10, 1995 (60 FR 7922). The action proposed to supersede AD 90–13–12 with a new AD that would (1) retain the requirements of modifying

the airplane electrical system and revising the emergency procedures section of the AFM required by AD 90–13–12; and (2) require these modification and revisions only for those airplanes that do not have modified inverters, P/N 1B350–1B1–3, installed in accordance with the instructions in Jetstream Service Bulletin (SB) 24–JM 7740, dated November 15, 1990, and do not have the inverter transfer function restored in accordance with the instructions in Jetstream SB 24–JA 900941, dated November 14, 1990; or Jetstream SB 24–JA 900941, Revision 1, dated February 18, 1992. Accomplishment of the proposed airplane electrical modifications would be in accordance with Jetstream Alert Service Bulletin (ASB) 24–A–JA 900443, Revision 1, dated May 1, 1990; and Jetstream ASB 24–A–JM 7708, Revision 1, dated May 22, 1990.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

The FAA estimates that 180 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 10 workhours per airplane to accomplish the required action, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $108,000. This figure is based on the assumption that no affected owner/operator has accomplished the required modification.

Since AD 90–13–12, which this AD supersedes, requires the same actions (except for a limit in the airplane applicability), there is no additional cost of this AD on U.S. operators. The $28,800 cost difference between this AD (estimated $108,000) and superseded AD 90–04–04 (estimated $79,200) is a result of inflationary costs used in determining the costs of labor ($60 per hour as opposed to $40 per hour).

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing AD 90–13–12, Amendment 39–6629 (55 FR 23890, June 13, 1990), and adding a new AD to read as follows:

95–11–17 Jetstream Aircraft Limited: Amendment 39–9250; Docket No. 90–CE–67–AD. Supersedes AD 90–13–12, Amendment 39–6629.

Applicability: Jetstream Models 3101 and 3201 airplanes (serial numbers 697 through 904), certificated in any category, that do not have the following:

1. Two modified inverters, part number (P/N) 1B350–1B1–3, installed in accordance with the instructions in Jetstream Service Bulletin (SB) 24–JM 7740, dated November 15, 1990; and

2. The inverter transfer function restored in accordance with the instructions in Jetstream SB 24–JA 900941, dated November 14, 1990; or Jetstream SB 24–JA 900941, Revision 1, dated February 18, 1992.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (e) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless already accomplished (compliance with superseded AD 90–13–12).

To prevent alternating current system failures, which, if not detected and corrected, could result in damage to the airplane navigational systems, accomplish the following:

(a) Within the next 50 hours time-in-service (TIS) after the effective date of this AD, modify the airplane electrical system and revise the emergency procedures section of the airplane flight manual in accordance with the instructions in Jetstream Alert Service Bulletin (ASB) 24–A–JA 900443, Revision 2, dated November 15, 1990, Section 2, ACCOMPLISHMENT INSTRUCTIONS; and APPENDIX C.

(b) Within the next 100 hours TIS after the effective date of this AD, modify the airplane electrical system in accordance with the instructions in Jetstream ASB 24–A–JM 7708, Revision 1, dated May 22, 1990, and revise the emergency procedures section of the airplane flight manual in accordance with the instructions in Jetstream ASB 24–A–JA 900443, Revision 2, dated November 15, 1990, APPENDIX C; or the following Advance Amendment Bulletins (AAB), as applicable:

Model	Publication
3101 ..	AFM HP.4.10, Jetstream AAB number 6 with at least issue 1 status; and AFM HP.4.10, Jetstream AAB number 4 with at least issue 2 status.
3201 ..	AFM HP.4.16, Jetstream AAB number 2 with at least issue 2 status, and removal of Jetstream AAB number 2, issue 1.

Note 2: Compliance with a previous revision level of the service information referenced in this AD fulfills the applicable requirements of this AD and is considered "unless already accomplished" for that portion of the AD.

(c) Replacement of both inverters, P/N 1B350–1B1–2, with modified inverters P/N 1B350–1B1–3 in accordance with the "ACCOMPLISHMENT INSTRUCTIONS" section of Jetstream SB 24–JM 7740, dated November 15, 1990, and restoration of the inverter transfer function in accordance with Jetstream ASB 24–JA 900941, dated November 14, 1990; or Jetstream ASB 24–JA 900941, Revision 1, dated February 18, 1992, is considered terminating action for the requirements of this AD.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Office ACO, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B–1000 Brussels, Belgium. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Brussels ACO.

(f) The modifications required by this AD shall be done in accordance with Jetstream Alert Service Bulletin 24–A–JA 900443, Revision 2, dated November 15, 1990, and Jetstream Alert Service Bulletin 24–A–JM 7708, Revision 1, dated May 22, 1990. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Jetstream Aircraft Limited, Manager Product Support, Prestwick Airport, Ayrshire, KA9 2RW Scotland; or Jetstream Aircraft Inc., Librarian, P.O. Box 16029, Dulles International Airport, Washington, DC, 20041–6029. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment (39–9250) supersedes AD 90–13–12, Amendment 39–6629.

(h) This amendment (39–9250) becomes effective on July 19 1995.

Issued in Kansas City, Missouri, on May 23, 1995.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–13120 Filed 5–31–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 97

[Docket No. 28226; Amdt. No. 1665]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a

"significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on May 19, 1995.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. app. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective June 22, 1995*

Mountain Home, ID, Mountain Home Muni, NDB or GPS RWY 28, Amdt 2
Chicago, IL, Chicago-O'Hare Intl, NDB, RWY 32R, Amdt 19, Cancelled
Chicago, IL, Chicago-O'Hare Intl, ILS, RWY 32R, Amdt 21
Kansas City, MO, Kansas City Intl, LOC BC RWY 27, Amdt 12
Jaffrey, NH, Jaffrey Muni-Silver Ranch, VOR-A, Amdt 7
Antigo, WI, Langlade County, NDB or GPS RWY 16, Amdt 4
Cottage Grove, WI, Blackhawk Field, VOR or GPS-A, Orig, Cancelled
La Crosse, WI, La Crosse Muni, VOR RWY 13, Amdt 28
La Crosse, WI, La Crosse Muni, VOR or GPS RWY 36, Amdt 29
La Crosse, WI, La Crosse Muni, NDB or GPS RWY 18, Amdt 17
La Crosse, WI, La Crosse Muni, ILS RWY 18, Amdt 17
Madison, WI, Blackhawk Airfield, VOR or GPS-A, Orig

** * * Effective July 20, 1995*

Lincoln, CA, Lincoln Regional, VOR or GPS RWY 15, Amdt 4
Rio Vista, CA, Rio Vista Muni, VOR-A, Orig
Arco, ID, Arco-Butte County, NDB-A, Orig
Hopkinsville, KY, Hopkinsville-Christian County, LOC RWY 26, Amdt 3
Hopkinsville, KY, Hopkinsville-Christian County, NDB RWY 26, Amdt 6
Slidell, LA, Slidell, GPS RWY 36, Orig
Ord, NE, Evelyn Sharp Field, NDB or GPS RWY 13, Amdt 13
Zuni Pueblo, NM, Black Rock, VOR/DME or GPS RWY 7, Amdt 1
Charlotte, NC, Charlotte/Douglas Intl, VOR/DME RNAV RWY 23, Orig
Mt. Airy, NC, Mt. Airy-Surry County, NDB or GPS-A, Amdt 2A, CANCELLED
Wauseon, OH, Fulton County, NDB or GPS RWY 27, Amdt 7
Oklahoma City, OK, Sundance Airpark, VOR/DME RNAV or GPS RWY 35, Amdt 1
Hot Springs, VA, Ingalls Field, NDB RWY 24, Amdt 5, CANCELLED
Sturgeon Bay, WI, Door County Cherryland, SDF RWY 1, Amdt 6
Sturgeon Bay, WI, Door County Cherryland, NDB or GPS RWY 1, Amdt 10

** * * Effective Upon Publication*

Chambersburg, PA, Chambersburg Muni, VOR/DME or GPS-B, Amdt 1

[FR Doc. 95-13398 Filed 5-31-95; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 97

[Docket No. 28227; Amdt. No. 1666]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS-420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviations Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The Provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been cancelled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulation for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on May 19, 1995.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. app. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective Upon Publication*

FDC Date	State	City	Airport	FDC No.	SIAP
04/26/95	FL	Miami	Opa Locka	5/1819	ILS RWY 9L, AMDT 2A...
05/03/95	DC	Washington	Washington National	5/1968	ILS RWY 36 AMDT 38...
05/03/95	FL	Jacksonville	Jacksonville Intl	5/1954	ILS RWY 13, AMDT 4...
05/03/95	MD	Baltimore	Baltimore-Washington	5/1969	ILS RWY 10 AMDT 15...
05/03/95	NY	New York	John F. Kennedy Intl	5/1958	ILS RWY 13L AMDT 14...
05/03/95	NY	Rochester	Greater Rochester Intl	5/1982	ILS RWY 4 AMDT 16...
05/03/95	PA	Philadelphia	Philadelphia Intl	5/1963	ILS RWY 9R AMDT 7...
05/03/95	PA	Pittsburgh	Pittsburgh Intl	5/1964	ILS RWY 10L AMDT 22...
05/03/95	VA	Richmond	Richmond Intl	5/1967	ILS RWY 34 AMDT 12...
05/04/95	IL	Chicago	Chicago O'Hare Intl	5/1992	ILS RWY 14R, AMDT 29, ILS RWY 14R (CAT II) AMDT 29, ILS RWY 14R (CAT III) AMDT 29...
05/04/95	IL	Chicago	Chicago O'Hare Intl	5/1993	ILS RWY 14L, AMDT 28, ILS RWY 14L (CAT II), ILS RWY 14L (CAT III) AMDT 28...
05/04/95	NE	Omaha	Eppley Airfield	5/1995	ILS RWY 14R AMDT 3A...
05/04/95	NV	Ely	Ely Airport-Yelland Field	5/1996	VOR/DME OR GPS-C AMDT 1...
05/04/95	OH	Bellefontaine	Bellefontaine Muni	5/1986	VOR/DME RNAV RWY 22 AMDT 5...
05/05/95	NY	New York	John F. Kennedy Intl	5/2007	ILS RWY 4R AMDT 28A...
05/09/95	CA	Oakland	Metropolitan Oakland Intl	5/2071	ILS RWY 29 AMDT 22B...
05/09/95	CA	San Francisco	San Francisco Intl	5/2077	ILS RWY 28R AMDT 9...
05/09/95	NC	Morganton	Morganton-Lenoir	5/2068	LOC RWY 3, Orig...
05/09/95	VA	South Boston	William M. Tuck	5/2069	VOR OR GPS-A AMDT 6...
05/10/95	NE	Kearney	Kearney Muni	5/2094	VOR RWY 36 AMDT 9A...

FDC Date	State	City	Airport	FDC No.	SIAP
05/10/95	OK	Oklahoma City	Will Rogers World	5/2088	ILS RWY 35R AMDT 8...
05/10/95	OR	Portland	Portland Intl	5/2072	ILS RWY 10R AMDT 29A...
05/10/95	TX	Dallas-Fort Worth	Dallas-Fort Worth Intl	5/2081	ILS RWY 17L AMDT 5A...
05/10/95	TX	Dallas-Fort Worth	Dallas-Fort Worth Intl	5/2082	CONVERGING ILS RWY 18R AMDT 2...
05/10/95	TX	Dallas-Fort Worth	Dallas-Fort Worth Intl	5/2084	ILS RWY 18R AMDT 4...
05/10/95	TX	Dallas-Fort Worth	Dallas Fort Worth Intl	5/2086	CONVERGING ILS RWY 17L AMDT 3...
05/10/95	WA	Seattle	Seattle-Tacoma Intl	5/2075	ILS RWY 16R AMDT 11A...
05/10/95	WA	Spokane	Seattle-Intl	5/2074	ILS RWY 21 AMDT 18A...
05/11/95	PA	Meadville	Port Meadville	5/2106	LOC RWY 25 AMDT 3...
05/12/95	AK	Fairbanks	Fairbanks Intl	5/2132	ILS RWY 1L, AMDT 6, CAT I, II, III...
05/12/95	MS	Raymond	Raymond/John Bell Williams	5/2128	NDB OR GPS RWY 12 ORIG...
05/16/95	NC	Raleigh/Durham	Raleigh-Durham Intl	5/2187	ILS RWY 5L AMDT 3A...
05/17/95	DC	Washington	Washington Dulles Intl	5/2199	ILS RWY 1R AMDT 21A...

[FR Doc. 95–13399 Filed 5–31–95; 8:45 am]

BILLING CODE 4910–13–M

RAILROAD RETIREMENT BOARD

20 CFR Part 320

RIN 3220–AB06

Initial Determinations Under the Railroad Unemployment Insurance Act and Reviews of and Appeals From Such Determinations

AGENCY: Railroad Retirement Board.

ACTION: Interim final rule.

SUMMARY: The Railroad Retirement Board (Board) hereby amends its regulations under the Railroad Unemployment Insurance Act (RUIA) to enlarge the authority of Board district offices to make initial determinations on claims for benefits under the RUIA.

EFFECTIVE DATE: June 1, 1995.

ADDRESSES: Submit comments to: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Thomas W. Sadler, Assistant General Counsel, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751–4513, TDD (312) 751–4701.

SUPPLEMENTARY INFORMATION: Section 320.6 of the Board's regulations defines the term "adjudicating office" and prescribes the extent of the authority of each such office to make determinations on claims for benefits under the RUIA. Currently, § 320.6(b) authorizes Board district offices to make initial determinations only with respect to certain issues of eligibility for unemployment benefits under the RUIA. Those determination are made on applications and claims for unemployment benefit received in connection with an employee's registration for unemployment benefits under part 325 of this chapter.

Board district offices have not heretofore been authorized to make determinations on claims for sickness benefits under the RUIA. However, since sickness benefit claimants now file their claims with district offices as part of an agency effort to improve the timeliness of claims processing, the Board is authorizing district offices to make determinations on two issues that often affect eligibility for sickness benefits. The first issue is whether the claimant has filed his or her claim for sickness benefits within the time limit prescribed in § 335.4(c) of part 335 of this chapter; the second issue is whether the claimant has received any form of remuneration, as defined in part 322 of this chapter, with respect to any day claimed as a day of sickness within the 14-day calendar period covered by the claim. Previously, these determinations were made only in the Division of Program Operations of the Bureau of Unemployment and Sickness Insurance. Authorizing Board district offices to make these two types of determinations will expedite the processing and payment of sickness benefits to those persons found properly entitled to payment.

The Board is publishing these amendments as a final rule because the amendments represent organizational changes only and do not affect the substantive rights of any person claiming sickness benefits under the RUIA. However, any person wishing to comment on the amendments may do so within 30 days of the date of this publication in the **Federal Register**.

The Board has determined, with the concurrence of the Office of Management and Budget, that this is not a significant regulatory action for purposes of Executive Order 12866. There are no information collections associated with this rule.

List of Subjects in 20 CFR Part 320

Railroad employees, Railroad unemployment benefits.

For the reasons set out in the preamble, title 20, chapter II, part 320 of the Code of Federal Regulations is amended as follows:

PART 320—INITIAL DETERMINATIONS UNDER THE RAILROAD UNEMPLOYMENT INSURANCE ACT AND REVIEWS OF AND APPEALS FROM SUCH DETERMINATIONS

1. The authority citation for part 320 continues to read as follows:

Authority: 45 U.S.C. 355 and 362(1).

2. Section 320.6 is amended by revising paragraphs (b) and (d) to read as follows:

§ 320.6 Adjudicating office.

* * * * *

(b) *District offices.* Board district offices are authorized to make initial determinations on the following issues relating to eligibility for unemployment or sickness benefits, as the case may be:

(1) Availability for work;

(2) Voluntary leaving of work, with or without good cause;

(3) Failure to accept work or apply for work or failure to report to an employment office;

(4) Timely registration for unemployment benefits under § 325.2 of this chapter and timely filing of claims for sickness benefits under § 335.4(c) of this chapter;

(5) Receipt of remuneration for claimed days of unemployment or sickness, as the case may be;

(6) Mileage or work restrictions and stand-by or lay-over rules;

(7) Whether the claimant's unemployment is due to a strike.

* * * * *

(d) *Division of Program Operations.* The Division of Program Operations, Bureau of Unemployment and Sickness Insurance, is authorized to make initial determinations on all issues of eligibility for unemployment and sickness benefits as set forth in paragraphs (b) and (c) of this section, and on any other issue not reserved to the Director by paragraph (e) of this section.

* * * * *

Dated: May 23, 1995.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 95–13297 Filed 5–31–95; 8:45 am]

BILLING CODE 7905–01–M

DEPARTMENT OF THE TREASURY

31 CFR Part 0

Employee Rules of Conduct

AGENCY: Department of the Treasury.

ACTION: Interim rule.

SUMMARY: The Department of the Treasury is issuing the Employee Rules of Conduct which will prescribe uniform rules of conduct and procedure for all employees and officials in the Department.

DATES: This interim rule is effective June 1, 1995. Comments must be received or postmarked on or before July 3, 1995.

ADDRESSES: Comments should be submitted to the Office of the Assistant General Counsel (General Law and Ethics), Department of the Treasury, Room 1410, Washington, DC 20220, Attention: Mr. R. Peter Rittling or by e-mail at the following address Peter.Rittling@treas.sprint.com.

FOR FURTHER INFORMATION CONTACT: Stephen J. McHale, Henry H. Booth, or R. Peter Rittling, Office of the Assistant General Counsel (General Law and Ethics), Department of the Treasury, telephone (202) 622–0450, FAX (202) 622–1176, e-mail Peter.Rittling@treas.sprint.com.

SUPPLEMENTARY INFORMATION:

I. Background

On August 7, 1992, the Office of Government Ethics (OGE) published the Standards of Ethical Conduct for Employees of the Executive Branch (5 CFR Part 2635). The Executive Branch-wide Standards became effective on February 3, 1993, superseding many, but not all, of the Department-wide conduct rules published at 31 CFR Part 0 (see also the grace period extension at 59 FR 4779–4780, February 2, 1994). This rule making repeals part 0 in its entirety and issues a new part 0. The new part 0 includes conduct rules previously published in part 0 that were not superseded and continue to be important to the efficient functioning of the Department. Many of the regulations included in the Rules of Conduct have been revised pursuant to changes in the law or Department policy.

Simultaneously, in a separate rule making, the Department is issuing as a final rule the Supplemental Standards of Ethical Conduct for Employees of the Department of the Treasury. The Supplemental Standards, to be codified at 5 CFR chapter XXI, prescribe Department-specific ethics regulations supplemental to the Executive Branch-wide Standards.

II. Analysis of the Regulations

Subpart A—General Provisions

The provisions contained in subpart A state the policy and purpose of the Rules of Conduct and the responsibilities of the Department's employees and officials in implementing and complying with the included regulations. Subpart A also includes a definitional section. The United States Savings Bonds Division is omitted from the definition of Bureau in § 0.103 because it was assumed into the Bureau of the Public Debt and no longer exists as a separate component of the Department.

Subpart B—Rules of Conduct

Subpart B sets out the conduct regulations that all Department employees and officials are required to follow. Generally, the rules regulate employee conduct including, for example, the use of Government vehicles or the use of controlled substances and intoxicants while an employee is on duty or on Government property. Regulations concerning conflicts of interest and ethics are contained in the Executive Branch-wide Standards and the Treasury Supplemental Standards.

Subpart C—Special Government Employees

Section 0.301 of subpart C explains that, with little variation, special Government employees employed with the Department are required to comply with the Rules of Conduct to the same degree as regular employees. Further, § 0.303 requires a special Government employee, serving concurrently with another Federal agency, to inform the Department of that fact so that the Department may take the appropriate administrative actions and avoid any conflict in duties or remuneration.

Subpart D—Advisers to the Department

Subpart D includes a definition of adviser to the Department and instructs individuals uncertain about their relationship with the Department to seek advice from the appropriate ethics official. Further, § 0.401(b) explains that it is the Department's policy that advisers should refer to the Rules of Conduct for guidance when working with the Department even though they are not required to follow the Rules.

III. Matters of Regulatory Procedure

Administrative Procedure Act

The Department finds that good cause exists for waiving the notice and comment requirements contained in 5 U.S.C. 553(b) and (d). The Department of the Treasury Employee Rules of Conduct contain statements of policy, interpretive rules, and conduct regulations relating solely to agency management and personnel. Moreover, this rule making essentially reissues in revised form many of the conduct rules previously published in 31 CFR Part 0. However, because this rule may be improved, comments may be submitted on or before July 3, 1995. All comments will be analyzed and any appropriate changes to the rule will be incorporated in the subsequent publication of the final rule.

Executive Order 12866, Regulatory Planning and Review

This rule is limited to agency organization, management and personnel matters; therefore, it is not subject to Executive Order 12866.

Regulatory Flexibility Act

It is hereby certified that this rule will not have a significant economic impact on a substantial number of small entities. This rule affects only Federal employees.

List of Subjects in 31 CFR Part 0

Government employees.

Dated: January 29, 1995.

Edward S. Knight,

General Counsel, Department of the Treasury.

For the reasons set forth in the preamble, 31 CFR part 0 is revised to read as follows:

PART 0—DEPARTMENT OF THE TREASURY EMPLOYEE RULES OF CONDUCT

Subpart A—General Provisions

Sec.

0.101 Purpose.
0.102 Policy.
0.103 Definitions.

Responsibilities

0.104 Designated Agency Ethics Official and Alternate Designated Agency Ethics Official.
0.105 Deputy Ethics Official.
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0.201 Political activity.
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0.203 Gifts or gratuities from foreign governments.
0.204 Use of controlled substances and intoxicants.
0.205 Care of documents and data.
0.206 Disclosure of information.
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0.211 Soliciting, selling and canvassing.
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0.213 General conduct prejudicial to the Government.
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0.215 Possession of weapons and explosives.
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0.217 Personal financial interests.

Subpart C—Special Government Employees

0.301 Applicability of subpart B.
0.302 Service with other Federal agencies.

Subpart D—Advisers to the Department

0.401 Advisers to the Department.

Authority: 5 U.S.C. 301.

Subpart A—General Provisions

§ 0.101 Purpose.

(a) The Department of the Treasury Employee Rules of Conduct (Rules) are separate from and additional to the Standards of Ethical Conduct for Employees of the Executive Branch (Executive Branch-wide Standards) (5 CFR part 2635) and the Supplemental Standards of Ethical Conduct for Employees of the Department of the Treasury (Treasury Supplemental Standards) (to be codified at 5 CFR part 3101). The Rules prescribe employee rules of conduct and procedure and provide for disciplinary action for the violation of the Rules, the Treasury Supplemental Standards, the Executive Branch-wide Standards, and any other rule, regulation or law governing Department employees.

(b) The Rules are not all-inclusive and may be modified by interpretive guidelines and procedures issued by the Department's bureaus. The absence of a specific published rule of conduct covering an action does not constitute a condonation of that action or indicate that the action would not result in corrective or disciplinary action.

§ 0.102 Policy.

(a) All employees and officials of the Department are required to follow the rules of conduct and procedure contained in the Rules, the Treasury Supplemental Standards, the Executive Branch-wide Standards of Ethical Conduct, the Employee Responsibilities and Conduct (5 CFR part 735), and any bureau issued rules.

(b) Employees found in violation of the Rules, the Treasury Supplemental Standards, the Executive Branch-wide Standards or any applicable bureau rule may be instructed to take remedial or corrective action to eliminate the conflict. Remedial action may include, but is not limited to:

(1) Reassignment of work duties;

(2) Disqualification from a particular assignment;

(3) Divestment of a conflicting interest; or

(4) Other appropriate action.

(c) Employees found in violation of the Rules, the Treasury Supplemental Standards, the Executive Branch-wide Standards or any applicable bureau rule may be disciplined in proportion to the gravity of the offense committed, including removal. Disciplinary action will be taken in accordance with applicable laws and regulations and after consideration of the employee's explanation and any mitigating factors. Further, disciplinary action may include any additional penalty prescribed by law.

§ 0.103 Definitions.

The following definitions are used throughout this part: (a) *Adviser* means a person who provides advice to the Department as a representative of an outside group and is not an employee or special Government employee as those terms are defined in § 0.103.

(b) *Bureau* means:

(1) Bureau of Alcohol, Tobacco and Firearms;

(2) Bureau of Engraving and Printing;

(3) Bureau of the Public Debt;

(4) Departmental Offices;

(5) Federal Law Enforcement Training Center;

(6) Financial Management Service;

(7) Internal Revenue Service;

(8) Legal Division;

(9) Office of the Comptroller of the Currency;

(10) Office of the Inspector General;

(11) Office of Thrift Supervision;

(12) United States Customs Service;

(13) United States Mint;

(14) United States Secret Service; and

(15) Any organization designated as a bureau by the Secretary pursuant to appropriate authority.

(c) *Person* means an individual, corporation and subsidiaries it controls, company, association, firm, partnership, society, joint stock company, or any other organization or institution as specified in 5 CFR 2635.102(k).

(d) *Regular employee* or *employee* means an officer or employee of the Department of the Treasury but does not include a special Government employee.

(e) *Special Government employee* means an officer or employee who is retained, designated, appointed, or employed to perform temporary duties either on a full-time or intermittent basis, with or without compensation, for a period not to exceed 130 days during any consecutive 365-day period. See 18 U.S.C. 202(a).

Responsibilities

§ 0.104 Designated Agency Ethics Official and Alternate Designated Agency Ethics Official.

The Deputy General Counsel is the Department's Designated Agency Ethics Official (DAEO). The DAEO is responsible for managing the Department's ethics program, including coordinating ethics counseling and interpreting questions of conflicts of interest and other matters that arise under the Executive Branch-wide Standards and Treasury Supplemental Standards and Rules. See 5 CFR 2638.203. The Senior Counsel for Ethics is the Alternate Designated Agency Ethics Official.

§ 0.105 Deputy Ethics Official.

The Chief Counsel or Legal Counsel for a bureau, or a designee, is the Deputy Ethics Official for that bureau. The Legal Counsel for the Financial Crimes Enforcement Network is the Deputy Ethics Official for that organization. It is the responsibility of the Deputy Ethics Official to give authoritative advice and guidance on conflicts of interest and other matters arising under the Executive Branch-wide Standards, Treasury Supplemental Standards, and the Rules.

§ 0.106 Bureau Heads.

Bureau heads or designees are required to:

(a) Provide all employees with a copy of Executive Order 12674, as amended by Executive Order 12731, the Executive Branch-wide Standards, the Treasury Supplemental Standards and the Rules; provide all new employees with an explanation of the contents and application of the Executive Branch-wide Standards, Treasury Supplemental Standards and the Rules; and provide all departing employees with an explanation of the applicable post-employment restrictions contained in 18 U.S.C. 207 and 5 CFR part 2641 and any other applicable law or regulation.

(b) Provide guidance and assistance to supervisors and employees in implementing and adhering to the rules and procedures included in the Executive Branch-wide Standards and Treasury Supplemental Standards and Rules; obtain any necessary legal advice or interpretation from the Designated Agency Ethics Official or a Deputy Ethics Official; and inform employees as to how and from whom they may obtain additional clarification or interpretation of the Executive Branch-wide Standards, Treasury Supplemental Standards, Rules, and any other relevant law, rule or regulation.

(c) Take appropriate corrective or disciplinary action against an employee who violates the Executive Branch-wide Standards, Treasury Supplemental Standards or Rules, or any other applicable law, rule or regulation, and against a supervisor who fails to carry out his responsibilities in taking or recommending corrective or disciplinary action when appropriate against an employee who has committed an offense.

§ 0.107 Employees.

(a) Employees are required to:

(1) Read and follow the rules and procedures contained in the Executive Branch-wide Standards, Treasury Supplemental Standards, and Rules;

(2) Request clarification or interpretation from a supervisor or ethics official if the application of a rule contained in the Executive Branch-wide Standards, Treasury Supplemental Standards, or Rules is not clear;

(3) Report to the Inspector General or to the appropriate internal affairs office of the Bureau of Alcohol, Tobacco and Firearms, Customs Service, Internal Revenue Service, or Secret Service, any information indicating that an employee, former employee, contractor, subcontractor, or potential contractor engaged in criminal conduct or that an employee or former employee violated the Executive Branch-wide Standards or the Treasury Supplemental Standards or Rules. Legal Division attorneys acquiring this type of information during the representation of a bureau shall report it to the appropriate Chief or Legal Counsel or the Deputy General Counsel, who shall report such information to the Inspector General or appropriate internal affairs office; and

(4) Report to the Inspector General information defined in paragraph (a)(3) of this section relating to foreign intelligence or national security, as covered in Executive Order 12356. Legal Division attorneys acquiring this type of information during the representation of a bureau shall report it to the Deputy General Counsel, who shall report such information to the Inspector General.

(b) The confidentiality of the source of the information reported to the Inspector General or the internal affairs office under this section will be maintained to the extent appropriate under the circumstances.

Subpart B—Rules of Conduct

§ 0.201 Political activity.

(a) Employees may:

(1) Take an active part in political management or in political campaigns to the extent permitted by law (5 U.S.C. 7321–7326); and

(2) Vote as they choose and express their opinions on political subjects and candidates.

(b) Employees may not use their official authority or influence to interfere with or affect election results.

(c) Employees may be disqualified from employment for knowingly supporting or advocating the violent overthrow of our constitutional form of government.

Note: The Hatch Act Reform Amendments of 1993 significantly reduced the statutory restrictions on the political activity of most Department employees. However, career members of the Senior Executive Service and employees of the Secret Service, the Internal Revenue Service, Office of Criminal Investigation, the Customs Service, Office of Investigative Programs, and the Bureau of Alcohol, Tobacco and Firearms, Office of Law Enforcement, remain subject to significant restrictions on their political activities.

§ 0.202 Strikes.

Employees shall not strike against the Government.

§ 0.203 Gifts or gratuities from foreign governments.

(a) The United States Constitution prohibits employees from accepting gifts, emoluments, offices, or titles from a foreign government without the consent of the Congress. Congress has consented to an employee accepting and retaining a gift from a foreign government that is of minimal value and offered as a souvenir or mark of courtesy, unless otherwise prohibited by bureau regulation (5 U.S.C. 7342). Minimal value is prescribed in 41 CFR part 101–49 and was set at $225.00 on the date that the Rules became effective.

(b) All gifts exceeding minimal value, the refusal of which would likely cause offense or embarrassment or otherwise adversely affect the foreign relations of the United States, shall be accepted and deposited with the Department within sixty days of acceptance. If the gift is travel or expenses for travel taking place entirely outside the United States, it shall be reported within thirty days (see 5 U.S.C. 7342(c)(1)(B)(ii)).

(c) As used in paragraph (b) of this section, *Deposit with the Department* means delivery to the Department Gift Unit or other depository as authorized by the Treasury Directive on Foreign Gifts (Treasury Directive 61–04).

(d) All foreign gifts must be reported as prescribed in the Treasury Directive on Foreign Gifts (Treasury Directive 61–04).

§ 0.204 Use of controlled substances and intoxicants.

Employees shall not sell, use or possess controlled substances or intoxicants in violation of the law while on Department property or official duty, or use a controlled substance or intoxicant in a manner that adversely affects their work performance.

§ 0.205 Care of documents and data.

(a) Employees shall not conceal, remove, alter, destroy, mutilate or access documents or data in the custody of the Federal Government without proper authority.

(b) Employees are required to care for documents according to Federal law and regulation, and Department procedure (18 U.S.C. 2071, 5 U.S.C. 552, 552a).

(c) The term *documents* includes, but is not limited to, any writing, recording, computer tape or disk, blueprint, photograph, or other physical object on which information is recorded.

§ 0.206 Disclosure of information.

Employees shall not disclose official information without proper authority, pursuant to Department or bureau regulation. Employees authorized to make disclosures should respond promptly and courteously to requests from the public for information when permitted to do so by law (31 CFR 1.9, 1.10, and 1.28(b)).

§ 0.207 Cooperation with official inquiries.

Employees shall respond to questions truthfully and under oath when required, whether orally or in writing, and must provide documents and other materials concerning matters of official interest when directed to do so by competent Treasury authority.

§ 0.208 Falsification of official records.

Employees shall not intentionally make false, misleading or ambiguous statements, orally or in writing, in connection with any matter of official interest. Matters of official interest include among other things: Transactions with the public,

government agencies or fellow employees; application forms and other forms that serve as a basis for appointment, reassignment, promotion or other personnel action; vouchers; leave records and time and attendance records; work reports of any nature or accounts of any kind; affidavits; entry or record of any matter relating to or connected with an employee's duties; and reports of any moneys or securities received, held or paid to, for or on behalf of the United States.

§ 0.209 Use of Government vehicles.

Employees shall not use Government vehicles for unofficial purposes, including to transport unauthorized passengers. The use of Government vehicles for transporting employees between their domiciles and places of employment must be authorized by statute (See, e.g., 31 U.S.C. 1344).

§ 0.210 Conduct while on official duty or on Government property.

Employees must adhere to the regulations controlling conduct when they are on official duty or in or on Government property, including the Treasury Building, Treasury Annex Building and grounds; the Bureau of Engraving and Printing buildings and grounds; the United States Mint buildings and grounds; the grounds of the Federal Law Enforcement Training Center; and Treasury-occupied General Services Administration buildings and grounds (see 31 CFR parts 91, 407, 605, 700).

§ 0.211 Soliciting, selling and canvassing.

Employees shall not solicit, make collections, canvass for the sale of any article, or distribute literature or advertising in any space occupied by the Department without appropriate authority.

§ 0.212 Influencing legislation or petitioning Congress.

(a) Employees shall not use Government time, money, or property to petition a Member of Congress to favor or oppose any legislation. This prohibition does not apply to the official handling, through the proper channels, of matters relating to legislation in which the Department of the Treasury has an interest.

(b) Employees, individually or collectively, may petition Congress or Members of Congress or furnish information to either House of Congress when not using Government time, money or property (5 U.S.C. 7211).

§ 0.213 General conduct prejudicial to the Government.

Employees shall not engage in criminal, infamous, dishonest, or notoriously disgraceful conduct, or any other conduct prejudicial to the Government.

§ 0.214 Nondiscrimination.

(a) Employees shall not discriminate against or harass any other employee, applicant for employment or person dealing with the Department on official business on the basis of race, color, religion, national origin, sex, sexual orientation, age, or disability. Sexual harassment is a form of sex discrimination and is prohibited by this section.

(b) An employee who engages in discriminatory conduct may be disciplined under these rules. However, this section does not create any enforceable legal rights in any person.

§ 0.215 Possession of weapons and explosives.

(a) Employees shall not possess firearms, explosives, or other dangerous or deadly weapons, either openly or concealed, while on Government property or official duty.

(b) The prohibition in paragraph (a) of this section does not apply to employees who are required to possess weapons or explosives in the performance of their official duties.

§ 0.216 Privacy Act.

Employees involved in the design, development, operation, or maintenance of any system of records or in maintaining records subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a), shall comply with the conduct regulations delineated in 31 CFR 1.28(b).

§ 0.217 Personal financial interests.

(a) Employees may hold the following financial interests without violating 18 U.S.C. 208(a):

(1) The stocks or bonds of a publicly traded corporation with a value of $1000 or less; and

(2) The stocks or bonds in the investment portfolio of a diversified mutual fund in which an employee has invested.

(b) The Department has found that the financial interests listed in paragraph (a) of this section are too remote and inconsequential to affect the integrity of an employee's service.

Subpart C—Special Government Employees

§ 0.301 Applicability of subpart B.

The rules of conduct contained in subpart B of this part apply to special Government employees employed with the Treasury Department. The regulations contained in § 0.201 of subpart B, concerning political activity, apply to special Government employees only on the days that they serve the Department. Treasury bureaus are responsible for informing special Government employees employed with them of the applicability of bureau specific statutes or regulations.

§ 0.302 Service with other Federal agencies.

A special Government employee serving concurrently in the Department and in a Federal agency other than the Department is required to inform the Department and the agency in which he serves of the arrangement so that appropriate administrative measures may be taken.

Subpart D—Advisers to the Department

§ 0.401 Advisers to the Department.

(a) An adviser or advisory committee member includes an individual who provides advice to the Department as a representative of an outside group and is not an employee or special Government employee of the Department. Questions concerning whether an individual serves the Department in the capacity of an adviser, employee, or special Government employee shall be addressed to the Designated Agency Ethics Official or a Deputy Ethics Official.

(b) Advisers or advisory committee members are not required to follow the Rules and are not generally required by the Department to file financial disclosure statements; nevertheless, they should be guided by the regulations in this part covering such issues as public disclosure of official information (§ 0.206), conduct (§ 0.211 and § 0.213), and gifts or gratuities from Foreign governments (§ 0.203).

[FR Doc. 95–13318 Filed 5–31–95; 8:45 am]

BILLING CODE 4810–25–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–5213–4]

Mississippi; Final Authorization of Revisions to State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: Mississippi has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). Mississippi's revisions consist of provisions contained in RCRA Cluster II and other provisions in Miscellaneous Clusters. These requirements are listed in Section B of this notice. The Environmental Protection Agency (EPA) has reviewed Mississippi's applications and has made a decision, subject to public review and comment, that Mississippi's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve Mississippi's hazardous waste program revisions. Mississippi's applications for program revisions are available for public review and comment.

DATES: Final authorization for Mississippi's program revisions shall be effective July 31, 1995, unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule. All comments on Mississippi's program revision applications must be received by the close of business, July 3, 1995.

ADDRESSES: Copies of Mississippi's program revision applications are available during 8 a.m. to 4:30 p.m. at the following addresses for inspection and copying: Mississippi Department of Environmental Quality, 2380 Highway 80 West, P.O. Box 10385, Jackson, Mississippi 39209, (601) 961–5062; U.S. EPA, Region IV, Library, 345 Courtland Street, NE., Atlanta, Georgia 30365; (404) 347–4216. Written comments should be sent to Al Hanke at the address listed below.

FOR FURTHER INFORMATION CONTACT: Al Hanke, Chief, State Programs Section, Waste Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365; (404) 347–2234 vmx. 2018.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under Section 3006(b) of the Resource Conservation and Recovery Act ("RCRA" or "the Act"), 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program.

In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98–616, November 8, 1984, hereinafter "HSWA") allows States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive "interim authorization" for the HSWA requirements under Section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later apply for final authorization for the HSWA requirements. Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR Parts 260–268 and 124 and 270.

B. Mississippi

Mississippi initially received final authorization for its base RCRA program effective on June 27, 1984. Mississippi received authorization for revisions to its program on October 17, 1988, October 9, 1990, May 28, 1991, August 27, 1991, July 10, 1992, June 7, 1993, December 20, 1993, and May 17, 1994.

On July 9, 1993, Mississippi submitted program revision applications for additional program approvals. Today, Mississippi is seeking approval of its program revisions in accordance with 40 CFR 271.21(b)(3).

EPA has reviewed Mississippi's applications and has made an immediate final decision that Mississippi's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the additional program modifications to Mississippi. The public may submit written comments on EPA's immediate final decision up until July 3, 1995.

Copies of Mississippi's applications for these program revisions are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this notice. Approval of Mississippi's program revisions shall become effective July 31, 1995, unless an adverse comment pertaining to the State's revisions discussed in this notice is received by the end of the comment period.

If an adverse comment is received EPA will publish either (1) a withdrawal of the immediate final decision or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

EPA shall administer any RCRA hazardous waste permits, or portions of permits that contain conditions based upon the Federal program provisions for which the State is applying for authorization and which were issued by EPA prior to the effective date of this authorization. EPA will suspend issuance of any further permits under the provisions for which the State is being authorized on the effective date of this authorization.

Mississippi is today seeking authority to administer the following Federal requirements promulgated on July 1, 1991–June 30, 1992, for RCRA II and other provisions in miscellaneous clusters.

Federal requirement	FR reference	FR promulgation date
Checklist 92—Wood Preserving Listing: Technical Corrections	56 FR 30192	7/1/91
Checklist 95—Land Disposal Restrictions for Electric Arc Furnace Dust (K061)	56 FR 41164	8/19/91
Checklist 99—Amendments to Interim Status Standards for Downgradient Ground-Water Monitoring Well Locations at Hazardous Waste Facilities.	56 FR 66365	12/23/91
Checklist 100—Liners and Leak Detection System for Hazardous Waste Land Disposal Units	57 FR 3462	1/29/92
Checklist 102—Second Correction to the Third Third Land Disposal Restrictions	57 FR 8086	3/6/92
Checklist 103—Hazardous Debris Case-by-Case Capacity Variance	57 FR 20766	5/15/92
Checklist 104—Used Oil Filter Exclusion	57 FR 21524	5/20/92
Checklist 106—Lead-Bearing Hazardous Materials Case-by-Case Capacity Variance	57 FR 28628	6/26/92
Checklist 7—Warfarin & Zinc Phosphide Listing	49 FR 19922	5/10/84
Checklist 8—Lime Stabilized Pickle Liquor Sludge	49 FR 23284	6/5/84

Federal requirement	FR reference	FR promulgation date
Checklist 9—Household Waste	49 FR 44978	11/13/84
Checklist 48—Farmer Exemption; Technical Correction	53 FR 27164	7/19/88
Checklist 54—Permit Modifications for Hazardous Waste Management Facilities	53 FR 37912	9/28/88
Checklist 59—Hazardous Waste Miscellaneous Units; Standards Applicable to Owners and Operators	54 FR 615	1/9/89
Checklist 60—Amendment to Requirements for Hazardous Waste Incinerator Permits	54 FR 4286	1/30/89
Checklist 82—Wood Preserving Listings	55 FR 50450	2/6/90

Mississippi's applications for these program revisions meet all of the statutory and regulatory requirements established by RCRA. Accordingly, Mississippi is granted final authorization to operate its hazardous waste program as revised.

Mississippi now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA program, subject to the limitations of its program revision application and previously approved authorities. Mississippi also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under Section 3007 of RCRA and to take enforcement actions under Section 3008, 3013, and 7003 of RCRA.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Mississippi's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of Sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended (42 U.S.C. 6912(a), 6926, 6974(b)).

Dated: May 12, 1995.

John H. Hankinson, Jr.,

Regional Administrator.

[FR Doc. 95–13371 Filed 5–31–95; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 7143

[WY–930–1430–01; WYW–128871]

Withdrawal of Public Lands and Federal Minerals for the Snake River Riparian Lands; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws from mineral or surface entry, for a period of 10 years, a total of 5,937 acres of public lands, 663 acres of lands as to which the United States owns both the surface and mineral estate, 1,993 acres of lands as to which the United States owns only the surface estate, and 3,281 acres of lands as to which the United States owns only the mineral estate, except that such public lands may be exchanged or sold pursuant to the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1701 (1988), or conveyed pursuant to the Recreation and Public Purposes Act, 43 U.S.C. 869 (1988). The lands are collectively known as the Snake River Riparian Lands, located in Teton County, near Jackson, Wyoming. This action will protect and preserve highly significant recreation, scenic, riparian, and wildlife resources until land use planning for the area can be completed. The lands have been and will remain open to mineral leasing.

EFFECTIVE DATE: June 1, 1995.

FOR FURTHER INFORMATION CONTACT: Tamara Gertsch, Wyoming State Office, P.O. Box 1828, Cheyenne, Wyoming 82003, 307–775–6115.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. To protect significant recreation, scenic, riparian and wildlife resources, the public lands, including lands as to which the United States owns both the surface and mineral estate, the surface estate only, and the mineral estate only, found within the following described areas are hereby withdrawn, subject to valid existing rights, from settlement, location, or entry, including entry under the mining laws of the United States (30 U.S.C. Ch 2 (1988)), but not from leasing pursuant to applicable mineral leasing laws, exchange or sale pursuant to the Federal Policy and Management Act of 1976, 43 U.S.C. 1701 (1988), or conveyance pursuant to the Recreation and Public Purpose Act, 43 U.S.C. 869 (1988):

Sixth Principal Meridian

T. 40 N., R. 116 W.,
  Secs. 28, 29, 30, 31, 32, 33, and 34.
T. 40 N., R. 117 W.,
  Secs. 3, 10, 11, 14, 23, 24, and 25.
T. 41 N., R. 116 W.,
  Secs. 5, 6, 7, and 18.
T. 41 N., R. 117 W.,
  Secs. 12, 13, 23, 24, 25, 26, 34, and 35.
T. 42 N., R. 116 W.,
  Secs. 20, 21, 29, 32, and 34.

The areas described contain a total of 5,937 acres of public lands in Teton County, 663 acres of lands as to which the United States owns both the surface and the mineral estate, 1,993 acres of lands as to which the United States owns only the surface estate, and 3,281 acres of lands as to which the United States owns only the mineral estate.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 10 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1988), the Secretary determines that the withdrawal shall be extended.

Dated: May 12, 1995.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 95–13299 Filed 5–31–95; 8:45 am]

BILLING CODE 4310–22–P

43 CFR Public Land Order 7144

[NM–030–1430–01; NMNM 83840]

Withdrawal of Public Land for The Box Special Management Area; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 39.95 acres of public land from surface entry and mining for a period of 50 years for the Bureau of Land Management to protect the recreational, scenic and natural values in a portion of The Box Special Management Area. The land has been and will remain open to mineral leasing.

EFFECTIVE DATE: June 1, 1995.

FOR FURTHER INFORMATION CONTACT: Lois A. Bell, BLM Socorro Resource Area, 198 Neel Avenue, Socorro, New Mexico 87801, 505–835–0412.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Subject to valid existing rights, the following described public land is hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2 (1988)), but not from leasing under the mineral leasing laws, to protect the recreational, scenic and natural values within The Box Special Management Area:

New Mexico Principal Meridian

T. 3 S., R. 1 W.,
  Sec. 31, lot 16.

The area described contains 39.95 acres in Socorro County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the land under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 50 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1988), the Secretary determines that the withdrawal shall be extended.

Dated: May 12, 1995.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 95–13375 Filed 5–31–95; 8:45 am]

BILLING CODE 4310–FB–P

43 CFR Public Land Order 7145

[CA–930–1430–01; CACA 30123]

Withdrawal of Public Lands and Minerals for the Ash Valley Research Natural Area and Area of Critical Environmental Concern; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 1,321.51 acres of public lands from surface entry and mining, and 360 acres of federally reserved mineral interests from mining, for a period of 50 years for the Bureau of Land Management to protect the Ash Valley Research Natural Area and Area of Critical Environmental Concern. The lands have been and will remain open to mineral leasing and the Materials Act of 1947. The surface estate of the above 360 acres of federally reserved minerals and an additional 360.53 acres of non-Federal lands, if acquired by the United States, would also be withdrawn by this order.

EFFECTIVE DATE: June 1, 1995.

FOR FURTHER INFORMATION CONTACT: Duane Marti, BLM California State Office, 2800 Cottage Way, Sacramento, California 95825, 916–979–2858.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Subject to valid existing rights, the following described public lands are hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2 (1988)) , but not from the Materials Act of 1947, or leasing under the mineral leasing laws, for the Bureau of Land Management to protect the Ash Valley Research Natural Area and Area of Critical Environmental Concern:

Mount Diablo Meridian

T. 37 N., R. 11 E.,
  Sec. 5, lots 1, 2, and 4, S½NE¼, SW¼NW¼, SW¼, and W½SE¼;
  Sec. 8, W½NE¼, N½NW¼, and S½;
  Sec. 9, NE¼SW¼, S½SW¼, and SE¼.
T. 38 N., R. 11 E.,
  Sec. 32, SW¼SW¼ and SE¼SE¼.

The area described contains 1,321.51 acres in Lassen County.

2. Subject to valid existing rights, the following described federally reserved mineral interests are hereby withdrawn from location and entry under the United States mining laws (30 U.S.C. Ch. 2 (1988)), but not from the Materials Act of 1947, or leasing under the mineral leasing laws, for the Bureau of Land Management to protect the Ash Valley Research Natural Area and Area of Critical Environmental Concern:

Mount Diablo Meridian

T. 37 N., R. 11 E.,
  Sec. 4, SW¼NW¼;
  Sec. 5, E½SE¼;
  Sec. 8, E½NE¼;
  Sec. 9, NW¼NW¼, S½NW¼, and NW¼SW¼.

The areas described aggregate 360 acres in Lassen County.

3. In the event the non-Federal surface estate, of the 360 acres described in paragraph 2 returns to public ownership, these lands would be subject to the terms and conditions of this withdrawal as described in paragraph 1.

4. The following described non-Federal lands are located within the boundary of the Ash Valley Research Natural Area and Area of Critical Environmental Concern. In the event these lands return to public ownership, they would be subject to the term and conditions of this withdrawal as described in paragraph 1:

Mount Diablo Meridian

T. 37 N., R. 11 E.,
  Sec. 4, W½SW¼;
  Sec. 5, lot 3 and SE¼NW¼;
  Sec. 8, S½NW¼;
  Sec. 9, NE¼NW¼.
T. 38 N., R. 11 E.,
  Sec. 32, SE¼SW¼ and SW¼SE¼.

The areas described aggregate 360.53 acres in Lassen County.

5. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

6. This withdrawal will expire 50 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1988), the Secretary determines that the withdrawal shall be extended.

Dated: May 12, 1995.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 95–13364 Filed 5–31–95; 8:45 am]

BILLING CODE 4310–40–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 65

[CC Docket No. 92–133; FCC 95–134]

Interstate Rate of Return Represcription and Enforcement Processes

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Federal Communications Commission ("Commission") has adopted a Report and Order ("Order") that reforms its rules that govern the procedures and methodologies for prescribing and enforcing the rate of return certain Local Exchange Carriers ("LECs") may earn on interstate access services. First, the Order replaces the existing rule, which calls for the initiation of rate of return represcription proceedings biennially, with a semiautomatic trigger activated by changes in capital costs. Second, the Order modifies the paper hearing rules set out in part 65 to streamline represcription proceedings. Third, the Order simplifies and streamlines the methodologies used to estimate the cost of capital for those LECs still subject to rate of return regulation. Finally, the Order removes the Commission's rule authorizing an automatic refund, with interest, of earnings in excess of "the maximum allowable rate of return." The Commission adopted this Order to streamline the procedures and methodologies of the rate of return represcription and enforcement processes and reduce the burdens these regulations impose on the remaining rate of return LECs, while allowing each the opportunity to maintain its credit and to attract capital. These reforms reflect the Commission's experience in the 1990 Represcription Proceeding,[1] with incentive ("price cap") regulation for the largest LECs, and with incentive regulation proposals for those LECs not subject to price cap regulation.

EFFECTIVE DATE: July 3, 1995, except that §§ 65.100, 65.101, 65.102, 65.103, 65.104, and 65.105 shall be effective August 30, 1995.

FOR FURTHER INFORMATION CONTACT: Thomas J. Beers, telephone number 202–418–0872, John C.K. Hays, telephone number 202–418–0875, or John V. Giusti, telephone number 202–418–0878.

SUPPLEMENTARY INFORMATION: This is a summary of the FCC's Report and Order in Amendment of parts 65 and 69 of the Commission's rules to Reform the Interstate Rate of Return Represcription and Enforcement Processes, FCC 95–134, CC Docket No. 92–133, adopted March 30, 1995 and released April 6, 1995. The Commission has made the full text of the Order available for inspection and copying during normal business hours in the Commission's Reference Center, room 239, 1919 M Street, NW, Washington, DC 20554, and will publish it in the FCC Record. The full text of the Order may also be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street, NW, suite 140, Washington, DC 20037, telephone number 202–857–3800.

Regulatory Flexibility Analysis

In the Notice of Proposed Rulemaking in this proceeding,[2] the Commission certified that the Regulatory Flexibility Act of 1980 exempts the rules proposed in this proceeding because they will not have a significant economic impact on a substantial number of small entities, as defined by section 601(3) of that act.[3] LECs do not fall within the Regulatory Flexibility Act's definition of a "small entity," which excludes any business that is dominant in its field of operation. In the *Competitive Carrier Rulemaking*, the Commission found that LECs, even small ones, enjoy a dominant monopoly position in their local service area.[4] In accordance with section 603(a) of the Regulatory Flexibility Act, the Secretary sent a copy of the Notice, including the certification, to the Chief Counsel for Advocacy of the Small Business Administration.

Paperwork Reduction

The Commission estimates the public reporting burden for the collections of information to average 100,000 hours per represcription, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Send comments regarding these burden estimates or any other aspects of the collections of information, including suggestions for reducing the burden, to the Federal Communications Commission, Records Management Branch, Room 234, Washington, DC 20554, and to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503.

Synopsis of the Report and Order

Part 65 of the Commission's rules sets forth procedures and methodologies for prescribing and enforcing the rate of return certain local exchange carriers ("LECs") may earn on interstate access service.[5] The Commission adopted those rules in 1985. In the *Notice* in this proceeding,[6] the Commission proposed a fundamental reform of those rules in order to reflect the dramatic changes in the telecommunications industry and the regulation of it that had occurred since that time. This Order accomplishes that reform by streamlining the rate of return represcription and enforcement processes in ways that, the Commission believes, will substantially reduce the burden of its regulations on the public and on those LECs still subject to rate of return regulation. The changes achieve a proper balance of regulatory goals by allowing a carrier the opportunity to "maintain its credit and to attract capital"[7] and by ensuring that ratepayers are charged reasonable rates for interstate services.

When part 65 was adopted, the Commission used rate of return principles to regulate the rates for the interstate communications services of the American Telephone and Telegraph Company ("AT&T") and all LECs. Since that time, price cap initiatives have removed all interexchange and most interstate access revenues from such regulation. The Commission has also created optional programs that allow the remaining rate of return LECs to increase their opportunities for increased profit and risks of loss above the levels they would face under traditional, rate of return regulation.

To reflect the altered environment as well as the Commission's experiences in implementing the part 65 rules, the Order changes virtually every aspect of our rate of return represcription and enforcement processes for telephone companies. First, the Order amends the current rule that contemplates a new represcription proceeding every two years regardless of conditions in the capital markets. The Order replaces that rule with one that relies on the yields on ten-year United States Treasury securities to determine when represcription might be warranted. Under this system, the Commission's Common Carrier Bureau will issue a notice asking whether the Commission should institute a represcription proceeding only if, for six consecutive months, the six-month average of those yields deviates by 150 basis points (1.5 percent) or more from the yield on these securities measured as of our most recent represcription. After evaluating the responses to such a notice, the Commission will decide whether a represcription proceeding is necessary and will then issue an order that either sets forth a procedural schedule for the proceeding or announces that a represcription proceeding is not necessary. Thus, the Order adopts a semi-automatic trigger that initiates an inquiry into whether a represcription is needed, rather than a trigger that automatically initiates a costly represcription.

The current rules also establish a "paper hearing" process for represcription proceedings that is modelled after the system used in evidentiary hearings. Because this process contains procedural steps beyond those necessary for a full and complete record, the Order adopts streamlined procedures that will reduce the inordinate delays and costs experienced in previous represcription proceedings, yet provide parties full opportunity to present and evaluate relevant evidence. The Order, therefore, streamlines the paper hearing system by removing unnecessary provisions such as those relating to cross-examination and oral argument options, notices of appearance, proposed findings of fact and conclusions, and use of a separated trail staff. Elimination of these provisions will significantly reduce procedural burden and delays. The Order also adopts the automatic discovery requirement proposed in the *Notice* in order to achieve further procedural efficiencies by eliminating the need for routine additional discovery.

Part 65 now uses a weighted average cost of capital to calculate a unitary, overall rate of return for rate of return LECs. This calculation requires the Commission to determine a cost of equity, cost of debt, and capital structure for LEC interstate access service. To help the Commission determine these components, part 65 requires the Regional Bell Holding Companies ("RHCs") to undertake complex studies and submit the resulting data for inclusion in the record in represcription proceedings. Because the Commission has found in past proceedings the cost of equity studies unnecessary and the cost of debt and capital structure studies unduly complex the Order eliminates the rules that require them. To facilitate the represcription process, however, the Order specifies methods to calculate cost of debt and capital structure that rely on readily available data regarding the largest LECs for presumptive use in future represcription proceedings. Under this approach, the Commission will use the specified methodologies in future represcription proceedings unless the record in those proceedings shows that the methodologies would produce unreasonable results.

Part 65 had authorized an automatic refund, with interest, of earnings exceeding what the rules refer to as "the maximum allowable rate of return."[8] In the *Automatic Refund Decision*,[9] the United States Court of Appeals for the District of Columbia Circuit ("D.C. Circuit") remanded this rule to the Commission. Because we find that our tariff review and complaint processes are sufficient to enforce the prescribed interstate rate of return, we eliminate that rule.

Part 65 also provides that "the maximum allowable rate of return" equals the prescribed rate of return plus a buffer zone. The buffer zones are defined by adding 25 basis points to overall interstate earnings and 40 basis points each to earnings within the common line, traffic sensitive, and special access categories. The Order retains these buffer zones at their present levels. The zones serve an important role in our complaint process by recognizing the effects fluctuations in demand and operating costs may have on rate of return LECs' earnings, while protecting customers from unreasonably high rates. In monitoring compliance, the Order retains a two-year enforcement period in order to provide sufficient time to reduce the risk of targeting error and the risk that carriers will need to make frequent rate changes to remain within the authorized rate of return.

Accordingly, it is ordered, pursuant to sections 1, 4(i), 4(j), 201–205, 218–220, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 201–205, 218–220, 403, that part 65 of the Commission's rules, 47 CFR part 65, is amended, as specified below.

List of Subjects in 47 CFR Part 65

Telephone.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Amendments

Part 65 of title 47 of the CFR is amended as follows:

Parts 65 of the Commission's rules and regulations, 47 CFR part 65, is amended as follows:

PART 65—INTERSTATE RATE OF RETURN PRESCRIPTION PROCEDURES AND METHODOLOGIES

1. The authority citation for part 65 is revised to read as follows:

Authority: Secs. 4, 201, 202, 203, 205, 218, 403, 48 Stat., 1066, 1072, 1077, 1094, as amended, 47 U.S.C. 151, 154, 201, 202, 203, 204, 205, 218, 219, 220, 403.

2. Section 65.1 is revised to read as follows:

§ 65.1 Application of part 65.

(a) This part establishes procedures and methodologies for Commission prescription of an authorized unitary interstate exchange access rate of return and individual rates of return for the interstate exchange access rates of certain carriers pursuant to § 65.102. This part shall apply to those interstate services of local exchange carriers as the Commission shall designate by rule or order, except that all local exchange carriers shall provide to the Commission that information which the Commission requests for purposes of conducting prescription proceedings pursuant to this part.

(b) Local exchange carriers subject to §§ 61.41 through 61.49 of this chapter are exempt from the requirements of this part with the following exceptions:

(1) Except as otherwise required by Commission order, carriers subject to §§ 61.41 through 61.49 of this chapter shall employ the rate of return value calculated for interstate access services in complying with any applicable rules under parts 36 and 69 that require a return component;

(2) Carriers subject to § § 61.41 through 61.49 of this chapter shall be subject to § 65.600(d);

(3) Carriers subject to §§ 61.41 through 61.49 of this chapter shall continue to comply with the prescribed rate of return when offering any services specified in § 61.42(f) of this chapter unless the Commission otherwise directs; and

(4) Carriers subject to § § 61.41 through 61.49 of this chapter shall comply with Commission information requests made pursuant to § 65.1(a).

3. Sections 65.100 is revised to read as follows:

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[1] 5 FCC Rcd 7507 (1990), 55 FR 51423, December 14, 1990.

[2] Amendment of parts 65 and 69 of the Commission's rules to Reform the Interstate Rate of Return Represcription and Enforcement Processes, *Notice of Proposed Rulemaking and Order*, 7 FCC Rcd 4688 (1992) (*Notice*), 57 FR 31944, July 20, 1992.

[3] 5 U.S.C. 601(3).

[4] 85 FCC 2d 1, 23–24 (1980), 45 FR 76148, November 18, 1980.

[5] 47 CFR part 65.

[6] *Notice*, 7 FCC Rcd 4688 (1992), 57 FR 31994, July 20, 1992.

[7] *FPC* v. *Hope Natural Gas*, 320 U.S. 591, 603 (1944).

[8] 47 CFR 65.700

[9] *AT&T* v. *FCC*, 836 F.2d 1386 (D.C. Cir. 1988) (per curiam) (*Automatic Refund Decision*).

§ 65.100 Participation and acceptance of service designation.

(a) All interstate exchange access carriers, their customers, and any member of the public may participate in rate of return proceedings to determine the authorized unitary interstate exchange access or individual interstate exchange access rates of return authorized pursuant to § 65.102.

(b) Participants shall state in their initial pleading in a prescription proceeding whether they wish to receive service of documents and other material filed in the proceeding. Participants that wish to receive service by hand on the filing dates when so required by this Part 65 shall specify in their initial pleading in a prescription proceeding, as specified in §§ 65.103 (b) and (c), an agent for acceptance of service by hand in the District of Columbia. The participant may elect in its pleading to receive service by mail or upon an agent at another location. When such an election is made, other participants need not complete service on the filing date, and requests for extension of time due to delays in completion of service will not be entertained.

4. Section 65.101 is revised to read as follows:

§ 65.101 Initiation of unitary rate of return prescription proceedings.

(a) Whenever the Commission determines that the monthly average yields on ten (10) year United States Treasury securities remain, for a consecutive six (6) month period, at least 150 basis points above or below the average of the monthly average yields in effect for the consecutive six (6) month period immediately prior to the effective date of the current prescription, the Commission shall issue a notice inquiring whether a rate of return prescription according to this part should commence. This notice shall state:

(1) The deadlines for filing initial and reply comments regarding the notice;

(2) The cost of debt, cost of preferred stock, and capital structure computed in accordance with §§ 65.302, 65.303, and 65.304; and

(3) such other information as the Commission may deem proper.

(b) Based on the information submitted in response to the notice described in § 65.101(a), and on any other information specifically identified, the Commission may issue a notice initiating a prescription proceeding pursuant to this part.

(c) The Chief, Common Carrier Bureau, may issue the notice described in § 65.101(a).

5. Section 65.102 is revised to read as follows:

§ 65.102 Petitions for exclusion from unitary treatment and for individual treatment in determining authorized return for interstate exchange access service.

(a) Exclusion from unitary treatment will be granted for a period of two years if the cost of capital for interstate exchange service is so low as to be confiscatory because it is outside the zone of reasonableness for the individual carrier's required rate of return for interstate exchange access services.

(b) A petition for exclusion from unitary treatment and for individual treatment must plead with particularity the exceptional facts and circumstances that justify individual treatment. The showing shall include a demonstration that the exceptional facts and circumstances are not of transitory effect, such that exclusion for a period of a least two years is justified.

(c) A petition for exclusion from unitary treatment and for individual treatment may be filed at any time. When a petition is filed at a time other than that specified in § 65.103(b)(2), the petitioner must provide compelling evidence that its need for individual treatment is not simply the result of short-term fluctuations in the cost of capital or similar events.

6. Section 65.103 is revised to read as follows:

§ 65.103 Procedures for filing rate of return submissions.

(a) Rate of return submissions listed in § 65.103(b)(1) and (c) may include any relevant information, subject to the page limitations of § 65.104. The Chief, Common Carrier Bureau, may require from carriers providing interstate services, and from other participants submitting rate of return submissions, data, studies or other information that are reasonably calculated to lead to a full and fair record.

(b) In proceedings to prescribe an authorized unitary rate of return on interstate access services, interested parties may file direct case submissions, responses, and rebuttals. Direct case submissions shall be filed within sixty (60) calendar days following the effective date of a Commission notice initiating a rate of return proceeding pursuant to § 65.101b). Rate of return submissions responsive to the direct case submissions shall be filed within sixty (60) calendar days after the deadline for filing direct case submissions. Rebuttal submissions shall be field within twenty-one (21) calendar days after the deadline for filing responsive submissions.

(c) Petitions for exclusion from unitary treatment and for individual treatment may be filed on the same date as the deadline for filing responsive rate of return submissions. Oppositions shall be filed within 35 calendar days thereafter. Rebuttal submissions shall be filed within 21 calendar days after the deadline for filing responsive submissions.

(d) An original and 4 copies of all rate of return submissions shall be filed with the Secretary.

(e) The filing party shall serve a copy of each rate of return submission, other than an initial submission, on all participants who have filed a designation of service notice pursuant to § 65.100(b).

7. Section 65.104 is revised to read as follows:

§ 65.104 Page limitations for rate of return submissions.

Rate of return submissions, including all argument, attachments, appendices, supplements, and supporting materials, such as testimony, data and documents, but excluding tables of contents and summaries of argument, shall be subject to the following double spaced typewritten page limits:

(a) The direct case submission of any participant shall not exceed 70 pages in length.

(b) The responsive submission of any participant shall not exceed 70 pages in length.

(c) The rebuttal submission of any participant shall not exceed 50 pages in length.

(d) Petitions for exclusion from unitary treatment shall not exceed 70 pages in length. Oppositions to petitions for exclusion shall not exceed 50 pages in length. Rebuttals shall not exceed 35 pages in length.

8. Section 65.105 is revised to read as follows:

§ 65.105 Discovery.

(a) Participants shall file with each rate of return submission copies of all information, including studies, financial analysts' reports, and any other documents relied upon by participants or their experts in the preparation of their submission. Information filed pursuant to this paragraph for which protection from disclosure is sought shall be filed subject to protective orders which shall be duly granted by the Chief, Common Carrier Bureau, for good cause shown.

(b) Participants may file written interrogatories and requests for documents directed to any rate of return submission and not otherwise filed pursuant to § 65.105(a). The permissible scope of examination is that participants may be examined upon any matter, not privileged, that will demonstrably lead to the production of material, relevant, decisionally significant evidence.

(c) Discovery requests pursuant to § 65.105(b), including written interrogatories, shall be filed within 14 calendar days after the filing of the rate of return submission to which the request is directed. Discovery requests that are not opposed shall be complied with within 14 calendar days of the request date.

(d) Oppositions to discovery requests made pursuant to § 65.105(b), including written interrogatories, shall be filed within 7 calendar days after requests are filed. The Chief, Common Carrier Bureau, shall rule upon any such opposition. Except as stayed by the Commission or a Court, any required response to a discovery request that is opposed shall be provided within 14 calendar days after release of the ruling of the Chief, Common Carrier Bureau.

(e) An original and 4 copies of all information described in § 65.105(a) and all requests, oppositions, and responses made pursuant to §§ 65.105 (a), (b) and (d) shall be filed with the Secretary.

(f) Service of requests, oppositions, and responses made pursuant to §§ 65.105 (b), and (d) shall be made upon all participants who have filed a designation of service notice pursuant to § 65.100(b). Service of requests upon participants who have filed designation of service notices pursuant to § 65.100(b) shall be made by hand on the filing dates thereof.

§ 65.106 [Removed]

9. Section 65.106 is removed.

§§ 65.200, 65.201, 65.400 and 65.510 [Removed]

10. Sections 65.200, 65.201, 65.400 and 65.510 are removed.

11. Section 65.300 is revised to read as follows:

§ 65.300 Calculations of the components and weights of the cost of capital.

(a) Sections 65.301 through 65.303 specify the calculations that are to be performed in computing cost of debt, cost of preferred stock, and financial structure weights for prescription proceedings. The calculations shall determine, where applicable, a composite cost of debt, a composite cost of preferred stock, and a composite financial structure for all local exchange carriers with annual revenues in excess of $100 million. The calculations shall be based on data reported to the Commission in FCC Report 43–02. (See 47 CFR 43.21). The results of the calculations shall be used in the represcription proceeding to which they relate unless the record in that proceeding shows that their use would be unreasonable.

(b) Excluded from cost of capital calculations made pursuant to § 65.300 shall be those sources of financing that are not investor supplied, or that are otherwise subtracted from a carrier's rate base pursuant to Commission orders governing the calculation of net rate base amounts in tariff filings that are made pursuant to section 203 of the Communications Act of 1934, 47 U.S.C. 203, or that were treated as "zero cost" sources of financing in section 450 and subpart G of this Part 65. Specifically excluded are: accounts payable, accrued taxes, accrued interest, dividends payable, deferred credits and operating reserves, deferred taxes and deferred tax credits.

12. Section 65.301 is revised to read as follows:

§ 65.301 Cost of equity.

The cost of equity shall be determined in represcription proceedings after giving full consideration to the evidence in the record, including such evidence as the Commission may officially notice.

13. Section 65.302 is revised to read as follows:

§ 65.302 Cost of debt.

The formula for determining the cost of debt is equal to:

$$\text{Embedded Cost of Debt} = \frac{\text{Total Annual Interest Expense}}{\text{Average Outstanding Debt}}$$

Where:

"Total Annual Interest Expense" is the total interest expense for the most recent two years for all local exchange carriers with annual revenues of $100 million or more.

"Average Outstanding Debt" is the average of the total debt for the most recent two years for all local exchange carriers with annual revenues of $100 million or more.

14. Section 65.303 is revised to read as follows:

§ 65.303 Cost of preferred stock.

The formula for determining the cost of preferred stock is:

$$\text{Cost of Preferred Stock} = \frac{\text{Total Annual Preferred Dividends}}{\text{Proceeds from the Issuance of Preferred Stock}}$$

Where:

"Total Annual Preferred Dividends" is the total dividends on preferred stock for the most recent two years for all local exchange carriers with annual revenues of $100 million or more.

"Proceeds from the Issuance of Preferred Stock" is the average of the total net proceeds from the issuance of preferred stock for the most recent two years for all local exchange carriers with annual revenues of $100 million or more.

15. Section 65.304 is revised to read as follows:

§ 65.304 Capital structure.

The proportion of each cost of capital component in the capital structure is equal to:

Proportion in the capital structure =

$$\frac{\text{Book Value of particular component}}{\text{Book Value of Debt} + \text{Book Value of Preferred Stock} + \text{Book Value of Equity}}$$

Where:

"Book Value of particular component" is the total of the book values of that component for all local exchange carriers with annual revenues of $100 million or more.

"Book Value of Debt+Book Value of Preferred Stock+Book Value of Equity" is the total of the book values of all the components for all local exchange carriers with annual revenues of $100 million or more.

The total of all proportions shall equal 1.00.

15. A new § 65.305 is added to read as follows:

§ 65.305 Calculation of the weighted average cost of capital.

(a) The composite weighted average cost of capital is the sum of the cost of debt, the cost of preferred stock, and the cost of equity, each weighted by its proportion in the capital structure of the telephone companies.

(b) Unless the Commission determines to the contrary in a prescription proceeding, the composite weighted average cost of debt and cost of preferred stock is the composite weight computed in accordance with § 65.304 multiplied by the composite cost of the component computed in accordance with § 65.301 or § 65.302, as applicable. The composite weighted average cost of equity will be determined in each prescription proceeding.

16. A new § 65.306 is added to read as follows:

§ 65.306 Calculation accuracy.

In a prescription proceeding, the final determinations of the cost of equity, cost of debt, cost of preferred stock and their capital structure weights shall be accurate to two decimal places.

17. Section 65.500 is revised to read as follows:

§ 65.500 Net income.

The net income methodology specified in § 65.450 shall be utilized by all interexchange carriers that are so designated by Commission order.

18. Section 65.600(b) is revised to read as follows:

§ 65.600 Rate of return reports.

* * * * *

(b) Each local exchange carrier or group of affiliated carriers which is not subject to §§ 61.41 through 61.49 of this chapter and which has filed individual access tariffs during the preceding enforcement period shall file with the Commission, within three (3) months after the end of each calendar quarter, a quarterly rate of return monitoring report. Each report shall contain two parts. The first part shall contain rate of return information on a cumulative basis from the start of the enforcement period through the end of the quarter being reported. The second part shall contain similar information for the most recent quarter. The final quarterly monitoring report for the entire enforcement period shall be considered the enforcement period report. Reports shall be filed on the appropriate report form prescribed by the Commission (see § 1.795 of this chapter) and shall provide full and specific answers to all questions propounded and information requested in the currently effective report form. The number of copies to be filed shall be specified in the applicable report form. At least one copy of the report shall be signed on the signature page by the responsible officer. A copy of each report shall be retained in the principal office of the respondent and shall be filed in such manner as to be readily available for reference and inspection. Final adjustments to the enforcement period shall be made by September 30 of the year following the enforcement period to ensure that any refunds can be properly reflected in an annual access filing.

* * * * *

§ 65.700 [Amended]

19. In § 65.700, paragraph (c) is removed and paragraph (d) is redesignated as paragraph (c).

20. Section 65.701 is revised to read as follows:

§ 65.701 Period of review.

For both exchange and interexchange carriers subject to this part, interstate earnings shall be measured over a two year period to determine compliance with the maximum allowable rate of return. The review periods shall commence on January 1 in odd-numbered years and shall end on December 31 in even-numbered years.

§ 65.702 [Amended]

21. In § 65.702, paragraph (a) is removed and paragraphs (b) and (c) are redesignated as (a) and (b) respectively.

§ 65.703 [Removed]

Section 65.703 is removed.

[FR Doc. 95–13380 Filed 5–31–95; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 74

[MM Docket No. 93–24]

Experimental, Auxiliary, and Special Broadcast and Other Program Distributional Services; ITFS Filing Window; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document contains corrections to the Federal Register summary of the *Report and Order* in MM Docket No. 93–24, which was published April 25, 1995 (60 FR 20241). The Federal Register summary contained regulation related to the Instructional Television Fixed Service.

EFFECTIVE DATE: May 25, 1995.

FOR FURTHER INFORMATION CONTACT: Clay Pendarvis (202) 418–1600.

Need for Correction

As published, the FR Notice gave an erroneous effective date for the above Order which may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the April 25, 1995, FR Notice 95–10024 is corrected as follows:

Paragraph 1. On page 20241, in the second column, after the phrase "EFFECTIVE DATE" is revised to read: "The change to the rules adopted in the Commission's Report and Order in MM Docket No. 93–24 will become effective May 25, 1995.

Paragraph 2. On page 20246, in third column, line seven of paragraph 47, after the word "effective" is corrected to read "May 25, 1995".

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–13292 Filed 5–31–95; 8:45 am]

BILLING CODE 6712–01–M

Proposed Rules

Federal Register

Vol. 60, No. 105

Thursday, June 1, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 308, 310, 318, 320, 325, 326, 327 and 381

[Docket No. 95–029N]

Pathogen Reduction; Hazard Analysis and Critical Control Point (HACCP) Systems: Extension of Comment Period

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Extension of comment period.

SUMMARY: The Food Safety and Inspection Service (FSIS) is extending the comment period for its February 3, 1995, proposal titled "Pathogen Reduction; Hazard Analysis and Critical Control Points (HACCP) Systems" (60 FR 6774). FSIS has received several requests to extend the comment period. FSIS believes there is merit to some of the requests and, therefore, is extending the comment period for 30 days.

DATES: Comments must be received by July 5, 1995.

ADDRESSES: *Written comments should be sent to:* Diane Moore, FSIS Docket Clerk, Room 4352, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. Oral comments, as provided by the Poultry Products Inspection Act, should be directed to the appropriate person listed in the proposed rule.

FOR FURTHER INFORMATION CONTACT: Judith A. Segal, Director, Policy, Evaluation and Planning Staff, Food Safety and Inspection Service, USDA, (202) 720–7773.

SUPPLEMENTARY INFORMATION: On February 3, 1995, FSIS published a proposed rule, "Pathogen Reduction; Hazard Analysis and Critical Control Point (HACCP) Systems" (60 FR 6774). In that document, the Agency proposed a number of regulatory changes applicable to Federal- and State-inspected meat and poultry establishments. The proposed changes are designed to reduce the occurrence and numbers of pathogenic microorganisms in meat and poultry products as well as control other hazards, thereby reducing the incidence of foodborne illness associated with the consumption of these products.

FSIS has received several requests to extend the comment period. These requests state that additional time is needed to permit the drafting of meaningful, well-considered comments on the Agency's far-reaching proposals, which take into account the new information and understanding growing out of the public hearing, scientific/technical conferences and public information briefings FSIS has conducted during the comment period. Also, extending the comment period will provide individuals, organizations, States, and foreign countries a better opportunity to respond to issues raised in others' comments received orally or in writing.

FSIS continues to believe that there is an important public health need to complete this rulemaking promptly. The complexity and importance of this rulemaking also require, however, that FSIS provide every reasonable opportunity for persons to provide meaningful comments, which it needs to develop sound and effective final rules. Therefore, the Agency has decided to extend the comment period for 30 days, to July 5, 1995.

FSIS also intends to convene a two-day public meeting, four to six weeks after the close of the comment period, to permit further public discussion, during the Agency's decisionmaking process, based on issues raised in the administrative record developed during the comment period. The Agency will provide notice in the **Federal Register** of the dates, times, location, and topics for the meeting.

Done at Washington, DC, on May 26, 1995.

Michael R. Taylor,

Acting Under Secretary for Food Safety.

[FR Doc. 95–13387 Filed 5–31–95; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM–93; Special Conditions No. 25–ANM–99]

Special Condition: Cessna Aircraft Company, Model 750 (Citation X) Airplane, High-Intensity Radiated Fields

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final special condition.

SUMMARY: This special condition for the Cessna Aircraft Company (Cessna) is issued for the Model 750 (Citation X) airplane. This new airplane will utilize new avionics/electronic systems that provide critical data to the flightcrew. The applicable regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity radiated fields. This special condition contains the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

EFFECTIVE DATE: July 3, 1995.

FOR FURTHER INFORMATION CONTACT: Mark Quam, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone (206) 221–2145, facsimile (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Background

On October 15, 1991, Cessna Aircraft Company (Cessna), 6030 Cessna Blvd., P.O. Box 7704, Wichita, KS 67277–7704, applied for a new type certificate in the transport airplane category for the Model 750 (Citation X) airplane. The Cessna Model 750 is a T-tail, low swept wing, medium-sized business jet powered by two GMA–3007C turbofan engines mounted on pylons extending from the aft fuselage. Each engine will be capable of delivering 6,000 pounds thrust. The flight controls will be powered and capable of manual reversion. The airplane has a seating capacity of up to twelve passengers, and a maximum takeoff weight of 31,000 pounds.

Type Certification Basis

Under the provisions of § 21.17 of the FAR, Cessna must show, except as provided in § 25.2, that the Model 750 (Citation X) meets the applicable provisions of part 25, effective February 1, 1965, as amended by Amendments 25–1 through 25–74 and Amendment 25–80. In addition, the proposed certification basis for the Model 750 includes part 34, effective September 10, 1990, plus any amendments in effect at the time of certification; and part 36, effective December 1, 1969, as amended by Amendment 36–1 through the amendment in effect at the time of certification. No exemptions are anticipated. This special condition will form an additional part of the type certification basis.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25, as amended) do not contain adequate or appropriate safety standards for the Cessna Model 750 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29, and become part of the type certification basis in accordance with § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The Model 750 incorporates new avionics/electronic installations, including a digital Electronic Flight Instrument System (EFIS), Air data System, Attitude and Heading Reference System (AHRS), Navigation and Communication System, Autopilot System, and a Full Authority Digital Engine Control (FADEC) system that controls critical engine parameters. These systems may be vulnerable to high-intensity radiated fields external to the airplane.

Discussion

At the time that Cessna applied for type certification of the Cessna Model 750 (Citation X) airplane, the existing lightning protection airworthiness certification requirements were insufficient to provide an acceptable level of safety for new technology avionics and electronic systems. The two existing regulations that specifically pertained to lightning were § 25.581 (the airframe in general), and § 25.954 (fuel system protection). There were, however, no regulations that specifically addressed protection of electrical and electronic systems from lightning.

On March 29, 1994, the FAA published in the **Federal Register** Notice of Proposed Special Conditions No. SC–94–1–NM (59 FR 14571) for the Cessna Model 750 (Citation X). These special conditions were proposed requirements to protect the airplane systems from the effects of lightning and high-intensity radiated fields (HIRF). Cessna, commenting to the docket by letter, noted that there were differences in the preamble language from the language used in issue papers that discussed the proposed method of compliance with the special conditions. The FAA agreed. Although the special conditions proposed were not changed from the original notice, the methods of compliance discussed in the issue papers that preceded the original notice were, in fact, different in certain respects than the methods of compliance discussed in the original notice. The FAA inadvertently left out Cessna's proposed alternative methods of complying with the proposed special conditions. As the methods of compliance proposed by Cessna deviate in certain respects from previous methods of compliance with the proposed special conditions, the FAA agreed these methods should also be made available for the public record and comment as well. Therefore, Notice SC–94–1–NM was republished in the **Federal Register** on September 12, 1994, as Notice SC–94–1A–NM (59 FR 46775) in its entirety, including Cessna's proposed alternative methods of compliance with the special conditions.

The FAA agrees with Cessna's proposed alternative method of testing and evaluation of the effects of lightning on the installed airplane systems when complying with the proposed special conditions. However, lightning protection is no longer considered a novel or unusual design feature relative to the regulations, as Amendment 25–80, effective May 21, 1994, was added to 14 CFR part 25 of the FAR (59 FR 22116, April 28, 1994). The lightning special condition differs from the rule in that the definitions of critical and essential functions are retained as a separate paragraph (i.e. item 3 in the notice). The rule also provides approaches to compliance for designing and verifying lightning protection in § 25.1316(c) that would be no different than the approaches to compliance for the special conditions.

As there is no longer a need for lightning special conditions, the proposed lightning special condition has been removed from this final special condition and § 25.1316, as adopted by Amendment 25–80, will be added to the Cessna 750 certification basis as authorized under § 21.17(a)(1)(i). Cessna's proposed method of testing and evaluation of the effects of lightning on the installed airplane systems for compliance with the lightning special condition can be utilized when complying with § 25.1316, as the intent of the lightning special condition and § 25.1316 are identical.

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground based radio transmitters and the growing use of sensitive electrical and electronic systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, a special condition is needed for the Cessna Model 750, to require that new technology electrical and electronic systems, such as the EFIS, FADEC, AHRS, etc., be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground based transmitters, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical digital avionics systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, the FAA considers that an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraphs 1 or 2 below:

1. A minimum threat of 100 volts per meter peak electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated.

Frequency	Peak (V/M)	Average (V/M)
10 KHz–100 KHz	50	50
100 KHz–500 KHz	60	60
500 KHz–2000 KHz	70	70
2 MHz–30 MHz	200	200
30 MHz–100 MHz	30	30
100 MHz–200 MHz	150	33
200 MHz–400 MHz	70	70
400 MHz–700 MHz	4,020	935
700 MHz–1000 MHz	1,700	170
1 GHz–2 GHz	5,000	990
2 GHz–4 GHz	6,680	840
4 GHz–6 GHz	6,850	310
6 GHz–8 GHz	3,600	570
8 GHz–12 GHz	3,500	1,270
12 GHz–18 GHz	3,500	360
18 GHz–40 GHz	2,100	750

Cessna's market for the Model 750 Citation X includes, at the present time, two European JAA member countries. Consequently, Cessna intends to pursue certification to meet the European JAA requirements as well as the FAA requirements. To reduce the testing required, Cessna proposes to test to an environment that combines a proposed FAA certification environment (from the SAE AE4R Subcommittee) and a proposed JAA certification environment (from EUROCAE WG–33) to form a "worst case" certification environment. Cessna's proposed environment consists of the following:

Where the combined proposed certification environment is less than 100 volts per meter, Cessna would test to the proposed certification environment (JAA or FAA, whichever is higher). Where the combined environment is greater than 100 volts per meter, Cessna would test to the proposed JAA environment (less aircraft attenuation above 200 MHz). The aircraft attenuation would be established by the results of full vehicle tests conducted by Cessna on Model 650, Citation III, and Citation VII aircraft. Cessna's proposed Model 750 HIRF certification environment is as follows:

PROPOSED CESSNA 750 (CITATION X (CX)) HIRF CERTIFICATION ENVIRONMENT

Frequency (HZ)	Proposed FAA certification environment (peak/avg)	Proposed JAA certification environment (peak/avg)	Proposed CX environment (peak/avg)
10K–500K.	50/50	40/40	50/50
500K–2M.	40/40	40/40	40/40
2M–30M.	100/100	100/100	100/100
30M–100M.	20/20	20/20	20/20
100M–200M.	50/30	50/30	50/30
200M–400M.	70/70	70/70	70/70
400M–700M.	1520/750	700/30	700/30
700M–1G.	1300/170	1300/70	1300/70
1G–2G	2500/180	2500/160	2500/160
2G–4G	3500/360	3500/240	3500/240
4G–6G	6800/280	3200/280	3200/280
6G–8G	1800/330	800/330	800/330
8G–12G	3500/215	3500/330	3500/330
12G–18G.	1700/270	1700/180	1700/180

Discussion of Comments

There were no comments received in response to Notice SC–94–1–NM other than those submitted by Cessna, as discussed earlier in this document. No comments were received in response to Supplemental Notice SC–94–1A–NM.

The Federal Aviation Administration's Analysis/Summary

The FAA does not agree with Cessna's proposed alternative method of compliance (i.e., the proposed CX threat environment) for the evaluation of the effects of HIRF on the installed airplane systems. The FAA has not formally adopted any of the certification environments proposed by Cessna listed above. The latest published FAA policy that defines the external environment acceptable for airplane testing is dated July 29, 1992, and is reflected earlier in the preamble to these special conditions. If Cessna wishes to reduce testing by combining the FAA and JAA environments, Cessna should test to the higher of the values given in the environment tables that have been adopted by the FAA and JAA. It should be noted that frequencies above 18 GHz should be used only if the pass/fail criteria are not met in the 12–18 GHz range, or if the system is designed to operate in the range from 18–40 GHz.

The FAA's option of testing using 100 volts per meter threat from 10 KHz to 18 GHz requires that this treat be applied to the systems elements and associated wiring without the benefit of airframe shielding. The 100 volts per meter test can be established by systems tests and analysis acceptable to the FAA.

In summary, the FAA has determined that Cessna must utilize the FAA's HIRF envelop (the first HIRF envelope and not the proposed SAE AE4R envelop) or may combine the FAA HIRF envelope and the JAA envelope and test to the greater values.

As discussed earlier in this document, the special conditions are applicable initially to the Model 750. Should Cessna apply at a later date for a change to the type certificate to include another model incorporating that same novel or unusual design feature, the special conditions would apply to that model as well, under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain design features on the Cessna Model 750 (Citation X) airplane. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and record keeping requirements.

The authority citation for these special conditions is as follows:

Authority 49 U.S.C. app. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f–10, 4321 et seq.; E.O. 11514; and 49 U.S.C. 106(g).

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special condition is issued as part of the type certification basis for the Cessna Model 750 (Citation X) series airplanes.

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields.

2. For the purpose of this special condition, the following definition applies: *Critical Functions.* Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on May 8, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–13397 Filed 5–31–95; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 25

[Docket No. NM–109; Notice No. SC–95–3–NM]

Special Condition: Gulfstream Aerospace Corporation, Model Gulfstream V, High-Intensity Radiated Fields

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the Gulfstream Model Gulfstream V airplane. This new airplane will utilize new avionics/electronic systems that provide critical data to the flightcrew. The applicable regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity radiated fields. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Comments must be received on or before July 17, 1995.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, Attn: Rules Docket (ANM–7), Docket No. NM–109, 1601 Lind Avenue SW., Renton, Washington 98055–4056; or delivered in duplicate to the Office of the Assistant Chief Counsel at the above address. Comments must be marked: Docket No. NM–109. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Standardized Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these proposed special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator before further rulemaking action is taken on these proposals. The proposals contained in this notice may be changed in light of comments received. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM–109." The postcard will be date stamped and returned to the commenter.

Background

On February 26, 1992, Gulfstream Aerospace Corporation, P.O. Box 2206, Savannah, GA 31402–2206, applied for an amended type certificate in the transport airplane category for the Model Gulfstream V airplane. The Gulfstream V is a T-tail, low swept wing, business jet airplane powered by two Rolls-Royce BR710–48 turbofan engines mounted on pylons extending from the aft fuselage. Each engine will be capable of delivering 14,750 pounds trust. The flight controls will be powered and capable of manual reversion. The airplane has a seating capacity of up to nineteen passengers, and a maximum takeoff weight of 89,000 pounds.

Type Certification Basis

Under the provisions of § 21.17 of the FAR, Gulfstream must show, except as provided in § 25.2, that the Model Gulfstream V meets the applicable provisions of part 25, effective February 1, 1965, as amended by Amendments 25–1 through 25–75. In addition, the proposed certification basis for the Model Gulfstream V includes part 34, effective September 10, 1990, plus any amendments in effect at the time of certification; and part 36, effective December 1, 1969, as amended by Amendment 36–1 through the amendment in effect at the time of certification. No exemptions are anticipated. The special conditions that may be developed as a result of this notice will form an additional part of the type certification basis. In addition, the certification basis may include other special conditions that are not relevant to these proposed special conditions.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25, as amended) do not contain adequate or appropriate safety standards for the Gulfstream V because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29, and become part of the type certification basis in accordance with § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporated the same novel or unusual design feature, or should any other model already included on the same type certicate be modified to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The Model Gulfstream V incorporates new avionic/electronic installations, including a digital Electronic Flight Instrument System (EFIS), Air Data System, Attitude and Heading Reference System (AHRS), Navigation and Communication System, Autopilot System, and a Full Authority Digital Engine Control (FADEC) system that controls critical engine parameters. These systems may be vulnerable to high-intensity radiated fields external to the airplane.

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground based radio transmitters and the growing use of sensitive electrical and electronic systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are proposed for the Gulfstream V which would require that new technology electrical and electronic systems, such as the EFIS, FADEC, AHRS, etc., be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground based transmitters, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical digital avionics systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraphs 1 or 2 below:

1. A minimum threat of 100 volts per meter peak electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated.

Frequency	Peak (V/M)	Average (V/M)
10 KHz–100 KHz	50	50
100 KHz–500 KHz	60	60
500 KHz–2000 KHz	70	70
2 MHz–30 MHz	200	200
30 MHz–70 MHz	30	30
70 MHz–100 MHz	30	30
100 MHz–200 MHz	150	33
200 MHz–400 MHz	70	70
400 MHz–700 MHz	4,020	935
700 MHz–1000 MHz	1,700	170
1 GHz–2 GHz	5,000	990
2 GHz–4 GHz	6,680	840
4 GHz–6 GHz	6,850	310
6 GHz–8 GHz	3,600	670
8 GHz–12 GHz	3,500	1,270
12 GHz–18 GHz	3,500	360
18 GHz–40 GHz	2,100	750

As discussed above, the proposed special conditions would be applicable initially to the Model Gulfstream V. Should Gulfstream apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well, under the provisions of § 21.101(a)(1).

Conclusion

This action affects certain design features only on the Gulfstream V airplane. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Federal Aviation Administration, Reporting and recordkeeping requirements.

The authority citation for these proposed special conditions is as follows:

Authority: 49 U.S.C. app. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f–10, 4321 et seq.; E.O. 11514; and 49 U.S.C. 106(g).

The Proposed Special Condition

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for the Gulfstream Model Gulfstream V series airplanes.

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields.

2. For the purpose of this special conditions, the following definition applies: *Critical Functions.* Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on May 17, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 95–13400 Filed 5–31–95; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 95–ANM–2]

Proposed Realignment of VOR Federal Airway V–86; Montana

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would extend Federal Airway V–86 from the Coppertown, MT, Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME) to the Missoula, MT, VOR/DME. This action would improve the efficiency of air traffic operations between the Coppertown, MT, VOR/DME and Missoula, MT, VOR/DME facilities, and would reduce pilot/controller workload.

DATES: Comments must be received on or before July 17, 1995.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ANM–500, Docket No. 95–ANM–2, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, WA 98055–4056.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Norman W. Thomas, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9230.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 95–ANM–2." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be

considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to extend Federal Airway V–86 from the Coppertown, MT, VOR/DME to the Missoula, MT, VOR/DME facility. The extension of V–86 would improve the efficiency of air traffic operations between the Coppertown, MT, VOR/DME and Missoula, MT, VOR/DME facilities, and would reduce pilot/controller workload. Domestic VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Domestic VOR Federal airway listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 6010(a)—Domestic VOR Federal Airways

* * * * *

V–86 [Revised]

From Missoula, MT; Coppertown, MT; Whitehall, MT; Bozeman, MT; INT Bozeman 128° and Livingston, MT, 261° radials; Livingston; 11 miles, 25 miles, 85 MSL, Billings, MT; 32 miles, 35 miles, 75 MSL; Sheridan, WY; 20 miles, 45 miles, 70 MSL, 63 miles, 80 MSL, to Rapid City. SD.

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Issued in Washington, DC, on May 23, 1995.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 95–13402 Filed 5–31–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 73

[Airspace Docket No. 94–ANM–25]

Proposed Reconfiguration of Restricted Area R–6714, Yakima Firing Center; Washington

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to restructure restricted airspace at Yakima Firing Center, WA. Presently, Restricted Area R–6714 is composed of five subareas: R–6714A, R–6714B, R–6714C, R–6714D, and R–6714E. This proposal would decrease the size of areas R–6714A, R–6714C, and R–6714D by deleting the restricted airspace west of Interstate Highway 82, and the airspace south of the Yakima Firing Center property boundary. R–6714A and R–6714E would be redesigned, and three new subareas established: R–6714F, R–6714G, and R–6714H, to facilitate the release of portions of the restricted area for public access. A portion of R–6714G, and all of R–6714H, would consist of new restricted airspace. These proposed changes are the result of a Department of Army review of their overall training and operational requirements.

DATES: Comments must be received on or before July 17, 1995.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ANM–500, Docket No. 94–ANM–25, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, WA 98055–4056.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Military Operations Program Office (ATM–420), Office of Air Traffic System Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–7686.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 94–ANM–25." The postcard will be date/time stamped and returned to the commenter. Send comments on environmental and land use aspects to: Commander, I Corps and Fort Lewis, ATTN: AFZH–DEQ (Gary Stedman), Fort Lewis, WA 98433–5000. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 73 of the Federal Aviation Regulations (14 CFR part 73) to redesign Restricted Area R–6714, Yakima Firing Center, WA. The Department of Army has performed a review of overall training and operational requirements and has requested changes in the Yakima Firing Center restricted airspace to accommodate changes in their training tactics.

The revised restricted areas would support the firing of long-range weapons into existing impact areas, and no additional impact areas are planned. There would be no change in the other types of activities currently conducted in the R–6714 complex. In order to achieve training and operational requirements, it would be necessary to redesign R–6714A, R–6714B, R–6714C, R–6714D, and R–6714E. R–6714E is a high altitude subdivision that overlies the current restricted airspace configuration. The current subareas R–6714A, R–6714C, and R–6714D would be slightly decreased in size. Three new subareas would be established: R–6714F, R–6714G, and R–6714H. R–6714F would be formed from airspace currently in the northwest end of the existing R–6714A. The purpose of the "F" area subdivision is to facilitate the release of restricted airspace to accommodate the VOR and GPS–A instrument approaches at Bowers Field, Ellenburg, WA. These approaches may not be utilized when the adjacent restricted area is activated. R–6714F would be activated approximately 30 days per year compared to an estimated 330 days per year for R–6714A, thus reducing the impact on instrument approach procedures at Bowers Field. R–6714G would be established using a combination of airspace comprising the northern tip of the existing R–6714A, and the designation of new restricted airspace. R–6714H would consist entirely of new restricted airspace to the north of the existing R–6714A area. Projected use for R–6714G and R–6714H is approximately 100 days per year. The high altitude subdivision, R–6714E, would be realigned so that it continues to overlie all subareas, except the new R–6714H. Under this proposal, existing restricted airspace outside the Yakima Firing Center boundary is deleted. The airspace to be deleted includes all restricted airspace west of Interstate Highway 82 and airspace south of the center property boundary. Restricted airspace would be expanded north of the present R–6714 boundary by establishing R–6714G and R–6714H. Internal boundaries of R–6714A, R–6714B, R–6714C, and R–6714D are also being redesigned to better align the airspace to accommodate the requirements of the U.S. Army.

The new R–6714 configuration would allow the activation of portions of the restricted area on an as needed basis, thus decreasing the burden on nonparticipating aircraft that normally circumnavigate the restricted areas when they are in use. The activities presently being conducted, time of use, and altitudes remain the same.

Any subsequent final rulemaking on this proposal is contingent upon Congressional approval of the Bureau of Land Management and the U.S. Army agreement on land transfer. The coordinates for this airspace docket are based on North American Datum 83. Section 73.67 of part 73 of the Federal Aviation Regulations was republished in FAA Order 7400.8B dated March 9, 1994.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Impact

An environmental impact review of this proposal will be conducted by the U.S. Army and the FAA prior to an FAA final decision in any subsequent rulemaking action.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 73 as follows:

PART 73—[AMENDED]

1. The authority citation for 14 CFR part 73 continues to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§73.67 [Amended]

2. Section 73.67 is amended as follows:

R–6714A Yakima, WA [Amended]

By removing the present boundaries, altitudes, and time of use and substituting the following:

Boundaries. Beginning at lat. 46°51′15″N., long. 119°57′57″W.;
thence south along the west edge of the Columbia River
to lat. 46°42′28″N., long. 119°58′19″W.;
to lat. 46°35′04″N., long. 120°02′50″W.;
to lat. 46°37′50″N., long. 120°20′26″W.;
to lat. 46°38′29″N., long. 120°20′25″W.;
to lat. 46°38′59″N., long. 120°22′13″W.;
to lat. 46°42′19″N., long. 120°26′12″W.;
then north along the east side of Interstate Highway 82
to lat. 46°47′49″N., long. 120°21′19″W.;
to lat. 46°51′09″N., long. 120°09′02″W.;
thence to point of beginning.
Designated altitudes. Surface to but not including 29,000 feet MSL.
Time of designation. 0700–2300 local time daily; other times by NOTAM.

R–6714B Yakima, WA [Amended]

By removing the present boundaries and altitudes and substituting the following:

Boundaries. Beginning at lat. 46°42'28"N., long. 119°58'19"W.;
thence south along the west edge of the Columbia River
to lat. 46°38'59"N., long. 119°56'09"W.;
to lat. 46°38'08"N., long. 119°56'13"W.;
to lat. 46°38'08"N., long. 119°55'04"W.;
to lat. 46°33'55"N., long. 119°55'04"W.;
to lat. 46°35'04"N., long. 120°02'50"W.;
thence to point of beginning.
Designated altitudes. Surface to but not including 29,000 feet MSL.

R–6714C Yakima, WA [Amended]

By removing the present boundaries and altitudes and substituting the following:

Boundaries. Beginning at lat. 46°33'55"N., long. 119°55'04"W.;
to lat. 46°32'50"N., long. 119°55'04"W.;
to lat. 46°32'50"N., long. 120°04'25"W.;
to lat. 46°37'03"N., long. 120°20'26"W.;
to lat. 46°37'50"N., long. 120°20'26"W.;
to lat. 46°35'04"N., long. 120°02'50"W.;
thence to point of beginning.
Designated altitudes. Surface to but not including 29,000 feet MSL.

R–6714D Yakima, WA [Amended]

By removing the present boundaries and altitudes and substituting the following:

Boundaries. Beginning at lat. 46o38'59"N., long. 120o22'13"W.;
to lat. 46°38'59"N., long. 120°23'45"W.;
to lat. 46°40'34"N., long. 120°26'39"W.;
to lat. 46°42'19"N., long. 120°26'12"W.;
thence to point of beginning.
Designated altitudes. Surface to but not including 29,000 feet MSL.

R–6714E Yakima, WA [Amended]

By removing the present boundaries and altitudes and substituting the following:

Boundaries. Beginning at lat. 46°51'15"N., long. 119°57'57"W.;
thence south along the west side of the Columbia River
to lat. 46°42'28"N., long. 119°58'19"W.;
thence south along the west side of the Columbia River
to lat. 46°38'59"N., long. 119°56'09"W.;
to lat. 46°38'08"N., long. 119°56'13"W.;
to lat. 46°38'08"N., long. 119°55'04"W.;
to lat. 46°33'55"N., long. 119°55'04"W.;
to lat. 46°33'19"N., long. 119°55'04"W.;
to lat. 46°32'50"N., long. 119°55'04"W.;
to lat. 46°32'50"N., long. 120°04'25"W.;
to lat. 46°37'03"N., long. 120°20'26"W.;
to lat. 46°37'50"N., long. 120°20'26"W.;
to lat. 46°38'29"N., long. 120°20'25"W.;
to lat. 46°38'59"N., long. 120°22'13"W.;
to lat. 46°38'59"N., long. 120°23'45"W.;
to lat. 46°40'34"N., long. 120°26'39"W.;
to lat. 46°42'19"N., long. 120°26'12"W.;
thence north along the east side of Interstate Highway 82
to lat. 46°47'49"N., long. 120°21'19"W.;
thence north along the east side of Interstate Highway 82
to lat. 46°49'35"N., long. 120°21'38"W.;
to lat. 46°51'09"N., long. 120°21'38"W.;
to lat. 46°51'09"N., long. 120°16'34"W.;
to lat. 46°54'29"N., long. 120°15'04"W.;
to point of beginning.
Designated altitudes. 29,000 feet MSL to and not including 55,000 feet MSL.

R–6714F Yakima, WA [New]

Boundaries. Beginning at lat. 46°47'49P"W., long. 120°21'19"W.;
thence north along the east side of Interstate Highway 82
to lat. 46°49'35"N., long. 120°21'38"W.;
to lat. 46°51'09"N., long. 120°21'38"W.;
to lat. 46°51'09"N., long. 120°09'02"W.;
thence to point of beginning.
Designated altitudes. Surface to but not including 29,000 feet MSL.
Time of designation. Intermittent by NOTAM.
Controlling agency. FAA, Seattle ARTCC.
Using agency. U.S. Army, Commanding General, Fort Lewis, WA.

R–6714G Yakima, WA [New]

Boundaries. Beginning at lat. 46°51'09"W., long. 120°16'34"W.;
to lat. 46°54'29"N., long. 120°15'04"W.;
to lat. 46°51'15"N., long. 119°57'57"W.;
to lat. 46°51'09"N., long. 120°08'54"W.;
thence to point of beginning.
Designated altitudes. Surface to but not including 29,000 feet MSL.
Time of designation. Intermittent by NOTAM.
Controlling agency. FAA, Seattle ARTCC.
Using agency. U.S. Army, Commanding General, Fort Lewis, WA.

R–6714H Yakima, WA [New]

Boundaries. Beginning at lat. 46°54'58"W., long. 120°00'33"W.;
excluding that airspace within a 1.5-mile radius of the Vantage Airport
to lat. 46°54'39"N., long. 119°59'31"W.;
thence south along the west side of the Wanapum Road
to lat. 46°51'15"N., long. 119°57'57"W.;
to lat. 46°54'29"N., long. 120°15'04"W.;
to lat. 46°55'20"N., long. 120°15'04"W.,
thence to point of beginning.
Designated altitudes. Surface to but not including 5,500 feet MSL.
Time of designation. Intermittent by NOTAM.
Controlling agency. FAA, Seattle ARTCC.
Using agency. U.S. Army, Commanding General, Fort Lewis, WA.

Issued in Washington, DC, on May 23, 1995.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 95–13401 Filed 5–31–95; 8:45 am]

BILLING CODE 4910–13–U

FEDERAL TRADE COMMISSION

16 CFR Part 409

Extension of Time; Rule Concerning Incandescent Lamp (Light Bulb) Industry

AGENCY: Federal Trade Commission.

ACTION: Extension of time for filing public comments.

SUMMARY: The Federal Trade Commission (the "Commission"), as part of a systematic review of all its current regulations and guides, requested public comments on April 6, 1995 about the Rule Concerning the Incandescent Lamp (Light Bulb) Industry ("Light Bulb Rule"), 60 FR 17491. The Commission solicited comments until June 6, 1995. In response to a petition from an industry group, the Commission grants an extension of the comment period.

DATES: Written comments will be accepted until August 7, 1995.

FOR FURTHER INFORMATION CONTACT: Kent C. Howerton, Attorney, Federal Trade Commission, Sixth Street & Pennsylvania Avenue NW, Washington, D.C. 20580, (202) 326–3013 (voice), (202) 326–3259 (fax).

SUPPLEMENTARY INFORMATION: As part of its periodic review of the overall costs and benefits, as well as the overall regulatory and economic impact, of all of its rules and guides, the Commission published a notice on April 6, 1995 requesting comments until June 6, 1995 concerning the Light Bulb Rule, 16 CFR Part 409. The Commission received a petition on May 9, 1995, from the Lamp Section of the National Electrical Manufacturers Association ("NEMA"), a trade association that represents light bulb manufacturers, requesting that the Commission extend the comment period for at least 60 days.[1]

NEMA requests the additional time to develop consensus industry recommendations among its members regarding various differences between the Light Bulb Rule and the new lamp labeling requirements of the Rule Concerning Disclosures Regarding Energy Consumption and Water Use of Certain Home Appliances and Other Products Required under the Energy Policy and Conservation Act ("Appliance Labeling Rule"), 16 CFR Part 305. See Final rule, 59 FR 25176 (1994). NEMA believes that an extension of the comment period is justified in light of further amendments to the lamp labeling requirements of the Appliance Labeling Rule that the Commission proposed on March 22, 1995, 60 FR 15200 (1995), in response to a separate petition from NEMA.[2]

In light of overlapping labeling requirements of the Light Bulb Rule and the Appliance Labeling Rule for incandescent light bulbs (other than incandescent reflector bulbs) and the pending proposed amendments to the labeling requirements for incandescent light bulbs (including incandescent reflector bulbs) under the Appliance Labeling Rule, the Commission has determined that an extension of the comment period is appropriate. Therefore, to allow all interested persons the opportunity to supply the Commission with written data, views and arguments concerning the Commission's review of the Light Bulb Rule, the Commission grants an extension of the comment period to August 7, 1995.

List of Subjects in 16 CFR Part 409

Advertising, Consumer protection, Energy conservation, Household appliances, Labeling, Lamp products, Trade practices.

Authority: 15 U.S.C. 41–58.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95–13361 Filed 5–31–95; 8:45 am]

BILLING CODE 6750–01–M

[1] Petition for Extension of the Public Comment Period Filed by the Lamp Section of the National Electrical Manufacturers Association, May 9, 1995, submitted by Mark L. Perlis, Counsel to NEMA Lamp Section, Dickstein, Shapiro & Morin, L.L.P., 2101 L Street NW, Washington, DC 20037–1526. The petition and Mr. Perlis' cover letter dated May 9, 1995 to Donald S. Clark, Secretary of the Commission, have been placed on the Commission's public record of this proceeding.

[2] NEMA also notes that the U.S. Department of Energy ("DOE") has published "interim final rules" regarding test procedures for incandescent light bulbs (and for other lamp products covered by the Appliance Labeling Rule). See Interim final rule, 59 FR 49468 (1994). NEMA states that, given the interim final status of the DOE testing rules, an extension of the comment period in the review of the Light Bulb Rule "would more likely enable the commentators to base their comments and recommendations upon final Department of Energy test procedure regulations." The Commission stated in the Statement of Basis and Purpose for the lamp labeling amendments to the Appliance Labeling Rule that it would consider testing performed according to the test procedures mandated by DOE in its final testing rules as meeting the reasonable basis standard required by the Appliance Labeling Rule, 59 FR 25176, 25200 (1994). Therefore, final action by DOE on its testing rules is not necessary for the Commission to conduct the current review of the Light Bulb Rule.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 182 and 186

[Docket No. 80N–0196]

Japan Wax; Affirmation of GRAS Status as an Indirect Human Food Ingredient; Reproposed Rule

AGENCY: Food and Drug Administration, HHS.

ACTION: Reproposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to affirm Japan wax as generally recognized as safe (GRAS) as an indirect human food ingredient for use as a constituent of cotton and cotton fabrics used in dry food packaging. In light of this action, the agency is withdrawing its July 9, 1982 (47 FR 29965), proposal to delete this use of Japan wax from GRAS status as an indirect human food ingredient (hereinafter referred to as the July 1982 proposal). This action results from FDA's review of all available information on Japan wax, including documents located in food additive extension file no. 393 (FAX 393) supporting its history of common use in food contact cotton bags and an acute oral toxicity study on mice that has been obtained since the publication of the July 1982 proposal to delete this use from the GRAS list.

DATES: Written comments by August 15, 1995.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Martha D. Peiperl, Center for Food Safety and Applied Nutrition (HFS–217), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3077.

SUPPLEMENTARY INFORMATION:

I. Background

FDA has been conducting a comprehensive review of human food ingredients classified as GRAS or subject to a prior sanction. Under this review, the agency has evaluated the safety of Japan wax, and FDA has reconsidered its July 1982 proposal to remove Japan wax from the GRAS list.

Japan wax (CAS Reg. No. 8001–39–6), also known as Japan tallow or sumac wax, is a pale yellow vegetable tallow, containing glycerides of the C_{19}–C_{23} dibasic acids and a high content of tripalmitin. It is prepared from the mesocarp by hot pressing of immature fruits of the oriental sumac, *Rhus succedanea* (Japan, Taiwan and Indo-China), *R. vernicifera* (Japan), and *R. trichocarpa* (China, Indo-China, India, and Japan).

Japan wax is listed in § 182.70 (21 CFR 182.70) as GRAS for use as a substance migrating to food from cotton and cotton fabrics used in dry food packaging based upon a final rule published in the **Federal Register** of June 10, 1961 (26 FR 5224). This final rule was the original GRAS listing for substances migrating to food from cotton and cotton fabrics used in dry food packaging and included only substances in common use prior to that time. Japan wax was one of the substances identified to FDA, in response to the 1958 Food Additives Amendment to the Federal Food, Drug, and Cosmetic Act (the act), by the National Cotton Council of America as being in use prior to 1958 in food contact articles (cotton bags) (Ref. 1). One member of the Council, Seydel-Woolley & Co., had reported using Japan wax for the sizing of cloth used for food bags or similar uses (Ref. 2). Japan wax had been in use in textile finishing for many years (Refs. 3 and 4). Japan wax is also listed in § 73.1(b)(2) (21 CFR 73.1(b)(2)) for use in diluents in color additive mixtures for coloring shell eggs, in § 175.105 (21 CFR 175.105) for use as a component of adhesives, in § 175.350 (d)(3) (21 CFR 175.350 (d)(3)) for use as an optional substance in vinyl acetate/crotonic acid copolymer, and in § 176.170 (a)(5) (21 CFR 176.170 (a)(5)) for use as a component of paper and paperboard in contact with aqueous and fatty foods. This action does not affect these regulated food additive or color additive uses of Japan wax.

The July 1982 proposal stated that insufficient safety data existed to affirm the GRAS status of the ingredient for indirect human food use. The July 1982 proposal also stated that the proposed action would not affect the regulated uses of Japan wax as a food additive and as a color additive diluent. The July 1982 proposal was published in accordance with the announced FDA review of the safety of GRAS and prior-sanctioned food ingredients.

The basis for the July 1982 proposal was the evaluation of the 1975 final report of the Select Committee on GRAS Substances (the Select Committee), composed of qualified scientists chosen by the Life Sciences Research Office of the Federation of American Societies for Experimental Biology (LSRO/FASEB). This report was one of a series concerning the health aspects of using GRAS and prior-sanctioned food substances as food ingredients, done by LSRO/FASEB under contract with FDA. FDA requested these reviews of the safety of substances that were listed as GRAS only on the basis of their common use in food prior to 1958. The Select Committee's report, entitled "Evaluation of the Health Aspects of Japan Wax as a Substance Migrating to Food from Cotton and Cotton Fabrics Used in Dry Food Packaging" (Ref. 5), included the results of an in vitro mutagenic evaluation of Japan wax

using *Saccharomyces cerevisiae*, strain D4, and *Salmonella typhimurium*, strains TA–1536, TA–1537, and TA–1538, with and without metabolic activation (Ref. 6). In these assays, Japan wax exhibited no mutagenic activity. The Select Committee's report, however, concluded that there were insufficient data upon which to evaluate the safety of Japan wax for use as a substance migrating to food from cotton and cotton fabrics used in dry food packaging. Although FDA proposed to remove this use from the GRAS list, the July 1982 proposal further stated that if information was subsequently obtained to support the safe use of Japan wax in cotton and cotton fabrics for use in dry food packaging, FDA would reconsider the July 1982 proposal.

In the **Federal Register** of August 28, 1991 (56 FR 42668) (hereinafter referred to as the August 1991 notice of intent), FDA published a notice of intent to review all of the proposed rules that the agency had published in the **Federal Register** on or before December 31, 1985, but for which no final rule or notice of withdrawal had been published. The agency then tentatively concluded that 115 of these pre-1986 proposals should be withdrawn, including the proposed deletion of Japan wax from GRAS status, and invited comments on FDA's intent to withdraw these proposals. No comments were received concerning Japan wax.

After due consideration of all comments received in response to the August 1991 notice of intent, FDA announced in the **Federal Register** of December 30, 1991 (56 FR 67440), that it was withdrawing 89 proposed rules that were published in the **Federal Register** on or before December 31, 1985, and was deferring a decision on withdrawal of 26 proposed rules. The agency also announced that it had, on its own initiative, further reviewed its proposal to withdraw the proposed deletion from GRAS status of Japan wax, published in the July 1982 proposal, and had decided to defer the withdrawal of this proposal.

II. Safety

Since the publication of the Select Committee's report, FDA has found evidence that bears on the safe use of Japan wax in the treatment of cotton fabric used for dry food packaging. The agency has received and considered an acute oral toxicity study in which mice were given 15 grams per kilogram body weight doses of Japan wax for 5 days (Ref. 7). No mortality was observed and no adverse effects were noted in this study. The agency has also conducted a review of the scientific literature since the 1975 final report of the Select Committee and has found no information that would cause any safety concerns about this use of Japan wax.

After obtaining the acute oral toxicity study, FDA reexamined the documents in its possession and other evidence supporting the history of common use of Japan wax in cotton fabrics used in dry food packaging. The agency found letters from a textile manufacturer and from the National Cotton Council of America in a food additive extension file (FAX 393), identifying Japan wax as one of the substances being used in the sizing of cloth used for food bags prior to 1958 (Refs. 1 and 2). FAX files contain the administrative record of industry requests for continued use of food ingredients, pending FDA's publication of regulations as required by the 1958 Food Additives Amendment to the act. The requests were made in the period immediately following the passage of the Food Additives Amendment.

As provided for under § 170.30(b) (21 CFR 170.30(b)), FDA has tentatively determined that the history of safe use of Japan wax since before 1958 provides an adequate basis upon which to affirm that the use of Japan wax in cotton and cotton fabrics used in dry food packaging is GRAS. The GRAS status of this use is corroborated by the acute study and by the in vitro mutagenic evaluation. Therefore, in accordance with the provisions of §§ 170.30 and 170.35 (21 CFR 170.35), the agency is proposing to affirm that Japan wax is GRAS for use as a constituent of cotton and cotton fabrics used in dry food packaging, on the basis of its common use in food prior to 1958, corroborated by further evidence of its safety obtained since the Select Committee's evaluation.

III. Economic Impact

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the proposed rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because the proposed rule would not prohibit any current activity, the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

IV. Environmental Impact

FDA has determined under 21 CFR 25.24(b)(7) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Prior Sanctions

The agency is unaware of any prior sanction for the use of this ingredient in foods under conditions different from those identified in this document. Any person who intends to assert or rely on such a sanction shall submit proof of its existence in response to this proposal. The action proposed above will constitute a determination that excluded uses would result in adulteration of the food in violation of section 402 of the act (21 U.S.C. 342), and the failure of any person to come forward with proof of such an applicable prior sanction in response to this proposal constitutes a waiver of their right to assert or rely on it later. Should any person submit proof of the existence of a prior sanction, the agency hereby proposes to recognize such use by issuing an appropriate final rule under part 181 (21 CFR part 181) or affirming it as GRAS under part 184 or 186 (21 CFR part 184 or 186), as appropriate.

VI. Comments

Interested persons may, on or before August 15, 1995, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

VII. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Letter to the Commissioner, FDA, from National Cotton Council of America, with attached Sheet V, (3 pp.), January 25, 1960.
2. Letter to John Howard, National Cotton Council of America, from Paul Seydel, Seydel-Woolley & Co., with attached list, March 25, 1960.
3. Sayre, J. E. and C. J. Marsel, CW Report "The $100 Million Market for Waxes," *Chemical Week*, p. 47, September 27, 1952.
4. Warth, A. H., "Japan wax," *The Chemistry and Technology of Waxes*, 2d ed., Reinhold Publishing Corp., pp. 270–274, 1956.
5. "Evaluation of the Health Aspects of Japan Wax as a Substance Migrating to Food From Cotton and Cotton Fabrics Used in Dry Food Packaging," Life Sciences Research Office, Federation of American Societies for Experimental Biology, 1975.
6. Litton Bionetics, Inc., LBI Project No. 2468, Mutagenic Evaluation of Compound, FDA 73–50, MX8001–39–6, Japan Wax, December 24, 1975.
7. Leberco Laboratories, Assay No. 22753, Unpublished Acute Oral Toxicity Test of Japan Wax in Charles River CF–1 Mice, March 8, 1982.

List of Subjects

21 CFR part 182

Food ingredients, Food packaging, Spices and flavorings.

21 CFR part 186

Food ingredients, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, the proposed rule that published in the **Federal Register** of July 9, 1982 (47 FR 29965) is withdrawn; and it is proposed that 21 CFR parts 182 and 186 be amended to read as follows:

PART 182—SUBSTANCES GENERALLY RECOGNIZED AS SAFE

1. The authority citation for 21 CFR part 182 continues to read as follows:

Authority: Secs. 201, 402, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 371).

§ 182.70 [Amended]

2. Section 182.70 *Substances migrating from cotton and cotton fabrics used in dry food packaging* is amended by removing the entry for "Japan wax."

PART 186—INDIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

3. The authority citation for 21 CFR part 186 continues to read as follows:

Authority: Secs. 201, 402, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 371).

4. New § 186.1555 is added to subpart B to read as follows:

§ 186.1555 Japan wax.

(a) Japan wax (CAS Reg. No. 8001–39–6), also known as Japan tallow or sumac wax, is a pale yellow vegetable tallow, containing glycerides of the C_{19}–C_{23} dibasic acids and a high content of tripalmitin. It is prepared from the mesocarp by hot pressing of immature fruits of the oriental sumac, *Rhus succedanea* (Japan, Taiwan, and Indo-China), *R. vernicifera* (Japan), and *R. trichocarpa* (China, Indo-China, India, and Japan). Japan wax is soluble in hot alcohol, benzene, and naphtha, and insoluble in water and in cold alcohol.

(b) In accordance with paragraph (b)(1) of this section, the ingredient is used as an indirect human food ingredient with no limitation other than current good manufacturing practice. The affirmation of this ingredient as generally recognized as safe (GRAS) as an indirect human food ingredient is based on the following current good manufacturing practice conditions of use:

(1) The ingredient is used as a constituent of cotton and cotton fabrics used for dry food packaging.

(2) The ingredient is used at levels not to exceed current good manufacturing practice.

(c) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

Dated: May 16, 1995.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 95–13293 Filed 5–31–95; 8:45 am]

BILLING CODE 4160–01–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MN–28–1–6163; FRL–5213–7]

Approval and Promulgation of Implementation Plans; Minnesota Carbon Monoxide Contingency Measure

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: The USEPA is proposing to approve the carbon monoxide (CO) contingency measure as a revision to the Minnesota State Implementation Plan (SIP) in the Twin-Cities area. This area is designated moderate nonattainment for CO. It includes the Twin Cities of Minneapolis-Saint Paul and the following counties which comprise the CO control area: Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey, Scott, Washington, and Wright. The USEPA action is based upon a request that was submitted by the State to satisfy the requirement of section 172(c)(9) of the Clean Air Act as amended in 1990 (CAAA). This section of the CAAA requires States with areas designated moderate or above CO or ozone nonattainment to submit contingency measures by November 15, 1993. These measures must take effect, without further action by the State or the USEPA, if an area fails to make reasonable further progress or to attain by the attainment date. The State submittal meets this requirement, of no further action to implement, because the State legislation that authorizes this measure requires the use of oxygenated gasoline on a year-round basis beginning October 31, 1995, in areas classified as CO control areas. In the State's plan no trigger event is required. Ethanol is expected to be the primary oxygenate in this area and will in large part be used to meet the year-round oxygenate requirement. Thus, in addition to the benefits from the reduction of CO emissions through the use of oxygenated gasoline, the expected use of ethanol in implementing this contingency measure is consistent with the longstanding Federal policy of using renewable fuels for a positive energy impact and the reduction of emissions of greenhouse gases.

DATES: Comments on this SIP revision and on the proposed USEPA rulemaking action must be received by July 3, 1995, to be considered in the development of the USEPA's final rulemaking action.

ADDRESSES: Written comments should be addressed to: William L. MacDowell, Chief, Regulation Development Section, Air Enforcement Branch (AE–17J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the revision request and USEPA's analysis are available for public inspection during normal business hours at the following addresses: United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard (AE–17J), Chicago, Illinois 60604; and Office of Air and Radiation (OAR), Docket and Information Center (Air Docket (6102) Room M1500, United States Environmental Protection

Agency, 401 M Street SW. Washington, D.C., 20460.

FOR FURTHER INFORMATION CONTACT: John Paskevicz, Air Enforcement Branch, Regulation Development Section (AE–17J), United States Environmental Protection, Region 5, Chicago, Illinois 60604, (312) 886–6084.

SUPPLEMENTARY INFORMATION:

I. Statutory Requirements and Guidance

For moderate CO nonattainment areas with design values of 12.7 parts per million (ppm) or less, section 172(c)(9) of the CAAA requires States to submit SIP revisions containing contingency measures, which are due by November 15, 1993, under section 172(b) of the CAAA. These provisions require contingency measures to take effect automatically, without further rulemaking action by the State or the Administrator, in the event the area fails to attain the national standard by the applicable attainment date. Certain actions, such as notification of the affected community, resource allocation, etc., would probably be needed before a measure could be implemented effectively. States must show that their contingency measures can be implemented with minimal further action on their part and with no additional rulemaking actions. The USEPA believes that, to be beneficial, contingency measures must be implemented within twelve months following a finding of failure to attain the CO national ambient air quality standard. States must show that their contingency measures can be implemented with minimal further action on their part and with no additional rulemaking actions.[1]

The Twin-Cities CO nonattainment area is a moderate area with a design value of 11.4 ppm for CO. Thus, under section 172(c)(9), Minnesota is required to submit a SIP revision containing contingency measures satisfying the above criteria. In this action, USEPA proposes to approve the State's submission as satisfying the CAAA requirements.

II. Summary of State Submittal and Analysis

Description of the Submittal

On November 12, 1993, the Commissioner of the Minnesota Pollution Control Agency submitted elements of a contingency measure SIP revision for the moderate CO nonattainment area in the Twin-Cities area of the State. This area includes the following counties which comprise the CO control area: Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey, Scott, Washington, and Wright.[2] The contingency measure expands the current four month wintertime oxygenated gasoline program to a year-round oxygenated gasoline program. On January 25, 1994, the USEPA issued a completeness letter noting the submittal was complete except for two items of information: the results of the public hearing process; and a report of the results of a study concerning the year-round use of ethanol as the oxygenate and its effect on summertime ozone concentrations. The USEPA received the results of the public hearing process in a letter from the Commissioner of the MPCA on January 26, 1994, which demonstrated that the State had carried out the public process. The State also submitted on that date a report prepared by an environmental contractor regarding the year-round use of ethanol in the State.[3]

The USEPA believes the State's year-round oxygenated gasoline requirement complies with the criteria for contingency measures. The program will be implemented in the event the area fails to reach attainment by 1996 because the program will go into effect on October 31, 1995. Also, all provisions of the program were adopted and enforceable prior to submittal to the USEPA on November 15, 1993. This contingency measure will produce emissions reductions during the portion of the year that the current wintertime oxygenated fuels program does not address. While there has not been a violation of the CO air quality standard since 1991, a significant number of exceedances contributing to a violation of the health standard between 1987 and 1991 were registered outside of the current four month program period. The current oxygenated gasoline program appears to be effectively reducing emissions of CO during the period of the year it is in effect. Therefore, USEPA believes the CO emissions reductions achieved by the expansion of the program throughout the rest of the year would be an important contribution to attaining the standard, in the event that the area fails to attain by the deadline. Thus, USEPA believes that it is appropriate to approve the revision.

An issue has been raised whether section 110(l) of the CAAA would prevent USEPA from approving the revision because of the potential that the year round oxygenate requirement would adversely affect summertime ozone levels. Section 110(l) bars the Administrator from approving a plan revision if the revision would interfere with any applicable requirement concerning attainment of a standard and reasonable further progress, or any other applicable requirement of the CAAA. The concern arises here because it is expected that ethanol, the primary oxygenate used in the blending program, will increase the emission of volatile organic compounds, which are ozone precursors, from the gasoline-ethanol blend.

Ethanol comprises over 65 percent of the market share for oxygenates in the Twin-Cities area. Splash blending of ethanol in gasoline increases the evaporative emissions of hydrocarbons, and section 211(h)(4) of the CAAA allows a one pound per square inch (psi) waiver of the vapor pressure limit on gasoline for ethanol blends. Increased evaporative hydrocarbon emissions could produce higher summertime ambient ozone concentrations in the area, potentially exceeding the National Ambient Air Quality Standard for ozone.

The USEPA requested that the State submit the report on year-round use of the ethanol blended gasoline in order to evaluate this potential problem.

While the Twin-Cities area is in attainment for ozone, it is difficult to accurately predict the effect that an increase in RVP resulting from increased summertime ethanol use will have on ambient ozone concentrations. The lower exhaust VOC and CO emissions resulting from the use of ethanol are believed to have some effect moderating the impact of increases in evaporative emissions of ethanol blends. Also, an increase is limited to the effects of a one psi increase in the vapor pressure limit for gasoline. In this case it is believed the use of ethanol year-round will have a positive impact on summertime ambient concentrations of carbon monoxide.[3] The State does not believe the year-round program will adversely affect ambient ozone concentrations. The State has indicated it will continue to evaluate the material available on the issue, especially the comments made by the USEPA regarding the consultant's report.[4] While USEPA questions some of the conclusions in the report by the environmental consultant on this issue, it believes the potential for reduced carbon monoxide exceedances during the summer months and the positive energy benefits of the use of renewable fuels outweigh the uncertain potential for increased ozone concentrations. At this time, USEPA does not have enough information to indicate a likely increase in ozone sufficient to move the area into nonattainment for ozone, which would be a basis for disapproval.

The remainder of the State's submittal is similar in content to the original document submitted for the oxygenated gasoline program dated November 9, 1992, which USEPA approved on October 4, 1994 (59 FR 50493). The major difference is that this contingency measure is a year-round oxygenated gasoline program as opposed to the four month wintertime only program. The State's procedures document details the manner in which the program must be carried out. The USEPA is also concerned about the extent and vigor of the enforcement program to ensure oxygen content. The USEPA believes that if tax supports for the use of renewable fuels are reduced, resources for enforcement will become critical to the effectiveness of the program. Without tax credits or other forms of price support, the cost of using ethanol will increase and retailers and/or blenders will have an incentive to reduce their costs by not blending. The State and interested parties are requested to respond to this concern.

The wintertime oxygenated gasoline program submitted in November 1992, was made final on October 4, 1994, (59 FR 50493). The program requires that gasoline sold in the CO control area contain a minimum of 2.0 weight percent oxygen and must average 2.7 weight percent oxygen during the control period. The program does not include oxygen credit trading. Under the revised program, these provisions and all other aspects of the oxygenated gasoline program will apply year-round. Persons interested in more details on the year-round program are invited to review the State's wintertime oxygenated gasoline program and the USEPA analysis of it published on January 20, 1994, (59 FR 3047), or contact the Minnesota Pollution Control Agency, which is responsible for the SIP revision.

The oxygenated gasoline program requires reports to be submitted by registered blenders at the end of the control period. For the year-round program the end of the control period for reporting purposes has not been defined in the State's legislation. The USEPA believes this minor deficiency can be overcome through an administrative order.

III. Summary

The USEPA believes the State's contingency measure CO SIP meets the requirements of section 172(c)(9) of the Act, was submitted promptly, and contains all of the required elements to reduce the emissions of CO. Because State legislation requires a year-round oxygenated gasoline program to be in operation beginning in October 1995, it does not require a triggering event for startup, and the USEPA believes there are no other regulatory provisions needed to fully implement the program. The State already has a seasonal oxygenated gasoline program in place. This will simply be expanded to a year-round program, which has been developed and will be implemented and enforced by the same State administrative agencies.

The USEPA believes this plan meets the requirements for approval as a contingency measure for the control of CO emissions and proposes to approve the State plan. However, as noted above, there are a number of items the USEPA believes should be addressed. Interested parties are invited to comment on the following issues: potential for increases in ozone concentrations during the summertime resulting from the use of renewable oxygenates, the impact on the potential for cheating in the event tax supports for the use of ethanol are no longer available, and the need to define an end point for reporting purposes in the annual program.

IV. Rulemaking Action

The USEPA is proposing to approve the State of Minnesota contingency plan to control the emissions of carbon monoxide in the nonattainment area of the Twin Cities area. The USEPA will take final action on this notice following analysis of public comments on this proposal.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. USEPA shall consider each request for revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Executive Order 12866

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The Office of Management and Budget exempted this regulatory action from Executive Order 12866 review.

Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, Part D of the CAAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAAA forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *USEPA*, 427 US 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

Under sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, USEPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of the state implementation plan or plan revisions approved in this action, the State has elected to adopt the program provided for under section 110 of the Clean Air Act. The rules and commitments being approved in this action may bind State, local and tribal governments to perform

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[1] See Contingency measure guideline document "Technical Support Document to Aid States With the Development of Carbon Monoxide SIPs, EPA–452/R–92–003, dated July 1992.

[2] St. Louis County (in the Duluth-Superior, Wisconsin MSA) was redesignated to attainment for carbon monoxide on April 14, 1994. The maintenance plan contains a 'park and ride' measure to reduce vehicle miles traveled in the event maintenance cannot be assured. If the first choice measure (park and ride) does not succeed in reducing the CO concentrations, the State will consider the implementation of an oxygenated gasoline program.

[3] Internal staff communication concerning past summertime exceedances of the carbon monoxide standard in Minnesota.

[4] Note dated July 20, 1994, from Paul Machiele, USEPA, Ann Arbor commenting on the report entitled "Ozone Impact of Year-Round Oxy-Fuel Program in Minnesota", G. Whitten, B. Austin, K. O'Conner, Systems Application International, sysapp94–93/246rl, January 10, 1994.

certain actions and also may ultimately lead to the private sector being required to perform certain duties. To the extent that the rules and commitments being approved by this action will impose or lead to the imposition of any mandate upon the State, local or tribal governments either as the owner or operator of a source or as a regulator, or would impose or lead to the imposition of any mandate upon the private sector, EPA's action will impose no new requirements; such sources are already subject to these requirements under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. The USEPA has also determined that this action does not include a mandate that may result in estimated costs or $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

Under Section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 31, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671(q).

Dated: May 17, 1995.

Michelle Jordan,

Acting Regional Administrator.

[FR Doc. 95–13430 Filed 5–31–95; 8:45 am]

BILLING CODE: 8560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 201–9

RIN 3090–AF72

Amendment To Revise FIRMR Provisions Regarding the Standard and Optional Forms Management Program

AGENCY: Information Technology Service, GSA.

ACTION: Notice of proposed rulemaking.

SUMMARY: GSA proposes to amend the Federal Information Resources Management Regulation (FIRMR) to simplify and clarify procedures related to the Standard and Optional Forms Management Program. Current procedures for this Program result in delays in the processing of forms requests, especially requests for exceptions to the use of Standard forms. This rule will streamline these processes and allow agencies to deal directly with the responsible parties regarding the issuance and printing of these forms. The specific changes in this rule include allowing agencies to obtain approval for an exception to the use of Standard forms directly from the promulgating agencies; and giving the promulgating agencies full responsibility for: certifying their proposed forms comply with applicable laws and regulations, announcing the availability of new or revised Standard forms and providing GSA with an accurate camera ready copy of the forms.

DATES: Comments must be received by July 31, 1995.

ADDRESSES: Comments may be mailed to GSA/KAR, 18th and F Streets, NW., Room 3224, Washington, DC 20405, Attn: R. Stewart Randall, or delivered to that address between 8:00 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: R. Stewart Randall, Jr., GSA, Office of Information Resources Management Policy, Regulations Analysis Division (KAR), 18th and F Streets, NW., Room 3224, Washington, DC 20405, telephone FTS/Commercial (202) 501–4469 (v) or (202) 501–4469 (tdd).

SUPPLEMENTARY INFORMATION: (1) Part 201–9.202 is being amended to delegated additional authority and responsibility to agencies regarding the granting of exceptions to Standard Forms. Currently, the FIRMR requires Federal agencies to submit a request for an exception to a Standard Form directly to GSA. GSA then reviews the exception request for conformance to good forms management practices. However, GSA also forwards the exception request directly to the promulgating agency for the agency's recommendation for approval or disapproval of the exception request. Since GSA and the promulgating agency typically agree on the disposition of an exception request, GSA believes it would be more efficient to give promulgating agencies full authority for the exception request process. Accordingly, the requirement in section 201–9.202–1 paragraph (b)(2) for Federal agencies to obtain approval from GSA for exceptions to Standard forms will be removed from the FIRMR. Instead, agencies will send their exception requests directly to the agency promulgating the Standard Form.

(2) Agencies typically request to establish standard forms because of a statutory or programmatic requirement. In the past, GSA conducted research to verify a requested form was consistent with the agency's authority and would meet the agency's requirements. GSA now plans to accept agencies' certification that their new or revised forms requirements are legally required and technically adequate. This change will eliminate GSA duplicating work already performed by the agency. Agencies will also be required to announce the availability of their new revised forms in the **Federal Register** and provide GSA an accurate camera ready copy of the new revised form. GSA will no longer verify the accuracy of the camera ready copy. Agencies are being given full authority and responsibility to ensure the accuracy of their copies; just as they are with other aspects of establishing new or revised forms. These changes will be reflected in § 201–9.202–1 paragraphs (b)(4) and (b)(6). GSA will continue to publish a list of all Standard and Optional forms in its Inventory of Standard and Optional Forms and facsimiles of all forms in its Standard and Optional Forms Facsimile Handbook.

(3) Several format and editorial changes are also being made to § 201–9.202–1 to reflect the new operating environment of the forms program. FIRMR Bulletin B–3 is being revised to reflect the above changes.

(4) GSA has determined that this rule is not a significant rule for the purposes of Executive Order 12866 of September 30, 1993, because it is not likely to result in any of the impacts noted in Executive Order 12866, affect the rights of specified individuals, or raise issues arising from the policies of the Administration. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for and consequences of this rule; has determined that the potential benefits to society from this rule outweight the potential costs; has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 201–9

Archives and records, Computer technology, Telecommunications,

Government procurement, Property management, Records management, and Federal information processing resources activities.

For the reasons set forth in the preamble, GSA proposes to amend 41 CFR Part 201–9 as follows:

PART 201–9—CREATION, MAINTENANCE, AND USE OF RECORDS

1. The authority citation for Part 201–9 continues to read as follows:

Authority: 40 U.S.C. 486(c) and 751(f).

2. Section 201–9.202–1 is revised to read as follows:

§ 201–9.202–1 Standard and Optional Forms Management Program.

(a) *General.* (1) The Standard and Optional Forms Management Program was established to achieve Governmentwide economies and efficiencies through development, maintenance and use of common forms.

(2) FIRMR Bulletin B–3 contains additional guidance on the Standard and Optional Forms Management Program.

(b) *Procedures.* Each Federal agency shall—

(1) Designate an agency-level Standard and Optional Forms Liaison Representative and Alternate, and notify GSA in writing of such designees' names, titles, mailing addresses, and telephone numbers within 30 days of the designation or redesignation at the address in paragraph (b)(4) of this section;

(2) Promulgate Governmentwide Standard Forms pursuant to the agency's statutory or regulatory authority and issue in the Federal Register Governmentwide procedures on the mandatory use, revision, or cancellation of these forms;

(3) Sponsor Governmentwide Optional Forms when needed in two or more agencies and announce the Governmentwide availability, revision or cancellation of these forms;

(4) Obtain GSA approval for each new, revised or canceled Standard and Optional Form, 60 days prior to planned implementation, and certify that the forms comply with all applicable laws and regulations. Send approval requests to: General Services Administration, Regulations Analysis Division (KAR), Washington, DC 20405;

(5) Provide GSA with a camera ready copy of the Standard and Optional Forms the agency promulgates or sponsors prior to implementation, at the address shown in paragraph (b)(4) of this section;

(6) Obtain promulgator's or sponsor's approval for all exceptions to Standard and Optional Forms prior to implementation;

(7) Annually review all Standard and Optional Forms which the agency promulgates or sponsors, including exceptions, for improvement, consolidation, or cancellation;

(8) When requested by GSA and OMB, submit a summary of the Standard and Optional Forms used for collection of information covered by 5 CFR part 1320;

(9) Request approval to overprint Standard and Optional Forms by contacting: General Services Administration, Supply Management Division (3FNI–CO), 1941 Jefferson Davis Highway, Crystal Mall Building 4, Washington, DC 20406 (See 41 CFR 101–26.302); and

(10) Coordinate all matters concerning health care related Standard Forms through the Interagency Committee on Medical Records (ICMR). For additional information on the ICMR contact: General Services Administration, Forms Management Branch (CARM), 18th and F Streets, NW., Washington, DC 20405.

Dated: May 17, 1995.

Fred L. Sims,

Assistant Commissioner for Information Technology Policy and Leadership.

[FR Doc. 95–12859 Filed 5–31–95; 8:45 am]

BILLING CODE 6820–25–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 95–43, Notice 01]

RIN No. 2127–AF05

Federal Motor Vehicle Safety Standards; Tire Selection and Rims for Motor Vehicles Other Than Passenger Cars

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Request for comments.

SUMMARY: This notice solicits comments to assist NHTSA in determining whether to propose certain amendments to Federal Motor Vehicle Safety Standard (Standard) No. 120, Tire selection and rims for motor vehicles other than passenger cars.

This rulemaking action implements NHTSA's granting of a petition for rulemaking submitted by the Tire Retreading Institute (TRI). The petition suggested that paragraph S5.1.3 of Standard No. 120 be amended to permit the installation of manufacturer-supplied retreaded tires on new trailers. As currently provided, used or retreaded tires may be installed on new trucks, buses, and trailers only if owned and provided by the vehicle purchaser. This notice solicits comments on that suggestion and, in addition, solicits comments on whether the standard should be further amended to permit manufacturers and/or distributors and dealers, in addition to the vehicle purchasers, to install used as well as retreaded tires on new trucks and buses as well as trailers.

DATES: Comment closing date: Comments on this notice must be received on or before September 29, 1995.

ADDRESSES: Comments should refer to the docket and notice numbers above and be submitted to: Docket Section, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Room 5109, Washington, DC 20590. Docket Room hours are from 9:30 a.m. to 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Ms. Terri Droneburg, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street SW., Room 5307, Washington, DC 20590. Telephone (202) 366–6617.

SUPPLEMENTARY INFORMATION:

I. Background

Standard No. 120 requires that vehicles equipped with pneumatic tires for highway service be equipped with new tires that meet the requirements of either Standard No. 109, New pneumatic tires (49 CFR 571.109) or Standard 119, New pneumatic tires for vehicles other than passenger cars (49 CFR 571.119).[1] Paragraph S5.1.3 of Standard No. 120, however, provides that in place of tires that meet Standard No. 119, a truck, bus, or trailer may, at the request of the vehicle purchaser, be equipped at the place of manufacture of the vehicle with used or retreaded tires owned or leased by the vehicle purchaser. The sum of the maximum load ratings of the tires must meet the requirements of paragraph S5.1.2 of the standard, which requires that the sum of the maximum load ratings of the tires fitted to an axle be not less than the gross axle weight rating of the axle system. Also, only used tires originally

[1] Standard No. 120 also requires vehicles to be equipped with rims that are listed by tire manufacturers as suitable for use with their tires in accordance with Standard Nos. 109 and 119.

manufactured to comply with Standard No. 119, as evidenced by a DOT symbol marked on the sidewall of the tire, can qualify for the S5.1.3 exception.

Standard No. 120 was promulgated by **Federal Register** notice dated January 23, 1976 (41 FR 3467), and became effective in phases between September 1, 1976 and September 1, 1979. Initially, the S5.1.3 exception applied only to used tires owned or leased by the vehicle purchaser, if the maximum load ratings were sufficient to carry the loads of the axles on which they were installed. This was intended to accommodate "mileage contract" purchasers, a common practice in the commercial truck, bus and trailer industry in which the purchaser's vehicles are equipped with tires purchased or leased from a supplier on a cost-per-mile basis.

In reviewing the standard after its issuance, NHTSA noted some minor errors and some portions of the standard that required clarification. The agency published a Notice of Proposed Rulemaking (NPRM) on October 30, 1980 (45 FR 71834) proposing to amend S5.1.3 to permit the installation of retreaded as well as used tires, but limiting that exception to mileage contract purchasers only. The agency reasoned that suppliers that provided tires on a mileage contract basis had a contractual obligation to ensure that the tires were serviceable and safe for use on the vehicles for which they were intended. The agency further believed that this safeguard would not exist in the case of any other purchaser who was merely trying to save the cost of purchasing new tires, since a purchaser could send the vehicle manufacturer palpably unsafe tires for mounting on a new vehicle.

Thirteen comments to the NPRM were received, 12 of which opposed the provision limiting the exception to mileage contract purchasers. The commenters stated that it is common practice for all vehicle fleets, not just mileage contract purchasers, to send tires from their tire banks to vehicle manufacturers for mounting on the new vehicles they order. Tire banks are composed of serviceable tires that have been removed from vehicles that are no longer in service. The commenters argued that the proposal in the NPRM to limit the used/retreaded tire exception to mileage contract purchasers would effectively eliminate the practice of maintaining tire banks, thereby increasing costs for the vehicle fleets affected with no safety justification for doing so. Some commenters also argued that it made no sense for a purchaser to spend $65,000 to $75,000 for a new vehicle, then install unsafe tires on it. Finally, one commenter correctly pointed out that Standard No. 120 did not require that new vehicles be equipped with tires. Therefore, a purchaser could, if it chose to do so, order a new vehicle for delivery without tires, then install unsafe tires on it after delivery.

NHTSA was persuaded by those comments and decided not to limit the use of used and retreaded tires only to mileage contract purchasers, but to widen the exception to permit all purchasers to provide their own tires. In addition, since all commenters who addressed the retread tire proposal supported it, NHTSA adopted that provision for inclusion in S5.1.3. NHTSA then published the final rule promulgating the current provisions of Standard No. 120 on May 17, 1984 (49 FR 20822).

II. Petition for Rulemaking

The Tire Retreading Institute (TRI), a division of the National Tire Dealers and Retreaders Association, suggested in a petition for rulemaking that the used/retreaded tire exception of S5.1.3 be amended to permit the installation of manufacturer-supplied retreaded tires on new trailers. TRI argued that retreaded tires from any source should be permitted as long as they meet appropriate quality standards and as long as the vehicle purchaser is informed that the vehicle has retreaded tires. TRI believed that permitting the installation of manufacturer-supplied retreaded tires would give the purchaser greater flexibility in the choice of tires for the new vehicle.

TRI asserted that the current restriction on the source of retreaded tires is not supported by safety considerations. TRI suggested that by permitting the use of purchaser-supplied retreaded tires on new trailers, NHTSA acknowledged that retreaded tires can safely be used on those vehicles. TRI believed that NHTSA decided to permit installation of only purchaser-supplied used or retreaded tires and not manufacturer-supplied used or retreaded tires because the agency believed purchasers have an interest, perhaps not shared by manufacturers, in ensuring that higher quality tires are placed on their own vehicles. TRI argued that, to the contrary, the vehicle manufacturer would be more knowledgeable than the purchaser of the safety characteristics of the vehicle and its tires and, because of vehicle warranty and liability considerations, would select retreaded tires with the same quality considerations as in selecting such vehicle components as axles, bearings, or new tires. Since the retreaded tires would be installed at the manufacturer's initiative, TRI considered it essential that the purchaser be advised in writing that the new vehicle was equipped with retreaded tires, giving the purchaser the opportunity to make further inquiries or impose additional requirements, while still enjoying the cost advantage of retreaded tires.

TRI also argued that the current exclusion of manufacturer-supplied retreaded tires is unfair to small purchasers of trailers. TRI said that currently, only large fleet owners with tire banks can take advantage of the cost savings of retreaded tires, while small businesses with only a few vehicles and no available supply of tire casings cannot. TRI argued that the current regulation discriminates against small purchasers because these businesses must acquire retreaded tires from another source and ship them to the manufacturer for installation. TRI considered this an unnecessary, burdensome practice.

TRI also asserted that in the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901 *et seq.*, Congress mandated the use of recycled products to the maximum extent practicable, including the use of retreaded tires. TRI further referred to an Environmental Protection Agency (EPA) regulation that, in implementing the RCRA, requires federal agencies to procure retreaded tires "to the maximum extent possible" (40 CFR 253.10). Accordingly, the petitioner believed that the current restriction on manufacturer-supplied retreaded tires contravenes these governmental policies of promoting the maximum use of retreaded tires.

III. Agency Analysis of Petition

As discussed above, paragraph S5.1.3 of Standard No. 120 permits manufacturers of new trucks, buses, and trailers to install used or retreaded tires on those new vehicles only if such tires are supplied by the vehicle purchaser. Apart from that narrow exception, paragraph S5.1.1 of the standard requires the installation of new tires that meet the requirements of Standard Nos. 109 or 119.

While there is a Federal motor vehicle safety standard, Standard No. 117, *Retreaded pneumatic tires*, for retreaded tires on passenger cars, there is no similar standard for retreaded tires for vehicles other than passenger cars. Further, there are no performance standards applicable to used tires since this agency does not have authority to regulate used vehicles or equipment. As noted above, in issuing the S5.1.3 exception NHTSA reasoned that motor vehicle purchasers would be likely to provide safe, serviceable tires for installation on their new vehicles. NHTSA believes that reasoning has been vindicated in that the agency has received no reports of any safety problems associated with the use of purchaser-provided used or retreaded tires. The agency still believes, however, that such reasoning would not extend to manufacturer-supplied used or retreaded tires and that, warranty and liability considerations notwithstanding, manufacturers, distributors and dealers would not have as great an interest as vehicle purchasers in providing safe, serviceable used or retreaded tires on their new vehicles. Further, manufacturers would not know the history of the used or retreaded tire casings as well as the vehicle purchaser would be expected to know.

Nevertheless, although NHTSA disagrees with some of the petitioner's arguments, the agency granted TRI's petition on August 12, 1993, in the belief that the petitioner raised some issues that merit further consideration. For example, the petitioner argues that installation of retreaded tires should be permitted, regardless of their source. Although this agency has received mixed reviews regarding the performance of retreaded tires, the petitioner correctly pointed out the policy of the Federal government in utilizing recycled products, including retreaded tires, to the extent practicable (see the Resource Conservation and Recovery Act, 42 U.S.C. 6901, *et seq.*, and implementing regulations at 40 CFR part 253). The petitioner also correctly asserted that manufacturer-installed retreaded tires would provide purchasers greater flexibility in the choice of tires for their vehicles, as long as the purchaser was notified in writing that the vehicle was equipped with retreaded tires.

On the other hand, the agency does not agree with the petitioner's assertion that the current limited exception in S5.1.3 is not supported by safety considerations. The agency believes that permitting vehicle purchasers to supply their own tires for their new vehicles is consistent with motor vehicle safety. Given the interest of vehicle purchasers in their personal safety and their economic interest in protecting their investment in their vehicles, vehicle purchasers have a strong motivation to install safe tires on their new vehicles. Further, although the agency is confident that most vehicle manufacturers are reliable and reputable and would select safe and serviceable tires for the vehicles they produce, it cannot be assumed that all manufacturers would be consistently reliable or conscientious in their selection of used and/or retreaded tires.

Finally, NHTSA does not agree with the petitioner that the current exclusion of manufacturer-supplied used or retreaded tires discriminates against small businesses. Large businesses generally are in a better position than small businesses to take advantage of cost savings by large quantity transactions in return for discount prices. In this case, the standard gives both large and small businesses the advantage of utilizing tires already on hand on their new vehicles, thus saving the unnecessary costs of purchasing unneeded new tires.

Although the petition suggested relaxing the limitation on the current S5.1.3 exception only to the extent of allowing installation of manufacturer-supplied retreaded tires on new trailers, NHTSA believes that it is appropriate to consider permitting the installation of manufacturer, distributor, and dealer-supplied used tires as well as retreaded tires on trucks and buses as well as trailers. This agency is committed to the use of recycled products to the extent practicable within the constraints of motor vehicle safety. Accordingly, if the use of used and retreaded tires, whether supplied by the purchaser, manufacturer, or distributor/dealer, is not inimical to motor vehicle safety, then NHTSA is receptive to considering further relaxation of the exception.

IV. Issues for NHTSA Consideration

As pointed out above, NHTSA has no data on any correlation between motor vehicle safety and the use of used and retreaded tires on new trucks, buses, and trailers. The agency is hopeful, therefore, that this notice will elicit meaningful comments and suggestions on which to base a decision on whether or not to amend the exception in Standard No. 120 and, if so, to what extent. Accordingly, NHTSA requests comments on the following specific issues:

1. How many or what percentage of new trucks, buses, and trailers are sold per year with purchaser-supplied used or retreaded tires installed?

2. Who are the heaviest users of the S5.1.3 exception, mileage contract/tire bank purchasers or private citizens?

3. Should any amendment to Standard No. 120 be limited to permitting the installation of only manufacturer-supplied retreaded tires only on new trailers? Should distributor/dealer-supplied retreaded tires also be permitted to be installed on new trailers?

4. Should Standard No. 120 be amended to permit the installation of manufacturer-supplied retreaded tires on new trucks and buses as well as trailers? Should installation of distributor/dealer-supplied retreaded tires be permitted on new trucks and buses as well as trailers?

5. Should Standard No. 120 be amended to permit the installation of manufacturer-supplied used tires on new trailers only? Should distributor/dealer-supplied used tires also be permitted on new trailers?

6. Should Standard No. 120 be amended to permit the installation of manufacturer-supplied used tires on new trucks and buses as well as new trailers? Should distributor/dealer-supplied used tires also be permitted on new trucks and buses?

7. Should used and/or retreaded tires be permitted on new school buses? On steering and/or drive axles of other new vehicles?

Note: 49 CFR 393.75(d) prohibits the use of retreaded tires on the steering axles of buses operated in interstate commerce.

8. Should NHTSA propose a Federal motor vehicle safety standard applicable to retreaded tires for motor vehicles other than passenger cars? If so, should it parallel Standard No. 117? Standard No. 119?

9. What requirements or criteria should be established for the installation of manufacturer or distributor/dealer-supplied used and/or retreaded tires on new motor vehicles other than passenger cars?

10. Should new vehicle purchasers, if not supplying or requesting the tires, be notified of the installation of used or retreaded tires? In writing? Orally?

11. What would be the economic impact of permitting the installation of manufacturer or distributor/dealer-supplied retreaded tires on new trailers? On new trucks and buses as well as trailers?

12. What would be the economic impact of permitting the installation of manufacturer or distributor/dealer-supplied used tires on new trailers? On new trucks and buses as well as trailers?

13. What would be the environmental impact of permitting the installation of manufacturer or distributor/dealer-supplied retreaded tires on new trailers? On new trucks and buses as well as trailers?

14. What would be the environmental impact of permitting the installation of manufacturer or distributor/dealer-supplied used as well as retreaded tires on new trailers? On new trucks and buses as well as trailers?

V. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This notice was not reviewed under Executive Order 12866. NHTSA has considered the impacts associated with this request for comments and has concluded that it is not significant under DOT's Regulatory Policies and Procedures. As explained above, this document requests comments to aid the agency in determining whether to propose amending Standard No. 120 and if so, the extent of such amendment.

B. Executive Order 12612 (Federalism)

NHTSA has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

VI. Comments

Interested persons are invited to submit comments on this proposal. It is requested but not required that any comments be submitted in 10 copies each.

Comments must not exceed 15 pages in length (49 CFR 553.21). This limitation is intended to encourage commenters to detail their primary arguments in concise fashion. Necessary attachments may be appended to these submissions without regard to the 15-page limit.

If a commenter wishes to submit certain information under a claim of confidentiality, 3 copies of the complete submission, including the purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address shown above, and 7 copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in 49 CFR part 512, the agency's confidential business information regulation.

All comments received on or before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available to the public for examination in the docket at the above address both before and after the closing date. To the extent possible, comments received after the closing date will be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for public inspection in the docket. NHTSA will continue to file relevant information in the docket after the closing date, and it is recommended that interested persons continue to monitor the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

Issued on May 23, 1995.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 95–13314 Filed 5–31–95; 8:45 am]

BILLING CODE 4910–59–P

Notices

Federal Register

Vol. 60, No. 105

Thursday, June 1, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 95–017N]

FLD Policy Memoranda; Semi-Annual Listing

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This document lists and makes available to the public memoranda which were issued by the Food Labeling Division (FLD), Regulatory Programs, Food Safety and Inspection Service (FSIS). These memoranda contain significant new applications or interpretations of the Federal Meat Inspection Act, the Poultry Products Inspection Act, the regulations promulgated thereunder, or departmental policy concerning labeling.

FOR FURTHER INFORMATION CONTACT: Cheryl Wade, Director, Food Labeling Division, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 254–2590.

SUPPLEMENTARY INFORMATION: Pursuant to section 7 of the Federal Meat Inspection Act (21 U.S.C. 607 *et seq.*) and section 8 of the Poultry Products Inspection Act (21 U.S.C. 457 *et seq.*), and the regulations promulgated thereunder (9 CFR 301.1 *et seq.* and 9 CFR 381.1 *et seq.*), meat and poultry products which do not bear approved labels or other labeling may not be distributed in commerce for use as human food. Accordingly, FSIS conducts a prior approval program for labels or other labeling (specified in 9 CFR 317.4, 317.5, 381.132 and 381.134) to be used on or in conjunction with federally inspected meat and poultry products.

FSIS's prior labeling approval program is conducted by labeling review experts within FLD. A variety of factors, such as continuing technological innovations in food processing and expanded public concern regarding the presence of various substances in foods, has generated a series of increasingly complex issues which FLD must resolve as part of the prior labeling approval process. In interpreting the Acts and regulations to resolve these issues, FLD may modify its policies on labeling or develop new ones.

Significant or novel interpretations or determinations made by FLD are issued as policy memoranda. This notice lists five FLD policy memoranda which were issued during the period of October 1, 1994, through April 1, 1995.

Persons interested in obtaining copies of the FLD policy memoranda or in being included on a list for automatic distribution of future FLD policy memoranda may write to: Printing and Distribution Section, Paperwork Management Branch, Administrative Services Division, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, or call (202) 720–4661; fax (202) 720–5400.

Memo No.	Title and date	Issue	Reference
066C	Uncooked Red Meat Products Containing Added Substances, November 30, 1994.	What are the policies for labeling uncooked (both cured and uncured) red meat products that weigh more than the weight of the fresh article?	(Supersedes Policy Memo 066B); 9 CFR 318.7(c)(4); Policy Memo 087A; 9 CFR 319.101 and 102; 9 CFR 319.104 and 105; FSIS Directive 7110.2 (Rev. 1); Policy Memo 084A; 9 CFR 317.2 (b); Policy Memo 081A.
084A	Cooked Red Meat Products Containing Added Substances, November 30, 1994.	What are the policies for labeling cooked corned (cured) beef products, and cooked cured pork products not addressed by the cured pork products regulation (9 CFR 319.104), and cooked uncured products that weigh more than the weight of the fresh uncured article?.	(Supersedes Policy Memo 084); 9 CFR 319.104(b); Policy Memo 087A and Policy Memo 109; Policy Memo 066C; 9 CFR 317.2(b).
121B	Labeling of Modified, Substitute Versions of Fresh (Species) Sausage, Hamburger, or Ground Beef Products With Added Ingredients Used to Replace Fat That Qualify for Use of Certain Nutrient Content Claims Associated With a Reduction in Fat Content, January 20, 1995.	How should modified, substitute versions of fresh (species) sausage (e.g., fresh pork sausage, fresh beef sausage) ground beef, or hamburger products containing added ingredients used to replace fat be identified, and what other requirements are necessary to obtain label approval and use of final labels?	(Supersedes Policy Memo 121A); 9 CFR 317.2(j)(1); 9 CFR 319.141, 319.142, and 319.15; 9 CFR 318.7(c)(4); 9 CFR 317.362; 21 CFR 130.10; Policy Memo 123 and 9 CFR 317.2(b).

Memo No.	Title and date	Issue	Reference
123	Modified Breakfast Sausage, Cooked Sausage, and Fermented Sausage Products Identified by a Nutrient Content Claim and a Standardized or Traditional Name, January 20, 1995.	How should modified, substitute versions of breakfast sausage, cooked sausages (e.g., frankfurters), and fermented sausages (e.g., pepperoni) that are defined by regulatory standards in 9 CFR Parts 319 and/or in the Standards and Labeling Policy Book be identified when containing added ingredients used to replace fat; and, what requirements must be met to obtain approval and use of final labels?	9 CFR 317; 9 CFR 381; 9 CFR 318.7(c)(4) and 381.147(f)(4); 21 CFR 130.10; Policy Memo 121B and Policy Memo 069.
124	Declaration of Net Quantity of Contents on Combination Packages Containing Liquid and Solid Products, January 17, 1995.	What are the Net Contents Labeling Requirements for Combination Packages Which Contain Both Liquid and Solid Products?	9 CFR 317.2(h) and 381.121; National Institute of Standards and Technology Handbook 130.

The FLD policies specified in these memoranda will be uniformly applied to all relevant labeling applications unless modified by future memoranda or more formal Agency actions. Applicants retain all rights of appeal regarding decisions based upon these memoranda.

Done at Washington, DC, on May 24, 1995.

Cheryl Wade,

Director, Food Labeling Division, Regulatory Programs Food Safety and Inspection Service.

[FR Doc. 95–13290 Filed 5–31–95; 8:45 am]

BILLING CODE 3410–DM–P

[Docket No. 95–027N]

National Advisory Committee on Microbiological Criteria for Foods; Subcommittee Meeting

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The National Advisory Committee on Microbiological Criteria for Foods' Subcommittee on Codex will be holding a meeting on Wednesday, June 14, 1995, from 12 p.m. to 5 p.m., and on Thursday, June 15, 1995, from 8:30 a.m. to 3 p.m. at the U.S. Department of Agriculture, Room 614, 300 12th Street, SW., 12th and C Street SW., Washington, DC 20250–3700.

FOR FURTHER INFORMATION CONTACT: Dr. Marvin A. Norcross, U.S. Coordinator for Codex Alimentarius, USDA, Food Safety and Inspection Service, Room 311, West End Court, Washington, DC 20250–3700, telephone (202) 254–2517; fax (202) 254–2530.

SUPPLEMENTARY INFORMATION: The Codex Alimentarius Food Standards Programme has asked the International Commission on Microbiological Specifications for Foods (ICMSF) to develop a document on general principles for the establishment and application of microbiological criteria for foods. The ICMSF has drafted a document titled "Principles for Establishment and Application of Microbiological Specifications for Foods." In April 1995, the U.S. Delegate to the Codex Committee on Food Hygiene asked the National Advisory Committee on Microbiological Criteria for Foods (NACMCF) to critique the ICMSF draft document.

The Subcommittee's work is under the auspices of the full Committee, which provides advice and recommendations to the Secretaries of Agriculture, and Health and Human Services concerning the development of microbiological criteria by which the safety and wholesomeness of food can be assessed, including criteria pertaining to microorganisms that indicate whether food has been processed using food manufacturing processes.

The Subcommittee meeting is open to the public on a space available basis. Interested persons may file comments prior to and following the meeting. Comments should be addressed to: Mr. Craig Fedchock, Advisory Committee Specialist, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 311, West End Court Building, Washington, DC 20250–3700. To receive copies of the background materials, including the ICMSF draft document, contact Mr. Fedchock on (202) 254–2517. Background materials may also be inspected in the Docket Clerk's Office, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 4352, South Agriculture Building, 14th Street & Independence Ave., SW., Washington DC 20250–3700.

Done at Washington, DC, on May 26, 1995.

Michael R. Taylor,

Administrator, Food Safety and Inspection Service.

[FR Doc. 95–13388 Filed 5–31–95; 8:45 am]

BILLING CODE 3410–DM–M

Forest Service

Newspapers To Be Used for Publication of Legal Notice of Appealable Decisions and Publication of Notice on Proposed Actions for Southern Region; Alabama, Kentucky, Georgia, Tennessee, Florida, Louisiana, Mississippi, Virginia, West Virginia, Arkansas, Oklahoma, North Carolina, South Carolina, Texas, Puerto Rico

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: Deciding Officers in the Southern Region will publish notice of decisions subject to administrative appeal under 36 CFR parts 215 and 217 in the legal notice section of the newspapers listed in the Supplementary Information section of this notice. As provided in 36 CFR 215.5(a) and 217.5(d), the public shall be advised, through **Federal Register** notice, of the principal newspaper to be utilized for publishing legal notices of decisions. Newspaper publication of notices of decisions is in addition to direct notice of decisions to those who have requested notice in writing and to those known to be interested in or affected by a specific decision.

In addition, Responsible Officials in the Southern Region will also publish notice of proposed actions under 36 CFR part 215 in the newspapers that are listed in the Supplementary Information section of this notice. As provided in 36 CFR 215.5(a), the public shall be advised, through **Federal Register** notice, of the principal newspapers to be utilized for publishing notices on proposed actions.

DATES: Use of these newspapers for purposes of publishing legal notices of decisions subject to appeal under 36 CFR parts 215 and 217, and notices of proposed actions under 36 CFR part 215 shall begin on or after the date of this publication.

FOR FURTHER INFORMATION CONTACT: Jean Paul Kruglewicz, Regional Appeals Coordinator, Southern Region, Planning and Budget, 1720 Peachtree Road, NW, Atlanta, Georgia 30367–9102, Phone: 404–347–4867.

SUPPLEMENTARY INFORMATION: Deciding Officers in the Southern Region will give legal notice of decisions subject to appeal under 36 CFR part 217 and Responsible Officials in the Southern Region will give notice of decisions subject to appeal under 36 CFR part 215 in the following newspapers which are listed by Forest Service administrative unit. Responsible Officials in the Southern Region will also give notice of proposed actions under 36 CFR part 215 in the following principal newspapers which are listed by Forest Service administrative unit. The timeframe for comment on a proposed action shall be based on the date of publication of the notice of the proposed action in the principal newspaper. The timeframe for appeal shall be based on the date of publication of the legal notice of the decision in the principal newspaper for both 36 CFR parts 215 and 217.

The following newspapers will be used to provide notice.

Southern Region

Regional Forester Decisions:
- Affecting National Forest System lands in more than one state of the 13 states of the Southern Region and the Commonwealth of Puerto Rico.
  - *Atlanta Journal*, published daily in Atlanta, GA

Southern Region

Regional Forester Decisions:
- Affecting National Forest System lands in only one state of the 13 states of the Southern Region and the Commonwealth of Puerto Rico will appear in the principal newspaper elected by the National Forest(s) of that state.

National Forest in Alabama, Alabama

Forest Supervisor Decisions:
- *Montgomery Advertiser*, published daily in Montgomery, AL

District Rangers Decisions:
- Bankhead Ranger District: *Northwest Alabamian*, published weekly (Monday & Thursday) in Haleyville, AL
- Conecuh Ranger District: *The Andalusia Star*, published daily (Tuesday through Saturday) in Andalusia, AL
- Oakmulgee Ranger District: *The Tuscaloosa News*, published daily in Tuscaloosa, AL
- Shoal Creek Ranger District: *The Anniston Star*, published daily in Anniston, AL
- Talladega Ranger District: *The Daily Home*, published daily in Talladega, AL
- Tuskegee Ranger District: *Tuskegee News*, published weekly (Thursday) in Tuskegee, AL

Caribbean National Forest, Puerto Rico

Forest Supervisor Decisions:
- *El Nuevo Dia*, published daily in Spanish in San Juan, PR
- *San Juan Star*, published daily in San Juan, PR

District Ranger Decisions:
- *El Horizonte*, published weekly (Wednesday) in Fajardo, PR

Chattahoochee-Oconee National Forest, Georgia

Forest Supervisor Decisions:
- *The Times*, published daily in Gainesville, GA

District Ranger Decisions:
- Armuchee Ranger District: *Walker County Messenger*, published bi-weekly (Wednesday & Friday) in LaFayette, GA
- Toccoa Ranger District: *The News Observer*, published weekly (Wednesday) in Blue Ridge, GA
- Chestatee Ranger District: *Dahlonega Nugget*, published weekly (Thursday) in Dahlonega, GA
- Brasston Ranger District: *North Georgia News*, published weekly (Wednesday) in Blairsville, GA
- Tallulah Ranger District: *Clayton Tribune*, published weekly (Thursday) in Clayton, GA
- Chattooga Ranger District: *Northeast Georgian*, published weekly (Tuesday) in Cornelia, GA
- *Toccoa Record*, published weekly (Thursday) in Toccoa, GA
- *White County News*, published weekly (Thursday) in Cleveland, GA
- Cohutta Ranger District: *Chatsworth Times*, published weekly (Tuesday) in Chatsworth, GA
- Oconee Ranger District: *Monticello News*, published weekly (Thursday) in Monticello, GA

Cherokee National Forest, Tennessee

Forest Supervisor Decisions:
- *Knoxville News Sentinel*, published daily in Knoxville, TN (covering McMinn, Monroe, and Polk Counties)
- *Johnson City Press*, published daily in Johnson City, TN (covering Carter, Cocke, Greene, Johnson, Sullivan, Unicoi and Washington Counties)

District Rangers Decisions:
- Ocoee Ranger District: *Polk County News*, published weekly (Wednesday) in Benton, TN
- Hiwassee Ranger District: *Daily Post-Athenian*, published daily (Monday–Friday) in Athens, TN
- Tellico Ranger District: *Monroe County Advocate*, published weekly (Thursday) in Sweetwater, TN
- Nolichucky Ranger District: *Greeneville Sun*, published daily (Monday–Saturday) in Greeneville, TN
- Unaka Ranger District: *Johnson City Press*, published daily in Johnson City, TN
- Watauga Ranger District: *Elizabethton Star*, published daily (Sunday–Friday) in Elizabethton, TN

Daniel Boone National Forest, Kentucky

Forest Supervisor Decisions:
- *Lexington Herald-Leader*, published daily in Lexington, KY

District Rangers Decisions:
- Morehead Ranger District: *Morehead News*, published bi-weekly (Tuesday and Friday) in Morehead, KY
- Stanton Ranger District: *The Clay City Times*, published weekly (Thursday) in Clay City, KY
- Berea Ranger District: *Jackson County Sun*, published weekly (Thursday) in McKee, KY
- London Ranger District: *The Sentinel-Echo*, published tri-weekly (Monday, Wednesday, and Friday) in London, KY
- Somerset Ranger District: *Commonwealth-Journal*, published daily (Sunday through Friday) in Somerset, KY
- Stearns Ranger District: *McCreary County Record*, published weekly (Tuesday) in Whitley City, KY
- Redbird Ranger District: *Manchester Enterprise*, published weekly (Thursday) in Manchester, KY

National Forests in Florida, Florida

Forest Supervisor Decisions:
- *The Tallahassee Democrat*, published daily in Tallahassee, FL

District Rangers Decisions:
- Apalachicola Ranger District: *The Weekly Journal*, published weekly (Wednesday) in Bristol, FL
- Lake George Ranger District: *The Ocala Star Banner*, published daily

in Ocala, FL
Osceola Ranger District: *The Lake City Reporter*, published daily (Monday–Saturday) in Lake City, FL
Seminole Ranger District: *The Daily Commercial*, published daily in Leesburg, FL
Wakulla Ranger District: *The Tallahassee Democrat*, published daily in Tallahassee, FL

Francis Marion & Sumter National Forest, South Carolina

Forest Supervisor Decisions:
The State, published daily in Columbia, SC
District Rangers Decisions:
Enoree Ranger District: *Newberry Observer*, published tri-weekly (Monday, Wednesday, and Friday) in Newberry, SC
Andrew Pickens Ranger District: *Seneca Journal and Tribune*, published bi-weekly (Wednesday and Friday) in Seneca, SC
Long Cane Ranger District: *The State*, published daily in Columbia, SC
Wambaw Ranger District: *News and Courier*, published daily in Charleston, SC
Witherbee Ranger District: *News and Courier*, published daily in Charleston, SC
Tyger Ranger District: *The Union Daily Times*, published daily in Union, SC

George Washington and Jefferson National Forests, Virginia

Forest Supervisor Decisions:
Roanoke Times & World-News, published daily in Roanoke, VA
District Rangers Decisions:
Lee Ranger District: *Shenandoah Valley Herald*, published weekly (Wednesday) in Woodstock, VA
Warm Springs Ranger District: *The Recorder*, published weekly (Thursday) in Monterey, VA
Pedlar Ranger District: *News-Gazette*, published weekly (Wednesday) in Lexington, VA
James River Ranger District: *Virginian Review*, published daily (except Sunday) in Covington, VA
Deerfield Ranger District: *Daily News Leader*, published daily in Staunton, VA
Dry River Ranger District: *Daily News Record*, published daily (except Sunday) in Harrisonburg, VA
Blacksburg Ranger District: *Roanoke Times & World-News*, published daily in Roanoke, VA
Monroe Watchman, published weekly (Thursday) in Union, WV (only for those decisions in West VA—notice will be published in the *Roanoke Times* and *Monroe Watchman*.)
Glenwood Ranger District: *Roanoke Times & World-News*, published daily in Roanoke, VA
New Castle Ranger District: *Roanoke Times & World-News*, published daily in Roanoke, VA
Monroe Watchmen, published weekly (Thursday) in Union, WV (only for those decisions in West VA—notice will be published in the *Roanoke Times* and *Monroe Watchman.)*
Mount Rogers National Recreation Area: *Bristol Herald Courier*, published daily in Bristol, VA
Clinch Ranger District: *Kingsport-Times News*, published daily in Kingsport, TN
Wythe Ranger District: *Southwest Virginia Enterprise*, published bi-weekly (Wednesday and Saturday) in Wytheville, VA

Kisatchie National Forest, Louisiana

Forest Supervisor Decisions:
Alexandria Daily Town Talk, published daily in Alexandria, LA
District Ranger Decisions:
Caney Ranger District: *Minden Press Herald*, published daily in Minden, LA
Homer Guardian Journal, published weekly (Wednesday) in Homer, LA
Catahoula Ranger District: *Alexandria Daily Town Talk*, published daily in Alexandria, LA
Colfax Chronicle, published weekly (Wednesday) in Colfax, LA
Evangeline Ranger District: *Alexandria Daily Town Talk*, published daily in Alexandria, LA
Kisatchie Ranger District: *Natchitoches Times*, published bi-weekly (Sunday and Wednesday) in Natchitoches, LA
Vernon Ranger District: *Leesville Leader*, published daily in Leesville, LA
Winn Ranger District: *Winn Parish Enterprise*, published weekly (Wednesday) in Winnfield, LA

National Forests in Mississippi, Mississippi

Forest Supervisor Decisions:
Clarion-Ledger, published daily in Jackson, MS
District Ranger Decisions:
Bienville Ranger District: *Clarion-Ledger*, published daily in Jackson, MS
Biloxi Ranger District: *Clarion-Ledger*, published daily in Jackson, MS
Black Creek Ranger District: *Clarion-Ledger*, published daily in Jackson, MS
Bude Ranger District: *Clarion-Ledger*, published daily in Jackson, MS
Chickasawhay Ranger District: *Clarion-Ledger*, published daily in Jackson, MS
Delta Ranger District: *Clarion-Ledger*, published daily in Jackson, MS
Holly Springs Ranger District: *Clarion-Ledger*, published daily in Jackson, MS
Homochitto Ranger District: *Clarion-Ledger*, published daily in Jackson, MS
Strong River Ranger District: *Clarion-Ledger*, published daily in Jackson, MS
Tombigbee Ranger District: *Clarion-Ledger*, published daily in Jackson, MS
Ashe-Erambert Ranger District: *Clarion-Ledger*, published daily in Jackson, MS

National Forests in North Carolina, North Carolina

Forest Supervisor Decisions:
The Asheville Citizen-Times, published daily in Ashville, NC
District Ranger Decisions:
Cheoah Ranger District: *Graham Star*, published weekly (Thursday) in Robbinsville, NC
Croatan Ranger District: *The Sun Journal*, published weekly (Sunday through Friday) in New Bern, NC
French Broad Ranger District: *The Ashville Citizen-Times*, published daily in Asheville, NC
Grandfather Ranger District: *McDowell News*, published daily in Marion, NC
Highlands Ranger District: *The Highlander*, published weekly (May–Oct Tues & Fri; Oct–April Tues only) in Highlands, NC
Pisgah Ranger District: *The Asheville Citizen-Times*, published daily in Asheville, NC
Toecane Ranger District: *The Asheville Citizen-Times*, published daily in Asheville, NC
Tusquitee Ranger District: *Cherokee Scout*, published weekly (Wednesday) in Murphy, NC
Uwharrie Ranger District: *Montgomery Herald*, published weekly (Wednesday) in Troy, NC
Wayah Ranger District: *The Franklin Press*, published bi-weekly (Wednesday and Friday) in Franklin, NC

Ouachita National Forest, Arkansas, Oklahoma

Forest Supervisor Decisions:
Arkansas Democrat-Gazette, published daily in Little Rock, AR
District Ranger Decisions:
Caddo Ranger District: *Arkansas Democrat-Gazette*, published daily in Little Rock, AR
Cold Springs Ranger District: *Arkansas Democrat-Gazette*, published daily in Little Rock, AR
Fourche Ranger District: *Arkansas Democrat-Gazette*, published daily in Little Rock, AR
Jessieville Ranger District: *Arkansas Democrat-Gazette*, published daily in Little Rock, AR
Mena Ranger District: *Arkansas Democrat-Gazette*, published daily in Little Rock, AR
Oden Ranger District: *Arkansas Democrat-Gazette*, published daily in Little Rock, AR
Poteau Ranger District: *Arkansas Democrat-Gazette*, published daily in Little Rock, AR
Winona Ranger District: *Arkansas Democrat-Gazette*, published daily in Little Rock, AR
Womble Ranger District: *Arkansas Democrat-Gazette*, published daily in Little Rock, AR
Choctaw Ranger District: *Tulsa World*, published daily in Tulsa, OK
Kiamichi Ranger District: *Tulsa World*, published daily in Tulsa, OK
Tiak Ranger District: *Tulsa World*, published daily in Tulsa, OK

Ozark-St. Francis National Forest: Arkansas

Forest Supervisor Decisions:
The Courier, published daily (Sunday through Friday) in Russellville, AR
District Ranger Decisions:
Sylamore Ranger District: *Stone County Leader*, published weekly (Tuesday) in Mountain View, AR
Buffalo Ranger District: *Newton County Times*, published weekly (Thursday) in Jasper, AR
Bayou Ranger District: *The Courier*, published daily (Sunday through Friday) in Russellville, AR
Pleasant Hill Ranger District: *Johnson County Graphic*, published weekly (Wednesday) in Clarksville, AR
Boston Mountin Ranger District: *Southwest Times Record*, published daily in Fort Smith, AR
Magazine Ranger District: *Southwest Times Record*, published daily in Fort Smith, AR
St. Francis Ranger District: *The Daily World*, published daily (Sunday through Friday) in Helena, AR

National Forests in Texas, Texas

Forest Supervisor Decisions:
The Lufkin Daily News, published daily in Lufkin, TX
District Rangers Decisions:
Angelina Ranger District: *The Lufkin Daily News*, published daily in Lufkin, TX
San Jacinto Ranger District: *The Courier*, published daily in Conroe, TX
Neches Ranger District: *The Lufkin Daily News*, published daily in Lufkin, TX
Raven Ranger District: *The Courier*, published daily in Conroe, TX
Tenaha Ranger District: *The Lufkin Daily News*, published daily in Lufkin, TX
Trinity Ranger District: *The Lufkin Daily News*, published daily in Lufkin, TX
Yellowpine Ranger District: *The Beaumont Enterprise*, published daily in Beaumont, TX
Caddo-LBJ Ranger District—Caddo-LBJ National Grassland: *Denton Record-Chronicle*, published daily in Denton, TX

Dated: May 25, 1995.

Gloria Manning,

Deputy Regional Forester, Resources.

[FR Doc. 95–13350 Filed 5–31–95; 8:45 am]

BILLING CODE 3410–11–M

Establishment of Ocmulgee Purchase Unit, Georgia

AGENCY: Forest Service, USDA.

ACTION: Notice of Establishment of a Purchase Unit.

SUMMARY: On April 10, 1995, the Deputy Under Secretary, Natural Resources and Environment, created the Ocmulgee Purchase Unit. This purchase unit comprises 10,000 acres, more or less, in Butts and Monroe Counties, Georgia. A copy of the establishment document, which includes the legal description of the lands within this purchase unit, appears at the end of this notice.

EFFECTIVE DATE: The effective date of this purchase unit was April 10, 1995.

ADDRESSES: A copy of the map showing this purchase unit is on file and available for public inspection in the Office of the Director of Lands, Forest Service, Auditor's Building, 201 14th Street, SW., Washington, DC 20090–6090.

FOR FURTHER INFORMATION CONTACT: Ralph Bauman, Lands Staff, Forest Service USDA P.O. Box 96090, Washington, DC 20090–6090, (202) 205–1248.

Dated: May 25, 1995.

Janice H. McDougle,

Associate Deputy Chief.

Proposed Boundary Description for the Ocmulgee Purchase Unit, Butts and Monroe Counties, Georgia

Pursuant to the Secretary of Agriculture's authority under Section 17, P.L. 94–588 (90 Stat. 2949) the Ocmulgee Purchase Unit is being established and is described as follows:

All that certain tract of land lying on the waters of the Ocmulgee River and being approximately 10,000 acres in Butts and Monroe Counties, Georgia, bounded on the north by Georgia Highway #16, east by said Ocmulgee River; on the south by Georgia Highway #83, and on the west by lines described as follows: (Distances recited are approximate)

BEGINNING in Monroe County at the intersection of Georgia Highway #83 with Georgia Highway #87, aka U.S. Highway 23. Thence, along and with Highway 87 in a north-northwesterly direction 3 miles to the intersection of Highway 87 with Sandy Creek.

Thence, along and with the meanders of Sandy Creek, being the Monroe-Butts County line, 1.0 mile in a general southeasterly direction to the intersection of Sandy Creek with Mt. Pleasant Road.

Thence, into Butts County along and with the meanders of Mt. Pleasant Road 1.5 miles in a general northwesterly direction to its intersection with Vicker Road.

Thence, along Vicker Road 1.8 miles in a general northerly direction to its intersection with Lamar's Mill Road.

Thence, along Lamar's Mill Road 3.3 miles in a general north-northwesterly direction to its intersection with Giles Ferry Road.

Thence, along Giles Ferry Road about 100 yards in a southwest direction to its intersection with Dave Bailey Road.

Thence, along Dave Bailey Road 2.1 miles in a general northwesterly direction to Georgia Highway #16.

The proposed boundary for the Ocmulgee Purchase Unit is more particularly delineated on the map which is attached hereto and made a part hereof.

These lands are well suited for watershed protection and meet the requirements of the Act of March 1, 1911, as amended.

Dated: April 10, 1995.

Adela Backiel,

Deputy Under Secretary.

[FR Doc. 95–13343 Filed 5–31–95; 8:45 am]

BILLING CODE 3410–11–M

National Urban and Community Forestry Advisory Council

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting; cancellation.

SUMMARY: On May 12, 1995, at 60 FR 25688, the Forest Service published notice of a National Urban and Community Forestry Advisory Council

meeting scheduled to be held in Carlisle, Illinois, June 8–10, 1995. That meeting has been cancelled. Notices of future meetings of the Advisory Council will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Suzanne M. del Villar, Cooperative Forestry Staff, Forest Service telephone: (970) 928–9264.

Dated: May 25, 1995.

William L. McCleese,

Acting Deputy Chief, NFF.

[FR Doc. 95–13342 Filed 5–31–95; 8:45 am]

BILLING CODE 3410–11–M

Grain Inspection, Packers and Stockyards Administration

Opportunity for Designation in the Schaal (IA) Area

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA).

ACTION: Notice.

SUMMARY: The United States Grain Standards Act, as amended (Act), provides that official agency designations will end not later than triennially and may be renewed. The designation of D.R. Schaal Agency, Inc. (Schaal), will end December 31, 1995, according to the Act, and GIPSA is asking persons interested in providing official services in the Schaal area to submit an application for designation.

DATES: Applications must be postmarked or sent by telecopier (FAX) on or before June 30, 1995.

ADDRESSES: Applications must be submitted to Janet M. Hart, Chief, Review Branch, Compliance Division, GIPSA, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. Telecopier (FAX) users may send applications to the automatic telecopier machine at 202–690–2755, attention: Janet M. Hart. If an application is submitted by telecopier, GIPSA reserves the right to request an original application. All applications will be made available for public inspection at this address located at 1400 Independence Avenue, S.W., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act authorizes GIPSA's Administrator to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services.

GIPSA designated Schaal, main office located in Belmond, Iowa, to provide official inspection services under the Act on January 1, 1993.

Section 7(g)(1) of the Act provides that designations of official agencies shall end not later than triennially and may be renewed according to the criteria and procedures prescribed in Section 7(f) of the Act. The designation of Schaal ends on December 30, 30, 1995.

The geographic area presently assigned to Schaal, in the State of Iowa, pursuant to Section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation is as follows:

Bounded on the North by the northern Kossuth County line from U.S. Route 169; the northern Winnebago, Worth, and Mitchell County lines;

Bounded on the East by the eastern Mitchell County line; the eastern Floyd County line south to B60; B60 west to T64; T64 south to State Route 188; State Route 188 south to C33;

Bounded on the South by C33 west to T47; T47 north to C23; C23 west to S56; S56 south to C25; C25 west to U.S. Route 65; U.S. Route 65 south to State Route 3; State Route 3 west to S41; S41 south to C55; C55 west to Interstate 35; Interstate 35 southwest to the southern Wright County line; the southern Wright County line west to U.S. Route 69; U.S. Route 69 to C54; C54 west to State Route 17; and

Bounded on the West by State Route 17 north to the southern Kossuth County line; the Kossuth County line west to U.S. Route 169; U.S. Route 169 north to the northern Kossuth County line.

Schaal's assigned geographic area does not include the following grain elevators inside Schaal's area which have been and will continue to be serviced by the following official agencies:

1. Central Iowa Grain Inspection Service, Inc.: Farmers Co-op Elevator Company, Chapin, Franklin County; and Farmers Community Co-op, Inc., Rockwell, Cerro Gordo County.

2. A. V. Tischer and Son, Inc.: West Bend Elevator Co., Algona, Kossuth County; Big Six Elevator, Burt, Kossuth County; Gold-Eagle, Goldfield, Wright County; and Farmers Co-op Elevator, Holmes, Wright County.

Interested persons, including Schaal, are hereby given the opportunity to apply for designation to provide official services in the geographic area specified above under the provisions of Section 7(f) of the Act and section 800.196(d) of the regulations issued thereunder. Designation in the specified geographic area is for the period beginning January 1, 1996, and ending November 30, 1998. Persons wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: May 23, 1995.

Sidney U. Allen,

Acting Director, Compliance Division.

[FR Doc. 95–13384 Filed 5–31–95; 8:45 am]

BILLING CODE 3410–EN–F

Request for Applications for Designation to Provide Official Services in the Northern Michigan Region

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA).

ACTION: Notice.

SUMMARY: The United Grain Standards Act, as amended (Act), authorizes the administrator of GIPSA to designate persons to provide official services under the Act. GIPSA is asking persons interested in providing official services in the Northern Michigan region to submit an application for designation.

DATES: Applications must be postmarked on or sent by telecopier (FAX) by June 30, 1995.

ADDRESSES: Applications must be submitted to Janet M. Hart, Chief, Review Branch, Compliance Division, GIPSA, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. Telecopier (FAX) users may send applications to the automatic telecopier machine at 202–690–2755, attention: Janet M. Hart. If an application is submitted by telecopier, GIPSA reserves the right to request an original application. All applications will be made available for public inspection at this address at 1400 Independence Avenue, S.W., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Michigan Grain Inspection Services, Inc., currently designated to provide official services in Southern Michigan, asked GIPSA about designation to provide official services in the Northern Michigan region.

Section 7(f)(1) of the United States Grain Standards Act, as amended (Act), authorizes GIPSA's Administrator to designate a qualified applicant to provide official services in a specified area after determining that the applicant is qualified and is better able than any other applicant to provide such official services.

The geographic area, in the State of Michigan, that is available for assignment to the applicant selected for designation, pursuant to Section (7)(f)(2) of the Act, is as follows:

The Michigan Counties of: Alcona, Alger, Alpena, Antrim, Baraga, Benzie, Charlevoix, Cheboygan, Chippewa, Clare, Crawford, Delta, Dickinson, Emmet, Gladwin, Gogebic, Grand Traverse, Houghton, Iron, Kalaska, Keweenaw, Lake, Leelanau, Luce, Mackinac, Manistee, Marquette, Mecosta, Menominee, Midland, Missaukee, Montmorency, Ogemaw, Ontonagon, Osceola, Oscoda, Otsego, Presque Isle, Roscommon, Schoolcraft, and Wexford.

Interested persons are hereby given an opportunity to apply for designation to provide official inspection services in the Northern Michigan region, as specified above, under the provisions of Section 7(f) of the Act and section 800.196(d) of the regulations issued thereunder.

Designation in the Northern Michigan region pursuant to Section 7(g)(1) of the Act, is for the period beginning December 1, 1995, and ending November 30, 1998, and may be renewed according to criteria and procedures prescribed in section 7(f) of the Act. Persons wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated to provide official services in the above-mention geographic area.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: May 23, 1995.

Sidney U. Allen,

Acting Director, Compliance Division.

[FR Doc. 95–13386 Filed 5–31–95; 8:45 am]

BILLING CODE 3410–EN–F

Opportunity To Comment on the Applicants for the Louisiana and North Carolina Areas

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA).

ACTION: Notice.

SUMMARY: GIPSA requests comments on the applicants for designation to provide official services in the geographic areas currently assigned to Louisiana Department of Agriculture (Louisiana) and North Carolina Departure of Agriculture (North Carolina).

DATES: Comments must be postmarked, or sent by telecopier (FAX) or electronic mail by June 30, 1995.

ADDRESSES: Comments must be submitted in writing to Janet M. Hart, Chief, Review Branch, Compliance Division, GIPSA, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. SprintMail users may respond to [A:ATTMAIL,O:USDA,ID:A36JHART]. ATTMAIL and FTS2000MAIL users may respond to !A36JHART. Telecopier (FAX) users may send comments to the automatic telecopier machine at 202–690–2755, attention: Janet M. Hart. All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue, S.W., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the March 31, 1995, **Federal Register** (60 FR 16602), GIPSA asked persons interested in providing official services in the geographic areas assigned to Louisiana and North Carolina to submit an application for designation. There were three applicants: Louisiana and North Carolina each applied for designation to provide official inspection services in the entire area currently assigned to them; Saybolt-South Texas Inspection Service, Inc., main office located in Galena Park, Texas, applied for the entire Louisiana area.

GIPSA is publishing this notice to provide interested persons the opportunity to present comments concerning the applicants. Commenters are encouraged to submit reasons and pertinent data for support or objection to the designation of these applicants. All comments must be submitted to the Compliance Division at the above address. Comments and other available information will be considered in making a final decision. GIPSA will publish notice of the final decision in the **Federal Register**, and GIPSA will send the applicants written notification of the decision.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: May 23, 1995.

Sidney U. Allen,

Acting Director, Compliance Division.

[FR Doc. 95–13385 Filed 5–31–95; 8:45 am]

BILLING CODE 3410–EN–F

Designation for the Enid (OK) Area

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA).

ACTION: Notice.

SUMMARY: GIPSA announces the designation of Enid Grain Inspection Company, Inc. (Enid), to provide official services under the United States Grain Standards Act, as amended (Act).

EFFECTIVE DATES: July 1, 1995.

ADDRESSES: Janet M. Hart, Chief, Review Branch, Compliance Division, GIPSA, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454.

FOR FURTHER INFORMATION CONTACT: Janet M Hart, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the January 3, 1995, **Federal Register** (60 FR 96), GIPSA asked persons interested in providing official services in the geographic area assigned to Enid to submit an application for designation. Applications were due by January 31, 1995. Enid, the only applicant, applied for designation to serve the entire area they are currently assigned.

GIPSA requested comments on the applicant in the March 1, 1995, **Federal Register** (60 FR 11068). Comments were due by March 31, 1995. GIPSA received no comments by the deadline.

GIPSA evaluated all available information regarding the designation criteria in Section 7(f)(l)(A) of the Act; and according to Section 7(f)(l)(B), determined that Enid is able to provide official services in the geographic area for which they applied. Effective July 1, 1995, and ending June 30, 1998, Enid is

designated to provide official services in the geographic area specified in the January 3, 1995, **Federal Register**.

Interested persons may obtain official services by contacting Enid at 405–233–1121.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: May 23, 1995.

Sidney U. Allen,

Acting Director, Compliance Division.

[FR Doc. 95–13389 Filed 5–31–95; 8:45 am]

BILLING CODE 3410–EN–F

Opportunity to Comment Concerning Applicants for the South Texas (TX) Region

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA).

ACTION: Notice.

SUMMARY: GIPSA requests comments concerning applicants for designation to provide official services in South Texas Under a Pilot Program.

DATES: Comments must be postmarked, or sent by telecopier (FAX) or electronic mail by July 15, 1995.

ADDRESSES: Comments must be submitted in writing to Janet M. Hart, Chief, Review Branch, Compliance Division, GIPSA, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. SprintMail users may respond to [A:ATTMAIL,O:USDA,ID:A36JHART]. ATTMAIL and FTS2000MAIL users may respond to !A36JHART. Telecopier (FAX) users may send comments to the automatic telecopier machine at 202–690–2755, attention: Janet M. Hart. All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue, S.W., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the March 3, 1995, **Federal Register** (60 FR 11952), GIPSA asked persons interested in providing official services in South Texas under a pilot program allowing more than one official agency to provide service in a single geographic area to submit an application for designation. There were two applicants. Quanta Lab (Quanta), main office located in Selma, Texas, and Saybolt South Texas Inspection Service, Inc. (Saybolt), main office located in Galena Park, Texas. Quanta applied for the Texas Counties of: Atascosa, Bexar, Dimmit, Duval, Frio, Kinnedy, La Salle, Mavervick, McMullen, Medina, Uvalde, Val Verda, Webb, and Zavala. Saybolt applied for all counties published in the March 3, 1995, **Federal Register**.

GIPSA is publishing this notice to provide interested persons the opportunity to present comments. Commenters are encouraged to submit reasons and pertinent data for support or objection to the designation of these applicants. All comments must be submitted to the Compliance Division at the above address. Comments and other available information will be considered in making a final decision. GIPSA will publish notice of the final decision in the **Federal Register**, and GIPSA will send the applicants written notification of the decision.

GIPSA, in the March 3, 1995, **Federal Register** (60 FR 11952), also asked for comments on the need for Official Services in the South Texas Region. Comments were due by March 21, 1995. GIPSA received 10 comments by the deadline. There were 6 from grain firms, 2 from grain grower organizations, 1 from an individual, and 1 from a bank. All but one of the comments indicated that there is no need for an official inspection service in South Texas because of the good unofficial inspection service provided by the Corpus Christi Grain Exchange. The other comment expressed concern about competition and the demand for official inspection services in the pilot area. The comment expressed concern about the size of the pilot area and was of the view that the proposal was unworkable.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: May 23, 1995.

Sidney U. Allen,

Acting Director, Compliance Division.

[FR Doc. 95–13390 Filed 5–31–95; 8:45 am]

BILLING CODE 3410–EN–F

Opportunity for Designation in the Amarillo (TX) and Wisconsin Areas

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA).

ACTION: Notice.

SUMMARY: The United States Grain Standards Act, as amended (Act), provides that official agency designations shall end not later than triennially and may be renewed. The designation of Amarillo Grain Exchange, Inc. (Amarillo), and Wisconsin Department of Agriculture, Trade and Consumer Protection (Wisconsin) will end November 30, 1995, according to the Act, and GIPSA is asking persons interested in providing official services in the specified geographic areas to submit an application for designation.

DATES: Applications must be postmarked or sent by telecopier (FAX) on or before June 30, 1995.

ADDRESSES: Applications must be submitted to Janet M. Hart, Chief, Review Branch, Compliance Division, GIPSA, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. Telecopier (FAX) users may send applications to the automatic telecopier machine at 202–690–2755, attention: Janet M. Hart. If an application is submitted by telecopier, GIPSA reserves the right to request an original application. All applications will be made available for public inspection at this address located at 1400 Independence Avenue, S.W., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act authorizes GIPSA's Administrator to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services.

GIPSA designated Amarillo, main office located in Amarillo, Texas, to provide official inspection services, and Wisconsin, main office located in Madison, Wisconsin, to provide official inspection and Class X and Class Y weighing services under the Act on December 1, 1992.

Section 7(g)(1) of the Act provides that designations of official agencies shall end not later than triennially and may be renewed according to the criteria and procedures prescribed in Section 7(f) of the Act. The designations of Amarillo and Wisconsin end on November 30, 1995.

The geographic area presently assigned to Amarillo, pursuant to Section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation is as follows:

In Texas:

Bounded on the North by the Texas-Oklahoma State line to the eastern Clay County line;

Bounded on the East by the eastern Clay, Archer, Throckmorton, Shackelford, and Callahan County lines;

Bounded on the South by the southern Callahan, Taylor, Nolan, Mitchell, Howard, Martin, and Andrews County lines; and

Bounded on the West by the western Andrews, Gaines, Yoakum, and Cochran County lines; the northern Cochran County line; the northern Hockley County line east to FM 303; FM 303 north to U.S. Route 84; U.S. Route 84 (including Sudan), southeast to FM 37; FM 37 east to FM 179; FM 179 north to FM 1914; FM 1914 east (not including Hale Center), to FM 400; FM 400 south to FM 37; FM 37 east to the Hale County line; the eastern Hale County line; the northern Crosby and Dickens County lines; the western Cottle and Childress County lines north to U.S. Route 287; U.S. Route 287 northwest to Donley County; the southern Donley and Armstrong County lines west to Prairie Dog Town Fork of the Red River; Prairie Dog Town Fork of the Red River northwest to State Route 217; State Route 217 west to FM 1062; FM 1062 west to U.S. Route 385; U.S. Route 385 north to Oldham County; the southern Oldham County line; the western Oldham, Hartley, and Dallam County lines.

The area also includes El Paso County, Texas, and Beaver, Beckham, Cimarron, Ellis, Harper, Roger Mills, and Texas Counties, Oklahoma.

The geographic area presently assigned to Wisconsin, pursuant to Section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation, is the entire State of Wisconsin, except those export port locations within the State.

Interested persons, including Amarillo and Wisconsin, are hereby given the opportunity to apply for designation to provide official services in the geographic area specified above under the provisions of Section 7(f) of the Act and section 800.196(d) of the regulations issued thereunder. Designation in the specified geographic area is for the period beginning December 1, 1995, and ending November 30, 1998. Persons wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: May 23, 1995.

Sidney U. Allen,

Acting Director, Compliance Division.

[FR Doc. 95–13391 Filed 5–31–95; 8:45 am]

BILLING CODE 3410–EN–F

Natural Resources Conservation Service

Lower Hamakua Ditch Watershed, Hawaii County, Hawaii

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Rules (40 CFR part 1500); and the Natural Resources Conservation Service Rules (7 CFR part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is being prepared for the Lower Hamakua Ditch Watershed, Hawaii County, Hawaii.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Kaneshiro, State Conservationist, Natural Resources Conservation Service, 300 Ala Moana Blvd., Room 4316, Honolulu, Hawaii, 96850, telephone (808) 541–2600.

SUPPLEMENTARY INFORMATION: This federally-assisted project action may cause significant local, regional, or national impacts on the environment, or create controversy over man's use of limited water resources. As a result of these findings, Kenneth M. Kaneshiro, State Conservationist, has determined the preparation and review of an environmental impact statement is needed for this project.

The project concerns a plan to provide a dependable water supply for small farms, and on-farm irrigation systems on former sugar cane lands. It will also address the social and cultural conflicts of the use of water in the watershed. Irrigation is the primary project purpose. Alternatives under consideration to research these objectives include: Rehabilitation of the ditch system, use of wells for the agricultural water supply, reorganization of on-farm irrigation systems.

A draft environmental impact statement will be prepared and circulated for review by agencies and the public. The Natural Resources Conservation Service invites participation and consultation of agencies and individuals that have special expertise, legal jurisdiction, or interest in the preparation of the draft environmental impact statement. Initial scoping meeting was held in Honokaa, May 16 at 6:00 p.m. to determine the scope of the evaluation of the proposed action. Further information on the proposed project action or additional scoping meetings may be obtained from Kenneth M. Kaneshiro, State Conservationist, at the above address or telephone (808) 541–2600.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Dated: May 18, 1995.

Lawrence T. Yamamoto,

Acting State Conservationist.

[FR Doc. 95–13379 Filed 5–31–95; 8:45 am]

BILLING CODE 3210–16–M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: International Trade Administration (ITA).

Title: NATO International Competitive Bidding List Application.

Agency Form Number: ITA–4023P.

OMB Approval Number: 0625–0055.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 60 hours.

Number of Respondents: 60.

Avg Hours Per Response: 1 hour.

Needs and Uses: U.S. firms that want to participate in NATO International Competitive Bidding under the NATO Security Investment Program must be certified as being technically and financially competent. The information provided is used to determine if a company is eligible to bid on NATO funded projects.

Affected Public: Businesses or other for–profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: International Trade Administration (ITA).

Title: Antidumping and Countervailing Duties - Procedures for

Initiation of Downstream Product Monitoring.

Agency Form Number: None.
OMB Approval Number: 0625–0200.
Type of Request: Extension of the expiration date of a currently approved collection.
Burden: 15 hours.
Number of Respondents: 1.
Avg Hours Per Response: 15 hours.
Needs and Uses: In 1988, the Tariff Act was amended. Under this provision a domestic producer of an article that is like a component part of a downstream product may petition the Department of Commerce to designate the downstream product for monitoring. If the Department accepts the petition, the U.S. International Trade Commission will monitor the trade in the downstream product. The Department of Commerce considers such reports in determining whether to self–initiate an antidumping or countervailing duty investigation.
Affected Public: Businesses or other for–profit institutions.
Frequency: On occasion.
Respondent's Obligation: Required to obtain or retain a benefit.
OMB Desk Officer: Don Arbuckle, (202) 395–7340.
Agency: International Trade Administration.
Title: Special Access — Special Regime Export Declaration.
Agency Approval Number: ITA–370P.
OMB Approval Number: 0625–0179.
Type of Request: Extension of the expiration date of a currently approved collection.
Burden: 10,483 hours.
Number of Respondents: 119,000.
Avg Hours Per Response: Ranges between 3 and 18 minutes for the reporting requirements and 1 minute per exported shipment for recordkeeping.
Needs and Uses: The Special Access and Special Regime Programs have been established to provide increased access to the United States market for textile products assembled abroad from fabric formed and cut in the U.S. The information being collected is used by the Committee for the Implementation of Textile Agreements (CITA) and the U.S. Customs Service in two ways: (1) to determine whether merchandise exported from a participating Caribbean country or Mexico is properly certified as entitled to entry under the Special Access or the Special Regime and (2) to conduct audits to determine whether U.S. fabric was used to produce the final product.
Affected Public: Businesses or other for–profit organizations.
Frequency: On occasion.
Respondent's Obligation: Required to obtain or retain a benefit.
OMB Desk Officer: Don Arbuckle, (202) 395–7340.
Agency: National Oceanic and Atmospheric Administration (NOAA).
Title: Coastal Economic Indicators.
Agency Form Number: None assigned.
OMB Approval Number: None.
Type of Request: New collection.
Burden: 475.
Number of Respondents: 475.
Avg Hours Per Response: 1 hour.
Needs and Uses: Part of NOAA's statutory mandate under the Coastal Zone Management Act is to undertake technical assistance and management–oriented research. Under this authority, and with consultation with its state partners, NOAA is proposing to establish a database of economic statistics related to coastal and marine resources and areas. The data will be used to increase awareness of the economic importance of our nation's coastal and marine assets.
Affected Public: Not for–profit institutions, federal, state, and local government representatives.
Frequency: One–time.
Respondent's Obligation: Voluntary.
OMB Desk Officer: Don Arbuckle, (202) 395–7340.
Agency: National Oceanic and Atmospheric Administration (NOAA).
Title: Coastal Resources Awareness.
Agency Form Number: None assigned.
OMB Approval Number: None.
Type of Request: New collection.
Burden: 175 hours.
Number of Respondents: 1,050.
Avg Hours Per Response: 10 minutes.
Needs and Uses: Under he Coastal Zone Management Act, NOAA is responsible for undertaking technical assistance and management–oriented research. Through this survey, NOAA will be seeking to determine whether coastal zone management efforts by the states have contributed to improved awareness of, and concern for, coastal resources and their importance to the national and local economies.
Affected Public: Not for–profit institutions, state, local governments.
Frequency: One–time.
Respondent's Obligation: Voluntary.
OMB Desk Officer: Don Arbuckle, (703) 395–7340.

Copies of the above information collection proposals can be obtained by calling or writing Gerald Tache, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, Room 5327, 14th and Constitution avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collections should be sent to Don Arbuckle, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, D.C. 20503.

Dated: May 23, 1995.

Gerald Tache,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 95–13344 Filed 5–31–95; 8:45 am]

BILLING CODE 3510–CW–F

Foreign-Trade Zones Board

[Docket 26–95]

Foreign-Trade Zone 75—Phoenix, Arizona; Application for Subzone Status, SGS-Thomson Microelectronics, Inc. (Semiconductors), Phoenix, Arizona

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of Phoenix, Arizona, grantee of FTZ 75, requesting special-purpose subzone status for the semiconductor manufacturing plant of SGS-Thomson Microelectronics, Inc. (STM), located in Phoenix, Arizona (Phoenix Customs port of entry area). The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on May 25, 1995.

The STM plant (250,000 sq. ft. plus 250,000 sq. ft. planned on 17 acres) is located at 1000 East Bell Road, Phoenix. The facility (300 employees) is used to produce a range of semiconductor devices. While the plant's primary product line currently involves microprocessors, other products that are or could be made at the facility include application-specific processors, memory chips, flash memories, and other power and signal processing devices. Foreign sourced materials (up to 50% of total) involve primarily gold, adhesives, resins, plastic sheets, and plastic packaging materials. Other materials that may also be purchased from abroad include transformers, capacitors, diodes, transistors, integrated circuits, resistors, printed circuits, switches, wire, fasteners, and other electrical and automatic data processing equipment and components. Some 10 to 15 percent of the finished products are exported.

Zone procedures would exempt STM from payments of Customs duties on foreign materials used in production for export. On domestic sales, the company would be able to choose the duty rates that apply to the finished products (mostly duty-free). The duty rates on foreign-sourced items range from duty-free to 20 percent (with most in the 2.1–7.4% range). The application indicates that the savings from zone procedures would help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is July 31, 1995. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to August 15, 1995).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce, District Office, Phoenix Plaza, Suite 970, 2901 North Central Avenue, Phoenix, AZ 85012

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th & Pennsylvania Avenue, NW, Washington, DC 20230

Dated: May 25, 1995.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 95–13423 Filed 5–31–95; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

Intent To Revoke Antidumping Duty Orders and Findings and To Terminate Suspended Investigations

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Intent to Revoke Antidumping Duty Orders and Findings and to Terminate Suspended Investigations.

SUMMARY: The Department of Commerce (the Department) is notifying the public of its intent to revoke the antidumping duty orders and findings and to terminate the suspended investigations listed below. Domestic interested parties who object to these revocations and terminations must submit their comments in writing no later than the last day of June 1995.

EFFECTIVE DATE: June 1, 1995.

FOR FURTHER INFORMATION CONTACT: Michael Panfeld or the analyst listed under Antidumping Proceeding at: Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230, telephone (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department may revoke an antidumping duty order or finding or terminate a suspended investigation if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke the following antidumping duty orders and findings and to terminate the suspended investigations for which the Department has not received a request to conduct an administrative review for the most recent four consecutive annual anniversary months:

Antidumping Proceeding

Belgium
Sugar
A–423–077
44 FR 33878
June 13, 1979
Contact: Joe Fargo at (202) 482–5345

France
Sugar
A–427–078
44 FR 33878
June 13, 1979
Contact: Joe Fargo at (202) 482–5345

Germany
Industrial Belts, except Synchronous & V belts
A–428–802
54 FR 25316
June 14, 1989
Contact: Charles Vannatta at (202) 482–0410

Germany
Precipitated Barium Carbonate
A–428–061
46 FR 32884
June 25, 1981
Contact: Kim Moore at (202) 482–0090

Germany
Sugar
A–428–082
44 FR 33878
June 13, 1979
Contact: Joe Fargo at (202) 482–5345

Japan
Nitrile Rubber
A–588–706
53 FR 22553
June 16, 1988
Contact: Sheila Forbes at (202) 482–5253

Sweden
Stainless Steel Plate
A–401–040
38 FR 15079
June 8, 1973
Contact: Michael Heaney at (202) 482–4475

Taiwan
Carbon Steel Plate
A–583–080
44 FR 33877
June 13, 1979
Contact: Michael Heaney at (202) 482–4475

Taiwan
Oil Country Tubular Goods
A–583–505
51 FR 22098
June 18, 1986
Contact: Michael Heaney at (202) 482–4475

If no interested party requests an administrative review in accordance with the Department's notice of opportunity to request administrative review, and no domestic interested party objects to the Department's intent to revoke or terminate pursuant to this notice, we shall conclude that the antidumping duty orders, findings, and suspended investigations are no longer of interest to interested parties and shall proceed with the revocation or termination.

Opportunity To Object

Domestic interested parties, as defined in § 353.2(k)(3), (4), (5), and (6) of the Department's regulations, may object to the Department's intent to revoke these antidumping duty orders and findings or to terminate the suspended investigations by the last day of June 1995. Any submission to the Department must contain the name and case number of the proceeding and a statement that explains how the objecting party qualifies as a domestic interested party under § 353.2(k)(3), (4), (5), and (6) of the Department's regulations.

Seven copies of such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B–099, U.S. Department of Commerce, Washington, DC 20230. You must also include the pertinent certification(s) in accordance with § 353.31(g) and § 353.31(i) of the Department's regulations. In addition, the Department requests that a copy of the objection be sent to Michael F. Panfeld in Room 4203. This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: May 19, 1995.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 95–13421 Filed 5–31–95; 8:45 am]

BILLING CODE 3510–DS–P

[C–201–001]

Initiation of New Shipper Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Initiation of New Shipper Countervailing Duty Administrative Review.

SUMMARY: The Department of Commerce (the Department) has received a request to conduct a review of a new shipper under the countervailing duty order on leather wearing apparel from Mexico, which has an April anniversary date. We are initiating that new shipper administrative review in accordance with 19 CFR 355.22(j)(3)(1995).

EFFECTIVE DATE: June 1, 1995.

FOR FURTHER INFORMATION CONTACT: Brian Albright or Maria MacKay, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

The Department has received a request pursuant to section 751(a)(2)(B) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act of 1994, (the Act), for a review of a new shipper under the countervailing duty order on leather wearing apparel from Mexico, which has an April anniversary date. The company requesting a new shipper review is Comercial de Artesanias, S.A.

Initiation of Reviews

Pursuant to section 751(a)(2)(B)(ii) of the Act and 19 CFR 355.22(j)(3), we are initiating a review of a new shipper under the countervailing duty order on leather wearing apparel from Mexico. We intend to issue the final results of this review not later than 270 days from the date of publication of this notice.

Countervailing duty proceeding	Period to be reviewed
Mexico:	
Leather Wearing Apparel	
C–201–001	
Comercial de Artesanias, S.A.	11/01/94–04/30/95

Concurrent with publication of this notice, we will instruct the Customs Service to allow, at the option of the importer, the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for each entry of the merchandise (19 CFR 355.22(j)(4)(1995)).

Interested Parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 355.34(b).

This initiation and this notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)).

Dated: May 24, 1995.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 95–13422 Filed 5–31–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–588–019]

Cyanuric Acid From Japan, Revocation of the Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of revocation of Antidumping Duty Order.

SUMMARY: The Department of Commerce (the Department) is notifying the public of its revocation of the antidumping duty order on cyanuric acid from Japan because it is no longer of any interest to domestic interested parties.

EFFECTIVE DATE: June 1, 1995.

FOR FURTHER INFORMATION CONTACT: Sheila Forbes or Michael Panfeld, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230, telephone (202) 482–5253.

SUPPLEMENTARY INFORMATION:

Background

The Department may revoke an antidumping duty order if the Secretary concludes that the duty order is no longer of any interest to domestic interested parties. We conclude that there is no interest in an antidumping duty order when no interested party has requested an administrative review for five consecutive review periods and when no domestic interested party objects to revocation (19 CFR 353.25(d)(4)(iii)).

On March 31, 1995, the Department published in the **Federal Register** (60 FR 16604) its notice of intent to revoke the antidumping duty order on cyanuric acid from Japan (April 27, 1984). Additionally, as required by 19 CFR 353.25(d)(4)(ii), the Department served written notice of its intent to revoke this antidumping duty order on each domestic interested party on the service list. Domestic interested parties who might object to the revocation were provided the opportunity to submit their comments not later than the last day of the anniversary month.

In this case, we received no requests for review for five consecutive review periods. Furthermore, no domestic interested party, as defined under § 353.2(k)(3), (k)(4), (k)(5), or (k)(6) of the Department's regulations, has expressed opposition to revocation. Based on these facts, we have concluded that the antidumping duty order on cyanuric acid from Japan is no longer of any interest to interested parties. Accordingly, we are revoking this antidumping duty order in accordance with 19 CFR 353.25(d)(4)(iii).

Scope of the Order

Imports covered by the revocation are shipments of cyanuric acid from Japan. This merchandise is currently classifiable under Harmonized Tariff Schedules (HTS) item number 2933.69.00. The HTS number is provided for convenience and customs purposes. The written description remains dispositive.

This revocation applies to all unliquidated entries of cyanuric acid from Japan entered, or withdrawn from warehouse, for consumption on or after April 1, 1995. Entries made during the period April 1, 1994, through March 31, 1995, will be subject to automatic assessment in accordance with 19 CFR 353.22(e). The Department will instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after April 1, 1995, without regard to antidumping duties, and to refund any estimated antidumping duties collected with respect to those entries. This notice is in accordance with 19 CFR 353.25(d).

Dated: May 24, 1995.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 95–13420 Filed 5–31–95; 8:45 am]

BILLING CODE 3510–DS–P

[C–549–802]

Ball Bearings and Parts Thereof From Thailand; Initiation and Preliminary Results of Changed Circumstances Countervailing Duty Administrative Review, Consideration of Revocation and Intent To Revoke Countervailing Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation and preliminary results of changed circumstances countervailing duty administrative review, consideration of revocation and intent to revoke countervailing duty order.

SUMMARY: We preliminarily determine that domestic parties are no longer interested in the countervailing duty order on ball bearings and parts thereof from Thailand. We therefore intend to revoke the order. The revocation will apply to all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after January 1, 1995. We invite interested parties to comment on these preliminary results and intent to revoke the order.

EFFECTIVE DATE: June 1, 1995.

FOR FURTHER INFORMATION CONTACT: Dana Mermelstein or Brian Albright, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On February 3, 1995, the Torrington Company (Torrington), the petitioner, submitted a letter to the Department of Commerce (the Department) stating that it has no further interest in the countervailing duty order on ball bearings and parts thereof from Thailand for entries after December 11, 1994. Accordingly, Torrington requested revocation of the order based on changed circumstances in accordance with 19 C.F.R. 355.25(d)(1994).

This changed circumstances administrative review covers all producers and/or exporters of the subject merchandise and all shipments of this merchandise to the United States entered, or withdrawn from warehouse, for consumption on or after January 1, 1995.

Scope of Review

Imports covered by this review are ball bearings and parts thereof. Such merchandise is described in detail in Appendix A to this notice. The *Harmonized Tariff Schedule* (HTS) item numbers listed on Appendix A are provided for convenience and Customs purposes. The written description remains dispositive.

Preliminary Results of Changed Circumstances Administrative Review and Intent To Revoke Countervailing Duty Order

Pursuant to section 751(d)(1) of the Tariff Act of 1930, as amended (1995) (the Act), and sections 355.22(h) and 355.25(d)(1994) of the Department's regulations, the Department may revoke a countervailing duty order if it concludes that "changed circumstances" have arisen such that the order is no longer of interest to interested parties (19 C.F.R. 355.25(d)(1)(i)(1994)). We preliminarily determine that the petitioner's affirmative statement of no further interest in this proceeding, not opposed by statements of interest by other interested parties, constitutes changed circumstances sufficient to warrant revocation of this countervailing duty order. Therefore, we preliminary determine to revoke the countervailing duty order on ball bearings and parts thereof from Thailand.

We are hereby notifying the public of our preliminary determination to revoke this countervailing duty order. If this preliminary determination to revoke this order is made final, the revocation will apply to all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after January 1, 1995.

Therefore, we intend to instruct the U.S. Customs Service to terminate the suspension of liquidation and liquidate all entries of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after January 1, 1995, without regard to countervailing duties. We will instruct the U.S. Customs Service to refund with interest any estimated countervailing duties collected with respect to those entries. The current requirement for a cash deposit of estimated countervailing duties will continue until publication of the final results of this changed circumstances administrative review.

Interested parties may request a hearing within 10 days of the date of publication of this notice. Case briefs or other written comments from interested parties may be submitted not later than 30 days after the date of publication of this notice. Rebuttal briefs and rebuttal comments, limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication of this notice. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with section 355.38(e) of the Department's regulations (1994).

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client of employer becomes a party in the proceeding, but in no event later than the date the case briefs, under 19 C.F.R. 355.38(e)(1994), are due. The Department will publish the final results of the changed circumstances administrative review and its decision on revocation of this countervailing duty order, as well as the results of its analysis of issues raised in any case or rebuttal brief, or at a hearing.

This notice of changed circumstances administrative review and intent to revoke is in accordance with section 751(d)(1) and (3) of the Act (19 U.S.C. 1675(d)(1) and (3)(1995)) and 19 C.F.R. 355.22(h) and 355.25(d)(1994).

Dated: May 26, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

Appendix A

Scope of The Review

The products covered by this review, ball bearings, mounted or unmounted, and parts thereof, constitute the following as outlined below.

Ball Bearings, Mounted or Unmounted, and Parts Thereof

These products include all antifriction bearings which employ balls as the rolling element. Imports of these products are classifiable under the following categories: antifriction balls; ball bearings with integral shafts; ball bearings (including radial ball bearings) and parts thereof; ball bearings type pillow blocks and parts thereof; ball bearing type flange, take-up, cartridge, and hanger units, and parts thereof; and other bearings (except tapered roller bearings) and parts thereof. Wheel hub units which employ balls as the rolling element are subject to this review. Finished but unground or semiground balls are not included in the scope of the review. Imports of these products are currently classifiable under the following Harmonized Tariff Schedule (HTS) item numbers: 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.10, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

This review covers all of the subject bearings and parts thereof outlined above with certain limitations. With regard to finished parts (inner race, outer race, cage, rollers, balls, seals, shields, etc.), all such parts are included in the scope of this review. For unfinished parts (inner race, outer race, rollers, balls, etc.), such parts are included if (1) they have been treated, or (2) heat treatment is not required to be performed on

the part. Thus, the only unfinished parts that are not covered by the review are those parts which will be subject to heat treatment after importation.

[FR Doc. 95–13486 Filed 5–31–95; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

Modernization Transition Committee (MTC)

ACTION: Notice of public meeting.

Time and Date: June 14, 1995 from 8 a.m. to 5 p.m.

Place: This meeting will take place at the Radisson Plaza Hotel, 5000 Seminary Road, Alexandria, VA.

Status: The meeting will be open to the public. On June 14, 1995, 10 a.m. to 10:45 a.m. will be set aside for oral comments or questions from the public. Approximately 50 seats will be available on a first-come first-served basis for the public.

Matters To Be Considered: This meeting will cover: An update on the National Research Council study and proposed Consolidation Certifications for WSOs Los Angeles and Galveston.

Contact Person for More Information: Mr. Nicholas Scheller, National Weather Service, Modernization Staff, 1325 East-West Highway, SSMC2, Silver Spring, Maryland 20910. Telephone: (301) 713–0454.

Dated: May 25, 1995.

Nicholas R. Scheller,

Manager, National Implementation Staff.

[FR Doc. 95–13315 Filed 5–31–95; 8:45 am]

BILLING CODE 3510–12–M

[I.D. 052395B]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's Northern Habitat Panel will hold a public meeting.

DATES: The meeting will be held on June 5, 1995, from 1:00 p.m. until 4:00 p.m.

ADDRESSES: The meeting will be held at the office of the Columbia Basin Fish and Wildlife Authority, 2501 SW First Avenue, Suite 100, Portland, OR.

FOR FURTHER INFORMATION CONTACT: John Coon, Fishery Management Coordinator (Salmon), Pacific Fishery Management Council;

2130 SW Fifth Avenue, Suite 224; Portland, OR 97201; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to discuss the composition and meeting frequency of the Northern Habitat Panel, and to receive an update on screening in the Columbia River Basin, as well as approve a letter to the respective state forestry agencies regarding pesticide use in coho streams, and consider any other timely, regional habitat issues the panel decides merit discussion at this time.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Michelle Perry Sailer at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: May 25, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–13338 Filed 5–26–95; 1:54 pm]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton Textile Products Produced or Manufactured in the People's Republic of China

May 25, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: May 25, 1995.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6703. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for Categories 336 and 352 are being increased for swing and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Also see 59 FR 65760, published on December 21, 1994.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Memorandum of Understanding dated January 17, 1994, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 25, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 16, 1994, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textile products, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on January 1, 1995 and extends through December 31, 1995.

Effective on May 25, 1995, you are directed to amend the directive dated December 16, 1994 to increase the limits for the following categories, as provided under the terms of the Memorandum of Understanding dated January 17, 1994 between the Governments of the United States and the People's Republic of China:

Category	Adjusted twelve-month limit [1]
Sublevels in Group I	
336	166,832 dozen.
352	1,935,579 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–13345 Filed 5–31–95; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in India

May 25, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs reducing limits.

EFFECTIVE DATE: June 2, 1995.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6705. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being reduced for carryforward used during the previous year.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 62645, published on December 20, 1994). Also see 60 FR 8344, published on February 14, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 25, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on February 9, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in India and exported during the twelve-month period which began on January 1, 1995 and extends through December 31, 1995.

Effective on June 2, 1995, you are directed to amend the directive dated February 9, 1995 to reduce the limits for the following categories, as provided under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
218	10,665,700 square meters.
313	28,158,481 square meters.
315	10,056,171 square meters.
317	32,551,200 square meters.
336/636	691,862 dozen.
340/640	1,627,927 dozen.
363	32,796,479 numbers.
369–S [2]	544,505 kilograms.
647/648	652,273 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

[2] Category 369–S: only HTS number 6307.10.2005.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–13346 Filed 5–31–95; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of an Import Limit for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Apparel Produced or Manufactured in Sri Lanka

May 26, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: June 1, 1995.

FOR FURTHER INFORMATION CONTACT: Helen L. LeGrande, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Categories 336/636/836 is being increased for unused special carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Also see 60 FR 13410, published on March 13, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 26, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on March 7, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products and silk blend and other vegetable fiber apparel, produced or manufactured in Sri Lanka and exported during the period which began on January 1, 1995 and extends through December 31, 1995.

Effective on June 1, 1995, you are directed to amend the directive dated March 7, 1995 to increase the limit for Categories 336/636/836 to 358,952 dozen [1], as provided under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

[1] The limit has not been adjusted to account for any imports exported after December 31, 1994.

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–13419 Filed 5–31–95; 8:45 am]

BILLING CODE 3510–DR–F

Announcement of an Import Restraint Limit for Certain Wool Textile Products Produced or Manufactured in the Ukraine

May 25, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: June 1, 1995.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In a Memorandum of Understanding (MOU) dated May 6, 1995, the Governments of the United States and the Ukraine agreed to establish limits for Category 435 for the periods December 1, 1994 through December 31, 1994 and January 1, 1995 through December 31, 1995.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish a limit for Category 435 for the twelve-month period beginning on January 1, 1995 and extending through December 31, 1995.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the MOU, but are designed to assist only in the implementation of certain of their provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 25, 1995.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); pursuant to the Memorandum of Understanding dated May 6, 1995 between the Governments of the United States and Ukraine; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on June 1, 1995, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products Category 435, produced or manufactured in the Ukraine and exported during the twelve-month period beginning on January 1, 1995 and extending through December 31, 1995, in excess of 85,000 dozen [1].

Imports charged to this category limit for the period December 1, 1994 through December 31, 1994, shall be charged against that level of restraint to the extent of any unfilled balance. In the event the limit established for that period has been exhausted by previous entries, such goods shall be subject to the level set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–13347 Filed 5–31–95; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review.

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

[1] The limit has not been adjusted to account for any imports exported after December 31, 1994.

Title; Applicable Forms; and OMB Control Number: Acquisition Management Systems and Data Requirements Control List (AMSDL); Numerous DoD and Military Departmental Forms; OMB Control Number 0704–0188

Type of Request: Revision

Number of Respondents: 1,516

Responses Per Respondent: 763

Annual Responses: 1/156,708

Average Burden per Response: 110 hours

Annual Burden Hours: 127,237,880

Needs and Uses: The Acquisition Management Systems and Data Requirements Control List (AMSDL) is a list of data requirements used in Department of Defense (DoD) contracts. The information collected hereby, is utilized by DoD to support the design, test, manufacture, operation, and maintenance of procured items. It is required in approximately 15 million DoD contracts, for supplies, services, and hardware and software.

Affected Public: Businesses or other for-profit; Not-for-profit institutions

Frequency: On occasion.

Respondent's Obligation: Mandatory

OMB Desk Officer: Mr. Peter N. Weiss

Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: May 26, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–13392 Filed 5–31–95; 8:45 am]

BILLING CODE 5000–04–P

Office of the Secretary

Defense Base Closure and Realignment Commission Investigative Hearings

AGENCY: Defense Base Closure and Realignment Commission (a Presidentially appointed commission separate from and independent of DoD).

ACTION: Notice of Congressional/Department of Defense Investigative Hearings and Final Deliberative Hearings.

SUMMARY: Pursuant to Public Law 101–510, as amended, the Defense Base Closure and Realignment Commission announces a series of investigative and final deliberative hearings to be held in Washington, DC.

The purpose of the investigative hearings is for the Commission to consider testimony from Members of Congress and from representatives of the Department of Defense and the Military Services regarding military bases and activities being considered for realignment or closure. The specific dates, locations, and general topics follow:

June 12 (Location: Cannon House Office Building, Caucus Room 345)
—Members of Congress testify on behalf of the 1995 base closure and realignment proposals.

June 13 (Location: Hart Senate Office Building, Room 216)
—Members of Congress testify on behalf of the 1995 base closure and realignment proposals.

June 14 (Location: Hart Senate Office Building, Room 216)
—Representatives from the Department of Defense and the Military Services provide testimony regarding the 1995 base closure and realignment proposals.

The purpose of the final deliberative hearings is for the Commission to receive testimony and briefings from the staff and formally vote on base closure and realignment recommendations. The specific dates, locations, and general topics follow:

June 22 (Location: Hart Senate Office Building, Room 216)
—Commission staff provides briefings and testimony prior to Commission final votes.

June 23 (Location: Hart Senate Office Building, Room 216)
—Commission staff provides briefings and testimony prior to Commission final votes.

June 24 (Location: Hart Senate Office Building, Room 216)
—Commission staff provides briefings and testimony prior to Commission final votes.

June 26 (Location: Hart Senate Office Building, Room 216)
—Commission staff provides briefings and testimony prior to Commission final votes.

Each hearing will begin at 8:30 a.m. The buildings and room numbers are noted in parentheses following the dates of the hearing. However, hearing locations, dates, and times are subject to change based upon availability of facilities.

FOR FURTHER INFORMATION CONTACT: Mr. Wade Nelson, Director of Communications, at (703) 696–0504.

SUPPLEMENTARY INFORMATION: Changes to the above schedule will be published in the Federal Register by the Commission. Please call the Commission to confirm dates, times, and locations prior to each event. Individuals needing special assistance should contact the commission in advance of each event to facilitate their requirements.

Dated: May 26, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–13393 Filed 5–31–95; 8:45 am]

BILLING CODE 5000–04–M

Per Diem, Travel and Transportation Allowance Committee

AGENCY: Per Diem, Travel and Transportation Allowance Committee.

ACTION: Publication of changes in per diem rates.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 183. This bulletin lists changes in per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the Northern Mariana Island and Possessions of the United States. Bulletin Number 183 is being published in the **Federal Register** to assure that travelers are paid per diem at the most current rates.

EFFECTIVE DATE: 1 June 1995.

SUPPLEMENTARY INFORMATION: This document gives notice of changes in per diem rates prescribed by the Per Diem Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. Distribution of Civilian Personnel Per Diem Bulletins by mail was discontinued effective 1 June 1979. Per Diem Bulletins published periodically in the **Federal Register** now constitute the only notification of change in per diem rates to agencies and establishments outside the Department of Defense.

The text of the Bulletin follows:

BILLING CODE 5000–04–M

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
ALASKA:				
ADAK 5/	$ 10	$ 34	$ 44	10-01-91
ANAKTUVUK PASS	83	57	140	12-01-90
ANCHORAGE				
05-15--09-30	147	64	211	05-15-95
10-01--05-14	81	57	138	03-01-95
ANIAK	73	36	109	07-01-91
ATQASUK	129	86	215	12-01-90
BARROW	105	83	188	11-01-93
BETHEL	76	67	143	02-01-94
BETTLES	65	45	110	12-01-90
COLD BAY	110	54	164	07-01-93
COLDFOOT	95	59	154	10-01-92
CORDOVA				
05-01--09-30	79	76	155	05-01-95
10-01--04-30	67	73	140	03-01-95
CRAIG	67	35	102	07-01-91
DENALI NATIONAL PARK	113	68	181	05-01-94
DILLINGHAM	85	64	149	11-01-93
DUTCH HARBOR-UNALASKA	113	67	180	05-01-92
EIELSON AFB				
05-15--09-15	106	59	165	05-15-94
09-16--05-14	68	55	123	01-01-94
ELMENDORF AFB				
05-15--09-30	147	64	211	05-15-95
10-01--05-14	81	57	138	03-01-95
EMMONAK	62	61	123	10-01-93
FAIRBANKS				
05-15--09-15	106	59	165	05-15-94
09-16--05-14	68	55	123	01-01-94
FALSE PASS	80	37	117	06-01-91
FT. RICHARDSON				
05-15--09-30	147	64	211	05-15-95
10-01--05-14	81	57	138	03-01-95
FT. WAINWRIGHT				
05-15--09-15	106	59	165	05-15-94
09-16--05-14	68	55	123	01-01-94
HOMER				
05-01--09-30	71	60	131	05-01-94
10-01--04-30	60	58	118	02-01-94

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
ALASKA: (CONT'D)				
JUNEAU				
04-30--09-14	$ 88	$ 72	$160	04-30-95
09-15--04-29	77	71	148	03-01-95
KATMAI NATIONAL PARK	89	59	148	12-01-90
KENAI-SOLDOTNA				
04-02--09-30	104	74	178	04-02-94
10-01--04-01	67	71	138	01-01-94
KETCHIKAN				
05-01--09-30	90	69	159	05-01-95
10-01--04-30	73	68	141	03-01-95
KING SALMON 3/	75	59	134	12-01-90
KLAWOCK	75	36	111	07-01-91
KODIAK	79	65	144	03-01-95
KOTZEBUE	133	87	220	05-01-93
KUPARUK OILFIELD	75	52	127	12-01-90
METLAKATLA				
06-01--10-01	95	58	153	06-01-94
10-02--05-31	72	56	128	02-01-94
MURPHY DOME				
05-15--09-15	106	59	165	05-15-94
09-16--05-14	68	55	123	01-01-94
NELSON LAGOON	102	39	141	06-01-91
NOATAK	133	87	220	05-01-93
NOME	71	67	138	10-01-93
NOORVIK	133	87	220	05-01-93
PETERSBURG	77	54	131	03-01-95
POINT HOPE	99	61	160	12-01-90
POINT LAY 6/	106	73	179	12-01-90
PRUDHOE BAY-DEADHORSE	73	60	133	11-01-93
SAND POINT	64	67	131	08-01-94
SEWARD				
05-01--09-30	100	55	155	05-01-95
10-01--04-30	83	53	136	03-01-95
SHUNGNAK	133	87	220	05-01-93
SITKA-MT. EDGECOMBE				
05-15--09-30	93	64	157	05-15-95
10-01--05-14	83	63	146	03-01-95
SKAGWAY				
05-01--09-30	90	69	159	05-01-95
10-01--04-30	73	68	141	03-01-95

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
ALASKA: (CONT'D)				
SPRUCE CAPE	$ 79	$ 65	$144	03-01-95
ST. GEORGE	100	39	139	06-01-91
ST. MARY'S	77	59	136	06-01-93
ST. PAUL ISLAND	62	63	125	10-01-93
TANANA	71	67	138	10-01-93
TOK				
05-02--09-30	64	56	120	05-02-95
10-01--05-01	50	52	102	03-01-95
UMIAT	97	63	160	12-01-90
VALDEZ				
05-01--09-14	95	70	165	05-01-95
09-15--04-30	79	69	148	03-01-95
WAINWRIGHT	90	75	165	12-01-90
WALKER LAKE	82	54	136	12-01-90
WRANGELL				
05-01--09-30	90	69	159	05-01-95
10-01--04-30	73	68	141	03-01-95
YAKUTAT	77	58	135	11-01-93
OTHER 3, 4, 6/	65	50	115	06-01-95
AMERICAN SAMOA	73	48	121	11-01-94
GUAM	150	82	232	06-01-95
HAWAII:				
ISLAND OF HAWAII: HILO	73	61	134	06-01-93
ISLAND OF HAWAII: OTHER	111	69	180	01-01-95
ISLAND OF KAUAI	105	70	175	01-01-95
ISLAND OF KURE 1/		13	13	12-01-90
ISLAND OF MAUI	99	76	175	01-01-95
ISLAND OF OAHU	100	67	167	01-01-95
OTHER	79	62	141	06-01-93
JOHNSTON ATOLL 2/	22	22	44	08-01-94
MIDWAY ISLANDS 1/		13	13	12-01-90
NORTHERN MARIANA ISLANDS:				
ROTA	80	90	170	06-01-95
SAIPAN	89	89	178	06-01-95
TINIAN	61	72	133	06-01-95
OTHER	20	13	33	12-01-90

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
PUERTO RICO:				
BAYAMON				
05-01--11-24	$107	$ 75	$182	11-01-94
11-25--04-30	130	77	207	11-25-94
CAROLINA				
05-01--11-24	107	75	182	11-01-94
11-25--04-30	130	77	207	11-25-94
FAJARDO (INCL CEIBA, LUQUILLO AND HUMACAO)				
04-16--12-10	65	52	117	10-01-93
12-11--04-15	110	52	162	12-11-93
FT. BUCHANAN (INCL GSA SERV CTR, GUAYNABO)				
05-01--11-24	107	75	182	11-01-94
11-25--04-30	130	77	207	11-25-94
MAYAGUEZ	85	65	150	08-01-92
PONCE	96	75	171	09-01-93
ROOSEVELT ROADS				
04-16--12-10	65	52	117	10-01-93
12-11--04-15	110	52	162	12-11-93
SABANA SECA				
05-01--11-24	107	75	182	11-01-94
11-25--04-30	130	77	207	11-25-94
SAN JUAN (INCL SAN JUAN COAST GUARD UNITS)				
05-01--11-24	107	75	182	11-01-94
11-25--04-30	130	77	207	11-25-94
OTHER 7/	63	52	115	08-01-92
VIRGIN ISLANDS OF THE U.S.:				
ST. CROIX				
04-15--12-14	119	73	192	08-01-94
12-15--04-14	169	78	247	12-15-94
ST. JOHN				
06-01--12-14	255	78	333	11-01-94
12-15--05-31	370	90	460	12-15-94
ST. THOMAS				
04-17--12-17	141	106	247	08-01-94
12-18--04-16	220	114	334	12-18-94
WAKE ISLAND 2/	30	25	55	10-01-94
ALL OTHER LOCALITIES	20	13	33	12-01-90

BILLING CODE 5000-04-C

Footnotes

[1] Commercial facilities are not available. The meal and incidental expense rate covers charges for meals in available facilities plus an additional allowance for incidental expenses and will be increased by the amount paid for Government quarters by the traveler.

[2] Commercial facilities are not available. Only Government-owned and contractor operated quarters and mess are available at this locality. This per diem rate is the amount necessary to defray the cost of lodging, meals and incidental expenses.

[3] On any day when US Government or contractor quarters are available and U.S. Government or contractor messing facilities are used, a meal and incidental expense rate of $19.65 is prescribed to cover meals and incidental expenses at Shemya AFB, Clear AFS, Galena APT and King Salmon APT. This rate will be increased by the amount paid for U.S. Government or contractor quarters and by $4 for each meal procured at a commercial facility. The rates of per diem prescribed herein apply from 0001 on the day after arrival through 2400 on the day prior to the day of departure.

[4] On any day when U.S. Government or contractor quarters are available and U.S. Government or contractor messing facilities are used, a meal and incidental expense rate of $34 is prescribed to cover meals and incidental expenses at Amchitka Island, Alaska. This rate will be increased by the amount paid for U.S. Government or contractor quarters and by $10 for each meal procured at a commercial facility. The rates of per diem prescribed herein apply from 0001 on the day after arrival through 2400 on the day prior to the day of departure.

[5] On any day when U.S. Government or contractor quarters are available and U.S. Government or contractor messing facilities are used, a meal and incidental expense rate of $25 is prescribed instead of the rate prescribed in the table. This rate will be increased by the amount paid for U.S. Government or contractor quarters.

[6] The meal rates listed below are prescribed for the following locations in Alaska: Cape Lisburne RRL, Cape Newenham RRL, Cape Romanzof APT, Fort Yukon RRL, Indian Mtn RRL, Sparrevohn RRL, Tatalina RRL, Tin City RRL, Barter Island AFS, Point Barrow AFS, Point Lay AFS and Oliktok AFS. The amount to be added to the cost of government quarters in determining the per diem will be $3.50 plus the following amount:

	Daily rate
DOD Personnel	$13
Non-DOD Personnel	50

[7] (Eff 9–1–94) A per diem rate of $200 (lodging $148; M&IE $52) will be in effect for Las Croabas, Puerto Rico, during the Annual Conference of the National Association of State Boating Law Administrators (NASBLA) being held at the El Conquistador Resort and Country Club. This rate will be in effect from 4–12 September 1994 only for travelers attending the conferernce and only for travelers staying at the El Conquistador Resort.

Dated: May 26, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–13395 Filed 5–31–95; 8:45 am]

BILLING CODE 5000–04–P

Membership of the DIA Performance Review Committee

AGENCY: Defense Intelligence Agency (DoD).

ACTION: Notice of membership of the DIA Performance Review Committee (PRC).

SUMMARY: This notice announces the appointment of the Performance Review Committee (PRC) of the Defense Intelligence Agency. The PRC's jurisdiction includes the entire Defense Intelligence Senior Executive Service (DISES). Publication of PRC membership is required by 10 U.S.C. 1601(a)(4).

The PRC provides fair and impartial review of DISES performance appraisals and makes recommendations to the Director, DIA, regarding performance, performance awards, pay adjustments, retention in DISES, and at the applicable 3-year cycle, DISES recertification.

EFFECTIVE DATE: 1 July 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Michael T. Curriden, Office for Human Resources, Defense Intelligence Agency (DAH–1), 3100 Clarendon Boulevard, Arlington, VA 22201–5322, 703–907–1341.

Primary Members

Mr. Michael F. Munson, Deputy Director (Chairman)
Mr. John T. Berbrich, Chief of Staff
Ms. Joan A. Dempsey, Director, National Military Intelligence Production Center
RADM Thomas A. Wilson, Deputy Director for Intelligence, J2
Mr. John J. Sloan, Director for Policy Support

Alternate Members

Ms. Dolores D. Greene, Director for Administration
MG Patrick M. Hughes, Director for Intelligence, J2
Mr. Lewis A Prombain, Comptroller
Mr. Richard B. Walker, Director, National Military Intelligence Systems Center.

Dated: May 26, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–13394 Filed 5–31–95; 8:45 am]

BILLING CODE 5000–04–M

Department of the Army

Notice of Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Cedar River Section 205 Flood Control Project at Renton, King County, Washington

AGENCY: Seattle District, U.S. Army Corps of Engineers, Department of Defense.

ACTION: Notice of intent.

SUMMARY: The Seattle District, U.S. Army Corps of Engineers is proposing to prepare an Environmental Impact Statement (EIS) for the Section 205 Flood Control Study on the Cedar River, Renton, King County, Washington. This study was requested by the City of Renton because of significant flooding which has occurred in the area. An EIS is being prepared because of the potential for impacts on notable environmental amenities, particularly, resident and anadromous fish resources.

DATES: The Corps invites and encourages agencies and the public to provide written comments on the proposed EIS throughout the scoping process to ensure that all relevant environmental issues are considered. Persons or organizations wishing to submit scoping comments should do so not later than June 30, 1995.

ADDRESSES: Written comments on the scope of the EIS, questions about the EIS, requests for inclusion on the EIS mailing list and requests for copies of any documents associated with the draft EIS should be directed to: Cedar River 205 EIS, CENPS–EN–PL–ER, U.S. Army Corps of Engineers, P.O. Box 3755, Seattle, Washington 98124–2255, ATTN: Merri Martz.

SUPPLEMENTARY INFORMATION:

Background

The Cedar River drainage basin is located southeast of Seattle, Washington and lies entirely within the boundaries of King County. The upper portion of the Cedar River basin is within the City of Seattle's watershed and closed to public use. The mainstem portion is surrounded by rural farming and residential areas. The lower three miles of river run through the middle of the City of Renton. The Cedar River supports runs of sockeye, chinook and coho salmon and steelhead, and much of Lake Washington's smelt population.

Proposed Action

The Corps and City of Renton propose to modify the lower one and one-quarter miles of the river channel to provide additional flood passage and storage. In 1912, a channel was dredged to connect the Cedar River with Lake Washington at its present location. Formerly, the Cedar River drained via the Black River into Elliott Bay. The channel has been subject to infrequent dredging by the City of Renton for flood control over the subsequent years. The proposed action will provide a long-term modification to the channel to prevent sedimentation of the channel and provide increased flood conveyance.

Alternatives

The Corps has identified four alternative courses of action for analysis:

(1) No action. Allow the river channel to continue to evolve as it has been with increased sedimentation from upstream sources.

(2) Construct a sediment retention trap and levees along the river banks from the Logan Street bridge to the river mouth.

(3) Construct a sediment retention trap and dredge the existing channel to a uniform slope from Logan Street to the mouth.

(4) Construct a sediment retention trap and widen the channel to 250 feet from Logan Street to the river mouth. Additionally, dredge the channel to create a uniform slope from Logan Street to the mouth.

Alternatives 2, 3, and 4 would need to have modifications made to the South Boeing bridge for increased flood conveyance. Also, alternatives 3 and 4 would need small levees placed at low points along the banks.

Scoping and Public Involvement

Public involvement will be sought during scoping and preparation of the EIS in accordance with NEPA procedures. A public scoping process has been started to clarify issues of major concern, identify any information sources that might be available to analyze and evaluate impacts, and obtain public input on the range and acceptability of alternatives. This Notice of Intent formally commences the scoping process under NEPA. As part of the scoping process, all affected Federal, State and local agencies, Indian Tribes, and other interested private organizations, including environmental groups, are invited to comment on the scope of the EIS. Comments are requested concerning project alternatives, mitigation measures, probable significant environmental impacts, and permits or other approvals that may be required.

The following key areas have been identified to be analyzed in depth in the draft EIS:

(1) Flooding Characteristics
(2) Channel Sedimentation Rates
(3) Water Quality
(4) Fisheries
(5) Wildlife
(6) Wetlands
(7) Socioeconomic Resources

Other Environmental Review and Coordination Requirements

All review and coordination requirements will be fulfilled via this NEPA process.

Scoping Meeting

A scoping meeting will be scheduled for mid-June, 1995. Details of the meeting time and location will be announced in local media. Notices will be sent to all agencies, organizations and individuals on the EIS mailing list.

Availability of Draft EIS

The Corps expects to complete the draft EIS by April, 1996.

Dated: May 15, 1995.

Donald T. Wynn,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 95–13377 Filed 5–31–95; 8:45 am]

BILLING CODE 3710–ER–M

Notice of Availability

SUMMARY: This announces the notice of availability of the DEIS on the potential impact of the construction and operation of the proposed chemical agent demilitarization facility at Pine Bluff Arsenal, Arkansas. The proposed facility will be used to demilitarize all stockpiled chemical agents and munitions currently stored at Pine Bluff Arsenal. The DEIS examines the potential impacts of on-site incineration, alternative sites within Pine Bluff Arsenal and the "no action" alternative. The "no action" alternative is considered to be a deferral of the demilitarization with continued storage of agents and munitions at Pine Bluff Arsenal.

In its Record of Decision on February 26, 1988 (53 FR 5816, February 26, 1988) for the Final Programmatic Environmental Impact Statement on the Chemical Stockpile Disposal Program (CSDP), the Department of the Army selected on-site disposal by incineration at all eight chemical munition storage sites within the continental United States as the method by which it will destroy its lethal chemical stockpile. On March 29, 1989, the Department of the Army published a Notice of Intent in the **Federal Register** which provided notice that, pursuant to the National Environmental Policy Act and implementing regulations, it would prepare a draft site-specific EIS for the Pine Bluff chemical munitions disposal facility. The Department of the Army prepared a DEIS to assess the site-specific health and environmental impacts of on-site incineration of chemical agents and munitions stored at the Pine Bluff Arsenal. Comments on the DEIS will be included in the FEIS and considered by the Army in its Record of Decision. The Army will meet with the public during the comment period to discuss the DEIS. Details of the meeting will be announced at a future date. The DEIS for Pine Bluff Arsenal is now available and comments may be delivered to the address below:

ADDRESSES: Director, U.S. Army Chemical Demilitarization and Remediation Activity, ATTN: AMSCB–RAE–E, Aberdeen Proving Ground, Maryland 21010–5401.

FOR FURTHER INFORMATION CONTACT: Above address, or Ms. Catherine Stalcup at (410) 671–3629/2583.

Lewis D. Walker,

Deputy Assistant Secretary of the Army, (Environmental, Safety and Occupational Health) OASA (I, L&E).

[FR Doc. 95–13358 Filed 5–31–95; 8:45 am]

BILLING CODE 3710–08–M

MTMC's Re-engineering Personal Property Program Bulletin Board

AGENCY: Military Traffic Management Command (MTMC), DOD.

ACTION: Notice.

SUMMARY: Notice is given that effective April 28, 1995, MTMC will begin publishing a weekly update providing information and progress reports regarding the Department of Defense Personal Property Program on its EasyLink Bulletin Board.

DATES: This action is effectively immediately.

ADDRESSES: Mail comments to Headquarters, Military Traffic Management Command, ATTN: MTOP–QE, 5611 Columbia Pike, Falls Church, VA 22041–5050.

FOR FURTHER INFORMATION CONTACT: Joe DeLucia, MTOP–QE, (703) 756–1292.

SUPPLEMENTARY INFORMATION: MTMC is currently working an initiative to re-engineer the DOD Personal Property Program. one concept under consideration is competitively acquiring personal property services through the use of long-term, full service contracts under the Federal Acquisition Regulation. MTMC wishes to keep all interested parties informed as to the progress and scope of this effort by publishing a weekly update in its EASYLINK bulletin board. Types of

information addressed will include summaries of interested parties' concerns, suggestions, and positions as well as the DOD position when applicable. It will also include contemplated service requirements for inclusion in a solicitation, notifications and status reports, and other relevant information.

To subscribe to AT&T EasyLink services, carriers may contact AT&T EasyLink representative Lynn Phelps at 1–800–346–1557. Procedures to access the bulletin board system are as follows:

MTMC BBS Access

To access the MTMC BBS, a communication software is required. The software could be EasyLink's Office Access, Procomm Plus, or some other type of off the shelf communication software. Also required is an account on the EasyLink network.

Office Access Software

- At the Main Menu type *C* for the On-line Communication Menu
- At the On-line Communication Menu type *F* for FYI. The software will dial the network and exit into FYI.
- The network will ask for CATEGORY NAME, type *MTMC*. This will place you in the MTMC BBS.
- To maneuver within the BBS to ADCSOPS for Quality.

a. From the main menu TYPE *2* for the ADSCOPS for Quality.

b. TYPE *1* for the Re-Engineered Personal Property Program.

c. TYPE *1* for Contacts.

d. TYPE *2* for Information.

As information scrolls across the screen, the information is automatically downloaded to the hard drive on your computer.

- Press *END* key to disconnect from EasyLink.
- Press *ESC* key and return to the Main Menu.
- Type *I* to access the Inbound Journal.
- High light the message and Press *ENTER* to view the BBS categories that were scanned.

Procomm Plus Software

- At the Dialing Directory press *R* to Revise Entry. Type in the entry name.
- The remaining setup entries are as follows:
- Number=*1–800–325–4112* or *1–800–445–7523*.
- BAUD=*2400*.
- PARITY=*Even*.
- DATA BITS=*7*.
- STOP BITS=*1*.
- DUPLEX=*HALF*.
- SCRIPT=*BLANK*.
- PROTOCOL=*ASCII*.
- TERMINAL=*ANSI*.
- Press *ENTER* to dial the network.
- At the EASYLINK ID prompt type your *USERID AND PASSWORD*.
- At the PTS prompt type *EXIT*. This will exit the EasyLink network and provide an EasyLink Service Menu.
- Press *2* to select FYI.
- Hold down the *ALT* key and press *F1* and type a log name. This will open the log and allow the capture of the BBS data as it is scanned.
- The network will ask for CATEGORY NAME, type *MTMC*. This will place you in the MTMC BBS.
- To maneuver within the BBS to ADCSOPS for Quality.

a. From the main menu TYPE *2* for the ADCSOPS for Quality.

b. TYPE *1* for the Re-Engineered Personal Property Program.

c. TYPE *1* for Contacts.

d. TYPE *2* for information.

- The software will automatically capture the categories that are typed. After the category scan is completed, press *ALT* and the *H* keys to logoff.
- Hold down the *ALT* key and press *F1* to close the log.
- Hold down the *ALT* key and press *V*. Type the log name to view it. This will allow the captured BBS data to be viewed.

Greogry D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 95–13289 Filed 5–31–95; 8:45 am]

BILLING CODE 3710–08–M

Department of the Navy

Record of Decision for the Lease of Fleet and Industrial Supply Center Property to the Port of Oakland for Development of Intermodal Rail Facilities and Maritime Cargo-Related Tenant Uses at Oakland, CA

Pursuant to section 102(2) of the National Environmental Policy Act (NEPA) of 1969 and the Council on Environmental Quality Regulations on Implementing NEPA Procedures (40 CFR 1500–1508), the Department of the Navy announces its decision to implement the preferred alternative presented in the Final Environmental Impact Report/Environmental Impact Statement (FEIR/EIS) for the Lease of Fleet and Industrial Supply Center property to the Port of Oakland for development of intermodal rail facilities and maritime-related tenant uses at Oakland, California. This decision fulfills Navy responsibility in compliance with NEPA process. The Port of Oakland will make its decision in compliance with the California Environmental Quality Act (CEQA).

In response to 10 U.S.C. 2667 and Public Law 102–484 (Section 2834(b)) of the Fiscal Year 1993 Defense Authorization Act, as amended, the Navy is authorized to lease to the Port of Oakland, real property, together with improvements thereon, at the Fleet and Industrial Supply Center, Oakland (FISCO), Alameda County, California.

The action is granting of a lease of up to 220 acres of the FISC Oakland property to the Port of Oakland for expansion of their existing intermodal rail facilities and maritime-related tenant activities. In addition, the proposed development includes another 87 acres of the Port of Oakland's and Union Pacific Railroad's properties directly south of the Supply Center. The Port of Oakland proposes to establish maritime and transportation activities and to redevelop the site for port operations in support of the Oakland Harbor Area.

The 307 total acres have been divided into six areas for planning purposes. Development of Area A (83 acres of the Center) would include demolition of most of the existing facilities and construction of new intermodal railtracks and associated appurtenances, such as straddle carrier runways and container staging support areas. Development of Area B (40 acres of the Center) would include demolition of existing facilities and construction of new container transfer and storage areas and a transloading facility. The transloading facility would be a narrow, dock-high platform with rail tracks on one side and truck spaces on the other side. Development of Area C (67 acres of the Center) would include demolition of some existing facilities, construction of an entrance for the intermodal rail facility (including a gatehouse and maintenance and repair building) and maintenance of existing warehouses for continued warehousing and/or distribution uses. Development of Areas D and E (87 acres of Port and Union Pacific Railroad properties) would include demolition of existing facilities and construction of a new terminal expansion area to be used for development of Area F (20 to 30 acres of the Center) may be included in the lease, depending on the results of discussions between the Port of Oakland and the Center. If the agreement is reached, the additional area would be used for warehousing and/or distribution.

The alternatives, including the preferred alternative, may be categorized as four development alternatives and the "no action" alternative. The development alternatives vary from extensive intermodal rail facilities to increased maritime related/industrial tenant activities. The lease and development alternatives would introduce major changes in scale and character of the Historic District at FISCO. In compliance with Section 106 of the National Historic Preservation Act (16 U.S.C. Section 470(f)), the Navy has consulted the State Historic Preservation Officer, and a Memorandum of Agreement has been reached regarding mitigation for adverse effects. The action will result in net air pollution emissions that will be below established threshold levels. A record of non-applicability for the proposed action has been prepared pursuant to 40 CFR Parts 51 and 93 and no Clean Air Act Conformity determination is necessary. There will not be any disproportionately high and adverse human health or environmental effects from the action on minority and low-income populations.

A Draft EIR/EIS was prepared by the Port and the Navy, and distributed to agencies and officials of federal, state and local governments, citizen groups and associates, public libraries, and other interested parties for review and comment. A public hearing to inform the public of the DEIR/EIS findings and to solicit comments was held on September 19, 1994. Public comments concentrated on existing adverse commercial truck traffic conditions in the West Oakland neighborhood. The Port of Oakland has been working with community-based organizations to arrive at appropriate and reasonable measures to ease these existing conditions. Copies of all comments received were included in the Final EIR/EIS. Six sets of written comments were received in response to the FEIR/EIS during the 30-day public review period. Two sets of these comments focused on technical questions pertaining to FISCO biological resources, and the asbestos survey at the site. The organizations making these comments will be directed to the appropriate sections of the FEIR/EIS that addressed their concerns. The principal emphasis of the remaining four sets of comments was regarding the action and its relationship to the Port's broader long-term expansion plan, including associated impacts—especially from increased commercial truck traffic. As part of the Port's "Vision 2000" long-term conceptual plan, the Port is investigating the feasibility of leasing an additional 200 acres of FISCO property for future expansion and development of maritime and rail facilities beyond the action. The Port will prepare a separate or supplemental NEPA/CEQA document that will suitably evaluate the environmental impacts of such future expansion plan, as components of the plan become reasonably foreseeable.

Questions regarding the Draft and Final Environmental Impact Report/Environmental Impact Statement prepared for this action may be directed to: (1) Mr. Raymond Chiang, Environmental Planning Branch, Engineering Field Activity West, Naval Facilities Engineering Command, P.O. Box 727, San Bruno, California 94066, FAX (415) 244–3737 for questions pertaining to the Navy action; and (2) Mr. Charles Schwarz, Environmental Department, Port of Oakland, 530 Water Street, Oakland, California 94607, FAX (510) 465–3755 for questions pertaining to the Port of Oakland action.

Dated: May 25, 1995

Robert B. Pirie, Jr.,

Assistant Secretary of the Navy (Installation and Environment).

[FR Doc. 95–13429 Filed 5–31–95; 8:45 am]

BILLING CODE 3810–FF–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before July 3, 1995.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chonok: Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–9915. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 9 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Group publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: May 25, 1995.

Gloria Parker,

Director, Information Resources Group.

Office of Postsecondary Education

Type of Review: Reinstatement.
Title: Application for Designation as an Eligible Institution.
Frequency: Annually.
Affected Public: Not-for-profit institutions.
Reporting Burden: Responses: 1; Burden Hours: 9,600.
Recordkeeping Burden: Recordkeepers: 0; Burden Hours; 0.
Abstract: Institutions of Higher Education submit this form in order to be designated as eligible to compete for grants under the Higher Education Action of 1965, as amended, Title III, Parts A and C. The Department will use the information to make grant awards.

[FR Doc. 95–13406 Filed 5–31–95; 8:45 am]

BILLING CODE 4000–01–M

Indian Education National Advisory Council; Meeting

AGENCY: National Advisory Council on Indian Education, Education.

ACTION: Notice of hearing.

SUMMARY: The National Advisory Council on Indian Education invites the

public to attend a one-day hearing conducted by the Council. This notice also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATE AND TIME: Monday, June 7, 1995 from 9:00 p.m. to 5:00 p.m.

ADDRESSES: The hearing will be held at the Ramada Classic, 6815 Menual Blvd. N.E., Albuquerque, New Mexico 87110. Telephone: (505) 881–0000.

FOR FURTHER INFORMATION CONTACT: John W. Cheek, Acting Director, National Advisory Council on Indian Education, 600 Independence Avenue S.W., The Portals Building, Suite 6211, Washington, DC 20202–7556. Telephone: 202/205–8353.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Indian Education is established under section 5342 of the Indian Education Act of 1988 (25 U.S.C. 2642). The Council is established to, among other things, assist the Secretary of Education in carrying out responsibilities under the Indian Education Act of 1988 (Part C, Title V, Pub. L. 100–297) and to advise Congress and the Secretary of Education with regard to federal education programs in which Indian children or adults participate or from which they can benefit.

In conjunction with the National Johnson O'Malley Conference scheduled for June 4–8 in Albuquerque, New Mexico, the National Advisory Council on Indian Education is scheduling a one-day hearing for Wednesday, June 7, 1995. The conference and hearing are scheduled to be held at the Ramada Classic Hotel in Albuquerque. NACIE welcomes written and/or oral testimony from the general public, especially Indian community parents relative to concerns about personal involvement in their children's education. NACIE is also interested in parental concerns regarding tribal language programs in schools and parental participation in common or core curriculum subjects. The Council encourages parents' ideas/comments on what is working and what is not in their child's educational setting. In order to facilitate additional comments, the Council will be soliciting hearing data from individuals for two additional weeks beyond the June 7 meeting day. Written testimony may be sent to: NACIE, 600 Independence Ave. S.W., The Portals, Suite 6211, Washington, DC 20202–7556. Findings from the hearing will provide the basis for future consideration in annual reports to Congress and on-going Council business. Testimony may also be faxed to the NACIE office at (202) 205–9446 any time from the date of publication of this document to June 23, 1995.

Records are kept of all Council proceedings, and are available for public inspection at the office of the National Advisory Council on Indian Education located at 1250 Maryland Avenue S.W., The Portals Building, Suite 6211, Washington, DC 20202–7556 from the hours of 9:00 a.m. to 4:30 p.m. Monday through Friday.

Dated: May 22, 1995.

John W. Cheek,

Acting Director, National Advisory Council on Indian Education.

[FR Doc. 95–13296 Filed 5–31–95; 8:45 am]

BILLING CODE 4000–01–M

[CFDA Number: 84.267]

State Postsecondary Review Program; Notice Extending the Period During Which a State Postsecondary Review Entity (SPRE) may be Reimbursed for Allowable Costs Under the State Postsecondary Review Program (SPRP)

EXTENSION OF FUNDING PERIOD FOR SPRE ACTIVITY: On July 12, 1994, the "Notice of closing date for receipt of State applications for fiscal year 1994" was published in the **Federal Register**. That notice established June 30, 1995 as the date by which the Secretary will no longer reimburse a State for direct and indirect costs under an approved plan and budget. The purpose of this notice is to extend the period during which a State Postsecondary Review Entity may be reimbursed for allowable costs under the State Postsecondary Review Program from June 30, 1995 to September 30, 1995. This action is taken so that States may continue to be reimbursed by the Secretary for current fiscal year costs incurred in carrying out allowable activities under the SPRP in consideration of a possible reduction in program funding for fiscal year 1995.

FOR FURTHER INFORMATION CONTACT: Rachael A. Shultz, State Liaison Branch, Office of Postsecondary Education, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3915, ROB–3, Washington, D.C. 20202–5244. Telephone: (202) 708–7417. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Program Authority: 20 U.S.C. 1099a–1099a–3.

Dated: May 26, 1995.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 95–13408 Filed 5–31–95; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Arbitration Panel Decision Under the Randolph-Sheppard Act

AGENCY: Department of Education.

ACTION: Notice of Arbitration Panel Decision Under the Randolph-Sheppard Act.

SUMMARY: Notice is hereby given that on October 21, 1992, an arbitration panel rendered a decision in the matter of *District of Columbia Department of Human Services v. General Services Administration (Docket No. R–S/91–9).* This panel was convened by the Secretary of Education pursuant to 20 U.S.C. 107d–1(b). The Randolph-Sheppard Act (the Act) provides a priority for blind vendors to operate vending facilities on Federal property. Under this section of the Act, the State licensing agency (SLA) may file a complaint with the Secretary if the SLA determines that an agency managing or controlling Federal property fails to comply with the Act or regulations implementing the Act. The Secretary then is required to convene an arbitration panel to resolve the dispute.

FOR FURTHER INFORMATION CONTACT: A copy of the full text of the arbitration panel decision may be obtained from George F. Arsnow, U.S. Department of Education, 600 Independence Avenue, SW., Room 3230, Mary E. Switzer Building, Washington, DC 20202-2738. Telephone: (202) 205-9317. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205-8298.

SUPPLEMENTARY INFORMATION: Pursuant to the Randolph-Sheppard Act (20 U.S.C. 107d–2(c)), the Secretary publishes a synopsis of arbitration panel decisions affecting the administration of vending facilities on Federal and other property.

Background

On August 29, 1986, the District of Columbia Rehabilitation Services Administration (DCRSA), the SLA, and the General Services Administration (GSA) entered into an interim agreement by which a permit was granted to DCRSA by GSA to operate a cafeteria in the GSA Regional Office Building (ROB) at 7th and D Streets, SW., Washington, DC. The cafeteria opened for business on September 2, 1986, and was assigned a blind vendor.

In mid-March 1989, GSA verbally notified the chief of DCRSA's Randolph-Sheppard Vending Facility program that, at an unspecified time in the future, GSA would be making structural repairs to the ROB cafeteria. Subsequently, in a letter dated August 1, 1990, GSA notified DCRSA that the repairs would begin on September 1, 1990, and that the cafeteria would be closed for approximately four months. The letter further indicated that during the renovations the fourth floor snack bar in the building would be used as a temporary facility for the blind vendor. GSA also alerted DCRSA that the new renovated cafeteria would have an upgraded menu, design changes, and increased service levels.

By letter dated August 14, 1990, DCRSA made various requests concerning the renovation and the new cafeteria. Specifically, DCRSA requested a walk-through of the temporary site, a proposed menu, an opportunity to review the design for the new cafeteria, a market-based survey, and a subsidy from GSA to offset the hardship of the vendor's employees during the renovation.

Responding by letter of August 23, 1990, GSA informed DCRSA that it would arrange for a walk-through of the temporary site and would waive payment from DCRSA of the one and one-half percent franchise fee during the renovation period. GSA also offered to meet with DCRSA to discuss any of DCRSA's concerns. The renovation project was delayed as the result of design errors and the discovery of asbestos.

On January 29, 1991, GSA met with DCRSA representatives to discuss the renovation completion and the operation of the new cafeteria. At that time, GSA formally requested by letter dated January 29 that DCRSA submit an operating plan for the new cafeteria. GSA's request for the plan contained 13 specific items of information.

DCRSA submitted its proposal on March 8, 1991. By letter dated March 28, 1991, GSA rejected DCRSA's proposal as being deficient in each of the 13 areas listed in its earlier request. GSA offered to meet with DCRSA to discuss the proposal. However, DCRSA declined this offer and, instead, asked for and received a written critique. On April 10, 1991, DCRSA submitted a revised proposal. By letter dated April 19, 1991, GSA again rejected DCRSA's proposal, and again DCRSA declined GSA's offer to meet to discuss the proposal.

Subsequently, by letter dated April 26, 1991, GSA informed DCRSA that it had chosen another contractor to operate the cafeteria and that DCRSA would have to close its operation by May 3, 1991.

On May 3, 1991, the DCRSA's blind vendor filed a complaint with the United States District Court for the District of Columbia against officials of GSA seeking a temporary restraining order, a preliminary injunction, compensatory damages, and attorney's fees.

The court issued a temporary restraining order effective through May 9, 1991, prohibiting GSA from terminating DCRSA's permit. GSA agreed not to terminate the permit until after the preliminary injunction hearing.

On May 14th, DCRSA filed a complaint for arbitration with the Secretary of Education. The preliminary injunction hearing was held on May 28, at which time GSA agreed to terminate its contract with the other vendor and conduct a full and open competition pursuant to 34 CFR 395.33(b). The court denied the preliminary injunction without prejudice on May 28 and ordered the parties to pursue arbitration under the Randolph-Sheppard Act, as amended.

The vendor continued to operate the fourth floor snack bar, while GSA advertised for bids to operate the fifth floor cafeteria. On June 7, 1991, GSA issued a Request for Proposal (RFP) for the operation of the cafeteria. GSA held a pre-bid proposal conference for offerers on June 13. The solicitation closed on July 8, 1991. DCRSA responded to the RFP. The maximum number of points to be earned was 1,000 for rating each applicant's proposal. The competitive range was set at 900 points or better. DCRSA received a point value of 691, which did not fall within the competitive range.

On October 1, 1991, GSA awarded the cafeteria contract to another contractor, effective October 15. On October 2, GSA requested that DCRSA close the fourth floor snack bar and vacate the fifth floor kitchen by October 11, 1991. Shortly thereafter, DCRSA and the vendor filed with the United States District Court for the District of Columbia a motion for a preliminary injunction, which was denied on October 21, 1991. On October 24, 1991, the denial of emergency relief was upheld by the United States Court of Appeals for the District of Columbia. Consequently, DCRSA vacated the fourth and fifth floor facilities on October 25, and the other contractor opened the renovated cafeteria on October 28, 1991.

An arbitration hearing was held on March 17 and 18, 1992, pursuant to section 107d–2.

Arbitration Panel Decision

The arbitration panel in a majority opinion found that GSA fully complied with the Act in its negotiations with DCRSA regarding the renovations of the cafeteria. The panel further found that, after issuing an RFP on June 7, 1991, GSA fully complied with the Act in the manner in which it conducted its solicitation of bids for the cafeteria. However, the panel ruled that GSA exceeded its authority by awarding the contract to GSI, a private contractor, prior to the RFP seeking open bids, thereby resulting in DCRSA's motion in United States District Court to compel GSA to comply with 34 CFR 395.33(b) by publishing an RFP.

In determining a remedy, the panel instructed GSA to pay DCRSA's and the vendor's reasonable attorneys' fees, which they expended in seeking relief in court. The parties were instructed to agree upon the amount of the attorneys' fees within 30 days of the award, with the actual reimbursement to take place within 90 days of the panel's award.

All other relief sought by the vendor was denied. The panel retained jurisdiction over the case for 120 days following the panel's award in order to resolve any remaining disputes over the amount of attorneys' fees to be paid.

One panel member dissented.

On May 6, 1994, the panel made its final award of attorneys' fees to DCRSA in the amount of $967.89 and to the vendor in the amount of $14,800.

The views and opinions expressed by the panel do not necessarily represent the views and opinions of the United States Department of Education.

Dated: May 26, 1995.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 95–13407 Filed 5–31–95; 8:45 am]

BILLING CODE 4000–01–P

Arbitration Panel Decision Under the Randolph-Sheppard Act

AGENCY: Department of Education.

ACTION: Notice of Arbitration Panel decision under the Randolph-Sheppard Act.

SUMMARY: Notice is hereby given that on June 16, 1993, an arbitration panel rendered a decision in the matter of *Joseph A. Roan and Kenneth White v. Massachusetts Commission for the Blind, (Docket No. R–S/92–12).* This panel was convened by the Secretary of

the U. S. Department of Education pursuant to 20 U.S.C. 107d–1(a), upon receipt of a complaint filed by Joseph A. Roan and Kenneth White on July 2, 1992. The Randolph-Sheppard Act (the Act) creates a priority for blind individuals to operate vending facilities on Federal property. Under this section of the Act, a blind licensee dissatisfied with the State's operation or administration of the vending facility program authorized under the Act may request a full evidentiary hearing from the State licensing agency (SLA). If the licensee is dissatisfied with the State agency's decision, the licensee may file a complaint with the Secretary of the U.S. Department of Education who then is required to convene an arbitration panel to resolve the dispute.

FOR FURTHER INFORMATION CONTACT: A copy of the full text of the arbitration panel decision may be obtained from George F. Arsnow, U.S. Department of Education, 600 Independence Avenue, SW., Room 3230 Switzer Building, Washington, DC 20202–2738. Telephone: (202) 205–9317. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8298.

SUPPLEMENTARY INFORMATION: Pursuant to the Randolph-Sheppard Act (20 U.S.C. 107d–2(c)), the Secretary publishes a synopsis of arbitration panel decisions affecting the administration of vending facilities on Federal property.

Background

The complainants, Joseph A. Roan and Kenneth White, are licensed blind vendors in the vending program operated by the Massachusetts Commission for the Blind, the SLA. Mr. Roan was the manager of a facility located in the lobby of the John F. Kennedy Federal Building (JFK Federal Building). Mr. White was the manager of a facility located on the sixth floor of the same building.

In the Fall of 1991, the JFK Federal Building was scheduled for extensive renovation, which involved the closing, in phases, of the five vending facilities at this site, including the ones operated by Messrs. Roan and White. Due to the renovation of the building, the General Services Administration (GSA) entered into an agreement with the SLA to lease space at One Congress Street. The SLA planned to use this space as a vending facility and characterized this location as a "temporary stand" to accommodate a vendor who was displaced during the renovation of the JFK Federal Building.

The complainants alleged that the SLA inappropriately characterized this facility as a "temporary location" to accommodate vendors displaced during the renovation of the JFK Federal Building. The complainants further alleged that the SLA failed to advertise for bid to all vendors the stand located at One Congress Street, but rather moved a displaced vendor into this location in violation of 20 U.S.C. 107a(b) and 34 CFR 395.7(c) relating to the transfer and promotion of vendors by the SLA.

On April 22, 1992 both Mr. Roan and Mr. White received a notice that the vendor of the IRS lobby facility at the JFK Federal Building was retiring and that this location was going out for bid. Mr. Roan and Mr. White jointly wrote a letter to the SLA requesting that the IRS lobby stand not be put up for bid, but rather that complainants be placed there to operate this facility while their respective stands were closed due to the scheduled renovation of the JFK Federal Building. Complainants' request was denied by the SLA. Subsequently, Mr. Roan and Mr. White requested and received an administrative review and a fair hearing by the SLA. In an opinion dated May 26, 1992, the Hearing Officer ruled that the SLA properly negotiated for the establishment of the Congress Street stand as a temporary accommodation to otherwise displaced JFK Federal Building vendors. With regard to complainants' objections that the IRS lobby stand was put up for bidding, the Hearing Officer ruled that this location was established as a permanent facility, which made it open to bidding by all vendors in the Massachusetts Vending Facility Program. Mr. Roan and Mr. White filed a complaint with the U.S. Department of Education requesting arbitration regarding the establishment of the temporary stand at One Congress Street and the open bidding on the IRS lobby stand. A hearing was conducted on April 13, 1993.

Arbitration Panel Decision

The arbitration panel ruled that there is no dispute that there is no express authority in the regulations for the creation of temporary stands. There is also nothing in the regulations to preclude this administrative action. The use of this device represents a reasonable effort by the SLA to further the program objectives of providing employment for blind vendors.

To lessen the effects of building renovations on vending facilities in the program, the SLA goes to great lengths to find a temporary site within the same workplace for the displaced vendor until his or her permanent location is back in operation.

The SLA has followed this practice in the past, and it is recognized by vending facility managers that the temporary sites are different in their essential nature from permanent vending facility sites, and, therefore, these locations are not subject to the posting and bidding procedures. In fact, the panel noted that there was not a challenge to this procedure when One Congress Street was used as a temporary stand during Phase One of the renovation at the JFK Federal Building. When Phase Two occurred and two vendors were to be displaced, the SLA used the same standard operating procedure in assigning the temporary location. Based on seniority, One Congress Street was assigned to another displaced vendor rather than Mr. White. Subsequently, Mr. White filed for an arbitration hearing. He was joined in his request by Joseph Roan, who was facing displacement during the third phase of the renovation.

The panel ruled that, even assuming that the SLA should have posted the One Congress Street location, there was no indication that Mr. White, as the junior vendor, would have benefited in any way from such a procedure.

Regarding the IRS lobby stand, the panel noted that this was not a temporary location, but rather a permanent and highly desirable vending facility. Therefore, under the clear regulations of the SLA, permanent vending facilities must be opened for bid. Further, the panel reasoned that there is nothing in the statute, regulations, or legislative history that suggests that an SLA has the authority to use a permanent vending facility as a temporary accommodation site to save a particular vendor from dislocation. The Randolph-Sheppard Act gives preference to blind vendors for licensing. It does not create a preference among blind vendors as to who will work at which vending facility.

The panel found that complainants' argument that the SLA was establishing a policy of promotion over employment was unpersuasive. The panel determined that the program embodies a system of promotion by bidding. At no time has there been a guarantee that all licensed vendors would have a vending location before any vendor could move to a more desirable location.

The panel ruled that complainants Roan and White have benefited from the bidding system, winning more profitable stands on multiple occasions despite the fact that other vendors have been without a place of employment. The panel reasoned that simply because Mr. Roan and Mr. White perceived a method of preserving their level of business during the JFK Federal Building renovations did not mean that the SLA's longstanding system of dealing with displaced vendors should be changed.

The views and opinions expressed by the panel do not necessarily represent the views and opinions of the U.S. Department of Education.

Dated: May 25, 1995.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 95–13354 Filed 5–31–95; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Conduct of Employees

Notice of Waiver Pursuant to section 602(c) of the Department of Energy Organization Act (Pub. L. 95–91)

Section 602(a) of the Department of Energy ("DOE") Organization Act (Pub. L. 95–91, hereinafter referred to as the "Act") prohibits a "supervisory employee" (defined in section 601(a) of the Act) of the Department from knowingly receiving compensation from, holding any official relation with, or having any pecuniary interest in any "energy concern" (defined in section 601(b) of the Act).

Section 602(c) of the Act authorizes the Secretary of Energy to waive the requirements of section 602(a) in cases where exceptional hardship would result, where the interest is a pension, interest or other similarly vested interest, or where the waiver is in the Department's interest and the asset is placed in a qualified trust that is created in accordance with regulations promulgated by the Office of Government Ethics.

Dr. Alexander MacLachlan is serving as Deputy Under Secretary for Technology Partnerships and Economic Competitiveness. As a result of his past employment with du Pont (E.I.) de Nemours and Company (DuPont), Dr. MacLachlan has a vested pension interest in the DuPont Pension and Retirement Plan within the meaning of section 602(c) of the Act. Dr. MacLachlan also participates in the DuPont Stock Performance Plan and the DuPont Savings and Investment Plan. I have determined that requiring Dr. MacLachlan to terminate his interest in these plans would be an exceptional hardship. He also owns stock in 11 energy concerns: Bethlehem Steel Corp., Burlington Resources Inc., The Coastal Corp., Delmarva Power & Light Co., E. I. du Pont de Nemours and Company, General Electric Co., GTE Corp., Halliburton Co., IMC Fertilizer Group, Inc., USX–US Steel Group, and Weyerhaeuser Co. I have determined that requiring Dr. MacLachlan to sell this stock would be an exceptional hardship. Therefore, I have granted Dr. MacLachlan a waiver of the divestiture requirement of section 602(a) of the Act with respect to the interests described above for the duration of his service as a supervisory employee to the Department.

In accordance with section 208, title 18, United States Code, Dr. MacLachlan has been directed not to participate personally and substantially, as a Government employee, in any particular matter the outcome of which could have a direct and predictable effect upon DuPont or any of the other entities listed above, unless his appointing official determines that his financial interest in the particular matter are not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from Dr. MacLachlan.

Dated: May 10, 1995.

Hazel R. O'Leary,

Secretary of Energy.

[FR Doc. 95–13382 Filed 5–31–95; 8:45 am]

BILLING CODE 6450–01–P

[FE Docket No. EA–104]

Application To Export Electricity; Arizona Public Service Company

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: Arizona Public Service Company (APS) has requested authorization to export electric energy to Mexico. APS is a regulated public utility incorporated in the State of Arizona and authorized to do business in the States of Arizona and New Mexico.

DATES: Comments, protests, or requests to intervene must be submitted on or before July 3, 1995.

ADDRESSES: Comments, protests, or requests to intervene should be addressed as follows: Office of Coal & Electricity (FE–52), Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Warren E. Williams (Program Office) 202–586–9629 or Michael T. Skinker (Program Attorney) 202–586–6667.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act.

On May 5, 1995, APS filed an application with the Office of Fossil Energy (FE) of the Department of Energy (DOE) for authorization to export electric energy to the Comision Federal de Electricidad (CFE), the Mexican national electric utility, pursuant to section 202(e) of the Federal Power Act. APS proposes to sell CFE electricity which is in excess of what is needed for APS customers. Specifically, APS has proposed the sale of economy energy to CFE,through the facilities of San Diego Gas & Electric (SDG&E). As an economy energy sale, service can be interrupted or curtailed by APS, CFE, or SDG&E.

The electricity to be sold to CFE would emanate from the APS electrical grid and would be delivered to SDG&E at either the Palo Verde substation west of Phoenix, Arizona, or the North Gila substation, located east of Yuma, Arizona. SDG&E owns two 230-kilovolt (kV) lines which interconnect with CFE. The first connects SDG&E's Miguel substation located east of San Diego, California, with CFE's Tijuana I substation located near Tijuana, Mexico; the second connects SDG&E's Imperial Valley substation located near El Centro, California, with CFE's La Rosita substation located west of Mexicali, Mexico. The construction and operation of these international transmission lines were previously authorized by Presidential Permit numbers PP–68 and PP–79, respectively.

Procedural Matters

Any person desiring to be heard or to protest this application should file a petition to intervene or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the rules of practice and procedure (18 CFR 385.211, 385.214).

Any such petitions and protests should be filed with the DOE on or before the date listed above. Additional copies of such petitions to intervene or protests also should be filed directly with: Dennis Beals, Arizona Public Service Company, PO Box 53999, Station 9860, Phoenix, Arizona 85072–3999, (602) 250–3101 and Bruce Gardner, Esq., Arizona Public Service Company, PO Box 53999, Station 9820, Phoenix, Arizona 850772–3999, (602) 250–3507.

Pursuant to 18 CFR 385.211, protests and comments will be considered by the DOE in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene under 18 CFR 385.214.

Section 385.214 requires that a petition to intervene must state, to the extent known, the position taken by the petitioner and the petitioner's interest in sufficient factual detail to demonstrate either that the petitioner has a right to participate because it is a State Commission; that it has or represents an interest which may be directly affected by the outcome of the proceeding, including any interest as a consumer, customer, competitor, or a security holder of a party to the proceeding; or that the petitioner's participation is in the public interest.

A final decision will be made on this application after the DOE determines whether the proposed action would impair the sufficiency of electric supply within the United States or would not impede or tend to impede the coordination in the public interest of facilities in accordance with section 202(e) of the Federal Power Act.

Before an export authorization may be issued, the environmental impacts of the proposed DOE action (i.e., granting the export authorization, with any conditions and limitations, or denying it) must be evaluated pursuant to the National Environmental Policy Act of 1969.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above.

Issued in Washington, DC, on May 25, 1995.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 95–13433 Filed 5–31–95; 8:45 am]

BILLING CODE 6450–01–M

Availability of Information Related to the Dual Axis Radiographic Hydrodynamic Test Facility; Draft Environmental Impact Statement

AGENCY: Department of Energy.

ACTION: Notice of availability of information.

SUMMARY: On May 12, 1995, the Environmental Protection Agency (EPA) announced the availability of the Department of Energy's (DOE) Dual Axis Radiographic Hydrodynamic Test (DARHT) Facility draft Environmental Impact Statement (EIS), DOE/EIS–0228D, for public review and comment (60 FR 25717). The alternative actions analyzed in the draft EIS would occur principally at the DOE's Los Alamos National Laboratory (LANL) in northern New Mexico. By this notice, DOE is announcing the availability of additional information related to the draft DARHT EIS that has recently been placed in the Los Alamos National Laboratory Community Reading Room for public review.

ADDRESSES: Information discussed in the supplementary information section is available for public review at the Los Alamos National Laboratory Community Reading Room, 1450 Central Ave., Suite 101, Los Alamos, New Mexico 87544. For information on the availability of specific documents, availability of copies of documents and hours of operation, please contact the reading room at (505) 665–2127 or (800) 543–2342.

FOR FURTHER INFORMATION CONTACT: For general information on the DARHT EIS, or for copies of the draft EIS, interested parties may contact Ms. Diana Webb, DARHT EIS Project Manager, Los Alamos Area Office, Department of Energy, 528 35th Street, Los Alamos, NM 87544. Ms. Webb may be contacted by telephone at (505) 665–6353 or by facsimile at (505) 665–1506.

SUPPLEMENTARY INFORMATION: The draft EIS was prepared pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 et seq.), the Council on Environmental Quality NEPA regulations (40 CFR parts 1500–1508) and the DOE NEPA regulations (10 CFR Part 1021).

The Department proposes to provide enhanced high-resolution radiography (x-ray) capability for the purpose of performing hydrodynamic tests and dynamic experiments in support of its national defense mission. The enhanced radiography facility would be a key component of the Department's near-term science-based stockpile stewardship and management program. These hydrodynamic tests and dynamic experiments are required to assist DOE in ensuring the continued safety, security, and reliability of existing nuclear weapons as they age.

The draft DARHT EIS analyzes the environmental consequences of alternative ways to accomplish the proposed action. The DOE's preferred alternative would be to complete and operate the DARHT facility at LANL in northern New Mexico. Public hearings are scheduled (Los Alamos, May 31, 1995 and Santa Fe, June 1, 1995) as previously announced in DOE's Notice of Availability dated May 24, 1995 (60 FR 27498). The comment period will extend through Monday, June 26, 1995. DOE expects to complete the final EIS in August 1995, and reach a Record of Decision in September 1995.

Following is a list of documents currently available for public review in the Los Alamos National Laboratory Community Reading Room:

1. Nuclear Weapons Stockpile Stewardship: the Role of Livermore and Los Alamos National Laboratories.
2. Congressional Budget Office Papers, The Bomb's Custodians.
3. An Alternative Budget for Lawrence Livermore National Laboratory and How to Get There—Los Alamos Study Group (LASG).
4. The Conversion of LANL to a Peacetime Mission—Concerned Citizens for Nuclear Safety (CCNS).
5. 1979 LANL Environmental Impact Statement.
6. Transcript from the September 14 SWEIS Public Meeting at the Los Alamos Civic Auditorium.
7. Environmental Impact Statement for Transuranium Solid Waste Development Facility, LASL, 4/73.
8. Implementation Plan Nuclear Weapons Complex Reconfiguration Programmatic Environmental Impact Statement.
9. Pantex Site-Wide EIS Scoping Plan.
10. Scoping Comments/Documents for the Nuclear Weapons Disposition PEIS, Oak Ridge Institute for Science & Education.
11. Fueling A Competitive Economy: US DOE Strategic Plan.
12. National Security Strategic Plan, Working Paper.
13. DOE Albuquerque Operations Office Strategic Plan.
14. September 13, 21, 22, 28, 29, SWEIS Public Meeting Transcripts.
15. Stormwater Pollution Prevention Plan for DARHT 10/25/94.
16. DARHT Hydrotest Project Cultural Resource Survey Report 10/25/94.
17. Hydrotest Firing Site Drawing List 10/25/94.
18. NESHAPS for DARHT Construction Project 10/25/94.
19. DARHT Amendment of Solicitation 10/25/94.
20. DARHT Construction Documents Vol 1–3, 10/25/94.
21. Action Description Memorandum DARHT Facility, TA–15.
22. Results of the Soil Sampling Survey Conducted Over Active RCRA Firing Site TA–15–184 (PHERMEX) 10/28/94.
23. Baseline Soil Uranium and Beryllium Concentrations Around The Proposed DARHT Facility at TA–15 10/28/94.
24. Construction Contract for DARHT.
25. Programmatic Cost Impact Due to Project Delay for EA 11/8/94.
26. Programmatic Cost Impact Due to Project Delay for EIS DARHT 11/8/94.
27. Total Regional Economic Impact Resulting from DARHT Cancellation 11/8/94.

28. DARHT Archaeological Site Protection 11/8/94.
29. Welcome to DARHT Day 11/28/94.
30. NEPA and Related Environmental Documentation History for DARHT.
31. 1979 Site-Wide EIS at LANL, Portions Addressing Dynamic Testing 1/5/94.
32. Soil/Sediment Studies Conducted at the DARHT and PHERMEX Firing Sites 1/5/95.
33. Implementation Plan for the Continued Operation of the Pantex Plant and Associated Storage of Nuclear Weapons Components EIS 1/12/95.
34. Initial Data Request for DARHT EIS 1/17/95.
35. DARHT Public Scoping Meeting Roundtable Discussion and Comments 12/7/95.
36. DARHT Scoping Comment Reference Documents 1/17/95.
37. Background Information on the Nuclear Weapons Stockpile Memorandum 1/31/95.
38. DARHT EIS Implementation Plan 2/14/95.
39. DARHT Feasibility Assessment Independent Consultants (DFAIC) Panel Final Report 9/9/2.
40. Hydrotest Program Assessment 10/92.
41. Report of Independent Consultants Reviewing Integrated Test Stands Performance and Readiness of DARHT Construction Start 8/93.
42. Letter to Jennifer Fowler-Propst—U.S. Fish and Wildlife Service—Att. Biological and Floodplain/Wetland Assessment for DARHT.
43. DOE NEWS—Draft Environmental Impact Statement Available for DARHT Facility at LANL 5/10/95.
44. DOE—Notice of Pre-Scoping Workshop for the Stockpile Stewardship and Management Programmatic Environmental Impact Statement 5/2/95.
45. The Stockpile Stewardship and Management Program—Maintaining Confidence in the Safety and Reliability of the Enduring U.S. Nuclear Weapon Stockpile.
46. Notice of Intent to Prepare a Site-Wide Environmental Impact Statement for the Los Alamos National Laboratory.
47. Statement of Hazel O'Leary, Secretary of Energy, Before the Committee on Armed Services, United States Senate April 4, 1995.
48. **Federal Register** Notices for the LANL DARHT and SWEIS 5/12/95.
49. Newspaper clippings.
50. Aerosolized U and Be from LASL Dynamic Experiments (1977).
51. DARHT Environmental Monitoring 1/30/95.
52. Stockpile Stewardship and Management Programmatic Environmental Impact Statement—Pre-Scoping Workshop (Viewgraphs) 5/19/95.
53. U.S. Department of Energy Environmental Justice Strategy Executive Order 12898—4/95.
54. DOE—Notice of Availability and Public Hearings.
55. Summary of Environmental Impacts from Classified Supplement, DARHT EIS—5/95.
56. DOD Nuclear Posture Review.
57. Letter exchange with LASG—4/95.
58. Letter from LASG—11/94.
59. Letter from LASG—12/94.
60. Letter to President Clinton from J. Stroud (LASG)—2/28/95.
61. Letter responding to J. Stroud (LASG) from V. Reis, Department of Energy—4/19/95.
62. Letter responding to Kathleen Sabo (LASG) from James Dorskind, White House—4/17/95.
63. Letter responding to Greg Mello (LASG) from D. Webb—3/20/95.
64. Letter responding to Greg Mello (LASG) from D. Webb with LLNL attachment—4/17/95.

Signed in Washington, DC, this 26th day of May, 1995, for the United States Department of Energy.

Everet H. Beckner,

Principal Deputy Assistant Secretary for Defense Programs.

[FR Doc. 95–13435 Filed 5–31–95; 8:45 am]

BILLING CODE 6450–01–P

Golden Field Office; Notice of Federal Assistance Award to United States Export Council for Renewable Energy

AGENCY: Department of Energy.

ACTION: Notice of Financial Assistance Award in Response to an Unsolicited Financial Assistance Application; Export Support to the U.S. Renewable Energy Industry, DE–FG36–95GO10072.

SUMMARY: The U.S. Department of Energy (DOE), pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7, is announcing its intention to grant funding to the United States Export Council For Renewable Energy (US/ECRE). DOE is promoting the development and application in foreign countries of renewable energy products and services and supporting domestic firms with the export of their renewable energy products and services. The United States Export Council For Renewable Energy (US/ECRE) is a United States, non-profit association, comprised of six renewable energy member trade associations and two sister organizations, representing the renewable energy industry. US/ECRE's mission is the promotion of domestic renewable energy industry technology and United States companies in the international marketplace. The series of grant proposals by US/ECRE directly relates to that objective and will be a significant step towards promoting renewable energy markets and technology.

ADDRESSES: Questions regarding this announcement may be addressed to the U.S. Department of Energy, Golden Field Office, 1617 Cole Blvd., Golden, Colorado 80401, Attention: John Motz, Contract Specialist. The telephone number is 303–275–4737. The Contracting Officer for this action is John W. Meeker.

SUPPLEMENTARY INFORMATION: DOE has evaluated, in accordance with the DOE Federal Assistance Regulations, 10 CFR section 600.14 , the unsolicited proposal entitled, "Export Support to the U.S. Renewable Energy Industry," submitted by United States Export Council For Renewable Energy (US/ECRE), be accepted for support without further competition in accordance with section 600.7 of the Federal Assistance Regulations.

One financial assistance agreement, between DOE and US/ECRE, encompassing separate fixed obligation awards is proposed under the deviation to CFR 600.109 permitting fixed obligations awards. The prime objectives of the umbrella agreement with US/ECRE, composed of a series of grants, are: (1) Preparation of outreach activities that will gather and distribute information on project opportunities for U.S. renewable industries as they emerge in the international marketplace, (2) promoting United States renewable energy development initiatives in emerging markets, and (3) developing market potential methodology that will determine environmental and economic impacts under various scenarios. US/ECRE tasks, with the resources of the member trade associations, include: newsletters, conferences, consulting services, exhibits, and training activities related to promoting United States renewable technology and companies.

US/ECRE, a consortium of the six renewable energy member trade associations, has been formed to bring together the member companies within the respective renewable energy industries for the purpose of promoting the use of U.S. technologies and member companies in projects overseas. The United States Export Council for Renewable Energy (US/ECRE) will serve as the lead organization issuing subcontracts to member associations. US/ECRE will coordinate the proposed projects and will rely heavily on the

resources of the member associations to implement the grants which support the renewable energy export development efforts.

US/ECRE will implement the umbrella agreement with DOE, composed of a series of grants, through subcontracts to the member trade associations and non-profit sister organizations who are uniquely qualified to fulfill the objectives of each grant. US/ECRE, through a grant from DOE under this agreement, will provide the management and oversight of each subcontract to facilitate synergy between activities funded through this agreement, as well as those funded through other Government agencies.

The series of grants represent a continued opportunity to promote United States renewable energy and energy efficiency technology and domestic companies in an international marketplace. The promotion of these activities will not only serve to educate, but also serves as a means for United States companies to expand their services in the global marketplace. The participating entities have been found to possess unique capabilities to successfully meet the objectives stated.

The estimated grant is $1,308,000. This notice is published for public comment at least fourteen calendar days prior to making an award.

Issued in Golden, Colorado, on May 18, 1995.

John W. Meeker,

Chief, Procurement, GO.

[FR Doc. 95–13304 Filed 5–31–95; 8:45 am]

BILLING CODE 6450–01–P

Environmental Management Site Specific Advisory Board, Fernald

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site Specific Advisory Board (EM SSAB), Fernald.

DATES: Saturday, June 10: 8:30 a.m.–12:30 p.m. (public comment session, 10:15 a.m.–10:30 a.m.).

ADDRESS: The Joint Information Center, 6025 Dixie Highway, Route 4, Fairfield, Ohio.

FOR FURTHER INFORMATION CONTACT: John S. Applegate, Chair of the Fernald Citizens Task Force, P.O. Box 544, Ross, Ohio 45061, or call the Fernald Citizens Task Force message line (513) 648–6478.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of future use, cleanup levels, waste disposition and cleanup priorities at the Fernald site.

Tentative Agenda

Saturday, June 10, 1995

Final Report Development

8:30 a.m. Task Force Administration, (Call to order; Approval of Minutes; Chair's Remarks).
8:50 a.m. Identification and Discussion of Unresolved Issues.
10:00 a.m. Break.
10:15 a.m. Opportunity for Public Input.
10:30 a.m. Resolution of Unresolved Issues.
11:00 a.m. Discussion of Draft Final Report.
12:15 p.m. Wrap Up.
12:30 p.m. Adjourn.

A final agenda will be available at the meeting, Saturday, June 10, 1995.

Public Participation: The meeting is open to the public. Written statements may be filed with the Task Force chair either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact the Task Force chair at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official, Kenneth Morgan, Public Affairs Officer, Ohio Field Office, U.S. Department of Energy, is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments. Due to programmatic issues that had to be resolved, the Federal Register notice is being published less than fifteen days before the date of the meeting.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to John S. Applegate, Chair, the Fernald Citizens Task Force, P.O. Box 544, Ross, Ohio 45061 or by calling the Task Force message line at (513) 648–6478.

Issued at Washington, DC on May 25, 1995.

Rachel Murphy Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 95–13319 Filed 5–31–95; 8:45 am]

BILLING CODE 6450–01–P

Environmental Management Site Specific Advisory Board, Kirtland Area Office (Sandia)

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site Specific Advisory Board (EM SSAB), Kirtland Area Office (Sandia).

DATES: Thursday, June 15, 1995: 7 pm–10 p.m. (Mountain Daylight Time).

ADDRESSES: Indian Pueblo Cultural Center, 2401 12th St. NW., Albuquerque, NM.

FOR FURTHER INFORMATION CONTACT: Mike Zamorski, Acting Manager, Department of Energy Kirtland Area Office, PO Box 5400, Albuquerque, NM 87185 (505) 845–4094.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

6:45 pm Public Comment Period.
7:00 pm Orientation.
8:00 pm Development of Board Behavioral Groundrules.
9:00 pm Selection of Leadership Team.
9:30 pm Evaluation.
10 pm Adjourn.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Mike Zamorski's office at the address or telephone number listed above.

Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Mike Zamorski, Department of Energy Kirtland Area Office, PO Box 5400, Albuquerque, NM 87185, or by calling (505) 845–4094.

Issued at Washington, DC on May 25, 1995.

Rachel M. Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 95–13320 Filed 5–31–95; 8:45 am]

BILLING CODE 6450–01–P

Environmental Management Site Specific Advisory Board, Nevada Test Site

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site Specific Advisory Board (EM SSAB), Nevada Test Site.

DATES: Wednesday, June 7, 1995: 5:30 p.m.–9:30 p.m.

ADDRESS: Community College of Southern Nevada, Cheyenne Campus, Highdesert Conference and Training Center, Room 1422, Las Vegas, NV.

FOR FURTHER INFORMATION CONTACT: Kevin Rohrer, U.S. DOE, Nevada Operations Office, AMEM, P.O. Box 98518, Las Vegas, NV 89193–8518, ph. 702–295–0197, fax 702–295–1810.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: The EM SSAB provides input and recommendations to the Department of Energy on Environmental Management strategic decisions that impact future use, risk management, economic development, and budget prioritization activities.

Tentative Agenda

Wednesday, May 7, 1995

5:30 p.m. Call to Order; Review Agenda; Minutes Acceptance; Financial Report; Correspondence; Reports from Committees, Delegates and Representatives; Unfinished Business; New Business; Evaluation of Board and Environmental Restoration and Waste Management Programs; Announcements.
10:00 p.m. Adjournment.

If needed, time will be allotted after public comments for old business, new business, items added to the agenda, and administrative details.

A final agenda will be available at the meeting Wednesday, June 7, 1995.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Don Beck's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments. Due to programmatic issues that had to be resolved, the **Federal Register** notice is being published less than fifteen days before the date of the meeting.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9 a.m. and 4 p.m., Monday-Friday, except Federal holidays.

Issued at Washington, DC on May 25, 1995.

Rachel M. Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 95–13321 Filed 5–31–95; 8:45 am]

BILLING CODE 6450–01–P

Environmental Management Site Specific Advisory Board, Savannah River Site

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site Specific Advisory Board (EM SSAB), Savannah River Site.

DATES AND TIMES: Thursday, June 8, 1995: 8:30 a.m. to 11:15 a.m.; 10:45 a.m. (public comment session).

ADDRESSES: The Board meeting will be held at: Savannah River Site Main Administration, Building 703–41 A, Aiken, S.C.

FOR FURTHER INFORMATION CONTACT: Tom Heenan, Manager, Environmental Restoration and Solid Waste, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, S.C. 29802 (803) 725–8074.

SUPPLEMENTARY INFORMATION: This **Federal Register** Notice does not meet the 15-day public notification requirement due to exceptional circumstances. Due to a lack of a quorum at the May 23, 1995, meeting of the Board, a special meeting is required to vote on a recommendation as stated below. The deadline for public comments on this Draft EIS is June 20, 1995 and a request to grant an extension has been declined. The special meeting date was one in which a majority of the Board members agreed upon.

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management and related activities.

Agenda:

Thursday, June 8, 1995

8:30 a.m. Nuclear Materials Management Subcommittee Report and discussion of recommendation regarding the Draft Foreign Research Reactor Spent Nuclear Fuel Environmental Impact Statement
10:45 a.m. Public Comment Session (5-minute rule)
11:15 a.m. Adjourn

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Tom Heenan's office at the address or telephone number listed above. Requests must be received 2 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday except Federal holidays. Minutes will also be available by writing to Tom Heenan, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, SC 29802, or by calling him at (803)–725–8074.

Issued at Washington, DC, on May 26, 1995.

Rachel Murphy Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 95–13434 Filed 5–31–95; 8:45 am]

BILLING CODE 6450–01–M

Inertial Confinement Fusion Advisory Committee/Defense Programs; Notice of Partially Closed Meeting

Pursuant to the provision of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following meeting:

Name: Inertial Confinement Fusion Advisory Committee/Defense Programs.

Date and time: Agenda is subject to revision.

Tuesday, June 6, 1995, 7:30 a.m.–10:45 a.m.—Open.
Tuesday, June 6, 1995, 10:45 a.m.–12:40 p.m.—Closed.
Tuesday, June 6, 1995, 1:50 p.m.–5:50 p.m.—Closed.
Wednesday, June 7, 1995, 7:30 a.m.–9:20 a.m.—Closed.
Wednesday, June 7, 1995, 9:20 a.m.–3:40 p.m.—Open.
Wednesday, June 7, 1995, 3:40 p.m.–6:40 p.m.—Closed.
Thursday, June 8, 1995, 7:30 a.m.–10:30 a.m.—Closed.
Thursday, June 8, 1995, 10:30 a.m.–12:30 p.m.—Open.

Place: Sandia National Laboratories, Albuquerque, New Mexico; Technical Area IV; Convening In Building 962; Room 1402.

FOR FURTHER INFORMATION CONTACT: Marshall M. Sluyter, Designated Federal Officer Office of Research and Inertial Fusion (DP–11), Defense Programs, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874, Telephone: (301) 903–3345.

Persons wishing to attend the open portions of the meeting must submit their names to Stephanie Torres at the Sandia National Laboratories, (505) 845–3656, on or before June 2, 1995, to obtain a visitor pass and/or escort to the meeting room(s).

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: To provide advice and guidance to the Assistant Secretary for Defense Programs on both technical and management aspects of the Inertial Confinement Fusion program.

Purpose of the Meeting: To assess the technical applicability and readiness of the Inertial Confinement Fusion program to support the Defense Programs Stockpile Stewardship Program Strategy and the National Security Strategic Plan. Also, to identify and evaluate the significance and the relative importance of each of the ICF program elements to the overall Inertial Confinement Fusion program, to the National Security Strategic Plan, and to the Stockpile Stewardship Program. To evaluate the progress of the light-ion ICF program with respect to its technical contract and its capability to support the Nation's Science-Based Stockpile Stewardship Program; to evaluate the progress of the target physics program with respect to the Nova technical contract; to be informed about the recently revised ICF Five Year Program Plan; and to comment on the technical merit and feasibility of a proposed hydrogen fluoride laser driver program.

Tentative Agenda: Subject to revision

June 6, 1995

8:00 a.m. Opening.
8:15 a.m. SNL Welcoming Remarks.
8:30 a.m. Summary of Recent Events; Stockpile Stewardship; ICF Program Mission, Priorities, & Objectives.
9:10 a.m. Omega Upgrade Status.
9:25 a.m. Nike Status.
9:40 a.m. Remarks from NIF Program Office.
9:55 a.m. ICF Program Wrap-Up and Review of ICF 5-Year Program Plan.
10:45 a.m. Closed Meeting (10:45am–5:50pm).

June 7, 1995

8:00 a.m. Closed Meeting (8:00am–9:20am).
9:20 a.m. Light Ion ICF Program (Open Meeting 9:20am–3:40pm).
3:40 p.m. Closed Meeting (3:40pm–6:40pm).

June 8, 1995

8:00 a.m. Closed Meeting.
10:45 a.m. Opportunity for Public Comment.
11:45 a.m. Committee Discussions and Wrap-up.
12:30 p.m. Adjournment.

Open to the Public: On June 6, 1995, from 7:30 a.m. to 10:45 a.m., on June 7, 1995, from 9:20 a.m. until 3:40 p.m., and on June 8, 1995 from 10:30 a.m. until adjournment, the meeting is open to the public. The Chairman of the Committee is empowered to guide the meeting in a manner that will, in the Chairman's judgment, facilitate the orderly conduct of business. This notice is being published less than 15 days prior to the date of the meeting due to issues that needed to be resolved.

Any member of the public who wishes to make an oral statement pertaining to agenda items should contact the Designated Federal Officer at the address or telephone number shown above. Requests must be received before 3:00 p.m. (eastern daylight time) Friday, June 2, 1995. Reasonable provisions will be made to include the presentation during the public comment period. Oral presenters are asked to provide 25 copies of their statements at the time of their presentations.

Written statements pertaining to agenda items may also be submitted prior to the meeting. Written statements must be received by the Designated Federal Officer at the address shown above before 3:00 p.m. (eastern daylight time) Friday, June 2, 1995, to assure they are considered by the committee during the meeting.

Closed Meeting: Pursuant to section 7234(b), title 42, United States Code, and section 776(b), title 15, United States Code, the portions of the meeting from 10:45 a.m. until 12:40 p.m. and from 1:50 p.m. until 5:50 p.m. on June 6, 1995; from 8:00 a.m. until 9:20 a.m. and from 3:40 p.m. until 6:40 p.m. on June 7, 1995; and from 8:00 a.m. until 10:30 a.m. June 8, 1995, will be closed to the public in the interest of national security.

Minutes: Minutes of the open portions of the meeting will be available for public viewing and copying approximately 30 days following the meeting at the Freedom of Information Public Reading Room, Room 1E–190, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, D.C., 20585, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C. on May 25, 1995.

Rachel Murphy Samuel,

Acting Deputy Advisory Committee, Management Officer.

[FR Doc. 95–13302 Filed 5–31–95; 8:45 am]

BILLING CODE 6450–01–P

International Energy Agency Meeting

AGENCY: Department of Energy.

ACTION: Notice of meeting.

SUMMARY: The Industry Supply Advisory Group (ISAG) to the International Energy Agency (IEA) will meet June 7–8, 1995, at the offices of the Organization for Economic Cooperation and Development (OECD) in Paris, France, to conduct training on the operation of the IEA's Emergency Sharing System.

FOR FURTHER INFORMATION CONTACT: Samuel M. Bradley, Acting Assistant General Counsel for International and Legal Policy, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, 202–586–6738.

SUPPLEMENTARY INFORMATION: In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(i)), the following meeting notice is provided:

A meeting of the Industry Supply Advisory Group (ISAG) to the International Energy Agency (IEA) will be held on June 7–8, 1995, at the headquarters of the Organization for Economic Cooperation and Development, 2, rue Andre-Pascal, Paris, France, beginning at 9:00 a.m. on June 7. The agenda for the meeting is as follows:

1. General Introduction and Short Description of IEA Organization and Purpose.
2. Review of the Agenda and Focus of the Training Program.
3. Legal Requirements.
4. The IEA Emergency Response System.
5. IEA Emergency Calculations.
6. An Introduction to Questionnaires A and B.
7. Information and Communications Systems.
8. ISAG's Role, Organization and Responsibilities.
9. An Introduction to the Disruption Scenario.
10. Short Discussion on Scenario.
11. An Introduction to Voluntary Offers.
12. An Introduction to Voluntary Offer Computer System (VOS).
13. Strategy Development and ISAG's Monitoring Role: An Example from AST–7.
14. Processing Voluntary Offers.
15. Description of a Typical ISAG Day.
16. Progress Towards Balancing Allocation Rights/Allocation Obligations Matrix, Information Flow and Problems Encountered.

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(ii)), this meeting is open only to representatives of members of the ISAG and their counsel, representatives of the Departments of Energy, Justice, and State, the Federal Trade Commission, the General Accounting Office, Committees of the Congress, the IEA, and the European Commission, and invitees of the ISAG or the IEA.

Issued in Washington, D.C., May 24, 1995.

Robert R. Nordhaus,

General Counsel.

[FR Doc. 95–13303 Filed 5–31–95; 8:45 am]

BILLING CODE 6450–01–P

Secretary of Energy Advisory Board

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Name: Secretary of Energy Advisory Board.

Date and Time: Tuesday, June 13, 1995, 8:30 AM–1:00 PM.

Place: Radisson Plaza Hotel at Mark Center, 5000 Seminary Road, Alexandria, Virginia 22311.

FOR FURTHER INFORMATION CONTACT: Peter F. Didisheim, Executive Director, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–7092.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: The Secretary of Energy Advisory Board was established to serve as the Secretary of Energy's primary mechanism for long-range planning and analysis of major issues facing the Department of Energy. The Board will advise the Secretary on the research, development, energy and national defense responsibilities, activities, and operations of the Department and provide expert guidance in these areas to the Department.

Tentative Agenda

9:00 am Opening Remarks.
9:15 am Task Force on Strategic Energy Research and Development—Final Report Presentation.
9:45 am Discussion.
10:15 am Break.
10:30 am Overview of the Strategic Alignment of the Department of Energy.
10:45 am Discussion.
11:00 am Follow-On Activities of the Task Force on Alternative Futures for the DOE National Labs.
11:30 am Discussion of Future Board Activities.
12:30 pm Public Comment.
1:00 pm Adjourn.

A final agenda will be available at the meeting.

Public Participation: The Chairman of the Board is empowered to conduct the meeting in a fashion that will, in the Chairman's judgment, facilitate the orderly conduct of business. During its meeting in Washington, DC, the Board welcomes public comment. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. The Board will make every effort to hear the views of all interested parties. Written comments may be submitted to Peter F. Didisheim, Executive Director, Secretary of Energy Advisory Board, AB–1, 1000 Independence Avenue, SW., Washington, DC 20585. In order to insure that Board members have the opportunity to review written comments prior to the meeting, comments should be received by Friday, June 9, 1995.

Minutes: Minutes and transcript of the meeting will be available for public review and copying approximately 30 days following the meeting at the Freedom of Information Public Reading Room,, 1E–190 Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9:00 AM and 4:00 PM, Monday through Friday except Federal holidays.

Issued at Washington, DC, on May 25, 1995.

Rachel M. Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 95–13301 Filed 5–31–95; 8:45 am]

BILLING CODE 6450–01–M

[Docket No.: EH–IG–95–835]

Implementation Guides for Use With Department of Energy Regulation for Occupational Radiation Protection

AGENCY: Department of Energy.

ACTION: Notice of availability.

SUMMARY: The Department of Energy (DOE) announces the availability of 12 Implementation Guides for its regulation on Occupational Radiation Protection (10 CFR part 835). In the preamble to 10 CFR part 835, DOE committed to developing regulatory guidance documents (Implementation Guides) to provide the rationale for and the objectives of the DOE occupational protection regulation and to identify acceptable approaches for implementing this regulation. In addition, DOE committed to make copies of these documents available for unlimited use and distribution at the DOE Freedom of Information Reading Room. DOE intends to update the Implementation Guides periodically to improve their technical content. Accordingly, comments may be submitted at any time and on a continuous basis.

ADDRESSES: A copy of each Implementation Guide (IG) may be examined in the Department of Energy Freedom of Information Reading Room, room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6020, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except federal Holidays.

Submit written comments in the format designated in the Implementation Guides to Mr. Steven Zobel, Office of Worker Protection Programs and Hazards Management, EH–52, U.S. Department of Energy, 270 CC/GTN, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Any legal questions concerning the Implementation Guides should be directed to Mr. Ben McRae at (202) 586–

6975. For technical questions on the Implementation Guides or procedural questions concerning the submission of written comments contact Mr. Steven Zobel at (301) 903–2305 or Dr. Joel Rabovsky at (301) 903–2135.

SUPPLEMENTARY INFORMATION: The Department's goal is to provide the DOE complex with current, thorough guidance to facilitate effective and efficient implementation of the provisions in 10 CFR part 835. This guidance is primarily intended for use by those entities that must implement the requirements contained in 10 CFR part 835. DOE considers these guides to be living documents and will periodically update these IGs to improve technical content and maintain currency with DOE requirements, regulations, and standards. To this end, DOE will continue to accept comments for improving methods to implement 10 CFR part 835. A comment sheet is provided in each IG specifying a format for submitting comments. Informal comments and questions of a technical nature concerning any IG may be brought to the attention of the Department's technical point of contact. The titles of the 12 Implementation Guides are:

G–10 CFR 835/B1—Radiation Protection Program;
G–10 CFR 835/B2—Occupational ALARA Program;
G–10 CFR 835/C1—Internal Dosimetry Program;
G–10 CFR 835/C2—External Dosimetry Program;
G–10 CFR 835/C3—Radiation-Generating Devices;
G–10 CFR 835/C4—Evaluation and Control of Fetal Exposure;
G–10 CFR 835/E1—Instrument Calibration for Portable Survey Instruments;
G–10 CFR 835/E2—Workplace Air Monitoring;
G–10 CFR 835/G1—Posting and Labeling for Radiological Control;
G–10 CFR 835/H1—Occupational Radiation Exposure Record-Keeping and Reporting;
G–10 CFR 835/J1—Radiation Safety Training; and
G–10 CFR 835/M1—Sealed Radioactivity Source Accountability and Control.

These IGs provide acceptable approaches for establishing and operating specific parts of the overall radiation protection program. They identify the requirements of 10 CFR part 835 that relate to a specific major topical area and provide guidance on the characteristics of a radiation protection program that the DOE staff considers adequate to comply with the regulatory requirements.

Dated: April 13, 1995.

Peter N. Brush

Acting Assistant Secretary, Environment, Safety and Health.

[FR Doc. 95–13438 Filed 5–31–95; 8:45 am]

BILLING CODE 6450–01–P

Bonneville Power Administration

Finding of No Significant Impact and Floodplain Statement of Findings for Dworshak Wildlife Mitigation Project

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Finding of No Significant Impact (FONSI) and Floodplain Statement of Findings.

SUMMARY: This notice announces environmental findings on BPA's proposal to implement the Wildlife Mitigation Agreement for Dworshak Dam (Agreement) in order to mitigate for loss of wildlife habitat caused by the development of Columbia River Basin hydroelectric projects, particularly Dworshak Dam. The project involves wildlife conservation on 24 420 hectares (ha; 60,000 acres) of land in the Craig Mountain area of Idaho, and future acquisition of additional, unidentified lands in the lower Clearwater River drainage of Idaho for wildlife conservation purposes. BPA has prepared an environmental assessment (DOE/EA–1066) evaluating the proposed project. Based on the analysis in the EA, BPA has determined that the proposed action is not a major Federal action significantly affecting the quality of the human environment, within the meaning of the National Environmental Policy Act (NEPA) of 1969. Therefore, the preparation of an environmental impact statement (EIS) is not required and BPA is issuing this FONSI.

A finding is included that there is no practicable alternative to locating the project within 100-year floodplains.

FOR FURTHER INFORMATION CONTACT: Thomas C. McKinney, Bonneville Power Administration, PO Box 3621 (ECN), Portland, Oregon, 97208–3621, phone number 503–230–4749, fax number 503–230–5699. For copies of the EA and this FONSI, please call BPA's toll-free document request line: 800–622–4520.

Public Availability: This FONSI will be distributed to all persons and agencies known to be interested in or affected by the proposed action or alternatives.

SUPPLEMENTARY INFORMATION: Implementation of the Agreement would transfer fee-title ownership of 24 420 ha (60,000 acres) to the Idaho Department of Fish and Game, and establish trust funds for the State of Idaho and the Nez Perce Tribe to use for protection and enhancement of wildlife and wildlife habitat in Idaho. Some of the trust fund assets would be used to acquire additional properties and/or conservation easements, and some would be used for management activities. Alternatives to the proposed action include maintaining the status quo, site-specific wildlife mitigation, and no action.

Potential impacts of the proposed action are: (1) Slow changes to vegetation patterns on wildlife mitigation lands; (2) avoidance of further loss or degradation of habitat on wildlife mitigation lands; (3) increased populations of target wildlife species; (4) improved surface water quality on wildlife mitigation lands; and (5) reduced grazing, timber production, and farming on wildlife mitigation lands. There are two main reasons why these impacts would not be significant. First, most of the impacts would gradually result from natural succession of vegetation patterns. Encouragement of desirable plant species (especially native species), discouragement of exotic species, and grazing control would eventually increase biological diversity on wildlife mitigation lands. Also, land use changes would not be significant because most would occur over a period of years, and because the amount of lands removed from economic uses would be minor in relation to other lands in the general area remaining available for similar uses. No impacts are expected on cultural resources, air quality, or unique environmental resources such as components of the National Wild and Scenic Rivers System or the National Trails System.

Floodplain Statement of Findings: This is a Floodplain Statement of Findings prepared in accordance with 10 CFR part 1022. BPA publishes a Notice of Floodplain and Wetland Involvement in the **Federal Register** on May 10, 1994, and incorporated a floodplain and wetland assessment into the EA. The proposed action may involve activities in the 100-year floodplains of the Clearwater, Salmon, and Snake Rivers and their tributaries because the floodplains and their related surface waters have high wildlife value. Any development (such as fencing) within the floodplains would be to protect or enhance wildlife values, and is therefore consistent with Executive Order 11988, *Floodplain Management*. The proposed action would preserve wetlands and is therefore consistent with Executive Order 11990, *Protection of Wetlands*.

BPA will endeavor to allow 15 days of public review after publication of this statement of findings before implementing the proposed action.

Determination: Based on the information in the EA, as summarized here, BPA determines that the proposed action is not a major Federal action significantly affecting the quality of the human environment within the meaning of NEPA, 42 U.S.C. 4321 et seq. Therefore, an EIS will not be prepared and BPA is issuing this FONSI.

Issued in Portland, Oregon, on May 11, 1995.

Randall W. Hardy,

Administrator and Chief Executive Officer.

[FR Doc. 95–13439 Filed 5–31–95; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. PR95–12–000]

Sonat Intrastate-Alabama Inc.; Notice of Petition for Rate Approval Pursuant to Section 284.123(b)(2) of the Commission's Regulations

May 25, 1995.

Take notice that on May 22, 1995, Sonat Intrastate-Alabama Inc. (SIA) filed in the captioned docket a petition pursuant to Section 284.123(b)(2) of the Federal Energy Regulatory Commission's (Commission) Regulations under the Natural Gas Policy Act of 1978 (NGPA) for approval of a maximum systemwide rate for transporting natural gas pursuant to Section 311 of the NGPA, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

SIA files this petition pursuant to the Commission's Letter Order issued in Docket No. PR92–16–000 on May 6, 1994, requiring SIA to file a § 284.123(b)(2) application on or before May 20, 1995, to justify SIA's existing systemwide transportation rate or a changed systemwide rate. SIA proposes to retain its existing maximum systemwide transportation rate of 29.4¢ per MMBtu for Section 311 transportation services. SIA requests the Commission to determine that the rate proposed herein is a fair and equitable rate for performing Section 311 transportation services.

Any person desiring to be heard or to make a protest with reference to said application should file with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E. Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions or protests should be filed on or before June 9, 1995. All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to a proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Secretary.

[FR Doc. 95–13309 Filed 5–31–95; 8:45 am]

BILLING CODE 6717–01–M

Southern Natural Gas Company; Notice for Petition for Declaratory Order

[Docket No. CP95–506–000]

May 25, 1995.

Take notice that on May 22, 1995, Southern Natural Gas Company (Southern), AmSouth-Sonat Tower, 1900 Fifth Avenue North, Birmingham, Alabama 35203, filed a petition in Docket No. CP95–506–000, requesting that the Commission declare that Southern's Miley Line, located in the Lockhart Crossing Field, Livingston Parish, Louisiana, is a gathering line exempt from the provisions of the Natural Gas Act (NGA), all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Southern proposes to sell its Miley Line, a natural gas pipeline extending approximately 7,800 feet from the Miley #1 well to Amoco Production Company's (Amoco) central dehydration and separation facility. It is stated that on April 9, 1995, Southern and Amoco entered into a settlement agreement to amend certain pricing provisions of gas purchase contracts and to provide for the sale by Southern to Amoco of the Miley Line. Under the terms of the settlement agreement, Amoco will purchase the Miley Line from Southern at its remaining book value, upon the issuance by the Commission of a declaratory order disclaiming jurisdiction over the pipeline.

Southern submits that its Miley Line is a "gathering facility" under Section 1(b) of the NGA as interpreted by the Commission under the "modified primary function" test, as set forth in *Amerada Hess Corp., et al.*, as amended. 52 FERC ¶ 61,268 (1990). Southern notes that characteristic of gathering lines, the Miley Line is a very short, small-diameter pipeline, less than two miles long and four inches in diameter. Southern argues that the central point in the field analysis is inappropriate in this case because the Miley Line feeds the natural gas it collects into the Amoco Plant for processing. Southern states that there are no compressor facilities located along the Miley Line, consistent with the requirement of minimal compression on gathering facilities. Southern notes that the Miley Line is located completely behind a processing plant, with volumes flowing from the point of production at the Miley #1 well to the Amoco Plant, strongly supporting a finding that the facility performs a gathering function. Southern further notes that the Miley Line begins at the Miley #1 well, satisfying the requirement that wells be located along all or part of the facilities. Southern states that the gas gathered by the Miley Line is untreated rather than "pipeline quality", a characteristic found to be consistent with the gathering function. Finally, Southern relates that upon Amoco's purchase of the pipeline, the Miley Line will be owned and operated by a traditionally unregulated corporation which will continue in its historic practice of moving its own gas production to its various customers through its capacity in the line. Southern reports that Amoco presently performs no jurisdictional transportation functions in the Lockhart Crossing Field.

Any person desiring to be heard or to make any protest with reference to said petition should on or before June 15, 1995, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Secretary.

[FR Doc. 95–13308 Filed 5–31–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GP95–7–000]

Williams Natural Gas Company v. Oxy USA, Inc.; Notice of Complaint

May 25, 1995.

Take notice that on May 22, 1995, Williams Natural Gas Company (WNG), pursuant to Rule 206, of the Commission's Rules of Practice and Procedure, 18 CFR 385.206(a), filed a complaint against Oxy USA Inc., (Oxy).

WNG submits that Oxy has filed a lawsuit against WNG in the District Court of Tulsa County, State of Oklahoma, Case No. CJ–95–01765 claiming the right to certain excess royalty reimbursements on two NGPA Section 102 wells during periods prior to 1985 when the price of Section 102 gas was regulated.

WNG states that it has already paid to Oxy the maximum lawful price (MLP) for such Section 102 gas. WNG requests that the Commission issue an order finding (a) any collection of excess royalties by Oxy from WNG in addition to the maximum lawful price already paid for such gas would violate the Natural Gas Policy Act of 1978, 15 USC §§ 3311–3333; and (b) this is an issue within the exclusive jurisdiction of the Commission.

Any person desiring to be heard or to protest said complaint should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214, 385.211. All such motions or protests should be filed on or before June 26, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. Answers to this complaint shall be due on or before June 26, 1995.

Lois D. Cashell,

Secretary.

[FR Doc. 95–13310 Filed 5–31–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER95–305–001]

Williams Power Trading Company; Errata to Notice of Filing

May 25, 1995.

Take notice that the Notice of Filing issued in Docket No. ER95–305–001 on May 9, 1995 (60 FR 25898, May 15, 1995), should have included the following sentence as the last sentence in that notice, "All comments and protests should be filed on or before June 8, 1995."

Lois D. Cashell,

Secretary.

[FR Doc. 95–13311 Filed 5–31–95; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

[FE Docket No. 95–34–NG]

Masspower; Order Granting Blanket Authorization to Import and Export Natural Gas, Including Liquefied Natural Gas From and to Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting MASSPOWER authorization to import and export a combined total of up to 20 Bcf of natural gas, including liquefied natural gas (LNG), from and to Canada over a two-year term beginning on the date of the first import or export delivery, whichever occurs first, after May 12, 1995.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, May 17, 1995.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 95–13324 Filed 5–31–95; 8:45 am]

BILLING CODE 6450–01–P

[FE Docket No. 95–26–NG]

Cibola Canada Energy Marketing Co.; Order Granting Blanket Authorization To Import and Export Natural Gas From and to Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Cibola Canada Energy Marketing Company (Cibola) authorization to import from and to export to Canada a combined total of up to 50 Bcf of natural gas. The term of the authorization is for a period of two years, beginning on the date of first import or export delivery.

Cibola's order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., May 8, 1995.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 95–13322 Filed 5–31–95; 8:45 am]

BILLING CODE 6450–01–P

[FE DOCKET No. 95–27–NG]

Koch Gas Services Co.; Order Granting Blanket Authorization to Export Natural Gas to Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Koch Gas Services Company blanket authorization to export up to 50 Bcf of domestic natural gas to Canada over a period of two years beginning on the date of first export delivery.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, Room 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., May 10, 1995.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 95–13323 Filed 5–31–95; 8:45 am]

BILLING CODE 6450–01–P

[FE DOCKET No. 95–30–NG]

Pawtucket Power Associates Limited Partnership; Order Granting Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Pawtucket Power Associates Limited Partnership authorization to import up to 10.584 Bcf of natural gas from Canada over a two-year term beginning on the date of the first delivery after May 25, 1995.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., May 16, 1995.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 95–13325 Filed 5–31–95; 8:45 am]

BILLING CODE 6450–01–P

[FE DOCKET NO 95–28–NG]

Western Gas Resources, Inc.; Order Granting Blanket Authorization To Import and Export Natural Gas From and to Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Western Gas Resources, Inc. authorization to import up to 73 Bcf of natural gas from Canada and export up to 73 Bcf of natural gas to Canada over a two-year term beginning on the date of the first import or export after June 16, 1995.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., May 18, 1995.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 95–13326 Filed 5–31–95; 8:45 am]

BILLING CODE 6450–01–P

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the procedures for disbursement of $866,352.24, plus accrued interest, in refined petroleum product violation amounts obtained by the DOE pursuant to Consent Orders issued to Bell Fuels, Inc., et al., Case Nos. LEF–0061, et al. In the absence of sufficient information to implement direct restitution to injured customers of the consenting firms, the OHA has determined that if no such customers come forward, the funds obtained from these firms, plus accrued interest, will be made available to state governments for use in four energy conservation programs.

DATE AND ADDRESS: Applications for Refund from customers of the consenting firms must be filed in duplicate and sent to:

Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585.

Applications should display a prominent reference to the name of the consenting firm in question and the appropriate case number. Applications should be postmarked by September 29, 1995.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Roger Klurfeld, Assistant Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–2094 (Mann); 586–2383 (Klurfeld).

SUPPLEMENTARY INFORMATION:

In accordance with 10 CFR 205.282(b), notice is hereby given of the issuance of the Decision and Order set out below. This Decision and Order sets forth the procedures that the DOE has formulated to distribute $866,352.24, plus accrued interest, obtained by the DOE pursuant to Consent Orders issued to eighteen resellers and retailers of refined petroleum products. The Consent Orders settled DOE allegations that, during periods between 1973 and 1981, the firms had sold certain refined petroleum products at prices in excess of the maximum lawful selling price, in violation of Federal petroleum price regulations. The names of the firms, their case numbers, the dates of the settlement periods, the products covered by each Consent Order, and the amounts received from each firm are set forth in the Appendix to the Decision.

Since it lacks sufficient information to implement a standard first-stage refund process, the OHA has determined that it will accept refund claims from any injured customers of the consenting firms who come forward and will devise refund procedures based on the information these applicants provide. If no applicants come forward, all of the funds obtained from the firms will be made available for indirect restitution in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C. 4501–07. The funds will be distributed to state governments for use in four energy conservation programs.

Applications for Refund must be postmarked by September 29, 1995. Instructions for the completion of refund applications are set forth in the Decision that immediately follows this notice. Applications should be sent to the address listed at the beginning of this notice.

Unless labeled as "confidential," all submissions must be made available for public inspection between the hours of 1 p.m. and 5 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E–234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: May 19, 1995.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy; Implementation of Special Refund Procedures

May 19, 1995.

Names of Firms: Bell Fuels, Inc., *et al.*

Dates of Filing: July 20, 1993, November 16, 1993.

Case Numbers: LEF–0061, et al.

On July 20 and November 16, 1993, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) filed Petitions for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA), to distribute the funds received pursuant to Consent Orders entered into by the DOE and the eighteen petroleum resellers and retailers listed in the Appendix to this Decision and Order (hereinafter collectively referred to as the consenting firms). In accordance with the provisions of the procedural regulations at 10 C.F.R. Part 205, Subpart V (Subpart V), the ERA requests in its Petitions that the OHA establish special procedures to make refunds in order to remedy the effects of regulatory violations set forth in the Consent Orders.

I. Background

Each of the consenting firms was a reseller or retailer of refined petroleum products during the periods relevant to this proceeding. ERA audits of the consenting firms revealed possible violations of the Mandatory Petroleum Price Regulations. Subsequently, each of these firms entered into a separate Consent Order with the DOE in order to settle its disputes with the DOE concerning certain sales of refined petroleum products. Pursuant to these Consent Orders, the firms agreed to pay to the DOE specified amounts in settlement of their potential liability with respect to sales to their customers during the settlement periods. The firms' payments are currently being held in separate interest-bearing accounts pending

distribution by the DOE. The names of the firms, their addresses, the dates of the settlement periods and of the Consent Orders, the amount received from each firm, and the products covered by each Consent Order are set forth in the Appendix to this Decision.

II. Jurisdiction and Authority

The Subpart V regulations set forth general guidelines which may be used by the OHA in formulating and implementing a plan of distribution of funds received as a result of an enforcement proceeding. The DOE policy is to use the Subpart V process to distribute such funds. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds, *see Petroleum Overcharge Distribution and Restitution Act of 1986*, 15 U.S.C. §§ 4501 et seq. *(PODRA)*, *Office of Enforcement*, 9 DOE ¶ 82,508 (1981), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*).

III. Refund Procedures

On April 3, 1995, the OHA issued a Proposed Decision and Order (PD&O) establishing tentative procedures to distribute the Consent Order funds. That PD&O was published in the **Federal Register**, and a 30-day period was provided for the submission of comments regarding our proposed refund plan. *See* 60 Fed. Reg. 18809 (April 13, 1995). More than 30 days have elapsed and the OHA has received no comments concerning these proposed refund procedures. Consequently, the procedures will be adopted as proposed.

In cases where the ERA is unable to identify parties injured by the alleged overcharges or the specific amounts to which they may be entitled, we normally implement a two-stage refund procedure. In the first stage of such a proceeding, those who bought refined petroleum products from the consenting firms may apply for refunds, which are calculated on a pro-rata or volumetric basis. In order to calculate the volumetric refund amount, the OHA divides the amount of money available for direct restitution by the number of gallons sold by the firm during the period covered by the consent order. In the second stage, any funds remaining after all first-stage claims are decided are distributed in accordance with *PODRA*.

In the cases covered by this Decision, however, we lack much of the information that we normally use to provide direct restitution to injured customers of the consenting firms. In particular, we have been unable to obtain any information on the volumes of the relevant petroleum products sold by the consenting firms during the settlement period. Nor do we have any information concerning the customers of these firms. Based on the present state of the record in these cases, it would be difficult to implement a volumetric refund process. Nevertheless, we will accept any refund claims submitted by persons who purchased the products specified in the Appendix from the consenting firms during the periods shown in the Appendix. We will work with those claimants to develop additional information that would enable us to determine who should receive refunds and in what amounts.

To apply for a refund from any of the Consent Order funds, a claimant should submit an Application for Refund containing the following information:

(1) Identifying information including the claimant's name, current business address, business address during the refund period, taxpayer identification number, a statement indicating whether the claimant is an individual, corporation, partnership, sole proprietorship, or other business entity, the name, title, and telephone number of a person to contact for additional information, and the name and address of the person who should receive any refund check.[1]

(2) A monthly purchase schedule covering the relevant settlement period. The applicant should specify the source of this gallonage information. In calculating its purchase volumes, an applicant should use actual records from the refund period, if available. If these records are not available, the applicant may submit estimates of its gasoline purchases, but the estimation method must be reasonable and must be explained;

(3) A statement whether the applicant or a related firm has filed, or has authorized any individual to file on its behalf, any other application in that refund proceeding. If so, an explanation of the circumstances of the other filing or authorization should be submitted;

(4) If the applicant is or was in any way affiliated with the consenting firm, it should explain this affiliation, including the time period in which it was affiliated;[2]

(5) The statement listed below signed by the individual applicant or a responsible official of the firm filing the refund application:

I swear (or affirm) that the information contained in this application and its attachments is true to the best of my knowledge and belief. I understand that anyone who is convicted of providing false information to the federal government may be subject to a fine, a jail sentence, or both, pursuant to 18 U.S.C. § 1001. I understand that the information contained in this application is subject to public disclosure. I have enclosed a duplicate of this entire application which will be placed in the OHA Public Reference Room.

All applications should be either typed or printed and clearly labeled with the name and case number of the relevant consenting firm. Each applicant must submit an original and one copy of the application. If the applicant believes that any of the information in its application is confidential and does not wish for that information to be publicly disclosed, it must submit an original application, clearly designated "confidential," containing the confidential information, and two copies of the application with the confidential information deleted. All refund applications should be postmarked on or before September 29, 1995, and sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., S.W., Washington, D.C. 20585.

We will adopt the standard OHA procedures relating to refund applications filed on behalf of applicants by "representatives," including refund filing services, consulting firms, accountants, and attorneys. See, e.g., Starks Shell Service, 23 DOE ¶ 85,017 (1993); Texaco Inc., 20 DOE ¶ 85,147 (1990); Shell Oil Co., 18 DOE ¶ 85,492 (1989). We will also require strict compliance with the filing requirements as specified in 10 C.F.R. § 205.283, particularly the requirement that applications and the accompanying certification statement be signed by the applicant.

The OHA reiterates its policy to scrutinize applications filed by filing services closely. Applications submitted by a filing service should contain all of the information indicated above.

Finally, the OHA reserves the authority to require additional information before granting any refund in these proceedings.

If no claims are received, we will distribute all of the funds received from the consenting firms in accordance with the provisions of PODRA. See Green Oil Company, 20 DOE ¶ 85,450 (1990). PODRA requires that the Secretary of Energy determine annually the amount of oil overcharge funds that will not be required to refund monies to injured parties in Subpart V proceedings and make those funds available to state governments for use in four energy conservation programs. The Secretary has delegated those responsibilities to the OHA, and any funds that the OHA determines will not be needed to effect direct restitution to injured customers will be distributed in accordance with the provisions of PODRA.

It Is Therefore Ordered That:

(1) Applications for Refund from the funds remitted to the Department of Energy by the firms listed in the Appendix to this Decision and Order pursuant to the Consent Orders whose dates are set forth in the Appendix may now be filed.

[1] Under the Privacy Act of 1974, the submission of a social security number by an individual applicant is voluntary. An applicant that does not submit a social security number must submit an employer identification number if one exists. This information will be used in processing refund applications, and is requested pursuant to our authority under the Petroleum Overcharge Distribution and Restitution Act of 1986 and the regulations codified at 10 C.F.R. Part 205, Subpart V. The information may be shared with other Federal agencies for statistical, auditing or archiving purposes, and with law enforcement agencies when they are investigating a potential violation of civil or criminal law. Unless an applicant claims confidentiality, this information will be available to the public in the Public Reference Room of the Office of Hearings and Appeals.

[2] As in other refund proceedings involving alleged refined product violations, the DOE will presume that affiliates of a consenting firm were not injured by the firm's overcharges. See, e.g., Marathon Petroleum Co./EMRO Propane Co., 15 DOE ¶ 85,288 (1987). This is because the consenting firm presumably would not have sold petroleum products to an affiliate if such a sale would have placed the purchaser at a competitive disadvantage. See Marathon Petroleum Co./Pilot Oil Corp., 16 DOE ¶ 85,611 (1987), amended claim denied, 17 DOE ¶ 85,291 (1988), reconsideration denied, 20 DOE ¶ 85,236 (1990). Furthermore, if an affiliate of the consenting firm were granted a refund, the consenting firm would be indirectly compensated from a Consent Order fund remitted to settle its own alleged violations.

(2) Applications for Refund must be postmarked no later than September 29, 1995.

George B. Breznay,

Director, Office of Hearings and Appeals.

Date: May 19, 1995.

APPENDIX

Case No.	Firm	Address	Settlement period	Date of consent order	Amount received	Product
LEF–0061	Bell Fuels, Inc.	4116 W. Peterson Ave., Chicago, IL 60646.	1/1/79–11/30/79	8/31/82	$33,973.12	Gasoline.
LEF–0062	Este Oil Co.	5556 Vine St., Cincinnati, OH 45217.	11/1/73–1/28/81	5/13/83	63,033.90	Refined petroleum products.
LEF–0063	G&G Oil Co. of Indiana, Inc..	220 E. Centennial Ave., Muncie, IN 47305.	4/1/79–12/31/79	2/1/83	49,097.11	Do.
LEF–0064	General Petroleum Products, Inc..	P.O. Box 209, Gary, IN 46402.	11/1/73–4/30/74	7/13/83	23,060.52	Do.
LEF–0065	Reco Petroleum, Inc.	100 N. 4th St., Reading, PA 19601.	3/1/79–1/30/81	2/5/83	26,472.40	Gasoline.
LEF–0066	SOS Monarch Oil Corp.	East Village Rd., Tuxedo, NY 10987.	4/1/79–9/30/79	10/25/82	5,901.03	Do.
LEF–0067	Capitol 66 Oil Co.	P.O. Box 2839, Jackson, MS 39207.	11/1/73–3/31/74	9/15/82	15,766.43	Refined petroleum products.
LEF–0068	Cumberland Farms Dairy, Inc..	777 Dedham St., Canton, MA 02021.	1/1/73–1/28/81	4/17/83	183,193.74	Gasoline.
LEF–0069	Kickapoo Oil Co.	215 E. Madison, Hillsboro, WI 54634.	3/1/79–8/31/79	9/24/82	40,812.58	Propane.
LEF–0070	Lampton-Love, Inc.	P.O. Drawer 1607, Jackson, MS 39205.	11/73–4/74	9/30/82	12,983.93	Gasoline.
LEF–0071	Skinny's Inc.	5189 Texas Ave., Abilene, TX 79608.	3/1/79–3/31/80	9/2/82	16,000.00	Do.
LEF–0072	Vermont Morgan Corp	114 Broadway, Saratoga, NY 12866.	4/1/79–6/30/79	4/5/83	20,275.00	Do.
LEF–0075	Bob's Broadway Shell	220 W. 17th St., Santa Ana, CA 92708.	8/1/79–5/7/80	10/6/81	2,100.00	Do.
LEF–0076	Clearview Gulf	3120 Clearview Parkway, Metairie, LA 70002.	4/1/79–7/15/79	8/14/81	594.54	Do.
LEF–0077	E–Z Serve, Inc.	P.O. Box 3579, Abilene, TX 79604.	8/19/73–1/27/81	12/27/82	368,550.56	Do.
LEF–0079	Millbrae Shell	825 Spruance Ln., Foster City, CA 94404.	8/1/79–11/30/79	3/5/82	2,500.00	Do.
LEF–0080	Bob Hutchinson, Inc.	1334 Breckenridge St., San Leandro, CA 94579.	8/1/79–11/30/79	3/5/82	1,762.07	Do.
LEF–0116	Maxwell Oil Co., Inc.	P.O. Box 1936, Olympia, WA 98507.	5/1/79–12/1/79	9/1/81	275.01	Do.

[FR Doc. 95–13305 Filed 5–26–95; 8:45 am]

BILLING CODE 6450–01–P

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the procedures for disbursement of a total of $7,280,202, plus accrued interest, in crude oil overcharges obtained by the DOE from MAPCO, Inc. and MAPCO International, Inc., Case No. VEF–0004 (MAPCO). The OHA has determined that the funds obtained from MAPCO, plus accrued interest, will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases, 51 Fed. Reg. 27899 (August 4, 1986).

DATE AND ADDRESSES: Applications for Refund should be filed in duplicate and sent to: Subpart V Crude Oil Overcharge Refunds, Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585

Applications must be postmarked no later than June 30, 1995.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Roger Klurfeld, Assistant Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–2094 (Mann); 586–2383 (Klurfeld).

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order sets forth the procedures that the DOE has formulated to distribute a total of $7,280,202, plus accrued interest, remitted to the DOE by MAPCO, Inc. and MAPCO International, Inc. to the DOE. The DOE is currently holding these funds in an interest bearing account pending distribution.

The OHA will distribute these funds in accordance with the DOE's Modified Statement of Restitutionary Policy in

Crude Oil Cases, 51 Fed. Reg. 27899 (August 4, 1986) (the MSRP). Under the MSRP, crude oil overcharge monies are divided among the federal government, the states, and injured purchasers of refined petroleum products. Refunds to the states will be distributed in proportion to each state's consumption of petroleum products during the price control period. Refunds to eligible purchasers will be based on the volume of petroleum products that they purchased and the extent to which they can demonstrate injury.

The deadline for filing Applications for Refund is June 30, 1995. A suggested application form may be obtained by sending a written request to the address given at the beginning of this notice. All applications should also be sent to that address. As we state in the Proposed Decision, any party who has previously submitted a refund application in the crude oil proceedings should not file another Application for Refund. The previously filed crude oil application will be deemed filed in all crude oil proceedings as the proceedings are finalized.

Unless labeled as "confidential," all submissions must be made available for public inspection between the hours of 1 p.m. and 5 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E–234, 1000 Independence Ave., SW., Washington, DC 20585.

Dated: May 19, 1995.

George B. Breznay,

Director, Office of Hearings and Appeals.

DEPARTMENT OF ENERGY, WASHINGTON, DC 20585

May 19, 1995.

Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Name of Firm: MAPCO International, Inc.
Date of Filing: February 23, 1995.
Case Number: VEF–0004.

On February 23, 1995, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) filed a Petition for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA), to distribute crude oil overcharge funds received from MAPCO, Inc. (MAPCO) pursuant to a June 23, 1994 Settlement Agreement. The Settlement Agreement resolved claims and litigation arising from an April 21, 1986 Remedial Order originally issued to MAPCO Inc.'s subsidiary MAPCO International, Inc. (MAPCO International) (Case No. HRO–0193). In accordance with the provisions of the procedural regulations at 10 C.F.R. Part 205, Subpart V (Subpart V), the ERA requests in its Petition that the OHA establish special procedures to make refunds in order to remedy the effects of alleged regulatory violations set forth in the Remedial Order. This Decision and Order sets forth the OHA's plan to distribute these funds.

I. Background

During the period relevant to this proceeding, MAPCO International, Inc. was a reseller of crude oil. On June 30, 1983, the ERA issued a Proposed Remedial Order (PRO) to the firm. The PRO alleged that during the period from August 1978 through November 1980 (the audit period), MAPCO International sold crude oil at prices in excess of those permitted by 10 C.F.R. Part 212, Subpart L. After considering and dismissing MAPCO International's objections to the PRO, the DOE issued a final Remedial Order. 14 DOE ¶ 83,019 (1986). MAPCO International appealed the Remedial Order to the Federal Energy Regulatory Commission, which affirmed the Remedial Order. 43 FERC ¶ 63,041 (1988); 56 FERC ¶ 61,063 (1991). Three years of litigation ensued. MAPCO, MAPCO International and the DOE finally resolved all their disputes arising from the Remedial Order with the June 23, 1994 Settlement Agreement. Pursuant to the Settlement Agreement, MAPCO remitted to the DOE the sum of $7,280,202, to which interest has since accrued. These funds are being held in an interest-bearing escrow account maintained at the Department of the Treasury pending a determination regarding their proper distribution.

II. Jurisdiction and Authority

The Subpart V regulations set forth general guidelines which may be used by the OHA in formulating and implementing a plan of distribution of funds received as a result of an enforcement proceeding. The DOE policy is to use the Subpart V process to distribute such funds. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds, *see Petroleum Overcharge Distribution and Restitution Act of 1986*, 15 U.S.C. §§ 4501 et seq., *Office of Enforcement*, 9 DOE ¶ 82,508 (1981), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*).

We have considered the ERA's petition that we implement Subpart V proceedings with respect to the MAPCO funds and have determined that such proceedings are appropriate. This Decision and Order sets forth the OHA's plan to distribute these funds.

III. Refund Procedures

On April 3, 1995, the OHA issued a Proposed Decision and Order (PD&O) establishing tentative procedures to distribute the MAPCO funds. That PD&O was published in the **Federal Register**, and a 30-day period was provided for the submission of comments regarding our proposed refund plan. *See* 60 Fed. Reg. 18812 (April 13, 1995). More than 30 days have elapsed and the OHA has received no comments concerning the proposed procedures for the distribution of the MAPCO funds. Consequently, the procedures will be adopted as proposed.

A. Crude Oil Refund Policy

We will distribute the monies remitted by MAPCO in accordance with DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases (MSRP). *See* 51 Fed. Reg. 27899 (August 4, 1986) The MSRP was issued as a result of a court-approved Settlement Agreement *In Re: The Department of Energy Stripper Well Exemption Litigation*, 653 Fed. Supp. 108 (D. Kan.), 6 Fed. Energy Guidelines ¶ 90,509 (1986) (the Stripper Well Settlement Agreement). This policy has been applied in all Subpart V proceedings involving alleged crude oil violations. *See* Order Implementing the MSRP, 51 Fed. Reg. 29689 (August 20, 1986) (the August 1986 Order).

Under the MSRP, 40 percent of crude oil overcharge funds will be refunded to the federal government, another 40 percent to the states, and up to 20 percent may initially be reserved for the payment of claims to injured parties. The MSRP also specifies that any funds remaining after all valid claims by injured purchasers are paid will be disbursed to the federal government and the states in equal amounts.

On April 10, 1987, the OHA issued a Notice analyzing the numerous comments received in response to the August 1986 Order. 52 Fed. Reg. 11737 (April 10, 1987) (the April 10 Notice). This Notice provided guidance to claimants that anticipated filing refund applications for crude oil monies under the Subpart V regulations. In general, we stated that all claimants would be required to (1) document their purchase volumes of petroleum products during the August 19, 1973 through January 27, 1981 crude oil price control period, and (2) prove that they were injured by the alleged crude oil overcharges. End-users of petroleum products whose businesses were unrelated to the petroleum industry would be presumed to have been injured by the alleged crude oil overcharges and would not be required to submit proof of injury. *See City of Columbus, Georgia*, 16 DOE ¶ 85,550 (1987).

B. Refund Claims

The amount of money covered by this Decision is $7,280,202, plus accrued interest. In accordance with the MSRP, we will initially reserve 20 percent of those funds ($1,456,040 in principal, plus accrued interest) for direct refunds to applicants who claim that they were injured by crude oil overcharges.

We will evaluate claims in the MAPCO crude oil refund proceeding in exactly the same manner as in other crude oil proceedings. As we stated in the April 10 Notice, claimants will generally be required to document their purchase volumes of petroleum products and prove that they were injured as a result of the alleged violations. We will presume that the alleged crude oil overcharges were absorbed, rather than passed on, by applicants who were (1) end-users of petroleum products, (2) unrelated to the petroleum industry, and (3) not subject to the regulations promulgated under the Emergency Petroleum Price and Allocation Act of 1973, 15 U.S.C. §§ 751–760h. In order to receive a refund, such claimants need not submit any evidence of injury beyond documentation of their purchase volumes. It is the current policy of the DOE to pay all crude oil refund claims at the rate of $0.0016 per gallon.

As has been stated in earlier Decisions, a crude oil refund applicant will only be required to submit one application for its share of all available crude oil overcharge funds. *See, e.g., A.Tarricone Inc.*, 15 DOE ¶85,475 (1987). A party that has already submitted a claim in any other crude oil refund proceeding implemented by the DOE need not file another claim. The deadline for filing an Application for Refund is June 30, 1995. *See* 60 Fed. Reg. 19914 (April 21, 1995). Any claimant that has executed a valid waiver pursuant to one of the escrow accounts established by the Stripper Well Agreement, however, has waived its right to file an application for a Subpart V crude oil refund. *See Mid-American Dairymen v. Herrington*, 878 F. 2d 1448 (Temp. Emer. Ct. App.), 3 Fed. Energy Guidelines ¶26,617 (1989); *In re: Department of Energy Stripper Well Exemption Litigation*, 707 F. Supp. 11267 (D. Kan.), 3 Fed. Energy Guidelines] 26,613 (1987).

To apply for a refund, a claimant should submit an Application for Refund. Each crude oil Application for Refund should contain the information specified by the OHA in past decisions. *See Texaco Inc.*, 19 DOE ¶85,200 at 88,374, *corrected*, 19 DOE ¶85,236 (1989); *Hood Goldsberry*, 18 DOE ¶85,902 at 89,477–78 (1989); *Wickett Refining Co.*, 18 DOE ¶85,659 at 89,081–82 (1989). All applications should be postmarked no later than June 30, 1995 and sent to: Subpart V Crude Oil Overcharge Refunds, Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., S.W., Washington, D.C. 20585.

Although an applicant is not required to use any specific form for its crude oil refund application, the OHA has prepared a suggested form, which may be obtained by sending a written request to the address given above.

D. Payments to the States and Federal Government

Under the terms of the MSRP, the remaining 80 percent of the amount remitted by MAPCO, or $5,824,162 in principal, plus accrued interest, will be disbursed in equal shares to the states and federal government for indirect restitution. Refunds to the states will be in proportion to the consumption of petroleum products in each state during the crude oil price control period. The share of the funds allocated to each state is contained in Exhibit H of the Stripper Well Agreement. When disbursed, these funds will be subject to the same limitations and reporting requirements that apply to any other crude oil overcharge funds received by the states in accordance with the Stripper Well Agreement.

It Is Therefore Ordered That:

(1) Applications for Refund from the alleged crude oil overcharges remitted to the Department of Energy by MAPCO, Inc. pursuant to the Settlement Agreement dated June 23, 1994 may now be filed.

(2) All crude oil refund applications submitted pursuant to Paragraph (1) above must be postmarked no later than June 30, 1995.

(3) The Director of Special Accounts and Payroll, Office of Departmental Accounting and Financial Systems Development, Office of the Controller, Department of Energy, shall transfer a total of $2,912,081, plus accrued interest, from the subaccount denominated "MAPCO International," Consent Order No. 6C0X00270W, into the subaccount denominated "Crude Tracking-States," Account No. 999DOE003W.

(4) The Director of Special Accounts and Payroll shall transfer a total of $2,912,081, plus accrued interest, from the subaccount denominated "MAPCO International," Consent Order No. 6C0X00270W, into the subaccount denominated "Crude Tracking-Federal," Account No. 999DOE002W.

(5) The Director of Special Accounts and Payroll shall transfer a total of $1,456,040, plus accrued interest, from the subaccount denominated "MAPCO International," Consent Order No. 6C0X00270W, into the subaccount denominated "Crude Tracking-Claimants 4," Account No. 999DOE0010Z.

(6) This is a final Order of the Department of Energy.

Date: May 19, 1995.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 95–13306 Filed 5–31–95; 8:45 am]

BILLING CODE 6450–01–P

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy has adopted the procedures to be followed in refunding monies obtained by the Department of Energy (DOE) from Gulf Oil Corporation to settle alleged crude oil violations. The funds will be distributed pursuant to the DOE's Modified Statement of Restitutionary Policy.

ADDRESSES: Applications for Refund must be filed in duplicate no later than June 30, 1995, and should be addressed to: Subpart V Crude Oil Overcharge Refunds, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: Thomas L. Wieker, Deputy Director, Office of Hearings and Appeals, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–2390.

SUPPLEMENTARY INFORMATION: In accordance with the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the final Decision and Order set out below. The Decision relates to a June 14, 1985 consent order between the DOE and Gulf Oil Corporation. The Decision sets forth the procedures that the DOE has formulated to distribute funds that Gulf Oil Corporation remitted to the DOE to settle allegations that it violated the Agency's crude oil price and allocation regulations. The consent order covers the period January 1, 1973 through January 27, 1981.

The Decision disburses the available funds in accordance with the DOE's Modified Statement of Restitutionary Policy. Specifically, a total of $37,309,761, will made available for direct restitution to injured end users of refined petroleum products. The States will receive $8,706,529, and the Federal Government will receive $8,604,301.

Applications for Refund from the portion of the Gulf Oil Corporation consent order funds allocated to the crude oil overcharge refund pool may now be filed. Applications must be filed by June 30, 1995. Applicants that have previously filed a crude oil overcharge refund application with the Department of Energy need not file an additional application in order to receive a refund from the Gulf crude oil monies.

Dated: May 19, 1995.

George B. Breznay,

Director, Office of Hearings and Appeals.

DEPARTMENT OF ENERGY, WASHINGTON, DC 20585

May 19, 1995.

Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Name of Firm: Gulf Oil Corporation.
Date of Filing: June 30, 1987.
Case Number: KFX–0037.

On July 25, 1985, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) filed a petition with the Office of Hearings and Appeals (OHA), requesting that the OHA formulate and implement procedures for distributing funds obtained through the settlement of enforcement proceedings involving Gulf Oil Corporation (Gulf). See 10 C.F.R. Part 205, Subpart V. On October 15, 1986, the OHA issued a Proposed Decision and Order tentatively setting forth procedures for distributing the Gulf settlement fund, remitted to the DOE pursuant to a June 14, 1985 consent order. 51 Fed. Reg. 37479 (October 22, 1986). This Decision and Order will provide the final procedures for the disbursement of the Gulf funds attributable to Gulf's alleged crude oil violations.

Under the terms of a consent order, Gulf remitted $146,550,226.79 to the DOE in settlement of alleged violations occurring between January 1, 1973 and January 27, 1981. Because the consent order resolves alleged violations involving both sales of crude oil and refined products, we divided the fund into two pools. See Standard Oil Co. (Indiana), 10 DOE ¶ 85,048 (1982)(*Amoco*). As we stated in the Proposed Order,

according to information set forth in the **Federal Register** Notice announcing the proposed Gulf consent order, approximately 71 percent of the aggregate amount of the alleged violations settled by the consent order concern Gulf's alleged production and sales of crude oil. 50 Fed. Reg. 9493, 9496 (March 6, 1985). We therefore proposed that this same percentage of the principal in the Gulf escrow account, or $104,050,661, be set aside as a pool to be used for crude oil refunds.[1]

The DOE's Modified Statement of Restitutionary Policy (MSRP) is applicable to the disbursal of the Gulf crude oil funds. Under the terms of the MSRP, 20 percent of crude oil violation funds are reserved to satisfy claims by injured end users of petroleum products. The remaining 80 percent of the funds are divided equally between the States and the Federal Government. We will next consider how the funds in the Gulf account should be disbursed.[2]

Pursuant to the MSRP, we will reserve 20 percent of the $104,050,661 Gulf crude oil fund, or $20,810,132, for direct restitution to end users. 51 Fed. Reg. 27899 (August 4, 1986). We will also transfer $16,499,629 in interest on that sum for this purpose.[3] Thus, the total amount to be disbursed to the end user account is $37,309,761.

We next consider the refund amount due to the States. Under the terms of the MSRP, the States were entitled to 40 percent of the Gulf crude oil fund, or $41,620,264. The States have already been reimbursed $36,792,564.[4] Therefore, the States are entitled to an additional $4,827,700 plus interest. Applying the current interest factor discussed above, we find that the interest on this amount is $3,827,715. Thus, the total is $8,655,415. We further find that the Federal Government should receive the same share.

However, one small modification must be made to this State/Federal Government division. We will provide an adjustment to account for a payment of $57,019, for which the Federal Government is solely responsible. This payment was made from the Gulf crude oil funds to Sage Creek Refining Company, an entitlements receive order firm. Sage Creek Refining Co., 14 DOE ¶ 85,288 (1986). We will disburse to the States one half of the amount of the Sage Creek payment plus interest, or one half of $102,227, which is $51,114.[5] Thus, the States' total refund equals $8,655,415 plus $51,114, or $8,706,529. We will also deduct $51,114 from the Federal Government's share. Thus, the Federal Government's share will be $8,604,301.

In view of the above considerations, Applications for Refund from the funds remitted by Gulf to settle alleged crude oil violations may now be filed.[6]

It Is Therefore Ordered That:

(1) Applications for Refund from the portion of the Gulf Oil Corporation consent order funds allocated to the crude oil overcharge refund pool may now be filed. Applicants that have previously filed a crude oil overcharge refund application with the Department of Energy need not file an additional application in order to receive a refund from the Gulf crude oil monies.

(2) All applications submitted pursuant to Paragraph (1) above must be filed no later than June 30, 1995.

(3) The Director of Special Accounts and Payroll, Office of Departmental Accounting and Financial Systems Development, Office of the Controller, Department of Energy shall take all necessary steps to transfer all funds in the Consumers Power Company escrow account (Number AAAAAAAAAA) to the Gulf Oil Corporation escrow account, Number RGFA00001Z, hereinafter the Gulf account.

(4) The Director of Special Accounts and Payroll shall take all necessary steps to make the disbursements set forth in Paragraphs (5), (6) and (7) below from the Gulf account.

(5) The Director of Special Accounts and Payroll shall transfer the sum of $37,309,761 to the subaccount denominated "Crude Tracking-Claimants 4," Number 999DOE010Z.

(6) The Director of Special Accounts and Payroll shall transfer $8,604,301 into the subaccount denominated "Crude Tracking-Federal," Number 999DOE002W.

(7) The Director of Special Accounts and Payroll shall transfer $8,706,529 into the subaccount denominated "Crude Tracking-States," Number 999DOE003W.

Dated: May 19, 1995.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 95–13366 Filed 5–31–95; 8:45 am]

BILLING CODE 6450–01–P

[1] Our Proposed Decision covered tentative refund procedures for both crude oil and refined petroleum products. We stated that the remaining 29 percent of the Gulf funds, or $42,499,566, would be made available for distribution to claimants who were injured by Gulf's alleged violations in its sales of refined petroleum products. For simplicity, our final refund procedures relating to alleged overcharges in Gulf's sales of crude oil and refined products have been split into two Decisions and Orders. The Decision and Order establishing refund procedures concerning Gulf's alleged refined product overcharges was issued on September 8, 1987. Gulf Oil Corp., 16 DOE ¶ 85,381 (1987) (Gulf). We did not receive any comments regarding our proposed allocation of 29 percent of the Gulf funds to the refined product proceeding. Accordingly, in *Gulf*, we adopted the proposed 71/29 percent allocation between crude oil and refined product monies. We have actively been disbursing refunds to Gulf refined product purchasers for a number of years based on that division of the funds.

[2] The DOE used $73,585,129 of the $104,050,661 in Gulf crude oil funds to pay entitlements receive order firms. This includes funds paid to Consumers Power Company. As of March 31, 1995, there was $45,815,755 in the Gulf account. We will return to the Gulf account the excess $13,026,674 that is currently in the DOE's Consumers Power Company escrow account. The funds in the Consumers Power escrow account are those remaining after the Agency's litigation with that firm was concluded. *See Consumers Power Co.* versus *DOE*, 3 Fed. Energy Guidelines ¶ 26,532 (1990). After the Consumers Power transaction, there will be a total of $58,842,429 in the Gulf account.

[3] The DOE Controller has indicated that the interest factor for the Gulf crude oil funds is $.79286517, as of March 31, 1995. This amount represents interest earned on each dollar of Gulf funds since the day of deposit into the Department of Treasury escrow account. To derive the amount of interest to be deposited into the escrow account for end users, we multiplied that interest factor by $20,810,132, the end users' 20 percent share.

[4] This amount includes a payment to State governments of $18,396,282 of principal from the Bank IV Escrow, pursuant to a June 26, 1987 Order of the United States District Court for the District of Kansas. See Stripper Well Exemption Litigation, 16 DOE ¶ 85,200 (1987). The States also received $17,492,250 of credit in the "Federal Tilt" formula, and a related $904,032. *Id.* at 88,387.

[5] Interest on the $57,019 Sage Creek payment is $45,208 (57,019 × .79286517 = 45,208).

[6] Procedures for filing crude oil overcharge refund claims are by now well-known. We will not reiterate them here.

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5213–9]

Request for Nominations to the National Advisory Council for Environmental Policy and Technology

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of request for nominations.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is inviting nominations of qualified candidates to consider for appointment to fill vacancies on its National Advisory Council for Environmental Policy and Technology (NACEPT). Nominations will be accepted until 5:00 p.m. on July 10, 1995.

ADDRESSES: Submit nominations to: Mr. Gordon Schisler, Acting Director, Office of Cooperative Environmental Management, U.S. Environmental Protection Agency, 1601–F, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Mr. Gordon Schisler, Designated Federal Official for NACEPT, U.S. Environmental Protection Agency, 1601–F, Washington, DC 20460; telephone 202–260–9741.

SUPPLEMENTARY INFORMATION: NACEPT is a federal advisory committee under the Federal Advisory Committee Act, PL 92463. NACEPT provides advice and recommendations to the Administrator of EPA on a broad range of environmental policy issues. The Administrator has asked NACEPT to concentrate on how long-term ecological, economic, and social needs can be integrated to achieve a community-based approach to environmental management. Maintaining balance and diversity of experience, knowledge, and judgment is an important consideration in the selection of members.

The following three NACEPT committees were formed in FY'95 and will continue to examine different aspects of the Agency's community-based approach to environmental protection in FY'96.

- The Information and Assessments Committee is examining the availability, access, and use of environmental information in support of a community-based approach to environmental protection, as well as examining current environmental assessment processes to determine success factors.
- The Implementation Tools Committee is evaluating opportunities for EPA to reorient the use of its existing statutory and regulatory authorities to integrate a community-based approach to environmental protection into the Agency's decision-making process.
- The Sustainable Economies Committee is examining the defining elements of sustainable economies and opportunities for harmonizing environmental policy, economic activity, and ecosystem management.

NACEPT comprises a representative cross-section of EPA's partners and constituents in order to gain insights and perspectives from all interested parties. As these committees continue their work and to maintain a good balance of capabilities on the committees, nominations for additional membership are being solicited for all committees and NACEPT's executive committee.

EPA is seeking nominees for representation from all sectors, especially state and local planning agencies, industry, tribal organizations, environmental NGOs, and community organizations currently engaged in community-based environmental protection.

Nominations for membership must include a resume and short biography describing the educational and professional qualifications of the nominee and the nominee's current business address and daytime telephone number.

Dated: May 18, 1995.

Gordon Schisler,

Designated Federal Official.

[FR Doc. 95–13373 Filed 5–31–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5213–6]

Public Water Supply Supervision Program; Program Revision for the State of Alaska

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given that the State of Alaska is revising its approved State Public Water Supply Supervision Primacy Program. Alaska has adopted drinking water regulations for certain inorganic, volatile organic and synthetic organic chemicals (collectively known as the Phase II, Phase IIB and Phase V contaminants) and for lead and copper. EPA has determined that these State program revisions are no less stringent than the corresponding Federal regulations. Therefore, EPA has tentatively decided to approve these State program revisions. By approving Alaska's Phase II/IIB/V Contaminants Rule and its Lead and Copper Rule, EPA does not intend to affect the rights of Federally recognized Indian tribes within "Indian Country," as defined in 18 U.S.C. 1151, nor does it intend to limit existing rights of the State of Alaska.

All interested parties may request a public hearing. A request for public hearing must be submitted by July 3, 1995 to the Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by July 3, 1995, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become final and effective July 3, 1995.

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such hearing; and (3) the signature of the individual making the request; or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

Department of Environmental Conservation (DEC), 410 Willoughby Avenue, Suite 105, Juneau, Alaska 99801

DEC South Central Regional Office, 3601 C Street, Suite 1334, Anchorage, Alaska 99503

DEC Northern Regional Office, 1001 Noble Street, Suite 350, Fairbanks, Alaska 99701

DEC Pipeline Corridor Regional Office, 411 West 4th Avenue, Suite 2C, Anchorage, Alaska 99501

Environmental Protection Agency, Region 10 Library, 1200 Sixth Avenue, Seattle, Washington

FOR FURTHER INFORMATION CONTACT: Wendy Marshall, EPA, Region 10, Ground Water and Drinking Water Branch, at the EPA address given above, telephone (206) 553–1890.

Dated: May 16, 1995.

Chuck Clarke,

Regional Administrator.

[FR Doc. 95–13369 Filed 5–31–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5213–9]

Gulf of Mexico Program Joint Issue and Operating Committee; Meetings

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of Meetings of the Joint Issue and Operating Committees of the Gulf of Mexico Program.

SUMMARY: The Gulf of Mexico Program's Joint Issue and Operating Committees will hold meetings at the Marriott Hotel, 555 Canal Street, New Orleans, Louisiana.

FOR FURTHER INFORMATION CONTACT: Dr. Douglas Lipka, Acting Director, Gulf of Mexico Program Office, Building 1103, Room 202, John C. Stennis Space Center, Stennis Space Center, MS 39529–6000, at (601) 688–3726.

SUPPLEMENTARY INFORMATION: Meetings of the Joint Issue and Operating Committees of the Gulf of Mexico Program will be held June 21 and 22, 1995, at the Marriott Hotel, 555 Canal Street, New Orleans, Louisiana. The committees will meet from 8:30 a.m. to 4:30 p.m. Agenda items will include: Continue Development of the Third Generation Action Agenda Process; Determine Projects to be Funded in FY96; and Finalize Process for Integration of Issue Committee Action Items into the Gulf of Mexico Program Environmental Challenges.

The meeting is open to the public.

Douglas A. Lipka,

Acting Director, Gulf of Mexico Program.

[FR Doc. 95–13367 Filed 5–31–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5214–1]

Gulf of Mexico Program Citizens Advisory Committee Meeting

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of meetings of the Citizens Advisory Committee of the Gulf of Mexico Program.

SUMMARY: The Gulf of Mexico Program's Citizens Advisory Committee will hold a meeting at the Marriott Hotel, 555 Canal Street, New Orleans, Louisiana.

FOR FURTHER INFORMATION CONTACT: Dr. Douglas Lipka, Acting Director, Gulf of Mexico Program Office, Building 1103, Room 202, John C. Stennis Space Center, Stennis Space Center, MS 39529–6000, at (601) 688–3726.

SUPPLEMENTARY INFORMATION: A meeting of the Citizens Advisory Committee of the Gulf of Mexico Program will be held June 21–23, 1995, at the Marriott Hotel, 555 Canal Street, New Orleans, Louisiana. The committee will meet from 8:30 a.m. to 4:30 p.m. Agenda items will include: Assignment to GMP Issue Committees; Approval of March 31, 1995 Meeting Summary; Status of the 5-Year CAC Plan; Overview of the Gulf of Mexico Foundation; Gulf of Mexico Program FACA Issues; Update on Federal Agreement of Participation; Informational Presentation on Strategic Assessment; State Activity Reports; Issue Committee Meeting Report by CAC Representatives; and Program Office Report on Status of Projects and Action Items.

The meeting is open to the public.

Fred Koppler,

Acting Director, Gulf of Mexico Program.

[FR Doc. 95–13372 Filed 5–31–95; 8:45 am]

BILLING CODE 6560–60–M

[FRL–5213–5]

Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) or Superfund, Section 104; Announcement of Public Dialogues on Urban Revitalization and Brownfields

AGENCY: Environmental Protection Agency.

ACTION: Notice of a change in meeting schedule.

On May 15, 1995, the Environmental Protection Agency (EPA) announced in the **Federal Register** that the National Environmental Justice Advisory Council's (NEJAC) and EPA will convene a series of public dialogues on environmental justice issues related to urban revitalization and brownfields (see 60 FR 25908). The purpose of this notice is to announce a change in the meeting to be held in Philadelphia, PA. The new meeting time will be on Wednesday, June 7, 1995 from 6:30 p.m.–8:30 p.m., at the Forty Sixth Street Baptist Church, 1261 S. 46th Street in Philadelphia, PA. For more information about the meeting in Philadelphia please contact Maurice Sampson at 215–686–9242 or Josie Matsinger (US EPA) at 215–597–3182.

FOR FURTHER INFORMATION CONTACT: NEJAC Waste Subcommittee: Charles Lee/212–870–2077 or Lillian Kawasaki/213–580–1046; US EPA: Jan Young/202–260–1691 or Katherine Dawes/202–260–8394.

Dated: May 24, 1995.

Janvier C. Young,

Designated Federal Officer, NEJAC Waste Subcommittee, Office of Solid Waste and Emergency Response.

[FR Doc. 95–13370 Filed 5–31–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5213–8]

Privacy Act; Telephone Call Detail Records

AGENCY: Environmental Protection Agency.

ACTION: Notice of new Privacy Act System of Records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, the Environmental Protection Agency (EPA) is proposing to establish a new system of records entitled "Telephone Call Detail Records—EPA/OIRM."

EFFECTIVE DATE: This system of records shall become effective July 11, 1995 unless EPA receives written comments that result in a contrary determination.

ADDRESSES: Written comments should be addressed to the Chief, EPA Telecommunications Branch, MD–34, Research Triangle Park, N.C. 27711.

FOR FURTHER INFORMATION CONTACT: David A. Bittenbender, Chief, Telecommunications Branch, U.S. Environmental Protection Agency, MD–34, Research Triangle Park, N.C. 27711, (919) 541–0849.

SUPPLEMENTARY INFORMATION: The purposes of the Telephone Call Detail system of records are to aid in planning future Agency telecommunications needs and to control Agency telephone costs. In connection with the latter purpose, EPA may generate personally identifiable records retrievable by individuals' names or other personal identifiers. Records in the system will identify telephone calls billed to the Agency that were placed from Agency telephones by EPA employees, contractors, grantees, and other persons performing services on behalf of EPA. The records will be used to ensure compliance with laws prohibiting the use of appropriated funds for unofficial calls and to determine individual accountability for telephone usage. Telephone calls will not be monitored or recorded in connection with this system of records.

Dated: May 15, 1995.

John C. Chamberlin,

Assistant Administrator for Administration and Resources Management.

System Name

EPA Telephone Call Detail Records—EPA/OIRM.

Security Classification

None.

System Locations

(1) U.S. Environmental Protection Agency, National Data Processing Division, Research Triangle Park, NC 27711.

(2) Fifty-plus EPA facilities nationwide.

Categories of Individuals Covered by the System

EPA employees, contractors, grantees, and other persons performing services on behalf of the EPA who make telephone calls charged to EPA.

Categories of Records in System

Records relating to the use of Agency telephones to place telephone calls, records indicating the assignment of telephone numbers to personnel, and records indicating the location of telephones.

Authority for Maintenance of the System

31 U.S.C. 1348(b), which prohibits agencies from using appropriated funds to pay for personal telephone calls; 44 U.S.C. 3101, which authorizes agencies to create and preserve records documenting agency organizations, functions, procedures, and transactions; and 41 CFR 201–38, which prohibits the personal use of Government long distance services.

Purpose

The purpose of this system of records is to aid EPA in planning its future telecommunications needs, and to control agency telephone costs by ensuring that EPA telephones are used for official purposes only and by determining individual accountability for telephone usage.

Routine Uses of Records Maintained in the System, Including Categories of Users and the Purposes of Such Uses

Records in this system may be disclosed:

1. To Members of Congress or a Congressional office in response to an inquiry from that Member or office made at the request of the individual to whom the record pertains.

2. To Federal Government contractors, grantees, or volunteers who have been engaged to assist the Government in the performance of a contract, grant, cooperative agreement or other activity related to this system of records and who need to have access to the records in order to perform the activity. Recipients are required to maintain the records in accordance with the requirements of the Privacy Act.

3. To a Federal agency that has requested information relevant to its decision in connection with the hiring or retention of an employee; the reporting of an investigation on an employee; the letting of a contract; or the issuance of a security clearance, license, grant, or other benefit.

4. To a Federal, State or local agency, where necessary, to enable EPA to obtain information relevant to an EPA decision concerning the hiring or retention of an employee; the letting of a contract; or the issuance of a security clearance, license, grant, or other benefit.

5. To an appropriate Federal, State, local or foreign agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation or order, where there is an indication of a violation or potential violation of the statute, rule, regulation or order and the information disclosed is relevant to the matter.

6. To the Department of Justice to the extent that each disclosure is compatible with the purpose for which the record was collected and is relevant and necessary to litigation or anticipated litigation in which one of the following is a party or has an interest: (a) EPA or any of its components, (b) an EPA employee in his or her official capacity, (c) an EPA employee in his or her individual capacity where the Department of Justice is representing or considering representation of the employee, or (d) the United States where EPA determines that the litigation is likely to affect the Agency.

7. In a proceeding before a court, other adjudicative body or grand jury, or in an administrative or regulatory proceeding, to the extent that each disclosure is compatible with the purpose for which the record was collected and is relevant and necessary to the proceeding in which one of the following is a party or has an interest: (a) EPA or any of its components, (b) an EPA employee in his or her official capacity, (c) an EPA employee in his or her individual capacity where the Department of Justice is representing or considering representation of the employee, or (d) the United States where EPA determines that the litigation is likely to affect the Agency. Such disclosures include, but are not limited to, those made in the course of presenting evidence, conducting settlement negotiations, and responding to requests for discovery.

8. To representatives of the General Services Administration and the National Archives and Records Administration who are conducting records management inspections under the authority of 44 U.S.C. 2904 and 2906.

9. To a telecommunications company and/or the General Services Administration who are providing telecommunications support to verify billing or perform other servicing to the account.

10. To EPA employees, contractors, grantees and other persons performing services on behalf of the Agency to determine their individual responsibility for telephone calls.

Disclosures to Consumer Reporting Agencies

Pursuant to 5 U.S.C. 552a(b)(12), disclosures may be made from this system to a consumer reporting agency as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

Policies and Practices for Storing, Retrieving, Accessing, Retaining, and Disposing of Records in System

Storage

System records are maintained on electronic media such as computer tapes and diskettes, and as hard-copy records.

Retrievability

Records are retrieved by originating and destination telephone numbers, responsible individuals, call date, call time, call duration, destination city and state, and calling charge.

Safeguards

Access to these records is limited to EPA employees, contractors, grantees, and other persons who are performing services on behalf of the EPA and have an official need for the records in the performance of their duties. EPA has established internal procedures governing the use, transfer, and photocopying of the records within the Agency. Hard-copy records are maintained in rooms that are locked during non-business hours. Automated records are protected from unauthorized access through password identification procedures and other system-based protection methods.

Retention and Disposal

Records are disposed of in accordance with the National Archives and Records Administration, General Records Schedule 12.

System Manager(s) And Address(es)

Chief, EPA Telecommunications Branch, MD–34, Research Triangle Park, N.C. 27711. A list of fifty-plus site-specific system managers is maintained by the EPA National Telecommunications Manager.

Notification Procedures

Any person wishing access to information in this system should provide the national or local system managers with his or her name, office, and current work telephone number, the telephone number(s) in question, and the time period for which the information is being sought. The system manager may require additional information to verify the identity of the requester.

Record Access Procedures

Same as Notification Procedures. In addition, please specify the records being requested.

Contesting Records Procedures

Same as Notification Procedures. In addition, please specify the correction being sought and the justification for the correction.

Record Source Categories

(1) EPA employees, contractors, grantees, and other persons who are performing services on behalf of the EPA, (2) EPA telephone assignment and Locator records, (3) GSA and other phone companies, and (4) EPA-owned Private Branch Exchange systems.

Systems Exempted From Certain Provisions of the Act

None.

[FR Doc. 95–13368 Filed 5–31–95; 8:45 am]

BILLING CODE 6560–50–F

[OPPTS–59346; FRL–4957–4]

Certain Chemicals; Approval of a Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of applications for test

marketing exemptions (TMEs) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated these applications as TMEs 95–5, 6, 7, and 8. The test marketing conditions are described below.

DATES: This notice becomes effective May 19, 1995. Written comments will be received until June 16, 1995.

ADDRESSES: Written comments, identified by the docket number [OPPTS–59346] and specific TME number should be sent to: TSCA Nonconfidential Information Center (NCIC), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm., NEM–B607 (7407), 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: ncic@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by OPPTS–59346. No CBI should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Vera Stubbs, New Chemicals Branch, Chemical Control Division (7405), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–447, 401 M St., SW., Washington, DC 20460, (202) 260–5671.

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

EPA hereby approves TMEs 95–5, 6, 7, and 8. EPA has determined that test marketing of the new chemical substances described below, under the conditions set out in this TME application, and within the time period and restrictions specified below, will not present an unreasonable risk of injury to health or the environment. Production volume, use, and the number of customers must not exceed that specified in this application. All other conditions and restrictions described in this application and in this notice must be met.

Inadvertently, notice of receipt of these applications were not published. Therefore, an opportunity to submit comments is being at offered this time. The complete nonconfidential document is available in the NCIC at the above address between 12 noon and 4 p.m., Monday through Friday, excluding legal holidays. EPA may modify or revoke the test marketing exemption if comments are received which cast significant doubt on its finding that the test marketing activities will not present an unreasonable risk of injury.

The following additional restrictions apply to TMEs 95–5, 6, 7, and 8. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME. In addition, the Company shall maintain the following records until 5 years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. The applicant must maintain records of the quantity of the TME substance produced and the date of manufacture.
2. The applicant must maintain records of dates of the shipments to each customer and the quantities supplied in each shipment.
3. The applicant must maintain copies of the bill of lading that accompanies each shipment of the TME substance.

T–95–5, 6, 7, and 8

Date of Receipt: April 18, 1995. The extended comment period will close June 16, 1995.

Close of Review Period: June 1, 1995.

Applicant: Westvaco Corporation.

Chemical: Reaction products of maleated tall oil fatty acid, ethylene glycol ester, potassium salts with reaction products of fatty acids, tall oil with diethylenetriamine.

Use: Production, transportation, and processing petrochemical corrosion inhibitor.

Production Volume: Confidential.

Number of Customers: Confidential.

Test Marketing Period: One year, commencing on first day of commercial manufacture.

Risk Assessment: EPA identified no significant health or environmental concerns for the test market substance. Therefore, the test market activities will not present any unreasonable risk of injury to human health and the environment.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present an unreasonable risk of injury to health or the environment.

A record has been established for this notice under docket number [OPPTS-59346] (including comments and data submitted electronically as described above.) A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as confidential business information (CBI), is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center, at the address above.

Electronic comments can be sent directly to EPA at:

ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

List of Subjects

Environmental protection, Test marketing exemptions.

Dated: May 19, 1995.

Paul J. Campanella,

Chief, New Chemicals Branch, Office of Pollution Prevention and Toxics.

[FR Doc. 95–13374 Filed 5–31–95; 8:45 am]

BILLING CODE 6560–50–F

[FRL–5214–6]

Voluntary Environmental Self-Policing and Self-Disclosure Interim Policy Statement; Extension of Public Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of Public Comment Period.

SUMMARY: On April 3, 1995, EPA announced and requested comment on the Voluntary Environmental Self-Policing and Self-Disclosure Interim Policy Statement (60 FR 16875). In response to requests from all major stakeholder groups, EPA is extending the deadline for receiving comments from June 2, 1995 to June 30, 1995.

DATES: Comments must be received by EPA at the address below by June 30, 1995. The comment period will not be extended again.

ADDRESSES: Submit three copies of comments to the U.S. EPA Air Docket, Mail Code 6102, 401 M Street, SW, Washington, DC. 20460, attention: Docket #C–94–01. Additional documentation relating to the development of this interim policy is contained in the environmental auditing public docket. Documents from the docket may be requested by calling (202) 260–7548, requesting an index to docket #C–94–01, and faxing document requests to (202) 260–4400. Hours of operation are 8 a.m. to 5:30 p.m., Monday through Friday, except legal holidays.

Elaine G. Stanley,

Director, Office of Compliance, Office of Enforcement and Compliance Assurance.

[FR Doc. 95–13517 Filed 5–31–95; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE UNITED STATES

Notice of Open Special Meeting of the Advisory Committee of the Export-Import Bank of the United States

SUMMARY: The Advisory Committee was established by P.L. 98–181, November 30, 1983, to advise the Export-Import Bank on its programs and to provide comments for inclusion in the reports of the Export-Import Bank to the United States Congress.

Time and Place: Friday, June 16, 1995, at 9:30 a.m. to 12:00 noon. The meeting will be held at Ex-im Bank in Room 1143, 811 Vermont Avenue, N.W., Washington, D.C. 20571.

Agenda: The meeting agenda will include a discussion of the following topics: Advisory Committee Comment on Competitiveness Report; Roundtable Discussion on "Small Business Strategy"; and Next Steps and Other Topics.

Public Participation: The meeting will be open to public participation; and the last 10 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. In order to permit the Export-Import Bank to arrange suitable accommodations, members of the public who plan to attend the meeting should notify Barbara Lane, Room 1112, 811 Vermont Avenue, N.W., Washington, D.C. 20571, (202) 565–3957, not later than June 15, 1995. If any person wishes auxiliary aids (such as a sign language interpreter) or other special accommodations, please contact, prior to June 9, 1995, Barbara Lane, Room 1112, 811 Vermont Avenue, N.W., Washington, DC 20571, Voice: (202) 565–3957 or TDD: (202) 565–3377.

FURTHER INFORMATION: For further information, contact Barbara Lane, Room 1112, 811 Vermont Avenue, N.W., Washington, D.C. 20571, (202) 565–3957.

Carol F. Lee,

General Counsel.

[FR Doc. 95–13578 Filed 5–31–95; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL MARITIME COMMISSION

Item Submitted for OMB Review

The Federal Maritime Commission hereby gives notice that the following item has been submitted to OMB for review pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*). Requests for information, including copies of the collection of information and supporting documentation; should be directed to Bruce A. Dombrowski, Deputy Managing Director, Federal Maritime Commission, 800 North Capitol Street, NW., Room 1082, Washington, DC 20573, telephone number (202) 523–5800. Comments may be submitted to the agency and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for the Federal Maritime Commission, within 15 days after the date of the **Federal Register** in which this notice appears.

Summary of Item Submitted for OMB Review

46 CFR Part 582

FMC requests an extension of clearance for 46 CFR part 582, which implements section 10(b)(2) of the Shipping Act of 1984 provisions. The Act provides that no common carrier by water may rebate, refund, or remit any portion of its rates except in accordance with its tariffs or service contracts. Section 15(b) of the Act requires the chief executive officer of each common carrier and certain other persons designated by the Commission to file a periodic written certification that anti-rebating policies have been implemented. The Commission estimates that approximately 2100 NVOCCs, 500 VOCCs and 1800 freight forwarders will file anti-rebate certifications on each even-numbered year. Annual respondent burden for complying with the regulation is 2,200 manhours (½ hour per response). Estimated annual cost to the Federal Government is $5,700; estimated annual cost to respondents is $59,400.

Joseph C. Polking,

Secretary.

[FR Doc. 95–13313 Filed 5–31–95; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Cooperatieve Centrale Raiffeisen-Boerenleenbank B.A., et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that the Board has determined is closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as

greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 14, 1995.

A. Federal Reserve Bank of New York (William L. Rutledge, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. Cooperatieve Centrale Raiffeisen-Boerenleenbank B.A., Rabobank Nederland, Utrecht, The Netherlands (Notificant), to engage de novo through its subsidiary, Rabo Capital Services, Inc., New York, New York (Company), in intermediating in the international swap markets by acting as an originator and principal in interest rate swap and currency swap transactions; acting as an originator and principal with respect to certain risk-management products such as caps, floors and collars, as well as options on swaps, caps, floors and collars (Swap Derivative Products); acting as a broker or agent with respect to the foregoing transactions and instruments; and acting as an advisor to institutional customers regarding financial strategies involving interest rate and currency swaps and Swap Derivative Products. *See Long-Term Credit Bank of Japan, Limited*, 79 Federal Reserve Bulletin 345 (1993). Notificant proposes that Company engage in these activities throughout the world.

B. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. First Mariner Bancorp, Towson, Maryland; to engage *de novo* through its subsidiary, First Mariner Mortgage Corporation, Baltimore, Maryland, and thereby engage in originating, funding, brokering, servicing, selling and otherwise dealing in mortgages, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

C. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. State Banco, Ltd., Spirit Lake, Iowa; to engage *de novo* through its subsidiary, Parent Company of State Banco, Ltd., Spirit Lake, Iowa, in making and servicing loans, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 25, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–13359 Filed 5–31–95; 8:45 am]

BILLING CODE 6210–01–F

Northern Plains Investment, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than June 23, 1995.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Northern Plains Investment, Inc., Jamestown, North Dakota and North Star Holding Company, Jamestown, North Dakota (Bank); to increase their ownership of Stutsman County State Bank, Jamestown, North Dakota, as a result of a corporate reorganization. North Star will control 100 percent of Bank after the transaction.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Equity Bancshares, Inc., Mulhall, Oklahoma; to become a bank holding company by acquiring 96.6 percent of the voting shares of Oklahoma State Bank, Mulhall, Oklahoma.

Board of Governors of the Federal Reserve System, May 25, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–13360 Filed 5–31–95; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

Granting of Request For Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. § 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 050895 AND 051995

Name of acquiring person, name of acquired person, name acquired entity	PMN No.	Dated terminated
Mr. Keith Rupert Murdock, Thomas R. Galloway, ComCorp of Tennessee, Inc., and ComCorp of	95–1473	05/08/95

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 050895 AND 051995—Continued

Name of acquiring person, name of acquired person, name acquired entity	PMN No.	Dated terminated
Hanson PLC, Debra E. Francis, Patriot Coal Company, L.P.	95–1490	05/08/95
Dover Corporation, Mark Andy, Inc., Mark Andy, Inc	95–1510	05/08/95
Charterhouse Equity Partners, L.P., David Popowich, Regal Industries, Inc	95–1513	05/08/95
Charterhouse Equity Partners, L.P., Maury Popowich, Regal Industries, Inc	95–1514	05/08/95
CBS Inc., The Principal Mutual Impared Asset Trust 1991, Narragansett Television, L.P.	95–1515	05/08/95
New York Times Company, The Principal Mutual Impared Asset Trust 1991, Narragansett Television, L.P.	95–1516	05/08/95
Ernst & Young U.S. LLP, Kenneth Leventhal & Company, Kenneth Leventhal & Company	95–1517	05/08/95
Golder, Thoma, Cressey, Rauner Fund IV, L.P., Lawrence Davis, DavisVision, Inc	95–1518	05/08/95
Financial Holding Corporation, Louis J. Roussel, Jr., Victory Life Insurance Company	95–1519	05/08/95
Protection One, Inc., Alert Centers, Inc., Alert Centers, Inc	95–1520	05/08/95
General Electric Company, Global Compression Services, Inc., Global Compression Services, Inc	95–1523	05/08/95
Surgical Care Affiliates, Inc., Vivra Incorporated, Vivra Incorporated	95–1525	05/08/95
Southwestern Public Service Company, TNP Enterprises, Inc., TNP Enterprises, Inc	95–1526	05/08/95
Boston Ventures Limited Partnership IVA, Time Warner Inc., Six Flags Entertainment Corporation	95–1527	05/08/95
Boston Ventures Limited Partnership IV, Time Warner Inc., Six Flags Entertainment Corporation	95–1528	05/08/95
Vintage Petroleum, Inc., Texaco Inc., Texaco Exploration and Production Inc	95–1531	05/08/95
David H. Murdock, Dole Food Company, Inc., Dole Food Company, Inc	95–1533	05/08/95
Sun Healthcare Group, Inc., CareerStaff Unlimited, Inc., CareerStaff Unlimited, Inc	95–1534	05/08/95
Reptron Electronics, Inc., Western Micro Technology, Inc., Western Micro Technology, Inc	95–1539	05/08/95
Illinois Tool Works Inc., Don Curcio, United Silicone, Inc	95–1540	05/08/95
Philips Electronics N.V., The Regina Company (Debtor-in-Possession), The Regina Company (Debtor-in-Possession)	95–1541	05/08/95
Kenetech Corporation, Windpower Partners, Windpower Partners 1983–1 1983–1,	95–1543	05/08/95
Paxton Media Group, Inc., Thomas E. Worrell, Jr., Worrell Enterprises, Inc	95–1544	05/08/95
Peabody Trust, Urban Transportation Development, Bus Industries of America Inc., and BIA Parts, Inc	95–1545	05/08/95
American International Group, Inc., Royal Dutch Petroleum Company, Shell Consolidated Energy Resources, Inc	95–1546	05/08/95
Centex Corporation, Vista Properties Inc., Vista Properties, Inc	95–1547	05/08/95
Costilla Energy, L.L.C., Parker & Parsley Petroleum Company, Parker & Parsley Petroleum Company Assets	95–1548	05/08/95
American Industrial Partners Capital Fund, L.P., M.A. Hanna Company, Day International, Inc	95–1550	05/08/95
Apple South, Inc., The Marcus Corporation, Marcus Restaurants, Inc	95–1551	05/08/95
Aurora Equity Partners L.P., James R. Crane, Component Remanufacturing Specialists, Inc	95–1557	05/08/95
Physician Sales & Services, Inc., Taylor Medical, Inc., Taylor Medical, Inc	95–1560	05/08/95
Thorn Apple Valley, Inc., Doskocil Companies Incorporated, Doskocil Companies Incorporated	95–1568	05/08/95
Donald J. Trump, Chemical Banking Corporation, ACFH Inc	95–1286	05/10/95
Sumner M. Redstone, Discovery Zone, Inc., Discovery Zone, Inc	95–1530	05/10/95
US WEST, Inc., US WEST, Inc., Albucell Limited Partnership	95–1535	05/10/95
US WEST, Inc., GTE Corporation, GTE Corporation	95–1536	05/10/95
GTE Corporation, US WEST, Inc., US WEST, Inc	95–1542	05/10/95
Donald F. Dillon, Fiserv, Inc., Fiserv, Inc	95–1486	05/11/95
Fiserv, Inc., Donald F. Dillon, Information Technology, Inc	95–1487	05/11/95
Fuji Heavy Industries Ltd., Polaris Industries Inc., Polaris Industries Inc	95–1508	05/11/95
SmithKline Beecham plc, Eastman Kodak Company, UPT Facility	95–1524	05/11/95
Edisto Resources Corporation, Convest Energy Corporation, Convest Energy Corporation	95–1399	05/12/95
Lincoln Telecommunications Company, Nebraska Cellular Telephone Corporation, Nebraska Cellular Telephone Corporation	95–1554	05/12/95
Illinois Tool Works Inc., Neal Houbolt, Jemco Engineering Co	95–1559	05/12/95
Hassie Hunt Trust, Apache Corporation, Apache Corporation	95–1561	05/12/95
Methanex Corporation, Methanex Corporation, Methanex Methanol Corporation's Assets	95–1564	05/12/95
Lincoln Telecommunications Company, CommNet Cellular, Inc., Nebwest Cellular, Inc	95–1565	05/12/95
MedE America Corporation, Welsh, Carson, Anderson & Stowe V. L.P., GENCC Holdings Corporation	95–1566	05/12/95
Welsh, Carson, Anderson & Stowe V. L.P., MedE America Corporation, MedE America Corporation	95–1567	05/12/95
People's Choice TV Corp., Preferred Entertainment, Inc., Preferred Entertainment, Inc	95–1573	05/12/95
John L. Macdonald, David J. Greenway, BTL Specialty Resins Corp	95–1580	05/12/95
Intelligent Electronics, Inc., The Future Now, Inc., The Future Now, Inc	95–1586	05/12/95
Time Warner Inc., Sony Corporation, The Music Sound Exchange Company	95–1588	05/12/95
Fleet Financial Group, Inc., Simonds Industries, Inc., Simonds Industries, Inc	95–1590	05/15/95
Charles H. Bundrant, NCS Seafoods Corporation (a newly formed corporation), NCS Seafoods Corporation (a newly formed corporation)	95–1591	05/15/95
Sisters of Mercy Health System, St. Louis, Inc., Adorers of the Blood of Christ, Province of Wichita, KS, St. Mary's Hospital of Enid, Oklahoma, Inc	95–1592	05/15/95
Ralph J. Roberts, Telephone and Data Systems, Inc. Voting Trust, United States Cellular Operating Co. of Vineland, Inc	95–1593	05/15/95
Nortek, Inc., Joe C. McKenzie, Rangaire Compan	95–1595	05/15/95
Norwest Corporation, The Ryland Group, Inc., The Ryland Assets	95–1597	05/15/95
Atlantic Equity Partners, L.P., Natural Country Farms, Inc., Natural Country Farms, Inc	95–1598	05/15/95
Indianapolis Life Insurance Company, Southwestern Life Corporation, Bankers Life Insurance Company of New York	95–1601	05/15/95
Alan H. Goldfield, Alan H. Goldfield, CellStar Corporation	95–1602	05/15/95
William K. Gayden, Parker & Parsley Petroleum Company, Parker & Parsley Producing L.P./Development L.P.	95–1603	05/15/95
John Hancock Mutual Life Insurance Company, The Mead Corporation, Cabin Bluff Management Company	95–1607	05/15/95
John Hancock Mutual Life Insurance Company, Scott Paper Corporation, Cabin Bluff Management Company	95–1608	05/15/95

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 050895 AND 051995—Continued

Name of acquiring person, name of acquired person, name acquired entity	PMN No.	Dated terminated
Time Warner Inc., Time Warner Inc., The Music Sound Exchange Company	95–1609	05/15/95
Harbour Group Investments III, L.P., Matthew Warren Group, Inc., Matthew Warren Group, Inc	95–1625	05/15/95
Carlisle Companies Incorporated, Gordon F. Thomsen, Trail King Industries, Inc	95–1569	05/16/95
Imperial Chemical Industries PLC, Grow Group, Inc., Grow Group, Inc	95–1574	05/16/95
Midwest Resources Inc., McLeod Inc., McLeod Inc	95–1583	05/16/95
IES Industries Inc., McLeod, Inc., McLeod, Inc	95–1584	05/16/96
The Sherwin-Williams Company, Grow Group Inc., Grow Group Inc	95–1618	05/16/95
Newell Co., Marshall S. Cogan, CHF Industries, Inc	95–1605	05/17/95
Illinois Tool Works Inc., Foamseal Inc., Foamseal Inc	95–1532	05/18/95
ConAgra, Inc., The Quaker Oats Company, Stokely-Van Camp, Inc	95–1571	05/18/95
Baptist Health Systems of South Florida, Inc., South Miami Health System, Inc., South Miami Hospital, Inc., SMH Homestead Hospital	95–1575	05/18/95
Charterhouse Equity Partners II, L.P., Masada Cable Partners, L.P., Masada Cable Partners, L.P.	95–1596	05/18/95
Coram Healthcare Corporation, Lincare Holdings, Inc., Lincare Holdings, Inc	95–1626	05/18/95

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, D.C. 20580, (202) 326–3100.

By Direction of The Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95–13362 Filed 5–31–95; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

White House Conference on Aging

AGENCY: White House Conference on Aging, AoA, HHS.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given, pursuant to Title II of the Older Americans Act Amendments of 1987, Pub. L. 100–175 as amended by Pub. L. 102–375, and Pub. L. 103–171, that the 1995 White House Conference on Aging Advisory Committee will hold a meeting on Wednesday, June 14, 1995, in Washington, DC. The general meeting will begin at 10:00 a.m. and end at approximately 12:00 noon. More specific information on the location for the meeting can be obtained by calling the telephone number given below.

The general meeting of the Committee shall be open to the public. The proposed agenda includes preparation of the proposed report of the Conference which is to be transmitted to the chief executive officers of the States by August 3, 1995.

Records shall be kept of all Committee proceedings and shall be available for public inspection at 501 School Street SW., 8th Floor, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: White House Conference on Aging, 501 School Street SW., 8th Floor, Washington, DC 20024; telephone (202) 245–7116.

Dated: May 25, 1995.

Fernando M. Torres-Gil,

Assistant Secretary for Aging.

[FR Doc. 95–13291 Filed 5–31–95; 8:45 am]

BILLING CODE 4130–02–M

Food and Drug Administration

[Docket No. 95N–0137]

Drug Export; Antibody to Hepatitis B Surface Antigen (Human) Ortho™ Antibody to HBsAg Elisa Confirmatory Test

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ortho Diagnostic Systems, Inc., has filed an application requesting approval for the export of the human biological product Antibody to Hepatitis B Surface Antigen (human) ORTHO™ Antibody to HBsAg ELISA Confirmatory Test to Austria, Belgium, Canada, Denmark, Federal Republic of Germany, Finland, France, Iceland, Ireland, Italy, Japan, Luxembourg, The Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, and The United Kingdom.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human biological products under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Cathy Conn, Center for Biologics Evaluation and Research (HFM–610), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–594–2006.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of human biological products that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Ortho Diagnostic Systems, Inc., 1001 US Hwy. 202, Raritan, NJ 08869, has filed an application requesting approval for the export of the human biological product Antibody to Hepatitis B Surface Antigen (human) ORTHO™ Antibody to HBsAg ELISA Confirmatory Test to Austria, Belgium, Canada, Denmark, Federal Republic of Germany, Finland, France, Iceland, Ireland, Italy, Japan, Luxembourg, The Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, and The United Kingdom. The Antibody to Hepatitis B Surface Antigen (human) ORTHO™ Antibody to HBsAg ELISA Confirmatory Test is a third generation assay to be used to confirm the presence of Hepatitis B Surface Antigen (HBsAg) in specimens found repeatedly reactive in ORTHO™ Antibody to HBsAg ELISA Test System 3. The application was received and filed in the Center for Biologics Evaluation and Research on May 4, 1995, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by June 12, 1995, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Biologics Evaluation and Research (21 CFR 5.44).

Dated: May 9, 1995.

James C. Simmons,

Acting Director, Office of Compliance, Center for Biologics Evaluation and Research.

[FR Doc. 95–13295 Filed 5–31–95; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 95N–0143]

Drug Export; PEG-L-Asparaginase

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Enzon, Inc., has filed an application requesting approval for the export of the human biological product PEG-L-asparaginase to The Federal Republic of Germany.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human biological products under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Cathy E. Conn, Center for Biologics Evaluation and Research (HFM–610), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–594–2006.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of human biological products that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Enzon, Inc., 40 Kingsbridge Rd., Piscataway, NJ 08854, has filed an application requesting approval for the export of the human biological product PEG-L-asparaginase to The Federal Republic of Germany. PEG-L-asparaginase is an antineoplastic combination therapy for reinduction in the case of acute lymphatic leukemia (ALL) in childhood and adulthood in the case of patients with known hypersensitivity to "native" L-asparaginase. The application was received and filed in the Center for Biologics Evaluation and Research on May 15, 1995, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by June 12, 1995 and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Biologics Evaluation and Research (21 CFR 5.44).

Dated: May 18, 1995.

James C. Simmons,

Acting Director, Office of Compliance, Center for Biologics Evaluation and Research.

[FR Doc. 95–13411 Filed 5–31–95; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 95N–0142]

Drug Export; Caverject Sterile Powder (Alprostadil for Injection) 20 Micrograms per Milliliter (μG/mL) Vials

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that The Upjohn Co. has filed an application requesting approval for the export of the human drug CAVERJECT Sterile Powder (Alprostadil for Injection) 20μg/mL vials to Sweden via Belgium.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: James E. Hamilton, Center for Drug Evaluation and Research (HFD–310), Food and Drug Administration, 7520 Standish Pl., Rockville, MD 20857, 301–594–3150.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public

participation in its review of the application. To meet this requirement, the agency is providing notice that The Upjohn Co., 7000 Portage Rd., Kalamazoo, MI 49001–0199, has filed an application requesting approval for the export of the human drug CAVERJECT Sterile Powder (Alprostadil for Injection) 20µg/mL vials to Sweden via Belgium. The product is to be used for the treatment of erectile dysfunction. The application was received and filed in the Center for Drug Evaluation and Research on May 5, 1995, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by June 12, 1995, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: May 18, 1995.

Betty L. Jones,

Acting Deputy Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 95–13352 Filed 5–31–95; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 95N–0124]

Medical Devices; Third Party Review of Selected Premarket Notifications; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public workshop to discuss a proposed pilot program for third party review of selected premarket notifications. The purpose of the workshop is to provide information on the pilot program and to obtain public comments and suggestions that may help FDA refine its plans for third party review of selected premarket notifications. This workshop is one aspect of FDA's efforts in pursuit of the reinventing Government goals of the National Performance Review as well as the promotion and protection of the public health.

DATES: The workshop will be held on June 19, 1995, from 9 a.m. to 4:30 p.m. Submit written notices of participation by June 9, 1995. Participants and other persons who want to be heard must be present by 9 a.m. Submit written comments by July 7, 1995. There is no registration fee for this workshop. Interested persons are encouraged to register early because space is limited.

ADDRESSES: The workshop will be held at the Doubletree Hotel Rockville (formerly, the Holiday Inn Crowne Plaza), 1750 Rockville Pike, Rockville, MD. A limited number of overnight accommodations have been reserved at the Doubletree Hotel Rockville. Attendees requiring overnight accommodations may contact the hotel at 301–468–1100 and reference FDA meeting group GVL. Reservations will be confirmed at the group rate based on availability.

A registration form for the workshop may be obtained by contacting Sociometrics, Inc., 8300 Colesville Rd., Suite 550, Silver Spring, MD 20910, 301–608–2151 or 1–800–729–0890 (FAX 301–608–3542). Persons with disabilities who require special assistance to attend or participate in the workshop can be accommodated if advance notification is provided. If you have a disability that affects your attendance at, or participation in, this meeting, please contact Ed Rugenstein, Sociometrics, Inc., in writing and identify your needs. The availability of appropriate accommodations cannot be assured unless prior written notification is provided.

Written comments regarding the pilot program may be submitted to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. Those persons who wish to make a presentation must submit a written notice of participation to the Dockets Management Branch (address above), identified with the docket number found in brackets in the heading of this document, including their name, address, telephone number, business affiliation, a brief summary of the presentation, and an estimate of the amount of time required to make their comments. FDA requests that individuals or groups having similar interests consolidate their comments and present them through a single representative. FDA may require joint presentations by persons with common interests.

Transcripts of the workshop will be available from the Freedom of Information Staff (HFI–35), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6310 or FAX 301–443–1726.

FOR FURTHER INFORMATION CONTACT: Eric J. Rechen, Center for Devices and Radiological Health (HFZ–402), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2186, FAX 301–594–2977.

SUPPLEMENTARY INFORMATION:

I. Background

On April 6, 1995, FDA announced a limited pilot program to test the usefulness and practicality of third party review of medical devices. Under the proposed pilot, FDA will designate private sector organizations to review premarket notifications under section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act) (hereinafter referred to as 510(k)'s). This initiative will provide an alternative to FDA review and is one aspect of FDA's efforts in pursuit of the reinventing Government goals of the National Performance Review. FDA expects the pilot program will begin early in fiscal year 1996.

FDA's primary concern remains the promotion and protection of the public health. The proposed pilot will include checks and balances to ensure a high level of quality in the review of 510(k)'s.

II. Outline of the Proposed Third Party Review Pilot

At this time, FDA has not determined the final form of its pilot third party review process. The initial pilot program will be restricted to third party review, but not clearance, of 510(k)'s. During the pilot, the third party will make a recommendation to FDA. FDA will then make a decision based on the third party's documented review. The purpose of the pilot is to test the feasibility of third party review, including the willingness of qualified third parties to participate, and the quality and timeliness of third party reviews.

Industry participation in the pilot program will be voluntary. An applicant who does not wish to participate will be able to continue to submit 510(k)'s to FDA. The pilot will last 2 years, and will be evaluated by FDA in the second year.

FDA anticipates that the pilot program will be limited to FDA-designated class I and II devices that involve low-to-moderate risk. The pilot will exclude 510(k)'s that require clinical data for a decision. Clear review criteria must also be available, in the form of FDA guidance documents, consensus standards, or other appropriate assessment tools. FDA has prepared a preliminary list of devices that may be included in the pilot (see section IV. of this document for information on obtaining a copy).

Third party review organizations will be individually accepted by FDA. FDA will establish and apply requirements covering personnel qualifications as well as controls over potential conflicts of interest. FDA believes it is essential that third party review organizations maintain adequate independence from the device industry. FDA is also considering additional safeguards to ensure the quality and impartiality of third party reviews. Among the safeguards being considered are: FDA examination, acceptance, and oversight of third party review organizations; provision of training and standard operation procedures for third parties; audits of third party reviews; having FDA personnel serve as on site advisors to third party review bodies; and database checks to track ongoing reviews.

FDA expects that applicants who submit a 510(k) to a third party during the pilot will pay a fee directly to the third party. FDA does not expect to take part in setting fees, but rather intends to leave this to be negotiated between the third party review organization and the applicant.

The full range of general controls (current good manufacturing practices (CGMP's), medical device reporting, prohibition against adulteration and misbranding, etc.) and, where appropriate, special controls (device tracking, postmarket surveillance, etc.) will be applicable to devices included in the pilot program.

III. Purpose and Tentative Agenda of the Workshop

The purpose of the workshop is to obtain public comments and suggestions that will help FDA refine its plans for a pilot program for third party review of selected 510(k)'s.

Joseph A. Levitt, Deputy Director for Regulations and Policy, Center for Devices and Radiological Health, FDA, will preside. Mr. Levitt will be assisted by other FDA officials.

FDA will open the workshop with a summary of the framework for the proposed pilot program. This presentation will provide information on the impetus, objectives, and scope of the proposed pilot program. Following FDA's presentation, other participants will make presentations. After reviewing the notices of participation, FDA will allocate the time available for presentations among those persons who properly file a written notice of participation. FDA will schedule each appearance and will notify each participant by mail or telephone of the time allotted to him or her and the approximate time his or her presentation is scheduled to begin. The full schedule will be available at the workshop and will subsequently be placed on file in the Dockets Management Branch under the docket number found in brackets in the heading of this document. Time permitting, the workshop will also include an opportunity for interested persons who did not submit a notice of participation to make brief statements or comments. The workshop will then proceed to a panel discussion of specific issues that FDA must resolve before third party reviews of 510(k)'s can begin. Among the topics to be discussed are the following: Which devices should be eligible for third party review; criteria for selection or acceptance of private sector organizations to perform reviews, including conflict of interest protections; safeguards necessary to ensure a fair and impartial review by a third party; and funding of third party reviews.

FDA is making available a list of specific topics for written comment and discussion at the workshop. (See section IV. of this document for information on how to obtain a copy.)

The workshop is informal, and the rules of evidence will not apply. No participant may interrupt the presentation of another participant. Only the presiding officer and panel members may question participants at the conclusion of their presentations.

IV. Obtaining Additional Information on the Workshop

Information on the June 19, 1995, workshop, including a more detailed listing of the topics and issues on which FDA is inviting comment and a list of the devices proposed for inclusion in the pilot, can be obtained from the Dockets Management Branch (address above) or by calling FDAs Facts-on-Demand system. The Facts-on-Demand system can be reached by calling 1–800–899–0381 or 301–827–0111 on a touch-tone phone. Follow the instructions provided, and request DSMA shelf number 150. The requested materials will be sent by FAX.

Dated: May 25, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–13294 Filed 5–26–95; 10:22 am]

BILLING CODE 4160–01–F

Health Resources and Services Administration

RIN 0905–ZA89

Program Announcement and Proposed Review Criteria for Grants for the Minority Faculty Fellowship Program for Fiscal Year 1995

The Health Resources and Services Administration (HRSA) announces that applications will be accepted for fiscal year (FY) 1995 Grants for the Minority Faculty Fellowship Program (MFFP) under the authority of section 738(b), title VII of the Public Health Service Act, as amended by the Health Professions Education Extension Amendments of 1992, Pub. L. 102–408, dated October 13, 1992. Comments are invited on the proposed review criteria.

Approximately $210,000 will be available in FY 1995 for this program. It is anticipated that $210,000 will be available to support about five competing awards to schools and other eligible entities averaging $42,000 which will cover the cost of the following: stipend in an amount not exceeding 50 percent of the regular salary of a similar faculty member or $30,000, which ever is less, and tuition, fees and travel, where appropriate.

Purpose

The purpose of the MFFP is to increase the number of underrepresented minority faculty members in health professions schools, i.e., schools of medicine, osteopathic medicine, dentistry, veterinary medicine, optometry, podiatric medicine, pharmacy, public health, health administration, clinical psychology, and other public or private nonprofit health or educational entities.

Specifically, these grant awards are intended to allow institutions an opportunity to provide a fellowship to individuals who have the potential for teaching, administering programs, or conducting research as faculty members. Institutions must demonstrate a commitment and ability to identify, recruit, and select underrepresented minorities in health professions. The institutions' training programs provide the fellows with the techniques and skills needed to secure an academic career including competence in: pedagogical skills, research methodology, development of research

grant proposals, writing and publication skills, and the ability to work with minority populations and provide health services to medically underserved communities. In addition, the fellows must work under the direct supervision of a senior level faculty member engaged in the disciplines mentioned above, and upon successful completion of the program would be assured a teaching position at the institution.

Period of Support

The period of Federal support will not exceed one year for each fellowship award to an applicant institution. However, a fellowship award to an individual recipient must be for a minimum of two years. The program does not contribute to the support of the fellow in the second year. The applicant institution (school) will be required to support the fellow for the second year at a level not less than the total of federal and institutional funds awarded for the first year.

Eligibility Requirements for the Applicant Institution

Eligible applicants for this program are schools of allopathic medicine, osteopathic medicine, dentistry, veterinary medicine, optometry, podiatric medicine, pharmacy, public health, health administration, clinical psychology, and other public or private nonprofit health or educational entities.

In addition, to receive a fellowship award, an applicant institution must demonstrate to the Secretary that it has the commitment and ability to:

* Identify, recruit and select individuals from underrepresented minorities in health professions who have the potential for teaching, administering programs, or conducting research at a health professions institution;
* Provide such individuals with the skills necessary to enable them to secure an academic career. Training may include: pedagogical skills, program administration, the design and conduct of research, grant writing, and the preparation of articles suitable for publication in peer reviewed journals;
* Provide services designed to assist such individuals in their preparation for an academic career, including the provision of mentors; and
* Provide health services to rural or medically underserved populations.

In Addition, the Applicant Institution Shall Agree to the Following Assurances

* Provide an assurance that the applicant institution will make available (directly through cash donations) $1 for every $1 of Federal funds received under the fellowship (Each fellowship must include a stipend in an amount not exceeding 50 percent of the regular salary of a similar faculty member, or $30,000, whichever is less);
* Provide an assurance that institutional support will be provided for the individual for a second year at a level not less than the total amount of Federal and institutional funds provided in the year in which the grant was awarded;
* Provide an assurance that the fellowship recipient is from an underrepresented minority in the health professions; has at a minimum, appropriate advanced preparation (such as a master's or doctoral degree in a health profession) and special skills necessary to enable that individual to teach and practice;
* Provide an assurance that the recipient of the fellowship will be a member of the faculty of the applicant institution; and
* Provide an assurance that the recipient of the fellowship has not been a member of the faculty of any school at any time during the 18-month period preceding the date on which the individual submits a request for the fellowship.

Eligibility Requirements for the Fellows

Fellowship awards must be for two years, and are provided for an individual who meets the following criteria:

* Individual must be from an underrepresented minority in the health professions;
* Individual must have appropriate advanced preparation (such as a master's or doctoral degree in a health profession) and special skills necessary to enable that individual to teach and practice;
* Individual must not have been a member of the faculty of any school at any time during the 18-month period preceding the date on which the individual submits a request for the fellowship;
* Individual must have completely satisfied any other obligation for health professional service which is owed under an agreement with the Federal Government, State Government, or other entity prior to beginning the period of service under this program;
* Individual must be a U.S. citizen, noncitizen national, or foreign national who possesses a visa permitting permanent residence in the United States.

Breach of Fellowship Funds

The school will be required to return fellowship funds received if it fails to honor the terms of the fellowship award. Such sums must be paid within 1 year from the day the Secretary determines that the breach occurred. If payment is not received by the payment date, additional interest, penalties and administrative charges will be assessed in accordance with Federal Law (45 CFR 30.13).

National Health Objectives for the Year 2000

The Public Health Service urges applicants to submit work plans that address specific objectives of Healthy People 2000. Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone 202–783–3238).

Education and Service Linkage

As part of its long-range planning, HRSA will be targeting its efforts to strengthening linkages between U.S. Public Health Service education programs and programs which provide comprehensive primary care services to the underserved.

Smoke-Free Workplace

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Proposed Review Criteria

The following criteria are proposed for review of applications for this program:

1. The extent to which the institution demonstrates that it has the commitment and ability to identify, recruit, and select underrepresented minority faculty, and its ability to provide health services to rural or medically underserved populations;
2. The extent to which the institution's training program will provide the fellow with the preparation, training and skills needed to secure an academic career. Training may include: pedagogical skills, program administration, grant writing and publication skills, research methodology and development of research grant proposals, and community service abilities;
3. The degree to which the institution's senior faculty are involved in the training and preparation of fellows pursuing an academic career, and the potential of the institution to continue the program without Federal support beyond the approved project period; and
4. The extent to which the institution meets the eligibility requirements set forth in section 738(b) of the Public Health Service Act.

In determining awards, the Secretary will also take into consideration equitable distribution among health disciplines and geographic areas.

Additional Information

Interested persons are invited to comment on the proposed review criteria. The comment period is 30 days. All comments received on or before July 3, 1995 will be considered before the final review criteria are established. Written comments should be addressed to: Mr. William J. Holland, Acting Director, Division of Disadvantaged Assistance, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8A–09, 5600 Fishers Lane, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Division of Disadvantaged Assistance, Bureau of Health Professions, at the above address, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5 p.m.

Application Requests

Requests for application materials and questions regarding grants policy and business management issues should be directed to: Ms. Diane Murray, Grants Management Specialist, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8C–26, 5600 Fishers Lane, Rockville, Maryland 20857. Telephone: (301) 443–6857 FAX: (301) 443–6343.

Completed applications should be returned to the Grants Management Branch at the above address.

If additional programmatic information is needed, please contact: Mr. Lafayette Gilchrist, Analysis and Evaluation Branch, Division of Disadvantaged Assistance, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8A–09, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–3680 FAX: (301) 443–5242.

Paperwork Reduction Act

The application form for this program has been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB Clearance Number is 0915–0150.

Deadline Date

The deadline date for receipt of applications is July 14, 1995. Applications will be considered to be "on time" if they are either:

(1) Received on or before the established deadline date, or

(2) Sent on or before the established deadline date and received in time for orderly processing. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late applications not accepted for processing will be returned to the applicant.

This program, Grants for the Minority Faculty Fellowship Program, is listed at 93.923 in the Catalog of Federal Domestic Assistance. It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100). This program is not subject to the Public Health System Reporting Requirements.

Dated: May 26, 1995.

Ciro V. Sumaya,

Administrator.

[FR Doc. 95–13424 Filed 5–31–95; 8:45 am]

BILLING CODE 4160–15–P

HEALTH RESOURCES AND SERVICES ADMINISTRATION

Availability of Funds for the Nursing Education Loan Repayment Program for Service in Certain Health Facilities

AGENCY: Health Resources and Services Administration, PHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that approximately $2,025,000 will be available in fiscal year (FY) 1995 for awards under section 846 of the Public Health Service (PHS) Act to repay up to 85 percent of the nursing education loans of registered nurses who agree to serve for up to 3 years as nurse employees in certain health facilities.

The HRSA, through this notice, invites applications for participation in this loan repayment program. With these funds, the HRSA estimates that approximately 218 loan repayment awards may be made.

The PHS is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting health priorities. These programs will contribute to the Healthy People 2000 objectives by improving access to primary health care services through coordinated systems of care for medically underserved populations in both rural and urban areas. Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–01) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–01) through the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402–9325 (telephone number: 202 783–3238).

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

DATES: To receive consideration for funding, individuals must submit their applications by September 1, 1995.

Applications shall be considered as meeting the deadline if they are either:

(1) received on or before the deadline date; or

(2) sent on or before the deadline and received in time for submission to the reviewing program official.

(Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing).

Late applications will not be considered for funding in FY 1995, but may be kept on file for consideration in FY 1996.

ADDRESSES: Application materials with a list of counties (parishes) with the greatest shortage of nurses may be obtained by calling or writing to: Joyce Washington, Acting Chief, Loan Repayment Programs Branch, Division of Scholarships and Loan Repayments, Bureau of Primary Health Care, HRSA, 4350 East-West Highway, 10th Floor, Bethesda, MD 20814, (301–594–4400). The 24-hour toll-free phone number is 1–800–435–6464 and the FAX number is (301) 594–4981. Completed

applications should be mailed to the same address. The application form has been approved under Office of Management and Budget (OMB) Number 0915–0140.

FOR FURTHER INFORMATION CONTACT: For further program information and technical assistance, please contact the Branch Chief at the above address, phone or FAX number.

SUPPLEMENTARY INFORMATION: Section 846 of the PHS Act provides that the Secretary will repay a portion of an individual's educational loans incurred for nursing education costs if that individual enters into an agreement with the Secretary to serve as a registered nurse for 2 or 3 years in a variety of eligible health facilities or in a health facility determined by the Secretary to have a critical shortage of nurses. For an individual who is selected to participate in this program, repayment shall be on the following basis:

(1) By the completion of the first year of agreed service, the Secretary will have paid 30 percent of the principal of, and interest on, the outstanding balance on each qualified loan as of the beginning date of service;

(2) By the completion of the second year of agreed service, the Secretary will have paid another 30 percent of the principal of, and interest on, the outstanding balance of each qualified loan as of the beginning date of service; and

(3) By the completion of a third year of agreed service, if any, the Secretary will have paid another 25 percent of the principal of, and interest on, the outstanding balance of each qualified loan as of the beginning date of service.

No more than 85 percent of the principal balance of any qualified loan which was unpaid as of the beginning date of service will be paid under this program.

Prior to entering an agreement for repayment of loans, other than Nursing Student Loans, the Secretary will require that satisfactory evidence be provided of the existence and reasonableness of the educational loans.

These loan repayment amounts are unrelated to any salary paid to the nursing education loan repayment recipient by the health facility by which he or she has been employed.

To be eligible to participate in this program, an individual must:

(1) Have received, prior to the start of service, a baccalaureate or associate degree in nursing, a diploma in nursing, or a graduate degree in nursing;

(2) Have outstanding educational loans for the costs of his/her nursing education;

(3) Agree to be employed full-time for not less than 2 years in any of the following types of eligible health facilities: an Indian Health Service health center; a Native Hawaiian health center; a public hospital (operated by a State, county, or local government); a community or migrant health center [Sections 330(a) and 329(a)(1) of the PHS Act]; a Federally Qualified Health Center receiving Sections 330 or 329 funding; a rural health clinic (Section 1861 (aa)(2) of the Social Security Act); or a public or nonprofit private health facility determined by the Secretary to have a critical shortage of nurses; and

(4) Plan to begin employment as a registered nurse no later than September 30, 1995.

Funding Preferences

As required under section 846, the Secretary will give preference to qualified applicants:

(1) Who have the greatest financial need; and

(2) Who agree to serve in the types of health facilities described in paragraph (3) above, that are located in geographic areas determined by the Secretary to have a shortage of and need for nurses.

Breach of Agreement

Participants in this program who fail to provide health services for the period specified in their agreements with the Secretary, shall be liable to the Federal Government for payments made by the Secretary during the service period pursuant to such agreement, plus interest on this amount at the maximum legal prevailing rate, payable within 3 years from the date the agreement with the Secretary is breached.

Waiver or Suspension of Liability

A waiver or suspension of liability may be granted by the Secretary if compliance with the agreement with the Secretary by the individual participant is impossible, or would involve extreme hardship to the individual, and if enforcement of the agreement with respect to the individual would be unconscionable.

Other Award Information

This program is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs, since payments to individuals are not covered. In addition, this program is not subject to the submission of a Public Health System Impact Statement.

The OMB Catalog of Federal Domestic Assistance number for this program is 93.908.

Dated: May 24, 1995.

Ciro V. Sumaya,

Administrator.

[FR Doc. 95–13353 Filed 5–31–95; 8:45 am]

BILLING CODE 4160–15–P

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel.

Date: June 13, 1995.

Time: 10:30 am to 1:00 pm.

Place: 6120 Executive Boulevard, Room 400C, Rockville, MD 20852.

Contact Person: Marilyn Semmes, Ph.D., Acting Chief, Scientific Review Branch, DEA, NIDCD, NIH, EPS Room 400C, 6120 Executive Boulevard, MSC 7180, Bethesda, MD 20892–7180, 301/496–8683.

Purpose/Agenda: To review and evaluate grant application.

The meeting, which will be conducted as a telephone conference call, will be closed in accordance with the provisions set forth in sec. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review cycle.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Communication Disorders)

Dated: May 25, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–13340 Filed 5–31–95; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

Applicant: University of Kansas, Lawrence, KS, PRT–677648

The applicant requests renewal of their permit to export and reimport endangered and threatened specimens already accessioned into the permittee's collection for scientific research.

Applicant: Dennis A. Smithback, Deerfield, WI, PRT–802847

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygarcus dorcas*) culled from the captive herd maintained by Pat F. Cawood, Gannahoek, Cradock, Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: National Museum of Natural History, Washington D.C., PRT–802845

The applicant requests a permit to import 5cc of blood samples from 10 Vancouver Island marmot (*Marmota vancouverensis*) within the Vancouver Canada, Island Region, for the purpose of enhancement of the survival of the species through scientific research.

Applicant: National Zoological Park, Washington D.C., PRT–802925

The applicant requests a permit to import one wild female Komodo Island monitor (*Varanus komodoenisi*) from Ueno Zoological Gardens, Tokyo, Japan for the purpose of enhancement of the survival of the species through propagation.

Applicant: J. Michael Allgood, Lafayette, CA, PRT–803098

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygarcus dorcas*) culled from the captive herd maintained by D. B. Pohl, "Teafountain", Grahamstown, Republic of South Africa, for the purpose of enhancement of the survival of the species.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: May 26, 1995.

Caroline Anderson,

Acting Chief Branch of Permits Office of Management Authority.

[FR Doc. 95–13396 Filed 5–31–95; 8:45 am]

BILLING CODE 4310–55–p

Enforcement of the Migratory Bird Treaty Act on Machias Seal Island, Maine

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of information.

SUMMARY: Machias Seal Island, a colonial seabird nesting site and rookery 10 miles off the coast of Maine, has become a popular attraction among bird enthusiasts and photographers during the breeding season from June 1 through July 31 of each year. Visitors to the Island who are not careful risk killing or injuring the birds or destroying their eggs in violation of the Migratory Bird Treaty Act. Whenever the number of visitors to the Island in a single day exceeds 30, the likelihood of killing or injuring the birds at the site or destroying their eggs increases substantially.

This notice presents the intention of the Fish and Wildlife Service (FWS) to closely scrutinize any visitation of the Island in excess of 30 people per day for potential enforcement action against individuals visiting or facilitating the visitation of the Island for the taking or killing of migratory birds. This policy is undertaken in cooperation with the State of Maine and the Canadian Wildlife Service (CWS) to protect migratory birds nesting on this island and prevent the destruction of migratory bird nests and nestlings associated with public access to the nesting Island, while still providing a unique opportunity for the public to visit and observe an important seabird rookery.

EFFECTIVE DATE: June 1, 1995.

FOR FURTHER INFORMATION CONTACT: A. Eugene Hester, Assistant Regional Director for Law Enforcement, telephone (413) 253–8274.

SUPPLEMENTARY INFORMATION:

Service Authority: The Migratory Bird Treaty Act (MBTA) was enacted in 1918 to implement the convention between the United States and Great Britain (on behalf of Canada) for the protection of migratory birds (16 U.S.C. 703–711 (1988 & Supp. 1992)). The MBTA prescribes criminal sanctions for the taking of migratory birds in the United States except as permitted by regulations published by the FWS (16 U.S.C. 703, see also 50 C.F.R. parts 20 and 21). The express language of the statute, as well as its legislative history confirms that the MBTA is a wildlife management statute that delegates broad discretionary power to the Federal government through the Secretary of the Interior (16 U.S.C. 712).

Justification: Visitors to the seabird rookery on Machias Seal Island present many risks to the birds found there. Young birds or eggs can be stepped on by visitors. The mere presence of humans near nesting birds can disrupt their breeding activities and the incubation of chicks and eggs. Adult birds also can be flushed from or discouraged from returning to the nests, exposing chicks and eggs to loss by exposure or predation. Actions that result in bird mortalities are unlawful and prohibited by the MBTA. The likelihood of disruption and the associated taking or killing of birds increases with the number of visitors to the Island. Human presence in excess of 30 people per day on Machias Seal Island has resulted in bird mortality. In contrast, the FWS believes that if no more than 30 people per day visit the Island, and do so in such a manner as to minimize the disturbance to nesting migratory birds, bird mortality should be minimal. The FWS will closely scrutinize any visitation of the Island in excess of 30 people per day, including the role of any who aid and abet in actions resulting in the taking or killing of migratory birds in violation of the MBTA, and take appropriate enforcement action. The FWS will also take appropriate enforcement action with respect to any taking or killing resulting from actions not consistent with reasonable attempts to minimize disturbance to migratory birds, without regard to the number of visitors to the Island.

Additional Information

Machias Seal Island, a migratory bird rookery located approximately 10 miles off the coast of Maine, is United States territory that is also claimed by Canada. In 1944, Canada designated the area as a Migratory Bird Sanctuary pursuant to the Canadian Migratory Birds Convention Act, as amended. Because the Island is one of the few areas in North America, where bird enthusiasts and photographers may actually visit a colonial seabird nesting site, visitor demand has increased substantially in

recent years. In order to protect the bird populations during the breeding season while still providing public access, CWS regulations have limited human visitor access to the island to 30 persons per day from June 1 through July 31 each year in recent years. In addition, this 30 person per day access has been further divided into 26 individuals per day from commercial tour boat landings (combined total for United States and Canadian tour boats) and 4 individuals per day from privately-owned boat landings. In 1993, the FWS first became involved with controlling human access to this island at the request of three United States companies. In 1993 and 1994, the FWS working with CWS, three United States tour boat companies, and one Canadian company developed landing schedules based on previous landing access by these companies to the Island during the June and July period. For 1995, the FWS and CWS propose a similar strategy for access by tour boat companies to the Island (up to 26 people per day for June and July by tour boats). This results in 31.6% of these tour boat landings being assigned to the one Canadian company, and 46.7% and 21.7% being assigned to two United States companies. The CWS stations a wildlife technician on Machias Seal Island during June and July of each year to monitor landings and visitor behavior. The FWS intends to periodically visit Machias Seal Island in 1995 to monitor landings and impacts upon migratory birds by these visits.

Cathy Short,

Acting Regional Director.

[FR Doc. 95–12897 Filed 5–31–95; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Land Management

[AK–963–1410–00–P]

Notice for Publication F–14838–A; Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Section 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to Bethel Native Corporation for 40.00 acres. The lands involved are in the vicinity of Bethel, Alaska, and are located within T. 9 N., R. 71 W., Seward Meridian, Alaska.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Tundra Drums. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until July 3, 1995, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

Heather A. Coats,

Land Law Examiner, Branch of Southwest Adjudication.

[FR Doc. 95–13351 Filed 5–31–95; 8:45 am]

BILLING CODE 4310–JA–P

Minerals Management Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The supporting statement for a new form, MMS–4398, Notice of Intent to Take Oil and Gas Transportation and Processing Allowance, has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the new form and related explanatory material may be obtained by contacting Dennis Jones at (303) 231–3046. Comments and suggestions on the new form should be made directly to the Bureau Clearance Officer at the telephone number listed below, and to the OMB Paperwork Reduction Project, Washington, D.C. 20503, telephone (202) 395–7340.

Title: Supporting Statement for Notice of Intent to Take Oil and Gas Transportation and Processing Allowance.

Abstract: The Minerals Management Service (MMS) is amending its valuation regulations governing oil and gas transportation and processing allowances, particularly as they relate to forms filing requirements and associated sanctions for failure to file required forms on time. Because MMS has experienced numerous problems with administration of the allowance regulations, an Allowance Study Group composed of representatives from MMS, States and Tribes, and industry was formed to evaluate the current regulatory requirements. Based on the recommendations of the Study Group, MMS is amending its valuation regulations and has developed a new form, the Notice of Intent to Take Oil and Gas Transportation and Processing Allowance, Form MMS–4398. The new form will be used to notify MMS of a company's intention to take transportation and processing allowances. It will eliminate the need to report estimated allowances and other data and will reduce burden on the payor

Bureau Form Number: MMS–4398.

Frequency: Annually or during the year prior to claiming an allowance.

Description of Respondents: Oil and gas companies.

Estimated Average Completion Time: 30 minutes.

Annual Responses: 583.

Annual Burden Hours: 292.

Bureau Clearance Officer: Arthur Quintana (703) 787–1101.

Dated: May 10, 1995.

Donald T. Sant,

Acting Associate Director for Royalty Management.

[FR Doc. 95–13480 Filed 5–31–95; 8:45 am]

BILLING CODE 4310–MR–M

Bureau of Mines

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

A request extending the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1032–0090), Washington, DC 20503, telephone 202–395–7340.

Title: Production Estimate.

OMB approval number: 1032–0090.

Abstract: The collection is needed to provide data on mineral production for annual reports published by commodity for use by Government agencies, industry, education programs, and the general public. One publication is the "Mineral Commodity Summaries," the first preliminary publication to furnish estimates covering the previous year's nonfuel mineral industry.

Bureau form number: 6–1209–A and 6–1209–A–A.

Frequency: Quarterly and annually.

Description of respondents: Producers of industrial minerals and metals.

Estimated completion time: 15 minutes.

Annual responses: 3,802.

Annual burden hours: 951.

Bureau clearance officer: Alice J. Floyd, 202–501–9569.

Dated: May 9, 1995.

K.W. Mlynarski,

Chief, Division of Statistics and Information Services.

[FR Doc. 95–13376 Filed 5–31–95; 8:45 am]

BILLING CODE 4310–63–M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before May 20, 1995. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127. Written comments should be submitted by June 16, 1995.

Carol D. Shull,

Keeper of the National Register.

Arizona

Maricopa County

Ammo Bunker ($–1007) (Williams Air Force Base MPS), SW of Alaska Dr., Williams AFB, Williams Air Force Base, 95000748

Ammo Bunker ($–1008), (Williams Air Force Base MPS), SW of Alaska Dr., Williams AFB, Williams Air Force Base, 95000759

Archeological Site No. AZ U:10:77(ASM), (Hohokam and Euroamerican Land Use and Settlement Along the Northern Queen Creek Delta MPS), Address Restricted, Mesa vicinity, 95000749

Archeological Site No. AZ U:10:20(ASU), (Hohokam and Euroamerican Land Use and Settlement Along the Northern Queen Creek Delta MPS), Address Restricted, Mesa vicinity, 95000750

Archeological Site No. AZ U:10:25(ASU), (Hohokam and Euroamerican Land Use and Settlement Along the Northern Queen Creek Delta MPS), Address Restricted, Mesa vicinity, 95000751

Archeological Site No. AZ U:10:60(ASM), (Hohokam and Euroamerican Land Use and Settlement Along the Northern Queen Creek Delta MPS), Address Restricted, Mesa vicinity, 95000752

Archeological Site No. AZ U:10:61(ASM), (Hohokam and Euroamerican Land Use and Settlement Along the Northern Queen Creek Delta MPS), Address Restricted, Mesa vicinity, 95000753

Archeological Site No. AZ U:10:65(ASM), (Hohokam and Euroamerican Land Use and Settlement Along the Northern Queen Creek Delta MPS), Address Restricted, Mesa vicinity, 95000754

Archeological Site No. AZ U:10:66(ASM), (Hohokam and Euroamerican Land Use and Settlement Along the Northern Queen Creek Delta MPS), Address Restricted, Mesa vicinity, 95000755

Archeological Site No. AZ U:10:68(ASM), (Hohokam and Euroamerican Land Use and Settlement Along the Northern Queen Creek Delta MPS), Address Restricted, Mesa vicinity, 95000756

Civil Engineering Maintenance Shop, (Williams Air Force Base MPS), Jct. of 11th and A Sts., NE corner, Williams AFB, Williams Air Force Base, 95000747

Demountable Hangar, (Williams Air Force Base MPS), North Apron, Williams AFB, Williams Air Force Base, 95000743

Flagpole, (Williams Air Force Base MPS), 10 St. between D and E Sts., Williams AFB, Williams Air Force Base, 95000744

Housing Storage Supply Warehouse, (Williams Air Force Base MPS), Jct. of 11th and A Sts., NW corner, Williams AFB, Williams Air Force Base, 95000746

Water Pump Station and Water Tower, (Williams Air Force Base MPS), Jct. of 12th and B Sts., NE corner, Williams AFB, Williams Air Force Base, 95000745

Arkansas

Logan County

American Legion Post No. 121, Legion Hut Rd., off AR 107, Paris vicinity, 95000758

Methodist Episcopal Church, South, 205 N. Elm St., Paris, 95000757

Florida

Brevard County

City Point Community Church, 3783 N. Indian River Dr., Cocoa, 95000731

Lee County

Terry Park Ballfield (Lee County MPS) 3410 Palm Beach Blvd., Fort Myers, 95000730

Sarasota County

Leech, Hilton, House and Amagansett Art School, 1666 Hillview St., Sarasota, 95000732

Georgia

Cherokee County

Woodstock Depot, 2 N. Main St. (GA 5), Woodstock, 95000736

Cobb County

Atlanta—Frasier Street Historic District, Atlanta and Frasier Sts. between GA 120 Loop and Dixie Ave., Marietta, 95000737

Grady County

Dickey—Birdsong Plantation, Meridian Rd., off GA 93 W of Beachton, Beachton vicinity, 95000741

Lamar County

Barnesville Commercial Historic District, Roughly bounded by College, Taylor and Market Sts. and the Central of GA RR tracks, Barnesville, 95000733

Peach County

Byron Historic District, Roughly, along the Central GA RR tracks from Jackson St. to Vinson St. including Boulevard, Main, Church and Academy Sts, Byron, 95000739

Polk County

Rockmart Woman's Club, N. Marble St., Rockmart, 95000738

Stewart County

Green Grove Church, School, and Cemetery, Old Lumpkin-Eufaula Rd., Lumpkin, 95000734

Toombs County

Leader-Rosansky House, 403 Jackson St., Vidalia, 95000735

Ware County

Barber, Obediah, Homestead, Off Swamp Rd. approximately 7 mi. S of Waycross, Waycross vicinity, 95000742

Kansas

Riley County

Wharton, E. A. and Ura, House, 608 Houston St., Manhattan, 95000740

Maine

Aroostook County

Frenchville Railroad Station and Water Tank, 308 US 1, Frenchville, 95000723

Gray Memorial United Methodist Church and Parsonage, 8 Prospect St., Caribou, 95000725

Cumberland County

First Parish Congregational Church, 135 Main St., Yarmouth, 95000728

Hancock County

Saint Saviour's Episcopal Church and Rectory, 41 Mt. Desert St., Bar Harbor, 95000729

Sorrento Library, Waukeag Ave. S side, 0.5 mi. W of jct. with ME 185, Sorrento, 95000724

West Brooksville Congregational Church, ME 176 E side, 1 mi. NW of jct. with Varnum Rd., West Brooksville, 95000727

Penobscot County

North Newport Christian Church, Jct. of ME 222 and Pratt Rd., NE corner, North Newport, 95000726

New York

Suffolk County

St. Paul's Episcopal Church Complex, 31 Rider Ave., Patchogue, 95000722

Ohio

Butler County

Hamilton Historic Civic Center, Roughly bounded by Market St., High St., Court St., and Monument Ave., including High-Main St. Bridge, Hamilton, 94000170

[FR Doc. 95–13312 Filed 5–31–95; 8:45 am]

BILLING CODE 4310–70–P

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–43 (Sub-No. 168X)]

Illinois Central Railroad Co.—Abandonment Exemption—In Hinds County, MS

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10505, the Commission exempts from the regulatory requirements of 49 U.S.C. 10903–04 the abandonment by Illinois Central Railroad Company of 2.7 miles of rail line, between milepost NN–178.50 at Elton and milepost NN–181.21 at Jackson, in Hinds County, MS, subject to a public use condition, a historic preservation condition, and the standard employee protective conditions. The Commission also issues a notice of interim trail use.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on July 1, 1995. Formal expressions of intent to file an offer[1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by June 12, 1995. Petitions to stay must be filed by June 16, 1995. Requests for a public use condition must be filed by June 21, 1995. Petitions to reopen must be filed by June 26, 1995.

ADDRESSES: Send pleadings referring to Docket No. AB–43 (Sub-No. 168X) to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Avenue, NW, Washington, DC 20423; and (2) Miles L. Tobin, Esq., 455 North Cityfront Plaza Drive, Chicago, IL 60611–5504.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Interstate Commerce Commission Building, Room 2229, 1201 Constitution Avenue, NW, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721].

Decided: May 17, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioners Simmons and McDonald.

Vernon A. Williams,

Secretary.

[FR Doc. 95–13279 Filed 5–31–95; 8:45 am]

BILLING CODE 7035–01–P

[1] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 95–39; Exemption Application No. D–09358, et al.]

Grant of Individual Exemptions; NCNB Real Estate Fund, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

NCNB Real Estate Fund (the Fund), NationsBank Pension Plan, NationsBank Retirement Savings Plan Located in Charlotte, North Carolina; Exemption

[Prohibited Transaction Exemption 95–39; Exemption Application Nos. D–09358, D–09359 and D–09360, respectively]

Based on the facts and representations set forth in the application, the Department and the Service have determined to grant the following exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990) and Revenue Procedure 75–26, 1975–1 C.B. 722.

Section I: Covered Transactions

1. The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the sale (the Sale) of units in the Fund (Units) by plans participating in the Fund (the Plans) pursuant to an Option election made available by NationsBank, N.A. (Carolinas) (the Bank), to a standby trust (the Standby Trust) established and maintained by NationsBank, Corporation (the Holding Company), a party in interest with respect to the Plans. This exemption is subject to the conditions set forth in Section II.

2. The restrictions of sections 406(a)(1)(D), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (D) and (E) of the Code shall not apply to any decision by the Bank to sell a property held by the Fund to a third party, and jointly owned by the Plans and the Holding Company, provided that: each Plan receives no less than fair market value for its interest in the property; and the Independent Fiduciary approves the reasonableness and propriety of the sale of the property.

Section II: Conditions

(a) The properties held by the Fund (the Properties) shall be appraised by an independent and qualified appraiser within twelve months and updated within fifteen days before the Settlement Valuation Date.

(b) The Plans selling Units pursuant to the Options will receive a price equal to the value of each Unit sold based on the value of the Fund as of the Settlement Valuation Date (the Unit Purchase Price) plus the Interest Amount which will be calculated by the Bank and reviewed and approved by the Independent Fiduciary who has been retained to represent the interests of the Plans with respect to the Sale and the subsequent activities of the Fund related to the Fund's liquidation.

(c) Plans selling Units pursuant to Options 1 or 2 will receive the Unit Purchase Price plus the Interest Amount for each Unit sold on the settlement date (Settlement Date) which will be no more than 120 days after the Settlement Valuation Date.

(d) If Options 2 or 4 are elected, the Plans involved will receive the final payment, if any, within sixty days after the two year anniversary of the Settlement Valuation date for Option 2, or the date of complete liquidation of the Fund for Option 4.

(e) Prior to the Settlement Valuation Date, the Bank will provide each Plan with written information regarding the terms of the Sale. Such information includes, but is not limited to:

(i) notice that each Plan will be entitled to elect one or more Options which will permit the Plan to sell all or part of its Units to the Stand-by Trust, or to continue to hold all or part of its Units in the Fund until the Fund's liquidation is complete, provided that if multiple Options are elected they must be uniform with respect to the grant, or failure to grant, a Release to the Bank,

(ii) a description of each Option,

(iii) the date by which a Plan must elect an Option (Option Election Date), and

(iv) forms for electing the Options.

(f) Except for Plans with respect to which the Bank or any of its Affiliates is an employer, the decision whether to authorize the Independent Fiduciary to make an Option election on behalf of the Plan will be made by a fiduciary independent of the Bank and its Affiliates and the Independent Fiduciary.

(g) The Bank and any Affiliate which is an employer with respect to a Plan will authorize the Independent Fiduciary to choose among all of the Options.

(h) A Plan's Option election will be made by a Plan fiduciary who is independent of the Bank and its Affiliates or by the Independent Fiduciary.

(i) The Independent Fiduciary's duties and responsibilities are set forth in the Independent Fiduciary Agreement between the Independent Fiduciary and the Bank dated April 1, 1994 and amended by the First Amendment thereto dated September 1, 1994. These duties and responsibilities include such activities as:

(1) Reviewing and determining whether to rely on the appraisals of the Properties;

(2) Ordering a new appraisal to the extent it deems necessary in cases in which it has determined that an existing appraisal cannot be relied upon;

(3) Reviewing and approving all of the relevant disclosures, written explanations, and forms furnished to the Plans by the Bank;

(4) Furnishing certain information to an independent Plan fiduciary, in advance of any date by which the independent Plan fiduciary is required to respond in order to authorize the Independent Fiduciary to make a decision on behalf of the Plan. Such information includes, but is not limited to:

(i) the Unit Purchase Price;

(ii) a description and explanation of the Options;

(iii) dates by which the Plans must act in order to make Option elections and authorize the Independent Fiduciary to make Option elections on behalf of the Plan;

(iv) information summarizing: the effect of failing to authorize the Independent Fiduciary to make Option elections on behalf of the Plan, the effect of failing to make an Option election after informing the Independent Fiduciary that the independent Plan fiduciary would make the decision to select an Option election, and the availability and effect of the different Option election authorizations which the Plan may provide to the Independent Fiduciary, in language calculated to be reasonably understood by the average independent Plan fiduciary responsible for making decisions on behalf of a Plan with regard to Units of the Fund held by the Plan;

(5) making Option elections on behalf of any Plan if: (a) the Bank or any of its Affiliates is an employer with respect to the Plan; (b) the independent Plan fiduciary authorizes the Independent Fiduciary to make Option elections on behalf of that Plan; or (c) the independent Plan fiduciary fails to make an option election prior to the Option Election Date;

(6) providing certain assistance regarding the four Options, to those independent Plan fiduciaries who wish to make their own Option elections;

(7) reviewing and determining whether to approve the Unit Purchase Price as of the Settlement Valuation Date, and the value of a Unit in the Fund as of two years from the Sale of the Units by the Plans to the Standby Trust (for purposes of determining the amount which is due to those Plans electing Option 2);

(8) reviewing and determining whether to approve the Interest Amount payable to any Plan which elected either Option 1 or 2;

(9) exercising its veto authority with regard to the proposed Unit Purchase Price, Interest Amount, or value of Fund Units pursuant to Option 2, which it has determined not to approve;

(10) monitoring, by attending the Bank's Trust Real Estate Investment Committee's quarterly meetings, the Bank's efforts to dispose of the Properties during the liquidation of the Fund;

(11) approving the reasonableness and propriety of sales of the Properties during the period in which the Standby Trust owns units in the Fund.

(j) The Independent Fiduciary may be removed by a majority vote of the Plans "for cause."

(i) The term "for cause" shall mean that there must be sufficient and reasonable grounds for removal and the grounds must be related to the ability and fitness of the Independent Fiduciary to perform his required duties.

(ii) Each Plan's vote for or against removal will be proportionate to its ownership interest in the Fund exclusive of Units owned by the Standby Trust.

(k) The Bank and the Holding Company will be bound by the decisions and determinations made by the Independent Fiduciary.

(l) The Bank will continue its efforts, with due diligence to liquidate the Fund.

(m) Any distributions made by the Fund will be made pro rata, in cash.

(n) Any payment made pursuant to any of the Options will be made in cash.

(o) The Independent Fiduciary is responsible for taking reasonable steps consistent with its duties and responsibilities hereunder to monitor compliance with the terms and conditions of the exemption at all times.

Section III: Definitions

For purposes of this exemption:

(a) Affiliate of the Bank includes:

(1) Any person directly or indirectly through one or more intermediaries controlling, controlled by, or under common control with the Bank;

(2) Any officer, director or employee of the Bank, or of a person described in paragraph (a)(1) of Section II; and

(3) Any partnership in which the Bank is a partner;

(b) Control means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(c) Affiliate of the Independent Fiduciary includes:

(1) Any person directly or indirectly through one or more intermediaries controlling, controlled by, or under common control with the Independent Fiduciary;

(2) Any officer or director of the Independent Fiduciary (where the Independent Fiduciary is other than a partnership);

(3) Any partner in the Independent Fiduciary with the authority to make, or who actually makes, fiduciary decisions which are within the scope of the Independent Fiduciary's duties and responsibilities under this exemption, or who holds a five percent (5%) or greater interest in the Independent Fiduciary;

(d) Independent Fiduciary means a person who:

(1) Is not an Affiliate of the Bank as defined in Section III(a);

(2) does not have an ownership interest in the Bank or its Affiliates;

(3) is not a corporation or partnership in which the Bank or any of its Affiliates has an ownership interest;

(4) is not a fiduciary with respect to any of the Plans other than in connection with the transactions described in this exemption;

(5) has acknowledged in writing acceptance of fiduciary responsibility;

(6) is either:

(i) A business organization which has at least (5) years of experience with respect to commercial real estate investments or other relevant experience;

(ii) a committee comprised of three to five individuals who each have at least five (5) years of experience with respect to commercial real estate investments or other relevant experience; or

(iii) a committee comprised both of a business organization or organizations and individuals having the qualifications described in paragraphs (d)(1) through (6)(ii) above.

(7) An individual acting in a fiduciary capacity with respect to the Fund on behalf of, and at the direction of, an Independent Fiduciary meeting the conditions of paragraphs (d)(1) through (6)(iii) above shall be considered an Independent Fiduciary.

For purposes of this definition, no organization or individual may serve as an Independent Fiduciary for the Fund for any fiscal year, if the gross income received by such organization or individual (or by any partnership or corporation of which such organization or individual is an officer, director, or ten percent (10%) or more partner or shareholder) from the Bank, or any Affiliate, for that fiscal year exceeds five percent (5%) of its or his annual gross income from all sources for the prior fiscal year. If such organization or individual has no income for the prior fiscal year, the 5% limitation shall be applied with reference to the fiscal year in which such organization or individual serves as an independent fiduciary. The income limitation will include income received for services rendered to the Plans and the Fund as Independent Fiduciary, as described in this exemption.

In addition, no organization or individual who is an Independent Fiduciary or an Affiliate of such Independent Fiduciary, and no partnership or corporation of which such Independent Fiduciary is an officer, director, or ten percent (10%) or more partner or shareholder with the authority to cause such corporation or partnership to engage in the following transactions, or who exercises such authority in conjunction with others, may:

(1) Acquire any property from, sell any property to, or borrow any funds from, the Bank, its Affiliates, or any collective investment vehicle or separate trust maintained or advised by the Bank or its Affiliates, during the period that such organization or individual serves as an Independent fiduciary and continuing for a period of six (6) months after such organization or individual ceases to be an Independent Fiduciary; or

(2) Negotiate any such transaction, described above in paragraph (1) above during the period that such organization or individual serves as Independent Fiduciary.

No Plan fiduciary or sponsor of a Plan or a designee of such Plan fiduciary, sponsor or Plan may serve as the Independent Fiduciary with respect to the Fund.

(e) Option(s) means the following:

Option 1: A Plan will accelerate the liquidation of its investment in the Fund by selling each of its Units subject to this Option to the Standby Trust for an amount equal to the Unit Purchase Price plus the Interest Amount. A Plan electing this Option will reserve all rights it may have with respect to the Fund, the Bank and other appropriate persons. However, with respect to a participant directed account Plan, the Plan sponsor and an authorized independent Plan fiduciary will provide a Release to the Fund, the Bank and other appropriate persons without any affect on the rights of the participants or beneficiaries regarding the matters covered by the Release.

Option 2: A Plan will accelerate the liquidation of its investment in the Fund by selling each of its Units subject to this Option to the Standby Trust for an amount equal to the Unit Purchase Price plus the Interest Amount. In addition, the Bank will pay promptly following the second anniversary of the Settlement Valuation Date, an amount equal to the excess, if any, of (A) the sum of (1) the value that the Unit would have had at the Valuation Date two years after the Settlement Valuation Date if such Unit had not been sold, plus (2) the amount of any distributions made with respect to such Unit during such two year period, over (B) the Unit Purchase Price plus the Interest Amount. The Bank will pay Litigation Expenses to the Plan, if any. Under this Option, a Plan will release the Fund, the Bank and other appropriate persons with respect to all matters relating to the investment in the Fund occurring prior to the Sale.

Option 3: A Plan will continue its investment in the Fund through the end of the liquidation process. Under this Option, a Plan reserves all rights with respect to the Fund, the Bank and all other appropriate persons. However, with respect to a participant directed account Plan, the Plan sponsor and an authorized independent Plan fiduciary will provide a Release to the Fund, the Bank and other appropriate persons without any affect on the rights of the participants or beneficiaries regarding the matters covered by the Release.

Option 4: A Plan will continue its investment in the Fund through the end of the liquidation process. For a Plan electing this Option, the Bank will agree to pay promptly following the completion of the liquidation of the Fund, with respect to each Unit subject to this Option, an amount equal to the excess, if any, of the (i) the value of a Unit on September 28, 1990 over (ii) the value of all distributions made to the Plan with respect to such Unit since September 29, 1990 and during the liquidation of the Fund. The Bank will also pay Litigation Expenses to the Plan, if any. Plans electing this Option will release the Fund, the Bank and other appropriate persons with respect to all matters related to the investment in the Fund occurring prior to the Sale.

(f) Unit Purchase Price means the amount which is calculated by dividing the value of all of the assets of the Fund, as reviewed and approved by the Independent Fiduciary, by the total number of units in the Fund.

(g) Interest Amount means the amount approved by the Independent Fiduciary, equal to the net income earned on a Fund unit during the period commencing on the Settlement Valuation Date and ending on the day immediately preceding the Settlement Date, exclusive of realized or unrealized appreciation or depreciation.

(h) Settlement Valuation Date means the date on which the value of the Fund will be determined by the Bank in order to establish the Unit Purchase Price in connection with the Sale. The Settlement Valuation Date will be the last business day of the calendar month following the calendar month in which final prospective approval will be granted by the Office of the Comptroller of the Currency subsequent to the final grant of this exemption and approval of the transaction which is the subject of this exemption by the Federal Reserve Board.

(i) Litigation Expenses means the out-of-pocket expenses of litigation instituted before November 24, 1992 by or on behalf of a Plan against the Bank or the Fund with respect to the Plan's investment in the Fund exclusive of any expense of litigation with respect to a case which has proceeded to trial, or with respect to which there is a judgment against the Bank or the Fund, prior to the Option Election Date, plus interest. The total amount of Litigation Expenses, the rate of interest and the period for which interest is paid must be agreed to in writing between the Bank and the Plan prior to the Plan's election of Options 2 or 4. However, in the event there has never been a written settlement agreement specifying the amount of Litigation Expenses, prior to the date on which the Plan elects Option 2 or 4, Litigation Expenses will be the amounts requested by the Plan, unless such expenses are unreasonable.

(j) Option Election Date means the date as communicated to the Plans, at least Ninety (90) days subsequent to the Settlement Valuation Date and at least sixty (60) days subsequent to the completion of the mailing of the general post Settlement Valuation Date disclosure to all of the Plans by the Independent Fiduciary, on or prior to which a Plan must submit its Option election forms to the Bank.

(k) Settlement Date means the date, no more than 120 days after the Settlement Valuation Date, on which the transfer of the Units to the Standby Trust and delivery of Releases to the Bank will be effected pursuant to the Options.

(l) Release means a release covering activities and transactions in connection with the Fund prior to, and during, the Fund's liquidation, but in no case shall be effective on or after the Settlement Date. In this regard, the Release does not cover activities and transactions necessary to comply with the exemption, the conditions of the exemption, and the material representations made in connection therewith, which form the basis for the Department's decision to grant the exemption for the Sale and subsequent dispositions of properties owned by the Fund.

Written Comments

In the Notice of Proposed Exemption (the Notice), the Department invited all interested persons to submit written comments and requests for a hearing on the proposed exemption within 30 days of the date of publication of the Notice in the **Federal Register** on March 20, 1995.

During the comment period, the Department received no requests for a hearing. However, the Department received four comment letters; one from a person who appears to represent an employee benefit plan invested in the Fund, one from the Bank, and two from Arthur Anderson, the Independent Fiduciary.

The comment on behalf of Drs. Auman, Anderson & Munt, who appear to represent an employee benefit plan invested in the Fund, favored the liquidation of the plan's interest in the Fund.

The comment from the Bank dated March 30, 1995, states that the name of the applicant has been changed from "Nations Bank of North Carolina, N.A." to NationsBank, N.A. (Carolinas). The Department concurs.

The comment letter from Arthur Andersen dated, May 1, 1995, as well as a second letter clarifying certain comments in the first letter, requested certain modifications and clarifications of the conditions of the exemption and certain revisions of the language of the Summary of Facts and Representations in the Notice (SFR). Arthur Andersen's comments are as follows:

First, Arthur Andersen requests modification of the condition contained in Section II(i) on page 14781 of the Notice. A list of activities follows the language, "[t]he Independent Fiduciary's duties and responsibilities include, but are not limited to," which appears at the beginning of paragraph (i). Arthur Andersen suggests replacing the quoted language with the following language: "[t]he Independent Fiduciary's duties and responsibilities are set forth in the Independent Fiduciary Agreement between the Independent Fiduciary and the Bank dated April 1, 1994, and amended by the First Amendment thereto dated September 1, 1994. These duties and responsibilities include such activities as." Arthur Andersen states that this change would clarify that Section II(i) is meant to describe the terms of the Agreement which the parties should look to in order to determine the specific scope of Arthur Andersen's responsibilities. The Department concurs.

Second, the condition contained in Section II(i)(1) on page 14781 of the Notice states that the Independent Fiduciary's duties include "reviewing and determining whether to approve appraisals of the Properties." Arthur Andersen suggests replacing the word, "approve," with the words, "rely on." Arthur Andersen explains that its role is limited to reviewing the appraisals to determine whether they can reasonably be relied upon as the basis for establishing the Unit Purchase Price. The Department concurs.

Further, the third sentence of item 9 of the SFR on page 14785 of the Notice states that "[t]he Independent Fiduciary will review and approve the qualifications of the appraisers and their technical analyses and methodologies employed." Arthur Andersen states that it will not approve the professional qualifications of the appraisers, but rather will evaluate and consider their qualifications in the course of its review of the appraisals. The Department concurs.

Moreover, the fourth sentence of item 9 of the SFR on page 14785 states that "[a]s part of this approval process, the Independent Fiduciary will determine whether such appraisals are reasonable and adequate to establish the fair market value of the Properties." Arthur Andersen states that it would be more accurate to say that the Independent Fiduciary will determine to what extent such appraisals provide a reasonable basis for such purpose. Arthur Andersen explains that it's role will be limited to reviewing the appraisals to determine whether they can reasonably be relied upon as a basis for establishing the Unit Purchase Price, rather than approval of the underlying appraisals. The Department concurs.

In addition, the fourth sentence of the second paragraph of item 9 of the SFR

on page 14785 states that "[f]urther, if the Independent Fiduciary believes that the Unit Purchase Price proposed by the Bank is not accurate, the Independent Fiduciary has the authority to order the Bank to recalculate the Unit Purchase Price." Arthur Andersen suggests that the quoted language above should be replaced with the following language: "[f]urther, if the Independent Fiduciary cannot approve the Unit Purchase Price proposed by the Bank, the Independent Fiduciary has the authority to order the Bank to recalculate the Unit Purchase Price." Arthur Andersen explains that the word, "accurate," is not the appropriate term to use, because the property values will be based on a range of reasonableness. The Department concurs.

Third, the condition contained in Section II(i)(2) on page 14781 of the Notice states that the Independent Fiduciary is responsible for "[o]rdering a new appraisal in cases in which it has determined not to approve an existing appraisal." Arthur Andersen suggests that the quoted language above be replaced with the following language: "[o]rdering a new appraisal to the extent it deems necessary in cases in which it has determined that an existing appraisal cannot be relied upon." Arthur Andersen explains that this revision would make this condition consistent with the above described revision it proposes for the first sentence in Section II(i) of the conditions. The Department concurs.

Fourth, the condition contained in Section II(i)(3) on page 14781 of the Notice states that the Independent Fiduciary is responsible for "[r]eviewing and approving all of the disclosures, written explanations, and forms furnished to the Plans by the Bank." Arthur Andersen states that the word, "relevant," should be inserted before the word, "disclosures." In this regard, Arthur Andersen explains that it will review and approve materials only insofar as they are relevant to Arthur Andersen's duties and responsibilities in connection with the Option election process. Other communications by the Bank to the Plans would be outside the scope of Arthur Andersen's role under the exemption. Arthur Andersen believes this is particularly appropriate since the Bank may engage in a number of communications to the Plans during the liquidation period which are unrelated to the exemption or the Independent Fiduciary's role. The Department concurs.

Fifth, the condition contained in Section II(i)(4) on page 14781 of the Notice states that the Independent Fiduciary is responsible for

"[f]urnishing information to an independent Plan fiduciary, in advance of any date by which the independent Plan fiduciary is required to respond in order to authorize the Independent Fiduciary to make a decision on behalf of the Plan." Arthur Andersen suggests inserting the word, "certain," between the word, "furnishing," and the word, "information." Arthur Andersen explains that the change would clarify that it is responsible for providing certain types of information relevant to its role as Independent Fiduciary. The Department concurs.

Sixth, the condition contained in paragraph (i)(4) (renumbered in the final exemption as (i)(5)) on page 14782 of the Notice states that the Independent Fiduciary is responsible for—

Making Option elections on behalf of any Plan if: (a) the Bank or any of its Affiliates is an employer with respect to the Plan; (b) the independent Plan fiduciary authorizes the Independent Fiduciary to make an Option elections on behalf of that Plan; or (c) the independent Plan fiduciary does not reserve the right to make an Option election and fails to make an Option election prior to the Option Election Date.

Arthur Andersen suggests that the language in item (c) quoted above, should be replaced with the following language: "the independent Plan fiduciary fails to make Option election prior to the Option Election Date." Arthur Andersen states that Independent Plan fiduciaries that reserve the right to make an Option election but fail to do so within the prescribed time frames are not described in the current language quoted above.

Because Arthur Andersen will make Option elections for such Plans, the language in item (c) should include this omitted category, which can be accomplished by eliminating the distinction between Plan fiduciaries that do or do not reserve the right to make option elections. The Department concurs.

Further, the second paragraph of item 12 of the SFR on page 14786 states that—

[I]f the Plan reserves the right to make it's own Option election and subsequently fails to make an Option election by the Option Election Date, the Plan will be deemed to have elected Option 3. If the Plan does not reserve the right to make its own Option election and the Plan fails to make: a sufficiently broad authorization; any authorization at all; or fails to complete the profile survey, Arthur Andersen will elect only between Options 1 and 3 for the Plan. However, Arthur Andersen will choose among all four Options if the independent Plan fiduciary completes and returns timely all required parts of the profile/survey and the related authorization form expressly authorizing Arthur Andersen to choose among all four Options. The Bank represents that it will authorize Arthur Andersen to choose among all four Options for Plans with respect to which the Bank or any of its Affiliates is an employer.

Arthur Andersen states that the above quoted language should be clarified to indicate that "where the Plan fails to make its own Option election by the Option Election Date, Andersen will make an election for the Plan between Options 1 and 3, unless otherwise expressly authorized in writing by an independent Plan fiduciary to elect from among all four options. The Option election will not automatically default in certain cases to Option 3." Arthur Andersen explains that in each case, an Option election will be made either by a Plan's independent fiduciary, a plan participant or beneficiary in a participant-directed plan (where applicable), or by Arthur Anderson as Independent Fiduciary, as described in the Notice, and in no case will an Option election automatically default to any particular Option. The Department concurs.

Seventh, the condition contained in Section II(i)(5) (renumbered in the final exemption as (i)(6)) on page 14782 of the Notice states that the Independent Fiduciary is responsible for "providing guidance regarding the four Options, to those independent Plan fiduciaries who wish to make their own Option elections." Arthur Andersen states that the words, "certain assistance," should replace the word, "guidance." Arthur Andersen explains that where independent Plan fiduciaries have decided to make their own Option elections, they will not be depending on Arthur Andersen in making their decisions. Consequently, the word, "guidance," would overstate the interaction between Arthur Andersen and such fiduciaries regarding Option elections, whereas "certain assistance" more accurately describes this interaction. The Department concurs.

Further, the first sentence of the fourth paragraph of item 12 of the SFR on page 14786 states that "[w]ith respect to those independent Plan fiduciaries who notify Arthur Andersen that they will be making their own Option elections, Arthur Andersen is prepared to counsel any Plan fiduciary regarding the election process." Arthur Andersen suggests substituting the word, "assist," for the word, "counsel." Arthur Andersen wishes to clarify that with respect to those independent Plan fiduciaries who notify Arthur Andersen that they will be making their own Option elections, Arthur Andersen is prepared to assist any Plan fiduciary regarding the election process. Arthur Andersen explains that in this context, the word, "assist," is more accurate. The Department concurs.

Eighth, the condition contained in Section II(i)(9) (renumbered in the final exemption as (i)(10)) on page 14782 of the Notice states that the Independent Fiduciary is responsible for "monitoring the Bank's efforts to dispose of the Properties during the liquidation of the Fund." Arthur Andersen suggests modifying this phrase to read: "monitoring, by attending the Bank's Trust Real Estate Investment Committee's quarterly meetings, the Bank's efforts to dispose of the Properties during the liquidation of the Fund." Arthur Andersen states that the additional language more accurately reflects its duties under the Agreement, as amended. The Department concurs.

In addition, the condition contained in Section II(o) on page 14782 of Notice states that "[t]he Independent Fiduciary is responsible for monitoring compliance with the terms and conditions of the exemption at all times." Arthur Andersen suggests deleting the word, "monitoring," and inserting after the words, "responsible for," the following language: "taking reasonable steps consistent with its duties and responsibilities hereunder to monitor." In this regard, Arthur Andersen explains that it would not have an affirmative obligation to engage in additional activities to determine compliance beyond participation in the quarterly meetings of NationsBank's Trust Real Estate Investment Committee. Arthur Andersen believes that it must act reasonably within the scope of its defined role, and to the extent it determines there is non-compliance, it must take appropriate action.

Arthur Andersen represents that notwithstanding its comments regarding its responsibilities under the conditions contained in Sections II(i)(9) and (o) of the Notice, Arthur Andersen will be responsible for obtaining the information necessary to execute its duties as follows: (a) To approve, in advance of any sales of the Properties during the period in which the Standby Trust owns Units in the Fund, the reasonableness and propriety of such sales; and (b) to approve, in advance of the payments to Plans under Option 2 following the second anniversary of the Settlement Valuation Date, the reasonableness and propriety of the value of the Fund Units pursuant to Option 2, using procedures parallel to those used in reviewing and approving the reasonableness of the Unit Purchase Price. The Department concurs.

Ninth, the definition in Section II(c)(2) (renumbered in the final exemption as Section III(c)(2)) on page 14782 of the Notice states that "[a]ny officer or director of the Independent Fiduciary" is defined as an Affiliate of the Independent Fiduciary. Arthur Andersen requests that the parenthetical "(where the Independent Fiduciary is other than a partnership)" be appended to the end of the language quoted above. Arthur Andersen explains that the change would clarify that Section III(c)(2) is not intended to apply to a partnership. The Department concurs.

Tenth, the definition in Section II(c)(3) (renumbered in the final exemption as Section III(c)(3)) on page 14782 of the Notice defines Affiliate of the Independent Fiduciary to include "[a]ny partner in the Independent Fiduciary, *or any other related individual*, with the authority to make, or who actually makes, fiduciary decisions which are within the scope of the Independent Fiduciary's duties and responsibilities under this exemption, or who holds a five percent (5%) or greater interest in the Independent Fiduciary." Arthur Andersen suggests that the italicized phrase above be deleted. Arthur Andersen explains that section (d)(7) of the definitions, already reaches persons who are not partners in the Independent Fiduciary but nevertheless act in a fiduciary capacity. The Department concurs.

After giving full consideration to the record, including the comments by commentators, the Department has determined to grant the exemption as described herein. In this regard, the comments submitted to the Department have been included as part of the public record of the exemption application. The complete application file, including all supplemental submissions received by the Department is made available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, Room N–5507, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption published refer to the notice of proposed exemption published Monday March 20, 1995, at 60 FR 14781.

FOR FURTHER INFORMATION CONTACT: Eric Berger of the Department, telephone (202) 219–8971 (This is not a toll-free number).

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 25th day of May 1995.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 95–13300 Filed 5–31–95; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Notice of Submission of Proposed Information Collections to OMB

AGENCY: National Archives and Records Administration.

ACTION: Notice of proposed information collections submitted to OMB for approval.

SUMMARY: The National Archives and Records Administration (NARA) is giving notice that the proposed collections of information described in this notice have been submitted to the Office of Management and Budget for approval under the Paperwork Reduction Act and 5 CFR part 1320.

Public comment is invited on these collections.

DATES: Comments should be submitted by July 17, 1995.

ADDRESSES: Copies of the proposed information collections and supporting documentation can be obtained from the Policy and Planning Division (PIRM-POL), 8601 Adelphi Road, Room 3200, College Park, MD 20740–6001. Telephone requests may be made to (301) 713–6730, extension 226.

Written comments should be sent to Director, Policy and Planning Division (PIRM-POL), National Archives and Records Administration, 8601 Adelphi Road, Room 3200, College Park, MD 20740–6001. A copy of the comments should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for NARA, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mary Ann Hadyka or Nancy Allard at (301) 713–6730.

The following proposed information collections have been submitted to OMB:

1. *Statistical research in archival records contaning personal information.*

Description: The information collection, which is contained in 36 CFR 1256.4, is a written request for access to archival records that are restricted because they contain highly personal information. The access must be for the purpose of conducting biomedical research.

Purpose: The information is used to evaluate whether the research proposal meets the conditions imposed by NARA on access to restricted archival records containing highly personal information.

Frequency of response: On occasion.
Number of respondents: 1.
Reporting hours per response: 7.
Annual reporting burden hours: 7.

2. *NARA Class Evaluation Forms (NA Forms 2019A, 2019B, 2019C, and 2019D).*

Description: The information collection is a an evaluation form completed by participants in traing courses and workshops that NARA conducts on archival and records management topics and on use of the **Federal Register**. The version of the form used depends on the length and format of a class.

Purpose: The information collection will help NARA to assess customer satisfaction with the course content and delivery, and to correct problems with classes to ensure that future classes meet the customers' needs.

Frequency of response: On occasion.
Number of respondents: 4,850.

Reporting hours per response: 5 minutes for NA Forms 2019A, 2019B, and 2019C, which are used in most classes. 10 minutes for NA Form 2019D, which is used for certain multi-day classes.

Annual reporting burden hours: 509 hours.

3. *Application and Permit for Use of Space in Presidential Library and Grounds (NA Form 16011).*

Description: The information collection is an application form completed by organizations that want to hold meetings or other activities at a Presidential Library. When approved, the form also serves as the permit for the activity.

Purpose: The information is used to determine whether the proposed use will meet the criteria specified in 36 CFR 1280.42 and to schedule the dates.

Frequency of response: On occasion. Most respondents request use of the library space for a specific one-time event.

Number of respondents: 1,000.

Reporting hours per response: 20 minutes.

Annual reporting burden hours: 334 hours.

Dated: May 23, 1995.

Rudy Huskamp Peterson,

Acting Archivist of the United States.

[FR Doc. 95–13378 Filed 5–31–95; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

All Licensees; Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Enforcement, has issued a decision concerning the Petition filed by Mr. Thomas J. Saporito, Jr., (Petitioner) on March 8, 1995. The Petition requested that the NRC issue a generic letter of instruction to all licensees requiring them to review their station operating procedures to determine whether those procedures include any restrictions that would prevent or dissuade a licensee employee from bringing perceived safety concerns directly to the NRC without following the normal chain of command. The Petition requests that each licensee be required to report to the Commission, under oath or affirmation, that the review has been completed, that its employees are free to bring concerns to the NRC without following the normal chain of command, and that this information has been communicated to all of its employees.

Based on a review of Petitioner's request and the Secretary of Labor's Decision and Remand Order of June 3, 1994 and Order of February 16, 1995, the Director, Office of Enforcement, has denied this Petition. The reasons for the denial are explained in the "Director's Decision under 10 CFR 2.206" (DD–95–08) which is available for public inspection in the Commission's Public Document Room at 2120 L Street, NW., Washington, DC 20555.

A copy of this Decision will be filed with the Secretary for the Commission's review in accordance with 10 CFR 2.206. As provided by this regulation, the Decision will constitute the final action of the Commission 25 days after the date of issuance of the Decision unless the Commission on its own motion institutes a review of the Decision within that time.

Dated at Rockville, Maryland this 25th day of May 1995.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

[FR Doc. 95–13356 Filed 5–31–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–606]

Arkansas Tech University; Notice of Withdrawal of Application for Construction Permit and Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Arkansas Tech University (the applicant) to withdraw its November 13, 1989, application for issuance of a construction permit and subsequently a facility operating license for a non-power reactor for educational, training, and research purposes on the campus of the applicant in Russellville, Arkansas.

The Commission had previously issued a Notice of Proposed Issuance of Construction Permit and Facility Operating License published in the **Federal Register** on November 13, 1990 (55 FR 47408). However, by letter dated April 10, 1995, the applicant withdrew the application.

For further details with respect to this action, see the application for construction permit and facility operating license dated November 13, 1989, and the letter from the applicant dated April 10, 1995, which withdrew the application. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

Dated at Rockville, Maryland, this 24th day of May 1995.

For the Nuclear Regulatory Commission

Seymour H. Weiss,

Director, Non-Power Reactors and Decommissioning Project Directorate, Division of Project Support, Office of Nuclear Reactor Regulation.

[FR Doc. 95–13355 Filed 5–31–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–443 (License No. NPF–86)]

Exemption

In the Matter of North Atlantic Energy Service Corporation (Seabrook Station, Unit No. 1).

I

North Atlantic Energy Service Corporation (North Atlantic or the licensee) is the holder of Facility Operating License No. NPF–86, which authorizes operation of Seabrook Station, Unit No. 1 (the facility or Seabrook), at a steady-state reactor power level not in excess of 3411 megawatts thermal. The facility is a pressurized water reactor located at the licensee's site in Rockingham County, New Hampshire. The license provides among other things, that it is subject to all rules, regulations, and Orders of the U.S. Nuclear Regulatory Commission (the Commission or NRC) now or hereafter in effect.

II

Section III.D.1.(a) of Appendix J to 10 CFR Part 50 requires the performance of three Type A containment integrated leakage rate tests (ILTRs) at approximately equal intervals during each 10-year service period of the primary containment. The third test of each set shall be conducted when the plant is shutdown for the 10-year inservice inspection.

III

By letter dated February 17, 1995, North Atlantic requested temporary relief from the requirement to perform a set of three Type A tests at approximately equal intervals during each 10-year service period of the primary containment. The requested exemption would permit delaying performance of the of the second Type A test by approximately 22 months (from the 1995 refueling outage currently scheduled to being November 4, 1995, to the 1997 refueling outage projected to start September 1997). The last Type A test was completed October 30, 1992. Thus, if the next Type A test is delayed until the 1997 refueling outrage, the interval between tests will be 59 months.

North Atlantic's request cites the special circumstances provision of 10 CFR 50.12, paragraph (a)(2)(ii), as the basis for the exemption. North Atlantic notes that the existing Type B and C testing programs are not being modified by its request and that these testing programs will continue to detect effectively containment leakage caused by the degradation of active containment isolation components as well as containment penetrations. It has been the consistent and uniform experience at Seabrook during the three Type A tests conducted from 1986 to date, that any significant containment leakage paths are detected by the Type B and C testing. The Type A test results have been only confirmatory of the results of the Type B and C tests results. Therefore, application of the regulation in this particular circumstances would not serve, nor is it necessary to achieve the underlying purpose of the rule.

Additionally, North Atlantic stated that the exemption request meets the requirements of 10 CFR 50.12, paragraphs (a)(1) and (a)(2)(ii), for the following reasons:

- Based on the excellent performance of the Appendix J Type B and C test program and companion programs, the exemption would not result in undue risk to the health and safety of the public.
- The Type A test results demonstrate that Seabrook has a low-leakage containment. Three Type A tests have been performed at Seabrook without a single test failure, and the highest [as-found] leakage rate of 0.07092 percent per day is well below the acceptance limit of 0.1125 percent per day and the design limit of 0.15 percent per day.
- An assessment of the risk-impact of the exemption concludes that there would be no undue risk to the public health and safety as a result of the proposed schedular extension of the Type A test.
- Resources now being expended on meeting the requirements of Appendix J for the fourth refueling outage Type A test could be better utilized to prepare for and execute other functions with a higher impact on safety during the remainder of Cycle 4 and during the refueling outage.
- The proposed exemption only extends the ILRT from the fourth refueling outage to the fifth refueling outage. North Atlantic is requesting a one time exemption from Section III.D.1(a) of Appendix J that refers to performing ILRTs "* * * at approximately equal intervals" during each 10-year service period.

IV

Section III.D.1.(a) of Appendix J to 10 CFR part 50 states that a set of three Type A leakage rate tests shall be performed at approximately equal intervals during each 10-year period.

North Atlantic has proposed an exemption to this section which would provide a one-time interval extension for the second Type A test in the current 10-year service period by approximately 22 months.

The Commission has determined that pursuant to 10 CFR 50.12(a)(1) this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission further determines that special circumstances, as provided in 10 CFR 50.12(a)(2)(ii), are present justifying the exemption; namely, that application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule.

The underlying purpose of the requirement to perform Type A containment leak rate tests at intervals during the 10-year service period is to ensure that any potential leakage pathways through the containment boundary are identified within a time span that prevents significant degradation from continuing or becoming unknown. The NRC staff has reviewed the basis and supporting information provided by North Atlantic in the exemption request. The NRC staff has noted that North Atlantic has a good record of ensuring a leak-tight containment. All Type A tests have passed with significant margin and North Atlantic has noted that the results of the Type A testing have been confirmatory of the Type B and C tests which will continue to be performed. North Atlantic also has committed to perform, notwithstanding the granting of the proposed exemption, a general inspection of the containment and containment enclosure during the fourth refueling outage even though such an inspection is required by Appendix J, Section V.A. and the Seabrook Appendix A Technical Specifications to be performed only prior to Type A tests. The NRC staff considers that these inspections, though limited in scope, provide an important added level of confidence in the continued integrity of the containment boundary.

The licensee performed a risk analysis which demonstrates that the extension in the Type A test interval would result in a negligible increase in risk. These results are consistent with calculations performed for EPRI (as reported in EPRI

TR–104285, "Risk Impact Assessment of Revised Leak Rate Testing Intervals, August 1994) and the staff study reported in NUREG–1493, "Performance-Based Containment Leak Test Program."

the NRC staff has also made use of the information in a draft staff report, NUREG–1493, which provides the technical justification for the present Appendix J rulemaking effort which also includes a 10-year test interval for Type A tests. The integrated leakage rate test, or Type A test, measures overall containment leakage. However, operating experience with all types of containments used in this country demonstrates that essentially all containment leakage can be detected by local leakage rate tests (Type B and C). According to results given in NUREG–1493, out of 180 ILRT failure reports covering 110 individual reactors and approximately 770 years of operating history, only 5 ILRT failures were found which local leakage rate testing could not detect. Thus, Type A testing detected failures not discovered by Type B and C testing in about 3% of the tests, and in these tests the actual leakage rates were only marginally in excess of leak-tightness requirements. This study agrees well with previous NRC staff studies which show that Type B and C testing can detect a very large percentage of containment leaks.

The Nuclear Management and Resources Council (NUMARC), now known as the Nuclear Energy Institute (NEI), provided the NRC staff with summaries of data to assist in the Appendix J rulemaking effort. NUMARC collected results of 144 ILRTs from 33 units; 23 ILRTs exceeded $1.0L_a$. Of these, only nine were not due to Type B or C leakage penalties. The NEI data also added another perspective. The NEI data show that in about one-third of the cases exceeding allowable leakage, the as-found leakage was less than $2L_a$; in one case the leakage was found to be approximately $2L_a$; in one case the as-found leakage was less than $3L_a$; one case approached $10L_a$; and in one case the leakage was found to be approximately $21L_a$. For about half of the failed ILRTs the as-found leakage was not quantified. These data show that, for those ILRTs for which the leakage was quantified, the leakage values are small in comparison to the leakage value at which the risk to the public starts to increase over the value of risk corresponding to L_a (approximately $200L_a$, as discussed in NUREG–1493). Therefore, based on these considerations, it is unlikely that an extension of one cycle for the performance of the Appendix J, Type A test at Seabrook would result in significant degradation of the overall containment integrity. As a result, the application of the regulation in these particular circumstances is not necessary to achieve the underlying purpose of the rule.

Based on generic and plant specific data, the NRC staff finds the basis for North Atlantic's proposed exemption to allow a one-time exemption to permit a schedular extension of one cycle for the performance of the Appendix J Type A test to be acceptable provided that the general containment inspection is performed.

Pursuant to 10 CFR 51.32, the Commission has determined that granting this Exemption will not have a significant impact on the environment (60 FR 27569).

This Exemption is effective upon issuance and shall expire at the completion of the fifth refueling outage, presently expected to start in September 1997.

Dated at Rockville, Maryland, this 25th day of May 1995.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Acting Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–13357 Filed 5–31–95; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Notice of Request for Expedited Review of New Form RI 38–128

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces a request for an expedited review of a new information collection. Form RI 38–128, Payment Election Form, provides the opportunity for an annuitant to elect Direct Deposit or a paper check. This election is required only once: When a person is first put on the annuity roll. If there is no evidence that the separating agency gave the person this election, OPM must provide this form. As agencies learn to give retiring employees this election opportunity, OPM will send fewer election forms; however, this form will always be needed for deferred annuitants and survivor annuitants.

Approximately 65,320 RI 38–128 forms will be completed annually. We estimate that it takes 30 minutes to fill out the form. The annual burden is 32,660 hours.

A copy of this proposal is appended to this notice.

DATES: Comments on this proposal should be received within three (3) calendar days from the date of this publication. OMB has been asked to take action within five (5) calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—

Lorraine E. Dettman, Retirement and Insurance Service, Operations Support Division, U.S. Office of Personnel Management, 1900 E. Street NW., Room 3349, Washington, DC 20415

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building NW., Room 10235, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Mary Beth Smith-Toomey, Forms Analysis and Design, (202) 606–0623.

United States Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

BILLING CODE 6325–01–M

U.S. Office of Personnel Management
Retirement Operations Center
Post Office Box 440
Boyers, PA 16017-0440

OMB Approved
No: 3206-XXXX

Date:

It's Time to Sign Up for Direct Deposit

Public Law 103-356 requires that regular annuity payments begun on or after January 1, 1995, must be paid by Direct Deposit into a savings or checking account at a financial institution, unless a request for waiver of that requirement is submitted **in writing** so that payment may be made by check.

More than two-thirds of retirees have elected Direct Deposit. They gave it a 97% approval rating in a recent survey. That's because choosing Direct Deposit is a win-win situation all around. You avoid the bother of traveling to a bank or other financial institution to cash or deposit your check. You may earn a few days extra interest each month, and you save travel costs and time. Direct Deposit is a safeguard against your checks being stolen, and you avoid any possible mail delay. Finally, OPM, and your fellow taxpayers, save the difference in cost between Direct Deposit and payment by check ($.33 per payment). Please take these advantages into consideration when you make your decision.

Please complete the election information on the reverse of this letter, and submit it in the return envelope enclosed.

Thank you.

Office of Retirement Programs

Enclosure

Public Burden Statement

We think this form takes an average of 30 minutes to complete, including the time for reviewing instructions, getting the needed data, and reviewing the completed form. Send comments regarding our estimate or any other aspect of this form, including suggestions for reducing completion time, to the Office of Personnel Management, OPM Reports and Forms Officer, Washington, DC 20415.

RI 38-128
April 1995

Applicant's name
Claim number

Annuity Payment Election Form

To have your annuity payments made by Direct Deposit, please complete Section A. You may also receive Direct Deposit by completing a Standard Form 1199A (available at most financial institutions). If you want to receive your payments by check, please complete Section B to request a waiver of the Direct Deposit requirement.

Section A - Payment by Direct Deposit

I want to receive my annuity payments by Direct Deposit into the account indicated below. I have checked with my financial institution and confirmed that the following information is correct.

Account number	Account type ☐ Checking ☐ Savings
Financial institution routing number ⇨	Call your financial institution for the routing number. We cannot pay by Direct Deposit without it. If your financial institution indicates the information on your personal check is correct for Direct Deposit, you may attach a voided check instead of entering the information here.
Name, address and telephone number of your financial institution. ( )	
Signature	Date

Section B - Payment by Check

I want to be paid by check. I therefore request waiver of the requirement that I be paid by Direct Deposit. I understand that I may sign up for Direct Deposit at a later date.

Signature	Date

Reverse of RI 38-128
April 1995

[FR Doc. 95-13317 Filed 5-31-95; 8:45 am]
BILLING CODE 6325-01-C

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-35758; File No. SR-DTC-95-10]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Proposed Rule Change Seeking To Implement the Advice of Confirm Correction/Cancellation Feature and To Modify the Authorization/Exception Processing Feature of the Institutional Delivery System

May 24, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,[1] notice is hereby given that on April 27, 1995, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change involves the Advice of Confirm Correction/Cancellation feature and a modification of Authorization/Exception processing in the Institutional Delivery ("ID") system of DTC.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In a previous filing with the Commission, DTC described several enhancements to the ID system that it planned to implement, including the Advice of Confirm Correction/Cancellation feature and the modification of Authorization/Exception processing.[4] These are the subject of this proposed rule change.

The Advice of Confirm Correction/Cancellation feature is one of three electronic mail features described in the Enhanced ID Filing. The other two electronic mail features are the Notice of Order Execution and Institution Instructions, which were the subjects of another DTC filing.[5] The Advice of Confirm Correction/Cancellation feature will enable an institution or its agent which has received a confirmation through the ID system to notify the broker-dealer of the reason(s) why the institution disagrees with the confirmation. This communication from the institution, which is sometimes called a "DK" (*i.e.*, don't know) of the trade, will enable the broker-dealer to take steps to resolve the discrepancy between its records of the trade and the institution's records. The Advice of Confirm Correction/Cancellation was described in another DTC filing as a feature which will enable a prime broker to DK a trade when it receives an ID confirmation from an executing broker.[6]

The Enhanced ID Filing also described a planned modification of Authorization/Exception processing to extend the period during which delivering parties are allowed to authorize settlement of trades or to except trades from settlement. Prior to the modification, only ID trades which settled on the third day following the trade date ("T+3") or later could be authorized or excepted from settlement through an instruction submitted in Authorization/Exception processing on settlement date minus one ("S-1"). The modification allows authorization or exception of trades settling on T+1 and later through an instruction submitted on any of the twenty-three business days from S-1 through S+21.

DTC believes the proposed rule change is consistent with the requirements of Section 17A(b)(3) (A) and (F)[7] of the Act since the proposed rule change will promote efficiencies in the clearance and settlement of transactions in securities. The proposed rule change will be implemented consistently with the safeguarding of securities and funds in DTC's custody or control or for which it is responsible since the proposed rule change will be implemented as enhancements to DTC's existing ID system.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC perceives no impact on competition by reason of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The proposed rule change has been developed through widespread consultations with securities industry members, as described in the Enhanced ID Filing.[8] Written comments from DTC participants or others have not been solicited or received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street,

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] The modifications are set forth in the procedures attached as Exhibit 2 to File No. SR-DTC-95-10. The procedures are an addition to Section M of the ID System of DTC's Participant Operating Procedures. The file is available for review in the Commission's Public Reference Room and at the principal office of DTC.

[3] The Commission has modified the text of the summaries prepared by DTC.

[4] Securities Exchange Act Release No. 33466 (January 12, 1994), 59 FR 3139 [File No. SR-DTC-93-07] (order approving proposed rule change relating to the enhanced ID system) ("Enhanced ID Filing").

[5] Securities Exchange Act Release No. 34199 (June 10, 1994), 59 FR 31660 [File No. SR-DTC-94-04] (order granting accelerated approval of a proposed rule change to implement the interactive capabilities and the electronic mail features of the enhanced ID system).

[6] Securities Exchange Act Release No. 34779 (October 3, 1994), 59 FR 34779 [File No. SR-DTC-94-13] (order granting accelerated approval on a temporary basis through May 31, 1995, of the prime broker option in the ID system).

[7] 15 U.S.C. 78q-1(b)(3) (A) and (F) (1988).

[8] *Supra* note 3.

Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR–DTC–95–10 and should be submitted within June 22, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–13327 Filed 5–31–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35758; File No. SR–Phlx–95–02]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment No. 1 to the Proposed Rule Change, and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 to the Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Additional Expirations for Cash/Spot German Mark Foreign Currency Options ("3D Options")

May 24, 1995.

On January 25, 1995, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list series of cash/spot German mark foreign currency options ("3D Options") having up to 12 months to expiration. On February 24, 1995, the Exchange filed Amendment No. 1 to the proposed rule change.[3] Notice of the proposed rule change and Amendment No. 1 thereto appeared in the **Federal Register** on March 27, 1995.[4] No comment letters were received on the proposed rule change, as amended. The Exchange subsequently filed Amendment No. 2 to the proposal on May 9, 1995.[5] This order approves the Exchange's proposal, as amended.

On March 8, 1994, the Commission approved the listing and trading of 3D Options.[6] 3D Options are issued by The Options Clearing Corporation and are European-style.[7] These FCOs currently have one-week and two-week expirations and were originally designed to provide a hedging vehicle for: sophisticated retail customers, portfolio managers, and multi-national corporations which need to hedge their short term foreign currency exposure; and to banks which need to hedge the risks associated with trading in the forward and cash markets.

The Exchange represents that the users of 3D Options have particularly liked the U.S. dollar settlement feature and have indicated to the Exchange that they would like to be able to use an exchange-traded U.S. dollar settled FCO to hedge longer-term currency risks. As a result, in addition to the current one-week and two-week expiration series of 3D Options, the Phlx proposes to list series of 3D Options on the March, June, September, and December cycle and the two near-term months. Phlx Rules 1012(a)(ii) (B) and (C) are being amended to reflect these additional series of options.

The expiration date for these longer-term 3D Options will be the Monday preceding the third Wednesday of each month. The Exchange will not list 3D Options with month-end expirations or series with more than 12 months to expiration.[8]

Currently, 3D Options are listed with the symbol XDA, XDB, XDC, XDD, or XDE depending on whether they will expire on the first, second, third, fourth, or fifth Monday of the month, respectively. Because the proposed longer-term 3D Options will expire on the Monday before the third Wednesday of each month, they will always expire on either the second or third Monday of the month. Accordingly, the longer-term 3D Options will be listed with the symbol XDB or XDC and will carry that symbol until expiration.

3D Options are currently listed in one-half point strike price intervals. The longer-term 3D Options listed for the three near term months will also be listed in one-half point strike price intervals. The 3D Options listed with six, nine, of twelve months to expiration will have one point strike price intervals.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5)[9] in that the proposal is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and practices, and to protect investors and the public interest. Specifically, the Commission believes that the proposal is designed to provide investors an additional means of hedging foreign currency portfolios and cash flows with longer-term market risk, thereby facilitating transactions in FCOs. The Commission believes that by allowing the Phlx to list these options with up to 12 months to expiration, investors will be provided with greater flexibility to tailor FCO positions to satisfy their investment objectives.[10] In this regard, the Commission notes that the Phlx has stated that the longer-term 3D Options will meet the needs of investment managers who are seeking to protect portfolios against foreign exchange fluctuations but who do not wish to receive or deliver the underlying currency to achieve that goal. Similarly, the Exchange believes that corporate treasurers seeking balance sheet protection would also prefer paying or receiving U.S. dollars rather than exchanging German marks. Both of these potential users may have long-term concerns for which the one-week and two-week expiration 3D Options would not be an appropriate hedging vehicle. Finally, the Exchange believes that retail traders who may have a long-term market perspective will find the longer-term 3D Options attractive because they will not have to establish foreign bank credit lines or have to deal with the delivery or receipt of the underlying foreign currency at settlement.[11]

Additionally, the Commission notes that except as modified herein, all of the representations made by the Exchange and all of the rules approved by the Commission in connection with the 3D Approval Order, including, but not limited to, aggregation with regular Deutsche mark FCOs for position and exercise limit purposes, extended trading hours on expiration Mondays, Exchange and bank holidays on which 3D Options will not expire, and automatic exercise of in-the-money 3D Options,[12] will also apply to the longer-term 3D Options listed pursuant to this approval.[13]

As a result, for the reasons stated above and in the 3D Approval Order,[14] the Commission finds that the proposed rule change is consistent with the Act.

The Commission finds good cause for approving Amendment No. 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Specifically, Amendment No. 2 merely withdraws the Exchange's request for spread margin treatment between the Exchange's German mark FCOs and the 3D Options.[15] Because the requested spread margin treatment would have been a liberalization of the Exchange's existing margin rules, withdrawing this request from the proposal does not raise any regulatory issues.

The Commission notes that the termination by the Phlx of its relationship with one of the vendors used to calculate the settlement value for the 3D Options is, in this case, a non-substantive change. In this regard, based on the representations by the Phlx describing the procedures used for calculating the settlement value, including the backup procedures to be used in the event of a complication, the Commission believes that the Phlx will be able to continue to comply with the procedures specified in the 3D Approval Order despite this change.[16] Accordingly, the Commission believes it is consistent with Section 6(b)(5) of the Act to approve Amendment No. 2 to the Phlx's proposal on an accelerated basis.

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 2. Persons making written submissions should file six copies thereof with the Secretary, Securities, and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx.[16]

All submissions should refer to the File No. SR–Phlx–95–02 and should be submitted by June 22, 1995.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[17] that the proposed rule change (SR–Phlx–95–02), as amended, is approved contingent upon the Exchange's submission to the Commission of adequate systems capacity representations.[18]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–13413 Filed 5–31–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35761; File No. SR–NASD–95–19]

Self-Regulatory Organizations: Notice of Filing of Proposed Rule change by National Association of Securities Dealers, Inc. Relating to Limited Partnership Rollup Transactions

May 24, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. § 78s(b)(1), notice is hereby given that on May 4, 1995 the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the terms of Substance of the Proposed Rule Change

The NASD is herewith filing a proposed rule change to add new paragraph 7 to Subsection (b)(2)(B)(vii)d. of Article III, Section 34 of the Rules of Fair Practice and to add new paragraph (vii) to Subsection (14)(D) to Part I of Schedule D to the By-Laws to exclude investment companies and business development companies from the definition of "limited partnership rollup transaction." The specific text of the rule change would apply to "a transaction involving only

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[9] 17 CFR 200.30–3(a)(12) (1994).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[3] In Amendment No. 1, the Exchange proposed to: (1) amend the procedure for the symbols that will be used for the proposed longer term 3D Options, (2) change the name of these options in Phlx's rules from "cash/spot" to "3D" foreign currency options ("FCOs"); and (3) specify the strike price intervals applicable to the longer-term 3D Options. *See* Letter from Michele Weisbaum, Associate General Counsel, Phlx, to Brad Ritter, Senior Counsel, Office of Market Supervision ("OMS"), Division of Market Regulation ("Division"), Commission, dated February 24, 1995. Amendment No. 1 also clarified the proposal to allow spread margin between the 3D Options and the regular Deutsche mark FCO. This proposal, however, was later withdrawn in Amendment No. 2. *See* Amendment No. 2, *supra* note 5.

[4] *See* Securities Exchange Act Release No. 35520 (March 21, 1995), 60 FR 15807.

[5] In Amendment No. 2, the Exchange withdrew its request for spread margin treatment between the Exchange's German mark FCOs and the 3D Options. Additionally, the Exchange notified the Commission that it is terminating its agreement with one of the two outside vendors that it had contracted with to calculate the settlement value of the 3D Options. *See* Letter from Michele Weisbaum, Associate General Counsel, Phlx, to Brad Ritter, Senior Counsel, OMS, Division, Commission, dated May 8, 1995 ("Amendment No. 2").

[6] *See* Securities Exchange Act Release No. 33732 (March 8, 1994), 59 FR 12023 (March 15, 1994) ("3D Approval Order").

[7] A European-style option may only be exercised during a specified time period immediately prior to expiration of the option.

[8] The Exchange is also amending Phlx Rules 1000, 1012, 1014, 1057, and 1069 to change references from "cash/spot" FCOs to "3D" FCOs, as these options are more commonly referred to. The Exchange is also making some non-substantive changes to Rule 1012 for ease of reading.

[9] 15 U.S.C. 78f(b)(5) (1988).

[10] Pursuant to Section 6(b)(5) of the Act, the Commission must predicate approval of any new option proposal upon a finding that the introduction of such new derivative instrument is in the public interest. Such a finding would be difficult for a derivative instrument that served no hedging or other economic function because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

[11] The Commission notes that prior to listing longer-term 3D Options the Exchange will be required to provide written representations that both the Exchange and the Options Price Reporting Authority have the necessary systems capacity to support these new series of options.

[12] *See* 3D Approval Order, *supra* note 6.

[13] One additional modification herein is with regard to customer margin. In connection with the 3D Approval Order, the Phlx agreed to collect margin within two days following the date on which a customer enters into a cash/spot FCO position and to maintain customer margin at a level sufficient to produce at least a 97% confidence level in the volatility of the Deutsche mark in relation to the U.S. dollar for all two-day intervals during the two year period preceding the time of measurement. These margin provisions will apply to the longer-term 3D Options only when these options have two weeks or less to expiration. At all other times, the Exchange's customer margin procedures applicable to the Phlx's regular Deutsche mark FCOs will apply. Telephone conversation between Michele Weisbaum, Associate General Counsel, Phlx, and Brad Ritter, Senior Counsel, OMS, Division, Commission, on May 23, 1995.

[14] *See* 3D Approval Order, *supra* note 6.

[15] *See* Amendment No. 2, *supra* note 5.

[16] *See* 3D Approval Order, *supra* note 6. The Commission expects the Phlx to continue to notify the Commission prior to making any change in the procedures approved in the 3D Approval Order.

[17] 15 U.S.C. 78s(b)(2) (1988).

[18] *See supra* note 11.

[19] 17 CFR 200.30–3(a)(12) (1994).

entities registered under the Investment Company Act of 1940 or any Business Development Company as defined in Section 2(a)(48) of that Act."

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Section (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Federal legislation regulating limited partnership rollups ("Rollup Reform Act") was signed into law on December 17, 1993, and contained a mandate for the NASD to adopt its own rollup rule. The NASD's rule regulating rollups ("Rollup Rule") was approved by the SEC on August 15, 1994 [1] and amended Article III, Section 34 of the NASD Rules of Fair Practice to prohibit NASD members and associated persons from participating in a "limited partnership rollup transaction" unless the transaction includes specified provisions to protect the rights of limited partners. The Rollup Rule further amended Part III of Schedule D to the By-Laws to prohibit the authorization for quotation on the Nasdaq National Market of any security resulting from a "limited partnership rollup transaction" unless the transaction is conducted in accordance with certain specified procedures designed to protect the rights of dissenting limited partners. The NASD Roll Up Rule was designed to conform to the federal roll up legislation.

Subsequent to approving the NASA's Rollup Rule, the SEC adopted new Rule 3b–11 to exclude from the definition of "limited partnership rollup transaction," among other things, transactions involving entities registered under the Investment Company Act of 1940 (the "1940 Act") or any Business Development Company as defined in Section 2(a)(48) of the 1940 Act.[2] In its adopting release, the SEC stated that it was adopting the new Rule in order to define related terms used in the federal rollup definition ". . . for purposes of, among other things, the SRO rules."

The SEC has requested that the NASD amend the Rollup Rule to conform the NASD's definition of "limited partnership rollup transaction" to the definition adopted by the SEC. The proposed rule change amends the Rollup Rule by adding as an exclusion for investment companies and business development companies to the definition of "limited partnership rollup transaction"new paragraph 7 to Subsection (b)(2)(B)(vii)d. to Article III, Section 34 of the Rules of Fair Practice and new paragraph (vii) to Subsection 14(D) to Part I of Schedule D. Thus, if the proposed rule change is adopted, investment companies and business development companies would be excluded from the purview of the Rollup Rule. Investment Companies and Business Development Companies are already subject to extensive regulation under the 1940 Act and have not been perceived as entities connected with the types of abusive limited partnership rollup transactions for which investor protection provisions of the rollup rules were sought.

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[3] which require that the rules of the association be designed to prevent fraudulent and manipulative acts and promote just and equitable principles of trade in that the proposed rule change provides for regulatory consistency in the definition of "limited partnership rollup transaction" and appropriately excludes investment companies and business development companies from unnecessary, and potentially burdensome, additional regulation.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission,and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at a principal office of the NASD. All submissions should refer to File No. SR–NASD–95–19 and should be submitted by June 22, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–13307 Filed 5–31–95; 8:45 am]

BILLING CODE 8010–01–M

[1] *See*, Securities Exchange Act Release No. 34533 (August 15, 1994); 59 FR 43147 (August 22, 1994).

[2] *See*, Securities Act Release No. 7113; Securities Exchange Act Release No. 35036 (December 2, 1994); 59 FR 63676 (December 8, 1994).

[3] 15 U.S.C. § 78o–3.

[Rel. No. IC–21095; 811–8442]

Countdown to Retirement Funds; Notice of Application

May 24, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Countdown to Retirement Funds.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on April 19, 1995 and amended on May 22, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 19, 1995 and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicant, 1807 South Washington Avenue, Suite 106, Naperville, Illinois 60565.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Staff Attorney, at (202) 942–0574, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is registered as an open-end management investment company under the Act and organized as an Ohio business trust. On March 22, 1994, applicant registered under the Act as an investment company and filed a registration statement on Form N–1A to register its shares under the Securities Act of 1933. The registration statement became effective on June 22, 1994, and applicant commenced the initial public offering of its Retire 2010 series and Retire 2020 series promptly thereafter.

2. On March 25, 1995, after determining that the continued operation of applicant would be uneconomical and not in the best interest of shareholders, applicant's board of trustees unanimously authorized the liquidation of applicant pending shareholder approval. On or about March 25, 1995, applicant notified each of the remaining shareholders by phone of the situation concerning the future of their fund. Notification was made by phone as all non-affiliated shareholders were personal friends of the adviser. These non-affiliated shareholders requested redemption of their shares on various dates and such redemptions occurred at the prevailing net asset value on the date the redemption request was received.

3. On April 15, 1995, all non-affiliated shareholders had completed redemption of their shares. The board approved the deregistration on April 17, 1995, after the sole remaining shareholder, Gregory L. Bruno, President and Founder of the funds, voted to deregister and wind up the affairs of applicant. After the termination of the funds, the remaining portfolio securities were then transferred to Gregory L. Bruno.

4. Distributions to all securityholders in complete liquidation of their interests have been made. Applicant incurred $175 in brokerage commissions with respect to the disposition of its Retire 2010 portfolio securities, and $50 with respect to its Retire 2020 portfolio securities. Liquidation expenses are inconsequential and will be borne by Countdown Management Corporation, applicant's investment adviser.

5. As of the date of the application, applicant had no debts or liabilities and is not a party to any litigation or administrative proceeding.

6. Applicant is neither engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding-up of its affairs. Applicant intends to file all documents required to terminate its existence as an Ohio business trust.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–13328 Filed 5–31–95; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Economic Injury Disaster Local Area #8530]

North Carolina; Declaration of Disaster Loan Area

Buncombe County and the contiguous counties of Haywood, Henderson, Madison, McDowell, Rutherford, Transylvania, and Yancey in the State of North Carolina constitute an economic injury disaster area as a result of damages caused by a fire in the City of Asheville which occurred on April 2, 1995. Eligible small businesses without credit available elsewhere and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance until the close of business on February 26, 1996 at the address listed below:

U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, Georgia 30308.

Or other locally announced locations. The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

(Catalog of Federal Domestic Assistance Program No. 59002)

Dated: May 25, 1995.

Philip Lader,

Administrator.

[FR Doc. 95–13440 Filed 5–31–95; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2778]

Ohio (And Contiguous Counties in West Virginia); Declaration of Disaster Loan Area

Meigs County and the contiguous counties of Athens, Gallia, and Vinton in the State of Ohio and Jackson, Mason, and Wood Counties in the State of West Virginia constitute a disaster area as a result of damages caused by heavy rains and flooding on May 13–14, 1995. Applications for loans for physical damage may be filed until the close of business on July 24, 1995 and for economic injury until the close of business on February 26, 1996 at the address listed below: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308, or other local announced locations.

The interest rates are:

For physical damage:	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125
For economic injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The numbers assigned to this disaster for physical damage are 277806 for Ohio and 277906 for West Virginia. for economic injury the numbers are 852700 for Ohio and 852800 for West Virginia.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 25, 1995.

Philip Lader,

Administrator.

[FR Doc. 95–13441 Filed 5–31–95; 8:45 am]

BILLING CODE 8025–01–M

OFFICE OF SPECIAL COUNSEL

Agency Forms Submitted for Office of Management and Budget (OMB) Review Notice

SUMMARY: In accordance with the Paperwork Reduction Act of 1980, as amended (44 U.S.C. Chapter 35), the U.S. Office of Special Counsel (OSC) is submitting a proposal for the collection of information to OMB for review and approval.

(1) *Type of request:* New collection
(2) *OMB Number:* New information collection
(3) *Collection title:* OSC Surveys (OSC Forms 48a–48c)
(4) *Collection description:* Three written surveys seeking qualitative information in completed cases from individuals who have (a) alleged prohibited personnel practices resolved after review by the Complaints Examining Unit (CEU), or after full field investigation and legal review by OSC; (b) received written Hatch Act advisory opinions from OSC; and (c) disclosed possible wrongdoing by federal agencies to OSC. The collection of information will be conducted pursuant to Public Law (P.L.) 101–12, as amended, and a new statutory survey requirement enacted at § 13 of P.L. 103–424.
(5) *Respondents:* Federal employees will be the primary respondents. State or local government employees, businesses or other for-profit entities, non-profit institutions, and small businesses or organizations may be respondents on an occasional, infrequent basis.
(6) *Estimated annual number of respondents:* 1,576 (maximum).
(7) *Estimated annual number of responses:* Same as Item (6).
(8) *Proposed frequency of response:* Once per matter completed by OSC (maximum).
(9) *Estimated average burden hours per response:* .1333 hours
(10) *Estimated total annual reporting burden:* 211 hours.

ADDRESSES: Requests for further information should be addressed to Erin M. McDonnell, Associate Special Counsel for Planning and Advice, U.S. Office of Special Counsel, 1730 M Street NW. (Suite 300), Washington, DC 20036–4505. Comments should be made within 30 days of the date of publication of this notice, and should be addressed to Joseph F. Lackey, Office of Management and Budget, new Executive Office Building, Room 10235, 1725–17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Erin M. McDonnell, Associate Special Counsel for Planning and Advice, U.S. Office of Special Counsel, 1730 M Street NW. (Suite 300), Washington, DC 20036–4505, (202) 653–8971 [phone], (202) 653–5161 [fax].

SUPPLEMENTARY INFORMATION: Copies of the forms and supporting documents can be obtained from Erin M. McDonnell, Associate Special Counsel for Planning and Advice, at the address shown above.

Dated: May 25, 1995.

James A. Kahl,

Deputy Special Counsel.

[FR Doc. 95–13341 Filed 5–31–95; 8:45 am]

BILLING CODE 3046–01–M

SOCIAL SECURITY ADMINISTRATION

Representative Payment Advisory Committee; Notice of Establishment

Pursuant to Pub. L. 92–463, the Federal Advisory Committee Act, as amended, (5 U.S.C. App.), the Social Security Administration announces the establishment by the Commissioner of the Representative Payment Advisory Committee.

The Committee shall advise the Commissioner concerning representative payment policy in five broad areas: (1) Beneficiary incapability; (2) payee selection; (3) payee recruitment and retention; (4) standards for payee performance; and (5) payee oversight. The Committee shall assess the need for change in representative payment policy and make recommendations for possible legislation. The Committee is necessary and in the public interest.

The Committee will consist of at least 13 members, including the Chair, who are knowledgeable of the issues related to the Committee's function. They shall be selected from outstanding authorities in the fields of social services; disability, including mental health, developmental disabilities, and substance abuse; elder concerns; social welfare law; and State/local government. The Commissioner will give close attention to equitable geographic distribution and to minority and female representation as appropriate. Appointments shall be made without discrimination on the basis of age, race, sex, cultural, religious or socioeconomic status.

The Committee shall terminate after submission of its final report on July 1, 1996, unless the Commissioner formally determines that continuance is in the public interest and renews the Committee.

Sandy Crank,

Associate Commissioner, Office of Program Benefits Policy.

[FR Doc. 95–13363 Filed 5–31–95; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 95–046]

Closure of Coast Guard Facilities on Governors Island, NY, and Relocation of Coast Guard Facilities; Environmental Assessment and Draft Finding of No Significant Impact

AGENCY: Coast Guard, DOT.

ACTION: Notice of availability.

SUMMARY: The Coast Guard has prepared an Environmental Assessment (EA) and a draft Finding of No Significant Impact (FONSI) for the closure of Coast Guard facilities on Governors Island and relocation of Coast Guard operations and facilities to several receiving sites. The EA concluded that there will be no significant impact on the environment and that preparation of an Environmental Impact Statement will not be necessary. This notice announces the availability of the EA and draft FONSI and solicits comments.

DATES: Comments must be received on or before July 3, 1995.

ADDRESSES: Comments may be mailed to the Commanding Officer, U.S. Coast Guard Civil Engineering Unit Providence, 300 Metro Center Blvd., Warwick, RI 02886, or may be delivered to the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal Holidays. The telephone number is (401) 736–1776.

Copies of the EA and draft FONSI may be obtained by contacting LCDR Dan Takasugi at (401) 736–1776 or faxing a request to (401) 736–1704. Several copies of the EA and draft FONSI are also available for inspection at the Governors Island Library; the New Amsterdam Public Library, 9 Murray Street, New York, NY 10007; the St. George Public Library, 5 Central Avenue, Staten Island, NY 10301; and the Middletown Public Library, 55 New Monmouth Road, Middletown, NJ 07748.

FOR FURTHER INFORMATION CONTACT: LCDR Dan Takasugi, Executive Officer, Civil Engineering Unit Providence, (401) 736–1776.

Request for Comments

Copies of the EA and draft FONSI are available as described under **ADDRESSES.** The Coast Guard encourages interested persons to comment on these documents. The Coast Guard will consider these comments prior to making a decision to implement closure and relocation actions.

Background

Governors Island is located in New York Harbor, south of Manhattan and west of Brooklyn. It houses a large U.S. Coast Guard (USCG) facility, Support Center New York, and a number of tenant commands. The 172-acre island is surrounded by a seawall and is accessed by ferry from Manhattan.

The USCG is looking for a means to reduce its annual operating costs and closure of the Governors Island facility is intended to partially fulfill that goal. The USCG functions at Governors Island would be relocated off the island.

This Environmental Assessment (EA) was prepared pursuant to the National Environmental Policy Act (NEPA) of 1969 and evaluates the potential environmental impacts of closure of Coast Guard facilities at Governors Island. It also evaluates the potential environmental impacts of relocating these facilities to other sites in the New York Harbor region including: land use; infrastructure (traffic and utilities); public services; public health and safety; noise; air quality; geology and soils; water resources; biological resources; cultural resources; and socioeconomics.

Those facilities on Governors Island which provide service to the New York Harbor region would be relocated to other facilities within the New York Harbor region located at the Battery Park Building, Military Ocean Terminal Bayonne, Rosebank, Wadsworth, and Sandy Hook. The description of the relocation sites is as follows:

(a) The Battery Park Building: The proposed action would relocate various local functions from Governors Island to the Battery Park Building in Manhattan. This would include offices for the Coast Guard Auxiliary, Recruiting, Law Enforcement, Licensing and Inspection, and Automated Mutual Assistance Vessel Rescue System (AMVER) programs. No vessels would be relocated from Governors Island to the Battery Park Building. The building would be renovated but no building demolition or construction would be involved.

(b) Military Ocean Terminal Bayonne, NJ: The proposed action would relocate the Aids to Navigation Team (ANT) and nine Coast Guard vessels currently stationed at Governors Island to Bayonne, New Jersey. Cutters that would be relocated at Bayonne include the U.S. Coast Guard (USCGC) RED BEECH (a 157-foot buoy tender), USCGC PENOBSCOT BAY (a 140-foot cutter), USCGC STURGEON BAY (a 140-foot cutter), two 65-foot tugboats, two 46-foot buoy tenders, and two 21-foot vessels. Construction activities would include wharf improvements, new floating docks, a new fuel system, and new shore ties. A new building would be constructed for the ANT team for new facilities, storage, and parking. Storage areas would be used for hazardous materials (batteries, paints, solvents, and lubricants) and storage for vehicles, trailer-mounted vessels, and ANT supplies.

(c) Rosebank, Staten Island: The proposed action would relocate Station New York from Governors Island to Rosebank on Staten Island. Six search and rescue vessels and related equipment would be relocated at Rosebank. New construction would include the replacement of existing piers, the addition of wave screens, and the addition of a new fueling system for these vessels. Two buildings would be demolished and replaced, and existing housing in two other buildings would be renovated.

(d) Wadsworth, Staten Island: The proposed action would relocate Group New York administrative offices, the Vessel Traffic Service (VTS) control room, and the Marine Safety Office to Wadsworth on Staten Island. No vessels would be relocated to this facility. Construction activities would include the renovation of one building and a portion of an existing building, and the demolition of three buildings for new parking areas.

(e) Sandy Hook, NJ: The proposed action would relocate Group New York engineering functions to Sandy Hook, in New Jersey. No vessels would be relocated to this facility.

Construction activities would include the renovation of the Administrative building and boathouse, demolition of the Maintenance and Repair building, the construction of a new Group Engineering building, and parking improvements.

Two alternatives for the closure of Coast Guard facilities at Governors Island are discussed in the Environmental Assessment: closure with standard maintenance, and closure with basic maintenance. Under both alternatives, the relocation of tenant commands would be the same. The standard maintenance alternative would provide utility maintenance, full-time fire and security service, and full building maintenance, consistent with the historic landmark maintenance plan. The basic maintenance alternative would limit government maintenance expenditures to the least amount feasible. A third alternative, the no action alternative, assumes the continued operation of Support Center New York on Governors Island.

The standard maintenance alternative is the preferred alternative. This alternative was determined to have no significant environmental impacts. Consequently, preparation of an Environmental Impact Statement is not required to implement this alternative.

Kent H. Williams,

Vice Admiral, U.S. Coast Guard, Chief of Staff.

[FR Doc. 95–13412 Filed 5–31–95; 8:45 am]

BILLING CODE 4910–14–M

Federal Aviation Administration

[Change to AC No. 120–42A]

Proposed Appendix 7, Reduction of Operator's Inservice Experience Requirement Prior to the Granting of an ETOPS Operational Approval (Accelerated ETOPS Operational Approval), to Advisory Circular 120–42A, Extended Range Operation with Two-Engine Airplanes (ETOPS).

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for comments on proposed Appendix 7 to AC 120–42A.

SUMMARY: Appendix 7 has been developed as an alternate way for air carriers to make ETOPS application as specified in Advisory Circular 120–42A.

DATES: Comments must be submitted on or before July 17, 1995.

ADDRESSES: Send all comments and requests for copies of the proposed Appendix 7 to: Federal Aviation Administration, Program Management Branch, AFS–260, 800 Independence Avenue SW., Washington, DC 20591; or deliver comments to this same address, Room 834.

FOR FURTHER INFORMATION CONTACT: Eric van Opstal, AFS–260, at the above address; telephone (202) 267–3774.

SUPPLEMENTARY INFORMATION:

Comments Invited

Comments on the Accelerated-ETOPS Appendix 7 are solicited, and may be mailed or delivered to the address stated above. Comments may also be electronically uploaded to the FAA, AFS–200 Computer Bulletin Board System (BBS). The telephone number to access the AFS–200 BBS is (202) 267–5231. Comments received through the BBS will be printed in hard copy and maintained on file. Copies of this document may also be received by contacting the office at the above address.

Background

AC 120–42A provides criteria and guidance for the amount of operational inservice experience on specific airframe/engine combination by air carriers in order to obtain FAA operational approval for various levels of ETOPS. There are three levels of ETOPS operational approval. Each level is based on the one engine inoperative diversion time in minutes that the airplane may operate from a suitable alternate landing field.

—75-minute extended range operation may be approved for air carriers with minimal or no inservice experience with the airframe/engine combination.

—120-minute extended range operations may be granted air carriers that have previously gained 12 consecutive months of operational inservice experience with the airframe/engine combination.

—180-minute extended range operations may be granted air carriers that have previously gained 12 consecutive months of operational inservice experience with the specified airframe/engine combination in conducting 120-minute extended range (ETOPS) operations.

The material in Appendix 7 would provide guidance for air carriers that wish to apply an accelerated approach in obtaining higher levels of ETOPS diversion authority. Advisory Circular 120–42A, paragraph 9b, allows for a reduction of the specified inservice experience guidelines with the concurrence of the Flight Standards Service Director.

The Appendix 7 material was jointly developed by participants from the airline industry and manufacturing, the FAA, and other State regulatory authorities. The material has been coordinated and harmonized with the European Joint Aviation Authorities (JAA). The FAA and JAA have agreed that Appendix 7 provides an acceptable means for air carriers to apply for an Accelerated-ETOPS program.

Issued in Washington, D.C., on May 17, 1995.

William J. White,

Deputy Director, Flight Standards Service.

[FR Doc. 95–13403 Filed 5–31–95; 8:45 am]

BILLING CODE 4910–13–M

Approval of Revision to the Approved Noise Compatibility Program for San Diego International Airport-Lindbergh Field, San Diego, CA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the Revision to the Approved Noise Compatibility Program submitted by the San Diego Unified Port District for San Diego International Airport—Lindbergh Field (SAN), San Diego, California, under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96–193) (hereinafter referred to as "the Act") and 14 CFR Part 150. These findings are made in recognition of the description of Federal and non-federal responsibilities in Senate Report No. 96–52 (1980). This revision was submitted subsequent to a determination by the FAA that associated Noise Exposure Maps, submitted under 14 CFR Part 150, were in compliance with applicable requirements effective January 30, 1989. On May 11, 1995, the Assistant Administrator for Airports approved the revision to the Noise Compatibility Program for SAN. This revision provides sound attenuation of four public schools and one private school all located within the 65 dB CNEL contour.

EFFECTIVE DATE: The effective date of the FAA's approval for the Revision to the Approved NCP San Diego International Airport's revised Noise Compatibility Program is May 11, 1995.

FOR FURTHER INFORMATION CONTACT: Charles B. Lieber, Airport Planner, Airports Division, AWP–611.1, Federal Aviation Administration, Western-Pacific Region. Mailing address: P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009–2007. Telephone number (310) 297–1621. Street address: 15000 Aviation Boulevard, Hawthorne, California 90261. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval of the Revision to the Approved Noise Compatibility Program for San Diego International Airport-Lindbergh Field, effective May 11, 1995.

Under Section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (herein after referred to as the "Act"), an airport operator who has previously submitted a Noise Exposure Map may submit to the FAA a Noise Compatibility Program which sets forth the measures taken or proposed by the airport operator for the reduction of existing non compatible land uses and prevention of additional non compatible land uses within the area covered by the Noise Exposure Maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport Noise Compatibility Program developed in accordance with Federal Aviation Regulations (FAR) Part 150 is a local program, not a Federal Program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act, and is limited to the following determinations:

a. The Noise Compatibility Program was developed in accordance with the provisions and procedures of FAR Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing non compatible land uses around the airport and preventing the introduction of additional non compatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal government and;

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of navigable airspace and air traffic control responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an Airport Noise Compatibility Program are delineated in FAR Part 150, Section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, State or local law. Approval does not, by itself, constitute an FAA implementation action. A request for Federal action or approval to implement specific Noise Compatibility Measures may be required and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA under the Airport and Airway Improvement Act of 1982, as amended. Where Federal funding is sought, requests for project grants must be submitted to the FAA Airports Division Office in Hawthorne, California.

The San Diego Unified Port District submitted to the FAA on November 7, 1986 and December 11, 1987, the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from September 1985 through September 1989. The San Diego International Airport-Lindbergh Field noise exposure maps were determined by FAA to be in compliance with applicable requirements on January 30, 1989. Notice of this determination was published in the **Federal Register** on March 30, 1989.

The San Diego International Airport-Lindbergh Field study contained a proposed Noise Compatibility Program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to the year 1990. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on December 5, 1990 and was required by a provision of the Act to approve or disapprove the program within 180-days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed an approval of such program. The Noise Compatibility Program was approved by the FAA on June 5, 1991. On February 10, 1995, the FAA began its review of the Revision to the approved program and was required by a provision of the Act to approve or disapprove the program within 180-day (other than the use of new flight procedures for noise control).

The submitted revision to the program contained one proposed action for installation of sound insulation of four (4) public schools one (1) private school inside the 65 dB CNEL contour. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The revision to the program was approved by the Assistant Administrator for Airports effective May 12, 1995.

Outright approval was granted for one (1) new noise program measure for installation of sound insulation of four (4) public schools and one (1) private school inside the 65 dB CNEL contour.

This determination is set forth in detail in a Record of Approval endorsed by the Associate Administrator for Airports on May 11, 1995. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of the San Diego Unified Port District, San Diego, California.

Issued in Hawthorne, California on May 17, 1995.

Robert C. Bloom,

Acting Manager, Airports Division, AWP–600, Western-Pacific Region.

[FR Doc. 95–13404 Filed 5–31–95; 8:45 am]

BILLING CODE 4910–13–M

Air Traffic Control Tower; Grand Prairie, TX

AGENCY: Federal Aviation Administration [FAA], DOT.

ACTION: Notice of Commissioning.

SUMMARY: Notice is hereby given that on or about June 1, 1995, the airport traffic control tower at Grand Prairie Municipal Airport, Grand Prairie, Texas, will be commissioned. Hours of operation for the tower will be published in the Airport/Facility Directory. The designated facility identification for the airport control tower will be: Grand Prairie Tower.

Communications with the tower should be directed to:

Midwest ATC, 3102 S. Great Southwest Parkway, P.O. Box 53405, Grand Prairie, TX 75053–4045.

Authority: 49 U.S.C. app. 1348, 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

Issued in Fort Worth, Texas, on May 8, 1995.

Clyde DeHart, Jr.,

Regional Administrator, Southwest Region.

[FR Doc. 95–13405 Filed 5–31–95; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement: Virginia Counties of Spotsylvania and Stafford and the City of Fredericksburg

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared to investigate transportation alternatives for a proposal transportation corridor between the Virginia Counties of Spotsylvania and Stafford.

FOR FURTHER INFORMATION CONTACT: Mr. Bruce J. Turner, Transportation Planner, Federal Highway Administration, The Dale Building, Suite 205, 1504 Santa Rosa Road, Richmond, Virginia 23229, Telephone: (804) 281–5111.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Virginia Department of Transportation, will prepare an environmental impact statement (EIS) for various alternatives develop to alleviate congestion and provide a transportation corridor west of the City of Fredericksburg on new location from Route 3 in Spotsylvania County to Route 1 in Stafford County and to relieve traffic congestion on existing Routes 3 and 17. The proposed corridor consists of a multi-lane, controlled access roadway and would include a new bridge across the Rappahannock River. The project is estimated to be approximately 14 miles in length. A major metropolitan transportation investment study will be completed in accordance with 23 CFR 450 Subpart C.

Possible alternative to be considered will likely include multi-modal transportation alternatives, the improvement of existing facilities, and new construction. The no-build alternative will be considered throughout the study.

Letter describing the proposed action and soliciting comments have been sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have an interest in this study. A series of public meetings will be held within the study area beginning in the summer of 1995. Additional public outreach will occur through the issuance of project newsletters and the establishment of a study hotline which can be called at no cost within the Commonwealth of Virginia. The toll-free hotline number is 1 (800) 862–1386. The draft EIS will be available for public and agency review

and comment prior to a formal public hearing.

To ensure that the full range of issues related to this project are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.204, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to this proposed action)

Issued on: May 22, 1995.

Roberto Fonseca—Martinez,

Division Administrator, Richmond, Virginia.

[FR Doc. 95–13298 Filed 5–31–95; 8:45 am]

BILLING CODE 4910–22–M

Federal Railroad Administration

Petition for Exemption or Waiver of Compliance

In accordance with Title 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received requests for exemptions from or waivers of compliance with requirements of its safety standards. The individual petitions are described below, including the party seeking relief, the regulatory provisions involved, and the nature of the relief being requested.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number LI–95–3) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

Communications received within 45 days of the date of publication of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) in Room 8201, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

The individual petitions seeking an exemption or waiver of compliance are as follows:

Union Pacific Railroad Company (UP), Chicago and North Western Railway Company (CNW) (Waiver Petition Docket Number LI–95–5)

Union Pacific Railroad Company (UP) and Chicago and North Western Railway Company (CNW) jointly seek a temporary waiver of compliance with certain provisions of the Locomotive Safety Standards (Title 49 CFR Part 229) for certain locomotives. UP/CNW are seeking relief from the requirements of §§ 229.5 and 229.135 that all trains operating over 30 mph shall be equipped with an event recorder that records cab signal indications, when equipped with cab signals, by May 5, 1995. UP/CNW requests an extension of 12-months.

The Locomotive Safety Standards were revised on July 8, 1993, to require each lead locomotive of trains operating over 30 mph to be equipped with an event recorder by May 5, 1995. An event recorder, by definition, shall record cab signal aspects where the locomotive is so equipped. UP/CNW each have cab signal systems, however, the two systems are not compatible. Locomotives which operate jointly in cab signal territory on both railroads are equipped with both types of cab signals but record only the cab signal aspect of the owning railroad. If a CNW locomotive operates in the lead position when in UP cab signal territory, the train will be under the control of the cab signals, however, the aspects will not be recorded. Likewise, if a UP locomotive is in the controlling position when operating in CNW cab signal territory, the signal aspect will not be recorded.

To record both cab signal systems will require extensive modifications. UP/CNW have been working on a resolution to the issues, however, they will not have a solution in place by the May 5 requirement deadline. To permit the necessary time to resolve certain issues and complete the modifications in a manner that is efficient, reasonably economical and, above all, safe, UP and CNW request a temporary waiver until May 5, 1996.

National Railroad Passenger Corporation (Amtrak) (Waiver Petition Docket Number LI–95–3)

The National Railroad Passenger Corporation (Amtrak) seeks waivers of compliance with certain provisions of the Locomotive Safety Standards (Title 49 CFR Part 229) for their locomotives. Amtrak is seeking relief from the requirements of § 229.5 which requires that locomotive event recorders record the direction of motion and from Section 229.135 which requires that all trains operating over 30 mph shall be equipped with an event recorder by May 5.

The Locomotive Safety Standards were revised on July 8, 1993, to require each lead locomotive of trains operating over 30 mph to be equipped with an event recorder by May 5. The railroad states that although material is on hand to equip all of their passenger locomotives, the seven to ten days out-of-service time required for each installation will extend the completion date beyond the May 5 deadline. Thirty switcher locomotives used in work train service must also be equipped since they operate over 30 mph. Amtrak is requesting a 24-month extension to bring all recording systems into compliance.

Section 229.5 specifies the parameters which must be recorded by the event recorders. Amtrak does not record the direction of motion on their passenger locomotives, as required, since these locomotives almost never operate only in the reverse direction on mainline track. With the limited capacity of recorders, Amtrak feels that other parameters (such as horn or alertor cutout) are more important to their operation. Therefore, Amtrak is requesting a waiver from the requirement to record direction of motion on their passenger locomotives. The 30 switcher locomotives will be in full compliance with the regulation. The railroad estimates it would cost approximately $500 per locomotive to retrofit the direction feature to their recorders.

Crab Orchard and Egyptian Railroad (COER) (Waiver Petition Docket Number RSGM–95–6)

The Crab Orchard and Egyptian Railroad (COER) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (Title 49 CFR Part 223) for one locomotive. The locomotive is an EMD Model SW–1 switcher built in 1953 and is presently equipped with safety glass. The railroad has upgraded the recently purchased locomotive to FRA standards; however, it indicates that it has been unable to secure the exact glass and hardware to comply with Part 223. The COER operates on approximately 15 miles of track in rural southern Illinois. The railroad states there have been no incidents of vandalism regarding glazing.

C&S Railroad Corporation (CSKR) (Waiver Petition Docket Number RSGM–95–7)

The C&S Railroad Corporation (CSKR) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (Title 49 CFR Part 223) for one locomotive. The locomotive, STRT 11, an EMD 900 HP switcher built in 1937, is currently covered by waiver Docket Number RSGM–88–19 on the Stewartstown Railroad. The locomotive will be transferred to operate on CSKR. The CSKR operates on approximately 18 miles of track between Packerton Junction, Jim Thorpe and Haucks, Pennsylvania. Maximum track speed is 15 mph through the mostly rural area. The locomotive will be used approximately once per week.

Issued in Washington, D.C. on May 25, 1995.

Phil Olekszyk,

Deputy Associate Administrator for Safety Compliance and Program Implementation.

[FR Doc. 95–13427 Filed 5–31–95; 8:45 am]

BILLING CODE 4910–6–P

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief from the Requirements of Title 49 CFR Part 236

Pursuant to Title 49 CFR Part 235 and 49 U.S.C. App. 26, the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of Title 49 CFR Part 236 as detailed below.

Block Signal Application (BS–AP)-No. 3354

Applicants: CSX Transportation, Incorporated, Mr. D.G. Orr, Chief Engineer—Train Control, 500 Water Street (S/C J–350), Jacksonville, Florida 32202; Norfolk Southern Corporation, Mr. J.W. Smith, Chief Engineer—C&S Communication and Signal Department, 99 Spring Street, S.W., Atlanta, Georgia 30303.

CSX Transportation, Incorporated (CSX) and Norfolk Southern Corporation (NS) jointly seek approval of the proposed discontinuance and removal of the automatic interlocking at 29th Street, milepost 737.0, Birmingham, Alabama, CSX Mobile Division, Boyles Subdivision, where the single CSX main track crosses at grade the single NS yard track. The proposed changes consist of the discontinuance and removal of four interlocking signals, installation of a swing gate normally lined for CSX movements, and government of train operations by Yard Limit Rules.

The reasons given for the proposed changes is to eliminate facilities no longer needed for present day operation.

BS-AP-No. 3355

Applicants: Consolidated Rail Corporation, Mr. J.F. Noffsinger, Chief Engineer—C&S, 2001 Market Street, P.O. Box 41410, Philadelphia, Pennsylvania 19101–1410; Norfolk Southern Corporation, Mr. J.W. Smith, Chief Engineer—C&S, Communication and Signal Department, 99 Spring Street, S.W., Atlanta, Georgia 30303; Indiana Harbor Belt Railroad Company, Mr. C.H. Allen, General Manager, 2721–161st Street, P. O. Box 389, Hammond, Indiana 46325; Northern Indiana Commuter Transportation District, Mr. Victor R. Babin, General Manager, 601 North Roeske Avenue, Michigan City, Indiana 46360–2669.

Consolidated Rail Corporation (Conrail), Norfolk Southern Railway Company (NS), Indiana Harbor Belt Railroad Company (IHB), and Northern Indiana Commuter Transportation District (NICD) jointly seek approval of the proposed modifications to the signal system, on Conrail's S.C.& S Branch, Dearborn Division, between "Hegewisch" Interlocking, milepost 3.9 and "Calumet Park", milepost 5.5, South Chicago, Illinois, consisting of the following:

1. The discontinuance and removal of the traffic control system on the single main track between "Hegewisch" Interlocking and "Calumet Park", and operate as an Industrial Track;
2. The discontinuance and removal of "Hegewisch" Interlocking, milepost 3.9;
3. The conversion of Conrail's 2N and 2S signals at "Burnham" Interlocking, milepost 4.6, from operator controlled to automatic operation;
4. The conversion of NICD's 4E, 4W, 6E, and 6W signals at "Burnham" Interlocking, milepost 4.6, from operator controlled to automatic operation; and
5. The relocation of control to the NS Bridge Operator of the remaining NS signals and switches at "Burnham" Interlocking, milepost 4.6.

The reason given for the proposed changes is to retire facilities no longer required for present operation.

BS-AP-No. 3356

Applicants: Norfolk Southern Corporation, Mr. J.W. Smith, Chief Engineer—C&S, Communication and Signal Department, 99 Spring Street, S.W., Atlanta, Georgia 30303; CSX Transportation, Incorporated, Mr. D.G. Orr, Chief Engineer—Train Control, 500 Water Street (S/C J–350), Jacksonville, Florida 32202.

The Norfolk Southern Corporation (NS) and CSX Transportation, Incorporated (CSX) jointly seek approval of the proposed discontinuance and removal of the automatic interlocking at South Lima Yard, Ohio, milepost SP91.5, on the NS Lake Division, Frankfort District, where a single CSX yard track intersects with two NS yard tracks and one NS main track, through a series of hand-throw crossover switches. The proposed changes consist of the discontinuance and removal of all associated signals and government of train operations by Yard Limit Rules.

The reasons given for the proposed changes is to eliminate facilities no longer needed for present day operation.

Rules Standards & Instructions Application (RS&I-AP) No. 1095

Applicant: Consolidated Rail Corporation, Mr. J.F. Noffsinger, Chief Engineer—C&S, 2001 Market Street, P.O. Box 41410, Philadelphia, Pennsylvania 19101–1410.

Consolidated Rail Corporation (Conrail) seeks relief from the requirements of the Rules, Standard and Instructions, 49 CFR, Part 236, § 236.566, to the extent that Conrail be permitted to operate non-equipped Norfolk Southern locomotives, with or without cars, not exceeding 20 mph, on Track No. 1 and Track No. 2, between milepost 131.3, "Landover" Interlocking and milepost 136.7, "CP Virginia" Interlocking, near Washington, D.C, on the Landover Line, Harrisburg Division.

The applicant's justification for relief is to seek similar easement for the NS on this line, predicated upon existing relief for Conrail work trains and trains operating in switching service, as well as CSX trains, between "CP Anacostia" and "CP Virginia."

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the protestant in the proceeding. The original and two copies of the protest shall be filed with the Associate Administrator for Safety, FRA, 400 Seventh Street, SW., Washington, DC 20590 within 45 calendar days of the date of issuance of this notice. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

FRA expects to be able to determine these matters without oral hearing.

However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on May 25, 1995.

Phil Olekszyk,

Deputy Associate Administrator for Safety Compliance and Program Implementation.

[FR Doc. 95–13428 Filed 5–31–95; 8:45 am]

BILLING CODE #910–59–P

National Highway Traffic Safety Administration

[Docket No. 95–46; Notice 1]

Notice of Receipt of Petition for Determination that Nonconforming 1972 through 1976 Bristol VRT Buses Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Request for comments on petition for determination that nonconforming 1972 through 1976 Bristol VRT buses are eligible for importation.

SUMMARY: This notice requests comments on a petition submitted to the National Highway Traffic Safety Administration (NHTSA) for a determination that 1972 through 1976 Bristol VRT buses that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they have safety features that comply with, or are capable of being modified to comply with, all such standards.

DATES: The closing date for comments on the petition is July 3, 1995.

ADDRESS: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9:30 am to 4 pm.]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202) 366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards. Where there is no substantially similar U.S.-certified motor vehicle, 49 U.S.C. 30141(a)(1)(B) (formerly section 108(c)(3)(A)(i)(II) of the Act, 15 U.S.C. 1397(c)(3)(A)(i)(II)) permits a nonconforming motor vehicle to be admitted into the United States if its safety features comply with, or are capable of being altered to comply with, all applicable Federal motor vehicle safety standards based on destructive test data or such other evidence as NHTSA decides to be adequate.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register**.

Double Decker bus Company of Denver, Colorado (Registered Importer No. R–93–015) has petitioned NHTSA to determine whether 1972 through 1976 Bristol VRT buses are eligible for importation into the United States. The petitioner contends that these vehicles are eligible for importation under 49 U.S.C. 30141(a)(1)(B) because they have safety features that comply with, or are capable of being modified to comply with, all applicable Federal motor vehicle safety standards.

Specifically, the petitioner claims that 1972 through 1976 Bristol VRT buses have safety features that comply with Standard Nos. 102 Transmission Shift Lever Sequence . . . (based on documentation illustrating transmission braking effect, schematic diagram indicating starter interlock protection, and photograph showing shift lever positions), 103 Defrosting and Defogging Systems (based on statement and photograph indicating that system incorporates electrically heated elements and coolant heated air blowers), 104 Windshield Wiping and Washing Systems (based on statement and photographs indicating that system is pneumatically driven and offers full coverage of windshield at two set speeds and intermittently), 107 Reflecting Surfaces (based on statement and photographs indicating that reflective glare is kept to a minimum in the driver's cab through the use of matt black paint on the windshield wipers, the rearview mirror frame, the dash, and the cab walls), 120 Tire Selection and Rims for Motor Vehicles other than Passenger Cars (based on statements and photographs showing certification markings on tires and rims, and describing contents of tire information placard), 121 Air Brake Systems (based on statement, photographs, and specifications indicating that vehicles are equipped with an air compressors and associated equipment that provides greater cut-in pressure than 85 p.s.i.), 124 Accelerator Control systems (based on statement and photographs indicating that throttle return is provided by pneumatic valve, supplemented by a spring loaded foot pedal and photographs showing pneumatic accelerator resetting is less than one second), 205 Glazing Materials (based on statement and photographs showing that glazing materials bear DOT certification markings), 207 Seating Systems, (based on statement and photographs indicating that ample room exists for passengers to move in and out of their seats and that seats are securely mounted to vehicle floor) 217 Bus Window Retention and Release (based on statement describing window retention test procedures and results, and calculations indicating size and distribution of emergency exits), and 302 Flammability of Interior Materials (based on photographs and statements indicating composition of upholstery, and describing test procedures and results).

The petitioner also contends that 1972 through 1976 Bristol VRT buses are capable of being modified to comply with the following standards, in the manner indicated:

Standard No. 101 Controls and Displays: (a) Installation of a potentiometer wired in series to provide variation in panel lighting; (b) installation of dash-mounted high beam telltale; (c) installation of U.S.-model license plate lamp.

Standard No. 106 Brake Hoses: replacement of flexible brake hoses on front wheels with U.S.-model parts.

Standard No. 108 Lamps, Reflective Devices, and Associated Equipment: installation of the following equipment bearing DOT certification markings: (a) two sealed beam headlamps, three amber identification lamp clusters, two amber clearance lamps, and two amber length and height markers at the front end of the vehicle; (b) three red identification lamp clusters, two red clearance lamps, two red length and height markers, two red side marker/reflectors, and one license plate illumination lamp at the rear end of the vehicle; (c) two amber reflectors at the midsection of the vehicle's right side; (d) two amber reflectors at the midsection of the vehicle's left side.

Standard No. 111 Rearview Mirrors: replacement of the rearview mirrors with U.S.-model parts providing unity magnification in excess of 50 square inches of reflective surface and affording the driver a clear and unobstructed view of the area around both sides of the vehicle.

Standard No. 125 Warning Devices: procurement of three U.S.-model reflective warning triangles to be carried on vehicle.

Standard No. 208 Occupant Crash Protection: installation of a U.S.-model Type 2 seat belt at the driver's position.

Standard No. 209 Seat Belt Assemblies: installation of a U.S. model Type 2 seat belt at the driver's position.

Standard No. 210 Seat Belt Assembly Anchorages: use of 16–20UNF–2A hardened bolts, flat washers, lock washers, and nuts as anchorage hardware.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 15 U.S.C. 1397(c)(3)(A)(i)(II) and (C)(iii); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: May 26 1995.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 95–13425 Filed 5–31–95; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

May 22, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512–0164.
Form Number: ATF F 3069 (5200.7).
Type of Review: Extension.
Title: Schedule of Tobacco Products, Cigarette Papers or Tubes Withdrawn from the Market.
Description: ATF F 3069 (5200.7) is used by persons who intend to withdraw tobacco products from the market for which the tax has already been paid or determined. The form describes the products that are to be withdrawn to determine the amount of tax to be claimed later as a tax credit or refund. The form notifies ATF when withdrawal or destruction is to take place, and ATF may elect to supervise withdrawal or destruction.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 119.
Estimated Burden Hours Per Respondent: 45 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 1,071 hours.

OMB Number: 1512–0336.
Recordkeeping Requirement ID Number: ATF REC 5150/2.
Type of Review: Extension.
Title: Letterhead Applications and Notices Relating to Denatured Spirits.
Description: Denatured spirits are used for nonbeverage industrial purposes in the manufacture of personal/household products. Permits/Applications control the authorized uses and flow. Tax revenue and public safety is protected.
Respondents: Business or other for-profit, Not-for-profit institutions, State, Local or Tribal Government.
Estimated Number of Recordkeepers: 3,111.
Estimated Burden Hours Per Recordkeeper: 30 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 1,556 hours.

OMB Number: 1512–0337.
Recordkeeping Requirement ID Number: ATF REC 5150/1.
Type of Review: Extension.
Title: Usual and Customary Business Records Relating to Denatured Spirits.
Description: Denatured spirits are used for nonbeverage industrial purposes in the manufacture of personal household products. Records ensure spirits accountability. Tax revenue and public safety are protected.
Respondents: Business or other for-profit, State, Local or Tribal Government.
Estimated Number of Recordkeepers: 3,111.
Estimated Burden Hours Per Recordkeeper: 1 hour.
Frequency of Response: Other.
Estimated Total Recordkeeping Burden: 1 hour.

Clearance Officer: Robert N. Hogarth (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue NW., Washington, DC 20226.
OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 95–13414 Filed 5–31–95; 8:45 am]

BILLING CODE 4810–31–P

Public Information Collection Requirements Submitted to OMB for Review

May 22, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Bureau of the Public Debt (BPD)

OMB Number: 1535–0069.
Form Number: PD F's 5174–1, 5174–3, 5174–4, 5176–1, 5176–2, 5176–3, 5178, 5179, 5180, 5182, 5188, 5189, 5191, 5201, 5261, 5235, 5236, 5181.

Type of Review: Extension.
Title: Treasury Direct Forms.
Description: These forms are used to purchase and maintain Treasury Bills, Notes and Bonds.
Respondents: Individuals or households.
Estimated Number of Respondents:

Form	Respondents
PD F 5174–1	25,845
PD F 5174–3	13,610
PD F 5174–4	3,912
PD F 5176–1	96,390
PD F 5176–2	48,190
PD F 5176–3	9,035
PD F 5178	2,000
PD F 5179	2,000
PD F 5180	4,000
PD F 5181	70,000
PD F 5182	3,000
PD F 5188	1,500
PD F 5189	1,950
PD F 5191	1,200
PD F 5201	1,500
PD F 5235	500
PD F 5236	2,000
PD F 5261	150,000
Total	436,632

Estimated Burden Hours Per Response:

Form	Response time (minutes)
PD F 5174–1	10
PD F 5174–3	10
PD F 5174–4	10
PD F 5176–1	10
PD F 5176–2	10
PD F 5176–3	10
PD F 5178	10
PD F 5179	10
PD F 5180	10
PD F 5181	5
PD F 5182	10
PD F 5188	10
PD F 5189	10
PD F 5191	10
PD F 5201	10
PD F 5235	10
PD F 5236	10
PD F 5261	5

Frequency of Response: On occasion.
Estimated Total Reporting Burden: 57,795.
Clearance Officer: Vicki S. Ott (304) 480–6553, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328.
OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports, Management Officer.
[FR Doc. 95–13415 Filed 5–31–95; 8:45 am]
BILLING CODE 4810–40–P

Public Information Collection Requirements Submitted to OMB for Review

May 22, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0086.
Form Number: IRS Form 4010–C.
Type of Review: Extension.
Title: U.S. Departing Alien Income Tax Return.
Description: Form 1040–C is used by aliens departing the U.S. to report income received or expected to be received for the entire year. The data collected are used to insure that the departing alien has no outstanding U.S. tax liability. Affected public are aliens departing the U.S.
Respondents: Individuals or households.
Estimated Number of Respondents/Recordkeepers: 2,000.
Estimated Burden Hours Per Respondent/Recordkeepers:
Recordkeeping: 2 hr., 5 min.
Learning about the law or the form: 45 min.
Preparing the form: 2 hr., 19 min.
Copying, assembling, and sending the form to the IRS: 1 hr., 13 min.
Frequency of Response: On occasion.
Estimated Total Reporting/Recordkeeping Burden: 11,532.

OMB Number: 1545–0137.
Form Number: IRS Form 2032.
Type of Review: Extension.
Title: Contract Coverage Under Title II of the Social Security Act.
Description: American employers can enter into an agreement to extend social security coverage to U.S. citizens and resident aliens employed abroad by foreign affiliates.
Respondents: Individuals or households, Business or other for-profit, Federal Government.
Estimated Number of Respondents/Recordkeepers: 160.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping: 2 hr., 9 min.
Learning about the law or the form: 18 min.
Preparing and sending the form to the IRS: 20 min.
Frequency of Response: On occasion.
Estimated Total Reporting/Recordkeeping Burden: 448 hours.

OMB Number: 1545–0197.
Form Number: IRS Form 5300.
Type of Review: Revision.
Title: Application for Determination for Employee Benefit Plan.
Description: IRS needs certain information on the financing and operating of employee benefit and employee contribution plans set up by employers. IRS uses Form 5300 to obtain the information needed to determine whether the plans qualify under Code sections 401(a) and 501(a).
Respondents: Business or other for-profit, Individuals or households.
Estimated Number of Respondents/Recordkeepers: 300,000.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping: 21 hr., 46 min.
Learning about the law or the form: 6 hr., 18 min.
Preparing the form: 8 hr., 47 min.
Copying, assembling, and sending the form to the IRS: 32 min.
Frequency of Response: On occasion.
Estimated Total Reporting/Recordkeeping Burden: 11,217,000 hours.

OMB Number: 1545–0229.
Form Number: IRS Form 6406.
Type of Review: Extension.
Title: Short Form Application for Determination for Amendment of Employee Benefit Plan.
Description: This form is used by certain employee plans who want a determination letter or an amendment to the plan. The information gathered will be used to decide whether the plan is qualified under section 401(a).
Respondents: Business or other for-profit.
Estimated Number of Respondents/Recordkeepers: 16,000.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping: 12 hr., 55 min.
Learning about the law or the form: 3 hr., 23 min.
Preparing the form: 6 hr., 32 min.
Copying, assembling, and sending the form to the IRS: 48 min.
Frequency of Response: On occasion.
Estimated Total Reporting/Recordkeeping Burden: 378,240 hours.

OMB Number: 1545–0747.
Form Number: IRS Form 5498.
Type of Review: Extension.
Title: Individual Retirement Arrangement Information.
Description: Form 5498 is used by trustees and issuers to report contributions to and the fair market of an individual retirement arrangement.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 45,300.
Estimated Burden Hours Per Respondent: 7 minutes.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 6,686,640 hours.

OMB Number: 1545–0901.
Form Number: IRS Form 1098.
Type of Review: Extension.
Title: Mortgage Interest Statement.
Description: Form 1098 is used to report $600 or more of mortgage interest received from an individual in the course of the mortgagor's trade or business.
Respondents: Individuals or households, Business or other for-profit.
Estimated Number of Respondents: 171,000.
Estimated Burden Hours Per Respondent: 7 minutes.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 6,840,000 hours.

OMB Number: 1545–0908.
Form Number: IRS Forms 8282 and 8383.
Type of Review: Extension.
Title: Donee Information Return (Sale Exchange or Other Disposition of Donated Property) (8282); and Noncash Charitable Contributions (8283).
Description: Regulations section 1.170A–13(c) requires donors of property valued over $5,000 to file certain information with their return in order to receive the deduction. Donees must also inform the IRS if they dispose of the property within two years.
Respondents: Individuals or households, Business or other for-profit.
Estimated Number of Respondents/Recordkeepers: 1,501,000.
Estimated Burden Hours Per Respondent/Recordkeeper:

	Form 8282	Form 8283
Recordkeeping	3 hr., 7 min.	20 min.
Learning about the law or the form	30 min.	26 min.
Preparing the form	34 min.	35 min.
Copying, assembling, and sending the form to the IRS	0 min.	35 min.

Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 2,899,180 hours.

OMB Number: 1545–0990.
Form Number: IRS Form 8610.
Type of Review: Extension.
Title: Annual Low-Income Housing Credit Agencies Report.
Description: Form 8610 is used by state and local low-income housing credit agencies to transmit copies of Form 8609 to the IRS.
Respondents: State, Local or Tribal Government.
Estimated Number of Respondents/Recordkeepers: 100.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping: 4 hr., 18 min.
Learning about the law or the form: 1 hr., 0 min.
Preparing and sending the form to the IRS: 1 hr., 17 min.
Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 641 hours.

OMB Number: 1545–1132.
Regulation ID Number: INTL–536–89 Final.
Type of Review: Extension.
Title: Registration Requirements with Respect to Certain Debt Obligations; Application of Repeal of 30 Percent Withholding by the Tax Reform Act of 1984.
Description: The Internal Revenue Service needs the information in order to ensure that purchasers of bearer obligations are not U.S. persons (other than those permitted to hold obligations under section 165(j)) and to ensure that U.S. persons holding bearer obligations properly report income and gain on such obligations. The people reporting will be financial institutions holding bearer obligations.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 5,000.
Estimated Burden Hours Per Respondent: 10 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 852 hours.

OMB Number: 1545–1274.
Form Number: IRS Form 8453–NR.
Type of Review: Extension.
Title: U.S. Nonresident Alien Income Tax Declaration for Magnetic Media Filing.
Description: This form will be used to secure taxpayer signatures and declarations in conjunction with the Magnetic Media Filing program. This form, together with the electronic transmission will comprise the taxpayer's income tax return.
Respondents: Individuals or households.
Estimated Number of Respondents: 5,000.
Estimated Burden Hours Per Respondent: 15 minutes.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 1,250 hours.
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports, Management Officer.
[FR Doc. 95–13416 Filed 5–31–95; 8:45 am]
BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review

May 24, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0015.
Form Number: IRS Form 706 and Schedules.
Type of Review: Extension.
Title: United States Estate (and Generation-Skipping Transfer) Tax Return.
Description: Form 706 is used by executors to report and compute the Federal Estate Tax imposed by Internal Revenue Code (IRC) section 2001, the Federal Generation-Skipping Transfer (GST) tax imposed by IRC section 2601,

and the additional Estate Tax imposed by Code section 4980A. IRS uses the information to enforce these taxes and to verify that the tax has been properly computed.

Respondents: Individuals or households, Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 65,000.

Estimated Burden Hours Per Respondent/Recordkeepers:

Form/Sched	Record-keeping	Learning about law of the form	Preparing the form	Copying, assembling, and sending the form to the IRS
706	2 hr., 11 min.	1 hr., 9 min.	3 hr., 26 min.	49 min.
Sched. A	20 min.	16 min.	10 min.	20 min.
Sched. A–1	46 min.	25 min.	59 min.	49 min.
Sched. B	20 min.	10 min.	11 min.	20 min.
Sched. C	13 min.	2 min.	8 min.	20 min.
Sched. D	7 min.	6 min.	8 min.	20 min.
Sched. E	40 min.	7 min.	24 min.	20 min.
Sched. F	33 min.	6 min.	21 min.	20 min.
Sched. G	26 min.	18 min.	11 min.	14 min.
Sched. H	26 min.	6 min.	10 min.	14 min.
Sched. I	26 min.	25 min.	11 min.	20 min.
Sched. J	26 min.	5 min.	16 min.	20 min.
Sched. K	26 min.	9 min.	10 min.	20 min.
Sched. L	13 min.	5 min.	10 min.	20 min.
Sched. M	13 min.	31 min.	24 min.	20 min.
Sched. O	20 min.	9 min.	18 min.	17 min.
Sched. P	7 min.	14 min.	18 min.	14 min.
Sched. Q	7 min.	10 min.	11 min.	14 min.
Sched. Q Worksheet	7 min.	10 min.	59 min.	20 min.
Sched. R	20 min.	34 min.	1 hr., 1 min.	49 min.
Sched. R–1	7 min.	29 min.	24 min.	20 min.
Sched. S	26 min.	22 min.	37 min.	25 min.
Continuation	20 min.	3 min.	7 min.	20 min.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 1,436,265 hours.

OMB Number: 1545–0152.

Form Number: IRS Form 3115 and Schedules.

Type of Review: Extension.

Title: Application for Change in Accounting Method.

Description: Form 3115 is used by taxpayers who wish to change their method of computing their taxable income. The form is used by the IRS to determine if electing taxpayers have met the requirements and are able to change to the method requested.

Respondents: Business or other for-profit, Individuals or households, Farms.

Estimated Number of Respondents/Recordkeepers: 6,400.

Estimated Burden Hours Per Respondent/Recordkeeper:

Form/Sched.	Record-keeping	Learning about the law or the form	Preparing and sending the form to the IRS
3115	20 hr., 5 min.	3 hr., 38 min.	5 hr., 20 min.
Sched. A	23 hr., 12 min.	1 hr., 58 min.	3 hr., 38 min.
Sched. B	4 hr., 18 min.	1 hr., 4 min.	2 hr., 23 min.
Sched. C	26 hr., 47 min.	3 hr., 11 min.	3 hr., 45 min.
Sched. D	14 hr., 21 min.	2 hr., 23 min.	2 hr., 44 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 358,091 hours.

OMB Number: 1545–0232.

Form Number: IRS Form 6497.

Type of Review: Extension.

Title: Information Return of Nontaxable Energy Grants or Subsidized Energy Financing.

Description: Form 6497 is used by any governmental agency or its agents that make nontaxable grants or subsidized financing for energy conversation or production programs IRS uses the information from the form to ensure that recipients have not claimed tax credits or other benefits with respect to the grant or subsidized financing (no "double dipping").

Respondents: Business or other for-profit, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents/Recordkeepers: 250.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping: 2 hr., 23 min.

Learning about the law or the form: 18 min.

Preparing, copying, and sending the form to the IRS: 21 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 760 hours.

OMB Number: 1545–0245.

Form Number: IRS Form 6627.

Type of Review: Extension.

Title: Environmental Taxes.

Description: Form 6627 is attached to Form 720 to compute and collect tax on petroleum, chemicals, imported chemical substances, and ozone-depleting chemicals.

Respondents: Business or other for-profit, Individuals or households.

Estimated Number of Respondents/Recordkeepers: 2,445.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping: 21 hr., 2 min.

Learning about the law or the form: 6 min.

Preparing, copying, assembling, and sending the form to the IRS: 26 min.

Frequency of Response: Quarterly.

Estimated Total Reporting/Recordkeeping Burden: 33,431 hours.

OMB Number: 1545–0534.

Form Number: IRS Form 5303.

Type of Review: Extension.

Title: Application for Determination for Collectively Bargained Plan.

Description: IRS uses Form 5303 to get information needed about the finances and operation of employee benefit plans set up by employers under a collective bargaining agreement. The information obtained on Form 5303 is used to make a determination on whether the plan meets the requirements to qualify under section 401(a) and whether the related trust qualifies for exemption under section 501(a) of the Code.

Respondents: Business or other for-profit, Individuals or households.

Estimated Number of Respondents/Recordkeepers: 2,500.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping: 31 hr., 34 min.

Learning about the law or the form: 5 hr., 50 min.

Preparing the form: 10 hr., 20 min.

Copying, assembling, and sending the form to the IRS: 1 hr., 4 min.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 122,050 hours.

OMB Number: 1545–1243.

Regulation ID Number: PS–163–84 Final.

Type of Review: Extension.

Title: Treatment of Transaction Between Partners and Partnerships.

Description: Section 707(a)(2) provides that if there are transfers of money or property between a partner and a partnership, the transfer will be treated, in certain situations, as a disguised sale between the partner and the partnership. The regulations provide that the partner or the partnership should disclose the transfers and certain attendant facts in some situations.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 7,500.

Estimated Burden Hours Per Respondent: 20 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 2,500 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 95–13417 Filed 5–31–95; 8:45 am]

BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review.

May 25, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0121.

Form Number: IRS Form 1116.

Type of Review: Revision.

Title: Foreign Tax Credit—Individual, Fiduciary, or Nonresident Alien Individual.

Description: Form 1116 is used by individuals (including nonresident aliens) and fiduciaries who paid foreign income taxes on U.S. taxable income, to compute the foreign tax credit. This information is used by IRS to verify the foreign tax credit.

Respondents: Individuals or households.

Estimated Number of Respondents/Recordkeepers: 589,900.

Estimated Burden Hours Per Respondent/Recordkeepers:

Recordkeeping: 2 hr., 44 min.

Learning about the law or the form: 46 min.

Preparing the form: 1 hr., 53 min.

Copying, assembling, and sending the form to the IRS: 55 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 3,380,128 hours.

OMB Number: 1545–0213.

Form Number: IRS Form 5578.

Type of Review: Extension.

Title: Annual Certification of Racial Nondiscrimination for a Private School Exempt From Federal Income Tax.

Description: Form 5578 is used by private schools that do not file Schedule A (Form 990) to certify that they have a racially nondiscriminatory policy toward students as outlined in Rev. Proc. 75–50. The Internal Revenue Service uses the information to help ensure that the school is maintaining a nondiscriminatory policy in keeping with its exempt status.

Respondents: Not-for-profit institutions.

Estimated Number of Respondents/Recordkeepers: 1,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping: 2 hr., 52 min.

Learning about the law or the form: 53 min.

Preparing and sending the form to the IRS: 59 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 4,750 hours.

OMB Number: 1545–0773.

Regulation ID Number: LR–90–84 Final (T.D. 8172).

Type of Review: Extension.

Title: Notice Requires of Executor or Receiver Regulations Section 301.6036–1.

Description: Internal Revenue Code (IRC) section 6036 requires executors or receivers to advise the district director of their appointment or authorization to act. This information is necessary so that IRS will know of the proceedings and who to contact for delinquent returns or taxes.

Respondents: Individuals or households.

Estimated Number of Respondents: 50,000.

Estimated Burden Hours Per Respondent: 15 minutes.

Frequency of Response: Other (Nonrecurring).

Estimated Total Reporting Burden: 12,500 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 95–13418 Filed 5–31–95; 8:45 am]

BILLING CODE 4830–01–P

Office of Thrift Supervision

American Savings and Loan Association; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for American Savings and Loan Association, New York, New York, OTS No. 4080, on May 5, 1995.

Dated: May 25, 1995.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 95–13329 Filed 5–31–95; 8:45 am]

BILLING CODE 6720–01–M

Continental Savings of America, A FS&LA; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Continental Savings of America, A FS&LA, San Francisco, California, OTS No. 7532, on April 28, 1995.

Dated: May 25, 1995.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 95–13330 Filed 5–31–95; 8:45 am]

BILLING CODE 6720–01–M

[AC–32; OTS No. 01562]

Bell Federal Savings and Loan Association of Bellevue, Pittsburgh, Pennsylvania; Approval of Conversion Application

Notice is hereby given that on May 11, 1995, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Bell Federal Savings and Loan Association of Bellevue, Pittsburgh, Pennsylvania, to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and the Northeast Regional Office, Office of Thrift Supervision, 10 Exchange Place, 18th Floor, Jersey City, New Jersey 07302.

Dated: May 25, 1995.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 95–13331 Filed 5–31–95; 8:45 am]

BILLING CODE 6720–01–M

[AC–33; OTS No. 06005]

Clayton County Federal Savings and Loan Association, Jonesboro, Georgia; Approval of Conversion Application

Notice is hereby given that on May 12, 1995, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Clayton County Federal Savings and Loan Association, Jonesboro, Georgia, to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC, 20552, and the Southeast Regional Office, Office of Thrift Supervision, 1475 Peachtree Street, NE, Atlanta, Georgia 30309.

Dated: May 25, 1995.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 95–13332 Filed 5–31–95; 8:45 am]

BILLING CODE 6720–01–M

[AC–34; OTS No. 12336]

Community Bank & Trust, fsb, Olney, Illinois: Approval of Conversion Application

Notice is hereby given that on May 12, 1995, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Community Bank & Trust, fsb, Olney, Illinois, to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552, and the Central Regional Office, Office of Thrift Supervision, 111 East Wacker Drive, Suite 800, Chicago, Illinois 60601–4360.

Dated: May 25, 1995.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 95–13333 Filed 5–31–95; 8:45 am]

BILLING CODE 6720–01–M

[AC–30; OTS No. 00029]

First Federal Savings and Loan Association of Texarkana, Texarkana, Arkansas; Approval of Conversion Application

Notice is hereby given that on May 11, 1995, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of First Federal Savings and Loan Association of Texarkana, Texarkana, Arkansas; to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and the Midwest Regional Office, Office of Thrift Supervision, 122 W. John Carpenter Freeway, Suite 600, Irving, Texas 75039.

Dated: May 25, 1995.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 95–13334 Filed 5–31–95; 8:45 am]

BILLING CODE 6720–01–M

[AC–31; OTS No. 01611]

First Federal Savings Bank of Champaign-Urbana, Champaign, Illinois; Approval of Conversion Application

Notice is hereby given that on May 11, 1995, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of First Federal Savings Bank of Champaign-Urbana, Champaign, Illinois, to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and the Central Regional Office, Office of Thrift Supervision, 111 Wacker Drive, Suite 800, Chicago, Illinois 60601–4360.

Dated: May 25, 1995.

By the Office of Thrift Supervision.

Kimerly M. White,

Corporate Technican.

[FR Doc. 95–13335 Filed 5–31–95; 8:45 am]

BILLING CODE 6720–01–M

[AC–35; OTS No. 05829]

Fort Thomas Federal Savings and Loan Association, Fort Thomas, Kentucky; Approval of Conversion Application

Notice is hereby given that on May 15, 1995, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Fort Thomas Federal Savings and Loan Association, Fort Thomas, Kentucky, to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and the Central Regional Office, Office of Thrift Supervision, 111 East Wacker Drive, Suite 800, Chicago, Illinois 60601–4360.

Dated: May 25, 1995.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 95–13336 Filed 5–31–95; 8:45 am]

BILLING CODE 6720–01–M

[AC–29; OTS No. 06278]

Redwood Falls Federal Savings and Loan Association, Redwood Falls, Minnesota; Approval of Conversion Application

Notice is hereby given that on April 28, 1995, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Redwood Falls Federal Savings and Loan Association, Redwood Falls, Minnesota, to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street, N.W., Washington, DC 20552, and the Central Regional Office, Office of Thrift Supervision, 111 Wacker Drive, Suite 800, Chicago, Illinois 60601–4360.

Dated: May 25, 1995.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 95–13337 Filed 5–31–95; 8:45 am]

BILLING CODE 6720–01–M

Sunshine Act Meetings

Federal Register
Vol 60, No. 105
Thursday, June 1, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

AFRICAN DEVELOPMENT FOUNDATION

Board of Directors Meeting

TIME: 11:00 a.m.-2:00 p.m.
PLACE: ADF headquarters.
DATE: Monday, June 5, 1995.
STATUS: Open.

Agenda

11:00 a.m.—Chairman's Report
11:15 a.m.—President's Report
12:00 noon—Lunch
1:00 p.m.—Executive Session (Closed)

If you have any questions or comments, please direct them to Ms. Janis MCCollim, Executive Assistant to the President, who can be reached at (202) 673–3916.

William R. Ford,
President.
[FR Doc. 95–13561 Filed 5–30–95; 3:27 pm]
BILLING CODE 6116–01–P

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, June 6, 1995 at 10:00 a.m.
PLACE: 999 E Street, N.W., Washington, D.C.
STATUS: This meeting will be closed to the public.
ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, June 8, 1995 at 10:00 a.m.
PLACE: 999 E Street, N.W., Washington, D.C. (Ninth Floor).
STATUS: This meeting will be open to the public.
ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.
Advisory Opinion 1995–13: R. William Taylor, President, American Society of Association Executives (ASAE).
Advisory Opinion 1995–15: Beth Taylor (AllisonPAC), Allison Engine Company.
Regulations:
Draft Direct Final Rules Repealing Obsolete Provisions in Title 11 of the Code of Federal Regulations (11 C.F.R. Sections 104.17, 110.1(g), and 114.12(d)).
Presidential Primary and General Election Regulations: Draft Final Rules and Explanation and Justification (continued from meeting of May 24, 1995).
Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 219–4155.

Delores Hardy,
Administrative Assistant.
[FR Doc. 95–13577 Filed 5–30–95; 3:26 pm]
BILLING CODE 6715–01–M

Corrections

Federal Register
Vol. 60, No. 105
Thursday, June 1, 1995

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 95-007N]

International Standard-Setting Activities

Correction

In notice document 95–12570 beginning on page 27250 in the issue of Tuesday, May 23, 1995, make the following corrections:

1. On page 27251, in the second column, in the seventh line from the top, "whent he" should read "when the".

2. On the same page, in the second column, in the first full paragraph, in the first line "proved" should read "provided".

3. On the same page, in the same column, in the line beginning "Appendix 2", "fo" should read "of".

4. On page 27254, in the first column, under the heading "**Food Additives and Contaminants**" in the sixth line from the top, "husbandy" should read "husbandry".

5. On page 27255, in the table, in the first column, under the heading "Substance" in the second line from the bottom, "Polychlorotbiphenyls"should read "Polychlorobiphenyls".

6. On page 27260, in the second column, directly above the heading "Codex Committee on Food Hygiene" add

"Responsible Agency: HHS/FDA, USDA/FSIS
U.S. Participation: Yes"

BILLING CODE 1505–01–D

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 95-5]

Request for Comments on the Waiver of Moral Rights in Visual Artworks

Correction

In notice document 95–12606 beginning on page 27329 in the issue of Tuesday, May 23, 1995, make the following corrections:

1. On page 27330, in the first column, in the **ADDRESSES** section, in the fifth line, remove "Office".

2. On the same page, in the same column, in the **FOR ADDITIONAL INFORMATION CONTACT** section, in the second line, remove "Office".

3. On page 27331, in the third column, in the first full paragraph, in the last line "repression" should read "representation".

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-35620; File No. SR-Amex-95-10]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Amendments Updating Various Exchange Rules

April 18, 1995.

Correction

In notice document 95–10044 beginning on page 20130 in the issue of Monday, April 24, 1995 make the following correction:

On page 20131, in the first column, immediately preceding the file line, insert the signature line "Margaret H. McFarland, Deputy Secretary."

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-21015; 811-7133]

SSL 1993-1 Trust; Notice of Application

April 17, 1995.

Correction

In notice document 95–9985 appearing on page 20139 in the issue of Monday, April 24, 1995, the docket number should read as set forth above.

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 92-AWA-6]

RIN 2120-AF02

Alteration of the Charlotte Class B Airspace Area; North Carolina

Correction

In rule document 95–11925 beginning on page 26594 in the issue of Wednesday, May 17, 1995, make the following corrections:

§71.1 [Corrected]

1. On page 26597, in the second column, in the land description, in the fifth line, "long. 80°56'06"W." should read "long. 80°57'06"W."

2. On the same page, in the third column, in the 25th line, remove the phrase "of the Charlotte VOR/DME, thence west along the 081° radial".

3. On the same page, in the same column, in the last paragraph, in the last line "seat" should read "east".

BILLING CODE 1505–01–D

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federal register

Thursday
June 1, 1995

Part II

Department of Education

Grants and Cooperative Agreements: Star Schools Program; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.203D]

Star Schools Program; Notice inviting applications for new awards

Note to Applicants: This notice is a complete application package. Together with the Education Department General Administrative Regulations (EDGAR), the notice contains all of the information, application forms, and instructions needed to apply for a grant under this Star Schools Program competition.

Purpose of Program: The purpose of the Star Schools Program is to encourage improved instruction through distance learning technologies. Under this competition, the Secretary intends to support a project designed to advance adult literacy and the completion of requirements for a high school diploma or its equivalent.

Eligible Applicants: Only eligible telecommunications partnerships may receive grants under this program. Eligible telecommunications partnerships must be organized on a statewide or multistate basis. Two types of partnerships are eligible:

(a) A public agency or corporation established for the purpose of developing and operating telecommunications networks to enhance educational opportunities provided by educational institutions, teacher training centers, and other entities, provided that the agency or corporation represents the interests of elementary and secondary schools which are eligible to participate under Title 1 of the Elementary and Secondary Education Act of 1965 as amended by Public Law 103–382; or

(b) A partnership that will provide telecommunications services and which includes three or more of the following entities, at least one of which shall be an agency described in (1) or (2):

(1) A local educational agency, that serves a significant number of elementary and secondary schools that are eligible for assistance under Part A of Title 1 of the Elementary and Secondary Education Act of 1965 as amended by P.L. 103–382 or elementary and secondary schools operated or funded for Indian children by the Department of the Interior eligible under section 1121(c) of the Elementary and Secondary Education Act of 1965, as amended;

(2) A State educational agency;

(3) Adult and family education programs;

(4) An institution of higher education or a State higher education agency;

(5) A teacher training center or academy which—

(i) Provides teacher preservice and inservice training; and

(ii) Receives Federal financial assistance or has been approved by a State agency;

(6) A public or private entity with experience and expertise in the planning and operation of a telecommunications network, including entities involved in telecommunications through satellite, cable, telephone, or computer; or

(i) A public broadcasting entity with such experience; or

(7) A public or private elementary or secondary school.

Deadline for Transmittal of Applications: July 17, 1995.

Deadline for Intergovernmental Review: September 15, 1995

Available Funds: $3,000,000.

Note: The Department currently has funds available to make awards under this competition in FY 1995. However, changes to the Star Schools program, including the rescission of FY 1995 funds, have been under consideration by the Congress. If adequate funds are not available, the Department will not make awards in FY 1995. However, if sufficient funds are appropriated for FY 1996, the Department may evaluate applications submitted under this competition and make awards in FY 1996 without holding a separate FY 1996 competition.

Estimated Size of Awards: $3,000,000.

Estimated Number of Awards: 1.

Project Period: Up to 60 months.

Note: The Department is not bound by any estimates in this notice.

Applicable Regulations

The Education Department General Administrative Regulations (EDGAR) as follows:

(a) 34 CFR Part 74 (Administration of Grants and agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations).

(b) 34 CFR Part 75 (Direct Grant Programs).

(c) 34 CFR Part 77 (Definitions that Apply to Department Regulations).

(d) 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(e) 34 CFR Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(f) 34 CFR Part 81 (General Education Provisions Act—Enforcement).

(g) 34 CFR Part 82 (New Restrictions on Lobbying).

(h) 34 CFR Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(i) 34 CFR Part 86 (Drug-Free Schools and Campuses).

Description of Program: The Star Schools Program is authorized by the Elementary and Secondary Education Act of 1965, as amended, (ESEA), Title III, Part B (20 U.S.C. 6891–6900). Section 3210(c) of the ESEA authorizes the Secretary to award grants, on a competitive basis, to eligible entities to enable partnerships to develop and operate one or more programs that provide on-line access to educational resources in support of continuing education and curriculum requirements relevant to achieving a secondary school diploma or its recognized equivalent. The programs funded under this authority shall be designed to advance adult literacy, secondary school completion and the acquisition of specified competency by the end of the 12th grade, as envisioned by the Goals 2000: Educate America Act.

Definitions: The following definitions apply to the terms used in this notice:

Educational institution means an institution of higher education, a local educational agency, or a State educational agency.

Institution of higher education has the same meaning given that term under Section 1201(a) of the Higher Education Act of 1965, as amended (20 U.S.C. 8801(17)).

Instructional programming means courses of instruction, training courses, and materials used in such instruction and training which have been prepared in audio and visual form on tape, disc, film, or live interactive presentations, and presented by means of telecommunications devices.

Local educational agency has the same meaning given the term under section 14101(18) of the ESEA (20 U.S.C. 8801(18)).

Public broadcasting entity has the same meaning given that term in section 397 of the Communications Act of 1934 (47 U.S.C. 397).

State means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Federated States of Micronesia, the Republic of the Marshall Islands, Palau, and the Commonwealth of the Northern Mariana Islands.

State educational agency has the same meaning given that term under section 14101(28) of the ESEA (20 U.S.C. 8801(28)) and includes the Bureau of Indian Affairs for purposes of serving schools funded by the BIA in accordance with Title III of the ESEA of 1965, as amended.

Secretary means the Secretary of Education.

Priorities

Absolute Priority

Under 34 CFR 75.105(c)(3) and 20 U.S.C. 6900(c), the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only applications that meet this absolute priority:

Eligible entities, under the provisions of section 3210(c) of ESEA, which provide on-line access to educational resources in support of continuing education and curriculum requirements relevant to achieving a secondary school diploma or its recognized equivalent.

Invitational Priority

Under 34 CFR 75.105(c)(1), the Secretary is particularly interested in applications that meet the following invitational priority. However, an application that meets this invitational priority does not receive competitive or absolute preference over other applications:

Each entity receiving funds under this program is encouraged to provide—(a) closed captioning of the verbal content of instructional programming, where appropriate, to be broadcast by way of line 21 of the vertical blanking interval, or by way of comparable successor technologies; and

(b) descriptive video of the visual content of instructional programming as appropriate.

Application Requirements: Each eligible entity desiring a grant under this program shall submit an application to the Secretary. Each such application shall—

(a) Demonstrate that the applicant will use publicly funded or free public telecommunications infrastructure to deliver video, voice and data in an integrated service to support and assist in the acquisition of a secondary school diploma or its recognized equivalent;

(b) Assure that the content of the materials to be delivered is consistent with the accreditation requirements of the State for which such materials are used;

(c) Incorporate, to the extent feasible, materials developed in the Federal departments and agencies and under appropriate federally funded projects and programs; and

(d) Assure that the applicant has the technological and substantive experience to carry out the program.

Selection Criteria

(a)(1) The Secretary uses the following selection criteria to evaluate applications for new grants under this competition. These are the criteria for evaluating discretionary grants contained in the Education Department General Administrative Regulations (EDGAR).

(2) The maximum score for all of these criteria is 100 points.

(3) The maximum score for each criterion is indicated in parentheses.

(b) *The criteria.* (1) *Meeting the purposes of the authorizing statute.* (30 points) The Secretary reviews each application to determine how well the project will meet the purpose of the Star Schools Program, including consideration of—

(i) The objectives of the project; and

(ii) How the objectives of the project further the purposes of the Star Schools Program.

(2) *Extent of need for the project.* (20 points) The Secretary reviews each application to determine the extent to which the project meets specific needs recognized in the Star Schools Program, including consideration of—

(i) The needs addressed by the project;

(ii) How the applicant identified those needs;

(iii) How those needs will be met by the project; and

(iv) The benefits to be gained by meeting those needs.

(3) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(i) The quality of the design of the project;

(ii) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(iii) How well the objectives of the project relate to the purpose of the program;

(iv) The quality of the applicant's plan to use its resources and personnel to achieve each objective;

(v) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition; and

(vi) For grants under a program that requires the applicant to provide an opportunity for participation of students enrolled in private schools, the quality of the applicant's plan to provide that opportunity.

(4) *Quality of key personnel.* (10 points)

(i) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraph (b)(4)(i) (A) and (B) will commit to the project; and

(D) How the applicant, as part of its non-discriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(ii) To determine personnel qualifications under paragraphs (b)(4)(i) (A) and (B), the Secretary considers—

(A) Experience and training in fields related to the objectives of the project; and

(B) Any other qualifications that pertain to the quality of the project.

(5) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(i) The budget is adequate to support the project; and

(ii) Costs are reasonable in relation to the objectives of the project.

(6) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(i) Are appropriate to the project; and

(ii) To the extent possible, are objective and produce data that are quantifiable.

(Cross-reference: See 34 CFR 75.590 Evaluation by the grantee.)

(7) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

Intergovernmental Review of Federal Programs

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR Part 79.

The objective of the Executive Order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for

each of those States and follow the procedure established in each State under the Executive order. If you want to know the name and address of any State Single Point of Contact, see the list published in the **Federal Register** on Friday, March 31, 1995 (60 FR 16713–16715).

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA #84.203, U.S. Department of Education, Room 6213, 600 Independence Avenue, S.W. Washington, D.C. 20202–0125.

In those States that require review for this program, applications are to be submitted simultaneously to the State Review Process and the U.S. Department of Education.

Proof of mailing will be determined on the same basis as it is for applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, D.C. time) on the date indicated in this notice.

PLEASE NOTE THAT THE ABOVE ADDRESS IS NOT THE SAME ADDRESS AS THE ONE TO WHICH THE APPLICANT SUBMITS ITS COMPLETED APPLICATION. *DO NOT SEND APPLICATIONS TO THE ABOVE ADDRESS. INSTRUCTIONS FOR TRANSMITTAL OF APPLICATIONS:*

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84.203D), Washington, D.C. 20202–4725, or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, D.C. time) on the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84.203D), Room #3633, Regional Office Building #3, 7th and D Streets, S.W., Washington, D.C.

The Application Control Center will accept deliveries between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays and Federal holidays.

Individuals delivering applications must use the D Street entrance. Proper identification is necessary to enter the building.

In order for an application sent through a Courier Service to be considered timely, the Courier Service must be in receipt of the application on or before the closing date.

Note: Although applicants are not obligated to do so, it would be quite helpful if an additional two copies of the application were submitted (an original and four copies). The additional copies would be used during the review process.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgment to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708–9494.

(3) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and suffix letter, if any—of the competition under which the application is being submitted.

Application Instructions and Forms

The appendix to this application is divided into three parts plus a statement regarding estimated public reporting burden and various assurances and certifications. These parts and additional materials are organized in the same manner in which the submitted application should be organized. The parts and additional materials are as follows:

PART I: *Application for Federal Assistance* (Standard Form 424 (Rev. 4–88)) and instructions.

PART II: *Budget Information*—Non-Construction Programs (Standard Form 524) and instructions.

Special Budget Instructions

The Department is participating in the Administration's Reinventing Government Initiative. As part of that initiative, the National Performance Review urged the Department to "eliminate the continuation application process for budget years within the project period" and replace it with "yearly program progress reports focusing on program outcomes and problems related to program implementation and service delivery." The Department is implementing this recommendation for as many programs as possible beginning in fiscal year 1995. This will require all applicants for multi-year awards to provide detailed budget information for the total grant period requested. The Department will negotiate at the time of the initial award the funding levels for each year of the grant award. A new generic budget form, included in this package, requests the information needed to implement this initiative.

By requesting detailed budget information in the initial application for the total project period, the need for formal noncompeting continuation applications in the remaining years will be eliminated. An annual report will be used in place of the continuation application to determine progress, thereby relieving grantees of the burden to resubmit assurances, certifications, etc.

PART III: Application Narrative.

ADDITIONAL MATERIALS:

Estimated Public Reporting Burden.

Assurances—Non-Construction Programs (Standard Form 424B).

Certification Regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013, 6/90).

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80–0014, 9/90) and instructions. (NOTE: ED 80–0014 is intended for the use of grantees and should not be transmitted to the Department.)

Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions; and Disclosure of Lobbying Activities Continuation Sheet (Standard Form LLL-A).

An applicant may submit a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. No grant may be awarded unless a completed application form has been received.

For Further Information Contact: Gregory Dennis, U.S. Department of Education, Office of Educational Research and Improvement, 555 New Jersey Ave. N.W., Washington, D.C. 20208–5644. Telephone 202–219–1919. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under

Announcements, Bulletins and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 20 U.S.C. 6891–6900.

Dated: May 26, 1995.

Sharon P. Robinson,

Assistant Secretary for Educational Research and Improvement.

BILLING CODE 4000–01–P

Appendix

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED	Applicant Identifier
3. DATE RECEIVED BY STATE	State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

1. TYPE OF SUBMISSION:
Application: ☐ Construction ☒ Non-Construction
Preapplication: ☐ Construction ☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name: | Organizational Unit:

Address (give city, county, state, and zip code): | Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State — H. Independent School Dist.
B. County — I. State Controlled Institution of Higher Learning
C. Municipal — J. Private University
D. Township — K. Indian Tribe
E. Interstate — L. Individual
F. Intermunicipal — M. Profit Organization
G. Special District — N. Other (Specify) _____

8. TYPE OF APPLICATION:
☐ New ☐ Continuation ☐ Revision
If Revision, enter appropriate letter(s) in box(es): ☐ ☐
A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

9. NAME OF FEDERAL AGENCY:
U.S. Department of Education

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 8 4 . 2 0 3
TITLE: Star Schools Program

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING:	
a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:
DATE _____
b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

SF 424 (REV 4-88) Back

U.S. DEPARTMENT OF EDUCATION BUDGET INFORMATION NON-CONSTRUCTION PROGRAMS	OMB Control No. 1875-0102 Expiration Date: 9/30/95
Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

ED FORM NO. 524

Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED FORM NO. 524

Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington, D.C. 20503.

INSTRUCTIONS FOR ED FORM NO. 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary
U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e):
For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f):
Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e):
Show the total budget request for each project year for which funding is requested.

Line 12, column (f):
Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Instructions for ED Form 524 (cont.)

Section B - Budget Summary
Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e):
For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f):
Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e):
Show the total matching or other contribution for each project year.

Line 12, column (f):
Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information
Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.

2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.

3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.

4. Provide other explanations or comments you deem necessary.

BILLING CODE 4000-01-C

Instructions For Part III—Application Narrative

Before preparing the Application Narrative, an applicant should read carefully the description of the program, the information regarding the priority, and the selection criteria the Secretary uses to evaluate applications.

1. The applicant may include other pertinent information that may assist the Secretary in reviewing the application, including the scope and degree of services to be provided, who will render the telecommunications service, and when it will be delivered.

2. Justifications and specifications for equipment purchases should be clearly related to existing facilities and resources as well as to distance learning services to be delivered.

3. Applicants that apply for the production of instructional programming should be specific in the scope and sequence of the content and the tasks required to produce the proposed courses of instruction.

4. The application should enable reviewers to make clear linkages between the proposed budget and the specific tasks, operations, and service delivery.

The Secretary strongly requests the applicant to limit the Application Narrative to no more than 45 double-spaced, typed 8½″ × 11″ pages (on one side only), although the Secretary will consider applications of greater length.

The applicant may include an appendix, also on 8½″ × 11″ paper or any other pertinent information (e.g., letters of support, footnotes, resumes, etc.) that might assist the Secretary in reviewing the application.

The applicant may provide a VHS ½ inch videotape, however such a tape should be limited to no more than 12 minutes.

Estimated Public Reporting Burden

Under terms of the Paperwork Reduction Act of 1980, as amended, and the regulations implementing that Act, the Department of Education invites comment on the public reporting burden in this collection of information. Public reporting burden for this collection of information is estimated to average 100 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. You may send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202–4651. Information collection approved under OMB control number 1850–0623. Expiration date: 4/30/98.

BILLING CODE 4000-01-P

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

Standard Form 424B (4-88)
Prescribed by OMB Circular A-102

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

SF 424B (4-88) Back

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 –

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about–

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will–

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3),

Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013, 6/90 (Replaces ED 80-0008, 12/89; ED Form GCS-008, (REV. 12/88); ED 80-0010, 5/90; and ED 80-0011, 5/90, which are obsolete)

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV. 12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. **Type of Federal Action:** ☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	2. **Status of Federal Action:** ☐ a. bid/offer/application b. initial award c. post-award	3. **Report Type:** ☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter _____ date of last report _____

4. **Name and Address of Reporting Entity:** ☐ Prime ☐ Subawardee Tier _____, *if known:* **Congressional District,** *if known:*	5. **If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:** **Congressional District,** *if known:*
6. **Federal Department/Agency:**	7. **Federal Program Name/Description:** CFDA Number, *if applicable:* _____
8. **Federal Action Number,** *if known:*	9. **Award Amount,** *if known:* $
10. a. **Name and Address of Lobbying Entity** *(if individual, last name, first name, MI):*	b. **Individuals Performing Services** *(including address if different from No. 10a)* *(last name, first name, MI):*

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. **Amount of Payment** *(check all that apply):* $ _____ ☐ actual ☐ planned	13. **Type of Payment** *(check all that apply):* ☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. **Form of Payment** *(check all that apply):* ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	

14. **Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:**

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. **Continuation Sheet(s) SF-LLL-A attached:** ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____

Print Name: _____

Title: _____

Telephone No.: _____ **Date:** _____

Federal Use Only:

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Standard Form - LLL

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.
    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 mintues per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503

[FR Doc. 95-13409 Filed 5-31-95; 8:45 am]
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June 1, 1995

Part III

Department of Energy

Environmental Statements, Availability, Etc.; Programmatic Spent Nuclear Fuel Management and Idaho National Engineering Laboratory Environmental Restoration and Waste Management Programs: Notice

DEPARTMENT OF ENERGY

Programmatic Spent Nuclear Fuel Management and Idaho National Engineering Laboratory Environmental Restoration and Waste Management Programs

AGENCY: Department of Energy.

ACTION: Record of decision.

SUMMARY: The Department of Energy has issued a Record of Decision on Programmatic Spent Nuclear Fuel Management and Idaho National Engineering Laboratory Environmental Restoration and Waste Management Programs. The Record of Decision includes a Department-wide decision to regionalize spent nuclear fuel management by fuel type for Department-owned spent nuclear fuel. The Record of Decision also contains decisions dealing with site-wide environmental restoration and waste management programs at the Idaho National Engineering Laboratory. These decisions include the: (1) Continuation of environmental restoration activities; (2) development of cost-effective treatment technologies for spent nuclear fuel and waste management; and (3) implementation of projects and facilities to prepare waste and treat spent nuclear fuel for interim storage and final disposition.

ADDRESSES: Copies of the Department of Energy *Programmatic Spent Nuclear Fuel Management and Idaho National Engineering Laboratory Environmental Restoration and Waste Management Programs Environmental Impact Statement (DOE/EIS–0203–F)* and other information related to this Record of Decision are available in the public reading rooms and libraries identified in the **Federal Register** Notice that announced the availability of the final Environmental Impact Statement (60 FR 20979, April 28, 1995).

For further information on the Department's spent nuclear fuel management program and environmental restoration and waste management programs at the Idaho National Engineering Laboratory or to receive a copy of the Environmental Impact Statement, contact:

U.S. Department of Energy, Idaho Operations Office, Bradley P. Bugger, Office of Communications, 850 Energy Drive, MS 1214, Idaho Falls, ID 83403–3189, 208–526–0833.

For information on the Department's National Environmental Policy Act process, please contact:

Ms. Carol Borgstrom, Director, Office of NEPA Policy and Assistance, U.S. Department of Energy, 1000 Independence Ave. SW, Washington, D.C. 20585, 202–586–4600, 1–800–472–2756.

SUPPLEMENTARY INFORMATION:

1. Synopsis

The Record of Decision documents decisions made by the U.S. Department of Energy after the evaluation of the potential environmental impacts of a reasonable range of alternatives and appropriate nonenvironmental factors. The decisions fall into two categories, the first relating to the Department-wide management of Department of Energy-owned spent nuclear fuel for a period of up to forty years, pending the fuel's ultimate disposition, and the second relating to environmental restoration and waste management programs at the Idaho National Engineering Laboratory over a period of ten years. These decisions are based on information and analyses contained in the final Environmental Impact Statement *(Programmatic Spent Nuclear Fuel Management and Idaho National Engineering Laboratory Environmental Restoration and Waste Management Programs Environmental Impact Statement, DOE/EIS–0203–F)* and other relevant considerations. The Navy was a cooperating agency in the preparation of the Environmental Impact Statement, because spent nuclear fuel from Navy nuclear powered ships and prototypes is managed by the Department of Energy.

Spent Nuclear Fuel Management. The Department of Energy has decided to regionalize spent nuclear fuel management by fuel type at three sites: the Hanford Site, the Idaho National Engineering Laboratory and the Savannah River Site. Under this decision, the fuel type distribution would be as follows:

- Hanford production reactor fuel will remain at the Hanford Site;
- Aluminum clad fuel will be consolidated at the Savannah River Site; and
- Non-aluminum clad fuels (including spent nuclear fuel from the Fort St. Vrain Reactor and Naval spent fuel) will be transferred to the Idaho National Engineering Laboratory.

The Navy will resume shipments of its spent nuclear fuel to the Idaho National Engineering Laboratory immediately, upon the staying or dissolution of an injunction ordered by the United States District Court for the District of Idaho on May 19, 1995. The Department will prioritize and time-phase shipments of spent nuclear fuel from current storage locations to the selected sites and will implement the regional management strategy consistent with its other programmatic objectives (considerations will include fuel condition, facility availability, safety factors, budget and cost, transportation logistics and repository acceptance criteria). This regionalization strategy will result in the following inventories of spent nuclear fuel (in metric tons of heavy metal, i.e., uranium, plutonium and thorium, and percentage of total anticipated inventory) at each of the three sites:

Hanford Site—2103 (76%)
Idaho National Engineering Laboratory—426 (16%)
Savannah River Site—213 (8%)

This management strategy was selected using a formal decision management process that considered the analysis and evaluation of five management alternatives set forth in the Environmental Impact Statement (DOE/EIS–0203–F).

For each of the alternatives, the impacts of spent nuclear fuel management activities were analyzed for each of five sites: (1) the Hanford Site near Richland, Washington; (2) the Idaho National Engineering Laboratory, in southeastern Idaho; (3) the Savannah River Site, near Aiken, South Carolina; (4) the Oak Ridge Reservation, in Oak Ridge, Tennessee; and (5) Nevada Test Site, near Mercury, Nevada. In addition, four naval shipyards and one naval prototype site, the Kesselring Site (near West Milton, New York), were considered for management of naval spent fuel only. The four naval shipyards are: (1) Norfolk Naval Shipyard, Portsmouth, Virginia; (2) Portsmouth Naval Shipyard, Kittery, Maine; (3) Pearl Harbor Naval Shipyard, Honolulu, Hawaii; and (4) Puget Sound Naval Shipyard, Bremerton, Washington.

A short description of each of the alternatives evaluated, several of which included sub-alternatives or specific site options, is provided below:

- No Action—perform minimum activities required for safe and secure management at or close to the generation site or current storage location;
- Decentralization—store and stabilize most spent nuclear fuel at or near the generation site with limited shipments from university and non-Department of Energy facilities to Department of Energy facilities;
- 1992/1993 Planning Basis—transport to and store newly generated spent nuclear fuel at the Idaho National Engineering Laboratory or the Savannah River Site and consolidate some existing spent nuclear fuel at the Idaho National Engineering Laboratory;
- Regionalization—distribute existing and projected spent nuclear fuel among alternative Department of Energy sites based on fuel type or geographic location (an eastern regional site and a western regional site);
- Centralization—manage existing and projected spent nuclear fuel at one of the five Departmental sites.

The Department's decision, which furthers its mission to ensure safe, efficient and responsible management of spent nuclear fuel pending ultimate disposition, has certain benefits, including:

- Small potential environmental impacts (it is one of the environmentally preferable alternatives);
- Enabling the Navy to continue to defuel and refuel its ships in order to meet national defense commitments;
- Providing for the development of safe storage and ultimate disposition technologies and the continuation of research and development for naval reactor fuel;
- Positioning the Department to pursue a path forward for ultimate disposition of Department of Energy-owned spent nuclear fuel;
- Furthering the consolidation of fuel at Department of Energy sites where the best capability exists to manage that type of fuel, thus enhancing the flexibility to address future requirements for ultimate disposition of the fuel as they evolve; and
- Permitting the Department to balance potential environmental risks, safety consequences, public concerns, mission needs and costs.

Idaho National Engineering Laboratory Environmental Restoration and Waste Management Programs. The decisions regarding the Idaho National Engineering Laboratory site-wide spent fuel program and environmental restoration and waste management programs include: (1) Acceptance of non-aluminum-clad spent nuclear fuel for management, (2) continuation of the restoration of priority sites and the stabilization of other sites based on health and environmental risks and budget, (3) development of cost-effective waste treatment technologies, and (4) implementation of projects and facilities to prepare waste and spent nuclear fuel for final disposition and allow more efficient examination of naval spent nuclear fuel.

These decisions (which implement the preferred alternative—the Modified Ten-Year Plan as described in Volume 2 of the final Environmental Impact Statement) were made using a formal decision management process that considered the analysis and evaluation of four alternatives set forth in the Environmental Impact Statement. The following is a brief description of the alternatives evaluated and considered:

- No Action—complete all identified near-term actions and continue to operate most existing facilities;
- The Ten-Year Plan—complete all identified actions and initiate new projects to enhance cleanup, manage laboratory wastes and spent nuclear fuel;
- Minimum Treatment, Storage and Disposal—minimize treatment, storage and disposal activities to the extent possible, conduct minimum cleanup and decontamination and decommissioning activities prescribed by regulation, and transfer spent nuclear fuel and waste;
- Maximum Treatment, Storage and Disposal—maximize treatment, storage and disposal functions at the Idaho National Engineering Laboratory to accommodate waste and spent nuclear fuel from the Department of Energy complex, and conduct maximum cleanup and decontamination and decommissioning.

The Department's decisions enhance the ability of the Idaho National Engineering Laboratory to accomplish its mission and provide the following benefits, including:

- Small environmental impacts (it is one of the environmentally preferable alternatives);
- The continuation of progress with the cleanup and treatment of waste stored or buried at the Idaho National Engineering Laboratory;
- Consistency with the proposed site treatment plan requirements (under the Federal Facility Compliance Act) and flexibility to accommodate negotiations currently underway with the State of Idaho;
- Permitting the construction of a regional multi-purpose waste treatment facility in Idaho should the Department later decide to implement a regional waste treatment strategy (consistent with decisions which could result from the Department of Energy Waste *Management Programmatic Environmental Impact Statement* currently in preparation) and which would provide residues from treating off-site wastes to be returned to originating sites;
- Addressing concerns and legal requirements regarding cleanup of buried waste, treatment of stored wastes and protection of the Snake River Plain aquifer; and
- Reflecting a balanced approach that takes into consideration potential environmental risks, safety consequences, public concerns, Department and site mission mandates and costs.

The Department has examined the need for mitigation of impacts and found that no specific mitigative actions are required to implement the above decisions.

2. Introduction

During the last 40 years, the Department of Energy and its predecessor agencies have generated, transported, received, stored, and reprocessed spent nuclear fuel at facilities in the Department's nationwide complex. This spent nuclear fuel was generated from various sources, including: the Department's production reactors; Naval Nuclear Propulsion Program reactors; government, university, and other research and test reactors; special-case commercial power reactors; and foreign research reactors. The Department constructed and operated production reactors at the Hanford and Savannah River Sites to provide special nuclear materials and other isotopes for defense programs. These production reactors are no longer operating. Naval Nuclear Propulsion Program reactors and some test and research reactors are still operating. The Department of Energy has reprocessed spent nuclear fuel—more than 100,000 metric tons of heavy metal—at the Idaho National Engineering Laboratory, Hanford Site, and Savannah River Site to recover fissile materials (uranium-235 and plutonium-239) and other valuable nuclides for national defense or research and development programs.

The end of the Cold War has sharply reduced the need for special nuclear materials. In April 1992, the Department began to phase out reprocessing of spent nuclear fuel for recovery and recycling of highly enriched uranium and plutonium. Approximately 2,700 metric tons of Department of Energy spent nuclear fuel remain that have not been reprocessed. This spent nuclear fuel is in a wide range of enrichments and physical conditions, and is stored at various locations in the United States. The Environmental Impact Statement also analyzed the potential environmental impacts associated with foreign research reactor fuel containing U.S. enriched uranium, assuming a future decision is made to establish a policy to accept this fuel. This material requires safe and efficient management until a decision regarding its ultimate disposition is made and implemented. Additionally, Department of Energy-owned spent fuel containing approximately 100 metric tons of heavy metal is expected to be generated in the next 40 years.

The Department of Energy currently stores most of the fuel in 10- to 40-year-old water pools (designed for temporary storage of spent nuclear fuel until it could be reprocessed) at the Hanford Site, the Idaho National Engineering Laboratory, and the Savannah River Site. Smaller quantities are stored at approximately 55 university and government-owned research reactor facilities in the United States.

In November 1993, the Department of Energy identified potential environmental, safety, and health vulnerabilities at certain spent nuclear fuel storage facilities *(Spent Fuel Working Group Report on Inventory and Storage of the Department's Spent Nuclear Fuel and Other Reactor Irradiated Materials and Their Environmental Safety and Health Vulnerabilities)*. The Department also identified the storage locations of fuel with degraded cladding [1] and other problems that would require action to ensure continued safe storage. In May 1994, the independent Defense Nuclear Facilities Safety Board also addressed these vulnerabilities in Recommendation 94–1, which concluded that imminent hazards could arise unless certain problems were corrected, including those related to spent nuclear fuel storage. In addition, a court order embodying a stipulation between the State of Idaho and the Department of Energy (as discussed in section 7), in part, dictated the scope of the *Programmatic Spent Nuclear Fuel Management and Idaho National Engineering Laboratory Environmental Restoration and Waste Management Programs Environmental Impact Statement* and the schedule for its preparation. Volume 1 of the Environmental Impact Statement evaluates the potential impacts of the proposed action to safely, efficiently, and responsibly manage existing and projected quantities of the Department's spent nuclear fuel through the year 2035, pending ultimate disposition.

The Department's activities at the Idaho National Engineering Laboratory have, over the past 50 years, resulted in the accumulation of spent nuclear fuel; waste requiring treatment, storage, and disposal; and sites requiring remediation. Volume 2 of the Environmental Impact Statement evaluates the potential impacts of the proposed action: (1) To develop appropriate facilities and technologies to manage waste and spent nuclear fuel currently and reasonably expected to be located at the Idaho National Engineering Laboratory during the next ten years; (2) to integrate more fully all environmental restoration and waste management activities to achieve cost and operations efficiencies, including pollution prevention and waste minimization; and (3) to responsibly manage environmental impacts from environmental restoration and waste management activities. Volume 2 assesses the environmental impacts from these environmental restoration and waste management actions that may be taken during a 10-year period, 1995–2005.

[1] Fuel cladding is the metallic outer covering that encloses the uranium fuel matrix and products of the fission process. Claddings are composed of various alloys of aluminum, steel, or zirconium. Graphite-based nuclear fuels generally do not have a metallic covering, instead using silicon carbide coatings around each fuel particle.

3. Decisions

The Atomic Energy Act of 1954 (42 U.S.C. § 2011 et seq.) and the Department of Energy Organization Act (42 U.S.C. § 7101 et seq.) establish the Department's responsibility for the management of its spent nuclear fuel. The decision process reflected in this document complies with requirements of the National Environmental Policy Act (42 U.S.C. § 4321 et seq.) and its implementing regulations at 40 CFR Parts 1500–1508 and 10 CFR Part 1021. These decisions affect activities under the authority of the U.S. Department of the Navy, and the Navy was a cooperating agency in the preparation of the Environmental Impact Statement. Pursuant to 10 CFR 1021.315, the Department of Energy may revise this Record of Decision at any time, so long as the revised decision is adequately supported by existing reviews prepared in accordance with the National Environmental Policy Act.

3.1 Programmatic Spent Nuclear Fuel Management Decision

The Department has decided to implement the preferred alternative identified in Volume 1 of the Environmental Impact Statement, Regionalization by Fuel Type (Alternative 4a). This decision will consolidate existing and newly generated spent nuclear fuel at three existing Departmental sites (i.e., the Hanford Site, the Idaho National Engineering Laboratory, and the Savannah River Site) based on the fuel type, pending future decisions on ultimate disposition. Existing Hanford production reactor spent nuclear fuel will remain at the Hanford Site. Aluminum-clad spent nuclear fuel will be consolidated at the Savannah River Site, and non-aluminum clad spent nuclear fuel (including Fort St. Vrain reactor spent fuel) will be consolidated at the Idaho National Engineering Laboratory. Consolidation of spent nuclear fuel at these sites will be accomplished on a time-phased basis dependent upon fuel condition, facility availability, safety, transport logistics, budget and cost considerations and repository acceptance criteria. Naval spent nuclear fuel will be transported to the Idaho National Engineering Laboratory for examination and storage. Spent nuclear fuel facility upgrades, replacements, and additions will be undertaken, as will research and development activities to resolve safety vulnerabilities and assure safe spent nuclear fuel interim storage in preparation for ultimate disposition. Section 5 of this Record of Decision details the attributes of the selected alternative.

The potential impacts associated with the management of foreign research reactor spent nuclear fuel are analyzed in the Environmental Impact Statement; however, the policy decision on whether to accept this spent nuclear fuel is the subject of a separate environmental impact statement, Proposed Nuclear Weapons Nonproliferation Policy Concerning Foreign Research Reactor Spent Nuclear Fuel Environmental Impact Statement (DOE/EIS–0218D), published in draft form for public review and comment in March 1995.

Table 3.1 shows the origin and interim management destination of specific fuels and the potential number of shipments. Each shipment, whether by truck or rail, was assumed to consist of one shipping container. Table 3.2 shows the cumulative inventory at the Department's three spent nuclear fuel management locations.

Except for some special-case commercial fuel, these decisions do not apply to management of spent nuclear fuel from commercial nuclear power plants. This Record of Decision also does not address the ultimate disposition of the Department's spent nuclear fuel. Decisions regarding ultimate disposition of this fuel will be consistent with the Nuclear Waste Policy Act of 1982 (42 U.S.C. § 10101 et. seq. and will follow appropriate review under the National Environmental Policy Act. Decisions on stabilization technologies, including processing, will be made after completion of site-specific and fuel-type-specific reviews under the National Environmental Policy Act and tiered from the Environmental Impact Statement on spent nuclear fuel management.

3.2 Idaho National Engineering Laboratory Decision

The Department has decided to implement the preferred alternative, identified in Volume 2 of the Environmental Impact Statement, the Modified Ten-Year Plan (Modified Alternative B), for the Idaho National Engineering Laboratory environmental restoration and waste management programs. See section 4.2.1 below for a discussion of the Volume 2 preferred alternative.

Generator or current storage	Destination [2]	
	Idaho National Engineering Laboratory	Savannah River Site
Aerotest (California)	3	
General Atomics (California)	8	
General Electric (California)		4
McClellan Air Force Base (California)	3	
U.S. Geological Survey (Colorado)	6	
Fort St Vrain (Colorado)	244	
Idaho National Engineering Laboratory (Idaho)		114
Argonne National Laboratory—East (Illinois)	11	
Armed Forces Research Institute (Maryland)	3	
National Institute of Science and Technology (Maryland)		185
DOW Corp. (Michigan)	3	
Veterans Medical Center (Nebraska)	2	
Los Alamos National Laboratory (New Mexico)		17
Sandia National Laboratory (New Mexico) [3]	12	15
Brookhaven National Laboratory (New York)		71
West Valley Demonstration Project (New York)	83	
Savannah River Site (South Carolina)	121	
Oak Ridge Reservation (Tennessee) [3]	54	66
Babcock & Wilcox, Lynchburg (Virginia)	2	
Hanford Site (Washington)	524	
Foreign Research Reactors (various) [3,4]	170	836
Navy	575	
Universities (various) [3]	116	403
Total	1,940	1,715

[1] Number of shipments analyzed in the Final Environmental Impact Statement, including either truck or rail shipments.
[2] The Hanford Site would not receive any additional fuel.
[3] The specific distribution would be based upon the fuel type (i.e., cladding material).
[4] A policy decision on acceptance of foreign research reactor spent nuclear fuel will be made after completion of a separate environmental impact statement.

TABLE 3.2—APPROXIMATE SPENT NUCLEAR FUEL INVENTORY IN METRIC TONS OF HEAVY METAL.[1]

Sites	Existing spent fuel inventory		Existing redistributed and newly generated inventory	
	(As of 1995)	(Percent of total)	(By year 2035) [2]	(Percent of total)
Hanford Site	2133	(81%)	[3]2103	(76%) (Production reactor spent nuclear fuel)
Idaho National Engineering Laboratory	261	(10%)	426	(16%) (Non-aluminum-clad spent nuclear fuel)
Savannah River Site	206	(8%)	213	(8%) (Aluminum-clad spent nuclear fuel)
Other (Oak Ridge, other Department of Energy facilities, universities, special case commercial).	45	(1%)	[3]0	
Total	2645	(100%)	2742	(100%)

[1] A "metric ton of heavy metal" is a common unit of measure for spent nuclear fuel, which is 1000 kilograms (2,200 pounds) of heavy metal (uranium, plutonium, thorium) contained in the spent fuel.
[2] Inventory shown assumes no final disposition (repository disposal or processing).
[3] The Hanford and Oak Ridge sites would ship some or all of their existing inventory to the Savannah River site and Idaho National Engineering Laboratory, depending on fuel type.

3.2.1 Idaho National Engineering Laboratory Spent Nuclear Fuel Program

The following Idaho National Engineering Laboratory projects or activities will be implemented as a result of the decision (see Appendix for description):

- Increased Rack Capacity for Building 666 at the Idaho Chemical Processing Plant;
- Dry Fuel Storage Facility; Fuel Receiving, Canning/Characterization, and Shipping;
- Fort St. Vrain Spent Nuclear Fuel Receipt and Storage; and
- Expended Core Facility Dry Cell Project.

Other projects that are ongoing or planned are listed below. Decisions regarding these projects will be made in the future pending further project definition, funding priorities, and any additional appropriate review under the National Environmental Policy Act. Descriptions of these projects can be found in Volume 2, Appendix C, of the Environmental Impact Statement.

- Electrometallurgical Process Demonstration;

• Experimental Breeder Reactor-II Blanket Treatment Project; and
• Additional Increased Rack Capacity for Building 666.

3.2.2 Idaho National Engineering Laboratory Waste Management Program

The waste management program at the Idaho National Engineering Laboratory is accomplished through planning, coordination, and direction of functions related to generation, minimization, handling, treatment, storage, transportation, and disposal of waste and spent nuclear fuel, as well as associated surveillance and maintenance activities. The waste management program ensures that current and future waste management practices minimize any potentially adverse environmental impacts. The following discussion describes by waste type the selected alternative, the Modified Ten-Year Plan, alternative.

3.2.2.1 High-Level Radioactive Waste. The Department's decision for liquid high-level waste is to convert the high-level liquid waste to calcine (a stable, solid waste form). The Department has decided to resume operation of the New Waste Calcining Facility to convert the high-level liquid and sodium-bearing liquid waste to calcine prior to further treatment. The conversion to calcine will allow the Idaho National Engineering Laboratory to meet current requirements of a December 9, 1991 consent order with the State of Idaho and the Environmental Protection Agency to cease use of the existing liquid waste storage tanks without building new tanks. The Department proposes to construct a facility to treat the calcined high level waste (and any remaining liquid waste), in accordance with the Resource Conservation and Recovery Act, on a schedule to be negotiated with the State of Idaho under the Federal Facility Compliance Act.

The Department has selected a technology to be tested for potential use in a treatment facility. The technology selected is radionuclide partitioning for radioactive liquid and calcine waste treatment, grout for immobilizing the resulting low activity waste stream, and glass (vitrification) for immobilizing the resulting high-activity waste stream. For more information on this technology, see the Waste Immobilization Facility project description in Volume 2, Appendix C, of the Environmental Impact Statement.

There are two Idaho National Engineering Laboratory projects that will be implemented as a result of the decision (see Appendix for descriptions):

• Tank Farm Heel Removal Project; and
• Calcine Transfer Project.

Other projects which are planned are listed below. Decisions regarding these projects will be made in the future pending further project definition, funding priorities, or appropriate review under the National Environmental Policy Act. Descriptions of these projects can be found in Volume 2, Appendix C, of the Environmental Impact Statement.

• Waste Immobilization Facility;
• Radioactive Scrap/Waste Facility (Argonne National Laboratory-West); and
• Test Area North Pool Stabilization Project.

3.2.2.2 Transuranic Waste. The Department's decision will result in possible acceptance of some off-site transuranic waste from other Department facilities for treatment (depending upon future decisions made as a result of the Department of Energy *Waste Management Programmatic Environmental Impact Statement*). The Idaho National Engineering Laboratory will construct treatment facilities necessary to comply with the Federal Facility Compliance Act. Treatment of transuranic waste at a minimum will be for the purpose of meeting waste acceptance criteria for disposal at the Waste Isolation Pilot Plant (near Carlsbad, New Mexico) and will occur on a schedule to be negotiated with the State of Idaho.

Nominal additional quantities of transuranic waste will continue to be generated from on-site operations. The Site Treatment Plans developed under the Federal Facility Compliance Act may require that some types of waste be shipped from one Department of Energy site to another to take advantage of existing or future regionalized treatment capability. Off-site waste would be received depending on decisions based on: (1) Site Treatment Plan consent orders negotiated under the Federal Facility Compliance Act; and (2) the *Waste Management Programmatic Environmental Impact Statement*. Generally, after treatment, the waste residuals would be returned to the generator or transported to an approved off-site disposal facility (assumed to be the Waste Isolation Pilot Plant).

Projects for retrieving, characterizing, and treating transuranic waste will prepare the waste for transportation and disposal in a repository or for on-site disposal (for waste that can meet the on-site disposal performance criteria).

Projects that will be continued at the Idaho National Engineering Laboratory as a result of the decision (see Appendix for descriptions) are noted below:

• Transuranic Storage Area Enclosure and Storage Project; and
• Waste Characterization Facility.

Other projects which are planned are listed below. Decisions regarding these projects will be made in the future pending further project definition, funding priorities, or appropriate review under the National Environmental Policy Act. Descriptions of these projects can be found in Volume 2, Appendix C, of the Environmental Impact Statement.

• Private Sector Alpha-Contaminated Mixed Low-Level Waste Treatment;
• Radioactive Waste Management Complex Modifications to Support Private Sector; Treatment of Alpha-Contaminated Mixed Low-Level Waste;
• Idaho Waste Processing Facility;
• Mixed/Low-Level Waste Disposal Facility; and
• Plasma Hearth Process Project.

3.2.2.3 Mixed Low-Level Radioactive Waste. Pursuant to the selected alternative, the Idaho National Engineering Laboratory could accept off-site mixed low-level waste for treatment. This decision is subject to agreements being negotiated pursuant to the Federal Facility Compliance Act and the decisions resulting from the Department of Energy *Waste Programmatic Environmental Impact Statement*. If mixed low-level waste from other sites is accepted for treatment at the Idaho National Engineering Laboratory, the waste residuals would be returned to the generator or transported to an approved off-site disposal facility.

For the near term, stored and newly generated mixed low-level waste at the Idaho National Engineering Laboratory will be treated at the Waste Experimental Reduction Facility Incinerator (restart), the Nonincinerable Mixed Waste Treatment project, and the Sodium Processing Facility through generator treatment plans developed under 40 CFR 262.34, *Standards Applicable to Generators of Hazardous Waste—Accumulation Time*. Lead contaminated with radioactivity will be recycled at the Idaho National Engineering Laboratory and off-site.

The following projects will be implemented at the Idaho National Engineering Laboratory as a result of the decision (see Appendix for descriptions):

• Waste Experimental Reduction Facility Incineration;
• Nonincinerable Mixed Waste Treatment Project; and
• Sodium Processing Project.

Other projects which are planned are listed below. Decisions regarding these projects will be made in the future pending further project definition, funding priorities, or appropriate review under the National Environmental Policy Act. Descriptions of these projects can be found in Volume 2, Appendix C of the Environmental Impact Statement.

• Idaho Waste Processing Facility;
• Private Sector Alpha-Contaminated Mixed Low-Level Waste Treatment;
• Mixed/Low-Level Waste Disposal Facility; and
• Remote Mixed Waste Treatment Facility.

3.2.2.4 Low-Level Radioactive Waste. Idaho National Engineering Laboratory-generated low-level waste will be treated on-site and off-site and disposed of on-site. In addition, small amounts of off-site low-level waste may be received for treatment and disposal. Low-level waste that is suitable for incineration will be treated at the Waste Experimental Reduction Facility or at an off-site commercial facility. Current stabilization, compaction, and sizing operations at the Waste Experimental Reduction Facility will continue as will liquid low-level waste treatment at the Idaho Chemical Processing Plant and the Test Reactor Area. The Waste Experimental Reduction Facility will be restarted as a result of the decision (see Appendix for description).

Other projects which are planned are listed below. Decisions regarding these projects will be made in the future pending further project definition, funding priorities, and any further appropriate review under the National Environmental Policy Act. Descriptions of these projects can be found in Volume 2, Appendix C of the Environmental Impact Statement.

• Waste Handling Facility (Argonne National Laboratory—West);
• Mixed/Low-Level Waste Disposal Facility;
• Idaho Waste Processing Facility; and
• Private Sector Alpha-Contaminated Mixed Low-Level Waste Treatment.

3.2.2.5 Greater-Than-Class C Low-Level Waste. The Idaho National Engineering Laboratory will continue to plan and develop a program for the receipt and storage of greater-than-class C radioactive sealed-sources. Limited quantities of greater-than-class C waste may be stored in a new storage and recycle facility or an existing Idaho National Engineering Laboratory facility. It is possible that commercial facilities may be used, if available, for storage and recycling of all or part of the sources. (See Volume 2, Appendix C of the Environmental Impact Statement for more information on greater-than-class C dedicated storage at the Idaho National Engineering Laboratory.)

3.2.2.6 Hazardous Waste. Idaho National Engineering Laboratory nonradioactive hazardous waste will be treated, stored and disposed of at off-site commercial facilities. The Waste Handling Facility project at Argonne National Laboratory—West will be implemented as a result of the decision (see Appendix for description).

3.2.2.7 Industrial/Sanitary Waste. The Idaho National Engineering Laboratory will continue the existing industrial waste management program, with continued emphasis on reducing the amount of industrial waste generated through an intensive program of waste avoidance and recycling.

An Industrial/Commercial Landfill Expansion project is also planned. However, a decision regarding the start of this project will be made in the future pending further project definition, funding priorities, and any further appropriate review under the National Environmental Policy Act. A description of this project can be found in Volume 2, Appendix C of the Environmental Impact Statement.

3.2.3 Idaho National Engineering Laboratory Infrastructure Program

Existing Idaho National Engineering Laboratory facilities will be upgraded to comply with applicable state and Department of Energy requirements. In addition, new infrastructure projects may be needed to support ongoing operations.

The Gravel Pit Expansions project will be implemented as a result of the decision (see Appendix for a description).

Other projects which are planned are listed below. Decisions regarding these projects will be made in the future pending further project definition, funding priorities and any further appropriate review under the National Environmental Policy Act. Descriptions of these projects can be found in Volume 2, Appendix C of the Environmental Impact Statement.

• Industrial/Commercial Landfill Expansion;
• Central Facilities Area Clean Laundry and Respirator Facility;
• Health Physics Instrument Laboratory; and
• Radiological and Environmental Sciences Laboratory Replacement.

3.2.4 Idaho National Engineering Laboratory Environmental Restoration Program

With respect to environmental restoration, the Environmental Impact Statement recognizes that, with the exception of decontamination and decommissioning, the December 9, 1991 Federal Facility Agreement and Consent Order among the Department, the State of Idaho and the Environmental Protection Agency is the mechanism by which cleanup decisions are made for the Idaho National Engineering Laboratory Environmental Restoration Program. The Department of Energy's preferred alternative (Modified Ten-Year Plan) was selected because of its ability to provide for the remediation of critical sites while allowing the stabilization of the remaining sites. The selected alternative acknowledges the current industrial land use of the Idaho National Engineering Laboratory, but recognizes the need for flexibility to apply the criteria prescribed under the Comprehensive Environmental Response, Compensation and Liability Act in making cleanup decisions. The following Idaho National Engineering Laboratory projects will continue as a result of the decision (see Appendix for descriptions):

• Auxiliary Reactor Area Decontamination and Decommissioning;
• Boiling Water Reactor Experiment Decontamination and Decommissioning;
• Pit 9 Retrieval;
• Organic Contamination in Vadose Zone at Radioactive Waste Management Complex; and
• Remediation of Organic Ground Water Plume at Test Area North.

Other projects which are planned are listed below. Implementation decisions will be made in the future pending further project definition, funding priorities, and any further review under the Comprehensive Environmental Response, Compensation and Liability Act or the National Environmental Policy Act. Descriptions of these projects can be found in the Volume 2, Appendix C of the Environmental Impact Statement.

• Engineering Test Reactor Decontamination and Decommissioning;
• Materials Test Reactor Decontamination and Decommissioning;
• Fuel Processing Complex (CPP–601) Decontamination and Decommissioning;
• Fuel Receipt and Storage Facility (CPP–603) Decontamination and Decommissioning;
• Headend Processing Plant (CPP–640) Decontamination and Decommissioning;

• Waste Calcine Facility (CPP–633) Decontamination and Decommissioning; and

• Central Liquid Waste Processing Facility Decontamination and Decommissioning.

4. Alternatives Considered

4.1 Programmatic Spent Nuclear Fuel Alternatives Considered

The five programmatic management alternatives considered for spent nuclear fuel include: Alternative 1, No Action—perform minimum activities required for safe and secure management at or close to the generation site or current storage location; Alternative 2, Decentralization—storage and stabilization of most spent nuclear fuel at or near the generation site with limited shipments from university and non-Departmental facilities; Alternative 3, the 1992/1993 Planning Basis—transport to and store newly generated spent nuclear fuel at the Idaho National Engineering Laboratory or the Savannah River Site and consolidate some existing spent nuclear fuel at the Idaho National Engineering Laboratory; Alternative 4, Regionalization—distribute existing and projected spent nuclear fuel among alternative Department of Energy sites based on fuel type or geographic location (an eastern regional site and a western regional site); and Alternative 5, Centralization—manage existing and projected spent nuclear fuel at one site.

For all of the alternatives, the impacts of spent nuclear fuel management activities were analyzed for each of five sites: (1) The Hanford Site near Richland, Washington; (2) the Idaho National Engineering Laboratory, in southeastern Idaho; (3) the Savannah River Site, near Aiken, South Carolina; (4) the Oak Ridge Reservation, in Oak Ridge, Tennessee; and (5) the Nevada Test Site, near Mercury, Nevada. In addition, four naval shipyards and one naval prototype site, the Kesselring Site (near West Milton, New York), were considered for management of naval spent fuel only. The four naval shipyards are: (1) Norfolk Naval Shipyard, Portsmouth, Virginia; (2) Portsmouth Naval Shipyard, Kittery, Maine; (3) Pearl Harbor Naval Shipyard, Honolulu, Hawaii; and (4) Puget Sound Naval Shipyard, Bremerton, Washington.

4.1.1 Agency Preferred Alternative for Programmatic Spent Nuclear Fuel Management

The preferred alternative, Regionalization by Fuel Type, would distribute existing and projected inventories of spent nuclear fuel among Departmental sites based primarily on fuel type. Regionalization by Fuel Type would involve the use of the Idaho National Engineering Laboratory and Savannah River Site for storage of most newly generated spent fuel. Aluminum-clad fuel would be transported to the Savannah River Site; and non-aluminum clad fuel (including Fort St. Vrain and naval spent fuel) would be transported to the Idaho National Engineering Laboratory; Hanford production reactor spent fuel would remain at the Hanford Site. The timing of transportation of fuel between sites would be prioritized and time-phased depending on fuel condition, facility availability, safety, budget and cost, transport logistics, and activities necessary to meet repository acceptance criteria. Navy nuclear ships and prototypes would continue to be refueled and defueled as needed. Naval spent fuel would be transported to the Expended Core Facility at the Idaho National Engineering Laboratory for examination. Following examination, naval spent fuel would be stored at the Idaho National Engineering Laboratory. Spent nuclear fuel facility upgrades, replacements, and additions will be undertaken, as will research and development activities to resolve safety vulnerabilities and assure safe spent nuclear fuel interim storage in preparation for ultimate disposition.

The Department of Energy arrived at its preferred alternative through a formal screening process, which included developing screening and performance criteria. Since environmental impacts are substantially the same, they did not offer a strong basis for selection among the alternatives, as the environmental impacts of implementing any of the alternatives were evaluated in detail and determined to be small. The No Action, Decentralization A and B (no examination and limited examination of naval fuel respectively) and Centralization alternatives did not satisfy all of the screening criteria (regulatory compliance; accomplishment of Department and Navy missions; provision of technology development for stabilization and ultimate disposition) identified as necessary for alternatives to qualify for further consideration as candidates for the preferred alternative. Specifically, these alternatives would not have allowed the Department of Energy or the Navy to meet their mission needs, comply with applicable state and Federal laws and regulations, or provide for the necessary research and development of appropriate storage, treatment and disposal technologies. The No-Action alternative would not provide the capability for full examination of naval fuel. Similarly, Decentralization A and B (no examination and limited examination of naval fuel, respectively) would not provide capability for full examination of naval spent fuel. The Department did not prefer the Centralization alternative because it did not maintain backup capabilities for spent fuel management in order to accomplish vital spent fuel program activities. The remaining alternatives, Decentralization C (with full examination of naval fuel), the 1992/1993 Planning Basis, and Regionalization met all of the screening criteria.

The Department applied performance criteria (i.e., environmental impact; public concerns; cost; support of the spent fuel management mission; the need to honor contractual commitments and compliance agreements) to the four candidates that survived the screening process. Two of the four candidates, the 1992/1993 Planning Basis, and Regionalization by Fuel Type, rated the highest. These two candidate alternatives were then evaluated against a number of technical and nontechnical considerations, including environmental impact perception, indicated stakeholder preferences, implementation factors, regulatory risk, spent fuel processing potential, environmental justice, and fairness. As a result of this final evaluation, Regionalization by Fuel Type was identified as the preferred alterative.

4.1.2 Environmentally Preferable Alternatives for Programmatic Spent Nuclear Fuel Management

As indicated in the Environmental Impact Statement, the environmental consequences of the Decentralization, the 1992/1993 Planning Basis, Regionalization, and Centralization alternatives are small, including risks from normal operations, transportation, and potential accidents. While factors such as water quality, air quality, and land use for each alternative showed variations, these aggregated differences by themselves are not sufficient to identify one clearly environmentally preferable alternative. Accordingly, the Department regards all of these alternatives as environmentally preferable, based solely on the evaluation of environmental impacts. The selected alternative, Regionalization by Fuel Type, is among the environmentally preferred alternatives.

However, the No Action alternative would adversely affect the Department's mission to ensure safe and secure management of spent nuclear fuel. Future deterioration of fuels and facilities may increase accident risks over current risk estimates. The Department would initially suffer from a loss of margin in storage capacity. In time, there would be little or no flexibility for repairs to existing facilities under the No Action alternative. Additionally, by limiting research and development to activities already approved, the Department's ability to safely store spent nuclear fuel would be adversely affected by the inability to conduct new research and development. For all of these reasons, compared to each of the action alternatives, the No Action alternative is environmentally nonpreferred.

4.2 Alternatives Considered for Idaho National Engineering Laboratory Environmental Restoration and Waste Management Programs

The alternatives related to environmental restoration and waste management for the Idaho National Engineering Laboratory include: Alternative A, No Action; Alternative B, Ten-Year Plan; Alternative C, Minimum Treatment, Storage, and Disposal; and Alternative D, Maximum Treatment, Storage, and Disposal. Each alternative included components for environmental restoration, decontamination and decommissioning, waste management, and spent nuclear fuel management, including the infrastructure, technology development, and transportation for spent nuclear fuel management.

4.2.1 Agency Preferred Alternative for Site-Specific Actions at the Idaho National Engineering Laboratory

The agency preferred alternative is a modification of the Ten-Year Plan (described in the Environmental Impact Statement), which includes additional features drawn from the Minimum and Maximum Treatment, Storage, and Disposal alternatives. Ongoing spent fuel management, environmental restoration, and waste management activities and projects would continue and be enhanced to meet current and expanded spent fuel and waste handling needs. These enhanced activities would be needed to comply with regulations and agreements and would result from acceptance of specific additional off site-generated materials and waste.

Non-aluminum-clad spent nuclear fuel (including Fort St. Vrain spent fuel and naval spent fuel) would be consolidated at the Idaho National Engineering Laboratory, except for the Hanford production reactor spent fuel. Transuranic and mixed low-level waste might be received from other sites, depending on consent orders negotiated under the Federal Facility Compliance Act and decisions resulting from the Department of Energy *Waste Management Programmatic Environmental Impact Statement*. The transuranic waste and mixed low-level waste received from other Departmental sites would be treated, and the residue returned to the original site (generator) or transported or shipped to an approved off site disposal facility, depending on arrangements reached under the Federal Facility Compliance Act with the State of Idaho, the Environmental Protection Agency and other affected states. Ongoing remediation and decommissioning and decontamination projects would be continued, and additional projects would be conducted.

In addition to existing facilities and projects, projects proposed under the preferred alternative for 1995 through 2005 would be implemented to meet the current mission of the Laboratory and to comply with negotiated agreements and commitments.

4.2.2 Environmentally Preferable Alternative for Site-Specific Actions at the Idaho National Engineering Laboratory

The Environmental Impact Statement analysis shows that potential environmental impacts on and near the Idaho National Engineering Laboratory from each of the action alternatives considered would be small. The Environmental Impact Statement focuses on the potential environmental impacts on or near the Laboratory. The longer-term programmatic waste management impacts across the Department's sites (complex-wide) will be the subject of another environmental impact statement presently under development (Department of Energy *Waste Management Programmatic Environmental Impact Statement).*

The following is a brief comparison of the impacts of the alternatives as analyzed, augmented by a qualitative discussion, albeit somewhat speculative, of considerations related to potential longer-term and complex-wide tradeoffs that may factor into later decision-making. The decision provides for extensive waste treatment that exchanges near-term impacts for longer-term impact reduction. Similarly, transferring wastes to Idaho exchanges near-term impacts there for impact reductions elsewhere within the Department of Energy complex.

The analyses indicate that, among the action alternatives, Alternative C (Minimum Treatment, Storage and Disposal) appears to have the lowest overall potential for environmental impacts at the Laboratory. The lower local impacts are accounted for by the fact that waste management activities, materials, and wastes would be transferred to other Department sites for treatment and storage, therefore transferring associated environmental impacts to the receiving sites. For example, all spent nuclear fuel and transportable wastes other than high-level wastes would be shipped to other Department sites for treatment and storage. Alternative C would not allow the Department to meet all of the requirements of the Proposed Site Treatment Plan submitted to the State of Idaho on March 30, 1995, in accordance with the Federal Facility Compliance Act.

Compared to Alternative C, the analyses show that Alternative B (Ten-Year Plan) would result in somewhat greater, but still small environmental impacts at the Laboratory. The difference in impacts results from the treatment of waste and management of spent nuclear fuel at the Laboratory as opposed to another Department site. While the near-term impacts resulting from proceeding with environmental restoration activities would be greater than those under Alternative C, these would be offset by decreases in the long-term presence of radioactive and hazardous wastes in the environment. This alternative would not provide the Department any significant ability to send wastes to the Laboratory from other sites, and thus would inhibit later programmatic decisions that might otherwise lessen the impacts across the complex.

The selected alternative, the Modified Ten-Year Plan, affords the Department better flexibility to implement actions proposed in the Federal Facility Compliance Act Site Treatment Plan and programmatic decisions that may result from the *Waste Management Programmatic Environmental Impact Statement*, presently being prepared. The local, near-term impacts of this Modified Ten-Year Plan, as analyzed, would be similar to those under Alternative B and less than those under Alternative D (Maximum Treatment, Storage and Disposal). The potential environmental impacts associated with waste management at other sites would be reduced in proportion to the amounts of waste shipped to the Laboratory for treatment.

The analyses show that, among the four alternatives, Alternative D (Maximum Treatment, Storage and Disposal) would probably have the greatest overall potential for short-term,

local environmental consequences. This alternative would also result in the largest commitment of Laboratory resources to address waste-related issues throughout the complex. Although the potential for offsetting complex-wide, long-term reductions in impacts exists, the Department judges that the overall impact of this alternative would still be higher than Alternative B (Ten-Year Plan) or the Modified Ten-Year Plan because of the greater waste treatment, storage and environmental restoration activities at the Laboratory.

The No Action alternative, Alternative A, is not environmentally preferable because it would not permit the flexibility for the Department to fully meet all negotiated and anticipated agreements and commitments (e.g., the Federal Facility Agreement and other consent orders or obligations to receive university, Fort St. Vrain and West Valley Demonstration Project spent nuclear fuel). The No Action alternative would also result in longer-term impacts from the environmental burden and risks associated with untreated, stored, and buried wastes at the Laboratory left undisturbed. No offsetting long-term or complex-wide impact reductions would accrue from this alternative, since it would limit future programmatic decisions that may lessen impacts across the complex.

The Department anticipates that the Modified Ten-Year Plan, when viewed in terms of broader complex-wide impacts over an extended time period, would result in impacts that are comparable to or less than those under Alternative C. Because the Modified Ten-Year Plan would provide for full treatment of waste currently at the Laboratory in addition to treating wastes currently located at other sites, it is reasonable to expect that long-term reductions in environmental impact will be achieved proportionately to reductions in waste volumes from conversion of toxic and hazardous waste forms to stable and more benign forms.

Consequently, in view of the fact that the environmental impacts are small and the balance among the near-term local, long-term and complex-wide impacts may show that there is no clear distinction among Alternatives B, C, and the selected alternative (Modified 10-Year Plan), the Department considers these three alternatives to be equally environmentally preferable alternatives.

5. Selected Alternatives

This section compares important characteristics of the selected alternatives with other evaluated alternatives and presents the basis for the selection.

5.1 Basis for Decisions

These decisions result from a systematic evaluation process used to identify the preferred alternatives (see Chapter 3 of the Environmental Impact Statement). The Department used the following general considerations when making these decisions:

- Environmental and safety considerations;
- Mission accomplishment considerations; and
- Public preference considerations.

These considerations aided the Department in striking a reasoned balance between potential environmental risks and public and mission (including budgetary) concerns.

5.1.1 Environmental and Safety Considerations

Environmental and safety considerations used in making the decisions included the following:

- The potential environmental and safety consequences resulting from actions to be implemented under the decisions would be small and in compliance with applicable environmental laws, regulations, executive orders, Departmental orders, permits and compliance agreements with regulatory agencies.
- The potential environmental impacts resulting from actions to be implemented under the decisions would not constitute a disproportionately high and adverse impact on minority or low income communities.

5.1.2 Mission Accomplishment Considerations

Mission considerations used in making the decisions included the following:

- The decisions provide for the safe and efficient management of the Department's spent nuclear fuel during the next 40 years.
- The decisions position the Department to implement a path forward for ultimate disposition of its spent nuclear fuel.
- The decisions enable the Naval Nuclear Propulsion Program to refuel and defuel nuclear-powered ships and examine naval spent fuel.
- The decisions balance cost considerations with budgetary goals of the Department and congressional mandates.
- The decisions are implementable and reasonable, considering the availability of resources, current technology, and expected technology development.
- The decisions continue environmental restoration and waste management activities at the Idaho National Engineering Laboratory and provide a framework for new activities that may be necessary to comply with negotiated agreements. This includes conducting mixed waste treatment at the Laboratory in accordance with the Federal Facility Compliance Act.

5.1.3 Public Preference Considerations

Significant public preferences and comments considered in the decisions included the following:

- Minimize unnecessary movement of spent nuclear fuel.
- Provide an equitable sharing among states and localities of the perceived burdens for management of spent nuclear fuel.
- Focus the actions of the Department on identification and implementation of a path forward for ultimate disposition of Department-owned spent nuclear fuel.
- Continue the cleanup activities already underway at the Idaho National Engineering Laboratory.
- Protect aquifers from being degraded by the Department's activities.

Public involvement is further discussed in section 9.

5.2 Programmatic Spent Nuclear Fuel Decision Basis

5.2.1 Environmental and Safety Considerations

Application of the environmental and safety considerations (presented in section 5.1.1) is described below with respect to the decision on programmatic spent fuel management. The selected alternative—Regionalization by Fuel Type—is one of several spent nuclear fuel management alternatives considered to be environmentally preferable, as discussed in section 4.1.2 above. As indicated in the Environmental Impact Statement, the environmental and safety consequences of any of the five spent nuclear fuel management alternatives would be small. For example, analyses of air quality, water quality, and land use for each alternative showed little or no impact.

The cumulative impact analysis in the Environmental Impact Statement evaluated the incremental impacts associated with implementing each alternative plus the impacts of other past, present and reasonably foreseeable future actions on a nationwide and site-specific basis. These analyses indicate that the contribution to cumulative impacts from activities required for spent nuclear fuel management would be very small, both nationwide and at sites where fuel is managed. Similarly, on a site-specific basis, the implementation of any of the alternatives would not significantly contribute to cumulative impacts. For example, radiological emissions from normal operations and from transportation of spent nuclear fuel would be well within regulatory requirements, and the volumes of waste produced would be a small addition to other waste volumes generated at the sites.

As discussed in Appendix L to the Environmental Impact Statement, the evaluated potential impacts resulting from all alternatives were found to present no significant risk to potentially affected populations. Similarly, no disproportionately high and adverse effects are expected for any particular segment of the population, including minority populations and low-income populations.

5.2.2 Mission Accomplishment Considerations

The selection of the Regionalization by Fuel Type alternative included the consideration of several nonenvironmental factors, including the Department's ability to meet mission requirements, and cost.

5.2.2.1 Mission Accomplishment. The selected alternative meets the Department's mission requirements to manage its spent nuclear fuel safely and efficiently by consolidating the spent fuel by fuel type, thereby allowing efficiencies in management and technology development for stabilization and ultimate disposal. It also facilitates the construction of new or upgraded facilities for the safe and efficient management of spent nuclear fuel. The selected alternative allows the Navy to fulfill its mission to efficiently refuel and defuel nuclear powered ships and provide full examination of naval fuel. In contrast, the No Action and Decentralization alternatives would not meet the Department's objectives because leaving the spent fuel where it is generated or currently stored would not allow the Department to efficiently stabilize spent fuel for safe interim storage if necessary, or initiate new research and development for stabilization and ultimate disposition. In addition, the No Action and two of the three Decentralization alternatives would not allow full examination of naval fuel.

5.2.2.2 Cost Considerations. The Department is committed to operating cost-effective programs that meet all applicable safety, environmental, and regulatory requirements. The relative costs for implementation of the analyzed alternatives over 40 years have been examined in a report entitled *Spent Nuclear Fuel Management Cost Evaluation Report* (DOE/SNF/REP–PS–001, March 1995). The selected alternative is slightly less expensive than the Decentralization and Planning Basis alternatives. The selected alternative is somewhat more expensive than Regionalization by Geography, or any of the Centralization scenarios; however, these alternatives would be more capital-intensive (especially in the early years) than the selected alternative, and thus not as desirable. These relative rankings would remain the same for possible future spent nuclear fuel disposal scenarios including direct geologic repository disposal (in suitable containers) or processing followed by disposal.

5.2.3 Public Preference Considerations

A discussion of the public involvement process is presented in section 9; however, two important public concerns/preferences are discussed here.

Many commentors stated that spent nuclear fuel should not be stored in their locality. Until spent nuclear fuel is either finally disposed of or otherwise processed, it must be safely managed somewhere. Foreign storage, examination, and/or processing of spent fuel already in the Department's possession have been considered; however, at this time, concerns about security and nuclear material nonproliferation have caused the Department not to pursue this option programmatically. However, future analyses under the National Environmental Policy Act that are specific to sites or to spent nuclear fuel types may consider these options, and subsequent decisions could result in selected foreign storage or processing. For example, the *Proposed Nuclear Weapons Nonproliferation Policy Concerning Foreign Research Reactor Spent Nuclear Fuel Draft Environmental Impact Statement (DOE/EIS–0218D)* evaluates foreign and domestic options for storage, as well as chemical separation.

Many commentors also expressed a preference for minimizing the amount of spent nuclear fuel transportation. Although the potential environmental impacts due to transportation are very small, the Department acknowledges this public concern. The estimated number of shipments over the next 40 years analyzed ranges from about 200 shipments under No Action up to 7,400 shipments for Centralization. The selected alternative may involve up to 3,700 shipments over 40 years. The Regionalization by Geography and Centralization alternatives would require up to twice as many shipments, and the increased transportation was a consideration in not selecting those alternatives. Several other alternatives have lower shipment estimates but, as previously discussed, would impair the ability to meet mission requirements. The selected alternative allows a reasonable balance between the public preference for minimizing the extent of shipments and Department of Energy and Navy mission needs. It should be noted that the estimated number of shipments is conservative, and the number of actual shipments under the selected alternative is likely to be lower.

5.3 Site-wide Environmental Restoration and Waste Management Decision Basis

5.3.1 Environmental and Safety Considerations

Volume 2 of the Environmental Impact Statement evaluated many site-wide environmental parameters. The potential impacts were small for each alternative except that: (1) Fugitive dust would be generated during construction operations; and (2) the potential exists that acceptable visual color shift criteria could be exceeded at some sensitive areas if certain of the proposed projects were implemented without application of an air emission control technology. In actuality, fugitive construction dust would be controlled by standard practices (such as wetting). Additionally, through the State of Idaho Permit to Construct process, proposed projects are required to demonstrate that there will be no adverse impacts on the ambient air quality, including visibility.

The Environmental Impact Statement shows that the selected alternative generally causes potential impacts that fall between the Minimum Treatment, Storage, and Disposal alternative—Alternative C—and the Maximum Treatment, Storage, and Disposal alternative—Alternative D. The results reflect the fact that positive action—i.e., treatment of waste to render it more environmentally benign and stable over the long term—will result in short-term increases in releases of radionuclide and criteria pollutant emissions. However, all projected impacts are within applicable regulatory and Department of Energy requirements to ensure protection of public health and safety. Also, all alternatives involve continuation of existing projects or new projects to remediate or prevent contamination of the Snake River Plain aquifer.

5.3.2 Mission Accomplishment Considerations

The selection of the Modified Ten-Year Plan considered several nonenvironmental factors, including the flexibility to implement waste treatment options to be negotiated under the Federal Facility Compliance Act, cost-effective waste treatment and remedial actions.

5.3.2.1 Federal Facility Compliance Act Flexibility. Negotiations with the State of Idaho are underway on a consent order for treating mixed-waste streams that contain Resource Conservation and Recovery Act hazardous constituents. The No Action and Minimum Treatment, Storage, and Disposal alternatives would not enable the Department to implement treatment activities that would satisfy anticipated consent order requirements. The selected alternative, as well the Maximum Treatment, Storage, and Disposal alternatives, would provide the necessary flexibility.

5.3.2.2 Cost Effective Idaho National Engineering Laboratory Activities. Some alternatives provide a greater opportunity for cost effective Idaho National Engineering Laboratory waste operations than other alternatives. For example, the Ten-Year Plan Alternative would include new high-level liquid waste tanks estimated to cost $160 million. However, the selected alternative, Modified Ten-Year Plan, eliminates this cost by using the existing calcination process to eliminate the liquid high-level waste. In addition, the selected alternative allows flexibility in future decisions on, and operation of new waste treatment facilities with the possibility of treating multiple waste streams in one facility. The 1992/1993 Planning Basis and Maximum Treatment, Storage, and Disposal alternatives would also allow the desired flexibility, but the No Action and Minimum Treatment, Storage, and Disposal alternatives would not.

5.3.3 Public Preference Considerations

Public involvement activities are described in section 9. Several of the more important public concerns and preferences with respect to the selected alternative are discussed below.

Many comments stated that the Department must protect the environment, particularly the Snake River Plain aquifer. The Department discontinued direct liquid discharges to the aquifer in 1989 and is now actively cleaning up previous contamination. It should be noted that all safe drinking water standards are being met at the Laboratory site boundary. All of the action alternatives proposed in the Environmental Impact Statement would avoid any further degradation of the aquifer, and several alternatives, including the selected alternative, would continue current or propose additional aquifer cleanup actions. The No Action alternative would not protect the aquifer over a long period of time because treatment of existing waste to convert it to a more environmentally benign form would not be implemented.

Public comments also expressed a strong preference that the Idaho National Engineering Laboratory should not become the only waste treatment, storage, and disposal center for the Department. This is one reason why the Maximum Treatment, Storage, and Disposal alternative was not selected. Although the selected alternative would allow regional treatment of some selected waste streams, the residues from the treatment would be returned to the generator or transported to approved off-site storage or disposal facilities. By not selecting the Maximum Treatment, Storage, and Disposal alternative, the Department has also limited the number of waste shipments, an important consideration in many of the comments received.

6. Mitigation

6.1 Programmatic Spent Nuclear Fuel Management

The strictly controlled conduct of operations associated with Department of Energy and Naval Nuclear Propulsion Program spent fuel management activities are mitigation measures integral with the selected alternative. The Department of Energy and the Naval Nuclear Propulsion Program have orders and regulations for conduct of spent nuclear fuel management operations. All government spent fuel shipments must comply with Department of Energy and Department of Transportation regulations. The Department of Energy and the Navy have adopted stringent controls for minimizing occupational and public radiation exposure. The policy of these programs is to reduce radiation exposures to as low as reasonably achievable. Singly and collectively, these measures avoid, reduce, or eliminate any potentially adverse environmental impacts from spent nuclear fuel management activities. The Department has not identified a need for additional mitigation measures.

6.2 Site-wide Idaho National Engineering Laboratory Environmental Restoration and Waste Management

Volume 2, section 5.19 of the Environmental Impact Statement presents an overview of routine measures that minimize the risk associated with Department of Energy activities. Because the Department's compliance program requires self-assessments, external oversight, and audits, mitigation measures are an integral part of the Department's operations. Singly and collectively they avoid, reduce, or eliminate potentially adverse environmental impacts from environmental restoration and waste management activities. The Idaho National Engineering Laboratory has issued an Environmental Compliance Planning Manual that identifies the various requirements of Federal and state agencies that are applicable to its activities. Additional routine measures taken to reduce or avoid potential risks from Idaho National Engineering Laboratory environmental restoration and waste management activities encompassed by the decision are summarized below:

- Establishment and maintenance of cultural resources management plans, including consultations with the Shoshone-Bannock tribes and appropriate state and local agencies;
- Continued development of future land use plans in consultation with the Environmental Management Site Specific Advisory Board;
- Coordination with local communities and county planning agencies regarding labor and capital impacts;
- Evaluation of potential non-radiological air emissions for new facilities in specific Permit to Construct applications to demonstrate there will be no adverse air quality impacts;
- Evaluation of controls to reduce radiological emissions based on the nature of the activity and types and amounts of radionuclides; and
- Continued reduction in the generation of all types of waste.

Because of these activities and the Laboratory's commitment to operating in compliance with all applicable laws, regulations, executive orders, Departmental orders, permits, and compliance agreements with regulatory agencies, no additional mitigative actions are needed to implement this decision.

7. Legal and Regulatory Considerations

7.1 Litigation

7.1.1 History of Case

In 1965, the Public Service Company of Colorado and the then General Atomic Division of the General Dynamics Corporation signed a contract with the Atomic Energy Commission (now the Department of Energy) to pursue commercial power demonstration at the Fort St. Vrain Reactor in Colorado. The terms of that contract stipulated that a specified amount of spent fuel be shipped to the Idaho National Engineering Laboratory for interim storage. To meet this commitment, the Atomic Energy Commission constructed the Irradiated Fuels Storage Facility at the Idaho National Engineering Laboratory.

Pursuant to this contract, three segments of spent fuel were shipped from Colorado to the Idaho National Engineering Laboratory for storage in the early 1980s. In the late 1980s, Idaho Governor Cecil Andrus alerted the Department to the State of Idaho's concern about becoming a permanent repository for spent nuclear fuel. Governor Andrus declared that until the Department of Energy made a decision about a permanent repository, he would oppose further spent fuel shipments to Idaho. At that time, the Department was not in a position to make a decision about a permanent repository, and thus, disputes between the Department and the State of Idaho continued. In 1992, Idaho alleged that the Department had violated the National Environmental Policy Act by failing to prepare an Environmental Impact Statement on the continued receipt of spent fuel at the Idaho National Engineering Laboratory. Although the Department had prepared an Environmental Assessment on the impacts of receiving Fort St. Vrain fuel, and determined that the impacts of managing spent fuel were small, the State of Idaho pressed for an Environmental Impact Statement. In June 1993, the Federal District Court for the District of Idaho ruled that the Department was required to prepare an Environmental Impact Statement. See *Public Service Company v. Andrus*, 825 F. Supp. 1483 (D. Idaho 1993). In addition, the court enjoined the Department from further shipment of spent nuclear fuel to the Laboratory until the Environmental Impact Statement was completed. Following negotiations with the State of Idaho, an amended court order was entered on December 22, 1993, which contained a schedule for completion of the Environmental Impact Statement and provided for a limited number of naval shipments while the Environmental Impact Statement was prepared. On May 19, 1995, the District Court ordered an extension of the injunction.

During this same period, the Department was already in the process of preparing a site-wide environmental impact statement for proposed environmental restoration and waste management activities at the Idaho National Engineering Laboratory. Following the negotiated settlement with the State of Idaho and entry of the December 22, 1993 court order regarding spent fuel shipments to the Laboratory, the Department consolidated the site-specific environmental impact statement with the spent fuel environmental impact statement in a single document, now known as the *Programmatic Spent Nuclear Fuel Management and Idaho National Engineering Laboratory Environmental Restoration and Waste Management Programs Environmental Impact Statement.*

7.1.2 Compliance with the Court Order

Issuance of this decision is a part of ongoing compliance with the court's order of December 22, 1993. By fulfilling all of the Environmental Impact Statement preparation requirements, and other spent nuclear fuel requirements and milestones, a significant portion of the court's order has been satisfied.

7.2 Legal Requirements

The Department of Energy is mandated by Congress to comply with applicable Federal and state laws and regulations, among which are the:

- National Environmental Policy Act;
- Clean Air Act;
- Clean Water Act;
- Safe Drinking Water Act;
- Floodplains Protection Act;
- Federal Facility Compliance Act;
- Resource Conservation and Recovery Act; and
- American Indian Religious Freedom Act and Native American Graves Protection and Repatriation Act.

The selected alternatives provide for compliance with these and other applicable laws and regulations governing actions within the Department's responsibility.

8. Implementation

8.1 Programmatic Spent Nuclear Fuel Management Decision Implementation

Implementation of the Department of Energy spent nuclear fuel decision will be managed by the Department's Office of Spent Fuel Management in conjunction with the affected operations offices. Naval spent fuel shipments will be conducted by the Naval Nuclear Propulsion Program. For planning purposes, the Department of Energy assumes that its spent nuclear fuel that is not otherwise dispositioned would be emplaced in the first geologic repository for spent nuclear fuel and high-level radioactive waste, subject to physical and statutory limits, payment of fees, and meeting repository acceptance requirements.

Since this is a programmatic decision, only intersite spent fuel movement is addressed. Naval spent fuel shipments will resume immediately upon the lifting of the injunction imposed by the court's order dated May 19, 1995, barring such shipments. The consolidation of Department of Energy-owned spent fuel types from current storage locations to the selected locations will be prioritized and time-phased depending on fuel condition, facility availability, safety, budget and cost, transport logistics, and repository acceptance criteria.

As indicated in the *Spent Nuclear Fuel Management Cost Evaluation Report* (SNF–REP–PS–001), spent fuel storage under the Regionalization by Fuel Type alternative may cost from $9.1 to $17.6 billion (in constant 1995 dollars) over forty years, depending on whether existing or new facilities are used. This range is associated with an assumption of no funding limitations; however, implementation of Regionalization by Fuel Type is subject to congressional and Department funding priorities, which will affect the timing of spent fuel management activities.

8.2 Environmental Restoration and Waste Management Decision Implementation at the Idaho National Engineering Laboratory

The Department's Idaho Operations Office will manage implementation of Laboratory-specific activities described in this Record of Decision. The Naval Nuclear Propulsion Program will manage projects and activities located at the Naval Reactor Facility, while the Department's Chicago Operations Office will manage those projects and activities located at Argonne National Laboratory-West. Implementation of the site-wide decisions is subject to a number of constraints, several of which are described below.

8.2.1 Funding

All of the site's activities are dependent on Congressional and Departmental funding priorities. Implementation of activities and projects will be prioritized by Departmental management, taking into account negotiations with the State of

Idaho and recommendations from the Laboratory's Site-Specific Advisory Board.

8.2.2 Federal Facility Compliance Act Negotiations

All of the waste types, except nonradioactive hazardous and sanitary wastes, can also be subdivided into a mixed waste category, i.e., waste that contains both hazardous waste regulated under the Resource Conservation and Recovery Act and source, special nuclear, or byproduct material defined by the Atomic Energy Act. Under the Federal Facility Compliance Act, the Laboratory was required to develop a Site Treatment Plan that addresses how the mixed waste in storage and to be generated will be treated to meet the Land Disposal Restrictions under the Resource Conservation and Recovery Act. The Laboratory's Proposed Site Treatment Plan was submitted to the State of Idaho on March 30, 1995, and includes detailed plans on how mixed waste will be treated. The Proposed Site Treatment Plan also included the treatment of waste to be received from off-site. The Federal Facility Compliance Act requires that the regulatory authority (i.e., the State of Idaho) approve, approve with modification, or disapprove the submitted Plan within six months. A consent order implementing the Proposed Site Treatment Plan is expected to be negotiated between the Department and the State of Idaho prior to October 6, 1995. The projects and activities identified in the Proposed Site Treatment Plan are included in the preferred alternative for the Final Environmental Impact Statement and in the alternative selected in this Record of Decision. Upon receipt the consent order implementing the Proposed Site Treatment Plan, this Record of Decision will be reviewed to assure consistency. The consent order will provide schedules and milestones for most of the waste management projects identified for implementation in this Record of Decision.

The December 9, 1991 Federal Facility Agreement and Consent Order is the mechanism by which cleanup decisions are made at the Idaho National Engineering Laboratory. Schedules for activities and projects identified for the Environmental Restoration Program will be implemented under the Federal Facility Agreement and Consent Order Action Plan.

8.2.3 Department of Energy Waste Management Programmatic Environmental Impact Statement

The Waste Management Programmatic Environmental Impact Statement, currently in preparation, is analyzing alternative strategies and policies to maximize efficiency for the Department's national Waste Management Program. The analyses will support the Department's complex-wide decisions. Volume 2 of the Environmental Impact Statement on Idaho National Engineering Laboratory. environmental restoration and waste management programs has been coordinated with the preparation of the Waste Management Programmatic Environmental Impact Statement. Upon issuance of a record of decision for the Waste Management Programmatic Environmental Impact Statement, this Record of Decision will be reviewed for program consistency and possible changes.

9. Public Involvement

On October 22, 1990, the Department of Energy published a Notice of Intent in the **Federal Register** (55 FR 42633) announcing its intent to prepare a programmatic Environmental Impact Statement addressing Department-wide environmental restoration and waste management (including spent nuclear fuel management) activities. The Department invited the public to submit written comments on the scope of the document. Twenty-three scoping meetings were held across the country, and a draft Environmental Impact Statement Implementation Plan reflecting public comments was prepared. The Department held additional public meetings on the draft Implementation Plan and recorded public comments at these meetings.

On October 5, 1992, the Department published a Notice of Intent in the **Federal Register** (57 FR 45773) announcing its intent to prepare an environmental impact statement addressing environmental restoration and waste management and spent nuclear fuel management at Idaho National Engineering Laboratory. In the Notice of Intent, public comment was solicited on the proposed scope of the study. Five scoping meetings were held in Idaho, and public comments at those meetings were recorded.

As a result of a court order, the Department issued a Notice of Opportunity in the **Federal Register** (58 FR 46951) on September 3, 1993, announcing its intent to expand the scope of the ongoing Idaho National Engineering Laboratory Environmental Restoration and Waste Management Environmental Impact Statement to include a Department-wide review of the alternatives for managing spent fuel, including naval spent fuel. The notice also invited the public to comment on the expanded scope. Public comments received in response to the Notice of Opportunity, as well as public comments provided in the original scoping processes for both the Idaho National Engineering Laboratory Environmental Impact Statement and Department-wide Environmental Restoration and Waste Management Programmatic Environmental Impact Statement, were considered and summarized in the Environmental Impact Statement Implementation Plan issued on October 29, 1993.

These and other public outreach efforts, in conjunction with the public comment period discussed below, provided opportunities for the public to identify issues of concern relating to the Department's spent nuclear fuel management and Idaho National Engineering Laboratory environmental restoration and waste management activities.

9.1 Public Comments on the Draft Environmental Impact Statement

The public comment period on the Draft Environmental Impact Statement began on July 1, 1994 and closed on September 30, 1994. More than 1,400 individuals, agencies, and organizations provided approximately 5,000 comments. Comments were received from all affected Department of Energy and shipyard communities.

Many of the issues surrounding the management of the Department's spent nuclear fuel, raised during the public comment period, were not new. For example, the report entitled *Spent Fuel Working Group Report on Inventory and Storage of the Department's Spent Nuclear Fuel and Other Reactor Irradiated Materials and Their Environmental Safety and Health Vulnerabilities* documented current and potential vulnerabilities regarding existing storage facilities. Stakeholders raised many of the issues identified in this report in 33 public meetings held on the Draft Environmental Impact Statement in 1994.

The comments came from many states, from Maine to Hawaii. The origins of the comments indicated that Volume 1 (Spent Fuel Management) addressed issues of national interest, while Volume 2 (Idaho Engineering National Laboratory activities) was the subject of concern primarily to the citizens of Idaho. Recurring and controversial issues raised during the public comment period included comments on the Department of Energy and Navy credibility; the apparent lack of a clear path forward with respect to ultimate disposition of spent nuclear fuel and nuclear waste; continued generation of spent nuclear fuel; cost of implementation; safety of, and risk to, the public; transportation of spent nuclear fuel and waste; impacts of accidents and perceived risk on local economies and the quality of life; and United States nuclear, defense, energy, and foreign policies.

In response to these comments the Department of Energy and the Navy consulted with other Federal agencies, states, and Tribal Nations to achieve a better understanding of the bases for their comments. Discussions during these consultations resulted in resolution of many comments and further improvements in the final Environmental Impact Statement. These comments and concerns resulted in approximately 500 changes to the final document. For example, a brief summary of the costs associated with the various alternatives was added. Also, the Department of Energy determined that for planning purposes, Department of Energy spent nuclear fuel that is not otherwise dispositioned will be emplaced in the first geologic repository for spent nuclear fuel and high-level radioactive waste, subject to physical and statutory limits, payment of fees, and meeting acceptance requirements. Volume 1 was enhanced to include a description that clarifies the relationship between the Environmental Impact Statement and other National Environmental Policy Act reviews related to spent fuel management. Further, the Department clarified the relationship between the Environmental Impact Statement and the Department's spent fuel vulnerability assessment action plans. As a direct result of public comment, the Department expanded discussion in Volume 2 of the potential impacts to Native American cultural resources, and the potential impacts on air quality at the Idaho National Engineering Laboratory. With regard to naval spent fuel, enhancements to Appendix D (Naval Spent Nuclear Fuel Management) provide additional information in the following areas: importance of naval spent fuel examination, impacts of not refueling or defueling nuclear-powered vessels, the transition period required to implement naval spent fuel alternatives, potential accident scenarios at naval shipyards, and uncertainties in calculating potential environmental impacts. Editorial changes were made to the Environmental Impact Statement to correct errors, none of which were considered substantive, and to clarify discussions.

The Summary of the Environmental Impact Statement provides an overview of public comments received on the draft document and Departmental actions to address these comments in the Final Environmental Impact Statement. The Department also added Volume 3 to the Environmental Impact Statement in order to consider, individually and collectively, all comments.

9.2 Response to Public Comments on the Final Environmental Impact Statement

The Department of Energy received comments and inquiries following issuance of the final Environmental Impact Statement. Commentors did not recommend any new alternatives or raise any issues that had not already been considered during preparation of the Final Environmental Impact Statement. The comments are summarized as follows.

- Commentors did not want any additional waste or spent fuel moved into the State of Idaho because of concerns for the aquifer and perception of potential for earthquakes to occur in Idaho.
- The State of Idaho filed a motion in Federal District Court maintaining that the Environmental Impact Statement does not comply legally or technically with the Court's order of December 22, 1993.
- The State of Maryland generally concured with the Department's selection of the preferred alternatives. For Programmatic spent fuel management, regionalization by fuel type is endorsed provided that adequate transportation safeguards are applied and that groundwater is fully protected at all three sites.

10. Decision and Approval

This decision constitutes the Department's final programmatic action regarding spent nuclear fuel management. This decision does not constitute the final agency action for site-specific projects at the Idaho National Engineering Laboratory that are subject to further negotiations among the Environmental Protection Agency, the State of Idaho, and the Department of Energy under the Federal Facility Compliance Act, or those projects subject to further National Environmental Policy Act review.

Issued in Washington, D. C., this 30th day of May, 1995.

Hazel R. O'Leary,

Secretary of Energy.

Appendix

The following describes actions which will occur as a result of the programmatic spent nuclear fuel management decision and decisions on the waste management and environmental restoration programs at the Idaho National Engineering Laboratory. Volume 2, Appendix C, of the Environmental Impact Statement contains further detail on the projects described below.

Idaho National Engineering Laboratory Spent Nuclear Fuel Management

Implementation of the selected programmatic alternative, Regionalization by Fuel Type, results in consolidation of non aluminum-clad spent nuclear fuel (including Fort St. Vrain spent fuel) at the Idaho National Engineering Laboratory. Aluminum-clad spent nuclear fuel currently stored at the Idaho National Engineering Laboratory will be shipped to the Savannah River Site. Navy fuel will be transported to the Laboratory and continue to be examined at the Expended Core Facility and then stored at the Idaho Chemical Processing Plant. The Expended Core Facility Dry Cell Project will be implemented at the Naval Reactors Facility. Additional storage space at the Idaho Chemical Processing Plant will be gained by installing additional racks in the storage pools at Building CPP–666. Wet storage at Building CPP–603 will be phased out by transferring fuel to both Building CPP–666 and the Irradiated Fuel Storage Facility at the Idaho Chemical Processing Plant. New dry storage capacity will be constructed and phased in. Spent fuels currently stored at various locations at the Idaho National Engineering Laboratory will be consolidated at the Idaho Chemical Processing Plant facilities as funding allows. Idaho National Engineering Laboratory management efforts will be concentrated on placing spent fuel from aging facilities and future spent fuel receipts into new dry fuel storage systems with parallel emphasis on qualifying the spent fuel forms to emerging repository acceptance criteria. A new dry storage system for the storage of Three Mile Island fuel currently stored in an aging facility at Test Area North will be constructed upon receipt of any required approvals by the Nuclear Regulatory Commission. (This project is also the subject of an Environment Assessment.) The facility

construction and operation were included in the cumulative impacts analyzed in the Environmental Impact Statement.

The following spent nuclear fuel management projects and activities will be implemented at the Idaho National Engineering Laboratory as a result of the decision:

Increased Rack Capacity for Building 666 at the Idaho Chemical Processing Plant—Ensures the near-term capability of the Idaho Chemical Processing Plant to receive and store spent nuclear fuel by increasing the storage capability of three pools in the Fluorinel Dissolution Process and Fuel Storage Facility Building (CPP–666). This project involves replacing existing storage racks and rearranging fuel within the racks. This project will start in calendar year 1995.

Dry Fuel Storage Facility; Fuel Receiving, Canning/Characterization, and Shipping—A multi-functional project that will accommodate receipt and storage of the various fuel types currently in inventory at the Idaho National Engineering Laboratory and the fuels projected to be received at the Idaho National Engineering Laboratory. The project will assist in the safe, environmentally sound management of spent nuclear fuel until final disposition can be achieved. The project consists of two major facilities that will be integrated but that can be constructed in phases. One facility is the Fuel Receiving, Canning/Characterization, and shipping facility. The second facility is the Dry Fuel Storage Facility consisting of a Modular Aboveground Dry Storage system. Procurement is expected to start in 2002 with the facility becoming operational in 2004.

Fort St. Vrain Spent Nuclear Fuel Receipt and Storage—Implementation of this activity will involve the transportation, receipt, and storage (at the Idaho Chemical Processing Plant) of approximately 16 metric tons of Fort St. Vrain spent nuclear fuel from the Public Service Company of Colorado.

Expended Core Facility Dry Cell Project—This facility will be used to prepare naval spent nuclear fuel modules for examination and storage by removing the nonfuel structural section from the fuel. This activity is currently performed in water pools at the Expended Core Facility. The facility will be a shielded concrete structure with remotely operated equipment. The facility will be integral with the existing Expended Core Facility building. The contracting process for the Expended Core Facility Dry Cell Project is expected to resume in 1995.

Idaho National Engineering Laboratory Waste Management Program

As previously stated, the projects and actions needed to manage the waste and spent nuclear fuel associated with each alternative were identified in the Environmental Impact Statement. The following projects and activities associated with waste management for each of the waste types will be implemented as a result of the programmatic and site-specific decisions.

High-Level Radioactive Waste

Tank Farm Heel Removal Project—This project involves the design, procurement, and installation of equipment, and performance of necessary tank systems modifications in order to remove the liquid and solid heels from the 11 storage tanks in the Idaho Chemical Processing Plant tank farm. The schedule for heel removal will be included in a closure plan yet to be negotiated with the State of Idaho, but is anticipated to start about 2009.

Calcine Transfer Project—This project involves the design, procurement, and installation of equipment to retrieve calcined high-level waste from Bin Set #1 as the first step in developing and demonstrating equipment to retrieve and transfer calcined waste to the Waste Immobilization Facility. The schedule for this project depends on the schedule for the Waste Immobilization Facility to be negotiated under the Federal Facility Compliance Act.

Transuranic Waste

For purposes of this Record of Decision, "transuranic waste" also includes alpha low-level radioactive waste. Transuranic waste contains transuranic contamination over 100 nanoCuries/gram. Alpha low-level waste contains transuranic contamination of more than 10 nanoCuries/gram but less than 100 nc/g and has traditionally been managed at the Idaho National Engineering Laboratory as transuranic waste. These waste types are generally expected to be managed in the same manner; therefore, the projects and activities for the selected alternative are described together.

Transuranic Storage Area Enclosure and Storage Project—The potential environmental impacts of this project were evaluated by the Department in an Environmental Assessment and was the subject of a Finding of No Significant Impact. The project was included in the Environmental Impact Statement because it is an ongoing project that will begin operation during the period analyzed in the Environmental Impact Statement. This project involves the construction of a facility to retrieve and re-store transuranic waste to achieve compliance with Resource Conservation and Recovery Act requirements. The project includes both the Transuranic Storage Area Enclosure Facility project and the Storage Facility Project.

Waste Characterization Facility—This project involves the design, construction, and operation of a Waste Characterization Facility at the Radioactive Waste Management Complex. The Waste Characterization Facility will provide facilities to open containers of contact-handled alpha low-level waste, alpha mixed low-level waste, transuranic, mixed transuranic waste, and mixed low-level waste; obtain and examine samples; and repackage the characterized waste in an environment designed to contain alpha-type contamination.

Mixed Low-Level Radioactive Waste

Mixed low-level waste is currently managed on-site, and limited amounts have been treated/recycled or disposed of at commercial off-site facilities. Existing and newly generated Idaho National Engineering Laboratory mixed low-level waste would continue to be stored in existing facilities, pending on-site incineration and non-incineration treatment and off-site treatment, as needed. Prior to disposal, Idaho National Engineering Laboratory treated and untreated waste would be stored in existing facilities on-site. Other treated waste meeting the waste acceptance criteria for the Radioactive Waste Management Complex would be disposed of on-site. Treated waste will be stored until disposed of off-site in a Resource Conservation and Recovery Act Subtitle C disposal facility or until an on-site mixed waste disposal facility becomes operational.

Mixed waste management projects that will be implemented at the Idaho National Engineering Laboratory as a result of the decision are:

Waste Experimental Reduction Facility Incineration (restart)—The objective of the Waste Experimental Reduction Facility Incineration project for mixed low-level waste is to treat the waste to render it nonhazardous, or to meet the Land Disposal Restriction regulations. The project will modify the existing organic liquid waste injection system to provide the capability to incinerate either organic or aqueous waste through direct injection into the incinerator and to provide a location for liquid waste sampling, blending, and repackaging operations. The proposed date of operations for the incineration of mixed low-level waste is June 1996.

Nonincinerable Mixed Waste Treatment Project—The general objective of this project is to provide treatment capabilities for some of the mixed low-level waste that is not suitable for incineration. This project will use several technologies including ion exchange (Portable Water Treatment Unit), stabilization, macroencapsulation, neutralization and mercury amalgamation/retort. This facility will be located at the Power Burst Facility/Auxiliary Reactor Area. The mixed low-level waste treatment units under this project are scheduled to begin operation at different dates from June 1998, through June 2000.

Sodium Processing Project—This project involves construction and operation of a process system to convert sodium hydroxide to a disposable waste form, sodium carbonate. The project will provide for a modification to the existing Sodium Process Facility. A thin film evaporator, operating with a carbon dioxide atmosphere, would be used for hydroxide to the carbonate conversion process. The sodium conversion system will be sized to be compatible with the existing elemental sodium-to-sodium-hydroxide processing rate. Auxiliary equipment for packaging the sodium and for recycling process water is included. The planned operational date for this facility is March 1997.

Low-Level Radioactive Waste

Low-level waste at the Idaho National Engineering Laboratory is being generated, treated on-site, treated off-site at commercial facilities, and disposed of on-site at the Radioactive Waste Management Complex. The Waste Experimental Reduction Facility Incineration project described below will be implemented at the Idaho National Engineering Laboratory as a result of the decision.

Waste Experimental Reduction Facility Incineration—This project will provide volume reduction of low-level waste by incineration. The incinerator is a dual-chambered, controlled-air combustion unit with a maximum rated combustion capacity of 5.5 million British Thermal Units per hour. This facility has operated for six years previously and will resume incinerating low-level waste in 1995.

Industrial/Sanitary Waste

The industrial waste program (which includes sanitary waste) manages nonhazardous and nonradioactive solid wastes generated during manufacturing or industrial processes. The waste generated at the Idaho National Engineering Laboratory is currently disposed of at the Central Facilities Area Landfill and the Bonneville County Landfill. The current Idaho National Engineering Laboratory disposal area is located in a 4.8-hectare (12-acre) gravel pit.

An active recycling program is helping to reduce the amount of industrial waste. This recycling program includes such activities as recycling office waste and scrap metal and converting scrap wood into mulch. Other ongoing efforts to reduce industrial waste include waste avoidance and waste segregation programs.

The Idaho National Engineering Laboratory will continue the existing industrial waste program, with continued emphasis on reducing the amount of industrial waste generated, through an intensive program of waste avoidance, recycling, and segregation. Continuation of the existing program will require an expansion of the industrial/commercial landfill. This project will extend the boundaries of the Central Facilities Area Landfill Complex to provide 91 additional hectares (225 acres) of land to provide capacity for industrial waste disposal and operations for at least the next 30 years. The Landfill Complex extension provides a centralized area for various functions, including waste minimization operations, treatment and disposal of petroleum-contaminated media, and recyclable collection and transportation.

Idaho National Engineering Laboratory Infrastructure Program

Infrastructure support is part of ensuring the continued safe operation of Idaho National Engineering Laboratory facilities. Infrastructure support at the Idaho National Engineering Laboratory includes general plant projects to maintain and upgrade the current facilities, buildings, roads, and utilities that support operations. Recent projects include a new transportation complex, upgrades to the sewer system, and a new electrical system.

The decision is to continue the existing infrastructure support program. Existing facilities will be upgraded to comply with applicable state and Department requirements. In addition, new infrastructure projects may be needed to support ongoing Idaho National Engineering Laboratory operations. The Idaho National Engineering Laboratory industrial landfill facilities may be expanded as discussed above in the Industrial/Sanitary Waste subsection. Gravel pits located at several locations around the Idaho National Engineering Laboratory will be expanded as described below.

Gravel Pit Expansions—This project will expand existing gravel borrow pit operations to provide gravel and fill material for existing and future road and other construction activities at the Idaho National Engineering Laboratory during the 10-year period from June 1995 to June 2005. Some examples are gravel and fill material in support of new construction for spent nuclear fuel consolidation at the Idaho Chemical Processing Plant, and gravel and fill to support capping areas at the existing landfill and at the Radioactive Waste Management Complex. A total of eight gravel pits and borrow areas are located at the Idaho National Engineering Laboratory. The future needs of the Idaho National Engineering Laboratory will result in most if not all of the areas being utilized to some extent.

Idaho National Engineering Laboratory Environmental Restoration Program

In selecting the Modified Ten-Year Plan alternative, the Department acknowledges the current industrial land use of the Idaho National Engineering Laboratory, but recognizes the need for flexibility to apply the criteria prescribed under the Comprehensive Environmental Response, Compensation and Liability Act in making cleanup decisions. All of the following projects have been previously reviewed in accordance with the National Environmental Policy Act and are at various stages of implementation.

Auxiliary Reactor Area Decontamination and Decommissioning—The Auxiliary Reactor Area-II consists of radiologically contaminated buildings, structures, utilities, and other miscellaneous items. This project will ensure the facilities are in a safe configuration to determine and execute appropriate decontamination activities and to decommission the facilities. This action will reduce the risk of radioactive exposure and eliminate the need for and cost of continued surveillance and maintenance.

Boiling Water Reactor Experiment Decontamination and Decommissioning—This project will remove the Boiling Water Reactor Experiment facility from the list of surplus facilities, remove or stabilize potential sources of contamination and reduce the risk of radioactive exposure, and eliminate the need for and cost of continued surveillance and maintenance.

Pit 9 Retrieval—Pit 9 is an Interim Action initiated under the Idaho

National Engineering Laboratory Federal Facility Agreement and Consent Order. The project will reduce the potential for exposure of workers, the public, and the environment to contaminants disposed in Pit 9; expedite the overall cleanup of the Radioactive Waste Management Complex at the Idaho National Engineering Laboratory; and reduce the potential for migration of Pit 9 wastes to the Snake River Plain Aquifer.

Organic Contamination in Vadose Zone Remediation—This project will prevent organic contaminant migration to the Snake River Plain Aquifer in groundwater contaminant concentrations exceeding acceptable risk levels and/or Federal and State maximum contaminant levels. Through the use of vapor-vacuum extraction, volatile organic contaminants found in the unsaturated hydrogeological zone (vadose zone) will be removed and treated.

Remediation of Organic Ground/Water Plume—This project will reduce the contamination in the vicinity of an injection well located in the Test Area North Technical Support Facility. Ground water will be extracted by pumping, contaminants will be removed from the ground water in a treatment facility, and the cleaned water will be discharged to a surface impoundment.

[FR Doc. 95–13482 Filed 5–31–95; 8:45 am]

BILLING CODE 6450–01–P

Federal Register

Thursday
June 1,1995

Part IV

The President

Presidential Determination No. 95–21 of May 16, 1995

Federal Register
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Presidential Documents

Title 3—

The President

Presidential Determination No. 95–21 of May 16, 1995

Transfer of $3.0 Million in FY 1995 Economic Support Funds to the Peacekeeping Operations Account to Support African Peacekeeping Efforts in Liberia

Memorandum for the Secretary of State

Pursuant to the authority vested in me by section 610(a) of the Foreign Assistance Act of 1961, as amended (the "Act"), I hereby determine that it is necessary for the purposes of the Act that $3.0 million of funds made available under Chapter 4 of Part II of the Act, be transferred to, and consolidated with, funds made available for Peacekeeping Operations under Chapter 6 of Part II of the Act.

I hereby authorize the use in fiscal year 1995 of the aforesaid $3.0 million in funds made available above under Chapter 4 of Part II of the Act to provide peacekeeping assistance to support the Economic Community of West African States Cease-Fire Monitoring Group (ECOMOG), as well as Tanzanian, Ugandan, and ECOMOG peacekeeping efforts in Liberia.

You are hereby authorized and directed to report this determination immediately to the Congress and to arrange for its publication in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, May 16, 1995.

[FR Doc. 95–13614
Filed 5–31–95; 9:11 am]
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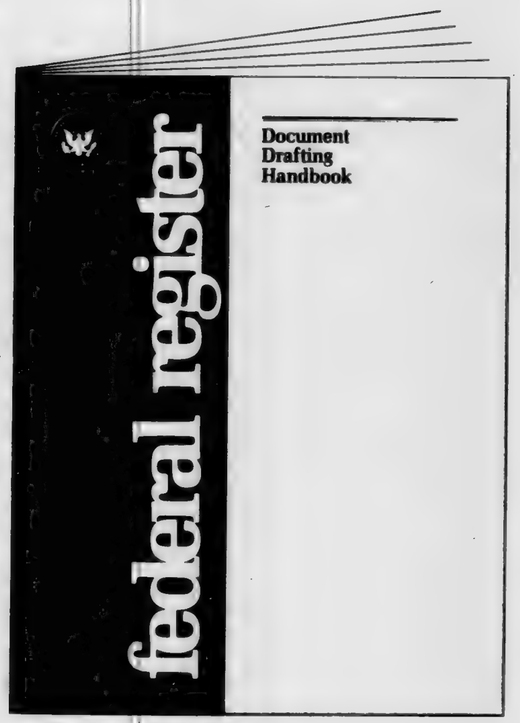
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Federal Register
Vol. 60, No. 106
Friday, June 2, 1995

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 953

[Docket No. FV95–953–1IFR]

Southeastern Potatoes; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule authorizes expenditures and establishes an assessment rate under Marketing Order No. 953 for the 1995–96 fiscal period. Authorization of this budget enables the Southeastern Potato Committee (Committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

DATES: Effective June 1, 1995, through May 31, 1996. Comments received by July 3, 1995, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, FAX 202–720–5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 104 and Order No. 953, both as amended (7 CFR part 953), regulating the handling of Irish potatoes grown in two southeastern States (Virginia and North Carolina). The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order now in effect, Virginia-North Carolina potato handlers are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable potatoes during the 1995–96 fiscal period, which begins June 1, 1995, and ends May 31, 1996. This interim final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 150 producers of Southeastern potatoes under this marketing order, and approximately 60 handlers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of Southeastern potato producers and handlers may be classified as small entities.

The budget of expenses for the 1995–96 fiscal period was prepared by the Southeastern Potato Committee, the agency responsible for local administration of the marketing order, and submitted to the Department for approval. The members of the Committee are producers and handlers of Southeastern potatoes. They are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Southeastern potatoes, based on last season's crop of approximately 1,124,736 hundredweight. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the Committee's expenses.

The Committee met April 20, 1995, and unanimously recommended a 1995–96 budget of $12,000, $1,000 more than the previous year. The budget item for 1995–96 which has increased compared to that budgeted for 1994–95 (in parentheses) is: Manager's salary, $5,800 ($4,800). All other items are budgeted at last year's amounts.

The Committee also recommended an assessment rate of $0.0050 per hundredweight, $0.0025 less than last season's rate. Planting for the 1995 crop has not been completed. However, it is estimated that shipments will generate about $5,624 in assessment income. This, along with $6,376 from the Committee's reserve, will be adequate to cover the expenses incurred. Funds remaining at the end of the 1995–96 fiscal period should be within the maximum permitted by the order of approximately one fiscal period's expenses.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the fiscal period begins on June 1, 1995, and the marketing order requires that the rate of assessment for the fiscal period apply to all assessable Irish potatoes handled during the fiscal period; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other budget actions issued in past years; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Part 953

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 953 is amended as follows:

PART 953—IRISH POTATOES GROWN IN SOUTHEASTERN STATES

1. The authority citation for 7 CFR part 953 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new § 953.252 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 953.252 Expenses and assessment rate.

Expenses of $12,000 by the Southeastern Potato Committee are authorized, and an assessment rate of $0.0050 per hundredweight of assessable potatoes is established for the fiscal period ending May 31, 1996. Unexpended funds may be carried over as a reserve.

Dated: May 26, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–13511 Filed 6–1–95; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92–CE–63–AD; Amendment 39–9251; AD 95–12–01]

Airworthiness Directives; Piper Aircraft Corporation PA–25 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes Airworthiness Directive (AD) 93–21–12, which currently requires inspecting (one-time visual and dye penetrant) the wing forward spar fuselage attachment assembly for cracks or corrosion on certain Piper Aircraft Corporation (Piper) PA–25 series airplanes, and replacing or repairing any cracked or corroded part. This action requires repetitively inspecting (using ultrasonic and dye penetrant procedures) the wing forward spar fuselage attachment assembly for cracks or corrosion, replacing or repairing any cracked or corroded part, and reporting to the Federal Aviation Administration (FAA) the results of the inspections. This action is prompted by the FAA's lack of confidence in detecting internal corrosion in the wing forward spar fuselage attachment fittings while accomplishing the inspection methods required by AD 93–21–12. A report of a crack in the wing forward spar fuselage attachment assembly on an airplane where the inspection requirements of AD 93–21–12 were accomplished also prompted this action. The actions specified by this AD are intended to prevent possible in-flight separation of the wing from the airplane caused by a cracked or corroded wing forward spar fuselage attachment assembly.

EFFECTIVE DATE: July 7, 1995.

ADDRESSES: Information that applies to this AD may be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Christina Marsh, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, suite 2–160, College Park, Georgia 30337–2748; telephone (404) 305–7362; facsimile (404) 305–7348.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to Piper PA–25 series airplanes was published in the **Federal Register** on January 20, 1995 (60 FR 4119). The action proposed to supersede AD 93–21–12 to require repetitively inspecting (using ultrasonic and dye penetrant procedures) the wing forward spar fuselage attachment assembly for cracks or corrosion, and replacing or repairing any cracked or corroded part. Accomplishment of the proposed actions would be in accordance with the APPENDIX included at the end of the AD.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

A number of commenters recommend a longer inspection interval for the affected airplanes, specifically:

- Four commenters recommend that the FAA establish a more frequent inspection interval for those airplanes operating in agricultural conditions. Two of the commenters recommend utilizing the proposed two-year inspection interval for those in agricultural operation and a longer interval for those in non-agricultural operation;
- One commenter recommends that the repetitive inspection only apply to those airplanes in agricultural operation;
- One commenter recommends a repetitive inspection interval of 2,000 hours time-in-service (TIS);
- Six commenters recommend a 10-year repetitive inspection interval;
- One commenter recommends a 5-year repetitive inspection interval;
- One commenter recommends a 3- to 5-year repetitive inspection interval for those airplanes in non-agricultural operation;

- One commenter recommends a 5-year repetitive inspection interval for those in NORMAL category operation; and
- One commenter recommends a repetitive inspection interval of 5 years or 2,000 hours TIS, whichever occurs first.

The FAA analyzed and evaluated all available information relating to the Piper PA–25 series airplane wing forward spar fuselage attachment assembly crack and corrosion condition when establishing the repetitive inspection intervals. Based on this information, no correlation exists between the type of operation that these airplanes are utilized and the time it takes for corrosion to develop. The AD compliance time, including the repetitive inspection interval, is unchanged as a result of these comments. However, the FAA is adding a reporting requirement to the final rule as a method of further analyzing this condition on the PA–25 series airplane fleet. Based on this data, the FAA may adjust the repetitive inspection interval in the future.

Three commenters feel that AD action is unjustified because the Piper PA–25 series airplane design is no different than that of any other airplane constructed with a steel fuselage frame. While there are literally thousands of airplanes constructed with steel fuselage frames, each airplane series or model is unique to its own type design. AD's are issued to correct an unsafe condition that exists or could develop on a specific type design aircraft. The FAA continuously analyzes the data of each specific type design aircraft to determine whether an unsafe condition exists or could develop for a particular airplane. Regardless of how many AD's exist on other airplane type designs utilizing steel fuselage structures, the FAA has received sufficient data to justify issuing an AD to require repetitive ultrasonic and dye penetrant inspections of the wing forward spar fuselage attachment assembly of the Piper PA–25 series airplane type design. The AD is unchanged as a result of these comments.

Seven commenters feel that there is an increased potential for causing damage to the airplane during the disassembly and re-assembly necessary to accomplish the repetitive inspections. The commenters' main concern is the repeated removal of the close-tolerance attach bolts every two years. The FAA concurs with the idea that frequent disassembly and re-assembly of the airplane provides the potential for damaging the airplane, as is true for removing any component to facilitate inspection. However, the FAA considers the removal of PA–25 series airplane close-tolerance bolts within the skill requirements of a mechanic certified in accordance with part 65 of the Federal Aviation Regulations (14 CFR part 65), and that a mechanic certified in this manner can assemble and disassemble the airplane in a non-damaging manner. The AD is unchanged as a result of these comments.

Two commenters state that the probability of wing failure caused by human error during frequent wing removal is greater than wing failure caused by a cracked or corroded wing attach fitting. The FAA does not concur. The FAA has not received any reports, data, or information related to Piper PA–25 series airplane wing failure caused by disassembling and reassembling the wing; however, the FAA has received information and data related to two accidents of Piper PA–25 series airplanes where the wing failed because of cracked and corroded wing forward spar fuselage attachment assemblies. The AD is unchanged as a result of these comments.

Three commenters believe that accomplishing the visual and dye-penetrant inspections specified in AD 93–21–12 are sufficient to detect corrosion and cracks in the wing forward spar fuselage attachment assembly. One commenter states that this assembly may be adequately inspected without removing the wings. The FAA does not concur. Analysis of the wing fittings in the two accidents revealed that corrosion internal to the fitting assembly was a contributing factor to the failures. The FAA developed the proposed ultrasonic and dye penetrant inspection procedures while actually examining a Piper PA–25 series airplane. The development of these procedures confirmed to the FAA that it is possible to inspect a Piper PA–25 series airplane as required by AD 93–21–12 and not detect corrosion, and that using ultrasonic inspection procedures is the only FAA-known way of detecting internal corrosion in the wing forward spar fuselage attachment assembly on the affected airplanes. The AD is unchanged as a result of these comments.

Three commenters state that the one-time inspection required by AD 93–21–12 is sufficient. The commenters feel that this AD raised the PA–25 series airplane operators' awareness of and emphasized to the applicable mechanics the importance of performing inspections of the wing forward spar fuselage attachment assembly on a regular basis in the future. The FAA does not concur. A one-time inspection mandated by an AD may make airplane operators aware of the importance of future repetitive inspections; however, AD action mandating ultrasonic and dye penetrant repetitive inspections is the only method the FAA is aware of to ensure that the unsafe condition of internal corrosion in the wing forward spar fuselage attachment assembly on the affected airplanes is detected and corrected.

One commenter states that the provision for replacing the wing attach cluster every five years instead of repetitively inspecting every two years is too short of a repetitive interval. The commenter feels that, if the existing fittings have been installed for 20 to 30 years, then justification exists for allowing additional time between repetitive inspections if the cluster is replaced. The FAA partially concurs. The FAA included this cluster replacement provision to give owners/operators a grace period if the cluster was recently replaced. The reason for a five-year threshold is to ensure that repetitive inspections are initiated on the assembly before corrosion develops or a crack initiates. The addition of the inspection reporting requirement will allow the FAA to continuously evaluate this threshold, and, as appropriate, either extend or shorten the repetitive inspection interval in the future.

Five commenters believe that repetitive inspections are unjustified. These commenters state that, because the FAA issued AD 93–21–12 to require a one-time inspection 20 to 30 years after the PA–25 series airplanes were manufactured, it is unrealistic to believe that corrosion or cracks could occur in the cluster assembly in the two years since the initial inspection required by AD 93–21–12. The FAA does not concur. As stated earlier, the airplanes in the referenced accidents had corrosion internal to the wing fitting assembly. The FAA has determined that the inspections currently required by AD 93–21–12 will not adequately detect internal corrosion and, this internal corrosion could develop to the point of structural failure to the wing when not inspected ultrasonically on a regular basis. The AD is unchanged as a result of these comments.

Eleven commenters state that the ultrasonic inspections contained in the proposal would provide a financial impact upon the operators of the Piper PA–25 series airplanes. Two of these commenters feel that the impact could be severe enough to eliminate the Piper PA–25 series airplane fleet. The FAA concurs that the actions would present a financial impact upon the Piper PA–25 series airplane operators. Although the main criteria for issuing an AD is to correct a known unsafe condition and

maintain a level of safety for the airplane equivalent to that originally certificated, the FAA must present an estimated cost impact upon the public for each AD. The FAA analyzes each AD to ensure that the condition specified in the AD is unsafe and is needed to maintain the original level of safety and that the estimated cost is a fair representation of reality. The FAA has determined that the level of safety needed for the Piper PA–25 series airplanes would no longer be achieved if this AD action was not mandated, and that the cost presented in the economic paragraph of this AD is an accurate assessment of the actual cost impact upon the public. The AD is unchanged as a result of these comments.

One commenter states that the ultrasonic inspection specified in the proposal is not necessary for the steel fuselage tubing. The FAA concurs. The requirements of the AD are only to inspect ultrasonically the wing attach fitting clevis ears for internal corrosion. The AD is unchanged as a result of this comment.

Two commenters recommend that the FAA include certain corrosion preventative treatments as an option for extending the time that the repetitive inspections are required. One of these commenters specifically recommends packing zinc chromate paste on the wing attach fitting area or treating the fuselage tubing with linseed oil. The other commenter recommends treating the clusters with Neutrasol after the initial inspection to halt any additional corrosion development. At this time, the FAA does not have enough data to ensure that corrosion inhibitors will deter or eliminate the development of internal corrosion of the wing forward spar fuselage attachment assembly. The FAA will keep these ideas in mind while analyzing the data of the inspection results obtained through this AD. As in any AD action, the airplane owners/operators may submit any data or ideas to the FAA as a request for an alternative method of compliance as specified in paragraph (k) of the AD. The AD is unchanged as a result of these comments.

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for the addition of the reporting requirement and minor editorial corrections. The FAA has determined that the reporting requirement addition and the minor editorial corrections will not change the meaning of the AD over that which was proposed. The addition of the reporting requirement only adds a paperwork burden upon the public over that already proposed, and the data obtained from the reports may lead the FAA to extend the repetitive inspection interval in the future.

The compliance time for this AD is presented in calendar time instead of hours TIS. The FAA has determined that a calendar time for compliance is the most desirable method because the unsafe condition described by this AD is caused by corrosion. Corrosion can occur on airplanes regardless of whether the airplane is in service or in storage. Therefore, to ensure that corrosion is detected and corrected on all airplanes within a reasonable period of time without inadvertently grounding any airplanes, the FAA is mandating a compliance schedule based upon calendar time instead of hours TIS.

The FAA estimates that 1,272 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 30 workhours per airplane to accomplish the required inspection, and that the average labor rate is approximately $60 an hour. The FAA has become aware that the affected airplane owners/operators could incur additional expenses to have their airplanes ultrasonically inspected. This figure will vary based on scheduling and travel time; however, for the purposes of this AD the FAA is using a figure of $500. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $2,925,600. This figure is based on the assumption that no affected airplane owner/operator has accomplished the required inspections, and does not reflect the cost of repetitive inspections. The FAA has no way of determining how many repetitive inspections a particular owner/operator may incur. In addition, the figure reflects a $500 expense charge for the ultrasonic inspection. The FAA anticipates that many of the affected airplane owners/operators will have ultrasonic expense charges much less than $500.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing AD 93–21–12, Amendment 39–8763 (58 FR 65104, December 13, 1993), and by adding a new AD to read as follows:

95–12–01 Piper Aircraft Corporation: Amendment 39–9251; Docket No. 92–CE–63–AD. Supersedes AD 93–21–12, Amendment 39–8763.

Applicability: Models PA–25, PA–25–235, and PA–25–260 airplanes (all serial numbers), certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (k) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required within the next 12 calendar months after the effective date of this AD, unless already accomplished, and thereafter at intervals not to exceed 24 calendar months (except as noted in paragraph (h) of this AD).

To prevent possible in-flight separation of the wing from the airplane caused by a cracked or corroded wing forward spar fuselage attachment assembly, accomplish the following:

(a) Gain access to the left and right wing forward spar fuselage attach fittings by removing the screws retaining the wing fairing. Dismantle the wing fillet by removing the screws on the aft edge top and bottom and removing the wing fairing (see FIGURE 1 of the Appendix to this AD).

(b) Remove the wing attach bolts and wing. Remove paint from the wing forward spar fuselage attachment fittings and surrounding areas; do not sand blast because it may obscure surface indications.

Note 2: Saturation of the bolts with a penetrating oil may facilitate removal.

(c) Visually inspect the wing forward spar tubular fuselage attach cluster for damage (cracks, corrosion, rust, or gouges). Prior to further flight, repair or replace any damaged tubular member with equivalent material in accordance with FAA Advisory Circular (AC) No. 43.13–1A, Acceptable Methods, Techniques, Practices—Aircraft Inspection and Repair.

(d) Inspect (using both dye penetrant and ultrasonic procedures) the wing forward spar fuselage attach fitting assembly, part numbers (P/N) 61005–0 (front spar fitting assembly) and 61006–0 (front spar fitting) for Model PA–25; and P/N 64412–0 (front spar fitting assembly) and 64003–0 (front spar fitting) for Models PA–25–235 and PA–25–260, for corrosion and cracks in accordance with the Appendix to this AD.

(1) If any corrosion is found that meets or exceeds the parameters presented in the Appendix to this AD or any cracks are found, prior to further flight, replace the forward spar fuselage tubular attach cluster with serviceable parts as specified in the Appendix to this AD.

(2) The inspection procedures in the Appendix of this AD, except for the dye penetrant inspection procedures, must be accomplished by a Level 2 inspector certified using the guidelines established by the American Society for Non-destructive Testing, or MIL–STD–410. A mechanic with at least an Airframe license may perform the dye penetrant inspection.

(e) Replacement parts required by this AD shall be of those referenced and specified in either Figures 3a and 3b, 4a and 4b, or 5a and 5b (as applicable), included as part of the Appendix of this AD.

(f) Prime and paint all areas where parts were replaced or where paint is bubbled or gone. Use epoxy paint and primer, and, after paint has cured, rust inhibit the entire area.

(g) Reinstall all items that were removed.

(h) If a new cluster is installed into the fuselage frame, repetitive inspections are not required until five years after the replacement date on the respective fuselage side. This cluster may be replaced every five years as an alternative to the repetitive inspections.

(i) Send the results of the inspection required by paragraph (d) of this AD within 10 calendar days after the inspection to the Manager, Atlanta Aircraft Certification Office (ACO), Campus Building, 1701 Columbia Avenue, suite 2–160, College Park, Georgia 30337–2748. Include the airplane model and serial number, the category of operation the airplane is operated in (normal or restricted), the location and condition of any cracked or corroded area, the number of hours TIS of the airplane at the time of inspection, and the approximate number of hours TIS accrued on the airplane annually. (Reporting approved by the Office of Management and Budget under OMB no. 2120–0056.)

(j) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(k) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office (ACO), Campus Building, 1701 Columbia Avenue, suite 2–160, College Park, Georgia 30337–2748. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(l) The Appendix to this AD may be obtained from the Atlanta ACO at the address specified in paragraph (k) of this AD. This document or any other information that relates to this AD may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri.

(m) This amendment (39–9251) supersedes AD 88–11–05, Amendment 39–5997.

(n) This amendment (39–9251) becomes effective on July 7, 1995.

Appendix to AD 95–12–01—Procedures and Requirements for Wing Forward Spar Attachment Assembly; Inspection of Piper PA–25 Series Airplanes

Equipment Requirements

1. A portable combination ultrasonic flaw detector with both an LED thickness readout and an A-trace with thickness gate display.

2. An ultrasonic probe with the following: a 15 MHz 0.25-inch diameter with a 0.375-inch plastic delay line. An equivalent permanent delay line transducer that provides adequate sensitivity and resolution to measure a 0.050-inch steel shim can also be used.

3. Three steel shims within the range of 0.050 to 0.100 inches are required. To ensure proper calibration, the steel shims should be smooth and free of dirt. In order to verify the shim thickness, use a calibrated micrometer to measure the steel shims.

4. Either glycerin, 3-in-1 oil, or equivalent ultrasonic couplants are used to conduct this test set-up and inspection. Water-based couplants are not permitted because of the possibility of initiating long-term corrosion of the wing forward spar fuselage attachment fittings.

Note: Couplant is defined as "a substance used between the face of the transducer and test surface to improve transmission of ultrasonic energy across this boundary or interface."

Note: If surface pitting is found on either side of the fitting ears, lightly sand the surface to obtain a smooth working surface. Removal of surface irregularities such as pits, rust, scale, and paint will enhance the accuracy of the inspection technique.

Instrument Calibration

1. Turn the instrument power on and check the battery charge status. The instrument should have at least 40-percent of available battery life. The screen brightness and contrast of the display screen should match the environmental conditions (i.e., outside sunlight or inside a hangar).

2. Depending on the ultrasonic instrument used, select or verify the single element transducer setting from the probe selection menu. If a removable delay line is used, unscrew the plastic delay line from the transducer. Add couplant to the base of the delay line, than reattach the delay line.

3. Obtain steel shims with known or measured thickness at or near 0.050, 0.0075, and 0.100 inches. At least one steel shim shall be greater than 0.095 inches, one less than or equal to 0.050 inches, and one between these two values. Place the probe on the thickest steel shim using couplant. Adjust the gain setting to increase the backwall signal from this steel shim. An A-trace will appear on the screen and a thickness readout will appear on the display. The signal on the screen from left to right shows: the initial pulse, the delay line (the front surface of the steel shim) and the backwall echo of the steel shim. A second and third multiple backwall echo may also be seen on the A-trace. Enable the thickness gate. Adjust the thickness gate to initiate at the delay line to steel shim interface and terminate at the first backwall echo.

4. Place the probe on the thinnest steel shim using couplant. Adjust the damping, voltage and pulse width to obtain the maximum signal response and highest resolution on this steel shim. These settings can vary from probe to probe and are somewhat dependent on operator preferences.

5. To stabilize the interface synchronization, adjust the electronic triggering (blocking gate) to approximately three quarters of the distance between the initial pulse and the delay line interface echo. The thickness gate should initiate at the delay line interface echo and terminate at the first backwall echo.

6. Depending on the instrument and probe, select positive half-wave rectified signal display or negative half-wave rectified signal display. This selection should give the best signal display on the thinnest steel shim. Select the interface synchronization. This selection automatically starts the thickness gate at the delay time corresponding to the tip of the plastic delay line.

7. Couple the probe to the thickest steel shim using couplant. Adjust the range so the

A-scan display reads from 0.000 to 0.300 inches. Several multiple backwall echoes will disappear from the screen.

8. Adjust the thickness gate to trigger on the first return signal. Of instability of the gate trigger occurs, adjust the gain and/or damping the stabilize the thickness reading. A thickness readout should be present on the screen and near the known steel shim thickness.

9. Adjust the velocity to 0.231 inches/microseconds. The thickness reading should be the known steel shim thickness. Couple the transducer to the thinnest steel shim. If the thickness readout does not agree with the known thickness, adjust the fine delay setting to produce the known thickness. Re-check the thickest step. If the readout does not indicate the correct thickness re-adjust the fine delay setting. After this adjustment is made, record the thickness values for each of the steel shims on a set-up sheet.

10. Calculate the percent error for each measured steel shim. The maximum allowable percent error should not exceed 3-percent.

Inspection Procedures

1. Add couplant to the outside inspection surface (Refer to Figures 3a, 4a and 5a, as applicable). Add the appropriate gain to obtain the backwall echo from the inspection surface. If the gain setting is adjusted, re-check the thickness values on the steel shims. To assure proper coupling to the test sample, twist the probe clockwise and counter-clockwise (with a 45-degree twist) and maintain contact with the test surface. During the articulation of the probe, observe the A-trace on the screen and stop the probe twist at the point of adequate back surface signal amplitude to trigger the thickness gate on the first half-cycle. Measure and record the thickness. Repeat the above process at eight equally-spaced locations around the surface. The weld bead near the spar cluster maybe hard to access. Find a suitable location near the weld and measure the thickness.

2. Add couplant to the inside inspection surface (Refer to figures 3a, 4a and 5a, as applicable). Add the appropriate gain to obtain the backwall echo from the inspection surface. To assure proper coupling to the test sample, twist the probe (clockwise and counter-clockwise with a 45-degree twist). During the articulation of the probe, observe the A-trace ion the screen and stop the probe twist at the point of adequate back surface signal amplitude to trigger the thickness gate on the first half-cycle. Measure and record the thickness. Repeat the above process at eight equally-spaced locations around the surface.

3. If a thickness reading in any one of the eight locations from paragraph 1 of the Inspection Procedures section (outside section surface) is .085-inch or less for the PA–25 Model or .055-inch or less for the PA–25–235 and PA–25–260 Models, or if a thickness reading in any one of the eight locations from paragraph 2. of the Inspection Procedures section (inside section surface) is .055-inch or less for the PA–25 Model or .085-inch or less for the PA–25–235 and PA–25–260 Models, prior to further flight, replace the forward spar fuselage tubular attach cluster with serviceable parts in accordance with FAA AC No. 43.13–1A, Acceptable Methods, Techniques, Practices—Aircraft Inspection and Repair. This procedure requires the following:

a. Provide for the alignment of the airframe with an appropriate alignment fixture in accordance with FAA AC No. 43.13–1A, Acceptable Methods, Techniques, Practices—Aircraft Inspection and Repair.

b. Cut the tubular members as referenced and specified in Figure 2 and either Figures 3a and 3b; Figures 4a and 4b; or Figures 5a and 5b, as applicable.

c. Fabricate a cluster using all applicable part numbers referenced in Figures 3b, 4b, or 5b, as applicable; and

d. Splice the new cluster into the fuselage frame.

Dye Penetrant Inspection

Inspect the wing forward spar fuselage attach fitting assembly for cracks using FAA-approved dye penetrant methods. If any cracks are found, prior to further flight, replace the forward spar fuselage tubular attach cluster with serviceable parts in accordance with FAA AC No. 43.13–1A, Acceptable Methods, Techniques, Practices—Aircraft Inspection and Repair. This procedure requires the following:

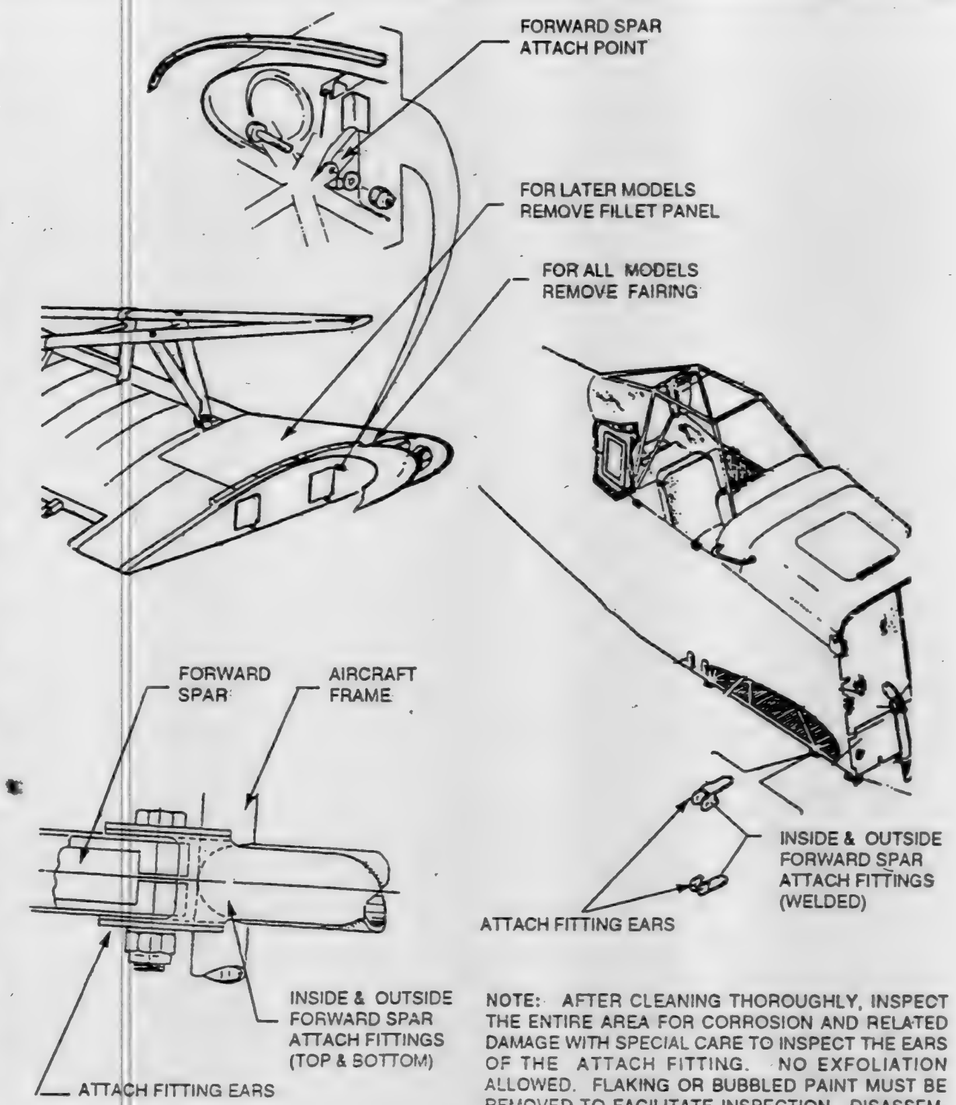
1. Provide for the alignment of the airframe with an appropriate alignment fixture in accordance with FAA AC No. 43.13–1A, Acceptable Methods, Techniques, Practices—Aircraft Inspection and Repair.

2. Cut the tubular members as referenced and specified in Figure 2 and either Figures 3a and 3b; Figures 4a and 4b; or Figures 5a and 5b, as applicable.

3. Fabricate a cluster using all applicable part numbers referenced in Figures 3b, 4b, or 5b, as applicable; and

4. Splice the new cluster into the fuselage frame.

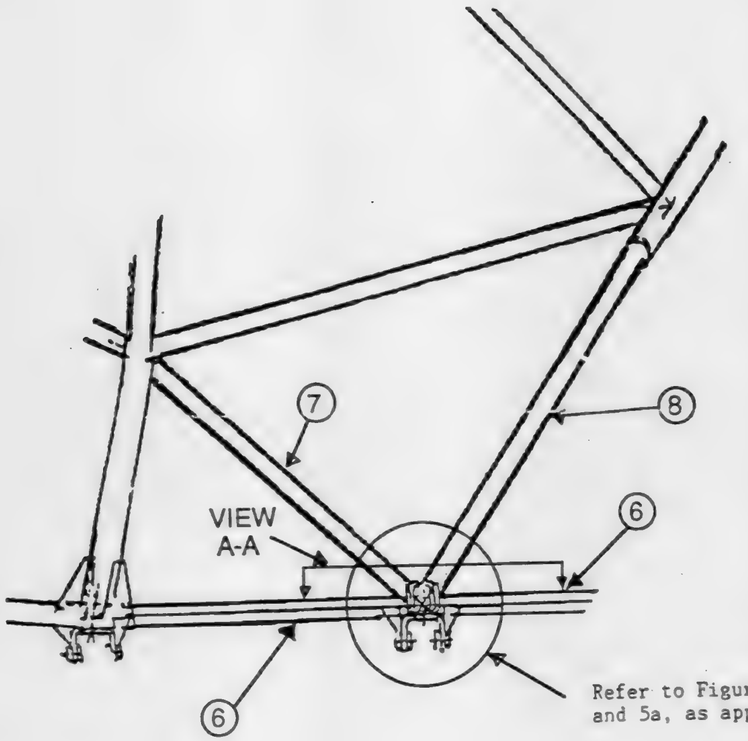
BILLING CODE 4910–13–U



NOTE: AFTER CLEANING THOROUGHLY, INSPECT THE ENTIRE AREA FOR CORROSION AND RELATED DAMAGE WITH SPECIAL CARE TO INSPECT THE EARS OF THE ATTACH FITTING. NO EXFOLIATION ALLOWED. FLAKING OR BUBBLED PAINT MUST BE REMOVED TO FACILITATE INSPECTION. DISASSEMBLY WILL BE AS REQUIRED BASED ON CONDITION. RETURN TO SERVICE INCLUDES PRIME, PAINT AND RUST INHIBITOR.

FIGURE 1

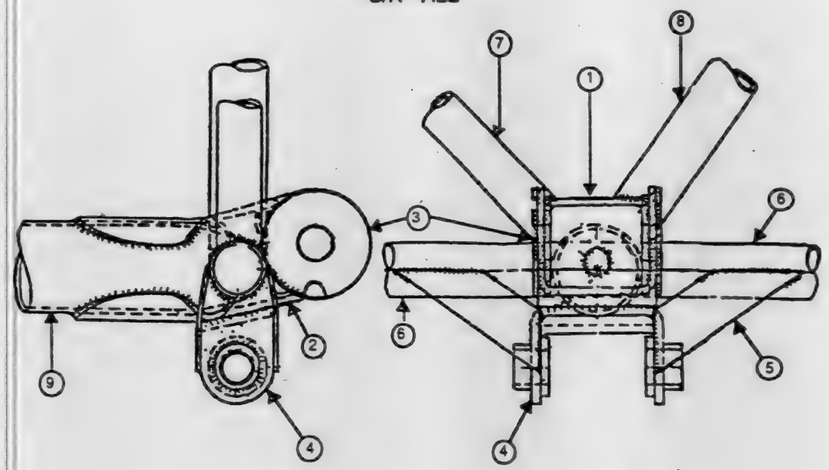
PA-25
Side View of the Front Wing Fitting
and Landing Gear Fittings



Refer to Figures 3a, 4a, and 5a, as applicable.

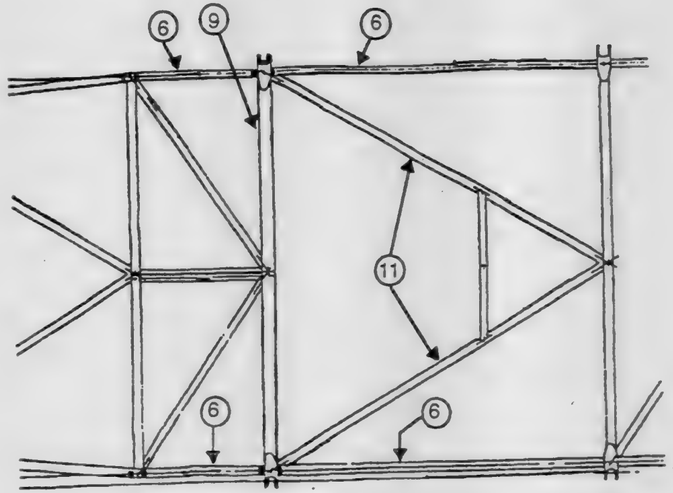
Figure 2

PA-25
S/N - ALL



View Looking Aft

Side View



Bottom View (View A-A)
(Both Sides)

Figure 3a

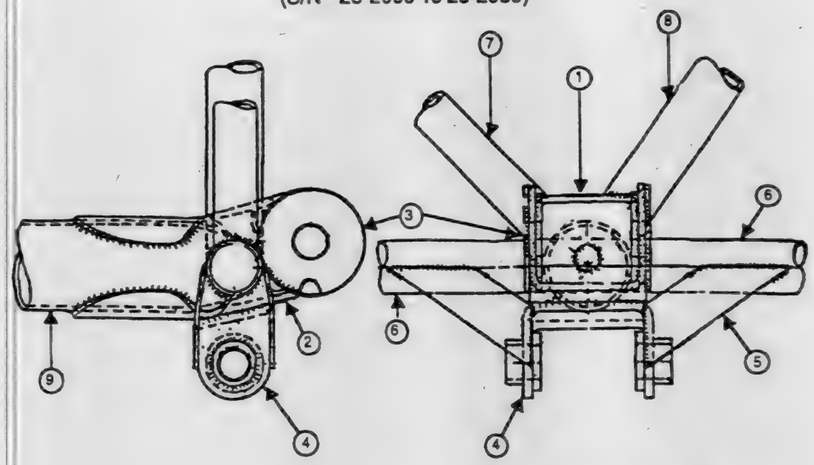
PA-25
S/N - ALL
Front Wing Spar Attachment-Fittings and Tubes

NO.	DESCRIPTION	PART NO./TUBE DIMENSIONS
1	Front Spar Fitting	61006-0
2	Channel	61007-0
3	Fitting Assy-Front Spar	61005-0
4	Fitting Assy-Landing Gear	21242-2
5	Brace-Bracket	11994-28
6	Tube	.75 x .035 (4130) N **
7	Tube	.625 x .035 (4130) N **
8	Tube	.75 x .035 (4130) N **
9	Tube	1.25 x .058 (4130) N **
11	Tube	.625 x .028 (1025)

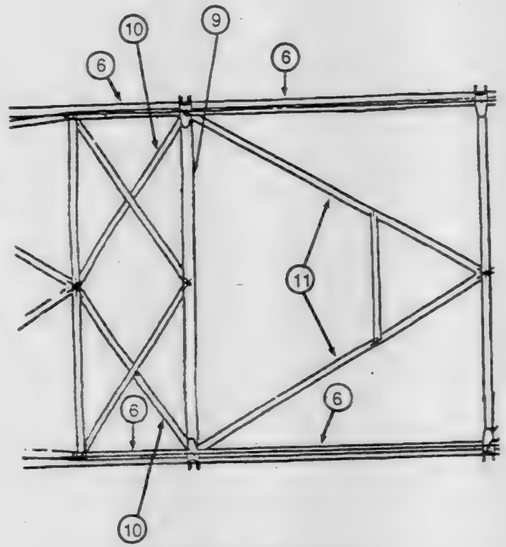
** - MIL-T-6736 Type 1

Figure 3b

PA-25-235
(S/N - 25-2000 To 25-2985)



View Looking Aft — Side View



Bottom View (View A-A)
(Both Sides)

Figure 4a

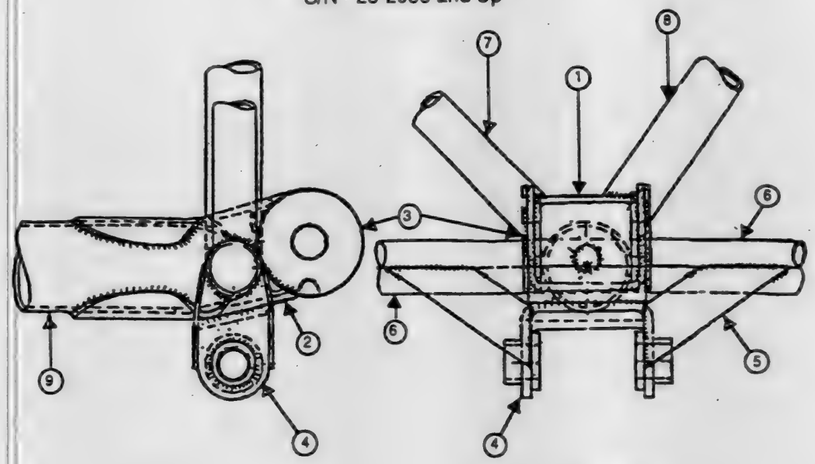
PA-25-235
S/N - 25-2000 to 25-2985
Front Wing Spar Attachment-Fittings and Tubes

NO.	DESCRIPTION	PART NO. /TUBE DIMENSIONS
1	Front Spar Fitting	64003-0
2	Channel	64175-0
3	Fitting Assy-Front Spar	64412-0
4	Fitting Assy-Landing Gear	64005-0 (L) 64005-1 (R)
5	Brace-Bracket	11994-28
6	Tube	.75 x .049 (4130) N **
7	Tube	.625 x .049 (4130) N **
8	Tube	.875 x .065 (4130) N **
9	Tube	1.25 x .095 (4130) N **
10	Tube	.75 x .049 (4130) N **
11	Tube	.625 x .028 (1025)

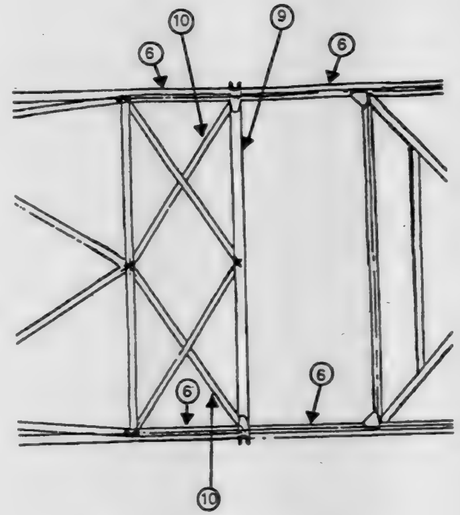
** - MIL-T-6736 Type 1

Figure 4b

PA-25-235, PA-25-260
S/N - 25-2986 and Up



View Looking Aft Side View



Bottom View (View A-A)
(Both Sides)

Figure 5a

PA-25-235,-260
S/N - 25-2986 and Up
Front Wing Spar Attachment-Fittings and Tubes

NO.	DESCRIPTION	PART NO. /TUBE DIMENSIONS
1	Front Spar Fitting	64003-0
2	Channel	64175-0
3	Fitting Assy-Front Spar	64412-0
4	Fitting Assy-Landing Gear	64005-0 (L) 64005-1 (R)
5	Brace-Bracket	11994-28
6	Tube	.75 x .049 (4130) N **
7	Tube	.625 x .049 (4130) N **
8	Tube	.875 x .065 (4130) N **
9	Tube	1.25 x .095 (4130) N **
10	Tube	.75 x .049 (4130) N **

** - MIL-T-6736 Type 1

Figure 5b

BILLING CODE 4910-13-C

Issued in Kansas City, Missouri, on May 25, 1995.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–13468 Filed 6–1–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–NM–240–AD; Amendment 39–9255; AD 95–12–05]

Airworthiness Directives; Lockheed Model 382 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Lockheed Model 382 series airplanes, that currently requires a revision to the Airplane Flight Manual to require takeoff operation in accordance with revised performance data. This amendment requires installation of certain valve housings for the propeller governor on the outboard engines. This amendment is prompted by a report of a change that had been incorporated into the propeller governor of these airplanes during production, which altered the thrust decay characteristic of the propeller when operating in an engine failure scenario. The actions specified by this AD are intended to ensure that the airplane maintains adequate thrust decay characteristics in the event of critical engine failure during takeoff.

DATES: Effective July 3, 1995.

The incorporation by reference of Lockheed Airplane Flight Manual Supplement 382–16, dated August 11, 1993, as listed in the regulations, was approved previously by the Director of the Federal Register as of August 10, 1994 (59 FR 35236, July 11, 1994).

ADDRESSES: The service information referenced in this AD may be obtained from Lockheed Aeronautical Systems Support Company (LASSC), Field Support Department, Dept. 693, Zone 0755, 2251 Lake Park Drive, Smyrna, Georgia 30080. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, Small Airplane Directorate, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Thomas Peters, Aerospace Engineer, FAA, Flight Test Branch, ACE–160, Small Airplane Directorate, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia 30337–2748; telephone (404) 305–7367; fax (404) 305–7348.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 94–14–09, amendment 39–8961 (59 FR 35236, July 11, 1994), which is applicable to certain Lockheed Model 382 series airplanes, was published in the **Federal Register** on February 8, 1995 (60 FR 7480). The action proposed to require removal of any servo-type valve housing assembly, having part number 714325–2, –3, –5, –6, or –7, installed on any outboard engine, and replacement of those assemblies with part number 714325–1.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 112 Model 382, 382E, and 382G series airplanes of the affected design in the worldwide fleet. The FAA estimates that 18 airplanes of U.S. registry will be affected by this AD, that it will take approximately 8 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $90,000 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,628,640, or $90,480 per airplane.

The FAA has been advised that the only U.S. operator of Lockheed Model 382 series airplanes has already equipped half of its fleet (9 airplanes) with the valve housing assembly that will be required by this rule. Therefore, the future economic cost of this rule on U.S. operators is now only $814,320.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8961 (59 FR 35236, July 11, 1994), and by adding a new airworthiness directive (AD), amendment 39–9255, to read as follows:

95–12–05 Lockheed: Amendment 39–9255. Docket 94–NM–240–AD. Supersedes AD 94–14–09, Amendment 39–8961.

Applicability: Model 382, 382E, and 382G series airplanes; equipped with a servo-type valve housing assembly, having part number 714325–2, –3, –5, –6, or –7, installed on any outboard engine; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe

condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To ensure that the airplane maintains adequate thrust decay characteristics in the event of critical engine failure during takeoff, accomplish the following:

(a) Within 60 days after August 10, 1994 (the effective date of AD 94–14–09, amendment 39–8961), revise the Limitations and Performance Data Sections of the FAA-approved Airplane Flight Manual (AFM) to include information specified in Lockheed Airplane Flight Manual Supplement 382–16, dated August 11, 1993, and operate the airplane accordingly thereafter. The requirements of this paragraph may be accomplished by inserting AFM Supplement 382–16 into the AFM.

(b) Within 24 months after the effective date of this AD, replace the servo-type valve housing assemblies having part number 714325–2, –3, –5, –6, or –7, with part number 714325–1, on the propeller governors installed on the outboard engines, in accordance with Lockheed Document SMP–515C, Card No. CO–135. Replacement of these assemblies with part number 714325–1, constitutes terminating action for the requirements of paragraph (a) of this AD; once the replacement is accomplished, the AFM revision may be removed.

Note 2: Propeller governors with servo-type valve housing assemblies having part number 714325–2, –3, –5, –6, or –7, may be retained or replaced with part number 714325–1 for use on the inboard engine positions.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The AFM revision shall be done in accordance with Lockheed Airplane Flight Manual Supplement 382–16, dated August 11, 1993. The incorporation by reference of this document was approved previously by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of August 10, 1994 (59 FR 35236, July 11, 1994). Copies may be obtained from Lockheed Aeronautical Systems Support Company (LASSC), Field Support Department, Dept. 693, Zone 0755, 2251 Lake Park Drive, Smyrna, Georgia 30080. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, Small Airplane Directorate, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on July 3, 1995.

Issued in Renton, Washington, on May 26, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–13505 Filed 6–1–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 71

[Airspace Docket No. 95–ACE–6]

Alteration of Class E Airspace Area; St. Louis, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule published on May 3, 1995, that inadvertently removed the St. Louis, MO, Class E5 airspace designation. This action reflects the FAA's original intent to revise the St. Louis, MO, Class E5 airspace designation to exclude the Weiss Municipal Airport from the airspace designation. This action is a result of the closure of the Weiss Municipal Airport.

EFFECTIVE DATE: 0901 UTC, May 3, 1995.

FOR FURTHER INFORMATION CONTACT: Patricia P. Crawford, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9255.

SUPPLEMENTARY INFORMATION: On May 3, 1995, the FAA published a final rule that removed the St. Louis, MO, Class E5 airspace designation (60 FR 21700). However, that action inadvertently removed the St. Louis, MO, Class E5 airspace area. This action reflects the FAA's original intent to revise the St. Louis, MO, Class E5 airspace designation to exclude the Weiss Municipal Airport from the airspace designation.

Correction of Final Rule

Accordingly, pursuant to the authority delegated to me, the publication in the **Federal Register** on May 3, 1995 (60 FR 21700, **Federal Register** Document 95–10772), and the corresponding description in FAA Order 7400.9B, which is incorporated by reference in 14 CFR 71.1, are corrected as follows:

§ 71.1 [Corrected]

* * * * *

ACE MO E5 St. Louis, MO [Revised]
Lambert-St. Louis International Airport
(Lat. 38°44'51" N, long. 90°21'36" W)
Spirit of St. Louis Airport, MO
(Lat. 38°39'43" N, long. 90°39'00" W)
St. Louis Regional Airport, Alton, IL
(Lat. 38°53'25" N, long. 90°02'45" W)
St. Charles County Smartt Airport, St. Charles, MO
(Lat. 38°55'47" N, long. 90°25'47" W)
St. Louis VORTAC
(Lat. 38°51'38" N, long. 90°28'57" W)
Foristell VORTAC
(Lat. 38°41'40" N, long. 90°58'17" W)
ZUMAY LOM
(Lat. 38°47'17" N, long. 90°16'44" W)
OBLIO LOM
(Lat. 38°48'01" N, long. 90°28'29" W)
Civic Memorial NDB
(Lat. 38°53'32" N, long. 90°03'23" W)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of the Lambert-St. Louis International Airport and within 4 miles southeast and 7 miles northwest of the Lambert-St. Louis International Airport Runway 24 ILS localizer course extending from the airport to 10.5 miles northeast of the ZUMAY LOM and within 4 miles southwest and 7.9 miles northeast of the Lambert-St. Louis Airport Runway 12R ILS localizer course extending from the airport to 10.5 miles northwest of the OBLIO LOM and within 4 miles southwest and 7.9 miles northeast of the Lambert-St. Louis Airport Runway 30L ILS localizer southeast course extending from the airport to 8.7 miles southeast of the airport and within a 6-mile radius of Spirit of St. Louis Airport and within 2.6 miles each side of the 098° radial of the Foristell VORTAC extending from the 6-mile radius area to 8.3 miles west of the airport and within a 6-mile radius of St. Charles County Smartt Airport, and within a 6-mile radius of St. Louis Regional Airport, and within 4 miles each side of the 014° bearing from the Civic Memorial NDB extending from the 6-mile radius to 7 miles north of the airport and within 4.4 miles each side of the 190° radial of the St. Louis VORTAC extending from 2 miles south of the VORTAC to 22.1 miles south of the VORTAC.

* * * * *

Issued in Washington, DC, on May 26, 1995.

Harold W. Becker,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 95–13456 Filed 5–26–95; 3:59 pm]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200 and 240

[Release No. 34–35775; File No. S7–3–94]

Recordkeeping and Reporting Requirements for Trading Systems Operated by Brokers and Dealers; Delegation of Authority

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; change of effective date.

SUMMARY: The Securities and Exchange Commission ("Commission") is postponing the effective date that registered broker-dealer sponsors of certain automated trading systems (as defined in Rule 17a–23) ("Broker-Dealer Trading Systems") must comply with the recordkeeping requirements of Rule 17a–23 under Section 17 of the Securities Exchange Act of 1934 from June 1, 1995 to July 1, 1995, in order to facilitate the process of conversion to a standard trade settlement time frame of three business days after the trade date. In addition, the Commission is amending its regulation concerning Organization and Program Management [1] to delegate authority to the Director of the Division of Market Regulation ("Division") to grant exemptions to any sponsor, or class of sponsors, of a Broker-Dealer Trading System or Systems from any or all of the provisions of Rule 17a–23, either unconditionally or on specified terms and conditions, if the Director of the Division determines that such exemption is consistent with the public interest or the protection of investors.

EFFECTIVE DATE: The effective date for § 240.17a–23(c), which was published on December 28, 1994, 59 FR 66702, is postponed until July 1, 1995. The effective date for the delegation of authority (§ 200.30–3(a)(60)) will be June 2, 1995.

FOR FURTHER INFORMATION CONTACT: Sheila C. Slevin, Assistant Director, 202/942–0796, or Elaine M. Darroch, Staff Attorney, 202/942–0798, Office of Automation and International Markets, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street NW., Mail Stop 5–1, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

The Commission today announced that it is changing the date for registered broker-dealer sponsors of certain automated systems to comply with recordkeeping requirements of Rule 17a–23 [2] under Section 17 of the Act from June 1, 1995 to July 1, 1995; and (2) amending the Commission's regulation concerning Organization and Program Management to delegate to the Director of the Division the authority to grant exemptions from the requirements of Rule 17a–23.

Effective June 1, 1995, Rule 17a–23 and Form 17A–23 establish recordkeeping and reporting requirements for registered brokers and dealers that operate certain automated trading systems ("Broker-Dealer Trading System" or "BDTS").[3] Under Rule 17a–23, registered broker-dealers that sponsor BDTSs are required to maintain participant, volume, and transaction records. In addition, Rule 17a–23 and Form 17A–23 require system sponsors to submit three reports to the Commission and, under certain circumstances, to an appropriate self-regulatory agency: (1) An initial system description (Part I of Form 17A–23), updated as necessary to reflect material changes (Part IA of Form 17A–23); (2) quarterly volume summaries (Part II of Form 17A–23); and (3) notice of ceasing to operate the system (Part III of Form 17A–23). At final adoption, the Commission modified Rule 17a–23 to allow sponsors of Broker-Dealer Trading Systems currently operating on June 1, 1995 to submit the information required by Part I of Form 17A–23 no later than July 1, 1995 (one month following the effective date). Due to extenuating circumstances, the Division has determined that system sponsors also should be allowed to delay compliance with the recordkeeping provisions of Rule 17a–23(c) until July 1, 1995.

II. Extension of Deadline for Recordkeeping Requirements

The Commission is extending the deadline for complying with recordkeeping requirements of Rule 17a–23 from June 1, 1995 to July 1, 1995. The effective date for provisions of Rule 17a–23 other than Rule 17a–23(c) remains June 1, 1995, unless otherwise noted in the final rule published December 28, 1994 (59 FR 66702). As noted previously, at final adoption the Commission modified the Rule to allow sponsors of BDTSs currently operating on June 1 to delay compliance with the reporting requirements of Rule 17a–23(d) until July 1, 1995. BDTS sponsors have requested that the Commission similarly delay effectiveness of the recordkeeping requirements of the Rule.

BDTSs have informed the Commission that reconfiguring their automated systems to comply with the recordkeeping requirements of Rule 17a–23(c) by June 1, 1995 would be difficult, because a significant portion of their automation resources are committed to implementing system changes necessary to comply with Rule 15c6–1 [4] by June 7, 1995. Rule 15c6–1 establishes the standard settlement time frame to be three business days after the trade date ("T+3"). In some cases, sponsors have informed the Commission that compliance with Rule 17a–23(c) recordkeeping requirements by June 1, 1995 may delay or adversely affect the broker-dealers' implementation of system changes necessary to comply with T+3. In recognition of the importance of T+3 in reducing settlement risk, and in reducing the liquidity risk among the derivatives and the cash markets, and because the conversion to T+3 will affect a substantial portion of the securities industry, the Commission believes it is important to allow the T+3 conversion to take place in an orderly fashion.

Accordingly, the Commission is postponing the effective date for Rule 17a–23(c) until July 1, 1995.

III. Delegation of Authority to the Director of the Division of Market Regulation

The Commission currently has the authority under Rule 17a–23(i) [5] to grant exemptions to any sponsor of a Broker-Dealer Trading System from any or all of the provisions of Rule 17a–23, either unconditionally or on specified terms and conditions, if the Commission determines that the exemption is consistent with the public interest and the protection of investors. The Commission has determined it should revise its rules to delegate this authority to the Director of the Division of Market Regulation.

Accordingly, the Commission announced today an amendment to Rule 30–3 of its regulation concerning Organization and Program Management by adding paragraph (a)(60), which authorizes the Director of the Division, pursuant to Rule 17a–23(i),[6] to grant exemptions to any sponsor, or class of sponsors, of a Broker-Dealer Trading System or Systems from any or all of the provisions of Rule 17a–23, either

[1] 17 CFR 200.30–3.

[2] 17 CFR 240.17a–23.

[3] Securities Exchange Act Release No. 35124 (December 20, 1994), 59 FR 66702.

[4] 17 CFR 240.15c6–1.

[5] 17 CFR 240.17a–23(i).

[6] 17 CFR 240.17a–23(i).

unconditionally or on specified terms and conditions, if the Director of the Division determines that such exemption is consistent with the public interest or the protection of investors.

The delegation of this authority will conserve the resources of the Commission and the Division, by providing for the Division to handle exemption requests rather than requiring exemption requests to be handled by the Commission itself. In any particular case where the Director of the Division believes it appropriate, the Director of the Division may submit a request for an exemption to the Commission for review.

The Commission finds, in accordance with Section 553(b)(A) of the Administrative Procedures Act,[7] that the amendment to Rule 30–3 relates solely to agency organization, procedure, or practice, and does not relate to a substantive rule. Accordingly, requirements for notice, opportunity for public comment, and publication of the amendment prior to its effective date would not apply in these circumstances.

List of Subjects in 17 CFR Part 200

Administrative practice and procedure, Authority delegation (Government agencies), Organization and functions (Government agencies).

Text of Amendment

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

Subpart A—Organization and Program Management

1. The authority citation for part 200, subpart A, continues to read in part as follows:

Authority: 15 U.S.C. 77s, 78d–1, 78d–2, 78w, 78*ll*(d), 79t, 77sss, 80a–37, 80b–11, unless otherwise noted.

* * * * *

2. Section 200.30–3 is amended by adding paragraph (a)(60) to read as follows:

§ 200.30–3 Delegation of authority to Director of Division of Market Regulation.

* * * * *

(a) * * *

(60) To grant exemptions from Rule 17a–23 (§ 240.17a–23 of this chapter), pursuant to Rule 17a–23(i) (§ 240.17a–23(i) of this chapter).

* * * * *

[7] 5 U.S.C. 553(b)(A).

Dated: May 26, 1995.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–13465 Filed 6–1–95; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[DEA–126F]

Schedules of Controlled Substances; Placement of 4-Bromo-2,5-Dimethoxyphenethylamine Into Schedule I

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Final rule.

SUMMARY: This final rule is issued by the Deputy Administrator of the Drug Enforcement Administration (DEA) to place 4-bromo-2,5-dimethoxyphenethylamine (4-bromo-2,5-DMPEA) into Schedule I of the Controlled Substances Act (CSA). This action is based on findings made by the Deputy Administrator of the DEA, after review and evaluation of the relevant data by both DEA and the Assistant Secretary for Health, Department of Health and Human Services, that 4-bromo-2,5-DMPEA meets the statutory criteria for inclusion in Schedule I of the CSA. Since this substance has been temporarily placed in Schedule I, the regulatory controls and criminal sanctions of Schedule I will continue to be applicable to the manufacture, distribution, importation, exportation and possession of 4-bromo-2,5-DMPEA.

EFFECTIVE DATE: June 2, 1995.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION: On December 20, 1994, in a notice of proposed rulemaking published in the **Federal Register** (59 FR 65521) and after a review of relevant data, the Deputy Administrator of the DEA proposed to place 4-bromo-2,5-DMPEA into Schedule I of the CSA pursuant to 21 U.S.C. 811(a). Prior to this time, the Deputy Administrator submitted data which DEA gathered regarding the trafficking, actual abuse and relative potential for abuse for 4-bromo-2,5-DMPEA to the Assistant Secretary for Health, delegate of the Secretary of the Department of Health and Human Services. In accordance with 21 U.S.C. 811(b), the Deputy Administrator also requested a scientific and medical evaluation and a scheduling recommendation for 4-bromo-2,5-DMPEA from the Assistant Secretary for Health.

4-Bromo-2,5-DMPEA had been temporarily placed into Schedule I of the CSA on January 6, 1994 for a period of one year (59 FR 671) pursuant to the temporary scheduling provisions of the CSA (21 U.S.C. 811(h)). The temporary scheduling of 4-bromo-2,5-DMPEA subsequently was extended for six months until July 6, 1995 (59 FR 65710). The temporary scheduling was based on the finding by the DEA Acting Administrator that such action was necessary to avoid an imminent hazard to the public safety.

By letter dated April 28, 1995, the Deputy Administrator for the DEA received the scientific and medical evaluation and a scheduling recommendation from the Assistant Secretary for Health. The Assistant Secretary recommended that 4-bromo-2,5-DMPEA be placed into Schedule I of the CSA based on a scientific and medical evaluation of the available data.

The notice or proposed rulemaking for 4-bromo-2,5-DMPEA provided the opportunity for interested parties to submit comments, objections or requests for a hearing regarding this scheduling. No comments, objections or requests for hearings were received regarding the scheduling of 4-bromo-2,5-DMPEA in the CSA.

4-Bromo-2,5-DMPEA is structurally similar to the Schedule I phenylisopropylamine hallucinogens, 4-methyl-2,5-dimethoxyamphetamine (DOM) and 4-bromo-2,5-dimethoxyamphetamine (DOB). Like DOM and DOB, 4-bromo-2,5-DMPEA displays high affinity for central serotonin receptors and is capable of substituting for DOM or DOB in drug discrimination studies conducted in rats. These data suggest that 4-bromo-2,5-DMPEA is a psychoactive substance capable of producing effects similar, though not identical, to DOM and DOB. Data from human studies indicate that 4-bromo-2,5-DMPEA is orally active at 0.1–0.2 mg/kg producing an intoxication with considerable euphoria and sensory enhancement which lasts for 6 to 8 hours. Higher doses have been reported to produce intense and frightening hallucinations.

The DEA first encountered 4-bromo-2,5-DMPEA in 1979. Since that time, several exhibits of 4-bromo-2,5-DMPEA have been analyzed by Federal and state forensic laboratories in Arizona, California, Colorado, Georgia, Illinois, Iowa, Kentucky, Oregon, Pennsylvania and Texas. Clandestine laboratories producing 4-bromo-2,5-DMPEA were seized in California in 1986 and 1994 and in Arizona in 1992. It has been represented as 3,4-methylenedioxymethamphetamine (MDMA) and has been sold in adulterated sugar cubes as LSD. 4-Bromo-2,5-DMPEA has been promoted as an aphrodisiac and distributed under the product name of Nexus. DEA has seized several thousand dosage units of this product.

The Food and Drug Administration (FDA) has notified the DEA that there are no exemptions or approvals in effect under Section 505 of the Federal Food, Drug, and Cosmetic Act for 4-bromo-2,5-DMPEA. A search of the scientific and medical literature pertaining to 4-bromo-2,5-DMPEA revealed no indications of current medical use in treatment in the United States.

Based on the information gathered and reviewed by DEA and upon the scientific and medical evaluation and recommendation of the Assistant Secretary for Health, the Deputy Administrator for the DEA, pursuant to the provisions of 21 U.S.C. 811 (a) and (b), finds that:

(1) 4-bromo-2,5-DMPEA has a high potential for abuse.

(2) 4-bromo-2,5-DMPEA has no currently accepted medical use in treatment in the United States.

(3) There is a lack of accepted safety for use of 4-bromo-2,5-DMPEA under medical supervision.

These findings are consistent with the placement of 4-bromo-2,5-DMPEA into Schedule I of the CSA.

All regulations applicable to Schedule I substances continue to be in effect as of June 2, 1995, with respect to 4-bromo-2,5-DMPEA. This substance has been in Schedule I pursuant to the temporary scheduling provisions of 21 U.S.C. 811(h) since January 6, 1994. The current applicable regulations are as follows:

1. *Registration.* Any person who manufactures, distributes, delivers, imports or exports 4-bromo-2,5-DMPEA or who engages in research or conducts instructional activities with respect to 4-bromo-2,5-DMPEA or who proposes to engage in such activities, must be registered to conduct such activity in accordance with parts 1301 and 1311 of title 21 of the Code of Federal Regulations.

2. *Security.* 4-bromo-2,5-DMPEA must be manufactured, distributed and stored in accordance with §§ 1301.71–1301.76 of title 21 of the Code of Federal Regulation.

3. *Labeling and Packaging.* All labels and labeling for commercial containers of 4-bromo-2,5-DMPEA must comply with §§ 1302.03–1302.05, 1302.07 and 1302.08 of title 21 of the Code of Federal Regulations.

4. *Quotas.* All persons required to obtain quotas for 4-bromo-2,5-DMPEA shall submit applications pursuant to §§ 1303.12 and 1303.22 of title 21 of the Code of Federal Regulations.

5. *Inventory.* Every registrant required to keep records and who possesses any quantity of 4-bromo-2,5-DMPEA shall take an inventory of all stocks of 4-bromo-2,5-DMPEA on hand pursuant to §§ 1304.11–1304.19 of title 21 of the Code of Federal Regulations.

6. *Records.* All registrants required to keep records pursuant to §§ 1304.21–1304.27 of title 21 of the Code of Federal Regulations shall maintain such records with respect to 4-bromo-2,5-DMPEA.

7. *Reports.* All registrants required to submit reports pursuant to §§ 1304.34–1304.37 of title 21 of the Code of Federal Regulations shall do so regarding 4-bromo-2,5-DMPEA.

8. *Order Forms.* All registrants involved in the distribution of 4-bromo-2,5-DMPEA must comply with §§ 1305.01–1305.16 of title 21 of the Code of Federal Regulations.

9. *Importation and Exportation.* All importation and exportation of 4-bromo-2,5-DMPEA shall be in compliance with part 1312 of title 21 of the Code of Federal Regulations.

10. *Criminal Liability.* Any activity with respect to 4-bromo-2,5-DMPEA not authorized by, or in violation of, the CSA or the Controlled Substances Import and Expert Act shall be unlawful.

The Deputy Administrator of the DEA hereby certifies that final placement of 4-bromo-2,5-DMPEA into Schedule I of the CSA will have no significant impact upon entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* This action involves the control of a substance with no currently accepted medical use in treatment in the United States.

In accordance with the provisions of 21 U.S.C. 811(a), this scheduling action is a formal rulemaking. Such proceedings are conducted pursuant to the provisions of 5 U.S.C. 556 and 557 and, as such, are exempt from review by the Office of Management and Budget pursuant to Executive Order (E.O.) 12866, 3(d)(1).

This action has been analyzed in accordance with the principles and criteria in E.O. 12612, and it has been determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, drug traffic control, narcotics, prescription drugs.

Under the authority vested in the Attorney General by section 201(a) of the CSA (21 U.S.C. 811(a)), and delegated to the Administrator of the DEA by the Department of Justice regulations (28 CFR 0.100) and redelegated to the Deputy Administrator pursuant to 28 CFR 0.104, the Deputy Administrator hereby orders that 21 CFR part 1308 be amended as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

1. The authority citation for 21 CFR part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871b, unless otherwise noted.

2. Section 1308.11 is amended by redesignating the existing paragraphs (d)(3) through (d)(30) as (d)(4) through (d)(31) and adding a new paragraph (d)(3) to read as follows:

§ 1308.11 Schedule I.

* * * * *

(d) * * *

(3) 4-Bromo-2,5-dimethoxyphenethylamine.....7392

Some trade or other names: 2-(4-bromo-2,5-dimethoxyphenyl)-1-aminoethane; alpha-desmethyl DOB; 2C-B, Nexus.

* * * * *

3. Section 1308.11 is further amended by removing paragraph (g)(3).

Dated: May 25, 1995.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 95–13454 Filed 6–1–95; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 8596]

RIN 1545–AL20

Payment of Excess Expenses Incurred by Purchaser in Connection With the Redemption of Real Property Under Internal Revenue Code Section 7425

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations regarding the payment of excess expenses incurred by a purchaser at a nonjudicial sale in connection with redemptions of real property by the United States. These regulations affect purchasers in connection with the redemption of real property.

EFFECTIVE DATE: June 2, 1995.

FOR FURTHER INFORMATION CONTACT: Robert A. Walker, (202) 622–3640 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

These final regulations amend the Income Tax Regulations (26 CFR part 301) under section 7425 of the Internal Revenue Code (Code). The regulations impose a time limit within which a purchaser of real property at a nonjudicial sale may submit a claim for excess expenses to the United States when it is redeeming such real property. The United States will not consider any claim made after expiration of the time limits.

The IRS published a notice of proposed rulemaking in the **Federal Register** on May 23, 1994 (59 FR 26608) providing proposed rules under section 7425 of the Code. No public comments were received and accordingly, the final regulations adopt the proposed regulations with only technical changes.

Explanation of Provisions

Section 301.7425–4(b)(3)(ii) does not provide a specific time period within which the purchaser at a nonjudicial foreclosure sale may submit a claim for excess expenses after the redemption. These regulations clarify that claims for excess expenses must be submitted within the time periods specified in the regulations in order for the purchaser to be reimbursed.

The regulations establish a 15-day limit after a request is made by the district director for the purchaser at a nonjudicial sale or his or her successor in interest to furnish a written itemized statement of expenses in excess of income. Since excess expenses could be incurred after a district director's request, a purchaser who fails to submit a claim at this time may submit a claim within 30 days after the date of redemption. These limits will allow the purchaser a reasonable amount of time within which to determine the amount of any excess expenses and to submit a claim to the United States. After the expiration of the relevant time periods, the United States may distribute all surplus proceeds associated with the sale of the redeemed property unhindered by any possibility of a claim for excess expenses made in the future when the surplus proceeds of sale are no longer available to satisfy such a claim. Adding time limits will also expedite the handling of redemption sales by earlier disposition of surplus proceeds of sale. Disputes concerning properly submitted claims will still be resolved by the United States within a reasonable time after the redemption period.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information. The principal author of these final regulations is Robert A. Walker, Office of Assistant Chief Counsel (General Litigation). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. In § 301.7425–4, paragraph (b)(3)(ii) is amended by revising the third sentence and adding a fourth sentence to read as follows:

§ 301.7425–4 Discharge of liens; redemption by United States.

* * * * *

(b) * * *

(3) * * *

(ii) * * * If a purchaser or his or her successor in interest has failed to furnish the written itemized statement within 15 days after the request therefor is made by the district director, or there is a disagreement as to the amount properly payable under paragraph (b)(1)(iii) of this section, or if there were additional excess expenses that were not claimed in the original itemized statement, the purchaser or his or her successor in interest may submit a written itemized statement to the district director within 30 days after the date of redemption. If the purchaser or his or her successor in interest fails to timely submit such a written itemized statement, no amount shall be payable for expenses in excess of income.

* * * * *

Approved: April 27, 1995.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 95–13444 Filed 6–1–95; 8:45 am]

BILLING CODE 4830–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NC59–2–6942a; NC55–1–6497a; NC54–1–6496a; FRL–5207–3]

Approval and Promulgation of Air Quality Implementation Plans; North Carolina; Basic Motor Vehicle Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a state implementation plan (SIP) revision submitted on May 19, 1994, January 17, 1992, September 24, 1992 and August 5, 1994, by the State of North Carolina, through the North Carolina Department of Environmental Management (NCDEM). This revision modifies the implementation of a basic motor vehicle inspection and maintenance (I/M) program in the areas of Charlotte, Raleigh/Durham, and Winston-Salem, North Carolina.

DATES: This final rule will be effective on July 17, 1995 unless adverse or critical comments are received by July 3, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments on this action should be addressed to Benjamin Franco at the EPA Regional office listed below.

Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air and Radiation Docket and Information Center (Air Docket), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Environmental Protection Agency, Region 4, Air Programs Branch, 345 Courtland Street, NE, Atlanta, Georgia 30365.

Department of Environment, Health, and Natural Resources, P.O. Box 29535, Raleigh, North Carolina, 27626–0535.

FOR FURTHER INFORMATION CONTACT: Benjamin Franco, Mobile Source Planning Unit, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Environmental Protection Agency, Region 4, 345 Courtland Street, NE, Atlanta, Georgia 30365. The telephone number is 404/347–3555, extension 4211.

SUPPLEMENTARY INFORMATION:

I. Background

The Clean Air Act as amended in 1990 (the Act) requires that most ozone nonattainment areas adopt either "basic" or "enhanced" I/M programs, depending on the severity of the problem and the population of the area. The moderate ozone nonattainment areas, plus marginal ozone nonattainment areas with existing or previously required I/M programs, fall under the "basic" I/M requirements. Enhanced programs are required in serious, severe, and extreme ozone nonattainment areas with 1980 urbanized populations of 200,000 or more.

The Act requires states to make changes to improve existing I/M programs or to implement new ones for certain nonattainment areas. Section 182(a)(2)(B) of the Act directed EPA to publish updated guidance for state I/M programs, taking into consideration findings of the Administrator's audits and investigations of these programs. The Act further mandates each area required to have an I/M program to incorporate this guidance into the SIP. Based on these requirements, EPA promulgated I/M regulations on November 5, 1992 (57 FR 52950, codified at 40 Code of Federal Regulations (CFR) 51.350–51.373).

The I/M regulation establishes minimum performance standards for basic I/M programs as well as requirements for the following: network type and program evaluation; adequate tools and resources; test frequency and convenience; vehicle coverage; test procedures and standards; test equipment; quality control; waivers and compliance via diagnostic inspection; motorist compliance enforcement; motorist compliance enforcement program oversight; quality assurance; enforcement against contractors, stations and inspectors; data collection; data analysis and reporting; inspector training and licensing or certification; public information and consumer protection; improving repair effectiveness; compliance with recall notices; on-road testing; SIP revisions; and implementation deadlines. The performance standard for basic I/M programs remains the same as it has been since initial I/M policy was established in 1978, pursuant to the 1977 amendments to the Clean Air Act.

The State of North Carolina contains the Raleigh/Durham and Winston-Salem urbanized areas which were recently redesignated to attainment for ozone, and Charlotte which is designated nonattainment for ozone and classified as moderate. A redesignation request for the Charlotte nonattainment area was submitted by the State on November 12, 1993, with supplementary information provided on December 15, 1994. It is currently being reviewed by EPA. Section 51.372(b)(2) of the Federal I/M regulation (codified at 40 CFR 51.372(b)(2)) required affected states to submit full I/M SIP revisions that met the requirements of the Act to EPA by November 15, 1993.

On August 5, 1994, NCDEM submitted a complete SIP revision of the I/M program. This submittal includes new and revised regulations adopted by the North Carolina Department of Motor Vehicles (NCDMV) and the North Carolina Department of Environmental Management (NCDEM) and documentation addressing required portions of the Federal I/M rule.

Also, on May 19, 1993, January 17, 1992, and September 24, 1992, the State of North Carolina, through NCDEM submitted to EPA a revised SIP for the areas of Charlotte, Raleigh/Durham, and Winston-Salem. These submittals included revisions to Regulation .1002, Applicability; Regulation .1004, Emission Standards; Regulation .1005, Measurement and Enforcement. Regulation .1002 was adopted by the Environmental Management Commission, on May 12, 1994, and became effective on July 1, 1994. Regulation .1004 was adopted on May 14, 1993, and became effective June 1, 1993. These regulations changed the I/M program from a carbon monoxide program to an ozone/carbon monoxide program. Also, NCDEM expanded the I/M program coverage. EPA summarizes the requirements of the Federal I/M regulations as found in 40 CFR 51.350–51.373 and its analysis of the state submittal below. Parties desiring additional details on the Federal I/M regulation are referred to the November 5, 1992, **Federal Register** notice (57 FR 52950) or 40 CFR 51.350–51.373.

II. EPA's Analysis of the North Carolina, Basic I/M Program

As discussed above, section 182(a)(2)(B) of the Act requires that states adopt and implement updated regulations for I/M programs in moderate and above ozone nonattainment areas. The following sections of this notice summarize the requirements of the Federal I/M regulations and address whether the elements of the State's submittal comply with the Federal rule.

Applicability—40 CFR 51.350

Section 182(b)(4) of the Act and 40 CFR 51.350(a)(4) require that any area classified as moderate ozone nonattainment and not required to implement enhanced I/M under 40 CFR 51.350(a)(1) shall implement basic I/M in the 1990 Census-defined urbanized nonattainment area. The urbanized portion of the Charlotte nonattainment area includes sections of Mecklenburg, Gaston, Cabarrus, and Union Counties. The urbanized portion of Winston-Salem includes sections of Guilford and Forsyth Counties. The urbanized portion of Raleigh/Durham includes sections of Wake, Durham, and Orange Counties. The population distribution of these counties is such that the program exceeds the minimum required I/M coverage area. The North Carolina submittal contains the legal authority and regulations necessary for the NCDEM to establish the program boundaries and operate a basic I/M program. The program boundaries described in the North Carolina submittal meet the Federal I/M requirements under § 51.350 and are approvable.

The Federal I/M regulation requires that state programs shall not lapse prior to the time they are no longer needed. EPA beleives that a program that does not lapse prior to the attainment deadline for each applicable area would meet this requirement. The attainment date for the Charlotte ozone nonattainment area is November 15, 1996, and the North Carolina I/M regulation contained in the North Carolina submittal does not establish an

I/M program sunset date. This section is approvable.

Basic I/M Performance Standard—40 CFR 51.352

The basic I/M program must be designed and implemented to meet or exceed a minimum performance standard, which is expressed as emission levels in area-wide average grams per mile (gpm) for certain pollutants. The performance standard shall be established using local characteristics, such as vehicle mix and local fuel controls, and the following model I/M program parameters: network type, start date, test frequency, model year coverage, vehicle type coverage, exhaust emission test type, emission standards, emission control device, evaporative system function checks, stringency, waiver rate, compliance rate and evaluation date. The emission levels achieved by the state's program design shall be calculated using the most current version, at the time of submittal, of the EPA mobile source emission factor model. At the time of the North Carolina submittal the most current version was MOBILE5a. Areas shall meet or exceed the performance standard for the pollutants which cause them to be subject to basic I/M requirements. In the case of ozone nonattainment areas, the performance standard must be met for both nitrogen oxides (NO_x) and volatile organic compounds (VOCs).

The North Carolina submittal includes the following program design parameters:

Network type—decentralized, test and repair
Start date—1991
Test frequency—annual
Model year coverage—1975 and later
Vehicle type coverage—light and heavy duty gasoline powered vehicles
Emission test—Idle
Emission standards—1.2 percent CO, 220 ppm HC
Emission control device—Catalytic converter, air injection system, PCV valve, unleaded gas restrictor, EGR, thermostatic air control, fuel evaporation control, and oxygen sensor.
Stringency (pre-1981 failure rate)—20 percent
Waiver rate (pre-81/81 and newer)—5 percent
Compliance rate—95 percent
Evaluation date(s)—January 1, 1997.

The North Carolina program design parameters meet the Federal I/M regulations and are approvable.

The emission levels achieved by the State, for each area, were modeled using MOBILE5a. The modeling demonstration was performed correctly, used local characteristics and demonstrated that the program design will exceed the minimum basic I/M performance standard, expressed in gpm, for VOCs and NO_x for each milestone and for the attainment deadline. The modeling demonstration is approvable.

Network Type and Program Evaluation—40 CFR 51.353

Basic I/M programs can be operated in a centralized test-only format, in a decentralized test and repair, or in any hybrid version as long as states can demonstrate that the selected program is effective in achieving the basic I/M performance standard. The NCDEM will administer a decentralized test and repair I/M program in the areas of Raleigh/Durham, Winston-Salem, and Charlotte. The enhanced program evaluation requirements of this section do not pertain to these areas as it is a basic I/M program. The network type is approvable.

Adequate Tools and Resources—40 CFR 51.354

The Federal regulation requires states to demonstrate that adequate funding of the program is available. A portion of the test fee or separately assessed per vehicle fee shall be collected, placed in a dedicated fund and used to finance the program. Alternative funding approaches are acceptable if demonstrated that the funding can be maintained. Reliance on funding from a state or local General Fund is not acceptable unless doing otherwise would be a violation of the state's constitution. The SIP shall include a detailed budget plan which describes the source of funds for personnel, program administration, program enforcement, and purchase of equipment. The SIP shall also detail the number of personnel dedicated to the quality assurance program, data analysis, program administration, enforcement, public education and assistance and other necessary functions.

The North Carolina program is funded by a portion of the inspection fee that is dedicated to the program, and is divided among North Carolina Department of Motor Vehicles (NCDMV) and NCDEM. The NCDEM portion of the vehicle inspection fee is credited to the I/M Air Pollution Control Account. The NCDMV uses their portion to fund the enforcement part of the program. A detailed budget is included in the SIP for both groups. The submittal demonstrates that sufficient funds, equipment and personnel have been appropriated to meet program operation requirements. The State's submittal meets the adequate tools and resources requirements set forth in the Federal I/M regulations.

Test Frequency and Convenience—40 CFR 51.355

The SIP shall describe the test year selection scheme, how the test frequency is integrated into the enforcement process and shall include the legal authority, regulations or contract provisions to implement and enforce the test frequency. The program shall be designed to provide convenient service to the motorist by ensuring short wait times, short driving distances and regular testing hours.

The North Carolina I/M regulation provides for an annual test frequency for all covered vehicles. A vehicle is assigned a test month. An emission sticker is placed on the vehicle's windshield, reminding the owner of the testing date. Vehicles not in compliance can be fined by the state police or NCDMV. In addition, the NCDMV is establishing a computer matching system in order to identify vehicles that are late in getting an emission test. Owner's identified through computer matching with more than four months of non-compliance will be fined $100 if the vehicle is a pre-81, $250 if it is a 1981 or newer vehicle, and the registration may be revoked. This section is approvable.

Vehicle Coverage—40 CFR 51.356

The performance standard for basic I/M programs assumes coverage of all 1968 and later model year light duty vehicles (LDV) and light duty trucks (LDT) up to 8,500 pounds gross vehicle weight rating (GVWR), and includes vehicles operating on all fuel types. Other levels of coverage may be approved if the necessary emission reductions are achieved. Fleets may be officially inspected outside of the normal I/M program test facilities, if such alternatives are approved by the program administration, but shall be subject to the same test requirements using the same quality control standards as non-fleet vehicles and shall be inspected in independent, test-only facilities, according to the requirements of 40 CFR 51.353(a). Vehicles which are operated on Federal installations located within an I/M program area shall be tested, regardless of whether the vehicles are registered in the state or local I/M area.

The Federal I/M regulation requires that the SIP shall include the legal authority or rule necessary to implement and enforce the vehicle coverage requirement, a detailed description of the number and types of vehicles to be covered by the program and a plan for how those vehicles are to be identified including vehicles that are routinely operated in the area but may not be registered in the area, and a description of any special exemptions including the percentage and number of vehicles to be impacted by the exemption.

The North Carolina I/M regulation require all 1975 and later model year gasoline powered vehicles up to 8,500 pounds gross vehicle weight registered in the I/M area to take an emission test. Non-gasoline powered vehicles, motorcycles, current model year vehicles, and vehicles of 1974 model year and older are exempted from this rule. Vehicles older than 1968 are required to undergo a tampering check as part of the state-wide safety inspection required on all vehicles. NCDMV will use a computer matching procedure in order to identify vehicles that should undergo testing. Fleet vehicles are subject to the program if registered in or primarily operated in a designated I/M county. Fleet owners are allowed to self-inspect their vehicles. Federally owned vehicles and vehicles operating in a federal installation located in an I/M county are subject to the testing requirements. The North Carolina's plan for testing fleet vehicles is acceptable and meets the requirements of the Federal I/M regulation.

Test Procedures and Standards—40 CFR 51.357

Written test procedures and pass/fail standards shall be established and followed for each model year and vehicle type included in the program. Test procedures and standards are detailed in 40 CFR 51.357 and in the EPA document entitled "Recommended I/M Short Test Procedures For the 1990's: Six Alternatives."

The State's I/M submittal includes a description of the test procedures used in the North Carolina I/M program. These test procedures conform to EPA approved test procedures and are approvable. The North Carolina I/M regulation establishes hydrocarbon (HC) and carbon monoxide (CO) pass/fail exhaust standards for all test procedures for each applicable model year and vehicle type. The exhaust standards and test methods adopted by the State conform to EPA established standards and are approvable.

Test Equipment—40 CFR 51.358

Computerized test systems are required for performing any measurement on subject vehicles. The Federal I/M regulation requires that state SIP submittals include written technical specifications for all test equipment used in the program. The specifications shall describe the emission analysis process, the necessary test equipment, the required features, and written acceptance testing criteria and procedures.

Appendix G of the North Carolina SIP establishes the type of exhaust analyzers that meet the BAR90 performance specifications. These specifications require the use of computerized test systems. The specifications also include performance features and functional characteristics of the computerized test systems. This section is approvable.

Quality Control—40 CFR 51.359

Quality control measures shall insure that emission measurement equipment is calibrated and maintained properly, and that inspection, calibration records, and control charts are accurately created, recorded and maintained.

Appendix G provides the calibration procedures and system checks that must be conducted by the inspection station. The SIP also contains the quality control requirements for the emission measurement equipment, record keeping requirements and measures to maintain the security of all documents used to establish compliance with the inspection requirements. A special software encryption algorithm codes the "Inspection Number" field on the test form and can not be duplicated without access to the source code. Under a Memorandum of Understanding between NCDMV and NCDEM, NCDMV is in charge of overt and covert audits of the inspection stations, and inspectors. NCDEM, in turn, quality assures NCDMV's enforcement program. This portion of the North Carolina submittal complies with the quality control requirements set forth in the Federal I/M regulation and is approvable.

Waivers and Compliance Via Diagnostic Inspection—40 CFR 51.360

The Federal I/M regulation allows for the issuance of a waiver, which is a form of compliance with the program requirements that allows a motorist to comply without meeting the applicable test standards. For basic I/M programs, an expenditure of at least $75 for pre-81 vehicles and $200 for 1981 and later vehicles in repairs, is required in order to qualify for a waiver. Waivers can only be issued after a vehicle has failed a retest performed after all qualifying repairs have been made. Any available warranty coverage must be used to obtain repairs before expenditures can be counted toward the cost limit. Tampering related repairs shall not be applied toward the cost limit. Repairs must be appropriate to the cause of the test failure. Repairs for 1980 and newer model year vehicles must be performed by a recognized repair technician. The Federal regulation allows for compliance via a diagnostic inspection after failing a retest on emissions and requires quality control of waiver issuance. The SIP must set a maximum waiver rate and must describe corrective action that would be taken if the waiver rate exceeds that contained in the SIP.

North Carolina is commited to a waiver rate of 5%. In case the waiver rate exceeds this percentage, the State will take corrective actions to lower the rate. North Carolina issues only repair waivers. North Carolina's Regulation 20–183.5 sets a $75 cost limit for pre-81 vehicles and $200 for 1981 and newer vehicles. The regulation includes provisions which address waiver criteria and procedures, including cost limits, tampering and warranty related repairs, quality control and administration. Any vehicle owner requesting a waiver must submit the vehicle for review at a NCDMV office. A vehicle repair form must be submitted by the owner at that time, verifying the repairs. This section is approvable.

Motorist Compliance Enforcement—40 CFR 51.361

The Federal regulation requires that compliance shall be ensured through the denial of motor vehicle registration in I/M programs. However, a basic area may use an alternative enforcement mechanism if it demonstrates that the alternative will be as effective as registration denial. The SIP shall provide information concerning the enforcement process, legal authority to implement and enforce the program, a commitment to a compliance rate to be used for modeling purposes and to be maintained in practice.

The NCDMV uses a sticker-enforcement system. The SIP contains a detailed description of the enforcement process. Any owner failing to obtain a certificate of compliance by the end of the assigned month will be subject to a penalty. If caught without a valid sticker, the vehicle owner will be given a $50.00 ticket. Also, NCDMV is in process of establishing a computer-matching system. The system will identify owners that are a month late in renewing their sticker, and the owner

will be notified by letter. If a second letter is sent out and the owner doesn't inspect the vehicle, a $100 penalty is assessed on a pre-1981 vehicle or a $250 penalty is assessed for a 1981 or newer vehicle. After four months of noncompliance, DMV will revoke the vehicle's registration. NCDMV and NCDEM will change the enforcement system to registration denial by October 1, 1996. North Carolina commits to a 95% compliance rate, and this number was used in their modeling demonstration. This portion of the North Carolina submittal meets the Federal requirements and is approvable.

Motorist Compliance Enforcement Program Oversight—40 CFR 51.362

The Federal I/M regulation requires that the enforcement program shall be audited regularly and shall follow effective program management practices, including adjustments to improve operation when necessary. The SIP shall include quality control and quality assurance procedures to be used to insure the effective overall performance of the enforcement system. An information management system shall be established which will characterize, evaluate and enforce the program.

The North Carolina program will be audited every quarter by NCDEM. These audits will insure that NCDMV is performing the enforcement portion of the I/M program at an acceptable level. NC has established a database system that tracks NCDMV's enforcement record, and the number of vehicles tested. This section is approvable.

Quality Assurance—40 CFR 51.363

An ongoing quality assurance program shall be implemented to discover, correct and prevent fraud, waste, and abuse in the program. The program shall include covert and overt performance audits of the inspectors, audits of station and inspector records, equipment audits, and formal training of all state I/M enforcement officials and auditors. A description of the quality assurance program which includes written procedure manuals on the above discussed items must be submitted as part of the SIP.

The North Carolina submittal includes a quality assurance program which describes details and procedures for auditing inspectors, station records, and equipment. NCDMV has developed a performance audit program. NCDMV's inspectors will perform inspections of testing station inspectors and testing equipment. These include overt and covert audits and remote observation of inspection personnel performing testing. Covert audits are required to use a range of vehicles which have been set to fail the inspection test. NCDEM will evaluate NCDMV performance, and is in charge of developing all manuals and program specifications. NCDEM's and NCDMV's quality assurance programs meets the Federal I/M regulation requirements and are approvable.

Enforcement Against Contractors, Stations and Inspectors—40 CFR 51.364

Enforcement against licensed stations or contractors, and inspectors shall include swift, sure, effective, and consistent penalties for violation of program requirements. The Federal I/M regulation requires the establishment of minimum penalties for violations of program rules and procedures which can be imposed against stations, contractors and inspectors. The legal authority for establishing and imposing penalties, civil fines, license suspensions and revocations must be included in the SIP. State quality assurance officials shall have the authority to temporarily suspend station and/or inspector licenses immediately upon finding a violation that directly affects emission reduction benefits. An official opinion explaining any state constitutional impediments to immediate suspension authority must be included in the submittal. The SIP shall describe the administrative and judicial procedures and responsibilities relevant to the enforcement process, including which agencies, courts and jurisdictions are involved, who will prosecute and adjudicate cases and the resources and sources of those resources which will support this function.

The North Carolina submittal includes the legal authority to establish and impose penalties against stations, contractors and inspectors. The North Carolina enforcement program is staffed by NCDMV officers and immediate action and prosecution is taken when needed. NCDMV officers have the authority to shut down analayzers that are not working properly, and can issue citations against inspectors and testing facilities. A penalty schedule is included in the submittal. The North Carolina I/M program meets the requirements of this section and is approvable.

Data Collection—40 CFR 51.365

Accurate data collection is essential to the management, evaluation and enforcement of an I/M program. The Federal I/M regulation requires data to be gathered on each individual test conducted and on the results of the quality control checks of test equipment required under 40 CFR 51.359.

Appendix G specifies the information contained on the inspection form. Appendix G requires the collection of data, and subsequent analysis, on each individual test conducted and describes the type of data to be collected. The type of test data collected meets the Federal I/M regulation requirements and is approvable. The submittal also commits to gather and report the results of the quality control checks required under 40 CFR 51.359 and is approvable.

Data Analysis and Reporting—40 CFR 51.366

Data analysis and reporting are required to allow for monitoring and evaluation of the program by the states and EPA. The Federal I/M regulation requires annual reports to be submitted which provide information and statistics and summarize activities performed for each of the following programs: testing, quality assurance, quality control and enforcement. These reports will be submitted quarterly.

The North Carolina I/M program provides for the analysis and reporting of data for the testing program, quality assurance program, quality control program and the enforcement program. The type of data to be analyzed and reported meets the Federal I/M regulation requirements and is approvable. North Carolina commits to submit quarterly reports on these programs to EPA. This section is approvable.

Inspector Training and Licensing or Certification—40 CFR 51.367

The Federal I/M regulation requires all inspectors to be formally trained and licensed or certified to perform inspections. The North Carolina I/M regulation requires all inspectors to receive formal training, be certified, and renew the certification every four years. The inspector must attend a training course and pass an examination with at least a score of 80%. The SIP meets the Federal I/M regulation requirements for inspector training and certification and is approvable.

Public Information and Consumer Protection—40 CFR 51.368

The Federal I/M regulation requires the SIP to include a public information and consumer protection program. NCDMV will operate a toll free number which provides information concerning the I/M program, and warranty information. This number must be posted in all testing stations and visible to the customer. Also, NCDEM and NCDMV developed a brochure that contains general program information, car care tips and information concerning

emissions warranty. The public information and consumer protection programs contained in the SIP submittal meet the Federal regulations and are approvable.

Improving Repair Effectiveness—40 CFR 51.369

Effective repairs are the key to achieving program goals. The Federal regulation requires states to take steps to ensure that the capability exists in the repair industry to repair vehicles. The SIP must include a description of the technical assistance program to be implemented, a description of the procedures and criteria to be used in meeting the performance monitoring requirements required in the Federal regulation and a description of the repair technician training resources available in the community.

The North Carolina I/M program provides for a mechanics "help line" regarding vehicle repair. The "help line" is intended to provide service in three areas: providing emissions repair technical assistance, assist in locating replacement parts for emissions devices, and to answer questions related to the legality of engine-switching and changes to exhaust system configurations. Also, various technical colleges in the State offer emission controls training. The repair effectiveness program described in the SIP meets the Federal regulation and is approvable.

Compliance with Recall Notices—40 CFR 51.370

The Federal regulation requires the states to establish methods to ensure that vehicles that are subject to enhanced I/M and are included in an emission related recall receive the required repairs prior to completing the emission test or renewing the vehicle registration.

The North Carolina's nonattainment areas are classified as moderate and therefore not subject to this provision.

On-road Testing—40 CFR 51.371

On-road testing is required in enhanced I/M areas. The use of either remote sensing devices (RSD) or roadside pullovers including tailpipe emission testing can be used to meet the Federal regulations. The program must include on-road testing of 0.5% of the subject fleet or 20,000 vehicles, whichever is less, in the nonattainment area or the I/M program area. Motorists that have passed an emission test and are found to be high emitters as a result of a on-road test shall be required to pass an out-of-cycle test.

Even though North Carolina's nonattainment areas are classified as moderate and therefore not subject to this provision, NCDEM has purchased a RSD and will conduct surveys with it.

State Implementation Plan Submissions/Implementation Deadlines—40 CFR 51.372–373

The Federal regulation requires decentralized basic I/M programs to be fully implemented by January 1, 1994. The North Carolina I/M program has been in operation since 1983 as a carbon monoxide program. Starting in 1991, the I/M program started failing vehicles for the hydrocarbon standard. The changes required by the CAA as amended in 1990 were phased in the I/M program areas between 1991–1993. The SIP meets the SIP submission and implementation deadline requirements set forth in the Federal I/M regulation.

EPA's review of the material indicates that the State has adopted a basic I/M program in accordance with the requirements of the Act. EPA is approving the North Carolina SIP revision for all basic I/M programs in North Carolina, which were submitted on August 5, 1994, July 19, 1993, January 17, 1992, and September 24, 1992.

Final Action

The EPA is publishing this action without prior proposal because the agency views this as a noncontroversial amendment and anticipates no adverse public comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective on August 1, 1995 unless, within 30 days of its publication, adverse or critical comments are received.

If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be discussed in a subsequent final rule based on the separate proposed rule. The EPA will not institute a second comment period for this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on August 1, 1995.

EPA is approving this revision to the North Carolina SIP for a basic I/M program. The Agency has reviewed this request for revision of the Federally-approved SIP for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements.

Under section 307(b)(1) of the Act, 42 U.S.C. 7607 (b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 1, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the Act, 42 U.S.C. 7607 (b)(2).)

The Office of Management and Budget has exempted this rule from the requirements of section 6 of Executive Order 12866.

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under 110 and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2) and 7410(k)(3).

Unfunded Mandates

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, or tribal governments in the aggregate.

EPA's final action does not impose any federal intergovernmental mandate, as defined in section 101 of the Unfunded Mandates Act, upon the State. To the extent that the rules being approved by this action will impose any mandate upon the State, local, or tribal governments, or upon the private sector, EPA's action will impose no new requirements; such sources are already subject to these regulations under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. For these reasons, EPA has determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and Recordkeeping requirements.

Dated: May 3, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

Part 52 of chapter I, title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42.U.S.C. 7401–7671q.

Subpart S—North Carolina

2. Section 52.1770, is amended by adding paragraph (c)(80) to read as follows:

§ 52.1770 Identification of plan.

* * * * *

(c) * * *

(80) Modifications to the existing basic I/M program in North Carolina submitted on July 19, 1993, January 17, 1992, and September 24, 1992. Addition of regulations .1001 through .1005 establishes the I/M program.

(i) Incorporation by reference.

(A) Regulation .1001 and .1003, effective on December 1, 1982.

(B) Regulation .1002 effective on July 1, 1994.

(C) Regulation .1004 effective on July 1, 1993.

(D) Regulation .1005 effective on April 1, 1991.

(E) Specification for the North Carolina Analyzer System adopted December 12, 1991.

(ii) Other material. None.

[FR Doc. 95–13462 Filed 6–1–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[WA22–1–6362; FRL–5214–2]

Approval and Promulgation of State Implementation Plans: Washington Approval of Section 112(l) Authority; Operating Permits; Washington

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving in part and disapproving in part, numerous revisions to the State of Washington Implementation Plan submitted to EPA by the Director of the Washington Department of Ecology (WDOE) on March 8, 1994. The revisions were submitted in accordance with the requirements of section 110 and part D of the Clean Air Act (hereinafter the Act). EPA is taking no action on a number of provisions which are unrelated to the purposes of the implementation plan. EPA is also approving certain WDOE rules under the authority of section 112(l) of the Act in order to recognize conditions and limitations established pursuant to these rules as Federally enforceable.

EFFECTIVE DATE: This action will be effective on June 2, 1995.

ADDRESSES: Copies of the State's request and other information supporting today's action are available for inspection during normal business hours at the following locations: EPA, Air & Radiation Branch (AT–082), 1200 Sixth Avenue, Seattle, Washington 98101, and State of Washington, Department of Ecology, 4550 Third Avenue SE, Lacey, Washington 98504

Documents which are incorporated by reference are available for public inspection at the Air and Radiation Docket and Information Center, EPA, 401 M Street, SW, Washington, D.C. 20460, as well as the above addresses.

FOR FURTHER INFORMATION CONTACT: David C. Bray, Permit Programs Manager, EPA, Air & Radiation Branch (AT–082), Seattle, Washington 98101, (206) 553–4253.

SUPPLEMENTARY INFORMATION:

I. Background

The Washington Department of Ecology (WDOE) amended its Part D NSR rules on August 20, 1993 and submitted them to EPA on March 8, 1994 as a revision to the Washington SIP. The WDOE also amended several other provisions of its current rules for air pollution sources and submitted them to EPA on March 8, 1994 as a revision to the Washington SIP. On September 29, 1994, the Director of the WDOE submitted an official application to obtain approval for Title V permitting authorities (with the exception of the Puget Sound Air Pollution Control Agency (PSAPCA) and the Southwest Air Pollution Control Agency (SWAPCA)) in the State of Washington to implement and enforce the statewide rules for "Controls for New Sources of Toxic Air Pollutants" (WAC 173–460) as an interim program to implement section 112(g) of the Act. The Director of the WDOE also submitted an official application on behalf of the PSAPCA and SWAPCA to obtain approval for those local agencies to implement and enforce their own rules (portions of PSAPCA Regulations I and III and SWAPCA Regulation 460) for new sources of toxic air pollutants as interim programs to implement section 112(g) of the Act.

On February 22, 1995 (60 FR 9802), EPA proposed to approve in part and disapprove in part, numerous revisions to the State of Washington Implementation Plan. EPA proposed to take no action on a number of provisions which are unrelated to the purposes of the implementation plan. EPA also proposed to approve certain WDOE rules, and certain rules of the Puget Sound Air Pollution Control Agency (PSAPCA) and Southwest Air Pollution Control Authority (SWAPCA), under the authority of section 112(l) of the Act, in order to recognize conditions and limitations established pursuant to these rules as Federally enforceable.

On May 8, 1995, WDOE officially withdrew its request for approval of the State and local agency rules submitted September 29, 1994 as an interim program for implementing section 112(g) of the Act. WDOE also withdrew two provisions of WAC 173–400 which were included in its March 8, 1994 SIP submittal.

II. Response to Comments

EPA received comments from Northwest Pulp & Paper Association, the American Forest & Paper Association, and the Washington Department of Ecology. With the exception of two comments from the WDOE supporting EPA's proposed approval of WAC 173–400–091, all of the comments pertained to rules which the WDOE has since withdrawn from its SIP and Section 112(l) submittal. Because the rules on which the adverse comments were submitted are no longer before EPA for consideration, the adverse comments are now moot.

III. This Action

On February 22, 1995 (60 FR 9802), EPA proposed to approve in part, disapprove in part, and take no action in part, on numerous revisions to Chapter 173–400 WAC "General Regulations for Air Pollution Sources." With the exception of the two provisions which were withdrawn by WDOE on May 8, 1995, EPA today is taking final action on the proposed approvals and disapprovals.

Specifically, EPA is approving revisions to WAC 173–400–030 "Definitions;" WAC 173–400–040 "General standards for maximum emissions" (except for –040(1)(c) and (d); –040(2); –040(4); and the second paragraph of –040(6)); WAC 173–400–100 "Registration;" WAC 173–400–105 "Records, monitoring, and reporting;" WAC 173–400–110 "New source review (NSR);" WAC 173–400–171 "Public involvement;" WAC 173–400–230 "Regulatory actions;" and WAC 173–400–250 "Appeals;" and the addition of WAC 173–400–081 "Startup and shutdown;" WAC 173–400–091 "Voluntary limits on emissions;" WAC 173–400–107 "Excess emissions;" WAC 173–400–112 "Requirements for new sources in nonattainment areas" (except for –112(8)); and WAC 173–400–113 "Requirements for new sources in attainment or unclassifiable areas" (except for –113(5)).

EPA is disapproving WAC 173–400–040(1)(c) "alternative time periods for opacity standards;" WAC 173–400–040(1)(d) "alternative opacity limits;" the second paragraph of WAC 173–400–040(6) "exemption from sulfur dioxide emission limit;" the exception provision in WAC 173–400–050(3) "alternative oxygen correction factor;" WAC 173–400–120 "Bubble rules;" WAC 173–400–131 "Issuance of emission reduction credits;" WAC 173–400–136 "Use of emission reduction credits;" WAC 173–400–141 "Prevention of significant deterioration (PSD);" and WAC 173–400–180 "Variance."

EPA is taking no action on WAC 173–400–040(2) "Fallout;" WAC 173–400–040(4) "Odors;" WAC 173–400–070(7) "Sulfuric acid plants;" WAC 173–400–075 "Emission standards for sources emitting hazardous air pollutants;" and WAC 173–400–115 "Standards of performance for new sources." Note that WAC 173–400–112(8), WAC 173–400–113(5), and WAC 173–400–114 were not submitted for inclusion in the Washington SIP. All other provisions of WAC 173–400 which are not mentioned above were previously approved by EPA on January 15, 1993 (58 FR 4578). See the February 22, 1995 **Federal Register** for a complete discussion of EPA's findings and rationale for its proposed approvals and disapprovals.

As was proposed in the February 22, 1995 **Federal Register**, after final EPA approval of WAC 173–400–091, "regulatory orders" issued pursuant to that rule, and terms and conditions contained therein, will be enforceable by the EPA and by citizens under section 304 of the Act regardless of whether such orders were issued prior to EPA approval of that section. However, such orders would have to have been issued after the effective date of WAC 173–400–091 (i.e., September 20, 1993) in accordance with all of the provisions set forth in that section. Sources could, after the effective date of this approval, rely on "regulatory orders" issued pursuant to WAC 173–400–091 as a means to limit their potential to emit criteria pollutants, pollutants regulated under the PSD provisions of the SIP, and hazardous air pollutants listed in section 112(b) of the Act in order to avoid requirements which would otherwise apply to "major stationary sources."

After the effective date of this approval, regulatory orders issued pursuant to WAC 173–400–091 will become part of the Washington SIP upon issuance by a permitting authority without further action by EPA. However, Section 110(h) requires EPA to assemble, maintain, and periodically publish each SIP. Furthermore, 40 CFR 51.104(e) and 51.326 require a State to submit to EPA all revisions to its SIP. Therefore, each regulatory issued pursuant to WAC 173–400–091 must be submitted to EPA for inclusion in the assembled SIP. While section 51.326 allows the submittal of such SIP revisions to occur on an annual basis, EPA strongly encourages permitting authorities to submit such revisions on a more routine basis (e.g., within 30 days of issuance) so that EPA and the public are aware of the major source status and current SIP provisions for affected sources.

IV. Effective Date

Pursuant to Section 553(d)(3) of the Administrative Procedures Act (APA), this final notice is effective June 2, 1995. Section 553(d)(3) of the APA allows EPA to waive the requirement that a rule be published 30 days before the effective date if EPA determines there is "good cause" and publishes the grounds for such a finding with the rule. Under section 553(d)(3), EPA must balance the necessity for immediate federal enforceability of these SIP revisions against principles of fundamental fairness which require that all affected persons be afforded a reasonable time to prepare for the effective date of a new rule. *United States* v. *Gavrilovic*, 551 F 2d 1099, 1105 (8th Cir., 1977). The purpose of the requirement for a rule to be published 30 days before the effective date of the rule is to give all affected persons a reasonable time to prepare for the effective date of a new rule. *Id.*

EPA has determined good cause exists to make this **Federal Register** notice effective upon publication. The rules made federally enforceable by this **Federal Register** notice have been enforceable as a matter of state law for more than a year. Moreover, the 30 day publication period would cause undue burdens to the public, affected industry and permitting authorities. Under Washington's Title V program, Title V sources must submit Title V applications by June 7, 1995. *See* WAC 173–401–500(3)(a). Many existing major stationary sources in Washington have applied for or have already received regulatory orders under WAC 173–400–091 to limit their potential to emit to less than the major source thresholds and are relying in good faith on these regulatory orders to exempt them from the requirements of the Title V operating permits program. If the federal enforceability of these SIP revisions is delayed for 30 days, these sources would be in violation of the requirement to submit Title V applications by June 7, 1995, solely because the regulatory orders that they have already been issued were not yet federally enforceable. The imposition of the 30 day delay in the effective date of these SIP revisions would therefore require sources to prepare and submit Title V applications that would not be required once this approval becomes effective in 30 days, require state and local permitting authorities to expend unnecessary resources for receiving, logging in and reviewing permit applications and possible enforcement

action for late submittals, and delay the federal enforceability of the voluntary emission reductions made by these sources.

Therefore, EPA has determined that good cause exists to make these SIP revisions immediately effective and that the principals of fundamental fairness are met because all known affected persons have been afforded a reasonable time to prepare for the effective date of these SIP revisions. Accordingly, pursuant to section 553(d)(3) of the APA, this approval of the Washington SIP is finally effective upon publication in the **Federal Register**.

V. Summary of Action

In summary, EPA is approving: WAC 173–400 as in effect on September 20, 1993, except for the following sections: –040(1)(c) and (d); –040(2); –040(4); the second paragraph of –040(6); the exception provision in –050(3); –070(7); –075; –112(8); –113(5); –114; –115; –120; –131; –136; –141; and –180.

EPA is disapproving: WAC 173–400–040(1)(c) and (d), the second paragraph of –040(6), the exception provision in –050(3), –120, –131, –136, –141, and –180.

EPA is taking no action on: WAC 173–400–040(2), –040(4), –070(7), –075, and –115. Note that WAC 173–400–112(8), WAC 173–400–113(5), and WAC 173–400–114 have not been submitted for inclusion in the Washington SIP.

EPA is also approving pursuant to the authority of section 112(l) of the Act: WAC 173–400–091 as in effect on September 20, 1993.

Administrative Review

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The OMB has exempted this regulatory action from E.O. 12866 review.

EPA's disapproval of the State request under section 110 and subchapter I, Part D of the CAA does not affect any existing requirements applicable to small entities. Any pre-existing Federal requirements remain in place after this disapproval. Federal disapproval of the State submittal does not affect its State enforceability. Moreover, EPA's disapproval of the submittal does not impose any new Federal requirements. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not impose any new Federal requirements.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 1, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2), 42 U.S.C. 7607(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, and Volatile organic compounds.

Dated: May 24, 1995.

Chuck Clarke,

Regional Administrator.

Note: Incorporation by reference of the Implementation Plan for the State of Washington was approved by the Director of the Office of Federal Register on July 1, 1982.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart WW—Washington

2. Section 52.2470 is amended by adding paragraph (c)(54) to read as follows:

§ 52.2470 Identification of plan.

* * * * *

(c) * * *

(54) On March 8, 1994, the Director of WDOE submitted to the Regional Administrator of EPA numerous revisions to the State of Washington Implementation Plan which included updated new source review regulations and provisions for voluntary limits on a source's potential to emit. The revisions were submitted in accordance with the requirements of section 110 and Part D of the Clean Air Act (hereinafter the Act).

(i) Incorporation by reference.

(A) March 8, 1994 and May 8, 1995 letters from WDOE to EPA submitting requests for revisions to the Washington SIP consisting of an amended state regulation; Chapter 173–400 Washington Administrative Code General Regulations for Air Pollution Sources, adopted on August 20, 1993, in its entirety with the exception of the following sections: –040(1)(c) and (d); –040(2); –040(4); the second paragraph of –040(6); the exception provision in –050(3); –070(7); –075; –112(8); –113(5); –114; –115; –120; –131; –136; –141; and –180.

3. Subpart WW is further amended by adding a new § 52.2495 to read as follows:

§ 52.2495 Voluntary limits on potential to emit

Terms and conditions of regulatory orders issued pursuant to WAC 173–400–091 "Voluntary limits on emissions" and in accordance with the provisions of WAC 173–400–091, WAC 173–400–105 "Records, monitoring, and reporting," and WAC 173–400–171 "Public involvement," shall be applicable requirements of the federally-approved Washington SIP and Section 112(l) program for the purposes of section 113 of the Clean Air Act and shall be enforceable by EPA and by any person in the same manner as other requirements of the SIP and Section 112(l) program. Regulatory orders issued pursuant to WAC 173–400–091 are part of the Washington SIP and shall be submitted to EPA Region 10 in accordance with the requirements of §§ 51.104(e) and 51.326.

[FR Doc. 95–13516 Filed 6–1–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[MI42–01–7027a; FRL–5213–3]

Determination of Attainment of Ozone Standard by Grand Rapids and Muskegon, Michigan; Determination Regarding Applicability of Certain Reasonable Further Progress and Attainment Demonstration Requirements

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Direct final rule.

SUMMARY: The USEPA is determining, through direct final procedure, that the Grand Rapids (Kent and Ottawa Counties) and Muskegon (Muskegon County) ozone nonattainment areas have attained the National Ambient Air Quality Standard (NAAQS) for ozone. This determination is based upon 3 years of complete, quality assured ambient air monitoring data for the years 1992–1994 that demonstrate that the ozone NAAQS has been attained in these areas. On the basis of this determination, USEPA is also determining that certain reasonable further progress and attainment demonstration requirements, along with certain other related requirements, of part D of Title 1 of the Clean Air Act are not applicable to the areas for so long as the areas continue to attain the ozone NAAQS. In the proposed rules section of this **Federal Register**, USEPA is proposing these determinations and soliciting public comment on them. If adverse comments are received on this direct final rule, USEPA will withdraw this final rule and address these comments in a subsequent final rule on the related proposed rule which is being published in the proposed rules section of this **Federal Register**. No additional opportunity for public comment will be provided. Unless this direct final rule is withdrawn no further rulemaking will occur on this action.

EFFECTIVE DATE: This action will be effective July 17, 1995 unless notice is received by July 3, 1995 that someone wishes to submit adverse comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments can be mailed to: Carlton T. Nash, Chief, Regulation Development Section, Air Toxics and Radiation Branch, (AT–18J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

A copy of the air quality data and USEPA's analysis are available for inspection at the following address: (It is recommended that you telephone Madelin Rucker at (312) 886–0661 before visiting the Region 5 office).

FOR FURTHER INFORMATION CONTACT: Madelin Rucker, Regulation Development Section, Air Toxics and Radiation Branch (AT–18J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Telephone: (312) 886–0661.

SUPPLEMENTARY INFORMATION:

I. Background

Subpart 2 of part D of Title I of the Clean Air Act (Act) contains various air quality planning and state implementation plan (SIP) submission requirements for ozone nonattainment areas. USEPA believes it is reasonable to interpret provisions regarding reasonable further progress (RFP) and attainment demonstrations, along with certain other related provisions, so as not to require SIP submissions if an ozone nonattainment area subject to those requirements is monitoring attainment of the ozone standard (i.e., attainment of the NAAQS demonstrated with three consecutive years of complete, quality assured air quality monitoring data). As described below, USEPA has previously interpreted the general provisions of subpart 1 of part D of Title I (sections 171 and 172) so as not to require the submission of SIP revisions concerning RFP, attainment demonstrations, or contingency measures. As explained in a memorandum dated May 10, 1995 from John Seitz to the Regional Air Division Directors, entitled "Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the National Ambient Air Quality Standard," USEPA believes it is appropriate to interpret the more specific RFP, attainment demonstration and related provisions of subpart 2 in the same manner.

First, with respect to RFP, section 171(1) states that, for purposes of part D of Title I, RFP "means such annual incremental reductions in emissions of the relevant air pollutant as are required by this part or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable national ambient air quality standard by the applicable date." Thus, whether dealing with the general RFP requirement of section 172(c)(2), or the more specific RFP requirements of subpart 2 for classified ozone nonattainment areas (such as the 15 percent plan requirement of section 182(b)(1)), the stated purpose of RFP is to ensure attainment by the applicable attainment date.[1] If an area has in fact attained the standard, the stated purpose of the RFP requirement will have already been fulfilled and USEPA does not believe that the area need submit revisions providing for the further emission reductions described in the RFP provisions of section 182(b)(1).

USEPA notes that it took this view with respect to the general RFP requirement of section 172(c)(2) in the General Preamble for the Interpretation of Title I of the Clean Air Act Amendments of 1990 (57 FR 13498 (April 16, 1992)), and it is now extending that interpretation to the specific provisions of subpart 2. In the General Preamble, USEPA stated, in the context of a discussion of the requirements applicable to the evaluation of requests to redesignate nonattainment areas to attainment, that the "requirements for RFP will not apply in evaluating a request for redesignation to attainment since, at a minimum, the air quality data for the area must show that the area has already attained. Showing that the State will make RFP towards attainment will, therefore, have no meaning at that point." (57 FR at 13564.)[2]

[1] USEPA notes that paragraph (1) of subsection 182(b) is entitled "PLAN PROVISIONS FOR REASONABLE FURTHER PROGRESS" and that subparagraph (B) of paragraph 182(c)(2) is entitled "REASONABLE FURTHER PROGRESS DEMONSTRATION," thereby making it clear that both the 15 percent plan requirement of section 182(b)(1) and the 3 percent per year requirement of section 182(c)(2) are specific varieties of RFP requirements.

[2] *See also* "Procedures for Processing Requests to Redesignate Areas to Attainment," from John Calcagni, Director, Air Quality Management Division, to Regional Air Division Directors, September 4, 1992, at page 6 (stating that the "requirements for reasonable further progress * * * will not apply for redesignations because they only have meaning for areas not attaining the standard") (hereinafter referred to as "September 1992 Calcagni memorandum").

Second, with respect to the attainment demonstration requirements of section 182(b)(1), an analogous rationale leads to the same result. Section 182(b)(1) requires that the plan provide for "such specific annual reductions in emissions * * * as necessary to attain the national primary ambient air quality standard by the attainment date applicable under this Act." As with the RFP requirements, if an area has in fact monitored attainment of the standard, USEPA believes there is no need for an area to make a further submission containing additional measures to achieve attainment. This is also consistent with the interpretation of certain section 172(c) requirements provided by USEPA in the General Preamble to Title I, as USEPA stated there that no other measures to provide for attainment would be needed by areas seeking redesignation to attainment since "attainment will have been reached." (57 FR at 13564; see also September 1992 Calcagni memorandum at page 6.) Upon attainment of the NAAQS, the focus of State planning efforts shifts to the maintenance of the NAAQS and the development of a maintenance plan under section 175A.

Similar reasoning applies to other related provisions of subpart 2 such as the contingency measure requirements of section 172(c)(9). USEPA has previously interpreted the contingency measure requirement of section 172(c)(9) as no longer being applicable once an area has attained the standard since those "contingency measures are directed at ensuring RFP and attainment by the applicable date." (57 FR at 13564; see also September 1992 Calcagni memorandum at page 6.)

USEPA emphasizes that the lack of a requirement to submit the SIP revisions discussed above exists only for as long as an area designated nonattainment continues to attain the standard. If USEPA subsequently determines that such an area has violated the NAAQS, the basis for the determination that the area need not make the pertinent SIP revisions would no longer exist. The USEPA would notify the State of that determination and would also provide notice to the public in the **Federal Register**. Such a determination would mean that the area would have to address the pertinent SIP requirements within a reasonable amount of time, which USEPA would establish taking into account the individual circumstances surrounding the particular SIP submissions at issue. Thus, a determination that an area need not submit one of the SIP submittals amounts to no more than a suspension of the requirement for so long as the area continues to attain the standard.

The State must continue to operate an appropriate air quality monitoring network, in accordance with 40 CFR part 58, to verify the attainment status of the area. The air quality data relied upon to determine that the area is attaining the ozone standard must be consistent with 40 CFR Part 58 requirements and other relevant USEPA guidance and recorded in USEPA's Aerometric Information Retrieval System (AIRS).

The determinations that are being made with this action are not equivalent to the redesignation of the area to attainment. Attainment of the ozone NAAQS is only one of the criteria set forth in section 107(d)(3)(E) that must be satisfied for an area to be redesignated to attainment. To be redesignated the State must submit and receive full approval of a redesignation request for the area that satisfies all of the criteria of that section, including the requirement of a demonstration that the improvement in the area's air quality is due to permanent and enforceable reductions and the requirements that the area have a fully-approved SIP meeting all of the applicable requirements under section 110 and part D and a fully-approved maintenance plan.

Furthermore, the determinations made in this action do not shield an area from future USEPA action to require emissions reductions from sources in the area where there is evidence, such as photochemical grid modeling, showing that emissions from sources in the area contribute significantly to nonattainment in, or interfere with maintenance by, other nonattainment areas. USEPA has authority under sections 110(a)(2)(A) and 110(a)(2)(D) to require such emission reductions if necessary and appropriate to deal with transport situations.

II. Analysis of Air Quality Data

The USEPA has reviewed the ambient air monitoring data for ozone (consistent with the requirements contained in 40 CFR Part 58 and recorded in AIRS) for the Grand Rapids and Muskegon ozone nonattainment areas in the State of Michigan from 1992 through the present time. On the basis of that review USEPA has concluded that the area attained the ozone standard during the 1992–1994 period and continues to attain the standard at this time. For ozone, an area may be considered attaining the NAAQS if there are no violations, as determined in accordance with the regulation codified at 40 CFR 50.9, based on three (3) consecutive calendar years of complete, quality assured monitoring data. A violation occurs when the ozone air quality monitoring data show greater than one (1) average expected exceedance per year at any site in the area at issue. An exceedance occurs when the maximum hourly ozone concentration exceeds 0.124 parts per million (ppm). The data should be collected and quality-assured in accordance with 40 CFR part 58, and recorded in the AIRS in order for it to be available to the public for review.

The Grand Rapids and Muskegon areas have demonstrated attainment of the ozone NAAQS based on ozone monitoring data for the years 1992 through 1994. The ozone monitoring network in Grand Rapids consists of two monitors located in Kent County. A monitor was established in Ottawa County in 1989 and relocated to Allegan County in 1993. The State, however, did reestablish a monitor in Ottawa county in 1994. Two exceedances of the ozone standard have been monitored since 1992 in the Grand Rapids area, both of these occurred at the Grand Rapids monitor in Kent County. At this site, the first exceedance of 0.156 ppm occurred in 1993, and the second exceedance of 0.149 ppm occurred in 1994. The ozone monitoring network in Muskegon consists of one monitor located in Muskegon County. Three exceedances of the ozone standard have been monitored since 1992 in the Muskegon area, all three of these occurred at the Muskegon monitor in Muskegon County. At this site, one exceedance was recorded during each of the years 1992, 1993, and 1994 at concentrations of 0.129 ppm, 0.141 ppm, and 0.146 ppm, respectively. Data stored in AIRS was used to determine the annual average expected exceedances for each area for the years 1992, 1993, and 1994. Data contained in AIRS have undergone quality assurance review by the State and USEPA. Since the annual average number of expected exceedances for each monitor during the most recent three years is equal to 1.0, the Grand Rapids and Muskegon areas are considered to have attained the standard. A more detailed summary of the ozone monitoring data for the area is provided in the USEPA technical support document dated May 12, 1995.

III. Final Action

USEPA determines that the Grand Rapids and Muskegon ozone nonattainment areas have attained the ozone standard and continue to attain the standard at this time. As a consequence of USEPA's determination that the Grand Rapids and Muskegon areas have attained the ozone standard, the requirements of section 182(b)(1) concerning the submission of the 15 percent plan and ozone attainment demonstration and the requirements of section 172(c)(9) concerning contingency measures are not applicable to the area so long as the area does not violate the ozone standard.

USEPA emphasizes that these determinations are contingent upon the continued monitoring and continued attainment and maintenance of the ozone NAAQS in the affected areas. If a violation of the ozone NAAQS is monitored in the Grand Rapids and Muskegon areas (consistent with the requirements contained in 40 CFR part 58 and recorded in AIRS), USEPA will provide notice to the public in the **Federal Register**. Such a violation would mean that the area would thereafter have to address the requirements of section 182(b)(1) and section 172(c)(9) since the basis for the determination that they do not apply would no longer exist.

As a consequence of the determinations that the areas have attained and that the reasonable further progress and attainment demonstration requirements of section 182(b)(1) and contingency measure requirements of section 172(c)(9) do not presently apply, the sanctions clocks started by USEPA as a result of the findings made on January 21, 1994 regarding incompleteness of the section 181(b)(1) 15 percent plans and 172(c)(9) contingency plans are hereby stopped as the deficiency for which the clocks were started no longer exists.

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any state implementation plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action will become effective on July 17, 1995. However, if the USEPA receives adverse comments by July 3, 1995, then the USEPA will publish a notice that withdraws the action, and will address these comments in a subsequent final rule on the related proposed rule which is being published in the proposed rules section of this **Federal Register**.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000. This action's determination does not create any new requirements, but allows suspension of the indicated requirements. Therefore, because the approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected.

Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act") (signed into law on March 22, 1995) requires that the Agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year. Section 203 requires the Agency to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule.

Under section 205 of the Unfunded Mandates Act, the Agency must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. The Agency must select from those alternatives the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule, unless the Agency explains why this alternative is not selected or the selection of this alternative is inconsistent with law.

Because this final rule is estimated to result in the expenditure by State, local, and tribal governments or the private sector of less than $100 million in any one year, the Agency has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, the Agency is not required to develop a plan with regard to small governments.

Under Section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 1, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen oxides, Ozone, Volatile organic compounds, Intergovernmental relations, Reporting and record keeping requirements.

Authority: 42 U.S.C. 4201–7601q.

Dated: May 18, 1995.

Valdas V. Adamkus,

Regional Administrator.

Part 52, chapter 1, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart X—Michigan

2. Section 52.1174 is amended by adding new paragraph (k) to read as follows:

* * * * *

§ 52.1174 Control strategy: Ozone.

(k) Determination—EPA is determining that, as of July 17, 1995, the Grand Rapids and Muskegon ozone nonattainment area has attained the ozone standard and that the reasonable further progress and attainment demonstration requirements of section 182(b)(1) and related requirements of section 172(c)(9) of the Clean Air Act do not apply to the area for so long as the area does not monitor any violations of the ozone standard. If a violation of the ozone NAAQS is monitored in the Grand Rapids and Muskegon ozone nonattainment area, these determinations shall no longer apply.

[FR Doc. 95–13461 Filed 6–1–95; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 Public Land Order 7146

[NM–1430–01; NMNM 89978]

Withdrawal of National Forest System Land for the Coyote Ranger District; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 232.50 acres of National Forest System land from mining for 20 years to protect the newly constructed Coyote Ranger District administrative facilities. The land has been and will remain open to mineral leasing.

EFFECTIVE DATE: June 2, 1995.

FOR FURTHER INFORMATION CONTACT: Hal Knox, BLM Taos Resource Area, 224 Cruz Alta Road, Taos, New Mexico, 87571, (505) 758–8851.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Subject to valid existing rights, the following described National Forest System land is hereby withdrawn from location and entry under the United States mining laws (30 U.S.C. Ch. 2 (1988)), but not from leasing under the mineral leasing laws, to protect the Coyote Ranger District administrative facilities:

New Mexico Principal Meridian

T. 23 N., R. 2 E.,
Sec. 26, S½SE¼SE¼;
Sec. 35, N½NE¼, N½SW¼NE¼, SW¼SW¼NE¼, NE¼NE¼NW¼, SE¼NW¼NE¼NW¼, S½NE¼NW¼, SE¼NW¼NW¼, E½SW¼NW¼, and SE¼NW¼.

The area described contains 232.50 acres in Rio Arriba County.

2. The withdrawal made by this order does not alter the applicability of those land laws governing the use of the National Forest System lands under lease, license or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) 1988), the Secretary determines that the withdrawal shall be extended.

Dated: May 19, 1995.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 95–13481 Filed 6–1–95; 8:45 am]

BILLING CODE 4310–FB–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7618]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATES: The effective date of each community's suspension is the third date ("Susp.") listed in the third column of the following tables.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea Jr., Division Director, Program Implementation Division, Mitigation Directorate, 500 C Street, SW., Room 417, Washington, DC 20472, (202) 646–3619.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 *et seq.*, unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 *et seq.* Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Deputy Associate Director finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Deputy Associate Director has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State/location	Community No.	Effective date of eligibility	Current effective map date	Date certain federal assistance no longer available in special flood hazard areas
Region II				
New York: Southampton, Village of, Suffolk County.	365343	Sept. 15, 1972, Emerg; March 9, 1973, Reg; June 2, 1995, Susp.	June 2, 1992 ...	June 2, 1995.
Region III				
Pennsylvania:				
Port Carbon, borough of, Schuylkill County.	420783	Sept. 15, 1972, Emerg; Jan. 19, 1978 Reg; June 2, 1995 Susp.	June 2, 1995 ...	Do.
St. Clair, borough of, Schuylkill County ...	420786	Nov. 24, 1972, Emerg; March 15, 1977, Reg; June 2, 1995, Susp.	.....do	Do.
Region IV				
Alabama: Tuscaloosa, city of, Tuscaloosa County.	010203	April 5, 1973, Emerg; Feb. 1, 1979, Reg; June 2, 1995, Susp.	.....do	Do.
Region V				
Ohio: Milford Center, village of, Union County.	390662	May 14, 1975, Emerg; June 22, 1995 Reg; June 2, 1995, Susp.	.....do	Do.
Wisconsin: Oshkosh, city of, Winnebago County.	550511	Nov. 12, 1971, Emerg; May 16, 1977, Reg; June 2, 1995, Susp.	.....do	Do.
Region VI				
Louisiana: Leesville, city of, Vernon Parish	220229	Oct. 17, 1974, Emerg; Jan 17, 1986, Reg; June 2, 1995, Susp.	.....do	Do.
Oklahoma:				
Pawnee, city of, Pawnee County	400163	Feb. 20, 1975, Emerg; June 19, 1985, Reg; June 2, 1995, Susp.	.....do	Do.
McClain County, unincorporated areas	400536	Sept. 10, 1990, Emerg; Feb. 3, 1993, Reg; June 2, 1995, Susp.	.....do	Do.
Region VIII				
Colorado:				
Nederland, town of, Boulder County	080255	May 2, 1977, Emerg; Aug. 1, 1979, Reg; June 2, 1995, Susp.	.....do	Do.
La Planta County, unincorporated areas .	080097	Dec. 12, 1974, Emerg; Dec. 15, 1981, Reg; Dec. 15, 1981, Susp; Dec. 28, 1983, Rein; June 2, 1995, Susp.	.....do	Do.
Utah: Joseph, town of, Sevier County	490127	Mar. 23, 1976, Emerg; Aug. 28, 1979, Reg; June 2, 1995, Susp.	.....do	Do.
Region IX				
Hawaii: Hawaii County, unincorporated areas	155166	June 5, 1970, Emerg; May 3, 1982, Reg; June 2, 1995, Susp.	.....do	Do.
Region X				
Washington: Cowlitz County, unincorporated areas.	530032	June 18, 1971, Emerg; Aug. 1, 1980, Reg; June 2, 1995, Susp.	.....do	Do.
Region III				
Delaware:				

State/location	Community No.	Effective date of eligibility	Current effective map date	Date certain federal assistance no longer available in special flood hazard areas
Bethany Beach, town of, Sussex County	105083	Nov. 12, 1971, Emerg; Apr. 6, 1973, Reg; June 16, 1995, Susp.	6–16–95	June 16, 1995.
Bethel, town of, Sussex County	100055	Jan. 22, 1976, Emerg; Jan. 16, 1981, Reg; June 16, 1995, Susp.	do	Do.
Blades, town of, Sussex County	100031	May 30, 1975, Emerg; Jan. 16, 1981, Reg; June 16, 1995, Susp.	do	Do.
Dagsboro, town of, Sussex County	100033	July 9, 1975, Emerg; June 1, 1981, Reg; June 16, 1995, Susp.	do	Do.
Dewey Beach, town of, Sussex County	100056	June 18, 1982, Emerg; June 18, 1982, Reg; June 16, 1995, Susp.	do	Do.
Fenwick Island, town of, Sussex County	105084	Nov. 19, 1971, Emerg; Mar. 23, 1973, Reg; June 16, 1995, Susp.	do	Do.
Greenwood, town of, Sussex County	100039	July 30, 1975, Emerg; Feb. 24, 1978, Reg; June 16, 1995, Susp.	do	Do.
Laurel, town of, Sussex County	100040	April 2, 1975, Emerg; Jan. 16, 1981, Reg; June 16, 1995, Susp.	do	Do.
Lewes, city of, Sussex County	100041	Mar. 23. 1973, Emerg; Mar. 15, 1977, Reg; June 16, 1995, Susp.	do	Do.
Milford, town of, Sussex County	100042	June 5, 1974, Emerg; June 1, 1977, Reg; June 16, 1995, Susp.	do	Do.
Millsboro, town of, Sussex County	100043	May 28, 1974, Emerg; Sept. 1, 1978, Reg; June 16, 1995, Susp.	do	Do.
Millville, town of, Sussex County	100044	Oct. 2, 1978, Emerg; Sept. 25, 1981, Reg; June 16, 1995, Susp.	do	Do.
Milton, town of, Sussex County	100045	Sept. 17, 1974, Emerg; Aug. 1, 1978, Reg; June 16, 1995, Susp.	do	Do.
Ocean View, town of, Sussex County	100046	July 1, 1975, Emerg; Sept. 3, 1980, Reg; June 16, 1995, Susp.	do	Do.
Rehoboth Beach, town of, Sussex County.	105086	Feb. 11, 1972, Emerg; Mar. 30, 1973, Reg; June 16, 1995, Susp.	do	Do.
Slaughter Beach, town of, Sussex County	100050	May 28, 1974, Emerg; July 2, 1980, Reg; June 16, 1995, Susp.	do	Do.
South Bethany, town of, Sussex County	100051	Sept. 15, 1972, Emerg; Oct. 6, 1976, Reg; June 16, 1995, Susp.	do	Do.
Sussex County, unincorporated areas	100029	Apr. 16, 1971, Emerg; Oct. 6, 1976, Reg; June 16, 1995, Susp.	do	Do.
Pennsylvania:				
Point Marion, borough of, Fayette County	421617	July 3, 1974, Emerg; July 4, 1988, Reg; June 16, 1995, Susp.	do	Do.
Upper Chichester, township of, Delaware County.	420439	Dec. 17, 1971, Emerg; May 16, 1977, Reg; June 16, 1995, Susp.	do	Do.
West Virginia: Mercer County, unincorporated areas.	540124	Dec. 23, 1975, Emerg; Feb. 1, 1985, Reg; June 16, 1995, Susp.	do	Do.
Region IV				
Florida:				
Gulf Breeze, city of, Santa Rosa County	120275	July 10, 1970, Emerg; Sept. 1, 1977, Reg; June 16, 1995, Susp.	do	Do.
Monroe County, unincorporated areas	125129	June 12, 1970, Emerg; June 15, 1973, Reg; June 16, 1995, Susp.	do	Do.
Tennessee: Polk County, unincorporated areas.	470261	Apr. 9, 1993, Emerg; June 16, 1995, Reg; June 16, 1995, Susp.	do	Do.
Region V				
Indiana: Bloomington, city of, Monroe County	180169	July 8, 1972, Emerg; June 15, 1978, Reg; June 16, 1995, Susp.	do	Do.
Region VI				
Oklahoma:				
Midwest City, city of, Oklahoma County	400405	Jan. 16, 1975, Emerg; May 19, 1981, Reg; June 16, 1995, Susp.	do	Do.
Newcastle, city of, McClain County	400103	July 18, 1975, Emerg; Dec. 15, 1983, Reg; June 16, 1995, Susp.	do	Do.
Region VII				
Iowa:				
Ames, city of, Storey County	190254	July 25, 1974, Emerg; Jan. 2, 1981, Reg; June 16, 1995, Susp.	do	Do.
Mason City, city of, Cerro Gordo County	190060	Mar. 21, 1975, Emerg; Dec. 2, 1980, Reg; June 16, 1995, Susp.	do	Do.
Jackson County, unincorporated areas	190879	Aug. 17, 1979, Emerg; May 1, 1990, Reg; June 16, 1995, Susp.	do	Do.
Kansas: Pittsburg, city of, Crawford County	200072	Nov. 14, 1974, Emerg; May 1, 1979, Reg; June 16, 1995, Susp.	do	Do.
Region X				
Washington: Thurston County, unincorporated areas.	530188	Sept. 13, 1974, Emerg; Dec. 1, 1982, Reg; June 16, 1995, Susp.	do	Do.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Rein.—Reinstatement; Susp.—Suspension.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Issued: May 24, 1995.

Frank H. Thomas,

Deputy Associate Director, Mitigation Directorate.

[FR Doc. 95–13519 Filed 6–1–95; 8:45 am]

BILLING CODE 6718–21–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 1357

RIN AB44

Child Welfare Services Program

AGENCY: Administration on Children, Youth and Families; Administration for Children and Families, HHS.

ACTION: Final rule.

SUMMARY: The Department of Health and Human Services is issuing this final rule to amend the regulations governing direct payments to Indian Tribal Organizations (ITOs) for child welfare services. It eliminates the requirement that to be eligible ITOs must provide services under contract (or grant) with the Secretary of the Interior under section 102 of the Indian Self-Determination Act, and adds a description of the formula used to calculate the amount of Federal funds available to eligible ITOs under title IV–B, Subpart 1 of the Social Security Act. We believe that complex and limiting eligibility requirements and low grant amounts have resulted in low ITO participation rates. The amendment will improve the quality of Indian child welfare services nationally by broadening eligibility and by allowing for an increase in grant amounts.

EFFECTIVE DATE: October 1, 1995.

FOR FURTHER INFORMATION CONTACT: Olivia A. Golden, Administration on Children, Youth and Families, P.O. Box 1182, Washington, DC 20013, (202) 205–8474.

SUPPLEMENTARY INFORMATION:

I. Program Description and Background

Title IV–B, Subpart 1, of the Social Security Act (the Act), the Child Welfare Services program, is a formula grant program. Each State receives a grant representing its share of the current authorized amount. The grants provide States with Federal support for a wide variety of State child welfare services including: preplacement preventive services to strengthen families and avoid placement of children; services to prevent abuse and neglect; services for the provision of foster care and adoption; and certain protections for children in foster care.

The grant funds can be used to provide services regardless of the income of the families and children who are in need of such services.

The Child Welfare Services program has been a part of the Social Security Act (the Act) since the Act's inception in 1935. In 1968, Congress transferred this program to title IV, Part B of the Act (sections 420–425 of the Act). Historically, title IV–B has provided Federal grants to States to establish, extend and strengthen child welfare services. Under this program, services are available to all children, including the homeless, neglected, dependent and those with disabilities.

The Adoption Assistance and Child Welfare Act of 1980 (Pub. L. 96–272) was enacted on June 17, 1980. In addition to amending title IV–B, Public Law 96–272 established a new program, the title IV–E program, which replaced on October 1, 1982, the title IV–A foster care program in the States. The law created links between the two programs with numerous program and fiscal incentives. The impetus behind the passage of Public Law 96–272 was the belief of Congress and most State child welfare administrators, supported by extensive research, that the public child welfare system responsible for serving dependent and neglected children, youth and families had become a receiving or holding system for children living away from their parents. Congress envisioned in the new legislation a system that would help families remain together by assisting parents in carrying out their roles and responsibilities and providing alternative permanent placement for those children who cannot return to their own homes.

Public Law 96–272 created section 428 of the Act which provides for direct payments to certain Indian Tribal Organizations, of funds authorized under title IV–B for child welfare services to certain ITOs. Effective June 22, 1983, regulations published at 45 CFR 1357.40 implemented section 428 of the Act, and specified which ITOs are eligible to receive funds directly and under what circumstances direct payments should be made available. In determining which ITOs would be eligible for direct funding, the Department decided to make the option of applying for direct funding available to those ITOs which had contracted with, or received a grant from, the Bureau of Indian Affairs under Public Law 93–638 (Indian Self-Determination Act) for child welfare services. This requirement was intended to limit direct funding to ITOs that had established the need for child welfare services and had taken advantage of the opportunity for direct management and operation of a tribal child welfare services program. Under this approach, direct grants would be added to existing ongoing Indian child welfare programs operated by the tribal organizations. The title IV–B funds were intended to be linked to the other major Federal Indian social services program to support Indian self-determination, and complement the provisions of the Indian Child Welfare Act of 1978 (Pub. L. 95–608). This was considered important by the Department because title IV–B funds alone are

insufficient for an ITO to establish and operate a basic child welfare services program.

We believe that the requirement that ITOs must contract, or receive a grant, for child welfare services under Public Law 93–638 in order to be eligible for direct funding under title IV–B is no longer necessary. In recent years, Federal social service funding under the Indian Child Welfare Act (ICWA) has increased significantly. In fiscal year 1994, 530 tribes are expected to receive $22,905,000 under ICWA. We are aware that there are ITOs which do not receive Indian Self-Determination Act funding although they are operating child welfare services programs utilizing ICWA funding, and others which could choose to begin to provide child welfare services.

II. Discussion of the Comments and Final Rule

On October 20, 1994, the Department published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** [59 FR 52951] that proposed a revision of 45 CFR Part 1357, the regulation governing direct payments to Indian Tribal Organizations (ITOs). Interested persons were given 60 days in which to comment on the proposed rule. The following is a summary of the comments from the respondents and the Department's response.

The Department received comments from twenty-one respondents, including Tribal governments, Tribal human services agencies, national Indian organizations, a Federal agency, and a State agency. Nineteen comments supported changing the multiplication factor from 1.4 to 3.0. Eighteen responses supported elimination of the Indian Self-Determination Act eligibility requirement. One respondent opposed elimination of the Indian Self-Determination Act eligibility requirement. Two respondents recommended changes to the proposed rule.

Comment

One respondent opposed elimination of the Indian Self-Determination Act eligibility requirement, and requested that an impact study be conducted first to determine the effect of expanding the population of Indians served on the population of Indians currently served under title IV–B, Part 1. The respondent recommended that the results of the study be published in the **Federal Register** along with the proposed definition changes and proposed funding allocation, and that there be an opportunity for comments.

Response

This comment appears to reflect two concerns: that the change allows for native American consortiums to receive direct title IV–B funding, and that the resulting increase of population which could participate in title IV–B funding could adversely impact the program if not funded appropriately. In response, it should be noted that the current regulation allows Indian consortiums to receive title IV–B direct funding. The proposed rule did not change this. However, the proposed rule, by eliminating the Indian Self-Determination Act requirement would likely expand the population of Indian children and families served under title IV–B direct funding. If such a change in the population served did occur, the corresponding increase of funding to tribes would result in a corresponding equivalent decrease in funding available to the State title IV–B agencies. There would be no decrease in title IV–B funding available to those Indian Self-Determination Act tribes currently receiving direct title IV–B funding as a result of increasing the Indian population under this program. We do not believe that an impact study is therefore necessary or appropriate.

Comment

One respondent recommended delay of implementation of the multiplication factor change to FY 1996 and implementation in two stages: citing as examples, 2.25 in FY 1996, and 3.0 in FY 1997. The respondent expressed concern about the impact on a State Agency due to the significant percentage of the budget reduction anticipated and the lack of adequate advance time for a State Agency to plan for the change if implemented in FY 1995, as proposed.

Response

The Department agrees that a large increase in direct funding of Tribes, coming late in a State's budget cycle would impose serious problems. In order to allow those States that are likely to be significantly impacted by the final regulation to adequately plan for the change, the Department will delay the effective date of the final regulation to October 1, 1995. However, we do not agree with the proposal to raise the multiplication factor in stages because we do not believe that a lower multiplication factor than 3.0 would be sufficient to achieve the purpose of the policy, which is to substantially increase the participation of the tribes and raise the quality of Indian child welfare services. Although we understand the State's concern about the need to maintain adequate State funding to continue to serve the Indian population of enrolled tribal members living off reservation, the title IV–B appropriations are not intended to adequately meet all of a State's child welfare services needs. It is expected that States will fund a significant portion of State child welfare services from other sources.

Comment

One respondent recommended replacing the proposed funding formula with a $20,000 base level of funding per Tribe, plus a percentage for each child. This comment opposes the proposed formula because small Tribes cannot sustain a viable program if this proposed funding formula to tribes is approved and because small tribes have the same base cost of providing services.

Response

Although we understand the concern that the funding formula does not adequately meet the needs of the smaller tribes, the Department believes that title IV–B is not sufficient to sustain base level plus percentage funding for every Tribe and also fund those States with either a large number of Tribes and/or a large population of Tribal children. Title IV–B is intended to supplement other State and Tribal child welfare resources. Under the Department's plan for increasing the multiplication factor from 1.4 to 3.0, the Tribes will receive twice the dollars per child in comparison with the States. The base level plus percentage proposal would result in differentials far greater in certain States. The proposed change as stated in the NPRM maintains more of a balance between the Department's decision to more adequately fund tribes, and the Federal responsibility to the States to assist them to meet the needs of the children served in their child welfare systems.

The Final Rule

This final rule revises paragraph (a) to eliminate the Indian Self-Determination Act eligibility requirement. Paragraph (a), as revised, states that "any ITO that meets the definitions in section 428(c) of the Act, or any consortium or other group of eligible tribal organizations authorized by the membership of the tribes to act for them is eligible to apply for direct funding if the Indian tribe, consortium or group has a plan for child welfare services provided by the ITO that is jointly developed by the ITO and the Department".

In determining the amount of direct funding available to an ITO eligible under the existing regulation, the Secretary currently applies a formula similar to the one used to calculate the title IV–B allotments of the territories. This formula takes into consideration the Indian tribe's resident population under 21 and its per capita income.

The current formula for calculating an ITO's allotment results in an amount which bears the same ratio to the total State's title IV–B allotment as the product of 1.4 times the proportion of the Indian tribe's resident population under age 21 to the State's total population under age 21. The 1.4 multiplication factor has not resulted in grant amounts large enough to make it worthwhile for many tribes to apply for title IV–B. By June 1993, only 24 tribes were receiving direct title IV–B grants totaling $549,340. The average grant available to specified ITOs was $22,889, and grants ranged from a high of $166,468 to a low of $648.

The Department plans to change the multiplication factor to 3.0 for fiscal year 1996 in order to improve the quality of Indian child welfare nationally. For comparison purposes, using the fiscal year 1993 figures given above, this would have raised the average amount available to the specified ITO's to $45,778, and grants would have ranged from a high of $332,936 to a low of $1,296.

Paragraph (g)(6) contains the Department's formula for the calculation of ITO allotments. The multiplication factor will be adjusted in future years based on the Department's experience, if necessary, in order to achieve the purposes of the Act. Any decision to change the multiplication factor will be promulgated through the issuance of an Information Memorandum under the ACYF policy issuance system.

Except for delaying the effective date to October 1, 1995, we have made no changes in the final rule as proposed in the Notice.

III. Impact Analysis

Executive Order 12866

Executive Order 12866 requires that regulations be written to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that the regulations are consistent with these priorities and principles. This final rule will not result in more costs because the increased funding to Indian tribes and ITOs will come from the change in the allotment formula.

Regulatory Flexibility Act of 1980

Consistent with the Regulatory Flexibility Act of 1980 (5 U.S.C. Ch. 5), the Department tries to anticipate and reduce the impact of rules and paperwork requirements on small businesses. For each rule with a "significant economic impact on a substantial number of small entities" an analysis is prepared describing the rule's impact on small entities. Small entities are defined in the Act to include small businesses and small non-profit organizations. This regulation would affect States and Indian tribes, which are not "small entities" within the meaning of the Act. For these reasons, the Secretary certifies that this rule will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1980, Public Law 96–511, all Departments are required to submit to the Office of Management and Budget (OMB) for review and approval any reporting or recordkeeping requirements in a proposed or final rule. This final rule contains no reporting or recordkeeping requirements. Therefore no submission to OMB is required.

List of Subjects in 45 CFR Part 1357

Adoption and foster care, Child welfare, Child welfare services, State plan, Indians, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Program Number 93.645, Child Welfare Services—State Grants)

Dated: May 12, 1995.

Mary Jo Bane,

Assistant Secretary for Children and Families.

For the reasons set forth in the preamble, 45 CFR 1357.40 is amended as follows:

PART 1357—REQUIREMENTS APPLICABLE TO TITLE IV–B

1. The authority statement for Part 1357 continues to read as follows:

Authority: 42 U.S.C. 620; 42 U.S.C. 670 et seq.; 42 U.S.C. 1302.

2. Section 1357.40 is amended by revising the heading and paragraph (a) and by adding paragraph (g)(6) to read as follows:

§ 1357.40 Direct payments to Indian Tribal Organizations (title IV–B, subpart 1, child welfare services).

(a) *Who may apply for direct funding?* Any Indian Tribal Organization (ITO) that meets the definitions in section 428(c) of the Act, or any consortium or other group of eligible tribal organizations authorized by the membership of the tribes to act for them, is eligible to apply for direct funding if the ITO, consortium or group has a plan for child welfare services that is jointly developed by the ITO and the Department.

* * * * *

(g) *Grants: General.*

* * * * *

(6) In order to determine the amount of Federal funds available for a direct grant to an eligible ITO, the Department shall first divide the State's title IV–B allotment by the number of children in the State, then multiply the resulting amount by a multiplication factor determined by the Secretary, and then multiply that amount by the number of Indian children in the ITO population. The multiplication factor will be set at a level designed to achieve the purposes of the Act and revised as appropriate.

[FR Doc. 95–13507 Filed 6–1–95; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF ENERGY

48 CFR Parts 933 and 970

RIN 1991–AB20

Acquisition Regulation; Department of Energy Management and Operating Contracts

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) today amends the Department of Energy Acquisition Regulation (DEAR) to modify certain requirements for management and operating contractor purchasing systems. These requirements are revised to identify certain purchasing system objectives and standards; eliminate the application of the "Federal norm"; and place greater reliance on commercial practices.

EFFECTIVE DATE: June 2, 1995.

FOR FURTHER INFORMATION CONTACT: James J. Cavanagh, Office of Contractor Management and Administration (HR–55), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585; telephone 202–586–8257.

SUPPLEMENTARY INFORMATION:

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I. Background

A proposed rule was published in the March 2, 1995, **Federal Register** at 60 FR 11646. It proposed to amend the Department of Energy Acquisition Regulation (DEAR) to revise the requirements for management and operating (M&O) contractor purchasing systems by eliminating the concept of the "Federal norm." In lieu of the detailed tenets contained in DEAR subpart 970.71, which have resulted in the inefficient layering of non-commercial systems and practices, the Department has identified certain purchasing system objectives and standards which it believes are common to superior purchasing activities, whether they be commercial or public. In this regard, the proposed rule proposed to amend, revise or remove §§ 933.170, 970.5204–22, 970.7101, 970.7102, and 970.7103 of the DEAR.

The March 2 publication also proposed the removal of DEAR 970.7106, which prescribed procedures for the handling of mistake in bid situations in purchasing by M&O contractors. Further, the Department proposed the removal of DEAR 970.7107 which, until today, provided guidelines for the consideration of subcontractor level protests. The removal of this section is consistent with the General Accounting Office proposed rule published in the **Federal Register** on January 31, 1995 at 60 FR 5871.

Subsequent to the March 2 notice of proposed rulemaking, the Department published an amendment to the proposed rule in the April 27, 1995, **Federal Register** at 60 FR 20663. The amendment dealt with administrative matters, mostly technical, that DOE reserved for further analysis during the comment period for the March 2 notice of proposed rulemaking. The comment period on the April 27 amendment to the proposed rulemaking ended on May 30, 1995. The Department wishes to effect the changes set forth in the March 2 proposed rulemaking and the April 27 amendment thereto as quickly as possible to enable the DOE contractor community to implement the changes to Subpart 970.71 of the DEAR without delay. Accordingly, the Department is finalizing the changes in the March 2 proposed rulemaking and the April 27 amendment in two stages. With two exceptions, today's rule finalizes the changes proposed in March 2 notice of proposed rulemaking. The two exceptions are the changes proposed to be made to the Contractor Purchasing System clause at § 970.5204–22 and § 970.7104. These proposed changes were affected by the April 27 amendment and, therefore, are being held in abeyance pending consideration of comments on the April 27 amendment. It is the intention of the Department to incorporate the revised and new clauses provided for in the April 27 amendment into existing M&O contracts as soon as practicable after the effective date of the second final rule.

II. Disposition of Comments

Comments on the March 2, 1995 notice of proposed rulemaking were received from a total of eleven commenters, nine of which are organizations and two of which are individuals. All of the organizations are contractors which have been awarded DOE M&O contracts. Nine of the commenters expressed support for the proposed rule and its intended effects upon the subcontracting processes of the Department of Energy's M&O contractors. Six commenters offered comments recommending revisions. Some of the recommendations were considered not significant, non-substantive, or editorial and are not discussed in the disposition of comments. Other recommendations were determined to be outside the scope of this rulemaking and, therefore, were not considered in formulating this final rule.

Comments related to DEAR Clause 970.5204–22 and DEAR § 970.7104 are reserved for resolution until the April 27, 1995 amendment to the March 2, 1995 notice of proposed rulemaking is finalized and are, therefore, not addressed in this final rule.

1. Policies and Procedures

One commenter suggests that DOE should clarify whether the proposed rule would apply to performance-based management contractors, DOE's so-called environmental remediation management contractors, and fixed price and cost contracts. This rule amends DEAR Part 970 and accordingly affects only M&O contracts which are the subject matter of the part. Performance-based contracts are a new form of M&O contract and are therefore affected. The rule also would affect M&O subcontracts which may be cost-type or fixed-price. This final rule does not apply to environmental restoration management contracts, or any other non-M&O contract.

The same commenter also recommends that we retitle Part 970 as "Prime Contractors." DEAR Part 970 is appropriately titled "DOE Management and Operating Contracts" as its scope is limited to this subject; therefore, no change has been made.

In addition, the same commenter requests that we define the "Federal norm." A definition will not be provided since the purpose of this rulemaking is, among other things, to delete the concept from Subpart 970.71.

Another commenter recommends that DOE remove Subpart 970.71 entirely and use the appropriate subcontracts clause from 52.244 of the Federal Acquisition Regulation (which would be the clause at 52.244–2). This commenter believes that this clause provides a sufficient framework for effective oversight of M&O subcontracting activities by DOE. The recommended change has not been adopted. The experience of this Department and its predecessors is that many unusual situations arise in subcontracting activities by DOE's M&O contractors that require treatment specific to the provisions of M&O contracts and DOE programs. Further, the amended DEAR Subpart 970.71 focuses more on outcome than processes and more clearly defines what the Department expects of its contractors by establishing performance objectives.

One commenter states that the phrase "and further * * * for review and acceptance" be removed from § 970.7102(b)(1), doing away with the requirement for submission of the M&O contractor's written purchasing system and methods to DOE upon award or extension of the contract. The suggested change has not been adopted because the opportunity to review the system at that point in time is critical to effective oversight by DOE.

Three commenters suggest additional language or changes to the revision to § 970.7102(b)(3) incorporating FAR 44.2 as the standard for review by DOE of proposed subcontract transactions. One commenter points out that the FAR provision requires review by the Government of substantially all proposed subcontracts even where the contractor has an approved system. The second suggests adding the phrase "for conformance with the procedural requirements of the contractor's written systems and methods" after the phrase "pursuant to FAR 44.2." The third would substitute "pursuant to the contractor's approved written description of its purchasing system and methods" for the phrase incorporating FAR 44.2. The change to § 970.7102(b)(3) was not intended to place more stringent requirements on contractors, but rather to establish review procedures which are consistent with FAR 44.2. The Department agrees that other review procedures may be approved consistent with the contractor's approved purchasing system procedures, and accordingly has revised § 970.7102(b)(3) to clarify this intent in the final rule.

Another commenter stated that the proposed rule was unclear regarding what contracting purchasing system objectives, expectations and standards will replace the "Federal norm" and whether they will be negotiated items or mandated by the DOE. Section 970.7103(a) clearly states the objectives of M&O purchasing systems. Section 970.7103 (b) and (c) set forth the requirements and expectations of the Department as to acceptable purchasing systems. Those provisions state the purchasing system requirements in terms of principles and results which the contractor must attain, and are necessarily negotiable as to specific approaches and methods which may then be tailored to the specific circumstances of the contractor mission, operations and site. Therefore, no change has been made to proposed § 970.7103.

Two commenters recommended the deletion of the word "directly" from the first sentence of proposed § 970.7103(c). The recommendation has not been adopted. Certainly, the FAR does not directly apply to purchasing activities of an M&O contractor or any other type of Federal contractor. However, certain conditions found in the FAR do apply to subcontracting transactions through flowdown requirements, *e.g.*, Truth in Negotiations submissions, Cost Accounting Standards, various labor provisions, or otherwise.

One commenter questioned the implicit assumption in the proposed § 970.7103(d) that there is a "best" in commercial purchasing practices and procedures. The comment further noted that it is unclear who is to decide what is "best," the contractor or the DOE. The purpose of the change in the Department's policy regarding contractor purchasing systems and methods is to allow M&O contractors to make maximum use of efficient and effective commercial business practices in their subcontracting. Although there is no established list of best commercial practices that generally fits all situations, there is a growing body of research into and knowledge of effective purchasing techniques. As stated in the proposed § 970.7103(a), contractors are expected to use their experience, expertise, and initiative consistent with Subpart 970.71. This approach provides these contractors with great discretion in designing their purchasing systems and methods. It is the intention of the Department, however, to work collegially with its contractor community to establish mechanisms by which commercial purchasing trends and best practices may be periodically identified and assessed for inclusion in contractor purchasing systems. It is further the intention of the Department to perform its fiduciary responsibility by evaluating contractors' practices to ensure the appropriate expenditure of funds.

Another commenter recommended that all of § 970.7103(d) after the first sentence be deleted. The suggested deletion has not been accepted because such a statement of principles is necessary to assure agreement between the Department and its M&O contractors as to the foundation of the purchasing system that is to be developed and described.

Two commenters recommended the alteration of § 970.7103(d)(1) to substitute "best value" for "fair and reasonable prices." One commenter stated that this change would be consistent with the proposed changes in § 970.7103 (c) and (d). The Department does not believe that these terms are inconsistent. The discretion provided by the provisions of this revision to DEAR 970.71 allow for purchasing using a best value approach. The use of "fair and reasonable" in the context of 970.7103(d)(1) makes clear the standard against which the results of the purchase will be assessed.

2. Protest Procedures

Two commenters question what process for protests against award of subcontracts by DOE M&O contractors will replace that which is being deleted by this final rule at § 970.7107. One commenter stated that DOE should identify any circumstances where it will request GAO jurisdiction. Consistent with the preamble of the proposed rule on March 2, 1995, this final rule deletes the guidelines in DEAR 970.7107 for consideration of subcontractor protests. This result is consistent with the GAO proposed rule of January 31, 1995 (60 FR 5871). The Department has advised the GAO of our decision. At the present time, we do not foresee any particular circumstances where DOE will request GAO subcontractor protest resolution assistance.

The second commenter questions "whether DOE will continue to accept and rule on [subcontractor] protests." The Department will not continue to accept or rule on subcontractor protests on a subcontract awarded after the effective date of this rule. As noted in the preamble to the proposed rule and this final rule, DEAR § 933.170 and § 970.7107 have been deleted in recognition of the elimination of the "Federal norm." The Department believes that disagreements over the award of individual subcontracts should be resolved in the same manner used by non-Federal entities and their suppliers. The Department has endorsed the contractors' use of alternative disputes resolution where appropriate.

3. DOE Oversight

The remaining comments received deal with the question of controls on M&O contractor purchasing systems and the process by which the controls will be enforced. This rule does not obviate the need for effective contract administration. In fact, initially the Department's participation in the development of an M&O purchasing system based upon "best commercial practices" may actually increase. We expect that the nature of DOE's oversight activity will change coincident with the identification, adoption, and systemic reflections of effective commercial practices consistent with the overriding expectations for contractor purchasing systems. The Department intends to focus its oversight on results, as opposed to process, and is working with its contractor base to establish meaningful outcome oriented performance indicators.

Another commenter recommended that DOE clarify whether M&O contractors are required to seek competition in subcontracting. The final rule at 970.7103(d)(4) establishes the use of effective competition as a system standard. This term, however, is not intended to equate to the Federal concept of full and open competition.

Other comments requested clarification of the application of certain statutory and regulatory requirements on the award of subcontracts (e.g., socio-economic and Buy American requirements). The current rulemaking does not effect the requirements of public law, applicable regulations, or the terms and conditions of the M&O contracts. For example, the requirement is for M&O contractors to put forth their best efforts to achieve agreed upon goals negotiated in their small business subcontracting plan. This rule neither defines, nor limits, the approaches that the contractor may utilize to achieve the results sought. Issues relating to specific statutory and regulatory requirements previously identified in § 970.7104 will be addressed in the final rule based upon the April 27, 1995 amendment.

One commenter stated that it is unclear whether the contractor can unilaterally implement the changes that it believes are necessary as a result of the proposed rule or whether DOE will require that such changes be submitted

to it for review and approval. As stated in § 970.7103(b)(1), the contractor's purchasing systems and methods shall be submitted to the contracting officer for review and acceptance. Changes to existing systems, such as those required to implement this rule, are substantive and will require review and approval by the contracting officer. The Department is currently working with its contractor community to identify effective commercial purchasing practices and intends to be a constructive participant in the re-engineering of contractor purchasing systems.

Another commenter asks whether costs resulting from the implementation of this rule will be allowable costs. Costs associated with implementation of this rule are reimbursable expenses, so long as they are reasonable, allowable and allocable as set forth in the contract's cost principles.

The same commenter also recommends that a periodic review of the effectiveness of the changes resulting from this final rule be made, including the potential effects on small, small disadvantaged, and small women-owned businesses. The comment goes on to recommend that DOE engage an outside consultant. The Department, as part of ongoing contract administration as well as when periodically assessing the continued approval of a contractor's purchasing system, will perform an evaluation of the impact of the changes effected by this rule. The Department does not believe that outside consultative services are required for such assessments.

Finally, that commenter questions whether existing contracts will be modified to reflect the effects of this rule. The last paragraph of the Background section of the notice of proposed rule stated, "It is the intention of the Department to incorporate the changes made by this proposed rule into existing management and operating contracts as soon as practicable after the effective date of a final rule."

III. Procedural Requirements

A. Review Under Executive Order 12866

This regulatory action has been determined not to be a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," (58 FR 51735, October 4, 1993). Accordingly, this action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs.

B. Review Under the National Environmental Policy Act

Pursuant to the Council on Environmental Quality Regulations (40 CFR parts 1500–1508), the Department has established guidelines for its compliance with the provisions of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*). Pursuant to appendix A of subpart D of 10 CFR part 1021, National Environmental Policy Act Implementing Procedures (Categorical Exclusion A6), the Department of Energy has determined that this final rule is categorically excluded from the need to prepare an environmental impact statement or environmental assessment.

C. Review Under the Paperwork Reduction Act

To the extent that new information collection or record keeping requirements are imposed by this rulemaking, they are provided for under Office of Management and Budget paperwork clearance package No. 1910–0300. No new information collection is proposed by this rule.

D. Review Under the Regulatory Flexibility Act

The proposed rule was reviewed under the Regulatory Flexibility Act of 1980, Public Law 96–354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. DOE concluded that the rule will have no impact on interest rates, tax policies or liabilities, the cost of goods or services, or other direct economic factors. It will also not have any indirect economic consequences, such as changed construction rates. Accordingly, DOE certified that this rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared. DOE did not receive any comments on this certification.

E. Review Under Executive Order 12612

Executive Order 12612 entitled "Federalism," 52 FR 41685 (October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the Federal Government and the States, or in the distribution of power and responsibilities among various levels of Government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action. The Department of Energy has determined that this final rule will not have a substantial direct effect on the institutional interests or traditional functions of States.

F. Review Under Executive Order 12778

Section 2 of Executive Order 12778 instructs each agency to adhere to certain requirements in promulgating new regulations and reviewing existing regulations. These requirements, set forth in sections 2(a) and (b)(2), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards for affected legal conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation: specifies clearly any preemptive effect, effect on existing Federal law or regulation, and retroactive effect; describes any administrative proceedings to be available prior to judicial review and any provisions for the exhaustion of such administrative proceedings; and defines key terms. DOE certifies that this rule meets the requirements of sections 2(a) and 2(b) of Executive Order 12778.

List of Subjects in 48 CFR Parts 933 and 970

Government procurement.

Issued in Washington, DC, on May 26, 1995.

Richard H. Hopf,

Deputy Assistant Secretary for Procurement and Assistance Management.

For the reasons set forth in the preamble, Chapter 9 of Title 48 of the Code of Federal Regulations is amended as set forth below.

PART 933—PROTESTS, DISPUTES, AND APPEALS

1. The authority citation for Part 933 continues to read as follows:

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c).

§ 933.170 [Removed]

2. Section 933.170, Subcontract level protests, is removed.

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

3. The authority citation for Part 970 continues to read as follows:

Authority: Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), sec. 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254).

§ 970.7101 [Amended]

4. Section 970.7101, General, is amended by removing paragraphs (c) and (d).

§ 970.7102 [Amended]

5. Section 970.7102, DOE responsibility, is amended at: Paragraph (a) to remove the parenthetical last two sentences at the end of the paragraph; paragraph (b)(3) by removing the words "to assure that management and operating contractors implement DOE policies and requirements as defined in this subpart, in accordance with the contractor's accepted system and methods" and adding in its place the words "pursuant to 48 CFR (FAR) 44.2 or as set forth in the contractor's approved system and methods"; and paragraph (b)(4) by revising the last parenthetical "(See Subpart 944.3 and 970.7108)" to read "(See 970.7103)".

6. Section 970.7103, Policies, is revised to read as follows:

§ 970.7103 Contractor purchasing system.

The following shall apply to the purchasing systems of management and operating contractors:

(a) The objective of a management and operating contractor's purchasing system is to deliver to its customers on a timely basis those best value products and services necessary to accomplish the purposes of the Government's contract. To achieve this objective, contractors are expected to use their experience, expertise and initiative consistent with this subpart.

(b) The purchasing systems and methods used by management and operating contractors shall be well-defined, consistently applied, and shall follow purchasing practices appropriate for the requirement and dollar value of the purchase. It is anticipated that purchasing practices and procedures will vary among contractors and according to the type and kinds of purchases to be made.

(c) Contractor purchases are not Federal procurements, and are not directly subject to the Federal Acquisition Regulations in 48 CFR. Nonetheless, certain Federal laws, Executive Orders, and regulations may affect contractor purchasing, as required by statute, regulation, or contract terms and conditions.

(d) Contractor purchasing systems shall identify and apply the best in commercial purchasing practices and procedures (although nothing precludes the adoption of Federal procurement practices and procedures) to achieve system objectives. Where specific requirements do not otherwise apply, the contractor purchasing system shall provide for appropriate measures to ensure the:

(1) Acquisition of quality products and services at fair and reasonable prices;

(2) Use of capable and reliable subcontractors who either

(i) Have track records of successful past performance, or

(ii) Can demonstrate a current superior ability to perform;

(3) Minimization of acquisition lead-time and administrative costs of purchasing;

(4) Use of effective competitive techniques;

(5) Reduction of performance risks associated with subcontractors, and facilitation of quality relationships which can include techniques such as partnering agreements, ombudsmen, and alternative disputes procedures;

(6) Use of self-assessment and benchmarking techniques to support continuous improvement in purchasing;

(7) Maintenance of the highest professional and ethical standards; and

(8) Maintenance of file documentation appropriate to the value of the purchase and which is adequate to establish the propriety of the transaction and the price paid.

§ 970.7106, 970.7107 [Removed]

7. Sections 970.7106, Procedures for handling mistakes relating to management and operating contractor purchases, and 970.7107, Protest of management and operating contractor procurements, are removed.

[FR Doc. 95–13432 Filed 6–1–95; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 227

[Docket No.950201033–5136–02; I.D. 040395C]

RIN 0648–AG37

Sea Turtle Conservation; Shrimp Trawling Requirements; Turtle Excluder Device Exemption

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule.

SUMMARY: NMFS temporarily amends the regulations protecting sea turtles to allow compliance with tow-time limits as an alternative to the use of turtle excluder devices (TEDs) by shrimp trawlers in a 30–square mile (48.3–square km) area off the coast of North Carolina (North Carolina restricted area) through November 30, 1995. This area seasonally exhibits high concentrations of red and brown algae that make trawling with TEDs impracticable. Specific tow-time limits are required as follows: A 30–minute tow limit through August 15, 1995; a 55–minute tow limit from August 16 through October 31, 1995; and a 75–minute tow limit from November 1 through November 30, 1995. The purpose of this temporary rule is to allow shrimp trawlers to harvest shrimp efficiently during their traditional shrimping season (March through November) and maintain adequate protection for sea turtles in this area.

EFFECTIVE DATE: Effective from May 30, 1995 through November 30, 1995.

ADDRESSES: Copies of the environmental assessment (EA) prepared for this temporary rule may be obtained from the Chief, Endangered Species Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Comments on the collection-of-information requirement subject to the Paperwork Reduction Act should be directed to the Chief, Endangered Species Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910; and to the Office of Information and Regulatory Affairs of Office of Management and Budget (OMB), Washington, DC 20503, Attention: Desk Officer for NOAA.

FOR FURTHER INFORMATION CONTACT: Russell J. Bellmer, (301) 713–1401, or Charles A. Oravetz, (813) 570–5312.

SUPPLEMENTARY INFORMATION:

Background

All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the Endangered Species Act of 1973 (ESA), 16 U.S.C. 1531 *et seq.* Incidental capture by trawlers has been documented for five species of sea turtles that occur in offshore waters of North Carolina. Sea turtle conservation regulations at 50 CFR parts 217 and 227 require all shrimp trawlers, regardless of length, in inshore and offshore waters of the Atlantic area, including off North Carolina, to have an approved TED installed year-round in each net rigged for fishing, unless specifically exempted.

Pursuant to the regulations at 50 CFR 227.72(e)(3)(ii), NMFS has promulgated 30-day exemptions to allow shrimpers in a certain area off North Carolina,

defined at 50 CFR 217.12 as the North Carolina restricted area, to limit tow times, rather than use TEDs, due to the presence of algae that makes trawling with TED-equipped nets impracticable. A comprehensive list of cites relating to these actions is as follows: 57 FR 33452, July 29, 1992; 57 FR 40859, September 8, 1992; 57 FR 45986, October 6, 1992; 57 FR 52735, November 5, 1992; 57 FR 57968, December 8, 1992; 58 FR 19631, April 15, 1993; 58 FR 28793, May 17, 1993; 58 FR 33219, June 16, 1993; 58 FR 38537, July 19, 1993; 58 FR 43820, August 18, 1993.

In addition to these 30-day exemptions, NMFS proposed a permanent exemption on May 25, 1993 (58 FR 30007), which contained a discussion of special environmental conditions, an assessment of the algae problem, a history of the local fishery, and of tow times. Comments received on the proposed rule were addressed in an interim final rule extending the tow-time allowance through November 30, 1993 (58 FR 48975, September 21, 1993). No comments were received on the interim final rule. A final rule (59 FR 33697, June 30, 1994) was issued allowing tow-time limits through November 30, 1994. That final rule with a sunset was issued instead of a permanent final rule because NMFS decided that future exemptions should be provided through an incidental take permit under section 10(a) of the ESA. The rationale is included in the cited **Federal Register** publication and is not repeated here. No comments were received on the final rule.

The present temporary rule provides an exemption to the TED requirement through November 30, 1995. This temporary rule will allow the harvest of shrimp in the North Carolina restriction area while providing protection of sea turtles until an incidental take permit under section 10(a) of the ESA can be processed. On February 16, 1995 (60 FR 8956), NMFS authorized non-Federal entities to apply for permits for the incidental take of threatened species. An incidental take permit would enable a state to develop its own conservation plan, including funding, monitoring and enforcement of activities under the permit and the plan. North Carolina has indicated its intent to apply for an incidental take permit in connection with shrimp fishing in the North Carolina restricted area, thus this exemption is promulgated on a temporary rather than a permanent basis. Any review of an application for an incidental take permit and any issuance of such a permit will comply with section 10 of the Act and its implementing regulations at 50 CFR parts 217 and 222. As a matter of policy, NMFS does not intend to promulgate a rule providing this exemption in the future. Rather, NMFS believes future exemptions should be provided through an incidental take permit issued pursuant to section 10(a) of the ESA.

NMFS' review of vessels operating in the North Carolina restricted area for the 1993–94 season indicates that sea turtle mortalities do not appear to be associated with the authorization of tow times in lieu of TEDs. NMFS has reached this conclusion based on the low number of takes documented by observers (two turtles caught alive and released), the observed compliance with tow-time restrictions, the cooperation of the fishermen, the small number of participants in the fishery, and the local knowledge required to trawl in the restricted area without losing gear on bottom obstructions (which effectively limits entry into the fishery). These factors are discussed in previous actions promulgated by NMFS, including the proposed rule (see above citations). However, NMFS is concerned about possible interactions between shrimping operations and turtles during the turtle nesting season. NMFS will continue to monitor this situation during the remainder of the 1995 shrimping season.

Based on information received during the 1993–94 season, as in previous years, NMFS has determined that algal concentrations may be characteristic of the restricted area or may recur in an intermittent or unpredictable pattern and, thus, render TED-use impracticable. NMFS will continue to monitor algal concentrations to determine whether these concentrations are consistently problematic or whether there are times or seasons when TEDs could be used. Shrimp trawling observed out of Sneads Ferry, NC, on April 28, 1994, confirmed the presence of algal concentrations sufficient to clog 3 of 4 TEDs used in the observed tows. On June 23, 1994, algae concentrations were high enough to partially clog 3 of 4 TEDs. The fourth TED was completely clogged, and an unidentified sea turtle of medium size was pinned in front of the TED. The turtle appeared lively and swam away. The tow time was 56 minutes.

This temporary rule makes effective for the remainder of the traditional shrimping season, through November 30, 1995, the policies and procedures of the rule promulgated last year. Specifically, under this temporary rule, tow times in the North Carolina restricted area are limited to 30 minutes through August 15; 55 minutes from August 16 through October 31; and 75 minutes from November 1 through November 30, 1995. These measures should not, in the long run, significantly impact fishermen's normal trawl times, since heavy algae concentrations characteristic of the warmer months cause fishermen to voluntarily shorten tow times to approximately 15–30 minutes. When algal concentrations are light, shrimpers should use TEDs.

Under this temporary rule, owners and operators of shrimp vessels must register with the Director, Southeast Region, NMFS (Regional Director), before fishing in the restricted area, and vessels using the tow-time alternative are required to carry a NMFS-approved observer if requested to do so by the Regional Director. The observer will monitor compliance with required conservation measures, including restricted tow times, and resuscitation of any captured turtles in accordance with 50 CFR 227.72(e)(1)(i). Data collected by observers may be used for enforcement purposes. Violations of tow-time restrictions documented by North Carolina enforcement officers may be prosecuted under the ESA by the Office of the General Counsel, NMFS, Southeast Region. In addition, violators may face prosecution under state law. NMFS and North Carolina Division of Marine Fisheries will jointly monitor compliance with the tow-time alternative.

Additional Sea Turtle Conservation Measures

Pursuant to the provisions of 50 CFR 227.72(e)(3) and (6), the Assistant Administrator for Fisheries, NOAA (AA) may modify the required conservation measures by publishing notification in the **Federal Register**, if necessary, to ensure adequate protection of endangered and threatened sea turtles. Under this procedure, the AA would impose any necessary additional or more stringent measures, including more restrictive tow times, synchronized tow times, or termination of the tow-time alternative, if the AA determines that: (1) The concentration of algae no longer makes trawling with TEDs impracticable; (2) there is insufficient compliance with the required conservation measures; (3) compliance cannot be monitored effectively; (4) significant or unanticipated levels of lethal or nonlethal takings or strandings of sea turtles have occurred in or near the North Carolina restricted area; (5) shrimp trawlers are having a significant adverse effect on sea turtles in the exemption area; or (6) the incidental take level, authorized by the biological opinion, of one mortality of Kemp's ridley, green, hawksbill, or leatherback turtles, or two mortalities of loggerhead turtles attributable to shrimp fishing in the North Carolina restricted area is met or exceeded during the exemption period.

Classification

The AA has determined that this temporary rule is consistent with the ESA and other applicable law and is not significant for purposes of E.O. 12866.

Pursuant to section 553(b)(B) of the Administrative Procedure Act (APA), the AA finds there is good cause to waive prior notice and opportunity to comment on this temporary rule. It is unnecessary to provide prior notice and opportunity for comment because NMFS has provided public notice and opportunity for comment on the same rule promulgated last year. Those comments were addressed in the publication of the final rule last year, which is identical to this temporary rule, and the AA finds that it is unnecessary to seek additional comments on the same rule again this year.

Because this rule relieves a restriction, under section 553(d) of the APA a 30-day delay in effective date is not required.

An EA prepared for this temporary rule concludes that this action will have no significant impact on the human environment. A copy of the EA is available (see **ADDRESSES**).

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act, namely, registration to trawl in the North Carolina restricted area. This collection of information has been approved by the OMB under OMB control number 0648–0267. The public reporting burden for this collection of information is estimated to average 7 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, may be sent to NMFS or OMB (see **ADDRESSES**).

List of Subjects in 50 CFR Part 227

Endangered and threatened species, Exports, Imports, Marine mammals, Transportation.

Dated: May 25, 1995.

Richard H. Schaefer,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 227 is amended as follows:

PART 227—THREATENED FISH AND WILDLIFE

1. The authority citation for part 227 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*

2. In § 227.72, paragraph (e)(3)(ii)(B) is temporarily suspended and paragraph (e)(3)(ii)(C) is temporarily added to read as follows:

§ 227.72 Exceptions to prohibitions.

* * * * *

(e) * * *

(3) * * *

(ii) * * *

(C) *North Carolina restricted area.* From May 30, 1995, through November 30, 1995, a shrimp trawler in the North Carolina restricted area, as an alternative to complying with the TED requirement of paragraph (e)(2)(i) of this section, may comply with the tow-time restrictions set forth in paragraph (e)(3)(i) of this section. The owner or operator of a shrimp trawler who wishes to fish in the North Carolina restricted area must register pursuant to paragraph (e)(3)(v) of this section, with registration received by the Director, Southeast Region, NMFS, at least 24 hours before the first use of tow times set forth in paragraph (e)(3)(i) of this section. Registration may be made by telephoning (813) 570–5312 or writing to 9721 Executive Center Drive, St. Petersburg, FL 33702. The owner or operator of a shrimp trawler in the North Carolina restricted area must carry aboard a NMFS-approved observer upon written notification by the Director, Southeast Region, NMFS. Notification shall be made to the address specified for the vessel in either NMFS or state fishing permit application, the registration or documentation papers, or otherwise served upon the owner or operator of the vessel. The owner or operator must comply with the terms and conditions specified in such written notification. All observers will report any violations of this section, or other applicable regulations and laws; such information may be used for enforcement purposes.

* * * * *

[FR Doc. 95–13512 Filed 5–30–95; 4:03 pm]

BILLING CODE 3510-22-F

Proposed Rules

Federal Register
Vol. 60, No. 106
Friday, June 2, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 984

[Docket No. FV95–984–1PR]

Walnuts Grown in California; Suspension of Deadline for Relaxing Reserve Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension.

SUMMARY: This proposal would suspend the deadline by which the Walnut Marketing Board (Board) may recommend a relaxation in reserve requirements established for a marketing year under the walnut marketing order. Suspension of the deadline would allow the Board, which locally administers the order, to make such a decision based on more current supply and shipment information. This suspension would provide the walnut industry an opportunity for more orderly marketing.

DATES: Comments must be received by July 3, 1995.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Marketing Order Administration Branch, F&V, AMS, USDA, room 2523–S, P.O. Box 96456, Washington, D.C. 20090–6456, FAX number (202) 720–5698. Comments should reference this docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Mark Hessel, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (209) 487–5901, or FAX (209) 487–5906; or Mark Kreaggor, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, room 2523–S, P.O. Box 96456, Washington, D.C. 20050–6456; telephone: (202) 720–3610, or FAX (202) 720–5698.

SUPPLEMENTARY INFORMATION: This proposal is issued under Marketing Agreement and Order No. 984 (7 CFR part 984), regulating the handling of walnuts grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This proposal has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have retroactive effect. This proposal would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 65 handlers of California walnuts who are subject to regulation under the walnut marketing order, and approximately 5,000 producers in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts are less than $5,000,000 and small agricultural producers have been defined as those having annual receipts of less than $500,000. The majority of California walnut handlers and producers may be classified as small entities.

The walnut marketing order provides authority for volume control in the form of free, reserve, and export percentages. The free percentage is the percentage of certified merchantable walnuts that may be shipped freely to any market during the marketing year. The reserve percentage is the amount of certified merchantable walnuts that may be shipped to export markets, government agencies, charitable institutions, poultry or animal feed, walnut oil, or other markets noncompetitive with markets for certified merchantable free walnuts. The export percentage is the percentage of reserve walnuts that may be shipped to export markets. Certified merchantable walnuts are walnuts which have been inspected and certified by the Dried Fruit Association of California as meeting the minimum grade and size requirements specified under the order.

The marketing order also provides that handlers may meet their reserve requirements by either delivering reserve walnuts to the Board for disposition by the Board or by selling or disposing of their own walnuts, as agents of the Board, in specified reserve outlets. Any reserve walnuts the Board receives would be pooled and sold by the Board in markets specified for reserve walnuts at the highest returns available. The proceeds from the sale of these pooled walnuts, minus all expenses incurred by the Board in receiving, holding, and disposing of the walnuts, would be distributed to handlers who delivered walnuts to the pool in proportion to each handler's contribution.

In a marketing year (August 1–July 31) that a reserve program is implemented, the Board recommends the initial percentages in September and has the option of recommending an increase in the free and export percentages and a decrease in the reserve percentage later in the marketing year. If the Department concurs with the Board's recommendation, the recommended percentages may be established or modified. Under current order requirements, the reserve percentage may be decreased and free percentage increased if the Board makes a recommendation on or before February 15. Section 984.49(b)(1) establishes a deadline of February 15 for the Board to recommend to the Secretary an increase in the free percentage and a decrease in the reserve percentage. On February 10, 1995, the Board unanimously recommended suspension of that deadline. The proposed rule would suspend the phrase "On or before February 15 of the marketing year," in section 984.49(b)(1) and would authorize the Board to recommend an increase in the free percentage and a decrease in the reserve percentage at any time during the marketing year, which ends on July 31.

In the past, many export markets were undeveloped and the domestic market provided better returns than export markets. The reserve percentage was used as a tool to keep the domestic walnut market from being oversupplied and the export percentage was used as a tool to place an orderly flow of California walnuts into the export market at prices that were competitive with foreign walnuts. Even though the free walnuts were allowed to be shipped to export markets, free walnuts were not price competitive with walnuts from other countries and consequently were not diverted to export markets. Under former marketing conditions, sufficient information relating to the domestic market was available prior to February 15 so that the Board could make an appropriate recommendation for final free and reserve percentages.

Under present marketing conditions, walnut export markets are well established and have returns equal to or higher than those received in the domestic market. As a result, the Board could recommend setting an export percentage of 0 percent which would preclude the shipment of reserve walnuts to export markets. The export market would then be supplied with only free walnuts. By setting a reserve percentage and keeping the export percentage at 0 percent, the Board could remove a quantity of walnuts in excess of domestic and export market demands.

When large shipments of reserve walnuts were exported, the February 15 deadline for recommending a decrease in the reserve gave handlers approximately five months to export the remainder of their reserve after the final reserve percentage was known. Since exports have now become a viable market for free walnuts, the Board may need more flexibility to consider later data on free shipments to revise its estimate of trade demand. The Board may also need more flexibility to consider the July forecast of the next crop to decide if the desirable carryout should be increased to supplement a short crop.

In addition, the order requires handlers to file monthly shipment reports that are due on the fifth day of the following month. Each additional monthly report the Board receives from handlers after the February 15 deadline, gives the Board a more accurate picture of the levels of shipments of walnuts for the current marketing year. More information is also available at that time on the foreign walnut crop, the pecan supply which directly, competes with walnuts, exchange rates, and foreign and domestic economic conditions. This information would allow the Board to better estimate the current and prospective domestic and export demand and supply conditions for California walnuts. Finally, later in the marketing year, the Board can better estimate the amount of the current crop of walnuts that should be carried over to the next marketing year. By allowing decisions to be made later in the season on a reserve program, the industry can better evaluate marketing conditions.

The Board estimates that sufficient information would be available by early June, but marketing conditions may cause the Board to wait longer before making a final recommendation on the free and reserve percentages. The suspension of the February 15 deadline would allow the Board more flexibility in dealing with the dynamic marketing conditions of the California walnut industry and in turn provide for more orderly marketing of walnuts.

Based on available information, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

A 30-day comment period is provided to allow interested persons an opportunity to comment on this proposal. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 984

Marketing agreements, Nuts, Reporting and recordkeeping requirements, Walnuts.

For the reasons set forth in the preamble, 7 CFR part 984 is proposed to be suspended in part as follows:

PART 984—WALNUTS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 984 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§ 984.49 [Suspended in part]

2. In § 984.49(b)(1), the words "On or before February 15 of the marketing year," are suspended.

Dated: May 26, 1995.

Lon Hatamiya,

Administrator.

[FR Doc. 95–13509 Filed 6–1–95; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 1126

[DA–95–16]

Milk in the Texas Marketing Area; Notice of Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: This document invites written comments on a proposal that would continue the suspension of segments of the pool plant and producer milk definitions of the Texas order for a two-year period. Associated Milk Producers, Inc., a cooperative association that represents producers who supply milk to the market, has requested the continuation of the suspension. The cooperative asserts that continuation of this suspension is necessary to insure that dairy farmers who have historically supplied the Texas market will continue to have their milk priced under the Texas order without incurring costly and inefficient movements of milk.

DATES: Comments are due no later than July 3, 1995.

ADDRESSES: Comments (two copies) should be sent to USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–9368.

FOR FURTHER INFORMATION CONTACT: Clifford M. Carman, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–9368.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed rule would not have a significant economic impact on a substantial number of small entities. This rule would tend to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

The Department is issuing this proposed rule in conformance with Executive Order 12866.

This proposed suspension of rules has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have a retroactive effect. If adopted, this proposed rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Notice is hereby given that, pursuant to the provisions of the Act, the suspension of the following provisions of the order regulating the handling of milk in the Texas marketing area is being considered for the months of August 1, 1995, through July 31, 1997.

1. In § 1126.7(d) introductory text, the words "during the months of February through July" and the words "under paragraph (b) or (c) of this section".

2. In § 1126.7(e) introductory text, the words "and 60 percent or more of the producer milk of members of the cooperative association (excluding such milk that is received at or diverted from pool plants described in paragraphs (b), (c), and (d) of this section) is physically received during the month in the form of a bulk fluid milk product at pool plants described in paragraph (a) of this section either directly from farms or by transfer from plants of the cooperative association for which pool plant status under this paragraph has been requested".

3. In § 1126.13(e)(1), the words "and further, during each of the months of September through January not less than 15 percent of the milk of such dairy farmer is physically received as producer milk at a pool plant".

4. In § 1126.13, paragraph (e)(2).

5. In § 1126.13(e)(3), the sentence "The total quantity of milk so diverted during the month shall not exceed one-third of the producer milk physically received at such pool plant during the month that is eligible to be diverted by the plant operator;".

All persons who desire to submit written data, views or arguments about the proposed suspension should send two copies to USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, by the 30th day after publication of this notice in the **Federal Register**.

All written submissions made pursuant to this notice will be made available for public inspection in the Dairy Division during regular business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposed suspension would continue the current suspension of segments of the pool plant and producer milk definitions under the Texas order. This proposed suspension would be in effect from August 1995 through July 1997. The current suspension will expire July 31, 1995. The proposed action would continue the suspension of : (1) The 60 percent delivery standard for pool plants operated by cooperatives; (2) the diversion limitation applicable to cooperative associations; (3) the limits on the amount of milk that a pool plant operator may divert to nonpool plants; (4) the shipping standards that must be met by supply plants to be pooled under the order; and (5) the individual producer performance standards that must be met in order for a producer's milk to be eligible for diversion to a nonpool plant.

The order permits a cooperative association plant located in the marketing area to be a pool plant, if at least 60 percent of the producer milk of members of the cooperative association is physically received at pool distributing plants during the month. In addition, a cooperative association may divert to nonpool plants up to one-third of the amount of milk that the cooperative causes to be physically received during the month at handlers' pool plants. The order also provides that the operator of a pool plant may divert to nonpool plants not more than one-third of the milk that is physically received during the month at the handler's pool plant. The proposed action would continue to inactivate the 60 percent delivery standard for plants operated by a cooperative association and remove the diversion limitations applicable to a cooperative association and to the operator of a pool plant.

The order also provides for regulating a supply plant each month in which it ships a sufficient percentage of its receipts to distributing plants. The order provides for pooling a supply plant that ships 15 percent of its milk receipts during August and December and 50 percent of its receipts during September through November and January. A supply plant that is pooled during each of the immediately preceding months of September through January is pooled under the order during the following months of February through July without making qualifying shipments to distributing plants. The requested action would continue the current suspension of these performance standards for supply plants that were regulated under the Texas order during each of the immediately preceding months of September through January.

The order also specifies that the milk of each producer must be physically received at a pool plant in order to be eligible for diversion to a nonpool plant. During the months of September through January, 15 percent of a producer's milk must be received at a pool plant for diversion eligibility. The proposed action would continue to suspend these requirements.

The continuation of the current suspension was requested by Associated Milk Producers, Inc., a cooperative association that represents a substantial number of dairy farmers who supply the Texas market. The cooperative stated that marketing conditions have not changed since the provisions were suspended in 1993 or since March 1995 when the suspension was expanded to include all of paragraph (e)(2), and therefore should be continued until restructuring of the order can be achieved through the formal rulemaking process.

The cooperative states that the continuation of the current suspension is necessary to insure that dairy farmers who have historically supplied the Texas market will continue to have their milk priced under the Texas order. In addition they maintain that the suspension would continue to provide handlers the flexibility needed to move milk supplies in the most efficient manner and to eliminate costly and inefficient movements of milk that would be made solely for the purpose of pooling the milk of dairy farmers who have historically supplied the market.

List of Subjects in 7 CFR Part 1126

Milk marketing orders.

The authority citation for 7 CFR Part 1126 continues to read as follows:

Authority: 7 U.S.C. 601–674.

Dated: May 26, 1995.

Lon Hatamiya,

Administrator.

[FR Doc. 95–13510 Filed 6–1–95; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 1280

[No. LS–94–015]

Sheep and Wool Promotion, Research, Education, and Information Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Sheep Promotion, Research, and Information Act of 1994 (Act), authorized the establishment of a national, industry-funded and -operated sheep and wool promotion, research, education, and information program. In response to an invitation published in the **Federal Register** to submit proposals for a sheep and wool promotion, research, education, and information order (Order), the Agricultural Marketing Service (AMS) received an entire industry proposal as well as five other partial proposals. With minor modifications, the full industry proposal and four of the partial proposals are set forth below for public comment. All comments will be considered before we issue a final rule establishing an Order.

Before an Order can become operational, a referendum must be conducted among sheep producers, sheep feeders, and importers of sheep and sheep products, except importers of raw wool. If sheep producers, feeders, and importers voting in the referendum approve the final Order, producers, feeders, and importers will be required to pay assessments, which would be used in a national program of sheep and wool promotion, research, consumer information, education, industry information, and producer information.

This rule also contains the certification and nomination procedures for the establishment of the National Sheep Promotion, Research, and Information Board (Board).

Additionally, please take notice that a public meeting will be held during the comment period to foster a better understanding of the intent and application of the proposed Order. The Secretary of Agriculture (Secretary) will consider the record of that meeting in the development of a final Order. All interested persons are invited to attend.

DATES: Written comments must be received by July 17, 1995. The meeting will convene at 9:00 a.m., eastern daylight time, on June 26, 1995.

ADDRESSES: Location of meeting: Room 3501, USDA South Building, 14th and Independence Avenue, SW., Washington, D.C.

COMMENTS: Send two copies of comments to Ralph L. Tapp, Chief; Marketing Programs Branch, Room 2606–S; Livestock and Seed Division, AMS-USDA; P.O. Box 96456; Washington, D.C. 20090–6456. Comments will be available for public inspection during regular business hours in Room 2606, South Building, 14th and Independence Avenue, SW., Washington, D.C. 20250. All comments should reference the docket number and the date and page number of the issue of the **Federal Register**. Comments concerning the information collection requirements contained in this proposal should also be sent to the Office of Information and Regulatory Affairs; Office of Management and Budget (OMB); Washington, D.C. 20503. Attention: Desk Officer for Agricultural Marketing Service, USDA.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Chief, Marketing Programs Branch, 202/720–1115.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Invitation to submit proposals—60 FR 381 (January 4, 1995).

Regulatory Impact Analysis

Executive Orders 12866 and 12778 and the Regulatory Flexibility Act

This proposed rule has been determined to be not significant for purposes of Executive Order 12866 and therefore has not been reviewed by OMB.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have a retroactive effect. This rule would not preempt any State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule.

The Act provides that any person subject to the Order may file with the Secretary a petition stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order is not in accordance with the law, and requesting a modification of the Order or an exemption from certain provisions or obligations of the Order. The petitioner will have the opportunity for a hearing on the petition. Thereafter the Secretary will issue a decision on the petition. The Act provides that the district courts of the United States in any district in which the petitioner resides or carries on business has jurisdiction to review a ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of the Secretary's decision. The petitioner must exhaust his administrative remedies before he can initiate any such proceeding in the district court.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA)(5 U.S.C. 601 et seq.), the Administrator of AMS has considered the economic impact of this proposed action on small entities.

The purpose of RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

According to the January 27, 1995, issue of "Sheep and Goats," published by the U.S. Department of Agriculture's (Department) National Agricultural Statistics Service, there are approximately 87,350 operations with sheep in the United States, nearly all of which would be classified as small businesses under the criteria established by the Small Business Administration (13 CFR 121.601).

The proposed Order would require each person who makes payment to a sheep producer, feeder, or handler of sheep or sheep products to be a collecting person, and thus to collect the assessment from the sheep producer, feeder, or handler of sheep or sheep products. Any person who buys domestic live sheep or greasy wool for processing must collect and remit the assessment to the Board. Each person who processes or causes to be processed sheep or sheep products of that person's own production and markets the processed products will pay an assessment and remit the assessment to the Board. Any person who exports live sheep or greasy wool will be required to remit an assessment to the Board. Finally, each person who imports into the United States sheep, sheep products, wool, or products containing wool,

other than raw wool, will pay an assessment. The U.S. Customs Service (Customs Service) will collect the assessments on imported sheep and sheep products (except raw wool) and forward them to AMS for disbursement to the Board..

The rate of assessment on domestic sheep producers, feeders, and exporters of live sheep and greasy wool will be 1-cent-per-pound on live sheep sold and 2-cents-per-pound on greasy wool sold. Importers will be assessed 1-cent-per-pound on live sheep and the equivalent of 1-cent-per-pound of live sheep for sheep products as well as 2-cents-per-pound of degreased wool or the equivalent of degreased wool for wool and wool products. Imported raw wool will be exempt from assessments. Each person who processes or causes to be processed sheep or sheep products of that person's own production and markets the processed products will be assessed the equivalent of 1-cent-per-pound of live sheep sold or 2-cents-per-pound of greasy wool sold. All assessment rates may be adjusted in accordance with the applicable provisions of the Act.

Although the assessments are expected to total about $14 million dollars annually, the economic impact of assessments collected from sheep producers, feeders, handlers, exporters, importers, or direct processors, will not be significant. The proposed Order also imposes a reporting and recordkeeping burden on (1) each collecting person, including processors and other persons required to remit assessments to the Board on live sheep or wool purchased from the producer, feeder, or handler, (2) each person marketing sheep products of that person's own production, (3) each exporter of sheep or greasy wool, and (4) each person importing sheep or sheep products, other than raw wool. This burden should average less than 5 hours per year, so its economic impact will not be significant. In addition, the sheep and wool promotion, research, education, and information program funded by the assessments is expected to benefit each person paying into the program by expanding and maintaining new and existing domestic and foreign markets and uses for sheep and sheep products and wool and products containing wool. Therefore, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

This proposal also contains the certification and nomination procedures for the establishment of the Board. The Board will be appointed by the Secretary.

Comments and Public Meeting

Interested persons are invited to submit written comments concerning this proposed Order. Comments must be sent to the Livestock and Seed Division's Marketing Programs Branch and must refer to the date and page number of this issue of the **Federal Register**. Comments submitted pursuant to this document will be made available for public inspection during regular business hours. Comments must be received by July 17, 1995.

Additionally, notice is given that a public meeting will be held beginning at 9:00 a.m., eastern daylight time, on June 26, 1995, at the U.S. Department of Agriculture, Room 3501, South Building, 14th and Independence Avenue, SW., Washington, D.C.

The meeting will be conducted by a presiding officer chosen by the Department. The proceedings of such meeting will be transcribed and considered in the development of a final Order. The purpose of the meeting is to provide an opportunity for a full discussion on the proposal to foster a better understanding of the intent and application of the proposed Order. Interested persons may present data, views, or arguments concerning the proposed Order through exhibits, written statements, or oral presentations. We encourage persons who make oral presentations to submit their presentations in writing as well. Those who submit written statements must provide one original and three copies of the statement for the record. Persons who attend the meeting will be allowed to question participants who give oral presentations. We anticipate that the proponents of this proposal will attend the meeting and will answer questions about the proposal.

Any interested person shall have an opportunity to appear and be heard concerning the proposed Order. However, the presiding officer may limit the number of times and the amount of time that any one person may be heard and may exclude information that is immaterial, irrelevant, or unduly repetitious, in order to limit the amount of cumulative material presented and to avoid prolonging the meeting unnecessarily.

Copies of the transcript of the meeting will not be available for distribution through the Hearing Clerk's office. However, the transcript will be available for public inspection during normal business hours. Anyone who would like to buy a copy of the transcript should make arrangements with the reporter at the meeting.

Paperwork Reduction

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the information collection requirements contained in this action will be submitted to OMB for approval. This action sets forth the provisions for establishing a nationwide, industry-funded sheep and wool promotion, research, education, and information program. Information collection requirements as required by this action are necessary for the implementation of this Order include:

(1) A report by each collecting person, including processors and other persons required to remit assessments to the Board for live sheep or wool purchased from the producer, feeder, or handler of sheep or sheep products and by each person marketing sheep or sheep products of that person's own production and by each exporter of sheep or greasy wool. The estimated number of respondents for this report is 700. Each respondent will submit one report per month, unless otherwise prescribed by the Board, and the estimated average reporting burden is 0.5 hours per response;

(2) A referendum ballot and registration form/envelope, or absentee ballot and registration form, to be completed by producers, feeders, and importers voting in an up-front referendum. The estimated number of respondents for this is approximately 25,000, (each of whom will submit one response) and the estimated average reporting burden is 0.10 hours per response;

(3) A nomination form by which certified organizations would nominate producers, feeders, and importers for membership on the Board. The estimated number of respondents for this form is 60 for the first year of the Order, and 20 each year thereafter. Each respondent will submit one response per year, and the estimated average reporting burden is 0.5 hours per response;

(4) An advisory committee membership background information form to be completed by candidates nominated by certified organizations for appointment to the Board. The estimated number of respondents for this form is 240 during the first year of the Order, and 80 each year thereafter. Each respondent will submit one response per year, and the estimated average reporting burden is 0.5 hours per response;

(5) An application for certification of organization to be completed by eligible organizations that request certification in order to be eligible to nominate producers, feeders, and importers to the Board. The estimated number of respondents for this form is 70 (with each submitting one response), and the estimated average reporting burden is 0.5 hour per response; and

(6) A requirement to maintain sufficient records to verify reports submitted under the Order. The estimated number of recordkeepers needed to comply with this requirement is 700, each of whom will have an estimated annual reporting burden of 0.5 hours.

Comments concerning the information collection requirements contained in this action should also be sent to the Office of Information and Regulatory Affairs; Office of Management and Budget; Washington, D.C. 20503. Attention: Desk Officer for Agricultural Marketing Service, USDA.

Background

The Act (7 U.S.C. 7101–7111), approved October 22, 1994, authorizes the Secretary to establish a national sheep and wool promotion, research, education, and information program. The program will be funded by a mandatory assessment on domestic sheep producers, sheep feeders, and exporters of live sheep and greasy wool of 1-cent-per-pound on live sheep sold and 2-cents- per-pound on greasy wool sold. Importers will be assessed

1-cent-per-pound on live sheep imported and the equivalent of 1-cent-per-pound of live sheep for sheep products imported as well as 2-cents-per-pound of degreased wool or the equivalent of degreased wool for wool and wool products imported. Imported raw wool will be exempt from assessments. Each person who processes or causes to be processed sheep or sheep products of that person's own production, and who markets the processed products, will be assessed the equivalent of 1-cent-per-pound of live sheep sold or 2-cents-per-pound of greasy wool sold. All assessment rates may be adjusted in accordance with applicable provisions of the Act.

The Act provides for submission of proposals for a sheep and wool promotion, research, education, and information order (Order). The Secretary may propose the issuance of an Order, or an association of sheep producers may request the issuance of, and submit a proposed Order. The Act provides that when the Secretary decides to propose an Order or receives a request and proposal for an Order, the Secretary shall publish the proposed Order and give due notice and opportunity for public comment.

The Department issued an invitation to submit proposals for an initial Order in the January 4, 1995, issue of the **Federal Register**.

In response to the invitation to submit proposals, the American Sheep Industry Association (ASI), the sheep industry's producer member organization, submitted a proposed Order. In addition, the New Zealand Meat Producers Board, the Australian Meat and Live-stock Corporation, the Wools of New Zealand, the National Lamb Feeders Association, and the Lamb Committee of the National Livestock and Meat Board each submitted a partial proposal.

The Department has also received letters from other interested parties. The Department did not consider these letters to be proposals because they primarily addressed information relating to sections already established under Act, and were therefore not proposals to the proposed program. Copies of these and the comments received in response to this proposed Order, will be available for public inspection.

The Department is publishing ASI's proposal as Proposal I, the New Zealand Meat Producers Board's proposal as Proposal II, the Australian Meat and Live-stock Corporation's proposal as Proposal III, the Wools of New Zealand's proposal as Proposal IV, and the National Lamb Feeders Association's proposal as Proposal V. The Department has modified these proposals slightly in order to (1) make them consistent with the Act and other similar national research and promotion programs supervised by the Department, (2) simplify the language and format of some provisions, and (3) add certain sections necessary for proper administration of the Order by the Department. The Department rejected the proposal submitted by the Lamb Committee of the National Livestock and Meat Board and the proposal and its rejection are discussed below.

Proposal I

The proposed Order submitted by ASI is summarized as follows:

Sections 1280.101–1280.136 of the proposal define certain words that are used in the Order.

Sections 1280.201–1280.215 concern the establishment, membership, nominations, method of obtaining nominations, certification of organizations, term of office, compensation, removal, and powers and duties of the Board, which is the governing body authorized to administer the Order subject to the oversight of the Secretary. These sections also include provisions for: (1) Budget review and approval, (2) the maintenance of books and records by the Board, (3) the investment of funds, and (4) the use of assessments, including reimbursement for expenses incurred for the Department's oversight responsibilities.

Sections 1280.216–1280.222 of the proposed Order establishes that the membership of the Executive Committee is comprised of 14 members, including 7 producer members elected from 7 regions reflecting sheep production and sheep producers, 1 sheep feeder, 3 importers of sheep or sheep products, and 3 elected officers of the Board. In addition, these sections authorize the Executive Committee to develop plans and projects of promotion, research, consumer information, education, industry information, and producer information with respect to sheep and sheep products and to develop and submit to the Board budgets of anticipated expenses and disbursements for program projects. The Secretary must approve such plans, projects, or budgets before they are implemented.

Section 1280.223 makes the Board responsible for expenses of the Board and the Executive Committee, as well as for contracts and agreements that the Board enters into.

Sections 1280.224–1280.228 establishes assessment rates on sheep and sheep products as provided by the Act.

Section 1280.229 authorizes each Qualified State Sheep Board (QSSB) to receive 20 percent of the total assessments collected by the Board on the marketing of domestic sheep and domestic sheep products in any one year from each State. However, no QSSB would receive less than $2,500 per year.

Section 1280.230 establishes collection procedures for each person responsible for collecting the assessment, fixes a 2 percent late payment charge for past due assessments, and authorizes the Secretary to receive assessments on behalf of the Board, if the Board is not in place or is otherwise unable to collect assessments. This section also authorizes the Secretary to promulgate rules and regulations concerning assessments and the collection of assessments.

Section 1280.231 prohibits funds received under this program from being used to influence Government action or policy, with certain specified exceptions. In addition, funds received under this program that are used to conduct plans or projects shall not (1) make false or misleading claims on behalf of sheep or sheep products or

against a competing product or (2) promote or advertise any sheep or sheep products by brand or trade name without the approval of the Board and the concurrence of the Secretary.

Sections 1280.232–1280.235 contain reporting and recordkeeping requirements for persons subject to the Order, and provide that all information obtained by the Board or the Department from books and reports required by the Order would be kept confidential. In addition, they provide for a $1,000 penalty or imprisonment for not more than 1 year, or both, for any willful violation of the Order.

Sections 1280.240–1280.246 contain miscellaneous provisions, including provisions concerning the Secretary's authority; proceedings after the termination of the Order; the effect of termination or amendment of the Order; personal liability of Board members; patents, copyrights, inventions and publications; amendments to the Order; and separability of Order provisions.

Proposal II

The New Zealand Meat Producers Board (NZMPB) proposes that of the 25 importers represented on the Board, 6 should be representatives of sheepmeat importers, and the remaining positions should be proportionally allocated to importers of wool and other sheep products. We have accepted this proposal for comment and identified it in § 1280.201 in the regulatory section under Proposal II.

NZMPB proposes that organizations that represent importers of sheep or sheep products may make nominations for representation of the importer unit. We have accepted this proposal for comment and identified it in § 1280.202 in the regulatory section under Proposal II.

NZMPB proposes that the Secretary certify foreign producer organizations that have historically represented importer interests in the United States market. We did not accept this proposal because the Act (1) contemplates that the Secretary would solicit importer nominees from United States organizations that have been certified and represent importers of sheep and sheep products and (2) does not authorize the Secretary to certify foreign producer organizations. Additionally, NZMPB's proposed criterion for eligibility for certification, that limits eligibility to—"foreign producer organizations with a history of representing importer interests in the United States market,"—is not one of the three specified criteria for certification set forth in the Act.

NZMPB proposes that at least one of the three importer members on the Executive Committee should represent importers of sheepmeat. We have accepted this proposal for comment and identified it in § 1280.217 in the regulatory section under Proposal II.

NZMPB proposes that the rate of assessment of sheep and sheep products not be raised without an affirmative determination by the Secretary, in consultation with the Special Trade Representative, and that such action would not violate the United States' obligations under the General Agreements on Tariffs and Trade. We did not accept this proposal because the Secretary is already directed to act pursuant to 7 U.S.C. 2278 and consequently, it is not necessary to include such request in the proposed Order.

NZMPB proposes that the equivalent of 1-cent-per-pound of live sheep should be determined by applying the dressing yield conversion factor published annually by the Department. We did not accept this proposal because the Act gives the Secretary the latitude to use the conversion factors that will most accurately determine the live sheep equivalents, and NZMPB's proposal would limit those calculations to the dressing percentage (yield).

Proposal III

The Australian Meat and Live-stock Corporation (AMLC) proposes a prohibition on the use of assessments for country of origin-specific promotions or programs. We have accepted this proposal for comment and identified it in § 1280.223 in the regulatory section under Proposal III.

Proposal IV

The Wools of New Zealand (WNZ) proposes (1) that funds generated under this subpart be used to promote a wide range of wool products in the United States, including interior textile products, e.g., carpet, rugs, and upholstery; and (2) that these funds be used to promote wool generically rather than to promote wool specifically grown in the United States. We have accepted this proposal and identified it in § 1280.223 in the regulatory section under Proposal IV.

Proposal V

The National Lamb Feeders Association (NLFA) proposes that the "national feeder organization" be defined as the only (1) organization in the United States chartered to represent lamb feeders with open membership for all interested in feeding lambs and (2) organization eligible to submit the names of 15 sheep feeders for appointment to the 10 sheep feeder positions on the Board. We did not accept this proposal because it would preclude other existing organizations, new organizations, and/or successor organizations from being eligible to nominate feeders to the Board, thereby restricting the opportunity for all qualified organizations to participate in the nomination process.

NLFA proposes that assessments collected under the program be used to promote "Fresh American Lamb." We have accepted this proposal for comment and identified it in § 1280.223 in the regulatory section under Proposal V.

NLFA proposes that the Board use its contracting powers to provide an annual funding base to NLFA to assure continuation of industry information and education programs. This proposal was not accepted because the Act does not authorize such funding.

NLFA proposes that the assessment be "phased-in" for the first 90 days after the effective date of the Order, and that lamb feeders be assessed ½-cent-per-head-per-day, thus making contributions to the program fair and equitable. NLFA provided the following example to illustrate its proposal: If a feeder sells lambs 20 days or 60 days after the effective date of the Order the assessment would be calculated as follows:

20 days x $0.005/head/day = $0.10/head; or
60 days x $0.005/head/day = $0.30/head.

We did not accept this proposal because the Act contemplates that the assessment rate of 1-cent-per-pound of live sheep sold shall be the rate of assessment on the effective date of any Order.

Additionally, the Act makes no provisions for modifying the assessment rate for any particular group of persons or type of sheep (i.e., feeder).

The Lamb Committee of the National Livestock and Meat Board (Lamb Committee) proposed that the Board annually fund the Lamb Committee's projects and that the Lamb Committee should receive not less than the amount it currently receives through voluntary contributions—approximately 2½ percent of the estimated income to be collected by the Board—to be used only for research, education, and consumer information projects. This proposal was not accepted because the Act does not authorize such funding.

Before the Department issues the final Order that will be voted on in an up-front referendum, it will analyze all written views received to date, as well as written comments on the five proposals published below. The program will not become operational unless and until producers, feeders, and importers approve the program in the up-front referendum.

In addition to Subpart A—Sheep and Wool Promotion, Research, Education, and Information Order—proposed herein, the Department is proposing procedures under this part for the certification of organizations and the nomination of sheep producers, feeders, and importers for appointment to the Board, in order to expedite as much as possible the receipt of nominations for appointment to the Board.

Subpart C—Procedures for Certification of Organizations and Nominations of Sheep Producers, Feeders, and Importers for Appointment to the National Sheep Promotion, Research, and Information Board (Board) is summarized as follows:

Sections 1280.400–1280.414 of this part would establish procedures for certification of organizations and nominations of sheep producers, feeders, and importers for appointment to the Board.

List of Subjects in 7 CFR Part 1280

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreements, Sheep and sheep products, Reporting and record keeping.

The full proposal and the four partial proposals set forth below have not received the approval of the Secretary.

We hereby propose that chapter XI of title 7 of the Code of Federal Regulations be amended as follows:

Proposal I

1. Part 1280 is proposed to be added to read as follows:

PART 1280 SHEEP PROMOTION, RESEARCH, AND INFORMATION

Subpart A—Sheep and Wool Promotion, Research, Education, and Information Order

Sec.

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1280.120 Person.
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Subpart B—[RESERVED]

Subpart C—Procedures for Certification of Organizations and Nominations of Sheep Producers, Feeders, and Importers for Appointment to the National Sheep Promotion, Research, and Information Board

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1280.401 Definitions.
1280.402 Administration.
1280.403 Certification of eligibility.
1280.404 Application for certification.
1280.405 Review of certification.
1280.406 Notification of certification and the listing of certified organizations.
1280.407 Solicitation of nominations for appointment to the Board.
1280.408 Nominations of members for appointment to the Board.
1280.409 Initial Board membership.
1280.410 Length of appointment to the initial Board.
1280.411 Acceptance of appointment.
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1280.413 Confidential treatment of information.
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Subpart D—[Reserved]

Subpart E—[Reserved]

Authority: 7 U.S.C. 7101–7111.

Subpart A—Sheep and Wool Promotion, Research, Education, and Information Order

Definitions

§ 1280.101 Act.

The term "Act" means the Sheep Promotion, Research, and Information Act of 1994, 7 U.S.C 7101–7111; Public Law No. 103–107; 108 Statute 4210, enacted October 22, 1994, and any amendments thereto.

§ 1280.102 Board.

The term "Board" means the National Sheep Promotion, Research, and Information Board established pursuant to § 1280.201.

§ 1280.103 Carbonized wool.

The term "carbonized wool" means wool that has been immersed in a bath, usually of mineral acids or acid salts, that destroys vegetable matter in the wool, but does not affect the wool fibers.

§ 1280.104 Certified organization.

The term "certified organization" means any organization that has been certified by the Secretary pursuant to this part as being eligible to submit nominations for membership on the Board.

§ 1280.105 Collecting person.

The term "collecting person" means any person who is responsible for collecting an assessment pursuant to the Act, this subpart and regulations

prescribed by the Board and approved by the Secretary, including processors and any other persons who are required to remit assessments to the Board pursuant to this part, except that a collecting person who is a market agency; *i.e.*, commission merchant, auction market, or livestock market in the business of receiving such sheep or sheep products for sale on commission for or on behalf of a producer or feeder shall pass the collected assessments on to the subsequent purchaser pursuant to the Act, this subpart and the regulations prescribed by the Board and approved by the Secretary.

§ 1280.106 Consumer information.

The term "consumer information" means nutritional data and other information that will assist consumers and other persons in making evaluations and decisions regarding the purchase, preparation, or use of sheep products.

§ 1280.107 Customs Service.

The term "Customs Service" means the U.S. Customs Service of the Department of the Treasury.

§ 1280.108 Degreased wool.

The term "degreased wool" means wool from which the bulk of impurities has been removed by processing.

§ 1280.109 Department.

The term "Department" means the U.S. Department of Agriculture.

§ 1280.110 Education.

The term "education" means activities providing information relating to the sheep industry or sheep products to producers, feeders, importers, consumers, and other persons.

§ 1280.111 Executive Committee.

The term "Executive Committee" means the Executive Committee of the Board established under § 1280.216.

§ 1280.112 Exporter.

The term "exporter" means any person who exports domestic live sheep or greasy wool from the United States.

§ 1280.113 Feeder.

The term "feeder" means any person who feeds lambs until the lambs reach slaughter weight.

§ 1280.114 Greasy wool.

The term "greasy wool" means wool that has not been washed or otherwise cleaned.

§ 1280.115 Handler.

The term "handler" means any person who purchases and markets greasy wool.

§ 1280.116 Importer.

The term "importer" means any person who imports sheep or sheep products into the United States.

§ 1280.117 Industry information.

The term "industry information" means information and programs that will lead to increased efficiency in processing and the development of new markets, marketing strategies, increased marketing efficiency, and activities to enhance the image of sheep or sheep products on a national or international basis.

§ 1280.118 National feeder organization.

The term "national feeder organization" means any organization of feeders that has been certified by the Secretary pursuant to the Act and this part as being eligible to submit nominations for membership on the Board.

§ 1280.119 Part and subpart.

"Part" means the Sheep and Wool Promotion, Research, Education, and Information Order and all rules and regulations issued pursuant to the Act and the Order, and the Order itself shall be a "subpart" of such part.

§ 1280.120 Person.

The term "person" means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity.

§ 1280.121 Processor.

The term "processor" means any person who slaughters sheep or processes greasy wool into degreased wool.

§ 1280.122 Producer.

The term "producer" means any person, other than a feeder, who owns or acquires ownership of sheep.

§ 1280.123 Producer information.

The term "producer information" means activities designed to provide producers, feeders, and importers with information relating to production or marketing efficiencies or developments, program activities, or other information that would facilitate an increase in the consumption of sheep or sheep products.

§ 1280.124 Promotion.

The term "promotion" means any action (including paid advertising) to advance the image and desirability of sheep or sheep products, to improve the competitive position, and stimulate sales, of sheep products in the domestic and international marketplace.

§ 1280.125 Pulled wool.

The term "pulled wool" means wool that is pulled from the skin of slaughtered sheep.

§ 1280.126 Qualified State Sheep Board.

The term "Qualified State Sheep Board" means a sheep and wool promotion entity that (A) is authorized by State statute or organized and operating within a State, (B) receives voluntary contributions or dues and conducts promotion, research, or consumer information programs with respect to sheep or wool, or both, and (C) is recognized by the Board as the sheep and wool promotion entity within the State; except that not more than one QSSB shall exist in any State at any one time.

§ 1280.127 Raw wool.

The term "raw wool" means greasy wool, pulled wool, degreased wool, or carbonized wool.

§ 1280.128 Research.

The term "research" means development projects and studies relating to the production (including the feeding of sheep), processing, distribution, or use of sheep or sheep products, to encourage, expand, improve, or make more efficient the marketing of sheep or sheep products.

§ 1280.129 Secretary.

The term "Secretary" means the Secretary of Agriculture of the United States or any other officer or employee of the Department to whom authority has been delegated, or to whom authority may be delegated, to act in the Secretary's stead.

§ 1280.130 Sheep.

The term "sheep" means ovine animals of any age, including lambs.

§ 1280.131 Sheep products.

The term "sheep products" means products produced in whole or in part from sheep, including wool and products containing wool fiber.

§ 1280.132 State.

The term "State" means each of the 50 States.

§ 1280.133 Unit.

The term "unit" means each State, group of States, or class designation that is represented on the Board.

§ 1280.134 United States.

The term "United States" means the 50 States and the District of Columbia.

§ 1280.135 Wool.

The term "wool" means the fiber from the fleece of a sheep.

§ 1280.136 Wool products.

The term "wool products" means products produced, in whole or in part, from wool and products containing wool fiber.

National Sheep Promotion, Research, and Information Board

§ 1280.201 Establishment and membership of the Board.

There is hereby established a National Sheep Promotion, Research, and Information Board (Board) of 120 members. Members of the Board shall be appointed by the Secretary from nominations submitted in accordance with this subpart. The seats shall be apportioned as follows:

(a) Producers: For purposes of nominating producers to the Board, each State shall be represented by the following number of members:

Unit	Board members
Alabama	1
Alaska	1
Arizona	1
Arkansas	1
California	5
Colorado	4
Connecticut	1
Delaware	1
Florida	1
Georgia	1
Hawaii	1
Idaho	2
Illinois	1
Indiana	1
Iowa	2
Kansas	1
Kentucky	1
Louisiana	1
Maine	1
Maryland	1
Massachusetts	1
Michigan	1
Minnesota	2
Mississippi	1
Missouri	1
Montana	5
Nebraska	1
Nevada	1
New Hampshire	1
New Jersey	1
New Mexico	2
New York	1
North Carolina	1
North Dakota	2
Ohio	1
Oklahoma	1
Oregon	2
Pennsylvania	1
Rhode Island	1
South Carolina	1
South Dakota	4
Tennessee	1
Texas	10
Utah	3
Vermont	1
Virginia	1
Washington	1
West Virginia	1
Wisconsin	1
Wyoming	5

(b) Feeders. The feeder sheep industry shall be represented by 10 members.

(c) Importers. Importers shall be represented by 25 members.

(d) Alternates. A unit represented by only one producer member may have an alternate member appointed to ensure representation at meetings of the Board.

§ 1280.202 Nominations.

(a) Producers. The Secretary shall appoint producers and alternates to represent units as specified under § 1280.201(a) of this subpart from nominations submitted by organizations certified under § 1280.207. A certified organization may submit only nominations for producer representatives and alternates if appropriate from the membership of the organization for the unit in which the organization operates. To be represented on the Board, each certified organization shall submit to the Secretary at least 1.5 nominations for each seat on the Board for which the unit is entitled to representation. If a unit is entitled to only one seat on the Board, the unit shall submit at least two nominations for the appointment.

(b) Feeders. The Secretary shall appoint representatives of the feeder sheep industry to seats established under § 1280.201(b) from nominations submitted by qualified national organizations that represent the feeder sheep industry. To be represented on the Board, the industry shall provide at least 1.5 nominations for each appointment to the Board to which the feeder sheep industry is entitled.

(c) Importers. The Secretary shall appoint importers to seats established under § 1280.201(c) from nominations submitted by qualified organizations that represent importers. The Secretary shall receive at least 1.5 nominations for each appointment to the Board to which importers are entitled.

(d) As soon as practicable, the Secretary shall obtain nominations from certified organizations. If no organization is certified in a unit the Secretary may use other means to obtain nominations. A certified organization shall only submit nominations for positions on the Board representing units in which such certified organization can establish that it is certified as eligible to submit nominations for representation of that unit of individual producers, feeders, or importers residing in that unit.

(e) After the establishment of the initial Board, the Department shall announce when a vacancy does or will exist. Nominations shall be initiated not less than 6 months before the expiration of the terms of the members whose terms are expiring, in the manner described in § 1280.205(b). In the case of vacancies due to reasons other than the expiration of term of office, successor Board members shall be appointed pursuant to § 1280.206.

(f) Where there is more than one eligible organization representing producers, feeders, or importers in a State or unit, they may caucus and jointly nominate a minimum of 1.5 qualified persons for each position representing that State or unit on the Board for which a member is to be appointed. If joint agreement is not reached with respect to any such nominations, or if no caucus is held, each certified organization may submit nominations for each appointment to be made to represent that State or unit.

(g) Nominations should be submitted in order of preference and, for the initial Board, in order of preference for staggered terms. If the Secretary rejects any nominations submitted and there are insufficient nominations submitted from which appointments can be made, the Secretary may request additional nominations under paragraphs (a), (b), or (c) of this section.

§ 1280.203 Nominee's agreement to serve.

Any producer, feeder, or importer nominated to serve on the Board, or as an alternate, shall file with the Secretary at the time of the nomination a written agreement to:

(a) Serve on the Board if appointed;

(b) Disclose any relationship with any organization that operates a qualified State or regional program or has a contractual relationship with the Board; and

(c) Withdraw from participation in deliberations, decision making, or voting on matters that concern the relationship disclosed under paragraph (b).

§ 1280.204 Appointment.

From the nominations made pursuant to § 1280.202 above, the Secretary shall appoint the members of the Board on the basis of representation provided in § 1280.201 above.

§ 1280.205 Method of obtaining nominations.

(a) Initially Established Board.

(1) Producer and Alternate Nominations. The Secretary shall solicit, from organizations certified under § 1280.207, nominations for each producer—s or alternate member's seat on the initially-established Board to which a unit is entitled. If no such organization exist, the Secretary shall solicit nominations for appointments in such manner as the Secretary determines appropriate.

(2) Feeder and Importer Nominations. The Secretary shall solicit, from certified organizations that represent feeders and importers, nominations for each seat to which feeders or importers are entitled. If no such organization exists, the Secretary shall solicit nominations for appointments in such manner as the Secretary determines appropriate. In determining whether an organization is eligible to submit nominations under this subparagraph, the Secretary shall determine whether:

(A) The organization's active membership includes a significant number of feeders or importers in relation to the total membership of the organization;

(B) There is evidence of stability and permanency of the organization; and

(C) The organization has a primary and overriding interest in representing the feeder or importer segment of the sheep industry.

(b) Subsequent Appointment.

(1) Producer Nominations. The solicitation of nominations for subsequent appointment to the Board from eligible organizations certified under § 1280.207 shall be initiated by the Secretary, with the Board securing the nominations for the Secretary.

(2) Feeder and Importer Nominations. The solicitation of feeder and importer nominations for subsequent appointment to the Board from organizations certified in accordance with § 1280.205(a)(2).

§ 1280.206 Vacancies.

To fill any vacancy occasioned by the death, removal, resignation, or disqualification of any member of the Board, the Secretary shall appoint a successor from the most recent list of nominations for the position or from nominations submitted by the Board.

§ 1280.207 Certification of organizations.

(a) In general. The eligibility of any State organization to represent producers and to participate in the making of nominations under this subpart shall be certified by the Secretary. The Secretary shall certify any State organization that the Secretary determines meets the eligibility criteria established under paragraph (b) below. An eligibility determination by the Secretary shall be final.

(b) Basis for Certification. Certification shall be based upon, in addition to other available information, a factual report submitted by the organization that shall contain information considered relevant and specified by the Secretary, including:

(1) The geographic territory covered by the active membership of the organization;

(2) The nature and size of the active membership of the organization, including the proportion of the total number of active producers represented by the organization;

(3) Evidence of stability and permanency of the organization;

(4) Sources from which the operating funds of the organization are derived;

(5) The functions of the organization; and

(6) The ability and willingness of the organization to further the aims and objectives of the Act.

(c) Primary Considerations. A primary consideration in determining the eligibility of an organization under this paragraph shall be whether;

(1) The membership of the organization consists primarily of producers who own a substantial quantity of sheep; and

(2) An interest of the organization is in the production of sheep.

§ 1280.208 Term of office.

Each appointment to the Board shall be for a term of 3 years, except that appointments to the initially established Board shall be proportionally for 1-year, 2-year, and 3-year terms. No person may serve more than two consecutive 3-year terms, except that elected officers shall not be subject to the term limitation while they hold office.

§ 1280.209 Compensation.

Board members shall serve without compensation, but shall be reimbursed for their reasonable expenses incurred in performing their duties as Board members.

§ 1280.210 Removal.

If the Secretary determines that any person appointed under this part fails to perform his or her duties properly or engages in acts of dishonesty or willful misconduct, the Secretary shall remove the person from office. The Secretary may remove a person appointed or certified under this part, or any employee of the Board, if the Secretary determines that the person's continued service would be detrimental to the purposes of the Act.

§ 1280.211 Powers and duties of the Board.

The Board shall have the following powers and duties:

(a) To elect officers of the Board, including a chairperson, vice chairperson, and secretary/treasurer;

(b) To administer this subpart in accordance with its terms and provisions;

(c) To recommend regulations to effectuate the terms and provisions of this subpart;

(d) To hold at least one annual meeting and any additional meetings it deems appropriate;

(e) To elect members of the Board to serve on the Executive Committee;

(f) To approve or reject budgets submitted by the Executive Committee;

(g) To submit budgets to the Secretary for approval;

(h) To contract with entities, if necessary, to implement plans or projects in accordance with the Act;

(i) To conduct programs of promotion, research, consumer information, education, industry information, and producer information;

(j) To receive, investigate, and report to the Secretary complaints of violations of this subpart;

(k) To recommend to the Secretary amendments to this subpart;

(l) To provide the Secretary with prior notice of meetings of the Board to permit the Secretary or a designated representative to attend such meetings;

(m) To provide not less than annually a report to producers, feeders, and importers, accounting for the funds expended by the Board, and describing programs implemented under the Act; and to make such report available to the public upon request;

(n) To establish seven regions that, to the extent practicable, contain geographically contiguous States and approximately equal numbers of sheep producers and sheep production;

(o) To employ or retain necessary staff; and

(p) To invest funds in accordance with § 1280.214.

§ 1280.212 Budgets.

(a) In general. The Board shall review the budget submitted by the Executive Committee, on a fiscal year basis, of anticipated expenses and disbursements by the Board, including probable costs of administration and promotion, research, consumer information, education, industry information, and producer information projects. The Board shall submit the budget to the Secretary for the Secretary's approval.

(b) Limitation. No expenditure of funds may be made by the Board unless such expenditure is authorized under a budget or budget amendment approved by the Secretary.

§ 1280.213 Books and records of the Board.

The Board shall:

(a) Maintain such books and records, which shall be made available to the Secretary for inspection and audit, as the Secretary may prescribe,

(b) Prepare and submit to the Secretary, from time-to-time, such reports as the Secretary may prescribe, and

(c) Account for the receipt and disbursement of all funds entrusted to it. The Board shall cause its books and records to be audited by an independent auditor at the end of each fiscal year, and a report of such audit to be submitted to the Secretary.

§ 1280.214 Investment of funds.

The Board may invest, pending disbursement, funds it receives under this subpart, only in obligations of the United States or any agency thereof, in general obligations of any State or any political subdivision thereof, in any interest-bearing account or certificate of deposit of a bank that is a member of the Federal Reserve System, or in obligations fully guaranteed as to principal and interest by the United States. Any income from any such investment may be used for any purpose for which the invested funds may be used.

§ 1280.215 Use of assessments.

(a) Assessments received by the Board shall be used by the Board for the payment of expenses incurred in administering this subpart, including a reasonable reserve.

(b) The Board shall reimburse the Secretary, from assessments collected, for costs incurred in implementing and administering the Order as provided for under the Act.

Executive Committee

§ 1280.216 Establishment.

The Board shall establish an Executive Committee of the Board to assist the Board in the administration of the terms and provisions of this subpart, under the direction of the Board, and consistent with the policies determined by the Board.

§ 1280.217 Membership.

The Executive Committee shall be comprised of 14 members. Eleven members of the Executive Committee shall be elected by the Board annually. Of these members:

(1) One member shall represent each of the seven regions established under § 1280.211(n) for a total of seven members representing producers;

(2) One member shall represent feeders; and

(3) Three members shall represent importers.

The remaining three members of the Executive Committee shall be the elected officers of the Board.

§ 1280.218 Powers and duties.

(a) Plans and Projects. The Executive Committee shall develop plans or projects of promotion and advertising, research, consumer information, education, industry information, and producer information, which plans or projects shall be paid for with assessments collected by the Board. The plans or projects shall not become effective until approved by the Secretary.

(b) Budgets. The Executive Committee shall be responsible for developing and submitting to the Board, for Board approval, budgets on a fiscal year basis of the Board's anticipated expenses and disbursements, including the estimated costs of advertising and promotion, research, consumer information, education, industry information, and producer information projects. The Board shall approve or disapprove such budgets and, if approved, shall submit them to the Secretary for the Secretary's approval.

§ 1280.219 Term of office.

Terms of appointment to the Executive Committee shall be for 1 year.

§ 1280.220 Chairperson.

The Chairperson of the Board shall serve as chairperson of the Executive Committee.

§ 1280.221 Quorum.

A quorum of the Executive Committee shall consist of eight members.

§ 1280.222 Vacancies.

To fill any vacancy caused by the death, removal, resignation, or disqualification of any member of the Executive Committee, the Board shall elect a successor for the position pursuant to § 1280.217.

Expenses

§ 1280.223 Expenses.

(a) The Board shall be responsible for all expenses of the Board and the Executive Committee.

(b) Contracts and Agreements. Any contract or agreement entered into by the Board shall provide that:

(1) The contracting party shall develop and submit to the Board a plan or project of promotion, research, education, consumer information, industry information, and producer information, together with a budget or budgets that shall show estimated costs to be incurred for such plan or project; and

(2) No plan, project, contract, or agreement shall become effective until it has been approved by the Secretary.

(c) The contracting party shall:

(1) keep accurate records of all of its transactions;

(2) account for funds received and expended, including staff time, salaries, and expenses expended on behalf of Board activities;

(3) make periodic reports to the Board of activities conducted; and

(4) make such other reports as the Board or the Secretary may require.

Assessments

§ 1280.224 Sheep purchases.

(a) In general. Each person making payment to a producer or feeder for sheep purchased from the producer or feeder shall be a collecting person and shall collect an assessment from the producer or feeder on each sheep sold by the producer or feeder. Each such producer or feeder shall pay such assessment to the collecting person at the rate set forth in paragraph (d) below.

(b) Remittances. Each processor making payment to a producer, feeder, or collecting person for sheep purchased from the producer, feeder, or collecting person shall be a collecting person and shall collect an assessment from the producer, feeder, or other collecting person on each sheep sold by the producer, feeder, or collecting person, and each such producer, feeder, or collecting person shall pay such assessment to the processor at the rate set forth in paragraph (d) below, and such processor shall remit the assessment to the Board.

(c) Processing. Any person who purchases sheep for processing shall collect the assessment from the seller and remit the assessment to the Board.

(d) Rate. Except as otherwise provided, the rate of assessment shall be 1-cent-per-pound of live sheep sold. The rate of assessment may be raised or lowered no more than 0.15 of a cent in

any 1 year as recommended by the Executive Committee and approved by the Board and the Secretary. The rate of assessment shall not exceed 2½-cents-per-pound.

§ 1280.225 Wool purchases.

(a) In general. Each person making payment to a producer, feeder, or handler of wool for wool purchased from the producer, feeder, or handler shall be a collecting person and shall collect an assessment from the producer, feeder, or handler on each pound of greasy wool sold. The producer, feeder, or handler shall pay such assessment to the collecting person at the rate set forth in (d) below.

(b) Remittances. Each processor making payment to a producer, feeder, handler, or collecting person for wool purchased from the producer, feeder, handler, or collecting person shall be a collecting person and shall collect an assessment from the producer, feeder, handler, or other collecting person on all wool sold by the producer, feeder, handler, or collecting person, and each such producer, feeder, handler, or collecting person shall pay such assessment to the processor at the rate set forth in paragraph (d) below and such processor shall remit the assessment to the Board.

(c) Processing. Any person purchasing greasy wool for processing shall collect the assessment and remit the assessment to the Board.

(d) Rate. Except as otherwise provided, the rate of assessment shall be 2-cents-per-pound. The rate of assessment may be raised or lowered no more than 0.2 of a cent per pound in any 1 year as recommended by the Executive Committee and approved by the Board and the Secretary. The rate of assessment shall not exceed 4-cents-per-pound of greasy wool.

§ 1280.226 Direct processing.

Each person who processes or causes to be processed sheep or sheep products of that person's own production, and markets such sheep or sheep products, shall pay an assessment on such sheep or sheep products at the time of sale at a rate equivalent to the rate established in § 1280.224(d) or § 1280.225(d), as appropriate, and shall remit such assessment to the Board.

§ 1280.227 Export.

Each person who exports live sheep or greasy wool shall remit the assessment on such sheep or greasy wool at the time of export, at a rate equivalent to the rate established in § 1280.224(d) or § 1280.225(d), as appropriate, and shall remit such assessment to the Board.

§ 1280.228 Imports.

(a) In general. Each person who imports sheep or sheep products or who imports wool or products containing wool (with the exception of raw wool) into the United States shall pay an assessment to the Board.

(b) Collection. The Customs Service is authorized to collect and remit such assessment to the Secretary for disbursement to the Board.

(c) Rate for Sheep and Sheep Products. The assessment rate for sheep shall be 1-cent-per-pound of live sheep. The assessment rate for sheep products shall be the equivalent of 1-cent-per-pound of live sheep, as determined by the Secretary in consultation with the domestic sheep industry. Such rates may be raised or lowered no more than 0.15-cent-per-pound in any 1 year as recommended by the Executive Committee and approved by the Board and the Secretary, but shall not exceed 2½-cents-per-pound.

(d) Rate for Wool and Wool Products. The assessment rate for wool and products containing wool shall be 2-cents-per-pound of degreased wool or the equivalent of degreased wool. The rate of assessment may be raised or lowered no more than 0.2-cents-per-pound in any 1 year, as recommended by the Executive Committee and approved by the Board and the Secretary, but shall not exceed 4-cents-per-pound of clean wool or the equivalent.

(e) The Secretary shall issue regulations regarding the assessment rates for imported sheep and sheep products. The Secretary may exclude from assessment certain imported products that contain *de minimis* levels of sheep or sheep products and waive the assessment on such products.

§ 1280.229 Qualified State Sheep Boards.

(a) Except as provided in paragraph (b) below, 20 percent of the total assessments collected by the Board on the marketings of domestic sheep and domestic sheep products in any 1 year from a State shall be returned to the QSSB of the State.

(b) No QSSB shall receive less than $2,500 under paragraph (a) above in any 1 year.

(c) The Board shall establish procedures with the approval of the Secretary to account for funds expended pursuant to paragraphs (a) and (b) of this section.

§ 1280.230 Collection.

(a) Each person responsible for the collection and remittance to the Board of assessments under this subpart shall do so on a monthly basis, unless the Board, with the approval of the Secretary, has specifically authorized otherwise.

(b) Late Payment Charges. Any unpaid assessments due the Board or from a person responsible for remitting assessments to the Board, shall be increased by 2 percent each month beginning with the day after the date such assessments were due under this subpart. Any assessments or late payment charges that remain unpaid shall be increased at the same rate on the corresponding day of each month thereafter until paid.

(c) Any unpaid assessments due to the Board pursuant to § 1280.224, § 1280.225, § 1280.226, and § 1280.227 shall be increased 2 percent each month beginning with the day following the date such assessments were due. Any remaining amount due, which shall include any unpaid charges previously made pursuant to this paragraph, shall be increased at the same rate on the corresponding day of each month thereafter until paid. For the purposes of this paragraph, any assessment determined at a date later than the date prescribed by this subpart because of a person's failure to submit a timely report to the Board shall be considered to have been payable by the date it would have been due if the report had been timely filed. The date of payment is the applicable postmark date or the date of receipt by the Board, whichever is earlier.

(d) If the Board is not in place by the date the first assessments are to be collected, the Secretary shall have the authority to receive assessments and invest them on behalf of the Board, and shall pay such assessments and any interest earned to the Board when it is formed. The Secretary shall have the authority to promulgate rules and regulations concerning assessments and the collection of assessments if the Board is not in place or is otherwise unable to develop such rules and regulations.

§ 1280.231 Prohibition on use of funds.

(a) Except as otherwise provided in paragraph (b) below, no funds collected by the Board under this subpart shall be used in any manner for the purpose of influencing any action or policy of the United States Government, any foreign or State Government, or any political subdivision thereof.

(b) The prohibition in paragraph (a) shall not apply:

(1) To the development and recommendation of amendments to this subpart; or

(2) To the communication to appropriate government officials, in response to a request made by the officials, of information relating to the conduct, implementation, or results of promotion, research, consumer information, education, industry information, or producer information activities under this subpart;

(c) A plan or project conducted pursuant to this title shall not make false or misleading claims on behalf of sheep or sheep products or against a competing product.

(d) No such plans or projects shall be undertaken to promote or advertise any sheep or sheep products by brand or trade name without the approval of the Board and the concurrence of the Secretary.

Reports, Books, and Records

§ 1280.232 Reports.

(a) Each collecting person, including processors and other persons required to remit assessments to the Board pursuant to § 1280.224(b) for live sheep, each person who markets sheep products of that person's own production and each exporter of sheep shall report to the Board information pursuant to regulations prescribed by the Board and approved by the Secretary. Such information may include:

(1) The number of sheep purchased, initially transferred or which, in any other manner, are subject to the collection of assessment, and the dates of such transaction;

(2) The number of sheep imported or exported, or the equivalent thereof of sheep products imported;

(3) The amount of assessment remitted;

(4) An explanation for the remittance of any assessment that is less than the pounds of sheep multiplied by the assessment rate; and

(5) The date any assessment was paid.

(b) Each collecting person, including processors and other persons required to remit assessments to the Board pursuant to § 1280.225(b) for wool purchased from the producer or handler of wool or wool products, each person purchasing greasy wool for processing, each importer of wool or wool products (except raw wool), each exporter of greasy wool, and each person who markets wool of that person's own production shall report to the Board information pursuant to regulations prescribed by the Board and approved by the Secretary. Such information may include:

(1) The amount of wool purchased, initially transferred or in any other manner subject to the collection of assessment, and the dates of such transaction;

(2) The amount of wool imported (except raw wool) or the equivalent thereof of wool products imported or the amount of greasy wool exported;

(3) The amount of assessment remitted;

(4) An explanation for the remittance of an assessment that is less than the pounds of wool multiplied by the assessment rate; and

(5) The date any assessment was paid.

§ 1280.233 Books and records.

(a) Each collecting person, including processors and other persons required to remit assessments to the Board, each importer of sheep or sheep products (except raw wool), and exporter of sheep or greasy wool, and each person who markets sheep products of that person's own production, shall maintain and make available for inspection such books and records as may be required by regulations prescribed by the Board and approved by the Secretary, including records necessary to verify any required reports. Such records shall be maintained for the period of time prescribed by the regulations issued hereunder.

(b) Document Evidencing Payment of Assessments. Each collecting person responsible for collecting an assessment paid pursuant to this subpart, other than a person who slaughters sheep or markets sheep products of his or her own production for sale, is required to give the person or collecting person from whom the collecting person collected an assessment written evidence of payment of the assessments paid pursuant to this Subpart. Such written evidence serving as a receipt shall include:

(1) Name and address of the collecting person;

(2) Name of the producer who paid the assessment;

(3) Number of head of sheep or pounds of wool sold;

(4) Total assessments paid by the producer;

(5) Date; and

(6) Such other information as the Board, with the approval of the Secretary, may require.

§ 1280.234 Use of information.

Information from records or reports required pursuant to this subpart shall be made available to the Secretary as is appropriate to the administration or enforcement of the Act, this subpart or any regulation issued under the Act. In addition, the Secretary shall authorize the use under this part of information that is accumulated under laws or regulations other than the Act or regulations issued under the Act regarding persons paying producers, feeders, importers, handlers, or processors.

§ 1280.235 Confidentiality.

(a) All information from records or reports required pursuant to this subpart shall be kept confidential by all officers and employees of the Department and of the Board. Such information may be disclosed only if the Secretary considers the information relevant, the information is disclosed only in a suit or administrative hearing brought at the direction or on the request of the Secretary, or to which the Secretary or any officer of the United States is a party, and the information relates to the Act.

(b) Administration. No information obtained under the authority of this subpart may be made available to any agency or officer of the Federal Government for any purpose other than the implementation of the Act and any investigatory or enforcement action necessary for the implementation of the Act.

(c) General Statements. Nothing in paragraph (a) may be deemed to prohibit:

(1) the issuance of general statements, based on the reports of the number of persons subject to this subpart or statistical data collected therefrom, which statements do not identify the information furnished by any person, or

(2) the publication, by direction of the Secretary, of the name of any person violating this subpart and a statement of the particular provisions of this subpart violated by such person.

(d) Penalty. Any person who willfully violates the provisions of this subpart, on conviction, shall be subject to a fine of not more than $1,000, or to imprisonment for not more than 1 year, or both, and if the person is an officer or employee of the Board or the Department, that person shall be removed from office.

Miscellaneous

§ 1280.240 Right of the Secretary.

All fiscal matters, programs or projects, bylaws, rules or regulations, reports, or other substantive actions proposed, and prepared by the Board shall be submitted to the Secretary for approval.

§ 1280.241 Proceedings after termination.

(a) Upon the termination of this subpart, the Board shall recommend not more than five of its members to the Secretary to serve as trustees for the purpose of liquidating the affairs of the Board. Such persons, upon designation by the Secretary, shall become trustees of all the funds and property owned, in the possession of or under the control of the Board, including any claims of the Board against third parties that exist at the time of such termination.

(b) The trustees shall:

(1) Act as trustees until discharged by the Secretary;

(2) Carry out the obligations of the Board under any contracts or agreements entered into by the Board pursuant to § 1280.223(b);

(3) From time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Board and of the trustees, to such persons as the Secretary may direct; and

(4) Upon the request of the Secretary, execute such assignment of other instruments necessary or appropriate to transfer to such persons full title and right to all of the funds, property, and claims of the Board or the trustees pursuant to this subpart.

(c) Any person to whom funds, property or claims have been transferred or delivered pursuant to this subpart shall be subject to the same obligation imposed upon the Board and upon the trustees.

(d) Any residual funds not required to pay the necessary costs of liquidation shall be turned over to the Secretary to be used, to the extent practicable, for continuing one or more of the promotion, research, consumer information, education, industry information, and producer information plans or projects authorized pursuant to this subpart.

§ 1280.242 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant thereto, or the issuance of any amendment to either thereof, shall not:

(a) Affect or waive any right, duty, obligation, or liability that has arisen or may hereafter arise in connection with any provision of this subpart or any regulation issued thereunder; or

(b) Release or extinguish any violation of this subpart or any regulation issued thereunder; or

(c) Affect or impair any rights or remedies of the United States, the Secretary or any person with respect to any such violation.

§ 1280.243 Personal liability.

No member, employee, or agent of the Board, including employees, agents, or Board members of the QSSB, acting pursuant to the authority provided in this subpart, shall be held personally responsible, either individually or jointly, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts of either commission or omission, of such member, employee, or agent except for acts of dishonesty or willful misconduct.

§ 1280.244 Patents, copyrights, inventions, and publication.

Any patents, copyrights, inventions, or publications developed through the use of funds remitted to the Board under the provisions of this subpart shall be the property of the United States Government as represented by the Board, and shall, along with any rents, royalties, residual payments, or other income from the rental, sales, leasing, franchising, or other uses of such patents, copyrights, inventions, or publications, inure to the benefit of the Board. Upon termination of this subpart, § 1280.240 shall apply to determine disposition of all such property.

§ 1280.245 Amendments.

Amendments to the subpart may be proposed, from time to time, by the Board or by any interested person affected by the provisions of the Act, including the Secretary.

§ 1280.246 Separability.

If any provision of this subpart is declared invalid or its applicability to any person or circumstances is held invalid, the validity of the remainder of this subpart of the applicability thereof to other persons or circumstances shall not be affected thereby.

Proposal II

§ 1280.201 Establishment and membership of the Board.

(c) Importers. Importers shall be represented by 25 members. At least six members shall represent importers of sheepmeat, and the remaining importer positions shall be proportionally allocated to importers of wool and sheep and sheep products.

§ 1280.202 Nominations.

(c) Importers. The Secretary shall appoint importers to seats established under § 1280.201(c), with nominations for representation of the importer unit made by organizations which represent importers of sheep or sheep products.

Executive Committee

§ 1280.217 Membership.

(3) Three members of the Executive Committee shall represent importers, and at least one importer member shall represent sheepmeat importers.

Proposal III

Expenses

§ 1280.223 Expenses.

(d) The use of assessments for country of origin-specific promotions or programs is prohibited.

Proposal IV

Expenses

§ 1280.223 Expenses.

(d) Funds generated under this subpart shall be used to promote a wide range of wool products in the United States including interior textile products, *e.g.*, carpet, rugs, and upholstery.

(e) Funds generated under this subpart shall be used to promote wool generically rather than to promote wool specifically grown in the United States.

Proposal V

Expenses

§ 1280.223 Expenses.

(d) Funds generated under this subpart shall be used for the promotion of "Fresh American Lamb."

Subpart B—[Reserved]

Subpart C—Procedures for Certification of Organizations and Nominations of Sheep Producers, Feeders, and Importers for Appointment to the National Sheep Promotion, Research, and Information Board

PART 1280—SHEEP PROMOTION, RESEARCH, AND INFORMATION

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§ 1280.400 General.

The Secretary shall determine which organizations are certified as eligible to nominate sheep producers and

alternates, sheep feeders, and importers of sheep and sheep products (excluding importers that import only raw wool) for appointment to the Board. The making and receiving of the nominations shall be conducted in accordance with this Subpart.

§ 1280.401 Definitions.

As used in this subpart:

(a) The term "Act" means the Sheep Promotion, Research, and Information Act of 1994, 7 U.S.C. 7101–7111, Public Law 103–407, 108 Statute 4210, enacted October 22, 1994, and any amendments thereto.

(b) The term "Board" means the National Sheep Promotion, Research, and Information Board.

(c) The term "carbonized wool" means wool that has been immersed in a bath, usually of mineral acids or acid salts, that destroys vegetable matter in the wool, but does not affect the wool fibers.

(d) The term "Department" means the U.S. Department of Agriculture.

(e) The term "feeder" means any person who feeds lambs until the lambs reach slaughter weight.

(f) The term "importer" means any person who imports sheep or sheep products into the United States.

(g) The term "Livestock and Seed Division" means the Livestock and Seed Division of the Department's Agricultural Marketing Service.

(h) The term "National feeder organization" means any organization of feeders that has been certified by the Secretary pursuant to the Act and this part as being eligible to submit nominations for membership on the Board.

(i) The term "person" means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity.

(j) The term "producer" means any person, other than a feeder, who owns or acquires ownership of sheep.

(k) The term "raw wool" means greasy wool, pulled wool, degreased wool, or carbonized wool.

(l) The term "Secretary" means the Secretary of Agriculture of the United States or any officer or employee of the Department to whom authority has been delegated, or to whom authority may be delegated to act in the Secretary's stead.

(m) The term "sheep" means ovine animals of any age, including lambs.

(n) The term "sheep products" means products produced in whole or in part from sheep, including wool and products containing wool fiber.

(o) The term "State" means each of the 50 States.

(p) The term "unit" means each State, group of States or class designation that is represented on the Board.

(q) The term "United States" means the 50 States and the District of Columbia.

(r) The term "wool" means the fiber from the fleece of a sheep.

(s) The term "wool products" means products produced, in whole or in part, from wool and products containing wool fiber.

§ 1280.402 Administration.

The Livestock and Seed Division shall have the responsibility of administering the provisions of this subpart.

§ 1280.403 Certification of eligibility.

(a) State Organizations. Requirements for Certification. The Secretary shall certify any State organization that the Secretary determines meets the criteria established under paragraphs (a) and (b) of this section to be eligible for certification to nominate producer members and alternate producer members to the Board. Certification for State producer organizations shall be based upon:

(1) The geographic territory covered by the active membership of the organization;

(2) The nature and size of the active membership of the organization, including the proportion of the total number of active producers represented by the organization;

(3) Evidence of stability and permanency of the organization;

(4) Sources from which the operating funds of the organization are derived;

(5) The functions of the organization; and

(6) The ability and willingness of the organization to further the aims and objectives of the Act.

(b) Primary Considerations. A primary consideration in determining the eligibility of a State producer organization under this paragraph shall be whether:

(1) The membership of the organization consists primarily of producers who own a substantial quantity of sheep; and

(2) An interest of the organization is in the production of sheep.

(c) Feeder and Importer Organizations. Requirements for certification.

The Secretary shall certify any national feeder organization and qualified importer organization that the Secretary determines meets the following criteria to be eligible for certification to nominate feeders and importers to the Board:

(1) The organization's active membership includes a significant number of feeders or importers in relation to the total membership of the organization;

(2) There is evidence of stability and permanency of the organization; and

(3) The organization has a primary and overriding interest in representing the feeder or importer segment of the sheep industry.

(d) The Secretary may also consider additional information that the Secretary deems relevant and appropriate. The Secretary's determination as to eligibility shall be final.

§ 1280.404 Application for certification.

Any organization that meets the eligibility criteria for certification specified in § 1280.403 is entitled to apply to the Secretary for such certification of eligibility to nominate sheep producers, feeders, or importers for appointment to the Board. The Secretary may require third party verification of information submitted by organizations, in determining their eligibility. To apply, such organization must submit a completed "Application for Certification of Organization" form. Copies may be obtained from the Livestock and Seed Division; AMS–USDA, Room 2606–S; P.O. Box 96456; Washington, D.C. 20090–6456. (Telephone: 202/720–1115)

§ 1280.405 Review of certification.

The Secretary may terminate or suspend certification or eligibility of any organization or association if it ceases to comply with the certification or eligibility criteria set forth in this subpart. The Secretary may require any information deemed necessary to ascertain whether the organization may remain certified or eligible to make nominations. The Secretary may require third party verification of information submitted by organizations in determining their eligibility to continue making nominations.

§ 1280.406 Notification of certification and the listing of certified organizations.

Organizations shall be notified in writing whether they are eligible to nominate sheep producers, feeders, or importers as members to the Board or not. A copy of the certification or eligibility determination shall be furnished to certified or eligible organizations. Copies shall also be available for inspection in the Livestock and Seed Division.

§ 1280.407 Solicitation of nominations for appointment to the Board.

In general, as soon as practicable after this subpart becomes operational, nominations for appointment to the initial Board shall be obtained from certified producer, feeder, and importer organizations by the Secretary.

(a) Initially Established Board.

(1) Producer and Alternate Nominations. The Secretary shall solicit from organizations certified under § 1280.403 (a) and (b) nominations for each producer or alternate member seat on the initially established Board to which a unit is entitled. If no such organization exists, the Secretary shall solicit nominations for appointments in such manner as the Secretary determines appropriate.

(2) Feeder and Importer Nominations. The Secretary shall solicit from organizations certified under § 1280.403(c) nominations for each feeder or importer member on the initially established Board to which a unit is entitled. If no such organization exists, the Secretary shall solicit nominations for appointment in such manner as the Secretary determines appropriate.

§ 1280.408 Nomination of members for appointment to the Board.

(1) In general. All nominations to the Board shall be made in the following manner:

(a) Producers. The Secretary shall appoint sheep producer and alternate members to represent units as specified under § 1280.409 (a) and (b) of this subpart, from nominations submitted by organizations certified under § 1280.403. A certified organization may only submit nominations for producer representatives and alternates if appropriate from the membership of the organization for the unit in which the organization operates. To be represented on the Board, each certified organization shall submit to the Secretary at least 1.5 nominations for each seat on the Board for which the unit is entitled to representation. If a unit is entitled to only one seat on the Board, the unit shall submit at least two nominations for the appointment. If a producer member and a producer alternate member are to be appointed to represent the unit, at least three nominations must be submitted for the two positions.

(b) Feeders. The Secretary shall appoint representatives of the feeder sheep industry to seats established under § 1280.409(c), from nominations submitted by qualified national organizations certified under § 1280.403 that represent the feeder sheep industry. To be represented on the Board, the industry shall provide at least 1.5 nominations for each appointment to the Board to which the feeder sheep industry is entitled.

(c) Importers. The Secretary shall appoint importers to seats established under § 1280.409(d) from nominations submitted by qualified organizations certified under § 1280.403 that represent importers of sheep and sheep products. The Secretary shall receive at least 1.5 nominations for each appointment to the Board to which importers are entitled.

(d) After the establishment of the initial Board, the Department shall announce when a vacancy does or will exist. Nominations for subsequent appointments shall be initiated by the Secretary with the Board securing the nominations from certified producer organizations. Feeder and importer nominees shall be submitted directly to the Secretary by certified feeder and importer organizations. Nominations shall be initiated not less than 6 months before the expiration of the terms of the members whose terms are expiring, in the manner as described in this section. In the case of vacancies caused by the death, removal, resignation, or disqualification of any member of the Board, the Secretary shall appoint a successor from the most recent list of nominations for the position or from nominations submitted by the Board for producers or from certified feeder or importer organizations for feeders and importers.

(e) Where there is more than one eligible organization representing producers in a State or unit, or representing feeders, or importers, they may caucus and jointly nominate a minimum of 1.5 qualified persons for each position representing that unit on the Board for which a producer member or producer alternate member is to be appointed. If they cannot agree on any such nominations, or if no caucus is held, each eligible organization may submit to the Secretary at least 1.5 nominations for each seat on the Board for which the unit is entitled to representation. If a unit is entitled to only one seat on the Board, the unit shall submit at least two nominations for the appointment to represent that unit.

(f) Nominations should be submitted in order of preference and, for the initial Board, in order of preference for staggered terms. If the Secretary rejects any nominations submitted and there are insufficient nominations submitted from which appointments can be made, the Secretary may request additional nominations under paragraph (a), (b), or (c) above.

(2) Official Nomination Forms. A "Nomination for Appointment to the National Sheep Promotion, Research, and Information Board" must be used to nominate producers, feeders, or importers for appointment to the Board. An "Advisory Committee Membership Background Information" form must be completed by each nominee listed on the "Nomination for Appointment to the National Sheep Promotion, Research, and Information Board" and must be attached to that form. Official nomination forms and additional information on nominations are available from the Marketing Programs Branch; Livestock and Seed Division; AMS–USDA, Room 2606–S; P.O. Box 96456; Washington, D.C. 20090–6456 (Telephone: 202/720–1115).

(3) The Secretary may reject any nomination submitted under subsection (1) of this section. If there are insufficient nominations from which to appoint members to the Board because the Secretary rejected the nominations submitted by a State or unit, the State or unit shall submit additional nominations, as provided in paragraph (1) of this section.

§ 1280.409 Initial Board membership.

(a) Base Membership. The number of producer members appointed to the Board from each State or unit shall be allocated as follows:

Alabama 1; Alaska 1; Arizona 1; Arkansas 1; California 5; Colorado 4; Connecticut 1; Delaware 1; Florida 1; Georgia 1; Hawaii 1; Idaho 2; Illinois 1; Indiana 1; Iowa 2; Kansas 1; Kentucky 1; Louisiana 1; Maine 1; Maryland 1; Massachusetts 1; Michigan 1; Minnesota 2; Mississippi 1; Missouri 1; Montana 5; Nebraska 1; Nevada 1; New Hampshire 1; New Jersey 1; New Mexico 2; New York 1; North Carolina 1; North Dakota 2; Ohio 1; Oklahoma 1; Oregon 2; Pennsylvania 1; Rhode Island 1; South Carolina 1; South Dakota 4; Tennessee 1; Texas 10; Utah 3; Vermont 1; Virginia 1; Washington 1; West Virginia 1; Wisconsin 1; and Wyoming 5.

(b) Alternate Members. A unit represented by only one producer member may have an alternate producer member appointed to ensure representation at meetings of the Board.

(c) Feeders. The feeder sheep industry shall be represented by ten members.

(d) Importers. Importers shall be represented by 25 members.

§ 1280.410 Length of appointment to the initial Board.

When the Secretary appoints the members to the initial Board, the Secretary shall also specify the term of office for each member. To the extent practicable, one-third of the members shall serve for 1-year, one-third shall serve for 2-years, and one-third shall serve for 3-years. No person may serve more than two consecutive 3-year terms, except that elected officers shall not be subject to the term limitation while they hold office.

§ 1280.411 Acceptance of appointment.

Producers, feeders, and importers nominated to the Board must confirm in writing their intent to serve if appointed, to disclose any relationship with any organization that operates a qualified State or regional program or has a contractual relationship with the Board and to withdraw from participation in deliberations, decision making, or voting on matters that concern the aforementioned disclosed relationships.

§ 1280.412 Verification.

The Secretary shall have the right to examine at any time the books, documents, papers, records, files, and facilities of nominating units as the Secretary deems necessary to verify the information submitted and to procure such other information as may be required to determine whether the unit is eligible to nominate sheep producers, feeders, or importers for appointment to the Board.

§ 1280.413 Confidential treatment of information.

All documents submitted in accordance with this subpart shall be kept confidential by all employees of the Department. Nothing in this section shall be deemed to prohibit the disclosure of such information so furnished or acquired as the Secretary deems relevant and then only in the issuance of general statements based upon the reports of a number of persons subject to the Order or statistical data collected therefrom, when such a statement or data does not identify the information furnished by any one person.

§ 1280.414 Paperwork Reduction Act assigned number.

The control number assigned to the information collection requirements in Part 1280 by OMB pursuant to the Paperwork Reduction Act of 1980 is OMB 0581–0093.

Subpart D—[Reserved]

Subpart E—[Reserved]

Dated: May 26, 1995.

Lon Hatamiya,

Administrator.

[FR Doc. 95–13485 Filed 6–1–95; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–191–AD]

Airworthiness Directives; Airbus Model A310 and A300–600 Series Airplanes Equipped with SOGERMA-SOCEA Pilot, Co-Pilot, and Third Occupant Seats

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain Airbus Model A310 and A300–600 series airplanes, that would have required repetitive inspections to detect distortion and/or cracks on the attachment brackets of the backrest recline control locks of certain seats. That proposed AD would have also required replacement of cracked or distorted brackets and their associated attachment fittings with new parts, which would have terminated the repetitive inspection requirements. That proposal was prompted by a report of failure of the bracket of the backrest recline control lock on a seat due to fatigue-related cracking. This action revises the proposed rule by requiring repetitive inspections following replacement of cracked or distorted brackets and by providing a new optional terminating modification for the repetitive inspections. The actions specified by this proposed AD are intended to prevent fatigue-related cracking and/or distortion, which could result in failure of the seat backrest attach fitting, and the subsequent uncommanded 50° angle recline of the pilot or co-pilot seat; this situation could lead to the temporary inability of the pilots to control the airplane.

DATES: Comments must be received by June 23, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–191–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from SOGERMA-SOCEA, Group Aerospatiale, Product Support Department, B.P. 109, 17303 Rochefort Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Stephen Slotte, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–191–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No.

94–NM–191–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain Airbus Model A310 and A300–600 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on December 16, 1994 (59 FR 64872). That NPRM would have required repetitive detailed visual inspections to detect distortion and/or cracks on the attachment brackets of the seat backrest recline control locks. That NPRM would have also required replacement of both of the brackets and their associated attachment fittings with new parts; this replacement would have constituted terminating action for the repetitive inspection requirements. That NPRM was prompted by a report of failure of the bracket of the backrest recline control lock on a seat due to fatigue-related cracking. Fatigue cracks and/or distortion of the bracket of the backrest recline control lock, if not detected and corrected in a timely manner, could result in failure of the seat backrest attach fittings, and the subsequent uncommanded 50° angle recline of the pilot or co-pilot seat; this situation could lead to the temporary inability of the pilots to control the airplane.

Due consideration has been given to the comments received in response to the NPRM:

Two commenters request that the FAA revise the proposed rule to include SOGERMA-SOCEA Service Bulletin 25–233 as an optional terminating modification for the repetitive inspection requirements.

The FAA concurs. Since the issuance of that NPRM, SOGERMA-SOCEA has issued Service Bulletin 25–233, Revision 1, dated January 9, 1995, which describes procedures for modification of the backing of the control locks fittings of the backrest recline. This modification involves replacing lock washers with a back-plate and a flat washer. Accomplishment of this modification would eliminate the need for the repetitive inspections. The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, approved this service bulletin and issued French airworthiness directive 94–188–162(B) R1 in order to assure the continued airworthiness of these airplanes in France.

The FAA examined the findings of the DGAC and reviewed the new service information. The FAA finds that replacement of the distorted or cracked brackets, as specified in the proposal, cannot preclude further cracking or distortion in the seat backrest attach fittings. Therefore, to ensure safety of the fleet, the FAA finds that inspections of the attachment brackets of the backrest recline controls locks of certain seats must be performed repetitively following replacement of distorted or cracked brackets, as specified in the French airworthiness directive. The FAA has revised paragraph (a) of this supplemental NPRM accordingly. In addition, the FAA has revised this supplemental NPRM to provide a new optional terminating modification for the repetitive inspections, as described in SOGERMA-SOCEA Service Bulletin 25–233 and specified in the French airworthiness directive.

Since these changes expand the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

The FAA estimates that 49 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will be supplied by the manufacturer at no cost to the operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $11,760, or $240 per airplane, per inspection cycle.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Should an operator elect to accomplish the optional terminating action that would be provided by this proposed AD action, the number of hours required to accomplish it would be approximately 1 per airplane, at an average labor charge of $60 per work hour. Required parts would be supplied by the manufacturer at no cost to the operators. Based on these figures, the total cost impact of the optional terminating action on U.S. operators would be $60 per airplane.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 94–NM–191–AD.

Applicability: Model A310 and A300–600 series airplanes equipped with SOGERMA-SOCEA pilot, co-pilot, and third occupant seats; as listed in SOGERMA-SOCEA Service Bulletin 25–229, dated November 26, 1993; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracks and/or distortion in the seat bracket of the backrest recline control lock, which could result in failure of the seat backrest attach fittings, the uncommanded 50° angle recline of the pilot or co-pilot seat, and, subsequently, lead to the temporary inability of the pilots to control the airplane, accomplish the following:

(a) Prior to the accumulation of 10,000 total flight hours or within 500 flight hours after the effective date of this AD, whichever occurs later, perform a detailed visual inspection to detect distortion and/or cracks on the attachment brackets of the backrest recline control locks of certain seats, in accordance with SOGERMA-SOCEA Service Bulletin 25–229, dated November 26, 1993.

(1) If no bracket is distorted or cracked, repeat the inspection thereafter at intervals not to exceed 5,000 flight hours.

(2) If any bracket is distorted or cracked, prior to further flight, accomplish paragraph (a)(2)(i) or (a)(2)(ii) of this AD.

(i) Replace both of the brackets and their associated attachment fittings with new parts, in accordance with SOGERMA-SOCEA Service Bulletin 25–229, dated November 26, 1993. Thereafter, repeat the inspection at intervals not to exceed 5,000 flight hours. Or,

(ii) Modify the backing of the control locks fittings of the backrest recline, in accordance with SOGERMA-SOCEA Service Bulletin 25–233, Revision 1, dated January 9, 1995. Accomplishment of this modification constitutes terminating action for the repetitive inspection requirements of this AD.

(b) Modification of the backing of the control locks fittings of the backrest recline, in accordance with SOGERMA-SOCEA Service Bulletin 25–233, Revision 1, dated January 9, 1995, constitutes terminating action for the repetitive inspection requirements of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on May 26, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–13504 Filed 6–1–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–NM–28–AD]

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Boeing Model 737 series airplanes. This proposal would require revising the FAA-approved Airplane Flight Manual (AFM) to provide the flightcrew with additional procedures for shutting down the auxiliary power unit (APU) when an APU fire is indicated. This proposal is prompted by reports indicating that a latent electrical failure exists in the fire extinguishing system for the APU; this failure could prevent the APU from shutting down and fire extinguishant from discharging into the APU compartment in the event of an APU fire. The actions specified by the proposed AD are intended to ensure that the flightcrew is provided with procedures for shutting down the APU in the event of an APU fire.

DATES: Comments must be received by July 31, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–28–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Stephen Bray, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2681; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–NM–28–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–28–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA received two reports indicating that a latent electrical failure exists in the fire extinguishing system of the auxiliary power unit (APU) on Boeing Model 737 series airplanes. The FAA-approved Airplane Flight Manual (AFM) for these airplanes currently contains procedures that require the flightcrew to pull and rotate the flight compartment fire handle when an APU fire is indicated. When the flightcrew takes such action, the APU shuts down and fire extinguishant discharges into the APU compartment. However, if a latent electrical failure exists in the fire extinguishing system of the APU, this failure could prevent the APU from shutting down and fire extinguishant from discharging when the flightcrew pulls and rotates the fire handle. A latent electrical failure in the fire extinguishing system of the APU, if not corrected, could result in the inability of the flightcrew to extinguish an APU fire.

In light of this information, the FAA finds that the procedures specified

currently in the FAA-approved AFM for flightcrew response to an APU fire on Model 737 series airplanes are not defined adequately. The FAA has determined that the FAA-approved AFM for these airplanes must be revised to provide procedures for the flightcrew to turn the APU switch to the "OFF" position, as well as pulling and rotating the fire handle, when an APU fire is indicated. Such action will ensure that the flightcrew is able to shut down the APU in the event of an APU fire.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require revising the Emergency Procedures and Limitations Sections of the FAA-approved AFM to provide the flightcrew with these additional procedures for shutting down the APU when an APU fire is indicated.

There are approximately 2,602 Model 737 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,072 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $64,320, or $60 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 95–NM–28–AD.

Applicability: All Model 737 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure that the flightcrew is provided with additional procedures necessary for shutting down the auxiliary power unit (APU) in the event of an APU fire, accomplish the following:

(a) Within 6 months after the effective date of this AD, revise the Emergency Procedures and Limitations Sections of the FAA-approved Airplane Flight Manual (AFM) to include the following procedures, which will ensure that the flightcrew is able to shut down the APU when an APU fire is indicated. This may be accomplished by inserting a copy of this AD in the AFM.

"APU FIRE WARNING

RECALL	
APU Fire Warning Switch	PULL AND ROTATE
APU Switch	OFF
REFERENCE	
Master Fire Warning	RESET"

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Operations Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on May 26, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–13503 Filed 6–1–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 71

[Airspace Docket No. 95–AWP–12]

Proposed Revocation of Class E Airspace Area; Merced, Castle Air Force Base (AFB), CA, and Amendment of Class E Airspace Areas; Merced Municipal/MacReady Field, CA

AGENCY: Federal Aviation Administration [FAA], DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revoke the Class E airspace area at Merced, Castle AFB, CA. This proposal action is necessary due to the closure of Castle AFB, CA. This action also proposes to amend the Class E2 and E5 airspace areas at Merced Municipal/MacReady Field, CA.

DATES: Comments must be received on or before June 30, 1995.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, System Management Branch, AWP–530, Docket No. 95–AWP–12, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California, 90009.

The official docket may be examined in the Office of the Assistant Chief Counsel, Western Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California, 90261.

An informal docket may also be examined during normal business hours at the Office of the Manager, System Management Branch, Air Traffic Division, at the above address.

FOR FURTHER INFORMATION CONTACT: Scott Speer, System Management Specialist, System Management Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 297–0010.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 95–AWP–12." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) by revoking the Class E3 airspace area at Merced, Castle AFB, CA. This notice also proposes to amend the Class E2 and E5 airspace areas at Merced Municipal/MacReady Field, CA. This proposed action is necessary due to the closure of Castle AFB, CA. Class E airspace designations are published in paragraph 6000 of FAA Order 7400.9B, dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 10034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 6003 Class E Airspace Areas Designated as an Extension to Class C Surface Area

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AWP CA E3 Merced, Castle AFB, CA [Removed]

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Paragraph 6002 Class E Airspace Areas Designated as a Surface Area for an Airport

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AWP CA E2 Merced Municipal/MacReady Field, CA [Revised]

Merced Municipal/MacReady Field, CA
(Lat. 37°17'05" N, long. 120°30'50" W)

Within a 4.3-mile radius of Merced Municipal/MacReady Field. This Class E airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

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Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth

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AWP CA E5 Merced, CA [Revised]

Merced Municipal/MacReady Field, CA
(Lat. 37°17'05" N, long. 120°30'50" W)
El Nido VOR/DME
[Lat. 37°13'10" N, long. 120°24'01" W)

That airspace extending upward from 700 feet above the surface within a 6.1-mile radius of Merced Municipal/MacReady Field and within 1.8 miles each said of the El Nido VOR/DME 141° and 321° radials extending from the Merced Municipal/MacReady Field 6.1-mile radius to 2.6 miles southeast of the El Nido VOR/DME. That airspace extending upward from the 1,200 feet above the surface bounded on the northeast and east by V–459, on the south by V–230, on the west by V–109, and on the north by V–244, excluding the portions within the Fresno, CA, the Stockton, CA, and the Modesto, CA, Class E airspace areas. That airspace extending upward from 7,500 feet MSL northeast of Merced Municipal/MacReady Field bounded on the east by V–165, on the southwest by V–459, and on the north by V–244. That airspace extending upward from 12,000 feet MSL east of Merced Municipal/MacReady Field bounded on the east by long. 119°30'04" W, on the south by the Fresno, CA, Class E airspace area, on the west by V–165, and on the north by V–244.

* * * * *

Issued in Los Angeles, California, on May 3, 1995.

Dennis T. Koehler,

Acting Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 95–13492 Filed 6–1–95; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 135

Public Meeting on Commuter Operations and General Certification and Operations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meetings.

SUMMARY: The FAA is issuing this notice to advise the public of two public

meetings on the notice of proposed rulemaking, Commuter Operations and General Certification and Operations, published in the **Federal Register** on March 29, 1995 [59 FR 16230]. The purpose of these meetings is to provide an opportunity for the public to comment on the commuter proposal.

DATES: The meetings will be held on June 14 and June 21, 1995, from 9 am to 5 pm.

ADDRESSES: Meeting locations are as follows:

June 14—McCormick Place—East Building, 2301 S. Lake Shore Drive, Chicago, Ill. 60616, phone: (312) 791–5000.

June 21—Hacienda Hotel, 3950 Las Vegas Blvd. S., Las Vegas, Nevada 89119, phone: (702) 739–8911.

Persons unable to attend the meetings may mail their comments in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Rules Docket (AGC–200), Docket No. 28154, 800 Independence Ave., NW, Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Requests to present a statement at the public meetings on the commuter NPRM or questions regarding the logistics of the meeting should be directed to Linda Williams, Federal Aviation Administration, Office of Rulemaking (ARM–109), 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–9685; fax (202) 267–5075.

Questions concerning the subject matter of the public meeting on the commuter NPRM should be directed to Katherine Hakala, Flight Standards Service (AFS–250), Federal Aviation Administration, 800 Independence Ave., Washington, DC 20591. Telephone: (202) 267–8137.

SUPPLEMENTARY INFORMATION:

Background

The FAA will conduct two public meetings on the recently published commuter proposed rule. Comments from the public at this meeting should be directed specifically to the proposed rule. The notice of proposed rulemaking was published in the **Federal Register** on March 29, 1995. If adopted, the proposed rule would require certain commuter operators that now conduct operations under part 135 to conduct those operations under part 121. The commuter operators that would be affected are those part 135 operators conducting scheduled passenger-carrying operations in airplanes that have a passenger-seating configuration of 10 to 30 seats and those conducting scheduled passenger-carrying operations in turbojets regardless of seating configuration. The proposed rule would revise the requirements concerning operating certificates and operations specifications. The rule would also propose certain management officials for all operators under parts 121 and 135.

The closing date for comments on the proposal is June 27, 1995. To give the public an additional opportunity to comment on the proposed rule, the FAA is planning these public meetings. Because this additional opportunity to comment on the proposed rule is provided, the FAA does not intend to extend the closing date for comments on the NPRM.

Persons interested in obtaining a copy of the proposed commuter rule should contact Linda Williams at the address or telephone number provided in **FOR FURTHER INFORMATION CONTACT.**

Participation at the Public Meeting on the Commuter NPRM

Requests from persons who wish to present oral statements at the public meeting on the communter NPRM should be received by the FAA no later than June 9, 1995. Such requests should be submitted to Linda Williams as listed in the section titled **FOR FURTHER INFORMATION CONTACT.** Requests received after June 9 will be scheduled if time is available during the meeting; however, the name of those individuals may not appear on the written agenda. The FAA will prepare an agenda of speakers that will be available at the meeting. To accommodate as many speakers as possible, the amount of time allocated to each speaker may be less than the amount of time requested.

Public Meeting Procedures

The following procedures are established to facilitate the public meeting on the commuter NPRM:

1. There will be no admission fee or other charge to attend or to participate in the public meeting. The meeting will be open to all persons who have requested in advance to present statements or who register on the day of the meeting (between 8:00 a.m. and 9:00 a.m.) subject to availability of space in the meeting room.

2. The public meeting may adjourn early if scheduled speakers complete their statements in less time than currently is scheduled for the meeting.

3. The FAA will try to accommodate all speakers; therefore, it may be necessary to limit the time available for an individual or group.

4. Participants should address their comments to the panel. No individual will be subject to cross-examination by any other participant.

5. Sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting.

6. Representatives of the FAA will conduct the public meeting. A panel of FAA personnel involved in this issue will be present.

7. The meeting will be recorded by a court reporter. A transcript of the meeting and any material accepted by the panel during the meeting will be included in the public docket (Docket No. 28154). Any person who is interested in purchasing a copy of the transcript should contact the court reporter directly. This information will be available at the meeting.

8. The FAA will review and consider all material presented by participants at the public meeting. Position papers or material presenting views or information related to the proposed NPRM may be accepted at the discretion of the presiding officer and subsequently placed in the public docket. The FAA requests that persons participating in the meeting provide 10 copies of all materials to be presented for distribution to the panel members; other copies may be provided to the audience at the discretion of the participant.

9. Statements made by members of the public meeting panel are intended to facilitate discussion of the issues or to clarify issues. Because the meeting concerning the commuter NPRM is being held during the comment period, final decisions concerning issues that the public may raise cannot be made at the meeting. FAA officials will, however, ask questions to clarify statements made by the public and to ensure a complete and accurate record. Comments made at this public meeting will be considered by the FAA when deliberations begin concerning whether to adopt any or all of the proposed rules.

10. The meeting is designed to solicit public views and more complete information on the proposed rule. Therefore, the meeting will be conducted in an informal and nonadversarial manner.

Issued in Washington, DC, on May 26, 1995.

Chris A. Cristie,

Director of Rulemaking.

[FR Doc. 95–13483 Filed 5–30–95; 11:57 am]

BILLING CODE 4910–13–M

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 410

RIN 0960–AD99

Overpayment Appeal and Waiver Rights

AGENCY: Social Security Administration.

ACTION: Proposed rules.

SUMMARY: In these proposed regulations we address the rights of individuals regarding overpayment and waiver determinations in the Social Security and Black Lung benefits programs by stating policy established as a result of a series of court decisions, beginning with the 1974 court decision in *Buffington, et al.* v. *Weinberger* and including the Supreme Court decision in *Califano* v. *Yamasaki*. The effect of these proposed regulations is to codify these additional rights for overpaid individuals established in these court decisions.

DATES: Comments must be submitted on or before August 1, 1995.

ADDRESSES: Submit your comments as follows: (1) Telefax to (410) 966–2830, (2) mail them to the Social Security Administration, P.O. Box 1585, Baltimore, MD 21235, (3) send by E-mail to "regulations@ssa.gov", or (4) deliver them to 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, between 8:00 a.m. and 4:30 p.m. on regular business days. You may inspect the comments received also during these same hours by making arrangements with the contact person shown below.

The electronic file of this document is available on the Federal Bulletin Board (FBB) at 9 a.m. on the date of publication in the **Federal Register**. To download the file, modem dial (202) 512–1387. The FBB instructions will explain how to download the file and the fee. This file is in WordPerfect and will remain on the FBB during the comment period.

FOR FURTHER INFORMATION CONTACT: Lois Berg, Legal Assistant, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1713 for information about these rules.

SUPPLEMENTARY INFORMATION

Background

Section 204(b) of the Social Security Act (the Act) provides that the Commissioner of Social Security (the Commissioner) shall not recover an Old-Age, Survivors, and Disability Insurance (OASDI) overpayment from any individual who is without fault in causing the overpayment if recovery from that individual would "defeat the purpose" of title II of the Act or be "against equity and good conscience." Sections 205(a) and 1102(a) of the Act authorize the issuance of regulations regarding our overpayment recovery policies.

Sections 411(b) and 426(a) of the Black Lung Benefits Act (30 U.S.C. 921(b) and 936(a)), authorize the Commissioner to issue regulations to administer the provisions of the Black Lung benefit program. The provisions for recovery of an overpayment from an individual under the Black Lung benefit program (Part B) regulations generally parallel the regulations of the OASDI programs.

On October 22, 1974, the U.S. District Court for the Western District of Washington in *Buffington, et al.* v. *Weinberger*, No. 734–73C2, stopped the Social Security Administration (SSA) from recovering overpaid Social Security benefits without first giving each member of the plaintiff class adequate written notice of the overpayment determination and the right to a pre-recoupment hearing.

The court ordered that the written notice must include:

- A statement of the alleged overpayment, an explanation of the basis for the overpayment and SSA's proposed action to recover the overpayment;
- A statement of the individual's right to a pre-recoupment hearing;
- Instructions and forms for requesting a pre-recoupment hearing;
- An explanation that if the individual did not request a pre-recoupment hearing within 30 days of the date of mailing of the overpayment notice, it would be presumed that the individual waived his/her right to the hearing and recovery of the alleged overpayment would begin;
- A statement of any other administrative relief available (i.e., reconsideration of the fact and/or amount of overpayment and waiver of recovery of the overpayment); and
- A statement that an SSA office would help the individual complete and submit forms for appeal or waiver requests.

The court also ordered the following:

1. SSA had to restore all benefits withheld from the named plaintiffs pending an opportunity for a pre-recoupment hearing.

2. Each individual had to be given the opportunity to examine his/her claims file at least 5 days prior to the date of the pre-recoupment hearing.

3. The pre-recoupment hearing had to be conducted by an SSA employee who had no prior knowledge of the events leading to the overpayment determination and the decision to recover the overpayment.

4. At the hearing, the individual had to be given the opportunity to:

- Appear personally, testify, and cross-examine any witnesses;
- Be represented by an attorney or other representative; and
- Submit documents for consideration at the hearing;

The court did not require that a transcript be made of the hearing.

5. After the hearing, SSA had to issue a written decision to the individual (and his/her representative, if any) specifying the findings of fact and conclusions in support of the decision and advising of the individual's right to appeal the decision.

In accordance with the court order, SSA began to issue overpayment notices containing all of the aforementioned information and to offer pre-recoupment hearings to all class members.

On June 20, 1979, the Supreme Court held in *Califano* v. *Yamasaki*, 442 U.S. 682 (1979), that individuals who file a written request for waiver are entitled to the opportunity for a pre-recoupment oral hearing, but those who request only reconsideration are not so entitled. Thereafter, SSA applied revised overpayment notice and pre-recoupment hearing procedures to all individuals determined to be overpaid under the title II or Black Lung benefit programs. On July 31, 1981, the *Buffington* court required SSA to schedule pre-recoupment hearings automatically for individuals whose request for waiver of overpayment recovery could not be approved after initial paper review. On February 10, 1983, the *Buffington* court approved procedures developed by SSA in response to the 1981 decree whereby pre-recoupment hearings would be scheduled automatically but ordered SSA to schedule the hearings through a written notice to the claimant. The scheduling letter had to contain the date, time and place of the hearing; the procedure for reviewing the claims file before the hearing; the procedure for seeking a change in the scheduled date, time, and/or place; and all other information necessary to fully inform the claimant about the pre-recoupment hearing. SSA began to schedule automatically pre-recoupment hearings in writing in April 1983. The court also retained jurisdiction over the matter and prohibited any changes in the overpayment procedures it had approved without prior notification of plaintiffs' counsel and prior approval from the court.

In its order of October 19, 1987, the *Buffington* court approved SSA's plan to transfer waiver decisionmaking authority for Retirement and Survivors Insurance overpayments from the processing centers to the field offices. SSA implemented this change in July 1988.

On April 13, 1994, the *Buffington* court approved a stipulation modifying the court's injunction in this matter. Under the stipulation, plaintiffs agree to withdraw counsel notification and court approval requirements for future changes to SSA overpayment policies. In return, SSA agreed to promulgate a Social Security Ruling (SSR) and then proposed regulations embodying the overpayment requirements set forth in *Yamasaki*, above. SSA published the SSR on July 11, 1994 (59 FR 35378), and is publishing these proposed regulations to fulfill its commitments under the stipulation.

Current Regulations

Our current regulations do not address the adequate notice, face-to-face oral hearing, or appeal step issues noted above. However, SSA has been complying with the court orders described above through program instructions approved by the *Buffington* court.

Regulations Changes

We are restating in regulations the policies enunciated in the court decisions and established in our program instructions. The proposed regulations provide when an overpayment is discovered, we notify the individual immediately. The notice includes:

- The overpayment amount and how and when it occurred;
- A request for full, immediate refund, unless the overpayment can be withheld from the next month's benefit;
- The proposed adjustment of benefits if refund is not received within 30 days after the date of the notice and adjustment of benefits is available;
- An explanation of the availability of a different rate of withholding when full withholding is proposed, installment payments when refund is requested and adjustment is not currently available, and/or cross-program recovery when refund is requested and the individual is receiving another type of payment from SSA (language about cross-program recovery is not included in notices sent to individuals in jurisdictions where this recovery option is not available; currently, cross-program recovery is not available to residents of New York and Pennsylvania);
- An explanation of the right to request waiver of adjustment or recovery and the automatic scheduling of a file review and pre-recoupment hearing (commonly referred to as a personal conference) if a request for waiver cannot be approved after initial paper review;
- An explanation of the right to request reconsideration of the fact and/or amount of the overpayment determination;
- Instructions about the availability of forms for requesting reconsideration and waiver;
- An explanation that if the individual does not request waiver or reconsideration within 30 days of the date of the overpayment notice, adjustment or recovery of the overpayment will begin;
- A statement that an SSA office will help the individual complete and submit forms for appeal or waiver requests; and
- A statement that the individual should notify SSA promptly if reconsideration, waiver, a lesser rate of withholding, repayment by installments or cross-program adjustment is wanted.

Form SSA–3105 (Important Information About Your Appeal and Waiver Rights) is included with each overpayment notice. The SSA–3105 further explains the pre-recoupment review process and contains a tear-off form which the individual may complete and return to SSA if he/she wants reconsideration and/or waiver.

The proposed regulations also provide that to ensure meaningful opportunity to contest the correctness of an overpayment determination and/or establish entitlement to waiver, the date on which full refund is due and, if appropriate, the date on which adjustment will begin must be at least 30 days after the date of the overpayment notice. If the individual responds within 30 days after the date of the overpayment notice, SSA must take action to ensure that benefit payments are not interrupted. Any time waiver is requested, SSA stops adjustment or recovery.

When waiver is requested, the individual gives SSA information (usually on Form SSA–632–BK (Request for Waiver of Overpayment Recovery or Change in Repayment Rate)) to support his/her contention that he/she is without fault in causing the overpayment and that recovery would either cause financial hardship or be inequitable. That information, along with supporting documentation, is reviewed to determine if waiver can be approved.

If waiver cannot be approved after this review, the individual is notified in writing and given the dates, times and place of the file review and personal conference; the procedure for reviewing the claims file prior to the personal conference; the procedure for seeking a change in the scheduled dates, times, and/or place; and all other information necessary to fully inform the individual about the personal conference. The file review is always scheduled at least 5 days before the personal conference.

At the file review, the individual and the individual's representative have the right to review the claims file and applicable law and regulations with the decisionmaker or another SSA representative who is prepared to answer questions. We will provide copies of material related to the overpayment and/or waiver from the claims file or pertinent sections of the law or regulations that are requested by the individual or the individual's representative.

Although the individual may be represented at the personal conference, he/she must also be present. This requirement is consistent with the Supreme Court's reasoning in *Califano v. Yamasaki*. In Yamasaki, the Court concluded that written review could not satisfy SSA's obligation to make an accurate waiver determination, because an evaluation of fault requires an evaluation of all pertinent circumstances, such as the recipient's intelligence, and physical and mental condition. The court said, "We do not see how these can be evaluated absent personal contact between the recipient and the person who decides his case." Id. at 698.

SSA will provide suitable private space for the personal conference. However, if the individual cannot come to the conference site for a legitimate reason (e.g., he/she is incapacitated), SSA personnel will travel as far as necessary to conduct the conference.

At the personal conference, the individual is given the opportunity to:

- Appear personally, testify, cross-examine any witnesses, and make arguments;
- Be represented by an attorney or other representative, although the individual must be present at the conference; and
- Submit documents for consideration by the decisionmaker. At the personal conference, the decisionmaker:
- Tells the individual that the decisionmaker was not previously involved in the issue under review, that the waiver decision is solely the decisionmaker's, and that the waiver decision is based only on the evidence or information presented or reviewed at the conference;
- Ascertains the role and identity of everyone present;
- Indicates whether or not the individual reviewed the claims file;
- Explains the provisions of law and regulations applicable to the issue;
- Briefly summarizes the evidence already in file which will be considered;
- Ascertains from the individual whether the information presented is correct and whether he/she fully understands it;
- Allows the individual and the individual's representative, if any, to present the individual's case;
- Secures updated financial information and verification, if necessary;
- Allows each witness to present information and allows the individual and the individual's representative to question each witness;
- Ascertains whether there is any further evidence to be presented;
- Reminds the individual of any evidence promised by the individual which has not been presented;
- Lets the individual and the individual's representative, if any, present any proposed summary or closing statement;
- Explains that a decision will be made and the individual will be notified in writing; and
- Explains further appeal rights in the event the decision is adverse to the individual.

SSA issues a written decision to the individual (and his/her representative, if any) specifying the findings of fact and conclusions in support of the decision to approve or deny waiver and advising of the individual's right to appeal the decision. If waiver is denied, adjustment or recovery of the overpayment begins even if the individual appeals.

If it appears that the waiver cannot be approved, and the individual declines a personal conference or fails to appear for a second scheduled personal conference, a decision regarding the waiver will be made based on the written evidence of record. Reconsideration is then the next step in the appeals process.

The proposed regulations also state that although a personal conference decision on the waiver issue is an initial determination, when an individual is appealing an initial determination of waiver denial based on a personal conference, the first appeal step is an Administrative Law Judge (ALJ) hearing, bypassing the reconsideration which generally follows initial determinations. We provide that the appeal goes directly to an ALJ hearing in this situation because a reconsideration is a review of the written evidence and would be less comprehensive in scope than the preceding personal conference. However, where an individual is appealing an initial determination of waiver denial based solely on a review of the written evidence rather than a personal conference (i.e., the individual chose to forego the personal conference) the first appeal step is a reconsideration.

Additionally, an individual may concurrently appeal the substantive determination that the overpayment occurred and request waiver of recovery of the overpayment. We provide that when the substantive determination is upheld on reconsideration and the waiver is denied, even if it is denied solely on the basis of a review of the written evidence, the next step in the appeal process for both determinations is an ALJ hearing.

In addition to revising the regulations to codify the policy established in these court decisions, we are also removing references to title XVIII from §§ 404.502a and 404.506. These references address Medicare overpayment situations, which fall within the purview of the Health Care Financing Administration (HCFA). Prior to becoming a separate agency, SSA was responsible for both the social security cash benefit program and the Medicare program. Consequently, HCFA has historically relied on many of SSA's regulations that addressed similar situations under titles II and XVIII of the Act. The recoupment of overpayments has been one of these situations. However, as differences in the two programs have increased, the applicability of SSA regulations to Medicare overpayment situations has diminished. As a result, HCFA is in the process of promulgating its own regulations with regard to Medicare overpayments. Therefore, we are removing the references to title XVIII from the regulations text of these proposed regulations. However, until HCFA's regulations are published as final, the to-be-superseded SSA procedures will continue to apply to title XVIII (Medicare) overpayments.

Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these regulations do not meet the criteria for a significant regulatory action under Executive Order 12866. Thus, they were not subject to OMB review.

Paperwork Reduction Act of 1980

These proposed regulations impose no new reporting or recordkeeping requirements which are subject to review by OMB.

Regulatory Flexibility Act

We certify that these proposed regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities because they affect only individuals. Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance: Program Nos. 93.802, Social Security—Disability insurance; 93.803, Social Security—Retirement Insurance; 93.805, Social Security—Survivors Insurance; and 93.806, Special Benefits for Disabled Coal Miners)

List of Subjects

20 CFR Part 404

Administrative practice and procedure; Death benefits; Old-Age, Survivors, and Disability insurance; Reporting and recordkeeping requirements.

20 CFR Part 410

Administrative practice and procedure; Black lung benefits; Death benefits; Disability benefits; Miners; Reporting and recordkeeping requirements.

Dated: May 23, 1995.

Approved:

Shirley Chater,

Commissioner of Social Security.

For the reasons set out in the preamble, Parts 404 and 410 of Chapter III of Title 20 of the Code of Federal Regulations are proposed to be amended as follows.

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart F—[Amended]

1. The authority citation for subpart F of part 404 continues to read as follows:

Authority: Secs. 204(a)–(d), 205(a), and 1102 of the Social Security Act; 31 U.S.C. 3720A; 42 U.S.C. 404(a)–(d), 405(a), and 1302.

2. Section 404.502a is revised to read as follows:

§ 404.502a Notice of right to waiver consideration.

Whenever an initial determination is made that more than the correct amount of payment has been made, and we seek

adjustment or recovery of the overpayment, the individual from whom we are seeking adjustment or recovery is immediately notified. The notice includes:

(a) The overpayment amount and how and when it occurred;

(b) A request for full, immediate refund, unless the overpayment can be withheld from the next month's benefit;

(c) The proposed adjustment of benefits if refund is not received within 30 days after the date of the notice and adjustment of benefits is available;

(d) An explanation of the availability of a different rate of withholding when full withholding is proposed, installment payments when refund is requested and adjustment is not currently available, and/or cross-program recovery when refund is requested and the individual is receiving another type of payment from SSA (language about cross-program recovery is not included in notices sent to individuals in jurisdictions where this recovery option is not available);

(e) An explanation of the right to request waiver of adjustment or recovery and the automatic scheduling of a file review and pre-recoupment hearing (commonly referred to as a personal conference) if a request for waiver cannot be approved after initial paper review;

(f) An explanation of the right to request reconsideration of the fact and/or amount of the overpayment determination;

(g) Instructions about the availability of forms for requesting reconsideration and waiver;

(h) An explanation that if the individual does not request waiver or reconsideration within 30 days of the date of the overpayment notice, adjustment or recovery of the overpayment will begin;

(i) A statement that an SSA office will help the individual complete and submit forms for appeal or waiver requests; and

(j) A statement that the individual receiving the notice should notify SSA promptly if reconsideration, waiver, a lesser rate of withholding, repayment by installments or cross-program adjustment is wanted.

3. Section 404.506 is revised to read as follows:

§ 404.506 When waiver may be applied and how to process the request.

(a) Section 204(b) of the Act provides that there shall be no adjustment or recovery in any case where an overpayment under title II has been made to an individual who is without fault if adjustment or recovery would either defeat the purpose of title II of the Act, or be against equity and good conscience.

(b) If an individual requests waiver of adjustment or recovery of a title II overpayment within 30 days after receiving a notice of overpayment that contains the information in § 404.502a, no adjustment or recovery action will be taken until after the initial waiver determination is made. If the individual requests waiver more than 30 days after receiving the notice of overpayment, SSA will stop any adjustment or recovery actions until after the initial waiver determination is made.

(c) When waiver is requested, the individual gives SSA information to support his/her contention that he/she is without fault in causing the overpayment (see § 404.507) and that adjustment or recovery would either defeat the purpose of title II of the Act (see § 404.508) or be against equity and good conscience (see § 404.509). That information, along with supporting documentation, is reviewed to determine if waiver can be approved. If waiver cannot be approved after this review, the individual is notified in writing and given the dates, times and place of the file review and personal conference; the procedure for reviewing the claims file prior to the personal conference; the procedure for seeking a change in the scheduled dates, times, and/or place; and all other information necessary to fully inform the individual about the personal conference. The file review is always scheduled at least 5 days before the personal conference.

(d) At the file review, the individual and the individual's representative have the right to review the claims file and applicable law and regulations with the decisionmaker or another SSA representative who is prepared to answer questions. We will provide copies of material related to the overpayment and/or waiver from the claims file or pertinent sections of the law or regulations that are requested by the individual or the individual's representative.

(e) At the personal conference, the individual is given the opportunity to:

(1) Appear personally, testify, cross-examine any witnesses, and make arguments;

(2) Be represented by an attorney or other representative (see § 404.1700), although the individual must be present at the conference; and

(3) Submit documents for consideration by the decisionmaker.

(f) At the personal conference, the decisionmaker:

(1) Tells the individual that the decisionmaker was not previously involved in the issue under review, that the waiver decision is solely the decisionmaker's, and that the waiver decision is based only on the evidence or information presented or reviewed at the conference;

(2) Ascertains the role and identity of everyone present;

(3) Indicates whether or not the individual reviewed the claims file;

(4) Explains the provisions of law and regulations applicable to the issue;

(5) Briefly summarizes the evidence already in file which will be considered;

(6) Ascertains from the individual whether the information presented is correct and whether he/she fully understands it;

(7) Allows the individual and the individual's representative, if any, to present the individual's case;

(8) Secures updated financial information and verification, if necessary;

(9) Allows each witness to present information and allows the individual and the individual's representative to question each witness;

(10) Ascertains whether there is any further evidence to be presented;

(11) Reminds the individual of any evidence promised by the individual which has not been presented;

(12) Lets the individual and the individual's representative, if any, present any proposed summary or closing statement;

(13) Explains that a decision will be made and the individual will be notified in writing; and

(14) Explains repayment options and further appeal rights in the event the decision is adverse to the individual.

(g) SSA issues a written decision to the individual (and his/her representative, if any) specifying the findings of fact and conclusions in support of the decision to approve or deny waiver and advising of the individual's right to appeal the decision. If waiver is denied, adjustment or recovery of the overpayment begins even if the individual appeals.

(h) If it appears that the waiver cannot be approved, and the individual declines a personal conference or fails to appear for a second scheduled personal conference, a decision regarding the waiver will be made based on the written evidence of record. Reconsideration is then the next step in the appeals process (but see § 404.930(a)(7)).

Subpart J—[Amended]

4. The authority citation for subpart J of part 404 continues to read as follows:

Authority: Secs. 201(j), 205(a), (b), and (d)–(h), 221(d), and 1102 of the Social Security Act; 31 U.S.C. 3720A; 42 U.S.C. 401(j), 405(a), (b), and (d)–(h), 421(d), and 1302; sec. 5 of Pub. L. 97–455, 96 Stat. 2500; sec. 6 of Pub. L. 98–460, 98 Stat. 1802.

5. Section 404.907 is revised to read as follows:

§ 404.907 Reconsideration-general.

If you are dissatisfied with the initial determination, reconsideration is the first step in the administrative review process that we provide, except that we provide the opportunity for a hearing before an administrative law judge as the first step for those situations described in § 404.930(a)(6) and (a)(7), where you appeal an initial determination denying your request for waiver of adjustment or recovery of an overpayment (see § 404.506). If you are dissatisfied with our reconsidered determination, you may request a hearing before an administrative law judge.

6. Section 404.930 is amended by removing the word "or" at the end of (a)(4) and the period at the end of (a)(5), and adding a semicolon in its place and adding (a)(6) and (a)(7) as follows:

§ 404.930 Availability of a hearing before an administrative law judge.

(a) * * *

(6) An initial determination denying waiver of adjustment or recovery of an overpayment based on a personal conference (see § 404.506); or

(7) An initial determination denying waiver of adjustment or recovery of an overpayment based on a review of the written evidence of record (see § 404.506), and the determination was made concurrent with, or subsequent to, our reconsideration determination regarding the underlying overpayment but before an ALJ holds a hearing.

* * * * *

PART 410—FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969, TITLE IV—BLACK LUNG BENEFITS (1969–)

Subpart E—[Amended]

7. The authority citation for subpart E of part 410 is revised to read as follows:

Authority: Secs. 411(a), 412(a) and (b), 413(b), 426(a), and 508 of the Federal Mine Health and Safety Act of 1969, as amended; 30 U.S.C. 921(a), 922(a) and (b), 923(b), 936(a), and 957; sec 410.565 also issued under sec. 3, 80 Stat. 309, 31 U.S.C. 952, unless otherwise noted.

8. Section 410.561 is revised to read as follows:

§ 410.561 Notice of right to waiver consideration.

When we seek adjustment or recovery of an overpayment, the individual from whom we are seeking adjustment or recovery is immediately notified. The notice includes:

(a) The overpayment amount and how and when it occurred;

(b) A request for full, immediate refund, unless the overpayment can be withheld from the next month's benefit;

(c) The proposed adjustment of benefits if refund is not received within 30 days after the date of the notice and adjustment of benefits is available;

(d) An explanation of the availability of a different rate of withholding when full withholding is proposed, installment payments when refund is requested and adjustment is not currently available, and/or cross-program recovery when refund is requested and the individual is receiving another type of payment from SSA (language about cross-program recovery is not included in notices sent to individuals in jurisdictions where this recovery option is not available);

(e) An explanation of the right to request waiver of adjustment or recovery and the automatic scheduling of a file review and pre-recoupment hearing (commonly referred to as a personal conference) if a request for waiver cannot be approved after initial paper review;

(f) An explanation of the right to request reconsideration of the fact and/or amount of the overpayment determination;

(g) Instructions about the availability of forms for requesting reconsideration and waiver;

(h) An explanation that if the individual does not request waiver or reconsideration within 30 days of the date of the overpayment notice, adjustment or recovery of the overpayment will begin;

(i) A statement that an SSA office will help the individual complete and submit forms for appeal or waiver requests; and

(j) A statement that the individual receiving the notice should notify SSA promptly if reconsideration, waiver, a lesser rate of withholding, repayment by installments or cross-program adjustment is wanted.

9. Section 410.561a is revised to read as follows:

§ 410.561a When waiver may be applied and how to process the request.

(a) There shall be no adjustment or recovery in any case where an overpayment under part B of title IV of the Act has been made to an individual who is without fault if adjustment or recovery would either defeat the purpose of title IV of the Act, or be against equity and good conscience.

(b) If an individual requests waiver of adjustment or recovery of an overpayment made under part B of title IV within 30 days after receiving a notice of overpayment that contains the information in § 410.561, no adjustment or recovery action will be taken until after the initial waiver determination is made. If the individual requests waiver more than 30 days after receiving the notice of overpayment, SSA will stop any adjustment or recovery actions until after the initial waiver determination is made.

(c) When waiver is requested, the individual gives SSA information to support his/her contention that he/she is without fault in causing the overpayment (see § 410.561b), and that adjustment or recovery would either defeat the purposes of this subpart (see § 410.561c) or be against equity and good conscience (see § 410.561d). That information, along with supporting documentation, is reviewed to determine if waiver can be approved. If waiver cannot be approved after this review, the individual is notified in writing and given the dates, times and place of the file review and personal conference; the procedure for reviewing the claims file prior to the personal conference; the procedure for seeking a change in the scheduled dates, times, and/or place; and all other information necessary to fully inform the individual about the personal conference. The file review is always scheduled at least 5 days before the personal conference.

(d) At the file review, the individual and the individual's representative have the right to review the claims file and applicable law and regulations with the decisionmaker or another SSA representative who is prepared to answer questions. We will provide copies of material related to the overpayment and/or waiver from the claims file or pertinent sections of the law or regulations that are requested by the individual or the individual's representative.

(e) At the personal conference, the individual is given the opportunity to:

(1) Appear personally, testify, cross-examine any witnesses, and make arguments;

(2) Be represented by an attorney or other representative (see § 410.684), although the individual must be present at the conference; and

(3) Submit documents for consideration by the decisionmaker.

(f) At the personal conference, the decisionmaker:

(1) Tells the individual that the decisionmaker was not previously involved in the issue under review, that the waiver decision is solely the decisionmaker's, and that the waiver decision is based only on the evidence or information presented or reviewed at the conference;

(2) Ascertains the role and identity of everyone present;

(3) Indicates whether or not the individual reviewed the claims file;

(4) Explains the provisions of law and regulations applicable to the issue;

(5) Briefly summarizes the evidence already in file which will be considered;

(6) Ascertains from the individual whether the information presented is correct and whether he/she fully understands it;

(7) Allows the individual and the individual's representative, if any, to present the individual's case;

(8) Secures updated financial information and verification, if necessary;

(9) Allows each witness to present information and allows the individual and the individual's representative to question each witness;

(10) Ascertains whether there is any further evidence to be presented;

(11) Reminds the individual of any evidence promised by the individual which has not been presented;

(12) Lets the individual and the individual's representative, if any, present any proposed summary or closing statement;

(13) Explains that a decision will be made and the individual will be notified in writing; and

(14) Explains repayment options and further appeal rights in the event the decision is adverse to the individual.

(g) SSA issues a written decision to the individual (and his/her representative, if any) specifying the findings of fact and conclusions in support of the decision to approve or deny waiver and advising of the individual's right to appeal the decision. If waiver is denied, adjustment or recovery of the overpayment begins even if the individual appeals.

(h) If it appears that the waiver cannot be approved, and the individual declines a personal conference or fails to appear for a second scheduled personal conference, a decision regarding the waiver will be made based on the written evidence of record. Reconsideration is then the next step in the appeals process (but see § 410.630(c)).

Subpart F—[Amended]

10. The authority citation for subpart F of part 410 is revised to read as follows:

Authority: Secs. 413(b), 426(a), 507, and 508 of the Federal Mine Health and Safety Act of 1969, as amended; 30 U.S.C. 923(b), 936(a), 956, and 957.

11. Section 410.623 is revised to read as follows:

§ 410.623 Reconsideration; right to reconsideration.

(a) We shall reconsider an initial determination if a written request for reconsideration is filed, as provided in § 410.624, by or for the party to the initial determination (see § 410.610). We shall also reconsider an initial determination if a written request for reconsideration is filed, as provided in § 410.624, by an individual as a widow, child, parent, brother, sister, or representative of a decedent's estate, who makes a showing in writing that his or her rights with respect to benefits may be prejudiced by such determination.

(b) Reconsideration is the first step in the administrative review process that we provide for an individual dissatisfied with the initial determination, except that we provide the opportunity for a hearing before an administrative law judge as the first step for those situations described in § 410.630 (b) and (c), where an individual appeals an initial determination denying waiver of adjustment or recovery of an overpayment (see § 410.561a).

12. Section 410.630 is revised to read as follows:

§ 410.630 Hearing; right to hearing.

An individual referred to in §§ 410.632 or 410.633 who has filed a written request for a hearing under the provisions in § 410.631 has a right to a hearing if:

(a) An initial determination and reconsideration of the determination have been made by the Social Security Administration concerning a matter designated in § 410.610;

(b) An initial determination denying waiver of adjustment of recovery of an overpayment based on a personal conference has been made by the Social Security Administration (see § 410.561a); or

(c) An initial determination denying waiver of adjustment or recovery of an overpayment based on a review of the written evidence of record has been made by the Social Security Administration (see § 410.561a) and the determination was made concurrent with, or subsequent to, our reconsideration determination regarding the underlying overpayment but before an ALJ holds a hearing.

[FR Doc. 95–13453 Filed 6–1–95; 8:45 am]

BILLING CODE 4190–29–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NC59–2–6942b; NC55–1–6497b; NC54–1–6496b; FRL–5207–4]

Approval and Promulgation of Air Quality Implementation Plans; North Carolina; Basic Motor Vehicle Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the state implementation plan (SIP) revisions submitted on May 19, 1994, January 17, 1992, September 24, 1992, and August 5, 1994, by the State of North Carolina, through the North Carolina Department of Environmental Management. This revision modifies the implementation of a basic motor vehicle inspection and maintenance (I/M) program in the areas of Charlotte, Raleigh/Durham, and Winston-Salem, North Carolina. In the final rules section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: To be considered, comments must be received by July 3, 1995.

ADDRESSES: Written comments on this action should be addressed to: Benjamin Franco at the EPA Regional office listed below.

Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air and Radiation Docket and Information Center (Air Docket), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Environmental Protection Agency, Region 4, Air Programs Branch, 345 Courtland Street, NE, Atlanta, Georgia 30365.

Department of Environment, Health, and Natural Resources, P.O. Box 29535, Raleigh, North Carolina, 27626–0535.

FURTHER INFORMATION CONTACT: Benjamin Franco, Mobile Source Planning Unit, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Environmental Protection Agency, Region 4, 345 Courtland Street, NE, Atlanta, Georgia 30365. The telephone number is 404/347–3555, extension 4211.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: May 3, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 95–13463 Filed 6–1–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[MI42–01–7026; FRL 5213–4]

Determination of Attainment of Ozone Standard by Grand Rapids and Muskegon, MI; Determination Regarding Applicability of Certain Reasonable Further Progress and Attainment Demonstration Requirements

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: The USEPA proposes to determine that the Grand Rapids (Kent and Ottawa Counties) and Muskegon (Muskegon County) ozone nonattainment areas have attained the National Ambient Air Quality Standard (NAAQS) for ozone and that certain reasonable further progress and attainment demonstration requirements, along with certain related requirements, of part D of title I of the Clean Air Act are not applicable for so long as the area continues to attain the ozone standard. In the final rules section of this **Federal Register**, USEPA is making these determinations without prior proposal. A detailed rationale for the action is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If USEPA receives adverse comments, USEPA will withdraw the direct final rule and address the comments in a subsequent final rule based on this proposed rule. USEPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this action must be received by July 3, 1995.

ADDRESSES: Written comments should be mailed to: Carlton T. Nash, Chief, Regulation Development Section, Air Toxics and Radiation branch (AT–18J), United States Environmental Protection Agency, 77 West Jackson boulevard, Chicago, Illinois 60604.

A copy of the air quality data and EPA's analysis are available for inspection at the following address: Regulation Development Section, Air Toxics and Radiation Branch (AT–18J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. (It is recommended that you telephone Madelin Rucker at (312) 886–0661 before visiting the Region 5 office.)

FOR FURTHER INFORMATION CONTACT: Madelin Rucker, Telephone: (312) 886–0661.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule published in the Final Rules section of this **Federal Register**.

Dated: May 18, 1995.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 95–3460 Filed 6–1–95; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 11

RIN 1090–AA23

Natural Resource Damage Assessments: Type A Procedure for Coastal and Marine Environments

AGENCY: Department of the Interior.

ACTION: Proposed rule; availability of technical reports.

SUMMARY: This document announces the availability of technical reports relating to the Department of the Interior's December 8, 1994, notice of proposed rulemaking to revise the natural resource damage assessment regulations. 59 FR 63300. The natural resource damage assessment regulations establish procedures for assessing damages for injury to natural resources resulting from a discharge of oil or hazardous substance into navigable waters under the Clean Water Act, or a release of a hazardous substance under the Comprehensive Environmental Response, Compensation, and Liability Act. The December 8, 1994, document proposed revisions to a simplified "type A" procedure for assessing damages from relatively minor discharges or releases in coastal and marine environments. That proposed assessment procedure incorporates the use of a computer model named the Natural Resource Damage Assessment Model for Coastal and Marine Environments (NRDAM/CME), Version 2.2. The Department has arranged for a number of technical specialists to conduct independent reviews of the proposed NRDAM/CME, Version 2.2 and is making those technical reports available for public review.

ADDRESSES: Copies of the reports are available for inspection at the Office of Environmental Policy and Compliance, Room 2243, Department of the Interior, 1849 C Street, NW, Washington, DC 20240, tel: (202) 208–3301 (regular business hours 7:45 a.m. to 4:15 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mary Morton, Office of Environmental Policy and Compliance, Department of the Interior, MS 2340, 1849 C Street, NW, Washington, DC 20240, (202), tel: 208–3301 or MMORTON@IOS.DOI.GOV on Internet.

SUPPLEMENTARY INFORMATION: The natural resource damage assessment regulations establish procedures that Federal, State, and Tribal natural resource trustees may use to obtain compensation from liable parties for natural resource injuries under the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (42 U.S.C. 9601 *et seq.*) and the Clean Water Act, as amended (33 U.S.C. 1251 *et seq.*). The regulations provide an administrative process for conducting assessments as well as two types of technical procedures for the actual determination of injuries and damages. "Type A" procedures are standard procedures for simplified assessments requiring minimal field observation in cases of minor discharges or releases in certain environments. "Type B" procedures are site-specific

procedures for detailed assessments in other cases.

On December 8, 1994, the Department published a proposed rule to revise the type A procedure for coastal and marine environments, in compliance with a court order and a statutory biennial review requirement. 59 FR 63300. The proposed revised type A procedure for coastal and marine environments incorporates a computer model called the Natural Resource Damage Assessment Model for Coastal and Marine Environments Version 2.2 (NRDAM/CME). The comment period on the December 8, 1994, proposed rule has been extended until July 6, 1995. 60 FR 7155.

NOAA is responsible for developing natural resource damage assessment regulations under the Oil Pollution Act (OPA). 33 U.S.C. 2701 *et seq.* On January 7, 1994, NOAA published a proposed rule and indicated that it may allow for use of the revised NRDAM/CME under its OPA regulations after the Department publishes a final rule. 59 FR 1062, 1124–1125.

The Department and NOAA have arranged for a number of technical specialists to conduct independent reviews of the proposed NRDAM/CME. These reports are under evaluation by the Department and are being included in the administrative record for the rulemaking. Anyone interested in reviewing the reports is encouraged to contact the Department.

Dated: May 30, 1995.

Willie R. Taylor,

Director, Office of Environmental Policy and Compliance.

[FR Doc. 95–13557 Filed 6–1–95; 8:45 am]

BILLING CODE 4310–RG–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 61

[CC Docket No. 87–313 and 93–197, FCC 95–198]

Rates for Dominant Carriers: Revisions to Price Cap Rules for AT&T

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action seeks comment on proposed revisions to the price cap rules that would redefine AT&T Corp.'s promotional tariffs and optional calling plans as alternative pricing plans (APPs) for domestic residential MTS. The proposed rule would allow AT&T to file APPs outside of price caps initially on a streamlined basis and to receive price cap credit for these services on a more expedited basis than the new services rules currently provide, while requiring it to calculate index credit based on historical data, rather than forecasts. These revised rules would simplify review of AT&T's price cap tariff filings and would accord AT&T greater pricing flexibility in the increasingly competitive interexchange market.

DATES: Comments must be filed on or before July 3, 1995, and reply comment on or before July 24, 1995.

ADDRESS: Federal Communications Commissions, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jane Gross, tel: 202–418–1556.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further notice of Proposed Rulemaking in CC Docket Nos. 87–313 and 93–197, FCC 95–198, adopted May 5, 1995, and released May 18, 1995. This document requests comments on the regulatory treatment that the Commission should accord to AT&T Corp.'s promotional tariffs and OCPs, as well as similar discounts for the remaining AT&T services in Basket 1. The Commission seeks comment regarding its tentative conclusion to redefine AT&T Corp's promotional tariffs and OCPs as alternative callings plans (APPs) for the domestic MTS service category, as well as whether it should modify its rules to allow AT&T to file APPs outside of price caps initially on a streamlined basis and to receive price cap credit for these services on a more expedited basis than the new services rules currently provide. The Commission requests comment on whether it should reduce the existing Basket 1 service categories to three service categories: (1) Domestic MTS, including all three current time-of-day MTS categories, OCPs in the existing domestic ReachOut America category, and domestic MTS promotions; (2) operator and credit card services; and (3) international MTS; and whether it should modify the service category bands applicable to the existing residential service categories affected to impose a four-percent upper limit and a 15 percent lower limit on the domestic MTS service category band. The Commission is also seeking comment on whether there is a need to limit AT&T's ability to raise the basic schedule or rates for domestic MTS, and, if so, what methods the Commission should use to impose such limits. Finally, the Commission seeks comment on whether it should revise the rule for AT&T for PCI changes based on changes in exogenous costs arising from GAAP accounting changes to resemble the rules recently adopted in the review of price cap regulation for local exchange carriers, the Price Cap Performance Review for Local Exchange Carriers, CC Docket No. 94–1, FCC 95–132, (rel. April 7, 1995) (60 FR 19,526, April 19, 1995).

The full text of this Commission proposal is available for inspection and copying during normal business hours in the FCC Reference Center (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this proposal may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street, NW, Washington, DC 20037.

Paperwork Reduction Act

The revisions contained herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found not to impose new or modified information collection and/or recordkeeping, labeling, disclosure or record retention requirements and will not increase burden hours imposed on the public.

Regulatory Flexibility Act

As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analyses (IFRA) of the expected impact on small entities of the proposals suggested in this document. The IRFA is set forth in Section V. Written public comments are requested on the IFRA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Notice, but they must have a separate and distinct heading designating them as responses to the Initial Regulatory Flexibility Analysis. The Secretary shall send a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Public Law 96–354, 94 Stat. 1164, 5 U.S.C. section 601 *et seq.* (1981).

Ex Parte

This is a non-restricted notice and comment rulemaking proceeding. Written and/or oral *ex parte* presentations are permitted except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. See generally, 47 CFR 1.1202, 1.1203, and 1.1206(a).

List of Subjects in 47 CFR Part 61

Communications common carriers.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–13498 Filed 6–1–95; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 64

[CC Docket No. 91–281, FCC 95–187]

Calling Number Identification Service—Caller ID

AGENCY: Federal Communications Commission.

ACTION: Third notice of proposed rulemaking.

SUMMARY: Notice is hereby given that in a Third Notice of Proposed Rulemaking on Rules and Policies Regarding Calling Number Identification Service—Caller ID, adopted May 4, 1995, the Commission proposed that Private Branch Exchange (PBX) systems and private payphones capable of delivering Calling Party Number (CPN) to the public switched telephone network also be capable of: Delivering a privacy indicator when the user of a telephone served by the PBX or private payphone dials *67, and unblocking the transmission of their CPN when the user dials *82.

DATES: Comments are due on or before June 30, 1995, and reply comments are due on or before July 28, 1995.

FOR FURTHER INFORMATION CONTACT: Marian Gordon (202/634–4215) or Mike Specht (202/634–1816), Domestic Facilities Division, Common Carrier Bureau.

SUPPLEMENTARY INFORMATION: The above actions were taken pursuant to Sections 1, 4(i) and (j), 201–205, 218 of the Communications Act as amended, 47 U.S.C. 151, 154(i), 151(j), 201–205, and 218. The Commission takes this action to ensure that the privacy expectations of users of such equipment will be honored. If PBX or private payphones can pass CPN to the public switched network, but do not enable callers using telephones connected to the PBX to indicate a privacy request to switches in the public network, the Commission believes it creates risk to calling parties that must be addressed.

List of Subjects in 47 CFR Part 64

Calling party telephone number and privacy, Communications common carriers.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–13497 Filed 6–1–95; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 80

[CI Docket No. 95–55, FCC 95–171]

Inspection of Radio Installations on Large Cargo and Small Passenger Ships

AGENCY: Federal Communications Commission.

ACTION: Notice of Inquiry.

SUMMARY: The Commission has adopted a Notice of Inquiry (Notice) which begins a proceeding to review the Commission's current Rules regarding the inspection of ships for compliance with the Communications Act of 1934 (Communications Act) and the International Convention for the Safety of Life at Sea, 1974 (Safety Convention).

DATES: Comments must be filed on or before July 18, 1995, and reply comments must be filed on or before August 17, 1995.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: George R. Dillon of the Compliance and Information Bureau at (202) 418–1100.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Inquiry, CI Docket No. 95–55, FCC 95–171, adopted April 24, 1995, and released, May 16, 1995. The full text of this Notice of Inquiry is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239) 1919 M Street, NW, Washington, DC. The complete text may be purchased from the Commission's copy contractor, International Transcription Services, 2100 M Street NW, Washington, DC 20037, telephone (202) 857–3800.

Summary of Notice of Inquiry

1. The Commission is recommending amendments to the Communications Act that allows early implementation of the Global Maritime and Distress System (GMDSS) and that will permit changes to the way we inspect large cargo vessels and small passenger vessels. This notice begins a proceeding to review the Commission's current Rules regarding the inspection of ships for compliance with the Communications Act of 1934 (Communications Act) and the International Convention for the Safety of Life at Sea, 1974 (Safety Convention). We seek information that will allow us to streamline ship inspection procedures for the maritime services, to remove unnecessary rules, to improve service to the maritime community, and, above all else, to preserve maritime safety.

2. This Notice is the initial step to develop and implement an overall strategy to improve the manner in which we conduct inspections without derogating the safety of life at sea.

3. Commission inspectors currently conduct a thorough inspection of all of a ship's required radio equipment, from simple VHF maritime transmitters to complex satellite transmitting and receiving equipment. Inspectors are primarily responsive for ensuring that the radio transmitting and receiving equipment provides safety communications capability at the time of inspection. It is the ship operator's responsibility to ensure that the vessel is capable of providing safety communications at all other times. The Commission recognizes the importance of ensuring safety of life and property at sea. In 1990, we incorporated the GMDSS amendments to the Safety Convention in Part 80 of our Rules, 47 CFR Part 80, to implement and internationally approved safety system. We have worked in conjunction with the United States Coast Guard on a recommendation to Congress that the United States amend the Communications Act to incorporate the GMDSS to replace the outdated manual Morse Call radiotelegraph requirements.

4. We are conducting an inquiry into whether the policies and procedures that the Commission uses to inspect and verify that a radio installation on a U.S. vessel is properly installed and functions as intended during a distress can be simplified and streamlined. For example, an inspection of a large cargo vessel can take up to 6 hours, not including travel time, and is often highly complex. Commission inspectors note anecdotally, however, that the ship's captain often reports that the only time that one component, the medium frequency radiotelegraph installation, is used is during the annual FCC inspection.

5. Although the inspections the Commission currently conducts for large cargo vessels are complex, the inspections required in the GMDSS may not be quite as complicated because much of the equipment will incorporate self-test features. Further, many of the inspections the Commission conducts for small passenger vessels are relatively simple and generally take no more than an hour to complete. All of the

inspections are conducted to ensure that ships have a reliable means of distress communications in an emergency.

6. We believe in the principle that government should be responsive to user needs and began this proceeding to promote flexibility, to improve our inspection process by removing unnecessary and inimical policies and, most importantly, provide better service to the public. In summary, we believe that it is both necessary and timely to commence a thorough review of the policies, rules and procedures that the Commission uses to regulate the inspection of compulsorily equipped ships. The primary purpose of this Notice is to compile a complete record that will (1) allow us to improve current inspections processes, (2) develop a technically sufficient regulatory environment for the inspection of ships subject to the GMDSS; and (3) provide an overall strategy on how to best utilize private sector entities to inspect compulsory ship stations.

7. Initial Regulatory Flexibility Analysis

An Initial Regulatory Flexibility Analysis is not required.

List of Subjects in 47 CFR Part 80

Communications equipment, Radio, Reporting and recordkeepinkg requirements.

Federal Communications Commission.

William F. Caton,

Secretary.

[FR Doc. 95–13490 Filed 6–1–95; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[I.D. 052495B]

Atlantic Tuna Fisheries; Comment Period Extension

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On May 12, 1995, NMFS published a proposed rule to amend the Atlantic tuna fisheries that would address allocation issues in the Atlantic bluefin categories, simplify rules applicable to recreational tuna fishing, enhance data collection, improve enforcement efforts, and resolve/clarify other issues.

NMFS announces that it is extending the comment period for the 1995 proposed rule on Atlantic tuna fisheries from June 8 to June 16, 1995.

DATES: Written comments must be received on or before June 16, 1995.

ADDRESSES: Written comments on the rulemaking for Atlantic bluefin, yellowfin and other tunas, should be sent to:

Richard B. Stone, Chief, Highly Migratory Species Management Division (F/CM4), Office of Fisheries Conservation and Management, National Marine Fisheries Service, 1315 East-West Highway, Room 14853, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Chris Rogers, 301-713-2347.

SUPPLEMENTARY INFORMATION: As a result of the initial hearings held in May 1995, and requests from the public, NMFS has determined that it is important for commenters to have additional time to submit their comments on this proposed rulemaking.

Therefore, NMFS is extending the comment period on the 1995 Atlantic tuna rulemaking from June 8, 1995, to June 16, 1995.

Dated: May 24, 1995.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–13446 Filed 6–1–95; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 60, No. 106

Friday, June 2, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

May 26, 1995.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) Who will be required or asked to report; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 690–2118.

Revision

- Consolidated Farm Service Agency

7 CFR 1413, 1414, 1415, 1416—Forms for Participation in Price Support and Production Adjustment Programs
CCC–477, 477 Appendix, CCC–477B, CCC–477A, ASCS–503, ASCS 658–1, CCC–505, CCC–507A, CCC–406, 406 Appendix, CCC–300, 300 Appendix, CCC–302, CCC–135, 135 Appendix, CCC–136
Farms; 1,740,000 responses; 433,400 hours
Bruce Hiatt (202) 690–2798

- Food and Consumer Services

FSP Store Applications
Form FNS–252; 252A; 252R and 252–2
Business or other for-profit; Not-for-profit institutions; 112,023 responses; 32,482 hours
Preston Mears (703) 305–2419

- Food and Consumer Services

Requisition for Food Stamp Coupon Books
Form FNS–260
State, Local or Tribal Government; 6,900 responses; 3,450 hours
Asher Bryte (703) 305–2418

Donald E. Hulcher,

Deputy Departmental Clearance Officer.

[FR Doc. 95–13479 Filed 6–1–95; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 052595A]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of receipt of application for a scientific research permit (P521A).

SUMMARY: Notice is hereby given that Dr. James Spotila and Dr. Pamela Plotkin of Drexel University have applied in due form for a permit to take listed sea turtles for the purpose of scientific research.

DATES: Written comments or requests for a public hearing on this application must be received on or before July 3, 1995.

ADDRESSES: The application and related documents are available for review by appointment in the following offices:

Office of Protected Resources, F/PR8, NMFS, 1315 East-West Hwy., Room 13307, Silver Spring, MD 20910–3226 (301–713–1401); Director, Northeast Region, NMFS, NOAA, One Blackburn Drive, Gloucester, MA 01930–2298 (508–281–9250).

Written comments, or requests for a public hearing on this application should be submitted to the Chief, Endangered Species Division, Office of Protected Resources.

SUPPLEMENTARY INFORMATION: The application requests a permit under the authority of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217–227). The applicant requests authorization to take 100 listed loggerhead, green, and Kemp's ridley sea turtles (*Caretta caretta, Chelonia mydas,* and *Lepidochelys kempii*) in 1995. The animals will be measured, examined, photographed, tagged, have blood and fecal samples taken, and be released at the site of capture. The purpose of the research is to assess the distribution and population dynamics of sea turtles in Delaware Bay.

Those individuals requesting a hearing (see **ADDRESSES**) should set out the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in this application summary are those of the Applicant and do not necessarily reflect the views of NMFS.

Dated: May 25, 1995.

Russell J. Bellmer,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–13445 Filed 6–1–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 052695A]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of modification to permit no. 945 (P319D).

SUMMARY: Notice is hereby given that on May 25, 1995, permit no. 945, isssued to Randall S. Wells, Ph.D., Dolphin Biology Research Institute, c/o Mote Marine Laboratory, 1600 Thompson Parkway, Sarasota, FL 34236 was modified.

ADDRESSES: The modification and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130 Silver Spring, MD 20910 (301/713–2289);

Director, Southeast Region, NMFS, NOAA, 9721 Executive Center Drive,

North St. Petersburg, FL 33702 (813/570–5312).

SUPPLEMENTARY INFORMATION: The subject modification has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the provisions of § 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The original permit authorized the the Holder to capture, sample and/or conduct procedures for the assessment of various health parameters and subsequently release up to 150 individual dolphins near the Sarasota, Florida, area over a 5-year period. Special condition A.4 of the original permit has been altered to reflect the circumstances needed to conduct the specified research activities.

Dated: May 25, 1995.

Ann D. Terbush,

Chief, Permits & Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–13513 Filed 6–1–95; 8:45 am]

BILLING CODE 3510–22–F

Patent and Trademark Office

[Docket No. 9505 31 44–5144–01]

Request for Comments on Proposed Examination Guidelines for Computer-Implemented Inventions

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice and request for public comments.

SUMMARY: The Patent and Trademark Office (PTO) requests comments from any interested member of the public on proposed internal guidelines to be used by Office personnel in their review of patent applications on computer-implemented inventions. Because these guidelines govern internal practices, they are exempt from notice and comment rulemaking under 5 U.S.C. 553(b)(A).

DATES: Written comments on the proposed guidelines will be accepted by the PTO until July 31, 1995.

ADDRESSES: Written comments should be addressed to the Commissioner of Patents and Trademarks, marked to the attention of Jeff Kushan. Comments submitted by mail should be sent to Commissioner of Patents and Trademarks, Box 4, Patent and Trademark Office, Washington, DC 20231. Comments may also be submitted by telefax at (703) 305–8885 and by electronic mail through the Internet to "comments-software@uspto.gov." Written comments should include the following information:

—name and affiliation of the individual responding;
—an indication of whether comments offered represent views of the respondent's organization or are the respondent's personal views; and
—if applicable, information on the respondent's organization, including the type of organization (e.g., business, trade group, university, non-profit organization) and general areas of interest.

Parties presenting written comments who wish to have their comments included in a publicly accessible electronic database of comments must provide their comments in machine-readable format. Such submissions may be provided in the form of an electronic mail message sent through the Internet, or on a 3.5" floppy disk formatted for use in either a Macintosh or MS–DOS based computer. Machine-readable submissions must be provided as unformatted text (e.g., ASCII or plain text).

All written comments, whether submitted on paper or in machine-readable form, will be available for public inspection no later than August 18, 1995, in Room 902 of Crystal Park Two, 2121 Crystal Drive, Arlington, Virginia. In addition, comments provided in machine-readable format will be available no later than August 18, 1995, through anonymous file transfer protocol (ftp) via the Internet (address: comments.uspto.gov) and through the World Wide Web (address: www.uspto.gov).

FOR FURTHER INFORMATION CONTACT: Jeff Kushan by telephone at (703) 305–9300, by fax at (703) 305–8885, by electronic mail at kushan@uspto.gov, or by mail marked to his attention addressed to the Commissioner of Patents and Trademarks, Box 4, Washington, DC 20231.

SUPPLEMENTARY INFORMATION

I. Guidelines for Examination of Computer-Implemented Inventions

A. General Considerations.

The following guidelines have been developed to assist Office personnel in their review of applications drawn to computer-implemented inventions. These guidelines respond to recent changes in the law that governs the patentability of computer-implemented inventions, and set forth the official policy of the Office regarding inventions in this field of technology.

It is essential that patent applicants obtain a prompt yet complete examination of their applications. The Office can best achieve this goal by raising any issue that may affect patentability in the initial action on the merits. Under the principles of compact prosecution, each claim should be reviewed for compliance with every statutory requirement of patentability in the initial review of the application, even if one or more claims is found to be deficient with respect to one statutory requirement. Deficiencies should be explained clearly, particularly when they serve as a basis of a rejection. Where possible, examiners should indicate how rejections may be overcome and problems resolved. A failure to follow this approach can lead to unnecessary delays in the prosecution of the application.

B. Procedures To Be Followed When Evaluating Computer-Implemented Inventions

The following procedures should be used when reviewing applications drawn to computer-implemented inventions.

1. *Determine what the applicant has invented by reviewing the written description and the claims.*

(a) Identify any specific embodiments of the invention that have been disclosed, review the detailed descripton of the invention and note the specific utility that has been asserted for the invention.

(b) Analyze each claim carefully, correlating each claim element to the relevant portion of the written description that describes that element. Give claim elements their broadest reasonable interpretation that is consistent with the written description. If elements of a claimed invention are defined in means plus function format, review the written description to identify the specific structure, materials or acts that correspond to each such element.

(c) Considering each claim as a whole, classify the invention defined by each claim as to its statutory category (i.e., process, machine, manufacture or composition of matter). Rely on the following presumptions in making this classification.

(i) A computer or other programmable apparatus whose actions are directed by a computer program or other form of "software" is a statutory "machine."

(ii) A computer-readable memory that can be used to direct a computer to function in a particular manner when used by the computer [1] is a statutory "article of manufacture".

(iii) A series of specific operational steps to be performed on or with the aid of a computer is a statutory "process".

A claim that clearly defines a computer-implemented process but is not cast as an element of a computer-readable memory or as implemented on a computer should be classified as a statutory "process." [2] If an applicant responds to an action of the Office based on this classification by asserting that subject matter claimed in this format is a machine or an article of manufacture, reject the claim under 35 U.S.C. 112, second paragraph, for failing to recite at least one physical element in the claims that would otherwise place the invention in either of these two "product" categories. The Examiner should also object to the specification under 37 CFR 1.71(b) if such an assertion is made, as the complete invention contemplated by the applicant has not been cast precisely as being an invention within one of the statutory categories.

A claim that defines an invention as any of the following subject matter should be classified as non-statutory.

—a compilation or arrangement of data, independent of any physical element;
—a known machine-readable storage medium that is encoded with data representing creative or artistic expression [e.g., a work of music, art or literature) [3], [4];
—a "data structure" independent of any physical element (i.e., not as implemented on a physical component of a computer such as a computer-readable memory to render that component capable of causing a computer to operate in a particular manner); or
—a process that does nothing more than manipulate abstract ideas or concepts (e.g., a process consisting solely of the steps one would follow in solving a mathematical problem [5]).

Claims in this form are indistinguishable from abstract ideas, laws of nature and natural phenomena and may not be patented. Non-statutory claims should be handled in the manner described in section (2)(c) below.

2. *Analyze each claim to determine if it complies with § 112, second paragraph, and with § 112, first paragraph.*

(a) Determine if the claims particularly point out and distinctly claim the invention. To do this, compare the invention as claimed to the invention as it has been described in the specification. Pay particular attention to the specific utility contemplated for the invention—features or elements of the invention that are necessary to provide the specific utility contemplated for that invention must be reflected in the claims. If the claims fail to accurately define the invention, they should be rejected under § 112, second paragraph. A failure to limit the claim to reflect features of the invention that are necessary to impart the specific utility contemplated may also create a deficiency under § 112, first paragraph.

If elements of a claimed invention are defined using "means plus function" language, but it is unclear what structure, materials or acts are intended to correspond to those elements, reject the claim under § 112, second paragraph. A rejection imposed on this basis shifts the burden to the applicant to describe the specific structure, material or acts that correspond to the means element in question, and to identify the precise location in the specification where a description of that means element can be found. Interpretation of means elements for § 112, second paragraph purposes must be consistent with interpretation of such elements for §§ 102 and 103 purposes.

Computer program-related elements of a computer-implemented [6] invention may serve as the specific structure, material or acts that correspond to an element of an invention defined using a means plus function limitation. For example, a series of operations performed by a computer under the direction of a computer program may serve as "specific acts" that correspond to a means element. Similarly, a computer-readable memory encoded with data representing a computer program that can cause a computer to function in a particular fashion, or a component of a computer that has been reconfigured with a computer program to operate in a particular fashion, can serve as the "specific structure" corresponding to a means element.

Claims must be defined using the English language. See, 37 CFR 1.52(a). A computer programming language is not the English language, despite the fact that English words may be used in that language. Thus, an applicant may not use computer program code, in either source or object format, to define the metes and bounds of a claim. A claim which attempts to define elements of an invention using computer program code, rather than the functional steps which are to be performed, should be rejected under § 112, second paragraph, and should be objected to under 37 CFR 1.52(a).

(b) Construe the scope of the claimed invention to determine if it is adequately supported by an enabling disclosure. Construe any element defined in means plus function language to encompass all reasonable equivalents of the specific structure, material or acts disclosed in the specification corresponding to that means element. Special care should be taken to ensure that each claim complies with the written description and enablement requirements of 35 U.S.C. § 112.

(c) A claim *as a whole* that defines non-statutory subject matter is deficient under § 101, and under § 112, second paragraph. Determining the scope of a claim as a whole requires a clear understanding of what the applicant regards as the invention. The review performed in step 1 should be used to gain this understanding.

(i) If the invention as disclosed in the written description is statutory, but the claims define subject matter that is not, the deficiency can be corrected by an appropriate claim amendment. Therefore, reject the claims under §§ 101 and 112, second paragraph, but identify the features of the invention that, if recited in the claim, would render the claimed subject matter statutory.

(ii) If the invention, both as disclosed and as claimed, is not statutory subject matter, reject the claims under § 101 for being drawn to non-statutory subject matter, and under § 112, second paragraph, for failing to particularly point out and distinctly claim an invention entitled to protection under U.S. patent law.

An invention is not statutory if it falls within any of the non-statutory claim categories outlined in section (1)(c) above. Also, in rare situations, a claim classified as a statutory machine or article of manufacture may define non-statutory subject matter. Non-statutory subject matter (i.e., abstract ideas, laws of nature and natural phenomena) does not become statutory merely through a different form of claim presentation. Such a claim will (a) define the "invention" not through characteristics of the machine or article of manufacture claimed but exclusively in terms of a non-statutory process that is to be performed on or using that machine or article of manufacture, and (b) encompass any product in the stated class (e.g., computer, computer-readable memory) configured *in any manner* to perform that process.

3. *Determine if the claimed invention is novel and nonobvious under §§ 102 and 103.* When evaluating claims defined using "means plus function" language, refer to the specific guidance provided in the *In re Donaldson* guidelines [1162 OG 59] and section (3)(a) above.

C. Notes on the Guidelines

[1] Articles of manufacture encompassed by this definition consist of two elements: (1) a computer-readable storage medium, such as a memory device, a compact disc or a floppy disk, and (2) the specific physical configuration of the substrate of the computer-readable storage medium that represents data (e.g., a computer program), where the storage medium so configured causes a computer to operate in a specific and predefined manner. The composite of the two elements is a storage medium with a particular physical structure and function (e.g., one that will impart the functionality represented by the data onto a computer).

[2] For example, a claim that is cast as "a computer program" but which then recites specific steps to be implemented on or using a computer should be classified as a "process." A claim to simply a "computer program" that does not define the invention in terms of specific steps to be performed on or using a computer should not be classified as a statutory process.

[3] The specific words or symbols that constitute a computer program represent the expression of the computer program and as such are a literary creation.

[4] A claim in this format should also be rejected under § 103, as being obvious over the known machine-readable storage medium standing alone.

[5] A claim to a method consisting solely of the steps necessary to converting one set of numbers to another set of numbers without reciting any computer-implemented steps would be a non-statutory claim under this definition.

[6] This includes the software and any associated computer hardware that is necessary to perform the functions directed by the software.

II. Additional Information

An analysis of the law supporting the examination guidelines for computer-implemented inventions is being prepared. Interested members of the public are invited to comment on this legal analysis. Copies of the legal analysis can be obtained from Jeff Kushan on or after June 23, 1995, who can be reached using the information indicated above.

Dated: May 30, 1995.

Bruce A. Lehman,

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

[FR Doc. 95–13694 Filed 5–31–95; 2:13 pm]

BILLING CODE 3510–16–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from the Procurement List.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List commodities previously furnished by such agencies.

EFFECTIVE DATE: July 3, 1995.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On May 13, 1994, February 10, 17, March 17 and April 14, 1995, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (59 FR 25038, 60 F.R. 7944, 9326, 14427 and 19026) of proposed additions to and deletions from the Procurement List.

Additions

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services, fair market price, and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List. Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Side Rack, Vehicle
2510–00–179–7093
Disk, Flexible
7045–01–365–2069
7045–01–365–2070
7045–01–365–2071
Suit, Contamination Avoidance
8415–01–364–3320
8415–01–364–3321
8415–01–364–3322

Services

Grounds Maintenance, U.S. Army Reserve Center, 1816 East Main Street, Albemarle, North Carolina
Grounds Maintenance, Naval and Marine Corps Reserve Center, 3190 Gilbert Avenue, Cincinnati, Ohio
Grounds Maintenance, U.S. Army Reserve Center, 1984 Whiskey Road, Aiken, South Carolina
Janitorial/Related Exterior Maintenance, VA Outpatient Clinic, 351 East Temple Street, Los Angeles, California
Recycling Service, Robins Air Force Base, Georgia

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Deletions

After consideration of the relevant matter presented, the Committee has determined that the commodities listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Accordingly, the following commodities are hereby deleted from the Procurement List:

Gown, Operating, Surgical
6532–01–058–2518 thru -2525

Beverly L. Milkman,

Executive Director.

[FR Doc. 95–13558 Filed 6–1–95; 8:45 am]

BILLING CODE 8820–33–P

Procurement List Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete commodities previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: July 3, 1995.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Light, Marker, Distress
6230–01–143–4778
NPA: Fedcap Rehabilitation Services, Inc. New York, New York
Cover, Headrest, Plastic
7290–00–890–1822
NPA: Wichita Industries and Services for the Blind, Inc., Wichita, Kansas
Folder, Medical, Outpatient
7530–00–NIB–0193
(Requirements for the VA Medical Center, Richmond, Virginia)
NPA: Lions Club Industries for the Blind, Inc., Durham, North Carolina
Case, Flag, Hardwood
8345–00–NSH–0013 (Navy - 18" x 25")
8345–00–NSH–0014 (Marine Corps - 18" x 25")
(Requirements for the Naval Medical Logistics Command, Fort Detrick, Maryland)
NPA: Triangle, Inc., Malden, Massachusetts

Services

Administrative Services for the following Washington, DC locations:
Department of the Treasury, Technical Assistance Office, 1730 K Street, NW
Department of the Treasury, 1500 Pennsylvania Avenue, NW, Saudi-Arabian Joint Commission Office, 1401 New York Avenue, NW
NPA: Fairfax Opportunities Unlimited, Inc., Springfield, Virginia
Grounds Maintenance, Fleet and Industrial Supply Center, Administrative Areas, Oahu, Hawaii
NPA: Lanikila Rehabilitation Center, Honolulu, Hawaii
Janitorial/Custodial, U.S. Army Reserve Center, Montgomery County Airport, 100 South Parkway, Conroe, Texas
NPA: Tri-County Mental Health Mental Retardation Services, Conroe, Texas
Medical Transcription, Department of Veterans Affairs Medical Center, 7305 N. Military Trail, West Palm Beach, Florida
NPA: Gulfstream Goodwill Industries, Inc., West Palm Beach, Florida

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action does not appear to have a severe economic impact on future contractors for the commodities.

3. The action will result in authorizing small entities to furnish the commodities to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities proposed for deletion from the Procurement List.

The following commodities have been proposed for deletion from the Procurement List:

Cap, Garrison
8410–01–381–5481
8410–01–381–5507
8410–01–381–5521
8410–01–381–5536
8410–01–381–5544
8410–01–381–5559
8410–01–381–5566
8410–01–381–5612
8410–01–381–5627
8410–01–381–5647

Beverly L. Milkman,

Executive Director.

[FR Doc. 95–13559 Filed 6–1–95; 8:45 am]

BILLING CODE 8820–33–P

Procurement List Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to the Procurement List.

SUMMARY: This action adds to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: July 3, 1995.

ADDRESS: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On January 13, 1995, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (60 F.R. 3196) of proposed addition to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the service, fair market price, and impact of the addition on the current or most recent contractors, the Committee has determined that the service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or

other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the service.

3. The action will result in authorizing small entities to furnish the service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the service proposed for addition to the Procurement List.

Accordingly, the following service is hereby added to the Procurement List:

Food Service, Patrick Air Force Base, Florida.

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 95–13683 Filed 6–1–95; 8:45 am]

BILLING CODE 6820-33-p

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Final Notice of Selection of AmeriCorps*VISTA Sponsors and Projects Guidelines

SUMMARY: The Corporation for National and Community Service is issuing this final notice addressing the criteria for sponsorship of new and existing AmeriCorps*VISTA projects, criteria for project selection, and the approval process at the State level. Also, the process for selecting national competitive and national demonstration AmeriCorps*VISTA projects is addressed.

DATES: The effective date of these guidelines was February 7, 1995.

FOR FURTHER INFORMATION CONTACT: Diana B. London, Deputy Director, AmeriCorps*VISTA, (202) 606–5000, extension 228. For individuals with disabilities, information will be made available in alternative formats, upon request.

SUPPLEMENTARY INFORMATION: The Corporation for National and Community Service published the Selection of AmerCorps*VISTA Sponsors and Projects Guidelines in the **Federal Register,** Volume 60, No. 25, on February 7, 1995. The Corporation received no comments on the issues discussed in these guidelines.

Dated: May 26, 1995.

Tracy Gray,

Acting Executive Vice-President Corporation for National and Community Service.

[FR Doc. 95–13447 Filed 6–1–95; 8:45 am]

BILLING CODE 6050–28–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER90–168–020, et al.]

National Electric Associates Limited Partnership, et al., Electric Rate and Corporate Regulation Filings

May 25, 1995.

Take notice that the following filings have been made with the Commission:

1. National Electric Associates Limited Partnership

[Docket No. ER90–168–020]

Take notice that on April 28, 1995, National Electric Associates Limited Partnership tendered for filing certain information pursuant to the Commission's order dated March 20, 1990. Copies of the informational filing are on file with the Commission and are available for public inspection.

2. The Cleveland Electric Illuminating Company, and The Toledo Edison Company

[Docket No. EC94–14–000]

Take notice that on May 9, 1995, The Cleveland Electric Illuminating Company (Cleveland Electric) and The Toledo Edison Company (Toledo Edison) (together, the Applicants) tendered for filing an amendment to the application for an order from the Commission authorizing the merger of Toledo Edison into Cleveland Electric.

The Applicants are public utilities organized and existing under the lease of the State of Ohio, and both Applicants are engaged in the business of supplying electric energy to wholesale and retail customers within the State of Ohio. Cleveland Electric generates, transmits, distributes and sells electric energy to approximately 748,000 customers in Northeastern Ohio. Toledo Edison generates, transmits, distributes and sells electric energy to approximately 285,000 customers in Northwestern Ohio. Cleveland Electric's and Toledo Edison's operations are subject to regulation by The Public Utilities Commission of Ohio. Centerior Energy Corporation (Centerior), which is organized and existing under the laws of the State of Ohio, is the 100% owner of the common stock of both Cleveland Electric and Toledo Edison. Each of Cleveland Electric and Toledo Edison has outstanding serial preferred shares that are held by the public.

Under the terms and conditions of a definitive Agreement of Merger entered into by Cleveland Electric and Toledo Edison, 100% of the common shares of Toledo Edison will be converted into newly-issued common shares of Cleveland Electric, the Toledo Edison preferred shares will be exchanged for newly-issued preferred shares of Cleveland Electric, and any dissenting preferred shareholders of Toledo Edison will be paid cash for their shares upon exercise of applicable dissenters' rights. Upon the occurrence of these events, Toledo Edison will be merged into Cleveland Electric, and the separate corporate existence of Toledo Edison will cease. Cleveland Electric will, by operation of law, acquire title to and interest in all facilities of Toledo Edison in that are currently under the jurisdiction of the Commission, and Cleveland Electric will operate such facilities without change.

Cleveland Electric and Toledo believe that the proposed corporate reorganization is consistent with the public interest, and that it will be in the best interests of the customers, shareowners and employees of both Applicants.

Comment date: June 9, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. Catex Vitol Electric, L.L.C.

[Docket No. ER94–155–007]

Take notice that on May 1, 1995, Catex Vitol Electric, L.L.C. tendered for filing certain information pursuant to the Commission's order dated January 14, 1995. Copies of the informational filing are on file with the Commission and are available for public inspection.

4. The Electric Exchange

[Docket No. ER95–111–002]

On May 18, 1995, The Electric Exchange ("Applicant") tendered for filing information concerning the identity of its limited partners and a revised rate schedule as required by the May 3, 1995 letter order in these proceedings. Applicant has requested that the Commission act expeditiously on the filing.

Comment date: June 8, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Jersey Central Power & Light Company

[Docket No. ER95–557–000]

Take notice that on March 17, 1995, Jersey Central Power & Light Company tendered for executed copies of the signature page for the amendment to the Purchase and Sale Agreement between GPU and Niagara Mohawk Power Corporation.

Comment date: June 8, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Maine Public Service Company

[Docket No. ER95–954–000]

Take notice that on May 10, 1995, Maine Public Service Company tendered for filing a supplement to its April 26, 1995, filing in Docket No. ER95–954–000.

Comment date: June 9, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Southern Company Services Company

[Docket No. ER95–971–000]

Take notice that on April 28, 1995, Southern Company Services, Inc., acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively referred to as "Southern Companies") filed a Notice of Cancellation of Short-Term Non-Firm Transmission Service Tariff of Southern Companies (FERC Electric Tariff Original Volume No. 1).

Comment date: June 8, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Madison Gas and Electric Company

[Docket No. ER95–1017–000]

Take notice that on May 5, 1995, Madison Gas and Electric Company (MGE) tendered for filing a service agreement with Central Illinois Public Service Company under MGE's Power Sales Tariff. MGE requests an effective date 60 days from the filing date.

Comment date: June 9, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Kohler Company

[Docket No. ER95–1018–000]

Take notice that on May 8, 1995, Kohler Company tendered for filing an Application for Waivers, Blanket Authorizations, and Order Accepting Rate Schedule.

Comment date: June 9, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Gulf Power Company

[Docket No. ER95–1025–000]

Take notice that on May 8, 1995, Gulf Power Company tendered for filing Supplements to Service Schedule T of the Gulf/AEC Interconnection Agreement (FERC Rate Schedule No. 82).

Comment date: June 9, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–13472 Filed 6–1–95; 8:45 am]

BILLING CODE 6717–01–P

Power Flow Simulation Package Presentation

May 26, 1995.

On May 31, 1995, Thomas Overbye and George Gross, both of the Department of Electrical and Computer Engineering of the University of Illinois, will make a presentation before the Commission, interested members of the staff, and interested members of the public. The presentation will concern PowerWorld, a power flow simulation package. PowerWorld is intended to simulate the operation of a hypothetical area in an interconnected power system over a specified period of time ranging from several hours to a day. PowerWorld was developed to present the basics of power system operations and control to individuals with a nontechnical background.

The presentation will be held on May 31, 1995, from 1 pm to 3 pm, in the Commission Meeting Room, 9th Floor, 825 North Capitol Street NE., Washington, DC 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–13471 Filed 6–1–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–233–001]

Colorado Interstate Gas Co.; Compliance Filing

May 26, 1995.

Take notice that on May 23, 1995, Colorado Interstate Gas Company (CIG), tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets, effective May 15, 1995:

Substitute Third Revised Sheet No. 35
Substitute Third Revised Sheet No. 57
Substitute Second Revised Sheet No. 69
Substitute Third Revised Sheet No. 101
Substitute First Revised Sheet No. 123
Substitute Third Revised Sheet No. 127
Substitute Second Revised Sheet No. 128

CIG states that the new tariff sheets are filed to comply with Ordering Paragraph (B) of the order issued May 12, 1995 in Docket No. RP95–233–000. The order required CIG to state, in situations involving Northwest Pipeline Corporation, as an interconnecting pipeline, Transporter's nomination deadline is 9:30 a.m. Mountain Time, 30 minutes before Northwest Pipeline Corporation's nomination deadline.

CIG states that a copy of this filing was served upon all parties in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's rules of practice and procedure (18 CFR 385.211). All such protests should be filed on or before June 5, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–13475 Filed 6–1–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MG88-30-003]

Great Lakes Gas Transmission Co.; Filing

May 26, 1995.

Take notice that on May 23, 1995, Great Lakes Gas Transmission Company (Great Lakes) filed revised standards of conduct governing the business relationship between Great Lakes and its marketing/brokering affiliates.[1] Great Lakes also states that this filing is in compliance with the Commission's Order on Standards of Conduct issued May 4, 1995.[2]

Great Lakes states that copies of this filing have been mailed to all parties on the official service list compiled by the Secretary in this proceeding and to the public service commissions of the states of Michigan, Minnesota and Wisconsin.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 or 214 of the Commission's rules of practice and procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before June 12, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95-13474 Filed 6-1-95; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GT95-40-000]

Koch Gateway Pipeline Co.; Notice of Proposed Changes in FERC Gas Tariff

May 26, 1995

Take notice that on May 24, 1995, Koch Gateway Pipeline Company (Koch Gateway) tendered for filing to become part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets to be effective June 24, 1995;

Second Revised Sheet No. 5300
Second Revised Sheet No. 5301
Second Revised Sheet No. 5302
Second Revised Sheet No. 5303

Koch Gateway states that this filing is being submitted to update its Index of Purchasers with current information pursuant to § 154.41 of the Federal Energy Regulatory Commission's ("Commission") regulations. On May 2, 1995, Koch Gateway filed tariff sheets updating its Index of Purchasers which contained inadvertent errors. On May 10, 1995, Koch Gateway filed a notice to withdraw the May 2, 1995 filing and is filing the above tariff sheets to replace the previous filing.

Koch Gateway states that the tariff sheets are being mailed to all of Koch Gateway's jurisdictional customers, interested state commissions and all intervenors in the May 2, 1995 filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 385.214 and 385.211 of the Commission's regulations. All such motions or protests should be filed on or before June 5, 1995. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95-13476 Filed 6-1-95; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP94-423-000, RP94-119-000, et al.]

Texas Gas Transmission Corp.; Notice of Informal Settlement Conferences

May 26, 1995.

Take notice that an informal settlement conference will be convened in the above-captioned proceedings commencing at 10:00 am on May 31, 1995, continuing through June 1, 1995, at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE, Washington, DC, for the purpose of exploring the possible settlement of the above-referenced dockets. For planning purposes, discussions on the GSR case, FERC Docket No. RP94-119-000 *et al.*, will commence at 1 pm on May 31.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information please contact Michael D. Cotleur, (202) 208-1076, or Russell B. Mamone (202) 208-0744.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95-13478 Filed 6-1-95; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2984-024]

S.D. Warren Co.; Notice of Extension of Comment Due Date

May 26, 1995.

On April 3, 1995, the S.D. Warren Company, licensee for the Eel Weir Project, submitted its Final Proposed Level Management Plan for Sebago Lake (Sebago Lake Plan). The plan was submitted in accordance with the Federal Energy Regulatory Commission's (Commission) Order on Complaint, dated August 4, 1994 and Order Granting Extension of Time, dated December 20, 1994 and March 7, 1995. The submittal, prepared by S.D. Warren Company, is a lake level plan that seeks to balance the various competing uses of Sebago Lake.

On April 26, 1995, the Commission issued a Notice of Reservoir Level Management Plan for Sebago Lake. The notice was published in the Portland Press Herald on May 12, 1995, and provided the public with the opportunity to comment on S.D. Warren's Sebago Lake Plan. The notice required that comments be filed no later than June 12, 1995.

By letter dated May 12, 1995, State of Maine Department of Environmental Protection (DEP) requested an extension of the comment due date from June 12, 1995 to June 30, 1995. In support of its request, the DEP states that it, in conjunction with the Maine Departments of Conservation, Environmental Protection, and Inland Fisheries and Wildlife, has scheduled a public meeting for May 31, 1995, in order to receive public comment on the Sebago Lake Plan. The DEP believes a 30-day comment period from the date of the public meeting is appropriate and sufficient to allow for public comment. Accordingly, the DEP requests an extension of the comment deadline from June 12 to June 30, 1995.

The Commission finds the DEP's request reasonable and will hereby extend the comment due date for the Sebago Lake Plan from June 12, 1995 to June 30, 1995.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95-13473 Filed 6-1-95; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP95-303-000]

Williams Natural Gas Co.; Notice of Proposed Changes in FERC Gas Tariff

May 26, 1995.

Take notice that on May 24, 1995, Williams Natural Gas Company (WNG) tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets:

Third Revised Sheet No. 1
Fourth Revised Sheet No. 2
First Revised Sheet No. 144
Third Revised Sheet No. 200
First Revised Sheet Nos. 201-203
Second Revised Sheet No. 204
Third Revised Sheet No. 205
Second Revised Sheet Nos. 206 and 207
First Revised Sheet Nos. 212-216 and 218-220
Second Revised Sheet No. 226
Third Revised Sheet Nos. 227 and 228
Second Revised Sheet No. 229
First Revised Sheet Nos. 231-234, 236, 238, 239 and 241
Second Revised Sheet No. 243
First Revised Sheet No. 249
Second Revised Sheet No. 250
First Revised Sheet No. 257-263
Second Revised Sheet No. 264
First Revised Sheet No. 265, 269, 403, 411, 419, 426, 432, 433, 438-442, 444, 449, 455, and 456
Original Sheet No. 456A
First Revised Sheet Nos. 458, 461, and 490

The proposed effective date of these tariff sheets is July 1, 1995.

WNG states that the purpose for the instant filing is to make general maintenance changes to WNG's FERC Gas Tariff, second Revised Volume No. 1. WNG has operated under Order No. 636 since October 1, 1993, when its restructuring in Docket No. RS92-12 was made effective. WNG has gained experience operating under Order No. 636, during this nineteen-month period, and has found minor changes that need to be made to its tariff.

WNG states that a copy of its filing was served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 5, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.

Acting Secretary.

[FR Doc. 95-13477 Filed 6-1-95; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-4723-6]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared April 24, 1995 Through April 28, 1995 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 14, 1995 (72 FR 19047).

Draft EISs

ERP No. D-AFS-K65169-CA Rating LO, Snowy Trail Off-Highway Vehicle Re-Route, Smith Fork Parcel of Los Padres National Forest, Approval and Implementation, Mount Pinos Ranger District, Ventura County, CA.

Summary: EPA had no objection to the action but did request that the final document discuss the applicability of the Clean Water Act's stormwater permitting provisions.

ERP No. D-AFS-K67029-AZ Rating Eu3, Carlota Open-Pit Copper Mine Project, Construction and Operation, Plan of Operations and COE Section 404 Permit, Tonto National Forest, Gila and Pinal Counties, AZ.

Summary: EPA identified potential adverse impacts that would be unsatisfactory from the standpoint of environmental quality. Specific concerns relate to ground and surface water impacts. The proposal lacks an adequate alternative analysis and mitigation measures. EPA also expressed serious concerns regarding potential significant adverse effects on air quality and residential water supply wells in the project vicinity. EPA recommended that the document should be formally revised.

EPA No. D-FHW-J40135-MT Rating EC2, US 93 Highway Transportation Project, Improvements between Evaro and Polson, Funding and COE Section 404 Permit, Missoula and Lake Counties, MT.

Summary: EPA expressed environmental concerns regarding air quality, water quality, and the preservation of wetlands and environmentally sensitive areas. An air quality conformity determination for PM-10 emissions, and a comprehensive wetlands mitgation plan are needed.

ERP No. DS-FHW-K50007-CA Rating EC2, Benicia-Martinez Bridege Project, Transportation Improvements, Updated Information, I-680 from CA-4 in Martinez to I-80 in Fairfield, I-80 from Red Top Road to CA-12 east in Fairfield, I-780 from the I-680 Interchange in Benicia to Lemon St. In Vallego, Funding, US CGD Bridge and COE Section 10/404 Permits, Contra Costa and Solano Cos., CA.

Summary: EPA expressed environmental concerns regarding increased carbon monoxide and other air pollutant levels that would occur outside the limits of the bridge project. EPA also expressed concerns regarding wetlands, water quality and contaminated sediment. EPA requested that these issues be addressed and appropriate mitigation be implemented.

Dated: May 30, 1995.

William D. Dickerson,

Director, NEPA Compliance Division Office of Federal Activities.

[FR Doc. 95-13538 Dated 6-1-95; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-4723-5]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260-5076 OR (202) 260-5075. Weekly receipt of Environmental Impact Statements Filed May 22, 1995 Through May 26, 1995 Pursuant to 40 CFR 1506.9.

EIS No. 950210, Draft EIS, GSA, CA; Fresno—United States Courthouse, Site Selection and Construction, City of Fresno, Fresno County, CA, Due:

[1] Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27, 1994), III FERC Stats. & Regs. ¶ 30,997 (June 17, 1994); Order No. 566-A, *order on rehearing*, 59 FR 52896 (October 20, 1994), 69 FERC ¶ 61,044 (October 14, 1994); Order No. 566-B, *order on rehearing*, 59 FR 65707, (December 21, 1994); 69 FERC ¶ 61,334 (December 14, 1994); *appeal docketed sub nom. Conoco, Inc. v. FERC*, D.C. Cir. No. 94-1745 (December 13, 1994).

[2] 71 FERC ¶ 61,141 (1995).

July 17, 1995, Contact: Javad Soltani (415) 744–5255.
EIS No. 950211, Draft EIS, COE, TX, Gulf Intracoastal Waterway (Section 216 Study), Bank Protection and a Spill Containment Feature, Implementation, Aransas National Wildlife Refuge, Galveston District, Aransas, Calhoun and Refugio Counties, TX, Due: July 17, 1995, Contact: Richard Medina (409) 766–3044.
EIS No. 950212, Draft EIS, AFS, AZ, Pocket/Baker Ecosystem and Land Management Plan, Implementation, Mogollan Rim, Coconino National Forest, Coconino County, AZ, Due: July 17, 1995, Contact: John Gerritsma (520) 354–2216.
EIS No. 950213, Draft EIS, AFS, MT, Bass Lake Dam Reconstruction, Operation and Maintenance, Temporary-Use-Permit, Bitterroot National Forest, Stevensville Ranger District, Ravalli County, MT, Due: July 17, 1995, Contact: David J. Silvieus (406) 777–5461.
EIS No. 950214, Draft EIS, AFS, ID, Main Salmon Post-Fire Project, Implementation, Payette National Forest, New Meadows and McCall Ranger District, Idaho County, ID, Due: July 17, 1995, Contact: Kimberly Brandel (208) 347–0300.
EIS No. 950215, Final EIS, FHW, WA, WA–525/Paine Field Boulevard Project, Improvements, between WA–99 to WA–526, Funding and COE Section 404 Permit, City of Mukitteo, Snohomish County, WA, Due: July 03, 1995, Contact: Gene Fong (360) 753–2120.
EIS No. 950216, Final EIS, AFS, ID, Charlie Tyson Ecosystem Management Project, Implementation, Idaho Panhandle National Forests, St. Maries Ranger District, Charlie Creek, Benewah County, ID, Due: July 03, 1995, Contact: Tracy Gravelle (208) 245–2531.
EIS No. 950217, Draft Supplement, RUS, FL, Hardee Unit 3 440 Megawatt (MW) Natural Gas and Oil Fired Combined Cycle Electric Power Station Construction and Operation, Funding, Approval and NPDES Permit Issuance, Hardee County, FL, Due: July 17, 1995, Contact: Robert Quigel (202) 720–1784.
EIS No. 950218, DRAFT EIS, AFS, MT, North Fork Decision Area Fire Recovery Project, Timber Salvage, Implementation, Kootenai National Forest, Rexford Ranger District, Lincoln County, MT, Due: July 17, 1995, Contact: Robert . Thompson (406) 296–2536.
EIS No. 950219, DRAFT EIS, SCS, UT, Muddy Creek Orderville Watershed Plan, Offsite Salt and Sediment Damage to Water Quality in the Virgin River and the Colorado River, Wildlife Habitat and Rangeland Productivity Enhancements, Approvals and Funding, Kane County, UT, Due: July 17, 1995, Contact: Phillip J. Nelson (801) 524–5050.
EIS No. 950220, FINAL EIS, AFS, MT, Running Wolf Timber Sales, Implementation, Lewis and Clark National Forest, Judith Ranger District, Stanford, Judith Basin County, MT, Due: July 03, 1995, Contact: Rick M. Abt (406) 566–2292.
EIS No. 950221, FINAL EIS, FHW, TX, US 82 Highway (East-West Freeway in the City of Lubbock) Transportation Improvements from South of Loop 289 to East of I–27 and Relocation of the Seagraves, Whiteface and Lubbock Railroad, Funding and Right-of-Way Grant, Lubbock County, TX, Due: July 03, 1995, Contact: Lubin M. Quinones (512) 482–5988.
EIS No. 950222, FINAL EIS, BLM, CA, Briggs Open Pit Heap Leach Gold Mine Project, Construction and Operation, NPDES Permit and COE Section 404 Permit, Inyo County, CA, Due: July 03, 1995, Contact: Ahmed Mohsen (619) 384–5400.

Dated: May 30, 1995.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 95–13537 Filed 6–1–95; 8:45 am]

BILLING CODE: 6560–50–U

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1049–09]

Louisiana; Amendment to Notice of a major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Louisiana (FEMA–1049–DR), dated May 10, 1995, and related determinations.

EFFECTIVE DATE: May 20, 1995.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, effective this date and pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint R. Dell Greer of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

This action terminates my appointment of G. Clay Hollister as Federal Coordinating Officer for this disaster.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

James L. Witt,

Director.

[FR Doc. 95–13520 Filed 6–1–95; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1049–DR]

Louisiana; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Louisiana, (FEMA–1049–DR), dated May 10, 1995 and related determinations.

EFFECTIVE DATE: May 22, 1995.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Louisiana dated May 10, 1995, is hereby amended to include the following areas determined to have been adversely affected by the catastrophe declared a major disaster by the President of his declaration of May 10, 1995:

LaFourche and St. James Parishes for Public Assistance (already designated for Individual Assistance).

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

G. Clay Hollister,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 95–13522 Filed 6–1–95; 8:45 am]

BILLING CODE 6718–02–M

FEMA–1051–DR]

Mississippi; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Mississippi (FEMA–1051–DR), dated May 12, 1995, and related determinations.

EFFECTIVE DATE: May 12, 1995.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated May 12, 1995, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows.

I have determined that the damage in certain areas of the State of Mississippi, resulting from severe storms, tornadoes, and flooding on May 8, 1995, and continuing is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Mississippi.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas. Public Assistance may be added at a later date, if warranted. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Michael J. Polny of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Mississippi to have been affected adversely by this declared major disaster:

The counties of Hancock, Harrison and Pearl River for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

James L. Witt,

Director.

[FR Doc. 95–13521 Filed 6–1–95; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Revocations

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR part 510.

License Number: 3658.
Name: Worldwide International Forwarders, Inc.
Address: 1168–150th Court North, Jupiter, FL 33478.
Date Revoked: May 10, 1995.
Reason: Surrendered license voluntarily.

License Number: 1352
Name: Independent Cargo Services, Inc.
Address: 20 Lafayette Street, Carteret, NJ 07008.
Date Revoked: May 17, 1995.
Reason: Surrendered license voluntarily.

Bryant L. VanBrakle,

Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 95–13560 Filed 6–1–95; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice.

BACKGROUND: On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR 1320.9, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9. Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the OMB 83-I and supporting statement and the approved collection of information instruments will be placed into OMB's public docket files. The following forms, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collections, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority.

DATES: Comments must be submitted on or before July 1, 1995.

ADDRESSES: Comments, which should refer to the OMB Docket number (or Agency form number in the case of a new information collection that has not yet been assigned an OMB number), should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, D.C. 20551, or delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments received may be inspected in room M-P-500 between 9:00 a.m. and 5:00 p.m., except as provided in section 261.8 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Milo Sunderhauf, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form and instructions, the Paperwork Reduction Act Submission (OMB 83-I), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Mary M. McLaughlin, Federal Reserve Board Clearance Officer (202-452-3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. For the hearing impaired *only*, Telecommunications Device for the Deaf (TDD) Dorothea Thompson (202-452-3544), Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

Proposal to approve under OMB delegated authority the extension, with revision, of the following reports:

1. Report title: Registration Statement for Persons who Extend Credit Secured by Margin Stock, Deregistration Statement for Persons Registered Pursuant to Regulation G, and Annual Report.
Agency form numbers: FR G-1, FR G-2, and FR G-4

OMB Docket number: 7100-0011
Frequency: On occasion
Reporters: Individuals and businesses
Annual reporting hours: 1,478
Estimated average hours per response: 1.90
Number of respondents: 778
Small businesses are affected.

General description of report: This information collection is mandatory (15 U.S.C. 78g). The FR G-1 and FR G-4 are given confidential treatment (5 U.S.C. 552(b)(4)). The FR G-2 does not request confidential information.

Abstract: Regulation G was adopted in response to concerns of the Federal Reserve and the Securities Exchange Commission that unregulated lenders were circumventing the margin requirements of Regulations T and U. These reports are event-generated and are filed with the appropriate Federal Reserve Bank. The proposed revisions include a further breakdown of an existing item regarding employee stock option, purchase, and ownership plans on the FR G-1 and FR G-4, the addition of the registrant's telephone number to the FR G-2, and clarifications to the existing reporting instructions for the FR G-1 and FR G-4. The proposed revisions are expected to have no appreciable effect on respondent burden for these reports.

Proposal to approve under OMB delegated authority the extension, without revision, of the following reports:

1. *Report title:* Statement of Purpose for an Extension of Credit Secured by Margin Stock by a Person Subject to Registration under Regulation G.
Agency form number: FR G-3
OMB Docket number: 7100-0018
Frequency: On occasion
Reporters: Individuals and businesses
Annual reporting hours: 2,240
Estimated average hours per response: .16
Number of respondents: 700
Small businesses are affected.

General description of report: This information collection is mandatory (15 U.S.C. 78g). Since the FR G-3 is not filed with the Federal Reserve, no issue of confidentiality arises.

Abstract: Regulation G was adopted in response to concerns of the Federal Reserve and the Securities Exchange Commission that unregulated lenders were circumventing the margin requirements of Regulations T and U. This report is event-generated and is not filed with the Federal Reserve System but retained by the lender. The report is needed to ensure that a Regulation G lender does not extend credit to purchase or carry securities in excess of the amount permitted by the Federal Reserve Board pursuant to Regulation G and to ensure that a borrower does not violate Regulation X.

2. *Report title:* Agreement of Domestic and Foreign Nonmember Banks.
Agency form number: FR T-1, T-2
OMB Docket number: 7100-0191
Frequency: On occasion
Reporters: Nonmember Banks
Annual reporting hours: .50
Estimated average hours per response: .50
Number of respondents: 1
Small businesses are not affected.

General description of report: This information collection is mandatory (15 U.S.C. 78h) and is not given confidential treatment.

Abstract: The Federal Reserve adopted Regulation T, "Credit by Brokers and Dealers," in 1934 to regulate extension of credit by and to brokers and dealers; it also covers related transactions within the Federal Reserve's authority under the act. It imposes, among other obligations, initial margin requirements and payment rules on securities transactions. Pursuant to Section 8 of the Securities Exchange Act of 1934 and Regulation T, domestic and foreign banks that are not members of the Federal Reserve System are required to file a FR T-1, T-2 with the appropriate Federal Reserve Bank in the event that they wish to extend credit to brokers/dealers using exchange-traded securities as collateral. In addition, the form must be filed by foreign nonmember banks that issue letters of credit used as deposits against borrowings of securities by brokers-dealers. The FR T-1, T-2 requires a domestic or foreign nonmember bank to state that it is a "bank" as defined in section 3(a)(6) of the Securities Exchange Act of 1934, and list the state or country in which it was organized and the location of its principal place of business. No substantive changes are being proposed to the FR T-1, T-2. However, the Federal Reserve proposes to add the phrase "(indicate state for domestic bank or country for foreign bank)" to explicitly state this requirement of Regulation T.

3. *Report title:* Statement of Purpose of Extension of Credit by a Creditor (under Regulation T).
Agency form number: FR T-4
OMB Docket number: 7100-0019
Frequency: On occasion
Reporters: Individuals and businesses
Annual reporting hours: 42
Estimated average hours per response: .17
Number of respondents: 250
Small businesses are affected.

General description of report: This information collection is mandatory (15 U.S.C. 78g). Because the FR T-4 is not filed with the Federal Reserve, no issue of confidentiality arises.

Abstract: The Federal Reserve adopted Regulation T, "Credit by Brokers and Dealers," in 1934 to regulate extension of credit by and to brokers and dealers; it also covers related transactions within the Federal Reserve's authority under the act. It imposes, among other obligations, initial margin requirements and payment rules on securities transactions. Regulation T presumes that any extension of credit by a broker/dealer to a customer is made for the purpose of purchasing, trading, or carrying securities, and thus is subject to the Board's margin requirements. Customers and creditors are required to complete and retain the FR T-4 in the event that the customer can rebut the presumption and the creditor is thereby permitted to extend credit in excess of the amount otherwise permitted under Regulation T. The FR T-4 solicits information from borrowers regarding the purpose of each loan, and from creditors identifying collateral. No changes are proposed for the FR T-4 reporting form.

4. *Report title:* Statement of Purpose for an Extension of Credit Secured by Margin Stock.
Agency form number: FR U-1
OMB Docket number: 7100-0115
Frequency: On occasion
Reporters: Individuals and businesses
Annual reporting hours: 157,853
Estimated average hours per response: .07
Number of respondents: 10,637
Small businesses are not affected.

General description of report: This information collection is mandatory (15 U.S.C. 78g). Since the FR U-1 is not filed with the Federal Reserve no issue of confidentiality arises.

Abstract: In 1936, the Federal Reserve adopted Regulation U, "Credit by Banks for the Purpose of Purchasing or Carrying Margin Stock," as a companion to Regulation T which applies to securities credit extended by brokers/dealers. Regulation U imposes restrictions upon "banks" (as defined in section 221.2(b) of Regulation U) that extend credit for the purpose of buying or carrying margin stock if the credit is secured directly or indirectly by margin stock. Banks may not extend more than the minimum loan value of the collateral securing such credit, as set by the Federal Reserve in section 221.8 of Regulation U. Regulation U requires that a purpose statement be completed and retained in the event that a bank extends credit in an amount exceeding $100,000 secured directly or indirectly by margin stock.

In all cases, the FR U-1 collects the following loan information from the borrower:

(1) The amount of credit being obtained; and

(2) Whether the loan is to purchase or carry margin stocks and, if not, the purpose of the loan. If the borrower affirms that the purpose of the loan is to purchase or carry margin stocks, the bank provides the following collateral information in Part II:

(3) The number of shares of stock serving as collateral;

(4) The name of the stock (issue);

(5) The market price per share;

(6) The date and source of valuation (not required if market value is obtained from regularly published information in a journal of general circulation or from an automated quotation system);

(7) The total market value per issue; and

(8) The amount of any other collateral securing the loan. No substantive changes are proposed for the FR U-1 reporting form. However, the Federal Reserve proposes to

(i) Revise the phrase "maximum loan value of margin stock is ... per cent" for items 1 and 2 of Part II to "maximum loan value of margin stock is 50 per cent," and

(ii) Add the phrase "or from an automated quotation system." to the note below item 3.

5. *Report title:* Written Security Program for State Member Banks.
Agency form number: FR 4004
OMB Docket number: 7100-0112
Frequency: Annual
Reporters: State member banks
Annual reporting hours: 484
Estimated average hours per response: 0.5
Number of respondents: 968
Small businesses are affected.

General description of report: This recordkeeping requirement is mandatory (12 U.S.C. §§ 1882(a), 248(a)(1), and 325). Because written security programs are maintained at state member banks, no issue of confidentiality under the Freedom of Information Act arises.

Abstract: The Congress adopted the Bank Protection Act of 1968 (12 U.S.C. 1882) to promulgate rules establishing minimum standards for banks as to the installation, maintenance, and operation of security devices and procedures to discourage robberies, burglaries, and larcenies and to assist in the identification and apprehension of persons who commit such acts.

In response to the passage of the Bank Protection Act (Act), each of the federal financial institution supervisory agencies established minimum standards for security devices and procedures. The requirements established by the Board of Governors of the Federal Reserve System in 1969 for state member banks are contained in Regulation P. In the regulation, the Federal Reserve requires the board of directors of each state member bank to designate a security officer to assume the responsibility for the development, administration, and maintenance of a written security program. The original Act also contained provisions requiring financial institutions to submit periodic reports to their primary federal supervisory agency with respect to the installation, maintenance, and operation of security devices and the development of security procedures.

The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) includes provisions that amend the Act: eliminating the requirement that each bank submit periodic reports to its regulator, but retaining the requirement that each bank maintain a written security program. The Federal Reserve amended Regulation P in 1991 to reflect this change. Each state member bank must maintain a written security program in its records. This program should include a requirement to install security devices and should establish procedures that satisfy minimum standards in the regulation, with the security officer determining the need for additional security devices and procedures based on the location of the banking office. No changes are being proposed to the recordkeeping requirement.

6. *Report title:* Annual Report on Status of Disposition of Assets Acquired in Satisfaction of Debts Previously Contracted.
Agency form number: FR 4006
OMB Docket number: 7100-0129
Frequency: Annual
Reporters: Bank holding companies that have acquired assets or shares through foreclosure in the ordinary course of collecting a debt previously contracted.
Annual reporting hours: 3,000
Estimated average hours per response: 5
Number of respondents: 600
Small businesses are affected.

General description of report: This information collection is mandatory (12 U.S.C. 1843(c)(2) and 1844(c) and may be given confidential treatment upon request (5 U.S.C. 552(b)(4)).

Abstract: The Federal Reserve has statutory responsibility for regulation and supervision of bank holding companies (BHCs) under the Bank Holding Company Act of 1956, as amended (Act). Under the Act, the Federal Reserve must ensure that impermissible assets are divested in a manner consistent with the statute. The Act sets forth the time frame within which assets and shares acquired in collecting a debt previously contracted (DPC) must be divested.

The Federal Reserve does not require BHCs to obtain prior approval for their acquisition of DPC shares or assets so long as they divest them within two years of the date of their initial acquisition. If the BHC is unsuccessful in divesting them within the two-year period, it must request and obtain approval to continue to hold them. The Board may extend the initial two-year period for up to three additional one-year periods. Further, for real estate or other DPC assets that are demonstrated to have value and marketability characteristics similar to real estate, the Board may permit additional extensions for up to five years (for a total of ten years).

The Federal Reserve does require that the BHC make good faith efforts to dispose of DPC shares or assets and notify it annually of the progress being made with respect to their disposition. Beginning two years after the date of acquisition of DPC assets or shares, the BHC must report annually to the Federal Reserve on its efforts to divest them.

The Federal Reserve uses the information to determine:

(1) Whether a BHC has made timely, good faith efforts to comply with the requirements of the Act; and

(2) The effect that the sale or retention of the property will have on the organization. This report serves to identify potentially unsound situations and to encourage timely compliance with the divestiture requirement as contained in the statutes and regulation. The Federal Reserve monitors the BHC's efforts to effect an orderly divestiture, and may require divestiture before the end of the approved period if supervisory concerns warrant such action.

The reporting requirement only applies to those BHCs that fail to divest DPC shares or assets within two years. They must file an annual report on their efforts to accomplish divestiture of the shares or assets. The report must describe the efforts made to date to effect divestiture (including reasons for any delay in the pace of divestiture), and must include financial and descriptive data with respect to assets as well as the sales price of divested assets.

Affected BHCs file the annual report on their progress toward divestiture with their district Federal Reserve Bank. The due date for the report is based on the date the BHC acquired the DPC

assets or shares. The BHC submits the information in a letter format, which is neither stored electronically nor published. No changes are being proposed to the FR 4006 reporting requirement.

Board of Governors of the Federal Reserve System, May 25, 1995

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–13443 Filed 6–1–95; 8:45AM]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families, Commission on Child and Family Welfare

Notice of Public Meetings

AGENCY: Administration for Children and Families, DHHS.

SUMMARY: The Commission on Child and Family Welfare will hold meetings at the following locations:

On June 13–15, 1995: Ramada Hotel, 901 N. Fairfax St., Alexandria, Virginia 22314.

On September 13–15, 1995: Embassy Suites in Crystal City, 1300 Jefferson Davis Highway, Arlington, Virginia 22202.

These meetings are open to the public. Public comments will be accepted at the conclusion of the second day of each of the above meetings, June 14 and September 14 respectively, at approximately 5:00 p.m. Written statements will also be accepted. If a sign language interpreter is needed, contact Justine Truesdale at (202) 401–5592 no later than 14 days prior to each meeting.

FOR FURTHER INFORMATION CONTACT: Justine Truesdale, Commission on Child and Family Welfare, 370 L'Enfant Promenade SW., Aerospace Bldg., 6th Floor West, Room 616, Washington, D.C. 20447, (202) 401–5592.

SUPPLEMENTARY INFORMATION: During these meetings the Commission will consider topics and issues for the purpose of preparing its final report, as required under Public Law 102–521.

Dated: May 26, 1995.

Marianne Rufty,

Executive Director, Commission on Child and Family Welfare.

[FR Doc. 95–13508 Filed 6–1–95; 8:45 am]

BILLING CODE 4184–31–M

Public Health Service

Agency Forms Undergoing Paperwork Reduction Act Review

Each Friday the Public Health Service (PHS) publishes a list of information collection requests under review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the PHS Reports Clearance Office on (202) 690–7100.

The following requests have been submitted for review since the list was last published on May 19.

1. PHS Supplements to Application for Federal Assistance (SF 424)—0937–0189—Extension, no change—The checklist, Program Narrative, and Public Health System Impact Statement are part of application forms used to elicit information primarily from governmental and other non-profit organizations requesting financial assistance from PHS grant programs. Respondents: Not-for-profit institutions; State, Local or Tribal Government; Number of Respondents: 7,643; Number of Responses per Respondent: 1; Average Burden per Response: 4.12 hours; Estimated Annual burden: 32,215. Send comments to James Scanlon, Office of the Assistant Secretary for Health, Room 737–F, Humphrey Building, 200 Independence Ave., SW., Washington, DC 20201.

Written Comments and recommendations concerning the proposed information collections should be sent within 30 days of this notice directly to the individual designated.

Dated: May 26, 1995.

James Scanlon,

Director, Data Policy Staff, Office of the Assistant Secretary for Health and PHS Reports Clearance Officer.

[FR Doc. 95–13515 Filed 6–1–95; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–95–1917; FR–3778–N–39]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact David Pollack, room 7256, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1234; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to David Pollack at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: Department of the Interior: Lola D. Knight, Property Management Specialist, Department of the Interior, 1849 C Street, NW, Mail Stop 552–MIB, Washington, DC 20240; U.S. Air Force: Carol Xander, Air Force Real Estate Agency (Area/MI), Bolling AFB, 172 Luke Avenue, Suite 104, Building 5683, Washington, DC 20332–5113; (202) 767–4034; (These are not toll-free numbers).

Dated: May 26, 1995.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

Title V, Federal Surplus Property Program, Federal Register Report For 06/02/95

Suitable/Available Properties

Buildings (by State)

California

Brown House 07–129
Highway 199
Hiouchi Co: Del Norte CA 95531–
Landholding Agency: Interior
Property Number: 619520030
Status: Excess
Comment: 1 story wood frame residence, off-site removal only

Crist House 07–130
Highway 199
Hiouchi Co: Del Norte CA 95531–
Landholding Agency: Interior
Property Number: 619520031
Status: Excess
Comment: 1269 sq. ft., story wood frame residence, off-site removal only, need repairs

Dunkley House 07–127
Highway 199
Hiouchi Co: Del Norte CA 95531–
Landholding Agency: 619520032
Status: Excess
Comment: 1269 sq. ft., 1 story wood frame residence, need repairs, off-site removal only

Graton House 07–125
Highway 199
Hiouchi Co: Del Norte CA 95531–
Landholding Agency: Interior
Property Number: 619520033
Status: Excess
Comment: 1665 sq. ft., 1 story wood frame residence, need repairs, off-site removal only

Schach House 07–105
Highway 199
Hiouchi Co: Del Norte CA 95531–
Landholding Agency: Interior
Property Number: 619520034
Status: Excess
Comment: 700 sq. ft., 1 story wood frame residence, off-site removal only, need repairs

Young House 07–132
Highway 199
Hiouchi Co: Del Norte CA 95531–
Landholding Agency: Interior
Property Number: 619520035
Status: Excess
Comment: 1442 sq. ft., 1 story wood frame residence, off-site removal only

Unsuitable Properties

Buildings (by State)

Alaska

Bldg. 142
Tin City Long Range Radar Site
Wales Co: Nome AK
Landholding Agency: Air Force
Property Number: 189520013
Status: Unutilized
Reason: Secured area, extensive deterioration

Bldg. 110
Tin City Long Range Radar Site
Wales Co: Nome AK
Landholding Agency: Air Force
Property Number: 189520014
Status: Unutilized
Reason: Secured area, extensive deterioration

Bldg. 646
King Salmon Airport
Naknek Co: Bristol Bay AK
Landholding Agency: Air Force
Property Number: 189520015
Status: Unutilized
Reason: Secured area, extensive deterioration

Bldg. 2541
Galena Airport
Galena Co: Yukon AK
Landholding Agency: Air Force
Property Number: 189520016
Status: Unutilized
Reason: Secured area, extensive deterioration

Bldg. 1770
Galena Airport
Galena Co: Yukon AK
Landholding Agency: Air Force
Property Number: 189520017
Status: Unutilized
Reason: Secured area, extensive deterioration

Bldg. 1
Lonely Dewline Site
Fairbanks Co: Fairbanks NS AK
Landholding Agency: Air Force
Property Number: 189520024
Status: Unutilized
Reason: Extensive deterioration

Bldg. 2
Lonely Dewline Site
Fairbanks Co: Fairbanks NS AK
Landholding Agency: Air Force
Property Number: 189520025
Status: Unutilized
Reason: Extensive deterioration, not accessible by road

Bldg. 12
Lonely Dewline Site
Fairbanks Co: Fairbanks NS AK
Landholding Agency: Air Force
Property Number: 189520026
Status: Unutilized
Reason: Extensive deterioration, not accessible by road

Bldg. 1
Wainwright Dewline Site
Fairbakns Co: Fairbanks NS AK
Landholding Agency: Air Force
Property Number: 189520027
Status: Unutilized
Reason: Extensive deterioration, not accessible by road

Bldg. 2
Wainwright Dewline Site
Fairbanks Co: Fairbanks NS AK
Landholding Agency: Air Force
Property Number: 189520028
Status: Unutilized
Reason: Extensive deterioration, not accessible by road

Bldg. 3
Wainwright Dewline Site
Fairbanks Co: Fairbanks NS AK
Landholding Agency: Air Force
Property Number: 189520029
Status: Unutilized
Reason: Extensive deterioration, not accessible by road

California

Bldg. 908
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189520018
Status: Excess

Reason: Other
Comment: Detached latrine
Bldg. 11514
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189520019
Status: Excess
Reason: Secured area, extensive deterioration
Bldg. 11559
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189520020
Status: Excess
Reason: Secured area, extensive deterioration
Bldg. 13002
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189520021
Status: Excess
Reason: Secured area, extensive deterioration
Bldg. 13004
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189520022
Status: Excess
Reason: Secured area, extensive deterioration
Bldg. 16195
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189520023
Status: Excess
Reason: Secured area, extensive deterioration
Dixon Residence 08–102
Oceanview Terrace
Klamath Co: Del Norte CA 95548–
Landholding Agency: Interior
Property Number: 619520027
Status: Unutilized
Reason: Extensive deterioration
Waterson Residence 08–107
Oceanview Terrace
Klamath Co: Del Norte CA 95531–
Landholding Agency: Interior
Property Number: 619520036
Status: Unutilized
Reason: Extensive deterioration

Florida

23 Family Housing
MacDill Auxiliary Airfield No. 1
Avon Park Co: Polk FL 33825–
Location: Include Bldgs; 448, 451 thru 470, 472 and 474
Landholding Agency: Air Force
Property Number: 189520006
Status: Excess
Reason: Within airport runway clear zone
Bldg. 240
MacDill Auxiliary Airfield No. 1
Avon Park Co: Polk FL 33825–
Landholding Agency: Air Force
Property Number: 189520007
Status: Excess
Reason: Extensive deterioration

Idaho

Bldg. 4403
Mountain Home Air Force Base
Mountain Home Co: Elmore ID 83647–
Landholding Agency: Air Force
Property Number: 189520008
Status: Unutilized
Reason: Extensive deterioration

Montana

Bldg. 780
Malmstrom Air Force Base
Malmstrom AFB Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 189520012
Status: Unutilized
Reason: Secured area

South Dakota

Bldg. 1208
Ellsworth Air Force Base
Ellsworth AFB CO; Meade SD 57706–
Landholding Agency: Air Force
Property Number: 189520009
Status: Unutilized
Reason: Secured area
Bldg. 7245
Ellsworth Air Force Base
Ellsworth AFB CO; Meade SD 57706–
Landholding Agency: Air Force
Property Number: 189520010
Status: Unutilized
Reason: Secured area, within 2000 ft. of flammable or explosive material
Bldg. 7502
Ellsworth Air Force Base
Ellsworth AFB CO; Meade SD 57706–
Landholding Agency: Air Force
Property Number: 189520011
Status: Unutilized
Reason:Secured area, within 2000 ft. of flammable or explosive material

Virginia

Chandler House 272 & 272A
220 Zweybrucken Road
Yorktown Co: York VA 23690–
Landholding Agency: Interior
Property Number: 619520028
Status: Unutilized
Reason: Extensive deterioration
Jenkins House, Bldg. JH
218 Zweybrucken Road
Yorktown Co: York VA 23690–
Landholding Agency: Interior
Property Number: 619520029
Status: Unutilized
Reason: Extensive deterioration

[FR Doc. 95–13458 Filed 6–1–95; 8:45 am]
BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–05–1320–01; WYW136502]

Cheyenne, Wyoming 82003

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of invitation for coal exploration licenses.

SUMMARY: Pursuant to section 2(b) of the Mineral Leasing Act of February 25, 1920, as amended by section 4 of the Federal Coal Leasing Amendments Act of 1976, 90 Stat. 1083, 30 U.S.C. 201(b), and to the regulations adopted as Subpart 3410, Title 43, Code of Federal Regulations, all interested parties are hereby invited to participate with Bridger Coal Company on a pro rata cost sharing basis in its program for the exploration of coal deposits owned by the United State of America in the following described lands in Sweetwater County, Wyoming:

T. 40 N., R. 100 W., 6th P.M., Wyoming
Sec. 24: All.
Containing approximately 640.00 acres.

All of the coal in the above-described land consists of unleased Federal coal within the Rock Springs Known Recoverable Coal Resource Area. The purpose of the exploration program is to conduct off-lease exploration by drilling.

ADDRESSES: The proposed exploration program is fully described and will be conducted pursuant to an exploration plan to be approved by the Bureau of Land Management. Copies of the exploration plan are available for review during normal business hours in the following offices (serialized under number WYW136502): Bureau of Land Management, Wyoming State Office, 2515 Warren Avenue, P.O. Box 1828, Cheyenne, Wyoming 82003; and, Bureau of Land Management, Rock Springs District Office, Highway 191 North, Rock Springs, Wyoming 82902.

FOR FURTHER INFORMATION CONTACT:

This notice of invitation will be published in the Daily Rocket-Miner of Rock Springs, Wyoming, once each week for two consecutive weeks beginning the week of May 29, 1995, and in the **Federal Register**. Any party electing to participate in this exploration program must send written notice to both the Bureau of Land Management and Bridger Coal Company no later than thirty days after publication of this invitation in the **Federal Register**. The written notice should be sent to the following addresses: Bridger Coal Company, Attn: Don Hartley, P.O. Box 2068, Rock Springs, Wyoming 82902, and the Bureau of Land Management, Wyoming State Office, Home Base Chief, Minerals and Lands Authorization Group, P.O. Box 1828, Cheyenne, WY 82003.

The foregoing is published in the **Federal Register** pursuant to Title 43 Code of Federal Regulations, section 3410.2–1(c)(1).

Pamela J. Lewis,
Supervisory Land Law Examiner.
[FR Doc. 95–13449 Filed 6–1–95; 8:45 am]
BILLING CODE 4310–22–M

[WY–920–41–5700; WYW97141]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease; Wyoming

Pursuant to the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW97141 for lands in Fremont County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination. The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessees has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW97141 effective January 1, 1995, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Pamela J. Lewis,
Supervisory Land Law Examiner.
[FR Doc. 95–13451 Filed 6–1–95; 8:45 am]
BILLING CODE 4310–22–M

[WY–920–41–5700; WYW116467]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease; Wyoming

Pursuant to the provisions of 30 U.S.C. 188 (d) and (e), and 43 CFR 3108.2–3 (a) and (b)(1), a petition for reinstatement of oil and gas lease WYW116467 for lands in Natrona County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination. The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW116467 effective September 1, 1994, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Pamela J. Lewis,
Supervisory Land Law Examiner.
[FR Doc. 95–13452 Filed 6–1–95; 8:45 am]
BILLING CODE 4310–22–M

[NV–030–95–1610–00]

Notice of Intent To Consider Amending the Walker Resource Management Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to consider amending the Walker Resource Management Plan, prepare an environmental assessment and invite public participation.

SUMMARY: The Carson City District of the Bureau of Land Management is considering amending the Walker Resource Management Plan to address management of public lands in the Carson City, Nevada urban interface. The impacts of the amendment would be analyzed in an environmental assessment. The proposed amendment would be prepared jointly with Carson City as part of the City's master plan update.

DATES AND ADDRESSES: A joint public meeting will be held at 6 pm on June 20, 1995 at Carson High School, 1111 N. Saliman Rd., in Carson City. The meeting will be chaired by the Carson City Planning Commission and the Bureau of Land Management. It's purpose will be to identify issues for BLM's plan amendment and to review the goals and objectives for Carson City's master plan update. Written comments on the proposed amendment and environmental assessment are welcomed through July 14, 1995. They should be sent to Carson City Amendment Project Manager, U.S. Bureau of Land Management, 1535 Hot Springs Road, Carson City, NV 89706. Please call 702 885–6100 for further information.

Comments to the Carson City Planning Commission should be forwarded through the Carson City Community Development Department, 8621 Northgate Lane, Suite 62, Carson City, NV 80706, PH (702) 887–2180.

SUPPLEMENTARY INFORMATION: The public is invited to participate in the identification of issues related to the management of public lands in the Carson City urban interface. Preliminary issues include recreation, open space and land tenure. Planning documents and other pertinent materials may be examined at the Bureau of Land Management office in Carson City between 7:30 a.m. and 5 p.m. Monday through Friday.

Dated this 25th day of May, 1995.

John Singlaub,
District Manager, Carson City District.
[FR Doc. 95–13489 Filed 6–1–95; 8:45 am]
BILLING CODE 4310–HC–M

[UT–943–1420–00–269Z]

Filing of Plat of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: These plats of survey of the following described land have been filed in the Utah State Office, Salt Lake City, Utah:

Group	Tp.	Rge.	Meridian	Approved	Type
0732	18 S.	02 E.	SLM	11/23/94	Dep. Res.
0733	19 S.	01 E.	SLM	11/23/94	Dep. Res.
0733	19 S.	02 E.	SLM	11/23/94	Dep. Res.
0758	13 S.	01 W.	SLM	08/19/94	Dep. Res.
0758	13 S.	02 W.	SLM	08/19/94	Dep. Res.
0762	10 S.	22 E.	SLM	08/19/94	Dep. Res.
0779	14 S.	01 W.	SLM	11/23/94	Dep. Res.
0782	03 S.	03 W.	USM	11/23/94	Dep. Res.
0782	04 S.	03 W.	USM	11/23/94	Dep. Res.
0790	06 S.	20 E.	SLM	04/22/94	Dep. Res.

Group	Tp.	Rge.	Meridian	Approved	Type
0794	01 N.	12 W.	SLM	03/17/94	Dep. Res.
SUP–234	02 S.	11 W.	SLM	02/17/95	Supple.
SUP–235	09 S.	03 E.	SLM	04/06/95	Supple.
SUP–236	09 S.	19 W.	SLM	04/06/95	Supple.
SUP–237	19 S.	02 E.	SLM	04/06/95	Supple.
SUP–238	20 S.	20 W.	SLM	04/06/95	Supple.
SUP–239	42 S.	11 W.	SLM	04/06/95	Supple.
7382–A	23 S.	09 W.	SLM	07/25/94	Mineral Sur.
7382–B	23 S.	09 W.	SLM	07/25/94	Mineral Sur.
7383–A	23 S.	09 W.	SLM	07/25/94	Mineral Sur.
7383–B	23 S.	09 W.	SLM	07/25/94	Mineral Sur.
7384–A	23 S.	09 W.	SLM	07/25/94	Mineral Sur.
7384–B	23 S.	09 W.	SLM	07/25/94	Mineral Sur.

NOTICE: Suspension of plat for Township 16 South, Range 4 West, Salt Lake Meridian, Utah, under the authority of Group 614, as accepted on February 14, 1984, has been lifted by the Chief Cadastral Surveyor for Utah.

The identity plat was suspended by memorandum on February 10, 1993, due to a protest filed against the dependent resurvey conducted by Richard A. Zaninovich, Cadastral Surveyor. The action of suspension was taken as a result of the protest filed by Kendall Stewart, Las Vegas, Nevada.

Cancellation of suspension is by direction of this office, pursuant to the dismissing of protest by the Interior Board of Land Appeals (IBLA). All documents with notations pertaining to suspension must signify that: "Cancellation of Suspension was executed in accordance with IBLA decision on March 28, 1995. Refer to Docket No. 93–409, Serial No. UT–943."

Mat Millenbach,

State Director.

[FR Doc. 95–13448 Filed 6–1–95; 8:45 am]

BILLING CODE 4310–DQ–M

National Park Service

Intention To Extend an Existing Concession Contract—Muir Woods National Monument

SUMMARY: Pursuant to the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20 *et seq.*), notice is given that the National Park Service intends to extend the concession contract at Muir Woods National Monument for a period of three years. This extension is necessary to allow the continuation of public services during the completion period of the planning documents for the park. The current concessioner has performed its obligation to the satisfaction of the Secretary and therefore has a statutory preference in renewal.

SUPPLEMENTARY INFORMATION: The concession contract at Muir Woods National Monument will expire on December 31, 1995, unless extended. The National Park Service will not renew this contract for an extended period until planning can be conducted to determine the future direction for concession services at Muir Woods National Monument. The necessary planning process is expected to begin shortly and will affect the future of the concession. The planning process is expected to take two to three years to complete. Until that planning process is completed, it will not be in the best interest of Muir Woods National Monument to enter into a long term concession contract. For these reasons, it is the intention of the National Park Service to extend the current contract for a period of three years beginning January 1, 1996. Benefits accruing to the government under this contract were renegotiated in 1994.

Information about this notice can be sought from: Business Manager, Golden Gate National Recreation Area, Attention: Robert Kates, Building 201, Fort Mason, San Francisco, California 94123, or call: (415) 556–3104.

Dated: May 25, 1995.

Patty Neubacher,

Acting Regional Director, Western Region.

[FR Doc. 95–13546 Filed 6–1–95; 8:45 am]

BILLING CODE 4310–70–M

Notice of Intent To Issue a Prospectus for the Operation and Management of a Medical Clinic

SUMMARY: Medical operations at the Yosemite Medical Clinic have been conducted by Samaritan Health Services of Phoenix, Arizona. Due to management decisions by Samaritan, they intend to cease such operations in the Fall of 1995. The National Park Service will shortly issue a Prospectus seeking a new concessioner to operate and manage the Yosemite Medical Clinic in Yosemite National Park, California.

SUPPLEMENTARY INFORMATION: Medical services for visitors to Yosemite and for the resident population of government and concessioner employees are provided at the Yosemite Medical Clinic. The Clinic also supports the emergency medical requirements related to park emergency and rescue operations. The current business grosses roughly $1.5 million per year. The clinic operates from a government owned building. Some housing is also provided by the government. These facilities are provided for a fee. Samaritan will sell certain personal property (supplies and equipment) to the incoming operator. Other equipment and supplies are to be provided by the new operator. All of the requirements as well as needed improvements to the facilities, are described in the Prospectus. The new contract will be for a term of between 5 and 15 years depending on the degree of facility improvements agreed to and other factors described in the Prospectus.

If you are interested in this business opportunity and wish to receive a copy of the Prospectus and the Application when they are issued, please send your name and address to: National Park Service, Concession Program Management Division, 600 Harrison Street, Suite 600, San Francisco, CA 94107–1372, or call: (415) 744–3981—Teresa Jackson; when the Prospectus is issued, applications will be accepted for SIXTY (60) days under the terms described in the Prospectus.

Dated: May 19, 1995.

Bruce Kilgore,

Acting Regional Director, Western Region.

[FR Doc. 95–13545 Filed 6–1–95; 8:45 am]

BILLING CODE 4310–70–M

Chesapeake and Ohio Canal National Historical Park Commission Meeting

Notice is hereby given in accordance with Federal Advisory Committee Act that a meeting will be held at 1:00 p.m., Saturday, June 10, 1995, at Allegany Community College, Willowbrook Road, Cumberland, Maryland.

The Commission was established by Public Law 91–664 to meet and consult with the Secretary of the Interior on general policies and specific matters related to the administration and development of the Chesapeake and Ohio Canal National Historical Park.

The members of the Commission are as follows:

Mrs. Sheila Rabb Weidenfeld, Chairman, Washington, D.C.
Ms. Diane C. Ellis, Brunswick, Maryland
Brother James T. Kirkpatrick, F.S.C., Cumberland, Maryland
Ms. Anne L. Gorner, Cumberland, Maryland
Ms. Elise B. Heinz, Arlington, Virginia
Mr. George M. Wykoff, Jr., Cumberland, Maryland
Mr. Rockwood H. Foster, Washington, D.C.
Mr. Barry A. Passett, Washington, D.C.
Mrs. Jo Reynolds, Potomac, Maryland
Ms. Nancy C. Long, Glen Echo, Maryland
Ms. Mary E. Woodward, Shepherdstown, West Virginia
Dr. James H. Gilford, Frederick, Maryland
Mr. Edward K. Miller, Hagerstown, Maryland
Mrs. Sue Ann Sullivan, Williamsport, Maryland
Mr. Terry W. Hepburn, Hancock, Maryland
Mr. Laidley E. McCoy, Charleston, West Virginia
Ms. Jo Ann M. Spevacek, Burke, Virginia
Mr. Charles J. Weir, Falls Church, Virginia

The primary agenda for this meeting will include a report and update on the Canal Place Authority project in Cumberland.

The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning the matters to be discussed. Persons wishing further information concerning this meeting or who wish to submit written statements, may contact the Superintendent, C&O Canal National Historical Park, P.O. Box 4, Sharpsburg, Maryland 21782.

Minutes of the meeting will be available for public inspection six (6) weeks after the meeting at park headquarters, Sharpsburg, Maryland.

Dated: May 25, 1995.

Terry R. Carlstrom,

Acting Regional Director, National Capital Region.

[FR Doc. 95–13544 Filed 6–1–95; 8:45 am]

BILLING CODE 4310–70–M

Notice of Public Hearing

SUMMARY: Proposed Exchange of Federally-Owned Lands for Privately-Owned Lands Both in Fulton County, Georgia.

FOR FURTHER INFORMATION CONTACT: Superintendent, Martin Luther King, Jr. National Historic Site, 526 Auburn Avenue, Atlanta, Georgia 30312.

A public hearing has been scheduled to hear and receive public comments on the proposed exchange. A Notice of Realty Action, published in the **Federal Register** on May 5, 1995, describes the proposed action which involves an equal value exchange of property between Ebenezer Baptist Church and the National Park Service.

The public hearing will be held at 6:30 p.m. on Thursday, June 15, 1995, at the Auburn Avenue Research Library of African American Culture and History, 145 Auburn Avenue, Atlanta, Georgia.

Comments will be accepted during a 45-day public comment period which ends June 19, 1995.

Dated: May 24, 1995.

Robert Deskins,

Southeast Field Director.

[FR Doc. 95–13543 Filed 6–1–95; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–706 (Final)]

In the Matter of Canned Pineapple Fruit From Thailand; Commission Determination to Conduct a Portion of the Hearing in Camera

AGENCY: U.S. International Trade Commission.

ACTION: Closure of a portion of a Commission hearing to the public.

SUMMARY: Upon requests of petitioner Maui Pineapple Company, Ltd. ("Maui") and respondents Thai Food Processors' Association ("TFPA") and the Government of Thailand in the above-captioned final investigation, the Commission has unanimously determined to conduct a portion of its hearing scheduled for June 1, 1995, *in camera*. See Commission rules 207.23(d), 201.13(m) and 201.35(b)(3) (19 C.F.R. 207.23(d), 201.13(m) and 201.35(b)(3), as amended, 59 Fed. Reg. 66,719 (Dec. 28, 1994)). The remainder of the hearing will be open to the public.

FOR FURTHER INFORMATION CONTACT: Rachele R. Valente, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202–205–3089. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission believes that the parties have justified the need for a closed session. Because Maui is virtually the sole domestic producer, a full discussion of its financial condition and of many of the indicators that the Commission examines in assessing material injury, or threat thereof, by reason of subject imports can only occur if at least part of the hearing is held *in camera*. In making this decision, the Commission nevertheless reaffirms its belief that whenever possible its business should be conducted in public.

The hearing will include the usual public presentations by petitioner and by respondents, with questions from the Commission. In addition, the hearing will include an *in camera* session for presentations including BPI by petitioner and respondents, and for questions from the Commission relating to the BPI. For any *in camera* session the room will be cleared of all persons except (1) those who have been granted access to BPI under a Commission administrative protective order ("APO") and are included on the Commission's APO service list in these investigations (see 19 C.F.R. 201.35(b)(1), (2)); (2) non-APO authorized Maui personnel when Maui's BPI will be discussed; and (3) non-APO authorized foreign producer personnel when such producer's BPI will be discussed. See 19 C.F.R. 201.35(b)(1), (2). The time for the parties' presentations and rebuttals in the *in camera* session will be taken from their respective overall allotments for the hearing. All persons planning to attend the *in camera* portions of the hearing should be prepared to present proper identification.

Authority: The General Counsel has certified, pursuant to Commission Rule 201.39 (19 C.F.R. 201.39) that, in her opinion, a portion of the Commission's hearing in *Canned Pineapple Fruit Thailand*, Inv. No. 731–TA–706 (Final) may be closed to the public to prevent the disclosure of BPI.

By order of the Commission.

Issued: May 26, 1995.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–13542 Filed 6–1–95; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 93–65]

Harlan J. Borcherding, D.O.; Revocation of Registration

On June 17, 1993, the Deputy Assistant Administrator (then-Director), Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Harlan J. Borcherding, D.O., of Houston, Texas (Respondent), proposing to revoke his DEA Certificate of Registration, AB1540079, and deny any pending applications for such registration. The statutory basis for the Order the Show Cause was that Respondent's continued registration would be inconsistent with the public interest as that term is used in 21 U.S.C. 823(f) and 824(a)(4).

Respondent, through counsel, requested a hearing on the issues raised in the Order to Show Cause, and the matter was docketed before Administrative Law Judge Paul A. Tenney. Following prehearing procedures, a hearing was held in Houston, Texas, on May 25, 1994.

On October 11, 1994, Judge Tenney issued his findings of fact, conclusions of law and recommended ruling. The Government filed exceptions to Judge Tenney's recommended ruling on October 28, 1994. No exceptions were filed by Respondent.

On November 11, 1994, the administrative law judge transmitted the record, including the Government's exceptions, to the Deputy Administrator. The Deputy Administrator has considered the record in its entirety and enters his final order in this matter pursuant to 21 CFR 1316.67, based on findings of fact and conclusions of law as set forth herein.

The administrative law judge found that Respondent is a primary-care family physician. Respondent's medical practice is situated in a low-income area and his clientele primarily are economically deprived individuals.

The administrative law judge further found that DEA initiated an investigation of Respondent, in March of 1990, following information received from the Texas Department of Human Services that Respondent was among the top 1,000 Medicaid prescribers. DEA also received information from the Houston Police Department that Respondent was writing numerous prescriptions for Tylenol #4, a Schedule III controlled substance, and Valium, a Schedule IV controlled substance.

The administrative law judge found that an undercover Houston police officer participated in DEA's investigation of Respondent for the purpose of obtaining prescriptions for Tylenol #4 and Valium from Respondent for non-medical reasons. The undercover officer, wired with a transmitter, visited Respondent's office on ten occasions between October 1990 and March 1991. The undercover officer completed a patient information sheet during his first meeting with Respondent on March 21, 1990, and indicated that he was unemployed. Respondent recorded the officer's blood pressure, temperature and weight, and drew a blood sample. The officer informed Respondent that he "needed something to mellow out at the end of the day", and specifically asked for Valium. Judge Tenney noted that Respondent explained to the officer that he did not give Valium to new patients and that he would only give it to regular patients. Respondent also asked if the lack of a job was the reason the officer complained of stress and, therefore, had requested the medication. Respondent dispensed to the officer 18 Tranxene 7.5 mg tablets, a Schedule IV controlled substance.

The administrative law judge found that the officer made his second visit the Respondent's office on April 24, 1990, and received a prescription for 30 Tranxene 7.5 mg tablets, plus one refill. Judge Tenney also noted that after giving the officer the prescription, Respondent asked him if he needed a note for work.

The administrative law judge further found that, on June 8, 1990, at his third visit, the officer informed Respondent that he had been taking two Tranxene tablets at a time. The officer received a prescription of 30 Valium 10 mg tablets, with one refill.

Judge Tenney found that, on the officer's next visit in July 1990, the officer informed Respondent that he now was taking two Valium per day and asked for a prescription for Tylenol #4. Respondent refused to prescribe Tylenol #4 stating that Tylenol #4 is only needed for pain and that the combination of Valium and Tylenol #4 is potent. Respondent also informed that officer that he could continue to take two Valium per day, but that one per day was preferable. The officer obtained a prescription for 30 Valium 10 mg tablets, plus one refill. Respondent again asked the officer if he needed a note for work.

The administrative law judge further found that during the officer's next visit in September of 1990, the officer informed Respondent that he had a new job. The officer also asked for a prescription of Tylenol #4, stating that he had run out of Valium and had taken Tylenol #4 in its place. Respondent refused the request for Tylenol #4 and, instead, again prescribed 30 Valium 10 mg tablets, plus one refill.

The administrative law judge found that the officer made another visit to Respondent on December 14, 1990, and was refused his requested refill of Valium because, as Respondent stated, narcotics agents were monitoring Respondent's prescriptions, particularly those for street drugs. However, respondent did give the officer a prescription for 30 Tranxene 7.5 mg tablets, plus one refill.

The officer again visited Respondent on January 25, 1991, and informed Respondent that he had obtained Tylenol #4 from another physician. The administrative law judge found that the officer did not complain of any illness during this visit nor give any reason why he might need a prescription for Tylenol #4. Respondent prescribed 30 Tranxene 15 mg tablets, plus one refill.

Judge Tenney found that the officer returned to Respondent on February 26, 1991. Respondent informed the officer that he should not have returned until two months after his previous January 25, 1991 visit. The officer responded that he had been giving some of his medication to his girlfriend and asked whether she could see Respondent. The officer additionally informed Respondent that the Tranxene was not working as well as the Valium. Respondent prescribed 60 Tranxene 15 mg tablets, plus one refill.

Judge Tenney found that, on March 20, 1991, at the final visit, the officer brought another undercover police officer to Respondent's office to pose as his girlfriend. The second officer requested a prescription because she "just needed something to relax." Respondent refused to prescribe medication to either officer at this visit.

With regard to the officer's visits to Respondent, Judge Tenney noted that Respondent spent, on average, only three minutes with the officer on most of these visits, and that two visits lasted only one minute each. During these visits Respondent did not pursue the nature of the officer's complaints beyond checking the officer's blood pressure and, on two occasions, checking his chest with a stethoscope. Judge Tenney additionally noted that Respondent never advised the officer to call him or make arrangements for follow-up appointments.

Nonetheless, the administrative law judge concurred with Respondent's expert witness that the undercover officer presented a legitimate medical complaint to Respondent, i.e. anxiety purportedly induced by unemployment. Judge Tenney further found that Respondent's treatment of the officer with Tranxene and Valium was medically proper.

In January of 1992, a grand jury in Harris County, Texas indicted Respondent on three counts of prescribing Clorazepate (also known by its brand name "Tranxene"), a Schedule IV controlled substance, without a valid medical purpose. The indictment was based on Respondent's prescriptions of Tranxene to the undercover officer on December 14, 1990, January 25, 1991, and February 26, 1991.

The administrative law judge found that Respondent pled guilty to a single misdemeanor count and that adjudication of guilt was deferred. Respondent was given two years probation, a $2,000 fine and 200 hours of community service. Respondent's probationary period expired without an adjudication of guilt and the proceedings were dismissed.

Judge Tenney also found that DEA conducted an accountability audit covering the period between January 1, 1992 and February 19, 1993. The audit revealed shortages and overages of various controlled substances. The audit revealed recordkeeping violations, including failure to maintain complete and accurate records of controlled substances received and dispensed; failure to take an initial or biennial inventory of all stocks of controlled substances; and failure to maintain dispensing records of controlled substances in a readily retrievable form. The administrative law judge noted Respondent's admission concerning recordkeeping deficiencies, and additionally noted Respondent's testimony that he had instituted new office procedures to remedy his recordkeeping problems.

The administrative law judge found that the United States Attorney for the Southern District of Texas prepared a complaint seeking civil penalties for violations of 21 U.S.C. 827(a)(3) based on "virtually identical" recordkeeping deficiencies as those asserted in this proceeding. Respondent entered into a settlement agreement dated October 28, 1993. Judge Tenney found that no representation was made, through the course of the settlement, that DEA would surrender its claims concerning Respondent's DEA Certificate of Registration.

Pursuant to 21 U.S.C. 824(a)(4) the Deputy Administrator of the DEA may revoke the registration of a practitioner upon a finding that the registrant has committed such acts as would render his registration inconsistent with the public interest as that term is used in 21 U.S.C. 823(f). In determining the public interest, the following factors will be considered:

"(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The [registrant]'s experience in dispensing, or conducting research with respect to controlled substances.

(3) The [registrant]'s conviction record under Federal or State laws relating to the manufacture, distribution or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety."

It is well established that these factors are to be considered in the disjunctive, i.e. the Deputy Administrator may properly rely on any one or a combination of factors, and give each factor the weight he deems appropriate in assessing the public interest. See Mukand Lal Arora, M.D., 60 FR 4447 (1995); Henry J. Schwartz, Jr., M.D., 54 FR 16422 (1989).

The Government argued that factors (2) through (5) are relevant in the instant case. The administrative law judge found that the Government had established a *prima facie* case only with respect to factors (3) and (5). Judge Tenney held, with respect to factors (2) and (4), that the Government had not proven by a preponderance of the evidence that Respondent lacked a legitimate medical purpose for dispensing and prescribing controlled substances to the undercover officer.

The administrative law judge did find, however, that this is a "close case", because of such facts as Respondent's average three minute office visits, and Respondent's concern that narcotics agents were monitoring his prescriptions for street drugs. Judge Tenney additionally noted the fact that Respondent, on two occasions, asked the officer if he needed a note for work, raising the question as to whether Respondent actually was treating the officer for anxiety allegedly inducted by unemployment.

With regard to factor (3), the administrative law judge rejected Respondent's argument that he had not been "convicted" of any offense within the meaning of 21 U.S.C. 823(f)(3). The law is well settled that a DEA registrant may be found to have been "convicted" within the meaning of the Controlled Substances Act, despite a deferred adjudication of guilt. See Mukand Lal Arora, M.D., 60 FR 4447 (1995) (conviction, sentence of probation and deferred adjudication may be considered under 21 U.S.C. 823(f)(3)); also, Clinton D. Nutt, D.O., 55 FR 30992 (1990), *aff'd* 916 F.2d 202 (5th Cir. 1990); Eric A. Baum, M.D., 53 FR 47272 (1988).

With respect to factor (5) the administrative law judge found that the Government presented credible, uncontradicted testimony concerning Respondent's recordkeeping deficiencies and that Respondent had conceded that his recordkeeping practices were inadequate. The administrative law judge also briefly addressed and rejected Respondent's contentions that revocation of his registration, based on these recordkeeping deficiencies, is precluded by double jeopardy and collateral estoppel following Respondent's payment of a civil fine for recordkeeping violations as part of his settlement with the United States Attorney's office for the Southern District of Texas. Judge Tenney found that the settlement agreement does not preclude DEA from revoking or suspending Respondent's registration based on deficient recordkeeping practices.

Notwithstanding his conclusion that the Government had met its burden of proof with respect to 21 U.S.C. 823(f) (3) and (5), the administrative law judge recommended that Respondent retain his DEA Certificate of Registration, but should receive a formal reprimand.

The Government took exception to Judge Tenney's findings that Respondent legitimately dispensed and prescribed controlled substances to an undercover officer from March 21, 1990 to February 26, 1991. The Government argued that Respondent's guilty plea to the criminal misdemeanor fraud count constitutes an admission that Respondent did not legitimately prescribe controlled substances to the undercover officer.

The Government further objected to the administrative law judge's failure to accord more weight to evidence introduced concerning inconsistencies in the Respondent's treatment of the undercover officer in determining whether Respondent prescribed controlled substances to the undercover officer for a legitimate medical purpose. Additionally, the Government took exception to Judge Tenney's conclusion that there was little evidence of Respondent's current non-compliance with recordkeeping requirements. The Government argued that Judge Tenney's conclusion was based, in part, on the failure of DEA personnel to return to Respondent's office to verify his

compliance following the February 1993 accountability audit in which the deficiencies were discovered. The Government further argued that it's evidentiary burden was satisfied upon establishing, as found by Judge Tenney, a *prima facie* case with respect to Respondent's deficient recordkeeping systems in the past. The Government argued that it does not have the additional burden of conducting ongoing investigations up until the date of the administrative hearing to verify continued non-compliance or recent compliance. The Government further maintained that Respondent provided no evidence of his current compliance, and, further that the Government does not have the burden of establishing whether Respondent corrected his recordkeeping systems.

The Deputy Administrator rejects the opinion and recommended decision of the administrative law judge in its entirety. The Deputy Administrator concludes that, for a controlled substance prescription to be valid, it must be written by an authorized individual acting within the scope of normal professional practice for a legitimate medical purpose. Under these parameters, the prescriptions issued to the undercover officer by Respondent were not valid prescriptions because Respondent, while authorized by law to prescribe controlled substances, did not act within the scope of normal, professional practice concerning his prescriptions of Tranxene and Valium to the undercover officer. Respondent's total treatment time averaged only three minutes per visit with two visits lasting only one minute each. The undercover officer received controlled substances at seven out of ten visits over a one year period, but Respondent never advised the officer to telephone his office or schedule an appointment for follow-up. Respondent determined that since the undercover officer did not have a job and was partially "uptight", a prescription for Tranxene was warranted, but subsequently asked if the officer needed a note for work. Respondent continued to prescribe controlled substances to the undercover officer after the officer informed Respondent that he was taking the medication in larger quantities and more frequently than directed and was sharing the drugs with another person. Further, the officer dictated which controlled substance he wanted, rather than Respondent, as a practitioner, determining the medication appropriate for the medical condition presented by the officer.

The Deputy Administrator further finds that the prescriptions issued by Respondent were not for a legitimate medical purpose as demonstrated by Respondent's non-medical rationale for not prescribing requested drugs. For example, Respondent initially refused the officer's request for Valium, not because the undercover officer did not present a legitimate medical problem to Respondent, but, as Respondent explained, as a rule he did not give Valium to new patients, only regular patients, as if regular patients had a more legitimate medical need for controlled substances. Additionally, after prescribing Valium to the officer on three separate visits, Respondent later refused to issue a prescription for Valium out of concern that narcotic agents were monitoring his prescriptions for street drugs, but, instead, gave the officer a prescription for Tranxene.

The Deputy Administrator concludes, in light of the foregoing, that Respondent did not legitimately dispense or prescribe controlled substances to the undercover officer. The Government has met its burden of proof in this regard and factors (2) and (4) under 21 U.S.C. 823(f) are, therefore, relevant. Further, the Deputy Administrator concurs with the administrative law judge's finding that the Government established a *prima facie* case with respect to factor (3) and factor (5) under 21 U.S.C. 823(f). Finally, the Deputy Administrator concludes that Respondent's guilty plea, and his past recordkeeping violations demonstrate a pattern of noncompliance by Respondent with the Controlled Substance Act and its implementing regulations. Therefore, in consideration of 21 U.S.C. 823(f) (2), (3), (4) and (5), Respondent's continued registration would not be consistent with the public interest.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration, AB1540079, previously issued to Harlan J. Borcherding, D.O., be, and it hereby is, revoked, and any pending applications for such registration be, and they hereby are, denied. This order is effective July 3, 1995.

Dated: May 25, 1995.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 95–13455 Filed 6–1–95; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 12, 1995.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 12, 1995.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC. this 22nd day of May, 1995.

Victor J. Trunzo,

Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Baras Jersey Inc. (Wkrs)	New York, NY	05/22/95	03/27/95	31,038	Knitted Fabrics.
Lockley Mfg. Group (USWA)	New Castle, PA	05/22/95	05/02/95	31,039	Fabrication of Weapons Systems.
Mobile Tech Inc. (Wkrs)	Abingdon, VA	05/22/95	05/09/95	31,040	Automotive Remote Starters.
Overton Shirt Makers (Wkrs)	Livingston, TN	05/22/95	05/01/95	31,041	Men's Shirts, Boxers, P.J. & Robes.
Tubescope Vetco International (Wkrs).	Girard, OH	05/22/95	05/07/95	31,042	Oilfield Pipe Inspection Service.
Zenith Distributing Corp. of NY (Wkrs).	Uniondale, NY	05/22/95	05/10/95	31,043	Consumer Electronics.
Engraph Label Group (Wkrs)	Delran, NJ	05/22/95	05/04/95	31,044	Sale & Serv. Label Application Machinery.
Engraph Label Group (Wkrs)	Moorestown, NJ	05/22/95	05/04/95	31,045	Sale & Serv. Label Application Machinery.
Ingersoll-Dresser Pump Co (USWA)	Phillipsburg, NJ	05/22/95	05/08/95	31,046	Petro-Chemical & Utility Pumps.
(The) Travelers Insurance Co (Wkrs)	Voorhees, NJ	05/22/95	05/01/95	31,047	Process Medical Insurance Claims.
OXY USA, Inc (Wkrs)	Tulsa, OK	05/22/95	05/12/95	31,048	Oil and Gas.
OXY USA, Inc (Wkrs)	Oklahoma City, OK.	05/22/95	05/12/95	31,049	Oil and Gas.
OXY USA, Inc (Wkrs)	Liberal, KS	05/22/95	05/12/95	31,050	Oil and Gas.
OXY USA, Inc (Wkrs)	Wichita, KS	05/22/95	05/12/95	31,051	Oil and Gas.
OXY USA, Inc (Wkrs)	Houston, TX	05/22/95	05/12/95	31,052	Oil and Gas.
OXY USA, Inc (Wkrs)	Midland, TX	05/22/95	05/12/95	31,053	Oil and Gas.
OXY USA, Inc (Wkrs)	Hobbs, NM	05/22/95	05/12/95	31,054	Oil and Gas.
OXY USA, Inc (Wkrs)	Bakersfield, CA	05/22/95	05/12/95	31,055	Oil and Gas.
Philips Laser Magnetic Storage (Wkrs).	Colorado Springs, CO.	05/22/95	05/08/95	31,056	CD–ROM/Compact Disc Drives.
F & M Hat Co (Wkrs)	Denver, PA	05/22/95	05/01/95	31,057	Women's Wool Felt Hats.
H & P Garment (ILGWU)	Hoboken, NJ	05/22/95	04/26/95	31,058	Women's Coats.
King Design, Inc. (Wkrs)	Eugene, OR	05/22/95	05/04/95	31,059	Interior Graphic Design Products.
Norcross Footwear Inc. (Co.)	Nashua, NH	05/22/95	05/10/95	31,060	Waders & Children's Snow Boots.
Strand Lighting, Inc. (Wkrs)	Rancho Dominguez, CA.	05/22/95	05/12/95	31,061	Lighting Fixtures & PCB Assemblies.

[FR Doc. 95–13526 Filed 6–1–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,570]

Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In the matter of Chevron USA Production Company Headquartered in Houston, Texas and Chevron USA Production Company operating at various locations in the following States: Alabama TA–W–30,570A; California TA–W–30,570B; Colorado TA–W–30,570C; District of Columbia TA–W–30,570D; Kansas TA–W–30,570E; Louisiana TA–W–30,570F; Mississippi TA–W–30,570G; New Mexico TA–W–30,570H; North Dakota TA–W–30,570I; Oklahoma TA–W–30,570J; Texas TA–W–30,570K; Utah TA–W–30,570L; Wyoming TA–W–30,570M.

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) as amended by the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Act must be met. It is determined in this case that all of the requirements have been met.

The investigation was initiated on December 19, 1994 in response to a petition filed on behalf of workers and former workers at Chevron USA Production Company, headquartered in Houston, Texas (TA–W–30,570) and all operations in the following states: (1) Alabama (TA–W–30,570A); and (2) California (TA–W–30,570B); (3) Colorado (TA–W–30,570C); (4) District of Columbia (TA–W–30,570D); (5) Kansas (TA–W–30,570E); (6) Louisiana (TA–W–30,570F); (7) Mississippi (TA–W–30,570G); (8) New Mexico (TA–W–30,570H); (9) North Dakota (TA–W–30,570I); (10) Oklahoma (TA–W–30,570J); (11) Texas (TA–W–30,570K); (12) Utah (TA–W–30,570L); and (13) Wyoming (TA–W–30,570M). Workers are engaged in the exploration and production of crude oil and natural gas.

Workers are not separately identifiable between crude oil and natural gas exploration or production. Crude oil accounts for an important portion of Chevron USA Production Company's sales.

Workers at Chevron USA Production Company located in various locations in various states: Texas; New Mexico; Colorado; Utah; Wyoming; California; Louisiana; Mississippi; Oklahoma; Alabama; Kansas; and North Dakota (TA–W–27,627; TA–W–27,308; TA–W–27,310–27,313; and TA–W–27,316–318) were certified eligible to apply for trade adjustment assistance benefits on July 9, 1992. These certifications expired on July 9, 1994.

United States imports of crude oil and dry natural gas increased absolutely and relative to domestic shipments and consumption in the period November 1993 through October 1994 as compared to the year earlier.

Sales and production of crude oil at Chevron USA Production Company declined in 1994 compared to 1993.

Overall employment of workers at Chevron USA Production Company, headquartered in Houston, Texas (TA–W–30,570) and in various locations in various states of Chevron USA Production (TA–W–30,570A–M) declined in 1994 compared to 1993.

There have been major layoffs at the headquarters (TA–W–30,570) and at various locations in various states (TA–W–30,570A–M) of Chevron USA Production Company in 1993 and 1994. There are additional layoffs planned for 1995; 1996; and beyond at Chevron USA Production Company.

Company imports of crude oil and natural gas increased in 1994 compared to 1993.

Conclusion

After careful review of the facts obtained in the investigation, I conclude

that increases of imports of articles like or directly competitive with crude oil and natural gas contributed importantly to the decline in sales or production and to the total or partial separation of workers at Chevron USA Production Company. In accordance with the provisions of the Act, I make the following certification:

"All workers of Chevron USA Production Company, located in the District of Columbia (TA–W–30,570D) who become totally or partially separated from employment on or after December 19, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

AND

"All workers of Chevron USA Production Company operating at various locations in the following states engaged in employment related to the exploration and production of crude oil and natural gas who became totally or partially separated from employment on or after July 9, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Alabama TA–W–30,570A
California TA–W–30,570B
Colorado TA–W–30,570C
Kansas TA–W–30,570E
Louisiana TA–W–30,570F
Mississippi TA–W–30,570G
New Mexico TA–W–30,570H
North Dakota TA–W–30,570I
Oklahoma TA–W–30,570J
Texas TA–W–30,570K
Utah TA–W–30,570L
Wyoming TA–W–30,570M

Signed in Washington, DC this 23rd day of May 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–13525 Filed 6–1–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–29, 403]

Johnson Controls Inc., Bennington, Vermont; Revised Determination on Reopening

On May 12, 1995, the Department, on its own motion, reopened its investigation for the former workers of the subject firm.

The initial investigation resulted in a negative determination on March 15, 1994 because the "contributed importantly" test of the Group Eligibility Requirements of the Trade Act was not met for workers at the subject firm. The denial notice was published in the **Federal Register** on March 30, 1994 (59 FR 14876).

The new findings show a later response indicating that a customer of the subject firm increased purchases of imported automotive batteries in 1993 and 1994.

Conclusion

After careful consideration of the new facts obtained on reopening, it is concluded that increased imports of articles like or directly competitive with automotive batteries produced by the subject firm contributed importantly to the declines in sales and to the total or partial separation of workers of the subject firm. In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

"All workers of Johnson Controls Inc., Bennington, Vermont, engaged in the production of automotive batteries who became totally or partially separated from employment on or after January 3, 1993, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed in Washington, DC, this 18th day of May 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–13527 Filed 6–1–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30, 659]

Johnson Controls Battery Group Inc., Owosso, Michigan; Revised Determination on Reopening

On May 12, 1995, the Department on its own motion, reopened its investigation for the former workers of the subject firm.

The initial investigation resulted in a negative determination on February 21, 1995 because the "contributed importantly" test of the Group Eligibility Requirements of the Trade Act was not met for workers at the subject firm. The denial notice was published in the **Federal Register** on March 10, 1995 (60 FR 13177).

The new findings show a late response indicating that a customer of the subject firm increased purchases of imported automotive batteries in 1993 and 1994.

Conclusion

After careful consideration of the new facts obtained on reopening, it is concluded that increased imports of articles like or directly competitive with automotive batteries produced by the subject firm contributed importantly to the declines in sales and to the total or partial separation of workers of the subject firm. In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

"All workers of Johnson Controls Battery Group, Inc., Owosso, Michigan, who became totally or partially separated from employment on or after December 22, 1993, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed in Washington, DC, this 17th day of May 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–13529 Filed 6–1–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,485]

Lockheed Fort Worth Co., a Division of Lockheed Corp., Department 73, Fort Worth, Texas; Revised Determination on Reopening

On May 16, 1995, the Department, on its own motion, reopened its investigation for the former workers of the subject firm.

The initial investigation resulted in a negative determination on January 10, 1995 because the "contributed importantly" test of the Group Eligibility Requirements of the Trade Act was not met for workers at the subject firm. The denial notice was published in the **Federal Register** on February 10, 1995 (60 FR 8061).

New evidence furnished to the Department show company imports of wire harnesses for F–16 fighter aircraft.

Conclusion

After careful consideration of the new facts obtained on reopening, it is concluded that increased imports of articles like or directly competitive with wire harnesses produced by the subject firm contributed importantly to the declines in sales and to the total or partial separation of workers of the subject firm. In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

"All workers of Department 73 of Lockheed Fort Worth Company, a Division of Lockheed Corporation, located in Fort Worth, Texas, who became totally or partially separated from employment on or after October 31, 1993, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed in Washington, DC, this 17th day of May 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–13528 Filed 6–1–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,690]

Pennzoil Products Co., Roosevelt, Utah Refinery, Roosevelt, Utah; Negative Determination Regarding Application for Reconsideration

By an application postmarked April 28, 1995, one of the petitioners requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on March 30, 1995 and published in the **Federal Register** on April 27, 1995 (60 FR 20763).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation, of facts or of the law justified reconsideration of the decision.

The investigation findings show that the workers were primarily engaged in employment related to the production of petroleum products.

The Department's denial was based on the fact that the "contributed importantly" test of the increased import criterion of the Group Eligibility Requirements of the Trade Act was not met. The "contributed importantly" test is generally demonstrated through a survey of the workers' firm's customers.

The petroleum products produced at Pennzoil's Roosevelt, Utah refinery, were sold to wholesale or retail customers. The Department's survey of Pennzoil's customers shows that they did not import petroleum products during the relevant periods.

The Petitioner claims that the international price of crude oil affects the price of domestic crude oil and was responsible for the worker separations at Pennzoil.

Price is not a criterion for a worker group certification, and would not form a basis for a worker group certification.

The Trade Act was not intended to provide TAA benefits to everyone who is in some way affected by foreign competition but only to those who experienced a decline in sales or production and employment and an increase in imports of like or directly competitive products which "contributed importantly" to declines in sales or production and employment.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 23 day of May 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–13524 Filed 6–1–95; 8:45 am]

BILLING CODE 4510–30–M

Employment Standards Administration Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determinations Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by volume and State. Dates of publication in the **Federal Register** are

in parentheses following the decisions being modified.

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WA950010 (Feb. 10, 1995)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S.

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Signed at Washington, D.C. This 26th Day of May 1995.

Alan L. Moss,

Director, Division of Wage Determination.

[FR Doc. 95–13431 Filed 6–1–95; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Advanced Scientific Computing: Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Advanced Scientific Computing (# 1185).

Date and Time. June 22/23, 1995, 8:30 am to 5 pm.

Place: National Science Foundation, 4201 Wilson Boulevard Suite 1122, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Richard Hirsh, Deputy Division Director, Centers Program, Suite 1122, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230 (703) 306–1970.

Purpose of Meeting: To provide recommendations and advice concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Metacenter Regional Alliance Research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: May 30, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–13556 Filed 6–1–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Biological Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Biological Sciences (#1754).

Date and Time: June 19–23, 1995.

Place. National Science Foundation, 4201 Wilson Boulevard, Room 680, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Penelope Firth, Division of Environmental Biology, Room 635, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1483.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF and EPA for financial support.

Agenda: To review and evaluate Interagency Announcement of Opportunity, NSF/EPA Partnership for Environmental Research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: May 30, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–13549 Filed 6–1–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Civil and Mechanical Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announced the following meeting:

Name: Special Emphasis Panel in Civil and Mechanical Systems.

Date and Time: June 21, 1995; 8:30 a.m. to 4:00 p.m.

Place: National Science Foundation, Room 580, Arlington, VA 22230.

Notice of Meeting: Closed.

Contact Person: Dr. Jorn Larsen-Basse, Program Director, 4201 Wilson Blvd., Arlington, VA 22230, Telephone: (703) 306–1360.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: Review and evaluate Civil and Mechanical Systems NSF IIA proposals.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including

technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: May 30, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–13553 Filed 6–1–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Design, Manufacture, and Industrial Innovation; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Design, Manufacture, and Industrial Innovation–#1194

Date and Time: June 26–27, 1995, 8:30 a.m.–5:00 p.m.

Place: Rooms 310 and 340, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Christina Gabriel, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 306–1330.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the NSF for financial support.

Agenda: To review and evaluate Management of Technological Innovation (MOTI) proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: May 30, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–13536 Filed 6–1–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Design, Manufacture and Industrial Innovation; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Design, Manufacture and Industrial Innovation (#1194)

Date and Time: June 22 and 23, 1995, 8:30 am to 5:00 pm.

Place: Room 320, NSF, 4201 Wilson Boulevard, Arlington VA.

Type of Meeting: Closed.

Contact Person: Mr. Darryl G. Gorman, Program Director, Small Business Technology Transfer Program, National Science Foundation, 4201 Wilson Boulevard, Arlington VA 22230, Telephone (703) 306–1391.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Small Business Technology Transfer [STTR] proposals as part of the selection for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: May 30, 1995

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–13554 Filed 6–1–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Electrical and Communications Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Electrical and Communications Systems (#1196).

Date and Time: June 19–20, 1995; 8:00 am–5:00 pm.

Place: National Science Foundation, Room 680, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Albert B. Harvey, Program Director, ECS, Room 675, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.Phone: (703) 306–1319.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate applications of regular research proposals.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: May 30, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–13552 Filed 6–1–95; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for Engineering; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: Advisory Committee for Engineering (1170).

Date and Time: June 19, 1995: 8:30 a.m. to 5:00 p.m.

Place: Room 530, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Devendra P. Garg, Program Director, Dynamic Systems and Control Program, Division of Civil and Mechanical Systems, Telephone: (703) 306–1361.

Purpose of Meeting: To carry out Committee of Visitors (COV) review, including examination of decisions on proposals, reviewer comments, and other privileged materials.

Agenda: To provide oversight review of the Dynamic Systems and Control Program.

Reason for Closing: The meeting is closed to the public because the Committee is reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they are disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act would be improperly disclosed.

Dated: May 30, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–13551 Filed 6–1–95; 8:45 am]

BILLING CODE 7555–01–M

Task Force on the Future of the NSF Supercomputer Centers Program; Notice of Meeting:

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Task Force on the Future of the NSF Supercomputer Centers Program (#1982).

Date and Time: June 16, 1995 from 8:30 am–12 noon.

Place..Tentative: Conference Center, San Francisco Airport San Francisco, CA.

Type of Meeting: Open.

Contact Person: Please contact Dr. Robert Borchers for the exact location. Dr. Borchers is the Director, Division of Advanced Scientific Computing, Directorate for Computer & Information Science & Engineering, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, 703/306–1970.

Minutes: May be obtained from the contact person listed above.

Meeting Purpose: The objective of the Task Force is to advise the NSF on the future of its Supercomputing Centers Program considering the changing nature of computing and information science and technology. Its scope will be limited to NSF's support for advanced computational science.

Agenda: Deliberation of the Draft Report.

Reason for Late Notice: Difficulty with scheduling meeting location.

Dated: May 30, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–13555 Filed 6–1–95; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for Social, Behavioral and Economic Sciences; Subcommittee on Transformations to Quality Organizations; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Social, Behavioral and Economic Sciences; Subcommittee on Transformations to Quality Organizations (#1171)

Date & Time: June 21, 1995, 8:30 am–3:30 pm.

Place: Rm 320, National Science Foundation, 4201 Wilson Blvd., Arlington VA.

Type of Meeting: Open.

Contact Person: Dr. Marietta Baba, Program Director, Transformations to Quality Organizations Program, National Science Foundation, 4201 Wilson Boulevard, Room 910, Arlington, VA 22230, 703/306–1757, x7210.

Minutes: May be obtained from the contact person listed above.

Meeting Purpose: To provide advice, recommendations, and oversight concerning support for research, education, and human resources in the areas of the social, behavioral, and economic sciences. To identify preliminary plans to advance Transformations to Quality Organizations (TQO) effort.

Agenda

1. Welcome and Introductions
2. Opening Remarks
3. Importance of Research
4. Role of Subcommittee
5. Current Status of Program
6. Assessment of Year One
7. Work Plan for Year Two
8. Next Steps

Dated: May 30, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–13550 Filed 6–1–95; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Proposed Generic Letter; Relocation of the Pressure Temperature Limit Curves and Low Temperature Overpressure Protection System Limits

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of opportunity for public comment.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to issue a generic letter. This draft generic letter would allow licensees to voluntarily relocate the pressure temperature limit curves and low temperature overpressure protection system limits from the technical specifications to a licensee-controlled document. The NRC is seeking comment from interested parties regarding both the technical and regulatory aspects of the proposed generic letter presented under the Supplementary Information heading. This proposed generic letter and supporting documentation were sent to the Committee to Review Generic Requirements (CRGR). CRGR will review the proposed generic letter after resolution and incorporation of public comments. Relevant information, including model technical specifications and a model safety evaluation, that was sent to the CRGR is available in the Public Document Rooms under accession number 9505220128. The NRC will consider comments received from interested parties in the final evaluation of the proposed generic letter. The NRC's final evaluation will include a review of the technical position and, when appropriate, an analysis of the value/impact on licensees. Should this generic letter be issued by the NRC, it will become available for public inspection in the Public Document Rooms.

DATES: Comment period expires July 3, 1995. Comments submitted after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except for comments received on or before this date.

ADDRESSES: Submit written comments to Chief, Rules Review and Directives Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Written comments may also be delivered to 11545 Rockville Pike, Rockville, Maryland, from 7:30 am to 4:15 pm, Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Maggalean W. Weston, Technical Specifications Branch, Division of Project Support, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–001, Telephone (301) 415–3151.

SUPPLEMENTARY INFORMATION:

NRC Generic Letter 95–XX: Relocation of the Pressure Temperature Limit Curves and Low Temperature Overpressure Protection System Limits

Addressees

All holders of operating licenses or construction permits for nuclear power reactors.

Purpose

The U.S. Nuclear Regulatory Commission (NRC) is issuing this generic letter to advise licensees that they may request a license amendment to relocate the pressure temperature (P/T) limit curves and low temperature overpressure protection (LTOP) system limits from the technical specifications (TS) to a pressure temperature limits report (PTLR) or a similar document.

Description of Circumstances

During the development of the improved standard technical specifications (STS), a change was proposed to relocate the P/T curves and LTOP setpoint curves and values currently contained in the TS to a licensee-controlled document. As part of the improvements to the STS, the NRC staff agreed with the industry that the curves and setpoints may be relocated outside the TS where these limits could be maintained more efficiently and at a lower cost to the licensee, provided the parameters for constructing the curves and setpoints are derived using a methodology approved by the NRC.

Discussion

Technical specifications include limiting conditions for operation (LCOs) that establish P/T and LTOP system limits for the reactor coolant system. The limits are defined by figures and values that provide an acceptable range of operating temperatures and pressures for heatup, cooldown, low temperature overpressure, criticality, and inservice leak and hydrostatic testing conditions. These parameters are generally valid for a specified number of effective full-power years.

License amendments are generally required at the end of the effective period for P/T limit curves or when surveillance specimens are withdrawn

and tested. Also, each time the curves are revised, the LTOP system must be reevaluated to ensure that its functional requirements can still be met using relief valves or other methods. Processing amendment requests for changes to TS that are developed using an accepted methodology is an unnecessary burden on licensee and NRC resources. An alternative approach for the control of these limits was proposed during the development of the improved STS. This approach, like that used for the core operating limits, would relocate the P/T curves and the LTOP setpoint curves or values to a PTLR or a similar document and reference that document in the affected LCOs and bases.

The methodology for determining P/T and LTOP system limit parameters must comply with the specific requirements of Appendices G and H to Part 50 of Title 10 of the *Code of Federal Regulations* (10 CFR), be documented in an NRC-approved topical report or in a plant-specific submittal, and be incorporated by reference into the TS. As such, subsequent changes in the methodology must be approved by a license amendment.

Requested Information

Licensees and applicants who voluntarily choose to adopt this line item improvement are encouraged to propose changes that are consistent with the attached guidance. The guidance requires that the licensee be able to reference a methodology for developing the curves and setpoints that has been approved by the NRC, develop a PTLR or a similar document that contains the figures, values, parameters, and explanations derived from the methodology, and make appropriate changes to the applicable sections of the TS. The NRC project manager for the facility will review the amendment requests that conform to the guidance in this generic letter and coordinate the appropriate staff review of the methodology proposed for calculating the P/T limit curves and the LTOP system limits. Amendment requests that do not conform to the guidance in this generic letter will require additional review time.

Required Response

Licensees and applicants who voluntarily choose to adopt this line item improvement should submit a response to the requested information described above.

Backfit Discussion

Any action by licensees to propose TS changes in accordance with the guidance of this generic letter is voluntary and, therefore, not a backfit analysis.

Guidance for a Proposed License Amendment To Relocate the Pressure Temperature Limit Curves and Low Temperature Overpressure Protection System Limits

Introduction

This generic letter provides guidance for preparing a license amendment request to modify the technical specifications (TS) to relocate the pressure temperature (P/T) limit curves and low temperature overpressure protection (LTOP) system limits currently contained in the TS to a pressure temperature limits report (PTLR) or a similar document. This alternative was based on a change included in the improved standard technical specifications (STS) to remove the P/T limit curves and LTOP system limits from the TS and relocate them to a PTLR or a similar document to reduce the number of amendment requests associated with changes to the P/T limit curves and LTOP system limits. Since an amendment request must be submitted whenever a change is made to the TS, the relocation of the P/T curves and LTOP system limits will result in a resource savings for the licensees and the NRC by eliminating unnecessary license amendment requests for changes to the P/T limit curves and LTOP system limits in TS when surveillance specimens are withdrawn and tested and additional vessel toughness data become available. To relocate the P/T curves and LTOP system limits from the TS, the licensee must be able to reference a methodology approved by the NRC for deriving the parameters used for constructing the curves and setpoints, develop a PTLR or a similar document, and make appropriate changes to the applicable sections of the TS.

In evaluating the relocation, the NRC staff concluded that, while it is essential to safety to operate the plant within the bounds of P/T limits and to satisfy the regulations that ensure the integrity of the reactor coolant pressure boundary (RCPB), the periodic adjustment of those limits to account for time-dependent parametric changes could be calculated in accordance with a methodology approved by the NRC. Criterion 2 of the Commission's final policy on TS improvements, which was published in the **Federal Register** (58 FR 39132) on July 22, 1993, requires that the TS include operating restrictions (pressure/temperature limits) needed to preclude unanalyzed accidents and transients. However, once the methodology is approved, the licensee may modify the figures, values, and parameters without the need for a license amendment and without affecting nuclear safety, provided these changes are determined using the approved methodology and are consistent with all applicable limits of the plant design assumptions as stated in the FSAR. Additionally, the licensee must submit to the NRC a formal PTLR or a similar document containing the figures, values, and parameters derived from the application of the methodology approved by the NRC. This reporting requirement augments a reporting requirement that is already in effect. Section III of Appendix H currently requires a summary technical report of data relating to capsule withdrawal and specimen test results. Application of these results will also be included in the PTLR. This report will allow the NRC staff to continue monitoring the status of the structural integrity of the reactor vessel even though prior NRC approval of the changes to these limits would not be required if they do not involve an unreviewed safety question.

A new provision was also added to the administrative controls section of the TS indicating that the figures, values, and parameters for inclusion in the PTLR will be verified after each reactor vessel fluence period or when surveillance specimens are withdrawn and tested and a report submitted to the NRC. Hence, the staff can confirm proper application of the methodology approved by the NRC. Further, the PTLR will be referenced in the TS so that the same degree of control on plant operation will be maintained. As a result, this alternative provides the same assurance of compliance with design specifications as before, yet removes the unnecessary burden on both plant and NRC staff of processing amendment requests.

Discussion

Technical specifications include limiting conditions for operation (LCOs) that establish P/T limits for the RCS. This system is designed to withstand the effects of cyclic loads resulting from system temperature and pressure changes. These cyclic loads are introduced by normal load transients, reactor trips, startup and shutdown operations, and hydrostatic and leak rate tests. During startup and shutdown, the rates of temperature and pressure changes are limited so that the maximum specified heatup and cooldown rates are consistent with the design assumptions and satisfy operating limits that provide a wide margin of safety to brittle failure of the reactor vessel. The P/T limits are periodically modified as the reactor vessel material toughness decreases as a result of material embrittlement caused by neutron irradiation. The periodic modifications are necessary when the applicable effective full-power years (EFPYs) for the P/T limits contained in the TS are about to expire or the reactor vessel material surveillance data indicate an increase in the nil-ductility transition reference temperature (RT_{NDT}).

As required by Appendix G to Part 50 of Title 10 of the *Code of Federal Regulations* (10 CFR), operating P/T limits are calculated and adhered to by plant operations personnel to ensure that fracture toughness requirements for Part 50, specimens of reactor vessel material are installed near the inside reactor vessel wall and are withdrawn on a schedule to provide data on the effects of radiation fluence and the thermal environment on the vessel material. These data are used to adjust the P/T limits, as necessary, to compensate for the shift in material transition temperature as indicated by tests on the withdrawn specimens. The withdrawal and analysis of the specimens and resulting revision of the P/T limit curves make up the requirements necessary to compensate for the shift in material transition temperature. This ensures that the reactor vessel is operated at high enough temperatures to preclude brittle fracture of the vessel material.

The LTOP system controls RCS pressure at low temperatures so that the integrity of the RCPB is not compromised by violating the P/T limits of Appendix G to 10 CFR part 50. The LTOP system provides overpressure protection by limiting coolant input capability and having adequate pressure relief capacity. Each time the P/T limit curves are revised, the LTOP system must be reevaluated to ensure that its functional requirements can still be met. The LTOP system for pressure relief typically consists of two power-operated relief valves (PORVs), two residual heat removal (RHR) suction relief valves, or a combination of both. Some plants have only one PORV. The LTOP system limits consist of PORV and RHR setpoints. The RHR suction relief valves do not have variable pressure and temperature lift setpoints like the PORVs and, therefore, are still addressed in the TS. As designed for the LTOP system, each PORV is signaled to open if the RCS pressure approaches a limit determined by the LTOP system actuation logic. This logic monitors both RCS temperature and RCS pressure to determine when a condition not acceptable in the PTLR is approached. The PORV setpoints should be included in the PTLR and updated when the revised P/T limits conflict with the LTOP system limits. LTOP requirements do not apply to boiling water reactors.

Requirements for Relocating the Curves and Setpoints

Relocation of the curves and setpoints to a licensee-controlled document requires three separate licensee actions. The licensee must (1) have a methodology approved by the NRC to reference in its TS; (2) develop a report such as a PTLR or a similar document to contain the figures, values, parameters, and any explanation necessary; and (3) modify the applicable sections of the TS accordingly.

•Methodology and PTLR

The first two of the three requirements for relocating the P/T curves and LTOP system limits are an NRC-approved methodology and the associated reporting requirements in the PTLR. The methodology will consist of only those methods used for calculation, not the calculations themselves. The PTLR will consist of the explanations, figures, values, and parameters derived from the calculations. Since the PTLR will be provided to the NRC upon issuance after each fluence period and after approval of the methodology, a preliminary or draft PTLR should be provided when the methodology is submitted so that questions regarding the content and format can be addressed prior to its formal completion.

The following table shows the relationship between the provisions specified in the STS for the approved methodology and the requirements to be included in the methodology and the PTLR. The provisions for the methodology are those shown in the administrative controls section of the STS.

REQUIREMENTS FOR METHODOLOGY AND PTLR

Provisions for methodology from administrative controls section in sts	Minimum requirements to be included in methodology	Minimum requirements to be included in PTLR
1. The methodology shall describe how the neutron fluence is calculated (reference new Regulatory Guide when issued).	Describe transport calculation methods including computer codes and formulas used to calculate neutron fluence. Provide references.	Provide the values of neutron fluences that are used in the adjusted reference temperature (ART) calculation.
2. The Reactor Vessel Material Surveillance Program shall comply with Appendix H to 10 CFR Part 50. The reactor vessel material irradiation surveillance specimen removal schedule shall be provided, along with how the specimen examinations shall be used to update the PTLR curves.	Briefly describe the surveillance program. Licensee transmittal letter should identify by title and number report containing the Reactor Vessel Surveillance Program and surveillance capsule reports. Topical/generic report contains placeholder only. Reference Appendix H to 10 CFR Part 50.	Provide the surveillance capsule withdrawal schedule, or reference by title and number the documents where the schedule is located. Reference the surveillance capsule reports by title and number if ARTs are calculated using surveillance data.
3. Low temperature overpressure protection (LTOP) system lift setting limits developed using NRC-approved methodologies may be included in the PTLR.	Describe how the LTOP system limits are calculated applying system/thermal hydraulics and fracture mechanics. Reference SRP Section 5.2.2; Code Case N–514; ASME Code, Appendix G, Section XI as applied in accordance with 10 CFR 50.55.	Provide setpoint curves or setpoint values.
4. The adjusted reference temperature (ART) for each reactor beltline material shall be calculated, accounting for irradiation embrittlement, in accordance with Regulatory Guide 1.99, Revision 2.	Describe the method for calculating the ART using Regulatory Guide 1.99, Revision 2.	Identify both the limiting ART values and limiting materials at the 1/4T and 3/4T locations (T=vessel beltline thickness). PWRs—identify RT_{PTS} value in accordance with 10 CFR 50.61.

REQUIREMENTS FOR METHODOLOGY AND PTLR—Continued

Provisions for methodology from administrative controls section in sts	Minimum requirements to be included in methodology	Minimum requirements to be included in PTLR
5. The limiting ART shall be incorporated into the calculation of the pressure and temperature limit curves in accordance with NUREG–0800, SRP Section 5.3.2, Pressure-Temperature Limits.	Describe the application of fracture mechanics in constructing P/T curves based on ASME Code, Appendix G, Section XI, and SRP Section 5.3.2.	Provide the P/T curves for heatup, cooldown, criticality, and hydrostatic and leak tests.
6. The minimum temperature requirements of Appendix G to 10 CFR Part 50 shall be incorporated into the pressure and temperature limit curves.	Describe how the minimum temperature requirements in Appendix G to 10 CFR Part 50 are applied to P/T curves.	Identify minimum temperatures on the P/T curves such as minimum boltup temperature and hydrotest temperature.
7. Licensees who have removed two or more capsules should compare for each surveillance material the measured increase in reference temperature (RT_{NDT}) to the predicted increase in RT_{NDT}; where the predicted increase in RT_{NDT} is based on the mean shift in RT_{NDT} plus the two standard deviation value ($2\sigma_\Delta$) specified in Regulatory Guide 1.99, Revision 2. If the measured value exceeds the predicted value (increase in $RT_{NDT} + 2\sigma_\Delta$), the licensee should provide a supplement to the PTLR to demonstrate how the results affect the approved methodology.	Describe how the data from multiple surveillance capsules are used in the ART calculation. Describe procedure if measured value exceeds predicted value. WHEN OTHER PLANT DATA ARE USED ..... 1. Identify the source(s) of data when other plant data are used. 2.a Identify by title and number the safety evaluation report that approved the use of data for the plant. Justify applicability. OR 2.b Compare licensee data with other plant data for both the radiation environments (e.g., neutron spectrum, irradiation temperature) and the surveillance test results.	Provide supplemental data and calculations of the chemistry factor in the PTLR if the surveillance data are used in the ART calculation. Evaluate the surveillance data to determine if they meet the credibility criteria in Regulatory Guide 1.99, Revision 2. Provide the results.

•Technical Specifications

The following changes must be made to the plant TS to complete the three requirements for relocating the curves and setpoints to an alternative document.

Three separate actions are necessary to modify the plant TS: (1) "Definitions"—the addition of the definition of a named formal report (PTLR or a similar document) that would contain the explanations, figures, values, and parameters derived in accordance with an NRC-approved methodology and consistent with all of the design assumptions and stress limits for cyclic operation; (2) LCOs—the addition of references to the PTLR noting that the P/T limits shall be maintained within the limits specified in the PTLR; and (3) "Administrative Controls"—the addition of a reporting requirement to submit to the NRC the PTLR, when it is issued, for each reactor vessel fluence period.

1. *Definitions*

Section 1.0, "Definitions," should contain the following language:

Pressure Temperature Limits Report (PTLR)

The PTLR is the unit-specific document that provides the reactor vessel P/T limits and setpoints, including heatup and cooldown rates, for the current reactor vessel fluence period. These P/T limits shall be determined for each fluence period in accordance with Specification 5.X.X.X. Plant operation within these operating limits is addressed in LCO 3.X.X, "RCS Pressure and Temperature (P/T) Limits," and LCO 3.X.X, "Low Temperature Overpressure Protection (LTOP) System."

2. *Limiting Conditions for Operation (LCOs) and Bases*

LCO 3.X.X, "RCS Pressure and Temperature (P/T) Limits," and LCO 3.X.X, "Low Temperature Overpressure Protection (LTOP) System," must reference the PTLR as the document where the limits and curves can be found as demonstrated in the attached model TS. The bases for these LCOs should be modified accordingly.

3. *Administrative Controls*

Section 5.X, "Administrative Controls," Subsection 5.X.X, "Reporting Requirements," must contain the following information:

Section 5.X.X.X *Reactor Coolant System (RCS) PRESSURE AND TEMPERATURE LIMITS REPORT (PTLR)*

a. RCS pressure and temperature limits for heatup, cooldown, LTOP, criticality, and hydrostatic testing as well as heatup and cooldown rates shall be established and documented in the PTLR for the following: [The individual specifications that address RCS pressure and temperature limits must be referenced here.]

b. The analytical methods used to determine the RCS pressure and temperature limits shall be those previously reviewed and approved by the NRC, specifically those described in the following document(s): [Identify the NRC staff approval document(s) by date.]

c. The PTLR shall be provided to the NRC upon issuance for each reactor vessel fluence period and for any revision or supplement thereto.

* * * * *

Dated at Rockville, Maryland, this 25th day of May 1995.

For the Nuclear Regulatory Commission.

Brian K. Grimes,

Director, Division of Project Support, Office of Nuclear Reactor Regulation.

[FR Doc. 95–13514 Filed 6–1–95; 8:45 am]

BILLING CODE 7590–01–P

[Docket Nos. 50–295 and 50–304]

Commonwealth Edison Company, Zion Nuclear Power Station, Units 1 and 2; Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has acted on a Petition for action under 10 CFR 2.206 received from Mr. Robert K. Rutherford and 43 other security guards, dated November 3, 1994, regarding the Zion Nuclear Power Station, Units 1 and 2.

The Petitioners requested that the NRC reassess and withdraw its approval of the new response team member (RTM) security plan. It also demanded additional justification from both Commonwealth Edison Company (ComEd, the Licensee) and the security contractor concerning the reduction of armed guards and the defense of the plant.

The Director of the Office of Nuclear Reactor Regulation has determined that the request should be denied for the reasons stated in the "Director's Decision Under 10 CFR 2.206" (DD–95–09), the complete text of which follows this notice and which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W. Washington, D.C. 20555, and at the local public document room located at the Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

A copy of this Decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206(c) of the Commission's regulations. As provided by this regulation, this Decision will constitute the final action of the Commission 25 days after the date of issuance, unless the Commission, on its own motion, institutes a review of the decision within that time.

Dated at Rockville, Maryland, this 26th day of May 1995.

For the Nuclear Regulatory Commission.

William T. Russell,

Director, Office of Nuclear Reactor Regulation.

I. Introduction

By letter dated November 3, 1994, Mr. Robert K. Rutherford and 43 other security guards at the Zion Nuclear Power Station (Petitioners) requested that the Nuclear Regulatory Commission (NRC) rethink and withdraw its approval of the October 7, 1994, revisions to the Zion Nuclear Power Station security plan, and demand greater justification from both Commonwealth Edison Company (ComEd or Licensee) and its security contractor concerning the proposal to reduce the number of armed guards and the defense of the Zion Nuclear Power Station. Petitioners also requested that the manning and positioning of armed guards be reconsidered and increased to a more sound defensive position.

As the bases for these requests, Petitioners allege that (1) the revised Response Team Member (RTM) plan degrades actual plant security to the point of folly; (2) the proposed qualifications for the RTM plan are causing employee turnover, undue stress, labor problems, and inconsistency in plant defense; (3) monetary considerations should not take priority over plant defense and administrative jobs should not replace front-line security guards; (4) the total disarming of the owner controlled areas and protected areas is highly detrimental to plant defense and public safety; and (5) modern armaments and increased hostility among the general public as well as potential terrorist threats from either domestic and/or international sources have not abated. In addition, a copy of the same Petition was sent to United States Senator Paul Simon of Illinois, who referred it to the Department of Energy (DOE). The DOE forwarded the copy of the Petition to the NRC. On this copy of the Petition, a handwritten note stated the following: "Low level waste is now being stored in the owner controlled area with no security patrols except a casual tour once per eight hour shift."

By letter dated December 22, 1994, the NRC acknowledged receipt of the Petition and indicated that the NRC staff would take action within a reasonable time. Commonwealth Edison Company responded to the Petition by letter dated February 27, 1995. Petitioner replied to the ComEd response by letter dated February 28, 1995, supplementing the Petition with further detail.

The Licensee's letter briefly described the revision to the security plan contained in its October 7, 1994, letter and explained that although the total number of guards on-site will be decreased, the number of armed response personnel at Zion Station has not been changed and will continue to exceed the minimum requirements of 10 CFR 73.55(h)(3). The Licensee's February 27, 1995, letter also stated that certain administrative functions such as those performed by x-ray and metal detector machine operators, security badge issue personnel and personnel search will be performed by watchmen. It went on to say that four of the six ComEd nuclear sites implemented the TRM plan in 1994, another implemented it in January 1995, and Zion is scheduled for implementation in June 1995. In addition to this general description of the revision to the security plan, the letter addressed each point in the Petition.

For the reasons discussed below, I have concluded that the Petitioners have not raised any substantial safety concern, and I, therefore, deny the Petition.

II. Background

The Licensee's original security plan, submitted in a letter dated November 18, 1977, and supplemented in letters dated May 26, 1978, and June 25, 1978, included an armed response commitment. The NRC staff reviewed the security plan against the general performance requirements of 10 C.F.R. 73.55(a) and the specific requirements of 10 C.F.R. 73.55(b) through (h). In particular, the NRC staff concluded that the physical security organization met the requirements of 10 C.F.R. 73.55(b)(1) regarding the written agreement with the security contractor and the requirements of 10 C.F.R. § 73.55(b)(2) regarding the onsite presence of a full time member of the security organization with the authority to direct physical protection activities of the security organization. Based on a review, principally of the size of the site, the location of the vital areas, and the response capability of the local law enforcement agencies, the NRC staff also concluded that the security plan met the response requirements of 10 C.F.R. 73.55(h). In particular, the number of guards in the plan substantially exceeded the requirements of 10 C.F.R. 73.55(h)(3) concerning the minimum number of guards on-site. As defined in 10 C.F.R. 73.2, a guard is a uniformed individual armed with a firearm. A watchman is an individual, not necessarily uniformed or armed with a firearm, who provides protection for a plant in the course of performing other duties, and armed response personnel are persons who are uniformed, whose primary duty in the event of attempted radiological sabotage shall be to respond, armed and equipped, to prevent or delay such actions. The NRC staff concluded that Zion facility's security plan was satisfactory and that it was adequate to protect the Zion facility from threats, thefts, and radiological sabotage directed from within or outside the facility. Consequently, the NRC staff issued a Security Plan Evaluation Report (SPER), dated March 14, 1979, which concluded that upon full implementation, the security plan would meet the general performance requirements of 10 C.F.R. 73.55(a) and the specific requirements of 10 C.F.R. 73.55(b) through (h), and that the security plan would ensure that the health and safety of the public would not be endangered from threats, thefts, and radiological sabotage directed at the Zion facility.

By letter dated October 7, 1994, ComEd submitted a revision to the security plan for Zion Station pursuant to 10 C.F.R. 50.54(p), which allows licensees to make changes to their security plans without prior NRC approval, provided the changes do not

reduce the effectiveness of the plan. The October 7, 1994, revision included use of watchmen in positions that formerly used guards. The revision reduced the total number of guards on-site, but did not change the number of armed response personnel. In its October 7, 1994, submittal, the licensee stated that the revision did not reduce the effectiveness of the plan.

III. Discussion

A. Plant Security

Petitioners contend that the revised RTM security plan degrades actual plant security "to the point of folly." Petitioners' supplemental letter of February 28, 1995, requests that the NRC guarantee that ComEd will not reduce the number of armed responders to five.

The total number of guards immediately available at a nuclear power plant to fulfill NRC response requirements shall nominally be ten, unless specifically required otherwise on a case-by-case basis by the Commission; however, this number may not in any case be reduced to less than five guards. 10 C.F.R. 73.55(h)(3).

Although the October 7, 1994, revision to the security plan will reduce the total number of guards on-site, the number of armed response personnel at the Zion facility will not change and will continue to exceed the minimum number of armed response personnel required by 10 C.F.R. 735(h)(3). The regulations address the use of both guards and watchmen in a security force. Historically, most licensees have used a combination of the two because there are certain job assignments that do not require use of a guard, i.e., central alarm station and secondary alarm station operator, personnel escorts in the protected and vital areas, x-ray and metal detector machine operators, security badge issue personnel, and personnel searchers. In the past, ComEd far exceeded the guard requirement, having guards even where they were not required by regulations. The NRC staff has reviewed the revised RTM security plan and concluded that it provides sufficient site security, is not inimical to the common defense and security, and that protection of the public health and safety does not require the Licensee to increase the number of its armed response personnel or guards beyond the levels reflected in the revised plan. Moreover, the NRC staff concluded that the revisions are acceptable and would not decrease the effectiveness of the security plan.

In view of the above, Petitioners have not raised a substantial safety concern regarding the reduction in the number of armed security personnel.

B. Effects of the Proposed Revision to the Zion Nuclear Power Station Security Plan on Employees and Plant Defense

Petitioners contend that the new qualifications for armed guard positions in the revised security plan will cause employee turnover, undue stress, labor problems, and inconsistency in plant defense.

Petitioners state in their February 28, 1995, supplemental letter that inconsistencies exist in that: unarmed personnel (watchmen and inspectors) are permitted to respond to intrusion alarms although they have had no physical agility testing; unarmed personnel escort vehicles into a door zone which has direct containment access, although the NRC has directed that armed personnel be placed at Vertical Pipe Chase doors to prevent such access; and unarmed personnel intermingle with armed personnel at the main gate, which could be disastrous in the event of a firearms exchange.

NRC regulations only require that unarmed personnel such as watchmen shall have no physical weaknesses or abnormalities that would adversely affect their performance of assigned security job duties, 10 C.F.R. part 73, appendix B, criterion I.B.1.a., and do not specify which type of security officer should respond to intrusion alarms. The regulations also only require that vehicles be escorted in the protected and vital areas, 10 C.F.R. 73.55(d)(4), and do not specify whether the escort must be an armed or unarmed officer. Moreover, NRC regulations do not require control of vital area doors and barriers by an armed security officer. Finally, there is no prohibition of both armed and unarmed personnel occupying access control facilities; in fact it is a common practice at many sites. It should be noted that 10 C.F.R. part 73 is "performance oriented," with the specific implementation left to the licensee in the site specific security plan. The details of the specific commitments depend on the specific site factors. As noted below, the NRC staff review of the Zion security plan concluded that Zion meets the requirements of 10 C.F.R. 7355(b) through (h).

In February 1994, NRC inspectors identified security force morale as poor due to continuing personnel layoffs to reduce security force shift manning levels to the minimum required to meet security plan commitments. NRC Inspection Report No. 50–295/94005 and 50–304/94005, dated March 22, 1994. In April 1994, the NRC staff conducted another physical security inspection and concluded that overall security performance was good. In addition, the NRC staff noted that morale had improved, due to better communication with security staff members during the backshifts following key personnel changes in the contract security management organization. However, the NRC staff was concerned that continued high overtime hours worked by the security force had the potential to negatively affect performance. Security force staffing levels were sufficient to meet security plan commitments, but were strained to support unplanned maintenance work. NRC Inspection Report No. 50–295/94011 and 50–304/94011, dated May 25, 1994. The NRC staff continues to monitor the performance of the security staff through security inspections, and the continued inspections by its resident inspector staff.

During an NRC staff inspection of the Zion facility in October and November 1994, tactical response drills were conducted in which the security force demonstrated a high level of proficiency. NRC Inspection Report No. 50–295/94021 and 50–304/94021, dated December 12, 1994. The other five ComEd sites have already implemented their version of the October 7, 1994, security plan revision. An NRC inspection at LaSalle County Station in July 1994 did not find any inconsistencies in plant defense or adverse effects of the revised RTM plan on plant physical protection and safety. The NRC staff found that ComEd has continued to meet its armed response personnel commitments to the NRC. NRC Inspection Report Nos. 50–295/94005 and 50–304/94005, dated March 22, 1994; 50–295/94011 and 50–304/94011, dated May 25, 1994; 50–295/94021 and 50–304/94021, dated December 12, 1994. Accordingly, there is no reason to expect that implementation of the revised security plan at the Zion facility will result in inconsistencies in plant defense or adverse effects on plant physical protection and safety.

The October 7, 1994, revision to the security plan provided for an improved selection process that would result in the most qualified personnel performing armed responder duties. The revised selection criteria are higher objective standards for proficiency in firearms, physical agility, and knowledge of the security plan. It is ComEd's plan that security guards who cannot meet the new criteria to be an RTM member will be reassigned to the administrative duties of watchmen. Although such a reassignment could conceivably cause morale problems and turnover for such individuals, use of a process reasonably designed to select the guards who are best qualified for armed response personnel duties is in the best interest of the common defense and security and the public health and safety.

In view of the above, the Petitioners have not raised a substantial safety concern regarding security force morale or inconsistencies in plant security.

C. Monetary Considerations and Administrative Jobs

Petitioners assert that monetary considerations should not take priority over plant defense and administrative jobs should not replace frontline security guards.

Regardless of any anticipated Licensee savings or increased expenses that might be associated with the October 7, 1994, revision to the Licensee's security plan, the NRC staff must review the revised plan for compliance with 10 C.F.R. 73.55. In particular, the NRC staff considered whether the Licensee's on-site physical protection system and security organization include the capabilities to meet the requirements of 10 C.F.R. 73.55(b) through (h). As explained in Section III.A above, the NRC staff concluded that the October 7, 1994, security plan revision to reduce the number of guards does not violate 10 C.F.R. 73.55. Moreover, after review of the October 7, 1994, revisions to the security plan, the NRC staff found that the revisions are acceptable and would not decrease the effectiveness of the security plan.

For the reasons stated above, Petitioners have not raised a substantial safety concern regarding the reduction in the number of guards at the Zion facility.

D. Disarming of Owner Controlled and Protected Areas

Petitioners assert that the total disarming of the owner controlled area and the protected area is highly detrimental to plant defense and public safety.

Contrary to Petitioners' assertions, the Zion facility has not been totally disarmed. As explained above, at Section II.A., the Zion security plan meets NRC requirements for armed personnel. The Commission's regulations do not require any guards in the owner controlled area. Security of the station is centered around protecting selected vital equipment situated within the protected area. *See* 10 C.F.R. 73.55.

Prior to initial plant licensing, the NRC staff evaluated the Licensee's security plan to ensure that it met the general performance objective and requirements of 10 C.F.R. 73.55(a) and that it implemented the more prescriptive requirements of 10 C.F.R. 73.55 (b) through (h). In addition, the NRC staff observed drills to ensure that the Licensee could effectively implement its security plan; in particular, to ensure that the security force could successfully perform the requirements of 10 C.F.R. 73.55(h)(4), which are to determine the existence of a threat, assess the extent of the threat, take immediate concurrent measures to neutralize the threat by requiring responding guards to interpose themselves between vital areas and any adversary attempting entry for the purpose of radiological sabotage and inform local law enforcement agencies of the threat and request assistance. When a licensee submits a revision to its security plan, the NRC staff evaluates it to ensure the same general performance objective and requirements of 10 C.F.R. 73.55(a) and the more prescriptive requirements of 10 C.F.R. 73.55 (b) through (h) are being met and implemented. Periodically, the NRC staff also continues to observe tactical response drills to ensure that the licensee remains capable of effectively implementing its security plan by demonstrating threat response as required by 10 C.F.R. 73.55(h)(4).

The staff evaluated the Licenee's October 7, 1994, revision to the physical security plan and found that it met the requirements of 10 C.F.R. 73.55. Although Zion has not implemented the new RTM plan, an NRC inspection at LaSalle County Station (which has implemented the new RTM plan) in July 1994 did not find any inconsistencies in plant defense or adverse impacts on plant physical protection and safety.

Based on the above, the Petitioners have not raised a substantial safety concern regarding security of the owner controlled areas and the protected area.

E. Potential Threats

Petitioners assert that modern armaments and increase hostility among the general public as well as potential terrorist threats from either domestic and/or international sources have not abated.

NRC regulations establish a framework for security plans with respect to such matters as terrorist attacks against licensed nuclear power plants. 10 C.F.R. part 73. As explained above, although the October 7, 1994, revision to the Zion security plan will result in a reduced number of armed guards, the number of armed response personnel will not decline and the Licensee continues to meet the specific requirements of 10 C.F.R. 73.55(h)(3) with respect to the number of armed response personnel. In addition, NRC regulations require that in designing safeguards systems, licensees shall use the design basis threats contained in the regulations, including those for the type of radiological sabotage referred to by Petitioners. 10 C.F.R. 73.1(a)(1). On a daily basis, the staff threat-related information to ensure the design basis threat statements in the regulations remain a valid basis for safeguards system design. On a semi-annual basis, the results of this staff review are formally documented and forwarded to the Commission. To date, no credible threat to licensed facilities has been identified that would warrant a modification to the design basis threat statements in the regulations. After review of the October 7, 1994, revision to the Zion facility security plan, the NRC staff concludes that the revised security plan does not decrease the effectiveness of the plan in protecting the facility against design basis threats and that the revised plan meets the requirements of 10 C.F.R. part 73.

In view of the above, the Petitioners have not raised a substantial safety concern regarding sabotage or theft of special nuclear material at the Zion facility.

F. Manning and Positioning of Armed Guards

Petitioners asked that both manning and positioning of armed guards be reconsidered and increased back to a more sound defense posture.

Specifically, Petitioners state in their February 28, 1995, supplemental letter that, in regard to the protected area, mobile patrols, armed posts and armed positions have been reduced, and that there should be at least one continuous armed mobile patrol. Petitioners also state, with regard to the owner controlled area, that at least one patrol should be made each 24 hours, and that a minimum of five armed guards per unit and two armed guards dedicated to the main gate are necessary, but that ten armed guards per unit (consisting of two protected area patrols and/or sector guards) is optimum. Additionally, Petitioners state that there is a post for unarmed personnel in the vehicle search area, although the NRC has directed that at least one armed officer be present at an alternate gate entry.

There is no regulatory requirement to have (1) an armed guard at an entry gate to the protected area, (2) any security activities in the owner controlled area outside the protected area, or (3) mobile patrols in the protected area. While

checking the protected area is required, 10 C.F.R. 73.55(c)(4), the type of personnel and patrol frequency are not specified in the regulations, but are detailed in the site physical security plan. All changes to the Zion plan are reviewed against the requirements of the regulations and site specific needs. The NRC inspects against the commitments contained in the approved plan to verify that the plan remains effective and that the Licensee continues to fulfill its commitments. Based on NRC staff review of the Zion security plan and its associated revisions, and upon onsite verification of Zion's commitments, Zion continues to meet the performance objectives of 10 C.F.R. 73.55(a) and its commitments under its security plan.

As explained above, although the October 7, 1994, revision to the Zion security plan will result in a reduced number of armed guards, the number of armed response personnel will not decline and the Licensee continues to meet the specific requirements of 10 C.F.R. 73.55(h)(3) with respect to the number of armed response personnel. In regard to the positioning of armed response personnel, NRC regulations require that licensees establish a safeguards contingency plan which requires armed response personnel to interpose themselves between vital areas and material access areas such that armed response personnel can prevent entry for the purpose of radiological sabotage. 10 C.F.R. 73.55(h)(4)(iii)(A). If revisions to a licensee's security plan meet the requirements of 10 C.F.R. 73.55, the NRC staff concludes that the revisions are consistent with 10 C.F.R. 50.54(p) and that they will not decrease the effectiveness of the safeguards plan. In this case, the NRC staff concluded that the October 7, 1994, revision to the Zion security plan met the requirements of 10 C.F.R. 73.55 and did not result in decreased effectiveness of the plan.

In view of the above, the Petitioners have not raised a substantial safety concern regarding manning and positioning of armed guards at Zion Station.

G. Additional Concern Noted on a Copy of the Petition Sent to Senator Simon

Petitioners appended an additional concern that low level waste is now being stored in the owner controlled area with no security patrols except a casual tour once per eight hour shift, on a copy of the Petition addressed to United States Senator Paul Simon of Illinois. Senator Simon referred the concern to the DOE, and DOE subsequently forwarded it to the NRC. Petitioners' supplemental letter of February 28, 1995, asserts that the interim radwaste storage facility is worthy of one full 24-hour patrol and alarmed, continuous surveillance equipment, such as a camera.

Storage and control of NRC-licensed material are governed, in pertinent part, by 10 CFR 20.1801 of Subpart I to 10 CFR part 20, which requires licensees to secure from unauthorized removal or unauthorized access licensed materials that are stored in controlled or unrestricted areas. The security requirements of 10 CFR part 73 do not apply to the storage of low level waste. Zion Station maintains an interim radwaste storage facility (IRSF) for licensed material on-site, within the owner controlled area to which general access is not permitted. The IRSF is locked, key access is controlled, and once in each 8 hour shift the IRSF is patrolled by a security officer. The staff finds that the IRSF at the Zion facility is in compliance with 10 CFR 20.1801.

For the reasons stated above, Petitioners have not raised a substantial safety concern regarding security of low level waste in the owner controlled area at the Zion facility.

IV. Conclusion

The institution of a proceeding in response to a request for action under 10 CFR 2.206 is appropriate only when substantial health and safety issues have been raised. See *Consolidated Edison Co. of New York* (Indian Point, Units 1, 2, and 3), CLI–75–8, 2 NRC 173, 176 (1975), and *Washington Public Power Supply System* (WPPSS Nuclear Project No. 2), DD–84–7, 19 NRC 899, 923 (1984). I have applied this standard to determine what action, if any, is warranted in response to the matters raised by Petitioners. Each of the claims or allegations by Petitioners has been reviewed, and I conclude that, for the reasons discussed above, Petitioners have raised no substantial safety concern regarding the revised security plan for the Zion facility. Petitioners' requests that the NRC withdraw its approval of the changes to the security plan and that the NRC require an increase in the number of, or a change in the positioning of, armed guards at the Zion Nuclear Power Station, are denied. Petitioners' request that the NRC demand greater justification for the proposal to reduce the number of armed guards and the defense of the Zion Nuclear Power Station is denied. Since the NRC has agreed with the Licensee that the changes to Zion's security plan do not decrease the effectiveness of the plan, per 10 CFR 50.54(p), NRC approval to implement the changes to Zion's security plan is not required.

A copy of this Decision will be filed with the Secretary of the Commission for the Commission to review in accordance with 10 CFR 2.206(c). As provided by Section 2.206(c), this Decision will constitute the final action of the Commission 25 days after issuance, unless the Commission, on its own motion, institutes a review of the decision within that time.

Dated at Rockville, Maryland, this 26th day of May 1995.

For the Nuclear Regulatory Commission.

William T. Russell,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 95–13501 Filed 6–1–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–341]

Detroit Edison Company; Notice of Partial Denial of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has partially denied a request by Detroit Edison Company (licensee) for an amendment to Facility Operating License No. NPF–43 issued to the licensee for operation of Fermi 2, located in Frenchtown Township, Monroe County, Michigan. Notice of Consideration of Issuance of this amendment was published in the **Federal Register** on April 12, 1995 (60 FR 18625).

The licensee's proposed amendment request revised the Technical Specifications (TS) to relocate the audit frequencies in TS 6.5.2.8 to the Quality Assurance Program (QAP) in Chapter 17.2 of the Updated Final Safety Analysis Report. The licensee also proposed to extend the frequency for use of an independent fire protection contractor from once every 3 years to once every third fire protection audit. The licensee submitted corresponding changes to the QAP in accordance with 10 CFR 50.54(a) to Region III for review which also reduced some audit frequencies. The region approved the relocation of and reductions in the audit frequencies but did not approve the requested change on independent contractor use for fire protection audits. Therefore, this proposed change to the TS was also denied.

The NRC staff has concluded that the licensee's request cannot be fully granted. The licensee was notified of the Commission's denial of the proposed change by a letter dated May 23, 1995.

By July 3, 1995, the licensee may demand a hearing with respect to the

denial described above. Any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC by the above date.

A copy of any petitions should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48266, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendment dated September 13, 1993, as supplemented July 26, 1994, and (2) the Commission's letter to the licensee dated May 23, 1995.

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48160. A copy of item (2) may be obtained upon written request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Document Control Desk.

Dated at Rockville, Maryland, this 23rd day of May 1995.

For the Nuclear Regulatory Commission.

Timothy G. Colburn, Sr.,

Project Manager, Project Directorate III–I, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–13500 Filed 6–1–95; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–35774; File No. SR–NASD–95–24]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change Regarding Depository Eligibility Requirements

May 26, 1995.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on May 19, 1995, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by the NASD. The Commission is publishing this notice to solicit comments from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD proposes to amend Part II, Section 1(c) of Schedule D to the NASD By-laws ("By-laws") to establish depository eligibility requirements for issuers that desire to have their securities included in the Nasdaq Stock Market ("Nasdaq").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Under the proposed rule change, the NASD will adopt a uniform depository eligibility rule for issuers that desire to have their securities eligible for inclusion in Nasdaq. The uniform rule has been developed by the Legal and Regulatory Subgroup of the U.S. Working Committee of the Group of Thirty in coordination with each of the national securities exchanges and the NASD. It is anticipated that each national securities exchange in addition to the NASD will file rule changes proposing adoption of depository eligibility standards substantially similar to the NASD's proposed rule[3] and will seek to make such changes effective contemporaneously with the effective date of the transition from a five-day ("T+5") to a three-day ("T+3") settlement cycle. The transition is set to occur June 7, 1995.[4]

The proposed rule change will require that before any issue of securities of a domestic issuer (excluding securities of a Canadian issuer) is eligible for inclusion in Nasdaq, such issue of securities must have a CUSIP number that is included in the file of eligible issues maintained by a securities depository registered as a clearing agency under Section 17A of the Securities Exchange Act of 1934.[5]

While the NASD believes that depository eligibility should be universal and that few exemptions be granted, the proposed rule change will not apply to a security if the terms of such security cannot be reasonably modified to meet the criteria for depository eligibility at all securities depositories. The exemption authority is intended to address the situation where a Nasdaq company issues short-term warrants and other similar short-term securities that are not generally depository eligible. The NASD does not believe that the issuers of such securities should be required to obtain individual exceptions from the proposed new listing requirement in order to permit those securities to be listed during their short life span. However, an exemption is not intended to be available in instances where the issuer could meet the depository eligibility requirements but chooses not to do so or has not left enough time prior to the offering to do so.

The proposed rule change sets forth additional requirements that must be met before a security will be deemed to be "depository eligible," as such term is used in Part II, Section 1(c) of Schedule D to the By-laws and Section 11 of the NASD Uniform Practice Code ("UPC").[6] The proposed rule specifies different requirements for depository eligibility depending upon whether a new issue is distributed by an underwriting syndicate before or after the date a securities depository system is available for monitoring repurchases of the

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] The Commission has modified the language in these sections.

[3] In addition to the listing requirement contained in Schedule D to the By-laws, the NASD is proposing to amend the definition of "depository eligibility" contained in its book-entry settlement rule contained in Section 11 of the NASD Uniform Practice Code consistent with the amendment to Schedule D. Section 11 must be amended because the NASD's depository settlement rule applies to all NASD members regardless of where the securities are listed. In comparison, the depository settlement rule of the exchanges only applies to transactions in the securities listed on the exchange.

[4] Securities Exchange Act Release Nos. 33023 (October 6, 1993), 58 FR 52891 (adoption of Rule 15c6–1) and 34952 (November 9, 1994), 59 FR 59137 (change of effective date of Rule 15c6–1 from June 1, 1995 to June 7, 1995).

[5] U.S.C 78q–1 (1988).

[6] Pursuant to section 11 of the UPC, trades by a member in depository eligible securities generally must be settled by book-entry through a securities depository.

distributed shares by syndicate members ("flipping tracking system").

Currently, a flipping tracking system is being developed that will include a securities depository service that (i) can be activated upon the request of the managing underwriter for a period of time that the managing underwriter specifies, (ii) in certain circumstances, will require the delivering participant to provide to the depository information sufficient to identify the seller of such shares as a precondition to the processing of book-entry delivery instructions for distributed shares, and (iii) will report to the managing underwriter the identity of any other syndicate member or selling group member whose customer(s) sold distributed shares (but will not report to the managing underwriter the identity of such customer[s]), and in certain circumstances, will report to such syndicate member or selling group member the identity of such customer(s). Prior to the availability of a flipping tracking system, the managing underwriter may delay the date a security is deemed "depository eligible" for up to three months after trading has commenced in the security. After the availability of a flipping tracking system, a new issue will be deemed to be depository eligible upon commencement of trading on Nasdaq.

The NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act[7] in that the proposed rule change is designed to encourage book-entry settlement of transactions by requiring that securities included in Nasdaq and listed on the national securities exchanges be depository eligible thereby reducing the risks to the financial markets and investors associated with physical delivery, clearance, and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

[7] 15 U.S.C. 78f(b)(5) (1988).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

(a) By order approve such proposed rule change or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

The NASD has requested accelerated approval of the proposed rule change in order that the rule can become effective on June 7, 1995.[8]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filings will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number SR–NASD–95–24 and should be submitted by June 23, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–13532 Filed 6–1–95; 8:45 am]

BILLING CODE 8016-01-M

[8] *Supra* note 4 and accompanying text.

[9] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–35769; File No. SR–NASD–95–11]

Self-Regulatory Organizations; the National Association of Securities Dealers, Inc.; Order Granting Accelerated Approval of Proposed Rule Change Relating to Requiring the Use of the Facilities of a Registered Clearing Agency for the Clearance of Transactions in Corporate Debt Securities

May 25, 1995.

On April 10, 1995, the National Association of Securities Dealers, Inc. ("NASD") filed a proposed rule change (File No. SR–NASD–95–11) with the Securities and Exchange Commission ("Commission") pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on May 1, 1995, to solicit comments from interested persons.[2] No comments were received. As discussed below, the Commission is approving the proposed rule change on an accelerated basis.

I. Description

The NASD is amending its Uniform Practice Code ("UPC") to include a new Section 72 that requires each NASD member or its agent that is a participant in a registered clearing agency to use the facilities of a clearing agency to clear eligible transactions in corporate debt securities. Section 72 also provides that the NASD may exempt any transaction or class of transactions in corporate debt securities from the provisions of the rule as may be necessary to accommodate special circumstances related to the clearance of such transactions or class of transactions.[3]

According to the NASD, approximately thirty percent of all transactions in corporate bonds are being compared, cleared, and settled without using the facilities of a registered clearing agency (*i.e.*, settled broker-to-broker or ex-clearing). Clearing such transactions broker-to-broker is labor intensive, requires more time to complete, and results in more fails than transactions processed through a registered clearing agency. The labor intensive nature of broker-to-broker processing may introduce errors into the process from keystroke errors, manually handling documents, delivery errors, and payment errors. Further, the increase in the number of failed trades and the corresponding increase in potential financial exposure to members creates systemic clearance risk.

[1] 15 U.S.C. 78s(b) (1988).

[2] Securities Exchange Act Release No. 35642 (April 24, 1995), 60 FR 21226.

[3] The NASD anticipates that this provision will be used only in the event special pricing and processing problems related to particular corporate debt securities make using the facilities of a registered clearing agency difficult or impossible and when these problems outweigh the benefits of using the facilities of a registered clearing agency. For example, the NASD considered mandating the use of the facilities of a registered clearing agency for other types of securities, such as unit investment trusts, private label collateralized mortgage obligations, synthetic stripped coupons and government securities, but concluded that it would be inadvisable to adopt such a mandate until the special pricing and processing requirements for these securities is fully understood and resolved.

II. Discussion

Section 15A(b)(6) of the Act[4] requires that the rules of the NASD be designed to perfect the mechanism of a national market system, and, in general, to protect investors and the public interest. By requiring its members to clear transactions in corporate debt securities through the facilities of a registered clearing agency, the proposed rule change should reduce the number of failed trades and should reduce or eliminate the risks and inefficiencies associated with broker-to-broker clearance and settlement of such transactions which should further the goal of a national market system. As a result of the rule, more trades will have the benefit of a clearing agency's guarantee of trade settlement and risk and thereby enhance investor protection.

Furthermore, the move to three day settlement of securities transactions on June 7, 1995, will reduce the time available to complete all tasks necessary to settle a transaction.[5] By increasing the number of transactions that must be settled through the facilities of a registered clearing agency, the rule also facilitates the implementation of a three day settlement.

The NASD has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing. The Commission finds good cause for so approving the proposed rule because accelerated approval will permit the NASD to notify their members two weeks before the effective date of the rule. Such notification should help the NASD and its members to implement the rule in an orderly manner while still permitting the rule to become effective shortly after the implementation of T+3 settlement, which is scheduled to occur on June 7, 1995.

[4] 15 U.S.C. 78o–3(b)(6) (1988).

[5] Securities Exchange Act Release Nos. 33023 (October 6, 1993), 58 FR 52891 (adopting Rule 15c6–1) and 34952 (November 9, 1994), 59 FR 59137 (changing effective date from June 1, 1995, to June 7, 1995).

III. Conclusion

For the reasons stated above, the Commission finds that NASD's proposal is consistent with Section 15A of the Act.[6]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (File No. SR–NASD–95–11) be and hereby is approved, effective June 30, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–13466 Filed 6–1–95; 8:45 am]

BILLING CODE 8016-01-M

[6] 15 U.S.C. 78o–3 (1988).

[7] 15 U.S.C. 78s(b)(2) (1988).

[8] 17 CFR 200.30(a)(12) (1994).

Under Review by Office of Management and Budget

Agency Clearance Officer: Michael E. Bartell, (202) 942–8800

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:

Rule 23c–3, File No. 270–373

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the "SEC") has submitted for extension of OMB approval Rule 23c–3 under the Investment Company Act of 1940 [17 CFR 270.23c–3].

Rule 23c–3 permits closed-end management investment companies to make periodic repurchase offers to shareholders at net asset value. These repurchases are exempt from the disclosure and filing requirements of the tender offer rules under the Securities Exchange Act of 1934. Rule 23c–3 requires closed-end funds making repurchase offers to give shareholders before each offer a notification containing specified information, to file three copies of the notification with the Commission, to describe the fund's repurchase policy and the results of recent repurchase offers in the annual report to shareholders, and to cause fund directors to adopt and maintain written procedures designed to preserve a sufficiently liquid investment portfolio. An estimated 10 respondents together incur 320 burden hours annually to comply with the requirements, under new estimates reflecting a program change and an adjustment.

In addition, closed-end funds relying on the rule must file copies of advertisements and other sales literature with the Commission unless already filed with the National Association of Securities Dealers (NASD). Respondents generally incur no burden hours to comply with this requirement because each fund's principal underwriter must comply with separate NASD rules requiring the filing of such materials with the NASD.

Direct general comments to the OMB Clearance Officer for the Securities and Exchange Commission at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with SEC rules or forms to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and to OMB Clearance Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Paperwork Reduction Act Number 3235–0422, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20543.

Dated: May 22, 1995.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–13535 Filed 6–1–95; 8:45 am]

BILLING CODE 8016-01-M

[Release No. 34–35772; File No. SR–PHLX–95–34]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change Regarding Depository Eligibility Requirements

May 26, 1995.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on May 19, 1995, the Philadelphia Stock Exchange, Inc. ("PHLX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by PHLX. On May 18, 1995, PHLX filed an amendment to the rule filing.[2] The Commission is publishing this notice to solicit comments from interested persons.

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Letter from Sharon S. Metzger, PHLX, to Christine Sibille, Senior Counsel, Division of Market Regulation, Commission (May 18, 1995).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

PHLX proposes to adopt a new Rule 853 which will set forth depository eligibility requirements for issuers that apply to list their securities on PHLX.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, PHLX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Under the proposed rule change, PHLX will adopt a uniform depository eligibility rule for issuers that desire to list their securities on PHLX.[4] The uniform rule has been developed by the Legal and Regulatory Subgroup of the U.S. Working Committee of the Group of Thirty in coordination with each of the national securities exchanges and the National Association of Securities Dealers ("NASD"). It is anticipated that each national securities exchange and the NASD will file rule changes proposing adoption of depository eligibility standards substantially similar to PHLX's proposed rule and will seek to make such changes effective contemporaneously with the effective date of the transition from a five day ("T+5") to a three day ("T+3") settlement cycle. The transition is set to occur June 7, 1995.[5]

The proposed rule change will require issuers to ensure that securities to be listed on PHLX have been included in the file of eligible issues maintained by a securities depository registered as a clearing agency under section 17A of the Act.[6] This requirement will not apply to a security if the terms of such security cannot be reasonably modified to meet the criteria for depository eligibility at all securities depositories.

The proposed rule change sets forth additional requirements that must be met before a security will be deemed to be "depository eligible," within the meaning of PHLX Rule 279 ("uniform book-entry settlement rule").[7] The proposed rule specifies different requirements for depository eligibility depending upon whether a new issue is distributed by an underwriting syndicate before or after the date a securities depository system is available for monitoring repurchases of the distributed shares by syndicate members ("flipping tracking system").

Currently, a flipping tracking system is being developed that will include a securities depository service that (i) can be activated upon the request of the managing underwriter for a period of time that the managing underwriter specifies, (ii) in certain circumstances, will require the delivering participant to provide to the depository information sufficient to identify the seller of such shares as a precondition to the processing of book-entry delivery instructions for distributed shares, and (iii) will report to the managing underwriter the identity of any other syndicate member or selling group member whose customer(s) sold distributed shares (but will not report to the managing underwriter the identity of such customer[s]), and in certain circumstances, will report to such syndicate member or selling group member the identity of such customer(s). Prior to the availability of a flipping tracking system, the managing underwriter may delay the date a security is deemed "depository eligible" for up to three months after trading has commenced in the security. After the availability of a flipping tracking system, a new issue will be deemed to be depository eligible upon commencement of trading on PHLX.

The proposed rule change is consistent with section 6(b)(5) of the Act[8] in that it is designed to promote just and equitable principles of trade.

(B) Self-Regulatory Organization's Statement on Burden on Competition

PHLX believes that no burden will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which PHLX consents, the Commission will:

(a) By order approve such proposed rule change or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

PHLX has requested accelerated approval of the proposed rule change in order that the rule can become effective on June 7, 1995.[9]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filings will also be available for inspection and copying at the principal office of PHLX. All submissions should refer to file number SR–PHLX–95–34 and should be submitted by June 23, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

[3] The Commission has modified the language in these sections.

[4] In addition, PHLX Rules 803 and 805 will be amended to properly cross-reference to new Rule 853.

[5] Securities Exchange Act Release Nos. 33023 (October 6, 1993), 58 FR 52891 (adoption of Rule 15c6–1) and 34952 (November 9, 1994), 59 FR 59137 (change of effective date of Rule 15c6–1 from June 1, 1995 to June 7, 1995).

[6] 15 U.S.C. 78q–1 (1988).

[7] Pursuant to PHLX's uniform book-entry settlement rule, trades by a member in depository eligible securities generally must be settled by book-entry through a securities depository.

[8] 15 U.S.C. 78f(b)(5) (1988).

[9] *Supra* note 5 and accompanying text.

[10] 17 CFR 200.30–3(a)(12) (1994).

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 95–13533 Filed 6–1–95; 8:45 am]
BILLING CODE 8010–01–M

[Release No. 34–35773; File No. SR–NYSE–95–19]

Self-Regulatory Organizations; New York Stock Exchange, Inc., Notice of Filing of Proposed Rule Change Regarding Depository Eligibility Requirements

May 26, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on May 16, 1995, the New York Stock Exchange, Inc. ("NYSE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by NYSE. The Commission is publishing this notice to solicit comments from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NYSE proposes to adopt a new Rule 227 which will set forth depository eligibility requirements for issuers that apply to list their securities on NYSE.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Under the proposed rule change, NYSE will adopt a uniform depository eligibility rule, proposed new Rule 227, for issuers that desire to list their securities on NYSE. The uniform rule has been developed by the Legal and Regulatory Subgroup of the U.S. Working Committee of the Group of Thirty in coordination with each of the national securities exchanges and the National Association of Securities Dealers ("NASD"). It is anticipated that each national securities exchange and the NASD will file rule changes proposing adoption of depository eligibility standards substantially similar to NYSE's proposed rule and will seek to make such changes effective contemporaneously with the effective date of the transition from a five-day ("T+5") to a three-day ("T+3") settlement cycle. The transition is set to occur June 7, 1995.[3]

The proposed rule change will require domestic issuers to represent to the NYSE before issues of securities are listed that the CUSIP numbers identifying the securities have been included in the file of eligible issues maintained by a securities depository registered as a clearing agency under section 17A of the Act.[4] This requirement will not apply to a security if the terms of such security cannot be reasonably modified to meet the criteria for depository eligibility at all securities depositories.

The proposed rule change sets forth additional requirements that must be met before a security will be deemed to be "depository eligible," as such term is used in Rule 226 of the NYSE rules.[5] The proposed rule specifies different requirements for depository eligibility depending upon whether a new issue is distributed by an underwriting syndicate before or after the date a securities depository system is available for monitoring repurchases of the distributed shares by syndicate members ("flipping tracking system").

Currently, a flipping tracking system is being developed that will include a securities depository service that (i) can be activated upon the request of the managing underwriter for a period of time that the managing underwriter specifies, (ii) in certain circumstances, will require the delivering participant to provide to the depository information sufficient to identify the seller of such shares as a precondition to the processing of book-entry delivery instructions for distributed shares, and (iii) will report to the managing underwriter the identity of any other syndicate member or selling group member whose customer(s) sold distributed shares (but will not report to the managing underwriter the identity of such customer[s]), and in certain circumstances, will report to such syndicate member or selling group member the identity of such customer(s). Prior to the availability of a flipping tracking system, the managing underwriter may delay the date a security is deemed "depository eligible" for up to three months after trading has commenced in the security. After the availability of a flipping tracking system, a new issue will be deemed to be depository eligible upon commencement of trading on NYSE.

The proposed rule change is consistent with Section 6(b)(5) of the Act[6] in that it protects investors and the public interest by reducing the risk inherent in settling securities transactions to clearing corporations, their members, and public investors. This is accomplished because the new rule will promote book-entry settlement for the vast majority of initial public offerings and will reduce risk in the U.S. national market system.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NYSE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

NYSE has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which NYSE consents, the Commission will:

(a) By order approve such proposed rule change or

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] The Commission has modified the language in these sections.

[3] Securities Exchange Act Release Nos. 33023 (October 6, 1993), 58 FR 52891 (adoption of Rule 15c6–1) and 34952 (November 9, 1994), 59 FR 59137 (change of effective date of Rule 15c6–1 from June 1, 1995 to June 7, 1995).

[4] 15 U.S.C. 78q–1 (1988).

[5] The term "depository eligible securities" is defined in Rule 226(d) as securities that (i) are part of an issue (securities identified by a single CUSIP number) of securities that is eligible for deposit at a securities depository and (ii) with respect to a particular transaction, are eligible in book-entry transfer at the depository at the time of settlement of the transaction.

[6] 15 U.S.C. 78f(b)(5) (1988).

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

NYSE has requested accelerated approval of the proposed rule change in order that the rule can become effective on June 7, 1995.[7]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 5th Street, NW., Washington, DC 20549. Copies of such filings will also be available for inspection and copying at the principal office of NYSE. All submissions should refer to file number SR–NYSE–95–19 and should be submitted by June 23, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–13534 Filed 6–1–95; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21098; 812–8902]

IDS Certificate Company, Notice of application

May 26, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANT: IDS Certificate Company ("IDSC").

RELEVANT ACT SECTIONS: Order requested under sections 6(c), 28(b), 18(j)(1), and (28(c).

SUMMARY OF APPLICATION: IDSC requests an order under section 28(b) to permit it to hold as "qualified investments" those investments permitted under the Minnesota life insurance code ("Minnesota Code") and to value these investments in accordance with the Minnesota Code; under section 6(c) to adopt a more conservative formula to calculate its minimum reserve requirements; under section 18(j)(1) to engage in certain hedging transactions that are permitted under the Minnesota Code; and under section 28(c) to authorize certain custodial arrangements. The order under section 6(c) would supersede a prior order (the "Interest Rate Order") relating to IDSC's reserve calculations.[1] In addition, the order under section 28(c) would amend two prior orders (the "Custody Orders") concerning IDSC's custodial arrangements.[2]

FILING DATE: The application was filed on October 15, 1987, and amended on March 30, 1988, March 3, 1989, December 22, 1989, May 24, 1990, August 20, 1990, September 27, 1994, and May 26, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 20, 1995, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, IDS Tower 10, Minneapolis, Minnesota 55440, Attn: Bruce A. Kohn.

FOR FURTHER INFORMATION CONTACT: Robert A. Robertson, Branch Chief, at (202) 942–0564, or Elizabeth G. Osterman, Assistant Director, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee for the SEC's Public Reference Branch.

Applicant's Representations

1. IDSC, a registered face-amount certificate company, is a wholly-owned subsidiary of IDS Financial Corporation, a registered broker-dealer and investment adviser. IDSC issues several types of "face-amount certificates" with varying terms and maturities. Face-amount certificates are debt obligations of the issuing company. These certificates obligate the issuer to pay a certain amount to the holder thereof upon maturity or to pay a specified surrender value prior to maturity.

2. IDSC is located in Minnesota. A specific statutory mandate subjects IDSC to oversight and periodic inspections by the Minnesota Department of Commerce, which administers the Minnesota Code and also regulates insurance companies. The Department inspects IDSC at least annually, and focuses particularly on portfolio quality and the adequacy of reserves for losses.

A. Qualified Investments

1. As a face-amount certificate company, the Act requires IDSC to hold assets having a value of not less than the aggregate amount of its required paid-in capital and certificate reserves. Section 28(b) provides that these assets must consist of cash or "qualified investments," which are defined as those investments that life insurance companies are permitted to invest in or hold under the Code of the District of Columbia (the "D.C. Code") or investments that the SEC may authorized by rule, regulation, or order. In addition, the section provides that these investments must be valued in accordance with the D.C. Code.

2. Investments available in the marketplace have changed substantially since the adoption of the D.C. Code, and applicants believe that the D.C. Code is largely outdated as the last substantive amendments were passed in 1960. Under the D.C. Code, life insurance companies may not invest more than 5% of their assets in investments not expressly permitted by the D.C. Code (the "5% Limitation").

3. IDSC requests and order under section 28(b) to permit it to hold as "qualified investments" those financial instruments that life insurance companies may hold under the Minnesota Code, as in effect at the time relief is granted. In addition, if the requested relief is granted, these investments will be valued in accordance with the Minnesota Code. The Minnesota Code allows "financial transactions solely for the purpose of managing the interest rate risk associated with the Company's assets and liabilities and not for speculative or other purposes."[3] These transactions may involve "futures, options to buy or sell fixed income securities, repurchase and reverse repurchase agreements, and interest rate swaps, caps, and floors."[4]

4. IDSC's current procedures for hedging include approval of any hedging program by an asset/liability committee that has been created by IDSC's investment adviser and includes senior managers of the investment adviser and managers of IDSC. The investment adviser is IDSC's parent company, IDS Financial Corporation. The committee does not review specific transactions before the fact. However, both the committee and IDSC's board of directors are informed of the implementation at their meetings or in written materials prepared for those meetings.

5. There are other significant differences between the D.C. Code and the Minnesota Code:

a. Under the D.C. Code, there is no limit on investments in high-yield, lower grade bonds. In contrast, the Minnesota Code permits no more than 15% of a company's assets to be invested in bonds rated below investment grade by a nationally recognized rating agency or below the two highest of the six rating categories of the National Association of Insurance Commissioners ("NAIC").

b. The percentage of a portfolio that may be invested in equities is not limited under the D.C. Code, whereas the Minnesota Code permits no more than 20% to be invested in common stock, and no more than 25% to be invested in common and preferred stocks combined. No more than five percent may be invested in preferred stock rated in one of the four lowest NAIC rating categories.

c. Under the D.C. Code, foreign investments other than in Canada are subject to the 5% Limitation. In addition to the investments in Canada, the Minnesota Code allows a company to invest up to ten percent of its assets in certain foreign investments in countries where the obligations of the government are rated in one of the two highest rating categories by a U.S. rating agency.

6. In both Minnesota and the District of Columbia, NAIC principles are used to value the investments of life insurance companies, and most investments are valued at acquisition cost, with amortization of premiums and accretion of discounts, when applicable. IDSC states that there are few differences in valuation requirements between the two jurisdictions. In Minnesota, securities rated by the NAIC in its category 6—the lowest NAIC rating category—are required to be marked to a market value determined by the NAIC, which the D.C. Code does not require. In addition, unlike the D.C. Code, the Minnesota Code contains rules on valuation of commercial mortgage loans and real estate owned as a result of foreclosure on such loans.

7. Section 28(b) provides that the SEC may authorize face-amount certificate companies to invest in qualified investments in addition to those permitted under the D.C. Code. IDSC requests an order under the section to permit it to use the Minnesota Code—instead of the D.C. Code—to determine its qualified investments. IDSC believes that the Minnesota Code governing investments by insurance companies contains several provisions that would enhance the protection of investors and be consistent with the policies and purposes of the Act.

8. IDSC will explain its expanded use of derivative instruments in its prospectus and in a publication to its current certificate holders. In particular, IDSC will explain that it may enter into financial transactions, including futures and other derivatives, for the purpose of managing the interest rate exposures associated with its assets or liabilities. IDSC also will explain that derivatives are financial instruments whose performance is derived, at least in part, from the performance of an underlying asset, security or index, and that a small change in the value of the underlying asset, security or index may cause a sizable gain or loss in the fair value of the derivative.

B. Reserves

1. IDSC also requests an order to change the formula for calculating its minimum reserves. Sections 28(a) and 28(i) specify the amount of reserves required to be maintained on fully paid (or single pay) certificates and installment certificates. The underlying principle in calculating a face-amount certificate company's reserves is to start with the amount of money that will have to be paid at maturity and then to work backward through an analysis similar to a present value calculation. For instance, with a fully paid (or single pay) certificate, section 28(a) requires IDSC to maintain reserves at least equal to the amount, when accumulated at 3½% per annum compounded annually, that will provide the value payable at maturity.

2. The Interest Rate Order permits IDSC to calculate its minimum reserves using a weighted Moody's Corporate Bond Yield Average ("Moody's Index"), as opposed to using the statutory 3½%. IDSC believes that a different formula for calculating its reserves could more closely approximate the usual average maturity of the investments in IDSC's portfolio. Accordingly, IDSC requests an order under section 6(c) to calculate its reserves using the rate of Treasury bonds with seven years remaining to maturity. IDSC requests this order such that, if it so chose, it could comply with the condition to, and rely on, this amended exemption without complying with the other conditions to, or relying on, the other exemptions requested in this application. However, if IDSC relies on the relief requested herein to determine qualified investments, it will comply with all the conditions set forth in this application.

3. Section 6(c) provides that the SEC may exempt any person from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Congress sought adequate and secure reserves for face-amount certificate companies. While it could not have specifically anticipated the country's recent history of widely fluctuating interest rates, Congress did recognize a need for flexibility with changing conditions. Section 6(c) was adopted by Congress to permit the SEC to grant exemptions consistent with the Act's purpose of protecting investors. IDSC believes that its proposal would continue to meet Congress' goal of adequate reserves.

C. Issuing Additional Securities

1. IDSC also requests an order under section 18(j)(1). The section generally provides that face-amount certificate companies may not issue any securities other than face-amount certificates, common stock, and private short-term debt, except as the SEC authorizes by rule, regulation, or order.

2. As discussed above, the Minnesota Code permits companies to engage in certain hedging transactions. To the extent these transactions may involve the issuance of securities other than those permitted by section 18(j)(1), IDSC requests approval to issue these securities.

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[7] *Supra* note 3 and accompanying text.

[8] 17 CFR 200.30–3(a)(12) (1994).

[1] *IDS Certificate Company*, Investment Company Act Release Nos. 14981 (Mar. 11, 1986) (notice) and 15045 (Apr. 7, 1986) (order).

[2] *IDS Certificate Company*, Investment Company Act Release Nos. 14652 (July 31, 1985) (notice) and 14712 (Sept. 11, 1985) (order); *IDS Certificate Company*, Investment Company Act Release Nos. 17652 (Aug. 3, 1990) (notice) and 17723 (Aug. 31, 1990).

[3] Minn. Stat. §61A.28, subdib. 9a (emphasis added).

[4] Minn. Stat. §61A.28, subdiv. 9a.

D. Custody

1. Section 28(c) requires a face-amount certificate company to deposit and maintain, upon such terms and conditions as the SEC may prescribe by rule, regulation, or order, all certificate reserve investments with a bank. The Custody Orders approve various custodial arrangements for IDSC. Under these arrangements, IDSC's custodian holds assets either directly or in the book entry system of the Depository Trust Company or the Federal Reserve. In addition, a transnational depository, Centrale de Livraison de Valeuers Mobilieres, S.A., holds a small number of foreign bonds. From time to time, the custodian's agent bank, State Street Bank and Trust Co. in New York City, holds short-term securities. Finally, the custodian's agent, Marquette Bank Minneapolis, holds a small number of unregistered bearer securities. IDSC believes that it can maintain custody for most of the investments permitted under the Minnesota Code in accordance with the Custody Orders.

2. IDSC, however, requests an order under section 28(c) to allow certain custody arrangements for exchange-trade options. IDSC proposes to maintain custody of exchange-traded options indirectly through clearing members who will be participating members in the Options Clearing Corporation ("OCC"). The clearing member will hold such options in nonproprietary accounts. IDSC or its custodian will prepare an activity report of every option transaction or exercise, and will identify on its records the quantity of options belonging or attributable to IDSC on the books of the clearing member. IDSC or its custodian will monitor account activity to assure that IDSC's options are appropriately recorded. IDSC's board of directors initially will approve IDSC's use of the OCC system and will review it annually thereafter, together with the annual report from IDSC or its custodian, in conjunction with its overall review of IDSC's custody arrangements.

3. IDSC believes that, in general, these custodial arrangements will be similar to how a management investment company may maintain custody of similar investments under section 17(f). Thus, IDSC believes that it would be appropriate to permit custody of options under safeguards similar to those that apply to custody of such investments when they are made by management investment companies.

Applicant's Conditions

As conditions to the requested relief, applicant agrees to the following, provided that only condition 6 applies to applicant's request to amend applicant's exemption related to its calculation of reserves in order to change the benchmark for such calculation:

1. Qualified investments under section 28(b) of the Act will be determined by reference to Minnesota law governing investments by life insurance companies as such law exists as of the date of the order granting the relief requested in this application, and such other investments as the Commission shall by rule, regulation, or order authorize as qualified investments. However, any investment in municipal revenue bonds held by applicant that is a qualified investment under applicable law immediately prior to the time that the requested exemptions are granted will continue to be a qualified investment even if it would not otherwise be a qualified investment under the requested exemptions.

2. Qualified investments under section 28(b) of the Act will be determined by reference to Minnesota law governing investments by life insurance companies only so long as applicant remains subject to the jurisdiction of and periodic examinations by the Minnesota Commissioner of Commerce.

3. Applicant will not invest in an illiquid security if, immediately after the investment, more than 15% of its investment portfolio would be held in illiquid securities. For these purposes, an illiquid security will be any security which may not be sold or disposed of in the ordinary course of business within seven days at approximately the current market value at which applicant has valued the investment.

4. To the extent required by generally accepted accounting principles, applicant will employ market-based accounting in valuing its portfolio investments for financial reporting purposes.

5. In its prospectuses and in a communication to existing certificate owners, applicant will explain its expanded use of derivative instruments. In particular, applicant will explain that it may enter into financial transactions, including futures and other derivatives, for the purpose of managing interest rate exposures associated with its assets or liabilities. Applicant also will explain that derivatives are financial instruments whose performance is derived, at least in part, from the performance of an underlying asset, security or index, and that a small change in the value of the underlying asset, security or index may cause a sizable gain or loss in the fair value of the derivative. For these purposes, derivatives are interest rate futures, options, forwards, swaps, caps and similar financial transactions.

6. Applicant will maintain an amount of unappropriated earned surplus and capital equal to at least 5% of net certificate reserves. Net certificate reserves means certificate reserves less outstanding certificate loans. In determining compliance with this condition, qualified investments shall be valued in accordance with the provisions of Minnesota Statutes where such provisions are applicable.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95-13464 Filed 6-1-95; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-26296]

Filings Under the Public Utility Holding Company Act of 1935, as amended ("Act")

May 26, 1995.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by June 19, 1995, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

West Texas Utilities Company (70-8057)

West Texas Utilities Company ("WTU"), 301 Cypress Street, Abilene, Texas 79601-5820, a wholly owned electric public-utility subsidiary company of Central and South West Corporation, a registered holding company, has filed a post-effective amendment to its declaration under sections 6(a) and 7 of the Act and rule 54 thereunder.

By order of the Commission dated October 7, 1992 (HCAR No. 25649), the Commission authorized WTU, among other things, to issue and sell up to an aggregate principal amount of $150 million of first mortgage bonds ("New Bonds"), in one or more series, from time to time through December 31, 1994. The Company was authorized to use the proceeds from the sale of New Bonds to redeem or purchase some of its then outstanding first mortgage bonds, and repay outstanding short-term borrowings or for other general corporate purposes.

In October 1992, WTU issued $75 million of first mortgage bonds. By order dated December 19, 1994, (HCAR No. 26194) ("Order"), the Commission extended WTU's authorization to issue and sell the remaining $75 million of first mortgage bonds from December 31, 1994 to December 31, 1996. In March 1995, WTU issued $40 million of additional New Bonds. WTU has authority remaining under the Order to issue and sell up to an additional $35 million of New Bonds ("Remaining Bonds").

WTU now proposes to issue and sell, through December 31, 1997, up to an additional $95 million of first mortgage bonds which, together with the Remaining Bonds would aggregate $130 million of first mortgage bonds (collectively, "Bonds"). WTU proposes to issue and sell the Bonds with maturities not less than two nor more than 40 years.

The Bonds will be issued under WTU's indenture dated August 1, 1943, to Harris Trust and Savings Bank and J. Bartolini, as Trustees, as amended and supplemented, and secured by a first lien on substantially all of the properties now owned and hereafter acquired by WTU, except for properties specifically excepted from such liens. WTU proposes to issue and sell the Bonds either pursuant to competitive bidding or in negotiated transactions with underwriters or agents.

The Bonds may have redemption or refunding restrictions to be determined at or about the time of sale of the Bonds. WTU further proposes to issue the Bonds with or without a sinking or retirement fund and requests a waiver from the requirement of a limitation on dividends.

The proceeds from the sale of the Bonds will be used to: (1) Redeem all or a portion of WTU's outstanding $55.203 million Series O Bonds; and/or (2) repay a portion of WTU's short-term debt, to provide working capital and for other general corporate purposes.

Mississippi Power Company (70-8127)

Mississippi Power Company ("Mississippi"), 2992 West Beach Boulevard, Gulfport, Mississippi 39501, a wholly owned electric public-utility subsidiary company of The Southern Company, a registered holding company, has filed a post-effective amendment to its application-declaration previously filed under sections 6(a), 7, 9(a), 10, 12(c) and 12(d) of the Act and rules 42 and 44 thereunder.

By orders dated April 13, 1993, June 25, 1993 and December 15, 1993 (HCAR Nos. 25791, 25837 and 25946, respectively), Mississippi was authorized, among other things, to enter into loan agreements and/or installment sales agreements with various public instrumentalities ("Financing Agreements"), in connection with the issuance by those authorities of bonds relating to certain pollution control equipment ("Revenue Bonds"), in amounts aggregating $37.875 million. Mississippi was further authorized to engage in related transactions for the purpose of securing its obligations under the Financing Agreements. The Commission reserved jurisdiction over all transactions, in connection with the issuance and sale by one or more public instrumentalities of one or more series of Revenue Bonds in an aggregate principal amount of up to an additional $11.125 million.

Mississippi proposes that its authority to enter into Financing Agreements relating to Revenue Bonds be increased by $13.875 million, so that it may enter into such agreements in amounts aggregating up to $25 million.

EUA Energy Investment Corporation (70-8617)

EUA Energy Investment Corporation ("EEIC"), P.O. Box 2333, Boston, Massachusetts 02107, a wholly owned nonutility subsidiary of Eastern Utilities Associates ("EUA"), a registered holding company, has filed an application-declaration pursuant to sections 6(a), 7, 9(a), 10, and 12(b) of the Act and rules 43(a) and 45(a) promulgated thereunder.

By orders dated December 4, 1987 (HCAR No. 24515) and April 15, 1994 (HCAR 26028), the Commission authorized EEIC to engage in certain energy related research and development activities. Pursuant to these orders, EEIC has developed certain proprietary technology with a group of individuals and companies not associated with EEIC ("Wood Group"). Additionally, EEIC has acquired certain related contract rights and equipment related to this technology (together with such technology, "Proprietary Technology"). The Proprietary Technology relates to the development and commercialization of biomass-fired combustion turbine power generation facilities and products and/or services offered in connection with such facilities ("Business Opportunity").

EEIC requests Commission authorization to incorporate a nonutility subsidiary ("EEIC Subsidiary"), which would participate as one of two general partners in a proposed joint venture ("BIOTEN Partnership"), along with a corporation to be established by the Wood Group ("BIOTEN LLC"). The initial authorized capitalization of the EEIC Subsidiary will be 200,000 shares of Common Stock, $.01 par value per share. EEIC, which will be the sole owner of the EEIC Subsidiary, will acquire 100 of the authorized shares of the EEIC Subsidiary Common Stock in exchange for its contribution of the Proprietary Technology to the EEIC Subsidiary.

The EEIC subsidiary will, in turn, contribute the Proprietary Technology to the BIOTEN Partnership in exchange for its general partnership interest. BIOTEN LLC will contribute its title to all shares of a to-be-formed wholly-owned subsidiary of BIOTEN LLC ("BIOTEN Operations") in exchange for its general partnership interest in the BIOTEN Partnership. BIOTEN Operations will own certain property to be used in connection with the Business Opportunity at the time its stock is transferred to the BIOTEN Partnership.

In addition, EEIC requests authorization through December 31, 1998 to make additional capital contributions to the BIOTEN Partnership in an aggregate amount of up to $3,907,000. This would consist of up to $1.907 million to be disbursed in connection with the testing and development of a commercial prototype plant using the Proprietary Technology and, possibly, an additional $2 million ("Additional Contribution").

EEIC will at all times own no more than a 9.9% voting interest in the BIOTEN Partnership. However, EEIC will initially have a 30% interest in the profits of the BIOTEN Partnership upon its formation. Also, EEIC will also

receive an additional one and one-half percent share of the partnership's profits for each $100,000 that its capital contribution to the partnership exceeds $1.607 million, exclusive of the Additional Contribution. This share of the partnership's profits will increase to 45% upon EEIC's election to make the Additional Contribution, which election is solely within EEIC's discretion.

EEIC also requests Commission authorization from time to time through December 31, 1998 to provide the BIOTEN Partnership with a line of credit of up to $3 million. Advances made under this line of credit will bear interest at an annual rate equal to the prime lending rate announced from time to time by The First National Bank of Boston, N.A., plus (a) 6% at any time the Additional Contribution has been made but not yet repaid to EEIC and (b) 2% after the Additional Contribution made to the BIOTEN Partnership has been repaid, but in no event to exceed 16% per annum.

All advances made under the line of credit will become due and payable three years after the later of (a) the date of the partnership agreement establishing the BIOTEN Partnership and (b) the date such line of credit is first drawn upon. All advances under this line of credit will be evidenced by a promissory note and the BIOTEN Partnership's obligations under the note will be secured by a first priority security interest in the assets of the BIOTEN Partnership.

UNITIL Corp., et al. (70–8623)

UNITIL Corporation ("UNITIL"), a registered holding company, and its wholly owned subsidiary companies ("Subsidiaries"), Concord Electric Company ("Concord"), Exeter & Hampton Electric Company ("E&H"), Fitchburg Gas and Electric Light Company ("Fitchburg"), UNITIL Power Corp. ("UNITIL Power"), UNITIL Realty Corp. ("UNITIL Realty"), UNITIL Resources, Inc. ("UNITIL Resources"), and UNITIL Service Corp. ("UNITIL Service"), all of 216 Epping Road, Exeter, New Hampshire, 03833, have filed an application-declaration under sections 6(a), 7, 9(a), 10 and 12(b) and the Act and rules 43 and 45 thereunder.

The application-declaration seeks Commission authorization for: (i) The issuance of unsecured bank notes in support of short-term borrowing by UNITIL through June 30, 1997 of up to $15 million on a revolving basis from certain banks; (ii) short-term borrowing by the Subsidiaries pursuant to formal or informal credit lines up to stated limits through June 30, 1997; and, (iii) continued use of the system money pool ("Money Pool") through June 30, 1997, pursuant to the February 1, 1985 Cash Pooling and Loan Agreement ("Pooling Agreement") among UNITIL and the Subsidiaries.

By order dated March 29, 1993 (HCAR No. 25773) ("Order"), UNITIL and the Subsidiaries, with the exception of UNITIL Resources, were authorized to make unsecured short-term borrowings up to stated limits and to operate under the Money Pool through June 30, 1995. UNITIL Resources now seeks Commission authorization to engage in short-term borrowing of up to $500,000. In addition, UNITIL Resources seeks authorization to operate under the Money Pool.

UNITIL proposes to issue bank notes pursuant to which it will be allowed to borrow up to $15 million at the base or prime rate. These borrowings will be subject to prepayment at UNITIL's option. In some instances the borrowings may bear an interest rate that is the higher of the base rate or ½ of one percent per annum above the daily Federal Funds Rate published by the Federal Reserve Bank of New York. In addition, short-term notes may be offered at fixed money market rates. Money market rate borrowings may or may not be subject to prepayment. Borrowings will not exceed the nine months.

Concord, E&H, Fitchburg, UNITIL Power, UNITIL Realty, UNITIL Resources and UNITIL Service seek authorization to incur short-term borrowings from any source, but principally if not exclusively from the Money Pool, of up to the following amounts (in millions of dollars):

Concord	5
E&H	5
Fitchburg	12
UNITIL Power	6
UNITIL Realty	7
UNITIL Resources	.5
UNITIL Service	1

Short-term borrowing from commercial banks undertaken by the Subsidiaries will be under terms and conditions substantially similar to the terms and conditions of the short-term borrowing agreements entered into by UNITIL.

The Pooling Agreement allows UNITIL and the Subsidiaries to invest their surplus funds and the Subsidiaries to borrow on an equal basis. UNITIL Service administers the Money Pool for UNITIL and the Subsidiaries on an "at-cost" basis. UNITIL and the Subsidiaries propose to continue operating under the Money Pool pursuant to the same terms and conditions as authorized in the Order.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–13530 Filed 6–1–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–26297]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

May 26, 1995.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by June 19, 1995, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Blackstone Valley Electric Company (70–8633)

Notice of Proposal to Increase Unsecured Indebtedness Limitation of Preferred Stock; Order Authorizing Solicitation of Proxies

Blackstone Valley Electric Company ("BVEC"), Washington Highway, P.O. Box 1111, Lincoln, Rhode Island 02865, an electric public-utility subsidiary company of Eastern Utilities Associates, a registered holding company, has filed a declaration with the Commission under Sections 6(a), 7, and 12(e) of the Act and Rules 62 and 65 thereunder.

The terms of the preferred stock of BVEC provide that, except with the consent of a majority of the preferred stock then outstanding, the amount of unsecured indebtedness of the company having maturities of less than ten years which the company may issue or assume shall not exceed 10% of the sum of the principal amount of all bonds and other securities representing secured indebtedness and the capital and surplus of the company. The amount of all unsecured indebtedness of the company issued or assumed shall not exceed 20% of such sum.

At a special meeting of the holders of BVEC preferred stock held on October 8, 1985, BVEC was authorized, for a five year period ending October 1, 1990, to issue or assume unsecured indebtedness, having maturities of less than ten years, in excess of the 10% limitation. Subsequently, at a special meeting of the holders of BVEC preferred stock held on September 27, 1990, it was voted to extend such authorization for an additional five year period ending October 1, 1995.

BVEC now seeks Commission authorization to issue or assume unsecured indebtedness having maturities of less than ten years in excess of the 10% limitation at various times during an additional five year period. In addition under applicable provisions of the Preferred Stock Provisions, adoption of the proposal with respect to the unsecured debt limitation requires the affirmative vote of a majority of the total number of outstanding shares of BVEC's preferred stock (which consists of two series par value of $100 per share) voting as a single class.

BVEC proposes and requests authorization to submit the proposal to extend the authorization permitting the issuance or assumption by BVEC of unsecured indebtedness having maturities of less than ten years in excess of the 10% limitation to the holders of its preferred stock for approval at the special meeting of preferred stockholders to be held on July 6, 1995. In connection therewith, BVEC proposes to solicit proxies from its preferred stockholders.

It's appearing that the declaration, as amended, regarding the proposed solicitation of proxies should be permitted to become effective forthwith pursuant to Rule 62:

It is ordered, pursuant to Rule 62, that the declaration regarding the proposed solicitation of proxies be, and it hereby is, permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 under the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–13531 Filed 6–1–95; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21097; 812–9464]

Security Equity Life Insurance Company, et al.

May 25, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Security Equity Life Insurance Company ("Security Equity"), Security Equity Separate Accounts 26 and 27 (the "Separate Accounts"), and G.T. Global Financial Services, Inc. ("G.T. Global").

RELEVANT ACT SECTIONS: Order requested under section 6(c) of the Act that would exempt applicants from sections 26(a)(2)(C) and 27(c)(2) of the Act.

SUMMARY OF APPLICATION: Appliants request an order to permit Security Equity to deduct a mortality and expense risk charge from the assets of the Separate Accounts in connection with the offering of certain flexible premium variable deferred annuity contracts (the "Contracts").

FILING DATE: The application was filed on February 2, 1995. Applicants have agreed to file an amendment, the substance of which is incorporated herein, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 19, 1995, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, D.C. 20549. Applicants, c/o Juanita M. Thomas, Esq., Assistant Counsel, Security Equity Life Insurance Company, 700 Market Street, St. Louis, Missouri 63101; c/o Peter R. Guarine, Esq., G.T. Global Financial Services, Inc., 50 California Street, San Francisco, California 94111.

FOR FURTHER INFORMATION CONTACT: James M. Curtis, Senior Counsel, at (202) 942–0563, or Robert A. Robertson, Branch Chief, (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. Security Equity is a stock life insurance company incorporated under the laws of New York and is licensed to do business in thirty-eight states and the District of Columbia.

2. The Separate Accounts were established by Security Equity as separate accounts under the laws of the State of New York, and each has been registered with the SEC under the Act as a unit investment trust. A registration statements has been filed under the Securities Act of 1933 in connection with the Contracts. Each of the Separate Accounts is divided into divisions ("Divisions"), each of which will invest solely in the shares of one of the series of G.T. Global Variable Investment Series or G.T. Global Variable Investment Trust (a "Fund"), or in other similar funds available under the Contracts. Each Fund is a registered open-end management investment company.

3. G.T. Global will serve as the distributor and principal underwriter of the Contracts. G.T. Global is registered under the Securities Exchange Act of 1934 as a broker-dealer and is a member of the National Association of Securities Dealers, Inc.

4. The Contract is a variable flexible premium annuity contract designed for use as a non-qualified retirement vehicle and as an Individual Retirement Annuity. The Contract may be purchased with a minimum initial purchase payment of $2,000. Subsequent purchase payments must be at least $100. The Contract owner may allocated purchase payments among one or more Divisions of the Separate Accounts.

5. In the event that an annuitant who is not a Contract owner dies prior to the annuity date and before a Contract owner, a death benefit is payble upon receipt of due proof that the annuitant died prior to the annuity date and before a Contract owner. The death benefit during the first six contract years is equal to the greater of the accumulated

value on the date of receipt of due proof of death and a written request for payment or the sum of all net purchase payments made, less partial withdrawals (including applicable charges). The death benefit during any subsequent six contract year period is the greater of accumulated value on the date of receipt of due proof of death and a written request for payment or the death benefit on the last day of the previous six contract year period plus any net purchase payments made less any partial withdrawals (including applicable charges). Notwithstanding the foregoing, if the issue date is on or after the annuitant's 75th birthday, the death benefit is the accumulated value on the date due proof of death and a written request for payment are received. in each case, except for Contracts with accumulated values of $20,000 or more, the death benefit is reduced by an account fee and applicable special handling fees.

6. In the event that a Contract owner dies prior to the annuity date and his or her surviving spouse is not the beneficiary or annuitant, the beneficiary (or the beneficiary's estate) is entitled to receive a death benefit equal to the amount described in the preceding paragraph. In the event that the Contract owner dies prior to the annuity date and his or her surviving spouse is the annuitant or beneficiary, the spouse may elect to become the new owner.

7. Security Equity will deduct an annual account administration fee (the "Account Fee") on accumulated values of less than $20,000. Revenues from the Account Fee will partially compensate Security Equity for the cost of providing administrative services relating to the issue and maintenance of the Contract and the Contract owner's records. The Account Fee will be deducted from the accumulated value of a Contract on each contract anniversary prior to the annuity date and upon full surrender of the Contract or upon the annuity date if other than a contract anniversary. In contract years ending prior to December 31, 1999, the Account Fee is the lesser of $30 or 2% of the Accumulated Value. Thereafter, the Account Fee may be changed annually but will not exceed an amount that reflects the change in the Consumer Price Index since December 31, 1992 or $50.00. This fee will be deducted from the money market Division or from the Division having the largest portion of accumulated value under the Contract if no money market Division investment exists on the contract anniversary. After the annuity date, the Account Fee will be deducted in equal amounts from each variable annuity payment throughout the year. No Account Fee is deducted in connection with fixed annuity payments.

8. Security Equity also will deduct a daily administration fee, equal to an annual rate of .15% of the average daily net assets of each Division. This charge is designed to reimburse Security Equity for those administrative expenses attributable to the Contracts, contract owner accounts and records, and the Separate Accounts which exceed the revenues received from the account fee. The administration fee is guaranteed not to increase for the life of the Contracts.

9. Transfers of accumulated values under the Contracts may be made among the Divisions. Security Equity reserves the right to charge $25 for each transfer in excess of twelve transfers in any contract year.

10. Applicants represent that this charge will be deducted in reliance on rule 26a–1 under the Act and that the fee applicable during contract years ending prior to December 31, 1999 represents reimbursement only for administrative costs expected to be incurred over these contract years and the fee applicable in any contract year thereafter represents reimbursement only for administrative costs expected to be incurred over that year. Security Equity does not anticipate making any profit from this charge.

11. Security Equity may assess a contingent deferred sales charge surrender charge ("Surrender Charge") if any part of a Contract owner's accumulated value is withdrawn or if the Contract is surrendered. This Surrender Charge, calculated as a percentage of any net purchase payment, will apply to net purchase payments for seven years from the date the net purchase payment is received. Net purchase payments received more than seven years prior to the date of withdrawal and accumulated value in excess of accumulated net purchase payments (less withdrawals of net purchase payments) may be withdrawn without incurring a Surrender Charge. The Surrender Charge ranges from 7% to 1% of a net purchase payment. Notwithstanding the Surrender Charge, an amount equal to 10% of a Contract's accumulated value may be withdrawn each year (calculated as of the date of the first such withdrawal in that year) without incurring the Surrender Charge. The Surrender Charge will apply for seven complete years measured from the date a net purchase payment is received, according to the following schedule:

Years since receipt of net purchase payment	Surrender charge percentage
0	7
1	6
2	5
3	4
4	3
5	2
6	1
7+	0

For purposes of computing the Surrender Charge, after the 10% amount described above has been withdrawn for any year, net purchase payments are considered to be withdrawn on a first-in-first-out basis, and net purchase payments are considered to be withdrawn before earnings thereon. If, after the 10% of accumulated value has been withdrawn, the Contract's accumulated value is less than the sum of net purchase payments (less prior withdrawals of net purchase payments) the Surrender Charge will be assessed on accumulated value. A Surrender Charge is not imposed in the event of annuitization with Security Equity after three Contract years, or on the death of the annuitant.

12. Security Equity does not anticipate that Surrender Charge revenues from the Contracts will generate sufficient funds to pay the cost of distributing the Contracts. If Surrender Charge revenues are insufficient to cover distribution expenses, the deficiency will be met with amounts from Security Equity's general account, which may include amounts derived from the mortality and expense risk charge.

13. Security Equity may incur premium taxes relating to the Contracts. Security Equity may deduct any premium taxes related to a particular Contract upon receipt of payment, surrender, withdrawal, annuitization, or payment of death benefits.

14. Security Equity proposes to impose a daily charge to compensate it for bearing certain mortality and expense risks in connection with the Contracts. This charge will be at an annual rate of 1.25% of the average daily net assets in the Separate Accounts. Of that amount, approximately 1.00% is attributable to mortality risks, and approximately 0.25% is attributable to expense risks. Security Equity guarantees that this charge will never exceed 1.25%.

15. The mortality risk that Security Equity assumes is that annuitants may live for a longer period of time than estimated when the guarantees in the Contract wre established. Because of these guarantees, each Contract owner is assured that longevity will not have an adverse effect on the annuity payments received. The mortality risk that Security Equity assumes also includes a guarantee to pay a death benefit. The expense risk that Security Equity assumes is the risk that the account fee and the daily administration fee will be insufficient to cover actual future administrative expenses.

16. If the mortality and expense risk charge is insufficient to cover actual costs and assumed risks, the loss will fall on Security Equity. Conversely, if the charge is more than sufficient to cover such costs and risks, any excess will be profit to Security Equity. Security Equity currently anticipates a profit from this charge.

Applicants' Legal Analysis

1. Applicants request an exemption under section 6(c) of the Act from sections 26(a)(2)(C) and 27(c)(2) of the Act to permit the deduction of a mortality and expense risk charge from the assets of the Separate Account under the Contracts.

2. Section 26(a)(2)(C) provides that no payment to the depositor of, or principal underwriter for, a registered unit investment trust shall be allowed the trustee or custodian as an expense except compensation, not exceeding such reasonable amount as the SEC may prescribe, for performing bookkeeping and other administrative duties normally performed by the trustee or custodian. Section 27(c)(2) prohibits a registered investment company, or a depositor or underwriter for such company, from selling periodic payment plan certificates unless the proceeds of all payments on such certificates, other than sales loads, are deposited with a trustee or custodian having the qualifications prescribed in Section 26(a)(1), and held by such trustee or custodian under an agreement containing substantially the provisions required by Sections 26(a)(2) and 26(a)(3) of the Act. Security Equity's deduction of a mortality and expense risk charge from the assets of the Separate Accounts may be deemed to be a payment prohibited by sections 26(a)(2)(c) and 27(c)(2).

3. Section 6(c) authorizes the SEC to exempt any person, security or transaction, or any class or classes of persons, securities or transactions from the provisions of the Act and the rules promulgated thereunder if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. Applicants believe that Security Equity is entitled to reasonable compensation for its assumption of mortality and expense risks. Applicants represent that the 1.25% mortality and expense risk charge under the Contracts is consistent with the protection of investors because it is a reasonable and proper insurance charge. In return for this amount, Security Equity guarantees certain annuity rates and assumes certain risks in the Contracts. The mortality and expense risk charge is a reasonable charge to compensate Security Equity for the risk that annuitants under the Contracts will live longer than has been anticipated in setting the annuity rates guaranteed in the Contracts; for the risk that the accumulated value under a Contract, less any otherwise applicable charges, will be less than the death benefit; and for the risk that administrative expenses will be greater than amounts derived from the account and administrative fees and other administrative charges.

5. Security Equity represents that the 1.25% charge for mortality and expense risks assumed by Security Equity is within the range of industry practice with respect to comparable annuity products. This representation is based upon Security Equity's analysis of publicly available information about similar industry products, taking into consideration such factors as current charge levels, the existence of charge level guarantees, and guaranteed annuity rates. Security Equity will maintain at its home office or at General American Life Insurance Company, available to the SEC, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, its comparative survey.

6. Applicants acknowledge that if a profit is realized from the mortality and expense risk charge, all or a portion of such profit may be viewed by the SEC as being offset by distribution expenses not reimbursed by revenues from the Surrender Charge. Security Equity has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the separate Accounts and the Contract owners. The basis for such conclusion is set forth in a memorandum which will be maintained by Security Equity at its home office or by its service provider, General American Life Insurance Company, at its National Service Center and will be available to the SEC.

7. Security Equity also represents that the Separate Accounts will only invest in management investment companies which undertake, in the event such company adopts a plan under rule 12b–1 of the Act to finance distribution expenses, to have a board of directors, a majority of whom are not interested persons of the company, formulate and approve any such plan under rule 12b–1.

Conclusion

For the reasons set forth above, applicants believe that the requested exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–13467 Filed 6–1–95; 8:45 am]

BILLING CODE 8016–01–M

SOCIAL SECURITY ADMINISTRATION

Agency Forms Submitted to the Office of Management and Budget for Clearance

Normally on Fridays, the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with Public Law 96–511, The Paperwork Reduction Act. The following clearance packages have been submitted to OMB since the last list was published in the **Federal Register** on Friday, May 12, 1995.

(Call Reports Clearance Officer on (410) 965–4142 for copies of package)

1. Student's Statement Regarding School Attendance—0960–0105. The information on form SSA–1372 is used by the Social Security Administration to determine if a claimant is entitled to Social Security benefits as a student. Respondents are student claimants for Social Security benefits.

Number of Respondents: 200,000
Frequency of Response: 1
Average Burden Per Response: 10 minutes
Estimated Annual Burden: 33,333 hours

2. Request for Earnings Benefits Estimate Statement—0960–0466. The information on form SSA–7004 is used by the Social Security Administration to provide a statement of earnings, quarters of coverage and future benefit estimates to certain workers and self-employed individuals. The respondents are

individuals requesting personal earnings and benefit statements.

Number of Respondents: 20,000,000
Frequency of Response: 1
Average Burden Per Response: 5 minutes
Estimated Annual Burden: 1,166,667 hours

3. Statement of Agricultural Employer (Years Prior to 1988); Statement of Agricultural Employer Years 1988 and Later—0960–0036. The information on forms SSA–1002 and SSA–1003 is used by the Social Security Administration to resolve discrepancies when farm workers have alleged that their employers did not report their wages or reported them incorrectly. The respondents are agricultural employers.

Number of Respondents: 125,000
Frequency of Response: 1
Average Burden Per Response: 10 minutes (SSA–1002)
30 minutes (SSA–1003)
Estimated Annual Burden: 37,500 hours
OMB Desk Officer: Laura Oliven.

Social Security Administration

Written comments and recommendations regarding these information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: Office of Management and Budget, OIRA, New Executive Office Building, Room 10230, Washington, D.C. 20503.

Dated: May 26, 1995.

Charlotte Whitenight,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 95–13523 Filed 6–1–95; 8:45 am]

BILLING CODE 4190–29–P

THRIFT DEPOSITOR PROTECTION OVERSIGHT BOARD

Regional Advisory Board Meetings for Regions 1–6

AGENCY: Thrift Depositor Protection Oversight Board.

ACTION: Meetings notice.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is hereby published for the Series 21 and 22 Regional Advisory Board meetings for Regions 1 through 6. The meetings are open to the public.

DATES: The 1995 Series 21 and 22 meetings are scheduled as follows:

1. June 20 (Series 21), 3 p.m. to 5 p.m.; June 21 (Series 22), 9 a.m. to 12 noon, Dallas, Texas, Region 4 Advisory Board.

2. June 22 (Series 21), 3 p.m. to 5 p.m.; June 23 (Series 22), 9 a.m. to 12 noon, Freeport, Maine, Region 1 Advisory Board.

3. July 6 (Series 21), 3 p.m. to 5 p.m.; July 7, (Series 22), 9 a.m. to 12 noon, Denver, Colorado, Region 5 Advisory Board.

4. July 13 (Series 21), 3 p.m. to 5 p.m.; July 14 (Series 22), 9 a.m. to 12 noon, San Diego, California, Region 6 Advisory Board.

5. July 18, (Series 21), 3 p.m. to 5 p.m.; July 19 (Series 22), 9 a.m. to 12 noon, Chicago, Illinois, Region 3 Advisory Board.

6. July 27 (Series 21), 3 p.m. to 5 p.m.; July 28 (Series 22), 9 a.m. to 12 noon, Nashville, Tennessee, Region 2 Advisory Board.

ADDRESSES: The meetings will be held at the following locations:

1. Dallas, Texas—Harvey Hotel Dallas, 400 North Olive.

2. Freeport, Maine—Harraseeket Inn, 162 Main Street.

3. Denver, Colorado—Stouffer Concourse Hotel, 3801 Quebec Street.

4. San Diego, California—Pan Pacific Hotel, 400 West Broadway.

5. Chicago, Illinois—Federal Deposit Insurance Corporation, 500 West Monroe Street, 32nd Floor.

6. Nashville, Tennessee—Stouffer Renaissance Nashville, 611 Commerce Street.

FOR FURTHER INFORMATION CONTACT: Jill Nevius, Committee Management Officer, Thrift Depositor Protection Oversight Board, 808 17th Street NW., Washington, DC 20232, 202/416–2626.

SUPPLEMENTARY INFORMATION: Section 501(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Public Law No. 101–73, 103 Stat. 183, 382–383, directed the Oversight Board to establish one national advisory board and six regional advisory boards. Since July 1990, these citizen advisory boards have provided private-sector perspectives on the role of the federal government in the resolution of the S&L crisis. The Series 21 and 22 meeting are the final series of the regional boards prior to termination of the Resolution Trust Corporation on December 31, 1995. The meetings will be held on consecutive days.

Purpose

The Regional Advisory Boards provide the Resolution Trust Corporation (RTC) with recommendations on the policies and programs for the sale of RTC-owned real property assets.

Agenda

The agenda for Series 21, on the first day, will include remarks from the board's chair and Oversight Board staff, as well as a final report and transition briefing from the respective regional RTC vice presidents. The agenda for Series 22, on the second day, will include remarks from the board's chair and Oversight Board staff, as well as a presentation on the draft document of the history of the advisory boards. Each meeting will include a public forum.

Statements

Interested persons may submit to an Advisory Board written statements, data, information or views on the issues pending before the board prior to or at the meeting. Interested persons may also sign up for the public forum at each meeting. Oral comments will be limited to approximately five minutes. All meetings are open to the public. Seating is available on a first come, first served basis.

Dated: May 30, 1995.

Jill Nevius,

Committee Management Officer, Office of Advisory Board Affairs.

[FR Doc. 95–13487 Filed 6–1–95; 8:45 am]

BILLING CODE 2221–01–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements filed during the Week Ended May 26, 1995

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 50368
Date filed: May 25, 1995
Parties: Members of the International Air Transport Association
Subject: TC12 Reso/P 1669 dated May 23, dated May 23, 1995, Mid Atlantic-Europe Expedited Resos, r-1-073ii r-2- 074c r-3- 015v
Proposed Effective Date: expedited August 1, 1995.

Paulette V. Twine,

Chief, Documentary Services Division.

[FR Doc. 95–13548 Filed 6–1–95; 8:45 am]

BILLING CODE 4910–62–M

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q during the Week Ended May 26, 1995

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 50361.
Date filed: May 22, 1995.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 19, 1995.
Description: Application of Translux International Airlines SA d/b/a Cargo Lion, pursuant to Section 41301, and Subpart Q of the Act, applies for a Foreign Air Carrier Permit, to operate non-scheduled and charter all-cargo air services between points in Luxembourg and points in the United States.

Docket Number: 49896.
Date filed: May 22, 1995.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 19, 1995.
Description: Application of MVP Airlines, Inc., pursuant to Section 401(d) of the Act, requests that their name be changed to "air 21, Inc." and that the Department grant the certificate of public convenience and necessity, to engage in interstate and overseas scheduled and charter air transportation under the new name of "air 21, Inc."

Paulette V. Twine,

Chief, Documentary Services Division.

[FR Doc. 95–13547 Filed 6–1–95; 8:45 am]

BILLING CODE 4910–62–P

Office of the Secretary

Solicitation of Public Comment on Proposed Western Hemisphere Transportation Initiative; Notice of Meeting

SUMMARY: The Office of International Transportation and Trade, U.S. Department of Transportation, invites comments on a proposed Western Hemisphere Transportation Initiative. The public is invited to a meeting on June 20, 1995, at the Transportation Department, 400 7th Street, SW, Washington, DC, in Room 2230, to discuss concerns and key issues regarding transportation in the Western Hemisphere for use in developing the agenda for a conference of transport ministers from the region.

SUPPLEMENTARY INFORMATION: The Department of Transportation organized a Conference on Transportation in the Americas in October 1994 as a precursor to the Summit of the Americas in December. Transport ministers from twelve countries met to discuss the critical transportation issues that confront each country in the region and the hemisphere as a whole. The conference was designed to serve as a platform from which to launch additional cooperative efforts to build an efficient and integrated transportation network throughout the hemisphere.

The ministers' discussions touched on a wide range of key transportation issues, including ways to improve planning and financing of critical transportation projects; economic regulation of transport operations and facilitation of transportation and trade procedures; developing and deploying new technologies to improve the efficiency and environmental friendliness of transport systems; and, harmonizing construction, safety, and operating regulations.

The Summit of the Americas specifically endorsed future cooperation among transport ministers throughout the region. Recognizing the critical role that transportation plays in a nation's trade, tourism, and economic and social development, the Department of Transportation proposes to cooperate with all the countries in the hemisphere to launch a hemispheric transportation initiative. The initiative should promote sustainable and environmentally sound transport infrastructure development, encourage open investment and operating regimes, ensure that technologies are shared so that every nation will benefit from improvements in the efficiency and harmonization of transportation systems and services, and it should provide for the development of common approaches to problems in transport systems.

The Department of Transportation would like to solicit the transportation industry's (service providers and users, equipment manufacturers, construction and engineering firms, and labor) thoughts and ideas to assist in identifying key issues and areas for cooperation among the countries of the Western Hemisphere. The Department is interested in hearing what, in the industry's experience, are the areas that could benefit from the focused attention of the hemisphere's transport ministers. For those who wish to comment but cannot attend the meeting, written comments may be submitted to the individuals named below. The fax number for the Office of International Transportation and Trade is (202) 366–7417. To advise of attendance and for further information contact LeeAnn Moore, International Transportation Specialist, at (202) 366–1219.

Dated: May 26, 1995.

Bernestine Allen,

Chief, International Cooperation and Trade Division, Office of International Transportation and Trade, U.S. Department of Transportation.

[FR Doc. 95–13518 Filed 6–1–95; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

Flight Service Station at Stockton, California; Closure

Notice is hereby given that on May 20, 1995, the Flight Service Station (FSS) at Stockton, California, will close. Services to the general aviation public of Stockton, California, formerly provided by this facility, are provided by the Automated Flight Service Station (AFSS) in Rancho Murieta, California. This information will be reflected in the next issue of the FAA Organization Statement.

(Sec. 313(a), 72 Stat. 752, 49 U.S.C. 1354)

Issued in Lawndale, California, on May 25, 1995.

Lynore C. Brekke,

Acting Regional Administrator, Western-Pacific Region.

[FR Doc. 95–13495 Filed 6–1–95; 8:45 am]

BILLING CODE 4910–13–M

Intent To Rule on Application To Impose and Use a Passenger Facility Charge (PFC) at Orlando International Airport, Orlando, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to Impose and Use a PFC at Orlando International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before July 3, 1995.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Orlando Airports District Office, 9677 Tradeport Drive, Suite 130, Orlando, Florida 32827.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Robert B. Bullock, Executive Director, Greater Orlando Aviation Authority at the following address: Orlando International Airport, One Airport Boulevard, Orlando, Florida 32827.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Greater Orlando Aviation Authority under § 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Pablo G Auffant, P.E., Programs Manager, FAA Orlando Airports District Office, 9677 Tradeport Drive, Suite 130, Orlando, Florida 32827 (407) 648–6583. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to Impose and Use a PFC at Orlando International Airport Under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation regulations (14 CFR part 158).

On May 25, 1995 the FAA determined that the application to Impose and Use the revenue from a PFC submitted by Greater Orlando Aviation Authority was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than August 24, 1995.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: February 1, 1993.

Proposed charge expiration date: August 1, 1996.

Total estimated PFC revenue: $20,060.000.

Brief description of proposed project(s):

1—Design for North Crossfield Taxiway
2—Preliminary Design for Airside 2 and Related Improvements Reimbursement for PFC Eligible Projects as follows:
3—Construction of Taxiway R–60, Taxiway F–15, and airfield access to the Aircraft Rescue and Fire Fighting Facility
4—Implementation of the Security Improvement Program
5—West Ramp Rehabilitation Design
6—Matching Funds for OIA Master Plan
7—Development of Exhibit A Property Map
8—Replacement for Pumper Engine No. 84
9—Replacement for Airfield Sweeper No. 70353
10—Construction of 24 Sanitary Force Main
11—800 Megahertz Communication System
12—Development of Master Mitigation Plan (conceptual permitting)
13—Development of Mitigation Program (engineering services)
14—Development of Mitigation Program (jurisdictional boundaries)
15—Completion of Main Terminal Northeast Corridor
16—Closeout Services for FAA Grants
17—Retrofit Close Circuit Television Cameras
18—Convert Chillers to Non-CFC Refrigerant
19—FAR Part 150 Noise Study.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: NONE

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon a request, inspect the application, notice and other documents germane to the application in person at the Greater Orlando Aviation Authority.

Issued in Orlando, Florida on May 25, 1995.

Charles E. Blair,

Manager, Orlando Airports District Office, Southern Region.

[FR Doc. 95–13496 Filed 6–1–95; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Stewart International Airport, Newburg, New York

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Stewart International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before July 3, 1995.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. Philip Brito, Manager New York Airports District Office, 600 Old Country Road, Suite 446, Garden City, NY 11530.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Russell B. Vachon, Director of Aviation Division for the New York Department of Transportation, at the following address: 1220 Washington Avenue, Albany, New York 12232.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the New York Department of Transportation under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Philip Brito, Manager of the New York Airports District Office, Manager New York Airports District Office, 600 Old Country Road, Suite 446, Garden City, New York 11530. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Stewart International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On April 10, 1995, the FAA determined that the application to impose and use the revenue from a PFC submitted by New York State Department of Transportation was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than July 29, 1995.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00

Proposed charge effective date: November 1, 1995

Proposed charge expiration date: August 1, 2007

Total estimated PFC revenue: $12,757,300

Brief description of proposed projects:

—Acquire Snow Removal Equipment (Impose and Use)
This project includes the procurement of the following equipment; One (1) Twin Dozer Plow with Truck, Four (4) Snow Brooms, One (1) Vacuum Sweeper, Two (2) Roll-over Plows with Sanders and Trucks, One (1) 24′ Plow Truck, One (1) Snow Broom, One (1) 4,000 Gallon Runway De-Icing Truck, Two (2) 4,000 Ton/Hour Snow Blowers, Two (2) Snow Brooms, Two (2) 19′ Plows with Trucks, Two (2) 19′ Plows with Trucks.
—Terminal Building Expansion (Impose and Use)
This project includes expanding existing ground level space for ticketing offices, baggage makeup and claim, waiting areas, concessions and airport operations and security offices. Also included is the construction of six gates on the second level concourse with passenger waiting areas and loading bridges.
—Replace Southeast Quadrant Fuel Farm (Impose and Use)
This project includes the removal of the existing Southwest Quadrant fuel farm facility and the construction of a replacement at a new location which is directly accessible from the aircraft parking ramp. The replacement facility will have Jet-A fuel storage tanks with a total capacity of 300,000 gallons and expandable to accommodate future storage requirements.
—Runway Approach Protection (Impose and Use)
This project includes land and easement acquisition for Runway 16 Runway Protection Zone (approximately 200 acres) and for Runway 16 approach protection—Phase I and II.
—Storm Water Management Study (Impose and Use)
This project involves conducting an in-depth study/analysis and preliminary design for aircraft and pavement de-icing facilities at the Airport.
—Taxiway C Relocation and Removal of a Portion of Tower Hill (Impose and Use)
This project includes relocation of Taxiway C to the East and widening of existing flightline ramp to facilitate ground maneuvering of aircraft in the vicinity of the passenger terminal. A portion of Tower Hill will be removed as part of this project.
—Field Lighting Control Vault (Impose and Use)
This project includes the construction of a new Airfield Lighting and Power Supply Building.
—Northeast Quadrant Phase III Ramp (Impose and Use)
This project consists of placing approximately 33,000 square yards of asphalt pavement which will extend the existing ramp in the Northeast Quadrant to the North to provide public/transient aircraft parking for the remaining FBO and hangar sites.
—Security Access Control System, Part 107 (Impose and Use)
This project includes the installation of all communication, surveillance, alarm and access control equipment needed to provide control for security of terminal, flightline and remote gates and doors.
—South Cargo Development, Phase I Design (Impose and Use)
This project will provide basic site development design for aircraft and truck access and infrastructure in the South Cargo Area.
—Rehabilitate First Street (Impose and Use)
This project provides for the rehabilitation of First Street (on airport property) from the Circulation Road north to the ARFF Station and south of the Passenger Terminal to Breunig Road.
—6,000 Foot Fence Along NY State Route 17K (Impose and Use)
—Phase III Cargo Ramp Expansion (Impose and Use)
This project includes: (1) The removal of approximately 600,000 cubic yards of earth including some rock excavation, (2) Paving approximately 155,000 sq. ft. of additional aircraft parking ramp including lighting, (3) Rehabilitation, widening, partial re-alignment and lighting of approximately one mile of existing roadway to serve as cargo access.
—Partial Parallel Taxiway, Runway 16/34 and Removal of a Portion of Tower Hill (Impose and Use)
This project includes the construction of a partial parallel Taxiway "D" (approx. 75′ × 3,200′) from the intersection with Taxiway "C" and "A" to the end of Runway 34. This construction will require the removal of a portion of Tower Hill.
—Demolition of Hanger E (Impose and Use)
This project includes the demolition of Hanger E and clearing and remediation of its site.
—Rehabilitate Perimeter Road (Impose and Use)
This project will rehabilitate Perimeter Road from its intersection with First Street to its intersection with the United States Military Academy property line.
—Tower Hill Obstruction Removal (Impose)
This project will remove the remaining portion of Tower Hill after the Ramp Widening and Partial Parallel Taxiway project have been completed.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Unscheduled Air Taxi operators operating under Part 135.

Any person may inspect the application in person at the FAA office listed above under FOR FURTHER INFORMATION CONTACT and at the FAA regional Airports office located at: Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York, 11430.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Stewart International Airport.

Issued in Jamaica, New York on May 23, 1995.

William DeGraaff,

Manager, Planning & Programming Branch, Eastern Region.

[FR Doc. 95–13493 Filed 6–1–95; 8:45 am]

BILLING CODE 4910–13–M

Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Syracuse Hancock International Airport, Syracuse, New York

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Syracuse Hancock International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before July 3, 1995.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. Philip Brito, Manager New York Airports District Office, 600 Old Country Road, Suite 446, Garden City, NY, 11530.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Charles Everett, Commissioner of Aviation, Division for the City of Syracuse Department of Aviation, Syracuse Hancock International Airport, Syracuse, New York 13212.

Air carriers and foreign air carriers may submit copies of written comments

previously provided to the City of Syracuse Department of Aviation under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Philip Brito, Manager of the New York Airports District Office, Manager New York Airports District Office, 600 Old Country Road, Suite 446, Garden City, New York, 11530.

The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Syracuse Hancock International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On April 28, 1995, the FAA determined that the application to impose and use the revenue form a PFC submitted by the City of Syracuse Department of Aviation was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than July 26, 1995.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00

Proposed charge effective date: July 1, 1995

Proposed charge expiration date: June 30, 1998

Total estimated PFC revenue: $9,699,050

Brief description of proposed projects:

—Terminal Area Delcing Collection and Concrete Parking Pads (Impose and Use)

This project includes the installation of a glycol based de-icing fluid collection system within the air carrier terminal apron to collect de-icing fluid runoff and the installation of Portland Cement Concrete pavement surrounding the north and south concourse.

—Relocate Taxiway H West and Widen Taxiway J and Taxiway H East (Impose and Use)

This project includes construction of Parallel Taxiway "H" from Taxiway "N" to Runway 10 (approx. 2500′ × 75′), the widening of Taxiway "J" (approx. 750 × 50), and Taxiway "H" from Taxiway "J" to Taxiway "M".

—Land Acquisition For Parallel Runway 10L–28R (Impose)

This project includes the acquisition in fee of approximately 225 acres of federal and privately owned land to accommodate future Runway 10L–28R and runway protection zones at the ultimate length.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial operators filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York, 11430.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Syracuse Hancock International Airport.

Issued in Jamaica, New York on May 23, 1995.

William DeGraaff,

Manager, Planning & Programming Branch, Eastern Region.

[FR Doc. 95–13494 Filed 6–1–95; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

The Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted to OMB the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours and recordkeeping burden; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collections and supporting documents may be obtained from Trish Fineran, Veterans Benefits Administration (20M30), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 273–6886.

Comments and recommendations concerning the proposed information collections should be directed to VA's OMB Desk Officer, Allison Eydt , OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. DO NOT send requests for benefits to this address.

DATES: Comments on the proposed information collections should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: April 24, 1995.

By direction of the Secretary.

Valerie Gray Durkin,

Management Analyst.

Reinstatement, Without Change, of a Previously Approved Collection for Which Approval Has Expired

1. Veterans Mortgage Life Insurance Inquiry, VA Form 29–0543
2. The form is used by Veterans Benefits Administration to request information for the proper maintenance of Veterans Mortgage Life Insurance accounts
3. Individuals or households
4. 45 hours
5. 5 minutes
6. On occasion
7. 540 respondents

Reinstatement, Without Change, of a Previously Approved Collection for Which Approval Has Expired

1. Application for Supplemental Service Disabled Veterans (RH) Life Insurance, VA Form 29–0188
2. The form is used by veterans to apply for Supplemental Service Disabled Veterans Insurance. The information is used by Veterans Benefits Administration to determine eligibility for insurance
3 Individuals or households
4. 3,333 hours
5. 20 minutes
6. On occasion
7. 10,000 respondents

Reinstatement, Without Change, of a Previously Approved Collection for Which Approval Has Expired

1. Application for Exclusion of Children's Income, VA Form 21–0571
2. The form is used by Veterans Benefits Administration to collect the information needed to determine whether a child's income can be excluded from consideration in determining a parent's eligibility for nonservice-connected pension.
3. Individuals or households
4. 18,750 hours
5. 45 minutes
6. On occasion
7. 25,000 respondents

Extension of a Currently Approved Collection

1. Matured Endowment Notification, VA Form 29–5767
2. The form is used to notify the insured that his/her endowment policy has matured and to solicit the desired disposition of the proceeds of the policy. The information is used by Veterans Benefits Administration to process the insured's request.
3. Individuals or households
4. 2,838 hours
5. 20 minutes
6. On occasion
7. 8,600 respondents

Extension of a Currently Approved Collection

1. Certification of Delivery of Advance Payment and Enrollment, VA Form 22–1999V
2. The form is used by educational institutions' certifying officials to certify delivery of advance payment and to report any changes in enrollment status. The information is used by Veterans Benefits Administration to determine if advance payment of benefits has been properly delivered and if the veteran's or other eligible person's education benefits are to be increased, decreased, or terminated, and if so, the effective date of change
3. Business or other for-profit—Not-for-profit institution—State, Local or Tribal Government
4. 3,787 hours
5. 5 minutes
6. On occasion
7. 7,635 respondents

Extension of a Currently Approved Collection

1. Statement of Purchaser or Owner Assuming Seller's Loan, VA Form 26–6382
2. The form is completed by purchasers who are assuming veterans' guaranteed, insured, and direct home loans. The information is used by Veterans Benefits Administration to make determinations for release of liability and substitution of entitlement.
3. Individuals or households
4. 3,000 hours
5. 15 minutes
6. On occasion
7. 9,000 respondents

Revision of a Currently Approved Collection

1. Claim Under Loan Guaranty, VA Form 26–1874, and Supplemental Claim Form—Adjustable Rate Mortgages, VA Form 26–1874a
2. VA Form 261874 is used by lenders and holders of VA guaranteed home loans as the notification to VA of default on such loans. VA Form 26–1874a will be used by lenders and holders of VA loans as an attachment to VA Form 26–1874 when filing a claim under the loan guaranty resulting from the termination of an Adjustable Rate Mortgage loan. The information is used by Veterans Benefits Administration in determining the amount owed the holder under the guaranty.
3. Business or other for-profit
4. Estimate of the Total Annual Reporting Hours—26,139 hours
   a. VA Form 26–1874—25,806 hours
   b. VA Form 26–1874a—333 hours
5. Estimated Average Burden Hours Per Respondent—59 minutes average
   a. VA Form 26–1874—60 minutes
   b. VA Form 26–1874a—20 minutes
6. On occasion
7. Estimated Number of Respondents—26,806 respondents
   a. VA Form 26–1874—25,806 respondents
   b. VA Form 26–1874a—1,000 respondents

[FR Doc. 95–13469 Filed 6–1–95; 8:45 am]

BILLING CODE 8320–01–P

Information Collection Under OMB Review: National Health Survey of Persian Gulf War Era Veterans VA Form 10–20986(NR)

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

The Veterans Health Administration (VHA), Department of Veterans Affairs, has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours and recordkeeping burden; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collections and supporting documents may be obtained from Ann Bickoff, Veterans Health Administration (161B4), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 565–7407.

Comments and recommendations concerning the proposed information collections should be directed to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. DO NOT send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: May 24, 1995.

Valerie Gray Durkin,

Management Analyst.

New Collection

1. National Health Survey of Persian Gulf War Era Veterans, VA Form 10–20986(NR)
2. The survey will be used to estimate and compare the prevalence of various symptoms and other health outcomes among Persian Gulf War veterans and their family members, and those of non-Persian Gulf veterans. A sample of respondents will be invited to take a physical examination. The information will be used by Veterans Health Administration in formulating VA policies regarding Persian Gulf veterans.
3. Individuals or households
4. Total Annual Hours Requested—22,500 hours
   a. VA Form 10–20986(NR)—10,500 hours
   b. Physical Examination—12,000 hours
5. Estimated Average Burden Hours Per Respondent
   a. VA Form 10–20986(NR)—30 minutes
   b. Physical Examination—6 hours
6. One-time
7. Estimated Number of Respondents—21,000.

[FR Doc. 95–13470 Filed 6–1–95; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 60, No. 106
Friday, June 2, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

ASSASSINATION RECORDS REVIEW BOARD

TIME AND DATE: 9:00 a.m., June 7, 1995.

PLACE: 600 E Street, NW., Second Floor, Washington, D.C. 20530.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Review of documents postponed in part or in full by federal agencies under the standards of the Assassination Records Collection Act of 1992, 44 U.S.C. § 2107 note.

CONTACT PERSON FOR MORE INFORMATION: Thomas Samoluk, Press and Public Affairs Officer, 600 E Street, NW, Second Floor, Washington, D.C. 20530. Telephone: (202) 724–0088; Fax: (202) 724–0457.

David G. Marwell,
Executive Director.
[FR Doc. 95–13639 Filed 5–31–95; 10:00 am]
BILLING CODE 6820–TD–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:30 a.m., Friday, June 16, 1995.

PLACE: 2033 K St. NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 95–13697 Filed 5–31–95; 2:52 pm]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND PLACE: 10 a.m., Tuesday, June 27, 1995.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 95–13698 Filed 5–31–95; 2:52 pm]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, June 29, 1995.

PLACE: 2033 K St., N.W., Washington, D.C., Lower Level Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED: Amendments to Part 4, Commodity Pool Operator and Commodity Trading Advisor Disclosure Rules.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 95–13699 Filed 5–31–95; 2:52 pm]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:30 a.m., Thursday, June 29, 1995.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 95–13700 Filed 5–31–95; 2:52 pm]
BILLING CODE 6351–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:04 a.m. on Tuesday, May 30, 1995, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's corporate and supervisory activities.

In calling the meeting, the Board determined, on motion of Vice Chairman Andrew C. Hove, Jr., seconded by Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), concurred in by Director Eugene A. Ludwig (Comptroller of the Currency) and Chairman Ricki Helfer, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550–17th Street, N.W., Washington, D.C.

Dated: May 30, 1995.
Federal Deposit Insurance Corporation.
Leneta G. Gregorie,
Acting Assistant Executive Secretary.
[FR Doc. 95–13645 Filed 5–31–95; 2:52 pm]
BILLING CODE 6714–01–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, June 1, 1995.

PLACE: 6th Floor, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument on the following:

1. *Morton International, Inc., Morton Salt,* Docket No. CENT 93–237–RM, etc.
(Issues include whether the judge erred in concluding that 30 CFR §§ 57.22232 and 57.22235(a) do not apply to abandoned areas.)

Any person attending this oral argument who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150–(a)(3) and 2706.160(e).

TIME AND DATE: Immediately following oral argument.

STATUS: Closed [Pursuant to 5 U.S.C. 552b(c)(10)].

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Morton International, Inc., Morton Salt,* Docket No. CENT 93–237–RM, etc. (see item 1 above)

It was determined by a majority vote of Commissioners that this meeting be held in closed session.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653–5629/for toll free TDD Relay/1–800–877–8339.

Jean H. Ellen,
Chief Docket Clerk.
[FR Doc. 95–13617 Filed 5–31–95; 10:00 am]
BILLING CODE 6735–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 60 FR 28437, May 31, 1995.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 11:00 a.m., Monday, June 5, 1995.

CHANGES IN THE MEETING: Addition of the following closed item(s) to the meeting: Federal Reserve Bank and Branch director appointments.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: May 31, 1995.
Jennifer J. Johnson,
Deputy Secretary of the Board.
[FR Doc. 95-13720 Filed 5–31–95; 3:34 pm]
BILLING CODE 6210–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Board of Directors Meeting

TIME AND DATE: Tuesday, June 13, 1995 1:00 P.M. (Open Portion), 1:30 P.M. (Closed Portion).

PLACE: Offices of the Corporation Twelfth Floor Board Room, 1100 New York Avenue, N.W., Washington, D.C.

STATUS: Meeting Open to the Public from 1:00 P.M. to 1:30 P.M. Closed portion will commence at 1:30 P.M. (approx.)

MATTERS TO BE CONSIDERED:

1. President's Report
2. New Appointment
3. Approval of 03/28/95 Minutes (Open Portion)
4. Meeting schedule through December 1995

FURTHER MATTERS TO BE CONSIDERED: (Closed to the Public 1:30 P.M.)

1. Insurance Project in Peru
2. Insurance Project in Brazil
3. Finance Project in Brazil
4. Finance and Insurance Project in the Philippines
5. Insurance Project in India
6. Finance Project in Russia
7. Finance Project in the NIS
8. Finance Project in the NIS
9. Insurance Project in Ghana
10. Pending Major Projects
11. Approval of the 03/28/95 Minutes (Closed Portion)

CONTACT PERSON FOR INFORMATION: Information on the meeting may be obtained from Jane Chalmers at (202) 336–8421.

Dated: May 30, 1995.
Jane H. Chalmers,
Deputy General Counsel.
[FR Doc. 95–13608 Filed 5–30–95; 4:14 pm]
BILLING CODE 3210–01–M

Corrections

Federal Register
Vol. 60, No. 106
Friday, June 2, 1995

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 3

[Docket No. 93-076-3]

Marine Mammal Negotiated Rulemaking Advisory Committee; Establishment

Correction

In proposed rule document 95–12434 beginning on page 27049 in the issue of Monday, May 22, 1995, make the following corrections:

On page 27050, in the first column, in the second full paragraph, in the fifth line, and in the third full paragraph, in the third line, "human" should read "humane" each time it appears.

BILLING CODE 1505–01–D

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 23-95]

Proposed Foreign-Trade Zone—Ocala/Marion County, Florida; Application and Public Hearing

Correction

In notice document 95–12498 beginning on page 27077 in the issue of Monday, May 22, 1995, make the following correction:

On page 27078, in the first column, in the third full paragraph, beginning in the second line from the bottom, "(to [75 days from date of publication])" should read "(to August 7, 1995)".

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 164

[CGD 83-043]
RIN 2115-AB41

Incorporation of Amendments to the International Convention for Safety of Life at Sea, 1974

Correction

In rule document 95–10921 beginning on page 24767 in the issue of Wednesday, May 10, 1995, make the following correction:

§ 164.35 [Corrected]

On page 24771, in the third column, in § 164.35(o), in the fifth line, "1991" should read "1995".

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Applications To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at John F. Kennedy International Airport, Jamaica, NY; La Guardia Airport (LGA), Flushing, NY, and Newark International Airport (EWR), Newark, NJ

Correction

In notice document 95– 12754 appearing on page 27592 in the issue of Wednesday, May 24, 1995, make the follwing corrections:

1. In the second column, in the twenty-first and twenty-second lines, "July 9, 1995" should read "July 29, 1995".

2. In the third column, in the file line, "FR Doc. 95-1754" should read "FR Doc. 95-12754".

BILLING CODE 1505–01–D

federal register

Friday
June 2, 1995

Part II

Department of Health and Human Services

Health Care Financing Administration

42 CFR Parts 412, 413, et al.
Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 1996 Rates; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 412, 413, 424, 485, and 489

[BPD–825–P]

RIN 0938–AG95

Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 1996 Rates

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: We are proposing to revise the Medicare hospital inpatient prospective payment systems for operating costs and capital-related costs to implement necessary changes arising from our continuing experience with the system. In addition, in the addendum to this proposed rule, we are describing proposed changes in the amounts and factors necessary to determine prospective payment rates for Medicare hospital inpatient services for operating costs and capital-related costs. These changes would be applicable to discharges occurring on or after October 1, 1995. We are also setting proposed rate-of-increase limits as well as proposing policy changes for hospitals and hospital units excluded from the prospective payment systems.

DATES: Comments will be considered received at the appropriate address, as provided below, no later than 5 p.m. on August 1, 1995.

ADDRESSES: Mail written comments (an original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPD–825–P, P.O. Box 7517, Baltimore, MD 21207–0517.

If you prefer, you may deliver your written comments (an original and 3 copies) to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, MD 21207.

Because of staffing and resource limitations, we cannot accept comments by fecsimile (FAX) transmission. In commenting, please refer to file code BPD–825–P. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

For comments that relate to information collection requirements, mail a copy of comments to: Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Allison Herron Eydt, HCFA Desk Officer.

Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 or by faxing to (202) 512–2250. The cost for each copy is $8.00. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

To obtain data used in deriving the standardized amounts and DRG relative weights, see section VIII.B of the Supplementary Information section of this preamble, Requests for Data From the Public.

FOR FURTHER INFORMATION CONTACT:

Nancy Edwards (410) 966–4532, Operating Prospective Payment, DRG, Wage Index Issues.

Tzvi Hefter (410) 966–4529, Capital Prospective Payment, Excluded Hospitals, EACH, RPCH.

SUPPLEMENTARY INFORMATION:

I. Background

A. Summary

Under section 1886(d) of the Social Security Act (the Act), a system of payment for the operating costs of acute care hospital inpatient stays under Medicare Part A (Hospital Insurance) based on prospectively-set rates was established effective with hospital cost reporting periods beginning on or after October 1, 1983. Under this system, Medicare payment for hospital inpatient operating costs is made at a predetermined, specific rate for each hospital discharge. All discharges are classified according to a list of diagnosis-related groups (DRGs). The regulations governing the hospital inpatient prospective payment system are located in 42 CFR part 412. On September 1, 1994, we published a final rule with comment period (59 FR 45330) to implement changes to the prospective payment system for hospital operating costs beginning with Federal fiscal year (FY) 1995. We invited comments only on certain revisions to the criteria for geographic reclassification by the Medicare Geographic Classification Review Board (MGCRB). We did not receive any timely comments in response to the September 1, 1994 final rule with comment period. Therefore, we are confirming the provisions of that rule as final and are not publishing another final rule.

For cost reporting periods beginning before October 1, 1991, hospital inpatient operating costs were the only costs covered under the prospective payment system. Payment for capital-related costs had been made on a reasonable cost basis because, under sections 1886(a)(4) and (d)(1)(A) of the Act, those costs had been specifically excluded from the definition of inpatient operating costs. However, section 4006(b) of the Omnibus Budget Reconciliation Act of 1987 (Public Law 100–203) revised section 1886(g)(1) of the Act to require that, for hospitals paid under the prospective payment system for operating costs, capital-related costs would also be paid under a prospective payment system effective with cost reporting periods beginning on or after October 1, 1991. As required by section 1886(g) of the Act, we replaced the reasonable cost-based payment methodology with a prospective payment methodology for hospital inpatient capital-related costs. Under the new methodology, effective for cost reporting periods beginning on or after October 1, 1991, a predetermined payment amount per discharge is made for Medicare inpatient capital-related costs. (See subpart M of 42 CFR part 412, and the August 30, 1991, final rule (56 FR 43358) for a complete discussion of the prospective payment system for hospital inpatient capital-related costs.)

B. Major Contents of This Proposed Rule

In this proposed rule, we are setting forth proposed changes to the Medicare hospital inpatient prospective payment systems for both operating costs and capital-related costs. This proposed rule would be effective for discharges occurring on or after October 1, 1995. Following is a summary of the major changes that we are proposing to make:

1. Changes to the DRG Classifications and Relative Weights

As required by section 1886(d)(4)(C) of the Act, we must adjust the DRG classifications and relative weights at least annually. Our proposed changes for FY 1996 are set forth in section II of this preamble.

2. Changes to the Hospital Wage Index

In section III of this preamble, we discuss revisions to the wage index and the annual update of the wage data. Specific issues addressed in this section include:

- FY 1996 wage index update.
- Allocation of general service salaries and hours to excluded areas.
- Revisions to the wage index based on hospital redesignations.
- Criteria for seeking MGCRB reclassification.
- Alternative labor market areas.

3. Other Changes to the Prospective Payment System for Inpatient Operating Costs

In section IV of this preamble, we discuss several provisions of the regulations in 42 CFR parts 412, 424, and 485 and set forth certain proposed changes concerning the following:

- Payment for transfer cases.
- Rural referral centers.
- Determination of number of beds in determining the indirect medical education adjustment.
- Disproportionate share adjustment.
- Essential access community hospitals (EACHs) and rural primary care hospitals (RPCHs).
- Rebasing the hospital market baskets.

4. Changes and Clarifications to the Prospective Payment System for Capital-Related Costs

In section V of this preamble, we discuss several provisions of the regulations in 42 CFR part 412 and set forth certain proposed changes concerning the following:

- New update framework.
- Specific adjustment for taxes to the capital prospective payment system Federal rate.

5. Changes for Hospitals and Hospital Units Excluded From the Prospective Payment Systems

In section VI of this preamble, we discuss changes to the regulations at 42 CFR parts 412 and 413 for hospitals and hospital units excluded from the prospective payment system. The proposed changes concern the following:

- Requirements for certain long-term care hospitals excluded from the prospective payment systems.
- Payment window for preadmission services.
- Criteria for exclusion.
- Request for payment adjustment.

6. Determining Prospective Payment Rates and Rate-of-Increase Limits

In the addendum to this proposed rule, we set forth proposed changes to the amounts and factors for determining the FY 1996 prospective payment rates for operating costs and capital-related costs. We are also proposing new update factors for determining the rate-of-increase limits for cost reporting periods beginning in FY 1996 for hospitals and hospital units excluded from the prospective payment system.

7. Impact Analysis

In Appendix A, we set forth an analysis of the impact that the proposed changes described in this rule would have on affected entities.

8. Capital Acquisition Model

Appendix B contains the technical appendix on the proposed FY 1996 capital acquisition model.

9. Report to Congress on the Update Factor for Prospective Payment Hospitals and Hospitals Excluded From the Prospective Payment System

Section 1886(e)(3)(B) of the Act requires that the Secretary report to Congress no later than March 1, 1995 on our initial estimate of an update factor for FY 1996 for both hospitals included in and hospitals excluded from the prospective payment systems. This report is included as Appendix C to this proposed rule.

10. Proposed Recommendation of Update Factor for Hospital Inpatient Operating Costs

As required by sections 1886 (e)(4) and (e)(5) of the Act, Appendix D provides our recommendation of the appropriate percentage change for FY 1996 for the following:

- Large urban area and other area average standardized amounts (and hospital-specific rates applicable to sole community hospitals) for hospital inpatient services paid for under the prospective payment system for operating costs.
- Target rate-of-increase limits to the allowable operating costs of hospital inpatient services furnished by hospitals and hospital units excluded from the prospective payment system.

11. Discussion of Prospective Payment Assessment Commission Recommendations

The Prospective Payment Assessment Commission (ProPAC) is directed by section 1886(e)(2)(A) of the Act to make recommendations on the appropriate percentage change factor to be used in updating the average standardized amounts. In addition, section 1886(e)(2)(B) of the Act directs ProPAC to make recommendations regarding changes in each of the Medicare payment policies under which payments to an institution are prospectively determined. In particular, the recommendations relating to the hospital inpatient prospective payment systems are to include recommendations concerning the number of DRGs used to classify patients, adjustments to the DRGs to reflect severity of illness, and changes in the methods under which hospitals are paid for capital-related costs. Under section 1886(e)(3)(A) of the Act, the recommendations required of ProPAC under sections 1886(e)(2) (A) and (B) of the Act are to be reported to Congress not later than March 1 of each year.

We are printing ProPAC's March 1, 1995 report, which includes its recommendations, as Appendix E of this document. The recommendations, and the actions we are proposing to take with regard to them (when an action is recommended), are discussed in detail in the appropriate sections of this preamble, the addendum, or the appendices to this proposed rule. See section VII of this preamble for specific information concerning where individual recommendations are addressed. For a brief summary of the ProPAC recommendations, we refer the reader to the beginning of the ProPAC report as set forth in Appendix E of this proposed rule. ProPAC also produced technical appendices in its March 1, 1995 report that provide background material and detailed analyses used in preparation of the ProPAC recommendations. For further information relating specifically to the ProPAC report or to obtain a copy of the technical appendices, contact ProPAC at (202) 401–8986.

II. Proposed Changes to DRG Classifications and Relative Weights

A. Background

Under the prospective payment system, we pay for inpatient hospital services on the basis of a rate per discharge that varies by the DRG to which a beneficiary's stay is assigned. The formula used to calculate payment for a specific case takes an individual hospital's payment rate per case and multiplies it by the weight of the DRG to which the case is assigned. Each DRG weight represents the average resources required to care for cases in that

particular DRG relative to the average resources used to treat cases in other DRGs.

Congress recognized that it would be necessary to recalculate the DRG relative weights periodically to account for changes in resource consumption. Accordingly, section 1886(d)(4)(C) of the Act requires that the Secretary adjust the DRG classifications and relative weights annually. These adjustments are made to reflect changes in treatment patterns, technology, and any other factors that may change the relative use of hospital resources. The proposed changes to the DRG classification system and the proposed recalibration of the DRG weights for discharges occurring on or after October 1, 1995 are discussed below.

B. DRG Reclassification

1. General

Cases are classified into DRGs for payment under the prospective payment system based on the principal diagnosis, up to eight additional diagnoses, and up to six procedures performed during the stay, as well as age, sex, and discharge status of the patient. The diagnosis and procedure information is reported by the hospital using codes from the International Classification of Diseases, Ninth Edition, Clinical Modification (ICD–9–CM). The Medicare fiscal intermediary enters the information into its claims system and subjects it to a series of automated screens called the Medicare Code Editor (MCE). These screens are designed to identify cases that require further review before classification into a DRG can be accomplished.

After screening through the MCE and any further development of the claims, cases are classified by the GROUPER software program into the appropriate DRG. The GROUPER program was developed as a means of classifying each case into a DRG on the basis of the diagnosis and procedure codes and demographic information (that is, sex, age, and discharge status). It is used both to classify past cases in order to measure relative hospital resource consumption to establish the DRG weights and to classify current cases for purposes of determining payment. The records for all Medicare hospital inpatient discharges are maintained in the Medicare Provider Analysis and Review (MedPAR) file. The data in this file are used to evaluate possible DRG classification changes and to recalibrate the DRG weights.

Currently, cases are assigned to one of 492 DRGs in 25 major diagnostic categories (MDCs). Most MDCs are based on a particular organ system of the body (for example, MDC 6, Diseases and Disorders of the Digestive System); however, some MDCs are not constructed on this basis since they involve multiple organ systems (for example, MDC 22, Burns).

In general, principal diagnosis determines MDC assignment. However, there are five DRGs to which cases are assigned on the basis of procedure codes rather than first assigning them to an MDC based on the principal diagnosis. These are the DRGs for liver, bone marrow, and lung transplant (DRGs 480, 481, and 495, respectively) and the two DRGs for tracheostomies (DRGs 482 and 483). Cases are assigned to these DRGs before classification to an MDC.

Within most MDCs, cases are then divided into surgical DRGs (based on a surgical hierarchy that orders individual procedures or groups of procedures by resource intensity) and medical DRGs. Medical DRGs generally are differentiated on the basis of diagnosis and age. Some surgical and medical DRGs are further differentiated based on the presence or absence of complications or comorbidities (hereafter CC).

Generally, GROUPER does not consider other procedures; that is, nonsurgical procedures or minor surgical procedures generally not performed in an operating room are not listed as operating room (OR) procedures in the GROUPER decision tables. However, there are a few non-OR procedures that do affect DRG assignment for certain principal diagnoses, such as extracorporeal shock wave lithotripsy for patients with a principal diagnosis of urinary stones.

The changes we are proposing to make to the DRG classification system for FY 1996 and other decisions concerning DRGs are set forth below.

2. MDC 5 (Diseases and Disorders of the Circulatory System)

a. Automatic Implantable Cardioverter Defibrillator (AICD) Procedures (DRG 116). For several years, we have received correspondence regarding the appropriate DRG assignment of certain procedures involving automatic implantable cardioverter defibrillators (AICDs). When a patient whose principal diagnosis is classified to MDC 5 (Diseases and Disorders of the Circulatory System) receives a total AICD system implant or replacement (procedure code 37.94), the case is assigned to DRG 104 or 105 (Cardiac Valve Procedures With or Without Cardiac Catheterization). However, for discharges occurring before October 1, 1992, if a procedure was performed that involved the implantation or replacement of only part of the AICD system (that is, replacement or implant of either the leads or pulse generator only), the case was assigned to DRG 120 (Other Circulatory System OR Procedures). Effective with discharges occurring on or after October 1, 1992, these procedures were reclassified to DRG 116 (Other Permanent Cardiac Pacemaker Implant or AICD Lead or Generator Procedure).

As we stated in the September 1, 1994, final rule (59 FR 45347), we have continued to monitor the appropriate placement of the AICD cases that are currently assigned to DRG 116. The AICD cases are represented by the following procedure codes: 37.95 (Implantation of automatic cardioverter/defibrillator lead(s) only), 37.96 (Implantation of automatic cardioverter/defibrillator pulse generator only), 37.97 (Replacement of automatic cardioverter/defibrillator lead(s) only), 37.98 (Replacement of automatic cardioverter/defibrillator pulse generator only). Some hospitals and the manufacturer of the first of these devices to be approved by the Food and Drug Administration (FDA) believe that a more appropriate DRG assignment would be DRG 115 (Permanent Cardiac Pacemaker Implantation with AMI, Heart Failure or Shock), because, in their opinion, the higher relative weight assigned to this DRG would provide more equitable payment.

As explained in detail in the September 1, 1992 final rule (57 FR 39749), the current clinical composition and relative weights of the surgical DRGs in MDC 5 do not offer a perfect match with the AICD cases. After reviewing the current DRGs in terms of clinical coherence and similar resource use, we determined that DRG 116 was the best possible fit.

Since reassignment of these procedures to DRG 116, we have annually analyzed the cases based on the most recent data. Based on data in the FY 1994 Medicare Provider Analysis and Review (MedPAR) file, the average standardized charge for the 2,459 AICD cases assigned to DRG 116 is $27,965. The average standardized charge for all cases in DRG 116 is $19,584 and, for DRG 115, $28,965. The $8,381 difference between the average charge for AICD cases in DRG 116 and all cases in DRG 116 is within the variation in charges for that DRG. We note that compared to last year's analysis using FY 1993 MedPAR data, the average charge for the AICD cases has decreased slightly as has the difference in charges between all cases in DRG 116 and the AICD cases.

The average length of stay for the AICD cases in DRG 116 is 4.0 days compared to 5.89 days for all cases in DRG 116. However, the length of stay for cases in DRG 115 is 11.77. In general, the patients classified to DRG 115 are seriously ill and the long length of stay supports this contention. We continue to believe that the AICD patients are clinically much more similar to the patients classified to DRG 116 than to those in DRG 115 and that it is the cost of the AICD device that is responsible for the high average charge for these cases and not the intensity of hospital services required to treat the patient.

In the September 1, 1994 final rule, we stated our belief that as new AICD devices were approved by the FDA and entered the market, increased competition would result in a decrease in the price of the devices and a corresponding drop in the average charge for a hospital stay for AICD procedures. Second and third generations of several manufacturers' devices are now on the market. In addition, we believe that the slight decrease in average charges seen in the FY 1994 data compared to the FY 1993 data is a direct result of hospitals' ability to obtain AICD devices from multiple sources. (The increase in charges for AICD cases between FY 1992 data and FY 1993 was approximately $6,000.) Based on this evidence, we will continue to assign the AICD implant cases to DRG 116 for FY 1996. We will reassess this assignment as a part of our FY 1997 DRG analysis.

b. Sympathectomy Procedures. When performed in connection with a principal diagnosis assigned to MDC 5, procedure code 05.24 (presacral sympathectomy) is assigned to DRGs 478 and 479 (Other Vascular Procedures).[1] However, the four other sympathectomy procedures related to MDC 5 diagnoses are classified to DRG 120 (Other Circulatory System OR Procedures). In order to improve clinical consistency, we propose to assign procedure code 05.24 to DRG 120 rather than to DRGs 478 and 479.

We realize that this proposal moves a procedure from a specific surgical DRG class to the "other OR procedures" surgical class in MDC 5. There are very few presacral sympathectomies performed for the Medicare population, therefore, we believe that this move will not unduly affect any cases in the Medicare population. We note that we are not moving this procedure from the DRGs to which it is assigned in MDC 1 (Diseases and Disorders of the Nervous System) or MDC 13 (Diseases and Disorders of the Female Reproductive System).

3. MDC 15 (Newborns and Other Neonates With Conditions Originating in the Perinatal Period)

In the September 1, 1994 final rule (59 FR 45341), we stated our intention to improve the classification and relative weights of the DRGs that apply to newborns, children, and maternity patients. Because the Medicare population does not include many of these individuals, the original DRG classification system was developed from analysis of claims data representative of the total inpatient population. Non-Medicare discharge records from Maryland and Michigan hospitals were used to calculate the original Medicare weights for the DRGs to which newborns, children, and maternity patients are classified. Since that time, because of the lack of Medicare data, these low-volume DRGs have not been analyzed and refined, and the relative weights assigned to them may no longer be entirely reflective of the resources needed to treat patients.

Accordingly, we have acquired hospital claims data representative of the total patient population for analysis and evaluation. These data, collected and formatted by the Urban Institute under contract with HCFA (Contract 500–92–0024), represent claims for non-Medicare payers from 19 States. The data base contains approximately 17 million discharge records. Using this data, we are evaluating possible modifications to MDC 15 that would better address the requirements for an all-patient population.

As we have not yet completed this evaluation, we are not proposing an MDC 15 DRG reclassification structure for FY 1996. However, we are proposing to adjust the DRG relative weights for the Medicare low-volume DRGs. We identified 36 low-volume DRGs (defined as those DRGs with fewer than 10 cases) in the FY 1994 MedPAR data, which is being used to calculate the FY 1996 DRG relative weights. These DRGs are generally those assigned to patients age 0–17, many of the neonate and newborn MDC 15 DRGs, and one DRG in MDC 14 (Pregnancy, Childbirth and Puerperium). The DRG relative weights for these low-volume DRGs were calculated based on the non-Medicare data we acquired from the 19 States.

During the year, we have received suggestions from the public concerning improvements for the neonate DRG classifications. Among these suggestions have been recommendations concerning specific diagnoses that are currently considered significant problems in determining the assignment of a neonate case to DRG 390 (Neonate with other Significant Problems) rather than DRG 391 (Normal Newborn). Another issue is the assignment to MDC 15 of discharges with a principal diagnosis of certain congenital defects regardless of the age of the patient. Because the MDC 15 modifications that we are considering should resolve these concerns, we are not proposing to revise the assignment of these diagnoses and conditions at this time. Rather, we will incorporate the necessary and appropriate assignment of these cases with our overall modification of the neonate DRGs.

4. MDC 24 (Multiple Significant Trauma)

Several years ago, we created a new MDC 24 to classify cases of multiple significant trauma. In order to be assigned to this MDC, a patient must have a principal diagnosis of trauma and at least two significant trauma diagnosis codes from two different body sites reported as either principal or secondary diagnoses. We recognize eight different body site categories: head, chest, abdomen, kidney, urinary, pelvis and spine, upper limb, and lower limb.

It has been brought to our attention that diagnosis code 851.06 (Cerebral cortex contusion with loss of consciousness of unspecified duration) was mistakenly excluded from the list of diagnoses that count as principal or secondary diagnoses in the significant head trauma section of MDC 24. Because this code is clinically similar to those already on the list of principal or secondary diagnoses that cause assignment to DRG 487 (Other Multiple Significant Trauma), we propose to add this diagnosis to the significant head trauma list effective with discharges occurring on or after October 1, 1995.

5. Surgical Hierarchies

Some inpatient stays entail multiple surgical procedures, each one of which, occurring by itself, could result in assignment of the case to a different DRG within the MDC to which the principal diagnosis is assigned. It is, therefore, necessary to have a decision rule by which these cases are assigned to a single DRG. The surgical hierarchy, an ordering of surgical classes from

[1] A single title combined with two DRG numbers is used to signify pairs. Generally, the first DRG is for cases with CC and the second DRG is for cases without CC. If a third number is included, it represents cases of patients who are age 0–17. Occasionally, a pair of DRGs is split on age >17 and age 0–17.

most to least resource intensive, performs that function. Its application ensures that cases involving multiple surgical procedures are assigned to the DRG associated with the most resource-intensive surgical class.

Because the relative resource intensity of surgical classes can shift as a function of DRG reclassification and recalibration, we reviewed the surgical hierarchy of each MDC, as we have for previous reclassifications, to determine if the ordering of classes coincided with the intensity of resource utilization, as measured by the same billing data used to compute the DRG relative weights.

A surgical class can be composed of one or more DRGs. For example, in MDC 5, the surgical class "heart transplant" consists of a single DRG (DRG 103) and the class "coronary bypass" consists of two DRGs (DRGs 106 and 107). Consequently, in many cases, the surgical hierarchy has an impact on more than one DRG. The methodology for determining the most resource-intensive surgical class, therefore, involves weighting each DRG for frequency to determine the average resources for each surgical class. For example, assume surgical class A includes DRGs 1 and 2 and surgical class B includes DRGs 3, 4, and 5, and that the average charge of DRG 1 is higher than that of DRG 3, but the average charges of DRGs 4 and 5 are higher than the average charge of DRG 2. To determine whether surgical class A should be higher or lower than surgical class B in the surgical hierarchy, we would weight the average charge of each DRG by frequency (that is, by the number of cases in the DRG) to determine average resource consumption for the surgical class. The surgical classes would then be ordered from the class with the highest average resource utilization to that with the lowest, with the exception of "other OR procedures" as discussed below.

This methodology may occasionally result in a case involving multiple procedures being assigned to the lower-weighted DRG (in the highest, most resource-intensive surgical class) of the available alternatives. However, given that the logic underlying the surgical hierarchy provides that the GROUPER searches for the procedure in the most resource-intensive surgical class, which may sometimes occur in cases involving multiple procedures, this result is unavoidable.

We note that, notwithstanding the foregoing discussion, there are a few instances when a surgical class with a lower average relative weight is ordered above a surgical class with a higher average relative weight. For example, the "other OR procedures" surgical class is uniformly ordered last in the surgical hierarchy of each MDC in which it occurs, regardless of the fact that the relative weight for the DRG or DRGs in that surgical class may be higher than that for other surgical classes in the MDC. The "other OR procedures" class is a group of procedures that are least likely to be related to the diagnoses in the MDC but are occasionally performed on patients with these diagnoses. Therefore, these procedures should only be considered if no other procedure more closely related to the diagnoses in the MDC has been performed.

A second example occurs when the difference between the average weights for two surgical classes is very small. We have found that small differences generally do not warrant reordering of the hierarchy since, by virtue of the hierarchy change, the relative weights are likely to shift such that the higher-ordered surgical class has a lower average weight than the class ordered below it.

Based on the preliminary recalibration of the DRGs, we are proposing to modify the surgical hierarchy as set forth below. As we stated in the September 1, 1989 final rule (54 FR 36457), we are unable to test the effects of the proposed revisions to the surgical hierarchy and to reflect these changes in the proposed relative weights due to the unavailability of revised GROUPER software at the time this proposed rule is prepared. Rather, we simulate most major classification changes to approximate the placement of cases under the proposed reclassification and then determine the average charge for each DRG. These average charges then serve as our best estimate of relative resource use for each surgical class. We test the proposed surgical hierarchy changes after the revised GROUPER is received and reflect the final changes in the DRG relative weights in the final rule. Further, as discussed below in section II.C of this preamble, we anticipate that the final recalibrated weights will be somewhat different from those proposed, since they will be based on more complete data. Consequently, further revision of the hierarchy, using the above principles, may be necessary in the final rule.

At this time, we would revise the surgical hierarchy for MDC 2 (Diseases and Disorders of the Eye) and MDC 8 (Diseases and Disorders of the Musculoskeletal System and Connective Tissue) as follows:

- In MDC 2, we would reorder Extraocular Procedures Except Orbit (DRGs 40 and 41) above Retinal Procedures (DRG 36).
- In MDC 8, we would reorder Major Thumb or Joint Procedures or Other Hand or Wrist Procedures with CC (DRG 228) above Major Shoulder/Elbow Procedures or Other Upper Extremity Procedures with CC (DRG 223).

6. Refinement of Complications and Comorbidities List

There is a standard list of diagnoses that are considered complications or comorbidities (CCs). We developed this list using physician panels to include those diagnoses that, when present as a secondary condition, would be considered a substantial complication or comorbidity. In preparing the original CC list, a substantial CC was defined as a condition that, because of its presence with a specific principal diagnosis, would increase the length of stay by at least 1 day for at least 75 percent of the patients.

In previous years, we have made changes to the standard list of CCs, either by adding new CCs or deleting CCs already on the list. For FY 1996, we are proposing the following changes to the current CC list:

- We would add diagnosis code 008.49 (Bacterial enteritis) to the CC list. This diagnosis would be considered a CC for any principal diagnosis not shown in Table 6f, Addition to the CC Exclusions List (see discussion of CC Exclusions list in section V of the addendum below).
- We would delete diagnosis code 276.8 (Hypopotassemia) from the CC list. This diagnosis would no longer be considered a CC for any principal diagnosis.

In the September 1, 1987 final notice concerning changes to the DRG classification system (52 FR 33143), we modified the GROUPER logic so that certain diagnoses included on the standard list of CCs would not be considered a valid CC in combination with a particular principal diagnosis. Thus, we created the CC Exclusions List. We made these changes to preclude coding of CCs for closely related conditions, to preclude duplicative coding or inconsistent coding from being treated as CCs, and to ensure that cases are appropriately classified between the complicated and uncomplicated DRGs in a pair.

In the May 19, 1987 proposed notice concerning changes to the DRG classification system (52 FR 18877), we explained that the excluded secondary diagnoses were established using the following five principles:

- Chronic and acute manifestations of the same condition should not be considered CCs for one another (as subsequently corrected in the September 1, 1987 final notice (52 FR 33154)).
- Specific and nonspecific (that is, not otherwise specified (NOS)) diagnosis codes for a condition should not be considered CCs for one another.
- Conditions that may not co-exist, such as partial/total, unilateral/bilateral, obstructed/unobstructed, and benign/malignant, should not be considered CCs for one another.
- The same condition in anatomically proximal sites should not be considered CCs for one another.
- Closely related conditions should not be considered CCs for one another.

The creation of the CC Exclusions List was a major project involving hundreds of codes. The FY 1988 revisions were intended to be only a first step toward refinement of the CC list in that the criteria used for eliminating certain diagnoses from consideration as CCs were intended to identify only the most obvious diagnoses that should not be considered complications or comorbidities of another diagnosis. For that reason, and in light of comments and questions on the CC list, we have continued to review the remaining CCs to identify additional exclusions and to remove diagnoses from the master list that have been shown not to meet the definition of a CC stated above, as appropriate. (See the September 30, 1988 final rule for the revision made for the discharges occurring in FY 1989 (53 FR 38485); the September 1, 1989 final rule for the FY 1990 revision (54 FR 36552); the September 4, 1990 final rule for the FY 1991 revision (55 FR 36126); the August 30, 1991 final rule for the FY 1992 revision (56 FR 43209); the September 1, 1992 final rule for the FY 1993 revision (57 FR 39753); the September 1, 1993 final rule for the FY 1994 revisions (58 FR 46278); and the September 1, 1994 rule for the FY 1995 revisions (59 FR 45334).)

We are proposing a limited revision of the CC Exclusions List to take into account the changes that will be made in the ICD–9–CM diagnosis coding system effective October 1, 1995 as well as the proposed CC changes described above. (See section II.B.8, below, for a discussion of these changes.) These proposed changes are being made in accordance with the principles established when we created the CC Exclusions List in 1987.

The changes discussed above have been added to Table 6g, Additions to the CC Exclusions List, in section V of the addendum to this proposed rule.

Tables 6g and 6h in section V of the addendum to this proposed rule contain the proposed revisions to the CC Exclusions List that would be effective for discharges occurring on or after October 1, 1995. Each table shows the principal diagnoses with proposed changes to the excluded CCs. Each of these principal diagnoses is shown with an asterisk and the additions or deletions to the CC Exclusions List are provided in an indented column immediately following the affected principal diagnosis.

CCs that are added to the list are in Table 6g—Additions to the CC Exclusions List. Beginning with discharges on or after October 1, 1995, the indented diagnoses will not be recognized by the GROUPER as valid CCs for the asterisked principal diagnosis.

CCs that are deleted from the list are in Table 6h—Deletions from the CC Exclusions List. Beginning with discharges on or after October 1, 1995, the indented diagnoses will be recognized by the GROUPER as valid CCs for the asterisked principal diagnosis.

Copies of the original CC Exclusions List applicable to FY 1988 can be obtained from the National Technical Information Service (NTIS) of the Department of Commerce. It is available in hard copy for $84.00 plus $6.00 shipping and handling and on microfiche for $20.50, plus $4.00 for shipping and handling. A request for the FY 1988 CC Exclusions List (which should include the identification accession number, (PB) 88–133970) should be made to the following address: National Technical Information Service; United States Department of Commerce; 5285 Port Royal Road, Springfield, Virginia 22161; or by calling (703) 487–4650.

Users should be aware of the fact that all revisions to the CC Exclusions List (FYs 1989, 1990, 1991, 1992, 1993, 1994, and 1995) and those in Tables 6g and 6h of this document must be incorporated into the list purchased from NTIS in order to obtain the CC Exclusions List applicable for discharges occurring on or after October 1, 1995.

Alternatively, the complete documentation of the GROUPER logic, including the current CC Exclusions List, is available from 3M/Health Information Systems (HIS), which, under contract with HCFA, is responsible for updating and maintaining the GROUPER program. The current DRG Definitions Manual, Version 12.0, is available for $195.00, which includes $15.00 for shipping and handling. Version 13.0 of this manual, which will include the changes proposed in this document as finalized in response to public comment, will be available in September 1995 for $195.00. These manuals may be obtained by writing 3M/HIS at: 100 Barnes Road; Wallingford, Connecticut 06492; or by calling (203) 949–0303. Please specify the revision or revisions requested.

7. Review of Procedure Codes in DRGs 468, 476, and 477

Each year, we review cases assigned to DRG 468 (Extensive OR Procedure Unrelated to Principal Diagnosis), DRG 476 (Prostatic OR procedure Unrelated to Principal Diagnosis), and DRG 477 (Nonextensive OR Procedure Unrelated to Principal Diagnosis) in order to determine whether it would be appropriate to change the procedures assigned among these DRGs.

DRGs 468, 476, and 477 are reserved for those cases in which none of the OR procedures performed is related to the principal diagnosis. These DRGs are intended to capture atypical cases, that is, those cases not occurring with sufficient frequency to represent a distinct, recognizable clinical group. DRG 476 is assigned to those discharges in which one or more of the following prostatic procedures are performed and are unrelated to the principal diagnosis:

60.0 Incision of prostate
60.12 Open biopsy of prostate
60.15 Biopsy of periprostatic tissue
60.18 Other diagnostic procedures on prostate and periprostatic tissue
60.2 Transurethral prostatectomy
60.61 Local excision of lesion of prostate
60.69 Prostatectomy NEC
60.81 Incision of periprostatic tissue
60.82 Excision of periprostatic tissue
60.93 Repair of prostate
60.94 Control of (postoperative) hemorrhage of prostate
60.95 Transurethral balloon dilation of the prostatic urethra
60.99 Other operations on prostate

All remaining OR procedures are assigned to DRGs 468 and 477, with DRG 477 assigned to those discharges in which the only procedures performed are nonextensive procedures that are unrelated to the principal diagnosis. The original list of the ICD–9–CM procedure codes for the procedures we consider nonextensive procedures if performed with an unrelated principal diagnosis was published in Table 6C in section IV of the addendum to the September 30, 1988 final rule (53 FR 38591). As part of the final rules published on September 4, 1990, August 30, 1991, September 1, 1992, September 1, 1993, and September 1, 1994, we moved several other procedures from DRG 468 to 477. (See 55 FR 36135, 56

FR 43212, 57 FR 23625, 58 FR 46279, and 59 FR 45336 respectively.)

a. Adding Procedure Codes to MDCs. We annually conduct a review of procedures producing DRG 468 or 477 assignments on the basis of volume of cases in these DRGs with each procedure. Our medical consultants then identify those procedures occurring in conjunction with certain principal diagnoses with sufficient frequency to justify adding them to one of the surgical DRGs for the MDC in which the diagnosis falls. This year's review did not identify any necessary changes; therefore, we are not proposing to move any procedures from DRG 468 or DRG 477 to one of the surgical DRGs.

b. Reassignment of Procedures Among DRGs 468, 476, and 477. We also reviewed the list of procedures that produce assignments to each of DRG 468, 476, and 477 to ascertain if any of those procedures should be moved to one of the other DRGs based on average charges and length of stay.

Generally, we move only those procedures for which we have an adequate number of discharges to analyze the data. Based on our review this year, we are proposing to move a limited number of procedures.

In reviewing the list of OR procedures that produce DRG 468 assignments, we analyzed the average charge and length of stay data for cases assigned to that DRG to identify those procedures that are more similar to the discharges that currently group to either DRG 476 or 477. We identified several procedures that are significantly less resource intensive than the other procedures assigned to DRG 468. These procedures occur in the same "family" (that is, they relate to procedures on the same body part or system) and at least one of this family of codes is already present within DRG 477. Therefore, we are proposing to move the following procedures to the list of procedures that result in assignment to DRG 477:

18.21 Excision of preauricular sinus
18.31 Radical excision of lesion of external ear
18.39 Other excision of external ear
18.5 Surgical correction of prominent ear
18.6 Reconstruction of external auditory canal
18.71 Construction of auricle of ear
18.72 Reattachment of amputated ear
18.9 Other operations of external ear

We conducted a similar analysis of the procedures that assign cases to DRG 477 to determine if any of those procedures might more appropriately be classified to DRG 468. Again, we analyzed charge and length of stay data to identify procedures that were more similar to discharges assigned to DRG 468 than to those classified in DRG 477. We did not identify any procedures in DRG 477 that should be assigned to DRG 468.

All of the proposed reassignments of procedures in DRGs 468 and 477 would be effective with discharges beginning on or after October 1, 1995.

8. Changes to the ICD–9–CM Coding System

As discussed above in section II.B.1 of this preamble, the ICD–9–CM is a coding system that is used for the reporting of diagnoses and procedures performed on a patient. In September 1985, the ICD–9–CM Coordination and Maintenance Committee was formed. This is a Federal interdepartmental committee charged with the mission of maintaining and updating the ICD–9–CM. That mission includes approving coding changes, and developing errata, addenda, and other modifications to the ICD–9–CM to reflect newly developed procedures and technologies and newly identified diseases. The Committee is also responsible for promoting the use of Federal and non-Federal educational programs and other communication techniques with a view toward standardizing coding applications and upgrading the quality of the classification system.

The Committee is co-chaired by the National Center for Health Statistics (NCHS) and HCFA. The NCHS has lead responsibility for the ICD–9–CM diagnosis codes included in *Volume 1—Diseases: Tabular List* and *Volume 2—Diseases: Alphabetic Index*, while HCFA has lead responsibility for the ICD–9–CM procedure codes included in *Volume 3—Procedures: Tabular List and Alphabetic Index*.

The Committee encourages participation in the above process by health-related organizations. In this regard, the Committee holds public meetings for discussion of educational issues and proposed coding changes. These meetings provide an opportunity for representatives of recognized organizations in the coding fields, such as the American Health Information Management Association (AHIMA) (formerly American Medical Record Association (AMRA)), the American Hospital Association (AHA), and various physician specialty groups as well as physicians, medical record administrators, health information management professionals, and other members of the public to contribute ideas on coding matters. After considering the opinions expressed at the public meetings and in writing, the Committee formulates recommendations, which then must be approved by the agencies.

The Committee presented proposals for coding changes at public meetings held on May 5 and December 1 and 2, 1994, and finalized the coding changes after consideration of comments received at the meetings and in writing within 30 days following the December 1994 meeting. The initial meeting for consideration of coding issues for implementation in FY 1997 was held on May 4, 1995. Copies of the minutes of these meetings may be obtained by writing to one of the co-chairpersons representing NCHS and HCFA. We encourage commenters to address suggestions on coding issues involving diagnosis codes to: Sue Meads, Co-Chairperson; ICD–9–CM Coordination and Maintenance Committee; NCHS; Rm. 9–58; 6525 Belcrest Road; Hyattsville, Maryland 20782.

Questions and comments concerning the procedure codes should be addressed to: Patricia E. Brooks, Co-Chairperson; ICD–9–CM Coordination and Maintenance Committee; HCFA, Office of Hospital Policy; Division of Prospective Payment System; Rm. 1–H–1 East Low Rise Building; 6325 Security Boulevard; Baltimore, Maryland 21207.

The ICD–9–CM code changes that have been approved will become effective October 1, 1995. The new ICD–9–CM codes are listed, along with their proposed DRG classifications, in Tables 6a and 6b (New Diagnosis Codes and New Procedure Codes, respectively) in section V of the addendum to this proposed rule. As we stated above, the code numbers and their titles were presented for public comment in the ICD–9–CM Coordination and Maintenance Committee meetings. Both oral and written comments were considered before the codes were approved. Therefore, we are soliciting comments only on the proposed DRG classification.

Further, the Committee has approved the expansion of certain ICD–9–CM codes to require an additional digit for valid code assignment. Diagnosis codes that have been replaced by expanded codes, other codes, or have been deleted are in Table 6c (Invalid Diagnosis Codes). The procedure codes that have been replaced by expanded codes or have been deleted are in Table 6d (Invalid Procedure Codes). These invalid diagnosis and procedure codes will not be recognized by the GROUPER beginning with discharges occurring on or after October 1, 1995. The corresponding new or expanded codes are included in Tables 6a and 6b. Revisions to diagnosis and procedure code titles are in Tables 6e (Revised Procedure Code Titles) and 6f (Revised Procedure Code Titles), which also include the proposed DRG assignments for these revised codes.

There are three new procedure codes that were previously included in codes classified as operating room procedures even though the specific procedures specified by the new codes may not be routinely performed in an operating room. The three codes are as follows:

48.36 [Endoscopic] polypectomy of rectum
59.72 Injection of implant into urethra and/or bladder neck
92.3 Stereotactic radiosurgery

These three new codes are being classified as Non-OR procedures that affect DRG assignment and are indicated as such in Table 6b—New Procedure Codes. We will continue to assign these three codes to the surgical DRGs to which they are currently assigned. As we have stated in previous rules, most recently in the September 1, 1994, final rule (59 FR 45340), our practice is to assign a new code to the same DRG as its predecessor. One compelling reason for this practice is our inability to move the cases associated with the new code to a new DRG assignment as a part of DRG reclassification and recalibration. However, in 2 years, when data on the new procedure codes are available, we will reevaluate the DRG classification of the codes. At that time, we may move one or more of the procedure codes to a different surgical DRG or we may classify them as non-OR procedures that do not affect DRG assignment.

9. DRG Refinements

For several years, we have been analyzing major refinements to the DRG classification system to compensate hospitals more equitably for treating severely ill Medicare patients. These refinements, generally referred to as severity of illness adjustments, would create DRGs specifically for hospital discharges involving very ill patients who consume far more resources than do other patients classified to the same DRGs in the current system. This approach has been taken by various other groups in refining the Medicare DRG system to include severity measurements, most notably the research done for Yale, the changes incorporated by the State of New York into its all patient (AP) DRG system, and the all-patient refined (APR) DRGs, which are a joint effort of 3M/HIS and the National Association of Children's Hospitals and Related Institutions.

In the May 27, 1994 proposed rule, we announced the availability of a paper we had prepared that describes our preliminary severity DRG classification system as well as the analysis upon which our proposal was formulated.

Comments were due to HCFA by September 30, 1994. We received 99 individual letters commenting on the DRG refinements. Many of the commenters supported the change in theory, but there were numerous specific comments on the methodology.

Our plan was to incorporate comments and suggestions we received and to consider proposing the complete revised DRG system as part of the FY 1996 prospective payment system proposed rule. However, as the final rule published on September 1, 1992 (57 FR 39761) indicated, we would not propose to make significant changes to the DRG classification system unless we are able either to improve our ability to predict coding changes by validating in advance the impact that potential DRG changes may have on coding behavior, or to make methodological changes to prevent building the inflationary effects of the coding changes into future program payments.

Besides the mandate of section 1886(d)(4)(C)(iii) of the Act, which provides that aggregate payments may not be affected by DRG reclassification and recalibration changes, we do not believe it is prudent policy to make changes for which we cannot predict the effect on the case-mix index and, thus, payments. Our goal is to refine our methodology so that we can fulfill, in the most appropriate manner, both the statutory requirement to make appropriate DRG classification changes and to recalibrate DRG relative weights (as mandated by section 1886(d)(4)(C) of the Act) as well as to make DRG changes in a budget neutral manner.

One approach to this problem would be to maintain the average case weight at 1.0 after recalibration, thereby eliminating the process of normalization. In other words, after recalibration, we would not scale the new relative weights upward to carry forward the cumulative effects of past case-mix increases. We would, instead, make an adjustment or include in the annual update factor a specific allowance for any real case-mix change that occurred during the previous year. This is a relatively simple and straightforward system for preventing the effects of year-to-year increases in the case-mix index from accumulating in the DRG weights and to account for expected changes in coding practice. In addition, we are exploring a means of estimating anticipated case-mix change due to changes in coding practice that are a result of DRG classification revisions. (See section VII.E of this preamble for a more detailed description of this process in response to a ProPAC recommendation.) However, since we have not yet resolved these issues, we are unable to propose our refined DRG severity system for FY 1996. We will continue to analyze the comments we received and validate our previous research with later MedPAR data. We remain committed to proposing our revised system as soon as possible.

C. Recalibration of DRG Weights

We are proposing to use the same basic methodology for the FY 1996 recalibration as we did for FY 1995. (See the September 1, 1994 final rule (59 FR 45347).) That is, we would recalibrate the weights based on charge data for Medicare discharges. However, we would use the most current charge information available, the FY 1994 MedPAR file, rather than the FY 1993 MedPAR file. The MedPAR file is based on fully-coded diagnostic and surgical procedure data for all Medicare inpatient hospital bills.

The proposed recalibrated DRG relative weights are constructed from FY 1994 MedPAR data, based on bills received by HCFA through December 1994, from all hospitals subject to the prospective payment system and short-term acute care hospitals in waiver States. The FY 1994 MedPAR file includes data for approximately 10.9 million Medicare discharges.

Although we are using the same basic methodology for recalibration, we are making two revisions which are described below. The methodology used to calculate the proposed DRG relative weights from the FY 1994 MEDPAR file is as follows:

- To the extent possible, all the claims were regrouped using the proposed DRG classification revisions discussed above in section II.B of this preamble. As noted in section II.B.4, due to the unavailability of revised GROUPER software, we simulate most major classification changes to approximate the placement of cases under the proposed reclassification. However, there are some changes that cannot be modeled.
- Charges were standardized to remove the effects of differences in area wage levels, indirect medical education costs, disproportionate share payments, and, for hospitals in Alaska and Hawaii, the applicable cost-of-living adjustment.
- The average standardized charge per DRG was calculated by summing the standardized charges for all cases in the DRG and dividing that amount by the number of cases classified in the DRG.
- We then eliminated statistical outliers. In computing the FY 1995 weights, we eliminated all cases outside of 3.0 standard deviations from the mean of the log distribution of charges per case for each DRG. For the proposed FY 1996 relative weights, we would

eliminate a case only if it met the current criterion and was also outside of 3.0 standard deviations from the mean log of distribution of charges per day. We believe that this refinement to the methodology will reduce the risk of eliminating cases with unusually low or high total charges that are nevertheless accurately reported. For example, a case with extremely high charges and a corresponding extremely long length of stay would be less likely to be eliminated under the revised methodology.

- The average charge for each DRG was then recomputed (excluding the statistical outliers) and divided by the national average standardized charge per case to determine the relative weight. The second revision we are making is in the treatment of transfer cases. In the current recalibration methodology, we count transfer cases as full cases. This distorts the average standardized charges, particularly in DRGs with a high percentage of transfer cases, because the charges associated with a transfer case often do not reflect the resources necessary for a complete course of treatment. Therefore, in calculating the proposed FY 1996 relative weights, a transfer case is counted as a fraction of a case based on the ratio of its length of stay to the geometric mean length of stay of the cases assigned to the DRG. That is, a 5-day length of stay transfer case assigned to a DRG with a geometric mean length of stay of 10 days is counted as 0.5 of a total case.
- We established the relative weight for heart and liver transplants (DRGs 103 and 480) in a manner consistent with the methodology for all other DRGs except that the transplant cases that were used to establish the weights were limited to those Medicare-approved heart and liver transplant centers that have cases in the FY 1994 MedPAR file. (Medicare coverage for heart and liver transplants is limited to those facilities that have received approval from HCFA as transplant centers.) Similarly, we limited the lung transplant cases we used to establish the weight for DRG 495 (Lung Transplant) to those hospitals that are established lung transplant centers. (As discussed in detail in the final notice with comment period of Medicare coverage of lung transplants published in the **Federal Register** on February 2, 1995 (60 FR 6543), payment for lung transplants will not be limited to Medicare-approved facilities until July 31, 1995.)
- Acquisition costs for kidney, heart, liver, and lung transplants continue to be paid on a reasonable cost basis. Unlike other excluded costs, the acquisition costs are concentrated in specific DRGs (DRG 302 (Kidney Transplant); DRG 103 (Heart Transplant); DRG 480 (Liver Transplant); and DRG 495 (Lung Transplant)). Because these costs are paid separately from the prospective payment rate, it is necessary to make an adjustment to prevent the relative weights for these DRGs from including the effect of the acquisition costs. Therefore, we subtracted the acquisition charges from the total charges on each transplant bill that showed acquisition charges before computing the average charge for the DRG and before eliminating statistical outliers.

When we recalibrated the DRG weights for previous years, we set a threshold of 10 cases as the minimum number of cases required to compute a reasonable weight. We propose to use that same case threshold in recalibrating the DRG weights for FY 1995. Using the FY 1994 MedPAR data set, there are 37 DRGs that contain fewer than 10 cases. As we discuss in detail in section II.B.3 of this preamble, we computed the weight for the 37 low-volume DRGs by using the non-Medicare cases from 19 States.

The weights developed according to the methodology described above, using the proposed DRG classification changes, result in an average case weight that is different from the average case weight before recalibration. Therefore, the new weights are normalized by an adjustment factor, so that the average case weight after recalibration is equal to the average case weight before recalibration. This adjustment is intended to ensure that recalibration by itself neither increases nor decreases total payments under the prospective payment system.

Section 1886(d)(4)(C)(iii) of the Act requires that beginning with FY 1991, reclassification and recalibration changes be made in a manner that assures that the aggregate payments are neither greater than nor less than the aggregate payments that would have been made without the changes. Although normalization is intended to achieve this effect, equating the average case weight after recalibration to the average case weight before recalibration does not necessarily achieve budget neutrality with respect to aggregate payments to hospitals because payment to hospitals is affected by factors other than average case weight. Therefore, as we have done in past years and as discussed in section II.A.4.b of the Addendum to this proposed rule, we are proposing to make a budget neutrality adjustment to assure that the requirement of section 1886(d)(4)(C)(iii) of the Act is met.

III. Proposed Changes to the Hospital Wage Index

A. Background

Section 1886(d)(3)(E) of the Act requires that, as part of the methodology for determining prospective payments to hospitals, the Secretary must adjust the standardized amounts "for area differences in hospital wage levels by a factor (established by the Secretary) reflecting the relative hospital wage level in the geographic area of the hospital compared to the national average hospital wage level." In accordance with the broad discretion conferred by this provision, we currently define hospital labor market areas based on the definitions of Metropolitan Statistical Areas (MSAs) issued by the Office of Management and Budget (OMB). In addition, as discussed below, we adjust the wage index to take into account the geographic reclassification of hospitals in accordance with sections 1886(d)(8)(B) and 1886(d)(10) of the Act.

Section 1886(d)(3)(E) of the Act also requires that the wage index be updated annually beginning October 1, 1993. This section further provides that the Secretary base the update on a survey of wages and wage-related costs of short-term, acute care hospitals. The survey should measure, to the extent feasible, the earnings and paid hours of employment by occupational category and must exclude data with respect to the wages and wage-related costs incurred in furnishing skilled nursing services.

For determining prospective payments to hospitals in FY 1995, the wage index is based on the data collected from the Medicare cost reports submitted by short-term, acute care hospitals for cost reporting periods beginning in FY 1991 (that is, cost reporting periods beginning on or after October 1, 1990 and before October 1, 1991). The FY 1995 wage index includes wages and salaries paid by a hospital, home office salaries, fringe benefits, and certain contract labor costs. The FY 1995 computation for the wage index excludes salaries and wages associated with nonhospital-type services, such as skilled nursing facility services, home health agency services, or other subprovider components that are not subject to the prospective payment system.

As discussed in detail below, we are proposing to use updated wage data to construct the wage index as required by section 1886(d)(3)(E) of the Act. The FY 1996 wage index would be based on data for hospital cost reporting periods beginning on or after October 1, 1991 and before October 1, 1992 (FY 1992).

B. FY 1996 Wage Index Update

We propose to base the FY 1996 wage index, effective for hospital discharges occurring on or after October 1, 1995 and before October 1, 1996, on the data collected from the Medicare cost report (Worksheet S–3, Part II) submitted by hospitals for cost reporting periods beginning in FY 1992.

We propose to use all of the categories of data collected from Worksheet S–3, Part II. Therefore, the proposed FY 1996 wage index reflects the following:

- Total short-term, acute care hospital salaries and hours.
- Home office costs and hours.
- Fringe benefits associated with hospital and home office salaries.
- Direct patient care related contract labor cost and hours.
- The exclusion of salaries and hours for nonhospital type services such as skilled nursing facility services, home health services, or other subprovider components that are not subject to the prospective payment system.

1. Verification of Wage Data From the Medicare Cost Report

The data for the proposed FY 1996 wage index were obtained from Worksheet S–3, Part II, of the HCFA–2552 form submitted by short-term, acute care hospitals for cost reporting periods beginning during FY 1992. The wage data are reported electronically to HCFA through the Hospital Cost Report Information System (HCRIS). As in past years, we initiated an intensive review of the wage data submitted by hospitals and made numerous edits to ensure quality and accuracy. Medicare intermediaries were instructed to transmit any revisions in wage data made as a result of this review through HCRIS by early January 1995.

We then subjected the revised cost report data to several edit checks. Of the 5,304 hospitals in the data base, 3,274 hospitals had data elements that failed an edit. Five of these involved mathematical errors and have been resolved. The other edit failures involved data that appeared unusual and had to be verified by the intermediary. Only 57 hospitals have data elements that were unresolved as of March 21, 1995. Most of the unresolved data elements fall outside established edit parameters and require verification by the intermediary. We deleted seven hospitals from the database because they had extremely high fringe benefit to salary ratios, and the intermediary was unable to provide documentation to substantiate the fringe benefit amount. We will continue to try to resolve these problems so that these seven hospitals can be included in the data used to establish the final wage index.

The wage file used to construct the proposed wage index includes data obtained in late January 1995 from the HCRIS data base and subsequent changes we received from intermediaries through March 21, 1995. We have instructed the intermediaries to complete their verification of questionable data elements and to transmit any changes to the wage data, through HCRIS, no later than June 15, 1995. We expect that all outstanding data elements will be resolved by that date and that the revised data will be reflected in the final rule.

Following a procedure initiated last year with the proposed FY 1995 wage index, to allow hospitals more time to evaluate the wage data used to construct the proposed hospital wage index, we made available to the public a diskette containing the raw hospital wage data that were used to construct the proposed FY 1996 wage index. In a memorandum dated February 28, 1995, we instructed all fiscal intermediaries to inform the prospective payment hospitals they serve that the FY 1992 data diskette would be available approximately mid-March 1995. The fiscal intermediaries were also instructed to advise hospitals of the availability of the data either through their representative hospital organizations or directly from HCFA using order forms provided to them. Additional details on the cost and ordering of this data file are discussed below in section VIII.B of this preamble, Requests for Data from the Public.

In addition, we note that Table 3C in the Addendum to this proposed rule contains each hospital's inflated average hourly wage used to construct the proposed wage index values. By dividing the hourly wage by the applicable inflation factors (set forth below in section III.B.3. of this preamble), a hospital can determine its uninflated average hourly wage as reflected in the proposed wage index. A corresponding table will also be included in the final rule. If, based on its review of the data on the diskette or in Table 3C, a hospital believes that there is a problem with its wage data, the hospital should immediately contact its intermediary as discussed below.

2. Requests for Wage Data Corrections

As noted above, we will use cost report data from FY 1992 (that is, cost reporting periods beginning on or after October 1, 1991 and before October 1, 1992) for the FY 1996 update to the wage index. We believe hospitals have had ample time to ensure the accuracy of their FY 1992 wage data. Moreover, the ultimate responsibility for accurately completing the cost report rests with the hospital, which must attest to the accuracy of the data at the time the cost report is filed. However, if after review of the diskette or Table 3C, a hospital believes that its FY 1992 wage data have been incorrectly reported, the hospital must submit corrections along with complete supporting documentation to its intermediary in time to allow for review, verification, and transmission of the data before the development of the final wage index.

In the February 28 memorandum to the intermediaries, we indicated that, to allow sufficient time to process any changes, a hospital must submit requests for corrections to its fiscal intermediary by May 15, 1995. Requests were to include all documentation necessary to support the requested change. To be reflected in the final wage index, any wage data corrections must be reviewed by the intermediary and transmitted to HCFA through HCRIS on or before June 15, 1995. These deadlines, which correspond to the deadlines we used last year for the FY 1995 wage index, are necessary to allow sufficient time to review and process the data so that the final wage index calculation can be completed for development of the final prospective payment rates to be published by September 1, 1995. We cannot guarantee that corrections transmitted to HCFA after June 15, 1995, will be reflected in the final wage index.

After reviewing requested changes submitted by hospitals, intermediaries will transmit any revised cost reports to HCRIS and forward a copy of the revised Worksheet S–3, Part II to the hospitals. If requested changes are not accepted, fiscal intermediaries will notify hospitals in writing of reasons why the changes were not accepted. This procedure will ensure that hospitals have an opportunity to verify the data that will be used to construct their wage index values. We believe that fiscal intermediaries are generally in the best position to make evaluations regarding the appropriateness of a particular cost and whether it should be included in the wage index data. However, if a hospital disagrees with the intermediary's resolution of a requested change, the hospital may contact HCFA in an effort to resolve the dispute. We note that the June 15 deadline also applies to these requested changes.

We have created the process described above to resolve all substantive wage data correction disputes before we finalize the raw wage data for the FY 1996 payment rates. Accordingly, hospitals that do not meet the procedural deadlines set forth above will not be afforded a later opportunity to submit wage corrections or to dispute the intermediary's decision with respect to requested changes. We intend to make a diskette available in mid-August that will contain the finalized raw wage data that will be used to construct the wage index values in the final rule. As with the diskette made available in March 1995, HCFA will make the August diskette available to hospital associations and the public. This August diskette, however, is being made available only for the limited purpose of identifying any potential errors made by HCFA or the intermediary in the entry of the final wage data that result from the process described above, not for the initiation of new wage data correction requests. Hospitals are encouraged to review their hospital wage data promptly after the release of the second diskette.

If, after reviewing the August diskette, a hospital believes that its wage data are incorrect due to a fiscal intermediary or HCFA error in the entry or tabulation of the final wage data, it should send a letter to both its fiscal intermediary and HCFA. The letters to the intermediary and HCFA should outline why the hospital believes an error exists. These requests must be *received* by HCFA no later than September 21, 1995 to allow inclusion in the wage index values effective October 1, 1995. Requests should be sent to: Office of Hospital Policy; Attention: Nancy Edwards, Director; Division of Prospective Payment System; Central 5–02–17; 7500 Security Boulevard; Baltimore, Maryland 21244–1850. The intermediary will review requests upon receipt, and, if it is determined that an intermediary or HCFA error exists, the fiscal intermediary will notify HCFA immediately.

As indicated above, after mid-August, we will make changes to the hospital wage data only in those very limited situations involving an error by the intermediary or HCFA that the hospital could not have known about before its review of the August diskette. Specifically, neither the intermediary nor HCFA will accept the following types of requests in conjunction with this mid-August process: requests for wage data corrections that were submitted too late to be included in the data transmitted to the HCRIS system on or before June 15, 1995; requests for correction of errors made by the hospital that were not, but could have been, identified during the hospital's review of the March 1995 data; or requests to revisit factual determinations or policy interpretations made by the intermediary or HCFA during the wage data correction process. Verified corrections to the wage index made as a result of an intermediary or HCFA error received timely (that is, by September 21, 1995) will be effective October 1, 1995.

We believe the wage data correction process described above provides hospitals with sufficient opportunity to bring errors made during the preparation of Worksheet S–3 to the intermediary's attention. Moreover, because hospitals will have access to the raw wage data in mid-August, they will have the opportunity to detect any data entry or tabulation errors made by the intermediary or HCFA before the implementation of the prospective payment rates on October 1. We believe that if hospitals avail themselves of this opportunity, the wage index implemented on October 1 should be free of such errors. Nevertheless, in the unlikely event that such errors should occur, we retain the right to make midyear changes to the wage index under very limited circumstances.

Specifically, in accordance with § 412.63(s)(2), we may make midyear corrections to the wage index only in those limited circumstances where a hospital can show: (1) That the intermediary or HCFA made an error in tabulating its data, and (2) that the hospital could not have known about the error, or did not have an opportunity to correct the error, before the beginning of FY 1996 (that is, by the September 21, 1995 deadline). As indicated earlier, since a hospital will have the opportunity to verify its data, and the intermediary will notify the hospital of any changes, we do not foresee any specific circumstances under which midyear corrections would be made. However, should a midyear correction be necessary, the wage index change for the affected area will be made prospectively from the date the correction is made.

It has been our longstanding policy to make midyear revisions to wage index data prospectively only (see, for example, 49 FR 258 (Jan. 3, 1984); 54 FR 36,478 (Sept. 1, 1989)), and we continue to believe that, to the extent that midyear wage data revisions are appropriate, those revisions should be made prospectively only. Some hospitals whose requests for wage data revisions have been denied by HCFA have sought relief in the Federal courts. While no court has yet reversed a HCFA decision denying a hospital's wage data revision request, these cases have the potential to present the question of what effect we would give to such a final judicial decision.

Because we have not previously addressed this question in any rulemaking, we now propose to clarify our position regarding the temporal effect of a final judicial decision reversing a HCFA denial of a hospital's request for a wage data revision. We propose to add a new § 412.63(s)(5) to give such a decision limited retroactive effect. If a final judicial decision reverses a HCFA denial of a hospital's wage data revision request, we propose to treat the hospital as if HCFA's decision on the hospital's wage data revision request had been favorable rather than unfavorable. HCFA would pay the hospital by applying a revised wage index that reflects the revised wage data at issue. The revised wage data would not be considered for purposes of revisiting past adjudications of requests for geographic reclassification under section 1886(d)(10) of the Act. Under the statutory scheme established by Congress, decisions on applications for MGCRB reclassification must be finalized prior to the Federal fiscal year for which the reclassifications would take effect.

In some Federal fiscal years, wage data revision requests were initially reviewed by the intermediaries and forwarded to HCFA's Office of Hospital Policy (or the former Office of Payment Policy) for a determination of whether a revision should be made. In other years, the intermediaries themselves have made determinations on wage data revision requests. The latter is our current policy. Therefore, in the foregoing discussion, the phrases "HCFA denial of a hospital's wage data revision request" and "HCFA decision on the hospital's wage data revision request" mean the decision by either HCFA's Office of Hospital Policy or the intermediary denying a hospital's request for a wage data revision.

We considered proposing to apply a strict policy of prospectivity to final judicial decisions reversing HCFA denials of wage data revision requests—that is, adopting a policy to apply such judicial decisions prospectively from the date they are made. While we continue to believe that prospective-only changes are most appropriate under a prospective rate-setting system such as the hospital inpatient prospective payment system, we also recognize that hospitals have sought, and will continue to seek, judicial review of unfavorable HCFA decisions on hospitals' requests for wage data revisions. Applying a policy of strict prospectivity to final judicial decisions reversing HCFA denials of wage data revision requests might be viewed, in some cases, as frustrating the purpose of judicial review, since such a decision might not be made until after the close of the fiscal year or years at issue. Therefore, on balance, we believe the better policy is the one we are currently proposing, under which we would give effect to a final judicial decision reversing a HCFA denial of a hospital's wage data revision request by applying a revised wage index that reflects the revised wage data as if HCFA's decision had been favorable rather than unfavorable.

3. Computation of the Wage Index

As noted above, we are proposing to base the FY 1996 wage index on wage data reported on the FY 1992 cost report. The proposed wage index is based on data from 5,238 hospitals paid under the prospective payment system and short-term, acute care hospitals in waiver States. The method used to compute the proposed wage index is as follows:

Step 1—We gathered data from each of the non-Federal short-term, acute care hospitals for which data were reported on the Worksheet S–3, Part II of the Medicare cost report for the hospital's cost reporting periods beginning on or after October 1, 1991, and before October 1, 1992. Each hospital was assigned to its appropriate urban or rural area prior to any reclassifications under section 1886(d)(8) or 1886(d)(10) of the Act. In addition, we included data from a few hospitals that had cost reporting periods beginning in September 1991 and had reported a cost reporting period exceeding 52 weeks. The data were included because no other data from these hospitals would be available for the cost reporting period described above, and particular labor market areas might be affected due to the omission of these hospitals. However, we generally describe these wage data as FY 1992 data.

Step 2—For each hospital, we subtracted the excluded salaries (that is, direct salaries attributable to skilled nursing facility services, home health services, and other subprovider components not subject to the prospective payment system) from gross hospital salaries to determine net hospital salaries. To the net hospital salaries, we added hospital contract labor costs, hospital fringe benefits, and any home office salaries and fringe benefits reported by the hospital to determine total salaries plus fringe benefits.

Step 3—For each hospital, we inflated or deflated, as appropriate, the total salaries plus fringe benefits resulting from Step 2 to a common period to determine total adjusted salaries. To make the wage inflation adjustment, we used the percentage change in average hourly earnings for each 30-day increment from October 14, 1991 through September 15, 1993, for hospital industry workers from Standard Industry Classification 806, Bureau of Labor Statistics Employment and Earnings Bulletin. The annual inflation rates used were 5.6 percent for FY 1991, 4.8 percent for FY 1992, and 3.6 percent for FY 1993. The inflation factors used to inflate the hospital's data were based on the midpoint of the cost reporting period as indicated below.

MIDPOINT OF COST REPORTING PERIOD

After	Before	Adjustment factor
10/14/91	11/15/91	1.059411
11/14/91	12/15/91	1.055280
12/14/91	01/15/92	1.051165
01/14/92	02/15/92	1.047066
02/14/92	03/15/92	1.042983
03/14/92	04/15/92	1.038916
04/14/92	05/15/92	1.034865
05/14/92	06/15/92	1.030830
06/14/92	07/15/92	1.026810
07/14/92	08/15/92	1.022806
08/14/92	09/15/92	1.018818
09/14/92	10/15/92	1.014845
10/14/92	11/15/92	1.011859
11/14/92	12/15/92	1.008881
12/14/92	01/15/93	1.005912
01/14/93	02/15/93	1.002952
02/14/93	03/15/93	1.000000
03/14/93	04/15/93	0.997057
04/14/93	05/15/93	0.994123
05/14/93	06/15/93	0.991197
06/14/93	07/15/93	0.988280
07/14/93	08/15/93	0.985372
08/14/93	09/15/93	0.982472

For example, the midpoint of a cost reporting period beginning January 1, 1992 and ending December 31, 1992 is June 30, 1992. An inflation adjustment factor of 1.026810 would be applied to the wages of a hospital with such a cost reporting period. In addition, for the data for any cost reporting period that began in FY 1992 and covers a period of less than 360 days or greater than 370 days, we annualized the data to reflect a 1-year cost report. Annualization is accomplished by dividing the data by the number of days in the cost report and then multiplying the results by 365.

Step 4—For each hospital, we subtracted the reported excluded hours from the gross hospital hours to determine net hospital hours. We increased the net hours by the addition of any reported contract labor hours and home office hours to determine total hours.

Step 5—As part of our editing process, we deleted data for 59 hospitals for which we lacked sufficient documentation to verify data that failed

edits because the hospitals are no longer participating in the Medicare program or are in bankruptcy status. We retained the data for other hospitals that are no longer participating in the Medicare program because these hospitals contributed to the relative wage levels in their labor market areas during their FY 1992 cost reporting period.

Step 6—Within each urban or rural labor market area, we added the total adjusted salaries plus fringe benefits obtained in Step 3 for all hospitals in that area to determine the total adjusted salaries plus fringe benefits for the labor market area.

Step 7—We divided the total adjusted salaries plus fringe benefits obtained in Step 6 by the sum of the total hours (from Step 4) for all hospitals in each labor market area to determine an average hourly wage for the area.

Step 8—We added the total adjusted salaries plus fringe benefits obtained in Step 3 for all hospitals in the nation and then divided the sum by the national sum of total hours from Step 4 to arrive at a national average hourly wage. Using the data as described above, the national average hourly wage is $18.8939.

Step 9—For each urban or rural labor market area, we calculated the hospital wage index value by dividing the area average hourly wage obtained in Step 7 by the national average hourly wage computed in Step 8.

C. Allocation of General Service Salaries and Hours to Areas Excluded From the Wage Index

In constructing the wage index, we exclude the direct wages and hours associated with certain subprovider components of the hospital, such as skilled nursing facilities and home health agencies. The cost reporting form used to collect the FY 1992 wage data also includes within the definition of excluded areas any rehabilitation and psychiatric distinct part units of the hospital that are excluded from the prospective payment system. Thus, the wage index is constructed by including only the direct wages and hours associated with those areas of the hospital subject to the prospective payment systems. However, the general service hours associated with excluded areas are not excluded from the wage index calculation.

In the May 26, 1993 proposed rule, we discussed our analysis of our first attempt to allocate overhead salaries and hours to areas of the hospital that are excluded from the prospective payment system (58 FR 30237). This analysis was prompted by several suggestions from hospital representatives that, in addition to excluding the direct salaries and hours for subprovider components of the hospital, HCFA should also exclude the general service, or overhead, wages and hours that are associated with these areas. For example, we currently include all of the wage costs associated with housekeeping in the wage index data, even if a facility has excluded subprovider components that receive housekeeping services. Because the hours associated with workers in the general service areas of the hospital were not collected in the FY 1990 cost reports (the most recent wage data available in 1993), we initiated a special data collection to obtain these data in order to calculate an overhead allocation to excluded areas for the FY 1994 wage index. As we discussed in detail in the May 26, 1993 proposed rule, we identified several problems with the data collected that led us to the conclusion that it would be inappropriate to use the data in allocating the overhead wages and hours. Specifically, there were a large number of hospitals removed due to the edits, a large number of hospitals that experienced significant swings in their average hourly wages when the overhead salaries and hours were allocated, and a large proportion of hospitals whose average hourly wage decreased as a result of the allocation (58 FR 30237–30238). Thus, we did not allocate general service salaries and hours to the excluded areas of hospitals in calculating the FY 1994 wage index.

In the September 1, 1993 final rule, we indicated that we would revisit this issue when the data for cost reporting periods beginning in FY 1992 became available (58 FR 46298). We stated that the overhead allocation performed with data from the 1992 cost reports would be more accurate because the overhead salaries and hours would be determined at the same time. We believed that the retroactive determination of overhead hours for the FY 1990 cost reports may have caused some of the problems with the data. We stated that the FY 1992 cost report might allow a more accurate allocation since both overhead salaries and overhead hours would be directly reported on the Worksheet S–3.

In calculating the FY 1996 wage index, we are using data for cost reporting periods beginning in FY 1992. We received general service hour data for 4,356 of the 4,441 hospitals that reported excluded salaries. We analyzed these data to determine whether we could reasonably allocate the overhead wages and hours to the excluded areas of the hospital. First, we determined the total general service wages (including fringe benefits) from Worksheet A of the cost report. We then developed a ratio of total indirect costs (net of capital costs) allocated to the excluded areas of the hospital to total noncapital general service costs (using Worksheet B, Parts I, II, and III from the cost report). We call this the "indirect cost ratio." We computed the general service salaries and hours allocated to the excluded areas by multiplying the indirect cost ratio by the total general service salaries and by the total general service hours reported by the hospital on the cost report. For example, if 10 percent of a hospital's total indirect costs were allocated to excluded areas, we allocated 10 percent of its overhead salaries and 10 percent of its overhead hours to the excluded areas.

We analyzed the results of the general service allocation to remove any clearly incorrect or distorted allocations. We began by performing preliminary data edits. We eliminated 20 hospitals with allocated salaries or hours greater than the total salaries or hours reported on the cost report (after adjustment for the excluded areas of the hospital). We then analyzed the data for the remaining 4,336 hospitals in order to remove any obviously incorrect allocations. Two hospitals had general service average hourly wages below $5.00. Considering the Federal minimum wage of $4.25, we believe this indicates an obvious error in reporting the hours or salaries. We also eliminated the allocation for eight hospitals with a general service average hourly wage of $100 per hour or greater.

The next edit we performed was based on a comparison of the indirect cost ratio and the ratio of excluded hours (as reported on the cost report) to total hours (including excluded hours). We reasoned that the allocation was probably erroneous if the indirect cost ratio was extraordinarily high, unless there was also a large proportion of the hospital's total hours reported in excluded areas of the hospital. As a result, we eliminated allocations for 58 hospitals that had indirect cost ratios more than 3 standard deviations above the mean (that is, above 0.589986) but hour ratios less than 3 standard deviations above the mean (0.445800).

After completing the above edits, we eliminated the allocation for 48 hospitals whose general service average hourly wage was more than 3 standard deviations above the mean for the remaining hospitals, or above $36.75. Finally, we eliminated the allocation for 21 hospitals for which the percentage difference between their pre-allocation average hourly wage and their general service average hourly wage was more than 3 standard deviations from the mean (if the difference was greater than 66.62 percent or less than −88.24 percent, we eliminated the allocation). These edits eliminated the most extreme and inexplicable general service allocations.

After we completed the above edits, 4,199 hospitals still had overhead allocations. Of these, 71 percent (2,978) had average hourly wages that were lower after the overhead allocation was made to the excluded areas. The average difference between the pre- and post-allocation average hourly wage was −0.14 percent. Eighty-six hospitals had a percentage change of more than 10 percent in their average hourly wage, of which 45 were decreases. An additional 158 hospitals had a percentage change of between 5 and 10 percent, of which 104 were decreases. Thirty-seven of 49 rural labor market areas would experience decreases in their wage index value if we performed the allocation, while 195 of 317 urban areas would experience decreases. The average wage index value for all hospitals would decrease 0.08 percentage points if we performed the overhead allocation.

Thus, we again conclude that it would not be appropriate to perform the allocation of overhead salaries and hours to excluded areas of the hospital in computing the wage index. The data still have the same variations that were prevalent when we declined to use this methodology in the proposed rule for FY 1994: Many hospitals were removed due to the edits, many have large swings in their average hourly wages, and many more hospitals' average hourly wages would decrease as a result of the allocation than would increase, particularly for rural hospitals.

As we noted in the September 1, 1993 final rule (58 FR 46297), if these allocations are accurate, it would mean that for the majority of hospitals with excluded areas, the average hourly wage for the overhead areas (such as laundry and housekeeping) is higher than that for patient care areas (such as nursing). We do not believe that this could be the case for such a large number of hospitals, and we have therefore concluded that the reported data regarding overhead hours are inaccurate. As a result, we have decided not to employ the allocation of general service salaries and hours to excluded areas of the hospital in constructing the FY 1996 wage index.

We note that hospital representatives that support the allocation of overhead salaries to excluded areas do so because they believe that, for those hospitals with excluded areas, the current average hourly wage is artificially weighted downward (see the September 1, 1994 final rule (59 FR 45359)). They believe that the current methodology, which removes the higher nursing costs in excluded areas from the hospital's direct salaries, but leaves in the lower general services salaries, distorts wages downward. The reported data, however, are not consistent with this concern.

While we continue to believe that an allocation of overhead salaries and hours to the excluded subprovider components may be appropriate, it would not benefit the hospital industry or the Medicare program to implement an allocation that is not reliable. Clearly, the overhead hours reported by many hospitals did not accurately reflect the salaries reported. In addition, we realize that the allocation method described above may not necessarily be the most accurate method to make this allocation. We invite public comment concerning alternative methods that might produce a more accurate and uniform allocation method and at the same time impose little or no additional reporting burden on the hospital industry. Commenters should note that, under any acceptable allocation method, we would require that the method be used by all hospitals with excluded areas and that the intermediary be able to verify the accuracy of the reported data.

The cost report effective for FY 1995 (that is for cost reporting periods that begin on or after October 1, 1994 and before October 1, 1995) will collect overhead data, both paid hours and the related salaries, by general service area. These data will be used to construct the wage index for FY 1999. We propose to reevaluate an allocation of overhead salaries and hours to excluded areas of the hospital once the data from this new cost report are available or possibly earlier if we receive comments or suggestions from the public or otherwise determine alternative methods to better allocate overhead salaries.

D. Revisions to the Wage Index Based on Hospital Redesignation

Under section 1886(d)(8)(B) of the Act, hospitals in certain rural counties adjacent to one or more Metropolitan Statistical Areas (MSAs) are considered to be located in one of the adjacent MSAs if certain standards are met. Under section 1886(d)(10) of the Act, the Medicare Geographic Classification Review Board (MGCRB) considers applications by hospitals for geographic reclassification for purposes of payment under the prospective payment system.

The methodology for determining the wage index values for redesignated hospitals is applied jointly to the hospitals located in those rural counties that were deemed urban under section 1886(d)(8)(B) of the Act and those hospitals that were reclassified as a result of the MGCRB decisions under section 1886(d)(10) of the Act. Section 1886(d)(8)(C) of the Act provides that the application of the wage index to redesignated hospitals is dependent on the hypothetical impact that the wage data from these hospitals would have on the wage index value for the area to which they have been redesignated. Therefore, pursuant to section 1886(d)(8)(C) of the Act, the wage index values were determined by considering the following:

- If including the wage data for the redesignated hospitals reduces the MSA wage index value by 1 percentage point or less, the MSA wage index value determined exclusive of the wage data for the redesignated hospitals applies to the redesignated hospitals.
- If including the wage data for the redesignated hospitals reduces the wage index value for the area to which the hospitals are redesignated by more than 1 percentage point, the hospitals that are redesignated are subject to the wage index value of the area that results from including the wage data of the redesignated hospitals (the "combined" wage index value). However, the wage index value for the redesignated hospitals cannot be reduced below the wage index value for the rural areas of the State in which the hospitals are located.
- Rural areas whose wage index values would be reduced by excluding the data for hospitals that have been redesignated to another area continue to have their wage index calculated as if no redesignation had occurred. Those rural areas whose wage index value increases as a result of excluding the wage data for the hospitals that have been redesignated to another area have their wage index calculated exclusive of the redesignated hospitals.
- The wage index value for an urban area is calculated exclusive of the wage data for hospitals that have been reclassified to another area. However, geographic reclassification may not reduce the wage index for an urban area below the Statewide rural average, provided the wage index prior to reclassification was greater than the Statewide rural wage index value.
- A change in classification of hospitals from one area to another may not result in the reduction in the wage index for any urban area whose wage index is below the rural wage index for the State. This provision also applies to any urban area that encompasses an entire State.

We note that, except for those rural areas where redesignation would reduce

the rural wage index value, and for urban areas whose wage index values are already below the rural wage index and would be reduced by redesignations, the wage index value for each area is computed exclusive of the data for hospitals that have been redesignated from the area for purposes of their wage index. As a result, several MSAs listed in Table 4a have no hospitals remaining in the MSA. This is because all the hospitals originally in these MSAs have been reclassified to another area by the MGCRB. For those areas, we have listed the Statewide rural wage index value.

The proposed revised wage index values for FY 1996 are shown in Tables 4a, 4b, and 4c of the addendum to this proposed rule. Hospitals that are redesignated should use the wage index values shown in Table 4c. For some areas, more than one wage index value will be shown in Table 4c. This occurs when hospitals from more than one State are included in the group of redesignated hospitals, and one State has a higher Statewide rural wage index value than the wage index value otherwise applicable to the redesignated hospitals. Tables 4d and 4e list the average hourly wage for each labor market area based on the FY 1992 wage data. In addition, as discussed above, we have expanded Table 3C (Hospital Case-Mix Indexes for Discharges) to include the average hourly wage for each hospital based on the FY 1992 data. The MGCRB will use the average hourly wage published in the final rule to evaluate a hospital's application for reclassification, unless that average hourly wage is later revised in accordance with the wage data correction policy described in § 412.63(s)(2). In such cases, the MGCRB will use the most recent revised data used for purposes of the hospital wage index. Hospitals that choose to apply before publication of the final rule can use the proposed wage data in applying to the MGCRB for wage index reclassifications that would be effective for FY 1997. We note that in adjudicating these wage reclassification requests during FY 1996, the MGCRB will use the average hourly wages for each hospital and labor market area that are reflected in the final FY 1996 wage index.

The proposed FY 1996 wage index values incorporate all hospital redesignations for FY 1996. At the time this proposed wage index was constructed, the MGCRB had completed its review. For FY 1996, 436 hospitals are redesignated for purposes of the wage index (including hospitals redesignated under both sections 1886(d)(8)(B) and 1886(d)(10) of the Act). The number of reclassifications may change because some MGCRB decisions are still under review by the Administrator.

Any changes to the wage index that result from withdrawals of requests for reclassification, wage index corrections, appeals, and the Administrator's review process will be incorporated into the wage index values published in the final rule. The changes may affect not only the wage index value for specific geographic areas, but also whether redesignated hospitals receive the wage index value for the area to which they are redesignated or a combined wage index that includes the data for both the hospitals already in the area and the redesignated hospitals. Further, the wage index value for the area from which the hospitals are redesignated may be affected.

Under § 412.273, hospitals that have been reclassified by the MGCRB are permitted to withdraw their applications within 45 days of the publication of this **Federal Register** document. The request for withdrawal of an application for reclassification that would be effective in FY 1996 must be received by the MGCRB by July 17, 1995. A hospital that requests to withdraw its application may not later request that the MGCRB decision be reinstated.

E. Proposed Changes to the Medicare Geographic Classification Review Board (MGCRB) Guidelines

Under section 1886(d)(10) of the Act, the MGCRB considers applications by hospitals for geographic reclassification for purposes of payment under the prospective payment system. Guidelines concerning the criteria and conditions for hospital reclassification are located at §§ 412.230 through 412.236. The purpose of these criteria is to provide direction, to both the MGCRB and those hospitals seeking geographic reclassification, with respect to the situations that merit an exception to the rules governing the geographic classification of hospitals under the prospective payment system. As discussed in detail below, we are proposing the following three changes to the MGCRB guidelines:

- Individual hospitals may not be reclassified from rural to other urban areas for purposes of the standardized amount.
- An individual hospital may be reclassified for purposes of the wage index only to an area that has a higher pre-reclassification average hourly wage.
- For group reclassifications either the standardized amount or the pre-reclassification average hourly wage of the area to which the hospitals seek reclassification must be higher than the standardized amount or pre-reclassification average hourly wage, respectively, of the area in which the hospitals are currently located.

In addition to the changes to the MGCRB guidelines, we propose a minor revision to § 412.266 concerning hospital requests for data from HCFA that are needed to complete applications to the MGCRB.

1. Limitations on Hospital Reclassification (§§ 412.230, 412.232, and 412.234)

a. Elimination of Reclassification from Rural to Other Urban Areas for Purposes of the Standardized Amount. Section 1886(d)(10)(C)(i)(I) of the Act requires the MGCRB to consider applications of hospitals requesting reclassification for purposes of the standardized amount. Section 1886(d)(10)(D)(i)(II) of the Act requires that the MGCRB utilize guidelines published by the Secretary for determining whether the county in which a particular hospital is located should be treated as being a part of a particular MSA. Accordingly, the MGCRB allows reclassifications for purposes of the standardized amount for individual hospitals that meet the guidelines under § 412.230, and for groups of rural and urban hospitals that represent an entire county and that meet the guidelines under §§ 412.232 and 412.243 respectively.

As required by section 1886(d)(3)(A)(iii) of the Act, effective for discharges occurring on or after October 1, 1994, the average standardized amount for hospitals located in a rural area was made equal to the average standardized amount for hospitals located in other urban areas. The standardized amount effective for those areas is now known as the other standardized amount. Large urban areas continue to receive a separate, higher standardized amount. The effect of this provision is that in FY 1995 or later, hospitals reclassified from rural to other urban areas for purposes of the standardized amount receive no increase in their standardized payment amount, since the two rates are now the same.

However, we continue to receive applications from individual hospitals seeking to be reclassified from rural to other urban areas for the standardized amount because of certain payment advantages that accompany the urban designation. When an individual hospital reclassifies from a rural to an urban area for purposes of the standardized amount, we consider it urban for all purposes except the wage index. For some rural hospitals, the urban designation enables them to qualify as a disproportionate share hospital (DSH) and to receive special payment adjustments. For other rural hospitals that already qualify for DSH payments, the urban designation qualifies them for a higher adjustment than they would receive as a rural hospital.

We do not believe that the MGCRB provisions of the law were intended to allow hospitals to be reclassified merely for the purpose of receiving higher DSH payments. Rather, we believe that the intent of the MGCRB legislation was to provide a hospital with the opportunity to receive a more appropriate base payment rate, that is, the standardized amount. Applying to an area with an identical standardized amount does not produce this benefit. Section 1886(d)(10)(C)(i) of the Act states, in part:

> "The [MGCRB] shall consider the application of any subsection (d) hospital requesting that the Secretary change the hospital's geographic classification for purposes of determining for a fiscal year—
> (I) the hospital's average standardized amount under paragraph (2)(D) * * *"

Since the standardized amounts applicable to hospitals in rural areas and other urban areas are now equal, there is no reason to request geographic reclassification from a rural area to an other urban area "for purposes of * * * the hospital's standardized amount." Therefore, we propose to provide under new § 412.230(a)(5)(ii) that a rural hospital may not be reclassified to an other urban area for purposes of the standardized amount. This change would be effective for hospital applications due October 2, 1995, requesting reclassification for FY 1997. (Since October 1 is a Sunday, the MGCRB will accept applications through October 2, 1995.)

We note that this change would not prevent individual rural hospitals from applying for reclassification to large urban areas, since the standardized amount for large urban areas is greater than that of rural or other urban areas. Also, group applications from all hospitals in a rural county to be reclassified to urban areas would not be affected, since these hospitals are required to meet a different "metropolitan character" criterion under § 412.232(b).

b. Reclassification for Purposes of the Wage Index. Section 1886(d)(10)(C)(i)(II) of the Act requires the MGCRB to consider the application of any prospective payment hospital for purposes of changing its applicable wage index. Sections 412.230, 412.232, and 412.234 set forth the types of individual and group reclassifications that are currently allowed. An individual rural hospital may reclassify to another rural area or to an urban area. An individual urban hospital may reclassify to another urban area for purposes of the wage index, the standardized amount or both. A rural group may reclassify to an urban area and an urban group may reclassify to another urban area, but only for purposes of both the wage index and the standardized amount.

We have recently received hospital requests for reclassification to a labor market area with a lower wage index. Although such requests initially would appear illogical, they can result, in some cases, in a hospital gaining reclassification to an area from which all other hospitals have reclassified, that is, to an empty labor market area. Thus, a hospital reclassified to such an area could receive a wage index value based only on its own hourly wages.

In the June 4, 1991 final rule with comment period, we stated our belief that geographic reclassification should be limited to hospitals that are disadvantaged by their current classification because they compete with hospitals that are located in the geographic area to which they seek reclassification (56 FR 25469). We do not believe it is appropriate for hospitals to seek reclassification to an area with a lower wage index in an effort to use the MGCRB system inequitably.

Therefore, we are proposing that a hospital that seeks to reclassify for the purpose of the wage index may apply for reclassification only to an area that has a higher pre-reclassified average hourly wage than the pre-reclassified average hourly wage in the hospital's original geographic area. We would revise §§ 412.230, 412.232, and 412.234 to reflect this proposal.

We recognize that this change could present a problem for hospital group requests for reclassification from a rural or other urban area to a large urban area for purposes of the standardized amount. A group of hospitals seeking to reclassify to a large urban area must apply for both the wage index and the standardized amount. It is possible that the pre-reclassified average hourly wage for the area to which the group seeks reclassification may be lower than the average hourly wage for the group's original area. The same problem could occur if a group seeks to reclassify to an area that has a higher wage index, although the standardized amount is the same (that is, a group of rural hospitals seek to reclassify to an other urban area). Therefore, for group reclassifications, we propose that either the pre-reclassified average hourly wage or the standardized amount of the area to which the hospitals seek reclassification must be higher than the corresponding figure of the area in which the hospitals are located for the group to qualify for reclassification. These revisions would be effective for applications for reclassification due by October 1, 1995, for reclassifications effective October 1, 1996.

Accordingly, we propose the following changes to the MGCRB guidelines:

- We would specify under new § 412.230(a)(5)(i) that, for purposes of the wage index, a hospital may not be reclassified to an area whose pre-reclassification average hourly wage is lower than the hospital's current pre-reclassification average hourly wage. As noted above, we would provide under § 412.230(a)(5)(ii) that a rural hospital may not be reclassified to an other urban area for purposes of the standardized amount. In addition, we would move the current limitation that a hospital may only be reclassified to one area from § 412.230(a)(1) to new § 412.230(a)(5)(iii).
- We would add a new paragraph (a)(4) to §§ 412.232 and 412.234 to provide that for rural or urban group requests for reclassification, the standardized amount of the area to which the group seeks reclassification must be higher than the group's current standardized amount, or the average hourly wage of the area to which the group seeks reclassification must be higher than the group's current average hourly wage.

2. Hospital Requests for Wage Data from HCFA

Currently, regulations at § 412.266 provide that a hospital may request from HCFA certain wage data that are necessary for a complete reclassification application to the MGCRB. The regulations also set forth dates by which HCFA must respond to such requests. Before 1994, hospitals needed to obtain data on average hourly wages directly from HCFA, since the data were not available from any other source. Beginning with the May 27, 1994, proposed rule, we have included the average hourly wage data for each hospital in the proposed and final rules as part of Table 3c. Therefore, hospitals no longer need to contact HCFA to obtain the data necessary to apply for reclassification. Thus, we are proposing

to revise § 412.266 to indicate that hospitals are to obtain the necessary data from the **Federal Register** document.

3. Elimination of the MGCRB

As discussed above, under section 1886(d)(10) of the Act, the MGCRB is charged with reviewing and making decisions on hospital requests for geographic reclassification. Since implementation of this process 5 years ago, many changes have been made to the criteria that hospitals must meet in order to qualify for reclassification. The majority of these criteria are now objective standards that are easily assessed. However, the MGCRB application process remains essentially unchanged.

We believe that it may be appropriate to revise the current MGCRB process. That is, we believe that it may now be possible to establish a simplified hospital application process and transfer the Board's decision making authority to HCFA. In general, we believe that this could result in a more efficient system and reduce the paperwork burden to hospitals. However, we would need a change in the current law to accomplish this transfer.

One area in which it may be possible to make changes if we are granted legislative authority is in the use of more current data. By statute, the MGCRB must issue all of its decisions by March 30 each year, before the final wage data for the upcoming Federal fiscal year are computed. Given the current application and review process, the best data we can use are the previous year's final wage data. If the reclassification system were revised and simplified, then it might be possible to use more current data in making the reclassification decisions. However, this would require a statutory change. We welcome comments on this issue and on how we could simplify the application process.

F. Alternative Labor Market Areas

1. Background

Almost from the beginning of the prospective payment system, we have received comments from hospitals and ProPAC questioning the use of MSA-based labor market areas to construct the wage index. In light of these concerns, we have examined a variety of options for revising wage index labor market areas.

In the May 27, 1994, proposed rule (59 FR 27724), we presented our latest research concerning possible future refinements to the wage index labor market areas. Specifically, we discussed in detail ProPAC's proposal for hospital-specific labor market areas based on each hospital's nearest neighbors, and our research and analysis on alternative labor market areas. We solicited comments on these possible revisions to the labor market areas. In this proposed rule, we will summarize our position with regard to further research into changing labor market areas and summarize the major comments we received in response to last year's proposals.

2. Summary of Research on Labor Market Areas

In the May 27, 1994 proposed rule, we described our research on alternative labor market areas including a number of hospital-specific labor market alternatives and the criteria we used to analyze each of the alternatives. We also discussed our belief that even though none of the alternative labor market areas that we studied provided a distinct improvement over the current reclassification wage index, a combination of the current MSA-based system and the "nearest neighbors" based system proposed by ProPAC, in which a hospital's wage index is based on its wages and those of the other hospitals closest to it, might have considerable potential for improving the wage index.

We presented an option using the current MSA-based system but generally giving a hospital's own wages a higher weight than under the current system. Under this approach, the wage index of each hospital would be based on a weighted average of that hospital's own average hourly wages and the average hourly wages of other hospitals in its labor market area (either an MSA or Statewide rural area).

We considered two alternative wage indexes. The first, known as "M25" or "minimum 25," placed a minimum 25 percent (.25) weight on each hospital's own average hourly wage and a 75 percent weight (.75) on the average hourly wage of the other hospitals in each hospital's MSA or Statewide rural area. If a hospital's data already represented more than 25 percent of the hours in its labor market area, that higher percent was used instead in calculating the hospital's weighted average hourly wage. The resulting weighted average hourly wage was divided by the national average hourly wage to obtain each hospital's wage index value. The second wage index, known as "M50" or "Minimum 50," differs from the first alternative only in that a minimum 50 percent weight is given to the hospital's own average hourly wage, instead of a minimum 25 percent. We refer to these as the M25/50 labor market classification options.

However, we recognized that in some cases a hospital's immediate labor market area as defined under a "nearest neighbor" approach could be more representative of its true labor market area than an MSA-based labor market area. To address such situations, we described a mechanism that would essentially provide a hospital with an alternative wage index derived entirely or in part from its nearest neighbors labor market. We presented two methods for reclassification, a "simple" method and a "refined" method. Both methods utilized the two wage indexes described above and like the current MGCRB reclassification system, also required a hospital's own wages to exceed certain thresholds to meet eligibility. Under the simple reclassification methodology, if a hospital's wages met certain thresholds, the average hourly wage of that hospital's 10 nearest neighbors would be substituted for the MSA or statewide rural average hourly wage in calculating the numerator of that hospital's wage index. Under the refined reclassification methodology, if certain tests were met, in addition to using the neighboring hospitals' average hourly wages in computing a hospital's wage index, the hospital's hours percentage in its nearest neighbors' labor market area would also be substituted for the weight that would otherwise be used. For example, if a hospital's wages made up 80 percent of all hospital wages in its nearest neighbors' labor market area, then the hospital would receive that weight (.80) in computing its wage index.

We also described for comment a State labor market option (SLMO) under which hospitals would be allowed to design labor market areas within their own State boundaries. We specified that aggregate payments to hospitals participating in the SLMO must be budget neutral; that is, the payments could be no higher than they otherwise would have been in the absence of the SLMO. We discussed options for applying the budget neutrality adjustment and a number of issues that would have to be resolved before a SLMO could be instituted. Among these issues were how to determine when a SLMO should be approved for a particular area. We asked for comment on whether unanimous support from all of the hospitals participating should be required, or whether it would be sufficient to obtain support from only a specific percentage of the covered hospitals.

3. Summary of Comments on Labor Market Areas

We received 74 comments on our labor market alternatives. These comments were from individual hospitals, national, State and local hospital associations, hospital consultant groups and ProPAC. Of the individual comments received, 27 were from New York hospitals and the rest were relatively evenly distributed around the country.

Many of the commenters limited their comments to specific aspects of the issues mentioned in the proposed rule. The majority focused on the M25/50 labor market classifications option. Of those, 42 were opposed, 16 gave conditional support, and 11 were in favor. The alternative reclassification mechanism received 43 comments of which 36 opposed the option, 4 gave conditional support, and 3 were in favor. We received the fewest number of comments on the SLMO proposal, with nine commenters expressing opposition, nine expressing conditional support, and two in favor.

M25/50 Labor Market Option

Many of those who commented on the M25/50 proposal expressed concern that a blended wage index would undermine the principles on which the prospective payment system is based. One commenter said that the present system is designed to allow a cost effective hospital to move toward profitability and questioned why HCFA would want to change directions. Other commenters noted that a blended wage index would reward the highest cost hospitals with high wage indexes.

Several commenters believe that we should complete a detailed financial analysis for each option. Although we did not include sample wage index values in the proposed rule, two associations did financial analyses upon which many hospitals based their comments. A number of commenters were concerned about the redistribution of funds under the blended wage index. One association commented that under such a proposal, twice as many hospitals in its State would receive a lower wage index as would benefit. Two national associations recommended that if M25/50 were adopted it should be implemented gradually because of the redistributive nature of the proposal. One association recommended that we provide "buffer zones" to protect hospitals from payment swings that exceeded a fixed percentage. Rural referral centers were generally opposed to the blended wage index because they believe it would create a new system with significant redistribution of funds, produce new inequities, and not correct the major problem of rural referral centers being grouped with unlike hospitals in rural areas. Both ProPAC and another commenter stated that labor market changes should be implemented in conjunction with an occupational mix adjustment. ProPAC said that it was difficult to evaluate competing labor market options without such data and that therefore it had not done so. ProPAC also stated that a blended wage index would be likely to increase occupational mix bias as more weight is attached to a hospital's own wage rate.

Several State and national hospital association representatives recommended that we convene a meeting of hospital association representatives to discuss our labor market proposals in greater detail. They called for a meeting similar to the one we held in November 1993 to discuss options for redefining labor market areas, as discussed in last year's May 27, 1994 proposed rule (59 FR 27726).

On the positive side, several hospital associations expressed their belief that a blended wage index holds potential to create a more equitable and supportable payment mechanism and could significantly reduce the number of hospitals requiring reclassification. One national association stated that a blended wage index balances the model that hospitals can purchase labor at the same price within a market with the recognition that imperfections in measuring labor markets will persist.

Reclassification Option

As noted above, the majority of commenters (36 of 43) were opposed to the alternative reclassification option. A number of commenters are concerned that the proposed 'simple' and 'refined' reclassification methodologies were too complicated. A State hospital association favored "a simplified [reclassification] approach that could easily be administered by the intermediary." Some commenters stated that they disagreed with the formula-driven nature of the reclassification process and believed that it was contrary to Congressional intent. Some commenters were concerned about the effect of this proposal on group reclassifications. While some commenters decried the loss of group reclassification, another commenter believes that hospitals should be allowed to continue to use commuting data to justify their county's eligibility for reclassification. One State hospital association expressed its belief that reclassification was originally intended to benefit small, rural hospitals, but that our proposal went far beyond that original intent by allowing many more urban and large urban hospitals to qualify for reclassification.

Rural referral centers are concerned that they will lose money due to more stringent reclassification criteria in proposed methodologies.

Two commenters were concerned that the reclassification proposal did not address inequities in the Boston NECMA (New England County Metropolitan Area). They believe that the core problem is the Boston NECMA itself, which should be replaced by a central/outlying county framework.

Two hospital associations were concerned about the proposed reclassification methodologies' reliance on "nearest neighbors". A regional hospital association questioned why the nearest neighbor approach would be utilized for geographic reclassification purposes after it was rejected as a model for all market areas.

ProPAC stated that the reclassification options are likely to increase occupational mix bias. A hospital with a low wage rate, which results partially from a low occupational mix, would be unlikely to qualify for reclassification. However, a hospital with a high wage index (such as a large teaching hospital) would be more likely to qualify for reclassification and thus be able to "lock in" the occupational mix bias. One positive comment received was that the data for all hospitals in the region would be retained in calculating wage index values and that it would be an improvement over the current system.

State Labor Market Option

Regarding this option, the main area of concern was the level of support required to allow hospitals in a State to select the SLMO. Some commenters expressed concern that if a SLMO could be established only by an overwhelming or unanimous majority of a State's hospitals, the possibility of such unanimity would be unrealistic given the requirement of budget neutrality. As one hospital stated, "We do not understand the circumstances in which a hospital that would lose reimbursement under this method would consent to participate." On the other hand, some commenters expressed concern that if we were to allow the creation of a SLMO with less than full agreement by all participating hospitals, it could create a system where the few would suffer greatly at the whim of the many.

4. Conclusion

As the comment summary illustrates, there was no consensus among the

commenters on the choice for new labor market areas. Many individual hospitals that commented expressed dissatisfaction with all of the proposals. However, several State hospital association representatives commented that while the M25/50 labor market classification option and the simple and refined reclassification options were not ready for implementation, they did merit further study. Based on the commenters' suggestions that we convene a group of hospital association representatives to discuss these issues, in February we sent letters to association representatives that participated in our November 1993 meeting on labor market issues in which we solicited ideas for additional types of labor market research that HCFA should conduct. None of the individuals we contacted suggested any new avenues for research. While we believe a blended wage index such as the M25 or M50 option may have merit, we are not planning to propose it at this time given the comments we received. Although we believe that the response to the various proposals we have made in the last couple of years demonstrates that there is no clear "best" labor market area option to pursue, we are willing to continue research on possible labor market refinements. However, we believe we have exhausted most available avenues for new research.

IV. Other Decisions and Proposed Changes to the Prospective Payment System for Inpatient Operating Costs

A. Payment for Transfer Cases (§ 412.4)

The prospective payment system distinguishes between "discharges," situations in which a patient leaves an acute-care hospital after receiving complete treatment, and "transfers," situations in which the patient is transferred to another acute-care hospital for related care. If a full DRG payment were made to each hospital involved in a transfer situation irrespective of the length of time the patient spent in the "sending" hospital before transfer, this would create a strong incentive to increase transfers, thereby unnecessarily endangering patients' health. Therefore, the regulations at § 412.4(d) provide that, in a transfer situation, full payment is made to the final discharging hospital and each transferring hospital is paid a per diem rate for each day of the stay, not to exceed the full DRG payment that would have been made if the patient had been discharged without being transferred.

Currently, the per diem rate paid to a transferring hospital is determined by dividing the full DRG payment that would have been paid in a nontransfer situation by the geometric mean length-of-stay for the DRG into which the case falls. Transferring hospitals are also eligible for outlier payments for cases that meet the cost outlier criteria established for all cases (nontransfer and transfer cases alike) classified to the DRG. They are not, however, eligible for day outlier payments. Two exceptions to the transfer payment policy are transfer cases classified into DRG 385 (Neonates, Died or Transferred to Another Acute Care Facility) or DRG 456 (Burns, Transferred to Another Acute Care Facility), which are not paid on a per diem basis but instead receive the full DRG payment.

In the May 27, 1994 proposed rule, we proposed to revise our payment methodology for transfer cases. Under the proposal, for the first day of a transfer, the per diem amount would be doubled, while a flat per diem amount would be paid for each succeeding day, up to the full DRG payment (59 FR 27734). We also proposed at that time to change our definition of a transfer case to include cases transferred from an acute-care setting paid under the prospective payment system to a hospital or unit excluded from the prospective payment system. When we published the September 1, 1994 final rule with comment period, we withdrew these proposals for FY 1995 (59 FR 45362) based on negative comments and further analysis. In that final rule, however, we stated our intention to continue to evaluate the appropriateness of our transfer policy.

For FY 1996, we are again proposing to adopt a graduated per diem payment methodology for transfer cases. Again, under this proposed methodology, we would pay double the per diem amount for the first day and the per diem amount for subsequent days. We are not proposing to revise our definition of transfers at this time. However, we note that we are concerned about an accelerating trend toward earlier discharges to post-acute settings. We are, therefore, soliciting public comments regarding this trend and the implications this has for the design of our payment systems. In its March 1, 1995 report. ProPAC supported our proposed payment methodology (Recommendation 11) and expressed its concern "about the continuity of care across treatment settings." The Commission also indicated its willingness to work with the Secretary to explore this issue. The following discussion describes our proposed change to the transfer payment methodology and some of the issues identified by our further analysis of transfer cases.

1. Payment for Transfer Cases

As part of a study of Medicare transfer cases funded by HCFA ("Transfers of Medicare Hospital Patients under the Prospective Payment System", PM–191–HCFA, January 1994), RAND found that among cases transferred before reaching the geometric mean length-of-stay, 1-day stays cost 2.096 times the per diem payment amount for cases in nonsurgical DRGs and 2.576 times the per diem for surgical DRGs (based on FY 1991 data). Among nonsurgical transfer cases, the costs of 2-day stays were about 1.215 times the per diem payment amount, and cases transferred after 2 days cost about 10 percent more than the applicable per diem amount. Among surgical cases, the costs of stays of 2 or more days were actually about 7 percent below the applicable per diem amount.

In order to pay hospitals more appropriately for the treatment they furnish to patients before transfer, we are proposing to revise § 412.4(d)(1) to pay transfers twice the per diem amount for the first day of any transfer stay plus the per diem amount for each of the remaining days before transfer, up to the full DRG amount. (Our concerns about basing the gradation of the per diem scale on the actual coefficients as estimated by RAND were described in last year's proposed and final rules, as referenced above.) We are proposing that this change be applied uniformly for both medical and surgical transfer cases; although surgical transfer cases appear to be more costly on average for the first day, they are relatively less costly for the second day and beyond.

If the patient is transferred again before final discharge, then, under the change we are proposing, all sending hospitals involved would be paid using the graduated per diem methodology rather than the flat per diem rate they currently receive. For example, a case transferred from a community hospital to a tertiary care hospital for a procedure that is not performed at the community hospital, may subsequently be transferred back to the community hospital, which ultimately discharges the patient home. In such a case, the community hospital and the tertiary care hospital would be paid using the transfer payment methodology for the first two phases of the hospitalization, and the community hospital would also receive a DRG amount for the final phase when it discharges the patient. This is our current policy, as well. Each phase of the hospitalization is assigned a DRG based on the diagnosis and procedures applicable to that particular phase; therefore, a different DRG could be assigned to each phase.

Transfer cases would continue to be eligible for additional payments as cost outliers. In the September 1, 1993 final rule, we set forth revised qualifying criteria for transfer cases to be eligible for cost outlier payments (58 FR 46305). Before that change, transfer cases were required to meet the same criteria to qualify for cost outliers as were discharges. The revised policy adjusts the outlier threshold for transfer cases to reflect the fact that transfer cases were receiving a reduced payment amount under the per diem methodology. Last year, when we revised the cost outlier qualifying criteria so that it was based on a fixed loss threshold, the qualifying criteria for transfers continued to reflect the fact that their payment amounts are reduced relative to discharges. Specifically, the cost outlier threshold for transfer cases is equal to the fixed loss amount (for FY 1995, the prospective payment rate for the DRG plus $20,500), divided by the geometric mean for the DRG, multiplied by the length of stay before transfer. Although we did not state this explicitly in the September 1, 1994 final rule, it is the policy we have employed, and intend to continue to employ, since the fixed loss threshold was implemented October 1, 1994.

Using the proposed graduated per diem methodology, RAND estimated the payment-to-cost ratio of transfer cases that were transferred before reaching the geometric mean length of stay would be 0.9321. While this is somewhat less than the payment-to-cost ratio for nontransfer cases (0.9645), it represented a significant improvement over the current ratio for transfer cases (0.7224). Using more recent data (FY 1993 MedPAR) and payment policies (FY 1995), we estimated the improvement in the payment-to-cost ratio for transfer cases to be from 0.7548 under the current flat per diem policy to 0.9701 under the proposed graduated per diem policy.

Section 109 of the Social Security Act Amendments of 1994 (Public Law 103–432) authorized the Secretary to make adjustments to the prospective payment system standardized amounts so that adjustments to the payment policy for transfer cases do not affect aggregate payments. In light of this authority, we believe the benefits of the graduated per diem methodology now outweigh the concerns that we expressed in the September 1, 1994 final rule. Our methodology for applying this adjustment is described in section II of the Addendum to this proposed rule.

Finally, we are also proposing to revise the DRG recalibration methodology so that transfer cases are treated as a proportion of a full case based on the length of stay (as discussed above in section II.C of this preamble). Specifically, we are proposing to weight transfer cases as less than a full discharge based on the proportion of the number of days the patient was hospitalized before transfer. This would have the effect of increasing the relative weights of the DRGs with a high number of short stay transfer cases.

2. Definition of a Transfer Case

Under current policy, cases that are transferred from an acute-care hospital paid under the prospective payment system to another type of provider or unit are considered to be discharges (as opposed to transfers) from the acute-care hospital. As a discharge, payment for the case is the full DRG amount.

As noted above, we are concerned that the current trend of declining average lengths of stay as hospitals transfer Medicare patients into alternative health care settings (other than acute care) in less time may result in a misalignment of payments and costs under our existing payment systems. In particular, we are concerned that hospitals paid under the prospective payment system may be shifting costs (for which they are compensated through the DRG payments) to alternative settings, which are in turn paid on a cost basis.

In the September 1, 1994 final rule, we explained our rationale for proposing to consider patients transferred to excluded hospitals or units as transfers rather than discharges. Briefly, our proposal was "based upon the premise that an increasing number of patients are being transferred to excluded hospitals or units and that these patients are still in the acute care phase of treatment when they are transferred." (See 59 FR 45364). We also explained our reason for continuing to consider patients going to a skilled nursing facility (SNF) as discharges. In that regard, we stated that "(w)e did not propose to consider discharges to SNFs as transfers because we do not consider SNFs to be hospital settings; thus, there is generally little overlap with acute care hospitals in the services provided." Based upon further analysis of patient discharge trends and research on the type and outcomes of care provided in SNFs, as well as anecdotal evidence drawn from the health care industry, we no longer believe there is a clear distinction between the type of care provided in SNFs and the type of care provided in hospitals or units excluded from the prospective payment system, such as rehabilitation facilities and long-term care hospitals.

Therefore, we considered proposing to expand our definition of transfers to include not only cases going from one hospital paid under the prospective payment system to another but also cases transferred to excluded hospitals and units as well as SNFs. However, as discussed below, our analysis has identified problems that need to be addressed. Nevertheless, once we are convinced these problems can be effectively handled, we intend to proceed with implementing policy changes designed to remedy this issue.

First, our analysis (as well as anecdotal evidence) indicates that the settings where acute care is now being delivered are rapidly expanding and evolving. To the extent that payment is affected by where a patient goes after an acute hospitalization, it is critical to understand the clinical capabilities of different types of settings, so that the incentives treated by the payment system do not unduly influence the choice of where to send a patient for post-acute care. That is, all like provider settings should be treated equally in terms of payment incentives. Currently, the settings that are considered as alternatives to acute care are expanding rapidly, and we want to be sure that we do not create unforeseen financial incentives toward one alternative over another by any redefinition of transfers.

In addition, as discussed in last year's final rule, hip replacement cases (which, as a group, constitute one of the largest sources of Medicare cases going from acute to post-acute settings) would be systematically underpaid under either the current or the proposed per diem methodology. This is because the cost of the surgery including the prosthetic device, which is incurred in the first day or two of the stay, constitutes a large percentage of the total cost of the stay. A graduated per diem would have to be skewed greatly toward the first day to approximate the daily cost distribution.

We are soliciting public comment with regard to these issues. Specifically, we are interested in suggestions on how best to adapt our payment methodologies for hospitals and units (both acute care paid under the prospective payment system and those excluded from this system), SNFs, and home health agencies in response to the evolving integrated delivery systems. We are particularly interested in comments and suggestions on how to design a comprehensive payment system that better matches payments with the costs providers actually incur

in furnishing care (that is, reducing hospital payments when a significant phase of a patient's acute episode is treated in other than an acute hospital inpatient setting). A major issue in developing such an integrated payment system is to neutralize the incentives that arise in terms of where patients are treated. For example, hospitals should continue to be adequately compensated for acute inpatient hospitalization where appropriate, so that there will not be an adverse incentive to move patients prematurely to alternative settings.

We will continue to analyze and explore various solutions to this issue, including any that are provided by commenters.

B. Rural Referral Centers (§ 412.96)

Under the authority of section 1886(d)(5)(C)(i) of the Act, § 412.96 sets forth the criteria a hospital must meet in order to receive special treatment under the prospective payment system as a rural referral center. For discharges occurring before October 1, 1994, rural referral centers received the benefit of payment based on the other urban payment rate rather than the rural payment rate. As of that date, the other urban and rural payment rates are the same. However, rural referral centers continue to receive special treatment under both the disproportionate share hospital payment adjustment and the criteria for geographic reclassification.

One of the criteria under which a rural hospital may qualify as a referral center is to have 275 or more beds available for use. A rural hospital that does not meet the bed size criterion can qualify as a rural referral center if the hospital meets two mandatory criteria (number of discharges and case-mix index) and at least one of three optional criteria (medical staff, source of inpatients, or volume of referrals). With respect to the two mandatory criteria, a hospital may be classified as a rural referral center if its—

- Case-mix index is at least equal to the lower of the median case-mix index for urban hospitals in its census region, excluding hospitals with approved teaching programs, or the median case-mix index for all urban hospitals nationally; and
- Number of discharges is at least 5,000 discharges per year or, if fewer, the median number of discharges for urban hospitals in the census region in which the hospital is located. (The number of discharges criterion for an osteopathic hospital is at least 3,000 discharges per year.)

1. Case-Mix Index

Section 412.96(c)(1) provides that HCFA will establish updated national and regional case-mix index values in each year's annual notice of prospective payment rates for purposes of determining rural referral center status. In determining the proposed national and regional case-mix index values, we would follow the same methodology we used in the November 24, 1986 final rule, as set forth in regulations at § 412.96(c)(1)(ii). Therefore, the proposed national case-mix index value includes all urban hospitals nationwide, and the proposed regional values are the median values of urban hospitals within each census region, excluding those with approved teaching programs (that is, those hospitals receiving indirect medical education payments as provided in § 412.105).

These values are based on discharges occurring during FY 1994 (October 1, 1993 through September 30, 1994) and include bills posted to HCFA's records through December 1994. Therefore, in addition to meeting other criteria, we are proposing that to qualify for initial rural referral center status or to meet the triennial review standards for cost reporting periods beginning on or after October 1, 1995, a hospital's case-mix index value for FY 1994 would have to be at least—

- 1.3165; or
- Equal to the median case-mix index value for urban hospitals (excluding hospitals with approved teaching programs as identified in § 412.105) calculated by HCFA for the census region in which the hospital is located.

The median case-mix values by region are set forth in the table below:

Region	Case-mix index value
1. New England (CT, ME, MA, NH, RI, VT)	1.2186
2. Middle Atlantic (PA, NJ, NY)	1.2090
3. South Atlantic (DE, DC, FL, GA, MD, NC, SC, VA, WV)	1.3112
4. East North Central (IL, IN, MI, OH, WI)	1.2280
5. East South Central (AL, KY, MS, TN)	1.2782
6. West North Central (IA, KS, MN, MO, NE, ND, SD)	1.1912
7. West South Central (AR, LA, OK, TX)	1.2995
8. Mountain (AZ, CO, ID, MT, NV, NM, UT, WY)	1.3606
9. Pacific (AK, CA, HI, OR, WA)	1.3300

The above numbers will be revised in the final rule to the extent required to reflect the updated MedPAR file, which will contain data from additional bills received for discharges through September 30, 1994.

For the benefit of hospitals seeking to qualify as referral centers or those wishing to know how their case-mix index value compares to the criteria, we are publishing each hospital's FY 1994 case-mix index value in Table 3C in section V of the addendum to this proposed rule. In keeping with our policy on discharges, these case-mix index values are computed based on all Medicare patient discharges subject to DRG-based payment.

2. Discharges

Section 412.96(c)(2)(i) provides that HCFA will set forth the national and regional numbers of discharges in each year's annual notice of prospective payment rates for purposes of determining referral center status. As specified in section 1886(d)(5)(C)(ii) of the Act, the national standard is set at 5,000 discharges. However, we are proposing to update the regional standards. The proposed regional standards are based on discharges for urban hospitals' cost reporting periods that began during FY 1993 (that is, October 1, 1992 through September 30, 1993). That is the latest year for which we have complete discharge data available.

Therefore, in addition to meeting other criteria, we are proposing that to qualify for initial rural referral center status or to meet the triennial review standards for cost reporting periods beginning on or after October 1, 1995, the number of discharges a hospital must have for its cost reporting period that began during FY 1994 would have to be at least—

- 5,000; or
- Equal to the median number of discharges for urban hospitals in the census region in which the hospital is located, as indicated in the table below.

Region	Number of discharges
1. New England (CT, ME, MA, NH, RI, VT)	5808
2. Middle Atlantic (PA, NJ, NY)	8611
3. South Atlantic (DE, DC, FL, GA, MD, NC, SC, VA, WV)	7320
4. East North Central (IL, IN, MI, OH, WI)	6959
5. East South Central (AL, KY, MS, TN)	5520
6. West North Central (IA, KS, MN, MO, NE, ND, SD)	5001
7. West South Central (AR, LA, OK, TX)	4473
8. Mountain (AZ, CO, ID, MT, NV, NM, UT, WY)	8421
9. Pacific (AK, CA, HI, OR, WA)	5594

We reiterate that, to qualify for rural referral center status for cost reporting periods beginning on or after October 1, 1995, an osteopathic hospital's number of discharges for its cost reporting period that began during FY 1994 would have to be at least 3,000.

3. Retention of Referral Center Status

Section 412.96(f) states that each hospital receiving the referral center adjustment is reviewed every 3 years to determine if the hospital continues to meet the criteria for referral center status. To retain status as a referral center, a hospital must meet the criteria for classification as a referral center specified in § 412.96(b)(1) or (b)(2) or (c) for 2 of the last 3 years, or for the current year. A hospital may meet any one of the three sets of criteria for individual years during the 3-year period or the current year. For example, a hospital may meet the two mandatory requirements in § 412.96(c)(1) (case-mix index) and (c)(2) (number of discharges) and the optional criterion in paragraph (c)(3) (medical staff) during the first year. During the second or third year, the hospital may meet the criteria under § 412.96(b)(1) (rural location and appropriate bed size).

A hospital must meet all of the criteria within any one of these three sections of the regulations in order to meet the retention requirement for a given year. That is, it will have to meet all of the criteria of § 412.96(b)(1) or § 412.96(b)(2) or § 412.96(c). For example, if a hospital meets the case-mix index standards in § 412.96(c)(1) in years 1 and 3 and the number of discharge standards in § 412.96(c)(2) in years 2 and 3, it will not meet the retention criteria. All of the standards would have to be met in the same year.

In accordance with § 412.96(f)(2), the review process is limited to the hospital's compliance during the last 3 years. Thus, if a hospital meets the criteria in effect for at least 2 of the last 3 years or if it meets the criteria in effect for the current year (that is, the criteria for FY 1996 outlined above in this section of the preamble), it will retain its status for another 3 years. We have constructed the following chart and example to aid hospitals that qualify as referral centers under the criteria in § 412.96(c) in projecting whether they will retain their status as a referral center.

Under § 412.96(f), to qualify for a 3-year extension effective with cost reporting periods beginning in FY 1996, a hospital must meet the criteria in § 412.96(c) for FY 1996 or it must meet the criteria for 2 of the last 3 years as follows:

For the cost reporting period beginning during FY	Use hospital's case-mix index for FY	Use the discharges for the hospital's cost reporting period beginning during FY	Use numerical standards as published in the Federal Register on
1995	1993	1993	Sept. 1, 1994.
1994	1992	1992	Sept. 1, 1993.
1993	1991	1991	Sept. 1, 1992.

Example: A hospital with a cost reporting period beginning July 1 qualified as a referral center effective July 1, 1993. The hospital has fewer than 275 beds. Its 3-year status as a referral center is protected through June 30, 1996 (the end of its cost reporting period beginning July 1, 1995). To determine if the hospital should retain its status as a referral center for an additional 3-year period, we will review its compliance with the applicable criteria for its cost reporting periods beginning July 1, 1993, July 1, 1994, and July 1, 1995. The hospital must meet the criteria in effect either for its cost reporting period beginning July 1, 1996, or for two out of the three past periods. For example, to be found to have met the criteria at § 412.96(c) for its cost reporting period beginning July 1, 1994, the hospital's case-mix index value during FY 1992 must have equaled or exceeded the lower of the national or the appropriate regional standard as published in the September 1, 1993 final rule with comment period. The hospital's total number of discharges during its cost reporting year beginning July 1, 1992, must have equaled or exceeded 5,000 or the regional standard as published in the September 1, 1993 final rule with comment period.

For those hospitals that seek to retain referral center status by meeting the criteria of § 412.96(b)(1) (i) and (ii) (that is, rural location and at least 275 beds), we will look at the number of beds shown for indirect medical education purposes (as defined at § 412.105(b)) on the hospital's cost report for the appropriate year. We will consider only full cost reporting periods when determining a hospital's status under § 412.96(b)(1)(ii). This definition varies from the number of beds criterion used to determine a hospital's initial status as a referral center because we believe it is important for a hospital to demonstrate that it has maintained at least 275 beds throughout its entire cost reporting period, not just for a particular portion of the year.

C. Determination of Number of Beds Used in Calculating the Indirect Medical Education Adjustment (§ 412.105)

In the September 1, 1994 final rule (59 FR 45373), in an effort to clarify our policy, we amended the regulations at § 412.105(b), which describe how to determine the number of beds in a hospital for purposes of the indirect medical education adjustment. At that time, we added language to the regulations that specifically excludes as a bed "nursery" beds assigned to newborns "that are not in intensive care areas." This change was supposed to have left little doubt that, with regard to infants, only beds in a nursery used for newborns (see section 2815 of the Provider Reimbursement Manual-Part 2) are excluded from the count. As we stated in the preamble to the May 27, 1994 proposed rule (59 FR 27741), we made this revision "to exclude specifically only beds assigned to newborns *in the nursery*" (emphasis added). Furthermore, when we published the final rule, we added the reference to nursery beds directly into the text of § 412.105(b) "(t)o prevent any future confusion about the term "newborn" (59 FR 45374).

Although we received no public comments as to whether beds occupied by sick infants in areas other than a neonatal intensive care area or a nursery could be counted, we continue to receive questions on this issue. Therefore, we are once again revising § 412.105(b) to clarify our bed counting policy. This year, rather than specifically identifying intensive care beds occupied by infants as eligible to be counted, we are deleting that phrase and inserting the phrase "beds in the healthy newborn nursery." Thus, our policy is and has been that only beds in a healthy, or regular, baby nursery are excluded from the count. All other beds available for occupation by a newborn are to be counted.

D. Disproportionate Share Adjustment (§ 412.106)

Section 1886(d)(5)(F) of the Act provides for additional payments for hospitals that serve a disproportionate share of low income patients. A hospital's disproportionate share adjustment is determined by calculating two patient percentages (Medicare Part A/SSI covered days to total Medicare covered days and Medicaid but not Medicare Part A covered days to total inpatient hospital days), adding them together, and comparing that total percentage to the hospital's qualifying criteria. These calculations are done by HCFA and the fiscal intermediary on a Federal fiscal year basis. However, § 412.106(b)(3) states that if a hospital prefers that HCFA use its cost reporting period instead of the Federal fiscal year, it must furnish to its intermediary, in machine-readable format as prescribed by HCFA, data on its Medicare Part A

patients for its cost reporting period. These data take the place of the Federal fiscal year MedPAR file data in obtaining the Medicare Part A/SSI percentage. However, we match the hospital's data to the HCFA MedPAR data to ensure that the hospital is reporting actual Medicare Part A patient days. In addition, we have required that a hospital accept the recalculated percentage, even if it is lower than the Federal fiscal year percentage.

In the last few years, this process has proven to be unsatisfactory for several reasons. First, it is an administrative burden for the hospital to prepare a tape that includes all its Medicare Part A inpatient days. In addition, the hospital's tape data have seldom exactly matched the MedPAR data. In that case, we can use only the data that match. Finally, and probably often due to this second problem, the resulting disproportionate patient percentages are invariably lower than the original HCFA determined percentage. Therefore, we are proposing to alleviate these problems by continuing to provide hospitals an alternative to base their percentage on their cost reporting year, but relieving them of the tape requirement.

We propose that, if a hospital wishes a recalculation based on its cost reporting period, the hospital would notify HCFA in writing of its request that the Medicare Part A/SSI percentage be calculated based on its own cost reporting year. The hospital would be required to provide HCFA with its name, provider number, and cost report period end date. HCFA, in turn, would use all MedPAR records for that hospital from the requested time period, as opposed to only those records that matched between the MedPAR file and the hospital's tape data. This should provide hospitals with a better opportunity to possibly increase their Medicare Part A/SSI percentages.

In addition, we propose that we would process these requests on a quarterly basis. Processing these individual requests for recalculation on a flow basis has become an administrative burden on the available HCFA computer processing resources. Therefore, we believe it is necessary to batch these requests and run the MedPAR data on a set schedule. This will be much more efficient and predictable.

Therefore, we are proposing to revise § 412.106(b)(3) to provide that HCFA will accept a hospital's written request, transmitted through its fiscal intermediary, for a recalculation of its Medicare Part A/SSI percentage based on its cost reporting period. The written request would include the hospital's name, provider number, and cost report period end date. We would perform a recalculation only once per hospital per cost report period, and the resulting percentage becomes the hospital's official Medicare Part A/SSI percentage for that period.

E. Essential Access Community Hospitals (EACHs) and Rural Primary Care Hospitals (RPCHs) (§§ 412.109, 413.70, 424.15, 485.603, 485.606, 485.614, 485.620, and 485.639)

On May 26, 1993, we published a final rule to implement the EACH program (58 FR 30630). The rule set forth the requirements for designating certain hospitals as EACHs or RPCHs, the conditions that an RPCH must meet to participate in Medicare, and the rules for Medicare payment for services furnished by EACHs and RPCHs. The final rule implemented section 1820 of the Act, as added by sections 6003(g) and 6116(b)(2) of Public Law 101–239 and revised by section 4008(d) of Public Law 101–508. The amendments were intended to promote regionalization of rural health services in grant States, improve access to hospital and other health services for rural residents, and enhance the provision of emergency and other transportation services related to health care.

Section 102 of the Social Security Act Amendments of 1994, Public Law 103–432 (SSAA '94), made significant changes in the provisions of the Medicare law governing the EACH/RPCH program. To implement these changes, we propose to revise the regulations as follows:

1. Designation of Urban Hospitals as EACHs (§ 412.109)

Section 1820(e) of the Act previously provided that only rural facilities could be designated as EACHs, and all EACHs were to be paid as sole community hospitals (SCHs). Section 102(b)(1) of SSAA '94 revised section 1820(e) of the Act to allow hospitals located in urban areas to be designated as EACHs if they have entered into network agreements with RPCHs and meet other applicable requirements. As EACHs, these urban facilities may qualify for EACH grants. However, they are not eligible for the special payment methodology afforded rural EACHs. For payment purposes, rural EACHs are treated as sole community hospitals (SCH). Section 1886(d)(5)(D) of the Act was amended to clarify that only hospitals designated as EACHs *and* located in rural areas are treated as SCHs for payment purposes. Urban EACHs will therefore continue to be paid at the applicable urban rates.

To implement this provision, we propose to revise § 412.109 to remove the current rural location requirement for EACH designation, and to provide that payment as an SCH is limited to EACHs in rural areas. As explained below, we also propose to revise that section to allow a State that has received an EACH grant to designate an otherwise qualified hospital in an adjoining State as an EACH.

In conjunction with this change, we are making a technical correction to a reference in § 485.603.

2. Designation of EACHs and RPCHs in States Adjoining Grant States (§§ 412.109 and 485.606)

Section 1820(c) of the Act previously provided that hospitals could be designated as EACHs only if they were located in States receiving EACH grants. Section 1820(i)(2) of the Act did authorize designation of RPCHs outside the grant States; however, the number of facilities designated under this authority was limited to 15 nationally, and only the Secretary, not individual grant States, could make the designation. Section 1820(i)(2) of the Act further requires the Secretary, in making the special designations, to give preference to facilities that have entered into network agreements with other facilities in grant States, thus indicating a strong preference for designation of RPCHs in States adjoining grant States. Section 102(b)(2) of SSAA '94 amended section 1820 of the Act to authorize the individual grant States to make designations of both EACHs and RPCHs in adjoining States, if the facilities so designated are otherwise qualified and have entered into network agreements with EACHs or RPCHs in the grant State. The legislation does not limit the number of such designations. To implement this change, we propose to revise §§ 412.109 and 485.606 to permit these new designations of EACHs and RPCHs by adjacent States that have received grants. We propose that hospitals designated in this way will be required to meet other applicable requirements, and we plan to make such designations subject to review and approval by the HCFA regional offices on the same basis as designations of facilities in the grant State. That is, the designation will not result in recognition of a facility as an EACH or RPCH for Medicare or Medicaid purposes until HCFA has determined that the requirements are met.

3. Designation of EACHs and RPCHs by States That Have Received Grants (§§ 412.109 and 485.606)

Section 1820(a)(1) of the Act establishes a program under which the Secretary makes grants available to not more than seven States to carry out certain activities, including designating hospitals or facilities in the State as either an EACH or an RPCH. Because there is no assurance that funding of this grant program will continue, some or all of the seven States may not receive grants under section 1820(a)(1) of the Act in the future. Since States may not continue to "receive" grants, we propose to revise the regulations pertaining to EACHs and RPCHs by replacing references to "States receiving grants" with references to "States that have received grants" or "a State that has received a grant," as appropriate. Specifically, we propose to revise the designation of EACHs and RPCHs under current § 412.109(b) and (c), and § 485.606, respectively, to include these revised references. Should the grant program expire, these proposed revisions would prevent any uncertainty that may arise as to the status of designations made by States that have received grants.

4. Change in Payment for Outpatient RPCH Services (§ 413.70)

Previously, section 1834(g) of the Act provided that payments to RPCHs for outpatient services under the cost-based facility fee plus professional charges method were to be determined under section 1833(a)(2)(B) of the Act. That section states that payment is to be made at the lesser of the reasonable cost of the services or the customary charges for the services. (This is commonly referred to as "LCC," that is, the lesser of costs or charges.) Current regulations at § 413.70(b)(2)(i) require that payment to RPCHs under the cost-based facility fee plus professional services be made in accordance with the LCC principle. This principle is set forth under § 413.13.

Section 102(e)(2) of SSAA '94 amended section 1834(g)(1) of the Act to provide that payment for outpatient RPCH services under the cost-based facility fee plus professional charges method are to be determined without regard to the amount of the customary charge. To implement this change, we propose to amend § 413.70(b)(2)(i) to provide that for payment for RPCH outpatient services made under the cost-based RPCH payment plus professional services method, the principle of the lesser of costs or charges does not apply.

5. Content of Required Physician Certification (§ 424.15)

Section 1814(a)(8) of the Act previously provided that Medicare Part A could pay for inpatient RPCH services only if a physician certified that the services were required to be furnished immediately on a temporary, inpatient basis. Section 102(a)(3) of SSAA '94 deleted this requirement and provided instead that Medicare Part A will pay for the inpatient RPCH services only if a physician certifies that the individual may reasonably be expected to be discharged or transferred to a hospital within 72 hours after admission to the RPCH. We are proposing to revise § 424.15 to reflect the new requirement.

6. Length-of-Stay Requirement for RPCHs (§§ 485.614 and 485.620)

Section 1820(f)(1)(F) of the Act previously allowed all RPCHs to keep inpatients no longer than 72 hours before discharging them or transferring them to a full-service hospital, unless discharge or transfer was precluded by inclement weather or other emergency conditions. Section 102(a)(1) of SSAA '94 removed the per-stay limitation and substituted for it a provision under which the Secretary may terminate the designation of a facility as an RPCH if the Secretary finds that the average length of stay in the preceding year exceeded 72 hours. The provision further states that periods of stay in excess of 72 hours that occurred because discharge or transfer were precluded by inclement weather or other emergency conditions are not to be taken into account in computing a facility's average length of stay for this purpose.

To implement this change, we propose to revise §§ 485.614 and 485.620 to delete the current per-stay limitation, and to replace it with a requirement for a facility-wide average length of stay that does not exceed 72 hours, excluding parts of stays in excess of 72 hours that occurred because of inclement weather or other emergencies. In the case of a currently participating RPCH, termination of the RPCH designation can be made effective only by ending Medicare participation. Therefore, we propose to revise § 489.53 to authorize termination of the provider agreement of an RPCH if the Secretary finds that it does not maintain the required average length of stay.

7. Restriction on Scope of Surgical Services to RPCH Inpatients (§ 485.614 and new § 485.639)

Before the Social Security Act Amendments of 1994 were enacted, there were no explicit restrictions on the type or extent of surgical activity that could be performed in a RPCH. These facilities and their practitioners were, however, required to conform to applicable State licensure and scope of practice laws. Section 102(a)(1) of SSAA '94 added an explicit restriction on surgical activity by RPCHs. Specifically, a State may not designate a facility as an RPCH if the facility provides inpatient hospital services consisting of surgery or any other service requiring the use of general anesthesia (other than surgical procedures specified by the Secretary under section 1833(i)(1)(A) of the Act), unless the attending physician certifies that the risk associated with transferring the patient to a hospital for such services outweighs the benefits of transferring the patient to a hospital for such services. The procedures specified by the Secretary under section 1833(i)(1)(A) of the Act are those that are performed on an inpatient basis in a hospital but which also can be performed safely on an ambulatory basis in an ambulatory surgical center (ASC) or in a hospital outpatient department. Implementing regulations for section 1833(i)(1)(A) of the Act are set forth at § 416.65. HCFA also publishes a list of covered surgical procedures in Addendum A to Part 3 of the *Medicare Carriers Manual*.

To implement this change, we propose to revise § 485.614 to reflect the new statutory provision. We note that the law still does not limit the scope of surgical procedures that can be performed for RPCH outpatients, and that both hospitals and ASCs, the other two facilities in which ASC procedures can be performed, are subject to specific health and safety rules on administration of anesthesia and performance of the surgery. To ensure adequate health and safety protection for RPCH patients and to apply Medicare standards uniformly to ASC-type procedures, we are further proposing to add, at § 485.639, a new RPCH condition of participation for surgical services. We note that the new condition would apply the same rules in the RPCH as now apply in an ASC, and that it would apply to both inpatient and outpatient surgery. Given the similarities between RPCHs and ASCs and the fact that identical procedures can be performed in each, we believe uniform health and safety rules are needed.

F. Rebasing the Hospital Market Basket

Effective for cost reporting periods beginning on or after July 1, 1979, we developed and adopted a hospital input price index (that is, the hospital "market basket") for operating costs. Although

"market basket" technically describes the mix of goods and services used to produce hospital care, this term is also commonly used to denote the input price index, which includes both the market basket and the price proxy series that are used to measure price changes over time. Accordingly, the term "market basket" as used in this document refers to the hospital input price index.

The percentage change in the market basket reflects the average change in the price of goods and services purchased by hospitals to furnish inpatient care. We first used the market basket to adjust hospital cost limits by an amount that reflected the average increase in the prices of goods and services used to furnish inpatient care. This approach linked the increase in the cost limits to the efficient utilization of resources.

With the inception of the prospective payment system on October 1, 1983, we continued to use the hospital market basket to update each hospital's 1981 inpatient operating cost per discharge used in establishing the FY 1984 standardized payment amounts. In addition, the projected change in the hospital market basket has been the integral component of the update factor by which the prospective payment rates and the rate-of-increase limits applicable to hospitals and hospital units excluded from the prospective payment system are updated every year.

The hospital market basket is a fixed-weight price index constructed in two steps. First, a base period is selected and the proportion of total expenditures accounted for by designated spending categories is calculated. These proportions are called cost or expenditure weights. Second, a rate of price increase for each spending category is multiplied by the cost weight for the category. The sum of these products for all cost categories yields the percentage change in the market basket, an estimate of price changes for a fixed quantity of purchased goods and services.

The market basket is described as a fixed-weight index because it answers the question of how much more or less it would cost, at a later time, to purchase the same mix of goods and services that was purchased in the base period. The effects on total expenditures resulting from changes in the quantity or mix of goods and services purchased subsequent to the base period are not considered. For example, shifts from an inpatient to an outpatient setting for the furnishing of a certain type of care might affect the volume of inpatient goods and services purchased by the hospital but would not be factored into the percentage change in the hospital market basket.

We believe that it is desirable to rebase the market basket periodically, so the cost weights reflect changes in the mix of goods and services (hospital inputs) that hospitals purchase in furnishing inpatient care. We last rebased the hospital market basket cost weights effective for FY 1991. That market basket reflected base-year data from 1987 in the construction of the cost weights. At that time, we also established a separate market basket for hospitals and hospital units excluded from the prospective payment system. Excluded hospitals and units tend to have different case mixes, practice patterns, and composition of inputs than hospitals subject to the prospective payment system.

When prospective payment for capital-related costs was introduced effective October 1, 1991, a separate capital-related market basket was established. In its April 1, 1985 report to the Secretary, ProPAC suggested that the market basket should be rebased at least every 5 years, or more frequently if significant changes in the weights occur. When reviewing whether to rebase the market basket, we consider the following factors:

- Evidence of cost structure changes indicating that the existing weights are no longer appropriate.
- Evidence that the continued use of existing price proxies should be reconsidered.
- The availability of new data sources to use in the rebasing.

Our practice has been to update or rebase the market basket about every 5 years. Occasionally, we have adjusted this timing to coincide with the Department of Commerce, Bureau of Economic Analysis' schedule for updating the interindustry model of the United States (U.S.) economy, which is released every 5 to 7 years. The interindustry model includes detailed cost analyses of the entire U.S. economy including the hospital industry. In developing the current market basket, effective beginning October 1, 1990, we used 1987 hospital data from the American Hospital Association's (AHA's) 1988 Annual Survey for six major expense categories (wages and salaries, employee benefits, professional fees, depreciation, interest, and a residual "all other" category). We used AHA's Hospital Administrative Services (HAS) data from 1987 to derive the weights for professional liability insurance, food, and pharmaceutical products. Weights for most of the remaining subcategories were derived from Department of Commerce, Bureau of Economic Analysis data trended forward to 1987. For a detailed description of the rebased market basket effective October 1, 1990, see the September 1, 1990 final rule (55 FR 36043).

Although it has been 5 years since the most recent rebasing of the market basket, we are announcing our intention to schedule market basket rebasing for FY 1997. We believe that a 1-year delay in the usual schedule is advantageous for the following reasons. First, it provides an opportunity to review and incorporate two important new data sources that are not available at this time. The first of these, the FY 1992 and 1993 Medicare cost report data, contain more detailed data on labor-related and capital-related costs. We are planning on replacing the AHA Annual Survey data with Medicare cost report data for the main operating and capital cost weights. In the next several months, we are planning to compare and analyze the impact of this change to ensure the validity and consistency of the rebased market baskets for operating and capital costs. We believe that using the Medicare data would be an improvement since these data are reported directly to HCFA by Medicare participating hospitals, are readily available to us in a timely manner, and would free us from relying on data that is collected by outside organizations.

The second new data source we anticipate obtaining and analyzing is the 1992 Bureau of the Census' Assets and Expenditures Survey, which will be available later this year. The Census survey will provide much more detailed operating and capital cost data, and we anticipate that we will be able to use this survey to allocate the main cost category weights into more detailed subcategory weights for both operating and capital costs.

In addition to using the market basket to update the payment rates, we also use the percentages of the labor-related items (that is, wages and salaries, employee benefits, professional fees, business services, computer and data processing, blood services, postage, and all other labor-intensive services) to determine the labor-related portion of the standardized amounts. The labor-related portion of the standardized amounts is that portion that is subject to adjustment by the hospital wage index. In order to estimate if postponement of the market basket rebasing would adversely affect hospital payments due to a potential change in the labor-related portion of the payment amounts, we conducted an analysis using the 1987 index rebasing methodology (with 1992 equivalents of the data sources used in

1987). This analysis indicates only a minor difference in the cost shares for compensation costs, which are the major portion of labor-related costs. Therefore, we believe that delaying the market basket rebasing until FY 1997 will not disadvantage hospitals and will allow us to use more detailed and current data.

V. Changes and Clarifications to the Prospective Payment System for Capital-Related Costs

A. Update Framework for Prospective Payment System for Inpatient Hospital Capital-Related Costs and Possible Revisions to the Federal Rate (§ 412.308(c)(1)(ii))

1. Introduction

For FY 1992 through FY 1995, § 412.308(c)(1) provides that the update for the capital prospective payment rates (Federal rate and hospital-specific rate) will be based on a 2-year moving average of actual increases in Medicare inpatient capital costs per discharge. The regulations provide that, beginning in FY 1996, HCFA will determine the update in the capital prospective payment rates based on an analytical framework that will take into account (1) changes in the price of capital (which we will incorporate into a capital input price index), and (2) appropriate changes in capital requirements resulting from development of new technologies and other factors (such as existing hospital capacity and utilization). The objective of the capital update framework is to determine a rate of increase in aggregate capital prospective payments that, along with a rate of increase in DRG operating payments, ensures a flow of capital and operating services for efficient and effective care for Medicare patients.

We have presented a series of preliminary models, using available data and concepts, of an update framework for the prospective payment system for hospital inpatient capital-related costs in our FY 1992, FY 1993, FY 1994, and FY 1995 rulemaking documents. We received no public comments on our most recent version of the framework, which appeared in the September 1, 1994 final rule (59 FR 45517–45524). However, the Prospective Payment Assessment Commission (ProPAC) has presented its own update framework, along with a recommendation for the FY 1996 update to the capital rates, in its March 1, 1995 report to Congress. Below we present our formal proposal for an update framework, based on our previously published versions and our continued analysis of the data and concepts incorporated into the framework. We also respond to the recommendations of ProPAC.

The proposed update framework includes a capital input price index (CIPI) that parallels the operating input price index. The CIPI measures the pure price changes associated with changes in capital-related costs (prices ×"quantities"). The composition of capital-related costs is maintained at base-year FY 1987 proportions in the CIPI. As such, the composition of capital reflects the underlying capital acquisition process. We employ FY 1987 as the base year for this-preliminary CIPI for consistency with the operating input price index. We will periodically update both the operating and the capital input price indexes to reflect the changing composition of inputs for capital and operating costs.

The proposed capital update framework, like the operating update framework, incorporates several policy adjustments in addition to the CIPI. We propose to adjust the CIPI rate of increase for case-mix index-related changes, for intensity, and for error in previous CIPI forecasts. We also discuss a possible adjustment for the efficient and cost-effective use of capital (such as movable equipment, buildings and fixed equipment) in the hospital industry.

In this proposed framework, we have attempted to maximize consistency with the current operating framework, in order to facilitate the eventual development of a single prospective payment system update framework. We have also attempted to promote the goals that motivated the adoption of the capital prospective payment system, especially the goals of promoting more effective and efficient utilization of capital resources in the hospital industry and establishing incentives for hospitals to make cost-effective decisions regarding acquisition of new capital resources.

We will consider comments and recommendations on any aspect of the proposed framework. We are interested in suggestions regarding the CIPI, the proposed policy adjustment factors, and alternative methodologies for deriving the factors. We are especially interested in comments on a possible efficiency adjustment. We welcome information concerning empirical studies and sources of data that could be useful in the framework. To assure consideration before publication of the final rule, comments should be sent by August 1, 1995, to the address listed at the beginning of this proposed rule.

2. ProPAC Recommendation for Updating the Capital Prospective Payment System Federal Rate

In its March 1, 1995 report to Congress, ProPAC recommends the use of an update framework that includes a capital market basket component (Recommendation 2). The ProPAC market basket measures 1-year changes in the purchase prices of a fixed basket of capital goods purchased by hospitals. The ProPAC framework also includes several policy adjustment factors. A forecast error correction factor adjusts payment rates so that the effects of past errors are not perpetuated. A financing policy adjustment accounts for the effects of substantial deviations from long-term trends in interest rates on hospital capital costs. The ProPAC capital update framework also includes adjustments for scientific and technological advances, productivity, and case-mix change similar to those employed in the ProPAC operating update framework. ProPAC also recommends the adoption of a single update framework for adjusting PPS operating and capital rates when the transition to full Federal rate capital payments is complete (Recommendation 3).

Our long-term goal is to develop a single prospective payment system update framework. Once we have completed work on an analytical framework for the capital prospective payment update in this year's final rule, we will begin to study development of a unified framework. In the meantime, we will continue to maintain as much consistency as possible with the current operating framework in order to facilitate the eventual development of a unified framework.

The ProPAC and HCFA update frameworks share certain goals. The goal of each framework is to provide a rate of increase in capital prospective payments that, along with the rate of increase in operating prospective payments, will ensure a flow of capital and operating resources that will allow for efficient and effective care for Medicare patients. Both frameworks are designed to provide increases for the purchase of quality-enhancing new technologies. Both frameworks provide for case-mix adjustments to remove the effects of upcoding and to adjust for changes in within-DRG severity. Both frameworks also seek to encourage efficient capital spending behavior. Although the frameworks adopt different methodologies for promoting some of these goals, they are compatible to the degree that they share these goals.

The major difference between the ProPAC and HCFA frameworks concerns the purpose and structure of the capital input price index, or market basket. ProPAC's framework is based on the premise that capital prospective payments are only for future capital purchases and should not reflect the vintage nature of capital. Thus, ProPAC's proposed capital market basket reflects the projected increase in the purchase price of capital goods from one year to the next. HCFA's framework is based on the premise that capital prospective payments are for hospitals' future capital-related expenses, which include the expenses related to future capital-related purchases. That is, HCFA's framework addresses the input price component of expenses associated with hospitals' given stock of capital in a particular fiscal year; ProPAC's framework ignores hospitals' present stock of capital and focuses on changes in input prices associated with capital purchases that hospitals will make in a particular fiscal year.

The HCFA CIPI projects the price changes associated with the accounting or vintage costs of capital assets. The HCFA CIPI is based on a definition of capital-related expenses and associated capital-related prices derived from accounting practice (including required HCFA PPS accounting practice) and consistent with economic theory. HCFA believes that the concept of capital-related prices incorporated into the HCFA CIPI is more appropriate than the concept incorporated into the ProPAC market basket because the consumption of capital is not just what is purchased in one year. The consumption of capital has a time-dimension: Capital is not used up immediately but rather over time. This feature of capital is reflected in the accounting definition of capital cost, and it should be reflected as well in the concept of capital prices in the CIPI. The transition from reasonable cost reimbursement to payment under a prospective system does not cancel the applicability of general accounting practice or the HCFA accounting practice derived from it. Thus the concepts of capital-related expenses and capital-related prices continue to be appropriate. Furthermore, the base capital rates were computed on the basis of accounting costs. HCFA believes that it is more consistent to update those rates on the basis of the changes in prices associated with those costs rather than on the basis of changes in current year purchase prices alone.

The HCFA CIPI captures the vintage feature of capital price by using a vintage average approach, that is, weighted averages of purchase prices and interest rates up to and including the current year. The use of vintage averages as the measure of price changes tracks the flow of consumption of capital. The vintage approach better reflects what hospital cash-flow needs are as new assets are brought on, since hospitals still bear the costs of older assets as the new assets are brought on.

HCFA believes that the CIPI appropriately reflects the prices associated with past and current period purchases of capital. Under the HCFA approach, the price change associated with the capital costs for any year is a weighted average of the prices associated with depreciation, interest and other capital costs for that year. The prices associated with the depreciation costs during the year are an average of the pro-rated purchase prices for the assets in use during that year (25 years buildings and fixed equipment, 10 years movable equipment, including current year purchases). The prices associated with the interest costs during the year are an average of the interest rates on debt instruments in effect during that year (22 years, including debt instruments that are new in the current year). Capital-related costs for insurance have an annual time dimension, and therefore the prices associated with those expenses are current year prices only.

In addition to the disagreement with ProPAC over whether the CIPI should reflect the vintage nature of capital, HCFA and ProPAC also disagree over the treatment of interest. ProPAC proposes to account for interest rate changes through a separate financing policy adjustment which would account for significant changes in long term interest rates. This adjustment would increase the update in case of significant long-term interest rate increases, and decrease the update in cases of significant interest rate decreases. (ProPAC has not identified the threshold that constitutes "significant" interest rate changes.)

HCFA believes that there must be an interest rate component in a capital input price index. Sound accounting practice includes interest, along with depreciation, as a component of capital cost. The interest and depreciation components of capital cost track the flow of consumption of capital inputs. Price is a component factor of cost (that is, cost is the product of price and quantity), and capital cost has both depreciation and interest components. There must therefore be an interest component of capital price just as there is an interest component of capital cost.

Furthermore, ProPAC's treatment of interest assumes that only current year interest rate changes need to be measured to capture the relevant price effects of interest rate changes. HCFA believes that the price aspects of interest costs, like the price aspects of depreciation costs, have a time dimension that must be captured in the CIPI. Whether the current year interest rate reflects a net lower price of financing to the hospital depends not on comparison of the current year's interest rate to the previous year's interest rate, but on the effect of the current year interest rate on all the hospital's debt instruments. For example, assume that the previous year's interest rate was 8 percent, and the current year's interest rate is 5 percent. However, as the hospital enters new financing arrangements at the current rate of 5 percent, it retires debt instruments from 20 years earlier that bore an interest rate of 3 percent. The price effect of the current year's interest rate is thus higher, not lower, as new debt instruments at 5 percent replace old debt instruments at 3 percent. HCFA believes it to be a great advantage of its CIPI that it directly tracks price effects such as these.

Finally, the pure price aspects of interest costs (that is, the interest rate and the purchase price that is represented in the amount of loan principal) are typically beyond the control of the hospital industry. To be sure, the actual decision to purchase capital assets or acquire debt is a "quantity" decision and typically is discretionary for a particular span of time. However, in measuring the actual expected price per unit of real capital, independently of any evaluation of the propriety of any actual purchase decisions, it is essential to recognize that the industry has some control over the amount of capital it purchases but little or no control over the price it pays for capital. Thus, the pure price aspect of interest cost changes must be incorporated into the CIPI. Otherwise, the CIPI will not accurately reflect the prices faced by hospitals who must borrow to finance necessary capital acquisitions. Limitations on the quantity of capital are appropriately implemented through policy adjustment factors. The ProPAC approach artificially eliminates pure price changes related to interest costs from the CIPI and incorporates them into a discretionary adjustment factor. The HCFA CIPI retains all price components of increases in interest costs as one measure of inflation in capital-related expenses. It thereby keeps price and quantity aspects distinct, allowing separate analysis of each factor of increases in capital expenses.

We provide further comments on particular ProPAC recommendations in section V.A.3 of this preamble.

3. Measurement of Capital Input Price Increases

a. Introduction. HCFA discussed a capital input price index as one component in developing future update factors for the Federal rate in the September 1, 1992 **Federal Register** (57 FR 40016). We have presented revised versions of the capital input price index in the May 26, 1993 (58 FR 30448), September 1, 1993 (58 FR 46490), May 27, 1994 (59 FR 27876), and September 1, 1994 (59 FR 45517) issues of the **Federal Register**.

In this proposed rule, we are formally presenting a capital input price index for public comments prior to adoption of a final rule. The proposed CIPI parallels the operating input price index. Both the CIPI and the operating input price index are designed to measure input price changes for hospitals' current year expenses, that is, to separate pure price changes from quantity and expenditure changes. The operating sector input price index measures input price changes for operating-related expenses. The capital input price index measures input price changes for capital-related expenses, which include depreciation, interest, and other expenses (such as insurance related to capital goods.)

b. Proposed HCFA Capital Input Price Index Methodology. The proposed CIPI is based on the following assumptions:

- The Federal rate is based on the concept of capital-related expenses of capital assets used for patient care in the fiscal year and, therefore, any change in the Federal rate should take into account expected changes in the input price aspects of capital-related expenses;
- Capital-related expenses are defined as the sum of depreciation expense, capital-related interest costs, and other capital-related costs, including insurance and leases; and
- The input prices related to capital-related expenses are typically beyond the control of the hospital industry (that is, the hospital is a price-taker, not a price-setter).

These assumptions lead directly to a definition of a CIPI that takes into account the price aspects of changes in depreciation expense, interest costs, and other capital-related costs. Thus, the proposed CIPI includes three categories of capital-related expenses: Depreciation, interest, and other capital-related costs (such as insurance). Further, the assumptions lead directly to input prices for depreciation and interest costs that, unlike operating costs, have a time dimension that must be captured in the CIPI.

Current depreciation costs represent the summed depreciation charges for all purchases of capital assets that are still depreciable in the current period. The input prices associated with these depreciation expenses are the purchase prices attached to all past and current capital purchases for capital still depreciable in the current period. A weighted average of these purchase prices thus represents the input price associated with depreciation expenses in the current period. Thus, the depreciation input price for the current period measures price aspects of current depreciation expenses for capital just as the operating input price index for the current period measures price aspects of current operating expenses for labor and non-capital goods and services. The depreciation input price differs from the operating input price in that the depreciation input price is a vintage-weighted composite of all past capital purchase prices while the operating index input price measures purchase prices for current periods only.

Current interest expenses represent the total interest costs for all still-active past debt instruments associated with past and current purchases of all capital assets. The input prices associated with these interest expenses are the interest rates associated with all past debt instruments that are still active in the current period. A weighted average of these interest rates thus represents the input price associated with interest expenses in the current period. Thus, the interest input price for the current period measures price aspects of current interest expenses just as the operating input price index for the current period measures price aspects of current operating expenses for labor and non-capital goods and services. The interest input price appropriately differs from the operating input price in that the interest input price is a vintage-weighted composite of all interest rates for debt instruments that are still active in the current period, while the operating index input price measures purchase prices for current periods only.

Current year other capital-related expenses (for example, for insurance) have an annual time dimension and, therefore, prices associated with these expenses are, like operating input prices, current year prices only.

A commenter on a previous version of the CIPI recommended that proportional annual vintage weights (implicit in moving averages) for capital price proxies be replaced by non-proportional annual vintage weights that reflect the relative vintage purchases of capital. The commenter pointed out that annual purchases of real capital tend to increase over time. As annual purchases of real capital increase, the later years in the moving average of depreciation and interest costs should be weighted more heavily than the earlier years. We agree with this comment. Accordingly, a special data base was prepared to provide appropriate historical vintage weights for depreciation and interest input prices.

We have done preliminary research into the effects of changing the base year from FY 1987 to FY 1992 using capital-related data from the FY 1992 Medicare cost reports among other sources. The initial results have shown small differences between the FY 1987 and FY 1992 base year weights, resulting in a minimal effect on the CIPI. We will continue to analyze these data in preparation for a future change to a FY 1992 base year when more 1992 data become available.

The FY 1987 composite data base starts with financial variables from the American Hospital Association (AHA) Panel Survey. The variables are enhanced with data from the Medicare cost reports and from the Department of Commerce Capital Expenditure Survey. The composite data base provides annual estimates of nominal purchases for building and fixed equipment and for movable equipment. Leasing amounts were distributed among building and fixed equipment and movable equipment nominal purchases by first computing the percentage of total owner-operated nominal purchases attributable to each type of equipment, and then applying these percentages to total leasing amounts. Nominal purchases were then converted to annual real (that is, constant dollar) purchases by dividing nominal expenditures by an appropriate purchase price proxy.

Expected life for building and fixed equipment and for movable equipment were derived from Medicare cost reports by dividing the book value of assets by current year depreciation amounts. The relative distribution of real capital purchases within the respective life for building and fixed equipment (25 years) and for movable equipment (10 years) were derived from the special data base. These relative distributions are shown in Table 1. Relative distributions for a number of different time periods were averaged to obtain the distributions in Table 1. These distributions were all very similar regardless of the periods

chosen and, therefore, we selected an average of the distributions in order to simplify the calculations.

TABLE 1.—RELATIVE WEIGHTS FOR CAPITAL-RELATED PRICE PROXIES

Building and fixed equipment		Movable equipment		Interest	
Expected life	25 years	Expected life	10 years	Expected life	22 years
1	0.015	1	0.064	1	0.007
2	0.019	2	0.072	2	0.009
3	0.022	3	0.077	3	0.010
4	0.024	4	0.085	4	0.011
5	0.023	5	0.095	5	0.013
6	0.022	6	0.101	6	0.015
7	0.020	7	0.109	7	0.017
8	0.021	8	0.122	8	0.020
9	0.025	9	0.132	9	0.023
10	0.030	10	0.142	10	0.027
11	0.033	Total	1.000	11	0.032
12	0.034			12	0.038
13	0.034			13	0.043
14	0.035			14	0.050
15	0.038			15	0.057
16	0.043			16	0.064
17	0.049			17	0.074
18	0.053			18	0.083
19	0.056			19	0.090
20	0.057			20	0.098
21	0.060			21	0.105
22	0.066			22	0.114
23	0.071			Total	1.000
24	0.075				
25	0.077				
Total	1.000				

Source: Health Care Financing Administration, Office of the Actuary (Medicare Cost Reports, AHA Panel Survey, Securities Data Inc.)

Table 2 shows the historical, annual percentage changes in the capital-related price proxies employed in the CIPI prior to vintage-weighting. These proxies are: The institutional construction index maintained by Boeckh for the unit prices of fixed assets; the machinery and equipment component of the Producer Price Index (PPI–11) for movable equipment; the average yield on domestic municipal bonds from the Bond Buyer index of 20 bonds (Muni); the average yield on Moody's corporate bonds (AAA); a composite of Muni and AAA indexes (Combined Muni/AAA); and the residential rent component of the Consumer Price Index (CPI Rent) for other capital costs.

We previously used the Engineering News-Record (ENR) building cost index as a price proxy for the unit price of fixed assets. However, we believe that the Boeckh institutional construction index is more applicable to the industry. The variation between the two indexes is minimal.

We applied the relative vintage depreciation weights from Table 1 to the appropriate non-vintage weighted historical, annual index levels (base year FY 1987) of depreciation price proxies to generate the current year, vintage-weighted component index levels for the CIPI depreciation sector. The annual percentage change between the non-vintage weighted historical, annual depreciation index levels are listed in Table 2. The annual percentage change between the annual, vintage-weighted depreciation component index levels (base year FY 1987) are listed in Table 3. For example, the FY 1996 movable equipment index component percentage change of 1.8 percent in Table 3 was computed as the percentage change between the FY 1995 and FY 1996 vintage-weighted movable equipment component index levels. The 1996 movable equipment component index (base year FY 1987) represents the weighted-average of the index levels in the movable equipment price proxy (PPI–11 in Table 2) for the previous 10 years (that is, FY 1987 through 1996), weighted by the relative vintage weights listed for movable equipment in Table 1. These calculations are slightly different than prior versions of the CIPI in the **Federal Register**, and reflect a more refined weighting methodology.

TABLE 2.—ANNUAL PERCENT CHANGES FOR NON-VINTAGE WEIGHTED CAPITAL INPUT PRICE PROXIES, FISCAL YEARS 1949 TO 2000

Fiscal year	BOECKH	PPI–11	Muni	AAA	Combined muni/AAA	CPI rent
1949	3.3	7.4	−4.4	−3.1	−4.2	4.4
1950	1.4	0.5	−9.4	−4.2	−8.4	3.9
1951	8.6	13.6	−5.8	7.1	−3.4	3.7
1952	3.7	1.6	12.9	5.7	11.4	4.2
1953	3.5	0.8	25.9	7.3	22.2	4.7
1954	1.5	2.7	−8.2	−6.3	−7.9	4.8

TABLE 2.—ANNUAL PERCENT CHANGES FOR NON-VINTAGE WEIGHTED CAPITAL INPUT PRICE PROXIES, FISCAL YEARS 1949 TO 2000—Continued

Fiscal year	BOECKH	PPI–11	Muni	AAA	Combined muni/AAA	CPI rent
1955	1.8	1.9	−0.4	1.1	−0.1	1.4
1956	4.8	7.5	7.8	7.6	7.8	1.7
1957	3.6	8.0	24.0	18.0	23.0	1.9
1958	1.8	3.2	−3.7	−1.1	−3.3	1.9
1959	3.1	1.6	11.5	13.3	11.8	1.3
1960	2.7	1.5	1.7	4.9	2.3	1.6
1961	1.1	−0.3	−3.1	−3.2	−3.2	1.3
1962	2.2	0.0	−6.4	0.8	−5.1	1.3
1963	2.3	0.0	−3.4	−2.8	−3.3	1.0
1964	2.8	0.9	3.2	3.3	3.2	1.0
1965	3.1	0.6	−0.5	1.6	−0.1	1.0
1966	3.8	2.7	16.5	11.0	15.4	1.2
1967	5.3	3.8	2.4	8.3	3.5	1.7
1968	7.3	2.8	14.7	14.5	14.6	2.4
1969	8.4	3.3	21.5	9.8	19.2	2.8
1970	7.0	4.2	22.2	18.0	21.4	4.1
1971	8.7	4.2	−13.9	−4.9	−12.3	4.7
1972	8.0	2.2	−5.8	−3.8	−5.4	3.6
1973	6.0	2.6	−1.8	0.8	−1.3	4.0
1974	8.0	9.9	12.6	12.5	12.6	4.9
1975	11.1	19.5	19.2	7.9	16.9	5.2
1976	7.6	6.7	−1.2	−3.2	−1.5	5.3
1977	8.5	6.0	−15.8	−6.4	−14.1	5.8
1978	6.6	7.6	1.1	5.6	2.0	6.7
1979	7.5	8.7	7.3	8.9	7.6	7.1
1980	8.6	11.5	26.9	22.9	26.1	8.6
1981	9.8	10.6	32.9	20.7	30.5	8.8
1982	9.6	7.1	16.2	5.5	14.2	8.0
1983	7.0	3.2	−22.5	−17.7	−21.7	6.3
1984	5.2	2.3	4.8	6.9	5.1	5.0
1985	2.0	2.2	−5.3	−7.1	−5.6	5.9
1986	1.6	1.5	−18.1	−19.6	−18.4	6.2
1987	2.1	1.5	−5.5	−5.3	−5.5	4.5
1988	2.3	2.2	7.1	9.9	7.6	3.8
1989	3.6	3.5	−6.7	−4.8	−6.3	3.8
1990	2.5	3.1	−1.2	−2.0	−1.3	4.2
1991	2.7	2.2	−2.7	−2.6	−2.7	3.9
1992	3.1	0.5	−7.4	−8.2	−7.5	2.6
1993	2.4	0.4	−10.6	−8.9	−10.3	2.4
1994	2.8	0.8	0.0	0.2	0.0	2.3
1995	3.2	1.5	17.9	12.7	17.0	3.2
1996	3.0	3.2	−5.4	−3.0	−5.0	4.1
1997	3.1	2.6	−2.2	−1.8	−2.1	2.2
1998	3.4	2.5	2.5	1.6	2.3	3.1
1999	3.1	2.6	0.9	0.9	0.9	2.9
2000	3.1	2.6	−0.8	0.5	−0.5	2.9

Proxy Name:
BOECKH—Institutional construction.
PPI–11–Machinary and equipment.
Muni—Average yield on domestic municipal bonds—bond buyer (20 bonds).
AAA—Average yield on moody's AAA corporate bonds.
CPI RENT (all urban)—residential rent.
Source: DRI/McGraw-Hill HCC, 1st Qtr 1995; @USSIM/Trend25YR95; @CISSIM/CONTROL951.
Released By: HCFA, OACT, Office of National Health Statistics.

TABLE 3.—HCFA CAPITAL INPUT PRICE INDEX PERCENT CHANGES, TOTAL AND COMPONENTS, FISCAL YEARS 1979 TO 2000

Fiscal year	Total	Depreciation			Interest	Other
		Total	Building and fixed equipment	Movable equipment		
Weights (FY1987)	1.0000	0.6510	0.3054	0.3456	0.3274	0.0216

TABLE 3.—HCFA CAPITAL INPUT PRICE INDEX PERCENT CHANGES, TOTAL AND COMPONENTS, FISCAL YEARS 1979 TO 2000

Fiscal year	Total	Depreciation			Interest	Other
		Total	Building and fixed equipment	Movable equipment		
Price Changes						
1979	5.6	7.4	6.9	7.7	2.6	7.1
1980	7.1	7.9	7.2	8.6	5.6	8.6
1981	8.8	8.4	7.6	9.1	9.5	8.8
1982	9.3	8.5	7.9	9.0	10.7	8.0
1983	6.7	8.0	7.8	8.1	4.7	6.3
1984	6.3	7.2	7.5	7.0	4.8	5.0
1985	5.1	6.2	6.7	5.7	3.3	5.9
1986	3.7	5.5	6.1	5.0	0.3	6.2
1987	3.1	4.9	5.6	4.3	−0.5	4.5
1988	3.0	4.5	5.3	3.9	0.1	3.8
1989	2.7	4.3	5.1	3.6	−0.7	3.8
1990	2.4	4.0	4.8	3.2	−1.0	4.2
1991	2.1	3.6	4.5	2.7	−1.3	3.9
1992	1.7	3.2	4.3	2.1	−2.1	2.6
1993	1.3	2.9	4.1	1.8	−2.9	2.4
1994	1.3	2.8	4.0	1.6	−2.7	2.3
1995	1.8	2.7	3.9	1.6	−1.0	3.2
1996	1.8	2.8	3.8	1.8	−1.5	4.1
1997	1.8	2.9	3.7	2.0	−1.6	2.2
1998	1.9	2.9	3.6	2.0	−1.1	3.1
1999	2.0	2.8	3.5	2.0	−0.8	2.9
2000	2.0	2.8	3.5	2.1	−0.7	2.9

Source: DRI/McGraw-Hill HCC, 1st Qtr 1995; @USSIM/Trend25YR95; @CISSIM/CONTROL951.
Released By: HCFA, OACT, Office of National Health Statistics.

As we have discussed in connection with previous versions of the CIPI, stability is an important criterion for evaluating such an index. Stability is an inherent characteristic of capital because of its vintage nature; since capital assets are consumed over time, they are replaced at a relatively slow rate. An input price index for capital should reflect the relative stability of capital assets themselves. Furthermore, excessive volatility in a price index deprives the index of predictability, thus inhibiting the ability of institutions to plan for changes in capital payments resulting from changes in the CIPI. We graphically demonstrated (using the projections available at that time) the stability of the annual HCFA vintage-weighted CIPI compared to annual changes in non-vintage weighted capital purchase prices in Figures 1 and 2 in our discussion of May 27, 1994 (59 FR 27882).

ProPAC recommends a capital input price index based on annual changes in current capital purchase prices excluding consideration of weighted historical capital purchase prices (that is, not vintage weighted). We previously argued that the ProPAC index was not consistent with the operating input price index that is currently used to assist updating DRG payment rates. We would add that the greater volatility in annual purchase prices would introduce an unacceptable degree of volatility in prospective capital payments and does not reflect the inherent stability that comes from the vintage nature of capital.

Another commenter on a previous version of the CIPI recommended that data from Securities Data Corporation be incorporated into the CIPI interest computations. This source provides information on hospital issuances of municipal and commercial bonds. From this data base, we incorporated information showing that the average expected life of hospital bond debt instruments (that is, the time interval between the issue date and the maturation date) was about 13 years for municipal serial bonds and about 25 years for municipal term bonds. The weighted average life for the 2 types of bonds was 22 years.

The relative nominal capital purchases within various 22-year periods provided appropriate vintage weights for annual changes in interest rates. Not all capital purchases are funded by debt. Medicare cost reports suggest that about 80 percent of new capital acquisitions are financed by debt and about 20 percent by equity financing. However, if the proportion of total purchases financed by debt does not change substantially from year to year, then it is irrelevant whether we use the full amount or a constant proportion of the full amount of nominal capital acquisitions as weights for relative amounts of the debt instruments still active in the current period.

A third commenter on a previous version of the CIPI recommended that we investigate the effects on interest rate changes of changing structures of hospital bond ratings. If bond ratings are deteriorating, hospitals incur higher interest rate charges; if bond ratings improve, hospitals incur lower interest rates. Our CIPI currently recognizes only changes in pure interest rates and does not recognize changes in effective interest rates due to changes in bond ratings.

We examined a hospital-municipal-bond data base from Securities Data Corporation, to examine that issue. The data showed that serial bonds continue to dominate short-term financing and that term bonds dominate long-term financing. We classified all bond amounts by ratings found in the data base for years 1980 to 1993. The distribution of those issues described with a Moody's Quality Rating, shown in Table 4 (portions are applied to dollar amount of debt issued), indicates a trend toward higher quality issues since 1984. Although the annual, aggregate issue amounts in Moody's quality range Aaa through A have remained approximately constant since 1980, issue amounts in the highest quality band have become substantially higher since inception of the prospective payment system. Both issue amounts in the Aaa-Aa3 ranges and those in the Aaa-A range are greater in 1993 than at any time since 1980. We conclude there is no evidence to justify a component for deteriorating bond ratings in the CIPI.

TABLE 4.—PERCENT DISTRIBUTION OF HOSPITAL MUNICIPAL BOND AMOUNTS BY MOODY'S QUALITY RATING*

	Pre-PPS	Post-PPS	
	1980–1983 (percent)	1984–1988 (percent)	1989–1993 (percent)
Aaa-Aa3	7.1	36.8	49.0
Aa-A	50.0	24.1	21.7
Baa1-Ba	9.6	3.6	8.0
Not Rated	31.0	32.7	17.9

* Distributions do not sum to 100 percent due to a residual category of missing data.
Notes:
[1] Aggregate issues from Aaa-A have remained fairly constant since 1980.
[2] Issue amounts in the highest quality band have become substantially higher since inception of PPS.
[3] Both issue amounts in the Aaa-Aa3 ranges and those in the Aa-A ranges are greater in 1993 than at any time since 1980.

Relative vintage interest weights derived from our procedure are shown in Table 1. When combined with index levels (base year FY 1987) of annual, non-vintage weighted interest rate proxies, the relative interest weights provide current year, vintage-weighted component index levels for interest rates in the CIPI. The annual percentage change between the non-vintage weighted historical, annual interest index levels are listed in Table 2. The annual percentage change between the annual, vintage-weighted interest component index levels (base year FY 1987) are listed in Table 3. Thus, for example, the interest rate component change of -1.5 percent in Table 3 for FY 1996 represents the annual percentage change between the 1995 and 1996 vintage-weighted interest component index levels. The 1996 interest component index level (base year FY 1987) is computed as the vintage-weighted average of the previous 22 years in the interest rate proxy index level (Combined Muni/AAA) in Table 2, weighted by the interest weights listed in Table 1. We use an index level for a combined municipal and AAA commercial bond interest rate (percent changes shown in Table 2 as Combined Muni/AAA), giving the municipal rate an 85 percent weight and the AAA rate a 15 percent weight, reflecting the relative hospital debts of the government/non-profit hospital sector and the for-profit sector.

Although Medicare cost reports show that only 60 percent of current hospital debt is in the form of notes or bonds (about 40 percent is in the form of mortgages), we assumed that the relative annual weights for all debt and the relative annual changes in interest rates for all debt were the same as bond-related weights and price changes. We are still searching for an appropriate source of information on hospital commercial mortgage data. We do not expect that the discovery of such data will materially alter our current conclusions about trends in effective interest rates over time.

c. Projection of the CIPI for Fiscal Year 1996. DRI projects a 1.8 percent increase in the CIPI for FY 1996 (Table 3). This is the outcome of a 2.8 percent increase in projected weighted depreciation prices in FY 1996, partially offset by a 1.5 percent decline in vintage-weighted interest rates in FY 1996.

d. ProPAC Input Price Index. i. Introduction. Three major differences distinguish ProPAC's CIPI from HCFA's CIPI:

- The ProPAC CIPI measures changes in capital asset purchase prices in the year the asset is purchased (that is, not vintage weighted). HCFA's CIPI is designed to measure changes in a vintage-weighted composite of capital asset purchase prices.
- The ProPAC CIPI uses the Marshall and Swift hospital equipment index as the movable equipment purchase price proxy while HCFA uses the Producer Price Index for machinery and equipment.
- The ProPAC CIPI has no interest component. ProPAC treats interest rate changes as an optional separate update policy adjustment factor.

Through 1996, for example, ProPAC expects that long term interest rates will remain relatively stable and, therefore, believes that it is not appropriate to adjust capital input prices for forecasted changes in interest rates in the target year.

HCFA incorporates a vintage-weighted composite of interest rates in its CIPI for the target year.

ii. Depreciation. ProPAC states that its CIPI is analogous to the prospective payment operating price index. We disagree. The components of the operating index represent price changes in ongoing hospital expenses for labor and non-capital goods and services. The analogous capital expenses in this context are current depreciation costs, interest costs, and other capital-related expenses (such as insurance). Current depreciation and interest costs, according to HCFA, IRS, and accounting principles, are a cumulative composite of segments of expenses incurred in current and prior periods. Current interest costs are a cumulative composite of segments of past and current year debt costs. Since both depreciation and interest costs have a vintage component, the price aspect of these costs must have a vintage component as well. The HCFA CIPI attempts to capture these vintage components.

Differences between HCFA and ProPAC with respect to choices for annual non-vintage weighted rates of change in alternative price proxies for movable equipment are small for much of the historical period. (We illustrated this fact in Figure 8 (Inset) in the May 27, 1994 proposed rule (59 FR 27890), using earlier projections.) As noted in our September 1, 1992 final rule, one basic criterion for accepting price proxies is public availability of documentation on data sources and methodology (57 FR 40018–40019).

Despite repeated efforts, neither we nor Data Resources Inc. have been able to obtain documentation on the movable price proxy recommended by ProPAC (Marshall and Swift hospital equipment index) that explains how it is derived and what sampling frame and sampling error attach to the estimates. In the absence of such information we cannot adopt the ProPAC alternative.

HCFA's assumption is that prices for movable equipment purchased by hospitals change at about the same rate as general prices for all machinery and equipment. This assumption is justified in part by the fact that not all movable equipment purchased by hospitals is medical equipment; it stands to reason that the prices for non-medical movable equipment purchased by hospitals, such as automobiles, desks, chairs, etc., would change at about the same rate as prices for all machinery and equipment. To examine this assumption further, we measured the rate of change in the HCFA movable price proxy relative to prices for medical equipment only by preparing a composite index of medical prices from the Bureau of Labor Statistics Producer Price Index (PPI) for two commodity categories—medical instruments/equipment and X-ray/electro-medical equipment. The two PPI commodity indexes were then merged using their respective PPI weights. Price changes for this index are not available for years prior to 1984. Annual price changes for medical equipment follow the annual HCFA price proxy more closely than the ProPAC price proxy for most of the historical period. We will continue to monitor trends in these indexes to ensure that appropriate price proxies are incorporated in the CIPI.

iii. Interest. ProPAC has proposed to project annual interest rates to future periods and then to decide whether to allow an add-on to the Federal capital rate depending on the magnitude of the projection. ProPAC has presented no objective criteria for determining when an interest adjustment is appropriate. We previously noted that a single-year projection for interest rates is conceptually inappropriate since interest costs must be vintage-weighted. In addition to this conceptual problem, the ProPAC approach is impractical because future annual interest rates are volatile, vulnerable to unpredictable market forces, and subject to exogenous influences (such as Federal Reserve Board decisions) that are difficult to anticipate. Thus, any projection of future annual interest rates is likely to be inaccurate, resulting in underpayment or overpayment of the Federal capital rate relative to the capital-related expenses that the rate is supposed to compensate. The resulting uncertainty in payments under future Federal capital rates further complicates future capital expenditure decisions by hospitals. On the other hand, the projected HCFA CIPI interest component for the target year is the weighted average change over 22 years of interest rate history, of which 20 years experience in the non-vintage weighted price proxy is appropriately historical. The projected annual, non-vintage weighted experience in the price proxy for the most recent 2 years may be as inaccurate as any ProPAC projection, but any error will have minimal effects on Federal rates due to the appropriately weighted effect of the historical data in the HCFA CIPI. This stability in the interest rate component of the HCFA CIPI provides hospital planners with a degree of certainty about future Federal rate payments, other things remaining equal.

iv. The Composite HCFA CIPI. Annual percentage changes in the historical and projected HCFA and ProPAC CIPI's differ markedly as shown in Table 5. The 3.1 percent increase for the ProPAC capital market basket in Table 5 for FY 1996 is lower than the 4.1 percent increase presented in ProPAC's March 1995 Report and Recommendation to the Congress. In the ProPAC March report, ProPAC used the 4th quarter 1994 DRI forecasts, while the figure in this proposed rule represents 1st quarter 1995 DRI forecasts. Between 4th quarter 1994 and 1st quarter 1995, DRI revised its forecast by 1.0 percent to reflect slower price growth in 1996 than originally expected. A lower forecast for the movable equipment price proxy (Marshall and Swift) was responsible for two-thirds of the 1.0 percent decline between forecasts. The remaining one-third of the decline was the result of lower forecasts in the fixed equipment price proxy (Boeckh) and the other capital-related expenses price proxy (CPI-residential rent), with each being equally responsible. We emphasize that the later forecast was not available when ProPAC released its March report.

The ProPAC CIPI is much more volatile than the HCFA CIPI in the historical period through 1994 because it does not reflect vintage-weighted capital input price factors for depreciation. Further, the ProPAC CIPI omits conceptually relevant interest rates. The cumulative effect of declining interest rates for all debt instruments in recent years has driven the rate of change in the HCFA vintage-weighted interest rate component downward, a trend projected by DRI into future rate years. The declining interest rate component appropriately brings the HCFA CIPI below the ProPAC CIPI in the projection period. Other things being equal, the ProPAC index would result in overpayment through the Federal rate because anticipated actual capital-related expenses will be less than ProPAC projects due to the effects of lower interest rates on capital-related expenses.

TABLE 5.—ANNUAL PERCENT CHANGES IN HCFA CAPITAL INPUT PRICE INDEX AND THE PROPAC CAPITAL MARKET BASKET, 1979 TO 2000

Fiscal year	HCFA capital input price index	ProPAC capital market basket
1979	5.6	8.3
1980	7.1	9.2
1981	8.8	10.0
1982	9.3	7.7
1983	6.7	4.6
1984	6.3	3.9
1985	5.1	2.2
1986	3.7	1.7
1987	3.1	2.1
1988	3.0	3.5
1989	2.7	4.6
1990	2.4	2.3
1991	2.1	3.0
1992	1.7	2.2
1993	1.3	2.1
1994	1.3	2.8
1995	1.8	3.5
1996	1.8	3.1
1997	1.8	3.3
1998	1.9	3.3
1999	2.0	3.2
2000	2.0	3.3

Source: DRI/McGraw-Hill HCC, 1st Qtr 1995; @USSIM/Trend25YR95; @CISSIM/CONTROL951.
Released by: HCFA, OACT, Office of National Health Statistics.

ProPAC believes that Medicare program payments should reflect both savings from low interest rate levels on new debt instruments and the additional costs of high interest rate levels. As explained above, the Commission has proposed accomplishing this through an interest policy adjustment. However, ProPac has neither presented a threshold level for making an interest adjustment nor established a process for determining the amount of the adjustment. The HCFA CIPI, on the other hand, automatically registers the price effects of interest rate changes on new debt instruments that carry over into future periods, although those effects are appropriately registered only very gradually.

When interest rate levels decline, hospitals may refinance their existing debt. Refinancing has a price effect as new debt instruments with lower prices (interest rate levels) replace older debt instruments with higher prices (interest rate levels). ProPAC believes its interest policy adjustment can and should capture this behavior. In this way, Medicare can share in the savings from refinancing. The HCFA CIPI does not now automatically register the price effects of refinancing. Whether to do so or not is a policy judgment concerning whether HCFA should share in refinancing savings or allow hospitals to realize the full effects of refinancing. A refinancing adjustment would not only reflect actual hospital behavior, but would also add to the existing incentives of a rate-based system for hospitals to replace high interest debt instruments with lower interest debt instruments. However, the absence of a refinancing adjustment could allow individual hospitals to refinance and keep the savings, just as individual hospitals who become relatively more efficient in furnishing care for specific DRGs are rewarded for the more efficient behavior.

We invite comment on whether to incorporate a refinancing adjustment within the HCFA framework: A refinancing adjustment would present specific problems because HCFA has not been able to obtain data to accurately determine refinancing amounts. Whether HCFA can ultimately propose a refinancing adjustment depends upon whether the necessary data can be obtained.

Since refinancing is a price matter, the adjustment would appropriately be on the price side of the framework, rather than on the policy adjustment side, which deals with quantities. However, the adjustment would not be included directly within the CIPI because the price effect of refinancing involves a shift in the vintage weights applied to index levels. That is, interest expense associated with prices (interest rate levels) in the year the debt is originated would be shifted to reflect interest expense associated with prices in the year the debt is refinanced. This essentially would reduce the relative vintage weights for interest in the CIPI (Table 1) in some years and increase the relative vintage weights for interest in other years. Yet by definition, the fixed-weight CIPI holds all weights constant. However, a discretionary adjustment could be made on the relative vintage weights. This is analogous to the separate adjustments for real case-mix changes in the update framework.

At this time we are continuing to analyze the merits and technical difficulties of including a refinancing adjustment in the HCFA update framework. We encourage comments and suggestions on a refinancing adjustment, as well as any studies or data sources that would be useful in assessing and implementing this potential adjustment.

4. Case-Mix Adjustment and Adjustment for Forecast Error

The case-mix index (CMI) is the measure of the average DRG weight for cases paid under the prospective payment system. Because the DRG weight determines the prospective payment for each case, any percentage increase in the CMI corresponds to an equal percentage increase in hospital payments.

The CMI can change for any of several reasons: Because the average resource use of Medicare patients changes ("real" case-mix change); because changes in hospital coding of patient records result in higher weight DRG assignments ("coding effects"); and because the annual DRG reclassification and recalibration changes may not be budget neutral ("reclassification effect"). We define real case-mix change as actual changes in the mix (and resource requirements) of Medicare patients as opposed to changes in coding behavior that result in assignment of cases to higher-weighted DRGs but do not reflect higher resource requirements. In the update framework for the prospective payment system for operating costs, we adjust the update upwards to allow for real case-mix change, but remove the effects of coding changes on the CMI. We also remove the effect on total payments of prior changes to the DRG classifications and relative weights, in order to retain budget neutrality for all CMI-related changes other than patient severity. (For example, we adjusted for the effects of the FY 1992 DRG reclassification and recalibration as part of our FY 1994 update recommendation.) The operating adjustment consists of a reduction for total observed case-mix change, an increase for the portion of case-mix change that we determine is due to real case-mix change rather than coding modifications, and an adjustment for the effect of prior DRG reclassification and recalibration changes. We propose to adopt this CMI adjustment as well in the capital update framework.

For FY 1996, we are projecting a 0.8 percent increase in the case-mix index. We estimate that real case mix increase will equal projected case-mix increase in FY 1996. We do not anticipate any changes in coding behavior in our projected case-mix change. The proposed net adjustment for case-mix change in FY 1996 is therefore 0.0 percentage points.

The −1.0 percent figure used in the ProPAC framework represents ProPAC's projection for observed case-mix change. ProPAC projects a 0.8 percent increase in real case-mix change across DRG's and a 0.2 percent increase in within-DRG complexity. ProPAC's net adjustment for case mix is therefore zero.

We estimate that DRG reclassification and recalibration resulted in a 0.3 percent increase in the case mix when compared with the case-mix index that would have resulted if we had not made the reclassification and recalibration changes to the DRGs. ProPAC does not make an adjustment for DRG reclassification and recalibration in its update recommendation.

The current operating update framework contains an adjustment for forecast error. The input price index forecast is based on historical trends and relationships ascertainable at the time the update factor is established for the following year. In any given year there can be unanticipated price fluctuations that can result in differences between the actual increase in prices faced by hospitals and the forecast used in calculating the update factors. We continue to believe that the capital update framework should include a forecast error adjustment factor. In setting a prospective payment rate under the proposed framework, we would make an adjustment for forecast error only if our estimate of the capital input price index rate of increase for any year is off by 0.25 percentage points or more. There is a 2-year lag between the forecast and the measurement of the forecast error. Thus, for example, we would adjust for a forecast error made in FY 1996 through an adjustment to the FY 1998 update.

5. Policy Adjustment Factors

The capital input price index measures the pure price changes associated with changes in capital-related costs (prices × "quantities"). The composition of capital-related costs is maintained at base-year 1987 proportions in the capital input price index. We would address appropriate changes in the amount and composition of capital stock through the policy adjustment factors.

The current update framework for the prospective payment system for operating costs includes factors designed to adjust the input price index rate of increase for policy considerations. Under the revised

operating framework, we adjust for service productivity (the efficiency with which providers produce individual services such as laboratory tests and diagnostic procedures) and intensity (the amount of services used to produce a discharge). The service productivity factor for the operating update framework reflects a forward-looking adjustment for the changes that hospitals can be expected to make in service-level productivity during the year. A hospital retains any productivity increases above the average.

The intensity factor for the operating update framework reflects how hospital services are utilized to produce the final product, that is, the discharge. This component accounts for changes in the use of quality-enhancing services, changes in within-DRG severity, and expected modification of practice patterns to remove cost-ineffective services. We are proposing that the intensity adjustment factor in the operating framework be adopted in the capital update framework. Under the operating update framework, we calculate case-mix constant intensity as the change in total charges per admission, adjusted for price level changes (the CPI hospital component) and changes in real case mix. The use of total charges in the calculation of the proposed intensity factor makes it a total intensity factor, that is, charges for capital services are already built into the calculation of the factor. We can therefore incorporate the proposed intensity adjustment from the operating update framework into the capital update framework. In the absence of reliable estimates of the proportions of the overall annual intensity increases that are due, respectively, to ineffective practice patterns and to the combination of quality-enhancing new technologies and within-DRG complexity, we would assume, as in the revised operating update framework, that one-half of the annual increase is due to each of these factors. The capital update framework would thus provide an add-on to the input price index rate of increase of one-half of the estimated annual increase in intensity to allow for within-DRG severity increases and the adoption of quality-enhancing technology.

For FY 1996, we have developed a Medicare-specific intensity measure based on a five-year average using FYs 1990–1994. In determining case-mix constant intensity, we found that observed case-mix increase was 2.2 percent in FY 1990, 2.8 percent in FY 1991, 1.8 percent in FY 1992, 0.9 percent in FY 1993, and 0.8 percent in FY 1994. For FY 1990 through FY 1992, we estimate that 1.0 to 1.4 percent of the case-mix increase was real. (This estimate is supported by past studies of case-mix change by the RAND Corporation. The most recent study was "Has DRG Creep Crept Up? Decomposing the Case-Mix Index Change Between 1987 and 1988" by G.M. Carter, J.P. Newhouse, and D.A. Relles, R–4098–HCFA/ProPAC (1991). The study suggested that real case-mix change was not dependent on total change, but was rather a fairly steady 1.0 to 1.5 percent per year. We use 1.4 percent as the upper bound because the RAND study did not take into account that hospitals may have induced doctors to document medical records more completely in order to improve payment.) We assumed that all of the observed case-mix increase of 0.9 percent for FY 1993 and 0.8 percent for FY 1994 was real. (This assumption is consistent with the FY 1996 CMI projections described above.) If we assume that real case-mix increase was 1.0 percent per year during FY 1990 through FY 1992 (but 0.9 percent in FY 1993 and 0.8 percent in FY 1994), case-mix constant intensity declined by an average 1.2 percent during FY 1990 through FY 1994, for a cumulative decrease of 6.1 percent. If we assume that real case-mix increase was 1.4 percent per year during FY 1990 through FY 1992 (but 0.9 percent in FY 1993 and 0.8 percent in FY 1994), case-mix constant intensity declined by an average 1.5 percent during FY 1990 through FY 1994, for a cumulative decrease of 7.2 percent. Since we estimate that intensity has declined during the FY 1990–1994 period, we are recommending a 0.0 percent intensity adjustment for FY 1996.

In our previous discussions of a possible efficiency adjustment, we suggested that such an adjustment should take into account two considerations. One is that capital inputs, unlike operating inputs, are generally fixed in the short run. The productivity target in the revised operating framework operates on a short-term, year-to-year basis. Targets for capital efficiency and cost effectiveness, however, must operate on a longer term basis. The other consideration is that, prior to the adoption of the capital prospective payment system, Medicare payment policy for capital-related costs, as well as the policies of other payers, did not provide sufficient incentives for efficient and cost-effective capital spending. As a result, capital costs per case, and therefore base year prospective capital rates, may be higher than would have been consistent with capital acquisition policy in more efficiency-oriented markets. A guiding principle in devising an efficiency adjustment is therefore that Medicare capital prospective payment rates should not provide for maintenance of capital in excess of the level that would be produced in an efficiency-oriented competitive market.

To examine this issue, we analyzed the change in actual Medicare capital cost per case for FY 1986 through FY 1992 in relation to the change in the capital input price index (which accounts for change in the input prices for capital-related costs), and the other adjustment factors that we were then proposing to include in the framework. (The other adjustment factors are the increase in real case mix and the increase in intensity due to quality-enhancing technological change and within-DRG complexity.) We found rates of increase in actual spending per case that exceeded the rate of increase attributable to inflation in capital input prices, quality-enhancing intensity increases, and real case-mix growth.

Economic theory suggests that an industry with a guaranteed return on capital (such as the hospital industry prior to prospective payment for capital-related costs) would have a tendency to be overly capitalized relative to more competitive industries. This is because the incentive for firms in such an industry is to compete on the basis of more capital-intensive production processes than firms in other industries. As a result, capital costs per case, and therefore base year prospective capital rates, may be higher than would have been consistent with capital acquisition policy in more efficiency-oriented competitive markets.

Our analysis was designed to examine whether hospitals had in fact responded to the incentives of the cost-based payment system for capital by expanding beyond what was necessary for efficient and cost-effective delivery of services. The analysis confirmed that volume and intensity of capital acquisition far outpaced the increase in capital input prices during the years between the implementation of the prospective payment system for operating costs and the introduction of the capital prospective payment system. Even accounting for real CMI increases and increases in intensity attributable to cost-increasing but quality-enhancing new technologies, there remains a large excess of capital-related spending.

The following table shows the results of our most recent analysis, based on the most current data available and the most recent projections. Differences between this table and the tables in previous discussions in the **Federal Register** reflect updated figures for average capital cost per case increases, based on the most recent data and projections, and our revised CIPI. This analysis encompasses all but 1 year of the period from the implementation of the prospective payment system for operating costs to the implementation of the prospective payment system for capital costs. (For FY 1984, sufficient data is not available to compute capital cost per case increases and intensity increases.) The results of the analysis in Table 6 are substantially similar to the results of previous analyses. In Table 6, real case-mix increase is assumed to be 1.0 percent annually.

TABLE 6.—CUMULATIVE PERCENTAGE CHANGE IN CAPITAL-RELATED COST PER CASE DUE TO INFLATION, REAL CMI, AND INTENSITY, 1985–1992

Year	CIPI [1]	Real CMI [2]	Allowable intensity [3]	Resulting increase [4]	% Change cost/case [5]	Residual [6]
1985	5.1	1.0	3.7	10.1	12.5	2.2
1986	3.7	1.0	2.1	6.9	19.9	12.2
1987	3.1	1.0	2.5	6.7	14.9	7.6
1988	3.0	1.0	1.5	5.5	7.1	1.5
1989	2.7	1.0	0.5	4.3	7.9	3.5
1990	2.4	1.0	0.2	3.6	6.7	2.9
1991	2.1	1.0	0.1	3.2	5.7	2.4
1992	1.7	1.0	0.1	2.8	4.1	1.2
Cumulative (compounded)	.....	.....	.....	52.0	110.1	38.3

[1] Figures from Table 1, section V.A.3 of this preamble.
[2] Assuming that real CMI increase is 1.0 percent annually.
[3] One half of observed intensity increase, as determined by the joint operating/capital intensity measure.
[4] The increase attributable to inflation, real CMI, and allowable intensity, calculated as the product of the rates of increase of those factors (that is, 1.031×1.01×1.025=1.067 for 1987).
[5] Figures supplied by HCFA's Office of the Actuary.
[6] The actual increase in average cost per case divided by the increase attributable to inflation, real CMI, and allowable intensity (that is, 1.149/1.067=1.076, a 7.6 percent residual for 1987).

We believe that an adjustment for capital efficiency and cost-effectiveness should take into account the efficiency and effectiveness of the capital resources present in the base year for the capital prospective payment system. We do not believe that Medicare capital payment rates should provide for maintenance of capital in excess of the level that would be produced in an efficiency-oriented competitive market. A capital efficiency adjustment should be designed to give hospitals an incentive to reduce inefficiency and ineffectiveness in capital resources. The analysis in Table 6 suggests that, in order to restore the Federal rate to the level at which it would have been if capital costs had not been excessive in the years before the implementation of capital prospective payment, a cumulative reduction in the rate of 27.7 percent (1.52/2.101=0.7235, or −27.7 percent) would be necessary.

We are considering a range of options for such an efficiency adjustment. In particular, we are considering whether to provide, in the design of such an adjustment, for eventually reducing the rate by the entire 27.7 percent suggested by the above analysis. Alternatively, the eventual reduction to the rate could reflect some part, but not all, of the excess of actual capital cost increases over the identified factors. We are also considering the appropriate rate at which an adjustment based on the above analysis should be applied to the update factors. On the assumption that the updates to the rate should be reduced by the full 27.7 percent, such an adjustment could be accomplished over a shorter or longer period of time. For example, HCFA could adjust the updates to the rate over a period of 20 years at the rate of 1.4 percent per year. Similarly, the adjustment could be made over 5 years at the rate of 5.5 percent per year.

We are proposing that HCFA have the discretion to apply an efficiency adjustment to the capital input price rate of change in determining the annual update factor. We invite comment on the advisability of such an adjustment, on the proportion of the residual that should be employed in adjustments to the update, and on the rate at which such an adjustment should be applied. We also welcome information on possible sources of data that would be useful in developing or refining such an adjustment, and on the possible effects of such an adjustment on various segments of the hospital industry.

6. Proposed FY 1996 Update Factor

Table 7 summarizes HCFA's proposed FY 1996 update factor in comparison with the recommendation presented by ProPAC in its March 1, 1995 report.

ProPAC recommends a 4.1 percent update for FY 1996, in comparison to HCFA's proposed update of 1.5 percent. As Table 5 shows, the different update methodologies adopted by ProPAC and HCFA, respectively, can be expected to result in higher ProPAC update recommendations during some years, and higher HCFA update recommendations during other years. (As we note in the discussion of Table 5, the values for the ProPAC index in that table reflect recent projections that were not available to ProPAC at the time of its March 1, 1995 report.)

TABLE 7.—COMPARISON OF FY 1996 UPDATE RECOMMENDATIONS

	HHS	ProPAC
Capital Input Price Index	1.8	4.1
Difference Between HCFA & ProPAC CIPI's	.....	2.3
Subtotal	1.8	4.1

TABLE 7.—COMPARISON OF FY 1996 UPDATE RECOMMENDATIONS—Continued

	HHS	ProPAC
Policy Adjustment Factors:		
Productivity	.....	(1)
Efficiency	(2)	.....
Intensity	0.0	.....
Science and Technology	.....	(1)
Intensity	.....	(3)
Real Within DRG Change	.....	(4)
Subtotal	0.0	0.0
Case Mix Adjustment Factors:		
Projected Case Mix Change	−0.8	−1.0
Real Across DRG Change	0.8	0.8
Real Within DRG Change	(5)	0.2
Subtotal	0.0	0.0
Effect of 1993 Reclassification and Recalibration	−0.3	.....
Forecast Error Correction	0.0	0.0
Total Recommended Update	1.5	4.1

[1] Adjustments for scientific and technological advance and productivity offset each other. No specific values were recommended.
[2] Efficiency adjustment may be adopted after public comment.
[3] Included in ProPAC's Productivity Measure.
[4] Included in ProPAC's Case Mix=Adjustment.
[5] Included in HHS' Intensity Factor.

7. Possible Adjustments to the Federal Rate and the Hospital-Specific Rates

In the Addendum to this proposed rule, we discuss the effects of the expiration of the statutory budget neutrality provision on rates and aggregate payments under the capital-prospective payment system. Under that provision, we set the capital-prospective payment system rates during FY 1992 through FY 1995 so that payments would equal 90 percent of estimated Medicare payments that would have been made on a reasonable cost basis for the fiscal year. As a result of the provision's expiration, both the capital-prospective payment system rates and payments under the transition system will increase significantly. The proposed FY 1996 Federal rate is 21.3 percent higher than the FY 1995 Federal rate. We estimate that payments will increase by 20.45 percent in FY 1996 compared to FY 1995, and that FY 1996 payments will exceed projected FY 1996 Medicare hospital inpatient capital costs by 4.52 percent.

We have considered possible revisions to the capital-prospective payment rates that would moderate these substantial increases in payments. These revisions could be made in conjunction with, or in place of, an update framework adjustment to account for possible inefficiency in capital spending prior to the capital-prospective payment system base period. While these possible revisions to the rate are not, strictly speaking, elements of the update framework, we are presenting them within this context in order to allow commenters the opportunity to consider all the possible rate revisions that may affect the future levels of rates and payments. We solicit comment on whether to make any of these possible revisions to the rate. Generally, we believe that reductions in Medicare spending should be addressed in the context of health care reform.

Under § 412.308, HCFA determined the standard Federal rate, which is used to determine the Federal rate for each fiscal year, on the basis of an estimate of the FY 1992 national average Medicare capital cost per discharge. The FY 1992 national average Medicare capital cost per discharge was estimated by updating the FY 1989 national average Medicare capital cost per discharge by the estimated increase in Medicare inpatient capital cost per discharge. As we discussed in the preamble to the final capital-prospective payment system rule on August 30, 1991 (56 FR 43366–43384), HCFA used the July 1991 update of HCRIS data to estimate an FY 1989 national average Medicare cost per case of $527.22. HCFA then updated that amount to FY 1992 by using an actuarial projection of a 31.3 percent increase in Medicare capital cost per discharge from FY 1989 to FY 1992. The standard Federal rate was thus based on an estimated FY 1992 national average Medicare capital cost per discharge of $692.24 (prior to the application of a transfer adjustment and a payment parameter adjustment).

Section 13501(a)(3) of Public Law 103–66 amended section 1886(g)(1)(A) of the Social Security Act to require that, for discharges occurring after September 30, 1993, the unadjusted standard Federal rate be reduced by 7.4 percent. As we discussed in the September 1, 1993 final rule for FY 1994 (58 FR 46316ff.), the purpose of that reduction was to reflect revised inflation forecasts, as of May 1993, for the increases in Medicare capital cost per discharge during FY 1989 through FY 1992. By that time, the estimate of increases in Medicare inpatient capital costs per discharge from FY 1989 through FY 1992 had declined from 31.3 percent to 21.57 percent. The 7.4 percent reduction to the Federal rate was calculated to account for these revised forecasts (1.2157/1.313=.926, a 7.4 percent decrease). That provision of Public Law 103–66 also required that, for cost reporting periods beginning on or after October 1, 1993, the Secretary redetermine which hospital payment methodology should be applied under the capital prospective payment system transition rules to take into account the 7.4 percent reduction to the Federal rate.

As a result of the reduction required by Public 103–66, the standard Federal rate is now based on an estimated FY 1992 Medicare inpatient capital cost per case of $641.01 ($692.24×.926). At the time of the Public Law 103–66 reduction to the Federal rate, actual cost report data on the FY 1992 Medicare capital cost per discharge were not yet available. The reduction was based on cost report data for FY 1990 and FY 1991, and a revised projection of the rate of increase in Medicare capital costs per discharge during FY 1992. We now have extensive cost report data for FY 1992. The December 1994 update of HCRIS data shows an audit-adjusted FY 1992 Medicare inpatient capital cost per discharge of $593.15, or 7.47 percent lower than the estimate on which the Federal rate is currently based. We do not believe that the Federal rate should necessarily remain at a level that reflects a known over-estimation of base year costs. We are therefore inviting comment on the appropriateness of an estimated 7.47 percent reduction to the unadjusted standard Federal rate to account for that over-estimation.

Under § 412.328, HCFA determined the FY 1992 hospital-specific rate by using a process similar to the process for determining the FY 1992 Federal rate. The intermediary determined each hospital's allowable Medicare inpatient capital cost per discharge for the hospital's latest cost reporting period ending on or before December 31, 1990. The intermediary then updated each hospital's FY 1990 allowable Medicare capital cost per discharge to FY 1992 based on the estimated increase in Medicare inpatient capital cost per case. As in the case with the Federal rate updates, current data demonstrate that the estimates used to update the hospital specific rates from FY 1990 to FY 1992 were overstated. On the basis of the current data, we are also considering whether to correct for the original rate of increase estimates by decreasing the hospital-specific rates 8.27 percent. Such a reduction would not apply to hospital-specific rates that have been redetermined for a later cost reporting period. This is because the rate of increase estimates were not employed for redeterminations after FY 1992.

We estimate that savings from simultaneous reductions of 7.47 percent to the Federal rate and 8.27 percent to the hospital-specific rates would be approximately $2.7 billion for FY 1996 through FY 2000. Capital-prospective payments would be about 98 percent of Medicare inpatient capital costs in FY 1996 and about 95 percent of Medicare costs in FY 2000. By comparison, we estimate that payments under current law and regulations will be 104 percent of Medicare costs in FY 1996 and 102 percent of Medicare costs in FY 2000.

Finally, the analysis of capital cost increases prior to the implementation of the prospective payment system for capital-related costs could be the basis for an immediate adjustment to the Federal rate to compensate for the effects of the expiration of budget neutrality. As discussed in section V.A.6 above, a reduction to the Federal rate of 27.7 percent would be necessary to restore the rate to the level at which it would have been if capital costs had not exceeded the level that can be accounted for on the basis of known factors. Such an adjustment could be accomplished gradually over a number of years within the context of the update framework. We discuss how the residual could be employed within the context of the update framework in section V.A.6 above. Alternatively, some large part of the residual could be removed from the rate in a single adjustment. For example, retaining the FY 1995 budget neutrality adjustment of 0.8432 in the standard Federal rate would have the effect of recapturing a large part of the residual of capital cost increase over the identifiable factors. The remainder of the residual, if appropriate, could be removed from the rate on a gradual basis through an adjustment to the update factor, as discussed in section V.A.6 above. We are therefore requesting comments on the appropriateness of such measures, particularly on the appropriateness of retaining the FY 1995 budget neutrality adjustment in the rate as an efficiency measure.

We estimate that savings from this approach would be approximately $5.5 billion for FY 1996 through FY 2000. Capital-prospective payments would be about 92 percent of Medicare inpatient capital costs in FY 1996 and about 88 percent of costs in FY 2000.

B. Adjustment to the Capital Prospective Payment System Federal Rate for Capital-Related Taxes (§§ 412.308, 412.312, and 412.323)

In our September 1, 1994 final rule, we discussed an adjustment to the capital prospective payment system for capital-related tax costs. As we noted in that discussion, such an adjustment would be designed to remove a possible inequity in the capital prospective payment system. While capital-related taxes constitute a unique cost imposed on an identifiable group of hospitals, those costs are currently reflected in the Federal capital rate paid to all hospitals. Several commenters have pointed out that all hospitals are thus being reimbursed for costs that only some hospitals pay. We noted in our previous discussion that introducing an adjustment was then premature because we still lacked adequate data on capital-related tax payments and payments in lieu of taxes. Accordingly, we announced a special initiative to collect and verify the data on hospital capital-related tax costs. We also solicited comments on the merits of a possible tax adjustment and on the development of an adjustment methodology. Below we discuss a proposal for such a tax adjustment. (The proposed capital rates in Addendum D, and impact analysis in Appendix A.VII are based on the proposal for a tax adjustment.) We then discuss several difficult issues that such an adjustment may pose. We also respond to public comments on the merits of introducing a tax adjustment to the capital prospective payment system. Finally, we describe the preliminary results of our data collection effort and discuss several questions and issues that arose in the course of the data collection effort.

Some commenters have maintained that the absence of an adjustment for capital-related tax costs poses a serious issue of equity. The argue that capital-related tax costs constitute a fully distinguishable category that can be readily identified and that applies to an identifiable group of hospitals. In fact, this cost may be even more clearly delineated than other costs for which we provide adjustment to prospective system rates, since whether a hospital bears such costs is determined by law entirely outside the Social Security Act. In the absence of an adjustment for those hospitals that actually bore the tax costs represented in the Federal rate, all hospitals are being reimbursed through the Federal rate portion of their payments for costs imposed only on an identifiable subset of hospitals.

Since the publication of the September 1, 1994 final rule we have directed considerable analysis toward the development of an equitable adjustment for capital-related tax costs. That analysis has revealed issues that we have not yet been able to resolve fully. These issues involve equity to hospitals that may become subject to capital-related taxes in the future. They also involve our responsibility to protect the Medicare trust fund from possible manipulation as well as from any new open-ended commitments to increase Medicare payments. Although we have not yet fully resolved all of these issues, we remain open to discussion on a special adjustment to the capital Federal rate for tax costs, and to facilitate such a discussion we present a proposal for a special tax adjustment. We believe that presentation and analysis of a proposal provide the best opportunity for a full and public discussion of all the issues surrounding a possible adjustment for capital-related tax costs.

From our discussions with representatives of hospital associations and individual hospitals, we expect that this proposal will generate numerous substantive comments both for and against a possible adjustment for capital-related taxes. We will analyze all timely public comments carefully before deciding whether or not to proceed with an adjustment for taxes in the final rule. We hope that the process of public comment will produce a solution that in the most appropriate manner simultaneously protects the trust fund and satisfies the equity concerns of all hospitals.

In order to facilitate this discussion, we are proposing to provide for a special adjustment for the capital-related tax costs of hospitals that paid such taxes for cost reporting periods beginning in FY 1992. The tax costs of those hospitals were included in the computation of the capital Federal rate. Hospitals that have begun operation since FY 1992 would also be eligible for an adjustment. We are further proposing an adjustment of the Federal rate to offset the amount of capital-related tax costs originally included in the computation of the rate. In this way, adoption of the tax adjustment will be budget neutral: Capital payments will neither increase nor decrease merely because of the tax adjustment.

For those hospitals that are eligible for an adjustment, we propose to apply a hospital-specific Medicare tax cost per discharge amount to the Federal rate portion of each payment for each discharge from the hospital, beginning October 1, 1995. The hospital-specific Medicare tax cost per discharge would be determined on the basis of the updated FY 1992 base year cost, as described below.

The serious issues that arise in connection with the implementation of a tax adjustment concern hospitals whose tax-paying status has changed since FY 1992. We received several inquiries about the treatment of such hospitals. Some hospitals that paid capital-related taxes in FY 1992 may no longer be subject to such taxes (for example, because they converted to non-proprietary status in a taxing jurisdiction that does not tax non-proprietaries). Other hospitals may have been in operation during FY 1992, but have only become subject to tax payments since that time, either by a change in status (that is, from non-proprietary to proprietary) or by the action of state or local authorities to impose capital-related taxes on entities that had not previously been subject to such taxes.

It is the situation of hospitals that have become subject to taxes through the action of state or local authorities that poses the most serious issues of equity and protection of the trust fund. On the one hand, it may seem unfair to prohibit hospitals on whom a tax cost is imposed after FY 1992 from receiving an adjustment available to hospitals on whom a tax cost was imposed in FY 1992. On the other hand, a capital Federal rate tax adjustment should not be vulnerable to possible efforts by state or local authorities to gain revenues from increased Medicare payments to hospitals. Nor should a tax adjustment provide an open-ended commitment to increase the overall level of Medicare capital payments as state and local governments extend taxation to previously tax-exempt facilities. The capital Federal rate tax adjustment that we are proposing reflects only the FY 1992 capital-related tax costs included in the original computation of the Federal rate. It cannot reflect costs imposed on hospitals by the extension of state and local capital-related taxes after FY 1992. Therefore, in the absence of some additional budget neutrality provision, extending the tax adjustment to hospitals that become subject to capital-related taxes after FY 1992 could significantly increase the overall level of Medicare capital payment.

We are proposing that hospitals will not qualify for the adjustment if they become subject to tax payments because of state or local action to change tax laws (for example, by extending taxation to non-proprietary hospitals) since FY 1992. We are doing so both to prevent the possibility that state and local authorities could gain revenues through increased Medicare payments, and to prevent the adoption of a tax adjustment from producing large increases in Medicare capital payments if additional jurisdictions impose taxes on non-proprietary hospitals. Arguably, it is appropriate to exclude such hospitals from a tax adjustment since they had no capital-related tax costs included in the original rate computation, and one feature of a prospective system is that hospitals are at risk for cost changes. In addition, the updates to the Federal rate may be adequate to compensate such hospitals for tax costs imposed on them since FY 1992. Finally, at least during the transition period, hospitals on whom taxes are newly imposed may find some relief through the exceptions provision. We recognize, however, that this policy might be viewed as penalizing newly taxed hospitals for changes in circumstances over which they have no control. We invite comment on the appropriateness of this proposal, which raises issues of equity between hospitals subject to capital-related taxes in FY 1992 and those newly subject to such taxes after FY 1992. We also invite suggestions and comments on other approaches to dealing with the situation of hospitals that become subject to taxes after FY 1992. We believe that any proposal to deal with the situation of such hospitals should protect the Medicare trust fund against an open-ended commitment to increase Medicare payments in order to reimburse hospitals for Medicare's share of newly imposed capital-related tax obligations.

In particular, we invite comment on the possibility of providing an adjustment to such hospitals on a budget-neutral basis. Under such an approach, an annual tax adjustment budget neutrality factor would be applied to the Federal rate to account for the estimated cost of the tax adjustment over and above the costs attributable to capital-related taxes in the FY 1992 base year. In this way, payments including tax adjustments to hospitals that have become subject to taxes since FY 1992 would not exceed the amount of payments in the absence of an adjustment to such hospitals. Such an approach would prevent the tax adjustment from becoming an open-ended drain on the Medicare trust fund. However, such an approach necessarily involves reducing the rate beyond the level accounted for by the capital-related tax costs originally included in the rate computation. In other words, such a budget neutrality adjustment would reduce the amount of other capital-related costs incorporated in the original rate computation. Under such an approach, the reductions in payments to hospitals that do not pay taxes would exceed the amount of capital-related taxes included in the original rate computation; arguably, then, this approach would inappropriately disadvantage hospitals that do not pay capital-related taxes.

With regard to the situation of other hospitals whose tax status has changed since FY 1992, we do not believe that hospitals which are no longer subject to capital-related taxes should receive an adjustment to their capital Federal rate payments. Therefore, we are providing in this proposed rule that a hospital (or a related organization) must be directly subject to capital-related taxes in order to qualify for the capital Federal rate tax adjustment. Hospitals may be required to verify their tax status by appropriate documentation in the course of normal auditing activity.

In addition, we are proposing that no adjustment would be made for hospitals whose status changed from non-proprietary to proprietary after FY 1992. The decision to change status to a proprietary hospital is a voluntary decision of the hospital's management, and we therefore believe that an adjustment to allow special payment for additional taxes that result from such a decision is not warranted.

However, we are proposing that hospitals which were not in operation in FY 1992, should be able to qualify for the adjustment. We are therefore providing that the intermediaries should accept data on capital-related tax payments from hospitals that have begun operation since FY 1992. Such hospitals should contact their intermediaries as soon as possible, but in any case no later than July 31, 1995, to submit the appropriate data and documentation. Such hospitals are responsible for identifying themselves and submitting the required information on their own initiative before that date. Specifically, each hospital should submit the exact amount of capital-related tax payments via resubmission of Medicare cost report Worksheet A–7, Part III, Column 6, Line 5 for the first year of operation. Each hospital should also submit documentation of their capital-related tax payments during that year for verification by the intermediaries. We will follow the same procedure discussed below to establish each hospital's FY 1996 Federal rate tax add-on amount.

Comment: We received several comments opposing a possible tax adjustment to capital-PPS Federal rate payments. Specifically, the commenters alleged that there are inpatient service costs associated with maintaining nonprofit status that are sufficient either to balance the costs of capital-related taxes borne by some hospitals, or to justify a special adjustment to non-proprietary hospitals for those costs. The commenters cited patient service costs including provision of 24-hour emergency room services to all regardless of ability to pay, public information and educational services, and general provision of charity care. The commenters therefore recommended either that we make no adjustment for capital-related tax costs, or that we also initiate a process to compensate nonprofit hospitals for the costs of maintaining that status through an appropriate adjustment.

Response: Capital-related tax costs constitute a fully distinguishable category that can be readily identified and that applies to an identifiable group of hospitals. We do not believe that the existence of costs to maintain tax-exempt status justifies a separate adjustment under the capital prospective payment system. The costs cited by the commenters are largely inpatient operating costs, or even non-inpatient costs (e.g., for outpatient services). To the degree that the cited costs are not inpatient capital costs, they do not provide an appropriate basis for adjustment to the capital-PPS Federal payment rate. Furthermore, we believe that such costs may be adequately compensated by existing arrangements with Medicare and other payers (e.g., various state and local subsidies for charity care and bad debt, as well as the existing Medicare and Medicaid disproportionate share adjustments). Historically, many non-proprietary hospitals have received tax appropriations from state and local governments to compensate them for otherwise uncompensated care. If these hospitals no longer had tax-exempt status, they would no longer receive some of these subsidies. For the purposes of discussion we propose to institute a special adjustment to the capital-PPS Federal rate for tax costs. However, we will continue to analyze this issue of equity in preparation for the final rule. We welcome further comments on this issue. We would also appreciate submission of any data or analysis that may be useful.

As we discussed in our prior **Federal Register** notice (59 FR 45377), adoption of any adjustment to the capital-PPS Federal rate payment for capital-related tax costs requires a corresponding adjustment of the Federal rate to offset the amount of capital-related tax costs originally included in the computation of the rate. In this way, adoption of the tax adjustment will be budget neutral: Capital payments will neither increase nor decrease merely because of the adoption of the tax adjustment. Adoption of a tax adjustment also requires hospital-specific information on capital-related tax costs in order to determine the appropriate adjustment amount for each hospital.

Accordingly, we instructed the Medicare fiscal intermediaries in October 1994 to contact each prospective payment system hospital in writing in order to obtain the necessary data on capital-related tax costs for the first cost-reporting period beginning on or after October 1, 1991 (the first year under the capital prospective payment system). Specifically, the intermediaries asked each prospective payment system hospital to submit the exact amount of capital-related tax costs via resubmission of Medicare cost report Worksheet A–7, Part III, Column 6, Line 5 for the first capital prospective payment system year. Hospitals were also required to submit documentation of their capital-related tax costs for verification by the intermediaries. The intermediaries were further instructed to verify the amount of the capital-related tax costs for each hospital, and to submit that amount, as verified and accepted, to HCFA via the Hospital Cost Report Information System (HCRIS).

We have used the information submitted in response to the tax data collection effort to create a special HCRIS data set. The tax adjustment file contains hospital identifying information (from Worksheets S–2 and S–3), capital-related tax costs (from Worksheet A–7), total capital-related costs (from Worksheets B, Parts II and III, Columns 27, Lines 103, respectively), and total Medicare inpatient capital-related cost data (from Worksheet D, Part I, Columns 6 and 8, Line 101, for routine costs; and from Part II, Columns 6 and 8, Line 101, for ancillary costs). We have also incorporated into this data set information from the regular HCRIS files on hospitals that did not submit the requested information and documentation on any capital-related tax costs. This latter information is necessary in order to determine the proportion of verified capital-related tax costs to all capital-related costs in the initial capital-PPS year. From this file we have determined the Medicare inpatient capital-related tax cost per discharge for each hospital that submitted verified data. We have also developed a proposed adjustment to the Federal capital rate, to account for the capital-related tax costs included in the original Federal rate computation.

Approximately 45 percent of PPS hospitals responded to the data collection effort. We have verified data on 64 percent of proprietary hospitals and 39 percent of non-proprietary hospitals. We have verified that 60 percent of proprietary hospitals and 8 percent of non-proprietary hospitals had capital-related tax costs in the initial capital-PPS year. We still lack verified data from 36 percent of proprietary hospitals. In addition, there may be non-proprietary hospitals who have not yet provided documentation for their FY 1992 tax costs. Approximately 7 percent of PPS hospitals reported capital-related tax costs on previous cost report submissions, but have not yet submitted documentation to the intermediaries for verification.

We therefore instructed the intermediaries to notify hospitals that did not respond to the initial request for tax information and documentation, that

further submissions will be accepted until June 1, 1995. The intermediaries were instructed to send the appropriate notification no later than May 1, 1995. In order to be eligible for a capital-related tax cost adjustment, a hospital must submit the exact amount of capital-related tax payments via resubmission of Medicare cost report Worksheet A–7, Part III, Column 6, Line 5 for the first capital-PPS year. A hospital must also submit documentation of those capital-related tax payments for verification by the intermediary. A hospital which has not submitted the required data and documentation to its intermediary by June 1, 1995 will *not* qualify for a tax adjustment.

We also instructed the intermediaries to notify each hospital that did respond to the initial request for tax information and documentation, of the amount of total tax cost as reviewed, verified, and approved by the intermediary. The intermediaries notified the hospitals that they may provide further information and documentation on costs that the intermediary may have disallowed. The intermediaries were instructed to send the appropriate notification no later than May 1, 1995. The notification from the intermediaries informed hospitals that they must submit any further information and documentation by June 1, 1995. The intermediaries will submit any revised tax data, including new data, to HCFA via HCRIS no later than July 1, 1995. Hospitals that did submit tax data and documentation in response to the previous request, and that have no objections to the amount approved by the intermediary, need take no further steps. Hospitals will receive an appealable final notification of their tax adjustment amount once the final rule implementing the adjustment is published.

We used the following methodology to calculate each hospital's Medicare capital-related tax cost per discharge for the first capital prospective payment system year. We first developed the ratio of the hospital's Medicare inpatient capital-related costs to total capital costs. We then applied that ratio to the amount of total hospital tax costs. The result is the hospital's Medicare inpatient capital-related tax cost. We used this method to compensate for the absence in HCRIS of the statistics, on Worksheet B–1 of the cost report, that are used for cost allocation purposes. In the absence of those statistics, applying the ratio of Medicare inpatient capital-related costs to total capital-related costs provides the most accurate way to derive Medicare's share of capital-related taxes from total hospital capital-related taxes. We then divided Medicare's share of inpatient capital-related tax costs by Medicare inpatient discharges to determine the Medicare tax cost per discharge.

We propose to use the following methodology to adjust the Federal rate to account for the tax costs included in the original computation of the rate. We propose to subtract the total FY 1992 Medicare capital-related taxes allocated to Medicare for all hospitals from the total FY 1992 Medicare capital-related costs for all hospitals. The result is FY 1992 Medicare capital-related costs without taxes. We then determine the ratio of FY 1992 Medicare capital-related costs without taxes to total FY 1992 Medicare capital-related costs (including capital-related tax costs). Finally, we apply this ratio to the base Federal rate to remove the capital-related tax costs currently incorporated into that rate. As a result of these calculations, we are providing in this proposed rule for an estimated 1.14 percent decrease to the base Federal rate to account for the tax costs originally included in the rate. We discuss the effect of this preliminary adjustment to the Federal rate in Part III of the Addendum to this proposed rule.

In estimating the proposed adjustment to the final rule, we took into account not only the FY 1992 capital-related tax costs as verified by the intermediaries, but also tax costs previously reported by hospitals that have not yet been verified by the intermediaries. We counted the latter costs, only for the purposes of estimating the Federal rate adjustment in this proposed rule, in order to provide the hospital industry with an estimate that reflects the maximum adjustment to the rate, given the current data. Since we are also providing, in this proposed rule, an additional opportunity for hospitals to report capital-related tax data, some hospitals that have not yet verified previously reported tax costs may yet provide us with appropriate documentation. We believe that the estimated Federal rate adjustment in this proposed rule should reflect those costs that may yet be verified. If this proposal is retained in the final rule, we would recalculate the adjustment to the Federal rate, using only data on FY 1992 tax costs that has been documented and verified by the intermediaries, and submitted to HCFA via HCRIS by July 1, 1995. (Hospitals that have not yet submitted documentation to verify their FY 1992 capital-related tax costs must do so no later than June 1, 1995 in order to qualify for a tax adjustment.) The final adjustment to the capital Federal rate could thus be higher or lower than the adjustment in this proposed rule, depending upon the results of further reporting and verification activity.

In our previous discussion of a possible tax adjustment, we outlined two possible methodologies for determining the amount of the actual payment adjustment to hospitals. One possible method was to determine a property tax factor (PTF) on the basis of the ratio of the FY 1992 Medicare tax cost per discharge to the hospital's FY 1992 adjusted Federal capital rate. This percentage would then be applied to the Federal rate for each discharge from an eligible hospital for discharges on or after October 1, 1995. However, we expressed reservations about this approach. Under this approach, payments would increase or decrease purely as a function of Federal rate changes. As a result, the change in payments received by a hospital under this methodology would correlate with the changes to the Federal rate. However, changes in the Federal rate are driven by factors that may not correlate with changes in capital-related tax costs.

The second option was to apply a hospital-specific Medicare tax cost per discharge amount from the FY 1992 base year to the Federal rate portion of each payment for each discharge from an eligible hospital, beginning October 1, 1995. Under this approach, each hospital's FY 1992 Medicare tax cost per discharge would be calculated as described above. The FY 1992 tax cost per discharge would then be updated by an appropriate factor for subsequent periods. This direct dollar add-on approach has the advantage of separating the tax adjustment from changes to the Federal rate. A difficulty with this approach is the selection of an appropriate update mechanism. Any update mechanism would have to account for any differences between the factors that drive capital-related cost increase in general and those that drive capital-related tax cost increases in particular (e.g., changes in the assessed value of property and changes in tax rates). Any update mechanism would also need to be insulated from the effects of actions by taxing authorities, so that the amount of Medicare payment cannot be manipulated to increase tax revenues to state and local authorities. In addition, it will be several years before we have sufficient data on tax costs from Worksheet A–7 of the cost report to analyze trends in tax cost increases.

We received no comments on the discussion of possible adjustment methodologies. We have therefore determined to proceed with a proposed

adjustment methodology that reflects the considerations we presented in our previous discussion (59 FR 45376ff.) Our proposal is to update each hospital's FY 1992 Medicare tax cost per discharge to FY 1996 by the total capital-PPS Federal rate updates for that period. The cumulative update is 14.75 percent (the product of the update factors for FY 1993, FY 1994, FY 1995, and the proposed factor for FY 1996: 6.07 percent, 3.04 percent, 3.44 percent, and 1.50 percent). Once we have updated each hospital's Medicare tax cost per discharge, we would study the issues involved in developing an appropriate update mechanism. If we adopt a tax adjustment in the final rule, we propose to determine an update mechanism by FY 1998. We would then adjust each hospital's Medicare Federal rate tax add-on amount to reflect the appropriate updates under the mechanism.

We propose to use the hospital-specific Medicare tax cost per discharge, as updated to FY 1996, as the capital-related tax add-on to the Federal rate portion of payment for each discharge, beginning on October 1, 1995. The Federal rate tax add-on amount would be added to the Federal rate payment amount prior to the application of the appropriate Federal rate payment percentages under the capital prospective payment system transition methodologies (e.g., 50 percent for fully prospective hospitals in FY 1996). This is because both old capital reasonable cost payments under the hold harmless methodology, and hospital-specific rate payments under the fully prospective methodology, reflect a hospital's actual cost experience, including the hospital's costs for capital-related taxes. Adding the tax adjustment amount outside the Federal rate payment percentage would thus constitute double payment for those costs.

Since we are presenting a proposal for a capital-related tax adjustment, the impact analysis in Appendix A.VII of this proposed rule includes two new categories of hospitals. Table V of the Appendix shows that, with all the changes in this proposed rule, average payments per case to all hospitals are estimated to increase 20.45 percent. If a tax adjustment is instituted, average payments per case to hospitals that we expect to receive the adjustment are estimated to increase 20.9 percent (an average increase of $139 per case from FY 1995 to FY 1996). In contrast, payments to other hospitals are expected to increase 20.2 percent (an average increase of $117). We also estimate that, in the absence of a tax adjustment, payments to hospitals that would have received the adjustment would increase 19.1 percent (an average increase of $127), and payments to other hospitals would increase 21.1 percent (an average increase of $122).

In the course of the data collection initiative, we received one other inquiry that must be addressed in this proposed rule. Several intermediaries and other parties inquired about the treatment of taxes included in the terms of leases between unrelated parties on real property and equipment. Many leases of equipment and real estate require the lessee to pay the lessor's property tax costs on the leased property. In the course of the data collection effort, we instructed the intermediaries not to include such costs as provider tax costs for the purposes of the capital-related tax cost data collection effort. We have several reasons for adopting this position. The first reason is that, in such cases, the obligation to pay the lessor's tax costs arises from a contractual commitment rather than from the action of a taxing authority. In other words, it is the owner of the property, not the lessee, that bears the tax obligation. In case the lessee fails to pay the amount for taxes specified under the lease, the lessee would be subject not to action on the part of the taxing authority for failure to pay taxes due, but only to action on the part of the lessor for failure to meet a contractual obligation. For this reason, where a provider is obligated by the terms of a lease with an unrelated party to pay the lessor's tax costs, we believe that those costs are lease costs rather than tax costs for the provider.

Even if we agreed that such costs should be considered tax costs, however, we still do not believe that they ought to be included within the scope of an adjustment for capital-related taxes. The purpose of making a tax payment adjustment within a rate-based system is to account for the unique costs of an identifiable group of hospitals. There is an identifiable group of hospitals that make tax payments on the value of the real assets that they own. Virtually all providers lease some real property or equipment. Thus, virtually all providers pay tax costs on leased property (whether or not the lease specifically identifies the portion of the lease payments that reflect the owner's tax costs). Since such costs are not unique to an identifiable group of hospitals, they are not an appropriate basis for a tax payment adjustment. These costs continue to be encompassed within the Federal rate.

An additional consideration involves differences in lease terms. In some leases, tax costs on the leased property are separately identified in the terms of the lease agreements. It can even be the case that, under the terms of the lease, the annual tax bill is merely forwarded to the lessee for direct payment to the taxing authority. In other leases, the tax costs are not specifically identified, although they are certainly reflected, like other costs of the lessor, in the designated lease payments. In these latter cases, it may be administratively difficult to verify what portion of the lease payments reflect the lessor's tax costs as opposed to the lessor's other costs. We believe that it would be unfair to treat hospitals differently on the basis of differences in lease terms.

Tax costs included in leases between related parties, however, should be treated in accordance with the established rules for related party costs under section 413.17 of the regulations. In these cases, it is not the existence of the lease, but rather the relationship of common ownership or control, that provides the basis for considering such costs as allowable capital-related tax costs for the hospital. Such costs would be treated as allowable capital-related tax costs even in the absence of a formal lease between the related parties. We are therefore providing, in this proposed rule, that only tax costs borne by a hospital (or a related organization) as the owner of property qualify for consideration under this special payment adjustment.

VI. Proposed Changes for Hospitals and Units Excluded From the Prospective Payment Systems

A. New Requirements for Certain Long-Term Care Hospitals Excluded From the Prospective Payment Systems (§§ 412.23(e))

1. Effect of Change of Ownership on Exclusion of Long-Term Care Hospitals

Some questions have arisen as to whether a hospital's compliance with the length-of-stay requirement for long-term care (LTC) hospitals is affected by its sale to a new owner. A hospital that has operated as a general acute care facility and is paid under the prospective payment system may experience an increased length of stay that, if continued for all of the 6-month period immediately preceding the start of a cost reporting period, would qualify the facility for an LTC hospital exclusion. If there is a change of ownership, the issue arises whether the part of the hospital's operating experience that preceded the change of ownership should be counted toward the 6-month period of operating experience needed to justify exclusion

of the hospital, under its new owner, from the prospective payment system.

After reviewing this issue, we have concluded that the operating experience of the hospital is the relevant consideration. If a change of ownership occurs at the start of a cost reporting period, or at any time during the 6 months immediately preceding the start of that period, the hospital is not required to begin a new qualifying period. To clarify current regulations, we would specify under § 412.23(e)(2) that if a hospital undergoes a change of ownership at the start of a cost reporting period, or at any time within the preceding 6 months, it may be excluded from the prospective payment system as an LTC hospital if it is otherwise qualified and maintained an average length of stay in excess of 25 days, under both current and previous ownership, for that 6-month period. To qualify for the exclusion, the hospital must have been continuously in operation for all of the qualifying period and participated continuously in Medicare as a hospital. That is, as in the case of any hospital experiencing a change of ownership, periods during which the hospital was closed or did not participate in Medicare could not be counted toward the required experience.

2. Revised Criterion on Purchase of Services by LTC "Hospitals Within Hospitals"

Recently, some entities began to organize themselves under what they refer to as the "hospital within a hospital" model. Under this model, an entity may operate in space leased from a hospital and have most or all services furnished under arrangements by employees of the lessor hospital. The newly organized entity may be operated by a corporation formed and controlled by the lessor hospital, or by a third entity that controls both. In either case, the new entity seeks State licensure and Medicare participation as a hospital, demonstrates that it has an average length of stay of over 25 days, and seeks to obtain an exclusion from the prospective payment systems. However, the effect of excluding such a facility from the prospective payment systems would be to extend the LTC hospital exclusion, inappropriately, to what is for all practical purposes a LTC hospital unit.

To avoid granting LTC hospital exclusions inappropriately to hospital units while still allowing adequate flexibility for legitimate networking and sharing of services, we set forth additional exclusion criteria for these "hospitals within hospitals" in our September 1, 1994 final rule (59 FR 45389–45393). These regulations provide that, in addition to meeting the other LTC hospital exclusion requirements set forth in § 412.23, to be excluded from the prospective payment systems, a hospital located in the same building or in one or more entire buildings located on the same campus as another hospital must have a separate governing body, a separate chief medical officer, a separate medical staff, and a separate chief executive officer. These criteria are stated in regulations at §§ 412.23(e)(3)(i)(A) through 412.23(e)(3)(i)(D). In addition, the hospital must either perform most basic hospital functions without any assistance from the hospital with which it shares space (or from a third entity which controls both) (§ 412.23(e)(3)(i)(E)) or receive at least 75 percent of its inpatient referrals from a source other than the other hospital during the period used to demonstrate compliance with the length-of-stay criterion (§ 412.23(e)(3)(ii)). We note that the criterion under § 412.23(e)(3)(i)(E) does permit a hospital seeking exclusion to obtain certain services from a hospital occupying space in the same building, including food and dietetic services and housekeeping, maintenance, and other services necessary to maintain a clean and safe physical environment.

Since publication of the September 1, 1994 final rule, hospital representatives have stated that there are some situations in which basic hospital services other than those related to dietetic, housekeeping and maintenance functions could be furnished in a more cost-effective manner, or more conveniently for patients, if they were provided by the hospital in which the LTC hospital is located. For example, a hospital must be able to perform some lab tests, known as "stat" lab tests, on a 24-hour basis and to obtain results quickly. However, these tests are performed only infrequently, and it would not be cost-effective to maintain a separate in-house laboratory simply for them. Another frequently cited example of such services is specialized imaging procedures, such as CT scans and MRI procedures, which require very complex and costly equipment and may be available from only a few sources. If such procedures are available at the hospital in which the LTC hospital is located, it is safer and more convenient for patients for the services to be provided there than to transport the patient to another facility for them.

We recognize the need to allow LTC hospitals within hospitals greater discretion to purchase services like these from their "host" facilities, when it is done in a cost-effective and convenient way. However, it is also important that the LTC hospital exclusion criteria be clear and definite enough to limit LTC exclusions to bona fide separate hospitals. To balance these competing objectives, we propose to revise the exclusion criteria to describe the scope of services that can be obtained from the host hospital in financial terms, rather than by type of service.

Under our proposal, an otherwise qualified hospital could obtain a LTC hospital exclusion if the operating cost of services that it furnishes directly or obtains from a source other than the hospital with which it shares a building or campus (or from a third entity which controls both hospitals) constitutes at least 85 percent of its total inpatient operating costs. This test would be applied with respect to the cost reporting period or other time period used to establish the hospital's compliance with the length of stay criterion. (If a period other than a full cost reporting period is used, the LTC hospital is responsible for providing HCFA with verifiable information on its costs for that part of the period.)

We are proposing a criterion of 85 percent of total inpatient operating costs as an appropriate test of separateness based on the level of dietetic, housekeeping, and maintenance expenses incurred by a small sample of LTC hospitals for which we have readily available data. Our review showed that these expenses generally ranged from 5 to 17 percent of total inpatient operating costs for the periods under review. By setting the maximum acceptable level at 15 percent, we believe that we would allow hospitals an adequate margin for purchase of a limited range of services, without encouraging a level of dependence that calls into question the LTC hospital's status as a separate institution.

To implement this policy, we would specify under proposed § 412.23(e)(3)(i)(E) that the costs of any services a hospital obtains under contract or other agreements with a hospital occupying space in the same building or campus, or with a third entity that controls both hospitals, may not exceed 15 percent of the hospital's total inpatient operating costs, as defined under § 412.2(c). Thus, a LTC hospital would be permitted to obtain dietetic, housekeeping, maintenance or other services from another hospital with which it shares a building or campus (or from a controlling third entity), provided that the aggregate cost of these services is no more than 15 percent of its total inpatient operating costs.

B. Clarifying Changes for Excluded Hospitals and Units (§§ 412.23, 412.29, 412.30 and 412.130)

For clarity, we propose to revise § 412.23(e)(3) to state more clearly that a hospital sharing space with another can qualify for exclusion only if it meets all of the requirements of paragraphs (e)(3)(i)(A) through (e)(3)(i)(D) of that section and, in addition, those in *either* paragraph (e)(3)(i)(E), which deals with separate performance of services, or § 412.23(e)(3)(ii), which deals with the source of the hospital's patients.

In addition, we propose to restate the rules in §§ 412.29 and 412.30 to differentiate more clearly between criteria that apply when a hospital seeks exclusion of a rehabilitation unit that is created through an addition to its existing bed capacity, and the criteria that apply when a hospital seeks exclusion of a unit that has been created by converting existing bed capacity from other uses. We also plan to clarify the rules that apply when a hospital expands an existing rehabilitation unit by increasing its bed capacity or by converting existing capacity. These revisions are being proposed in response to complaints from some hospital representatives that the current regulations do not state our criteria clearly. We want to emphasize that these proposals merely restate, and do not change, existing rules. In conjunction with this proposed change, we would make a technical change to a reference in § 412.130.

C. Changes to the Regulations Addressing Limitations on Reimbursable Costs (§§ 413.30(e) and (f), and 413.35(b))

We propose to remove obsolete material from the regulations. Specifically, we propose to remove § 413.30(e)(1), (e)(3), and (e)(4), since sole community hospitals, risk-basis HMOs, and rural hospitals with less than 50 beds are included under 42 CFR part 412, which governs the prospective payment system for operating costs. In addition, we propose to remove § 413.30(f)(5), (f)(6), (f)(7) (a reserved paragraph), and (f)(9), concerning exceptions for hospital routine care, essential community hospital services, and hospital case-mix changes for cost reporting periods beginning before October 1, 1983. In conjunction with these proposed changes, we would incorporate the exemption requirements for new providers into paragraph (e) of § 413.30, redesignate subparagraphs under paragraph (f) of § 413.30, and make technical changes to references in §§ 413.30(f) and 413.35(b)(2).

D. Payment Window for Hospitals and Hospital Units Excluded from the Prospective Payment Systems (§ 413.40(c))

On January 12, 1994, we published an interim final rule with comment period to specify that inpatient hospital operating costs include costs of certain preadmission services furnished by the hospital (or by an entity that is wholly owned or operated by the hospital) to the patient up to 3 days before the date of the patient's admission to the hospital (59 FR 1654). The interim final rule implemented section 4003 of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101–508), which amended section 1886(a)(4) of the Act. Because the definition of inpatient operating costs in section 1886(a)(4) of the Act applies to both prospective payment system hospitals and hospitals excluded from the system, the January 12, 1994 interim final rule revised the regulations governing excluded hospitals as well as those governing prospective payment hospitals. Specifically, we revised § 413.40(c)(2) of the regulations to reflect the 3-day payment window as required by the statute. We received 11 comments in response to the January 12, 1994 interim final rule.

On October 31, 1994, Congress enacted the Social Security Act Amendments of 1994. Section 110 of that legislation amended section 1886(a)(4) of the Act to state that, for hospitals excluded from the prospective payment system, the preadmission services to be included are those furnished during the 1 day (not 3 days) before a patient's admission.

To implement this provision, we propose to revise § 413.40(c)(2) to provide for a 1-day payment window for the hospitals and hospital units excluded from the prospective payment system. We note that the term "day" refers to the calendar day immediately preceding the date of admission, not the 24-hour time period that immediately precedes the hour of admission.

This change may have an impact on the application of the hospital's target rate per discharge. With the implementation of the 3-day window of section 4003 of Public Law 101–508, the hospital may have received an adjustment to account for costs that had been reported in the TEFRA base year as Part B, that as a result of the Public Law 101–508 change were reported as Part A costs. In light of the 1994 amendment, such adjustments will be reviewed and if necessary revised to assure that the costs designated as Part A during the base year continue to be comparable to the costs reported as Part A during the subsequent cost year.

In the final rule, we will address comments on the proposed change as well as the comments on the January 12, 1994 interim final rule.

E. Ceiling on the Rate of Increase in Hospital Inpatient Costs (§ 413.40(e) and (g))

We propose to revise § 413.40(e)(1) to clarify that a request for a payment adjustment must be received by a hospital's fiscal intermediary no later than 180 days from the date on the notice of amount of program reimbursement (NPR). As currently worded, this section states that a request must be "made" rather than "received." We have consistently interpreted the word "made" to mean "received by the fiscal intermediary" since the original regulation was promulgated (47 FR 43282, September 30, 1982). However, use of the word "made" in § 413.40(e)(1) has resulted in varying interpretations of the timely filing requirement by hospitals and their fiscal intermediaries. In the interest of a uniform and consistent application of our policy, we are proposing to clarify the regulation by substituting "received by the hospital's fiscal intermediary" for "made" in § 413.40(e)(1).

In § 413.40(g)(1), we are proposing to clarify the determination of the amount of payment made to a hospital that receives a TEFRA adjustment. Since October 1, 1991, a hospital with operating costs in excess of its ceiling has been paid the ceiling plus an additional amount, as provided at § 413.40(d)(3). For these cost reporting periods, a hospital receives some payment for costs in excess of the ceiling. We are proposing to add a sentence to clarify that the amount of payment made after a TEFRA adjustment may not exceed the difference between a hospital's operating costs and the payment previously allowed.

VII. ProPAC Recommendations

We have reviewed the March 1, 1995 report submitted by ProPAC to Congress and have given its recommendations careful consideration in conjunction with the proposals set forth in this document. Recommendations 1, 4, and 5, concerning the update factors for inpatient operating costs, the update factor for hospitals paid on the basis of hospital-specific rates, and the update factor for hospitals excluded from the prospective payment system and distinct-part units, respectively, are

discussed in Appendix D of this proposed rule. Recommendations 2 and 3, concerning the update factors for inpatient capital costs and the single operating and capital update factor, respectively, are discussed in Section V of this proposed rule. Recommendation 11, concerning improving Medicare transfer payment policy, is discussed in section IV.A of the preamble. The remaining recommendations are discussed below.

A. Update to the Composite Rate for Dialysis Services (Recommendation 6)

Recommendation: For FY 1996, the composite rate for dialysis services should be updated to account for the following:

- The projected increase in the market basket index for dialysis services, currently estimated at 3.7 percent;
- A net adjustment of zero percentage points for scientific and technological advances and productivity; and
- A negative discretionary adjustment of 3.7 percentage points to reflect the relationship between payments and estimated fiscal year 1995 costs.

This would result in an update of zero percent.

Response: We agree with ProPAC's recommendation not to propose a payment rate increase for dialysis services. ProPAC's cost analysis indicates that, in aggregate, Medicare payments to independent dialysis facilities were about 12 percent higher than their Medicare allowable costs, and thus there is no basis to increase the composite rate. Furthermore, ProPAC concludes that without documented explanations for reported higher costs in hospital-based facilities, it cannot justify a differential update for these facilities.

ProPAC's analysis of the 1993 unaudited cost data shows that Medicare allowable costs for independent facilities are less than their payment rate. Since 1983, the number of independent facilities has continued to increase in response to growing patient demand, even though payment rates have remained constant. As noted by ProPAC, the margin between independent facilities' composite payment rates and their Medicare allowable costs continues to decrease. Because of this trend, we will closely monitor the costs of dialysis treatments as reported by facilities on their cost reports. Further, if Medicare's conditions of coverage are revised to include an adequacy of dialysis standard, we will examine the need to adjust composite payment rates. The current composite payment rates are mandated by statute.

To improve the quality of the cost report data and to address concerns about the cost report, we have revised the independent facilities' cost report, Form HCFA 265–94. The new cost report eliminates the allocation of the facility's overhead to the drug recombinant human erythropoietin (EPO). In addition, we are revising the independent cost reports edits. These edits would screen cost report data to ensure that data elements outside edit ranges are investigated by intermediaries.

B. Level of the Indirect Medical Education (IME) Adjustment to Prospective Payment System Operating Payments (Recommendation 7)

Recommendation: For FY 1996, the IME adjustment to prospective payment system operating payments should be reduced by 13 percent, from a 7.7 percent to a 6.7 percent increase for every 10 percent increment in teaching intensity. Ultimately, the IME adjustment should be reduced by about 40 percent, to a 4.5 percent increase for every 10 percent increment in teaching intensity.

Response: ProPAC's IME estimate of 4.5 percent represents a significant acceleration in the downward trend of its estimates in the last several years (5.7 percent in 1992, 5.4 percent in 1993, and 5.2 percent in 1994). Coupled with FY 1993 cost report data showing major teaching hospitals' Medicare operating margins (difference between payments and costs as a percentage of payments) rising to over 11 percent, this declining IME estimate adds to the argument that the current adjustment is too high. Legislation would be required to reduce the IME adjustment. However, savings proposals of this sort would only be appropriate in the context of health care reform.

C. Improving Outlier Payment Policy (Recommendation 8)

Recommendation: The Medicare statute should be amended so that the estimated cost of a case for determining outlier payment and the outlier payment amount are not adjusted to reflect a hospital's teaching and disproportionate share status. This change would make the outlier payment policy more effective in protecting hospitals from the risk of large losses on some cases.

Response: We agree that it may be appropriate not to adjust the estimated cost of a case to reflect a hospital's teaching and disproportionate share status. However, as we have stated in the past (see, for example, 59 FR 27754, September 1, 1994), we believe this change would be appropriate only in conjunction with statutory changes providing that IME and DSH payments would no longer reflect outlier payments. Currently, sections 1886(d)(5)(B) and (F) of the Act, respectively, specify that IME and DSH payments are calculated by applying a factor to the sum of DRG payments and outlier payments. Therefore, the more outlier payments a hospital receives, the more IME and DSH payments the hospital receives (if it qualifies for such payments).

We note that the current scheme leads to higher overall payments than might be intended, and this problem could be addressed by the changes discussed above. We set outlier payment policies for a Federal fiscal year so that estimated outlier payments equal 5.1 percent of estimated total payments based on DRGs. Under section 1886(d)(3)(B) of the Act, we reduce the standardized amounts by a corresponding factor. However, outlier payments affect the level of IME and DSH payments, and, generally, aggregate IME and DSH payments after accounting for outliers are greater (an estimated $80 million greater in FY 1996) than aggregate IME and DSH payments would be if there were no outliers (and no reduction to the standardized amounts to account for outliers). Currently, the statute does not provide for an adjustment to the standardized amounts to account for the increased IME and DSH payments.

D. Making DRG Payment Rates More Accurate (Recommendation 9)

Recommendation: The Secretary should implement, as soon as practicable, the DRG severity refinements developed by HCFA. At the same time, she should improve the accuracy of basic DRG payment rates and outlier payments by changing the methods used to calculate the DRG relative weights. The weights should be based on the national average of hospital-specific relative values for all cases in each DRG, rather than the national average standardized charge per case.

Response: In the May 27, 1994 proposed rule (59 FR 27716), we announced the availability of a paper we prepared that describes our preliminary severity DRG classification system and the analysis upon which our proposal was formulated. Based on the 100 comments we received on that paper, we are further analyzing and adjusting the severity DRG classifications. We are also examining the stability of the severity classifications over time. We agree with the Commission's judgment that adopting the severity DRGs would tend

to reduce current discrepancies between payments and costs for individual cases and thereby improve payment equity among hospitals. We therefore remain committed to implementing the severity DRG classification system as soon as possible. (See discussion in Section II.B of this preamble.)

We also agree with the Commission that basing DRG weights on standardized charges results in weights that are somewhat distorted as measures of the relative costliness of treating a typical case in each DRG. The Commission notes several sources of distortion, including the following: Systematic differences among hospitals in cost-to-charge ratios; variation in mark-ups for services across hospitals; variation among DRGs in the average mark-up implicit in case level charges; standardization factors that inaccurately represent cost differences among hospitals; and the absence of adjustments to account for factors such as variations in practice patterns and efficiency. We recognize that the hospital-specific relative value method of setting weights may reduce or eliminate distortions from these sources, and we are studying its effect on DRG weights and hospital payments.

The Commission also addresses two issues regarding current outlier financing policies: (1) How to account for outlier payments in setting a DRG weight that accurately reflects the relative costliness of treatment for typical cases; and (2) how to finance outlier payments so that the burden of treating such cases is spread fairly among all hospitals. We are studying these issues and look forward to working with ProPAC to find solutions.

Because the effects on DRG weights of implementing DRG severity refinements and changing the methods used to calculate DRG relative weights are interactive, we believe that appropriate changes should be adopted concurrently. However, as stated in the final rule published on September 1, 1992 (57 FR 39761) and in subsequent rules, as well as in this rule, we would not make significant changes to the DRG classification system unless we are able either to improve our ability to predict coding changes by validating in advance the impact that potential DRG changes may have on coding behavior, or to make methodological changes to prevent building the inflationary effects of the coding changes into future program payments.

E. Improving Annual Update Policies (Recommendation 10)

Recommendation: The Secretary should be given authority to adjust the standardized amounts if anticipated coding improvements would increase aggregate payments by more than 0.25 percent during the coming year. This adjustment should be separate from the annual update. It should be based on findings from empirical analysis of the new HCFA data base of reabstracted medical records. Once sufficient data are available, the Secretary should also make a correction if there is more than a 0.1 percentage point error in a previous adjustment.

Response: We agree with ProPAC that anticipated coding changes should be taken into account and that the most appropriate method for recognizing valid increases in case mix as a result of improved coding practices is within the framework of the standardized payment amount. We acknowledge, with ProPAC, that shifts in the mix of cases among DRGs may result from changes in practice patterns, new technology, or variations in the incidence of illness, as well as changes in the coding of diagnoses and procedures.

As ProPAC states, under section 1886(d)(4)(C) of the Act, we are required to make DRG reclassification and recalibration changes in a budget neutral manner. To meet this requirement, we normalize the DRG relative weights so that, for the discharges in the data base, the average DRG weights before and after reclassification and recalibration are equal. The recalibration of the DRG weights is accompanied by a budget neutrality adjustment to the standardized payment amount to ensure that estimated aggregate payments remain unchanged.

We share ProPAC's concern that introduction of any major modification to the DRG classification system will result in major shifts in the distribution of cases among the DRGs. Because the severity refinements to the DRGs would create many new DRGs with relatively high weights, there will be increased incentive to hospitals to report those secondary diagnoses that result in assignment to the higher weighted DRG. We agree with ProPAC that this is not inappropriate and is indeed anticipated. We further agree that we need to ensure that hospitals are fairly compensated for increases in costs that reflect real increases in the level of severity of illness of their patient population.

In order to protect the Medicare program from payment increases that are a consequence of improved coding practices that do not reflect a real increase in case mix, we have developed a methodology that would recalibrate the DRG relative weight to 1.0 each year, thus eliminating the normalization process and the concomitant inflationary adjustment to the DRG weights. This would prohibit upcoding and other coding improvements from having an impact on the DRG relative weight. To account for real case-mix increases, we have recommended an annual upward adjustment to the standardized amounts equal to the lesser of the total observed case-mix increase or 1.0 percent. Anticipated case-mix change due to upcoding would be accounted for through a prospective adjustment to the standardized amounts. This adjustment would be for one year at a time and would not be cumulative.

ProPAC recommends that an ongoing data base of reabstracted medical records be used to estimate the real and coding components of case-mix change and provide the basis for forecasting future coding changes. HCFA has recently implemented a record reabstracting process being conducted by two clinical data abstraction centers (CDACs) under contract with the Health Standards and Quality Bureau (HSQB). The CDACs will review a national random sample of 30,000 records per year from the National Case History file, gathered on a monthly basis. Registered Record Administrators (RRAs) and Associate Record Technicians (ARTs) will reabstract the medical record and perform complete record medical coding, which will be stored with the original coding.

We will evaluate the results of this reabstracting process before making a decision to base adjustments for anticipated coding changes only on this data base. Our estimate of an annual real case-mix increase of 1.0 percent is supported by past studies of case-mix change by the Rand Corporation. The most recent study by RAND, "Has DRG Creep Crept Up? Decomposing the Case Mix Index Change Between 1987 and 1988", by G.M. Carter, J.P. Newhouse and D.A. Relles, R–4098–kHCFA/ProPAC (1991) uses medical records from those Federal fiscal years, using consistent standards, to determine real case-mix change.

As we pursue options and alternatives to payment adjustments to account for real case-mix increases, we will take into consideration ProPAC's recommendations to limit adjustments to those occasions in which coding changes would increase aggregate payments by more than 0.25 percent or when forecasts differ from observed, actual experience by more than 0.1 percent. We note, also, that we are considering a number of related modifications to the calculation of the

DRG relative weights that will have an impact on the prospective payment rates. (See response to ProPAC Recommendation 9, above.)

F. Controlling the Volume of Hospital Outpatient and Other Ambulatory Services (Recommendation 12)

Recommendation: The Secretary should conduct research on appropriate and effective volume control methods for services provided in hospital outpatient departments and other ambulatory settings. Even with a prospective payment system that relies on ambulatory patient groups or some other service classification scheme, Medicare spending for ambulatory services will continue to grow at a rapid pace because of increased volume. The Secretary should also address how the changing health care delivery system will affect utilization and site of care.

Response: ProPAC asserts that expenditures for ambulatory services provided in hospital outpatient departments will continue to grow rapidly even under an outpatient prospective payment system unless measures are taken to control volume of services. In our *Report to Congress—Medicare Hospital Outpatient Prospective Payment (March 17, 1995) (p. 21),* HCFA explicitly recognizes the need for such measures under an outpatient prospective payment system. If outpatient prospective payment is implemented, HCFA intends to investigate various methods to control the volume of ambulatory services in the hospital setting, as well as in other sites. These include bundling, ancillary packaging, multiple-procedure discounting, and expenditure targets (volume performance standards).

We fully concur with ProPAC's assessment of the difficulties involved in controlling the volume of ambulatory services. We recognize that because Medicare's payment methods differ by site of service, if payment and volume controls are imposed in one setting, utilization probably would shift to another. We would hope to ensure that payment encourages shifting of services to appropriate sites. We are aware of these difficulties and fully intend to address them if and when we implement an outpatient prospective payment system.

G. Changes to Medicare's Hospital Outpatient Payment Method (Recommendation 13)

Recommendation: Beneficiary coinsurance for hospital-provided outpatient services should be reduced from 20 percent of charges to 20 percent of payments. Further, until prospective payment for hospital outpatient services is implemented, the payment formula should be changed to fully reflect beneficiary coinsurance payments. The savings from correcting the payment formula should be used to offset program expenditure increases caused by reducing beneficiary liability.

Response: ProPAC notes that due to the way Medicare payments are calculated, beneficiaries pay more than 20 percent of total payments to hospitals for outpatient services. In addition, part of the payment formula for hospital outpatient services is based on the incorrect assumption that 20 percent of the prospective rate equals 20 percent of charges. This flaw in the payment formula prevents HCFA from fully benefiting from beneficiary coinsurance payments, resulting in a "formula-driven overpayment" to hospitals. ProPAC recommends the immediate reduction of beneficiaries' share of payments to 20 percent of the total payments, and the simultaneous correction of the payment formula. ProPAC also raises the possibility of phasing in a correction in the payment formula over the next several years.

HCFA has investigated this problem at considerable length, and has reported the results of this investigation in our Report to Congress—Medicare Hospital Outpatient Prospective Payment (March 17, 1995) (p. 24). Outpatient prospective payment would provide an excellent opportunity to reduce the beneficiary percentage of payments; in fact, contrary to ProPAC's assertion that the coinsurance problem should be addressed independently of the implementation of an outpatient prospective payment system, HCFA believes that the issues are inextricably linked. The Medicare payment amounts for most outpatient services furnished by hospitals are not known at the time the services are provided, because most hospital outpatient services are paid, at least in part, on a retrospective cost basis. Accordingly, the statute requires that coinsurance be based on 20 percent of charges for the majority of hospital outpatient services. However, the implementation of a prospective payment system would allow for the coinsurance issue to be addressed since payment would be known at the time of service. We do recognize, however, that the "formula-driven overpayment" problem can be corrected independently of the prospective payment system and beneficiary coinsurance.

In our report to Congress, we have presented several options for phasing down the beneficiary coinsurance to 20 percent, in conjunction with the outpatient prospective payment system. However, since implementation of any given option would require legislation, HCFA currently does not have the authority to modify the outpatient payment methodology as suggested.

VIII. Other Required Information

A. Paperwork Reduction Act

This proposed rule contains information collection requirements that are subject to review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Following is a discussion of each of these requirements:

- Under § 412.106(b)(3), for purposes of the DSH adjustment, a hospital's Medicare Part A/SSI percentage may be calculated based on its cost reporting period rather than the Federal fiscal year. (See section IV.E of the preamble.) Under current policy, a hospital must submit, in machine-readable format, data on its Medicare Part A patients for its cost reporting period. We are proposing to revise this requirement to provide that hospitals need only make a written request for the recalculation and need not submit the data. We estimate that the current burden associated with submitting the data is approximately 24 hours per request. Under the proposed revision, we estimate a burden of 1 hour per request. Based on an estimate of 12 requests per year, the total proposed burden would be 12 hours, in comparison to the current total burden of approximately 288 hours.
- Section 412.323 of this proposed rule contains new requirements concerning how a hospital may qualify for an adjustment to the Federal rate payment to account for its capital-related tax costs. (See section V.B of the preamble.) Currently, each Medicare-participating hospital is required to identify the amount of its capital-related tax costs on the hospital cost report (HCFA Form 2552–92). The reporting and recordkeeping burden associated with the hospital cost report is approved through August 31, 1996 under OMB No. 0938–0050.

Under proposed § 412.323, we are requiring that a hospital submit supporting documentation to its intermediary to verify the amount of capital-related tax costs reported on the hospital's cost report for FY 1992, or its first year of operation, if later. A hospital cannot qualify for an adjustment to the Federal rate payment unless it submits the required supporting documentation.

Based on our current cost reporting data, we estimate that the large majority of hospitals will be essentially unaffected by the proposed documentation requirement because they have no relevant capital-related tax costs to report. For this group of almost 4,000 hospitals, simple verification of the lack of any such costs should take no more than 15 minutes per response, resulting in a one-time burden of no more than 1,000 hours. For the remaining group of approximately 1,300 hospitals with capital-related tax costs, we are unable to develop a quantifiable estimate of the burden associated with submitting the necessary documentation. The associated burden for an individual hospital will depend on the complexity of its property holdings and tax situation. We estimate that the burden could range from as little as 15 minutes per response to 8 hours, producing a possible burden ranging from 325 to 10,400 hours. However, we note that, as part of their cost reporting responsibilities, all hospitals are required to be able to furnish documentation of information reported on the hospital cost report. Thus, we believe that for most of these 1,300 hospitals, the associated burden should be much closer to the lower end of the estimated range.

We welcome comments on the information collection requirements associated with the provisions discussed above. These information collection and recordkeeping requirements are not effective until they have been approved by OMB. A notice will be published in the **Federal Register** when approval is obtained. Organizations and individuals desiring to submit comments on these information collection and recordkeeping requirements should direct them to the Office of Management and Budget, Human Resources and Housing Branch, Room 10235, New Executive Office Building, Washington, D.C., 20503, Attention: Allison Eydt, HCFA Desk Officer.

B. Requests for Data From the Public

In order to respond promptly to public requests for data related to the prospective payment system, we have set up a process under which commenters can gain access to the raw data on an expedited basis. Generally, the data are available in computer tape format or cartridges; however, some files are available on diskette. Data files are listed below with the cost of each. Anyone wishing to purchase data tapes, cartridges, or diskettes should submit a written request along with a company check or money order (payable to HCFA–PUF) to cover the cost, to the following address: Health Care Financing Administration, Public Use Files, Accounting Division, P.O. Box 7520, Baltimore, Maryland 21207–0520, (410) 597–5151.

1. Expanded Modified MEDPAR-Hospital (National)

The Medicare Provider Analysis and Review (MEDPAR) file contains records for 100 percent of Medicare beneficiaries using hospital inpatient services in the United States. (The file is a Federal fiscal year file which means discharges occurring October 1 through September 30.) The records are stripped of most data elements that will permit identification of beneficiaries. The hospital is identified by the 6-position Medicare billing number. The file is available to persons qualifying under the terms of the Notice of Proposed New Routine Uses for an Existing System of Records published in the **Federal Register** on December 24, 1984 (49 FR 49941), and amended by the July 2, 1985 notice (50 FR 27361). The national file consists of approximately 11 million records. Under the requirements of these notices, a data release must be signed by the purchaser before release of these data. For all files requiring a signed data release agreement, please write or call to obtain a blank agreement form before placing order. Two versions of this file are created each year. They support the following:

- Notice of Proposed Rulemaking (NPRM) published in the **Federal Register**, usually available by the end of May. This file is derived from the MedPAR file with a cutoff of 3 months after the end of the fiscal year (December file).
- Final Rule published in the **Federal Register**, usually available by the first week of September. This file is derived from the MedPAR file with a cutoff of 9 months after the end of the fiscal year (June file).

Media: Tape/Cartridge
File Cost: $3,415.00 per fiscal year
Periods Available: FY 1988 through FY 1994

2. Expanded Modified MedPAR-Hospital (State)

The State MedPAR file contains records for 100 percent of Medicare beneficiaries using hospital inpatient services in a particular State. The records are stripped of most data elements that will permit identification of beneficiaries. The hospital is identified by the 6-position Medicare billing number. The file is available to persons qualifying under the terms of the Notice of Proposed New Routine Uses for an Existing System of Records published in the December 24, 1984 **Federal Register** notice, and amended by the July 2, 1985 notice. This file is a subset of the Expanded Modified MedPAR-Hospital (National) as described above. Under the requirements of these notices, a data release must be signed by the purchaser before release of these data. Two versions of this file are created each year. They support the following:

- NPRM published in the **Federal Register**, usually available by the end of May. This file is derived from the MedPAR file with a cutoff of 3 months after the end of the fiscal year (December file).
- Final Rule published in the **Federal Register**, usually available by the first week of September. This file is derived from the MedPAR file with a cutoff of 9 months after the end of the fiscal year (June file).

Media: Tape/Cartridge
File Cost: $1,050.00 per State per year
Periods Available: FY 1988 through FY 1994

3. HCFA Hospital Wage Index Data File

This file is composed of four separate diskettes. Included are: (1) The hospital hours and salaries for FY 1992 used to create the proposed FY 1996 prospective payment system wage indexes; (2) a history of all wage indexes used since October 1, 1983; (3) a list of State and county codes used by SSA and FIPS (Federal Information Processing Standards), county name, and Metropolitan Statistical Area (MSA); and (4) a file of hospitals that were reclassified for the purpose of the FY 1996 wage index. Two versions of these files are created each year. They support the following:

- NPRM published in the **Federal Register**, usually by the end of May.
- Final Rule published in the **Federal Register**, usually by the first week of September.

Media: Diskette
File Cost: $500.00
Periods Available: FY 1996 PPS Update

We note that the files also are available individually as indicated below:

(1) HCFA Hospital Wage Index Survey Only usually available by the end of March for the NPRM and the middle of August for the final rule.)

(2) Urban and Rural Wage Indices Only.

(3) PPS SSA/FIPS MSA State and County Crosswalk Only (usually available by the end of March).

(4) Reclassified Hospitals by Provider Only.

Media: Diskette
File cost: $145.00 per file

4. PPS–IV to PPS–XI Minimum Data Sets

The Minimum Data Set contains cost, statistical, financial, and other information from the Medicare hospital cost report. The data set includes only the most current cost report (as submitted, final settled or reopened) submitted for a Medicare participating hospital by the Medicare Fiscal Intermediary to HCFA. This data set is updated at the end of each calendar quarter and is available on the last day of the following month.

MEDIA: TAPE/CARTRIDGE

	Periods beginning on or after	and before
PPS IV	10/01/86	10/01/87
PPS V	10/01/87	10/01/88
PPS VI	10/01/88	10/01/89
PPS VII	10/01/89	10/01/90
PPS VIII	10/01/90	10/01/91
PPS IX	10/01/91	10/01/92
PPS X	10/01/92	10/01/93
PPS XI	10/01/93	

(Note: The PPS XI Minimum Data Set covering 1994 will not be available until 07/31/95.)

File Cost: $715.00 per year

5. PPS–IX to PPS–XI Capital Data Set

The Capital Data Set contains selected data for capital-related costs, interest expense and related information and complete balance sheet data from the Medicare hospital cost report. The data set includes only the most current cost report (as submitted, final settled or reopened) submitted for a Medicare certified hospital by the Medicare fiscal intermediary to HCFA. This data set is updated at the end of each calendar quarter and is available on the last day of the following month.

MEDIA: TAPE/CARTRIDGE

	Periods beginning on or after	and before
PPS IX	10/01/91	10/01/92
PPS X	10/01/92	10/01/93
PPS XI	10/01/93	

(Note: The PPS XI Capital Data Set covering 1994 will not be available until 07/31/95.)

File Cost: $715.00 per year

6. Provider-Specific File

This file is a component of the PRICER program used in the fiscal intermediary's system to compute DRG payments for individual bills. The file contains records for all prospective payment system eligible hospitals, including hospitals in waiver States, and data elements used in the prospective payment system recalibration processes and related activities. Beginning with December 1988, the individual records were enlarged to include pass-through per diems and other elements.

Media: Tape/Cartridge
File Cost: $500.00 per file
Periods Available: FY 1987 through FY 1995 (December updates)

Media: Diskette
File Cost: $265.00
Periods Available: FY 1995 PPS Update

7. HCFA Medicare Case-Mix Index File

This file contains the Medicare case-mix index by provider number as published in each year's update of the Medicare hospital inpatient prospective payment system. The case-mix index is a measure of the costliness of cases treated by a hospital relative to the cost of the national average of all Medicare hospital cases, using DRG weights as a measure of relative costliness of cases. Two versions of this file are created each year. They support the following:

- NPRM published in the **Federal Register**, usually by the end of May.
- Final rule published in the **Federal Register**, usually by the first week of September.

Media: Diskette
Price: $145.00 per year
Periods Available: FY 1985 through FY 1994

8. Table 5 DRG File

This file contains a listing of DRGs, DRG narrative description, relative weight, geometric mean, length of stay, and day outlier trim points as published in the **Federal Register**. The hardcopy image has been copied to diskette. There are two versions of this file as published in the **Federal Register**:

a. NPRM, usually published by the end of May.

b. Final rule, usually published by the first week of September.

Media: Diskette
File Cost: $145.00
Periods Available: FY 1996 PPS Update

9. PPS Payment Impact File

This file contains data used to estimate payments under Medicare's hospital inpatient prospective payment systems for operating and capital-related costs. The data are taken from various sources, including the Provider-Specific File, the PPS–VII and PPS–VIII Minimum Data Sets, and prior impact files. The data set is abstracted from an internal file used for the impact analysis of the changes to the prospective payment systems published in the **Federal Register**. This file is available for release 1 month after the final rule is published in the **Federal Register**, usually during the first week of September.

Media: Diskette
File Cost: $145.00
Periods Available: FY 1995 PPS Update

10. AOR/BOR Tables

This file contains data used to develop the DRG relative weights. It contains mean, maximum, minimum, standard deviation and coefficient of variation statistics by DRG for length of stay and standardized charges. The BOR tables are "Before Outliers Removed" and the AOR is "After Outliers Removed." (Outliers refers to statistical outliers, not payment outliers.) Two versions of this file are created each year. They support the following:

- NPRM published in the **Federal Register**, usually by the end of May.
- Final rule published in the **Federal Register**, usually by the first week of September.

Media: Diskette
File Cost: $145.00
Periods Available: FY 1996 PPS Update

11. HCFA FY 1992 Capital-Related Tax File

This file contains data used to develop a special property tax adjustment to the capital prospective payment system for capital-related costs. The dataset includes a preliminary hospital-specific add-on amount for all PPS hospitals. The dataset also contains the information used to propose an adjustment to the Federal rate so that the tax add-on is budget neutral. The proposed property tax adjustment provides special treatment to qualified hospitals who pay capital-related property taxes. The add-on was determined using base year tax costs per discharge attributable to Medicare. The data are taken from the FY 1992 Medicare hospital cost report and a special request for validation by the fiscal intermediaries.

Media: Diskette
File cost: $145.00
Period available: FY 1992 PPS Update

For further information concerning these data tapes, contact Mary R. White at (410) 597–3671.

In addition, certain other data, such as area wage data and data used to construct the Puerto Rico standardized amounts, are available in hard copy format. Commenters interested in examining hard copy data should contact John Davis at (410) 966–5654.

We realize that commenters may be interested in obtaining data other than those we have discussed above. These commenters should direct their requests to John Davis at the number provided above.

Finally, in lieu of obtaining data through the mail, certain data may also be available for inspection at the central office of the Health Care Financing Administration in Baltimore, Maryland. Commenters interested in obtaining more information about this alternative for reviewing data should also contact John Davis.

C. Public Comments

Because of the large number of items of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, in preparing the final rule, we will consider all comments concerning the provisions of this proposed rule that we receive by the date and time specified in the "Dates" section of this preamble and respond to those comments in the preamble to that rule. We emphasize that, given the statutory requirement under section 1886(e)(5) of the Act that our final rule for FY 1996 be published by September 1, 1995, we will consider only those comments that deal specifically with the matters discussed in this proposed rule.

List of Subjects

42 CFR Part 412

Administrative practice and procedure, Health facilities, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 424

Emergency medical services, Health facilities, Health professions, Medicare.

42 CFR Part 485

Grant programs-health, Health facilities, Medicaid, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 489

Health facilities, Medicare, Reporting and recordkeeping requirements.

42 CFR chapter IV would be amended as set forth below:

A. Part 412 would be amended as follows:

PART 412—PROSPECTIVE PAYMENT SYSTEMS FOR INPATIENT HOSPITAL SERVICES

1. The authority citation for part 412 continues to read as follows:

Authority: Secs. 1102, 1815(e), 1820, 1871, and 1886 of the Social Security Act (42 U.S.C. 1302, 1395g(e), 1395i–4, 1395hh, and 1395ww).

Subpart A—General Provisions

2. Section 412.4 is amended as follows:

a. In the first sentence of paragraph (d)(1), the phrase "is paid a per diem rate" is revised to read "is paid a graduated per diem rate".

b. In paragraph (d)(1), a new sentence is added at the end of the paragraph.

The addition is to read as follows:

§ 412.4 Discharges and transfers.

* * * * *

(d) *Payment to a hospital transferring an inpatient to another hospital.* (1) * * * Payment is graduated by paying twice the per diem amount for the first day of the stay, and the per diem amount for each subsequent day, up to the limit as described in this paragraph.

* * * * *

Subpart B—Hospital Services Subject to and Excluded From the Prospective Payment Systems for Inpatient Operating Costs and Inpatient Capital-Related Costs

3. Section 412.23 is amended as follows:

a. Paragraphs (e)(2), (e)(3) introductory text, (e)(3)(i)(E), and (e)(3)(ii) are revised.

b. In paragraph (e)(4), the phrase "in paragraphs (e)(3) of this section" is revised to read "in paragraph (e)(3) of this section".

The revisions are to read as follows:

§ 412.23 Excluded hospitals: Classifications.

* * * * *

(e) *Long-term care hospitals.* * * *

(2) The hospital must have an average length of inpatient stay greater than 25 days—

(i) As computed by dividing the number of total inpatient days (less leave or pass days) by the number of total discharges for the hospital's most recent complete cost reporting period;

(ii) If a change in the hospital's average length of stay is indicated, as computed by the same method for the immediately preceding 6-month period; or

(iii) If a hospital has undergone a change of ownership (as described in § 489.18 of this chapter) at the start of a cost reporting period or at any time within the preceding 6 months, the hospital may be excluded from the prospective payment system as a long-term care hospital for a cost reporting period if, for the 6 months immediately preceding the start of the period (including time before the change of ownership), the hospital has the required average length of stay, continuously operated as a hospital, and continuously participated as a hospital in Medicare.

(3) Except as provided in paragraph (e)(4) of this section, for cost reporting periods beginning on or after October 1, 1994, a hospital that occupies space in a building also used by another hospital, or in one or more entire buildings located on the same campus as buildings used by another hospital, must meet the criteria in paragraph (e)(3)(i)(A) through (e)(3)(i)(D) of this section, and either the criterion in paragraph (e)(3)(i)(E) of this section or the criterion in paragraph (e)(3)(ii) of this section.

(i) * * *

(E) *Performance of basic hospital functions.* For the period of at least 6 months used to determine compliance with the length-of-stay criterion in paragraph (e)(2) of this section, the cost of the services that the hospital obtained under contracts or other agreements with the hospital occupying space in the same building or on the same campus, or with a third entity that controls both hospitals, is no more than 15 percent of the hospital's total inpatient operating costs, as defined in § 412.2(c).

(ii) For the period of at least 6 months used to determine compliance with the length-of-stay criterion in paragraph (e)(2) of this section, the hospital has an inpatient population of whom at least 75 percent were referred to the hospital from a source other than another hospital occupying space in the same building or on the same campus.

* * * * *

4. In § 412.29, the introductory text is republished, and paragraph (a) is revised to read as follows:

§ 412.29 Excluded rehabilitation units: Additional requirements.

In order to be excluded from the prospective payment systems, a rehabilitation unit must meet the following requirements:

(a) Have met either the requirements for—

(1) New units under § 412.30(a); or

(2) Converted units under § 412.30(b).

* * * * *

5. Section 412.30 is amended as follows:

a. Paragraph (a) is revised.

a. Paragraph (a) is revised.
b. Paragraphs (b) and (c) are redesignated as paragraphs (c) and (d).
c. A new paragraph (b) is added.
d. Redesignated paragraph (c) is revised.
e. In redesignated paragraph (d), the phrase "under paragraph (b) of this section," is revised to read "under paragraph (c) of this section,".

The revisions and addition are to read as follows:

§ 412.30 Exclusion of new rehabilitation units and expansion of units already excluded.

(a) *New units.* (1) A hospital unit is considered a new unit if the hospital—

(i) Has not previously sought exclusion for any rehabilitation unit; and

(ii) Has obtained approval, under State licensure and Medicare certification, for an increase in its hospital bed capacity that is greater than 50 percent of the number of beds in the unit.

(2) A hospital that seeks exclusion of a new rehabilitation unit may provide a written certification that the inpatient population the hospital intends the unit to serve meets the requirements of § 412.23(b)(2) instead of showing that the unit has treated such a population during the hospital's most recent cost reporting period.

(3) The written certification described in paragraph (a)(2) of this section is effective for the first full cost reporting period during which the unit is used to provide hospital inpatient care. If the hospital has not previously participated in the Medicare program as a hospital, the written certification also is effective for any cost reporting period of not less than 1 month and not more than 11 months occurring between the date the hospital began participating in Medicare and the start of the hospital's regular 12-month cost reporting period.

(4) A hospital that has undergone a change of ownership or leasing as defined in § 489.18 of this chapter is not considered to have participated previously in the Medicare program.

(b) *Converted units.* A hospital unit is considered a converted unit if it does not qualify as a new unit under paragraph (a) of this section. A converted unit must have treated, for the hospital's most recent 12-month cost reporting period, an inpatient population of which at least 75 percent required intensive rehabilitation services for the treatment of one or more conditions listed under § 412.23(b)(2).

(c) *Expansion of excluded rehabilitation units.*

(1) *New bed capacity.* The beds that a hospital seeks to add to its excluded rehabilitation unit are considered new beds only if—

(i) The hospital's State-licensed and Medicare-certified bed capacity increases at the start of the cost reporting period for which the hospital seeks to increase the size of its excluded rehabilitation unit, or at any time after the start of the preceding cost reporting period; and

(ii) The number of beds the hospital seeks to add to its excluded rehabilitation unit is greater than 50 percent of the number of beds by which the hospital's State licensed and Medicare certified bed capacity increased under paragraph (c)(1)(i) of this section.

(2) *Conversion of existing bed capacity.*

(i) Bed capacity is considered to be existing bed capacity if it does not meet the definition of new bed capacity under paragraph (c)(1) of this section.

(ii) A hospital may increase the size of its excluded rehabilitation unit through conversion of existing bed capacity only if it shows that, for all of the hospital's most recent cost reporting period of at least 12 months, the beds have been used to treat an inpatient population meeting the requirements of § 412.23(b)(2).

* * * * *

Subpart D—Basic Methodology for Determining Prospective Payment Federal Rates for Inpatient Operating Costs

6. In § 412.63, a new paragraph (s)(5) is added to read as follows:

§ 412.63 Federal rates for inpatient operating costs for fiscal years after Federal fiscal year 1984.

* * * * *

(s) * * *

(5) If a judicial decision reverses a HCFA denial of a hospital's wage data revision request, HCFA pays the hospital by applying a revised wage index that reflects the revised wage data as if HCFA's decision had been favorable rather than unfavorable.

Subpart G—Special Treatment of Certain Facilities Under the Prospective Payment System for Inpatient Operating Costs

§ 412.92 [Amended]

7. In paragraph (b)(5) of § 412.92, remove the phrase "under § 413.30(e)(1) of this chapter", wherever it appears.

8. In § 412.105, paragraph (b) is revised to read as follows:

§ 412.105 Special treatment: Hospitals that incur indirect costs for graduate medical education programs.

* * * * *

(b) *Determination of number of beds.* For purposes of this section, the number of beds in a hospital is determined by counting the number of available bed days during the cost reporting period, not including beds in the healthy newborn nursery, custodial care beds, or beds in excluded distinct part hospital units, and dividing that number by the number of days in the cost reporting period.

* * * * *

9. In § 412.106, paragraph (b)(3) is revised to read as follows:

§ 412.106 Special treatment: Hospitals that serve a disproportionate share of low-income patients.

* * * * *

(b) * * *

(3) *First computation: Cost reporting period.* If a hospital prefers that HCFA use its cost reporting period instead of the Federal fiscal year, it must furnish to HCFA, through its intermediary, a written request including the hospital's name, provider number, and cost reporting period end date. This exception will be performed once per hospital per cost reporting period, and the resulting percentage becomes the hospital's official Medicare Part A/SSI percentage for that period.

* * * * *

10. Section 412.109 is amended as follows:

a. Paragraph (a) is revised.
b. Paragraphs (b) through (e) are redesignated as paragraphs (c) through (f).
c. A new paragraph (b) is added.
d. Redesignated paragraphs (c)(1), (c)(2)(ii), (d) introductory text, and (d)(1) are revised.
e. The paragraph heading of redesignated paragraph (e) and redesignated paragraph (e)(1) are revised.

The revisions and addition are to read as follows:

§ 412.109 Special treatment: Essential access community hospitals (EACHs).

(a) *General rule.* For payment purposes, HCFA treats as a sole community hospital any hospital that is located in a rural area as described in paragraph (b) of this section and that HCFA designates as an EACH under the criteria in paragraph (c) of this section. The payment methodology for sole community hospitals is set forth at § 412.92(d).

(b) *Location in a rural area.* For purposes of this section, a hospital is located in a rural area if it—

(1) Is located outside any area that is a Metropolitan Statistical Area as defined by the Office of Management and Budget or that has been recognized as urban under § 412.62;

(2) Is not deemed to be located in an urban area under § 412.63;

(3) Is not classified as an urban hospital for purposes of the standardized payment amount by HCFA or the Medicare Geographic Classification Review Board; or

(4) Is not located in a rural county that has been redesignated to an adjacent urban area under § 412.232.

(c) *Criteria for HCFA designation.* (1) HCFA designates a hospital as an EACH if the hospital is located in a State that has received a grant under section 1820(a)(1) of the Act or in an adjacent State and is designated as an EACH by the State that has received the grant.

* * * * *

(2) * * *

(ii) Is not eligible for State designation solely because the hospital is located in a rural area, has fewer than 75 beds and is located 35 miles or less from any other hospital; and

* * * * *

(d) *Criteria for State designation.* A State that has received a grant under section 1820(a)(1) of the Act may designate as an EACH any hospital in the State or in an adjoining State that meets the criteria of this paragraph (d).

(1) *Geographic location.* The hospital meets one of the following requirements:

(i) If it is located in a rural area as described in paragraph (b) of this section, the hospital is located more than 35 miles from any hospital that either has been designated as an EACH, or has been classified as a rural referral center under § 412.96.

(ii) The hospital meets other criteria relating to geographic location, imposed by the State with HCFA's approval.

* * * * *

(e) *Adjustment to the hospital-specific rate for rural EACH's experiencing increased costs.*—(1) *General rule.* HCFA increases the applicable hospital-specific rate of an EACH that it treats as a sole community hospital if, during a cost reporting period, the hospital experiences an increase in its Medicare inpatient operating costs per discharge that is directly attributable to activities related to its membership in a rural health network.

* * * * *

Subpart H—Payments to Hospitals Under the Prospective Payment Systems

§ 412.130 [Amended]

11. In paragraph (a)(3) of § 412.130, remove the reference "§ 412.30(b)" wherever it appears and add, in its place, the reference "§ 412.30(c)".

Subpart L—The Medicare Geographic Classification Review Board

12. In § 412.230, paragraph (a)(1) is revised and a new paragraph (a)(5) is added to read as follows:

§ 412.230 Criteria for an individual hospital seeking redesignation to another rural area or an urban area.

(a) *General*—(1) *Purpose.* Except as provided in paragraph (a)(5) of this section, an individual hospital may be redesignated from a rural area to an urban area, from a rural area to another rural area, or from an urban area to another urban area for the purposes of using the other area's standardized amount for inpatient operating costs, wage index value, or both.

* * * * *

(5) *Limitations on redesignation.* The following limitations apply to redesignation:

(i) An individual hospital may not be redesignated to another area for purposes of the wage index if the pre-reclassified average hourly wage for that area is lower than the pre-reclassified average hourly wage for the area in which the hospital is located.

(ii) A hospital may not be redesignated for purposes of the standardized amount if the area to which the hospital seeks redesignation does not have a higher standardized amount than the standardized amount the hospital currently receives.

(iii) A hospital may not be redesignated to more than one area.

* * * * *

13. In § 412.232, a new paragraph (a)(4) is added to read as follows:

§ 412.232 Criteria for all hospitals in a rural county seeking urban redesignation.

(a) * * *

(4) The hospitals may be redesignated only if one of the following conditions is met:

(i) The pre-reclassified average hourly wage for the area to which they seek redesignation is higher than the pre-reclassified average hourly wage for the area in which they are currently located.

(ii) The standardized amount for the area to which they seek redesignation is higher than the standardized amount for the area in which they are located.

* * * * *

14. In § 412.234, a new paragraph (a)(4) is added to read as follows:

§ 412.234 Criteria for all hospitals in an urban county seeking redesignation to another urban area.

(a) * * *

(4) The hospitals may be redesignated only if one of the following conditions is met.

(i) The pre-reclassified average hourly wage for the area to which they seek redesignation is higher than the pre-reclassified average hourly wage for the area in which they are currently located.

(ii) The standardized amount for the area to which they seek redesignation is higher than the standardized amount for the area in which they are currently located.

* * * * *

15. Section 412.266 is revised to read as follows:

§ 412.266 Availability of wage data.

A hospital may obtain the average hourly wage data necessary to prepare its application to the MGCRB from **Federal Register** documents published in accordance with the provisions of § 412.8(b).

Subpart M—Prospective Payment System for Inpatient Hospital Capital Costs

16. In § 412.308, new paragraphs (b)(3) and (b)(4) are added and paragraph (c)(1)(ii) is revised to read as follows:

§ 412.308 Determining and updating the Federal rate.

* * * * *

(b) * * *

(3) Effective FY 1996, the standard Federal rate used to determine the Federal rate each year under paragraph (c) of this section is reduced by 0.28 percent to account for the effect of the revised policy for payment of transfers under § 412.4(d).

(4) Effective FY 1996, the standard Federal rate used to determine the Federal rate each year under paragraph (c) of this section is reduced by 1.14 percent to account for capital-related tax costs included in the original rate computation.

(c) * * *

(1) * * *

(ii) *Effective FY 1996.* Effective FY 1996, the standard Federal rate is updated based on an analytical framework. The framework includes a capital input price index, which measures the annual change in the prices associated with capital-related costs during the year. HCFA adjusts the capital input price index rate of change

to take into account forecast errors, changes in the case mix index, the effect of changes to DRG classification and relative weights, and allowable changes in the intensity of hospital services. HCFA may also adjust the annual rate of change to take into account the efficiency and cost-effectiveness of capital resources and other factors as appropriate.

* * * * *

17. In § 412.312, a new paragraph (b)(5) is added to read as follows:

§ 412.312 Payment based on the Federal rate.

* * * * *

(b) * * *

(5) An additional payment is made, as provided in § 412.323, to account for the capital-related tax costs of qualifying hospitals.

* * * * *

18. A new § 412.323 is added under the undesignated heading of subpart M that continues to read: **Basic Methodology for Determining the Federal Rate for Capital-Related Costs.**

The new section reads as follows:

§ 412.323 Special treatment: Capital-related tax costs.

(a) *Definition.* As used in this section, the term capital-related tax costs means the costs for taxes on land or depreciable assets owned by a hospital (or a related organization consistent with the terms of § 413.17 of this chapter) and used for patient care. Taxes assessed on some basis other than valuation of land or depreciable assets used for patient care, or on assets not owned by the hospital, are not considered capital-related tax costs.

(b) *Effective date.* Effective for discharges beginning on or after October 1, 1995, HCFA provides an adjustment to the Federal rate payment for each eligible hospital to account for capital-related tax costs.

(c) *Eligibility*—(1) *General requirement for initial eligibility.* If a hospital paid capital-related taxes during the first cost reporting period beginning on or after October 1, 1991, and meets the requirements for verifying those costs under paragraph (d) of this section, the hospital is eligible for an adjustment subject to paragraph (c)(3) of this section.

(2) *Special rule for initial eligibility of a hospital that began operation after FY 1992.* If a hospital began operation after Federal FY 1992, and is subject to capital-related taxes, the hospital is eligible for an adjustment provided that it meets the special requirement for verifying those costs under paragraph (d) of this section.

(3) *Continued basis for eligibility.* A hospital that meets the requirements for initial eligibility remains eligible for a tax adjustment as long as it continues to pay capital-related taxes. The intermediary may require the hospital to submit proof of continued eligibility for the adjustment.

(d) *Verification of eligibility.* (1) A hospital that meets the general requirement for initial eligibility must provide the intermediary with complete documentation of its capital-related tax costs during the hospital's first cost reporting period beginning on or after October 1, 1991.

(2) A hospital that meets the special requirements for initial eligibility under paragraph (c)(2) of this section must provide the intermediary with complete documentation of its tax costs during the first year in which it pays such costs.

(e) *Methodology.* (1) The intermediary determines the amount of a hospital's total allowable capital-related tax costs during the first cost reporting period beginning on or after October 1, 1991, on the basis of the documentation submitted by the hospital to meet the eligibility requirements under paragraph (c) of this section. The intermediary reports that amount to HCFA.

(2) HCFA determines each hospital's FY 1992 Medicare inpatient capital-related tax cost per discharge by applying, to the amount determined under paragraph (e)(1) of this section, the ratio of the hospital's Medicare inpatient capital-related costs to total inpatient capital-related costs, and then dividing the result by the number of Medicare inpatient discharges during that cost reporting period.

(3) HCFA updates the amount in paragraph (e)(2) of this section by a factor that represents the total amount of the updates to the Federal rate for FY 1993 through FY 1996 under § 412.308(c)(1).

(4) For discharges occurring on or after October 1, 1995, the intermediary adds the amount determined under paragraph (e)(3) of this section to the Federal rate portion of each eligible hospital's payment, before the application of the appropriate Federal rate payment percentage under § 412.340 or § 412.344.

(5) For discharges occurring on or after October 1, 1998, HCFA updates the prior year tax per discharge amount by an analytical framework that accounts for changes in the factors that determine capital-related costs.

(6) For a hospital that qualifies for an adjustment under the special rule in paragraph (c)(2) of this section, determination of the payment amount follows the following steps:

(i) The intermediary determines the amount of a hospital's total allowable capital-related tax costs during the first cost reporting for which the hospital is subject to capital-related taxes, on the basis of the documentation submitted by the hospital to meet the eligibility requirements under paragraph (c) of this section. The intermediary reports that amount to HCFA.

(ii) HCFA determines each hospital's first year Medicare inpatient capital-related tax costs per discharge by applying, to the amount determined under paragraph (e)(6)(i) of this section, the ratio of the hospital's Medicare inpatient capital-related costs to total capital costs, and by dividing the result by the number of Medicare inpatient discharges during that cost reporting period.

(iii) For discharges occurring on or after October 1, 1995, HCFA updates the amount under paragraph (e)(6)(ii) of this section by a factor that represents the total amount, if any, of the updates to the Federal rate from the first year in which the hospital paid capital-related taxes to FY 1996, under § 412.308(c)(1).

(iv) The intermediary adds the amount determined under paragraph (e)(6)(iii) of this section to the Federal rate portion of each eligible hospital's payment, before the application of the appropriate Federal rate payment percentage under § 412.340 or § 412.344.

(v) For discharges occurring on or after October 1, 1998, HCFA updates the prior year tax per discharge amount by an analytical framework that accounts for changes in the factors that determine capital-related costs.

19. In § 412.328, a new paragraph (e)(4) is added to read as follows:

§ 412.328 Determining and updating the hospital-specific rate.

* * * * *

(e) * * *

(4) Effective FY 1996, the intermediary reduces the updated amount determined in paragraph (d) of this section by 0.28 percent to account for the effect of the revised policy for payment of transfers under § 412.4(d).

* * * * *

B. Part 413 would be amended as follows:

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES

1. The authority citation for part 413 is revised to read as follows:

Authority: Secs. 1102, 1122, 1814(b), 1815, 1833 (a), (i), and (n), 1861(v), 1871, 1881, 1883, and 1886 of the Social Security Act (42 U.S.C. 1302, 1320a–1, 1395f(b), 1395g, 1395l (a), (i), and (n), 1395x(v), 1395hh, 1395rr, 1395tt, and 1395ww).

Subpart C—Limits on Cost Reimbursement

2. Section 413.30 is amended as follows:

a. Paragraph (e) is revised.

b. In paragraph (f) introductory text, the first sentence is revised.

c. Paragraphs (f)(5), (f)(6), (f)(7), and (f)(9) are removed and paragraph (f)(8) is redesignated as paragraph (f)(5).

The revisions are to read as follows:

§ 413.30 Limitations on reimbursable costs.

* * * * *

(e) *Exemptions.* Exemptions from the limits imposed under this section may be granted to a new provider. A new provider is a provider of inpatient services that has operated as the type of provider (or the equivalent) for which it is certified for Medicare, under present and previous ownership, for less than three full years. An exemption granted under this paragraph expires at the end of the provider's first cost reporting period beginning at least two years after the provider accepts its first patient.

(f) *Exceptions.* Limits established under this section may be adjusted upward for a provider under the circumstances specified in paragraphs (f)(1) through (f)(5) of this section. * * *

* * * * *

§ 413.35 [Amended]

3. In paragraph (b)(2) of § 413.35, remove the reference "§ 413.30(e)(2)" wherever it appears in the paragraph and add, in its place, the reference "§ 413.30(e)".

4. Section 413.40 is amended as follows:

a. In § 413.40(c)(2), remove the phrase "during the 3 days" wherever it appears in the paragraph and add, in its place, the phrase "on the calendar day".

b. Paragraph (e)(1) is revised.

c. A new sentence is added at the end of paragraph (g)(1).

The revision and addition are to read as follows:

§ 413.40 Ceiling on the rate of increase in hospital inpatient costs.

* * * * *

(e) *Hospital requests regarding adjustments to the payment allowed under the rate-of-increase ceiling*—(1) *Timing of application.* A hospital may request an adjustment to the rate-of-increase ceiling imposed under this section. The hospital's request must be received by the hospital's fiscal intermediary no later than 180 days after the date on the intermediary's initial notice of amount of program reimbursement (NPR) for the cost reporting period for which the hospital requests an adjustment.

* * * * *

(g) * * *

(1) * * * The amount of payment made to a hospital after a TEFRA adjustment may not exceed the difference between the hospital's operating costs and the payment previously allowed.

* * * * *

Subpart E—Payment to Providers

5. In § 413.70, the first sentence of paragraph (b)(2)(i) is revised to read as follows:

§ 413.70 Payment for services of an RPCH.

* * * * *

(b) * * *

(2) * * * (i) *RPCH services.* Payment under this method for outpatient RPCH services is equal to the amounts described in section 1833(a)(2)(B) of the Act (which describes amounts paid for hospital outpatient services) and subject to the applicable principles of cost reimbursement in this part and in part 405, subpart D of this chapter, except for the principle of the lesser of costs or charges in § 413.13. * * *

* * * * *

C. Part 424 would be amended as follows:

PART 424—CONDITIONS FOR MEDICARE PAYMENT

1. The authority citation for part 424 continues to read as follows:

Authority: Secs. 216(j), 1102, 1814, 1815(c), 1835, 1842 (b) and (p), 1861, 1866(d), 1870 (e) and (f), 1871, and 1872 of the Social Security Act (42 U.S.C. 416(j), 1302, 1395f, 1395g(c), 1395n, 1395u (b) and (p), 1395x, 1395cc(d), 1395gg (e) and (f), 1395hh, and 1395ii).

Subpart B—Physician Certification Requirements

2. In § 424.15, paragraph (a) is revised to read as follows:

§ 424.15 Requirements for inpatient RPCH services.

(a) *Content of certification.* Medicare part A pays for inpatient RPCH services only if a physician certifies that the individual may reasonably be expected to be discharged or transferred to a hospital within 72 hours after admission to the RPCH.

* * * * *

D. Part 485 would be amended as follows:

PART 485—CONDITIONS OF PARTICIPATION: SPECIALIZED PROVIDERS

1. The authority citation for part 485 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart F—Conditions of Participation: Rural Primary Care Hospitals (RPCHs)

§ 485.603 [Amended]

2. In paragraph (a)(2)(i) of § 485.603, remove the reference "§ 412.109(c)" wherever it appears in the paragraph and add, in its place, the reference "§ 412.109(d)".

3. In § 485.606, paragraphs (a)(1), (b)(1), (b)(3), the paragraph heading of paragraph (c), (c)(1) introductory text, (c)(1)(i), (c)(2) introductory text, and (c)(2)(ii) are revised to read as follows:

§ 485.606 Designation of RPCHs.

(a) *Criteria for State designation*—(1) A State that has received a grant under section 1820(a)(1) of the Act may designate as an RPCH any hospital that—

(i) Is located in the State that has received the grant, or is located in an adjoining State and is a member of a rural health network that also includes one or more facilities located in the State that has received the grant;

(ii) Meets the RPCH conditions of participation in this subpart F; and

(iii) Applies to the State that has received the grant for designation as an RPCH.

* * * * *

(b) *Criteria for HCFA designation*—(1) HCFA designates a hospital as an RPCH if the hospital is designated as an RPCH by the State in which it is located or by an adjoining State that has received a grant.

* * * * *

(3) HCFA may also designate not more than 15 hospitals as RPCHs if the hospitals are not located in States that have received grants under section 1820(a)(1) of the Act and meet the requirements of paragraph (c)(1) of this section.

(c) *Special rule: Hospitals not designated by a State as RPCHs*—(1) HCFA may designate not more than 15 hospitals as RPCHs under this paragraph (c)(1). These hospitals must be located in a State that has not received a grant under section 1820(a)(1) of the Act, must not have

been designated as RPCHs by a State that has received a grant under paragraph (a)(1) of this section, and must meet the requirements with regard to location, participation in the Medicare program, and emergency services as defined in §§ 485.610, 485.612, and 485.618, respectively. In designating a hospital as an RPCH under this paragraph (c)(1), HCFA—

(i) Gives preference to a hospital that has entered into an agreement with a rural health network as defined in § 485.603 that is located in a State that has received a grant under section 1820(a)(1) of the Act; and

* * * * *

(2) HCFA may designate a hospital as an RPCH if the hospital is located in a State that has received a grant under section 1820(a)(1) of the Act and is not eligible for State designation under paragraph (a) of this section solely because the hospital—

* * * * *

(ii) Has more than six inpatient beds or does not maintain an average length of stay for inpatients not greater than 72 hours for each 12-month cost reporting period, excluding periods of stays that exceeded 72 hours because transfer was precluded because of inclement weather or other emergency conditions, as described in § 485.620; or

* * * * *

4. Section 485.614 is revised to read as follows:

§ 485.614 Condition of participation: Termination of inpatient care services.

(a) *General rule.* The hospital has ceased providing inpatient hospital care or has agreed to cease providing inpatient hospital care upon approval of its application for designation as an RPCH except to the extent permitted under paragraph (b) of this section.

(b) *Limitations on inpatient care*—(1) If the RPCH does not have a swing-bed agreement under § 485.645, it provides not more than six inpatient beds for providing inpatient RPCH care to patients, but only if—

(i) The patient requires stabilization before discharge or transfer to a hospital;

(ii) The patient's attending physician certifies that the patient may reasonably be expected to be discharged or transferred to a hospital within 72 hours of admission to the facility; and

(iii) The RPCH complies with the limitation on inpatient surgery set forth in paragraph (b)(3) of this section.

(2) If the RPCH has a swing-bed agreement under § 485.645, it provides inpatient RPCH care as described under paragraph (b)(1) of this section and, under the swing-bed agreement, provides posthospital SNF care.

(3) The RPCH does not provide any inpatient hospital services consisting of surgery or any other service requiring the use of general anesthesia (other than surgical procedures specified by HCFA under § 416.65 of this chapter), unless the attending physician certifies that the risk associated with transferring the patient to a hospital for such services outweighs the benefits of transferring the patient to a hospital for such services.

(c) *Exception for RPCHs designated by HCFA.* If an RPCH is designated by HCFA under the specific criteria in § 485.606(c), the RPCH is not subject to the requirements in this section.

5. In § 485.620, paragraph (b) is revised to read as follows:

§ 485.620 Condition of participation: Number of beds and length of stay.

* * * * *

(b) *Standard: Length of stay.* The RPCH maintains an average length of stay for inpatients that is not greater than 72 hours for each 12-month cost reporting period. In determining the average length of stay, periods of stay of inpatients in excess of 72 hours are not taken into account to the extent such periods exceed 72 hours because transfer to a hospital is precluded because of inclement weather or other emergency conditions.

6. A new § 485.639 is added to read as follows:

§ 485.639 Condition of participation: Surgical services.

Surgical procedures must be performed in a safe manner by qualified practitioners who have been granted clinical privileges by the governing body of the RPCH in accordance with the designation requirements under paragraph (a) of this section.

(a) *Designation of qualified practitioners.* The RPCH designates the practitioners who are allowed to perform surgery for RPCH patients, in accordance with its approved policies and procedures, and with State scope of practice laws. Surgery is performed only by—

(1) A doctor of medicine or osteopathy, including an osteopathic practitioner recognized under section 1101(a)(7) of the Act;

(2) A doctor of dental surgery or dental medicine; or

(3) A doctor of podiatric medicine.

(b) *Anesthetic risk and evaluation.* A qualified practitioner, as described in paragraph (a) of this section, must examine the patient immediately before surgery to evaluate the risk of anesthesia and of the procedure to be performed. Before discharge from the RPCH, each patient must be evaluated for proper anesthesia recovery by a qualified practitioner as described in paragraph (a) of this section.

(c) *Administration of anesthesia.* The RPCH designates the person who is allowed to administer anesthesia to RPCH patients in accordance with its approved policies and procedures and with State scope of practice laws.

(1) Anesthetics must be administered only by—

(i) A qualified anesthesiologist;

(ii) A doctor of medicine or osteopathy other than an anesthesiologist, including an osteopathic practitioner recognized under section 1101(a)(7) of the Act;

(iii) A doctor of dental surgery or dental medicine;

(iv) A doctor of podiatric medicine;

(v) A certified registered nurse anesthetist, as defined in § 410.69(b) of this chapter;

(vi) An anesthesiologist's assistant, as defined in § 410.69(b) of this chapter; or

(vii) A supervised trainee in an approved educational program, as described in §§ 413.85 or 413.86 of this chapter.

(2) In those cases in which a certified registered nurse anesthetist administers the anesthesia, the anesthetist must be under the supervision of the operating practitioner. An anesthesiologist's assistant who administers anesthesia must be under the supervision of an anesthesiologist.

(d) *Discharge.* All patients are discharged in the company of a responsible adult, except those exempted by the practitioner who performed the surgical procedure.

E. Part 489 would be amended as follows:

PART 489—PROVIDER AGREEMENTS AND SUPPLIER APPROVAL

1. The authority citation for part 489 continues to read as follows:

Authority: Secs. 1102, 1819, 1861, 1864(m), 1866, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395i–3, 1395x, 1395aa(m), 1395cc, and 1395hh).

Subpart E—Termination of Agreement and Reinstatement After Termination

2. In § 489.53, a new paragraph (a)(14) is added to read as follows:

§ 489.53 Termination by HCFA.

(a) * * *

(14) In the case of a rural primary care hospital as defined in part 485, subpart F of this chapter, the rural primary care hospital maintains an average length of stay for inpatients in its most recent 12-month cost reporting period that is in excess of 72 hours. In determining the length of stay of a rural primary care hospital for purposes of this paragraph, HCFA does not take into account periods of stay in excess of 72 hours that occurred because transfer to a hospital was precluded because of inclement weather or other emergency conditions.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: May 12, 1995.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: May 23, 1995.

Donna E. Shalala,

Secretary.

[**Editorial Note:** The following addendum and appendixes will not appear in the Code of Federal Regulations.]

Addendum—Proposed Schedule of Standardized Amounts Effective With Discharges On or After October 1, 1995 and Update Factors and Rate-of-Increase Percentages Effective With Cost Reporting Periods Beginning On or After October 1, 1995

I. Summary and Background

In this addendum, we are setting forth the proposed amounts and factors for determining prospective payment rates for Medicare inpatient operating costs and Medicare inpatient capital-related costs. We are also setting forth new proposed rate-of-increase percentages for updating the target amounts for hospitals and hospital units excluded from the prospective payment system.

For discharges occurring on or after October 1, 1995, except for sole community hospitals and hospitals located in Puerto Rico, each hospital's payment per discharge under the prospective payment system will be based on 100 percent of the Federal national rate.

Sole community hospitals are paid based on whichever of the following rates yields the greatest aggregate payment: the Federal national rate, the updated hospital-specific rate based on FY 1982 cost per discharge, or the updated hospital-specific rate based on FY 1987 cost per discharge. For hospitals in Puerto Rico, the payment per discharge is based on the sum of 75 percent of a Puerto Rico rate and 25 percent of a national rate (section 1886(d)(9)(A) of the Act).

As discussed below in section II, we are proposing to make changes in the determination of the prospective payment rates for Medicare inpatient operating costs. The changes, to be applied prospectively, would affect the calculation of the Federal rates. In section III, we discuss our proposed changes for determining the prospective payment rates for Medicare inpatient capital-related costs. Section IV sets forth our proposed changes for determining the rate-of-increase limits for hospitals excluded from the prospective payment system. The tables to which we refer in the preamble to the proposed rule are presented at the end of this addendum in section V.

II. Proposed Changes to Prospective Payment Rates For Inpatient Operating Costs for FY 1996

The basic methodology for determining prospective payment rates for inpatient operating costs is set forth at § 412.63 for hospitals located outside of Puerto Rico. The basic methodology for determining the prospective payment rates for inpatient operating costs for hospitals located in Puerto Rico is set forth at §§ 412.210 and 412.212. Below, we discuss the manner in which we are changing some of the factors used for determining the prospective payment rates. The Federal and Puerto Rico rate changes, once issued as final, will be effective with discharges occurring on or after October 1, 1995. As required by section 1886(d)(4)(C) of the Act, we must also adjust the DRG classifications and weighting factors for discharges in FY 1996.

In summary, the proposed standardized amounts set forth in Tables 1a, 1b, and 1c of section V of this addendum reflect—

- Updates of 1.5 percent for all areas (that is, the market basket percentage increase of 3.5 percent minus 2.0 percentage points);
- An adjustment to ensure budget neutrality as provided for in sections 1886(d)(4)(C)(iii) and (d)(3)(E) of the Act by applying new budget neutrality adjustment factors to the large urban and other standardized amounts;
- An adjustment to ensure budget neutrality as provided for in section 1886(d)(8)(D) of the Act by removing the FY 1995 budget neutrality factor and applying a revised factor;
- An adjustment to apply the revised outlier offset by removing the FY 1995 outlier offsets and applying a new offset; and
- An adjustment to apply a budget neutrality factor for the proposed change concerning transfer cases.

A. Calculation of Adjusted Standardized Amounts

1. Standardization of Base-Year Costs or Target Amounts

Section 1886(d)(2)(A) of the Act required the establishment of base-year cost data containing allowable operating costs per discharge of inpatient hospital services for each hospital. The preamble to the September 1, 1983 interim final rule (48 FR 39763) contains a detailed explanation of how base-year cost data were established in the initial development of standardized amounts for the prospective payment system and how they are used in computing the Federal rates.

Section 1886(d)(9)(B)(i) of the Act required that Medicare target amounts be determined for each hospital located in Puerto Rico for its cost reporting period beginning in FY 1987. The September 1, 1987 final rule contains a detailed explanation of how the target amounts were determined and how they are used in computing the Puerto Rico rates (52 FR 33043, 33066).

The standardized amounts are based on per discharge averages of adjusted hospital costs from a base period or, for Puerto Rico, adjusted target amounts from a base period, updated and otherwise adjusted in accordance with the provisions of section 1886(d) of the Act. Sections 1886(d)(2)(C) and (d)(9)(B)(ii) of the Act required that the updated base-year per discharge costs and, for Puerto Rico, the updated target amounts, respectively, be standardized in order to remove from the cost data the effects of certain sources of variation in cost among hospitals. These include case mix, differences in area wage levels, cost of living adjustments for Alaska and Hawaii, indirect medical education costs, and payments to hospitals serving a disproportionate share of low-income patients.

Since the standardized amounts have already been adjusted for differences in case mix, wages, cost-of-living, indirect medical education costs, and payments to hospitals serving a disproportionate share of low-income patients, no additional adjustments for these factors for FY 1996 were made. That is, the standardization adjustments reflected in the FY 1996 standardized amounts are the same as those reflected in the FY 1995 standardized amounts.

Sections 1886(d)(2)(H) and (d)(3)(E) of the Act require that, in making payments under the prospective payment system, the Secretary adjust the proportion (as estimated by the Secretary from time to time) of costs that are wages and wage-related costs. Beginning October 1, 1990, when the

market basket was rebased, we have considered 71.40 percent of costs to be labor-related for purposes of the prospective payment system.

2. Computing Large Urban and Other Averages Within Geographic Areas

Section 1886(d)(3) of the Act requires the Secretary to compute two average standardized amounts for discharges occurring in a fiscal year: one for hospitals located in large urban areas and one for hospitals located in other areas. In addition, under sections 1886(d)(9)(B)(iii) and (C)(i) of the Act, the average standardized amount per discharge must be determined for hospitals located in urban and other areas in Puerto Rico. Hospitals in Puerto Rico are paid a blend of 75 percent of the applicable Puerto Rico standardized amount and 25 percent of a national standardized payment amount.

Section 1886(d)(2)(D) of the Act defines "urban areas" as those areas within a Metropolitan Statistical Area (MSA). A "large urban area" is defined as an urban area with a population of more than 1,000,000. In addition, section 4009(i) of Public Law 100–203 provides that a New England County Metropolitan Area (NECMA) with a population of more than 970,000 is classified as a large urban area. As required by section 1886(d)(2)(D) of the Act, population size is determined by the Secretary based on the latest population data published by the Bureau of the Census. Urban areas that do not meet the definition of a "large urban area" are referred to as "other urban areas." Areas that are not included in MSAs are considered "rural areas" under section 1886(d)(2)(D). Payment for discharges from hospitals located in large urban areas will be based on the large urban standardized amount. Payment for discharges from hospitals located in other urban and rural areas will be based on the other standardized amount.

Based on 1994 population estimates published by the Bureau of the Census, 56 areas meet the criteria to be defined as large urban areas for FY 1996. These areas are identified by an asterisk in Table 4a.

Table 1a contains the two national standardized amounts that we are proposing be applicable to most hospitals. Table 1b sets forth the 18 regional standardized amounts that would continue to be applicable for hospitals located in census areas subject to the regional floor. Under section 1886(d)(9)(A)(ii) of the Act, the national standardized payment amount applicable to hospitals in Puerto Rico consists of the discharge-weighted average of the national large urban standardized amount and the national other standardized amount (as set forth in Table 1a). The national average standardized amount for Puerto Rico is set forth in Table 1c. This table also includes the two standardized amounts that would be applicable to most hospitals in Puerto Rico.

3. Updating the Average Standardized Amounts

In accordance with section 1886(d)(3)(A)(iv) of the Act, we are proposing to update the large urban and the other areas average standardized amounts for FY 1996 using the applicable percentage increases specified in section 1886(b)(3)(B)(i) of the Act. Section 1886(b)(3)(B)(i)(XI) of the Act specifies that, for hospitals in all areas, the update factor for the standardized amounts for FY 1996 is the market basket percentage increase minus 2.0 percentage points.

The percentage change in the market basket reflects the average change in the price of goods and services purchased by hospitals to furnish inpatient care. The most recent forecast of the hospital market basket increase for FY 1996 is 3.5 percent. For FY 1996, this yields an update to the average standardized amounts of 1.5 percent (3.5 percent minus 2.0 percent).

As in the past, we are adjusting the FY 1995 standardized amounts to remove the effects of the FY 1995 geographic reclassifications and outlier payments before applying the FY 1996 updates. That is, we are increasing the standardized amounts to restore the reductions that were made for the effects of geographic reclassification and outliers. After including offsets to the standardized amounts for outliers and geographic reclassification, we estimate that there will be an actual increase of 1.2 percent to the large urban and other area standardized amounts.

Beginning in FY 1995, we revised the national average standardized amounts based on national average labor/nonlabor shares. In FY 1996, we will continue to adjust the labor and nonlabor proportions of the standardized amount to reflect the national average. As a result, the national average labor share (as reflected in the hospital market basket) will equal 71.4 percent of the standardized payment amounts. (We are revising the Puerto Rico standardized amounts by applying the average labor share in Puerto Rico of 82.8 percent.)

Although the update factor for FY 1996 is set by law, we are required by section 1886(e)(3)(B) of the Act to report to Congress on our initial recommendation of update factors for FY 1996 for both prospective payment hospitals and hospitals excluded from the prospective payment system. For general information purposes, we have included the report to Congress as Appendix C to this proposed rule. Our proposed recommendation on the update factors (which is required by sections 1886(e)(4)(A) and (e)(5)(A) of the Act), as well as our responses to ProPAC's recommendation concerning the update factor, are set forth as Appendix D to this proposed rule.

4. Other Adjustments to the Average Standardized Amounts

a. Recalibration of DRG Weights and Updated Wage Index—Budget Neutrality Adjustment.

Section 1886(d)(4)(C)(iii) of the Act specifies that beginning in FY 1991, the annual DRG reclassification and recalibration of the relative weights must be made in a manner that ensures that aggregate payments to hospitals are not affected. As discussed in section II of the preamble, we normalized the recalibrated DRG weights by an adjustment factor, so that the average case weight after recalibration is equal to the average case weight prior to recalibration.

Section 1886(d)(3)(E) of the Act specifies that the hospital wage index must be updated on an annual basis beginning October 1, 1993. This provision also requires that any updates or adjustments to the wage index must be made in a manner that ensures that aggregate payments to hospitals are not affected by the change in the wage index.

To comply with the requirement of section 1886(d)(4)(C)(iii) of the Act that DRG reclassification and recalibration of the relative weights be budget neutral and the requirement in section 1886(d)(3)(E) of the Act that the updated wage index be budget neutral, we compared aggregate payments using the FY 1995 relative weights and the wage index effective October 1, 1994 to aggregate payments using the proposed FY 1996 relative weights and wage index. The same methodology was used for the FY 1995 budget neutrality adjustment. (See the discussion in the September 1, 1992 final rule (57 FR 39832).) Based on this comparison, we computed a budget neutrality adjustment factor equal to 0.999174. This budget neutrality adjustment factor is applied to the standardized amounts without removing the effects of the FY 1995 budget neutrality adjustment. We do not remove the prior budget neutrality adjustment because estimated aggregate payments after the changes in the DRG relative weights and wage index should equal estimated aggregate payments prior to the changes. If we removed the prior year adjustment, we would not satisfy this condition.

In addition, we are proposing to continue to apply the same FY 1996 adjustment factor to the hospital-specific rates that are effective for cost reporting periods beginning on or after October 1, 1995, in order to ensure that we meet the statutory requirement that aggregate payments neither increase nor decrease as a result of the implementation of the FY 1996 DRG weights and updated wage index. (See the discussion in the September 4, 1990 final rule (55 FR 36073).)

Section 1886(d)(5)(I) of the Act, as amended by section 109 of the Social Security Act Amendments of 1994 (Public Law 103–432), authorizes the Secretary to make adjustments to the prospective payment system standardized amounts so that adjustments to the payment policy for transfer cases do not affect aggregate payments. As discussed in section IV of the preamble, we are proposing to revise our payment methodology for transfer cases, so that we would pay double the per diem amount for the first day of a transfer case, and the per diem amount after that, up to the full DRG amount. For the data that we analyzed, this would result in additional payments for transfer cases of $159 million. To implement this proposed change in a budget neutral manner, we adjusted the standardized amounts by applying a budget neutrality adjustment of 0.997583. This adjustment will only be applied on a one-time basis to the FY 1996 standardized amounts. After FY 1996, there will be no need for a further budget neutrality adjustment unless or until we make further changes to the transfer payment methodology.

b. Reclassified Hospitals—Budget Neutrality Adjustment.

Section 1886(d)(8) (B) of the Act provides that certain rural hospitals are deemed urban effective with discharges occurring on or after October 1, 1988. In addition, section 1886(d)(10) of the Act provides for the reclassification of hospitals based on determinations by the Medicare Geographic Classification Review Board (MGCRB). Under section 1886(d)(10) of the Act, a hospital may be reclassified for purposes of the standardized amount or the wage index, or both.

Under section 1886(d)(8)(D) of the Act, the Secretary is required to adjust the standardized amounts so as to ensure that total aggregate payments under the prospective payment system after implementation of the provisions of sections 1886(d)(8) (B) and (C) and 1886(d)(10) of the Act are equal to the aggregate prospective payments that would have been made absent these provisions. We are applying an adjustment of 0.994125 to ensure that the effects of reclassification are budget neutral.

The adjustment factor is applied to the standardized amounts after removing the effects of the FY 1995 budget neutrality adjustment factor. We note that the proposed FY 1996 adjustment reflects wage index and standardized amount reclassifications approved by the MGCRB or the Administrator as of March 14, 1995. The effects of any additional reclassification changes resulting from appeals and reviews of the MGCRB decisions for FY 1996 or from a hospital's request for the withdrawal of a reclassification request will be reflected in the final budget neutrality adjustment required under section 1886(d)(8)(D) of the Act and published in the final rule for FY 1996.

c. Outliers.

Section 1886(d)(5)(A) of the Act provides that, in addition to the basic prospective payment rates, for discharges occurring before October 1, 1997, payments must be made for discharges involving day outliers and may be made for cost outliers. Section 1886(d)(3)(B) of the Act requires the Secretary to adjust both the large urban and other areas national standardized amounts by the same factor to account for the estimated proportion of total DRG payments made to outlier cases. Section 1886(d)(9)(B)(iv) of the Act requires that the urban and other standardized amounts applicable to hospitals in Puerto Rico be reduced by the proportion of estimated total DRG payments attributable to estimated outlier payments. Furthermore, under section 1886(d)(5)(A)(iv) of the Act, estimated outlier payments in any year may not be less than 5 percent nor more than 6 percent of total payments projected or estimated to be made based on DRG prospective payment rates.

Beginning with FY 1995, section 1886(d)(5)(A) of the Act requires the Secretary to reduce the proportion of total outlier payments paid under the day outlier methodology. Under the requirements of section 1886(d)(5)(A)(v) of the Act, the proportion of outlier payments made under the day outlier methodology, relative to the proportion of outlier payments made under the day outlier methodology in FY 1994 (which we estimated at 31.3 percent in our September 1, 1993 final rule (58 FR 46348)), will be 75 percent in FY 1995, 50 percent in FY 1996, and 25 percent in FY 1997. For discharges occurring after September 30, 1997, the Secretary will no longer pay for day outliers under the provisions of section 1886(d)(5)(A)(i) of the Act.

i. FY 1996 Outlier Thresholds.

For FY 1995, the day outlier threshold is the geometric mean length of stay for each DRG plus the lesser of 22 days or 3.0 standard deviations. The marginal cost factor for day outliers (or the percent of Medicare's average per diem payment paid for each outlier day) is equal to 47 percent in FY 1995. The fixed loss cost outlier threshold is equal to the prospective payment for the DRG plus $20,500 ($18,800 for hospitals that have not yet entered the prospective payment system for capital-related costs). The marginal cost factor for cost outliers (or the percent of costs paid after costs for the case exceed the threshold) is 80 percent. We applied an outlier adjustment to the FY 1995 standardized amounts of 0.948940 for the large urban and other areas rates and 0.9414 for the capital Federal rate.

For FY 1996, we propose to set the day outlier threshold at the geometric mean length of stay for each DRG plus the lesser of 23 days or 3.0 standard deviations. Section 1886(d)(5)(A)(iii) of the Act, as amended by section 13501(c)(3) of Public Law 103–66, provides that additional payments for day outlier cases are allowed to be reduced below the marginal cost of care to meet the requirements of section 1886(d)(5)(A)(v) of the Act. We are proposing to reduce the marginal cost factor for each outlier day from 47 percent to 45 percent in FY 1996. We estimate that our proposed policies will reduce the proportion of outlier payments paid as day outliers to approximately 16 percent in accordance with section 1886(d)(5)(A) of the Act.

We are also proposing a fixed loss cost outlier threshold in FY 1996 equal to the prospective payment rate for the DRG plus $16,700 ($15,200 for hospitals that have not yet entered the prospective payment system for capital-related costs). In addition, we are proposing to maintain the marginal cost factor for cost outliers at 80 percent.

As provided in section 1886(d)(5)(A)(iv) of the Act, we calculated outlier thresholds so that estimated outlier payments equal 5.1 percent of estimated total payments based on DRGs. The model to determine the outlier thresholds for FY 1996 uses the FY 1994 MedPAR file and the most recent available information on hospital-specific payment parameters (such as the cost-to-charge ratios). This information is based on the December 1994 update of the provider-specific file used in the PRICER program. Using

these data, we simulate the payments that would be made for these cases under certain assumptions and policies. The simulation provides estimates of outlier payments and total payments for the set of cases analyzed.

In simulating payments, we convert billed charges to costs for purposes of estimating cost outlier payments. As we explained in the September 1, 1993 final rule (58 FR 46347), prior to FY 1994, we used a charge inflation factor to adjust charges to costs; beginning with FY 1994, we are using a cost inflation factor to estimate costs. In other words, instead of inflating the FY 1994 charge data by a charge inflation factor for 2 years in order to estimate FY 1996 charge data and then applying the cost-to-charge ratio, we adjust the charges by the cost-to-charge ratio and then inflate the estimated costs for 2 years of cost inflation. In this manner, we automatically adjust for any changes in the cost-to-charge ratios that may occur, since the relevant variable is the costs estimated for a given case.

In setting the proposed FY 1996 outlier thresholds, we used a cost inflation factor of 1.02009. This reflects the average increase in cost per case between the data from cost reporting periods beginning in FY 1991 (referred to as PPS–VIII data) and the data from cost reporting periods beginning in FY 1993 (PPS–X data) for a matched set of hospitals. We made an audit adjustment for any cost report that had not been settled, based on the average ratio of submitted to final cost report data. This adjustment was made separately for Medicare inpatient capital costs and Medicare inpatient operating costs. We used the actual settlement ratio for PPS–VIII data, since most cost reports for that period have been settled. We also used the settlement ratio from PPS–VIII for the PPS–IX cost reports, since the PPS–IX settlement ratio currently available is based on many fewer hospitals (approximately 36 percent, as opposed to 93 percent for PPS–VIII).

When we modeled the combined operating and capital outlier payments, we found that using a common set of thresholds resulted in a lower percentage of outlier payments for capital-related costs than for operating costs. We estimate the proposed thresholds for FY 1996 will result in outlier payments equal to 5.1 percent of operating DRG payments and 4.7 percent of capital payments based on the Federal rate.

As stated in the September 1, 1993 final rule (58 FR 46348), we have established outlier thresholds that would be applicable to both inpatient operating costs and inpatient capital-related costs. As explained earlier, we will apply a reduction of approximately 5.1 percent to the FY 1996 standardized amounts to account for the proportion of payments paid to outliers. The proposed outlier adjustment factors applied to the standardized amounts and the capital Federal rate for FY 1996 are as follows:

Operating standardized amounts	Capital federal Rate
0.949054	0.9526

We would apply the proposed outlier adjustment factors after removing the effects of the FY 1995 outlier adjustment factors on the standardized amounts and the capital Federal rate.

ii. Other Changes Concerning Outliers.

Table 5 of section V of this addendum contains the DRG relative weights, geometric and arithmetic mean lengths of stay, as well as the day outlier threshold for each DRG. When we recalibrate DRG weights, we set a threshold of 10 cases as the minimum number of cases required to compute a reasonable weight and geometric mean length of stay. DRGs that do not have at least 10 cases are considered to be low volume DRGs. For the low volume DRGs, we use the original geometric mean lengths of stay, because no arithmetic mean length of stay was calculated based on the original data.

Table 8a in section V of this addendum contains the updated Statewide average operating cost-to-charge ratios for urban hospitals and for rural hospitals to be used in calculating cost outlier payments for those hospitals for which the intermediary is unable to compute a reasonable hospital-specific cost-to-charge ratio. These Statewide average ratios would replace the ratios published in the September 1, 1994 final rule (59 FR 45480), effective October 1, 1995. Table 8b contains comparable Statewide average capital cost-to-charge ratios. These average ratios would be used to calculate cost outlier payments for those hospitals for which the intermediary computes operating cost-to-charge ratios lower than 0.25960 or greater than 1.30826 and capital cost-to-charge ratios lower than 0.012912 or greater than 0.21945. This range represents 3.0 standard deviations (plus or minus) from the mean of the log distribution of cost-to-charge ratios for all hospitals. The cost-to-charge ratios in Tables 8a and 8b would be applied to all hospital-specific cost-to-charge ratios based on cost report settlements occurring during FY 1996.

iii. FY 1994 and FY 1995 Outlier Payments. In the September 1, 1994 final rule (59 FR 45408), we estimated that actual FY 1994 outlier payments would be approximately 3.9 percent of total DRG payments. This figure was computed by simulating payments using actual FY 1993 bill data available at the time. That is, the figure did not reflect actual FY 1994 bills but instead reflected the application of FY 1994 rates and policies to available FY 1993 bills. Our current estimate, using FY 1994 rates, policies, and available bills, is that actual FY 1994 outlier payments were approximately 3.5 percent of total DRG payments.

In FY 1994, we began using a cost inflation factor rather than a charge inflation factor to update billed charges for purposes of estimating outlier payments. This refinement was made in order to improve our estimation methodology. We believe that actual FY 1994 outlier payments as a percentage of total DRG payments may be lower than expected because actual hospital costs may be lower than reflected in the methodology used to set the FY 1994 outlier thresholds. Our most recent data on hospital costs show a significant trend in declining rates of increase. Thus, the cost inflation factor of 8.3 percent used to set FY 1994 outlier policy (based on the best available data) appears to have been overstated. For FY 1995, we used a cost inflation factor of 2.5 percent. For FY 1996, based on more recent data, we are proposing a cost inflation factor of 2.009 percent to set outlier policy. Also, although we estimate that FY 1994 outlier payments will approximate 3.5 percent of total DRG payments, we note that the estimate of the market basket rate of increase used to set the FY 1994 rates was 4.3 percentage points, while the latest FY 1994 market basket rate of increase forecast is 2.5 percent. Thus, the net effect is that hospitals are receiving higher FY 1994 payments than would have been established based on a more recent forecast of the market basket rate of increase.

We currently estimate that FY 1995 outlier payments will approximate 4.2 percent of total DRG payments. This estimate is based on simulations using the December 1994 update of the provider-specific file and the December 1994 update of the FY 1994 MedPAR file. We used these data to estimate an outlier percentage by applying FY 1995 rates and policies to available FY 1994 bills.

We believe that there are two main reasons why our current estimate of actual FY 1995 outlier payments is below 5.1 percent. First, in setting the outlier thresholds for FY 1995, we used 2.5 percent as our cost inflation factor to inflate FY 1993 bills to FY 1995 levels. Our current estimate of cost inflation is 2.009 percent, demonstrating that the rate of increase in costs continues to slow.

Second, in setting the outlier thresholds for FY 1995, we used cost-to-charge ratios that had a mean value of 0.618. Our current estimate of cost-to-charge ratios for FY 1995 is down to 0.605. Thus, not only are costs not rising as fast as we estimated, but they also make up a lower percentage of charges than we estimated in setting FY 1995 thresholds. We are continuing to explore better ways to forecast the changes in cost inflation.

B. Adjustments for Area Wage Levels and Cost of Living

The adjusted standardized amounts are divided into labor and nonlabor portions. Tables 1a, 1b, and 1c, as set forth in this addendum, contain the actual labor-related and nonlabor-related shares that will be used to calculate the prospective payment rates for hospitals located in the 50 States, the District of Columbia, and Puerto Rico. This section addresses two types of adjustments to the standardized amounts that are made in determining the prospective payment rates as described in this addendum.

1. Adjustment for Area Wage Levels

Sections 1886(d)(3)(E) and 1886(d)(9)(C)(iv) of the Act require that an adjustment be made to the labor-related portion of the prospective payment rates to account for area differences in hospital wage levels. This adjustment is made by multiplying the labor-related portion of the adjusted standardized amounts by the appropriate wage index for the area in which the hospital is located. In section III of the preamble, we discuss certain revisions we are making to the wage index. This index is set forth in Tables 4a through 4e of this addendum.

2. Adjustment for Cost of Living in Alaska and Hawaii

Section 1886(d)(5)(H) of the Act authorizes an adjustment to take into account the unique circumstances of hospitals in Alaska and Hawaii. Higher labor-related costs for these two States are taken into account in the adjustment for area wages described above. For FY 1996, we propose to adjust the payments for hospitals in Alaska and Hawaii by multiplying the nonlabor portion of the standardized amounts by the appropriate adjustment factor contained in the table below. If the Office of Personnel Management releases revised cost-of-living adjustment factors before August 1, 1995, we will publish them in the final rule and use them in determining FY 1996 payments.

TABLE OF COST-OF-LIVING ADJUSTMENT FACTORS, ALASKA AND HAWAII HOSPITALS

Alaska—All areas	1.25
Hawaii:	
Oahu	1.225
Kauai	1.20
Maui	1.20
Molokai	1.20
Lanai	1.20
Hawaii	1.15

(The above factors are based on data obtained from the U.S. Office of Personnel Management.)

C. DRG Relative Weights

As discussed in section II of the preamble, we have developed a classification system for all hospital discharges, assigning them into DRGs, and have developed relative weights for each DRG that reflect the resource utilization of cases in each DRG relative to Medicare cases in other DRGs. Table 5 of section V of this addendum contains the relative weights that we propose to use for discharges occurring in FY 1996. These factors have been recalibrated as explained in section II of the preamble.

D. Calculation of Prospective Payment Rates for FY 1996

General Formula for Calculation of Prospective Payment Rates for FY 1996

Prospective payment rate for all hospitals located outside Puerto Rico except sole community hospitals = Federal rate.

Prospective payment rate for sole community hospitals = Whichever of the following rates yields the greatest aggregate payment: 100 percent of the Federal rate, 100 percent of the updated FY 1982 hospital-specific rate, or 100 percent of the updated FY 1987 hospital-specific rate.

Prospective payment rate for Puerto Rico = 75 percent of the Puerto Rico rate + 25 percent of a discharge-weighted average of the national large urban standardized amount and the national other standardized amount.

1. Federal Rate

For discharges occurring on or after October 1, 1995 and before October 1, 1996, except for sole community hospitals, hospitals subject to the regional floor, and hospitals in Puerto Rico, the hospital's payment is based exclusively on the Federal national rate. Section 1866(d)(1)(A)(iii) of the Act provides that the Federal rate is comprised of 100 percent of the Federal national rate except for those hospitals in census regions that have a regional rate that is higher than the national rate. The Federal rate for hospitals located in census regions that have a regional rate that is higher than the national rate equals 85 percent of the Federal national rate plus 15 percent of the Federal regional rate. Based on the proposed rates, for discharges occurring on or after October 1, 1995, hospitals in regions are affected by the regional floor.

The payment amount is determined as follows:

Step 1—Select the appropriate national or regional adjusted standardized amount considering the type of hospital and designation of the hospital as large urban or other (see Tables 1a and 1b, section V of this addendum).

Step 2—Multiply the labor-related portion of the standardized amount by the applicable wage index for the geographic area in which the hospital is located (see Tables 4a, 4b, and 4c, section V of this addendum).

Step 3—For hospitals in Alaska and Hawaii, multiply the nonlabor-related portion of the standardized amount by the appropriate cost-of-living adjustment factor.

Step 4—Add the amount from Step 2 and the nonlabor-related portion of the standardized amount (adjusted if appropriate under Step 3).

Step 5—Multiply the final amount from Step 4 by the relative weight corresponding to the appropriate DRG (see Table 5, section V of this addendum).

2. Hospital-Specific Rate (Applicable Only to Sole Community Hospitals)

Sections 1886(d)(5)(D)(i) and (b)(3)(C) of the Act provide that sole community hospitals are paid based on whichever of the following rates yields the greatest aggregate payment: the Federal rate, the updated hospital-specific rate based on FY 1982 cost per discharge, or the updated hospital-specific rate based on FY 1987 cost per discharge.

Hospital-specific rates have been determined for each of these hospitals based on both the FY 1982 cost per discharge and the FY 1987 cost per discharge. For a more detailed discussion of the calculation of the FY 1982 hospital-specific rate and the FY 1987 hospital-specific rate, we refer the reader to the September 1, 1983 interim

final rule (48 FR 39772); the April 20, 1990 final rule with comment (55 FR 15150); and the September 4, 1990 final rule (55 FR 35994).

a. Updating the FY 1982 and FY 1987 Hospital-Specific Rates for FY 1996. We are proposing to increase the hospital-specific rates by 1.5 percent (the hospital market basket percentage increase minus 2.0 percentage points) for sole community hospitals located in all areas in FY 1996. Section 1886(b)(3)(C)(ii) of the Act provides that the update factor applicable to the hospital-specific rates for sole community hospitals equals the update factor provided under section 1886(b)(3)(B)(ii) of the Act, which, for FY 1996, is the market basket rate of increase minus 2.0 percentage points.

b. Calculation of Hospital-Specific Rate. For sole community hospitals, the applicable FY 1996 hospital-specific rate would be calculated by multiplying a hospital's hospital-specific rate for the preceding fiscal year by the applicable update factor (1.5 percent), which is the same as the update for all prospective payment hospitals. In addition, the hospital-specific rate would be adjusted by the budget neutrality adjustment factor (that is, .999174) as discussed in section II.A.4.a of this addendum. This resulting rate would be used in determining under which rate a sole community hospital is paid for its discharges beginning on or after October 1, 1995, based on the formula set forth above.

3. General Formula for Calculation of Prospective Payment Rates for Hospitals Located in Puerto Rico Beginning On or After October 1, 1995 and Before October 1, 1996.

a. Puerto Rico Rate. The Puerto Rico prospective payment rate is determined as follows:

Step 1—Select the appropriate adjusted average standardized amount considering the large urban or other designation of the hospital (see Table 1c, section V of the addendum).
Step 2—Multiply the labor-related portion of the standardized amount by the appropriate wage index (see Tables 4a and 4b, section V of the addendum).
Step 3—Add the amount from Step 2 and the nonlabor-related portion of the standardized amount.
Step 4—Multiply the result in Step 3 by 75 percent.
Step 5—Multiply the amount from Step 4 by the appropriate DRG relative weight (see Table 5, section V of the addendum).

b. National Rate. The national prospective payment rate is determined as follows:

Step 1—Multiply the labor-related portion of the national average standardized amount (see Table 1c, section V of the addendum) by the appropriate wage index.
Step 2—Add the amount from Step 1 and the nonlabor-related portion of the national average standardized amount.
Step 3—Multiply the result in Step 2 by 25 percent.
Step 4—Multiply the amount from Step 3 by the appropriate DRG relative weight (see Table 5, section V of the addendum).

The sum of the Puerto Rico rate and the national rate computed above equals the prospective payment for a given discharge for a hospital located in Puerto Rico.

III. Proposed Changes to Payment Rates for Inpatient Capital-Related Costs for FY 1996

The prospective payment system for hospital inpatient capital-related costs was implemented for cost reporting periods beginning on or after October 1, 1991. Effective with that cost reporting period and during a 10-year transition period extending through FY 2001, hospital inpatient capital-related costs are paid on the basis of an increasing proportion of the capital prospective payment system Federal rate and a decreasing proportion of the historical costs for capital.

The basic methodology for determining Federal capital prospective rates is set forth at §§ 412.308 through 412.352. Below we discuss the factors that we used to determine the proposed Federal rate and the hospital-specific rates for FY 1996. The rates will be effective for discharges occurring on or after October 1, 1995.

For FY 1992, we computed the standard Federal payment rate for capital-related costs under the prospective payment system by updating the FY 1989 Medicare inpatient capital cost per case by an actuarial estimate of the increase in Medicare inpatient capital costs per case. Each year after FY 1992 we update the standard Federal rate, as provided in § 412.308(c)(1), to account for capital input price increases and other factors. Also, § 412.308(c)(2) provides that the Federal rate is adjusted annually by a factor equal to the estimated additional payments under the Federal rate for outlier cases, determined as a proportion of total capital payments under the Federal rate. Section 412.308(c)(3) further requires that the Federal rate be reduced by an adjustment factor equal to the estimated additional payments made for exceptions under § 412.348, and § 412.308(c)(4)(ii) requires that the Federal rate be adjusted so that the annual DRG reclassification and the recalibration of DRG weights and changes in the geographic adjustment factor are budget neutral. For FY 1992 through FY 1995, § 412.352 required that the Federal rate also be adjusted by a budget neutrality factor so that estimated aggregate payments for inpatient hospital capital costs will equal 90 percent of the estimated payments that would have been made for capital-related costs on a reasonable cost basis during the fiscal year. As discussed below, that provision has now expired.

The hospital-specific rate for each hospital was calculated by dividing the hospital's Medicare inpatient capital-related costs for a specified base year by its Medicare discharges (adjusted for transfers), and dividing the result by the hospital's case mix index (also adjusted for transfers). The resulting case-mix adjusted average cost per discharge was then updated to FY 1992 based on the national average increase in Medicare's inpatient capital cost per discharge and adjusted by the exceptions payment adjustment factor and the budget neutrality adjustment factor to yield the FY 1992 hospital-specific rate. The hospital-specific rate is updated each year after FY 1992 for inflation and for changes in the exceptions payment adjustment factor. For FY 1992 through FY 1995, the hospital-specific rate was also adjusted by a budget neutrality adjustment factor.

To determine the appropriate budget neutrality adjustment factors and the exceptions payment adjustment factor, we developed a dynamic model of Medicare inpatient capital-related costs, that is, a model that projects changes in Medicare inpatient capital-related costs over time. With the expiration of the budget neutrality provision, the model is still used to estimate the exceptions payment adjustment and other factors. The model and its application are described more fully in Appendix B.

In accordance with section 1886(d)(9)(A) of the Act, under the prospective payment system for inpatient operating costs, hospitals located in Puerto Rico are paid under a special payment formula. These hospitals are paid a blended rate that is comprised of 75 percent of the applicable standardized amount specific to Puerto Rico hospitals and 25 percent of the applicable national average standardized amount. Section 412.374 provides for the use of this blended payment system for payments to Puerto Rico hospitals under the prospective payment system for inpatient capital-related costs. Accordingly, for capital-related costs we compute a separate payment rate specific to Puerto Rico hospitals using the same methodology used to compute the national Federal rate for capital. Hospitals in Puerto Rico are paid based on 75 percent of the Puerto Rico rate and 25 percent of the Federal rate.

A. Determination of Federal Inpatient Capital-Related Prospective Payment Rate Update

For FY 1995, the Federal rate was $376.83. With the changes we are proposing to the factors used to establish the Federal rate, the FY 1996 Federal rate would be $457.11.

In the discussion that follows, we explain the factors that were used to determine the FY 1996 Federal rate. In particular, we explain why the FY 1996 Federal rate has increased 21.3 percent compared to the FY 1995 Federal rate. We also explain that aggregate payments for capital in FY 1996 are estimated to increase by 20.45 percent.

The major factor contributing to the increase in the FY 1996 rate in comparison to FY 1995 is the expiration of the budget neutrality requirement. Section 412.352 required that estimated payments each year from FY 1992 through FY 1995 for capital costs equal 90 percent of the amount that would have been payable that year on a reasonable cost basis. Accordingly, each year from FY 1992 through FY 1995, we applied an adjustment to the Federal rate and the hospital-specific rate so that estimated capital prospective payments would equal 90 percent of estimated Medicare hospital inpatient capital-related costs.

Based on the most recent data, we now estimate that capital payments equalled 95.11 percent of reasonable costs in FY 1992, 91.07 percent of reasonable costs in FY 1993, 91.00 percent of reasonable costs in FY 1994, and 91.06 percent of reasonable costs in FY 1995. Thus, the data indicate that the budget neutrality adjustments for FY 1992, FY 1993, and FY 1994 were not sufficient to meet the 90 percent target and, consequently, the Federal rates for FY 1992, FY 1993, FY 1994, and FY 1995 were higher than they should have been. We do not retroactively adjust the budget neutrality factor and the Federal rate for previous years to account for revised estimates. For FY 1996, we estimate that payments will exceed costs by 4.52 percent as a result of the expiration of the budget neutrality provision.

As we explain in section III.A.8 below, the predominant factor in the 21.3 percent increase in the Federal rate, as well as the 20.45 percent increase in payments, is the expiration of the budget neutrality provision. For FY 1995, the budget neutrality adjustment was 0.8432, a 15.68 percent reduction to the rates. The expiration of that provision alone accounts for an 18.6 percent increase (1.00/.8432 = 1.186, or 18.6 percent) in the rate. The FY 1996 update factor and changes in the outlier and exceptions factors also contribute to the increase in the rate. The factors contributing to the increase in the rate were partially offset by special adjustments to the rate to account for the effects of the new transfer policy and the new treatment of capital-related tax costs, and by the effect of the DRG/GAF reduction factor.

Total payments to hospitals under the prospective payment system are relatively insensitive even to changes of such magnitude in the capital Federal rate. Since capital payments constitute about 10 percent of hospital payments, a 1 percent change in the capital Federal rate yields only about 0.1 percent change in actual payments to hospitals. Therefore, the large increase in the FY 1996 Federal rate can be expected to increase total payments to hospitals under the prospective payment system by only about 2.04 percent.

1. Standard Federal Rate Adjustment for the New Treatment of Capital-Related Tax Costs

Section V.B of the preamble to this proposed rule discusses our proposal to revise the treatment of capital-related tax costs within the prospective payment system for capital-related costs. As we discuss in that section, adoption of any adjustment to the capital Federal rate payment for capital-related tax costs requires a corresponding adjustment of the standard Federal rate to offset the amount of capital-related tax costs originally included in the computation of the rate. In this way, adoption of the tax adjustment will be budget neutral: capital payments will neither increase nor decrease because of the adoption of the tax adjustment.

We propose to use the following methodology to adjust the standard Federal rate to account for the tax costs included in the original computation of the rate. We propose to subtract the total FY 1992 Medicare capital-related taxes for all hospitals from the total FY 1992 Medicare capital-related costs for all hospitals. The result is FY 1992 Medicare capital-related costs without taxes. We then determine the ratio of FY 1992 Medicare capital-related costs without taxes to total FY 1992 Medicare capital-related costs, including capital-related tax costs. We then apply this ratio to the base Federal rate to remove the capital-related tax costs currently incorporated into that rate. As a result of these calculations, we are providing in this proposed rule for an estimated 1.14 percent decrease to the base Federal rate to account for the tax costs originally included in the rate. As discussed in section V.B of the preamble to this proposed rule, we will recompute this adjustment on the basis of the verified hospital FY 1992 capital-related tax cost data available for the final rule.

2. Special Federal Rate Adjustment for the Effects of the New Transfer Payment Policy

Section 412.312(d) provides that payment under the capital prospective payment system for transfer cases is made under the same rules governing transfer payments under the operating prospective payment system. Transfer cases under the prospective payment system for capital-related costs have been paid on a per diem basis, using the full prospective payment amount for the DRG (both Federal rate and hospital-specific rate, if appropriate) divided by the geometric mean length of stay for the DRG, but not to exceed the full prospective payment. Section IV.A of the preamble describes our proposal to adopt a graduated per diem payment methodology for transfer cases. Under this proposal, we would pay double the per diem amount for the first day and the per diem amount for subsequent days, up to the full prospective payment amount. Section 109 of the Social Security Amendments of 1994 (Public Law 103–432) authorizes the Secretary to make adjustments to the operating prospective payment system rates so that adjustments to the payment policy for transfer cases do not affect aggregate payments. Section II of the addendum describes the methodology for making the adjustment to the operating rates.

In order to maintain consistency with the prospective payment system for operating costs, we believe that a parallel adjustment to the Federal capital rate and the hospital-specific capital rates is warranted. In this way, revision of the payment policy for transfer cases will not affect aggregate payments under the prospective payment system for capital-related costs. We describe the methodology for making this adjustment in Appendix B to this proposed rule. Following that

methodology, we have determined that a special adjustment of .9972 (−0.28 percent) to the standard Federal rate and the hospital-specific rates is required.

3. Standard Federal Rate Update

Section 412.308(c)(1)(ii) provides that, effective FY 1996, the standard Federal rate is updated on the basis of an analytical framework that takes into account changes in a capital input price index and other factors. We discuss the proposed analytical framework and the derivation of the proposed FY 1996 update factor under that framework in section V.A of the preamble to this proposed rule. The proposed update factor is 1.5 percent.

4. Outlier Payment Adjustment Factor

Section 412.312(c) establishes a unified outlier methodology for inpatient operating and inpatient capital-related costs. A single set of thresholds is used to identify outlier cases for both inpatient operating and inpatient capital-related payments. Outlier payments are made only on the portion of the Federal rate that is used to calculate the hospital's inpatient capital-related payments (for example, 50 percent for cost reporting periods beginning in FY 1996 for hospitals paid under the fully prospective methodology). Section 412.308(c)(2) provides that the standard Federal rate for inpatient capital-related costs be reduced by an adjustment factor equal to the estimated additional payments under the Federal rate for outlier cases, determined as a proportion of inpatient capital-related payments under the Federal rate. The outlier thresholds are set so that estimated outlier payments are 5.1 percent of estimated total DRG payments. The inpatient capital-related outlier reduction factor is then set according to the estimated inpatient capital-related outlier payments that would be made if all hospitals were paid according to 100 percent of the Federal rate. For purposes of calculating the outlier thresholds and the outlier reduction factor, we model all hospitals as if paid 100 percent of the Federal rate because, as explained above, outlier payments are made only on the portion of the Federal rate that is included in the hospital's inpatient capital-related payments.

In the September 1, 1994 final rule, we estimated that outlier payments for capital in FY 1995 would equal 5.86 percent of inpatient capital-related payments based on the Federal rate. Accordingly, we applied an outlier adjustment factor of 0.9414 to the Federal rate. Based on the thresholds as set forth in section II.A.4.d of the addendum, we estimate that outlier payments will equal 4.74 percent of inpatient capital-related payments based on the Federal rate in FY 1996. We are, therefore, proposing an outlier adjustment factor of 0.9526 to the Federal rate. Thus, proposed capital outlier payments for FY 1996 represent a lower percentage of total capital standard payments than in FY 1995.

The outlier reduction factors are not built permanently into the rates; that is, they are not applied cumulatively in determining the Federal rate. Therefore, the proposed net change in the outlier adjustment to the Federal rate for FY 1996 is 1.0119 (.9526/.9414). Thus, the proposed outlier adjustment increases the FY 1996 Federal rate by 1.19 percent (1.0119−1) compared with the FY 1995 outlier adjustment.

5. Budget Neutrality Adjustment Factor for Changes in DRG Classifications and Weights and the Geographic Adjustment Factor

Section 412.308(c)(4)(ii) requires that the Federal rate be adjusted so that estimated aggregate payments for the fiscal year based on the Federal rate after any changes resulting from the annual DRG reclassification and recalibration and changes in the geographic adjustment factor equal estimated aggregate payments that would have been made on the basis of the Federal rate without such changes. We use the actuarial model described in Appendix B to estimate the aggregate payments that would have been made on the basis of the Federal rate without changes in the DRG classifications and weights and in the geographic adjustment factor. We also use the model to estimate aggregate payments that would be made on the basis of the Federal rate as a result of those changes. We then use these figures to compute the adjustment required to maintain budget neutrality for changes in DRG weights and in the geographic adjustment factor.

For FY 1995, we calculated a GAF/DRG budget neutrality factor of 0.9998. For FY 1996, we are proposing a GAF/DRG budget neutrality factor of 0.9993. The GAF/DRG budget neutrality factors are built permanently into the rates; that is, they are applied cumulatively in determining the Federal rate. This follows from the requirement that estimated aggregate payments each year be no more than they would have been in the absence of the annual DRG reclassification and recalibration and changes in the geographic adjustment factor. The proposed incremental change in the adjustment from FY 1995 to FY 1996 is 0.9993. The proposed cumulative change in the rate due to this adjustment is 1.0024 (the product of the incremental factors for FY 1993, FY 1994, FY 1995, and the proposed incremental factor for FY 1996: .9980×1.0053×.9998×.9993=1.0024).

This factor accounts for DRG reclassifications and recalibration and for changes in the geographic adjustment factor. It also incorporates the effects on the geographic adjustment factor of FY 1996 geographic reclassification decisions made by the MGCRB compared to FY 1995 decisions. However, it does not account for changes in payments due to changes in the disproportionate share and indirect medical education adjustment factors or in the large urban add-on.

6. Exceptions Payment Adjustment Factor

Section 412.308(c)(3) requires that the standard Federal rate for inpatient capital-related costs be reduced by an adjustment factor equal to the estimated additional payments for exceptions under § 412.348 determined as a proportion of total payments under the hospital-specific rate and Federal rate. We use the model originally developed for determining the budget neutrality adjustment factor to estimate payments under the exceptions payment process and to determine the exceptions payment adjustment factor. We describe that model in Appendix B to this proposed rule.

For FY 1995, we estimated that exceptions payments would equal 2.66 percent of aggregate payments based on the Federal rate and the hospital-specific rate. Therefore, we applied an exceptions reduction factor of 0.9734 (1−.0266) in determining the Federal rate. For this proposed rule, we estimate that exceptions payments for FY 1996 will equal 1.60 percent of aggregate payments based on the Federal rate and the hospital-specific rate. We are, therefore, proposing an exceptions payment reduction factor of 0.9840 to the Federal rate for FY 1996.

The proposed exceptions reduction factor for FY 1996 is thus 1.09 percent higher than the factor for FY 1995. The reduced level of estimated exceptions payments for FY 1996 compared to FY 1995 is a result of the significant increases in the capital rates and in aggregate capital payments.

The exceptions reduction factors are not built permanently into the rates; that is, the factors are not applied cumulatively in determining the Federal rate. Therefore, the proposed net adjustment to the FY 1996 Federal rate is .9840/.9734, or 1.0109.

7. Expiration of Budget Neutrality Provision

For FY 1992 through FY 1995, § 412.352 required that the Federal rate also be adjusted by a budget neutrality factor so that estimated aggregate payments for inpatient hospital capital costs would equal 90 percent of the estimated payments that would have been made for capital-related costs on a reasonable cost basis during the fiscal year. That provision has now expired. The expiration of the budget neutrality provision is the predominant factor in the 21.3 percent increase in the Federal rate, as well as the 20.4 percent increase in payments.

For FY 1995, the budget neutrality adjustment was 0.8432, a 15.68 percent reduction to the rates. The budget neutrality factors were not built permanently into the rates; that is, the factors were not applied cumulatively in determining the Federal rate. With the expiration of the budget neutrality provision, the proposed net adjustment to the rate is thus 1.186 (1.00/.8432=1.186), or 18.6 percent. The expiration of the provision, therefore, accounts for an 18.6 percent increase in the rate.

8. Standard Capital Federal Rate for FY 1996

For FY 1995, the capital Federal rate was $376.83. With the changes we are proposing to the factors used to establish the Federal rate, the FY 1996 Federal rate would be $457.11. The proposed Federal rate for FY 1996 was calculated as follows:

- The proposed special adjustment to the standard Federal rate to account for the change in transfer payment policy is 0.9972.
- The proposed special adjustment to remove the capital-related tax costs included in the original computation of the rate is 0.9886.
- The proposed FY 1996 update factor is 1.0150.
- The proposed FY 1996 outlier adjustment factor is 0.9526.
- The proposed FY 1996 budget neutrality adjustment factor that is applied to the standard Federal payment rate for changes in the DRG relative weights and in the geographic adjustment factor is 0.9993.
- The proposed FY 1996 exceptions payments adjustment factor is 0.9840.
- The expiration of the budget neutrality provision requires that the FY 1995 budget neutrality adjustment be removed from the rate without further incremental adjustment.

Since the Federal rate has already been adjusted for differences in case mix, wages, cost of living, indirect medical education costs, and payments to hospitals serving a disproportionate share of low-income patients, we propose to make no additional adjustments in the standard Federal rate for these factors other than the budget neutrality factor for changes in the DRG relative weights and the geographic adjustment factor.

We are providing a chart that shows how each of the factors and adjustments for FY 1996 affected the computation of the proposed FY 1996 Federal rate in comparison to the FY 1995 Federal rate. The proposed special adjustments to account for the effects of changes in transfer payment policy and in the treatment of capital-related tax costs have the effect of reducing the rate by 0.28 percent and 1.14 percent, respectively. The proposed FY 1996 update factor has the effect of increasing the Federal rate 1.50 percent compared to the rate in FY 1994, while the proposed geographic and DRG budget neutrality factor has the effect of decreasing the Federal rate by 0.07 percent. The proposed FY 1996 outlier adjustment factor has the effect of increasing the Federal rate by 1.19 percent compared to FY 1995. The proposed FY 1996 exceptions reduction factor has the effect of increasing the Federal rate by 1.09 percent compared to the exceptions reduction for FY 1995. Finally, the expiration of the budget neutrality provision has the effect of increasing the proposed FY 1996 rate by 18.60 percent compared to the effect of the budget neutrality reduction in FY 1995. The combined effect of all the proposed changes is to increase the proposed Federal rate by 21.3 percent compared to the Federal rate for FY 1995.

COMPARISON OF FACTORS AND ADJUSTMENTS: FY 1995 FEDERAL RATE AND PROPOSED FY 1996 FEDERAL RATE

		Change	Percent change
Transfer adjustment			
FY 1995:	N/A		
Proposed FY 1996:	0.9972	0.9972	−0.28
Tax adjustment			
FY 1995:	N/A		
Proposed FY 1996:	0.9886	0.9886	−1.14
Update factor [1]			
FY 1995:	1.0344		
Proposed FY 1996:	1.0150	1.0150	1.50
GAF/DRG adjustment factor [1]			
FY 1995:	0.9998		
Proposed FY 1996:	0.9993	0.9993	−0.07
Outlier adjustment factor [2]			
FY 1995:	0.9414		
Proposed FY 1996:	0.9526	1.0119	1.19
Exceptions adjustment factor			
FY 1995 [2]	0.9734		
Proposed FY 1996:	0.9840	1.0109	1.09
Budget neutrality adjustment factor [2]			
FY 1995:	0.8432		
Proposed FY 199	1.0000	1.1860	18.60
Federal rate			
FY 1995:	$376.83		
Proposed FY 1996:	$457.11	1.2130	21.30

[1] The update factor and the GAF/DRG budget neutrality factors are built permanently into the rates. Thus, for example, the incremental change from FY 1995 to FY 1996 resulting from the application of the 0.9993 GAF/DRG budget neutrality factor for FY 1996 is 0.9993.

[2] The outlier reduction factor and the exceptions reduction factor are not built permanently into the rates; that is, these factors are not applied cumulatively in determining the rates. Thus, for example, the net change resulting from the application of the FY 1996 exceptions reduction factor is 0.9840/0.9734, or 1.0119.

9. Special Rate for Puerto Rico Hospitals

For FY 1995, the special rate for Puerto Rico hospitals was $289.87. With the changes we are proposing to the factors used to determine the rate, the proposed FY 1996 special rate for Puerto Rico would be $351.61.

B. Determination of Hospital-Specific Rate Update

Section 412.328(e) of the regulations provides that the hospital-specific rate for FY 1996 be determined by adjusting the FY 1995 hospital-specific rate by the following factors:

1. Special Adjustment for the Effects of the New Transfer Policy

Section 412.312(d) of the regulations provides that payment under the capital prospective payment system for transfer cases is made under the same rules governing transfer payments under the operating prospective payment system. Transfer cases under the prospective payment system for capital-related costs have been paid on a per diem basis, using the full prospective payment amount for the DRG (both Federal rate and hospital-specific rate, if appropriate) divided by the geometric mean length of stay for the DRG, but not to exceed the full prospective payment. Section IV.A of the preamble to this proposed rule describes our proposal to adopt a graduated per diem payment methodology for transfer cases. Under this proposal, we would pay double the per diem amount for the first day and the per diem amount for subsequent days, up to the full prospective payment amount. Section 109 of the Social Security Amendments of 1994 (Public Law 103–432) authorizes the Secretary to make adjustments to the operating prospective payment system rates so that adjustments to the payment policy for transfer cases do not affect aggregate payments. Section II of this Addendum describes the methodology for making the adjustment to the operating rates.

In order to maintain consistency with the prospective payment system for operating costs, we believe that a parallel adjustment to the Federal capital rate and the hospital-specific capital rates is warranted. In this way, revision of the payment policy for transfer cases will not affect aggregate payments under the prospective payment system for capital-related costs. We describe the methodology for making this adjustment in Appendix B of this proposed rule. Following that methodology, we have determined that a special adjustment of 0.9972 (-0.28 percent) to the standard Federal rate and the hospital-specific rates is required. We propose to revise § 412.328(e) accordingly.

2. Hospital-Specific Rate Update Factor

The hospital-specific rate is updated in accordance with the update factor for the standard Federal rate determined under § 412.308(c)(1). For FY 1996, we are proposing that the hospital-specific rate be updated by a factor of 1.015.

3. Exceptions Payment Adjustment Factor

For FY 1992 through FY 2001, the updated hospital-specific rate is multiplied by an adjustment factor to account for estimated exceptions payments for capital-related costs under § 412.348, determined as a proportion of the total amount of payments under the hospital-specific rate and the Federal rate. For FY 1996, we estimate that exceptions payments will be 1.60 percent of aggregate payments based on the Federal rate and the hospital-specific rate. We therefore propose that the updated hospital-specific rate be reduced by a factor of 0.9840. The exceptions reduction factors are not built permanently into the rates; that is, the factors are not applied cumulatively in determining the hospital-specific rate. Therefore, the proposed net adjustment to the FY 1996 hospital-specific rate is .9840/.9734, or 1.0109.

4. Expiration of the Budget Neutrality Provision

For FY 1992 through FY 1995, the updated hospital-specific rate was adjusted by a budget neutrality adjustment factor determined under § 412.352, so that estimated aggregate payments under the capital prospective payment system would equal 90 percent of estimated payments that would have been made on a reasonable cost basis. (The budget neutrality adjustment for changes in the DRG classifications and relative weights and in the geographic adjustment factor is not applied to the hospital-specific rate.) For FY 1995, the budget neutrality adjustment was 0.8432. The budget neutrality provision has now expired. Therefore, for FY 1996 there is no budget neutrality adjustment. The budget neutrality factor was not built permanently into the rates; that is, the factor was not applied cumulatively in determining the hospital-specific rate. Therefore, the proposed net adjustment to the FY 1996 hospital-specific rate as a result of the expiration of the budget neutrality provision is 1.0000/.8432, or 1.1860.

5. Net Change to Hospital-Specific Rate

We are providing a chart to show the net change to the hospital-specific rate. The chart shows the factors for FY 1995 and FY 1996 and the net adjustment for each factor. It also shows that the proposed cumulative net adjustment from FY 1995 to FY 1996 is 1.2134, which represents a proposed increase of 21.34 percent to the hospital-specific rate. The proposed FY 1996 hospital-specific rate for each hospital is determined by multiplying the FY 1995 hospital-specific rate by the cumulative net adjustment of 1.2134.

PROPOSED FY 1996 UPDATE AND ADJUSTMENTS TO HOSPITAL-SPECIFIC RATES

		Net adjustment	Percent change
Transfer adjustment			
FY 1995:	N/A		
Proposed FY 1996:	0.9972	0.9972	−0.28
Update factor			
FY 1995:	1.0304		
Proposed FY 1996:	1.0150	1.0150	1.50
Exceptions payment adjustment factor			
FY 1995:	0.9734		
Proposed FY 1996:	0.9840	1.0109	1.09
Budget neutrality factor			

PROPOSED FY 1996 UPDATE AND ADJUSTMENTS TO HOSPITAL-SPECIFIC RATES—Continued

		Net adjustment	Percent change
FY 1995:	0.8432		
Proposed FY 1996:	1.0000	1.1860	18.60
Cumulative adjustments			
FY 1995:	0.8457		
Proposed FY 1996:	1.0262	1.2134	21.34

Note: The update factor for the hospital-specific rate is applied cumulatively in determining the rates. Thus, the incremental increase in the update factor from FY 1995 to FY 1996 is 1.0150. In contrast, the exceptions payment adjustment factor and the budget neutrality factor are not applied cumulatively. Thus, for example, the incremental increase in the exceptions reduction factor from FY 1995 to FY 1996 is .9840/.9734, or 1.0109.

C. Calculation of Inpatient Capital-Related Prospective Payments for FY 1996

During the capital prospective payment system transition period, a hospital is paid for the inpatient capital-related costs under one of two alternative payment methodologies: the fully prospective payment methodology or the hold-harmless methodology. The payment methodology applicable to a particular hospital is determined when a hospital comes under the prospective payment system for capital-related costs by comparing its hospital-specific rate to the Federal rate applicable to the hospital's first cost reporting period under the prospective payment system. The applicable Federal rate was determined by adjusting:

- For outliers by dividing the standard Federal rate by the outlier reduction factor for that fiscal year; and,
- For the payment adjustment factors applicable to the hospital (that is, the hospital's geographic adjustment factor, the disproportionate share adjustment factor, and the indirect medical education adjustment factor, when appropriate).

If the hospital-specific rate is above the applicable Federal rate, the hospital is paid under the hold-harmless methodology. If the hospital-specific rate is below the applicable Federal rate, the hospital is paid under the fully prospective methodology.

For purposes of calculating payments for each discharge under both the hold-harmless payment methodology and the fully prospective payment methodology, the standard Federal rate is adjusted as follows: (Standard Federal Rate) × (DRG weight) × (Geographic Adjustment Factor) × (Large Urban Add-on, if applicable) × (COLA adjustment for hospitals located in Alaska and Hawaii) × (1 + Disproportionate Share Adjustment Factor + Indirect Medical Education Adjustment Factor, if applicable). The result is termed the adjusted Federal rate.

Payments under the hold-harmless methodology are determined under one of two formulas. A hold-harmless hospital is paid the higher of:

- 100 percent of the adjusted Federal rate for each discharge; or
- An old capital payment equal to 85 percent (100 percent for sole community hospitals) of the hospital's allowable Medicare inpatient old capital costs per discharge for the cost reporting period plus a new capital payment based on a percentage of the adjusted Federal rate for each discharge. The percentage of the adjusted Federal rate equals the ratio of the hospital's allowable Medicare new capital costs to its total Medicare inpatient capital-related costs in the cost reporting period.

Once a hospital receives payment based on 100 percent of the adjusted Federal rate in a cost reporting period beginning on or after October 1, 1994 (or the first cost reporting period after obligated capital that is recognized as old capital under § 412.302(c) is put in use for patient care, if later), the hospital continues to receive capital prospective payment system payments on that basis for the remainder of the transition period.

Payment for each discharge under the fully prospective methodology is the sum of:

- The hospital-specific rate multiplied by the DRG relative weight for the discharge and by the applicable hospital-specific transition blend percentage for the cost reporting period; and
- The adjusted Federal rate multiplied by the Federal transition blend percentage.

The blend percentages for cost reporting periods beginning in FY 1996 are 50 percent of the adjusted Federal rate and 50 percent of the hospital-specific rate.

In addition, we are proposing that, for discharges on or after October 1, 1995, a hospital that was subject to capital-related tax payments in FY 1992 would receive a dollar add-on to the Federal rate payment as an adjustment for capital-related tax costs. The hospital-specific amount of the adjustment would be determined in accordance with the methodology described in section V.B of the preamble to this proposed rule. During the transition, the hospital-specific dollar add-on amount is multiplied by the Federal rate percentage applicable to the hospital under its transition payment methodology (e.g., 50 percent in FY 1996 for fully prospective hospitals).

Hospitals may also receive outlier payments for those cases that qualify under the thresholds established for each fiscal year. Section 412.312(c) provides for a single set of thresholds to identify outlier cases for both inpatient operating and inpatient capital-related payments. Outlier payments are made only on that portion of the Federal rate that is used to calculate the hospital's inpatient capital-related payments. For fully prospective hospitals, that portion is 50 percent of the Federal rate for discharges occurring in cost reporting periods beginning during FY 1996. Thus, a fully prospective hospital will receive 50 percent of the capital-related outlier payment calculated for the case for discharges occurring in cost reporting periods beginning in FY 1996. For hold-harmless hospitals paid 85 percent of their reasonable costs for old inpatient capital, the portion of the Federal rate that is included in the hospital's outlier payments is based on the hospital's ratio of Medicare inpatient costs for new capital to total Medicare inpatient capital costs. For hold-harmless hospitals that are paid 100 percent of the Federal rate, 100 percent of the Federal rate is included in the hospital's outlier payments.

The outlier thresholds for FY 1996 are published in section II.A.4.c of this Addendum. For FY 1996, a case qualifies as a cost outlier if the cost for the case (after standardization for the indirect teaching adjustment and disproportionate share adjustment) is greater than the prospective payment rate for the DRG plus $16,700. A case qualifies as a day outlier for FY 1996 if the length of stay is greater than the geometric mean length of stay for the

DRG plus the lesser of three standard deviations of the length of stay or 23 days.

During the capital prospective payment system transition period, any hospital may also receive an additional payment under an exceptions process if its total inpatient capital-related payments are less than a minimum percentage of its allowable Medicare inpatient capital-related costs. The minimum payment level is established by class of hospital under § 412.348. The minimum payment levels for portions of cost reporting periods occurring in FY 1996 are:

- Sole community hospitals (located in either an urban or rural area), 90 percent;
- Urban hospitals with at least 100 beds and a disproportionate share patient percentage of at least 20.2 percent and urban hospitals with at least 100 beds that qualify for disproportionate share payments under § 412.106(c)(2), 80 percent; and,
- All other hospitals, 70 percent.

Under § 412.348(d), the amount of the exceptions payment is determined by comparing the cumulative payments made to the hospital under the capital prospective payment system to the cumulative minimum payment levels applicable to the hospital for each cost reporting period subject to that system. Any amount by which the hospital's cumulative payments exceed its cumulative minimum payment is deducted from the additional payment that would otherwise be payable for a cost reporting period.

New hospitals are exempted from the capital prospective payment system for their first 2 years of operation and are paid 85 percent of their reasonable costs during that period. A new hospital's old capital costs are its allowable costs for capital assets that were put in use for patient care on or before the later of December 31, 1990 or the last day of the hospital's base year cost reporting period, and are subject to the rules pertaining to old capital and obligated capital as of the applicable date. Effective with the third year of operation, we will pay the hospital under either the fully prospective methodology, using the appropriate transition blend in that Federal fiscal year, or the hold-harmless methodology. If the hold-harmless methodology is applicable, the hold-harmless payment for assets in use during the base period would extend for 8 years, even if the hold-harmless payments extend beyond the normal transition period.

IV. Proposed Changes for Excluded Hospitals and Hospital Units

A. Proposed Rate-of-Increase Percentages for Excluded Hospitals and Hospital Units

The inpatient operating costs of hospitals and hospital units excluded from the prospective payment system are subject to rate-of-increase limits established under the authority of section 1886(b) of the Act, which is implemented in § 413.40 of the regulations. Under these limits, an annual target amount (expressed in terms of the inpatient operating cost per discharge) is set for each hospital, based on the hospital's own historical cost experience trended forward by the applicable rate-of-increase percentages (update factors). The target amount is multiplied by the number of Medicare discharges in a hospital's cost reporting period, yielding the ceiling on aggregate Medicare inpatient operating costs for the cost reporting period.

Effective with cost reporting periods beginning on or after October 1, 1991, a hospital that has Medicare inpatient operating costs in excess of its ceiling is paid its ceiling plus 50 percent of its costs in excess of the ceiling. Total payment may not exceed 110 percent of the ceiling. A hospital that has inpatient operating costs less than its ceiling is paid its costs plus the lower of—

- Fifty percent of the difference between the allowable inpatient operating costs and the ceiling; or
- Five percent of the ceiling.

Each hospital's target amount is adjusted annually, at the beginning of its cost reporting period, by an applicable rate-of-increase percentage. Section 1886(b)(3)(B) of the Act provides that for cost reporting periods beginning on or after October 1, 1993 and before October 1, 1994, the applicable rate-of-increase percentage is the market basket percentage increase minus the lesser of one percentage point or the percentage point difference between 10 percent and the hospital's "update adjustment percentage" except for hospitals with an "update adjustment percentage" of at least 10 percent. The rate-of-increase percentage for hospitals in the latter case is the market basket percentage increase. The "update adjustment percentage" is the percentage by which a hospital's allowable inpatient operating costs exceeds the hospital's ceiling for the cost reporting period beginning in Federal fiscal year 1990. For cost reporting periods beginning on or after October 1, 1994 and before October 1, 1997, the update adjustment percentage is the update adjustment percentage from the previous year plus the previous year's applicable reduction. The applicable reduction and applicable rate of increase percentage are then determined in the same manner as for FY 1994. The most recent forecasted market basket increase for FY 1996 for hospitals and hospital units excluded from the prospective payment system is 3.6 percent.

V. Tables

This section contains the tables referred to throughout the preamble to this proposed rule and in this addendum. For purposes of this proposed rule, and to avoid confusion, we have retained the designations of Tables 1 through 5 that were first used in the September 1, 1983 initial prospective payment final rule (48 FR 39844). Tables 1a, 1b, 1c, 1d, 3C, 4a, 4b, 4c, 4d, 4e, 5, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 7A, 7B, 8a, and 8b are presented below. The tables presented below are as follows:

Table 1a—National Adjusted Operating Standardized Amounts, Labor/Nonlabor
Table 1b—Regional Adjusted Operating Standardized Amounts, Labor/Nonlabor
Table 1c—Adjusted Operating Standardized Amounts for Puerto Rico, Labor/Nonlabor
Table 1d—Capital Standard Federal Payment Rate
Table 3C—Hospital Case Mix Indexes for Discharges Occurring in Federal Fiscal Year 1994 and Hospital Average Hourly Wage for Federal Fiscal Year 1996 Wage Index
Table 4a—Wage Index and Capital Geographic Adjustment Factor (GAF) for Urban Areas
Table 4b—Wage Index and Capital Geographic Adjustment Factor (GAF) for Rural Areas
Table 4c—Wage Index and Capital Geographic Adjustment Factor (GAF) for Hospitals That Are Reclassified
Table 4d—Average Hourly Wage for Urban Areas
Table 4e—Average Hourly Wage for Rural Areas
Table 5—List of Diagnosis Related Groups (DRGs), Relative Weighting Factors, Geometric Mean Length of Stay, and Length of Stay Outlier Cutoff Points Used in the Prospective Payment System
Table 6a—New Diagnosis Codes
Table 6b—New Procedure Codes
Table 6c—Invalid Diagnosis Codes
Table 6d—Invalid Procedure Codes
Table 6e—Revised Diagnosis Code Titles
Table 6f—Revised Procedure Code Titles

Table 6g—Additions to the CC Exclusions List
Table 6h—Deletions to the CC Exclusions List
Table 7A—Medicare Prospective Payment System Selected Percentile Lengths of Stay FY 94 MEDPAR Update 12/94 GROUPER V12.0
Table 7B—Medicare Prospective Payment System Selected Percentile Lengths of Stay FY 94 MEDPAR Update 12/94 GROUPER V13.0
Table 8a—Statewide Average Operating Cost-to-Charge Ratios for Urban and Rural Hospitals (Case Weighted) April 1995
Table 8b—Statewide Average Capital Cost-to-Charge Ratios for Urban and Rural Hospitals (Case Weighted) April 1995

TABLE 1a.—NATIONAL ADJUSTED OPERATING STANDARDIZED AMOUNTS, LABOR/NONLABOR

Large urban areas		Other areas	
Labor-related	Nonlabor-related	Labor-related	Nonlabor-related
$2,741.66	$1,098.20	$2,698.26	$1,080.82

TABLE 1b.—REGIONAL ADJUSTED OPERATING STANDARDIZED AMOUNTS, LABOR/NONLABOR

	Large urban areas		Other areas	
	Labor-related	Nonlabor-related	Labor-related	Nonlabor-related
1. New England (CT, ME, MA, NH, RI, VT)	2,874.42	1,151.39	2,828.91	1,133.15
2. Middle Atlantic (PA, NJ, NY)	2,623.32	1,050.80	2,581.79	1,034.16
3. South Atlantic (DE, DC, FL, GA, MD, NC, SC, VA, WV)	2,685.89	1,075.86	2,643.37	1,058.83
4. East North Central (IL, IN, MI, OH, WI)	2,926.74	1,172.34	2,880.40	1,153.77
5. East South Central (AL, KY, MS, TN)	2,538.10	1,016.66	2,497.42	1,000.57
6. West North Central (IA, KS, MN, MO, NE, ND, SD)	2,743.46	1,098.92	2,700.03	1,081.52
7. West South Central (AR, LA, OK, TX)	2,670.25	1,069.60	2,627.98	1,052.66
8. Mountain (AZ, CO, ID, MT, NV, NM, UT, WY)	2,653.09	1,062.72	2,611.08	1,045.90
9. Pacific (AK, CA, HI, OR, WA)	2,712.47	1,086.51	2,669.53	1,069.31

TABLE 1c.—ADJUSTED OPERATING STANDARDIZED AMOUNTS FOR PUERTO RICO, LABOR/NONLABOR

	Large urban areas		Other areas	
	Labor-related	Nonlabor-related	Labor-related	Nonlabor-related
National	$2,714.90	$1,087.48	$2,714.90	$1,087.48
Puerto Rico	2,445.01	509.56	2,406.30	501.49

TABLE 1d.—CAPITAL STANDARD FEDERAL PAYMENT RATE

	Rate
National	$457.11
Puerto Rico	351.61

BILLING CODE 4120-01-P

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1994 PAGE 1 OF 16
: HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 1996 WAGE INDEX

PROVIDER	CASE MIX INDEX	AVG HOUR WAGE	PROVIDER	CASE MIX INDEX	AVG HOUR WAGE	PROVIDER	CASE MIX INDEX	AVG HOUR WAGE
010001	01.3959	14.47	010095	01.0371	10.66	030004	01.0678	11.86
010004	01.0372	11.54	010097	00.9270	12.23	030006	01.2185	11.16
010005	01.1638	13.61	010098	01.0783	11.19	030007	01.1245	15.18
010006	01.3851	14.23	010099	01.0343	14.74	030008	01.0751	12.13
010007	01.0907	12.03	010100	01.1808	13.72	030009	01.8001	16.23
010008	01.0528	09.78	010101	01.1098	12.72	030010	01.3355	18.71
010009	01.0816	15.37	010102	00.9178	11.42	030011	01.1200	13.58
010010	01.0779	13.64	010103	01.7129	15.44	030012	01.1378	13.45
010011	01.5172	19.92	010104	01.6684	15.84	030013	01.1848	13.61
010012	01.2593	14.67	010108	01.2155	11.76	030014	00.9480	11.00
010015	01.0420	15.13	010109	01.0556	11.54	030016	01.5709	26.17
010016	01.1881	14.74	010110	00.9493	12.21	030017	01.3963	19.22
010018	00.9526	15.60	010112	01.0995	13.96	030018	01.5861	26.30
010019	01.2773	13.87	010113	01.6264	13.09	030019	01.4408	24.86
010021	01.2581	13.21	010114	01.3115	15.41	030022	01.6637	
010022	01.0259	15.65	010115	00.8519	10.12	030023	01.8228	20.87
010023	01.3825	14.42	010117	00.9324	18.73	030024	01.1459	22.82
010024	01.3739	15.01	010118	01.2249	15.42	030025	01.4370	20.74
010025	01.3773	12.75	010119	01.2576	15.12	030027	01.1479	14.51
010027	00.8467	13.11	010120	00.9997	13.93	030030	02.0879	24.17
010029	01.4692	14.06	010121	01.1901	14.23	030033	01.2512	18.71
010031	01.2492	13.51	010123	01.2326	16.17	030034	01.3595	21.85
010032	00.9781	13.69	010124	01.2770	15.36	030035	01.5020	23.45
010033	01.8704	17.15	010125	01.0477	12.25	030036	01.2800	19.28
010034	01.0136	12.69	010126	01.1167	12.41	030037	01.2636	23.23
010035	01.2174	14.72	010127	01.4867	16.01	030038	01.4003	24.74
010036	01.1377	15.26	010128	01.0329	10.97	030040	00.7562	20.22
010038	01.2311	16.54	010129	01.0697	13.39	030041	01.4087	15.18
010039	01.6223	15.05	010130	01.0481	15.47	030043	01.5939	25.93
010040	01.4671	17.28	010131	01.2537	17.42	030044	01.2800	19.28
010043	01.0559	12.55	010134	00.8414	12.38	030046	01.4003	24.74
010044	00.9550	12.54	010137	01.2258	15.71	030047	01.7562	20.22
010045	01.1359	11.95	010138	00.9878	09.88	030054	01.3295	27.09
010046	01.4551	13.93	010139	01.6128	20.00	030055	01.5939	25.93
010047	01.0648	08.72	010143	01.1769	16.12	030059	01.2836	22.38
010049	01.1107	14.18	010144	01.2989	15.54	030060	01.3643	21.76
010050	01.0161	11.94	010145	01.2146	15.36	030061	01.2516	20.06
010051	00.8333	09.81	010146	01.1630	15.74	030062	01.5384	27.78
010052	00.9533	11.56	010148	00.9497	10.54	030064	01.3018	17.13
010053	01.0569	12.58	010149	01.3417	15.90	030065	01.1743	24.46
010054	01.1534	15.11	010150	01.0130	13.86	030067	01.6762	28.05
010055	01.4319	14.98	010152	01.3340	15.42	030068	00.9661	13.23
010056	01.4019	17.28	010155	00.9579	09.48	030069	01.3602	16.55
010058	01.0172	12.39	020001	01.5180	25.13	030071	00.9437	
010059	01.0345	13.89	020002	00.9978	24.19	030072	00.8611	
010061	00.9879	13.39	020004	01.1279	23.34	030073	01.0794	
010062	01.0026	11.97	020005	00.9082	23.80	030074	00.8462	
010064	01.7797	17.06	020006	01.1719	21.93	030075	00.8619	
010065	01.3683	14.14	020007	00.8580	17.74	030076	00.8683	
010066	00.9186	09.11	020008	00.9988	26.80	030077	00.8113	
010068	01.2298	20.35	020009	00.9487	19.88	030078	01.1179	
010069	01.0775	13.08	020010	01.0739	18.60	030079	00.8091	
010072	01.2015	12.45	020011	01.0898	21.26			
010073	00.8999	10.82	020012	01.2954	22.82			
010078	01.1663	15.06	020013	00.8540	21.66			
010079	01.1116	14.51	020014	01.3040	19.97			
010080	00.9827	13.13	020017	01.4063	25.88			
010081	01.9637	16.46	020018	00.9100				
010083	01.0398	12.57	020019	00.8760				
010084	01.3702	15.98	020020	00.6486				
010085	01.2531	15.87	020021	00.9016				
010086	00.9868	13.22	020024	01.0717	22.25			
010087	01.7680	16.49	020025	01.0403	21.61			
010089	01.1279	15.32	020026	01.2701				
010090	01.5513	15.76	020027	00.9668				
010091	00.9577	12.37	030001	01.2945	19.25			
010092	01.3737	14.97	030002	01.8159	20.27			
010094	01.1703	17.54	030003	01.7310	19.73			

PROVIDER	CASE MIX INDEX	AVG HOUR WAGE
040105	01.0678	11.86
040106	01.2185	11.16
040107	01.1245	15.18
040109	01.0751	12.13
040114	01.8001	16.23
040116	01.3355	18.71
040118	01.1200	13.58
040119	01.1378	13.45
040124	01.1848	13.61
040126	00.9480	11.00
040132	00.8500	14.00
050002	01.5709	26.17
050006	01.3963	19.22
050007	01.5861	26.30
050008	01.4408	24.86
050009	01.6637	
050013	01.8228	20.87
050014	01.1459	22.82
050015	01.4370	20.74
050016	01.1479	14.51
050017	02.0879	24.17
050018	01.2512	18.71
050021	01.3595	21.85
050022	01.5020	23.45
050024	01.3479	23.48
050025	01.7154	21.46
050026	01.4265	20.43
050028	01.4087	15.18
050029	01.2859	25.93
050030	01.2800	19.28
050032	01.2636	23.23
050033	01.4003	24.74
050036	01.7562	20.22
050038	01.3295	27.09
050039	01.5939	25.93
050040	01.2836	22.38
050041	01.3643	21.76
050042	01.2516	20.06
050043	01.5384	27.78
050045	01.3018	17.13
050046	01.1743	24.46
050047	01.6762	28.05
050051	01.0963	17.38
050052	01.1447	
050054	01.1555	19.64
050055	01.4063	29.68
050056	01.3700	23.16
050057	01.4635	20.04
050058	01.4520	21.76
050060	01.5693	19.17
050061	01.3687	22.38
050063	01.4319	21.08
050065	01.6075	22.56
050066	01.2549	24.33
050067	01.4064	21.52
050068	01.2501	18.33
050069	01.5984	23.54
050070	01.3026	28.61
050071	01.3027	28.82
050072	01.3169	29.34
050073	01.2545	29.15
050074	01.0874	31.09
050075	01.3389	28.82
050076	01.6608	29.00
050077	01.5842	22.97
050078	01.3900	22.72
050079	01.5489	29.43
050080	01.2776	23.03
030080	01.2954	22.82
030083	00.8540	21.66
030084	01.3040	19.97
030085	01.4063	25.88
030086	00.9100	
030087	00.8760	
030088	00.6486	
030089	00.9016	
030092	01.0717	22.25
030093	01.0403	21.61
030094	01.2701	
030095	00.9668	
040001	01.2945	19.25
040002	01.8159	20.27
040002	01.7310	19.73

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1994 PAGE 2 OF 16
: HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 1996 WAGE INDEX

PROVIDER	CASE MIX INDEX	AVG HOUR WAGE
050081	01.6691	21.10
050082	01.4772	21.28
050084	01.5859	21.46
050088	01.0832	21.32
050089	01.3280	19.83
050090	01.3260	19.87
050091	01.1739	21.63
050092	00.9059	16.84
050093	01.5559	20.79
050095	00.9300	29.05
050096	01.0909	18.14
050097	01.4274	19.13
050099	01.4827	22.03
050100	01.8951	22.82
050101	01.4194	24.82
050102	01.5160	21.67
050103	01.6042	28.14
050104	01.3540	21.95
050107	01.4074	20.13
050108	01.5736	22.46
050109	02.2118	24.11
050110	01.2613	20.72
050111	01.3060	18.52
050112	01.5147	22.87
050113	01.3064	26.77
050114	01.4354	25.48
050115	01.5146	21.57
050116	01.4910	22.96
050117	01.3267	18.74
050118	01.2177	23.13
050121	01.5407	20.07
050122	01.6417	23.24
050124	01.2679	22.77
050125	01.3507	24.50
050126	01.4228	24.72
050127	01.2784	22.28
050128	01.5380	20.73
050129	01.4985	21.49
050131	01.2934	25.95
050132	01.3628	19.85
050133	01.3706	20.11
050135	01.2478	26.85
050136	01.4279	21.96
050137	01.3740	30.43
050138	01.7732	31.18
050139	01.3254	29.35
050140	01.4137	29.84
050144	01.6516	22.42
050145	01.3451	26.85
050146	01.3762	
050147	00.7118	20.96
050148	01.0702	17.09
050149	01.3631	22.36
050150	01.3115	21.41
050152	01.4044	25.24
050153	01.6164	29.55
050154	01.0994	21.81
050155	01.1539	19.97
050158	01.5597	26.71
050159	01.2340	26.10
050167	01.3550	22.09
050168	01.5947	23.78
050169	01.5245	23.32
050170	01.5051	21.45
050172	01.3086	
050173	01.2170	22.01
050174	01.7043	25.94
050175	01.3303	23.42
050176	01.3440	25.07
050177	00.9441	16.99
050178	01.1612	22.91

PROVIDER	CASE MIX INDEX	AVG HOUR WAGE
050407	01.3582	26.56
050410	01.1102	16.16
050411	01.3939	28.60
050414	01.2987	24.04
050417	01.2298	18.53
050418	01.3459	23.95
050419	01.3007	18.33
050420	01.4733	24.40
050421	01.4301	24.17
050423	01.0343	17.53
050424	01.7339	24.12
050425	01.2398	27.86
050426	01.3310	22.18
050427	00.9355	22.53
050430	00.9285	15.31
050431	01.1265	20.82
050432	01.5942	23.40
050433	01.0529	17.20
050434	01.1785	17.00
050435	01.2924	16.47
050436	00.9911	15.70
050438	01.6072	23.36
050440	01.3916	18.93
050441	01.8460	27.68
050443	00.9398	14.95
050444	01.3494	23.83
050446	00.8871	17.23
050447	01.0899	16.92
050448	01.0637	18.59
050449	01.3122	20.99
050454	01.7985	26.50
050455	01.8533	21.11
050456	01.2206	21.52
050457	01.9351	28.03
050458	00.7146	23.76
050459	01.1620	28.15
050464	01.8476	22.87
050468	01.3430	15.80
050469	01.1374	17.19
050470	01.1137	19.37
050471	01.6748	23.33
050476	01.2488	19.26
050477	01.4087	27.66
050478	00.9987	22.01
050481	01.4256	25.61
050482	00.9617	18.35
050483	01.1917	28.34
050485	01.5985	21.84
050486	01.4350	23.44
050488	01.4137	27.49
050489	01.0675	23.36
050491	01.1820	26.44
050492	01.1855	20.52
050494	01.1573	23.56
050496	01.7266	29.82
050497	00.8927	11.78
050498	01.2746	21.87
050502	01.8616	21.87
050503	01.3329	22.11
050506	01.4572	24.09
050510	01.3655	28.74
050512	01.3698	29.78
050515	01.3294	29.34
050516	01.6462	23.36
050517	01.2703	19.52
050522	01.3852	29.90
050523	01.2191	25.91
050526	01.3586	25.43
050528	01.1976	16.76
050531	01.2065	19.97
050534	01.3905	23.99
050535	01.5062	22.35
050537	01.2233	21.30
050539	01.1563	22.82
050541	01.5437	26.97
050542	01.1773	15.76
050543	00.9071	24.31
050545	00.8617	21.07
050546	00.8271	21.43
050547	00.9040	22.13
050549	01.7697	25.56
050550	02.3330	21.44
050551	01.3403	23.83
050552	01.3271	20.13
050557	01.5771	21.72
050559	01.3782	22.56
050560	01.5718	22.35
050561	01.2111	29.11
050564	01.2874	25.38
050565	01.2728	21.03
050566	00.9860	13.84
050567	01.5876	21.00
050568	01.3248	22.17
050569	01.4295	21.89
050570	01.5840	24.67
050571	01.3208	26.14
050573	01.6206	22.10
050575	01.2499	23.34
050577	01.3945	21.47
050578	01.2672	24.09
050579	01.5393	27.06
050580	01.4093	22.20
050581	01.4125	24.32
050583	01.6101	21.83
050584	01.2117	22.37
050585	01.3338	22.76
050586	01.3463	22.75
050587	01.2709	20.16
050588	01.2771	27.21
050589	01.3337	24.60
050590	01.4064	
050591	01.1726	20.64
050592	01.3813	23.45
050593	01.5582	25.60
050594	02.0565	23.12
050597	01.2327	21.75
050598	01.4341	25.33
050599	01.7107	22.85
050601	01.3000	30.28
050603	01.4443	22.96
050604	01.5386	27.42
050607	01.3435	19.27
050608	01.1898	15.26
050609	01.3379	30.43
050613	01.0786	22.87
050615	01.4504	21.15
050616	01.2743	20.76
050618	01.0235	16.48
050623	01.2062	23.19
050624	01.2544	26.72
050625	01.5807	23.29
050630	01.2449	21.58
050633	01.2678	21.41
050635	01.3387	29.38
050636	01.3357	21.81
050637	01.0648	
050262	01.8349	25.71
050263	01.2550	26.81
050264	01.4331	26.35
050267	01.5697	24.29
050270	01.3264	22.68
050272	01.3607	19.69
050274	01.0960	18.11
050276	01.2571	
050277	01.3181	21.80
050278	01.4977	21.13
050279	01.2244	20.51
050280	01.6357	22.36
050281	01.4794	
050282	01.3473	22.75
050283	01.3323	26.46
050286	00.9860	13.84
050289	01.2065	19.97
050290	01.3905	23.99
050291	01.5062	22.35
050292	01.2233	21.30
050293	00.9071	24.31
050295	01.1773	15.76
050296	00.8617	21.07
050298	01.8271	21.43
050299	00.9040	22.13
050300	01.7697	25.56
050301	02.3330	21.44
050302	01.3403	23.83
050305	01.3271	20.13
050307	01.5771	21.72
050308	01.3782	22.56
050309	01.5718	22.35
050310	01.2111	29.11
050312	01.2874	25.38
050313	01.2728	21.03
050315	00.9860	13.84
050317	01.5876	21.00
050320	01.3248	22.17
050324	01.4295	21.89
050325	01.5840	24.67
050327	01.3208	26.14
050328	01.6206	22.10
050329	01.2499	23.34
050331	01.3945	21.47
050333	01.2672	24.09
050334	01.5393	27.06
050335	01.4093	22.20
050336	01.4125	24.32
050337	01.6101	21.83
050342	01.2117	22.37
050343	01.3338	22.76
050348	01.3463	22.75
050349	00.2709	20.16
050351	01.2771	27.21
050352	01.3337	24.60
050353	01.4064	
050355	01.1726	20.64
050357	01.3813	23.45
050359	01.5582	25.60
050360	02.0565	23.12
050366	01.2327	21.75
050367	01.4341	25.33
050369	01.7107	22.85
050373	01.3000	30.28
050376	01.4443	22.96
050377	01.5386	27.42
050378	01.3435	19.27
050379	01.1898	15.26
050380	01.3379	30.43
050382	01.0786	22.87
050385	01.4504	21.15
050388	01.2743	20.76
050390	01.0235	16.48
050391	01.2062	23.19
050392	01.2544	26.72
050393	01.5807	23.29
050394	01.2449	21.58
050396	01.2678	21.41
050397	01.3387	29.38
050401	01.3357	21.81
050404	01.0648	
050406	01.3323	26.46

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1994 PAGE 3 OF 16
: HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 1996 WAGE INDEX

PROVIDER	CASE MIX INDEX	AVG HOUR WAGE
050631	01.3016	19.23
050633	01.2996	24.24
050634	01.3455	24.14
050635	01.3913	22.12
050636	01.3236	25.69
050638	00.9919	
050661	01.6451	23.28
050662	01.2515	16.99
050663	01.3056	19.41
050666	01.3232	16.96
050667	01.3131	15.82
050668	01.3760	18.42
050671	01.2801	17.44
050672	01.4590	19.84
050674	01.1401	15.96
050675	01.9915	23.92
050676	00.9308	20.65
050677	01.5552	
050678	01.6208	22.45
050680	01.2734	25.02
050682	01.3244	19.62
050684	01.4712	19.96
050685	01.5672	23.02
050686	00.9308	20.65
050688	01.7117	19.32
050689	01.5528	19.83
050690	01.4431	19.21
050693	01.6369	17.84
050694	01.4425	21.79
050695	01.1134	24.12
050696	02.1816	26.95
050697	01.1362	16.30
050698	01.3958	21.28
050699	00.8276	
050700	01.5071	30.13
050701	01.3467	27.27
050702	00.9270	16.26
050704	01.1743	
050705	00.6755	
050706	00.8663	
050707	00.8745	
050708	00.9008	
060001	01.5057	17.31
060003	01.3094	16.54
060004	01.1485	18.71
060006	01.1421	16.47
060007	01.2230	12.87
060008	00.9867	13.68
060009	01.4339	19.83
060010	01.5760	21.01
060011	01.2259	18.74
060012	01.4254	16.50
060013	01.2762	17.06
060014	01.7239	20.66
060015	01.5998	18.45
060016	01.1618	12.48
060018	01.2276	14.91
060020	01.4951	15.53
060022	01.7446	16.71
060023	01.5177	17.84
060024	01.7198	21.41
060026	01.4238	18.69
060027	01.5295	19.14
060028	01.4642	20.00
060029	01.0345	14.09
060030	01.3139	18.40
060031	01.5019	18.31
060032	01.4379	20.01
060033	01.1419	11.24
100056	01.4902	20.15
100057	01.3746	15.39
100059	00.9153	16.30
100060	01.7346	16.88
100061	01.5115	20.27
100062	01.7465	16.21
100063	01.2235	15.65
100067	01.3714	15.72
100068	01.4322	17.17
100069	01.5064	15.21
100070	01.4351	17.16
100071	01.2744	15.51
100072	01.2503	16.94
100073	01.7634	20.14
100074	01.2355	19.00
100075	01.6373	16.40
100076	01.3988	16.53
100077	01.3386	15.66
100078	01.1736	14.56
100079	01.4670	18.80
100080	01.5378	18.08
100081	01.1718	12.91
100082	01.5681	16.76
100083	01.3813	16.09
100084	01.5160	16.83
100085	01.3550	19.23
100086	01.3843	20.43
100087	01.7370	19.99
100088	01.7186	16.94
100090	01.3590	15.22
100092	01.5157	17.11
100093	01.4372	14.09
100098	01.1755	16.49
100099	01.2235	15.33
100102	01.0678	15.80
100103	01.1144	15.50
100105	01.4168	17.68
100106	01.0504	14.76
100107	01.3179	17.58
100108	01.1079	15.65
100109	01.3214	16.41
100110	01.4016	16.69
100112	01.0019	11.56
100113	02.1296	16.92
100114	01.4677	17.68
100117	01.3079	17.02
100118	01.3122	16.43
100121	01.2693	14.78
100122	01.3441	15.71
100124	01.4071	18.25
100125	01.0921	16.78
100126	01.4394	18.61
100127	01.5854	18.03
100128	02.1550	19.42
100129	01.2985	17.71
100130	01.1883	17.18
100131	01.3122	19.27
100132	01.4115	15.18
100134	01.2631	14.50
100135	01.4739	15.53
100137	01.2763	16.08
100138	00.9692	11.92
100139	01.0335	15.70
100140	01.1774	16.00
100142	01.1857	18.26
100144/	01.2253	11.06
100145	01.4695	12.24
100146	01.1486	14.10
100147	01.0929	13.00
100150	01.2811	16.60
100151	01.7807	18.68
100154	01.6457	18.00
100156	01.1415	17.50
100157	01.6035	18.71
100159	01.0356	14.28
100160	01.0643	17.34
100161	01.5583	19.20
100162	01.4186	16.74
100165	01.2367	13.51
100166	01.4693	19.88
100167	01.4158	20.48
100168	01.3776	18.09
100169	01.8757	18.22
100170	01.4109	15.90
100172	01.3596	13.54
100173	01.5816	15.44
100174	01.4712	18.74
100175	01.1006	15.14
100176	01.9885	25.81
100177	01.3315	17.48
100179	01.6277	17.87
100180	01.4826	16.54
100181	01.4195	15.91
100183	01.3410	17.45
100186	01.3892	14.90
100187	01.4438	19.93
100189	01.2662	21.83
100191	01.3232	18.97
100199	01.2977	18.97
100200	01.3793	21.22
100203	01.1241	18.76
100204	01.5977	17.77
100206	01.3464	20.26
100207	01.4231	23.04
100208	01.5538	18.48
100209	01.5997	22.01
100210	01.7124	15.69
100211	01.3219	17.57
100212	01.6272	18.04
100213	01.5983	17.94
100217	01.2336	18.31
100220	01.8430	19.78
100221	01.4376	18.35
100222	01.3487	16.57
100223	01.4705	16.34
100224	01.4544	18.76
100225	01.3745	19.52
100226	01.3634	17.20
100227	01.0080	17.78
100228	01.2566	18.85
100229	01.3336	17.11
100230	01.3662	18.43
100231	01.6860	17.03
100232	01.2234	17.96
100234	01.6129	18.45
100235	01.4308	16.20
100236	01.4557	17.68
100237	02.1826	22.74
100238	01.4226	16.86
100239	01.4534	14.66
100240	00.8513	14.86
100241	00.9123	12.29
100242	01.4055	15.55
100243	01.4677	13.92
100244	01.3853	17.40
100246	01.3244	20.75

PROVIDER	CASE MIX INDEX	AVG HOUR WAGE
060034	01.5026	17.52
060036	01.1814	12.48
060037	01.0513	12.26
060038	01.0298	11.85
060041	00.8924	15.38
060042	00.9433	17.68
060043	01.0013	14.76
060044	01.1492	14.89
060046	01.1278	15.46
060047	01.1030	09.96
060049	01.2137	17.19
060050	01.2618	13.15
060052	01.1243	12.88
060053	00.9362	12.60
060054	01.3462	15.54
060056	00.9139	12.65
060057	01.0334	20.40
060058	00.8997	10.18
060060	00.9640	12.38
060062	00.9884	12.82
060063	01.0031	11.07
060064	01.3866	20.49
060065	01.3772	17.83
060066	00.9635	12.11
060068	01.1327	14.76
060070	01.1131	15.55
060071	01.2616	13.96
060072	00.9310	
060073	01.0152	14.30
060075	01.2260	18.89
060076	01.3839	16.07
060085	00.9265	10.79
060087	01.6314	20.20
060088	00.9743	13.54
060090	00.9245	14.20
060096	00.9561	19.72
060100	01.3751	20.85
060103	01.2075	20.37
060104	01.3092	19.86
060106	01.4032	
070001	01.7328	23.62
070002	01.8130	24.21
070003	01.1687	24.23
070004	01.1513	23.01
070005	01.3243	24.75
070006	01.3687	25.94
070007	01.3746	22.95
070008	01.2779	22.85
070009	01.2466	23.96
070010	01.4483	22.35
070011	01.2735	22.16
070012	01.1872	22.30
070013	01.3431	23.92
070015	01.3813	23.42
070016	01.3211	24.30
070017	01.4156	23.47
070018	01.4187	25.83
070019	01.2689	23.06
070020	01.4243	23.64
070021	01.3009	25.55
070022	01.6939	24.10
070024	01.3208	21.90
070025	01.6821	23.66
070026	01.1169	23.44
070027	01.2443	24.05
070028	01.4662	22.94
070029	01.2871	20.71
070030	01.2544	23.06

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1994
: HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 1996 WAGE INDEX

PROVIDER	CASE MIX INDEX	AVG HOUR WAGE
100135	01.1373	12.78
100136	01.1541	17.56
100140	00.8071	16.43
100141	00.8803	10.46
100142	01.0384	11.73
100143	01.3235	18.71
100144	01.1503	12.85
100146	00.9501	12.45
100149	01.0671	11.53
100150	01.3269	15.62
100152	01.1220	12.64
100153	00.5572	16.74
100154	00.9792	13.79
100155	01.1841	14.04
100156	00.9752	12.03
100157	01.0800	.
100161	01.2331	19.75
100162	00.8832	.
100163	01.3618	18.05
100164	01.4385	18.67
100165	01.3315	17.68
100166	01.5036	16.62
100168	01.6389	19.01
100169	00.6684	19.82
100171	01.3971	21.21
100172	01.2175	.
100174	01.0008	13.50
100176	01.0946	19.01
100177	01.4740	18.73
100178	01.0683	19.58
100179	01.2103	21.20
100181	00.9615	11.66
100183	01.3983	18.69
100184	01.1402	17.71
100185	01.1405	12.05
100186	01.2503	15.64
100187	01.1390	17.43
100188	01.4765	17.46
100189	01.2079	18.59
100190	01.1352	13.01
100192	01.3089	17.98
100193	01.3411	20.20
100194	01.1623	15.60
100195	01.1317	10.00
100198	01.3741	22.76
100200	01.9354	15.32
110201	01.3741	16.18
110203	00.9961	15.24
110204	00.7928	16.64
110205	01.0694	13.28
110207	01.0579	13.48
110208	00.9113	12.52
110209	00.9142	.
110210	01.0869	.
120001	01.7091	23.07
120002	01.1940	17.55
120003	01.0484	21.38
120004	01.2383	19.86
120005	01.2670	18.43
120006	01.1630	22.51
120007	01.6191	19.33
120009	00.9724	18.94
120010	01.7903	21.30
120011	01.2564	28.18
120012	00.9535	19.45
120014	01.2478	20.16
120015	00.8979	20.16
110028	01.6054	17.60
110029	01.3243	17.70
110030	01.2231	17.52
110031	01.3453	20.47
110032	01.2141	14.40
110033	01.4264	20.02
110034	01.4954	15.84
110035	01.3175	18.03
110036	01.6099	18.45
110037	01.0630	09.72
110038	01.4474	13.71
110039	01.3744	17.07
110040	01.0513	15.13
110041	01.2788	13.87
110042	01.1808	14.31
140005	00.9457	09.86
140007	01.4565	20.34
140008	01.4284	20.25
140010	01.3165	21.78
140011	01.0960	13.89
140012	01.2724	15.85
140013	01.6331	15.47
140014	01.1661	15.87
140015	01.2868	13.12
140016	00.9217	10.97
140018	01.3394	18.18
140019	00.9425	12.11
140024	01.0074	13.82
140025	01.0810	15.57
140026	01.1455	14.78
140027	01.2769	15.39
140029	01.2979	18.41
140030	01.5388	20.82
140031	01.1850	12.51
140032	01.2811	15.20
140033	01.2426	17.93
140034	01.1628	15.79
140035	01.0560	11.09
140036	01.1483	14.67
140037	00.9951	11.93
140038	01.1775	15.57
140039	00.9726	12.57
140040	01.2410	13.67
140041	01.1638	15.42
140043	01.2456	15.96
140045	00.9755	12.36
140046	01.2947	15.06
140047	01.1553	12.83
140048	01.3215	21.62
140049	01.5655	18.55
140051	01.4191	19.71
140052	01.3266	15.64
140053	01.8312	17.25
140054	01.3139	22.79
140055	00.9764	13.01
140058	01.1705	14.76
140059	01.1451	13.34
140061	01.0912	13.15
140062	01.2771	21.56
140063	01.3580	20.34
140064	01.2340	15.63
140065	01.4652	23.04
140066	01.2980	13.04
140067	01.8046	17.15
140068	01.3822	17.79
140069	01.0904	14.27
140070	01.3467	15.36
140074	01.0360	15.11
140075	01.4423	17.74
140077	01.1266	14.95
140079	01.2576	19.31
140080	01.6766	18.56
140081	01.1035	12.45
140082	01.5484	20.34
140083	01.3488	15.67
140084	01.2142	18.03
140086	01.1500	11.92
140087	01.2881	17.36
140088	01.5956	23.06
140089	01.2336	15.16
140090	01.4650	24.80
140091	01.7779	16.35
140093	01.1622	15.98
140094	01.2655	16.95
140095	01.5075	18.79
140097	00.9545	12.93
140098	01.5341	18.91
140100	01.3452	17.74
140101	01.1402	17.56
140102	01.0421	13.57
140103	01.3112	17.19
140105	01.2704	19.12
140107	01.0607	11.30
140108	01.3536	20.33
140109	01.0921	12.38
140110	01.2892	15.34
140112	01.0946	13.56
110113	01.0778	12.69
110114	01.1023	13.66
110115	01.6482	18.21
110118	01.0129	11.37
110120	01.1064	11.39
110121	01.1599	12.02
110122	01.2978	15.37
110124	01.0446	14.58
110125	01.2029	15.34
110127	00.9893	12.30
110128	01.1832	17.25
110129	01.6386	12.64
110130	01.0578	09.58
110132	01.1389	12.55
110134	00.8695	10.30

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1994 PAGE 5 OF 16
: HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 1996 WAGE INDEX

PROVIDER	CASE MIX INDEX	AVG HOUR WAGE
140113	01.4667	17.23
140114	01.3273	17.70
140115	01.2842	16.57
140116	01.2401	17.79
140117	01.4087	16.72
140118	01.6959	21.24
140119	01.6510	20.94
140120	01.4832	14.18
140121	01.4659	10.01
140122	01.5359	20.90
140124	01.1150	21.99
140125	01.3105	14.30
140127	01.3093	16.12
140128	01.0932	15.47
140129	01.0387	13.55
140130	01.1656	19.99
140132	01.4209	18.36
140133	01.3817	19.25
140135	01.2404	13.86
140137	01.0156	13.42
140138	00.9734	11.80
140139	01.0713	13.33
140140	01.1717	12.45
140141	00.9715	12.21
140143	01.1183	15.80
140144	01.0178	13.85
140145	01.1246	15.06
140146	00.9402	14.65
140147	01.1691	13.02
140148	01.7028	16.79
140150	01.5352	22.42
140151	01.1684	16.06
140152	01.0961	21.14
140155	01.2049	16.91
140158	01.3353	20.44
140160	01.2065	14.61
140161	01.1217	16.18
140162	01.6796	17.28
140164	01.2495	15.27
140165	01.0959	12.83
140166	01.2658	15.81
140167	01.1582	13.88
140168	01.2012	14.64
140170	01.1334	11.77
140171	00.8939	10.42
140172	01.5022	17.11
140173	00.9862	12.88
140174	01.4132	17.67
140176	01.2479	19.10
140177	01.2834	15.29
140179	01.3045	18.61
140180	01.4745	20.05
140181	01.3422	17.28
140182	01.3041	19.45
140184	01.1651	13.87
140185	01.4733	15.34
140186	01.2821	17.46
140187	01.4159	15.70
140188	00.9720	10.93
140189	01.1505	15.87
140190	01.1516	13.53
140191	01.4177	20.56
140192	01.1314	16.11
140193	01.0107	11.79
140197	01.3693	16.76
140199	01.0297	14.73
140200	01.4496	20.10
140202	01.3424	19.33
140203	01.1743	17.40
140205	00.9280	13.44
140206	00.9843	18.13
140207	01.3699	19.80
140208	01.5900	22.03
140209	01.7169	16.20
140210	01.0256	11.46
140211	01.1932	18.69
140212	01.1525	21.62
140213	01.2715	21.23
140215	01.1466	13.29
140217	01.1995	20.19
140218	00.9763	13.27
140220	01.1228	14.02
140223	01.5259	21.42
140224	01.3781	20.01
140228	01.5722	16.72
140230	00.9807	14.89
140231	01.5465	19.72
140233	01.7510	15.55
140234	01.1935	15.04
140236	00.9899	11.86
140239	01.5662	17.90
140240	01.4682	21.75
140242	01.5202	20.44
140245	01.1149	12.96
140246	01.0624	11.58
140250	01.2695	21.19
140251	01.3118	17.14
140252	01.4472	21.67
140253	01.4684	.
140258	01.5147	20.74
140271	01.0473	13.77
140275	01.2135	15.26
140276	01.9940	19.03
140280	01.2782	16.62
140281	01.5915	19.85
140285	01.2306	14.65
140286	01.0931	16.58
140288	01.6724	21.28
140289	01.2914	14.43
140290	01.3176	19.56
140291	01.3434	22.01
140292	01.1802	18.63
140294	01.1520	15.03
140297	01.1927	21.49
140300	01.0326	.
150001	01.1020	16.90
150002	01.4343	16.23
150003	01.7334	16.59
150004	01.4479	18.37
150005	01.2148	16.87
150006	01.1902	15.77
150007	01.2598	17.48
150008	01.3427	18.07
150009	01.2791	16.85
150010	01.1821	16.38
150011	01.2161	15.65
150012	01.6456	18.77
150013	01.1120	12.68
150014	01.4300	18.85
150015	01.2698	15.88
150017	01.7899	15.68
150018	01.2597	16.65
150019	01.0326	13.59
150020	01.1634	12.34
150021	01.6427	17.52
150022	01.0976	17.53
150023	01.4740	16.92
150024	01.3026	15.60
150025	01.4959	17.14
150026	01.1687	16.48
150027	01.0143	15.66
150029	01.2771	17.73
150030	01.0682	15.26
150031	01.0305	13.82
150032	01.8081	18.37
150033	01.5708	18.86
150034	01.3589	18.13
150035	01.4082	17.89
150036	01.0143	16.72
150037	01.2518	16.88
150038	01.3416	15.77
150039	00.9563	14.21
150042	01.2383	14.19
150043	01.0397	18.18
150044	01.2397	17.15
150045	01.1661	15.56
150046	01.4959	16.06
150047	01.6536	17.32
150048	01.1747	15.68
150049	01.1567	12.40
150050	01.1472	14.30
150051	01.2720	15.96
150052	01.1248	11.23
150053	01.0222	15.93
150054	01.1288	13.30
150056	01.6426	19.66
150057	02.4445	14.55
150058	01.6757	17.54
150059	01.3263	18.15
150060	01.1558	15.01
150061	01.2431	14.90
150062	01.0231	14.82
150063	01.0873	19.83
150064	01.0351	16.55
150065	01.0998	16.08
150066	00.9886	13.07
150067	01.0665	13.96
150069	01.2214	16.18
150070	01.0522	14.00
150071	01.2035	11.40
150072	01.1566	15.35
150073	00.9930	17.12
150074	01.5562	18.05
150075	01.1752	13.29
150076	01.0483	16.51
150077	01.3155	15.22
150078	01.0198	18.19
150079	01.2096	13.37
150082	01.4885	16.98
150102	01.0647	13.94
150103	01.0209	15.64
150104	01.1069	14.82
150105	01.3114	15.63
150106	01.0797	15.53
150109	01.4150	14.54
150110	00.9933	14.35
150111	01.2172	13.31
150112	01.2096	16.35
150113	01.1661	16.07
150114	01.0006	12.64
150115	01.3315	16.31
150122	01.1316	16.92
150123	01.2512	13.21
150124	01.1524	14.29
150125	01.3979	17.70
150126	01.5032	18.93
150127	01.1495	12.34
150128	01.2308	17.33
150129	01.1757	19.71
150130	01.0605	13.99
150132	01.3512	19.63
150133	01.1948	15.64
150134	01.2848	15.24
150136	00.9146	18.37
150137	03.0011	.
150138	01.1952	.
150140	02.4500	.
150141	00.9198	.
150897	05.1104	.
160001	01.2432	16.04
160002	01.2061	13.01
160003	01.0316	12.40
160005	01.0556	12.42
160007	01.0192	12.24
160008	01.1329	14.12
160009	01.2115	13.13
160012	01.1292	13.88
160013	01.2597	14.28
160014	00.9704	12.72
160016	01.2532	15.22
160018	00.9102	12.69
160020	01.0573	11.57
160021	01.0850	14.23
160023	01.0963	13.47
160024	01.5912	16.25
160025	01.7787	15.89
160026	01.1474	14.15
160027	01.1991	12.61
160028	01.3042	17.45
160029	01.4726	16.54
160030	01.2656	15.65
160031	01.1953	12.60
160032	01.1969	14.22
160033	01.4972	15.45
160034	00.9901	13.04
160035	00.9947	11.50
160036	01.0402	13.58
160037	01.1606	14.19
160039	01.0398	14.71
160040	01.3292	15.44
160041	01.0179	12.16
160043	01.0207	13.42
160044	01.1729	12.51
160045	01.6649	16.35
160046	01.0630	11.52
160047	01.3428	15.29
160048	01.1219	11.75
160049	00.9304	11.56
160050	01.0337	13.62
160051	01.1200	14.21
160052	01.0426	12.86
160054	00.9726	11.05
160055	01.0280	12.02
160056	01.0372	12.73
160057	01.3292	14.53
160058	01.6601	17.91
160060	01.0508	13.01
160061	01.0052	12.04
160062	01.0359	11.11
160063	01.1764	12.72
160064	01.5805	16.66
160065	01.0796	13.11
160066	01.1325	13.51
160067	01.4124	15.81
160068	00.9909	13.55
160069	01.3955	15.47
160070	00.9622	12.72
160072	01.0833	12.24
160073	00.9507	10.93
160074	00.9967	12.64
160075	01.0715	13.49
160076	01.0568	15.24
160077	01.2019	10.22
160079	01.4068	15.08
160080	01.2129	15.51
160081	01.0837	13.91
160082	01.6907	16.80
160083	01.5047	16.82
160085	01.0726	11.90
160086	00.9276	12.15
160088	01.0502	13.89
160089	01.2047	13.54
160090	01.0540	14.24
160091	01.1714	10.55
160092	00.9678	12.64
160093	01.1418	12.92
160094	01.2114	14.65
160095	01.0147	15.81
160097	01.1838	13.10
160098	01.0149	12.41
160099	00.9934	11.35
160101	01.1244	17.13
160102	01.3053	15.06
160103	00.9903	12.23
160104	01.1575	16.70
160106	01.0834	13.40
160107	01.1462	14.31
160108	01.0930	13.59
160109	00.9279	11.85
160110	01.5471	17.18
160111	01.0002	10.22
160112	01.4480	14.36
160113	01.0104	11.13
160114	01.0521	13.89
160115	00.9910	12.83
160116	01.1869	14.18
160117	01.2911	14.70
160118	01.0060	11.77
160120	00.9929	09.44
160122	01.1665	14.31
160123	01.1893	14.15
160124	01.2361	14.80
160126	01.0849	16.15
160129	01.0143	12.82
160130	01.0653	12.49

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1994 PAGE 6 OF 16
: HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 1996 WAGE INDEX

PROVIDER	CASE MIX INDEX	AVG HOUR WAGE
160131	01.1368	12.28
160133	01.1892	17.39
160134	01.0327	12.24
160135	00.9905	10.69
160138	01.1206	12.70
160140	01.0817	14.30
160142	01.0436	12.65
160143	01.0395	12.58
160145	01.1166	11.55
160146	01.3788	14.96
160147	01.2181	14.07
160151	01.0874	13.10
160152	00.9465	12.35
160153	01.7281	16.71
170001	01.2135	14.88
170004	01.0693	12.69
170006	01.1997	15.19
170008	00.9800	12.92
170009	01.1151	17.18
170010	01.1750	14.08
170011	01.3534	14.19
170012	01.4654	15.64
170013	01.3534	13.97
170014	01.0835	14.53
170015	00.9817	13.60
170016	01.6103	19.51
170017	01.1912	15.10
170018	01.0152	11.92
170019	01.1395	14.63
170020	01.3113	14.68
170022	01.1429	13.47
170023	01.3812	15.56
170024	01.2165	11.95
170025	01.3790	14.29
170026	01.0495	13.40
170027	01.2558	14.72
170029	01.0217	13.67
170031	00.9339	11.65
170032	01.1089	13.49
170033	01.2883	14.89
170034	00.9141	13.26
170035	00.8753	12.11
170036	01.1199	15.23
170037	01.1199	15.23
170038	00.9551	11.29
170039	01.0976	12.22
170040	01.4314	16.25
170041	01.0144	11.04
170043	01.0640	12.94
170044	01.1084	14.61
170045	01.0144	12.44
170049	01.3184	17.80
170050	01.0199	10.54
170051	00.9951	12.83
170052	01.1055	12.81
170053	00.8956	11.99
170054	01.0674	12.27
170055	01.1183	14.16
170056	00.9914	10.07
170057	01.0098	14.13
170058	01.1356	16.33
170060	01.0085	12.67
170061	01.2342	11.89
170062	00.9531	11.22
170063	00.9660	09.03
170064	00.9363	11.28
170066	00.9185	11.39
170067	00.9121	11.65
180048	01.1875	15.40
180049	01.3297	14.26
180050	01.3011	15.06
180051	01.3449	13.60
180053	01.2175	13.52
180054	01.0534	12.43
180055	01.1071	13.29
180056	01.0307	15.70
180058	00.9166	12.01
180059	00.8798	11.19
180060	00.9584	11.01
180063	01.0491	09.44
180064	01.2286	12.70
180065	01.0579	09.61
180066	01.2311	17.26

PROVIDER	CASE MIX INDEX	AVG HOUR WAGE
190034	01.1618	14.41
190035	01.4516	17.61
190036	01.6209	18.08
190037	01.0271	10.37
190039	01.4420	17.58
190040	01.3886	17.91
190041	01.4862	16.84
190043	01.0930	12.42
190044	01.1589	17.86
190045	01.3427	18.67
190046	01.4660	16.26
190047	01.0592	16.68
190048	01.0628	13.69
190049	01.0162	13.95
190050	01.0699	13.14
190053	01.0359	12.25
190054	01.3670	13.23
190059	00.9426	13.39
190060	01.4756	15.16
190064	01.4909	16.92
190065	01.4974	17.12
190071	00.8525	11.85
190075	01.4544	18.92
190077	00.9541	11.73
190078	01.1815	11.43
190079	01.2314	14.73
190081	00.9053	08.99
190083	00.9662	11.08
190086	01.3031	14.53
190088	01.2363	16.36
190089	01.0754	09.26
190090	01.1683	14.43
190092	01.2522	11.66
190095	01.0282	13.52
190098	01.5111	17.10
190099	01.1233	17.03
190102	01.5280	15.33
190103	00.8387	09.39
190106	01.1260	15.42
190109	01.2183	14.11
190110	01.0315	11.76
190111	01.5612	17.17
190112	01.4925	17.30
190113	01.3380	17.08
190114	00.9853	12.28
190115	01.2551	17.60
190116	01.2880	13.30
190118	01.0065	12.00
190120	01.0309	13.37
190122	01.2868	13.38
190124	01.4621	18.66
190125	01.4606	15.18
190127	01.4573	19.90
190128	01.0689	16.60
190130	01.0493	12.05
190131	01.2973	14.32
190133	01.0532	10.80
190134	00.9942	11.85
190135	01.4560	18.43
190136	01.1399	12.08
190138	00.7376	10.92
190140	00.9858	11.41
190142	00.9660	13.12
190144	01.1974	14.30
190145	00.9496	13.28
190146	01.5708	17.87
190147	00.9622	12.68
190148	00.9487	11.65
170134	00.9502	11.70
170137	01.1494	16.18
170139	01.0554	11.91
170140	01.0762	11.61
170142	01.2491	15.74
170143	01.1525	13.23
170144	01.6075	14.82
170145	01.1819	13.74
170146	01.3569	17.87
170147	01.1920	17.94
170148	01.4363	17.40
170150	01.1431	14.56
170151	01.0535	11.47
170152	00.9489	13.46
170160	01.0407	11.05

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1994
: HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 1996 WAGE INDEX

PROVIDER	CASE MIX INDEX	AVG HOUR WAGE
190149	00.9932	10.54
190151	01.0840	11.14
190152	01.4087	19.90
190155	00.9862	14.75
190156	00.8835	11.37
190158	01.3060	20.92
190160	01.2528	14.82
190161	01.0023	13.12
190162	01.2338	21.67
190164	01.0913	16.49
190166	01.0211	13.69
190167	01.2487	17.25
190170	00.9832	12.41
190173	01.4647	20.83
190175	01.3591	
190176	01.6155	17.06
190177	01.6221	20.78
190178	00.9602	10.79
190182	00.9604	20.15
190183	01.1547	12.24
190184	01.0185	11.69
190185	01.2169	19.21
190186	00.8488	12.16
190187	00.9346	12.85
190189	00.7843	16.06
190190	01.0120	18.85
190191	01.2726	20.41
190193	01.2731	19.19
190194	01.1554	18.53
190196	00.8489	16.90
190197	01.2849	17.69
190199	01.4288	12.37
190200	01.1572	18.93
190201	01.2584	17.92
190202	01.5141	18.78
190203	01.4986	19.57
190204	01.4770	20.13
190205	01.8146	16.91
190206	01.4594	20.80
190207	01.2020	18.41
190208	00.8313	09.96
190211	00.6056	11.52
190212	00.7321	12.23
190216	00.6297	18.42
190217	00.9191	
190218	01.0526	
190223	00.5037	
190226	00.8135	
190227	00.8873	
190229	02.6066	
190230	00.8457	
190231	01.1981	
200001	01.2549	14.52

PROVIDER	CASE MIX INDEX	AVG HOUR WAGE
220092	01.2498	20.41
220094	01.2119	18.76
220095	01.2274	17.94
220097	01.1024	
220098	01.2359	17.34
220099	01.1412	
220100	01.2220	21.66
220101	01.4470	23.37
220104	01.2219	22.59
220105	01.1880	21.38
220106	01.2388	21.02
220107	01.2011	18.62
220108	01.1329	20.00
220110	02.0093	29.37
220111	01.2222	19.33
220114	01.4632	18.43
220116	01.8459	23.87
220118	02.0261	25.34
220119	01.3037	23.40
220120	01.2408	18.85
220123	01.0225	22.88
220126	01.2632	17.78
220128	01.1191	22.23
220133	00.8682	24.97
220135	01.1597	22.89
20153	00.9819	17.41
.20154	00.9547	19.60
220156	01.3156	19.38
220162	01.4675	
220163	01.9513	22.98
220171	01.7218	22.19
220897	04.7846	
230001	01.2127	13.60
230002	01.2675	18.81
230003	01.1446	17.63
230004	01.6489	20.75
230005	01.2920	17.44
230006	01.1050	15.62
230007	01.0015	16.93
230012	00.6001	12.54
230013	01.3308	19.57
230015	01.1628	18.65
230017	01.5681	20.01
230019	01.4941	20.56
230020	01.6300	19.60
230021	01.5839	16.12
230022	01.3140	16.98
230024	01.4941	23.06
230027	01.1020	14.80
230029	01.5954	20.50
230030	01.2685	16.01
230031	01.4635	18.10
230032	01.7427	18.41

PROVIDER	CASE MIX INDEX	AVG HOUR WAGE
230034	01.1839	15.14
230035	01.1879	18.81
230036	01.2897	18.69
230037	01.1608	16.35
230038	01.6733	20.24
230040	01.2225	17.05
230041	01.1717	17.55
230042	01.1797	18.66
230046	01.7688	25.27
230047	01.2924	19.18
230053	01.5005	23.90
230054	01.7846	19.33
230055	01.1567	16.59
230056	00.9692	13.08
230058	01.1270	15.97

PROVIDER	CASE MIX INDEX	AVG HOUR WAGE
230059	01.4628	18.12
230060	01.3342	16.27
230062	01.1141	14.71
230063	01.3407	17.81
230065	01.4541	17.64
230066	01.3164	18.55
230068	01.4251	19.97
230069	01.1231	18.20
230070	01.4616	18.67
230071	00.8344	20.02
230072	01.2415	17.55
230075	01.5035	18.55
230076	01.3254	18.86
230077	02.0005	18.35
230078	01.1992	14.77
230080	01.1863	18.22
230081	01.1638	16.37
230082	01.1211	14.65
230085	01.1010	16.38
230086	01.0395	14.27
230087	01.0333	16.89
230089	01.3674	21.88
230092	01.2763	17.42
230093	01.2494	18.00
230095	01.1825	15.62
230096	01.1641	18.30
230097	01.5668	17.19
230099	01.2430	18.35
230100	01.2376	14.49
230101	01.0973	15.97
230103	01.0453	16.10
230104	01.6206	19.92
230105	01.5887	18.07
230106	01.1535	16.99
230107	00.8813	12.27
230108	01.2173	15.90
230110	01.2393	16.49
230111	01.0615	14.14
230113	00.9901	17.34
230114	00.6315	20.38
230115	00.9772	14.41
230116	00.9215	14.42
230117	01.8756	22.68
230118	01.2112	15.76
230119	01.3491	20.97
230120	01.1556	
230121	01.2991	18.60
230122	01.3038	17.81
230124	01.1097	16.69
230125	01.3025	13.25
230128	01.4349	19.92
230129	01.9385	19.58
230130	01.6297	21.89

PROVIDER	CASE MIX INDEX	AVG HOUR WAGE
230132	01.4175	21.06
230133	01.2489	14.88
230134	01.1361	16.43
230135	01.2081	19.52
230137	01.1847	17.53
230141	01.6011	20.25
230142	01.1832	19.07
230143	01.2198	15.80
230144	01.1496	21.06
230145	01.1248	14.78
230146	01.2918	19.28
230147	01.5191	19.33
230149	01.2015	14.21
2.0151	01.3255	19.88
230153	01.0329	14.92

PROVIDER	CASE MIX INDEX	AVG HOUR WAGE
210034	01.3437	19.13
210035	01.2134	20.18
210037	01.2485	15.17
210038	01.4572	19.79
210039	01.1555	15.16
210040	01.3545	19.85
210043	01.2516	20.43
210044	01.2374	20.56
210045	00.9828	11.99
210046	01.1353	12.11
210048	01.1878	21.98
210049	01.1191	16.76
210051	01.3592	13.41
210054	01.2326	19.16
210055	01.1177	26.02

PROVIDER	CASE MIX INDEX	AVG HOUR WAGE
210056	01.4	
210057	01.	
210058	01.	
210059	01.	
210060	01.	
210061	01.	
220001	01.	
220002	01.	
220003	01.	
220004	01.	
220006	01.	
220008	01.	
220010	01.	
220011	01.	
220012	01.	
220015	01.	
220016	01.	
220017	01.	
220019	01.	
220020	01.	
220021	01.	
220023	01.	
220024	01.	
220025	01.	
220028	01.	
220029	01.	
220030	01.	
220031	01.	
220033	01.	
220035	01.	
220036	01.	
220038	01.	
220041	01.	
220042	01.	
220046	01.	
220049	01.	
220050	01.	
220051	01.	
220052	01.	
220053	01.	
220055	01.	
220057	01.	
220058	01.	
220060	01.	
220062	00.	
220063	01.	
220064	01.	
220065	01.	
220066	01.	
220067	01.	
220068	00.	
220070	01.	
220071	01.	

PROVIDER	CASE MIX INDEX	AVG HOUR WAGE
220073	01.3886	23.80
220074	01.2799	20.97
220075	01.1918	18.14
220076	01.1685	21.63
220077	01.6271	21.36
220079	01.0998	20.24
220080	01.2785	17.64
220081	01.0461	21.45
220082	01.2675	17.24
220083	01.1950	19.46
220084	01.2194	23.28
220086	01.5370	24.89
220088	01.5462	21.94
220089	01.2962	23.19
220090	01.1998	20.51

PROVIDER	CASE MIX INDEX	AVG HOUR WAGE
200002	01.0572	16.63
200003	01.1171	15.66
200006	01.1716	15.38
200007	00.9836	14.93
200008	01.2435	18.02
200009	01.7312	19.47
200012	01.1034	15.58
200013	01.1204	14.58
200015	01.2479	16.46
200016	01.175	16.05
200017	01.2475	17.38
200018	01.1755	14.04
200019	01.2488	17.59
200020	01.1514	19.52
200021	01.1486	17.17

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1994 PAGE 8 OF 16
: HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 1996 WAGE INDEX

PROVIDER	CASE MIX INDEX	AVG HOUR WAGE
240084	00.9740	16.21
240096	01.0892	15.05
240097	01.0203	16.73
240098	00.9526	14.88
240099	01.0583	11.12
240100	01.2670	18.09
240101	01.2050	16.22
240102	00.9525	13.30
240103	01.1395	14.12
240104	01.1831	19.56
240105	01.1009	13.71
240106	01.2745	22.45
240107	00.9818	13.40
240108	00.9750	11.10
240109	00.9503	13.75
240110	00.9468	14.99
240111	00.9742	12.94
240112	01.0876	13.13
240114	01.0126	10.23
240115	01.6263	20.91
240116	00.8793	12.64
240117	01.0866	16.56
240119	00.8508	16.27
240121	00.8918	17.30
240122	01.0335	16.04
240123	01.0175	12.31
240124	01.0498	15.19
240125	00.9073	10.62
240127	00.9922	11.24
240128	01.0927	13.49
240129	00.9624	11.01
240130	00.9809	14.34
240132	01.2204	21.55
240133	01.1246	15.52
240135	00.9295	11.04
240137	01.1885	14.43
240138	00.9614	11.55
240139	00.9522	14.97
240141	01.0970	19.61
240142	01.1064	14.42
240143	00.9171	11.41
240144	00.9704	13.73
240145	01.0050	11.38
240146	00.9819	14.99
240148	01.0002	10.45
240150	00.8788	10.86
240152	01.0006	17.14
240153	01.0176	14.24
240154	00.9879	14.61
240155	00.9248	16.12
240157	01.0125	12.12
240160	00.9521	14.46
240161	00.9606	14.31
240162	00.9633	14.88
240163	00.8665	13.46
240166	01.1245	14.50
240169	00.9513	13.93
240170	01.1212	14.12
240171	01.0071	13.83
240172	01.0866	14.56
240173	01.0131	14.48
240179	01.0490	14.05
240180	00.9138	10.44
240184	00.9033	11.75
240187	01.2619	15.97
240193	01.0525	14.44
240196	00.6037	18.69
240200	00.8565	12.36
250065	00.9039	10.62
250066	00.9325	12.03
250067	01.0947	12.22
250068	00.8705	12.14
250069	01.2526	12.65
250071	00.9922	11.25
250072	01.2883	15.11
250073	01.0574	09.16
250076	01.0126	11.04
250077	00.9404	10.20
250078	01.3909	13.76
250079	00.8481	12.64
250081	01.2300	14.24
250082	01.2321	12.01
250083	01.0860	11.71
260015	01.2439	12.97
260017	01.1927	12.42
260018	00.9427	08.66
260019	01.0703	13.01
260020	01.6809	19.79
260021	01.4704	16.68
260022	01.3476	14.85
260023	01.2148	14.03
260024	00.9983	11.71
260025	01.3006	13.16
260027	01.5843	18.65
260029	01.1107	17.08
260030	01.3016	09.37
260031	01.4656	18.03
260032	01.6047	13.18
230257	01.1387	17.12
230259	01.2715	18.67
230264	01.2471	16.92
230269	01.2438	20.82
230270	01.2165	19.64
230273	01.5822	19.35
230275	00.6453	15.75
230276	00.8823	15.40
230277	01.2075	19.43
230278	01.7771	17.19
230280	00.9194	
240001	01.5214	20.18
240002	01.6719	19.53
240003	01.1482	23.37
240004	01.4442	19.26
240077	00.9193	12.69
240078	01.4361	19.92
240079	01.0107	13.47
240080	01.4106	19.39
240082	01.1398	14.18
240083	01.3321	17.68
240084	01.3195	16.20
240085	00.9115	15.23
240086	01.0856	14.33
240087	01.1568	14.21
240088	01.4395	17.29
240089	01.0076	14.73
240090	01.0775	13.12
240091	01.0937	10.82
240093	01.3109	15.75
240094	01.2916	13.80
240095	00.9756	12.64
240096	01.2820	14.87
240097	01.1097	13.52
240098	00.8753	11.22
240099	01.2390	11.86
240100	01.2098	12.66
250101	00.9436	09.57
250102	01.4636	13.97
250104	01.2784	14.47
250105	00.8549	11.42
250107	00.9009	13.99
250108	00.9702	12.07
250112	00.8540	12.65
250117	01.0299	11.54
250119	01.2517	11.96
250120	01.0477	11.54
250122	01.3103	14.29
250123	01.4157	18.33
250124	00.8949	11.34
250125	01.3291	15.75
250126	01.0028	12.25
250127	00.7914	
250128	00.9406	10.61
250131	01.0299	09.45
250134	00.9563	11.58
250136	00.8571	16.62
250138	01.3336	16.03
250140	00.8086	09.41
250141	01.2433	14.89
250144	00.9434	
250145	00.8776	
250146	01.0137	
250148	01.0679	
250149	00.9185	
260001	01.6403	15.91
260002	01.4302	19.48
260003	00.9754	12.78
260004	01.0432	12.06
260005	01.5807	19.05
260006	01.4817	16.01
260007	01.4066	16.14
260008	01.2397	13.90
260009	01.2653	15.01
260011	01.6009	16.63
260012	01.0578	11.88
260013	01.1391	13.50
260014	01.7511	17.79

GES OCCURRING IN FEDERAL FISCAL YEAR 1994
RAL FISCAL YEAR 1996 WAGE INDEX

PROVIDER	CASE MIX INDEX	AVG HOUR WAGE
270053	00.9970	07.13
270057	01.1692	15.18
270058	00.9818	10.66
270059	00.8275	13.66
270060	00.9741	13.42
270063	00.9125	13.15
270068	00.9231	11.79
270072	00.9576	12.39
270073	01.1044	10.27
270074	00.9149	.
270075	00.8505	.
270076	00.7659	.
270079	00.8806	13.15
270080	01.1206	14.02
270081	01.0081	10.21
270082	00.9080	16.06
270083	01.0333	11.82
270084	00.8579	13.29
270085	01.1363	.
280001	01.1541	14.18
280003	01.9102	17.34
280005	01.4451	16.78
280009	01.5922	15.76
280010	00.9153	13.81
280011	00.9470	11.03
280012	01.1852	13.28
280013	00.9685	20.71
280014	00.9427	10.97
280015	01.1108	12.78
280017	01.1940	13.37
280018	01.0064	12.08
280020	01.5115	17.33
280021	01.2589	14.03
280022	00.9591	10.41
280023	01.3691	14.33
280024	00.8379	10.93
280025	01.0059	10.58
280026	01.0774	12.62
280028	01.0505	12.46
280029	00.9984	12.23
280030	01.7866	22.60
280031	01.0720	12.01
280032	01.2366	14.78
280033	01.0133	12.91
280034	01.1900	13.66
280035	00.8819	11.62
280037	00.9998	12.06
280038	01.0605	12.86
280039	01.2712	13.10
280040	01.6153	18.26
280041	01.0578	10.95
280042	01.1705	13.58
280043	01.0535	12.23
280045	01.1730	13.09
280046	01.0708	10.66
280047	01.1624	16.07
280048	01.1063	13.00
280050	01.0205	11.53
280051	01.0484	14.71
280052	01.1273	10.91
280054	01.2436	14.44
280055	00.9275	10.12
280056	01.0855	10.24
280057	00.9875	14.21
280058	01.1987	13.63
280060	01.5875	18.29
280061	01.4428	14.55

PROVIDER	CASE MIX INDEX	AVG HOUR WAGE
280062	01.1912	10.12
280064	00.9706	12.15
280065	01.2512	15.96
280066	01.0293	11.07
280068	00.9847	08.59
280070	00.9863	09.86
280073	01.0758	12.53
280074	01.0409	11.79
280075	01.3055	11.50
280076	01.0752	12.42
280077	01.3623	16.20
280079	01.0098	08.85
280080	01.2529	10.50
280081	01.6910	18.52
280082	01.0939	11.81
280083	01.0486	12.63
280084	01.0201	10.55
280085	00.5745	13.22
280088	01.6943	17.05
280089	01.0284	13.15
280090	01.0387	11.51
280091	01.1392	14.23
280092	00.8866	11.69
280094	01.1314	13.77
280097	00.9867	12.08
280098	00.9200	09.92
280101	01.0595	09.77
280102	01.1276	10.31
280104	01.0141	10.32
280105	01.2538	15.99
280106	00.9297	13.01
280107	01.0584	10.79
280108	01.1080	12.56
280109	00.8849	10.22
280110	01.0165	10.55
280111	01.2542	15.55
280114	00.9309	10.07
280115	00.9753	13.60
280117	01.1627	14.07
280118	00.9862	13.25
280119	00.9957	15.00
280123	00.9270	17.75
290001	01.7411	21.82
290002	00.9235	19.56
290003	01.6556	21.19
290005	01.2673	16.63
290006	01.0348	22.22
290007	01.7758	17.86
290008	01.2015	20.26
290009	01.5582	17.50
290010	01.1530	13.05
290011	00.9731	19.66
290012	01.4462	14.46
290013	01.1414	15.42
290014	00.9970	16.60
290015	00.9865	13.00
290016	01.3258	15.75
290018	00.9628	.
290019	01.2482	17.47
290020	01.2453	18.29
290021	01.5611	20.67
290022	01.6179	22.89
290027	01.0008	13.90
290029	00.8842	.
290032	01.3408	19.50
290036	00.9319	.
290037	01.7907	.
290038	01.0931	.
310001	01.4055	19.86
300003	01.7901	21.09
300005	01.2719	17.44
300006	01.1105	15.99
300007	01.1791	17.72
300008	01.2223	16.18
300009	01.1965	15.47
300010	01.2115	17.36
300011	01.3331	21.08
300012	01.2950	21.68
300013	01.1820	16.16
300014	01.2558	17.01
300015	01.1412	16.94
300016	01.2669	19.06
300017	01.1742	19.64
300018	01.2146	18.68
300019	01.2258	18.15
300020	01.2428	18.81
300021	01.1687	15.20
300022	01.1081	16.54
300023	01.2771	19.11
300024	01.2875	17.09
300028	01.3078	15.13
300029	01.2847	20.32
300033	01.0577	13.69
300034	01.9216	21.01
310001	01.6894	23.30
310002	01.6535	24.76
310003	01.2000	20.90
310005	01.1805	20.02
310006	01.2102	20.07
310008	01.2636	19.90
310009	01.2227	20.09
310010	01.3110	18.36
310011	01.2838	19.99
310012	01.5305	22.97
310013	01.3252	19.19
310014	01.6145	22.95
310015	01.7717	23.86
310016	01.2319	21.83
310017	01.3433	21.36
310018	01.2139	21.47
310019	01.6862	21.25
310020	01.1983	18.60
310021	01.2801	19.65
310022	01.2488	18.19
310024	01.2322	21.47
310025	01.1869	20.24
310026	01.2706	21.12
310027	01.3096	17.61
310028	01.1396	19.28
310029	01.7904	20.86
310031	02.6061	23.85

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OC
: HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FI

PROVIDER	CASE MIX INDEX	AVG HOUR WAGE
260034	01.0156	12.93
260035	01.0664	11.41
260036	01.0898	14.27
260037	01.3239	14.40
260039	01.2462	10.72
260040	01.6132	14.88
260042	01.3265	15.75
260044	01.0826	13.78
260047	01.4225	13.91
260048	01.2568	17.03
260050	01.1086	13.74
260052	01.2714	16.70
260053	01.1662	09.81
260054	01.2523	15.10
260055	01.0736	12.81
260057	01.1637	13.77
260059	01.1221	12.90
260061	01.1058	11.10
260062	01.1913	15.30
260063	01.0980	14.23
260064	01.3736	14.63
260065	01.7358	14.50
260066	01.1243	12.47
260067	00.9750	10.16
260068	01.7208	18.00
260070	01.2610	11.28
260073	01.0088	11.49
260074	01.3223	14.56
260077	01.5567	16.08
260078	01.1107	15.17
260079	01.0373	11.13
260080	00.9468	09.28
260081	01.3832	17.21
260082	01.1721	13.18
260085	01.5216	18.65
260086	01.0099	12.28
260089	01.0430	12.88
260091	01.6169	18.97
260094	01.0880	14.92
260095	01.4323	16.21
260096	01.5455	19.82
260097	01.1495	14.83
260100	01.1265	12.68
260102	01.0386	15.71
260103	01.3160	17.08
260104	01.6589	17.96
260105	01.8279	18.29
260107	01.3897	17.90
260108	01.7500	17.38
260109	01.0095	11.51
260110	01.5457	14.55
260111	00.8940	10.83
260112	01.4438	17.09
260113	01.1585	13.08
260115	01.1783	14.97
260116	01.1414	12.66
260119	01.1922	13.36
260120	01.2264	14.49
260122	01.1617	12.04
260123	01.0175	10.19
260127	00.9970	14.37
260128	01.0173	08.68
260129	01.1481	13.09
260131	01.3401	15.29
260134	01.1830	13.51
260137	01.2902	14.24
260138	01.8394	19.32
260141	01.8956	17.33

PROVIDER	CASE MIX INDEX	AVG HOUR WAGE
260142	01.1887	14.08
260143	00.9904	10.22
260146	01.4878	19.71
260147	01.0148	12.16
260148	01.1774	11.40
260158	01.3430	18.30
260159	01.0911	12.54
260160	01.5119	16.23
260162	01.1761	13.51
260163	01.0491	11.58
260164	01.1551	18.14
260166	01.0137	11.31
260172	00.9916	10.67
260173	01.1485	13.86
260175	01.5959	15.21
260176	01.2802	18.47
260177	01.4977	19.19
260178	01.5458	20.22
260179	01.7175	17.79
260183	01.6332	15.54
260186	01.1912	14.51
260188	01.3009	16.33
260189	00.9718	09.35
260190	01.1855	18.20
260191	01.1913	16.21
260193	01.2097	17.84
260195	01.1683	13.70
260197	01.2679	22.49
260198	01.2554	14.73
260200	01.2583	20.52
260202	01.1408	17.37
260204	00.5287	.
270002	01.2072	14.67
270003	01.2456	17.35
270004	01.6723	16.44
270006	01.0357	11.79
270007	00.9035	12.34
270009	01.0522	18.56
270011	01.1431	14.69
270012	01.4586	17.47
270013	01.3239	16.62
270014	01.6567	15.12
270016	00.8211	10.20
270017	01.2751	16.23
270019	00.9930	12.23
270021	01.1349	14.48
270023	01.3040	17.63
270024	00.9842	11.35
270026	00.9128	12.56
270027	01.0305	12.04
270028	01.0706	14.45
270029	01.0320	14.46
270031	00.9070	09.71
270032	01.1435	15.72
270033	00.8260	21.10
270035	00.9902	14.73
270036	01.0120	09.12
270039	00.9393	12.62
270040	01.0910	19.48
270041	01.0575	10.12
270044	01.2671	14.11
270046	00.9529	15.13
270048	01.0890	12.39
270049	01.7620	16.51
270050	01.0475	16.53
270051	01.2742	18.12
270052	01.0618	13.84

PROVIDER	CASE MIX INDEX	AVG HOUR WAGE
310032	01.2495	19.04
310034	01.2017	18.38
310036	01.2151	17.92
310037	01.2407	24.01
310038	01.7744	21.60
310039	01.2762	19.62
310040	01.2693	21.87
310041	01.2897	20.71
310042	01.1592	20.03
310043	01.1777	20.15
310044	01.3114	19.51
310045	01.3064	24.22
310047	01.2915	21.60
310048	01.2247	20.26
310049	01.2980	20.19

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1994 PAGE 10 OF 16
: HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 1996 WAGE INDEX

PROVIDER	CASE MIX INDEX	AVG HOUR WAGE
310050	01.2030	20.49
310051	01.3237	22.94
310052	01.2360	19.44
310054	01.2844	22.08
310056	01.2288	18.60
310057	01.2639	18.67
310058	01.0982	22.53
310060	01.1759	15.81
310061	01.1733	18.96
310062	01.2969	26.21
310063	01.3241	20.46
310064	01.2666	20.47
310067	01.2600	20.34
310069	01.1728	17.01
310070	01.3493	21.58
310072	01.2319	19.41
310073	01.4787	20.82
310074	01.3229	20.59
310075	01.3141	20.49
310076	01.3234	26.50
310077	01.5002	22.03
310078	01.2825	22.45
310081	01.2168	19.38
310083	01.2420	21.39
310084	01.2072	20.18
310086	01.2172	19.30
310087	01.2319	18.62
310088	01.1805	18.95
310090	01.1950	21.84
310091	01.2436	18.79
310092	01.3914	19.24
310093	01.1416	19.43
310096	01.8907	21.72
310105	01.2372	20.43
310108	01.3620	19.35
310110	01.2144	19.27
310111	01.2450	18.13
310112	01.2942	19.38
310113	01.2254	19.35
310116	01.2387	18.84
310118	01.2163	20.81
310119	01.2105	21.18
310120	01.4822	28.06
310121	01.0706	17.85
320001	01.4339	16.14
320002	01.3536	21.36
320003	01.2308	14.20
320004	01.1170	16.38
320005	01.3222	18.36
320006	01.4251	14.16
320009	01.5144	16.90
320011	01.0253	17.65
320012	01.0392	17.37
320013	01.0916	17.38
320014	01.0526	09.02
320016	01.1594	14.52
320017	01.1495	17.38
320018	01.3994	16.77
320019	01.4807	18.67
320021	01.6995	20.73
320022	01.2421	17.51
320023	01.0473	14.13
320030	01.0672	18.67
320031	00.9676	11.41
320032	00.9759	20.28
320033	01.0836	19.40
320035	01.1627	13.24
330065	01.2062	18.08
330066	01.2084	16.38
330067	01.1320	16.03
330072	01.3526	16.68
330073	00.5583	23.06
330074	01.7016	20.80
330075	01.3009	22.10
330078	01.0139	17.60
330079	01.6414	27.25
330080	01.1264	13.51
330082	01.2705	23.24
330084	01.3735	24.98
330085	01.1700	17.06
330086	01.2472	25.87
330088	01.2088	23.47
330090	01.2257	23.02
330091	01.3068	24.11
330092	00.8767	15.44
330094	01.8167	17.46
330095	01.1609	23.73
330096	01.8093	26.95
330097	01.2865	28.01
330100	00.7536	36.27
330101	01.8064	28.55
330102	01.2023	24.96
330103	01.6768	25.15
330104	01.4868	17.28
330106	01.2142	26.55
330107	01.3267	
330108	01.4571	
330111	01.2129	25.28
330114	01.2327	19.79
330115	01.3333	26.58
330116	01.2500	23.30
330118	01.4738	23.47
330119	01.3112	27.41
330121	01.2122	25.84
330122	01.3112	27.41
330125	01.4369	18.69
330126	01.8167	17.46
330127	01.4868	17.28
330128	01.2142	26.55
330132	01.3267	
330133	01.4571	
330135	01.2129	25.28
330136	01.2327	19.79
330140	01.3333	26.58
330141	01.2500	23.30
330144	01.4738	23.47
330148	01.2122	25.84
330151	01.1132	14.19
330152	01.1599	14.94
330153		
330154	01.2237	15.82
330157	01.1554	19.21
330158	01.2993	15.46
330159	01.1066	13.94
330160	01.2160	15.39
330161	01.2152	14.57
330162	01.5868	16.83
330163	01.2435	15.33
330164	01.1498	15.63
330166	01.3015	14.51
330167	01.0837	14.66
330169	01.0409	10.97
330171	01.2222	19.33
330175	01.2373	15.10
330177	01.0849	14.07
340001	01.4369	18.69
340002	01.8167	17.46
340003	01.1534	17.44
340004	01.4848	16.48
340005	01.2414	12.65
340006	01.1132	14.19
340007	01.1599	14.94
340008	01.2237	15.82
340009	01.1554	19.21
340010	01.2993	15.46
340011	01.1066	13.94
340012	01.2160	15.39
340013	01.2152	14.57
340014	01.5868	16.83
340015	01.2435	15.33
340016	01.1498	15.63
340017	01.3015	14.51
340018	01.0837	14.66
340019	01.0409	10.97
340020	01.2222	19.33
340021	01.2373	15.10
340022	01.0849	14.07
340044	01.2034	16.10
340045	01.3997	23.27
340046	01.4792	26.80
340047	01.2170	16.37
340048	01.2656	15.50
340049	01.2678	16.39
340050	01.1259	14.20
340055	01.3739	27.96
340056	01.3499	26.51
340057	01.6001	17.28
340058	01.2660	15.35
340059	01.5813	27.24
340061	01.3144	22.35
340062	01.0626	15.08
340064	01.3860	27.78
340065	01.5518	
340066	01.2562	18.01
340067	01.2950	22.12
340070	01.3175	17.37
340072	01.4507	27.75
340073	00.9430	15.60
340074	01.2568	24.16
340075	01.1584	16.79
340078	01.3512	18.48
340079	00.9861	13.97
340084	01.5885	26.67
340085	01.4501	29.07
340086	01.2987	21.23
340088	01.1046	13.41
340090	01.0500	12.91
330246	01.2727	22.67
330247	00.7913	25.42
330249	01.2356	15.87
330250	01.2330	15.40
330252	00.9049	15.14
330254	00.9907	15.51
330258	01.3620	23.96
330259	01.3531	21.30
330261	01.2167	23.08
330263	01.0427	15.85
330264	01.2551	19.42
330265	01.3466	14.35
330267	01.2472	21.76
330268	01.0083	14.86
330270	01.9646	27.18
330273	01.2857	21.42

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1994 PAGE 11 OF 16
: HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 1996 WAGE INDEX

PROVIDER	CASE MIX INDEX	AVG HOUR WAGE	PROVIDER	CASE MIX INDEX	AVG HOUR WAGE	PROVIDER	CASE MIX INDEX	AVG HOUR WAGE
340023	01.3550	16.96	340119	01.2835	14.92	350035	00.8461	10.06
340024	01.2109	14.35	340120	01.0614	12.83	350038	01.0009	13.01
340025	01.1092	14.27	340121	01.0972	13.86	350039	01.0341	13.65
340027	01.2031	14.87	340122	01.0070	12.44	350041	01.0454	11.63
340028	01.5085	16.47	340123	01.1038	12.23	350042	01.0125	13.85
340030	01.9232	18.03	340124	01.0588	13.16	350043	01.4048	15.08
340031	01.0089	11.38	340125	01.4101	16.38	350044	00.8713	10.01
340032	01.2698	16.65	340126	01.4004	16.98	350047	01.1514	15.98
340034	01.2862	17.25	340127	01.3145	15.68	350049	01.1017	09.92
340035	01.1041	14.24	340129	01.2777	18.25	350050	01.0066	10.35
340036	01.2278	16.39	340130	01.3396	15.99	350051	00.9666	11.29
340037	01.1623	13.39	340131	01.3781	15.66	350053	01.0353	09.16
340038	01.1623	15.33	340132	01.2664	12.81	350055	00.9458	11.52
340039	01.2748	18.01	340133	01.1129	14.24	350056	00.9552	12.07
340040	01.7266	17.23	340136	01.0941	16.92	350058	01.0054	11.46
340041	01.2497	15.28	340137	01.1819	13.07	350060	00.9107	07.20
340042	01.1072	13.11	340138	01.1344	14.31	350061	01.0521	14.13
340044	01.0386	12.58	340141	01.5344	18.20	350063	00.8101	.
340045	01.0077	08.49	340142	01.1851	15.16	350064	00.8179	.
340047	01.8767	17.36	340143	01.2364	18.30	350065	00.8966	.
340048	00.7695	.	340144	01.3552	16.96	350066	00.8594	.
340049	00.6050	15.68	340145	01.2862	15.79	360001	01.2751	16.58
340050	01.1903	16.12	340146	01.0941	12.76	360002	01.1542	14.90
340051	01.2450	15.76	340147	01.2917	16.80	360003	01.7200	19.44
340052	01.0201	08.45	340148	01.4232	17.75	360006	01.7281	19.60
340053	01.6177	18.66	340151	01.1788	13.81	360007	01.0536	15.57
340054	01.0766	12.74	340153	01.9573	19.41	360008	01.2404	15.05
340055	01.2122	16.29	340154	01.1004	14.94	360009	01.3556	17.14
340060	01.1348	15.32	340155	01.4462	19.22	360010	01.1694	15.09
340061	01.6944	18.19	340156	00.7809	.	360011	01.2327	17.13
340063	01.0868	14.50	340158	01.1618	16.37	360012	01.2491	18.10
340064	01.2245	15.87	340159	01.1342	15.36	360013	01.1092	15.10
340065	01.2567	11.40	340160	01.1428	12.04	360014	01.1327	16.24
340067	01.2065	13.69	340162	01.3238	16.41	360016	01.5669	17.58
340068	01.2924	12.84	340164	01.4102	17.72	360017	01.6526	19.27
340069	01.6469	17.99	340166	01.3836	18.78	360018	01.5903	18.12
340070	01.2851	16.21	340168	00.4889	16.61	360019	01.2598	18.17
340071	01.0201	13.98	340170	01.2903	.	360020	01.4352	17.58
340072	01.0999	13.96	340171	01.0667	.	360021	01.2305	17.68
340073	01.4138	19.33	350001	01.1048	11.68	360024	01.4170	17.78
340075	01.2132	15.40	350002	01.7411	16.34	360025	01.1612	16.49
340080	01.1471	10.79	350003	01.1719	15.20	360026	01.1445	15.74
340084	01.0656	13.21	350004	01.9173	17.81	360027	01.5514	18.78
340085	01.2368	14.60	350005	01.1550	11.38	360028	01.3585	15.35
340087	01.2049	16.57	350006	01.3146	15.87	360029	01.1343	15.69
340088	01.1536	16.20	350007	00.9766	11.64	360030	01.1082	14.24
340089	00.9588	11.53	350008	01.0299	17.11	360031	01.2726	14.01
340090	01.1095	15.15	350009	01.1708	15.04	360032	01.1027	15.34
340091	01.6948	18.09	350010	01.0965	11.48	360034	01.2285	12.05
340093	01.0962	12.41	350011	01.8066	16.90	360035	01.5046	19.25
340094	01.2544	16.46	350012	01.0575	11.94	360036	01.1674	16.98
340096	01.2482	15.59	350013	01.1191	14.23	360037	02.0791	19.73
340097	01.1638	14.13	350014	01.0811	10.84	360038	01.5350	17.06
340098	01.6532	17.10	350015	01.5980	15.49	360039	01.2949	15.46
340099	01.1571	13.04	350016	01.0047	10.29	360040	01.2773	17.57
340100	00.9781	.	350017	01.3965	14.02	360041	01.3231	17.13
340101	00.9979	11.37	350018	01.1060	10.15	360042	01.1302	15.94
340104	00.9394	10.52	350019	01.5964	17.70	360044	01.0991	15.06
340105	01.3279	17.43	350020	01.3462	15.80	360045	01.5151	19.48
340106	01.0977	16.14	350021	01.0702	10.47	360046	01.0674	17.35
340107	01.2656	15.88	350023	00.8747	14.45	360047	01.1673	13.69
340109	01.3612	15.08	350024	01.0866	12.46	360048	01.7619	20.91
340111	01.2302	13.16	350025	01.0046	13.17	360049	01.3457	17.28
340112	01.0248	12.98	350027	00.9928	13.76	360050	01.1011	11.62
340113	01.9570	19.22	350029	00.9486	10.79	360051	01.4651	19.97
340114	01.4375	18.91	350030	01.0763	15.42	360052	01.6718	17.01
340115	01.5511	16.94	350033	00.9413	13.28	360054	01.2302	14.87
340116	01.7560	19.43	350034	00.9863	14.00	360055	01.1877	17.07

PROVIDER	CASE MIX INDEX	AVG HOUR WAGE
360132	01.3047	18.64
360133	01.4341	17.01
360134	01.6312	17.77
360135	01.1408	15.15
360136	01.0356	13.92
360137	01.5585	17.61
360140	00.9970	15.13
360141	01.4439	19.09
360142	00.9938	14.51
360143	01.3137	17.32
360144	01.3260	19.94
360145	01.8488	15.94
360147	01.2621	14.83
360148	01.1778	15.29
360149	01.1368	16.99
360150	01.3086	16.70
360151	01.3504	16.20
360152	01.5227	17.02
360153	01.1421	13.32
360154	01.0536	12.01
360155	01.3080	18.05
360156	01.3298	16.30
360159	01.1493	17.70
360161	01.3493	18.52
360162	01.1971	15.50
360163	01.8234	18.81
360164	00.8895	13.53
360165	01.1266	14.66
360166	01.1591	16.68
360169	01.0169	16.77
360170	01.1996	17.19
360172	01.4114	16.01
360174	01.2614	16.86
360175	01.2630	17.31
360176	01.1881	13.50
360177	01.2545	15.44
360178	01.2500	15.16
360179	01.3025	18.53
360180	02.0910	22.00
360184	00.5700	15.74
360185	01.2247	16.35
360186	01.2043	15.60
360187	01.2741	15.63
360188	01.0233	14.47
360189	01.0665	14.86
360192	01.3030	18.10
360193	01.2998	14.39
360194	01.1140	15.67
360195	01.1674	16.12
360197	01.1620	16.55
360200	01.0669	12.61
360203	01.1257	15.23
360204	01.2134	15.84
360210	01.1866	18.60
360211	01.1839	17.02
360212	01.4128	18.54
360213	01.1331	15.72
360218	01.2483	15.77
360230	01.2914	19.39
360231	01.1019	12.30
360232	01.2332	20.25
360234	01.3137	17.37
360236	01.1994	16.82
360238	01.0795	.
360239	01.1692	18.44
360240	00.4529	00.64
360241	00.6131	16.19
360242	01.6782	.

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1994 PAGE 12 OF 16
: HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 1996 WAGE INDEX

PROVIDER	CASE MIX INDEX	AVG HOUR WAGE	PROVIDER	CASE MIX INDEX	AVG HOUR WAGE	PROVIDER	CASE MIX INDEX	AVG HOUR WAGE
360018	01.7772	18.54	390019	01.1193	15.02	390102	01.3555	19.54
360019	01.1937	17.57	390022	01.3581	20.09	390103	01.0911	16.83
360020	01.4635	19.42	390023	01.2587	20.25	390104	01.1240	13.92
360021	01.2005	19.11	390024	00.7628	21.76	390106	00.9496	16.62
360022	01.1825	17.88	390025	00.7525	15.82	390107	01.2134	17.78
380023	01.2895	16.49	390026	01.2631	20.06	390108	01.3503	17.21
380025	01.2513	21.04	390027	01.9400	21.93	390109	01.1403	13.32
380026	01.3246	16.19	390028	01.7671	18.59	390110	01.5478	17.47
380027	01.2238	18.77	390029	01.7506	17.52	390111	01.7840	26.50
380029	01.1936	15.70	390030	01.2138	15.42	390112	01.1978	12.38
380031	01.0035	14.64	390031	01.1386	17.02	390113	01.2116	14.98
380033	01.6750	21.91	390032	01.2180	17.70	390114	01.0998	20.24
380035	01.3451	18.88	390035	01.2554	16.82	390115	01.3234	20.80
380036	01.0261	16.34	390036	01.2891	17.23	390116	01.1802	19.21
380037	01.2551	19.57	390037	01.2981	17.90	390117	01.1281	15.07
380038	01.3261	20.55	390039	01.0790	15.36	390118	01.2374	15.74
380039	01.2667	20.17	390040	00.9405	12.87	390119	01.3646	17.02
380040	01.3369	18.06	390041	01.2781	17.41	390121	01.3200	17.22
380042	01.1742	21.92	390042	01.3859	20.08	390122	01.0399	15.47
380047	01.6445	19.29	390043	01.0942	14.27	390123	01.2531	19.42
380048	01.0224	13.14	390044	01.5680	18.24	390125	01.2040	15.75
380050	01.3158	16.38	390045	01.5160	16.69	390126	01.2801	20.35
380051	01.5308	18.38	390046	01.4881	17.71	390127	01.1724	19.86
380052	01.1597	15.90	390047	01.6149	22.95	390128	01.1730	17.17
380055	01.1773	23.98	390048	01.1705	15.25	390130	01.1060	17.23
380056	01.0295	15.19	390049	01.5135	19.09	390131	01.2491	15.35
380060	01.4358	21.21	390050	02.0193	20.30	390132	01.2301	18.08
380061	01.5098	21.74	390051	02.1938	23.77	390133	01.7629	20.23
380062	01.1147	13.68	390052	01.1456	15.52	390135	01.2408	19.41
380063	01.2689	22.15	390054	01.1476	13.42	390136	01.2122	15.59
380064	01.3413	18.16	390055	01.7090	20.40	390137	01.1705	17.43
380065	00.9846	19.00	390056	01.1719	15.60	390138	01.2407	16.41
380066	01.3474	17.09	390057	01.2889	18.37	390139	01.4609	21.08
380068	01.0131	10.61	390058	01.2874	16.75	390142	01.6697	21.77
380069	01.1384	17.14	390060	01.1133	15.65	390145	01.3348	18.30
380070	01.2749	19.47	390061	01.5073	20.59	390146	01.2323	15.37
380071	01.2975	19.74	390062	01.1217	14.75	390147	01.2319	18.19
380072	00.9285	14.25	390063	01.7184	18.14	390148	01.1856	17.53
380075	01.4140	19.35	390064	01.5125	15.84	390149	01.2351	19.33
380078	01.0297	16.80	390065	01.2190	17.97	390150	01.1451	17.62
380081	01.0934	16.57	390066	01.3023	16.55	390151	01.3012	17.35
380082	01.3225	20.54	390067	01.7301	18.65	390152	01.0221	15.13
380083	01.3305	17.08	390068	01.3103	17.00	390153	01.1959	21.16
380084	01.2634	18.54	390069	01.2845	18.31	390154	01.1635	13.64
380087	01.0074	13.59	390070	01.3176	19.08	390155	01.3023	17.65
380088	00.9674	15.05	390071	01.0958	13.09	390156	01.3745	21.65
380089	01.2969	20.02	390072	01.0746	15.84	390157	01.2567	16.75
380090	01.3075	21.62	390073	01.5165	17.44	390158	01.4555	18.63
380091	01.1975	23.39	390074	01.2311	16.29	390159	01.2938	19.66
380897	04.7333	.	390075	01.3378	15.51	390160	01.1993	17.44
390001	01.2927	17.00	390076	01.2510	19.48	390161	01.0409	13.71
390002	01.3102	17.45	390078	01.0454	14.92	390162	01.3087	19.03
390003	01.2089	16.14	390079	01.6734	15.99	390163	01.1814	16.45
390004	01.3573	16.37	390080	01.2210	17.76	390164	01.8481	18.93
390005	01.0212	13.53	390081	01.2961	19.78	390166	01.1611	16.81
390006	01.7675	17.25	390083	01.1854	20.41	390167	01.2628	20.38
390007	01.1637	20.95	390084	01.2275	14.79	390168	01.1938	17.18
390008	01.0940	15.45	390086	01.0903	15.51	390169	01.2110	17.22
390009	01.6043	17.97	390088	01.3462	19.25	390170	01.8613	23.09
390010	01.2036	16.98	390090	01.7200	19.42	390173	01.1971	17.58
390011	01.1955	16.82	390091	01.1466	16.41	390174	01.6952	23.23
390012	01.2114	18.59	390093	01.1717	14.61	390176	01.1345	16.28
390013	01.2017	15.89	390095	01.1723	14.43	390178	01.2804	17.36
390014	01.5635	15.29	390096	01.2821	16.50	390179	01.2582	20.45
390015	01.1326	13.12	390097	01.3212	20.40	390180	01.5840	22.45
390016	01.1962	15.75	390098	01.7237	19.80	390181	01.0572	16.72
390017	01.1843	13.74	390100	01.6555	18.56	390183	01.1591	17.15
390018	01.1906	18.44	390101	01.2382	15.40	390184	01.1173	17.14
370064	00.9690	09.12	370193	01.3808	.			
370065	01.0838	14.46	380001	01.2938	18.46			
370071	01.0279	10.53	380002	01.2492	17.64			
370072	00.9502	11.89	380003	01.1829	17.46			
370076	01.2814	11.71	380004	01.6219	22.25			
370077	01.3665	15.34	380005	01.1604	19.10			
370078	01.6906	14.47	380006	01.3725	16.46			
370079	00.9182	11.99	380007	01.6280	20.58			
370080	00.9812	11.31	380008	01.0648	16.93			
370082	00.9236	10.23	380009	01.8073	21.55			
370083	01.0324	10.99	380010	01.0996	19.18			
370084	01.0520	08.49	380011	01.1556	14.12			
370085	00.8086	12.79	380013	01.1859	19.76			
370086	01.1609	08.53	380014	01.3831	19.00			
370089	01.2782	11.32	380017	01.7690	21.74			

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1994 PAGE 13 OF 16
: HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 1996 WAGE INDEX

PROVIDER	CASE MIX INDEX	AVG HOUR WAGE	PROVIDER	CASE MIX INDEX	AVG HOUR WAGE	PROVIDER	CASE MIX INDEX	AVG HOUR WAGE
390185	01.1718	15.64	400012	01.1149	07.24	420022	00.5343	20.70
390186	01.1789	12.18	400013	01.1641	09.09	420023	01.	
390189	01.0731	16.34	400014	01.4215	07.32	420026	01.	
390191	01.0449	14.03	400015	01.3504	10.35	420027	01.	
390192	01.1109	16.42	400016	01.3534	09.54	420028	01.	
390193	01.1498	15.76	400017	01.1639	06.80	420029	01.	
390194	01.0786	18.49	400018	01.2973	08.17	420030	01.	
390195	01.8123	21.40	400019	01.6158	09.32	420031	01.	
390196	01.3612	.	400021	01.3491	07.96	420033	01.	
390197	01.2700	18.62	400022	01.3082	09.80	420035	00.	
390198	01.2284	14.41	400024	00.9856	07.75	420036	01.	
390199	01.2212	14.46	400026	00.8401	07.20	420037	01.	
390200	01.0088	12.74	400027	01.1220	06.87	420038	01.	
390201	01.2926	18.28	400028	01.1461	07.04	420039	01.	
390203	01.3074	18.63	400029	01.1139	07.59	420040	01.	
390204	01.2606	18.31	400031	01.0357	07.33	420042	01.	
390205	01.2221	22.42	400032	01.1755	07.75	420043	01.	
390206	01.3646	19.80	400044	01.1285	09.07	420044	01.	
390209	01.0362	14.45	400048	01.0975	06.84	420048	01.	
390211	01.2078	16.56	400061	01.4681	12.57	420049	01.	
390213	01.0987	14.10	400079	01.2472	09.48	420051	01.	
390215	01.1563	20.50	400087	01.3329	08.37	420053	01.	
390217	01.2283	17.56	400094	01.0187	07.41	420054	01.	
390219	01.2464	15.84	400098	01.2471	07.46	420055	01.	
390220	01.1990	18.50	400102	01.2012	07.47	420056	01.	
390222	01.2927	19.29	400103	01.4021	10.21	420057	01.	
390223	01.6248	22.05	400104	01.1981	09.13	420059	00.	
390224	00.9135	13.29	400105	01.2588	07.81	420061	01.	
390225	01.2275	15.41	400106	01.2429	07.28	420062	01.	
390226	01.7063	22.03	400109	01.5809	08.35	420064	01.	
390228	01.1941	17.98	400110	01.1028	08.90	420065	01.	
390231	01.3455	20.59	400111	01.1492	07.90	420066	01.	
390233	01.2760	17.67	400112	01.2638	07.00	420067	01.	
390235	01.7555	23.03	400113	01.1820	06.62	420068	01.	
390236	01.1545	16.00	400114	01.0671	07.53	420069	01.	
390237	01.5578	18.82	400115	01.0129	07.85	420070	01.	
390238	01.0894	16.51	400117	01.2063	07.66	420071	01.	
390242	01.3231	18.78	400118	01.1444	07.05	420072	01.	
390244	00.9175	12.37	400120	01.2843	08.63	420073	01.	
390245	01.3588	20.09	400121	00.9107	07.33	420074	00.	
390246	01.1551	15.60	400122	00.9802	06.35	420075	01.	
390247	01.0093	16.83	400123	01.1528	08.39	420076	01.	
390249	00.9960	11.06	400124	02.7780	.	420078	01.	
390256	01.6957	20.51	410001	01.3209	21.94	420079	01.	
390258	01.3249	19.30	410004	01.3533	20.28	420080	01.	
390260	01.2434	17.74	410005	01.3598	20.46	420081	00.	
390262	01.9010	17.06	410006	01.2125	21.65	420082	01.	
390263	01.4743	18.55	410007	01.6861	19.83	420083	01.	
390265	01.3080	17.62	410008	01.1749	20.30	420084	00.	
390266	01.2009	15.69	410009	01.3426	20.77	420085	01.	
390267	01.2663	19.03	410010	01.0332	24.28	420086	01.	
390268	01.3843	19.24	410011	01.2186	21.48	420087	01.	
390270	01.3057	16.33	410012	01.7233	18.98	420088	01.	
400001	01.2173	08.19	420007	01.5035	15.99	430008	01.	
400002	01.4216	10.39	420009	01.2547	15.89	430009	01.	
400003	01.2202	08.29	420010	01.0837	13.17	430010	01.	
400004	01.3104	08.02	420011	01.0974	14.00	430011	01.	
400005	01.0899	06.34	420014	01.0743	13.05	430012	01.	
400006	01.2527	06.86	420015	01.3697	16.20	430013	01.	
400007	01.1885	07.19	420016	01.1263	13.46	430014	01.	
400009	00.9592	07.08	420018	01.6630	17.26	430015	01.	
400010	00.9770	07.87	420019	01.2123	14.47	430016	01.	
400011	01.0699	06.77	420020	01.2555	15.92	430018	00.	
440012	01.1149	07.24	440125	01.4144	18.38			
440013	01.2540	24.87	440130	01.1226	13.51			
440014	00.9938	10.17	440131	01.0835	13.17			
440015	01.5329	15.38	440132	01.1210	13.29			
440016	00.9712	10.91	440133	01.5208	17.70			
440017	01.5838	17.33	440135	01.3487	19.68			
440018	01.4908	15.33	440137	00.9661	11.88			
440019	01.5844	18.39	440141	01.1785	12.78			
440020	01.2176	16.73	440142	01.0557	10.83			
440022	01.2005	12.79	440143	01.0968	16.30			
440023	01.0130	11.52	440144	01.2164	17.90			
440024	01.3778	16.35	440145	01.0472	13.40			
440025	01.0792	12.19	440146	01.3506	12.03			
440026	00.9153	15.63	440148	01.1560	15.66			
440029	01.3367	15.62	440149	01.2184	15.74			
440030	01.1489	12.68						
440031	00.9730	11.83						

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1994
: HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 1996 WAGE INDEX

PROVIDER	CASE MIX INDEX	AVG HOUR WAGE	PROVIDER	CASE MIX INDEX	AVG HOUR WAGE	PROVIDER	CASE MIX INDEX	AVG HOUR WAGE	PROVIDER	CASE MIX INDEX	AVG HOUR WAGE
440150	01.2567	18.75	450054	01.7322	21.09	450157	01.0507	15.90	450264	00.8571	09.77
440151	01.4181	15.89	450055	01.1133	11.71	450160	00.[illegible]	[illegible]	450269	01.0761	13.32
440152	01.6568	17.32	450056	01.6529	17.62	450162	01.[illegible]	[illegible]	450270	01.1079	10.66
440153	01.2680	14.46	450058	01.5214	14.43	450163	01.[illegible]	[illegible]	450271	01.1990	14.76
440156	01.5223	18.78	450059	01.2797	12.62	450164	01.[illegible]	[illegible]	450272	01.2241	15.51
440157	01.0026	13.12	450060	01.3775	19.96	450165	01.[illegible]	[illegible]	450276	00.8682	11.11
440159	01.2399	15.52	150063	01.0234	11.54	450166	00.[illegible]	[illegible]	450278	01.3423	19.11
440161	01.5953	20.02	450064	01.5133	14.88	450169	00.[illegible]	[illegible]	450280	01.[illegible]	[illegible]
440166	01.3898	17.40	450065	01.1215	10.61	450170	00.[illegible]	[illegible]	450283	01.0163	[illegible]
440168	01.0180	13.32	450068	01.7808	17.27	450176	01.[illegible]	[illegible]	450286	01.0537	13.54
440173	01.4919	16.51	450070	01.1697	13.40	450177	01.[illegible]	[illegible]	450288	01.2346	13.72
440174	00.9739	14.29	450072	01.2267	17.28	450178	01.[illegible]	[illegible]	450289	01.4732	16.97
440175	01.2429	17.24	450073	01.1179	10.92	450181	00.[illegible]	[illegible]	450292	01.2637	17.84
440176	01.3083	17.31	450074	00.8549	10.51	450184	01.[illegible]	[illegible]	450293	01.0223	12.90
440178	01.2158	18.01	450076	01.5279	[illegible]	450185	01.[illegible]	[illegible]	450296	01.3636	16.97
440180	01.1388	16.13	450078	00.9573	10.69	450187	01.[illegible]	[illegible]			
440181	01.0420	12.30	450079	01.4454	19.51	450188	00.[illegible]	[illegible]			
440182	00.9107	14.69	450080	01.2509	14.43	450190	01.[illegible]	[illegible]			
440183	01.4835	15.92	450081	01.0910	12.40	450191	01.[illegible]	[illegible]			
440184	01.4116	18.01	450082	00.9795	14.21	450192	01.[illegible]	[illegible]			
440185	01.0004	17.19	450083	01.7014	16.91	450193	01.[illegible]	[illegible]			
440186	01.2176	16.57	450085	01.1188	13.44	450194	01.[illegible]	[illegible]			
440187	01.2364	16.64	450087	01.4775	20.39	450195	01.[illegible]	[illegible]			
440189	01.4621	16.08	450090	01.0830	11.92	450196	01.[illegible]	[illegible]			
440192	01.1114	14.00	450092	01.3841	12.51	450197	01.[illegible]	[illegible]			
440193	01.3107	17.42	450094	01.2963	17.42	450200	01.[illegible]	[illegible]			
440194	01.3045	17.11	450096	01.4953	16.57	450201	00.[illegible]	[illegible]			
440196	00.9325	14.68	450097	01.4142	17.99	450203	01.[illegible]	[illegible]			
440197	01.3633	19.48	450098	01.2530	13.96	450209	01.[illegible]	[illegible]			
440200	01.2078	16.84	450099	01.3057	16.51	450210	01.[illegible]	[illegible]			
440203	00.9625	11.16	450101	01.4027	14.92	450211	01.[illegible]	[illegible]			
440205	01.3058	14.19	450102	01.8383	17.29	450213	01.[illegible]	[illegible]			
440206	01.0758	13.22	450104	01.2371	13.07	450214	01.[illegible]	[illegible]			
450002	01.4667	15.71	450107	01.5465	18.16	450217	01.[illegible]	[illegible]			
450004	01.1257	12.11	450108	01.0249	12.16	450219	01.[illegible]	[illegible]			
450005	01.0888	14.37	450109	01.0396	16.18	450221	00.[illegible]	[illegible]			
450007	01.3221	13.04	450110	01.2323	14.61	450222	01.[illegible]	[illegible]			
450008	01.4126	14.15	450111	01.1519	18.57	450224	01.[illegible]	[illegible]			
450010	01.3565	14.36	450112	01.3394	12.60	450229	01.[illegible]	[illegible]			
450011	01.5245	16.73	450113	01.2322	14.59	450231	01.[illegible]	[illegible]			
450014	01.1027	13.51	450118	01.5352	15.96	450234	01.[illegible]	[illegible]			
450015	01.6277	14.58	450119	01.2993	15.78	450235	00.[illegible]	[illegible]			
450016	01.5830	18.64	450121	01.5729	18.89	450236	01.[illegible]	[illegible]			
450018	01.4655	19.82	450123	01.1646	16.60	450237	01.[illegible]	[illegible]			
450020	01.0451	14.94	450124	01.4879	18.15	450239	01.[illegible]	[illegible]			
450021	01.8448	19.58	450126	01.3564	16.49	450241	00.[illegible]	[illegible]			
450023	01.4027	15.21	450128	01.2524	13.45	450243	01.[illegible]	[illegible]			
450024	01.3953	14.47	450130	01.4844	15.56	450246	01.[illegible]	[illegible]			
450025	01.4727	15.12	450131	01.3218	17.06	450249	01.[illegible]	[illegible]			
450028	01.5388	17.21	450132	01.5336	15.46	450250	01.[illegible]	[illegible]			
450029	01.4026	11.50	450133	01.5957	17.50	450253	01.[illegible]	[illegible]			
450031	01.6426	18.78	450135	01.7230	19.83	450258	01.[illegible]	[illegible]			
450032	01.2885	13.14	450137	01.4468	21.51	450259	01.[illegible]	[illegible]			

PROVIDER	CASE MIX INDEX	AVG HOUR WAGE	PROVIDER	CASE MIX INDEX	AVG HOUR WAGE	PROVIDER	CASE MIX INDEX	AVG HOUR WAGE
450424	01.2114	16.01	450626	01.0205	13.74			
450429	01.0797	12.22	450628	00.8866	11.43			
450431	01.5587	15.81	450630	01.5830	22.91			
450438	01.1423	13.61	450631	01.7436	18.06			
450446	00.8105	13.57	450632	00.9909	10.90			
450447	01.3465	17.04	450633	01.5675	17.65			
450450	01.1298	13.64	450634	01.5774	20.13			
450451	01.0803	16.31	450637	01.3727	17.24			
450457	01.7452	16.53	450638	01.5876	21.91			
450460	01.0000	11.81	450639	01.4374	23.61			
450462	01.8368	16.04	450641	00.9511	11.53			
450464	00.9988	13.17	450643	01.2895	16.80			
450465	01.1817	11.39	450644	01.8066	21.23			
450467	00.9682	13.76	450646	01.5877	18.64			
450469	01.3504	15.87	450647	01.9856	22.35			

PROVIDER	CASE MIX INDEX	AVG HOUR WAGE	PROVIDER	CASE MIX INDEX	AVG HOUR WAGE	PROVIDER	CASE MIX INDEX	AVG HOUR WAGE
450140	01.0164	12.94	450264	00.[illegible]	[illegible]			
450142	01.4611	19.12	450269	01.[illegible]	[illegible]			
450143	01.1241	11.76	450270	01.[illegible]	[illegible]			
450144	01.1070	15.44	450271	01.[illegible]	[illegible]			
450145	00.8838	12.69	450272	01.[illegible]	[illegible]			
450147	00.9974	14.56	450276	01.[illegible]	[illegible]			
450148	01.3685	17.10	450278	00.[illegible]	[illegible]			
450149	01.2858	18.70	450280	01.[illegible]	[illegible]			
450151	01.4000	18.97	450283	01.[illegible]	[illegible]			
450152	00.9215	12.55	450286	01.[illegible]	[illegible]			
450153	01.1640	12.12	450288	01.[illegible]	[illegible]			
450154	01.3006	14.41	450289	01.[illegible]	[illegible]			
450155	01.5425	17.33	450292	01.[illegible]	[illegible]			
	01.1242	10.93	450293	01.[illegible]	[illegible]			
	01.0094	10.09	450296	01.[illegible]	[illegible]			

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1994 PAGE 15 OF 16
: HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 1996 WAGE INDEX

PROVIDER	CASE MIX INDEX	AVG HOUR WAGE
460044	01.1635	17.90
460046	00.8198	12.57
460047	01.7942	18.94
460049	01.9429	15.66
460050	01.2335	
460051	01.0494	
470001	01.1928	17.49
470003	01.9206	17.39
470004	01.0758	14.19
470005	01.2118	18.33
470006	01.2031	18.12
470008	01.2840	16.29
470010	01.1507	17.20
470011	01.1946	18.92
470012	01.2696	15.64
470013	01.1400	18.59
470015	01.1484	16.60
470018	01.1611	19.67
470020	00.9595	13.25
470023	01.2133	16.94
470024	01.1178	17.30
490001	01.0915	18.15
490002	01.1125	13.98
490003	00.6436	17.00
490004	01.1985	16.29
490005	01.5054	15.81
490006	01.1528	11.33
490007	02.0036	16.84
490009	01.7134	17.43
490010	01.1082	16.48
490011	01.3379	16.63
490012	01.1711	15.28
490013	01.1937	14.26
490014	01.4354	20.38
490015	01.4867	15.02
490017	01.3048	16.09
490018	01.2059	16.36
490019	01.2494	14.91
490020	01.1709	14.05
490021	01.3442	16.28
490022	01.2754	16.93
490023	01.2016	16.32
490024	01.6887	16.18
490027	01.1704	12.79
490028	01.3418	18.68
490030	01.2367	11.35
490031	01.1759	12.64
490032	01.7127	17.10
490033	01.1802	14.44
490035	01.0391	13.73
490037	01.1700	12.86
490038	01.1901	12.51
490040	01.3942	20.53
490041	01.2579	17.07
490042	01.3558	14.57
490043	01.2564	18.82
490044	01.3071	16.12
490045	01.1759	18.21
490046	01.0644	17.13
490048	01.4615	16.87
490050	01.3828	20.10
490052	01.5687	14.59
490053	01.2526	13.56
490054	01.0967	13.83
490057	01.4877	16.33
490059	01.5938	16.48
490060	01.0573	17.44
500005	01.7671	21.79
500007	01.3543	19.61
500008	01.8408	22.18
500009	01.3058	20.51
500011	01.3493	22.04
500012	01.5177	19.95
500014	01.4078	22.00
500015	01.3081	19.91
500016	01.3734	21.55
500019	01.2732	19.53
500021	01.5232	19.18
500023	01.2097	19.80
500024	01.6049	21.17
500025	01.8674	22.05
500026	01.4028	21.54
500027	01.5380	20.35
500028	01.1284	14.22
500029	00.9689	12.95
500030	01.3678	24.00
500031	01.2643	19.54
500033	01.2443	17.29
500036	01.2785	18.39
500037	01.1900	17.16
500039	01.3364	19.49
500041	01.2749	21.21
500042	01.3108	20.40
500043	01.1304	16.16
500044	01.8706	19.89
500045	01.1215	18.22
500048	00.9108	15.45
500049	01.4867	16.56
50005C	01.4023	19.25
500051	01.5408	21.26
500052	01.2714	
500053	01.2473	18.75
500054	01.8217	19.36
500055	01.0385	19.51
500057	01.3242	15.53
500058	01.4382	18.93
500059	01.1158	19.10
500060	01.4636	20.13
500061	01.0210	18.41
500062	01.1719	18.66
500064	01.4625	20.82
500065	01.3181	16.86
500068	00.9816	17.47
500069	01.1264	17.48
500071	01.2481	18.61
500072	01.2220	20.50
500073	01.0571	15.12
500074	01.0901	13.95
500075	01.2828	19.27
500077	01.3496	20.78
500079	01.3562	19.24
500080	00.8386	11.39
500084	01.2235	20.02
500085	01.0254	16.17
500086	01.3675	17.97
500088	01.3221	22.26
500089	01.0005	13.34
500090	00.7866	11.74
500092	01.0568	15.00
500094	00.9029	14.32
500096	00.9751	17.15
500097	01.2166	15.19
500098	00.9351	13.14
500100	00.9725	15.87
500101	00.9822	17.18
500102	01.2637	19.06
500104	00.9062	14.69
500106	01.1129	14.46
500107	01.6562	21.71
500108	01.2374	17.96
500110	01.1817	19.87
500118	01.3353	19.61
500119	01.2726	18.49
500122	01.0218	15.07
500123	01.3300	21.28
500124	01.0628	10.72
500125	01.7012	14.81
500127	01.6426	20.99
500129	00.9821	18.61
500132	01.8241	15.79
500134	01.3741	19.52
450728	00.9435	11.43
450730	01.3410	20.38
450732	01.3484	18.21
450733	01.3858	18.33
450734	01.3020	16.26
450735	00.9503	11.77
450742	01.2801	18.64
450743	01.3734	20.69
450745	00.7844	
450746	01.0222	12.27
450747	01.4080	14.03
450749	01.0407	12.03
450750	01.0229	11.13
450751	01.3204	21.85
450754	00.9021	11.72
460024	01.0300	13.10
460025	00.7912	08.72
460026	01.0400	18.73
460027	00.9649	17.34
460029	01.1330	17.92
460030	01.2005	15.88
460032	00.9586	14.10
460033	00.9831	21.04
460035	00.8910	12.40
460036	00.9189	18.92
460037	01.0284	13.35
460039	00.9759	19.47
460041	01.2195	18.67
460042	01.4770	15.69
460043	01.3741	19.52

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1994 PAGE 15 OF 16
: HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 1996 WAGE INDEX

PROVIDER	CASE MIX INDEX	AVG HOUR WAGE
500137	00.6451	17.85
500138	06.7161	.
500139	01.4523	21.47
500140	00.9789	13.96
500141	01.3357	20.95
500143	00.8369	14.99
500145	01.3495	.
500898	01.1447	.
510001	01.7062	16.64
510002	01.2609	17.53
510004	00.9418	11.47
510005	00.9054	12.40
510006	01.2418	17.07
510007	01.4222	16.92
510008	01.1011	14.78
510009	01.0075	12.02
510012	01.0481	14.30
510013	01.1922	14.68
510015	00.9499	13.86
510016	01.0204	11.19
510018	01.0859	12.75
510020	01.0870	09.36
510022	01.6985	18.80
510023	01.1025	15.21
510024	01.3549	16.56
510025	00.9569	10.06
510026	00.9267	11.40
510027	00.9835	13.01
510028	01.0609	18.75
510029	01.2907	15.75
510030	01.0605	14.71
510031	01.3074	15.41
510033	01.2395	13.81
510035	01.1566	17.54
510036	00.9331	11.78
510038	01.0455	13.86
510039	01.3538	14.77
510043	00.9748	10.23
510046	01.2074	15.20
510047	01.1464	16.50
510048	01.1001	16.65
510050	01.3081	14.18
510053	00.9808	13.43
510055	01.2651	18.38
510058	01.2272	15.23
510059	01.0529	13.61
510060	01.1121	13.44
510061	01.0234	13.23
510062	01.2041	15.84
510063	01.0520	13.39
510065	00.9969	18.80
510066	01.1024	11.29
510067	01.2247	16.60
510068	01.1336	14.26
510070	01.1941	15.70
510071	01.2598	14.58
510072	01.0958	12.86
510077	01.1419	13.20
510080	01.1731	10.11
510081	00.9783	12.88
510082	01.1298	11.32
510084	00.9907	12.23
510085	01.2452	17.51
510086	01.0849	14.08
520002	01.2744	16.70
520003	01.1019	14.95
520004	01.1986	15.96
520006	01.0298	17.00
520007	01.0708	13.40
520008	01.5036	20.21
520009	01.6709	16.69
520010	01.1345	18.74
520011	01.1802	15.82
520013	01.3452	17.39
520014	01.1754	14.92
520015	01.1940	16.10
520016	01.0320	12.10
520017	01.2185	16.17
520018	00.9714	15.12
520019	01.3208	15.81
520021	01.3289	17.87
520024	01.0292	12.06
520025	01.0788	14.84
520026	01.0600	16.62
520027	01.1484	16.20
520028	01.3475	16.60
520029	00.9455	15.32
520030	01.6734	18.99
520031	01.1716	16.00
520032	01.1513	14.19
520033	01.1839	15.92
520034	01.1919	16.24
520035	01.2437	14.95
520037	01.5847	17.92
520038	01.3736	16.35
520039	01.0054	15.55
520040	01.4625	19.00
520041	01.1993	14.44
520042	01.0491	15.99
520044	01.3545	15.83
520045	01.6512	16.87
520047	01.0328	14.12
520048	01.4311	16.96
520049	01.8168	17.11
520051	01.9224	18.64
520053	01.0469	14.95
520054	01.0492	15.66
520056	01.2885	17.61
520057	01.1550	15.81
520058	01.0294	17.40
520059	01.2808	17.27
520060	01.3394	14.70
520062	01.2441	15.60
520063	01.1933	16.74
520064	01.6911	17.56
520066	01.3689	17.75
520068	00.9069	14.65
520069	01.2176	15.89
520070	01.4630	16.29
520071	01.1126	16.28
520074	01.0971	14.80
520075	01.4735	16.74
520076	01.0967	14.67
520077	01.0475	13.87
520078	01.4881	16.04
520082	01.4060	15.87
520083	01.6390	20.44
520084	01.1027	14.50
520087	01.6062	16.54
520088	01.2835	16.79
520089	01.5248	18.22
520090	01.2304	15.59
520091	01.2712	16.49
520092	01.1001	15.89
520094	01.0719	15.88
520095	01.3501	17.75
520096	01.6442	16.65
520097	01.3453	16.82
520098	01.8189	19.03
520100	01.2383	15.22
520101	01.1154	15.24
520102	01.2247	18.37
520103	01.3087	16.55
520107	01.2733	15.90
520109	01.0088	16.79
520110	01.1093	16.26
520111	01.0740	13.12
520112	01.1239	17.91
520113	01.1921	17.45
520114	01.0981	12.56
520115	01.2916	15.40
520116	01.2587	16.86
520117	01.0571	14.29
520118	00.9485	09.62
520120	00.9820	11.97
520121	00.9344	13.81
520122	01.0110	13.21
520123	01.0555	15.20
520124	01.1527	14.50
520130	01.0899	12.36
520131	01.0240	15.72
520132	01.1829	13.60
520134	01.0940	14.40
520135	01.0039	12.70
520136	01.5218	18.05
520138	01.8488	17.66
520139	01.2030	17.83
520140	01.5529	18.24
520141	01.1515	15.56
520142	00.8177	11.71
520144	01.0184	15.72
520145	00.9590	16.59
520146	01.0826	12.88
520148	01.1479	14.99
520149	00.9606	12.29
520151	01.0805	13.81
520152	01.1487	15.57
520153	00.9143	12.42
520154	01.1217	15.66
520156	01.0948	17.35
520157	01.0076	13.06
520159	00.8910	15.84
520160	01.7720	16.98
520161	01.0518	14.34
520170	01.3118	17.27
520171	00.9709	13.38
520173	01.1994	17.49
520174	01.4562	19.90
520177	01.5277	19.26
520178	01.0616	13.83
520186	02.0515	.
530002	01.1020	16.35
530003	00.8805	12.54
530004	01.0252	12.81
530005	01.0062	11.90
530006	01.1409	16.90
530007	01.0746	11.30
530008	01.2071	16.29
530009	01.0226	15.00
530010	01.2345	16.00
530011	01.0507	15.86
530012	01.5268	15.96
530014	01.2901	14.52
530015	01.1403	16.33
530016	01.1188	11.30
530017	01.0512	15.09
530018	01.0216	13.70
530019	00.9959	12.98
530022	01.0588	15.34
530023	00.8275	16.19
530025	01.3393	17.07
530026	01.0599	13.67
530027	00.8666	08.89
530029	00.8694	13.60
530031	00.8847	10.48
530032	01.1474	16.45

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH DECEMBER 1994

BILLING CODE 4120-01-C

TABLE 4a.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS

Urban area (Constituent counties or county equivalents)	Wage index	GAF
0040 Abilene, TX	0.8347	0.8836
Taylor, TX		
0060 Aguadilla, PR	0.4753	0.6009
Aguada, PR		
Aguadilla, PR		
Moca, PR		
0080 Akron, OH	0.9596	0.9722
Portage, OH		
Summit, OH		
0120 Albany, GA	0.8624	0.9036
Dougherty, GA		
Lee, GA		
0160 Albany-Schenectady-Troy, NY	0.8796	0.9159
Albany, NY		
Montgomery, NY		
Rensselaer, NY		
Saratoga, NY		
Schenectady, NY		
Schoharie, NY		
0200 Albuquerque, NM	0.9561	0.9697
Bernalillo, NM		
Sandoval, NM		
Valencia, NM		
0220 Alexandria, LA	0.8025	0.8601
Rapides, LA		
0240 Allentown-Bethlehem-Easton, PA	1.0218	1.0149
Carbon, PA		
Lehigh, PA		
Northampton, PA		
0280 Altoona, PA	0.9024	0.9321
Blair, PA		
0320 Amarillo, TX	0.8711	0.9096
Potter, TX		
Randall, TX		
0380 Anchorage, AK	1.3398	1.2218
Anchorage, AK		
0440 Ann Arbor, MI	1.2138	1.1419
Lenawee, MI		
Livingston, MI		
Washtenaw, MI		
0450 Anniston, AL	0.8139	0.8885
Calhoun, AL		
0460 Appleton-Oshkosh-Neenah, WI	0.8561	0.9205
Calumet, WI		
Outagamie, WI		
Winnebago, WI		
0470 Arecibo, PR	0.4273	0.5586
Arecibo, PR		
Camuy, PR		
Hatillo, PR		
0480 Asheville, NC	0.9235	0.9470
Buncombe, NC		
Madison, NC		
0500 Athens, GA	0.9062	0.9362
Clarke, GA		
Madison, GA		
Oconee, GA		
0520 *Atlanta, GA	1.0130	1.0089
Barrow, GA		
Bartow, GA		
Carroll, GA		
Cherokee, GA		
Clayton, GA		
Cobb, GA		
Coweta, GA		
De Kalb, GA		
Douglas, GA		
Fayette, GA		
Forsyth, GA		
Fulton, GA		
Gwinnett, GA		
Henry, GA		
Newton, GA		
Paulding, GA		
Pickens, GA		
Rockdale, GA		
Spalding, GA		
Walton, GA		
0560 Atlantic City-Cape May, NJ	1.0852	1.0576
Atlantic City, NJ		
Cape May, NJ		
0600 Augusta-Aiken, GA-SC	0.8975	0.9286
Columbia, GA		
McDuffie, GA		
Richmond, GA		
Aiken, SC		
Edgefield, SC		
0640 Austin-San Marcos, TX	0.9049	0.9339
Bastrop, TX		
Caldwell, TX		
Hays, TX		
Travis, TX		
Williamson, TX		
0680 Bakersfield, CA	1.0521	1.0354
Kern, CA		
0720 *Baltimore, MD	0.9885	0.9921
Anne Arundel, MD		
Baltimore, MD		
Baltimore City, MD		
Carroll, MD		
Harford, MD		
Howard, MD		
Queen Annes, MD		
0733 Bangor, ME	0.9377	0.9569
Penobscot, ME		
0743 Barnstable-Yarmouth, MA	1.3482	1.2270
Barnstable, MA		
0760 Baton Rouge, LA	0.8695	0.9087
Ascension, LA		
East Baton Rouge, LA		
Livingston, LA		
West Baton Rouge, LA		
0840 Beaumont-Port Arthur, TX	0.8384	0.8863
Hardin, TX		
Jefferson, TX		
Orange, TX		
0860 Bellingham, WA	1.2705	1.1782
Whatcom, WA		
0870 Benton Harbor, MI	0.8320	0.8817
Berrien, MI		
0875 *Bergen-Passaic, NJ	1.1475	1.0988
Bergen, NJ		
Passaic, NJ		
0880 Billings, MT	0.8721	0.9105
Yellowstone, MT		
0920 Biloxi-Gulfport-Pascagoula, MS	0.8464	0.8921
Hancock, MS		
Harrison, MS		
Jackson, MS		
0960 Binghamton, NY	0.9012	0.9312
Broome, NY		
Tioga, NY		
1000 Birmingham, AL	0.8999	0.9303
Blount, AL		
Jefferson, AL		
St. Clair, AL		
Shelby, AL		
1010 Bismarck, ND	0.8314	0.8812
Burleigh, ND		
Morton, ND		
1020 Bloomington, IN	0.8445	0.8907
Monroe, IN		
1040 Bloomington-Normal, IL	0.8756	0.9130
McLean, IL		
1080 Boise City, ID	0.9091	0.9368
Ada, ID		
Canyon, ID		
1123 *Boston-Brockton-Nashua, MA-NH	1.1691	1.1129
Bristol, MA		
Essex, MA		
Middlesex, MA		
Norfolk, MA		
Plymouth, MA		
Suffolk, MA		
Worcester, MA		
Hillsborough, NH		
Merrimack, NH		
Rockingham, NH		
Strafford, NH		
1125 Boulder-Longmont, CO	0.8223	0.8746
Boulder, CO		
1145 Brazoria, TX	0.8313	0.8812
Brazoria, TX		
1150 Bremerton, WA	1.0314	1.0214
Kitsap, WA		
1240 Brownsville-Harlingen-San Benito, TX	0.8666	0.9066
Cameron, TX		
1260 Bryan-College Station, TX	0.9004	0.9307
Brazos, TX		
1280 *Buffalo-Niagara Falls, NY	0.9215	0.9456
Erie, NY		
Niagara, NY		
1303 Burlington, VT	0.9270	0.9494
Chittenden, VT		
Franklin, VT		
Grand Isle, VT		
1310 Caguas, PR	0.4716	0.5977
Caguas, PR		
Cayey, PR		
Cidra, PR		
Gurabo, PR		
San Lorenzo, PR		

TABLE 4a.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (Constituent counties or county equivalents)	Wage index	GAF
1320 Canton-Massillon, OH	0.8826	0.9180
Carroll, OH		
Stark, OH		
1350 Casper, WY	0.8466	0.8922
Natrona, WY		
1360 Cedar Rapids, IA	0.8375	0.8856
Linn, IA		
1400 Champaign-Urbana, IL	0.8883	0.9221
Champaign, IL		
1440 Charleston-North Charleston, SC	0.8947	0.9266
Berkeley, SC		
Charleston, SC		
Dorchester, SC		
1480 Charleston, WV	0.9454	0.9623
Kanawha, WV		
Putnam, WV		
1520 *Charlotte-Gastonia-Rock Hill, NC-SC	0.9664	0.9769
Cabarrus, NC		
Gaston, NC		
Lincoln, NC		
Mecklenburg, NC		
Rowan, NC		
Union, NC		
York, SC		
1540 Charlottesville, VA	0.9196	0.9442
Albemarle, VA		
Charlottesville City, VA		
Fluvanna, VA		
Greene, VA		
1560 Chattanooga, TN-GA	0.9140	0.9403
Catoosa, GA		
Dade, GA		
Walker, GA		
Hamilton, TN		
Marion, TN		
1580 Cheyenne, WY	0.7950	0.8546
Laramie, WY		
1600 *Chicago, IL	1.0653	1.0443
Cook, IL		
De Kalb, IL		
Du Page, IL		
Grundy, IL		
Kane, IL		
Kendall, IL		
Lake, IL		
McHenry, IL		
Will, IL		
1620 Chico-Paradise, CA	1.0538	1.0365
Butte, CA		
1640 *Cincinnati, OH-KY-IN	0.9474	0.9637
Dearborn, IN		
Ohio, IN		
Boone, KY		
Campbell, KY		
Gallatin, KY		
Grant, KY		
Kenton, KY		
Pendleton, KY		
Brown, OH		
Clermont, OH		
Hamilton, OH		
Warren, OH		
1660 Clarksville-Hopkinsville, TN-KY	0.7556	0.8254
Christian, KY		
Montgomery, TN		
1680 *Cleveland-Lorain-Elyria, OH	0.9847	0.9895
Ashtabula, OH		
Cuyahoga, OH		
Geauga, OH		
Lake, OH		
Lorain, OH		
Medina, OH		
1720 Colorado Springs, CO	0.9311	0.9523
El Paso, CO		
1740 Columbia, MO	0.9479	0.9640
Boone, MO		
1760 Columbia, SC	0.9050	0.9339
Lexington, SC		
Richland, SC		
1800 Columbus, GA-AL	0.7758	0.8404
Russell, AL		
Chattanoochee, GA		
Harris, GA		
Muscogee, GA		
1840 *Columbus, OH	0.9747	0.9826
Delaware, OH		
Fairfield, OH		
Franklin, OH		
Licking, OH		
Madison, OH		
Pickaway, OH		
1880 Corpus Christi, TX	0.8957	0.9273
Nueces, TX		
San Patricio, TX		
1900 Cumberland, MD-WV	0.8388	0.8866
Allegany, MD		
Mineral, WV		
1920 *Dallas, TX	0.9810	0.9669
Collin, TX		
Dallas, TX		
Denton, TX		
Ellis, TX		
Henderson, TX		
Hunt, TX		
Kaufman, TX		
Rockwall, TX		
1950 Danville, VA	0.8470	0.8925
Danville City, VA		
Pittsylvania, VA		
1960 Davenport-Rock Island-Moline, IA-IL	0.8372	0.8854
Scott, IA		
Henry, IL		
Rock Island, IL		
2000 Dayton-Springfield, OH	0.9160	0.9417
Clark, OH		
Greene, OH		
Miami, OH		
Montgomery, OH		
2020 Daytona Beach, FL	0.9013	0.9313
Flagler, FL		
Volusia, FL		
2030 Decatur, AL	0.8189	0.8721
Lawrence, AL		
Morgan, AL		
2040 Decatur, IL	0.7805	0.8439
Macon, IL		
2080 *Denver, CO	1.0414	1.0282
Adams, CO		
Arapahoe, CO		
Denver, CO		
Douglas, CO		
Jefferson, CO		
2120 Des Moines, IA	0.8794	0.9158
Dallas, IA		
Polk, IA		
Warren, IA		
2160 *Detroit, MI	1.0850	1.0575
Lapeer, MI		
Macomb, MI		
Monroe, MI		
Oakland, MI		
St. Clair, MI		
Wayne, MI		
2180 Dothan, AL	0.7700	0.8361
Dale, AL		
Houston, AL		
2190 Dover, DE	0.8977	0.9288
Kent, DE		
2200 Dubuque, IA	0.8051	0.8620
Dubuque, IA		
2240 Duluth-Superior, MN-WI	0.9678	0.9778
St. Louis, MN		
Douglas, WI		
2281 Dutchess County, NY	1.0654	1.0443
Dutchess, NY		
2290 Eau Claire, WI	0.8676	0.9073
Chippewa, WI		
Eau Claire, WI		
2320 El Paso, TX	0.8844	0.9193
El Paso, TX		
2330 Elkhart-Goshen, IN	0.8822	0.9177
Elkhart, IN		
2335 Elmira, NY	0.8476	0.8929
Chemung, NY		
2340 Enid, OK	0.8186	0.8719
Garfield, OK		
2360 Erie, PA	0.9213	0.9454
Erie, PA		
2400 Eugene-Springfield, OR	1.1206	1.0811
Lane, OR		
2440 Evansville-Henderson, IN-KY	0.8916	0.9244
Posey, IN		
Vanderburgh, IN		
Warrick, IN		
Henderson, KY		
2520 Fargo-Moorhead, ND-MN	0.8929	0.9254
Clay, MN		

TABLE 4a.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (Constituent counties or county equivalents)	Wage index	GAF
Cass, ND		
2560 Fayetteville, NC	0.8860	0.9205
Cumberland, NC		
2580 Fayetteville-Springdale-Rogers, AR	0.7100	0.7909
Benton, AR		
Washington, AR		
2640 Flint, MI	1.0667	1.0452
Genesee, MI		
2650 Florence, AL	0.7985	0.8572
Colbert, AL		
Lauderdale, AL		
2655 Florence, SC	0.8553	0.8985
Florence, SC		
2670 Fort Collins-Loveland, CO	1.0612	1.0415
Larimer, CO		
2680 *Ft Lauderdale, FL	1.0959	1.0647
Broward, FL		
2700 Fort Myers-Cape Coral, FL	0.9584	0.9783
Lee, FL		
2710 Fort Pierce-Port St Lucie, FL	1.0320	1.0218
Martin, FL		
St Lucie, FL		
2720 Fort Smith, AR-OK	0.7624	0.8305
Crawford, AR		
Sebastian, AR		
Sequoyah, OK		
2750 Fort Walton Beach, FL	0.8757	0.9131
Okaloosa, FL		
2760 Fort Wayne, IN	0.8708	0.9096
Adams, IN		
Allen, IN		
De Kalb, IN		
Huntington, IN		
Wells, IN		
Whitley, IN		
2800 *Fort Worth-Arlington, TX	0.9947	0.9964
Hood, TX		
Johnson, TX		
Parker, TX		
Tarrant, TX		
2840 Fresno, CA	1.0550	1.0373
Fresno, CA		
Madera, CA		
2880 Gadsden, AL	0.8584	0.9007
Etowah, AL		
2900 Gainesville, FL	0.9024	0.9321
Alachua, FL		
2920 Galveston-Texas City, TX	1.0269	1.0183
Galveston, TX		
2960 Gary, IN	0.9470	0.9634
Lake, IN		
Porter, IN		
2975 Glens Falls, NY	0.9294	0.9511
Warren, NY		
Washington, NY		
2980 Goldsboro, NC	0.8180	0.8715
Wayne, NC		
2985 Grand Forks, ND-MN	0.9000	0.9304
Polk, MN		
Grand Forks, ND		
3000 Grand Rapids-Muskegon-Holland, MI	1.0067	1.0046
Allegan, MI		
Kent, MI		
Muskegon, MI		
Ottawa, MI		
3040 Great Falls, MT	0.9139	0.9402
Cascade, MT		
3060 Greeley, CO	0.9164	0.9420
Weld, CO		
3080 Green Bay, WI	0.9288	0.9507
Brown, WI		
3120 *Greensboro-Winston-Salem-High Point, NC	0.9123	0.9391
Alamance, NC		
Davidson, NC		
Davie, NC		
Forsyth, NC		
Guilford, NC		
Randolph, NC		
Stokes, NC		
Yadkin, NC		
3150 Greenville, NC	0.9119	0.9388
Pitt, NC		
3160 Greenville-Spartanburg-Anderson, SC	0.8981	0.9290
Anderson, SC		
Cherokee, SC		
Greenville, SC		
Pickens, SC		
Spartanburg, SC		
3180 Hagerstown, MD	0.9091	0.9368
Washington, MD		
3200 Hamilton-Middletown, OH	0.8254	0.8776
Butler, OH		
3240 Harrisburg-Lebanon-Carlisle, PA	0.9991	0.9994
Cumberland, PA		
Dauphin, PA		
Lebanon, PA		
Perry, PA		
3283 *Hartford, CT	1.2412	1.1595
Hartford, CT		
Litchfield, CT		
Middlesex, CT		
Tolland, CT		
3285 Hattiesburg, MS	0.7253	0.8026
Forrest, MS		
Lamar, MS		
3290 Hickory-Morganton, NC	0.8002	0.8584
Alexander, NC		
Burke, NC		
Caldwell, NC		
Catawba, NC		
3320 Honolulu, HI	1.1233	1.0829
Honolulu, HI		
3350 Houma, LA	0.7613	0.8296
Lafourche, LA		
Terrebonne, LA		
3360 *Houston, TX	0.9836	0.9887
Chambers, TX		
Fort Bend, TX		
Harris, TX		
Liberty, TX		
Montgomery, TX		
Waller, TX		
3400 Huntington-Ashland, WV-KY-OH	0.9014	0.9314
Boyd, KY		
Carter, KY		
Greenup, KY		
Lawrence, OH		
Cabell, WV		
Wayne, WV		
3440 Huntsville, AL	0.8146	0.8690
Limestone, AL		
Madison, AL		
3480 *Indianapolis, IN	0.9774	0.9845
Boone, IN		
Hamilton, IN		
Hancock, IN		
Hendricks, IN		
Johnson, IN		
Madison, IN		
Marion, IN		
Morgan, IN		
Shelby, IN		
3500 Iowa City, IA	0.9387	0.9576
Johnson, IA		
3520 Jackson, MI	0.9139	0.9402
Jackson, MI		
3560 Jackson, MS	0.7652	0.8325
Hinds, MS		
Madison, MS		
Rankin, MS		
3580 Jackson, TN	0.8527	0.8966
Madison, TN		
3600 Jacksonville, FL	0.8927	0.9252
Clay, FL		
Duval, FL		
Nassau, FL		
St Johns, FL		
3605 Jacksonville, NC	0.6939	0.7786
Onslow, NC		
3610 Jamestown, NY	0.7556	0.8249
Chautauqua, NY		
3620 Janesville-Beloit, WI	0.8802	0.9163
Rock, WI		
3640 Jersey City, NJ	1.1041	1.0702
Hudson, NJ		
3660 Johnson City-Kingsport-Bristol, TN-VA	0.8785	0.9151
Carter, TN		
Hawkins, TN		
Sullivan, TN		
Unicoi, TN		
Washington, TN		
Bristol City, VA		
Scott, VA		
Washington, VA		
3680 Johnstown, PA	0.8534	0.8971
Cambria, PA		
Somerset, PA		
3710 Joplin, MO	0.7938	0.8537
Jasper, MO		
Newton, MO		
3720 Kalamazoo-Battlecreek, MI	1.0776	1.0525
Calhoun, MI		
Kalamazoo, MI		
Van Buren, MI		
3740 Kankakee, IL	0.7524	0.8230
Kankakee, IL		
3760 *Kansas City, KS-MO	0.9373	0.9566
Johnson, KS		
Leavenworth, KS		
Miami, KS		
Wyandotte, KS		
Cass, MO		
Clay, MO		
Clinton, MO		
Jackson, MO		
Lafayette, MO		
Platte, MO		
Ray, MO		
3800 Kenosha, WI	0.8888	0.9224
Kenosha, WI		
3810 Killeen-Temple, TX	1.0546	1.0371
Bell, TX		
Coryell, TX		
3840 Knoxville, TN	0.8534	0.8971
Anderson, TN		
Blount, TN		
Knox, TN		
Loudon, TN		
Sevier, TN		
Union, TN		
3850 Kokomo, IN	0.8851	0.9198
Howard, IN		
Tipton, IN		
3870 La Crosse, WI-MN	0.8603	0.9021
Houston, MN		
La Crosse, WI		
3880 Lafayette, LA	0.8515	0.8958
Acadia, LA		
Lafayette, LA		
St Landry, LA		
St Martin, LA		
3920 Lafayette, IN	0.8343	0.8833
Clinton, IN		
Tippecanoe, IN		
3960 Lake Charles, LA	0.8109	0.8663
Calcasieu, LA		
3980 Lakeland-Winter Haven, FL	0.8684	0.9079
Polk, FL		
4000 Lancaster, PA	0.9587	0.9715
Lancaster, PA		
4040 Lansing-East Lansing, MI	1.0124	1.0085
Clinton, MI		
Eaton, MI		
Ingham, MI		
4080 Laredo, TX	0.6504	0.7527
Webb, TX		
4100 Las Cruces, NM	0.8878	0.9217
Dona Ana, NM		
4120 *Las Vegas, NV-AZ	1.0964	1.0651
Mohave, AZ		
Clark, NV		
Nye, NV		
4150 Lawrence, KS	0.8565	0.8994
Douglas, KS		
4200 Lawton, OK	0.8611	0.9027
Comanche, OK		
4243 Lewiston-Auburn, ME	0.9451	0.9621
Androscoggin, ME		
4280 Lexington, KY	0.8352	0.8840
Bourbon, KY		
Clark, KY		
Fayette, KY		
Jessamine, KY		
Madison, KY		
Scott, KY		
Woodford, KY		
4320 Lima, OH	0.8575	0.9001
Allen, OH		
Auglaize, OH		
4360 Lincoln, NE	0.9097	0.9372
Lancaster, NE		
4400 Little Rock-North Little Rock, AR	0.8543	0.8978
Faulkner, AR		
Lonoke, AR		
Pulaski, AR		
Saline, AR		
4420 Longview-Marshall, TX	0.8669	0.9068
Gregg, TX		
Harrison, TX		
Upshur, TX		
4480 *Los Angeles-Long Beach, CA	1.2521	1.1664
Los Angeles, CA		
4520 Louisville, KY-IN	0.9345	0.9547
Clark, IN		
Floyd, IN		
Harrison, IN		
Scott, IN		
Bullitt, KY		
Jefferson, KY		
Oldham, KY		
4600 Lubbock, TX	0.8459	0.8917
Lubbock, TX		
4640 Lynchburg, VA	0.8065	0.8631
Amherst, VA		
Bedford City, VA		
Bedford, VA		
Campbell, VA		
Lynchburg City, VA		
4680 Macon, GA	0.9008	0.9310
Bibb, GA		
Houston, GA		
Jones, GA		
Peach, GA		
Twiggs, GA		
4720 Madison, WI	1.0074	1.0051
Dane, WI		
4800 Mansfield, OH	0.8389	0.8867
Crawford, OH		
Richland, OH		
4840 Mayaguez, PR	0.4654	0.5923
Anasco, PR		
Cabo Rojo, PR		
Hormigueros, PR		
Mayaguez, PR		
Sabana Grande, PR		
San German, PR		
4880 McAllen-Edinburg-Mission, TX	0.8685	0.9080
Hidalgo, TX		
4890 Medford-Ashland, OR	1.0181	1.0124
Jackson, OR		
4900 Melbourne-Titusville-Palm Bay, FL	0.9408	0.9591
Brevard, FI		
4920 *Memphis, TN-AR-MS	0.8411	0.8883
Crittenden, AR		
De Soto, MS		
Fayette, TN		
Shelby, TN		
Tipton, TN		
4940 Merced, CA	1.0898	1.0607
Merced, CA		
5000 *Miami, FL	0.9530	0.9676
Dade, FL		
5015 *Middlesex-Somerset-Hunterdon, NJ	1.0549	1.0373
Hunterdon, NJ		
Middlesex, NJ		
Somerset, NJ		
5080 *Milwaukee-Waukesha, WI	0.9516	0.9666
Milwaukee, WI		
Ozaukee, WI		
Washington, WI		
Waukesha, WI		
5120 *Minneapolis-St. Paul, MN-WI	1.0726	1.0492
Anoka, MN		
Carver, MN		
Chisago, MN		
Dakota, MN		
Hennepin, MN		
Isanti, MN		
Ramsey, MN		
Scott, MN		
Sherburne, MN		
Washington, MN		
Wright, MN		
Pierce, WI		
St. Croix, WI		
5160 Mobile, AL	0.7720	0.8376
Baldwin, AL		
Mobile, AL		
5170 Modesto, CA	1.0575	1.0390
Stanislaus, CA		
5190 *Monmouth-Ocean, NJ	1.0515	1.0350
Monmouth, NJ		
Ocean, NJ		
5200 Monroe, LA	0.7963	0.8556
Ouachita, LA		
5240 Montgomery, AL	0.7914	0.8520
Autauga, AL		

TABLE 4a.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

TABLE 4a.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

TABLE 4a.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

TABLE 4a.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (Constituent counties or county equivalents)	Wage index	GAF
Elmore, AL		
Montgomery, AL		
5280 Muncie, IN	0.8843	0.9192
Delaware, IN		
5330 Myrtle Beach, SC	0.7976	0.8565
Horry, SC		
5345 Naples, FL	0.9890	0.9925
Collier, FL		
5360 *Nashville, TN	0.9273	0.9496
Cheatham, TN		
Davidson, TN		
Dickson, TN		
Robertson, TN		
Rutherford TN		
Sumner, TN		
Williamson, TN		
Wilson, TN		
5380 *Nassau-Suffolk, NY	1.2680	1.1766
Nassau, NY		
Suffolk, NY		
5483 *New Haven-Bridgeport-Stamford-Danbury-Waterbury, CT	1.2585	1.1705
Fairfield, CT		
New Haven, CT		
5523 New London-Norwich, CT	1.2111	1.1401
New London, CT		
5560 *New Orleans, LA	0.9419	0.9598
Jefferson, LA		
Orleans, LA		
Plaquemines, LA		
St. Bernard, LA		
St. Charles, LA		
St. James, LA		
St. John The Baptist, LA		
St. Tammany, LA		
5600 *New York, NY	1.3845	1.2496
Bronx, NY		
Kings, NY		
New York, NY		
Putnam, NY		
Queens, NY		
Richmond, NY		
Rockland, NY		
Westchester, NY		
5640 *Newark, NJ	1.1185	1.0797
Essex, NJ		
Morris, NJ		
Sussex, NJ		
Union, NJ		
Warren, NJ		
5660 Newburgh, NY-PA	1.0529	1.0359
Orange, NY		
Pike, PA		
5720 *Norfolk-Virginia Beach-Newport News, VA-NC	0.8448	0.8909
Currituck, NC		
Chesapeake City, VA		
Gloucester, VA		

TABLE 4a.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (Constituent counties or county equivalents)	Wage index	GAF
Hampton City, VA		
Isle of Wight, VA		
James City, VA		
Mathews, VA		
Newport News City, VA		
Norfolk City, VA		
Poquoson City, VA		
Portsmouth City, VA		
Suffolk City, VA		
Virginia Beach City VA		
Williamsburg City, VA		
York, VA		
5775 *Oakland, CA	1.5219	1.3332
Alameda, CA		
Contra Costa, CA		
5790 Ocala, FL	0.8960	0.9276
Marion, FL		
5800 Odessa-Midland, TX	0.8769	0.9140
Ector, TX		
Midland, TX		
5880 *Oklahoma City, OK	0.8343	0.8833
Canadian, OK		
Cleveland, OK		
Logan, OK		
McClain, OK		
Oklahoma, OK		
Pottawatomie, OK		
5910 Olympia, WA	1.1130	1.0761
Thurston, WA		
5920 Omaha, NE-IA	0.9812	0.9871
Pottawattamie, IA		
Cass, NE		
Douglas, NE		
Sarpy, NE		
Washington, NE		
5945 *Orange County, CA	1.4733	1.3039
Orange, CA		
5960 *Orlando, FL	0.9356	0.9554
Lake, FL		
Orange, FL		
Osceola, FL		
Seminole, FL		
5990 Owensboro, KY	0.7512	0.8221
Davies, KY		
6015 Panama City, FL	0.8147	0.8691
Bay, FL		
6020 Parkersburg-Marietta, WV-OH	0.7766	0.8410
Washington, OH		
Wood, WV		
6080 Pensacola, FL	0.8228	0.8750
Escambia, FL		
Santa Rosa, FL		
6120 Peoria-Pekin, IL	0.8635	0.9044
Peoria, IL		
Tazewell, IL		
Woodford, IL		
6160 *Philadelphia, PA-NJ	1.1103	1.0743
Burlington, NJ		
Camden, NJ		
Gloucester, NJ		

TABLE 4a.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (Constituent counties or county equivalents)	Wage index	GAF
Salem, NJ		
Bucks, PA		
Chester, PA		
Delaware, PA		
Montgomery, PA		
Philadelphia, PA		
6200 *Phoenix-Mesa, AZ	0.9799	0.9862
Maricopa, AZ		
Pinal, AZ		
6240 Pine Bluff, AR	0.7842	0.8466
Jefferson, AR		
6280 *Pittsburgh, PA	0.9761	0.9835
Allegheny, PA		
Beaver, PA		
Butler, PA		
Fayette, PA		
Washington, PA		
Westmoreland, PA		
6323 Pittsfield, MA	1.0859	1.0581
Berkshire, MA		
6360 Ponce, PR	0.4756	0.6011
Guayanilla, PR		
Juana Diaz, PR		
Penuelas, PR		
Ponce, PR		
Villalba, PR		
Yauco, PR		
6403 Portland, ME	0.9763	0.9837
Cumberland, ME		
Sagadahoc, ME		
York, ME		
6440 *Portland-Vancouver, OR-WA	1.1272	1.0855
Clackamas, OR		
Columbia, OR		
Multnomah, OR		
Washington, OR		
Yamhill, OR		
Clark, WA		
6483 *Providence-Warwick, RI	1.1048	1.0706
Bristol, RI		
Kent, RI		
Newport, RI		
Providence, RI		
Washington, RI		
6520 Provo-Orem, UT	0.9886	0.9922
Utah, UT		
6560 Pueblo, CO	0.8524	0.8964
Pueblo, CO		
6580 Punta Gorda, FL	0.8764	0.9136
Charlotte, FL		
6600 Racine, WI	0.8424	0.8892
Racine, WI		
6640 Raleigh-Durham-Chapel Hill, NC	0.9558	0.9695
Chatham, NC		
Durham, NC		
Franklin, NC		
Johnston, NC		
Orange, NC		
Wake, NC		
6660 Rapid City, SD	0.8283	0.8790
Pennington, SD		
6680 Reading, PA	0.9588	0.9716
Berks, PA		

TABLE 4a.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (Constituent counties or county equivalents)	Wage index	GAF
6690 Redding, CA	1.1725	1.1151
Shasta, CA		
6720 Reno, NV	1.1108	1.0746
Washoe, NV		
6740 Richland-Kennewick-Pasco, WA	1.0028	1.0019
Benton, WA		
Franklin, WA		
6760 Richmond-Petersburg, VA	0.8852	0.9199
Charles City County, VA		
Chesterfield, VA		
Colonial Heights City, VA		
Dinwiddie, VA		
Goochland, VA		
Hanover, VA		
Henrico, VA		
Hopewell City, VA		
New Kent, VA		
Petersburg City, VA		
Powhatan, VA		
Prince George, VA		
Richmond City, VA		
6780 *Riverside-San Bernardino, CA	1.1588	1.1062
Riverside, CA		
San Bernardino, CA		
6800 Roanoke, VA	0.8586	0.9009
Botetourt, VA		
Roanoke, VA		
Roanoke City, VA		
Salem City, VA		
6820 Rochester, MN	1.0565	1.0384
Olmsted, MN		
6840 *Rochester, NY	0.9602	0.9726
Genesee, NY		
Livingston, NY		
Monroe, NY		
Ontario, NY		
Orleans, NY		
Wayne, NY		
6880 Rockford, IL	0.8889	0.9225
Boone, IL		
Ogle, IL		
Winnebago, IL		
6895 Rocky Mount, NC	0.8852	0.9199
Edgecombe, NC		
Nash, NC		
6920 *Sacramento, CA	1.2581	1.1703
El Dorado, CA		
Placer, CA		
Sacramento, CA		
6960 Saginaw-Bay City-Midland, MI	0.9507	0.9660
Bay, MI		
Midland, MI		
Saginaw, MI		
6980 St Cloud, MN	0.9567	0.9701
Benton, MN		
Stearns, MN		
7000 St Joseph, MO	0.8473	0.8927
Andrews, MO		
Buchanan, MO		

TABLE 4a.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (Constituent counties or county equivalents)	Wage index	GAF
7040 *St Louis, MO-IL	0.8889	0.9225
Clinton, IL		
Jersey, IL		
Madison, IL		
Monroe, IL		
St Clair, IL		
Franklin, MO		
Jefferson, MO		
Lincoln, MO		
St Charles, MO		
St Louis, MO		
St Louis City, MO		
Warren, MO		
7080 Salem, OR	0.9593	0.9719
Marion, OR		
Polk, OR		
7120 Salinas, CA	1.4290	1.2769
Monterey, CA		
7160 *Salt Lake City-Ogden, UT	0.9643	0.9754
Davis, UT		
Salt Lake, UT		
Weber, UT		
7200 San Angelo, TX	0.7792	0.8429
Tom Green, TX		
7240 *San Antonio, TX	0.8404	0.8877
Bexar, TX		
Comal, TX		
Guadalupe, TX		
Wilson, TX		
7320 *San Diego, CA	1.1917	1.1276
San Diego, CA		
7360 *San Francisco, CA	1.4332	1.2795
Marin, CA		
San Francisco, CA		
San Mateo, CA		
7400 *San Jose, CA	1.4352	1.2807
Santa Clara, CA		
7440 *San Juan-Bayamon, PR	0.4481	0.5771
Aguas Buenas, PR		
Barceloneta, PR		
Bayamon, PR		
Canovanas, PR		
Carolina, PR		
Catano, PR		
Ceiba, PR		
Comerio, PR		
Corozal, PR		
Dorado, PR		
Fajardo, PR		
Florida, PR		
Guaynabo, PR		
Humacao, PR		
Juncos, PR		
Los Piedras, PR		
Loiza, PR		
Luguillo, PR		
Manati, PR		
Naranjito, PR		
Rio Grande, PR		
San Juan, PR		
Toa Alta, PR		
Toa Baja, PR		
Trujillo Alto, PR		
Vega Alta, PR		

TABLE 4a.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (Constituent counties or county equivalents)	Wage index	GAF
Vega Baja, PR		
Yabucoa, PR		
7460 San Luis Obispo-Atascadero-Paso Robles, CA	1.1427	1.0957
San Luis Obispo, CA		
7480 Santa Barbara-Santa Maria-Lompoc, CA	1.1114	1.0750
Santa Barbara, CA		
7485 Santa Cruz-Watsonville, CA	1.0175	1.0120
Santa Cruz, CA		
7490 Santa Fe, NM	1.1129	1.0760
Los Alamos, NM		
Santa Fe, NM		
7500 Santa Rosa, CA	1.2758	1.1815
Sonoma, CA		
7510 Sarasota-Bradenton, FL	0.9871	0.9911
Manatee, FL		
Sarasota, FL		
7520 Savannah, GA	0.8888	0.9224
Bryan, GA		
Chatham, GA		
Effingham, GA		
7560 Scranton–Wilkes-Barre–Hazleton, PA	0.8740	0.9119
Columbia, PA		
Lackawanna, PA		
Luzerne, PA		
Wyoming, PA		
7600 *Seattle-Bellevue-Everett, WA	1.1229	1.0826
Island, WA		
King, WA		
Snohomish, WA		
7610 Sharon, PA	0.9110	0.9382
Mercer, PA		
7620 Sheboygan, WI	0.7996	0.8590
Sheboygan, WI		
7640 Sherman-Denison, TX	0.8795	0.9158
Grayson, TX		
7680 Shreveport-Bossier City, LA	0.9023	0.9320
Bossier, LA		
Caddo, LA		
Webster, LA		
7720 Sioux City, IA-NE	0.8398	0.8873
Woodbury, IA		
Dakota, NE		
7760 Sioux Falls, SD	0.8778	0.9146
Lincoln, SD		
Minnehaha, SD		
7800 South Bend, IN	0.9429	0.9605
St Joseph, IN		
7840 Spokane, WA	1.0401	1.0273
Spokane, WA		
7880 Springfield, IL	0.8957	0.9273
Menard, IL		
Sangamon, IL		
7920 Springfield, MO	0.7911	0.8517
Christian, MO		
Greene, MO		

TABLE 4a.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (Constituent counties or county equivalents)	Wage index	GAF
Webster, MO		
8003 Springfield, MA	1.0488	1.0332
Hampden, MA		
Hampshire, MA		
8050 State College, PA	1.0181	1.0124
Centre, PA		
8080 Steubenville-Weirton, OH-WV	0.8471	0.8926
Jefferson, OH		
Brooke, WV		
Hancock, WV		
8120 Stockton-Lodi, CA	1.1687	1.1127
San Joaquin, CA		
8140 Sumter, SC	0.8360	0.8846
Sumter, SC		
8160 Syracuse, NY	0.9548	0.9688
Cayuga, NY		
Madison, NY		
Onondaga, NY		
Oswego, NY		
8200 Tacoma, WA	1.0822	1.0556
Pierce, WA		
8240 Tallahassee, FL	0.8337	0.8829
Gadsden, FL		
Leon, FL		
8280 *Tampa-St Petersburg-Clearwater, FL	0.9319	0.9528
Hernando, FL		
Hillsborough, FL		
Pasco, FL		
Pinellas, FL		
8320 Terre Haute, IN	0.9688	0.9082
Clay, IN		
Vermillion, IN		
Vigo, IN		
8360 Texarkana, AR-Texarkana, TX	0.8272	0.8782
Miller, AR		
Bowie, TX		
8400 Toledo, OH	1.0349	1.0238
Fulton, OH		
Lucas, OH		
Wood, OH		
8440 Topeka, KS	0.9607	0.9729
Shawnee, KS		
8480 Trenton, NJ	1.0176	1.0120
Mercer, NJ		
8520 Tucson, AZ	0.9292	0.9510
Pima, AZ		
8560 Tulsa, OK	0.8274	0.8783
Creek, OK		
Osage, OK		
Rogers, OK		
Tulsa, OK		
Wagoner, OK		
8600 Tuscaloosa, AL	0.7937	0.8537
Tuscaloosa, AL		
8640 Tyler, TX	0.9448	0.9619
Smith, TX		
8680 Utica-Rome, NY	0.8530	0.8968
Herkimer, NY		
Oneida, NY		
8720 Vallejo-Fairfield-Napa, CA	1.3341	1.2182
Napa, CA		
Solano, CA		
8735 Ventura, CA	1.2760	1.1816
Ventura, CA		
8750 Victoria, TX	0.8451	0.8911
Victoria, TX		
8760 Vineland-Millville-Bridgeton, NJ	0.9985	0.9990
Cumberland, NJ		
8780 Visalia-Tulare-Porterville, CA	1.0525	1.0357
Tulare, CA		
8800 Waco, TX	0.7913	0.8519
McLennan, TX		
8840 *Washington, DC-MD-VA-WV	1.1088	1.0733
District of Columbia, DC		
Calvert, MD		
Charles, MD		
Frederick, MD		
Montgomery, MD		
Prince Georges, MD		
Alexandria City, VA		
Arlington, VA		
Clarke, VA		
Culpepper, VA		
Fairfax, VA		
Fairfax City, VA		
Falls Church City, VA		
Fauquier, VA		
Fredericksburg City, VA		
King George, VA		
Loudoun, VA		
Manassas City, VA		
Manassas Park City, VA		
Prince William, VA		
Spotsylvania, VA		
Stafford, VA		
Warren, VA		
Berkeley, WV		
Jefferson, WV		
8920 Waterloo-Cedar Falls, IA	0.8855	0.9058
Black Hawk, IA		
8940 Wausau, WI	1.0053	1.0036
Marathon, WI		
8960 West Palm Beach-Boca Raton, FL	1.0175	1.0120
Palm Beach, FL		
9000 Wheeling, OH-WV	0.7554	0.8252
Belmont, OH		
Marshall, WV		
Ohio, WV		
9040 Wichita, KS	0.9580	0.9710
Butler, KS		
Harvey, KS		
Sedgwick, KS		
9080 Wichita Falls, TX	0.7772	0.8415
Archer, TX		
Wichita, TX		
9140 Williamsport, PA	0.8524	0.8964
Lycoming, PA		
9160 Wilmington-Newark, DE-MD	0.9598	0.9723
New Castle, DE		
Cecil, MD		
9200 Wilmington, NC	0.9317	0.9527
New Hanover, NC		
Brunswick, NC		
9260 Yakima, WA	0.9894	0.9927
Yakima, WA		
9270 Yolo, CA	1.1640	1.1096
Yolo, CA		
9280 York, PA	0.9182	0.9432
York, PA		
9320 Youngstown-Warren, OH	0.9509	0.9724
Columbiana, OH		
Mahoning, OH		
Trumbull, OH		
9340 Yuba City, CA	1.0631	1.0428
Sutter, CA		
Yuba, CA		
9360 Yuma, AZ	0.9787	0.9854
Yuma, AZ		

TABLE 4b.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR RURAL AREAS

Nonurban area	Wage index	GAF
Alabama	0.7172	0.7964
Alaska	1.2064	1.1371
Arizona	0.8156	0.8697
Arkansas	0.6915	0.7768
California	1.0175	1.0120
Colorado	0.8223	0.8746
Connecticut	1.3142	1.2058
Delaware	0.8986	0.9294
Florida	0.8684	0.9079
Georgia	0.7670	0.8339
Hawaii	0.9865	0.9908
Idaho	0.8424	0.8892
Illinois	0.7524	0.8230
Indiana	0.8047	0.8617
Iowa	0.7353	0.8101
Kansas	0.7249	0.8023
Kentucky	0.7678	0.8345
Louisiana	0.7284	0.8049
Maine	0.8441	0.8904
Maryland	0.8479	0.8932
Massachusetts	1.0597	1.0405
Michigan	0.8776	0.9145
Minnesota	0.8143	0.8688
Mississippi	0.6710	0.7609
Missouri	0.7217	0.7998
Montana	0.8088	0.8647
Nebraska	0.7226	0.8005
Nevada	0.8805	0.9165
New Hampshire	1.0032	1.0022
New Jersey[1]		
New Mexico	0.8347	0.8836
New York	0.8624	0.9036
North Carolina	0.8002	0.8584
North Dakota	0.7305	0.8065

TABLE 4b.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR RURAL AREAS—Continued

Nonurban area	Wage index	GAF
Ohio	0.8264	0.8776
Oklahoma	0.7005	0.7837
Oregon	0.9509	0.9661
Pennsylvania	0.8534	0.8971
Puerto Rico	0.3888	0.5237
Rhode Island[1]		
South Carolina	0.7746	0.8395
South Dakota	0.6952	0.7796
Tennessee	0.7433	0.8162
Texas	0.7269	0.8038
Utah	0.8698	0.9089
Vermont	0.9132	0.9397
Virginia	0.7813	0.8445
Washington	0.9791	0.9856
West Virginia	0.8073	0.8636
Wisconsin	0.8424	0.8892
Wyoming	0.7933	0.8534

[1] All counties within the State are classified urban.

TABLE 4c.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR HOSPITALS THAT ARE RECLASSIFIED

Area reclassified to	Wage index	GAF
Abilene, TX	0.8347	0.8836
Albuquerque, NM	0.9561	0.9697
Alexandria, LA	0.8025	0.8601
Allentown-Bethlehem-Easton, PA	1.0218	1.0149
Amarillo, TX	0.8711	0.9098
Anchorage, AK	1.3398	1.2218
Ann Arbor, MI	1.2014	1.1339
Asheville, NC	0.9235	0.9470
Atlanta, GA	1.0130	1.0089
Augusta-Aiken, GA-SC	0.8975	0.9286
Baton Rouge, LA	0.8695	0.9087
Benton Harbor, MI	0.8320	0.8817
Benton Harbor, MI (Rural Michigan Hosp.)	0.8776	0.9145
Bergen-Passaic, NJ	1.1361	1.0913
Biloxi-Gulfport-Pascagoula, MS	0.8464	0.8921
Birmingham, AL	0.8999	0.9303
Bismarck, ND	0.8188	0.8721
Boise City, ID	0.9091	0.9368
Boston-Brockton-Nashua, MA-NH	1.1691	1.1129
Brazoria, TX	0.7556	0.8254
Casper, WY	0.8466	0.8922
Champaign-Urbana, IL	0.8580	0.9076
Charleston-North Charleston, SC	0.8947	0.9266
Charleston, WV	0.9276	0.9498
Charlotte-Gastonia-Rock Hill, NC-SC	0.9564	0.9769
Charlottesville, VA	0.9041	0.9333
Chattanooga, TN-GA	0.8956	0.9280
Chicago, IL	1.0534	1.0363
Cincinnati, OH-KY-IN	0.9474	0.9637
Cleveland-Lorain-Elyria, OH	0.9847	0.9895
Columbia, MO	0.9167	0.9422
Columbus, GA-AL	0.7758	0.8404
Columbus, OH	0.9747	0.9825
Dallas, TX	0.9810	0.9889
Davenport-Rock Island-Moline, IA-IL	0.8372	0.8854
Dayton-Springfield, OH	0.9160	0.9417
Denver, CO	1.0414	1.0282
Des Moines, IA	0.8685	0.9082
Detroit, MI	1.0850	1.0575
Duluth-Superior, MN-WI	0.9678	0.9778
Dutchess County, NY	1.0468	1.0318
Eau Claire, WI	0.8676	0.9073
Elkhart-Goshen, IN	0.8822	0.9177
Eugene-Springfield, OR	1.1206	1.0811
Fargo-Moorhead, ND-MN	0.8781	0.9148
Fayetteville, NC	0.8518	0.8960
Flint, MI	1.0667	1.0452
Florence, AL	0.7985	0.8572
Florence, SC	0.8553	0.8985
Fort Lauderdale, FL	1.0959	1.0647
Fort Pierce-Port St Lucie, FL	1.0021	1.0014
Fort Smith, AR-OK	0.7624	0.8305
Fort Walton Beach, FL	0.8656	0.9059
Fort Worth-Arlington, TX	0.9947	0.9964
Gadsden, AL	0.8584	0.9007
Grand Forks, ND-MN	0.9000	0.9304
Great Falls, MT	0.9139	0.9402
Greeley, CO	0.9010	0.9311
Green Bay, WI	0.9288	0.9507
Greenville-Spartanburg-Anderson, SC	0.8848	0.9196
Harrisburg-Lebanon-Carlisle, PA	0.9991	0.9994
Hartford, CT	1.2218	1.1470
Honolulu, HI	1.1233	1.0829
Houston, TX	0.9836	0.9887
Huntington-Ashland, WV-KY-OH	0.9014	0.9314
Huntsville, AL	0.7975	0.8565
Indianapolis, IN	0.9659	0.9765
Jackson, MS	0.7652	0.8325
Jacksonville, FL	0.8927	0.9252
Johnson City-Kingsport-Bristol, TN-VA	0.8785	0.9151
Joplin, MO	0.7938	0.8537
Kalamazoo-Battlecreek, MI	1.0557	1.0378
Kansas City, KS-MO	0.9373	0.9566
Knoxville, TN	0.8534	0.8971
Lafayette, LA	0.8515	0.8958
Lansing-East Lansing, MI	1.0124	1.0085
Las Vegas, NV-AZ	1.0964	1.0651
Lexington, KY	0.8352	0.8840
Lima, OH	0.8575	0.9001
Lincoln, NE	0.8892	0.9227
Little Rock-North Little Rock, AR	0.8543	0.8978
Longview-Marshall, TX	0.8495	0.8943
Los Angeles-Long Beach, CA	1.2521	1.1664
Louisville, KY-IN	0.9345	0.9547
Lubbock, TX	0.8459	0.8917
Madison, WI	1.0074	1.0051
Mansfield, OH	0.8389	0.8867
Medford-Ashland, OR	1.0181	1.0124
Memphis, TN-AR-MS	0.8307	0.8807
Middlesex-Somerset-Hunterdon, NJ	1.0405	1.0276
Milwaukee-Waukesha, WI	0.9516	0.9665
Minneapolis-St Paul, MN-WI	1.0726	1.0492
Modesto, CA	1.0575	1.0390
Monroe, LA	0.7963	0.8556
Montgomery, AL	0.7914	0.8520
Nashville, TN	0.9273	0.9496
New London-Norwich, CT	1.2111	1.1401
New Orleans, LA	0.9419	0.9598
New York, NY	1.3845	1.2496
Newark, NJ	1.1185	1.0797
Newburgh, NY-PA	1.0529	1.0359
Oakland, CA	1.5219	1.3332
Odessa-Midland, TX	0.8769	0.9140
Oklahoma City, OK	0.8343	0.8833
Omaha, NE-IA	0.9812	0.9871
Orange County, CA	1.4733	1.3039
Peoria-Pekin, IL	0.8635	0.9044
Philadelphia, PA-NJ	1.1103	1.0743
Pittsburgh, PA	0.9661	0.9767
Portland, ME	0.9763	0.9837
Portland-Vancouver, OR-WA	1.1272	1.0855
Provo-Orem, UT	0.9714	0.9803
Raleigh-Durham-Chapel Hill, NC	0.9558	0.9695
Rapid City, SD	0.8283	0.8790
Richland-Kennewick-Pasco, WA	0.9854	0.9900
Roanoke, VA	0.8586	0.9009
Rochester, MN	1.0565	1.0384
Rockford, IL	0.8869	0.9225
Rocky Mount, NC	0.8852	0.9199
Sacramento, CA	1.2581	1.1703
Saginaw-Bay City-Midland, MI	0.9507	0.9660
St Cloud, MN	0.9567	0.9701
St Louis, MO-IL	0.8889	0.9225
Salem, OR	0.9593	0.9719
Salinas, CA	1.4168	1.2695
Salt Lake City-Ogden, UT	0.9643	0.9754
San Diego, CA	1.1917	1.1276
San Francisco, CA	1.4332	1.2795
San Jose, CA	1.4352	1.2807
Santa Rosa, CA	1.2635	1.1737
Sarasota-Bradenton, FL	0.9871	0.9911
Savannah, GA	0.8888	0.9224
Seattle-Bellevue-Everett, WA	1.1229	1.0826
Sharon, PA	0.9110	0.9382
Sherman-Denison, TX	0.8604	0.9022
Sioux Falls, SD	0.8778	0.9146
South Bend, IN	0.9429	0.9605
Springfield, IL	0.8852	0.9199
Springfield, MO	0.7911	0.8517
Stockton, CA	1.1687	1.1127
Syracuse, NY	0.9548	0.9688
Tampa-St Petersburg-Clearwater, FL	0.9319	0.9528

TABLE 4c.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR HOSPITALS THAT ARE RECLASSIFIED—Continued

Area reclassified to	Wage index	GAF
Texarkana, TX-Texarkana, AR	0.8272	0.8782
Topeka, KS	0.9302	0.9517
Trenton, NJ	1.2622	1.1729
Tucson, AZ	0.9292	0.9510
Tulsa, OK	0.8274	0.8783
Tyler, TX	0.9182	0.9432
Ventura, CA	1.2760	1.1816
Victoria, TX	0.8451	0.8911
Waco, TX	0.7741	0.8392
Washington, DC-MD-VA-WV	1.1088	1.0733
Waterloo-Cedar Falls, IA	0.8655	0.9058
Wausau, WI	0.9697	0.9792
Wichita, KS	0.9328	0.9535
Rural Arkansas	0.6915	0.7768
Rural Florida	0.8684	0.9079
Rural Kentucky	0.7678	0.8345
Rural Louisiana	0.7284	0.8049
Rural Michigan	0.8776	0.9145
Rural Minnesota	0.8143	0.8688
Rural Missouri	0.7217	0.7998
Rural New Hampshire	1.0032	1.0022
Rural North Carolina	0.8002	0.8584
Rural Virginia	0.7813	0.8445
Rural West Virginia	0.8073	0.8636
Rural Wyoming	0.7933	0.8534

TABLE 4d.—AVERAGE HOURLY WAGE FOR URBAN AREAS

Urban area	Average hourly wage
Abilene, TX	15.7713
Aguadilla, PR	8.9796
Akron, OH	18.0935
Albany, GA	16.2942
Albany-Schenectady-Troy, NY	16.6194
Albuquerque, NM	18.0635
Alexandria, LA	14.9860
Allentown-Bethlehem-Easton, PA-NJ	19.3050
Altoona, PA	17.0490
Amarillo, TX	16.4576
Anchorage, AK	25.3141
Ann Arbor, MI	22.9331
Anniston, AL	15.3769
Appleton-Oshkosh-Neenah, WI	16.7413
Arecibo, PR	8.0736
Asheville, NC	17.4487
Athens, GA	17.1598
Atlanta, GA	19.1400
Atlantic City-Cape May, NJ	20.5031
Augusta-Aiken, GA-SC	16.9581
Austin-San Marcos, TX	17.0978
Bakersfield, CA	19.8791
Baltimore, MD	18.6758
Bangor, ME	17.7164
Barnstable-Yarmouth, MA	25.4728
Baton Rouge, LA	16.4273
Beaumont-Port Arthur, TX	15.8400
Bellingham, WA	24.0042
Benton Harbor, MI	15.6323
Bergen-Passaic, NJ	22.0724
Billings, MT	16.4779
Biloxi-Gulfport-Pascagoula, MS	15.9912
Binghamton, NY	17.0278
Birmingham, AL	17.0034
Bismarck, ND	15.7090
Bloomington, IN	15.9556
Bloomington-Normal, IL	16.5439
Boise City, ID	16.9658
Boston-Brockton-Nashua, MA-NH	22.0851
Boulder-Longmont, CO	18.5131
Brazoria, TX	16.2335
Bremerton, WA	19.4876
Brownsville-Harlingen-San Benito, TX	16.3732
Bryan-College Station, TX	17.0117
Buffalo-Niagara Falls, NY	17.4103
Burlington, VT	17.5139
Caguas, PR	8.9106
Canton-Massillon, OH	16.6748
Casper, WY	15.9558
Cedar Rapids, IA	15.8233
Champaign-Urbana, IL	16.7843
Charleston-North Charleston, SC	16.9003
Charleston, WV	17.8630
Charlotte-Gastonia-Rock Hill, NC-SC	18.2595
Charlottesville, VA	17.3750
Chattanooga, TN-GA	17.2687
Cheyenne, WY	15.0213
Chicago, IL	20.1273
Chico-Paradise, CA	19.9101
Cincinnati, OH-KY-IN	17.8346
Clarksville-Hopkinsville, TN-KY	14.2763
Cleveland-Lorain-Elyria, OH	18.6053
Colorado Springs, CO	17.5930
Columbia, MO	17.9090
Columbia, SC	17.0995
Columbus, GA-AL	14.6584
Columbus, OH	18.4158
Corpus Christi, TX	16.9241
Cumberland, MD-WV	15.8483
Dallas, TX	18.5344
Danville, VA	16.0030
Davenport-Moline-Rock Island, IA-IL	15.8183
Dayton-Springfield, OH	17.8047
Daytona Beach, FL	17.0281
Decatur, AL	15.4729
Decatur, IL	14.7466
Denver, CO	19.6754
Des Moines, IA	16.6145
Detroit, MI	20.4702
Dothan, AL	14.5485
Dover, DE	16.9613
Dubuque, IA	15.2109
Duluth-Superior, MN-WI	18.2853
Dutchess County, NY	20.1296
Eau Claire, WI	16.3926
El Paso, TX	16.7092
Elkhart-Goshen, IN	16.5895
Elmira, NY	16.0141
Enid, OK	15.4658
Erie, PA	17.4068
Eugene-Springfield, OR	21.0833
Evansville, Henderson, IN-KY	16.8454
Fargo-Moorhead, ND-MN	16.8702
Fayetteville, NC	16.7399
Fayetteville-Springdale-Rogers, AR	13.4138
Flint, MI	20.1573
Florence, AL	14.5759
Florence, SC	16.1316
Fort Collins-Loveland, CO	20.0496
Fort Lauderdale, FL	19.8995
Fort Myers-Cape Coral, FL	18.2971
Fort Pierce-Fort St. Lucie, FL	19.4990
Fort Smith, AR-OK	14.3665
Fort Walton Beach, FL	16.5450
Fort Wayne, IN	16.4522
Fort Worth-Arlington, TX	18.7773
Fresno, CA	19.9329
Gadsden, AL	16.2189
Gainesville, FL	17.0500
Galveston-Texas City, TX	19.4029
Gary, IN	18.0636
Glens Falls, NY	17.5596
Goldsboro, NC	15.4556
Grand Forks, ND-MN	16.9349
Grand Rapids-Muskegon-Holland, MI	19.0210
Great Falls, MT	17.1426
Greeley, CO	17.3139
Green Bay, WI	16.8657
Greensboro-Winston-Salem-High Point, NC	17.2367
Greenville, NC	17.2294
Greenville-Spartanburg-Anderson, SC	16.9679
Hagerstown, MD	17.1762
Hamilton-Middletown, OH	16.6240
Harrisburg-Lebanon-Carlisle, PA	16.0766
Hartford, CT	23.4517
Hattiesburg, MS	13.7034
Hickory-Morganton, NC	16.4126
Honolulu, HI	21.2237
Houma, LA	14.3835
Houston, TX	18.5845
Huntington-Ashland, WV-KY-OH	17.0304
Huntsville, AL	15.3910
Indianapolis, IN	18.4664
Iowa City, IA	17.7359
Jackson, MI	17.2666
Jackson, MS	14.2689
Jackson, TN	16.1114
Jacksonville, FL	16.8656
Jacksonville, NC	13.1113
Jamestown, NY	14.2640
Janesville-Beloit, WI	16.6310
Jersey City, NJ	20.8846
Johnson City-Kingsport-Bristol, TN-VA	16.5552
Johnstown, PA	16.4137
Joplin, MO	14.9986
Kalamazoo-Battle Creek, MI	20.3592
Kankakee, IL	17.2516
Kansas City, KS-MO	17.7093
Kenosha, WI	16.7936
Killeen-Temple, TX	15.9249
Knoxville, TN	16.1236
Kokomo, IN	16.7227
LaCrosse, WI-MN	16.2552
Lafayette, LA	15.9836
Lafayette, IN	15.7641
Lake Charles, LA	15.3218
Lakeland-Winter Haven, FL	16.8079
Lancaster, PA	18.1140
Lansing-East Lansing, MI	19.1281
Laredo, TX	12.4773
Las Cruces, NM	16.7732
Las Vegas, NV-AZ	20.7139
Lawrence, KS	16.1829
Lawton, OK	16.2688
Lewiston-Auburn, ME	17.8565
Lexington, KY	15.7793
Lima, OH	16.2023
Lincoln, NE	17.1871
Little Rock-North Little Rock, AR	16.1414
Longview-Marshall, TX	16.5201
Los Angeles-Long Beach, CA	23.7140
Louisville, KY-IN	17.6561
Lubbock, TX	15.9821
Lynchburg, VA	15.2374
Macon, GA	17.0204
Madison, WI	19.0333
Mansfield, OH	15.8496
Mayaguez, PR	8.7937
McAllen-Edinburg-Mission, TX	16.4091
Medford-Ashland, OR	18.8231
Melbourne-Titusville-Palm Bay, FL	17.7745
Memphis, TN-AR-MS	15.8921
Merced, CA	20.5898
Miami, FL	19.1521
Middlesex-Somerset-Hunterdon, NJ	20.2661
Milwaukee-Waukesha, WI	17.9785
Minneapolis-St. Paul, MN-WI	20.2652
Mobile, AL	14.7679
Modesto, CA	20.9677
Monmouth-Ocean, NJ	19.8663
Monroe, LA	14.9551
Montgomery, AL	14.9085
Muncie, IN	16.7085
Myrtle Beach, SC	15.0700
Naples, FL	18.6860
Nashville, TN	17.5194
Nassau-Suffolk, NY	25.3790
New Haven-Bridgeport-Stamford-Danbury-Waterbury, CT	23.7784
New London-Norwich, CT	22.5252
New Orleans, LA	17.7954
New York, NY	26.0720
Newark, NJ	22.4086
Newburgh, NY-PA	19.8924
Norfolk-Virginia Beach-Newport News, VA-NC	15.9621
Oakland, CA	28.7549
Ocala, FL	16.9285
Odessa-Midland, TX	16.5687
Oklahoma City, OK	15.7626
Olympia, WA	21.0283
Omaha, NE-IA	18.5393
Orange County, CA	23.3465
Orlando, FL	17.6766
Owensboro, KY	14.1939
Panama City, FL	15.3923
Parkersburg-Marietta, WV-OH	14.6723
Pensacola, FL	15.5451
Peoria-Pekin, IL	16.3153
Philadelphia, PA-NJ	21.0153
Phoenix-Mesa, AZ	18.5146
Pine Bluff, AR	14.8160
Pittsburgh, PA	18.4432
Pittsfield, MA	20.5161
Ponce, PR	8.9854
Portland, ME	18.4464
Portland-Vancouver, OR-WA	21.2978
Providence-Warwick, RI	20.8739
Provo-Orem, UT	18.6788
Pueblo, CO	18.1052
Punta Gorda, FL	17.9343
Racine, WI	16.4769
Raleigh-Durham-Chapel Hill, NC	18.0595
Rapid City, SD	15.6494
Reading, PA	18.1153
Redding, CA	22.1527
Reno, NV	20.9576
Richland-Kennewick-Pasco, WA	18.9472
Richmond-Petersburg, VA	16.7248
Riverside-San Bernardino, CA	22.1620
Roanoke, VA	16.0589
Rochester, MN	19.9607
Rochester, NY	18.1428
Rockford, IL	16.7939
Rocky Mount, NC	16.5823
Sacramento, CA	23.7695
Saginaw-Bay City-Midland, MI	17.9615
St Cloud, MN	18.0754
St Joseph, MO	16.0095
St Louis, MO-IL	16.7946
Salem, OR	18.1534
Salinas, CA	26.9889
Salt Lake City-Ogden, UT	18.2195
San Angelo, TX	14.7224
San Antonio, TX	15.8781
San Diego, CA	22.4937
San Francisco, CA	27.3080
San Jose, CA	27.0561
San Juan-Bayamon, PR	8.4669
San Luis Obispo-Atascadero-Paso Robles, CA	21.5899
Santa Barbara-Santa Maria-Lompoc, CA	20.9996
Santa Cruz-Watsonville, CA	26.3954
Santa Fe, NM	21.0277
Santa Rosa, CA	24.1046
Sarasota-Bradenton, FL	18.4291
Savannah, GA	16.7920
Scranton-Wilkes Barre-Hazleton, PA	16.5137
Seattle-Bellevue-Everett, WA	21.2065
Sharon, PA	16.8537
Sheboygan, WI	15.1072
Sherman-Denison, TX	16.6168
Shreveport-Bossier City, LA	17.0487
Sioux City, IA-NE	15.8679
Sioux Falls, SD	16.5847
South Bend, IN	17.8143
Spokane, WA	19.6518
Springfield, IL	16.9223
Springfield, MO	14.9476
Springfield, MA	19.8153
State College, PA	19.2360
Steubenville-Weirton, OH-WV	16.0044
Stockton-Lodi, CA	21.8188
Sumter, SC	15.7945
Syracuse, NY	18.0407
Tacoma, WA	20.4462
Tallahassee, FL	15.7519
Tampa-St. Petersburg-Clearwater, FL	17.5134
Terre Haute, IN	16.4157
Texarkana, TX-Texarkana, AR	15.5179
Toledo, OH	19.7305
Topeka, KS	18.1518
Trenton, NJ	19.2270
Tucson, AZ	17.5524
Tulsa, OK	15.6323
Tuscaloosa, AL	14.9955
Tyler, TX	17.8508
Utica-Rome, NY	16.1173
Vallejo-Fairfield-Napa, CA	25.2072
Ventura, CA	23.3668
Victoria, TX	15.9679
Vineland-Millville-Bridgeton, NJ	18.0648
Visalia-Tulare-Porterville, CA	19.8859
Waco, TX	14.9500
Washington, DC-MD-VA-WV	20.9501
Waterloo-Cedar Falls, IA	16.2799
Wausau, WI	18.9838
West Palm Beach-Boca Raton, FL	19.2693
Wheeling, WV-OH	14.2732
Wichita, KS	18.1011
Wichita Falls, TX	14.6842
Williamsport, PA	16.1054
Wilmington-Newark, DE-MD	21.8395
Wilmington, NC	17.6028
Yakima, WA	18.6937
Yolo, CA	21.9919
York, PA	17.3484
Youngstown-Warren, OH	18.1388
Yuba City, CA	20.0855
Yuma, AZ	18.4923

TABLE 4e.—AVERAGE HOURLY WAGE FOR RURAL AREAS

Nonurban area	Average hourly wage
Alabama	13.5508
Alaska	22.7927
Arizona	15.4106
Arkansas	13.0577
California	19.2244
Colorado	15.5365
Connecticut	24.8299
Delaware	16.9772
Florida	16.4079
Georgia	14.4909
Hawaii	18.6401
Idaho	15.9158
Illinois	14.2153
Indiana	15.2039
Iowa	13.8935
Kansas	13.6955
Kentucky	14.4872
Louisiana	13.7616
Maine	15.9481
Maryland	16.0195
Massachusetts	20.0223
Michigan	16.5806
Minnesota	15.3816
Mississippi	12.6782
Missouri	13.6327
Montana	15.2814
Nebraska	13.6525
Nevada	16.6365
New Hampshire	18.9536
New Jersey [1]	.....
New Mexico	15.7706
New York	16.2939

TABLE 4e.—AVERAGE HOURLY WAGE FOR RURAL AREAS—Continued

Nonurban area	Average hourly wage
North Carolina	15.1121
North Dakota	13.8011
Ohio	15.6140
Oklahoma	13.2346
Oregon	17.9670
Pennsylvania	16.1247
Puerto Rico	7.3467
Rhode Island[1]	.....

TABLE 4e.—AVERAGE HOURLY WAGE FOR RURAL AREAS—Continued

Nonurban area	Average hourly wage
South Carolina	14.6343
South Dakota	13.1352
Tennessee	14.0446
Texas	13.7338
Utah	16.4331
Vermont	17.2545
Virginia	14.7381
Washington	18.4996

TABLE 4e.—AVERAGE HOURLY WAGE FOR RURAL AREAS—Continued

Nonurban area	Average hourly wage
West Virginia	15.1887
Wisconsin	15.9157
Wyoming	14.9877

[1] All counties within the State are classified urban.

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TABLE 5

LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM

				RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	ARITHMETIC MEAN LOS	OUTLIER THRESHOLD
1	01	SURG	CRANIOTOMY AGE >17 EXCEPT FOR TRAUMA	3.1021	8.7	12.4	32
2	01	SURG	CRANIOTOMY FOR TRAUMA AGE >17	3.0200	9.1	12.6	32
3	01	SURG	• CRANIOTOMY AGE 0-17	1.8777	6.6	11.4	30
4	01	SURG	SPINAL PROCEDURES	2.3294	6.5	9.9	29
5	01	SURG	EXTRACRANIAL VASCULAR PROCEDURES	1.5794	4.0	5.2	27
6	01	SURG	CARPAL TUNNEL RELEASE	.8170	2.4	4.0	25
7	01	SURG	PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC W CC	2.4107	9.1	15.2	32
8	01	SURG	PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC W/O CC	.9254	2.8	4.1	26
9	01	MED	SPINAL DISORDERS & INJURIES	1.2856	5.7	8.5	29
10	01	MED	NERVOUS SYSTEM NEOPLASMS W CC	1.2302	6.2	8.9	29
11	01	MED	NERVOUS SYSTEM NEOPLASMS W/O CC	.7919	3.7	5.2	27
12	01	MED	DEGENERATIVE NERVOUS SYSTEM DISORDERS	.9866	6.0	8.6	29
13	01	MED	MULTIPLE SCLEROSIS & CEREBELLAR ATAXIA	.7861	5.4	6.9	28
14	01	MED	SPECIFIC CEREBROVASCULAR DISORDERS EXCEPT TIA	1.2058	6.0	8.2	29
15	01	MED	TRANSIENT ISCHEMIC ATTACK & PRECEREBRAL OCCLUSIONS	.7226	3.8	4.9	27
16	01	MED	NONSPECIFIC CEREBROVASCULAR DISORDERS W CC	1.0592	5.3	7.4	28
17	01	MED	NONSPECIFIC CEREBROVASCULAR DISORDERS W/O CC	.5881	3.1	4.1	26
18	01	MED	CRANIAL & PERIPHERAL NERVE DISORDERS W CC	.9208	5.1	6.8	28
19	01	MED	CRANIAL & PERIPHERAL NERVE DISORDERS W/O CC	.5846	3.5	4.6	27
20	01	MED	NERVOUS SYSTEM INFECTION EXCEPT VIRAL MENINGITIS	2.1110	8.2	11.4	31
21	01	MED	VIRAL MENINGITIS	1.5355	6.5	8.7	29
22	01	MED	HYPERTENSIVE ENCEPHALOPATHY	.8140	4.0	5.1	27
23	01	MED	NONTRAUMATIC STUPOR & COMA	.8125	3.9	5.5	27
24	01	MED	SEIZURE & HEADACHE AGE >17 W CC	.9834	4.5	6.4	28
25	01	MED	SEIZURE & HEADACHE AGE >17 W/O CC	.5570	3.1	4.1	26
26	01	MED	SEIZURE & HEADACHE AGE 0-17	.8135	2.8	4.0	26
27	01	MED	TRAUMATIC STUPOR & COMA, COMA >1 HR	1.3465	3.9	7.1	27
28	01	MED	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE >17 W CC	1.1988	5.2	7.8	28
29	01	MED	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE >17 W/O CC	.5980	3.1	4.2	26
30	01	MED	• TRAUMATIC STUPOR & COMA, COMA <1 HR AGE 0-17	.3175	1.9	2.6	25
31	01	MED	CONCUSSION AGE >17 W CC	.7850	3.8	5.6	27
32	01	MED	CONCUSSION AGE >17 W/O CC	.4694	2.4	3.2	21
33	01	MED	• CONCUSSION AGE 0-17	.1996	1.4	1.6	24
34	01	MED	OTHER DISORDERS OF NERVOUS SYSTEM W CC	1.0542	4.9	6.9	28
35	01	MED	OTHER DISORDERS OF NERVOUS SYSTEM W/O CC	.5729	3.3	4.6	26

• MEDICARE DATA HAVE BEEN SUPPLEMENTED BY DATA FROM 19 STATES FOR LOW VOLUME DRGS.
•• DRGS 469 AND 470 CONTAIN CASES WHICH COULD NOT BE ASSIGNED TO VALID DRGS.
NOTE: GEOMETRIC MEAN IS USED ONLY TO DETERMINE PAYMENT FOR TRANSFER CASES.
NOTE: ARITHMETIC MEAN IS USED ONLY TO DETERMINE PAYMENT FOR OUTLIER CASES.
NOTE: RELATIVE WEIGHTS ARE BASED ON MEDICARE PATIENT DATA AND MAY NOT BE APPROPRIATE FOR OTHER PATIENTS.

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TABLE 5

LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM

				RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	ARITHMETIC MEAN LOS	OUTLIER THRESHOLD
36	02	SURG	RETINAL PROCEDURES	.6032	1.4	1.7	7
37	02	SURG	ORBITAL PROCEDURES	.8853	2.6	4.1	26
38	02	SURG	PRIMARY IRIS PROCEDURES	.4228	2.0	2.7	17
39	02	SURG	LENS PROCEDURES WITH OR WITHOUT VITRECTOMY	.5071	1.5	1.9	9
40	02	SURG	EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE >17	.7024	2.5	3.9	25
41	02	SURG	* EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE 0-17	.3232	1.5	2.1	25
42	02	SURG	INTRAOCULAR PROCEDURES EXCEPT RETINA, IRIS & LENS	.5642	1.6	2.2	12
43	02	MED	HYPHEMA	.3658	3.0	3.8	24
44	02	MED	ACUTE MAJOR EYE INFECTIONS	.6152	4.8	5.9	28
45	02	MED	NEUROLOGICAL EYE DISORDERS	.6457	3.3	4.3	25
46	02	MED	OTHER DISORDERS OF THE EYE AGE >17 W CC	.7526	4.2	5.8	27
47	02	MED	OTHER DISORDERS OF THE EYE AGE >17 W/O CC	.4478	3.0	3.9	26
48	02	MED	* OTHER DISORDERS OF THE EYE AGE 0-17	.2849	2.8	3.6	26
49	03	SURG	MAJOR HEAD & NECK PROCEDURES	1.7784	4.7	7.0	28
50	03	SURG	SIALOADENECTOMY	.7521	1.8	2.4	12
51	03	SURG	SALIVARY GLAND PROCEDURES EXCEPT SIALOADENECTOMY	.7294	2.0	3.0	22
52	03	SURG	CLEFT LIP & PALATE REPAIR	.8443	2.4	3.3	25
53	03	SURG	SINUS & MASTOID PROCEDURES AGE >17	.9397	2.2	3.7	25
54	03	SURG	* SINUS & MASTOID PROCEDURES AGE 0-17	.4617	1.6	2.7	25
55	03	SURG	MISCELLANEOUS EAR, NOSE, MOUTH & THROAT PROCEDURES	.7203	1.9	3.0	22
56	03	SURG	RHINOPLASTY	.8257	2.1	3.0	21
57	03	SURG	T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17	1.0442	3.2	4.9	26
58	03	SURG	* T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0-17	.2622	1.5	2.0	25
59	03	SURG	TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17	.5968	2.1	2.9	19
60	03	SURG	* TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0-17	.1997	1.1	1.2	24
61	03	SURG	MYRINGOTOMY W TUBE INSERTION AGE >17	1.2358	3.1	5.9	26
62	03	SURG	* MYRINGOTOMY W TUBE INSERTION AGE 0-17	.2827	1.4	2.0	24
63	03	SURG	OTHER EAR, NOSE, MOUTH & THROAT O.R. PROCEDURES	1.1478	3.3	4.9	26
64	03	MED	EAR, NOSE, MOUTH & THROAT MALIGNANCY	1.1954	5.1	8.2	28
65	03	MED	DYSEQUILIBRIUM	.5159	2.9	3.7	21
66	03	MED	EPISTAXIS	.5321	3.0	3.9	24
67	03	MED	EPIGLOTTITIS	.8105	3.4	4.4	26
68	03	MED	OTITIS MEDIA & URI AGE >17 W CC	.7064	4.2	5.1	27
69	03	MED	OTITIS MEDIA & URI AGE >17 W/O CC	.5123	3.4	4.0	21
70	03	MED	OTITIS MEDIA & URI AGE 0-17	.3219	2.3	2.8	15

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NOTE: GEOMETRIC MEAN IS USED ONLY TO DETERMINE PAYMENT FOR TRANSFER CASES.
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NOTE: RELATIVE WEIGHTS ARE BASED ON MEDICARE PATIENT DATA AND MAY NOT BE APPROPRIATE FOR OTHER PATIENTS.

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				RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	ARITHMETIC MEAN LOS	OUTLIER THRESHOLD
71	03	MED	LARYNGOTRACHEITIS	.6689	3.5	4.3	25
72	03	MED	NASAL TRAUMA & DEFORMITY	.6499	3.0	4.7	26
73	03	MED	OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSES AGE >17	.7738	4.0	5.4	27
74	03	MED	* OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSES AGE 0-17	.3212	2.2	3.3	25
75	04	SURG	MAJOR CHEST PROCEDURES	3.1097	9.3	11.9	32
76	04	SURG	OTHER RESP SYSTEM O.R. PROCEDURES W CC	2.5613	9.6	13.4	33
77	04	SURG	OTHER RESP SYSTEM O.R. PROCEDURES W/O CC	1.0778	3.7	5.7	27
78	04	MED	PULMONARY EMBOLISM	1.4126	7.4	8.8	30
79	04	MED	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >17 W CC	1.6545	7.8	10.1	31
80	04	MED	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >17 W/O CC	.8966	5.5	6.9	28
81	04	MED	* RESPIRATORY INFECTIONS & INFLAMMATIONS AGE 0-17	1.0085	6.2	9.2	29
82	04	MED	RESPIRATORY NEOPLASMS	1.3174	6.1	8.4	29
83	04	MED	MAJOR CHEST TRAUMA W CC	.9460	5.2	6.9	28
84	04	MED	MAJOR CHEST TRAUMA W/O CC	.4908	3.0	4.2	25
85	04	MED	PLEURAL EFFUSION W CC	1.1906	5.9	7.8	29
86	04	MED	PLEURAL EFFUSION W/O CC	.6724	3.5	4.5	27
87	04	MED	PULMONARY EDEMA & RESPIRATORY FAILURE	1.3480	5.3	7.2	28
88	04	MED	CHRONIC OBSTRUCTIVE PULMONARY DISEASE	1.0004	5.3	6.6	28
89	04	MED	SIMPLE PNEUMONIA & PLEURISY AGE >17 W CC	1.1163	6.2	7.6	29
90	04	MED	SIMPLE PNEUMONIA & PLEURISY AGE >17 W/O CC	.6772	4.6	5.4	26
91	04	MED	SIMPLE PNEUMONIA & PLEURISY AGE 0-17	.6995	3.1	4.0	26
92	04	MED	INTERSTITIAL LUNG DISEASE W CC	1.1996	6.0	7.7	29
93	04	MED	INTERSTITIAL LUNG DISEASE W/O CC	.7443	4.1	5.2	27
94	04	MED	PNEUMOTHORAX W CC	1.2300	6.2	8.1	29
95	04	MED	PNEUMOTHORAX W/O CC	.6248	3.8	4.8	26
96	04	MED	BRONCHITIS & ASTHMA AGE >17 W CC	.8339	4.9	5.9	28
97	04	MED	BRONCHITIS & ASTHMA AGE >17 W/O CC	.5952	3.8	4.5	23
98	04	MED	BRONCHITIS & ASTHMA AGE 0-17	.6858	4.0	5.0	27
99	04	MED	RESPIRATORY SIGNS & SYMPTOMS W CC	.6897	2.9	3.9	25
100	04	MED	RESPIRATORY SIGNS & SYMPTOMS W/O CC	.4968	2.1	2.6	14
101	04	MED	OTHER RESPIRATORY SYSTEM DIAGNOSES W CC	.9101	4.5	6.0	27
102	04	MED	OTHER RESPIRATORY SYSTEM DIAGNOSES W/O CC	.5495	2.9	4.0	26
103	05	SURG	HEART TRANSPLANT	13.9042	27.7	39.6	51
104	05	SURG	CARDIAC VALVE PROCEDURES W CARDIAC CATH	7.3620	13.3	16.0	36
105	05	SURG	CARDIAC VALVE PROCEDURES W/O CARDIAC CATH	5.6640	10.0	12.0	33

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TABLE 5

LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM

				RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	ARITHMETIC MEAN LOS	OUTLIER THRESHOLD
106	05	SURG	CORONARY BYPASS W CARDIAC CATH	5.6377	11.2	12.7	34
107	05	SURG	CORONARY BYPASS W/O CARDIAC CATH	4.1946	8.6	9.8	32
108	05	SURG	OTHER CARDIOTHORACIC PROCEDURES	5.9741	10.5	13.5	33
109			NO LONGER VALID	.0000	.0	.0	0
110	05	SURG	MAJOR CARDIOVASCULAR PROCEDURES W CC	4.1184	8.7	11.6	32
111	05	SURG	MAJOR CARDIOVASCULAR PROCEDURES W/O CC	2.1876 *	6.1	7.0	29
112	05	SURG	PERCUTANEOUS CARDIOVASCULAR PROCEDURES	1.9988	3.6	5.0	27
113	05	SURG	AMPUTATION FOR CIRC SYSTEM DISORDERS EXCEPT UPPER LIMB & TOE	2.7516	11.6	15.9	35
114	05	SURG	UPPER LIMB & TOE AMPUTATION FOR CIRC SYSTEM DISORDERS	1.5388	7.4	10.4	30
115	05	SURG	PERM CARDIAC PACEMAKER IMPLANT W AMI, HEART FAILURE OR SHOCK	3.5481	9.5	11.8	32
116	05	SURG	OTH PERM CARDIAC PACEMAKER IMPLANT OR AICD LEAD OR GENERATOR PROC	2.3963	4.2	5.9	27
117	05	SURG	CARDIAC PACEMAKER REVISION EXCEPT DEVICE REPLACEMENT	1.1497	3.0	4.5	26
118	05	SURG	CARDIAC PACEMAKER DEVICE REPLACEMENT	1.5298	2.2	3.4	25
119	05	SURG	VEIN LIGATION & STRIPPING	1.1272	3.4	5.9	26
120	05	SURG	OTHER CIRCULATORY SYSTEM O.R. PROCEDURES	1.9548	5.8	10.1	29
121	05	MED	CIRCULATORY DISORDERS W AMI & C.V. COMP DISCH ALIVE	1.6442	7.0	8.4	30
122	05	MED	CIRCULATORY DISORDERS W AMI W/O C.V. COMP DISCH ALIVE	1.1596	4.9	5.8	28
123	05	MED	CIRCULATORY DISORDERS W AMI, EXPIRED	1.4370	2.8	4.9	26
124	05	MED	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH & COMPLEX DIAG	1.2954	4.0	5.3	27
125	05	MED	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH W/O COMPLEX DIAG	.8770	2.4	3.2	22
126	05	MED	ACUTE & SUBACUTE ENDOCARDITIS	2.5935	12.3	16.2	35
127	05	MED	HEART FAILURE & SHOCK	1.0305	5.2	6.7	28
128	05	MED	DEEP VEIN THROMBOPHLEBITIS	.7916	6.3	7.2	29
129	05	MED	CARDIAC ARREST, UNEXPLAINED	1.1342	2.1	3.7	25
130	05	MED	PERIPHERAL VASCULAR DISORDERS W CC	.9346	5.6	7.2	29
131	05	MED	PERIPHERAL VASCULAR DISORDERS W/O CC	.5941	4.4	5.4	27
132	05	MED	ATHEROSCLEROSIS W CC	.6815	3.1	4.0	23
133	05	MED	ATHEROSCLEROSIS W/O CC	.5349	2.5	3.1	18
134	05	MED	HYPERTENSION	.5797	3.3	4.2	25
135	05	MED	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE >17 W CC	.8914	4.1	5.7	27
136	05	MED	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE >17 W/O CC	.5754	2.8	3.6	22
137	05	MED	* CARDIAC CONGENITAL & VALVULAR DISORDERS AGE 0-17	.7837	3.0	6.1	26
138	05	MED	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS W CC	.7991	3.7	4.9	27
139	05	MED	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS W/O CC	.4858	2.5	3.1	18
140	05	MED	ANGINA PECTORIS	.6312	3.1	3.9	22

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				RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	ARITHMETIC MEAN LOS	OUTLIER THRESHOLD
141	05	MED	SYNCOPE & COLLAPSE W CC	.7109	3.7	4.9	27
142	05	MED	SYNCOPE & COLLAPSE W/O CC	.5155	2.7	3.4	20
143	05	MED	CHEST PAIN	.5167	2.3	2.8	15
144	05	MED	OTHER CIRCULATORY SYSTEM DIAGNOSES W CC	1.0674	4.3	6.1	27
145	05	MED	OTHER CIRCULATORY SYSTEM DIAGNOSES W/O CC	.6093	2.6	3.4	22
146	06	SURG	RECTAL RESECTION W CC	2.5627	10.2	11.7	33
147	06	SURG	RECTAL RESECTION W/O CC	1.4850	7.0	7.7	29
148	06	SURG	MAJOR SMALL & LARGE BOWEL PROCEDURES W CC	3.2953	11.7	14.1	35
149	06	SURG	MAJOR SMALL & LARGE BOWEL PROCEDURES W/O CC	1.5017	7.2	7.9	26
150	06	SURG	PERITONEAL ADHESIOLYSIS W CC	2.6275	10.0	12.3	33
151	06	SURG	PERITONEAL ADHESIOLYSIS W/O CC	1.1999	5.2	6.5	28
152	06	SURG	MINOR SMALL & LARGE BOWEL PROCEDURES W CC	1.8646	8.0	9.6	31
153	06	SURG	MINOR SMALL & LARGE BOWEL PROCEDURES W/O CC	1.1012	5.6	6.3	26
154	06	SURG	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE >17 W CC	4.1861	12.5	16.0	35
155	06	SURG	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE >17 W/O CC	1.3221	5.2	6.4	28
156	06	SURG	* STOMACH ESOPHAGEAL & DUODENAL PROCEDURES AGE 0-17	.8072	4.0	6.7	27
157	06	SURG	ANAL & STOMAL PROCEDURES W CC	1.1013	4.3	6.0	27
158	06	SURG	ANAL & STOMAL PROCEDURES W/O CC	.5608	2.2	2.9	17
159	06	SURG	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W CC	1.1673	4.1	5.6	27
160	06	SURG	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W/O CC	.6599	2.4	3.0	17
161	06	SURG	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W CC	.9545	3.1	4.5	26
162	06	SURG	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W/O CC	.5257	1.7	2.1	11
163	06	SURG	HERNIA PROCEDURES AGE 0-17	.7771	3.6	5.2	27
164	06	SURG	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W CC	2.2107	8.4	9.8	31
165	06	SURG	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W/O CC	1.1883	5.2	5.9	24
166	06	SURG	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W CC	1.3578	4.9	6.0	28
167	06	SURG	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W/O CC	.7760	2.9	3.5	15
168	03	SURG	MOUTH PROCEDURES W CC	1.1856	3.6	5.7	27
169	03	SURG	MOUTH PROCEDURES W/O CC	.6410	2.0	2.7	17
170	06	SURG	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W CC	2.7068	9.1	13.3	32
171	06	SURG	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W/O CC	1.0961	4.2	5.8	27
172	06	MED	DIGESTIVE MALIGNANCY W CC	1.2884	6.1	8.8	29
173	06	MED	DIGESTIVE MALIGNANCY W/O CC	.6259	3.0	4.3	26
174	06	MED	G.I. HEMORRHAGE W CC	.9847	4.7	6.0	28
175	06	MED	G.I. HEMORRHAGE W/O CC	.5293	3.0	3.7	18

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				RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	ARITHMETIC MEAN LOS	OUTLIER THRESHOLD
176	06	MED	COMPLICATED PEPTIC ULCER	1.0578	5.0	6.5	28
177	06	MED	UNCOMPLICATED PEPTIC ULCER W CC	.8246	4.4	5.4	27
178	06	MED	UNCOMPLICATED PEPTIC ULCER W/O CC	.5846	3.2	3.8	20
179	06	MED	INFLAMMATORY BOWEL DISEASE	1.0964	6.0	7.7	29
180	06	MED	G.I. OBSTRUCTION W CC	.9143	5.0	6.5	28
181	06	MED	G.I. OBSTRUCTION W/O CC	.4901	3.3	4.0	21
182	06	MED	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE >17 W CC	.7755	4.1	5.4	27
183	06	MED	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE >17 W/O CC	.5322	2.9	3.6	21
184	06	MED	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE 0-17	.4071	2.5	3.0	18
185	03	MED	DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS, AGE >17	.8953	4.1	5.8	27
186	03	MED	* DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS, AGE 0-17	.3077	2.5	3.3	26
187	03	MED	DENTAL EXTRACTIONS & RESTORATIONS	.6549	2.8	3.8	26
188	06	MED	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >17 W CC	1.0421	4.7	6.5	28
189	06	MED	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >17 W/O CC	.5042	2.6	3.6	26
190	06	MED	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE 0-17	.9416	4.6	6.4	28
191	07	SURG	PANCREAS, LIVER & SHUNT PROCEDURES W CC	4.4383	12.8	17.4	36
192	07	SURG	PANCREAS, LIVER & SHUNT PROCEDURES W/O CC	1.6254	6.2	8.0	29
193	07	SURG	BILIARY TRACT PROC EXCEPT ONLY CHOLECYST W OR W/O C.D.E. W CC	3.1841	12.2	14.8	35
194	07	SURG	BILIARY TRACT PROC EXCEPT ONLY CHOLECYST W OR W/O C.D.E. W/O CC	1.6029	6.6	8.2	30
195	07	SURG	CHOLECYSTECTOMY W C.D.E. W CC	2.5960	9.4	11.1	32
196	07	SURG	CHOLECYSTECTOMY W C.D.E. W/O CC	1.5103	6.0	6.9	29
197	07	SURG	CHOLECYSTECTOMY EXCEPT BY LAPAROSCOPE W/O C.D.E. W CC	2.1818	7.9	9.6	31
198	07	SURG	CHOLECYSTECTOMY EXCEPT BY LAPAROSCOPE W/O C.D.E. W/O CC	1.0902	4.4	5.2	22
199	07	SURG	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR MALIGNANCY	2.3252	9.1	12.4	32
200	07	SURG	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR NON-MALIGNANCY	3.0103	7.9	12.6	31
201	07	SURG	OTHER HEPATOBILIARY OR PANCREAS O.R. PROCEDURES	3.2472	11.7	16.0	35
202	07	MED	CIRRHOSIS & ALCOHOLIC HEPATITIS	1.3178	6.1	8.3	29
203	07	MED	MALIGNANCY OF HEPATOBILIARY SYSTEM OR PANCREAS	1.2192	5.9	8.2	29
204	07	MED	DISORDERS OF PANCREAS EXCEPT MALIGNANCY	1.1998	5.5	7.2	28
205	07	MED	DISORDERS OF LIVER EXCEPT MALIG,CIRR,ALC HEPA W CC	1.2279	5.8	8.0	29
206	07	MED	DISORDERS OF LIVER EXCEPT MALIG,CIRR,ALC HEPA W/O CC	.6503	3.4	4.7	26
207	07	MED	DISORDERS OF THE BILIARY TRACT W CC	1.0219	4.7	6.2	28
208	07	MED	DISORDERS OF THE BILIARY TRACT W/O CC	.5682	2.7	3.4	22
209	08	SURG	MAJOR JOINT & LIMB REATTACHMENT PROCEDURES OF LOWER EXTREMITY	2.2669	6.8	7.6	27
210	08	SURG	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W CC	1.8508	8.1	9.7	31

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				RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	ARITHMETIC MEAN LOS	OUTLIER THRESHOLD
211	08	SURG	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W/O CC	1.2658	6.2	7.1	28
212	08	SURG	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE 0-17	1.0840	3.5	4.3	25
213	08	SURG	AMPUTATION FOR MUSCULOSKELETAL SYSTEM & CONN TISSUE DISORDERS	1.7187	7.6	10.6	31
214	08	SURG	BACK & NECK PROCEDURES W CC	1.9105	5.7	7.3	29
215	08	SURG	BACK & NECK PROCEDURES W/O CC	1.0774	3.4	4.1	21
216	08	SURG	BIOPSIES OF MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE	2.1032	8.6	12.2	32
217	08	SURG	WND DEBRID & SKN GRFT EXCEPT HAND,FOR MUSCSKELET & CONN TISS DIS	2.8961	11.0	17.0	34
218	08	SURG	LOWER EXTREM & HUMER PROC EXCEPT HIP,FOOT,FEMUR AGE >17 W CC	1.4086	5.2	6.8	28
219	08	SURG	LOWER EXTREM & HUMER PROC EXCEPT HIP,FOOT,FEMUR AGE >17 W/O CC	.9099	3.3	4.1	21
220	08	SURG	* LOWER EXTREM & HUMER PROC EXCEPT HIP,FOOT,FEMUR AGE 0-17	.5590	2.4	3.4	25
221	08	SURG	KNEE PROCEDURES W CC	1.8413	6.2	8.8	29
222	08	SURG	KNEE PROCEDURES W/O CC	.9613	3.2	4.2	26
223	08	SURG	MAJOR SHOULDER/ELBOW PROC, OR OTHER UPPER EXTREMITY PROC W CC	.8372	2.3	3.0	17
224	08	SURG	SHOULDER,ELBOW OR FOREARM PROC,EXC MAJOR JOINT PROC, W/O CC	.6922	1.9	2.4	11
225	08	SURG	FOOT PROCEDURES	.9518	3.3	5.1	26
226	08	SURG	SOFT TISSUE PROCEDURES W CC	1.3526	4.7	7.2	28
227	08	SURG	SOFT TISSUE PROCEDURES W/O CC	.7207	2.4	3.2	20
228	08	SURG	MAJOR THUMB OR JOINT PROC,OR OTH HAND OR WRIST PROC W CC	.9055	2.4	3.7	25
229	08	SURG	HAND OR WRIST PROC, EXCEPT MAJOR JOINT PROC, W/O CC	.5923	1.8	2.4	14
230	08	SURG	LOCAL EXCISION & REMOVAL OF INT FIX DEVICES OF HIP & FEMUR	1.0374	3.5	5.5	26
231	08	SURG	LOCAL EXCISION & REMOVAL OF INT FIX DEVICES EXCEPT HIP & FEMUR	1.2158	3.5	5.5	26
232	08	SURG	ARTHROSCOPY	1.0553	2.6	4.5	26
233	08	SURG	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC W CC	1.9162	6.8	9.8	30
234	08	SURG	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC W/O CC	.9929	3.3	4.4	26
235	08	MED	FRACTURES OF FEMUR	.8489	5.2	7.8	28
236	08	MED	FRACTURES OF HIP & PELVIS	.7781	5.2	7.1	28
237	08	MED	SPRAINS, STRAINS, & DISLOCATIONS OF HIP, PELVIS & THIGH	.5677	3.6	4.9	27
238	08	MED	OSTEOMYELITIS	1.4349	8.4	11.4	31
239	08	MED	PATHOLOGICAL FRACTURES & MUSCULOSKELETAL & CONN TISS MALIGNANCY	1.0207	6.3	8.4	29
240	08	MED	CONNECTIVE TISSUE DISORDERS W CC	1.1859	5.9	8.0	29
241	08	MED	CONNECTIVE TISSUE DISORDERS W/O CC	.5821	3.7	4.8	27
242	08	MED	SEPTIC ARTHRITIS	1.1273	6.6	9.0	30
243	08	MED	MEDICAL BACK PROBLEMS	.7238	4.7	6.1	28
244	08	MED	BONE DISEASES & SPECIFIC ARTHROPATHIES W CC	.7385	4.6	6.4	28
245	08	MED	BONE DISEASES & SPECIFIC ARTHROPATHIES W/O CC	.4951	3.3	4.5	26

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				RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	ARITHMETIC MEAN LOS	OUTLIER THRESHOLD
246	08	MED	NON-SPECIFIC ARTHROPATHIES	.5664	3.7	4.7	27
247	08	MED	SIGNS & SYMPTOMS OF MUSCULOSKELETAL SYSTEM & CONN TISSUE	.5533	3.1	4.3	26
248	08	MED	TENDONITIS, MYOSITIS & BURSITIS	.7301	4.2	5.7	27
249	08	MED	AFTERCARE, MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE	.6505	3.1	4.6	26
250	08	MED	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE >17 W CC	.7157	3.9	5.6	27
251	08	MED	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE >17 W/O CC	.4370	2.4	3.2	21
252	08	MED *	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE 0-17	.2429	1.3	1.6	24
253	08	MED	FX, SPRN, STRN & DISL OF UPARM,LOWLEG EX FOOT AGE >17 W CC	.7588	4.7	6.6	28
254	08	MED	FX, SPRN, STRN & DISL OF UPARM,LOWLEG EX FOOT AGE >17 W/O CC	.4290	3.0	4.0	26
255	08	MED *	FX, SPRN, STRN & DISL OF UPARM,LOWLEG EX FOOT AGE 0-17	.2828	1.9	2.6	25
256	08	MED	OTHER MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE DIAGNOSES	.6424	3.2	4.4	26
257	09	SURG	TOTAL MASTECTOMY FOR MALIGNANCY W CC	.8966	3.1	3.9	20
258	09	SURG	TOTAL MASTECTOMY FOR MALIGNANCY W/O CC	.6918	2.4	2.8	11
259	09	SURG	SUBTOTAL MASTECTOMY FOR MALIGNANCY W CC	.8746	2.6	4.1	26
260	09	SURG	SUBTOTAL MASTECTOMY FOR MALIGNANCY W/O CC	.5735	1.7	2.0	8
261	09	SURG	BREAST PROC FOR NON-MALIGNANCY EXCEPT BIOPSY & LOCAL EXCISION	.8125	1.9	2.6	13
262	09	SURG	BREAST BIOPSY & LOCAL EXCISION FOR NON-MALIGNANCY	.7172	2.6	4.0	26
263	09	SURG	SKIN GRAFT &/OR DEBRID FOR SKN ULCER OR CELLULITIS W CC	2.2289	11.1	15.7	34
264	09	SURG	SKIN GRAFT &/OR DEBRID FOR SKN ULCER OR CELLULITIS W/O CC	1.1465	6.6	9.1	30
265	09	SURG	SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS W CC	1.4126	4.9	7.9	28
266	09	SURG	SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS W/O CC	.7362	2.7	3.8	26
267	09	SURG	PERIANAL & PILONIDAL PROCEDURES	.8204	2.8	4.5	26
268	09	SURG	SKIN, SUBCUTANEOUS TISSUE & BREAST PLASTIC PROCEDURES	.9030	2.7	4.4	26
269	09	SURG	OTHER SKIN, SUBCUT TISS & BREAST PROC W CC	1.6400	6.7	9.9	30
270	09	SURG	OTHER SKIN, SUBCUT TISS & BREAST PROC W/O CC	.6641	2.3	3.5	25
271	09	MED	SKIN ULCERS	1.1063	7.1	9.4	30
272	09	MED	MAJOR SKIN DISORDERS W CC	1.0149	6.1	8.1	29
273	09	MED	MAJOR SKIN DISORDERS W/O CC	.6303	4.4	6.0	27
274	09	MED	MALIGNANT BREAST DISORDERS W CC	1.0768	5.5	8.1	28
275	09	MED	MALIGNANT BREAST DISORDERS W/O CC	.4861	2.4	3.4	25
276	09	MED	NON-MALIGANT BREAST DISORDERS	.6481	4.2	5.3	27
277	09	MED	CELLULITIS AGE >17 W CC	.8676	5.9	7.3	29
278	09	MED	CELLULITIS AGE >17 W/O CC	.5698	4.5	5.4	27
279	09	MED *	CELLULITIS AGE 0-17	.2909	3.3	4.0	26
280	09	MED	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE >17 W CC	.6808	4.0	5.5	27

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				RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	ARITHMETIC MEAN LOS	OUTLIER THRESHOLD
281	09	MED	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE >17 W/O CC	.4428	2.8	3.9	26
282	09	MED *	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE 0-17	.2458	1.6	2.1	25
283	09	MED	MINOR SKIN DISORDERS W CC	.7148	4.4	5.9	27
284	09	MED	MINOR SKIN DISORDERS W/O CC	.4259	3.1	4.1	26
285	10	SURG	AMPUTAT OF LOWER LIMB FOR ENDOCRINE,NUTRIT,& METABOL DISORDERS	2.4005	11.0	15.4	34
286	10	SURG	ADRENAL & PITUITARY PROCEDURES	2.3216	6.9	9.0	30
287	10	SURG	SKIN GRAFTS & WOUND DEBRID FOR ENDOC, NUTRIT & METAB DISORDERS	2.1186	10.7	15.5	34
288	10	SURG	O.R. PROCEDURES FOR OBESITY	2.0787	5.9	8.1	29
289	10	SURG	PARATHYROID PROCEDURES	1.0420	3.0	4.5	26
290	10	SURG	THYROID PROCEDURES	.8514	2.3	3.0	16
291	10	SURG	THYROGLOSSAL PROCEDURES	.4750	1.4	1.6	6
292	10	SURG	OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC W CC	2.6385	9.2	13.5	32
293	10	SURG	OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC W/O CC	1.1596	4.5	6.3	27
294	10	MED	DIABETES AGE >35	.7589	4.7	6.2	28
295	10	MED	DIABETES AGE 0-35	.7539	3.7	5.1	27
296	10	MED	NUTRITIONAL & MISC METABOLIC DISORDERS AGE >17 W CC	.9151	5.1	7.0	28
297	10	MED	NUTRITIONAL & MISC METABOLIC DISORDERS AGE >17 W/O CC	.5346	3.5	4.6	27
298	10	MED	NUTRITIONAL & MISC METABOLIC DISORDERS AGE 0-17	.4501	2.4	3.3	20
299	10	MED	INBORN ERRORS OF METABOLISM	.9847	4.2	6.2	27
300	10	MED	ENDOCRINE DISORDERS W CC	1.0852	5.8	7.8	29
301	10	MED	ENDOCRINE DISORDERS W/O CC	.5817	3.5	4.6	26
302	11	SURG	KIDNEY TRANSPLANT	4.1718	11.9	14.0	35
303	11	SURG	KIDNEY,URETER & MAJOR BLADDER PROCEDURES FOR NEOPLASM	2.6195	9.1	11.0	32
304	11	SURG	KIDNEY,URETER & MAJOR BLADDER PROC FOR NON-NEOPL W CC	2.3630	8.1	11.0	31
305	11	SURG	KIDNEY,URETER & MAJOR BLADDER PROC FOR NON-NEOPL W/O CC	1.1329	4.0	5.2	27
306	11	SURG	PROSTATECTOMY W CC	1.2398	4.9	7.1	28
307	11	SURG	PROSTATECTOMY W/O CC	.6500	2.6	3.2	16
308	11	SURG	MINOR BLADDER PROCEDURES W CC	1.4798	5.0	7.5	28
309	11	SURG	MINOR BLADDER PROCEDURES W/O CC	.7975	2.4	3.2	20
310	11	SURG	TRANSURETHRAL PROCEDURES W CC	.9682	3.3	4.9	26
311	11	SURG	TRANSURETHRAL PROCEDURES W/O CC	.5422	1.9	2.3	12
312	11	SURG	URETHRAL PROCEDURES, AGE >17 W CC	.8902	3.3	5.1	26
313	11	SURG	URETHRAL PROCEDURES, AGE >17 W/O CC	.4940	1.9	2.5	15
314	11	SURG *	URETHRAL PROCEDURES, AGE 0-17	.4728	2.6	4.0	26
315	11	SURG	OTHER KIDNEY & URINARY TRACT O.R. PROCEDURES	2.0723	5.7	10.3	29

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LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM

				RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	ARITHMETIC MEAN LOS	OUTLIER THRESHOLD
316	11	MED	RENAL FAILURE	1.3035	5.7	8.1	29
317	11	MED	ADMIT FOR RENAL DIALYSIS	.6404	2.6	4.0	26
318	11	MED	KIDNEY & URINARY TRACT NEOPLASMS W CC	1.0948	5.2	7.6	28
319	11	MED	KIDNEY & URINARY TRACT NEOPLASMS W/O CC	.5414	2.2	3.4	25
320	11	MED	KIDNEY & URINARY TRACT INFECTIONS AGE >17 W CC	.9275	5.6	7.0	29
321	11	MED	KIDNEY & URINARY TRACT INFECTIONS AGE >17 W/O CC	.5904	4.1	4.9	25
322	11	MED	KIDNEY & URINARY TRACT INFECTIONS AGE 0-17	.6072	3.6	5.1	27
323	11	MED	URINARY STONES W CC, &/OR ESW LITHOTRIPSY	.7238	2.8	3.8	26
324	11	MED	URINARY STONES W/O CC	.3955	1.8	2.2	11
325	11	MED	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 W CC	.6417	3.7	4.9	27
326	11	MED	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 W/O CC	.4171	2.6	3.3	21
327	11	MED *	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE 0-17	.2294	2.0	2.5	25
328	11	MED	URETHRAL STRICTURE AGE >17 W CC	.6691	3.2	4.4	26
329	11	MED	URETHRAL STRICTURE AGE >17 W/O CC	.4280	1.8	2.3	13
330	11	MED *	URETHRAL STRICTURE AGE 0-17	.3052	2.2	3.1	25
331	11	MED	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 W CC	1.0107	4.9	6.8	28
332	11	MED	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 W/O CC	.6003	3.0	4.1	26
333	11	MED	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE 0-17	.8653	4.2	6.0	27
334	12	SURG	MAJOR MALE PELVIC PROCEDURES W CC	1.6889	6.1	6.9	24
335	12	SURG	MAJOR MALE PELVIC PROCEDURES W/O CC	1.2884	4.8	5.2	20
336	12	SURG	TRANSURETHRAL PROSTATECTOMY W CC	.8777	3.6	4.6	25
337	12	SURG	TRANSURETHRAL PROSTATECTOMY W/O CC	.6095	2.6	3.0	12
338	12	SURG	TESTES PROCEDURES, FOR MALIGNANCY	1.0240	3.7	5.6	27
339	12	SURG	TESTES PROCEDURES, NON-MALIGNANCY AGE >17	.9345	3.1	4.7	26
340	12	SURG *	TESTES PROCEDURES, NON-MALIGNANCY AGE 0-17	.2713	1.3	1.5	24
341	12	SURG	PENIS PROCEDURES	1.0694	2.6	3.7	24
342	12	SURG	CIRCUMCISION AGE >17	.7304	2.7	4.1	26
343	12	SURG *	CIRCUMCISION AGE 0-17	.1474	1.3	1.6	24
344	12	SURG	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROCEDURES FOR MALIGNANCY	1.0254	2.4	3.5	25
345	12	SURG	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROC EXCEPT FOR MALIGNANCY	.8431	3.0	4.6	26
346	12	MED	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, W CC	.9628	5.1	7.5	28
347	12	MED	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, W/O CC	.4868	2.5	3.5	25
348	12	MED	BENIGN PROSTATIC HYPERTROPHY W CC	.7103	3.8	5.3	27
349	12	MED	BENIGN PROSTATIC HYPERTROPHY W/O CC	.4214	2.3	3.1	21
350	12	MED	INFLAMMATION OF THE MALE REPRODUCTIVE SYSTEM	.6805	4.3	5.2	27

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				RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	ARITHMETIC MEAN LOS	OUTLIER THRESHOLD
351	12	MED *	STERILIZATION, MALE	.2262	1.1	1.1	24
352	12	MED	OTHER MALE REPRODUCTIVE SYSTEM DIAGNOSES	.5963	3.1	4.3	26
353	13	SURG	PELVIC EVISCERATION, RADICAL HYSTERECTOMY & RADICAL VULVECTOMY	1.9542	7.5	9.4	30
354	13	SURG	UTERINE,ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG W CC	1.4527	5.6	6.8	29
355	13	SURG	UTERINE,ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG W/O CC	.8718	3.7	4.0	11
356	13	SURG	FEMALE REPRODUCTIVE SYSTEM RECONSTRUCTIVE PROCEDURES	.7308	2.9	3.3	13
357	13	SURG	UTERINE & ADNEXA PROC FOR OVARIAN OR ADNEXAL MALIGNANCY	2.3719	8.5	10.6	31
358	13	SURG	UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W CC	1.1369	4.3	5.0	20
359	13	SURG	UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W/O CC	.7986	3.2	3.5	10
360	13	SURG	VAGINA, CERVIX & VULVA PROCEDURES	.8749	3.3	4.2	23
361	13	SURG	LAPAROSCOPY & INCISIONAL TUBAL INTERRUPTION	1.1947	3.1	5.0	26
362	13	SURG *	ENDOSCOPIC TUBAL INTERRUPTION	.2891	1.3	1.7	24
363	13	SURG	D&C, CONIZATION & RADIO-IMPLANT, FOR MALIGNANCY	.6880	2.7	3.7	22
364	13	SURG	D&C, CONIZATION EXCEPT FOR MALIGNANCY	.6745	2.7	3.8	26
365	13	SURG	OTHER FEMALE REPRODUCTIVE SYSTEM O.R. PROCEDURES	1.7643	5.9	8.6	29
366	13	MED	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM W CC	1.1338	5.5	8.2	28
367	13	MED	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM W/O CC	.5006	2.4	3.6	25
368	13	MED	INFECTIONS, FEMALE REPRODUCTIVE SYSTEM	.9874	5.6	7.2	29
369	13	MED	MENSTRUAL & OTHER FEMALE REPRODUCTIVE SYSTEM DISORDERS	.5125	2.7	3.9	26
370	14	SURG	CESAREAN SECTION W CC	.9603	4.5	5.7	26
371	14	SURG	CESAREAN SECTION W/O CC	.6530	3.4	3.8	11
372	14	MED	VAGINAL DELIVERY W COMPLICATING DIAGNOSES	.5609	2.6	3.6	21
373	14	MED	VAGINAL DELIVERY W/O COMPLICATING DIAGNOSES	.3442	1.8	2.1	8
374	14	SURG	VAGINAL DELIVERY W STERILIZATION &/OR D&C	.6801	2.4	2.9	13
375	14	SURG *	VAGINAL DELIVERY W O.R. PROC EXCEPT STERIL &/OR D&C	.6564	2.9	4.2	26
376	14	MED	POSTPARTUM & POST ABORTION DIAGNOSES W/O O.R. PROCEDURE	.4473	2.5	3.7	26
377	14	SURG	POSTPARTUM & POST ABORTION DIAGNOSES W O.R. PROCEDURE	.8006	2.7	4.2	26
378	14	MED	ECTOPIC PREGNANCY	.7375	2.4	2.8	14
379	14	MED	THREATENED ABORTION	.4004	2.2	3.4	25
380	14	MED	ABORTION W/O D&C	.3789	1.6	2.0	9
381	14	SURG	ABORTION W D&C, ASPIRATION CURETTAGE OR HYSTEROTOMY	.4755	1.5	2.1	11
382	14	MED	FALSE LABOR	.1908	1.2	1.8	6
383	14	MED	OTHER ANTEPARTUM DIAGNOSES W MEDICAL COMPLICATIONS	.4611	3.1	4.4	26
384	14	MED	OTHER ANTEPARTUM DIAGNOSES W/O MEDICAL COMPLICATIONS	.2794	1.6	2.0	10
385	15	*	NEONATES, DIED OR TRANSFERRED TO ANOTHER ACUTE CARE FACILITY	1.3280	2.5	8.0	26

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				RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	ARITHMETIC MEAN LOS	OUTLIER THRESHOLD
386	15		* EXTREME IMMATURITY OR RESPIRATORY DISTRESS SYNDROME, NEONATE	4.3433	18.0	31.7	41
387	15		* PREMATURITY W MAJOR PROBLEMS	2.9664	13.7	24.6	37
388	15		* PREMATURITY W/O MAJOR PROBLEMS	1.7898	13.1	18.7	36
389	15		FULL TERM NEONATE W MAJOR PROBLEMS	2.3121	7.7	10.3	31
390	15		NEONATE W OTHER SIGNIFICANT PROBLEMS	.6328	2.7	4.5	26
391	15		* NORMAL NEWBORN	.1460	2.2	3.0	25
392	16	SURG	SPLENECTOMY AGE >17	3.1982	9.3	12.0	32
393	16	SURG	* SPLENECTOMY AGE 0-17	1.2902	6.2	7.5	29
394	16	SURG	OTHER O.R. PROCEDURES OF THE BLOOD AND BLOOD FORMING ORGANS	1.6316	4.9	8.5	28
395	16	MED	RED BLOOD CELL DISORDERS AGE >17	.8359	4.1	5.8	27
396	16	MED	RED BLOOD CELL DISORDERS AGE 0-17	.5915	2.6	3.9	26
397	16	MED	COAGULATION DISORDERS	1.2842	4.8	6.6	28
398	16	MED	RETICULOENDOTHELIAL & IMMUNITY DISORDERS W CC	1.2267	5.6	7.1	29
399	16	MED	RETICULOENDOTHELIAL & IMMUNITY DISORDERS W/O CC	.6862	3.7	4.7	27
400	17	SURG	LYMPHOMA & LEUKEMIA W MAJOR O.R. PROCEDURE	2.6120	7.2	11.2	30
401	17	SURG	LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W CC	2.4391	9.0	13.0	32
402	17	SURG	LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W/O CC	.9106	3.0	4.4	26
403	17	MED	LYMPHOMA & NON-ACUTE LEUKEMIA W CC	1.6740	6.9	9.9	30
404	17	MED	LYMPHOMA & NON-ACUTE LEUKEMIA W/O CC	.7738	3.6	5.1	27
405	17		* ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE 0-17	1.8291	6.1	10.7	29
406	17	SURG	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R.PROC W CC	2.6404	8.5	11.9	31
407	17	SURG	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R.PROC W/O CC	1.1287	3.9	5.0	27
408	17	SURG	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W OTHER O.R.PROC	1.6865	5.1	8.8	28
409	17	MED	RADIOTHERAPY	.9469	4.9	7.0	28
410	17	MED	CHEMOTHERAPY W/O ACUTE LEUKEMIA AS SECONDARY DIAGNOSIS	.7183	2.6	3.3	20
411	17	MED	HISTORY OF MALIGNANCY W/O ENDOSCOPY	.5035	2.5	3.4	25
412	17	MED	HISTORY OF MALIGNANCY W ENDOSCOPY	.4515	2.1	3.0	24
413	17	MED	OTHER MYELOPROLIF DIS OR POORLY DIFF NEOPL DIAG W CC	1.3366	6.4	9.2	29
414	17	MED	OTHER MYELOPROLIF DIS OR POORLY DIFF NEOPL DIAG W/O CC	.6983	3.7	5.6	27
415	18	SURG	O.R. PROCEDURE FOR INFECTIOUS & PARASITIC DISEASES	3.4709	12.4	17.2	35
416	18	MED	SEPTICEMIA AGE >17	1.4761	6.5	8.9	30
417	18	MED	SEPTICEMIA AGE 0-17	.9963	5.0	6.3	28
418	18	MED	POSTOPERATIVE & POST-TRAUMATIC INFECTIONS	.9727	5.7	7.3	29
419	18	MED	FEVER OF UNKNOWN ORIGIN AGE >17 W CC	.9183	4.8	6.2	28
420	18	MED	FEVER OF UNKNOWN ORIGIN AGE >17 W/O CC	.6175	3.7	4.6	25

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				RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	ARITHMETIC MEAN LOS	OUTLIER THRESHOLD
421	18	MED	VIRAL ILLNESS AGE >17	.6955	3.8	4.9	27
422	18	MED	VIRAL ILLNESS & FEVER OF UNKNOWN ORIGIN AGE 0-17	.5602	3.4	4.5	26
423	18	MED	OTHER INFECTIOUS & PARASITIC DISEASES DIAGNOSES	1.5799	6.7	9.3	30
424	19	SURG	O.R. PROCEDURE W PRINCIPAL DIAGNOSES OF MENTAL ILLNESS	2.4454	12.3	19.8	35
425	19	MED	ACUTE ADJUST REACT & DISTURBANCES OF PSYCHOSOCIAL DYSFUNCTION	.7126	3.9	5.5	27
426	19	MED	DEPRESSIVE NEUROSES	.6003	4.5	6.4	28
427	19	MED	NEUROSES EXCEPT DEPRESSIVE	.5911	4.2	6.0	27
428	19	MED	DISORDERS OF PERSONALITY & IMPULSE CONTROL	.7026	5.2	8.2	28
429	19	MED	ORGANIC DISTURBANCES & MENTAL RETARDATION	.9555	6.7	10.4	30
430	19	MED	PSYCHOSES	.8886	7.6	10.9	31
431	19	MED	CHILDHOOD MENTAL DISORDERS	.6306	5.3	7.6	28
432	19	MED	OTHER MENTAL DISORDER DIAGNOSES	.7196	4.4	6.9	27
433	20		ALCOHOL/DRUG ABUSE OR DEPENDENCE, LEFT AMA	.3086	2.6	3.7	26
434	20		ALC/DRUG ABUSE OR DEPEND, DETOX OR OTH SYMPT TREAT W CC	.7328	4.7	6.4	28
435	20		ALC/DRUG ABUSE OR DEPEND, DETOX OR OTH SYMPT TREAT W/O CC	.4157	3.9	5.1	27
436	20		ALC/DRUG DEPENDENCE W REHABILITATION THERAPY	.8457	12.7	15.7	36
437	20		ALC/DRUG DEPENDENCE, COMBINED REHAB & DETOX THERAPY	.7956	9.9	11.8	33
438			NO LONGER VALID	.0000	.0	.0	0
439	21	SURG	SKIN GRAFTS FOR INJURIES	1.6606	5.6	9.2	29
440	21	SURG	WOUND DEBRIDEMENTS FOR INJURIES	1.7738	7.0	10.9	30
441	21	SURG	HAND PROCEDURES FOR INJURIES	.8443	2.3	3.6	25
442	21	SURG	OTHER O.R. PROCEDURES FOR INJURIES W CC	2.0734	5.7	9.0	29
443	21	SURG	OTHER O.R. PROCEDURES FOR INJURIES W/O CC	.7918	2.4	3.3	25
444	21	MED	TRAUMATIC INJURY AGE >17 W CC	.7192	4.4	5.8	27
445	21	MED	TRAUMATIC INJURY AGE >17 W/O CC	.4594	2.9	3.9	26
446	21	MED	* TRAUMATIC INJURY AGE 0-17	.2836	2.1	2.9	25
447	21	MED	ALLERGIC REACTIONS AGE >17	.4943	2.3	3.0	20
448	21	MED	ALLERGIC REACTIONS AGE 0-17	.0747	1.0	1.0	1
449	21	MED	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W CC	.7907	3.3	4.8	26
450	21	MED	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W/O CC	.4232	1.9	2.5	15
451	21	MED	* POISONING & TOXIC EFFECTS OF DRUGS AGE 0-17	.2518	1.8	2.4	25
452	21	MED	COMPLICATIONS OF TREATMENT W CC	.9129	3.9	5.6	27
453	21	MED	COMPLICATIONS OF TREATMENT W/O CC	.4568	2.5	3.4	23
454	21	MED	OTHER INJURY, POISONING & TOXIC EFFECT DIAG W CC	.8882	3.8	6.0	27
455	21	MED	OTHER INJURY, POISONING & TOXIC EFFECT DIAG W/O CC	.4547	2.3	3.5	25

* MEDICARE DATA HAVE BEEN SUPPLEMENTED BY DATA FROM 19 STATES FOR LOW VOLUME DRGS.
** DRGS 469 AND 470 CONTAIN CASES WHICH COULD NOT BE ASSIGNED TO VALID DRGS.
NOTE: GEOMETRIC MEAN IS USED ONLY TO DETERMINE PAYMENT FOR TRANSFER CASES.
NOTE: ARITHMETIC MEAN IS USED ONLY TO DETERMINE PAYMENT FOR OUTLIER CASES.
NOTE: RELATIVE WEIGHTS ARE BASED ON MEDICARE PATIENT DATA AND MAY NOT BE APPROPRIATE FOR OTHER PATIENTS.

TABLE 5

LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM

				RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	ARITHMETIC MEAN LOS	OUTLIER THRESHOLD
456	22		BURNS, TRANSFERRED TO ANOTHER ACUTE CARE FACILITY	1.9675	4.3	8.2	27
457	22	MED	EXTENSIVE BURNS W/O O.R. PROCEDURE	1.6966	2.6	5.2	26
458	22	SURG	NON-EXTENSIVE BURNS W SKIN GRAFT	3.4865	12.8	18.4	36
459	22	SURG	NON-EXTENSIVE BURNS W WOUND DEBRIDEMENT OR OTHER O.R. PROC	1.9689	8.2	13.3	31
460	22	MED	NON-EXTENSIVE BURNS W/O O.R. PROCEDURE	.9336	5.1	7.3	28
461	23	SURG	O.R. PROC W DIAGNOSES OF OTHER CONTACT W HEALTH SERVICES	1.0447	2.6	5.7	26
462	23	MED	REHABILITATION	1.5295	12.1	15.1	35
463	23	MED	SIGNS & SYMPTOMS W CC	.7379	4.2	5.8	27
464	23	MED	SIGNS & SYMPTOMS W/O CC	.4824	3.0	3.9	26
465	23	MED	AFTERCARE W HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS	.4328	1.9	2.9	20
466	23	MED	AFTERCARE W/O HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS	.5632	2.5	4.5	25
467	23	MED	OTHER FACTORS INFLUENCING HEALTH STATUS	.4264	2.5	4.9	26
468			EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	3.5224	11.3	16.3	34
469		**	PRINCIPAL DIAGNOSIS INVALID AS DISCHARGE DIAGNOSIS	.0000	.0	.0	0
470		**	UNGROUPABLE	.0000	.0	.0	0
471	08	SURG	BILATERAL OR MULTIPLE MAJOR JOINT PROCS OF LOWER EXTREMITY	3.6449	8.0	9.6	31
472	22	SURG	EXTENSIVE BURNS W O.R. PROCEDURE	10.5483	14.0	30.8	37
473	17		ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE >17	3.4948	8.9	15.3	32
474			NO LONGER VALID	.0000	.0	.0	0
475	04	MED	RESPIRATORY SYSTEM DIAGNOSIS WITH VENTILATOR SUPPORT	3.6911	9.1	13.0	32
476		SURG	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	2.2716	11.5	15.1	35
477		SURG	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	1.5704	5.8	9.4	29
478	05	SURG	OTHER VASCULAR PROCEDURES W CC	2.2744	6.0	9.0	29
479	05	SURG	OTHER VASCULAR PROCEDURES W/O CC	1.3564	3.6	4.9	27
480		SURG	LIVER TRANSPLANT	16.6079	23.7	32.4	47
481		SURG	BONE MARROW TRANSPLANT	11.1157	26.6	30.3	50
482		SURG	TRACHEOSTOMY FOR FACE,MOUTH & NECK DIAGNOSES	3.6726	12.5	16.3	35
483		SURG	TRACHEOSTOMY EXCEPT FOR FACE,MOUTH & NECK DIAGNOSES	16.1256	38.1	49.5	61
484	24	SURG	CRANIOTOMY FOR MULTIPLE SIGNIFICANT TRAUMA	5.3868	11.1	17.2	34
485	24	SURG	LIMB REATTACHMENT, HIP AND FEMUR PROC FOR MULTIPLE SIGNIFICANT TR	3.1816	10.3	13.2	33
486	24	SURG	OTHER O.R. PROCEDURES FOR MULTIPLE SIGNIFICANT TRAUMA	4.9252	9.6	15.2	33
487	24	MED	OTHER MULTIPLE SIGNIFICANT TRAUMA	1.9541	6.8	9.9	30
488	25	SURG	HIV W EXTENSIVE O.R. PROCEDURE	4.2921	13.6	18.7	37
489	25	MED	HIV W MAJOR RELATED CONDITION	1.8054	7.8	11.7	31
490	25	MED	HIV W OR W/O OTHER RELATED CONDITION	1.0567	4.8	7.4	28

* MEDICARE DATA HAVE BEEN SUPPLEMENTED BY DATA FROM 19 STATES FOR LOW VOLUME DRGS.
** DRGS 469 AND 470 CONTAIN CASES WHICH COULD NOT BE ASSIGNED TO VALID DRGS.
NOTE: GEOMETRIC MEAN IS USED ONLY TO DETERMINE PAYMENT FOR TRANSFER CASES.
NOTE: ARITHMETIC MEAN IS USED ONLY TO DETERMINE PAYMENT FOR OUTLIER CASES.
NOTE: RELATIVE WEIGHTS ARE BASED ON MEDICARE PATIENT DATA AND MAY NOT BE APPROPRIATE FOR OTHER PATIENTS.

TABLE 5

LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM

				RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	ARITHMETIC MEAN LOS	OUTLIER THRESHOLD
491	08	SURG	MAJOR JOINT & LIMB REATTACHMENT PROCEDURES OF UPPER EXTREMITY	1.6102	4.0	4.8	22
492	17	MED	CHEMOTHERAPY W ACUTE LEUKEMIA AS SECONDARY DIAGNOSIS	4.1803	11.8	18.3	35
493	07	SURG	LAPAROSCOPIC CHOLECYSTECTOMY W/O C.D.E. W CC	1.6410	4.3	6.1	27
494	07	SURG	LAPAROSCOPIC CHOLECYSTECTOMY W/O C.D.E. W/O CC	.8523	1.7	2.3	13
495		SURG	LUNG TRANSPLANT	10.1175	19.1	24.2	42

* MEDICARE DATA HAVE BEEN SUPPLEMENTED BY DATA FROM 19 STATES FOR LOW VOLUME DRGS.
** DRGS 469 AND 470 CONTAIN CASES WHICH COULD NOT BE ASSIGNED TO VALID DRGS.
NOTE: GEOMETRIC MEAN IS USED ONLY TO DETERMINE PAYMENT FOR TRANSFER CASES.
NOTE: ARITHMETIC MEAN IS USED ONLY TO DETERMINE PAYMENT FOR OUTLIER CASES.
NOTE: RELATIVE WEIGHTS ARE BASED ON MEDICARE PATIENT DATA AND MAY NOT BE APPROPRIATE FOR OTHER PATIENTS.

TABLE 6a.—NEW DIAGNOSIS CODES

Diagnosis code	Description	CC	MDC	DRG
005.81	Food poisoning due to Vibrio vulnificus	N	6	182, 183, 184
005.89	Other bacterial food poisoning	N	6	182, 183, 184
041.86	Helicobacter pylori (H. pylori) infection	N	18	423
079.81	Hantavirus infection	N	18	421, 422
278.00	Obesity, unspecified	N	10	296, 297, 298
278.01	Morbid obesity	N	10	296, 297, 298
415.11	Iatrogenic pulmonary embolism and infarction	Y	4	75
			15	387, 389
415.19	Other pulmonary embolism and infarction	Y	4	75
			15	387, 389
435.3	Vertebrobasilar artery syndrome	N	1	15
458.2	Iatrogenic hypotension	N	5	141, 142
569.60	Colostomy and enterostomy complication, not otherwise specified	Y	6	188, 189, 190
569.61	Infection of colostomy or enterostomy	Y	6	188, 189, 190
569.69	Other colostomy and enterostomy complication	Y	6	188, 189, 190
690.10	Seborrheic dermatitis, unspecified	N	9	283, 284
690.11	Seborrhea capitis	N	9	283, 284
690.12	Seborrheic infantile dermatitis	N	9	283, 284
690.18	Other seborrheic dermatitis	N	9	283, 284
690.8	Other erythematosquamous dermatosis	N	9	283, 284
728.86	Necrotizing fasciitis	Y	8	246
787.91	Diarrhea	N	6	182, 183, 184
787.99	Other symptoms involving digestive system	N	6	182, 183, 184
989.81	Toxic effect of asbestos	N	21	449, 450, 451
989.82	Toxic effect of latex	N	21	449, 450, 451
989.83	Toxic effect of silicone	N	21	449, 450, 451
989.84	Toxic effect of tobacco	N	21	449, 450, 451
989.89	Toxic effect of other substance, chiefly nonmedicinal as to source, not elsewhere classified.	N	21	449, 450, 451
997.00	Nervous system complication, unspecified	Y	1	34, 35
			15	387, 389
997.01	Central nervous system complication	Y	1	34, 35
			15	387, 389
997.02	Iatrogenic cerebrovascular infarction or hemorrhage	Y	1	34, 35
			15	387, 389
997.09	Other nervous system complications	Y	1	34, 35
			15	387, 389
997.91	Complications affecting other specified body systems, hypertension	N	21	452, 453
997.99	Complications affecting other specified body systems, not elsewhere classified	Y	21	452, 453
V12.50	Personal history of unspecified circulatory disease	N	23	467
V12.51	Personal history of venous thrombosis and embolism	N	23	467
V12.52	Personal history of thrombophlebitis	N	23	467
V12.59	Personal history of other diseases of circulatory system, not elsewhere classified.	N	23	467
V15.84	Personal history of exposure to asbestos	N	23	467
V15.85	Personal history of exposure to potentially hazardous body fluids	N	23	467
V15.86	Personal history of exposure to lead	N	23	467
V43.81	Larynx replacement status	N	23	467
V43.82	Breast replacement status	N	23	467
V43.89	Other organ or tissue replacement status, not elsewhere classified	N	23	467
V45.83	Breast implant removal status	N	23	467
V56.1	Fitting and adjustment of dialysis (extracorporeal) (peritoneal) catheter	N	11	317
V58.61	Long-term (current) use of anticoagulants	N	23	465, 466
V58.69	Long-term (current) use of other medications	N	23	465, 466
V58.82	Fitting and adjustment of nonvascular catheter, not elsewhere classified	N	23	465, 466
V59.01	Blood donor, whole blood	N	23	467
V59.02	Blood donor, stem cells	N	23	467
V59.09	Other blood donor	N	23	467
V59.6	Liver donor	N	7	205, 206

TABLE 6b.—NEW PROCEDURE CODES

Procedure code	Description	OR	MDC	DRG
05.25	Periarterial sympathectomy	Y	1	7, 8
			5	120
32.22	Lung volume reduction surgery	Y	4	75
33.50	Lung transplantation, not otherwise specified	Y	Pre	495
33.51	Unilateral lung transplantation	Y	Pre	495

TABLE 6b.—NEW PROCEDURE CODES—Continued

Procedure code	Description	OR	MDC	DRG
33.52	Bilateral lung transplantation	Y	Pre	495
36.06	Insertion of coronary artery stent(s)	N		
37.65	Implant of an external, pulsatile heart assist system	Y	5	110, 111
37.66	Implant of an implantable, pulsatile heart assist system	Y	5	110, 111
39.50	Angioplasty or atherectomy of non-coronary vessel	Y	1	5
			5	478, 479
			9	269, 270
			10	292, 293
			11	315
			21	442, 443
			24	486
48.36	[Endoscopic] polypectomy of rectum	N[1]	17	412
59.72	Injection of implant into urethra and/or bladder neck	N[1]	11	308, 309
			13	358
60.21	Transurethral (ultrasound) guided laser induced prostatectomy (TULIP)	Y	11	306, 307
			12	336, 337, 476
60.29	Other transurethral prostatectomy	Y	11	306, 307
			12	336, 337, 476
92.3	Stereotactic radiosurgery	(1)	1	1, 2, 3
			10	286
			17	400, 406, 407
99.00	Perioperative autologous transfusion of whole blood or blood components	N		

[1] Non-OR procedure that affects DRG assignment.

TABLE 6c.—INVALID DIAGNOSIS CODES

Diagnosis code	Description	CC	MDC	DRG
005.8	Other bacterial food poisoning	N	6	182, 183, 184
278.0	Obesity	N	10	296, 297, 298
415.1	Pulmonary embolism and infarction	Y	4	75
			15	387, 389
569.6	Colostomy and enterostomy malfunction	Y	6	188, 189, 190
690	Erythematosquamous dermatosis	N	9	283, 284
787.9	Other symptoms involving digestive system	N	6	182, 183, 184
989.8	Toxic effect of other substances, chiefly nonmedicinal as to source	N	21	449, 450, 451
997.0	Central nervous system complications	Y	1	34, 35
			15	387, 389
997.9	Complications affecting other specified body systems, not elsewhere classified	Y	21	452, 453
V12.5	Personal history of diseases of circulatory system	N	23	467
V43.8	Organ or tissue replaced by other means, not elsewhere classified	N	23	467
V59.0	Blood donor	N	23	467
33.5	Lung transplant	Y	Pre	495
39.7	Periarterial sympathectomy	Y	5	478, 479
60.2	Transurethral prostatectomy	Y	11	306, 307
			12	336, 337
				476

TABLE 6e.—REVISED DIAGNOSIS CODE TITLES

Diagnosis code	Description	CC	MDC	DRG
441.00	Dissection of aorta, unspecified site	Y	5	121, 130, 131
441.01	Dissection of aorta, thoracic	Y	5	121, 130, 131
441.02	Dissection of aorta, abdominal	Y	5	121, 130, 131
441.03	Dissection of aorta, thoracoabdominal	Y	5	121, 130, 131
560.81	Intestinal or peritoneal adhesions with obstruction (postoperative) (postinfection).	Y	6	180, 181
568.0	Peritoneal adhesions (postoperative) (postinfection)	N	6	188, 189, 190
614.6	Pelvic peritoneal adhesions, female (postoperative) (postinfection)	N	13	358, 359, 369
650	Normal delivery	N	14	370, 371, 372, 373, 374, 375
780.6	Fever	N	18	419, 420, 422
997.4	Digestive system complication	Y	6	188, 189, 190
V52.4	Fitting and adjustment of breast prosthesis and implant	N	23	467
V53.5	Fitting and adjustment of other intestinal appliance	N	6	188, 189, 190

TABLE 6e.—Revised DiagnosisCode Titles—Continued

Diagnosis code	Description	CC	MDC	DRG
V58.81	Fitting and adjustment of vascular catheter	N	23	465, 466
V67.51	Follow-up examination following completed treatment with high-risk medications, not elsewhere classified.	N	23	467

TABLE 6f.—REVISED PROCEDURE CODE TITLES

Procedure code	Description	OR	MDC	DRG
99.02	Transfusion of previously collected autologous blood	N		

BILLING CODE 4120-01-P

TABLE 6G--ADDITIONS TO THE CC EXCLUSIONS LIST

*0011	*00843	01110	01191	01351	01622	01732	01882
00849	00849	01111	01192	01352	01623	01733	01883
*0020	*00844	01112	01193	01353	01624	01734	01884
00849	00849	01113	01194	01354	01625	01735	01885
*0029	*00845	01114	01195	01355	01626	01736	01886
00849	00849	01115	01196	01356	01630	01740	01890
*0030	*00846	01116	01200	01360	01631	01741	01891
00849	00849	01120	01201	01361	01632	01742	01892
*0049	*00847	01121	01202	01362	01633	01743	01893
00849	00849	01122	01203	01363	01634	01744	01894
*0050	*00849	01123	01204	01364	01635	01745	01895
00849	00849	01124	01205	01365	01636	01746	01896
*0051	*0085	01125	01206	01366	01640	01750	0310
00849	00849	01126	01210	01380	01641	01751	0360
*0052	*00861	01130	01211	01381	01642	01752	0361
00849	00849	01131	01212	01382	01643	01753	0362
*0060	*00862	01132	01213	01383	01644	01754	0363
00849	00849	01133	01214	01384	01645	01755	03640
*0061	*00863	01134	01215	01385	01646	01756	03641
00849	00849	01135	01216	01386	01650	01760	03642
*0062	*00864	01136	01300	01390	01651	01761	03643
00849	00849	01140	01301	01391	01652	01762	03681
*0069	*00865	01141	01302	01392	01653	01763	03682
00849	00849	01142	01303	01393	01654	01764	03689
*0071	*00866	01143	01304	01394	01655	01765	0369
00849	00849	01144	01305	01395	01656	01766	0380
*0072	*00867	01145	01306	01396	01660	01770	0381
00849	00849	01146	01310	01400	01661	01771	0382
*0073	*00869	01150	01311	01401	01662	01772	0383
00849	00849	01151	01312	01402	01663	01773	03840
*0078	*0088	01152	01313	01403	01664	01774	03841
00849	00849	01153	01314	01404	01665	01775	03842
*0079	*0090	01154	01315	01405	01666	01776	03843
00849	00849	01155	01316	01406	01670	01780	03844
*00800	*01480	01156	01320	01480	01671	01781	03849
00849	00849	01160	01321	01482	01672	01782	0388
*00801	*01481	01161	01322	01483	01673	01783	0389
00849	00849	01162	01323	01484	01674	01784	3570
*00802	*01482	01163	01324	01485	01675	01785	6800
00849	00849	01164	01325	01486	01676	01786	6801
*00803	*01483	01165	01326	01600	01690	01790	6802
00849	00849	01170	01330	01601	01691	01791	6803
*00804	*01484	01171	01331	01602	01692	01792	6804
00849	00849	01172	01332	01603	01693	01793	6805
*00809	*01485	01173	01333	01604	01694	01794	6806
00849	00849	01174	01334	01605	01695	01795	6807
*0081	*01486	01175	01335	01606	01696	01796	6808
00849	00849	01176	01336	01610	01720	01800	6809
*0082	*04186	01180	01340	01611	01721	01801	6820
00849	01100	01181	01341	01612	01722	01802	6821
*0083	01101	01182	01342	01613	01723	01803	6822
00849	01102	01183	01343	01614	01724	01804	6823
*00841	01103	01184	01344	01615	01725	01805	6825
00849	01104	01185	01345	01616	01726	01806	6826
*00842	01105	01186	01346	01620	01730	01880	6827
00849	01106	01190	01350	01621	01731	01881	6828

TABLE 6G--ADDITIONS TO THE CC EXCLUSIONS LIST

6829	0706	00849	*7283	*99709	99678	9587	99691
*07981	0709	*5564	72886	99700	99679	9954	99692
0520	0720	00849	*72881	99701	99680	99600	99693
0521	0721	*5565	7280	99702	99681	99601	99694
0527	0722	00849	72886	99709	99682	99602	99695
0528	0723	*5566	*72886	*99791	99683	99603	99696
0529	07271	00849	7280	9580	99684	99604	99699
0530	07272	*5568	72886	9581	99685	99609	99700
05310	07279	00849	*7750	9582	99686	9961	99701
05311	0728	*5569	00849	9583	99689	9962	99702
05312	*11285	00849	*7751	9584	99690	99630	99709
05313	00849	*5570	00849	9585	99691	99639	9971
05319	*129	00849	*7752	9587	99692	9964	9972
05379	00849	*5571	00849	9954	99693	99651	9973
0538	*41511	00849	*7753	99600	99694	99652	9974
05479	41511	*5579	00849	99601	99695	99653	9975
0548	41519	00849	*7754	99602	99696	99654	99762
0550	*41519	*5582	00849	99603	99699	99659	99799
0551	41511	00849	*7755	99604	99700	99660	9980
0552	41519	*5589	00849	99609	99701	99661	9981
05571	*45989	00849	*7756	9961	99702	99662	9982
05579	41511	*5641	00849	9962	99709	99663	9983
0558	41519	00849	*7757	99630	9971	99664	9984
05600	*4599	*56960	00849	99639	9972	99665	9985
05601	41511	56960	*7758	9964	9973	99666	9986
05609	41519	56961	00849	99651	9974	99667	9987
05671	*4878	56969	*7759	99652	9975	99669	99889
05679	00849	*56961	00849	99653	99762	99670	9989
0568	*5363	56960	*7775	99654	99799	99671	*99881
07020	00849	56961	00849	99659	9980	99672	99700
07021	*5368	56969	*7778	99660	9981	99673	99701
07022	00849	*56969	00849	99661	9982	99674	99702
07023	*5550	56960	*99700	99662	9983	99675	99709
07030	00849	56961	99700	99663	9984	99676	99799
07031	*5551	56969	99701	99664	9985	99677	*99889
07032	00849	*7280	99702	99665	9986	99678	99700
07033	*5552	72886	99709	99666	9987	99679	99701
07041	00849	*72811	*99701	99667	99889	99680	99702
07042	*5559	72886	99700	99669	9969	99681	99709
07043	00849	*72812	99701	99670	*99799	99682	99799
07044	*5560	72886	99702	99671	9580	99683	*9989
07049	00849	*72813	99709	99672	9581	99684	99700
07051	*5561	72886	*99702	99673	9582	99685	99701
07052	00849	*72819	99700	99674	9583	99686	99702
07053	*5562	72886	99701	99675	9584	99689	99709
07054	00849	*7282	99702	99676	9585	99690	99799
07059	*5563	72886	99709	99677			

TABLE 6H--DELETIONS TO THE CC EXCLUSIONS LIST

*2760	2768	*9970	99604	99663	99679	99696	9985
2768	*2768	9970	99609	99664	99680	99699	9986
*2761	2768	*9979	9961	99665	99681	9970	9987
2768	*2769	9580	9962	99666	99682	9971	99889
*2762	2768	9581	99630	99667	99683	9972	9989
2768	*4151	9582	99639	99669	99684	9973	*99881
*2763	4151	9583	9964	99670	99685	9974	9970
2768	*45989	9584	99651	99671	99686	9975	9979
*2764	4151	9585	99652	99672	99689	99762	*99889
2768	*4599	9587	99653	99673	99690	9979	9970
*2765	4151	9954	99654	99674	99691	9980	9979
2768	*5696	99600	99659	99675	99692	9981	*9989
*2766	5696	99601	99660	99676	99693	9982	9970
2768	*72810	99602	99661	99677	99694	9983	9979
*2767	7280	99603	99662	99678	99695	9984	

TABLE 7A - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY94 MEDPAR UPDATE 12/94 GROUPER V12.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
001	32210	12.3992	3	7	9	15	25
002	6158	12.5643	3	7	9	15	25
003	1	7.0000	7	7	7	7	7
004	5629	9.9360	2	3	7	12	20
005	68845	5.2444	2	3	4	6	10
006	493	4.0304	2	2	3	4	9
007	8103	15.1602	3	6	9	17	32
008	2180	8.1981	2	3	6	9	16
009	1708	8.7498	2	3	6	10	18
010	20251	6.1021	2	3	5	8	16
011	2857	5.5985	2	3	4	7	12
012	23038	6.8803	2	3	5	8	15
013	6209	8.1754	2	3	6	9	14
014	353378	4.9363	2	3	4	6	9
015	147787	7.4257	2	3	5	8	13
016	12112	4.1230	2	2	3	5	8
017	3245	6.0386	2	3	5	7	11
018	22156	4.5795	2	3	4	6	9
019	7222	11.2167	3	5	8	14	22
020	8182	8.6466	2	3	6	10	17
021	1160	5.1063	2	3	4	6	10
022	2992	5.6188	2	3	4	7	11
023	5939	6.3861	2	3	5	8	13
024	58040	4.0516	2	2	3	5	8
025	21770	4.0000	2	2	3	5	8
026	42	7.0413	2	3	5	9	14
027	3320	7.7332	2	3	5	9	15
028	10234	4.1933	2	2	3	5	8
029	3290	5.5809	2	3	4	7	11
031	3558	3.2108	2	2	3	4	6
032	1987	6.6466	2	3	5	8	13
034	15850	4.5556	2	3	4	6	9
035	3335	1.7173	1	1	1	2	3
036	13003	4.0974	2	2	3	5	8
037	2196	2.7143	1	2	2	3	5
038	364	1.9008	1	1	1	2	3
039	4015	3.8758	2	2	3	4	6
040	2874	2.0000	2	2	2	2	2
041	1	2.1841	2	2	2	2	2
042	9755	3.7540	2	2	3	4	6
043	126	5.8789	2	3	4	7	11
044	1710	4.3029	2	2	3	5	8
045	2532	5.1375	2	3	4	6	10
046	3278	3.9304	2	2	3	5	7
047	1422	7.0132	2	3	5	8	13
049	2270	2.3742	2	2	2	3	4
050	3704	3.0080	2	2	2	3	5
051	374	3.3068	2	2	3	4	5
052	88	3.6911	2	2	3	4	6
053	3908	4.0000	2	2	3	5	8
054	2	2.9604	2	2	3	3	3
055	2273						
056	757	3.0013	1	2	2	4	6
057	655	4.8672	2	2	3	6	12
059	109	2.9174	1	2	2	3	6
060	1	1.0000	1	1	1	1	1
061	267	5.8876	2	3	4	6	10
063	4339	4.9150	2	3	4	6	10
064	3648	8.1316	2	3	6	10	18
065	34835	3.6646	2	2	3	4	7
066	7253	3.8541	2	2	3	5	7
067	460	4.3500	2	2	3	5	8
068	15389	5.1441	2	3	4	6	9
069	4083	4.0149	2	2	3	5	8
070	18	2.7778	1	2	2	3	6
071	131	4.3282	2	2	3	5	8
072	654	4.6667	2	2	3	5	9
073	6329	5.4076	2	3	4	6	10
074	1	5.0000	5	5	5	5	5
075	38614	11.8512	3	6	9	15	23
076	39214	13.3262	3	6	10	16	25
077	2484	5.6453	2	3	4	7	12
078	27697	8.7085	2	3	6	10	18
079	201639	10.0516	3	5	8	12	20
080	8111	6.8996	2	3	5	8	15
081	3	6.0000	5	5	5	7	7
082	71343	8.4031	2	3	6	10	17
083	7337	6.8559	2	3	5	8	13
084	1505	4.2312	2	2	3	5	8
085	18333	7.7941	2	3	5	9	15
086	1362	4.5110	2	2	3	6	9
087	55899	7.2075	2	3	5	8	13
088	380405	6.5718	2	3	5	8	13
089	450024	7.5677	2	3	5	9	15
090	40132	5.3939	2	3	4	6	10
091	46	4.0217	2	2	3	5	8
092	11451	7.0767	2	3	5	8	13
093	1294	5.1847	2	3	4	6	10
094	10424	7.9988	2	3	5	9	15
095	1124	4.8194	2	2	3	6	9
096	75513	5.8801	2	3	4	7	11
097	26599	4.5076	2	2	3	5	8
098	25	5.0000	2	3	4	6	9
099	27303	3.8658	2	2	3	5	7
100	10459	2.6038	1	2	2	3	5
101	18956	5.9755	2	3	4	7	11
102	2974	3.8859	2	2	3	5	7
103	381	39.5328	6	12	26	52	93
104	21933	16.0246	3	6	10	20	28
105	19055	11.9925	3	6	9	14	21
106	91186	12.7325	3	6	9	15	21
107	59106	9.7593	3	5	8	11	15
108	6402	13.4609	3	6	11	16	25
110	58455	11.4645	3	6	9	14	22

TABLE 7A - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY94 MEDPAR UPDATE 12/94 GROUPER V12.0

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SELECTED PERCENTILE LENGTHS OF STAY
FY94 MEDPAR UPDATE 12/94 GROUPER V12.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
111	5043	6.9784	3	5	7	8	11
112	102552	4.9684	1	2	4	7	10
113	45007	15.9566	4	7	11	19	31
114	8082	10.4306	2	4	8	13	20
115	10396	11.7740	2	7	10	14	21
116	78140	5.8942	1	2	4	7	12
117	4331	4.4659	1	2	3	5	9
118	7364	5.3774	1	3	4	7	13
119	1850	10.0795	3	5	7	13	22
120	42398	8.0294	3	5	7	10	14
121	155540	5.5238	1	3	5	7	10
122	93260	4.8905	1	2	3	6	10
123	50902	5.2208	1	2	3	7	10
124	139504	3.1756	1	1	2	4	6
125	83695	15.8357	4	7	12	20	32
126	4667	6.7120	2	3	5	8	13
127	690485	7.2158	2	4	6	11	19
128	21487	3.7250	1	2	3	5	9
129	5099	7.1211	2	3	5	9	16
130	89074	5.3972	2	3	4	7	12
131	24522	3.9359	1	2	3	5	9
132	56902	3.0860	1	2	2	3	6
133	4803	4.2249	1	2	3	5	9
134	30214	5.6075	1	3	4	7	11
135	6887	3.5920	1	2	3	4	6
136	1130	19.0000	4	10	16	25	39
137	1	4.8949	1	2	3	6	12
138	207148	3.1062	1	2	2	4	6
139	65074	7.6765	2	3	5	9	16
140	272582	3.8091	1	2	3	5	8
141	78316	4.9567	1	2	3	6	11
142	33742	3.4014	1	2	2	4	7
143	138083	2.8505	1	1	2	3	5
144	65608	6.0177	1	2	4	7	12
145	6377	3.3771	1	2	3	4	6
146	8435	11.6669	3	5	8	13	20
147	1419	7.6765	2	3	5	9	16
148	149072	14.0671	3	6	10	17	25
149	13910	7.8799	2	3	5	9	15
150	23669	12.2691	3	5	8	13	22
151	4138	6.4770	2	3	4	7	12
152	4793	9.5489	2	4	6	11	18
153	1695	6.2755	2	3	4	7	12
154	37725	15.9673	4	7	12	20	30
155	3853	6.3582	2	3	4	7	11
156	5	10.6000	3	5	8	17	26
157	12078	6.0388	2	3	4	7	12
158	5989	2.8696	1	2	2	3	5
159	18053	5.5476	2	3	4	7	11
160	10275	2.9750	1	2	2	3	5
161	16867	4.5174	1	2	3	5	9
162	9454	2.1400	1	1	2	2	4

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SELECTED PERCENTILE LENGTHS OF STAY
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DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
163	13	5.1538	1	3	5	7	11
164	5382	9.8317	4	6	8	12	16
165	1570	5.9121	2	4	5	7	9
166	3422	6.0283	2	3	5	7	11
167	2209	3.5441	1	2	3	4	6
168	1861	5.8772	2	3	5	7	13
169	1103	2.6854	1	1	2	3	6
170	13062	13.2659	3	6	10	17	27
171	1089	5.7879	2	3	5	7	11
172	32047	6.7206	2	3	5	8	18
173	2139	4.3230	2	3	3	6	9
174	242167	5.9455	2	3	5	7	11
175	23533	3.6660	1	2	3	4	6
176	16024	6.4582	2	3	5	8	12
177	13260	5.4502	2	3	4	7	10
178	4469	3.8427	1	2	3	5	7
179	10649	7.6771	2	3	5	9	14
180	83221	6.4519	2	3	5	8	12
181	19825	3.9406	1	2	3	5	7
182	243773	5.3607	2	3	4	6	10
183	69130	3.6055	1	2	3	4	7
184	71	3.0423	1	2	2	4	6
185	3978	5.8079	2	3	5	7	12
186	4	5.7500	2	3	5	6	9
187	862	3.8074	1	2	3	5	7
188	60216	6.5003	2	3	5	8	13
189	7573	3.5726	1	2	3	4	7
190	78	6.8205	2	3	5	8	14
191	10694	17.3172	4	8	13	21	34
192	781	8.0320	2	4	6	10	15
193	9628	14.7907	3	7	12	18	26
194	841	8.1867	2	4	6	10	14
195	11258	11.1525	3	5	9	13	19
196	868	6.9505	2	4	6	8	11
197	32126	9.5755	3	5	7	11	17
198	8559	5.1541	2	3	4	6	9
199	2482	12.3767	3	6	10	16	24
200	1589	12.5620	3	6	10	16	27
201	1593	15.9780	4	7	12	20	30
202	24256	8.2786	2	4	6	10	16
203	29460	8.2068	2	4	6	10	16
204	48492	7.1438	2	3	5	8	14
205	22119	7.9531	2	3	6	10	16
206	1718	4.6676	1	2	4	6	9
207	37891	6.0711	2	3	5	7	11
208	10312	3.4110	1	2	3	4	7
209	325078	7.6475	2	3	5	9	12
210	138493	9.7631	2	4	6	11	16
211	24868	7.0990	2	3	5	8	11
212	15	4.2667	1	2	3	6	10
213	6826	10.6058	3	5	8	13	21
214	53097	7.3434	2	4	6	8	14

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SELECTED PERCENTILE LENGTHS OF STAY
FY94 MEDPAR UPDATE 12/94 GROUPER V12.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
215	41073	4.1261	2	2	3	5	7
216	6714	12.1844	3	5	9	15	25
217	19093	16.9796	6	8	11	20	36
218	23698	6.8091	3	4	5	8	13
219	18715	4.0620	2	2	3	5	7
220	4	3.7500	-	-	2	3	9
221	5075	8.7639	2	4	6	10	17
222	3797	4.1675	2	2	3	5	8
223	20488	3.0493	2	2	3	3	6
224	8684	2.3814	-	-	2	3	4
225	6956	5.0606	2	3	3	6	11
226	5864	7.2121	2	3	4	6	15
227	5172	3.1495	1	2	3	4	6
228	3231	3.7493	1	2	3	4	8
229	1553	2.3973	-	1	2	3	5
230	2696	5.5438	2	3	4	6	12
231	10959	5.5229	2	3	4	6	12
232	647	4.4699	2	3	4	6	10
233	4757	9.7675	2	4	7	12	19
234	2268	4.4453	2	3	4	6	9
235	6051	7.6691	2	3	5	9	15
236	39666	6.9787	2	3	5	8	13
237	1586	4.9098	2	3	4	6	9
238	7318	11.3360	3	5	7	11	22
239	62410	8.3701	3	5	6	9	16
240	11969	7.9905	3	5	6	9	16
241	2988	4.8313	2	3	4	6	9
242	2529	8.8802	2	4	6	10	17
243	87689	6.1328	3	4	5	7	11
244	11745	6.3745	3	4	5	7	12
245	4363	4.4873	2	3	4	6	8
246	1413	4.6914	2	3	4	6	8
247	10465	4.2654	2	3	4	5	8
248	6734	5.7180	2	3	4	7	10
249	9848	4.6294	2	3	4	6	9
250	3517	5.6230	2	3	4	6	11
251	2309	3.2278	1	2	3	4	6
253	18421	6.5600	2	3	4	6	12
254	9843	4.0040	2	3	4	5	7
256	9680	4.3875	2	3	4	5	9
257	26533	3.8836	2	3	3	5	7
258	20468	2.7710	1	2	3	4	6
259	4469	4.0759	2	3	4	5	8
260	5243	1.9804	1	1	2	3	5
261	2530	2.5775	1	2	2	3	5
262	800	4.0325	2	3	3	5	7
263	30952	15.7009	4	7	11	19	31
264	3530	9.0820	3	5	7	11	18
265	4687	7.8816	3	4	5	9	17
266	2973	3.8291	2	3	3	4	8
267	252	4.5000	2	3	4	5	8
268	1148	4.3476	2	3	3	5	9

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SELECTED PERCENTILE LENGTHS OF STAY
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DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
269	10951	9.9332	2	4	7	13	20
270	3949	3.4657	1	2	2	4	7
271	21531	9.4089	3	5	7	11	17
272	6510	8.0561	2	4	6	10	15
273	1525	5.9528	2	3	4	7	12
274	2607	8.0997	1	3	6	10	17
275	236	3.3898	-	1	2	4	8
276	932	5.2929	2	3	4	7	10
277	81902	7.2734	3	4	6	9	13
278	25360	5.4290	2	3	3	5	8
279	7	5.5714	-	2	5	7	8
280	13662	5.5282	2	2	4	7	10
281	6032	3.8984	2	2	3	5	7
282	1	10.0000	10	10	10	16	18
283	5628	5.9394	2	3	4	7	11
284	1756	4.0598	2	3	3	5	8
285	4066	15.3553	4	7	11	19	29
286	1902	8.9621	3	5	7	10	17
287	6650	15.5054	4	6	10	18	31
288	812	8.0776	3	4	6	8	14
289	5071	4.5401	2	2	3	4	10
290	8970	2.9600	1	2	2	3	5
291	83	1.6145	-	1	1	2	3
292	5246	13.7686	3	5	10	17	27
293	287	6.2718	2	3	5	7	12
294	94388	6.1464	2	3	4	6	11
295	3662	5.0459	2	3	4	6	9
296	225258	7.0066	2	3	5	8	13
297	33681	4.5968	2	3	4	6	8
298	88	3.3523	1	2	3	4	6
299	917	6.2345	2	3	5	7	10
300	13930	7.8190	2	4	6	9	15
301	1387	4.5829	2	3	4	6	8
302	7510	14.0459	3	6	11	18	25
303	10434	11.0042	3	5	8	13	20
304	13366	10.9868	3	5	8	13	22
305	2556	5.2277	2	3	4	6	9
306	12083	7.0795	2	3	5	9	15
307	2896	3.2441	1	2	3	4	6
308	9940	7.5019	2	3	5	9	16
309	3511	3.1820	1	2	3	4	6
310	31563	4.8832	2	3	4	6	10
311	11705	2.3329	1	2	2	3	4
312	2334	5.1110	2	3	3	6	11
313	972	2.5195	1	2	2	3	5
314	1	5.0000	5	5	5	5	5
315	30057	10.3051	2	3	5	13	23
316	64963	8.0010	2	3	6	10	16
317	854	4.0328	1	2	3	4	6
318	6426	7.5128	2	3	5	9	15
319	518	3.3919	1	2	2	4	7
320	178229	7.0271	3	4	5	8	13

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SELECTED PERCENTILE LENGTHS OF STAY
FY94 MEDPAR UPDATE 12/94 GROUPER V12.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
321	23919	4.9319	2	3	4	6	8
322	70	5.1143	-	2	3	5	10
323	19020	3.7525	-	-	2	3	7
324	9615	2.2315	-	-	1	3	4
325	8403	4.8757	2	2	3	6	9
326	2647	3.3294	-	-	2	4	6
327	6	2.0000	-	-	2	2	4
328	803	4.4009	-	2	3	5	8
329	146	2.2945	-	-	1	3	5
331	37697	6.7524	2	3	5	8	13
332	4869	4.0766	-	2	3	5	8
333	341	5.9589	-	2	4	6	10
334	23221	6.8622	2	3	5	8	14
335	10551	5.2485	-	2	3	6	10
336	71153	4.5795	-	2	3	5	8
337	45235	2.9648	-	-	2	3	5
338	8335	5.6153	-	2	3	6	10
339	2641	4.7228	-	2	3	5	8
340	1	2.0000	-	-	2	2	2
341	7744	3.7030	-	-	2	4	7
342	230	4.1435	-	-	2	5	8
344	5275	3.4923	-	-	2	4	7
345	1870	4.5958	-	-	2	5	9
346	5861	7.4817	2	3	5	9	15
347	549	3.5137	-	-	2	4	7
348	3252	5.2638	-	2	3	6	10
349	793	3.0958	-	-	2	4	6
350	7394	5.2410	-	2	3	6	10
352	707	4.2510	-	-	2	5	9
353	2641	9.3817	2	3	6	10	17
354	10461	6.7522	2	3	5	8	12
355	5561	3.9984	-	2	3	5	8
356	36598	3.3220	-	2	3	4	6
357	6705	10.8043	3	4	6	10	17
358	27581	5.0507	-	2	3	6	10
359	26855	3.4759	-	-	2	4	7
360	9686	4.2209	-	-	2	5	9
361	554	4.9603	-	2	3	6	10
363	4934	3.7148	-	-	2	4	7
364	1902	3.8291	-	-	2	4	7
365	2557	8.6394	2	3	5	9	15
366	4749	8.1093	2	3	5	9	14
367	581	3.5473	-	-	2	4	7
368	2156	7.1577	2	3	5	8	12
369	2432	3.8919	-	-	2	4	7
370	1004	5.6882	-	2	3	6	10
371	971	3.7508	-	-	2	4	7
372	729	3.8406	-	-	2	4	7
373	3479	2.0969	-	-	1	3	5
374	128	2.9141	-	-	2	4	6
375	6	2.6667	-	-	2	3	4
376	194	3.7062	-	-	2	4	7

TABLE 7A - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY94 MEDPAR UPDATE 12/94 GROUPER V12.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
377	34	4.1765	-	-	2	5	10
378	186	2.8298	-	-	2	4	7
379	346	3.3584	-	-	2	4	7
380	77	1.9870	-	-	1	2	4
381	223	2.0942	-	-	1	2	4
382	66	1.8136	-	-	1	2	2
383	1243	4.3805	-	-	3	5	6
384	128	2.0313	-	-	1	2	4
385	3	5.6667	-	-	2	9	9
388	1	2.0000	-	-	2	2	2
389	27	10.3333	-	2	6	16	26
390	10	4.5263	-	-	2	7	13
392	2574	11.9841	4	6	9	15	24
393	4	10.5000	-	4	7	12	19
394	1810	8.4691	2	3	5	10	19
395	68994	5.7779	2	3	4	7	11
396	20	3.8500	-	-	2	6	8
397	13959	6.6139	2	3	5	8	13
398	17069	7.1205	2	3	5	9	15
399	1318	4.7170	-	2	4	7	11
400	7944	11.2118	3	5	8	14	25
401	6868	13.0079	3	5	10	16	27
402	1757	4.4121	-	-	2	6	10
403	34137	9.9027	2	4	7	13	21
404	3918	5.1194	-	2	4	7	10
406	3626	11.9404	3	5	9	15	24
407	794	4.9572	-	2	4	6	9
408	3343	8.8086	2	3	6	11	21
409	7009	6.9568	2	3	5	8	15
410	105626	3.3443	-	2	3	4	6
411	53	3.3585	-	-	2	5	7
412	65	2.9692	-	-	2	4	7
413	8884	9.1275	2	3	6	11	19
414	898	5.5668	-	2	4	7	11
415	38002	17.1780	4	8	13	21	34
416	182780	8.8491	2	4	7	11	17
417	32	6.2813	-	2	4	8	13
418	17046	7.2477	2	3	5	9	13
419	16750	6.1816	2	3	5	7	11
420	2890	4.5689	-	2	4	6	8
421	13329	4.8718	-	2	4	6	9
422	81	4.5062	-	2	4	6	9
423	8858	9.3477	2	4	7	11	19
424	2309	19.7774	4	8	13	24	41
425	17593	5.4691	-	2	4	7	11
426	5333	6.3244	-	2	5	8	13
427	2097	6.0367	-	2	5	8	13
428	1059	8.1926	2	3	6	10	18
429	36291	10.3884	3	4	8	14	20
430	62101	10.8276	3	4	8	14	22
431	223	7.5516	2	3	6	9	14
432	501	6.8822	2	3	6	9	14

TABLE 7A - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY94 MEDPAR UPDATE 12/94 GROUPER V12.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
433	7667	3.6039	1	1	2	4	6
434	20984	6.3469	2	3	5	7	12
435	14493	5.0896	2	3	4	6	9
436	2792	15.4925	4	9	14	21	28
437	14398	11.7395	4	7	10	14	21
439	830	9.2161	2	3	6	11	19
440	4551	10.9143	2	4	7	13	24
441	810	3.6397	1	2	2	4	7
442	13831	9.0192	3	6	8	14	19
443	3878	3.9140	1	2	2	4	7
444	3480	5.7437	2	3	4	7	11
445	1397	3.8712	1	2	3	5	7
447	3578	3.0467	1	2	2	4	6
448	20	1.0000	1	1	1	1	1
449	30245	4.8298	1	2	3	6	10
450	6446	2.5476	1	2	2	3	5
451	6	3.3333	1	2	3	5	8
452	19188	5.6252	2	3	4	7	12
453	3864	3.4035	1	2	2	4	7
454	4410	8.0145	2	4	6	11	17
455	978	3.4673	1	2	2	4	7
456	194	8.1598	2	4	6	11	17
457	148	5.1689	2	3	4	6	9
458	1688	18.3691	4	8	14	24	37
459	599	13.2654	3	5	8	14	25
460	2438	7.3048	2	3	5	9	14
461	3593	5.6691	2	3	4	6	9
462	13129	14.9254	5	7	10	15	25
463	11082	5.8217	2	3	4	6	9
464	2624	3.9177	1	2	3	5	8
465	258	2.8760	1	1	2	4	6
466	2308	4.5308	1	2	3	5	8
467	2672	4.9008	1	2	3	6	9
468	62770	16.2138	3	6	12	20	32
471	8015	9.5860	3	5	8	12	16
472	184	30.7989	6	14	22	43	72
473	8260	14.9343	4	8	13	23	36
475	88675	12.8913	4	6	10	17	25
476	7915	15.0719	4	8	12	18	27
477	33544	9.3854	3	5	7	12	19
478	117696	8.9918	2	4	6	11	19
479	16826	4.8922	2	3	4	6	9
480	283	32.3816	10	14	22	40	70
481	130	30.3308	17	22	26	37	46
482	7137	16.2091	5	8	12	19	30
483	36266	49.1117	16	25	39	60	91
484	329	17.2097	2	7	14	23	33
485	3005	13.1304	5	7	10	15	25
486	2112	15.0578	1	6	11	19	30
487	3563	9.6904	2	4	7	12	19
488	1174	18.6431	5	8	14	23	36
489	13016	11.6713	3	4	8	14	24

TABLE 7A - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY94 MEDPAR UPDATE 12/94 GROUPER V12.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
490	3903	7.4220	1	3	5	8	15
491	9200	4.7991	2	3	4	6	8
492	2057	18.3379	4	5	12	28	38
493	52801	6.1255	1	2	5	8	12
494	28671	2.3049	1	1	1	3	5
495	133	24.1579	9	14	19	27	36
	1051666						

TABLE 7B - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY94 MEDPAR UPDATE 12/94 GROUPER V13.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
001	32210	12.3992	3	5	9	15	25
002	6158	12.5603	3	6	9	15	25
003	1	7.0000	2	7	7	17	17
004	5629	8.9360	2	3	7	12	20
005	68935	5.2444	2	3	4	6	10
006	403	4.0304	2	2	3	4	9
007	8108	15.1602	3	5	9	17	32
008	2120	4.1099	2	3	3	5	9
009	1706	8.1981	3	4	6	10	16
010	20251	8.7498	3	4	6	11	18
011	2957	5.1021	2	3	4	7	10
012	23636	8.5985	3	4	6	10	16
013	6208	8.8803	3	4	6	10	16
014	353378	8.1754	3	4	6	10	15
015	147787	4.9363	2	3	4	6	9
016	12112	7.4267	3	4	5	8	13
017	3245	4.1230	2	3	3	5	8
018	22156	6.8306	3	4	5	8	13
019	7222	4.5795	2	3	4	6	9
020	8102	11.2167	3	5	8	14	22
021	1160	6.8466	3	4	5	8	13
022	2992	5.1063	2	3	4	6	10
023	5939	5.5188	2	3	4	6	11
024	58040	6.3961	3	4	5	7	11
025	21770	4.0516	2	3	3	4	6
026	42	4.0000	2	3	3	4	6
027	3320	7.0413	3	4	5	7	12
028	10234	7.7332	3	4	5	8	13
029	3290	4.1933	2	3	3	5	9
031	3559	5.5809	2	3	4	6	10
032	1997	3.2108	2	2	3	4	6
034	15850	8.8466	3	4	6	10	16
035	3335	4.5556	2	3	4	6	9
036	13003	1.7173	1	1	1	2	3
037	2196	4.0974	2	3	4	6	9
038	364	2.7143	2	2	2	3	5
039	4015	1.9098	1	1	1	2	3
040	2874	3.8758	2	2	3	5	7
041	1	2.0000	2	2	2	2	2
042	9755	2.1841	1	1	2	2	3
043	126	3.7540	2	2	3	4	6
044	1710	5.8799	2	3	4	7	11
045	2532	4.3029	2	3	4	5	8
046	3278	5.9375	2	3	4	7	11
047	1422	3.9304	2	3	3	5	7
049	2270	7.0132	2	3	5	8	13
050	3704	2.3742	1	2	2	3	4
051	374	3.0080	2	2	3	4	5
052	88	3.2955	2	2	3	4	6
053	3908	2.5511	1	2	2	3	4
054	2	4.0000	2	3	4	5	6
055	2273	2.9804	1	2	3	4	5

TABLE 7B - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY94 MEDPAR UPDATE 12/94 GROUPER V13.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
056	757	3.0013	1	2	2	4	6
057	655	4.8672	2	3	4	6	12
059	109	2.9174	1	2	2	3	6
060	1	1.0000	1	1	1	1	1
061	267	5.8876	2	3	4	6	14
063	4330	4.9150	2	3	4	6	10
064	3848	8.1316	3	4	6	10	16
065	34835	3.6846	2	2	3	4	7
066	7253	3.8541	2	2	3	4	6
067	480	4.3500	2	3	3	5	8
068	15389	5.1441	2	3	4	6	10
069	4083	4.0149	2	3	3	5	7
070	16	2.7778	1	2	2	3	6
071	131	4.3282	2	3	3	5	8
072	654	4.6667	2	3	4	5	8
073	6329	5.4076	2	3	4	6	10
074	1	5.0000	5	5	5	5	5
075	38614	11.8512	3	6	9	15	25
076	39214	13.3262	4	6	10	17	25
077	2484	5.6453	2	3	4	6	10
078	27697	8.7085	3	4	6	10	16
079	201639	10.0516	3	5	8	12	19
080	8111	6.8996	3	4	5	8	12
081	3	9.0000	5	7	9	11	13
082	71343	8.4031	3	4	6	9	13
083	7337	6.8559	3	4	5	8	12
084	1505	4.2312	2	3	3	5	7
085	18313	7.7941	3	4	6	9	13
086	1312	4.5110	2	3	4	5	7
087	55899	7.2075	3	4	6	9	14
088	360405	6.5718	3	4	5	8	12
089	450024	7.5677	3	4	6	9	14
090	40132	5.3939	2	3	4	7	10
091	46	4.0217	2	3	3	5	8
092	11451	7.6767	3	4	6	9	15
093	1284	7.9088	3	4	6	10	18
094	10424	5.1847	2	3	4	6	10
095	1124	4.8194	2	3	4	6	8
096	75513	5.8801	2	3	4	7	11
097	26599	4.5076	2	3	4	5	7
098	25	5.0000	2	3	4	6	9
099	27303	3.8658	2	3	3	5	7
100	10459	2.6038	1	2	2	3	5
101	18956	5.9755	2	3	4	7	12
102	2974	3.9859	2	3	3	5	7
103	381	30.5328	5	12	26	52	83
104	21933	10.0248	3	5	8	12	21
105	19055	11.9925	4	6	9	14	21
106	91186	12.7325	4	6	11	15	25
107	59106	9.7593	3	5	8	11	15
108	6402	13.4609	4	6	11	16	25
110	58455	11.4645	4	6	9	14	22

TABLE 7B - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY94 MEDPAR UPDATE 12/94 GROUPER V13.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
111	5043	6.9794	3	5	7	9	11
112	182953	4.9684	1	2	4	6	10
113	45097	15.8566	4	7	11	19	31
114	8862	10.4306	2	4	8	13	20
115	10396	11.7740	2	4	10	14	21
116	79140	5.8942	1	2	4	7	12
117	4331	4.4659	1	2	3	5	9
118	7304	3.4184	1	2	3	4	7
119	1950	5.8774	1	2	4	7	13
120	42518	10.0750	3	5	8	13	22
121	165544	8.0294	3	5	7	10	14
122	93263	5.5228	2	3	4	7	12
123	50902	4.8905	2	3	4	6	10
124	139504	5.2208	2	3	4	7	12
125	63695	3.1756	1	2	3	4	6
126	4667	15.8357	4	7	12	20	32
127	699485	6.7120	2	3	5	8	13
128	21487	7.2158	2	3	6	9	15
129	5099	3.7250	1	2	3	5	9
130	89074	7.1211	2	3	5	8	12
131	24522	5.3972	2	3	4	6	9
132	56902	3.9359	1	2	3	5	8
133	4803	3.0860	1	2	3	4	6
134	30214	4.2249	1	2	3	5	8
135	6887	5.6075	1	2	4	7	11
136	1130	3.5920	1	2	3	5	8
137	1	19.0000	19	19	19	19	19
138	207048	4.8949	1	2	3	6	10
139	65874	3.1062	1	2	3	4	6
140	272582	3.8091	1	2	3	4	7
141	78316	4.9567	1	2	3	6	10
142	33742	3.4014	1	2	3	4	7
143	138083	2.8505	1	2	2	3	5
144	65608	6.0177	1	2	4	7	12
145	6377	3.3771	1	2	3	4	6
146	8435	11.6669	3	5	8	14	23
147	1419	7.6765	2	3	5	9	15
148	149072	14.0671	3	6	10	17	27
149	13910	7.8799	2	3	6	9	15
150	23669	12.2691	3	5	8	14	23
151	4138	6.4770	2	3	5	8	12
152	4793	9.5488	2	4	7	11	18
153	1695	6.2755	2	3	5	8	12
154	37726	15.9823	4	7	12	20	32
155	3853	6.3582	2	3	5	8	12
156	5	10.6000	3	6	8	13	20
157	12078	8.0389	2	3	6	10	16
158	5889	2.8496	1	2	2	3	5
159	18053	5.5476	1	2	4	7	11
160	10275	2.9750	1	2	2	3	5
161	16867	4.5174	1	2	3	5	9
162	9464	2.1400	1	1	2	3	4
163	13	5.1538	1	2	4	7	11
164	5382	9.8317	2	3	6	11	19
165	1570	5.9121	1	2	4	7	11
166	3422	6.0283	2	3	5	7	11
167	2209	3.5441	1	2	3	4	6
168	1981	5.6772	1	2	4	7	13
169	1103	2.8854	1	1	2	3	5
170	13062	13.2859	3	5	10	17	27
171	1088	5.7878	1	2	4	7	11
172	32047	8.7206	2	3	6	9	15
173	2139	4.3230	1	2	3	5	8
174	242187	5.9455	2	3	4	7	11
175	23533	3.6660	1	2	3	4	7
176	16024	6.4582	2	3	5	8	12
177	13260	5.4802	2	3	4	7	11
178	4469	3.8427	1	2	3	5	8
179	10649	7.6771	2	3	5	9	15
180	83221	6.4519	2	3	5	8	12
181	19825	3.9406	1	2	3	5	8
182	243773	5.3807	2	3	4	6	10
183	69130	3.6055	1	2	3	4	7
184	71	3.0423	1	2	3	4	6
185	3978	5.8079	2	3	4	7	11
186	4	5.7500	2	3	5	8	10
187	862	3.8074	1	2	3	5	8
188	60216	6.5003	2	3	5	8	12
189	7573	3.5726	1	2	3	4	7
190	78	6.8205	2	3	5	8	13
191	10694	17.3172	4	7	13	22	34
192	781	8.0320	2	3	6	10	16
193	9628	14.7907	3	6	11	19	29
194	841	8.1867	2	3	6	10	16
195	11250	11.1525	3	5	8	14	24
196	860	6.9505	2	3	5	9	15
197	32126	9.5755	2	4	7	12	20
198	8559	5.1541	1	2	4	7	11
199	2482	12.3767	3	5	9	15	25
200	1589	12.5620	3	5	9	15	25
201	1593	15.9760	4	7	12	20	32
202	24256	8.2786	2	3	6	10	16
203	29468	8.2068	2	3	6	10	16
204	46492	7.1438	2	3	5	9	14
205	22110	7.9531	2	3	6	9	15
206	1718	4.8676	1	2	4	7	11
207	37891	6.0711	2	3	4	7	12
208	10312	3.4110	1	2	3	4	6
209	328078	7.8475	2	3	6	9	15
210	138493	9.7631	2	4	7	11	19
211	24068	7.0990	2	3	5	9	14
212	15	4.2667	1	2	3	6	10
213	6626	10.6058	2	4	8	13	21
214	53097	7.3434	2	3	5	9	14

TABLE 7B - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY94 MEDPAR UPDATE 12/94 GROUPER V13.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
215	1	19.0000	19	19	19	19	19
216	1	19.0000	19	19	19	19	19
217	1	19.0000	19	19	19	19	19

TABLE 7B - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY94 MEDPAR UPDATE 12/94 GROUPER V13.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	PERCENTILE	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
215	41073	4.1261		2	2	3	5	7
216	6714	12.1844		5	6	11	15	25
217	19093	16.0796		6	9	15	20	36
218	23898	6.8091		3	4	5	8	13
219	18715	4.0820		2	2	3	5	7
220	4	3.7500		2	2	3	5	9
221	5075	8.7639		3	4	6	10	17
222	3787	4.1075		2	2	3	5	8
223	20488	3.0493		2	2	2	3	4
224	8684	2.3814		1	2	2	3	4
225	8956	6.0608		2	3	4	7	11
226	5864	7.2121		3	4	5	8	12
227	5172	3.1495		2	2	2	3	5
228	3231	3.7493		2	2	3	4	6
229	1553	2.3973		1	2	2	3	4
230	2686	6.5438		2	3	5	8	12
231	10959	5.5229		2	3	4	7	10
232	647	4.4699		2	2	3	5	9
233	4787	9.7675		3	4	7	12	19
234	2260	4.4453		2	2	3	5	8
235	6051	7.6691		2	3	5	9	15
236	39666	6.9787		2	3	5	9	15
237	1586	4.9096		2	2	3	6	13
238	7318	11.3360		3	4	7	13	22
239	62410	8.3701		3	4	6	10	16
240	11969	7.9905		3	4	6	10	17
241	2988	4.8313		2	2	3	6	11
242	2529	8.8802		3	4	6	11	18
243	87689	6.1328		2	3	5	8	12
244	11745	6.3745		2	3	5	8	12
245	4363	4.4873		2	2	3	6	10
246	1413	4.6914		2	2	3	6	10
247	10465	4.2854		2	2	3	5	8
248	8734	5.7180		2	3	4	7	11
249	9848	4.6284		2	2	3	6	10
250	3517	5.6230		2	3	4	7	11
251	2309	3.2278		1	2	2	4	7
253	18421	6.5600		2	3	5	8	13
254	9843	4.0040		2	2	3	5	8
256	9660	4.3875		2	2	3	5	8
257	26533	3.8836		2	2	3	5	7
258	20468	2.7710		1	2	2	3	5
259	4469	4.0759		2	2	3	5	8
260	5243	1.9804		1	1	1	2	3
261	2530	2.5775		1	2	2	3	4
262	800	4.0325		2	2	3	5	8
263	30952	15.7009		3	4	6	10	17
264	3530	9.0620		3	4	7	12	19
265	4687	7.8818		3	4	6	10	16
266	2973	3.8291		2	2	3	5	7
267	252	4.5000		2	2	3	6	9
268	1148	4.3476		2	2	3	5	8

TABLE 7B - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY94 MEDPAR UPDATE 12/94 GROUPER V13.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
269	10951	9.9332	2	4	7	13	20
270	3949	3.4657	1	2	3	5	7
271	21531	8.4000	2	3	5	9	17
272	6519	8.0561	2	3	5	9	15
273	1328	5.9528	2	3	4	7	12
274	2907	8.0997	2	3	5	9	17
275	238	3.3908	1	2	3	4	8
276	832	5.2928	2	3	4	6	10
277	81902	7.2734	2	3	5	9	15
278	25360	5.4290	2	3	4	7	11
279	7	5.5714	2	3	4	7	13
280	13862	5.5282	2	3	4	7	11
281	8032	3.9884	2	2	3	5	8
282	1	10.0000	10	10	10	10	10
283	5628	5.9364	2	3	4	7	11
284	1758	4.0568	2	2	3	5	8
285	4866	15.3553	3	4	6	10	17
286	1902	8.8621	3	4	6	11	18
287	6650	15.5054	3	4	6	10	17
288	812	8.0776	3	4	6	11	18
289	5071	4.5401	2	2	3	6	10
290	8970	2.9600	1	2	2	4	6
291	83	1.6145	1	1	1	2	3
293	5246	13.7686	3	4	6	10	17
294	287	6.2718	2	3	5	8	12
295	94388	8.1464	3	4	6	10	16
296	3662	5.0459	2	3	4	6	9
297	225258	7.0066	2	3	5	9	15
298	3881	4.5966	2	2	3	6	10
299	86	3.3523	1	2	3	4	6
300	917	6.2345	2	3	5	8	13
301	13838	7.8190	2	3	5	9	15
302	1887	4.5829	2	2	3	6	10
303	7518	14.0459	3	4	6	10	17
304	18434	11.0042	3	4	6	10	17
305	13366	10.9868	3	4	6	10	17
306	2556	5.2277	2	3	4	7	11
307	12083	7.0795	2	3	5	9	15
308	2898	3.2441	1	2	3	4	6
309	9940	7.5019	2	3	5	9	15
310	3511	3.1820	1	2	3	4	6
311	31563	4.8832	2	2	3	6	10
312	11705	2.3329	1	2	2	3	5
313	2334	5.1110	2	3	4	6	10
314	972	2.8195	1	2	2	3	5
315	1	5.0000	5	5	5	5	5
316	30057	10.3051	3	4	6	11	18
317	64963	8.0010	3	4	6	10	17
318	854	4.0328	2	2	3	5	8
319	6426	7.5128	2	3	5	9	15
320	518	3.3910	1	2	3	5	7
	178220	7.0271					

TABLE 7B - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY94 MEDPAR UPDATE 12/94 GROUPER V13.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
321	23919	4.9319	2	3	4	6	9
322	70	5.1143	2	3	4	6	9
323	10028	3.7525	2	2	3	5	7
324	9615	2.2315	1	1	2	3	4
325	8493	4.8757	2	3	4	6	8
326	2847	3.3284	1	2	3	4	6
327	6	2.0000	1	1	2	3	3
328	883	4.4000	2	3	4	5	7
329	146	2.2945	1	1	2	3	4
331	37697	6.7524	2	3	5	8	12
332	4880	4.0766	2	2	3	5	7
333	341	5.9589	2	3	4	7	10
334	23221	6.8822	2	3	5	8	12
336	10561	6.2485	2	3	5	8	11
336	71153	4.5795	2	3	4	6	8
337	46238	2.8648	1	2	2	3	5
338	6335	6.6153	2	3	5	8	12
339	2641	4.7228	2	3	4	6	8
340	1	2.0000	2	2	2	2	2
341	7744	3.7030	1	2	3	4	6
342	230	4.1435	2	2	3	5	7
344	6275	3.4923	1	2	3	4	6
345	1670	4.5958	2	2	3	5	8
346	5861	7.4817	2	3	5	9	14
347	549	3.5137	1	2	3	4	6
348	3252	5.2638	2	3	4	6	9
349	793	3.0968	1	2	3	4	5
350	7394	5.2410	2	3	4	6	9
352	707	4.2518	2	2	3	5	7
353	2641	9.3817	2	4	7	12	19
354	10461	6.7522	2	3	5	8	12
355	5561	3.9984	1	2	3	5	7
356	36598	3.3220	1	2	3	4	6
357	6705	10.6043	2	4	8	14	22
358	27581	5.0507	2	3	4	6	9
359	26655	3.4758	1	2	3	4	6
360	9686	4.2209	2	2	3	5	7
361	554	4.9603	2	3	4	6	8
363	4934	3.7146	1	2	3	4	6
364	1902	3.8291	1	2	3	4	6
365	2557	6.6394	2	3	5	8	12
366	4749	8.1093	2	4	6	10	15
367	581	3.5473	1	2	3	4	6
368	2156	7.1577	2	3	5	9	13
369	2432	3.8819	1	2	3	4	6
370	1004	5.6882	2	3	4	7	10
371	971	3.7508	1	2	3	4	6
372	729	3.6406	1	2	3	4	6
373	3479	2.0969	1	1	2	3	4
374	128	2.9141	1	2	2	3	5
375	6	2.6667	1	1	2	4	4
376	194	3.7062	1	2	3	4	6

TABLE 7B - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY94 MEDPAR UPDATE 12/94 GROUPER V13.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
377	34	4.1765	1	2	3	5	10
378	188	2.8298	1	2	2	4	5
379	346	3.3584	1	2	3	4	6
380	77	1.9870	1	1	2	2	3
381	223	2.0942	1	1	2	3	4
382	66	1.8136	1	1	2	2	3
383	1243	4.3805	2	2	3	5	8
384	128	2.0313	1	1	2	2	4
385	3	2.0000	2	2	2	2	2
386	27	5.6667	2	3	4	6	10
387	18	2.0000	1	1	2	2	3
388	2874	10.3333	2	4	8	14	24
389	4	4.8263	2	3	4	6	8
390	1810	11.8841	2	4	8	15	25
391	68994	10.8000	2	4	8	14	22
392	20	8.4881	2	3	6	11	17
393	13959	5.7779	2	3	4	7	10
394	17059	3.8500	1	2	3	5	7
395	1318	6.8139	2	3	5	8	12
396	7944	7.1205	2	3	5	9	13
400	6868	4.7170	1	2	3	6	9
401	1757	11.2116	2	4	8	15	24
402	34137	13.0079	3	5	9	17	27
403	3918	4.4121	1	2	3	5	8
404	3626	9.9027	2	4	7	12	19
406	794	5.1194	2	3	4	6	9
407	3343	11.9404	2	4	8	15	25
408	7009	4.9572	1	2	4	6	9
409	105626	8.8086	2	3	6	11	17
410	53	6.9568	2	3	5	9	13
411	65	3.3443	1	2	3	4	6
412	8884	3.3585	1	2	3	4	6
413	898	2.8692	1	2	2	3	5
414	38002	6.1276	2	3	5	8	11
415	182780	5.5668	2	3	4	7	10
416	32	17.1780	3	6	13	24	36
417	17046	6.8491	2	3	5	8	12
418	16750	6.2813	2	3	5	8	11
419	2890	7.2477	2	3	5	9	13
420	13329	6.1816	2	3	5	8	11
421	81	4.5669	2	3	4	6	8
422	8858	4.8718	2	3	4	6	8
423	2309	4.5062	2	3	4	6	8
424	17593	9.3477	2	4	7	12	19
425	5333	10.7774	2	4	8	14	22
426	2097	5.4691	2	3	4	7	10
427	1059	6.3244	2	3	5	8	12
428	36291	6.0367	2	3	5	8	11
430	82101	8.1928	2	3	6	11	17
431	223	10.3884	2	4	8	14	22
432	501	10.8276	2	4	8	14	22
		7.5516	2	3	6	10	15
		6.8822	2	3	5	9	13

TABLE 7B - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY94 MEDPAR UPDATE 12/94 GROUPER V13.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
433	7067	3.6939	-	-	2	4	6
434	20984	6.3469	2	3	4	7	12
435	14493	5.0896	1	3	4	6	9
436	2792	15.4925	4	5	10	21	28
437	14398	11.7395	4	6	9	14	21
439	930	9.2161	2	4	7	11	19
440	4851	10.9143	3	5	8	13	24
441	619	3.6397	1	2	3	5	7
442	13031	9.0192	2	4	6	11	17
443	3679	3.3148	1	2	3	4	7
444	3480	5.7437	2	3	4	7	11
445	1397	3.8712	1	2	3	5	7
447	3578	3.0467	1	2	2	4	6
448	20	1.0000	1	1	1	1	1
449	30245	4.8288	1	2	3	6	10
450	6446	2.5476	1	1	2	3	5
451	6	3.3333	1	2	2	4	6
452	19188	5.6252	2	3	4	7	10
453	3864	3.4035	1	2	3	4	6
454	4410	6.0145	2	3	4	7	11
455	978	3.4673	1	2	3	4	6
456	194	8.1598	2	3	5	10	19
457	148	5.1689	2	3	4	6	9
458	1688	10.3691	3	4	7	13	22
459	599	13.2654	3	5	9	17	28
460	2438	7.3048	2	3	5	9	14
461	3593	5.6691	2	3	4	7	11
462	13129	14.9254	3	5	9	17	30
463	11082	5.8217	2	3	4	7	11
464	2624	3.9177	1	2	3	5	8
465	258	2.8760	1	1	2	4	6
466	2308	4.5308	2	3	4	5	8
467	2672	4.9008	2	3	4	6	9
468	62701	10.2198	3	5	8	13	20
471	8015	9.5660	3	5	8	12	18
472	104	30.7980	6	12	22	40	70
473	8260	14.8343	5	8	12	19	30
475	88675	12.8813	4	7	10	16	25
476	7915	15.0719	5	8	12	19	30
477	33613	9.3883	3	5	8	12	19
478	117680	6.9922	2	4	6	9	14
479	16025	4.8824	2	3	4	6	8
480	283	32.3816	7	14	25	46	70
481	130	30.3308	6	12	22	40	70
482	7137	16.2091	5	8	12	19	30
483	36266	40.1117	9	14	25	46	91
484	329	17.2097	5	8	13	23	33
485	3005	13.1304	4	7	11	17	25
486	2112	15.0578	5	8	12	19	30
487	3563	9.6904	3	5	8	12	19
488	1174	18.6431	5	9	14	23	36
489	13016	11.6713	4	6	9	14	24

TABLE 7B - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY94 MEDPAR UPDATE 12/94 GROUPER V13.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
490	3903	7.4220	1	3	5	8	15
491	9200	4.7991	2	3	4	6	8
492	2057	18.3379	4	5	12	28	38
493	52801	6.1255	1	2	5	8	12
494	2871	2.3049	-	1	1	3	5
495	133	24.1579	9	14	19	27	36
	10916656						

BILLING CODE 4120-01-C

TABLE 8a.—STATEWIDE AVERAGE OPERATING COST-TO-CHARGE RATIOS FOR URBAN AND RURAL HOSPITALS (CASE WEIGHTED) APRIL 1995

State	Urban	Rural
ALABAMA	0.435	0.483
ALASKA	0.535	0.721
ARIZONA	0.459	0.643
ARKANSAS	0.552	0.515
CALIFORNIA	0.436	0.536
COLORADO	0.518	0.582
CONNECTICUT	0.556	0.576
DELAWARE	0.533	0.516
DISTRICT OF COLUMBIA	0.532	.....
FLORIDA	0.435	0.431
GEORGIA	0.541	0.540
HAWAII	0.510	0.504
IDAHO	0.580	0.673
ILLINOIS	0.523	0.605
INDIANA	0.580	0.633
IOWA	0.554	0.716
KANSAS	0.506	0.684
KENTUCKY	0.522	0.562
LOUISIANA	0.497	0.559
MAINE	0.613	0.560
MARYLAND	0.764	0.806
MASSACHUSETTS	0.612	0.622
MICHIGAN	0.549	0.557
MINNESOTA	0.583	0.647
MISSISSIPPI	0.544	0.532
MISSOURI	0.473	0.531
MONTANA	0.544	0.661
NEBRASKA	0.529	0.694
NEVADA	0.343	0.628
NEW HAMPSHIRE	0.582	0.625
NEW JERSEY	0.543	.....
NEW MEXICO	0.485	0.549
NEW YORK	0.633	0.721
NORTH CAROLINA	0.567	0.521
NORTH DAKOTA	0.652	0.695
OHIO	0.594	0.533
OKLAHOMA	0.506	0.571
OREGON	0.604	0.637
PENNSYLVANIA	0.454	0.579
PUERTO RICO	0.554	0.851
RHODE ISLAND	0.615	.....
SOUTH CAROLINA	0.510	0.524
SOUTH DAKOTA	0.558	0.656
TENNESSEE	0.530	0.570
TEXAS	0.490	0.593
UTAH	0.591	0.648
VERMONT	0.627	0.611
VIRGINIA	0.513	0.547
WASHINGTON	0.656	0.675
WEST VIRGINIA	0.577	0.529
WISCONSIN	0.640	0.706
WYOMING	0.611	0.765

TABLE 8b.—STATEWIDE AVERAGE CAPITAL COST-TO-CHARGE RATIOS FOR URBAN AND RURAL HOSPITALS (CASE WEIGHTED) APRIL 1995

State	Ratio
ALABAMA	0.053
ALASKA	0.075
ARIZONA	0.062
ARKANSAS	0.050
CALIFORNIA	0.041
COLORADO	0.051
CONNECTICUT	0.036

TABLE 8b.—STATEWIDE AVERAGE CAPITAL COST-TO-CHARGE RATIOS FOR URBAN AND RURAL HOSPITALS (CASE WEIGHTED) APRIL 1995—Continued

State	Ratio
DELAWARE	0.055
DISTRICT OF COLUMBIA	0.043
FLORIDA	0.052
GEORGIA	0.050
HAWAII	0.063
IDAHO	0.075
ILLINOIS	0.049
INDIANA	0.059
IOWA	0.058
KANSAS	0.062
KENTUCKY	0.059
LOUISIANA	0.074
MAINE	0.042
MASSACHUSETTS	0.061
MICHIGAN	0.059
MINNESOTA	0.054
MISSISSIPPI	0.055
MISSOURI	0.053
MONTANA	0.067
NEBRASKA	0.061
NEVADA	0.036
NEW HAMPSHIRE	0.065
NEW JERSEY	0.051
NEW MEXICO	0.056
NEW YORK	0.061
NORTH CAROLINA	0.048
NORTH DAKOTA	0.075
OHIO	0.061
OKLAHOMA	0.059
OREGON	0.068
PENNSYLVANIA	0.047
PUERTO RICO	0.078
RHODE ISLAND	0.027
SOUTH CAROLINA	0.064
SOUTH DAKOTA	0.065
TENNESSEE	0.057
TEXAS	0.058
UTAH	0.050
VERMONT	0.050
VIRGINIA	0.057
WASHINGTON	0.068
WEST VIRGINIA	0.058
WISCONSIN	0.048
WYOMING	0.072

Appendix A—Regulatory Impact Analysis

I. Introduction

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a proposed rule would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we consider all hospitals to be small entities.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any proposed rule that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. With the exception of hospitals located in certain New England counties, for purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 100 beds that is located outside of a Metropolitan Statistical Area (MSAs) or New England County Metropolitan Area (NECMA). Section 601(g) of the Social Security Amendments of 1983 (Public Law 98–21) designated hospitals in certain New England counties as belonging to the adjacent NECMA. Thus, for purposes of the prospective payment system, we classified these hospitals as urban hospitals.

It is clear that the changes being proposed in this document would affect both a substantial number of small rural hospitals as well as other classes of hospitals, and the effects on some may be significant. Therefore, the discussion below, in combination with the rest of this proposed rule, constitutes a combined regulatory impact analysis and regulatory flexibility analysis.

II. Objectives

The primary objective of the prospective payment system is to create incentives for hospitals to operate efficiently and minimize unnecessary costs, and at the same time ensure that payments are sufficient to adequately compensate hospitals for their legitimate costs. In addition, we share national goals of deficit reduction and restraints on government spending in general.

We believe the proposed changes would further each of these goals while maintaining the financial viability of the hospital industry and ensuring access to high quality care for beneficiaries. We expect that these proposed changes would ensure that the outcomes of this payment system are, in general, reasonable and equitable while avoiding or minimizing unintended adverse consequences.

III. Limitations of Our Analysis

As has been the case in previously published regulatory impact analyses, the following quantitative analysis presents the projected effects of our proposed policy changes, as well as statutory changes effective for FY 1996, on various hospital groups. We estimate the effects of each policy change by estimating payments while holding all other payment variables constant. We use the best data available, but we do not attempt to predict behavioral responses to our policy changes, and we do not make adjustments for future changes in such variables as admissions, lengths of stay, or case mix. As we have done in previous proposed rules, we are soliciting comments and information about the anticipated effects of these changes on the prospective payment system, and our methodology for estimating them.

IV. Hospitals Included In and Excluded From the Prospective Payment System

The prospective payment systems for hospital inpatient operating and capital-related costs encompass nearly all general, short-term, acute care hospitals that participate in the Medicare program. There were 46 Indian Health Service hospitals in our database, which we excluded from the analysis due to the special characteristics of the payment method for these hospitals. Only the 49 short-term, acute care hospitals in Maryland remain excluded from the prospective payment system under the waiver at section 1814(b)(3) of the Act. (As of January 1, 1995, the hospitals participating in the New York Finger Lakes demonstration project began to be paid under the prospective payment system.) Thus, as of April 1995, just over 5,150 hospitals were receiving prospectively based payments for furnishing inpatient services. This represents about 82 percent of all Medicare-participating hospitals. The majority of this impact analysis focuses on this set of hospitals.

The remaining 18 percent are specialty hospitals that are excluded from the prospective payment system and continue to be paid on the basis of their reasonable costs, subject to a rate-of-increase ceiling on their inpatient operating costs per discharge. These hospitals include psychiatric, rehabilitation, long-term care, children's, and cancer hospitals. The impacts of our proposed policy changes on these hospitals is discussed below.

V. Impact on Excluded Hospitals and Units

As of April 1995, just over 1,100 specialty hospitals are excluded from the prospective payment system and are instead paid on a reasonable cost basis subject to the rate-of-increase ceiling under § 413.40. In addition, approximately 2,230 psychiatric and rehabilitation units in hospitals that are subject to the prospective payment system are excluded from the prospective payment system and paid in accordance with § 413.40.

In accordance with section 1886(b)(3)(B)(ii)(V) of the Act, the update factor applicable to the rate-of-increase limit for excluded hospitals and units for FY 1996 would be the hospital market basket minus 1.0 percentage point, adjusted to account for the relationship between the hospital's allowable operating cost per case and its target amounts. We are currently projecting an increase in the excluded hospital market basket of 3.6 percent.

The impact on excluded hospitals and units of the proposed update in the rate-of-increase limit depends on the cumulative cost increases experienced by each excluded hospital and excluded unit since its applicable base period. For excluded hospitals and units that have maintained their cost increases at a level below the percentage increases in the rate-of-increase limits since their base period, the major effect will be on the level of incentive payments these hospitals and units receive. Conversely, for excluded hospitals and units with per-case cost increases above the cumulative update in their rate-of-increase limit, the major effect will be the amount of excess costs that the hospitals would have to absorb.

In this context, we note that, under § 413.40(d)(3), an excluded hospital or unit whose costs exceed the rate-of-increase limit is allowed to receive the lower of its rate-of-increase ceiling plus 50 percent of reasonable costs in excess of the ceiling, or 110 percent of its ceiling. In addition, under the various provisions set forth in § 413.40, excluded hospitals and units can obtain payment adjustments for significant, yet justifiable, increases in operating costs that exceed the limit. At the same time, however, by generally limiting payment increases, we continue to provide an incentive for excluded hospitals and units to restrain the growth in their spending for patient services.

VI. Quantitative Impact Analysis of the Proposed Policy Changes Under the Prospective Payment System for Operating Costs

A. Basis and Methodology of Estimates

In this proposed rule, we are announcing policy changes and payment rate updates for the prospective payment systems for operating and capital-related costs. We have prepared separate analyses of the proposed changes to each system, beginning with changes to the operating prospective payment system.

The data used in developing the quantitative analyses presented below are taken from the FY 1994 MedPAR file and the most current provider-specific file that is used for payment purposes. Although the analyses of the changes to the operating prospective payment system do not incorporate any actual cost data, the most recently available hospital cost report data were used to create some of the variables by which hospitals are categorized. Our analysis has several qualifications. First, we do not make adjustments for behavioral changes that hospitals may adopt in response to these proposed policy changes. Second, due to the interdependent nature of the prospective payment system, it is very difficult to precisely quantify the impact associated with each proposed change. Third, we draw upon various sources for the data used to categorize hospitals in the tables. In some cases, particularly the number of beds, there is a fair degree of variation in the data from different sources. We have attempted to construct these variables with the best available source overall. For individual hospitals, however, some miscategorizations are possible.

Using cases in the FY 1994 MedPAR file, we simulated payments under the operating prospective payment system given various combinations of payment parameters. Any short-term, acute care hospitals not paid under the general prospective payment systems (Indian Health Service Hospitals and hospitals in Maryland) are excluded from the simulations. Payments under the capital prospective payment system, or payments for costs other than inpatient operating costs, are not analyzed here. Estimated payment impacts of proposed FY 1996 changes to the capital prospective payment system are discussed below in section VII of Appendix A.

The proposed changes discussed separately below are the following:

- The effects of the annual reclassification of diagnoses and procedures and the recalibration of the diagnosis-related group (DRG) relative weights required by section 1886(d)(4)(C) of the Act.
- The effects of changes in hospitals' wage index values reflecting the wage index update.
- The effects of changing the transfer payment policy to a graduated per diem payment methodology.
- The effects of geographic reclassifications by the Medicare Geographic Classification Review Board (MGCRB) that are effective in FY 1996.
- The effects of phasing out payments for extraordinarily lengthy cases (day outlier cases) by 50 percent (with a corresponding increase in payments for extraordinarily costly cases (cost outliers)), in accordance with section 1886(d)(5)(A)(v) of the Act.
- The total change in payments based on FY 1996 policies relative to payments based on FY 1995 policies.

To illustrate the impacts of the FY 1996 proposed changes, our FY 1996 baseline simulation model uses: the FY 1995 GROUPER (version 12.0); the FY 1995 wage indexes; the current uniform per diem transfer payment policy; no effects of FY 1996 reclassifications; and current outlier policy (25 percent phase-out of day outlier payments). Outliers are estimated to be 5.1 percent of total DRG payments.

Each policy change is then added incrementally to this baseline model, finally arriving at an FY 1996 model incorporating all of the proposed changes. This allows us to isolate the effects of each proposed change.

Our final comparison illustrates the percent change in payments per case from FY 1995 to FY 1996. Three factors not displayed in the previous five columns have significant impacts here. First is the update to the standardized amounts. In accordance with section 1886(d)(3)(A)(iv) of the Act, we are proposing to update the large urban and the other areas average standardized amounts for FY 1996 using the most recent forecasted hospital market basket increase for FY 1996 of 3.5 percent, minus 2.0 percentage points. Thus, the update to the large urban and other areas standardized amounts is 1.5 percent. Similarly, section 1886(b)(3)(C)(ii) of the Act provides that the update factor applicable to the hospital-specific rates for sole community hospitals (SCHs) and essential access community hospitals (EACHs) (which are treated as SCHs for payment purposes) is also the market basket increase minus 2.0 percent, or 1.5 percent.

A second significant factor impacting upon changes in payments per case from FY 1995 to FY 1996 is a change in MGCRB reclassification status from one year to the next. That is, hospitals reclassified in FY 1995 that are no longer reclassified in FY 1996 may have a negative payment impact going from FY 1995 to FY 1996, and vice versa. In some cases these impacts can be quite substantial, so that a relatively few number of hospitals in a particular category that lost their reclassification status can hold the average percentage change for the category below the mean.

Third, when comparing our estimated FY 1995 payments to FY 1996 payments, another significant consideration is that we currently estimate that outlier payments during FY 1995 will be 4.2 percent of total DRG payments. When the FY 1995 final rule was published September 1, 1994 (59 FR 45330), we estimated FY 1995 outlier payments would be 5.1 percent of total DRG payments, and the standardized amounts were correspondingly reduced. The effects of the lower than expected outlier payments during FY 1995 are reflected in the analyses below comparing our current estimates of FY 1995 total payments to estimated FY 1996 payments.

Table I demonstrates the results of our analysis. The table categorizes hospitals by various geographic and special payment consideration groups to illustrate the varying impacts on different types of hospitals. The top row of the table shows the overall impact on the 5,154 hospitals included in the analysis. This is 100 fewer hospitals than were included in the impact analysis in the FY 1995 final rule (59 FR 45330). Data for 106 hospitals that were included in last year's analysis were not available for analysis this year; however, data were available this year for 1 hospital for which data were not available last year. In addition, 5 hospitals previously excluded from our analysis because they were participating in the Finger Lakes demonstration project are included in our analysis this year because the demonstration authority has expired and these hospitals are now being paid under the prospective payment system.

The next four rows of Table I contain hospitals categorized according to their geographic location (all urbans as well as large urban and other urban or rural). There are 2,895 hospitals located in urban areas (MSAs or NECMAs) included in our analysis. Among these, there are 1,622 hospitals located in large urban areas (populations over 1 million), and 1,273 hospitals in other urban areas (populations of 1 million or fewer). In addition, there are 2,259 hospitals in rural areas. The next two groupings are by bed size categories, shown separately for urban and rural hospitals. The final groupings by geographic location are by census divisions, also shown separately for urban and rural hospitals.

The second part of Table I shows changes in payments based on hospitals' FY 1996 payment classifications, including any reclassifications under section 1886(d)(10) of the Act. For example, the rows labeled urban, large urban, other urban, and rural, show the numbers of hospitals being paid based on these categorizations, after consideration of geographic reclassifications, are 3,106, 1,815, 1,291, and 2,048, respectively.

The next three groupings examine the impacts of the proposed changes on hospitals grouped by whether or not they have residency programs (teaching hospitals that receive an indirect medical education (IME) adjustment), receive disproportionate share (DSH) payments, or some combination of these two adjustments. There are 4,104 nonteaching hospitals in our analysis, 826 with fewer than 100 residents, and 224 with 100 or more residents.

In the DSH categories, hospitals are grouped according to their DSH payment status. In the past, we have included as urban hospitals those that are located in a rural area but were reclassified as urban by the MGCRB for purposes of the standardized amount, since they have been considered urban in determining the amount of their DSH adjustment. This year, however, we have isolated these hospitals in separate rows to identify the payment impacts of reclassification solely for DSH. In these rows, labeled "Large Urban and DSH" and "DSH Only", under the heading "Reclassified Rural DSH," we group reclassified rural hospitals that receive DSH after reclassification based on whether they also receive the higher large urban amount, or are only benefitting from reclassification by receiving higher DSH payments. Hospitals in the rural DSH categories, therefore, including those in the rural referral center (RRC) and SCH categories, represent hospitals that were not reclassified for purposes of the standardized amount (they may, however, have been reclassified for purposes of assigning the wage index). The next category groups hospitals paid on the basis of the urban standardized amount in terms of whether they receive the IME adjustment, the DSH adjustment, both, or neither.

The next six rows examine the impacts of the proposed changes on rural hospitals by special payment groups (SCHs, RRCs, and EACHs). Rural hospitals reclassified for FY 1996 for purposes of the standardized amount are not included here.

The RRCs (111), SCH/EACHs (612), and SCH/EACH and RRCS (46) shown here were not reclassified for purposes of the standardized amount. There are 2 EACHs included in our analysis and 3 EACH/RRCs.

There are 9 RRCs and 13 SCHs that will be reclassified for the standardized amount in FY 1996 and are therefore not included in these rows. In addition, two hospitals that are both SCH/RRCs will be reclassified for the standardized amount (one of these hospitals will also be reclassified for the wage index).

The next two groupings are based on type of ownership and the hospital's Medicare utilization expressed as a percent of total patient days. These data are taken from the FY 1993 Medicare cost report files, the latest available.

Data needed to calculate Medicare utilization percentages were unavailable for 68 hospitals. For the most part, these are either new hospitals or hospitals filing manual cost reports that are not yet entered into the data base.

The next series of groupings concern the geographic reclassication status of hospitals. The first three groupings display hospitals that were reclassified by the MGCRB for either FY 1995 or FY 1996, or for both years, by urban/rural status. The next rows illustrate the overall number of reclassifications, as well as the numbers of reclassified hospitals grouped by urban and rural location. The final row in Table I contains hospitals located in rural counties but deemed to be urban under section 1886(d)(8)(B) of the Act.

TABLE I.—IMPACT ANALYSIS OF CHANGES FOR FY 1996 OPERATING PROSPECTIVE PAYMENT SYSTEM

[Percent Changes in Payments per Case]

	No. of hosps.[1]	DRG recalibration[2]	New wage data[3]	New transfer policy[4]	MGCRB reclassification[5]	Day outlier policy changes[6]	All FY 96 changes[7]
	(0)	(1)	(2)	(3)	(4)	(5)	(6)
(By Geographic Location)							
All Hospitals	5,154	0.0	0.0	0.0	0.0	0.0	2.4
Urban Hospitals	2,895	0.0	−0.1	0.0	−0.4	0.0	2.3
Large Urban	1,622	0.1	−0.4	0.0	−0.5	−0.1	2.1
Other Urban	1,273	0.0	0.4	0.0	−0.1	0.1	2.8
Rural Hospitals	2,259	0.1	0.3	0.3	2.3	0.0	2.9
Bed Size (Urban)							
0–99 Beds	716	0.0	0.0	0.3	−0.4	0.2	2.6
100–199 Beds	918	0.0	0.2	0.1	−0.4	0.1	2.7
200–299 Beds	601	0.0	0.1	0.0	−0.3	0.0	2.5
300–499 Beds	480	0.0	−0.2	−0.1	−0.4	0.0	2.2
500 or more Beds	180	0.1	−0.3	−0.2	−0.3	−0.2	2.0
Bed Size (Rural)							
0–49 Beds	1,171	0.1	0.2	0.6	0.0	0.0	2.9
50–99 Beds	644	0.1	0.2	0.4	0.9	0.1	3.1
100–149 Beds	230	0.1	0.4	0.3	3.5	0.0	2.9
150–199 Beds	108	0.1	0.2	0.1	2.5	0.0	2.6
200 or more Beds	86	0.0	0.4	0.0	4.8	0.0	2.7
Urban by Census Division							
New England	163	0.1	−0.2	0.0	−0.1	−0.2	2.0
Middle Atlantic	440	0.4	−0.7	−0.1	−0.4	−0.7	1.7
South Atlantic	431	0.0	0.0	0.0	−0.5	0.1	2.4
East North Central	481	−0.1	0.0	0.0	−0.1	0.2	2.5
East South Central	164	−0.1	0.0	−0.1	−0.4	0.1	2.5
West North Central	196	−0.1	−0.6	−0.1	−0.5	0.2	1.8
West South Central	371	−0.2	0.5	−0.1	−0.5	0.3	3.2
Mountain	119	0.0	−0.5	−0.1	−0.4	0.3	2.0
Pacific	483	−0.1	0.6	0.0	−0.5	0.2	2.7
Puerto Rico	47	−0.2	2.2	−0.2	−0.5	0.0	4.5
Rural by Census Division							
New England	53	0.1	0.7	0.1	1.3	0.1	3.6
Middle Atlantic	84	0.4	−0.5	0.1	1.1	−0.2	2.4
South Atlantic	297	0.1	0.6	0.3	3.1	0.0	2.8
East North Central	305	0.1	0.5	0.4	1.9	0.1	3.4
East South Central	275	0.0	0.9	0.4	3.2	0.0	3.2
West North Central	527	0.1	−0.1	0.3	2.1	0.1	2.6
West South Central	352	0.1	−0.4	0.3	3.3	0.1	2.9
Mountain	218	0.1	−0.1	0.2	−0.1	0.1	1.9
Pacific	143	0.1	0.8	0.2	1.7	0.1	3.3
Puerto Rico	5	0.6	−6.9	−0.1	−0.5	0.2	−4.2
(By Payment Categories)							
Urban Hospitals	3,106	0.0	−0.1	0.0	−0.3	0.0	2.3
Large Urban	1,815	0.1	−0.3	0.0	−0.3	−0.1	2.2
Other Urban	1,291	0.0	0.3	0.0	−0.2	0.1	2.7
Rural Hospitals	2,048	0.1	0.2	0.3	1.9	0.0	2.9
Teaching Status							
Non-Teaching	4,104	0.0	0.1	0.1	0.3	0.1	2.7
Less than 100 Res.	826	0.0	0.0	−0.1	−0.4	0.0	2.3
100+ Residents	224	0.1	−0.4	−0.1	−0.3	−0.4	1.8
Disproportionate Share Hospitals (DSH)							
Non-DSH	3,223	0.1	0.0	0.1	0.1	0.1	2.6
Urban DSH 100 Beds or more	1,302	0.0	−0.1	−0.1	−0.5	−0.1	2.2

TABLE I.—IMPACT ANALYSIS OF CHANGES FOR FY 1996 OPERATING PROSPECTIVE PAYMENT SYSTEM—Continued

[Percent Changes in Payments per Case]

	No. of hosps.[1]	DRG recalibration[2]	New wage data[3]	New transfer policy[4]	MGCRB reclassification[5]	Day outlier policy changes[6]	All FY 96 changes[7]
	(0)	(1)	(2)	(3)	(4)	(5)	(6)
Fewer than 100 Beds	112	−0.2	0.1	0.3	−0.6	0.3	3.1
Reclassified Rural DSH Large Urban and DSH	54	0.0	0.4	0.0	3.1	0.0	3.4
DSH Only	53	0.1	0.5	0.3	5.4	−0.1	2.7
Rural DSH Sole Community (SCH)	137	0.1	0.1	0.2	0.1	0.0	1.8
Referral Centers (RRC)	40	0.1	0.4	0.1	3.7	−0.1	3.0
Other Rural DSH Hosp. 100 Beds or More	83	0.1	0.5	0.4	5.5	0.0	3.2
Fewer than 100 Beds	150	0.0	0.7	0.7	−0.1	0.1	3.3
Urban Teaching and DSH							
Both Teaching and DSH	653	0.0	−0.2	−0.1	−0.4	−0.3	2.0
Teaching and No DSH	350	0.0	−0.2	−0.1	−0.3	0.0	2.3
No Teaching and DSH	868	0.0	0.2	0.0	0.0	0.1	2.6
No Teaching and No DSH	1,235	0.1	0.0	0.1	−0.2	0.2	2.7
Rural Hospital Types							
Nonspecial Status Hospitals	1,279	0.1	0.4	0.6	1.9	0.1	3.4
RRC	111	0.0	0.4	0.1	5.0	0.1	3.4
SCH/Each	612	0.2	−0.1	0.1	0.1	0.0	1.9
SCH/Each and RRC	46	0.2	0.0	0.0	0.1	−0.1	1.9
Type of Ownership							
Voluntary	3,095	0.1	−0.1	0.0	−0.1	−0.1	2.3
Proprietary	725	−0.1	0.0	0.0	0.3	0.2	2.6
Government	1,334	0.0	0.2	0.1	0.2	0.0	2.7
Medicare Utilization as a Percent of Inpatient Days							
0–25	268	−0.1	−0.1	0.0	−0.1	−0.1	2.2
25–50	1,357	0.0	−0.1	−0.1	−0.2	−0.1	2.2
50–65	2,227	0.0	0.1	0.0	0.1	0.0	2.5
Over 65	1,234	0.1	−0.2	0.1	0.2	0.0	2.6
Unknown	68	0.5	−0.7	0.0	−0.4	−1.3	1.0
Hospitals Reclassified by the Medicare Geographic Review Board							
Reclassification Status During FY 95 and FY 96							
Reclassified During Both FY 95 and FY 96	465	0.1	0.2	0.1	4.4	0.0	2.7
Urban	175	0.1	0.1	0.0	2.3	0.0	2.5
Rural	290	0.0	0.3	0.2	6.1	0.0	2.9
Reclassified During FY 96 Only	153	0.2	0.1	0.1	3.1	0.0	7.1
Urban	34	0.3	−0.1	0.1	2.3	−0.2	7.4
Rural	119	0.1	0.3	0.2	3.7	0.1	6.8
Reclassified During FY 95 Only	220	−0.1	0.2	0.1	−1.0	0.1	−1.2
Urban	58	−0.2	0.3	−0.1	−2.2	0.1	−1.6
Rural	162	0.1	0.2	0.3	1.2	0.1	−0.4
FY 96 Reclassifications							
All Reclassified Hosp.	818	0.1	0.2	0.1	4.1	0.0	3.5
Stand. Amount Only	213	0.1	0.6	0.1	1.2	0.0	2.8
Wage Index Only	260	0.1	0.1	0.1	7.3	0.0	4.3
Both	145	0.1	0.0	0.0	3.2	0.0	3.2
Nonreclassified	4,509	0.0	−0.1	0.0	−0.6	0.0	2.3
All Urban Reclass.	209	0.1	0.1	0.0	2.3	−0.1	3.3
Stand. Amount Only	69	0.0	0.7	0.0	0.6	0.0	3.1
Wage Index Only	37	0.2	−0.2	−0.1	5.4	−0.2	3.9
Both	103	0.1	−0.1	0.0	1.7	0.0	3.0
Nonreclassified	2,586	0.0	−0.1	0.0	−0.6	0.0	2.2
All Rural Reclass.	409	0.0	0.3	0.2	5.9	0.1	3.9
Stand. Amount Only	144	0.1	0.4	0.3	2.2	0.1	2.5
Wage Index Only	223	0.0	0.2	8.2	8.5	0.1	4.6
Both	42	0.0	0.5	0.1	10.6	0.1	4.0
Nonreclassified	1,823	0.1	0.3	0.3	−0.2	0.0	2.3
Other Reclassified Hospitals (Section 1886(d)(8)(B))	27	0.1	−0.2	0.4	−0.4	0.1	2.8

[1] Because data necessary to classify some hospitals by category were missing, the total number of hospitals in each category may not equal the national total. Discharge data are from FY 1994, and hospital cost report data are from cost reporting periods beginning in FY 1992 and FY 1993.

[2] This column displays the payment impacts of the recalibration of the DRG weights and the classification changes, based on FY 1994 MedPAR data, in accordance with section 1886(d)(4)(C) of the Act.

[3] This column shows that payment impacts of updating the data used to calculate the wage index.

[4] This column displays the payment impacts of revising the per diem methodology for transfer cases from the current flat per diem methodology to a graduated per diem methodology.

[5] Shown here are the combined effects of geographic reclassification by the Medicare Geographic Classification Review Board (MGCRB). The effects shown here demonstrate the FY 1996 payment impacts of going from no reclassifications to the reclassifications scheduled to be in effect for FY 1996. Reclassification for prior years has no bearing on the payment impacts shown here.

[6] This column illustrates the payment impacts of our changes affecting payments for day outliers, in accordance with section 1886(d)(5)(A) of the Act.

[7] This column shows changes in payments from FY 1995 to FY 1996. It incorporates all of the changes displayed in columns 1 through 5. It also displays the impacts of the updates to the FY 1996 standardized amounts, change in hospitals' reclassification status in FY 1996 compared to FY 1995, and the difference in projected outlier payments from FY 1995 to FY 1996. The sum of the first five columns plus these effects may be slightly different from the percentage changes shown here, due to rounding errors and interactive effects.

B. The Impact of the Proposed Changes to the DRG Weights (Column 1)

In column 1 of Table I, we present the combined effects of the DRG reclassification and recalibration, as discussed in section II of the preamble to this proposed rule. Section 1886(d)(4)(C)(i) of the Act requires us each year to make appropriate classification changes and to recalibrate the DRG weights in order to reflect changes in treatment patterns, technology, and any other factors that may change the relative use of hospital resources. The impact of reclassification and recalibration on aggregate payments is required by section 1886(d)(4)(C)(iii) of the Act to be budget neutral.

The first row of Table I shows that the overall effect of these proposed changes is budget neutral. That is, the percentage change when adding the proposed FY 1996 GROUPER (version 13.0) to the FY 1996 baseline is 0.0. As described previously, all of the other payment parameters are held constant for the comparison in column 1, only the version of the GROUPER is different.

Consistent with the minor changes we are proposing for the FY 1996 GROUPER, the redistributional impacts across hospital groups are very small (an increase of 0.1 for large urban and rural hospitals). Among other hospital categories, the net effects are slightly positive changes for small (up to 200 beds) rural hospitals and slightly positive changes for larger urban hospitals. The largest single effect on any of the hospital categories examined is a 0.6 percent increase in payments for rural hospitals in Puerto Rico. This is a function of the fact that only five hospitals are included in this category, and one hospital has a 1.2 percent increase in its case-mix index value.

We also note that both urban and rural hospitals in the Middle Atlantic census division show a positive increase of 0.4 percent. We attribute this to the changes we proposed to our methodology for identifying statistical outliers that are trimmed from the data used to recalibrate the DRG weights (described in section II of the preamble to this proposed rule). In previous recalibrations, we trimmed all cases outside 3.0 standard deviations from the geometric mean of standardized charges *per case* for each DRG. In the proposed DRG recalibration set forth in this proposed rule, we eliminated only cases that met both the current criterion and an additional criterion that the cases fall outside 3.0 standard deviations from the geometric mean of standardized charges *per day* for each DRG. Because hospitals in the Middle Atlantic census division have longer lengths of stay (as demonstrated by the impacts of phasing out the day outliers—see the discussion below concerning column 5), they would be likely to have cases that exceed the per case threshold but not the per day threshold. Thus, costly cases previously trimmed would be left in the recalibration, thereby influencing the weights of the DRGs to which they are assigned.

Rural hospitals overall exhibit a positive effect in column 1. Because rural hospitals send out relatively more transfers, this effect is probably a reflection of the modification in the way we count transfer cases in the recalibration methodology (see section II of the preamble to this proposed rule). A study by the Rand Corporation for HCFA, "An Evaluation of Medicare Payments for Transfer Cases" (Contract Number 500–92–0023), identified 12 DRGs that account for more than half of all transfer cases. These DRGs experience a 7 percent increase in their average relative weights under the proposed recalibration, which contributes to the increases experienced by rural hospitals and select urban hospitals. The average change in the proposed weights of all DRGs from FY 1995 to FY 1996 is less than 1 percent.

C. The Impact of Updating the Wage Data (Column 2)

Section 1886(d)(3)(E) of the Act requires that, beginning October 1, 1993, we annually update the wage data used to calculate the wage index. In accordance with this requirement, the wage index for FY 1996 is based on data submitted for hospital cost reporting periods beginning on or after October 1, 1991 and before October 1, 1992. As with the previous column, the impact of the new data on hospital payments is isolated by holding the other payment parameters constant in the two simulations. That is, column 2 shows the percentage changes in payments when going from our FY 1996 baseline—using the FY 1995 wage index before geographic reclassifications based on 1991 wage data and incorporating the FY 1996 GROUPER—to a model substituting the FY 1996 pre-reclassification wage index based on 1992 wage data.

Section 1886(d)(3)(E) of the Act also requires that any updates or adjustments to the wage index be made in a manner that ensures that aggregate payments to hospitals are not affected by changes in the wage index. To comply with the requirements that the DRG and wage index changes be implemented in a budget neutral manner, we compute a budget neutrality adjustment factor to apply to the standardized amounts. For the FY 1996 proposed standardized amounts, this adjustment factor is 0.999174. This factor is applied to the standardized amounts to ensure that the overall effect of the wage index changes are budget neutral.

The results indicate that the new wage data do not have a significant overall impact on urban and rural hospitals. As discussed below, 94 percent of all prospective payment system hospitals would experience a change in their wage index of less than 5 percent. This column demonstrates that hospitals with significant changes in their wage indexes are not concentrated within any particular hospital group. For FY 1996, some of the largest changes are evident among both urban and rural hospitals grouped by census division. More census divisions experience payment increases, of greater magnitude, for rural hospitals than for urban hospitals. In most cases, payments changed by less than one percent. Although a degree of variation across consus categories is evident in this column, our review of the wage data (as described below) indicates that most of the significant changes were attributable to improved reporting.

In the States and the District of Columbia, the greatest changes are

increases of 0.9 and 0.8 percent for rural hospitals in the East South Central and the Pacific census divisions, respectively, and a 0.7 percent decrease for urban hospitals in the Middle Atlantic region. This effect contributes to the 0.4 percent decline among major teaching hospitals—New York City's wage index falls by over 1 percent. The Middle Atlantic region also experiences a payment decrease of 0.5 percent for its rural hospitals. The Pacific region experiences an increase in payments to both urban and rural hospitals, with increases of 0.6 and 0.8 percent, respectively. In Puerto Rico, payments decline by 6.9 percent in five rural hospitals and increase 2.2 percent in urban hospitals. Of the six urban areas in Puerto Rico, five experience large increases in wage index values while only one experiences a slight decline.

The FY 1996 proposed wage index represents the third annual update to the wage data, and will continue to include salaries, fringe benefits, home office salaries, and certain contract labor salaries. In the past, updates to the wage data have resulted in significant payment shifts among hospitals. Since the wage index is now updated annually, we expect these payment fluctuations will be minimized.

Based on the proposed wage index calculation (after reclassifications under sections 1886(d)(8)(B) and 1886(d)(10) of the Act) compared to the FY 1995 wage index, there are more labor markets that experience an increase of 5 percent or more in their wage index values, and fewer labor markets that experience a significant decrease of 5 percent or more. We reviewed the data for any area that experienced a wage index change of 10 percent or more to determine the reason for the fluctuation. When necessary, we contacted the intermediaries to determine the validity of the data or to obtain an explanation for the change. The following chart compares the shifts in wage index values (after reclassifications) for labor markets for FY 1996 with those experienced as a result of last year's wage index update.

Percentage change in area wage index values	Number of labor market areas	
	FY 1996	FY 1995
Increase more than 10 percent	8	5
Increase between 5 and 10 percent	21	17
Decrease between 5 and 10 percent	8	13
Decrease more than 10 percent	3	10

Under the proposed FY 1996 wage index, 92.0 percent of rural prospective payment hospitals and 94.8 percent of urban hospitals would experience a change in their wage index value of less than 5.0 percent. Approximately 3.5 percent (2.1 percent of rural hospitals and 4.5 percent of urban hospitals) would experience a change of between 5 and 10 percent, and 2.7 percent (5.4 percent of rural hospitals and 0.6 percent of urban hospitals) would experience a change of more than 10 percent. The following chart shows the projected impact for urban and rural hospitals.

Percentage change in area wage index values	Percent of hospitals (by urban/rural)	
	Rural	Urban
Decrease more than 10 percent	1.7	0.1
Decrease between 5 and 10 percent	1.0	1.8
Change between -5 and +5 percent	92.0	94.8
Increase between 5 and 10 percent	1.1	2.7
Increase more than 10 percent	3.7	0.5

D. Transfer Changes (Column 3)

Column 3 of Table I shows the impacts of the change we are proposing in transfer payment policy. This change would revise our methodology for payment for transfer cases under the prospective payment system to more appropriately compensate transferring hospitals for the higher costs they incur, on average, on the first day of a hospital stay prior to transfer. Our current transfer policy pays a flat per diem amount for each day prior to transfer up to the full DRG amount. The per diem is calculated by dividing the full DRG amount by the geometric mean length of stay for that DRG. Our proposal is to replace this flat per diem methodology with a graduated methodology that would pay twice the per diem amount for the first day, and the per diem amount for each day beyond the first up to the full DRG amount.

The payment impacts shown in column 3 illustrate the effects of this change, relative to the baseline simulation based on current policy (a flat per diem transfer payment methodology). In order to simulate the effects of the proposed changes, it was first necessary to identify current transfer cases. Current transfers are identifiable by the discharge destination code on the patient bill (see the RAND study for a thorough discussion of identifying transfer cases on the MedPAR file).

Next, to determine whether payment would be made under the per diem methodology, we compared the actual length of stay prior to transfer to the geometric mean length of stay for the DRG to which the case is assigned. A full discharge or a transfer case that received the full discharge payment would be counted as 1.0, while, under our current transfer policy, a transfer case that stayed 2 days in a DRG with a geometric mean length of stay of 5 days would count as 0.4 of a discharge, and would be paid 40 percent of the full DRG amount. In this manner, transfer cases are counted only to the extent that the transferring hospital received payment for them. To simulate our proposed change to the per diem payment methodology, we added 1 day to the actual length of stay for transfer cases, thereby replicating paying double the per diem for the first stay and the flat per diem, up to the full DRG amount, for subsequent days.

Finally, we calculated transfer-adjusted case-mix indexes for each hospital. The adjusted case-mix indexes are calculated by summing the transfer-adjusted DRG weights and dividing by the transfer-adjusted number of cases. The transfer-adjusted DRG weights are calculated by multiplying the DRG weight by the lesser of 1 or the fraction of the length of stay for the case divided by the geometric mean length of stay for the DRG. By adjusting the DRG weights, nontransfer cases and transfer cases that have a length of stay at least as long as the geometric mean length of stay will be represented by the full DRG weight, while transfer cases with lengths of stay below the geometric mean length of stay for the DRG will be represented by a lower number, reflective of their payment.

The FY 1996 baseline model reflected in columns 1 and 2 incorporates transfer-adjusted discharges and case-mix indexes based on current policies. That is, cases transferred prior to reaching the geometric mean length of stay received payments based on the flat per diem. In column 3, our model substitutes transfer-adjusted discharges and case-mix indexes that reflect our proposed policy change.

The first row in column 3 shows that the net effect of our proposed change is budget neutral compared to total payments under current transfer policy. As specified in section 109 of the Social Security Act Amendments of 1994 (Pub. L. 103–432), the Secretary is authorized to make adjustments to the standardized amounts so that adjustments to the payment policy for transfer cases do not affect aggregate payments. As described in section II.A.4 of the Addendum to this proposed rule, we applied a budget neutrality factor of 0.997583 to the standardized amounts to account for the higher payments going to transfer cases based on our proposal.

The distributional effects of these changes are to increase payments to rural hospitals by 0.3 percent and decrease urban hospitals' payments by less than 0.1 percent (the overall change is 0.0 percent). Rural hospitals clearly benefit from changing the per diem payment methodology. RAND found that rural hospitals as a whole transfer 4.5 percent of their patients, compared to 1.7 percent in large urban hospitals and 1.6 percent in other urban hospitals. Therefore, one would expect rural hospitals to benefit from the change to the per diem payment methodology.

The impact on small hospitals is also positive, consistent with RAND's finding that hospitals with fewer than 50 beds transfer 6.1 percent of their cases, and hospitals with 50 to 99 beds transfer 4.9 percent of cases. Rural hospitals with fewer than 50 beds receive a 0.6 percent increase in per case payments, and rural hospitals with 50 to 99 beds receive a 0.4 percent increase. Urban hospitals with fewer than 100 beds experience a 0.3 percent rise in payments. Among rural hospital groups, nonspecial status rural hospitals benefit by 0.6 percent.

E. Impacts of MGCRB Reclassifications (Column 4)

By March 30 of each year, the MGCRB makes reclassification determinations that will be effective for the next fiscal year, which begins on October 1. The MGCRB may reclassify a hospital to an urban area or a rural area with which it has a close proximity for the purpose of using the other area's standardized amount, wage index value, or both. (RRCs and SCHs are exempt from the proximity requirement.)

To this point, all of the simulation models have assumed hospitals are paid on the basis of their geographic location (with the exception of ongoing policies that provide that certain hospitals receive payments on bases other than where they are geographically located, such as RRCs and hospitals in rural counties that are deemed urban under section 1886(d)(8)(B) of the Act). The changes in column 4 reflect the per case payment impact of moving from this baseline to a simulation incorporating the MGCRB decisions for FY 1996. As noted above, these decisions affect hospitals' standardized amount and wage index area assignments. In addition, hospitals reclassified for the standardized amount also qualify to be treated as urban for purposes of the DSH adjustment.

The proposed FY 1996 standardized payment amounts and wage index values incorporate all of the MGCRB's reclassification decisions that will be effective for FY 1996. The wage index values also reflect any decisions made by the HCFA Administrator through the appeals and review process for MGCRB decisions as of March 14, 1995. Additional changes that result from the Administrator's review of MGCRB decisions will be reflected in the final rule implementing changes to the prospective payment system for FY 1996.

The overall effect of geographic reclassification is required to be budget neutral by section 1886(d)(8)(D) of the Act. Therefore, we applied an adjustment of 0.994125 to ensure that the effects of reclassification are budget neutral. (See section II.A.4 of the Addendum to this proposed rule).

As a group, rural hospitals benefit from geographic reclassification. Their payments rise 2.3 percent, while payments to urban hospitals decline 0.4 percent. Large urban hospitals lose 0.5 percent because, as a group, they have the smallest percentage of hospitals that are reclassified, fewer than 5 percent. There are enough hospitals in other urban areas that are reclassified to limit the decline in payments stemming from the budget neutrality offset to 0.1 percent. Among urban hospital groups generally, payments fall between 0.3 and 0.5 percent.

Rural hospitals that reclassify for the standardized amount and receive DSH payments experience a significant increase in payments as a result of receiving higher DSH payments as urban hospitals. Rural hospitals that reclassify to large urban areas and also receive DSH receive a 3.1 percent increase in payments. One percent of this change is due to the higher large urban rate, and the remaining 2.1 percent is due to DSH payments and to any wage index increase that hospitals reclassified for both the wage index and the standardized amount receive.

Rural hospitals reclassifying to other urban areas for the standardized amount receive an 8.4 percent increase in payments. Since there are no longer separate rural and other urban rates, this large increase is attributable to the higher DSH payments these 53 hospitals receive as a result of being classified as urban (as well as any increase in the wage index for those hospitals reclassified for both the wage index and the standardized amount). Under our proposed revision to the rules for MGCRB reclassification, these hospitals would no longer be eligible to reclassify solely to receive higher DSH payments effective with reclassifications for FY 1997.

Among rural hospitals designated as RRCs, 54 hospitals are reclassified for the wage index only and experience a 5 percent increase in payments overall. This positive impact on RRCs is also reflected in the category of rural hospitals with 200 or more beds, which have a 4.8 percent increase in payments.

Rural hospitals reclassified for FY 1995 and FY 1996 experience an 8.1 percent increase in payments, the greatest of any group in the category. This may be due to the fact that these hospitals have the most to gain from reclassification and have been reclassified for a period of years. Rural hospitals reclassified for FY 1996 alone experience a 3.7 percent increase in payments. Urban hospitals reclassified for FY 1995 but not FY 1996 experience a 2.2 percent decline in payments overall. This appears to be due to the combined impacts of the budget neutrality adjustment and a number of hospitals in this category that experience a 6 percent drop in their wage index after reclassification. Urban hospitals reclassified for FY 1996 but not for FY 1995 experience a 2.3 percent increase in payments.

The FY 1996 reclassification section of Table I shows the changes in payments per case for all FY 1996 reclassified and nonreclassified hospitals in urban and rural locations for each of the three reclassification categories (standardized amount only, wage index only, or both). The table illustrates that the large impact for reclassified rural hospitals is due to reclassifications for both the standardized amount and the wage index. These hospitals receive a 10.6 percent increase. In addition, rural hospitals reclassified for the wage index receive an 8.5 percent payment increase. The overall impact on reclassified hospitals is to increase their payments per case by an average of 4.1 percent for FY 1996.

The reclassification of hospitals primarily affects payment to nonreclassified hospitals through changes in the wage index and the geographic reclassification budget neutrality adjustment required by section 1886(d)(8)(D) of the Act. Among hospitals that are not reclassified, the overall impact of hospital reclassifications is an average decrease in payments per case of about 0.6 percent, which corresponds closely with the geographic reclassification budget neutrality factor. Rural nonreclassified hospitals decrease slightly less,

experiencing a 0.2 percent decrease. This occurs because the wage index values in some rural areas increase after reclassified hospitals are excluded from the calculation of those index values.

The number of reclassifications for the standardized amount, or for both the standardized amount and the wage index, has declined from 496 in FY 1995 to 358 in FY 1996. This is not surprising because of the elimination of the separate rural amount. Some of these rural hospitals are reclassifying for the large urban amount, thereby receiving a payment rate even higher than they would receive from the other national standardized amount. Rural hospitals also may be reclassifying for the standardized amount even though they are only eligible to reclassify to an other urban area either to meet the lower eligibility requirements for DSH payments, or to receive higher DSH payments. The payment impact upon hospitals reclassifying for the standardized amount only, however, is significantly lower than it is for hospitals reclassifying either for the wage index alone or for both the wage index and the standardized amount.

The foregoing analysis was based on MGCRB and HCFA Administrator decisions made by March 14 of this year. As previously noted, there may be changes to some MGCRB decisions through the appeals and review process. The outcome of these cases will be reflected in the analysis presented in the final rule.

F. Outlier Changes (Column 5)

Medicare provides extra payment in addition to the regular DRG payment amount for extremely costly or extraordinarily lengthy cases (cost outliers and day outliers, respectively). Section 1886(d)(5)(A)(v) of the Act requires the Secretary to phase out payment for day outliers from FY 1994 day outlier levels in 25 percent increments beginning in FY 1995. Day outliers in FY 1996 should account for approximately 16 percent of total outlier payments (50 percent of 1994 levels). This reduction in day outlier payments will be offset by an increase in payments for cost outliers. As discussed in the Addendum, for FY 1996, we are proposing a day outlier threshold equal to the geometric mean length of stay for each DRG plus the lesser of 23 days or 3.0 standard deviations. The proposed marginal cost factor for day outliers is 45 percent.

The statute also authorizes the Secretary to set a fixed loss threshold for cost outliers. For FY 1996, we are proposing that a case would receive cost outlier payments if its costs exceed the DRG amount plus $16,700. We are also proposing to maintain the marginal cost factor for cost outliers at 80 percent.

The payment impacts of these changes are minimal. The largest impacts appear to be related to geographic location in terms of census divisions. Urban hospitals in the Middle Atlantic census division have payment reductions of 0.7 percent per case. Rural Middle Atlantic hospitals have a 0.2 percent decline. In New England, urban hospitals experience decreases of 0.2 percent. Since the changes to outlier policy result in a shift in payments from cases paid as day outliers to cases paid as cost outliers, this indicates that these areas have higher percentages of day outliers. This is consistent with our previous analysis indicating above average impacts related to day outlier policy changes in the northeastern portion of the country (see the June 4, 1992 proposed rule, 57 FR 23824).

The largest negative impact occurs among hospitals for which we could not determine Medicare utilization rates. This group experiences a 1.3 percent fall in payments per case. The bulk of the decline is attributable to a group of New York hospitals included in this category that experience significant drops in outlier payments.

G. All Changes (Column 6)

Column 6 compares our estimate of payments per case for FY 1996 to our estimate of payments per case in FY 1995. It includes the 1.5 percent update to the standardized amounts and the hospital-specific rates for SCHs and EACHs, and the 0.9 percent lower than estimated outlier payments during FY 1995, as described in the introduction and the Addendum.

A single geographic reclassification budget neutrality factor of 0.994125 was applied to the proposed FY 1996 standardized amounts, compared to the FY 1995 factor of 0.994055. The budget neutrality adjustment factor for the updated wage index and the DRG recalibration is 0.999174, compared to the FY 1995 factor of 0.998050. Although the net effect of these changes is small, they are reflected in the payment differences shown in this column.

There may also be interactive effects among the various factors comprising the payment system that we are not able to isolate. For these reasons, the values in column 6 may not equal the sum of the previous columns plus the other impacts that we are able to identify.

We also note that column 6 includes the impacts of FY 1995 geographic reclassifications compared to the payment impacts of FY 1996 reclassifications. Therefore, the percent changes due to FY 1996 reclassifications shown in column 4 need to be offset by the effects of reclassification on hospitals' FY 1995 payments. For example, the impact of MGCRB reclassifications on rural hospitals' FY 1995 payments was approximately a 2.0 percent increase, compared to a 2.3 percent increase for FY 1996. Therefore, the net increase in FY 1996 payments due to reclassification is 0.3 percent.

The overall payment increase from FY 1996 to FY 1995 for all hospitals is a 2.4 percent increase. This reflects the 0.0 percent net change in total payments due to the proposed changes for FY 1996 shown in columns 1 through 5, the 1.5 percent update for FY 1996, and the 0.9 percent higher outlier payments in FY 1996 compared to FY 1995, as discussed above.

Hospitals in rural areas experience the largest payment increase, a 2.9 percent rise in payments per case over FY 1995. The increase in estimated outlier payments over FY 1995 for rural hospitals is 0.5 percent, below the 0.9 percent difference for all hospitals. As noted above, the net increase for rural hospitals in FY 1996 due to geographic reclassification is 0.3 percent. They also benefit from DRG recalibration, the new wage index, and the change in the transfer payment policy.

Urban hospitals' overall payments increase 2.3 percent. Hospitals in large and other urban areas experience 2.1 percent and 2.8 percent increases, respectively. Both large and other urban hospitals experience 0.9 percent increases in payments for FY 1996 due to the larger outlier payout, plus the 1.5 percent update. In addition, large urban hospitals' 0.5 percent decline due to reclassification is identical to the FY 1995 impact of reclassification, thus the net impact is 0.0. The FY 1995 reclassification impact on other urban hospitals was a 0.2 percent decline, compared to the 0.1 percent decline in column 4 of Table I, for a net increase of 0.1 percent from FY 1995 to FY 1996.

Among urban bed size groups, column 6 shows changes in payments are higher for the smallest urban hospitals compared to larger urban hospitals. The relatively smaller increases for the larger urban hospitals appears to be due to the negative impacts of the new wage data, as shown in column 2, and to the new transfer policy (column 4). Among rural bed size groups the impacts are less varied, ranging from 2.7 percent to 3.1 percent.

Greater variation is evident in the impacts displayed for the urban/rural census divisions, ranging from a 4.5 percent increase to a 4.2 percent decrease, respectively, for hospitals in urban and rural Puerto Rico. These impacts are primarily attributable to the effects of the new wage data, as discussed above. Other census divisions below the average payment increase are urban Middle Atlantic, urban West North Central, and rural Mountain (all increase less than 2.0 percent). The reason for the relatively small increase for urban hospitals in the Middle Atlantic is that they have sizeable negative impacts due to the new wage data and the phase-out of day outliers. Urban hospitals in the West North Central division also experience a negative impact from the new wage data. Rural hospitals in the Mountain division appear to have a lower percentage increase than other hospitals primarily because they have a smaller percentage increase in outlier payments than other hospitals (0.4 percent).

Conversely, rural New England hospitals experience a 3.6 percent increase. They have a 0.5 percent net increase over FY 1995 due to reclassification, and a 0.7 percent increase due to the new wage data. West South Central hospitals have the second largest payment increase (behind Puerto Rico hospitals) among urban divisions (3.2 percent).

Except for rural Puerto Rico, the only other hospital groups with negative payment impacts from FY 1995 to FY 1996 are hospitals that were reclassified during FY 1995 and are not reclassified for FY 1996. Overall, these hospitals lose 1.2 percent, with 58 urban hospitals in this category losing 1.6 percent and 162 rural hospitals losing 0.4 percent. On the other hand, hospitals reclassified for FY 1996 that were not reclassified for FY 1995 would experience the greatest payment increase: 7.4 percent for 34 urban hospitals in this category and 6.8 percent for 119 rural hospitals.

Reclassification appears to be a significant factor influencing the payment increases for a number of rural hospital groups with above average overall payment increases in column 6. For example, among hospital groups identified in the discussion of the impacts of MGCRB reclassifications for FY 1996 (column 4), almost all have overall increases of 3.0 or greater. This outcome highlights the redistributive effects of reclassification decisions upon hospital payments. This impact is illustrated even more clearly when one examines the rows categorizing hospitals by their reclassification status for FY 1996. All nonreclassified hospitals have an average payment increase of 2.3 percent. The average payment increase for all reclassified hospitals is 3.5 percent.

Major teaching hospitals with 100 or more residents have a payment increase of only 1.8 percent. This is attributable to the combined negative impacts of the new wage data, reclassification, and the continued phase-out of day outliers. As discussed above, teaching hospitals located in New York City account for much of this impact. (They also account for much of the below average increase for hospitals for which we do not have Medicare utilization data (1.0 percent increase), along with several Puerto Rican hospitals.)

Finally, among SCH/EACHs, and SCH/EACH and RRCs, the payment increase is 1.9 percent. The primary reason for this below average increase is that there is minimal impact upon these hospitals from the higher FY 1996 outlier payments. Because these hospital groups receive their hospital-specific rate if it exceeds the applicable Federal amount (including outliers), there is less of an impact due to changes in outlier payment levels, which are not applied to the hospital-specific rate.

TABLE II.—IMPACT ANALYSIS OF CHANGES FOR FY 1996 OPERATING PROSPECTIVE PAYMENT SYSTEM

[Payments per Case]

	No. of hospitals (1)	Average FY 1995 payment per case (2) [1]	Average FY 1996 payment per case (3) [1]	All changes (4)
(By Geographic Location)				
All Hospitals	5,154	5,255	5,405	2.4
Urban Hospitals	2,895	6,749	6,906	2.3
Large Urban Areas	1,622	7,252	7,401	2.1
Other Urban Areas	1,273	5,061	5,228	2.8
Rural Areas	2,259	4,259	4,382	2.9
Bed Size (Urban)				
0–99 Beds	716	4,613	4,734	2.6
100–199 Beds	918	5,708	5,863	2.7
200–299 Beds	501	6,267	6,421	2.5
300–499 Beds	480	7,138	7,297	2.2
500 or More Beds	180	8,779	8,952	2.0
Bed Size (Rural)				
0–49 Beds	1,171	3,516	3,630	2.9
50–99 Beds	564	3,961	4,084	3.1
100–149 Beds	230	4,439	4,568	2.9
150–199 Beds	108	4,545	4,665	2.6
200 or More Beds	86	5,213	5,356	2.7
Urban by Census Div.				
New England	163	7,172	7,318	2.0
Middle Atlantic	440	7,429	7,555	1.7
South Atlantic	431	6,423	6,576	2.4
East North Central	481	6,493	6,657	2.5
East South Central	164	5,917	6,065	2.5
West North Central	196	6,421	6,536	1.8
West South Central	371	6,225	6,425	3.2

TABLE II.—IMPACT ANALYSIS OF CHANGES FOR FY 1996 OPERATING PROSPECTIVE PAYMENT SYSTEM—Continued
[Payments per Case]

	No. of hospitals (1)	Average FY 1995 payment per case (2)[1]	Average FY 1996 payment per case (3)[1]	All changes (4)
Mountain	119	6,543	6,677	2.0
Pacific	483	7,771	7,982	2.7
Puerto Rico	47	2,472	2,583	4.5
Rural by Census Div.				
New England	53	5,135	5,318	3.6
Middle Atlantic	84	4,714	4,827	2.4
South Atlantic	297	4,395	4,518	2.8
East North Central	305	4,245	4,388	3.4
East South Central	275	3,819	3,942	3.2
West North Central	527	4,021	4,126	2.6
West South Central	352	3,846	3,955	2.9
Mountain	218	4,775	4,864	1.9
Pacific	143	5,309	5,487	3.3
Puerto Rico	5	1,964	1,882	−4.2
(By Payment Categories)				
Urban Hospitals	3,106	6,659	6,815	2.3
Large Urban Areas	1,815	7,093	7,247	2.2
Other Urban Areas	1,291	5,962	6,123	2.7
Rural Areas	2,048	4,218	4,340	2.9
Teaching Status				
Non-Teaching	4,104	5,160	5,301	2.7
Fewer Than 100 Residents	826	6,708	6,862	2.3
100 or More Residents	224	10,342	10,527	1.8
Disproportionate Share Hospitals (DSH)				
Non-DHS	3,223	5,506	5,649	2.6
Urban DSH				
100 Beds or More	1,302	7,389	7,548	2.2
Fewer Than 100 Beds	112	4,818	4,968	3.1
Reclass. Rural DSH				
Large Urban and DSH	54	6,345	6,562	3.4
DSH Only	53	4,354	4,472	2.7
Rural DSH				
Sole Community (SCH)	137	4,638	4,719	1.8
Referral Centers (RRC)	40	5,193	5,347	3.0
Other Rural DSH Hosp.				
100 Beds or More	83	4,019	4,149	3.2
Fewer Than 100 Beds	150	3,257	3,363	3.3
Urban Teaching and DSH				
Both Teaching and DSH	553	8,333	8,498	2.0
Teaching and No DSH	350	6,914	7,075	2.3
No Teaching and DSH	668	5,852	6,007	2.6
No Teaching and No DSH	1,235	5,278	5,421	2.7
Rural Hospital Types				
Nonspecial Status Hospitals	1,279	3,595	3,718	3.4
RRC	111	4,801	4,963	3.4
SCH/EACH	612	4,704	4,794	1.9
SCH/EACH and RRC	46	5,590	5,695	1.9
Type of Ownership				
Voluntary	3,095	6,422	6,573	2.3
Proprietary	725	5,686	5,831	2.6
Government	1,334	5,812	5,966	2.7
Medicare Utilization as a Percent of Inpatient Days				
0–25	268	8,390	8,578	2.2
25–50	1,357	7,523	7,690	2.2
50–65	2,227	5,734	5,880	2.5
Over 65	1,234	4,936	5,066	2.6
Unknown	68	8,184	8,266	1.0

TABLE II.—IMPACT ANALYSIS OF CHANGES FOR FY 1996 OPERATING PROSPECTIVE PAYMENT SYSTEM—Continued
[Payments per Case]

	No. of hospitals (1)	Average FY 1995 payment per case (2)[1]	Average FY 1996 payment per case (3)[1]	All changes (4)
Hospitals Reclassified by the Medicare Geographic Review Board				
Reclassification Status During FY95 and FY96				
Reclassified During Both FY95 and FY96	465	5,739	5,894	2.7
Urban	175	6,581	6,748	2.5
Rural	290	4,759	4,899	2.9
Reclassified During FY96 Only	153	5,203	5,572	7.1
Urban	34	6,561	7,049	7.4
Rural	119	4,416	4,716	6.8
Reclassified During FY95 Only	220	5,726	5,658	−1.2
Urban	58	7,051	6,939	−1.6
Rural	162	4,242	4,225	−0.4
FY 96 Reclassifications				
All Reclassified Hosp.	518	5,630	5,828	3.5
Stand. Amt. Only	213	5,060	5,203	2.8
Wage Index Only	260	5,759	6,016	4.3
Both	145	6,054	6,246	3.2
Nonreclass.	4,509	6,359	6,502	2.3
All Urban Reclass.	209	6,578	6,793	3.3
Stand. Amt. Only	69	5,834	6,013	3.1
Wage Index Only	37	8,402	8,730	3.9
Both	103	6,338	6,531	3.0
Nonreclass.	2,586	6,764	6,916	2.2
All Rural Reclass.	409	4,670	4,852	3.9
Stand. Amt. Only	144	4,235	4,339	2.5
Wage Index Only	223	4,831	5,051	4.6
Both	42	5,016	5,214	4.0
Nonreclass.	1,823	4,045	4,138	2.3
Other Reclassified Hospitals (Section 1886(d)(8)(B))	27	4,391	4,513	2.8

[1] These payment amounts per case do not reflect any estimates of annual case mix increase.

Table II presents the projected average payments per case under the changes for FY 1996 for urban and rural hospitals and for the different categories of hospitals shown in Table I. It compares the projected payments per case for FY 1996 with the average estimated per case payments for FY 1995. Thus, this table presents, in terms of the average dollar amounts paid per discharge, the combined effects of the changes presented in Table I. The percentage changes shown in the last column of Table I equal the percentage changes in average payments from column 6 of Table I.

VII. Impact of Proposed Changes in the Capital Prospective Payment System

A. General Considerations

We now have data that were unavailable in previous impact analyses for the capital prospective payment system. Specifically, we have cost report data for the second year of the capital prospective payment system (cost reports beginning in FY 1993) available through the December 1994 update of the Hospital Cost Report Information System (HCRIS). We also have information on the projected aggregate amount of obligated capital approved by the fiscal intermediaries. However, our impact analysis of payment changes for capital-related costs is still limited by the lack of hospital-specific data on several items. These are the hospital's projected new capital costs for each year, its projected old capital costs for each year, and the actual amounts of obligated capital that will be put in use for patient care and recognized as Medicare old capital costs in each year. The lack of such information affects our impact analysis in the following ways:

- Major investment in hospital capital assets (for example in building and major fixed equipment) occurs at irregular intervals. As a result, there can be significant variation in the growth rates of Medicare capital-related costs per case among hospitals. We do not have the necessary hospital-specific budget data to project the hospital capital growth rate for an individual hospital.
- Moreover, our policy of recognizing certain obligated capital as old capital makes it difficult to project future capital-related costs for individual hospitals. Under § 412.302(c), a hospital is required to notify its intermediary that it has obligated capital by the later of October 1, 1992, or 90 days after the beginning of the hospital's first cost reporting period under the capital prospective payment system. The intermediary must then notify the hospital of its determination whether the criteria for recognition of obligated capital have been met by the later of the end of the hospital's first cost reporting period subject to the capital prospective payment system or 9 months after the receipt of the hospital's notification. The amount that is recognized as old capital is limited to the lesser of the actual allowable costs when the asset is put in use for patient care or the estimated costs of the capital expenditure at the time it was obligated. We have substantial information regarding intermediary determinations of projected aggregate obligated capital amounts. However, we still do not know when these projects will actually be put into use for patient care, the amount

that will be recognized as obligated capital when the project is put into use, or the Medicare share of the recognized costs. Therefore, we do not know actual obligated capital commitments to be used in the FY 1996 capital cost projections. We discuss in Appendix B the assumptions and computations we employ to generate the amount of obligated capital commitments for use in the FY 1996 capital cost projections.

In Table III of this appendix, we present the redistributive effects that are expected to occur between "hold-harmless" hospitals and "fully prospective" hospitals in FY 1996. In addition, we have integrated sufficient hospital-specific information into our actuarial model to project the impact of the proposed FY 1996 capital payment policies by the standard prospective payment system hospital groupings. We caution that while we now have actual information on the effects of the transition payment methodology and interim payments under the capital prospective payment system and cost report data for most hospitals, we need to randomly generate numbers for the change in old capital costs, new capital costs for each year, and obligated amounts that will be put in use for patient care services and recognized as old capital each year. This means that we continue to be unable to predict accurately an individual hospital's FY 1996 capital costs; however, with the more recent data on the experience to date under the capital prospective payment system, there is adequate information to estimate the aggregate impact on most hospital groupings.

We present the transition payment methodology by hospital grouping in Table IV. In Table V we present the results of the cross-sectional analysis using the results of our actuarial model. This table presents the aggregate impact of the FY 1996 payment policies.

B. Projected Impact Based on the Proposed FY 1996 Actuarial Model

1. Assumptions

In this impact analysis, we model dynamically the impact of the capital prospective payment system from FY 1995 to FY 1996 using a capital acquisition model. The FY 1996 model, described in Appendix B of this proposed rule, integrates actual data from individual hospitals with randomly generated capital cost amounts. We have capital cost data from cost reports beginning in FY 1989 through FY 1993 received through the December 1994 update of the Hospital Cost Reporting Information System (HCRIS), interim payment data for hospitals already receiving capital prospective payments through PRICER, and data reported by the intermediaries that include the hospital-specific rate determinations that have been made through January 1, 1995 in the Provider-Specific file. We used this data to determine the proposed FY 1996 capital rates. However, we do not have individual hospital data on old capital changes, new capital formation, and actual obligated capital costs. We have data on costs for capital in use in FY 1993, and we age that capital by a formula described in Appendix B. We therefore need to randomly generate only new capital acquisitions for any year after FY 1993. All Federal rate payment parameters are assigned to the applicable hospital.

For purposes of this impact analysis, the FY 1996 actuarial model includes the following assumptions:

- Medicare inpatient capital costs per discharge will increase at the following rates during these periods:

AVERAGE PERCENTAGE INCREASE IN CAPITAL

Fiscal year	Costs per discharge
1995	4.61
1996	4.93

- The Medicare case-mix index will increase by 0.8 percent in FY 1995 and FY 1996.
- The Federal capital rate as well as the hospital-specific rate will be updated by an analytical framework that considers changes in the prices associated with capital-related costs, and adjustments to account for forecast error, changes in the case-mix index, allowable changes in intensity, and other factors. The proposed FY 1996 update for inflation is 1.50 percent (see Addendum, Part III).

2. Results

We have used the actuarial model to estimate the change in payment for capital-related costs from FY 1995 to FY 1996. Table III shows the effect of the capital prospective payment system on low capital cost hospitals and high capital cost hospitals. We consider a hospital to be a low capital cost hospital if, based on a comparison of its initial hospital-specific rate and the applicable Federal rate, it will be paid under the fully prospective payment methodology. A high capital cost hospital is a hospital that, based on its initial hospital-specific rate, will be paid under the hold-harmless payment methodology. Based on our actuarial model, the breakdown of hospitals is as follows:

CAPITAL TRANSITION PAYMENT METHODOLOGY

Type of hospital	Percent of hospitals	FY 1996 percent of discharges	FY 1996 percent of capital costs	FY 1996 percent of capital payments
Low cost hospital	66	62	51	55
High cost hospital	34	38	49	45

A low capital cost hospital may request to have its hospital-specific rate redetermined based on old capital costs in the current year, through the later of the hospital's cost reporting period beginning in FY 1994 or the first cost reporting period beginning after obligated capital comes into use (within the limits established in § 412.302(e) for putting obligated capital in use for patient care). If the redetermined hospital-specific rate is greater than the adjusted Federal rate, these hospitals will be paid under the hold-harmless payment methodology. Regardless of whether the hospital became a hold-harmless payment hospital as a result of a redetermination, we have continued to show these hospitals as low capital cost hospitals in Table III.

Assuming no behavioral changes in capital expenditures, Table III displays the percentage change in payments from FY 1995 to FY 1996 using the above described actuarial model.

TABLE III.—IMPACT OF PROPOSED CHANGES FOR FY 1996 ON PAYMENTS PER DISCHARGE

	No. of hospitals	Discharges	Adjusted federal payment	Average federal percent	Hospital specific payment	Hold-harmless payment	Exceptions payment	Total payment	Percent change
FY 1995 payments per discharge									
Low Cost Hospitals	3,393	6,548,545	$260.45	43.42	$191.07	$47.69	$15.33	$514.53	
Fully Prospective	1,621	3,140,867	237.50	40.00	228.18		4.62	470.30	
Rebase—Fully Prospective	1,408	2,487,365	238.66	40.00	214.90		33.06	486.61	
Rebase—100% Federal Rate	179	483,766	642.82	100.00			2.50	645.31	
Rebase—Hold Harmless	185	436,547	125.96	20.48		715.40	5.56	846.93	
High Cost Hospitals	1,758	4,081,014	360.03	57.60		377.33	4.14	741.50	
100% Federal Rate	689	1,744,966	647.48	100.00			0.00	647.48	
Hold Harmless	1,069	2,336,048	145.31	23.89		659.19	7.23	811.73	
Total Hospitals	5,151	10,629,560	298.68	49.00	117.71	174.25	11.03	601.67	
FY 1996 payments per discharge									
Low Cost Hospitals	3,393	6,548,545	$392.98	53.57	$194.75	$39.42	$12.98	$642.41	24.85
Fully Prospective	1,621	3,140,867	363.00	50.00	232.57		3.97	601.56	27.91
Rebase—Fully Prospective	1,408	2,487,365	364.77	50.00	219.04		26.50	611.94	25.75
Rebase—100% Federal Rate	226	602,562	780.03	100.00			8.25	795.17	23.22
Rebase—Hold Harmless	138	317,751	176.09	23.46		812.48	5.20	995.06	17.49
High Cost Hospitals	1,758	4,081,014	562.98	73.70		279.77	3.65	856.74	15.54
100% Federal Rate	991	2,528,050	779.48	100.00			0.00	792.32	22.37
Hold Harmless	767	1,552,965	210.53	28.51		735.20	9.59	961.50	18.46
Total Hospitals	5,151	10,629,560	458.25	61.49	119.98	131.70	9.40	724.70	20.45

Under section 1886(g)(1)(A) of the Act, estimated aggregate payments under the capital prospective payment system for FY 1992 through 1995 respectively, are to equal 90 percent of estimated payments that would have been payable on a reasonable cost basis in each year. With the expiration of the capital budget neutrality provision, we estimate that there will be an aggregate 20.45 percent increase in FY 1996 Medicare capital payments over the FY 1995 payments.

We project that low capital cost hospitals paid under the fully prospective payment methodology will experience an average increase in payments per case of 24.85 percent, and high capital cost hospitals will experience an average increase of 15.54 percent.

For hospitals paid under the fully prospective payment methodology, the Federal rate payment percentage will increase from 40 percent to 50 percent and the hospital-specific rate payment percentage will decrease from 60 to 50 percent in FY 1996.

The Federal rate payment percentage for a hospital paid under the hold-harmless payment methodology is based on the hospital's ratio of new capital costs to total capital costs. The average Federal rate payment percentage for hospitals receiving a hold-harmless payment for old capital will increase from 23.89 percent to 28.51 percent. We estimate the percentage of hold-harmless hospitals paid based on 100 percent of the Federal rate will increase from 41 percent to 57 percent.

Despite the reduction in the hospital-specific rate blend percentage from 60 percent in FY 1995 to 50 percent in FY 1996, we expect that the average hospital-specific rate payment per discharge will increase from $117.71 in FY 1995 to $119.98 in FY 1996. This is due to the large increase (21.34 percent) in the FY 1996 hospital-specific rate compared to FY 1995.

We are proposing no changes in our exceptions policies for FY 1996. As a result, the minimum payment levels would be:

- 90 percent for sole community hospitals;
- 80 percent for urban hospitals with 100 or more beds and a disproportionate share patient percentage of 20.2 percent or more; or
- 70 percent for all other hospitals.

We estimate that exceptions payments will decrease from 1.83 percent of total capital payments in FY 1995 to 1.30 percent of payments in FY 1996. This is due to the large increase in the rates—as rate-based payments increase, exceptions payments decrease. The projected distribution of the payments is shown in the table below:

ESTIMATED FY 1996 EXCEPTIONS PAYMENTS

Type of hospital	No. of hospitals	Percent of exceptions payments
Low capital cost	209	85

ESTIMATED FY 1996 EXCEPTIONS PAYMENTS—Continued

Type of hospital	No. of hospitals	Percent of exceptions payments
High capital cost	124	15
Total	333	100

C. Cross-Sectional Comparison of Capital Prospective Payment Methodologies

Table IV presents a cross-sectional summary of hospital groupings by capital prospective payment methodology. This distribution is generated by our actuarial model.

TABLE IV.—DISTRIBUTION BY METHOD OF PAYMENT (HOLD-HARMLESS/FULLY PROSPECTIVE) OF HOSPITALS RECEIVING CAPITAL PAYMENTS

	(1) Total No. of hospitals	(2) Hold-harmless		(3) Percentage paid fully prospective rate
		Percentage paid hold-harmless (A)	Percentage paid fully federal (B)	
By Geographic Location:				
All hospitals	5,151	17.6	23.6	58.8
Large urban areas (populations over 1 million)	1,620	20.1	31.5	48.5
Other urban areas (populations of 1 million of fewer)	1,273	22.5	27.4	50.1
Rural areas	2,258	13.0	15.9	71.1
Urban hospitals	2,893	21.1	29.7	49.2
0–99 beds	715	21.8	24.1	54.1
100–199 beds	917	25.0	31.5	43.5
200–299 beds	601	21.1	31.6	47.3
300–499 beds	480	16.5	31.0	52.5
500 or more beds	180	11.1	32.8	56.1
Rural hospitals	2,258	13.0	15.9	71.1
0–49 beds	1,170	10.2	10.7	79.1
50–99 beds	564	14.5	19.0	66.6
100–149 beds	230	20.0	27.0	53.0
150–199 beds	108	18.5	19.4	62.0
200 or more beds	86	15.1	27.9	57.0
By Region:				
Urban by Region	2,893	21.1	29.7	49.2
New England	163	7.4	25.2	67.5
Middle Atlantic	440	11.6	30.5	58.0
South Atlantic	431	25.8	34.6	39.7
East North Central	481	15.4	25.8	58.8
East South Central	164	31.7	27.4	40.9
West North Central	195	23.6	24.6	51.8
West South Central	371	37.5	36.9	25.6
Mountain	119	21.0	37.8	41.2
Pacific	482	18.9	27.0	54.1
Puerto Rico	47	21.3	12.8	66.0
Rural by Region	2,258	13.0	15.9	71.1
New England	53	7.5	15.1	77.4
Middle Atlantic	84	9.5	15.5	75.0
South Atlantic	297	14.5	22.9	62.6
East North Central	305	11.8	9.8	78.4
East South Central	275	14.9	26.2	58.9
West North Central	527	10.2	10.8	78.9
West South Central	351	13.4	19.9	66.7
Mountain	218	15.1	11.9	72.9
Pacific	143	19.6	9.1	71.3
By Payment Classification:				
All hospitals	5,151	17.6	23.6	58.8
Large urban areas (populations over 1 million)	1,813	19.5	31.2	49.3
Other urban areas (populations of 1 million or fewer)	1,291	22.7	27.0	50.3
Rural areas	2,047	12.5	14.8	72.6
Teaching Status:				
Non-teaching	4,101	18.0	22.7	59.3
Fewer than 100 Residents	826	17.3	27.2	55.4
100 or more Residents	224	9.8	28.1	62.1
Disproportionate share hospitals (DSH):				
Non-DSH	3,220	17.4	20.2	62.5
Urban DSH:				
100 or more beds	1,387	19.1	32.7	48.2
Less than 100 beds	134	21.6	25.4	53.0

TABLE IV.—DISTRIBUTION BY METHOD OF PAYMENT (HOLD-HARMLESS/FULLY PROSPECTIVE) OF HOSPITALS RECEIVING CAPITAL PAYMENTS—Continued

	(1) Total No. of hospitals	(2) Hold-harmless		(3) Percentage paid fully prospective rate
		Percentage paid hold-harmless (A)	Percentage paid fully federal (B)	
	(1)	(2)[1]	(3)[1]	(4)
Rural DSH:				
Sole community (SCH/EACH)	137	14.6	10.2	75.2
Referral Center (RRC/EACH)	40	12.5	20.0	67.5
Other Rural:				
100 or more beds	83	19.3	30.1	50.6
Less than 100 beds	150	6.7	22.0	71.3
Urban teaching and DSH:.				
Both teaching and DSH	653	13.5	30.3	56.2
Teaching and no DSH	350	18.3	24.6	57.1
No teaching and DSH	868	23.7	33.4	42.9
No teaching and no DSH	1,233	23.4	27.6	49.0
Rural Hospital Types:				
Non special status hospitals	1,278	9.4	15.9	74.7
RRC/EACH	111	17.1	22.5	60.4
SCH/EACH	612	18.0	10.9	71.1
SCH, RRC and EACH	46	19.6	17.4	63.0
Type of Ownership:				
Voluntary	3,092	16.8	24.1	59.1
Proprietary	725	31.6	38.6	29.8
Government	1,334	11.8	14.4	73.8
Medicare Utilization as a Percent of Inpatient Days:				
0–25	268	26.1	19.4	54.5
25–50	1,357	19.7	28.5	51.7
50–65	2,227	17.1	23.7	59.2
Over 65	1,234	14.6	18.6	66.8

As we explain in Appendix B, we were not able to determine a hospital-specific rate for 3 of the 5,154 hospitals in our data base. Consequently, the payment methodology distribution is based on 5,151 hospitals. This data should be fully representative of the payment methodologies that will be applicable to hospitals.

The cross-sectional distribution of hospital by payment methodology is presented by: (1) geographic location, (2) region, and (3) payment classification. This provides an indication of the percentage of hospitals within a particular hospital grouping that will be paid under the fully prospective payment methodology and under the hold-harmless methodology.

The percentage of hospitals paid fully Federal (100 percent of Federal rate) is expected to increase to 23.6 percent in FY 1996. The expiration of the budget neutrality provision resulted in a large rate increase in the capital Federal rate. This large increase means more hold-harmless hospitals will fare better under the fully Federal payment method.

Table IV indicates that 58.8 percent of hospitals are paid under the fully prospective payment methodology. (This figure, unlike the figure of 66 percent for low cost capital hospitals in the previous section, takes account of the effects of redeterminations. In other words, this figure does not include low cost hospitals that, following a hospital-specific rate redetermination, are now paid under the hold-harmless methodology.) As expected, a relatively higher percentage of rural and governmental hospitals (72.6 percent and 73.8 percent, respectively by payment classification) are being paid under the fully prospective methodology. This is a reflection of their lower than average capital costs per case. In contrast, only 29.8 percent of proprietary hospitals are being paid under the fully prospective methodology. This is a reflection of their higher than average capital costs per case. (We found at the time of the August 30, 1991 final rule (56 FR 43430) that 62.7 percent of proprietary hospitals had a capital cost per case above the national average cost per case.)

D. Cross-Sectional Analysis of Changes in Aggregate Payments

We used our FY 1996 actuarial model to estimate the potential impact of our proposed changes for FY 1996 on total capital payments per case, using a universe of 5,151 hospitals. The individual hospital payment parameters are taken from the best available data, including: the January 1, 1995 update to the Provider-Specific file, cost report data, and audit information supplied by intermediaries. Table V presents estimates of payments per case for FY 1995 and FY 1996 (columns 2 and 3). Column 4 shows the total percentage change in payments from FY 1995 to FY 1996. Column 5 presents the percentage change in payments that can be attributed to Federal rate changes alone.

Federal rate changes represented in Column 5 include the 21.30 percent increase in the Federal rate, a 0.85 percent increase in case mix, changes in the adjustments to the Federal rate (for example, the effect of the new hospital wage index on the geographic adjustment factor), and reclassifications by the Medicare Geographic Classification Review Board. We note that the 21.3 percent increase in the Federal rate incorporates the 1.14 percent decrease in the base rate to remove FY 1992 tax costs. Therefore, any effect of that decrease to the rate is represented in column 5. Column 4 includes the effects of the Federal rate changes represented in column 3. Column 4 also includes the effects of all other changes. Those other changes

include: the change from 40 percent to 50 percent in the portion of the Federal rate for fully prospective hospitals, the hospital-specific rate update, changes in the proportion of new to total capital for hold-harmless hospitals, changes in old capital (for example, obligated capital put in use), hospital-specific rate redeterminations, exceptions, and the special payments to certain hospitals for capital-related taxes. The comparisons are provided by: (1) geographic location and (2) payment classification and payment region.

The simulation results show that, on average, capital payments per case can be expected to increase 20.4 percent in FY 1996. The results show that the effect of the Federal rate changes alone is to increase payments by 11.0 percent. In addition to the increase attributable to the Federal rate changes, a 9.4 percent increase is attributable to the effects of all other changes.

Our comparison by geographic location shows that urban and rural hospitals experience similar rates of increase (20.3 percent and 21.2 percent, respectively). Urban hospitals will gain at the same rate as rural hospitals (11.0 percent) from the Federal rate changes. Urban hospitals will gain slightly less than rural hospitals (9.3 percent compared to 10.2 percent) from the effects of all other changes.

By region, there is relatively little variation compared to some previous years. All regions are estimated to receive large increases in total capital payments per case, due to the expiration of the budget neutrality provision. Increases by region vary from a low of 16 percent (rural Mountain and urban East South Central regions) to a high of 25 percent (rural hospitals of the New England and Middle Atlantic regions).

By type of ownership, proprietary hospitals are projected to have the highest rate of increase (21.9 percent, of which 11.0 percent is due to Federal rate changes and 10.9 percent to the effects of all other changes). Payments to voluntary hospitals will increase 20.2 percent (10.9 percent due to the Federal rate changes and 9.3 percent due to the effects of all other changes) and payments to government hospitals will increase 20.7 percent (11.8 percent due to Federal rate changes and 8.9 percent due to the effects of all other changes). We believe that one factor contributing to the higher rate of increase for proprietary hospitals is the proposed change in the treatment of tax costs. Proportionately more proprietary hospitals are subject to capital-related taxes than other categories.

Section 1886(d)(10) of the Act established the Medicare Geographic Classification Review Board (MGCRB). Hospitals may apply for reclassification for purposes of the wage index, standardized payment amount, or both. Although the Federal capital rate is not affected, a hospital's geographic classification for purposes of the operating standardized amount does affect a hospital's capital payments as a result of the large urban adjustment factor and the disproportionate share adjustment for urban hospitals with 100 or more beds. Reclassification for wage index purposes affects the geographic adjustment factor since that factor is constructed from the hospital wage index.

To present the effects of the hospitals being reclassified for FY 1996 compared to the effects of reclassification for FY 1995, we show the average payment percentage increase for hospitals reclassified in each fiscal year and in total. For FY 1996 reclassifications, we indicate those hospitals reclassified for standardized amount purposes only, for wage index purposes only, and for both purposes. The reclassified groups are compared to all other nonreclassified hospitals. These categories are further identified by urban and rural designation.

Hospitals reclassified during FY 1996 as a whole are projected to experience a 22.0 percent increase in payments (11.7 percent attributable to Federal rate changes and 10.3 percent attributable to the effects of all other changes). Nonreclassified hospitals will gain slightly less (20.2 percent) than reclassified hospitals (22.0 percent) overall. Nonreclassified hospitals will gain slightly less than reclassified hospitals from the Federal rate changes (10.9 percent compared to 11.7 percent); they will also gain slightly less from the effects of all other changes (9.3 percent compared to 10.3 percent).

Since we are proposing a capital-related tax adjustment effective in FY 1996, we have added two new categories of hospitals to our analysis in Table V. For hospitals that we expect to receive special payments for taxes, average payments per case are estimated to increase from $667 in FY 1995 to $806 in FY 1996 (an increase of 20.9 percent). In contrast, payments to other hospitals are expected to increase at a slightly lower rate (20.2 percent). We believe that the proposed change in the treatment of taxes is a major factor in the difference in the payment increase between these two groups of hospitals.

TABLE V—COMPARISON OF TOTAL PAYMENTS PER CASE

[FY 1995 payments compared to FY 1996 payments]

	No. of hospitals	Average FY 1995 payments/case	Average FY 1996 payments/case	All changes	Portion attributable to Federal rate change
By Geographic Location:					
All hospitals	5,151	602	725	20.4	11.0
Large urban areas (populations over 1 million)	1,620	588	833	21.1	11.4
Other urban areas (populations of 1 million or fewer)	1,273	602	718	19.2	10.5
Rural areas	2,258	396	480	21.2	11.0
Urban hospitals	2,893	652	785	20.3	11.0
0–99 beds	715	497	597	20.1	10.6
100–199 beds	917	595	712	19.7	10.4
200–299 beds	601	616	740	20.2	11.1
300–499 beds	480	666	804	20.8	11.4
500 or more beds	180	801	968	20.8	11.2
Rural hospitals	2,258	396	480	21.2	11.0
0–49 beds	1,170	297	370	24.9	11.5
50–99 beds	664	361	439	21.4	11.2
100–149 beds	230	429	518	20.7	11.7
150–199 beds	108	430	518	20.4	9.5
200 or more beds	86	507	606	19.5	10.9

TABLE V—COMPARISON OF TOTAL PAYMENTS PER CASE—Continued

[FY 1995 payments compared to FY 1996 payments]

	No. of hospitals	Average FY 1995 payments/case	Average FY 1996 payments/case	All changes	Portion attributable to Federal rate change
	(1)	(2) [1]	(3) [1]	(4)	
By Region:					
Urban by Region	2,893	652	785	20.3	11.0
New England	183	632	768	21.5	12.0
Middle Atlantic	440	681	834	22.5	11.4
South Atlantic	431	660	783	18.6	10.8
East North Central	481	600	727	21.1	11.0
East South Central	164	614	713	16.1	8.9
West North Central	195	651	771	18.5	9.6
West South Central	371	680	798	17.4	11.1
Mountain	119	647	775	19.8	13.0
Pacific	482	719	885	22.9	11.7
Puerto Rico	47	249	294	18.0	10.2
Rural by Region	2,258	396	480	21.2	11.0
New England	53	533	666	24.9	8.8
Middle Atlantic	84	397	496	25.0	12.6
South Atlantic	297	410	496	21.4	12.1
East North Central	305	390	467	19.8	10.1
East South Central	275	368	444	20.4	11.7
West North Central	527	371	451	21.8	11.2
West South Central	351	378	459	21.3	10.4
Mountain	218	447	519	16.1	8.5
Pacific	143	450	554	23.2	10.8
By Payment Classification:					
All hospitals	5,151	602	725	20.4	11.0
Large urban areas (populations over 1 million)	1,813	675	818	21.2	11.4
Other urban areas (populations of 1 million or fewer)	1,291	596	708	18.8	10.4
Rural areas	2,047	383	464	21.3	10.9
Teaching Status:					
Nonteaching	4,101	525	629	19.7	10.9
Fewer than 100 Residents	826	532	764	20.9	11.1
100 or more Residents	224	889	1,082	21.7	11.3
Disproportionate share hospitals (DSH):					
Non-DSH	3,220	553	668	20.8	10.7
Urban DSH:					
100 or more beds	1,387	680	817	20.1	11.3
Less than 100 beds	134	460	554	20.5	11.4
Rural DSH:					
Sole Community (SCH/EACH)	137	367	433	18.0	9.8
Referral Center (RRC/EACH)	40	441	529	20.0	10.3
Other Rural:.					
100 or more beds	83	392	474	20.9	11.4
Less than 100 beds	150	290	361	24.8	13.8
Urban teaching and DSH:					
Both teaching and DSH	653	741	896	20.9	11.4
Teaching and no DSH	350	661	806	22.0	10.8
No teaching and DSH	868	591	703	18.8	11.2
No teaching and no DSH	1,233	570	682	19.7	10.6
Rural Hospital Types:					
Nonspecial status hospitals	1,278	333	412	23.7	12.4
RRC/EACH	111	463	559	20.8	10.6
SCH/EACH	612	392	465	18.5	9.2
SCH, RRC and EACH	46	491	576	17.3	8.9
Hospitals Reclassified by the Medicare Geographic Classification Review Board:					
Reclassification Status During FY95 and FY96:					
Reclassified During Both FY95 and FY96	465	557	675	21.2	11.4
Reclassified During FY96 Only	153	491	616	25.5	13.1
Reclassified During FY95 Only	220	598	680	13.7	6.7
FY96 Reclassifications:					
All Reclassified Hospitals	618	543	663	22.0	11.7
All Nonreclassified Hospitals	4,506	611	735	20.2	10.9
All Urban Reclassified Hospitals	209	622	760	22.1	11.7
Urban Nonreclassified Hospitals	2,684	655	787	20.2	11.0
All Reclassified Rural Hospitals	409	463	564	21.8	11.7
Rural Nonclassified Hospitals	1,822	361	436	20.8	10.5

TABLE V—COMPARISON OF TOTAL PAYMENTS PER CASE—Continued

[FY 1995 payments compared to FY 1996 payments]

	No. of hospitals	Average FY 1995 payments/case	Average FY 1996 payments/case	All changes	Portion attributable to Federal rate change
	(1)	(2) [1]	(3) [1]	(4)	
Other Reclassified Hospitals (Section 1886(D)(8)(B)) ..	27	434	527	21.5	13.4
Real Estate Tax Status:					
No Payments for Taxes	3,906	574	691	20.2	11.3
Special Payments for Taxes	1,245	667	806	20.9	10.5
Type of Ownership:					
Voluntary	3,092	614	738	20.2	10.9
Proprietary	725	631	769	21.9	11.0
Government	1,334	507	612	20.7	11.8
Medicare Utilization as a Percent of Inpatient Days:					
0–25	268	667	818	22.6	10.5
25–50	1,357	715	864	20.8	11.1
50–65	2,227	560	671	19.9	10.9
Over 65	1,234	501	604	20.5	11.3

Appendix B: Technical Appendix on the Capital Acquisition Model and Required Adjustments

Section 1886(g)(1)(A) of the Act requires that for FY 1992 through FY 1995 aggregate prospective payments for operating costs under section 1886(d) of the Act and prospective payments for capital costs under section 1886(g) of the Act be reduced each year in a manner that results in a 10 percent reduction of the amount that would have been payable on a reasonable cost basis for capital-related costs in that year. To implement this requirement, we developed the capital acquisition model to determine the budget neutrality adjustment factor. Even though the budget neutrality requirement expires effective with FY 1996, we must continue to determine the recalibration and geographic reclassification budget neutrality adjustment factor, and the reduction in the Federal and hospital-specific rates for exceptions payments. We continue to use the capital acquisition model to determine these factors.

The following data are used in the capital acquisition model: the December 1994 update of the PPS–9 (cost reporting periods beginning in FY 1992) and PPS–10 (cost reporting periods beginning in FY 1993) cost reports, the January 1, 1995 update of the provider specific file, and the March 1994 update of the intermediary audit file.

The available data still lack certain items that were required for the determination of budget neutrality, including a hospital's projected new capital costs for each year, its projected old capital costs for each year, and the projected obligated capital amounts that will be put in use for patient care services and recognized as old capital each year.

Since hospitals under alternative payment system waivers (that is, hospitals in Maryland) are currently excluded from the capital prospective payment system, we excluded these hospitals from our model.

We then developed FY 1992, FY 1993, FY 1994, and FY 1995 hospital-specific rates using the provider-specific file, the intermediary audit file, and when available, cost reports. (We used the cumulative provider-specific file, which includes all updates to each hospital's records, and chose the latest record for each fiscal year.) We checked the consistency between the provider-specific file and the intermediary audit file. We also ensured that the FY 1993 increase in the hospital-specific rate was at least 0.62 percent (the net FY 1993 update), that the FY 1994 hospital-specific rate was at least as large as the FY 1993 hospital-specific rate decreased by 2.16 percent (the net FY 1994 update), and that the FY 1995 increase in the hospital-specific rate was at least 0.05 percent (the net FY 1995 update). We were able to match hospitals to the files as shown in the following table.

Source	Number of hospitals
Provider-Specific File Only	54
Provider-Specific and Audit File	5100
Total	5154

Thirty-nine of these hospitals had unusable or missing data. We were able to back-fill a hospital-specific rate for 36 of these hospitals from the cost reports as shown in the following table.

Source	Number of hospitals
PPS–5 Cost Reports	2
PPS–7 Cost Reports	2
PPS–8 Cost Reports	2
PPS–9 Cost Reports	10
PPS–10 Cost Reports	18
PPS–11 Cost Reports	2
Total	36

We did not have data for 3 hospitals, and had to eliminate them from the capital analysis. These hospitals likely are new hospitals or hospitals with very few Medicare admissions. This leaves us with 5151 hospitals and should not affect the precision of the required adjustment factors.

Next, we determined old and new capital amounts for FY 1992 using the PPS–9 cost reports as the first source of data. For FY 1993 we used PPS–9 and PPS–10 cost reports as the first source of data weighting each cost report by the number of days in FY 1993. We were able to match 5,097 PPS–9 cost reports and 4,824 PPS–10 cost reports. In cases where cost reports could not be matched, we used the provider-specific file for old capital information. Even in cases where a cost report was available, the breakout of old and new capital was not always available. In these cases, we used the old capital amounts and new capital ratios from the provider-specific file. If these were missing, we derived the old capital amount from the hospital-specific rate.

Finally, we used the intermediary audit file to develop obligated capital amounts. Since the obligated amounts are aggregate projected amounts, we computed a Medicare capital cost per admission associated with these amounts. We adjusted the aggregate amounts by the following factors:

(1) Medicare inpatient share of capital. This was derived from cost reports and was limited to the Medicare share of total inpatient days. It was necessary to limit the Medicare share because of data integrity problems. Medicare share of inpatient days is a reasonably good proxy for allocating capital. However, it may be understated if Medicare utilization is high, and may be overstated because it does not reflect the outpatient share of capital.

(2) Capitalization factor. This factor allocates the aggregate amount of obligated capital to depreciation and interest amounts. Consistent with the assumptions in the capital input price index, we used a 25-year life for fixed capital and a 10-year life for movable capital, and an average projected interest rate of 6.7 percent. We also assumed that fixed capital acquisitions are about one-half of total capital. In conjunction with the useful life and interest rate assumptions, the resulting capitalized fixed capital is about one-half of total capitalization. This is consistent with the allocations between fixed and movable capital found on the cost reports. The ratio we developed is 0.137, which produces the first year capitalization based on the aggregate amount.

(3) A divisor of Medicare admissions to derive the capital per discharge amount. Since we must project capital amounts for each hospital, we continued to use a Monte Carlo simulation to develop these amounts. (This model is described in detail in the August 30, 1991 final rule (56 FR 43517).) The Monte Carlo simulation is now used only to project capital costs per discharge amounts for each hospital. We analyzed the distributions of capital increases, and noted a slightly negative correlation between the dollar level of capital cost per admission, and the rate of increase in capital. To determine the rate of increase in capital cost per admission, we multiplied the lesser of $3,000 or the capital cost per admission by .00006 and subtracted this result from 1.2. (Increases for capital levels over $3,000 were not influenced by the level of capital, so this part of the calculation was capped at $3,000.) We selected a random number from the normal distribution, multiplied it by 0.17 (the standard deviation) and added it to −0.04 (the mean) and then added 1 to create a multiplier. This random result was multiplied by the previous result to assign a rate of increase factor which was multiplied by the prior year's capital per discharge amount to develop a capital per discharge amount for the projected year.

To model a projected year, we used the old and new capital for the prior year multiplied by 0.96 (aging factor). The 0.96 aging factor is the average of changes in capital over its life. The aged new and old capital is subtracted from the projected capital described in the previous paragraph. The difference represents newly acquired capital. We assume that the hospital would accrue only a half year of costs for newly acquired capital in the year in which the capital comes on line. This is because, on average, new capital will come on line in the middle of the year. We make the same assumption for obligated capital. If the hospital has obligated capital, the lesser of one half of the adjusted costs (as described in the succeeding paragraph) for newly acquired capital or one half of the costs (for FY 1993, all of the costs) for obligated capital are deemed to apply to the current year. The full year's costs for new or obligated capital are assumed to apply for the following year. For FY 1994, one half of the costs for any outstanding obligated capital were deemed to apply to FY 1994; a full year's costs were deemed to apply to FY 1995. With the exception of certain hospitals about whom we have information to the contrary, we assume that hospitals would meet the expiration dates provided under the obligated capital provision. The on-line obligated amounts are added to old capital and subtracted from the newly acquired capital to yield residual newly acquired capital, which is then added to new capital. The residual newly acquired capital is never permitted to be less than zero.

Next, we computed the average total capital cost per discharge from the capital costs that were generated by the model and compared the results to total capital costs per discharge that we had projected independently of the model. We adjusted the newly acquired capital amounts proportionately, so that the total capital costs per discharge generated by the model match the independently projected capital costs per discharge.

Once each hospital's capital-related costs are generated, the model projects capital payments. We use the actual payment parameters (for example, the case-mix index and the geographic adjustment factor) that are applicable to the specific hospital.

To project capital payments, the model first assigns the applicable payment methodology (fully prospective or hold-harmless) to the hospital. If available, the model uses the payment methodology indicated in the PPS–9 cost reports or the provider-specific file. Otherwise, the model determines the methodology by comparing the hospital's FY 1992 hospital-specific rate to the adjusted Federal rate applicable to the hospital. The model simulates Federal rate payments using the assigned payment parameters and hospital-specific estimated outlier payments. The case-mix index for a hospital is derived from the 1994 MedPAR file using the proposed FY 1996 DRG relative weights published in this rule. The case-mix index is increased each year after FY 1994 consistent with the continuing trend in case-mix increase.

We analyzed the case-mix increases for the recent past and found that case-mix increases have decelerated to about 1.53 percent in FY 1992, 0.78 percent in FY 1993, and 0.75 percent in FY 1994. It is too early to reliably determine a case-mix increase for FY 1995 from the discharge data. Since case-mix increases appear to be decelerating, we have reduced our projected long-term increase of 2 percent to .8 percent for both FY 1995 and FY 1996. We will continue to monitor case-mix increases and make appropriate adjustments to our projections. (Since we are using FY 1994 cases for our analysis, the FY 1994 increase in case mix has no effect on projected capital payments.)

Changes in geographic classification and revisions to the hospital wage data used to establish the hospital wage index affect the geographic adjustment factor. Changes in the DRG classification system and the relative weights affect the case-mix index.

Section 1886(g)(1)(A) of the Act requires that, for discharges occurring after September 30, 1993, the unadjusted standard Federal rate be reduced by 7.4 percent. Consequently, the model reduces the unadjusted standard Federal rate by 7.4 percent effective in FY 1994. Since budget neutrality expires effective with FY 1996, this adjustment affects the Federal rate starting in FY 1996.

Since we are proposing separate payments for real estate taxes, we are adjusting the Federal rate so that aggregate payments from the Federal rate and tax payments are budget neutral. Using data from the tax verification survey, and the information from the PPS–9 cost reports, we compared Medicare's share of taxes, with Medicare's share of capital. Medicare's share of taxes is computed by multiplying total taxes by the ratio of

Medicare's share of capital to total capital. In computing Medicare's share of capital, we applied adjustments to account for the estimated effects of future audits and reopenings. For unaudited cost reports, Medicare's share of capital was multiplied by .9299 to reflect the anticipated effects of auditing. For audited cost reports, Medicare's share of capital was multiplied by 1.0034 to reflect the anticipated effects of reopening cost reports. We used all short-stay hospitals, including hospitals in waiver States and hospitals with no taxes, but excluded cancer hospitals. We used the group of all short-stay acute care hospitals because the waivers for certain areas could be terminated at some future date. We believe that, in determining permanent changes to the rates, we should include hospitals that may be incorporated into the prospective payment system at a later date. We used tax information from all hospitals, including those that did not respond to the tax verification survey. Since we are providing a final opportunity to verify tax information, we decided to use information from all hospitals in this analysis. However, we propose to use only verified tax information in the final rule. The ratio of taxes to capital costs is 0.0114. The adjustment to the Federal rate for taxes is 1 − 0.0114 = 0.9886. For modeling payments we divided Medicare's share of taxes by Medicare discharges to determine taxes per discharge, which were then updated by 1.1475 (the cumulative Federal rate increase for FY 1993 through FY 1996). This amount is then multiplied by the Federal rate percentage and added to the payments for capital.

The proposed change in the method of paying transfer cases affects total capital payments. We are making the effect of this change budget neutral. To determine the budget neutrality adjustment factor for transfers, we followed the methodology described in section VI.D of Appendix A to this proposed rule. We computed the transfer-adjusted number of discharges and case-mix under the current transfer policy, and the proposed transfer policy for each hospital. We multiplied the corresponding number of discharges and case-mix numbers for each hospital and added all hospitals together. The number computed under the current transfer policy divided by the number computed under the proposed transfer policy yielded the transfer adjustment factor of 0.9972. This adjustment factor is applied to both the hospital specific rate and the Federal rate.

Section 412.308(c)(4)(ii) requires that the estimated aggregate payments for the fiscal year, based on the Federal rate after any changes resulting from DRG reclassifications and recalibration and the geographic adjustment factor, equal the estimated aggregate payments based on the Federal rate that would have been made without such changes. For FY 1995, the budget neutrality adjustment factor was 1.0031. To determine the factor for FY 1996, we first determined the portion of the Federal rate that would be paid for each hospital in FY 1996 based on its applicable payment methodology. We then compared estimated aggregate Federal rate payments based on the FY 1995 DRG relative weights and FY 1995 geographic adjustment factor to estimated aggregate Federal rate payments based on the FY 1996 relative weights and the FY 1996 geographic adjustment factor. In making the comparison, we held the FY 1996 Federal rate portion constant and set the other budget neutrality adjustment factor and exceptions reduction factor to 1.00. We determined that to achieve budget neutrality for the changes in the geographic adjustment factor and DRG classifications and relative weights, an incremental budget neutrality adjustment of 0.9993 for FY 1996 should be applied to the previous cumulative FY 1995 adjustment of 1.0031 (the product of the FY 1993 incremental adjustment of 0.9980, the FY 1994 incremental adjustment of 1.0053, and the FY 1995 incremental adjustment of 0.9998), yielding a cumulative adjustment of 1.0024 through FY 1996.

The methodology used to determine the recalibration and geographic (DRG/GAF) budget neutrality adjustment factor is similar to that used in establishing budget neutrality adjustments under the prospective payment system for operating costs. One difference is that under the operating prospective payment system, the budget neutrality adjustments for the effect of geographic reclassifications are determined separately from the effects of other changes in the hospital wage index and the DRG weights. Under the capital prospective payment system, there is a single DRG/GAF budget neutrality adjustment factor for changes in the geographic adjustment factor (including geographic reclassification) and the DRG relative weights. In addition, there is no adjustment for the effects that geographic reclassification has on the other payment parameters, such as the payments for serving low income patients or the large urban add-on.

In addition to computing the DRG/GAF budget neutrality adjustment factor, we used the model to simulate total payments under the prospective payment system.

Additional payments under the exceptions process are accounted for through a reduction in the Federal and hospital-specific rates. Therefore, we used the model to calculate estimated exceptions payments and the exceptions reduction factor. This exceptions reduction factor ensures that estimated aggregate payments under the capital prospective payment system, including exceptions payments, equal estimated aggregate payments under the capital prospective payment system without an exceptions process. Since changes in the level of the payment rates change the level of payments under the exceptions process, the exceptions reduction factor must be determined through iteration. Even though the additional payments for taxes are used to determine whether exceptions would be paid and the amount of the exceptions, the adjustment factor is not applied to the tax amounts.

In the August 30, 1991 final rule (56 FR 43517), we indicated that we would publish each year the estimated payment factors generated by the model to determine payments for the next 5 years. The table below provides the actual factors for FY 1992, FY 1993, FY 1994, and FY 1995, the proposed factors for FY 1996, and the estimated factors that would be applicable through FY 2000. We caution that, except with respect to FY 1992, FY 1993, FY 1994, FY 1995 and the proposed FY 1996, these are estimates only, and are subject to revisions resulting from continued methodological refinements, more recent data, and any payment policy changes that may occur. In this regard, we note that in making these projections we have assumed that the cumulative DRG/GAF adjustment factor will remain at 1.0024 for FY 1996 and later because we do not have sufficient information to estimate the change that will occur in the factor for years after FY 1996.

The projections are as follows:

Fiscal year	Update factor	Exceptions reduction factor	Budget neutrality factor	Federal rate (after outlier reduction)
1992	N/A	0.9813	0.9602	415.59
1993	5.07	.9756	.9162	[1] 417.29
1994	3.04	.9485	.8947	[2] 378.34
1995	3.44	.9734	.8432	[3] 376.83
1996	1.50	.9840	N/A	[4] 457.11
1997	1.80	.9804	N/A	463.63
1998	1.90	.9723	N/A	468.54
1999	2.00	.9572	N/A	470.49
2000	2.00	.9375	N/A	470.02

[1] Note: Includes the DRG/GAF adjustment factor of 0.9980 and the change in the outlier adjustment from 0.9497 in FY 1992 to 0.9496 in FY 1993.

[2] Note: Includes the 7.4 percent reduction in the unadjusted standard Federal rate. Also includes the DRG/GAF adjustment factor of 1.0033 and the change in the outlier adjustment from 0.9496 in FY 1993 to 0.9454 in FY 1994.

[3] Note: Includes the DRG/GAF adjustment factor of 1.0031 and the change in the outlier adjustment from 0.9454 in FY 1994 to 0.9414 in FY 1995.

[4] Note: Includes the adjustment of .9886 for taxes, and the transfer adjustment of .9972. Also includes the DRG/GAF adjustment factor of 1.0024 and the change in the outlier adjustment from .9414 in FY 1995 to .9526 in FY 1996. Future adjustments are, for purposes of this projection, assumed to remain at the same level.

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Appendix C

THE SECRETARY OF HEALTH AND HUMAN SERVICES
WASHINGTON D.C. 20201

MAR 17 1995

The Honorable Albert Gore, Jr.
President of the Senate
Washington, D.C. 20510

Dear Mr. President:

I am respectfully submitting the report on Medicare hospital outpatient prospective payment as required by section 4151(b)(2) of the Omnibus Budget Reconciliation Act of 1990 (P.L. 101-508). This section requires the Secretary of Health and Human Services to develop a proposal to replace the current Medicare payment system for hospital outpatient services with a prospective payment system.

The report presents a phased approach to the establishment of a hospital outpatient prospective payment system. For the first phase, a prospective payment system would be for hospital outpatient surgery, radiology, and other diagnostic procedures. As further research is completed, the payment system could be expanded to cover all hospital outpatient services.

The report discusses an issue with the amount of coinsurance that Medicare beneficiaries pay for outpatient surgery, radiology and other diagnostic procedures. Current law requires that beneficiaries pay 20 percent of submitted charges. However, in the recent past, hospitals' submitted charges have substantially exceeded Medicare's payment for these services, so that most of the time beneficiary coinsurance payments substantially exceed 20 percent of Medicare's payment. If Congress chose to set beneficiary coinsurance at 20 percent of Medicare allowed payments, this act would require a substantial increase in program expenditures and also could affect payments to providers. Even incremental modifications in the coinsurance percentage can have substantial impacts on Medicare program expenditures. Should Congress decide to modify current coinsurance arrangements, the report presents a number of alternatives and displays their costs to the Medicare program.

Page 2 - The Honorable Albert Gore

In addition, the report discusses a related problem with the current payment formula that results in an unintended increase in Medicare payments -- the so-called "formula driven overpayment." We believe this result was not intended by Congress. If Congress chooses to address this issue, the correction can be made separately or as part of the implementation of a prospective payment system.

I am also sending a copy of this report to the Speaker of the House of Representatives.

Sincerely,

Donna E. Shalala

Enclosure

THE SECRETARY OF HEALTH AND HUMAN SERVICES
WASHINGTON, D.C. 20201

MAR 17 1995

The Honorable Newt Gingrich
Speaker of the House of Representatives
Washington, D.C. 20515

Dear Mr. Speaker:

I am respectfully submitting the report on Medicare hospital outpatient prospective payment as required by section 4151(b)(2) of the Omnibus Budget Reconciliation Act of 1990 (P.L. 101-508). This section requires the Secretary of Health and Human Services to develop a proposal to replace the current Medicare payment system for hospital outpatient services with a prospective payment system.

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Page 2 - The Honorable Newt Gingrich

In addition, the report discusses a related problem with the current payment formula that results in an unintended increase in Medicare payments -- the so-called "formula driven overpayment." We believe this result was not intended by Congress. If Congress chooses to address this issue, the correction can be made separately or as part of the implementation of a prospective payment system.

I am also sending a copy of this report to the President of the Senate.

Sincerely,

Donna E. Shalala

Donna E. Shalala

Enclosure

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Appendix D: Recommendation of Update Factors for Operating Cost Rates of Payment for Inpatient Hospital Services

I. Background

Several provisions of the Social Security Act (the Act) address the setting of update factors for services furnished in FY 1996 by hospitals subject to the prospective payment system and those excluded from the prospective payment system. Section 1886(b)(3)(B)(i)(XI) of the Act sets the FY 1996 percentage increase in the operating cost standardized amounts equal to the rate of increase in the hospital market basket minus 2.0 percentage points for prospective payment hospitals in all areas. Section 1886(b)(3)(B)(iv) of the Act sets the FY 1996 percentage increase to the hospital-specific rate applicable to sole community hospitals equal to the rate set forth in section 1886(b)(3)(B)(i) of the Act, that is, the same update factor as all other hospitals subject to the prospective payment system, or the rate of increase in the market basket minus 2.0 percentage points. Section 1886(b)(3)(B)(ii) of the Act sets the FY 1996 percentage increase in the rate of increase limits for hospitals excluded from the prospective payment system equal to the rate of increase in the excluded hospital market basket minus the applicable reduction or, in the case of a hospital in a fiscal year for which the hospital's update adjustment percentage is at least 10 percent, the excluded hospital market basket percentage increase. Under section 1886(b)(3)(B)(v) of the Act, a hospital's update percentage increase for FY 1996 is the percentage increase by which the hospital's allowable operating costs of inpatient hospital services recognized under this title for the cost reporting period beginning in FY 1990 exceed the hospital's target amount for such cost reporting period, increased for each fiscal year (beginning with FY 1994) by the sum of any of the hospital's applicable reductions for previous years. The applicable reduction with respect to a hospital for FY 1996 is the lesser of 1 percentage point or the percentage point difference between 10 percent and the hospital's update adjustment percentage for FY 1996.

In accordance with section 1886(d)(3)(A) of the Act, we are proposing to update the standardized amounts, the hospital-specific rates, and the rate-of-increase limits for hospitals excluded for the prospective payment system as provided in section 1886(b)(3)(B) of the Act. Based on the first quarter 1995 forecasted market basket increase of 3.5 percent for hospitals subject to the prospective payment system, the proposed updates in the standardized amounts are 1.5 percent for hospitals in both large urban and other areas. The proposed update in the hospital-specific rate applicable to sole community hospitals is 1.5 percent (that is, the market basket rate of increase of 3.5 percent minus 2.0 percentage points). The proposed update for hospitals excluded from the prospective payment system is based on the percentage increase in the excluded hospital market basket (currently estimated at 3.6 percent) minus the applicable reduction factor. The applicable reduction factor is the lesser of 1 percentage point or the percentage point difference between 10 percent and the hospital's update adjustment percentage. Therefore, for excluded hospitals, the hospital-specific update can vary between 2.6 and 3.6 percent.

Sections 1886(e)(2)(A) and (3)(A) of the Act require that the Prospective Payment Assessment Commission (ProPAC) recommend to the Congress by March 1, 1995 an update factor that takes into account changes in the market basket rate of increase index, hospital productivity, technological and scientific advances, the quality of health care provided in hospitals, and long-term cost effectiveness in the provision of inpatient hospital services.

In its March 1, 1995 report, ProPAC recommended update factors to the standardized amounts equal to the percentage increase in the market basket minus 1.8 percentage points for hospitals in both large urban and other areas. Based on its market basket rate of increase estimate of 3.9 percent, ProPAC's recommended update to the standardized amounts equal 2.1 percent for hospitals in both large urban and other areas. ProPAC recommended that the update for the hospital-specific rates applicable to sole community hospitals be the same factor as the rate for all other prospective payment hospitals. This recommendation would result in a 2.1 percent update to the hospital-specific rates. The components of ProPAC's update factor recommendations are described in detail in the ProPAC report, which is published as Appendix E to this document. We discuss ProPAC's recommendations concerning the update factors and our responses to these recommendations below.

Section 1886(e)(4) of the Act requires that the Secretary, taking into consideration the recommendations of ProPAC, recommend update factors for each fiscal year that take into account the amounts necessary for the efficient and effective delivery of medically appropriate and necessary care of high quality. Under section 1886(e)(5) of the Act, we are required to publish the update factors recommended under section 1886(e)(4) of the Act. Accordingly, this appendix provides the recommendations of appropriate update factors, the analysis underlying our recommendations, and our responses to the ProPAC recommendations concerning the update factors.

II. Secretary's Recommendations

Under section 1886(e)(4) of the Act, we are recommending that the standardized amounts be increased by an amount equal to the market basket rate of increase minus 2.0 percentage points for hospitals located in large urban and other areas. We are also recommending an update of the market basket rate of increase minus 2.0 percentage points to the hospital-specific rate for sole community hospitals. These figures are consistent with the President's budget recommendation, given the current market basket forecast of 3.5 percent.

We recommend that hospitals excluded from the prospective payment system receive an update equal to the percentage increase in the market basket that measures input price increases for services furnished by excluded hospitals minus 1.0 percentage point. That market basket rate of increase is currently forecast at 3.6 percent. Subtracting 1.0 percentage point would result in an update for hospitals excluded from the prospective payment system of 2.6 percent.

As required by section 1886(e)(4) of the Act, we have taken into consideration the recommendations of ProPAC in setting these recommended update factors. Our responses to the ProPAC recommendations concerning the update factors are discussed below.

III. ProPAC Recommendation for Updating the Prospective Payment System Standardized Amounts

For FY 1996, ProPAC recommends that the standardized amounts be updated by the following factors:

- The projected increase in the HCFA market basket index, estimated at 3.9 percent, based upon the fourth quarter 1994 forecast;
- An adjustment of 0.4 percentage points to reflect the difference between the ProPAC and HCFA market baskets;
- A negative adjustment of 1.8 percentage points to correct for substantial error in the FY 1994 market basket forecast;
- A positive adjustment of 0.3 percentage points to reflect the cost-increasing effects of scientific and technological advances;
- A negative adjustment of 0.3 percentage points to encourage hospital productivity improvements; and
- A net adjustment of zero percentage points for case-mix change in FY 1995.

Overall, the net increase employing the above factors is the percentage increase in the hospital market basket minus 1.8 percentage points. Based on the market basket estimate of 3.9 percent, ProPAC recommends that hospitals in large urban and other areas receive a 2.1 percent update.

Response: We are recommending an update that is consistent with the Administration's budget proposal and the requirements of section 1886(b)(3)(B)(i) of the Act, as amended by section 13501(a) of Public Law 103–66. Our recommendation is that the update for prospective payment system hospitals located in large urban and other areas for FY 1996 be equal to the market basket rate of increase forecast minus 2.0 percentage points. Based on HCFA's current forecast of the market basket rate of increase (3.5 percent), we recommend an update for FY 1996 for large urban and other hospitals equal to 1.5 percent. Our recommendation is supported by the following analyses that measure changes in hospital productivity, scientific and technological advances, practice pattern changes, and changes in case mix:

- *Productivity:* Service level productivity is defined as the ratio of total service output to full-time equivalent employees (FTEs). While we recognize that productivity is a function of many variables (for example, labor, nonlabor material, and capital inputs), we use a labor productivity measure in our framework, since the current update framework applies to operating payment. To recognize that we are apportioning the short run output changes to the labor input, we weigh our productivity measure for operating costs by the appropriate share of labor input relative to total operating input to determine the expected effect on cost per case.

Our recommendation for the service productivity component is based on historical trends in productivity and total output for both the hospital industry and the general economy, and projected levels of future hospital service output. ProPAC has also estimated cumulative service productivity growth to be 4.9 percent from 1985–1989, or 1.2 percent annually. At the same time, they estimate total output growth at 3.4 percent annually, implying a ratio of service productivity growth to output growth of 0.35. Our MedPAR analysis indicates total Medicare service output (charges per admission, adjusted for CPI change) increased 16.5 percent from 1985–1994, or an approximate average annual increase of 1.7 percent. Since it is not possible at this time to develop a productivity measure specific to Medicare patients, we examined productivity (output per hour) and output (gross domestic product) for the economy. Depending on the exact time period, annual changes in productivity range from .3 to .35 of the change in output (that is, a 1.0 percent increase in output would be correlated with an 0.3 to 0.35 percent change in output per hour).

Under our framework, the recommended update is based in part on expected productivity—that is, projected service output during the year multiplied by the historical ratio of service productivity to total service output, multiplied by the share of labor in total operating inputs, as calculated in the hospital market basket rate of increase. This method estimates an expected labor productivity improvement in the same proportion to expected total service growth that has occurred in the past and assumes that, at a minimum, growth in FTEs changes proportionally to the growth in total service output. Thus, the recommendation allows for unit productivity to be smaller than the historical averages in years that output growth is relatively low and higher in years that output growth is larger than the historical trend. Based on the above estimates from both the hospital industry and the economy, we have chosen to employ the range of ratios of productivity change to output change of 0.30 to 0.35.

The expected change in total hospital service output is the product of projected growth in total admissions (adjusted for outpatient usage), projected real case-mix growth, and expected quality enhancing intensity growth, net of expected decline in intensity due to reduction of cost ineffective practice. Case-mix growth and intensity numbers for Medicare are used as proxies for those of the total hospital, since case-mix increases (used in the intensity measure as well) are unavailable for non-Medicare patients. Thus, expected output growth is simply the sum of the expected change in intensity (0.0 percent), projected admissions change (3.0 percent for FY 1996), and projected real case-mix growth (.8 percent), or 3.8 percent. The share of direct labor services in the market basket rate of increase (consisting of wages, salaries, and employee benefits) is 61.7 percent. Multiplying the expected change in total hospital service output (3.8 percent) by the ratio of historical service productivity change to total service growth of 0.30 to 0.35 and by the direct labor share percentage (0.617) provides our productivity standard of 0.7 to 0.8 percent.

ProPAC also believes hospitals should be given an incentive for additional productivity improvement. ProPAC measures productivity as the ratio of hospital admissions (adjusted for case mix and outpatient services) per FTE employee (adjusted for changes in skill mix). ProPAC includes in its productivity measurement the effect of changes in practice patterns. We treat practice pattern changes as a portion of our intensity adjustment, described below. This year, ProPAC assumes a productivity gain of at least 0.6 percent and recommends a −0.3 percentage point adjustment on the basis that any productivity gains should be shared equally by Medicare and hospitals.

- *Intensity:* We base our intensity standard on the combined effect of three separate factors: changes in the use of quality enhancing services, changes in the use of services due to shifts in within-DRG severity, and changes in the use of services due to reductions of cost-ineffective practices. For FY 1996, we recommend an adjustment of 0.0 percent. The basis of this recommendation is discussed below.

We have no empirical evidence that accurately gauges the level of quality-enhancing technology changes. Typically, a specific new technology increases cost in some uses and decreases cost in other uses. Concurrently, health status is improved in some situations while in other situations it may be unaffected or even worsened using the same technology. It is difficult to separate out the relative significance of each of the cost increasing effects for individual technologies and new technologies.

The quality enhancing technology component is intended to recognize the use of services which increase cost but whose value in terms of enhanced health-status is commensurate with these costs. Such services may result from technological change, or in some cases, increased use of existing technologies. The latter recognizes that as cost and medical effectiveness studies become available, some increased use of existing, as well as new, services may be warranted.

The component for reduction of cost-ineffective practice recognizes that some improvements in practice patterns could be made so that the intensity of services

provided is more consistent with the efficient use of limited resources. That is, improvements could be made so that the number of services provided during an inpatient stay, and their complexity, produce an improvement in health status that is consistent with the cost of care. This component of our update recommendation is intended to encourage both hospitals and physicians to more carefully consider the cost-effectiveness of medical care. This component of the framework also accounts for real within-DRG change, since that should be directly reflected in the CMI-adjusted growth in real charges per case.

Following methods developed by HCFA's Office of the Actuary for deriving hospital output estimates from total hospital charges, we have developed Medicare-specific intensity measures based on a 5-year average using FY 1990–1994 MedPAR billing data. Case-mix constant intensity is calculated as the change in total Medicare charges per discharge adjusted for changes in the average charge per unit of service as measured by the Medical CPI hospital component and changes in real case-mix. For FY 1990 through FY 1992, we estimate that 1.0 to 1.4 percent of observed case-mix increase was real. This estimate is supported by past studies of case-mix change by the RAND Corporation. The most recent study was "Has DRG Creep Crept Up? Decomposing the Case Mix Index Change Between 1987 and 1988" by G.M. Carter, J.P. Newhouse, and D.A. Relles, R–4098–HCFA/ProPAC (1991). The study suggests that real case-mix change was not dependent on total change, but was rather a fairly steady 1.0 to 1.5 percent per year. We use 1.4 percent as the upper bound because the RAND study did not take into account that hospitals may have induced doctors to document medical records more completely in order to improve payment. For FY 1993 and FY 1994, we assumed that all of the observed case-mix increases of 0.9 and 0.8 percent, respectively, were real. If we assume that real case-mix increase was 1.0 percent for FY 1990–1992, 0.9 percent for FY 1993, and 0.8 percent for FY 1994, we estimate case-mix constant intensity declined by an average 1.2 percent during FY 1990 through 1994, for a cumulative decrease of 6.1 percent. If we assume that real case-mix increase was 1.4 percent for FY 1990–1992, 0.9 percent for FY 1993, and 0.8 percent for FY 1994, we estimate case-mix constant intensity declined by an average of 1.5 percent during FY 1990 through 1994, for a cumulative decrease of 7.2 percent. Since we estimate that intensity has declined during FY 1990–1994 period, we are recommending a 0.0 percent intensity adjustment for FY 1996.

- *Quality Enhancing New Science and Technology:* For FY 1996, ProPAC used a qualitative approach to develop its estimate by examining technologies considered in last year's estimate and reviewing the literature for potential new advances. ProPAC decided that 0.3 percent was the appropriate level for the FY 1996 adjustment. This is the same estimate ProPAC used in FY 1995. ProPAC stated that there is no reason to believe that the rate of increase in scientific and technological advances had risen or fallen from last year's estimate.

We still believe that there may be several shortcomings with ProPAC's recommendations with regard to technology. First, the estimate does not account for offsetting changes in DRG assignment. Second, it is not clear that all of the new technologies listed in ProPAC's study significantly enhance health status. To the extent the new technologies are not quality enhancing, an adjustment is inappropriate. Finally, some of the technologies have considerable potential for cost savings relative to the technologies they are replacing.

- *Change in Case Mix:* Our analysis takes into account projected changes in case-mix, adjusted for changes attributable to improved coding practices. For our FY 1996 update recommendation, we are projecting a 0.8 percent increase in the case-mix index. We define real case-mix increase as actual changes in the mix (and resource requirements) of Medicare patients as opposed to changes in coding behavior that result in assignment of cases to higher-weighted DRGs but do not reflect greater resource requirements. For FY 1996, we believe that real case-mix increase is equal to our projected change in case mix. We do not see any changes in coding behavior in our projected case-mix change. Our net adjustment to case-mix-change for FY 1996 is 0.0 percentage points.

The −1.0 percent figure used in the ProPAC framework represents ProPAC's projection for observed case-mix change. ProPAC projects a 0.8 percentage points increase in real case-mix change across DRG's and a 0.2 percentage points increase in within-DRG case-complexity change. ProPAC's net adjustment for case mix is 0.0 percentage points.

- *Effect of FY 1994 DRG Reclassification and Recalibration:* We estimate that DRG reclassification and recalibration for FY 1994 resulted in a 0.3 percent increase in the case-mix index when compared with the case-mix index that would have resulted if we had not made the reclassification and recalibration changes to the GROUPER. ProPAC does not make an adjustment for DRG reclassification and recalibration in its update recommendation. (We note that Congress asks the Secretary for an estimate of these effects in our update recommendation.)

- *Correction for Market Basket Forecast Error:* The FY 1994 estimated market basket percentage increase used to update the payment rates was 4.3 percent. Our most recent data indicate the actual FY 1994 increase was 2.5 percent, reflecting that the actual increase in wages was lower than projected. The resulting forecast error in the projected FY 1994 market basket rate of increase is 1.8 percentage points. Our policy has been to make a forecast error correction if our estimate is off by 0.25 percentage points or more. Therefore, we are recommending an adjustment of −1.8 percentage points to reflect this overestimation of the FY 1994 market basket rate of increase. The following is a summary of the update ranges supported by our analyses compared to ProPAC's framework.

TABLE 1.—COMPARISON OF FY 1996 UPDATE RECOMMENDATIONS

	HHS	ProPAC
Market Basket	MB	MB
Difference Between HCFA & ProPAC Market Baskets		+0.4
Subtotal	MB	MB+0.4
Policy Adjustment Factors:		
Productivity	−0.7 to −0.8	−0.3
Intensity:	0.0	
Science and Technology		+0.3
Practice Patterns		(1)
Real Within DRG Change		(2)
Subtotal	−0.7 to −0.8	+0.0
Case Mix Adjustment Factors:		
Projected Case Mix Change	−0.8	−1.0
Real Across DRG Change	0.8	+0.8
Real Within DRG Change	(3)	+0.2
Subtotal	0.0	0.0
Effect of 1993 Reclassification and Recalibration	−0.3	
Forecast Error Correction	−1.8	−1.8
Total Recommended Update	MB–2.8 to MB–2.9	MB–1.4

[1] Included in ProPAC's Productivity Measure.
[2] Included in ProPAC's Case Mix Adjustment.
[3] Included in HHS's Intensity Factor.

While the above analysis would support a recommendation that the update be no more than market basket minus 2.8 percentage points, we are recommending an update of market basket minus 2.0 percentage points, consistent with current law. Any further reduction in the update factor would be most appropriate within the context of health care reform. We also recommend that the hospital-specific rates applicable to sole community hospitals be increased by the same update, market basket minus 2.0 percentage points.

IV. ProPAC Recommendation for the Elimination of a Separate Update for Sole Community Hospitals

ProPAC recommends an update factor for hospitals paid the hospital-specific rate equal to the factor used for all other prospective payment hospitals. As discussed earlier, the statute sets the update equal to the market basket minus 2.0 percentage points. In addition, ProPAC suggests that it is no longer necessary to calculate a separate update for these hospitals since section 1886(b)(3)(B)(iv) of the Act dictates that the update for sole community hospitals be the same as for other prospective payment hospitals in the future.

Response: We agree with the ProPAC recommendation that the update factor for hospitals paid the hospital-specific rate be the same as the update applicable to other prospective payment hospitals. That update factor is equal to the market basket percentage increase minus 2.0 percentage points, or 1.5 percent. We concur with the ProPAC suggestion to eliminate a separate update for the hospital-specific rate for the time being. We will continue to monitor the financial condition of sole community hospitals for signs of potential stress and provide a separate recommendation when and if conditions warrant it.

V. ProPAC Recommendation for Updating the Rate-of-Increase Limits for Excluded Hospitals

ProPAC recommends an update factor equal to the market basket rate of increase minus 1.6 percentage points for excluded hospitals and units. The 1.6 percentage points reduction represents a reduction of 1.6 percentage points to account for the forecast error in the FY 1994 market basket rate of increase for excluded units, no increase to reflect the different compensation price proxies used by ProPAC, and no allowance for new technology. ProPAC no longer recommends an additional allowance based on the year the hospital or unit was excluded from the prospective payment system, pending our report to Congress on payment reform for excluded hospitals and units as mandated by Public Law 101–508.

Response: We recommend that hospitals excluded for the prospective payment system receive an update equal to the percentage increase in the market basket that measures input price increases for services furnished by excluded hospitals minus 1.0 percentage point. The reduction is consistent with the updates provided under the current law and in the President's budget. The market basket rate of increase for excluded hospitals is currently forecast at 3.6 percent. Subtracting 1.0 percentage point would result in an update of 2.6 percent for excluded hospitals and units.

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APPENDIX E

PROSPECTIVE PAYMENT ASSESSMENT COMMISSION

REPORT AND RECOMMENDATIONS TO THE CONGRESS MARCH 1, 1995

PROSPECTIVE PAYMENT ASSESSMENT COMMISSION

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The Prospective Payment Assessment Commission, created in 1983 by the legislation that established the Medicare prospective payment system for inpatient hospital services, advises the Congress and the Secretary of Health and Human Services on policies affecting Medicare payments to hospitals and other facilities. The Commission also studies industrywide effects of Medicare policies and important trends in the health care delivery system. On March 1 of each year, the Commission submits a report to the Congress with recommendations for improvements in Medicare policies and related subjects.

Prospective Payment Assessment Commission

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March 1, 1995

The Honorable Al Gore
President of the Senate
United States Senate
Washington, D.C. 20510

Dear Mr. President:

I am hereby transmitting to the Congress the annual report of the Prospective Payment Assessment Commission as required by Section 1886(e)(3) of the Social Security Act as amended by Public Law 101-508. This report presents a discussion of the evolving health care system and provides the views of the Commission regarding the effects of these changes on health care financing and delivery. In addition, 13 recommendations concerning Medicare payment policies are included. The report reflects the Commission's collective judgment about issues of substantial importance to beneficiaries, hospitals, other providers, and the Medicare program.

Sincerely,

Stuart H. Altman, Ph.D.
Chairman

Enclosure

Prospective Payment Assessment Commission

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March 1, 1995

The Honorable Newt Gingrich
Speaker of the House
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Speaker:

I am hereby transmitting to the Congress the annual report of the Prospective Payment Assessment Commission as required by Section 1886(e)(3) of the Social Security Act as amended by Public Law 101-508. This report presents a discussion of the evolving health care system and provides the views of the Commission regarding the effects of these changes on health care financing and delivery. In addition, 13 recommendations concerning Medicare payment policies are included. The report reflects the Commission's collective judgment about issues of substantial importance to beneficiaries, hospitals, other providers, and the Medicare program.

Sincerely,

Stuart H. Altman, Ph.D.
Chairman

Enclosure

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Prologue

The Changing Health Care Environment: The Commission's Views

Medicare's payment policies must be considered in the context of changes occurring in the financing and delivery of health care. Among the most significant of these are the growth of capitated payment methods and managed care techniques in the private insurance market, together with continuous medical advances that allow the movement of services out of acute inpatient hospital settings. Important factors contributing to these developments include constraints on payments from private payers and increased competition among providers and payers.

The share of total health care spending devoted to acute inpatient hospital care continues to decline as per capita utilization decreases and as more services are furnished in ambulatory, post-acute, and other non-hospital settings. This reduced use of inpatient hospital services is creating excess capacity and greater competition for patients. Many private payers are taking advantage of this situation to negotiate lower payments for inpatient services. To maintain occupancy, hospitals are granting larger discounts to health plans and assuming greater financial risk in their relationships with insurers. Hospitals are also responding to competitive pressures by consolidating and developing integrated delivery systems in an attempt to maintain market share and control over their revenues. The development of new arrangements among insurers, providers, and physicians is altering longstanding financial incentives and the patterns of care furnished to all patients.

Medicare has developed policies that curb its spending by controlling its payment for each unit of service furnished. In the early 1980s, Medicare expenditures per enrollee were growing more rapidly than private health expenditures per insured person. Following implementation of Medicare's prospective payment system (PPS) for inpatient hospital care and subsequent constraints on payment for other services, this pattern reversed, with Medicare spending growing less rapidly than that in the private sector. More recently, Medicare expenditures per enrollee have again escalated, while private spending growth has continued to decline. Medicare's predominantly fee-for-service payment methods contain strong incentives to increase the number and intensity of services furnished. Much of the recent acceleration in Medicare spending is due to the rising number of beneficiaries receiving services and the number of services provided to each.

Changes in the financing and delivery of health care services have the potential to make the health care system more efficient and to control the rise in spending for medical care. At the same time, however, these changes may have important consequences for Medicare beneficiaries. The effects of heightened competition in the health care sector must be considered as Medicare updates and modifies its payment policies, and as the program considers methods to constrain the rapid increase in the volume of services furnished to its enrollees.

In this prologue to its annual report to the Congress, the Prospective Payment Assessment Commission (ProPAC) presents its views on important interactions between Medicare policies, increased competition, and restructuring in the financing and delivery of medical care. The Commission brings this information to the attention of the Congress and the public as a series of alerts concerning important implications these changes have for the Medicare and Medicaid programs.

Alert 1: Controlling the Growth in Medicare Spending

A significant portion of the growth in Medicare expenditures is due to increases in the number of Medicare enrollees and their greater use of services. Substantial reductions in the rise in Medicare spending cannot be achieved solely by lowering payments to providers for each unit of service furnished. Over the long term, fundamental changes in the program are needed to control the rise in the volume of services in order to curtail spending to desired levels.

- Medicare continues to rely primarily on fee-for-service payment policies, based on the type of provider. These policies encourage increases in the number and types of providers as well as the volume of services furnished. To curb the overall rise in spending, the Medicare program must control both the total number of services furnished over an episode of illness and the payment for each unit of service.

- Medicare has lagged behind the private sector in encouraging prevention and health promotion activities, including self-help and education programs. Such initiatives might improve the health of Medicare beneficiaries, as well as reduce utilization of acute and post-acute health care services.

- About 25 percent of the projected rise in real (inflation-adjusted) Medicare spending over the next five years is due to continued growth in the number and average age of Medicare enrollees. A portion of the remaining anticipated increase is accounted for by growth in payments per unit of service above the level of inflation. The largest contributor to the expected escalation in spending, however, is an increase in both the percentage of enrollees receiving services and the number of services they receive.

- Changes in Medicare payment policies over the past decade have controlled the growth in payment per hospital admission. During this time, Medicare spending for hospital acute care inpatient services rose less than spending for services furnished in other settings. Recently, the growth in inpatient hospital expenditures has gone up modestly as admissions again have begun to rise.

- Since 1988, Medicare spending for post-acute services furnished by skilled nursing facilities, home health agencies, and rehabilitation and long-term care hospitals has grown rapidly. Primarily responsible for this is the rapid growth in the volume of services furnished, reflecting increases in the number of beneficiaries served and in the quantity and intensity of services provided to each beneficiary. Spending for hospital outpatient and end-stage renal disease dialysis care also is accelerating, driven by utilization growth.

Alert 2: Strengthening Medicare's Managed Care Risk Contracting Program

Enrollment of Medicare beneficiaries under managed care risk contracts has lagged behind that in the private sector. Certain features of Medicare's risk contracting program appear to discourage some plans from participating and others to deter beneficiaries from enrolling. Low enrollment and flaws in the program limit potential Medicare savings.

- Enhancing the opportunity for Medicare beneficiaries to select the risk contracting program and improving the program's payment methods could help slow spending growth. Risk contracting will be increasingly important as people now in health maintenance organizations (HMOs) want to stay enrolled as they age into Medicare. The number of individuals likely to find this option desirable may grow with the rise in private sector enrollment in HMOs and preferred provider organizations.

- Medicare's payment under the risk contracting program is based on the adjusted average per capita cost (AAPCC) of furnishing care to fee-for-service beneficiaries in the enrollee's county of residence. Linking the level of the capitated payment directly to the level of Medicare spending in the fee-for-service sector fails to correct for differences in practice patterns and service utilization between the two sectors. This limits the program's ability to constrain spending growth.

- The AAPCC also lacks an adequate risk adjustment. Consequently, HMOs have an incentive to avoid higher-cost, sicker beneficiaries. The ability of HMOs to select low-cost, healthier enrollees can eliminate the savings from the

risk contracting program, and in fact may increase Medicare spending as a recent evaluation indicated. In addition, Medicare's policy of allowing beneficiaries to disenroll on a monthly, rather than annual, basis may contribute to biased selection. It could also disrupt the continuity of care.

- Determining the AAPCC annually on a county basis results in substantial payment variation among neighboring counties and from year to year. As a result, many HMOs are discouraged from participating in the risk contracting progam because of low payments in their service areas and payment variability from one year to the next. In addition, the AAPCC methodology does not account for the costs of services provided to Medicare beneficiaries by Department of Veterans Affairs and other military facilities. Consequently, Medicare capitated payments in some areas may be inappropriately low, further discouraging HMO participation.

- The Medicare program needs to provide beneficiaries with more information regarding available plans and how they compare. This information should include findings regarding the quality of care delivered to beneficiaries by HMOs in their area and data on enrollee satisfaction with alternative plans.

Alert 3: Changing Patterns of Subsidies Across Payers and Providers

A price competitive health care system will alter past patterns of subsidies across payers and providers. The ability of providers to cover losses from Medicare and Medicaid patients with excess revenues from private payers will diminish as competition intensifies.

- Hospitals have always used gains from some payers to cover losses from others. They have also relied on direct and indirect subsidies to help finance the care they furnish to the uninsured. These practices have spread rapidly in recent years. But as competition accelerates, payers will become less willing to finance these extra costs.

- Over the past decade, Medicare and Medicaid have curtailed the rise in their per case payments to hospitals. Instead of reducing cost growth as public payers constrained payments, however, hospitals responded by increasing revenue from private payers. In 1992, hospitals spent $26 billion more than they received for furnishing services to Medicare, Medicaid, and uninsured patients. In the same year, they took in $29 billion in revenue above their costs of providing care to privately insured patients. Because hospitals could get additional revenue from private payers, Medicare was able to slow payment growth without a commensurate decrease in the cost of furnishing care to its beneficiaries.

- Many hospitals will have difficulty securing extra revenues from private payers to subsidize losses from public programs because of accelerating price competition. To remain financially viable, therefore, they will have to constrain the growth in the costs of furnishing care to all patients.

- This deceleration in hospital costs per case began in late 1992. Contributing to this trend were improved labor productivity, smaller wage and salary increases, and a more gradual rise in the cost of supplies and services that hospitals purchase. In addition, hospital length of stay has declined for elderly and nonelderly populations alike. Consequently, growth in the average cost per case is moderating for Medicare and other payers.

- Medicare's payments relative to the costs of services provided to beneficiaries continue to be below those of most private payers. Because of the recent slowdown in cost growth, however, subsidies from private payers that offset these losses will not need to increase. Indeed, though still substantial, these subsidies appear to have dropped in 1994.

- Surplus revenue from private payers also has been used to subsidize losses from Medicaid and uninsured patients. If hospitals are unable to continue to obtain these additional revenues, they may avoid providing care to some public program beneficiaries and to the uninsured. Moreover, the pressure to do so is likely to rest most heavily on certain hospitals.

Alert 4: Assessing Further Reductions in Medicare Hospital Updates

While the growth in Medicare hospital per case payments can be reduced further, it is important

that this reduction be consistent with continued deceleration in total hospital costs. Unless that happens, access to care and the quality of care for beneficiaries will suffer.

- Since the third year of PPS, the annual update factor has been less than the rise in the market basket index, which measures the rate of inflation in the prices of goods and services hospitals purchase. Increases in inpatient hospital payments per case have been somewhat above the market basket. Hospital costs, however, have grown much faster than Medicare payments. As a result, Medicare payments are about 90 percent of the cost of care for its beneficiaries.

- Previous Federal constraints on payment updates have not affected the quality of services furnished to Medicare beneficiaries, since hospitals have been able to obtain sufficient revenue from private payers to cover continuing cost increases. This situation is changing as price competition in the private sector intensifies, leading private payers to curb the increase in hospital payments and hospitals to slow the rise in per case costs. Because it is unlikely that hospitals will be able to obtain additional revenue from private payers, further constraints on the PPS update factor and the rate of increase in payments should be consistent with the continued slowing in the growth of hospital costs.

- The financial condition of the average hospital continues to be good, although many individual hospitals are experiencing financial distress. One of the important factors determining the financial status of a hospital is its mix of patients and payers. Many Medicare beneficiaries rely on hospitals that also treat a large number of Medicaid patients and people without health insurance. Such facilities have limited ability to obtain surplus revenues from private payers to cover losses from the care of their other patients. The gap between public and private payments relative to costs disadvantages these hospitals in terms of their ability to maintain revenues and to compete with other hospitals. Additional across-the-board reductions in the PPS update factor would be hardest on those hospitals that treat the largest number of Medicare patients.

- The burden of furnishing care to a disproportionate share of Medicare and Medicaid patients and the uninsured is not spread equally across geographic areas or types of hospitals and other providers. Certain providers are less able to respond to reduced growth in public program payments. The beneficiaries served by these hospitals, therefore, may be particularly vulnerable.

Alert 5: Protecting Access to Hospitals That Care for Underserved Populations

Many Medicare beneficiaries rely on hospitals that are located in remote rural areas or that care for large numbers of the uninsured. The Medicare program has special payment provisions to assist these sole community and disproportionate share hospitals. Substantial reductions in these payments might adversely affect access to services for Medicare beneficiaries living in such areas. These payments, however, could be better targeted to hospitals that are truly isolated or that furnish a large share of uncompensated care.

- In many rural areas, there is only one community hospital available to provide emergency and routine care. Facilities in these areas frequently are confronted with special problems due to health work force shortages, low patient volumes, or other factors that limit their ability to control costs or effectively compete with other hospitals. The Medicare program has helped sole community hospitals through special payment policies to ensure that its beneficiaries have access to care.

- Many Medicare beneficiaries also rely on hospitals in underserved areas that furnish large amounts of care to the poor and the uninsured. These hospitals frequently have problems recruiting physicians and other staff, and meeting the special needs of their patients. Further, they tend to have a small share of privately insured patients, which limits their ability to subsidize losses from Medicare, Medicaid, and the uninsured. The extra revenue such hospitals receive from the Medicare program through disproportionate share payments helps to ensure reasonable access to care for enrollees in underserved communities. Reducing these payments

to hospitals that are the only source of care in a community, without also expanding coverage to the uninsured or otherwise subsidizing their care, will adversely affect their financial viability. This, in turn, could threaten access for enrollees in public programs.

- Some facilities benefit from the payment provisions for sole community or disproportionate share hospitals even though they do not serve these special functions. It is possible, therefore, to target payment reductions to protect access for Medicare enrollees served by hospitals that are truly isolated or that have the largest shares of low-income patients.

Alert 6: Funding for Graduate Medical Education Programs

Medicare payments for the costs associated with graduate medical education programs have become a particularly important source of revenue for teaching hospitals in the absence of explicit financial support for these activities from other payers. This is especially true because increasing competition in the private sector is making it harder for teaching facilities to obtain the higher payment rates needed to cover the added costs of their graduate medical education programs. Nevertheless, the Commission believes it is possible to reduce Medicare's graduate medical education adjustment by about 40 percent over the next three years.

- Many Medicare beneficiaries rely on hospitals that maintain postgraduate education and training programs for physicians and nurses. These hospitals incur additional indirect patient care costs related to their teaching mission. They also have direct costs due to resident salaries and benefits, faculty supervision, and overhead. The added costs of maintaining teaching programs have been explicitly recognized by the Medicare program and implicitly recognized through higher payment rates by some private payers.

- As competition in the health care system intensifies, the additional costs borne by teaching hospitals will place them at a disadvantage relative to other facilities. The role, scale, function, and number of these institutions increasingly will be challenged. In the absence of alternative methods for financing medical education, patient care revenues will continue to be the major source of support for these activities.

- Medicare's indirect and direct medical education payments are an important source of revenue for this group of hospitals. The level of the indirect medical education adjustment, however, exceeds the added costs of furnishing care to enrollees. The Commission has recommended reducing payments to reflect only the difference in patient care costs that is related to teaching intensity. Doing this over three years will achieve the ultimate objectives of the Medicare program, while allowing teaching hospitals to adjust to the changing health care environment. In addition, direct graduate medical education payments have risen with the growth in the number of residents. Further evaluation of these payment policies is necessary, including better understanding of the value of training an increasing number of residents and the wide variation in per resident costs across hospitals. Medicare should also examine the relationship between its payments to teaching physicians for services provided to beneficiaries and its payments to facilities for graduate medical education.

- Because of Medicare's teaching and disproportionate share payments, the PPS financial performance of major teaching hospitals is better than that of any hospital group. Partly because of the significant amount of uncompensated care that many furnish, however, their overall financial health ranks among the poorest. The magnitude, distribution, and timing of any change in Medicare payments to these hospitals should take this into account.

- Medicare's capitated payment under its managed care risk contracting program does not appropriately distribute payments for the costs of teaching programs or of caring for a disproportionate share of low-income patients. The capitated rate reflects the extra Medicare payments provided to teaching and disproportionate share hospitals in the fee-for-service sector, regardless of whether Medicare HMO enrollees receive care in those hospitals. The relationship between HMOs and the teaching and disproportionate share hospitals in their service area warrants further evaluation.

Alert 7: Changing the Medicaid Program Through Demonstration Waivers

Many state Medicaid programs are using research and demonstration waiver authority to replace traditional fee-for-service payment systems with capitated, managed care arrangements. Some states are using savings from enrolling the Medicaid population in managed care to cover additional individuals. These state initiatives have the potential to slow spending growth per enrollee and enhance continuity of care. However, oversight of enrollment, service patterns, and quality of care is necessary to protect the Medicaid population from unscrupulous plans and providers.

- Demonstration programs that enroll all of a state's Medicaid recipients in managed care plans represent a significant change for this vulnerable population. Capitated payment systems contain strong incentives to control the volume of services furnished. Converting Medicaid from a fee-for-service to a capitated, managed care system, therefore, can slow the rise in spending per enrollee. Capitated payment methods may also improve quality by promoting continuity of care, increasing the availability of primary care providers, and encouraging the appropriate use of other needed services. These programs, however, limit recipients' choice of providers and may alter covered benefits.

- Currently, eight states have statewide Medicaid research and demonstration projects authorized under section 1115 of the Social Security Act. Nine other states have waiver applications that are pending authorization. Section 1115 projects allow states to receive Federal Medicaid matching funds for the existing Medicaid population and others who become eligible under the terms of the demonstration. Because the projects are authorized under demonstration authority, some of the Medicaid program regulations are waived. States may alter provider reimbursement requirements, such as disproportionate share payments to hospitals and cost reimbursement for federally qualified health centers. Further, voluntary disenrollment and certain plan participation conditions may be waived. This is in contrast to the freedom of choice waivers authorized under section 1915(b), which allow states to enroll selected recipients in managed care programs for limited periods. Consequently, the 1115 projects are altering the eligibility, benefit, service delivery, and regulatory oversight of the Medicaid program in states with waivers.

- State demonstration projects using managed care approaches for Medicaid enrollees may expand the availability of Medicaid coverage to otherwise uninsured groups and improve the continuity of care for those who are already enrolled. These projects, however, must be carefully evaluated for any adverse effects on these vulnerable populations, including the impact of how restricting provider choice and changing benefit design would affect quality of care.

- The effects of these changes on providers that have traditionally cared for these populations should also be monitored. Many participating states are redistributing disproportionate share payments through capitated rates for recipients. Consequently, hospitals that historically have served many poor patients may lose these extra payments. Managed care plans also may reduce their payments to these hospitals or choose other providers. Using savings from enrolling recipients in managed care to expand coverage for the uninsured, however, may provide additional revenue to these hospitals. The effects of changes in revenue on the ability of this important group of hospitals to care for Medicaid enrollees and the remaining uninsured population must be assessed. The impact of Medicaid waivers on access to care for individuals who have traditionally relied on rural health clinics, federally qualified health centers, and other providers that serve vulnerable populations should also continue to be examined.

Alert 8: Protecting Vulnerable Populations' Access to Services

In response to the increasingly competitive environment in which they operate, health plans, hospitals, and other providers are developing comprehensive, integrated financing and deliv-

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ery systems to strengthen their market position and improve their efficiency. Access to care may decline for people without insurance, insured individuals living in underserved areas, and those with special needs if the providers they have traditionally relied upon cannot survive in the changing marketplace.

- A competitive insurance and delivery system contains strong incentives to enroll healthy, low-cost subscribers and to avoid the sickest, most costly patients and the providers that traditionally have served them. To protect quality and access for vulnerable populations, the premiums paid to plans or insurers must appropriately reflect the risk of their enrollees. Adequate risk adjustment of premiums would also improve the management of patient care and service delivery.

- Capitation and managed care techniques may be effective, in part, because they limit an individual's choice of and access to providers. People with special needs and those living in medically underserved areas, however, may be vulnerable because of these constraints on access. Plans should ensure that all their enrollees have reasonable access to basic services in their community and appropriate referrals to specialty services.

- A highly competitive health care financing and delivery system can control expenditure growth by consolidating the delivery of services and reducing excess capacity. Competition, however, will also limit the ability of providers to subsidize the care furnished to the uninsured. Consequently, access to care for the insured and uninsured alike may decline if consolidation leads to the closure of providers that serve large numbers of uninsured persons. In addition, extensive concentration in the health care system could restrict its capacity to provide certain types of services, require patients to travel too far, and reduce access to appropriate care for certain populations.

- The changing structure of the financing and delivery system creates new challenges for the legal system. Competition can help control health care spending through price reductions, consolidation, and increased efficiency. At some point, however, excessive concentration may reduce effective price competition.

Chapter 1

Medicare and the Evolving Health Care System

America's health care system is undergoing a transformation, resulting from spending that consistently has risen much faster than can be explained by population growth and general inflation for the past three decades. A major restructuring in the financing and delivery of care is under way that will have lasting effects on how care is provided to the entire population, including Medicare beneficiaries. Before looking at the changes, however, it is important to understand the context in which they are taking place.

Among the factors contributing to higher health care spending are greater demand for services and the development, diffusion, and use of medical and technological advances. Not only are people receiving more services, but these are of higher intensity. The utilization spiral historically has been fueled further by the nature of health care financing, characterized by third-party insurance coverage and fee-for-service payment. Providers traditionally have been paid on a per service basis, linking their revenues with the quantity of services they furnish. Health insurance has shielded consumers from the direct cost of service use.

The dynamics of the medical marketplace also differ from those in the markets for most other goods and services—and may help explain why costs have grown. In most markets, consumers choose the lowest-priced product of acceptable quality, but price has been less important in the health care sector, partly because of insurance. Additionally, physicians generally select the services provided; rarely—until recently—have they been held accountable for patient care costs. Further, hospitals and other providers have competed for patients based on the perceived quality of their products, rather than on price. Frequently, competition has entailed acquiring costly technologies, expanding capacity, and offering services and amenities with little attention to cost.

All this is changing. Recent trends indicate that the growth in health care spending is moderating. Competition among insurers and providers is increasing, with price becoming a more important consideration in health care purchasing decisions. Employers and other buyers of insurance are demanding lower premiums. Third-party payers are using capitation and other managed care techniques to constrain their costs by negotiating price reductions, sharing financial risk with providers, and controlling service use.

For a decade, Medicare has attempted to curb its expenditures by limiting the rise in payment for each service that is furnished. For example, Medicare policies control the payment for each hospital discharge as well as for each unit of service delivered by physicians and other providers. Nevertheless, program spending has continued to grow rapidly because there are more beneficiaries, and because the number of services each Medicare patient receives is rising.

The major restructuring of the financing of health care services will affect how health care is provided. Increased price competition, together with continued payment constraints by government payers, has the potential to slow the rise in health care spending by reducing excess capacity, eliminating services of little or no value, and enhancing overall system efficiency. Greater competition, however, can have adverse effects if insurance plans or providers attempt to control their costs by accepting only the healthiest individuals or by failing to provide appropriate services. People who are uninsured or at high risk for illness, those who cannot afford to travel to selected providers, and those living in underserved areas may be at a disadvantage in a highly competitive health care system. The providers that care for these vulnerable populations and those that furnish other socially valuable services, such as medical education, also may be disadvantaged.

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In this chapter, the Prospective Payment Assessment Commission (ProPAC) examines the evolving health care marketplace and Medicare's role within that marketplace. Changes in health care financing and service delivery are described. Recent health care spending trends are presented, along with the relationship between Medicare's payment policies and those of other payers. The increased competition and restructuring occurring in the financing and delivery of medical care are likely to affect the rate of growth and the distribution of spending by the private sector and by government programs. These changes could, therefore, have important consequences for access, service use, and quality of care.

THE CHANGING HEALTH CARE MARKETPLACE

Between 1980 and 1993, national health care spending grew more than 250 percent, largely because of the financial environment in which health care services are delivered.[1] Insurers traditionally played a passive role in managing spending because they were able to increase insurance premiums. Employers—the predominant payers of health insurance premiums—either raised product and service prices or delayed wage increases or other benefits to pay for higher premiums.

As a result of this financial environment, hospitals and other providers have attempted to improve the quality of their services with little regard to the cost. Capital improvements and expansions, along with technological advances, have enhanced the quality of and access to health care. At the same time, however, they have contributed to the tremendous growth in health care spending—from 9 percent of the nation's domestic output in 1980 to nearly 14 percent in 1993.[2]

Payment methodologies also have played a significant role in the rise of health care expenditures. Providers historically have been paid based on their costs or charges for each unit of service. These cost-based and fee-for-service payment methods give providers incentives to increase the frequency, duration, intensity, and specialization of services, leading to growth in overall spending.

In the early 1980s, Medicare expenditures were outpacing those in the private sector. To contain spending, Medicare implemented several payment policy changes, most notably the prospective payment system (PPS) for inpatient hospital care. Under this system, hospitals generally receive a fixed payment for each patient discharge, regardless of the amount or duration of services provided. PPS helped contain the growth in inpatient expenditures, thereby reducing the increase in total program spending.

Medicare's PPS, together with a decline in hospital admissions, resulted in an initial slowdown in overall hospital expenditures. This phenomenon was temporary, however, due to the relative lack of spending controls by other payers. While PPS constrained Medicare inpatient hospital payments, hospital costs continued to grow at historical rates. As their costs increasingly exceeded Medicare payments, many hospitals generated larger revenue surpluses from private insurers, a practice commonly referred to as cost shifting. Because they were able to cost shift, many health care providers did not have to confront financial pressures imposed by Medicare and some other payers. Cost shifting also meant that the constrained growth in Medicare payment rates generally did not impede access to or quality of care for Medicare beneficiaries.

Medicare's inpatient hospital payment policies hastened the decline in hospital admissions and length of stay; technological advances also contributed to this trend. An increasing number of services are provided in other sites, such as hospital outpatient and ambulatory settings, post-acute facilities, and the home. These factors have contributed to an overall excess in hospital inpatient capacity.

Recent trends indicate that price is becoming a more important consideration in health care purchasing decisions. Many of these changes began during the 1980s, but they have accelerated recently. This may be attributable to various factors, including a growing share of employers' dollars being spent for health care benefits, as well as a greater awareness of spiraling health care spending, highlighted during the 1994 debate on national health care reform.

Financial Constraints

The growth in health care expenditures is causing many buyers (primarily employers) to seek

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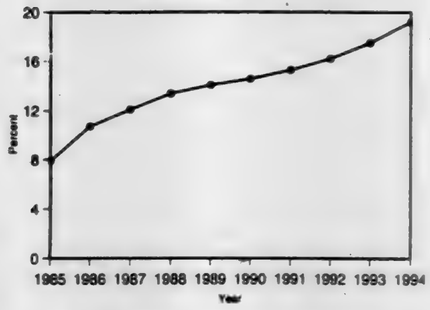
insurers or benefits managers that offer health benefit packages at lower premiums. Insurers are implementing new strategies to contain spending by controlling the payment per unit of service, as well as the total number of services furnished. These approaches include converting provider payment methodologies from fee for service to more comprehensive payment units—such as per day and per case or per capita—and implementing utilization review programs. Consequently, providers face different financial incentives, as they bear more of the risk associated with health care cost increases.

Many health care purchasers are turning to managed care plans, which often have lower premiums than conventional indemnity plans. The term managed care encompasses a variety of arrangements, but all rely on restricting the choice of health care providers and limiting clinicians' options to prescribe treatments. Common plan types include health maintenance organizations (HMOs), preferred provider organizations (PPOs), and point-of-service plans.

Managed care plans use various techniques to control their costs. Subscribers are limited in their choice of providers or given strong financial incentives to choose particular providers. By specifying doctors and hospitals, managed care plans can negotiate favorable payment rates and select providers that demonstrate lower-cost practice patterns. Further, plans may share financial risk with providers by using capitated payment arrangements or, in the case of hospitals, a per diem or per case payment. Other techniques include utilization review mechanisms and requirements that all specialized services be preauthorized by a primary care practitioner. Many managed care plans encourage preventive services to detect or avoid future costly conditions. Some control costs by acquiring hospitals and employing physicians so that they can provide services directly to subscribers.

The number of people enrolled in some form of managed care is growing rapidly. Enrollment in HMOs—the most tightly controlled managed care arrangement—more than doubled between 1985 and 1994, from 8 percent of the population to about 19 percent (see Figure 1-1). While HMO membership is expanding at the national level,

Figure 1-1. U.S. Population Enrolled in Health Maintenance Organizations, 1985-1994 (In Percent)



Note: Data for 1985-1986 are reported as of June 30; data for 1989-1993 reported as of December 31; 1994 data are estimated as of December 31, 1994.

SOURCE: Group Health Association of America, *Patterns in HMO Enrollment*, June 1994, and the Department of Commerce, Bureau of the Census.

HMO market penetration varies widely at the state-level. In California and Massachusetts, for example, almost 35 percent of residents belonged to an HMO in 1993, compared with Alaska, West Virginia, and Wyoming, where there was virtually no HMO activity.[3]

Enrollment in PPOs and other types of managed care also is accelerating. PPO subscribers generally have more choice of providers, although they are encouraged to use particular ones through financial incentives. In firms with 100 or more employees, PPO enrollment rose from 16 percent of all insured workers in 1991 to 26 percent in 1993.[4] Similarly, PPO enrollment for workers in smaller firms went up from 13 percent to 18 percent between 1990 and 1992.[5] Data on other forms of managed care are limited; however, anecdotal evidence suggests they are experiencing similar trends.

Managed care methods increasingly are affecting people who remain in fee-for-service indemnity insurance arrangements. Many indemnity insurance plans are incorporating utilization management features. In 1993, 90 percent of workers in firms with 100 or more employees were enrolled in fee-for-service plans that required certain services to be preauthorized by the insurer.[6]

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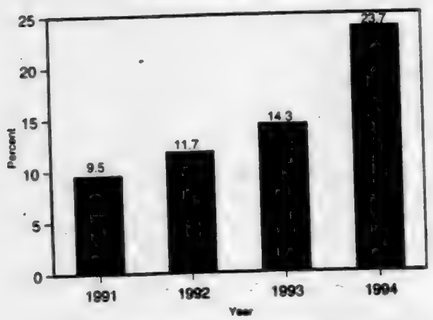
A growing number of states are attempting to control rising Medicaid expenditures by establishing managed care programs for Medicaid recipients. States generally need a waiver from the Federal government to implement such programs. Currently, 44 states and the District of Columbia have some type of managed care program in place, ranging from primary care case management to mandatory HMO enrollment.[7] These programs usually encompass specific geographic areas or populations, but several states have implemented statewide programs. The number of Medicaid recipients enrolled in managed care plans increased 66 percent between 1993 and 1994, from 4.8 million to nearly 8 million.[8] Managed care enrollment grew from almost 10 percent of the Medicaid-eligible population in 1991 to nearly 24 percent in 1994 (see Figure 1-2).

Provider Responses

Changes in the financing of health care are causing providers to reconsider how they do business. Confronted with intensified pressures to compete on the basis of price, they have three choices: control costs, increase volume in order to raise revenues, or both. Given changing financial incentives, the challenge for health care providers is to manage care delivery—and the resources used to provide that care—more effectively.

For hospitals, this is especially important. The combined growth in risk sharing arrangements, utilization review, and technological innovations has exacerbated the problem of excess capacity. Many services that previously were furnished on an inpatient basis are now being delivered in ambulatory settings. In addition, patients with conditions that require an inpatient stay are recovering in post-acute facilities and at home. The heightened demand for nonacute services has stimulated growth in the number and type of providers that compete for patients. Among these are hospital outpatient departments; free-standing ambulatory, surgical, and diagnostic imaging centers; rehabilitation facilities; and home health agencies. Insurers and managed care plans are capitalizing on the excess inpatient capacity to negotiate favorable prices for hospital services. Competition also is rising in other sectors, as private payers use managed care techniques to channel patients to selected physicians and other providers.

Figure 1-2. Medicaid Managed Care Enrollment, 1991-1994 (In Percent)



SOURCE: Health Care Financing Administration, Office of Managed Care.

To succeed in the increasingly competitive environment, hospitals and other providers are seeking ways to strengthen their market position. These methods range from developing outpatient and post-acute components to forming joint ventures with other providers and, in some cases, merging hospitals and entire hospital systems. The amount of collaboration between providers is widespread and unprecedented. The extent of this activity varies and often is directly related to the private sector market forces within an area. Each market differs, and these differences influence how providers respond to growing price competition. Areas heavily penetrated by managed care arrangements, for instance, are seeing more and more provider collaboration.

One of the more significant structural changes in the health care industry is the formation of integrated service delivery networks. These networks jointly market a comprehensive set of services to health benefit plans, insurers, or purchasers. They try to achieve savings through economies of scale and scope and the coordination of patient care.

Networks may include otherwise competing providers as well as those offering complementary or unrelated services. Besides physicians, they also may incorporate acute and post-acute facilities, other ambulatory-based providers, and, in some cases, an insurance component. By participating in networks, hospitals and other providers can compete more effectively for managed care contracts, thereby increasing their market share and improving their financial condition.

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Quality and Access

Changes in the financing and delivery of health care services are likely to affect the type, amount, and quality of services people receive. Access to care for certain individuals, particularly those without insurance, may also be compromised in a price-competitive environment. An estimated 39.7 million Americans (15.3 percent of the population) lacked health insurance coverage during the 1993 calendar year, an increase of 1.1 million over 1992.[9] The amount and quality of services used by uninsured patients are lower than for the rest of the population. Uninsured persons visit a physician less often and have fewer hospitalizations despite their poorer health status.[10] Those who are hospitalized are sicker on admission; use fewer costly, discretionary services; and appear to have a higher risk of death, both in the hospital and after discharge.[11]

With rising price competition in the marketplace, these disparities could be exacerbated. As payers negotiate larger discounts from providers, those that serve a population made up predominantly of Medicaid enrollees and the uninsured will be increasingly disadvantaged. Fewer payers may be willing to finance care to the uninsured through cost shifting, and fewer providers may be willing to take on this financial burden.

Changes in the health care market are also likely to affect the care received by the insured population. Many studies have shown that HMO enrollees have different utilization patterns, compared with members of traditional indemnity fee-for-service health insurance plans. HMO enrollees have lower hospital admission rates and more physician office visits than non-enrollees.[12] It appears that managed care physicians substitute ambulatory care for at least a portion of inpatient care. In addition, these physicians provide less intensive care in both inpatient and ambulatory settings compared with their fee-for-service counterparts.[13] Despite differences in the patterns of care furnished, the quality of care and health outcomes do not appear to differ between HMOs and fee-for-service plans. Moreover, HMO consumer surveys indicate a high degree of satisfaction.

Some have argued that the lower utilization rates in HMOs and other managed care plans are due to favorable enrollee selection. Another explanation is the reliance on physician "gatekeepers" to authorize the use of specialty services and otherwise coordinate care. It is clear, however, that providers paid a predetermined amount for furnishing comprehensive services have incentives to minimize the quantity and intensity of those services. How this will affect the quality of health care in the future is not known.

Research has documented wide variation in the use of health care services by various population groups.[14] While some of this variation may be appropriate—reflecting, for example, differences in patients' health status—much may be inappropriate and undesirable. To the extent that providers constrain needless use and control the intensity of services that do not improve patient outcomes or are furnished inefficiently, quality of care can be maintained or even improved. Providers can also improve quality and possibly avoid future use of expensive services through prevention and health promotion activities. The ability to identify inappropriate or inefficient service use, however, is limited. Most diagnostic and therapeutic interventions have not undergone rigorous evaluations of long-term outcomes that would allow targeted elimination or expansion of use.

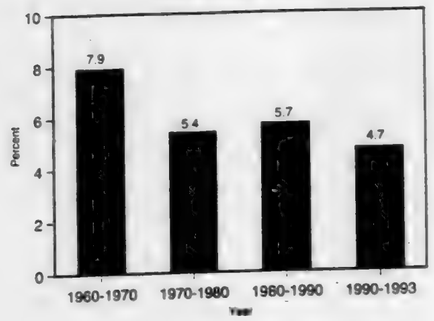
HEALTH CARE SPENDING AND COSTS

Data on overall health care spending provide some indication of the impact of the changes in the health care marketplace. Recent trends suggest a slowdown in national health care spending over the past few years (see Figure 1-3). After accounting for inflation, between 1990 and 1993 national expenditures grew at an average annual rate of 4.7 percent, compared with 5.7 percent between 1980 and 1990 and 5.4 percent between 1970 and 1980.

Marketplace changes may also help explain why private sector spending per person has, in recent years, grown more slowly than Medicare's spending per enrollee (see Figure 1-4). Medicare expenditures grew faster than private sector spending in the early 1980s. This pattern reversed in 1984—following PPS implementation—and continued through 1991. In 1992 and 1993, however, Medicare expenditures again were growing faster than those in the private sector.

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Figure 1-3. Real Average Annual Change in National Health Expenditures, 1960-1993 (In Percent)



SOURCE: ProPAC analysis of national health expenditure data from the Health Care Financing Administration, Office of the Actuary.

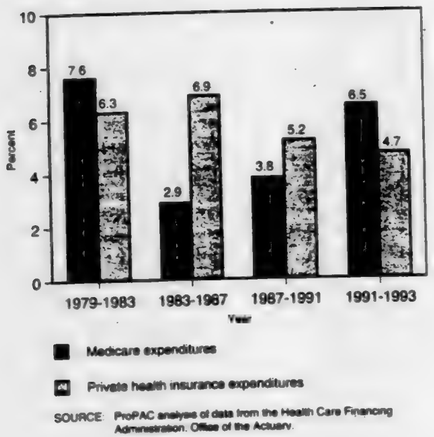
Spending growth rates for the different health care sectors have varied substantially in recent years. For example, overall hospital spending experienced the third lowest real increase since the beginning of the Medicare program, decelerating from an annual growth rate of 5.2 percent in 1992 to 3.6 percent in 1993.[15] Real spending for home health care continued growing the fastest—20.2 percent in 1993—although even this was lower than the 23.6 percent in 1992. Spending for physician services grew 2.8 percent after adjusting for inflation, compared with 4.5 percent in 1992.

Hospitals

Inpatient hospital care represents the largest share of health care spending. Payment policy changes and technological advances, however, have shifted many procedures to ambulatory settings, resulting in lower hospital occupancy rates and excess capacity. Insurers and managed care plans are taking advantage of these factors to pursue price discounts. Consequently, many hospitals are being pressured to lower their prices to more competitive levels, necessitating lower cost growth as well.

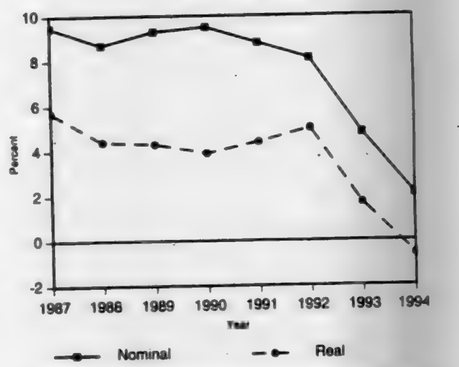
The dramatic decline in the growth of hospital costs over the past two years suggests that hospitals are adjusting to their changing financial environment (see Figure 1-5). From 1987 until 1992, hospital costs per case grew about 9 percent annually. In 1993, the rate dropped to 4.8 percent. This trend appears to have continued into 1994, with costs

Figure 1-4. Real Average Annual Change in Medicare Expenditures Per Enrollee and Private Health Insurance Expenditures Per Person, 1979-1993 (In Percent)



SOURCE: ProPAC analysis of data from the Health Care Financing Administration, Office of the Actuary.

Figure 1-5. Annual Change in Hospital Costs Per Adjusted Admission, 1987-1994 (In Percent)



* Value for January - September 1994 compared with same months in 1993

SOURCE: American Hospital Association National Hospital Panel Survey

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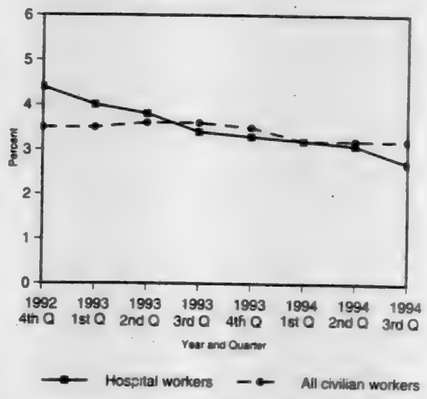
growing at a rate equivalent to 2.1 percent annually for the first nine months. The slowdown is even more striking when the effects of inflation are removed. Real cost growth fell from an annual rate of 5.0 percent in 1992 to 1.7 percent in 1993. In the first nine months of 1994, inflation-adjusted costs per case actually declined by 0.6 percent, compared with the same period in 1993.

Declines in average lengths of stay and slower employee wage growth appear to be key factors in the recent downward trend. After fluctuating slightly with no net change between 1985 and 1991, average length of stay fell 1.5 percent in 1992 (see Figure 1-6). This trend continued in 1993 and 1994, with additional stay reductions of slightly more than 3 percent in each year.

For many years, hospital wages grew faster than those for all civilian workers. This gap began to narrow in early 1993 (see Figure 1-7). By the end of that year, hospital wage increases fell below those in the rest of the economy. Since then, hospital wage growth has continued to slow. In the third quarter of 1994, average wages for hospital employees grew no faster than general inflation.

The recent downward trend in hospital cost growth is not unprecedented. Rates have slowed

Figure 1-7. Change in Hospital Workers' and All Civilian Workers' Compensation, 1992-1994 (In Percent)

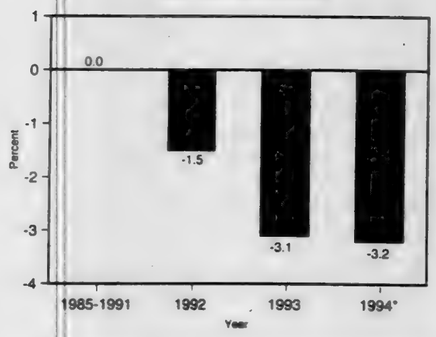


Note: Each period compared with the same period in the previous year.

SOURCE: Department of Labor, Bureau of Labor Statistics.

dramatically several other times during the past 25 years, each time in response to an explicit government policy or cost-containment initiative (see Figure 1-8). For example, the steep decline in 1973 coincided with the Nixon Administration's economic stabilization program. Decreases in the late 1970s and early 1980s corresponded with implementation of the Carter Administration's voluntary hospital cost controls and Medicare's prospective payment system for hospitals, respectively. In each of these periods, however, when the explicit pressure was withdrawn or lessened, the slowdown did not continue. Similarly, because comprehensive Federal health care reform seems unlikely in the immediate future, the pressure to slow cost growth could diminish. Nonetheless, many believe that today's trend differs from earlier ones because of changes in the private insurance market that appear to be accelerating, rather than subsiding. Moreover, because the impetus is based on the marketplace, there is a greater likelihood that the pressure will be sustained.

Figure 1-6. Average Annual Change in Length of Stay: 1985-1991 and 1992-1994 (In Percent)



* Value for January - September 1994 compared with same months in 1993

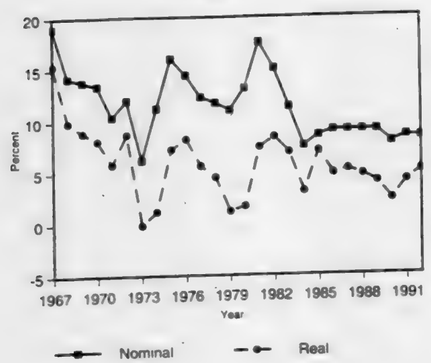
SOURCE: American Hospital Association National Hospital Panel Survey

Other Facilities

While inpatient hospital care continues to represent the largest share of total health care spending,

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Figure 1-8. Annual Change in Hospital Costs Per Case, 1967-1992 (In Percent)



SOURCE: American Hospital Association Annual Survey of Hospitals.

payment policies and technological advances have shifted the site of care for a growing number of services to ambulatory settings, driving up spending in this area. In 1984, for example, 15 percent of hospital care was provided on an outpatient basis. By 1993, this share had increased to 23 percent.[16] Hospital outpatient spending grew 290 percent between 1984 and 1993, while hospital inpatient expenditures went up 82 percent.[17]

Spending for post-acute services also has grown rapidly, as patients increasingly are transferred to skilled nursing facilities, rehabilitation and long-term hospitals, and the home to recuperate from inpatient services or to be treated for chronic conditions. The rising use of these settings may result from several factors, including private sector incentives to treat patients in less costly sites as well as changes in Medicare payment and coverage policies.

Volume continues to play a major role in the growth of spending by these other health care providers. This is best exhibited by examining Medicare spending for home health services (see Table 1-1). Increases in the number of people receiving home health care and the number of visits for each person are primarily responsible for the rising spending for this service. In 1980, for every

Table 1-1. Medicare Home Health Care Utilization, 1980-1994

Year	Persons Served		Visits	
	Number (In Thousands)	Per 1,000 Enrollees	Number (In Thousands)	Per Person Served
1980	726	26	16,322	22.5
1981	946	34	22,688	23.9
1982	1,154	40	30,628	26.5
1983	1,318	45	36,898	28.0
1984	1,498	50	40,422	27.0
1985	1,549	51	39,449	25.5
1986	1,571	51	38,000	24.2
1987	1,544	49	35,591	23.1
1988	1,582	49	37,132	23.5
1989	1,685	51	46,199	27.4
1990	1,940	58	69,565	35.9
1991	2,223	65	100,044	45.0
1992	2,523	72	134,844	53.4
1993	2,900	81	173,953	60.0
1994*	3,220	88	209,149	65.0

* Estimated

SOURCE: Health Care Financing Administration, Office of the Actuary

1,000 Medicare enrollees, 26 received home health services. This figure nearly tripled by 1993, while the number of visits received by each person nearly doubled. Much of this growth was associated with changes in coverage policies. Increases in the numbers of users and services provided per user also have driven much of Medicare's higher spending for skilled nursing facility care (see Table 1-2). Dialysis for end-stage renal disease and certain outpatient procedures demonstrate a similar—though less pronounced—pattern.

MEDICARE IN THE CHANGING MARKETPLACE

The changes in the health care marketplace will undoubtedly affect the Medicare program. Medicare is a major player in the health care arena, responsible in 1994 for the health care services of some 36 million people at an annual cost of about $150 billion.[18] Although the program's payment policies are distinct from those of private payers, the cost of providing care to Medicare beneficiaries—particularly for hospital services—has been linked to private sector payments through cost shifting. Financial constraints in the private sector may affect this relationship. In addition, there is an increasing divergence between Medicare's payment

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Table 1-2. Medicare Skilled Nursing Facility Utilization, 1980-1994

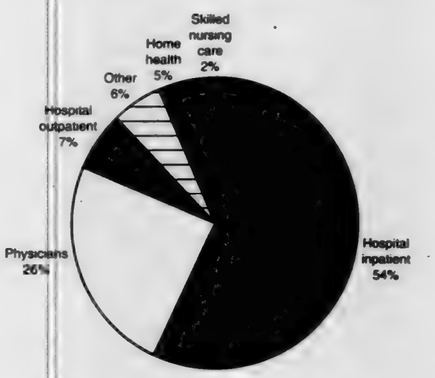
Year	Persons Served		Days	
	Number (In Thousands)	Per 1,000 Enrollees	Number (In Thousands)	Per Person Served
1980	257	9	8,645	33.6
1981	251	9	8,518	33.9
1982	252	9	8,814	35.0
1983	265	9	9,314	35.1
1984	299	10	9,640	32.2
1985	314	10	8,927	28.4
1986	304	10	8,160	26.8
1987	293	9	7,445	25.4
1988	384	12	10,667	27.8
1989	636	19	27,780	43.7
1990	638	19	25,200	39.5
1991	671	20	23,700	35.3
1992	785	22	28,960	36.9
1993	870	24	34,437	39.6
1994*	925	25	36,865	39.9

* Estimated.

SOURCE: Health Care Financing Administration, Office of the Actuary.

structure and those of a growing number of private payers. While Medicare offers its enrollees a managed care option, its primary payment method continues to be fee for service. The style of care provided to Medicare beneficiaries may change as

Figure 1-9. Share of Total Medicare Spending, by Sector, 1991 (In Percent)



SOURCE: Health Care Financing Administration, Office of National Health Statistics.

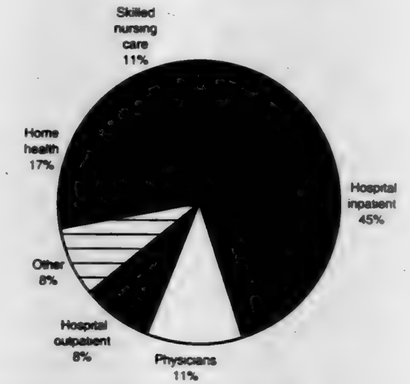
providers alter their practice patterns to meet the incentives of a health care environment dominated by managed care.

Medicare Spending

The Medicare program is experiencing shifts in spending across provider types similar to those seen in the overall health care system. Although hospital inpatient payments continue to be Medicare's largest outlay, skilled nursing care and home health services account for disproportionate shares of overall Medicare spending growth (see Figures 1-9 and 1-10). In 1991, expenditures for skilled nursing care and home health services constituted 2 percent and 5 percent of total Medicare spending, respectively, yet they represented 11 percent and 17 percent of the increase in total Medicare expenditures between 1991 and 1993.

This significant shift in Medicare spending shares results from sustained spending increases for post-acute services. Between 1991 and 1993, real expenditures per enrollee for skilled nursing care rose almost 40 percent per year; those for home health care services grew just over 30 percent annually (see Figure 1-11). These growth rates reflect a combination of technological advances, modifications

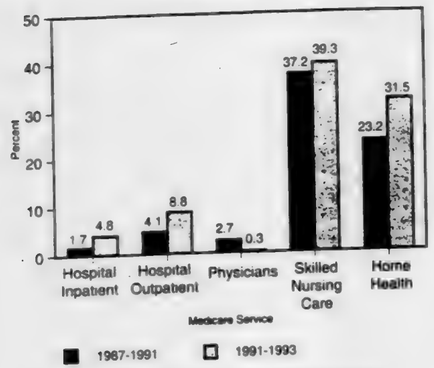
Figure 1-10. Contributors to Increase in Medicare Spending, by Sector, 1991-1993 (In Percent)



Note: Increase in total Medicare expenditures = 25.4 percent.
SOURCE: Health Care Financing Administration, Office of National Health Statistics

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Figure 1-11. Real Average Annual Growth Rates Per Enrollee for Selected Medicare Services, 1987-1993 (In Percent)



SOURCE: ProPAC analysis of data from the Health Care Financing Administration, Office of the Actuary.

in physicians' practice patterns, and changes in Medicare's coverage policies. Further, even though Medicare's cost-based payment methodologies incorporate payment limits, they do not provide strong enough incentives to control costs.

Medicare's hospital payment policies are having an increasing impact on the financial condition of hospitals. Medicare represents a rising share of hospitals' total patient care. The number of Medicare enrollees is growing faster than the general population, and Medicare admissions per enrollee have not been decreasing as have those for the under-65 population. In 1980, Medicare revenues represented about 40 percent of hospitals' patient care costs; in 1992, this proportion rose to 43 percent.[19]

Future Medicare Hospital Payments and Costs

The slowdown in hospital cost growth, along with continued Federal budgetary pressures, has focused attention on further reducing the growth in Medicare payments for hospitals and other providers. As discussed earlier, for a number of years hospitals have offset increases in Medicare costs per case that exceeded Medicare payments by obtaining extra revenues from private insurers. In 1992, for example, Medicare payments were $11 billion less than the costs of treating program beneficiaries.[20] All of this deficit was offset by higher payments from private payers. Whether additional Medicare payment constraints can be imposed without exacerbating the pressure to cost shift depends on the rate of increase in both payments and costs.

PPS updates through fiscal year 1997 were set by the Omnibus Budget Reconciliation Act of 1993.[21] The actual payment increases received by hospitals, however, depend not only on these updates, but also on the growth in the Medicare case-mix index. ProPAC has estimated this increase to be 1.0 percent in fiscal year 1994 and 1.1 percent in fiscal year 1995. The Commission believes a level of 1.0 percent likely will be maintained through 1997 in the absence of major changes in the payment system.

Because it is impossible to predict whether the current cost slowdown will continue, ProPAC projected cost growth under three scenarios that it believes represent the range of likely increases in Medicare cost per case (see Table 1-3). A reasonable estimate of the upper end of the range after 1994 is 4.9 percent annually (equal to the projected increase in the PPS hospital market basket index plus 1.8 percentage points)—the level experienced in fiscal year 1992. This upper limit reflects the assumption that the combination of cost-containment pressure from the private sector and public concern about rising costs will prevent cost growth from escalating to the 8 percent to 9 percent level of the late 1980s.

The lower boundary on the future rate of cost increase is best represented by the cost growth through the first nine months of 1994, which was 2.1 percent.[22] In ProPAC's view, the hospital industry's response to these pressures is not likely to be any more intense in the future than it is today. Further, the current growth rate is actually less than inflation in the general economy. The intermediate range cost growth estimate for 1995 and beyond is based on the forecasted market basket increase plus an allowance for changes in the mix and complexity of hospital admissions. The Commission's best estimates of these variables through 1997 are 1.0 percent per year for real case-mix growth and 2.9 percent per year for the market basket increase.[23]

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Table 1-3. Medicare PPS Per Case Payments Relative to Costs, Under Three Cost Growth Scenarios, Fiscal Years 1994-1997 (In Percent)

Variable	1994	1995	1996	1997	Average 1994-1997
Payment increase[a]	3.0%	3.1%	2.6%	4.2%	3.2%
Range of likely cost increase:					
High[b]	2.1	4.9	4.9	4.9	4.2
Intermediate[c]	2.1	3.8	4.0	4.1	3.5
Low[d]	2.1	2.1	2.1	2.1	2.1
Difference between payment and three alternative cost increases:					
High	-0.9	1.8	2.3	0.7	1.0
Intermediate	-0.9	0.7	1.4	-0.1	0.3
Low	-0.9	-1.0	-0.5	-2.1	-1.1

[a] Derived from the legislated update (which is the forecasted market basket increase less a prescribed number of percentage points) and ProPAC's estimate of case-mix index change.

[b] For 1994, based on the American Hospital Association National Hospital Panel Survey increase for the first nine months of 1994. For 1995 through 1997, assumes return to the per case increase in Medicare inpatient hospital costs experienced in fiscal year 1992.

[c] After 1994, based on the market basket increase (as forecasted by the Health Care Financing Administration in September 1994), plus increments for expected market basket forecast error correction and real case-mix growth (both as estimated by ProPAC).

[d] Assumes continuation of the 1994 experience.

SOURCE: ProPAC analysis.

The additional pressure to cost shift can be estimated by subtracting the Medicare payment increase from the cost increase each year. Medicare and the private sector account for approximately equal shares of hospital spending, 40 percent and 39 percent in 1992. Consequently, every percentage point of Medicare cost increase not reimbursed by the Medicare payment increase will, all else equal, translate into a percentage point of additional revenue needed from the private sector.

The unusually low 2.1 percent per case cost growth in fiscal year 1994 means that, for the first time since 1985, Medicare's payment increase will probably exceed the growth in costs. Further, if hospitals maintain cost growth at the current level for three more years, this situation would continue. Even under those circumstances, however, the difference between payment and cost increases is estimated at only 1.1 percentage points per year, so at best there could be only a modest reduction in the level of cost shifting from Medicare to the private sector. Moreover, pressures from rising uncompensated care losses, lagging Medicaid payment increases, and private sector payment constraint might prevent even this modest change from materializing. It should also be pointed out that even though the amount of cost shifting might be reduced slightly each year under this scenario, the amount hospitals spend to treat Medicare beneficiaries would still substantially exceed payments.[24]

If, alternatively, hospital cost growth follows the Commission's intermediate estimate, Medicare costs would continue to grow faster than payments. The uncovered cost increase would average about 0.3 percentage points annually from 1994 to 1997. This means that, to the extent private insurers would allow it, there would be additional cost shifting from Medicare to the private sector each year, and further reductions in the updates or other forms of scaling back payments would only exacerbate the problem. At the high end of the growth range for hospital costs, the legislated Medicare updates would increase the pressure to cost shift by 1.0 percentage point per year.[25]

The ability to use cost shifting to fill the revenue gap when Medicare cost increases exceed payment increases varies across hospitals. Facilities that treat larger shares of Medicare, Medicaid, and uninsured patients have a lesser ability to cost shift to the private sector. In view of growing price competition in the marketplace, these facilities will face

a greater risk of declining margins, which eventually could threaten their financial viability and their ability to care for Medicare beneficiaries.

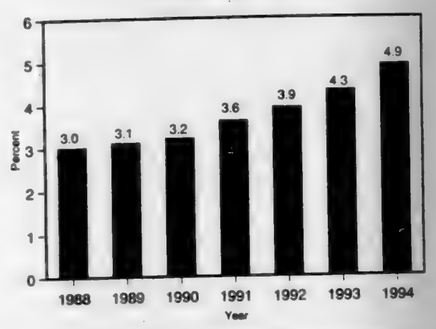
Medicare and Managed Care

The growth of managed care in the private sector may have implications for the Medicare program and its beneficiaries. Currently, the primary methods used by Medicare for financing and delivering care have different incentives than those inherent in managed care. Most Medicare beneficiaries have a large choice of health care providers, which are paid on a fee-for-service basis. By contrast, managed care is premised on a limited number of providers that share financial risk for patients' overall use of health care services. The private sector's increasing focus on managing patients' overall health service use, rather than on distinct service units, likely will influence providers' overall practice patterns. This, in turn, will affect the care provided to all patients, including Medicare beneficiaries.

Medicare beneficiaries have the option to receive their health care through HMOs, but enrollment growth lags behind that seen in the private sector. Medicare has offered at least one managed care option since its inception. Initially, however, plans were paid on the basis of their costs. In 1982, Medicare introduced the risk contracting program, which most resembles private sector managed care. Under this program—the largest of Medicare's managed care initiatives—Medicare pays HMOs a capitated rate that is based on estimated Medicare fee-for-service spending.

Beneficiary enrollment in risk contracting plans has risen slightly since the late 1980s, from 3 percent of the total Medicare population in 1988 to almost 5 percent in 1994 (see Figure 1-12). This is a much smaller proportion, however, than the 19 percent enrollment in similar arrangements in the privately insured population. Geographically, enrollment in risk contracting plans parallels that in the private sector. States with large private sector HMO enrollments also have high Medicare HMO penetration.

Figure 1-12. Medicare Beneficiaries Enrolled in Managed Care Risk Contracting Programs, 1988-1994 (In Percent)



SOURCE: Health Care Financing Administration, Office of Managed Care

CONCLUSIONS

Increased price competition is causing fundamental changes in the financing and delivery of care. Insurers are negotiating larger discounts from providers and increasingly managing where their subscribers obtain services. The growth in managed care arrangements reflects a heightened interest in controlling overall expenditures. Providers are responding to these competitive pressures by reconfiguring their relationships with each other as well as with payers to try to boost their market share. Whether these changes will influence quality of care will depend on the extent of cost-containment efforts, the services that are affected, and the need for and effectiveness of those services.

The financial pressures in the health care marketplace already seem to be working. Health care spending shows signs of moderating. Further, after accounting for inflation, hospital per case costs actually declined in 1994. The distribution of expenditures across health care sectors also is shifting. The hospital inpatient setting accounts for a smaller share of total health spending, with utilization moving to less intensive sites such as ambulatory settings and post-acute care facilities. Even though services may be less expensive in these alternative sites, higher utilization is driving up spending.

Medicare has managed to control its hospital expenditures by limiting its payment updates through PPS. By relying on greater revenues from

private payers, hospitals have, in aggregate, managed to offset increases in Medicare costs per case that exceeded payment increases. Two trends—greater price consciousness and slower hospital cost growth—will affect hospitals' ability and need to cost shift. If cost growth remains at the low levels of 1994, there could be modest reductions in the need for cost shifting. On the other hand, if costs grow at an intermediate level—between current and historical rates—cost-shifting pressures may continue to increase. There are concerns, however, that private payers will not continue to support even existing levels of subsidies. Particularly as payers receive larger discounts from providers and facilities compete to enlarge their market share, certain hospitals, such as those serving large numbers of Medicare, Medicaid, and uninsured patients, will be less able to rely on cost shifting to maintain their financial position.

Profound changes are taking place in the health care marketplace. It is too early to assess the impact of these changes, but there is one certainty. Restructuring the relationships among payers and providers will have a lasting influence on the way health care is delivered and financed in this country.

Notes to Chapter 1

1. Data provided by the Health Care Financing Administration, Office of the Actuary.

2. Ibid.

3. Data provided by the Group Health Association of America and the Department of Labor, Bureau of Labor Statistics.

4. "Employee Benefits in Medium and Large Private Establishments, 1991." Bulletin 2422, Department of Labor, Bureau of Labor Statistics, May 1993; and Department of Labor News Release, USDL: 94-477, September 30, 1994.

5. "Employee Benefits in Small Private Establishments, 1992." Bulletin 2441, Department of Labor, Bureau of Labor Statistics, May 1994; and "Employee Benefits in Small Private Establishments, 1990." Bulletin 2388, Department of Labor, Bureau of Labor Statistics, September 1991.

6. Department of Labor News Release, USDL: 94-477, September 30, 1994.

7. Under case management, a fee-for-service payment system is retained, but patients must obtain prior approval for specialized services from a primary care physician, who receives an additional fee to monitor an individual's service use.

8. Data provided by the Health Care Financing Administration, Office of Managed Care.

9. Bureau of the Census, "Statistical Brief: Health Insurance Coverage—1993," October 1994.

10. Chris Haffner-Eaton, "Physician Utilization Disparities Between the Uninsured and the Insured: Comparisons of the Chronically Ill, Acutely Ill, and Well Nonelderly Populations," *Journal of the American Medical Association* 269(6):787-92, February 10, 1993; Beth Hahn and Doris Lefkowitz, *Annual Expenses and Sources of Payment for Health Care Services*, National Medical Expenditure Survey Research Findings 14, AHCPR Pub. No. 93-0007 (Rockville, MD: U.S. Public Health Service, November 1992).

11. Jack Hadley, Earl P. Steinberg, and Judith Feder, "Comparison of Uninsured and Privately Insured Hospital Patients," *Journal of the American Medical Association* 265(3):374-79, January 16, 1991; Joel S. Weissman and others, "Rates of Avoidable Hospitalization by Insurance Status in Massachusetts and Maryland," *Journal of the American Medical Association* 268 (17):2388-94, November 4, 1992; John Z. Ayanian and others, "The Relation Between Health Insurance Coverage and Clinical Outcomes Among Women with Breast Cancer," *New England Journal of Medicine* 329(5):326-31, July 29, 1993.

12. Albert L. Siu and others, "Use of the Hospital in a Randomized Trial of Prepaid Care," *Journal of the American Medical Association* 259(9):1343-46, March 4, 1988; Jane McCusker, Anne M. Stoddard, and Andrew A. Sorensen, "Do HMOs Reduce Hospitalization of Terminal Cancer Patients?" *Inquiry* 25(2):263-70, Summer 1988; Sheldon Greenfield and others, "Variations in Resource Utilization Among Medical Specialties and Systems of Care," *Journal of the American Medical Association* 267(12):1624-30, March 25, 1992; and Robert H. Miller and Harold S. Luft, "Managed Care Plan Performance Since 1980: A Literature Analysis," *Journal of the American Medical Association* 271(19):1512-19, May 18, 1994.

13. Mark C. Hornbrook and Sylvester E. Berki, "Practice Mode and Payment Method: Effects on Use, Costs, Quality, and Access" *Medical Care* 23(5):485-511, May 1985; Alan N. Johnson and others, "Differences in Inpatient Resource Use by Type of Health Plan," *Inquiry* 26(3):388-98, Fall 1989; Robert H. Brook and others, "Quality of Ambulatory Care: Epidemiology and Comparison by Insurance Status and Income," *Medical Care* 28(5):392-433, May 1990; and James P. Murray and others, "Ambulatory Testing for Capitation and Fee-for-Service Patients in the Same Practice Setting: Relationship to Outcomes," *Medical Care* 30(3):252-61, March 1992.

14. Sherman Folland and Miron Stano, "Small Area Variations: A Critical Review of Propositions, Methods, and Evidence," *Medical Care Review* 47(4):419-65, Winter 1990; Jose J. Escarce and others, "Racial Differences in the Elderly's Use of Medical Procedures and Diagnostic Tests," *American Journal of Public Health* 83(7):948-54, July 1993.

15. ProPAC analysis of data from the Health Care Financing Administration, Office of the Actuary. The two lower real increases were in 1984 and 1985, the first two years of PPS.

16. Data provided by the Health Care Financing Administration, Office of the Actuary.

17. ProPAC analysis of data from the Health Care Financing Administration, Office of the Actuary.

18. Data provided by the Health Care Financing Administration, Office of the Actuary.

19. Ibid.

20. ProPAC analysis of data provided by the American Hospital Association.

21. The updates are 2.0 percent in both fiscal years 1994 and 1995 and, based on current forecasts, estimated at 1.6 percent in 1996 and 3.2 percent in 1997.

22. Data from the American Hospital Association National Hospital Panel Survey covering January through September 1994.

23. The latest forecast of the increase in the PPS market basket index averages 3.5 percent from 1995 through 1997. However, in recent years the forecasts have turned out to be higher than the actual increase. Even though HCFA's forecasts have recently been revised downward, ProPAC believes they may still prove to be too high and thus lowered them by 0.6 percentage points each year for purposes of estimating future cost per case growth. The unadjusted forecast was used in estimating payment updates, however, in accordance with current law.

24. In 1992, $10.8 billion of Medicare losses were cost shifted to the private sector. Under the low cost growth scenario, this amount would have been reduced by only $0.7 billion, or 6.5 percent of the total.

25. If HMO penetration in the private sector increases dramatically over the next three years, hospital inpatient service use might decline because patients with less complex conditions would most likely be treated on an outpatient basis. While this would create savings in the private sector, it also would elevate costs per case because hospitals' fixed expenses (for example, equipment and management salaries) would have to be spread over fewer cases. Additionally, the remaining patient mix would be sicker and therefore costlier. This situation would increase the probability of the highest of the three per case cost growth scenarios occurring.

Chapter 2

Recommendations

When the Prospective Payment Assessment Commission (ProPAC) was created by the Congress in 1983, its primary responsibility was to examine issues and make recommendations for updating and improving the Medicare prospective payment system (PPS). The Congress gradually has expanded ProPAC's mandate to include analyzing current payment policies for all facility services furnished to Medicare beneficiaries and developing policies for the future.

These broader duties include examining payment for hospital outpatient services, services furnished by skilled nursing facilities and home health agencies, and end-stage renal disease dialysis facilities. In addition, at the request of the Congress, the Commission has studied issues related to the adequacy of Medicaid hospital payment rates and the use of Medicare payment methods for other payers. ProPAC continues to devote substantial effort, however, to updating and improving payment for PPS hospitals and excluded facilities and distinct-part units.

Although this report is submitted to the Congress, the Secretary of Health and Human Services (HHS) is required to consider ProPAC's recommendations and respond to them in the annual notice of PPS rulemaking published in the *Federal Register*. The Commission is always pleased to work with the Secretary to provide additional analysis and information on its recommendations.

ProPAC's recommendations reflect the collective judgment of its 17 Commissioners. Some recommendations, such as the annual update factors, are reviewed every year. Others address new issues or modify previous recommendations. All incorporate recent research findings.

RECOMMENDATIONS FOR FISCAL YEAR 1996

The Commission's recommendations center on three areas:

- Updating payment rates,
- Improving PPS payment policies, and
- Strengthening hospital outpatient payment policies.

ProPAC's recommendations are intended to make Medicare's payments for health care services more equitable and effective. The recommendations on the updates reflect the Commission's views on aggregate spending levels. Refinements to the payment system and the distribution of Medicare PPS payments are the general focus of the next set of recommendations. Finally, the recommendations on outpatient payment policies address concerns about program and beneficiary payments for the rapidly growing volume of services provided in hospital outpatient departments.

Updating Payment Rates

The Commission is mandated by law to report to the Congress each year on the appropriate update to inpatient hospital payment rates under Medicare's PPS. As required, ProPAC considers several factors in developing its annual update recommendation: the hospital market basket index (which reflects the prices of resources hospitals use to provide inpatient care), scientific and technological advances (S&TA), hospital productivity, and the quality and long-term cost-effectiveness of health care. The Secretary of Health and Human Services is required to consider the Commission's recommendation in developing her update proposal. The actual update historically has been legislated by the Congress in the budget reconciliation process, often for several years in advance.

In the Omnibus Budget Reconciliation Act (OBRA) of 1993, the update to PPS operating payments was established for each fiscal year through 1997. For fiscal year 1996, the operating update for all PPS hospitals is set equal to the change in the hospital market basket index minus

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2.0 percentage points. Even though the fiscal year 1996 operating update has been set by law, the Commission has continued its traditional approach of examining the individual factors that together determine the appropriate update to the PPS payment rates. ProPAC believes this approach results in a payment increase that is sufficient, in the context of the current health care financing system, to maintain Medicare beneficiaries' access to quality care while encouraging hospital efficiency in providing that care. (See Appendix A for an historical overview of the PPS update and its components.)

In addition to the operating update, the Commission recommends an update for the Federal capital payment rate. ProPAC also recommends an update for the hospital-specific rates that apply to sole community hospitals. The update for facilities excluded from PPS is also considered. Finally, ProPAC's recommendation for an update to the composite payment rate for dialysis services is presented.

Recommendation 1: Update Factor for Operating Payments to PPS Hospitals

For fiscal year 1996, the PPS standardized payment amounts should be updated to account for the following:

- **The projected increase in the HCFA PPS market basket index, currently estimated at 3.9 percent;**
- **An adjustment of zero percentage points to reflect the difference between the ProPAC and HCFA market baskets;**
- **A negative adjustment of 1.8 percentage points to correct for substantial error in the fiscal year 1994 market basket forecast;**
- **A positive adjustment of 0.3 percentage points to reflect the cost-increasing effects of scientific and technological advances;**
- **A negative adjustment of 0.3 percentage points to encourage hospital productivity improvements; and**
- **A net adjustment of zero percentage points for case-mix change in fiscal year 1995.**

This would result in an update factor of 2.1 percent.

This recommendation reflects the Commission's judgment about the appropriate increase in the level of PPS payment rates. It is equal to the forecasted change in the market basket index minus 1.8 percentage points, 0.2 percentage points higher than mandated in current law. Since it is based on the most recent projections of the fiscal year 1996 increase in the market basket index, the effective value of ProPAC's update factor recommendation may be modified as more timely forecasts become available. The components of ProPAC's update factor recommendation are summarized in Table 2-1, and a discussion of each follows.

It should be noted that the growth in average per case payments in each year is higher than the PPS update. This is primarily because increases in the Medicare case-mix index (CMI) result in proportional increases in hospital payments. Future changes in the CMI are difficult to predict; however, on the basis of currently available data, ProPAC estimates that the CMI will rise by 1.0 percent in fiscal year 1996. Based on the Commission's recommendation of a 2.1 percent update, the average increase in per case payments would be about 3.1 percent.

PPS Market Basket Forecast and Forecast Error Correction—The forecasted increase in the market basket index is the expected change in the prices of the resources used during a typical hospital stay. This forecast is the reference point used in updating the PPS payment rates. The current forecast is for a 3.9 percent increase in the Health Care Financing Administration's (HCFA) PPS market basket index during fiscal year 1996.

In its March 1990 *Report and Recommendations to the Secretary, U.S. Department of Health and Human Services*, ProPAC proposed modifications to HCFA's market basket. Although the agency adopted most of these modifications, it did not incorporate the key provision, which would have increased the weight of internal hospital wages in the computation of the market basket index. The

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Table 2-1. Recommended Update Factor for PPS Hospital Operating Payments, Fiscal Year 1996

Components of the Update		
Fiscal year 1996 HCFA PPS market basket forecast*		3.9%
Adjustment for difference between HCFA and ProPAC market baskets*		0.0
Correction for fiscal year 1994 forecast error		-1.8
Allowance for scientific and technological advances		0.3
Adjustment for productivity		-0.3
Adjustments for case-mix change (fiscal year 1995)		
Total DRG case-mix index change	-1.0	
Real across-DRG case-mix change	0.8	
Within-DRG case-complexity change	0.2	
Net adjustment for case-mix change		0.0
Total PPS operating update		2.1

* Market basket forecast provided by the Health Care Financing Administration, Office of the Actuary, December 1994. The market basket forecast is subject to change as more current data become available.

market basket as currently constructed does not adequately recognize the unique characteristics of the hospital labor market. ProPAC encourages the Secretary to consider adopting the Commission's formulation of the market basket when the index is rebased later this year.

Since the PPS update for fiscal year 1996 is legislated relative to HCFA's market basket, that market basket is used as the basis for ProPAC's update framework. The Commission takes this into account by making an adjustment to allow for the estimated effect of the modifications it has proposed. However, the current fiscal year 1996 forecast is that the increase in ProPAC's and HCFA's market baskets will be the same. The corresponding adjustment, therefore, is zero percentage points.

A correction for substantial error in market basket forecasts is an important part of the Commission's update framework. This correction protects both hospitals and the Federal government by adjusting the base payment rates so that the effects of past forecast errors (both positive and negative) are removed.

A forecasted market basket increase of 4.3 percent was used to set payments in fiscal year 1994. The actual market basket increase, however, was only 2.5 percent. The update for fiscal year 1994 thus was set 1.8 percentage points higher than if the actual market basket increase had been known at the time. Therefore, ProPAC's update recommendation also includes a −1.8 percentage point adjustment for fiscal year 1994 market basket forecast error. (See Appendix A for more information on the components of the market basket forecast error.)

Scientific and Technological Advances—The allowance for scientific and technological advances is a future-oriented policy target. It provides additional funds for hospitals to adopt quality-enhancing, cost-increasing health care advances. This year, ProPAC is using a qualitative approach to develop its estimate for the fiscal year 1996 adjustment by examining technologies considered in last year's estimate and reviewing the literature for potential new advances. (See Appendix A for more information on the methodology and the technologies contributing to the estimate.) In the Commission's view, 0.3 percent is an appropriate level for the operating S&TA allowance for fiscal year 1996. This is the same estimate used in setting the fiscal year 1995 allowance. There is no compelling reason to believe the rate of increase in these costs has either risen or fallen substantially from last year's estimate.

Productivity Improvement—The productivity adjustment is also a future-oriented policy target. The Commission thinks it is reasonable to expect

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hospitals to achieve productivity improvements during fiscal year 1996 that are comparable to those expected in other sectors of the service economy. The recommended adjustment of −0.3 percentage points is based on ProPAC's determination that hospital productivity should increase by 0.6 percent and that the savings from such productivity improvement should be shared equally by hospitals and the Medicare program. Furthermore, the Commission expects hospitals to be able to finance scientific and technological advances through such gains in fiscal year 1996. This provides an incentive for hospitals to strive for productivity gains as they adopt new technologies. (See Appendix A for more information on trends in hospital productivity.)

Case-Mix Change—The Commission's fiscal year 1996 PPS update recommendation also accounts for the net effect of case-mix change during fiscal year 1995. The adjustment in this year's update is zero percentage points and reflects the following:

- A 1.0 percentage point reduction for the estimated change in the CMI,
- A positive allowance of 0.8 percentage points for real case-mix change across diagnosis-related groups (DRG), and
- A positive allowance of 0.2 percentage points for within-DRG case-complexity change.

Adjusting for these factors allows payments to increase due to real changes in the resources required to treat an average Medicare patient. Medical record documentation and coding practice improvements do not reflect increased patient resource requirements, so their impact on the CMI is also removed. (See Appendix A for more detailed discussion on case-mix change.)

Recommendation 2: Update Factor for Capital Payments to PPS Hospitals

For fiscal year 1996, the Commission recommends using a formula-based approach to update capital payment rates that includes the following:

- **The projected increase in a market basket index that measures the purchase price of capital used by hospitals, currently estimated at 4.1 percent;**
- **An adjustment to correct for substantial error in the capital market basket forecast (not applicable in fiscal year 1996);**
- **An adjustment of zero percentage points to reflect changes in financing costs;**
- **A net adjustment of zero percentage points for scientific and technological advances and productivity; and**
- **A net adjustment of zero percentage points for case-mix change in fiscal year 1995.**

This would result in an update factor of 4.1 percent.

The capital update formula is designed to maintain adequate hospital capital stock to provide efficient and effective care to Medicare beneficiaries. In the Commission's opinion, the capital update should reflect future replacement prices. The components of the update recommendation, summarized in Table 2-2, are discussed below. (See Appendix A for more information on the capital update.)

Capital Market Basket—ProPAC determines the capital update recommendation in light of projected increases in a market basket index that measures changes in the prices of capital assets that hospitals purchase. Developed by the Commission, the index measures annual change in the price of a fixed mix of capital goods. It is analogous to the one used to update PPS operating payments. (See Recommendation 1.)

The capital market basket includes three price components: buildings and fixed equipment, movable equipment, and other capital-related costs like insurance. The market basket weights indicate the relative importance of these three components. These weights are based on the shares of capital costs accounted for by buildings and fixed equipment and by movable equipment depreciation, as well as by annual outlays for other capital-related costs. In the absence of accurate and current infor-

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Table 2-2. Recommended Update Factor for PPS Hospital Capital Payments, Fiscal Year 1996

Components of the Update	
Fiscal year 1996 capital market basket forecast[a]	4.1%
Correction for fiscal year 1994 forecast error	[b]
Financing policy adjustment	0.0
Allowance for scientific and technological advances	[c]
Adjustment for productivity	[c]
Net adjustment for case-mix change[d]	0.0
Total capital update	4.1

[a] Market basket developed by ProPAC; forecast supplied by the Health Care Financing Administration, Office of the Actuary, December 1994. The market basket forecast is subject to change as more current data become available.

[b] Not applicable.

[c] Adjustments for scientific and technological advances and productivity offset each other. No specific values were recommended.

[d] Case-mix change adjustments are identical to those used in the PPS hospital operating update.

mation on the mix of appropriate future capital purchases, these historical shares are the best available measures for this purpose.

The market basket gives a single-year projection of price change. ProPAC studied a range of alternative capital price measures to use in its market basket. In its March 1993 *Report and Recommendations to the Congress*, the Commission proposed using two price proxies especially relevant to hospital industry capital purchases: for hospital buildings and fixed equipment capital costs, the Boeckh building cost index subindex for apartments and office buildings (institutional construction); and for movable equipment capital costs, the Marshall and Swift hospital equipment index. For other capital-related costs, the market basket uses the consumer price index for residential rent.

Although updates should apply to the full Medicare capital payment rate, which is based on historical levels of depreciation and interest, changes in interest rates should be handled separately from the market basket. The Commission's financing policy adjustment addresses the issue of interest rate change in the update framework.

The capital market basket proposed by the Secretary uses a complex structure of weighted average changes in economywide price proxies and measures of interest expense. Its value is largely determined by the historical values of its components. As a result, this market basket can produce low updates even when current capital prices are increasing significantly. In the Commission's view, a straightforward market basket based on the projected changes in the price of appropriate hospital capital purchases and in other capital-related costs in the coming fiscal year is preferable. ProPAC's market basket would provide Medicare capital payments consistent with anticipated capital purchase prices.

As of January 1995, the projected increase in ProPAC's market basket index for fiscal year 1996 is 4.1 percent. This forecast may change as more recent data become available and as methodologies for estimating the market basket's components are refined.

Forecast Error Correction—The Commission believes past market basket index forecast errors should be corrected within the update framework. This correction protects both hospitals and the Federal government by adjusting the payment rates so that the effects of past forecast errors are not perpetuated. Because fiscal year 1996 is the first year in which a capital update framework will be used, there is no correction to make this year.

Financing Policy Adjustment—The Commission's update framework includes a financing policy adjustment to account for substantial changes in long-term interest rates. This adjustment would be used when current interest rates differ markedly from the recent past and the difference is expected to persist or grow. Short-term fluctuations in interest rates should not affect the market basket. Inclusion of interest in the market basket could lead to volatility in updates, overcompensation of hospitals in some circumstances, and undue risk for facilities at other times.

Changes in interest rates can create significant financial burdens or substantial financial windfalls for hospitals. Extended periods of unusually high rates could force hospitals to choose between postponing needed renovation projects or incurring indebtedness beyond what Medicare payments would support. The financing policy adjustment would increase the capital update in such circumstances to ensure that facilities could maintain

capacity adequate for cost-effective care for Medicare beneficiaries. It could raise payment updates at times of prolonged high interest rates, when some hospitals might face disruptive financial impacts. When interest rates decline, the adjustment could lower payment updates to allow the Medicare program to share in some of the hospital cost savings.

Although both short-term and long-term interest rates increased markedly in the past year, the Commission anticipates that these changes will have little impact on hospitals' long-term capital financing costs. Therefore, it is not appropriate to adjust capital payments for forecasted changes in interest rates at this time.

Scientific and Technological Advances—ProPAC recognizes that future hospital capital investments may include more costly, quality-enhancing medical technology. The capital update framework adjusts payments to allow for scientific and technological advances. (See Appendix A for more information on this adjustment.) The Commission believes that, in the coming year, hospitals should offset annual capital costs of new technologies by using newly purchased and existing capital more efficiently. Therefore, it does not specify any adjustment for the capital component of scientific and technological advances.

Productivity Improvement—Through its productivity adjustment, ProPAC recognizes that hospitals need to maintain their technological position as well as to adapt their capital stock to a health care environment in which there is less demand for inpatient services. This adjustment is a policy target for improving productivity by using existing plant and equipment more efficiently and by buying cost-decreasing technologies. In the coming year, savings from these sources should be used to offset the costs of scientific and technological advances.

Case-Mix Change—Medicare uses the same DRG definitions and relative weights for operating and capital payments. As a result, capital payments respond to changes in the case-mix index in the same way as do PPS operating payments. Thus, the zero percentage point adjustment to operating payment rates for CMI change is applied to capital payment rates as well. (See Recommendation 1.)

Recommendation 3: Single Operating and Capital Update Factor

The Commission recommends that when the transition to fully prospective capital payments is complete, a single update factor should be used for adjusting PPS operating and capital payment rates. Based on ProPAC's recommended updates to the operating and capital payment rates, the total increase to a fully prospective combined payment rate would be 2.3 percent for fiscal year 1996.

The Commission believes there ultimately should be one payment for hospital inpatient operating and capital expenses, with a single annual update to that payment. Despite separate payment methods, hospitals do not distinguish between their operating and capital payments. Operating payments may be used to defray capital shortfalls and vice versa. Thus, separate update factors for operating and capital expenses do not reflect the way hospitals actually use their revenues or make investment decisions.

ProPAC therefore recommends the development of an update framework that includes capital and operating components for use as soon as practicable. Like the operating update ProPAC uses, the combined update approach should incorporate operating and capital market baskets to measure changes in prices, as well as adjustments for scientific and technological advances, productivity, and case-mix change. This would ensure that updates to both operating and capital base payment rates reflect increases in the cost of the goods and services that hospitals require to produce inpatient hospital care efficiently. Ultimately, operating and capital components should be included in a single market basket and set of adjustments.

Table 2-3. Estimated Fiscal Year 1996 Average Increase in Per Case Payments Under Fully Prospective Rates

Operating update factor	2.1%
Capital update factor	4.1
Total average update	2.3
Estimated case-mix index change (fiscal year 1996)	1.0
Total average increase in PPS payments*	3.3

* The total average increase in PPS payments reflects the multiplicative effects of the total average update and case-mix index change.

A combined fully prospective update would yield an increase of 2.3 percent under the Commission's recommendation. The total increase to payments, however, would be about 3.3 percent due to expected increases in the case-mix index (see Table 2-3).

Recommendation 4: Update Factor for Hospitals Paid on the Basis of Hospital-Specific Rates

For fiscal year 1996, payments based on hospital-specific base-year costs for sole community hospitals should be updated by the same factor as the rate for all other PPS hospitals. Furthermore, it is no longer necessary to calculate a separate update for these hospitals.

This recommendation would result in a 2.1 percent update to the hospital-specific rates for fiscal year 1996, consistent with the Commission's recommendation for the PPS update. Since the update is based on current projections of the fiscal year 1996 increase in the market basket index, its effective value may be modified as more current forecasts become available.

Following OBRA 1989, certain hospitals have been paid the higher of three amounts: the PPS rate, their own 1982 base-year costs updated to the current year, or their updated 1987 base-year costs. Sole community hospitals, which meet criteria related to distance from other hospitals or market share, qualify for this special treatment: Small rural Medicare-dependent hospitals—rural hospitals with fewer than 100 beds and at least a 60 percent Medicare share of total discharges or inpatient days—were also paid on the basis of hospital-specific rates through fiscal year 1994. These Medicare-dependent hospitals are now paid on the basis of the PPS rate.

Current law requires that the hospital-specific rates for sole community hospitals be updated at a rate equal to market basket minus 2.0 percentage points in fiscal year 1996, the same as for other PPS hospitals. ProPAC believes the update for these hospitals should be no different from that applied to all other PPS hospitals. Although these hospitals are accorded special treatment under PPS because they may face higher historical costs due to their special circumstances, they should be able to control their cost increases as other hospitals do. The factors considered in the Commission's update framework for PPS hospitals therefore are appropriate for these hospitals as well.

Recent data show that sole community hospitals have higher PPS and total margins than most other hospital groups. The Commission will continue to monitor the financial condition of sole community hospitals for signs of potential stress, but will no longer provide a separate recommendation unless conditions warrant it.

Recommendation 5: Update Factor for PPS-Excluded Hospitals and Distinct-Part Units

For fiscal year 1996, the target amounts for PPS-excluded hospitals and distinct-part units should be updated to account for the following:

- **The projected increase in the HCFA PPS-excluded hospital market basket index, currently estimated at 3.9 percent;**
- **An adjustment of zero percentage points to reflect the difference between the ProPAC and HCFA market baskets;**
- **A negative adjustment of 1.6 percentage points to correct for substantial error in the fiscal year 1994 market basket forecast; and**
- **An adjustment of zero percentage points for scientific and technological advances.**

This would result in an update factor of 2.3 percent.

When PPS was established, prospective payment based on DRGs could not be applied universally, so certain providers were excluded. Five types of specialty hospitals (psychiatric, rehabilitation, long-term, children's, and cancer) and two types of distinct-part units in general hospitals (psychiatric and rehabilitation) are now exempt from PPS. These providers are excluded primarily because DRGs fail to predict their resource costs accurately.

PPS-excluded hospitals and distinct-part units are subject to the payment limitations and incentives established in the Tax Equity and Fiscal

Responsibility Act of 1982 (TEFRA). Each provider is paid on the basis of its current Medicare-allowable inpatient operating costs per discharge or a target amount. The target amount is based on the provider's allowable costs per discharge in a base year, trended to the current year by an annual update factor. Medicare's share of allowable capital costs is paid in its entirety.

Under TEFRA, a facility with Medicare-allowable inpatient operating costs that are less than its ceiling (its target amount times the number of discharges) receives its costs plus either 50 percent of the difference between its costs and its ceiling or 5 percent of the ceiling, whichever is less. A facility with inpatient operating costs above its ceiling receives the ceiling plus 50 percent of the difference between the ceiling and its costs. Total payments, however, may not exceed 110 percent of the ceiling. Further, TEFRA provides an exceptions process whereby facilities may receive payment adjustments.

Although the Congress legislates the update to the TEFRA target amounts, the Secretary and ProPAC are required to recommend an annual update factor. Through fiscal year 1997, each facility is to receive an update ranging from the projected increase in the market basket index to the market basket increase minus 1.0 percentage points. The Commission recommends an average update to the target amount equal to the market basket minus 1.6 percentage points for fiscal year 1996 (see Table 2-4).

Market Basket—The update recommendation is determined primarily by the projected increase in the PPS-excluded market basket index. The market basket measures the price of inputs used by these facilities in treating Medicare patients. The current HCFA market basket increase forecast for fiscal year 1996 is 3.9 percent. There is no difference between the HCFA and ProPAC market basket forecasts for 1996, so no adjustment to reflect this difference is necessary.

Forecast Error Correction—ProPAC believes the update should be corrected for substantial past market basket forecast errors. Because projections must rely on available data, they cannot accurately anticipate all future economic conditions that may affect input prices. Updates based on market basket forecasts, therefore, may result in overpayments or underpayments to PPS-excluded facilities, which should not be carried forward to subsequent payment years. The market basket projection used to update TEFRA target amounts in fiscal year 1994 was 4.3 percent. The actual market basket increase, however, was only 2.7 percent. Therefore, the Commission's update recommendation includes a negative adjustment of 1.6 percentage points for fiscal year 1994 market basket forecast error.

Scientific and Technological Advances—ProPAC also believes the update should include an allowance for scientific and technological advances for PPS-excluded hospitals and distinct-part units. This allowance is intended to encourage providers to adopt quality-enhancing technologies, even when they increase costs. It reflects the Commission's judgment about the expected growth in the cost of scientific and technological advances used to provide inpatient services to Medicare beneficiaries.

To reach an informed judgment on the appropriate allowance, ProPAC reviewed prior

Table 2-4. Recommended Update Factor for PPS-Excluded Hospitals, Fiscal Year 1996

Components of the Update	
Fiscal year 1996 HCFA PPS-excluded market basket forecast*	3.9%
Adjustment for difference between HCFA and ProPAC market baskets*	0.0
Correction for fiscal year 1994 forecast error	-1.6
Allowance for scientific and technological advances	0.0
Total update	2.3

* Market basket forecast provided by the Health Care Financing Administration, Office of the Actuary, December 1994. The market basket forecast is subject to change as more current data become available.

allowances and made a general assessment of the change in the use and cost of technologies expected for fiscal year 1996. On the basis of this review, the Commission concluded that the diffusion of new technologies will not substantially increase Medicare costs in PPS-excluded facilities in fiscal year 1996. Therefore, it recommends no allowance for scientific and technological advances.

Unlike the update for PPS hospitals, the update for excluded facilities does not include a productivity adjustment. The productivity adjustment to the PPS update is based on the principle that Medicare should share in the savings generated by productivity improvements. However, Medicare automatically shares in the savings under TEFRA because part of any productivity increase is factored into reduced Medicare payments. A further reduction in payments for gains in productivity therefore would not be appropriate.

Revising the Payment Method—OBRA 1990 required the Secretary of Health and Human Services to propose revisions to the current payment system for PPS-excluded hospitals and distinct-part units. It also required ProPAC to comment on the Secretary's proposal. The Secretary's report has not been released. The Commission, however, submitted to the Congress in October 1992 an interim report on payment reform for PPS-excluded providers.

ProPAC's report findings suggested that, in aggregate, TEFRA payments to PPS-excluded facilities appeared adequate for most provider types. Notable exceptions were psychiatric hospitals and distinct-part units, and long-term hospitals. However, substantial variation in the proportion of facilities with costs exceeding their target amount was found across and within all provider types. Further, the Commission could not make definitive conclusions regarding the adequacy of the TEFRA payment system due to the lack of information on the amount of exceptions payments made to PPS-excluded providers. More recent data are consistent with these conclusions.

Specialty hospitals and distinct-part units were excluded from PPS primarily because the DRG patient classification system does not adequately group patients in these facilities according to resource use. However, considerable effort has been put into developing a patient classification system for rehabilitation hospitals and distinct-part units that is based on patient functional status. The Commission supports such efforts to develop prospective payment systems for specialty providers.

Although at this time prospective payment for these facilities is not feasible, modifications to the TEFRA payment method may be possible. Each type of PPS-excluded provider has unique patient characteristics and cost experiences, yet all receive the same basic update to the target amount. Further, TEFRA does not account for changes in case mix and relative wage rates. A more complete understanding of the cost characteristics of these facilities would help to identify appropriate revisions to the current payment system and update formula.

ProPAC encourages the Secretary to examine further the factors contributing to cost increases among these facilities. The Commission will continue to evaluate the appropriateness of the TEFRA system for PPS-excluded providers, and will respond to the Secretary's proposal for payment reform when it becomes available.

Recommendation 6: Update to the Composite Rate for Dialysis Services

For fiscal year 1996, the composite rate for dialysis services should be updated to account for the following:

- **The projected increase in the market basket index for dialysis services, currently estimated at 3.7 percent;**
- **A net adjustment of zero percentage points for scientific and technological advances and productivity; and**
- **A negative discretionary adjustment of 3.7 percentage points to reflect the relationship between payments and estimated fiscal year 1995 costs.**

This would result in an update of zero percent.

In 1972, the Congress extended Medicare coverage to almost all U.S. residents with end-stage

renal disease. These beneficiaries are entitled to all Medicare-covered services, including dialysis treatments or transplant services to replace lost kidney function. Since 1983, facilities that provide outpatient dialysis services have been paid a composite rate for each dialysis session. This rate is a prospective payment intended to cover the costs of services typically furnished during a dialysis treatment (related physician services are paid separately). Derived from data from 1977 through 1979, it represents a weighted average cost per treatment for dialysis provided in facilities and at home, according to the proportion of beneficiaries treated in each site. This method was intended to promote the less expensive home treatment alternative by paying the same amount for care provided in either site. The level of the composite rate has remained essentially unchanged since it was developed.

OBRA 1990 requires ProPAC to recommend an annual update to dialysis payments. In developing its recommendation for fiscal year 1996, the Commission first estimated how much costs would increase between fiscal years 1995 and 1996 using a framework similar to that used in the update recommendation for PPS hospitals. Then it evaluated the adequacy of the base payment rates to which the update factor would be applied. (See Appendix A for more information on the background analyses.)

Market Basket—The market basket index is intended to measure changes in the price of inputs dialysis facilities use to produce dialysis treatments. It reflects all the goods and services dialysis providers purchase. Using 1993 dialysis facility cost report data, four types of inputs were identified: capital, labor, other direct inputs, and overhead. Each component has a weight that represents its cost share, or proportion of total expenses. The price change for each component is measured by a proxy. The price proxies were adapted from those Medicare uses for the PPS, home health agency, and skilled nursing facility market baskets. The Commission's analysis indicates that the prices of inputs used in a dialysis treatment will rise by about 3.7 percent between fiscal years 1995 and 1996.

Scientific and Technological Advances—The scientific and technological advances allowance is intended to encourage dialysis facilities to adopt new technologies that improve the quality of patient care, even when they increase costs. It is an estimate of the expected increase in operating and capital costs that will result from the diffusion of new and emerging dialysis-related technologies during the coming fiscal year. To reach an informed judgment on the appropriate allowance, ProPAC examined the most important new cost-increasing innovations in the dialysis industry. On the basis of this analysis, the Commission estimates that facility costs will rise by 0.6 percent due to the adoption of new technologies in fiscal year 1996.

Productivity Improvement—The productivity adjustment is intended to provide dialysis facilities with a financial incentive for continued improvement in productivity through the more efficient use of resources. It is an estimate of the productivity gains that can be expected for the coming year. Historical data indicate that substantial productivity improvements in this industry have resulted in significant cost reductions. After considering a range of options, however, the Commission concluded that productivity gains of comparable magnitude are not likely for fiscal year 1996. Nevertheless, facilities can achieve modest productivity gains that will offset the costs of scientific and technological advances.

Discretionary Adjustment—ProPAC's update framework suggests that dialysis costs will increase by 3.7 percent in fiscal year 1996. An analysis of Medicare payments, however, indicates that, in aggregate, composite rate payments are essentially equal to estimated Medicare costs for fiscal year 1995. Moreover, Medicare payments to independent dialysis facilities—which make up the majority of facilities and provide the majority of treatments—are about 13 percent higher than Medicare-allowable costs. Therefore, most facilities are likely to have substantial Medicare profits in fiscal year 1996, despite rising costs. Accordingly, the Commission applied an off-setting adjustment to the update framework and recommends no increase to the composite rate at this time.

The Commission considered a separate update for hospital-based dialysis facilities. It is concerned about these providers' low ratio of payments to costs, which is estimated to be 0.76 in fiscal year 1995. This ratio has declined over time.

On average, the cost per treatment in hospital-based facilities is about 50 percent higher than in

independent facilities. Medicare recognizes this difference by paying hospital-based facilities $4 more per treatment. Medicare also provides for exceptions payments to facilities with justifiably higher costs. ProPAC analyses have been unable to explain hospital-based facilities' higher costs. Additional studies have not demonstrated differences in case severity, quality of care, or patient outcomes between hospital-based and independent facilities. Therefore, the Commission has no basis for recommending a differential update.

ProPAC also is concerned about future increases in the cost of providing dialysis services. In response to widespread concern within the industry regarding the adequacy of dialysis, HCFA is considering revisions to Medicare's conditions of participation to require facilities to document that treatments comply with adequacy standards. Many industry experts agree that to achieve these standards, facility costs will necessarily rise. The Commission believes that payments must recognize such costs.

ProPAC will continue to evaluate composite rate payments to dialysis facilities. Its analysis will focus on the difference between payments and costs, and how this relationship varies across providers and over time. Additionally, the Commission will analyze information regarding the relationship between facility costs, quality of care, and patient outcomes.

Improving PPS Payment Policies

The prospective payment system adjusts hospital payments in several ways to account for factors such as the level of teaching activity, wage rates, and patient complexity, which may legitimately affect hospital costs. These adjustments are important for providing fair payments to hospitals that reflect the circumstances they face.

As part of its mandate, the Commission examines the distribution of PPS payments across hospitals and makes recommendations concerning various adjustments to the payment system. ProPAC considers adjustments that are made both at a hospital level and at a case level. In this year's report, the Commission recommends improvements in the indirect medical education (IME) adjustment, outlier payment policy, the accuracy of DRG payment rates and coding change adjustments, and transfer payment policy.

Recommendation 7: Level of the Indirect Medical Education Adjustment to PPS Operating Payments

For fiscal year 1996, the indirect medical education adjustment to PPS operating payments should be reduced by 13 percent, from a 7.7 percent to a 6.7 percent increase for every 10 percent increment in teaching intensity. Ultimately, the indirect medical education adjustment should be reduced by about 40 percent, to a 4.5 percent increase for every 10 percent increment in teaching intensity.

The indirect medical education adjustment is intended to recognize the higher costs teaching hospitals incur in treating Medicare patients. These costs have been attributed to teaching hospitals caring for patients with more severe or complex illnesses, providing a broader scope of services and more services per patient, using a costlier mix of staff, and developing and introducing improvements in diagnostic and therapeutic technologies.

ProPAC annually estimates the relationship between teaching intensity and standardized Medicare operating costs per discharge. The measure of teaching intensity is based on the ratio of residents to beds. The standardization controls for differences in costs that are accounted for by other PPS payment factors. These include the local area wage index, the hospital's Medicare case-mix index, and outlier payments for extremely long or costly cases. ProPAC's analysis also controls for differences in costs associated with location in large urban, other urban, and rural areas. The most recent analysis was based on cost data from the ninth year of PPS and payment rules for fiscal year 1995. The results indicate that, on average, each 10 percent rise in teaching intensity is associated with a 4.5 percent increase in Medicare operating costs per discharge.

The estimated relationship between costs and teaching intensity is affected by changes in other PPS payment factors that account for differences in costs. For example, implementation of improvements in the accuracy of DRG rates and outlier

payment policy would alter the distribution of Medicare payments between teaching and nonteaching hospitals. (See Recommendations 8 and 9.) Modification of these components would influence the estimate of the relationship between costs and teaching intensity used by the Commission as the basis for its recommendation on the appropriate level of the IME adjustment.

The Commission recognizes that since PPS began, the Medicare program has more than adequately compensated teaching hospitals for the costs of treating Medicare patients. The current IME operating payment adjustment increases Medicare payments to teaching hospitals by about 7.7 percent for every 10 percent increment in teaching intensity. This is substantially above the 4.5 percent increase suggested by ProPAC's analysis. Moreover, PPS operating margins consistently have been higher for teaching than for non-teaching hospitals. This is especially true for major teaching hospitals (those with the highest levels of teaching intensity).

Accelerating price competition in the private sector, however, is reducing the ability of teaching hospitals to obtain the higher patient care rates from other payers that traditionally have contributed to financing the costs associated with graduate medical education. The Commission believes the purpose of the IME adjustment is to support the distinct role that teaching hospitals currently play in the provision of health care. It is concerned that a substantial and immediate reduction in Federal support might impair their ability to fulfill this role. In ProPAC's view, Medicare's responsibility to its enrollees extends beyond merely paying for beneficiaries' services to maintaining access to the quality and types of care provided at teaching hospitals. This might be affected adversely by a sharp decline in IME payments.

Given these considerations, a phased reduction of the IME adjustment is a prudent course of action. ProPAC's recommendation would reduce the adjustment by about one-third of the difference between the current 7.7 percent level and the 4.5 percent empirical estimate. Subsequent phases of the reduction should be implemented only after evaluation of the effect on access to quality care for Medicare enrollees. In addition, the distribution of IME payments across hospitals should be examined further, recognizing as an ultimate objective the use of the IME adjustment to compensate appropriately for differences in Medicare patient care costs that are attributable to medical education.

Previous Commission recommendations to reduce the IME adjustment have included provisions for budget-neutral redistribution of the savings, generally through corresponding increases in the standardized amounts. In the seven years since the IME adjustment was last changed, however, other components of the prospective payment system have been modified. Policy and technical changes have shifted the distribution of payments among hospital types. The distribution of PPS payments no longer resembles the original base-year costs on which the system was based. Therefore, ProPAC is not recommending that the anticipated decrease in IME payments be returned to all hospitals through a proportionate increase in the standardized payment amounts.

Changes in the IME adjustment should be considered in the context of its interactions with other payment system components and its effects on PPS payments, as well as hospitals' overall financial status. The impact on quality and access to care should also be considered. In the coming year, ProPAC will continue to examine the level and structure of the IME adjustment and other factors that affect hospitals' payments, costs, and financial condition. The distribution of PPS and total margins and the other effects of potential changes in the IME adjustment will be studied. For more information on ProPAC's most recent analyses, see the technical report, *The Indirect Medical Education Adjustment to PPS Payments* (forthcoming).

Recommendation 8: Improving Outlier Payment Policy

The Medicare statute should be amended so that the estimated cost of a case for determining outlier payment and the outlier payment amount are not adjusted to reflect a hospital's teaching and disproportionate share status. This change would make the outlier payment policy more effective in protecting hospitals from the risk of large losses on some cases.

Under PPS, a hospital receives a fixed payment rate per discharge for each type of patient. The

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diagnosis-related groups used to classify patients and establish these rates are designed to group cases with similar expected resource requirements. The hospital then faces the risk that its costs for a case may differ from the DRG payment rate it receives.

Most hospitals should be able to offset losses from more costly cases with gains from less costly ones. Because the cost of treatment may vary widely among the cases in any DRG, however, even efficient hospitals may have some cases for which costs are much higher than the DRG payment rate. These cases represent large financial losses for the hospitals that treat them.

To reduce financial risk and incentives to avoid treating such patients, hospitals are eligible to receive additional payments for cases with unusually long stays (day outliers) or unusually high costs (cost outliers). OBRA 1993 substantially changed PPS payment policies for these cases. Beginning in fiscal year 1995, additional payments for day outliers are being phased out over four years. Also beginning this year, a case qualifies for additional payments as a cost outlier if the hospital's estimated cost for the case exceeds a fixed loss threshold.

A hospital's loss threshold for a DRG is determined by adjusting a national fixed loss amount ($20,500 for fiscal year 1995) by the hospital's wage index and cost of living adjustment (COLA), and adding this amount to the hospital's base payment rate for the DRG. For a case with estimated costs above the threshold, the hospital receives an additional payment equal to 80 percent of the difference.

With fixed loss thresholds, the amount of loss a hospital must incur before receiving additional payments is the same for all DRGs. Although DRG-specific loss thresholds differ among hospitals according to their wage index and COLA values, the real (input price adjusted) amount of loss is constant. This is consistent with the concept that a dollar of real loss is equally important, regardless of the DRG or hospital in which it occurs.

The amount of loss a hospital incurs, however, also depends on how the costs of a case are measured. Currently, these costs are estimated by adjusting the hospital's billed charges for medical care-covered services by its overall average cost to charge ratio. Then, the estimated costs are standardized (reduced) to reflect the hospital's indirect medical education and disproportionate share (DSH) payment adjustments.

Under this policy, a case in a teaching or disproportionate share hospital is considered to be less costly than one with equal adjusted charges in a non-teaching, non-disproportionate share hospital. Therefore, similar cases treated in a teaching or disproportionate share hospital are less likely to qualify for cost outlier payments. And when they do, the outlier payment is smaller. Although outlier payments are then increased by each hospital's IME and DSH adjustments, this does not make up for the reduced outlier payments these hospitals receive.

This policy leads to payment inequities among hospitals. In addition, the outlier payment policy is less effective than it could be in limiting the financial risk associated with extraordinarily costly cases. Therefore, the Commission believes the estimated cost of a case and the outlier payment should not be adjusted to reflect a hospital's IME and DSH status.

In its March 1994 *Report and Recommendations to the Congress*, ProPAC recommended implementing this change for fiscal year 1995. In her response to the Commission's recommendations, the Secretary agreed with this proposal. She indicated that she has authority to eliminate the IME and DSH adjustments now applied to reduce the estimated cost of a case. However, current law requires her to apply these adjustments to all payments based on the DRGs, including those for outliers. Eliminating the adjustments applied to estimated costs without doing so for outlier payments would merely create opposite payment inequities. Consequently, she was unwilling to act without the ability to implement both changes simultaneously.

To resolve this problem, ProPAC recommends amending the Medicare statute to apply the IME and DSH adjustments only to the base DRG payments hospitals receive for all cases. This would eliminate the current IME and DSH add-ons to outlier payments. If possible, the law should be modified early enough to permit the Secretary to implement this change for fiscal year 1996.

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Following this change, the Secretary should discontinue applying the IME and DSH adjustments to reduce estimated costs for outlier cases. This would increase outlier payments for extraordinarily costly cases treated in teaching and disproportionate share hospitals. In addition, it would concentrate outlier payments on the highest-cost cases, thereby increasing the effectiveness of outlier policy in limiting the associated financial risk.

Recommendation 9: Making DRG Payment Rates More Accurate

The Secretary should implement, as soon as practicable, the DRG severity refinements developed by the Health Care Financing Administration. At the same time, she should improve the accuracy of basic DRG payment rates and outlier payments by changing the methods used to calculate the DRG relative weights. The weights should be based on the national average of hospital-specific relative values for all cases in each DRG, rather than the national average standardized charge per case.

Under PPS, a hospital receives a base DRG payment rate for each case. It also may receive outlier payments for a case with an unusually long stay or extremely high costs.

The base payment rate for each DRG is determined by multiplying the hospital's base payment amount, which is the same for all cases, by the relative weight for the DRG. The DRG definitions used to classify cases and calculate the relative weights are intended to group cases that are clinically similar and have comparable expected resource requirements. The relative weight for each DRG is intended to measure the relative costliness of a typical case in that category compared with the average cost of all typical Medicare cases.

The methods used to create the key components of this system lead to inaccurate payment rates for individual cases and payment inequities among hospitals. The DRG definitions do not completely account for the effect of variations in severity of illness on hospitals' treatment costs. In addition, the method of calculating the DRG weights leads to systematic errors in the DRG payment rates. Finally, financing outlier payments by a uniform offset to the standardized amounts also may distort the payment rates.

ProPAC believes these problems could be substantially alleviated if DRG refinements and improvements in calculating the weights were adopted, as outlined below. The Commission also has considered changes in the financing of outlier payments. However, it has yet to find a solution that makes the payment rates more accurate for typical cases and preserves broad-based outlier financing across hospitals. ProPAC will continue to examine this issue in the coming year.

DRG Refinement—Currently, all cases are classified in one of 490 DRGs. In many instances, the DRG definitions fail to distinguish significant subgroups of patients that have distinctly different treatment costs. These differences are often related to the presence or absence of specific secondary diagnoses that usually affect the cost of care substantially.

HCFA recently developed major refinements to the DRG definitions that are designed to account for the impact of these secondary diagnoses on costs. The refined DRGs appear to be better able than the current ones to distinguish among cases with different expected costs. Other things equal, implementing the refined DRGs would increase the spread of the relative weights and the accuracy of the payment rates.

Using the new DRGs, some cases now classified in a single category would be assigned to two or three categories with substantially different weights. For example, cases that involve spinal procedures are assigned to DRG 4; in fiscal year 1994, the relative weight for this category was 2.38. Under the refined DRGs, such cases would be allocated among three categories with weights of 1.49, 2.65, and 5.52, respectively.

In other instances, cases now classified in two DRGs would be assigned to two or three more distinct groups. The major chest trauma DRGs (with and without complicating conditions) had weights of 0.50 and 0.94 in fiscal year 1994. Under HCFA's proposal, these cases would be assigned to three DRGs with weights of 0.53, 0.89, and 1.57, respectively.

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In addition, the refined DRGs would more accurately identify outlier cases because the payment rates would provide a better standard of comparison. Consequently, adopting the new DRGs would tend to reduce current discrepancies between payments and costs for individual cases and improve payment equity among hospitals.

This change would tend to increase payments to hospitals that have a high case-mix index (such as major teaching hospitals), and reduce payments to those with a low case-mix index (small urban and rural hospitals). Although these effects would hold in general, the impact would vary substantially within such groups.

Some hospitals that would benefit are already treated relatively favorably under PPS because of other errors in the weights or other payment policies, such as those for teaching and disproportionate share hospitals or outlier cases. Similarly, some that would receive lower payments are currently disadvantaged for the same reasons. Therefore, to make payments more equitable overall, other sources of payment inequities also would need to be addressed.

Hospital-Specific Relative Value Weights— The weights for all DRGs are based on the national average standardized charge per case in each category, using the most recent billing data available. The billed charges for each case in a DRG are standardized to remove differences in costs related to three factors. These include geographic variation in hospital input prices (wage rates and price levels for supplies and other non-labor inputs), differences among hospitals in teaching activity (the IME adjustment), and variation in the extent of service to low-income patients (the DSH adjustment). Then, cases with extremely high or low standardized charges (statistical outliers) are identified and removed. Preliminary weights are created by calculating the national average standardized charge per case for the remaining cases in each DRG, and dividing this average by the overall national average standardized charge per case. Finally, the preliminary weight in each DRG is multiplied by a recalibration factor. This factor, which is the same for all DRGs, is necessary to ensure that annual changes in the DRG definitions and weights do not affect the aggregate amount of payments under PPS.

The weights are intended to measure the relative costliness of treating a typical case in each DRG, compared with the overall average cost of typical Medicare cases. Because they are based on the national average standardized charge per case in each DRG, however, they are subject to distortions that arise from several sources. One of these is systematic differences among hospitals in the mark-up of charges over costs. Overall average cost to charge ratios vary systematically among hospitals according to ownership, size, teaching and disproportionate share status, and location. In addition, the pattern of mark-ups among services varies across hospitals.

If the cases in all DRGs were distributed at random among all hospitals, these differences would not create any systematic distortion in the relative weights. In fact, however, cases in high-weight DRGs are more likely to be treated in institutions with relatively high charges, such as large teaching and disproportionate share hospitals in urban areas. Conversely, cases in low-weight DRGs are more likely to be treated in small urban and rural hospitals that have relatively low charges. Consequently, the average mark-up implicit in the case-level charges varies among the DRGs. This distorts the DRG weights, making them vary more than the actual relative cost of treatment.

A similar problem results from systematic differences in the level of costs among hospitals. The current method of standardizing the charges for each case is intended to remove variation that is attributable to geographic differences in the level of input prices, and hospital-specific differences in teaching activity and service to the poor. However, the payment adjustment factors used for this purpose do not accurately represent cost differences among hospitals. Moreover, these adjustments do not account for systematic differences in the level of costs due to other factors, such as variations in practice patterns and efficiency. Because cases in each DRG are not randomly distributed among hospitals, these differences also may affect the DRG weights.

These problems could be addressed by calculating the weights based on hospital-specific relative values. Under this method, the relative weights could continue to be calculated using hospitals' billed charges for all cases. However, the charges

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for each case would be divided by the hospital's overall average charge per case, and then adjusted to reflect the same scale of costs across all hospitals. This would create a hospital-specific relative value for each case. Then, the national relative weight in each DRG would be calculated as the case-weighted average of the relative values for all cases in the category.

The hospital-specific relative value method would automatically remove distortions in the weights caused by variation in hospitals' charge mark-ups and costliness. It also would eliminate the need to standardize hospitals' charges. The Commission's analysis indicates that DRG weights based on this method (relative value weights) differ substantially from the current weights. The relative value weights are consistently higher in DRGs with low current weights. Conversely, they are often lower (though less consistently) in DRGs with high current weights. These differences occur because cases in low-weight DRGs are more likely to be treated in small urban and rural hospitals with lower average charges, while cases in high-weight DRGs are more likely to be treated in large urban hospitals with high charges.

Other things equal, using relative value weights would tend to increase payments to small urban and rural hospitals, and reduce payments somewhat for large urban hospitals. These anticipated effects are generally opposite those of adopting the DRG severity refinements. ProPAC believes, however, that both changes would improve payment accuracy for individual cases. Therefore, they should help lessen current disparities between payments and costs for many cases.

Adjusting the Weights to Reflect Outlier Payments in Each DRG—The Commission also has considered potential changes in policy designed to correct errors in the payment rates that arise from inconsistencies between the methods used to calculate the DRG weights and those used to finance outlier payments.

Under current policy, outlier payments are financed by a uniform reduction in the standardized payment amounts (5.1 percent for fiscal year 1995). The uniform outlier financing adjustment reduces all hospitals' basic DRG rates proportionately. Outlier cases and payments, however, are highly concentrated in certain DRGs. (Outlier payments as a proportion of total DRG payments vary from less than 1 percent in many DRGs to more than 20 percent in a few categories.) This affects the relative weights of DRGs that have a high proportion of outlier payments because each weight is based on the national average standardized charge for all cases in the category, including outlier cases with extremely high charges. Consequently, the weights overstate the relative costliness of a typical case in DRGs with a high proportion of outlier payments (high-risk DRGs).

This pattern of bias in the DRG weights combines with the uniform outlier financing adjustment to produce both upward and downward errors in the DRG payment rates. The upward effects on the weights for high-risk DRGs are only partially offset by the 5.1 percent reduction in the standardized amounts. The weights for DRGs with a low proportion of outlier payments (low-risk DRGs), however, have little or no bias. Consequently, the 5.1 percent outlier financing adjustment reduces the payment rates too much for these DRGs. Therefore, the payment rates may be too low in low-risk DRGs, and too high in high-risk DRGs.

Although these errors primarily affect basic DRG payments, they also alter the distribution of outlier payments among hospitals. This occurs because the fixed loss thresholds are set too high in high-risk DRGs (since the basic DRG rates are too high), and too low in low-risk DRGs (where the DRG rates are too low). As a result, outlier payments are smaller than they otherwise would be for cases in high-risk DRGs, and larger than they would be for cases in low-risk DRGs.

To solve this problem, ProPAC investigated the desirability of making DRG-specific offsets to the relative weights to finance outlier payments. Under this approach, each DRG weight would be reduced to reflect the estimated proportion of outlier payments in that category based on the most recent billing data. In addition, the standardized payment amounts would be increased to remove the current outlier financing adjustment. This would change the DRG weights, the fixed loss outlier thresholds, basic DRG payments, and the amounts and proportions of outlier payments by DRG.

The revised DRG weights based on this approach would more accurately reflect the actual relative costliness of treating typical cases in each DRG. Therefore, this policy would tend to reduce existing discrepancies between payments and costs for many individual cases. The Commission is concerned, however, that this approach would impose an unfair burden on hospitals that treat cases in high-risk DRGs, because the full cost of extra payments for outlier cases would be financed through reduced base payment rates in those DRGs.

Current outlier financing policies raise two issues. One is how to account for outlier payments in setting a weight that accurately reflects the relative costliness of treatment for typical cases. The second issue is how to finance outlier payments so that the burden of treating such cases is spread fairly among all hospitals. Although these problems can be separated conceptually, the Commission has not yet found a method that addresses both adequately. In the coming year, ProPAC will continue to explore alternative solutions to these issues.

Recommendation 10: Improving Annual Update Policies

The Secretary should be given authority to adjust the standardized amounts if anticipated coding improvements would increase aggregate payments by more than 0.25 percent during the coming year. This adjustment should be separate from the annual update. It should be based on findings from empirical analysis of the new HCFA database of reabstracted medical records. Once sufficient data are available, the Secretary also should make a correction if there is more than a 0.1 percentage point error in a previous adjustment.

Under current law, the Secretary is required to update the DRG definitions and weights annually to account for changes in practice patterns, medical science, and technology that alter the relative use of hospital inpatient resources among types of patients. In most years, the Secretary has made minor changes in the DRG definitions to address issues raised by the public and the hospital industry regarding the current classification of patients. The Secretary also recalculates the relative weights each year to reflect changes in the relative costliness of each type of case, as indicated by the most recent billing data.

In making these changes, the Secretary is required to hold constant the estimated aggregate payments under PPS for the coming year. This requirement is met through recalibration of the weights, coupled with a budget neutrality adjustment to the standardized payment amounts. The annual recalibration adjusts the new weights so that the national average relative weight using the new DRG definitions and weights is equal to the national average based on the current year's definitions and weights. This removes most of the potential effect of changes in the DRGs and the weights on aggregate payments. A small budget neutrality adjustment is usually necessary to ensure that estimated aggregate payments remain unchanged.

These adjustments are applied to the rates that will be used in making payments to hospitals during the coming year. They are based on billing data that are always two years old. Adjustments for fiscal year 1995, for example, were based on bills for cases discharged during fiscal year 1993.

Actual payments, however, may differ from the earlier estimate for several reasons. The mix of cases among the DRGs may have shifted due to changes in practice patterns or variation in the incidence of illness. Such real changes in case mix are expected to generate corresponding changes in the cost of furnishing treatment. Consequently, the accompanying changes in payment are appropriate.

In addition, hospitals may have improved the accuracy and completeness of the coded clinical information they report on the bills, shifting cases among the DRGs. This kind of case-mix change generally redistributes payments among hospitals and increases total payments. The redistribution of payments is appropriate because the improved case-mix index more accurately reflects the true incidence of treatment costs. However, shifts in case mix caused by changes in reporting would not be expected to increase the aggregate cost of treating Medicare patients, since cases are merely reclassified into different DRGs. Therefore, the accompanying changes in aggregate payments are not appropriate. (See

Appendix A for a discussion of the components of case-mix change.)

Although both ProPAC's and the Secretary's update recommendations exclude the estimated historical change in case mix due to improvements in coding, neither attempts to exclude prospectively the coding change expected in the following year. Thus, under current policy, hospitals get the benefit of any coding improvements during the year in which they occur; estimates of these effects are then removed from the base payment amount in the next annual update. In fact, however, the Congress sets the annual update factor in law. Consequently, it is difficult to know whether the effects of coding changes are fully or partially offset each year.

In recent years, the Secretary has repeatedly raised concerns about the impact of coding changes that might accompany major changes in the DRGs. The severity refinements to the DRGs would create a number of new DRGs with very high weights. A hospital would receive a much larger payment if one of a set of major complications were coded on the bill. Consequently, implementing the refined DRGs could lead to a major change in the relative importance of these secondary diagnoses, and more effort by hospital coders to ensure that they are coded on the bill when they appear in the patient's medical record. This is not inappropriate behavior. But it does raise the problem of how to ensure that hospitals are fairly compensated for changes in costs that result from real changes in the mix of cases, while protecting the Medicare program from increases in payments that result only from better reporting.

To address this problem, the Secretary should be given authority to make an off-setting adjustment to the standardized amounts, separate from the annual update, when substantial improvements in coding are expected during the coming year. This would require a change in current law. In addition, the Congress should modify its legislated annual updates to appropriately account for this change.

An ongoing database of reabstracted medical records also would be needed to estimate the real and coding components of case-mix change, and provide a basis for forecasting future coding changes. Recently, HCFA has developed a monthly random sampling and reabstraction process, under the Peer Review Organization program, that will provide data on about 30,000 records per year. Using such data for the most recent two years, it would be possible to estimate the increase in the case-mix index that would occur if all hospital coders began to code records as accurately and completely as the reabstract coders do. Then, a judgment could be made about how to adjust (reduce) the estimate to reflect the fact that coding accuracy is unlikely to improve by the full amount of the estimate (and certainly not during the course of a single year).

ProPAC believes strongly that adjustments for anticipated coding change should be based only on findings from empirical analysis of the reabstracted data, reduced by judgment as described above. They should not incorporate any assumptions or projections regarding other potential behavioral responses by hospital coders. The Secretary's authority should be limited to occasions in which projected coding changes would increase aggregate payments by more than 0.25 percent.

If the projection were reasonably accurate, the hospital industry would no longer reap the benefit of substantial coding changes. The Medicare program also would avoid large, inappropriate increases in payments. On the other hand, it may be difficult to make accurate forecasts of coding change. Consequently, once sufficient data are available, the Secretary should also make a correction when forecasts diverge from actual experience by more than 0.1 percentage points. This would protect both the program and the hospital industry from the effect of large projection errors.

ProPAC also is concerned about the impact of forecast errors in other adjustments to the PPS payment rates. As part of its annual update recommendation, for example, the Commission makes an adjustment for past forecast errors related to the projected increase in the market basket index. Under current update policies, however, both the Medicare program and hospitals are at risk for discrepancies between the outlier financing offset to the standardized amounts and the actual amount of outlier payments. Despite HCFA's best efforts, outlier payments in recent years have repeatedly fallen well below the 5.1 percent outlier offset. To limit the impact of such errors on the DRG payment rates, ProPAC will include a forecast

error correction for this adjustment as part of its recommendation for fiscal year 1997.

Recommendation 11: Improving Medicare Transfer Payment Policy

> **PPS hospitals that treat Medicare patients who are then transferred to another PPS hospital should be paid on the basis of a graduated per diem payment up to the full DRG amount to recognize the higher daily costs associated with the first few days in a patient stay. The Secretary's proposal to pay twice the per diem payment for the first day in a transfer stay would significantly improve Medicare's payment for these cases.**

PPS hospitals that treat Medicare patients who are transferred to another PPS hospital are paid a uniform per diem based on the DRG up to the full payment rate for the case. The final hospital in a transfer sequence receives the full DRG payment for that stay, although the patient involved in the transfer may be assigned to a different DRG for each hospitalization.

ProPAC analysis found that the uniform per diem payment for the transferring hospital undercompensated that hospital for the care furnished during the stay. Payment to cost ratios were substantially below average for cases with short stays, but were closer to average for cases with typical stays. This is because a uniform per diem payment does not recognize the frequently higher costs associated with stabilization, evaluation, and surgery that generally take place early in a patient's hospital stay. In its analysis, HCFA discovered similar problems with transfer payment. The Commission's analysis also found that the receiving hospital was undercompensated for transfer cases because, on average, a larger percentage of these cases become outliers.

In ProPAC's view, the payment system should not influence the decision to transfer a patient. Rather, the decision should be based solely on appropriate patient care. Although there is no evidence that hospitals are avoiding these patients now, Medicare should adequately compensate for transfer cases.

A graduated per diem payment would more accurately reflect the higher daily costs incurred during the first few days of care. HCFA's analysis shows that payment to cost ratios for these cases could be improved significantly if a graduated per diem payment were adopted. A simple doubling of the per diem for the first day of a patient stay in a transfer sequence increased from 0.72 to 0.93 payment to cost ratios for cases paid on the basis of a per diem. Such a graduated per diem payment is necessary, in the Commission's opinion, to improve Medicare payment for these cases and create appropriate incentives for accepting transfers.

ProPAC also continues to be concerned about the impact of outlier payment policy on transfer cases. Compared with other cases, transfer cases received by another hospital are more than twice as likely to become outliers. Further, the losses on these cases tend to be greater than those for outliers who were not transferred. While many of the Commission's outlier payment recommendations have been adopted, the proposal to remove IME and DSH adjustments from case-level costs and outlier payments has not. (See Recommendation 8.) ProPAC analysis has found that, without this change in policy, the other changes recently made in outlier payment policy actually exacerbate the payment inequity for hospitals that receive a large number of transfer cases.

Finally, the Commission is concerned about the continuity of care across treatment settings and the role of Medicare payment policies in fostering service provision in the most appropriate site. ProPAC is pleased that the Secretary has been examining this issue and is looking at alternative payment strategies, such as paying hospitals that transfer patients to non-PPS settings a per diem instead of the full DRG amount. Further study is necessary before such a policy is adopted, however. The Commission would be happy to work with the Secretary in this endeavor.

Strengthening Hospital Outpatient Payment Policies

The past decade has seen unprecedented growth in the delivery of care in hospital outpatient and other ambulatory settings. As the number of services provided in alternative settings increases, so do Medicare payments. ProPAC has been concerned about appropriate payment policies to constrain the volume of ambulatory services. Additionally, the Commission has considered changes to

Medicare's payment for hospital-provided outpatient services to correct problems with excessive beneficiary liability and higher than intended program payments. Recommendations on these two issues follow.

Recommendation 12: Controlling the Volume of Hospital Outpatient and Other Ambulatory Services

> **The Secretary should conduct research on appropriate and effective volume control methods for services provided in hospital outpatient departments and other ambulatory settings. Even with a prospective payment system that relies on Ambulatory Patient Groups or some other service classification scheme, Medicare spending for ambulatory services will continue to grow at a rapid pace because of increased volume. The Secretary should also address how the changing health care delivery system will affect utilization and site of care.**

The Commission supports the Secretary's efforts and congressional intent to establish prospective payment methods for hospital outpatient services under the Medicare program. The Secretary is considering a payment system that would rely on Ambulatory Patient Groups to classify procedures and would assign the same payment rate to similar services. Such a system would create incentives for controlling costs by offering providers the opportunity for a profit as well as the risk of financial loss. The current payment method for hospital-provided outpatient services contributes to both cost and charge inflation. Because payments incorporate at least a portion of facility-specific costs or charges, hospitals that reduce their costs receive less in payments. Thus, there is little financial incentive to deliver care more efficiently.

ProPAC recognizes, however, that a prospective payment rate per unit of service does not control the number of services provided. In the hospital outpatient department, as in all ambulatory settings, increased volume has significantly affected spending growth.

Various methods to control the volume of ambulatory services in the hospital setting, as well as in other sites, should be explored. These include bundling, or grouping services into a package for which a single payment is made; expenditure targets, or setting an acceptable rate of expenditure growth combined with measures to reduce future outlays if the target is exceeded; and capitated methods, or putting providers at financial risk for a defined set of services. The Commission has conducted preliminary analyses of the volume control potential of bundling. Such an approach may limit the increase in ancillary service use, which currently accounts for a small portion of payments associated with outpatient surgeries or radiology procedures. It is unlikely, however, to control the number of surgical and radiological services. Other methods to constrain volume, such as utilization review, case management, and limiting the growth of providers, also should be explored.

In these analyses, the unique characteristics of ambulatory services that contribute to the difficulty in controlling use should be considered. First, most of these services are provided in multiple settings such as hospital outpatient departments, physicians' offices, and free-standing ambulatory clinics. Because Medicare's payment methods differ by site of service, if payment and volume controls are imposed in one setting, utilization probably would shift to another. Second, the broad range of ambulatory services and procedures, combined with the diverse reasons for an ambulatory encounter, complicate the appropriate grouping of services into a payment bundle or under an expenditure target. Third, the difficulty in defining the unit for outpatient payment, along with multiple ambulatory provider types, leaves many opportunities to increase service use and makes it difficult to establish the appropriate payment rate. Finally, data on expected and appropriate ambulatory service use are inadequate; such information would be needed to develop capitated payment rates.

The Secretary should consider the dramatic changes taking place in the organization of health care delivery as volume control methods are being explored. Some private insurers have changed the mix and reduced the use of services through managed care techniques. The Medicare program should explore adopting some of these innovative methods to constrain total program expenditures. New relationships among providers, as evidenced

by the increase in integrated delivery networks, are likely to change referral patterns and choice of service site. It is important that Medicare's payment mechanisms account for these changing characteristics of the delivery system.

Recommendation 13: Changes to Medicare's Hospital Outpatient Payment Method

> **Beneficiary coinsurance for hospital-provided outpatient services should be reduced from 20 percent of charges to 20 percent of payments. Further, until prospective payment for hospital outpatient services is implemented, the payment formula should be changed to fully reflect beneficiary coinsurance payments. The savings from correcting the payment formula should be used to offset program expenditure increases caused by reducing beneficiary liability.**

The Medicare beneficiary's share of the payment for hospital-provided outpatient services is significantly more than what the Congress intended. It exceeds 20 percent of the total payment and, therefore, is higher than it would have been had services been provided in another setting. Because payments for these services are not prospective and thus not known until annual cost reports are settled, copayments are calculated as 20 percent of charges, rather than 20 percent of payments. Historically, payments and charges were similar, so the beneficiary's share was not excessive. Over time, however, charges have grown significantly faster than Medicare payments, resulting in an increasing proportion of payments coming from the beneficiary. According to HCFA estimates for 1994, beneficiary copayments for ambulatory surgeries, radiology procedures, and diagnostic services furnished in hospital outpatient settings equaled about 50 percent of payments. This is projected to grow to almost 70 percent by 2000.

The Commission believes the beneficiary share should be reduced immediately. It recognizes this means that copayments would need to be based on an estimate of payments until a prospective system is implemented. This change also will significantly increase Medicare outlays. If necessary, the policy could be phased in over several years. Nevertheless, ProPAC believes relief to Medicare beneficiaries should not wait until the implementation of prospective payment for these services.

A related problem with Medicare's hospital outpatient payment method for most ambulatory surgeries, radiology procedures, and diagnostic services should be corrected at the same time. Payments are based on a formula that combines hospital-specific costs or charges with a prospective rate. The facility-specific proportion is reduced by 20 percent to reflect the beneficiary's coinsurance. The other portion of the payment is based on 80 percent of the applicable prospective rate. Because the second part of the formula reflects the incorrect assumption that 20 percent of the prospective rate equals 20 percent of charges, Medicare program payments are not reduced by the full amount of beneficiary coinsurance. This results in hospitals receiving higher payments than were intended, the so-called formula-driven overpayment. The discrepancy between what should have been paid and what actually was paid has been increasing each year because hospital charges continue to grow faster than the prospective rates. Therefore, the formula should be corrected as soon as possible.

Both of these problems provide incentives for hospitals to raise their charges, thereby increasing beneficiary liability and total payments. Further, the difference between what payments should be and actual payments widens.

In view of the relationship between these two problems and their off-setting cost effects, the Commission recommends correcting them simultaneously. The payment formula flaw will result in outlays that are nearly $1.7 billion higher than intended in 1996, according to HCFA. The savings from eliminating this flaw could be used to help offset the higher program costs related to lower beneficiary copayments. Depending on assumptions about behavioral responses to the payment change and when it is implemented, correcting the formula could finance between one-quarter and one-half of the increased payments resulting from reducing beneficiary liability. Some legislative proposals include correcting the payment formula to achieve budget savings. Given the related nature of these two problems and the magnitude of beneficiary coinsurance payments, however, they should be addressed together.

[FR Doc. 95–13183 Filed 6–1–95; 8:45 am]
BILLING CODE 4120–01–C

federal register

Friday
June 2, 1995

Part III

Department of Agriculture

Agricultural Marketing Service

7 CFR Parts 1007, 1093, 1094, 1096, and 1108
Milk Marketing Orders: Georgia et al.; Final Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1007, 1093, 1094, 1096, and 1108

[Docket Nos. AO–366–A36, et al.; DA–93–21]

Milk in the Southeast Marketing Area; Order Amending and Merging Orders

7 CFR part	Marketing area	Docket No.
1007	Georgia	AO–366–A36
1093	Alabama-West Florida.	AO–386–A14
1094	New Orleans-Mississippi.	AO–103–A56
1096	Greater Louisiana.	AO–257–A43
1108	Central Arkansas.	AO–243–A46

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule combines five Federal milk order marketing areas with unregulated counties in Arkansas, Georgia, Mississippi, and Tennessee to form the Southeast marketing area. It is based on industry proposals to merge the individual marketing areas so as to more equitably divide the markets' proceeds in what essentially has become a single, large market with significantly overlapping sales and procurement areas. More than two-thirds of the affected dairy farmers participating in a referendum voted in favor of the merged order.

EFFECTIVE DATE: July 1, 1995.

FOR FURTHER INFORMATION CONTACT: Nicholas Memoli, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, PO Box 96456, Washington, DC 20090–6456, (202) 690–1932.

SUPPLEMENTARY INFORMATION: This administrative rule is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and therefore is excluded from the requirements of Executive Order 12866.

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this rule will not have a significant economic impact on a substantial number of small entities. The amendments will promote orderly marketing of milk by producers and regulated handlers.

This final rule was reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have a retroactive effect and will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the entry of the ruling.

Prior documents in this proceeding:

Notice of Hearing: Issued September 3, 1993; published September 10, 1993 (58 FR 47653).

Supplemental Notice of Hearing: Issued October 13, 1993; published October 15, 1993 (58 FR 53436).

Extension of Time for Filing Briefs: Issued January 24, 1994; published February 3, 1994 (59 FR 5132).

Recommended Decision: Issued November 21, 1994; published November 29, 1994 (59 FR 61070).

Extension of Time for Filing Exceptions: Issued December 27, 1994; published January 3, 1995 (60 FR 65).

Final Decision: Issued May 3, 1995; published May 10, 1995 (60 FR 25014).

Findings and Determinations

The following findings and determinations supplement those that were made when the orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the aforesaid marketing areas. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure (7 CFR part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The Southeast order, which amends and merges the aforesaid orders, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the aforesaid marketing areas. The minimum prices specified in the order as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The Southeast order regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, marketing agreements upon which a hearing has been held;

(4) All milk and milk products handled by handlers, as defined in the Southeast order, are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products; and

(5) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require each handler to pay, as its pro rata share of such expense, 5 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to milk specified in § 1007.85.

(b) *Determinations.* It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in section 8c(9) of the Act) of more than 50 percent of the milk marketed within the Southeast marketing area to sign a proposed marketing agreement tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order; and

(3) The issuance of this order was approved by at least two-thirds of the producers who during the representative period of March 1995 were engaged in the production of milk for sale in the marketing area.

List of Subjects in 7 CFR Part 1007

Milk marketing orders.

Order Relative to Handling

It is therefore ordered that on and after the effective date hereof, the handling of milk in the Georgia, Alabama-West Florida, New Orleans-Mississippi, Greater Louisiana, and Central Arkansas marketing areas (parts 1007, 1093, 1094, 1096, and 1108, respectively) shall be amended and merged into one order. Parts 1093, 1094, 1096, and 1108 are vacated and reserved for future assignment. The handling of milk in the Southeast marketing area shall be in conformity to and in compliance with the following terms and conditions:

1. Part 1007 is revised to read as follows:

PART 1007—MILK IN THE SOUTHEAST MARKETING AREA

Subpart—Order Regulating Handling

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1007.90 Base milk.
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1007.94 Announcement of established bases.

Authority: 7 U.S.C. 601–674.

Subpart—Order Regulating Handling

General Provisions

§ 1007.1 General provisions.

The terms, definitions, and provisions in part 1000 of this chapter apply to and are hereby made a part of this order.

Definitions

§ 1007.2 Southeast marketing area.

The *Southeast marketing area,* hereinafter called the *marketing area,* means all territory within the bounds of the following Alabama, Florida, Georgia, Mississippi, Tennessee, and Arkansas counties and Louisiana parishes, including all piers, docks, and wharves connected therewith and all craft moored thereat, and all territory occupied by government (municipal, State, or Federal) reservations, installations, institutions, or other similar establishments if any part thereof is within any of the listed counties or parishes:

Zone 1

Arkansas Counties

Baxter, Clay, Fulton, Greene, Izard, Lawrence, Randolph, and Sharp.

Tennessee Counties

Cheatham, Clay, Davidson, Dickson, Fentress, Henry, Houston, Jackson, Lake, Macon, Montgomery, Obion, Overton, Pickett, Robertson, Smith, Stewart, Sumner, Trousdale, Weakley, and Wilson.

Zone 2

Arkansas Counties

Newton, Searcy, and Stone.

Tennessee Counties

Bedford, Benton, Bledsoe, Cannon, Carroll, Chester, Coffee, Crockett, DeKalb, Decatur, Dyer, Gibson, Grundy, Henderson, Hickman, Humphreys, Lewis, Madison, Marshall, Maury, Perry, Putnam, Rutherford, Van Buren, Warren, White, and Williamson.

Zone 3

Arkansas Counties

Cleburne, Craighead, Independence, Jackson, Johnson, Mississippi, Poinsett, Pope, and Van Buren.

Tennessee Counties

Lauderdale, Tipton, and Haywood.

Zone 4

Arkansas Counties

Conway, Crittenden, Cross, Faulkner, Garland, Lee, Lonoke, Monroe, Montgomery, Perry, Polk, Prairie, Pulaski, Saline, St. Francis, White, Woodruff, and Yell.

Tennessee Counties

Fayette, Franklin, Giles, Hardeman, Hardin, Lawrence, Lincoln, McNairy, Moore, Shelby, and Wayne.

Zone 5

Alabama Counties

Colbert, De Kalb, Franklin, Jackson, Lauderdale, Lawrence, Limestone, Madison, Marshall, and Morgan.

Arkansas Counties

Arkansas, Clark, Grant, Hot Spring, Howard, Jefferson, Phillips, Pike, and Sevier.

Georgia Counties

Gilmer, Towns, and Union.

Mississippi Counties

Alcorn, Benton, Coahoma, DeSoto, Itawamba, Lafayette, Lee, Marshall, Panola, Pontotoc, Prentiss, Quitman, Tate, Tippah, Tishomingo, Tunica, and Union.

Zone 6

Alabama Counties

Blount, Cherokee, Cullman, Etowah, Fayette, Lamar, Marion, Walker, and Winston.

Arkansas Counties

Bradley, Calhoun, Cleveland, Dallas, Desha, Drew, Hempstead, Lincoln, Little River, Nevada, and Ouachita.

Georgia Counties

Bartow, Cherokee, Dawson, Floyd, Gordon, Habersham, Lumpkin, Pickens, Rabun, and White.

Mississippi Counties

Bolivar, Calhoun, Chickasaw, Grenada, Monroe, Sunflower, Tallahatchie, and Yalobusha.

Zone 7

Alabama Counties

Bibb, Calhoun, Clay, Cleburne, Jefferson, Pickens, Randolph, Shelby, St. Clair, Talladega, and Tuscaloosa.

Arkansas Counties

Ashley, Chicot, Columbia, Lafayette, Miller, and Union.

Georgia Counties

Banks, Barrow, Butts, Carroll, Clarke, Clayton, Cobb, Coweta, De Kalb, Douglas, Elbert, Fayette, Forsyth, Franklin, Fulton, Greene, Gwinnett, Hall, Haralson, Hart, Heard, Henry, Jackson, Jasper, Lincoln, Madison, Morgan, Newton, Oconee, Oglethorpe, Paulding, Polk, Putnam, Rockdale, Spalding, Stephens, Taliaferro, Walton, and Wilkes.

Mississippi Counties

Attala, Carroll, Choctaw, Clay, Holmes, Humphreys, Leflore, Lowndes, Montgomery, Noxubee, Oktibbeha, Washington, Webster, and Winston.

Zone 8

Alabama Counties

Chambers, Chilton, Coosa, Greene, Hale, Lee, Perry, Sumter (north of U.S. 80), and Tallapoosa.

Georgia Counties

Baldwin, Bibb, Burke, Columbia, Crawford, Glascock, Hancock, Harris, Jefferson, Jones, Lamar, McDuffie, Meriwether, Monroe, Muscogee, Pike, Richmond, Talbot, Taylor, Troup, Twiggs, Upson, Warren, Washington, and Wilkinson.

Louisiana Parishes

Bienville, Bossier, Caddo, Claiborne, East Carroll, Jackson, Lincoln, Morehouse, Ouachita, Richland, Union, Webster, and West Carroll.

Mississippi Counties

Issaquena, Kemper, Leake, Madison, Neshoba, Sharkey, and Yazoo.

Zone 9

Alabama Counties

Autauga, Bullock, Dallas, Elmore, Lowndes, Macon, Marengo, Montgomery, Russell, Sumter (south of U.S. 80), and Wilcox.

Georgia Counties

Bleckley, Bulloch, Candler, Chattahoochee, Crisp, Dodge, Dooly, Effingham, Emanuel, Evans, Houston, Jenkins, Johnson, Laurens, Macon, Marion, Montgomery, Peach, Pulaski, Schley, Screven, Stewart, Sumter, Tattnall, Telfair, Toombs, Treutlen, Webster, Wheeler, and Wilcox.

Louisiana Parishes

Caldwell, De Soto, Franklin, Madison, Natchitoches (north of State Highway 6 and U.S. 84), Red River, Tensas, and Winn.

Mississippi Counties

Claiborne, Clarke, Copiah, Hinds, Jasper, Lauderdale, Newton, Rankin, Scott, Simpson, Smith, and Warren.

Zone 10

Alabama Counties

Barbour, Butler, Choctaw, Clarke, Coffee, Conecuh, Covington, Crenshaw, Dale, Escambia, Geneva, Henry, Houston, Monroe, Pike, and Washington.

Georgia Counties

Appling, Atkinson, Bacon, Baker, Ben Hill, Berrien, Brantley, Brooks, Bryan, Calhoun, Camden, Charlton, Chatham, Clay, Clinch, Coffee, Colquitt, Cook, Decatur, Dougherty, Early, Echols, Glynn, Grady, Irwin, Jeff Davis, Lanier, Lee, Liberty, Long, Lowndes, McIntosh, Miller, Mitchell, Pierce, Quitman, Randolph, Seminole, Terrell, Thomas, Tift, Turner, Ware, Wayne, and Worth.

Louisiana Parishes

Avoyelles, Catahoula, Concordia, Grant, La Salle, Natchitoches (south of State Highway 6 and U.S. 84), Rapides, Sabine, and Vernon.

Mississippi Counties

Adams, Amite, Covington, Forrest, Franklin, Greene, Jefferson, Jefferson Davis, Jones, Lamar, Lawrence, Lincoln, Marion, Perry, Pike, Walthall, Wayne, and Wilkinson.

Zone 11

Alabama Counties

Baldwin and Mobile (more than 20 miles from the Mobile city hall).

Florida Counties

Escambia, Okaloosa, Santa Rosa, and Walton.

Louisiana Parishes

Allen, Beauregard, East Feliciana, Evangeline, Pointe Coupee, St. Helena, St. Landry, St. Tammany, Tangipahoa, Washington, and West Feliciana.

Mississippi Counties

George, Hancock, Harrison, Jackson, Pearl River, and Stone.

Zone 12

Alabama Counties

Mobile (within 20 miles of the Mobile city hall).

Louisiana Parishes

Acadia, Ascension, Assumption, Calcasieu, Cameron, East Baton Rouge, Iberia, Iberville, Jefferson, Jefferson Davis, Lafayette, Lafourche, Livingston, Orleans, Plaquemines, St. Bernard, St. Charles, St. James, St. John the Baptist, St. Martin, St. Mary, Terrebonne, Vermilion, and West Baton Rouge.

§ 1007.3 Route disposition.

Route disposition means a delivery to a retail or wholesale outlet (except a plant), either directly or through any distribution facility (including disposition from a plant store, vendor or vending machine) of a fluid milk product classified as Class I milk. Packaged fluid milk products that are transferred to a distributing plant from a plant with route disposition in the marketing area and which are classified as Class I under § 1007.40(a) shall be considered as route disposition from the transferor plant, rather than the transferee plant, for the single purpose of qualifying it as a pool plant under § 1007.7(a).

§ 1007.4 Plant.

Plant means the land, buildings, facilities, and equipment constituting a single operating unit or establishment at which milk or milk products, including filled milk, are received, processed, or packaged. Separate facilities without stationary storage tanks that are used only as a reload point for transferring bulk milk from one tank truck to another or separate facilities used only as a distribution point for storing packaged fluid milk products in transit for route disposition shall not be a plant under this definition.

§ 1007.5 Distributing plant.

Distributing plant means a plant that is approved by a duly constituted regulatory agency for the handling of Grade A milk and at which fluid milk products are processed or packaged and from which there is route disposition in the marketing area during the month.

§ 1007.6 Supply plant.

Supply plant means a plant that is approved by a duly constituted regulatory agency for the handling of Grade A milk and from which fluid milk products are transferred during the month to a pool distributing plant.

§ 1007.7 Pool plant.

Pool plant means a plant specified in paragraphs (a), (b), (c) or (d) of this section, or a unit of plants as specified in paragraph (e) of this section, but excluding a plant specified in paragraph (g) of this section. The pooling standards described in paragraphs (a) through (c) of this section are subject to modification pursuant to paragraph (f) of this section:

(a) A distributing plant from which during the month:

(1) Total route disposition, except filled milk, is equal to 50 percent or more of the total quantity of Grade A fluid milk products, except filled milk, physically received at such plant or diverted therefrom pursuant to § 1007.13; and

(2) Route disposition, except filled milk, in the marketing area is at least the lesser of a daily average of 1,500 pounds or 10 percent of the total quantity of fluid milk products, except filled milk, physically received or diverted therefrom pursuant to § 1007.13.

(b) A supply plant from which during each of the months of July through November 60 percent (40 percent during each of the months of December through June) of the total quantity of Grade A milk that is received during the month from dairy farmers (including producer milk diverted from the plant pursuant to § 1007.13 but excluding milk diverted to such plant) and handlers described in § 1007.9(c) is transferred to pool distributing plants.

(c) A plant located within the Southeast marketing area that is operated by a cooperative association if pool plant status under this paragraph is requested for such plant by the cooperative association and during the month producer milk of members of such cooperative association is delivered directly from farms to pool distributing plants or is transferred to such plants as a fluid milk product from the cooperative's plant. Such deliveries, in excess of receipts by transfer from pool distributing plants, must equal not less than 60 percent of the total producer milk of such cooperative association in each of the months of July through November, and 40 percent of such milk in each of the months of December through June. The plant's pool plant status shall be subject to the following conditions:

(1) The plant does not qualify as a pool plant under paragraphs (a) or (b) of this section or under the provisions of another Federal order applicable to a distributing plant or a supply plant; and

(2) The plant is approved by a duly constituted regulatory agency to handle Grade A milk.

(d) A plant located within the marketing area (other than a producer-handler plant or a governmental agency plant) that meets the qualifications described in paragraph (a) of this section regardless of its quantity of route disposition in any other Federal order marketing area.

(e) Two or more plants operated by the same handler and that are located within the Southeast marketing area may qualify for pool status as a unit by meeting the total and in-area route disposition requirements specified in paragraph (a) of this section and the following additional requirements:

(1) At least one of the plants in the unit must qualify as a pool plant pursuant to paragraph (a) of this section;

(2) Other plants in the unit must process only Class I or Class II products and must be located in a pricing zone providing the same or a lower Class I price than the price applicable at the distributing plant included in the unit pursuant to paragraph (e)(1) of this section; and

(3) A written request to form a unit, or to add or remove plants from a unit, must be filed with the market administrator prior to the first day of the month for which it is to be effective.

(f) The applicable percentages in paragraphs (a) through (c) of this section may be increased or decreased up to 10 percentage points by the market administrator if, following a written request for such a revision, the market administrator finds that such revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the market administrator shall investigate the need for the revision by conducting an investigation and conferring with the Director of the Dairy Division. If the investigation shows that a revision might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and inviting written data, views, and arguments. Any decision to revise an applicable percentage must be issued in writing seven days before the effective date.

(g) The term *pool plant* shall not apply to the following plants:

(1) A *producer-handler* plant;

(2) An *exempt plant* as defined in § 1007.8(e);

(3) A plant qualified pursuant to paragraph (a) of this section which is not located within the Southeast marketing area, meets the pooling requirements of another Federal order, and has had greater sales in such other Federal order marketing area for three consecutive months, including the current month;

(4) A plant qualified pursuant to paragraph (a) of this section which is located in another order's marketing area and which is required to be regulated under such other order because of its location within the other order's marketing area; and

(5) A plant qualified pursuant to paragraph (b) of this section which also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made to plants regulated under such other order than are made to plants regulated under this part, or such plant has automatic pooling status under such other order.

§ 1007.8 Nonpool plant.

Nonpool plant means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) *Other order plant* means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) *Producer-handler plant* means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) *Partially regulated distributing plant* means a nonpool plant that is not an other order plant, a producer-handler plant, or an exempt plant, from which there is route disposition in consumer-type packages or dispenser units in the marketing area during the month.

(d) *Unregulated supply plant* means a supply plant that does not qualify as a pool supply plant and is not an other order plant, a producer-handler plant, or an exempt plant.

(e) *Exempt plant* means a plant:

(1) Operated by a governmental agency from which fluid milk products are distributed in the marketing area. Such plant shall be exempt from all provisions of this part; or

(2) Which has monthly route disposition of 100,000 pounds or less during the month. Such plant will be exempt from the pricing and pooling provisions of this order, but the handler will be required to file periodic reports as prescribed by the market administrator to enable determination of the exempt status of such handler.

§ 1007.9 Handler.

Handler means:

(a) Any person who operates one or more pool plants;

(b) Any cooperative with respect to producer milk which it causes to be diverted pursuant to § 1007.13 for the account of such cooperative association;

(c) Any cooperative association with respect to milk that it receives for its account from the farm of a producer for delivery to a pool plant of another handler in a tank truck owned and operated by, or under the control of, such cooperative association, unless both the cooperative association and the operator of the pool plant notify the market administrator prior to the time that such milk is delivered to the pool plant that the plant operator will be the handler of such milk and will purchase such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples. Milk for which the cooperative association is the handler pursuant to this paragraph shall

be deemed to have been received by the cooperative association at the location of the pool plant to which such milk is delivered;

(d) Any person who operates a partially regulated distributing plant;

(e) A producer-handler;

(f) Any person who operates an other order plant described in § 1007.8(a);

(g) Any person who operates an unregulated supply plant; and

(h) Any person who operates an exempt plant.

§ 1007.10 Producer-handler.

Producer-handler means a person who:

(a) Operates a dairy farm and a distributing plant from which there is monthly route disposition in excess of 100,000 pounds per month;

(b) Receives no Class I milk from sources other than his/her own farm production and pool plants;

(c) Disposes of no other source milk as Class I milk; and

(d) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary to produce all Class I milk handled (excluding receipts from pool plants) and the operation of the processing and packaging business are his/her personal enterprise and personal risk.

§ 1007.11 [Reserved]

§ 1007.12 Producer.

(a) Except as provided in paragraph (b) of this section, *producer* means any person who produces milk approved by a duly constituted regulatory agency for fluid consumption as Grade A milk and whose milk is:

(1) Received at a pool plant directly from such producer;

(2) Received by a handler described in § 1007.9(c); or

(3) Diverted from a pool plant in accordance with § 1007.13.

(b) *Producer* shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) Any person with respect to milk produced by such person whose milk is delivered to an exempt plant, excluding producer milk diverted to such exempt plant pursuant to § 1007.13;

(3) Any person with respect to milk produced by such person which is diverted to a pool plant from an other order plant if the other order plant designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1007.44(a)(8)(iii) and the corresponding step of § 1007.44(b); or

(4) Any person with respect to milk produced by such person which is reported as diverted to an other order plant if any portion of such person's milk so moved is assigned to Class I under the provisions of such other order.

§ 1007.13 Producer milk.

Producer milk means the skim milk and butterfat contained in milk of a producer that is:

(a) Received at a pool plant directly from such producer by the operator of the plant;

(b) Received by a handler described in § 1007.9(c);

(c) Diverted from a pool plant to the pool plant of another handler. Milk so diverted shall be deemed to have been received at the location of the plant to which diverted; or

(d) Diverted by the operator of a pool plant or cooperative association to a nonpool plant that is not a producer-handler plant, subject to the following conditions:

(1) In any month of December through June, not less than four days' production of the producer whose milk is diverted is physically received at a pool plant during the month;

(2) In any month of July through November, not less than ten days' production of the producer whose milk is diverted is physically received at a pool plant during the month;

(3) The total quantity of milk so diverted during the month by a cooperative association shall not exceed 33 percent during the months of July through November, or 50 percent during the months of December through June, of the producer milk that the cooperative association caused to be delivered to, and physically received at, pool plants during the month;

(4) The operator of a pool plant that is not a cooperative association may divert any milk that is not under the control of a cooperative association that diverts milk during the month pursuant to paragraph (d) of this section. The total quantity of milk so diverted during the month shall not exceed 33 percent during the months of July through November, or 50 percent during the months of December through June, of the producer milk physically received at such plant (or such unit of plants in the case of plants that pool as a unit pursuant to § 1007.7(d)) during the month;

(5) Any milk diverted in excess of the limits prescribed in paragraphs (d)(3) and (4) of this section shall not be producer milk. The diverting handler shall designate the dairy farmer deliveries that will not be producer milk pursuant to paragraphs (d)(3) and (4) of this section. If the handler fails to make such designation, no milk diverted by such handler shall be producer milk;

(6) To the extent that it would result in nonpool status for the plant from which diverted, milk diverted for the account of a cooperative association from the pool plant of another handler shall not be producer milk;

(7) The cooperative association shall designate the dairy farm deliveries that are not producer milk pursuant to paragraph (d)(6) of this section. If the cooperative association fails to make such designation, no milk diverted by it to a nonpool plant shall be producer milk;

(8) Diverted milk shall be priced at the location of the plant to which diverted; and

(9) The market administrator may increase or decrease the applicable percentages in paragraphs (d) (3) and (4) of this section by up to 10 percentage points, and may increase or decrease the 10-day and 4-day delivery requirements in paragraphs (d) (1) and (2) of this section by 50 percent if, following a written request for such a revision, the market administrator finds that such revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the market administrator shall investigate the need for the revision by conducting an investigation and conferring with the Director of the Dairy Division. If the investigation shows that a revision might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and inviting written data, views, and arguments. Any decision to revise an applicable percentage must be issued in writing seven days before the effective date.

§ 1007.14 Other source milk.

Other source milk means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1007.40(b)(1) from any source other than producers, a handler described in § 1007.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1007.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1007.40(b)(1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1007.40(b)(1)) for which the handler fails to establish a disposition.

§ 1007.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, *fluid milk product* means any milk products in fluid or frozen form containing less than 9 percent butterfat, that are in bulk or are packaged, distributed and intended to be used as beverages. Such products include, but are not limited to: Milk, skim milk, lowfat milk, milk drinks, buttermilk, and filled milk, including any such beverage products that are flavored, cultured, modified with added nonfat milk solids, sterilized, concentrated (to not more than 50 percent total milk solids), or reconstituted.

(b) The term *fluid milk product* shall not include:

(1) Plain or sweetened evaporated milk, plain or sweetened evaporated skim milk, sweetened condensed milk or skim milk, formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quantity of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

§ 1007.16 Fluid cream product.

Fluid cream product means cream (other than plastic cream or frozen cream), including sterilized cream, or a mixture of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

§ 1007.17 Filled milk.

Filled milk means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

§ 1007.18 Cooperative association.

Cooperative association means any cooperative marketing association of producers which the Secretary determines after application by the association:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act;" and

(b) To have full authority in the sale of milk of its members and be engaged in making collective sales of, or marketing, milk or milk products for its members.

§ 1007.19 Commercial food processing establishment.

Commercial food processing establishment means any facility, other than a milk or filled milk plant, to which bulk fluid milk products and bulk fluid cream products are disposed of, or producer milk is diverted, that uses such receipts as ingredients in food products, and has no disposition of fluid milk products or fluid cream products other than those that it received in consumer type packages. Producer milk diverted to commercial food processing establishments shall be subject to the same provisions relating to diversions to plants, including, but not limited to, provisions in §§ 1007.13, 1007.41, and 1007.52.

Handler Reports

§ 1007.30 Reports of receipts and utilization.

On or before the 5th day after the end of the month (if postmarked), or not later than the 7th day if the report is delivered in person to the office of the market administrator, each handler shall report for such month to the market administrator, in the detail and on forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of its pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1007.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1007.40(b)(1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1007.9(b) and (c) shall report:

(1) The quantities of skim milk and butterfat contained in receipts from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to its receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

§ 1007.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1007.9(a), (b), and (c) shall report to the market administrator its producer payroll for such month, in detail prescribed by the market administrator, showing for each producer:

(1) Such producer's name and address;

(2) The total pounds of milk received from such producer, showing separately the pounds of milk received from the producer on each delivery day;

(3) The average butterfat content of such milk; and

(4) The price per hundredweight, the gross amount due, the amount and nature of any deduction, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1007.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1007.32 Other reports.

(a) Each handler described in § 1007.9(a), (b), and (c) shall report to the market administrator on or before the 7th day after the end of each month of February through May the aggregate quantity of base milk received from producers during the month, and on or before the 20th day after the end of each month of February through May the pounds of base milk received from each producer during the month. In the case of milk diverted to another plant, the handler shall also report the pounds of base milk of each producer assigned to the divertee plant.

(b) In addition to the reports required pursuant to paragraph (a) of this section and §§ 1007.30 and 1007.31, each

handler shall report such information as the market administrator deems necessary to verify or establish each handler's obligation under the order.

Classification of Milk

§ 1007.40 Classes of utilization.

Except as provided in § 1007.42, all skim milk and butterfat required to be reported pursuant to § 1007.30 shall be classified as follows:

(a) *Class I milk* shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section;

(2) In packaged fluid milk products in inventory at the end of the month; and

(3) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk* shall be all skim milk and butterfat:

(1) Disposed in the form of a fluid cream product or any product containing artificial fat, fat substitutes, or 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b)(1) of this section and in bulk concentrated fluid milk products in inventory at the end of the month;

(3) In bulk fluid milk products and bulk fluid cream products disposed of or diverted to a commercial food processing establishment if the market administrator is permitted to audit the records of the commercial food processing establishment for the purpose of verification. Otherwise, such uses shall be Class I;

(4) Used to produce:

(i) Cottage cheese, lowfat cottage cheese, dry curd cottage cheese, ricotta cheese, pot cheese, Creole cheese, and any similar soft, high-moisture cheese resembling cottage cheese in form or use;

(ii) Milkshake and ice milk mixes (or bases), frozen desserts, and frozen dessert mixes distributed in one-quart containers or larger and intended to be used in soft or semi-solid form;

(iii) Aerated cream, frozen cream, sour cream, sour half-and-half, sour cream mixtures containing nonmilk items, yogurt, and any other semi-solid product resembling a Class II product;

(iv) Eggnog, custards, puddings, pancake mixes, buttermilk biscuit mixes, coatings, batter, and similar products;

(v) Formulas especially prepared for infant feeding or dietary use (meal replacement) that are packaged in hermetically sealed containers;

(vi) Candy, soup, bakery products and other prepared foods which are processed for general distribution to the public, and intermediate products, including sweetened condensed milk, to be used in processing such prepared food products; and

(vii) Any product not otherwise specified in this section.

(c) *Class III milk* shall be all skim milk and butterfat:

(1) Used to produce:

(i) Cream cheese and other spreadable cheeses, and hard cheese of types that may be shredded, grated, or crumbled, and are not included in paragraph (b)(4)(i) of this section;

(ii) Butter, plastic cream, anhydrous milkfat, and butteroil;

(iii) Any milk product in dry form except nonfat dry milk;

(iv) Evaporated or sweetened condensed milk in a consumer-type package and evaporated or sweetened condensed skim milk in a consumer-type package; and

(2) In inventory at the end of the month of unconcentrated fluid milk products in bulk form and products specified in paragraph (b)(1) of this section in bulk form;

(3) In fluid milk products, products specified in paragraph (b)(1) of this section, and products processed by the disposing handler that are specified in paragraphs (b)(4)(i) through (iv) of this section, that are disposed of by a handler for animal feed;

(4) In fluid milk products, products specified in paragraph (b)(1) of this section, and products processed by the disposing handler that are specified in paragraphs (b)(4) (i) through (iv) of this section, that are dumped by a handler. The market administrator may require notification by the handler of such dumping in advance for the purpose of having the opportunity to verify such disposition. In any case, classification under this paragraph requires a handler to maintain adequate records of such use. If advance notification of such dumping is not possible, or if the market administrator so requires, the handler must notify the market administrator on the next business day following such use;

(5) In fluid milk products and products specified in paragraph (b)(1) of this section that are destroyed or lost by a handler in a vehicular accident, flood, fire, or in a similar occurrence beyond the handler's control, to the extent that the quantities destroyed or lost can be verified from records satisfactory to the market administrator;

(6) In skim milk in any modified fluid milk product or in any product specified in paragraph (b)(1) of this section that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1007.15 and the fluid cream product definition pursuant to § 1007.16; and

(7) In shrinkage assigned pursuant to § 1007.41(a) to the receipts specified in § 1007.41(a)(2) and in shrinkage specified in § 1007.41 (b) and (c).

(d) *Class III–A* milk shall be all skim milk and butterfat used to produce nonfat dry milk.

§ 1007.41 Shrinkage.

For the purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1007.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraphs (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraphs (b) (1) through (6) of this section which was received in the form of a bulk fluid milk product or a bulk fluid cream product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a)(1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant);

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1007.9(c), except that if the operator of the plant to which the milk is delivered purchased such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage shall be 2 percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchased such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective amount of skim milk and butterfat to which percentages are applied in paragraphs (b) (1), (2), (4), (5), and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1007.9 (b) or (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1007.42 Classification of transfers and diversions.

(a) *Transfers and diversions to pool plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or transferred in the form of a bulk fluid cream product from a pool plant to another pool plant shall be classified as Class I milk unless the operators of both plants request the same classification in another class. In either case, the classification shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant after the computations pursuant to § 1007.44(a)(12) and the corresponding step of § 1007.44(b). The amount of skim milk or butterfat classified in each class shall include the assigned utilization of skim milk or butterfat in transfers of concentrated fluid milk products.

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1007.44(a)(7) or the corresponding step of § 1007.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1007.44(a) (11) or (12) or the corresponding steps of § 1007.44(b), the skim milk or butterfat so transferred, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or transferred in the form of a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b) (1), (2), or (3) of this section.

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in paragraph (b)(3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be Class I subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to the class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification shall be in accordance with the provisions of § 1007.40.

(c) *Transfers and diversions to producer-handlers and to exempt plants.* Skim milk or butterfat that is transferred or diverted from a pool plant to a producer-handler under another Federal order or to an exempt plant shall be classified:

(1) As Class I milk if transferred or diverted to a producer-handler;

(2) As Class I milk if transferred to an exempt plant in the form of a packaged fluid milk product;

(3) In accordance with the utilization assigned to it by the market administrator if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product to an exempt plant. For this purpose, the transferee's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to its receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant, a producer-handler plant, or an exempt plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or transferred in the form of a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraphs (d)(2)(i) (A) and (B) of this section are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization to its receipts as set forth in paragraphs (d)(2) (ii) through (viii) of this section:

(A) The transferor-handler or divertor-handler claims such classification in such handler's report of receipts and utilization filed pursuant § 1007.30 for the month within which such transaction occurred; and

(B) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification

purposes if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(A) Pro rata to receipts of packaged fluid milk products at such nonpool plants from pool plants;

(B) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plants from other order plants;

(C) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(D) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be classified to the extent possible in the following sequence:

(A) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(B) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(A) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(B) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class II utilization, and then to Class III utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class II utilization, then to any remaining Class III utilization, and then to Class I utilization at such nonpool plant; and

(viii) In determining the nonpool plant's utilization for purposes of this paragraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this paragraph.

(e) *Transfers by a handler described in § 1007.9(c) to pool plants.* Skim milk and butterfat transferred in the form of bulk milk by a handler described in § 1007.9(c) to another handler's pool plant shall be classified pursuant to § 1007.44 pro rata with producer milk received at the transferee-handler's plant.

§ 1007.43 General classification rules.

In determining the classification of producer milk pursuant to § 1007.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1007.30 and shall compute separately for each pool plant, and for each cooperative association with respect to milk for which it is the handler pursuant to § 1007.9 (b) or (c) that was not received at a pool plant, the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1007.40, 1007.41, and 1007.42. The combined pounds of skim milk and butterfat so determined in each class for a handler described in § 1007.9 (b) or (c) shall be such handler's classification of producer milk;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by the handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids;

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1007.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association;

(d) Skim milk and butterfat contained in receipts of bulk concentrated fluid milk and nonfluid milk products that are reconstituted for fluid use shall be assigned to Class I use, up to the reconstituted portion of labeled reconstituted fluid milk products, on a pro rata basis (except for any Class I use of specific concentrated receipts that is established by the handler) prior to any assignment under § 1007.44. Any remaining skim milk and butterfat in concentrated receipts shall be assigned to uses under § 1007.44 on a pro rata basis, unless a specific use of such receipts is established by the handler; and

(e) Class III–A milk shall be allocated in combination with Class III milk and the quantity of producer milk eligible to be priced in Class III–A shall be determined by prorating receipts from pool sources to Class III–A use on the basis of the quantity of total receipts of bulk fluid milk products allocated to Class III use at the plant.

§ 1007.44 Classification of producer milk.

For each month the market administrator shall determine for each handler described in § 1007.9(a) for each pool plant of the handler separately the classification of producer milk and milk received from a handler described in § 1007.9(c), by allocating the handler's receipts of skim milk and butterfat to the utilization of such receipts by such handler as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1007.41(b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in:

(i) Receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(ii) Packaged fluid milk products in inventory at the beginning of the month. This paragraph shall apply only if the pool plant was subject to the provisions of this paragraph or comparable provisions of another Federal milk order in the immediately preceding month;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products

received in packaged form from an other order plant, except that to be subtracted pursuant to paragraph (a)(7)(vi) of this section, as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1007.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1007.40(b)(1) in packaged form and in bulk concentrated fluid milk products that were in inventory at the beginning of the month, but not in excess of the pounds of skim milk remaining in Class II. This paragraph shall apply only if the pool plant was subject to the provisions of this paragraph or comparable provisions of another Federal milk order in the immediately preceding month;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in bulk concentrated fluid milk products and in other source milk (except other source milk received in the form of an unconcentrated fluid milk product or a fluid cream product) that is used to produce, or added to, any product specified in § 1007.40(b) (excluding the quantity of such skim milk that was classified as Class III milk pursuant to § 1007.40(c)(6)), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Bulk concentrated fluid milk products and other source milk (except other source milk received in the form of an unconcentrated fluid milk product) and, if paragraph (a)(5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1007.40(b)(1) that were not subtracted pursuant to paragraphs (a)(4), (a)(5), and (a)(6) of this section;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under any Federal milk order and from an exempt distributing plant;

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2)(i) of this section; and

(vi) Receipts of reconstituted skim milk in filled milk from an other order plant that is fully regulated under any Federal milk order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor-plant;

(8) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2)(i) and (7)(v) of this section for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(ii) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2)(i), (7)(v), and (8)(i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraphs (a)(8)(ii) (A) through (C) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount;

(A) Multiply by 1.25 the sum of the pounds of skim milk remaining in Class I at this allocation step at all pool plants of the handler (excluding any duplication of Class I utilization resulting from reported Class I transfers between pool plants of the handler);

(B) Subtract from the above result the sum of the pounds of skim milk in receipts at all pool plants of the handler of producer milk, milk from a handler described in § 1007.9(c), fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to paragraph (a)(7)(vi) of this section; and

(C) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this pool plant is of all such receipts remaining at this allocation step at all pool plants of the handler; and

(iii) The pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a)(7)(vi) of this section, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1007.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraphs (a)(2)(ii), (a)(5), and (a)(7)(i) of this section;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to paragraph (a)(1) of this section;

(11) Subject to the provisions of paragraphs (a)(11) (i) and (ii) of this section, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler), with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2)(i), (a)(7)(v), (a)(8)(i), and (a)(8)(ii) of this section and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received:

(i) Should the pounds of skim milk to be subtracted from Class II and Class III combined pursuant to paragraph (a)(11) of this section exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased

(increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount;

and

(ii) Should the pounds of skim milk to be subtracted from Class I pursuant to paragraph (a)(11) of this section exceed the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount, beginning with the nearest plant at which Class I utilization is available;

(12) Subtract in the manner specified below from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant that were not subtracted pursuant to paragraphs (a)(7)(vi) and (8)(iii) of this section:

(i) Subject to the provisions of paragraphs (a)(12) (ii), (iii) and (iv) of this section, such subtraction shall be pro rata to the pounds of skim milk in Class I and in Class II and Class III combined, with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, with respect to whichever of the following quantities represents the lower proportion of Class I milk:

(A) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1007.45(a); or

(B) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler);

(ii) Should the proration pursuant to paragraph (a)(12)(i) of this section result in the total pounds of skim milk at all pool plants of the handler that are to be subtracted at this allocation step from Class II and Class III combined exceeding the pounds of skim milk remaining in Class II and Class III at all such plants, the pounds of such excess shall be subtracted from the pounds remaining in Class I after such proration at the pool plants at which such other source milk was received;

(iii) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12) (i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class II and Class III combined that exceeds the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(iv) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12) (i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class I that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount beginning with the nearest plant at which Class I utilization is available;

(13) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from another pool plant according to the classification of such products pursuant to § 1007.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk and milk received from a handler described in § 1007.9(c), subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk and milk received from a handler described in § 1007.9(c) in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraph (a)(14) of this section and the corresponding step of paragraph (b) of this section.

§ 1007.45 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1007.44(a)(12) and the corresponding step of § 1007.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to §§ 1007.43(d) and 1007.44 on the basis of such report (including any reclassification of inventories of bulk concentrated fluid milk products), and thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 12th day after the end of each month, report to each cooperative association which so requests, the percentage of producer milk delivered by members of such association that was used in each class by each handler receiving such milk. For the purpose of this report the milk so received shall be prorated to each class in accordance with the total utilization of producer milk by such handler.

Class Prices

§ 1007.50 Class prices.

Subject to the provisions of § 1007.52, the class prices for the month per hundredweight of milk containing 3.5% butterfat shall be as follows:

(a) The *Class I price* shall be the basic formula price for the second preceding month plus $3.08.

(b) The *Class II price* shall be the basic formula price for the second preceding month plus $.30.

(c) The *Class III price* shall be the basic formula price for the month.

(d) The *Class III–A price* for the month shall be the average Central States nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times an amount computed by subtracting from 9 an amount calculated by dividing 0.4 by such nonfat dry milk price, plus the butterfat differential value per hundredweight of 3.5 percent milk and rounded to the nearest cent, and subject to the adjustments set forth in paragraph (c) of this section for the applicable month.

§ 1007.51 Basic formula price.

The *basic formula price* shall be the preceding month's average pay price for manufacturing grade milk in Minnesota and Wisconsin using the "base month" series, as reported by the Department, adjusted to a 3.5 percent butterfat basis using the butterfat differential for the preceding month computed pursuant to § 1007.74 and rounded to the nearest cent, plus or minus the change in gross value yielded by the butter-nonfat dry milk and Cheddar cheese product price formula computed pursuant to paragraphs (a) through (e) of this section.

(a) The gross values of per hundredweight of milk used to manufacture butter-nonfat dry milk and Cheddar cheese shall be computed, using price data determined pursuant to paragraph (b) of this section and annual yield factors, for the preceding month and separately for the current month as follows:

(1) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the Grade AA butter price by 4.27;

(ii) Multiply the nonfat dry milk price by 8.07; and

(iii) Multiply the dry buttermilk price by 0.42.

(2) The gross value of milk used to manufacture Cheddar cheese shall be the sum of the following computations:

(i) Multiply the Cheddar cheese price by 9.87; and

(ii) Multiply the Grade A butter price by 0.238.

(b) The following product prices shall be used pursuant to paragraph (a) of this section:

(1) *Grade AA butter price.* Grade AA butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade AA butter price, as reported by the Department.

(2) *Nonfat dry milk price.* Nonfat dry milk price means the simple average for the month of the Western Nonfat Dry Milk Low/Medium Heat price, as reported by the Department.

(3) *Dry buttermilk price.* Dry buttermilk price means the simple average for the month of the Western Dry Buttermilk price, as reported by the Department.

(4) *Cheddar cheese price.* Cheddar cheese price means the simple average for the month of the National Cheese Exchange 40-pound block Cheddar cheese price, as reported by the Department.

(5) *Grade A butter price.* Grade A butter price means the simple average for the month of the Chicago Mercantile Exchange Grade A butter price, as reported by the Department.

(c) Determine the amounts by which the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk and the gross value per hundredweight of milk used to manufacture Cheddar cheese for the current month exceed or are less than the respective gross values for the preceding month.

(d) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (c) of this section by determining the relative proportion that the data included in each of the following paragraphs is of the total of the data represented in paragraphs (d)(1) and (d)(2) of this section:

(1) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for nonfat dry milk, 8.07, to determine the quantity (in hundredweights) of milk used in the production of butter-nonfat dry milk;

and

(2) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for Cheddar cheese, 9.87, to determine the quantity (in hundredweights) of milk used in the production of American cheese.

(e) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (c) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (d) of this section.

§ 1007.52 Plant location adjustments for handlers.

(a) For milk received at a plant from producers or a handler described in § 1007.9(c) and which is classified as Class I milk without movement in bulk form to a pool distributing plant at which a higher Class I price applies, the price specified in § 1007.50(a) shall be adjusted by the amount stated in paragraphs (a) (1) through (6) of this section for the location of such plant:

(1) For a plant located within one of the zones set forth in § 1007.2, the adjustment (cents per hundredweight) shall be as follows:

Zone 1	Minus 53.
Zone 2	Minus 48.
Zone 3	Minus 38.
Zone 4	Minus 31.
Zone 5	Minus 25.
Zone 6	Minus 10.
Zone 7	No adjustment.
Zone 8	Plus 10.
Zone 9	Plus 20.
Zone 10	Plus 32.
Zone 11	Plus 50.
Zone 12	Plus 57.

(2) For a plant located in that portion of the Tennessee Valley marketing area that is within the State of Georgia, the adjustment shall be minus 25 cents.

(3) For a plant located in the Missouri counties of Dunklin or Pemiscot, the adjustment shall be minus 53 cents.

(4) For a plant located in the Texas counties of Bowie or Cass, the adjustment shall be zero.

(5) For a plant located within another Federal order marketing area, other than in those counties specified in paragraphs (a) (2), (3), and (4) of this section, the adjustment shall be determined by subtracting the Class I differential price in Zone 7 of this order from the Class I differential price, adjusted for the plant's location, under such other Federal order.

(6) For a plant located outside the areas described in paragraphs (a) (1) through (5) of this section, the adjustment shall be computed by multiplying 2.5 cents per 10 miles, or fraction thereof (by the shortest hard-surfaced highway distance as determined by the market

administrator), from the nearer of Shreveport, Louisiana; Little Rock, Arkansas; Memphis, Tennessee; Jackson, Tennessee; Nashville, Tennessee; or Atlanta, Georgia, and subtracting that figure from the location adjustment applicable at Shreveport, Little Rock, Memphis, Jackson, Nashville, or Atlanta, as the case may be.

(b) For fluid milk products transferred in bulk form from a pool plant to a pool distributing plant at which a higher Class I price applies and which are classified as Class I milk, the Class I price shall be the Class I price at the transferee-plant subject to a location adjustment credit for the transferor-plant which shall be determined by the market administrator for skim milk and butterfat, respectively, as follows:

(1) Subtract from the pounds of skim milk remaining in Class I at the transferee-plant after the computations pursuant to § 1007.44(a)(12) plus the pounds of skim milk in receipts of concentrated fluid milk products from other pool plants that are assigned to Class I use, an amount equal to:

(i) The pounds of skim milk in receipts of milk at the transferee-plant from producers and handlers described in § 1007.9(c); and

(ii) The pounds of skim milk in receipts of packaged fluid milk products from other pool plants;

(2) Assign any remaining pounds of skim milk in Class I at the transferee-plant to the skim milk in receipts of fluid milk products from other pool plants, first to the transferor-plants at which the highest Class I price applies and then to other plants in sequence beginning with the plant at which the next highest Class I price applies;

(3) Compute the total amount of location adjustment credits to be assigned to transferor-plants by multiplying the hundredweight of skim milk assigned pursuant to paragraph (b)(2) of this section to each transferor-plant at which the Class I price is lower than the Class I price applicable at the transferor-plant and the transferee-plant, and add the resulting amounts;

(4) Assign the total amount of location adjustment credits computed pursuant to paragraph (b)(3) of this section to those transferor-plants that transferred fluid milk products containing skim milk classified as Class I milk pursuant to § 1007.42(a) and at which the applicable Class I price is less than the Class I price at the transferee-plant, in sequence beginning with the plant at which the highest Class I price applies. Subject to the availability of such credits, the credit assigned to each plant shall be equal to the hundredweight of such Class I skim milk multiplied by the adjustment rate determined pursuant to paragraph (b)(3) of this section for such plant. If the aggregate of this computation for all plants having the same adjustment as determined pursuant to paragraph (b)(3) of this section exceeds the credits that are available to those plants, such credits shall be prorated to the volume of skim milk in Class I in transfers from such plants; and

(5) Location adjustment credit for butterfat shall be determined in accordance with the procedure outlined for skim milk in paragraphs (b) (1) through (4) of this section.

(c) The market administrator shall determine and publicly announce the zone location of each plant of each handler. The market administrator shall notify the handler on or before the first day of any month in which a change in a plant location zone will apply.

(d) The Class I price applicable to other source milk shall be adjusted at the rates set forth in paragraph (a) of this section, except that the adjusted Class I price shall not be less than the Class III price.

§ 1007.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price and Class II prices for the following month, and the Class III and Class III–A prices for the preceding month.

§ 1007.54 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

Uniform Prices

§ 1007.60 Handler's value of milk for computing the uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of the handler's pool plants and of each handler described in § 1007.9 (b) and (c) with respect to milk that was not received at a pool plant as follows:

(a) Multiply the pounds of producer milk and milk received from a handler described in § 1007.9(c) that were classified in each class pursuant to §§ 1007.43(a) and 1007.44(c) by the applicable class prices, and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1007.44(a)(14) and the corresponding step of § 1007.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1007.74, that are applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1007.44(a)(9) and the corresponding step of § 1007.44(b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat assigned to Class I pursuant to § 1007.43(d) and the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1007.44(a)(7) (i) through (iv) and the corresponding step of § 1007.44(b), excluding receipts of bulk fluid cream products from an other order plant and bulk concentrated fluid milk products from pool plants, other order plants, and unregulated supply plants;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1007.44(a)(7) (v) and (vi) and the corresponding step of § 1007.44(b);

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1007.43(d) and § 1007.44(a)(7)(i) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1007.44(a)(11) and the corresponding step of § 1007.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(g) Subtract, for reconstituted milk made from receipts of nonfluid milk products, an amount computed by multiplying $1.00 (but not more than the difference between the Class I price applicable at the location of the pool plant and the Class III price) by the hundredweight of skim milk and butterfat contained in receipts of nonfluid milk products that are allocated to Class I use pursuant to § 1007.43(d);

(h) Exclude, for pricing purposes under this section, receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another order under § 1007.76 (a)(5) or (c); and

(i) For pool plants that transfer bulk concentrated fluid milk products to other pool plants and other order plants, add or subtract the amount per hundredweight of any class price change from the previous month that results from any inventory reclassification of bulk concentrated fluid milk products that occurs at the transferee plant. Any such applicable class price change shall be applied to the plant that used the concentrated milk in the event that the concentrated fluid milk products were made from bulk unconcentrated fluid milk products received at the plant during the prior month.

§ 1007.61 Computation of uniform price (including weighted average price and uniform prices for base and excess milk).

(a) The market administrator shall compute the weighted average price for each month and the uniform price for each month of June through January per hundredweight of milk of 3.5 percent butterfat content as follows:

(1) Combine into one total the values computed pursuant to § 1007.60 for all handlers who filed the reports prescribed in § 1007.30 for the month and who made payments pursuant to § 1007.71 for the preceding month;

(2) Add not less than one-half the unobligated balance in the producer-settlement fund;

(3) Add an amount equal to the total value of the minus adjustments and subtract an amount equal to the total value of the plus adjustments computed pursuant to § 1007.75;

(4) Divide the resulting amount by the sum of the following for all handlers included in these computations;

(i) The total hundredweight of producer milk; and

(ii) The total hundredweight for which a value is computed pursuant to § 1007.60(f); and

(5) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The resulting figure, rounded to the nearest cent, shall be the weighted average price for each month and the uniform price for the months of June through January.

(b) For each month of February through May, the market administrator shall compute the uniform prices per hundredweight for base milk and for excess milk, each of 3.5 percent butterfat content, as follows:

(1) Compute the total value of excess milk for all handlers included in the computations pursuant to paragraph (a)(1) of this section as follows:

(i) Multiply the hundredweight quantity of excess milk that does not exceed the total quantity of such handlers' producer milk assigned to Class III–A by the Class III–A price:

(ii) Multiply the remaining hundredweight quantity of excess milk that does not exceed the total quantity of such handlers' producer milk assigned to Class III by the Class III price:

(iii) Multiply the remaining hundredweight quantity of excess milk that does not exceed the total quantity of such handlers' producer milk assigned to Class II by the Class II price:

(iv) Multiply the remaining hundredweight quantity of excess milk by the Class I price; and

(v) Add together the resulting amounts;

(2) Divide the total value of excess milk obtained in paragraph (b)(1) of this section by the total hundredweight of such milk and adjust to the nearest cent. The resulting figure shall be the uniform price for excess milk;

(3) From the amount resulting from the computations pursuant to paragraphs (a)(1) through (a)(3) of this section subtract an amount computed by multiplying the hundredweight of milk specified in paragraph (a)(4)(ii) of this section by the weighted average price;

(4) Subtract the total value of excess milk determined by multiplying the uniform price obtained in paragraph (b)(2) of this section times the hundredweight of excess milk from the amount computed pursuant to paragraph (b)(3) of this section;

(5) Divide the amount calculated pursuant to paragraph (b)(4) of this section by the total hundredweight of base milk included in these computations; and

(6) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (b)(5) of this section. The resulting figure, rounded to the nearest cent, shall be the uniform price for base milk.

§ 1007.62 Announcement of uniform price and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 11th day after the end of the month the applicable uniform price(s) pursuant to § 1007.61 for such month.

Payments for Milk

§ 1007.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the producer-settlement fund into which the market administrator shall deposit all payments made by handlers pursuant to §§ 1007.71, 1007.76, and 1007.77, and out of which the market administrator shall make all payments pursuant to §§ 1007.72 and 1007.77. Payments due any handler shall be offset by any payments due from such handler.

§ 1007.71 Payments to the producer-settlement fund.

(a) On or before the 12th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:

(1) The total value of milk of the handler for such month as determined pursuant to § 1007.60.

(2) The sum of:

(i) The value at the uniform price(s) as adjusted pursuant to § 1007.75, of such handler's receipts of producer milk and milk received from handlers pursuant to § 1007.9(c); and

(ii) The value at the weighted average price applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1007.60(f).

(b) On or before the 25th day after the end of the month each person who operated an other order plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk in route disposition from such plant in the marketing area which was allocated to Class I at such plant. If there is route disposition from such plant in marketing areas regulated by two or more marketwide pool orders, the reconstituted skim milk allocated to Class I shall be prorated to each order according to such route disposition in each marketing area; and

(2) Compute the value of the reconstituted skim milk assigned in paragraph (b)(1) of this section to route disposition in this marketing area by the difference between the Class I price under this part applicable at the location of the other order plant (but not to be less than the Class III price) and the Class III price.

§ 1007.72 Payments from the producer-settlement fund.

On or before the 13th day after the end of each month, the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1007.71(a)(2) exceeds the amount computed pursuant to § 1007.71(a)(1). If, at such time, the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the funds are available.

§ 1007.73 Payments to producers and to cooperative associations.

(a) Each handler shall pay each producer for producer milk for which payment is not made to a cooperative association pursuant to paragraph (b) of this section, as follows:

(1) On or before the 26th day of each month, for milk received during the first 15 days of the month from such producer who has not discontinued delivery of milk to such handler before the 23rd day of the month at not less than the Class III price for the preceding month or 90 percent of the weighted average price for the preceding month, whichever is higher, less proper deductions authorized in writing by the producer. If the producer had discontinued shipping milk to such handler before the 25th day of any month, or if the producer had no established base upon which to receive payments during the base paying months of February through May, the applicable rate for making payments to such producer shall be the Class III price for the preceding month; and

(2) On or before the 15th day of the following month, an amount equal to not less than the uniform price(s), as adjusted pursuant to §§ 1007.74 and 1007.75, multiplied by the hundredweight of milk or base milk and excess milk received from such producer during the month, subject to the following adjustments:

(i) Less payments made to such producer pursuant to paragraph (a)(1) of this section;

(ii) Less deductions for marketing services made pursuant to § 1007.86;

(iii) Plus or minus adjustments for errors made in previous payments made to such producers; and

(iv) Less proper deductions authorized in writing by such producer.

(3) If a handler has not received full payment from the market administrator pursuant to § 1007.72 by the 15th day of such month, such handler may reduce payments pursuant to this paragraph to producers on a pro rata basis but not by more than the amount of the underpayment. Such payments shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following after receipt of the balance due from the market administrator.

(b) On or before the day prior to the dates specified in paragraph (a) (1) and (2) of this section, each handler shall make payment to the cooperative association for milk from producers who market their milk through the cooperative association and who have authorized the cooperative to collect such payments on their behalf an amount equal to the sum of the individual payments otherwise payable for such producer milk pursuant to paragraph (a) (1) and (2) of this section.

(c) If a handler has not received full payment from the market administrator pursuant to § 1007.72 by the 15th day of such month, such handler may reduce payments pursuant to paragraph (b) of this section to such cooperative association on a pro rata basis, prorating such underpayment to the volume of milk received from such cooperative association in proportion to the total milk received from producers by the handler, but not by more than the amount of the underpayment. Such payments shall be completed in the following manner:

(1) If the handler receives full payment from the market administrator by the 15th day of the month, the handler shall make payment to the cooperative association of the full value of the underpayment on the 15th day of the month;

(2) If the handler has not received full payment from the market administrator by the 15th day of the month, the handler shall make payment to the cooperative association of the full value of the underpayment on or before the date for making such payments pursuant to this paragraph next following after receipt of the balance due from the market administrator.

(d) Each handler pursuant to § 1007.9(a) who receives milk from a cooperative association as a handler pursuant to § 1007.9(c), including the milk of producers who are not members of such association, and who the market administrator determines have authorized such cooperative association to collect payment for their milk, shall pay such cooperative for such milk as follows:

(1) On or before the 25th day of the month for milk received during the first 15 days of the month, not less than the Class III price for the preceding month or 90 percent of the weighted average price for the preceding month, whichever is higher; and

(2) On or before the 14th day of the following month, not less than the appropriate uniform price(s) as adjusted pursuant to §§ 1007.74 and 1007.75, and less any payments made pursuant to paragraph (d)(1) of this section.

(e) If a handler has not received full payment from the market administrator pursuant to § 1007.72 by the 14th day of such month, such handler may reduce payments pursuant to paragraph (d) of this section to such cooperative association and complete such payments for milk received from such cooperative association in its capacity as a handler pursuant to § 1007.9(c), in the manner prescribed in paragraph (c) (1) and (2) of this section.

(f) In making payments to producers pursuant to this section, each handler shall furnish each producer, except a producer whose milk was received from a handler described in § 1007.9(c), a supporting statement in such form that it may be retained by the recipient which shall show:

(1) The month and identity of the producer;

(2) The daily and total pounds and the average butterfat content of producer milk;

(3) For the months of February through May the total pounds of base milk received from such producer;

(4) The minimum rate(s) at which payment to the producer is required pursuant to this order;

(5) The rate(s) used in making the payment if such rate(s) is (are) other than the applicable minimum rate(s);

(6) The amount, or rate per hundredweight, and nature of each deduction claimed by the handler; and

(7) The net amount of payment to such producer or cooperative association.

§ 1007.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform prices for base and excess milk shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.138 times the current month's butter price less 0.0028 times the preceding month's average pay price per hundredweight, at test, for manufacturing grade milk, in Minnesota and Wisconsin, using the "base month" series, adjusted pursuant to § 1007.51(a) through (e), as reported by the Department. The butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade A butter price as reported by the Department.

§ 1007.75 Plant location adjustments for producers and on nonpool milk.

(a) The uniform price and the uniform price for base milk shall be adjusted according to the location of the plant at which the milk was physically received at the rates set forth in § 1007.52(a); and

(b) The weighted average price applicable to other source milk shall be adjusted at the rates set forth in section § 1007.52(a) applicable at the location of the nonpool plant from which the milk was received, except that the adjusted weighted average price shall not be less than the Class III price.

§ 1007.76 Payments by a handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1007.30(b) and 1007.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be an amount resulting from the following computations:

(1) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:

(i) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any payment obligation under any order;

(3) Subtract the pounds of reconstituted milk that are made from nonfluid milk products and which are then disposed of as route disposition in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds by the difference between the Class I price and the weighted average price, both prices to be applicable at the location of the partially regulated distributing plant (except that the Class I price and weighted average price shall not be less than the Class III price); and

(5) Add the amount obtained from multiplying the pounds of labeled reconstituted milk included in paragraph (a)(3) of this section by the difference between the Class I price applicable at the location of the partially regulated distributing plant less $1.00 (but not to be less than the Class III price) and the Class III price. For any reconstituted milk that is not so labeled, the Class I price shall not be reduced by $1.00. Alternatively, for such disposition, payments may be made to the producer-settlement fund of the order regulating the producer milk used to produce the nonfluid milk ingredients at the difference between the Class I price applicable under the other order at the location of the plant where the nonfluid milk ingredients were processed (but not to be less than the Class III price) and the Class III price. This payment option shall apply only if a majority of the total milk received at the plant that processed the nonfluid milk ingredients is regulated under one or more Federal orders and payment may only be made to the producer-settlement fund of the order pricing a plurality of the milk used to produce the nonfluid milk ingredients. This payment option shall not apply if the source of the nonfluid ingredients used in reconstituted fluid milk products cannot be determined by the market administrator.

(b) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the value that would have been computed pursuant to § 1007.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant or an other order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be computed to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to paragraph (b)(1)(i) of this section. Any such transfers remaining after the above allocation which are in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1007.60 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest price class of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1007.60 for such handler shall include, in lieu of the value of other source milk specified in § 1007.60(f) less the value of such other source milk specified in § 1007.71(a)(2)(ii), a value of milk determined pursuant to § 1007.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributed plant during the month equivalent to the requirements of § 1007.7(b), subject to the following conditions:

(A) The operator of the partially regulated distributing plant submits with its reports filed pursuant to §§ 1007.30(b) and 1007.31(b) similar reports for each such nonpool supply plant;

(B) The operator of such nonpool plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for verification purposes; and

(C) The value of milk determined pursuant to § 1007.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(2) From the partially regulated distributing plant's value of milk computed pursuant to paragraph (b)(1) of this section, subtract:

(i) The gross payments by the operator of the partially regulated distributing plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1007.74, for milk received at the plant during the month that would have been producer milk had the plant been fully regulated;

(ii) If paragraph (b)(1)(iii) of this section applies, the gross payments by the operator of such nonpool supply plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1007.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated; and

(iii) The payments by the operator of the partially regulated distributing plant to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant and like payments by the operator of the nonpool supply plant if paragraph (b)(1)(iii) of this section applies.

(c) Any handler may elect partially regulated distributing plant status for any plant with respect to receipts of nonfluid milk ingredients assigned to Class I use under § 1007.43(d). Payments may be made to the producer-settlement fund of the order regulating the producer milk used to produce the nonfluid milk ingredients at the difference between the Class I price applicable under the other order at the location of the plant where the nonfluid milk ingredients were processed (but not less than the Class III price) and the Class III price. This payment option shall apply only if a majority of the total milk received at the plant that processed the nonfluid milk ingredients is regulated under one or more Federal orders and payment may only be made to the producer-settlement fund of the order pricing a plurality of the milk used to produce the nonfluid milk ingredients. This payment option shall not apply if the source of the nonfluid ingredients used in reconstituted fluid milk products cannot be determined by the market administrator.

§ 1007.77 Adjustment of accounts.

Whenever audit by the market administrator of any handler's reports, books, records, or accounts, or other verification discloses errors resulting in money due the market administrator from a handler, or due a handler from the market administrator, or due a producer or cooperative association from a handler, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments as set forth in the provisions under which the error(s) occurred.

§ 1007.78 Charges on overdue accounts.

Any unpaid obligation due the market administrator from a handler pursuant to §§ 1007.71, 1007.76, 1007.77, 1007.78, 1007.85, and 1007.86 shall be increased 1.5 percent each month beginning with the day following the date such obligation was due under the order. Any remaining amount due shall be increased at the same rate on the corresponding day of each month until paid. The amounts payable pursuant to this section shall be computed monthly on each unpaid obligation and shall include any unpaid charges previously made pursuant to this section. The late charges shall be added to the respective accounts to which due. For the purpose of this section, any obligation that was determined at a date later than prescribed by the order because of a handler's failure to submit a report to the market administrator when due shall be considered to have been payable by the date it would have been due if the report had been filed when due.

Administrative Assessment and Marketing Service Deduction

§ 1007.85 Assessment for order administration.

As each handler's pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 15th day after the end of the month 5 cents per hundredweight or such lesser amount as the Secretary may prescribe with respect to:

(a) Receipts of producer milk (including such handler's own production) other than such receipts by a handler described in § 1007.9(c) that were delivered to pool plants of other handlers;

(b) Receipts from a handler described in § 1007.9(c);

(c) Receipts of concentrated fluid milk products from unregulated supply plants and receipts of nonfluid milk products assigned to Class I use pursuant to § 1007.43(d) and other source milk allocated to Class I pursuant to § 1007.44(a) (7) and (11) and the corresponding steps of § 1007.44(b), except such other source milk that is excluded from the computations pursuant to § 1007.60 (d) and (f); and

(d) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to § 1007.76(a)(2).

§ 1007.86 Deduction for marketing services.

(a) Except as provided in paragraph (b) of this section each handler, in making payments to producers for milk (other than milk of such handler's own production) pursuant to § 1007.73, shall deduct 7 cents per hundredweight or such lesser amount as the Secretary may prescribe and shall pay such deductions to the market administrator not later than the 15th day after the month. Such money shall be used by the market administrator to verify or establish weights, samples and tests of producer milk and provide market information for producers who are not receiving such services from a cooperative association. Such services shall be performed in whole or in part by the market administrator or an agent engaged by and responsible to the market administrator;

(b) In the case of producers for whom a cooperative association that the Secretary has determined is actually performing the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deduction specified in paragraph (a) of this section, such deductions from the payments to be made to such producers as may be authorized by the membership agreement or marketing contract between such cooperative association and such producers, and on or before the 15th day after the end of the month, pay such deductions to the cooperative association rendering such services accompanied by a statement showing the amount of any such deductions and the amount of milk for which such deduction was computed for each producer.

Base-Excess Plan

§ 1007.90 Base milk.

Base milk means the producer milk of a producer in each month of February through May that is not in excess of the producer's base multiplied by the number of days in the month.

§ 1007.91 Excess milk.

Excess milk means the producer milk of a producer in each month of February through May in excess of the producer's base milk for the month, and shall include all the producer milk in such months of a producer who has no base.

§ 1007.92 Computation of base for each producer.

(a) Subject to paragraph (c) of this section, a base for each dairy farmer who was a producer pursuant to § 1007.12 during one or more of the immediately preceding months of July through December shall be determined by dividing the total pounds of producer milk delivered by such producer during each of those months by the number of calendar days in the month, adding together the four highest monthly averages so computed, and dividing by four. If a producer operated more than one farm at the same time, a separate computation of base shall be made for each such farm.

(b) Any producer who delivered milk to a nonpool plant that became a pool plant after the beginning of the July-December base-forming period shall be assigned a base calculated as if the plant were a pool plant during such entire base-forming period. A base thus assigned shall not be transferable.

(c) A person who was unable to qualify as a producer during four or more of the immediately preceding months of July through December or who did not have at least four complete months of production, in either case for one or more of the reasons specified in this paragraph, may request a base computation based upon a lesser number of months by submitting to the market administrator in writing on or before February 1 a statement that establishes to the satisfaction of the market administrator that during four or more of the months in the immediately preceding July through December base-forming period the amount of milk produced on such producer's farm was substantially reduced because of conditions beyond the control of such person as a result of:

(1) The loss by fire, windstorm, or other natural disaster of a farm building used in the production of milk on the producer's farm;

(2) Brucellosis, bovine tuberculosis or other infectious diseases in the producer's milking herd as certified by a licensed veterinarian; or

(3) A quarantine by a Federal or State authority that prevented the dairy farmer from supplying milk from the farm of such producer to a plant.

§ 1007.93 Base rules.

(a) Except as provided in § 1007.92 (b) and (c) and paragraph (b) of this section, a base may be transferred in its entirety or in amounts of not less than 300 pounds effective on the first day of the month following the date on which such application is received by the market administrator. Base may be transferred only to a person who is or will be a producer by the end of the month that the transfer is to be effective. A base transfer to be effective on February 1 for the month of February must be received on or before February 15. Such application shall be on a form approved by the market administrator and signed by the baseholder or the legal representative of the baseholder's estate. If a base is held jointly, the application shall be signed by all joint holders or the legal representative of the estate of any deceased baseholder.

(b) A producer who transferred base on or after February 1 may not receive by transfer additional base that would be applicable during February through May of the same year. A producer who received base by transfer on or after February 1 may not transfer a portion of the base to be applicable during February through May of the same year, but may transfer the entire base.

(c) The base established by a partnership may be divided between the partners on any basis agreed to in writing by them if written notification of the agreed upon division of base by each partner is received by the market administrator prior to the first day of the month in which such division is to be effective.

(d) Two or more producers in a partnership may combine their separately established bases by giving notice to the market administrator prior to the first day of the month in which such combination of bases is to be effective.

§ 1007.94 Announcement of established bases.

On or before January 31 of each year, the market administrator shall calculate a base for each person who was a producer during one or more of the preceding months of July through December and shall notify each producer and the handler receiving milk from such dairy farmer of the base established by the producer. If requested by a cooperative association, the market administrator shall notify the cooperative association of each producer-member's base.

PARTS 1093, 1094, 1096, AND 1108 [REMOVED AND RESERVED]

2. Parts 1093, 1094, 1096, and 1108 are removed and reserved.

Dated: May 23, 1995.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Regulatory Programs.

[FR Doc. 95–13160 Filed 6–1–95; 8:45 am]

BILLING CODE 3410–02–P

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federal register

Friday
June 2, 1995

Part IV

Department of Housing and Urban Development

Office of the Assistance Secretary for Public and Indian Housing

Funding Availability for Training and Technical Assistance for the Prevention of Youth Violence in Public Housing; Notice

VOL 60 NO 106 JUNE 2 1995 UMI

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N–95–3906; FR–3889–N–01]

Notice of Funding Availability for Training and Technical Assistance for the Prevention of Youth Violence in Public Housing

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of Funding Availability (NOFA) for Training and Technical Assistance for the Prevention of Youth Violence in Public Housing.

SUMMARY: This NOFA solicits applications for a single two-year grant of up to $500,000. The grant is being awarded for the purposes of developing and implementing training and technical assistance (TA) for the prevention of youth violence in Public Housing. The TA and training are intended to assist public housing communities in conducting youth violence prevention activities and in using the most relevant scientific information when doing so. HUD is joining with the Centers for Disease Control and Prevention in this effort.

DATES: Applications must be received at HUD Headquarters at the address below on or before 3 p.m., Eastern Time, July 17, 1995. This application deadline is firm as to date and hour. In the interest of fairness of all competing applicants, the Department will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by any unanticipated or delivery-related problems. Applications received after the deadline will not be considered. A FAX is not acceptable.

APPLICATION SUBMISSION: An original and two copies of the application must be received by the deadline date at HUD Headquarters. Applications (originals and two copies) should be sent to the Crime Prevention and Security Division of the Office of Community Relations and Involvement (OCRI), Public and Indian Housing, Department of Housing and Urban Development, Room 4116, 451 Seventh Street, SW., Washington, DC 20410–0500.

FOR FURTHER INFORMATION, CONTACT: Elizabeth A. Cocke, Crime Prevention and Security Division (CPSD), Office of Community Relations and Involvement (OCRI), Public and Indian Housing, Department of Housing and Urban Development, Room 4116, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–1197. A telecommunications device for hearing or speech impaired persons (TDD) is available at (202) 708–0850. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this notice have been submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520) and have been assigned OMB control number 2577–0197, expiration date May 31, 1997.

I. Purpose and Substantive Description

(a) Authority

This grant is authorized under Chapter 2, Subtitle C, Title V of the Anti-Drug Abuse Act of 1988 (42 U.S.C. 11901 *et seq.*), as amended by Section 581 of the National Affordable Housing Act of 1990 (approved November 28, 1990, Pub. L. 101–625) (NAHA), and Section 161 of the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992) (1992 HCD Act).

(b) Allocation Amounts

The Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act 1995 (approved September 28, 1994, Pub. Law 103–327) (95 App. Act) appropriated $290 million for the Drug Elimination Program. Of the total $290 million appropriated, $10 million will fund drug elimination TA, contracts and other assistance training, program assessments, and associated costs (such as the cost of necessary travel for training participants). This NOFA makes up to $550,000 of the $10 million available for a cost-reimbursable grant of two years in duration.

(c) Eligibility

Organizations or combinations of organizations that can demonstrate experience and capability in youth violence prevention activities, scientific reviews, needs assessments, development and delivery of instructional materials, project monitoring and successful health promotion/disease prevention interaction with Pubic Housing Agencies (PHAs) or Community Based Organizations (CBOs) in low-income communities are eligible to apply.

(d) Background

Youth violence has become one of the greatest health problems in the United States. During the period from 1979 to 1991, homicide was the leading cause of death among African Americans 15 to 34 years of age and the second leading cause of death among African American youth 10 to 14 years of age. Risk factors such as poverty, hopelessness, low self esteem and discrimination are recognized as major factors contributing to youth violence.

A large proportion of teenagers in public housing are engaged in a constellation of high risk behaviors. A 1993 study of public housing drug, violent, and property crime rates in Los Angeles, Phoenix and Washington, DC showed that rates for these activities were considerably higher in public housing developments than citywide, and much higher than in large urban communities (Dunworth and Saiger, Rand Study, 1993).

HUD and the National Centers for Disease Control and Prevention (CDC) are soliciting applications for a single two-year grant of up to $550,000. The purpose of the grant is to assist public housing staff and residents in applying the results of current scientific research to the prevention of youth violence in pubic housing communities.

The HUD–CDC collaboration will increase the use of scientifically supported youth violence prevention activities in public housing developments. This is to be accomplished by the development and implementation of a system to provide scientifically based information, training, and other forms of technical assistance (TA) to PHAs throughout the United States. The effort will: (a) Determine the amount and type of youth violence prevention activities currently undertaken by PHAs; (b) determine the tools required by PHAs to augment both the quality and quantity of youth violence prevention activities; (c) develop a system to deliver TA to PHAs; and (d) implement and monitor the TA delivery system. In addition, the project will assist the research community in identifying and addressing youth violence prevention issues related to public housing.

(e) Grant Objectives

(1) First Year Objectives

(i) Develop, administer, and maintain an advisory group: This group at minimum should include representatives from PHA staff and residents (including young PHA residents), academia, CBOs, pubic health practitioners, and youth violence prevention program directors.

(ii) Identify and summarize existing PHA youth violence prevention efforts.

(iii) Identify and summarize the existing capability and need of PHAs to implement youth violence prevention activities (i.e. conduct a needs assessment).

(iv) Identify and summarize research on youth violence prevention pertinent to PHAs.

(v) Develop a realistic plan of action to deliver the TA to PHAs, thereby enabling the PHAs to implement scientifically based youth violence prevention activities.

(vi) Develop a plan to monitor and assess the effectiveness of the TA delivery system.

(vii) Review the plan of action and the findings of the first year's activities with the advisory group. Revise the plan of action.

(2) Second Year Objectives

(i) Implement the delivery of the TA to the PHAs.

(ii) Monitor the implementation of the TA delivery system.

(iii) Monitor the use of information and materials by the PHAs,

(iv) Review the progress and status of the project with the advisory group each semi-annual period.

(v) Share these findings with PHAs and the research community.

(f) Scope of Work

(1) General Requirements

(i) The grantee shall furnish all necessary personnel, materials, services, and equipment. The grantee shall also perform all work necessary for, or incidental to, the completion of the tasks set forth in paragraph I.(f)(2) of this NOFA.

(ii) The work to be performed under this grant includes, but is not limited to: Work with advisory groups; review of the administration and effectiveness of current PHA youth violence prevention efforts; provision of TA and training; evaluation of the TA and training; and submission of regular reports. In addition, the grantee shall attend one or more advisory group meetings at either HUD or CDC Headquarters each semi-annual period to provide a summary of the progress on the grant work.

(2) Specific Requirements

The grantee shall perform the following tasks in accordance with the grant objectives set forth in paragraph I.(e) of this NOFA.

(i) *Task 1—Orientation.* Within five working days after the effective date of the grant, the Project Director and other key personnel shall attend a meeting at HUD Headquarters in Washington, DC, for the purpose of establishing an approved grant strategy for achieving the grant objectives, the scope of the work necessary to achieve the objectives, and the time frame and methodology for implementing the grant strategy.

(ii) *Task 2—Management and Work Plan.* The grantee shall develop a draft management and work plan that addresses all of the requirements contained in the approved grant strategy and provide an updated and detailed work plan for the entire project. This draft work plan and budget, setting forth the timing of all stages of the project, shall be submitted to the HUD Government Technical Representative (GTR) for review and comment within 14 working days after the effective date of the grant. The plan shall include a detailed allocation of grant resources, a projected list of PHAs that will receive the TA and training (the PHAs must be diverse in size and geographic location), and a schedule for the accomplishment of the grant work. HUD and CDC shall submit their comments and suggestions to the grantee within ten working days from receipt of the draft plan. The grantee will submit a final management and work plan incorporating HUD and CDC's comments and suggestions within ten working days of having received the comments from HUD and CDC.

(iii) *Task 3: Advisory Group.* The grantee shall develop, administer, and maintain an advisory group. This group should include, but not be limited to, representatives of PHA staff and residents (including young PHA residents), academia, community based organizations, public health practitioners, and youth violence prevention program directors. The grantee shall submit a final list of advisory board members, approved by HUD and the CDC, within five weeks of the award's effective date. The grantee shall assemble and receive advice from the group within eight weeks of the award, and at least semi-annually thereafter.

(iv) *Task 4: Review Existing Efforts.* The grantee shall identify and summarize PHA youth violence prevention efforts. Furthermore, the grantee shall work with PHAs to identify existing youth violence prevention activities, the means by which the PHAs learned of and selected the activities, and any empirical evidence supporting the value of those activities. The work shall also determine the level of PHA knowledge about the value and types of other youth violence prevention activities that might be implemented, and the interest and capacity of PHAs to implement such programs.

(v) *Task 5: Identify Prevention Research and Programs.* The grantee shall identify and summarize research on youth violence prevention. The grantee's research will include, but not be limited to, published scientific articles, work in progress, and government and other agency publications. The grantee shall highlight findings of its research that bear directly upon its anticipated work with PHAs, including, but not limited to, research and programs related to low-income communities, single-parent families, geographic concentrations of housing in some communities and scattered site housing in others.

(vi) *Task 6: Develop Plan.* The grantee shall develop a realistic plan of action to provide TA and training to PHAs. This will include working with public housing communities as well as national and regional organizations to determine the need for and perceived value of particular youth violence prevention activities. The work will also include developing effective material and methods for delivering the necessary TA and training, delivering the TA and training, and assessing the effectiveness of the delivery system. The plan will address the following issues, although it will not be limited to them working with people from diverse ethnic and cultural backgrounds, working in low-income communities with limited public space for meetings and training, overall limited resources in sometimes unsafe communities, the time and logistical constraints of single parent families, and the logistical issues of scattered-site housing in some instances.

(vii) *Task 7: Review Findings and Plan.* The grantee shall review the conclusions and results of the first year's activities with the advisory group. The purpose of the review will be to develop priorities for the second year's activities.

(viii) *Task 8: Implement Technical Assistance and Training.* The grantee shall, based on the first year's activities, implement the TA and training strategy for and with public housing staff and residents.

(ix) *Task 9: Process Evaluation.* After the TA has been delivered, the grantee shall document the delivery of materials, training, and other forms of TA to the PHAs. Furthermore, the grantee shall document the PHAs' acquisition of information and their use of materials and methods transmitted via TA.

(x) *Task 10: Review the Progress.* The grantee shall conduct a semiannual review of the project's progress with the advisory group, CDC, and HUD. The purpose of the review will be to identify and propose plans to address any barriers to the implementation of the project.

(xi) *Task 11: Distribute findings.* The grantee shall develop an implementation plan to share results with PHAs (staff and residents), CBOs, academia, youth violence prevention program directors, and other organizations that may be interested in the results.

(3) CDC Activities

(i) Attend all semiannual progress reviews. Review and offer assistance in revising the plan of action.

(ii) Provide consultation and technical assistance in the design of the data collection methods and instruments for the summary of activities and the needs assessment.

(iii) Assist in data analysis and interpretation.

(iv) Provide scientific information about youth violence prevention.

(v) Assist in the development and implementation of a reporting system to monitor program activities.

(vi) Assist in the transfer of information and methods developed in this project to other PHAs.

(4) HUD Activities

(i) Provide a Government Technical Representative (GTR) and have full administrative responsibility for the grant.

(ii) Provide technical and programmatic assistance to the advisory group.

(iii) Provide consultation and TA in the collection of information, especially in identifying and working with PHAs. These PHAs will include, but not be limited to, PHAs which are interested in developing youth violence prevention programs, have youth violence prevention plans, have implemented youth violence prevention activities, or have evaluated their youth violence prevention activities.

(iv) Assist in identifying the current methods which PHA staff and residents are using to identify, choose, and evaluate youth violence prevention programs.

(v) Provide up-to-date information on any changes in public housing administration, or general HUD grant administration, which might have an impact on the implementation of youth violence prevention programs in public housing.

(vi) Assist in the transfer of information and methods developed in this grant to PHAs.

(vii) Assist in reviewing the findings of the first year's activities and the plan of action. Offer assistance in revising the plan of action.

(g) Selection Criteria

Applications submitted in response to this competitive announcement will be reviewed by a panel chosen by HUD and CDC representatives, which will make recommendations to the HUD Assistant Secretary for Public and Indian Housing. The initial panel will assign numerical values based on the weighted selection criteria. In the case of a numerical tie, preference will be given to the applicant with the highest numerical score for the Fourth Criterion, Quality of the Plan (see paragraph I. (g)(4) below). The top three to five scoring applications will then be reviewed and rescored by a secondary panel chosen by CDC and HUD representatives. The final award will be made by the HUD Assistant Secretary for Public and Indian Housing. Letters will be sent to all applicants notifying them that their proposal has been selected or the reason(s) it was not selected. HUD will then negotiate the specific terms of the award with the selected applicant.

(1) First Criterion: Corporate and Organizational Capacity (Maximum Points: 20)

(i) *Corporate Capacity.* (Maximum Points: 10)

The applicant must provide evidence of corporate and organizational structures and prior corporate and organizational experience that will contribute to the successful implementation of the tasks described in this NOFA. Furthermore, the applicant must demonstrate a commitment to equal employment opportunity and the ability to work successfully with culturally diverse groups.

(ii) *Administrative Capacity.* (Maximum Points: 10)

Applicants must demonstrate the financial capability, organization, staff size and prior experience that will maximize the effective implementation of a project of this size and scope. To permit HUD to make an evaluation on this criterion, the applicant must submit a detailed budget for the grant program, including the basis for computation of the costs for each of the outlined tasks. Additionally, the program budget must be complete, reasonable, and cost-effective in relation to the proposed program. The applicant must also demonstrate experience in designing and delivering TA and training on-time and within budget for other nationwide projects. Applicants should also submit references from individuals for whom previous work was completed.

(2) Second Criterion: Staff Qualifications (Maximum Points: 20)

(i) *Project Director.* (Maximum Points: 10)

The applicant must provide evidence of the Project Director's prior experience in effectively managing budgets and staffs of a similar size to those involved with this grant project. This evidence may include past success in completing youth violence related work of a similar size and nature on-time and within budget. This evidence may also include successful past experience in managing staff from culturally diverse communities. Applicants must also demonstrate their ability to obtain the cooperation and/or resources of PHA staff and residents, appropriate researchers and research organizations in order to manage advisory group meetings and implement programs.

(ii) *Project Staff.* (Maximum Points: 10)

The applicant must demonstrate the capacity of project staff to quickly and efficiently organize advisory groups similar to the one involved in this grant project, undertake scientific literature reviews, review ongoing public housing activities, conduct needs assessments, develop TA and training, and monitor the progress of the project in a professional manner. Staff must demonstrate successful experience in working with and providing TA to public housing staff and residents while resolving any substantial issues specific to public housing programs. Additionally, the applicant must submit evidence of its capability to work with program and research staff in a manner that maximizes their interest and participation. Staff must also demonstrate its ability to work with and maximize cooperation between a diverse range of clients such as public housing staff, the research community, law enforcement, and the youth violence prevention community.

(3) Third Criterion: Project Experience (Maximum Points: 30)

(i) The applicant must demonstrate appropriate project experience in successful interdisciplinary work with the target populations and in translating technical information into materials of interest to the targeted groups. Such experience may be demonstrated by positive evaluations from previous clients and objective reviewers or other demonstrable positive outcomes of previous youth violence prevention work. (Maximum Points: 15)

(ii) Applicants must provide evidence of their success in developing and using a wide variety of methods of providing youth violence prevention TA and training on a nationwide basis. This evidence should include both low-cost and state-of-the-art elements and strategies. In addition, applicants must demonstrate their capacity to recommend and utilize the most cost-effective and productive combination of elements and strategies for youth violence prevention work. (Maximum Points: 15)

(4) Fourth Criterion: Quality of the Plan (Maximum Points: 30)

(i) *Goals and Activities.* (Maximum Points: 9)

The applicant must demonstrate that the activities in the proposed plan will result in the completion of the outlined tasks necessary for achieving the goals of this NOFA.

(ii) *Effective Means.* (Maximum Points: 9)

The applicant must submit a plan which utilizes effective means in completing each of the outlined tasks necessary for achieving the goals of this NOFA. The plan must provide sufficient flexibility to meet goals developed during the implementation of the project.

(iii) *TA and Training.* (Maximum Points: 9)

The applicant must submit a plan detailing successful and appropriate means for TA and training. The methods must be sensitive to cultural diversity, and must provide for the translation of technical information into materials of use and interest to both the public housing and research communities. Furthermore, the activities must be shown to be readily understood, reasonable, and allow for modifications as the project is implemented. They must also be proven to be practical, stimulating and results-oriented.

(iv) *Employing, Training and Contracting with Public Housing Residents and Public Housing Business Concerns.* (Maximum Points: 3)

The applicant may submit a plan for training and employing public housing residents and for contracting with business concerns which provide economic opportunities to public housing residents. Submission of such a plan is not mandated by this NOFA. However, those applicants electing to submit a plan will receive up to 3 points towards their NOFA application score.

(h) Administrative Requirements

(1) Award Period

The Grant will be cost-reimbursable and awarded for two years.

(2) Cooperative Agreement

After the application has been approved and the grant awarded, HUD and the applicant shall enter into a Cooperative Agreement (Form HUD–1044) setting forth the amount of the Cooperative Agreement and its applicable terms, conditions, financial controls, payment mechanism/schedule, and special conditions.

II. Checklist of Application Submission Requirements

(a) Each application must include the items listed in the following format and order:

(1) Cover letter;

(2) Tab 1—Standard Form 424, Application for Federal Assistance. The SF–424 is the face sheet for the application.

(3) Tab 2—Standard Form 424A, Budget Information for the attached program plan and narrative. The applicant must provide a detailed budget for each quarter, with detailed justification for all costs including the basis for computation of the costs for each of the outlined tasks. The applicant must also provide a budget for each major task. The budget should include a narrative explaining the applicant's financial capability (i.e., the fiscal controls and accounting procedures which assure that Federal funds will be properly utilized).

(4) Tab 3—Corporate Qualifications: Applicants must fully describe their corporate structure, their corporate experience in managing a project of this size and scope, and how their corporate structure and experience will contribute to the quality and completion of the proposed work. Applicants must provide evidence of a corporate commitment to equal employment opportunity, and an ability to adapt to the unique characteristics of the clients.

(5) Tab 4—Organizational Qualification: Applicants must fully describe their organizational structure and experience, as well as their staff size and structure, to demonstrate that they are sufficient to effectively implement a project of this size and scope. Applicants should outline a list of housing authorities and research organizations with which the applicant has worked, the dates and numbers of persons involved, any current points of contact, and summaries of any work evaluations.

(6) Tab 5—Staff Qualifications: Applicants must fully describe the capabilities and work experience of the Project Director, and all key staff. Applicants must include a staffing plan to fulfill the requirements of the statement of work, including staff titles and the staff's related educational and professional background, experience, and skills; and the time each staff member will be required to contribute to the project. Applicants must identify the specific personnel responsible for or working on each task. Applicants should describe staff experience with youth violence prevention programs, preferably in public housing. Applicants should describe staff experience with projects requiring the translation of technical information into materials of interest and use to the targeted groups, and the ability to work successfully with culturally diverse populations.

(7) Tab 6—Project Experience. Applicants must fully describe prior experience in converting scientific information into usable material, and in training programs for PHAs or similar groups. Applicants must demonstrate how the combination of their organizational, staff and project experience is sufficient to effectively implement a program of this size and scope. Applicants should outline a list of public housing communities, low-income communities, or other related organizations where similar TA and training was provided, the dates of the TA and/or training, the nature of the TA and/or training, the results of the evaluations, and any current points of contact regarding the work.

(8) Tab 7—Program Implementation Plan. Applicants must submit a plan outlining each task and describe how available staff and financial resources will be allocated to each task. The plan must include an annotated organizational chart depicting the roles and responsibilities of key organizational and functional components and a list of key personnel responsible for managing and implementing the major elements of the program. There must be a time-task plan which clearly identifies the major milestones and products, staff assignments to each task, and schedule for the completion of activities and products. Applicants should discuss the goals, activities and products of each task including the efforts to address issues of cultural diversity and sensitivity, the translation of technical information into useable materials, and efforts to reach the broadest possible range of communities.

(9) Tab 8—Representations, Certifications, and Other Statements of Offerors or Quoters.

(i) Certification Regarding Federal Employment.

(ii) Certification of Procurement Integrity.

(iii) Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions.

(iv) SF–LLL Disclosure of Lobbying Activities.

(v) Certification Regarding Debarment, Suspension, Proposed Debarment, and other Responsibility Matters.

(b) The application should be limited to 25 pages, excluding attachments (e.g., letters of support, data collection forms, résumés, etc.). All material must be typewritten, single-spaced, with type no smaller than 10cpi, on 8.5" × 11" paper, with at least 1" margins, headings, and footers, and printed on one side only.

III. Corrections to Deficient Applications

(a) HUD will notify an applicant, in writing, of any curable technical deficiencies in the application. The applicant must submit corrections in accordance with the information specified in HUD's letter within 14 calendar days from the date of HUD's letter notifying the applicant of any such deficiency.

(b) Curable technical deficiencies relate to items that:

(i) Are not necessary for HUD review under selection criteria/ranking factors; and

(ii) Would not improve the quality of the applicant's program proposal.

IV. Other Matters

(a) Nondiscrimination and Equal Opportunity

The following nondiscrimination and equal opportunity requirements apply:

(1) The requirement of title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3600–20) (Fair Housing Act) and implementing regulations issued at subchapter A of title 24 of the Code of Federal Regulations, as amended by 54 FR 3232 (published January 23, 1989); Executive Order 11063 (Equal Opportunity in Housing) and implementing regulations at 24 CFR part 107; and title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–4) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR part 1;

(2) The Indian Civil Rights Act (title II of the Civil Rights Act of 1968) (25 U.S.C. 1301–1303) (ICRA) provides that no Indian tribe in exercising powers of self-government shall deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law. The Indian Civil Rights Act applies to any tribe, band, or other group of Indians subject to the jurisdiction of the United States in the exercise of recognized powers of self-government. The ICRA is applicable in all cases where an IHA has been established by exercise of tribal powers of self-government.

(3) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–07) and implementing regulations at 24 CFR part 146, and the prohibitions against discrimination against individuals with disabilities under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8;

(4) The requirements of Executive Order 11246 (Equal Employment Opportunity) and the regulations issued under the Order at 41 CFR Chapter 60;

(5) The requirements of the Americans with Disabilities Act of 1990 (42 U.S.C. 12131) and implementing regulations at 29 CFR part 1640, 28 CFR part 35, and 28 CFR part 36.

(6) The requirements of Executive Orders 11625, 12432, and 12138. Consistent with HUD's responsibilities under these Orders, recipients must make efforts to encourage the use of minority and women's business enterprises in connection with funded activities.

(b) Use of Debarred, Suspended, or Ineligible Contractors

Applicants for short-term technical assistance under this NOFA are subject to the provisions of 24 CFR part 24 relating to the employment, engagement of services, awarding of contracts, or funding of any contractors or subcontractors during any period of debarment, suspension, or placement in ineligibility status.

(c) Drug-free Workplace Act of 1988

The requirements of the Drug-Free Workplace Act of 1988 and implementing regulations at 24 CFR part 24, subpart F apply under this notice.

(d) Environmental Impact

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20(b) of the HUD regulations, the policies and procedures proposed in this document are determined not to have the potential of having a significant impact on the quality of the human environment, and therefore are categorically excluded from the requirements of the National Environmental Policy Act of 1969. Accordingly, a Finding of No Significant Impact is not required.

(e) Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the provisions of this NOFA do not have federalism implications within the meaning of the Order. The NOFA provides short-term technical assistance to housing authorities and resident organizations to assist them in their youth violence prevention efforts in public housing communities. The involvement of resident organizations should greatly increase the success of the anti-violence efforts under this technical assistance program and therefore should have positive effects on the target population. As such, the program helps housing authorities to combat the problem of youth violence in their communities, but it does not have federalism implications.

(f) Family Impact

The General Counsel, as the Designated Official for Executive Order 12606, the Family, has determined that the provisions of this NOFA have the potential for a positive, although indirect, impact on family formation, maintenance, and general well-being within the meaning of the Order. The NOFA is designed to assist housing authorities and resident organizations in their youth violence prevention efforts by providing short-term technical assistance. HUD expects that the provision of such assistance will better prepare and educate housing authority and resident organization officials to confront the widespread abuse of controlled substances in public housing communities. This, in turn, would indirectly affect the quality of life for housing residents.

(g) Documentation and Public Access Requirements; Applicant/Recipient Disclosures: HUD Reform Act

Disclosures. HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See 24 CFR subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942) for further information on these disclosure requirements.)

Public Notice. HUD will include the recipients of assistance pursuant to this NOFA in its quarterly **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these requirements.)

(h) Section 103 HUD Reform Act

HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 was published May 13, 1991 (56 FR 22088) and became effective on June 12, 1991. That regulation, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are limited by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving an applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics, (202) 708–3815. (This is not a toll-free number.) The Office of Ethics can provide information of a general nature to HUD employees, as well. *However,* a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact his or her Regional or Field Counsel, or Headquarters counsel for the program to which the question pertains.

(i) Section 112 HUD Reform Act

Section 13 of the Department of Housing and Urban Development Act contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by HUD, and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received, based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 22912). If readers are involved in any efforts to influence HUD in these ways, they are urged to read the final rule, particularly the examples contained in Appendix A of the rule.

(j) Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) (The "Byrd Amendment") and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative branches of the federal government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying.

Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no federal funds have been or will be spent on lobbying activities in connection with the assistance. Indian Housing Authorities (IHAs) established by an Indian tribe as a result of the exercise of their sovereign power are excluded from coverage, but IHAs established under state law are not excluded from coverage.

Authority: Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1993 (Pub. L. 102–389, approved October 6, 1992); Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1995 (Pub. L. 103–327, approved September 28, 1994).

Dated: May 24, 1995.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 95–13459 Filed 6–1–95; 8:45 am]

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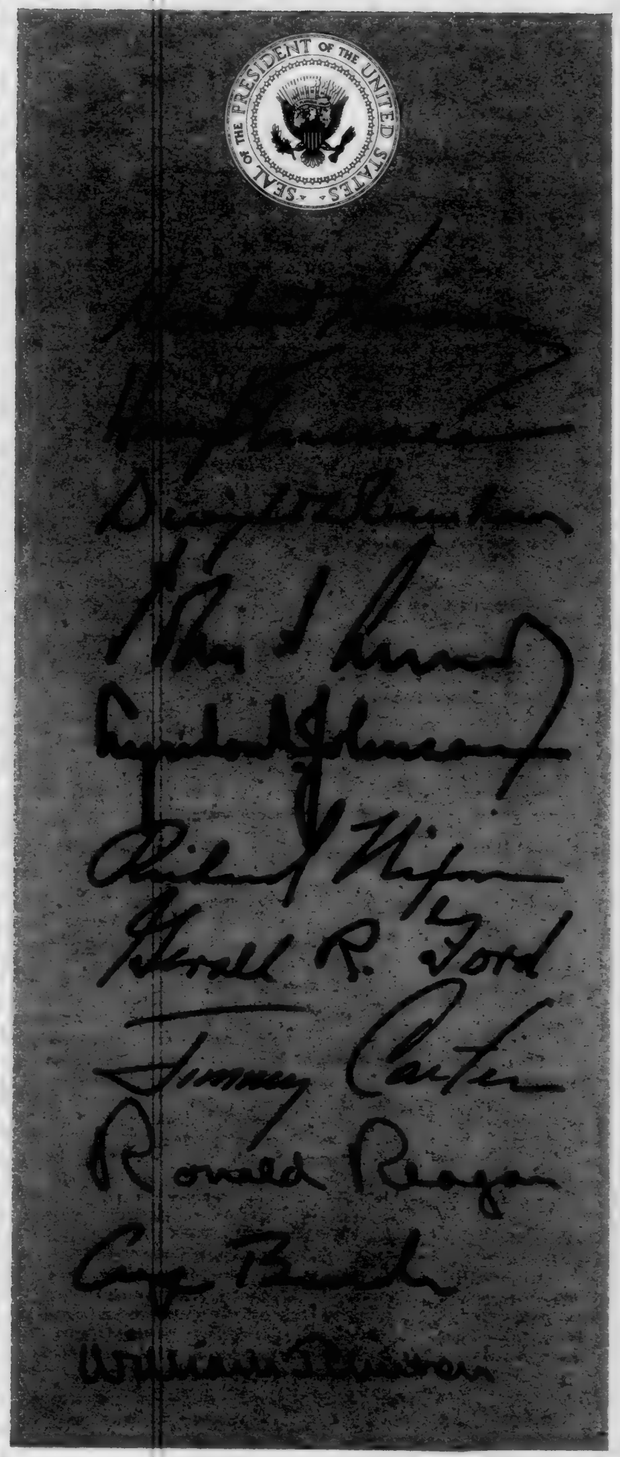
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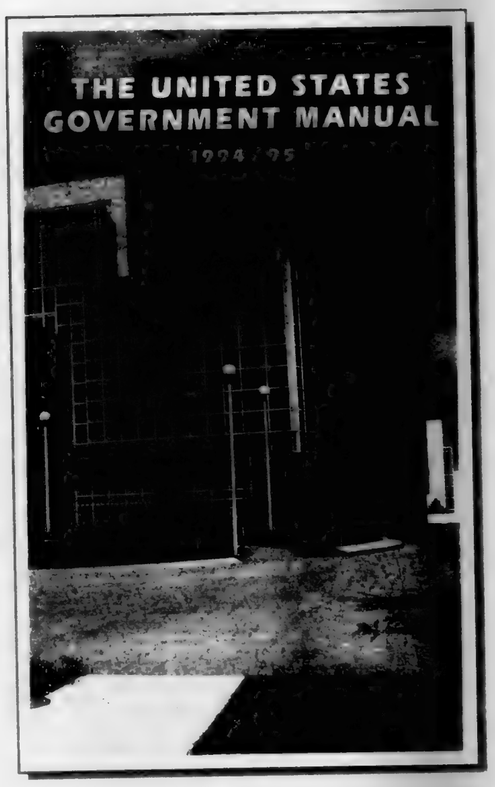
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federal register

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The President

Presidential Determination No. 95–22 of May 19, 1995

Presidential Determination Under Subsections 402(a) and 409(a) of the Trade Act of 1974, as Amended—Emigration Policies of the Republic of Romania

Memorandum for the Secretary of State

Pursuant to the authority vested in me by subsections 402(a) and 409(a) of the Trade Act of 1974 (19 U.S.C. 2432(a) and 2439(a)) ("the Act"), I determine that the Republic of Romania is not in violation of paragraph (1), (2) or (3) of subsection 402(a) of the Act or paragraph (1), (2) or (3) of subsection 409(a) of the Act.

You are authorized and directed to publish this determination in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, May 19, 1995.

[FR Doc. 95–13839
Filed 6–1–95; 3:20 pm]
Billing code 4710–10–M

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Rules and Regulations

Federal Register
Vol. 60, No. 107
Monday, June 5, 1995

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1099

[Docket No. AO–183–A47; DA–92–11]

Milk in the Paducah, Kentucky, Marketing Area; Order Amending the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the Paducah, Kentucky, Federal milk order based on final decisions issued by the Acting Assistant Secretary on December 2, 1994 (59 FR 64524) and on January 27, 1995 (60 FR 7290). The amendments to the order provide a new formula to price Class II milk and implement the base month Minnesota-Wisconsin (M–W) price updated with a butter/powder/cheese formula as the replacement for the M–W price series.

EFFECTIVE DATE: June 5, 1995.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Chief, Order Formulation Branch, USDA/AMS/Dairy Division, Room 2968, South Building, P.O. Box 96456, Washington, D.C. 20090–6456, (202) 720–6274.

SUPPLEMENTARY INFORMATION: This administrative rule is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and therefore is excluded from the requirements of Executive Order 12866.

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. The amended order will promote more orderly marketing of milk by producers and regulated handlers.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674) (the Act), provides that administrative proceedings must be exhausted before parties may file suit in court. Under Section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the District Court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Prior documents in this proceeding:

Notice of Hearing (M–W price): Issued May 12, 1992; published May 15, 1992 (57 FR 20790).

Notice of Hearing (Class II price): Issued December 14, 1993; published December 21, 1993 (58 FR 67380).

Recommended Decision (M–W price): Issued August 3, 1994; published August 8, 1994 (59 FR 40418).

Recommended Decision (Class II price): Issued August 22, 1994; published August 26, 1994 (59 FR 44074).

Final Decision (Class II price): Issued December 2, 1994; published December 14, 1994 (59 FR 64524).

Final Rule (Class II price): Issued January 27, 1995; published February 2, 1995 (60 FR 6606).

Final Decision (M–W price): Issued January 27, 1995; published February 7, 1995 (60 FR 7290).

Proposed Termination of Order: Issued March 3, 1995; published March 9, 1995 (60 FR 12907).

Extension of Time for Filing Comments on Proposed Termination of Order: Issued March 27, 1995; published March 31, 1995 (60 FR 16589).

Final Rule (M–W price): Issued April 6, 1995; published April 14, 1995 (60 FR 18952).

Referendum Order: Issued May 8, 1995; published May 12, 1995 (60 FR 25628).

Findings and Determinations

The proceeding on the proposed termination of the Paducah, Kentucky, milk marketing order, issued March 3, 1995 (60 FR 12907), is hereby terminated.

When producer approval of the order, as proposed to be amended, was not indicated in a referendum conducted in the Class II proceeding, comments were sought concerning possible termination of the order. The number of comments received from producers indicated that there was support for the order and provided a sufficient basis for conducting another referendum. Thus, another referendum was conducted to determine if producers approved of the order as amended by the Class II proceeding and by the M–W proceeding. The order, as proposed to be amended, was subsequently approved. Therefore, it is appropriate at this time to terminate the proposed termination proceeding issued March 3, 1995, and to proceed to amend the order as approved by producers.

The following findings and determinations hereinafter set forth supplement those that were made when the Paducah, Kentucky, order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

The following findings are hereby made with respect to the aforesaid order:

(a) Findings upon the basis of the hearing records. Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), public hearings were held upon certain proposed amendments to the tentative marketing agreements and to the orders regulating the handling of

milk in all Federal milk order marketing areas.

Upon the basis of the evidence introduced at such hearings and the records thereof, it is found that:

(1) The Paducah, Kentucky, order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the order, as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order, as hereby amended, regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial and commercial activity specified in, marketing agreements upon which a hearing has been held.

(b) Additional findings. It is necessary in the public interest to make this order amending the Paducah, Kentucky, order effective June 5, 1995. Any delay beyond that date would disrupt the orderly marketing of milk in the marketing area because there would be no pricing constituent available to use to establish minimum prices of milk.

The provisions of this order are known to handlers. The final decisions of the Acting Assistant Secretary containing proposed amendments to the order were issued on December 2, 1994, and January 27, 1995, and were published in the **Federal Register** on December 14, 1994 (59 FR 64524), and February 7, 1995 (60 FR 7290), respectively.

The changes effected by this order will not require extensive preparation or substantial alteration in method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making this order amending the Paducah, Kentucky, order effective June 5, 1995, and that it would be contrary to the public interest to delay the effective date of this order for 30 days after its publication in the **Federal Register**. (Sec. 553(d), Administrative Procedure Act, 5 U.S.C. 551–559.)

(c) Determinations. It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in Section 8c(9) of the Act) of more than 50 percent of the milk which is marketed within the marketing area to sign a proposed marketing agreement tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order amending the order is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order as hereby amended; and

(3) The issuance of the order amending the order is approved or favored by producers of at least two-thirds of the milk produced for sale in the marketing area who participated in a referendum and who during the determined representative period were engaged in the production of milk for sale in the marketing area.

List of Subjects in 7 CFR Part 1099

Milk marketing orders.

Order Relative to Handling

It is therefore ordered, that on and after June 5, 1995, the handling of milk in the Paducah, Kentucky, marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby further amended, as follows:

PART 1099—MILK IN THE PADUCAH, KENTUCKY, MARKETING AREA

1. The authority citation for 7 CFR Part 1099 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 1099.20 is removed.

3. Section 1099.50 is amended by revising paragraph (b) to read as follows:

§ 1099.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be the basic formula price for the second preceding month plus $0.30.

* * * * *

4. Section 1099.51 is revised to read as follows:

§ 1099.51 Basic formula price.

The basic formula price shall be the preceding month's average pay price for manufacturing grade milk in Minnesota and Wisconsin using the "base month" series, as reported by the Department, adjusted to a 3.5 percent butterfat basis using the butterfat differential for the preceding month computed pursuant to § 1099.74 and rounded to the nearest cent, plus or minus the change in gross value yielded by the butter-nonfat dry milk and Cheddar cheese product price formula computed pursuant to paragraphs (a) through (e) of this section.

(a) The gross values of per hundredweight of milk used to manufacture butter-nonfat dry milk and Cheddar cheese shall be computed, using price data determined pursuant to paragraph (b) of this section and annual yield factors, for the preceding month and separately for the current month as follows:

(1) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the Grade AA butter price by 4.27;

(ii) Multiply the nonfat dry milk price by 8.07; and

(iii) Multiply the dry buttermilk price by 0.42.

(2) The gross value of milk used to manufacture Cheddar cheese shall be the sum of the following computations:

(i) Multiply the Cheddar cheese price by 9.87; and

(ii) Multiply the Grade A butter price by 0.238.

(b) The following product prices shall be used pursuant to paragraph (a) of this section:

(1) *Grade AA butter price.* Grade AA butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade AA butter price, as reported by the Department.

(2) *Nonfat dry milk price.* Nonfat dry milk price means the simple average for the month of the Western Nonfat Dry Milk Low/Medium Heat price, as reported by the Department.

(3) *Dry buttermilk price.* Dry buttermilk price means the simple average for the month of the Western Dry Buttermilk price, as reported by the Department.

(4) *Cheddar cheese price.* Cheddar cheese price means the simple average for the month of the National Cheese Exchange 40-pound block Cheddar cheese price, as reported by the Department.

(5) *Grade A butter price.* Grade A butter price means the simple average for the month of the Chicago Mercantile Exchange Grade A butter price, as reported by the Department.

(c) Determine the amounts by which the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk and the gross value per hundredweight of milk used to manufacture Cheddar cheese for the current month exceed or are less than the respective gross values for the preceding month.

(d) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (c) of this section by determining the relative proportion that the data included in each of the following paragraphs is of the total of the data represented in paragraphs (d)(1) and (d)(2) of this section:

(1) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for nonfat dry milk, 8.07, to determine the quantity (in hundredweights) of milk used in the production of butter-nonfat dry milk; and

(2) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for Cheddar cheese, 9.87, to determine the quantity (in hundredweights) of milk used in the production of American cheese.

(e) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (c) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (d) of this section.

5. Section 1099.51a is removed.

6. Section 1099.53 is revised to read as follows:

§ 1099.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price and the Class II price for the following month, and the Class III and Class III–A prices for the preceding month.

7. Section 1099.74 is revised to read as follows:

§ 1099.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.138 times the current month's butter price less 0.0028 times the preceding month's average pay price per hundredweight, at test, for manufacturing grade milk in Minnesota and Wisconsin, using the "base month" series, adjusted pursuant to § 1099.51 (a) through (e), as reported by the Department. The butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade A butter price as reported by the Department.

Dated: May 31, 1995.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Regulatory Programs.

[FR Doc. 95–13688 Filed 6–2–95; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review

8 CFR Part 3

[EOIR No. 101F; AG Order No. 1970–95]

RIN 1125–AA05

Citizenship Requirement for Employment

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This final rule requires that employees hired by the Executive Office for Immigration Review (EOIR or Agency) be citizens of the United States of America. This rule exempts EOIR from the Immigration Reform and Control Act of 1986's general prohibition of discrimination based on citizenship status and supplements E.O. 11935, which requires United States citizenship for almost all Federal employees in the competitive service.

EFFECTIVE DATE: July 5, 1995.

FOR FURTHER INFORMATION CONTACT: Gerald S. Hurwitz, Counsel to the Director, Executive Office for Immigration Review, Suite 2400, 5107 Leesburg Pike, Falls Church, Virginia 22041, Telephone: (703) 305–0470.

SUPPLEMENTARY INFORMATION: The Department of Justice published a proposed rule on October 27, 1994 (59 FR 53946) in order to exempt the Executive Office for Immigration Review (EOIR) from the general rule of the Immigration Reform and Control Act of 1986, 8 U.S.C. 1324b(a)(1) (IRCA), by invoking IRCA's provision for regulatory exception to the general rule, 8 U.S.C. 1324b(a)(2)(C). The proposed rule is corollary to E.O. 11935, 41 FR 37301 (1976), which requires United States citizenship for almost all Federal employees in the competitive service. The Agency did not receive any timely comments. One comment was received well after the closing date.

The rule authorizes EOIR to require its employees and volunteers to be citizens of the United States of America. This rule will affect EOIR employees such as Immigration Judges, Board Members of the Board of Immigration Appeals and their legal staffs. The primary mission of these employees is to adjudicate or to facilitate the adjudication of immigration-related cases. Such Agency employees and volunteers often have access to sensitive information and handle complex and sensitive immigration issues. Furthermore, the citizenship requirement is designed to bolster public confidence in the proper administration of the country's immigration laws. It is imperative that individuals who work at EOIR, either as employees or volunteers, demonstrate their allegiance to the United States by being able to document that they are United States citizens.

Pursuant to E.O. 11935, 41 FR 37301 (1976), the Executive Branch requires United States citizenship for employees hired in the competitive service. This rule extends the citizenship requirement to all EOIR employees and volunteers. The rule exempts EOIR from the prohibition of discrimination based on citizenship status, pursuant to the procedures established by IRCA. This Attorney General rule is consistent with E.O. 11935. The rule is an exercise of the Attorney General's authority to regulate the employment of sensitive, non-competitive service Department of Justice employees.

Additionally, this rule allows the Agency to exercise its discretion to hire non-citizens when necessary to accomplish the Agency's mission. For example, this rule would permit the Director of the Agency to authorize hiring an interpreter skilled in the English language and an unusual foreign language when a United States citizen interpreter is not available.

This rule draws on well-established Supreme Court jurisprudence upholding the reservation of certain rights, such as the right to govern, to citizens. *Foley* v. *Connelie*, 435 U.S. 291 (1978) (affirming a requirement that police officers be citizens based on the precept that "[t]he act of becoming a citizen is more than a ritual * * * [The citizen] is entitled to participate in the process of democratic decisionmaking. *Id.* at 295"). *See also Ambach* v. *Norwick*, 441 U.S. 68 (1979) (affirming a citizenship requirement for public school teachers). The Supreme Court recognized that a citizenship employment requirement is sometimes necessary in *Bernal* v. *Fainter*, 467 U.S. 216 (1984), holding that, "[s]ome public positions are so closely bound up with the formulation and implementation of self-government that the State is permitted to exclude from those positions persons outside the political community, hence persons who have not become part of the process of democratic self-determination." *Id.*, at 221. The *Bernal* court relied on an

earlier Supreme Court case which held *inter alia*, "Aliens are by definition those outside this [political] community." *Cabell* v. *Chavez-Salido*, 454 U.S. 432, 440 (1982).

The untimely comment received by the Agency objects to the rule on three grounds. The comment states that: (1) The rule is unconstitutional because Article III of the United States Constitution does not require Article III judges to be citizens; (2) the rule contravenes case law; and (3) the rule lacks a rational basis.

After careful consideration of the comment, the Agency has decided not to follow the comment's suggestion that the rule be withdrawn or modified. The final rule retains the language of the proposed rule for the following reasons:

(1) The absence of a citizenship requirement for Article III judges cannot be understood as a constitutional prohibition against a citizenship requirement for Executive Branch immigration judges.

(2) These cases do not persuade the Agency that the rule needs modification. Three of the four cited cases pre-date IRCA but, even considered on the merits, these cases do not persuade the Agency that it needs to modify this rule. The three pre-IRCA cases cited are: *Bernal* v. *Fainter*, 467 U.S. 216 (1984) (strict scrutiny standards applies to state law distinction based on alienage except when laws exclude aliens from positions closely related to processes of democratic government); *Hampton* v. *Mow Sun Wong*, 426 U.S. 88 (1976) (rule imposing wholesale ban on aliens throughout the federal civil service was not justified by reasons within the authority of the Civil Service Commission to advance); and *In Re Griffiths*, 413 U.S. 717, 724 (1973) (Connecticut's prohibition on aliens sitting for the bar violates equal protection because the authority of attorneys does not "involve matters of state policy or acts of such unique responsibility as to entrust them only to citizens," nor does practice of law offer "meaningful opportunities adversely to affect the interest of the United States").

The comment's reliance on *Bernal* versus *Fainter* is misplaced. As discussed above, the *Bernal* decision expressly states that it is appropriate to exclude non-citizens from some government employment. 467 U.S. at 221.

The comment's analysis of *Hampton* versus *Mow Sun Wong* is not persuasive either. At issue in *Hampton* was a Civil Service Commission regulation requiring civil servants to be United States citizens. *Hampton* held that a federal executive agency could discriminate on the basis of citizenship where there is a legitimate national interest for such discrimination. The *Hampton* court found that the rule at issue did not meet the legitimate national interest standard and therefore held the rule unconstitutional. In contrast to the Civil Service Commission's rule, the EOIR rule meets the *Hampton* standard. The national interest is served by ensuring that individuals who are involved in the adjudication of immigration-related cases are citizens. It is also noteworthy that subsequent to judicial invalidation of the Civil Service Commission rule requiring citizenship in *Hampton*, the identical requirement was put into place by Executive Order. E.O. 11935, 41 FR 37301 (1976). The restriction barring noncitizens from employment in the federal competitive civil service, as authorized by the Executive Order, is still in effect.

In Re Griffiths is inapposite to this rulemaking. *Griffiths* examined whether a state had the authority to ban non-citizens from the practice of law. In finding that such a ban violated the Equal Protection Clause of the Fourteenth Amendment, the Court found that the state had not meet its burden of showing that the classification was necessary to promote or safeguard the state's interest in the qualifications of those admitted to the practice of law. 413 U.S. at 724–727. The practice of law, the Court found, does not involve matters of state policy or acts of such unique responsibility as to entrust them only to citizens. Furthermore, as stated in the decision, the practice of law does not offer meaningful opportunities adversely to affect the interest of the United States. *Id.* at 724. In contrast, EOIR employment frequently involves federal immigration matters which can impact national policy and affect the interest of the United States. Therefore, EOIR employment should be held exclusively by United States citizens.

The fourth case cited by the comment, *City of Orlando* v. *Florida*, 751 F. Supp. 974 (M.D. Fla. 1990), is also factually inapposite to this rulemaking. *Orlando* struck down that part of the state's loyalty oath requiring an affirmation of citizenship. Nonetheless, the *Orlando* court expressly held that, "this ruling does not mean that the State cannot require citizenship of Florida and/or the United States in certain classes of employment; rather, it means only that citizenship cannot be a prerequisite to taking the loyalty oath given to all employees and officers of the State of Florida. * * *" *City of Orlando* v. *Florida*, 751 F. Supp. at 976. Since this rule does not require a loyalty oath, the narrow holding of *City of Orlando* does not inform this rulemaking.

(3) The rule has a rationale, namely that individuals adjudicating, or assisting in the adjudication of, immigration laws should be able to demonstrate allegiance to this country by virtue of their citizenship, as addressed in more detail in other portions of the supplementary information.

Insertion of this rule requires a slight reorganization of 8 CFR Part 3.

The Attorney General, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed this rule and, by approving it, certifies that this rule will not have a significant adverse economic impact on a substantial number of small entities. 5 U.S.C. 605(b).

This rule has been drafted and reviewed in accordance with E.O. 12866, section 1(b), Principles of Regulation. The Attorney General has determined that this rule is not a "significant regulatory action" under E.O. 12866, section 3(f), Regulatory Planning and Review, and accordingly this rule has not been reviewed by the Office of Management and Budget.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with E.O. 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 8 CFR Part 3

Administrative practice and procedure, Immigration, Organization and functions (Government agencies).

PART 3—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

1. The authority citation for part 3 of title 8 is revised to read as follows:

Authority: 5 U.S.C. 301; 8 U.S.C. 1103, 1252 note, 1252b, 1324b, 1362; 28 U.S.C. 509, 510, 1746; sec. 2, Reorg. Plan No. 2 of 1950, 3 CFR, 1949–1953 Comp., p. 1002.

2. Section 3.0 is amended by designating its existing text as paragraph (a), and adding a heading, and by adding paragraph (b) to read as follows:

§ 3.0 Executive Office for Immigration Review.

(a) *Organization.* * * *

(b) *Citizenship Requirement for Employment.* (1) An application to work at the Executive Office for Immigration Review (EOIR or Agency), either as an employee or as a volunteer, must include a signed affirmation from the applicant that he or she is a citizen of the United States of America. Upon the Agency's request, the applicant must document United States citizenship.

(2) The Director of EOIR may, by explicit written determination and to the extent permitted by law, authorize the appointment of an alien to an Agency position when necessary to accomplish the work of EOIR.

Dated: May 23, 1995.

Janet Reno,

Attorney General.

[FR Doc. 95–13586 Filed 6–2–95; 8:45 am]

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8 CFR Part 3

[AG Order No. 1971–95]

Executive Office for Immigration Review; Board of Immigration Appeals; Expansion of the Board

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This final rule expands the Board of Immigration Appeals to twelve permanent members, including eleven Board Members and a Chairman. The rule also retains the authority of the Director of the Executive Office for Immigration Review to designate Immigration Judges as temporary additional Board Members.

EFFECTIVE DATE: This final rule is effective June 5, 1995.

FOR FURTHER INFORMATION CONTACT: Margaret Philbin, Associate Counsel to the Director, Executive Office for Immigration Review, Suite 2400, 5107 Leesburg Pike, Falls Church, Virginia 22041, telephone: (703) 305–0470.

SUPPLEMENTARY INFORMATION: The final rule provides for an expansion of the Board of Immigration Appeals to a twelve-member permanent Board. This is necessary because of the Board's greatly increased caseload, which has more than quadrupled over the past decade. To maintain an effective, efficient system of appellate adjudication, it has become necessary to increase the number of Board Members. This change will allow the Board to sit in four permanent member panels of three. This will further enhance effective, efficient adjudications while provide for en banc review in appropriate cases.

This final rule has been drafted and reviewed in accordance with Executive Order 12866, section 1(b). The Attorney General has determined that this rule is not a significant regulatory action under Executive Order 12866, section 3(f), and accordingly this rule has not been reviewed by the Office of Management and Budget.

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this final rule and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities.

This final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Compliance with 5 U.S.C. 553 as to notice of proposed rule making and delayed effective date is not necessary because this rule relates to agency organization and management.

List of Subjects in 8 CFR Part 3

Administrative practice and procedure, Aliens.

For the reasons set forth in the preamble, 8 CFR part 3 is amended as follows:

PART 3—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

Subpart A—Board of Immigration Appeals

1. The authority citation for part 3 continues to read as follows:

Authority: 5 U.S.C. 301; 8 U.S.C. 1103, 1252 note, 1252b, 1362; 28 U.S.C. 509, 510, 1746; sec. 2, Reorg. Plan No. 2 of 1950, 3 CFR, 1949–1953 Comp., p. 1002.

2. Section 3.1, paragraph (a)(1), is revised to read as follows:

§ 3.1 General authorities.

(a)(1) *Organization.* There shall be in the Department of Justice a Board of Immigration Appeals, subject to the general supervision of the Director, Executive Office for Immigration Review. The Board shall consist of a Chairman and eleven other members. The Board Members shall exercise their independent judgment and discretion in the cases coming before the Board. A majority of the permanent Board Members shall constitute a quorum of the Board sitting en banc. A vacancy, or the absence or unavailability of a Board Member, shall not impair the right of the remaining members to exercise all the powers of the Board. The Director may in his discretion designate Immigration Judges to act as temporary, additional Board Members for whatever time the Director deems necessary. The Chairman may divide the Board into three-member panels and designate a presiding member of each panel. The Chairman may from time to time make changes in the composition of such panels and of presiding members. Each panel shall be empowered to review cases by majority vote. A majority of the number of Board Members authorized to constitute a panel shall constitute a quorum for such panel. Each panel may exercise the appropriate authority of the Board as set out in part 3 that is necessary for the adjudication of cases before it. The permanent Board may, by majority vote on its own motion or by direction of the Chairman, consider any case en banc or reconsider en banc any case decided by a panel. By majority vote of the permanent Board, decisions of the Board shall be designated to serve as precedents pursuant to paragraph (g) of this section. There shall also be attached to the Board such number of attorneys and other employees as the Deputy Attorney General, upon recommendation of the Director, shall from time to time direct.

* * * * *

Dated: May 25, 1995.

Janet Reno,

Attorney General.

[FR Doc. 95–13582 Filed 6–2–95; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 440

[Docket No. EE–RM–94–401]

Weatherization Assistance Program for Low-Income Persons

AGENCY: Department of Energy.

ACTION: Interim final rule.

SUMMARY: The Department of Energy (DOE) is today publishing an interim final rule amending the regulations for the Weatherization Assistance Program for Low-Income Persons to change the formula used to distribute funds among the States under the Program. DOE issued the Notice of Proposed Rulemaking pursuant to the Conference Report on the Department of Interior and Related Agencies Appropriations Act of 1995 which accompanied Pub. L.

103–332 and premised the implementation of the proposed formula on specific language contained in that report. DOE is issuing this document as an interim final rule because of Congressional budgetary issues that have surfaced since the Notice of Proposed Rulemaking was published on January 23, 1995. The Department has made appropriate revisions in this interim final rule to accommodate possible rescissions to Fiscal Year 1995 appropriations to the Program.

The new formula increases the overall equity, among the States, of fund allocations under the program regulations, while at the same time preserving existing State program capabilities. The principal criteria in the formula reflect: Number of low-income households by State, climatic conditions using weather data by State, and residential energy expenditures by low-income households by State.

EFFECTIVE DATE: July 5, 1995.

FOR FURTHER INFORMATION CONTACT: Greg Reamy, Weatherization Assistance Program Division, U.S. Department of Energy, Mail Stop EE–532, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 426–1698.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Department of Energy (DOE or Department) is amending its regulations to change the formula used to distribute funds for the Weatherization Assistance Program for Low-Income Persons Program, which is authorized by Title IV of the Energy Conservation and Production Act (Act) 42 U.S.C. 6861 *et seq.* and is codified in 10 CFR part 440. The Program is also subject to the DOE general financial assistance regulations in 10 CFR part 600.

Since 1976, the Department of Energy has operated one of the nation's largest energy conservation programs—the Weatherization Assistance Program. The goal of the Program is to reduce heating and cooling costs for low-income families. The program improves the energy efficiency of the homes of low-income families, reducing their energy consumption, lowering their fuel bills, increasing the comfort of the homes, and insuring health and safety. This Program is critical to low-income populations who are particularly vulnerable—the elderly, persons with disabilities, and children.

The Program is administered by all 50 States, the District of Columbia, and certain Indian tribes, which in turn fund nearly 1,200 local agencies to provide weatherization services to eligible low-income persons. Based on priorities identified by energy audits conducted by local agencies and other weatherization service providers, energy efficiency measures are installed, including modifications to the heating and cooling systems. Consistent with the Act, the Program focuses particularly on the housing of low-income children, elderly, and disabled persons. 42 U.S.C. 6861(b).

The formula increases the overall equity, among the States, of fund allocations under the Program regulations, while at the same time preserving existing State program capabilities. The Department is taking this action based in part on the response to a Notice of Proposed Rulemaking (NOPR) published by DOE in the **Federal Register** on January 23, 1995, 60 FR 4480. In addition to accepting written comments on the NOPR, DOE held two public hearings to solicit oral testimony.

In the Conference Report on the Department of Interior and Related Agencies Appropriations Act, 1995, the conference committee stated that sufficient funds were being made available to permit DOE to revise the formula. H.R. Conf. Rep. No. 740, 103rd Cong., 2nd Sess. 50 (1994). The intent of the Congress was to provide warmer-weather States a greater share of the funding, while protecting the Program capacity developed over the years by colder-weather States. DOE believes that the formula in the interim final rule satisfies this intent and is consistent with the requirements of the Act.

The Act requires DOE to allocate funds to States based on the relative need for weatherization assistance among low-income persons throughout the States, taking into account the following factors: (1) The number of dwelling units to be weatherized; (2) the climatic conditions in each State which may include annual degree days; (3) the various types of weatherization work to be done; and (4) other factors as determined by DOE, such as the cost of heating and cooling. 42 U.S.C. 6864(a).

In order to allocate funds under the old formula i.e., (the existing formula being revised today) each year, DOE applied the formula in old 10 CFR 440.10(b) to the amount of funds remaining after training and technical assistance funds were subtracted from the annual appropriation. The old formula established for each State a minimum base grant level of $100,000 (Alaska received an additional $100,000). The remaining available funds were allocated by a mathematical formula which took into account heating/cooling degree days, total residential energy use for space heating/cooling, the number of low-income owner-occupied dwelling units, and the number of low-income renter occupied dwelling units in the State. This basic formula had remained unchanged since 1977. Data used in the formula for weather, residential energy use, and population were however updated several times. The data for program year 1993 were updated to include the 1990 census data.

As revised today, the new formula includes three elements: The number of low-income households below 125 percent of the poverty level, giving equal weight to owners and renters; climatic conditions across the country using heating and cooling degree days; and residential energy expenditures per low-income household per State.

The new formula buffers States from serious losses in program capacity, while at the same time allowing warmer-States to gain the benefits of a new formula. Consistent with these two objectives, the formula implementation establishes a fixed base amount of funds for each State that is derived from the amount received for the fiscal year 1993, while remaining funds will be distributed pursuant to the formula. Fiscal year 1993 was used to fix the base amounts because it was the most recent available data when Congress passed the fiscal year 1995 appropriation.

II. Amendments to the Weatherization Assistance Program Formula and Discussion of Public Comments

This part of the Supplementary Information discusses, where appropriate, the proposed changes to the regulations, comments received pertaining to the proposed changes, and the DOE final action.

Section 440.3 Definitions

No comments were received on the definitions and without change the Department is finalizing the proposed amendments to § 440.3.

DOE amends this section by deleting the references to the old formula which are not a part of the new formula. The definitions deleted are: "Number of owner-occupied units in the State"; "number of low-income, renter-occupied dwelling units in the State"; "percentage of total residential energy used for space cooling"; and "percentage of total residential energy used for space heating".

Additionally, several definitions are added to § 440.3 which describe the new criteria to be used in the new formula. DOE adds a definition of "base allocation," as set forth in § 440.10(b)(1), which refers to the fixed base amount each State receives. That amount is derived from each State's fiscal year 1993 allocation of funds.

DOE also adds definitions of "program allocation" and "total program allocations." The former represents the amount of funds (base allocation plus formula allocation) to be distributed to each State. The latter refers to the annual appropriation less funds reserved for training and technical assistance.

Section 440.10(b) Allocation of Funds

DOE deletes the old formula in § 440.10(b) and replaces it with the new formula set forth in revised § 440.10(b). Paragraph (b)(1) of § 440.10 provides for a program allocation (PA) for each State consisting of two parts. The two parts are: (1) A fixed amount of money (derived from the State's FY 1993 allocation), which is referred to as a State's "Base Allocation" (BA) (See Table 1); and (2) an amount of money referred to as the "Formula Allocation" (FA), which is determined by application of the new formula.

As mentioned earlier, DOE held two public hearings on the NOPR. Ten of the eleven speakers offered testimony in support of the proposed formula. One speaker expressed concern over the source of weather data in the form of heating and cooling degree days which was addressed in the proposed formula, but not specifically in the data. Additionally, the Department received 9 written comments generally supporting the formula change. However, 2 of the 9 written comments, while generally supporting the formula change, expressed concern about current and future funding levels, including possible Congressional budgetary actions on fiscal year 1995 appropriations and their effect on implementation. These commenters reserved the right to withdraw their support if funding levels are revised. Two commenters was generally non-supportive of the change as proposed.

One comment proposed that all funds above the fiscal year 1993 program allocation be provided to those States that would gain under the proposed formula; no other State would receive additional funds until "the previously disadvantaged States (i.e. warmer-weather States) achieve equity." Thereafter, the Program Allocation equation would be applied to all States. In making this proposal, however, the comment erroneously argues that colder-weather States would lose no money because they would remain at the current Base Allocation. In fact, limiting these States to their fiscal year 1993 base allocation would lower their program funds because they would not benefit from later higher increases in funding levels for the Program. DOE disagrees that the new formula "assumes historic equity of the funding allocation" since the new formula does shift a greater share of funds to warmer-weather States. The new formula embodies congressional intent of allowing for a more equitable apportionment of funds while protecting program capacity of any State. For these reasons, DOE does not believe that the formula implementation contained in the notice of proposed rulemaking should be modified as suggested by this commenter.

One comment questioned the appropriateness of multiplying F2 (climate) and F3 (energy expenditures). The comment argued that these factors are so similar that the outcome is similar to the old formula, presumably the squaring (or multiplying together) of degree days. Our analysis of weather and expenditure factors, however, indicates that there is not much similarity between these two factors; that is, the analysis indicated that the weather factor is not very indicative of energy expenditures. As a result, DOE concludes that these two factors represent two distinct elements contributing to the need for weatherization assistance by low-income households. Throughout its history, the Program has been concerned with both the need for energy generated by weather conditions and the importance of helping low-income households afford their energy bills. Adding these elements, as suggested by the comment, would reduce the relative importance of each in the new formula allocation.

The same comment expressed concern that the new formula does not protect program capacity developed over the years by colder-weather States. This comment contends that the new formula provides a greater share of funds to warmer-weather States and that the formula disproportionally affects the distribution of funds. The comment thus concludes that the new formula does not "work if it requires a hold harmless clause to meet the intent of Congress." DOE notes here that the formula did not include a "hold harmless clause," *per se*. Moreover, the proposed formula as a whole balances congressional intent of maintaining program capacity and apportioning funds more equitably among the States. Under the formula, no State loses more than one-half of one-percent of FY 1994 funds unless total program allocations fall below $220 million. All States gain when funds rise above this amount. Changing individual pieces of the formula would disrupt this balance. Likewise, although the base allocation could be changed, changing this element of the formula would alter the resulting overall balance.

One comment recommended including only cooling degree days (CDDs) associated with an unspecified level of extreme high temperatures and formulation of the formula so that no "cold-weather" State would have an "energy factor" less than one (1). The formula does not have an energy factor *per se*. Colder States, in fact, do have weather factors greater than one. When relatively lower formula shares result for colder-weather States, it is due to fewer low-income households or lower energy prices.

Another comment indicated dissatisfaction with the methods used by the National Oceanic and Atmospheric Administration (NOAA) to calculate heating and cooling degree days. However, the comment did not offer a viable alternative that could be readily adopted. DOE notes that this rule cannot govern NOAA calculations, but that it does provide a mechanism for updating the data for the formula factors, including weather data.

One comment recommended eliminating the energy expenditure factor to avoid "taking into account the constant fluctuation in fuel prices." Energy expenditures are consumption multiplied by price. Review of recent changes in State energy prices, consumption, and resulting energy expenditures indicates that the impact of fluctuations in any of these factors on final State shares tends to be relatively small. In fact, because price and consumption changes in any given year are often partially offsetting, percentage changes in expenditures from year to year tend to be smaller than changes in consumption.

Another comment recommended that DOE phase in the formula over a five year period to correct for fluctuations in funding formula factors. This recommendation was based on the premise that it would take several years before it could be determined if the proposed formula needs to be adjusted. While there will be some fluctuation from year to year, the comment merely speculated that the degree of fluctuation warranted adding a complex adjustment to the formula. DOE agrees that there will be some fluctuation from year to year. However, DOE's analysis reveals no wide degree of fluctuation that would disrupt the Program. Thus, no change has been made in the implementation of the new formula. However, DOE will be monitoring the year to year fluctuations in the allocations. If these fluctuations are

significant and persistent, DOE should be able to identify whether a formula factor is the cause and would act to remedy the problem.

One comment suggested continuing to count the families in multi-family buildings as one-half a household. Although households in multi-family buildings tend to use less energy than households in single-family homes, these and other differences in energy use are reflected in the energy expenditure factor F3. Therefore, no change needs to be made.

Revised § 440.10(b) maintains the current capacity of States to deliver weatherization services and sustains the strong network developed for this purpose by minimizing the impact of the formula change on colder-weather States. Those States would otherwise face layoffs of weatherization crews that would severely restrict their ability to provide reasonable weatherization services to their low-income residents.

For all the reasons set forth above, DOE has made no substantive changes in the proposed § 440.10(b).

Summary of Revised Formula

An explanation of the revised allocated allocation formula is set forth below. This explanation is based on the summary provided in the notice of proposed rulemaking, with minor clarifying changes. The figures contained in Tables 1 through 5 are based on available data as of fiscal year 1995. Depending upon changes in data available thereafter, some of these figures may change periodically. See § 440.10(e) for further information pertaining to updates.

The program allocation is expressed mathematically as:

PA=BA+FA

Base Allocation

Table 1 presents the "Base Allocation" for each State.

TABLE 1.—"BASE ALLOCATION" BY STATE

Alabama	1,636,000
Alaska	1,425,000
Arkansas	1,417,000
Arizona	760,000
California	4,404,000
Colorado	4,574,000
Connecticut	1,887,000
Delaware	409,000
District of Columbia	487,000
Florida	761,000
Georgia	1,844,000
Hawaii	120,000
Idaho	1,618,000
Illinois	10,717,000
Indiana	5,156,000
Iowa	4,032,000
Kansas	1,925,000
Kentucky	3,615,000
Louisiana	912,000
Maine	2,493,000
Maryland	1,963,000
Massachusetts	5,111,000
Michigan	12,346,000
Minnesota	8,342,000
Mississippi	1,094,000
Missouri	4,615,000
Montana	2,123,000
Nebraska	2,013,000
Nevada	566,000
New Hampshire	1,193,000
New Jersey	3,775,000
New Mexico	1,519,000
New York	15,302,000
North Carolina	2,853,000
North Dakota	2,105,000
Ohio	10,555,000
Oklahoma	1,846,000
Oregon	2,320,000
Pennsylvania	11,457,000
Rhode Island	878,000
South Carolina	1,130,000
South Dakota	1,561,000
Tennessee	3,218,000
Texas	2,999,000
Utah	1,692,000
Vermont	1,014,000
Virginia	2,970,000
Washington	3,775,000
West Virginia	2,573,000
Wisconsin	7,061,000
Wyoming	967,000
Total	171,258,000

Formula Allocation

The amount of total Formula Allocations (the amount which will be distributed among States based on the new formula) is calculated by subtracting total Base Allocations ($171,258,000) from the total Program Allocations. For example, if the amount of total Program Allocations is $200,000,000, the amount of total Formula Allocations would be $28,742,000 ($200,000,000–$171,258,000).

The Formula Allocation for each State is calculated by multiplying the total amount of Formula Allocations by each State's Formula Share, which is determined by the new formula.

Formula Factors

The new formula is composed of three factors for each State. The first factor (F1) is the population factor. The next factor (F2) represents the climatic conditions in each State, derived from heating and cooling degree days. The last factor (F3) is residential energy expenditures by low-income households in each State.

F1 Population Factor

The first factor in the new formula is the population factor. This is represented by the share of the Nation's low-income households in each State expressed as a percentage. Unlike the old formula, the new formula gives equal weight to owners and renters. The number of low-income households was obtained from a special run by the Bureau of the Census for the Department of Energy, referenced as "Households at 125% or less, Special Tab #54, Census Bureau".

F1—State Population Factor

$$F1 = \frac{\text{Total Number of Low-Income Households in the State}}{\text{Total Number of Low-Income Households Nationwide}} \times 100$$

Table 2 presents the number of low-income households and the population factor (F1) for each State.

Table Explanation

Column A—State Name.

Column B—Number of Low-Income Households per State.

Column C—State Population Factor (F1)—is calculated by dividing the number of low-income households in a given State (Column B) by the national total (16,231,250—shown at the bottom of the table) and multiplied by 100.

TABLE 2.—LOW-INCOME HOUSEHOLDS BY STATE

State A	Number of low-income households B	Percent of national low-income households (F1) C
Alabama	386,525	2.3814
Alaska	21,729	0.1339
Arizona	261,161	1.6090
Arkansas	240,155	1.4796
California	1,525,061	9.3958
Colorado	206,052	1.2695
Connecticut	120,483	0.7423
Delaware	31,028	0.1912
District of Columbia	46,438	0.2861
Florida	879,786	5.4203
Georgia	471,834	2.9069
Hawaii	40,856	0.2517
Idaho	69,204	0.4264
Illinois	657,508	4.0509
Indiana	327,581	2.0182
Iowa	184,021	1.1337
Kansas	163,891	1.0097
Kentucky	357,665	2.2036
Louisiana	442,320	2.7251
Maine	80,276	0.4945
Maryland	196,788	1.2124
Massachusetts	313,297	1.9302
Michigan	598,427	3.6869
Minnesota	247,149	1.5227
Mississippi	294,611	1.8151
Missouri	377,864	2.3280
Montana	68,456	0.4218
Nebraska	104,707	0.6451
Nevada	64,869	0.3997
New Hampshire	43,406	0.2674
New Jersey	303,328	1.8688
New Mexico	135,642	0.8357
New York	1,138,016	7.0113
North Carolina	489,172	3.0138
North Dakota	51,103	0.3148
Ohio	705,646	4.3475
Oklahoma	284,883	1.7552
Oregon	191,508	1.1799
Pennsylvania	725,124	4.4675
Rhode Island	57,155	0.3521
South Carolina	274,749	1.6927
South Dakota	56,917	0.3507
Tennessee	418,703	2.5796
Texas	1,345,471	8.2894
Utah	88,775	0.5469
Vermont	32,563	0.2006
Virginia	333,824	2.0567
Washington	280,943	1.7309
West Virginia	184,759	1.1383
Wisconsin	279,527	1.7222
Wyoming	30,294	0.1866
National Total	16,231,250	100

F2 Climate Factor

The second factor, climatic conditions, is obtained by adding the heating and cooling degree days for each State, treating the energy needed for heating and cooling proportionately.

The new formula uses (as did the old formula) the thirty year averages of heating degree days (HDD) and cooling degree days (CDD) as reported by the National Oceanic and Atmospheric Administration (NOAA) to account for climatic conditions. Heating and cooling consumption data were obtained from Table 28 of the Energy Information Administration's (EIA) Household Energy Consumption and Expenditures 1990.

State Climate Factor

F2=HDD State Ratio+CDD State Ratio

HDD and CDD Ratios

State HDD Ratio

$$\text{State HDD Ratio} = \frac{\text{State HDD}}{\text{National Median HDD}}$$

State CDD Ratio

$$\text{State CDD Ratio} = \frac{\text{State CDD}}{\text{National Median CDD}} \times 0.1$$

where

$$\frac{\text{Cooling Consumption (.49 Quadrillion Btu)}}{\text{Heating Consumption (4.79 Quadrillion Btu)}} = 0.1$$

National heating consumption equals 4.79 quadrillion Btu and air conditioning (cooling) consumption equals .49 quadrillion Btu. Cooling consumption divided by heating consumption rounds to 0.1. The ratio of cooling to heating energy consumption reflects the fact that nationally households use, on average, one tenth as much energy for cooling as for heating. This ratio is reflected in the old allocation formula. National data are used because of the absence of complete State-specific data.

In order to account for the variation in weather in a simple but equitable manner, DOE compares each State's climate to the national median. Each State's HDD and CDD is divided by the series' median value. Using the median as the denominator ensures that half of the States would fall above 1 and half would fall below 1. A State HDD ratio (HDD divided by the median) greater than 1 indicates a State with relatively cold winters, while a value greater than 1 for a State's CDD ratio indicates a State with a relatively warmer summer. To find the median of any odd series of numbers, the series is arranged in ascending order and the value that occurs in the middle of the series is chosen. The series relevant to F2 is odd because it consists of the 50 States and the District of Columbia. The median value occurs at the 26th observation (State). The median was chosen, rather than the mean, because of its characteristic of being "insensitive" to extreme values. States like Alaska and Florida tend to skew or pull the average towards one extreme or another. In calculating the heating and cooling ratios the old formula multiplied each State's HDD's by the national space heating consumption and its CDD's by the national air conditioning (cooling) consumption. The new formula simplifies this calculation by combining these two numbers into one by dividing cooling consumption by heating consumption (as reported in Table 28 of the Household Energy Consumption and Expenditures 1990). Each State's CDD ratio is multiplied by this one number (which rounds to 0.1). The final climate factor for each State is then the sum of the HDD and CDD ratios.

Table 3 presents the data used to calculate the climate factor (F2) for each State.

Table Explanation

Column A—State Name.

Column B—State heating degree days (HDD) as reported by the NOAA.

Column C—State HDD Ratio, calculated by dividing each State's HDD by the national median (5,429.9—as shown on the bottom of Table 2).

Column D—State cooling degree days (CDD) as reported by the NOAA.

Column E—State CDD divided by the national median (867.3—as shown on the bottom of Table 2).

Column F—State CDD Ratio, calculated by multiplying Column E by the ratio of cooling consumption to heating consumption, which is 0.1.

Column G—State Climate Factor (F2), calculated by summing each State's HDD and CDD ratios.

TABLE 3.—WEATHER DATA BY STATE

State A	Heating degree days B	HDD ratio C	Cooling degree days D	CDD divided by the median E	CDD ratio F	Climate factor (F2) G
Alabama	2,853.8	0.526	1,855.9	2.140	0.214	0.740
Alaska	11,475.2	2.113	1.9	0.002	0.000	2.114
Arizona	2,232.6	0.411	2,695.4	3.108	0.311	0.722
Arkansas	3,365.0	0.620	1,801.2	2.077	0.208	0.827
California	2,663.3	0.490	824.4	0.951	0.095	0.586
Colorado	7,264.0	1.338	280.4	0.323	0.032	1.370
Connecticut	6,122.4	1.128	526.6	0.607	0.061	1.188
Delaware	4,741.7	0.873	1,034.4	1.193	0.119	0.993
District of Columbia	4,785.7	0.881	1,008.5	1.163	0.116	0.998
Florida	715.6	0.132	3,365.1	3.880	0.388	0.520
Georgia	2,842.0	0.523	1,705.7	1.967	0.197	0.720
Hawaii	0.0	0.000	3,528.0	4.068	0.407	0.407
Idaho	6,960.0	1.282	434.9	0.501	0.050	1.332
Illinois	6,254.3	1.152	894.3	1.031	0.103	1.255
Indiana	5,906.8	1.088	891.7	1.028	0.103	1.191
Iowa	6,894.6	1.270	867.3	1.000	0.100	1.370
Kansas	4,990.9	0.919	1,490.4	1.718	0.172	1.091

TABLE 3.—WEATHER DATA BY STATE—Continued

State A	Heating degree days B	HDD ratio C	Cooling degree days D	CDD divided by the median E	CDD ratio F	Climate factor (F2) G
Kentucky	4,566.8	0.841	1,174.4	1.354	0.135	0.976
Louisiana	1,826.1	0.336	2,550.0	2.940	0.294	0.630
Maine	8,069.2	1.486	215.6	0.249	0.025	1.511
Maryland	4,785.7	0.881	1,008.5	1.163	0.116	0.998
Massachusetts	6,404.5	1.179	434.6	0.501	0.050	1.230
Michigan	6,837.5	1.259	565.7	0.652	0.065	1.324
Minnesota	8,687.0	1.600	487.3	0.562	0.056	1.656
Mississippi	2,549.5	0.470	2,094.4	2.415	0.241	0.711
Missouri	5,127.4	0.944	1,282.2	1.478	0.148	1.092
Montana	8,144.8	1.500	259.4	0.299	0.030	1.530
Nebraska	6,412.3	1.181	1,052.0	1.213	0.121	1.302
Nevada	4,260.1	0.785	1,572.0	1.813	0.181	0.966
New Hampshire	7,594.6	1.399	289.4	0.334	0.033	1.432
New Jersey	5,429.9	1.000	774.6	0.893	0.089	1.089
New Mexico	4,714.2	0.868	890.2	1.026	0.103	0.971
New York	5,960.8	1.098	641.4	0.740	0.074	1.172
North Carolina	3,492.2	0.643	1,366.3	1.575	0.158	0.801
North Dakota	9,382.8	1.728	471.7	0.544	0.054	1.782
Ohio	5,932.2	1.093	740.2	0.853	0.085	1.178
Oklahoma	3,593.3	0.662	1,941.6	2.239	0.224	0.886
Oregon	5,228.6	0.963	207.0	0.239	0.024	0.987
Pennsylvania	5,920.7	1.090	659.2	0.760	0.076	1.166
Rhode Island	5,942.0	1.094	457.2	0.527	0.053	1.147
South Carolina	2,768.2	0.510	1,787.0	2.060	0.206	0.716
South Dakota	7,613.7	1.402	804.6	0.928	0.093	1.495
Tennessee	4,005.8	0.738	1,337.5	1.542	0.154	0.892
Texas	2,039.7	0.376	2,623.2	3.025	0.302	0.678
Utah	6,451.3	1.188	694.7	0.801	0.080	1.268
Vermont	7,970.9	1.468	280.5	0.323	0.032	1.500
Virginia	4,402.4	0.811	1,052.4	1.213	0.121	0.932
Washington	5,636.0	1.038	174.9	0.202	0.020	1.058
West Virginia	5,271.5	0.971	766.5	0.884	0.088	1.059
Wisconsin	7,679.2	1.414	502.5	0.579	0.058	1.472
Wyoming	8,081.3	1.488	308.5	0.356	0.036	1.524
Median	5,429.9		867.3			

F3 Residential Energy Expenditure Factor

The final factor, residential energy expenditures by low-income households was determined to be the closest approximation, given available data, of the financial burden to low-income households of energy use. Based on the same reasoning as discussed for the climate factor, the national median is used to calculate the State residential energy expenditure factors.

State Residential Energy Expenditure Factor

$$F3 = \frac{\text{State Low-Income Household Energy Expenditures}}{\text{National Median Low-Income Household Energy Expenditures}}$$

Due to the lack of State specific data on residential energy expenditures by low-income households, an estimate is calculated based on the published data that is available. Specifically, available residential energy expenditures data at the State level does not distinguish between low-income households and the overall population. Information on residential energy expenditures by low-income households is available at the Census division level. The nine Census divisions including the States contained therein are shown below. Comparing each State's average household residential energy expenditures with the average household residential energy expenditures at its Census division level provides a means of allocating the Census division low-income residential energy expenditures to each State within that division.

Census division	State abbreviations
Northeast (NE)	CT, MA, ME, NH, RI, VT
Mid-Atlantic (MA)	NJ, NY, PA
South Atlantic (SA)	DC, DE, MD, VA, WV, FL, GA, SC, NC
East North Central (ENC).	IL, IN, MI, OH, WI
East South Central (ESC).	AL, KY, MS, TN
West North Central (WNC).	IA, KS, MN, MO, ND, NE, SD
West South Central (WSC).	AR, LA, OK, TX
Mountain (MN)	AZ, CO, ID, MT, NM, NV, UT, WY
Pacific (PAC)	AK, CA, HI, OR, WA

Table 4, set forth below, presents the data used to calculate the residential energy expenditures factor for each State.

Table Explanation

Column A—State Abbreviation.

Column B—Census Division Abbreviation.

Column C—Residential Energy Expenditures by State (State EE) is published in the EIA's State Energy Price and Expenditure Report 1991 (SEPER). Data is expressed in millions of dollars.

Column D—Residential Energy Expenditures by Census division (Div EE) is the sum of the State data in Column C for each Census division. Data is expressed in millions of dollars.

Column E—Number of Households per State (State #HH) was obtained from the Bureau of the Census' U.S. Summary of General Housing Characteristics, 1990 Census.

Column F—Number of Households per Census division (Division #HH) is the sum of the State data in Column E for each Census division.

Column G—Residential Energy Expenditures per Low-Income Household for each State's Census division (Division EE/#LIHH) is published in the EIA's Household Energy Consumption and Expenditures 1990—Supplement: Regional.

Column H—The ratio of each State's Residential Energy Expenditures per Household (State EE/#HH) over the Residential Energy Expenditures per Household for each State's Census division (Division EE/#HH) is calculated as follows:

$$\text{Column H} = \frac{\text{Column C} \;/\; \text{Column E}}{\text{Column D} \;/\; \text{Column F}}$$

Column I—Residential Energy Expenditures per Low-Income Household by State (State EE/#LIHH) is calculated as follows:

Column I = Column G × Column H

Column J—"Residential Energy Expenditure Factor (F3)" is calculated by dividing the estimate of residential energy expenditures per low-income households for each State by the national median ($998.52).

TABLE 4.—RESIDENTIAL ENERGY EXPENDITURE FACTOR DETAILS

State abbrev.	Census division	Residential energy expenditures (by state) (million $)	Residential energy expenditures (for census division) (million $)	Households (by state)	Households (for census division)	Residential energy expenditures per low-income household (for census division)	Ratio of state energy expenditure per household to division energy expenditure per household	Residential energy expenditures per low-income household (by state)	Expenditure factor (F3)
A	B	C	D	E	F	G	H	I	J
CT	NE	$2,024.20	$7,476.80	$1,230,479	$4,942,714	$1,150	$1.087	$1,250.62	$1.2565
MA	NE	3,264.10	7,476.80	2,247,110	4,942,714	1,150	0.960	1,104.30	1.1095
ME	NE	708.30	7,476.80	465,312	4,942,714	1,150	1.006	1,157.23	1.1627
NH	NE	595.90	7,476.80	411,186	4,942,714	1,150	0.960	1,103.60	1.1088
RI	NE	530.50	7,476.80	377,977	4,942,714	1,150	0.928	1,067.01	1.0720
VT	NE	352.80	7,476.80	210,650	4,942,714	1,150	1.107	1,273.25	1.2792
NJ	MA	4,114.50	19,378.30	2,794,711	13,929,999	1,157	1.058	1,224.47	1.2302
NY	MA	8,785.50	19,378.30	6,639,322	13,929,999	1,157	0.951	1,100.55	1.1057
DC	SA	222.40	20,804.00	249,634	16,503,063	988	0.707	698.24	0.7015
DE	SA	369.30	20,804.00	247,497	16,503,063	988	1.184	1,169.46	1.1749
MD	SA	2,309.50	20,804.00	1,748,991	16,503,063	988	1.047	1,034.92	1.0398
PA	MA	6,478.30	19,378.30	4,495,966	13,929,999	1,157	1.036	1,198.41	1.2040
VA	SA	2,920.60	20,804.00	2,291,830	16,503,063	988	1.011	998.77	1.0034
WV	SA	742.10	20,804.00	688,557	16,503,063	988	0.855	844.69	0.8486
AL	ESC	1,857.90	6,423.40	1,506,790	5,651,671	772	1.085	837.53	0.8415
FL	SA	6,144.50	20,804.00	5,134,869	16,503,063	988	0.949	937.85	0.9422
GA	SA	3,063.30	20,804.00	2,366,615	16,503,063	988	1.027	1,014.46	1.0192
KY	ESC	1,474.00	6,423.40	1,379,782	5,651,671	772	0.940	725.63	0.7290
MS	ESC	1,068.00	6,423.40	911,374	5,651,671	772	1.031	795.98	0.7997
NC	SA	3,390.90	20,804.00	2,517,026	16,503,063	988	1.069	1,055.85	1.0608
SC	SA	1,641.40	20,804.00	1,258,044	16,503,063	988	1.035	1,022.57	1.0274
TN	ESC	2,023.50	6,423.40	1,853,725	5,651,671	772	0.960	741.46	0.7449
IL	ENC	6,017.80	20,660.20	4,202,240	15,596,590	1,074	1.081	1,161.06	1.1665
IN	ENC	2,644.70	20,660.20	2,065,355	15,596,590	1,074	0.967	1,038.20	1.0431
MI	ENC	4,339.90	20,660.20	3,419,331	15,596,590	1,074	0.958	1,029.05	1.0339
MN	WNC	1,868.50	8,200.60	1,647,853	6,720,385	968	0.929	899.49	0.9037
OH	ENC	5,420.90	20,660.20	4,087,546	15,596,590	1,074	1.001	1,075.25	1.0803
WI	ENC	2,236.90	20,660.20	1,822,118	15,596,590	1,074	0.927	995.34	1.0000
AR	WSC	1,168.50	12,362.20	891,179	9,667,520	971	1.025	995.84	1.0003
LA	WSC	1,950.10	12,362.20	1,499,269	9,667,520	971	1.017	987.68	0.9923
NM	MT	545.40	5,476.10	542,709	5,033,336	885	0.924	820.25	0.8241
OK	WSC	1,441.60	12,362.20	1,206,135	9,667,520	971	0.935	907.59	0.9118

TABLE 4.—RESIDENTIAL ENERGY EXPENDITURE FACTOR DETAILS—Continued

State abbrev.	Census division	Residential energy expenditures (by state) (million $)	Residential energy expenditures (for census division) (million $)	Households (by state)	Households (for census division)	Residential energy expenditures per low-income household (for census division)	Ratio of state energy expenditure per household to division energy expenditure per household	Residential energy expenditures per low-income household (by state)	Expenditure factor (F3)
A	B	C	D	E	F	G	H	I	J
TX	WSC	7,802.00	12,362.20	6,070,937	9,667,520	971	1.005	975.86	0.9804
IA	WNC	1,355.70	8,200.60	1,064,325	6,720,385	968	1.044	1,010.45	1.0152
KS	WNC	1,138.90	8,200.60	944,726	6,720,385	968	0.988	956.32	0.9608
MO	WNC	2,539.40	8,200.60	1,961,206	6,720,385	968	1.061	1,027.15	1.0320
NE	WNC	680.70	8,200.60	602,363	6,720,385	968	0.926	896.44	0.9006
CO	MT	1,214.70	5,476.10	1,282,489	5,033,336	888	0.871	773.06	0.7767
MT	MT	321.50	5,476.10	306,163	5,033,336	888	0.965	857.09	0.8611
ND	WNC	303.20	8,200.60	240,878	6,720,385	968	1.032	998.52	1.0032
SD	WNC	314.20	8,200.60	259,034	6,720,385	968	0.994	962.22	0.9667
UT	MT	620.90	5,476.10	537,273	5,033,336	888	1.062	943.24	0.9477
WY	MT	194.40	5,476.10	165,839	5,033,336	888	1.058	939.77	0.9442
AZ	MT	1,694.00	5,476.10	1,368,843	5,033,336	888	1.137	1,010.08	1.0148
CA	PAC	10,642.80	13,958.20	10,381,206	13,902,132	676	1.021	690.25	0.6935
HI	PAC	273.20	13,958.20	356,267	13,902,132	676	0.764	516.30	0.5187
NV	MT	493.20	5,476.10	466,297	5,033,336	888	0.972	863.29	0.8673
AK	PAC	349.00	13,958.20	188,915	13,902,132	676	1.840	1,243.82	1.2496
ID	MT	392.00	5,476.10	360,723	5,033,336	888	0.999	886.97	0.8911
OR	PAC	1,013.60	13,958.20	1,103,313	13,902,132	676	0.915	618.54	0.6214
WA	PAC	1,679.60	13,958.20	1,872,431	13,902,132	676	0.893	603.95	0.6068
Total/Median								995.34	

The underlying assumption in the calculation of State residential energy expenditures per low-income household is that the relationship between a State's residential energy expenditures per household and its respective divisional residential energy expenditures per household is the same for its low-income population as it is for its general population. If State Y's average household spends 100 percent more on residential energy than the average household in its Census division, then it is assumed that the low-income households in State Y will also spend 100 percent more on residential energy than the average low-income household in its division. For example, assume State Y's residential energy expenditures per general household is $2,000 and the average residential energy expenditures per general household in its division is $1,000. If the average residential energy expenditures per low-income households for the division is $800, then the residential energy expenditures per low-income household for State Y would be $1,600.

Formula Share

The above factors are combined into a single formula by multiplying the percent of low-income households (F1) in each State by the climate factor (F2) and the residential energy expenditures factor (F3) for that State. For explanation purposes, the result of applying the formula to a given State will now be called the State's weight (SW), as follows:

SW=F1×F2×3.

These State-by-State calculations do not necessarily sum to one. As a result, each State's weight must be divided by the national total of each State's weight to obtain the State's Formula Share, as follows:

State's Formula Share=State's Weight/National Total.

Table 5 shows the three factors (from the previous tables) for each State along with each State's weight and Formula Share.

Table Explanation

Column A—State Name.

Column B—State's Population Factor (F1).

Column C—State's Climatic Factor (F2).

Column D—State's Residential Energy Expenditures Factor (F3).

Column E—State's Weight—F1×F2×F3.

Column F—State's Formula Share—State's weight (Column E) divided by the national total (the sum of Column E).

TABLE 5.—FORMULA FACTORS, WEIGHT AND FORMULA SHARE BY STATE

State	F1	F2	F3	Weight	Share
A	B	C	D	E	F
Alabama	2.381	0.740	0.841	1.482	0.0156
Alaska	0.134	2.114	1.250	0.354	0.0037
Arizona	1.609	0.722	1.015	1.179	0.0124
Arkansas	1.480	0.827	1.000	1.225	0.0129
California	9.396	0.586	0.693	3.815	0.0401
Colorado	1.269	1.370	0.777	1.351	0.0142
Connecticut	0.742	1.188	1.256	1.108	0.0117
Delaware	0.191	0.993	1.175	0.223	0.0023
District of Columbia	0.286	0.998	0.702	0.200	0.0021
Florida	5.420	0.520	0.942	2.655	0.0279
Georgia	2.907	0.720	1.019	2.133	0.0224
Hawaii	0.252	0.407	0.519	0.053	0.0006
Idaho	0.426	1.332	0.891	0.506	0.0053
Illinois	4.051	1.255	1.167	5.930	0.0624
Indiana	2.018	1.191	1.043	2.507	0.0264
Iowa	1.134	1.370	1.015	1.577	0.0166
Kansas	1.010	1.091	0.961	1.058	0.0111
Kentucky	2.204	0.976	0.729	1.569	0.0165
Louisiana	2.725	0.630	0.992	1.704	0.0179
Maine	0.495	1.511	1.163	0.869	0.0091
Maryland	1.212	0.998	1.040	1.258	0.0132
Massachusetts	1.930	1.230	1.109	2.633	0.0277
Michigan	3.687	1.324	1.034	5.049	0.0531
Minnesota	1.523	1.656	0.904	2.279	0.0240
Mississippi	1.815	0.711	0.800	1.032	0.0109
Missouri	2.328	1.092	1.032	2.624	0.0276
Montana	0.422	1.530	0.861	0.556	0.0058
Nebraska	0.645	1.302	0.901	0.757	0.0080
Nevada	0.400	0.966	0.867	0.335	0.0035
New Hampshire	0.267	1.432	1.109	0.425	0.0045
New Jersey	1.869	1.089	1.230	2.504	0.0263
New Mexico	0.836	0.971	0.824	0.669	0.0070
New York	7.011	1.172	1.106	9.084	0.0955
North Carolina	3.014	0.801	1.061	2.560	0.0269
North Dakota	0.315	1.782	1.003	0.563	0.0059
Ohio	4.347	1.178	1.080	5.532	0.0582
Oklahoma	1.755	0.886	0.912	1.417	0.0149
Oregon	1.180	0.987	0.621	0.724	0.0076
Pennsylvania	4.467	1.166	1.204	6.274	0.0660
Rhode Island	0.352	1.147	1.072	0.433	0.0046
South Carolina	1.693	0.716	1.027	1.245	0.0131
South Dakota	0.351	1.495	0.967	0.507	0.0053
Tennessee	2.580	0.892	0.745	1.714	0.0180
Texas	6.289	0.678	0.980	5.511	0.0580
Utah	0.547	1.268	0.948	0.657	0.0069
Vermont	0.201	1.500	1.279	0.385	0.0040
Virginia	2.057	0.932	1.003	1.924	0.0202
Washington	1.731	1.058	0.607	1.111	0.0117
West Virginia	1.138	1.059	0.849	1.023	0.0108
Wisconsin	1.722	1.472	1.000	2.535	0.0267
Wyoming	0.187	1.524	0.944	0.269	0.0028
National Total				95.083	1.0000

Each State's share of the "Formula Allocation" is then calculated by multiplying the total "Formula Allocation" by each State's "Formula Share".

Section 440.10(c) Allocation of Funds

Two comments noted that since the NOPR was published on January 23, 1995, Congressional budgetary issues, which may affect the level of program funds available, have surfaced. In the NOPR, § 440.10(c) referred to fiscal year 1995 funding. At that time, the Department contemplated possible reductions in funding beginning after fiscal year 1995. Because of the possibility of reductions in fiscal year 1995 funding, this provision has been modified from the proposed language to clarify that the level of appropriations referred to in this section is that found in Pub. L. 103–332. Therefore, any increase in funds above the total program allocations level under Pub. L. 103–332 will be allocated according to the new formula. Should total program allocations for any fiscal year fall below the total program allocations under Pub. L. 103–332, then each State's program allocation shall be reduced from its allocated amount under Pub. L. 103–332 by the same percentage. For example, if total program allocations for a given year were 10 percent below the amount under Pub. L. 103–332, then each State's program allocation would be 10 percent less than under Pub. L. 103–332. This approach distributes the effect of lower appropriations equitably.

Section 440.10(d) Allocation of Funds

In § 440.10(d), DOE clarifies the sources of data used in the new formula. All sources of data are publicly available. Since publication of the NOPR, DOE has obtained updated data on State energy expenditures and incorporated this new data in Tables 4 and 5 of this interim final rule.

Section 440.10(e) Allocation of Funds

Section 440.10(e) alerts States of possible impacts on their weatherization programs that may occur due to changes in data. For any given program year when changes occur, DOE will delay reallocations based on new data until the following year. This allows States to plan for anticipated shifts in funds and develop alternative strategies for minimizing the impact of such change.

Section 440.12 State Application

In § 440.12(b)(4) the term "tentative allocation" is deleted and "program allocation" is substituted to provide consistency with § 440.10. It should be noted that the original intent in using the term "tentative allocation", that is, retaining DOE's discretion to reallocate funds if they are not used on a timely basis, is preserved by substituting "program allocation" as it applies in § 440.10 (f) and (g). The term "tentatively" in § 440.14(b)(9)(vi) is deleted.

Section 440.14 State Plans

In § 440.14(b)(8)(i) the term "tentative allocation" has been retained. This term in context refers to State allocation (rather than DOE allocation) of funds among their subgrantees and the right of the State, after providing appropriate due process, to reduce or withdraw these funds for non-performance or other deficiencies.

III. Interim Final Effect

DOE has issued today's regulatory amendments as an interim final rule to reserve the possibility of reopening the record in light of the ultimate disposition of pending budgetary bills during the current session of Congress. The Department anticipates removing the interim final designation before the end of 1995.

IV. Review Under Executive Order 12866

Today's regulatory action has been determined not to be a significant regulatory action under Executive Order 12866. Accordingly, today's action was not subject to review under the Executive Order by the Office of Management and Budget.

V. Review Under Executive Order 12778

Section 2 of E.O. 12778 instructs each agency to adhere to certain requirements in promulgating new regulations and reviewing existing regulations. These requirements, set forth in sections 2(a) and (b)(2), include eliminating drafting errors and needless ambiguity, drafting the regulation to minimize litigation, providing clear and certain legal standards for affected conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation: Specifies clearly any preemptive effect, any effect on existing Federal law or regulation, and any retroactive effect; describes any administrative proceedings to be available to judicial review and any provisions for the exhaustion of such administrative proceedings; and defines key terms. DOE certifies that today's regulation meets the requirements of sections 2(a) and (b) of E.O. 12778.

VI. Review Under Executive Order 12612

Executive Order 12612 requires that regulations be reviewed for any substantial direct effects on States, on the relationship between the national Government and the States, or on the distribution of power among various levels of Government. If there are sufficient substantial direct effects, the Executive Order requires preparation of a federalism assessment to be used in decisions by senior policymakers in promulgating or implementing the regulation.

Today's regulatory action will not have a substantial direct effect on the traditional rights and prerogatives of States in relationship to the Federal Government. Preparation of a federalism assessment is therefore unnecessary.

VII. Review Under the Regulatory Flexibility Act

The regulations were reviewed under the Regulatory Flexibility Act, Pub. L. 96–354, which requires preparation of a regulatory flexibility analysis for any proposed regulation that will have a significant economic impact on a substantial number of small entities, i.e., small businesses and small government jurisdictions. DOE has concluded that the interim final rule will affect the States and local agencies operating weatherization programs, especially in the warmer-weather States which will receive more funding. The incremental effect of the final changes relates to the distribution of approximately $20 million. Thus this incremental effect when spread among all of the States and the District of Columbia will not have a significant impact on a substantial number of small entities. Therefore, DOE certifies that there will not be a significant economic impact on a substantial number of small entities and that preparation of a regulatory flexibility analysis is not warranted.

VIII. Review Under the Paperwork Reduction Act

No new information collection or recordkeeping requirements are imposed on the public by today's interim final rule. Accordingly, no OMB clearance is required under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., or implementing regulations at 5 CFR part 1320.

IX. Review Under National Environmental Policy Act

The interim final rule provides the new formula which will be used to distribute funds among the States pursuant to the regulations for the Weatherization Assistance Program for Low-Income Persons. Over the years many warmer-weather States have maintained that the old formula overallocated funds to colder-weather States. The purpose of the new formula is to increase the overall equity among the States. The Department has determined that this interim final rule is covered under the Categorical Exclusion found at paragraph A6 of appendix A to subpart D, 10 CFR part 1021, which applies to the establishment of procedural rulemakings. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

X. Other Federal Agencies

DOE provided draft copies of the interim final rule to the Department of Health and Human Services Low-Income Home Energy Assistance Program and the Department of Agriculture Farmers Home Administration. No comments were received. DOE also provided a draft copy to the Administrator of the Environmental Protection Agency, pursuant to section 7 of the Federal Energy Administration Act, as amended, 15 U.S.C. 766. The Administrator did not submit any comment.

XI. The Catalog of Federal Domestic Assistance

The *Catalog of Federal Domestic Assistance* number for the

Weatherization Assistance Program for Low-Income Persons is 81.042.

List of Subjects in 10 CFR Part 440

Administrative practice and procedure, Aged, Energy conservation, Grant programs-energy, Grant programs-housing and community development, Handicapped, Housing standards, Indians, Reporting and recordkeeping requirements, and Weather.

Issued in Washington, DC, on May 25, 1995.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, DOE hereby amends chapter II of title 10, Code of Federal Regulations, as set forth below:

PART 440—WEATHERIZATION ASSISTANCE PROGRAM FOR LOW-INCOME PERSONS

1. The authority citation for part 440 is revised to read as follows:

Authority: 42 U.S.C. 6861–6871; 42 U.S.C. 7191.

2. In § 440.3, remove the definitions for "Number of Low-Income, Owner Occupied Dwelling Units in the State"; "Number of Low-Income, Renter-Occupied Dwelling Units in the State"; "Percentage of Total Residential Energy Used for Space Cooling"; "Percentage of Total Residential Energy Used for Space Heating"; and add the following definitions in alphabetical order to read as follows.

§ 440.3 Definitions.

* * * * *

Base Allocation means the fixed amount of funds for each State as set forth in § 440.10(b)(1).

* * * * *

Formula Allocation means the amount of funds for each State as calculated based on the formula in § 440.10(b)(3).

Formula Share means the percentage of the total formula allocation provided to each State as calculated in § 440.10 (b)(3).

* * * * *

Program Allocation means the base allocation plus formula allocation for each State.

* * * * *

Residential Energy Expenditures means the average annual cost of purchased residential energy, including the cost of renewable energy resources.

* * * * *

Total Program Allocations means the annual appropriation less funds reserved for training and technical assistance.

* * * * *

3. Section 440.10 is revised to read as follows:

§ 440.10 Allocation of funds.

(a) DOE shall allocate financial assistance for each State from sums appropriated for any fiscal year, upon annual application.

(b) Based on total program allocations at or above the amount of total program allocations under Pub. L. 103–332, DOE shall determine the program allocation for each State from available funds as follows:

(1) Allocate to each State a "Base Allocation" as listed in Table 1.

TABLE 1

Alabama	1,636,000
Alaska	1,425,000
Arkansas	1,417,000
Arizona	760,000
California	4,404,000
Colorado	4,574,000
Connecticut	1,887,000
Delaware	409,000
District of Columbia	487,000
Florida	761,000
Georgia	1,844,000
Hawaii	120,000
Idaho	1,618,000
Illinois	10,717,000
Indiana	5,156,000
Iowa	4,032,000
Kansas	1,925,000
Kentucky	3,615,000
Louisiana	912,000
Maine	2,493,000
Maryland	1,963,000
Massachusetts	5,111,000
Michigan	12,346,000
Minnesota	8,342,000
Mississippi	1,094,000
Missouri	4,615,000
Montana	2,123,000
Nebraska	2,013,000
Nevada	586,000
New Hampshire	1,193,000
New Jersey	3,775,000
New Mexico	1,519,000
New York	15,302,000
North Carolina	2,853,000
North Dakota	2,105,000
Ohio	10,665,000
Oklahoma	1,846,000
Oregon	2,320,000
Pennsylvania	11,457,000
Rhode Island	875,000
South Carolina	1,130,000
South Dakota	1,561,000
Tennessee	3,218,000
Texas	2,999,000
Utah	1,692,000
Vermont	1,014,000
Virginia	2,970,000
Washington	3,775,000
West Virginia	2,573,000
Wisconsin	7,061,000
Wyoming	967,000
Total	171,258,000

(2) Subtract 171,258,000 from total program allocations.

(3) Calculate each State's formula share as follows:

(i) Divide the number of "Low Income" households in each State by the number of "Low Income" households in the United States and multiply by 100.

(ii) Divide the number of "Heating Degree Days" for each State by the median "Heating Degree Days" for all States.

(iii) Divide the number of "Cooling Degree Days" for each State by the median "Cooling Degree Days" for all States, then multiply by 0.1.

(iv) Calculate the sum of the two numbers from paragraph (b)(3)(ii) and (iii) of this section.

(v) Divide the residential energy expenditures for each State by the number of households in the State.

(vi) Divide the sum of the residential energy expenditures for the States in each Census division by the sum of the households for the States in that division.

(vii) Divide the quotient from paragraph (b)(3)(v) of this section by the quotient from paragraph (b)(3)(vi) of this section.

(viii) Multiply the quotient from paragraph (b)(3)(vii) of this section for each State by the residential energy expenditures per low-income household for its respective Census division.

(ix) Divide the product from paragraph (b)(3)(viii) of this section for each State by the median of the products of all States.

(x) Multiply the results for paragraph (b)(3)(i), (iv) and (ix) of this section for each State.

(xi) Divide the product in paragraph (b)(3)(x) of this section for each State by the sum of the products in paragraph (b)(3)(x) of this section for all States.

(4) Calculate each State's program allocation as follows:

(i) Multiply the remaining funds calculated in paragraph (b)(2) of this section by the formula share calculated in paragraph (b)(3)(xi) of this section,

(ii) Add the base allocation from paragraph (b)(1) of this section to the product of paragraph (b)(4)(i) of this section.

(c) Should total program allocations for any fiscal year fall below the total program allocations under Pub. L. 103-332, then each State's program allocation shall be reduced from its allocated amount under Pub. L. 103–332 by the same percentage as total program allocations for the fiscal year fall below the total program allocations under Pub. L. 103–332.

(d) All data sources used in the development of the formula are publicly available. The relevant data is available from the Bureau of the Census, the Department of Energy's Energy Information Administration and the National Oceanic and Atmospheric Administration.

(e) Should updates to the data used in the formula become available in any fiscal year, these changes would be implemented in the formula in the following program year.

(f) DOE may reduce the program allocation for a State by the amount DOE determines cannot be reasonably expended by a grantee to weatherize dwelling units during the budget period for which financial assistance is to be awarded. In reaching this determination, DOE will consider the amount of unexpended financial assistance currently available to a grantee under this part and the number of dwelling units which remains to be weatherized with the unexpended financial assistance.

(g) DOE may increase the program allocation of a State by the amount DOE determines the grantee can expend to weatherize additional dwelling units during the budget period for which financial assistance is to be awarded.

(h) The Support Office Director shall notify each State of the program allocation for which that State is eligible to apply.

4. Section 440.12 is amended by revising paragraph (b)(4) to read as follows:

§ 440.12 State applications.

* * * * *

(b) * * *

(4) The total number of dwelling units proposed to be weatherized with grant funds during the budget period for which assistance is to be awarded—

(i) With financial assistance previously obligated under this part, and

(ii) With the program allocation to the State;

* * * * *

5. Section 440.14 is amended by revising paragraph (b)(9)(vi) to read as follows:

§ 440.14 State plans.

* * * * *

(b) * * *

(9) * * *

(vi) The amount of weatherization grant funds allocated to the State under this part;

* * * * *

[FR Doc. 95–13437 Filed 6–2–95; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Lasalocid

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Hoffmann-La Roche, Inc. The supplemental NADA provides for the use of 20 percent of lasalocid Type A medicated article in making Type C medicated feed used for chukar partridges as a coccidiostat.

EFFECTIVE DATE: June 5, 1995.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1643.

SUPPLEMENTARY INFORMATION: Hoffmann-La Roche, Inc., Nutley, NJ 07110, is the sponsor of NADA 96–298, which currently provides for the use of a Type A medicated article HFV238 containing 20 percent (90.7 grams per pound (g/lb)) of lasalocid sodium activity in making 68- to 113-g per ton (g/t) Type C medicated feed for broiler or fryer chickens. The firm has filed a supplemental NADA that expands the use of the article to make a 113-g/t Type C medicated feed for chukar partridges for the prevention of coccidiosis caused by *Eimeria legionensis*. Approval is based in part on data and information in Public Master File (PMF) 5429 established under the Interregional Research Project No. 4 (IR–4), Northeastern Region, New York State College of Veterinary Medicine, Cornell University, Ithaca, NY 14853–6401.

The supplemental NADA is approved as of April 19, 1995, and the regulations are amended in § 558.311 (21 CFR 558.311) to reflect the approval. The basis for approval is discussed in the freedom of information summary.

Additionally, in a final rule published in the **Federal Register** of August 6, 1990 (55 FR 31827), that amended the regulations in § 558.311(e)(1), the agency failed to also revise § 558.311(b)(6) to remove reference to entry (xiii) in the table in paragraph (e)(1). This document corrects that error.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

2. Section 558.311 is amended in paragraph (b)(6) by removing "(e)(1)(xiii)," by adding new paragraph (b)(7), and in the table in paragraph (e)(1) by adding new entry "(xiii)" to read as follows:

§ 558.311 Lasalocid.

* * * * *

(b) * * *

(7) 20 percent activity to No. 000004 for use in chukar partridges as in paragraph (e)(1)(xiii) of this section.

* * * * *

(e)(1) * * *

Lasalocid sodium activity in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
•	•	•	•	•
(xiii) 113 (0.0125 pct).	.....	Chukar partridges; for prevention of coccidiosis caused by *Eimeria legionensis*.	Feed continuously as sole ration up to 8 weeks of age.	000004

* * * * *

Dated: May 24, 1995.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 95–13636 Filed 6–2–95; 8:45 am]

BILLING CODE 4160–01–F

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Lasalocid

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Hoffmann-La Roche, Inc. The supplemental NADA provides for the use of a 20-percent lasalocid Type A medicated article in making Type C medicated feed used for growing turkeys as a coccidiostat.

EFFECTIVE DATE: June 5, 1995.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1643.

SUPPLEMENTARY INFORMATION: Hoffmann-La Roche, Inc., Nutley, NJ 07110, is the sponsor of NADA 96–298, which currently provides for the use of a Type A medicated article containing 20 percent (90.7 grams per pound (g/lb)) of lasalocid sodium activity in making a 68- to 113-g-per-ton (g/t) Type C medicated feed for broiler or fryer chickens and chukar partridges. The firm has filed a supplemental NADA that expands the use of the article to making a 68- to 113-g/t Type C medicated feed for growing turkeys for the prevention of coccidiosis caused by *Eimeria meleagrimitis, E. gallopavonis,* and *E. adenoeides.*

The supplemental NADA is approved as of April 28, 1995, and the regulations are amended in 21 CFR 558.311 to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), this approval qualifies for 3 years of marketing exclusivity beginning April 28, 1995, because the supplemental application contains reports of new clinical or field investigations (other than bioequivalence or residue studies) essential to the approval of the application and conducted or sponsored by the applicant. The 3 years of marketing exclusivity applies only to the described use of lasalocid sodium in growing turkeys for which the supplemental application was approved.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

2. Section 558.311 is amended in paragraph (b) by revising paragraph (b)(7) and in the table in paragraph (e)(1) by adding new entry "(xiv)" to read as follows:

§ 558.311 Lasalocid.

* * * * *

(b) * * *

(7) 20 percent activity to No. 000004 for use in chukar partridges as in paragraph (e)(1)(xiii) and for use in turkeys as in paragraph (e)(1)(xiv) of this section.

* * * * *

(e)(1) * * *

Lasalocid sodium activity in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
•	•	•	•	•
(xiv) 68 (0.0075 pct) to 113 (0.0125 pct).	.....	Growing turkeys; for prevention of coccidiosis caused by *E. meleagrimitis, E. gallopavonis,* and *E. adenoeides.*	Feed continuously as sole ration.	000004

* * * * *

Dated: May 24, 1995.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 95–13637 Filed 6–2–95; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Nicarbazin and Bacitracin Methylene Disalicylate

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to codify a previously approved new animal drug application (NADA) held by Merck Research Laboratories, Division of Merck & Co., Inc. The NADA provides for use of nicarbazin and bacitracin methylene disalicylate in Type C broiler feeds for prevention of certain forms of coccidiosis and for increased rate of weight gain and improved feed efficiency.

EFFECTIVE DATE: June 5, 1995.

FOR FURTHER INFORMATION CONTACT: Dianne T. McRae, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1623.

SUPPLEMENTARY INFORMATION: Merck Research Laboratories, Division of Merck & Co., Inc., P.O. Box 2000, Rahway, NJ 07065, is sponsor of NADA 98–378 which provides for the use of approved nicarbazin and bacitracin methylene disalicylate Type A medicated articles to make Type C medicated broiler feeds containing 113.5 grams per ton (g/t) nicarbazin with 30 g/t bacitracin methylene disalicylate. The NADA was approved by letter of March 15, 1955, for prevention of certain forms of coccidiosis and for increased rate of weight gain and improved feed efficiency. This document amends the regulations in 21 CFR 558.76(d) and in the table in 21 CFR 558.366(c) to reflect the approval.

Also, the table in § 558.366(c) contains two entries in the first column for "113.5 (0.0125 pct)." The second entry in the first column is unnecessary, and is being removed at this time. In addition, the entry for "113.5 (0.0125)" contains an outdated footnote to the approval for use of 113.5 g/t nicarbazin. Because the National Academy of Sciences/National Research Council (NAS/NRC) status was changed by enactment of the Generic Animal Drug and Patent Term Restoration Act of 1988, the footnote is hereby removed.

NADA 98–378 provides for use of nicarbazin and bacitracin methylene disalicylate Type A medicated articles to make Type C medicated feeds. Nicarbazin is a Category II drug which, as provided in 21 CFR 558.4, requires an approved Form FDA 1900 for making Type C medicated feeds. Therefore, use of nicarbazin Type A medicated articles in making Type C medicated feeds as in this NADA requires an approved Form FDA 1900.

Because this NADA was approved prior to July 1, 1975, the freedom of information (FOI) summary specified in 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii) is not required.

The agency has determined under 21 CFR 25.24(d)(1)(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

2. Section 558.76 is amended by adding paragraph (d)(3)(v) to read as follows:

§ 558.76 Bacitracin methylene disalicylate.

* * * * *

(d) * * *

(3) * * *

(v) Nicarbazin as in § 558.366.

* * * * *

3. Section 558.366 is amended in the table in paragraph (c) by removing footnote "1" for the entry "113.5 (0.0125 pct)," by removing the second entry "113.5 (0.0125 pct)," and by adding a new item before the entry for "Lincomycin 2 (0.00044 pct)," to read as follows:

§ 558.366 Nicarbazin.

* * * * *

(c) * * *

Nicarbazin in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
•	•	•	•	•
	Bacitracin methylene disalicylate 30	Broiler chickens; aid in preventing outbreaks of cecal (*Eimeria tenella*) and intestinal (*E. acervulina, E. maxima, E. necatrix,* and *E. brunetti*) coccidiosis; for increased rate of weight gain and improved feed efficiency.	.....do	000005
•	•	•	•	•

Dated: May 24, 1995.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 95–13635 Filed 6–2–95; 8:45 am]

BILLING CODE 4160–01–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–10–1–7020; FRL–5214–8]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Revision to the State Implementation Plan (SIP) Addressing Visible Emissions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: The EPA published without prior proposal a **Federal Register** (FR) action approving a revision to the Texas SIP addressing visible emissions. The EPA's direct final approval was published on April 3, 1995 (60 FR 16806).

The EPA subsequently received adverse comments on the action. Accordingly, the EPA is withdrawing its direct final approval. All public comments received will be addressed in a subsequent final rule.

EFFECTIVE DATE: This withdrawal will be effective on June 2, 1995.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the addresses listed below. The interested persons wanting to examine these documents should make an appointment at least twenty-four hours before the visiting day.

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T–A), 1445 Ross Avenue, suite 700, Dallas, Texas 75202–2733.

Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711–3087.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Sather, Planning Section (6T–AP), Air Programs Branch (6T–A), USEPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7258.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Therefore, the final rule appearing at 60 FR 16806, April 3, 1995, which was to become effective June 2, 1995, is withdrawn.

Dated: May 22, 1995.

A. Stanley Meiburg,

Acting Regional Administrator.

[FR Doc. 95–13746 Filed 6–2–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 63

[AD–FRL–5209–8]

RIN 2060–AC31

National Emission Standards for Hazardous Air Pollutants: Halogenated Solvent Cleaning; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Corrections to final regulation.

SUMMARY: This action corrects errors and clarifies regulatory text in the final rule published on December 2, 1994 at 59 FR 61801.

EFFECTIVE DATE: These corrections become effective June 5, 1995.

FOR FURTHER INFORMATION CONTACT: Paul Almodóvar, Coatings and Consumer Products Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–0283.

SUPPLEMENTARY INFORMATION: On December 2, 1994 (59 FR 61801), the Environmental Protection Agency (EPA) promulgated in the **Federal Register** national emission standards for hazardous air pollutants for halogenated solvent cleaning. These standards were promulgated as subpart T in 40 CFR part 63. This document contains corrections to editorial and cross-referencing errors in the final standards. In addition, there are corrections to clarify the applicability of the final rule, and to clarify several definitions.

Paragraph (a) of § 63.460 is revised to reflect the intent of the final rule by clarifying that wipe cleaning activities, such as cleaning using a rag containing halogenated solvent or a spray cleaner containing halogenated solvent are not covered under the scope of this regulation.

Paragraph (d) of § 63.460 and the definition of an existing source under § 63.461 are being revised to clarify that any machine, the construction or reconstruction of which was commenced on or before November 29, 1993, that did not meet the definition of a solvent cleaning machine on December 2, 1994, because it did not, on that date, use halogenated hazardous air pollutant solvent liquid or vapor covered under this subpart to remove soils, becomes an existing source when it commences to use such liquid or vapor. The Agency intended machines that use halogenated hazardous air pollutants solvent liquid or vapor covered under this subpart to be subject to the regulation regardless of when they commenced such use. This correction clarifies an oversight in the drafting of the final rule. In addition, an existing solvent cleaning machine moved within a contiguous facility or to another facility under the same ownership continues to be regulated as an existing machine.

The definition of a batch cleaning machine under § 63.461 is being revised to clarify that cross-rod degreasers are considered batch cleaning machines. A definition of a cross-rod solvent cleaning machine is being added to the final rule.

The definition of a solvent cleaning machine under § 63.461 is being revised to clarify that small buckets, pails, and beakers with capacities of 7.6 liters (2 gallons) or less are not considered solvent cleaning machines for the purpose of this subpart. The Agency did not intend to regulate these small pieces of equipment not specifically designed to carry out cleaning or drying operations using one of the covered halogenated solvents. The size limit is included to ensure that larger vessels not specifically designed to carry out cleaning or drying operations remain subject to this final rule.

Paragraph (e)(2)(i) of § 63.463 is being revised to correct the proper units of measurement for the chilled air blanket temperature that the freeboard refrigeration device shall at least maintain. The chilled air blanket temperature shall be measured in °F, instead of °F or °C.

Paragraph (a)(4) of § 63.468 is being revised to correct an editorial error in order to clarify the intent of the provisions.

Paragraph (j) of § 63.468 is being revised to correct language on the part 70 permitting requirements for area source batch vapor and in-line solvent cleaning machines to clarify the intent of the provisions.

The headings for appendix B and appendix C are being revised for editorial errors in order to clarify the intent of the provisions.

List of Subjects in 40 CFR Part 63

Enviromental protection, Air pollution control, Hazardous

substances, Halogenated solvent cleaning machines, Reporting and recordkeeping requirements.

Dated: May 10, 1995.

Mary D. Nichols,

Assistant Administrator for Air and Radiation.

For reasons set out in the preamble, title 40, chapter I, part 63, subpart T of the Code of Federal Regulations is corrected as follows:

PART 63—[CORRECTED]

1. On page 61805, in the third column, 4 lines from the bottom, § 63.460(a) is corrected to add the following: "Wipe cleaning activities, such as using a rag containing halogenated solvent or a spray cleaner containing halogenated solvent are not covered under the provisions of this subpart."

2. On page 61806, first column, starting on line 18 from the top, § 63.460(d) is corrected by adding the following sentence to the end of the paragraph "Except that, any machine that commences construction or reconstruction on or before November 29, 1993, that does not use halogenated hazardous air pollutant (HAP) solvent on December 2, 1994 shall, if the machine begins use of halogenated HAP solvent after December 2, 1994, achieve compliance with the provisions of this subpart no later than December 2, 1997 or 60 days after commencing use of halogenated HAP solvent covered under this subpart whichever is later."

3. On page 61806, first column, starting 7 lines from the bottom, the definition of "batch cleaning machine" under § 63.461 is corrected by revising the last sentence to read as follows: "A solvent cleaning machine, such as a ferris wheel or a cross-rod degreaser, that clean multiple batch loads simultaneously and are manually loaded are batch cleaning machines."

4. On page 61806, second column, starting on the last line of the column, the definition of "existing" in § 63.461 is corrected to add the following sentence to the end of the definition: "A machine, the construction or reconstruction of which was commenced on or before November 29, 1993, but that did not meet the definition of a solvent cleaning machine on December 2, 1994 because it did not use halogenated HAP solvent liquid or vapor covered under this subpart to remove soils, becomes an existing source when it commences to use such liquid or vapor. A solvent cleaning machine moved within a contiguous facility or to another facility under the same ownership, constitutes an existing machine."

5. On page 61806, second column, immediately following the definition of "cover" in § 63.461, the following definition of "cross-rod solvent cleaning machine" is added: "*Cross-rod solvent cleaning machine* means a batch solvent cleaning machine in which parts baskets are suspended from 'cross-rods' as they are moved through the machine. In a cross-rod cleaning machine, parts are loaded semi-continuously, and enter and exit the machine from a single portal."

6. On page 61807, second column, starting on line 40 from the top, the definition of "solvent cleaning machine" under § 63.461 is corrected to add the following sentence to the end of the definition: "Buckets, pails, and beakers with capacities of 7.6 liters (2 gallons) or less are not considered solvent cleaning machines."

7. On page 61808, in the first column, starting on line 26 from the top, § 63.462(d) is corrected to read as follows: "Each owner or operator of a batch cold cleaning machine shall submit an initial notification report as described in § 63.468 (a) and (b) and a compliance report as described in § 63.468(c)."

8. On page 61810, first column, starting on the last two lines, § 63.463(e)(2)(i) is corrected to read as follows: "If a freeboard refrigeration device is used to comply with these standards, the owner or operator shall ensure that the chilled air blanket temperature (in °F), measured at the center of the air blanket, is no greater than 30 percent of the solvent's boiling point."

9. On page 61814, third column, starting on line 24 from the top, § 63.468(a)(4) is corrected to read as follows: "The date of installation for each solvent cleaning machine or a letter certifying that the solvent cleaning machine was installed prior to, or after, November 29, 1993."

10. On page 61816, second column, starting on line 3 from the top § 63.468(j) is corrected to read as follows: "The Administrator has determined, pursuant to the criteria under section 502(a) of the Act, that an owner or operator of any batch cold solvent cleaning machine that is not itself a major source and that is not located at a major source, as defined under 40 CFR 70.2, is exempt from part 70 permitting requirements for that source.

An owner or operator of any other solvent cleaning machine subject to the provisions of this subpart is subject to part 70 permitting requirements, such sources, if not major or located at major sources, may be deferred by the State from part 70 permitting requirements for 5 years after the EPA first approves a part 70 program (i.e., until December 9, 1999). All sources receiving deferrals shall submit permit applications within 12 months of such date (by December 9, 2000)."

11. On page 61818, in the first column, on the first line, amendment "4." is corrected to read as follows: "4. Appendix A to subpart T is added to read as follows:" Also, on the next line, the words "Appendix B" are corrected to read "Appendix A to Subpart T".

12. On page 61818, in the third column, on the last two lines, amendment "5." is corrected to read as follows: "5. Appendix B to Subpart T is added to read as follows:" Also, on the next line, the words "Appendix C" are corrected to read "Appendix B to Subpart T".

[FR Doc. 95–12769 Filed 6–2–95; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 43

[CC Docket No. 92–296; FCC 95–181]

Simplification of the Depreciation Process

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Federal Communications Commission is adopting ranges for the underlying factors that are used to compute depreciation rates for the local exchange carriers (LECs) regulated under the price cap incentive regulatory plan. Under new procedures, LECs may make streamlined filings for changes in depreciation rates, if their underlying depreciation factors fall within the prescribed ranges. The Commission implemented the streamlined procedures in two phases. The Second Report and Order (released June 28, 1994) adopted underlying factor ranges for 22 of the 34 depreciation rate categories. This Third Report and Order adopts ranges and alternate simplified procedures for the remaining 12 accounts and completes the implementation process. The rule change will lessen the depreciation prescription burden on price caps LECs in light of regulatory and market changes without sacrificing protection for consumers.

EFFECTIVE DATE: July 5, 1995.

FOR FURTHER INFORMATION CONTACT: Fatina K. Franklin (202–418–0859) or John Hays (202–418–0875), Common Carrier Bureau, Accounting and Audits Division.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Third Report and Order in the Simplification of the Depreciation Prescription Process, CC Docket No. 92–296, FCC 95–181, adopted May 2, 1995 and released May 4, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M St., Washington, DC. The full text will be published in the FCC Record and may also be purchased from the Commission's copy contractor, International Transcription Services, room 246, 1919 M Street, NW., Washington, DC 20554 (202–857–3800).

Paperwork Reduction Act

The Federal Communications Commission has submitted the following information collection request to OMB for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. 3507. Persons wishing to comment on this information collection should contact Timothy Fain, Office of Management and Budget, room 3225, New Executive Office Building, Washington, DC 20503, (202) 395–3561. For further information, contact Judy Boley, Federal Communications Commission, (202) 418–0214.

Please note: The Commission has requested expedited review of this collection by June 23, 1995, under the provisions of 5 C.F.R. Section 1320.18.

Title: Section 43.43—Report of Proposed Changes in Depreciation Rates
OMB Control No.: 3060–0168
Action: Revised collection
Respondents: Businesses or other for-profit entities
Frequency of response: On occasion; Triennially; Annually
Estimated Annual Burden: 12 responses; 5625 hours per response; 67,500 hours total
Needs and Uses: In the Report and Order in CC Docket No. 92–296 (released 10/20/93), the Commission streamlined its depreciation prescription process for local exchange carriers (LECs) regulated under its price cap regulatory scheme by adopting a modified form of the basic factor range option. The Second Report and Order (released 6/28/94) adopted the initial set of accounts and ranges for the price caps LECs. The Third Report and Order adopts ranges and alternate simplified procedures for the remaining accounts and completes the implementation process. The Commission has modified its information collection requirements whereby large LECs must submit analyses on proposed changes in depreciation rates. The changes should reduce by 43.75% the amount of time needed to prepare and review these analyses. The information will be used by the Commission staff to establish proper depreciation rates to be charged by the carriers pursuant to Section 220(b) of the Communications Act, as amended. 47 U.S.C. 220(b).

The foregoing estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the burden estimates or any other aspect of the collection of information including suggestions for reducing the burden to the Federal Communications Commission, Records Management Branch, Paperwork Reduction Project (3060–0168), Washington, DC 20554 and to the Office of Management and Budget, Washington, DC 20503.

Summary: 1. On September 23, 1993, we adopted streamlined depreciation prescription procedures for the local exchange carriers ("LECs") regulated under our price cap incentive regulatory plan.[1] These procedures require us to establish ranges for the underlying factors that are used to compute depreciation rates for plant categories. The new procedures generally will permit carriers to make streamlined filings for changes in depreciation rates for these categories, as long as their underlying factors fall within the prescribed ranges. By adopting these streamlined procedures, we hoped to simplify the depreciation process, achieve administrative savings, and allow the LECs greater flexibility[2] in the depreciation process, while remaining consistent with the public interest.

2. We further concluded that the streamlined procedures should be implemented as soon as practicable, beginning with the plant accounts most readily adaptable to the range approach. To that end, we decided to implement the new procedures in two phases. In the Second Report and Order (released 6/28/94), we completed phase one of the streamlining process and adopted ranges for 22 plant categories.[3]

3. On October 7, 1994, we adopted a Further Order Inviting Comment[4] proposing streamlined procedures for the remaining 12 plant categories. The FOIC sought comments on the proposed projection life and future net salvage ranges proposed by the Bureau for eight of these categories and alternate simplified procedures for the remaining four categories.

4. In response to the FOIC, the United States Telephone Association (USTA) and most of the LEC commenters urge the Commission to adopt the ranges so that the LECs can use them during the 1995 depreciation represcription process. These commenters, however, give limited support to the ranges as proposed in the FOIC. They state that those ranges are based on "historical" data that are not forward looking. In addition, they argue that the proposed projection life ranges encompass useful lives that are too long.

5. The General Services Administration (GSA), MCI Telecommunications Corporation (MCI), and the National Association of Regulatory Utility Commissioners (NARUC) support the ranges proposed in the FOIC. They state that the methodology the Commission used to determine the ranges is sound and that the ranges are reasonable and should be adopted without modification. MCI and NARUC further state that the proposed ranges appear to provide flexibility to a majority of the LECs, but are not so broad as to be meaningless.

6. On the other hand, the Idaho Public Utilities Commission (Idaho Commission) and the Missouri Public Service Commission (Missouri Commission) contend that the ranges are based on inadequate data. They state that, while the data are useful for determining the depreciation factors for a specific company, they are not adequate to establish industry-wide ranges. The Missouri Commission and the Idaho Commission indicate that the proposed ranges are too wide and that the ranges could substantially increase the carriers' depreciation expense. The Missouri Commission indicates that these ranges would give the price cap LECs discretion over approximately $1 billion in depreciation expense. In addition, the Missouri Commission

[1] Simplification of the Depreciation Prescription Process, Report and Order, 58 FR 58788 (1993) (Depreciation Simplification Order).

[2] Flexibility allows a LEC to select, within established ranges, the life and salvage factors it uses in prescribed depreciation rates without undergoing the expense of submitting studies to justify its specification of those factors. In addition, under the new procedures, the LECs can change their basic factors annually, as opposed to the current triennial represcription cycle.

[3] Simplification of the Depreciation Prescription Process, Second Report and Order, 59 FR 35632 (1994) (Second Report and Order).

[4] Simplification of the Depreciation Prescription Process, Order Inviting Comments, 58 FR 62083 (1993) (OIC).

contends that the ranges' width should vary inversely with the size of the account so that the potential depreciation change would equal some "target discretion value." Thus, according to the Missouri Commission, accounts with large balances should have relatively small ranges and accounts with small balances should have relatively large ranges.

7. In the Depreciation Simplification Order, we set forth the specific methodology that should be used to establish the projection life and future net salvage ranges. We have already used that methodology in establishing ranges for 22 depreciation rate categories in our Second Report and Order. In this Order, we are again using that methodology to set ranges for eight additional plant categories. This methodology requires that we consider certain specifically enumerated data. To apply it for each account and for each of the two basic factors, we first developed a range of one standard deviation around the mean of the basic factors underlying the currently prescribed depreciation rates for each of the LECs. From that point, we determined whether there were technological trends or changing carrier plans that might not be fully reflected in some of the LECs' prescribed factors. We then considered the number of LECs with basic factors that fall within the initial ranges and altered the ranges where appropriate. We recognized, however, that these specifically enumerated data must be considered in light of our obligation to prescribe reasonable depreciation rates. Thus, in developing the proposed ranges, we considered both the specific data enumerated in the Depreciation Simplification Order and our overriding responsibility to prescribe reasonable depreciation rates.

8. After reviewing the comments, we have decided to adopt the ranges proposed in the FOIC. (See Appendix). As indicated above, these ranges are based on statistical studies of the most recently prescribed factors. These statistical studies required detailed analyses of each carrier's most recent plant retirement patterns, the carriers' plans, and the current technological developments and trends. Because the proposed ranges reflect these data, we do not believe that the ranges are too high, too low, or not accurate as several commenters contend. Moreover, the ranges are not so broad as to be considered meaningless by including all prescribed factors.

9. As we stated in the Second Report and Order, our objective in this rulemaking is to streamline the process used by the Commission to prescribe depreciation rates, not to change those rates. We believe that the ranges adopted in this Order, and in the Second Report and Order, provide a reasonable degree of confidence that the basic factors falling within their bounds will produce depreciation rates accurately reflecting plant retirements, company plans, and technological trends. On the other hand, they allow the LECs sufficient flexibility in the selection of the final factors. Consequently, we have decided not to deviate from any of the proposed ranges at this time. We believe that some experience with the ranges should be developed before we consider modifying them. As suggested by most of the commenters, this will also allow us to establish the ranges as quickly as possible so that the LECs can use them during the 1995 represcription process. If changing conditions require revisions in the ranges, we can modify them during our three-year range review.

10. In the FOIC, we did not propose ranges for Account 2211, Analog Electronic Switching; Account 2215, Electro-mechanical Switching; and Account 2431, Aerial Wire.[5] We stated that the LECs are rapidly phasing out the obsolete equipment recorded in these "dying accounts"[6] and replacing it with equipment based on newer technologies. We proposed to calculate the depreciation rates for these accounts from specific plant retirement schedules that the LECs have developed based on company plans to modernize their networks. We stated that these rates would be more accurate and easier to calculate than rates based on national averages that require detailed statistical analyses of forecasted basic factors.

11. In addition, we did not propose a range for Account 2121, Buildings.[7] We stated that, for depreciation study purposes, we had permitted the LECs great flexibility in subdividing this account and estimating lives for each subcategory. We also stated that, because of the significant differences among the categorization methods, the LECs' current basic factors for the subaccounts could not be used to establish nationwide ranges. In the FOIC, we proposed to maintain the basic factors underlying the currently prescribed depreciation rates for the buildings account, until our three-year range review when we will reconsider whether ranges would be appropriate for this account. In the interim, we proposed to require that the price cap LECs submit the same data for the buildings account that would be required under our streamlined study procedures.[8]

12. The parties commenting on these matters support our proposals. MCI, the Southwestern Bell Telephone Company (Southwestern), and USTA indicate that there is no need to establish ranges for "dying accounts." NARUC agrees that our proposed method for determining the rates for the three "dying accounts" would be more accurate than rates based on national averages. NARUC maintains that these rates can be readily calculated using individual company retirement schedules without the need for statistical analyses to forecast lives. The commenters also concur with our proposed treatment of the buildings account.

13. We conclude that the public interest would be best served by adopting the alternate streamlined procedures for these accounts proposed in the FOIC. We find that the cost of establishing and administering ranges for these accounts would outweigh the benefits. As we stated in the FOIC, depreciation rates on obsolete equipment recorded in "dying accounts" can be readily calculated from retirement schedules using a methodology less complicated than the range approach. Moreover, to establish ranges for the buildings account would require that the LECs' present data be recast into new, uniform subcategories. The LECs have indicated that the cost of compiling the information necessary to develop new subcategories would be substantial.[9]

14. Furthermore, we find that the depreciation rates calculated for these accounts using our alternate streamlined procedures will be more accurate than depreciation rates based on the range approach. For the "dying accounts," the rates will reflect company-specific retirement schedules rather than national averages of the underlying basic factors. For the building account, we believe the present rates will reflect company operations over the next few years. The LECs do not have plans to add or retire a significant number of buildings during that period. As a result, the underlying depreciation

[5] 47 CFR 32.2211, 32.2115, 32.2431.

[6] "Dying accounts" are asset accounts in which little or no new investment is being made, and for which substantial retirements are impending.

[7] 47 CFR 32.2121.

[8] Depreciation Rates Branch, The Federal Communications Commission, The Federal Communications Commission Depreciation Study Guide § I (1995) describes these streamlined study procedures.

[9] See Letter from Thomas R. Whittaker, Chairman, United States Telephone Association Ad Hoc Depreciation Committee, to Ms. Fatina Franklin, Chief, Depreciation Rates Branch (June 21, 1994).

factors applicable to Account 2121 likely will not change, and an extensive analysis of the buildings account probably will not be necessary within the next few years. In the interim, we believe that the data required under the streamlined study procedures will be adequate, and will allow price cap LECs to submit only these data for the buildings account.

15. Under our depreciation prescription process, one-third of the carriers for which we prescribe rates have their rates reviewed each year. LECs scheduled for review in 1996 and 1997 may file for changes in their depreciation rates in 1995 as long as they use basic factors within the ranges we have selected and ranges chosen are consistent with their operations. These carriers must file these depreciation rate changes by July 1, 1995.

Ordering Clauses

16. Accordingly, it is ordered, pursuant to Section 4(i), 201–205 and 220(b) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 201–205 and 220(b), that the ranges for the future net salvage and the projection life factors for the accounts listed in the Appendix are Hereby Adopted as specified in the Appendix.

17. It is Further Ordered, that this order is effective thirty days after publication in the **Federal Register**.

18. It is Further Ordered, that carriers may use the ranges established herein for federal filing purposes prior to the effective date of this order.

List of Subjects in 47 CFR Part 43

Communication common carriers, Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission.

LaVera F. Marshall,

Acting Secretary.

APPENDIX.—ACCOUNTS AND RANGES

Account No.	Account Name	Depreciation rate category	Projection life range (years)		Future net salvage range (percent)	
			Low	High	Low	High
2220	Digital switching	Digital switching	16	18	0	5
2220	Operator systems	Combined	8	12	0	5
2232	Circuit equipment	Digital	11	13	0	5
2411	Poles	Poles	25	35	−75	−50
2421	Aerial cable	Metallic	20	26	−35	−10
2423	Buried cable	Metallic	20	26	−10	0
2426	Intrabuilding network cable	Metallic	20	25	−30	−5
2426	Intrabuilding network cable	Non-metallic	25	30	−15	0

[FR Doc. 95–13565 Filed 6–1–95; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 61

[CC Docket No. 94–97, Phase I, FCC No. 95–200]

Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection Through Virtual Collocation for Special Access and Switched Transport

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this Order, the Commission concludes that most of the local exchange carriers failed to demonstrate that the overhead loading levels established in their virtual collocation tariffs are just and reasonable. The Commission, therefore, finds these rates to be unlawful. In order to facilitate efficient entry into the interstate access service market, the Commission prescribes the maximum permissible overhead loading levels for virtual collocation rates. The intended effect of this action is to foster increased competition in the interstate access service market and to benefit consumers through increased efficiency, broader access to services, reduced rates, and more rapid deployment of new technologies.

EFFECTIVE DATE: July 5, 1995.

FOR FURTHER INFORMATION CONTACT: Amy Glatter or Mika Savir, (202) 418–1530.

SUPPLEMENTARY INFORMATION: On May 11, 1995, the Commission adopted and released a Report and Order in CC Docket No. 94–97, Phase I, after reviewing local exchange carriers' (LECs') direct cases, opposition, and rebuttals in the matter of LECs' Rates, Terms, and Conditions for Expanded Interconnection through Virtual Collocation for Special Access and Switched Transport. The Commission concluded that most LECs have not justified their proposed overhead loadings, and that these LECs' rates for virtual collocation service are therefore unlawful.

In order to advance the competitive goals of this Commission's new mandatory collocation policy, we prescribed in this Order the maximum permissible overhead loading levels for these LECs' virtual collocations rates.

We prescribed on a permanent basis the maximum permissible overhead loading levels for virtual collocation rates filed by Bell Atlantic Telephone Companies, BellSouth Telecommunications, Inc., GTE System Telephone Companies and GTE Telephone Operating Companies, United and Central Telephone Companies, and US West Communications, Inc. In addition, we prescribed on an interim basis the maximum permissible overhead loading levels for Southwestern Bell pending resolution of the carrier's request for confidential treatment of its cost support data. At the completion of our investigation, we will prescribe on a permanent basis just and reasonable overhead loading levels for SWB.

Finally, we affirmed on an interim basis the Common Carrier Bureau's earlier conclusion that the overhead loading levels of Ameritech Operating Companies and Cincinnati Bell Telephone Companies appear to comport with the Commission's overhead loading standard, pending resolution of these carrier's request for confidential treatment of their direct case cost support data.

The full text of this item is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239) of the Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, International Transcription Service, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

List of Subjects of 47 CFR Part 61

Communications common carriers, Report and recordkeeping requirements.

Federal Communications Commission.

LaVera F. Marshall,

Acting Secretary.

[FR Doc. 95–13641 Filed 6–2–95; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 64

[CC Docket No. 91–281, FCC 95–187]

Calling Number Identification Service—Caller ID

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: On May 5, 1995, the Commission adopted an Order on Reconsideration (Reconsideration) and a Second Report and Order (Second R&O). Pursuant to the Reconsideration and Second R&O (collectively called Order), this document amends rules regarding the federal model for Caller ID. This action fosters development of new technologies while at the same time protecting privacy expectations of people making and receiving calls.

EFFECTIVE DATE: Sections 64.1600 and 64.1602 are effective April 12, 1995. Sections 64.1601 and 64.1603 are effective December 1, 1995, except Sections 64.1601 and 64.1603 do not apply to public payphones and partylines until January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Marian Gordon (202/634–4215) or Mike Specht (202/634–1816), Domestic Facilities Division, Common Carrier Bureau.

SUPPLEMENTARY INFORMATION: This summarizes the Commission's Reconsideration and Second R&O in the matter of Rules and Policies Regarding Calling Number Identification Service—Caller ID, (CC Docket 91–281, adopted May 4, 1995, and released May 5, 1995). The file is available for inspection and copying during the weekday hours of 9 a.m. to 4:30 p.m. in the Commission's Reference Center, room 239, 1919 M St., NW., Washington DC, or copies may be purchased from the Commission's duplicating contractor, ITS, Inc. 2100 M St., NW., Suite 140, Washington, DC 20037, phone (202/857–3800).

Analysis of Proceeding

On October 23, 1991, the Commission issued a Notice of Proposed Rulemaking (NPRM), summarized at 59 FR 18318 (April 18, 1994), seeking to develop effective policies to govern interstate calling party number (CPN) based services such as Caller ID. CPN based services are services depending on capabilities that are possible with new, out-of-band signalling techniques, the most recent being Signalling System Seven (SS7). The Commission found that as interexchange and local exchange carriers deploy SS7 and interconnect their signalling networks, interstate CPN-based services become possible. The Commission tentatively concluded that these new interstate services (the most widely known is Caller ID) would serve the public interest, but that federal policies had to be established to resolve uncertainties that appeared to be impeding their development. In particular, it identified billing issues among different carriers involved in passing CPN and varying state policies on the privacy rights of the parties on interstate calls as needing clarification.

On March 29, 1994, the Commission affirmed its tentative conclusion that interstate passage of CPN is in the public interest because, consistent with the statutory intent underlying Sections 1 and 7 of the Communications Act, it makes many new services and efficiencies possible. The Commission adopted a federal model to govern interstate transport and delivery of CPN, based largely on the proposals in the NPRM. The federal model included the following principles: (1) When a carrier uses SS7 to set up a call, it must transmit CPN and its associated privacy indicator for that call to connecting carriers; (2) calling parties should be able to conceal their number on an interstate call by dialing *67, and know that if they do not dial *67 their number may be revealed; (3) carriers in the transmission chain must honor the calling party's privacy election; (4) carriers may not charge connecting carriers for passage of CPN because its incremental costs are *de minimis*; (5) carriers may not charge calling parties for providing them the ability to conceal CPN by using *67, and must educate subscribers how to maintain confidentiality; (6) customers of charge number services such as 800 generally may not reuse charge number information without the permission of the calling party (charge number in SS7 technology is equivalent to Automatic Number Identification (ANI) that identifies a calling number in the older multifrequency signalling technology); and (7) states are preempted from having policies that interfere with the federal policy.

In addition to articulating the principles that govern the federal caller ID model, the Commission sought further comment on whether it should prescribe precise requirements regarding exactly how carriers should educate consumers about maintaining privacy on CPN services and whether and how the policies it adopted should be extended to other identification services, such as calling party name. On March 17, 1995, the Commission stayed the effective date of Sections 1601 (CPN passage and privacy) and 1603 (education) of the rules.

In the order adopted May 4, 1994, the Commission considered petitions for reconsideration of its decision, addressed comments filed in response to the Further Notice of Proposed Rulemaking and issued a Third Notice of Proposed Rulemaking to resolve issues raised by Private Branch Exchange (PBX) telephone services and private payphones in connection with CPN. The order affirms the Commission's fundamental finding that federal policies to govern the passage of Calling Party Number (CPN) over interstate facilities are necessary because uncertainty created by their absence impedes the development of potentially valuable CPN based interstate services. The order also resolves areas of uncertainty identified on reconsideration, including financial issues involving interstate passage of CPN and varying state requirements concerning the privacy rights of calling and called parties on interstate calls. It addresses comments filed in response to the Further Notice concerning application of federal Caller ID rules to other CPN based services and Commission prescribed educational requirements to support consumer use of Caller ID services. Finally, the Third Notice of Proposed Rulemaking seeks comment on a reasonable timeframe for bringing PBX systems and private payphones into compliance with our rules.

Final Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 601, *et seq.*, the Commission's final analysis in this Order on Reconsideration and Second Report and Order is as follows:

I. Need and Purpose of This Action

This Order on Reconsideration and Second Report and Order amends the Commission's rules to require that the privacy requests of calling parties are

honored. The rule amendments are intended to ensure that caller ID services are available, to the extent possible and in the most efficient manner, to persons in the United States.

II. Summary of Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis

No comments were submitted in direct response to the Regulatory Flexibility Analysis in the Report and Order and Request for Comments.

III. Significant Alternatives Considered

The Report and Order and Request for Comments in this proceeding offered several proposals and requested comments as well as the views of commenters on other possibilities. The Commission has considered all comments and has adopted most of its proposals in addition to some alternatives recommended by commenters. The Commission considers its Order on Reconsideration and Second Report and Order that define a federal caller ID model to be the most reasonable course of action.

Ordering Clauses

1. Accordingly, It is Ordered, That, pursuant to authority contained in Sections 1, 4(i), 4(j), 201–205 and 218 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 151, 154(i), 154(j), 201–205, and 218, Part 64 of the Commission's Rules and Regulations is amended as set forth below, effective December 1, 1995.

2. The petitions for reconsideration and clarification of caller ID rules are granted in part and denied in part.

List of Subjects in 47 CFR Part 64

Calling party telephone number and privacy, Communications common carriers.

Federal Communications Commission.

LaVera F. Marshall,

Acting Secretary.

Rule Changes

Part 64 of chapter I of Title 47 of the Code of Federal Regulations, is amended as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation for part 64 continues to read as follows:

Authority: Section 4, 48 Stat. 1066, as amended; 47 U.S.C. 154, unless otherwise noted. Interpret or apply secs. 201, 218, 225, 226, 227, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 201–4, 218, 225, 226, 227, unless otherwise noted.

2. Section 64.1600 is revised to read as follows:

§ 64.1600 Definitions.

(a) *Aggregate information.* The term "aggregate information" means collective data that relate to a group or category of services or customers, from which individual customer identities or characteristics have been removed.

(b) *ANI.* The term "ANI" (automatic number identification) refers to the delivery of the calling party's billing number by a local exchange carrier to any interconnecting carrier for billing or routing purposes, and to the subsequent delivery of such number to end users.

(c) *Calling party number.* The term Calling Party Number refers to the subscriber line number or the directory number contained in the calling party number parameter of the call set-up message associated with an interstate call on a Signaling System 7 network.

(d) *Charge number.* The term "charge number" refers to the delivery of the calling party's billing number in a Signaling System 7 environment by a local exchange carrier to any interconnecting carrier for billing or routing purposes, and to the subsequent delivery of such number to end users.

(e) *Privacy indicator.* The term Privacy Indicator refers to information, contained in the calling party number parameter of the call set-up message associated with an interstate call on an Signaling System 7 network, that indicates whether the calling party authorizes presentation of the calling party number to the called party.

(f) *Signaling System 7.* The term Signaling System 7 (SS7) refers to a carrier to carrier out-of-band signaling network used for call routing, billing and management.

3. Section 64.1601 is revised to read as follows:

§ 64.1601 Delivery requirements and privacy restrictions.

(a) *Delivery.* Common carriers using Signaling System 7 and offering or subscribing to any service based on Signaling System 7 call set functionality are required to transmit the calling party number associated with an interstate call to interconnecting carriers.

(b) *Privacy.* Originating carriers suing Signaling System 7 and offering or subscribing to any service based on Signaling System 7 call set up functionality will recognize *67 dialed as the first three digits of a call (or 1167 for rotary or pulse-dialing phones) as a caller's request for privacy on an interstate call. Such carriers providing line blocking services will recognize *82 as a caller's request that privacy not be provided on an interstate call. No common carrier subscribing to or offering any service that delivers calling party number may override the privacy indicator associated with an interstate call. Carriers must arrange their CPN-based services in such a manner that when a caller requests privacy, a carrier may not reveal that caller's number or name, nor may the carrier use the number or name to allow the called party to contact the calling party. The terminating carrier must act in accordance with the privacy indicator unless the call is made to a called party that subscribes to an ANI or charge number based service and the call is paid for by the called party.

(c) *Charges.* No common carrier subscribing to or offering any service that delivers calling party number may

(1) Impose on the calling party charges associated with per call blocking of the calling party's telephone number, or

(2) Impose charges upon connecting carriers for the delivery of the calling party number parameter or its associated privacy indicator.

(d) *Exemptions.* § 64.1601 shall not apply to calling party number delivery services

(1) Used solely in connection with calls within the same limited system, including (but not limited to) a Centrex, virtual private network, or private branch exchange system;

(2) Used on a public agency's emergency telephone line or in conjunction with 911 emergency services, or on any entity's emergency assistance poison control telephone line;

(3) Provided in connection with legally authorized call tracing or trapping procedures specifically requested by a law enforcement agency.

4. Section 64.1602 is revised to read as follows:

§ 64.1602 Restrictions on use and sale of telephone subscriber information provided pursuant to automatic number identification or charge number services.

(a) Any common carrier providing Automatic Number Identification or charge number services on interstate calls to any person shall provide such services under a contract or tariff containing telephone subscriber information requirements that comply with this subpart. Such requirements shall:

(1) Permit such person to use the telephone number and billing information for billing and collection, routing, screening, and completion of the originating telephone subscriber's call or transaction, or for services directly related to the originating telephone subscriber's call or transaction;

(2) Prohibit such person from reusing or selling the telephone number or billing information without first

(i) Notifying the originating telephone subscriber and,

(ii) Obtaining the affirmative consent of such subscriber for such reuse or sale; and,

(3) Prohibit such person from disclosing, except as permitted by paragraphs (a) (1) and (2) of this section, any information derived from the automatic number identification or charge number service for any purpose other than

(i) Performing the services or transactions that are the subject of the originating telephone subscriber's call,

(ii) Ensuring network performance security, and the effectiveness of call delivery,

(iii) Compiling, using, and disclosing aggregate information, and

(iv) Complying with applicable law or legal process.

(b) The requirements imposed under paragraph (a) of the section shall not prevent a person to whom automatic number identification or charge number services are provided from using

(1) The telephone number and billing information provided pursuant to such service, and

(2) Any information derived from the automatic number identification or charge number service, or from the analysis of the characteristics of a telecommunications transmission, to offer a product or service that is directly related to the products or services previously acquired by that customer from such person. Use of such information is subject to the requirements of 47 CFR 64.1200 and 64.1504(c).

5. Section 64.1603 is revised to read as follows:

§ 64.1603 Customer notification.

Any common carrier participating in the offering of services providing calling party number, ANI, or charge number on interstate calls must notify its subscribers, individually or in conjunction with other carriers, that their telephone numbers may be identified to a called party. Such notification must be made not later than December 1, 1995, and at such times thereafter as to ensure notice to subscribers. The notification must be effective in informing subscribers how to maintain privacy by dialing *67 (or 1167 for rotary or pulse-dialing phones) on interstate calls. The notice shall inform subscribers whether dialing *82 (or 1182 for rotary or pulse-dialing phones) on interstate calls is necessary to present calling party number to called parties. For ANI or charge number services for which such privacy is not provided, the notification shall inform subscribers of the restrictions on the reuse or sale of subscriber information.

6. Section 64.1604 is revised to read as follows:

§ 64.1604 Effective date

The provisions of §§ 64.1600 and 64.1602 are effective April 12, 1995. The provisions of §§ 64.1601 and 64.1603 are effective December 1, 1995, except §§ 64.1601 and 64.1603 do not apply to public payphones and partylines until January 1, 1997.

[FR Doc. 95–13760 Filed 6–2–95; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 94–146; RM–8557]

Radio Broadcasting Services; Houston, AK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 242A to Houston, Alaska, as that community's third local FM service, in response to a petition for rule making filed on behalf of Evangelistic Alaska Missionary Fellowship, Inc. *See* 59 FR 66287, December 23, 1994. Coordinates used for Channel 242A at Houston are 61–38–01 and 149–50–28. With this action, the proceeding is terminated.

DATES: Effective July 17, 1995. The window period for filing applications on Channel 242A at Houston, Alaska, will open on July 17, 1995, and close on August 17, 1995.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180. Questions related to the window application filing process for Channel 242A at Houston, Alaska, should be addressed to the Audio Services Division, FM Branch, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 94–146, adopted May 23, 1995, and released May 31, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, located at 1919 M Street, NW., Room 246, or 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments underAlaska, is amended by adding Channel 242A at Houston.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–13640 Filed 6–2–95; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF DEFENSE

48 CFR Parts 202, 203, 206, 207, 209, 215, 217, 219, 225, 226, 228, 231, 232, 235, 237, 242, 244, 245, 247, 249, 251, 252, 253, and Appendix C to Chapter 2

[Defense Acquisition Circular (DAC) 91–7]

Defense Federal Acquisition Regulation Supplement; Miscellaneous Amendments

AGENCY: Department of Defense (DoD).

ACTION: Final rules.

SUMMARY: Defense Acquisition Circular (DAC) 91–7 amends the Defense FAR Supplement (DFARS) to revise, finalize, or add language on competitive prototyping, contractor accounting controls, award to foreign controlled contractors, terrorist countries, debarment and suspension, small purchases in support of contingency operations, greatest value sources, predetermined indirect cost rates, undefinitized contract actions, small disadvantaged business, historically black colleges and universities and minority institutions, Indian tribal or Alaska native corporations, North American Free Trade Agreement, valves and machine tools, restriction on procurement of goods, aircraft fuel cells, lifeboat survival systems, performance outside the United States, offset

administrative costs, preference for local and small businesses, preference for local residents, surety bonds, limitation on allowable individual compensation, restructuring costs under defense contracts, indirect costs of institutions of higher learning, research and development definitions, manufacturing science and technology program, research and development contracting, Federally Funded Research and Development Centers, streamlined research and development contracting procedures test, personal services contracts, services at installations being closed, production surveillance, contractor insurance/pension reviews, best value—stevedoring, returnable cylinders, reflagging or repair work, screening threshold for contractor inventory, notification of proposed program termination of reduction, and Government supply sources.

DATES: Effective date May 17, 1995.

FOR FURTHER INFORMATION CONTACT: Ms. Lucile Martin, Defense Acquisition Regulations Directorate, PDUSD(A&T)DP(DAR), 3062 Defense Pentagon, Washington, DC 20302–3062, telephone (703) 602–0131.

SUPPLEMENTARY INFORMATION:

A. Background

This Defense Acquisition Circular (DAC) 91–7 includes 39 rules and miscellaneous editorial amendments. Twelve of the rules in the DAC (Item XXIII, III, VI, VII, XIV, XVIII, XX, XXII, XXVI, XXVIII, XXIX, and XXX) were published previously in the **Federal Register** and thus are not included as part of this rulemaking notice. These 12 rules are being published in the DAC to revise the looseleaf edition of DFARS to conform to the previously published revisions.

C. Regulatory Flexibility Act

DAC 91–7, Items, I, XXI, XXV, XXXV

The Regulatory Flexibility Act does not apply because these rules are not significant revisions within the meaning of Public Law 98–577. However, comments from small entities will be considered in accordance with section 610 of the Act. Such comments must be submitted separately. Please cite DFARS Case 95–610 in correspondence.

DAC 91–7, Items II, IV, V, VII, IX, X, XIII, XV, XVI, XVII, XXIV, XXXII, XXXIV, XXXVI, XXXVII, XXXIX

DoD certifies that these rules will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act because:

Item II—The rule emphasizes existing requirements for contractors to ensure that cost data is reliable and contract costs are properly allocated.

Item IV—The rule only applies to solicitations and contracts with an estimated or actual value exceeding $5,000,000.

Item V—The rule only applies to contractors and subcontractors that are debarred, suspended, or proposed for debarment.

Item VII—The rule clarified DoD's existing policy regarding contractor selection of subcontractors based on greatest value.

Item IX—The rule clarifies the existing regulatory language regarding statutory restrictions on the use of undefinitized contract actions.

Item X—The rule updates the definitions of SDB and HBCU, and eliminates the requirement for an offeror that represents itself as an SDB, HBCU, or MI, to maintain its status as such as the time of contract award.

Item XIII—The rule implements statutory restrictions on the acquisition of machine tool accessories of foreign manufacture.

Item XV—The rule implements statutory restrictions on the acquisition of fuel cells of foreign manufacture.

Item XVI—The rule implements statutory restrictions on the acquisition of lifeboat survival systems of foreign manufactures or assembly.

Item XVII—The rule only applies to contracts that exceed $500,000 and involve performance outside the United States.

Item XXIV—The rule prohibits DoD from placing certain limitations on the reimbursement of indirect costs to institutions of higher learning.

Item XXXII—The rule merely simplifies the method used by the Government to determine when on-site production surveillance will be performed on a contract.

Item XXXIV—The rule is consistent with the policy at FAR 15.605 regarding selection of a source whose proposal offers the greatest value to the Government.

Item XXXVI—The rule implements statutory restrictions on foreign performance of certain reflagging or repair work.

Item XXXVII—The rule merely raises the dollar threshold for Government screening of excess contractor inventory prior to disposal.

Item XXXIX—The rule uses standard commercial terms for payment within 30 days, for contractor purchases from Government supply sources.

DAC 91–7, Items XI, XII, XIX, XXVII, XXXI, XXXIII, XXXVIII

The Regulatory Flexibility Act applies. A final regulatory analysis has been performed and is available by writing the Defense Acquisition Regulations Directorate, ATTN: Ms. Michele Peterson, PDUSD(A&T)DP(DAR), 3062 Defense Pentagon, Washington, DC 20301–3062.

D. Paperwork Reduction Act

DAC 91–7, Items I, II, V, VII, IX, X, XI, XV, XVI, XIX, XXI, XXIV, XXV, XXXI, XXXII, XXXIV, XXXV, XXXVI, XXXVII, XXXVIII, XXXIX

The Paperwork Reduction Act does not apply because the revisions in this rulemaking notice do not contain and/or affect information collection requirements which require the approval of OMB under 44 U.S.C. 3501 *et seq.*

DAC 91–7, Items IV, XII, XIII, XVII, XXVII, XXXIII

The Paperwork Reduction Act applies. OMB has improved the information collection requirements. The following OMB control numbers apply:

Item IV—No. 0704–0372
Item XII—No. 0704–0361
Item XIII—No. 0704–0350
Item XVII—No. 0704–0355
Item XXVII—No. 0704–0188 and 0704–0264
Item XXXIII—No. 0704–0250

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Defense Acquisition Circular (DAC) 91–7 amends the Defense FAR Supplement (DFARS) 1991 edition, prescribes procedures to be followed, and provides informational interest items. The amendments, procedures, and information are summarized as follows:

Item I—Competitive Prototyping

This final rule deletes the language at DFARS 207.105(b)(2)(v), which addressed competitive prototyping for major acquisition programs as required by 10 U.S.C. 2438. Section 3006 of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103–355) repealed 10 U.S.C. 2438.

Item II—Contractor Accounting Controls

This final rule amends DFARS 209.104–1, 232.503–6, 242.302, and 253.209–1, and adds a new subpart at 242.75, to provide policies and procedures applicable to contractor

accounting systems and related internal controls. Contractors receiving cost-reimbursement or incentive type contracts, or contracts which provide for progress payments based on costs or on a percentage or stage of completion, must maintain an accounting system and related internal controls which provide reasonable assurance that (1) Applicable laws and regulations are complied with; (2) the accounting system and cost data are reliable; (3) risk of misallocations and mischarges are minimized; and (4) contract allocations and charges are consistent with invoice procedures.

Item III—Award to Foreign Controlled Contractors

This final rule was issued by Departmental Letter 94–013, effective September 29, 1994. The rule revises and finalizes the interim rule published as Item VII of DAC 91–5. The rule implements 10 U.S.C. 2536, which prohibits award of a DoD contract under a national security program to an entity controlled by a foreign government, if access to proscribed information is required to perform the contract. The final rule differs from the interim rule in that it (1) revises the definition of "entity controlled by a foreign government" at DFARS 252.209–7002 as required by Section 842 of the Fiscal Year 1994 Defense Authorization Act (Pub. L. 103–160); (2) revises the definition of "effectively owned or controlled" at 252.209–7002 for clarity; (3) revises the definition of "foreign government" at 252.209–7002 for consistency with the regulations at 31 CFR Chapter V, issued by the Treasury Department Office of Foreign Assets Control; and (4) makes minor clarifying revisions at 209.101, 209.104–1(g)(ii), 225.702, and 252.209–7002(b).

Item IV—Terrorist Countries

The interim rule issued by Departmental Letter 94–014 on September 29, 1994, is converted to a final rule without change. The rule implements Section 843 of the Fiscal Year 1994 Defense Authorization Act (Public Law 103–160). Section 843 requires offerors and contractors under DoD solicitations and contracts exceeding $5,000,000 to report commercial transactions conducted with the government of a terrorist country. The rule adds new language at DFARS 209.104–1(g)(iii), a new provision at 252.209–7003, and a new clause at 252.209–7004. The rule also revises the provision at 252.209–7001 for consistency with the terminology used in the new provision and clause.

Item V—Debarment and Suspension

This final rule adds a new subsection at DFARS 209.405–1 to place restrictions on the issuance of orders under indefinite quantity and Federal Supply Schedule contracts in instances where the contractor has been debarred, suspended, or proposed for debarment. The rule also clarifies that the restriction at FAR 9.405–1(b), against renewal or extension of existing contracts or consent to subcontracts with contractors debarred, suspended, or proposed for debarment, also applies to the exercise of options.

Item VI—Small Purchases in Support of Contingency Operations

This final rule was issued by Departmental Letter 94–015, effective September 29, 1994. The rule amends DFARS 213.000, 213.101, 213.404, and 213.505 to fully implement DoD's authority to use simplified procedures for acquisitions in support of contingency operations. The rule provides for the use of simplified procedures for acquisitions of $100,000 or less, for contracts to be awarded and performed outside the United States in support of a contingency operation as defined in 10 U.S.C. 101(a)(13).

Item VII—Greatest Value Sources

This final rule (1) adds language at DFARS 215.806–1(a) (1) to clarify DoD policy regarding the selection of subcontractors based on greatest value; (2) adds language at 244.202–2 regarding consideration of greatest value when consent to subcontract is required; and (3) revises Section C–207.5 of Appendix C to establish more definitive criteria for Government personnel to consider when evaluating contractor vendor rating systems during a Contractor Purchasing System Review.

Item VIII—Predetermined Indirect Cost Rates

This final rule was issued by Departmental Letter 94–018, effective October 18, 1994. The rule adds language at DFARS 216.307, 242.705–3, and 252.216–7002 to implement revisions made to OMB Circular A–21, Cost Principles for Educational Institutions, on July 26, 1993. The revised circular provides that indirect cost rates for educational institutions may be predetermined for a period of up to four years when cost experience and other pertinent facts are sufficient to assess the probable level of indirect costs during subsequent accounting periods.

Item IX—Undefinitized Contract Actions

This final rule revises DFARS 217.7404–3(a)(2), 217.7404–4, and 217.7404–5 to clarify the policy and procedures implementing 10 U.S.C. 2326(b) with regard to limitations on the use of undefinitized contract actions.

Item X—Small Disadvantaged Business, Historically Black Colleges and Universities and Minority Institutions

The interim rule published as Item XLVII of DAC 91–6 is converted to a final rule without change. The rule implements Subsections 811 (a), (b), and (c) of the Fiscal Year 1994 Defense Authorization Act (Pub. L. 103–160). Subsections 811 (a) and (b) of Pub. L. 103–160 revise the definitions of historically black colleges and universities (HBCU) and minority institutions (MI). Subsection 811(c) deletes the requirement for an offeror, that represents itself on a DoD solicitation as a small disadvantaged business, HBCU, or MI, to maintain its status as such at the time of award. The implementing DFARS language can be found at 219.301(a), 226.7005(a)(1), 252.219–7003(a), 252.219–7006(a), 252.226–7000 (a) and (b), and 252.226–7001(a).

Item XI—Indian Tribal or Alaska Native Corporation

The interim rule issued by Departmental Letter 94–009 on May 3, 1994, is revised and finalized. The rule implements Section 8051 of the Fiscal Year 1994 Defense Appropriations Act (Pub. L. 103–139) and Section 8012 of the Fiscal Year 1995 Defense Appropriations Act (Pub. L. 103–335). Sections 8051 and 8012 provide that, notwithstanding any other provision of law, a qualified Indian Tribal Corporation or Alaska Native Corporation furnishing the product of a responsible small business concern shall not be denied the opportunity to compete for and be awarded a contract under the Small Disadvantaged Business (SDB) preference programs. The final rule differs from the interim rule in that it adds references to Section 8012 of Pub. L. 103–335 at DFARS 219.502–2–70(a)(1)(ii), 252.219–700(f)(2), 252.219–7002(c), and 252.219–7006(d)(2).

Item XII—North American Free Trade Agreement

The interim rule published as Item XVIII of DAC 91–6 is revised and finalized. The rule incorporates Buy American Act and Balance of Payment Program waivers required by the North American Free Trade Agreement

(NAFTA) Implementation Act of 1993 (Pub. L. 103–182). The final rule differs from the interim rule in that it amends the provision at DFARS 252.225–7035, the clause at 252.225–7036, and the clause prescription at 225.408(a)(4)(B), to recognize the $25,000 threshold for application of NAFTA to Canadian end products.

Item XIII—Valves and Machine Tools

This final rule adds a new provision at DFARS 252.225–7040, Machine Tool List, and corresponding prescriptive language at 225.7004–2(b) and 225.7004–6(c). The provision at DFARS 252.225–7040 requires offerors to identify the country of manufacture and the cost of machine tool accessories to be provided under a contract, if the accessories are not listed in the schedule as separate line items and are not of U.S. or Canadian origin. This information will facilitate evaluation of machine tool accessories by supply class, as required by 10 U.S.C. 2534, to determine if foreign source restrictions apply.

Item XIV—Restriction on Procurement of Goods

This interim rule was issued by Departmental Letter 95–009, effective April 10, 1995. The rule revises DFARS Subpart 225.70 and the clauses at 252.225–7017 and 252.225–7029, to implement 10 U.S.C. 2534 as amended by Section 814 of the Fiscal Year 1995 Defense Authorization Act (Pub. L. 103–337) and Section 4102(i) of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103–355). Section 814 revises the existing foreign source restrictions for machine tools and valves, buses, chemical weapons antidote, air circuit breakers, and antifriction bearings, by uniformly permitting acquisition of Canadian items, and by expanding and standardizing the waiver criteria. Section 4102(I) exempts acquisitions below the simplified acquisition threshold from these restrictions.

Item XV—Aircraft Fuel Cells

The interim rule published as Item XLIV of DAC 91–6 is revised and finalized. The rule implements Section 8090 of the Fiscal Year 1994 Defense Appropriations Act (Pub. L. 103–139) and Section 8075 of the Fiscal Year 1995 Defense Appropriations Act (Pub. L. 103–335). Sections 8090 and 8075 prohibit the use of fiscal year 1994 or 1995 funds to purchase aircraft fuel cells unless such cells are produced or manufactured in the United States by a domestic-operated entity. The final rule differs from the interim rule in that it amends the language at DFARS 225.7021–1 and 225.7021–3(a) to address fiscal year 1995 requirements.

Item XVI—Lifeboat Survival System

The interim rule published as Item XLVI of DAC 91–6 is revised and finalized. The rule implements Section 8124 of the Fiscal Year 1994 Defense Appropriations Act (Pub. L. 103–139) and Section 8093 of the Fiscal Year 1995 Defense Appropriations Act (Pub. L. 103–335). Sections 8124 and 8093 prohibit the purchase of a totally enclosed lifeboat survival system unless 50 percent or more of the system's components are manufactured in the United States, and 50 percent or more of the labor in the final manufacture and assembly of the system is performed in the United States. The final rule differs from the interim rule in that it adds a reference to Pub. L. 103–335 at DFARS 225.7022–1.

Item XVII—Performance Outside the United States

The interim rule published as Item XXIX of DAC 91–5 is revised and finalized. The rule implements 10 U.S.C. 2410g, which requires offerors and contractors to provide the Government with advance notification of contract performance outside the United States and Canada in certain instances. The final rule differs from the interim rule in that (1) Detailed reporting requirements are deleted from the clause at DFARS 252.225–7026; (2) DD Form 2139, which was deleted by DAC 91–5, is reinstated with a new title and revised to include the reporting requirements deleted from the clause at DFARS 252.225–7026; and (3) editorial changes are made at 225.7202 and 252.225–7026(b)(3).

Item XVIII—Offset Administrative Costs

This final rule was issued by Departmental Letter 94–012, effective September 28, 1994. The rule revises DFARS 225.7303–2 to change the criteria for contractor recovery of offset administrative costs under foreign military sale contracts. The change eliminates the requirement for inclusion of specific information regarding offset costs in Letters of Offer and Acceptance for foreign military sales. A corresponding revision has been made to DoD 5105.38–M, Security Assistance Management Manual.

Item XIX—Preference for Local and Small Businesses

The interim rule issued as Item XLV of DAC 91–6 is revised and finalized. The rule implements Section 2912 of the Fiscal Year 1994 Defense Authorization Act (Pub. L. 103–160). Section 2912 requires DoD, when entering into contracts as part of the closure or realignment of a military installation under a base closure law, to give preference, to the greatest extent practicable, to qualified businesses located in the vicinity of the installation and to small business and small disadvantaged business concerns. The final rule differs from the interim rule in that it (1) Revises the definition of "vicinity" at DFARS 226.7101 to permit modification of the definition by the agency head; and (2) clarifies the procedures at 226.7103 to address criteria for consideration of awards to contractors under the section 8(a) program.

Item XX—Preference for Local Residents

This interim rule was issued by Departmental Letter 95–003, effective January 26, 1995. The rule amends DFARS Subpart 226.71 to implement Section 817 of the Fiscal Year 1995 Defense Authorization Act (Pub. L. 103–337). Section 817 authorizes the Secretary of Defense to give preference to entities that plan to hire local residents, when entering into contracts for services to be performed at a military installation that is affected by closure or alignment under a base closure law.

Item XXI—Surety Bonds

This final rule amends DFARS 228.102–1 to implement Section 323 of the Fiscal Year 1995 Defense Authorization Act (Pub. L. 103–337). Section 323 extends the authority to issue surety bonds for certain environmental programs through December 31, 1999.

Item XXII—Limitation on Allowable Individual Compensation

This interim rule was issued by Departmental Letter 94–019, effective December 14, 1994. The rule amends DFARS 231.205, 231.303, 231.603, and 231.703 to implement Section 8117 of the Fiscal Year 1995 Defense Appropriations Act (Pub. L. 103–335). Section 8117 limits allowable costs for individual compensation to $250,000 per year. This limitation applies to contracts that are awarded after April 15, 1995, and that are funded with Fiscal Year 1995 appropriations.

Item XXIII—Restructuring Costs Under Defense Contracts

This interim rule was issued by Departmental Letter 94–020, effective December 29, 1994. The rule adds new sections at DFARS 231.205–70, 242.1202, and 242.1204 to implement Section 818 of the Fiscal Year 1995 Defense Authorization Act (Pub. L. 103–337). Section 818 restricts DoD from reimbursing restructuring costs associated with a business combination undertaken by a defense contractor unless certain conditions are met.

Item XXIV—Indirect Costs of Institutions of Higher Learning

The interim rule issued by Departmental Letter 94–010 on May 5, 1994, is converted to a final rule without change. The rule adds a new section at DFARS 231.303 to implement Section 841 of the Fiscal Year 1994 Defense Authorization Act (Pub. L. 103–160). Section 481 prohibits DoD from placing any limitation on the reimbursement of otherwise allowable indirect costs incurred by an institution of higher learning, unless that same limitation is applied uniformly to all other organizations performing similar work under DoD contracts.

Item XXV—Research and Development Definitions

This final rule amends DFARS 235.001 to incorporate the definitions of the categories of research and development found in DoD 7000.14–R, Financial Management Regulation.

Item XXVI—Manufacturing Science and Technology Program

This interim rule was issued by Departmental Letter 95–002, effective January 17, 1995. The rule adds language at DFARS 235.006 (a) and (b)(iv) to implement Section 256 of the Fiscal Year 1995 Defense Authorization Act (Pub. L. 103–337). Section 256 requires the use of competitive procedures in awarding contracts under the Manufacturing Science and Technology Program, and use of a cost-sharing arrangement for these contracts unless an alternative arrangement is approved by the Secretary of Defense.

Item XXVII—Research and Development Contracting

This final rule revises DFARS 235.010(b) to provide updated information regarding the Defense Technical Information Center (DTIC). The rule also adds two new clauses at DFARS 252.235–7010, Acknowledgment of Support and Disclaimer, and DFARS 252.235–7011, Final Scientific or Technical Report Requirement. The clause at 252.235–7010 requires contractors to include an acknowledgment of the Government's support in the publication of any material based on or developed under a Government contract. The clause at 252.235–7011 requires contractors to provide DTIC with two copies of scientific or technical reports delivered under a Government contract.

Item XXVIII—Federally Funded Research and Development Centers (FFRDCs)

This interim rule was issued by Departmental Letter 95–005, effective March 3, 1995. The rule adds a new section at DFARS 235.017–1 to implement Section 217 of the Fiscal Year 1995 Defense Authorization Act (Pub. L. 103–337). Section 217 allows DoD-sponsored FFRDCs that function primarily as research laboratories to respond to solicitations and announcements for programs which promote research, development, demonstration, or transfer of technology.

Item XXIX—Streamlined Research and Development Contracting Procedures Test

This final rule was issued by Departmental Letter 94–017, effective October 4, 1994, and Departmental Letter 95–008, effective March 21, 1995. The rule adds a new subpart at DFARS 235.70 to establish streamlined research and development contracting procedures for use by selected DoD contracting offices under a test program. The test will be conducted for a 20-month period extending from October 1, 1994, to May 31, 1996.

Item XXX—Personal Service Contracts

This interim rule was issued by Departmental Letter 95–001, effective January 5, 1995. The rule adds language at DFARS 206.102(d) and revises DFARS 237.104(b)(ii) to implement Section 712 of the Fiscal Year 1994 Defense Authorization Act (Pub. L. 103–160) and Section 704 of the Fiscal Year 1995 Defense Authorization Act (Pub. L. 103–337). Section 712 requires the Secretary of Defense to establish procedures for entering into personal service contracts under 10 U.S.C. 1091 to carry out health care responsibilities in medical/dental treatment facilities. Section 704 provides authority for the Secretary of Defense to enter into personal service contracts under 10 U.S.C. 1091 to provide the services of clinical counselors, family advocacy program staff, and victim's services representatives.

Item XXXI—Services at Installations Being Closed

The interim rule issued by Departmental Letter 94–011 on July 8, 1994, is revised and finalized. The rule implements Section 2907 of the Fiscal Year 1994 Defense Authorization Act (Pub. L. 103–160). Section 2907 permits the Secretary of Defense to contract with local governments for police, fire protection, airfield operation, or other community services at military installations being closed under Title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Pub. L. 100–526) and the Defense Base Closure and Realignment Act of 1990 (Pub. L. 101–510). The final rule differs from the interim rule in that it adds a new paragraph at DFARS 237.7401(d) to clarify that Subpart 222.71, Right of First Refusal of Employment, applies to contracts with local governments unless it conflicts with the local government's civil service selection procedures.

Item XXXII—Production Surveillance

This final rules revises DFARS 242.1104 to simplify the criteria for determining the extent of production surveillance to be performed under a contract. Category 1, 2, and 3 surveillance criteria are eliminated and replaced with streamlined surveillance requirements.

Item XXXIII—Contractor Insurance/Pension Reviews

This final rule revises DFARS 242.7302(a) to increase the dollar threshold for performance of Contractor Insurance/Pension Reviews from $10,000,000 to $40,000,000. The rule also adds language at 242.7302(d) to clarify the criteria for determining a contractor's eligibility for insurance/pension review.

Item XXXIV—Best Value—Stevedoring

The interim rule issued by Departmental Letter 94–016, effective September 29, 1994, is converted to a final rule without change. The rule revises DFARS 247.270–5 and 247.270–6 to permit contracting officers to consider factors other than cost or price when evaluating offers for stevedoring services.

Item XXXV—Returnable Cylinders

This final rule revises the clause at DFARS 252.247–7021 and the corresponding prescriptive language at 247.305–70 to delete references to use of the clause for acquisitions involving returnable cylinders. The clause at DFARS 252.247–7021 now applies to returnable containers other than cylinders as the clause at FAR 52.247–66 applies to returnable cylinders. References to a 30-day rent-free Government use period are also deleted from the clause to facilitate tailoring of this time period to the circumstances of the acquisition.

Item XXXVI—Reflagging or Repair Work

The interim rule published as Item XLIII of DAC 91–6 is revised and finalized. The rule implements Section 315 of the Fiscal Year 1994 Defense Authorization Act (Pub. L. 103–160). Section 315 places restrictions on the performance of reflagging or repair work on vessels used under time charter contracts. The final rule differs from the interim rule in that it revises the language at DFARS 247.571(c) and 252.247–7025 to further clarify the restrictions on the performance of reflagging or repair work.

Item XXXVII—Screening Threshold

This final rule amends DFARS 245.608–70 to raise the dollar threshold for screening serviceable and unusable contractor inventory, with no national stock number, through the Contractor Inventory Redistribution System. The threshold is raised form $500 to $1,000 (except for furniture) to coincide with the threshold at FAR 45.608–2.

Item XXXVIII—Notification of Proposed Program Termination or Reduction

The interim rule published as Item XXXVIII of DAC 91–6 is revised and finalized. The rule implements Section 1372 of the Fiscal Year 1994 Defense Authorization Act (Pub. L. 103–160) as amended by Section 1142 of the Fiscal Year 1995 Defense Authorization Act (Pub. L. 103–337). Section 1372 requires the Secretary of Defense to provide certain notices regarding the proposed termination or substantial reduction of major defense programs. The final rule differs from the interim rule in that it makes clarifying revisions at DFARS 249.7003(b)(1) and 252.249–7002(c)(1), and changes the notification periods at 249.7003(b) (2) and (3) from 90 days to 60 days, as required by Section 1142 of Pub. L. 103–337.

Item XXXIX—Government Supply Sources

This final rule amends DFARS 251.102, adds a new section at 251.105, and amends the clause at 252.251–7000 to clarify that, when a contractor is authorized to use Government supply sources (1) Payments to the Government for such supplies are due within 30 days of the Government's invoice; (2) contractors must pay interest on late payments to the Government; and (3) a contractor's failure to pay may result in loss of authorization to use Government supply sources.

Item XL—Editorials

(**Note:** The asterisked items are revisions being made only in the looseleaf edition of DFARS.)

(a) The definition of "contracting activity" at DFARS Section 202.101 is amended to update the contracting activity names that appear under the NAVY heading.

(b) The definition of "contracting activity" at DFARS Section 202.101 is amended by adding under the heading United States Special Operations Command and after the word "Headquarters," the words "United States Special Operations Command" that were inadvertently removed in DAC 91–6.

(c) DFARS 203.502—2 is amended by revising paragraph (h)(ii) to read "Naval Criminal Investigative Service."

*(d) DFARS 204.7202–2(b)(2)(iii)(B) to amended to revise "Nay" to read "Navy."

(e) DFARS 206.302–5(c)(i)(B) is amended to revise the parenthetical reference "(Acquisition)" to read "(Acquisition & Technology)."

*(f) DFARS 215.804–3(b)(1)(B)(3) is amended to revise "submisson" to read "submission."

(g) DFARS 225.603(b)(i)(D) and (b)(ii) are amended to revise the address for DCMAO, New York.

*(h) DFARS 225.872–5(a) is amended to revise "bee" to read "been."

(i) DFARS 225.872–5(a) is amended to reflect the correct title of the Deputy Director of Defense Procurement (Foreign Contracting).

(j) DFARS 225.872–6(b) is amended to reflect the correct title of the Deputy Director of Defense Procurement (Foreign Contracting).

*(k) DFARS 225.7001(c) is amended to revise "speciality" to read "specialty."

*(l) DFARS Table of Contents for section 226.71 is amended to revise the title to read: "Preference for Local and Small Businesses."

*(m) DFARS Table of Contents for section 232 is amended to reflect the proper sequence of Subparts 232.7 and 232.8.

(n) DFARS 232.108(1)(i) is revised to update the Army finance office designation.

(o) DFARS 235.006(b)(i)(C)(*1*)(*iii*) is revised to clarify the references to applicable statutes.

(p) DFARS 235.015–70(d)(3)(ii) is amended by revising the word "which" to read "who."

(q) DFARS 237.7302 is amended to revise the reference "10 U.S.C. 2304(a)(i)" to read "10 U.S.C. 2304(a)(1)."

*(r) DFARS 252 Table of Contents is amended to revise the title for clause number 252.225–7018.

(s) DFARS 252.225–7009(f)(2)(iv) is amended to revise the address for DCMAO, New York.

(t) DFARS 252.225–7010(e) is amended to revise the address for DCMAO, New York.

(u) DFARS 252.225–7037(f)(2)(iv) is amended to revise the address for DCMAO, New York.

*(v) DFARS 253 is amended to update DD Form 879, DD Form 1155 and DD Form 1155C–1.

*(w) DFARS 253 is amended to delete the following obsolete forms: DD Form 1114, DD Form 1568, DD Form 1592, and DD Form 2025. DD Form 1568 has been replaced by Standard form 1146. The other forms have no replacement.

Interim Rules Adopted as Final Without Changes

PARTS 209 AND 252—[AMENDED]

The interim rule that was published at 59 FR 51130 on October 7, 1994, is adopted as final without change.

PARTS 219, 226, AND 252—[AMENDED]

The interim rule that was published as Item XLVII of DAC 91–6 at 59 FR 27662 on May 27, 1994, is adopted as final without change.

PART 231—[AMENDED]

The interim rule that was published at 59 FR 26143 on May 19, 1994, is adopted as final without change.

PART 247—[AMENDED]

The interim rule that was published at 59 FR 50851 on October 6, 1994, is adopted as final without change.

Interim Rules Adopted as Final With Changes

PARTS 206, 222, 226, 237, AND 252—[AMENDED]

The interim rule that was published at 59 FR 36088 on July 15, 1994 is adopted as final with minor editorial amendments at sections 226.7200(a), 237.7400, 237.7401, 237.7402, and with the addition of 237.7401(d).

PARTS 219 AND 226—[AMENDED]

The interim rule that was published at 59 FR 12191 on March 16, 1994, as corrected at 59 FR 15501 on April 1, 1994, is adopted as final with amendments at sections 226.7101 and 226.7103.

PARTS 219 AND 252—[AMENDED]

The interim rule that was published at 59 FR 24958 on May 13, 1994, is adopted as final with revisions at 219.502–2–70, 252.219–7001, 252.219–7002, and 252.219–7006.

PARTS 225 AND 252—[AMENDED]

The interim rule that was published at 59 FR 1288 on January 10, 1994, as corrected at 59 FR 8041 on February 17, 1994 and at 59 FR 39974 on August 5, 1994, is adopted as final with amendments at sections 225.408, 252.225–7035, and 252.225–7036.

PARTS 225 AND 252—[AMENDED]

The interim rule that was published as Item XLIV of DAC 91–6 at 59 FR 11729 on March 14, 1994, as corrected at 59 FR 38931 on August 1, 1994, is adopted as final with amendments at sections 225.7021–1 and 225.7021–3.

PARTS 225 AND 252—[AMENDED]

The interim rule that was published as Item XLVI of DAC 91–6 at 59 FR 19146 on April 22, 1994, is adopted as final with amendments at section 225.7022–1.

PARTS 225, 252, AND 253—[AMENDED]

The interim rule that was published a Item XXIX of DAC 91–5 at 58 FR 28458 on May 13, 1993, is adopted as final with amendments at 225.7202 and 252.225–7026. In addition, DD Form 2139 is reinstated with a new title and revised.

PARTS 247 AND 252—[AMENDED]

The interim rule was published as Item XLIV of DAC 91–6 at 59 FR 27662 on May 27, 1994, is adopted as final with amendments at 247.571, 247.573, and 252.247–7025.

PARTS 249 AND 252—[AMENDED]

The interim rule that was published as Item XXXVIII of DAC 91–6 at 59 FR 27662 on May 27, 1994, is adopted as final with amendments at 249.7003 and 252.249–7002.

List of Subjects in 48 CFR Parts 202, 203, 206, 207, 209, 215, 217, 219, 225, 226, 228, 231, 232, 235, 237, 242, 244, 245, 247, 249, 251, 252, 253, and Appendix C to Chapter 2

Government procurement.

Amendments to 48 CFR Chapter 2 (Defense Far Supplement)

48 CFR Chapter 2 (the Defense FAR Supplement) is amended as set forth below.

1. The authority for 48 CFR parts 202, 203, 206, 207, 209, 215, 217, 291, 225, 226, 228, 231, 232, 235, 237, 242, 244, 245, 247, 249, 251, 252, 253, and Appendix C to Chapter 2 is revised to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 202—DEFINITIONS OF WORDS AND TERMS

202.101 [Amended]

2. Section 202.101 is amended by revising in the definition entitled *Contracting activity* under the heading Navy, the entry "Deputate, Acquisition Policy, Integrity and Accountability, Office of the Assistant Secretary of the Navy (Research, Development, and Acquisition)" to read "Deputy, Acquisition Policy, Integrity and Accountability, Office of the Assistant Secretary of the Navy (Research, Development, and Acquisition)".

PART 203—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

203.502–2 [Amended]

3. Section 203.502–2 is amended by revising in paragraph (h)(ii) the phrase "Naval Investigative Service" to read "Naval Criminal Investigative Service."

PART 206—COMPETITION REQUIREMENTS

206.302–5 [Amended]

4. Section 206.302–5 is amended by revising in paragraph (c)(i)(B) the phrase "Office of the Under Secretary of Defense for Acquisition" to read "Office of the Under Secretary of Defense (Acquisition & Technology)."

5. Section 206.304 is amended by revising paragraphs (a)(4)(A)(2) and (a)(4)(B) to read as follows:

206.304 Approval of the justification.

(a)(4)(A) * * *

(*1*) * * *

(*2*) In the case of the Under Secretary of Defense (Acquisition & Technology) (USD(A&T)), to—

* * * * *

(B) For proposed contracts over $50 million, this authority is not delegable, except in the case of the USD(A&T) who may delegate as specified in paragraph (a)(4)(A)(*2*) of this section.

PART 207—ACQUISITION PLANNING

207.105 [Amended]

6. Section 207.105 is amended by removing paragraph (b)(2)(v).

PART 209—CONTRACTOR QUALIFICATIONS

209.103 [Amended]

7. Section 209.103(a)(i)(c) is amended by revising the reference "Under Secretary of Defense (Acquisition)" to read "Under Secretary of Defense (Acquisition & Technology)."

8. Section 209.104–1 is amended by revising paragraph (e) to read as follows:

209.104–1 General standards.

(e) For cost-reimbursement or incentive type contracts, or contracts which provide for progress payments based on costs or on a percentage or stage of completion, the prospective contractor's accounting system and related internal controls must provide reasonable assurance that—

(i) Applicable laws and regulations are complied with;

(ii) The accounting system and cost data are reliable;

(iii) Risk of misallocations and mischarges are minimized; and

(iv) Contract allocations and charges are consistent with invoice procedures.

* * * * *

9. Section 209.405–1 is added to read as follows:

209.405–1 Continuation of current contracts.

(a) Unless the agency head makes a written determination that a compelling reason exists to do so, ordering activities shall not—

(i) Place orders exceeding the guaranteed minimum under indefinite quantity contracts: or

(ii) When the agency is an optional user, place orders against Federal Supply Schedule contracts.

(b) This includes exercise of options.

PART 215—CONTRACTING BY NEGOTIATION

10. Section 215.806–1 is amended by revising paragraph (a)(1) to read as follows:

215.806–1 General.

* * * * *

(a)(1) Contractor and subcontractor proposals may reflect the selection of sources whose proposals offer the greatest value to the Government in terms of performance and other factors. If the selection is based on greatest value rather than lowest price, the analysis supporting subcontractor

selection should include a discussion of the factors considered in the selection (see also FAR 15.605(c) and 215.605(c)). If the contractor's analysis is not adequate, return it for correction of deficiencies.

* * * * *

PART 217—SPECIAL CONTRACTING METHODS

11. Section 217.7404–3 is amended by revising paragraph (a)(2) to read as follows:

217.7404–3 Definitization schedule.

(a) * * *

(1) * * *

(2) The date on which the amount of funds obligated under the contract action is equal to more than 50 percent of the not-to-exceed price.

* * * * *

12. Section 217.7404–4 is revised to read as follows:

217.7404–4 Limitations on obligations.

The Government shall not obligate more than 50 percent of the not-to-exceed price before definitization. However, if a contractor submits a qualifying proposal before 50 percent of the not-to-exceed price has been obligated by the Government, then the limitation on obligations before definitization may be increased to no more than 75 percent (see 232.102–70 for coverage on provisional delivery payments).

13. Section 217.7404–5 is revised to read as follows:

217.7404–5 Exceptions.

(a) The limitations in 217.7404–2, 217.7404–3, and 217.7404–4 do not apply to UCAs for the purchase of initial spares.

(b) The head of an agency may waive the limitations in 217.7404–2, 217.7404–3, and 217.7404–4 for UCAs if the head of the agency determines that the waiver is necessary to support a contingency operation.

PART 219—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

14. Section 219.502–2–70 is amended by revising paragraph (a)(1)(ii) to read as follows:

219.502–2–70 Total set-asides for small disadvantaged business concerns.

(a) * * *

(1) * * *

(i) * * *

(ii) In the case of an SDB regular dealer owned by an Indian tribe, including an Alaska Native Corporation, will provide the supplies of a small business for contracts awarded during fiscal years 1994 and 1995, as provided in Section 8051 of Pub. L. 103–139 and Section 8012 of Pub. L. 103–335; or,

* * * * *

PART 225—BUY AMERICAN ACT—CONSTRUCTION MATERIALS

15. Section 225.408 is amended by revising paragraph (a)(4)(B) to read as follows:

225.408 Solicitation provision and contract clause.

(a)(1) * * *

* * * * *

(4)(A) * * *

(B)(i) Use the clause in all solicitations and contracts for the items listed at 225.403–70, when the estimated value is $50,000 or more and the Trade Agreements Act does not apply. Include the clause in solicitations for multiple line items if any line item is subject to NAFTA.

(ii) Use the clause with its Alternate I when the estimated value is between $25,000 and $50,000.

* * * * *

225.603 [Amended]

16. Section 225.603 is amended in paragraph (b)(i)(D) by revising the phrase "Commander, DCMAO New York, ATTN: Customs Division, International Logistics Office, 201 Varick Street, New York, NY 10014—" to read "Commander, DCMAO New York, ATTN Customs Team, DCMDN–GNIC, 207 New York Avenue, Staten Island, NY 10305–5013—".

225.603 [Amended]

17. Section 225.603 is amended in paragraph (b)(ii) by revising the phrase "Chief, Customs Division, International Logistics Office, DCMAO New York" to read "Customs Team, DCMDN–GNIC, DCMAO New York".

225.872–5 [Amended]

18. Section 225.872–5(a) is amended by revising "Foreign Contracting Directorate, Office of the Director of Defense Procurement" to read "Deputy Director of Defense Procurement (Foreign Contracting)."

225.872–6 [Amended]

19. Section 225.872–6(b) is amended by revising "Foreign Contracting Directorate, Office of the Director of Defense Procurement" to read "Deputy Director of Defense Procurement (Foreign Contracting)."

20. Section 225.7004–2 is amended by revising paragraph (b) to read as follows:

225.7004–2 Applicability.

* * * * *

(b) Machine tool accessories classified under FSC 3460 or 3461 are not components under 225.7004–5. Where a solicitation for machine tools includes machine tool accessories, list known machine tool accessories which are not separate line items in the provision at 252.225–7040, Machine Tool List. Identify accessories which are separate line items in the schedule. The contracting activity must exercise judgment in determining whether an item is an accessory or a component. This determination should be based on the use of the item in the machine tool being purchased.

* * * * *

21. Section 225.7004–6 is amended by adding paragraph (c) to read as follows:

225.7004–6 Contract clauses.

* * * * *

(c) Use the provision at 252.225–7040, Machine Tool List, in all solicitations for machine tools which contain the clause at 252.225–7017 except where—

(1) All machine tool accessories are listed as separate line items; and

(2) The solicitation does not allow offerors to provide accessories which are not specifically required by the specifications.

22. Section 225.7021–1 is revised to read as follows:

225.7021–1 Restriction.

In accordance with Section 8090 of the Fiscal Year 1994 Defense Appropriations Act (Pub. L. 103–139) and Section 8075 of the Fiscal Year 1995 Defense Appropriations Act (Pub. L. 103–335), do not purchase aircraft fuel cells unless they are produced or manufactured in the United States by a domestic-operated entity.

23. Section 225.7021–3 is revised to read as follows:

225.7021–3 Contract clause.

Unless a waiver has been granted in accordance with 225.7021–2, use the clause at 252.225–7038, Restriction on Acquisition of Aircraft Fuel Cells, in all solicitations and contracts which—

(a) Use fiscal year 1994 or 1995 funds; and

(b) Require delivery of aircraft fuel cells.

24. Section 225.7022–1 is revised to read as follows:

225.7022–1 Restriction.

In accordance with Section 8124 of the Fiscal Year 1994 Defense Appropriations Act (Pub. L. 103–139) and Section 8093 of the Fiscal Year 1995 Defense Appropriations Act (Pub. L. 103–335), do not purchase a totally enclosed lifeboat survival system, which consists of the lifeboat and associated davits and winches, unless 50 percent or more of the components are manufactured in the United States, and 50 percent or more of the labor in the final manufacture and assembly of the entire system is performed in the United States.

25. Section 225.7202 is amended by revising "OUSD(A)DP(FC)" to read "OUSD(A&T)DP(FC)."

PART 226—OTHER SOCIOECONOMIC PROGRAMS

26–28. Section 226.7101 is revised to read as follows:

226.7101 Definition.

Vicinity, as used in this subpart, means the county or counties in which the military installation to be closed or realigned is located and all adjacent counties, unless otherwise defined by the agency head.

29. Section 226.7103 is revised to read as follows:

226.7103 Procedure.

In considering acquisitions for award through the section 8(a) program (subpart 219.8 and FAR subpart 19.8) or in making set-aside decisions under subpart 219.5 and FAR subpart 19.5 for acquisitions in support of a base closure or realignment, the contracting officer shall—

(a) Determine whether there is a reasonable expectation that offers will be received from responsible business concerns located in the vicinity of the military installation that is being closed or realigned.

(b) If offers can not be expected from business concerns in the vicinity, proceed with section 8(a) or set-aside consideration as otherwise indicated in part 219 and FAR part 19.

(c) If offers can be expected from business concerns in the vicinity—

(1) Consider section 8(a) only if the 8(a) contractor is located in the vicinity.

(2) Set aside the acquisition for small disadvantaged business only if one of the expected offers is from a small disadvantaged business located in the vicinity.

(3) Set aside the acquisition for small business only if one of the expected offers is from a small business located in the vicinity.

226.7200 [Amended]

30 and 31. Section 226.7200 is amended by revising in paragraph (a) the word "established" to read "establishes."

PART 228—BONDS AND INSURANCE

32. Section 228.102–1 is amended by revising the introductory paragraph to read as follows:

228.102–1 General.

For Defense Environmental Restoration Program construction contracts entered into pursuant to 10 U.S.C. 2701 and executed between December 5, 1991, and December 31, 1999—

* * * * *

PART 231—CONTRACT COST PRINCIPLES AND PROCEDURES

231.205–70 [Amended]

33. Section 231.205–70(b)(4) is amended to revise in the second sentence the word "repositioning" to read "repositionings."

231.703 [Amended]

34. Section 231.703 is amended to revise in paragraph (1) the reference "231.603(a)" to read "231.603(1)."

PART 232—CONTRACT FINANCING

232.108 [Amended]

35. Section 232.108 is amended by revising in paragraph (1)(i) the phrase "Army—Chief of Contract Financing, Office of the Comptroller" to read "Army—Office, Assistant Secretary of the Army (Financial Management)".

36. Section 232.503–6 is amended by adding a new paragraph (b) to read as follows:

232.503–6 Suspension or reduction of payments.

(b) *Contractor noncompliance.* See also 242.7503.

* * * * *

PART 235—RESEARCH AND DEVELOPMENT CONTRACTING

37. Section 235.001 is revised to read as follows:

235.001 Definitions.

The following terms are defined in DoD 7000.14–R, Financial Management Regulation. As used in this part—

Advanced development means all effort directed toward projects which have moved into the development of hardware for test. The prime proof of this type of effort is proof of design concept rather than the development of hardware. Projects in this category have a potential military application.

Basic research means all effort of scientific study and experimentation directed toward increasing knowledge and understanding in those fields of the physical, engineering, environmental, and life sciences related to long-term national security needs. It provides fundamental knowledge required for the solution of military problems. It forms a part of the base for—

(1) Subsequent exploratory and advanced developments in defense related technologies; and

(2) New or improved military functional capabilities in areas such as communications, detection, tracking, surveillance, propulsion, mobility, guidance and control, navigation, energy conversion, materials and structures, and personnel support.

Demonstration/validation means those efforts necessary to evaluate integrated technologies in as realistic an operating environment as possible to assess the performance or cost reduction potential of advanced technology. The demonstration/validation phase is system specific and also includes advanced technology demonstrations that help expedite technology transition from the laboratory to operational use.

Engineering and manufacturing development means those projects in full-scale engineering development but which have not yet received approval for production or had production funds included in the DoD budget submission for the budget or subsequent fiscal year. This area is characterized by major line item projects where program control is exercised by review of individual projects.

Exploratory development means all effort directed toward the solution of specific military problems, short of major development projects. This type of effort may vary from fairly fundamental applied research to quite sophisticated bread-board hardware, study, programming, and planning efforts. It would thus include studies, investigations, and minor development effort. The dominant characteristic of this category of effort is that it be pointed toward specific military problem areas with a view toward developing and evaluating the feasibility and practicability of proposed solutions and determining their parameters.

Management and support means all effort directed toward support of installations and operations required for general research and development use. This includes military construction of a general nature unrelated to specific programs, maintenance support of laboratories, operation and maintenance of test ranges, and maintenance of test aircraft and ships. Costs of laboratory personnel, either in-house or contracted, would be assigned to projects or as a line item in the research, exploratory development, or advanced development

program areas, as appropriate. Management and support is not "research and development" except in exceptional cases. For example, construction of recreational facilities at an installation is not "research and development" work, even if the installation is used only for research and development work.

Operational system development means those projects still in full-scale engineering development, but which have received approval for production through Defense Acquisition Board or other action, or production funds have been included in the DoD budget submission for the budget or subsequent year. All items in this area are major line item projects which appear as RDT&E costs of weapons systems elements in other programs. Program control is exercised by review of the individual projects.

Research and development ordinarily covers only the following categories—

(1) Basic research;
(2) Exploratory development;
(3) Advanced development;
(4) Demonstration/validation;
(5) Engineering and manufacturing development; and
(6) Operational system development.

38. Section 235.006 is amended by revising paragraph (b)(i)(C)*(1)(iii)* to read as follows:

235.006 Contracting methods and contract type.

* * * * *

(b)(i) * * *
(C) * * *
(1) * * *

(iii) The development of a major system (as defined in FAR 34.001) or subsystem thereof, it the contract is over $25 million, or is over $10 million and is funded with FY90 funds (Pub. L. 101–165, Section 9048), FY91 funds (Pub. L. 101–511, Section 8038), FY92 funds (Pub. L. 102–172, Section 8037), or FY93 funds (Pub. L. 102–396, Section 9037).

* * * * *

39. Section 235.010 is revised to read as follows:

235.010 Scientific and technical reports.

(b) The Defense Technical Information Center (DTIC) is responsible for collecting all scientific or technological observations, findings, recommendations, and results derived from DoD endeavors, including both in-house and contracted efforts. The DTIC has eligibility and registration requirements for use of its services. Requests for eligibility and registration information should be addressed to DTIC–BCS, Cameron Station, Alexandria, VA 22304–6145.

235.015–70 [Amended]

40. Section 235.015–70(d)(3)(ii) is amended by revising the second occurrence of the word "which" to read "who."

41. Section 235.071 is amended by adding paragraphs (c) and (d) to read as follows:

235.071 Additional contract clauses.

(a) * * *
(b) * * *
(c) Use the clause at 252.235–7010, Acknowledgement of Support and Disclaimer, in solicitations and contracts for research and development.
(d) Use the clause at 252.235–7011, Final Scientific or Technical Report, in solicitations and contracts for research and development.

42. Section 235.017–1 is added to read as follows:

235.017–1 Sponsoring agreements.

(c)(4) DoD-sponsored FFRDCs that function primarily as research laboratories may respond to solicitations and announcements for programs which promote research, development, demonstration, or transfer of technology (Section 217, Pub. L. 103–337).

PART 237—SERVICE CONTRACTING

237.7302 [Amended]

43. Section 237.7302 is amended by revising in the last sentence the reference "10 U.S.C. 2304(a)(i)" to read "10 U.S.C. 2304(a)(1)."

237.7400 [Amended]

44. Section 237.7400 is amended by revising the reference "(Pub. L. 100–536)" to read "(Pub. L. 100–526)."

45. Section 237.7401 is amended in paragraph (c) by revising "govenrment" to read "government;" by revising the word "is" to read "are"; and by adding a new paragraph (d) to read as follows:

237.7401 Policy.

* * * * *

(d) Includes the requirement of subpart 222.71, Right of First Refusal of Employment, unless it conflicts with the local government's civil service selection procedures.

237.7402 [Amended]

46. Section 237.7402 is amended by revising the word "subject" to read "subpart."

PART 242—CONTRACT ADMINISTRATION

47. Section 242.302 is amended by adding a new paragraph (a)(7) to read as follows:

242.302 Contract administration functions.

(a)(4) * * *

(7) See 242.7503 for ACO responsibilities with regard to receipt of an audit report identifying significant accounting system or related internal control deficiencies.

* * * * *

48. Section 242.1104 is revised to read as follows:

242.1104 Surveillance requirements.

(a)(i) As a minimum, contracts will receive pre-delivery telephonic surveillance.

(ii) Contracts in the following categories will receive pre-delivery on-site production surveillance:

(A) Contracts assigned criticality designator A (see FAR 42.1105).

(B) Contracts specifically identified for special surveillance by the contracting officer.

(C) Any contract where telephonic surveillance reveals actual or anticipated delinquency unless the contract administration office, in coordination with the contracting officer, decides that on-site surveillance is not warranted.

49. Section 242.7302 is amended by revising paragraph (a) and by adding paragraph (d) to read as follows:

242.7302 Requirements.

(a) A CIPR shall be conducted for each contractor whose qualifying sales to the Government exceeded $40 million during the contractor's preceding fiscal year. Qualifying sales are sales for which certified cost or pricing data were required under 10 U.S.C. 2306, as implemented in FAR 15.804 (unless exempt in accordance with FAR 15.804–3), or which are cost-reimbursement type contracts. Sales include prime contracts, subcontracts, and modifications to such contracts and subcontracts.

* * * * *

(d) Reviews of selected insurance and pension elements may be conducted for contractors not meeting the criteria in paragraph (a) of this section if significant problems have been identified.

50. A new subpart 242.75 is added to read as follows:

Sec.
242.7500 Scope of subpart.
242.7501 Definition.
242.7502 Policy.
242.7503 Procedures.

Subpart 242.75—Contractor Accounting Systems and Related Controls

242.7500 Scope of subpart.

This subpart provides policies and procedures applicable to contractor accounting systems and related internal controls.

242.7501 Definition.

Internal controls means those policies and procedures established by contractor management to provide reasonable assurance that applicable laws and regulations are complied with and that actual and estimated costs are equitably allocated within the accounting system.

242.7502 Policy.

Contractors receiving cost-reimbursement or incentive type contracts, or contracts which provide for progress payments based on costs or on a percentage or stage of completion, shall maintain an accounting system and related internal controls throughout contract performance which provide reasonable assurance that—

(a) Applicable laws and regulations are complied with;

(b) The accounting system and cost data are reliable;

(c) Risk of misallocations and mischarges are minimized; and

(d) Contract allocations and charges are consistent with invoice procedures.

242.7503 Procedures.

(a) Upon receipt of an audit report identifying significant accounting system or related internal control deficiencies, the ACO will—

(1) Provide a copy of the report to the contractor and allow 30 days, or a reasonable extension, for the contractor to respond;

(2) If the contractor agrees with the report, the contractor has 60 days from the date of initial notification to correct any identified deficiencies or submit a corrective action plan showing milestones and actions to eliminate the deficiencies.

(3) If the contractor disagrees, the contractor should provide rationale in its written response.

(4) The ACO will consider whether it is appropriate to suspend a percentage of progress payments or reimbursement of costs proportionate to the estimated cost risk to the Government, considering audit reports or other relevant input, until the contractor submits a corrective action plan acceptable to the ACO and corrects the deficiencies. (See FAR 32.503–6 (a) and (b) and FAR 42.302(a)(7)).

PART 244—SUBCONTRACTING POLICIES AND PROCEDURES

51. Subpart 244.2 is added to read as follows:

244.2 Consent to subcontracts.

Sec.
244.202 Contracting officer's evaluation.
244.202–2 Considerations.

242.2 Consent to subcontracts.

244.202 Contracting officer's evaluation.

244.202–2 Considerations.

(a) Where other than lowest price is the basis for subcontractor selection, has the contractor adequately substantiated the selection as offering the greatest value to the Government?

PART 245—GOVERNMENT PROPERTY

52. Section 245.608–70 is amended by revising paragraph (a)(3) to read as follows:

245.608–70 Contractor inventory redistribution system (CIRS).

(a) * * *

(3) Has a line item acquisition value in excess of $1,000 ($500 for furniture) but no national stock number.

* * * * *

PART 247—TRANSPORTATION

53. Section 247.305–70 is revised to read as follows:

247.305–70 Returnable containers other than cylinders.

Use the clause at 252.247–7021, Returnable Containers Other Than Cylinders, in solicitations and contracts for supplies involving contractor-furnished returnable reels, spools, drums, carboys, liquid petroleum gas containers, or other returnable containers if the contractor is to retain title to the containers.

54. Section 247.571 is amended by revising paragraph (c); by removing paragraph (d); and by redesignating paragraph (e) as paragraph (d) to read as follows:

247.571 Policy.

* * * * *

(c)(1) Any vessel used under a time charter contract for the transportation of supplies shall have any reflagging or repair work, as defined in the clause at 252.247–7205, Reflagging or Repair Work, performed in the United States or its territories, if the reflagging or repair work is performed—

(i) On a vessel for which the contractor submitted an offer in response to the solicitation for the contract; and

(ii) Prior to acceptance of the vessel by the Government.

(2) The Secretary of Defense may waive this requirement if the Secretary determines that such waiver is critical to the national security of the United States.

* * * * *

55. Section 247.573 is amended by revising paragraph (d) to read as follows:

247.573 Solicitation provision and contract clauses.

* * * * *

(d) Use the clause at 252.247–7025, Reflagging or Repair Work, in all time charter solicitations and contracts for the use of a vessel for the transportation of supplies, unless a waiver has been granted in accordance with 247.571(c).

PART 249—TERMINATION OF CONTRACTS

249.7003 [Amended]

56. Section 249.7003 is amended by inserting in paragraph (b)(1) the word "major" between the words "which" and "defense;" by revising in paragraph (d)(2) introductory text the number "90" to read "60;" by revising in paragraph (b)(3) introductory text the number "90" to read "60;" and by removing in paragraph (b)(3) introductory text the word "provided."

PART 251—USE OF GOVERNMENT SOURCES BY CONTRACTORS

57. Section 251.102 is amended to revise paragraph (e) introductory text and to add a new paragraph (f) to read as follows:

251.102 Authorization to use Government supply sources.

(e) Use the format in Table 51–1, Authorization to Purchase from Government Supply Sources. Specify the terms of the purchase, including contractor acceptance of any Government materiel, payment terms, and the addresses required by paragraph (f) of the clause at 252.251–7000, Ordering from Government Supply Sources.

* * * * *

(f) The authorizing agency shall also be responsible for promptly considering requests of the DoD supply source for authority to refuse to honor requisitions from a contractor which is indebted to the DoD and has failed to pay proper invoices in a timely manner.

* * * * *

58. Section 251.105 is added to read as follows:

251.105 Payment for shipments.

Contractor payments for purchases from DoD supply sources are due within 30 days of the date of a proper invoice (see FAR 32.902 for definition of "due

date" and "payment date;" also see FAR 32.905(e)).

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.209–7004 [Amended]

59. and 60. Section 252.209–7004 is amended by revising in paragraph (b)(5) the symbol "PDUSD(A&T)(DPFC)" to read "OUSD(A&T)DP(FC)."

61. Section 252.219–7001 is amended by revising the clause date "(May 1994)" "(May 1995)"; and by revising paragraph (f)(2) to read as follows:

252.219–7001 Notice of partial small business set-aside with preferential consideration for small disadvantaged business concerns.

* * * * *

(f) * * *

(2) A manufacturer or regular dealer, which claims preference as a small disadvantaged business and submits an offer in its own name, agrees to furnish in performing this contract only end items manufactured or produced by small disadvantaged business concerns in the United States, except, as provided in Section 8051 of Pub. L. 103–139 and Section 8012 of Pub. L. 103–335, for contracts awarded during fiscal years 1994 and 1995, a small disadvantaged business manufacturer or regular dealer owned by an Indian tribe, including an Alaska Native Corporation, agrees to furnish only end items manufactured or produced by small business concerns in the United States.

* * * * *

62. Section 252.219–7002 is amended by revising the clause date "(MAY 1994)" to read "(MAY 1995)"; and by revising paragraph (c) to read as follows:

252.219–7002 Notice of small disadvantaged business set-aside.

* * * * *

(c) *Agreement.*

A small disadvantaged business manufacturer or regular dealer, submitting an offer in its own name, agrees to furnish in performing this contract only end items manufactured or produced by small disadvantaged business concerns in the United States, except, as provided in Section 8051 of Pub. L. 103–139 and Section 8012 of Pub. L. 103–335, for contracts awarded during fiscal years 1994 and 1995, a small disadvantaged business manufacturer or regular dealer owned by an Indian tribe, including an Alaska Native Corporation, agrees to furnish only end items manufactured or produced by small business concerns in the United States.

* * * * *

63. Section 252.219–7006 is amended by revising the clause date "(MAY 1994)" to read "(MAY 1995)"; and by revising paragraph (d)(2) to read as follows:

252.219–7006 Notice of evaluation preference for small disadvantaged business concerns.

* * * * *

(d) * * *

(2) A small disadvantaged business, historically black college or university, or minority institution regular dealer submitting an offer in its own name agrees to furnish in performing this contract only end items manufactured or produced by small disadvantaged business concerns, historically black colleges or universities, or minority institutions in the United States, except, as provided in Section 8051 of Pub. L. 103–139 and Section 8012 of Pub. L. 103–335, for contracts awarded during fiscal years 1994 and 1995, a small disadvantaged business manufacturer or regular dealer owned by an Indian tribe, including an Alaska Native Corporation, agrees to furnish only end items manufactured or produced by small business concerns in the United States.

* * * * *

252.225–7009 [Amended]

64. Section 252.225–7009 is amended to revise in paragraph (f)(2)(iv) the phrase "Customs Division, International Logistics Office, 201 Varick Street, New York, New York 10014" to read "Customs Team, DCMDN–GNIC, 207 New York Avenue, Staten Island, New York, 10305–5013."

252.225–7010 [Amended]

65. Section 252.225–7010 is amended to revise in paragraph (e) introductory text the phrase "Chief, Customs Division, International Logistics Office, 201 Varick Street, New York, New York 10014" to read "Customs Team, DCMDN–GNIC, 207 New York Avenue, Staten Island, New York, 10305–5013."

66. Section 252.225–7026 is amended by revising the clause date "(APR 1993)" to read "(MAY 1995)"; by revising paragraph (b)(3); by adding a new paragraph (b)(4); and by revising paragraph (d) to read as follows:

252.225–7026 Reporting of contract performance outside the United States.

* * * * *

(b) * * *

(1) * * *

(2) * * *

(3) The Contractor shall submit reports required by paragraph (a)(3) of this clause within 10 days of the end of each Government quarter to—Deputy Director of Defense Procurement (Foreign Contracting) OUSD(A&T)DP(FC) Washington, DC 20301–3060

(4) The Offeror/Contractor shall submit reports on DD Form 2139, Report of Contract Performance Outside the United States. Computer-generated reports are acceptable, provided the report contains all information required by DD Form 2139. Copies of DD Form 2139 may be obtained from the Contracting Officer.

(c) * * *

(d) *Information required.*

Information to be reported on the part of this contract performed outside the United States (or outside the United States and Canada for reports required by paragraphs (a)(1) and (a)(2) of this clause) includes that for—

(i) Subcontracts;

(ii) Purchases; and

(iii) Intracompany transfers when transfers originate in a foreign location.

67. Section 252.225–7035 is amended by revising the clause date "(JAN 1994)" read "(MAY 1995)"; and by revising paragraph (c)(2)(ii) to read as follows:

252.225–7035 Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate.

* * * * *

(c) * * *

(2) * * *

(i) * * *

(ii) The Offeror certifies that the following supplies are qualifying country (except Canada) end products:

* * * * *

68. Section 252.225–7036 is amended by adding a new Alternate I (MAY 1995) to read as follows:

252.225–7036 North American Free Trade Agreement Implementation Act.

* * * * *

ALTERNATE I (MAY 1995)

As prescribed in 225.408(a)(4)(B)(ii), add the following paragraph (a)(7) to the basic clause, and substitute the following paragraph (c) in place of paragraph (c) of the basic clause:

(a)(7) "Canadian end product," means an article that—

(i) Is wholly the growth, product, or manufacturer of Canada; or

(ii) Has, in the case of an article which consists in whole or in part of materials from another country or instrumentality, been substantially transformed in Canada into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term includes services (except transportation services) incidental to its supply; provided, that the value of those incidental services does not exceed that of the product itself. It does not include service contracts as such.

(c) The Contractor agrees to deliver under this contract only U.S. made end products unless, in its offer, it specified delivery of qualifying country, NAFTA country, or non-NAFTA country end products in the Buy American Act-North American Free Trade Agreement Implementation Act-Balance of Payments Program Certificate provision. An offer certifying that a qualifying country end product or a Canadian end product will be supplied requires the Contractor to supply a qualifying country end product or a Canadian end product, whichever is certified, or, at the Contractor's option, a U.S. made end product.

252.225–7037 [Amended]

69. Section 252.225–7037 is amended to revise in paragraph (f)(2)(iv) the phrase "Customs Division, International Logistics Office, 201 Varick Street, New York, NY 10014" to read "Customs Team, DCMDN–GNIC, 207 New York Avenue, Staten Island, New York 10305–5013,"

70. Section 252.225–7040 is added to read as follows:

252.225–7040 Machine tool list.

As prescribed in 225.7004–5(c), use the following provision:

Machine Tool List (May 1995)

The Government has identified those items listed as machine tool accessories which are not listed in the schedule as separate line items. The Offeror must also list any accessories to be provided which are not specifically required by the specifications. Where the machine tool accessory is not of U.S. or Canadian origin, as defined in the Preference for United States and Canadian Valves and Machine Tools clause of this solicitation, indicate the country in which the accessory was manufactured and the cost of the accessory.

Line Item No.	Accessory	Country of manufacture	Cost

(End of provision)

71. Section 252.235–7010 is added to read as follows:

252.235–7010 Acknowledgment of support and disclaimer.

As prescribed in 235.071(c), use the following clause:

Acknowledgment of Support and Disclaimer (May 1995)

(a) The Contractor shall include an acknowledgment of the Government's support in the publication of any material based on or developed under this contract, stated in the following terms: This material is based upon work supported by the (name of contracting agency(ies)) under Contract No. (Contracting agency(ies) contract number(s)).

(b) All material, except scientific articles or papers published in scientific journals, must, in addition to any notices or disclaimers by the Contractor, also contain the following disclaimer: Any opinions, findings and conclusions or recommendations expressed in this material are those of the author(s) and do not necessarily reflect the views of the (name of contracting agency(ies)).

(End of clause)

72. Section 252.235–7011 is added to read as follows:

252.235–7011 Final scientific or technical report.

As prescribed in 235.071(d), use the following clause:

Final Scientific or Technical Report (May 1995)

The Contractor shall submit two copies of the approved scientific or technical report delivered under this contract to the Defense Technical Information Center (DTIC), Attn: DTIC–)OC, Cameron Station, Alexandria, VA 22304–6145. The Contractor shall include a completed Standard Form 298, Report Documentation Page, with each copy of the report. For submission of reports in other than paper copy, contact the Defense Technical Information Center, Attn: DTIC–OC, Cameron Station, Alexandria, VA 22304–6145.

(End of clause)

252.237–7022 [Amended]

73. Section 252.237–7022 is amended by revising the clause date "(JUL 1994)" to read "(MAY 1995)" and by revising at their second occurrence the words "the local" to read "such."

74. Section 252.247–7021 is revised to read as follows:

252.247–7021 Returnable containers other than cylinders.

As prescribed in 247.305–70, use the following clause:

Returnable Containers Other Than Cylinders (May 1995)

(a) *Returnable container,* as used in this clause, includes reels, spools, drums, carboys, liquid petroleum gas containers, and other returnable containers when the Contractor retains title to the container.

(b) Returnable containers shall remain the Contractor's property but shall be loaned without charge to the Government for a period of _____(insert number of days) calendar days after delivery to the f.o.b. point specified in the contract. Beginning with the first day after the loan period expires, to and including the day the containers are delivered to the Contractor (if the original delivery was f.o.b. origin) or are delivered or are made available for delivery to the Contractor's designated carrier (if the original delivery was f.o.b. destination), the Government shall pay the Contractor a rental of $_____ (insert dollar amount for rental) per container per day, computed separately for containers for each type, size, and capacity, and for each point of delivery named in the contract. No rental shall accrue to the Contractor in excess of the replacement value per container specified in paragraph (c) of this clause.

(c) For each container lost or damaged beyond repair while in the Government's possession, the Government shall pay to the Contractor the replacement value as follows, less the allocable rental paid for that container:

_____

(Insert the container types, sizes, capacities, and associated replacement values.)

These containers shall become Government property.

(d) If any lost container is located within _____ (insert number of days) calendar days after payment by the Government, it may be returned to the Contractor by the Government, and the Contractor shall pay to the Government the replacement value, less rental computed in accordance with paragraph (b) of this clause, beginning at the expiration of the loan period specified in paragraph (b) of this clause, and continuing to the date on which the container was delivered to the Contractor.

(End of clause)

75. Section 252.247–7025 is revised to read as follows:

252.247–7025 Reflagging or repair work.

As prescribed in 247.573(d), use the following clause:

Reflagging or Repair Work (May 1995)

(a) *Definition.*

Reflagging or repair work, as used in this clause, means work performed on a vessel—

(1) To enable the vessel to meet applicable standards to become a vessel of the United States; or

(2) To convert the vessel to a more useful military configuration.

(b) *Requirement.* Unless the Secretary of Defense waives this requirement, reflagging or repair work shall be performed in the United States or its territories, if the reflagging or repair work is performed—

(1) On a vessel for which the Contractor submitted an offer in response to the solicitation for this contract; and

(2) Prior to acceptance of the vessel by the Government.

(End of clause)

76. Section 252.249–7002 is amended by revising the clause date "(MAY 1994)" to read "(MAY 1995)" and by revising paragraph (c)(1) to read as follows:

252.249–7002 Notification of proposed program termination or reduction.

* * * * *

(c) * * *

(1) Each employee representative of the Contractor's employees whose work is related to the program and who may be impacted in the event of a termination or substantial reduction; or

* * * * *

77. Section 252.251–7000 is amended by revising the clause date "(DEC 1991)" to read "(MAY 1995)"; by revising paragraph (d)(4); and by adding a new paragraph (f) to read as follows:

252.251–7000 Ordering from Government supply sources.

* * * * *

(d) * * *

(1) * * *

(2) * * *

(3) * * *

(4) Pay invoices from Government supply sources promptly. For purchases made from DoD supply sources, this means within 30 days of the date of a proper invoice (see also Defense Federal Acquisition Regulation Supplement (DFARS) 251.105). For purposes of computing interest for late Contractor payments, the Government's invoice is deemed to be a demand for payment in accordance with the Interest clause of this contract. The Contractor's failure to pay may also result in the DoD supply source refusing to honor the requisition (see DFARS 251.102(f)) or in the Contracting Officer terminating the Contractor's authorization to use DoD supply sources. In the event the Contracting Officer decides to terminate the authorization due to the Contractor's failure to pay in a timely manner, the Contracting Officer shall provide the Contractor with prompt written notice of the intent to terminate the authorization and the basis for such action. The Contractor shall have 10 days after receipt of the Government's notice in which to provide additional information as to why the authorization should not be terminated. Such termination shall not provide the Contractor with an excusable delay for failure to perform or complete the contract in accordance with the terms of the contract, and the Contractor shall be solely responsible for any increased costs.

(e) * * *

(f) Government invoices shall be submitted to the Contractor's billing address, and Contractor payments shall be sent to the Government remittance address specified below:

Contractor's Billing Address (include point of contact and telephone number):

Government Remittance Address (include point of contact and telephone number):

(End of clause)

PART 253—FORMS

78. Section 253.209–1 is amended by revising paragraph (a)(i)(E) to read as follows:

253.209–1 Responsible prospective contractors.

(a) * * *

(i) * * *

(E) *Accounting system and related internal controls.* An assessment by the auditor of the adequacy of the prospective contractor's accounting system and related internal controls as defined in 242.7501, Definition. Normally, a contracting officer will request an accounting system review when soliciting and awarding cost-reimbursement or incentive type contracts, or contracts which provide for progress payments based on costs or on a percentage or stage of completion.

* * * * *

253.215–70 [Amended]

79. At the end of section 253.215–70, Form 253.303–2139, Report of Contract Performance Outside the United States, is added in numerical order to the DFARS Form List.

Appendix C to Chapter 2

80. Appendix C to Chapter 2, Section C–207.5 is amended by revising paragraph (b) to read as follows:

C–207.5 Subcontractor responsibility and vendor performance rating system (IIG5).

(a) * * *

(b) *Vendor performance rating systems.* Contractor vendor performance rating systems may be a valuable element in the contractor's selection of subcontractors that offer the greatest value to the Government. State in the report whether the contractor has a vendor rating system. If the contractor has a system in place, evaluate its effectiveness in selecting sources. Consider whether the system—

(1) Allows consistency of comparisons among competing subcontractors;
(2) Protects rating information;
(3) Provides appropriate documentation for each element rated;
(4) Allows adequate opportunities for new subcontractors to compete;
(5) Provides for evaluations by appropriate functional areas; and
(6) Is kept current and accurate.

[FR Doc. 95–13061 Filed 6–2–95; 8:45 am]

BILLING CODE 3810–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1831 and 1852

RIN 2700–AB82

Revision to NASA FAR Supplement Coverage on Precontract Costs

AGENCY: Office of Procurement, Acquisition Liaison Division, National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This rule amends the regulations pertaining to precontract costs to specify the content of letters to contractors which authorize the incurrence of precontract costs, make clear the circumstances when precontract costs would be appropriate, and clarify that precontract costs are not allowable unless the clause "Precontract Costs" is included in the contract. In addition, the rule revises the prescription for the clause to allow its use in other than cost-reimbursement contracts. Also, the rule changes the title of that clauses from "Date of Incurrence of Costs" to "Precontract Costs" to more accurately reflect its purpose.

EFFECTIVE DATE: July 5, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Le Cren, (202) 358–0444.

SUPPLEMENTARY INFORMATION:

Background

NASA proposed to amend its regulation on precontract costs, 59 FR 33254, 6/28/94. The rule is intended to provide standardization in the contents of the Agency's precontract cost letters to contractors, make clear the circumstances when precontract costs would be appropriate, clarify that the precontract cost clause is required in the contract in order for such costs to be allowable, and changes the title of the precontract cost clause to more accurately reflect its purpose.

The only public comments submitted were from an industry association. The association considers the FAR coverage to be adequate and "strongly opposes the proposed revision as an unwarranted and unnecessary restriction of the FAR provisions governing percontract costs." NASA's coverage differs from the FAR cost principle by making precontract costs unallowable unless the NASA precontract costs clause is included in the contract.

The public comments were reviewed and considered. The proposed rule was determined to be compliant with the FAR as it utilizes advance agreements whose terms are incorporated in the affected contracts. In addition, the rule prevents the types of litigation identified by the commenter. Furthermore, NASA believes the need to incur precontract costs should be disclosed and only incurred when authorized.

Although no change was made to the proposed rule based on the public comments, the rule has been revised as a result of our review due to the public comments. The final rule eliminates the need for the Precontract Costs clause in firm-fixed-price contracts and fixed-price contracts with an economic price adjustment. The background for the proposed rule stated that the clause was appropriate for the firm-fixed price contracts as the FAR Part 31 cost principles would apply in the case of a termination. While that is true, FAR 49.113, Cost principles, also states that the Part 31 cost principles are subject to the general principles of 49.201. That section states that the primary objective of a termination settlement is to compensate the contractor fairly for the work done and the parties may agree on a total amount to be paid the contractor without agreeing on or segregating the particular elements of costs or profit comprising that amount. Therefore, the cost principles are viewed as a guide and not required for reaching an agreement by cost element, eliminating the need of a precontract cost clause for such contracts.

Impact

NASA certifies that this regulation will not have a significant economic impact on a substantial number of small entities under Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule does not impose any reporting or record keeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 48 CFR Parts 1831 and 1852

Government procurement.

Tom Luedtke,

Deputy Associate Administrator for Procurement.

Accordingly, 48 CFR Parts 1831 and 1852 are amended as follows.

1. The authority citation for 48 CFR Parts 1831 and 1852 continues to read as follows:

Authority: 41 U.S.C. 2473(c)(1).

PART 1831—CONTRACT COST PRINCIPLES AND PROCEDURES

2. Section 1831.205–32 is revised to read as follows:

1831.205–32 Precontract costs.

(a) The authorization of precontract costs is not encouraged and shall be granted only when there will be a sole source award or a single offeror has been selected for negotiations as the result of a competitive procurement, the criteria at FAR 31.205–32 are met, and a written request and justification has been submitted to and approved by the procurement officer. The authorization of precontract cost shall not apply to firm-fixed-price contracts and fixed-price contracts with economic price adjustment. The justification shall:

(1) Substantiate the necessity for the contractor to proceed prior to contract award,

(2) Specify the start date of such contractor effort,

(3) Identify the total estimated time of the advanced effort, and

(4) Specify the cost limitation.

(b) Authorization to the contractor to incur precontract costs shall be in writing and shall:

(1) Specify the start date for incurrence of such costs,

(2) Specify a limitation on the total amount of precontract costs which may be incurred,

(3) State that the costs are allowable only to the extent they would have been if incurred after the contract had been entered into, and

(4) State that the Government is under no obligation to reimburse the contractor for any costs unless a contract is awarded.

(c) Precontract costs shall not be allowable unless the clause at 1852.231–70, Precontract Costs, is included in the contract.

3. Section 1831.205–70 is revised to read as follows:

1831.205–70 Contract clause.

The contracting officer shall insert the clause at 1852.231–70, Precontract Costs, in contracts for which specific coverage of precontract costs is authorized under 1831.205–32.

4. Section 1852.231–70 is revised to read as follows:

1852.231–70 Precontract costs.

As prescribed in 1831.205–70, insert the following clause:

Precontract Costs

(June 1995)

The contractor shall be entitled to reimbursement for costs incurred on or after _____ in an amount not to exceed $_____ that, if incurred after this contract had been entered into, would have been reimbursable under this contract.

(End of clause)

[FR Doc. 95–13631 Filed 6–2–95; 8:45 am]

BILLING CODE 7510–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[I.D. 090692B]

RIN 0648–AD44

Groundfish of the Gulf of Alaska; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; correction.

SUMMARY: This document contains a correction to a final regulation (I.D. 090892B) that was published on Wednesday, October 5, 1994. The regulation established standard groundfish product types and standard product recovery rates (PRRs) for purposes of managing the groundfish fisheries off Alaska.

EFFECTIVE DATE: November 4, 1994.

FOR FURTHER INFORMATION CONTACT: Catherine Belli, 301-713-2341.

SUPPLEMENTARY INFORMATION: On October 5, 1994 (59 FR 50699), NMFS published a final rule establishing standard groundfish product types and standard PRRs for the groundfish fisheries off Alaska. The final rule was effective November 4, 1994. NMFS issued a correction to that rule on November 2, 1994 (59 FR 54841), adding amendatory instruction 3 that correctly amended § 672.20. The October 5, 1994, rule included Table 1 to § 672.20, but inadvertently omitted the amendatory instructions to add Table 1 to the section. This notice corrects this oversight and adds Table 1 to § 672.20.

Correction of Publication

Accordingly, the publication on October 5, 1994 (59 FR 50699), of the final regulations (I.D. 090892B), which were the subject of FR Doc. 94–24637, is corrected as follows:

Table 1 to § 672.20 [Corrected]

On page 50702, before the beginning of Table 1 to § 672.20, amendatory instruction 3a. is added to read as follows:

"3a. Section 672.20 is amended by adding a new Table 1 at the end of § 672.20 to read as follows:".

Dated: May 30, 1995

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 95–13684 Filed 6–2–95; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 60, No. 107
Monday, June 5, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

9 CFR Part 201

RIN 0590–AA09

Regulations and Statements of General Policy Issued Under the Packers and Stockyards Act: Scales & Weighing, Restrictions of Competition, Records, Packer Financial, Packer-Custom Feeding and Dealer/Order Buyer Arrangements, Meat Packer Sales and Purchase Contracts, Gifts to Government Employees, and Packer/Dealer Service Charges

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Proposed rules; review of existing regulations.

SUMMARY: The Packers and Stockyards Programs, Grain Inspection, Packers and Stockyards Administration, is currently reviewing all regulations and policy statements issued under the provisions of the Packers and Stockyards (P&S) Act. Review of 20 regulations and statements of general policy, which have been identified as Group II, has been completed. As a result of the review, this document proposes to modify six trade practice regulations and retain seven regulations and seven statements of general policy in their present form.

DATES: Comments must be submitted on or before August 4, 1995.

ADDRESSES: Comments may be mailed to the Deputy Administrator, Packers and Stockyards Programs, Grain Inspection, Packers and Stockyards Administration, Room 3039 South Building, U.S. Department of Agriculture, Washington, D.C. 20250–2810. Comments received may be inspected during normal business hours in the Office of the Deputy Administrator.

FOR FURTHER INFORMATION CONTACT: Dan VanAckeren, Acting Director, Livestock Marketing Division, (202) 720–6951, or Tommy Morris, Director, Packer and Poultry Division, (202) 720–7363.

SUPPLEMENTARY INFORMATION: Advance Notice of Proposed Rulemaking was published in the **Federal Register** (57 FR 42515) on September 15, 1992. Comments were solicited, at that time, concerning the relevance and importance of each regulation and statement of general policy to today's livestock, meat, and poultry industries, and which sections should be retained, modified or removed. To complete the review process, the rules covered by the Advance Notice of Proposed Rulemaking were divided into three groupings and this document relates to those rules identified as Group II.

In response to a request for comments in the Advance Notice of Proposed Rulemaking, the Agency received a total of fourteen comments relating to the rules in Group II. Comments were received from five livestock producer and trade associations, two legal service groups representing producer and poultry grower associations, four poultry grower associations, two livestock marketing interests, and one livestock auction market.

Six comments were received recommending modification of § 201.49. This regulation requires that interested parties be furnished certain specified information in transactions that are based on the weight of livestock and live poultry: The generation, distribution, and maintenance of scale tickets is a necessary part of this process. One comment recommended a modification to the current regulations to specify that all scales, including those used to purchase livestock on a dressed weight basis, be equipped with printing devices. Five comments recommended that the current regulations be modified to require that scale tickets, similar to those required for livestock and poultry, be made a requirement for poultry feed delivered to growers where feed weight is part of the grower's compensation formula. The commentors proposed that the feed scale printing device print the time and date on the ticket. These same five commentors also recommended a modification to the existing regulations to emphasize the civil penalties of up to $10,000 per livestock weighing offense that are currently available under section 203 of the P&S Act (7 U.S.C 193).

The same six commentors also proposed revision of § 201.71 which requires that all scales used by stockyard owners, market agencies, dealers, packers, and live poultry dealers be installed, maintained, and operated to insure accurate weights and requires that all scales used to weigh livestock and live poultry, with the exception of monorail scales, be equipped with a printing device.

The Agency proposes to amend subsection (a) of § 201.49 by modifying the last sentence to specifically state that all scales used to purchase livestock on a dressed weight basis be equipped with printing devices. The Agency also proposes to amend subsection (b) of § 201.49 to require weighmaster identification on executed poultry scale tickets that is uniform with identification required by livestock weighers. The Agency is considering addressing the issue of poultry feed weighing where feed weight is a part of the grower's compensation formula under a separate rulemaking.

The Agency adopts standards, specifications, and tolerances as approved by the National Institute of Standards and Technology (NIST) and printed in NIST Handbook 44. The Agency proposes to amend subsection (a) of § 201.71 to incorporate by reference the 1995 edition of NIST Handbook 44 to replace references to the currently adopted 1989 edition, as the 1995 handbook contains the most current standards, specifications, and tolerances approved by NIST. The Agency also proposes to amend subsection (b) of § 201.71 to specifically require that scales used to purchase livestock on a carcass weight basis be equipped with printing devices. The Agency is considering addressing the issue of poultry feed weighing where feed weight is a part of the grower's compensation formula under a separate rulemaking.

Section 201.55 requires that purchases and sales of livestock be made on the basis of actual weights and that any adjustments to the weights be fully and accurately explained on the accountings. The Agency proposes to amend § 201.55 by modifying the first sentence to include the purchase, sale, acquisition, and settlement of live poultry. This proposed change will provide uniform requirements for

livestock and live poultry. No comments were received concerning this section.

No comments were received concerning the modification of § 201.73–1. The Agency proposes a technical change to § 201.73–1 to more accurately reflect where forms are available and where they are to be filed.

Three comments were received concerning the modification of § 201.98. This regulation prohibits packers and dealers from charging commission, yardage, or other selling fees to livestock sellers. Of the three comments, one was received from each of the following: a trade association, a livestock auction market, and an agricultural cooperative. One comment recommended modifying the current regulation to exempt charges for services that are mandated by law or regulation from this prohibition. The other two comments recommended a modification that would only prohibit this practice if it resulted in anticompetitive behavior or was not disclosed to the seller.

The Agency proposes to amend § 201.98 by adding the wording, "unless the charge is for services mandated by law or statute", at the end of the last sentence of the regulation. This change would allow buyers to charge for services rendered at the time livestock is received, such as animal identification, provided the service is necessary to comply with statutory requirements.

No comments were received concerning the modification of § 201.108–1. This regulation consists of instructions for live poultry weighers that inform them of requirements and procedures which must be followed in order to assure accurate weighing of live poultry on vehicle scales.

The Agency proposes to amend and update § 201.108–1 by incorporating instructions for weighing live poultry on electronic scales with digital readouts. Currently, § 201.108–1 contains instructions for weighing live poultry on weighbeam and dial scales, but does not include electronic scales. We also propose to amend the regulation to assure uniformity of requirements for weighing livestock and poultry.

A review of the following regulations and statements of general policy has been completed and the Agency proposes to retain each in its present form:

§ 201.53 Persons subject to the Act not to circulate misleading reports about market conditions or prices.
§ 201.69 Furnishing information to competitor buyers.
§ 201.70 Restriction or limitation of competition between packers and dealers prohibited.
§ 201.73 Scale operators to be qualified.
§ 201.76 Reweighing.
§ 201.100 Records to be furnished poultry growers and sellers.
§ 201.200 Sale of livestock to a packer on credit.
§ 203.2 Statement of general policy with respect to the giving by meat packers of meat and other gifts to Government employees.
§ 203.4 Statement with respect to the disposition of records by packers, live poultry dealers, stockyard owners, market agencies and dealers.
§ 203.7 Statement with respect to meat packer sales and purchase contracts.
§ 203.15 Trust benefits under sections 206 and 207 of the Act.
§ 203.16 Mailing of checks in payment for livestock purchased for slaughter, for cash and not on credit.
§ 203.18 Statement with respect to packers engaging in the business of custom feeding livestock.
§ 203.19 Statement with respect to packers engaging in the business of livestock dealers or buying agencies.

In the process of reviewing these regulations, it was determined that they were necessary to the efficient and effective enforcement of the P&S Act and to the orderly conduct of the marketing system. The absence of any of the regulations would be detrimental to the industry and could result in increased litigation.

Comments received pursuant to the Advance Notice of Proposed Rulemaking concerning §§ 203.2, 203.15 and 203.16 were generally in support of retaining each in its present form. No comments were received concerning §§ 201.69, 201.200 and 203.7.

Five comments were received concerning modification of § 201.53. This regulation prohibits packers, live poultry dealers, stockyard owners, market agencies, or dealers from knowingly making, issuing, or circulating false or misleading reports concerning market conditions or prices on the sale of livestock, meat, or live poultry. One comment came from a legal service group representing a poultry grower association and four from poultry grower associations recommending that the regulation be broadened to prohibit the distribution of false or misleading information about the income contract growers receive or could expect to receive in a contract growing arrangement. The Agency is not proposing any changes in the requirements of § 201.53 and believes the regulation, as written, adequately specifies that the Agency considers it an unfair practice under section 202 of the P&S Act to disseminate false or misleading market information.

Two comments were received concerning modification of § 201.70. This regulation requires that packers and dealers operate their livestock buying operations in competition with, and independently of, one another to avoid a restriction of competition. The comments came from a trade association and a livestock auction market and recommended that the regulation be limited to cover only those situations that result in anticompetitive behavior. The Agency is not proposing any changes in the current requirements of § 201.70, as the regulation, coupled with the provisions of the P&S Act, is adequate to ensure that the intent of the Act is not compromised.

Five comments were received concerning modification of § 201.73. This regulation requires that stockyard owners, market agencies, dealers, packers, and live poultry dealers employ only qualified persons to operate their scales and requires that such employees operate the scales in accordance with the regulations. One comment came from a legal service group representing a poultry grower association and four from poultry grower associations recommending that the regulation be broadened to require live poultry dealers to employ qualified weighmasters to weigh poultry feed delivered to contract poultry growers. The same five commentors recommended that § 201.76, which requires stockyard owners, market agencies, dealers, packers and live poultry dealers to reweigh livestock, livestock carcasses, or live poultry on request of any authorized representative of the Secretary, be broadened to include poultry feed in the reweighing requirements. The Agency is proposing no changes to § 201.73 or § 201.76. The Agency is considering addressing the issue of poultry feed weighing where feed weight is a part of the grower's compensation formula under a separate rulemaking.

Seven comments were received concerning modification of § 201.100. This regulation requires that poultry growing agreements be written and that they contain essential specified elements. It also provides that growers are entitled to receive documents necessary for independent verification of their settlement. Two comments were received from legal service groups representing poultry producers, four from poultry growers associations, and one from a producer association. Five of the seven comments recommended adding language to subsection (d) to prohibit employees of live poultry dealers who also raise poultry under growing arrangements with the dealer by whom they are employed from being included in a grouping or ranking of

poultry growers. One comment recommended expanding subsection (a) to include livestock. The seventh comment recommended that this regulation be diligently enforced to ensure that growers have sufficient information to understand their settlement checks. Past investigations of growout arrangements have not shown that employees of a live poultry dealer, who also happen to raise poultry, have an inherent advantage over other contract growers that would warrant prohibiting employee and nonemployee contract growers from being grouped together. Further, the Agency is aware that more and more livestock is being produced under various contractual arrangements, however, other provisions of the statute and regulations have been sufficient to address concerns thus far. Therefore, the Agency is not proposing any changes in § 201.100.

Six comments were received concerning modification of § 203.4. This policy statement notifies persons subject to the P&S Act that certain records may be disposed of after a specific period of time. It also states that the Deputy Administrator may require that records should be retained for a longer period pending completion of an investigation. The policy statement advises that if records are disposed of before the specified periods, the Agency will consider taking formal action. One comment was received from a legal service group representing a poultry grower association, four from poultry grower associations, and another from a producers association. One comment recommended no change and the other five recommended modifying the policy statement to require that records be maintained for a 5-year period. This section has not caused problems in administering the provisions of the P&S Act. Further, the Agency has the authority to require that records be retained for longer periods when deemed necessary.

Four comments were received concerning modifications of § 203.18. This policy statement notifies packers that ownership or operation of custom feedlots may, under certain circumstances, result in a conflict of interest or anticompetitive violations. It suggests packers consult with the Agency before commencing such activity. All four comments were from producer associations. Two comments recommend section (c) be modified to require consultation with the Agency prior to acquiring, merging with, or operating a custom feedlot. The two other comments recommend a strict prohibition against packers owning or operating custom feedlots. While the Agency continues to be concerned about potential conflicts of interest, current arrangements do not appear to have created conflicts warranting a per se prohibition. Also, current authority under the P&S Act is sufficient to allow the Agency to review any arrangement, at any time that it appears that it may result in an unfair practice or advantage. For these reasons, no changes are being proposed in § 203.18 at this time. The Agency will continue to evaluate these types of arrangements on a case-by-case basis.

Four comments suggested modifications to § 203.19. This policy statement notifies packers that operating as a livestock dealer or buying agency may, under certain circumstances, result in violations of the P&S Act. All four comments were from producer associations. Two comments recommend subsection (c)(1) be modified to require consultation with the Agency prior to operating as a market agency or dealer. Another comment suggested the policy statement be broadened to place the burden of proof on the packer to prove such ownership does not restrain trade. The fourth comment recommends packers be prohibited from operating as dealers or buying agencies. The Agency has not proposed changes in § 203.19 at this time, but will continue to evaluate each such arrangement on a case-by-case basis. As a practical matter, most packers consult with the Agency before entering into such arrangements. Amending this rule to require such consultation does not appear necessary. Attempting to shift the burden of proof that the arrangement does not restrain trade would not relieve the Agency of the responsibility to investigate and make a factual determination.

The proposed changes in §§ 201.49, 201.55, 201.71, 201.73–1, 201.98, and 201.108–1 do not impose or change any recordkeeping or information collection requirements. Existing requirements in these regulations have been previously approved by OMB under Control No. 0590–0001.

As provided by the Regulatory Flexibility Act, it is hereby certified that these proposed amended rules will not have a significant economic impact on a substantial number of small entities and a statement explaining the reasons for the certification is set forth in the following paragraph and is being provided to the Chief Counsel for Advocacy of the Small Business Administration.

While these proposed amended rules impact small entities, they will not have a significant economic impact on any entity, large or small. The primary effect of the changes in rules §§ 201.49 and 201.71 is to require that when livestock is purchased on the basis of carcass weight the scale used on such purchases be equipped with a printer. The primary effect of the rule change in § 201.55 is to require that when poultry is bought, sold, acquired, or settled on a weight basis, then the actual weight on the scale ticket be used for such purposes, as is currently required for livestock. The primary effect of the rule change in § 201.73–1 is to make a technical change in the name of the Agency pursuant to Pub. L. 103–354, the Federal Crop Insurance Reform and the Department of Agriculture's Reorganization Act of 1994. The primary effect of the rule change in § 201.98 is to allow packers and dealers to charge for services that are mandated by law or statute. The primary effect of the rule change in § 201.108–1 is to update the regulation.

This rule has been determined to be not significant for purposes of executive order 12866 and therefore has not been reviewed by OMB. These amendments do not impose any new paperwork requirements and do not have implications of Federalism under the criteria of E.O. 12612.

These proposed amendments have been reviewed under E.O. 12778, Civil Justice Reform, and are not intended to have retroactive effect. These amendments will not preempt state or local laws, regulations, or policies unless they present an irreconcilable conflict with this amendment. Prior to judicial challenge of the amendment to rule, a party must first be found by the Secretary to be in violation of the P&S Act and in violation of the accompanying regulations. Second, the party must appeal that finding and the validity of the regulation to the Secretary in the course of the administrative proceeding. Only after taking these steps, the party may challenge the regulation in a court of competent jurisdiction.

List of Subjects in 9 CFR Part 201

Reporting and recordkeeping requirements, Stockyards, Trade practices.

Done at Washington, D.C. this 26th day of May 1995.

James R. Baker,

Administrator, Grain Inspection, Packers and Stockyards Administration.

For the reasons set forth in the preamble, the Grain Inspection, Packers and Stockyards Administration proposes to amend 9 CFR part 201 as follows:

1. The authority citation for part 201 continues to read as follows:

Authority: 7 U.S.C. 204, 228; 7 CFR 2.17(e), 2.56.

2. Revise § 201.49 to read as follows:

§ 201.49 Requirements regarding scale tickets evidencing weighing of livestock and live poultry.

(a) Livestock. When livestock is weighed for the purpose of purchase or sale, a scale ticket shall be issued which shall be serially numbered and used in numerical sequence. Sufficient copies shall be executed to provide a copy to all parties to the transaction. In instances where the weight values are automatically recorded directly on the account of purchase, account of sale or other basic record, this record may serve in lieu of a scale ticket. When livestock is purchased on a carcass weight or carcass grade and weight basis, the hot carcass weights shall be recorded using a scale equipped with a printing device, and such printed weights shall be retained as part of the person or firm's business records to substantiate settlement on each transaction. Scale tickets issued under this section shall show:

(1) The name and location of the agency performing the weighing service;
(2) The date of the weighing;
(3) The name of the buyer and seller or consignor, or a designation by which they may be readily identified;
(4) The number of head;
(5) Kind of livestock;
(6) Actual weight of each draft of livestock; and
(7) The name, initials, or number of the person who weighed the livestock, or if required by State law, the signature of the weigher.

(b) Poultry. When live poultry is weighed for the purpose of purchase, sale, acquisition, or settlement by a live poultry dealer, a scale ticket shall be issued which shall show:

(1) The name of the agency performing the weighing service;
(2) The name of the live poultry dealer;
(3) The name and address of the grower, purchaser, or seller;
(4) The name or initials or number of the person who weighed the poultry, or if required by State law, the signature of the weigher;
(5) The location of the scale;
(6) The gross weight, tare weight, and net weight;
(7) The date and time gross weight and tare weight are determined;
(8) The number of poultry weighed;
(9) The weather conditions;
(10) Whether the driver was on or off the truck at the time of weighing; and
(11) The license number of the truck or the truck number; provided, that when live poultry is weighed on a scale other than a vehicle scale, the scale ticket need not show the information specified in paragraphs (b)(9)–(11) of this section. Scale tickets issued under this paragraph shall be at least in duplicate form and shall be serially numbered and used in numerical sequence. One copy shall be furnished to the grower, purchaser, or seller, and one copy shall be furnished to or retained by the live poultry dealer.

(Approved by the Office of Management and Budget under control number 0590–0001)

3. Revise § 201.55 to read as follows:

§ 201.55 Purchases, sales, acquisitions, and settlements to be made on actual weights.

When livestock or live poultry is bought, sold, acquired, or settled on a weight basis, settlement therefor shall be on the basis of the actual weight on the scale ticket. If the actual weight used is not obtained on the date and at the place of transfer of possession, this information shall be disclosed with the date and location of the weighing on the accountings, bills, or statements issued. Any adjustment to the actual weights shall be fully and accurately explained on the accountings, bills, or statements issued and records shall be maintained to support such adjustment.

(Approved by the Office of Management and Budget under control number 0590–0001)

4. Revise § 201.71 (a) and (b) to read as follows:

§ 201.71 Scales, accurate weights, repairs, adjustments or replacements after inspection.

(a) All scales used by stockyard owners, market agencies, dealers, packers, and live poultry dealers to weigh livestock, livestock carcasses, or live poultry for the purpose of purchase, sale, acquisition, or settlement shall be installed, maintained, and operated to insure accurate weights. Such scales shall meet applicable requirements contained in the General Code, Scale Code, and Weights Code of the 1995 edition of National Institute of Standards and Technology Handbook 44, "Specifications, Tolerances and Other Technical Requirements for Weighing and Measuring Devices," which is hereby incorporated by reference. This incorporation by reference was approved by the Director of the Federal Register on [insert date of approval]. These materials are incorporated as they exist on the date of approval and a notice of any change in these materials will be published in the **Federal Register**. This handbook is for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. It is also available for inspection at the Office of the Federal Register Information Center, 800 North Capitol Street, N.W., Suite 700, Washington, D.C. 20408.

(b) All scales used by stockyard owners, market agencies dealers, packers, and live poultry dealers to weigh livestock or live poultry for the purpose of purchase, sale, acquisition or settlement and all scales used for the purchase, sale, acquisition, or settlement of livestock on a carcass weight basis shall be equipped with a printing device which shall be used for recording weight values on a scale ticket or other document used for this purpose.

* * * * *

5. Revise § 201.73–1 introductory text to read as follows:

§ 201.73–1 Instructions for weighing livestock.

Stockyard operators, market agencies, dealers, and packers who operate scales on which livestock is weighed in purchase or sales transactions are responsible for the accurate weighing of such livestock. They shall supply copies of the instructions in this section to all persons who perform weighing operations for them and direct such person to familiarize themselves with the instructions and to comply with them at all times. This section shall also apply to any additional weighers who are employed at any time. Weighers must acknowledge their receipt of these instructions and agree to comply with them, by signing in duplicate, P&SA Form 215 provided by the Packers and Stockyards Programs. One copy of the form is to be filed with a regional office of the Packers and Stockyards Programs and the other retained by the agency employing the weighers.

* * * * *

6. Revise § 201.98 to read as follows:

§ 201.98 Packers and dealers not to charge, demand, or collect commission, yardage, or other services charges.

No packer or dealer shall, in connection with the purchase of livestock in commerce, charge, demand, or collect from the seller of the livestock any compensation in the form of commission, yardage, or other service charge unless the charge is for services mandated by law or statute and is not inconsistent with the provisions of the Act.

7. Revise § 201.108–1 introductory paragraph and paragraphs, (a) and (c)–(f) to read as follows:

§ 201.108–1 Instructions for weighing live poultry.

Live poultry dealers who operate scales on which live poultry is weighed for purposes of purchase, sale, acquisition, or settlement are responsible for the accurate weighing of such poultry. They shall supply copies of the instructions in this section to all persons who perform weighing operations for them and direct such persons to familiarize themselves with the instructions and to comply with them at all times. This section shall also apply to any additional weighers who are employed at any time. Weighers must acknowledge their receipt of these instructions and agree to comply with them by signing in duplicate, on a form provided by the Packers and Stockyards Programs, Grain Inspection, Packers and Stockyards Administration. One copy of this form is to be filed with a regional office of the Packers and Stockyards Programs, Grain Inspection, Packers and Stockyards Administration and the other copy retained by the agency employing the weighers. The following instructions shall be applicable to the weighing of live poultry on all scales, except that paragraph (c)(1) of this section is only applicable to the weighing of live poultry on vehicle scales.

(a) Balancing the empty scale. (1) The scale shall be maintained in zero balance at all times. The empty scale shall be balanced each day before weighing begins and thereafter its zero balance shall be verified before any poultry is weighed. In addition, the zero balance of the scale shall be verified whenever a weigher resumes weighing duties after an absence from the scale.

(2) Before balancing the empty scale, the weigher shall notify parties outside the scale house of his intention and shall assure himself that no persons or vehicles are in contact with the platform. When the empty scale is balanced and ready for weighing, he shall so indicate by appropriate signal.

(3) Weighbeam scales shall be balanced by first seating each poise securely in its zero notch and then moving the balance ball to such position that a correct zero balance is obtained. A scale equipped with a balance indicator is correctly balanced when the indicator comes to rest in the center of the target area. A scale not equipped with a balance indicator is correctly balanced if the weighbeam, when released at the top or bottom of the trig loop, swings freely in the trig loop in such manner that it will come to rest at the center of the trig loop.

(4) Dial scales shall be balanced by releasing all drop weights and operating the balance ball or other balancing device to obtain a correct zero balance. The indicator must visibly indicate zero on the dial reading face and the ticket printer must record a correct zero balance. "Balance tickets" shall be filed with other scale tickets issued on that date.

(5) Electronic digital scales should be properly warmed up before use. In most cases it is advisable to leave the electric power on continuously. The zero balance shall be verified by recording the zero balance on a scale ticket. The main indicating element and the remote visual weight display shall indicate zero when the balance is verified. The proper procedure for balancing this type of scale will vary according to the manufacture. Refer to the operator's manual for specific instructions.

(6) A balance ball or other balancing device shall be operated only when balancing the empty scale and shall not be operated at any other time or for any other purpose.

(7) The time at which the empty scale is balanced or its zero balance verified shall be marked on scale tickets or other permanent records.

* * * * *

(c) Weighing the load. (1) Vehicle scales used to weigh live poultry shall be of sufficient length and capacity to weigh an entire vehicle as a unit; provided, that a trailer may be uncoupled from a tractor and weighed as a single unit. Before weighing a vehicle, either coupled or uncoupled, the weigher shall assure himself that the entire vehicle is on the scale platform and that no persons are on the scale platform.

(i) On a weighbeam scale with a balance indicator the weight of a vehicle shall be determined by moving the poises to such positions that the indicator will come to rest within the central target area.

(ii) On a weighbeam scale without a balance indicator the weight shall be determined by moving the poises to such positions that the weighbeam, when released from the top or bottom of the trig loop, will swing freely in the trig loop and come to rest at the approximate center of the trig loop.

(iii) On a dial scale the weight of a vehicle is indicated automatically when the indicator revolves around the dial face and comes to rest.

(iv) On an electronic digital scale the weight of a vehicle is indicated automatically when the weight value indicated is stable.

(2) The correct weight is the value in pounds indicated by a weighbeam, dial or digital scale when a stable load balance is obtained. In any case, the weigher should concentrate his attention upon the beam tip, balance indicator, dial or digital indicator while weighing and not concern himself with reading the visible weight indications until a stable load balance is obtained. On electronic digital scales, the weigher should concentrate on the pulsing or flickering of weight values to assure that the unit indicates a stable weight before activating the print button.

(d) Recording the weight. (1) The gross or tare weight shall be recorded immediately after the load balance is obtained and before any poises are moved or load removed from the scale platform. The weigher shall make certain that the printed weight record agrees with the weight value visibly indicated on the weighbeam, dial or digital indicator when correct load balance is obtained. The weigher shall also assure that the printed weight value is sufficiently distinct and legible.

(2) The weight printing device on a scale shall be operated only to produce a printed or impressed record of the weight while the load is on the scale and correctly balanced. If the weight is not printed clearly and correctly, the ticket shall be marked void and a new one printed before the load is removed from the scale.

(e) Weigher's responsibilities. (1) The primary responsibility of a weigher is to determine and record the true weight of live poultry without prejudice or favor to any person or agency and without regard for poultry ownership, price, condition, shrink, or other considerations. A weigher shall not permit the representations or attitudes of any persons or agencies to influence his judgment or action in performing his duties.

(2) Scale tickets issued shall be serially numbered and used in numerical sequence. Sufficient copies shall be executed to provide a copy to all parties to the transaction. Unused scale tickets or those which are partially executed shall not be left exposed or accessible to other parties. All such tickets shall be kept under lock when the weigher is not at his duty station.

(3) Accurate weighing and weight recording require that a weigher shall not permit his operations to be hurried to the extent that inaccurate weights or incorrect weight records may result. The gross, tare and net weights must be determined accurately to the nearest minimum graduation. Manual operations connected with balancing, weighing, and recording shall be performed with the care necessary to prevent damage to the accurately machined and adjusted parts of weighbeams, poises, and printing devices. Rough handling of these parts shall be avoided.

(4) Poultry growers, live poultry dealers, sellers, or others having legitimate interest in a load of poultry are entitled to observe the balancing, weighing, and recording procedures. A weigher shall not deny such persons that right or withhold from them any information pertaining to the weight. He shall check the zero balance of the scale or reweigh a load of poultry when requested by such parties or duly authorized representatives of the Administrator.

(f) General precautions. (1) The poises of weighbeam scales are carefully adjusted and sealed to a definite weight at the factory and any change in that weight seriously affects weighing accuracy. A weigher, therefore, shall observe if poise parts are broken, loose or lost or if material is added to a poise and shall report any such condition to his superior or employer. Balancing or weighing shall not be performed while a scale ticket is in the slot of a weighbeam poise.

(2) Stops are provided on scale weighbeams to prevent movement of poises back of the zero graduation when balancing or weighing. When the stops become worn or broken and allow a poise to be set behind the zero position, this condition must be reported by the weigher to his superior or employer and corrected without delay.

(3) Motion detection circuits are a part of electronic scales. They are designed to prevent the printing of weight values if the load has not stabilized within prescribed limits. The weighmaster's duty is to print the actual weight of the load within these limits. This requires printing the actual weight of the load, not one of the other weights that may be within the motion detection limits.

(4) Foreign objects or loose material in the form of nuts, bolts, washers, or other material on any part of the weighbeam assembly, including the counter-balance hanger or counter-balance weights, are potential sources of weighing error. Loose balancing material must be enclosed in the shot cup of the counter-balance hanger and counter-balance weights must not be of the slotted type which can readily be removed.

(5) Whenever, for any reason, a weigher has reason to believe that a scale is not functioning properly or not yielding correct weight values, he shall discontinue weighing, report the facts to the parties responsible for scale maintenance and request inspection, test or repair of the scale.

(6) When a scale has been adjusted, modified, or repaired in any manner which can affect the accuracy of weighing or weight recording, the weigher shall not use the scale until it has been tested and inspected and found to be accurate.

[FR Doc. 95–13615 Filed 6–2–95; 8:45 am]

BILLING CODE 3410–KD–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–CE–29–AD]

Airworthiness Directives; Piper Aircraft Corporation Model PA–46–350P Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Piper Aircraft Corporation (Piper) Model PA–46–350P airplanes. The proposed action would require installing to the right of the manifold pressure gauge in full view of the pilot a placard that specifies manifold pressure limits, and incorporating a revision into the Limitations section of the Pilots' Operating Handbook (POH). After recent review of the Piper Model PA–46–350P powerplant data, the Federal Aviation Administration (FAA) determined that certain manifold pressure limitations should be incorporated. These limitations fall outside the normal continuous operation range of the engine, and therefore testing was not performed in this area during original type certification. The actions specified by the proposed AD are intended to prevent fatigue damage to the propeller caused by operating above certain manifold pressure limits.

DATES: Comments must be received on or before August 11, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–CE–29–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to this AD may be obtained from the Piper Aircraft Corporation, Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Christina Marsh, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, suite 2–160, College Park, Georgia 30337–2748; telephone (404) 305–7362; facsimile (404) 305–7348.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 95–CE–29–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–CE–29–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

Following the Piper Model PA–46–350P airplane power plant review, the FAA realized that the vibration approval for the Hartzell propeller Model HC–12YR–1 (BF) and Lycoming engine model TIO–540–AE2A contains a manifold pressure restriction, as follows:

"Do not exceed 36 inches manifold pressure below 2,400 RPM and 32 inches manifold pressure below 2,300 RPM."

These restrictions fall outside the normal continuous operation range of the engine; therefore testing was not performed in this area during original type certification and the vibratory stress levels are unknown. The FAA has determined that (1) it is possible for the airplane to register these lower revolutions per minute (r.p.m.) combinations while operating at these high manifold pressure limits; and (2) the airplane operator should observe the limitations discussed above.

On March 29, 1995, Piper revised page 2–16 of Revision 14 (PR950329) to Report: VB–1332 of the PA–46–350P Pilots' Operating Handbook (POH). This POH revision references revised paragraph 2.35 regarding placards, specifically a placard containing manifold pressure limits. This revision is also referenced in Piper Service Bulletin No. 982, dated April 3, 1995.

After examining the circumstances and reviewing all available information related to the subject described above, the FAA has determined that AD action should be taken to prevent fatigue damage to the propeller caused by operating above certain manifold pressure limits.

Since an unsafe condition has been identified that is likely to exist or develop in other Piper Model PA–46–350P airplanes of the same type design, the proposed AD would require installing to the right of the manifold pressure gauge in full view of the pilot a placard that specifies manifold pressure limits. The proposed action would also require incorporating revised page 2–16 (dated March 29, 1995) of Revision 14 (PR950329) to Report: VB–1332 into the Limitations Section of the PA–46–350P POH. Piper Service Bulletin No. 982, dated April 3, 1995, contains the placard, and instructions on installing the placard and incorporating the POH revision. An owner/operator who holds a private pilot's certificate as authorized by sections 43.7 and 43.11 of the Federal Aviation Regulations (14 CFR 43.7 and 43.11) may perform these actions.

The compliance time of the proposed AD is presented in calendar time instead of hours time-in-service. Although the unsafe condition develops as result of airplane usage, it cannot develop unless the manifold pressure limits specified in the proposed action are exceeded. Therefore, to ensure that all owners/operators of the affected airplanes incorporate the manifold pressure limits in a reasonable amount of time, a compliance based on calendar time is proposed.

The FAA estimates that 189 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 1 workhour per airplane to accomplish the proposed action. Since an owner/operator who holds a private pilot's certificate as authorized by sections 43.7 and 43.11 of the Federal Aviation Regulations (14 CFR 43.7 and 43.11) can accomplish this action, the only impact this action would have upon the public is the time it takes each owner/operator to install the placard and incorporate the POH revision.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new AD to read as follows:

Piper Aircraft Corporation: Docket No. 95–CE–29–AD.

Applicability: Model PA–46–350P airplanes, serial numbers 4622001 through 4622189, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (e) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required within the next 2 calendar months after the effective date of this AD, unless already accomplished.

To prevent fatigue damage to the propeller caused by operating above certain manifold pressure limits, accomplish the following:

(a) Install to the right of the manifold pressure gauge in full view of the pilot a placard that specifies the following manifold pressure limits:

DO NOT EXCEED

36" MP

BELOW 2400 RPM

32" MP

BELOW 2300 RPM

Accomplish this installation in accordance with Piper Service Bulletin No. 982, dated April 3, 1995. This placard is included with the referenced service bulletin.

(b) Incorporate revised page 2–16 (dated March 29, 1995) of Revision 14 (PR950329) to Report: VB–1332 into the Limitations Section of the PA–46–350P Pilots' Operating Handbook. Piper Service Bulletin No. 982, dated April 3, 1995, contains the instructions for incorporating this POH revision.

(c) Installing the placard and incorporating the POH revision as required by this AD may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with section 43.11 of the Federal Aviation Regulations (14 CFR 43.11).

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office (ACO), Campus Building, 1701 Columbia Avenue, suite 2–160, College Park, Georgia 30337–2748. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(f) All persons affected by this directive may obtain copies of the POH revision, placard, and service information referred to herein upon request to Piper Aircraft Corporation, Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960; or may examine these documents at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on May 26, 1995.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–13621 Filed 6–2–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 95–CE–23–AD]

Airworthiness Directives; Beech Aircraft Corporation Models 60 and A60 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Beech Aircraft Corporation (Beech) Models 60 and A60 airplanes. The proposed action would require incorporating flight manual supplement revisions into the Airplane Flight Manual (AFM) that would specify a minimum airspeed for operating the affected airplanes in icing conditions. Reports of several incidents and accidents on the affected airplanes related to flight in icing conditions prompted the proposed action. The actions specified by the proposed AD are intended to prevent loss of control of the airplane because of the airplane traveling too slow in icing conditions.

DATES: Comments must be received on or before August 4, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–CE–23–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Bennett L. Sorensen, Flight Test Pilot, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone (316) 946–4165; facsimile (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 95–CE–23–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–CE–23–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has received reports of four icing-related occurrences (one incident and three fatal accidents) involving Beech Models 60 and A60 airplanes. Investigation of these occurrences revealed that, in two of the accidents, the airplane was traveling too slow for icing conditions.

The Model 60 and A60 Pilot's Operating Handbook/Airplane Flight Manual (POH/AFM), including the FAA-approved sections, contains no specification or precautionary performance advisory regarding the appropriate minimum airspeed to maintain while operating in icing conditions.

Beech recently issued AFM supplement "FLIGHT IN KNOWN ICING CONDITIONS", Revised: January 1995, part number (P/N) 60–590001–17. This AFM supplement establishes a minimum airspeed for operating Beech Models 60 and A60 airplanes in icing conditions.

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that AD action should be taken to prevent loss of control of the airplane because of the airplane traveling too slow in icing conditions.

Since an unsafe condition has been identified that is likely to exist or develop in other Beech Models 60 and A60 airplanes of the same type design, the proposed AD would require incorporating AFM supplement "FLIGHT IN KNOWN ICING CONDITIONS", Revised: January 1995, part number (P/N) 60–590001–17, into the applicable AFM.

The compliance time of the proposed AD is presented in calendar time instead of hours time-in-service. Although the unsafe condition develops as a result of airplane usage, it cannot develop unless the airplane travels too slow in icing conditions. Therefore, to ensure that all owners/operators of the affected airplanes incorporate the minimum airspeed in icing conditions flight manual supplement revisions in a reasonable amount of time, a compliance based on calendar time is proposed.

The FAA estimates that 243 airplanes in the U.S. registry would be affected by the proposed AD, that it would take less than 1 workhour per airplane to accomplish the proposed action. Since an owner/operator who holds a private pilot's certificate as authorized by sections 43.7 and 43.11 of the Federal Aviation Regulations (14 CFR 43.7 and 43.11) can accomplish this action, the

only cost impact upon the public is the time it takes to incorporate these AFM supplement revisions.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new AD to read as follows:

Beech Aircraft Corporation: Docket No. 95–CE–23–AD.

Applicability: Models 60 and A60 airplanes, serial numbers P–4 through P–246, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required within the next 60 calendar days after the effective date of this AD, unless already accomplished.

To prevent loss of control of the airplane because of the airplane traveling too slow in icing conditions, accomplish the following:

(a) Incorporate Airplane Flight Manual (AFM) supplement "FLIGHT IN KNOWN ICING CONDITIONS", Revised: January 1995, part number (P/N) 60–590001–17, into the AFM, P/N 60–590000–5 or P/N 60–590000–11, as applicable.

(b) Incorporating the AFM supplement "FLIGHT IN KNOWN ICING CONDITIONS", Revised: January 1995, part number (P/N) 60–590001–17, as required by this AD may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with section 43.11 of the Federal Aviation Regulations (14 CFR 43.11).

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA, 1801 Airport Road, Room 100, Wichita, Kansas 67209. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and send it to the Manager, Wichita ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(e) All persons affected by this directive may obtain copies of the AFM revision referred to herein upon request to Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085; or may examine these documents at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on May 26, 1995.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–13626 Filed 6–2–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 234

[Docket No. 50053; Notice No. 95–7]

RIN 2137–AC87

Amendments to the On-time Disclosure Rule

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Notice of proposed rulemaking and denial of petitions for emergency waiver.

SUMMARY: This document proposes to revise the on-time flight performance reporting requirements by re-instituting the exclusion of flights delayed or cancelled due to mechanical problems and seeks comments on the retroactive application of the proposal. This action is taken in response to recommendations made at the Federal Aviation Administration's Aviation Safety Conference and a petition for rulemaking by Northwest Airlines. This document denies the petitions of Northwest, Southwest and America West for an emergency waiver from the current on-time reporting requirements, and seeks comments concerning the collection of flight completion data and the filing frequency of the data collection.

DATES: Comments on the proposed rule must be received on or before July 5, 1995. Petitions for reconsideration of the staff action denying the emergency waiver must be received on or before June 15, 1995.

ADDRESSES: Comments should be directed to the Docket Clerk, Docket 50053, Room PL 401, Office of the Secretary, Department of Transportation, 400 Seventh Street SW., Washington, D.C. 20590–0001. Comments should identify the regulatory docket number and be submitted in duplicate to the address listed above. Commenters wishing the Department to acknowledge receipt of their comments must submit with those comments a self-addressed stamped postcard on which the following statement is made: Comments on Docket 50053. The postcard will be dated/time stamped and returned to the commenter. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments.

FOR FURTHER INFORMATION CONTACT: Bernard Stankus or Jack Calloway, Office of Airline Statistics, DAI–10, Research and Special Programs Administration, 400 Seventh Street SW., Washington, D.C., 20590, (202) 366–4387 or 366–4383, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 9, 1987, the Department of Transportation (DOT or Department) issued a rule (52 FR 34056) which required the largest U.S. airlines to report their on-time performance for every domestic scheduled passenger flight operated to or from a reportable airport, with the exception of qualifying flights that were delayed 15 minutes or more or cancelled because of mechanical problems. A flight is considered on-time if it arrives less than 15 minutes after its published arrival time. The U.S. airlines covered by the reporting requirement are those generating at least 1 percent of the U.S. domestic scheduled-passenger revenues on a yearly basis. Reportable airports are those airports in the contiguous 48 states generating at least 1 percent of the domestic scheduled-passenger enplanements on an annual basis. In practice, all reporting airlines are voluntarily submitting data for their entire domestic scheduled-passenger operations. The purpose of the rule was to reduce airline flight delays and consumer dissatisfaction with airline service by providing a persuasive, market-based incentive for airlines to improve their quality of service and reliability of schedules. The reporting system developed for the administration of these reporting requirements was called the On-Time Flight Performance Reporting System.

Flights that were delayed 15 minutes or more, or cancelled, because of mechanical problems which were reported to the Federal Aviation Administration (FAA) under 14 CFR 121.703 or 121.705, were excluded from the reporting requirements. Mechanical delays included delays of the flight on which the mechanical problem was encountered and subsequent delayed flights performed by the same or substitute aircraft for which the delay was attributed to the initial mechanical problem. However, flights delayed less than 15 minutes because of a mechanical problem were included in the on-time performance data.

The issuance of the rule was in response to the Department's year-long study conducted in 1986–87 of airline operating performance at eight of the country's largest airports. This study included all flights, even those delayed or cancelled because of mechanical problems, and it showed that only 40 to 50 percent of the flights arrived on-time. In December 1994, the on-time flight performance for the 10 reporting airlines ranged from 73 to 84 percent. These figures are higher than the airlines' actual performance, since mechanical delays and cancellations (estimated to impact about 4 percent of all flights) are excluded. Nonetheless, there has been marked improvement in airline on-time performance, to the benefit of consumers.

The improvement can be attributed to, among other things, more realistic flight scheduling by the airlines and improved traffic management by the FAA. The reporting requirements and the publication by the Department of each reporting airline's on-time performance created an incentive for the airlines to adjust scheduled flight times and make other changes to improve schedule reliability. These actions reduced unrealistic scheduling and resulted in improved on-time performance.

On December 4, 1992, the Department's Research and Special Programs Administration ("RSPA") issued a Notice of Proposed Rulemaking ("NPRM") (57 FR 58755; December 11, 1992) seeking public comments on a proposal to improve the on-time flight performance reporting requirements in 14 CFR Part 234. The Department proposed to eliminate the reporting exclusion for flights delayed or cancelled due to mechanical problems; to add the aircraft tail number, and wheels-off and wheels-on time for each flight reported; to define "cancelled flight," "discontinued flight," "diverted flight," and "extra-section flight"; to clarify the reporting requirement for a new flight; and, to delete references to obsolete offices.

Comments on the NPRM were received from Alaska Airlines, Inc. (Alaska), American Airlines, Inc. (American), America West Airlines, Inc. (America West), Delta Air Lines, Inc. (Delta), Northwest Airlines, Inc. (Northwest), Southwest Airlines Co. (Southwest), the Air Transport Association of America (ATA), and The Port Authority of New York and New Jersey (Port Authority).

The comments addressed safety, alternative data sources, the proprietary nature of aircraft tail number data, elimination of the rule in its entirety, the addition of new data items and definition changes.

Northwest, Southwest and America West opposed the elimination of the mechanical exclusion. They contended that including mechanicals in their on-time reports could compromise safety. They believed airline personnel might dispatch aircraft with mechanical problems to improve on-time performance.

ATA, American, Delta and the Port Authority filed in support of the proposed amendment. They contended the elimination of the exclusion would not compromise safety.

Alaska stated the Department should initiate a rulemaking to see whether the existing on-time performance requirements should be eliminated in their entirety, rather than imposing additional reporting requirements.

On September 30, 1994, the Department issued a final rule that revised the reporting requirements in 14 CFR part 234 for the On-Time Flight Performance Reporting System (59 FR 49793, September 30, 1994). The rule change eliminated the exclusion of reporting flights delayed or cancelled due to mechanical problems and added three new data items (aircraft tail number, wheels-off time and wheels-on time) for each flight reported. These changes were effective on January 1, 1995. The initial monthly airline reports under the new requirements covering January 1995 operations were due at DOT on February 15, 1995. These reports have been filed. Since then February, March and April reports have also been filed.

One of the main purposes of the original rule, adopted on September 9, 1987, was to create a market-based incentive for airlines to improve their service quality and schedule reliability for consumers. The public availability of comparative data on airline service created this incentive. In issuing the September 30, 1994 final rule, the Department believed the elimination of the exclusion for mechanical delays and mechanical cancellations would provide better consumer information since aircraft dispatch reliability would now be a factor in airline on-time performance. At the same time, the new consumer reports would provide more complete information on an airline's operation.

A benefit of the revised reporting requirement was an 840 hour reduction in airline reporting burden. The elimination of a time-consuming sort to exclude mechanical delays and cancellations more than offset the increase in burden of adding three new data items.

The addition of the new data items—wheels-off and wheels-on times, and the identification of aircraft by tail number—enables the FAA to analyze air traffic operations and create system models for use in reducing enroute and ramp delays. The reporting of these three data items is not at issue in this notice, and airlines will continue to report these items.

Aviation Safety Conference

On January 9 and 10, 1995, the DOT and FAA sponsored an aviation safety

conference in Washington, D.C. The two-day conference, with over 1,000 attendees, focused on ways to improve safety measures and increase public confidence in airline transportation. Six workshops dealt with specific safety areas, namely: (1) *Crew Training*, (2) *Air Traffic Control and Weather*, (3) *Safety Data Collection and Use*, (4) *Application of New Technology*, (5) *Aircraft Maintenance Procedures and Inspection*, and (6) *Development of Flight Crew Procedures*.

Workshop # 5, *Aircraft Maintenance Procedures and Inspection*, recommended that DOT remove maintenance delays and cancellations from the On-Time Flight Performance Reporting System stating that: (1) their inclusion intimidates maintenance personnel, (2) their inclusion encourages potentially unsafe practices, (3) the risk of abuse outweighs the benefits of the information, and (4) the information is already required for submission to local FAA offices.

Following the Aviation Safety Conference, Transportation Secretary Federico Peña and FAA Administrator David Hinson issued a press release on February 9, 1995, outlining the actions that government and industry are taking to achieve a goal of "zero accidents." Secretary Peña and Administrator Hinson presented 173 safety action initiatives that the government, industry and labor developed. The *Aviation Safety Action Plan* of February 9, 1995, sets the timetable for achieving these safety action initiatives. While 104 of the safety initiatives are scheduled for completion by September 30, 1995, there is no specific time schedule to resolve the issue of maintenance delays in the On-Time Flight Performance Reporting System. However, the plan states "Administrative policy determination necessary."

Petitions for Reversal of the Final Rule

After the January 1995 safety conference, Northwest petitioned the DOT (Docket 50053) on January 19, 1995, to (1) grant an emergency waiver to all airlines permitting them to exclude mechanical delays or cancellations from the monthly on-time reports; and (2) institute a rulemaking proceeding to reinstate the mechanical exclusion.

Northwest maintained that the 220 industry representatives at the Aircraft Maintenance Procedure and Inspection Workshop unanimously recommended that mechanical delays and cancellations be eliminated from the on-time performance reporting. Northwest believes the present rule has the potential to jeopardize public safety by introducing the possibility of conflict between an airline's commitment to on-time performance and its commitment to safety. Northwest estimated that 60 hours of re-programming time would be required to convert back to the previous system of excluding mechanical delays and cancellations from on-time performance reporting.

Southwest and America West filed answers on February 1 and February 3, 1995, respectively, with motions to file late. The motions are hereby granted. Both airlines supported Northwest's petition for rulemaking and emergency waiver application.

On February 15, 1995, America West, Northwest, and Southwest (joint petitioners) filed a joint emergency petition (Docket 50053). The petition requested the immediate issuance of an order instructing all reporting airlines covered by the On-Time Flight Performance Reporting System to exclude mechanical delays and cancellations from the reports submitted to the Department.

Senator Larry Pressler, Congressman James L. Oberstar, the International Brotherhood of Teamsters (IBT), the Air Line Pilots Association (ALPA), the International Airline Passenger Association (IAPA), and the International Association of Machinist and Aerospace Workers (IAM) have each sent letters to Secretary Peña on this subject. They asked the Secretary to reverse the decision to include mechanical delays and cancellations in the on-time reports and to restore the previous data collection requirements. IAPA also proposed the exclusion of delays and cancellations caused by weather, since airlines cannot control these events. IAPA believes that passengers want to know which airlines are not operating on-time because of their own shortcomings, not external causes such as weather.

Comments in opposition were filed by American and Delta. Also, American, Delta, United and USAir sent a letter (joint letter) to Secretary Peña.

American does not believe airline employees would risk their jobs and threaten passenger safety by dispatching unsafe aircraft with mechanical problems to improve on-time performance. American asserts that there are many opportunities for airlines to behave recklessly in order to improve on-time performance, if they are so inclined. American believes Northwest could make the same argument about weather or a medical emergency. For example, an airline could unsafely dispatch aircraft or attempt landings in bad weather, or refuse to make an emergency landing for an on-board medical emergency to avoid chargeable delays and improve on-time performance. American believes that this does not happen.

The joint emergency petitioners responded that American's comments are without merit and frivolous. The joint petitioners do not believe mechanicals can be equated with inclement weather or medical emergencies. The decision to delay a flight based on mechanical problems can be made by a single airline employee, while the decision to delay a flight based on adverse weather conditions is a group process in which the government is involved. Furthermore, the petitioners contend it is absurd to think a pilot would not make a landing for a medical emergency.

Delta stated that the Department has already fully examined the safety issue and properly concluded that there is no safety risk. Delta asserts that the mechanical exclusion generated considerable unnecessary expenses for the reporting airlines. Delta believes that Northwest was less than candid in its portrayal of the opposition to reporting mechanical delays and cancellations at the safety conference. Delta compared reporting mechanical delays with reporting flights delayed because of time-consuming deicing procedures required by the FAA. Delta notes that no one has suggested that airline employees are exposed to undue pressures to meet schedules when they are faced with a decision whether to deice an aircraft or not.

The joint letter expressed the carriers' concerns about the Department reversing the on-time reporting requirements. They believe that the Department performed a thorough analysis of the issues in its final rule issued on September 30, 1994. They also believe the current requirements provide better consumer information. They suggested that the consumer information would be further improved by adding a requirement for reporting completion factor.

Completion Factor

The Department seeks comments on whether it should publish the percentage of scheduled domestic passenger departures completed or scheduled domestic revenue-passenger miles completed by the reporting carriers. Commenters should address whether the publication of this information would allow consumers to make better decisions on air-travel purchases.

Under the present reporting requirement of including mechanicals, the Department is able to calculate for each carrier's domestic system the percentage of scheduled passenger departures completed. However, if the Department reverts to the old system of excluding flights impacted by mechanicals, it could calculate departure-completion percentages for only the reported flights. Please comment on (1) whether the departure-completion percentage should exclude or include flights impacted by mechanical problems, and (2) if flights impacted by mechanicals are included in the completion percentage, how should the Department collect this data?

Commenters should also address the use of existing data such as the *T–100 System* for calculating the percentage of scheduled domestic revenue-passenger miles completed. While the Department can presently make this calculation, the percentage is slightly overstated when an airline operates extra-section flights. Aircraft miles for extra-section flights are reported as aircraft-miles completed, but are not reported as scheduled aircraft miles. If the Department uses this system to determine a completion factor, there would be no special treatment for flights cancelled because of mechanical problems.

Commenters, that propose additional data items, should address the cost to the airlines to submit those data items.

Frequency of Reporting

A recent Presidential regulatory initiative directs federal agencies to review their reporting regulations in order to reduce the burden on business and the public. In many instances, less frequent reporting may relieve some burden.

From our initial review of the likely benefits of less frequent filing of on-time data, we believe that there would be no burden reduction. Airlines are required to file data for each individual flight segment, and less frequent reporting would not change this requirement. Therefore, we are not proposing to amend the filing frequency. However, if commenters can show a savings from less frequent reporting, we may be agreeable to amending the regulations.

Commenters should address the burden reduction and the effect on the usefulness of consumer information if the on-time performance data were filed less frequently. For instance, commenters may want to consider such options as: (1) Quarterly submissions to DOT with consumer information published quarterly and quarterly tapes provided CRS vendors; (2) quarterly submissions to DOT with consumer information published quarterly and monthly tapes provided CRS vendors; and (3) quarterly submissions to DOT but data separated by month, with monthly tapes provided CRS vendors. Under option (3), the quarterly consumer information could be shown by month, by quarter or by the last month of the quarter.

The Proposal

The Department is proposing to reinstate the exclusion of mechanical delays and cancellations in the on-time performance reports. At the January 1995 Aviation Safety Conference, representatives of the mechanics and pilots unions expressed concerns that there may be undue pressure on mechanics to dispatch aircraft in the name of on-time performance. Neither the pilots nor the mechanics responded to the December 4, 1992 NPRM. In the interest of public safety, we wish to fully explore this issue.

When the Department decided to eliminate the mechanical exclusion, the decision was based on information in the docket and the belief that the majority of the air transportation industry, including the airlines, labor, ATA, and the general public did not oppose the change. There was no evidence in the record to indicate that safety would be adversely affected by eliminating the mechanical exclusion. The only airlines opposing the change were America West, Northwest and Southwest. These airlines generally ranked in the top three for on-time performance.

Since the Department's September 30, 1994 final rule, safety concerns have been raised. The purpose of this rulemaking is to fully explore these concerns. We do not, however, believe a safety emergency exists. As American, Delta, United, USAir and even Northwest have stated, airlines are faced with many instances where an airline must decide between safety and on-time performance, and safety always is given first priority. Accordingly, the emergency waiver requests of Northwest, America West and Southwest are hereby denied. Airlines have 10 days to appeal for review of this action to the Administrator, Research and Special Programs Administration, under 14 CFR 385.50 *et seq.*

For historical data base purposes, we are also asking airlines to comment on the retroactive application of the proposal. Specifically, the Department proposes to require airlines to refile all relevant monthly on-time reports beginning with January 1995, to exclude mechanical delays or cancellations. Comments should discuss, among other things, the availability of historical data, and burden and monthly costs involved.

Until this rulemaking is completed, airlines will continue to report according to the final rule issued on September 30, 1994. All back issues of the Department's monthly *Air Travel Consumer Report*, which includes data from the On-Time Flight Performance Reporting System, will be issued contemporaneously with the publication of this proposed rulemaking. Future issues will be issued monthly on a current basis as the data are received.

IAPA's proposal to exclude weather-related delays and cancellations will not be considered in this rulemaking, as it is beyond the scope of the September 30, 1994 final rule. Moreover, while airlines do not have control over the weather, they do control where they establish hub airports. The various hub airports throughout the country are not affected by weather to the same degree. Consumers should have this information.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This notice of proposed rulemaking is not considered a significant regulatory action under section 3(f) of Executive Order 12866, therefore it was not reviewed by the Office of Management and Budget.

This rule is considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034), because it involves Departmental policy concerning the reporting of flight delays and their potential impact on safety.

Executive Order 12612

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 ("Federalism") and DOT has determined the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

I certify this proposed rule will not have a significant economic impact on a substantial number of small entities. The proposal will affect only large certificated U.S. airlines accounting for at least 1 percent of U.S. domestic scheduled passenger revenues (over $450 million annually for the 12 months ended March 31, 1994). The Department's economic regulations define "large certificated air carrier" to include U.S. air carriers holding a certificate issued under section 401 of the Federal Aviation Act of 1958, as

amended, that operate aircraft designed to have a maximum passenger capacity of more than 60 seats or a maximum payload capacity of more than 18,000 pounds. Consequently, small carriers are not affected by this final rule.

Paperwork Reduction Act

The reporting and recordkeeping requirement associated with this rule is being sent to the Office of Management and Budget for approval in accordance with 44 U.S.C. Chapter 35 under OMB NO: 2138–0041; ADMINISTRATION: Research and Special Programs Administration; TITLE: Airline Service Quality Performance Reports; NEED FOR INFORMATION: Consumer Information and Flight Data for Air Traffic Control; PROPOSED USE OF INFORMATION: Consumer Publications; FREQUENCY: Monthly; BURDEN ESTIMATE: 1,920; AVERAGE BURDEN HOURS PER RESPONDENT 192. For further information contact: The Information Requirements Division, M–34, Office of the Secretary of Transportation, 400 Seventh Street, SW, Washington, D.C. 20590–0001, (202) 366–4735 or Transportation Desk Officer, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, D.C. 20503.

Regulation Identifier Number

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number 2137–AC67 contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 14 CFR Part 234

Advertising, Air carriers, Consumer protection, Reporting requirements, Travel agents.

Proposed Rule

Accordingly, it is proposed to amend 14 CFR Part 234, *Airline Service Quality Performance Reports*, as follows:

PART 234—AIRLINE SERVICE QUALITY PERFORMANCE REPORTS

1. The authority for Part 234 continues to read as follows:

Authority: 49 U.S.C. 40101, 40114, 41702, 41708, 41712; 5 U.S.C. 553(e) and 14 CFR 302.38.

2. Section 234.2, Definitions, is amended by revising the definition of "reportable flight" and by adding the definitions for "mechanical delay" and "mechanical cancellation" in alphabetical order as set forth below, and the introductory text is republished as follows:

§ 234.2 Definitions.

For the purpose of this part:

* * * * *

Mechanical delay and *mechanical cancellation* mean respectively, the arrival delay (by 15 minutes or more) or cancellation of a flight scheduled to be operated with a particular aircraft on a particular day due to mechanical problems on that aircraft that are reported to the Federal Aviation Administration pursuant to 14 CFR 121.705 or 121.703. Mechanical delays will include delays in both the flight on which the mechanical problem was encountered and subsequent delayed flights performed by the same aircraft, or the aircraft substituted for it, on the same day, where the delay was attributable to the initial mechanical problem.

* * * * *

Reportable flight means any nonstop flight to or from any airport within the contiguous 48 states that accounted for at least 1 percent of domestic scheduled passenger enplanements in the previous calendar year, as reported in reports submitted to the Department pursuant to part 241 of this title. Qualifying airports will be specified periodically in reporting directives issued by the Office of Airline Statistics. Flights delayed or cancelled because of qualifying mechanical problems are excluded from the carriers reports.

3. Section 234.4 is amended by redesignating paragraphs (b), (c), (d), (e), and (f) as (c), (d), (e), (f), and (g), respectively, and adding a new paragraph (b) to read as follows:

§ 234.4 Reporting of on-time performance.

* * * * *

(b) A reporting carrier shall not report any of the information specified in paragraph (a) of this section for any scheduled operation that was late or cancelled due to a mechanical cancellation or mechanical delay.

* * * * *

4. Section 234.8 is amended by revising paragraph (b)(1) as set forth below, and the introductory text of paragraph (b) is republished as follows:

§ 234.8 Calculation of on-time performance codes.

* * * * *

(b) The on-time performance code shall be calculated as follows:

(1) Based on reportable flight data provided to the Department, calculate the percentage of on-time arrivals of each nonstop flight. Calculations shall not include discontinued, extra-section flights, nor flight operations affected by mechanical delays or mechanical cancellations for which data are not reported to the Department.

* * * * *

Issued in Washington, D.C. on May 26, 1995.

Ana Sol Gutierrez,

Deputy Administrator, Research and Special Programs Administration.

[FR Doc. 95–13630 Filed 6–1–95; 8:45 am]

BILLING CODE 4910–62–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1307

Plastic Buckets; Withdrawal of Advance Notice of Proposed Rulemaking

AGENCY: Consumer Product Safety Commission.

ACTION: Withdrawal of advance notice of proposed rulemaking.

SUMMARY: The Consumer Product Safety Commission has voted to terminate a proceeding to develop a rule addressing risks of injury and death associated with certain 5 gallon plastic buckets.[1] The Commission initiated the proceeding when it published an advance notice of proposed rulemaking ("ANPR") on July 8, 1994. 59 FR 35058. On February 8, 1995, the Commission voted to terminate the proceeding and withdraw the ANPR. As explained below, the Commission determined that based on information available at this time, rulemaking is not warranted.

FOR FURTHER INFORMATION CONTACT: Celestine Trainor, Directorate for Epidemiology, Division of Human Factors, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504–0468.

SUPPLEMENTARY INFORMATION:

A. Background

In July 1989, the Commission first learned of a drowning hazard associated with certain large buckets or bucket-like containers. These drownings occurred when a child leaned over the bucket and fell in head first. Children have drowned in a very small amount of liquid. Because of their shape, size, and sturdiness, the buckets do not tip over,

[1] The Commission voted to issue this termination notice with Chairman Ann Brown and Commissioner Mary Gall voting in favor of issuing the notice. Commissioner Thomas Moore abstained from voting on this implementing notice because he did not participate in the previous decision to withdraw the ANPR.

nor can toddlers who have fallen into the buckets extricate themselves.

Upon learning of such incidents, the Commission issued a Safety Alert in July 1989 warning consumers of the potential drowning hazard associated with this product. The Commission also contacted the major trade associations representing manufacturers and fillers of buckets. These trade associations formed the Coalition for Container Safety and developed an information and education program that included distribution to consumers of free self-adhesive warning labels and production of a video news release.

The Commission staff also worked with ASTM subcommittee F15.31 on voluntary standards for 5-gallon buckets. In 1993, ASTM approved an emergency standard for labeling of buckets to address the drowning hazard, and a final ASTM standard for labeling is in process. In addition, an ASTM subcommittee task group pursued the possibility of developing a draft performance standard. After considering various options, subcommittee members stated at a March 17, 1994 meeting that they did not believe a performance standard was feasible and that they would continue to vote against it. Subsequent subcommittee and task force meetings did not progress any further toward a voluntary performance standard.

On July 8, 1994, the Commission published an ANPR explaining that it was beginning a proceeding to address the hazard of drowning associated with 5-gallon plastic buckets and that a range of options were open to the Commission to address this hazard. 59 FR 35058, 35062.

B. Statutory Authority

The Commission initiated the rulemaking proceeding under the Consumer Product Safety Act ("CPSA"). 15 U.S.C. 2051–2084. Sections 7, 8 and 9 of the CPSA set forth the requirements that the Commission must follow to issue safety regulations. 15 U.S.C. 2056, 2057 and 2058.

The July 8, 1994 ANPR was the first step required in the rulemaking process. In accordance with section 9(a) of the CPSA, the ANPR described the product, explained the nature of the risk of injury, summarized the possible regulatory alternatives, and discussed existing relevant standards. The ANPR also invited interested persons to submit (i) comments concerning the risk of injury; (ii) an existing standard or portion of a standard to be developed as a proposed rule; and (iii) a statement of intention to modify or develop a voluntary standard that would address the risk of injury associated with plastic buckets. 15 U.S.C. 2058(a). The Commission received 84 comments in response to the ANPR.(2)[2]

C. The Product

As explained in the ANPR, this proceeding covers certain buckets, referred to as "5-gallon plastic buckets." They are open-head buckets with a rated capacity of 4½ to 5½ gallons and are generally 14 inches high and 10.25 to 11.25 inches in diameter. They have practically straight sides and are manufactured of high density polyethylene. These buckets are used to package and transport such industrial, commercial and consumer products as chemicals, cleaning substances, foods, paints and construction materials. Consumers obtain the buckets when they purchase consumer goods, like paint or detergent, packaged in the buckets, when they carry the buckets away from job sites, or when they purchase them empty. The ANPR described the bucket industry based on a study conducted by the Freedonia Group, Inc. That study estimated that by 1997, 175 million open-head plastic buckets will be produced annually.(1)

D. Risks of Injury and Death

Incident scenarios usually involved an unwitnessed event when a child leaned over the bucket and fell in head first.

Of the 112 fatal incidents which CPSC staff investigated, the location of the caregiver could be determined in 93 of the cases. In 91 of these incidents, the caregiver was not in the same room with the victim.(12)

Of the 19 investigations of "near-miss" situations where the victims survived, the location of the caregiver was known in 16 of these cases. In 13 of these incidents, the caregiver was not in the same room with the victim.(12)

Between January 1984 and January 1995, the Commission has received reports of 247 deaths and 32 non-fatal incidents associated with 5-gallon buckets. The estimated annual average number of deaths for the years 1990, 1991, and 1992, is about 36, a slight reduction from the annual average estimate of about 40 for the years 1990 and 1991. The ages of the victims ranged from 7 to 24 months, with a median age of 11 months. Sixty percent of the victims were male. Height and weight of the victims, when reported, averaged about 28 inches and 22 pounds, respectively. Where race/ethnicity was reported, minority groups accounted for about 70% of those incidents.(4)

All but one of the incidents in which the bucket material was reported involved plastic buckets—the other was metal. In 35 incidents, the bucket material was not known. In cases where the buckets' measurements were known, over 90% were 5-gallon buckets, usually 14 to 15 inches high, with diameters of about 12 inches. The average height of the liquid in the buckets was about 6 inches.(4)

E. Existing Standards

As discussed above, ASTM formed subcommittee F15.31 to address hazards associated with buckets. In July 1993, ASTM approved ES 26–93, an emergency labeling standard for 5-gallon plastic buckets. The standard requires that 5-gallon open-head buckets have a specified label at the time they are sold or delivered to the end user or, if the bucket is intended to be sold empty, when shipped to a retailer for sale. The label must be difficult to remove and must not be covered, obstructed or removed by distributors or retailers. The placement, size, layout, and wording of the label are specified. The label contains a pictorial along with the words: "Children can fall into bucket and drown" followed by the words "Keep children away from bucket with even a small amount of liquid." The label may be modified to include additional languages.(8) ASTM is in the process of making this a final standard. The ASTM subcommittee also examined the possibility of a performance standard, but as of this time, has not developed one.(1)

In addition, as discussed in the ANPR, California has a law, in effect since September 1993, that requires a warning label on 5-gallon buckets intended for use, sale, or distribution within the state. Also, as discussed in the ANPR, there are several standards that establish criteria for handling and shipping of buckets, but these standards do not address the child-drowning hazard.(1)

F. Industry's Labeling, Information and Education Campaign

Following publication of the ANPR, industry substantially increased its efforts with respect to labeling and information and education. A substantial number of 5-gallon plastic buckets are now being labeled in conformance to the ASTM labeling standard described above. According to a letter dated January 17, 1995 from counsel for five major bucket manufacturers, 80% of the buckets manufactured by those companies were

[2] Numbers in parentheses refer to documents listed at the end of this notice.

being labeled in accordance with the ASTM standard, and that compliance would increase in the coming months. The letter stated that these five companies comprise approximately 90% of the U.S. bucket market.(9)

These five manufacturers also initiated an education and information program warning of the drowning hazard associated with plastic buckets. In late fall of 1994, they issued an audio news release and an audio public service announcement. They are in the process of producing a large color poster to be widely distributed through key safety, health and other organizations. As of February 8, 1995, these firms had committed or spent approximately $250,000 on the campaign, and their counsel represented that the firms are committed to continuing the campaign over the next 2½ years, spending approximately an additional $250,000.(9)

G. Action by the Commission

On February 8, 1995, the Commission held an oral briefing to have the staff provide an update on this proceeding. After considering the issues and information discussed above, the Commission determined that rulemaking is not warranted. Accordingly, the Commission voted to terminate the proceeding and withdraw the ANPR issued on July 8, 1994. In withdrawing the ANPR, the Commission is not relying on a voluntary standard under section 9 of the CPSA. See 15 U.S.C. 2064 and 16 CFR 1115.5. As discussed below, the two Commissioners differed in the reasoning behind their common conclusion that rulemaking is unwarranted.

Chairman Ann Brown stated: "In view of the progress made by the bucket industry in placing English and Spanish warning labels on five-gallon buckets, its commitment to an ongoing information and education campaign, the significant cost to the Commission and industry that could result in attempting to redesign buckets to meet a performance standard with no assurance that such a standard would be practicable and reasonable for all buckets, or even a majority of buckets, it makes sense to terminate the proceeding."(10)

In her statement, the Chairman reviewed the initiation of the proceeding and the industry's efforts involving labeling and developing an information and education campaign. She noted the apparent success of labeling legislation in California where, as far as the Commission is aware, no labeled bucket-related deaths have occurred since the law took effect. The Chairman noted that her decision was based in part on the significant resources that would be required to address the drowning hazard through a performance standard, noting that "it is best to concentrate those resources on problems that are more clearly solvable within a reasonable period of time." Finally, the Chairman encouraged industry to continue exploring alternatives to labeling that could potentially eliminate the bucket drowning hazard.(10)

Commissioner Mary Sheila Gall observed in her statement that "it is clear that development of a voluntary performance standard and prototype solutions were unworkable, despite the best efforts of industry and our staff." Commissioner Gall explained that, although industry's efforts toward labeling and an information and education campaign were laudable, they did not form the basis of her vote to terminate the rulemaking. Rather, Commissioner Gall found that the drowning incidents occurred due to the absence of adult supervision. She stated: "It is those charged with the responsibility of caring for young children who are creating the hazard. It is not the product." Commissioner Gall concluded that her vote to terminate the rulemaking reaffirmed her position "that the Federal government cannot mandate changes in products as a substitute for responsible adult supervision. The deaths of these children are inexcusable. The fact that they were preventable is tragic."(11)

In accordance with the Commission's decision that a rulemaking proceeding is no longer warranted to address the drowning hazard associated with 5-gallon plastic buckets, the Commission hereby withdraws the ANPR published on July 8, 1994 (59 FR 35058).

Dated: May 30, 1995.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

Reference Documents

The following documents contain information relevant to this rulemaking proceeding and are available for inspection at the Office of the Secretary, Consumer Product Safety Commission, Washington, Room 502, 4330 East-West Highway, Bethesda, Maryland 20814.

1. **Federal Register** notice, "Plastic Buckets; Advance Notice of Proposed Rulemaking; Request for Comments and Information," July 8, 1994 (59 FR 35058).
2. Comments received in response to **Federal Register** notice, "Plastic Buckets; Advance Notice of Proposed Rulemaking; Request for Comments and Information," July 8, 1994 (59 FR 35058).
3. Memorandum from Ronald L. Medford, Assistant Executive Director, HIR, to the Commission, "Commission Meeting on 5–Gallon Buckets," February 7, 1995.
4. Memorandum from Suzanne P. Cassidy, EPHA to Celestine Trainor, EPHF, "Data Update of Investigated Cases Associated with 5–Gallon Buckets," January 20, 1995.
5. Memorandum from George Sushinsky, LSEL, to Celestine Trainor, EPHF, "LSEL Status Report on Performance Test Development," January 19, 1995.
6. Log of Meeting of ASTM F15.31 Performance Task Group, July 20, 1994.
7. Log of Meeting of ASTM F15.31, January 25, 1995.
8. ASTM ES 26–93: Standard for Specification of Cautionary Labeling for Five Gallon Open-Head Plastic Containers (Buckets).
9. Letter from David H. Baker, Holland and Knight to Eric Rubel, CPSC, concerning industry program, January 17, 1995.
10. Statement of Chairman Ann Brown, "Five-gallon Buckets," February 8, 1995.
11. Statement of Commissioner Mary Sheila Gall, "The Termination of Rulemaking Proceedings Regarding Five Gallon Buckets," February 8, 1995.
12. Memorandum from Suzanne P. Cassidy, EPHA to Ronald Medford, HAR, "Location of Caregivers (Bucket Investigations)," April 20, 1995.

[FR Doc. 95–13597 Filed 6–2–95; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 10, 12, 102, 134, and 177

RIN 1515–AB19; 1515–AB34

Rules for Determining the Country of Origin of a Good for Purposes of Annex 311 of the North American Free Trade Agreement; Rules of Origin Applicable To Imported Merchandise

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On May 5, 1995, Customs published in the **Federal Register** a notice of proposed rulemaking that set forth proposed amendments to the interim Customs Regulations establishing rules for determining when the country of origin of a good is one of the parties to the North American Free Trade Agreement for purposes of Annex 311 of that Agreement and republished, with some modifications, proposed amendments to the Customs Regulations to provide uniform rules governing the determination of the country of origin of imported merchandise. This document extends for an additional 30 days the period of time within which interested members of the public may submit comments on the proposed amendments.

DATES: Comments must be received on or before July 19, 1995.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to the Regulations Branch, U.S. Customs Service, Franklin Court, 1301 Constitution Avenue, N.W., Washington, D.C. 20229. Comments submitted may be inspected at the Regulations Branch, Office of Regulations and Rulings, Franklin Court, 1099 14th Street, N.W., Suite 4000, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Sandra Gethers, Office of Regulations and Rulings (202–482–6980).

SUPPLEMENTARY INFORMATION:

Background

On May 5, 1995, Customs published in the **Federal Register** (60 FR 22312) a notice of proposed rulemaking that (1) set forth proposed amendments to the interim Customs Regulations, published in the **Federal Register** on January 3, 1994, as T.D. 94–4, which established the rules for determining when the country of origin of a good is one of the parties to the North American Free Trade Agreement for purposes of Annex 311 of that Agreement and (2) republished, with some modifications, proposed amendments to the Customs Regulations to set forth uniform rules governing the determination of the country of origin of imported merchandise, which also had been published in the **Federal Register** on January 3, 1994. The document solicited public comments that were to be received on or before June 19, 1995.

Customs has been requested to extend the period of time for comments in order to afford interested parties additional time to study the proposed regulatory changes and prepare responsive comments. Customs believes that it would be appropriate to grant the request. Accordingly, the period of time for the submission of comments is being extended 30 days.

Dated: May 30, 1995.

Stuart P. Seidel,

Assistant Commissioner, Office of Regulations and Rulings.

[FR Doc. 95–13644 Filed 6–2–95; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Ch. VII

Establishment of an Advisory Committee To Negotiate Regulations

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; clarification.

SUMMARY: This notice contains information concerning the membership of the advisory committee established by the Office of Surface Mining Reclamation and Enforcement (OSM) to negotiate rulemaking on coal refuse disposal sites.

FOR FURTHER INFORMATION CONTACT: Melanie Wilson, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, NW., Room 52, Washington, DC 20240, (202) 208–4609.

SUPPLEMENTARY INFORMATION: A notice, published March 14, 1995 (60 FR 13858), established the advisory committee and requested nominations for membership. The notice listed those groups contacted during the convening stage of the negotiated rulemaking process to help identify those issues to be considered during the negotiated rulemaking. OSM is publishing this notice to clarify that those parties contacted *have not* agreed to participate in the negotiated rulemaking and nothing in the notice should be construed otherwise.

Dated: May 25, 1995.

Robert J. Uram,

Director.

[FR Doc. 95–13691 Filed 6–2–95; 8:45 am]

BILLING CODE 4310–05–M

30 CFR Part 926

Montana Regulatory Program and Abandoned Mine Land Reclamation Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Montana regulatory program (hereinafter, the "Montana program") and abandoned mine land reclamation plan (hereinafter, the "Montana plan") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to statutes pertaining to the designation of the Montana State Regulatory Authority and reclamation agency under SMCRA, statutory definitions including those of "prospecting" and "prime farmland," revegetation success criteria for bond release, prospecting under notices of intent, and permit renewal. The amendment is intended to revise the Montana program to be consistent with the corresponding Federal regulations and SMCRA, and to improve program efficiency.

DATES: Written comments must be received by 4:00 p.m., m.d.t., July 5, 1995. If requested, a public hearing on the proposed amendment will be held on June 30, 1995. Requests to present oral testimony at the hearing must be received by 4:00 p.m., m.d.t., on June 20, 1995.

ADDRESSES: Written comments should be mailed or hand delivered to Guy Padgett at the address listed below.

Copies of the Montana program, the Montana plan, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Casper Field Office.

Guy Padgett, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 100 East B Street, Room 2128,Casper, WY 82601–1918, Telephone: (307) 261–5776.

Gary Amestoy, Administrator, Montana Department of State Lands, Reclamation Division, Capitol Station, 1625 Eleventh Avenue, Helena, Montana 59620, (406) 444–2074.

FOR FURTHER INFORMATION CONTACT: Guy V. Padgett, Telephone: (307) 261–5776

SUPPLEMENTARY INFORMATION:

I. Background on the Montana Program and Montana Plan

On April 1, 1980, the Secretary of the Interior conditionally approved the Montana program as administered by the Department of State Lands. General background information on the Montana program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Montana program can be found in the April 1, 1980, **Federal Register** (45 FR 21560). Subsequent actions concerning Montana's program and program amendments can be found at 30 CFR 926.15, 926.16, and 926.30.

On October 24, 1980, the Secretary of the Interior conditionally approved the Montana plan as administered by the Department of State Lands. General background information on the Montana program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Montana plan can be found in the October 24, 1980, **Federal Register** (45 FR 70445). Subsequent actions concerning Montana's program and program amendments can be found at 30 CFR 926.20.

II. Proposed Amendment

By letter dated May 16, 1995, Montana submitted a proposed amendment to its program and plan pursuant to SMCRA (30 U.S.C. 1201 *et seq.*) (Administrative Record No. MT–14–01). Montana submitted the proposed amendment in response to the required program amendments at 30 CFR 926.16 (f) and (g), and at its own initiative. The provisions of the Montana Code Annotated (MCA) that Montana proposes to revise are: 82–4–203, MCA (definitions); 82–4–204, MCA (rulemaking authority); 82–4–205, MCA (administration by Department of Environmental Quality); 82–4–221, MCA (mining permit required); 82–4–223, MCA (permit fee and surety bond); 82–4–226(8), MCA (prospecting permit); 82–4–226, MCA (prospecting permit); 82–4–227, MCA (refusal of permit); 82–4–231, MCA (submission of and action on reclamation plan); 82–4–232, MCA (area mining; bond; alternate plan); 82–4–235, MCA (inspection of vegetation; final bond release); 82–4–239 (reclamation by regulatory authority); 82–4–240, MCA (reclamation after bond forfeiture); 82–4–242, MCA (funds received by regulatory authority); 82–4–251, MCA (noncompliance; suspension of permits); and 82–4–254, MCA (violation; penalty; waiver).

Specifically, Montana proposes the following revisions:

1. Redesignation of regulatory authority and reclamation agency under SMCRA.

The Montana Legislature has enacted Senate Bill 234 to reorganize the environmental and natural resources functions of the State government, including eliminating the Department of State Lands and creating the Department of Environmental Quality, and transferring the powers of the Board of Land Commissioners, except rulemaking authority, to the Department of Environmental Quality. Montana proposes to implement these changes with the following proposed revisions: revise the definition of "Board" at 82–4–203(6), MCA, to mean the board of environmental review instead of the board of land commissioners; delete the definition of "Commissioner" at 82–4–203(10), MCA; revise and recodify the definition of "Department" at 82–4–203(13), MCA, to mean the department of environmental quality instead of the department of state lands; revise Section 82–4–204, MCA, by deleting subsections (1), (2), and (4) which provide for the board to issue orders and hold hearings, and adding a new subsection providing that the board may adopt rules with respect to filing of reports, issuance of permits, monitoring, and other matters of procedure and administration; and revise Section 82–4–205, MCA, to provide for the administration of the Montana Strip and Underground Mine Reclamation Act (SUMRA) by the department of environmental quality instead of the department of state lands, and add provisions for the department to issue orders and conduct hearings. Additionally, Montana proposes in many other sections to replace references to "the board" (of state land commissioners) with references to "the department" (of environmental quality), to delete references to "the commissioner" (of state lands), or replace references to "the commissioner" (of state lands) with references to "the director of the department" (of environmental quality); these proposed revisions are located at: 82–4–223 (2) and (3), 82–4–226(8), 82–4–227(3)(b)(i), 82–4–231 (9) and (1)(f), 82–4–232(7), 82–4–239(1), (2), (3), and (6) 82–4–240, 82–4–242, 82–4–254 (1), (2), and (3), MCA. Additionally, at Section 82–4–251, MCA, Montana proposes to replace references to "the commissioner [of state lands] or an authorized representative" with references to "the director of the department [of environmental quality] or an authorized representative."

2. Revegetation criteria for bond release.

Montana proposes, in Senate Bill 365, to revise Section 82–4–235, MCA, to provide that: for land that was seeded using a seed mix that included a substantial component of introduced species approved by the regulatory authority, and on which the revegetation otherwise meets the requirements of 82–4–233(1), MCA, approval of revegetation for release of bond may not be withheld on the basis that introduced species compose a major or dominant component. Montana further proposes to add a new subsection providing that on land affected by coal mining only prior to May 3, 1978, the department may approve bond release on an area meeting the following criteria: (1) It was seeded using a seed mix approved by the department that included introduced species, and (2) at least one of the following conditions exist: the standards of 82–4–233(1) are otherwise met; the operator has demonstrated substantial usefulness of the revegetation for grazing; the operator demonstrates that the revegetation has substantial value as a habitat component for wildlife; or the area is suitable for conversion to cropland or hayland, and the department approves and the operator completes the conversion. The new subsection would further provide that on such lands, interseeding or supplemental planting may be performed without reinitiating the revegetation liability period.

3. Prospecting definition and notices of intent to prospect.

Montana proposes, in House Bill 162, to revise the definition of "prospecting" at 82–4–203(26), MCA, so that it would mean either: (1) The gathering of surface or subsurface geologic, physical, or chemical data by mapping, trenching, geophysical, or other techniques necessary to determine the quality and quantity of overburden in an area or the location, quantity, or quality of a natural mineral deposit; or (2) the gathering of environmental data to establish the conditions of an area before beginning mining operations. Montana further proposes to revise 82–4–226(8), MCA, by adding a provision that prospecting that is conducted to determine the location, quality, or quantity of a natural mineral deposit and that does not substantially disturb the natural land surface is not subject to the requirements for prospecting permits, but is subject to the requirements for filing a notice of intent to prospect.

4. Renewal of permits.

Montana proposes, in House Bill 162, to revise 82–4–221(1), MCA, to change the deadlines for filing permit renewal applications. The proposed revision would require that renewal applications be filed at least 240 days, but not more than 300 days, prior to the renewal date.

5. Definition of "prime farmland."

Montana proposes, in Senate Bill 234, to revise and recodify the definition of "prime farmland" at 82–4–203(25), MCA. Under the proposal, "prime farmland" would mean land that meets the criteria for prime farmland prescribed by the United States Secretary of Agriculture in the **Federal Register** and which historically has been used for intensive agricultural purposes.

6. Editorial revisions.

In all of the sections cited above, Montana proposes numerous editorial revisions.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), 884.14, and 884.15(a), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15 and 884.14. If the amendment is deemed adequate, it will become part of the Montana program and Montana plan.

1. Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Casper Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

2. Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., mdt, on June 20, 1995. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

3. Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made part of the administrative record.

IV. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning Review).

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the State must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met. Decisions on proposed State abandoned mine land reclamation plans and revisions thereof submitted by a State are based on a determination of whether the submittal meets the requirements of Title IV of SMCRA (30 U.S.C. 1231–1243) and the applicable Federal regulations at 30 CFR Parts 884 and 888.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). Also, agency decisions on proposed State abandoned mine land reclamation plans and revisions thereof are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 926

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 30, 1995.

Richard J. Seibel,

Regional Director, Western Regional Coordinating Center.

[FR Doc. 95–13665 Filed 6–2–95; 8:45 am]

BILLING CODE 4310–05–M

National Park Service

36 CFR Part 13

RIN 1024–AC05

Glacier Bay National Park, Alaska: Vessel Management Plan Regulations

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: The National Park Service (NPS) has reevaluated the current vessel regulations for Glacier Bay National Park and Preserve and is proposing to revise the regulations, including vessel quotas, that were established to protect the endangered humpback whale and other resources Glacier Bay National Park and Preserve manages. These regulations are being proposed after an

Endangered Species Act, Section 7, consultation with the National Marine Fisheries Service (NMFS), and are consistent with the 1993 Biological Opinion issued by that agency. The regulations are drafted to track the proposed action (Alternative Five) from the six-alternative Vessel Management Plan and Environmental Assessment prepared by the NPS. The proposed regulations contemplate an increase in cruise ship use, to be offset by specific mitigation measures. The regulations would authorize a 72 percent seasonal increase in cruise ship traffic during the months of June, July, and August. However, there would be no increase in the maximum number of cruise ships permitted to use the bay on any given day (two). Rather, the increased traffic will be absorbed, for the most part, by authorizing more cruise ship entries in early and late summer. The NPS also solicits comment on the possibility of modest increases in seasonal use by charter and private vessels. The proposed regulations would also extend and codify park compendium vessel regulations that were developed, under the authority of the existing regulations, for the protection of humpback whales, Steller sea lions, and other wildlife and resource values within the park. Additional measures are also proposed to mitigate natural resource impacts associated with the proposed increase in vessel traffic. Finally, to provide park visitors a range of recreational opportunities and to maintain opportunities for the safe use of kayaks, the proposed regulations would close the upper Muir Inlet to motor vessels on a seasonal basis.

DATES: Written comments, suggestions, or objections will be accepted until August 4, 1995. Hearing dates and locations are listed under **SUPPLEMENTARY INFORMATION**, below.

ADDRESSES: Comments should be addressed to: Superintendent, Proposed Regulations Comment, Glacier Bay National Park and Preserve, P.O. Box 140, Gustavus, Alaska 99826.

FOR FURTHER INFORMATION CONTACT: J.M. Brady, Superintendent, Glacier Bay National Park and Preserve, P.O. Box 140, Gustavus, Alaska 99826, Telephone: (907) 697–2230.

SUPPLEMENTARY INFORMATION:

Public Hearings

Open houses and hearings are scheduled for the following dates and locations:

June 19—Gustavus, School Gym, Open House (6:30 to 8 p.m.) & Hearing (8 p.m.)
June 20—Juneau, Centennial Hall, Open house (2 to 4 p.m.) & Hearing (8 p.m.)
June 21—Hoonah, Open house (6:30 to 8 p.m.) & Hearing (8 p.m.)
June 22—Elfin Cove, Community Bld., Open House (6:30 to 8 p.m.) & Hearing (8 p.m.)
June 23—Pelican, Community Hall, Open House (6:30 to 8 p.m.) & Hearing (8 p.m.)
July 11—Anchorage, NPS Regional Office, 2525 Gambell St., Hearing (7 p.m.)

Background

Glacier Bay National Monument was established by presidential proclamation dated February 26, 1925 (43 Stat. 1988). The monument was established to protect the dynamically changing glacial environment of mountains, tidewater glaciers, associated movements and development of flora and fauna, and to promote the scientific study of such. The early monument included marine waters within Glacier Bay north of a line running approximately from Geikie Inlet on the west side of the bay to the northern extent of the Beardslee Islands on the east side of the bay. The monument was expanded by a second presidential proclamation on April 18, 1939. 53 Stat. 2534. The expanded monument included additional lands and the marine waters of all of Glacier Bay; portions of Cross Sound, North Inian Pass, North Passage, Icy Passage, and Excursion Inlet; and Pacific coastal waters to a distance of three miles seaward between Cape Spencer in the south and Sea Otter Creek, north of Cape Fairweather. The inclusion of marine waters within the boundaries of the monument and present-day park presents unique opportunities for the study and preservation of marine flora and fauna in an unimpaired state.

Glacier Bay National Monument was redesignated as Glacier Bay National Park in 1980 by the Alaska National Interest Lands Conservation Act (ANILCA). The new park included all lands and waters of the previously existing monument, plus additional land areas. 94 Stat. 2382. The legislative history of ANILCA provides that certain NPS units in Alaska including Glacier Bay National Park "* * * are intended to be large sanctuaries where fish and wildlife may roam freely, developing their social structures and evolving over long periods of time as nearly as possible without the changes that extensive human activities would cause." Sen. Rep. No. 96–413, 96th Cong., 1st Sess. 137 (1979); and, Cong. Rec. H 10532 (Nov. 12, 1980).

The original monument proclamations and the NPS Organic Act and its amendments governed the management of the former Glacier Bay National Monument and govern the present Glacier Bay National Park and Preserve. The NPS Organic Act of 1916 directs the Secretary of the Interior and the NPS to manage national parks and monuments to "conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations." 16 U.S.C. § 1. In addition, the Redwood National Park Act of 1978 states: "The authorization of activities shall be construed and the protection, management and administration of [NPS areas] shall be conducted in light of the high public value and integrity of the National Park System and shall not be exercised in derogation of the values and purposes for which these various areas have been established, except as may have been or shall be directly and specifically provided by Congress." 92 Stat. 166, 16 U.S.C. § 1a–1. The NPS Organic Act also grants the Secretary of the Interior the authority to implement "rules and regulations as he may deem necessary or proper for the use and management of the parks, monuments and reservations under the jurisdiction of the National Park Service." 16 U.S.C. 3. In addition to general regulatory authority, the NPS has been delegated specific authority to "[p]romulgate and enforce regulations concerning boating and other activities on or relating to waters located within areas of the National Park System, including waters subject to the jurisdiction of the United States * * *." 16 U.S.C. § 1a–2(h).

Vessel Management

The NPS first published vessel traffic regulations for Glacier Bay, a marine body of water in Glacier Bay National Park, in 1980. Those regulations, that were published in two parts, were promulgated in response to a NMFS Biological Opinion issued pursuant to Section 7 of the Endangered Species Act. The NPS requested a formal consultation with NMFS in 1979, when for the second consecutive year, the number of endangered humpback whales that used the bay for summer feeding remained significantly below historical levels. NMFS concluded that the increase in vessel traffic, especially erratically traveling craft, may have altered the humpback's behavior and that restriction and regulation of vessel traffic were necessary to protect the humpback whales.

One portion of the ensuing regulations limited the number of cruise ships that entered Glacier Bay to two per day and not more than a total of 89 cruise ship entries during the months when whales feed in the bay (June 1 through August 31). The regulations also imposed speed and routing restrictions on all motor vessels and restricted vessels from remaining closer than one-quarter nautical mile from a whale, or otherwise pursuing or attempting to pursue a whale. 45 FR 32228 (May 15, 1980).

The second portion of regulations limited small vessel entries into Glacier Bay to 1976 levels for charter vessels and allocated 339 entries for private vessels from June 1 through August 31. 45 FR 32234 (May 15, 1980); 45 FR 85471 (December 30, 1980); and 46 FR 50370 (October 13, 1981).

The NPS intended the two sets of regulations to be temporary, until more conclusive research could be completed and NMFS could again be consulted. Pending completion of this process, the NPS extended the regulations until August 31, 1983. 48 FR 21947 (May 16, 1983).

On June 22, 1983, NMFS issued its second Biological Opinion. The NMFS reported that while the amount of vessel use that would have the effect of total whale displacement from Glacier Bay could not be defined or predicted, the operational and vessel number restrictions imposed by the NPS were sufficient so that some increase in the amount of vessel use could occur without jeopardizing the continued existence of the southeast Alaska humpback whale stock. However, NMFS directed that no additional vessel traffic should be allowed unless the number of individual whales that enter Glacier Bay remained equal to or greater than the 1982 level of 22 whales—and that any increase of vessel traffic be implemented in a conservative manner and appropriately monitored. The NMFS suggested that no more than a 20 percent increase in the three vessel categories at that time (large, small and charter vessels) would be prudent and that a minimum of two years should be allowed for monitoring and evaluating the effects of such an increase before proposing additional increases. Lastly, NMFS cautioned the NPS that it was unable to determine the amount of additional vessel traffic in Glacier Bay to which the whales could adjust.

On April 18, 1984, based on the 1983 NMFS opinion, the NPS published proposed rules for the protection of humpback whales in Glacier Bay (49 FR 15482); final rules were published on May 10, 1985 (50 FR 19880). These regulations continued the permit requirement and seasonal vessel limits for entry into Glacier Bay and continued the speed and routing restrictions on motor vessels, as well as the restrictions on remaining close to, or otherwise pursuing or attempting to pursue a whale. The terms "entry" and "vessel use-day" were defined and applied to prevent vessel accumulation and overcrowding. Earlier vessel categories were dropped in favor of the current categories: cruise ship, tour vessel, charter vessel, and private vessel. Vessel entry limits were retained for cruise ships and private vessels; charter vessels and the newly defined tour boat class were assigned seasonal quotas. Drawing on the NMFS 1983 Biological Opinion, the regulations provided authority for the superintendent to permit an increase in vessel traffic up to 20 percent above the 1976 base figures. The amount of whale research then underway and anticipated in the future was published with the proposed and final rules.

In 1985, the NPS authorized a 15 percent increase in cruise ship traffic and a 20 percent increase in charter vessel and private vessel entries. An additional 5 percent increase in cruise ship traffic was authorized in 1988.

In 1991, the NMFS published the Final Recovery Plan for the Humpback Whale. The interim goal of the plan is to double the extant population of humpback whales within the next 20 years by "* * * optimiz[ing] natural fecundity by providing natural feeding opportunities, and reducing death and injury by human activities." Objectives in the plan include: (1) improvement of current and historical habitat by reducing human-produced underwater noise when whales are present, (2) prevention of collisions between whales and ships, and (3) the continued monitoring of humpback whale populations.

The 1995 Vessel Management Plan

In response to requests from the cruise ship industry and other tourism groups for greater access to Glacier Bay—which is a major tourist destination—the NPS undertook a review of the vessel quotas for Glacier Bay that were established in 1985. The existing quotas were based on the NMFS 10-year-old Biological Opinion. In order to obtain an updated opinion, the NPS prepared an Internal Review Draft Vessel Management Plan/Environmental Assessment (IRDVMP/EA). In September 1992, the NPS reinitiated consultation with the NMFS. The IRDVMP/EA evaluated four alternatives for managing vessel traffic in Glacier Bay. The NMFS review covered any vessel management alternative that is equivalent to, or less than, the range of vessel traffic increase described in the plan. NMFS Biological Opinion, February 19, 1993 (NPS VMP/EA Appendix D, p. 3). Two more alternatives that are within the scope of the Biological Opinion that NMFS subsequently issued have since been added to the plan. The four alternatives reviewed by NMFS ranged from an average 17 percent reduction in all vessel traffic—to an apportioned increase in cruise ship (72 percent), charter boat (8 percent), and private vessel traffic (34 percent). The NMFS reviewed the IRDDVMP/EA and analyzed the potential impacts of the plan on endangered humpback and gray whales and the threatened Steller sea lion.

Following review, the NMFS issued a Biological Opinion on February 19, 1993. The NMFS reported a nonjeopardy finding for the gray whale: as gray whales rarely enter Glacier Bay, the NMFS does not believe there will be any adverse impact on the gray whale as a result of the plan. (On June 16, 1994, the NMFS published a determination to remove the eastern North Pacific gray whale population from the list of endangered wildlife and plants (59 FR 31094)). The NMFS also concluded that the plan would not adversely affect the Steller sea lion population. All action alternatives proposed in the plan recommend that the existing summer closure surrounding the South Marble Island sea lion haul-out (100 yards) be extended to include this and other other haul-outs year-round.

In addressing humpback whales, the NMFS opinion recognized that the humpback whales that frequent southeastern Alaska (including those that visit Glacier Bay) are presumably part of a discrete North Pacific population. Therefore, the NMFS considered whether the effects of the plan were likely to jeopardize the continued existence of the entire North Pacific humpback population. The NMFS concluded that, for the three-year period following implementation, it would not. Beyond this short-term prediction, NMFS did not project long-term effects. NMFS did, however, make the following observations concerning the decline in humpback whale use of Glacier Bay, an issue of concern to NPS because of its duty to manage Glacier Bay in a manner that protects the opportunity for whales to enter and feed in the park's waters:

The NPS Vessel Management Plan and environmental assessment document a

declining trend in whale usage of Park waters and a decline in crude birth rate since 1986. However, given the small sample sizes involved, and the high inherent variability of these types of data, it is hard to assess whether or not these trends are real. If the trends are real, there is no way to determine whether they are caused by changes in prey distribution or increases in vessel traffic because there have not been conclusive prey studies or vessel interaction studies. However, because these changes have occurred coincidentally with increases in vessel traffic, NMFS cannot rule out the hypothesis that some humpback whales may avoid the area due to vessel traffic.

NMFS Biological Opinion, February 19, 1993 (NPS VMP/EA Appendix D, p. 13).

To mitigate these concerns, the NMFS urged the NPS "to take a conservative approach in all management actions that may affect humpback whales." *Id.* at 14. NMFS limited the validity of its opinion, as follows:

[B]ecause NMFS is concerned about significantly declining use of Park waters by humpback whales and a decline in the crude birth rate for humpback whales in Glacier Bay National Park and Icy Strait since 1988, this opinion is valid only until December 31, 1997.

NMFS Biological Opinion, February 1993 letter of transmittal (NPS VMP/EA, Appendix D, p. 2). NMFS directed that formal consultation must be reinitiated upon the expiration of the opinion. The NMFS also made two specific recommendations that have been included in all of the action alternatives of the NPS 1995 Vessel Management Plan:

(1) The NPS should implement a humpback whale feeding ecology research program which will provide information on movement, distribution, and abundance of humpback whales in Glacier Bay and northern southeast Alaska at least as far south as Sumner Strait. These data should be correlated to distribution of whale prey in space and time. Studies should also be conducted to determine how vessel presence alters the behavior and/or distribution of humpback whales.

(2) The NPS should continue monitoring programs that identify the number of humpback whales that feed in the National Park waters, and their individual identity, age, reproductive status, and length of stays. Although this information by itself will not provide an answer to the hypothesis that vessels affect humpback whales, it does provide indications of trends and deviations in humpback whale use in and around Glacier Bay.

NMFS Biological Opinion, February 19, 1993 (NPS VMP/EA Appendix D, p. 14).

The Proposed Action

The proposed regulations are drafted to track the proposed action (Alternative Five) from the six-alternative Vessel Management Plan and Environmental Assessment prepared by the NPS. The proposed regulations contemplate an increase in cruise ship use, to be offset by specific mitigation measures. The regulations would authorize a 72 percent seasonal increase in cruise ship traffic during the months of June, July, and August. However, there would be no increase in the maximum number of cruise ships permitted to use the bay on any given day (two). Rather, the increased traffic will be absorbed, for the most part, by authorizing more cruise ship entries in early and late summer. The basis for this proposal is the proposition that, with adequate mitigating measures, the number of seasonal entries allocated to cruise ships can be increased to equal the maximum daily use limit of two. The proposed regulations would also extend and codify park compendium vessel regulations that were developed, under the authority of the existing regulations, for the protection of humpback whales, Steller sea lions, and other wildlife and resource values within the park.

Although the proposed regulations do not propose an increase in charter vessels or private vessels, the NPS is interested in soliciting comment on the possibility of an 8% increase in charter vessel use and a 15% increase in private vessel use of Glacier Bay waters from June 1 through August 31, as described in Alternative Six in the VMP/EA. As in the case of cruise ships, this option would not allow an increase in the present maximum number of daily entries for charter vessels and private vessels (currently 6 and 25, respectively). Rather, it would allow these increases by authorizing more entries and use-days in early and late summer in each category:

For charter vessels: Seasonal entries and use-days would increase 8% from the present cap of 511 use-days to a new cap of 552 use days.

For private vessels: Seasonal entries and use-days would increase 15% from the present cap of 1,714 use-days to a new cap of 1,971 use days.

This option could provide more opportunities for a greater variety of visitors to Glacier Bay, including local park neighbors. However, the increase in vessel traffic from this option could result in greater impacts to park resources, particularly in light of the maneuverability of these smaller vessels and the challenge of achieving compliance with protective regulations. Consequently, NPS is considering this option, perhaps on a trial basis, contingent upon mitigation measures such as an educational orientation program for small vessel operators, a compliance monitoring program, continued research on potential impacts to park resources, and—fundamental to all these measures—adequate resources for implementation. We encourage commenters to submit views on this option, that may be incorporated into the final regulation.

For general mitigation purposes, the proposed regulations would require charter and private vessel operators to attend a short educational program provided by NPS each season when they enter Glacier Bay. The program would inform boaters of closures, restrictions and other resource protection measures, as well as provide additional information to assist boaters in having a safe and enjoyable visit to the park. The NPS will also vigilantly monitor vessel use and enforce resource protection regulations.

Alternative Five proposes several additional mitigating measures. The NPS proposes to adopt the existing state standards for marine vessel (stack) emissions within Glacier Bay as NPS regulations.

This would permit the NPS to cooperatively monitor and enforce these standards. The NPS has received complaints from park visitors concerning stack emissions from cruise ships. While underway, cruise ships sometimes emit a blue-grey or black smoke plume as they travel the length of the Bay. As cruise ships increase the speed of their engines to head down-bay after their passengers have viewed Margerie Glacier, stack emissions sometimes increase and stagnate in the generally still air of the upper inlet, despoiling the spectacular and pristine view of the tidewater glaciers. Temperature inversions occur frequently at this location, holding plumes low and pancake-like over the inlet for hours. By adopting this regulation, the NPS can more effectively and consistently enforce the emission standards. This will ensure that all park visitors, including those visitors arriving each day on the second cruise ship, have an opportunity to view and photograph the tidewater glaciers in an unimpaired state.

Underwater noise pollution from cruise ship operation is also a park resource concern. The mechanical noise transmitted into the water by moving vessels has been identified as one of the most likely human-caused disturbances to whales. NMFS Biological Opinion, February 19, 1993 (NPS VMP/EA Appendix D, pp. 10–12).

Given the above concerns about air pollution and underwater noise pollution, NPS is proposing that cruise ship companies seeking entry permits for operation in Glacier Bay prepare and, after approval, implement a pollution minimization plan. The purpose of this plan would be to assure, to the fullest extent possible, that cruise ships permitted to travel within Glacier Bay National Park apply the industry's best approaches toward minimization of air and underwater noise pollution. These approaches may include, for example, installation of original or retrofitted technology, use of cleaner fuels, and improved methods of operation. NPS specifically seeks comment on the merits of this pollution minimization proposal, and welcomes the input of industry and other knowledgeable parties on current pollution control measures across the cruise ship industry, research and development concerning improvements in pollution control measures, as well as the feasibility of various pollution minimization approaches. NPS intends to evaluate all this information in determining how to achieve air and noise pollution control and protection of park resources in the Bay.

In a similar vein, for entry permits subject to competitive allocation, NPS will give a strongly weighted preference to commercial vessels that can demonstrate minimization of air and underwater noise pollution. In this way, companies will be challenged to devise their own effective, state-of-the-art solutions.

The above measures to achieve cleaner, quieter cruise ship operations in Glacier Bay would provide important mitigation toward the protection of air quality and whale habitat in Glacier Bay. In addition, cruise ship permits would require permittees to assess the short and long-term impacts of their activities on potentially affected Glacier Bay resources through a research and monitoring program.

Since whales have been known to arrive at the mouth of Glacier Bay in May, the speed limit and the requirement that vessels in transit stay one nautical mile off-shore would automatically become effective in the designated lower bay whale waters each year on May 15. This earlier date would ensure that whales arriving at the mouth of Glacier Bay in late spring are able to pass through the narrow entrance to Glacier Bay to access the feeding areas with minimal disturbance. Previously the "mid-channel restriction" began on June 1, and the speed restriction was not activated until several whales were observed near the mouth of the bay.

Other natural resource protection measures that are proposed in this rulemaking serve to protect Steller sea lions and their haul-outs; pupping and molting harbor seals; nesting sea bird colonies; and, nesting and molting water fowl and water fowl feeding areas. The specific locations and wildlife affected by these measures, and the activities taking place that are critical to each species that these measures seek to protect, are set out below in the section-by-section analysis.

During the last 10 years Glacier Bay has experienced increased use by visitors exploring the bay by kayak. Currently, kayaks and motor vessels concentrate in the bay's west arm, primarily because the west arm contains easily accessible, large, renowned tidewater glaciers. Conversely, kayakers (and other backcountry users), preferring a more remote, undisturbed recreational experience focus their activities in the less-used east arm (Muir Inlet). Given this, the NPS believes that even a modest increase in motor vessel traffic in the upper reaches of the Muir Inlet would substantially reduce opportunities for remote recreational experiences. Specifically, the proposed east arm closure would allow kayakers access to a tidewater glacier with no motor vessel disturbance. The closure would also mitigate a safety concern: kayaks are susceptible to being overturned by large vessel wakes. This concern is amplified in the narrow confines and steep sides of the upper east arm (Muir Inlet). The NPS believes that it is appropriate to provide a range of visitor opportunities (from motorized to non-motorized), take steps to protect the safety of kayakers, and maintain opportunities for use of this watercraft in Glacier Bay. Accordingly, based on detriment to the recreational resource values associated with kayaking and other backcountry use as well as safety concerns, the NPS is proposing to close the waters of the Muir Inlet north of Point McLeod (including Wachusett Inlet) to motor vessels June 1 through August 31.

Section-by-Section Analysis

Section 13.65(b)(1) of the proposed regulations defines various types of vessels and other terms used in this section. Most of the definitions are retained without significant revision from the existing regulations. However, there are exceptions:

The terms "cruise ship," "charter vessel" and "tour vessel" have been revised. In addition to some technical revisions, the proposed definitions include a measurement standard based on the rules of the International Convention on Tonnage Measurements of Ships, 1969. Congress has provided for recognition of these rules that are generally used to measure and certify foreign hull vessels. See, Omnibus Budget Reconciliation Act of 1986, Title V—Maritime Programs, Part J—Measurement of Vessels, P.L. 99–509, 100 Stat. 1919 (codified as amended in scattered sections of 46 U.S.C.). The NPS is proposing that a vessel with an International Tonnage Certificate at or over 2,000 tons gross (that carries passengers for hire) would be defined as a cruise ship. A vessel with an International Tonnage Certificate less than 2,000 tons gross (that carries passengers for hire) would be defined as a tour vessel or a charter vessel. The existing standard of 100 tons gross, based on the U.S. method for measuring vessels, will be retained. The NPS recognizes that there is not an exact means of conversion between these two systems and will honor either rating in support of a concessions authorization and entry permit. The NPS welcomes comments from knowledgeable parties concerning this proposal.

The terms "operate" and "operating" have been expanded to include the actual or constructive possession of a vessel. This has been done to enable enforcement action against vessels violating permit or closed-water restrictions when the vessel is not underway at the time of the violation. Definitions are proposed for two new terms as a means to retain, clarify, and codify both restricted and permitted activities that were authorized and implemented under the existing 13.65(b)(2)(iii) whale-waters regulations. The first, "speed through the water," is analogous in aeronautical terms to "airspeed," as opposed to "ground speed." Whale water speed limits have been measured and enforced in this manner to prevent collisions between vessels moving rapidly "up-current" and whales or other marine mammals that are drifting "down" in the tidal current. These speed limits also lower the level of underwater noise by limiting high engine revolutions that can disrupt whale feeding activities. The term "transit" has been defined to allow vessels to approach perpendicularly and land on an otherwise unrestricted shore within designated whale waters in order to view or photograph wildlife, camp, or participate in any other park activity. The term "whale season" has been deleted and the dates on which closures or restrictions begin and end are included as part of the regulation.

Section 13.65(b)(2) of the proposed regulations authorizes a 72 percent increase in cruise ship traffic over the seasonal limits authorized and implemented under the existing

regulations. However, there would be no increase in the maximum number of cruise ships permitted to use the bay on any given day (two). Rather, the increase in traffic will be absorbed, for the most part, by authorizing more cruise ship entries in early and late summer. This section also provides for reinitiation of consultation with NMFS to ensure that the increase in vessel traffic does not affect endangered or threatened species, particularly in Glacier Bay. The section also requires the Director of the NPS to reduce vessel entry and use levels in 1998 (or thereafter) if necessary to protect the values and purposes of Glacier Bay National Park and Preserve.

Section 13.65(b)(2) also incorporates the permit requirements of section 13.65(b)(3) of the existing regulations, with minor modifications. Paragraph (b)(2)(ii)(A) requires concessioner vessels to notify the Bartlett Cove Ranger Station within the 24 hours prior to, or immediately upon, entry to the bay. Paragraph (b)(2)(iii)(A) generally requires private motor vessels entering the bay through the mouth to stop at the Bartlett Cove Ranger Station for orientation before proceeding up bay. Vessels that have previously visited the bay may receive a waiver. Paragraph (b)(2)(v)(C) allows private vessels to launch a motorized skiff or tender after anchoring. Paragraphs (vii) and (viii) have been added to clarify the superintendent's authority to revoke or deny a permit based on violations of this section.

Section 13.65(b)(3) of the proposed regulations retains the existing prohibitions on operating a vessel within one-quarter nautical mile of a whale, and on pursuing or attempting to pursue a whale. The superintendent's authority to designate temporary whale waters and establish vessel use and speed restrictions have also been retained. The proposed regulations also identify, and designate as whale waters, areas in which seasonal restrictions have applied on a recurring basis. The proposed regulations would codify the restrictions that were implemented pursuant to section 13.65(b)(2), *i.e.*, mid-channel transit through these waters, and in the case of lower bay waters, speeds not to exceed 10 knots (proposed regulation (b)(3)(v)(A)).

As whales have been known to arrive at the mouth of Glacier Bay in May, the speed limit and the requirement that vessels in transit stay one nautical mile off-shore, as proposed, would become effective in the designated lower bay whale waters each year on May 15. This earlier date would ensure that whales arriving at the mouth of Glacier Bay in late spring are able to pass with minimal disturbance through the narrow entrance to Glacier Bay to access the feeding areas. The superintendent would continue to have discretion to increase the speed limit through these waters to 20 knots in the absence of whales.

A speed restriction is also proposed to mitigate mortality and stress of breeding and molting harbor seals resulting from large vessel wakes in the narrow confines of the Johns Hopkins Inlet (paragraph (B)). Seasonal closures and operating restrictions concerning the Spider Island group and Johns Hopkins Inlet that appear in paragraphs (b)(3)(vi)(C)–(E) are also proposed to protect the park's harbor seals, that have recently been recognized as the largest concentration of breeding harbor seals in the world. These closures and restrictions have previously been enforced as park compendium regulations. The preceding paragraph (b)(3)(vi)(B) is proposed for the year-round protection of Steller sea lions and their haul-outs and is consistent with NMFS recommendations.

Nesting sea bird colonies would be protected in proposed section 13.65(b)(3)(vi)(A), that closes colonial nesting islands to vessel landing and foot traffic year-round. These small-island closures were previously enforced, seasonally, as park compendium regulations. Continuing these restrictions year-round will reduce impacts to vegetation that is important to nesting birds and will otherwise protect this sensitive nesting habitat from trampling. This action will also augment sea lion haul-out protection at South Marble Island. Park visitors are advised in paragraph (b)(3)(vi)(F) that the distances proposed in this rulemaking that are to be maintained between visitors and wildlife are minimum distances; 36 CFR § 2.2 (wildlife protection) requires that greater distances be maintained from wildlife if it seems likely that wildlife may be disturbed or frightened.

Nesting sea birds as well as molting and feeding waterfowl would receive protection through the seasonal water (area) closures proposed for motor vessels in paragraphs (b)(3)(vii)(A)–(E). These motor vessel closures would also serve to protect harbor seal haul-outs associated with pupping and molting activities (paragraphs (C) and (D)). Similar closures were previously proposed for these areas. 48 FR 14978, April 6, 1983. That rulemaking also recognized the importance of sheltering the unique concentrations of marine mammals and birds, that these areas support, from motorized disruption during the critical months of feeding, breeding, nesting and rearing of young. With the exception of Rendu Inlet, these areas contain, or are approached through, shallow areas that are hazardous to navigate in motor vessels.

Paragraph (b)(3)(vii)(F) proposes closing the waters of the Muir Inlet north of Point McLeod (including Wachusett Inlet) to motor vessels on a seasonal basis. This closure is proposed to allow for kayaks to safely pass through the narrow and steep walls of the east arm to the tidewater glaciers there and to provide the opportunity for camping and other backcountry use away from the noise of motor vessel traffic.

As discussed above, the NPS believes that the closures proposed in paragraphs (b)(3)(vi) and (b)(3)(vii)(A)–(E) are necessary to protect the natural values of Glacier Bay, and the closures proposed in paragraph (b)(3)(vii)(F) are necessary to protect the visitor experience values of Glacier Bay. These closures are proposed in accordance with ANILCA Section 1110(a) to prevent detriment to the resource values of Glacier Bay. Therefore, in addition to the public comment period provided by this rulemaking, the NPS will hold hearings in the vicinity of Glacier Bay on these proposed closures, as noticed in this rulemaking.

In order to further limit and mitigate the effects of underwater noise, section 13.65(b)(3)(viii) restricts generator and other non-propulsive motor use during the evening hours of summer.

Section 13.65(b)(3)(ix) clarifies the duties, responsibilities, and authority of the superintendent to regulate public use in response to changing conditions. The NPS has previously determined the need to provide administrative remedies to protect whales through imposition of temporary public-use limits, whale-water designations, and other temporary operating restrictions. *See*, 50 FR 19880, 19881–82 (May 10, 1985). The environmentally safe implementation and maintenance of the increased public-use levels proposed in this rulemaking require that the superintendent have the necessary authority to modify use levels and establish vessel restrictions to protect park resources. The proposed regulation incorporates the existing authority granted to the superintendent in 1985; recognizes that in addition to whales, other wildlife may be impacted by the increase in vessel traffic (*see*, NPS VMP/EA); and avoids duplication of existing authority and standards. In most cases, the action contemplated under this section would be the shifting of existing prohibitions, as whale and other wildlife feeding, breeding, and molting sites shift, to new areas in the dynamic sea and landscape of the rebounding bay.

Section 13.65(b)(4) of the proposed regulations adopts the existing state restrictions on vessel (stack) emissions.

Section 13.65(b)(5)–(6) of the existing regulations, *Restricted Commercial Fishing Harvest*, has been addressed separately in proposed rules, 56 FR 37262 (August 5, 1991), and has not been considered as part of these proposed rules. However, the proposed seasonal closure of water areas to vessels (b)(3)(vi), and motor vessels (b)(3)(vii), would also apply to commercial fishing boats.

Public Participation

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Interested persons are invited to submit written comments, suggestions or objections regarding the proposed regulations to the address noted at the beginning of this rulemaking. Comments must be received on or before August 4, 1995. The NPS will review comments and consider making changes to the rule, based upon an analysis of comments.

Drafting Information

The primary authors of this revision are Russel J. Wilson, Alaska Regional Office, National Park Service, and Molly N. Ross, Office of the Assistant Secretary for Fish and Wildlife and Parks, Department of the Interior, Washington, D.C. Other National Park Service staff from the Alaska Regional Office and Glacier Bay National Park and Preserve made significant contributions.

Compliance With Other Laws

This proposed rule has been reviewed under Executive Order 12866.

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

The collection of information contained in this rule has been approved by the Office of Management and Budget as required by 44 U.S.C. 3501 *et seq.* The Office of Management and Budget approval number is 1024–0026.

List of Subjects in 36 CFR Part 13

Alaska, National parks.

PART 13—NATIONAL PARK SYSTEM UNITS IN ALASKA

Subpart C—Special Regulations—Specific Park Areas In Alaska

In consideration of the foregoing, 36 CFR Part 13 is proposed to be amended as follows:

1. The authority citation for part 13 continues to read as follows:

Authority: 16 U.S. C. 1, 3, 462(k), 3101 et seq.; § 13.65 also issued under 16 U.S.C. 1a–2(h), 1361, 1531.

2. Section 13.65(b) (1) through (4) is revised to read as follows:

§ 13.65. Glacier Bay National Park and Preserve.

* * * * *

(b) *Resource Protection and Vessel Management*—(1) *Definitions.* As used in this section:

Charter vessel means any motor vessel under 100 tons gross (U.S. System) or 2,000 tons gross (International Convention System) that is rated to carry up to 49 passengers, and is available for hire on an unscheduled basis.

Commercial fishing vessel means any motor vessel conducting fishing activities under the appropriate commercial fishing licenses as required and defined by the State of Alaska.

Cruise ship means any motor vessel at or over 100 tons gross (U.S. System) or 2,000 tons gross (International Convention System) carrying passengers for hire.

Entry means each time a motor vessel passes the mouth of Glacier Bay into the bay; each time a private vessel activates or extends a permit; each time a motor vessel based at or launched from Bartlett Cove leaves the dock area on the way into Glacier Bay, except a private vessel based at Bartlett Cove that is gaining access or egress to or from outside Glacier Bay; the first time a local private vessel uses a day of the seven use day permit; or each time a motor vessel is launched from another vessel within Glacier Bay, except a motor vessel singularly launched from a permitted motor vessel and operated only while the permitted vessel remains at anchor, or a motor vessel launched and operated from a permitted motor vessel while that vessel is not under way and in accordance with a concession agreement.

Glacier Bay means all marine waters contiguous with Glacier Bay, lying north of an imaginary line between Point Gustavus and Point Carolus.

Motor vessel means any vessel, other than a seaplane, propelled or capable of being propelled by machinery (including steam), whether or not such machinery is the principal source of power, except a skiff or tender under tow or carried on board another vessel.

Operate or *Operating* includes the actual or constructive possession of a vessel or motor vessel.

Private vessel means any motor vessel used for recreation that is not engaged in commercial transport of passengers, commercial fishing, or official government business.

Pursue means to alter the course or speed of a vessel or a seaplane in a manner that results in retaining a vessel, or a seaplane operating on the water, at a distance less than one-half nautical mile from a whale.

Speed through the water means the speed that a vessel moves through the water (which itself may be moving); as distinguished from "speed over the ground."

Transit means to operate a motor vessel under power and continuously so as to accomplish ½ nautical mile of littoral (i.e. along the shore) travel.

Tour vessel means any motor vessel under 100 tons gross (U.S. System) or 2,000 tons gross (International Convention System) that is rated to carry more than 49 passengers, and conducts tours or provides transportation at regularly scheduled times along a regularly scheduled route.

Vessel includes every type or description of craft used as a means of transportation on the water, including a buoyant device permitting or capable of free flotation and a seaplane while operating on the water.

Vessel use day means any continuous period of time that a motor vessel is in Glacier Bay between the hours of 12 midnight on one day to 12 midnight the next day.

Whale means any humpback whale (*Megaptera novaeangliae*).

Whale waters means any portion of Glacier Bay, designated by the Superintendent, having a high probability of whale occupancy, based upon recent sighting and/or past patterns of occurrence.

(2) Permits. (i) The superintendent shall maintain a motor vessel permit system.

(ii) Permits for cruise ships, tour vessels, and charter vessels shall be issued in accordance with National Park Service concession authorizations. To obtain or renew an entry permit, a cruise ship company shall prepare and, after approval, implement a pollution minimization plan to assure, to the fullest extent possible, that any ship permitted to travel within Glacier Bay will apply the industry's best approaches toward minimization of air

and underwater noise pollution while operating in Glacier Bay. Such plan shall be submitted to the superintendent, who may approve or disapprove the plan. In addition, the superintendent may adopt at any time permit operating conditions for the purpose of mitigating air and underwater noise pollution or other impacts of cruise ship operation. The superintendent shall immediately suspend the entry permit(s) of any cruise ship that fails to submit, implement or abide by such a plan or operating condition.

(A) A concessioner vessel is prohibited from entering Glacier Bay unless the Bartlett Cove Ranger Station has been given notice of the vessel's entry within the 24 hours prior to, or immediately upon, entry.

(B) Off-boat activities from a concessioner vessel are prohibited, except as permitted and under conditions established by the superintendent.

(iii) Permits for private motor vessels are required to enter Glacier Bay June 1 through August 31. Private motor vessel permits shall be issued in accordance with, and subject to, conditions established by the superintendent. Conditions established for private motor vessels may include, but are not limited to, whom a vessel operator must contact when entering or leaving Glacier Bay, designated anchorages, and the maximum length of stay in Glacier Bay.

(A) June 1 through August 31, upon entering Glacier Bay through the mouth, the operator of a private motor vessel shall proceed directly to the Bartlett Cove Ranger Station for orientation. Failing to report as required is prohibited.

(*1*) The superintendent may waive this requirement prior to or upon entry.

(*2*) [Reserved]

(iv) The superintendent shall restrict vessel entry to, and operation within, Glacier Bay to no more than the following:

(A) Cruise ships are limited to two vessel use days per day;

(B) Tour vessels are limited to three vessel use days per day;

(C) Charter vessels are limited, June 1 through August 31, to six vessel use days per day, and a total of no more than 312 entries and 552 vessel use days;

(D) Private vessels are limited, June 1 through August 31, to 25 vessel use days per day, and a total of no more than 468 entries and 1,971 vessel use days;

(E) Provided that, no later than October 1, 1996, the superintendent shall reinitiate consultation with the U.S. National Marine Fisheries Service (NMFS) and request a Biological Opinion pursuant to section 7 of the Endangered Species Act. The superintendent shall request the NMFS assess and analyze any impacts, that may be associated with the vessel traffic authorized by this section (13.65), to the endangered and threatened species that occur in, or that use, Glacier Bay National Park and Preserve. Based on this Biological Opinion, applicable authority, and any other relevant information, the Director shall reduce the vessel entry and use levels for any or all categories of vessels in this section, effective for the 1998 season or any year thereafter, if required to protect the values and purposes of Glacier Bay National Park and Preserve. The Director would accordingly publish a notice of such revision in the **Federal Register**. Nothing in this paragraph shall be construed to prevent the superintendent from taking any action at any time in order to protect the values and purposes of Glacier Bay National Park and Preserve.

(v) Operating a motor vessel in Glacier Bay without a permit issued pursuant to this section is prohibited, except:

(A) A motor vessel engaged in official business of the state or federal Government.

(B) A private motor vessel based at Bartlett Cove that is transitting between Bartlett Cove and waters outside Glacier Bay, or that is being operated in Bartlett Cove in waters bounded by the Public and Administrative Docks.

(C) A motor vessel singularly launched from a permitted motor vessel, and operated only while the permitted motor vessel remains at anchor, or a motor vessel launched and operated from a permitted motor vessel while that vessel is not underway and in accordance with a concession agreement.

(D) A commercial fishing vessel otherwise authorized and permitted, and actually engaged in commercial fishing within Glacier Bay.

(E) A vessel granted safe harbor at Bartlett Cove by the Superintendent.

(vi) Violating a term or condition of a permit issued pursuant to this section is prohibited.

(vii) Violating a term or condition of a permit issued pursuant to this section may also result in the suspension or revocation of the permit by the superintendent.

(viii) Operating a motor vessel in Glacier Bay without a permit shall constitute sufficient grounds for the superintendent to deny future permit requests.

(3) Operating Restrictions. (i) Except for a commercial fishing vessel actually trolling or setting or pulling long lines or crab pots as authorized and permitted by the superintendent, operating a vessel within one-quarter nautical mile of a whale is prohibited.

(ii) The operator of a vessel accidentally positioned within one-quarter nautical mile of a whale shall immediately slow the vessel to ten knots or less, without shifting into reverse unless impact is likely. The operator shall then direct or maintain the vessel on as steady a course as possible away from the whale until at least one-quarter nautical mile of separation is established.

(A) Failure to take action as required in paragraph (b)(3)(ii) is prohibited.

(B) [Reserved]

(iii) Pursuing or attempting to pursue a whale is prohibited.

(iv) Whale Water Restrictions. (A) May 15 through August 31, the following Glacier Bay waters are designated as whale waters.

(*1*) Lower Bay waters, as defined as: waters north of an imaginary line drawn from Point Carolus to Point Gustavus; and south of an imaginary line drawn from the northernmost point of Lars Island across the northernmost point of Strawberry Island to the point where it intersects the line that defines the Beardslee Island group, as described in paragraph (b)(3)(vii)(D) of this section, and following that line south and west to the Bartlett Cove shore.

(*2*) [Reserved]

(B) June 1 through August 31, the following Glacier Bay waters are designated as whale waters.

(*1*) Whidbey Passage waters, as defined as: waters north of an imaginary line drawn from the northernmost point of Lars Island to the northernmost point of Strawberry Island; west of imaginary lines drawn from the northernmost point of Strawberry Island to the southernmost point of Willoughby Island, the northernmost point of Willoughby Island (proper) to the southernmost point of Francis Island, the northernmost point of Francis Island to the southernmost point of Drake Island; and south of the northernmost point of Drake Island to the northernmost point of the Marble Mountain peninsula.

(*2*) East Arm Entrance waters, as defined as: waters north of an imaginary line drawn from the southernmost point of Sebree Island to the northernmost point of Sturgess Island, and from there to the westernmost point of the unnamed island south of Puffin Island (that comprises the south shore of North Sandy Cove); and south of an imaginary line drawn from Caroline Point across

the northernmost point of Garforth Island to shore.

(*3*) Russell Island Passage waters, as defined as waters enclosed by imaginary lines drawn from: the easternmost point of Russell Island due east to shore, and from the westernmost point of Russell Island due north to shore.

(C) The superintendent may designate temporary whale waters, and impose motor vessel speed restrictions in whale waters. Maps of temporary whale waters and notice of vessel speed restrictions imposed pursuant to this paragraph, shall be made available to the public at park offices at Bartlett Cove and Juneau, Alaska, and shall be submitted to the U.S. Coast Guard for publication as a "Notice to Mariners".

(D) The following restrictions apply in designated whale waters. Violation of a whale water restriction is prohibited:

(*1*) Except vessels actually fishing as authorized and permitted by the superintendent or vessels operating solely under sail, while in transit, operators of motor vessels over 18 feet in length will in all cases where the width of the water permits, maintain a distance of at least one nautical mile from shore, and, in narrower areas will navigate in mid-channel. Provided, however, that operators may perpendicularly approach and land on an otherwise unrestricted shore within designated whale waters in order to view or photograph wildlife, camp, or participate in any other park activity.

(*2*) Motor vessel speed limits established by the superintendent pursuant to paragraph (b)(3)(iv)(C) of this section.

(v) Speed Restrictions. (A) May 15 through August 31, in the waters of the Lower Bay as defined in paragraph (b)(3)(iv)(A)(*1*) of this section, the following are prohibited:

(*1*) Operating a motor vessel at a speed greater than 10 knots speed through the water, or

(*2*) Operating a motor vessel at a speed greater than 20 knots speed through the water, when the superintendent has designated a maximum speed of 20 knots during the absence of whales.

(B) July 1 through August 31, operating a motor vessel on Johns Hopkins Inlet south of 58°54.2′ N. latitude (an imaginary line running approximately due west from Jaw Point) at a speed greater than 10 knots speed through the water is prohibited.

(vi) Closed Waters, Islands and Other Areas. The following are prohibited:

(A) Operating a vessel or otherwise approaching within 100 feet of a nesting seabird colony; or that part of South Marble Island lying south of 58°38.6′ N. latitude (approximately the southern one-half of South Marble Island); or Flapjack Island; or the three small unnamed islets approximately one nautical mile southeast of Flapjack Island; or Eider Island; or Boulder Island; or Geikie Rock; or Lone Island; or the northern three-fourths of Leland Island (north of 58°39.1′ N. latitude; or the four small unnamed islands located approximately one nautical mile north (one island), and 1.5 nautical miles east (three islands) of the eastern-most point of Russell Island.

(B) Operating a vessel or otherwise approaching within 100 yards of a Steller (Northern) Sea Lion (*Eumetopias jubatus*) hauled-out on land or a rock; or that part of South Marble Island lying north of 58°38.6′ N. latitude (approximately the northern one-half of South Marble Island); or Graves Rocks (on the outer coast); or Cormorant Rock, or any adjacent rock, including all of the near shore rocks located along the outer coast, for a distance of 1½ nautical miles, southeast from the mouth of Lituya Bay; or the surf line along the outer coast, for a distance of 1½ nautical miles northwest of the mouth of the glacial river at Cape Fairweather.

(C) May 1 through August 31, operating a vessel or otherwise approaching within ¼ nautical mile of, Spider Island or any of the four small islets lying immediately west of Spider Island.

(D) May 1 through June 30, operating a vessel or a seaplane on Johns Hopkins Inlet waters south of 58°54.2′ N. latitude (an imaginary line running approximately due west from Jaw Point).

(E) July 1 through August 31, operating a vessel or a seaplane on Johns Hopkins Inlet waters south of 58°54.2′ N. latitude (an imaginary line running approximately due west from Jaw Point), within ¼ nautical mile of a seal hauled out on ice; except when safe navigation requires, and then with due care to maintain the ¼ nautical mile distance from concentrations of seals.

(F) Restrictions imposed in this paragraph ((b)(3)(vi)) are minimum distances. Park visitors are advised that protection of park wildlife may require that greater distances be maintained from wildlife. See 36 CFR 2.2 (Wildlife protection).

(vii) Closed Waters, Motor Vessels and Seaplanes. May 1 through September 15, operating a motor vessel or a seaplane on the following water is prohibited:

(A) Adams Inlet, east of 135°59.2′ W. longitude (an imaginary line running approximately due north and south through the charted (*5*) obstruction located approximately 2¼ nautical miles east of Pt. George).

(B) Rendu Inlet, north of the wilderness boundary at the mouth of the inlet.

(C) Hugh Miller Complex, including Scidmore Bay and Charpentier Inlet, west of the wilderness boundary at the mouth of the Hugh Miller Inlet.

(D) Waters within the Beardslee Island group (except the Beardslee Entrance), that is defined by an imaginary line running due west from shore to the easternmost point of Lester Island, then along the south shore of Lester Island to its western end, then to the southernmost point of Young Island, then north along the west shore and east along the north shore of Young Island to its northernmost point, then at a bearing of 15° true to an imaginary point located one nautical mile due east of the easternmost point of Strawberry Island, then at a bearing of 345° true to the northernmost point of Flapjack Island, then at a bearing of 81° true to the northernmost point of the unnamed island immediately to the east of Flapjack Island, then southeasterly to the northernmost point of the next unnamed island, then southeasterly along the (Beartrack Cove) shore of that island to its easternmost point, then due east to shore.

(E) Dundas Bay, west of 136°25′ W. longitude.

(F) Muir Inlet, north of 58°54.8′ N. latitude (an imaginary line running approximately due east from Point McLeod), including Wachusett Inlet.

(viii) Noise Restrictions. June 1 through August 31, except vessels in transit or at Bartlett Cove or as otherwise permitted by the superintendent, the use of generators or other non-propulsive motors is prohibited from 10:00 p.m. until 6:00 a.m.

(ix) Other Closures and Restrictions. Notwithstanding any other provision of this Part or 43 CFR Part 36, due to the rapidly emerging and changing ecosystems of, and for the protection of wildlife in Glacier Bay National Park and Preserve, including but not limited to whales, seals, sea lions, nesting birds and molting waterfowl:

(A) Pursuant to § 1.5 of this chapter, the superintendent may establish, designate, implement and enforce closures, restrictions, and public use limits, and terminate such closures, restrictions, and public use limits.

(B) The public shall be notified of closures, restrictions, or public use limits imposed under this paragraph, and the termination or relaxation of such, in accordance with § 1.7 of this chapter, and by submission to the U.S.

Coast Guard for publication as a "Notice to Mariners", where appropriate.

(C) When authorized by, and consistent with applicable legislation, the superintendent may issue a permit to authorize an activity otherwise prohibited or restricted under § 1.5 of this chapter.

(*1*) The superintendent shall include in the permit terms and conditions the superintendent deems necessary to protect park resources.

(*2*) [Reserved]

(D) The following are prohibited:

(*1*) Violating a closure, designation, use or activity restriction or condition, schedule or public use limit imposed pursuant to § 1.5 of this chapter without a permit; or,

(*2*) Violating a term or condition of a permit issued pursuant to paragraph ((b)(3)(vii)(C)).

(E) The superintendent shall make rules for the safe and equitable use of Bartlett Cove waters and for park docks. The public shall be notified of these rules by the posting of signs or a copy of the rules at each dock.

(*1*) Failure to obey a sign or rule is prohibited.

(*2*) [Reserved]

(x) Closed waters and islands within Glacier Bay as described in paragraphs (b)(3) (iv) through (vii) of this section are described as depicted on NOAA Chart #17318 GLACIER BAY (4th Ed., Mar. 6/93).

(xi) Paragraphs (b)(3) (i) through (iii) of this section do not apply to a vessel being used in connection with federally permitted whale research or monitoring; other closures and restrictions in paragraph (b)(3) of this section do not apply to authorized persons conducting: emergency or law enforcement operations, research or resource management, park administration/ supply, or other necessary patrols.

(4) Marine vessel visible emission standards. (i) The following definitions shall apply to this paragraph:

(A) *Underway* means not at berth or anchor or moored or aground.

(B) *Port* means only that area comprised by Bartlett Cove and the public dock.

(ii) Visible emissions from a marine vessel, excluding condensed water vapor, may not result in a reduction of visibility through the exhaust effluent of greater than 20 percent for a period or periods aggregating more than:

(A) Three minutes in any one hour while underway, at berth, or at anchor; or

(B) Six minutes in any one hour during initial startup of diesel-driven vessels; or

(C) 12 minutes in one hour while anchoring, berthing, getting underway or maneuvering in port.

* * * * *

Dated: May 30, 1995.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 95–13616 Filed 5–31–95; 3:52 pm]

BILLING CODE 4310–70–P

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36 CFR Part 13

RIN 1024–AC05

Glacier Bay National Park, Alaska: Vessel Management Plan Regulations

AGENCY: National Park Service, Interior.

ACTION: Proposed rule; availability of environmental assessment.

SUMMARY: This document announces the availability of an environmental assessment (EA) prepared by the National Park Service (NPS) that describes and analyzes a proposed action and five alternatives for the Glacier Bay National Park and Preserve Vessel Management Plan.

DATES: Comments on the EA must be received no later than August 7, 1995. Hearing dates and locations are listed under Supplementary Information, below.

ADDRESSES: Comments on the EA should be submitted to the Chief, Division of Environmental Quality, National Park Service, Alaska Region, 2525 Gambell Street, Room 404, Anchorage, Alaska 99503. Copies of the Glacier Bay Vessel Management Plan/ Environmental Assessment are available on request from the above address.

FOR FURTHER INFORMATION CONTACT: Glen Yankus, Alaska Regional Office, (907) 257–2645.

SUPPLEMENTARY INFORMATION: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (P.L. 91–190, as amended), the NPS has prepared an EA for the Glacier Bay National Park and Preserve Vessel Management Plan. Open houses and hearings on the EA are scheduled in Alaska for the following dates and locations:

- June 19—Gustavus, School Gym, Open house (6:30 to 8 p.m.) and Hearing (8 p.m.)
- June 20—Juneau, Centennial Hall, Open house (2 to 4 p.m.) and Hearing (8 p.m.)
- June 21—Hoonah, Open house (6:30 to 8 p.m.) and Hearing (8 p.m.)
- June 22—Elfin Cove, Community Bld., Open House (6:30 to 8 p.m.) and Hearing (8 p.m.)
- June 23—Pelican, Community Hall, Open House (6:30 to 8 p.m.) and Hearing (8 p.m.)
- July 11—Anchorage, NPS Regional Office, 2525 Gambell St., Hearing (7 p.m.)

The vessel management plan responds to a continually growing demand for park visitation and vessel entries and addresses issues and concerns associated with vessel management and the park's marine environment. This document presents the proposed action, a no-action alternative, and four other alternatives and analyzes their environmental consequences.

The proposed action (Alternative 5) would optimize cruise ship visitor-use opportunities in Glacier Bay by raising cruise ship entry quotas. Seasonal entry quotas for cruise ships would increase by 72%. Seasonal entry quotas for tour boats, charter boats, and private boats would not change from those levels identified in the no-action alternative. The seasonal closure of designated wilderness waters to motor vessels would enhance wilderness recreation opportunities. Additional protection would be provided for sensitive resources (humpback whales, other marine mammals, and nesting birds) through special-use area closures and restrictions.

Dated: May 31, 1995.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 95–13686 Filed 6–2–95; 8:45 am]

BILLING CODE 4310–70–P

Bureau of Reclamation

43 CFR Part 426 and 427

RIN 1006–AA32

Acreage Limitation and Water Conservation Rules and Regulations

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice to extend comment period.

SUMMARY: The Bureau of Reclamation is extending the comment period published in 60 FR 16922, Apr. 3, 1995, in response to a number of requests from the public for an extension of the comment period. The extension will allow the public more time to prepare comments concerning the proposed rulemaking, Acreage Limitation and Water Conservation Rules and Regulations.

DATES: Written comments for inclusion in the official record must be postmarked no later than June 26, 1995.

ADDRESSES: Written comments should be mailed to: Mr. Ronald J. Schuster, Westwide Settlement Manager, Bureau of Reclamation, PO. Box 25007 (Mail Code D–5010), Denver, Colorado 80225.

Access to the dedicated toll-free telephone number 1–800–861–5443, has been extended through June 26, 1995, for those wishing to make oral comments on the rules. Comments will be recorded on tape and transcribed by a court reporter, and will be part of the official record. Statements are limited to 10 minutes and must include the commentor's name in order to be included in the official record. Address and affiliation are optional.

FOR FURTHER INFORMATION CONTACT: Concerning part 426, contact Richard Rizzi, Bureau of Reclamation, PO. Box 25007 (Mail Code D–5010), Denver Colorado 80225, telephone (303) 236–1061 ext. 235; concerning part 427, contact Craig Phillips, Bureau of Reclamation, PO. Box 25007 (Mail Code D–5300), Denver, Colorado 80225, telephone (303) 236–1061 ext. 265.

SUPPLEMENTARY INFORMATION: An identical notice is published in this **Federal Register** regarding extension of comment period on the environmental impacts of the proposed rules and regulations for implementing the Reclamation Reform Act of 1982.

Dated: May 31, 1995.

Daniel P. Beard,

Commissioner.

[FR Doc. 95–13693 Filed 6–2–95; 8:45 am]

BILLING CODE 4310–94–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[CS Docket No. 95–61, FCC 95–186]

Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming

AGENCY: Federal Communications Commission.

ACTION: Notice of inquiry.

SUMMARY: The Commission is required to report annually to Congress on the status of competition in the market for the delivery of video programming pursuant to Section 628(g) of the Communications Act of 1934, as amended. On May 4, 1995, the Commission adopted a Notice of Inquiry to solicit information from the public for use in preparation of the annual assessment of the status of competition in the market for the delivery of video programming that is to be submitted to Congress by November 15, 1995. The Notice of Inquiry will provide parties with an opportunity to submit comments and information to be used in conjunction with publicly available information and filings submitted in relevant Commission proceedings to assess the extent of competition in the market for the delivery of video programming.

DATES: Comments are due by June 30, 1995, and reply comments are due by July 28, 1995.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Marcia Glauberman, Cable Services Bureau (202) 416–1184 or Martin L. Stern, Office of the General Counsel (202) 416–0865.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Inquiry in CS Docket No. 95–61, FCC 95–186, adopted May 4, 1995, and released May 24, 1995. The complete text of this Notice of Inquiry is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street NW., Washington, DC 20554, and may also be purchased from the Commission's copy contractor, International Transcription Service ("ITS, Inc."), (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Synopsis of the Notice of Inquiry

1. Section 628(g) of the Communications Act of 1934, as amended ("Communications Act"), 47 U.S.C. § 548(g), requires the Commission to deliver an annual report to Congress concerning the status of competition in the market for the delivery of video programming. The Commission submitted its first to Congress in September 1994. First Report, CS Docket No. 94–48, summarized in FR 64657 (December 15, 1994). The Commission expects to submit the 1995 Competition Report to Congress by November 15, 1995.

2. When Congress adopted the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act") and added Section 628(g) to the Communications Act, it indicated a preference for competition over regulation of cable television systems. Congress found, however, that sufficient competition to local cable television systems did not exist and, as a result, cable operators had undue market power compared to that of consumers and video programmers. Accordingly, Congress enacted the 1992 Cable Act to promote competition and to ensure that consumer interests are protected in the absence of effective competition to cable television. A critical element of this regulatory framework is to promote the emergence of competition over time by fostering the entry of alternative multichannel video programming distributors ("MVPDs"). The annual competition report to Congress provides an opportunity for the Commission to summarize the status of cable television and other video distributors, monitor changes in the competitive environment and evaluate the progress that is being made in promoting and developing a competitive marketplace for the delivery of video programming services.

3. The Notice of Inquiry ("Notice") is designed to solicit comments and information that the Commission can use to prepare its 1995 Competition Report. Specifically, the Notice requests information concerning the cable industry, existing and potential competitors to cable systems, barriers to entry by new competitors, technological advances and the prospects for increased competition in the market for the delivery of video programming. The Commission expects to use the information that is submitted by commenters to supplement publicly available information and relevant comments that have been filed in other Commission proceedings. The Notice highlights a wide range of competitive issues, and offers parties an opportunity to submit information on these issues, as well as any other information they believe is relevant to an evaluation of competition in market for the delivery of video programming.

4. The Notice begins with an overview of the 1994 Competition Report,including a summary of the framework for analyzing competition in the market for delivered video programming and the findings regarding the status of competition as of September 1994. The 1994 Competition Report's analytical framework can be summarized as follows: (1) Definition of the market; (2) analysis of the status of current and potential future participants in the market; (3) examination of the conduct of the firms in the market; (4) analysis of market structure conditions that may affect competition, with particular emphasis on impediments to competition and regulatory efforts to promote competition; and (5) evaluation of the overall economic performance of the market. In addition, on the basis of its analysis of the status of existing and potential competitors to local cable

systems, the Commission stated that while competitors were emerging, alternative video programming distributors were not available to a sufficient number of subscribers to create a competitive environment in most markets.

5. The Notice then seeks information and comment on specific issues in preparation for the 1995 Competition Report. The Commission first addresses the relevant product and geographic markets for delivered video programming. In the 1994 Competition Report, the Commission used the 1992 Cable Act's definition of "multichannel video programming service" as a starting point for the relevant product. This definition includes cable television, multipoint multichannel distribution service ("MMDS" or "wireless cable"), direct broadcast satellites ("DBS") and receive-only satellite dishes. The Commission also analyzed the status of other MVPDs that were not included in the statutory definition, such as satellite master antenna television ("SMATV") systems and video dialtone ("VDT") service, and other video programming distribution media as potential substitutes for cable services. With respect to the geographic market, the Commission determined that it seemed reasonable to define it, at least tentatively, as the local franchising area, although over time this definition may be broadened. The Commission seeks comment on whether these definitions remain relevant or whether a reassessment of the appropriate definitions of product and geographic markets is required.

6. The Notice then requests data and information about the cable television industry, entities using other distribution technologies that are already in the market, entities that are potential entrants in this market and other technologies that might impact the nature of competition in the market for delivery of video programming services. Commenters are invited to provide information regarding the cable industry, including cable overbuilds, wireless cable systems, SMATV systems, direct-to-home satellite services, such as DBS and home satellite dishes ("HSDs"), and VDT services. The Notice asks a variety of questions concerning each of these video service providers and solicits information regarding barriers to entry and the nature of the services they provide. The Notice also indicates that the Commission intends to examine the effects on competition of broadcast television service, video cassette recorders ("VCRs") and interactive video and data services ("IVDS"). In the Notice, the Commission states that it expects to explore possible entry of other types of firms into the market for the delivery of video programming, such as electric utilities, and requests comment on the likelihood of such entry and its effect on competition.

7. The Commission observes that there are technological changes and developments that may also affect the structure of the market for the delivery of video programming. In this regard, the Notice solicits information on digital compression, the hybridization of different transmission media used for the distribution of multichannel video programming and technologies that will facilitate consumer access to various distribution media and services.

8. In the Notice, the Commission requests comment on the structure of the market for the delivery of video programming and the effect of this structure on competition. The Commission expects to explore the status of horizontal concentration and vertical integration in the cable television industry and analyze the market structure conditions that may affect competition in markets for the delivery of video programming. Information is requested to help the Commission identify local markets where cable operators, currently, or may in the near future, face competition from other MVPDs. At the national level, the 1994 Competition Report provided an analysis of multiple system operator, or MSO, ownership of cable systems. The Notice seeks data regarding the number of subscribers served by individual MSOs, which will allow the Commission to continue to monitor industry concentration and to assess its effects on the video marketplace. The Commission also notes that there has been a trend towards "clustering," or regional concentration, of cable system ownership. the Notice invites comment on the competitive effects of clustering.

9. Several provisions of the 1992 Cable Act were intended to ensure that vertically integrated cable companies do not impede competition. In the Notice, the Commission solicits data to update the information presented in the 1994 Competition Report relating to vertically integrated and unaffiliated programming services. Thus, the Commission seeks information that will allow it to examine affiliation between national programming services and cable operators, determine whether alternative providers are able to acquire programming services on nondiscriminatory terms and assess the degree to which unaffiliated programmer are gaining access to cable systems. In particular, the Commission "request[s] comment on whether the program access rules and our decisions in response to program access complaints have served their intended purpose alleviate [the] problem [that non-cable MVPDs faced in acquiring programming services on nondiscriminatory terms]."

10. The Notice further requests that commenters consider several economic market performance indicators that were used in the 1994 Competition Report to assess the current level of competition. Parties are asked to provide appropriate updates wit respect to these indicators and to comment on the conclusion drawn in the 1994 Competition Report regarding these indicators and the appropriate methods for assessing market performance. The Commission also seeks comment on market structure characteristics that may increase competition or pose impediments to competition. Furthermore, comment is requested concerning economies of scale and scope in the cable industry, regulatory or technological barriers to entry into the market for the delivery of video programming and the implications of sunk cost investments for competitive entry.

11. Finally, the Notice seeks recommendations Commission actions, if any, to promote further competition in the market for delivered video programming. In this regard, parties are asked to explain how their proposals would increase competition in the delivery of video programming to consumers or enhance the programming distribution market.

Administrative Matters

Ex Parte

12. There are no ex parte or disclosure requirements applicable to this proceeding pursuant to 47 CFR 1.1204(a)(4).

Comment Dates

13. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before June 30, 1995, and reply comments on or before July 28, 1995. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus ten copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239) of the Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

Ordering Clauses

14. This Notice of Inquiry is issued pursuant to authority contained in Sections 4(i), 4(j) 403 and 628(g) of the Communications Act of 1934, as amended.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

LaVera F. Marshall,

Acting Secretary.

[FR Doc. 95–13643 Filed 6–2–95; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Parts 0 and 80

[CI Docket No. 95–54, FCC 95–170]

Inspection of Great Lakes Agreement Ships

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has adopted a *Notice of Proposed Rule Making* which proposes rules to allow vessel operators on the Great Lakes subject to the annual inspection requirements of the Agreement between the United States and Canada for the Promotion of Safety on the Great Lakes by Means of Radio (Great Lakes Agreement) to have the inspection performed by a classification society instead of by Commission staff.

DATES: Comments must be filed on or before July 18, 1995, and reply comments must be filed on or before August 17, 1995.

ADDRESSES: Federal Communications Commission, 1919 M Street, N.W., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: George R. Dillon of the Compliance and Information Bureau at (202) 418–1100.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making*, CI Docket No. 95–54, FCC 95–170, adopted April 24, 1995, and released, May 16, 1995. The full text of this *Notice of Proposed Rule Making* is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239) 1919 M Street, NW, Washington, DC. The complete text may be purchased from the Commission's copy contractor, International Transcription Services, 2100 M Street NW, Washington, DC 20037, telephone (202) 857–3800.

Summary of Notice of Proposed Rule Making

1. In this Notice of Proposed Rule Making (Notice), we propose to allow owners and operators of ships subject to the annual inspection requirements of the Agreement between the United States and Canada for the Promotion of Safety on the Great Lakes by Means of Radio (Great Lakes Agreement) to have the inspection performed by a private sector classification society instead of by Commission staff. The proposed changes would reduce economic burdens on the public and the Commission by allowing mariners to arrange for an inspection at their convenience. Because of our concern that maritime safety on the Great Lakes not be compromised by this action, we are also proposing a joint study to be conducted with the United States Coast Guard and the Canadian Coast Guard on the effect of this proposal. Further, we are requesting specific comment on whether we should permit other designated private sector entities or persons to perform such inspections.

2. The Great Lakes Agreement is intended to promote safety of life and property on the Great Lakes by means of radio. It dates back to 1952 and requires, among other things, that all vessels over 20 meters (65 feet), most towing vessels, and vessels carrying more than six passengers for hire be equipped with a marine VHF radiotelephone installation. The Great Lakes Agreement requires that these installations be inspected at least once each year. The Great Lakes Agreement requires that the inspections be carried out by officers of the Contracting Governments or by either persons nominated for that purpose or organizations recognized by the Contracting Government. In other words, the Great Lakes Agreement provides specific authority allowing the United States to entrust the annual inspection to either persons or organizations other than the Commission. Presently, however, the Commission's Rules do not permit a Great Lakes Agreement inspection to be conducted by anyone other than Commission staff.

3. Additionally, the Great Lakes Agreement requires that these vessels be inspected while the vessel is in active service or within one month before the date the vessel is placed in service. Because almost all vessels on the Great Lakes must be taken out of service over the winter and operators do not wish to interrupt shipping schedules after the shipping season begins, there is a very busy period in the spring when these vessels are being put back in service.

4. The Commission inspects approximately 490 vessels subject to the Great Lakes Agreement each year. Commission inspectors test the outpower, frequency tolerance and availability of reserve power, and conduct an operational radio check of the radiotelephone installation during the inspection. Any failure of these critical items results in the vessel failing the annual inspection and not receiving a safety certificate until the failure is corrected. An integral part of the annual inspection is to examine the connecting transmission lines, electrical cabling and control circuitry that makeup the entire radiotelephone installation to ensure that the individual components operate satisfactorily when connected together.

5. Although the inspections are relatively simple and generally take no more than an hour to complete, they are conducted to ensure that Great Lakes Agreement ships have a reliable means of distress communications in an emergency. We note, however, that improvements in the reliability of radiotelephone equipment and the industry practice of preinspection examinations have resulted in an inspection failure rate for Great Lakes Agreement vessels of only one per cent.

6. The International Maritime Organization (IMO) has adopted a resolution setting forth the minimum standards for nongovernment organizations that conduct inspections on behalf of an administration, *IMO Assembly Resolution A.739(18), Appendix 1*, "Minimum Standards for Recognized Organizations Acting on Behalf of the Administration." There are more than 40 Classification societies worldwide that inspect passenger and cargo vessels for compliance with the myriad of domestic and international regulations that vessels must comply with before leaving port. Additionally, 11 classification societies are members of the International Association of Classification Societies (IACS). The IACS grants membership status to classification societies that meet the IACS's Quality System Certification Scheme. The use of classification societies to conduct inspections on behalf of an administration is widespread. The United States, for example, is statutorily required to use the American Bureau of Shipping, or a similar United States classification society, to class vessels owned by the Federal Government. Additionally, some of IACS' members operate in the United States.

7. We propose, therefore, to permit any United States ship subject to the Great Lakes Agreement to arrange for an inspection of the radiotelephone installation by a classification society that is a member of the IACS, such as the American Bureau of Shipping. We further propose that the classification society issue a radiotelephone certificate on behalf of the Commission to the ship upon successful completion of the inspection. Because the Commission is ultimately responsible for guaranteeing that an inspection meets the requirements of the Great Lakes Agreement inspection we request specific comment on safety related questions posed in this proposal.

We believe in the principle that government should be responsive to user needs and began this proceeding to promote flexibility, remove unnecessary and inimical regulations and, most importantly, provide better service to the public. In a companion Notice of Inquiry, we are requesting comments on how inspections of large cargo vessels and small passenger vessels can be streamlined to better serve the public and to make government operations more efficient. We are proposing a significant change to the current rules and procedures regarding safety inspections and request comment on these proposals.

Initial Regulatory Flexibility Analysis

Reason for Action

The Commission proposes to permit ships subject to the Great Lakes Agreement to have the annual inspection conducted by a classification society.

Objectives

The Commission seeks to: promote efficiency in the Commission's service to the public and to encourage the use of private sector organizations to take over government operations wherever possible.

Legal Basis

The proposed action is authorized under Sections 4(i) and 303(r) of the Communications Act, 47 U.S.C. 154(i) and 303(r), and the Great Lakes Agreement, Article XII.

Reporting, Recordkeeping and Other Compliance Requirements

Our proposed amendment to 47 CFR 80.953 would permit owners and operators of vessels subject to the Great Lakes Agreement to use a classification society to meet a current annual inspection requirement.

Federal Rules Which Overlap, Duplicate or Conflict With These Rules

None.

Description, Potential Impact, and Small Entities Involved

Use of private sector classification societies to inspect Great Lakes Agreement vessels would allow better service to the owners and operators of such vessels, many which are small businesses, and more efficient use of scarce government resources. It would additionally encourage the creation of jobs to inspect approximately 490 vessels each year.

Any Significant Alternatives Minimizing the Impact on Small Entities Consistent With the Stated Objectives

None.

List of Subjects

47 CFR Part 0

Organization and functions (Government agencies).

47 CFR Part 80

Communciations equipment, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Proposed Rules

Chapter I of title 47 of the Code of Federal Regulations, parts 0 and 80 are proposed to be amended as follows:

PART 0—COMMISSION ORGANIZATION

1. The authority citation for part 0 continues to read as follows:

Authority: Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155.

2. The undesignated center heading preceding §§ 0.311, 0.314 and 0.317 is revised to read as follows:

Compliance and Information Bureau

2a. Section 0.311 is amended by revising paragraph (f) to read as follows:

§ 0.311 Authority delegated.

* * * * *

(f) The Chief of the Compliance and Information Bureau is authorized to rely on reports, documents and certificates issued by the American Bureau of Shipping or any other classification society that is a member of the International Association of Classification Societies to conduct radio inspections of vessels and to issue certificates in accordance with Regulations 11, 12 and 13 of the Great Lakes Agreement. The Chief, Compliance and Information Bureau is further authorized to delegate this authority.

* * * * *

PART 80—STATIONS IN THE MARITIME SERVICES

3. The authority citation for part 80 continues to read a follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

4. Section 80.5 is amended by adding in alphabetical order the following definitions:

§ 80.5 Definitions.

* * * * *

Classification society. A non-profit organization formed to conduct vessel inspections that is affiliated or associated with a particular administration.

* * * * *

International Association of Classification Societies (IACS). An association representing classification societies.

* * * * *

5. Section 80.59 is amended by revising the heading, paragraphs (a) introductory text and (a)(1), removing paragraph (a)(2), redesignating paragraph (b) as (a)(2), and adding a new paragraph (b) to read as follows:

§ 80.59 Compulsory ship inspections.

(a) *Application for inspection and certification by the FCC.* An application for inspection and certification and documentation that the appropriate inspection fees have been paid, must be submitted to the FCC field office serving the port where the ship is to be inspected at least three days before the proposed inspection date.

(1) FCC Form 801 must be used to apply for a ship radio inspection on board ships subject to Part II or Part III of Title III of the Communications Act or the Safety Convention. Applications for Great Lakes Agreement inspections must state the reason why a classification society could not inspect the vessel.

* * * * *

(b) *Application for inspection and certification by a classification society.* An inspection of a ship radio station and certification of a ship subject to the Great Lakes Agreement may be made by a classification society that is a member of the IACS or by the FCC.

* * * * *

6. Section 80.953 is amended by redesignating the text as paragraph (a), revising the first sentence of paragraph (a), removing the second sentence of paragraph (a) and adding a new paragraph (b) to read as follows:

§ 80.953 Inspection and certification.

(a) Each U.S. flag vessel subject to the Great Lakes Agreement must have an inspection of the required radiotelephone installation at least once every 13 months. * * *

(b) This inspection may be conducted by the FCC or by a classification society that is a member of the International Association of Classification Societies (IACS). A certificate issued by a classification society has the same standing as one issued by the FCC.

[FR Doc. 95–13491 Filed 6–2–95; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AD28

Endangered and Threatened Wildlife and Plants; Proposal To List Three Aquatic Invertebrates in Comal and Hays Counties, Texas, as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service proposes to list three aquatic invertebrate species known only from Comal and Hays counties, Texas, as endangered species under the Endangered Species Act of 1973, as amended (Act). The primary threat to these species is a decrease in water quantity and quality as a result of water withdrawal and other activities by humans throughout the San Antonio segment of the Edwards Aquifer. This proposal, if made final, will implement Federal protection provided by the Act for the Peck's cave amphipod *(Stygobromus pecki)*, Comal Springs riffle beetle *(Heterelmis comalensis)*, and Comal Springs dryopid beetle *(Stygoparnus comalensis)*.

DATES: Comments from all interested parties must be received by August 4, 1995. Public hearing requests must be received by July 20, 1995.

ADDRESSES: Comments and materials concerning this proposal should be sent to the State Administrator, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, Texas 78758. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ruth Stanford, Ecologist, or Alisa Shull, Fish and Wildlife Biologist (see **ADDRESSES** section) (512/490–0057).

SUPPLEMENTARY INFORMATION:

Background

The U.S. Fish and Wildlife Service (Service) proposes to list as endangered under the Endangered Species Act of 1973, as amended (Act) three aquatic invertebrate animal species with a known distribution in spring sites in Comal and Hays counties, Texas; two of the species are subterranean. Peck's cave amphipod is known from Comal Springs and Hueco Springs, both in Comal County. The Comal Springs riffle beetle is known from Comal Springs and San Marcos Springs (Hays County). The Comal Springs dryopid beetle is known from Comal Springs and Fern Bank Springs (Hays County). The water flowing out of each of these springs comes from the Edwards Aquifer (Balcones Fault Zone—San Antonio Region), which extends from Hays County on the east to Kinney County on the west. Comal Springs are located in Landa Park, which is owned and operated by the City of New Braunfels, and on private property adjacent to Landa Park. Hueco Springs and Fern Bank Springs are located on private property. San Marcos Springs are located on the property of Aquarena Springs, formerly a privately owned resort facility. Southwest Texas State University purchased the facility in 1994. Aquarena Springs continues to operate as a resort, but the university plans to increase conference facilities and provide educational and interpretive displays and to increase availability of the springs for biological and ecological research (Billy Moore, Public Affairs Director, Southwest Texas State University, pers. comm., 1995).

Peck's cave amphipod is a subterranean, aquatic crustacean. The other two species are aquatic beetles. The families to which these beetles belong live primarily in flowing, uncontaminated waters. The Comal Springs riffle beetle is a surface species in the family Elmidae. The Comal Springs dryopid beetle is the only known subterranean member of the family Dryopidae.

The first recorded specimen of the amphipod *Stygobromus* (=*Stygonectes*) *pecki* (Holsinger 1967) was collected by Peck at Comal Springs in June, 1964. Reddell collected a second specimen at the same place in May, 1965. In 1967, Holsinger named the species *Stygonectes pecki*, in Peck's honor; the 1965 specimen, an adult female 10.5 mm (about one half inch) long, served as the type specimen. Later he included all the nominal *Stygonectes* species in the synonymy of the large genus *Stygobromus*. The Service has used "cave amphipod" as a generic common name for members of this genus, and this name was simply translated as "Peck's cave amphipod" without reference to a particular cave. Other known springs and artesian wells of the Edwards Aquifer in central Texas have been extensively sampled for amphipod crustaceans; a single specimen of Peck's cave amphipod was collected at Hueco Springs by Barr in August, 1992.

Over 300 specimens of Peck's cave amphipod have been collected since its description. Most documented specimens were netted from crevices in rock and gravel near the orifices of the three largest Comal Springs on the west side of Landa Park in Comal County, Texas. Barr collected one specimen from a fourth Comal spring run on private property adjacent to Landa Park and one specimen from Hueco Springs, about 7 km (4 miles) north of Comal Springs (Barr 1993). However, like all members of the exclusively subterranean genus *Stygobromus*, this species is eyeless and unpigmented, indicating that its primary habitat is a zone of permanent darkness in the underground aquifer feeding the springs. Above ground, individuals are easy prey for predators, but they usually take shelter in the rock and gravel crevices and may succeed in reentering the spring orifice. Barr (1993) got most specimens in drift nets at spring orifices and found them less often as she moved downstream, supporting the notion that they may be easy prey and do not likely survive for long outside the aquifer.

The Comal Springs riffle beetle is a small, aquatic beetle known from Comal Springs and San Marcos Springs. It was first collected by Bosse in 1976 and was described in 1988 by Bosse *et al.* The closest relative of *H. comalensis* appears to be a species that occurs farther to the west (Bosse *et al.* 1988).

Adult Comal Springs riffle beetles are about 2 mm (1/10 inch) long, with females slightly larger than males. Unlike the other two organisms proposed here, the Comal Springs riffle beetle is not a subterranean species. It occurs in the gravel substrate and shallow riffles in spring runs. Some riffle beetle species can fly, but the hind wings of *Heterelmis comalensis* are short and almost certainly non-functional, making the species

incapable of this mode of dispersal (Bosse *et al.* 1988). The larvae have been collected with adults in the gravel substrate of the spring headwaters and not on submerged wood as is typical of most *Heterelmis* species (Brown and Barr 1988). Usual water depth in occupied habitat is 2 to 10 cm (1 to 4 inches) although the beetle may also occur in slightly deeper areas within the spring runs. Populations are reported to reach their greatest densities from February to April (Bosse *et al.* 1988). The Comal Springs riffle beetle has been collected from spring runs 1, 2, and 3 at Comal Springs in Landa Park, and a single specimen was collected from San Marcos Springs 32 km (20 miles) to the northeast.

The Comal Springs dryopid beetle is a recently discovered species. It was first collected in 1987 and described as a new genus and species in 1992 by Barr (California State University) and Spangler (National Museum of Natural History, Smithsonian Institution). Adult Comal Springs dryopid beetles are about 3.0–3.7 mm (⅛ inch) long. They have vestigial (non-functional) eyes and are weakly pigmented, translucent, and thin-skinned. The species is the first stygobiontic (subterranean aquatic) member of its family to be discovered (Brown and Barr 1988, Barr, *in litt.* 1990, Barr and Spangler 1992). Collection records for the Comal Springs dryopid beetle are primarily from spring run 2 at Comal Springs, but they have also been collected from runs 3 and 4 at Comal Springs and from Fern Bank Springs about 32 km (20 miles) to the northeast in Hays County. Specimens have been collected in April, May, June, July, and August. Most of the specimens have been taken from drift nets or from inside the spring orifices. Although the larvae of the Comal Springs dryopid beetle have been collected in drift nets positioned over the spring openings, they are presumed to be associated with air-filled voids inside the spring orifices since all other known dryopid beetle larvae are terrestrial. Unlike Peck's cave amphipod, the Comal Springs dryopid beetle does not swim, and it may have a smaller range within the aquifer.

The exact depth and subterranean extent of the ranges of the two subterranean species (Comal Springs dryopid beetle and Peck's cave amphipod) are not precisely known because of a lack of methodologies available for studying karst aquifer systems and the organisms that inhabit such systems. The subterranean portion of this habitat may be a single, interconnected system that provides the area necessary for the feeding, growth, survival, and reproduction of the Comal Springs dryopid beetle and Peck's cave amphipod, which are obligate aquatic stygobiontic species. However, no specimens of *Stygoparnus comalensis* or *Stygobromus pecki* have appeared in collections from 22 artesian and pumped wells flowing from the Edwards Aquifer (Barr 1993), suggesting that these species may be confined to small areas surrounding the spring openings and are not distributed throughout the aquifer. Barr (1993) also surveyed nine springs in Bexar, Comal, and Hays counties considered most likely to provide habitat for endemic invertebrates and found *Stygoparnus comalensis* only at Comal and Fern Bank springs and *Stygobromus pecki* only at Comal and Hueco springs.

The low water limits for survival are not known for any of these three invertebrate species. At least a single population of each species survived the drought of the middle 1950's, which resulted in cessation of flow at Comal Springs from June 13 through November 3, 1956. Hueco springs is documented to have gone dry in the past (Brune 1981; Barr 1993), and although no information is available for Fern Bank Springs, it has probably gone dry as well given its higher elevation (Glenn Longley, Edwards Aquifer Research and Data Center, pers. comm., 1993). San Marcos Springs has not gone dry in recorded history.

Although these invertebrates were not entirely extirpated by the temporary cessation of spring flow, they may have been adversely affected and are not expected to be able to survive long periods of drying (up to several years in duration) that may occur in the absence of an adequate water management plan for the Edwards Aquifer. Stagnation of water may be a limiting condition, particularly for the two stygobiontic invertebrates. Stagnation of water and/or drying within the spring runs and the photic (lighted) zone of the spring orifices would probably be limiting for the Comal Springs riffle beetle. Natural water flow is considered important to the respiration and therefore survival of these species. The two beetle species have a mass of tiny, hydrophobic (unwettable) hairs on their underside where they maintain a thin bubble of air through which gas exchange occurs (Chapman 1982). This method of respiration loses its effectiveness as the level of dissolved oxygen in the water decreases. A number of aquatic insects that use dissolved oxygen rely on flowing water to obtain oxygen from the water.

In a petition dated September 9, 1974, the Conservation Committee of the National Speleological Society requested the Service to list Peck's cave amphipod. The species was included in a notice of review published on April 28, 1975 (40 FR 18476). A "warranted but precluded" finding regarding several species in that petition was made October 12, 1983, and published January 20, 1984 (49 FR 2485). The same petition determination has been repeated for Peck's cave amphipod in subsequent years. The species was included as a category 2 candidate in comprehensive notices of review published May 22, 1984 (49 FR 21664), January 6, 1989 (54 FR 554), and November 21, 1991 (56 FR 58804). In the latest notice of review of November 15, 1994 (59 FR 58982), it was included as a category 1 candidate.

In a petition dated June 20, 1990, and received June 21, 1990, Mr. David Whatley, Director of the City of New Braunfels Parks and Recreation Department, requested the Service to list five invertebrate taxa, including Peck's cave amphipod and four insects. The Service treated this as a second petition for the amphipod. A notice of 90-day petition finding published April 29, 1991 (56 FR 19632) announced that the petition had presented substantial information indicating that listing the Comal Springs riffle beetle and the Comal Springs dryopid beetle may be warranted, and initiated a formal status review for those species. Taxonomic uncertainties about the Comal Springs *Microcylloepus* riffle beetle and *Hexagenia* mayfly, also included in the June 21, 1990, petition, led to 90-day petition findings that were negative for those insects. The *Heterelmis* was recognized as a category 2 candidate in the November 21, 1989, notice of review, and both it and the *Stygoparnus* were recognized as category 1 candidates in the 1994 notice of review.

The present proposal constitutes a positive 1-year finding for the petitions to list the Comal Springs riffle beetle, Comal Springs dryopid beetle, and Peck's cave amphipod.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (50 CFR Part 424) set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1). These factors and their application to the Peck's cave amphipod *(Stygobromus pecki)*, Comal Springs riffle beetle *(Heterelmis comalensis)*, and Comal Springs dryopid beetle *(Stygoparnus comalensis)* are as follows:

A. *The present or threatened destruction, modification, or curtailment of their habitat or range.* The main threat to the habitat of these aquatic invertebrates is a reduction or loss of water of adequate quantity and quality, due primarily to human withdrawal of water from the Edwards Aquifer and other activities. Total withdrawal from the San Antonio region of the Edwards Aquifer has been increasing since at least 1934, when the total well discharge was 101,900 acre-feet (Edwards Underground Water District 1989). In 1989, the total well discharge was slightly more than 542,000 acre-feet (Longley 1991; Edwards Underground Water District 1992a).

There is an integral connection between the waters in the aquifer west of the springs and the waters serving as habitat for these species at the springs. Water entering the Edwards Aquifer as far west as Kinney County would eventually exit at springs were it not for withdrawal of groundwater from wells. Water in the Edwards Aquifer flows from west to east or northeast, and withdrawal or contamination of water in the western part of the aquifer can have a direct effect on the quantity and quality of water flowing toward the springs and at the spring openings.

Prior to wells being drilled into the aquifer, the average springflow from Comal and San Marcos springs was equal to the average annual recharge. That is, almost all of the water entering the aquifer eventually exited at the springs. At present, much of the recharge is pumped out of the aquifer, and most of what is left becomes the average springflow (Guadalupe-Blanco River Authority 1988). The amount of water removed by wells is therefore a direct, one-for-one depletion of water that would otherwise exit through the springs (Guadalupe-Blanco River Authority 1988) and provide habitat for the proposed invertebrates.

The Texas Water Commission (TWC) (1989) classified the San Antonio segment of the Edwards Aquifer as a critical area in terms of its potential for groundwater problems related to overdrafting. The Commission also ranked Bexar, Comal, and Hays counties among the top 23 counties in Texas for number of active groundwater public supply systems. Human population in the region is expected to increase (Technical Advisory Panel 1990; Edwards Underground Water District 1993), which will result in increased demand for water from the aquifer.

The Texas Water Development Board has applied its model of the Edwards Aquifer to determine the maximum pumping level that would allow Comal Springs to continue to flow (Technical Advisory Panel 1990). The Board found that during a drought similar to that of the 1950's, the maximum pumpage that would allow spring flow at Comal Springs is about 250,000 acre-feet per year (less than half the current pumping rate). "At this pumping level, Comal Springs could be expected to maintain some annual flow although they may flow on an intermittent basis during a recurrence of the drought of record" (Technical Advisory Panel 1990). The Panel also stated that in the year 2000, if pumping continues to grow at historical rates and a drought of record were to occur, Comal Springs would go dry for a number of years (Technical Advisory Panel 1990). Wanakule (1990) states: "The present problem facing the Edwards Aquifer is the threat of overdrafting of the annual average recharge rate (1934–1988) of approximately 635,500 acre-feet. McKinney and Watkins (1993) evaluated the Texas Water Development Board model and other models and concluded that, without limiting withdrawal to about 200,000 acre-feet per year, Comal Springs will likely go dry for extended periods during even a minor drought. The creation of the Edwards Aquifer Authority may help to alleviate this threat to some degree (see Factor D for further discussion). The Edwards Aquifer Authority is currently subject to litigation regarding violation of the Voting Rights Act in its formation. The Texas Legislature is now considering bills designed to bring the Authority into compliance, but the outcome of this effort remains to be determined.

In 1984 and 1990, some of the higher-elevation Comal Springs ceased flowing and water levels in the index well (J–17) in San Antonio dropped to within twelve feet of the historic low of 612.5 ft that occurred in 1956 (Wanakule 1990). Because these invertebrates require relatively well-oxygenated water, a reduction or cessation of spring flows, even if standing water remained around the spring orifices, may adversely affect the species. Loss of water entirely within their habitat would result in the extirpation of these aquatic species from their native habitat.

In addition to a loss of water, a decrease in the water level in the aquifer could lead to a decreased quality of water at the springs. The Balcones Fault Zone—San Antonio Region is bounded on the south and east by a "bad water" line across which the groundwater quality abruptly deteriorates to greater than 1000 mg/l total dissolved solids (TDS). In other words, at the bad water line, there is a transition in groundwater from fresh to saline or brackish. Lowered water levels resulting from groundwater pumpage or decreased recharge may result in deterioration of water quality in the fresh water section of the aquifer through movement of the bad water line. The Comal and San Marcos Springs are very close to the bad water line (TWC 1989; Edwards Underground Water District 1992b) and although the data are inconclusive at present, these springs may be sensitive to intrusion of saline waters at low aquifer levels. Other possible effects of reduced springflow levels include changes in the chemical composition of the water in the aquifer and at the springs, a decrease in current velocity and corresponding increase in siltation, and increase in temperature and temperature fluctuations in the aquatic habitat (McKinney and Watkins 1993).

Another threat to the habitat of these species is the potential for groundwater contamination. Pollutants of concern include those associated with human sewage (particularly septic tanks), animal/feedlot waste, agricultural chemicals (especially insecticides, herbicides, and fertilizers) and urban runoff (including pesticides, fertilizers, and detergents). Pipeline, highway, and railway transportation of potentially harmful materials in the Edwards Aquifer recharge zone and its watershed with the attendant possibility of accidents presents a particular risk to water quality in Comal and San Marcos springs. Comal and San Marcos springs are both located in highly urbanized areas. Hueco Springs is located alongside River Road, which is heavily travelled for recreation on the Guadalupe River, and may be susceptible to road runoff and spills related to traffic. Fern Bank Springs is in a relatively remote, rural location and its principal vulnerability is probably to contaminants associated with leaking septic tanks, animal/feedlot wastes, and agricultural chemicals.

Of the counties containing portions of the San Antonio segment of the Edwards Aquifer, the potential for acute, catastrophic contamination of the aquifer is greatest in Bexar, Hays, and Comal counties because of the higher density of urbanization compared to the western counties. Although spill or contamination events that could affect water quality may occur to the west of Bexar County, dilution and the time required for the water to reach the springs may lessen the threat from that area. As aquifer levels decrease,

however, dilution of contaminants moving through the aquifer may also decrease.

The TWC reported that in 1988 within the San Antonio segment of the Edwards Aquifer, Bexar, Hays, and Comal counties had the greatest number of land-based oil and chemical spills in central Texas that affect surface and/or groundwater with 28, 6, and 4 spills, respectively (TWC 1989). As of July, 1988, Bexar County had between 26 and 50 confirmed leaking underground storage tanks, Hays County had between 6 and 10, and Comal County had between 2 and 5 (TWC 1989), putting these counties among the top five counties in central Texas for confirmed underground storage tank leaks. The TWC estimates that, on average, every leaking underground storage tank will leak about 500 gallons per year of contaminants before the leak is detected. These tanks are considered one of the most significant sources of groundwater contamination in the State (TWC 1989).

A TWC project, using the DRASTIC methodology/tool (Aller, *et al.* 1987) classified Texas aquifers statewide according to their pollution potential. The Edwards Aquifer (Balcones Fault Zone—Austin and San Antonio Regions) was ranked among the highest in pollution potential of all major Texas aquifers (TWC 1989). The project's objective was to identify areas sensitive to groundwater pollution from a contaminated land surface. The project modelled both point source and non-point source types of contamination. The area of particular concern is the Edwards Aquifer recharge zone and its watershed. The TWC (1989) also reviewed and reported on the risk to Texas aquifers from sanitary landfills, hazardous waste disposal facilities, industrial waste and sewage disposal wells, commercial feedlots, and graveyards.

The DRASTIC methodology may underestimate the importance of faults and fractures, which affect the movement of groundwater and pollutants. Faults and fractures may act as conduits and/or barriers to groundwater flow and, in the vicinity of springs, could facilitate movement of contaminants. The Comal Springs fault facilitates the movement of groundwater (and potentially pollutants) towards Comal Springs. Hueco Springs has a large local recharge component (Brune 1981) and may be more susceptible to contamination via polluted runoff than Comal or San Marcos Springs. Little information is available on the relative contribution of groundwater and local recharge to the water emerging at Fern Bank Springs, although the temporary increase in discharge seen after storm events indicates a local recharge component (Barr 1993).

B. *Overutilization for commercial, recreational, scientific or educational purposes.* No threat from overutilization of these species is known to exist.

C. *Disease or predation.* While individuals of these three species may be preyed upon by various predatory insects or fishes, no information indicates that this is a substantial threat to any of the three species.

D. *The inadequacy of existing regulatory mechanisms.* Invertebrates are not included on the Texas Parks and Wildlife Department's (TPWD) list of threatened and endangered species and are provided no protection by the State. Nor do the TPWD regulations contain provisions for protecting habitat of any listed species.

Traditionally, the State of Texas has had no authority to regulate withdrawal of groundwater from an aquifer. In response to a lawsuit filed against the Service by the Sierra Club (Sierra Club v. Babbitt, formerly Sierra Club v. Lujan), the Texas State Legislature passed a bill (S.B. 1477) authorizing the creation of the Edwards Aquifer Authority (Authority) and granting the Authority the power to regulate groundwater withdrawal from the Edwards Aquifer. The bill recommends limiting groundwater withdrawal from the aquifer to 450,000 acre-feet per year initially, then reducing it to 400,000 acre-feet per year by January 1, 2008, based on a model developed by the TWC. One stated goal of the bill is to provide continuous minimum springflow of at least 100 cfs at Comal and San Marcos Springs by the year 2012 to protect species that are designated as threatened or endangered under Federal or State law. However, some researchers have maintained that, even with such pumping limits, flow at Comal Springs will drop below 100 cfs, and the springs will likely go dry for extended periods in time of severe drought and probably during minor droughts (McKinney and Watkins 1993).

The bill creating the Authority gives consideration in setting minimum springflow requirements only to those species protected under Federal or State law. These invertebrates would receive no consideration under the current plan until they are listed. In addition, Comal and San Marcos Springs are the lowest elevation springs in which these invertebrates are found, and maintaining flow at Fern Bank and Hueco Springs is not a stated goal of the water withdrawal limitations. Efforts to maintain minimum springflow at Comal and San Marcos Springs would not necessarily be sufficient to maintain flow at Hueco and Fern Bank Springs, which lie at higher elevations.

Although creation of the Edwards Aquifer Authority and development of regulations for limiting withdrawal of groundwater from the Edwards Aquifer is a positive step toward protecting the Comal and San Marcos spring ecosystems, creation of the Authority is currently a matter in litigation regarding compliance with the Voting Rights Act. It is uncertain if or when the Authority will be empowered to enforce the pumping limits dictated by the legislation, and thus whether it will be able to protect these aquatic invertebrates and other threatened and endangered species dependent upon water from the aquifer.

The major regulations affecting water quality in the San Antonio segment of the Edwards Aquifer are the Edwards Rules (31 Texas Administrative Code, Chapter 313), promulgated and enforced by the TWC (recently renamed as the Texas Natural Resource Conservation Commission). The Edwards Rules regulate construction-related activities on the recharge zone that may "alter or disturb the topographic, geologic, or existing recharge characteristics of the site" as well as any other activity "which may pose a potential for contaminating the Edwards Aquifer." The Edwards Rules regulate construction activities through review of Water Pollution Abatement Plans (WPAPs). The WPAPs do not require site-specific water quality performance standards for developments over the recharge zone nor do they address land use or impervious cover limitations. The WPAPs do not regulate activities in the aquifer contributing zone and, as yet, the Edwards Rules do not include a comprehensive plan to address the effects of cumulative impacts on water quality in the aquifer (Edwards Underground Water District 1993).

E. *Other natural or manmade factors affecting its continued existence.* The effect of droughts in south central Texas will be much more severe than previously was the case, due to the large increase in groundwater withdrawals (Wanakule 1990). These species' very limited habitat is likely to be lost through drying or decreased volume of springflow during minor or severe drought.

At present, competition is not known to be a significant threat to these species. However, two exotic snail species, *Thiara granifera* and *Thiara tuberculata* are common in the spring runs and, as grazers, may compete for food. Another exotic, the giant ramshorn snail (*Marisa cornuarietis*), is present in two of the spring runs and may colonize the other runs at low flow levels or through transfer by humans.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to propose this rule. Based on this evaluation the preferred action is to list the Peck's cave amphipod (*Stygobromus peckí*), Comal Springs riffle beetle (*Heterelmis comalensis*), and Comal Springs dryopid beetle as endangered.

Critical Habitat

Critical habitat is defined by Section 3 of the Act as— (i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for Peck's cave amphipod, the Comal Springs riffle beetle, and the Comal Springs dryopid beetle at this time. Service regulations (50 CFR 424.12(a)(1) state that designation of critical habitat is not prudent when one or both of the following situations exist— (1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

The Service finds that designation of critical habitat for these three species would not be prudent because it would not provide a conservation benefit to them, and would actually be detrimental by suggesting a misleadingly restricted view of their conservation needs.

Designation of critical habitat would not be beneficial to these species beyond the benefits provided by listing and the subsequent evaluation of activities under section 7 of the Act for possible jeopardy. In the Service's section 7 regulations at 50 CFR Part 402, the definition of "jeopardize the continued existence of" includes "to reduce appreciably the likelihood of both the survival and recovery of the listed species," and "adverse modification" is defined as "a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species." Because these species are endemic to such highly localized areas, actions that apparently diminish water quality and quantity at the springs would be fully evaluated for their effects on the three species through analysis of whether the actions would be likely to jeopardize their continued existence. Any action that would appreciably diminish the value, in quality or quantity, of spring flows on which they depend would also reduce appreciably the likelihood of survival and recovery of the three species. The analysis for possible jeopardy applied to these species would therefore be identical to the section 7 analysis for determining adverse modification or destruction of critical habitat; no distinction between jeopardy and adverse modification for activities impacting the springs on which these species depend can be made at this time. Application of section 7 relative to critical habitat would therefore not add measurable protection to these species beyond what is achievable through review for jeopardy.

Designation of the springs and their immediate environment as critical habitat would actually be detrimental to conservation efforts for these species because it would promote the misconception that the springs are the only areas important to their conservation. Conservation efforts for these species must address a wide variety of federally funded or authorized activities (summarized in the "Available Conservation Measures" section of this proposed rule) that affect the quality and quantity of water available to these species through effects on the recharge sources and aquifer that supply water to their habitats. Nearly all of these activities will occur beyond the immediate vicinity of the springs, and some will occur many miles away. Designation of the springs as critical habitat would be misleading in implying to Federal agencies whose activities may affect these species that the Service's concern is limited only to activities taking place at the springs occupied by the species. Designation of critical habitat for these species would therefore not be prudent.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Conservation and management of the Peck's cave amphipod, Comal Springs riffle beetle, and Comal Springs dryopid beetle are likely to involve protection and conservation of the Edwards Aquifer and spring flow at Comal Springs, Hueco Springs, San Marcos Springs, and Fern Bank Springs. It is also anticipated that listing will encourage research on critical aspects of the species' population biology.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species. If a species is listed subsequently, Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Federal actions that could affect the Peck's cave amphipod, Comal Springs riffle beetle, and/or Comal Springs dryopid beetle include the funding, authorization, and implementation of projects that would reduce the quantity or quality of water within the San Antonio segment of the Edwards Aquifer or otherwise significantly affect the outlets or water output of Comal Springs in New Braunfels, Texas; San Marcos Springs in

San Marcos, Texas; Hueco Springs in Comal County, Texas; and Fern Bank Springs in Hays County, Texas.

Examples of these types of activities include projects that would involve withdrawal of water from the aquifer; permits for municipal wastewater discharge; agricultural irrigation; use of pesticides and herbicides; Environmental Protection Agency National Pollutant Discharge Elimination System permits; section 18 exemptions under the Federal Insecticide, Fungicide, and Rodenticide Act; and Corps of Engineers permits for stream crossings.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. It is anticipated that few trade permits would ever be sought or issued because these species are not known to be in trade.

It is the policy of the Service (59 FR 34272) to identify to the maximum extent practicable at the time a species is listed or proposed to be listed those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a listing on proposed and ongoing activities within a species' range. The Service emphasizes that this action is a proposed listing, and that the guidelines presented herein are for use in the event that the listing becomes final. Should the listing become final, the discussion and outline presented here should assist landowners and managers in avoiding violation of section 9 of the Act. The Service believes that, based on the best available information, activities that could potentially harm the Comal invertebrates and result in "take" include, but are not limited to—

(1) Collecting or handling of the species;

(2) Activities that may result in destruction or alteration of the species' habitat (including, but not limited to withdrawal of water from the aquifer to the point at which habitat becomes unsuitable for the species, alteration of the physical habitat within the spring runs, or physical alteration of the spring orifices or of the subsurface pathways providing water to the springs);

(3) Discharge or dumping of chemicals, silt, pollutants, household or industrial waste, or other material into the springs or into areas that provide access to the aquifer and where such discharge or dumping could affect water quality; or

(4) Herbicide, pesticide, or fertilizer application in or near springs containing the species or areas that drain into the aquifer. Careful use of pesticides in the vicinity of the springs may be necessary in some instances.

The Service believes that a wide variety of activities would not harm these species if undertaken in the vicinity of their habitats and thus would not constitute taking. In general, any activity in the contributing, recharge, or artesian zones of the Edwards aquifer that would not have potential for cumulative or acute/catastrophic decrease in water quality within the aquifer and would not involve use of water from the aquifer should not harm these species. Inquiries concerning the possible effects of specific activities should be directed to the Service's Texas State Office (see **ADDRESSES**, above).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments are particularly sought concerning:

(1) Biological, commercial trade, or relevant data concerning any threat (or lack thereof) to Peck's cave amphipod, the Comal Springs riffle beetle, and Comal Springs dryopid beetle;

(2) The location of any additional populations of these species and the reasons why any habitat should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) Additional information concerning the ranges, distributions, and population sizes of these species;

(4) Current or planned activities in the subject area and their possible impacts on these species; and

Final promulgation of the regulations on these species will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to State Administrator, U.S. Fish and Wildlife Service (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Authors: The primary authors of this rule are Ruth Stanford and Alisa Shull (see **ADDRESSES** section) and George Drewry, Division of Endangered Species, U.S. Fish and Wildlife Service, 452 ARLSQ, Washington DC 20240.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulations Promulgation

PART 17—[AMENDED]

Accordingly, the Service hereby proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Section 17.11(h) is amended by adding the following, in alphabetical order under Crustaceans and Insects, respectively, to the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
.	.	.	.	.	.	.	.
CRUSTACEANS:							
.	.	.	.	.	.	.	.
Amphipod, Peck's cave.	*Stygobromus (=Stygonectes) pecki.*	U.S.A. (TX)	NA	E		NA	NA
.	.	.	.	.	.	.	.
INSECTS:							
Beetle, Comal Springs dryopid.	*Stygoparnus comalensis.*	U.S.A. (TX)	NA	E		NA	NA
.	.	.	.	.	.	.	.
Beetle, Comal Springs riffle.	*Heterelmis comalensis.*	U.S.A. (TX)	NA	E		NA	NA

Dated: May 23, 1995.

Mollie H. Beattie,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 95–13457 Filed 6–1–95; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 630

[Docket No. 950522139–5139–01; I.D. 042495B]

RIN 0648–AH75

Atlantic Swordfish Fishery; 1995 Quotas

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to change the total allowable catch (TAC) for the Atlantic swordfish fishery in accordance with the framework procedure of the regulations. This rule proposes a reduction of the directed-fishery TAC to 1,365 metric tons (mt) dressed weight for each of two semiannual periods, each of which would be divided into a drift gillnet quota of 27 mt and a longline and harpoon quota of 1,338 mt. The amount of the semi-annual longline and harpoon quota allowed to be landed would be 1,225 mt—the semi-annual quota amount less 113 mt, the estimated weight of undersized swordfish that

would be discarded dead semi-annually. The intent of this action is to protect the swordfish resource while allowing harvests of swordfish consistent with the recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT). NMFS is also soliciting comment on alternative management strategies for extending the fishing season.

DATES: Comments on this proposed rule must be received on or before July 17, 1995.

ADDRESSES: Copies of documents supporting this action may be obtained from and comments on the proposed rule should be sent to Richard H. Schaefer, Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Richard B. Stone, 301–713–2347.

SUPPLEMENTARY INFORMATION: The Atlantic swordfish fishery is managed under the Fishery Management Plan for Atlantic Swordfish and its implementing regulations at 50 CFR part 630 under the authority of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) (Magnuson Act) and the Atlantic Tunas Convention Act (ATCA) (16 U.S.C. 971 *et seq.*). Regulations issued under the authority of ATCA carry out the recommendations of ICCAT.

NMFS has reevaluated the annual TAC, the annual directed-fishery quota, the annual bycatch quota, bycatch limits in the non directed fishery, and the harpoon gear set-aside quotas in the Atlantic swordfish fishery in accordance with the procedures and factors specified in 50 CFR 630.24(d), including consideration of the latest stock assessment and recommendations of ICCAT. ICCAT's Standing Committee on Research and Statistics conducted a stock assessment of North Atlantic swordfish in November, 1994. The assessment report indicates the North Atlantic swordfish stock is overfished, stock biomass continues to decline, and a large reduction in yields is necessary in the immediate future if the stock is to be rebuilt to the level that supports maximum sustainable yield.

Based on the assessment findings, ICCAT adopted recommendations that include country-specific quotas that will reduce catch levels for the major harvesting nations. The recommended 1995 quota for the United States is 3,970 mt whole weight (2,984 mt dressed weight). Estimates of swordfish discarded dead are now included in the total catch quota.

In accordance with a review of the factors specified in 50 CFR 630.24(d), NMFS proposes for 1995 a decrease in TAC of 449 mt to 2,984 mt. All weights in this proposed rule are in dressed weight of swordfish unless indicated otherwise. The proposed TAC would be divided between a directed-fishery quota of 2,730 mt and a bycatch quota of 254 mt. These quotas in 1994 were 3,175 mt and 254 mt, respectively.

The directed-fishery quota would be divided into two 1,365 mt semiannual quotas for each of the 6-month periods, January 1 through June 30, and July 1 through December 31. Each of the 1,365 mt semiannual quotas would be further subdivided into a drift gillnet quota of 27 mt and a longline and harpoon quota of 1,338 mt. This allocation by gear types employs the same percentages in effect in 1994.

NMFS estimates that approximately 113 mt of swordfish semi-annually will be discarded dead, based on estimates from 1992 and 1993, recent estimated rates of discards, and expected improvement by the fleet in avoiding small fish. Therefore, the semi-annual landing quota for the longline and harpoon swordfish fishery would be the semi-annual catch quota of 1,338 mt minus the estimated semi-annual dead discards of 113 mt, or 1,225 mt for each of the two semiannual periods.

NMFS has no new information sufficient to justify changes in the bycatch quota of 254 mt or the existing 10 mt special set-aside quota for harpoon gear. Likewise, there were no new data, or new data have not been thoroughly analyzed that would warrant revision to the existing bycatch limits of 5 swordfish per trip in the squid trawl fishery and 2 swordfish per trip for all other bycatch fisheries.

This rule would revise the address of NMFS Southeast Regional Director, which has changed.

Segments of the industry have expressed concern that it may become necessary for NMFS to close some or all segments of the fishery prior to the end of the year, causing economic disruption in the industry. Therefore, NMFS is soliciting comments on alternative management methods that could extend the fishing season, should it appear that the second semiannual quota would be exceeded prior to year-end. A variety of management methods are available to prevent premature closures, so NMFS is requesting comments on the following:

(1) A set-aside of 227 mt in the second semiannual period reserved for the longline fleet. When the quota, less 227 mt, is reached, the fishery would be closed. On November 15, the longline set-aside season would open until NMFS determines that the set-aside quota is reached;

(2) A seasonal closure of the directed fishery, such as the month of August or September, during which the possession limit would be set between 10 to 15 swordfish, rather than the 2 fish possession limit imposed after attainment of the quota in the longline fishery;

(3) Closures by area or region and by week or month to avoid catch of small fish in both the directed and incidental fisheries of each gear type;

(4) A catch limit for each vessel, by gear type, for each trip in the directed longline and drift gill net fisheries.

The set-aside option is currently being considered by NMFS for implementation by the final rule, but upon consideration of the written and public hearing comments, another option may be implemented..

NMFS is also requesting comment on the closure process for the Atlantic swordfish fishery, particularly the lengths of time between notification, end of fishing, returning to port, and unloading the catch.

Classification

This proposed rule is published under the authority of the ACTA. Preliminarily, the Assistant Administrator for Fisheries, NOAA, has determined that the regulations contained in this proposed rule are necessary to implement the recommendations of ICCAT and are necessary for management of the Atlantic swordfish fishery. The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The 1995 TAC represents about a 13–percent reduction from the TAC of the previous 2 years. However, the TAC has not been fully utilized in the past 3 years. The overall impact in a fully utilized fishery would affect about 200 fishermen and potentially reduce their income by about 13 percent, provided there is no change in international market conditions. Under the TAC, the allowable catch is slightly higher than last year's catch; as a result, a regulatory flexibility analysis was not prepared.

This action is exempt from review under E.O. 12866.

List of Subjects in 50 CFR Part 630

Fisheries, Fishing, Reporting and recordkeeping requirements

Dated: May 30, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 630 is proposed to be amended as follows:

PART 630—ATLANTIC SWORDFISH FISHERY

1. The authority citation for part 630 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.* and 16 U.S.C. 971 *et seq.*

2. In § 630.2, "Regional Director" is revised to read as follows:

§ 630.2 Definitions.

* * * * *

Regional Director means the Director, Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432.

* * * * *

3. In § 630.24, paragraph (b)(1) is revised to read as follows:

§ 630.24 Quotas.

* * * * *

(b) * * *

(1) The annual quota for the directed fishery for swordfish is 2,730 mt, dressed weight, divided into two semiannual quotas as follows:

(i) For the semiannual period January 1 through June 30—

(A) 27 mt dressed weight, that may be harvested by drift gillnet; and

(B) 1,338 mt, dressed weight, that may be harvested by longline and harpoon. To account for harvested fish that are discarded dead, only 1,225 mt may be landed in this category.

(ii) For the semiannual period July 1 through December 31—

(A) 27 mt, dressed weight, that may be harvested by drift gillnet; and

(B) 1,338 mt, dressed weight, that may be harvested by longline and harpoon. To account for harvested fish that are discarded dead, only 1,225 mt may be landed in this category.

* * * * *

[FR Doc. 95–13685 Filed 6–2–95; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 60, No. 107
Monday, June 5, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

North Star Inc. Mine Operating Plan

AGENCY: Forest Service, USDA.

ACTION: Revised notice of intent to prepare an environmental impact statement.

SUMMARY: Notice is hereby given that the United States Forest Service will prepare an Environmental Impact Statement (EIS) to assess the potential environmental impacts that may be associated with development of the proposed North Star Project. North Star, Inc., previously known as Right Star, Inc. a California Corporation, has filed a plan of operation with the Big Bear Ranger Station, San Bernardino National Forest to expand and develop a high grade locatable limestone deposit in San Bernardino County, California. The North Star Project is located approximately 80 miles due east of Los Angeles, and approximately 3.5 miles northeast of Big Bear City. The Project will ultimately affect approximately 37 acres, and includes the following activities: mining, limestone trucking, vegetation and soil removal, blasting, loading, crushing, screening, and reclamation of disturbed land. The quarry will extend to a depth of approximately 40 feet below the level of Forest Road 3N03. Access to the site is via State Highway 18 and Forest Road 3N03. Approximately 200 tons of limestone per day would be transported to markets in California and Arizona. The USDA Forest Service is the lead Federal Agency for NEPA compliance in the preparation of the Environmental Impact Statement (EIS) for the proposed project. The following issues have been preliminarily identified for analysis: Visual quality, cultural resources, traffic, recreation, threatened, endangered and sensitive plant and wildlife species, health and safety, economics, mineral development, air quality, and other land uses. In accordance with the National Environmental Quality Act requirements, the EIS will also consider alternatives to the proposed action. Alternatives and additional issues may be identified as a result of the public scoping process.

This notice is a request for environmental information that you or your organization feels should be addressed in the EIS. Detailed information may be included in your response. Written comments should be sent to the address below no later than June 30, 1995.

SUPPLEMENTARY INFORMATION: The General Mining Law of 1872 (May 10, 1872) as amended, authorizes the location and extraction of minerals, including limestone, subject to regulations prescribed by law.

Mining regulations for the Forest Service are found in 36 CFR Part 228, Subpart A, first issued on August 28, 1974.

In preparing the environmental impact statement, the Forest Service will identify and consider a range of alternatives for this site. One of these will be no development of the site. Other alternatives will consider the company proposal, and environmentally modified proposal and an environmentally constrained proposal. Alternative locations for overburdened dumps, roads, and support facilities also will be considered.

Gene Zimmerman, Forest Supervisor, San Bernardino National Forest, San Bernardino, California is the responsible official.

Public participation will be especially important at several points during the analysis. The first point is during the scoping process (40 CFR 1501.7). The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. This input will be used in preparation of the draft environmental impact statement (DEIS). The scoping process includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Exploring additional alternatives.
5. Identifying potential environmental effects of the proposed action and alternatives (i.e. direct, indirect, and cumulative effects and connected actions).
6. Determining potential cooperating agencies and task assignments.

The mining of limestone is a significant activity on the north slope of the San Bernardino Mountains and is important to the economy of the Lucerne Valley Community. In excess of 3.5 million tons of limestone material are removed annually from quarries on both private and Federal lands. An additional 1.8 million tons of uneconomic materials are removed but redeposited in waste dumps. The limestone mining operations on the northslope have been carried on for many years through various approvals (Plans of Operations and a variety of amendments to those plans). The need for a consolidation of plans and amendments and a need to emphasize reclamation and advanced planning has been identified.

North Star, Inc., has been bulk-sample mining at the edge of the 11 acre site. Approximately .6 of an acre has been mined to date. Mining equipment (e.g. drills, crushers, loaders) has not been left on the site. North Star proposes to expand from the current bulk sample to an anticipated 200,000 tons of product in the next 5 years, based upon market demands.

North Star Minerals, Inc., a California corporation, holds leases for Smart Ranch Carbonate Placer Mining Claims 11 and 16 from Don Fife and Associates in Lone Valley, Big Bear Ranger District (Sec 32, T3N, R2E, SBBM) all within San Bernardino County. Right Star proposes to develop a quarry on the 11 acres and conduct operations that will yield high quality screened limestone products. Access to the site is via SH 18 and Forest road 3N03. Approximately 8 trucks per day would transport 200 tons of limestone to markets in the Lucerne Valley area. The 11 acres will be used for soil stockpiles, processing facility and a benched quarry. Operations will include vegetation and soil removal, blasting, loading, hauling, crushing and screening. The quarry will extend to a depth of approximately 40 feet below the level of FS 3N03. Waste material would also be deposited on-site. Electrical power would be supplied by a diesel generator. The staging area would be set up to accommodate a guard's camper trailer and chemical toilet for the crew. A 20 foot air-sea cargo container (for storage of small tools) and a 500 gallon diesel fuel storage tank would be in the same general location.

During a preliminary environmental analysis, it was determined that an area of Forest Service sensitive plants and their habitat exists on the North Star limestone area, and that the plants and habitat would be impacted by any developmental alternative. For the reason, it was determined that the proposal could have significant effects on the environment, and an EIS is needed.

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by September 1995. At that time EPA will publish a notice of availability of the draft EIS in the **Federal Register**.

The comment period on the draft EIS will be 45 days from the date that the EPA's notice of availability appears in the **Federal Register**. It is very important that those interested in the management of the north slope of the San Bernardino Mountains participate at that time. To be the most helpful, comments on the draft EIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of draft EISs must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions, *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978), and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final.

After the comment period ends on the draft EIS, the comments will be analyzed and considered by the Forest Service in preparing the final environmental impact statement. The final EIS is scheduled to be completed by December 1995. In the final EIS, the Forest Service is required to respond to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, environmental consequences discussed in the EIS, and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to appeal under 36 CFR 211.18.

DATES: Comments are requested on this notice concerning the scope of the analysis of the draft EIS. Comments must be received within 30 days of the publication date of this notice.

ADDRESSES: Submit written comments and suggestions concerning the scope of the analysis to Gene Zimmerman, Forest Supervisor, San Bernardino National Forest, 1824 S. Commercenter Circle, San Bernardino, CA 92408–3430.

FOR FURTHER INFORMATION CONTACT: Raj Daniel, District Minerals Officer, San Bernardino National Forest, Mill Creek Station, 34701 Mill Creek Road, Mentone, CA 92359, telephone: (909) 794–1123.

Dated: May 26, 1995.

Gene Zimmerman,

Forest Supervisor.

[FR Doc. 95–13566 Filed 6–2–95; 8:45 am]

BILLING CODE 3410–11–M

Eastern Region; Illinois, Indiana, and Ohio, Michigan, Minnesota, Missouri, New Hampshire, and Maine, Pennsylvania, Vermont, and New York, West Virginia, and Wisconsin; Legal Notice of Appealable Decisions

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: Deciding Officers in the Eastern Region will publish notice of decisions subject to administrative appeal under 36 CFR Part 217 in the legal notice section of the newspaper listed in the Supplementary Information section of this notice. As provided in 36 CFR 217.5, such notice shall constitute legal evidence that the agency has given timely and constructive notice of decisions that are subject to administrative appeal. Newspaper publication of notices of decisions is in addition to direct notice to those who have requested notice in writing and to those known to be interested in or affected by a specific decision.

DATES: Use of these newspapers for purposes of publishing legal notices of decisions subject to appeal under 36 CFR 217 and 36 CFR 215 shall begin June 1, 1995.

FOR FURTHER INFORMATION CONTACT: James Smalls, Regional Appeals and Litigation Coordinator, Eastern Region, Reuss Federal Plaza, 310 West Wisconsin, Avenue, Milwaukee, Wisconsin 53203, Area Code 414–297–1371.

SUPPLEMENTARY INFORMATION: Deciding Officers in the Eastern Region will give legal notice of decisions subject to appeal under 36 CFR Part 217 and 36 CFR Part 215 in the following newspapers which are listed by Forest Service administrative unit. Where more than one newspaper is listed for any unit, the first newspaper listed is the primary newspaper which shall be used to constitute legal evidence that the agency has given timely and constructive notice of decisions that are subject to administrative appeal. As provided in 36 CFR 217.8(2) and 36 CFR 215.13(a), the timeframe for appeal shall be based on the date of publication of a notice of decision in the primary newspaper.

Decisions by the Regional Forester:

JOURNAL/SENTINEL, published daily in Milwaukee, Milwaukee County, Wisconsin, for decisions affecting National Forest System lands in the States of Illinois, Indiana and Ohio, Michigan, Minnesota, Missouri, New Hampshire and Maine, Pennsylvania, Vermont and New York, West Virginia, Wisconsin and for any decision of Region-wide impact.

Allegheny National Forest, Pennsylvania

Forest Supervisor Decisions:
Warren Times Observer, Warren, Warren County, Pennsylvania
District Ranger Decisions:
Bradford District: Bradford Era, Bradford, McKean County, Pennsylvania
Marienville District: Oil City Derrick, Oil City, Venango, Pennsylvania
Sheffield District: Warren Times Observer, Warren, Warren County, Pennsylvania
Ridgway District: Ridgway Record, Ridgway, Elk County, Pennsylvania

Chequamegon National Forest, Wisconsin

Forest Supervisor Decisions:
Milwaukee Journal Sentinel, published daily in Milwaukee, Milwaukee County, Wisconsin
District Ranger Decisions:
Glidden/Hayward District: The Glidden Enterprise, published

weekly in Glidden, Ashland County,Wisconsin and Sawyer County Record, published weekly in Hayward, Sawyer County, Wisconsin
Medford District: The Star News, published weekly in Medford, Taylor County, Wisconsin
Park Falls District: Park Falls Herald, published weekly in Park Falls, Price County, Wisconsin
Washburn District: The Daily Press, published daily in Ashland County, Ashland, Wisconsin

Chippewa National Forest, Minnesota

Forest Supervisor Decisions:
Bemidji Pioneer, published daily in Bemidji, Beltrami County, Minnesota
District Ranger Decisions:
Blackduck District: The American, published weekly in Blackduck, Beltrami County, Minnesota
Cass Lake District: Cass Lake Times, published weekly in Cass Lake, Cass County, Minnesota
Deer River and Marcell Districts: Western Itasca Review, published weekly in Deer River, Itasca County, Minnesota Walker District: The Pilot/Independent, published weekly in Walker, Cass County, Minnesota

Green Mountain National Forest, Vermont

Forest Supervisor Decisions:
Rutland Herald, published daily in Rutland, Rutland County, Vermont

Finger Lakes National Forest, New York

Forest Supervisor Decisions:
Ithaca Journal, published daily in Ithaca, Tempkins County, New York
District Ranger Decisions:
Manchester District: Bennington Banner, published daily in Bennington, Bennington County, Vermont; Manchester Journal, published weekly in Bennington County, Vermont and Brattleboro Reformer, published daily in Brattleboro, Windham County, Vermont
Middlebury District: Addison County Independent, published twice a week in Middlebury, Addison County, Vermont
Rochester District: Burlington Free Press, published daily in Burlington, Chittenden County, Vermont; Valley Reporter, published weekly in Washington County, Vermont and Randolph Herald, published daily in Windsor County, Vermont

Hiawatha National Forest, Michigan

Forest Supervisor Decisions:
Daily Press, published daily in Escanaba, Delta County, Michigan
Mining Journal, published daily in Marquette, Marquette County, Michigan
Evening News, published daily in Sault Ste. Marie, Chippewa County, Michigan
St. Ignace News, published weekly in St. Ignace, Mackinac County, Michigan
District Ranger Decisions:
Rapid River District: Daily Press, published daily in Escanaba, Delta County, Michigan
Manistique District: Daily Press, published daily in Escanaba, Delta County, Michigan; Pioneer Tribune, published daily in Manistique, County, Michigan, and Mining Journal, published daily in Marquette, Marquette County, Michigan
Munising District: Mining Journal, published daily in Marquette, Marquette County, Michigan
Sault Ste. Marie District: Evening News, published daily in Sault Ste. Marie, Chippewa County, Michigan
St. Ignace District: Evening News, published daily in Sault Ste. Marie, Chippewa County, Michigan and St. Ignace News, published weekly in St. Ignace, Mackinac County, Michigan

Hoosier National Forest, Indiana

Fort Supervisor Decisions:
Sunday Herald-Times, published in Bloomington, Monroe County, Indiana.
District Ranger Decisions:
Brownstown District: Sunday Herald-Times, published in Bloomington, Monroe County, Indiana.
Tell City District: The Perry County News, published in Tell City, Perry County, Indiana

Huron-Manistee National Forests, Michigan

Note: 1st newspaper listed is mandatory—other optional.

Forest Supervisor Decisions:
Cadillac Evening News, published daily in Cadillac, Wexford County, Michigan; Lake County Star, published weekly in Baldwin, Lake County, Michigan; Ludington Daily News, published daily in Ludington, Mason County, Michigan; Alcona County Review, published weekly in Harrisville, Alcona County, Michigan; Manistee News Advocate, published daily in Manistee, Manistee County, Michigan; Oscoda County Herald, published weekly in Mio, Oscoda County, Michigan; Crawford County Avalanche, published weekly in Grayling, Crawford County, Michigan; Oscoda Press, published weekly in Oscoda, Iosco County, Michigan; Fremont Times-Indicator, published weekly in Fremont, Newaygo County, Michigan; Ocean-Herald Journal, published daily in Hart, Mason County, Michigan; Muskegon Chronicle, published daily in Muskegon, Muskegon County, Michigan; Grand Rapids Press, published daily in Grand Rapids, Kent County, Michigan and Big Rapids Pioneer, published daily in Big Rapids, Mecosta County, Michigan
District Ranger Decisions:
Baldwin District: Lake County Star, published weekly in Baldwin, Lake County, Michigan and Ludington Daily News, published daily in Ludington, Mason County, Michigan
Cadillac District: Cadillac Evening News, published daily in Cadillac, Wexford County, Michigan; Manistee News Advocate, published daily in Manistee, Manistee County, Michigan and Lake County Star, published weekly in Baldwin, Lake County, Michigan
Harrisville District: Alcona County Review, published weekly in Harrisville, Alcona County, Michigan
Manistee District: Manistee News Advocate, published daily in Manistee, Manistee County, Michigan
Mio District: Oscoda County Herald, published weekly in Mio, Oscoda County, Michigan and Crawford County Avalanche, published weekly in Grayling, Crawford County, Michigan
Tawas District: Oscoda Press, published weekly in Oscoda, Isoco County, Michigan
White Cloud District: Remont Times-Indicator, published weekly in Fremont, Newaygo County, Michigan and Oceana-Herald Journal, published daily in Hart, Mason County, Michigan

Mark Twain National Forest, Missouri

Forest Supervisor Decisions:
Rolla Daily News, published in Rolla, Phelps County, Missouri
District Ranger Decisions:
Ava/Cassville District: Springfield News Leader, published daily in Springfield, Greene County, Missouri
Cedar Creek District: Fulton Sun, published daily in Fulton, Callaway County, Missouri
Doniphan District: Prospect News, published weekly in Doniphan, Ripley County, Missouri
Eleven Point District: Current Wave, published weekly in Eminence, Shannon County, Missouri
Rolla District: Houston Herald, published weekly (Thursdays) in Houston, Texas County, Missouri
Houston District: Houston Herald, published weekly (Thursdays) in Houston, Texas County, Missouri
Poplar Bluff District: Daily American Republic, published daily in Poplar Bluff, Butler County, Missouri
Potosi District: The Independent-Journal, published Thursday in Potosi, Washington County, Missouri
Fredericktown Ranger District: The Democrat-News published Thursdays in Fredericktown, Madison County, Missouri
Salem District: The Salem News, published Tuesday and Thursday in Salem, Dent County, Missouri
Willow Springs District: West Plains Daily Quill, published daily in West Plains, Howell County, Missouri

Monongahela National Forest, Elkins, West Virginia

Forest Supervisor Decisions:
The Elkins Intermountain, published daily in Elkins, Randolph County, West Virginia.
Cheat District: The Parsons Advocate, published weekly in Parsons, Tucker County, West Virginia.
Gauley District: The Richwood News Leader, published weekly in Richwood, Nicholas County, West Virginia.
Greenbrier District: The Pocahontas Times, published weekly in Marlinton, Pocahontas County, West Virginia.
Marlinton District: The Pocahontas Times, published weekly in Marlinton, Pocahontas, County, West Virginia.
Potamac District: The Grant County Press, published weekly in Petersburg, Grant County, West Virginia.
White Sulphur Springs District: The Register-Herald, published daily in Beckley, Raleigh County, West Virginia.

Nicolet National Forest, Rhinelander, Wisconsin

Forest Supervisor Decisions:
The Daily News, published daily except Saturday, Rhinelander, Wisconsin
District Ranger Decisions:
Eagle River/Florence Districts: The Daily News, published daily except Saturday, Rhinelander, Wisconsin
Lakewood/Laona District: The Daily News, published daily except Saturday, Rhinelander, Wisconsin

Ottawa National Forest, Michigan

Forest Supervisor Decisions:
Ironwood Daily Globe, published in Ironwood, Gogebic County, Michigan
District Ranger Decisions:
Bergland District, Bessemer District, Kenton District, Ontonagon District, and Watersmeet District: Ironwood Daily Globe, published in Ironwood, Gogebic County, Michigan
Iron River District, Iron River Reporter, published in Iron River, Iron County, Michigan

Shawnee National Forest, Illinois

Forest Supervisor Decisions:
Southern Illinoisian, published daily in Carbondale, Jackson County, Illinois
District Ranger Decisions:
Elizabethtown District, Jonesboro District, Murphysboro
District and Vienna District: Southern Illinoisian, published daily in Carbondale, Jackson County, Illinois

Superior National Forest, Minnesota

Forest Supervisor Decisions:
Duluth News-Tribune, published daily in Duluth, St. Louis County, Minnesota
District Ranger Decisions:
Gunflint Ranger District: Cook County News-Herald, published weekly in Grand Marias, Cook County, Minnesota
Kawishiwi Ranger District: Ely Echo, published weekly in Ely, St. Louis County, Minnesota
LaCroix Ranger District: Mesabi Daily News, published daily in Virginia, St. Louis County, Minnesota
Laurentian Ranger District: Mesabi Daily News, published daily in Virginia, St. Louis County, Minnesota; and Lake County News-Chronicle, published weekly in Two Harbors, Lake County, Minnesota
Tofte Ranger District: Duluth News-Tribune published daily in Duluth, St. Louis County, Minnesota

Wayne National Forest, Ohio

Forest Supervisor Decisions:
The Athens Messenger, published in Athens, Athens County, Ohio
District Ranger Decisions:
Athens District: Athens Messenger (same for Marietta Unit), published in Athens, Athens County, Ohio
Ironton District: The Ironton Tribune, published in Ironton, Lawrence County, Ohio

White Mountain National Forest, New Hampshire and Maine

Forest Supervisor Decisions:
The Union Leader, published daily in Manchester, County of Hillsborough, New Hampshire
District Ranger Decisions:
Ammonoosuc Ranger District: The Union Leader, published daily in Manchester, County of Hillsborough, New Hampshire
Androscoggin Ranger District: The Union Leader, published daily in Manchester, County of Hillsborough, New Hampshire
Evans Notch Ranger District: The Lewiston Sun, published daily in Lewiston, County of Androscoggin, Maine
Pemigewasset Ranger District: The Union Leader, published daily in Manchester, County of Hillsborough, New Hampshire
Saco Ranger District: The Union Leader, published daily in Manchester, County of Hillsborough, New Hampshire.

Dated: May 25, 1995.

Floyd J. Marita,

Regional Forester.

[FR Doc. 95–13595 Filed 6–2–95; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Kansas Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Kansas Advisory Committee to the Commission will convene at 10 a.m. and adjourn at 2 p.m. on Friday, June 23, 1995, at the Central Regional Office, Gateway Tower II, 400 State Avenue, Suite 908, Kansas City, KS. The purpose of the meeting is to collect information on civil rights issues in order to plan for future projects in Kansas.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 816–426–5253 (TTY 816–426–5009). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working

days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 24, 1995.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 95–13574 Filed 6–2–95; 8:45 am]

BILLING CODE 6335–01–P

Agenda and Notice of Public Meeting of the Maine Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Maine Advisory Committee to the Commission will convene at 1:30 p.m. and adjourn at 4:30 p.m. on Tuesday, June 20, 1995, at the Bangor Ramada Inn, 357 Odlin Road, Bangor, Maine 04401. The purpose of the meeting is to brief the Committee on the status of the Commission, the status of a draft Advisory Committee report, review civil rights issues in Maine, and select a 1995 project.

Persons desiring additional information, or planning a presentation to the Committee, should contact Edward Darden, Acting Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 25, 1995.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 95–13581 Filed 6–2–95; 8:45 am]

BILLING CODE 6335–01–P

Agenda and Notice of Public Meeting of the Minnesota Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Minnesota Advisory Committee to the Commission will convene at 1 p.m. and adjourn 6 p.m. on Tuesday, June 20, 1995, at the Crown Sterling Suites, 425 South Seventh Street, Minneapolis, Minnesota 55415. The purpose of the meeting is to review the draft report, "Resources Devoted to Local and Federal Civil Rights Enforcement in Minnesota," and to discuss other civil rights issues of interest to the Advisory Committee.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Karon J. Rogers, 612–661–4713, or Constance M. Davis, Director of the Midwestern Regional Office, 312–353–8311 (TDD 312–353–8326). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 24, 1995.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 95–13575 Filed 6–2–95; 8:45 am]

BILLING CODE 6335–01–P

Agenda and Notice of Public Meeting of the Ohio Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Ohio Advisory Committee to the Commission will convene at 1 p.m. and adjourn 6 p.m. on Thursday, June 22, 1995, at the Great Southern Hotel, 310 South High Street, Columbus, Ohio. The purpose of the meeting is to discuss current issues and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Grace Ramos, 614–466–6715, or Constance M. Davis, Director of the Midwestern Regional Office, 312–353–8311 (TDD 312–353–8326). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 24, 1995.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 95–13576 Filed 6–2–95; 8:45 am]

BILLING CODE 6335–01–P

Agenda and Notice of Public Meeting of the Wisconsin Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Wisconsin Advisory Committee to the Commission will be held from 1 p.m. until 6 p.m. on Tuesday, June 27, 1995, at the Milwaukee Hilton, 509 W. Wisconsin Avenue, Milwaukee, Wisconsin. The purpose of the meeting is to discuss current issues and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Kimberly Shankman, 414–748–8739 or Constance M. Davis, Director of the Midwestern Regional Office, 312–353–8311 (TDD 312–353–8326). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 26, 1995.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 95–13580 Filed 6–2–95; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Action Affecting Export Privileges; Rolando Franco; Order Denying Permission to Apply for or Use Export Licenses

On December 13, 1994, Rolando Franco (Franco) was convicted in the U.S. District Court for the District of New Jersey of violating the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401–2420 (1991, Supp. 1993, and Pub. L. No. 103–277, July 5, 1994)) (the Act).[1] Specifically, Franco was convicted on one count of knowingly and willfully violating the terms of an Order previously issued by the Department of Commerce on July 22, 1992, which denied Franco all U.S. export privileges for a period of five years.

Section 11(h) of the Act, provides that, at the discretion of the Secretary of Commerce,[2] no person convicted of violating the Act, or certain other provisions of the United States Code, shall be eligible to apply for or use any export license issued pursuant to, or provided by, the Act or the Export Administration Regulations (currently codified at 15 C.F.R. Parts 768–799 (1995)) (the Regulations) for a period of up to 10 years from the date of the conviction. In addition, any export license issued pursuant to the Act in which such a person had any interest at the time of conviction may be revoked.

Pursuant to Sections 770.15 and 772.1(g) of the Regulations, upon notification that a person has been convicted of violating the Act, the Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, shall determine whether to deny that person permission to apply for or use any export license issued pursuant to, or provided by, the Act and the Regulations, and shall also determine whether to revoke any export license previously issued to such a person.

Having received notice of Franco's conviction for violating the Act, and following consultations with the Director, Office of Export Enforcement, I have decided to deny Franco permission to apply for or use any export license, including any general license, issued pursuant to, or provided by, the Act and the Regulations, for a period of 10 years from the date of his conviction. The 10-year period ends on December 13, 2004. I have also decided to revoke all export licenses issued pursuant to the Act in which Franco had an interest at the time of his conviction.

Accordingly, it is hereby ordered.

I. All outstanding individual validated licenses in which Franco appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Franco's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

II. Until December 13, 2004, Rolando Franco, 195 Willet Avenue, South River, New Jersey 08882, hereby is denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction in the United States or abroad involving any commodity or technical data exported or to be exported from the United States, in whole or in part, and subject to the Regulations. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (i) as a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated or general export license, reexport authorization or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported or to be exported from the United States, and subject to the Regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data.

III. After notice and opportunity for comment as provided in Section 770.15(h) of the Regulations, any person, firm, corporation, or business organization related to Franco by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

IV. As provided in Section 787.12(a) of the Regulations, without prior disclosure of the facts to and specific authorization of the Office of Export Licensing, in consultation with the Office of Export Enforcement, no person may directly or indirectly, in any manner or capacity: (i) apply for, obtain, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to an export or reexport of commodities or technical data by, to, or for another person then subject to an order revoking or denying his export privileges or then excluded from practice before the Bureau of Export Administration; or (ii) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate: (a) in any transaction which may involve any commodity or technical data exported or to be exported from the United States; (b) in any reexport thereof; or (c) in any other transaction which is subject to the Export Administration Regulations, if the person denied export privileges may obtain any benefit or have any interest in, directly or indirectly, any of these transactions.

V. This Order is effective immediately and shall remain in effect until December 13, 2004.

VI. A copy of this Order shall be delivered to Franco. This Order shall be published in the **Federal Register.**

Dated: May 25, 1995.

Eileen Albanese,

Acting Director, Office of Exporter Services.

[FR Doc. 95–13593 Filed 6–2–95; 8:45 am]

BILLING CODE 3510–DT–M

[1] The Act expired on August 20, 1994. Executive Order 12924 (59 *Fed. Reg.* 43437, August 23, 1994) continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701–1706 (1991)).

[2] Pursuant to appropriate delegations of authority that are reflected in the Regulations, the Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, exercises the authority granted to the Secretary by Section 11(h) of the Act. Because of a recent Bureau of Export Administration reorganization, this responsibility now rests with the Director, Office of Exporter Services. Subsequent regulatory references herein to the "Director, Office of Export Licensing," should be read as meaning "Director, Office of Exporter".

Foreign-Trade Zones Board

[Docket 27–95]

Foreign-Trade Zone 142, Camden, New Jersey, Proposed Foreign-Trade Subzone, Mobil Corp. (Oil Refinery), Paulsboro, New Jersey

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the South Jersey Port Corporation, grantee of FTZ 142, requesting special-purpose subzone status for the oil refinery complex of Mobil Corporation (Mobil), located in the Paulsboro, New Jersey, area. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on May 24, 1995.

The refinery complex (678 acres) consists of 2 sites in Gloucester County, New Jersey: Site 1—main refinery complex, located on the Delaware River near Paulsboro, New Jersey, some 10 miles south of Philadelphia; Site 2—MTBE and light cycle oil storage facility located within GATX Terminals Corporation storage facility, adjacent to the refinery. The refinery (140,000 barrels per day; 600 employees) is used to produce fuels and petrochemical feedstocks. Fuels produced include gasoline, jet fuel, distillates such as diesel fuel and fuel oil, lubricating oil, residual fuels and naphthas. Petrochemical feedstocks include methane, ethane, mixed butanes, and propane. Refinery by-products include asphalt, petroleum coke and sulfur. All of the crude oil (89% of inputs), some feedstocks, and some blendstocks are sourced abroad.

Zone procedures would exempt the refinery from Customs duty payments on the foreign products used in its exports. On domestic sales, the company would be able to choose the finished product duty rate

(nonprivileged foreign status—NPF) on certain petrochemical feedstocks and refinery by-products (duty-free). The duty on crude oil ranges from 5.25¢ to 10.5¢/barrel. The application indicates that the savings from zone procedures would help improve the refinery's international competitiveness.

In accordance with the Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is August 4, 1995. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to August 21, 1975).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce District Office, 3131 Princeton Pike, Bldg. #6, Suite 100, Trenton, NJ 08648

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue NW., Washington, DC 20230.

Dated: May 26, 1995.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 95–13701 Filed 6–2–95; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

[A–588–038]

Bicycle Speedometers From Japan; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On January 31, 1995, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping finding on bicycle speedometers from Japan. The review covers one manufacturer/exporter, Cateye Co., Ltd. (Cateye), and the period November 1, 1992 through October 31, 1993.

We gave interested parties an opportunity to comment on our preliminary results. We received comments from the respondent, Cateye. Based on our analysis of the comments received, the final results of this review have changed from those presented in the preliminary results of review.

EFFECTIVE DATE: June 5, 1995.

FOR FURTHER INFORMATION CONTACT: Arthur N. DuBois or Thomas F. Futtner, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; telephone (202) 482–6312/3814.

SUPPLEMENTARY INFORMATION:

Background

On January 31, 1995, the Department published in the **Federal Register** (60 FR 5898) the preliminary results of its administrative review of the antidumping finding on bicycle speedometers from Japan (37 FR 24826, November 22, 1972). On February 27, 1995, we received comments from the respondent, Cateye. The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Review

Imports covered by the review are shipments of bicycle speedometers. This merchandise is currently classifiable under the *Harmonized Tariff Schedule* (HTS) item numbers 9029.20.20, 9029.40.80, and 9029.90.40. HTS item numbers are provided for convenience and Customs purposes. Our written description remains dispositive.

The review covers the shipments of Cateye, a manufacturer/exporter of bicycle speedometers during the period November 1, 1992 through October 31, 1993.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results as provided by section 353.38 of the Department's regulations. We received comments from the respondent, Cateye.

Comment 1: Cateye commented that in the preliminary calculations the Department inappropriately included sales in the home market data base that occurred outside the period of review.

Department's Response: We agree and have corrected the programming accordingly.

Comment 2: Cateye commented that for certain models sold in the United States, we failed to compare the most similar merchandise sold in the home market.

Department's Response: We agree that for the models mentioned in Cateye's comment, we failed to compare models sold in the United States with the most similar merchandise sold in the home market. The most similar merchandise for models with black cases sold in the United States are home market models with black cases, and the most similar merchandise for models with colored cases sold in the United States are home market models with colored cases. We have recalculated our results accordingly.

Final Results of Review

As a result of our review, we have determined that the following margin exists for the period November 1, 1992 through October 31, 1993:

Manufacturer/exporter	Margin (percent)
Cateye Co., Ltd	1.44

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between U.S. price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of these final results of administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after that publication date, as provided by section 751(a)(1) of the Act, and will remain in effect until publication of the final results of the next administrative review: (1) The cash deposit rate for the reviewed company will be 1.44 percent;

(2) for exporters not covered in this review, but covered in previous reviews or the original less-than-fair-value (LTFV) investigation, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review, the cash deposit rate will be 26.44 percent, which is the "new shipper" rate established in the first administrative review in accordance with the Court of International Trade's (CIT's) decisions in *Floral Trade Council* v. *United States*, 822 F. Supp. 766 (CIT 1993), and *Federal Mogul Corporation and the Torrington Company* v. *the United States*, 822 F Supp. 782 (CIT 1993). We are basing the "all others" rate on the "new shipper" rate established in the first final results of administrative review published by the Department (47 FR 28978, July 2, 1982) because this proceeding is governed by an antidumping finding, and we are unable to ascertain the "all others" rate from the Treasury LTFV investigation.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period.

Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties has occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a) of the Act, as amended (19 U.S.C. 1675(a)), and 19 CFR 353.22.

Dated: May 26, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–13702 Filed 6–2–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–549–813]

Final Determination of Sales at Less Than Fair Value: Canned Pineapple Fruit From Thailand

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 5, 1995.

FOR FURTHER INFORMATION CONTACT: Michelle Frederick or Jennifer Katt, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–0186 or 482–0498, respectively.

Final Determination

We determine that imports of canned pineapple fruit (CPF) from Thailand are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the "Act") (1994). The estimated weighted-average margins are shown in the "Continuation of Suspension of Liquidation" section of this notice.

Case History

Since our affirmative preliminary determination and postponement of the final determination on January 4, 1995 (60 FR 2734, January 11, 1995) (*Preliminary Determination*), the following events have occurred:

On January 20, 1995, Maui Pineapple Company, Ltd. and the International Longshoremen's and Warehousemen's Union (the petitioners) alleged a ministerial error in the Department's preliminary determination calculations regarding Dole Food Company, Inc., Dole Packaged Foods Company, and Dole Thailand, Ltd. (collectively Dole). The error was found to constitute a significant ministerial error because the correction resulted in a difference between a dumping margin of *de minimis* and a margin greater than *de minimis*. *See* § 353.15(g)(4)(ii) of the Department's Proposed Regulations (57 FR 1131, January 10, 1992). An amended preliminary determination was issued on February 14, 1995 (60 FR 9820, February 22, 1995).

The four respondents in this investigation, Dole, The Thai Pineapple Public Co., Ltd. (TIPCO), Siam Agro Industry Pineapple and Others Co., Ltd. (SAICO), and Malee Sampran Factory Public Co., Ltd. (Malee), submitted revisions to their responses, and/or revised computer tapes that corrected clerical errors discovered at verification in January, February, March and April 1995.

We conducted verifications of TIPCO, SAICO and Malee's sales and cost questionnaire responses in Thailand in February and March 1995. Verifications of Dole's sales and cost responses were conducted in Belgium, Thailand, Hong Kong, and the United States in January, February and March 1995.

Dole, TIPCO, SAICO, Malee and the petitioners submitted case briefs on April 26, 1995, and rebuttal briefs on May 3, 1995. At the request of both the petitioners and Dole, a public hearing was held on May 10, 1995.

Scope of the Investigation

The product covered by this investigation is canned pineapple fruit (CPF). For the purposes of this investigation, CPF is defined as pineapple processed and/or prepared into various product forms, including rings, pieces, chunks, tidbits, and crushed pineapple, that is packed and cooked in metal cans with either pineapple juice or sugar syrup added. CPF is currently classifiable under subheadings 2008.20.0010 and 2008.20.0090 of the *Harmonized Tariff Schedule of the United States* (HTSUS). HTSUS 2008.20.0010 covers CPF packed in a sugar-based syrup; HTSUS 2008.20.0090 covers CPF packed without added sugar (*i.e.*, juice-packed). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Period of Investigation

The period of investigation ("POI") is January 1 through June 30, 1994, for TIPCO, SAICO and Malee; and January 2 through June 18, 1994, for Dole (*see* Memorandum from Gary Taverman to Barbara R. Stafford, dated August 18, 1994).

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

Such or Similar Comparisons

We have determined that all products covered by this investigation constitute a single category of such or similar merchandise. Where there were no sales of identical merchandise in the third country market [1] to compare to U.S. sales, we made similar merchandise comparisons on the basis of the criteria defined in Appendix V to the antidumping questionnaire, on file in Room B–099 of the main building of the Department of Commerce. In accordance with 19 CFR 353.58, we made comparisons at the same level of trade, where possible. Where we were not able to match sales at the same level of trade, we made comparisons across levels of trade.

Based on the functional differences between Dole's U.S. and German customers, we continue to consider Dole's sales of CPF to be made at two distinct levels of trade in both the U.S. and German markets. (*See Preliminary Determination* and Import Administration Policy Bulletin 92/1, dated July 29, 1992.) The first level is comprised of sales to customers in the retail and food service sectors (Level I); the second is comprised of sales to customers in the industrial sector (Level II).

[1] Third country markets were used because none of the four respondents had a viable home market.

Fair Value Comparisons

To determine whether sales of CPF from Thailand to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

As stated in our preliminary determination, Dole has reported all of its U.S. sales of subject merchandise, including those of Philippine origin and re-sales of CPF Dole purchased from unrelated producers in Thailand. We have continued to exclude these sales by weighing the dumping margin for each Universal Product Code (UPC) category by both (1) the ratio of shipments of CPF from Thailand to the total volume shipped from both Thailand and the Philippines during the last seven accounting periods of 1993, and (2) the ratio of shipments of Dole-produced product to the total volume of Dole-produced and purchased product shipped to the United States during 1993, respectively. For further discussion, see the *Preliminary Determination* and Comment 8 in the "Interested Party Comments" section of this notice.

For those unreported U.S. sales by TIPCO, SAICO and Malee presented or discovered during verification, we are applying the average of all positive margins to the quantities sold as best information available (BIA). *See* Comment 2 below.

United States Price

For Dole, TIPCO, SAICO and Malee we calculated USP according to the methodology described in our preliminary determination, with the following company-specific exceptions:

A. Dole

1. We excluded all sales made to military commissaries from our calculation of USP because we determined that these sales do not represent the sale to the first unrelated purchaser. In this channel of trade, the first unrelated purchaser of CPF is a distributor for the U.S. military. This distributor takes title and physical possession of the merchandise before reselling it to military commissaries. Dole's sales to the distributor were included in our calculation of USP.

2. In the *Preliminary Determination* we stated that Dole would be required to report as U.S. sales, certain shipments pursuant to a long-term agreement negotiated prior to the POI. Because these shipments were not reported for the preliminary determination, we applied as BIA, the average of all positive margins to one-half of the maximum quantity specified in the agreement to be purchased during 1994. Based on our findings at verification, we determined that Dole made no shipments pursuant to the contract during the POI. Therefore, Dole did not fail to report these sales and we have removed these sales from our margin calculation.

3. We recalculated direct selling expenses for the "warehouse club" channel of trade to reflect the allowance confirmed at verification.

4. We recalculated inventory carrying costs using a publicly available representative Thai baht borrowing rate for that period of time the merchandise was held in inventory in Thailand. For the period of time when the merchandise was shipped to and held in inventory in the United States, we used the short-term U.S. dollar borrowing rate confirmed at verification, because the title passed from the Thai producer to the U.S. parent at the time of shipment. For further discussion, see the Concurrence Memorandum, dated May 26, 1995, on file in Room B–099 of the main Commerce building (Concurrence Memorandum).

B. TIPCO

1. We reclassified reported rebates as discounts because it was determined that customers paid a reduced price, rather than receiving a refund of monies. *See* Comment 21 below.

2. We reclassified a certain expense reported as warranty expense as a discount. It was determined that a customer did not receive a reimbursement for the reported warranty claim, but rather paid a reduced price. *See* Comment 21 below.

3. We recalculated inventory carrying costs based on the actual cost of manufacture of the inventory, rather than the selling price. In addition, we applied TIPCO's borrowing rate for short-term loans during the POI denominated in baht.

C. SAICO

1. We did not reduce USP for export bill discounts because we determined that this expense was already captured in our imputed credit calculation. *See* Comment 29 below.

2. As in the preliminary determination, we included certain U.S. shipments of spoiled subject merchandise because we determined them to be POI sales. *See* Comment 28 below.

D. Malee

1. We recalculated inventory carrying costs based on the actual cost of manufacture of the inventory, rather than the selling price. In addition, we applied Malee's borrowing rate for short-term loans during the POI denominated in baht.

Foreign Market Value

As stated in our preliminary determination, we determined that the home market was not viable for any of the four respondents. In accordance with 19 CFR 353.49(b), we selected Germany as the third country market for all four respondents. We calculated FMV as noted in the "Price-to-Price" and "Price to Constructed Value (CV)" sections of this notice.

Cost of Production

Based on the petitioners' allegations, the Department found reasonable grounds to believe or suspect that sales in the comparison market were made at prices below the cost of producing the merchandise. As a result, the Department initiated investigations to determine whether Dole, TIPCO, SAICO and Malee made third country sales during the POI at prices below their respective cost of productions (COP) within the meaning of section 773(b) of the Act. *See* memorandum from Richard W. Moreland to Barbara R. Stafford, dated October 21, 1994.

A. Calculation of COP

We calculated the COP based on the sum of each respondent's cost of materials, fabrication, general expenses, and third country packing in accordance with 19 CFR 353.51(c). We relied on the submitted COPs, except in the following company specific instances where the costs were not appropriately quantified or valued:

Dole

1. We rejected the respondent's submitted fruit cost allocation methodology and recalculated these costs as described in Comment 7 below.

2. We increased fruit costs to include purchases of pineapple fruit on the last day of the POI, which had been excluded from the submitted fruit cost calculation.

3. We adjusted certain costs incurred prior to the split-off point which were improperly allocated. *See* Comment 7 below.

4. We increased fixed overhead costs to remove a credit which was specifically related to non-subject merchandise.

5. We recalculated other materials costs to reflect the actual packing medium which was used in each product. *See* Comment 17 below.

6. We adjusted fixed overhead and other materials costs for the respondent's incorrect calculation of the activity base used for these costs.

7. We recalculated general and administrative (G&A) expenses using the respondent's 1993 audited financial information. *See* Comment 18 below.

8. For those products where more than one COP value was reported, we calculated an average COP value for the product.

TIPCO

1. We rejected the respondent's submitted fruit cost allocation methodology and recalculated these costs. *See* Comment 7 below.

2. We adjusted certain costs incurred prior to the split-off point which were improperly allocated. *See* Comment 7 below.

3. We recalculated TIPCO's G&A expense factor using the company's annual 1993 audited income statement. *See* Comment 22 below. As part of our calculation, we reduced 1993 G&A costs and increased cost of sales to account for the administrative costs reported as part of cost of manufacture in 1994. The 1993 selling expenses and reclassified administrative costs were approximated using information on the record.

4. We adjusted interest expense to reflect the adjustment to costs of sales discussed above.

5. For those products where more than one COP value was reported, we calculated an average COP value for the product.

SAICO

1. We recalculated SAICO's cost of pineapple fruit in the following manner: (a) We calculated SAICO's pineapple cost using the company's normal cost accounting methodology (*see* Comment 7 below); (b) we recalculated SAICO's plantation growing costs using the company's normal costing methodology with a modification for the allocation of overhead costs between subject and non-subject crops based on direct labor hours; and (c) we recalculated the cost of juice used as a packing medium.

2. We adjusted certain costs incurred prior to the split-off point which were improperly allocated. *See* Comment 7 below.

3. We recalculated SAICO's fixed overhead expense based on the amortization of 1993 shutdown costs over the POI.

4. We recalculated SAICO's G&A rate to account for the omission of board of director fees.

Malee

1. We rejected the respondent's submitted fruit cost allocation methodology and recalculated these costs as described in Comment 7, below.

2. We adjusted fruit cost for the respondent's incorrect calculation of conversion factors.

3. We adjusted certain costs incurred prior to the split-off point which were improperly allocated. *See* Comment 7 below.

4. We increased overhead by including the depreciation effect of foreign exchange losses incurred on purchases of machinery and removing a credit for a reimbursement.

5. We increased G&A expenses to include the G&A expenses of Malee's parent company, which is a holding company with no operations, and inventory write-downs.

6. We adjusted certain COM offsets to reflect amounts which are more directly related to production during the POI. (*See* the Concurrence Memorandum for a further discussion of all of these adjustments.)

7. For those products where more than one COP value was reported, we calculated an average COP value for the product.

B. Test of Third Country Sales Prices

After calculating COP, we tested whether, as required by section 773(b) of the Act, each respondent's third country sales of subject merchandise were made at prices below COP, over an extended period of time in substantial quantities, and whether such sales were made at prices which permit recovery of all costs within a reasonable period of time in the normal course of trade. On a product specific basis, we compared the COP (net of selling expenses) to the reported third country prices, less any applicable movement charges, rebates, and direct and indirect selling expenses. To satisfy the requirement of section 773(b)(1) of the Act that below-cost sales be disregarded only if made in substantial quantities, we applied the following methodology. If over 90 percent of a respondent's sales of a given product were at prices equal to or greater than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." If between ten and 90 percent of a respondent's sales of a given product were at prices equal to or greater than the COP, we discarded only the below-cost sales, provided sales of that product were also found to be made over an extended period of time. Where we found that more than 90 percent of a respondent's sales of a product were at prices below the COP, and the sales were made over an extended period of time, we disregarded all sales of that product, and calculated FMV based on CV, in accordance with section 773(b) of the Act.

In accordance with section 773(b)(1) of the Act, in order to determine whether below-cost sales had been made over an extended period of time, we compared the number of months in which below-cost sales occurred for each product to the number of months in the POI in which that product was sold. If a product was sold in three or more months of the POI, we do not exclude below-cost sales unless there were below-cost sales in at least three months during the POI. When we found that sales of a product only occurred in one or two months, the number of months in which the sales occurred constituted the extended period of time, *i.e.*, where sales of a product were made in only two months, the extended period of time was two months; where sales of a product were made in only one month, the extended period of time was one month. *See Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings from the United Kingdom*, 60 FR 10558, 10560 (February 27, 1995).

C. Results of COP Test

We found that for certain types of CPF more than 90 percent of each respondent's third country sales were sold at below COP prices over an extended period of time. Because neither Dole, TIPCO, SAICO nor Malee provided any indication that the disregarded sales were at prices that would permit recovery of all costs within a reasonable period of time in the normal course of trade, for all U.S. sales left without a match to third country sales as a result of our application of the COP test we based FMV on CV, in accordance with section 773(b) of the Act.

D. Calculation of CV

In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of a respondent's cost of materials, fabrication, general expenses and U.S. packing costs as reported in the U.S. sales database. In accordance with section 773(e)(1)(B)(i) and (ii) of the Act we included: (1) For general expenses, the greater of a respondent's reported general expenses, adjusted as detailed in the "Calculation of COP" section above, or the statutory minimum of ten percent of the cost of manufacture; and (2) for profit, the

statutory minimum of eight percent of the sum of COM and general expenses because actual profit on third country sales for each respondent was less than eight percent. We recalculated each respondent's CV based on the methodology described in the calculation of COP above. In addition, for Malee, we recalculated interest expense using the company's 1993 consolidated financial statements.

Price-to-Price Comparisons

For those products for which there were an adequate number of sales at prices above the COP, we based FMV on third country prices. We calculated FMV according to the methodology described in our preliminary determination, with the following company-specific exceptions:

Dole

1. We excluded a single, small volume sale from the calculation of FMV because we determined this sale was outside the ordinary course of trade. *See* Comment 9 below.

2. We excluded certain sales from our calculation of FMV where Dole knew at the time of sale that the merchandise would be delivered to an ultimate location outside of Germany. For further discussion, see the Concurrence Memorandum.

3. We recalculated credit incurred on sales denominated in deutsche marks using a publicly available representative equivalent of the German prime rate for the POI as the short-term borrowing rate.

4. We recalculated inventory carrying costs using a publicly available representative baht borrowing rate for that period of time the merchandise was held in inventory in Thailand. For that period of time when the merchandise was shipped to and held in inventory in Europe, we used the short-term borrowing rate confirmed at verification. For further discussion, see the Concurrence Memorandum.

5. We used the date of the final determination for all missing payment dates in our calculation of imputed credit.

6. We corrected a clerical error regarding the calculation of pre-sale movement expenses. In addition, we reclassified all movement, import duty, and warehousing expenses associated with certain sales made prior to importation as post-sale expenses. *See* Comment 12 below.

TIPCO

1. We recalculated credit expenses using the interest rate applicable to the currency in which the sale was incurred. For sales denominated in U.S. dollars, the U.S. interest rate was based on TIPCO's dollar denominated short-term loans during the POI. For sales denominated in deutsche marks, we based the interest rate on a publicly available representative German short-term borrowing rate in effect during the POI.

2. We recalculated inventory carrying costs based on the actual cost of manufacture of the inventory, rather than the selling price. In addition, we applied TIPCO's actual baht denominated short-term borrowing rate for the POI.

SAICO

1. We recalculated credit expenses using the interest rate applicable to the currency in which the sale was incurred. Because SAICO had no dollar denominated short-term borrowings during the POI, the U.S. interest rate was based on the average prime rate charged by the 25 largest U.S. banks on short-term business loans for the period January through June 1994.

2. We included one third country sale presented at the start of verification in our calculation of FMV because the quantity involved was insignificant and all the charges and adjustments associated with this sale were verified.

3. We excluded certain sales from our calculation of FMV where SAICO knew at the time of sale that the merchandise would be delivered to an ultimate location outside of Germany. For further discussion, see the Concurrence Memorandum.

Malee

1. We recalculated credit expenses using the interest rate applicable to the currency in which the sale was incurred. Because all sales to the United States and Germany were made in U.S. dollars, the U.S. interest rate was based on Malee's actual weighted-average U.S. dollar denominated short-term borrowing rate in effect during the POI.

2. We recalculated inventory carrying costs based on the actual cost of manufacture of the inventory, rather than the selling price. We applied Malee's actual baht denominated short-term borrowing rate for the POI.

Price-to-CV Comparisons

Where, for TIPCO, SAICO and Malee, we made CV to purchase price comparisons, we deducted from CV the weighted-average third country direct selling expenses and added the U.S. product specific direct selling expenses. We adjusted for differences in commissions in accordance with 19 CFR 353.56(a)(2) as follows:

Where commissions were paid on some third country sales, we deducted from CV both (1) indirect selling expenses attributable to those sales on which commissions were not paid; and (2) commissions. The total deduction was capped by the amount of the commission paid on the U.S. sales in accordance with 19 CFR 353.56(b)(1) (1994). Where no commissions were paid on third country sales, in accordance with 19 CFR 353.56(b)(1), we deducted the lesser of either (1) the amount of the commission paid on the U.S. sale; or (2) the sum of the weighted average indirect selling expenses paid on the third country sales. Finally, the amount of the commission paid on the U.S. sale was added to FMV in accordance with 19 CFR 353.56(a)(2).

Where we compared Dole's ESP transactions to CV, we made deductions for the weighted-average third country direct selling expenses. We also deducted from CV the weighted-average third country indirect selling expenses. This deduction was capped by the amount of U.S. indirect selling expenses, in accordance with 19 CFR 353.56(b) (1) and (2).

Currency Conversion

We made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank of New York, pursuant to 19 CFR 353.60.

Verification

As provided in section 776(b) of the Act, we verified information provided by Dole, TIPCO, SAICO and Malee by using standard verification procedures, including the examination of relevant sales and financial records, and selection of original source documentation containing relevant information.

Interested Party Comments

General Issues

Comment 1

TIPCO, SAICO and Malee argue that if inadequate above-cost sales of a given comparison market model are found as a result of the COP test, the Department should look for another similar model with adequate above-cost sales rather than go directly to CV. Although TIPCO, SAICO and Malee recognize that their arguments are at odds with the Department's Policy Bulletin 92/4, they argue that the Department's policy is flawed and should be changed for this final determination. TIPCO, SAICO and Malee assert that although the statutory definition of "such or similar merchandise" contained in section 771(16) of the Act does not include adequate sales above cost as a criterion of similar merchandise, it does not preclude the Department from making product matches with regard to cost considerations.

In addition, TIPCO, SAICO and Malee contend that, pursuant to *Koyo Seiko Co. v. United States*, 810 F. Supp. 1287, 1290 (CIT 1993), *rev'd on other grounds*, 36 F.3d 1565 (Fed. Cir. 1994), the Department must consider all potential model matches and avoid the use of CV whenever possible. Further, the respondents claim that considering COP in the matching procedure would not be burdensome to the Department because the only additional work would be in switching lines of computer code so that the product matching concordance is applied after, rather than before, the below-cost sales test. Finally, TIPCO, SAICO and Malee argue that the statute strongly favors the use of price-to-price comparisons whenever possible. Therefore, these respondents contend that the Department should base FMV on comparison market prices as long as there are above-cost sales of similar merchandise.

The petitioners argue that the Department's policy with respect to this issue is clear. Specifically, the Department has consistently determined that the statute does not require the exhaustion of all possible model matches before resorting to CV. Furthermore, they argue that the Department has been given broad discretion in making product matching decisions. Finally, the petitioners note that the Department's practice with respect to this issue has been upheld by the Court of International Trade (CIT). *See Zenith Electronics Corp. v. the United States*, 872 F. Supp. 992 (CIT 1994) (*Zenith*).

DOC Position

We agree with the petitioners. The Department's practice is to proceed directly to constructed value if the most similar match fails the cost test. Although section 773(a) of the Act expresses a preference for using the price of such or similar merchandise as the FMV before resorting to CV, section 773(b) of the Act directs the Department to resort immediately to CV if, after disregarding sales below cost, the remaining sales are inadequate as the basis for FMV. *See, e.g., Final Determination of Sales at Less Than Fair Value: Stainless Steel Angle from Japan*, 60 FR 16608, 16616 (March 31, 1995), and *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, et al.; Final Results of Antidumping Duty Administrative Review, Partial Termination of Administrative Reviews, and Revocation in Part of Antidumping Duty Orders*, 60 FR 10900, 10936 (February 28, 1995). Furthermore, the Department's practice on this issue was upheld in *Zenith* where the CIT rejected the argument, similarly made here by the respondents, that if any merchandise meeting one of the definitions of "such or similar" under section 771(16) of the Act survives the cost test, such merchandise would be used for price comparison purposes. *See Zenith*, 872 F. Supp. at 999. As the Court stated, once the product matches are established and the COP test is completed, the Department is not required to reexamine all of the undifferentiated product data in order to make new matches and price comparisons on the basis of whatever subset of lower-ranked such or similar merchandise survives the COP test. The respondents' reliance on *Koyo Seiko* therefore is misplaced. In that case the Court rejected the Department's resorting to CV when initial attempts at most similar model matches failed; the case did not involve resorting to CV due to failure to pass the COP test. *See Zenith*, 872 F. Supp. at 999n.8.

In this proceeding, therefore, the Department properly used CV for those product match comparisons that failed the COP analysis.

Comment 2

The petitioners contend that the Department should include in its calculation of USP the unreported U.S. sales to Puerto Rico made by TIPCO, SAICO and Malee that were presented at or discovered during verification. To derive the expenses associated with these sales, the petitioners argue that the Department should reduce the per unit value for each unreported sale by the highest charges and adjustments reported by each company in the U.S. sales listing. The petitioners contend that the highest deductions are appropriate because shipments to Puerto Rico pass through the Panama Canal thus incurring additional expenses. In addition, for TIPCO the petitioners contend that an additional deduction for certain expenses noted on the invoice is appropriate.

TIPCO, SAICO, and Malee argue that the Department should exclude the unreported Puerto Rican sales from the calculation of USP because these sales account for only an insignificant portion of total U.S. sales during the POI. In the event the Department determines inclusion of these sales is appropriate, TIPCO, SAICO and Malee argue that applying the highest deductions is unwarranted. Malee asserts that the movement and selling expenses it reported for sales to Puerto Rico in its February 2, 1995, submission should be used as the best estimate of charges and expenses for the omitted sales. SAICO argues that Puerto Rican sales incur exactly the same average expenses as other U.S. sales with the same sales terms, thus the average charges and adjustments reported for U.S. sales with the same sales terms should be applied.

DOC Position

We agree with the petitioners that these Puerto Rican sales should be included in the calculation of USP because Puerto Rico is part of the Customs territory of the United States. However, we disagree with the petitioners that it is appropriate to apply the highest deductions to these sales. Based on our findings at verification, we conclude that the omission of these sales was inadvertent. Thus, we are applying the average of all positive margins for each company to each of the unreported Puerto Rican sales as BIA.

Comment 3

TIPCO, SAICO and Malee argue that the Department should calculate imputed credit costs using a weighted average short-term borrowing rate which reflects the currency in which the sale was invoiced. The respondents note that this methodology is consistent with the Department's policy expressed in the *Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings from Thailand*, 60 FR 10552 (February 27, 1995). Malee asserts that the Department should use either the dollar denominated short-term borrowing rate calculated at verification or apply a U.S. dollar short-term interest rate obtained from public information.

TIPCO argues that dollar denominated short-term borrowing rate presented in its case brief should be used to calculate the imputed credit expense for all U.S. dollar and deutsche mark denominated sales. SAICO had no dollar denominated short-term borrowings during the POI.

DOC Position

We agree with TIPCO and Malee, in part. We have applied the actual weighted-average dollar denominated short-term borrowing rates calculated for Malee and TIPCO to all U.S. and German sales invoiced in U.S. dollars. Because SAICO had no dollar denominated borrowings during the POI, we are applying, as a publicly available representative U.S. dollar short-term interest rate, the average

prime rate charged by the 25 largest U.S. banks on short-term business loans for the period January through June 1994.

We disagree, with TIPCO, however, that it is appropriate to apply a dollar rate to those German sales invoiced in deutsche marks. Because these German sales are deutsche mark-denominated transactions, it is appropriate to apply a deutsche mark-denominated short-term borrowing rate to determine the credit costs associated with these transactions. Because TIPCO had no deutsche mark-denominated borrowings during the POI, we have applied a publicly available representative German short-term borrowing rate for the POI.

Comment 4

SAICO, Malee, and the petitioners request that a number of corrections presented at, and found during, the sales verifications should be incorporated into the Department's calculations of the final margins.

DOC Position

All corrections listed in the respondents' and the petitioners' case briefs with respect to the sales were confirmed on-site at verification and were incorporated in the Department's calculation of the final margin.

Comment 5

TIPCO, SAICO, and Malee argue that a particular proprietary payment should be allowed as an adjustment to COP and CV. Alternatively, if the Department chooses to disallow these payments for purposes of computing costs, the three respondents claim that the payments should be treated as sales price adjustments.

The petitioners believe that no adjustment should be made for the payments because the Department did not verify that these payments were related in any way to the production of CPF.

DOC Position

Because of the business proprietary nature of this item, we have addressed the parties' comments and analyzed the issue in detail in the proprietary concurrence memorandum. Our determination was to allow the payments as an offset to the respondents' submitted COP and CV figures.

Comment 6

Each of the four respondents claims that providing accurate cost information is not the main purpose of its normal fruit cost allocation methodology; rather each company's allocation methodology was devised to achieve certain managerial goals. The respondents argue that their normal allocation methodologies therefore result in the misallocation of fresh pineapple fruit costs and generate cost figures that bear no relationship to the actual costs incurred.

Consequently, each respondent submitted alternative fruit cost methodologies, based on the relative weight of fresh pineapple fruit in CPF and juice products, that result in a lower fruit cost being allocated to CPF. According to the respondents, use of a weight-based fruit cost allocation methodology is appropriate in the context of this antidumping proceeding because it is based on a non-distortive, neutral, physical criterion, *i.e.*, weight. Dole also argues that its submitted methodology is consistent with its treatment of other shared operating and overhead costs, which are allocated among products on the basis of weight. Furthermore, the respondents argue that use of a weight-based methodology is appropriate because the petitioners use such a methodology for tax purposes, elevating the practice to an acknowledged and accepted industry norm.

In addition to arguing that their normal fruit cost allocation methodologies are inappropriate, the respondents argue that use of a value-based methodology also would be inappropriate. One respondent, in particular, argues that although its normal allocation methodology is based on an estimate of relative sales value, such a methodology is inappropriate under general accounting principles. According to the respondents, *Cost Accounting: A Managerial Emphasis* (Horngren and Foster 1987) (*Cost Accounting*) indicates that use of value-based allocations is discouraged in a rate-regulated setting because "it is circular reasoning to use selling prices as a basis for determining a selling price." The respondents argue that if the Department uses its normal value-based allocation of pineapple fruit costs, dumping margins would fluctuate because of changes in juice and concentrate prices.

All four respondents argue that a value-based allocation is also legally impermissible under the precedent established in *IPSCO v. United States*, 965 F.2d 1056 (Fed. Cir. 1992). The respondents contend that in *IPSCO* the Court of Appeals for the Federal Circuit held that value-based allocations inappropriately shift costs actually incurred with respect to one co-product onto another co-product. Furthermore, Dole and Malee suggest that a value-based allocation, which would result in values being assigned to the various parts of the pineapple (*i.e.*, the shell, the core, the ends, and the cylinder), is inappropriate because they themselves do not assign values to the various parts of the fruit and because pineapples are purchased in their entirety on a per-kilogram basis.

Finally, the respondents argue that a value-based methodology would provide a loophole for companies to manipulate dumping margins. According to the respondents, a company could reduce CPF prices in non-comparison markets or in the U.S. market, or could increase prices of non-subject merchandise, any of which actions would reduce the relative sales value of the subject merchandise, thereby resulting in a reduction of allocated costs. A reduction in allocated costs, according to respondents, would result in some comparison market models surviving a below-cost sales test or in a reduction of constructed value when comparison market models remain below cost.

The petitioners argue that Department precedent supports the use of the respondents' normal cost allocation methodologies for calculating COP and CV. *See, e.g., Final Determination of Sales at Less Than Fair Value Certain Hot-Rolled Carbon Steel Flat Products and Certain Cut-To-Length Carbon Steel Plate from Korea*, 48 FR 37176 (July 9, 1993) (Department adjusted the submitted data to reflect information calculated under the respondent's normal accounting system). The petitioners contend that respondents' normal allocation methodologies have been accepted by the companies' auditors as reasonable and, in turn, have been used to produce audited financial statements which are relied upon by lenders, shareholders, and Thai tax authorities. Accordingly, the petitioners argue, the respondents' normal allocation methodologies must have some factual basis to them or they would not be accepted by these parties.

With respect to the one respondent's argument that general accounting principles discourage the use of value-based cost allocations in regulatory pricing situations, the petitioners note that the reference to the Horngren and Foster text is misplaced in this investigation because the CPF industry is not regulated. The petitioners agree, however, that if the CPF industry were regulated, sales value allocations might be distortive because prices would not be set by the marketplace.

In addition, the petitioners argue that the Department should not consider the respondents' weight-based allocation methodology as an acceptable alternative to their normal fruit cost allocation methodologies. In previous cases, petitioners note, the Department has recognized that weight-based allocations may be inappropriate. *See, e.g., Final Determination of Sales at Less Than Fair Value: Certain Carbon and Alloy Steel Wire Rod from Canada*, 59 FR 18791, 18795 (April 20, 1994) (Department determined that weight was an inappropriate allocation basis, stating that the "use of tonnage to allocate melt shop costs, as petitioner suggests, would result in the same cost per ton regardless of the grade of steel"). Furthermore, the petitioners note that none of the respondents use the submitted weight-based methodology in their normal course of business, nor do they use it for any internal decision-making. The petitioners claim that if the submitted allocation was accurate, the respondents would certainly maintain internal reports showing such a weight-based allocation, yet they do not. In addition, the petitioners state that they are not aware of any CPF producer anywhere that allocates fruit costs based on weight in its normal accounting system. (The petitioners acknowledge using weight as the basis for calculating fruit costs for tax purposes, but note that their financial and cost accounting systems use value-based allocations. The petitioners argue that, contrary to the respondents' claims, the use of a weight-based allocation for tax purposes does not establish it as an industry standard practice.)

Additionally, the petitioners claim that a weight-based allocation does not make sense in situations such as this one where the respondents' production processes assign values to various parts of the pineapple, depending upon the product being produced, *i.e.*, CPF or juice products. As a result, it makes no sense to use a volume-based allocation ratio to calculate costs of production for products that are produced using a value-based production process.

The petitioners argue, therefore, that a value-based allocation is appropriate for use in the instant investigation where the raw material has different parts with very different values. The petitioners cite *Cost Accounting* at 534 (Horngren, 5th ed. 1980) for the proposition that "[t]he majority of accountants * * * support allocation in proportion to some measure of the relative revenue-generating power identifiable with the individual products." Furthermore, the petitioners argue that *IPSCO* is not controlling in the instant proceeding because the facts in *IPSCO* are significantly different from the facts in this investigation.

Finally, the petitioners maintain that the potential dumping consequences suggested by the respondents are illogical. No company would decrease prices of subject merchandise in non-subject countries in order to affect the dumping margins in the United States because this would reduce profits in those countries. Neither would a company reduce U.S. prices in an attempt to reduce dumping margins because they would risk increasing these margins. The petitioners argue that the respondents would not increase concentrate prices, to allocate fruit costs away from subject merchandise because this would adversely affect their market share.

DOC Position

The legislative history of the COP statute states that "in determining whether merchandise has been sold at less than cost (the Department) will employ accounting principles generally accepted in the home market of the country of exportation if (the Department) is satisfied that such principles reasonably reflect the variable and fixed costs of producing the merchandise." H.R. Rep. No. 571, 93d Cong., 1st Sess. 71 (1973). Accordingly, the Department's practice is to adhere to an individual firm's recording of costs in accordance with GAAP of its home country if the Department is satisfied that such principles reasonably reflect the costs of producing the subject merchandise. *See, e.g., Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from South Africa*, 60 FR 22556 (May 8, 1995) ("The Department normally relies on the respondent's books and records prepared in accordance with the home country GAAP unless these accounting principles do not reasonably reflect the COP of the merchandise"). The Department's practice has been sustained by the CIT. *See, e.g., Laclede Steel Co.* v. *United States*, Slip Op. 94–160 at 21–25 (CIT October 12, 1994) (CIT upheld the Department's decision to reject the respondent's reported depreciation expenses in favor of verified information obtained directly from the company's financial statements that was consistent with Korean GAAP).

Normal accounting practices provide an objective standard by which to measure costs, while allowing the respondents a predictable basis on which to compute those costs. However, in those instances where it is determined that a company's normal accounting practices result in an unreasonable allocation of production costs, the Department will make certain adjustments or may use alternative methodologies that more accurately capture the costs incurred. *See, e.g., Final Determination of Sales at Less Than Fair Value: New Minivans from Japan*, 57 FR 21937, 21952 (May 26, 1992) (Department adjusted a company's U.S. further manufacturing costs because the company's normal accounting methodology did not result in an accurate measure of production costs).

In the instant proceeding, the respondents want the Department to reject their normal allocation methodologies in favor of alternative methodologies reported during the investigation. As noted, however, the Department's practice is to rely on a respondent's books and records prepared in accordance with its home country GAAP unless these accounting principles do not reasonably reflect costs associated with production of the subject merchandise. As a result, before analyzing any alternative allocations or accounting methodologies reported by a respondent during the proceeding, the Department will determine whether it is appropriate to use the respondent's normal allocation methodologies.

In the instant proceeding, therefore, the Department examined whether each respondent's normal fruit cost allocation methodology was reasonable. In examining each respondent's books and records at verification we found that each company had used its recorded fruit cost allocation methodology for at least a number of years. Furthermore, we found no evidence that each respondent had not relied historically upon its recorded allocation percentages to compute its production costs. In addition, evidence on the record, *i.e.*, audited financial statements, indicates that each respondent's normal allocation methodology was accepted by its independent auditors. Given the auditors' acceptance of the respondent's financial statements and any lack of evidence to the contrary, we conclude that each respondent's normal allocation methodology is consistent with generally accepted accounting principles practiced in Thailand.

Given the fact that each respondents' allocation methodology is consistent with Thai GAAP, we will accept each respondent's normal allocation methodology unless the methodology results in allocations that do not reasonably reflect the costs associated with production of CPF. The respondents have argued that their normal allocation methodologies do not reasonably reflect costs because the methodologies were designed to achieve certain managerial goals as opposed to providing accurate cost information.

While the reasons cited by the respondents for employing the allocation methodologies may have been factors in their selection, this does not necessarily make such methodologies, or the resulting allocations, unreasonable.

In *Hercules, Inc. v. United States*, 673 F. Supp. 454 (CIT 1987), for example, the Court upheld the Department's decision to rely on COP information from respondent's normal financial statements maintained in conformity with GAAP. The respondent, SNPE, had argued that the accelerated depreciation method employed in its financial statements and records was for tax purposes and did not accurately reflect SNPE's actual costs. Consequently, SNPE submitted recalculated depreciation expenses under a straight-line methodology. The Department rejected SNPE's alternate allocation methodology, which was based on unverifiable allegations that straight-line depreciation methodology would more accurately reflect the actual costs, in favor of the information contained in SNPE's verified normal records and audited financial statements. *See Hercules*, 673 F. Supp. at 490–91.

In the instant investigation, the respondents' arguments that their normal allocation methodologies are based on certain managerial goals and therefore do not accurately reflect actual costs are similarly unpersuasive. An accounting methodology designed to achieve certain managerial goals does not *necessarily* imply that the employed methodologies result in an unreasonable reflection of costs, particularly where a company's accounting methodology had been approved by independent auditors. In addition, as discussed in the paragraphs below concerning the respondents' alternative allocation methodologies, the respondents have failed to demonstrate that their unverifiable alternative methodologies are a more reliable source of reasonable fruit cost allocations than their verified books and audited financial records.

Based on the foregoing, we have adjusted Malee's, SAICO's, and TIPCO's submitted fruit costs to reflect the allocations as calculated and verified under each company's normal accounting system. Their normal allocation methodologies are consistent with Thai GAAP and appear to reasonably allocate fruit costs to CPF. Furthermore, the respondents have provided insufficient, if any, evidence to the contrary. In addition, as discussed below, the respondents have failed to demonstrate that their unverifiable alternative methodologies are a more reliable source of reasonable fruit cost allocations than their verified books and audited financial records.

Notwithstanding the Department's conclusion that the respondents' normal fruit cost allocation methodologies are in accordance with Thai GAAP and the Department's rejection of the respondents' arguments concerning the managerial goals of their normal allocation methodologies, the Department determines that in light of the practices followed by the other three respondents in this investigation, Dole's normal allocation methodology results in an unreasonable allocation of fruit costs to CPF. Due to the proprietary nature of the facts at issue, our entire analysis of Dole's normal allocation methodology is contained in the proprietary version of our concurrence memorandum dated May 26, 1995.

Thus, we have determined that because Dole's allocation does not "reasonably reflect" the cost of producing the merchandise, we cannot employ that allocation in our COP analysis. Given that Dole's normal methodology results in an unreasonable allocation of fruit costs to CPF, the Department must determine what would constitute a reasonable allocation of fruit costs. A reasonable fruit cost allocation methodology would be one which reflects the significantly different quality of the fruit parts which are used in the production of CPF versus those which are used in the production of juice products. One approach to deriving such an allocation methodology would be to compare the net realizable value of the CPF versus juice products over a period of years. Net realizable value (NRV) is commonly defined as the predicted selling price in the ordinary course of business less reasonably predictable costs of completion and disposal. *See Cost Accounting* at 534. Ideally, such a NRV methodology would compare historical cost and sales data for pineapple fruit products over a period encompassing several years prior to the antidumping proceeding and also would include data for markets where allegations of dumping have not been lodged.

While it would have been preferable to develop an allocation methodology based on historical NRV data in order to reasonably allocate Dole's fruit costs to CPF, we were unable to do so in this investigation because the data were not available and we did not present Dole with an alternative methodology for allocating fruit costs. However, we intend to do so in any future administrative reviews if an order is issued. *Cf. Final Determination of Sales at Less Than Fair Value: Fresh Cut Roses from Ecuador*, 60 FR 7019, 7026 (February 6, 1995) (Department determined that it would have been preferable to disaggregate rose costs but the data were not available and the Department did not present respondents with an alternative methodology). Such a methodology would enable us to reasonably allocate Dole's fruit costs to CPF, but would not require them to change their method of recordkeeping.

Given the fact that the record in this investigation does not contain the data necessary to develop an allocation methodology for Dole based on its historical NRV data, for our final determination, we have allocated Dole's pineapple fruit costs based upon an average of the proprietary fruit cost allocation percentages used by Malee, SAICO, and TIPCO in their normal accounting systems.

As discussed above, the Department's practice is to rely on a respondent's books and records prepared in accordance with its home country GAAP *unless* those accounting principles do not reasonably reflect costs associated with production of the subject merchandise. Although we have relied on Malee's, SAICO's and TIPCO's normal fruit cost allocation methodologies and have based Dole's fruit costs upon the other three respondents' normal fruit cost allocation methodologies, we also will address the respondents' alternative, weight-based allocation methodologies.

Each of the respondents have argued that a weight-based methodology is appropriate in the context of this investigation because it is based on a non-distortive, neutral, physical criterion, *i.e.*, weight. We believe, however, that allocating the cost of pineapple evenly over the weight is not supportable. Using weight alone as the allocation criteria sets up the illogical supposition that a load of shells, cores, and ends cost just as much as an equal weight of trimmed and cored pineapple cylinders. Significantly, the use of physical weighting for allocation of joint costs, *i.e.*, in this case the cost of the pineapple fruit, may have no relationship to the revenue-producing power of the individual products. Thus, for example, if the joint cost of a hog were assigned to its various products on the basis of weight, center-cut pork chops would have the same unit cost as pigs' feet, lard, bacon, ham, and so forth. Fabulous profits would be shown for some cuts, although losses consistently would be shown for other cuts. *See Cost Accounting: A Managerial Emphasis* at 533.

Much like the hog in the previous example, the pineapple is comprised of various parts, *i.e.*, the cylinder, core, shells, etc., with significantly different uses and values. Because the parts of the pineapple are not interchangeable when it comes to CPF versus juice production, it would be unreasonable to value all parts equally by using a weight-based allocation methodology.

We also note that authoritative accounting literature provides examples of cost allocations in the canning industry dependent on two factors, a quantitative factor and a qualitative factor. *See Management Accountants' Handbook* (Keller 4th ed.) at 11:13, citing "Cost and Sales Control in the Canning Industry", N.A.C.A. Bulletin, Vol. 36 (November 1954) at 376. The output of finished products can be captured in the quantitative measure, which is used to allocate the direct preparation labor costs and other costs directly related to the quantity of raw fruit processed. The difference in the relative quality of the fruit used in each product is reflected in a qualitative factor, which is used to allocate the purchase cost of raw materials among products. The various grades or parts of the fruit are assigned a factor reflective of the quality of the fruit used for each product. With all of this in mind, we believe it is inappropriate to allocate fresh pineapple fruit costs to the various pineapple products solely on the basis of weight.

The respondents have also argued that value considerations are inappropriate because the purchased pineapples have a uniform value throughout and, therefore, the cost of pineapple properly should be allocated based on consumed weight. Based on verification testing and our review of the record in this case, however, we believe that CPF producers strive first to maximize production of the more valuable canned fruit products and second, to maximize revenue from the remaining raw material through the production of juice and concentrate. As such, the respondents place a higher value on the raw material which may be used in the production of subject merchandise. As evidence of this, we noted that the respondents pay a lower price to pineapple suppliers that deliver small fruit. Though two shipments may contain in total the same weight of fresh pineapple, a vendor that delivers smaller fruit will be paid less than one that delivers fruit of a larger size. This is because the smaller pineapples will yield a smaller cylinder of quality pineapple fruit which can be used in CPF production.

Accordingly, we reject respondents' claim that, although it is true that during the POI the sales value of canned pineapples was higher on a per-kilogram basis than that of juice or concentrate, that does not mean that the pineapples used to make the canned pineapples were more expensive than those used to make the juice or concentrate. We do acknowledge that the purchased quantities of small fruit used exclusively in juice production were not significant during the POI, but the existence of a "penalty" for small fruit indicates a lower value for such items.

As discussed above, the respondents have also claimed that a value-based allocation methodology is legally impermissible pursuant to *IPSCO*. Contrary to the respondents' arguments, however, *IPSCO* is not controlling in this case. Nor does *IPSCO* stand for the proposition that in every instance value-based allocations are legally impermissible.

IPSCO involved the Department's use of an appropriate methodology for allocating costs between two *grades* of steel pipe. There were no physical differences between the two grades of pipe, only differences in quality and market value. *IPSCO*, 965 F.2d at 1058. Furthermore, the same materials, labor, and overhead went into the manufacturing lot that yielded both grades of pipe. *Id.* Given these facts, the Department, in its final determination, allocated production costs equally between the two grades of pipe. The Department reasoned that because they were produced simultaneously, the two grades of pipe in fact had identical production costs. *Id.* The CIT rejected the Department's allocation methodology, reasoning that it did not account for differences in value between the two grades of pipe. On appeal, the Court of Appeals for the Federal Circuit held that the CIT erred by substituting its own construction of a statutory provision for the reasonable interpretation made by the Department, *i.e.*, identical production costs. *Id.* at 1061.

While the Court of Appeals noted that the CIT's instructions to allocate costs based on relative value in *IPSCO* resulted in an unreasonable circular methodology (*i.e.*, because the value of the pipe became a factor in determining cost which became the basis for measuring the fairness of the selling price of pipe), nowhere did the appellate court indicate that use of an allocation methodology based on relative value was legally impermissible. On the contrary, *IPSCO* suggests that the courts will defer to the Department's preference for reliance on respondents' normal allocation methodologies, particularly where there are significant differences in the raw materials, *i.e.*, the use of the cylinder in production of CPF and the use of the shells, cores, and ends, in production of juice and concentrate, as well as differences in processing, labor and overhead. Our reasoning here is consistent with *IPSCO* as well as the applicable legislative history. As a result, respondents' reliance on *IPSCO* is misplaced. We also find the respondents' references to the inappropriateness of value-based allocations in a rate-regulated environment to be irrelevant because there is no evidence on the record to suggest that either the subject merchandise or the juice products are sold in a rate-regulated environment.

We have also considered the respondents' comments regarding potentially undesirable consequences of a value-based allocation and find that such scenarios are unlikely to actually take place. However, as with any allocation methodology chosen by the Department, there exists the potential for respondents to manipulate the allocations in opposition to the Department's intent. The respondents' argument that it will be possible to reduce the dumping margin by reducing their prices of subject merchandise in the United States and increasing their prices of non-subject merchandise is misleading. Because it would be most reasonable to base measures of net realizable value upon long term historical data, it is unclear how respondents could use this information to restructure their past results. However, the Department would, of course, continue to review this information closely through the administrative review process. Thus, we believe that this scenario is unlikely as such action would likely result in lower profits on subject merchandise sales (possibly raising the dumping margin) and reduced market share for non-subject merchandise. We also believe it would be inappropriate for the Department to choose a particular course of action based on an argument that in its essence states, if the Department picks a particular methodology we, the respondents, will take advantage of loopholes in that methodology.

Finally, we disagree with the respondents' claim that petitioners' use of a weight-based allocation for fruit cost establishes that method as industry standard practice. The fact that the petitioners use weight as a basis for income tax purposes is not persuasive. We also note the dichotomy in respondents' reasoning that their own tax (and book) methodology must be rejected, while arguing that petitioners

tax accounting records should be controlling. We also note that the respondents did not provide any examples of companies that use weight-based fruit cost allocations as the basis for financial or managerial reporting.

Comment 7

Each respondent claims that its normal accounting method of allocating certain costs incurred prior to the split-off point of the CPF and juice production lines results in distortive and inappropriate cost of production figures.

The petitioners argue that the Department should rely on the respondent companies' normal accounting for these costs.

DOC Position

Because of the proprietary nature of this item, we have addressed the parties' comments and analyzed the issue in detail in our proprietary concurrence memorandum. For TIPCO, SAICO, and Malee, our determination was to allocate the costs following the companies' normal methodology for allocating pineapple fruit costs. For Dole, we allocated the costs using the average of the other three respondents' normal fruit cost allocation percentages, consistent with our determination in Comment 6 above.

Company Specific Issues

Dole

Comment 8

The petitioners argue that the methodology used by the Department in its preliminary determination to calculate a dumping margin for Dole based on an estimated quantity of its U.S. sales of Thai-origin merchandise is biased. Specifically, the petitioners contend that this methodology fails to take into account the fact that prices vary within UPC categories because Dole's Philippine-sourced merchandise is sold at a lower price than its Thai-sourced merchandise. In order to apply a methodology that is less distortive and more accurate, the petitioners assert that the Department should calculate one overall Thai-to-Philippine shipment ratio and apply this ratio to the total amount of potential uncollectible dumping duties (PUDD) calculated for all UPC codes.

Dole asserts that no possible distortion could arise from the methodology used by the Department in its preliminary determination. Although prices vary within a given UPC code, Dole argues that there is no correlation between the sales price and the country of origin because the selling price is based on contract prices and standard price lists that do not distinguish between Philippine- and Thai-sourced merchandise. Therefore, Dole asserts that any possible dumping attributable to imports from Thailand is directly related to the volume of imports sourced from Thailand.

DOC Position

We agree with Dole, in part. At verification we confirmed that Dole sells both its Thai- and Philippine-origin merchandise at the same price in the United States. Therefore, the petitioners' assertion that Dole's Philippine-sourced sales were sold at prices lower than its Thai-sourced sales is unfounded. In addition, contrary to the petitioners' assertion, the application of a single shipment ratio to the total PUDD for all sales would be distortive because this approach assumes that the shipment ratio between Thai- and Philippine-sourced merchandise is constant across all UPCs. This is not true. The shipment data confirmed at verification shows that the ratio of Thai- to Philippine-sourced merchandise varied immensely between UPCs. The petitioners' approach blurs the vast differences between these UPC shipment ratios.

In order to calculate a less than fair value margin based on an estimated quantity of Dole's U.S. sales of Thai-origin merchandise during the POI, we have continued to weight average the dumping margin for each UPC product category by the ratio of shipments of subject merchandise from Thailand to the total volume shipped from both Thailand and the Philippines during the last seven accounting periods of 1993. In calculating the ratios, we excluded all negative shipment quantities reported by Dole because these quantities do not represent actual shipments during the second half of 1993. Instead, these quantities reflect the reclassification of merchandise from one UPC category to another.

Comment 9

Dole argues that the Department's preliminary margin is grossly distorted due to the inclusion of a single, aberrant third country sale. Dole asserts that this sale is outside the ordinary course of trade and should be excluded from the Department's calculation of FMV for the following reasons: (1) The sale was of a product type sold only once in the third country market during the POI; (2) the sale constituted a negligible portion of the third country database; (3) the sale was not to a regular customer; (4) the terms of sale were uncommon for the third country market; and (5) the selling price was abnormally high when compared to the average selling price for other products of the same can size during the POI.

In addition Dole argues that if it were subject to an antidumping order, it would not need to raise its U.S. prices or lower its German prices to avoid the imposition of dumping duties. Therefore Dole asserts that no purpose would be served by an antidumping duty order if it were to be based on this sale. In support of its position Dole cites *Melamine Chemicals, Inc.* v. *United States*, 732 F.2d 924 (Fed. Cir. 1984) (*Melamine Chemicals*), where the Court of Appeals emphasized that the purpose of the antidumping law is "to discourage the practice of selling in the United States at LTFV * * *. That purpose would be ill-served by application of a mechanical formula to find LTFV sales where none existed."

The petitioners argue that this sale is not outside of the ordinary course of trade and should be included in the calculation of FMV. The petitioners contend that the terms of sale were not unusual because the same sales terms were offered on numerous third country sales during the POI. In addition, the petitioners assert that the customer was regular because Dole made several sales to this same customer during the POI. Finally, the petitioners contend that Dole's assertion that the selling price for this sale was abnormally high is misleading because sales made at prices below the COP were included in Dole's calculation of the average selling price for this can size. The petitioners argue that the fact that this sale was sold at a higher price than sales sold at prices below the COP does not provide evidence that the price is aberrational.

DOC Position

We agree with Dole that the sale was outside the ordinary course of trade as defined in section 771(15) of the Act and have excluded it from the calculation of FMV. We agree with the petitioners that the customer and terms of sale associated with this sale were not unique. Further, Dole's reliance on Melamine Chemicals is misplaced. *Melamine Chemicals* involved the issue of whether the Department's issuance and application of a regulation concerning exchange rate fluctuations during a less than fair value investigation was lawful. Notably, the sentence immediately following the ones quoted by Dole states, "A finding of LTFV sales based on a margin resulting *solely* from a factor beyond the control of the exporter would be unreal, unreasonable, and unfair." *Melamine Chemical*, 732 F. 2d at 933 (emphasis in original). However, after reviewing all aspects of the sale, we have determined that this sale was outside of the ordinary course of trade and have excluded it from the calculation of FMV.

In determining whether a sale is outside the ordinary course of trade, the Department does not rely on one factor taken in isolation, but rather considers all of the circumstances particular to the sale in question. *See Murata Mfg. Co. v. United States*, 820 F. Supp. 603, 606 (CIT 1993). Furthermore, our analysis of these factors is guided by the purpose of the ordinary course of trade provision, namely to prevent dumping margins from being based on sales which are not representative of home market or third country sales. *See Monsanto Co. v. United States*, 698 F. Supp. 275, 278 (CIT 1988). After reviewing all aspects of this sale, we found the following facts, taken as a whole, determinative: (1) Dole's single third country sale of this product constituted an insignificant portion of its total German sales volume; (2) the sale was of a product that was sold only once during the POI; (3) the sales quantity was significantly lower than the average sales quantity for the POI; (4) the sales price was significantly higher than the average sales price charged on other CPF products sold in the same can size during the POI; (5) the profit margin realized by Dole on this particular sale was substantially higher than the weighted-average profit earned on other sales of CPF in this can size during the POI; and (6) there was only one customer for this product in the third country market during the POI. *See generally Cemex, S.A. v. United States*, Slip Op. 95–72 at 6–14 (CIT April 24, 1995)(factors considered included lack of market demand, volume of sales, sales patterns, shipping arrangements, and relative profitability between models), and *Mantex, Inc. v. United States*, 841 F. Supp. 1290, 1305–09 (CIT 1993) (factors considered included volume and frequency of sales, demand, product use, and relative profitability). The facts provide the basis for our finding that this one sale was outside the ordinary course of trade.

Comment 10

Dole argues that the Department's uneven treatment of pre-sale movement and import duty expenses associated with third country and ESP transactions in the preliminary determination was unfair and at odds with the Department's policy of making "mirror-image adjustments to FMV and ESP so that they can be fairly compared at the same point in the chain of commerce." *See Koyo Seiko Co. v. United States*, 36 F. 3d 1565, 1573 (Fed. Cir. 1994) (Koyo Seiko). Dole notes that the antidumping statute provides for such mirror-image adjustments through the circumstance of sale (COS) adjustment.

Dole argues that the Court of Appeals holding in *Koyo Seiko* regarding the COS and ESP offset provisions was not limited by its decision in *The Ad Hoc Committee of AX-NM-TX-FL Producers of Gray Portland Cement v. United States*, 13 F.3d 398 (Fed. Cir. 1994) (*Ad Hoc Committee*). Dole asserts that the *Ad Hoc Committee* decision addressed the issue of pre-sale movement expenses incurred in connection with home-market sales, and only with regard to FMV where U.S. price is based on purchase price sales. Dole claims that it could not have been the intent of Congress for significant costs such as those incurred for ocean freight and import duties to be ignored when third country sales are used to calculate FMV.

Dole argues that all import duty and movement expenses incurred on its third country sales should be deducted under the COS provision as direct expenses for the following reasons: (1) In accordance with 19 CFR 353.56(a)(1), there is a *bona fide* difference in the COS between U.S. and third country sales made on an ex-warehouse basis; (2) movement and import duty expenses are directly related to the third country terms of sale because the terms call for delivery from Dole's European warehouse; (3) transportation costs are variable, not fixed, and as such are directly related to sales; (4) pre-sale warehousing expenses are directly related to sales because it is necessary to hold the inventory in forward warehouses in order to ensure that the merchandise is available within the delivery times required under the terms of the sales agreement; and (5) *Import Policy Bulletin 94.6* states that movement expenses are a direct cost of making the sale, and are always deducted from the price.

The petitioners argue that the Department properly classified the import duty and movement expenses associated with Dole's third country sales made on an ex-warehouse or delivered basis as indirect selling expenses. The petitioners assert that the costs incurred by Dole for duty and movement expenses would have been incurred whether or not any individual sale had ever taken place and, therefore, cannot be directly associated with individual sales.

DOC Position

In The *Ad Hoc Committee*, the Court held that the Department could not deduct home market pre-sale movement charges from FMV based on its inherent authority to apply reasonable interpretations in areas where the antidumping law is silent. Instead we will adjust for these expenses under the COS provision of the Department's regulations (19 CFR 353.56). Pursuant to the COS provision, the Department will make an adjustment to FMV only if the expenses are determined to be directly related to the sales under investigation. To determine whether pre-sale movement expenses are direct, the Department examines the respondent's pre-sale warehousing expenses because the pre-sale movement charges incurred in positioning the merchandise at the warehouse are considered, for analytical purposes, to be linked in most instances to pre-sale warehousing expenses. *See, e.g., Ad Hoc Committee of AZ-NM-TX-FL Producers v. United States*, Slip Op. 95–91 at 3–9 (CIT May 15, 1995). Typically the Department treats expenses associated with inventory that is held for purposes of production planning and being able to ship the merchandise quickly with a regular turnover as indirect selling expenses because this inventory is maintained by the company as a service to all customers. *See, e.g., Carbon Steel Wire Rod from Trinidad and Tobago*, 46 FR 43206 (September 22, 1983). In limited circumstances, however, the Department does recognize certain pre-sale expenses as direct. For freight and warehouse expenses, those circumstances usually involve products channeled or customized for certain buyers. *See, e.g., Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar from Italy*, 59 FR 66921, 66928 (December 28, 1994) (allowing COS adjustment where pre-sale warehousing expenses incurred for designated amount of subject merchandise with certain specifications for particular customers); *Final Determination of Sales at Less Than Fair Value: Polyethylene Terephthalate Film, Sheet, and Strip from Japan*, 56 FR 16300, 16303 (April 22, 1991) (allowing COS adjustment for pre-sale warehousing expenses found to be directly related to sales on the basis that expenses were incurred and reported for specific products sold to specific customers); and *Final Determination of Sales at Less Than Fair Value: Calcium Aluminate Cement, Cement Clinker and Flux from France*, 59 FR 14136 (March 25, 1994) (respondent demonstrated that specific products were held in a warehouse for specific customers and that the stock in question was only available for sale to those specific customers).

In the instant proceeding, Dole reported two types of third country warehousing expenses: (1) Those

associated with moving the merchandise "in and out" of the warehouse; and (2) warehouse storage charges. Based upon our review of the evidence on the record, we are not satisfied that Dole has provided evidence to substantiate its claim that either pre-sale warehousing expense is directly linked to the sales under investigation. These pre-sale expenses do not appear to be direct expenses for the following reasons: (1) The amount of time that passes between the date the merchandise arrives at the European warehouse and the date it is shipped to the third country customer; (2) in most instances the third country sales were made from inventory, as demonstrated by the fact that the date of sale and the date of shipment are the same, *i.e.*, the fact that the merchandise was sold from inventory demonstrates that the warehousing was pre-sale; (3) the merchandise held in the European warehouses is not pre-designated for sale to a specific customer; (4) the merchandise sold from inventory was not specialty merchandise, but instead commercial products sold in the normal course of trade in Germany; (5) the merchandise that was held in inventory was sold to numerous third country customers during the POI; (6) Dole incurs the cost of pre-sale warehousing expenses, not the customer, *i.e.*, these expenses are not post-sale warehousing expenses because if they were post-sale, the customer would have to incur the cost of the post-sale warehousing; and (7) in its questionnaire response Dole did not claim the warehouse storage charges as direct selling expenses; rather, Dole characterized warehouse storage costs as indirect expenses.

As noted above, pre-sale movement charges incurred in positioning the merchandise at the warehouse generally are linked to pre-sale warehousing expenses. Therefore, because we have found Dole's third country pre-sale warehouse expenses to be indirect, the expenses involved in moving the merchandise to the warehouse also must be indirect. We do not have the option of treating comparable expenses on U.S. sales as indirect in nature because such sales are ESP sales, and section 772(d)(2)(A) of the Act clearly requires the deduction of such expenses in arriving at USP.

Comment 11

Dole argues that in the event the Department concludes that the third country pre-sale movement and import duty expenses are indirect selling expenses, the Department must similarly characterize identical U.S. movement and import duty expenses as indirect expenses. Dole asserts that 19 CFR 353.56(b)(2) defines the pool of U.S. expenses used to calculate the "ESP cap" in the same terms it uses to define the pool of third country expenses subject to the cap. Therefore, Dole contends that the Department is unjustified in categorizing pre-sale movement expenses as "directly related" to U.S. sales while finding the same group of expenses to be indirectly related to third country sales.

The petitioners assert that under 19 CFR 353.41(d)(2)(i), "any cost and expenses, and United States import duties incident to bringing the merchandise from the place of shipment in the country of exportation to the place of delivery in the United States" must be subtracted from USP. Therefore, the petitioners argue that under the law, U.S. movement and duty expenses cannot be classified as selling expenses, but instead must be subtracted directly from USP.

DOC Position

We agree with the petitioners. Pursuant to section 772(d)(2)(A) of the Act, to treat these expenses as indirect expenses would be clearly contrary to the antidumping law.

Comment 12

Dole contends that the Department made the following clerical errors in its preliminary determination: (1) The Department improperly classified import duty and movement expenses associated with two third country sales made prior to importation as pre-sale rather than post-sale expenses; (2) the Department incorrectly classified freight expenses associated with moving the merchandise between Dole's European warehouse and the German customer as pre-sale rather than post-sale expenses; and (3) the Department inadvertently deducted the swells allowance from USP as both a discount and a warranty expense.

The petitioners agree that post-sale expenses associated with the third country sales should be treated as direct expenses.

DOC Position

We agree with Dole, in part. We have corrected the errors noted in points one and two above for the final determination. Regarding point three, we disagree with Dole's assertion that the swells allowance was deducted twice from USP. We have examined both the computer program and Dole's U.S. database and have concluded that the swells allowance was not deducted as a discount in our preliminary determination. Therefore, this expense was properly deducted from USP just once as a warranty expense in our preliminary determination.

Comment 13

The petitioners argue that the Department should adjust Dole's submitted fruit costs for pineapple obtained from the company's own plantations. The petitioners assert that the Department should use the costs which were actually incurred during the POI instead of Dole's submitted amount, which represents an allocation of the annual plantation costs. According to the petitioners, Dole's methodology is contrary to the Department's questionnaire requirements and practice. In support of their position, the petitioners refer to the *Final Determination of Stainless Steel Bar from Spain*, 59 FR 69931, 66938 (December 28, 1994), where the Department stated:

> The Section D questionnaire clearly requests weighted average production data based on costs incurred during the POI. We have departed from this general policy only when unique circumstances arise, such as when production did not occur during the period of investigation * * * (A)bsent strong evidence to the contrary, the Department assumes that the cost structure during the POI is representative and can be used to calculate the cost of production.

Dole argues that the Department should accept its submitted calculation of fruit costs, as it is appropriate to take account of the growing cycle which occurs at its plantations. According to Dole, the majority of its self-grown pineapple was harvested in the second half of 1994, yet more than half of its annual operating costs were incurred in the first half of the year, during the POI. Dole argues that the use of actual costs incurred during the POI would be distortive, in relation to the quantity of pineapples harvested in that period, while the company's submitted fruit costs reflect a proper matching of expenses and production.

DOC Position

We agree with Dole. The evidence on the record demonstrates the disproportionate relationship that exists between expenses incurred and pineapples harvested under the accounting methods practiced by Dole's plantations. Dole has presented evidence which has led to our determination that unique circumstances exist in this case, with regard to Dole's self-grown pineapples, and it is clear that the cost structure during the POI is not representative. As noted by Dole, its annual accrual system for plantation costs effectively ensures an approximate relation between the costs incurred and the volume of fruit harvested during the same period. The company's submitted methodology, which presents a similar allocation, does not appear to be unreasonable, given the fluctuation in Dole's growing cycle. We therefore accepted Dole's submitted fruit costs, including the allocation of plantation fruit costs based upon the POI pineapple harvest.

Comment 14

The petitioners claim that Dole improperly excluded pineapple purchases made on the last day of the POI from its fruit cost calculation. The petitioners argue that this fruit was used in POI production and, therefore, the Department should include this amount in the calculation of Dole's COP and CV.

Dole did not object to the petitioners' comments.

DOC Position

We agree with the petitioners. COP and CV should be calculated using the actual costs incurred during the POI and the excluded pineapple purchases were used in POI production. As a result, we increased Dole's fruit costs by the amount of the excluded pineapple purchases.

Comment 15

In its submission, Dole allocated fixed overhead and certain variable overhead costs to its products in the same manner as in its normal accounting system. The petitioners argue that the Department should reallocate these overhead costs on the basis of net realizable value. The petitioners argue that Dole is unable to track its variable overhead costs on a product line basis and suggest that the normal allocation methodology does not use an appropriate activity base. The petitioners also state that the Department should exclude an offset to overhead costs which they claim was improperly applied.

Dole disagrees with the petitioners' assertions and states that the submitted allocation methodology is consistent with its normal accounting for these overhead costs and should be accepted by the Department. Dole did not comment on the overhead offset.

DOC Position

We agree with Dole, in part. The methodology used to allocate these overhead costs is, in fact, used by Dole in its normal course of business. In addition, the activity bases in this methodology are commonly used for overhead allocations and present a reasonable method of allocating these expenses. However, we agree with the petitioners that the overhead offset was directly related to a non-subject product line and should not be allocated over all products. We therefore accepted the allocation methodology used by Dole, but adjusted the submitted overhead costs to exclude the submitted overhead offset.

Comment 16

The petitioners note that the Department calculated a standard case quantity for tropical fruit products that was less than Dole's submitted quantity. Since standard cases were used by Dole as an activity base for allocating sugar and acid costs, the petitioners assert that the Department should correct the quantity of standard cases submitted by Dole. Also, the petitioners assert that the standard case quantity submitted for concentrate was calculated using unverified estimates and should not be relied upon.

Dole did not comment on this issue.

DOC Position

We agree with the petitioners, in part. The number of standard cases was reviewed for all products by the Department, using Dole's normal conversion factors, and only the amount of tropical fruit cases was found to be incorrect. We therefore adjusted the number of standard cases used in the allocation of sugar and acid costs to reflect the quantity calculated by the Department. We also noted that this error affects the allocation of fixed overhead, and adjusted the allocation accordingly.

Comment 17

The petitioners assert that the Department should revise Dole's other materials costs to reflect the packing medium actually used by the company in each of its CPF products. The petitioners argue that, for purposes of computing COP and CV, Dole incorrectly allocated sugar and citric acid costs over all CPF products, including juice-packed products which do not contain sugar.

Dole disagrees with the petitioners and submits that the cost difference for products packed in juice and products packed in syrup is minimal and should not be recognized in the COP and CV calculations. Dole also argues that the packing medium does not affect the pricing of its products and refers to petitioners' own comments from the petition: "The difference in costs of manufacturing between the various forms and two varieties (juice packed and syrup packed) are sufficiently marginal to allow for equal pricing; consumer preferences are not sufficiently pronounced as to support price differentials." Based upon this, Dole argues that sugar and citric acid unit costs were properly submitted for all products, regardless of the actual packing medium used.

DOC Position

We agree with the petitioners that Dole should have reported packing medium costs for each specific product. It is clear from a review of the record that the syrup packing medium costs more to produce than the juice packing medium. We have reflected this cost difference in our revised COP and CV figures for Dole.

Comment 18

Dole claims that the Department should revise the company's submitted G&A factor to reflect the use of 1994 financial data, provided at verification.

The petitioners did not comment on this issue.

DOC Position

We disagree with Dole. Dole's submitted G&A factor was computed based on 1993 financial data for Dole Thailand, Ltd. (DTL), and included an allocation of G&A expenses incurred by Dole Food Company, Inc. (DFC) and Dole Packaged Foods Company (DPF). At verification, Dole provided a revised G&A factor, which was computed based on full-year 1994 financial data. To support its revised calculation, Dole provided the Department with audited financial statements for DFC and unaudited financial statements for DTL. DPF does not prepare audited financial statements.

The Department normally computes the G&A expense factor based on the respondent's audited financial statements for the full-year period that most closely corresponds to the POI. *See, e.g., Final Determination of Sales at Less Than Fair Value: Sweaters Wholly or in Chief Weight of Man-Made Fiber from Hong Kong*, 55 FR 30733 (July 27, 1990) (Comment 18). Audited financial statement information provides us with some degree of assurance that an independent party has reviewed the respondent's accounting data and expressed an opinion as to its fairness in reflecting the results of that company's operations. Therefore, because Dole did not provide 1994 audited financial statements for DTL, we calculated the G&A factor using the respondent's audited 1993 financial statements, which we believe are a reasonable surrogate for Dole's 1994 operations. *See also* Comment 35 below.

Comment 19

The petitioners argue that Dole improperly applied waste revenues and sugar refunds as offsets to G&A expenses. The petitioners claim that waste revenues should be applied to fruit costs, reflecting Dole's normal accounting system, in the same ratio that the Department determines fruit costs should be allocated (*see* Comment 6 above). Sugar refunds, according to the petitioners, should be applied to materials costs, since sugar is a raw material. In addition, the petitioners argue that sugar refunds should be applied only to those products to which sugar and citric acid costs were allocated.

Dole did not comment on this issue.

DOC Position

We agree with the petitioners. It would be more appropriate to apply waste revenues to fruit costs, reflecting Dole's normal accounting system. It would also be more appropriate to apply sugar refunds to other materials costs, since sugar is a raw material. We therefore adjusted fruit costs, other materials costs, and G&A costs to reflect the reclassification of waste revenues and sugar refunds.

Comment 20

Dole argues that the Department should use the amount of sugar refunds earned as an offset in its calculation of the G&A factor, rather than the amount of sugar refunds received.

DOC Position

We disagree with Dole. We noted that Dole, in its normal accounting system, does not record these refunds as earned until payment is received. Since the amount of the refund is uncertain until payment is received, this appears to be a reasonable treatment and, therefore, we have not adjusted the sugar refund offset amounts.

TIPCO

Comment 21

The petitioners argue that certain price adjustments reported as a warranty claim should be reclassified as a rebate in the final determination.

TIPCO argues that the reclassification of the claim is unnecessary given its insignificant value. However, TIPCO asserts that the Department can incorporate the claim as either a rebate or a warranty claim.

DOC Position

We agree with the petitioners, in part. We agree that this price adjustment was improperly reported as a warranty claim. It is the Department's practice to allow only those expenses related to quality-based complaints to be classified as a warranty expense. *See, e.g., Final Determination of Sales at Less Than Fair Value: Fresh and Chilled Atlantic Salmon from Norway*, 56 FR 7661 (February 25, 1991). In this instance, the records do not indicate that the price adjustments were associated with quality based complaints.

We disagree with the petitioners, however, that the price adjustment should be treated as a rebate. A rebate is a refund of monies paid, a credit against monies due on future purchases, or the conveyance of some other item of value by the seller to the buyer after the buyer has paid for the merchandise. In this instance, the price adjustment was accounted for by reducing the selling price to the customer. Accordingly, we are treating these expenses as discounts.

Comment 22

TIPCO argues that the Department should compute G&A expenses for the final determination using the company's submitted 1994 G&A ratio calculation for the six months of the POI. TIPCO claims that the Department should not compute a G&A ratio based on 1993 financial data and apply that ratio to 1994 CPF manufacturing costs because the company's change in its accounting for factory administrative costs would make such a calculation nonsensical. Further, TIPCO maintains that application of a 1993 G&A ratio to 1994 costs would double count factory administrative costs since these costs would be included in both the numerator and the denominator of the G&A ratio calculation. Lastly, TIPCO argues that if the Department determines the company's 1994 G&A ratio is unacceptable because it is based on a six-month period, then the Department should compute G&A expenses based on the unaudited financial statement data for the full-year 1994 provided by TIPCO at verification.

The petitioners assert that, in keeping with its normal practice, the Department should use TIPCO's full-year 1993 audited financial statements to compute the company's G&A expense ratio for the final determination.

DOC Position

We have followed our normal practice for calculating G&A expenses by using TIPCO's 1993 full-year, audited financial statements. *See also* Comment 35 below. However, to correct for any possible distortion between 1993 and 1994 costs due to TIPCO's change in accounting classifications, we have adjusted the company's 1993 G&A and cost of sales figures for an annualized estimate of factory administrative costs based on amounts incurred during the POI. This adjustment would represent our estimate of 1993 factory administrative costs since the actual 1993 cost figure is not available from the case record.

We also adjusted TIPCO's net interest expense calculation to take into account the change to 1993 cost of sales that occurred due to the reclassification of factory administration costs in 1994.

Comment 23

TIPCO states that the Department should accept the company's reported can weights for purposes of allocating certain can production department costs. TIPCO argues that difference between the can weights used by TIPCO in the submission and the POI can weights obtained at verification are insignificant. According to TIPCO, any increases to weights associated with certain can sizes will only be offset with decreases to weights for other can sizes.

The petitioners state that the Department should adjust the costs of cans to incorporate the current weights obtained from the production department at verification

DOC Position

We did not adjust for the differences in can weights since they had an immaterial affect on the cost of CPF sold during the POI. In its COP/CV submission, TIPCO used the standard weight of cans to allocate the can production departments direct labor and overhead costs. At verification, we noted that the can weights used to allocate labor and overhead costs were outdated. Therefore, we obtained can weights specific to the POI. Although we raised this as an issue in our verification report, after reviewing the POI can weight data obtained at verification, we note that the difference in the reported weights has only a slight effect on CPF costs since can production labor and overhead during the POI were insignificant.

Comment 24

TIPCO states that it properly classified seasonal labor costs as direct, not indirect, labor. The only labor classified as indirect was the labor expense associated with salary of administrative personnel who were employed throughout the year in a supervisory or administrative capacity.

The petitioners have no comments on this issue.

DOC Position

We agree with the respondent and have accepted their classification of seasonal labor as direct labor for the final determination. During verification, we traced the payroll records of several seasonal production employees from source documentation to a specific fabrication cost item reported in TIPCOs income statement. We then reconciled this fabrication cost item to the amount reported in the COP and CV submission. During this testing, we noted that TIPCO normally accounted for the cost of the seasonal employees as part of direct labor costs.

Comment 25

The petitioners state that, at verification, the Department discovered that TIPCO incorrectly allocated electricity to certain pieces of machinery (*e.g.*, electric generators) based on horsepower production factors rather than horsepower consumption factors. According to the petitioners, the Department should correct TIPCO's reported variable overhead costs for this error.

TIPCO states that it has already made changes to account for the electricity allocation issue found at verification in a supplemental submission.

DOC Position

At verification, we found that TIPCO had overstated the amount of electricity allocated to certain overhead departments. A supplemental submission that corrects the misstatement was requested by the Department and received on February 28, 1995. We reviewed this submission and found the corrections to be appropriate. We have used this corrected data in reaching our final determination.

Comment 26

TIPCO states that the Department should accept its submission methodology of making a downward adjustment to the cost of manufacturing to account for certain revenues received in connection with the production of subject merchandise. If this approach is not accepted, TIPCO believes that the Department should make an upward adjustment to prices pursuant to section 773(a)(4)(B) of the Act.

The petitioners did not comment on this issue.

DOC Position

Because of the business proprietary nature of this item, we have addressed TIPCO's comment and analyzed the issue in detail in the proprietary concurrence memorandum. Our determination was to allow the revenues in question as an offset to TIPCO's submitted COP and CV figures.

Comment 27

Both the respondent and the petitioners raise certain issues regarding the appropriateness of the methods used by TIPCO to compute the weight of its pineapple juice and solid fruit for purposes of allocating costs.

DOC Position

We believe that the issues surrounding the appropriateness of TIPCO's weight calculations are moot. For the final determination, TIPCO's fresh pineapple costs were allocated based on its normal accounting system and not on the company's proposed weight-based methodology. *See* Comment 6 above.

SAICO

Comment 28

SAICO argues that the Department should exclude certain U.S. sales of spoiled CPF from the calculation of any dumping margins, contending that these sales are aberrational and that claims for spoiled goods are extremely rare. SAICO cites the *Final Determination of Sales at Less Than Fair Value: Certain Welded Stainless Steel Pipe from Korea*, 57 FR 53693, 53782 (November 12, 1992) where defective corrosion-damaged pipe was excluded and the *Final Determination of Sales of Less Than Fair Value: Circular Welded Non-Alloy Steel Pipe from Korea*, 57 FR 42942,42949 (September 17, 1992) (*Welded SST Pipe*) in which aberrant and damaged sales were disregarded from the analysis. Additionally, SAICO argues, that the Department normally excludes cancelled or returned sales from its margin analysis. *See Welded SST Pipe.*

If the Department does not exclude the cancelled sales, SAICO argues that the expenses associated with the replacement shipments should be treated as indirect selling expenses because the circumstances of sale between the U.S. and German market do not differ. Treating the claim expenses as a circumstance of sale adjustment would distort the dumping margin. If the Department decides that the indirect selling expenses should apply only to the U.S. market, SAICO asserts that the allocation of the claim expense should still be made over all POI sales. To do otherwise would assume that prices of specific sales include a full allowance for aberrational and unforeseeable costs.

The petitioners contend that the Department should adjust for the actual costs incurred by SAICO for shipment of the spoiled merchandise shipped to the U.S. customer. In their proprietary case brief, the petitioners provide a calculation of costs involved in this process based on all aspects of this transaction.

DOC Position

We agree with the petitioners that the sales of spoiled merchandise should not be treated as cancelled sales given that SAICO received payment in full for the merchandise. Instead, we are treating the expenses associated with the compensation for the spoiled sales as warranty expenses because they were associated with quality-based complaints. We allocated the total expenses SAICO incurred in connection with the spoiled sales over all sales made to the United States during the POI.

The expenses were not allocated over total worldwide sales because the data we have applies only to U.S. sales; we do not know whether SAICO made replacement shipments for spoiled merchandise to any other markets during the POI. Additionally, we do not believe it would be appropriate to allocate the expenses to the particular spoiled sales. SAICO does not have any warranty programs in place, and therefore its sales prices do not reflect an allowance for unforeseeable costs.

Comment 29

The petitioners interpret export bill discounts as sales-specific expenses that were necessitated by the credit terms that SAICO provided to certain customers. As such, the petitioners argue that these expenses were actual expenses SAICO incurred on certain sales and should be treated as direct selling expenses.

SAICO contends that because there is no adjustment to U.S. or foreign market selling price for actual interest expenses (but only imputed interest expenses), these expenses should not be deducted from U.S. price.

DOC Position

We agree with SAICO that these charges are included in imputed credit expense and therefore should not be deducted from U.S. price. Accordingly, we have not done so.

Comment 30

SAICO claims that, contrary to the assertions in the Department's verification report, the company produces syrup for CPF from a combination of water, sugar, and citric acid. It further maintains that pineapple juice is not an ingredient in its packing syrup but, instead, is used only for its

CPF products packed in their "natural juices." SAICO therefore asserts that the Department misstated in its cost verification report that the company improperly omitted the cost of pineapple juice for CPF products packed in heavy and light syrup.

The petitioners contend that the Department should revise SAICO's reported CPF costs to include the cost of pineapple juice used in heavy and light packing syrup. The petitioners believe that SAICO's cost of production for CPF should include the cost of all materials used to produce the merchandise, including pineapple juice used for packing syrup.

DOC Position

We have revised COP and CV to include an amount for the cost of pineapple juice used in SAICO's heavy and light packing syrups. During verification, we obtained documentation (verification exhibits 10 and 15) that led us to conclude that, despite SAICO's claims to the contrary, the company did in fact use pineapple juice as an ingredient in its heavy and light packing syrup.

Comment 31

SAICO argues that it could not rely on its normal accounting method for plantation pineapples for two reasons. First, it notes the fact that, at the time of its response preparation (as well as at the time of verification), the company's auditors had not made their year-end adjustment for pineapple costs. Thus, according to SAICO, essential data were missing for the company to compute the cost of plantation pineapples under its normal system. Second, SAICO maintains that, even if the year-end adjustment could have been made, the adjusting figure itself is an aggregate amount and cannot be divided into the materials, labor, and overhead cost elements that the company was required to report.

SAICO further argues that, in determining the proper cost-reporting period for the company's self-grown pineapples, the Department should select the period that captures to the extent practicable the costs incurred with respect to pineapples harvested during the POI. SAICO maintains that the pineapple costs computed on a 18-month period reasonably reflect such costs and that the Department should therefore rely on this methodology in its final determination.

The petitioners argue that SAICO's pineapple production costs should be based on the procedures used in the company's normal accounting system. Thus, the petitioners maintain that the Department should revise SAICO's reported costs for self-grown pineapples to reflect the costs actually recorded by the company during the POI, including adjustments made by the company's auditors.

DOC Position

As part of our verification testing, we obtained and verified detailed information relating to SAICOs pineapple plantation costs. Contrary to SAICOs assertions in its case brief, this information showed monthly plantation costs, including capitalized preproduction costs, segregated by cost element. Moreover, the information is sufficient to compute a POI estimate of the year-end adjustment made by SAICOs auditors.

The lack of the year-end auditors adjustment and separable cost elements notwithstanding, SAICO has failed to offer any reason why its normal accounting method should not be used to compute the cost of its self-grown pineapples. Nor has the company provided the Department with information or analysis supporting its contention that such a methodology would be distortive for purposes of computing the cost of CPF during the POI. We have therefore used the plantation cost data obtained at verification to recompute the cost of SAICOs self grown pineapples following the company's normal accounting method.

Comment 32

SAICO argues that certain plantation cost adjustments are reasonable and necessary in order to avoid distorting the cost of the company's self-grown pineapples harvested during the POI. First, SAICO believes that it properly excluded from total plantation costs all of the costs incurred at its three newest plantations—plantation numbers 7, 8, and 9. Second, SAICO states that it is more appropriate for the Department to allocate the company's plantation overhead costs based on the direct labor hours charged to each crop instead of on land area as reported in SAICO's original COP and CV submission.

The petitioners do not specifically address these adjustments in their case or rebuttal briefs. As a general comment, however, the petitioners do argue that the Department should base the cost of SAICO's self-grown pineapples on costs recorded under the company's normal plantation accounting system.

DOC Position

With respect to SAICO's exclusion of costs for plantations 7, 8, and 9, we believe in principle that this adjustment is consistent with the companys normal method of deferring preproduction costs during the pineapple growing cycle. During verification, however, we found that plantation 7 had begun harvesting its pineapple crop during the POI. Consequently, in accordance with its normal method of accounting for self-produced pineapples, SAICO had begun recognizing as an expense the pineapple preproduction costs associated with the harvested plants. We have therefore revised SAICOs submitted fresh pineapple costs to account for the POI costs recorded by the company for plantation 7. In addition, we have excluded the preproduction costs incurred at plantations 8 and 9, in accordance with SAICO's normal accounting method.

For plantation overhead costs, we have accepted SAICO's labor-hour allocation method to charge a portion of total overhead costs to non-pineapple crops produced at the plantations. We found that SAICO did in fact normally charge all of its overhead costs to pineapples and none to the other crops produced at the company's plantations. We believe that this method unreasonably inflates the overhead costs associated with pineapple production since the overhead costs incurred generally relate to the overall operations of the plantations. Moreover, in this instance, given the labor-intensive nature of the plantation operations and the fact that the overhead costs correspond more closely with direct labor hours than land area, we believe that SAICO's proposed labor-hour allocation method represents an acceptable means of charging overhead costs to all plantation crops harvested during the POI.

Comment 33

SAICO argues that it is appropriate to include 1994 shutdown costs as part of the calculation of fixed overhead costs for the POI. According to SAICO, the 1994 shutdown costs are more closely associated with the POI than those incurred during the 1993 shutdown period.

The petitioners contend that SAICO's production costs should be based on the methods used by the company in its normal accounting system. According to the petitioners, SAICO shut down its processing plant during 1993 to prepare the facility for production operations during the subsequent months, that is, until the next shutdown in 1994. Thus, the petitioners maintain that the 1993 shutdown costs were incurred for and directly relate to production during the POI, and that the Department should therefore adjust SAICO's reported fixed overhead costs to account for shutdown costs under the company's normal methodology.

DOC Position

We recalculated SAICO's fixed overhead costs for the POI based on the company's 1993 shutdown costs and following its normal accounting method. SAICO has historically amortized its annual plant shutdown costs on a prospective basis over the months following the shutdown period. Despite this fact, SAICO departed from its normal method and amortized shutdown costs retroactively for purposes of its COP and CV response. SAICO offered no explanation for this change in methodology other than to say that the 1994 shutdown costs were more "closely associated" with the POI. We found no justification for this claim. Further, we note the fact that SAICO's normal prospective accounting method was in accordance with Thai GAAP basis.

Comment 34

SAICO argues that the Department should not adjust the company's CPF costs for a certain POI transaction that the company's own outside auditors did not see fit to reflect in SAICO's 1994 interim financial statements.

The petitioners argue that this item should have been recorded as a loss in SAICO's accounting records and reflected in the company's reported COP and CV figures.

DOC Position

Because of the business proprietary nature of this item, we have addressed the parties' comments and analyzed the issue in detail in the proprietary concurrence memorandum. Our determination was to exclude the transaction from SAICO's reported COP and CV calculations.

Comment 35

SAICO argues that the Department should use the company's 1993 audited financial statement information to compute G&A and interest expense for the final determination. SAICO maintains that the 1994 financial data obtained by the Department at verification was unaudited and incomplete. Specifically, SAICO notes the fact that the 1994 data do not contain information necessary to compute the offsets for interest income, trade receivables, or finished goods inventory.

The petitioners contend that the Department should calculate SAICO's G&A and net interest expense factors based on the company's 1994 financial data since this information encompasses the six months of the POI.

DOC Position

We have used the 1993 audited financial statements to compute G&A and interest expense factors. The Department normally computes G&A and interest expense factors based on SAICO's audited financial statement information for the full-year period that most closely corresponds to the POI. Audited financial statement information provides us with some degree of assurance that an independent party has reviewed SAICO's accounting data and expressed an opinion as to its fairness in reflecting the results of that company's operations. In addition, since companies often incur G&A and interest expenses sporadically throughout the fiscal year, we rely on the respondent's full-year audited data to ensure that our G&A and interest calculations capture the expenses incurred by the company over most, if not all, of its operating cycle. The full-year statements also make certain that we have considered any year-end adjusting entries made by respondent to its G&A and interest expenses. *See, e.g., Final Determinations of Sales at Less Than Fair Value: Certain Hot Rolled Carbon Steel Flat Products, Certain Cold Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut to Length Carbon Steel Plate from France*, 58 FR 37125, 37135 (July 9, 1993) (*Certain Carbon Steel Products from France*).

Comment 36

The petitioners state that, for the final determination, the Department should increase SAICO's reported cost of production to include the compensation paid by SAICO to its Board of Directors. The compensation paid to the Board of Directors was directly charged to retained earnings and was not recorded in the income statement.

SAICO did not comment on this issue.

DOC Position

For the final determination, we have determined that it is appropriate to include the Board of Directors' compensation in G&A costs.

Comment 37

SAICO believes that the Department should revise its submitted values for the clerical corrections and modifications presented at the first day of verification. These modifications were: (1) A single drained weight used in the COP/CV tables for a specific control number that had been incorrectly stated, (2) using actual cases instead of standard cases of finished goods to calculate can and lid costs, and (3) revising the total net weights of the CPF production used to allocate variable overhead to correct for a minor mathematical error.

The petitioners state that the Department should revise SAICO's cost of production to reflect the actual costs obtained during verification.

DOC Position

The clerical corrections and modification were tested at verification and are appropriate adjustments. We have incorporated the adjustments into SAICO's COP and CV figures.

Comment 38

SAICOs states that the sugar ratio used by the company in its COP and CV submission accurately reflects the differing amounts of sugar required in the production of heavy and light syrup products.

The petitioners did not comment on this issue.

DOC Position

We have relied on SAICO's submitted sugar ratio for allocating sugar costs between heavy and light syrup products for the final determination. SAICO's sugar ratio was found to be an average of the daily sugar ratio reported in the company's production logs. This ratio was analyzed and tested at verification with no discrepancies noted.

Comment 39

Both respondent and petitioners raise certain issues regarding the appropriateness of the methods used by SAICO to compute the weight of its pineapple juice and solid fruit for purposes of allocating costs.

DOC Position

We believe that the issues surrounding the appropriateness of SAICO's weight calculations are moot. For the final determination, SAICO's fresh pineapple costs were allocated based on its normal accounting system and not on the company's proposed weight-based methodology. *See* Comment 6 above.

Malee

Comment 40

Malee argues that the Department should exclude from its less than fair value calculation certain additional ocean freight and demurrage expenses it incurred on some of its sales to the United States. It asserts that it has already been reimbursed in part for these expenses by its freight forwarder and states that it will be reimbursed in

full. Further, Malee contends that in prior cases the Department has not included expenses where the respondent was seeking reimbursement for the expense. *See, e.g., Certain Internal-Combustion, Industrial Forklift Trucks from Japan: Final Results of Antidumping Duty Administrative Review*, 57 FR 3167, 3179 (January 28, 1992) (*Forklift Trucks from Japan*).

DOC Position

We agree with Malee that these expenses should be excluded from our calculations. In *Forklift Trucks from Japan*, the Department had no evidence on the record that the respondent's insurance company had rejected its claim, or that it would not be reimbursed in part or in full, for expenses associated with stolen trucks. In that instance, the Department determined that lack of this evidence was not dispositive that reimbursement would not occur, and thus the expenses were not treated as direct selling expenses.

In this case, at verification we found evidence that Malee was to be reimbursed by its freight forwarder for the demurrage charges. We examined Malee's records and confirmed that it has already been reimbursed in part for these expenses. Documents on the record indicate that Malee will be fully reimbursed for the remaining balance of the charges.

Comment 41

Malee argues that the Department should exclude certain interest expense which was reported as a bank charge in its sections B and C responses. This expense represents the interest expense for delayed payment.

Malee states that since the Department's only use for interest expenses in the sales response is for calculating the interest rate to be used for the imputed credit expenses, the Department does not include a company's actual interest expenses as a direct expense. Moreover, this interest expense for late payment is already included in Malee's interest expense reported in the COP/CV databases and thus has been double counted. As a result, the interest expense for late payment should be removed as a direct adjustment from the sales listing.

The petitioners argue that similar to other direct expenses, the late payment expense is an expense incurred by Malee for sales of CPF to its customers; therefore, the petitioners contend that this expense should be deducted as a direct expense. The petitioners claim that because this expense is charged by Malee's bank for late payment after Malee has already received payment from the bank, it is not included in the imputed credit expense.

DOC Position

We agree with the petitioners that this interest expense should be deducted as a direct expense because this is a transaction specific bank charge. Because Malee received payment before it incurred this expense, it is not captured by our imputed credit cost. Furthermore, Malee's concern regarding double counting of late payment expenses is not substantiated because we do not have documents on the record demonstrating that this expense was recorded as an interest expense in Malee's accounting records. Accordingly, we continue to treat this expense as a bank charge.

Comment 42

The petitioners argue that the Department should adjust Malee's submitted factory overhead costs to include an amount for foreign exchange gains or losses incurred on purchases of machinery depreciated over a 7.5 year period. Additionally, the petitioners argue that the Department should adjust factory overhead by removing an offset for reimbursement of an overpayment on a machine purchase.

Malee agrees with the petitioners that fixed overhead should be adjusted for the depreciation effect of the foreign exchange gains or losses, but suggests that these amounts should be depreciated over five years. Malee did not comment on the reimbursement offset.

DOC Position

We agree with the petitioners, in part. Since the foreign exchange gains or losses relate directly to machinery purchases, we consider it appropriate to include them in the basis of the assets. Therefore, we adjusted Malee's fixed overhead costs to include the depreciation effect of the foreign exchange gains or losses. We calculated the revised depreciation expense using the five-year useful life suggested by Malee, which is a reasonable period for the company's equipment. Also, we removed the reimbursement offset from the overhead calculation as the company's normal record-keeping included this item in other income. We believe this is a reasonable treatment for a minor reimbursement. Malee's reclassification of this item to a credit in fixed overhead does not represent a more precise treatment, since the company did not identify the credit to the specific machine or even to the specific group which uses this machinery. Therefore, we reclassified this credit to the other income account, in accordance with Malee's normal accounting treatment.

Comment 43

Malee argues that the activities of its parent company, Boon Malee, are not related to the production of the subject merchandise and, therefore, its G&A expenses should not be included in the G&A factor calculation. To support this position, Malee refers to the *Certain Carbon Steel Products from France*, 58 FR at 37136, where the Department agreed that the G&A expenses of a parent company whose activities were not related to production of the subject merchandise should not be used in place of those of the company actually producing the subject merchandise.

The petitioners claim that the G&A factor should be revised to include 1993 G&A expenses incurred by Malee's parent company. They argue that since Boon Malee is a holding company with no operations, its G&A expenses should be included in Malee's calculation. Malee's cite from *Certain Carbon Steel Products from France* is misplaced, according to the petitioners. They assert that the Department decided to base its G&A factor on the financial records of the producer, which included an allocation of the parent company's G&A expenses.

DOC Position

We agree with the petitioners. We noted that Malee is the only directly-owned active subsidiary of Boon Malee, which is a holding company that has no operations. In addition, we noted that Boon Malee's G&A expenses are related to a building that it rents to Malee. As discussed in *Certain Carbon Steel Products from France*, the Department's general approach to calculating a G&A factor is to use Malee's G&A expenses, along with an allocation of G&A expenses from the parent company. 58 FR at 37136; *See also Camargo Correa Metais* v. *United States*, Slip Op. 93–163 at 18 (CIT August 13, 1993). Therefore, we included Boon Malee's G&A expenses in our adjusted calculation of Malee's G&A factor.

Comment 44

The petitioners argue that we should revise Malee's submitted G&A expenses to include inventory write-downs made during the year. These adjustments are normally recorded by Malee to cost of sales. According to the petitioners, write-downs are a period expense, similar to G&A expenses, and thus should be reported as part of the fully-absorbed cost of products sold during the period. The petitioners argue that both inventory write-downs and inventory write-offs have the same function of recognizing losses of future revenue and thus should be treated the same for COP.

Malee argues that inventory write-downs are not a cost of production and should not be included in COP. It claims that the only effect of these adjustments is on the value of inventory for balance sheet purposes, and on cost of goods sold for income statement purposes. Further, Malee argues that there is a fundamental difference between COP and cost of goods sold and states that the effect of such revaluation is self-cancelling over time. Malee claims that these write-downs are a method of absorbing losses more gradually as inventory declines in expected market value.

DOC Position

We agree with the petitioners that the inventory write-downs should be reflected in Malee's production costs. During verification, we noted that inventory write-downs are a normal, recurring period adjustment made annually by Malee. Also, we agree with the petitioners that such adjustments are part of the fully-absorbed cost of goods sold and should be included in the calculation of COP and CV. We therefore adjusted the G&A factor calculation to include the amount of inventory write-downs.

Comment 45

Malee asserts that certain proprietary payments, applied as offsets to COM, should be determined based upon the amounts earned rather than the amounts received during the POI. It claims that it is more appropriate to match the income earned during the POI with the expense incurred. It would be inappropriate, according to Malee, to use the amounts received during the POI, since they relate to production in a prior period.

The petitioners did not comment on this issue.

DOC Position

We agree with Malee, in part. We noted that certain proprietary payments are accrued at the time production occurs and the payment is effectively earned. However, we noted that other payments are not recorded as earned until a letter is received confirming the amount to be paid to Malee. This letter is normally received after the production is completed. We agree with Malee that the actual receipt date is a function of timing and cash flow and has no relationship to the production occurring in that same period. Therefore, we adjusted the offset amounts to reflect the payments earned during the POI rather than the amounts received by Malee during the same period.

Comment 46

Malee asserts that the Department should recalculate COP and CV using the can and lid costs which were submitted to the Department at the start of verification as a correction of an error.

The petitioners claim that the revisions submitted at the start of verification should not have been accepted by the Department. These corrections adjusted per kilogram costs by a significant percentage, according to the petitioners. They argue that the explanation provided for this error was inadequate and should not have been accepted by the Department.

DOC Position

We agree with Malee. We reviewed Malee's explanation for its submitted cost revisions, which are described in the March 1, 1995, submission, and considered it to be reasonable. During verification, we reconciled the revised can and lid costs to stock reports and to the general ledger. Therefore, we accepted these costs for purposes of calculating COP and CV.

Comment 47

Malee states that the Department should recalculate COP and CV using the verified drained weight/net weight ratios, which were submitted at the start of verification. It also requests that the Department calculate the interest offset using the consolidated financial statements, as discussed at verification.

The petitioners did not comment on these issues.

DOC Position

We agree with Malee. We have used the submitted and reviewed drained weight/net weight ratios to calculate fruit costs and we used the consolidated financial statements to calculate CV interest expense.

Continuation of Suspension of Liquidation

We are directing the Customs Service to continue to suspend liquidation of all entries of CPF from Thailand, as defined in the "Scope of the Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after January 11, 1995, the date of publication of our preliminary determination in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated amount by which the FMV of the merchandise subject to this investigation exceeds the U.S. price, as shown below. This suspension of liquidation will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Producer/manufacturer exporter	Weighted-average margin
Dole	2.36
TIPCO	36.68
SAICO	55.77
Malee	43.43
All Others	25.76

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. As our final determination is affirmative, the ITC will determine whether these imports are causing material injury, or threat of material injury, to the industry in the United States, within 45 days. If the ITC determines that material injury, or threat of material injury, does not exist, the proceeding will be terminated and all securities posted will be refunded or cancelled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

This determination is published pursuant to section 735(d) of the Act and 19 CFR 353.20(a)(4).

Dated: May 26, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–13695 Filed 6–2–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–570–839]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Partial-Extension Steel Drawer Slides With Rollers From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 5, 1995.

FOR FURTHER INFORMATION CONTACT: John Brinkmann or Michelle Frederick, Office of Antidumping Investigations,

Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 482–5288 or (202) 482–0186, respectively.

Preliminary Determination

We preliminarily determine that certain partial-extension steel drawer slides with rollers (drawer slides) from the People's Republic of China (PRC) are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the initiation of this investigation on November 21, 1994, (*Initiation of Antidumping Duty Investigation: Certain Partial-Extension Steel Drawer Slides with Rollers from the People's Republic of China (PRC)*, 59 FR 60773 (November 28, 1994) (*Initiation of Drawer Slides from the PRC*)), the following events have occurred:

On November 30, 1994, Guangdong Metals and Minerals Import and Export Group Corporation (GDMC), identified itself as an exporter of the subject merchandise during the period of investigation (POI).

On December 15, 1994, the U.S. International Trade Commission (ITC) notified the Department of Commerce (the Department) of its preliminary determination that there is a reasonable indication that the drawer slides industry in the United States is threatened with material injury by reason of imports from the PRC that are alleged to be sold at less than fair value.

On December 20, 1994, we sent a survey to the PRC's Ministry of Foreign Trade and Economic Cooperation (MOFTEC) and the China Chamber of Commerce for Machinery and Electronics Products Importers/Exporters (the Chamber) requesting the identification of drawer slides producers and exporters, and information on production and sales of drawer slides exported to the United States. MOFTEC did not respond to this survey.

We did, however, receive a response to the survey on January 6, 1995, from the Chamber. The Chamber indicated that it could not confirm whether any PRC company exported the subject merchandise to the United States during the POI. On December 23, and 30, 1994, we received letters from Hangzhou Metals, Minerals, Machinery and Chemicals, Import/Export Corp. and Liaoning Machinery Import & Export Corporation, respectively. Both of these companies indicated that although they were named in the petition, they did not produce or export drawer slides during the POI. On January 3, 1995, two companies, Tai Ming Metal Products Co., Ltd. (Taiming), and Sikai Hardware & Electronic Equipment Manufacturing Co., Ltd. (SHEEM), which were not named in the petition, identified themselves as exporters of the subject merchandise to the United States during the POI.

Based on the foregoing information, on January 19, 1995, the Department sent full questionnaires including Attachment I (dealing with claims for Market Oriented Industry (MOI) status) and Attachment II (dealing with claims for Separate Rates), to MOFTEC and the Chamber. The Department requested that the questionnaire be transmitted to all companies that produce drawer slides for export to the United States and to all companies that exported drawer slides to the United States during the POI. Although requested, the Department never received confirmation that either MOFTEC or the Chamber had forwarded the questionnaire. The Department sent questionnaires to the three identified respondents (*i.e.*, GDMC, Taiming and SHEEM) on January 19, 1995.

On February 10, 1995, the Department received Section A responses from GDMC, Taiming and SHEEM. Supplemental information regarding Section A was provided at the Department's request on March 28, 1995.

On February 10, 1995, Taiming requested that it be allowed to exclude certain Exporter Sales Price (ESP) transactions of drawer slides given that these sales constituted a negligible portion of its sales during the POI. On February 21, 1995, the Department issued a decision memorandum granting Taiming's request. (*See* Memorandum to Barbara R. Stafford from the Team dated February 21, 1995, on file in Room B–099, U.S. Department of Commerce.)

On March 10, 1995, we received responses to the remaining sections of our questionnaire from the three respondents. Supplemental information requested by the Department was received on May 2, 1995. The petitioner filed comments on all responses submitted by the respondents on March 2 and 24, and May 8, 1995.

On March 30, 1995, the Department requested the parties to submit publicly available published information concerning surrogate country selection and factors of production valuation for drawer slides. The Department also requested parties to identify those surrogate countries which produce merchandise comparable to the subject merchandise. On April 27 and May 4, 1995, the petitioner and respondents submitted the information and comments on these issues.

Postponement of Final Determination

Pursuant to section 735(a)(2)(A) of the Act, on May 17, 1995, the respondents requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until 135 days after the date of publication of an affirmative preliminary determination in the **Federal Register**. Pursuant to 19 CFR 353.20(b), because our preliminary determination is affirmative, and no compelling reasons for denial exist, we are granting respondents' request and postponing the final determination.

Scope of Investigation

The subject merchandise in this investigation is certain partial-extension steel drawer slides of any length with rollers. A drawer slide is composed of two separate drawer slide rails. Each rail has screw holes and an attached polymer roller. The polymer roller may or may not have ball bearings. The subject drawer slides come in two models: European or Low-Profile and Over-Under or High-Profile. The former model has two opposing rails that provide one channel along which both rollers move and the latter has two opposing rails that provide two channels, one for each roller. For both models of drawer slides, the two opposing rails differ slightly in shape depending on whether the rail is to be affixed to the side of a cabinet or the side of a drawer. A rail may also feature a flange for affixing to or aligning along the bottom of a drawer.

Drawer slides may be packaged in an assembly pack with two drawer slides; that is, four rails with their attached rollers, or in an assembly pack with one drawer slide; that is, two rails with their attached rollers; or individually; as a drawer slide rail with its attached roller. An assembly pack may or may not contain a packet of screws.

Not included in the scope of this investigation are linear ball bearing steel drawer slides (with ball bearings in a linear plane between the steel elements of the slide), roller bearing drawer slides (with roller bearings in the wheel), metal box drawer slides (slides built into the side of a metal or aluminum drawer), full extension drawer slides (with more than four rails per pair), and industrial slides (customized, high-precision slides without polymer rollers).

The subject merchandise is currently classifiable under subheading 8302.42.30 of the *Harmonized Tariff Schedule of the United States* (HTSUS). It may also be classified under 9403.90.80. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Period of Investigation

The period of investigation is May 1, 1994, through October 31, 1994.

Applicable Statue and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

Separate Rates

Each of the responding Chinese companies has requested a separate, company-specific rate. Taiming and SHEEM are joint ventures which were established in China in 1990 and 1993, respectively. Taiming is a joint venture between a Chinese collective (which the respondent claims has no government ownership), a privately owned Hong Kong Company, and a privately owned Taiwanese company. The joint venture owns both the production and export facilities used to manufacture and export the drawer slides it sells to the United States. SHEEM is a joint venture between a privately-owned Chinese company (*i.e.*, owned by individuals) and a Hong Kong company. This joint venture also owns both the production and export facilities used to manufacture and export the drawer slides it sells to the United States.

According to GDMC's business license it is "owned by all the people". As stated in the *Final Determination of Sales at Less than Fair Value: Silicon Carbide from the People's Republic of China* 59 FR 22585, 22586 (May 2, 1994) (*Silicon Carbide*), and the *Final Determination of Sales at Less than Fair Value: Furfuryl Alcohol from the People's Republic of China* 60 FR 22545 (May 8, 1995) (*Furfuryl Alcohol*), ownership of a company by all the people does not require the application of a single rate. Accordingly, each of the three respondents is eligible for consideration for a separate rate.

To establish whether a firm is sufficiently independent from government control to be entitled to a separate rate, the Department analyzes each exporting entity under a test arising out of the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China* 56 FR 20588 (May 6, 1991) (*Sparklers*) and amplified in *Silicon Carbide*. Under the separate rates criteria, the Department assigns separate rates in nonmarket economy cases only if respondents can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

1. Absence of De Jure Control

The respondents in this investigation have submitted a number of documents to demonstrate absence of *de jure* control. Taiming and SHEEM each submitted the "Law of the People's Republic of China on Chinese-Foreign Contractual Joint Ventures" (April 13, 1988). The articles of this law authorize joint venture companies to make their own operational and managerial decisions. They also submitted the "Foreign Trade Law of the PRC" (May 12, 1994) which grants autonomy to foreign trade operators in management decisions and establishes accountability for their own profits and losses.

GDMC submitted four enactments indicating that the responsibility for managing enterprises "owned by all of the people" is with the enterprises themselves and not with the government. These are the "Law of the People's Republic of China on Industrial Enterprises Owned by the Whole People," adopted on April 13, 1988, (*1988 Law*) and the "Regulations for Transformation of Operational Mechanism of State-Owned Industrial Enterprises," approved on August 23, 1992 (*1992 Regulations*); "Foreign Trade Law of the PRC" (May 12, 1994); and the "Temporary Provisions for Administration of Export Commodities," approved on December 21, 1992, (*Export Provisions*). In April 1994, the State Council enacted the "Emergent Notice of Changes in Issuing Authority for Export Licenses Regarding Public Quota Bidding for Certain Commodities (*Quota Measures*).

The *1988 Law* and *1992 Regulations* shifted control of enterprises owned by all the people from the government to the enterprises themselves. The *1988 Law* provides that enterprises owned "by the whole people" shall make their own management decisions, be responsible for their own profits and losses, choose their own suppliers, and purchase their own goods and materials. The *1988 Law* also has other provisions which support a finding that such enterprises have management independence from the government in making management decisions. The *1992 Regulations* provide that these same enterprises can, for example, set their own prices (Article IX); make their own production decisions (Article XI); use their own retained foreign exchange (Article XII); allocate profits (Article II); sell their own products without government interference (Article X); make their own investment decisions (Article XIII); dispose of their own assets (Article XV); and hire and fire their employees without government approval (Article XVII). The *Export Provisions* indicate those products that may be subject to direct government control. Drawer slides do not appear on the *Export Provisions* list nor on the *Quota Measures* list and are not, therefore, subject to export constraints.

As stated in previous cases, there is some evidence, that the provisions of the above-cited *1988 Law* and *1992 Regulations* regarding enterprise autonomy have not been implemented uniformly among different sectors and/or jurisdictions in the PRC (*see* "PRC Government Findings on Enterprise Autonomy," in *Foreign Broadcast Information Service-China-93–133* (July 14, 1993)). Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

2. Absence of De Facto Control

The Department typically considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) Whether the export prices are set by or subject to the approval of a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses (*see Silicon Carbide* and *Furfuryl Alcohol*).

Each respondent has asserted the following: (1) It establishes its own export prices; (2) it negotiates contracts, without guidance from any governmental entities or organizations; (3) it makes its own personnel decisions, and there is no information on the record that suggests central government control over selection of management; and (4) it retains the proceeds of its export sales, uses profits according to its business needs and has the authority to sell its assets and to

obtain loans. In addition, respondents' questionnaire responses indicate that company-specific pricing during the POI does not suggest coordination among exporters. This information supports a preliminary finding that there is a *de facto* absence of governmental control of export functions.

Consequently, we preliminarily determine that Taiming, SHEEM, and GDMC have met the criteria for the application of separate rates. We will examine this issue at verification and determine whether the questionnaire responses are supported by verifiable documentation.

Nonmarket Economy Country Status

The Department has treated the PRC as a nonmarket economy country (NME) in all past antidumping investigations and administrative reviews (see, *e.g., Silicon Carbide* and *Furfuryl Alcohol*). Neither respondents nor petitioners have challenged such treatment. Therefore, in accordance with section 771(18)(c) of the Act, we will continue to treat the PRC as an NME in this investigation.

When the Department is investigating imports from an NME, section 773(c)(1) of the Act directs us to base foreign market value (FMV) on the NME producers' factors of production, valued in a comparable market economy that is a significant producer of comparable merchandise. The sources of individual factor prices are discussed under the FMV section, below.

Surrogate Country

Section 773(c)(4) of the Act requires the Department to value the NME producers' factors of production, to the extent possible, in one or more market economy countries that (1) are at a level of economic development comparable to that of the NME country, and (2) are significant producers of comparable merchandise. The Department has determined that India, Kenya, Nigeria, Pakistan, Sri Lanka, and Indonesia are the countries most comparable to the PRC in terms of overall economic development (*see* Memorandum from David Mueller, Director, Office of Policy, to Gary Taverman, Acting Director, Office of Antidumping Investigations, dated January 25, 1995). According to the information on the record, we have determined that India is also a significant producer of products comparable to drawer slides among these six potential surrogate countries. We found formed metal products suitable for furniture to be comparable merchandise to drawer slides. This is a broad category of merchandise which encompasses a variety of products including drawer slides. Because other products included in this category undergo similar production process (*i.e.*, cutting, stamping and forming of metal) as drawer slides, and have similar end uses (*i.e.*, manufactured for use in home or office furniture) as drawer slides, we have determined that metal furniture parts constitute comparable merchandise. Accordingly, we have calculated FMV using Indian prices for the PRC producers' factors of production. We have obtained and relied upon published, publicly available information wherever possible.

Fair Value Comparisons

To determine whether sales of drawer slides from the PRC to the United States by Taiming, SHEEM, and GDMC were made at less than fair value, we compared the United States price (USP) to the FMV, as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

For all respondents, we based USP on purchase price, in accordance with section 772(b) of the Act, because the subject merchandise was sold directly by the Chinese exporters to unrelated parties in the United States prior to importation into the United States and because ESP methodology was not otherwise indicated. We have included certain sales characterized by SHEEM as "trial" sales because we determined that they were sold in commercial quantities and at prices that were not aberrational.

We calculated purchase price based on packed, FOB Hong Kong and CIF U.S. port prices to unrelated purchasers in the United States, as appropriate. Where necessary, we made deductions for foreign inland freight, brokerage and handling, loading and containerization, ocean freight, and marine insurance. When these services were provided by a market economy supplier and paid for in a market economy currency, we used the actual cost. Otherwise, these charges were valued in the surrogate country.

Foreign Market Value

In accordance with section 773(c) of the Act, we calculated FMV based on factors of production reported by the factories in the PRC which produced the drawer slides for the three exporters. To calculate FMV, the reported factor quantities were multiplied by Indian values for those inputs purchased domestically from PRC suppliers. Where possible, we used public information for the surrogate values and adjusted the input prices to make them delivered prices. For a complete analysis of surrogate values, see the Calculation Memorandum attached to the Concurrence Memorandum, dated May 30, 1995. We then added amounts for overhead, general expenses and profit, and packing expenses incident to placing the merchandise in condition packed and ready for shipment to the United States.

To value cold-rolled steel coil (1.2 mm), we used public information from the 1994 edition of *Statistics for Iron & Steel Industry In India*, published by the Steel Authority of India Limited (SAIL). We used this source instead of a U.S. Embassy report submitted by the petitioner because (1) it provided prices for steel that most closely resembled the specifications of the product used by the respondents and (2) because the data was more contemporaneous with the POI. We adjusted the factor values from January 1994 to the POI using wholesale price indices published in *International Financial Statistics* (*IFS*) by the International Monetary Fund and made deductions for certain domestic taxes to derive a tax-exclusive price.

The respondents, Taiming and SHEEM, argue that we should use the actual acquisition price of cold-rolled steel imported by the joint ventures from the Republic of Korea. However, cold-rolled steel imports from Korea are subject to U.S. antidumping (AD) and countervailing (CVD) duties orders and therefore the prices are likely to be unsuitable for use in this context. It is the Department's practice not to value factors based on data from producers subject to AD or CVD orders. *See Final Determination of Sales at Less Than Fair Value: Certain Helical Spring Lock Washers from the PRC*, 58 FR 48833, 48841 (September 20, 1993) (*Helical Spring Lock Washers*). Similarly, GDMC argues that the Department should rely on its acquisition price of Japanese steel imports in calculating FMV because GDMC purchases steel from Japan in U.S. dollars. However, the relevant transaction for purposes of constructing a surrogate FMV is the transaction between the producer and the supplier of the input.

Because GDMC resells the steel to the producer in Chinese RMB, the Department did not rely on the Japanese acquisition price (*e.g., see Final Determination of Sales at Less than Fair Value: Coumarin From the PRC*, 59 FR 66895 (December 28, 1994)) (*Coumarin*). Although the drawer slides producer uses the Japanese steel exclusively for the manufacture of drawer slides for GDMC to export, this does not detract from the central fact that the transaction between GDMC and the producer is in a non-convertible currency. *See Final Determination of Sales at Less Than Fair Value: Ferrovanadium and Nitrided Vanadium From the Russian Federation*, 60 FR 102 27957 (May 26, 1995). Further GDMC does not purchase steel exclusively for use in drawer slides production. Therefore, the price for the large quantities purchased by GDMC does not necessarily reflect prices for the smaller quantities purchased by drawer slides producers.

To value epoxy powder, steel rivets, polymer wheels, coloring powder and nylon powder, we used public information from the August 1994 *Monthly Statistics of the Foreign Trade of India, Imports* (*Indian Import Statistics*). Although certain respondents who subcontract certain components of drawer slides (*e.g.*, steel rivets and polymer wheels) argue that the Department should value the factors of production based upon their subcontractors' experience, we based the value for these inputs on the price of a completed input. In two past cases, *Helical Spring Lock Washers* and *Final Determination of Sales Less Than Fair Value: Disposable Pocket Lighters From the PRC*, 60 FR 87 22359 (May 5, 1995), the Department did use the subcontractor's factors of production in calculating FMV. In those instances, the subcontractor further processed the subject merchandise into a finished product and the Department was unable to obtain surrogate information for valuing this further processing. However, in this investigation, wheels and rivets are completed sub-components inserted into the respondents' product and we were able to obtain surrogate information to value these subcomponents. Furthermore, valuing the cost to the producer of the subject merchandise for inputs is consistent with the statute's direction to measure and value "the factors of production utilized in the production of the merchandise." All inputs that were purchased were valued on the basis of a surrogate. Therefore, it is appropriate to base the value for these inputs on the price of a completed product. This is consistent with our practice in recent investigations (*see Furfuryl Alcohol* and *Coumarin*.)

For degreaser, a material not listed in *Indian Import Statistics*, we relied on *The Analyst's Import Reference 1993, Chemical & Pharmaceutical Products* (*The Analyst*), published by Genasys Multimedia of Bombay, India. We also relied on *The Analyst* for valuing phosphoric acid and phosphorous powder because data from the *Indian Import Statistics* was based on negligible quantities or a broadly defined import category. For hydrochloric acid, we relied on a 1993 price quote used in *Coumarin from the PRC* because the *Indian Import Statistics* and *The Analyst* are based on an Indian import category that is not exclusive to hydrochloric acid (*see Coumarin*). We adjusted these factor values to the POI using wholesale price indices published by *IFS*.

To value labor, we used information from the U.S. Department of Labor's *1992 Foreign Labor Trends* which provided Indian labor rates for skilled, semi-skilled, and unskilled workers. To determine the number of hours in an Indian work week, we used the *Country Reports: Human Rights Practices for 1990*. We adjusted the factor value to the POI using consumer price indices published in the *IFS*, consistent with our treatment of this value in past NME cases.

To value factory overhead, including energy, we calculated a percentage based on industry group income statements for "Processing and Manufacture—Metals, Chemicals, and Products thereof" from the September 1994 *Reserve Bank of India Bulletin* (1994 *RBI*).

For selling, general and administrative (SG&A) expenses, we derived a percentage based on *1994 RBI* data. The respondents argue that the ten percent statutory minimum is more appropriate because the *RBI* data is inclusive of selling commissions, which are not incurred by most of the respondents. However, in NME proceedings, the FMV is normally based completely on factors valued in a surrogate country (with regard to, for example, actual selling expenses) on the premise that the actual experience can not be meaningfully considered. Accordingly, we are applying the surrogate-based SG&A expenses. *See, e.g., Final Determination of Sales at Less than Fair Value: Pure Magnesium from Ukraine* 60 FR 16432 (March 30, 1995).

For profit, we relied on the statutory minimum of eight percent because the calculated rate based on *1994 RBI* data was less than eight percent. We added packing, using Indian values obtained from the August 1994 *Indian Import Statistics* and *Statistics for Iron & Steel Industry in India*. Packing values were inflated to the POI using *IFS* price indices.

Best Information Available (BIA)

The following discussion regarding the application of BIA applies to all exporters other than those that have responded to our questionnaires. Because no information has been presented to the Department to prove otherwise, any exporter of subject merchandise that did not respond to the Department's questionnaires is presumed to be under government control, and, therefore, is not entitled to its own separate dumping margin. The evidence on record indicates the responding companies may not account for all exports of the subject merchandise. In the absence of responses from all exporters, therefore, we are basing the PRC-Wide rate on BIA, pursuant to section 776(c) of the Act (*see Silicon Carbide* and *Manganese Sulfate*).

In determining what to use as BIA, the Department follows a two-tiered methodology, whereby the Department normally assigns lower margins to those respondents that cooperated in an investigation and more adverse margins to those respondents that did not cooperate in an investigation. When a company refuses to provide the information requested in the form required, or otherwise significantly impedes the Department's investigation, it is appropriate for the Department to assign to that company the higher of (a) the highest margin alleged in the petition, or (b) the highest calculated rate of any respondent in the investigation (*see Final Determination of Sales at Less Than Fair Value: Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from Federal Republic of Germany*, 54 FR 18992 (May 3, 1989).

In this investigation, since the evidence indicates that not all PRC exporters of drawer slides responded to our questionnaire, any PRC company, other than those specifically identified below, will be subject to the PRC-Wide rate. In this investigation, that rate is the highest margin alleged in the petition, as revised by the Department, because it is higher than the highest calculated rate of any respondent. (*See Initiation of Drawer Slides from the PRC*).

Verification

As provided in section 776(b) of the Act, we will verify all information determined to be acceptable for use in making our final determination.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to suspend liquidation of all entries of drawer slides from the PRC, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated dumping margins by which the FMV

exceeds the USP, as shown below. These suspension of liquidation instructions will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Weighted-average margin percentage
Taiming Metal Products Co., Ltd.	0.66
Sikai Hardware Electronic Equipment Manufacturing Co. Ltd.	5.22
Guangdong Metals and Minerals Import and Export Group Corp./ Guangdong Metals and Minerals, Import and Export Group, Metal Products Trading Company	24.48
PRC-Wide Rate	55.69

The PRC-Wide rate applies to all entries of subject merchandise except for entries from exporters that are identified individually above.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than August 23, 1995, and rebuttal briefs, no later than August 30, 1995. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held at 1:00 p.m. on September 6, 1995, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B–099, within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination within 135 days after the publication of this preliminary determination.

This determination is published pursuant to section 733(f) of the Act and 19 CFR 353.15(a)(4).

Dated: May 30, 1995.

Susan G. Esserman

Assistant Secretary for Import Administration.

[FR Doc. 95–13703 Filed 6–2–95; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

[I.D. 051195B]

North Pacific Fishery Management Council; Agenda Change

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of agenda change.

SUMMARY: Agendas for public meetings of the North Pacific Fishery Management Council (Council) and its advisory bodies, which are scheduled to meet June 8–9, 1995, and June 11–16, 1995, were published on May 30, 1995. Subsequently, the following modifications have been made to the published meeting agendas. All other information previously published remains unchanged.

FOR FURTHER INFORMATION CONTACT: North Pacific Fishery Management Council, (907) 271–2809.

SUPPLEMENTARY INFORMATION: The initial agenda was published on May 30, 1995 (60 FR 28087). For the meeting of the Scientific and Statistical Committee, scheduled for June 8–9, 1995, at the Holiday Inn in Anchorage, AK, agenda item (3), relating to observer specifications for 1996, will instead be a review of a proposed regulatory amendment to continue the current observer coverage levels through 1995. Agenda item (7), Electronic Reporting Requirements, has been removed from the agenda.

For the meetings of the Advisory Panel and the Council, scheduled during the week of June 11, 1995, at the Grand Aleutian Hotel in Dutch Harbor, AK, the following modifications have been made:

(1) Discussion of agenda item (4), relating to observer specifications for 1996, will instead be a review of a proposed regulatory amendment to continue current observer coverage levels through 1995.

(2) Agenda item (5), the Sablefish and Halibut Individual Fishery Quota Program, has been amended to add a report from the Implementation Team, as well as a discussion of International Pacific Halibut Commission Area 4 suballocations.

(3) A discussion of the Council's next steps in comprehensive rationalization for the groundfish and crab fisheries off Alaska will be added to the agenda.

Dated: May 31, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–13705 Filed 6–2–95; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Increase in a Guaranteed Access Level for Certain Wool Textile Products Produced or Manufactured in the Dominican Republic

May 30, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a guaranteed access level.

EFFECTIVE DATE: June 7, 1995.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this level, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Government of the United States has agreed to increase the 1995 Guaranteed Access Level (GAL) for Category 444.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Also see 60 FR 17321, published on April 5, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 30, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on March 30, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Dominican Republic and exported during the twelve-month period which began on January 1, 1995 and extends through December 31, 1995.

Effective on June 7, 1995, you are directed to increase the current guaranteed access level for Category 444 to 130,000 numbers.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–13620 Filed 6–2–95; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

Advisory Committee on CFTC-State Cooperation; Meeting

This is to give notice, pursuant to Section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, § 10(a), that the Commodity Futures Trading Commission's Advisory Committee on CFTC-State Cooperation will conduct a public meeting on June 28, 1995, in the Hearing Room on the basement level of the Commission's Washington, D.C. headquarters, 2033 K St., N.W., Washington, D.C. 20581. This meeting will begin at 9:30 a.m. and last until 12:30 p.m. The agenda will consist of the following:

Agenda

1. Opening Remarks—Mary L. Schapiro, Chairman, CFTC; Barbara Pedersen Holum, Commissioner, CFTC and Chairman, Advisory Committee on CFTC-State Cooperation;

2. Discussion of state/federal enforcement issues;

3. Report on enforcement issues from representatives of key congressional committees;

4. Briefing by various CFTC personnel on the Commission's recent enforcement actions; and

5. Discussion of other questions of concern to Advisory Committee members.

The Advisory Committee was created by the Commodity Futures Trading Commission for the purpose of receiving advice and recommendations on matters of joint concern to the States and the Commission arising under the Commodity Exchange Act, as amended. The purposes and objectives of the Advisory Committee on CFTC-State Cooperation are more fully set forth in the March 8, 1994 Ninth Renewal Charter of the Advisory Committee.

The meeting is open to the public. The Chairman of the Advisory Committee, Commissioner Barbara Pedersen Holum, is empowered to conduct the meeting in a fashion that will, in her judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Advisory Committee should mail a copy of the statement to the attention of: The Advisory Committee on CFTC-State Cooperation c/o Commissioner Barbara Pedersen Holum, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581, before the meeting. Members of the public who wish to make oral statements should also inform Commissioner Holum in writing at the foregoing address at least three business days before the meeting. Reasonable provision will be made, if time permits, for an oral presentation of no more than five minutes each in duration.

Issued by the Commission in Washington, D.C. on May 30, 1995.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 95–13638 Filed 6–2–95; 8:45 am]

BILLING CODE 6351–01–M

CONSUMER PRODUCT SAFETY COMMISSION

Commission Agendas and Priorities; Public Hearing

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of public hearing.

SUMMARY: The Commission will conduct a public hearing to receive views from all interested parties about its agenda and priorities for Commission attention during fiscal year 1997, which begins October 1, 1996. Participation by members of the public is invited. Written comments and oral presentations concerning the Commission's agenda and priorities for fiscal year 1997 will become part of the public record.

DATES: The hearing will be on June 23, 1995, immediately after the conclusion of the Commission's meeting which begins at 10 a.m. the same day. Written comments and requests from members of the public desiring to make oral presentations must be received by the Office of the Secretary not later than June 16, 1995. Persons desiring to make oral presentations at this hearing must submit a written text of their presentations not later than June 16, 1995.

ADDRESSES: The hearing will be in room 420 of the East-West Towers Building, 4330 East West Highway, Bethesda, Maryland. Written comments, requests to make oral presentations, and texts of oral presentations should be captioned "Agenda and Priorities" and mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207, or delivered to that office, room 502, 4330 East West Highway, Bethesda, Maryland.

FOR FURTHER INFORMATION CONTACT: For information about the hearing or to request an opportunity to make an oral presentation, call or write Rockelle Hammond, Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504–0800; telefax (301) 504–0127.

SUPPLEMENTARY INFORMATION: Section 4(j) of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2053(j)) requires the Commission to establish an agenda for action under the laws it administers, and, to the extent feasible, to select priorities for action at least 30 days before the beginning of each fiscal year. Section 4(j) of the CPSA provides further that before establishing its agenda and priorities, the Commission shall conduct a public hearing and provide an opportunity for the submission of comments.

The Office of Management and Budget requires all Federal agencies to submit their budget requests 13 months before the beginning of each fiscal year. The Commission is formulating its budget request for fiscal year 1997, which begins on October 1, 1996.

For this reason, the Commission will conduct a public hearing on June 23, 1995, to receive comments from the public concerning its agenda and priorities for fiscal year 1997. The Commissioners desire to obtain the views of a wide range of interested persons including consumers; manufacturers, importers, distributors, and retailers of consumer products; members of the academic community; consumer advocates; and health and safety officers of state and local governments.

The Commission is charged by Congress with protection of the public from unreasonable risks of injury associated with consumer products. The Commission enforces and administers the Consumer Product Safety Act (15 U.S.C. 2051 *et seq.*); the Federal Hazardous Substances Act (15 U.S.C. 1261 *et seq.*); the Flammable Fabrics Act (15 U.S.C. 1191 *et seq.*); the Poison Prevention Packaging Act (15 U.S.C. 1471 *et seq.*); and the Refrigerator Safety Act (15 U.S.C. 1211 *et seq.*). Standards and regulations issued under provisions of those statutes are codified in the Code of Federal Regulations, title 16, chapter II.

While the Commission has broad jurisdiction over products used by consumers in or around their homes, in schools, in recreation, and other settings, its staff and budget are limited. Section 4(j) of the CPSA expresses Congressional direction to the Commission to establish an agenda for action each fiscal year and, if feasible, to select from that agenda some of those projects for priority attention.

When the Commission selects priorities, it does so in accordance with its policy statement governing establishment of priorities codified at 16 CFR 1009.8. That policy statement includes the following factors to be considered by the Commission when selecting its priorities:

- Frequency and severity of injuries.
- Causality of injuries.
- Chronic illness and future injuries.
- Costs and benefits of Commission action.
- Unforeseen nature of a risk of injury.
- Vulnerability of the population at risk.
- Probability of exposure to hazard.

The order of listing of these criteria does not indicate their relative importance.

Persons who desire to make oral presentations at the hearing on June 23, 1995, should call or write Rockelle Hammond, Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207, telephone (301) 504–0800, telefax (301) 504–0127, not later than June 16, 1995.

Presentations should be limited to approximately ten minutes. Persons desiring to make presentations must submit the written text of their presentations to the Office of the Secretary not later than June 16, 1995. The Commission reserves the right to impose further time limitations on all presentations and further restrictions to avoid duplication of presentations. The hearing will be immediately after the completion of the Commission meeting which begins at 10 a.m. on June 23, 1995, and will conclude the same day.

Written comments on the Commission's agenda and priorities for fiscal year 1997, should be received in the Office of the Secretary not later than June 16, 1995.

Dated: May 30, 1995.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 95–13598 Filed 6–2–95; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title; Applicable Form; and OMB Control Number: Application for the U.S. Army ROTC 2 and 3 year Scholarship; ROTC Cadet Command Form 166–R; OMB Control Number 0702–0083.

Type of Request: Revision.

Number of Respondents: 4,400.

Responses Per Respondent: 1.

Annual Responses: 4,400.

Average Burden Per Response: 30 minutes.

Annul Burden Hours: 2,200.

Needs and Uses: The application for a U.S. Army ROTC scholarship is one of the primary tools used in the selection process for scholarship applicants. These scholarships provide highly qualified men and women with the opportunity to pursue a commission in the U.S. Army. The information collected hereby, provides the Department of the Army with the data necessary to evaluate and determine scholarship awards.

Affected Public: Individuals or households.

Frequency: Annually.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Mr. Edward C. Springer. Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William Pearce. Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: May 30, 1995.

Patricial L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–13599 Filed 6–2–95; 8:45 am]

BILLING CODE 5000–04–M

Department of the Army

Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement, Improvements for Juvenile Salmon Migration, Lower Snake River

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent to prepare a draft EIS.

SUMMARY: The U.S. Army Corps of Engineers (Corps) intends to prepare a Draft Environmental Impact Statement (EIS) under the National Environmental Policy Act (NEPA). The EIS will investigate proposals for use of reservoir drawdown and surface-oriented bypass sytems to improve juvenile salmon migration by decreasing water travel time through reservoirs and reducing stress associated with dam passage at the four lower Snake River dams and reservoirs. Alternatives will consider various designs for structural modifications and combination of the proposed modifications to these four dams.

Drawdown of the four lower Snake River reservoirs below minimum operating pool elevation is being evaluated as a means to increase flow velocities through the lower Snake River. Increased flow velocities are thought to decrease juvenile salmon travel time through the reservoir system and thereby presumably increase survival. Surface oriented bypass is being evaluated to improve guidance, and thereby reduce stress and associated mortality from passage of juvenile salmon through the dams.

Proposed alternatives focus on major structural modifications to existing Corps dams. These include Lower Granite, Little Goose, Lower Monumental, and Ice Harbor dams, located between Lewiston, Idaho and Pasco, Washington. A "no action" alternative will also be considered.

This action is being considered in response to a need to protect stocks of Snake River salmon that have been listed as threatened and endangered under the Endangered Species Act. National Marine Fisheries Service, on March 2, 1995, issued a biological opinion (BiOp) on operation of the Federal Columbia River Power System. The subject alternatives are being evaluated in response to recommendations contained in that document and the Federal agencies decision to implement the BiOp. The "Reasonable and Prudent Alternative" identified in the BiOp calls for an interim operation and examination of long-term configuration changes including drawdowns and surface bypass.

The U.S. Army Corps of Engineers, Walla Walla District is the lead agency in preparing this EIS. Cooperating agencies may be identified during the scoping process.

FOR FURTHER INFORMATION CONTACT: Mr. Peter F. Poolman, Walla Walla District, Corps of Engineers, CENPW–PL–ER, 201 North Third Avenue, Walla Walla, Washington 99362–1876, (509) 527–7261.

SUPPLEMENTARY INFORMATION: The proposed actions are being considered under NEPA, the Endangered Species Act, the Fish and Wildlife Coordination Act, and the authorizing legislation for the respective projects potentially involved in the proposed actions. This EIS is being developed as part of the Corps' System Configuration Study (SCS) Phase II. The SCS was initiated in response to the Northwest Power Planning Council's Fish and Wildlife Program Amendments, issued in December 1991, and is the Corps of Engineers' program for evaluating structural modifications at the Lower Snake and Columbia River dams to improve survival of salmon. Phase II is being proposed in response to evaluation requested by National Marine Fisheries Service (NMFS) in its Endangered Species Act Section 7 Consultation, Biological Opinion for Reinitiation of Consultation on 1994–1998 Operation of the Federal Columbia River Power System and the Juvenile Transportation Program in 1995 and Future Years, (BiOp), issued March 2, 1995.

In the BiOp, NMFS included a Reasonable and Prudent Alternative which includes immediate, intermediate and long-term actions concerning the operation and configuration of certain dams and reservoirs in the Columbia and Snake River basins. The strategy is an adaptive approach which requires aggressively pursuing studies and decisions on possible intermediate and long-term structural configuration changes, and obtaining scientific information to make those decisions. In the near-term, the operation is designed to provide conditions NMFS considers will improve mainstream survival while providing conditions to maximize the ability to gather scientific information to make intermediate and long-term decisions. For each of these decisions, NEPA documentation will be prepared as needed. For instance, the System Operation Review EIS is addressing power system operational strategy recommended in the BiOp.

This EIS is addressing one of the potential long-term alternatives for implementation of drawdown and/or surface bypass at the four lower Snake River dams. The Reasonable and Prudent Alternative included a schedule for completing the major modifications required under drawdown and bypass alternatives to these four dams. By mid-1996, an interim evaluation report on the drawdown and surface bypass alternative is scheduled to be completed to assist in identifying a preferred drawdown and surface bypass alternative for detailed engineering and design evaluations. The Reasonable and Prudent Alternative also specifies completion of necessary studies and engineering/design work no later than 1999 in preparation for potential drawdown and/or surface bypass implementation at the four lower Snake River Reservoirs by the year 2000.

The U.S. Army Corps of Engineers, North Pacific Division, published a Record of Decision (ROD) on Reservoir Regulation and Project Operation for 1995 and Future Years on March 10, 1995, in response to the NMFS BiOp. The ROD identified actions to be taken by the Corps, including the drawdowns and bypass being considered in the proposed EIS.

1. Proposed Actions

The proposed actions are being considered in response to the listing of certain salmon species and designation of critical habitat for these species. The Snake River sockeye salmon was listed as endangered on November 20, 1991 with an effective date of December 20, 1991 (56 FR 58,619). The spring/summer chinook and fall chinook were originally listed as threatened on April 22, 1992 with an effective date of May 22, 1992 (57 FR 14,653). Subsequently, the spring/summer chinook and fall chinook were proposed for listing as endangered (Interim Emergency Rule, August 18, 1994, 59 FR 42,529 with correction published on April 17, 1995 at 60 FR 19,342 and proposed rule, December 28, 1994, 59 FR 66,784). Critical habitat was designated for the Snake River sockeye, spring/summer chinook, and fall chinook salmon on December 28, 1993 (FR 68,543).

The proposed actions include potential use of reservoir drawdown and surface oriented bypass systems to improve juvenile salmon migration through the four lower Snake River dams and reservoirs as recommended by NMFS as a "Reasonable and Prudent Alternative to the Proposed Action" in the BiOp. The actions ultimately proposed for implementation in future years may involve some combination of measures for the lower Snake River Basin.

2. Alternatives

Alternatives being considered for the proposed action include a range of measures to improve downstream passage for juvenile anadromous salmon at the four lower Snake River projects. Alternatives address: 1) reducing reservoir-associated mortality; and/or 2) reducing dam-passage mortality.

a. No action—The no action alternative identifies the "without project condition", or those activities which will occur or continue to occur whether or not the proposed actions identified in the EIS are implemented. Development of technology for juvenile bypass, operation of juvenile salmon transportation programs, flow augmentation releases from storage reservoirs, spill for fish passage, and monitoring and evaluation are planned to continue with the no action alternative.

b. Lower Snake River Drawdown—Drawing down the lower Snake River reservoirs below designed operations levels during the juvenile salmon out migration season is intended to decrease

the water travel time by reducing the cross-sectional area of the reservoir and presumably reduce the juvenile downstream migration time. There are a number of drawdown options of the four lower Snake River reservoirs which will be examined in the EIS. These include: (1) Drawing the reservoirs down to the near-natural river elevation during the entire year; (2) drawing down to natural river for a portion of the year; and (3) drawing the reservoirs down to a mid-elevation level, such as spillway crest (lowest structural elevation that water will pass over the dam), for a portion of the year.

c. Surface Bypass Systems—This element defines and evaluates potential improvements to juvenile fish facilities at the four projects. This includes: (1 a new surface bypass structure for passage of salmon around the powerhouse, utilizing spill or a bypass flume; (2) a new surface bypass structure to collect fish by transport by barge and truck; (3) utilizing a combination of transport and bypass around the dams at one or a combination for the four lower Snake River projects; and (4) use of surface bypass systems in drawdown alternatives.

3. Scoping Process

The Corps invites affected Federal, state, and local agencies, Native American tribes, and other interested organizations, parties and the public to participate in the scoping process for the EIS. Input from other agencies and organizations that have a special interest and expertise in key resource areas such as fisheries, wildlife, water quality, navigation, hydropower production, recreation, cultural resources, and irrigation is welcome. The Corps seeks input on specific drawdown concepts and operational scenarios, and potential surface bypass alternatives. Resources impacts and other effects of the alternatives are solicited. The EIS process includes environmental review and consultation in accordance with other environmental statutes, rules, and regulations which apply to the proposed action. Further compliance with the Endangered Species Act may include preparation of one or more Biological Assessments and formal consultation with NMFS and the U.S. Fish and Wildlife Service.

4. Scoping Meetings

Four public scoping meeting and workshops for the EIS will be held in the region in mid-July, 1995. They will be held in Boise and Lewiston, Idaho; Spokane and Pasco, Washington. Confirmation dates, location and times will be advertised and provided in a scoping letter that will be widely distributed throughout the region.

5. Availability

An Interim Status Report is tentatively scheduled for release to the public and agencies for review during October, 1996 in order to facilitate decisions necessary to the BiOp. The Draft EIS should be available in 1998.

Dated: May 19, 1995.

James S. Weller,

LTC, En Commanding.

[FR Doc. 95–13570 Filed 6–2–95; 8:45 am]

BILLING CODE 3710–GC–M

DEPARTMENT OF ENERGY

Environmental Management Site Specific Advisory Board, Savannah River Site

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site Specific Advisory Board (EM SSAB), Savannah River Site.

DATES: Tuesday, June 20, 1995: 8:30 a.m.–11:30 a.m.

ADDRESSES: Savannah River Site Main Administration, Building 703–41A, Aiken, S.C.

FOR FURTHER INFORMATION CONTACT: Tom Hennan, Manager, Environmental Restoration and Solid Waste, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, S.C. 29802 (803)725–8074.

SUPPLEMENTARY INFORMATION: This notice replaces the notice published June 1, 1995, announcing an open meeting on June 8, 1995. Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Agenda:

Tuesday, June 20, 1995

8:30 a.m.—Nuclear Materials Management Subcommittee Report and discussion of recommendations regarding the Draft Foreign Research Reactor Spent Nuclear Fuel Environmental Impact Statement

10:45 a.m.—Public Comment Session (5-minute rule)

11:30 a.m.—Adjourn

Public Participation

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Written comments will be accepted at the address above for 15 days after the date of the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Tom Heenan's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes

The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Tom Heenan, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, S.C. 29802, or by calling him at (803)-725–8074.

Issued at Washington, DC on May 31, 1995.

Rachel Murphy Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 95–13681 Filed 6–2–95; 8:45 am]

BILLING CODE 6450–01–P

Invention Available for License

AGENCY: Office of General Counsel, Department of Energy.

ACTION: Notice.

SUMMARY: The U.S. Department of Energy announces that the following inventions, and possible foreign counterparts, are available for license in accordance with 35 U.S.C. 207–209. U.S. Patent No. 5,384,048, "Bioremediation of Contaminated Groundwater;" U.S. Patent No. 5,189,359, "Solid State Safety Jumper Cables;" U.S. Patent No. 5,217,009, "Compact Electronic Bone Growth Stimulator;" U.S. Patent No. 5,137,314, "Catwalk Grate Lifting Tool;" and U.S. S.N. 843,027, "Method and Device for Disinfecting a Toilet Bowl."

A copy of the patents may be obtained, for a modest fee, from the U.S. Patent and Trademark Office, Washington, D.C. 20231. A copy of the patent application may be obtained, for a modest fee, from the National Technical Information Service (NTIS), Springfield, Virginia 22161.

FOR FURTHER INFORMATION CONTACT: Robert J. Marchick, Office of the Assistant General Counsel for Technology Transfer and Intellectual Property, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, D.C. 20585; Telephone (202) 586–2802.

SUPPLEMENTARY INFORMATION: 35 U.S. 207 authorizes licensing of Government-owned inventions. Implementing regulations are contained in 37 CFR Part 404. 37 CFR 404.7(a)(1) authorizes exclusive licensing of Government-owned inventions under certain circumstances, provided that notice of the invention's availability for license has been announced in the **Federal Register**.

Issued in Washington, D.C., on May 30, 1995.

Agnes P. Dover,

Deputy General Counsel for Technology Transfer and Procurement.

[FR Doc. 95–13679 Filed 6–2–95; 8:45 am]

BILLING CODE 6450–01–M

Molecular Structure Corporation

AGENCY: Office of the General Counsel, Department of Energy.

ACTION: Notice of intent to grant exclusive patent license.

SUMMARY: Notice is hereby given of an intent to grant to Molecular Structure Corporation, of The Woodlands, Texas, an exclusive license to practice the invention described in U.S. Patent No. 4,953,191, entitled "High Intensity X-Ray Source Using Liquid Gallium." The invention is owned by the United States of America, as represented by the Department of Energy (DOE). The proposed license will be exclusive, subject to a license and other rights retained by the U.S. Government, and other terms and conditions to be negotiated. DOE intends to grant the license, upon a final determination in accordance with 35 U.S.C. § 209(c), unless within 60 days of this notice the Assistant General Counsel for Technology Transfer and Intellectual Property, Department of Energy, Washington, D.C. 20585, receives in writing any of the following, together with supporting documents:

(i) A statement from any person setting forth reasons why it would not be in the best interests of the United States to grant the proposed license; or

(ii) An application for a nonexclusive license to the invention, in which applicant states that he already has brought the invention to practical application or is likely to bring the invention to practical application expeditiously.

DATES: Written comments or nonexclusive license applications are to be received at the address listed below no later than August 4, 1995.

ADDRESSES: Office of Assistant General Counsel for Technology Transfer and Intellectual Property, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: Robert J. Marchick, Office of the Assistant General Counsel for Technology Transfer and Intellectual Property, U.S. Department of Energy, Forrestal Building, Room 6F–067, 1000 Independence Avenue SW., Washington, D.C. 20585; Telephone (202) 586–4792.

SUPPLEMENTARY INFORMATION: 35 U.S.C. 209(c) provides the Department with authority to grant exclusive or partially exclusive licenses in Department-owned inventions, where a determination can be made, among other things, that the desired practical application of the invention has not been achieved, or is not likely expeditiously to be achieved, under a nonexclusive license. The statute and implementing regulations (37 CFR 404) require that the necessary determinations be made after public notice and opportunity for filing written objections.

Molecular Structure Corporation, of The Woodlands, Texas, has applied for an exclusive license to practice the invention embodied in U.S. Patent No. 4,953,191, and has a plan for commercialization of the invention.

The proposed license will be exclusive as deemed appropriate, subject to a license and other rights retained by the U.S. Government, and subject to a negotiated royalty. The Department will review all timely written responses to this notice, and will grant the license if, after expiration of the 60-day notice period, and after consideration of any written responses to this notice, a determination is made, in accordance with 35 U.S.C. 209(c), that the license grant is in the public interest.

Issued in Washington, D.C., on May 30, 1995.

Agnes P. Dover,

Deputy General Counsel for Technology Transfer and Procurement.

[FR Doc. 95–13678 Filed 6–2–95; 8:45 am]

BILLING CODE 6450–01–M

Alaska Power Administration

Snettisham Project—Notice of Order Confirming and Approving an Adjustment of Power Rates on an Interim Basis

AGENCY: Alaska Power Administration, DOE.

ACTION: Notice of adjustment of power rates—Snettisham Project, rate schedules SN–F–5, SN–NF–8, SN–NF–9, and SN–NF–10.

SUMMARY: Notice is hereby given that the Deputy Secretary approved on April 28, 1995, Rate Order No. APA 13 which adjusts the present power rates for the Snettisham Project. This is an interim rate action effective May 1, 1995, for a period of 12 months, unless extended, and is subject to final confirmation and approval by the Federal Energy Regulatory Commission (FERC) for a period of up to five years.

FOR FURTHER INFORMATION CONTACT: Mr. Lloyd Linke, Director, Power Division, Alaska Power Administration, 2770 Sherwood Lane, Suite 2B, Juneau, AK 99801–8545, (907) 586–7405.

SUPPLEMENTARY INFORMATION: On December 6, 1994, the Alaska Power Administration (APA) published a **Federal Register** notice of its intention to adjust current power rates for the Snettisham Project for a period of up to five years. The present rates, as approved by FERC at 57 FERC ¶ 62,235, are 32.1 mills per kilowatthour for firm energy. There is a variable rate for based on the cost of heating oil of 27.1 mills per kilowatthour for non-firm energy based on energy used in place of wood burning. These rates were approved by FERC Order, Docket No. EF92–1021–000 issued December 23, 1991, for the period October 1, 1991, through September 30, 1996. Based on the annual certification of rates, APA now proposes that rates be adjusted beginning May 1, 1995, for a period of up to five years. The new rates would be 34.7 mills per kilowatthour for firm energy, with the non-firm rates to remain the same. The **Federal Register** notice also indicated APA's intention to seek interim approval of the proposed rates by the Deputy Secretary of Energy pending final confirmation and approval of the rates by FERC.

Following review of APA's proposal within the Department of Energy, on April 28, 1995, I approved on an interim basis Rate Order No. APA–13 which adjusts the present Snettisham Rates for period of up to five years beginning May 1, 1995, subject to final confirmation and approval by FERC.

Issued at Washington, DC, April 28, 1995.

Bill White,

Deputy Secretary.

Order Confirming and Approving Power Rates on an Interim Basis

April 28, 1995.

In the matter: of Alaska Power Administration—Snettisham Project Power Rates; Rate Order No. APA–13.

This is an interim rate action subject to review and approval of the Federal Energy Regulatory Commission. It is made pursuant to the authorities delegated in DOE Delegation Order No. 0204–108, Amendment No. 3 to that Order.

Background

Section 204 of the 1962 Flood Control Act (76 Stat. 1194), authorizes the Crater-Long Lakes Division of the Snettisham Project and provides authority and general criteria for marketing Snettisham project power. Section 201 of the 1976 Water Resources Development Act, Public Law 94–587, provides additional criteria. The DOE Organization Act (91 Stat. 565) assigns responsibilities for Snettisham to the Secretary of Energy acting by and through the APA Administrator.

The Snettisham Project was constructed in two phases. The Long Lake phase went into commercial service in 1975. The Crater Lake phase went into commercial service in 1991. Section 201 of the 1976 Water Resource Development Act, Public Law 94–587, set a repayment period of 60 years for the Long Lake portion of the project and fixed a schedule for its repayment. The Crater Lake investment carries a 50 year repayment period.

The Snettisham Project is a single purpose project comprised of two separate lake taps, power tunnels and penstocks; a single underground powerplant housing three units with a combined capacity of 78,210 kw; 41 miles of 138 kv overhead transmission line and three miles of submarine cable; and a single substation serving the Juneau area. A small amount of energy is sold to the State of Alaska for operation of a fish hatchery at Snettisham. Rate Schedules SN–F–4, SN–NF–5, SN–NF–6, SN–NF–7 now in effect for the Snettisham Project were confirmed and approved by order of the Federal Energy Regulatory Commission, Docket No. EF92–1021–000 issued December 23, 1991 for a period ending September 30, 1996.

Discussion

System Repayment

Studies prepared by the Alaska Power Administration, as required by DOE Policy No. RA 6120.2, demonstrate that the present firm rate must be increased to provide sufficient revenue to meet requirements for the rate period and meet project repayment criteria by the end of the repayment period. On that basis, the Alaska Power Administration proposes an adjustment of the firm rate for a period not to exceed five years. The Administrator of Alaska Power Administration has certified that the new rates are consistent with applicable law and that they are the lowest possible rates to customers consistent with sound business principles.

Environmental Impact

Alaska Power Administration has concluded with Departmental concurrence that this rate action will have no significant environmental impact within the meaning of the Environmental Policy Act of 1969. It is the Alaska Power Administration's determination that the rate adjustment does not exceed the rate of inflation and therefore is categorically excluded from the NEPA process as defined in 40 CFR 1508.4 and is listed as a categorical exclusion for DOE in 10 CER 1021, Appendix B4.3. The proposed action is not a major Federal action for which preparation of an Environmental Impact Statement is required.

Availability of Information

Information regarding this rate action, including studies and other supporting material, is available for public review in the officers of the Alaska Power Administration, 2770 Sherwood Lane, Suite 2B, Juneau, Alaska.

Public Notice and Comment

Opportunity for public review and comment on the rate action was announced by notice in the **Federal Register** on December 6, 1994, and in a paid advertisement of a newspaper in the market area on December 22 and 23, 1994. The notice provided for a comment period of 90 days following publication in the **Federal Register**. An informational meeting was held with an advisory committee to the Juneau City Assembly. A new article on the proposed rate action was published in the Juneau Empire on February 7, 1995. A public information and comment forum was scheduled in Juneau, Alaska on January 12, 1995, with public comment period ending March 7, 1995. The public information and comment forum was canceled on January 6, 1995, due to lack of interest, in accordance with 10 CFR 903.15(b), 10 CFR 903.15(c) and the Alaska Power Administration's prior notices of the public forum.

Submission to FERC

The rates herein confirmed, approved, and placed in effect on an interim basis, together with supporting documents, will be submitted promptly to the Federal Energy Regulatory Commission (FERC) for confirmation and approval on a final basis.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby confirm and approve on an interim basis, effective May 1, 1995, attached Wholesale Power Rate Schedules SN–F–5 SN–NF–8, SN–NF–9 and SN–NF–10. These rate schedules shall remain in effect on an interim basis for a period of 12 months unless such period is extended or until the Federal Energy Regulatory Commission confirms and approves them or substitute rate schedules on a final basis.

Issued at Washington, DC, this 28 day of April 1995.

Bill White,

Deputy Secretary.

[Schedule SN–NF–5]

United States Department of Energy
Alaska Power Administration

Snettisham Project, Alaska

Schedule of Rates for Wholesale Firm Power Service

Effective

May 1, 1995 for a maximum of five years.

Available

In the area served by the Snettisham Project, Alaska.

Applicable

To wholesale power customers for general power service.

Character and Conditions of Service

Alternating current, sixty cycles, three-phase, delivered and metered at the low-voltage side of substation.

Monthly Rate

Capacity charge: None.

Energy charge: Firm energy at 34.7 mills per kilowatt-hour.

Minimum Annual Capacity Charge

None.

Billing Demand

Not applicable.

Adjustments

For transformer losses: If delivery is made at the high-voltage side of the customer's substation but metered at the low-voltage side, the meter readings will be increased 2 percent to compensate for transformer losses.

[Schedule SN–NF–6]

United States Department of Energy
Alaska Power Administration

Snettisham Project, Alaska

Schedule of Rates for Interruptible Power Service

Effective

May 1, 1995 for a maximum of five years.

Available

In the area served by the Snettisham Project, Alaska.

Applicable

To wholesale power customers for resale to their large commercial and government dual-fuel customers. Availability of energy will be determined by Alaska Power Administration.

Character and Conditions of Service

Alternating current, sixty cycles, three-phase, delivered and metered at the low-voltage side of substation.

Monthly Rate

Capacity charge: None.

Energy charge: Variable rate pegged to price of hearing oil purchased by the State of Alaska or City and Borough of Juneau, whichever is lower. Refer to Table 1 listing oil prices and comparable wholesale rates.

Minimum Annual Capacity Charge

None.

Billing Demand

No applicable.

Adjustments

For transformer losses: If delivery is made at the high-voltage side of the customer's substation but metered at the low-voltage side, the meter readings will be increased 2 percent to compensate for transformer losses.

Table 1

$$\text{Wholesale rate} = 1.00 + \left(\frac{\frac{9 \times \text{OIL}}{28.3} - 1.91}{2} \right)$$

Fuel oil ($/gal)	Wholesale rate (cents/kwh)	Wholesale rate (mills/kwh)
0.50	0.84	8.4
0.52	0.87	8.7
0.54	0.90	9.0
0.56	0.94	9.4
0.58	0.97	9.7
0.60	1.00	10.0
0.62	1.03	10.3
0.64	1.06	10.6
0.66	1.09	10.9
0.68	1.13	11.3
0.70	1.16	11.6
0.72	1.19	11.9
0.74	1.22	12.2
0.76	1.25	12.5
0.78	1.29	12.9
0.80	1.32	13.2
0.82	1.35	13.5
0.84	1.38	13.8
0.86	1.41	14.1
0.88	1.44	14.4
0.90	1.48	14.8
0.92	1.51	15.1
0.94	1.54	15.4
0.96	1.57	15.7

United States Department of Energy
Alaska Power Administration

Snettisham Project Alaska

Schedule of Rates for Interruptible Power Service

Effective

May 1, 1995 for a maximum of five years.

Available

In the area served by the Snettisham Project, Alaska.

Applicable

To wholesale power customers for resale to their residential dual-fuel customers. Availability of energy will be determined by Alaska Power Administration.

Character and Conditions of Service

Alternating current, sixty cycles, three-phase, delivered and metered at the low-voltage side of substation.

Monthly Rate

Capacity charge: None.

Energy charge: Variable rate pegged to price of heating oil purchase by the State of Alaska. Refer to Table 1 listing oil prices and comparable wholesale rates.

Minimum Annual Capacity Charge

None.

Billing Demand

Not applicable.

Adjustments

For transformer losses: If delivery is made at the high-voltage side of the customer's substation but metered at the low-voltage side, the meter readings will be increased 2 percent to compensate for transformer losses.

Table 1

$$\text{Wholesale rate} = 1.00 + \left(\frac{\frac{9 \times \text{OIL}}{28.3} - 1.91}{2} \right)$$

Fuel oil ($/gal)	Wholesale rate (cents/kwh)	Wholesale rate (mills/kwh)
0.50	0.84	8.4
0.52	0.87	8.7
0.54	0.90	9.0
0.56	0.94	9.4
0.58	0.97	9.7
0.60	1.00	10.0
0.62	1.03	10.3
0.64	1.06	10.6
0.66	1.09	10.9
0.68	1.13	11.3
0.70	1.16	11.6
0.72	1.19	11.9
0.74	1.22	12.2
0.76	1.25	12.5
0.78	1.29	12.9
0.80	1.32	13.2
0.82	1.35	13.5
0.84	1.38	13.8
0.86	1.41	14.1
0.88	1.44	14.4
0.90	1.48	14.8
0.92	1.51	15.1
0.94	1.54	15.4
0.96	1.57	15.7

[Schedule SN–NF–10]

United States Department of Energy
Alaska Power Administration

Snettisham Project, Alaska

Schedule of Rates for Non-Firm Surplus Power Service

Effective

May 1, 1995 for a maximum of five years.

Available

In the area served by the Snettisham Project, Alaska.

Applicable

To wholesale power customers who have established a rate schedule providing an incentive retail rate for electric heat customers who also have a wood stove, for increased use of energy for each month when compared to the same month in the preceding year. Availability of surplus energy will be determined by Alaska Power Administration.

Character and Conditions of Service

Alternating current, sixty cycles, three-phase, delivered and metered at the low-voltage side of substation.

Monthly Rate

Capacity charge: None.
Energy charge: 21.7 mills per kilowatt-hour.

Minimum Annual Capacity Charge

None.

Billing Demand

Not applicable.

Adjustments

For transformer losses: If delivery is made at the high-voltage side of the customer's substation but metered at the low-voltage side, the meter readings will be increased 2 percent to compensate for transformer losses.

[FR Doc. 95–13682 Filed 6–2–95; 8:45 am]
BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Project No. 3074–006 Washington]

City of Spokane; WA; Notice of Availability of Environmental Assessment

May 30, 1995.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's Regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47910), the Office of Hydropower Licensing (OHL) reviewed the Revised Report on Recreational Resources (revised report), filed May 11, 1990, pursuant to Article 29 of the license for the Upriver Project. The facilities proposed in the revised report are being assessed separately from an amendment proposal to raise the forebay by 1.5 feet, filed September 23, 1993. The proposed recreational facilities will not be impacted by the proposed 1.5-foot rise in the forebay. The additional recreation facilities proposed in the revised report will be constructed on projectlands on the Spokane River in Spokane County, Washington. The recreation facilities proposed consist of: (1) The north side development that includes the licensee's half-mile portion of the constructed Centennial Trail and a constructed river access area located in the immediate area of the Upriver Dam spillway; and (2) the unconstructed southside development that includes a visitor information center, bus parking area, and extensive landscaping next to the forebay to the powerhouse. The staff prepared an Environmental Assessment (EA) for the action. In the EA, staff concludes that approval of the licensee's revised report would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Reference and Information Center, Room 3308, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 95–13611 Filed 6–2–95; 8:45 am]
BILLING CODE 6717–01–M

Notice of Intent to Prepare an Environmental Assessment, Conduct Site Visit, Solicit Interventions, Protests, and Written Scoping Comments

May 26, 1995.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Minor License (existing non-operating).
b. Project No. 11509–000.
c. Date filed: December 5, 1994.
d. Applicant: City of Albany, Oregon.
e. Name of Project: City of Albany Hydroelectric Project.
f. Location: On the South Santiam River and the Albany-Santiam Canal in Linn County, Oregon, in the cities of Albany and Lebanon. T12S,R1W, section 19; T12S,R2W sections 2, 3, 11, 23 and 24; T11S,R3W sections 6, 7, 15, 18, and 20–25; T11S,R2W section 12; T11S,R4W, section 12.
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. Applicant Contact:
Mark A. Yeager, P.E., Public Works Director, City of Albany, P.O.Box 490, 250 Broadalbin, Albany, OR 97321, (503) 967–4300.
Beverly Bruesch, Project Planner, David Evans and Associates, Inc., 2828 SW Corbett Avenue, Portland, OR 97201–4830, (503) 223–6663.
i. FERC Contact: Ms. Deborah Frazier-Stutely, (202) 219–2842.
j. Deadline for filing protests, motions to intervene and written scoping comments: July 28, 1995.
k. Status of Environmental Analysis: The application is not ready for environmental analysis at this time—see attached paragraph D8.
l. Intent to Prepare an Environmental Assessment and Invitation for Written Scoping Comments: The Commission staff intends to prepare and Environmental Assessment (EA) on this hydroelectric project in accordance with the National Environmental Policy Act. In the EA, we will consider both site-specific and cumulative environmental impacts of the project and reasonable alternatives, and will include an economic, financial, and engineering analyses.

A draft EA will be issued and circulated for review by all interested parties. All comments filed on the draft EA will be analyzed by the staff and considered in a final EA. The staff's conclusions and recommendations will then be presented for the consideration by the Commission in reaching its final licensing decision.

Scoping Meetings

Staff will hold two scoping meetings. A scoping meeting oriented towards the public will be held on Tuesday, June 27, 1995, at 7:00 pm, at the City of Albany, City Hall, 250 Broadalbin, Albany, Oregon. A scoping meeting oriented towards the agencies will be held on Wednesday, June 28, 1995, at 9:30 am, at the Portland Building, 1120 South West 5th Avenue, 2nd floor, Room B, Portland, Oregon.

Interested individuals, organizations, and agencies are invited to attend either or both meetings and assist the staff in identifying the scope of environmental issues that should be analyzed in the EA.

To help focus discussions at the meetings, a scoping document outlining subject areas to be addressed in the EA will be mailed to agencies and interested individuals on the Commission mailing list. Copies of the scoping document will also be available at the scoping meetings.

Site Visit

A site visit to the City of Albany Hydroelectric Project is planned for June 27, 1995. Those who wish to attend should plan to meet at 8:00 am at the City of Albany's Water Treatment Plant at 300 Vine Street SW, Albany, Oregon. If you plan to attend, contact Mr. G. Matthew Reynolds, City of Albany, by June 23, 1995, at (503) 967–4300 for directions or additional details.

Objectives

At the scoping meetings the staff will: (1) identify preliminary issues related to the proposed project; (2) identify issues that are not important and do not require detailed analysis; (3) identify reasonable alternatives to be addressed in the EA; (4) solicit from the meeting participants all available information, especially quantified data, on the resource issues; and (5) encourage statements from experts and the public on issues that should be analyzed in the EA, including points of view in opposition to, or in support of, the staff's preliminary views.

Procedures

The scoping meetings will be recorded by a court reporter and all statements (oral and written) will become a part of the formal record of the Commission's proceedings on the City of Albany Hydroelectric Project. Individuals presenting statements at the meetings will be asked to clearly identify themselves for the record.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meetings and assist the staff in defining and clarifying the issues to be addressed in the EA.

Persons choosing not to speak at the meetings, but who have views on the issues or information relevant to the issues, may submit written statements for inclusion in the public record at the meetings. In addition, written scoping comments may be filed with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, D.C. 20426, until July 28, 1995.

All written correspondence should clearly show the following caption on the first page: City of Albany Hydroelectric Project, FERC No. 11509–000.

Intervenors—those on the Commission's service list for this proceeding (parties)—are reminded of the Commission's Rules of Practice and Procedure, requiring parties filing documents with the Commission, to serve a copy of the document on each person whose name appears on the official service list. Further, if a party files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. All entities commenting on this scoping document must file an original and eight copies of the comments with the Secretary of the Commission.

Any questions regarding this notice may be directed to Ms. Deborah Frazier-Stutely, Environmental Coordinator, FERC, at (202) 219–2842.

m. Description of Project: The proposed project would consist of: (1) the existing 6-foot-high, 450-foot-long concrete Lebanon dam, consisting of 3-foot-high flashboards with a crest elevation at 100 feet mean sea level (m.s.l) to be modified to a fixed crest dam with a new crest elevation at 101.5 feet m.s.l; (2) four existing fish ladders, two to be removed, one replaced and one rehabilitated; (3) the existing unscreened canal inlet, to be screened; (4) the existing 18-mile-long, 20-foot-wide trapezoidal Albany-Santiam Canal, about 12 miles of which would be dredged; (5) the two existing concrete penstock intakes with trashracks, wood plank cover and manual slide gates, one to remain closed; (6) the two existing 6-foot-diameter, 55-foot-long steel penstocks, one to remain closed; (7) the existing powerhouse containing two Francis turbines, one to be removed, and one refurbished, two synchronous generators, one to be replaced with an induction generator with an installed capacity of 50 kilowatts and the other to be removed; (8) the existing switchyard, to be upgraded; (9) the existing tailrace discharging project flows into the Calapooia River; (10) the existing 2.4-kilovolt, 300-foot-long transmission line tying into an existing Pacific Power and Light substation; and (11) related facilities.

The project would operate in a run-of-river mode, and the canal, after dredging would have a maximum capacity of 310 cubic feet per second (cfs). Albany proposes to operate the project to maintain a continuous minimum flow of 1,100 cfs in the South Santiam River bypass reach. The proposed project would generate about 3,780,000 kilowatthours of energy annually.

n. Purpose of Project: Project power will be used by the City of Albany.

o. This notice also consists of the following standard paragraphs: A2, A9, B1, D8.

p. Available Locations of Applications: A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, N.E., Room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at the applicant's office (see item (h) above).

A2. Development Application—Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

B1. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

D8. Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," or "COMPETING APPLICATION"; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 1027, at the above

address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–13610 Filed 6–2–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–99–007]

Colorado Interstate Gas Company; Notice of Refund Report

May 30, 1995.

Take notice that on April 12, 1995, Colorado Interstate Gas Company (CIG) filed a refund report in Docket No. RP93–99–007. CIG states that the filing and refunds were made to comply with the Commission's order of November 10, 1994. CIG states that that these amounts were paid by CIG on March 13, 1995 and April 7, 1995.

CIG notes that the refund report summarizes transportation and gathering refund amounts for the period October 1, 1993 through September 30 1994 pursuant to Article 3.2 of CIG's Stipulation and Agreement as approved in the Commission's November 10, 1994 Order.

CIG states that copies of CIG's filing have been served on CIG's jurisdictional transportation and gathering customers, interested state commissions, and all parties to the proceedings.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before June 6, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95– 13612 Filed 6–2–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–91–001]

Columbia Gas Transmission Corporation; Notice of Compliance Filing

May 30, 1995.

Take notice that on May 24, 1995, Columbia Gas Transmission Corporation (Columbia) tendered for filing the following information.

In compliance with the Commission's letter order of May 19, 1995 in Docket No. RP95–91–000, Columbia states that it has recalculated Appendix B of the Excess Revenue Credit Report to correct an error in its allocation of excess revenue credits.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure. All protests should be filed on or before June 6, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of Columbia's filings are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–13613 Filed 6–2–95; 8:45 am]

BILLING CODE 6717–01–M

Western Area Power Administration

Stampede Division, Washoe Project—Proposed Nonfirm Power Rate

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Proposed Stampede Division, Washoe Project Nonfirm Energy Rate Adjustment.

SUMMARY: The Western Area Power Administration (Western) is proposing a rate adjustment for nonfirm energy from the Stampede Division, Washoe Project (Stampede). Stampede is located in Sierra County, California. The power repayment study and other analyses indicate that the proposed ceiling rate for nonfirm energy provides sufficient revenue to pay all annual costs (including interest expense), plus repayment of required investment within the allowable time period. Details regarding the proposed rates are outlined in a rate brochure to be provided to all interested parties. Proposed rates for nonfirm energy are scheduled to become effective October 1, 1995.

This notice provides for proposed floor and ceiling rates that are intended to ensure the maximum reasonable annual repayment of the Stampede power investment at marketable rates. The proposed formula for the floor rate will be no less than 85 percent of the then-effective non-time-differentiated rate as provided in Sierra Pacific Power Company's (SPPC) California Quarterly Short-Term Purchase Price Schedule for As-Available Purchases from Qualifying Facilities with Capacities of 100 kilowatts (kW) or Less (CSPP). This floor rate reflects the rate used to determine a value of an energy exchange account between Western and SPPC for the benefit of project-use facilities. The CSPP is filed with the California Public Utilities Commission (CPUC) on a semi-annual basis. The ceiling rate will be the rate determined by Western to be necessary to repay the Stampede power investment and annual expenses over the remaining repayment period of the power facilities.

Under the proposed rate schedule, Western will conduct a bidding process for the Stampede nonfirm energy that is available after project-use loads have been met, giving priority to preference entities. The nonfirm Stampede energy will be sold to the highest bidder, provided that the bid price is between the proposed floor and ceiling rates.

On June 7, 1991, the Federal Energy Regulatory Commission (FERC) approved the rate procedure for Stampede in Docket No. EF90–5161–000, which expires on September 30, 1995. FERC approved Rate Schedule SNF–3 through September 30, 1994, 55 FERC P61,391. On September 14, 1994, the Deputy Secretary of Energy extended the rate schedule until September 30, 1995 pursuant to Delegation Order No. 0204–108, 59 FR 488875. This rate procedure established an annual bidding process for the sale of Stampede nonfirm energy. The nonfirm energy would be sold to the entity offering the highest price, provided that the bid price is between the floor and ceiling rates established by Western. Since 1991, Western has not received a bid for Stampede energy that fully complied with the FERC-approved bidding procedure. As a result, Western has been able to market Stampede nonfirm energy only under short-term agreements. In addition, prior to 1994, Western could not provide Stampede power to project-use loads, as announced in the **Federal Register** (50 FR 21350) on May 23, 1985. To serve project-use loads and market Stampede nonfirm energy, Western negotiated an agreement in 1994 with SPPC that provides for an annual energy exchange account for Stampede energy. As members of the Western Systems Power Pool (WSPP), Western and SPPC agreed that SPPC would accept delivery of all energy generated by Stampede into its electrical system. The dollar value of the Stampede energy received by SPPC during any month will be credited into the Stampede Energy Exchange Account (SEEA). Western can utilize the SEEA to benefit project use facilities, market Stampede nonfirm energy to preference entities over the SPPC transmission system at mutually agreed points of delivery, or sell a portion of the Stampede energy to SPPC. So long as there is a balance in the SEEA, Western may direct SPPC to do any combination of the above transactions in any month.

The existing and proposed floor and ceiling rates for Stampede nonfirm energy are shown in the table below:

PERCENTAGE CHANGE IN NONFIRM ENERGY RATE

Nonfirm energy rate	Existing rates as of July 1, 1994	Proposed rates October 1, 1995	Percent change
Floor rate (mills/kWh)	27.69	See formula	N/A
Ceiling rate (mills/kWh)	67.39	72.307	7

Stampede is a power system which normally has annual sales less than 100 million kWh and an installed capacity of less than 20,000 kilowatt; therefore, the proposed rates constitute a minor rate adjustment as defined by the procedures for public participation in rate adjustments, as cited below. Since this is a minor rate adjustment, no public meetings are scheduled; however, Western will accept comments from interested parties. After review of public comments, Western will recommend proposed rates for approval on an interim basis by the Deputy Secretary of the Department of Energy (DOE).

DATES: The consultation and comment period will begin with publication of this notice in the **Federal Register** and will end July 5, 1995.

Written comments should be received by Western by the end of the consultation and comment period to be assured consideration and should be sent to the address below.

FOR FURTHER INFORMATION CONTACT: James C. Feider, Area Manager, Sacramento Area Office, Western Area Power Administration, 1825 Bell Street, Suite 105, Sacramento, CA 95825–1097, (916) 649–4418.

SUPPLEMENTARY INFORMATION: Nonfirm energy rates for Stampede are established pursuant to the Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*), the Reclamation Act of 1902 (43 U.S.C. 372 *et seq.*), and acts amendatory or supplementary to the foregoing acts, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)) and the Act of August 1, 1956, 70 Stat. 775.

By Amendment No. 3 to Delegation Order No. 0204–108, published November 10, 1993 (58 FR 59716), the Secretary of Energy delegated (1) the authority to develop long-term power and transmission rates on a nonexclusive basis to the Administrator of Western; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to FERC. Existing DOE procedures for public participation in rate adjustments (10 CFR Part 903) became effective on September 18, 1985.

Availability of Information

The rate brochure, studies, comments, letters, memorandums, and other documents made or kept by Western for the purpose of developing the proposed rates for Stampede nonfirm energy are available for inspection and copying at Western's Sacramento Area Office, located at 1825 Bell Street, Suite 105, Sacramento, CA 95825–1097.

Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*), each agency, when required by 5 U.S.C. 553 to publish a proposed rule, is further required to prepare and make available for public comment an initial regulatory flexibility analysis to describe the impact of the proposed rule on small entities. In this instance, the initiation of the Stampede nonfirm energy rate adjustment is related to nonregulatory services provided by Western at a particular rate. Under 5 U.S.C. 601(2), rules of particular applicability relating to rates or services are not considered rules within the meaning of the act. Since the nonfirm energy rates are of limited applicability, no flexibility analysis is required.

Determination Under Executive Order 12866

DOE has determined that this is not a significant regulatory action because it does not meet the criteria of Executive Order 12866, 58 FR 51735. Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Environmental Evaluation

In compliance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*; Council on Environmental Quality Regulations (40 CFR Parts 1500–1508); and DOE NEPA Regulations (10 CFR Part 1021), Western has determined that this action is categorically excluded from the preparation of an environmental assessment or an environmental impact statement. A categorical exclusion was issued on April 15, 1995.

Issued in Golden, Colorado, May 10, 1995.

J.M. Shafer,

Administrator.

[FR Doc. 95–13680 Filed 6–2–95; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5215–2]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requests (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before July 5, 1995.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 260–2740, please refer to ICR #193.05.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: National Emission Standard for Hazardous Air Pollutants (NESHAP) for

Beryllium (Subpart C)—Information Requirements (EPA ICR No. 193.05, OMB No. 2060–0092.)

Abstract: This ICR is for an extension of an existing information collection in support of NESHAP requirements as established by the Clean Air Act. Specifically, under 40 CFR 61.07–61.13 and 40 CFR 61.30–61.34, owners or operators of sources subject to the NESHAP for beryllium must demonstrate compliance through either an initial test of stack emissions, or ambient air monitoring (unless a waiver of emission testing is obtained under 40 CFR 61.13). The information collected will be used by the EPA for monitoring, inspection, and enforcement efforts directed at ensuring source compliance with the NESHAP.

Prior to commencement of operations, owners or operators of new sources subject to this NESHAP must submit an application for approval of construction that includes: (1) The name and address of the applicant, (2) the location or proposed location of the source, and (3) technical information describing the source. Once approved, the owners or operators must notify EPA of the anticipated and actual start-up dates at the source.

Owners and operators of new and existing sources conducting an initial emission test must: (1) Notify EPA at least 30 days prior to the date of the test, and (2) record and report the test results to EPA.

Owners and operators of all existing facilities must report all calculations estimating new emission levels whenever a change in plant operations or modifications might elevate emission levels.

While owners or operators of new sources must conduct an initial emission test, owners or operators of existing sources may, as an alternative, seek approval from the EPA to conduct continuous compliance monitoring. Owners or operators of existing sources seeking EPA approval to perform continuous ambient air monitoring must submit a report that includes: (1) A description of the locations and physical characteristics of the sampling area, (2) the design, methods, and techniques used in sampling and estimating emissions, (3) a description of the process used to design the air sampling network, and (4) three years of air quality monitoring data. If the request is granted, the owner or operator must submit a monthly report on beryllium concentrations measured at all sampling sites.

All sources must maintain records on: (1) Emission test results and other data used to determine emissions, (2) control equipment parameters, production variables or other indirect data. Sources that have chosen to continuously monitor ambient air concentrations must: (1) Record ambient concentrations at all sampling sites from the continuous monitoring system.

Presently, only about 24 sources, out of an estimated 236 subject to this NESHAP, conduct continuous compliance monitoring. The EPA does not anticipate any expansion in the regulated community over the next three years. Owners and operators of subject sources must maintain records related to compliance for a two year period.

Burden Statement: Public reporting burden for this collection of information is estimated to average 8 hours per response including time for reviewing instructions, searching existing data sources, gathering and maintaining data, and completing and reviewing the collection of information.

Respondents: Businesses or other for-profit organizations.

Estimated Number of Respondents: 24.

Estimated Number of Responses per Respondent: 12.

Estimated Total Annual Burden on Respondents: 2,235 hours.

Frequency of Collection: Monthly for ambient monitoring, on occasion for initial emission testing.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, EPA #193.05, U.S. Environmental Protection Agency, Regulatory Information Division, 401 M Street, SW., Washington, DC 20460

and

Chris Wolz, OMB #2060–0092, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th St., NW., Washington, DC 20503.

Dated: May 25, 1995.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 95–13673 Filed 6–2–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5215–3]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces the Office of Management and Budget's (OMB) responses to Agency PRA clearance requests.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer (202) 260–2740, Please refer to the EPA ICR No.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency PRA Clearance Requests

OMB Approvals

EPA ICR No. 1633.07; Technical Amendments for Continuous Emissions Monitoring, Acid Rain Program; was approved 04/28/95; OMB No. 2060–0258; expires 01/31/96.

EPA ICR No. 1058.05; NSPS (Supbart E) for Municipal Incinerators; was approved 03/28/95; OMB No. 2060–0040; expires 03/31/98.

OMB's Extensions of Expiration Dates

EPA ICR No. 1189.04; Identification, Listing and Rulemaking Petitions; OMB No. 2050–0053; expiration date extended to 07/31/95.

EPA ICR No. 0167.04; Verification of Test Parameters and Parts Lists for Light-Duty Vehicles, Light-Duty Trucks, and Heavy-Duty Engines; OMB No. 2060–0094; expiration date was extended to 10/31/95.

EPA ICR No. 0783.32; Application for Motor Vehicle Emission Certification and Fuel Economy Labeling, Small Nonroad Engines (Proposed Rule); OMB No. 2060–0104; expiration date was extended to 09/30/95.

EPA ICR No. 1051.05; NSPS for Portland Cement Plant Monitoring Provisions; OMB No. 2060–0025; expiration date was extended to 08/31/95.

EPA ICR No. 0193.04; NESHAP for Beryllium (Supbart C)—Information Requirements; OMB No. 2060–0092; expiration date was extended to 08/31/95.

EPA ICR No. 0827.03; Construction Grants Program Information Collection Request; OMB No. 2040–0027; expiration date was extended to 09/30/95.

EPA ICR No. 1584.06; Acid Raid Program (Title IV of the Clean Air Act Amendments of 1990); OMB No. 2060–0221; expiration date was extended to 09/30/95.

EPA ICR No. 1062.04; NSPS for Coal Preparation Plants (Subpart Y); OMB No. 2060–0122; expiration date was extended to 09/30/95.

EPA ICR No. 1367.03; Gasoline Volatility Enforcement; OMB No. 2060–0178; expiration date was extended to 08/30/95.

EPA ICR No. 1084.03; NSPS for Nonmetallic Mineral Processing Plants—Reporting and Recordkeeping—40 CFR Subpart 000; OMB No. 2060–0050; expiration date was extended to 08/30/95.

EPA ICR No. 1050.04; Standards of Performance for New Stationary Sources Vessels for Petroleum Liquids—Subpart KA; OMB No. 2060–0121; expiration date was extended to 08/31/95.

EPA Withdrawal

EPA ICR No. 1728.01; Municipal Water Pollution Prevention Program Evaluation (Self Audit); was withdrawn from OMB's review 04/21/95.

Dated: May 25, 1995.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 95–13670 Filed 6–2–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5215–4]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before July 5, 1995.

FOR FURTHER INFORMATION: For further information or to obtain a copy of this ICR contact Sandy Farmer at EPA, (202) 260–2740, please refer to EPA ICR No. 0657.05.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: Reporting and Recordkeeping Requirements for the New Source Performance Standards, (NSPS) Subpart QQ for the Graphics Arts Industry-Publication Rotogravure Printing (ICR No. 0657.05; OMB No. 2060–0105).

Abstract: This ICR is for an extension of an existing information collection in support of the Clean Air Act, as described under the general NSPS at 40 CFR 60.7–60.8 and the specific NSPS, for volatile organic compound (VOC) emissions from the Graphic Arts Industry, at 40 CFR 60.430–60.435. The information will be used by EPA to direct monitoring, inspection, and enforcement efforts, thereby ensuring compliance with the NSPS.

Owners and operators of affected facilities must provide EPA with: (1) Notification of construction, reconstruction, or modification; (2) anticipated and actual dates of facility startup; (3) initial performance test data, date and results; and (4) notification of any physical or operational change to an existing facility which could increase the VOC emission rate.

All affected facilities must maintain records on the facility operation that document: (1) Occurrence and duration of any start-ups, shutdowns, and mulfunction; (2) amount of volatile solvent used and the amount recovered; (3) percentage of volatile solvent emitted over each performance period (4 weeks or one month); (4) amount of water used; (5) periods when the monitoring system was inoperative and (6) initial performance test results.

Presently there are approximately 165 sources at 17 respondent faciliites, subject to the regulation. All subject facilities must maintain records related to compliance for two years.

Burden Statement: Public reporting burden for facilities subject to this collection of informaiton is estimated to average 328 hours annually.

Respondents: Owners or operators of subject rotogravure printing facilities which commenced construction, reconstruction, or modification after October 28, 1980.

Estimated Number of Respondents: 17.

Estimated Number of Respondents per Respondent: 1.

Estimated Total Annual Burden on Responents: 5577 hours.

Frequency of Collection: One-time notifications for new facilities; occastional reporting, as appropriate, for existing facilities.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, (please refer to EPA ICR #657.04 and OMB #2060–0105) to:

Sandy Farmer, EPA ICR #657.04, U.S. Environmental Protection Agency, Regulatory Information Division, 401 M Street, SW., Washington, DC 20460

and

Chris Wolz, OMB #2060–0105, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20530.

Dated: May 25, 1995.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 95–13674 Filed 6–2–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5215–5]

Agency Information Collection Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before July 5, 1995.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 260–2740, (please refer to EPA ICR #783.33 and OMB #2060–0104.)

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: Application for Motor Vehicle Emission Certification and Fuel Economy Labeling (EPA ICR #783.33; OMB #2060–0104). This ICR requests renewal of an existing clearance.

Abstract: Motor vehicle and motor vehicle engine manufacturers maintain records and submit detailed reports to EPA describing their planned product line with a description of emission control systems, and test data organized by "engine family" groups expected to have similar emissions and "model types" with similar fuel economy. Manufacturers must maintain records on information submitted to EPA. The EPA, the IRS and the DOT use the information to verify compliance with the Clean Air Act, gas guzzler taxes in the Omnibus Reconciliation Act, 1990, and Corporate Average Fuel Economy Standards respectively. State and local governments also use the information in their inspection/maintenance programs. More specifically, the EPA uses the information to issue certificates of conformity and fuel economy labels, to determine that manufacturers conducted appropriate tests and verify that vehicles comply with prescribed emission standards.

Burden Statement: The public reporting burden for this collection of information is estimated to average

16,010 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. In addition, each respondent will spend an estimated 4981 hours per year conducting tests and 1522 hours per year maintaining records required for maintaining the records required for reporting and enforcement.

Respondents: Manufacturers of motor vehicles and motor vehicle engines.

Estimated Number of Respondents: 58.

Estimated Total Annual Burden on Respondents: 1,530,900 hours.

Frequency of Collection: Annually.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing burden, (please refer to EPA ICR #783.33 and OMB #2060–0104) to:

Sandy Farmer, EPA ICR #783.33, U.S. Environmental Protection Agency, Regulatory Information Division (2136), 401 M St., SW., Washington, DC 20460

and

Tim Hunt, OMB #2060–0104, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th St., NW., Washington, DC 20530.

Dated: May 25, 1995.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 95–13675 Filed 6–2–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5215–7]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before July 5, 1995.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 260–2740, please refer to EPA ICR #1170.05.

SUPPLEMENTARY INFORMATION:

Office of Prevention, Pesticides, and Toxic Substances

Title: Collection of Economic and Program Support Data: Request for generic Clearance. (EPA ICR No.: 1170.05; OMB No.: 2070–0034). This is a request for an extension of the expiration date of a currently approved collection.

Abstract: The Toxic Substances Control Act (TSCA) requires the EPA Administrator to consider the economic impacts of actions taken to control the manufacture, distribution, processing, use, or disposal of a chemical substance or mixture that presents an unreasonable risk of injury to human health or the environment. On occasion, EPA conducts surveys requesting that chemical companies voluntarily provide certain economic and regulatory impact data to the Agency. EPA uses this information to determine the potential consequences on the industry of the regulatory actions under consideration by the Agency.

Burden Statement: The burden for this collection of information is estimated to average 1.5 hour per response annually. This estimate includes the time needed to review instructions, complete the form, and review the collection of information.

Respondents: Chemical manufacturers.

Estimated No. of Respondents: 4,000.

Estimated No. of Responses per Respondent: 1.

Estimated Total Annual burden on Respondents: 6,000 hours.

Frequency of Collection: On occasion.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, (please refer to EPA ICR #1170.05 and OMB #2070–0034) to:

Sandy Farmer, EPA ICR #1070.05, U.S. Environmental Protection Agency, Regulatory Information Division—2136, 401 M Street, SW., Washington, DC 20460

and

Tim hunt, OMB # 2070–0034, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Dated: May 25, 1995.

Joe Retzer,

Director, Regulatory Information Division.

[FR Doc. 95–13672 Filed 6–2–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5208–3]

Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses; Public Review of a Notification of Intent to Certify Equipment

AGENCY: Environmental Protection Agency.

ACTION: Notice of agency receipt of a notification of intent to certify equipment and initiation of 45 day public review and comment period.

SUMMARY: The Agency has received a notification of intent to certify urban bus retrofit/rebuild equipment pursuant to 40 CFR part 85, Subpart O. Pursuant to § 85.1407(a)(7), today's **Federal Register** notice summarizes the notification below, announces that the notification is available for public review and comment, and initiates a 45-day period during which comments can be submitted. The Agency will review this notification of intent to certify, as well as comments received, to determine whether the equipment described in the notification of intent to certify should be certified. If certified, the equipment can be used by urban bus operators to reduce the particulate matter of urban bus engines.

The Detroit Diesel Corporation (DDC) notification of intent to certify, as well as other materials specifically relevant to it, are contained in category VII–A of Public Docket A–93–42, entitled "Certification of Urban Bus Retrofit/Rebuild Equipment". This docket is located at the address below.

Today's notice initiates a 45-day period during which the Agency will accept written comments relevant to whether or not the equipment included in this notification of intent to certify should be certified. Comments should be provided in writing to Public Docket A–93–42, Category VII–A, at the address below. An identical copy should be submitted to William Rutledge, also at the address below.

DATES: Comments must be submitted on or before July 20, 1995.

ADDRESSES: Submit separate copies of comments to each of the two following addresses:

1. U.S. Environmental Protection Agency, Public Docket A–93–42 (Category VII–A), Room M–1500, 401 M Street S.W., Washington, DC 20460.

2. William Rutledge, Technical Support Branch, Manufacturers Operations Division (6405J), 401 "M" Street S.W., Washington, DC 20460.

The DDC notification of intent to certify, as well as other materials specifically relevant to it, are contained in the public docket indicated above.

Docket items may be inspected from 8 a.m. until 5:30 p.m., Monday through Friday. As provided in 40 CFR Part 2, a reasonable fee may be charged by the Agency for copying docket materials.

FOR FURTHER INFORMATION CONTACT: William Rutledge, Manufacturers Operations Division (6405J), U.S. Environmental Protection Agency, 401 M Street S.W., Washington, DC 20460. Telephone: (202) 233–9297.

SUPPLEMENTARY INFORMATION:

I. Background

On April 21, 1993, the Agency published final Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses (58 FR 21359). The retrofit/rebuild program is intended to reduce the ambient levels of particulate matter (PM) in urban areas and is limited to 1993 and earlier model year (MY) urban buses operating in metropolitan areas with 1980 populations of 750,000 or more, whose engines are rebuilt or replaced after January 1, 1995. Operators of the affected buses are required to choose between two compliance options: Program 1 sets particulate matter emissions requirements for each urban bus engine in an operator's fleet which is rebuilt or replaced; Program 2 is a fleet averaging program that establishes specific annual target levels for average PM emissions from urban buses in an operator's fleet.

A key aspect of the program is the certification of retrofit/rebuild equipment. To meet either of the two compliance options, operators of the affected buses must use equipment which has been certified by the Agency. Emissions requirements under either of the two compliance options depend on the availability of retrofit/rebuild equipment certified for each engine model. To be used for Program 1, equipment must be certified as meeting a 0.10 g/bhp-hr PM standard or as achieving a 25 percent reduction in PM. Equipment used for Program 2 must be certified as providing some level of PM reduction that would in turn be claimed by urban bus operators when calculating their average fleet PM levels attained under the program. For Program 1, information on life cycle costs must be submitted in the notification of intent to certify in order for certification of the equipment to initiate (or trigger) program requirements. To trigger program requirements, the certifier must guarantee that the equipment will be available to all affected operators for a life cycle cost of $7,940 or less at the 0.10 g/bhp-hr PM level, or for a life cycle cost of $2,000 or less for the 25 percent or greater reduction in PM. Both of these values are based on 1992 dollars.

II. Notification of Intent to Certify

By a notification of intent to certify signed March 16, 1995, and with cover letter dated April 11, 1995, Detroit Diesel Corporation (DDC) has applied for certification of equipment applicable to it's 6V92TA model engines having mechanical unit injectors (MUI) that were originally manufactured between January 1979 and December 1989. The notification of intent to certify states that the candidate equipment will reduce PM emissions 25 percent or more, on petroleum-fueled diesel engines that have been rebuilt to DDC specifications. Further, transit pricing level has been submitted with the notification, along with a guarantee that the equipment will be offered to all affected operators for less than the incremental life cycle cost ceiling. Therefore, this equipment may trigger program requirements for the 25% reduction standard. If certified as a trigger of this standard, urban bus operators will be required to use this retrofit/rebuild equipment or other equipment certified to provide a PM reduction as discussed below.

All components of the candidate equipment are contained in two basic types of kits. One of each basic type of kit is required for the rebuild of an engine. Twelve combinations of the two basic types of kits are relevant to certification—the specific combination to be used with a particular engine depends upon engine rotation direction, orientation of the engine block, cam gear mounting technique, and engine power level. One basic type of kit includes a gasket kit, air inlet hose, cylinder kit, and by-pass valve assembly. The other basic type of kit includes fuel injectors, camshafts, blower assembly, turbocharger, and head assemblies. Further, engines of model year 1979 through 1987 would receive an injector timing dimension that is different than that for the 1988 and 1989 engines.

DDC presents exhaust emission data from testing the candidate equipment on an engine rebuilt to a configuration identical to a 1979 model year DDC 6V92TA urban bus engine. This engine was selected to represent a "worst case", with respect to PM, of the engines for which certification of the equipment is being sought. A baseline test was conducted after the engine was rebuilt to the original 1979 urban bus configuration. Subsequent testing was done after again rebuilding using the candidate equipment: One test was conducted using the injector timing dimension for the 1988 and 1989 engines, and another test was conducted using the dimension for the 1979 through 1987 engines. The test data indicate, with the candidate equipment installed, 52 percent reduction in PM level for 1979 through 1987 model year engines (to a level of 0.26 g/bhp-hr), and 25 percent reduction for 1988 and 1989 engines (to a level of 0.23 g/bhp-hr). (Model years 1988 and 1989 of this engine family were certified under EPA's new engine certification program to a PM level of 0.31 g/bhp-hr.) The test data also indicate that hydrocarbon (HC), carbon monoxide (CO), and oxides of nitrogen (NO_x) are less than applicable standards. Fuel consumption is reduced with the candidate equipment installed. DDC presents smoke emission measurements for the engine which indicate compliance with applicable standards.

DDC states that the candidate equipment will be offered to all affected operators for less than a life cycle cost of $2,000 (1992 dollars), and has submitted life cycle cost information. This information may trigger the 25 percent reduction standard if the equipment is certified. DDC indicates that the candidate equipment has no incremental purchase price, installation cost, fuel cost, or maintenance cost compared to the currently available standard rebuild.

If the Agency certifies the candidate DDC equipment as a trigger of program requirements, operators will be affected as follows. Under Program 1, all rebuilds of applicable engines performed 6 months following the effective date of certification, must use the DDC equipment or other equipment certified to prove at least a 25 percent reduction. This requirement would continue for the applicable engines until such time that equipment was certified to trigger the 0.10 g/bhp-hr emission standard for less than a life cycle cost of $7,940 (in 1992 dollars). If the Agency certifies the candidate DDC equipment as a trigger of program requirements, operators who choose to comply with Program 2 and install this equipment, will use the PM emission level(s) established during the certification review process, in their calculations for target or fleet level as specified in the program regulations. DDC projects a post-rebuild PM level of 0.26 g/bhp-hr with the equipment installed on model year 1979 through 1987 6V92TA MUI engines, and 0.23 g/bhp-hr for 6V92TA MUI engines of model years 1988 and 1989.

At a minimum, EPA expects to evaluate this notification of intent to certify, and other materials submitted as

applicable, to determine whether there is adequate demonstration of compliance with: (1) the certification requirements of § 85.1406, including whether the testing accurately substantiates the claimed emission reduction or emission levels; and, (2) the requirements of § 85.1407 for a notification of intent to certify, including whether the data provided by DDC complies with the life cycle cost requirements.

The Agency requests that those commenting also consider these regulatory requirements, plus provide comments on any experience or knowledge concerning: (a) problems with installing, maintaining, and/or using the candidate equipment on applicable engines; and, (b) whether the equipment is compatible with affected vehicles.

The date of this notice initiates a 45 day period during which the Agency will accept written comments relevant to whether or not the equipment described in the DDC notification of intent to certify should be certified pursuant to the urban bus retrofit/rebuild regulations. Interested parties are encouraged to review the notification of intent to certify and provide comment during the 45-day period. Please send separate copies of your comments to each of the above two addresses.

The Agency will review this notification of intent to certify, along with comments received from interested parties, and attempt to resolve or clarify issues as necessary. During the review process, the Agency may add additional documents to the docket as a result of the review process. These documents will also be available for public review and comment within the 45-day period.

Dated: May 10, 1995.

Mary D. Nichols,

Assistant Administrator for Air and Radiation.

[FR Doc. 95–13540 Filed 6–1–95; 8:45 am]

BILLING CODE 6560–50–P–M

[FRL–5215–9]

Notice of Final Decision To Grant Chemical Waste Management, Inc. a Modification of an Exemption From the Land Disposal Restrictions of the Hazardous and Solid Waste Amendments of 1984 Regarding Injection of Hazardous Wastes

AGENCY: United States Environmental Protection Agency.

ACTION: Notice of Final Decision on a Request to Modify an Exemption from the Hazardous and Solid Waste Amendments of the Resource Conservation and Recovery Act (RCRA).

SUMMARY: Notice is hereby given by the United States Environmental Protection Agency (USEPA or Agency) that modification of an exemption to the land disposal restrictions under the 1984 Hazardous and Solid Waste Amendments to RCRA has been granted to Chemical Waste Management, Inc. (CWM) of Oakbrook, Illinois. As required by Title 40 of the Code of Federal Regulations (40 CFR part 148), CWM has demonstrated, to a reasonable degree of certainty, that there will be no migration of hazardous constituents from the injection zone utilized by CWM's waste disposal facility located near Vickery, Ohio, for as long as the waste remains hazardous. This modification allows CWM to inject additional RCRA-regulated hazardous wastes, identified by codes F037, F038, K086, K107, K108, K109, K110, K123, K124, K125, K126, K131, K132, K141, K142, K143, K144, K145, K147, K148, K149, K150, and K151 through four waste disposal wells (WDWs) at the facility at Vickery, Ohio. This decision constitutes a final Agency action for which there is no administrative appeal.

Background

CWM submitted a petition for an exemption from the restrictions on land disposal of hazardous wastes on January 19, 1988. Revised documents were received on December 4, 1989, and several supplemental submittals were subsequently made. The exemption was granted on August 7, 1990. On September 12, 1994, and October 28, 1994, CWM submitted a petition to modify the exemption to include wastes bearing 23 additional wastes codes.

After careful review of the material submitted, the USEPA has determined, as required by 40 CFR 148.20(f), that there is a reasonable degree of certainty that waste streams containing constituents designated by these codes will behave hydraulically and chemically like wastes for which CWM was granted an exemption, and will not migrate from the injection zone within 10,000 years. The injection zone is the Mt. Simon Sandstone and the Rome, Conasauga, Kerbel, and Knox Formations. The confining zone is comprised of the Wells Creek and Black River Formations. A fact sheet containing a summary of the decision now being modified was published in the **Federal Register** on June 18, 1990, at 55 FR 24629 et seq. The proposed decision for this modification was published in the **Federal Register** on February 14, 1995, at 60 FR 8378 et seq.

A public notice of the proposed decision was issued on February 14, 1995, and a public hearing was held in Fremont, Ohio, on March 16, 1995. The public comment period expired on March 31, 1995. A number of comments were received and all comments have been considered in reaching this final decision. A responsiveness summary has been mailed to all commentors and included as part of the Administrative Record relating to this decision.

As a result of this action, CWM may inject the wastes bearing the RCRA codes: F037, F038, K086, K107, K108, K109, K110, K123, K124, K125, K126, K141, K142, K143, K144, K145, K147, K148, K149, K150, and K151 in addition to wastes designated by the codes listed in the fact sheet for this decision. CWM may continue to inject wastes designated as K131 and K132 after they are banned from land disposal on June 30, 1995.

Errata

Several errors were made in compiling the list of waste codes which are covered in the original exemption. Following are corrections:

Waste codes K100, K117, K118, and P110 were inadvertently omitted. CWM's existing exemption includes these waste codes.

The listing included U013 and U175 in error; there are currently no such waste codes, and, should such codes be used to designate wastes in the future, CWM may not inject those wastes unless they can be shown to behave similarly to previously exempted wastes and the CWM exemption is modified to include them.

The duplication of U003 was inadvertent and the second occurrence has no significance.

'l's were used instead of '1's in U150, U176, and U178. These codes should have been written using '1's.

A full list of all the RCRA waste codes for which CWM has been granted exemption follows:

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List of Approved RCRA Waste Codes for Injection:

D001	K023	K107	P029	P096	U031	U089	U146	U205
D002	K024	K108	P030	P097	U032	U090	U147	U206
D003	K025	K109	P031	P098	U033	U091	U148	U207
D004	K026	K110	P033	P099	U034	U092	U149	U208
D005	K027	K111	P034	P101	U035	U093	U150	U209
D006	K028	K112	P036	P102	U036	U094	U151	U210
D007	K029	K113	P037	P103	U037	U095	U152	U211
D008	K030	K114	P038	P104	U038	U096	U153	U213
D009	K031	K115	P039	P105	U039	U097	U154	U214
D010	K032	K116	P040	P106	U041	U098	U155	U215
D011	K033	K117	P041	P107	U042	U099	U156	U216
D012	K034	K118	P042	P108	U043	U101	U157	U217
D013	K035	K123	P043	P109	U044	U102	U158	U218
D014	K036	K124	P044	P110	U045	U103	U159	U219
D015	K037	K125	P045	P111	U046	U105	U160	U220
D016	K038	K126	P046	P112	U047	U106	U161	U221
D017	K039	K131	P047	P113	U048	U107	U162	U222
F001	K040	K132	P048	P114	U049	U108	U163	U223
F002	K041	K136	P049	P115	U050	U109	U164	U225
F003	K042	K141	P050	P116	U051	U110	U165	U226
F004	K043	K142	P051	P118	U052	U111	U166	U227
F005	K044	K143	P054	P119	U053	U112	U167	U228
F006	K045	K144	P056	P120	U055	U113	U168	U234
F007	K046	K145	P057	P121	U056	U114	U169	U235
F008	K047	K147	P058	P122	U057	U115	U170	U236
F009	K048	K148	P059	P123	U058	U116	U171	U237
F010	K049	K149	P060	U001	U059	U117	U172	U238
F011	K050	K150	P062	U002	U060	U118	U173	U239
F012	K051	K151	P063	U003	U061	U119	U174	U240
F019	K052	P001	P064	U004	U062	U120	U176	U243
F024	K060	P002	P065	U005	U063	U121	U177	U244
F037	K061	P003	P066	U006	U064	U122	U178	U246
F038	K062	P004	P067	U007	U066	U123	U179	U247
F039	K069	P005	P068	U008	U067	U124	U180	U248
K001	K071	P006	P069	U009	U068	U125	U181	U249
K002	K073	P007	P070	U010	U069	U126	U182	U328
K003	K083	P008	P071	U011	U070	U127	U183	U353
K004	K084	P009	P072	U012	U071	U128	U184	U359
K005	K085	P010	P073	U014	U072	U129	U185	
K006	K086	P011	P074	U015	U073	U130	U186	
K007	K087	P012	P075	U016	U074	U131	U187	
K008	K093	P013	P076	U017	U075	U132	U188	
K009	K094	P014	P077	U018	U076	U133	U189	
K010	K095	P015	P078	U019	U077	U134	U190	
K011	K096	P016	P081	U020	U078	U135	U191	
K013	K097	P017	P082	U021	U079	U136	U192	
K014	K098	P018	P084	U022	U080	U137	U193	
K015	K099	P020	P085	U023	U081	U138	U194	
K016	K100	P021	P087	U024	U082	U139	U196	
K017	K101	P022	P088	U025	U083	U140	U197	
K018	K102	P023	P089	U026	U084	U141	U200	
K019	K103	P024	P092	U027	U085	U142	U201	
K020	K104	P026	P093	U028	U086	U143	U202	
K021	K105	P027	P094	U029	U087	U144	U203	
K022	K106	P028	P095	U030	U088	U145	U204	

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Conditions

General conditions of this exemption are found at 40 CFR part 148. The exemption granted to CWM on August 7, 1990 included a number of conditions. Conditions numbered (1), (2), (3), (4), and (9) remain in force. Monitoring under condition 5, which called for construction and operation of a deep monitoring well, will continue through the life of the facility. Conditions numbered (5), (6), (7), and (8) have been satisfied.

DATES: This action is effective as of May 16, 1995.

FOR FURTHER INFORMATION CONTACT: Harlan Gerrish or Nathan Wiser, Lead Petition Reviewers, USEPA, Region 5, telephone numbers (312) 886–2939 and (312) 353–9569, respectively. Copies of the petition and all pertinent information relating thereto are on file and are part of the Administrative Record. It is recommended that you contact the lead reviewers prior to reviewing the Administrative record.

Edward P. Watters,

Acting Director, Water Division.

[FR Doc. 95–13676 Filed 6–2–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5215–7]

Availability of Draft Proposed Compliance Agreement Between Environmental Protection Agency and Department of Energy Related to Noncompliance of the Los Alamos National Laboratory With National Emission Standards for Hazardous Air Pollutants, 40 CFR Part 61, Subpart H (Radionuclides); and Notice of Public Information Meetings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of draft proposed compliance agreement and notice of public information meetings.

SUMMARY: The Environmental Protection Agency is hereby giving notice of availability for public review and comment, a draft Federal Facility Compliance Agreement (FFCA) between the Environmental Protection Agency (EPA) and the Department of Energy (DOE), in the matter of the DOE's Los Alamos National Laboratory, Los Alamos, New Mexico. The draft FFCA has been negotiated pursuant to the Clean Air Act, 42 U.S.C. 7401, et seq., and Executive Order 12088, October 13, 1978, (43 FR 47707). The FFCA will resolve violations of the National Emission Standards for Hazardous Air Pollutants relating to Emissions of Radionuclides Other Than Radon From Department of Energy Facilities (NESHAP), 40 CFR part 61, subpart H, set forth in Notices of Noncompliance issued by EPA to DOE effective November 27, 1991, and November 23, 1992. The draft FFCA incorporates (at Appendix A) a Compliance Plan which requires DOE to upgrade the facility and operations to achieve full compliance with NESHAP Subpart H. EPA seeks comment on the draft FFCA within 60 days of the date of publication of this notice. Single copies of the draft FFCA may be obtained on request, or the draft FFCA may be examined at any of the locations listed below (see **ADDRESSES**). Single copies of the draft FFCA are available on request from Mr. Hank May, U.S. Environmental Protection Agency (6T-E), 1445 Ross Avenue, Dallas, Texas 75202–2733. The request may be made via facsimile at (214) 665–2164, or by calling a 24-hour message system at (214) 665–7225. If request is made on 24-hour telephone message system or by facsimile, message will be acknowledged promptly and the draft FFCA mailed as soon as possible. On request, the draft FFCA will be sent instead on PC disk in WordPerfect 5.1.

Three informational meetings will be held early in the 60-day comment period, and will be open to the public. The purpose of these meetings is not to receive comments on the FFCA, but rather to explain the background and basis of the FFCA to those interested, and answer questions related to the FFCA. Meetings will be held in Los Alamos, NM at the Fuller Lodge, 2132 Central Avenue (at 20th Street) from 7 p.m. to 10 p.m. on June 27, 1995; in Española at the Española National Guard Building, West Fairview Lane (2.3 miles west of U.S. Highway 285) from 7 p.m. to 10 p.m. on June 28, 1995; and in Santa Fe at the auditorium in the Runnels Building, New Mexico Department of Environment, 1190 St. Francis Drive from 7:00 p.m. to 10:00 p.m. on June 29, 1995. All meetings will be conducted in English, but a Spanish translator will be available to assist with questions and answers. Facilities will not be available to receive comments, and it is emphasized that *comments on the draft FFCA cannot be received at these informational meetings.*

DATES: Comments on the draft FFCA must be received in writing by no later than August 4, 1995.

ADDRESSES: Written comments on the draft FFCA should be submitted in writing to Mr. Samuel Coleman, Director Air, Pesticides and Toxics Division (6T), U.S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, TX 75202–2733.

A copy of the draft FFCA is available for inspection at the following locations:

Albuquerque Public Library, 501 Copper Avenue NW, Albuquerque, New Mexico.

Santa Fe Public Library, 145 Washington Avenue, Santa Fe, New Mexico.

Los Alamos DOE Community Reading Room, 1350 Central Avenue, Suite 101, Los Alamos, New Mexico; also in Los Alamos at the Mesa Public Library, 2400 Central Avenue, Los Alamos, New Mexico.

Española Public Library, 314 Onate, Española, New Mexico.

EPA Library, 401 "M" Street, SW. (West Tower, Room 2904), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Hank May, Air Enforcement Branch (6T-E), U.S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7297.

Dated: May 26, 1995.

Samuel Coleman,

Director, Air, Pesticides and Toxics Division (6T), EPA Region 6.

[FR Doc. 95–13668 Filed 6–2–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5214–9]

Common Sense Initiatives Council (CSIC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of Public Advisory CSI Printing and Iron and Steel Sector Subcommittee Meetings; Open Meetings.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Printing and Iron and Steel Sector Subcommittees of the Common Sense Initiative Council (CSIC) will meet on the dates and times described below. All times noted are Eastern Time. All meetings are open to the public. Seating at meetings will be on a first-come basis. For further information concerning specific meetings, please contact the individuals listed with the two Sector Subcommittee announcements below.

(1) Printing Sector Subcommittee—June 21, 1995

The Common Sense Initiative Council, Printing Sector Subcommittee (CSIC–PSS) is convening an open meeting on June 21, 1995 from 8:30 am to 3:30 pm. The workgroups will meet the day before on June 20, 1995 from approximately 10:00 am until about 5:30 pm. The meetings will be held at the Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, VA 22202–3564. The phone number of the hotel is 703–413–5500.

The purpose of the Subcommittee meeting is to discuss the projects under consideration by the Subcommittee and the Subcommittee workplan. The purpose of the workgroup meetings the day before is to further develop the workplan for these projects. Agendas will be available June 13, 1995.

Limited time will be provided for members of the public wishing to make an oral presentation or comments at the Subcommittee meeting.

For further information, contact Ginger Gotliffe of EPA's Office of Enforcement and Compliance Assurance at 202–564–7072, or Nancy Cichowicz of EPA's Region III at 215–597–2030.

(2) Iron and Steel Sector Subcommittee—June 29, 1995

The Common Sense Initiative Council, Iron and Steel Sector Subcommittee (CSIC–ISS) is holding an open meeting on Thursday, June 29, 1995 from 9:00 a.m. to 5:00 p.m. at the Westin William Penn Hotel, 530 William Penn Place, Pittsburgh, PA 15219, telephone number 412–281–7100.

The Iron and Steel Subcommittee has created four workgroups which are responsible for proposing to the full Subcommittee for its review and approval potential activities or projects that the Iron and Steel Sector Subcommittee will undertake, and for carrying out projects once approved. The Subcommittee has approved four projects and their workplans and two project concepts for which workplans are being developed for review and discussion. Two additional projects are being considered by the Subcommittee. Workgroups will be meeting on Wednesday preceding the meeting to discuss further these projects and continue working on workplans. The purpose of the Subcommittee meeting will for be the four workgroups to report on the progress they have made, and for the Subcommittee to review and discuss the workplan activities, to provide further guidance as necessary, to approve any proposed changes or additional projects, and to make remaining implementation decisions.

For more information about the Iron and Steel Sector Subcommittee meeting, please call either Ms. Mary Byrne at 312–353–2315 in Chicago, Illinois or Ms. Judith Hecht at 202–260–5680 in Washington, DC.

Further Information and Inspection of CSIC Documents

Documents relating to the above Sector Subcommittee announcements will be publicly available at the meetings. Thereafter, these documents, together with official minutes for the meetings, will be available for public inspection in room 2417 Mall of EPA Headquarters, Common Sense Initiative Program Staff, 401 M Street, SW., Washington, DC 20460, phone (202) 260–7417. CSIC information can be accessed electronically through contacting Katherine Brown at: brown.katherine@epamail.epa.gov.

Dated: May 31, 1995.

Vivian Daub,

Designated Federal Officer.

[FR Doc. 95–13671 Filed 6–2–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5215–8]

Notice of Closed Meeting of the Ad Hoc Environmental Education and Training Subcommittee of the National Environmental Education Advisory Council

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Date: June 20, 1995.
Time: 9:00 am–5:00 pm.
Place: U.S. EPA.
Contact: Kathleen MacKinnon, U.S. EPA, Environmental Education Division (1707), 401 M Street, SW., Washington, DC 20460, 202–260–4951.
Purpose/Agenda: To review and evaluate proposals to operate the Environmental Education and Training Program.

The meeting will be closed in accordance with the provisions set forth in Section 552b(c)(4) and (6) of Title 5 U.S.C. Discussions about the proposals could disclose privileged or confidential trade secrets and commercial or financial information as well as information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Dated: May 12, 1995.

Loretta M. Ucelli,

Associate Administrator, Office of Communications, Education, and Public Affairs.

[FR Doc. 95–13669 Filed 6–2–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5216–2]

Land Use Directive

AGENCY: Environmental Protection Agency.

ACTION: Notice of Availability of "Land Use in the CERCLA Remedy Selection Process."

SUMMARY: The U.S. Environmental Protection Agency (EPA) has issued a directive entitled "Land Use in the CERCLA Remedy Selection Process" (OSWER Directive Number 9355.7–04). This directive outlines guidelines to consider when developing "reasonably anticipated" future land uses in the CERCLA remedy selection process. It recommends early community involvement, which EPA believes should result in a more participatory and better informed decisionmaking process; greater community support for remedies selected as a result of this process; and more expedited cleanups.

ADDRESSES: To obtain a copy of this land use directive contact the National Technical Information Service (NTIS) at (703) 487–4650 and request "Considering Land Use in the CERCLA Remedy Selection Process," 9355.7–04/PB95–96324/EPA540/R95/052.

FOR FURTHER INFORMATION CONTACT: The RCRA/Superfund Hotline at (800) 424–9346 (in the Washington, DC metropolitan area, (703) 412–9810). The Telecommunications Device for the Deaf (TDD) Hotline number is (800) 553–7672 (in the Washington, DC metropolitan area, (703) 412–3323). Or contact Sherri Clark, Remedial Operations and Guidance Branch, Hazardous Site Control Division, Office of Emergency and Remedial Response (5203G), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 at (703) 603–8820.

SUPPLEMENTARY INFORMATION:

A. Background

The U.S. Environmental Protection Agency responds to releases and threatened releases of hazardous substances under the authority of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). Regulations governing such responses are found in the National Oil and Hazardous Substances Pollution Contingency Plan or NCP. The process for remedy selection in the NCP generally requires that a remedial investigation be performed to identify the nature and extent of contamination at National Priorities List (NPL) sites. The remedy selection process also requires that a feasibility study be completed which

develops potential remedial alternatives for cleanup of the site. These remedial alternatives, which are aimed at protecting human health and the environment, should specify the acceptable level of contaminants of concern in a particular media as well as the associated exposure route(s). Knowing the projected future use of the land affects the determination of the exposure route(s) and receptor(s) of concern for the remedial action objectives.

Many people believe that EPA "chooses" residential land use in the risk assessment and remedy selection steps regardless of whether that use is relevant to the site. At many sites, the risk assessment evaluates the future residential scenario as a point of information to aid the decisionmaker in assessing the consequences of remedy selection. This is different from premising the final remedy, or even the baseline risk assessment, on future residential use. Many sites, while not currently residential, have residences adjacent or in close proximity. Consequently, current residential use is not assessed, while future residential use may be very relevant in the context of the site.

Analyses by the Office of Solid Waste and Emergency Response (OSWER) show that residents currently live on 15% of NPL sites, that 31% of NPL sites are used currently for industrial use, and that 25% of NPL sites are used currently for commercial use. For those sites where EPA has looked at potential future land use(s), 26% of the sites are expected to be residential, 35% of the sites are expected to be industrial, and 24% of the sites are expected to be commercial. These statistics represent the land uses at the facility itself; however, approximately 80% of the NPL sites have residents surrounding the site which would lead the Agency to consider residential use as a reasonably anticipated future land use for the site.

Given the diversity of land uses at and surrounding the site, determining the "reasonably anticipated" future land uses may be a challenge. Therefore, EPA believes that it is useful to involve the affected community and stakeholders in the scoping stage of the RI/FS process to begin discussions of what the future "reasonably anticipated" land uses might be.

OSWER analyzed the post-remedial land use at completed NPL sites and compared that with the projected future land use at the time the Record of Decision was signed. The analysis showed that approximately 50% of the sites with future residential land use predicted are currently vacant. In comparison, only 23% of the sites with future industrial or commercial use predicted are vacant. The land use directive promotes discussions between the local land use authorities, the community groups, and the land owner(s) which may assist in avoiding vacant lots in the future and instead, to facilitate productive reuse of the property.

B. Summary of the Directive

The directive recommends early community involvement during the scoping phase of the Remedial Investigation/Feasibility Study (RI/FS) to develop reasonable assumptions regarding future land use(s) anticipated at a Superfund site. EPA believes that early community involvement, with a particular focus on the community's desired future uses of a property associated with the CERCLA site, should result in a more participatory and better informed decisionmaking process; greater community support for remedies selected as a result of this process; and, more expedited cleanups. Where there are environmental justice concerns, extra efforts should be made to reach out to and consult with affected community members who may not be reached through conventional outreach and communication vehicles. The directive is generally consistent with, and will help to implement, principles that were discussed and widely agreed upon in last year's CERCLA reauthorization debate. The directive is not as specific as some of last year's proposed legislation with respect to the degree of deference that EPA should give the community in determining reasonably anticipated land uses at the site, but clearly calls for a substantial community role.

The directive also recommends meeting with local land use planning officials and identifies sources of information to which one might look regarding the history and likely future of the property. Where the local planning process has involved thorough and broad-based public participation, EPA will be able to rely on planned uses resulting from that process with a greater degree of certainty than where that is not the case. At some sites there are environmental justice concerns and the local residents near the Superfund site may feel disenfranchised from the local land use planning and development process. In these instances, the directive calls attention to the need for special efforts to involve the full range of community residents.

In addition, the guidance describes how anticipated land uses are considered in the RI/FS and remedy selection process. Remedial action alternatives developed in the RI/FS process should generally reflect the reasonably anticipated land use or uses. In some instances, concerns about cost or practicability may make it necessary to consider other possible uses. Land uses that will be available following completion of remedial action are determined as part of the remedy selection process. During this process, the goal of realizing reasonably anticipated future land use potential is considered along with other factors. Any combination of unrestricted uses, restricted uses, or use for long-term waste management may result.

Goals

EPA's goal is to issue this land use directive to assist EPA's Regional offices in developing reasonable assumptions regarding anticipated future land uses at a site for use in the RI/FS.

Please contact individuals and offices listed in the sections of this notice entitled **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** to learn more about the Land Use Directive.

Dated: May 30, 1995.

Elliott P. Laws,

Assistant Administrator.

[FR Doc. 95–13677 Filed 6–2–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Approved by Office of Management and Budget

May 26, 1995.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collection pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96–511. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418–1379.

Federal Communications Commission

OMB Control No.: 3060–0355.

Expiration Date: 05/31/98.

Title: Rate of Return Reports, FCC Forms 492 and 492A.

Estimated Annual Burden: 1544 total annual hours; 8 hours per response.

Description: Filing of FCC Form 492 and FCC Form 492A is required by Sections 1.795 and 65.600 of the FCC Rules and Section 219 of the Communications Act of 1934, as amended. Filing of the FCC Form 492 on a quarterly basis is required from each local exchange carriers or group of affiliated carriers which is not subject to Sections 61.41 through 61.49 of the Commission's Rules and which has filed individual access tariffs during the enforcement period. Each local exchange carrier or group of affiliated carriers subject to the previously stated sections shall file the FCC Form 492A report with the Commission for the calendar year. The forms are necessary to enable the Commission to monitor the access tariffs and to enforce maximum rate of return prescriptions and price cap earnings levels. A copy of each report must be retained in the principal office of the respondent and shall be filed in such manner as to be readily available for reference and inspection. FCC Form 492 and FCC Form 492A have been updated to display the current expiration date and are available for public use. Copies of the forms may be obtained by call 202–418–FORM.

OMB Control No.: 3060–0422.

Expiration Date: 05/31/98.

Title: Waivers (Application for Waiver of Hearing Aid Compatibility Requirement), Section 68.5.

Estimated Annual Burden: 30 total annual hours; 3 hours per response.

Description: Section 710(b) of the Communications Act requires that almost all telephones manufactured in or imported into this country after August 16, 1989 be hearing aid compatible. Refurbished, repaired or resold telephones, telephones used with public and private mobile radio services, and secure telephones used for classified communications are exempt. The HAC Act provides a three year grace period for cordless telephones before they must comply with the requirement. Congress recognized, however, that there may be technological and/or economical reasons some new telephones may not meet the hearing aid compatibility requirement. Therefore, it provided for a waiver requirement for new telephones base on technological and economical grounds. Section 68.5 of the Commission's rules provides the criteria to be used to assess waivers. Applicants seeking waivers must submit sufficient information for the Commission to make an informed decision.

Federal Communications Commission.

LaVera F. Marshall,

Acting Secretary.

[FR Doc. 95–13563 Filed 6–2–95; 8:45 am]

BILLING CODE 6712–01–F

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

May 26, 1995.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW, Suite 140, Washington, DC 20037, (202) 857–3800. For further information on this submission contact Dorothy Conway, Federal Communications Commission, (202) 418–0217 or via internet at DConway@FCC.GOV. Persons wishing to comment on this information collection should contact Timothy Fain, Office of Management and Budget, Room 10214 NEOB, Washington, DC 20503, (202) 395–3561.

OMB Number: 3060–0031.

Title: Application for Consent of Assignment of Broadcast Station Construction Permit or License.

Form No.: FCC 314.

Action: Extension of a currently approved collection.

Respondents: Businesses or other for-profit.

Frequency of Response: On occasion.

Estimated Annual Burden: 1060 responses; 83.42 hour burden per response; 88,246 hours total annual burden.

Needs and Uses: Section 154(j), 308 and 310(d) of the Communications Act of 1934, as amended require FCC Form 314 to be filed when applying for assignment of a broadcast station construction permit. This information is used by FCC staff to determine whether the assignee meets basic statutory requirements to become a Commission permittee or licensee.

OMB Number: 3060–0032.

Title: Application for Consent to Transfer Control of Corporation Holding Broadcast Construction Permit or License.

Form No.: FCC 315.

Action: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Frequency of Response: On occasion.

Estimated Annual Burden: 1060 responses; 83.42 hours burden per response; 88,246 hours total annual burden.

Needs and Uses: Sections 154(i), 308 and 310(d) of the Communications Act of 1934, as amended require FCC Form 315 to be filed when applying for consent to transfer control of corporation holding an AM, FM or TV broadcast station construction permit or license. The data is used by FCC staff to determine whether transferee meets basic statutory requirements to become a Commission permittee or licensee.

OMB Number: 3060–0470.

Title: Computer III Remand Proceeding: Bell Operating Company Safeguards, and Tier 1 Local Exchange Company Safeguards (CC Docket No. 90–623) and Implementation of Further Cost Allocation Uniformity (MO&O).

Form No.: N/A.

Action: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Estimated Annual Burden: 90 responses; 300 hours burden per response; 27,00 hours total annual burden.

Needs and Uses: Section 201(b) of the Communications Act of 1934, as amended, requires that common carriers establish just and reasonable charges, practices and regulations for the services they provide; the Commission is responsible for regulating the telecommunications industry and ensuring that common carriers abide by its mandate. Since the carriers are allowed to provide nonregulated services the Commission must establish a mechanism to prevent carriers from imposing on ratepayers the costs and risks of nonregulated service. The cost allocation manual is reviewed by the Commission to ensure that all costs are properly classified between regulated and nonregulated activity.

OMB Number: 3060–0072.

Title: Airborne Mobile Radio Telephone License Application.

Form No.: FCC 409.

Action: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Estimated Annual Burden: 3000 responses; 5 minutes burden per response; 252 hours total annual burden.

Needs and Uses: FCC 409 is used by Commission staff to license airborne mobile units in the air-ground service to individuals who intend to become subscribers to a common carrier mobile radio service.

OMB Number: 3060–0509.

Title: Amendments to Parts 21, 22, 23 and 25 of the Commission's rules to require reporting of station frequency and technical parameters for registration by the Commission with the International Frequency Registration Board (IFRB).

Form No.: N/A.

Action: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Estimated Annual Burden: 7,747 responses; 10.3 hours burden per response; 77,205 hours total annual burden.

Needs and Uses: The NPRM proposed to collection date, which is FCC is required to report to the IFRB. The Commission will use the information to perform monitoring, reporting and coordinating functions to resolve matters raised with foreign governments or through the Treaty Branch of the Commission's Office of Engineering and Technology.

OMB Number: 3060–0387.

Title: Section 78.69 Cable Relay Station Records.

Form No.: N/A.

Action: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Estimated Annual Burden: 1,987 recordkeepers; 26 hours burden per recordkeeper; 51,662 hours total annual burden.

Needs and Uses: Section 78.69 requires that licensees of cable relay stations maintain records of certain inspections, observations and repairs. These records are used by FCC field personnel during investigations.

Federal Communications Commission.

LaVera F. Marshall,

Acting Secretary.

[FR Doc. 95–13564 Filed 6–2–95; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL RESERVE SYSTEM

Associated Banc-Corp, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than June 29, 1995.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Associated Banc-Corp, Green Bay, Wisconsin; and Associated Illinois Banc-Corp, Green Bay, Wisconsin, to acquire 100 percent of the voting shares of GN Bancorp, Inc., Chicago, Illinois, and thereby acquire Gladstone-Norwood Trust & Savings Bank, Chicago, Illinois.

B. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Victoria Bancshares, Inc., Victoria, Texas; and Victoria Financial Services, Inc., Wilmington, Delaware, to acquire 100 percent of the voting shares of Cattlemen's Financial Services, Inc., Austin, Texas; Cattlemen's Financial Services of Delaware Inc., Wilmington, Delaware; and Cattlemen's State Bank, Austin, Texas.

Board of Governors of the Federal Reserve System, May 30, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95-13629 Filed 6-2-95; 8:45 am]

BILLING CODE 6210-01-F

First Union Corporation; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 19, 1995.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. First Union Corporation, Charlotte, North Carolina; to acquire STATCO Inc., Rome, Georgia, and its subsidiary, Home Federal Savings Bank, Rome, Georgia, and thereby engage in operating a federal savings bank pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 30, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95-13628 Filed 6-2-95; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

[File No. 932 3040]

APM Enterprises—Minn Inc.; Proposed Consent Agreement with Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, a video dating service franchise to properly and accurately disclose the annual percentage rate (APR) and other credit terms of financed memberships, as required by the federal Truth in Lending Act, and would require the franchise to make refunds to consumers who were misled by the undisclosed finance charges and APRs.

DATES: Comments must be received on or before August 4, 1995.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Stephen Cohen, FTC/S–4429, Washington, DC 20580. (202) 326–3222.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with an accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order To Cease And Desist

In the Matter of APM Enterprises—Minn Inc., a corporation. File No. 932 3040.

The Federal Trade Commission having initiated an investigation of certain acts and practices of APM Enterprises—Minn Inc., a corporation, (hereinafter referred to as proposed respondent) and it now appearing that proposed respondent is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It Is Hereby Agreed by and between proposed respondent, its attorneys, and counsel for the Federal Trade Commission that:

1. APM Enterprises—Minn Inc., doing business as Great Expectations of Minneapolis ("GE Minneapolis"), is a corporation organized, existing, and doing business under and by virtue of the laws of the state of Illinois, with its office and principal place of business located at 3300 Edinborough Way, Suite 300, Edina, MN 55435.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) Any right to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint, or that the facts alleged in the draft complaint, other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It Is Ordered that:

A. Respondent GE Minneapolis, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the offering of credit, do forthwith cease and desist from failing to accurately calculate and disclose the annual percentage rate, as required by Sections 107(a) and (c) of the Truth in Lending Act, 15 U.S.C. §§ 1606 (a) and (c), and Sections 226.18(e) and 226.22 of Regulation Z, 12 CFR 226.18(e) and 226.22;

B. Respondent GE Minneapolis, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the offering of credit, do forthwith cease and desist from failing to segregate the disclosures required by the TILA from all other information provided in connection with the transaction, including from the itemization of the amount financed, as required by Section 128(b)(1) of the TILA, 15 U.S.C. 1638(b)(1), and Section 226.17(a) of Regulation Z, 12 CFR 226.17(a);

C. Respondent GE Minneapolis, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the offering of credit, do forthwith cease and desist from failing to make all disclosures in the manner, form, and amount required by Sections 122 and 128(a) of the TILA, 15 U.S.C. §§ 1632 and 1638(a), and Sections 226.17 and 226.18 of Regulation Z, 12 CFR 226.17 and 226.18;

D. Respondent GE Minneapolis, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the offering of credit,

do forthwith cease and desist from failing to comply with the TILA, 15 U.S.C. § 1601 *et seq.*, and Regulation Z, 12 CFR Part 226.

II

Refund Program

It Is Further Ordered that:

A. Within thirty (30) days following the date of service of this order, respondent shall:

1. Determine to whom respondent disclosed on the original TILA disclosure an annual percentage rate that was miscalculated by more than one quarter of one percentage point below the annual percentage rate determined in accordance with Section 226.22 of Regulation Z, 12 CFR 226.22, or that disclosed a finance charge that was miscalculated by more than one dollar below the finance charge determined in accordance with Section 226.4 of Regulation Z, 12 CFR 226.4, so that each such person will not be required to pay a finance charge in excess of the finance charge actually disclosed or the dollar equivalent of the annual percentage rate actually disclosed, whichever is lower, plus a tolerance of one quarter of one percentage point;

2. Calculate a lump sum refund and a monthly payment adjustment, if applicable, in accordance with Section 108(e) of the TILA, 15 U.S.C. § 1607(e);

3. Mail a refund check to each eligible consumer in the amount determined above, along with Attachment 1; and

4. Provide the Federal Trade Commission with a list of each such consumer, the amount of the refund, the number of payments refunded, the amount of adjustment for future payments and the number of future payments to be adjusted.

B. No later than fifteen (15) days following the date of service of this order, respondent shall provide the Federal Trade Commission with the name and address of three independent accounting firms, with which it, its officers, employees, attorneys, agents, and franchisees have no business relationship. Staff for the Division of Credit Practices of the FTC shall then have the sole discretion to choose one of the firms ("independent agent") and so advise respondent;

C. Within thirty (30) days following the date of adjustments made pursuant to this section, respondent shall direct the independent agent to review a statistically-valid sample of refunds. Respofident shall provide the Federal Trade Commission with a certified letter from the independent agent confirming that respondent has complied with Part II.A. of this order;

D. All costs associated with the administration of the refund program and payment of refunds shall be borne by the respondent.

III

It Is Further Ordered that respondent, its successors and assigns, shall maintain for at least five (5) years from the date of service of this order and, upon thirty (30) days advance written request, make available to the Federal Trade Commission for inspection and copying all documents and other records necessary to demonstrate fully its compliance with this order.

IV

It Is Further Ordered that respondent, its successors and assigns, shall distribute a copy of this order to any present or future officers and managerial employees having responsibility with respect to the subject matter of this order and that respondent, its successors and assigns, shall secure from each such person a signed statement acknowledging receipt of said order.

V

It Is Further Ordered that respondent, for a period of five (5) years following the date of service of this order, shall promptly notify the Commission at least thirty (30) days prior to any proposed change in its corporate structure such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or affiliates, or any other change in the corporation that may affect compliance obligations arising out of the order.

VI

It Is Further Ordered that respondent shall, within one hundred and eighty (180) days of the date of service of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

Attachment 1

Dear Great Expectations Customer: As part of our settlement with the Federal Trade Commission for alleged violations of the Truth in Lending Act, we are sending you the enclosed refund check in the amount of $_____. The refund represents the amount you were overcharged as a result of errors made by Great Expectations in calculating or disclosing the annual percentage rate or finance charge.

[In addition, your future monthly payments have been reduced. Starting immediately, your monthly payments will be _____.]

We regret any inconvenience this may have caused you.

Great Expectations

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from respondent APM Enterprises—Minn, Inc. ("GE Minneapolis").

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The complaint alleges that GE Minneapolis, as a creditor under the Truth in Lending Act ("TILA"), has violated the TILA and its implementing Regulation Z. Specifically, the TILA requires creditors to make clear and consistent disclosures of the credit terms in a financed transaction. GE Minneapolis failed to accurately calculate and disclose the annual percentage rate ("APR"), which resulted in some consumers paying more in interest charges than the franchise disclosed. The complaint further alleges that this practice is unfair or deceptive in violation of the Federal Trade Commission Act.

Additionally, the complaint alleges that GE Minneapolis failed to accurately disclose the itemization of the amount financed, which assists consumers in understanding whether they are being charged a prepaid finance charge or whether any of the proceeds are being distributed to third parties, and has failed to separate the itemization from all other information provided in connection with the transaction. Also, GE Minneapolis failed to provide a descriptive explanation of the financing terms. For example, GE Minneapolis failed to explain that the APR is "the cost of your credit as a yearly rate" and that the finance charge is "the dollar amount the credit will cost you." GE Minneapolis also failed to provide a description of the amount financed, the total of payments, and the total sales price.

Additionally, the complaint alleges that GE Minneapolis failed to conspicuously disclose the finance charge. The purpose of the required disclosure is to make this term apparent to consumers.

Finally, the complaint alleges that GE Minneapolis failed to identify the creditor in each transaction and failed to provide the total sales price.

The consent agreement would prohibit GE Minneapolis from failing to accurately calculate and disclose the APR and any other terms required by the TILA.

The consent agreement includes a refund program requiring GE Minneapolis to make adjustments to the account of any consumer to whom it disclosed an APR or finance charge that was lower than the amount the consumer actually was required to pay.

The consent agreement would also require GE Minneapolis to maintain records of its compliance with the consent agreement, distribute copies of the agreement to its employees, and advise the Federal Trade Commission of any changes in its corporate structure.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 95–13659 Filed 6–2–95; 8:45 am]

BILLING CODE 6750–01–M

[File No. 942 3044]

The Eskimo Pie Corporation; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a Virginia-based corporation from misrepresenting the existence or amount of calories or any other nutrient or ingredient in any frozen dessert product and from falsely claiming that any frozen dessert product has been approved, endorsed or recommended by any person, group or organization.

DATES: Comments must be received on or before August 4, 1995.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: C. Steven Baker or Barbara Di Giulio, FTC/Chicago Regional Office, Federal Trade Commission, 55 East Monroe St., Suite 1860, Chicago, IL 60603, (312) 353–8156.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order To Cease and Desist

In the Matter of The Eskimo Pie Corporation, a corporation.

The Federal Trade Commission having initiated an investigation of certain acts and practices of The Eskimo Pie Corporation, a corporation, and it how appearing that The Eskimo Pie Corporation, hereinafter sometimes referred to as proposed respondent is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed that by and between The Eskimo Pie Corporation, by its duly authorized officer and its attorneys, and counsel for the Federal Trade Commission that:

1. Proposed respondent The Eskimo Pie Corporation is a Delaware corporation, with its office and principal place of business located at 901 Moorefield Park Drive, Richmond, Virginia 23236.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint.

3. Proposed respondent waives:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. All claims under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint, or that the facts as alleged in the draft of complaint, other than jurisdictional facts, are true.

6. The agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make the information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered that respondent The Eskimo Pie Corporation, a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labelling, advertising, promotion, offering for sale, sale, or distribution of any frozen dessert product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, through numerical or descriptive terms, logos, symbols, or any other means:

A. The existence or amount of calories or any other nutrient or ingredient in any such product; or

B. That such product has been approved, endorsed or recommended by any person, group or organization.

II

It is ordered that respondent The Eskimo Pie Corporation, a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labelling, advertising, promotion, offering for sale, sale, or distribution of any frozen dessert product in or affecting commerce, "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from failing to disclose clearly and prominently in any advertisement or promotional material that represents, in any manner, directly or by implication, through numerical or descriptive terms, logos, symbols, or any other means, that such product is a useful or appropriate part of a diabetic's diet:

A. The fat content per serving of such product expressed as 1) the number of grams and 2) the percentage of the "Maximum Daily Value", unless such product is low in total fat;

B. The saturated fat content per serving of such product expressed as 1) the number of grams and 2) the percentage of the "Maximum Daily Value" of the saturated fat, unless such product is low in saturated fat; and

C. The statement "Not a reduced calorie food" when such a statement would be required on the label pursuant to regulations promulgated by the Food and Drug Administration.

The statements required by subparagraphs A.1 and A.2 and B.1 and B.2 of this Part shall appear in close proximity. For purposes of this Part, the term "Maximum Daily Value" shall mean the daily reference value or other daily intake limit for total fat or saturated fat established in an effective final regulation of the Food and Drug Administration. For purposes of this Part, "low in fat" and "low in saturated fat" shall mean the qualifying amount for such terms as set forth in regulations promulgated by the Food and Drug Administration.

For purposes of this Order, "clearly and prominently" shall mean as follows:

1. In a television or videotape advertisement, the disclosure shall be presented simultaneously in both the audio and video portions of the advertisement. The audio disclosure shall be delivered in a volume and cadence and for a duration sufficient for an ordinary consumer to hear and comprehend it. The video disclosure shall be of a size and shade, and shall appear on the screen for a duration, sufficient for an ordinary consumer to read and comprehend it;

2. In a print advertisement, the disclosure shall be in close proximity to the representation that triggers the disclosure in at least twelve (12) point type; and

3. In a radio advertisement, the disclosure shall be delivered in a volume and cadence and for a duration sufficient for an ordinary consumer to hear and comprehend it.

III

Nothing in this Order shall prohibit respondent from making any representation that is specifically permitted in labeling for any product by regulations promulgated by the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990.

IV

It is further ordered that for five (5) years after the last date of dissemination of any representation covered by this Order, respondent, or its successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials that were relied upon in disseminating such representation; and

B. All test reports, studies, surveys, demonstrations, or other evidence in its possession or control that contradict, qualify, or call into question such representation, including correspondence from consumers.

V

It is further ordered that respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the respondent such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the respondent which may affect compliance obligations arising out of this Order.

VI

It is further ordered that respondent shall distribute a copy of this Order to each of its operating divisions and to each of its officers, agents, representatives, employees, and licensees engaged in the preparation or placement of advertisements or other materials covered by this Order.

VII

It is further ordered that respondent, or its successors and assigns, shall, for three (3) years after the date of the last dissemination of the representation to which they pertain, maintain and upon request make available to the Federal Trade Commission for inspection and copying all advertisements containing any representation covered by this Order.

VIII

It is further ordered that respondent shall, within sixty (60) days after service of this Order, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from The Eskimo Pie Corporation (Eskimo Pie).

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter concerns claims made by Eskimo Pie in its advertising for its Sugar Freedom frozen dessert products.

The Commission's complaint in this matter charges Eskimo Pie with engaging in unfair or deceptive practices in connection with its advertising of its Sugar Freedom frozen dessert products. According to the complaint Eskimo Pie falsely represented that its Sugar Freedom frozen dessert products are significantly reduced in calories compared with comparable foods and that they are low in calories.

The complaint also alleges that Eskimo Pie falsely represented that the American Diabetes Association has approved or endorsed Eskimo Pie Sugar Freedom frozen dessert products.

Finally, the complaint alleges that Eskimo Pie represented that its Sugar Freedom frozen dessert products are particularly useful or appropriate in the diabetics's diet, but failed to disclose that many of these products are high in total fat and saturated fat and are not low or reduced in calories.

The consent order contains provisions designed to remedy the violations charged and to prevent Eskimo Pie from engaging in similar deceptive and unfair acts and practices in the future.

Part I of the order prohibits Eskimo Pie from misrepresenting the existence or amount of calories or any other nutrient or ingredient in any frozen dessert product; or that such product has been approved, endorsed or recommended by any person, group or organization.

Part II of the order requires that when Eskimo Pie represents that any frozen dessert product is a useful or appropriate part of a diabetic's diet, then it must disclose a) the total fat content if the product is not low in fat; b) the saturated fat content if the product is not low in saturated fat; and c) that the product is not a reduced calorie product when the FDA would require a similar disclosure in labelling.

Part III of the order provides that representations that would be specifically permitted in food labeling, under regulations issued by FDA pursuant to the Nutrition Labeling and Education Act of 1990, are not prohibited by the order.

Part IV of the order requires Eskimo Pie to maintain copies of all materials relied upon in making any representation covered by the order.

Part V of the order requires Eskimo Pie to notify the Commission of any changes in corporate structure that might affect compliance with the order.

Part VI of the order requires Eskimo Pie to distribute copies of the order to its operating divisions and to various officers, agents and representatives of Eskimo Pie.

Part VII of the order requires Eskimo Pie to maintain copies of all advertisements containing representations covered by the order.

Part VIII of the order requires Eskimo Pie to file with the Commission one or more reports detailing compliance with the order.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order, or to modify any of their terms.

Donald S. Clark,

Secretary.

[FR Doc. 95–13652 Filed 6–2–95; 8:45 am]

BILLING CODE 6750–01–M

[File No. 932 3040]

G.E.C.H., Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, a video dating service franchise to properly and accurately disclose the annual percentage rate (APR) and other credit terms of financed memberships, as required by the federal Truth in Lending Act, and would require the franchise to make refunds to consumers who were misled by the undisclosed financed charges and APRs.

DATES: Comments must be received on or before August 4, 1995.

ADDRESSES Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Stephen Cohen, FTC/S–4429, Washington, DC 20580. (202) 326–3222.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order To Cease And Desist

In the Matter of G.E.C.H., Inc., a corporation. File No. 932 3040.

The Federal Trade Commission having initiated an investigation of certain acts and practices of G.E.C.H., Inc., a corporation, (hereinafter sometimes referred to as proposed respondent) and it now appearing that proposed respondent is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between proposed respondent and counsel for the Federal Trade Commission that:

1. G.E.C.H., Inc., doing business as Great Expectations of Cherry Hill ("GE Cherry Hill"), is a corporation organized, existing, and doing business under and by virtue of the laws of the state of New Jersey with its office and principal place of business located at One Cherry Hill, Suite 600, Cherry Hill, NJ 08002.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) Any right to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint, or that the facts alleged in the draft complaint, other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statue for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered that:

A. Respondent GE Cherry Hill, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the offering of credit, do forthwith cease and desist from failing to accurately calculate and disclose the annual percentage rate, as required by Sections 107 (a) and (c) of the TILA, 15 U.S.C. 1606 (a) and (c), and Sections 226.18(e) and 226.22 of Regulation Z, 12 CFR 226.18(e) and 226.22;

B. Respondent GE Cherry Hill, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the offering of credit, do forthwith cease and desist from failing to make all disclosures in the manner, form, and amount required by Sections 122 and 128(a) of the TILA, 15 U.S.C. 1632 and 1638(a), and Sections 226.17 and 226.18 of Regulation Z, 12 CFR 226.17 and 226.18;

C. Respondent GE Cherry Hill, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the offering of credit, do forthwith cease and desist from failing to comply with the TILA, 15 U.S.C. 1601 *et seq.*, and Regulation Z, 12 CFR part 226.

II

Refund Program

It is further ordered that:

A. Within thirty (30) days following the date of service of this order, respondent shall:

1. Determine to whom respondent disclosed on the original TILA disclosure an annual percentage rate that was miscalculated by more than one quarter of one percentage point below the annual percentage rate determined in accordance with Section 226.22 of Regulation Z, 12 CFR 226.22, or that disclosed a finance charge that was miscalculated by more than one dollar below the finance charge determined in accordance with Section 226.4 of Regulation Z, 12 CFR 226.4, so that each such person will not be required to pay a finance charge in excess of the finance charge actually disclosed or the dollar equivalent of the annual percentage rate actually disclosed, whichever is lower, plus a tolerance of one quarter of one percentage point;

2. Calculate a lump sum refund and a monthly payment adjustment, if applicable, in accordance with Section 108(e) of the TILA, 15 U.S.C. 1607(e);

3. Mail a refund check to each eligible consumer in the amount determined above, along with Attachment 1; and

4. Provide the Federal Trade Commission with a list of each such consumer, the amount of the refund, the number of payments refunded, the amount of adjustment for future payments and the number of future payments to be adjusted;

B. Within thirty (30) days following the date of adjustments made pursuant to this section, respondent shall direct Ira M. Goldberg, Esquire, to review a statistically-valid sample of refunds. Respondent shall provide the Federal Trade Commission with a certified letter from Mr. Goldberg confirming that respondent has complied with Part II. A. of this order;

C. All costs associated with the administration of the refund program and payment of refunds shall be borne by the respondent.

III

It is further ordered that respondent, its successors and assigns, shall maintain for at least five (5) years from the date of service of this order and, upon thirty (30) days advance written request, make available to the Federal Trade Commission for inspection and copying all documents and other records necessary to demonstrate fully its compliance with this order.

IV

It is further ordered that respondent, its successors and assigns, shall distribute a copy of this order to any present or future officers and managerial employees having responsibility with respect to the subject matter of this order and that respondent, its successors and assigns, shall secure from each such person a signed statement acknowledging receipt of said order.

V

It is further ordered that respondent, for a period of five (5) years following the date of service of this order, shall promptly notify the Commission at least thirty (30) days prior to any proposed change in its corporate structure such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or affiliates, or any other change in the corporation that may affect compliance obligations arising out of the order.

VI

It is further ordered that respondent shall, within one hundred and eighty (180) days of the date of service of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

Attachment 1

Dear Great Expectations Member: Some time ago, the Federal Trade Commission staff notified us that we had made some inadvertent errors in filling out certain Truth in Lending Act disclosure forms, which is the form you signed containing primarily the terms by which you agreed to pay for your Great Expectations membership over some period of time. After receiving the FTC notification, we went back and recomputed your finance charge and determined that we had miscalculated or improperly disclosed that charge, or the annual percentage rate. We are therefore enclosing a refund check payable to your order in the amount of $_____ which represents the amount you were inadvertently overcharged.

[In addition, your future monthly payments have been recalculated and, starting immediately, your monthly payments will be $_____.]

We hope that your experience with Great Expectations has been a positive one and hope that you will feel free to notify us if there is anything we can do for you. We regret any inconvenience this may have caused you.

Very truly yours,

[signed]

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from respondent G.E.C.H., Inc. ("GE Cherry Hill").

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The complaint alleges the GE Cherry Hill, as a creditor under the Truth in Lending Act ("TILA"), has violated the TILA and its implementing Regulation Z. Specifically, the TILA requires creditors to make clear and consistent disclosures of the credit terms in a financed transaction. GE Cherry Hill failed to accurately calculate and disclose the annual percentage rate ("APR"), which resulted in some consumers paying more in interest charges than the franchise disclosed. The complaint further alleges that this practice is unfair or deceptive in violation of the Federal Trade Commission Act.

Additionally, the complaint alleges that GE Cherry Hill failed to accurately disclose the itemization of the amount financed, which assists consumers in understanding whether they are being charged a prepaid finance charge or whether any of the proceeds are being distributed to third parties.

Finally, the complaint alleges that GE Cherry Hill failed to identify the creditor in each transaction, and failed to provide the total payments and the total sales price.

The consent agreement would prohibit GE Cherry Hill from failing to accurately calculate and disclose the APR and any other terms by the TILA.

The consent agreement includes a refund program requiring GE Cherry Hill to make adjustments to the account of any consumer to whom it disclosed an APR or finance charge that was lower than the amount the consumer actually was required to pay.

The consent agreement would also require GE Cherry Hill to maintain records of its compliance with the consent agreement, distribute copies of the agreement to its employees, and advise the Federal Trade Commission of any changes in its corporate structure.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 95–13655 Filed 6–2–95; 8:45 am]

BILLING CODE 6750–01–M

[File No. 932 3040]

Great Expectations Creative Management, Inc., et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, the franchisor of video dating services and its four franchises to properly and accurately disclose the annual percentage rate (APR) and other credit terms of financed memberships, as required by the federal Truth in Lending Act and would require the franchises to make refunds to consumers who were mislead by the undisclosed finance charges and APRs. In addition, the consent agreement would prohibit the respondents from providing franchises contracts with pre-printed APRs.

DATES: Comments must be received on or before August 4, 1995.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Stephen Cohen, FTC/S–4429, Washington, DC 20580. (202) 326–3222.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

In the Matter of Great Expectations Creative Management, Inc., Great Expectations, Inc., GEC Illinois, Inc., GEC Tennessee, Inc., and GEC Alabama, Inc., corporations. File No. 932 3040.

Agreement Containing Consent Order To Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Great Expectations Creative Management, Inc., Great Expectations, Inc., GEC Illinois, Inc., GEC Tennessee, Inc., and GEC Alabama, Inc., corporations, (hereinafter sometimes referred to as Proposed Respondents) and it now appearing that Proposed Respondents are willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated.

It Is Hereby Agreed by and between Proposed Respondents, their attorneys, and counsel for the Federal Trade Commission that:

1. Great Expectations Creative Management, Inc. ("G/ECM") is a corporation organized, existing, and doing business under and by virtue of the laws of the state of California, with its office and principal place of business located at 16830 Ventura Blvd,, Suite P, Encino, CA 91436.

2. Great Expectations, Inc., ("G/EI") is a corporation organized, existing, and doing business under and by virtue of the laws of the state of California, with its corporate office at 16830 Ventura Blvd., Suite P, Encino, CA 91436, and its principal places of business located at 1640 S. Sepulveda Blvd., Suite 100, Los Angeles, CA 91436, 17207 Ventura Blvd., Encino, CA 91316, and 450 N. Mountain, Suite B, Upland, CA 91786.

3. GEC Illinois, Inc. ("GE Illinois") is a corporation organized, existing, and doing business under and by virtue of the laws of the state of Illinois, with its office and principal place of business located at 1701 E. Woodfield Dr., Suite 400, Schaumburg, IL 60173.

4. GEC Tennessee, Inc. ("GE Tennessee") is a corporation organized, existing, and doing business under and by virtue of the laws of the state of

California, with its office and principal place of business located at 5552 Franklin Rd., Suite 200, Nashville, TN 37220.

5. GEC Alabama, Inc. ("GE Alabama") is a corporation organized, existing, and doing business under and by virtue of the laws of the state of Alabama, with its office and principal place of business located at 7529 S. Memorial Pkwy., Suite C & D, Huntsville, AL 35802.

6. Proposed Respondents admit all the jurisdictional facts set forth in the draft of complaint.

7. Proposed Respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) Any right to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

8. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify Proposed Respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

9. This agreement is for settlement purposes only and does not constitute an admission by Proposed Respondents that the law has been violated as alleged in the draft of compliant or that the facts alleged in the draft complaint, other than the jurisdictional facts, are true. This agreement shall apply only to the U.S. operations of Proposed Respondents.

10. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to Proposed Respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to Proposed Respondents, address as stated in this agreement shall constitute service. Proposed Respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

11. Proposed Respondents have read the proposed complaint and order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed Respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It Is Ordered that:

A. Respondent G/ECM, a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, do forthwith cease and desist from:

1. Providing a retail installment contract or any other financial instrument or disclosure to its franchisees that violates the Truth in Lending Act ("TILA"), 15 U.S.C. 1601 *et seq.*, and Regulation Z, 12 CFR Part 226;

2. Providing a retail installment contract or other TILA disclosure that contains a pre-printed annual percentage rate;

3. Providing instructions for calculating or disclosing the annual percentage rate, finance charge, or monthly payments that conflict with the TILA and Regulation Z;

4. Failing to take reasonable steps sufficient to ensure that its franchisees are complying with the TILA or Regulation Z including, but not limited to, reviewing and randomly testing TILA disclosures used by its franchisees;

5. Failing to terminate, unless prohibited by state law, any franchise that G/ECM knows or should know does not comply with the TILA or Regulation Z;

6. Failing to make available to its franchisees a computer program or other comparable system that accurately calculates the disclosures required by the TILA and Regulation Z; and

7. Failing to provide Attachment 1 to all of its current franchisees;

B. Respondents G/EI, GE Illinois, GE Tennessee, and GE Alabama, their successors and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the offering of credit, do forthwith cease and desist from failing to accurately calculate and disclose the annual percentage rate, as required by Sections 107 (a) and (c) of the TILA, 15 U.S.C. §§ 1606 (a) and (c), and Sections 226.18(e) and 226.22 of Regulation Z, 12 CFR 226.18(e) and 226.22;

C. Respondents G/EI, GE Illinois, GE Tennessee, and GE Alabama, their successors and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the offering of credit, do forthwith cease and desist from failing to make all disclosures in the manner, form, and amount required by Sections 122 and 128(a) of the TILA, 15 U.S.C. 1632 and 1638(a), and Sections 226.17 and 226.18 of Regulation Z, 12 CFR 226.17 and 226.18;

D. Respondents G/EI, GE Illinois, GE Tennessee, and GE Alabama, their successors and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the offering of credit, do forthwith cease and desist from failing to comply with the TILA, 15 U.S.C. 1601 *et seq.*, and Regulation Z, 12 CFR part 226.

II

Refund Program

It is further ordered that:

A. Within sixty (60) days following the date of service of this order, Respondents G/EI, GE Illinois, GE Tennessee, and GE Alabama shall:

1. For each TILA disclosure relating to any executory contract or any contract consummated within two years prior to July 20, 1994, determine to whom Respondents disclosed on the original TILA disclosure an annual percentage rate that was miscalculated by more than one quarter of one percentage point below the annual percentage rate determined in accordance with Section 226.22 of Regulation Z, 12 CFR 226.22, or that disclosed a finance charge that

was miscalculated by more than one dollar below the finance charge determined in accordance with Section 226.4 of Regulation Z, 12 CFR 226.4, so that each such person will not be required to pay a finance charge in excess of the finance charge actually disclosed or the dollar equivalent of the annual percentage rate actually disclosed, whichever is lower, plus a tolerance of one quarter of one percentage point; provided, however, that no determination need be made for any person that has already received a full refund of all finance charges paid to Respondents;

2. Calculate a lump sum refund and a monthly payment adjustment, if applicable, in accordance with Section 108(e) of the TILA, 15 U.S.C. 1607(e);

3. Mail a refund check to each eligible consumer in the amount determined above, along with Attachment 2; provided, however, that should such consumer have a balance due and owing Respondents and should Respondents have a legal right to collect such balance under state law and under the terms of their contract with the consumer, the refund maybe applied to that balance and the excess, if any, shall be refunded to each such consumer;

4. Provide the Federal Trade Commission with a list of each such consumer, the amount of the refund, the number of payments refunded, the amount of adjustment for future payments and the number of future payments to be adjusted;

B. No later than fifteen (15) days following the date of service of this order, Respondents G/EI, GE Illinois, GE Tennessee, and GE Alabama shall provide the Federal Trade Commission with the name and address of three independent accounting firms, with which they, their officers, employees, attorneys, and agents, have no business relationship. Staff for the Division of Credit Practices of the FTC shall then have the sole discretion to choose one of the firms ("independent agent") and so advise Respondents;

C. Within thirty (30) days following the date of adjustments made pursuant to this section, Respondents G/EI, GE Illinois, GE Tennessee, and GE Alabama shall direct the independent agent to review a statistically-valid sample of refunds. Respondents shall provide the Federal Trade Commission with a certified letter from the independent agent confirming that Respondents have complied with Part II. A. of this order;

D. All costs associated with the administration of the refund program and payment of refunds shall be borne by Respondents G/EI, GE Illinois, GE Tennessee, and GE Alabama.

III

It Is Further Ordered that Respondents, their successors and assigns, shall maintain for at least five (5) years from the date service of this order and, upon thirty (30) days advance written request, make available to the Federal Trade Commission for inspection and copying all documents and other records necessary to demonstrate fully their compliance with this order.

IV

It Is Further Ordered that Respondents, their successors and assigns, shall distribute a copy of this order to any present or future officers and managerial employees having responsibility with respect to the subject matter of this order and that Respondents, their successors and assigns shall secure from each such person a signed statement acknowledging receipt of said order.

V

It Is Further Ordered that Respondents,. for a period of five (5) years following the date of service of this order, shall promptly notify the Commission at least thirty (30) days prior to any proposed change in their corporate structure such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or affiliates, or any other change in the corporation that may affect compliance obligations arising out of the order.

VI

It Is Further Order that Respondents shall, within one hundred and eighty (180) days of the date of service of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

Attachment 1

Important Notice To Great Expectations' Franchisees

We have reached a settlement with the Federal Trade Commission concerning their claims of alleged violations of the Truth in Lending Act and the Federal Trade Commission Act. The Federal Trade Commission believes that the retail installment contracts and the formula listed on them that we may have provided to you in the past may not comply with the Truth in Lending Act.

As part of our settlement, we agreed to alert you to *immediately* stop using any retail installment contracts we provided until you can verify that they comply with all local, state, and federal laws. As always, we recommend that you have your forms reviewed by your own attorney. We have a computer software program available for your use that can be used to help you make sure your disclosures are accurately calculated. To obtain a copy of this program, please contact Keith Granirer.

Jeffrey Ullman

President

Great Expectations Creative Management, Inc.

Attachment 2

Dear Great Expectations Member: As part of our settlement with the Federal Trade Commission for alleged violations of the Truth in Lending Act, we are sending you the enclosed refund check in the amount of $_____. The refund represents the amount you may have been overcharged as a result of a possible error in calculating or disclosing the annual percentage rate or finance charge.

[In addition, your future monthly payments have been reduced. Starting immediately, your monthly payments will be $_____.]

We regret any inconvenience this may have caused you.

Great Expectations

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from respondents Great Expectations Creative Management, Inc. ("G/ECM"), Great Expectations, Inc. ("G/EI"), GEC Illinois, Inc. ("GE Illinois"), GEC Tennessee, Inc. ("GE Tennessee"), and GEC Alabama, Inc. ("GE Alabma").

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The complaint alleges that G/ECM provided its franchises with Truth in Lending Act ("TILA") disclosures that, when used by those franchises, resulted in false and misleading disclosures of the annual percentage rate ("APR") and finance charge to consumers. Thus, the complaint alleges that G/ECM engaged in unfair or deceptive acts or practices in violation of Section 5 of the Federal Trade Commission Act.

The complaint also alleges that G/EI, GE Illinois, GE Tennessee, and GE Alabama, as creditors under the TILA, have violated the TILA and its implementing Regulation Z. Specifically, the TILA requires creditors to make clear and consistent disclosures of the credit terms in a financed transaction. These franchises failed to

accurately calculate and disclose the APR, which resulted in some consumers paying more in interest charges than the franchises disclosed. The complaint further alleges that this practice, when engaged in by G/EI, GE Alabama, and GE Illinois, was unfair or deceptive in violation of the Federal Trade Commission Act.

Additionally, the complaint alleges that G/EI, GE Illinois, GE Tennessee, and GE Alabama failed to accurately disclose the itemization of the amount financed, which assists consumers in understanding whether they are being charged a prepaid finance charge or whether any of the proceeds are being distributed to third parties.

Finally, the complaint alleges that G/EI, GE Illinois, GE Tennessee, and GE Alabama failed to identify the creditor in each transaction.

The consent agreement would prohibit G/ECM from providing any disclosures to its franchises that violate the TILA. Because G/ECM disseminated TILA disclosure forms that contained pre-printed APRs without also providing adequate instructions for accurately calculating and disclosing the APR, the consent agreement would prohibit G/ECM's use of forms containing pre-printed APRs in the future. The consent agreement would further prohibit G/ECM from providing any calculation instructions that conflict with the TILA.

The consent agreement would require G/ECM to make sure that its franchises are complying with the TILA, including reviewing and randomly testing franchises' TILA disclosures. The consent agreement would also require G/ECM to make available to its franchises a program that accurately calculates the disclosures required by the TILA and would require G/ECM to terminate, where permitted by state law, any franchise that it knows or should know does not comply with the TILA.

The consent agreement would prohibit G/EI, GE Illinois, GE Tennessee, and GE Alabama from failing to accurately calculate and disclose the APR and other terms required by the TILA.

The consent agreement includes a refund program requiring G/EI, GE Illinois, GE Tennessee, and GE Alabama to make adjustments to the account of any consumer to whom they disclosed an APR or finance charge that was lower than the amount the consumer actually was required to pay.

The consent agreement would also require G/EI, GE Illinois, GE Tennessee, and GE Alabama to maintain records of their compliance with the consent agreement, distribute copies of the agreement to their employees, and advise the Federal Trade Commission of any changes in their corporate structure.

The purpose of this analysis is to facilitate public comment on the proposed order, an it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 95–13653 Filed 6–2–95; 8:45 am]

BILLING CODE 6750–01–M

[File No. 932 3040]

Great Expectations of Baltimore, Inc., et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, the video dating service franchise to properly and accurately disclose the annual percentage rate (APR) and other credit terms of financed memberships, as required by the federal Truth in Lending Act and would require the franchises to make refunds to consumers who were misled by the undisclosed finance charges and APRs.

DATES: Comments must be received on or before August 4, 1995.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Stephen Cohen, FTC/S–4429, Washington, DC 20580, (202) 326–3222.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

In the matter of Great Expectations of Baltimore, Inc., Great Expectations of Washington, DC, Inc., Great Expectations of Washington, Inc., corporations. File No. 932 3040.

Agreement Containing Consent Order To Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Great Expectations of Baltimore, Inc., Great Expectations of Washington, DC, Inc., and Great Expectations of Washington, Inc., corporations, (hereinafter collectively referred to as proposed respondents) and it now appearing that proposed respondents are willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between proposed respondents, their attorneys, and counsel for the Federal Trade Commission that:

1. Great Expectations of Baltimore, Inc. ("GE Baltimore") is a corporation organized, existing, and doing business under and by virtue of the laws of the state of Virginia, with its office and principal place of business located at 40 York Rd., Suite 500, Towson, MD 21204.

2. Great Expectations of Washington, DC, Inc. ("GE DC") is a corporation organized, existing, and doing business under and by virtue of the laws of the state of Maryland, with its office and principal place of business located at 8601 Westwood Center Dr., Vienna, VA 22182.

3. Great Expectations of Washington, Inc., doing business as Great Expectations of Raleigh/Durham ("GE Raleigh"), is a corporation organized, existing, and doing business under and by virtue of the laws of the state of Maryland, with its office and principal place of business located at 3714 Benson Dr., Suite 200, Raleigh, NC 27609.

4. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint.

5. Proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) Any right to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

6. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

7. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft of complaint, or that the facts alleged in the draft complaint, other than the jurisdictional facts, are true.

8. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondents' address as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

9. Proposed respondents have read the proposed complaint and order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered that:

A. Respondent GE Baltimore, GE DC, and GE Raleigh, their successors and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the offering of credit, do forthwith cease and desist from failing to accurately calculate and disclose the annual percentage rate, as required by Sections 107 (a) and (c) of the TILA, 15 U.S.C. 1606 (a) and (c), and Sections 226.18(e) and 226.22 of Regulation Z, 12 CFR 226.18(e) and 226.22;

B. Respondents GE Baltimore, GE DC, and GE Raleigh, their successors and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the offering of credit, do forthwith cease and desist from failing to accurately calculate and disclose the finance charge, as required by Section 106 of the TILA, 15 U.S.C. 1605, and Sections 226.4 and 226.18(d) of Regulation Z, 12 CFR 226.4 and 226.18(d);

C. Respondents GE Baltimore, GE DC, and GE Raleigh, their successors and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the offering credit, do forthwith cease and desist from failing to segregate the disclosures required by the TILA from all other information provided in connection with the transaction, including from the itemization of the amount financed, as required by Section 128(b)(1) of the TILA, 15 U.S.C. 1638(b)(1), and Section 226.17(a) of Regulation Z, 12 CFR 226.17(a);

D. Respondents GE Baltimore, GE DC, and GE Raleigh, their successors and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the offering of credit, do forthwith cease and desist from failing to make all disclosures in the manner, form, and amount required by Sections 122 and 128(a) of the TILA, 15 U.S.C. 1632 and 1638(a), and Sections 226.17 and 226.18 of Regulation Z, 12 CFR 226.17 and 226.18;

E. Respondents GE Baltimore, GE DC, and GE Raleigh, their successors and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the offering of credit, do forthwith cease and desist from:

1. Failing to include, in the finance charge and the annual percentage rate disclosed to the consumer, set-up or other fees that are charged only to consumers who finance the costs of their memberships, as required by Sections 106, 107, and 128 of the TILA, 15 U.S.C. 1605, 1606, and 1638, and Sections 226.4(b), 226.22, and 226.18(d) and (e) of Regulation Z, 12 CFR 226.4(b), 226.22, and 226.18 (d) and (e); and

2. Failing to exclude, from the amount financed disclosed to the consumer, set-up or other fees that are charged only to consumers who finance the costs of the their memberships, as required by Section 128 of the Truth in Lending Act, 15 U.S.C. 1638(a) and Section 226.18(b) of Regulation Z, 12 CFR 226.18(b); and

F. Respondents GE Baltimore, GE DC, and GE Raleigh, their successors and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the offering of credit, do forthwith cease and desist from failing to comply with the TILA, 15 U.S.C. 1601 *et seq.*, and Regulation Z, 12 CFR part 226.

II

Refund Program

It is further ordered that:

A. Within thirty (30) days following the date of service of this order, respondents shall:

1. Determine to whom respondents disclosed on the original TILA disclosure an annual percentage rate that was miscalculated by more than one quarter of one percentage point below the annual percentage rate determined in accordance with Section 226.22 of Regulation Z, 12 CFR 226.22, or that disclosed a finance charge that was miscalculated by more than one dollar below the finance charge determined in accordance with Section 226.4 of Regulation Z, 12 CFR 226.4, so that each such person will not be required to pay a finance charge in excess of the finance charge actually disclosed or the dollar equivalent of the annual percentage rate actually disclosed, whichever is lower, plus a tolerance of one quarter of one percentage point;

2. Calculate a lump sum refund and a monthly payment adjustment, if applicable, in accordance with Section 108(e) of the TILA, 15 U.S.C. 1607(e);

3. Mail a refund check to each eligible consumer in the amount determined above, along with Attachment 1; and

.4. Provide the Federal Trade Commission with a list of each such consumer, the amount of the refund, the number of payments refunded, the amount of adjustment for future payments and the number of future payments to be adjusted.

B. No later than fifteen (15) days following the date of service of this order, respondents shall provide the Federal Trade Commission with the name and address of three independent accounting firms, with which they, their officers, employees, attorneys, agents, and franchisees have no business relationship. Staff for the Division of Credit Practices of the FTC shall then have the sole discretion to choose one of the firms ("independent agent") and so advise respondents;

C. Within thirty (30) days following the date of adjustments made pursuant to this section, respondents shall direct the independent agent to review a statistically-valid sample of refunds. Respondents shall provide the Federal Trade Commission with a certified letter from the independent agent confirming that respondents have complied with Part II.A. of this order;

D. All costs associated with the administration of the refund program and payment of refunds shall be borne by the respondents.

III

It is further ordered that respondents, their successors and assigns, shall maintain for at least five (5) years from the date of service of this order and, upon thirty (30) days advance written request, make available to the Federal Trade Commission for inspection and copying all documents and other records necessary to demonstrate fully their compliance with this order.

IV

It is further ordered that respondents, their successors and assigns, shall distribute a copy of this order to any present or future officers and managerial employees having responsibility with respect to the subject matter of this order and that respondents, their successors and assigns, shall secure from each such person a signed statement acknowledging receipt of said order.

V

It is further ordered that respondents, for a period of five (5) years following the date of service of this order, shall promptly notify the Commission at least thirty (30) days prior to any proposed change in their corporate structure such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or affiliates, or any other change in the corporation that may affect compliance obligations arising out of the order.

VI

It is further ordered that respondents shall, within one hundred and eighty (180) days of the date of service of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

Attachment 1

Dear Great Expectations Customer:

As part of our settlement with the Federal Trade Commission for alleged violations of the Truth in Lending Act, we are sending you the enclosed refund check in the amount of $_____. The refund represents the amount you were overcharged as a result of errors made by Great Expectations in calculating or disclosing the annual percentage rate or finance charge.

[In addition, your future monthly payments have been reduced. Starting immediately, your monthly payments will be $_____.]

We regret any inconvenience this may have caused you.

Great Expectations

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from respondents Great Expectations of Baltimore, Inc. ("GE Baltimore"), Great Expectations of Washington, DC, Inc. ("GE DC"), and Great Expectations of Washington, Inc. ("GE Raleigh").

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The complaint alleges that GE Baltimore, GE DC, and GE Raleigh, as creditors under the Truth in Lending Act ("TILA"), have violated the TILA and its implementing Regulation Z. Specifically, the TILA requires creditors to make clear and consistent disclosures of the credit terms in a financed transaction. These franchises failed to accurately calculate and disclose the annual percentage rate ("APR") and the finance charge, which resulted in some consumers paying more in interest charges and finance charges than the franchises disclosed. The complaint further alleges that this practice is unfair or deceptive in violation of the Federal Trade Commission Act.

Additionally, the complaint alleges that these franchises failed to accurately disclose the itemization of the amount financed, which assists consumers in understanding whether they are being charged a prepaid finance charge or whether any of the proceeds are being distributed to third parties, and have failed to separate the itemization from all other information provided in connection with the transaction. Also, these franchises failed to provide a descriptive explanation of the financing terms. For example, the named franchises failed to explain that the APR is "the cost of your credit as a yearly rate" and that the finance charge is "the dollar amount the credit will cost you." The named franchises also failed to provide a description of the amount financed, the total of payments, and the total sales price.

The complaint also alleges that the named franchises failed to include in the finance charge a set-up fee that each charged to its customers that financed the costs of their memberships, but did not charge to its customers that paid cash. The TILA requires that such charges be made part of the finance charge. Instead, the named franchises included the set-up fees in the amount financed, which resulted in the finance charge and the APR being underdisclosed.

Finally, the complaint alleges that the named franchises failed to identify the creditor in each transaction, and failed to provide the total sales price.

The consent agreement would prohibit the franchises named herein from failing to accurately calculate and disclose the APR and any other terms required by the TILA.

The consent agreement includes a refund program requiring the named franchises to make adjustments to the account of any consumer to whom they disclosed an APR or finance charge that was lower than the amount the consumer actually was required to pay.

The consent agreement would also require the named franchises to maintain records of their compliance with the consent agreement, distribute copies of the agreement to their employees, and advise the Federal Trade Commission of any changes in their corporate structure.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 95–13657 Filed 6–2–95; 8:45 am]

BILLING CODE 6750–01–M

[File No. 932–3040]

Great Expectations of Columbus, Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, a video dating service franchise to properly and accurately disclose the annual percentage rate (APR) and other credit terms of financed memberships, as required by the federal Truth in Lending Act, and would require the franchise to make refunds to consumers who were misled by the undisclosed finance charges and APRs.

DATES: Comments must be received on or before August 4, 1995.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT:

Stephen Cohen, FTC/S–4429, Washington, D.C. 20580, (202) 326–3222.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

In the matter of Great Expectations of Columbus, Inc., a corporation; File No. 932–3040.

Agreement Containing Consent Order to Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Great Expectations of Columbus, Inc., a corporation, (hereinafter referred to as proposed respondent) and it now appearing that proposed respondent is willing to enter into an agreement containing a order to cease and desist from the use of the acts and practices being investigated,

It is Hereby Agreed by and between proposed respondent, its attorney, and counsel for the Federal Trade Commission that:

1. Great Expectations of Columbus, Inc. ("GE Columbus") is a corporation organized, existing, and doing business under and by virtue of the laws of the state of California, with its corporate office at 11835 West Olympic Boulevard, East Tower, Suite 490, Los Angeles, California, 90064, and its principal place of business located at 1103 Schrock Rd., Suite 101, Columbus, OH 43229.

2. Proposed respondent admits to all the jurisdictional facts set forth in the draft of complaint.

3. Proposed respondent waives:.

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) Any right to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint, or that the facts alleged in the draft complaint, other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is Ordered that:

A. Respondent GE Columbus, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the offering of credit, do forthwith cease and desist from failing to accurately calculate and disclose the annual percentage rate, as required by sections 107 (a) and (c) of the TILA, 15 U.S.C. 1606 (a) and (c), and sections 226.18(e) and 226.22 of Regulation Z, 12 CFR 226.18(e) and 226.22;

B. Respondent GE Columbus, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation,

subsidiary, division, or other device, in connection with the offering of credit, do forthwith cease and desist from failing to accurately calculate and disclose the finance charge, as required by section 106 of the TILA, 15 U.S.C. 1605, and sections 226.4 and 226.18(d) of Regulation Z, 12 CFR 226.4 and 226.28(d);

C. Respondent GE Columbus, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the offering of credit, do forthwith cease and desist from failing to make all disclosures in the manner, form, and amount required by sections 122 and 128(a) of the TILA, 15 U.S.C. 1632 and 1638(a), and sections 226.17 and 226.18 of Regulation Z, 12 CFR 226.17 and 226.18;

D. Respondent GE Columbus, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the offering of credit, do forthwith cease and desist from failing to comply with the TILA, 15 U.S.C. 1601 *et seq.*, and Regulation Z, 12 CFR part 226.

II

Refund Program

It is Further Ordered that:

A. Within thirty (30) days following the date of service of this order, respondent shall:

1. Determine to whom respondent disclosed on the original TILA disclosure an annual percentage rate that was miscalculated by more than one quarter of one percentage point below the annual percentage rate determined in accordance with section 226.22 of Regulation Z, 12 CFR 226.22, or that disclosed a finance charge that was miscalculated by more than one dollar below the finance charge determined in accordance with section 226.4 of Regulation Z, 12 CFR 226.4, so that each such person will not be required to pay a finance charge in excess of the finance charge actually disclosed or the dollar equivalent of the annual percentage rate actually disclosed, whichever is lower, plus a tolerance of one quarter of one percentage point;

2. Calculate a lump sum refund and a monthly payment adjustment, if applicable, in accordance with Section 108(e) of the TILA, 15 U.S.C. 1607(e);

3. Mail a refund check to each eligible consumer in the amount determined above, along with Attachment 1; and

4. Provide the Federal Trade Commission with a list of each such consumer, the amount of the refund, the number of payments refunded, the amount of adjustment for future payments and the number of future payments to be adjusted.

B. No later than fifteen (15) days following the date of service of this order, respondent shall provide the Federal Trade Commission with the name and address of three independent accounting firms, with which it, its officers, employees, attorneys, agents, and franchisees have no business relationship. Staff for the Division of Credit Practices of the FTC shall then have the sole discretion to choose one of the firms ("independent agent") and so advise respondent;

C. Within thirty (30) days following the date of adjustments made pursuant to this section, respondent shall direct the independent agent to review a statistically-valid sample of refunds. Respondent shall provide the Federal Trade Commission with a certified letter from the independent agent confirming that respondent has complied with Part II.A. of this order;

D. All costs associated with the administration of the refund program and payment of refunds shall be borne by the respondent.

III

It is Further Ordered that respondent, its successors and assigns, shall maintain for at least five (5) years from the date of service of this order and, upon thirty (30) days advance written request, make available to the Federal Trade Commission for inspection and copying all documents and other records necessary to demonstrate fully its compliance with this order.

IV

It is Further Ordered that respondent, its successors and assigns, shall distribute a copy of this order to any present or future officers and managerial employees having responsibility with respect to the subject matter of this order and that respondent, its successors and assigns, shall secure from each such person a signed statement acknowledging receipt of said order.

V

It is Further Ordered that respondent, for a period of five (5) years following the date of service of this order, shall promptly notify the Commission at least thirty (30) days prior to any proposed change in its corporate structure such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or affiliates, or any other change in the corporation that may affect compliance obligations arising out of the order.

VI

It is Further Ordered that respondent shall, within one hundred and eighty (180) days of the date of service of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

Attachment 1

Dear Great Expectations Customer:

As part of our settlement with the Federal Trade Commission for alleged violations of the Truth in Lending Act, we are sending you the enclosed refund check in the amount of $_____. The refund represents the amount you were overcharged as a result of errors made by Great Expectations in calculating or disclosing the annual percentage rate or finance charge.

[In addition, your future monthly payments have been reduced. Starting immediately, your monthly payments will be $_____.]

We regret any inconvenience this may have cause you.

Great Expectations

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from respondent Great Expectations of Columbus, Inc. ("GE Columbus").

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The complaint alleges that GE Columbus, as a creditor under the Truth in Lending Act ("TILA"), has violated the TILA and its implementing Regulation Z. Specifically, the TILA requires creditors to make clear and consistent disclosures of the credit terms in a financed transaction. GE Columbus failed to accurately calculate and disclose the annual percentage rate ("APR") and the finance charge, which resulted in some consumers paying more in interest charges and finance charges than the franchise disclosed. The complaint further alleges that this practice is unfair or deceptive violation of the Federal Trade Commission Act.

Additionally, the complaint alleges that GE Columbus failed to accurately disclose the itemization of the amount financed, which assists consumers in understanding whether they are being charged a prepaid finance charge or whether any of the proceeds are being distributed to third parties.

Finally, the complaint alleges that GE Columbus failed to identify the creditor in each transaction.

The consent agreement would prohibit GE Columbus from failing to accurately calculate and disclose the APR and any other terms required by the TILA.

The consent agreement includes a refund program requiring GE Columbus to make adjustments to the account of any consumer to whom it disclosed an APR or finance charge that was lower than the amount the consumer actually was required to pay.

The consent agreement would also require GE Columbus to maintain records of its compliance with the consent agreement, distribute copies of the agreement to its employees, and advise the Federal Trade Commission of any changes in its corporate structure.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 95–13658 Filed 6–2–95; 8:45 am]

BILLING CODE 6750–01–M

[File No. 932 3040]

Great Southern Video, Inc., et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, the video dating service franchises to properly and accurately disclose the annual percentage rate (APR) and other credit terms of financed memberships, as required by the federal Truth in Lending Act and would require the franchises to make refunds to consumers who were misled by the undisclosed finance charges and APRs.

DATES: Comments must be received on or before August 4, 1995.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Stephen Cohen, FTC/S–4429, Washington, DC 20580, (202) 326–3222.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order To Cease and Desist

In the matter of Great Southern Video, Inc., New West Video Enterprises, Inc., MWVE, Inc., and Sun West Video, Inc., corporations; File No. 932 3040.

The Federal Trade Commission having initiated an investigation of certain acts and practices of Great Southern Video, Inc., New West Video Enterprises, Inc., MWVE, Inc., and Sun West Video, Inc., corporations, (hereinafter sometimes referred to as proposed respondents) and it now appearing that proposed respondents are willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between proposed respondents, their attorney, and counsel for the Federal Trade Commission that:

1. Great Southern Video, Inc., doing business as Great Expectations of Dallas ("GE Dallas"), is a corporation organized, existing, and doing business under and by virtue of the laws of the state of Texas, with its office and principal place of business located at 14180 Dallas Parkway, Suite 100, Dallas, TX 75240.

2. New West Video Enterprises, Inc., doing business as Great Expectations of Houston ("GE Houston"), is a corporation organized, existing, and doing business under and by virtue of the laws of the state of Texas, with its office and principal place of business located at 50 Briarhollow, Suite 100, Houston, TX 77027.

3. MWVE, Inc., doing business as Great Expectations of Cleveland, Inc. ("GE Cleveland"), is a corporation organized, existing, and doing business under and by virtue of the laws of the state of Ohio with its office and principal place of business located at 6300 Rockside Rd., Suite 200, Cleveland, OH 44131.

4. Sun West Video, Inc., doing business as Great Expectations for Singles ("GE Phoenix"), is a corporation organized, existing, and doing business under and by virtue of the laws of the state of Arizona with its office and principal place of business located at 5635 N. Scottsdale Rd., Suite 190, Scottsdale, AZ 85253.

5. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint.

6. Proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) Any right to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

7. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

8. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft of complaint, or that the facts alleged in the draft complaint, other than the jurisdictional facts, are true.

9. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint and its

decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondents' address as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

10. Proposed respondents have read the proposed complaint and order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered that:

A. Respondents GE Dallas, GE Houston, GE Cleveland, and GE Phoenix, their successors, and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the offering of credit, do forthwith cease and desist from failing to accurately calculate and disclose the annual percentage rate, as required by sections 107 (a) and (c) of the Truth in Lending Act ("TILA"), 15 U.S.C. 1606 (a) and (c), and §§ 226.18(e) and 226.22 of Regulation Z, 12 CFR 226.18(e) and 226.22;

B. Respondents GE Dallas, GE Houston, GE Cleveland, and GE Phoenix, their successors and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the offering of credit, do forthwith cease and desist from failing to accurately calculate and disclose the finance charge, as required by Section 106 of the TILA, 15 U.S.C. 1605, and §§ 226.4 and 226.18(d) of Regulation Z, 12 CFR 226.4 and 226.18(d);

C. Respondents GE Dallas, GE Houston, GE Cleveland, and GE Phoenix, their successors and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the offering of credit, do forthwith cease and desist from failing to segregate the disclosures required by the TILA from all other information provided in connection with the transaction, including from the itemization of the amount financed, as required by section 128(b)(1) of the TILA, 15 U.S.C. 1638(b)(1), and § 226.17(a) of Regulation Z, 12 CFR 226.17(a);

D. Respondents GE Dallas, GE Houston, GE Cleveland, and GE Phoenix, their successors and assigns; and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the offering of credit, do forthwith cease and desist from failing to make all disclosures in the manner, form, and amount required by Sections 122 and 128(a) of the TILA, 15 U.S.C. 1632 and 1638(a), and §§ 226.17 and 226.18 of Regulation Z, 12 CFR § 226.17 and 226.18;

E. Respondents GE Dallas, GE Houston, and GE Phoenix, their successors and assigns; and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the offering of credit, do forthwith cease and desist from failing to comply with the TILA, 15 U.S.C. 1601 *et seq.*, and Regulation Z, 12 CFR Part 226.

II

Refund Program

It is further ordered that:

A. Within thirty (30) days following the date of service of this order, respondents shall:

1. Determine to whom respondents disclosed on the original TILA disclosure an annual percentage rate that was miscalculated by more than one quarter of one percentage point below the annual percentage rate determined in accordance with § 226.22 of Regulation Z, 12 CFR 226.22, or that disclosed a finance charge that was miscalculated by more than one dollar below the finance charge determined in accordance with § 226.4 of Regulation Z, 12 CFR 226.4, so that such person will not be required to pay a finance charge in excess of the finance charge actually disclosed or the dollar equivalent of the annual percentage rate actually disclosed, whichever is lower, plus a tolerance of one quarter of one percentage point;

2. Calculate a lump sum refund and a monthly payment adjustment, if applicable, in accordance with section 108(e) of the TILA, 15 U.S.C. 1607(e);

3. Mail a refund check to each eligible consumer in the amount determined above, along with Attachment 1; and

4. Provide the Federal Trade Commission with a list of each such consumer, the amount of the refund, the number of payments refunded, the amount of adjustment for future payments and the number of future payments to be adjusted.

B. No later than fifteen (15) days following the date of service of this order, respondents shall provide the Federal Trade Commission with the name and address of three independent accounting firms, with which they, their officers, employees, attorneys, agents, and franchisees have no business relationship. Staff for the Division of Credit Practices of the FTC shall then have the sole discretion to choose one of the firms ("independent agent") and so advise respondents;

C. Within thirty (30) days following the date of adjustments made pursuant to this section, respondents shall direct the independent agent to review a statistically-valid sample of refunds. Respondents shall provide the Federal Trade Commission with a certified letter from the independent agent confirming that respondents have complied with Part II.A. of this order;

D. All costs associated with the administration of the refund program and payment of refunds shall be borne by the respondents.

III

It is further ordered that respondents, their successors and assigns, shall maintain for at least five (5) years from the date of service of this order and, upon thirty (30) days advance written request, make available to the Federal Trade Commission for inspection and copying all documents and other records necessary to demonstrate fully their compliance with this order.

IV

It is further ordered that respondents, their successors and assigns, shall distribute a copy of this order to any present or future officers and managerial employees having responsibility with respect to the subject matter of this order and that respondents, their successors and assigns, shall secure from each such person a signed statement acknowledging receipt of said order.

V

It is further ordered that respondents, for a period of five (5) years following the date of service of this order, shall promptly notify the Commission at least thirty (30) days prior to any proposed change in their corporate structure such as dissolution, assignment; or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or affiliates, or any other change in the corporation that may affect compliance obligations arising out of the order.

VI

It is further ordered that respondents shall, within one hundred and eighty (180) days of the date of service of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

Attachment 1

Dear Great Expectations Customer:

As part of our settlement with the Federal Trade Commission for alleged violations of the Truth in Lending Act, we are sending you the enclosed refund check in the amount of $_____. The refund represents the amount you were overcharged as a result of errors made by Great Expectations in calculating or disclosing the annual percentage rate or finance charge.

[In addition, your future monthly payments have been reduced. Starting immediately, your monthly payments will be $_____.]

We regret any inconvenience this may have caused you.

Great Expectations

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from respondents Great Southern Video, Inc. ("GE Dallas"), New West Video Enterprises, Inc. ("GE Houston"), MWVE, Inc. ("GE Cleveland"), and Sun West Video, Inc. ("GE Phoenix").

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The complaint alleges that GE Dallas, GE Houston, GE Cleveland, and GE Phoenix, as creditors under the Truth in Lending Act ("TILA"), have violated the TILA and its implementing Regulation Z. Specifically, the TILA requires creditors to make clear and consistent disclosures of the credit terms in a financed transaction. These franchises failed to accurately calculate and disclose the annual percentage rate ("APR") and the finance charge, which resulted in some consumers paying more in interest charges and finance charges than the franchises disclosed. The complaint further alleges that this practice is unfair or deceptive in violation of the Federal Trade Commission Act. The complaint also alleges that these franchises failed to disclose the finance charge more conspicuously than any other disclosure except the APR and the creditor's identity.

Additionally, the complaint alleges that these franchises failed to accurately disclose the itemization of the amount financed, which assists consumers in understanding whether they are being charged a prepaid finance charge or whether any of the proceeds are being distributed to third parties, and have failed to separate the itemization from all other information provided in connection with the transaction. Also, these franchises failed to provide a descriptive explanation of the financing terms. For example, the named franchises failed to explain that the APR is "the cost of your credit as a yearly rate" and that the finance charge is "the dollar amount the credit will cost you." The named franchises also failed to provide a description of the amount financed, the total of payments, and the total sales price.

The complaint also alleges that GE Dallas, GE Houston, and GE Phoenix failed to include in the finance charge a set-up fee that each charged to its customers that financed the costs of their memberships, but did not charge to its customers that paid cash. The TILA requires that such charges be made part of the finance charge. Instead, these franchises included the set-up fees in the amount financed, which resulted in the finance charge and the APR being underdisclosed.

The complaint also alleges that GE Houston failed to disclose the amount financed and the total of payments.

Finally, the complaint alleges that all of the named franchises failed to identify the creditor in each transaction, and failed to provide the total sales price.

The consent agreement would prohibit the franchises named herein from failing to accurately calculate and disclose the APR and any other terms required by the TILA.

The consent agreement includes a refund program requiring the named franchises to make adjustments to the account of any consumer to whom they disclosed an APR or finance charge that was lower than the amount the consumer actually was required to pay.

The consent agreement would also require the named franchises to maintain records of their compliance with the consent agreement, distribute copies of the agreement to their employees, and advise the Federal Trade Commission of any changes in their corporate structure.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 95–13662 Filed 6–2–95; 8:45 am]

BILLING CODE 6750–01–M

[File No. 932 3040]

JAMS Financial, Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, a video dating

service franchise to properly and accurately disclose the annual percentage rate (APR) and other credit terms of financed memberships, as required by the federal Truth in Lending Act, and would require the franchise to make refunds to consumers who were misled by the undisclosed finance charges and APRs.

DATES: Comments must be received on or before August 4, 1995.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Stephen Cohen, FTC/S–4429, Washington, DC 20580. (202) 326–3222.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order To Cease and Desist

In the matter of Jams Financial, Inc., a corporation; File No. 932 3040.

The Federal Trade Commission having initiated an investigation of certain acts and practices of JAMS Financial, Inc., a corporation, (hereinafter referred to as proposed respondent) and it now appearing that proposed respondent is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is Hereby Agreed by and between proposed respondent, its attorney, and counsel for the Federal Trade Commission that:

1. JAMS Financial, Inc., doing business as Great Expectations of Milwaukee ("GE Milwaukee"), is a corporation organized, existing, and doing business under and by virtue of the laws of the state of Wisconsin, with its corporate office at 11835 W. Olympic Blvd., Suite 490, Los Angeles, CA 90064, and its principal place of business located at 16650 W. Bluemound, Suite 100, Brookfield, WI 53005.

2. Proposed respondent admits to all the jurisdictional facts set forth in the draft of complaint.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) Any right to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint, or that the facts alleged in the draft complaint, other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is Ordered that:

A. Respondent GE Milwaukee, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the offering of credit, do forthwith cease and desist from failing to accurately calculate and disclose the annual percentage rate, as required by Sections 107(a) and (c) of the TILA, 15 U.S.C. 1606(a) and (c), and sections 226.18(e) and 226.22 of Regulation Z, 12 CFR 226.18(e) and 226.22;

B. Respondent GE Milwaukee, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the offering of credit, do forthwith cease and desist from failing to accurately calculate and disclose the finance charge, as required by section 106 of the TILA, 15 U.S.C. 1605, and sections 226.4 and 226.18(d) of Regulation Z, 12 CFR 226.4 and 226.18(d);

C. Respondent GE Milwaukee, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the offering of credit, do forthwith cease and desist from failing to make all disclosures in the manner, form, and amount required by sections 122 and 128(a) of the TILA, 15 U.S.. 1632 and 1638(a), and sections 226.17 and 226.18 of Regulation Z, 12 CFR 226.17 and 226.18;

D. Respondent GE Milwaukee, its successors ad assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the offering of credit,

do forthwith cease and desist from failing to comply with the TILA, 15 U.S.C. 1601 *et seq.*, and Regulation Z, 12 C.F.R. Part 226.

II

Refund Program

It is Further Ordered that:

A. Within thirty (30) days following the date of service of this order, respondent shall:

1. Determine to whom respondent disclosed on the original TILA disclosure an annual percentage rate that was miscalculated by more than one quarter of one percentage point below the annual percentage rate determined in accordance with Section 226.22 of Regulation Z, 12 CFR 226.22, or that disclosed a finance charge that was miscalculated by more than one dollar below the finance charge determined in accordance with Section 226.4 of Regulation Z, 12 CFR 226.4, so that each such person will not be required to pay a finance charge in excess of the finance charge actually disclosed or the dollar equivalent of the annual percentage rate actually disclosed, whichever is lower, plus a tolerance of one quarter of one percentage point;

2. Calculate a lump sum refund and a monthly payment adjustment, if applicable, in accordance with Section 108(e) of the TILA, 15 U.S.C. 1607(e);

3. Mail a refund check to each eligible consumer in the amount determined above, along with Attachment 1; and

4. Provide the Federal Trade Commission with a list of each such consumer, the amount of the refund, the number of payments refunded, the amount of adjustment for future payments and the number of future payments to be adjusted.

B. No later than fifteen (15) days following the date of service of this order, respondent shall provide the Federal Trade Commission with the name and address of three independent accounting firms, with which it, its officers, employees, attorneys, agents, and franchisees have no business relationship. Staff for the Division of Credit Practices of the FTC shall then have the sole discretion to choose one of the firms ("independent agent") and so advise respondent;

C. Within thirty (30) days following the date of adjustments made pursuant to this section, respondent shall direct the independent agent to review a statistically-valid sample of refunds. Respondent shall provide the Federal Trade Commission with a certified letter from the independent agent confirming that respondent has complied with Part II.A. of this order;

D. All costs associated with the administration of the refund program and payment of refunds shall be borne by the respondent.

III

It is Further Ordered that respondent, its successors and assigns, shall maintain for a least five (5) years from the date of service of this order and, upon thirty (30) days advance written request, make available to the Federal Trade Commission for inspection and copying all documents and other records necessary to demonstrate fully its compliance with this order.

IV

It is Further Ordered that respondent, its successors and assigns, shall distribute a copy of this order to any present or future officers and managerial employees having responsibility with respect to the subject matter of this order and that respondent, its successors and assigns, shall secure from each such person a signed statement acknowledging receipt of said order.

V

It is Further Ordered that respondent, for a period of five (5) years following the date of service of this order, shall promptly notify the Commission at least thirty (30) days prior to any proposed change in its corporate structure such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or affiliates, or any other change in the corporation, that may affect compliance obligations arising out of the order.

It is Further Ordered that respondent shall, within one hundred and eighty (180) days of the date of service of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which its has complied with this order.

Attachment 1

Dear Great Expectations Customer:

As part of our settlement with the Federal Trade Commission for alleged violations of the Truth in Lending Act, we are sending you the enclosed refund check in the amount of $_____. The refund represents the amount you were overcharged as a result of errors made by Great Expectations in calculating or disclosing the annual percentage rate or finance charge.

[In addition, your future monthly payments have been reduced. Starting immediately, your monthly payments will be $_____.]

We regret any inconvenience this may have caused you.

Great Expectations

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from respondent JAMS Financial, Inc. ("GE Milwaukee").

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The complaint alleges that GE Milwaukee, as a creditor under the Truth in Lending Act ("TILA"), has violated the TILA and its implementing Regulation Z. Specifically, the TILA requires creditors to make clear and consistent disclosures of the credit terms in a financed transaction. GE Milwaukee failed to accurately calculate and disclose the annual percentage rate ("APR") and the finance charge, which resulted in some consumers paying more in interest charges and finance charges than the franchise disclosed. The complaint further alleges that this practice is unfair or deceptive in violation of the Federal Trade Commission Act.

Finally, the complaint alleges that GE Milwaukee failed to identify the creditor in each transaction.

The consent agreement would prohibit GE Milwaukee from failing to accurately calculate and disclose the APR and any other terms required by the TILA.

The consent agreement includes a refund program requiring GE Milwaukee to make adjustments to the account of any consumer to whom it disclosed an APR or finance charge that was lower than the amount the consumer actually was required to pay.

The consent agreement would also require GE Milwaukee to maintain records of its compliance with the consent agreement, distribute copies of the agreement to its employees, and advise the Federal Trade Commission of any changes in its corporate structure.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of

the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 95–13661 Filed 6–2–95; 8:45 am]

BILLING CODE 6750–01–M

[File No. 932 3040]

KGE, Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, a video dating service franchise to properly and accurately disclose the annual percentage rate (APR) and other credit terms of financed memberships, as required by the federal Truth in Lending Act, and would require the franchise to make refunds to consumers who were misled by the undisclosed finance charges and APRs.

DATES: Comments must be received on or before August 4, 1995.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Stephen Cohen, FTC/S–4429, Washington, DC 20580. (202) 326–3222.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order To Cease And Desist

In the matter of KGE, Inc., a corporation. File No. 932 3040.

The Federal Trade Commission having initiated an investigation of certain acts and practices of KGE, Inc., a corporation, (hereinafter referred to as proposed respondent) and it now appearing that proposed respondent is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated.

It is hereby agreed by and between proposed respondent, its attorneys, and counsel for the Federal Trade Commission that:

1. KGE, Inc., doing business as Great Expectations of Sausalito, Great Expectations of Mountain View, and Great Expectations of Walnut Creek ("GE–SFA"), is a corporation organized, existing, and doing business under and by virtue of the laws of the state of California, with its corporation office at 1943 Landings Dr., Mountain View, CA 94043, and its principal places of business located 2401 Marinship Way, Suite 100, Sausalito, CA 94965, 2085 Landings Dr., Mountain View, CA 94043, and 1280 Civic Dr., Suite 300, Walnut Creek, CA 94596.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of finding of fact and conclusions of law; and

(c) Any right to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint, or that the facts alleged in the draft complaint, other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It Is Ordered that:

A. Respondent GE–SFA, its successors and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the offering of credit, do forthwith cease and desist from failing to accurately calculate and disclose the annual percentage rate, as required by Sections 107(a) and (c) of the TILA, 15 U.S.C. 1606(a) and (c), and Sections 226.18(e) and 226.22 of Regulation Z, 12 CFR 226.18(e) and 226.22;

B. Respondent GE–SFA, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the offering of credit, do forthwith cease and desist from failing to accurately calculate and disclose the finance charge, as required by Section 106 of the TILA, 15 U.S.C. 1605, and Sections 226.4 and 226.18(d) of Regulation Z, 12 CFR 226.4 and 226.18(d);

C. Respondent GE–SFA, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the offering of credit, do forthwith cease and desist from failing to make all disclosures in the manner, form, and amount required by Sections 122 and 128(a) of the TILA, 15 U.S.C. 1632 and 1638(a), and Sections 226.17 and 226.18 of Regulation Z, 12 CFR 226.17 and 226.18;

D. Respondent GE–SFA, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the offering of credit, do forthwith cease and desist from failing to comply with the TILA, 15 U.S.C. 1601 *et seq.*, and Regulation Z, 12 CFR part 226.

II

Refund Program

It Is Further Ordered that:

A. Within thirty (30) days following the date of service of this order, respondent shall:

1. Determine to whom respondent disclosed on the original TILA disclosure an annual percentage rate that was miscalculated by more than one quarter of one percentage point below the annual percentage rate determined in accordance with Section 226.22 of Regulation Z, 12 CFR 226.22, or that disclosed a finance charge that was miscalculated by more than one dollar below the finance charge determined in accordance with Section 226.4 of Regulation Z, 12 CFR 226.4, so that each such person will not be required to pay a finance charge in excess of the finance charge actually disclosed or the dollar equivalent of the annual percentage rate actually disclosed, whichever is lower, plus a tolerance of one quarter of one percentage point;

2. Calculate a lump sum refund and a monthly payment adjustment, if applicable, in accordance with Section 108(e) of the TILA, 15 U.S.C. 1607(e);

3. Mail a refund check to each eligible consumer in the amount determined above, along with Attachment 1; and

4. Provide the Federal Trade Commission with a list of each such consumer, the amount of the refund, the number of payments refunded, the amount of adjustment for future payments and the number of future payments to be adjusted.

B. No later than fifteen (15) days following the date of service of this order, respondent shall provide the Federal Trade Commission with the name and address of three independent accounting firms, with which it, its officers, employees, attorneys, agents, and franchisees have no business relationship. Staff for the Division of Credit Practices of the FTC shall then have the sole discretion to choose one of the firms ("independent agent") and so advise respondent;

C. Within thirty (30) days following the date of adjustments made pursuant to this section, respondent shall direct the independent agent to review a statistically-valid sample of refunds. Respondent shall provide the Federal trade Commission with a certified letter from the independent agent confirming that respondent has complied with Part II.A. of this order;

D. All costs associated with the administration of the refund program and payment of refunds shall be borne by the respondent.

III

It Is Further Ordered that respondent, its successors and assigns, shall maintain for at least five (5) years from the date of service of this order and, upon thirty (30) days advance written request, make available to the Federal Trade Commission for inspection and copying all documents and other records necessary to demonstrate fully its compliance with this order.

IV

It Is Further Ordered that respondent, its successors and assigns, shall distribute a copy of this order to any present or future officers and managerial employees having responsibility with respect to the subject matter of this order and that respondent, its successors and assigns, shall secure from each such person a signed statement acknowledging receipt of said order.

V

It Is Further Ordered that respondent, for a period of five (5) years following the date of service of this order, shall promptly notify the Commission at least thirty (30) days prior to any proposed change in its corporate structure such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or affiliates, or any other change in the corporation that may affect compliance obligations arising out of the order.

VI

It Is Further Ordered that respondent shall, within one hundred and eighty (180) days of the date of service of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

Attachment 1

Dear Great Expectations Customer:

As part of our settlement with the Federal Trade Commission for alleged violations of the Truth in Lending Act, we are sending you the enclosed refund check in the amount of $_____. The refund represents the amount you were overcharged as a result of errors made by Great Expectations in calculating or disclosing the annual percentage rate or finance charge.

[In addition, your future monthly payments have been reduced. Starting immediately, your monthly payments will be $_____.]

We regret any inconvenience this may have caused you.

Great Expectations

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from respondent KGE, Inc. ("GE–SFA").

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The complaint alleges that GE–SFA, as a creditor under the Truth in Lending Act ("TILA"), has violated the TILA and its implementing Regulation Z. Specifically, the TILA requires creditors to make clear and consistent disclosures of the credit terms in a financed transaction. GE–SEA failed to accurately calculate and disclose the annual percentage rate ("APR") and the finance charge, which resulted in some consumers paying more in interest charges and finance charges than the franchise disclosed. The complaint further alleges that this practice is unfair or deceptive in violation of the Federal Trade Commission Act.

Additionally, the complaint alleges that GE–SFA failed to accurately

disclose the itemization of the amount financed, which assists consumers in understanding whether they are being charged a prepaid finance charge or whether any of the proceeds are being distributed to third parties.

Finally, the complaint alleges that GE–SFA failed to identify the creditor in each transaction.

The consent agreement would prohibit GE–SFA from failing to accurately calculate and disclose the APR and any other terms required by the TILA.

The consent agreement includes a refund program requiring GE–SFA to make adjustments to the account of any consumer to whom it disclosed an APR or finance charge that was lower than the amount the consumer actually was required to pay.

The consent agreement would also require GE–SFA to maintain records of its compliance with the consent agreement, distribute copies of the agreement to its employees, and advise the Federal Trade Commission of any changes in its corporate structure.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 95–13654 Filed 6–2–95; 8:45 am]

BILLING CODE 6750–01–M

[File No. 932–3040]

San Antonio Singles of Texas, Inc., et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, the video dating service franchises to properly and accurately disclose the annual percentage rate (APR) and other credit terms of financed memberships, as required by the federal Truth in Lending Act and would require the franchises to make refunds to consumers who were misled by the undisclosed finance charges and APRs.

DATES: Comments must be received on or before August 4, 1995.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC., 20580.

FOR FURTHER INFORMATION CONTACT: Stephen Cohen, FTC/S–4429, Washington, DC 20580. (2020 326–3222.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order To Cease and Desist

In the Matter of San Antonio Singles of Texas, Inc., and Austin Singles of Texas, Inc., corporations; File No 932 3040.

The Federal Trade Commission having initiated an investigation of certain acts and practices of San Antonio Singles of Texas, Inc., and Austin Singles of Texas, Inc., corporations, (hereinafter sometimes referred to as proposed respondents) and it now appearing that proposed respondents are willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is Hereby Agreed by and between proposed respondents, their attorney, and counsel for the Federal Trade Commission that:

1. San Antonio Singles of Texas, Inc., doing business as Great Expectations of San Antonio ("GE San Antonio"), is a corporation organized, existing, and doing business under and by virtue of the laws of the state of Texas, with its corporate office at 10497 Town & Country Way, Suite 214, Houston, TX 77024, and its principal place of business located at 8131 I.H. 10 West, Suite 225, San Antonio, TX 78230.

2. Austin Singles of Texas, Inc., doing business as Great Expectations of Austin ("GE Austin"), is a corporation organized, existing, and doing business under and by virtue of the laws of the state of Texas, with its corporate office at 10497 Town & Country Way, Suite 214, Houston, TX 77024, and its principal place of business located at 9037 Research Blvd. Suite 130, Austin, TX 78758.

3. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint.

4. Proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) Any right to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

5. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft of complaint, or that the facts alleged in the draft complaint, other than the jurisdictional facts, are true.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondents' address as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may

be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

8. Proposed respondents have read the proposed complaint and order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after its becomes final.

Order

I

It is Ordered that:

A. Respondents GE San Antonio, and GE Austin, their successors and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the offering of credit, do forthwith cease and desist from failing to accurately calculate and disclose the annual percentage rate, as required by Sections 107 (a) and (c) of the Truth in Lending Act ("TILA"), 15 U.S.C. §§ 1606 (a) and (c), and Sections 226.18(e) and 226.22 of Regulation Z, 12 CFR 226.18(e) and 226.22;

B. Respondents GE San Antonio, and GE Austin, their successors and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the offering of credit, do forthwith cease and desist from failing to accurately calculate and disclose the finance charge, as required by Section 106 of the TILA, 15 U.S.C. § 1605, and Sections 226.4 and 226.18(d) of Regulation Z, 12 CFR 226.4 and 226.18(d);

C. Respondents GE San Antonio, and GE Austin, their successors and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the offering of credit, do forthwith cease and desist from failing to segregate the disclosures required by the TILA from all other information provided in connection with the transaction, including from the itemization of the amount financed, as required by Section 128(b)(1) of the TILA, 15 U.S.C. § 1638(b)(1), and Section 226.17(a) of Regulation Z, 12 CFR 226.17(a);

D. Respondents GE San Antonio, and GE Austin, their successors and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the offering of credit, do forthwith cease and desist from failing to make all disclosures in the manner, form, and amount required by Sections 122 and 128(a) of the TILA, 15 U.S.C. §§ 1632 and 1638(a), and Sections 226.17 and 226.18 of Regulation Z, 12 CFR 226.17 and 226.18;.

E. Respondents GE San Antonio, and GE Austin, their successors and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the offering of credit, do forthwith cease and desist from:

1. Failing to include, in the finance charge and the annual percentage rate disclosed to the consumer, set-up or other fees that are charged only to consumers who finance the costs of their memberships, as required by Sections 106, 107, and 128 of the TILA, 15 U.S.C. §§ 1605, 1606, and 1638, and Sections 226.4(b), 226.22, and 226.18 (d) and (e) of Regulation Z, 12 CFR 226.4(b), 226.22, and 226.18 (d) and (e); and

2. Failing to exclude, from the amount financed disclosed to the consumer, set-up or other fees that are charged only to consumers who finance the costs of their memberships, as required by Section 128 of the Truth in Lending Act, 15 U.S.C. § 1638(a) and Section 226.18(b) of Regulation Z, 12 CFR 226.18(b); and

F. Respondents GE San Antonio, and GE Austin, their successors and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the offering of credit, do forthwith cease and desist from failing to comply with the TILA, 15 U.S.C. § 1601 *et seq.*, and Regulation Z, 12 CFR Part 226.

II

Refund Program

It is Further Ordered that:

A. Within thirty (30) days following the date of service of this order, respondents shall:

1. Determine to whom respondents disclosed on the original TILA disclosure an annual percentage rate that was miscalculated by more than one-quarter of one percentage point below the annual percentage rate determined in accordance with Section 226.22 of Regulation Z, 12 CFR 226.22, or that disclosed a finance charge that was miscalculated by more than one dollar below the finance charge determined in accordance with Section 226.4 of Regulation Z, 12 CFR 226.4, so that each such person will not be required to pay a finance charge in excess of the finance charge actually disclosed or the dollar equivalent of the annual percentage rate actually disclosed, whichever is lower, plus a tolerance of one-quarter of one percentage point;

2. Calculate a lump sum refund and a monthly payment adjustment, if applicable, in accordance with Section 108(e) of the TILA, 15 U.S.C. § 1607(e);

3. Mail a refund check to each eligible consumer in the amount determined above, along with Attachment 1; and

4. Provide the Federal Trade Commission with a list of each such consumer, the amount of the refund, the number of payments refunded, the amount of adjustment for future payments and the number of future payments to be adjusted.

B. No later than fifteen (15) days following the date of service of this order, respondents shall provide the Federal Trade Commission with the name and address of three independent accounting firms, with which they, their officers, employees, attorneys, and agents, have no business relationship. Staff for the Division of Credit Practices of the FTC shall then have the sole discretion to choose one of the firms ("independent agent") and so advise respondents;

C. Within thirty (30) days following the date of adjustments made pursuant to this section, respondents shall direct the independent agent to review a statistically-valid sample of refunds. Respondents shall provide the Federal Trade Commission with a certified letter from the independent agent confirming that respondents have complied with Part II. A. of this order;

D. All costs associated with the administration of the refund program and payment of refunds shall be borne by the respondents.

III

It is Further Ordered that respondents, their successors and assigns, shall maintain for at least five (5) years from the date of service of this order and, upon thirty (30) days advance written request, make available to the Federal Trade Commission for inspection and copying all documents and other records necessary to demonstrate fully their compliance with this order.

IV

It is Further Ordered that respondents, their successors and assigns, shall distribute a copy of this order to any present or future officers and managerial employees having responsibility with respect to the subject matter of this order and that respondents, their successors and assigns, shall secure from each such person a signed statement acknowledging receipt of said order.

V

It is Further Ordered that respondents, for a period of five (5) years following the date of service of this order, shall promptly notify the Commission at least thirty (30) days prior to any proposed change in their corporate structure such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or affiliates, or any other change in the corporation that may affect compliance obligations arising out of the order.

VI

It is Further Ordered that respondents shall, within one hundred and eighty (180) days of the date of service of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

Attachment 1

Great Expectations

Dear Great Expectations Member:

We were recently notified by the Federal Trade Commission staff ("FTC") that we may have inadvertently miscalculated and/or improperly disclosed information in your Retail Installment Contract which the FTC believes is inconsistent with certain provisions of the Truth in Lending Act. After extensive investigation by us, along with conversations with the FTC, we have decided that it would be in the best interest of all parties to [refund] [credit to your account] the amount of $_____ which would cover any incorrect calculations. [Additionally, please be advised that your future monthly payments have been reduced to $_____ starting _____.]

We at Great Expectations are always interested in providing our members prompt professional services and are here to answer any questions you may have regarding this or any other matter.

Sincerely,

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from respondents San Antonio Singles of Texas, Inc. ("GE San Antonio"), and Austin Singles of Texas, Inc. ("GE Austin").

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The complaint alleges that GE San Antonio and GE Austin, creditors under the Truth in Lending Act ("TILA"), have violated the TILA and its implementing Regulation Z. Specifically, the TILA requires creditors to make clear and consistent disclosures of the credit terms in a financed transaction. These franchises failed to accurately calculate and disclose the annual percentage rate ("APR") and the finance charge, which resulted in some consumers paying more in interest charges and finance charges than the franchises disclosed. The complaint further alleges that this practice is unfair or deceptive in violation of the Federal Trade Commission Act.

Additionally, the complaint alleges that these franchises failed to accurately disclose the itemization of the amount financed, which assists consumers in understanding whether they are being charged a prepaid finance charge or whether any of the proceeds are being distributed to third parties, and have failed to separate the itemization from all other information provided in connection with the transaction. Also, these franchises failed to provide a descriptive explanation of the financing terms. For example, the named franchises failed to explain that the APR is "the cost of your credit as a yearly rate" and that the finance charge is "the dollar amount the credit will cost you." The named franchises also failed to provide a description of the amount financed, the total of payments, and the total sales price.

The complaint also alleges that the named franchises failed to include in the finance charge a set-up fee that each charged to its customers that financed the costs of their memberships, but did not charge to its customers that paid cash. The TILA requires that such charges be made part of the finance charge. Instead, these franchises included the set-up fees in the amount financed, which resulted in the finance charge and the APR being underdisclosed.

Finally, the complaint alleges that the named franchises failed to identify the creditor in each transaction, and failed to provide the total sales price.

The consent agreement would prohibit the franchises named herein from failing to accurately calculate and disclose the APR and any other terms required by the TILA.

The consent agreement includes a refund program requiring the named franchises to make adjustments to the account of any consumer to whom they disclosed an APR or finance charge that was lower than the amount the consumer actually was required to pay.

The consent agreement would also require the named franchises to maintain records of their compliance with the consent agreement, distribute copies of the agreement to their employees, and advise the Federal Trade Commission of any changes in their corporate structure.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 95–13664 Filed 6–2–95; 8:45 am]

BILLING CODE 6750–01–M

[File No. 932 3040]

Sterling Connections, Inc., et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, the video dating service franchises to properly and accurately disclose the annual percentage rate (APR) and other credit terms of financed memberships, as required by the federal Truth in Lending Act, and would require the franchises to make refunds to consumers who were misled by the undisclosed finance charges and APRs.

DATES: Comments must be received on or before August 4, 1995.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Stephen Cohen, FTC/S–4429, Washington, DC 20580. (202) 326–3222.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

In the Matter of STERLING CONNECTIONS, INC., PRIVATE EYE PRODUCTIONS, INC., AND GREATEX DENVER, INC., corporations; File No. 932 3040.

Agreement Containing Consent Order To Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Sterling Connections, Inc., Private Eye Productions, Inc., and GREATEX Denver, Inc., corporations (hereinafter sometimes referred to as proposed respondents), and it now appearing that proposed respondents are willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between proposed respondents, their attorney, and counsel for the Federal Trade Commission that:

1. Sterling Connections, Inc., doing business as Great Expectations of Seattle ("GE Seattle"), is a corporation organized, existing, and doing business under and by virtue of the laws of the state of Oregon, with its office and principal place of business located at 305 108th Ave., N.E., Suite 205, Bellevue, WA 98004.

2. Private Eye Productions, Inc., doing business as Great Expectations of Portland ("GE Portland"), is a corporation organized, existing, and doing business under and by virtue of the laws of the state of Oregon, with its office and principal place of business located at 5531 S.W. Macadam Ave., Suite 225, Portland, OR 97201.

3. GREATEX Denver, Inc., doing business as Great Expectations of Denver ("GE-Denver"), is a corporation organized, existing, and doing business under and by virtue of the laws of the state of Washington with its office and principal place of business located at 3773 Cherry Creek North Dr., Suite 140, Denver, CO 80209.

4. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint.

5. Proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) Any right to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

6. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

7. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft of complaint, or that the facts alleged in the draft complaint, other than the jurisdictional facts, are true.

8. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondents' address as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

9. Proposed respondents have read the proposed complaint and order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered that:

A. Respondents GE Seattle, GE Portland, and GE Denver, their successors and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the offering of credit, do forthwith cease and desist from failing to accurately calculate and disclose the annual percentage rate, as required by sections 107 (a) and (c) of the Truth in Lending Act ("TILA"), 15 U.S.C. 1606 (a) and (c), and §§ 226.18(e) and 226.22 of Regulation Z, 12 CFR 226.18(e) and 226.22;

B. Respondents GE Seattle, GE Portland, and GE Denver, their successors and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the offering of credit, do forthwith cease and desist from failing to segregate the disclosures required by the TILA from all other information provided in connection with the transaction, including from the itemization of the amount financed, as required by section 128(b)(1) of the TILA, 15 U.S.C. 1638(b)(1), and § 226.17(a) of Regulation Z, 12 CFR 226.17(a);

C. Respondents GE Seattle, GE Portland, and GE Denver, their successors and assigns, and their officers, agents, representatives, and

employees, directly or through any corporation, subsidiary, division, or other device, in connection with the offering of credit, do forthwith cease and desist from failing to make all disclosures in the manner, form, and amount required by sections 122 and 128(a) of the TILA, 15 U.S.C. 1632 and 1638(a), and §§ 226.17 and 226.18 of Regulation Z, 12 CFR 226.17 and 226.18;

D. Respondents GE Seattle, GE Portland, and GE Denver, their successors and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the offering of credit, do forthwith cease and desist from failing to comply with the TILA, 15 U.S.C. 1601 *et seq.*, and Regulation Z, 12 CFR Part 226.

II

Refund Program

It is further ordered that:

A. Within thirty (30) days following the date of service of this order, respondents shall:

1. For each TILA disclosure relating to any executory contract or any contract or any contract consummated within two years prior to August 2, 1994, determine to whom respondents disclosed on the original TILA disclosure an annual percentage rate that was miscalculated by more than one quarter of one percentage point below the annual percentage rate determined in accordance with § 226.22 of Regulation Z, 12 CFR 226.22, or that disclosed a finance charge that was miscalculated by more than one dollar below the finance charge determined in accordance with § 226.4 of Regulation Z, 12 CFR 226.4, so that each such person will not be required to pay a finance charge in excess of the finance charge actually disclosed or the dollar equivalent of the annual percentage rate actually disclosed, whichever is lower, plus a tolerance of one quarter of one percentage point;

2. Calculate a lump sum refund and a monthly payment adjustment, if applicable, in accordance with section 108(e) of the TILA, 15 U.S.C. 1607(e);

3. Mail a refund check to each eligible consumer in the amount determined above, along with Attachment 1; and

4. Provide the Federal Trade Commission with a list of each such consumer, the amount of the refund, the number of payments refunded, the amount of adjustment for future payments and the number of future payments to be adjusted;

B. No later than fifteen (15) days following the date of service of this order, respondents shall provide the Federal Trade Commission with the name and address of three independent accounting firms, with which they, their officers, employees, attorneys, and agents, have no business relationship. Staff for the Division of Credit Practices of the FTC shall then have the sole discretion to choose one of the firms ("independent agent") and so advise respondents;

C. Within thirty (30) days following the date of adjustments made pursuant to this section, respondents shall direct the independent agent to review a statistically-valid sample of refunds. Respondents shall provide the Federal Trade Commission with a certified letter from the independent agent confirming that respondents have complied with Part II A of this order;

D. All costs associated with the administration of the refund program and payment of refunds shall be borne by the respondents.

III

It is further ordered that respondents, their successors and assigns, shall maintain for at least five (5) years from the date of service of this order and, upon thirty (30) days advance written request, make available to the Federal Trade Commission for inspection and copying all documents and other records necessary to demonstrate fully their compliance with this order.

IV

It is further ordered that respondents, their successors and assigns, shall distribute a copy of this order to any present or future officers and managerial employees having responsibilty with repsect to the subject matter of this order and that respondemts. their succesors and assigns, shall secure from each such person a signed statement acknowledging receipt of said order.

V

It is further ordered that respondents, for a period of five (5) years following the date of service of this order, shall promptly notify the Commission at least thirty (30) days prior to any proposed change in their corporate structure such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or affiliates, or any other change in the corporation that may affect compliance obligations arising out of the order.

VI

It is further ordered that respondents shall, within one hundred and eighty (180) days of the date of service of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

Attachment 1

Dear Great Expectations Customer:

As part of our settlement with the Federal Trade Commission for alleged violations of the Truth in Lending Act, we are sending you the enclosed refund check in the amount of $_____. The refund represents the amount you are overcharged as a result of errors made by Great Expectations in calculating or disclosing the annual percentage rate or finance charge.

[In addition, your future monthly payments have been reduced. Starting immediately, your monthly payments will be $_____.]

We regret any inconvenience this may have cause you.

Great Expectations

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from respondents Sterling Connections, Inc. ("GE Seattle"), Private Eye Productions, Inc., ("GE Portland"), and GREATEX Denver, Inc. ("GE-Denver").

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The compliant alleges that GE Seattle, GE Portland, and GE Denver, as creditors under the Truth in Lending Act ("TILA"), have violated the TILA and its implementing Regulation Z. Specifically, the TILA requires creditors to make clear and consistent disclosures of the credit terms in a financed transaction. These franchises failed to accurately calculate and disclose the annual percentage rate ("APR"), which resulted in some consumers paying more in interest charges than the franchises disclosed. The complaint further alleges that this practice is unfair or deceptive in violation of the Federal Trade Commission Act. The complaint also alleges that these franchises failed to disclose the finance charge more conspicuously than any other disclosure except the APR and the creditor's identify.

Additionally, the complaint alleges that these franchises failed to accurately disclose the itemization of the amount financed, which assists consumers in understanding whether they are being charged a prepaid finance charge or whether any of the proceeds are being distributed to third parties, and have failed to separate the itemization from all other information provided in connection with the transaction. Also, these franchises failed to provide a descriptive explanation of the financing terms. For example, the named franchises failed to explain that the APR is "the cost of your credit as a yearly rate" and that the finance charge is "the dollar amount the credit will cost you." The named franchises also failed to provide a description of the amount financed, the total of payments, and the total sales price.

Finally, the complaint alleges that all of the named franchises failed to identify the creditor in each transaction, and failed to provide the total sales price.

The consent agreement would prohibit the franchises named herein from failing to accurately calculate and disclose the APR and any other terms required by the TILA.

The consent agreement includes a refund program requiring the named franchises to make adjustments to the account of any consumer to whom they disclosed an APR or finance charge that was lower than the amount the consumer actually was required to pay.

The consent agreement would also require the named franchises to maintain records of their compliance with the consent agreement, distribute copies of the agreement to their employees, and advise the Federal Trade Commission of any changes in their corporate structure.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 95–13663 Filed 6–2–95; 8:45 am]

BILLING CODE 6750–01–M

[File No. 932 3040]

TRIAAC Enterprises, Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, a video dating service franchise to properly and accurately disclose the annual percentage rate (APR) and other credit terms of financed memberships, as required by the federal Truth in Lending Act, and would require the franchise to make refunds to consumers who were misled by the undisclosed finance charges and APRs.

DATES: Comments must be received on or before August 4, 1995.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Stephen Cohen, FTC/S–4429, Washington, DC 20580. (202) 326–3222.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order To Cease and Desist

In the matter of TRIAAC Enterprises, Inc., a corporation; File No. 032 3040.

The Federal Trade Commission having initiated an investigation of certain acts and practices of TRIAAC Enterprises, Inc., a corporation, (hereinafter sometimes referred to as proposed respondent) and it now appearing that proposed respondent is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated.

It is Hereby Agreed by and between proposed respondent and counsel for the Federal Trade Commission that:

1. TRIAAC Enterprises, Inc., doing business as Great Expectations of Sacramento ("GE Sacramento"), is a corporation organized, existing, and doing business under and by virtue of the laws of the state of California with its office and principal place of business located at 2277 Fair Oaks Blvd., Suite 195, Sacramento, CA 95825.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) Any right to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint, or that the facts alleged in the draft complaint, other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to-order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may

be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered that:

A. Respondent GE Sacramento, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the offering of credit, do forthwith cease and desist from failing to accurately calculate and disclose the annual percentage rate, as required by sections 107 (a) and (c) of the TILA, 15 U.S.C. 1606 (a) and (c), and sections 226.18(e) and 226.22 of Regulation Z, 12 CFR 226.18(e) and 226.22;

B. Respondent GE Sacramento, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the offering of credit, do forthwith cease and desist from failing to accurately calculate and disclose the finance charge, as required by section 106 of the TILA, 15 U.S.C. 1605, and sections 226.4 and 226.18(d) of Regulation Z, 12 CFR 226.4 and 226.18(d);

C. Respondent GE Sacramento, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the offering of credit, do forthwith cease and desist from failing to segregate the disclosures required by the TILA from all other information provided in connection with the transaction, including from the itemization of the amount financed, as required by section 128(b)(1) of the TILA, 15 U.S.C. 1638(b)(1), and section 226.17(a) of Regulation Z, 12 CFR 226.17(a);

D. Respondent GE Sacramento, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the offering of credit, do forthwith cease and desist from failing to make all disclosures in the manner, form, and amount required by sections 122 and 128(a) of the TILA, 15 U.S.C. 1632 and 1638(a), and sections 226.17 and 226.18 of Regulation Z, 12 CFR 226.17 and 226.18;

E. Respondent GE Sacramento, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the offering of credit, do forthwith cease and desist from failing to comply with the TILA, 15 U.S.C. 1601 *et seq.*, and Regulation Z, 12 CFR Part 226.

II

Refund Program

It is Further Ordered that:

A. Within thirty (30) days following the date of service of this order, respondent shall:

1. Determine to whom respondent disclosed on the original TILA disclosure an annual percentage rate that was miscalculated by more than one quarter of one percentage point below the annual percentage rate determined in accordance with section 226.22 of Regulation Z, 12 CFR 226.22, or that disclosed a finance charge that was miscalculated by more than one dollar below the finance charge determined in accordance with § 226.4 of Regulation Z, 12 CFR 226.4, so that each such person will not be required to pay a finance charge in excess of the finance charge actually disclosed or the dollar equivalent of the annual percentage rate actually disclosed, whichever is lower, plus a tolerance of one quarter of one percentage point;

2. Calculate a lump sum refund and a monthly payment adjustment, if applicable, in accordance with section 108(e) of the TILA, 15 U.S.C. 1604(e);

3. Mail a refund check to each eligible consumer in the amount determined above, along with Attachment 1; and

4. Provide the Federal Trade Commission with a list of each such consumer, the amount of the refund, the number of payments refunded, the amount of adjustment for future payments and the number of future payments to be adjusted;

B. No later than fifteen (15) days following the date of service of this order, respondent shall provide the Federal Trade Commission with the name and address of three independent accounting firms, with which it, it officers, employees, attorneys, and agents, have no business relationship. Staff for the Division of Credit Practices of the FTC shall then have the sole discretion to choose one of the firms ("independent agent") and so advise respondent;

C. Within thirty (30) days following the date of adjustments made pursuant to this section, respondent shall direct the independent agent to review a statistically-valid sample of refunds. Respondent shall provide the Federal Trade Commission with a certified letter from the independent agent confirming that respondent has complied with Part II. A. of this order;

D. All costs associated with the administration of the refund program and payment of refunds shall be borne by the respondent.

III

It Is Further Ordered that respondent, its successors and assigns, shall maintain for at least five (5) years from the date of service of this order and, upon thirty (30) days advance written request, make available to the Federal Trade Commission for inspection and copying all documents and other records necessary to demonstrate fully its compliance with this order.

IV

It Is Further Ordered that respondent, its successors and assigns, shall distribute a copy of this order to any present or future officers and managerial employees having responsibility with respect to the subject matter of this order and that respondent, its successors and assigns, shall secure from each such person a signed statement acknowledging receipt of said order.

V

It Is Further Ordered that respondent, for a period of five (5) years following the date of service of this order, shall promptly notify the Commission at least thirty (30) days prior to any proposed change in its corporate structure such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or affiliates, or any other change in the corporation that may affect compliance obligations arising out of the order.

VI

It Is Further Ordered that respondent shall, within one hundred and eighty (180) days of the date of service of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

Attachment 1

Dear Great Expectations Customer:

As part of our settlement with the Federal Trade Commission for alleged violations of the Truth in Lending Act, we are sending you the enclosed refund check in the amount of $_____. The refund represents the amount you were overcharged as a result of errors made by Great Expectations in calculating or disclosing the annual percentage rate or finance charge.

[In addition, your future monthly payments have been reduced. Starting immediately, your monthly payments will be $_____.]

We regret any inconvenience this may have caused you.

Great Expectations

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from respondent TRIAAC Enterprises, Inc. ("GE Sacramento").

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The complaint alleges that GE Sacramento, as a creditor under the Truth in Lending Act ("TILA"), has violated the TILA and its implementing Regulation Z. Specifically, the TILA requires creditors to make clear and consistent disclosures of the credit terms in a financed transaction. GE Sacramento failed to accurately calculate and disclose the annual percentage rate ("APR") and the finance charge, which resulted in some consumers paying more in interest charges and finance charges than the franchise disclosed. The complaint further alleges that this practice is unfair or deceptive in violation of the Federal Trade Commission Act.

Additionally, the complaint alleges that GE Sacramento failed to accurately disclose the itemization of the amount financed, which assists consumers in understanding whether they are being charged a prepaid finance charge or whether any of the proceeds are being distributed to third parties, and failed to separate the itemization from all other information provided in connection with the transaction. Also, GE Sacramento failed to provide a descriptive explanation of the financing terms. For example, GE Sacramento failed to explain that the APR is "the cost of your credit as a yearly rate" and that the finance charge is "the dollar amount the credit will cost you." GE Sacramento also failed to provide a description of the amount financed, the total of payments, and the total sales price.

Finally, the complaint alleges that GE Sacramento failed to identify the creditor in each transaction.

The consent agreement would prohibit GE Sacramento from failing to accurately calculate and disclose the APR and any other terms required by the TILA.

The consent agreement includes a refund program requiring GE Sacramento to make adjustments to the account of any consumer to whom it disclosed an APR or finance charge that was lower than the amount the consumer actually was required to pay.

The consent agreement would also require GE Sacramento to maintain records of its compliance with the consent agreement, distribute copies of the agreement to its employees, and advise the Federal Trade Commission of any changes in its corporate structure.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 95–13660 Filed 6–2–95; 8:45 am]

BILLING CODE 6750–01–M

[File No. 932 3040]

V.L.P. Enterprises, Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, a video dating service franchise to properly and accurately disclose the annual percentage rate (APR) and other credit terms of financed memberships, as required by the federal Truth in Lending Act, and would require the franchise to make refunds to consumers who were misled by the undisclosed finance charges and APRs.

DATES: Comments must be received on or before August 4, 1995.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Stephen Cohen, FTC/S–4429, Washington, DC 20580. (202) 326–3222.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order to Cease and Desist

In the matter of V.L.P. Enterprises, Inc., a corporation; File No. 932 3040.

The Federal Trade Commission having initiated an investigation of certain acts and practices of V.L.P. Enterprises, Inc., a corporation, (hereinafter sometimes referred to as proposed respondent) and it now appearing that proposed respondent is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It Is Hereby agreed by and between proposed respondent, its attorneys, and counsel for the Federal Trade Commission that:

1. V.L.P. Enterprises, Inc., doing business as Great Expectations of San Diego ("GE San Diego"), is a corporation organized, existing, and doing business under and by virtue of the laws of the state of California, with its office and principal place of business located at 3465 Camino Del Rio South, Suite 300, San Diego, CA 92108.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) Any right to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint, or that the facts alleged in the draft complaint, other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered that:

A. Respondent GE San Diego, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the offering of credit, do forthwith cease and desist from failing to accurately calculate and disclose the annual percentage rate, as required by Sections 107(a) and (c) of the Truth in Lending Act, 15 U.S.C. §§ 1606(a) and (c), and Sections 226.18(e) and 226.22 of Regulation Z, 12 CFR 226.18(e) and 226.22;

B. Respondent GE San Diego, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the offering of credit, do forthwith cease and desist from failing to accurately calculate and disclose the finance charge, as required by Section 106 of the TILA, 15 U.S.C. 1605, and Sections 226.4 and 226.18(d) of Regulation Z, 12 CFR 226.4 and 226.18(d);

C. Respondent GE San Diego, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the offering of credit, do forthwith cease and desist from failing to make all disclosures in the manner, form, and amount required by Sections 122 and 128(a) of the TILA, 15 U.S.C. 1632 and 1638(a), and Sections 226.17 and 226.18 of Regulation Z, 12 CFR 226.17 and 226.18;

D. Respondent GE San Diego, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the offering of credit, do forthwith cease and desist from failing to comply with the TILA, 15 U.S.C. 1601 *et seq.*, and Regulation Z, 12 CFR part 226.

II

Refund Program

It is further ordered that:

A. Within thirty (30) days following the date of service of this order, respondent shall:

1. Determine to whom respondent disclosed on the original TILA disclosure an annual percentage rate that was miscalculated by more than one quarter of one percentage point below the annual percentage rate determined in accordance with Section 226.22 of Regulation Z, 12 CFR 226.22, or that disclosed a finance charge that was miscalculated by more than one dollar below the finance charge determined in accordance with Section 226.4 of Regulation Z, 12 CFR 226.4, so that each such person will not be required to pay a finance charge in excess of the finance charge actually disclosed or the dollar equivalent of the annual percentage rate actually disclosed, whichever is lower, plus a tolerance of one quarter of one percentage point;

2. Calculate a lump sum refund and a monthly payment adjustment, if applicable, in accordance with Section 108(e) of the TILA, 15 U.S.C. 1607(e);

3. Mail a refund check to each eligible consumer in the amount determined above, along with Attachment 1; and

4. Provide the Federal Trade Commission with a list of each such consumer, the amount of the refund, the number of payments refunded, and amount of adjustment for future payments and the number of future payments to be adjusted.

B. No later than fifteen (15) days following the date of service of this order, respondent shall provide the Federal Trade Commission with the name and address of three independent accounting firms, with which it, its officers, employees, attorneys, agents, and franchisees have no business relationship. Staff for the Division of Credit Practices of the FTC shall then have the sole discretion to choose one of the firms ("independent agent") and so advise respondent;

C. Within thirty (30) days following the date of adjustments made pursuant to this section, respondent shall direct the independent agent to review a statistically-valid sample of refunds. Respondent shall provide the Federal Trade Commission with a certified letter from the independent agent confirming that respondent has complied with part II.A. of this order;

D. All costs associated with the administration of the refund program and payment of refunds shall be borne by the respondent.

III

It is further ordered that respondent, its successors and assigns, shall maintain for at least five (5) years from the date of service of this order and, upon thirty (30) days advance written request, make available to the Federal trade Commission for inspection and copying all documents and other records necessary to demonstrate fully its compliance with this order.

IV

It is further ordered that respondent, its successors and assigns, shall distribute a copy of this order to any present or future officers and managerial employees having responsibility with respect of the subject matter of this order and that respondent, its successors and assigns, shall secure from each such person a signed statement acknowledging receipt of said order.

V

It is further ordered that respondent, for a period of five (5) years following the date of service of this order, shall promptly notify the Commission at least thirty (30) days prior to any proposed change in its corporate structure such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or affiliates, or any other change in the corporation that may affect compliance obligations arising out of the order.

VI

It is further ordered that respondent, shall, within one hundred and eighty (180) days of the date of service of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

Attachment 1

Dear Great Expectation Customer:

As part of our settlement with the Federal Trade Commission for alleged violations of the Truth in Lending Act, we are sending you the enclosed refund check in the amount of $_____. The refund represents the amount you were overcharged as a result of errors made by Great Expectations in calculating or disclosing the annual percentage rate or finance charge.

[In addition, your future monthly payments have been reduced. Starting immediately, your monthly payments will be $_____.]

We regret any inconvenience this may have caused you.

Great Expectations

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from respondent V.L.P. Enterprises, Inc. ("GE San Diego").

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The complaint alleges that GE San Diego, as a creditor under the Truth in Lending Act ("TILA"), has violated the TILA and its implementing Regulation Z. Specifically, the TILA requires creditors to make clear and consistent disclosures of the credit terms in a financed transaction. GE San Diego failed to accurately calculate and disclose the annual percentage rate ("APR") and the finance charge, which resulted in some consumers paying more in interest charges and finance charges than the franchise disclosed. The complaint further alleges that this practice is unfair or deceptive in violation of the Federal Trade Commission Act.

Additionally, the complaint alleges that GE San Diego failed to accurately disclose the itemization of the amount financed, which assists consumers in understanding whether they are being charged a prepaid finance charge or whether any of the proceeds are being distributed to third parties. The complaint also alleges that on numerous occasions, GE San Diego failed to provide consumers with any TILA disclosures. The purpose of these required disclosures is to make the terms easier for consumers to understand.

Finally, the complaint alleges that GE San Diego failed to identify the creditor in each transaction.

The consent agreement would prohibit GE San Diego from failing to accurately calculate and disclose and disclose the APR, finance charge, and any other terms required by the TILA.

The consent agreement includes a refund program requiring GE San Diego to make adjustments to the account of any consumer to whom it disclosed an APR or finance charge that was lower than the amount the consumer actually was required to pay.

The consent agreement would also require GE San Diego to maintain records of its compliance with the consent agreement, distribute copies of the agreement to its employees, and advise the Federal Trade Commission of any changes in its corporate structure.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 95–13656 Filed 6–2–95; 8:45 am]

BILLING CODE 6750–01–M

GENERAL SERVICES ADMINISTRATION

Change in Solicitation Procedures Under the Small Business Competitiveness Demonstration Program

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Notice.

SUMMARY: Title VII of the "Business Opportunity Development Act of 1988" (Public Law 100–656) established the Small Business Competitiveness Demonstration Program and designated nine (9) agencies, including GSA, to conduct the program over a four (4) year period from January 1, 1989 to December 31, 1992. The Small Business Opportunity Enhancement Act of 1992 (Public Law 192–366) extended the demonstration program until September 1996 and made certain changes in the procedures for operation of the demonstration program. The law designated four (4) industry groups for testing whether the competitive capabilities of the specified industry groups will enable them to successfully compete on an unrestricted basis. The four (4) industry groups are: construction (except dredging); architectural and engineering (A&E) services (including surveying and mapping); refuse systems and related services (limited to trash/garbage collection); and non-nuclear ship repair. Under the program, when a participating agency misses its small business participation goal, restricted competition is reinstituted only for those contracting activities that failed to attain the goal. The small business goal is 40 percent of the total contract dollars awarded for construction, trash/garbage collection services, and non-nuclear ship repair and 35 percent of the total contract dollars awarded for architect-engineer services. This notice announces modifications to GSA's solicitation practices under the demonstration program based on a review of the agency's performance during the period from April 1, 1994 to March 31, 1995. Modifications to solicitation practices are outlined in the Supplementary Information section below and apply to solicitations issued on or after July 1, 1995.

EFFECTIVE DATE: July 1, 1995.

FOR FURTHER INFORMATION CONTACT: Tom Wisnowski, Office of GSA Acquisition Policy, (202) 501–1224.

SUPPLEMENTARY INFORMATION:

Procurements of construction or trash/garbage collection with an estimated value of $25,000 or less will be reserved for emerging small business concerns in accordance with the procedures outlined in the interim policy directive issued by the Office of Federal Procurement Policy (59 FR 123513, March 11, 1993).

Procurements of construction or trash/garbage collection with an estimated value that exceeds $25,000 by GSA contracting activities will be made in accordance with the following procedures:

Construction Services in Groups 15, 16, and 17:

Procurements for all construction services (except solicitations issued by GSA contracting activities in Regions 1, 2, 3, 4, 5, 8, 9, 10, and the National Capital Region) in Group 15 will be conducted on an unrestricted basis.

Procurements for construction services in Group 15 issued by GSA contracting activities in Regions 1, 2, 3, 4, 5, 8, 9, 10, and the National Capital Region shall be set aside for small business when there is a reasonable expectation of obtaining competition for two or more small businesses. If no expectation exists, the procurements will be conducted on an unrestricted basis.

Region 1 encompasses the states of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.

Region 2 encompasses the states of New Jersey, New York, and the territories of Puerto Rico and the Virgin Islands.

Region 3 encompasses the states of Pennsylvania, Delaware, West Virginia, Maryland (except Montgomery and Prince Georges Counties), and Virginia (except the city of Alexandria and the counties of Arlington, Fairfax, Loudoun, and Prince William).

Region 4 encompasses the states of Alabama, Florida, Georgia, Kentucky, North Carolina, South Carolina, Mississippi, and Tennessee.

Region 5 encompasses the states of Illinois, Indiana, Ohio, Michigan, Minnesota, and Wisconsin.

Region 8 encompasses the states of Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming.

Region 9 encompasses the states of Arizona, California, Hawaii, and Nevada.

Region 10 encompasses the states of Alaska, Idaho, Oregon, and Washington.

The National Capital Region encompasses the District of Columbia, Montgomery and Prince Georges counties in Maryland, and the city of Alexandria and the counties of Arlington, Fairfax, Loudoun, and Prince William in Virginia.

Trash/garbage collection services in PSC S205:

Procurements for trash/garbage collection services in PSC S205 will be conducted on an unrestricted basis.

Architect-Engineer services (all PSC codes under the Demonstration Program):

Procurements for all architect-engineer services (except procurements issued by contracting activities in GSA Regions 2, 3, 4, 9, and the National Capital Region) shall be conducted on an unrestricted basis.

Procurements for architect-engineer services issued by GSA contracting activities in GSA Regions 2, 3, 4, 9, and the National Capital Region shall be set aside for small business when there is a reasonable expectation of obtaining competition from two or more small businesses. If no expectation exists, the procurement will be conducted on an unrestricted basis.

Region 2 encompasses the states of New Jersey, New York, and the territories of Puerto Rico and the Virgin Islands.

Region 3 encompasses the states of Pennsylvania, Delaware, West Virginia, Maryland (except Montgomery and Prince Georges counties), and Virginia (except the city of Alexandria and the counties of Arlington, Fairfax, Loudoun, and Prince William).

Region 4 encompasses the states of Alabama, Florida, Georgia, Kentucky, North Carolina, South Carolina, Mississippi, and Tennessee.

Region 9 encompasses the states of Arizona, California, Hawaii, and Nevada.

The National Capital Region encompasses the District of Columbia, Montgomery and Prince Georges counties in Maryland, and the city of Alexandria and the counties of Arlington, Fairfax, Loudoun, and Prince William in Virginia.

Non-nuclear ship repairs:

GSA does not procure non-nuclear ship repairs.

Dated: May 23, 1995.

Ida M. Ustad,

Associate Administrator, Office of Acquisition Policy.

[FR Doc. 95–13587 Filed 6–2–95; 8:45 am]

BILLING CODE 6820–61–M

GOVERNMENT PRINTING OFFICE

The Federal Register Online Via GPO Access; Public Meeting for Federal, State and Local Agencies, and Others Interested in a Demonstration of GPO Access, the Online Service Providing the Federal Register and Other Federal Databases

The Superintendent of Documents will hold a public meeting for Federal, state and local government agencies, and any others interested in an overview and demonstration of the Government Printing Office's online service, GPO Access, provided under the Government Printing Office Electronic Information Access Enhancement Act of 1993 (Pub. L. 103–40).

Sessions will be held at Duquesne University, Duquesne Union Building, the Duquesne Room, 600 Forbes Avenue, Pittsburgh, PA, on Monday, July 17, from 9 a.m. to 10:30 a.m. and 11 a.m. to 12:30 p.m. There is no charge to attend.

The online **Federal Register** Service offers access to the daily issues of the **Federal Register** by 6 a.m. on the day of publication. All notices, rules and proposed rules, Presidential documents, executive orders, separate parts, and reader aids are included in the database as ASCII text files and as Adobe Acrobat Portable Document Format (PDF) files, with graphics provided in TIFF format. The online **Federal Register** is available via the Internet or as a dial-in service. Historical data is available from January 1994 forward.

Other databases currently available online through GPO Access include the Congressional Record; Congressional Record Index, including the History of Bills; Congressional Bills; Public Laws; U.S. Code; and GAO Reports.

Individuals interested in attending may reserve a space by contacting John Berger, Product Manager at the GPO's Office of Electronic Information Dissemination Services, by telephone: 202–512–1525; by fax: 202–512–1262; or by Internet e-mail at john@eids05.eids.gpo.gov. Seating reservations will be accepted through Wednesday, July 12, 1995.

Michael F. DiMario,

Public Printer.

[FR Doc. 95–13165 Filed 5–26–95; 8:45 am]

BILLING CODE 1505–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[CDC–561]

Announcement of Cooperative Agreement to the Association of State and Territorial Health Officials

Summary

The Centers for Disease Control and Prevention (CDC), National Immunization Program, announces the availability of fiscal year (FY) 1995 funds for a cooperative agreement with the Association of State and Territorial Health Officials (ASTHO) to identify improved methods of reaching and sustaining high immunization coverage, interrupting disease transmission, and improving vaccine preventable diseases surveillance for the States and territories. Approximately $250,000 will be available in FY 1995 to support this project. It is expected the award will begin on or about September 15, 1995, for a 12-month budget period within a project period of 5 years. The funding estimate is subject to change.

The purposes of this immunization project are: to assure that the perspectives of State and territorial health officials are integrated into all programmatic aspects of the Childhood Immunization initiative; to provide linkage between States, private providers, and the Federal government in implementing the Vaccines for Children Program and other Federal and State vaccine initiatives; to coordinate efforts with the existing ASTHO school health project, maternal and child health programs and the existing ASTHO school health project, maternal and child health programs and the existing immunization efforts of the Association of Maternal and Child Health Programs (AMCHP), the Council of State and Territorial Epidemiologists (CSTE), and the Association for Vital Records and Health Statistics (AVRHS); and to facilitate outreach to private providers, non-profit organizations and entities involved in comprehensive school health to increase participation in the Vaccines for Children Program and other Federal and State vaccine initiatives.

In conducting activities to achieve the purpose of this program, CDC will: collaborate in the design of research protocols (e.g., Vaccines for Children (VFC) accountability studies, immunization coverage studies, random digit dialing (RDD) survey); the analysis and interpretation of data generated from each project; and in the preparation of reports and manuscripts; provide other technical assistance in support of each project, as needed; collaborate in the planning, implementation, and evaluation of the various immunization training programs; and develop and coordinate immunization national policy and evaluation.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2000," a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Immunization and Infectious Diseases. (For ordering a copy of "Healthy People 2000," see the section **Where to Obtain Additional Information.**)

Authority

This program is authorized under section 317(k) of the Public Health Service Act, 42 U.S.C. 247b(k), as amended.

Smoke-free Workplace

PHS strongly encourages all grant recipients to provide a smoke-free workplace and to promote the nonuse of all tobacco products, and Public Law 103–277, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Eligible Applicant

Assistance will be provided only to ASTHO. No other applications are solicited. The Program Announcement and application kit have been sent to ASTHO. ASTHO is the most appropriate and qualified agency to conduct the activities under this cooperative agreement because ASTHO represents the chief public health official of each State and territory. Through its own membership, ASTHO has developed unique knowledge and understanding of the needs and operations of State health agencies. ASTHO members have already developed an enormous wealth of experience in immunization coverage and improving vaccine preventable diseases surveillance.

Executive Order 12372 Review

The application is not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs (45 CFR Part 100).

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number for this program is 93.185, Immunization Research, Demonstration, Public Information, and Education, Training, and Clinical Skills Improvement Projects.

Other Requirements

Paperwork Reduction Act

Individual studies or surveys that involve the collection of information from 10 or more individuals and funded by the cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Where To Obtain Additional Information

If you are interested in obtaining additional information regarding this project, please refer to Announcement 561 and contact Carole J. Tully, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Mailstop E–09, Atlanta, Georgia 30305, telephone (404) 842–6880.

A copy of "Healthy People 2000" (Full Report, Stock No. 017–001–00474–0) or "Healthy People 2000" (Summary Report, Stock No. 017–001–00473–1) referenced in the **Summary** may be obtained through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512–1800.

Dated: May 30, 1995.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–13627 Filed 6–2–95; 8:45 am]

BILLING CODE 4163–18–P

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies and Laboratories That Have Withdrawn From the Program

AGENCY: Substance Abuse and Mental Health Services Administration, HHS (Formerly: National Institute on Drug Abuse, ADAMHA, HHS).

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29916, 29925). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be identified as such at the end of the current list of certified laboratories, and will be omitted from the monthly listing thereafter.

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh, Division of Workplace Programs, Room 13A–54, 5600 Fishers Lane, Rockville, Maryland 20857; Tel.: (301) 443–6014.

SUPPLEMENTARY INFORMATION:

Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are *not* to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

ACCU–LAB, Inc., 405 Alderson St., Schofield, WI 54476, 800–627–8200 (formerly: Alpha Medical Laboratory, Inc., Employee Health Assurance Group, ExpressLab, Inc.).

Aegis Analytical Laboratories, Inc., 624 Grassmere Park Rd., Suite 21, Nashville, TN 37211, 615–331–5300.

Alabama Reference Laboratories, Inc., 543 South Hull St., Montgomery, AL 36103, 800–541–4931/205–263–5745.

American Medical Laboratories, Inc., 14225 Newbrook Dr., Chantilly, VA 22021, 703–802–6900.

Associated Pathologists Laboratories, Inc., 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412, 702–733–7866.

Associated Regional and University Pathologists, Inc. (ARUP), 500 Chipeta Way, Salt Lake City, UT 84108, 801–583–2787.

Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–227–2783 (formerly: Forensic Toxicology Laboratory Baptist Medical Center).

Bayshore Clinical Laboratory, 4555 W. Schroeder Dr., Brown Deer, WI 53223, 414–355–4444/800–877–7016.

Cedars Medical Center, Department of Pathology, 1400 Northwest 12th Ave., Miami, FL 33136, 305–325–5810.

Centinela Hospital Airport Toxicology Laboratory, 9601 S. Sepulveda Blvd., Los Angeles, CA 90045, 310–215–6020.

Clinical Reference Lab, 11850 West 85th St., Lenexa, KS 66214, 800–445–6917.

CompuChem Laboratories, Inc., 3308 Chapel Hill/Nelson Hwy., Research Triangle Park, NC 27709, 919–549–8263/800–833–3984 (Formerly: CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory, Roche CompuChem Laboratories, Inc., A Member of the Roche Group).

CompuChem Laboratories, Inc., Special Division, 3308 Chapel Hill/Nelson Hwy., Research Triangle Park, NC 27709, 919–549–8263 (Formerly: Roche CompuChem Laboratories, Inc., Special Division, A Member of the Roche Group, CompuChem Laboratories, Inc.—Special Division).

CORNING Clinical Laboratories, South Central Division, 2320 Schuetz Rd. St. Louis, MO 63146, 800–288–7293 (formerly: Metropolitan Reference Laboratories, Inc.).

CORNING Clinical Laboratories, 8300 Esters Blvd., Suite 900, Irving, TX 75063, 800–526–0947 (formerly: Damon Clinical Laboratories, Damon/MetPath).

CORNING Clinical Laboratories Inc., 1355 Mittel Blvd., Wood Dale, IL 60191, 708–595–3888 (formerly: MetPath, Inc., CORNING MetPath Clinical Laboratories).

CORNING MetPath Clinical Laboratories, One Malcolm Ave., Teterboro, NJ 07608, 201–393–5000 (formerly: MetPath, Inc.).

CORNING National Center for Forensic Science, 1901 Sulphur Spring Rd., Baltimore, MD 21227, 410–536–1485 (formerly: Maryland Medical Laboratory, Inc., National Center for Forensic Science).

CORNING Nichols Institute, 7470–A Mission Valley Rd., San Diego, CA 92108–4406, 800–446–4728/619–686–3200 (formerly: Nichols Institute, Nichols Institute Substance Abuse Testing (NISAT)).

Cox Medical Centers, Department of Toxicology, 1423 North Jefferson Ave., Springfield, MO 65802, 800–876–3652/417–836–3093.

Dept. of the Navy, Navy Drug Screening Laboratory, Great Lakes, IL, Building 38–H, Great Lakes, IL 60088–5223, 708–688–2045/708–688–4171.

Diagnostic Services Inc., dba DSI, 4048 Evans Ave., Suite 301, Fort Myers, FL 33901, 813–936–5446/800–735–5416.

Doctors Laboratory, Inc., P.O. Box 2658, 2906 Julia Dr., Valdosta, GA 31604, 912–244–4468.

Drug Labs of Texas, 15201 I–10 East, Suite 125, Channelview, TX 77530, 713–457–3784.

DrugProof, Division of Dynacare/Laboratory of Pathology, LLC, 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 800–898–0180/206–386–2672 (formerly: Laboratory of Pathology of Seattle, Inc., DrugProof, Division of Laboratory of Pathology of Seattle, Inc.).

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Rd., Warminster, PA 18974, 215–674–9310.

Eagle Forensic Laboratory, Inc., 950 N. Federal Highway, Suite 308, Pompano Beach, FL 33062, 305–946–4324.

ElSohly Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, 601–236–2609.

General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, 608–267–6267.

Harrison Laboratories, Inc., 9930 W. Highway 80, Midland, TX 79706, 800–725–3784/915–563–3300 (formerly: Harrison & Associates Forensic Laboratories).

HealthCare/MetPath, 24451 Telegraph Rd., Southfield, MI 48034, 800–444–0106, ext. 650 (formerly: HealthCare/Preferred Laboratories).

Holmes Regional Medical Center Toxicology Laboratory, 5200 Babcock St., N.E., Suite 107, Palm Bay, FL 32905, 407–726–9920.

Jewish Hospital of Cincinnati, Inc., 3200 Burnet Ave., Cincinnati, OH 45229, 513–569–2051.

LabOne, Inc., 8915 Lenexa Dr., Overland Park, Kansas 66214, 913–888–3927 (formerly: Center for Laboratory Services, a Division of LabOne, Inc.).

Laboratory Corporation of America, 13900 Park Center Rd., Herndon, VA 22071, 703–742–3100 (formerly: National Health Laboratories Incorporated).

Laboratory Corporation of America, d.b.a. LabCorp Reference Laboratory, Substance Abuse Division, 1400 Donelson Pike, Suite A–15, Nashville, TN 37217, 615–360–3992/800–800–4522 (formerly: National Health Laboratories, Incorporated, d.b.a. National Reference Laboratory, Substance Abuse Division).

Laboratory Corporation of America, 15305 N.E. 40th St., Redmond, WA 98052, 206–882–3400 (formerly: Regional Toxicology Services).

Laboratory Corporation of America, 2540 Empire Dr., Winston-Salem, NC 27103–6710, Outside NC: 919–760–4620/800–334–8627/Inside NC: 800–642–0894 (formerly: National Health Laboratories, Incorporated).

Laboratory Corporation of America Holdings, 1120 Stateline Rd., Southaven, MS 38671, 601–342–1286 (formerly: Roche Biomedical Laboratories, Inc.).

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 800–437–4986 (formerly: Roche Biomedical Laboratories, Inc.).

Laboratory Specialists, Inc., 113 Jarrell Dr., Belle Chasse, LA 70037, 504–392–7961.

Marshfield Laboratories, 1000 North Oak Ave., Marshfield, WI 54449, 715–389–3734/800–222–5835.

MedExpress/National Laboratory Center, 4022 Willow Lake Blvd., Memphis, TN 38175, 901–795–1515.

Medical College Hospitals Toxicology Laboratory, Department of Pathology, 3000 Arlington Ave., Toledo, OH 43699–0008, 419–381–5213.

Medlab Clinical Testing, Inc., 212 Cherry Lane, New Castle, DE 19720, 302–655–5227.

MedTox Laboratories, Inc., 402 W. County Rd. D, St. Paul, MN 55112, 800–832–3244/612–636–7466.

Methodist Hospital of Indiana, Inc., Department of Pathology and Laboratory Medicine, 1701 N. Senate Blvd., Indianapolis, IN 46202, 317–929–3587.

Methodist Medical Center Toxicology Laboratory, 221 N.E. Glen Oak Ave., Peoria, IL 61636, 800–752–1835/309–671–5199.

MetPath Laboratories, 875 Greentree Rd., 4 Parkway Ctr., Pittsburgh, PA 15220–3610, 412–931–7200 (formerly: Med-Chek Laboratories, Inc., Med-Chek/Damon).

MetroLab-Legacy Laboratory Services, 235 N. Graham St., Portland, OR 97227, 503–413–4512, 800–237–7808(x4512).

National Psychopharmacology Laboratory, Inc., 9320 Park W. Blvd., Knoxville, TN 37923, 800–251–9492.

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 805–322–4250.

Northwest Toxicology, Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 800–322–3361.

Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Ave., Eugene, OR 97440–0972, 503–687–2134.

Pathology Associates Medical Laboratories, East 11604 Indiana, Spokane, WA 99206, 509–926–2400.

PDLA, Inc. (Princeton), 100 Corporate Court, So. Plainfield, NJ 07080, 908–769–8500/800–237–7352.

PharmChem Laboratories, Inc., 1505–A O'Brien Dr., Menlo Park, CA 94025, 415–328–6200/800–446–5177.

PharmChem Laboratories, Inc., Texas Division, 7606 Pebble Dr., Fort Worth, TX 76118, 817–595–0294, (formerly: Harris Medical Laboratory).

Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913–338–4070/800–821–3627, (formerly: Physicians Reference Laboratory Toxicology Laboratory).

Poisonlab, Inc., 7272 Clairemont Mesa Rd., San Diego, CA 92111, 619–279–2600/800–882–7272.

Presbyterian Laboratory Services, 1851 East Third Street, Charlotte, NC 28204, 800–473–6640.

Puckett Laboratory, 4200 Mamie St., Hattiesburgh, MS 39402, 601–264–3856/800–844–8378.

Scientific Testing Laboratories, Inc., 463 Southlake Blvd., Richmond, VA 23236, 804–378–9130.

Scott & White Drug Testing Laboratory, 600 S. 25th St., Temple, TX 76504, 800–749–3788.

S.E.D. Medical Laboratories, 500 Walter NE, Suite 500, Albuquerque, NM 87102, 505–848–8800.

Sierra Nevada Laboratories, Inc., 888 Willow St., Reno, NV 89502, 800–648–5472.

SmithKline Beecham Clinical Laboratories, 7600 Tyrone Ave., Van Nuys, CA 91045, 818–376–2520.

SmithKline Beecham Clinical Laboratories, 801 East Dixie Ave., Leesburg, FL 34748, 904–787–9006, (formerly: Doctors & Physicians Laboratory).

SmithKline Beecham Clinical Laboratories, 3175 Presidential Dr., Atlanta, GA 30340, 404–934–9205, (formerly: SmithKline Bio-Science Laboratories).

SmithKline Beecham Clinical Laboratories, 506 E. State Pkwy., Schaumburg, IL 60173, 708–885–2010, (formerly: International Toxicology Laboratories).

SmithKline Beecham Clinical Laboratories, 400 Egypt Rd., Norristown, PA 19403, 800–523–5447 (formerly: SmithKline Bio-Science Laboratories).

SmithKline Beecham Clinical Laboratories, 8000 Sovereign Row, Dallas, TX 75247, 214–638–1301 (formerly: SmithKline Bio-Science Laboratories).

SmithKline Beecham Clinical Laboratories, 1737 Airport Way South, Suite 200, Seattle, WA 98134, 206–623–8100.

South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 219–234–4176.

Southwest Laboratories, 2727 W. Baseline Rd., Suite 6, Tempe, AZ 85283, 602–438–8507.

St. Anthony Hospital (Toxicology Laboratory), P.O. Box 205, 1000 N. Lee St., Oklahoma City, OK 73102, 405–272–7052.

Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, Suite 208, Columbia, MO 65203, 314–882–1273.

Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260.

TOXWORX Laboratories, Inc., 6160 Variel Ave., Woodland Hills, CA 91367, 818–226–4373 (formerly: Laboratory Specialists, Inc.; Abused Drug Laboratories; MedTox Bio-Analytical, a Division of MedTox Laboratories, Inc.).

UNILAB, 18408 Oxnard St., Tarzana, CA 91356, 800–492–0800/818–343–8191 (formerly: MetWest-BPL Toxicology Laboratory).

No laboratories withdrew from the Program in May.

Richard Kopanda,

Acting Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 95–13807 Filed 6–2–95; 8:45 am]

BILLING CODE 4160–20–U

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–95–3923]

Notice of Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (7) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: May 24, 1995.

David S. Cristy,

Director, Information Resources Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: 1995 Property Owners and Managers Survey.

Office: Policy Development and Research.

Description of the Need for the Information and Its Proposed Use: HUD needs this survey to learn more about the property owners and managers who provide housing for over 35 million American families. The survey will focus on the owners and managers of all types of rental properties. HUD will use this survey to shape future housing policy for Congress.

Form Number: POMS–100(A); 100(B); 100(L); 101; 102; and 103.

Respondents: Business or Other For-Profit.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Survey	17,500		1		.85		15,387

Total Estimated Burden Hours: 15,387.

Status: New.

Contact: Duane McGough, HUD (202) 708–1060, Peter Fronczek, Census, (301) 763–8165, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

[FR Doc. 95–13601 Filed 6–2–95; 8:45 am]

BILLING CODE 4210–8–M

Office of Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N–95–3904; FR–3903–N–02]

Notice of Submission of Proposed Information Collection to OMB Section 811 Supportive Housing for Persons With Disabilities—Application Submission Requirements

AGENCY: Office of Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of Submission of Proposed Information Collection Section 811 Supportive Housing for Persons with Disabilities—Application Submission Requirements for FY 1995.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for expedited review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within seven (7) days from the date of this Notice. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 — 7th Street, Southwest, Washington, DC 20410, telephone number (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the Department of Housing and Urban Development has submitted to OMB, for expedited processing, an information collection package with respect to the application submission requirements for the Section 811 Supportive Housing Program for Persons with Disabilities. HUD is requesting a seven-day OMB review of this information collection.

The funds for this project development and construction assistance, which are capital advances and project rental assistance contracts were appropriated by the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1995, (Pub. L. 103–327, enacted September 28, 1994).

HUD intends to make available $154,946,000 in capital advance assistance which will produce approximately 2,421 units of supportive housing for persons with disabilities., HUD also will make available sufficient project rental assistance funds to help cover the project's operating cost. These funds will be provided to nonprofit organizations to expand the supply of supportive housing for persons with disabilities.

This Section 811 application submission package describes the contents of the application package and includes the forms and other information an applicant needs to file an application. The Section 811 application consists of 11 exhibits which are evaluated by HUD to determine (1) The applicant's eligibility to participate in the program; (2) the applicant's ability (financially and administratively) to develop and operate the proposed project: (3) the need for the supportive housing in the area to be served; (4) the extent to which the applicant has site control; (5) the suitability of the site; (6) the adequacy of the provision of supportive services; (7) the adequacy of the proposed facility; and (8) that the applicant has properly certified to comply with the various governmental requirements, Executive Orders, etc.

The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35);

(1) the title of the information collection proposal;

(2) the office of the agency to collect the information;

(3) the description of the need for the information and its proposed use;

(4) the agency form number, if applicable;

(5) what members of the public will be affected by the proposal;

(6) how frequently information submission will be required;

(7) an estimate of the total number of hours needed to prepare the information submission including the number of respondents, frequency of response, and hours of response;

(8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and

(9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated May 24, 1995.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Section 811 Supportive Housing Program for Persons with Disabilities—Application Submission Requirements.

Office: Office of Assistant Secretary for Housing—Federal Housing Commissioner.

Description of the Need for the Information and its Proposed Use: This information collection is required in connection with the application submission requirements for the Section 811 Supportive Housing Program for Persons with Disabilities. HUD intends to make available $154,946,000 in capital advance assistance to expand the supply of supportive housing for persons with disabilities. This information collection describes the contents of the application package which is used by HUD to determine the acceptability of the requests for capital advance assistance.

Form Number: HUD–92016–CA

Respondents: Nonprofit Organizations.

Frequency of Submission: Annually.

Reporting Burden:

	Number of respondents	X	Frequency of response	X	Hours per response	=	Burden hours
Application package	400		1		41.2		14,960

Total Estimated Burden Hours: 14,960.

Status: Reinstatement with Change.

Contact: Margaret F. Milner, HUD (202) 708–4542, Joseph F. Lackey, Jr., OMB (202) 395–7316.

Dated: May 24, 1995.

Section 202 Application Submission Requirements, OMB No. 2502–0462

A. Supporting Statement

1. Need for Information

The Section 811 program, amended by the National Affordable Housing Act (NAHA) of 1990 and the Housing and Community Development Act of 1992, provides capital advances to nonprofit organizations to expand the supply of supportive housing for persons with disabilities. In order to ensure that only eligible nonprofit organizations are selected, it is important to obtain information from prospective applicants to assist HUD in determining if they have the administrative capacity to develop such a project and whether the project design and supportive services plan meet the needs of the residents. These factors are critical in meting statutory requirements and in protecting the Department's financial interest in projects funded under this program.

In keeping with the Department's commitment to streamline the Section 811 application submission package, the Department met with representatives of Section 811 nonprofit organizations, housing consultants and other program staff to discuss ideas for revamping the Section 811 application submission package to make it less burdensome to Section 811 applicants without compromising the Federal Government's financial interest in the project.

More recently, the Department held two working group sessions to identify further ways to streamline the Section 811 program and make it more consumer friendly. The working groups consisted of Sponsors of Section 811 projects and HUD staff. Additionally, the Department conducted a Section 811 consumer forum in which program beneficiaries, primarily disabled residents and potential residents, expressed their concerns about the quality of living in existing Section 811 projects and provided ideas for improving the program and projects. The supporting justification as contained herein reflects the results of the Department's meetings and telephone conversations with the private sector and HUD program staff.

The Section 811 application submission package for the fund reservation was approved by OMB under No. 2502–0462 which expired in December 1994. The Department is requesting reinstatement of OMB No. 2502–0462 to permit the Department to collect the information identified in this submission.

The Department has an on-going commitment to identify ways to simplify the process by which the Section 811 program is administered (including the application submission requirements) so that is can be more consumer friendly. Because of this commitment, the Department wanted greater participation from the private sector in revising the program. To accomplish this, additional time was needed to arrange for and conduct the various working group sessions with the private sector and other program staff, and to evaluate the recommendations resulting from these sessions. As a result of this public-private effort, the Department was unable to make the final revisions to the application submission package prior to the OMB expiration date.

Based on our previous years' experience, the Department receives far more applications than available resources can fund. In Fiscal Year (FY) 1994, the Department received 383 applications requesting some 5,037 units of housing and could only select for funding 222 applications for some 2,783 units of housing.

Because the Department has continued to reduce program requirements at the fund reservation stage and because the program provides for capital advances (in lieu of loans), the Section 811 program is expected to attract more nonprofit organizations. It is anticipated that the number of applications received will exceed those received in FY 1994. In view of the highly competitive nature of the Section 811 program, it is necessary to have the response comply with prescribed application requirements in order to form a basis for HUD's evaluation in selecting applications.

The application submission requirements, summarized below, were developed after much consultation with the professionals in the field of providing housing for persons with disabilities and were intended to not only reduce the paperwork burden to the nonprofit applicants but to minimize their front-end expenditures in putting together an application package. This is important because only a small percentage of the universe of applications received ultimately are funded.

Contents of Application Package

The contents of the Application for a Section 811 Fund Reservation have been reorganized and reduced from five parts and 24 exhibits to four parts and 11 exhibits. Included with the 11 exhibits are six prescribed forms; five are required and one is optional.

There are 17 certifications in the application package. Twelve of the certifications have been combined into

a single document as a convenience to the applicant. The four components of the application submission package are:

Part 1—Application for Section 811 Supportive Housing—Capital Advance

Part 2—Sponsor's Ability to Develop and Operate the Proposed Project

Part 3—Need for Supportive Housing for Persons with Disabilities in the Area to be Served, Extent to Which Sponsor has Site Control, Suitability of Site, and the Design of the Project

Part 4—General Application Requirements and Certifications

All of the required application exhibits are specifically identified in Section 890.265(b) of the Section 811 regulations, as amended.

2. The Section 811 application submission requirements are necessary to assist HUD in determining an applicant's eligibility and capacity to develop housing for persons with disabilities consistent with prescribed statutory and program criteria. A thorough evaluation of an applicant's qualifications and capabilities is critical in protecting the Federal Government's financial interest and to mitigate any possibility of fraud, waste or mismanagement of public funds.

The procedures for information collection requires the prospective applicant to submit its Section 811 application to the appropriate local HUD Office by the nationally established deadline date (usually between March and June). Local HUD Offices evaluate applications based on established criteria (identified in Section 890.300 of the regulations), rate the applications and make selection recommendations to Headquarters (usually by the first week of September). Applicants are notified of selection or nonselection generally by September 30. This process occurs once a year.

The purpose and use of the four components of the application exhibits are briefly described below:

(a) Part 1—Application for Section 811 Supportive Housing—Capital Advance

Exhibit 1: This exhibit requires applicants to submit Form HUD–92016–CA, Request for Section 811 Fund Reservation—Summary Information. This is a relatively new form which replaced Form HUD–92013, Application for Multifamily Housing Project, at the fund reservation stage. Form HUD–92016–CA was specifically designed to require the minimum information needed about the project for HUD review at this stage. The form identifies the applicant and its known development team members as well as collects basic information with regard to the proposed project's characteristics. It is used by HUD staff to obtain basic information regarding the proposed project.

(b) Part 2—Sponsor's Ability to Develop and Operate the Proposed Project

Exhibit 2: This Exhibit requests the submission of organizational documents, IRS tax exemption ruling, and a Resolution, which also includes a listing of all officers and directors, concerning Conflict of Interest to assure that no officer or director has a financial interest in the project. It is important to note that not all applicants will have to submit all of the information asked for in this exhibit. Applicants who have received a Section 811 fund reservation within the last three funding cycles are not required to submit their organizational documents and IRS tax exemption rulings. Instead, these applicants must submit only the project numbers of their latest application and any modifications to these documents, if any.

Exhibit 3: This exhibit requests narrative descriptions of the applicant's community ties, experience in operating rental housing projects and its experience with programs other than housing such as the provision of services. This information includes the applicant's experience in serving persons with disabilities and minorities. This information will assist HUD in determining the applicant's over-all previous experience and capacity to operate the proposed project over an extended period of time. This is consistent with the statute which requires applicants to be selected on, among things, their ability to develop and operate the proposed housing.

In addition, the statute requires the Department to take action to ensure, among other things, that the supportive housing for persons with disabilities facilitates their access to the community at large and to suitable employment opportunities within such community. Also, the application must provide evidence of the applicant's (or designated service provider's) experience in providing supportive services as well as the extent to which State and/or local funds are available to assist in the provision of such supportive services. In order to assess the applicant's ability to carry out these statutory requirements, the applicant is required to submit a statement evidencing its ties to the community, including the disabled community and minorities, in which the proposed project is to be built as well as a statement regarding its purposes and activities.

Under this part, the applicant also submits a narrative description of its contracting experience with minority and women-owned businesses pursuant to Executive Orders 11625, 12432 and 12138, as well as its efforts to involve persons with disabilities, in the development of the application and its intent to involve such persons in the development of the project.

Included in this exhibit is a certified Resolution from the applicant's Board acknowledging its responsibilities of sponsorship and long-term support of the project, along with its willingness to fund the minimum capital investment, estimated start-up expenses, and the cost of any amenities or features that cannot be covered by the capital advance.

It is important to note that many applicants will experience some relief of paperwork burden in preparing this exhibit because applicants that have participated in prior funding competitions will be able to utilize information and exhibits from previously prepared applications. Some examples include information regarding previous experience in the provision of housing and services, supportive services plan, community ties, and experience serving minorities.

(c) Part 3—Need for Supportive Housing for Persons With Disabilities in the Area To Be Served, Extent to Which Sponsor Has Site Control, Suitability of Site and the Design of the Project

Exhibit 4: This exhibit requires the applicant to (1) Identify the proposed population and evidence demonstrating demand for the project; (2) describe the project, including the building design and whether or not the design will promote energy efficiency, (3) submit a supportive services plan describing the supportive services needs, the manner in which the services will be delivered, sources of funds to cover the cost of services with a certification from the local entity that the services are well designed; (4) justify any request to exceed the project size limits; (5) provide information about the proposed site (including environmental condition of the site) with evidence of site control or at least identification of a site and proper zoning; and (6) submit a copy of Form HUD–92013E, Supplemental Application Processing Form (OMB 2502–0232) showing the services to be provided.

Information relative to the need for the housing, proposed residents, supportive services, and project design is necessary to determine (1) Whether

the applicant is proposing to serve an eligible population, whether the applicant accurately assessed the needs of the proposed residents, if the plan for the provision of services is sufficient and will meet the needs of the residents since supportive services are critical to the success of projects for the disabled; and (2) that a project of the type proposed will accommodate the needs of the disabled residents, will be compatible with and integrated into the surrounding neighborhood, is marketable, and that any increased number of persons to be served (above the administrative limitations) is necessary for the economic feasibility of the project.

Information relative to the site is evaluated to determine that the site is acceptable from an environmental and locational standpoint for the intended use and that the applicant has control of the site or has identified a site for which it feels it can gain control of within six months from the fund reservation, if selected. It also is reviewed to assure that proper zoning can be obtained. For sites identified but not under the applicant's control, the applicant provides a narrative description of the location and surrounding area which will assist HUD in determining the suitability of the site before the applicant purchases it.

Also, if an applicant proposes to develop and operate a group home to be licensed as an Intermediate Care Facility for persons with disabilities, then the applicant must provide additional information regarding its commitment for Medicaid funding along with a commitment that the State agency accepts responsibility to pay the tenant's contribution towards rent in the Medicaid payment. HUD reviews this information to assure that the group home (considering both services and building design) will operate as a housing facility rather than be medical in nature and that the residents will be enrolled in a structured program outside the home for a period of time.

Information with respect to the promotion of an agency efficient building design will be used to assist HUD in determining compliance with the energy efficiency standards in accordance with Section 109 of NAHA.

The information required under this exhibit is in accordance with Section 811 of the NAHA.

(d) Part 4—General Application Requirements and Certifications

Exhibit 5: To assist HUD in determining if the applicant is over-committed, the applicant submits for HUD's review a list of all Section 202 and Section 811 applications submitted for the current fiscal year funding round, and a list of projects previously funded which have not finally closed. This is information that an applicant that participated in a prior year can easily update, if necessary, and resubmit for the current year.

Exhibit 6: Form HUD–2880, Applicant/Recipient Disclosure/Update Report (OMB No. 2525–0101), is required by Section 102 of the HUD Reform Act of 1989. The applicant uses this form to disclose any other government assistance that may be provided in connection with the proposed project as well as to report its Social Security Numbers or Employee Identification Numbers. This information assists HUD to ensure that the applicant does not receive more assistance than is necessary to develop and operate the proposed project.

Exhibit 7: This exhibit is a certification, to be completed by the Section 202 applicant, that the application was submitted to the State for its review or that the State was contacted and it was determined that a State review was not required. This certification is required by OMB in accordance with Executive Order 12372.

Exhibit 8: This is a Guide Form, titled Project Data on Occupancy, Displacement and Real Property Acquisition (Form HUD–40087), and its use is *optional*. An applicant, at its option, may use the form to report information relative to the acquisition of property and the relocation or displacement of occupants in cases where the applicant proposes to acquire property which is occupied. This information is consistent with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Act of 1970, as amended.

In granting the previous approval to collect information under 2502–0462, OMB conditioned the approval on the correction of certain forms, one, of which, was Form HUD–40087. OMB specified that the Department must accurately reflect the burden in the disclosure statement. This form is exempt from the burden disclosure requirements because it is only a "guide" form to be used at the option of the applicant. It is only included in the application package as a convenience to the applicant. The applicant is not required to submit this form. The information regarding any relocation activities may be submitted in narrative form.

Exhibit 9: Information requested on Form SF–424, Application for Federal Assistance (OMB No. 0348–0043), serves a dual purpose. Pursuant to Executive Order 12372, the applicant submits this form to the State which is used by the State to initiate the intergovernmental review process. The applicant also uses the form to certify that it is not delinquent on any Federal debt which is an OMB requirement.

Exhibit 10. The applicant provides the Form SF–LLL, Disclosure of Lobbying Activities (OMB No. 0348–0046), to indicate if other than federally appropriated funds have been or will be used to lobby the Executive or Legislative branches of the Federal Government pursuant to Title 31 U.S.C., Section 1352.

Exhibit 11. This exhibit represents the consolidation of the following 12 certifications into a single document, thereby requiring one signature for all. These certifications are required by governmental actions, Executive Orders, etc. and are used to review the applicant's intent to comply with the (1) Civil Rights, Fair Housing and Equal Opportunity laws; (2) Drug-Free Workplace Act; (3) HUD's design and cost standards including the Uniform Federal Accessibility Standards and Section 504 of the Rehabilitation Act of 1973; (4) acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended; (5) requirement to form an Owner after issuance of the capital advance; (6) requirements of the Lead-Based Poisoning Prevention Act; (7) Davis-Bacon Act Provisions; (8) requirement that the project be consistent with the Consolidated Plan for the appropriate jurisdiction; (9) Flood Disaster Protection Act of 1973; (10) National Environmental Policy Act; (11) Anti-Lobbying Prohibition; and (12) requirement regarding the truth and accuracy of the information contained in the application.

Included in this exhibit also is a guide format for use by the public official responsible for developing the Consolidated Plan to indicate whether or not the proposed activities are consistent with the Consolidated Plan or the previous year's Comprehensive Housing Affordability Strategy (CHAS) if the Consolidated Plan has not yet started.

In the absence of collecting the above information, the Department would not be able to assess the worthiness of the applications, determine whether the facilities and services meet statutory and regulatory requirements, or make sound judgments regarding the potential risk to the Government.

3. Each fiscal year (near the beginning of the funding cycle), HUD issues a Notice pertaining to application

submission requirements. During this process, the Department reevaluates the application submission requirements to identify ways to reduce the burden to the applicants. Because the Section 811 program had changed drastically when it was converted to a capital advance program, the Department made major revisions to the application package at that time. More recently, in response to feedback from the professionals in the field of developing Section 811 housing, the Department made further major changes to streamline the program. This has resulted in less paperwork for the applicants. Therefore, in revising the application package, consideration was given to modifying it to require the minimum of information needed by HUD to conduct the program in accordance with the NAHA, statutory and regulatory requirements and, at the same time, to establish a selection system which is equitable to all participants.

The information described under Item 2 above represents the minimum information acceptable to HUD. Further, as mentioned in Item No. 2 above, many applicants will experience a tremendous relief from paperwork burden because they will not have to spend time preparing "new" information to complete an exhibit. In some cases, those applicants that have participated in this program in the past will be able to utilize previously submitted information.

4. No duplication exists, as there are no other forms or exhibits used for the purposes specified under Item 2 herein. Individual applications are evaluated and rated by HUD on the merits of the responses submitted with the application. Each application is unique. The information contained in each application relates to a particular applicant proposing a specific project, design, site, etc., and, as such, the information collected from applicants will be significantly different per application.

Also, the Department implemented a new requirement which relieves a previously funded applicant of the burden of submitting certain documents (e.g., the organization's Articles of Incorporation, By-Laws and IRS tax exemption ruling). Further, since FY 1991 when the program was converted to a capital advance program, HUD has been reviewing and modifying the application submission requirements to assure that only necessary information is being requested of applicants. HUD has taken into consideration suggestions made by the private sector in modifying the application submission requirements.

5. Due to the highly competitive nature of the Section 811 program, the application submission requirements were developed in a way to minimize the front-end cost to the nonprofit applicant and only require the minimum amount of information needed in HUD's evaluation. This is important due to the fact that only a small percentage of the universe of applications received ultimately get selected. For example, although applicants may still obtain the services of a housing consultant, information on the consultant is no longer required to be submitted at this stage. HUD review and approval of the consultant will be done at a later stage and only for those projects which are ultimately selected for funding.

Also, eliminated at the fund reservation stage is the submission of Form HUD–92530, regarding the applicant's previous participation in HUD programs and Form HUD–92013 Supplement, Supplement to Application for Multifamily Housing Project. The submission and review of these forms have been deferred to a subsequent processing stage. Applicants no longer have to submit sketches of the site plans which included typical unit and floor plans, making it unnecessary for an applicant to have to obtain input from an architect at this stage. Other major documents recently eliminated at this stage are the applicant's financial statements and a narrative description of the applicant's financial history. The elimination of these documents will result in a tremendous relief of paperwork burden to small and minority applicants.

The Department has consolidated several of the certification forms into a single document for the applicant's convenience.

Also, the Department has prepared sample Application Packages which include all the required forms and materials necessary to put together an Application Package. The sample Application Packages will be made available to all applicants well in advance of the deadline date for submission of applications.

Local HUD Offices are required to conduct workshops to provide needed guidance to applicants in preparing the application packages. In an effort to assist the small sponsoring organizations as well as first-time applicants, HUD staff also conducts pre-workshops especially designed for them.

In addition to the above, HUD recognizes that some applicants, who are sincerely interested in providing housing, may lack the staff and other resources to develop such a project. Therefore, in recognition of the need for these applicants to use the services of professional housing consultants, HUD permits a reasonable fee for consultant's services to be included in the Section 811 capital advance. The consultant may assist the applicant in preparing the Application Package to request a Section 811 Capital Advance and throughout the final development of the project should the applicant be selected for funding.

6. Currently, the information collection activities occur annually to coincide with the receipt of annual fiscal year appropriations for the program. Each year, Congress appropriates funds with which to select new applications. HUD, in turn, invites applications and makes selections based on the funds available for the year. These funds are normally exhausted at the end of each fiscal year. The Section 811 regulations require HUD to publish a Notice of Fund Availability (NOFA) in the **Federal Register** when such funds are made available by Congress. The regulations also require HUD to specify a deadline date for receipt of applications. In order for HUD to accept an application, the application must have been submitted in response to a specific NOFA and Invitation requesting such an application and by the closing date stated in the Invitation. As the funding cycle for the program occurs annually, including the Invitations for Applications, it is not possible to require the submission of this information less frequently.

7. Part 5 CFR 1320.6 lists 10 items that OMB will not approve for information collection, unless it can be demonstrated that the collection of information is necessary to satisfy statutory requirements or other substantial need.

This request for information is consistent with the guidelines under 5 CFR 1320.6 with the exception of one item. Subparagraph (c) of the above CFR indicates OMB's disapproval of requiring respondents to submit more than an original and two copies of any document. HUD requires applicants to submit an original and four copies of the Section 811 Application. The changes to the application submission requirement resulted in a better organized Application Package. As the program is administered on an annual basis, processing of the application must be accomplished in an expeditious manner in order that decisions regarding selections of applications and reservations of funds can be made prior to the end of the fiscal year (September 30).

During the course of processing the applications, eight HUD technical disciplines are involved in the review process: staff from Valuation, Architectural and Engineering, Housing Management, Fair Housing and Equal Opportunity, Economic and Market Analysis, Community Planning and Development, the Multifamily Housing Representative and the Office Counsel. These HUD staff members are required to comment on the approvability of each application received.

Because of the (1) Various HUD staff involved in the review process, (2) tremendous volume of applications received each fiscal year, and (3) the commitment to obligate funds by the fiscal year-end, HUD requires concurrent reviews of the applications by the aforementioned HUD staff to assure prompt processing with minimum interruption. For example, additional information or clarification is often needed from applicants to permit HUD to make a fair and complete review. The requirement for simultaneous reviews promotes a more efficient, time-saving method to provide applicants a single notification regarding all deficiencies noted as a result of a full review from each HUD technical discipline.

HUD needs more than an original and two copies of the application in order to carry out the above procedures for concurrent reviews.

8. This OMB request is the result of on-going telephone conversations, meetings and workshops HUD staff recently held with Section 811 nonprofit Sponsors, housing consultants, disabled residents and potential residents, and other interested HUD program staff. The Department consulted with various housing professionals representing the types of Sponsors that generally participate in the Section 811 program; i.e., minority organizations, small organizations and nonminority organizations. Following is a list of some of the housing professionals (Housing Consultants and Section 811 Sponsors) that HUD consulted with by telephone, meetings and/or workshop sessions:

Judy Ponds, Housing Services, 1234—4th Street, SW, Washington, DC 20024, (202) 488–1639

Nick Smyrnis, AHEPA Management Corp., 7202 N. Shadeland Ave., Indianapolis, IN, (317) 845–3410

Sam Simmons, National Center on Black Aged, 1424 K Street, NW, Suite 500, Washington, DC 20005 (202) 637–8400

Mark Olshan, B'nai B'rith, 1640 Rhode Island Avenue, NW, Washington, DC 20036, (202) 857–6580

Alan Patricio, P.O. Box 53274, Atlanta, GA 30355, (404) 237–9877

Joe Howell, 815—15th Street, NW, Washington, DC 20005, (202) 393–3044

Randy Speaker, Bank IV Towers, 534 Kansas Avenue, Suite 910, Topeka, KS 66603, (913) 232–8338

Jane Graf, Mercy Charities Housing, 1028A Howard Street, San Francisco, CA 94103, (415) 487–6825

Harrison Joseph, Nat'l Baptist Convention, 338 Washington Street, Newark, OH 43005, (614) 258–7998

Tom Slemmer, Nat'l Church Residences, 2335 N. Bank Drive, (614) 451–2151

Don Redfoot, American Assn. for Retired Persons, 601 E Street, NW, Washington, DC 20049, (202) 434–2277

Jose Fabregas, CODEC, Inc., 300 SW 12th St., Suite A, Miami, FL 33130, (305) 642–1361

Additionally, inasmuch as this OMB request is submitted in accordance with 24 CFR 890.265, as amended, the promulgation procedure for regulations allows sufficient participation by outside agency contacts to review and comment on the application materials.

9. HUD does not assure confidentiality.

10. The application submission requirements do not contain any sensitive questions.

11. *Provide estimates of annualized cost to the Federal Government and to the respondents.*

(a) *Estimate of Cost to Federal Government:* Inasmuch as the majority of the work involved in reviewing the applications is performed at the local HUD Office level, the significant costs attributable to the promulgation of the application requirements will be the cost involved in reviewing the information submitted by applicants. Outstanding program procedures require the following reviews performed by the various local HUD Office staff. The cost to the Federal Government is based on an average salary at the GS–12 level, except for the Office Counsel and the Clerical Assistant which is at the GS–14 and GS–7 levels, respectively. Also, included is the cost associated with the preparation and printing of the HUD Application Package for use by the applicants in putting together their individual Application Packages.

Reviews

HUD staff	Total time per application (hours)	Hourly rate	Total
Multifamily housing representative	3	$22	566
Architectural	1	22	22
Valuation	3	22	66
Economic and market analysis	1	22	22
Fair housing and equal opportunity	1	22	22
Housing management	1	22	22
Community planning and development	1	22	22
Field office counsel	3	31	93
Clerical assistant	0.5	13	6.5
Total staff time—per application	14.5		341.5
Total annual number of responses			*×400
Total annual staff time cost to government			136,600
Other Cost for All Applications:			
Printing/reproducing HUD application package (400 copies)			500
Postage (400 copies × $3.00)			1,200
Multifamily clearinghouse (mailing services)			**5,000
Total other cost			6,700
Total estimated annual cost to government			143,300

*See Item 12 below for an explanation.

**The Department now utilizes the services of a Multifamily Clearinghouse to maintain a national mailing list for Section 811 Applications and to mail out the applications. Most applicants will receive their packages through the mail. However, some applicants will be handed copies of the Application Packages at the HUD-held workshops.

(b) *Estimate of Cost to Respondents*: In estimating the cost to the applicants, it should be noted that in order to comply with the revised program requirements, the applicant may retain an attorney. In addition, as many nonprofit organizations do not have in-house expertise or staff to develop an application, a housing consultant is usually hired by the applicant. The applicant is a nonprofit organization and as such provides its services at no cost. In view of this, the following illustrates the estimated cost to the public:

Housing consultant ($40 per hour)	$1,076
Applicant (sponsor)	(**)
Attorney	1,000
Total cost per respondent	$2,076
Total annual number of responses	*×400
Total estimated annual cost for all applicants	830,400

* See Item 12 below for an explanation.
** Probono.

This reflects a slight decrease in the cost per applicant from the previous OMB submission. Beginning this year, the Department is requiring the applicant to include as part of Exhibit 4 information about the environmental condition of the proposed site. An adjustment was made to take into consideration the additional time and cost that will be incurred by the applicant to inspect the proposed site for this purpose. Also, an adjustment was made to the burden hour time associated with Form HUD–92013E, Supplemental Application Processing Form—Housing for the Elderly, to comply with OMB's conditions for approval. However, these adjustments (increases) are offset by the reduction of burden hour time associated with the elimination of the financial documents.

It should be noted that many professionals work on a retainer basis and if the application does not obtain HUD approval, they do not collect a fee. The figures presented above are based on our own experience, as well as consultation with housing professionals in the field of housing persons with disabilities.

12. Although for Fiscal Year 1994 HUD received 383 Section 811 applications, it is anticipated that because the Department has further simplified the application submission requirements coupled with the fact that the program provides capital advances in lieu of loans, the number of applicants will slightly increase beyond the Fiscal Year 1994 level. It is anticipated that the level of activity will average 400 applications annually over the next three years. Although the program funding cycle is on an annual basis, each prospective applicant could submit more than one application. However, our estimate of time involved is based on one application per applicant.

To assist the applicant in putting together an Application for a Fund Reservation, the Department developed an Application Package consisting of the information, forms and materials needed by the applicant to assemble an application. The HUD Application Package, which will be made available to all applicants, is expected to aid in reducing the applicant's and housing consultant's time and effort in putting together an application.

Given the above and using the categories presented in the illustration in Item 11(b) above, the estimated amount of hours involved in developing a complete application submission is as follows:

	Hours
Housing consultant	26.9
Attorney	2.0
Applicant (sponsor)	12.3
Total	41.2

These figures are based on HUD's experience, as well as consultation with housing professionals in the field of housing persons with disabilities.

This reflects a decrease of 4 hours from the previous OMB submission (from 45.2 to 41.2 hours). This represents the net result of adjusting the burden time associated with Form HUD–92013E, the exhibit regarding project information to include an environmental review of the site by the applicant and the elimination of the applicant's financial documents.

A Tabulation of Annual Reporting Burden is shown in Table 1. It should be noted that Exhibits 4, 6, 9 and 10 already have OMB clearances as shown in the Table. These information collections are common to many of our programs and our request for clearance was calculated to include the burden associated for all program uses. The burden shown in Table 1 for Exhibits 4, 6, 9 and 10, therefore, reflects our estimate applicable to the Section 811 program. No adjustment to the previously cleared Exhibits 4, 6, 9 and 10 is required.

13. The primary reason for the increase of 1,160 in the total burden hours (from 13,800 to 14,960) is due to a projected increase in the total number of applicants expected to submit applications this fiscal year (from 350 to 400). Also, an adjustment was to reduce the applicant's burden time associated with the submission of financial documents since this requirement has been eliminated. A minor adjustment to the time reported for preparing Exhibit 4 was made to include additional time an applicant will need to perform an environmental inspection of the proposed site. In the past, most applicants would generally inspect the site to determine its acceptability for developing a project for persons with disabilities, which included inspecting it for potential environmental problems. However, because the Department is specifically requiring that an environmental inspection be performed, we have adjusted the applicant's burden time to include this function. Further, an adjustment was made to Form HUD–92013E to provide for the 8 hour burden time as reported in the disclosure statement on the form. Although there is a modest increase in the total burden hours for all applicants, the net effect of the above adjustments (which includes the reduction of time associated with the elimination of the financial documents) resulted in a slight reduction in the burden time per applicant.

15. Not applicable.

B. Collections of Information Employing Statistical Methods

Not applicable.

BILLING CODE 4210-27-M

TABLE 1 - TABULATION OF ANNUAL REPORTING BURDEN

DESCRIPTION OF INFORMATION COLLECTION (APPLICATION SUBMISSION REQUIREMENTS) (2502-0462	SECTION OF CFR APPECTED	NUMBER OF RESPONDENTS	NUMBER OF RESPONSES PER RESPONDENT	TOTAL ANNUAL RESPONSES	HOURS PER RESPONSE	TOTAL HOURS
PART 1: Exhibit 1, Form HUD-92016-CA (OMB 2502-0462)	890.265(b) (1)	400	1	400	1.0	400
PART 2: Exhibit 2, Evidence of Sponsor's Nonprofit Status	890.265(b) (2)	400	1	400	2.0	800
" Exhibit 3, Description of Purpose, Community Ties and Experience	890.265(b) (10) (11) (12) (13) (14)	400	1	400	8.0	3200
PART 3: Exhibit 4, Project Information Form HUD-92013E (OMB 2502-0232)	890.265(b) (5) (17) (18) (19) (20) (21)	400	1	400	20.9	8360
PART 4: Exhibit 5, Statement on Other 202 or 811 Applications Submitted and Funded Projects	890.265(b) (15)	400	1	400	2.0	800
" Exhibit 6, Form HUD-2880, Applicant Disclosure Report (OMB 2525-0101)	890.265(b) 16)	400	1	400	2.5	1000
" Exhibit 7, Certification on EO 12372	890.265(b) (4)	400	1	400	0.4	160
" Exhibit 8, Guide Form to Report Data on Project Displacement and Real Property Acquisition (Form HUD-40087)	890.265(b) (8)	20*	1	20	4.0	80

2

DESCRIPTION OF INFORMATION COLLECTION (APPLICATION SUBMISSION REQUIREMENTS) (2502-0462)	SECTION OF CFR AFFECTED	NUMBER OF RESPONDENTS	NUMBER OF RESPONSES PER RESPONDENT	TOTAL ANNUAL RESPONSES	HOURS PER RESPONSE	TOTAL HOURS
PART 4: Exhibit 9, Form SF-424, Application for Federal Assistance (OMB 0348-0043)	EXEMPT PER 5 CFR PART 1320					
* Exhibit 10, Form SF-LLL, Disclosure of Lobbying Activities (OMB 0348-0046)	EXEMPT PER 5 CFR PART 1320	400	1	400	0.4	160
* Exhibit 11, Certifications (Includes Consolidated Plan Certification From Local Public Official)	890.265(b)(3)(9)	400	1	400	41.2	14,960
TOTALS		400				

* Based on experience, no more than 5 percent of the proposals will involve relocation.

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PART I - APPLICATION FOR SECTION 811 SUPPORTIVE HOUSING - CAPITAL ADVANCE — PAGE

EXHIBIT 1: Form HUD-92016-CA, Application for Section 811 Supportive Housing Capital Advance ____

PART II - SPONSOR'S ABILITY TO DEVELOP AND OPERATE THE PROPOSED PROJECT

EXHIBIT 2: Legal Status of each Nonprofit Sponsor:

a. Articles of Incorporation, constitution (or other organizational documents) ____

b. By-laws ____

c. IRS Tax Exemption Ruling ____

d. Conflict of Interest Resolution ____

[EXCEPTION: SPONSORS WHO HAVE RECEIVED A SECTION 811 FUND RESERVATION WITHIN THE LAST THREE FUNDING CYCLES ARE NOT REQUIRED TO SUBMIT THE DOCUMENTS DESCRIBED IN (a), (b), and (c), ABOVE. INSTEAD, SPONSORS MUST SUBMIT THE PROJECT NUMBER OF THE LATEST APPLICATION SUBMITTED AND THE HUD OFFICE TO WHICH IT WAS SUBMITTED. IF THERE HAVE BEEN ANY MODIFICATIONS OR ADDITIONS TO THE SUBJECT DOCUMENTS, INDICATE SUCH, AND SUBMIT THE NEW MATERIAL.]

e. The number of people on the Sponsor's board and the number of those people who have a disability ____

EXHIBIT 3: Sponsor's purpose, community ties and experience:

(a) Describe purpose and current activities ____

(b) Describe ties to the community at large and to the disabled community ____

(c) Describe housing and/or supportive services experience including any rental housing projects and/or medical facilities sponsored, owned and operated by the Sponsor; past or current involvement in any programs other than housing that demonstrates the Sponsor's management capabilities and experience in serving persons with disabilities and minorities ____

(d) Describe experience in contracting with minority and women-owned businesses including a summary of the total amount awarded in each of the two categories for the preceding three years and the percentage that amount represents of all contracts awarded by the Sponsor in the relevant time period ____

(e) A certified Board Resolution (see attached) ____

(f) Description, if applicable, of the Sponsor's efforts to involve persons with disabilities in the development of the application as well as its intent to involve persons with disabilities in the development of the project. ____

PART III - THE NEED FOR SUPPORTIVE HOUSING FOR PERSONS WITH DISABILITIES IN THE AREA TO BE SERVED, THE EXTENT TO WHICH THE SPONSOR HAS SITE CONTROL, SUITABILITY OF THE SITE, AND THE DESIGN OF THE PROJECT

EXHIBIT 4: (a) Evidence of need for supportive housing. ____

(b) Description of the project including the following:

(1) Number and type of structure(s), number of bedrooms if group home, number of units with bedroom distribution if independent living units (including condos), number of residents with disabilities and resident staff per structure. ____

(2) An identification of all community spaces, amenities or features planned for the housing ____

(3) Describe if and how the project will promote energy efficiency and if applicable, innovative construction or rehabilitation methods or technologies to be used that will promote efficient construction ____

(c) A supportive services plan that includes:

(1) A detailed description of whether the housing is intended to serve persons with physical, mental or emotional impairments, developmental disabilities, or chronic mental illness. ____

(2) A detailed description of the supportive service needs of the proposed population and the extent to which the supportive services will be needed. ____

(3) The manner in which such services will be provided _____

(4) If services will be organized or provided by the Sponsor, include the following:

(i) the name(s) of the agency(s) (if other than the Sponsor) which will be responsible for providing the supportive services _____

(ii) the evidence of each service provider's capability and experience in providing such supportive services _____

(iii) description of how, when and how often, and where (on/off-site) the services will be provided _____

(iv) description of residential staff, if needed _____

(v) identification of the extent of State and local funds to assist in the provision of supportive services _____

(vi) letters of intent from service providers or funding sources _____

(vii) If any State or local government funds will be provided, a description of the State/local agency's philosophy/policy concerning residential facilities for the population to be served _____

(5) If the proposed residents will be taking responsibility for acquiring their own supportive services, provide a description of appropriate services in the community from which the residents can choose _____

(6) Assurances that the proposed residents will receive supportive services based on their individual needs and a commitment that accepting supportive services will not be a condition of occupancy _____

(7) Form HUD 92013E, Supplemental Application Processing Form - Housing for Persons with Disabilities. Identify all supportive services, if any, to be provided to the persons occupying such housing _____

(d) Supportive Services certification. A certification from the appropriate State or local agency identified in the application package that the provision of supportive services is well designed to serve the special needs of persons with disabilities, the necessary supportive services will be provided on a consistent, long-term basis, and the proposed facility is consistent with State or local plans and policies governing the development and operation of facilities to serve individuals of the proposed occupancy category _____

(e) Evidence of control of an approvable site

1. Evidence of site control

(i) Evidence that the Sponsor has entered into a legally binding option agreement to purchase or lease the proposed site; or has a copy of the contract of sale for the site, a deed, long-term leasehold, _____

(ii) Evidence that the project as proposed is permissible under applicable zoning ordinances _____

(iii) Narrative description of site and area surrounding the site, characteristics of neighborhood, how the site will promote greater housing opportunities for minorities, and any other information that impacts on the suitability of the site for persons with disabilities _____

(iv) If acquisition, evidence that the structure has been constructed or occupied for at least three years (other than RTC properties); _____

(v) statement regarding willingness to seek alternate site _____

(vi) map showing the location of the site and the racial composition of the neighborhood _____

(vii) Transaction Screen Process and Phase I Environmental Site Assessment _____

(viii) If an exception of the project size limits is being requested, describe why the site was selected and demonstrate the following:

(A) The increased number of people is necessary for the economic feasibility of the project _____

(B) The project is compatible with other residential development and the population density of the area in which the project is to be located _____

(C) The increased number of people will not prohibit their successful integration into the community _____

(D) The project is marketable in the community _____

(E) The size of the project is consistent with State and/or local policies governing similar facilities for the proposed population _____

(F) A statement regarding willingness to have the application processed at the project size limit should HUD not approve the exception _____

2. Identification of site

(i) A description of the location of the site, including its street address and unit number _____

(ii) A description of the activities undertaken to identify the site as well as what actions must be taken to obtain control of the site _____

(iii) An indication as to whether the site is properly zoned _____

(iv) A status of the sale of the site _____

(v) An indication as to whether the site would involve relocation _____

(f) Statements of support for the proposed project from nongovernmental organizations familiar with the needs of the population it would serve, sources of local funds to serve project, minority support _____

(g) For group homes to be licensed as intermediate care facilities:

(1) evidence demonstrating that the proposed project will primarily provide housing rather than medical facilities, and is or will be licensed by appropriate State agencies _____

(2) description of the medical training of the staff of the proposed facility and any nursing services that will be required by the residents on-site _____

(3) description of the services that will be funded by Medicaid _____

(4) description of any special design features proposed _____

(5) written evidence that the State Medicaid Office recognizes the need for a tenant contribution to rent and has agreed to pay the cost of the tenant contribution in the Medicaid payment to the Owner _____

(6) statement certifying that the Individual Program Plan for each resident will include participation in an out-of-the-home activity program for at least six hours each work day _____

PART IV - GENERAL APPLICATION REQUIREMENTS/CERTIFICATIONS

EXHIBIT 5. A list of applications submitted under the current Section 811 or Section 202 NOFAs and a list of all funded projects which have not been finally closed _____

EXHIBIT 6. HUD-2880, Applicant/Recipient Disclosure/Update Report including Social Security Numbers and Employee Identification Numbers _____

EXHIBIT 7: E.O. 12372 _____

EXHIBIT 8: FORM HUD-40087, Project Data on Occupancy, Displacement and Real Property Acquisition, including a description of persons, businesses and organizations by race/minority group ____

EXHIBIT 9: Standard Form 424 ____

EXHIBIT 10: Standard Form LLL, Disclosure of Lobbying Activities, if applicable ____

EXHIBIT 11: Sponsor Certifications ____

Supportive Housing for Persons with Disabilities
Section 811
Application for Capital Advance
Summary Information

U.S. Department of Housing and Urban Development
Office of Housing
Federal Housing Commissioner

EXHIBIT 1

OMB Approval No. 2502-0462(exp.12/31/94)

Public Reporting Burden for this collection of information is estimated to average 1.0 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2502-0462), Washington, D.C. 20503. Do not send this completed form to either of the above addressees.

HUD Use Only | HUD Project Number: | FHAC Number:

1. Name(s), Address(es), Contact Person, & Telephone Number(s) of Sponsor(s):

2. Minority Sponsor Designation: A minority sponsor is one in which at least 51 percent of the board members are minority.
Is this sponsor a minority applicant? ☐ Yes ☐ No
If yes, identify by numeric code as shown at left: ☐
Codes: 2-Black; 3-Native American; 4-Hispanic; 5-Asian Pacific; 6-Asian Indian; 7-Hasidic Jewish

3a. Location of Site: (city & state)

3b. Will project be located within the boundaries of a Federally designated Empowerment Zone,Urban Supplemental Empowerment Zone, Enterprise Community or Urban Enhanced Enterprise Community?
☐ Yes ☐ No
If yes, name zone/community?_____
Contact local HUD office to determine boundaries of zones/communities.

4. Congressional District:

5. Capital Advance Amount Requested: $

6. Project Rental Assistance Contract Amount Requested: $

7. Application Contains:
☐ Evidence of Site Control
☐ Identification of Site

8. Type of Construction:
☐ New Construction
☐ Rehabilitation
☐ Acquisition (GH or RTC)

9. Occupancy Type:
☐ Physically Disabled
☐ Developmentally Disabled
☐ Chronically Mentally Ill

10. Facility Type & Number of Units/Residents Proposed:

a. Group Homes:

Site	Intermediate Care Facility (Y/N)	No. of Disabled Residents	Resident Mgr. Unit (Y/N)	Address
#1				
#2				
#3				
#4				

b. Independent Living Facilities:

Site	Units by No. of Bedrooms 0 1 2 3	Total Disabled Units	Total Disabled Residents	Resident Mgr. Unit (Y/N)	Total Units	Address
#1						
#2						
#3						
#4						

c. Condominiums:

No. of Bldgs.	Units by No. of Bedrooms 0 1 2 3	Total Disabled Units	Total Disabled Residents	Resident Mgr. Unit (Y/N)	Total Units	Address
#1						
#2						
#3						
#4						

*NOTE: If an elevator structure in b or c above, indicate by placing an "E" next to the total number of units for each applicable site.

Totals:

	Units
	Disabled Residents
	Sites

(Note: If project will be a group home(s), include the number of disabled residents in both the "Total Units" and the "Total Disabled Residents" categories. If project will be an independent living facility(s), include Resident Manager unit, if applicable, in the "Total Units" category.

form HUD-92016-CA (5/95)
ref Handbook 4571.2

11. Check utilities and services not included in the rent and to be paid directly by the tenant:
- ☐ Electric
- ☐ Water
- ☐ Heat
- ☐ Gas

12. HUD Headquarters approval required for: (check if applicable)
- ☐ Restricted occupancy
- ☐ Mixed Occupancy
- ☐ Group home to be licensed as intermediate care facility

13. Unusual Site Features:
- ☐ None
- ☐ Cuts
- ☐ Fill
- ☐ Erosion
- ☐ Other (specify)
- ☐ Poor Drainage
- ☐ Retaining Walls
- ☐ Rock Foundations
- ☐ High Water Table

14. Off-Site Facilities:

	Public	At Site	Ft. from Site
Water	☐	☐	
Sewer	☐	☐	
Paving	☐	☐	
Gas	☐	☐	
Electric	☐	☐	

15. Community Facilities to be included inProject: (identified by site no. indicated in 10 above):

16. Name, Address & Telephone Number of: (mark one box)
- ☐ Consultant
- ☒ Agent
- ☐ Authorized Representative

17. Sponsor's Attorney: (name, address & telephone number)

By: (signature of sponsor's authorized representative)

X

Type in Name & Title:

form HUD-92016-CA (5/95)
ref Handbook 4571.2

Supplemental Application and Processing Form Housing For The Elderly/Disabled

U.S. Department of Housing and Urban Development
Office of Housing
Federal Housing Commissioner

EXHIBIT 4(c)(7)

OMB Approval No. 2502-0232 (exp. 11/30/95)

See Instructions on pages 2 & 3

Project Name

☐ Congregate ☐ Mixed ☐ Non-Congregate

Project Number

A. Non-Rent Congregate Living Space	Area Square Feet
1. Congregate Kitchen and Dining	
2. Lobbies	
3. Community Room	
4. Hobby Shop	
5. Infirmary or Health Facility	
6. Other	
7. Other	
8. Total Square Feet	

B. Project Composition

1. Number of Bedrooms	2. Total No. of Units	3. No. of Units With Kitchens	4. No. of Units with Kitchenettes
0-Bedroom Units			
1-Bedroom Units			
2-Bedroom Units			

C. Food Service	Annual Expense Sponsor	HUD
1. Payroll		
Number of cooks ____ x salary $ ____	$	$
Number of waitresses ____ x salary $ ____	$	$
Number of helpers ____ x salary $ ____	$	$
2. Food Cost	$	$
3. Supplies	$	$
4. Dining Room Furniture Exp.		
a. Repl. Res: 10% x Equip. Cost $ ____	$	$
b. Int: on Inv: ___% Int. Rate x Cost $ ____	$	$
c. Maintenance and Repairs	$	$
5. Other (Specify)	$	$
6. Other (Specify)	$	$
7. Total Food Service Expense	$	$
8. Average No. of Persons Serviced ____		
9. Proposed Charger per Person per Month	$	$
10. No. of Meals per Person per Day ____		

D. Maid Service	Annual Expense Sponsor	HUD
1. Payroll		
Number of maids ____ x salary $ ____	$	$
2. Supplies	$	$
3. Other (Specify)	$	$
4. Other (Specify)	$	$
5. Total Maid Service	$	$
6. Average Number of Units Using Service ____	$	$
7. Proposed Charge per Unit per Month	$	$

E. Health Service	Annual Expense Sponsor	HUD
1. Nursing Payroll		
Number of Nurses ____ x salary $ ____	$	$
2. Equipment Expense:		
a. Repl. Res: 10% x Equipment Cost $ ____	$	$
b. Int. on Inv.: ___% Int. Rate x Cost $ ____	$	$
c. Maintenance and Repairs	$	$
3. Medical Supplies	$	$
4. Utilities	$	$
5. Laundry Service	$	$
6. Other (Specify)	$	$
7. Total Health Service	$	$
8a. No. of Beds in Infirmary ____		
8b. No. of Persons Serviced ____		
9. Proposed Charge per Mo. per Patient ____ per Person ____	$	$

F. Furniture in Units	Annual Expense Sponsor	HUD
1. Furniture Exp. when Leased	$	$
2. Furniture Exp. If Not Leased:		
a. Repl. Res: 10% x Furniture Cost $ ____	$	$
b. Int. on Inv: ____ % Int. Rate x Cost $ ____	$	$
3. Total Furniture Expense	$	$
4. Number of Units Furnished ____	$	$
5. Proposed charge per unit per month to cover furniture rent	$	$

G. Other Non-Shelter Services	Annual Expense Sponsor	HUD
1. Program & Activities Payroll	$	$
2. Other (Specify)	$	$
3. Other (Specify)	$	$
4. Chg. per Person (Unit) for Item 1	$	$
4. Chg. per Person (Unit) for Item 2	$	$
6. Chg. per Person (Unit) for Item 3	$	$

Official Use Only

H. Remarks & Signatures

Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)
The above estimates in "Sponsor" column for Sections C through G represent estimates of income and expense in non-shelter budgets.

Signed	Date	☐ Sponsor, ☐ Mortgagor, ☐ Borrower, ☐ Owner
Valuation Processor	Date	Reviewer / Date

Replaces FHA 2013-E

form HUD-92013-E (5/93)
ref. Handbooks 4571.1, 4571.2, 4571.3, 4571.4, & 4571.5

Public reporting burden for this collection of information is estimated to average 8.0 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2502-0232), Washington, D.C. 20503. Do not send this completed form to either of the above addressees.

Instructions

General

Form HUD-92013E must accompany form HUD-92013, Application–Project Mortgage Insurance, for each project intended to provide housing for the elderly or the disabled.

Preparation of the forms HUD-92013 and HUD-92013E must separate the budget for shelter (and utilities included in the rent) from other budgets concerned with supplying services other than shelter, such as food service, main service, program and recreation service, rented furniture, and any other non-shelter services which may be planned. The non-shelter budgets concerned with supplying food, furniture, maid service, and other personal services are shown on the form HUD-92013E.

All non-shelter services and amenities offered with a charge to the tenant and as a condition of occupancy must be identified on this form. Special circumstances regarding items to be included in an amenity package such as additional charges for additional persons that cannot be readily shown on this form must be explained on an addendum sheet to the form HUD-92013E.

Form HUD-92013E must accompany all requests for feasibility analysis, conditional and firm commitments.

Definitions

An elderly person is defined as one who is age 62 or over. A disabled person is one whose impairment (a) is expected to be of continued and indefinite duration; (b) substantially impedes his ability to live independently; and (c) is such that his ability to live independently could be improved by more suitable housing. (See appropriate program regulations for more detailed definitions.)

Congregate Housing is designed for persons, normally well and ambulatory, who prefer residential accommodations but need some assistance in day-to-day living. While not a nursing or medical facility, it offers services that protect residents and provide for their needs.

Congregate housing projects have a central dining room generally serving three meals a day, with emergency room service available. There are common areas for lounges, recreation, special activities; limited housekeeping and laundry services may be provided. Some projects have an infirmary with personnel qualified to control and administer medications.

Instructions

Projects having congregate dining facilities with only kitchenettes in the living units, are checked in the box marked "Congregate." Projects having no congregate dining facilities, but having full sized kitchens in the living units are checked in the box marked "Non-Congregate." Projects having congregate dining facilities and having some living units with complete sized kitchens, are checked in the box marked, "Mixed."

Section A. Non-Rent Congregate Living Space Areas

Enter the net area, in square feet, for various kinds of non-rent congregate living space shown, such as, congregate kitchen and dining, lobbies, community rooms, hobby shop, infirmaries, or other non-rented common buildings area. When plans are available, these net areas should be calculated from the plans. Congregate dining facilities should be large enough to serve the probable total number of diners within a single meal period, but not necessarily at a single sitting. The number of diners shall be estimated to include all of the occupants of the units having kitchenettes only, plus a reasonable portion of the occupants of units with full kitchens.

Section B. Project Composition

For each number of bedrooms enter in Column 2 the total number of units. In Column 3, enter the number of units with complete kitchens. In Column 4, enter the number of units with kitchenettes only.

Non-Shelter Income and Expense Budgets.

Sections C through G contain budgets of income and expense for furnishing various non-shelter services. The sponsor enters his estimates of items of income and expense for each budget in the column headed "Sponsor," thus using form HUD-92013E as a supplemental application form. Subsequently, copies of the same form will be used as a processing form, with HUD personnel entering estimates in the Column headed, "HUD."

Section C. Food Service: Annual Expenses.

Line C-1– Estimate the number of cooks times the average annual salary. The number of waitresses, and other employees needed to operate the dining room are also estimated to arrive at payroll, including payroll tax. When the food service operation is large or complex, a detailed explanation of kinds of staff, numbers of employees, rates of pay, payroll tax, and total payroll for food service, should be shown in an attachment. The annual food cost and cost of supplies is also entered.

Line C-4a.–Dining room furniture expense includes an annual reserve for replacement of dining room furniture and equipment. Estimate the replacement reserve by multiplying furniture cost by 10%.

Line C-4b–Return on investment in dining room furniture and equipment is estimated by multiplying the furniture cost by the market interest rate for similar investments.

Line C-4c–Enter the estimated annual allowance for maintenance and repairs to the furniture.

Line C-7–Show the total annual food service expense.

Line C-8–Estimate the probable number of tenants customarily using the congregate dining facility.

Line C-9–Enter the proposed charge per person per month for food service. This charge should be sufficient to provide an annual income at least 3% more than the total food service expense estimated in Line C-7. If a food service concessionaire is contemplated, the proposed terms of the concession shall be completely explained in an attachment.

Line C-10–Enter the number of meals per person per day covered by the proposed food service charge.

Section D. Maid Service: Annual Expense.

Line D-1–Enter the number of mains multiplied by the average annual salary to result in annual payroll.

Line D-2–Enter the annual expense for cleaning supplies.

Line D-3 and 4–If clean sheets are to be provided as part of this service, the word "Laundry" is entered after "other" followed by the annual amount of this expense. Enter other expenses of supplying maid service.

Line D-5–Enter the sum of Lines D-1 through D-4. This represents total maid service expense.

Line D-6–Enter the estimated number of units using this service.

Line D-7–Enter the proposed charge per unit to cover this service.

Section E. Health Service: Annual Expense.

Line E-1–Enter the anticipated number of nurses needed times the average salary including payroll tax. If the health service operation is large or complex, the sponsor should submit a more detailed estimate of health service payroll in an attachment.

Line E-3–Equipment expenses includes an annual reserve for replacement of beds and other furniture and equipment in the infirmary.

Line E-4– Estimate the replacement reserve by multiplying equipment cost by 10%.

Line E-2b–Return on investment in equipment is estimated by multiplying the furniture cost by the market interest rate for similar investments.

Line E-2c–Enter the estimated annual allowance for maintenance and repairs to the equipment.

Line E-3, 4, 5, and 6–Enter the annual amounts to be expended for medical supplies, utilities, laundry or linen service, and other expenses of the health service facility.

Line E–Enter the sum of lines E-1 through E-6. This represents total health service expense.

Line E-8– Enter the number of beds in the infirmary.

Line E-9–Enter the average number of patients in the infirmary.

Line E-9–Enter the proposed charge per patient or per person. Indicate method of payment.

Section F. Furniture in Living Units.

Line F-1–Indicate the amount of total a nnual payments to the leasing company when furniture for some or all of the living units is obtained by the mortgagor by leasing it.

Line F-2a–The renting of furniture by tenant must be optional and not a condition of occupancy. For those units in which the project owns the furniture, furniture expense includes an annual reserve for replacement of living unit furniture. Estimate the replacement reserve by multiplying furniture cost by 10%.

Line F-2b–Return on investment in furniture is estimated by multiplying furniture cost by the market interest rate for similar investments.

Line F-2–Enter the estimated annual allowance for maintenance and repairs to the furniture.

Line F-3–Enter the Total Furniture Expense.

Line F-4–Indicate the number of units furnished by the mortgagor.

Line F-5–Enter the proposed charge per unit per month to cover the furniture expense.

Section G. Other Non-Shelter Services

Line G-1–Enter the salaries of persons employed to furnish guidance and recreation during the leisure time of the resident's occupancy in the project.

Lines G-2 and G-3–Enter the amounts covering any other service or facility included in the proposal that would contribute to the health, comfort and recreation of elderly persons, and specify.

Lines G-4, 5 and 6–Enter the charges per person or unit for the respective service or facility.

Section H. Remarks and Signatures

Self Explanatory.

Applicant/Recipient Disclosure/Update Report

U.S. Department of Housing and Urban Development
Office of Ethics

EXHIBIT 6

3/31/95

OMB Approval No. 2535-0101 (exp. ~~12/31/94~~)

Instructions. (See Public Reporting Statement and Privacy Act Statement and detailed instructions on page 4.)

Part I Applicant/Recipient Information **Indicate whether this is an Initial Report** ☐ **or an Update Report** ☐

1. Applicant/Recipient Name, Address, and Phone (include area code) | Social Security Number or Employer ID Number

2. Project Assisted/ to be Assisted (Project/Activity name and/or number and its location by Street address, City, and State)

3. Assistance Requested/Received	4. HUD Program	5. Amount Requested/Received $

Part II. Threshold Determinations – Applicants Only

1. Are you requesting HUD assistance for a specific project or activity, as provided by 24 CFR Part 12, Subpart C, and have you received, or can you reasonably expect to receive, an aggregate amount of all forms of covered assistance from HUD, States, and units of general local government, in excess of $200,000 during the Federal fiscal year (October 1 through September 30) in which the application is submitted? ☐ Yes ☐ No

   If Yes, you must complete the remainder of this report.

   If No, you must sign the certification below and answer the next question.

   I hereby certify that this information is true. (Signature) _____ Date _____

2. Is this application for a specific housing project that involves other government assistance? ☐ Yes ☐ No

   If Yes, you must complete the remainder of this report.

   If No, you must sign this certification.

   I hereby certify that this information is true. (Signature) _____ Date _____

If your answers to both questions are No, you do not need to complete Parts III, IV, or V, but you must sign the certification at the end of the report.

Part III. Other Government Assistance Provided/Requested

Department/State/Local Agency Name and Address	Program	Type of Assistance	Amount Requested/Provided

Is there other government assistance that is reportable in this Part and in Part V, but that is reported only in Part V? ☐ Yes ☐ No

If there is no other government assistance, you must certify that this information is true.

I hereby certify that this information is true. (Signature) _____ Date _____

form HUD-2880 (3/92)
ref. Sec 102. HRA 1989; PL. 101 - 235

Part IV. Interested Parties

Alphabetical list of all persons with a reportable financial interest in the project or activity (for individuals, give the last name first)	Social Security Number or Employee ID Number	Type of Participation in Project/Activity	Financial Interest in Project/Activity ($ and %)

If there are no persons with a reportable financial interest, you must certify that this information is true.

I hereby certify that this information is true. (Signature) _____ Date _____

form HUD-2880 (3/92)
ref. Sec 102. HRA 1989; PL. 101 - 235

Part V. Report on Expected Sources and Uses of Funds

Source	

If there are no sources of funds, you must certify that this information is true.

I hereby certify that this information is true. (Signature) _____ Date _____

Use	

If there are no uses of funds, you must certify that this information is true.

I hereby certify that this information is true. (Signature) _____ Date _____

Certification

Warning: If you knowingly make a false statement on this form, you may be subject to civil or criminal penalties under Section 1001 of Title 18 of the United States Code. In addition, any person who knowingly and materially violates any required disclosure of information, including intentional non-disclosure, is subject to civil money penalty not to exceed $10,000 for each violation.

I certify that this information is true and complete.

Signature	Date

Public reporting burden for this collection of information is estimated to average 2.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2535-0101), Washington, D.C. 20503. Do not send this completed form to either of these addressees.

Privacy Act Statement. Except for Social Security Numbers (SSNs) and Employer Identification Numbers (EINs), the Department of Housing and Urban Development (HUD) is authorized to collect all the information required by this form under section 102 of the Department of Housing and Urban Development Reform Act of 1989, 42 U.S.C. 3531. Disclosure of SSNs and EINs is optional. The SSN or EIN is used as a unique identifier. The information you provide will enable HUD to carry out its responsibilities under Sections 102(b), (c), and (d) of the Department of Housing and Urban Development Reform Act of 1989, Pub. L. 101-235, approved December 15, 1989. These provisions will help ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. They will also help ensure that HUD assistance for a specific housing project under Section 102(d) is not more than is necessary to make the project feasible after taking account of other government assistance. HUD will make available to the public all applicant disclosure reports for five years in the case of applications for competitive assistance, and for generally three years in the case of other applications. Update reports will be made available along with the disclosure reports, but in no case for a period generally less than three years. All reports, both initial reports and update reports, will be made available in accordance with the Freedom of Information Act (5 U.S.C. §552) and HUD's implementing regulations at 24 CFR Part 15. HUD will use the information in evaluating individual assistance applications and in performing internal administrative analyses to assist in the management of specific HUD programs. The information will also be used in making the determination under Section 102(d) whether HUD assistance for a specific housing project is more than is necessary to make the project feasible after taking account of other government assistance. You must provide all the required information. Failure to provide any required information may delay the processing of your application, and may result in sanctions and penalties, including imposition of the administrative and civil money penalties specified under 24 CFR §12.34.

Note: This form only covers assistance made available by the Department. States and units of general local government that carry out responsibilities under Sections 102(b) and (c) of the Reform Act must develop their own procedures for complying with the Act.

Instructions (See Note 1 on last page.)

I. **Overview.** Subpart C of 24 CFR Part 12 provides for (1) initial reports from applicants for HUD assistance and (2) update reports from recipients of HUD assistance. An overview of these requirements follows.

A. Applicant disclosure (initial) reports: General. All applicants for assistance from HUD for a specific project or activity must make a number of disclosures, if the applicant meets a dollar threshold for the receipt of covered assistance during the fiscal year in which the application is submitted. The applicant must also make the disclosures if it requests assistance from HUD for a specific housing project that involves assistance from other governmental sources.

Applicants subject to Subpart C must make the following disclosures:

Assistance from other government sources in connection with the project,

The financial interests of persons in the project,

The sources of funds to be made available for the project, and

The uses to which the funds are to be put.

B. Update reports: General. All recipients of covered assistance must submit update reports to the Department to reflect substantial changes to the initial applicant disclosure reports.

C. Applicant disclosure reports: Specific guidance. The applicant must complete all parts of this disclosure form if **either** of the following **two** circumstances in paragraph 1. or 2., below, applies:

1.a. Nature of Assistance. The applicant submits an application for assistance for a specific project or activity (See Note 2) in which:

HUD makes assistance available to a recipient for a specific project or activity; or

HUD makes assistance available to an entity (other than a State or a unit of general local government), such as a public housing agency (PHA), for a specific project or activity, where the application is required by statute or regulation to be submitted to HUD for any purpose; **and**

b. Dollar Threshold. The applicant has received, or can reasonably expect to receive, an aggregate amount of all forms of assistance (See Note 3) from HUD, States, and units of general local government, in excess of $200,000 during the Federal fiscal year (October 1 through September 30) in which the application is submitted. (See Note 4)

2. The applicant submits an application for assistance for a specific housing project that involves other government assistance. (See Note 5) Note: There is no dollar threshold for this criterion: any other government assistance triggers the requirement. (See Note 6)

If the Application meets **neither** of these two criteria, the applicant need only complete Parts I and II of this report, as well as the certification at the end of the report. If the Application meets **either** of these criteria, the applicant must complete the entire report.

The applicant disclosure report must be submitted with the application for the assistance involved.

D. Update reports: Specific guidance. During the period in which an application for covered assistance is pending, or in which the assistance is being provided (as indicated in the relevant grant or other agreement), the applicant must make the following additional disclosures:

1. Any information that should have been disclosed in connection with the application, but that was omitted.

2. Any information that would have been subject to disclosure in connection with the application, but that arose at a later time, including information concerning an interested party that now meets the applicable disclosure threshold referred to in Part IV, below.

3. For changes in previously disclosed other government assistance:

For programs administered by the Assistant Secretary for Community Planning and Development, any change in other government assistance that exceeds the amount of such assistance that was previously disclosed by $250,000 or by 10 percent of the assistance (whichever is lower).

For all other programs, any change in other government assistance that exceeds the amount of such assistance that was previously disclosed.

4. For changes in previously disclosed financial interests, any change in the amount of the financial interest of a person that exceeds the amount of the previously disclosed interests by $50,000 or by 10 percent of such interests (whichever is lower).

5. For changes in previously disclosed sources or uses of funds:

a. For programs administered by the Assistant Secretary for Community Planning and Development:

Any change in a source of funds that exceeds the amount of all previously disclosed sources of funds by $250,000 or by 10 percent of those sources (whichever is lower); and

Any change in a use of funds under paragraph (b)(1)(iii) that exceeds the amount of all previously disclosed uses of funds by $250,000 or by 10 percent of those uses (whichever is lower).

b. For all programs, other than those administered by the Assistant Secretary for Community Planning and Development:

For projects receiving a tax credit under Federal, State, or local law, any change in a source of funds that was previously disclosed.

For all other projects, any change in a source of funds that exceeds the lower of:

The amount previously disclosed for that source of funds by $250,000, or by 10 percent of the amount previously disclosed for that source, whichever is lower; or

The amount previously disclosed for all sources of funds by $250,000, or by 10 percent of the amount previously disclosed for all sources of funds, whichever is lower.

c. For all programs, other than those administered by the Assistant Secretary for Community Planning and Development:

For projects receiving a tax credit under Federal, State, or local law, any change in a use of funds that was previously disclosed.

For all other projects, any change in a use of funds that exceeds the lower of:

The amount previously disclosed for that use of funds by $250,000, or by 10 percent of the amount previously disclosed for that use, whichever is lower; or

The amount previously disclosed for all uses of funds by $250,000, or by 10 percent of the amount previously disclosed for all uses of funds, whichever is lower.

Note: Update reports must be submitted within 30 days of the change requiring the update. The requirement to provide update reports only applies if the application for the underlying assistance was submitted on or after the effective date of Subpart C.

II. Line-by-Line Instructions.

A. Part I. Applicant/Recipient Information.

All applicants for HUD assistance specified in Section I.C.1.a., above, as well as all recipients required to submit an update report under Section I.D., above, must complete the information required by Part I. The applicant/recipient must indicate whether the disclosure is an initial or an update report. Line-by-line guidance for Part I follows:

1. Enter the full name, address, city, State, zip code, and telephone number (including area code) of the applicant/recipient. Where the applicant/recipient is an individual, the last name, first name, and middle initial must be entered. Entry of the applicant/recipient's SSN or EIN, as appropriate, is optional.

2. Applicants enter the name and full address of the project or activity for which the HUD assistance is sought. Recipients enter the name and full address of the HUD-assisted project or activity to which the update report relates. The most appropriate government identifying number must be used (e.g., RFP No.; IFB No.; grant announcement No.; or contract, grant, or loan No.) Include prefixes.

3. Applicants describe the HUD assistance referred to in Section I.C.1.a. that is being requested. Recipients describe the HUD assistance to which the update report relates.

4. Applicants enter the HUD program name under which the assistance is being requested. Recipients enter the HUD program name under which the assistance, that relates to the update report, was provided.

5. Applicants enter the amount of HUD assistance that is being requested. Recipients enter the amount of HUD assistance that has been provided and to which the update report relates. The amounts are those stated in the application or award documentation. NOTE: In the case of assistance that is provided pursuant to contract over a period of time (such as project-based assistance under section 8 of the United States Housing Act of 1937), the amount of assistance to be reported includes all amounts that are to be provided over the term of the contract, irrespective of when they are to be received.

Note: In the case of Mortgage Insurance under 24 CFR Subtitle B, Chapter II, the mortgagor is responsible for making the applicant disclosures, and the mortgagee is responsible for furnishing the mortgagor's disclosures to the Department. Update reports must be submitted directly to HUD by the mortgagor.

Note: In the case of the Project-Based Certificate program under 24 CFR Part 882, Subpart G, the owner is responsible for making the applicant disclosures, and the PHA is responsible for furnishing the owner's disclosures to HUD. Update reports must be submitted through the PHA by the owner.

B. Part II. Threshold Determinations — Applicants Only

Part II contains information to help the applicant determine whether the remainder of the form must be completed. **Recipients filing Update Reports should not complete this Part.**

1. The first question asks whether the applicant meets the Nature of Assistance and Dollar Threshold requirements set forth in Section I.C.1. above.

If the answer is Yes, the applicant must complete the remainder of the form. If the answer is No, the form asks the applicant to certify that its response is correct, and to complete the next question.

2. The second question asks whether the application is for a specific housing project that involves other government assistance, as described in Section I.C.2. above.

If the answer is Yes, the applicant must complete the remainder of the form. If the answer is No, the form asks the applicant to certify that its response is correct.

If the answer to both questions1 and 2 is No, the applicant need not complete Parts III, IV, or V of the report, but must sign the certification at the end of the form.

C. Part III. Other Government Assistance.

This Part is to be completed by both applicants filing applicant disclosure reports and recipients filing update reports. Applicants must report any other government assistance involved in the project or activity for which assistance is sought. Recipients must report any other government assistance involved in the project or activity, to the extent required under Section I.D.1., 2., or 3., above.

Other government assistance is defined in note 5 on the last page. For purposes of this definition, other government assistance is expected to be made available if, based on an assessment of all the circumstances involved, there are reasonable grounds to anticipate that the assistance will be forthcoming.

Both applicant and recipient disclosures must include all other government assistance involved with the HUD assistance, as well as any other government assistance that was made available before the request, but that has continuing vitality at the time of the request. Examples of this latter category include tax credits that provide for a number of years of tax benefits, and grant assistance that continues to benefit the project at the time of the assistance request.

The following information must be provided:

1. Enter the name and address, city, State, and zip code of the government agency making the assistance available. Include at least one organizational level below the agency name. For example, U.S. Department of Transportation, U.S. Coast Guard; Department of Safety, Highway Patrol.

2. Enter the program name and any relevant identifying numbers, or other means of identification, for the other government assistance.

3. State the type of other government assistance (e.g., loan, grant, loan insurance).

4. Enter the dollar amount of the other government assistance that is, or is expected to be, made available with respect to the project or activities for which the HUD assistance is sought (applicants) or has been provided (recipients).

If the applicant has no other government assistance to disclose, it must certify that this assertion is correct.

To avoid duplication, if there is other government assistance under this Part and Part V, the applicant/recipient should check the appropriate box in this Part and list the information in Part V, clearly designating which sources are other government assistance.

D. Part IV. Interested Parties.

This Part is to be completed by both applicants filing applicant disclosure reports and recipients filing update reports.

Applicants must provide information on:

(1) All developers, contractors, or consultants involved in the application for the assistance or in the planning, development, or implementation of the project or activity and

(2) any other person who has a financial interest in the project or activity for which the assistance is sought that exceeds $50,000 or 10 percent of the assistance (whichever is lower).

Recipients must make the additional disclosures refferred to in Section I.D.1.,2., or 4, above.

Note: A financial interest means any financial involvement in the project or activity, including (but not limited to) situations in which an individual or entity has an equity interest in the project or activity, shares in any profit on resale or any distribution of surplus cash or other assets of the project or activity, or receives compensation for any goods or services provided in connection with the project or activity. Residency of an individual in housing for which assistance is being sought is not, by itself, considered a covered financial interest.

The information required below must be provided.

1. Enter the full names and addresses of all persons referred to in paragraph (1) or (2) of this Part. If the person is an entity, the listing must include the full name of each officer, director, and principal stockholder of the entity. All names must be listed alphabetically, and the names of individuals must be shown with their last names first.

2. Entry of the Social Security Number (SSN) or Employee Identification Number (EIN), as appropriate, for each person listed is optional.

3. Enter the type of participation in the project or activity for each person listed: i.e., the person's specific role in the project (e.g., contractor, consultant, planner, investor).

4. Enter the financial interest in the project or activity for each person listed. The interest must be expressed both as a dollar amount and as a percentage of the amount of the HUD assistance involved.

If the applicant has no persons with financial interests to disclose, it must certify that this assertion is correct.

5. Part V. Report on Sources and Uses of Funds. This Part is to be completed by both applicants filing applicant disclosure reports and recipients filing update reports.

The applicant disclosure report must specify all expected sources of funds — both from HUD and from any other source — that have been, or are to be, made available for the project or activity. Non-HUD sources of funds typically include (but are not limited to) other government assistance referred to in Part III, equity, and amounts from foundations and private contributions. The report must also specify all expected uses to which funds are to be put. All sources and uses of funds must be listed, if, based on an assessment of all the circumstances involved, there are reasonable grounds to anticipate that the source or use will be forthcoming.

Note that if any of the source/use information required by this report has been provided elsewhere in this application package, the applicant need not repeat the information, but need only refer to the form and location to incorporate it into this report. (It is likely that some of the information required by this report has been provided on SF 424A, and on various budget forms accompanying the application.) If this report requires information beyond that provided elsewhere in the application package, the applicant must include in this report all the additional information required.

Recipients must submit an update report for any change in previously disclosed sources and uses of funds as provided in Section I.D.5., above.

General Instructions — sources of funds

Each reportable source of funds must indicate:

a. The name and address, city, State, and zip code of the individual or entity making the assistance available. At least one organizational level below the agency name should be included. For example, U.S. Department of Transportation, U.S. Coast Guard; Department of Safety, Highway Patrol.

b. The program name and any relevant identifying numbers, or other means of identification, for the assistance.

c. The type of assistance (e.g., loan, grant, loan insurance).

Specific instructions — sources of funds.

(1) For programs administered by the Assistant Secretaries for Fair Housing and Equal Opportunity and Policy Development and Research, each source of funds must indicate the total amount of approved, and received; and must be listed in descending order according to the amount indicated.

(2) For programs administered by the Assistant Secretaries for Housing-Federal Housing Commissioner, Community Planning and Development, and Public and Indian Housing, each source of funds must indicate the total amount of funds involved, and must be listed in descending order according to the amount indicated.

(3) If Tax Credits are involved, the report must indicate all syndication proceeds and equity involved.

General instructions—uses of funds.

Each reportable use of funds must clearly identify the purpose to which they are to be put. Reasonable aggregations may be used, such as "total structure" to include a number of structural costs, such as roof, evevators, exterior masonry, etc.

Specific instructions – uses of funds.

(1) For programs administered by the Assistant Secretaries for Fair Housing and Equal Opportunity and Policy Development and Research, each use of funds must indicate the total amount of funds involved; must be broken down by amount committed, budgeted, and planned; and must be listed in descending order according to the amount indicated.

(ii) For programs administered by the Assistant Secretaries for Housing-Federal Housing Commissioner, Community Planning and Development, and Public and Indian Housing, each use of funds must indicate the total amount of funds involved and must be listed in descending order according to the amount involved.

(iii) If any program administered by the Assistant Secretary for Housing-Federal Housing Commissioner is involved, the report must indicate all uses paid from HUD sources and other sources, including syndication proceeds. Uses paid should include the following amounts.

AMPO
Architect's fee — design
Architect's fee — supervision
Bond premium
Builder's general overhead
Builder's profit
Construction interest
Consultant fee
Contingency Reserve
Cost certification audit fee
FHA examination fee
FHA inspection fee
FHA MIP
Financing fee
FNMA / GNMA fee
General requirements
Insurance
Legal — construction
Legal — organization
Other fees
Purchase price
Supplemental management fund
Taxes
Title and recording
Operating deficit reserve
Resident initiative fund
Syndication expenses
Working capital reserve
Total land improvement
Total structures

Uses paid from syndication must include the following amounts:

Additional acquisition price and expenses
Bridge loan interest
Development fee
Operating deficit reserve
Resident initiative fund
Syndication expenses
Working capital reserve

Footnotes:

1. All citations are to 24 CFR Part 12, which was published in the Federal Register on March 14, 1991 at 56 Fed. Reg. 11032.
2. A list of the covered assistance programs can be found at 24 CFR §12.30, or in the rules or administrative instructions governing the program involved. Note: The list of covered programs will be updated periodically.
3. Assistance means any contract, grant, loan, cooperative agreement, or other form of assistance, including the insurance or guarantee of a loan or mortgage, that is provided with respect to a specific project or activity under a program administered by the Department. The term does not include contracts, such as procurements contracts, that are subject to the Federal Acquisition Regulation (FAR) (48 CFR Chapter 1).
4. See 24 CFR §§12.32 (a)(2) and (3) for detailed guidance on how the threshold is calculated.
5. "Other government assistance" is defined to include any loan, grant, guarantee, insurance, payment, rebate, subsidy, credit, tax benefit, or any other form of direct or indirect assistance from the Federal government (other than that requested from HUD in the application), a State, or a unit of general local government, or any agency or instrumentality thereof, that is, or is expected to be made, available with respect to the project or activities for which the assistance is sought.
6. For further guidance on this criterion, and for a list of covered programs, see 24 CFR §12.50.
7. For purposes of Part 12, a person means an individual (including a consultant, lobbyist, or lawyer); corporation; company; association; authority; firm; partnership; society; State, unit of general local government, or other government entity, or agency thereof (including a public housing agency); Indian tribe; and any other organization or group of people.

Project Data On Occupancy, Displacement and Real Property Acquisition

U.S. Department of Housing and Urban Development
Office of Community Planning and Development

Note: This information (which may be included in other HUD forms) will assist HUD Community Planning and Development (CPD) staff in reviewing the application for a project and in determining technical assistance needs and monitoring requirements to ensure compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) and related program requirements. All projects for which real property will be acquired (or was recently acquired) and all projects involving property that is occupied (or was recently occupied) must be reviewed, whether the occupants are required to relocate permanently or have been notified that they will be permitted to remain on-site. Questions about the URA and requests for training or technical assistance should be addressed to the HUD CPD Relocation/ Realty Specialist in the Field Office administering the URA for the area in which the project is located.

General Project Information

1. Applicant Name and Address (Street, City, State and zip code)	2. Program/Project No., Name and Address (Street, City, State and zip code)

3. Has site control been secured? ☐ Yes ☐ No If Yes, explain how.

Project Occupancy and Relocation (Determine occupancy at the time of submission of application or date site identified, if later)

	No. of Units in Property	Units Occupied: Owner	Units Occupied: Tenant	Occupants to Move Permanently	Occupants to Remain: Total	Occupants to Remain: No. to be Temporarily Relocated
4. Residential						
5. Nonresidential						

6. Has anyone been forced to move from the site in the past 12 months? ☐ Yes ☐ No ☐ Unknown If Yes, explain.

7. Estimated cost of relocation: $	8. Source of funding	
9. Agency administering relocation	10. Contact person (Name)	Telephone Number (Include area code)

11. Description of relocation experience

Acquisition of Real Property

12. Estimated cost of acquisition: $	13. Source of funding	14. Number of parcels: Residential / Nonresidential
15. Name of acquiring entity:	16. Contact Person (Name)	Telephone Number (Include area code)

Remarks:

Completed by: (Name, title and organization)	Telephone Number (Include area code)	Date

EXHIBIT 9

Application for Federal Assistance

OMB Approval No. 0348-0043

1. Type of Submission: Application: ☐ Construction ☐ Non-Construction; Preapplication: ☐ Construction ☐ Non-Construction	2. Date Submitted	Applicant Identifier
	3. Date Received by State	State Application Identifier
	4. Date Received by Federal Agency	Federal Identifier

5. Applicant Information

Legal Name	Organizational Unit
Address (give city, county, State, and zip code):	Name, telephone number, and facsimile number of the person to be contacted on matters involving this application (give area codes)
6. Employer Identification Number (EIN):	7. Type of Applicant: (enter appropriate letter in box) ☐
8. Type of Application: ☐ New ☐ Continuation ☐ Revision; If Revision, enter appropriate letter(s) in box(es): ☐ ☐	A. State; B. County; C. Municipal; D. Township; E. Interstate; F. Intermunicipal; G. Special District; H. Independent School Dist.; I. State Controlled Institution of Higher Learning; J. Private University; K. Indian Tribe; L. Individual; M. Profit Organization; N. Other (Specify):
A. Increase Award B. Decrease Award C. Increase Duration D. Decrease Duration Other (specify):	9. Name of Federal Agency:
10. Catalog of Federal Domestic Assistance Number: ☐☐ – ☐☐☐ Title:	11. Descriptive Title of Applicant's Project:
12. Areas Affected by Project (cities, counties, States, etc.):	

13. Proposed Project: Start Date	Ending Date	14. Congressional Districts of: a. Applicant	b. Project

15. Estimated Funding:		16. Is Application Subject to Review by State Executive Order 12372 Process?
a. Federal	$ .00	a. Yes This preapplication/application was made available to the State Executive Order 12372 Process for review on: Date:
b. Applicant	$ .00	b. No ☐ Program is not covered by E.O. 12372
c. State	$ .00	or ☐ Program has not been selected by State for review.
d. Local	$ .00	17. Is the Applicant Delinquent on Any Federal Debt? ☐ Yes If "Yes," explain below or attach an explanation ☐ No
e. Other	$ .00	
f. Program Income	$ .00	
g. Total	$ .00	

18. To the best of my knowledge and belief, all data in this application/preapplication are true and correct, the document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.

a. Typed Name of Authorized Representative	b. Title	c. Telephone Number
d. Signature of Authorized Representative		e. Date Signed

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form SF-424 (4/92)
Prescribed by OMB Circular A-102

Instructions for the SF-424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Office of Management and Budget, Paperwork Reduction Project (0348-0043), Washington, D.C. 20503. Please do not return your completed form to the Office of Management and Budget; send it to the address provided by the sponsoring agency.

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item — Entry

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

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form SF-424 (4/92)
Prescribed by OMB Circular A-102

Disclosure of Lobbying Activities

EXHIBIT 10

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse side for instructions and public burden disclosure.)

Approved by OMB
0348-0046

1. Type of Federal Action:
☐ a. contract
☐ b. grant
☐ c. cooperative agreement
☐ d. loan
☐ e. loan guarantee
☐ f. loan insurance

2. Status of Federal Action:
☐ a. bid/offer/application
☐ b. initial award
☐ c. post-award

3. Report Type:
☐ a. initial filing
☐ b. material change

For Material Change Only:
year _____ quarter _____
date of last report _____

4. Name and Address of Reporting Entity:
☐ Prime ☐ Subawardee Tier _____, if known:

Congressional District, if known:

5. If Reporting Entity in No. 4 is Subawardee, enter Name and Address of Prime:

Congressional District, if known:

6. Federal Department/Agency:

7. Federal Program Name/Description:

CFDA Number, if applicable: _____

8. Federal Action Number, if known:

9. Award Amount, if known:
$

10a. Name and Address of Lobbying Entity
(if individual, last name, first name, MI):

b. Individuals Performing Services (including address if different from No. 10a.)
(last name, first name, MI):

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment (check all that apply):
$_____ ☐ actual ☐ planned

12. Form of Payment (check all that apply):
☐ a. cash
☐ b. in-kind; specify: nature _____
value _____

13. Type of Payment (check all that apply):
☐ a. retainer
☐ b. one--time fee
☐ c. commission
☐ d. contingent fee
☐ e. deferred
☐ f. other; specify:

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, Including officer(s), employee(s), or Member(s) contacted, for Payment indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semiannually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____

Print Name: _____

Title: _____

Telephone No.: _____ **Date:** _____

Federal Use Only:

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Standard Form-LLL

Instructions for Completion of SF-LLL, Disclosure of Lobbying Activities

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or any employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g. the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a).

Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box (es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contracted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public Reporting Burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

Disclosure of Lobbying Activities
Continuation Sheet

Approved by OMB
0348-0046

Reporting Entity: _____ Page _____ of _____

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Standard Form-LLL-A

[FR Doc. 95–13602 Filed 6–2–95; 8:45 am]
BILLING CODE 4210–27–C

[Docket No. N–95–3909; FR–3904–N–02]

Notice of Submission of Proposed Information Collection to OMB; Section 202 Supportive Housing for the Elderly—Application Submission Requirements

AGENCY: Office of Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of submission of proposed information collection section 202 supportive housing for the elderly—application submission requirements for FY 1995.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for expedited review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments must be received within seven (7) days from the date of this Notice. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone number (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the Department of Housing and Urban Development has submitted to OMB, for expedited processing, an information collection package with respect to the application submission requirements for the Section 202 Supportive Housing Program for the Elderly. HUD is requesting a seven-day OMB review of this information collection.

The funds for this project development and construction assistance, which are capital advances and project rental assistance contracts, were appropriated by the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1995, (Pub. L. 103–327, enacted September 28, 1994).

HUD intends to make available $510,518,387 in capital advance assistance which will produce approximately 7,409 units of supportive housing for the elderly. HUD also will make available sufficient project rental assistance funds to help cover the project's operating cost. These funds will be provided to private nonprofit organizations and nonprofit consumer cooperatives to expand the supply of supportive housing for the elderly.

This Section 202 application submission package describes the contents of the application package and includes the forms and other information an applicant needs to file an application. The Section 202 application consists of 11 exhibits which are evaluated by HUD to determine (1) the applicant's eligibility to participate in the program; (2) the applicant's ability (financially and administratively) to develop and operate the proposed project; (3) the need for the supportive housing in the area to be served; (4) the extent to which the applicant has site control; (5) the suitability of the site; (6) the adequacy of the provision of supportive services; (7) the adequacy of the proposed facility; and (8) that the applicant has properly certified to comply with the various governmental requirements, Executive Orders, etc.

The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35);

(1) the title of the information collection proposal;

(2) the office of the agency to collect the information;

(3) the description of the need for the information and its proposed use;

(4) the agency form number, if applicable;

(5) what members of the public will be affected by the proposal;

(6) how frequently information submission will be required;

(7) an estimate of the total number of hours needed to prepare the information submission including the number of respondents, frequency of response, and hours of response;

(8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and

(9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: May 24, 1995.

Jeanne K. Engel,

General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Section 202 Supportive Housing Program for the Elderly—Application Submission Requirements, FR–3904.

Office: Office of Assistant Secretary for Housing—Federal Housing Commissioner.

Description of the Need for the Information and Its Proposed Use: This information collection is required in connection with the application submission requirements for the Section 202 Supportive Housing Program for the Elderly. HUD intends to make available $510,518,387 in capital advance assistance to expand the supply of supportive housing for the elderly. This information collection describes the contents of the application package which is used by HUD to determine the acceptability of the requests for capital advance assistance.

Form Number: HUD–92015–CA

Respondents: Private Nonprofit Organizations and Nonprofit Consumer Cooperatives

Frequency of Submission: Annually

Reporting Burden:

	Number of respondents	Frequency of Response	Hours per response	Burden hours
Application package	600	1	41.3	22,500

Total Estimated Burden Hours: 22,500

Status: Reinstatement with Change

Contact: Margaret F. Milner, HUD (202) 708–4542; Joseph F. Lackey, Jr., OMB (202) 395–7316.

Dated: May 24, 1995.

Section 202 Application Submission Requirements OMB No. 2502–0267

A. Supporting Statement

1. Need for Information

The Section 202 program, amended by the National Affordable Housing Act (NAHA) of 1990 and the Housing and Community Development Act of 1992, provides capital advances to private nonprofit organizations and nonprofit consumer cooperatives to expand the supply of supportive housing for the elderly. In order to ensure that only eligible private nonprofit organizations and nonprofit consumer cooperatives are selected, it is important to obtain information from prospective applicants to assist HUD in determining if they have the administrative capacity to develop such a project and whether the project design and proposed services meet the needs of the residents. These factors are critical in meeting statutory requirements and in protecting the Department's financial interest in projects funded under this program.

In keeping with the Department's commitment to streamline the Section 202 application submission package, the Department met with representatives of Section 202 nonprofit organizations, housing consultants and other program staff to discuss ideas for revamping the Section 202 application submission package to make it less burdensome to Section 202 applicants without compromising the Federal Government's financial interest in the project.

More recently, the Department held two working group sessions to identify further ways to streamline the Section 202 program and make it more consumer friendly. The working groups consisted of Sponsors of Section 202 projects and HUD staff. Additionally, the Department conducted a Section 202 consumer forum in which program beneficiaries, primarily elderly residents and potential residents, expressed their concerns about the quality of living in existing Section 202 projects and provided ideas for improving the program and projects. The supporting justification as contained herein reflects the results of the Department's meetings and telephone conversations with the private sector and HUD program staff.

The Section 202 application submission package for the fund reservation was approved by OMB under No. 2502–0267 which expired in December 1994. The Department is requesting reinstatement of OMB No. 2502–0267 to permit the Department to collect the information identified in this submission.

The Department has an on-going commitment to identify ways to simplify the process by which the Section 202 program is administered (including the application submission requirements) so that it can be more consumer friendly. Because of this commitment, the Department wanted greater participation from the private sector in revising the program. To accomplish this, additional time was needed to arrange for and conduct the various working group sessions with the private sector and other program staff, and to evaluate the recommendations resulting from these sessions. As a result of this public-private effort, the Department was unable to make the final revisions to the application submission package prior to the OMB expiration date.

Based on our previous years' experience, the Department receives far more applications than available resources can fund. In Fiscal Year (FY) 1994, the Department received 492 applications requesting some 26,364 units of housing and could only select for funding 164 applications for some 7,819 units of housing.

Because the Department has continued to reduce program requirements at the fund reservation stage and because the program provides for capital advances (in lieu of loans), the Section 202 program is expected to attract more nonprofit organizations. It is anticipated that the number of applications received will exceed those received in FY 1994. In view of the highly competitive nature of the Section 202 program, it is necessary to have the responses comply with prescribed application requirements in order to form a basis for HUD's evaluation in selecting applications.

The application submission requirements, summarized below, were developed after much consultation with the professionals in the field of providing housing for the elderly and were intended to not only reduce the paperwork burden to the nonprofit applicants but to minimize their front-end expenditures in putting together an application package. This is important because only a small percentage of the universe of applications received ultimately are funded.

Contents of Application Package

The contents of the Application for a Section 202 Fund Reservation have been reorganized and reduced from five parts and 22 exhibits to four parts and 11 exhibits. Included with the 11 exhibits are six prescribed forms; five are required and one is optional.

There are 15 certifications in the application package. Eleven of the certifications have been combined into a single document as a convenience to the applicant. The four components of the application submission package are:

Part 1—Application for Section 202 Supportive Housing Capital Advance
Part 2—Sponsor's Ability to Develop and Operate the Proposed Project
Part 3—Need for Supportive Housing in Area to be Served, Extent to Which Sponsors has Site Control, and Suitability of Site; Adequacy of Provision of Supportive Services and of the Proposed Facility
Part 4—General Application requirements and Certifications

All of the required application exhibits are specifically identified in Section 889.270(b) of the Section 202 regulations, as amended.

2. The Section 202 application submission requirements are necessary to assist HUD in determining an applicant's eligibility and capacity to develop housing for the elderly consistent with prescribed statutory and program criteria. A thorough evaluation of an applicant's qualifications and capabilities is critical in protecting the Federal Government's financial interest and to mitigate any possibility of fraud, waste or mismanagement or public funds.

The procedures for information collection requires the prospective applicant to submit its Section 202 application to the appropriate local HUD Office by the nationally established deadline date (usually between March and June). Local HUD Office evaluate applications based on established criteria (identified in Section 889.300 of the regulations), rate the applications and make selection recommendations to Headquarters (usually by the first week of September). Applicants are notified of selection or nonselection generally by September 30. This process occurs once a year.

The purpose and use of the four components of the application exhibits are briefly described below:

(a) Part 1—Application for Section 202 Supportive Housing—Capital Advance

Exhibit 1: This exhibit requires applicants to submit Form HUD–92015–CA, Request for Section 202 Fund Reservation—Summary Information. This is a relatively new form which replaced Form HUD–92013, Application for Multifamily Housing Project, at the fund reservation stage. Form HUD–92015–CA was specifically designed to require the minimum information needed about the project for HUD review at this stage. The form identifies the applicant and its known development team members as well as collects basic information with regard to the proposed project's characteristics. It is used by HUD staff to obtain basic information regarding the proposed project. Since this Form is only used at the fund reservation stage, in the previous clearance submission to OMB, we requested that it be assigned the same OMB number as this submission (i.e., 2502–0267). It inadvertently was assigned OMB No. 2502–0462 which relates to the Section 811 application submission package.

(b) Part 2—Sponsor's Ability To Develop and Operate the Proposed Project

Exhibit 2: This exhibit requests the submission of organizational documents, IRS tax exemption ruling, and a Resolution, which also includes a listing of all officers and directors, concerning Conflict of Interest to assure that no officer or director has a financial interest in the project. It is important to note that not all applicants will have to submit all of the information asked for in this exhibit. Applicants who have received a Section 202 fund reservation within the last three funding cycles are not required to submit their organizational documents and IRS tax exemption rulings. Instead, these applicants must submit only the project numbers of their latest application and any modifications to these documents, if any.

Exhibit 3: This exhibit requests narrative descriptions of the applicant's experience in operating rental housing projects as well as its experience with programs other than housing such as the provisions of services. This information includes the applicant's experience in serving the elderly and minorities. This information will assist HUD in determining the applicant's over-all previous experience and capacity to operate the proposed project over an extended period of time. This is consistent with the statute which requires applicants to be selected on, among things, their ability to develop and operate the proposed housing.

In addition, the statute provides for the local coordination of services by requiring, among things, that applicants have management capacity to coordinate the provision of services and seek on a continuous basis new sources of assistance for the provision of supportive services tailored to the individual needs of the residents. In order to assess the applicant's ability to carry out these statutory requirements, the applicant is required to submit a statement evidencing its ties to the community, including minority support, in which the proposed project is to be built as well as a statement regarding its purposes and activities.

Under this part, the applicant also submits a narrative description of its contracting experience with minority and women-owned businesses pursuant to Executive Orders 11625, 12432 and 12138, as well as its efforts to involve elderly persons, including minority elderly persons, in the development of the application and its intent to involve such persons in the development of the project.

Included in this exhibit is a certified Resolution from the applicant's Board acknowledging its responsibilities of sponsorship and long-term support of the project, along with its willingness to fund the minimum capital investment, estimated start-up expenses, and the cost of any amenities or features that cannot be covered by the capital advance.

It is important to note that many applicants will experience some relief of paperwork burden in preparing this exhibit because applicants that have participated in prior funding competitions will be able to utilize information and exhibits from previously prepared applications. Some examples include information regarding previous experience in the provision of housing and services, supportive services plan, community ties, and experiences serving minorities.

(c) Part 3—Need for Supportive Housing in Area to be Served, Extent to Which Sponsor has Site Control, and Suitability of Site; Adequacy of Provision of Supportive Services and of the Proposed Facility

Exhibit 4: This exhibit requests information pertaining to the categories of elderly persons to be served, proposed site (including environmental condition of the site), proposed design of the facility, provision of supportive services, and demand for the proposed housing. Also, the applicant must include a map showing the racial composition and location of facilities and services of the area where the project is to be located and Form HUD–92013E, Supplemental Application Processing Form—Housing for the Elderly (OMB No. 2502–0232).

Information relative to the site and proposed residents is necessary to assure that the proposed site is acceptable from an environmental and locational standpoint for the intended use and the applicant has control of the site as well as can obtain proper zoning. In addition, the information is needed to determine the market needs and demand for supportive housing for the elderly in the area to be served by the proposed project.

Form HUD–92013E is used by the applicant to identify supportive services, if any, to be provided to proposed residents of the housing. In granting the previous approval to collect information under 2502–0267, OMB conditioned the approval on the correction of two forms, one, of which, was Form HUD–92013E. OMB specified that the Department must accurately reflect the burden in the disclosure statement. The disclosure statement for this form is contained on the top of the second page and it reflects 8 burden hours. The reporting of 8 burden hours is correct for this form and this submission package has been revised to reflect 8 burden hours for this form.

In addition to describing the proposed services, the applicant provides information about (1) any public or private sources of assistance expected to fund the proposed services; (2) the manner in which the services will be provided; (3) the building design and how the design will facilitate the delivery of services and accommodate the changing needs of the residents; and (4) how and if the proposed project will promote energy efficiency, including any innovative construction or rehabilitation methods.

This information is evaluated to determine the adequacy of the provision of such services and how such services will be funded; how the services and building design will meet the identified needs of the residents as well as accommodate the aging in place of the residents over the years. This is important because the NAHA requires HUD to ensure that supportive services are provided which are tailored to the needs of the type of elderly persons (including the frail elderly) occupying the housing. HUD funds (Project Rental Assistance Contract funds) may be used to cover a small portion (15 percent) of the cost for such services. The balance of the service cost must be provided from other sources.

Information with respect to the promotion of an energy efficient building design will be used to assist HUD in determining compliance with the energy efficiency standards in accordance with Section 109 of NAHA. The information required under this Exhibit is in accordance with the NAHA.

(d) Part 4—General Application Requirements and Certifications

Exhibit 5: To assist HUD in determining if the applicant is over-

committed, the applicant submits for HUD's review a list of all Section 202 and Section 811 applications submitted for the current fiscal year funding round, and a list of projects previously funded which have not finally closed. This is information that an applicant that participated in a prior year can easily update, if necessary, and resubmit for the current year.

Exhibit 6: Form HUD–2880, Applicant/Recipient Disclosure/Update Report (OMB No. 2525–0101), is required by Section 102 of the HUD Reform Act of 1989. The applicant uses this form to disclose any other government assistance that may be provided in connection with the proposed project as well as to report its Social Security Numbers or Employee Identification Numbers. this information assists HUD to ensure that the applicant does not receive more assistance than is necessary to develop and operate the proposed project.

Exhibit 7. This exhibit is a certification, to be completed by the Section 202 applicant, that the application was submitted to the State for its review or that the State was contacted and it was determined that a State review was not required. This certification is required by OMB in accordance with Executive Order 12372.

Exhibit 8. This is a Guide Form, titled Project Data on Occupancy, Displacement and Real Property Acquisition (Form HUD–40087), and its use is *optional.* An applicant, at its option, may use to report information relative to the acquisition of property and the relocation or displacement of occupants in cases where the applicant proposes to acquire property which is occupied. This information is consistent with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Act of 1970, as amended.

In granting the previous approval to collect information under 2502–0267, OMB conditioned the approval on the correction of two forms, one, of which, was Form HUD–40087. OMB specified that the Department must accurately reflect the burden in the disclosure statement. This form is exempt from the burden disclosure requirements because it is only a "guide" form to be used at the option of the applicant. It is only included in the application package as a convenience to the applicant. The applicant is not required to submit this form. The information regarding any relocation activities may be submitted in narrative form.

Exhibit 9. Information requested on Form SF–424, Application for Federal Assistance (OMB No. 0348–0043), serves a dual purpose. Pursuant to Executive Order 12372, the applicant submits this form to the State which is used by the State to initiate the intergovernmental review process. The applicant also uses the form to certify that it is not delinquent on any Federal debt which is an OMB requirement.

Exhibit 10. The applicant provides the Form SF–LLL, Disclosure of Lobbying Activities (OMB No. 0348–0046), to indicate if other than federally appropriated funds have been or will be used to lobby the Executive or Legislative branches of the Federal Government pursuant to Title 31 U.S.C., Section 1352.

Exhibit 11. This exhibit represents the consolidation of the following ten certifications into a single document, thereby requiring one signature for all. These certifications are required by governmental actions, Executive Orders, etc. and are used to review the applicant's intent to comply with the (1) Civil Rights, Fair Housing and Equal Opportunity laws; (2) Drug-Free Workplace Act; (3) HUD's design and cost standards including the Uniform Federal Accessibility Standards and Section 504 of the Rehabilitation Act of 1973; (4) acquisition relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended; (5) requirement to form an Owner after issuance of the capital advance; (6) Davis-Bacon Act Provisions; (7) requirement that the project be consistent with the Consolidated Plan for the appropriate jurisdiction; (8) Flood Disaster Protection Act of 1973; (9) National Environmental Policy Act; (10) Anti-Lobbying Prohibition; and (11) requirement regarding the truth and accuracy of the information contained in the application.

Included in this exhibit also is a guide format for use by the public official responsible for developing the Consolidated Plan to indicate whether or not the proposed activities are consistent with the Consolidated Plan or the previous year's Comprehensive Housing Affordability Strategy (CHAS) if the Consolidated Plan has not yet started.

In the absence of collecting the above information, the Department would not be able to assess the worthiness of the applications, determine whether the facilities and services meet statutory and regulatory requirements, or make sound judgements regarding the potential risk to the Government.

3. Each fiscal year (near the beginning of the funding cycle), HUD issues a Notice pertaining to application submission requirements. During this process, the Department reevaluates the application submission requirements to identify ways to reduce the burden to the applicants. Because the Section 202 program had changed drastically when it was converted to a capital advance program, the Department made major revisions to the application package at that time. More recently, in response to feedback from the professionals in the field of developing Section 202 housing, the Department made further major changes to streamline the program. This has resulted in less paperwork for the applicants. Therefore, in revising the application package, consideration was given to modifying it to require the minimum of information needed by HUD to conduct the program in accordance with the NAHA, statutory and regulatory requirements and, at the same time, to establish a selection system which is equitable to all participants. The information described under Item 2 above represents the minimum information acceptable to HUD. Further, as mentioned in Item No. 2 above, many applicants will experience a tremendous relief from paperwork burden because they will not have to spend time preparing "new" information to complete an Exhibit. In some cases, those applicants that have participated in this program in the past will be able to utilize previously submitted information.

4. No duplication exists, as there are no other forms or exhibits used for the purposes specified under Item 2 herein. Individual applications are evaluated and rated by HUD on the merits of the responses submitted with the application. Each application is unique. The information contained in each application relates to a particular Sponsor proposing a specific project, design, site, etc., and, as such, the information collected from applicants will be significantly different per application.

Also, the Department implemented a new requirement which relieves a previously funded applicant of the burden of submitting certain documents (e.g., the organization's Articles of Incorporation, By-Laws and IRS tax exemption ruling). Further, since FY 1991 when the program was converted to a capital advance program, HUD has been reviewing and modifying the application submission requirements to assure that only necessary information is being requested of applicants. HUD has taken into consideration suggestions made by the private sector in modifying the application submission requirements.

5. Due to the highly competitive nature of the Section 202 program, the application submission requirements were developed in a way to minimize the front-end cost to the nonprofit applicant and only require the minimum amount of information needed in HUD's evaluation. This is important due to the fact that only a small percentage of the universe of applications received ultimately get selected. For example, although applicants may still obtain the services of a housing consultant, information on the consultant is no longer required to be submitted at this stage. HUD review and approval of the consultant will be done at a later stage and only for those projects which are ultimately selected for funding.

Also, eliminated at the fund reservation stage is the submission of Form HUD–92530, regarding the applicant's previous participation in HUD programs and Form HUD–92013 Supplement, Supplement to Application for Multifamily Housing Project. The submission and review of these forms have been deferred to a subsequent processing stage. Sponsors no longer have to submit sketches of the site plans which included typical unit and floor plans, making it unnecessary for an applicant to have to obtain input from an architect at this stage. Other major documents recently eliminated at this stage are the applicants's financial statements and a narrative description of the applicant's financial history. The elimination of these documents will result in a tremendous relief of paperwork burden to small and minority applicants.

The Department has consolidated several of the certification forms into a single document for the applicant's convenience.

Also, the Department has prepared sample Application Packages which include all the required forms and materials necessary to put together an Application Package. The sample Application Packages will be made available to all applicants well in advance of the deadline date for submission of applications.

Local HUD Offices are required to conduct workshops to provide needed guidance to applicants in preparing the application packages. In an effort to assist the small sponsoring organizations as well as first-time applicants, HUD staff also conducts pre-workshops especially designed for them.

In addition to the above, HUD recognizes that some applicants, who are sincerely interested in providing housing, may lack the staff and other resources to develop such a project. Therefore, in recognition of the need for these applicants to use the services of professional housing consultants, HUD permits a reasonable fee for consultant's services to be included in the Section 202 capital advance. The consultant may assist the applicant in preparing the Application Package to request a Section 202 Capital Advance and throughout the final development of the project should the applicant be selected for funding.

6. Currently, the information collection activities occur annually to coincide with the receipt of annual fiscal year appropriations for the program. Each year, Congress appropriates funds with which to select new applications. HUD, in turn, invites applications and makes selections based on the funds available for the year. These funds are normally exhausted at the end of each fiscal year. The Section 202 regulations require HUD to publish a Notice of Fund Availability (NOFA) in the **Federal Register** when such funds are made available by Congress. The regulations also require HUD to specify a deadline date for receipt of applications. In order for HUD to accept an application, the application must have been submitted in response to a specific NOFA and Invitation requesting such an application and by the closing date stated in the Invitation. As the funding cycle for the program occurs annually, including the Invitations for Applications, it is not possible to require the submission of this information less frequently.

7. Part 5 CFR 1320.6 lists 10 items that OMB will not approve for information collection, unless it can be demonstrated that the collection of information is necessary to satisfy statutory requirements or other substantial need.

This request for information is consistent with the guidelines under 5 CFR 1320.6 with the exception of one item. Subparagraph (c) of the above CFR indicates OMB's disapproval of requiring respondents to submit more than an original and two copies of any document. HUD requires applicants to submit an original and four copies of the Section 202 Application. The changes to the application submission requirement resulted in a better organized Application Package. As the program is administered on an annual basis, processing of the application must be accomplished in an expeditious manner in order that decisions regarding selections of applications and reservations of funds can be made prior to the end of the fiscal year (September 30).

During the course of processing the applications, eight HUD technical disciplines are involved in the review process: staff from Valuation, Architectural and Engineering, Housing Management, Fair Housing and Equal Opportunity, Economic and Market Analysis, Community Planning and Development, the Multifamily Housing Representative and the Office Counsel. These HUD staff members are required to comment on the approvability of each application received.

Because of the (1) various HUD staff involved in the review process, (2) tremendous volume of applications received each fiscal year, and (3) the commitment to obligate funds by the fiscal year-end, HUD requires concurrent reviews of the applications by the aforementioned HUD staff to assure prompt processing with minimum interruption. For example, additional information or clarification is often needed from applicants to permit HUD to make a fair and complete review. The requirement for simultaneous reviews promotes a more efficient, time-saving method to provide applicants a single notification regarding all deficiencies noted as a result of a full review from each HUD technical discipline.

HUD needs more than an original and two copies of the application in order to carry out the above procedures for concurrent reviews.

8. This OMB request is the result of on-going telephone conversations, meetings and workshops HUD staff recently held with Section 202 nonprofit Sponsors, housing consultants, elderly residents and potential residents, and other interested HUD program staff. The Department consulted with various housing professionals representing the types of Sponsors that generally participate in the Section 202 program; i.e., minority organizations, small organizations and nonminority organizations. Following is a list of some of the housing professionals (Housing Consultants and Section 202 Sponsors) that HUD consulted with by telephone, meetings and/or workshop sessions:

Judy Ponds, Housing Services, 1234 4th Street SW., Washington, DC 20024, (202) 488–1639

Sam Simmons, National Center on Black Aged, 1424 K Street NW., Suite 500, Washington, DC 20005, (202) 637–8400

Nick Smyrnis, AHEPA Management Corp., 7202 N. Shadeland Ave., Indianapolis, IN, (317) 845–3410

Jane Graf, Mercy Charities Housing, 1028A Howard Street, San Francisco, CA 94103, (415) 487–6825

Mark Olshan, B'nai B'rith, 1640 Rhode Island Avenue, NW., Washington, DC 20036, (202) 857–6580
Alan Patricio, P.O. Box 53274, Atlanta, GA 30355, (404) 237–9877
Joe Howell, 815 15th Street NW., Washington, DC 20005, (202) 393–3044
Randy Speaker, Bank IV Towers, 534 Kansas Avenue, Suite 910, Topeka, KS 66603, (913) 232–8338
Harrison Joseph, Nat'l Baptist Convention, 338 Washington Street, Newark, OH 43005, (614) 258–7998
Tom Slemmer, Nat'l Church Residences, 2335 N. Bank Drive, (614) 451–2151
Don Redfoot, American Assn. for Retired Persons, 601 E Street NW., Washington, DC 20049, (202) 434–2277
Jose Fabregas, CODEC, Inc., 300 SW 12th Street, Suite A, Miami FL 33130, (305) 642–1361.

Additionally, inasmuch as this OMB request is submitted in accordance with 24 CFR 889.270, as amended, the promulgation procedure for regulations allows sufficient participation by outside agency contacts to review and comment on the application materials.

9. HUD does not assure confidentiality.

10. The application submission requirements do not contain any sensitive questions.

11. *Provide estimates of annualized cost to the Federal Government and to the respondents.*

(a) *Estimate of Cost to Federal Government:* Inasmuch as the majority of the work involved in reviewing the applications is performed at the local HUD Office level, the significant costs attributable to the promulgation of the application requirements will be the cost involved in reviewing the information submitted by applicants. Outstanding program procedures require the following reviews performed by the various Field Office staff. The cost to the Federal Government is based on an average salary at the GS–12 level, except for the Office Counsel and the Clerical Assistant which is at the GS–14 and GS–7 levels, respectively. Also, included is the cost associated with the preparation and printing of the HUD Application Package for use by the applicants in putting together their individual Application Packages.

Reviews

HUD staff	Total time per application (hours)	Hourly rate	Total
Multifamily housing representative	3	$22	$66
Architectural	1	22	22
Valuation	3	22	66
Economic and market analysis	1	22	22
Fair housing and equal opportunity	1	22	22
Housing management	1	22	22
Community planning and development	1	22	22
Field office counsel	3	31	93
Clerical assistant	0.5	13	6.5
Total staff time—per application	14.5	.....	$341.5
Total annual number of responses	.....	.....	*×600
Total annual staff time cost to government	.....	.....	204,900
Other cost for all applications:			
Printing/reproducing HUD application package (600 copies)	.....	.....	700
Postage (600 copies × $3.00)	.....	.....	1,800
Multifamily Clearinghouse (Mailing Services)	.....	.....	**5,000
Total other cost	.....	.....	7,500
Total estimated annual cost to government	.....	.....	212,400

*See Item 12 below for an explanation.
**The Department now utilizes the services of a Multifamily Clearinghouse to maintain a national mailing list for Section 2020 Applications and to mail out the applications. Most applicants will receive their packages through the mail. However, some applicants will be handed copies of the Application Packages at the HUD-held workshops.

(b) *Estimate of cost to Respondents:* In estimating the cost to the applicants, it should be noted that in order to comply with the revised program requirements, the applicant may retain an attorney. In addition, as many nonprofit organizations do not have in-house expertise or a staff to develop an application, a housing consultant is usually hired by the applicant. The applicant is a nonprofit organization and as such provides its services at no cost. In view of this, the following illustrates the estimated cost to the public:

Housing consultant ($40 per hour)	$1,092
Applicant (sponsor)	(**)
Attorney	1,000
Total cost per respondent	2,092
Total annual number of responses	*×600
Total estimated annual cost for all applicants	1,255,200

*See Item 12 below for an explanation.
**Probono.

This reflects no change in the cost to the applicant from the previous OMB submission. Beginning this year, the Department is requiring the applicant to include as part of Exhibit 4 information about the environmental condition of the proposed site. An adjustment was made to take into consideration the additional time and cost that will be incurred by the applicant to inspect the proposed site for this purpose. Also, an adjustment was made to the burden hour time associated with Form HUD–92013E, Supplemental Application Processing Form—Housing for the Elderly, to comply with OMB's conditions for approval. However, these adjustments (increases) are offset by the reduction of burden hour time associated with the elimination of the financial documents.

It should be noted that many professionals work on a retainer basis and if the application does not obtain HUD approval, they do not collect a fee. The figures presented above are based on our own experience, as well as consultation with housing professionals in the field.

12. Although for Fiscal Year 1994 HUD received approximately 500 Section 202 applications, it is anticipated that because the Department has further simplified the application submission requirements coupled with the fact that the program provides capital advances in lieu of loans, the number of applicants will increase beyond the Fiscal Year 1994 level. It is anticipated that the level of activity will average 600 applications annually over the next three years. Although the program funding cycle is on an annual basis, each prospective applicant could submit more than one application. However, our estimate of time involved in based on one application per applicant.

To assist the applicant in putting together an Application for a Fund Reservation, the Department developed an Application Package consisting of the information, forms and materials needed by the applicant to assemble an application. The HUD Application Package, which will be made available to all applicants, is expected to aid in reducing the applicant's and housing consultant's time and effort in putting together an application.

Given the above and using the categories presented in the illustration in Item 11(b) above, the estimated amount of hours involved in developing a complete application submission is as follows:

	Hours
Housing consultant	27.3
Attorney	2.0
Applicant (sponsor)	12.0
Total	41.3

These figures are based on HUD's experience, as well as consultation with housing professionals in the field.

This reflects a slight decrease (1 hour) from the previous OMB submission (from 42.3 to 41.3 hours). This represents the net result of adjusting the burden time associated with Form HUD–92013E, the exhibit regarding project information to include an environmental review of the site by the applicant and the elimination of the applicant's financial documents.

A Tabulation of Annual Reporting Burden is shown in Table 1. It should be noted that Exhibits 4, 6, 9 and 10 already have OMB clearances as shown in the Table. These information collections are common to many of our programs and our request for clearance was calculated to include the burden associated for all program uses. The burden shown in Table 1 for Exhibits 4, 6, 9 and 10, therefore, reflects our estimate applicable to the Section 202 program. No adjustment to the previously cleared Exhibits 4, 6, 9 and 10 is required.

13. The primary reduction of 6,377 in the total burden hours (from 28,877 to 22,500) is due to a change in information requested in the application, specifically, the elimination of the financial documents, and a decrease in the number of applicants (from 788 to 600) expected to submit applications this fiscal year. A minor adjustment to the applicant's burden time (associated with Exhibit 4) was made to include the additional time an applicant will need to perform an environmental inspection of the proposed site. In the past, most applicants would generally inspect the site to determine its acceptability for developing a project for the elderly, which included inspecting it for potential environmental problems. However, because the Department is specifically requiring that an environmental inspection be performed, we have adjusted the applicant's burden time to include this function. An adjustment also was made to Form HUD–92013E to provide for the 8 hour burden time as reported in the disclosure statement on the form. However, in view of the elimination of the financial documents and the decrease in applicant participation, the net result is a reduction in total burden hours.

15. Not applicable.

B. Collections of Information Employing Statistical Methods.

Not applicable.

BILLING CODE 4210–27–M

TABLE 1 - TABULATION OF ANNUAL REPORTING BURDEN

DESCRIPTION OF INFORMATION COLLECTION (APPLICATION SUBMISSION REQUIREMENTS) (2502-0267)		SECTION OF CFR AFFECTED	NUMBER OF RESPONDENTS	NUMBER OF RESPONSES PER RESPONDENT	TOTAL ANNUAL RESPONSES	HOURS PER RESPONSE	TOTAL HOURS
PART 1: Exhibit 1,	Form HUD-92015-CA (OMB 2502-0267)*	889.270(b)(1)	600	1	600	.5	300
PART 2: Exhibit 2,	Evidence of Sponsor's Nonprofit Status	889.270(b)(2)	600	1	600	2.0	1200
• Exhibit 3,	Description of Purpose, Community Ties and Experience	889.270(b)(9)(10)(11)(12)(13)	600	1	600	8.0	4800
PART 3: Exhibit 4,	Project Information Form HUD-92013E (OMB 2502-0232)	889.270(b)(16)(17)(18)(19)(20)	600	1	600	21.5	12900
PART 4: Exhibit 5,	Statement on Other 202 or 811 Applications Submitted and Funded Projects	889.270(b)14)	600	1	600	2.0	1200
• Exhibit 6,	Form HUD-2880, Applicant Disclosure Report (OMB 2525-0101)	889.270(b)15)	600	1	600	2.5	1500
• Exhibit 7,	Certification on EO 12372	889.270(b)(4)	600	1	600	0.4	240
• Exhibit 8,	Guide Form to Report Data on Project Displacement and Real Property Acquisition (Form HUD-40087)	889.270(b)(7)	30**	1	30	4.0	120

DESCRIPTION OF INFORMATION COLLECTION (APPLICATION SUBMISSION REQUIREMENTS) (2502-0267)		SECTION OF CFR AFFECTED	NUMBER OF RESPONDENTS	NUMBER OF RESPONSES PER RESPONDENT	TOTAL ANNUAL RESPONSES	HOURS PER RESPONSE	TOTAL HOURS
PART 4: Exhibit 9,	Form SF-424, Application for Federal Assistance (OMB 0348-0043)	EXEMPT PER 5 CFR PART 1320					
• Exhibit 10,	Form SF-LLL, Disclosure of Lobbying Activities (OMB 0348-0046)	EXEMPT PER 5 CFR PART 1320					
• Exhibit 11,	Certifications (Includes Consolidated Plan Certification From Local Public Official)	889.270(b)(8)	600	1	600	0.4	240
	TOTALS		600	1	600	41.3	22,500

* Form HUD-92015-CA was assigned OMB No. 2502-0462 in error; however, it should have been assigned OMB No. 2502-0267 which is the OMB number for this clearance package. Refer to the narrative justification for an explanation.

** Based on experience, no more than 5 percent of the proposals will involve relocation.

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PART I - APPLICATION FOR SECTION 202 SUPPORTIVE HOUSING - CAPITAL ADVANCE — PAGE

EXHIBIT 1: Form HUD-92015-CA, Application for Section 202 Supportive Housing Capital Advance ____

PART II - SPONSOR'S ABILITY TO DEVELOP AND OPERATE THE PROPOSED PROJECT

EXHIBIT 2: Legal Status of each Nonprofit or Consumer Cooperative Sponsor:

a. Articles of Incorporation (or other organizational documents) ____

b. By-laws ____

c. IRS Tax Exemption Ruling ____

d. Conflict of interest Resolution ____

[NOTE: SPONSORS WHO HAVE RECEIVED A SECTION 202 FUND RESERVATION WITHIN THE LAST THREE FUNDING CYCLES ARE NOT REQUIRED TO SUBMIT THE DOCUMENTS DESCRIBED IN (a), (b), and (c), ABOVE. INSTEAD, SPONSORS MUST SUBMIT THE PROJECT NUMBER OF THE LATEST APPLICATION AND THE HUD OFFICE TO WHICH IT WAS SUBMITTED. IF THERE HAVE BEEN ANY MODIFICATIONS OR ADDITIONS TO THE SUBJECT DOCUMENTS, INDICATE SUCH, AND SUBMIT THE NEW MATERIAL.]

EXHIBIT 3: Sponsor's purpose, community ties and experience:

(a) A description of Sponsor's purposes and activities, ties to the community and minority support and how long it has been in existence (include any additional related information); ____

(b) A description of Sponsor's housing and/or supportive services experience. The description should include any rental housing projects and/or medical facilities, sponsored, owned and operated by the Sponsor, the Sponsor's past or current involvement in any programs other than housing that demonstrates the Sponsor's management capabilities and experience and the Sponsor's experience in serving the elderly and/or families and minorities; ____

(c) A description of Sponsor's experience in contracting with minority and women-owned businesses including a summary of the total amount awarded in each of the two categories for the preceding three years and the percentage that amount represents of all contracts awarded by the Sponsor in the relevant time period; ____

(d) A certified Board Resolution ____

(e) Description, if applicable, of the Sponsor's efforts to involve elderly persons, including minority elderly persons, in the development of the application as well as its intent to involve elderly persons in the development of the project. (Bonus) ____

PART III - NEED FOR SUPPORTIVE HOUSING IN THE AREA TO BE SERVED, EXTENT TO WHICH THE SPONSOR HAS SITE CONTROL, AND SUITABILITY OF SITE; ADEQUACY OF PROVISION OF SUPPORTIVE SERVICES AND OF THE PROPOSED FACILITY

EXHIBIT 4: Project information

(a) Evidence of need for supportive housing ____

(b) Description of the project which includes:

(1) Narrative description of the building design including a description of any special design features and community space, and how this design will facilitate the delivery of services in an economical fashion and accommodate the changing needs of the residents over the next 10-20 years. ____

(2) Describe if and how the project will promote energy efficiency and if applicable, innovative construction or rehabilitation methods or technologies to be used that will promote efficient construction ____

(c) Evidence of site control and permissive zoning:

(1) Evidence that the Sponsor has entered into a legally binding option agreement to buy or lease the proposed site ____

(2) Evidence that the project as proposed is permissible under applicable zoning ordinances or regulations ____

(3) Narrative description of site and area surrounding the site, characteristics of neighborhood, how the site will promote greater housing opportunities for minorities, and any other information that impacts on the suitability of the site for the elderly ____

(4) A map showing the location of the site and the racial composition of the neighborhood, with the area of racial concentration delineated ____

(5) A Transaction Screen Process and a Phase I Environmental Site Assessment ____

(d) Provision of supportive services and proposed facility:

(1) A detailed description of the supportive services proposed to be provided to the anticipated occupancy ____

(2) Form HUD 92013E, Supplemental Application Processing Form - Housing for the Elderly. Identify all supportive services, if any, to be provided to the persons occupying such housing ____

(3) A description of public or private sources of assistance that reasonably could be expected to fund the proposed services ____

(4) The manner in which such services will be provided to such persons (i.e., on or off-site), including, whether a service coordinator will facilitate the adequate provision of such services, and how the services will meet the identified needs of the residents ____

PART IV - GENERAL APPLICATION REQUIREMENTS/CERTIFICATIONS

EXHIBIT 5: A list of the applications, if any, the Sponsor has submitted or is planning to submit to any other EUD Office in response to this NOFA or the NOFA for Supportive Housing for Persons with Disabilities. Also, a list of prior year projects which have not been finally closed ____

EXHIBIT 6: HUD-2880, Applicant/Recipient Disclosure/Update Report, including Social Security Numbers and Employee Identification Numbers ____

EXHIBIT 7: E.O. 12372 ____

EXHIBIT 8: Form HUD-40087, Project Data on Occupancy Displacement and Real Property Acquisition:

(a) identify all persons (families, individuals, businesses and nonprofit organizations (identified by race/minority group, and status as owners or tenants) occupying the property on the date of submission of the application ____

(b) indicate the estimated cost of relocation payments and other services ____

(c) identify the staff organization that will carry out the relocation activities. ____

EXHIBIT 9: Standard Form 424 ____

EXHIBIT 10: Standard Form LLL, Disclosure of Lobbying Activities ____

EXHIBIT 11: Sponsor Certifications ____

Supportive Housing for the Elderly
Section 202
Application for Capital Advance
Summary Information

U.S. Department of Housing and Urban Development
Office of Housing
Federal Housing Commissioner

EXHIBIT 1

OMB Approval No. 2502-0267(exp.12/31/94)

Public Reporting Burden for this collection of information is estimated to average .5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2502-0462), Washington, D.C. 20503. Do not send this completed form to either of these addressees.

HUD Use Only | 202 Project Number: | PRAC Number:

1. Sponsor's Name(s), Address(es) & TelephoneNumber (s):

2. Minority Sponsor Designation: A minority sponsor is one in which at least 51 percent of the board members are minority.
Is this sponsor a minority applicant? ☐ Yes ☐ No
Codes: 2 - Black; 3 - Native American; 4 - Hispanic; 5 - Asian Pacific; 6 - Asian Indian; 7 - Hasidic Jewish
If yes, identify by numeric code as shown above: ☐

3a. Address of Site:

3b. Will project be located within the boundaries of a Federally designated Empowerment Zone,Urban Supplemental Empowerment Zone, Enterprise Community or Urban Enhanced Enterprise Community?
☐ Yes ☐ No
If yes, name zone/community?_____
Contact local HUD office to determine boundaries of zones/communities.

4. Congressional District:

5. Type of Area: ☐ Metropolitan ☐ Non-metropolitan

6. Capital Advance Amount Requested: $

7. Project Rental Assistance Contract Amount Requested: $

8a. Total No. of Units:

8a. Number & Type of Resident Units Proposed: ☐ Efficiency ☐ One bedroom

8b. Resident Manager's Unit: (check appropriate type) ☐ Efficiency ☐ One bedroom ☐ Two bedroom

9. Number of Buildings:

10. Type of Project: ☐ New Construction ☐ Rehabilitation ☐ Acquisition (RTC) Year Built: ☐

11. Type of Building(s): ☐ Row/Townhouse ☐ Walkup ☐ Elevator ☐ Semi-detached ☐ Detached

12. Number of Stories:

13. Number of Parking Spaces:

14. Check utilities and services not included in the rent and to be paid directly by the tenant:
☐ Electric ☐ Heat ☐ Water ☐ Gas

15. Off-Site Facilities:

	Public	At Site	Feet from Site:
Water	☐	☐	
Sewer	☐	☐	
Paving	☐	☐	
Gas	☐	☐	
Electric	☐	☐	

16. Community Facilities to be Included in Project:

17 Unusual Site Features:
☐ None ☐ Cuts ☐ Fill ☐ Erosion ☐ Other (specify)
☐ Poor Drainage ☐ Retaining Walls ☐ Rock Foundations ☐ High Water Table

18. Mark one box
☐ Consultant ☐ Agent ☐ Authorized Representative

Name, Address & Telephone Number:

19. Sponsor's Attorney: (name, address & telephone number)

By: (Signature of Sponsor's Authorized Representative)

X

Type in Name:

Type in Title:

Supplemental Application and Processing Form
Housing For The Elderly/Disabled

U.S. Department of Housing and Urban Development
Office of Housing
Federal Housing Commissioner

EXHIBIT 4(d)(2)

See Instructions on pages 2 & 3

OMB Approval No. 2502-0232 (exp. 11/30/95)

Project Name | ☐ Congregate ☐ Mixed ☐ Non-Congregate | Project Number

A. Non-Rent Congregate Living Space — Area Square Feet

1. Congregate Kitchen and Dining	
2. Lobbies	
3. Community Room	
4. Hobby Shop	
5. Infirmary or Health Facility	
6. Other	
7. Other	
8. Total Square Feet	

B. Project Composition

1. Number of Bedrooms	2. Total No. of Units	3. No. of Units With Kitchens	4. No. of Units with Kitchenettes
0-Bedroom Units			
1-Bedroom Units			
2-Bedroom Units			

C. Food Service

	Annual Expense Sponsor	HUD
1. Payroll		
Number of cooks _____ x salary $ _____	$	$
Number of waitresses _____ x salary $ _____	$	$
Number of helpers _____ x salary $ _____	$	$
2. Food Cost	$	$
3. Supplies	$	$
4. Dining Room Furniture Exp.		
a. Repl. Res: 10% x Equip. Cost $ _____	$	$
b. Int. on Inv: ____% Int. Rate x Cost $ _____	$	$
c. Maintenance and Repairs	$	$
5. Other (Specify)	$	$
6. Other (Specify)	$	$
7. Total Food Service Expense	$	$
8. Average No. of Persons Serviced _____		
9. Proposed Charge per Person per Month	$	$
10. No. of Meals per Person per Day _____		

D. Maid Service

	Annual Expense Sponsor	HUD
1. Payroll		
Number of maids _____ x salary $ _____	$	$
2. Supplies	$	$
3. Other (Specify)	$	$
4. Other (Specify)	$	$
5. Total Maid Service	$	$
6. Average Number of Units Using Service _____	$	$
7. Proposed Charge per Unit per Month	$	$

E. Health Service

	Annual Expense Sponsor	HUD
1. Nursing Payroll		
Number of Nurses _____ x salary $ _____	$	$
2. Equipment Expense:		
a. Repl. Res: 10% x Equipment Cost $ _____	$	$
b. Int. on Inv.: ____% Int. Rate x Cost $ _____	$	$
c. Maintenance and Repairs	$	$
3. Medical Supplies	$	$
4. Utilities	$	$
5. Laundry Service	$	$
6. Other (Specify)	$	$
7. Total Health Service	$	$
8a. No. of Beds in Infirmary _____		
8b. No. of Persons Serviced _____		
9. Proposed Charge per Mo. per Patient _____ per Person _____	$	$

F. Furniture in Units

	Annual Expense Sponsor	HUD
1. Furniture Exp. when Leased	$	$
2. Furniture Exp. If Not Leased:		
a. Repl. Res: 10% x Furniture Cost $ _____	$	$
b. Int. on Inv: ____ % Int. Rate x Cost $ _____	$	$
3. Total Furniture Expense	$	$
4. Number of Units Furnished _____	$	$
5. Proposed charge per unit per month to cover furniture rent	$	$

G. Other Non-Shelter Services

	Annual Expense Sponsor	HUD
1. Program & Activities Payroll	$	$
2. Other (Specify)	$	$
3. Other (Specify)	$	$
4. Chg. per Person (Unit) for Item 1	$	$
4. Chg. per Person (Unit) for Item 2	$	$
6. Chg. per Person (Unit) for Item 3	$	$

Official Use Only

H. Remarks & Signatures

Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)
The above estimates in "Sponsor" column for Sections C through G represent estimates of income and expense in non-shelter budgets.

Signed | Date | ☐ Sponsor, ☐ Mortgagor, ☐ Borrower, ☐ Owner

Valuation Processor | Date | Reviewer | Date

Public reporting burden for this collection of information is estimated to average 8.0 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2502-0232), Washington, D.C. 20503. Do not send this completed form to either of the above addressees.

Instructions

General

Form HUD-92013E must accompany form HUD-92013, Application–Project Mortgage Insurance, for each project intended to provide housing for the elderly or the disabled.

Preparation of the forms HUD-92013 and HUD-92013E must separate the budget for shelter (and utilities included in the rent) from other budgets concerned with supplying services other than shelter, such as food service, main service, program and recreation service, rented furniture, and any other non-shelter services which may be planned. The non-shelter budgets concerned with supplying food, furniture, maid service, and other personal services are shown on the form HUD-92013E.

All non-shelter services and amenities offered with a charge to the tenant and as a condition of occupancy must be identified on this form. Special circumstances regarding items to be included in an amenity package such as additional charges for additional persons that cannot be readily shown on this form must be explained on an addendum sheet to the form HUD-92013E.

Form HUD-92013E must accompany all requests for feasibility analysis, conditional and firm commitments.

Definitions

An elderly person is defined as one who is age 62 or over. A disabled person is one whose impairment (a) is expected to be of continued and indefinite duration; (b) substantially impedes his ability to live independently; and (c) is such that his ability to live independently could be improved by more suitable housing. (See appropriate program regulations for more detailed definitions.)

Congregate Housing is designed for persons, normally well and ambulatory, who prefer residential accommodations but need some assistance in day-to-day living. While not a nursing or medical facility, it offers services that protect residents and provide for their needs.

Congregate housing projects have a central dining room generally serving three meals a day, with emergency room service available. There are common areas for lounges, recreation, special activities; limited housekeeping and laundry services may be provided. Some projects have an infirmary with personnel qualified to control and administer medications.

Instructions

Projects having congregate dining facilities with only kitchenettes in the living units, are checked in the box marked "Congregate." Projects having no congregate dining facilities, but having full sized kitchens in the living units are checked in the box marked "Non-Congregate." Projects having congregate dining facilities and having some living units with complete sized kitchens, are checked in the box marked, "Mixed."

Section A. Non-Rent Congregate Living Space Areas

Enter the net area, in square feet, for various kinds of non-rent congregate living space shown, such as, congregate kitchen and dining, lobbies, community rooms, hobby shop, infirmaries, or other non-rented common buildings area. When plans are available, these net areas should be calculated from the plans. Congregate dining facilities should be large enough to serve the probable total number of diners within a single meal period, but not necessarily at a single sitting. The number of diners shall be estimated to include all of the occupants of the units having kitchenettes only, plus a reasonable portion of the occupants of units with full kitchens.

Section B. Project Composition

For each number of bedrooms enter in Column 2 the total number of units. In Column 3, enter the number of units with complete kitchens. In Column 4, enter the number of units with kitchenettes only.

Non-Shelter Income and Expense Budgets.

Sections C through G contain budgets of income and expense for furnishing various non-shelter services. The sponsor enters his estimates of items of income and expense for each budget in the column headed "Sponsor," thus using form HUD-92013E as a supplemental application form. Subsequently, copies of the same form will be used as a processing form, with HUD personnel entering estimates in the Column headed, "HUD."

Section C. Food Service: Annual Expenses.

Line C-1–Estimate the number of cooks times the average annual salary. The number of waitresses, and other employees needed to operate the dining room are also estimated to arrive at payroll, including payroll tax. When the food service operation is large or complex, a detailed explanation of kinds of staff, numbers of employees, rates of pay, payroll tax, and total payroll for food service, should be shown in an attachment. The annual food cost and cost of supplies is also entered.

Line C-4a–Dining room furniture expense includes an annual reserve for replacement of dining room furniture and equipment. Estimate the replacement reserve by multiplying furniture cost by 10%.

Line C-4b–Return on investment in dining room furniture and equipment is estimated by multiplying the furniture cost by the market interest rate for similar investments.

Line C-4c–Enter the estimated annual allowance for maintenance and repairs to the furniture.

Line C-7–Show the total annual food service expense.

Line C-8–Estimate the probable number of tenants customarily using the congregate dining facility.

Line C-9–Enter the proposed charge per person per month for food service. This charge should be sufficient to provide an annual income at least 3% more than the total food service expense estimated in Line C-7. If a food service concessionaire is contemplated, the proposed terms of the concession shall be completely explained in an attachment.

Line C-10–Enter the number of meals per person per day covered by the proposed food service charge.

Section D. Maid Service: Annual Expense.

Line D-1–Enter the number of mains multplied by the average annual salary to result in annual payroll.

Line D-2–Enter the annual expense for cleaning supplies.

Line D-3 and 4–If clean sheets are to be provided as part of this service, the word "Laundry" is entered after "other" followed by the annual amount of this expense. Enter other expenses of supplying maid service.

Line D-5–Enter the sum of Lines D-1 through D-4. This represents total maid service expense.

Line D-6–Enter the estimated number of units using this service.

Line D-7–Enter the proposed charge per unit to cover this service.

Section E. Health Service: Annual Expense.

Line E-1–Enter the anticipated number of nurses needed times the average salary including payroll tax. If the health service operation is large or complex, the sponsor should submit a more detailed estimate of health service payroll in an attachment.

Line E-2–Equipment expenses includes an annual reserve for replacement of beds and other furniture and equipment in the infirmary.

Line E-2a– Estimate the replacement reserve by multiplying equipment cost by 10%.

Line E-2b–Return on investment in equipment is estimated by multiplying the furniture cost by the market interest rate for similar investments.

Line E-2c–Enter the estimated annual allowance for maintenance and repairs to the equipment.

Line E-3, 4, 5, and 6–Enter the annual amounts to be expended for medical supplies, utilities, laundry or linen service, and other expenses of the health service facility.

Line E–Enter the sum of lines E-1 through E-6. This represents total health service expense.

Line E-8– Enter the number of beds in the infirmary.

Line E-9–Enter the average number of patients in the infirmary.

Line E-10–Enter the proposed charge per patient or per person. Indicate method of payment.

Section F. Furniture in Living Units.

Line F-1–Indicate the amount of total annual payments to the leasing company when furniture for some or all of the living units is obtained by the mortgagor by leasing it.

Line F-2a–The renting of furniture by tenant must be optional and not a condition of occupancy. For those units in which the project owns the furniture, furniture expense includes an annual reserve for replacement of living unit furniture. Estimate the replacement reserve by multiplying furniture cost by 10%.

Line F-2b–Return on investment in furniture is estimated by multiplying furniture cost by the market interest rate for similar investments.

Line F-2–Enter the estimated annual allowance for maintenance and repairs to the furniture.

Line F-3–Enter the Total Furniture Expense.

Line F-4–Indicate the number of units furnished by the mortgagor.

Line F-5–Enter the proposed charge per unit per month to cover the furniture expense.

Section G. Other Non-Shelter Services

Line G-1–Enter the salaries of persons employed to furnish guidance and recreation during the leisure time of the resident's occupancy in the project.

Lines G-2 and G-3–Enter the amounts covering any other service or facility included in the proposal that would contribute to the health, comfort and recreation of elderly persons, and specify.

Lines G-4, 5 and 6–Enter the charges per person or unit for the respective service of facility.

Section H. Remarks and Signatures

Self Explanatory.

Applicant/Recipient Disclosure/Update Report

U.S. Department of Housing and Urban Development
Office of Ethics

EXHIBIT 6

3/31/95

OMB Approval No. 2535-0101 (exp. 10/31/94)

Instructions. (See Public Reporting Statement and Privacy Act Statement and detailed instructions on page 4.)

Part I Applicant/Recipient Information Indicate whether this is an Initial Report ☐ or an Update Report ☐

1. Applicant/Recipient Name, Address, and Phone (include area code) | Social Security Number or Employer ID Number

2. Project Assisted/ to be Assisted (Project/Activity name and/or number and its location by Street address, City, and State)

3. Assistance Requested/Received	4. HUD Program	5. Amount Requested/Received $

Part II. Threshold Determinations – Applicants Only

1. Are you requesting HUD assistance for a specific project or activity, as provided by 24 CFR Part 12, Subpart C, and have you received, or can you reasonably expect to receive, an aggregate amount of all forms of covered assistance from HUD, States, and units of general local government, in excess of $200,000 during the Federal fiscal year (October 1 through September 30) in which the application is submitted? ☐ Yes ☐ No

If Yes, you must complete the remainder of this report.

If No, you must sign the certification below and answer the next question.

I hereby certify that this information is true. (Signature) _____ Date _____

2. Is this application for a specific housing project that involves other government assistance? ☐ Yes ☐ No

If Yes, you must complete the remainder of this report.

If No, you must sigh this certification.

I hereby certify that this information is true. (Signature) _____ Date _____

If your answers to both questions are No, you do not need to complete Parts III, IV, or V, but you must sign the certification at the end of the report.

Part III. Other Government Assistance Provided/Requested

Department/State/Local Agency Name and Address	Program	Type of Assistance	Amount Requested/Provided

Is there other government assistance that is reportable in this Part and in Part V, but that is reported only in Part V? ☐ Yes ☐ No

If there is no other government assistance, you must certify that this information is true.

I hereby certify that this information is true. (Signature) _____ Date _____

form HUD-2880 (3/92)
ref. Sec 102, HRA 1989; PL. 101 - 235

Part IV. Interested Parties

Alphabetical list of all persons with a reportable financial interest in the project or activity (for individuals, give the last name first)	Social Security Number or Employee ID Number	Type of Participation in Project/Activity	Financial Interest in Project/Activity ($ and %)

If there are no persons with a reportable financial interest, you must certify that this information is true.

I hereby certify that this information is true. (Signature) _____ Date _____

form HUD-2880 (3/92)
ref. Sec 102, HRA 1989; PL. 101 - 235

Part V. Report on Expected Sources and Uses of Funds

Source	

If there are no sources of funds, you must certify that this information is true.

I hereby certify that this information is true. (Signature)_____ Date _____

Use	

If there are no uses of funds, you must certify that this information is true.

I hereby certify that this information is true. (Signature)_____ Date _____

Certification

Warning: If you knowingly make a false statement on this form, you may be subject to civil or criminal penalties under Section 1001 of Title 18 of the United States Code. In addition, any person who knowingly and materially violates any required disclosure of information, including intentional non-disclosure, is subject to civil money penalty not to exceed $10,000 for each violation.

I certify that this information is true and complete.

Signature	Date

Public reporting burden for this collection of information is estimated to average 2.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2535-0101), Washington, D.C. 20503. Do not send this completed form to either of these addressees.

Privacy Act Statement. Except for Social Security Numbers (SSNs) and Employer Identification Numbers (EINs), the Department of Housing and Urban Development (HUD) is authorized to collect all the information required by this form under section 102 of the Department of Housing and Urban Development Reform Act of 1989, 42 U.S.C. 3531. Disclosure of SSNs and EINs is optional. The SSN or EIN is used as a unique identifier. The information you provide will enable HUD to carry out its responsibilities under Sections 102(b), (c), and (d) of the Department of Housing and Urban Development Reform Act of 1989, Pub. L. 101-235, approved December 15, 1989. These provisions will help ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. They will also help ensure that HUD assistance for a specific housing project under Section 102(d) is not more than is necessary to make the project feasible after taking account of other government assistance. HUD will make available to the public all applicant disclosure reports for five years in the case of applications for competitive assistance, and for generally three years in the case of other applications. Update reports will be made available along with the disclosure reports, but in no case for a period generally less than three years. All reports, both initial reports and update reports, will be made available in accordance with the Freedom of Information Act (5 U.S.C. §552) and HUD's implementing regulations at 24 CFR Part 15. HUD will use the information in evaluating individual assistance applications and in performing internal administrative analyses to assist in the management of specific HUD programs. The information will also be used in making the determination under Section 102(d) whether HUD assistance for a specific housing project is more than is necessary to make the project feasible after taking account of other government assistance. You must provide all the required information. Failure to provide any required information may delay the processing of your application, and may result in sanctions and penalties, including imposition of the administrative and civil money penalties specified under 24 CFR §12.34.

Note: This form only covers assistance made available by the Department. States and units of general local government that carry out responsibilities under Sections 102(b) and (c) of the Reform Act must develop their own procedures for complying with the Act.

Instructions (See Note 1 on last page.)

I. Overview. Subpart C of 24 CFR Part 12 provides for (1) initial reports from applicants for HUD assistance and (2) update reports from recipients of HUD assistance. An overview of these requirements follows.

A. Applicant disclosure (initial) reports: General. All applicants for assistance from HUD for a specific project or activity must make a number of disclosures, if the applicant meets a dollar threshold for the receipt of covered assistance during the fiscal year in which the application is submitted. The applicant must also make the disclosures if it requests assistance from HUD for a specific housing project that involves assistance from other governmental sources.

Applicants subject to Subpart C must make the following disclosures:

Assistance from other government sources in connection with the project,

The financial interests of persons in the project,

The sources of funds to be made available for the project, and

The uses to which the funds are to be put.

B. Update reports: General. All recipients of covered assistance must submit update reports to the Department to reflect substantial changes to the initial applicant disclosure reports.

C. Applicant disclosure reports: Specific guidance. The applicant must complete all parts of this disclosure form if **either** of the following **two** circumstances in paragraph 1. or 2., below, applies:

1.a. Nature of Assistance. The applicant submits an application for assistance for a specific project or activity (See Note 2) in which:

HUD makes assistance available to a recipient for a specific project or activity; or

HUD makes assistance available to an entity (other than a State or a unit of general local government), such as a public housing agency (PHA), for a specific project or activity, where the application is required by statute or regulation to be submitted to HUD for any purpose; **and**

b. Dollar Threshold. The applicant has received, or can reasonably expect to receive, an aggregate amount of all forms of assistance (See Note 3) from HUD, States, and units of general local government, in excess of $200,000 during the Federal fiscal year (October 1 through September 30) in which the application is submitted. (See Note 4)

2. The applicant submits an application for assistance for a specific housing project that involves other government assistance. (See Note 5) Note: There is no dollar threshold for this criterion: **any** other government assistance triggers the requirement. (See Note 6)

If the Application meets **neither** of these two criteria, the applicant need only complete Parts I and II of this report, as well as the certification at the end of the report. If the Application meets **either** of these criteria, the applicant must complete the entire report.

The applicant disclosure report must be submitted with the application for the assistance involved.

D. Update reports: Specific guidance. During the period in which an application for covered assistance is pending, or in which the assistance is being provided (as indicated in the relevant grant or other agreement), the applicant must make the following additional disclosures:

1. **Any** information that should have been disclosed in connection with the application, but that was omitted.

2. Any information that would have been subject to disclosure in connection with the application, but that arose at a later time, including information concerning an interested party that now meets the applicable disclosure threshold referred to in Part IV, below.

3. For changes in previously disclosed other government assistance:

For programs administered by the Assistant Secretary for Community Planning and Development, any change in other government assistance that exceeds the amount of such assistance that was previously disclosed by $250,000 or by 10 percent of the assistance (whichever is lower).

For all other programs, any change in other government assistance that exceeds the amount of such assistance that was previously disclosed.

4. For changes in previously disclosed financial interests, any change in the amount of the financial interest of a person that exceeds the amount of the previously disclosed interests by $50,000 or by 10 percent of such interests (whichever is lower).

5. For changes in previously disclosed sources or uses of funds:

a. For programs administered by the Assistant Secretary for Community Planning and Development:

Any change in a source of funds that exceeds the amount of all previously disclosed sources of funds by $250,000 or by 10 percent of those sources (whichever is lower); and

Any change in a use of funds under paragraph (b)(1)(iii) that exceeds the amount of all previously disclosed uses of funds by $250,000 or by 10 percent of those uses (whichever is lower).

b. For all programs, other than those administered by the Assistant Secretary for Community Planning and Development:

For projects receiving a tax credit under Federal, State, or local law, any change in a source of funds that was previously disclosed.

For all other projects, any change in a source of funds that exceeds the lower of:

The amount previously disclosed for that source of funds by $250,000, or by 10 percent of the amount previously disclosed for that source, whichever is lower; or

The amount previously disclosed for all sources of funds by $250,000, or by 10 percent of the amount previously disclosed for all sources of funds, whichever is lower.

c. For all programs, other than those administered by the Assistant Secretary for Community Planning and Development:

For projects receiving a tax credit under Federal, State, or local law, any change in a use of funds that was previously disclosed.

For all other projects, any change in a use of funds that exceeds the lower of:

The amount previously disclosed for that use of funds by $250,000, or by 10 percent of the amount previously disclosed for that use, whichever is lower; or

The amount previously disclosed for all uses of funds by $250,000, or by 10 percent of the amount previously disclosed for all uses of funds, whichever is lower.

Note: Update reports must be submitted within 30 days of the change requiring the update. The requirement to provide update reports only applies if the application for the underlying assistance was submitted on or after the effective date of Subpart C.

II. Line-by-Line Instructions.

A. Part I. Applicant/Recipient Information.

All applicants for HUD assistance specified in Section I.C.1.a., above, as well as all recipients required to submit an update report under Section I.D., above, must complete the information required by Part I. The applicant/recipient must indicate whether the disclosure is an initial or an update report. Line-by-line guidance for Part I follows:

1. Enter the full name, address, city, State, zip code, and telephone number (including area code) of the applicant/recipient. Where the applicant/recipient is an individual, the last name, first name, and middle initial must be entered. Entry of the applicant/recipient's SSN or EIN, as appropriate, is optional.

2. Applicants enter the name and full address of the project or activity for which the HUD assistance is sought. Recipients enter the name and full address of the HUD-assisted project or activity to which the update report relates. The most appropriate government identifying number must be used (e.g., RFP No.; IFB No.; grant announcement No.; or contract, grant, or loan No.) Include prefixes.

3. Applicants describe the HUD assistance referred to in Section I.C.1.a. that is being requested. Recipients describe the HUD assistance to which the update report relates.

4. Applicants enter the HUD program name under which the assistance is being requested. Recipients enter the HUD program name under which the assistance, that relates to the update report, was provided.

5. Applicants enter the amount of HUD assistance that is being requested. Recipients enter the amount of HUD assistance that has been provided and to which the update report relates. The amounts are those stated in the application or award documentation. NOTE: In the case of assistance that is provided pursuant to contract over a period of time (such as project-based assistance under section 8 of the United States Housing Act of 1937), the amount of assistance to be reported includes all amounts that are to be provided over the term of the contract, irrespective of when they are to be received.

Note: In the case of Mortgage Insurance under 24 CFR Subtitle B, Chapter II, the mortgagor is responsible for making the applicant disclosures, and the mortgagee is responsible for furnishing the mortgagor's disclosures to the Department. Update reports must be submitted directly to HUD by the mortgagor.

Note: In the case of the Project-Based Certificate program under 24 CFR Part 882, Subpart G, the owner is responsible for making the applicant disclosures, and the PHA is responsible for furnishing the owner's disclosures to HUD. Update reports must be submitted through the PHA by the owner.

B. Part II. Threshold Determinations — Applicants Only

Part II contains information to help the applicant determine whether the remainder of the form must be completed. **Recipients filing Update Reports should not complete this Part.**

1. The first question asks whether the applicant meets the Nature of Assistance and Dollar Threshold requirements set forth in Section I.C.1. above.

If the answer is Yes, the applicant must complete the remainder of the form. If the answer is No, the form asks the applicant to certify that its response is correct, and to complete the next question.

2. The second question asks whether the application is for a specific housing project that involves other government assistance, as described in Section I.C.2. above.

If the answer is Yes, the applicant must complete the remainder of the form. If the answer is No, the form asks the applicant to certify that its response is correct.

If the answer to both questions1 and 2 is No, the applicant need not complete Parts III, IV, or V of the report, but must sign the certification at the end of the form.

C. Part III. Other Government Assistance.

This Part is to be completed by both applicants filing applicant disclosure reports and recipients filing update reports. Applicants must report any other government assistance involved in the project or activity for which assistance is sought. Recipients must report any other government assistance involved in the project or activity, to the extent required under Section I.D.1., 2., or 3., above.

Other government assistance is defined in note 5 on the last page. For purposes of this definition, other government assistance is expected to be made available if, based on an assessment of all the circumstances involved, there are reasonable grounds to anticipate that the assistance will be forthcoming.

Both applicant and recipient disclosures must include all other government assistance involved with the HUD assistance, as well as any other government assistance that was made available before the request, but that has continuing vitality at the time of the request. Examples of this latter category include tax credits that provide for a number of years of tax benefits, and grant assistance that continues to benefit the project at the time of the assistance request.

The following information must be provided:

1. Enter the name and address, city, State, and zip code of the government agency making the assistance available. Include at least one organizational level below the agency name. For example, U.S. Department of Transportation, U.S. Coast Guard; Department of Safety, Highway Patrol.

2. Enter the program name and any relevant identifying numbers, or other means of identification, for the other government assistance.

3. State the type of other government assistance (e.g., loan, grant, loan insurance).

4. Enter the dollar amount of the other government assistance that is, or is expected to be, made available with respect to the project or activities for which the HUD assistance is sought (applicants) or has been provided (recipients).

If the applicant has no other government assistance to disclose, it must certify that this assertion is correct.

To avoid duplication, if there is other government assistance under this Part and Part V, the applicant/recipient should check the appropriate box in this Part and list the information in Part V, clearly designating which sources are other government assistance.

D. Part IV. Interested Parties.

This Part is to be completed by both applicants filing applicant disclosure reports and recipients filing update reports.

Applicants must provide information on:

(1) All developers, contractors, or consultants involved in the application for the assistance or in the planning, development, or implementation of the project or activity and

(2) any other person who has a financial interest in the project or activity for which the assistance is sought that exceeds $50,000 or 10 percent of the assistance (whichever is lower).

Recipients must make the additional disclosures refferred to in Section I.D.1.,2., or 4, above.

Note: A financial interest means any financial involvement in the project or activity, including (but not limited to) situations in which an individual or entity has an equity interest in the project or activity, shares in any profit on resale or any distribution of surplus cash or other assets of the project or activity, or receives compensation for any goods or services provided in connection with the project or activity. Residency of an individual in housing for which assistance is being sought is not, by itself, considered a covered financial interest.

The information required below must be provided.

1. Enter the full names and addresses of all persons referred to in paragraph (1) or (2) of this Part. If the person is an entity, the listing must include the full name of each officer, director, and principal stockholder of the entity. All names must be listed alphabetically, and the names of individuals must be shown with their last names first.

2. Entry of the Social Security Number (SSN) or Employee Identification Number (EIN), as appropriate, for each person listed is optional.

3. Enter the type of participation in the project or activity for each person listed: i.e., the person's specific role in the project (e.g., contractor, consultant, planner, investor).

4. Enter the financial interest in the project or activity for each person listed. The interest must be expressed both as a dollar amount and as a percentage of the amount of the HUD assistance involved.

If the applicant has no persons with financial interests to disclose, it must certify that this assertion is correct.

5. Part V. Report on Sources and Uses of Funds. This Part is to be completed by both applicants filing applicant disclosure reports and recipients filing update reports.

The applicant disclosure report must specify all expected sources of funds — both from HUD and from any other source — that have been, or are to be, made available for the project or activity. Non-HUD sources of funds typically include (but are not limited to) other government assistance referred to in Part III, equity, and amounts from foundations and private contributions. The report must also specify all expected uses to which funds are to be put. All sources and uses of funds must be listed, if, based on an assessment of all the circumstances involved, there are reasonable grounds to anticipate that the source or use will be forthcoming.

Note that if any of the source/use information required by this report has been provided elsewhere in this application package, the applicant need not repeat the information, but need only refer to the form and location to incorporate it into this report. (It is likely that some of the information required by this report has been provided on SF 424A, and on various budget forms accompanying the application.) If this report requires information beyond that provided elsewhere in the application package, the applicant must include in this report all the additional information required.

Recipients must submit an update report for any change in previously disclosed sources and uses of funds as provided in Section I.D.5., above.

General Instructions — sources of funds

Each reportable source of funds must indicate:

a. The name and address, city, State, and zip code of the individual or entity making the assistance available. At least one organizational level below the agency name should be included. For example, U.S. Department of Transportation, U.S. Coast Guard; Department of Safety, Highway Patrol.

b. The program name and any relevant identifying numbers, or other means of identification, for the assistance.

c. The type of assistance (e.g., loan, grant, loan insurance).

Specific instructions — sources of funds.

(1) For programs administered by the Assistant Secretaries for Fair Housing and Equal Opportunity and Policy Development and Research, each source of funds must indicate the total amount of approved, and received; and must be listed in descending order according to the amount indicated.

(2) For programs administered by the Assistant Secretaries for Housing-Federal Housing Commissioner, Community Planning and Development, and Public and Indian Housing, each source of funds must indicate the total amount of funds involved, and must be listed in descending order according to the amount indicated.

(3) If Tax Credits are involved, the report must indicate all syndication proceeds and equity involved.

General instructions—uses of funds.

Each reportable use of funds must clearly identify the purpose to which they are to be put. Reasonable aggregations may be used, such as "total structure" to include a number of structural costs, such as roof, evevators, exterior masonry, etc.

Specific instructions -- uses of funds.

(1) For programs administered by the Assistant Secretaries for Fair Housing and Equal Opportunity and Policy Development and Research, each use of funds must indicate the total amount of funds involved; must be broken down by amount committed, budgeted, and planned; and must be listed in descending order according to the amount indicated.

(ii) For programs administered by the Assistant Secretaries for Housing-Federal Housing Commissioner, Community Planning and Development, and Public and Indian Housing, each use of funds must indicate the total amount of funds involved and must be listed in descending order according to the amount involved.

(iii) If any program administered by the Assistant Secretary for Housing-Federal Housing Commissioner is involved, the report must indicate all uses paid from HUD sources and other sources, including syndication proceeds. Uses paid should include the following amounts.

AMPO
Architect's fee — design
Architect's fee — supervision
Bond premium
Builder's general overhead
Builder's profit
Construction interest
Consultant fee
Contingency Reserve
Cost certification audit fee
FHA examination fee
FHA inspection fee
FHA MIP
Financing fee
FNMA / GNMA fee
General requirements
Insurance
Legal — construction
Legal — organization
Other fees
Purchase price
Supplemental management fund
Taxes
Title and recording
Operating deficit reserve
Resident initiative fund
Syndication expenses
Working capital reserve
Total land improvement
Total structures

Uses paid from syndication must include the following amounts:

Additional acquisition price and expenses
Bridge loan interest
Development fee
Operating deficit reserve
Resident initiative fund
Syndication expenses
Working capital reserve

Footnotes:

1. All citations are to 24 CFR Part 12, which was published in the Federal Register on March 14, 1991 at 56 Fed. Reg. 11032.
2. A list of the covered assistance programs can be found at 24 CFR §12.30, or in the rules or administrative instructions governing the program involved. Note: The list of covered programs will be updated periodically.
3. Assistance means any contract, grant, loan, cooperative agreement, or other form of assistance, including the insurance or guarantee of a loan or mortgage, that is provided with respect to a specific project or activity under a program administered by the Department. The term does not include contracts, such as procurements contracts, that are subject to the Federal Acquisition Regulation (FAR) (48 CFR Chapter 1).
4. See 24 CFR §§12.32 (a)(2) and (3) for detailed guidance on how the threshold is calculated.
5. "Other government assistance" is defined to include any loan, grant, guarantee, insurance, payment, rebate, subsidy, credit, tax benefit, or any other form of direct or indirect assistance from the Federal government (other than that requested from HUD in the application), a State, or a unit of general local government, or any agency or instrumentality thereof, that is, or is expected to be made, available with respect to the project or activities for which the assistance is sought.
6. For further guidance on this criterion, and for a list of covered programs, see 24 CFR §12.50.
7. For purposes of Part 12, a person means an individual (including a consultant, lobbyist, or lawyer); corporation; company; association; authority; firm; partnership; society; State, unit of general local government, or other government entity, or agency thereof (including a public housing agency); Indian tribe; and any other organization or group of people.

form HUD-2880 (3/92)
ref. Sec 102. HRA 1989; P.L. 101 - 235

Project Data On Occupancy, Displacement and Real Property Acquisition

U.S. Department of Housing and Urban Development
Office of Community Planning and Development

OPTIONAL (GUIDE FORM)

EXHIBIT 8

Note: This information (which may be included in other HUD forms) will assist HUD Community Planning and Development (CPD) staff in reviewing the application for a project and in determining technical assistance needs and monitoring requirements to ensure compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) and related program requirements. All projects for which real property will be acquired (or was recently acquired) and all projects involving property that is occupied (or was recently occupied) must be reviewed, whether the occupants are required to relocate permanently or have been notified that they will be permitted to remain on-site. Questions about the URA and requests for training or technical assistance should be addressed to the HUD CPD Relocation/Realty Specialist in the Field Office administering the URA for the area in which the project is located.

General Project Information

1. Applicant Name and Address (Street, City, State and zip code)

2. Program/Project No., Name and Address (Street, City, State and zip code)

3. Has site control been secured? ☐ Yes ☐ No If Yes, explain how.

Project Occupancy and Relocation (Determine occupancy at the time of submission of application or date site identified, if later)

	No. of Units in Property	Units Occupied: Owner	Units Occupied: Tenant	Occupants to Move Permanently	Occupants to Remain: Total	Occupants to Remain: No. to be Temporarily Relocated
4. Residential						
5. Nonresidential						

6. Has anyone been forced to move from the site in the past 12 months? ☐ Yes ☐ No ☐ Unknown If Yes, explain.

7. Estimated cost of relocation: $	8. Source of funding	
9. Agency administering relocation	10. Contact person (Name)	Telephone Number (Include area code)

11. Description of relocation experience

Acquisition of Real Property

12. Estimated cost of acquisition: $	13. Source of funding	14. Number of parcels: Residential / Nonresidential
15. Name of acquiring entity:	16. Contact Person (Name)	Telephone Number (Include area code)

Remarks:

Completed by: (Name, title and organization)	Telephone Number (Include area code)	Date

form HUD-40057 (9/91)
ref. Handbook 1374

Application for Federal Assistance

EXHIBIT 9

OMB Approval No. 0348-0043

1. Type of Submission:		2. Date Submitted	Applicant Identifier
Application ☐ Construction ☐ Non-Construction	Preapplication ☐ Construction ☐ Non-Construction	3. Date Received by State	State Application Identifier
		4. Date Received by Federal Agency	Federal Identifier

5. Applicant Information	
Legal Name	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)
6. Employer Identification Number (EIN):	7. Type of Applicant: (enter appropriate letter in box) ☐ A. State H. Independent School Dist. B. County I. State Controlled Institution of Higher Learning C. Municipal J. Private University D. Township K. Indian Tribe E. Interstate L. Individual F. Intermunicipal M. Profit Organization G. Special District N. Other (Specify):
8. Type of Application: ☐ New ☐ Continuation ☐ Revision If Revision, enter appropriate letter(s) in box(es): ☐ ☐ A. Increase Award B. Decrease Award C. Increase Duration D. Decrease Duration Other (specify):	9. Name of Federal Agency:
10. Catalog of Federal Domestic Assistance Number: Title:	11. Descriptive Title of Applicant's Project:
12. Areas Affected by Project (cities, counties, states, etc.):	

13. Proposed Project: Start Date	Ending Date	14. Congressional Districts of: a. Applicant	b. Project

15. Estimated Funding:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. Total	$	.00

16. Is Application Subject to Review by State Executive Order 12372 Process?

a. Yes. This preapplication/application was made available to the State Executive Order 12372 Process for review on:

Date: _____

b. No. ☐ Program is not covered by E.O. 12372

☐ or Program has not been selected by State for review.

17. Is the Applicant Delinquent on Any Federal Debt?

☐ Yes If "Yes," attach an explanation ☐ No

18. To the best of my knowledge and belief, all data in this application/preapplication are true and correct, the document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.

a. Typed Name of Authorized Representative	b. Title	c. Telephone Number
d. Signature of Authorized Representative		e. Date Signed

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Form SF-424 (4/88)
Prescribed by OMB Circular A-102

Instructions for the SF-424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item 1. Self-explanatory.

Item 2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).

Item 3. State use only (if applicable).

Item 4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

Item 5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

Item 6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

Item 7. Enter the appropriate letter in the space provided.

Item 8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
- "New" means a new assistance award.
- "Continuation" means an extension for an additional funding budget period for a project with a projected completion date.
- "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

Item 9. Name of Federal agency from which assistance is being requested with this application.

Item 10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.

Item 11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item 12. List only the largest political entities affected (e.g., State, counties, cities).

Item 13. Self-explanatory.

Item 14. List the applicant's Congressional District and any District(s) affected by the program or project.

Item 15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

Item 16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

Item 17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

Item 18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

Form SF-424 (4/88)
Prescribed by OMB Circular A-102

Disclosure of Lobbying Activities

EXHIBIT 10

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse side for instructions and public burden disclosure.)

Approved by OMB
0348-0046

1. Type of Federal Action:
☐ a. contract
☐ b. grant
☐ c. cooperative agreement
☐ d. loan
☐ e. loan guarantee
☐ f. loan insurance

2. Status of Federal Action:
☐ a. bid/offer/application
☐ b. initial award
☐ c. post-award

3. Report Type:
☐ a. initial filing
☐ b. material change
For Material Change Only:
year _____ quarter _____
date of last report _____

4. Name and Address of Reporting Entity:
☐ Prime ☐ Subawardee Tier _____, if known:

Congressional District, if known:

5. If Reporting Entity in No. 4 is Subawardee, enter Name and Address of Prime:

Congressional District, if known:

6. Federal Department/Agency:

7. Federal Program Name/Description:

CFDA Number, if applicable: _____

8. Federal Action Number, if known:

9. Award Amount, if known:
$

10a. Name and Address of Lobbying Entity
(if individual, last name, first name, MI):

b. Individuals Performing Services (including address if different from No. 10a.)
(last name, first name, MI):

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment (check all that apply):
$_____ ☐ actual ☐ planned

12. Form of Payment (check all that apply):
☐ a. cash
☐ b. in-kind; specify: nature _____
value _____

13. Type of Payment (check all that apply):
☐ a. retainer
☐ b. one--time fee
☐ c. commission
☐ d. contingent fee
☐ e. deferred
☐ f. other; specify:

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semiannually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____

Print Name: _____

Title: _____

Telephone No.: _____ Date: _____

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Standard Form-LLL

Instructions for Completion of SF-LLL, Disclosure of Lobbying Activities

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or any employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a).

Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box (es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contracted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public Reporting Burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

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Disclosure of Lobbying Activities
Continuation Sheet

Approved by OMB
0348-0046

Reporting Entity: _____ Page _____ of _____

[FR Doc. 95–13603 Filed 6–2–95; 8:45 am]
BILLING CODE 4210–27–C

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Standard Form-LLL-A

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–020–95–1220–00; N2–5–95]

Nevada; Temporary Closure of Certain Public Lands in the Winnemucca District for Management of the Summer 1995 Running of the "Fernley 250" Off-Highway Vehicle (OHV) Race

AGENCY: Bureau of Land Management (Interior).

ACTION: Temporary closure of certain Public Lands in Washoe, Lyon and Churchill Counties, Nevada on and adjacent to the 1995 "Fernley 250" race course on June 24, 1995. Access will be limited to race officials, entrants, law-enforcement and emergency personnel, licensed permittee(s) and right-of-way grantees.

SUPPLEMENTARY INFORMATION: Certain public lands in the Winnemucca District, Washoe, Lyon and Pershing Counties will be temporarily closed to public access from 0600 hours, June 24, 1995 to 2400 hours June 24, 1995, to protect persons, property and public land resources on and adjacent to the 1995 "Fernley 250" OHV race course. The Sonoma-Gerlach Area Manager is the authorized officer for the 1995 "Fernley 250" OHV race, permit number N2–5–95. These temporary closures and restrictions are made pursuant to 43 CFR Part 8364. The public lands to be closed or restricted are those lands adjacent to and including roads, trails and washed identified as the 1995 "Fernley 250" OHV race course.

The following public lands administered by the BLM restricted or closed are described as the following:

T. 21 N., R 24. E, Sec. 36; T. 22 N., R. 24 E., Sec. 2 and 12; T. 23 N., R. 24 E., Sec. 4, 8, 12, 14, 16, 22 and 26; T. 24 N., R. 24 E., Sec. 9, 10, 12, 16, 17, 20, 22 and 28; T. 25 N., R.24 E., Sec. 36; T. 21 N., R. 25 E., Sec. 6, 8, 12, 14, 20, 22, 28, and 32; T. 20 N., R. 25 E., Sec. 4 and 6; T. 21 N., R. 25 E., Sec. 6, 8, 12, 14, 22 and 28; T. 22 N., R. 25 E., Sec. 18 and 30; T. 23 N., R. 25 E., Sec. 2, 6, 10, 12 and 14; T. 24 N., R. 25 E., Sec. 8, 18, 20, 30, 32, 34 and 36; T. 25 N, R. 25 E., Sec. 30, 31, and 32; T. 21 N., R. 26 E., Sec. 6 and 8; T. 21 N., R. 26 E., Sec. 6; T. 22 N., R. 26 E., Sec. 2, 14, 22, 28, and 32; T. 23 N., R. 26 E., Sec. 4, 6, 10, 22, 26, and 36; T. 24 N., R. 26 E., Sec. 28, 30 and 32.

The following public lands administered by the BLM will be designated as a secondary pit area: T. 23 N., R. 24 E., Sec. 14.

The lands involved are located in the Mount Diablo Meridian and are located north and northeast of Fernley, Nevada. They are within Washoe, Pershing and Lyon Counties, A map showing the exact route of the course is available from the following BLM office: the Winnemucca District Office, 705 East Fourth Street, Winnemucca, Nevada, 89445, (702) 623–1500.

Any person who fails to comply with this closure order issued under 43 CFR Part 8364 may be subject to the penalties provided for in 43 CFR 8360.7

FOR FURTHER INFORMATION CONTACT: Lynn Clemons, 705 East Fourth Street, Winnemucca, Nevada 89445, (702) 623–1500.

Dated: May 25, 1995.

Ron Wenker,

District Manager, Winnemucca.

[FR Doc. 95–13604 Filed 6–2–95; 8:45 am]
BILLING CODE 4310–HC–P

[CA–066–05–1610–00]

Proposed California Desert Conservation Area Plan Amendment, Palm Springs-South Coast Resource Area, Southern California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent to prepare a proposed plan amendment to the California Desert Conservation Area Plan and environmental assessment.

SUMMARY: In compliance with the National Environmental Policy Act of 1969 (NEPA), the Federal Land Policy Management Act of 1976 (FLPMA) and the Code of Federal Regulations (40 CFR 1501.7, 43 CFR1610.2), notice is hereby given that the Bureau of Land Management (BLM) will prepare an environmental assessment and proposed California Desert Conservation Area plan amendment affecting public lands within the Palm Springs-South Coast Resource Area. The proposed plan amendments would expand two existing Areas of Critical Environmental Concern (ACEC): the Big Morongo Canyon ACEC (No. 50) and the Salt Creek Pupfish/Rail Habitat ACEC (No. 60). The name of the Salt Creek ACEC would also be changed to Dos Palmas ACEC.

DATES: Citizens are requested to help identify significant issues or concerns related to the proposed plan amendments. Recommendations from citizens regarding additional plan amendments may also be considered, for example, new ACECs or changing land use designations. Written comments must be submitted no later than 30 days from the date of this notice to the following address: Ms. Julia Dougan, Area Manager, Bureau of Land Management Palm Springs-South Coast Resource Area, 63–500 Garnet Avenue, North Palm Springs, CA 92258–2000. Citizens submitting comments will automatically be included in the mailing list to receive a copy of the Proposed Plan and Environmental Assessment when available.

FOR ADDITIONAL INFORMATION CONTACT: If you require additional information or simply would like to be included in the mailing list, contact Ms. Elena Misquez, Bureau of Land Management Palm Springs-South Coast Resource Area, 63–500 Garnet Avenue, North Palm Springs, CA 92258–2000; telephone(619) 251–4826.

SUPPLEMENTARY INFORMATION: The Big Morongo Canyon ACEC currently includes 3,705 acres of public land just east of Highway 62, and 7 miles north of Interstate 10, San Bernardino County. BLM proposes to expand the ACEC to establish a corridor between the BLM-managed public lands and Joshua Tree National Park, 5 miles due east. Management prescriptions for the ACEC would only apply to the BLM-managed public lands. The proposed ACEC expansion would protect sensitive plant and wildlife habitat and wildlife movement corridors.

The Salt Creek Pupfish/Rail Habitat ACEC (4,288 acres) is located northeast of the Salton Sea and Highway 111 in Riverside County. The ACEC would be renamed as the Dos Palmas ACEC in recognition of the Dos Palmas Ecosystem of which the Salt Creek ACEC is an integral part. The ACEC boundary would be expanded to approximately 17,000 acres to include additional public lands and lands acquired by The Nature Conservancy for the protection of sensitive plant, wildlife and cultural resources. Management prescriptions for the ACEC would not apply to non-TNC private lands within the proposed ACEC boundary. TNC and BLM would continue their acquisition effort from willing sellers within the proposed ACEC boundary.

Public participation is an integral part of the planning and NEPA process in which members of the public are informed of proposed actions affecting the public lands and resources, and are encouraged to submit comments regarding these proposals. For 30-days commencing the date of this notice, citizens are formally requested to identify issues and to suggest alternative or new proposals to be addressed in the proposed plan and environmental assessment. Upon completion of the proposed plan amendment and environmental assessment, a notice of availability will be published in the **Federal Register** followed by a 60-day public comment period. Plan protests filed in accordance with 43 CFR 1610.5–

2 will be accepted for 30-days following issuance of the final Plan. The plan will become effective when all protests have been resolved and a Decision Record is signed by the authorized officer.

Julia Dougan,

Area Manager.

[FR Doc. 95–13592 Filed 6–2–95; 8:45 am]

BILLING CODE 4310–40–P

[UT–046–05–4210–0–03–5]

Intent To Prepare Environmental Impact Statement for Proposed Plan Amendment to Virgin River Management Framework Plan, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent to prepare an Environmental Impact Statement (EIS) for a proposed plan amendment to the Virgin River Management Framework Plan (MFP).

SUMMARY: This notice is to advise the public that the Bureau of Land Management is preparing an EIS to consider proposed amendments to the land use plan that guides management of public lands within the Dixie Resource Area located in Washington County, Utah. The proposed amendment would consider alternatives for additional opportunities for land tenure adjustments.

DATES: The comment period for the preliminary issues and planning criteria identified for the proposed plan amendments will commence with publication of this notice. Comments must be submitted on or before July 5, 1995.

FOR FURTHER INFORMATION CONTACT: Jim Crisp, Area Manager, Dixie Resource Area, 345 E. Riverside Drive, St. George, Utah 84770. Existing planning documents and information are available at the above address or telephone (801) 673–4654, Ext. 201. Comments on the proposed plan amendment should be sent to the above address.

SUPPLEMENTARY INFORMATION: The Dixie Resource Area of the Cedar City District, BLM, is proposing to amend the Virgin River MFP, to allow for land tenure adjustments not previously identified in the MFP. The main purpose is to identify and analyze lands that could be exchanged and result in acquisition of special status species habitat including desert tortoise habitat and to consider exchange criteria under which future land exchanges could take place. Lands transferred out of Federal ownership to private, state and municipal interests, as a result of the exchanges would be available to meet the various needs of the respective parties. Where there are specific uses proposed on lands identified for exchange, those uses will be analyzed. This would include the potential use of public lands as an area for water overflow storage associated with the Sand Hollow Reservoir that is proposed to be built on adjacent private land. An Environmental Impact Statement (EIS) will be prepared to analyze the impacts of this proposal and alternatives. This notice begins the BLM planning scoping process. Additional public meetings and scoping will occur during the development of this EIS.

Preliminary planning issues have been identified to consist of possible adverse impacts to public lands once removed from public ownership, conflicts or controversy surrounding the use of public lands for the "overflow" of water from adjacent private lands, economic impacts, impacts on other natural resource and special status species from land disposal.

The following preliminary planning criteria have been identified and set the parameters under which land exchanges may take place:

1. The action results in a net gain of important and manageable resource values on public land such as Desert Tortoise and other T&E species habitat, crucial wildlife habitat, significant cultural sites, high quality riparian area, live water, or areas key to the maintenance of productive ecosystems.

2. The action ensures the accessibility of public lands in areas where access is needed and cannot otherwise be obtained.

3. The action is essential to allow effective management on public lands in areas where consolidation of ownership is necessary to meet resource management objectives.

4. The action results in acquisition of lands that serve a national priority as identified in Federal policy directives.

The following disciplines will be utilized for interdisciplinary input through out the NEPA process: Archeologist, Lands and Realty Specialist, Wildlife Biologist, Range Conservationist, Botanist, Mineral Specialist and Geologist, Certified Appraiser, Engineer, Planning Specialist, Soils Scientist and Hydrologist.

The present land use plan for the Dixie Resource Area is the Virgin River Management Framework Plan (MFP) prepared in 1977. This land use plan is being revised and updated through preparation of a newer and more comprehensive Dixie Resource Management Plan (RMP) but the completion date is uncertain at this time. The planning amendment now being initiated will amend either the Virgin River MFP or the Dixie RMP, which ever is the current document at the time this amendment is completed.

G. William Lamb,

Acting State Director.

[FR Doc. 95–13618 Filed 6–2–95; 8:45 am]

BILLING CODE 4310–DQ–P

[AZ–040–05–1040 00]

Notice of Meeting for the Gila Box Advisory Committee

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given in accordance with 43 CFR 1780 that a meeting of the Gila Box Riparian National Conservation Area (NCA) Advisory Committee will be held.

DATES: July 14, 1995, 10 a.m.–4 p.m., Safford District Office.

ADDRESSES: BLM Safford District Office, 711 14th Ave., Safford, Arizona.

SUPPLEMENTARY INFORMATION: The NCA Advisory Committee was established by Arizona Desert Wilderness Act of 1990 to provide input to the Safford District on management of the Gila Box Riparian National Conservation Area (NCA). The Committee is continuing work on the Gila Box Interdisciplinary Activity Plan, which will be completed by December 1995.

The agenda for the meeting includes (1) refine management actions and (2) finalize preferred alternative.

All meetings are open to the public. Interested persons may make oral statements to the Committee between 10:30 and 11:00 a.m. or may file written statements for consideration by the Committee. Anyone wishing to make an oral statement must contact the BLM Gila Resource Area Manager at least two working days prior to the meeting. Written statements are also accepted at any time during preparation of the draft plan, and will be reviewed by the committee.

Statements should be mailed to Elmer Walls, Team Leader, Gila Resource Area, 711 14th Ave., Safford, Arizona 85546.

Summary minutes of the meeting will be maintained in the Safford District Office and will be available for public inspection (during regular business hours) within 30 days after each meeting.

FOR FURTHER INFORMATION: Meg Jensen, Gila Resource Area Manager, or Elmer Walls, Team Leader, 711 14th Ave., Safford, Arizona 85546, Telephone (520) 428–4040.

Dated: May 23, 1995.

William T. Civish,

District Manager.

[FR Doc. 95–13571 Filed 6–2–95; 8:45 am]

BILLING CODE 4310–32–M

[WY–920–41–5700; WYW125896]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease; Wyoming

May 23, 1995.

Pursuant to the provisions of 30 U.S.C. 188 (d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW125896 for lands in Natrona County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW125896 effective January 1, 1995, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Pamela J. Lewis,

Supervisory Land Law Examiner.

[FR Doc. 95–13590 Filed 6–2–95; 8:45 am]

BILLING CODE 4310–22–M

[UT–942–4212–13; UTU–65659]

Notice of Issuance of Land Exchange Conveyance Document; Utah

AGENCY: Bureau of Land Management.

ACTION: Exchange of public and private lands.

SUMMARY: This action informs the public of the conveyance of 953.95 acres of public land out of Federal ownership. This action will also open 1,803.24 acres of reconveyed land to appropriation under the public land laws including the mining laws, open 557.82 acres of reconveyed land to appropriation under the public land laws, and open 320 acres of reconveyed land to appropriation under the public land laws including 50% of the minerals under the mining laws.

FOR FURTHER INFORMATION CONTACT: Michael L. Crocker, Bureau of Land Management, Utah State Office, 324 South State Street, P.O. Box 45155, Salt Lake City, Utah 84145–0155, 801–539–4118.

SUPPLEMENTARY INFORMATION:

1. The United States has issued an exchange conveyance document to United States Pollution Control, Inc., for the surface and locatable mineral estates of the following described land pursuant to Section 206 of the Act of October 21, 1976, 90 Stat. 2756; 43 U.S.C. 1716:

Salt Lake Meridian

T. 1 S., R. 11 W.,
Sec. 19, lot 4, SE¼SW¼, S½SE¼;
Sec. 20, W½SW¼.
T. 1 S., R. 12 W.,
Sec. 24, S½SE¼;
Sec. 25, All.
Containing 953.95 acres.

2. In exchange for the lands listed in paragraph 1, the United States received the surface and mineral estates of the following described land:

Salt Lake Meridian

T. 4 N., R. 19 W.,
Sec. 23, W½W½, N½SE¼SW¼, SW¼SE¼SW¼, S½SE¼SE¼SW¼.
T. 6 S., R. 5 W.,
Sec. 34, SE¼SW¼.
T. 7 S., R. 5 W.,
Sec. 3, lots 3, 4, S½NW¼, N½SW¼, SW¼SW¼.
T. 10 S., R. 6 W.,
Sec. 23, SE¼SE¾;
Sec. 26, NE¼NE¼, W½NE¼, E½NW¼, SW¼NW¼, SW¼;
Sec. 27, NE¼NE¼, S½NE¼;
Sec. 34, N½SE¼, SE¼SE¼;
Sec. 35, N½, N½S½, S½SW¼, SW¼SE¼.
Containing 1,803.24 acres.

3. The United States received the surface estate of the following land:

Salt Lake Meridian

T. 6 S., R. 5 W.,
Sec. 27, SE¼SW¼;
Sec. 34, NW¼NE¼, NW¼.
T. 6 S., R 6 W.,
Sec. 28, lots 5 and 6, NE¼SW¼, NW¼SE¼.
T. 40 S., R 17 W.,
Sec. 4. SW¼NW¼, NW¼SW¼;
Sec. 5, lot 1, SE¼NE¼.
Containing 557.82 acres.

4. The United States received the surface and 50% interest in the mineral estates of the following land:

Salt Lake Meridian

T. 6 S., R 5 W.,
Sec. 34, SW¼SW¼.
T. 7 S., R 5 W.,
Sec. 4, E½SE¼;
Sec. 9, E½NE¼, NE¼SE¼;
Sec. 22, W½NW¼.
Containing 320.00 acres.

5. At 8 a.m., on July 5, 1995, the lands described in paragraphs 2, 3, and 4 will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 8:00 a.m. on July 5, 1995 shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

6. At 8:00 a.m., on July 5, 1995, the lands described in paragraph 2 will be opened to location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the lands described in paragraph 2 under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

7. At 8:00 a.m., on July 5, 1995, the lands described in paragraph 4 will be opened to the operation of the mining laws, applicable to 50% of the mineral estate, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the lands described in paragraph 4 under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

8. The purpose of this exchange was to acquire non-federal lands that have high values for wildlife, livestock grazing, and recreational use. This exchange created a more logical and efficient land management pattern that will better serve the public interest.

Teresa L. Catlin,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 95–13619 Filed 6–2–95; 8:45 am]

BILLING CODE 4310–DQ–M

[4310–OR–100–6332–00; 5–032]

Availability of Approved Resource Management Plan and Record of Decision

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of the Approved Resource Management Plan and Record of Decision for the Roseburg District, Oregon.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 (40 CFR 1550.2), and the Federal Land Policy and Management Act of 1976 (43 CFR 1610.2 (g)), the Department of the Interior, Bureau of Land Management (BLM), Roseburg District provides notice of availability of the Approved Resource Management Plan (ARMP) and Record of Decision (ROD) for the Roseburg District. In addition to describing the decisions, the ARMP will provide the framework to guide land and resource allocations and management direction for the next 10 to 20 years in the Roseburg District. This ARMP supersedes the existing Roseburg District (Drain, Dillard, North Umpqua, South Umpqua) Management Framework Plan, and other related documents for managing approximately 425,588 acres of mostly forested public land and 1,717 acres of non-federal surface ownership with federal mineral estate administered by the Bureau of Land Management in Douglas County in southwestern Oregon.

ADDRESSES: Copies of the ARMP/ROD are available upon request by contacting the Roseburg District Office, Bureau of Land Management, 777 NW Garden Valley Blvd., Roseburg, Oregon 97470. This document has been sent to all those individuals and groups who were on the mailing list for the Proposed Roseburg District Resource Management Plan/Final Environmental Impact Statement. The full supporting record for the ARMP is available for inspection in the Roseburg District Office at the address shown above. Copies of draft RMP/EIS and proposed RMP/final EIS are also available for inspection in the public room on the 7th floor of the BLM Oregon/Washington State Office, 1515 SW Fifth Street, Portland, Oregon; and public libraries throughout Douglas County during normal office hours.

FOR FURTHER INFORMATION CONTACT: Cary Osterhaus, District Manager, Roseburg District Office, Bureau of Land Management. He can be reached by telephone number at 503–440–4930 or by FAX at 503–440–4948.

SUPPLEMENTARY INFORMATION: The Roseburg District ARMP/ROD is essentially the same as the Roseburg District Proposed Resource Management Plan and Final Environmental Impact Statement (PRMP/FEIS). Virtually no changes to the proposed decisions have been made, except for some clarifying language in response to the eight protests BLM received on the Roseburg District PRMP/FEIS and as a result of ongoing staff review. The clarifying language concerns:

—Language revisions intended to clarify some management direction.
—Language revisions intended to strengthen the link between the ARMP and the 1994 Record of Decision for Amendments to Forest Service and Bureau of Land Management Planning Documents Within the Range of the Northern Spotted Owl and Standards and Guidelines for Management of Habitat for Late-Successional and Old-Growth Forest Related Species Within the Range of the Northern Spotted Owl (or Northwest Forest Plan/ROD).
—Revisions that incorporate guidelines issued by the Regional Ecosystem Office since the issuance of the 1994 Record of Decision named above. Such guidelines may clarify or interpret the 1994 Record of Decision.
—Revision of land tenure zone boundary involving 240 acres (.05% of district lands).
—Revision of Bushnell-Irwin Rocks from an ACEC to an ACEC/RNA.

Seven alternatives that encompass a spectrum of realistic management options were considered in the planning process. The final plan is a mixture of the management objectives and actions that, in the opinion of the BLM, best resolve the issues and concerns that originally drove the preparation of the plan and also meet the plan elements or adopt decisions made in the Northwest Forest Plan/ROD. The Northwest Forest Plan/ROD was signed by the Secretary of the Interior who directed the BLM to adopt it in its Resource Management Plans for western Oregon. Further, those decisions were upheld by the United States District Court for the Western District of Washington on December 21, 1994.

Ecosystem Management and Forest Product Production: The ARMP/ROD responds to the need for a healthy forest ecosystem with habitat that will support populations of native species (particularly those associated with late-successional and old-growth forests). It also responds to the need for a sustainable supply of timber and other forest products that will help maintain the stability of local and regional economies, and contribute valuable resources to the national economy on a predictable and long-term basis. BLM-administered lands are primarily allocated to Riparian Reserves, Late-Successional Reserves, General Forest Management Areas, and Connectivity/Diversity Blocks. An Aquatic Conservation Strategy will be applied to all lands and waters under BLM jurisdiction.

Approximately 89,900 acres will be managed for timber production. The annual allowable sale quantity will be 7.0 million cubic feet (45 million board feet). Standing trees; snags; and down, dead woody material will be retained to contribute to biological diversity.

Wild and Scenic Rivers: Approximately 29 miles of river found eligible for designation and studied by BLM will be found not suitable for designation.

Most BLM-administered lands will remain available for mineral leasing and location of mining claims, but 28 acres will be closed to leasing for oil and gas and geothermal resources, and 5,070 acres will be closed to location of claims.

The Proposed Resource Management Plan will designate or redesignate the following ACECs and RNAs:

Bear Gulch
ACEC/RNA
330 acres
Beatty Creek
ACEC/RNA
331 acres
Bushnell-Irwin Rocks
ACEC/RNA
958 acres
Myrtle Island
ACEC/RNA
30 acres
North Bank
ACEC
6221 acres
North Myrtle Creek
ACEC/RNA
472 acres
North Umpqua River
ACEC
1620 acres
Red Pond
ACEC/RNA
134 acres
Tater Hill
ACEC/RNA
280 acres
Umpqua River Wildlife Area
ACEC
947 acres

There were no potential ACEC areas identified that met the Bureau ACEC criteria of relevance and importance that are not included in whole or in part in the ARMP/ROD described above.

Off-Highway-Vehicle (OHV) Use: The ARMP/ROD makes the following designations for OHV management in the District: no lands will be open; 423,422 acres will be restricted to designated existing roads and trails and/or seasonally closed; and 2,166 acres will be closed to all use, except for specified administrative or emergency uses. The closed areas include administratively withdrawn areas such as progeny test sites and various ACECs. In addition, the ARMP/ROD provides for road closures to meet ecosystem management objectives. Such closures may be permanent or seasonal, and will be effected by use of signs, gates, barriers or total road deconstruction and site restoration.

Land Tenure Adjustment: The ARMP/ROD identifies approximately 35,930 acres of BLM-administered lands that will be retained in public ownership; 380,989 acres of BLM-administered lands that may be considered for exchange under prescribed circumstances; and 13,352 acres of BLM-administered lands that may be available for sale or disposal under other authorized processes. The ARMP also provides criteria for the acquisition of lands, or interests in lands, where such acquisition would meet objectives of the various resource programs. The plan allocates approximately 1,577 acres as right-of-way exclusion areas.

Special Recreation and Visual Resource Management Areas: The ARMP/ROD identifies three Special Recreation Management Areas (SRMA), including one existing (North Umpqua River) and two new (Cow Creek and Umpqua River). The existing SRMAs total approximately 1,620 acres and the new SRMAs total approximately 3,950 acres. The ARMP/ROD allocates approximately 1,309 acres of BLM-administered lands for 29 existing or potential recreation sites. The plan also allocates lands for 19 existing or potential trails, totaling approximately 49 miles. The plan also identifies management objectives for four visual resource management classifications.

Dated: May 24, 1995.

David R. Baker,

Acting District Manager.

[FR Doc. 95–13579 Filed 6–2–95; 8:45 am]

BILLING CODE 4310–33–P

[CO–935–1430–010; COC–58110]

Proposed Withdrawal: Opportunity for Public Meeting; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw 175 acres of public lands for 20 years to protect and maintain existing and planned recreational facilities on 3 recreation sites. This notice closes these lands to location and entry under the general land laws, including the mining laws, for up to two years. The lands will remain open to mineral leasing.

DATES: Comments on this proposed withdrawal or requests for public meeting must be received on or before September 5, 1995.

ADDRESSES: Comments and requests for a meeting should be sent to the Colorado State Director, BLM, 2850 Youngfield Street, Lakewood, Colorado 80215–7076.

FOR FURTHER INFORMATION CONTACT: Doris Chelius, 303–239–3706.

SUPPLEMENTARY INFORMATION: On May 12, 1995, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described public lands from settlement, sale, location or entry under the general land laws, including the mining laws, subject to valid existing rights:

Sixth Principal Meridian

Collegiate Peaks Scenic Overlook

T. 14 S., R. 78 W.,
Sec. 23. E½SW¼NW¼, NE¼NW¼SW¼, and N½SE¼NW¼SW¼.

Sand Gulch Campground

T. 16 S., R. 70 W.,
Sec. 21, SE¼SE¼SW¼;
Sec. 28, W½NW¼NE¼, NW¼SW¼NE¼, E½SW¼NE¼, W½SE¼NE¼, and NE¼NE¼NW¼.

Bank Campground

T. 16 S., R. 70 W.,
Sec. 33, SW¼NW¼NE¼, NW¼SW¼NE¼, S½NE¼SW¼NE¼, N½SE¼SW¼NE¼, SE¼NE¼NW¼, and NE¼SE¼NW¼.

The areas described aggregate approximately 175 acres in Chaffee and Freemont Counties.

The purpose of this withdrawal is to protect these recreation areas and the improvements constructed for recreation purposes.

For a period of 90 days from the date of publication of this notice, all parties who wish to submit comments, suggestions, or objections in connection with this proposed withdrawal, or to request a public meeting, may present their views in writing to the Colorado State Director. If the authorized officer determines that a meeting should be held, the meeting will be scheduled and conducted in accordance with 43 CFR 2310.3–1(c)(2).

This application will be processed in accordance with the regulations set forth in 43 CFR part 2310.

For a period of two years from the date of publication in the **Federal Register**, these lands will be segregated from the mining laws as specified above unless the application is denied or cancelled or the withdrawal is approved prior to that date. During this period the Bureau of Land Management will continue to manage these lands.

Jenny L. Saunders,

Chief, Branch of Realty Programs.

[FR Doc. 95–13591 Filed 6–2–95; 8:45 am]

BILLING CODE 4310–JB–P

Bureau of Reclamation

Draft Environmental Impact Statement for Proposed Acreage Limitation and Water Conservation Rules and Regulations

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice to extend comment period.

SUMMARY: The Bureau of Reclamation is extending the comment period published in 60 FR 20114, Apr. 24, 1995, in response to a number of requests from the public for an extension of the comment period. The extension will allow the public more time to prepare comments concerning the draft environmental impact statement (DEIS) for the proposed rulemaking, Acreage Limitation and Water Conservation Rules and Regulations.

DATES: Written comments for inclusion in the official record must be postmarked no later than June 26, 1995.

ADDRESSES: Written comments should be mailed to: Mr. Ronald J. Schuster, Westwide Settlement Manager, Bureau of Reclamation, P.O. Box 25007 (Mail Code D–5010), Denver, Colorado 80225.

Access to the dedicated toll-free telephone number 1–800–661–5443, has been extended through June 26, 1995, for those wishing to make oral

comments on the DEIS. Comments will be recorded on tape and transcribed by a court reporter, and will be part of the official record. Statements are limited to 10 minutes and must include the commentor's name in order to be included in the official record. Address and affiliation are optional.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald J. Schuster, Westwide Settlement Manager, Bureau of Reclamation, P.O. Box 25007 (Mail Code D–5010), Denver, Colorado 80225, telephone (303) 236–9336 ext. 237.

SUPPLEMENTARY INFORMATION: An identical notice is published in this **Federal Register** regarding extension of comment period on the proposed rules and regulations implementing the Reclamation Reform Act of 1982.

Dated: May 31, 1995.

Daniel P. Beard,

Commissioner.

[FR Doc. 95–13692 Filed 6–2–95; 8:45 am]

BILLING CODE 4310–94–P

Travel Management Plan for Owyhee Reservoir, Owyhee Project, Oregon

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation (Reclamation), in accordance with the provisions of the Off-road Vehicle Use regulation and Executive Orders 11644 and 11989, is implementing a Travel Management Plan for Reclamation lands in the vicinity of Owyhee Reservoir, Oregon. The purpose of the Travel Management Plan is to provide appropriate and safe access to Reclamation lands.

EFFECTIVE DATE: The effective date of the travel management plan is June 5, 1995.

ADDRESSES: Copies of the Owyhee Reservoir Resource Management Plan (RMP) Travel Management Plan map are available at:

- Bureau of Reclamation, Snake River Area Office, 214 Broadway Avenue, Boise, ID 83702.
- Malheur County Courthouse, Vale, Oregon, 97918.
- Bureau of Land Management, Vale District Office, 100 Oregon Street, Vale, OR 97918.
- Lake Owyhee State Park, PO Box 247, Adrian, OR 97901.

FOR FORTHER INFORMATION CONTACT: Steve Dunn, Natural Resource Specialist, Bureau of Reclamation, Snake River Office, 214 Broadway Avenue, Boise, ID, 83702, (208) 334–9844.

SUPPLEMENTARY INFORMATION: In April 1994 Reclamation completed a RMP and Environmental Assessment/Finding of No Significant Impact for approximately 26,190 acres of land and 12,740 acres of water surface at Owyhee Reservoir in southeastern Oregon. The RMP was developed through extensive public involvement and interagency consultation and coordination. To meet the goal of providing appropriate and safe access to Reclamation lands consistent with Reclamation's Off Road Vehicle use regulations in 43 CFR part 420, a Travel Management Plan was incorporated into the RMP.

The Travel Management Plan designates all Reclamation lands at Owyhee Reservoir closed to motorized travel except for those roads and areas specifically designated as "open" for such use. Areas and roads designated as "open" are shown on Reclamation's Owyhee Reservoir RMP Travel Management Plan map in the RMP and available separately at the addresses above. This designation of "open" lands at Owyhee reservoir supersedes the Notice of Off-Road Vehicle Use published in 39 FR 46951, Aug. 9, 1979.

Dated: May 19, 1995.

John W. Keys, III,

Regional Director.

[FR Doc. 95–13573 Filed 6–2–95; 8:45 am]

BILLING CODE 4310–94–M

Fish and Wildlife Service

Environmental Impact Statement for the Reintroduction of Grizzly Bears to the Bitterroot Mountains of Central Idaho and Western Montana

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of public open houses.

SUMMARY: The Fish and Wildlife Service (Service) announces its intention to hold public scoping sessions in the States of Idaho and Montana, and in one major city elsewhere, to further identify issues and develop management alternatives for the Environmental Impact Statement (EIS) for the reintroduction of grizzly bears to the Bitterroot Mountains of central Idaho and western Montana. This notice is being furnished as required by the National Environmental Policy Act (NEPA) regulations (CFR 1501.7) to obtain input from other agencies and the public on issues and alternatives to be considered in the EIS.

DATES: Public scoping sessions will be held in Boise, Grangeville, and Orofino, Idaho; Hamilton, Helena, and Missoula, Montana; and Salt Lake City, Utah, from July 5 through July 11, 1995. The times and locations of the open houses will be announced in the local media and in mailings to interested public. Written comments should be received by July 20, 1995.

ADDRESSES: Questions and comments concerning these public scoping sessions should be addressed to Dr. John Weaver, Team Leader, Bitterroot Grizzly Bear Environmental Impact Statement, U.S. Fish and Wildlife Service, P.O. Box 5127, Missoula, Montana 59806.

FOR FURTHER INFORMATION CONTACT: Dr. John Weaver (see **ADDRESSES** section) at telephone (406) 329–3254.

SUPPLEMENTARY INFORMATION:

Historically, the grizzly bear (*Ursus arctos horribilus*) was a widespread inhabitant of the Bitterroot Mountains in central Idaho and western Montana. The last documented grizzly bear was killed in the late 1930's, although occasional unverified reports persist. In 1975, the grizzly bear was listed as a threatened species in the 48 contiguous States under the U.S. Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). An interagency task force, working with a citizen's involvement group, drafted a chapter on grizzly bear recovery in the Bitterroot Ecosystem. Several scoping meetings were held in local communities of central Idaho and western Montana to gather public comments. The chapter developed for the Grizzly Bear Recovery Plan calls for an EIS to evaluate a full range of grizzly bear recovery alternatives, including the reintroduction of four to six grizzly bears per year for 5 years to the wilderness areas of central Idaho as an experimental, nonessential population under section 10(j) of the Endangered Species Act.

During scoping meetings concerning the chapter on the Bitterroot Ecosystem and the Notice of Intent to complete an EIS (60 FR 2399), the public identified several issues. These included recovery needs of the grizzly bear, recovery options and statutory classification, boundaries of the recovery zone, location and costs of a reintroduction program, management authority, concern for human safety, control of nuisance bears, and possible restrictions on human uses of public and private lands. Preliminary alternatives suggested to date include—(1) no action (natural recolonization from other grizzly bear populations), (2) reintroduction of grizzlies as a threatened species (management similar to other grizzly bear populations), and (3) reintroduction of grizzlies as an experimental, nonessential population (greater management flexibility under a special rulemaking). Additional alternatives may be identified through the upcoming series of public scoping sessions for analysis in the draft EIS.

A scoping newsletter details the EIS process; issues and alternatives identified to date; locations, dates, and times of open houses, and how to become involved. A 16-page booklet with answers to citizens' questions about grizzly bear recovery in the Bitterroot Ecosystem is available and will be inserted in the newsletter. Individuals who previously requested information on grizzly bear recovery in the Bitterroot Ecosystem will receive copies.

Other interested persons can obtain copies of these materials and be placed on the mailing list by writing to Dr. John Weaver (see **ADDRESSES** section).

Dated: May 25, 1995.

Terry T. Terrell,

Deputy Regional Director, Region 6.

[FR Doc. 95–13488 Filed 6–1–95; 8:45 am]

BILLING CODE 4310–55–M

Notice of Intent To Prepare an Environmental Impact Statement for a Permit Application to Incidentally Take the Endangered Karner Blue Butterfly in the State of Wisconsin

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent and meetings.

SUMMARY: The U.S. Fish and Wildlife Service (Service) is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared regarding an application from the Wisconsin Department of Natural Resources (WDNR), Madison, Wisconsin, for a permit to allow the incidental take of the Karner blue butterfly *(Lycaeides melissa samuelis)* in the State of Wisconsin with an accompanying habitat conservation plan (HCP). This notice describes the conservation plan (proposed action) and possible alternatives, invites public participation in the scoping process for preparing the EIS, and identifies the Service official to whom questions and comments concerning the proposed action may be directed. Three public scoping meetings will be held in the State of Wisconsin on the following dates at the indicated locations and times:

1. June 27, 1995; Wisconsin Rapids, WI at City Hall, 444 W. Grand Ave., Council Chambers; 3 p.m. to 6 p.m.
2. June 28, 1995; Siren, WI at the Burnett County Government Center, 7410 Cty. Rd. K, Room 165; 3 p.m. to 6 p.m.
3. June 29, 1995; Eau Claire, WI at the South Middle School, 2115 Mitscher Ave., Auditorium; 3 p.m. to 6 p.m.

There will be a presentation at 3 p.m. at each meeting which will address the Karner blue butterfly, the background and history of the HCP development process, the information available on the presence of this species in Wisconsin, activities which may be affected by their presence, and strategies to conserve the species while allowing land use activities to continue. Submission of written and oral comment and questions will be accepted at the scoping meetings. Written comments regarding EIS scoping also may be submitted by August 30, 1995, to the address below.

FOR FURTHER INFORMATION CONTACT: Janet M. Smith, Field Supervisor, U.S. Fish and Wildlife Service, 1015 Challenger Court, Green Bay, Wisconsin 54311.

SUPPLEMENTARY INFORMATION: The Karner blue butterfly was listed by the Service as an endangered species in December, 1992. Because of its listing as endangered, the Karner blue butterfly population is protected by the Endangered Species Act's (Act) prohibition against "taking." The Act defines "take" to mean: to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in such conduct. "Harm" is further defined by regulation as any act that kills or injures wildlife including significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavior patterns, including breeding, feeding, or sheltering (50 CFR 17.3).

However, the Service may issue permits to carry out prohibited activities involving endangered and threatened species under certain circumstances. Regulations governing permits for endangered and threatened wildlife are at 50 CFR 17.22, 17.23, and 17.32.

The WDNR is preparing to apply to the Service for an incidental take permit pursuant to Section 10(a)(1)(B) of the Act, which authorizes the issuance of incidental take permits to non-Federal landowners. The largest populations of the Karner blue butterfly in the nation occur in this State. This permit would authorize the incidental take of the Karner blue butterfly, and, possibly, associated threatened or endangered species addressed in the HCP, during the course of conducting otherwise lawful land use or development activities on public and private land in the State of Wisconsin. Although public and private entities or individuals have participated in development of the HCP and may benefit by issuance of an incidental take permit, the WDNR has accepted the responsibility of coordinating preparation of the HCP, submission of the permit application and coordination of the preparation and processing of an EIS for Service review and approval. The action to be described in the HCP is a program that will ensure the continued conservation of the Karner blue butterfly in the State of Wisconsin, while resolving potential conflicts that may arise from otherwise lawful activities that may involve this species and its habitat on non-Federal lands in the State of Wisconsin. The environmental impacts which may result from implementation of a conservation program described in the HCP or as a result of implementing other alternatives will be evaluated in the EIS. The WDNR and more than 30 other persons or entities are involved in the process of information gathering, development and preparation of the Section 10(a)(1)(B) permit application, NCP, and the EIS, which is being developed concurrently.

Development of the HCP will involve a public process that includes open meetings of the HCP team and its advisory subcommittees. Those involved in this effort include other State and Federal agencies; counties; towns; industries, utilities, foresters, lepidopterists and biologists; and representatives of various environmental and recreational use organizations. Conservation strategies to be applied to the lands will differ depending on the landowner, ownership objective and management capability. It is anticipated that implementation of the conservation strategies will be through an implementation agreement or cooperative agreement entered into by the landowner and the WDNR.

Alternatives

I. Statewide HCP and Incidental Take Permit (Proposed Action)

This alternative, the proposed action, seeks to address all lands which constitute potential Karner blue butterfly habitat and associated land uses in the State of Wisconsin, whether publicly or privately owned or large or small in size. Such lands include utility, highway and railroad rights-of-way; private and publicly owned forest lands; other publicly owned lands such as parks, fisheries and wildlife areas, and recreational use areas; and private and publicly owned land subject to other

land uses including agriculture and development. This approach seeks to address conservation through a "grassroots" landowner effort. Individual conservation strategies of landowners may include:

1. Forest management and production strategies designed to assure no net loss of Karner blue butterfly habitat. However, specific areas of habitat may change;

2. Continued management of habitat through a maintenance and management scheme. Information on this species to date indicates that it is dependent on a disturbance regime, whether natural or otherwise. The species is found in such areas as tank trails on military training areas, timber sale or timber regeneration areas, highway or utility rights-of-way, and agricultural lands. There is evidence that some past and current practices in agriculture, forest management, military operations, right-of-way management, and wildlife management have been beneficial to the species. A "protection" strategy alone may result in the loss of habitat due to the natural maturation of other vegetation;

3. Barrens management which entails a scheme designed to maintain or restore barrens communities which may constitute habitat for a variety of species including the Karner blue butterfly;

4. Right-of-way maintenance regimes designed to minimize adverse effects on the Karner blue butterfly or enhance habitat through modification in mowing or clearing regimes, or burning;

5. Agricultural practices designed to maintain habitat; and

6. Other practices or strategies designed to maintain and, possibly, enhance habitat as science or practice confirms their effectiveness.

This alternative would incorporate the concept of "adaptive management." As science and conservation strategies evolve or demonstrate a need to change, the landowners would adapt or modify the conservation strategy as needed. Therefore, as science and information progress, so may the conservation strategies and efforts under the HCP and permit.

This alternative seeks authority for a long-term incidental take permit. The HCP will assure continued conservation measures as well as monitoring and reporting procedures, as required for issuance of an incidental take permit by the Service.

Service issuance of an incidental take permit will authorize land use activities to proceed without violating the Act. Landowners may participate in the HCP through cooperative agreements, certificates of inclusion, involvement in one of the several WDNR private lands assistance programs, other cooperative programs by partners or participants in this conservation effort, or exemption from regulation based on the conservation program established under the HCP and permit. A coarse estimate of potential Karner blue butterfly habitat in the State would include about 25 percent of its acreage. About 12 percent may have a high potential to be Karner blue butterfly habitat.

II. Development of an HCP and Application for an Incidental Take Permit by one Landowner or a Consortium of Landowners or Organizations Not Constituting a Statewide Effort

This alternative may involve a single landowner, such as the WDNR or an industrial forest landowner. It may also involve a group of landowners, such as several industrial forest landowners or utilities. Any conservation strategy addressed in the proposed action alternative could be applied by the landowners involved under the same or similar facts or motives. Conservation strategies not discussed earlier could also be developed.

This alternative requires separate HCP development and application processes. Naturally, this approach would require separate permit review processes by the Service with the necessity of conducting separate environmental impact review procedures and documents.

Implementation and oversight would not likely involve the WDNR, which is the endangered resource regulatory agency for the State of Wisconsin, but would require oversight and implementation as described in the implementation agreements and permits.

III. Development of Short-term Incidental Take Permits

This alternative would seek to address the conservation program for this species for a period which is shorter than that anticipated in the proposed action alternative, which could extend for up to 30 years for willing landowners. Conservation strategies may be the same or similar as in the proposed action alternative, with the possibility of addressing the same land ownership, or some smaller element of land ownership.

IV. No Action Alternative

Under the No Action Alternative, no section 10(a)(1)(B) permit(s) would be issued and activities involving the take of the Karner blue butterfly would remain prohibited under Section 9 of the Act. Activities that would avoid the take of the butterfly could continue. Proposed activities on non-Federal land that may affect the butterfly would require submitting an individual section 10(a)(1)(B) permit application to the Service. If a Federal action (e.g., proposed roadway) would affect the butterfly, incidental take could be allowed through the Section 7 consultation process and development of an incidental take statement if the action were determined to not jeopardize the continued existence of the species.

Issue Resolution and Environmental Review

The primary issue to be addressed during the scoping and planning process for the HCP and EIS is how to resolve potential conflicts between development or land management practices and listed (Federal or State) species in the State of Wisconsin. A tentative list of issues, concerns and opportunities has been developed. There will be a discussion of the potential effect, by alternative, which will include the following areas:

(1) Karner blue butterfly and its habitat.

(2) Other federally listed endangered or threatened species in the state of Wisconsin.

(3) State listed endangered and threatened species in the State of Wisconsin.

(4) Effects on other species of flora and fauna.

(5) Socioeconomic effects.

(6) Use of state, county and local public lands for Karner blue butterfly conservation.

(7) Use of privately owned lands for Karner blue butterfly conservation.

(8) Use of Federal lands.

Environmental review of the permit application will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), National Environmental Policy Act regulations (40 CFR Parts 1500–1508), other appropriate Federal regulations, and Service procedures for compliance with those regulations. This notice is being furnished in accordance with Section 1501.7 of the National Environmental Policy Act, to obtain suggestions and information from other agencies, tribes, and the public on the scope of issues to be addressed in the statement. Comments and participation in this scoping process are solicited.

The draft environmental impact statement should be available to the public in the spring of 1996.

William F. Hartwig,

Regional Director, Region 3, U.S. Fish and Wildlife Service, Fort Snelling, MN.

[FR Doc. 95–13622 Filed 6–2–95; 8:45 am]

BILLING CODE 4310–55–M

Notice of Availability of a Draft Recovery Plan for the June Sucker for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the June sucker *(Chasmistes lioris)*, a fish inhabiting Utah Lake and the Provo River in Utah. The Service solicits review and comment from the public on this draft recovery plan.

DATES: Comments on the draft recovery plan must be received on or before August 4, 1995 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Field Supervisor, Ecological Services, Lincoln Plaza, Suite 404, 145 East 1300 South, Salt Lake City, Utah 84115. Written comments and materials regarding this draft recovery plan should be sent to the Field Supervisor at the Salt Lake City address given above. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Henry Maddox (see **ADDRESSES** above) at telephone (801) 524–4430.

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the Fish and Wildlife Service's (Service) endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal Agencies also will take these comments into account in the course of implementing approved recovery plans.

The June sucker *(Chasmistes lioris)* occurs only in Utah Lake and the Provo River in central Utah, although the species historically occupied the Spanish Fork River and possibly other tributaries of Utah Lake. This once common fish has declined in abundance due to a variety of human activities that have significantly altered the lake and river habitat in which the species occurs.

The June sucker was listed under the Act as an endangered species on March 31, 1986 (51 FR 10857), due to the precipitous decline in this once common fish. The species decline is believed to result from significant alterations in the species' lake and river habitat. Dams and water diversions constructed on the rivers flowing into Utah Lake have reduced water flows, altered flow regimes within the river, and dramatically increased fluctuations in the level of the lake. Increased pollution and nutrient inflow caused by urban development surrounding Utah Lake, have degraded water quality within the lake and destroyed shoreline vegetation. In addition, several species of nonnative predacious fish that may prey upon juvenile June suckers have been introduced into Utah Lake. The combination of these factors has apparently reduced the survival of young fish to the point that most fish found today are between 20 and 43 years old.

The goal of the recovery plan is increase reproduction and survival of young June sucker to increase population numbers and ensure the species' survival. Recovery actions recommended to facilitate recovery of the species include identification of habitat requirements, coordination of efforts to restore required water flows and other appropriate habitat conditions, and identification and amelioration of the effects of predation by nonnative fish species.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified in the DATES section above will be considered prior to approval of the recovery plan.

Authority

The authority for this action is Section 4(f) of the Endangered Species Act, 16 U.S.C. 1533 (f).

Dated: May 23, 1995.

Terry T. Terrell,

Deputy Regional Director, Denver, Colorado.

[FR Doc. 95–13572 Filed 6–2–95; 8:45 am]

BILLING CODE 4310–55–M

Klamath River Basin Fisheries Task Force; Meeting

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Klamath River Basin Fisheries Task Force, established under the authority of the Klamath River Basin Fishery Resources Restoration Act (16 U.S.C. 460ss *et seq.*). The meeting is open to the public.

DATES: The Klamath River Basin Fisheries Task Force will meet from 8:00 a.m. to 5:30 p.m. on Tuesday, June 20, 1995, and from 8:00 a.m. to 1:00 p.m. on Wednesday, June 21, 1995.

PLACE: The meeting will be held at the Oregon Institute of Technology (Shasta Conference Center), 2301 Campus Drive, Klamath Falls, Oregon 97603.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald A. Iverson, Project Leader, U.S. Fish and Wildlife Service, P.O. Box 1006 (1030 South Main), Yreka, California 96097–1006, telephone (916) 842–5763.

SUPPLEMENTARY INFORMATION: The principal agenda items at this meeting of the Klamath River Basin Fisheries Task Force will be to recommend a flow study approach for the Klamath River Basin; to recommend projects for funding through Federal and State and fishery restoration grants in the 1996 fiscal year; to decide how to proceed with a draft restoration plan amendment addressing issues on the upper Klamath River Basin; to solicit nominations for awards to recognize private landowner efforts towards restoration of anadromous fish in the Klamath Basin.

For background information on the Task Force, please refer to the notice of their initial meeting that appeared in the **Federal Register** on July 8, 1987 (52 FR 25639).

Dated: May 24, 1995.

Thomas Dwyer,

Acting Regional Director.

[FR Doc. 95–13625 Filed 6–2–95; 8:45 am]

BILLING CODE 4310–55–M

National Biological Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information reproduced below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest for the reasons given below. Approval has been requested by June 30, 1995. Comments and suggestions on the proposal should be made directly to the bureau clearance officer listed below and to the Office of Management and Budget, Paperwork Reduction Project (1089–NBS1), Washington, DC 20503; telephone 302–395–7340.

Title: Technology Transfer Planning—client response.

OMB Approval Number: 1089–NBS1.

Abstract: With the transfer of the National Ecology Research Center of the U.S. Fish and Wildlife Service to the National Biological Service in Fiscal Year 1994 a need exists to redirect technology transfer efforts for the Instream Flow Incremental Methodology (IFIM) and the Habitat Evaluation Procedure (HEP). A sample of clients drawn from past training participants will be asked to identify their priority needs related to enhancements for continued use of these computer based technologies.

Reason for Expedited Review: To comply with a fiscal year technology upgrade deadline and because of the hardship which would be imposed on agency trainers by failure to implement this new requirement before the end of the current quarter.

Frequency: On occasion.

Description of Respondents: Training participants and current users of the Instream Flow Incremental Methodology and Habitat Evaluation Procedures Technologies.

Estimated Completion Time: 30 minutes.

Annual Responses: 1200.

Annual Burden Hours: 600.

Bureau Clearance Officer: Don Minnich 202–482–4838.

Dated: May 15, 1995.

F. Eugene Hester,

Deputy Director.

[FR Doc. 95–13588 Filed 6–2–95; 8:45 am]

BILLING CODE 4310–DP–M

INTERSTATE COMMERCE COMMISSION

Availability of Environmental Assessments

Pursuant to 42 U.S.C. 4332, the Commission has prepared and made available environmental assessments for the proceedings listed below. Dates environmental assessments are available are listed below for each individual proceeding.

To obtain copies of these environmental assessments contact Ms. Tawanna Glover-Sanders, Interstate Commerce Commission, Section of Environmental Analysis, Room 3219, Washington, DC 20423, (202) 927–6203.

Comments on the following assessment are due 15 days after the date of availability:

AB–439X, Dallas Area Rapid Transit—Abandonment Exemption—In Dallas County, Texas. EA available 5/22/95.

AB–55 (Sub—No. 506X), CSX Transportation, Inc.—Abandonment—in Fannin County, Georgia. EA available 5/25/95.

Comments on the following assessment are due 30 days after the date of availability:

AB–433 (Sub-No.2X), Idaho Northern & Pacific Railroad Company—Abandonment and Discontinuance of Trackage Rights In Washington and Adams Counties, Idaho. EA available 5/16/95.

AB–289 (Sub-No. 3X), Central Railroad Company of Indianapolis—Discontinuance of Service Exemption—Between Kokomo and Argos in Howard, Miami, Fulton and Marshall Counties, Indiana; and

AB290 (Sub-No. 168X) Norfolk and Western Railway Company—Abandonment Exemption—Between Kokomo and Rochester in Howard, Miami and Fulton Counties, Indiana. EA available 5/19/95.

AB–441 (Sub-No. 1X), SWKR Operating Co., Inc.—Abandonment Exemption—In Cochise County, AZ. EA available 5/19/95.

AB–167 (Sub-No. 1146X), Consolidated Rail Corporation—Abandonment Exemption—In Clearfield and Centre Counties, Pennsylvania. EA available 5/26/95.

Vernon A. Williams,

Secretary.

[FR Doc. 95–13647 Filed 6–2–95; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to Clean Air Act

In accordance with Department of Justice policy and 28 CFR 50.7, notice is hereby given that on May 18, 1995, a proposed consent Decree in *United States v. Insulation & Environmental Services, Inc., et al.*, Case No. 1:94–CV–360, was lodged in the United States District Court for the Western District of Michigan. The Complaint filed by the United States alleged violations of the Clean Air Act ("the Act"), 42 U.S.C. 7401 *et seq.* The Consent Decree requires Defendant IESI to comply with the NESHAPs for asbestos and to pay a civil penalty of $1,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments concerning the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States v. Insulation & Environmental Services, Inc., et al.*, D.J. Ref. No. 90–5–2–1–1850.

The proposed Consent Decree may be examined at any of the following offices: (1) The United States Attorney for the Western District of Michigan, 330 Ionia NW., Fifth Floor, Grand Rapids, MI 49503 (contact Assistant United States Attorney W. Francesca Ferguson); (2) the U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, IL 60604–3590 (contact Assistant Regional Counsel Robert Thompson); and at the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005, 202–624–0892. Copies of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G St. NW., 4th Floor, Washington, DC 20005, telephone (202) 624–0892. For a copy of the Consent Decree please enclose a check in the amount of $3.75 (25 cents per page reproduction costs) payable to Consent Decree Library.

Joel M. Gross,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–13585 Filed 6–2–95; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Settlement Agreement in In re Edward Cyril Niedermeyer

Notice is hereby given that a proposed Settlement Agreement between the United States on behalf of the United States Environmental Protection Agency ("EPA") and the Trustee of the bankruptcy estate in *In re Edward Cyril Niedermeyer* was lodged on May 18, 1995, with the United States Bankruptcy Court for the District of Oregon in *In re Edward Cyril Niedermeyer*, No. 393–34353–elp7 (Bankr. D. Ore.), No. 1–91–00100. Under the Agreement, the United States will have an allowed general unsecured claim of $10,000,000. Any payments received by EPA will be used to implement response action at the Pacific Wood Treating Site in Ridgefield, Washington under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9601 *et seq.*, or by the State of Washington, Department of Ecology, pursuant to a cooperative agreement with EPA, to implement response action at the Site pursuant to state law. The Settlement Agreement also resolves the United States' proof of claim on behalf of EPA filed under the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6901 *et seq.*

The Department of Justice will receive comments relating to the proposed Settlement Agreement for 30 days following the publication of this Notice. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *In re Edward Cyril Niedermeyer*, D.J. Ref. No. 90–7–1–743. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of RCRA.

The proposed Settlement Agreement may be examined at the Office of the United States Attorney for the District of Oregon, 312 U.S. Courthouse, 620 SW Main Street, Portland, Oregon 97205; the Region X Office of the United States Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005 (202–624–0892). A copy of the proposed Settlement Agreement may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy of the Settlement Agreement without attachments, please enclose a check in the amount of $1.50 (25 cents per page for reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Acting Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–13583 Filed 6–2–95; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to Clean Water Act

In accordance with Department of Justice policy and 28 CFR 50.7 notice is hereby given that on May 18, 1995, a proposed Consent Decree in *United States* v. *City of North Olmstead et al.*, Case No. 1:95CV1109, was lodged in the United States District Court for the Northern District of Ohio. The Complaint filed by the United States alleged violations of the Clean Water Act ("the Act"), 33 U.S.C. 1319(b). The Consent Decree requires the City of North Olmstead to comply with its applicable NPDES permit, the Clean Water Act, the Administrative Order issued by U.S. EPA on July 31, 1991, OEPA's Administrative Order of June 21, 1991, and Chapter 6111 of the Ohio Revised Code. North Olmstead has also agreed to make certain equipment changes at its plant by July 1, 1995, submit reports to U.S. EPA concerning any voluntary sewer rehabilitation which North Olmstead undertakes, and submit all reports required by its NPDES permit to U.S. EPA. The Consent Decree also requires North Olmstead to pay a civil penalty of $175,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments concerning the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *City of North Olmstead et al.*, D.J. Ref. No. 90–5–1–1–3949.

The proposed Consent Decree may be examined at any of the following offices: (1) the United States Attorney for the Northern District of Ohio, Room 208 U.S. Courthouse, 2 South Main St, Akron, Ohio 44308 (contact Assistant United States Attorney James L. Bickett); (2) the U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590 (contact Assistant Regional Counsel Padimavati Klejwa); and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, 202–624–0892. Copies of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, telephone (202) 624–0892. For a copy of the Consent Decree please enclose a check in the amount of $3.00 (25 cents per page reproduction costs) payable to Consent Decree Library.

Joel M. Gross,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–13584 Filed 6–2–95; 8:45 am]

BILLING CODE 4410–01–M

National Institute of Corrections

Advisory Board Meeting

Time and date: 10:30 a.m., Tuesday, June 20, 1995.

Place: Charleston Marriott Hotel, 4770 Marriott Drive, Charleston, South Carolina.

Status: Open.

Matters To Be Considered

Office of Justice Programs update on the Violent Offender and Truth In Sentencing Grant Program, update on the Crime Bill provisions assigned to NIC, NIC Information Center report on state legislative actions on truth In sentencing, policy statement on emerging issues in corrections, report on the reorganization and restructuring of NIC, plans for future Advisory Board meetings, and NIC's budget and funding.

CONTACT PERSON FOR FURTHER INFORMATION:

Larry Solomon, Deputy Director, (202) 307–3106, ext. 155.

Morris L. Thigpen,

Director.

[FR Doc. 95–13562 Filed 6–2–95; 8:45 am]

BILLING CODE 4410–36–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–30, 904]

Alliant Techsystems, Inc., A/K/A Hercules, Inc. Kenvil, NJ; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC. 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on April 28, 1995, applicable to all workers of Alliant Techsystems, Incorporated, Kenvil, New Jersey engaged in employment related to the production of propellants. The notice was published in the Federal Register on May 9, 1995 (60 FR 24653).

New information received from the State Agency show that some of the workers at Alliant Techsystems, Incorporated had their unemployment insurance (UI) taxes paid to Hercules, Inc.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Alliant Techsystems, Incorporated who were adversely affected by increased imports.

The amended notice applicable to TA–W–30,904 is hereby issued as follows:

"All workers of Alliant Techsystems, Incorporated, a/k/a Hercules, Inc., Kenville, New Jersey engaged in employment related to the production of propellants who became totally or partially separated from employment on or after March 30, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC this 23rd day of May 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–13567 Filed 6–2–95; 8:45 am]

BILLING CODE 4510–30–M

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. H & S Coal Company

[Docket No. M–95–67–C]

H & S Coal Company, 534 Melrose Street, Marion Heights, Pennsylvania 17832 has filed a petition to modify the application of 30 CFR 75.1400 (hoisting equipment; general) to its No. 1 Slope (I.D. No. 36–08447) located in Northumberland County, Pennsylvania. The petitioner proposes to use a slope conveyance (gunboat) in transporting persons without installing safety catches or other no less effective devices but instead use a increased rope strength/safety factor and secondary safety rope connection in place of such devices. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

2. C. H. & S. Coal Company

[Docket No. M–95–68–C]

C. H. & S. Coal Company, Inc., P.O. Box 159, Birchleaf, Virginia 24220 has filed a petition to modify the application of 30 CFR 75.1711–2 (sealing of slope or drift openings) to its Mine No. 3 (I.D. No. 44–01246) located in Scott County, Virginia. The petitioner proposes to install bat gates on openings at Mine No. 3 and Portals C in addition to the two bat gates already installed by the Virginia Department of Mines, Minerals and Energy at openings Portal A and Portal B in 1987. The petitioner states that the U.S. Forest Service has information that would verify that bat-friendly angle-iron gates have proven highly successful in ensuring both human and bat safety throughout the country; and that they would be willing to provide gate plans for review and to take responsibility for the maintenance and upkeep of the gates including responsibility for the public's safety. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

3. Bear Coal Company

[Docket No. M–95–69–C]

Bear Coal Company, P.O. Box 518, Somerset, Colorado 81434 has filed a petition to modify the application of 30 CFR 75.364(b)(4) (weekly examination) to its Bear No. 3 Mine (I.D. No. 05–03787) located in Gunnison County, Colorado. Due to a roof fall in the "C" seam at crosscuts #25 and #26, entries #0 and #1 impeding travel to two (2) permanent seals the area cannot be traveled safely. The petitioner proposes to establish monitoring stations to measure the quantity and quality of air entering and leaving the affected area; to have a certified person examine the stations on a daily basis and record the results in a book kept on the surface and made available for inspection by interested persons. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

4. Clinchfield Coal Company

[Docket No. M–95–70–C]

Clinchfield Coal Company, 1600 Laidley Tower, P.O. Box 553, Charleston, West Virginia 25322 has filed a petition to modify the application of 30 CFR 75.350 (air courses and belt haulage entries) to its McClure No. 2 Mine (I.D. No. 44–04946) located in Dickenson County, Virginia. Due to extreme restrictions on the intake airways, the petitioner proposes to install a low-level carbon monoxide monitoring system as an early warning fire detection system in all belt entries used as intake air courses to ventilate the active working faces and to dilute and render harmless respirable dust and harmful gases. The petitioner states that application of the standard would result in diminution of safety to the miners. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

5. Clinchfield Coal Company

[Docket No. M–95–71–C]

Clinchfield Coal Company, 1600 Laidley Tower, P.O. Box 553, Charleston, West Virginia 25322 has filed a petition to modify the application of 30 CFR 75.340(a) (underground electrical installations) to its McClure No. 2 Mine (I.D. No. 44–04946) located in Dickenson County, Virginia. Due to extreme air restrictions on the intake airways, the petitioner proposes to install a low-level carbon monoxide monitoring system in all belt entries used as intake air courses as an early warning fire detection system to ventilate the active working faces and to dilute and render harmless respirable dust and harmful gases. The petitioner states that application of the standard would result in a diminution of safety to the miners. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

6. Costain Coal, Inc.

[Docket No. M–95–72–C]

Costain Coal, Inc., P.O. Box 289, Sturgis, Kentucky 42459 has filed a petition to modify the application of 30 CFR 75.1710–1 (canopies or cabs; self-propelled electric face equipment; installation requirements) to its No. 9 Wheatcroft Mine (I.D. No. 15–13920) located in Webster County, Kentucky. The petitioner requests a modification of the mandatory standard to eliminate the use of a canopy or cab on its Pettito Mule longwall shield puller. The petitioner proposes to have its roof bolt spacing between the longwall shield canopy tip and the coal block reduced from 5 foot to 4 foot centers; to install additional roof bolts or cribs if adverse or questionable roof conditions occur; to install additional roof bolts or cribs if the longwall canopy tips are located more than 5 feet from the coal block; and to have a certified person continue to evaluate the roof conditions during longwall shield removal. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

7. Consolidation Coal Company

[Docket No. M–95–73–C]

Consolidation Coal Company, Consol Plaza, 1800 Washington Road, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.364(b) (weekly examination) to its Osage No. 3 Mine (I.D. No. 46–01455) located in Monongalia County, West Virginia. Due to deteriorating roof and rib conditions in the Main West return aircourse, between block markers 7 and 18, traveling the area would be unsafe. The petitioner proposes to establish evaluation check points to monitor the affected area; to have a certified person test for methane and the quantity of air at each check point on a weekly basis, and record the results in a record book kept on the surface and made available for inspection by interested persons. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

8. Industrial Coal Corporation

[Docket No. M–95–74–C]

Industrial Coal Corporation, P.O. Box 1139, Grundy, Virginia 24614 has filed a petition to modify the application of 30 CFR 77.214(a) (refuse piles; general) to its Mine No. 3 (I.D. No. 44–06673) located in Buchanan County, Virginia. The petitioner proposes to seal the mine by removing all sloughed overburden for 10 to 12 feet in front of and to either side of the drift openings in order to allow placement of suitable material for sealing. The petitioner proposes to install a rock core underdrain constructed of durable sandstone rock, enclosed in filter fabric to prevent piping, and/or 2 to 3 inch CMP drain for wet seal in the lowest entry; to backfill the portal areas with an impervious, noncombustible material that contains enough fines to ensure an airtight seal and compacted to 90 percent Proctor dry density; to backfill to 4 feet above drift openings or to 4 feet above any visible cracks above the drifts; and to backfill all exposed coal seams in the vicinity of the openings to a minimum depth of 4 feet above the top of the seam. Petitioner states that all backfill material would be placed in 2-foot lifts. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

9. Trapper Mining, Inc.

[Docket No. M–95–75–C]

Trapper Mining, Inc., P.O. Box 187, Craig, Colorado 81626 has filed a petition to modify the application of 30 CFR 77.1304(a) (blasting agents; special provisions) to its Trapper Mine (I.D. No. 05–02838) located in Moffat County, Colorado. The petitioner requests that its previous petition be amended to allow the addition of petroleum-based solvent (NAPHTHA) to the recycled oil/diesel fuel mixture in the creation of an ammonium nitrate-fuel oil (ANFO) for use as a blasting agent at the minesite. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

10. Twentymile Coal Company

[Docket No. M–95–76–C]

Twentymile Coal Company, 29515 Routt County Road #27, Oak Creek, Colorado 80467 has filed a petition to modify the application of 30 CFR 75.507 (power connection points) to its Foidel Creek Mine (I.D. No. 05–03836) located in Routt County, Colorado. The petitioner proposes to use high-voltage submersible pumps in boreholes drilled into a sump area or areas of the mine. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

11. Twentymile Coal Company

[Docket No. M–95–77–C]

Twentymile Coal Company, 29515 Routt County Road #27, Oak Creek, Colorado 80467 has filed a petition to modify the application of 30 CFR 75.803 (fail safe ground check circuits on high-voltage resistance grounded systems) to its Foidel Creek Mine (I.D. No. 05–03836) located in Routt County, Colorado. The petitioner proposes to use high-voltage submersible pumps in boreholes drilled into a sump area or areas of the mine. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

12. Cyprus Bagdad Copper Corporation

[Docket No. M–95–08–M]

Cyprus Bagdad Copper Corporation, 9100 East Minerals Circle, Englewood, Colorado 80112 has filed a petition to modify the application of 30 CFR 56.6309 (fuel oil requirements for ANFO) to its Bagdad Mine (I.D. No. 02–00137) located in Yavapai County, Arizona. The petitioner proposes to blend recycled oil with fuel oil in preparing ammonium nitrate-fuel oil (ANFO) for use as a blasting agent. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

Request for Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 3, 1995. Copies of these petitions are available for inspection at that address.

Dated: May 25, 1995.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 95–13594 Filed 6–2–95; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment For The Humanities

Agency Information Collection Under OMB Review

AGENCY: National Endowment for the Humanities, National Foundation on the Arts and Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposal for expedited action for a generic clearance for voluntary customer surveys. This collection of information falls under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Comments on this information collection must be submitted on or before June 19, 1995.

ADDRESSES: Send comments to Ms. Susan Daisey, Assistant Director, Grants Office, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., Room 310, Washington, DC 20506 (202–606–8494) and Mr. Daniel Chenok, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Room 3002, Washington, DC 20503 (202–395–7316).

FOR FURTHER INFORMATION CONTACT: Ms. Susan Daisey, Assistant Director, Grants Office, National Endowment for the humanities, 1100 Pennsylvania Avenue, NW., Room 310, Washington, DC 20506 (202) 606–8494 from whom copies of forms and supporting documents are available.

SUPPLEMENTARY INFORMATION: All of the entries are grouped into new forms, revisions, extensions, or reinstatements. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what the form will be used for; (6) an estimate of the number of responses; (7) the frequency of response; (8) an estimate of the total number of hours needed to fill out the form; (9) an estimate of the total annual reporting and recordkeeping burden. None of these entries are subject to 44 U.S.C. 3504(h).

Category: New Forms

Title: Generic Clearance for Voluntary Customer Surveys.
Form Number: N/A.
Frequency of Collection: Annually.
Respondents: Grantees and Applicants.
Use: Assess Quality of Service.
Estimated Number of Respondents: 500.
Frequency of Response: Once.
Estimated Hours for Respondents to Provide Information: .50 per respondent.
Estimated Total Annual Reporting and Recordkeeping Burden: 250 hours.

Sheldon Hackney,
Chairman.
[FR Doc. 95–13704 Filed 6–2–95; 8:45 am]
BILLING CODE 7536–01–M

Media Arts Advisory Panel: Film Preservation Section

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Media Arts Advisory Panel (Film Preservation Section) to the National Council on the Arts will be held on June 21, 1995 from 10 a.m. to 3 p.m. This meeting will be held in Room 415, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 10 a.m. to 10:15 a.m. for introductory remarks and from 2:30 p.m. to 3:30 p.m. for a policy discussion.

The remaining portion of this meeting from 10:15 a.m. to 2:30 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the national Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, this session will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies. National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

Dated: May 30, 1995.

Yvonne M. Sabine,
Director, Office of Council & Panel Operations, National Endowment for the Arts.
[FR Doc. 95–13648 Filed 6–2–95; 8:45 am]
BILLING CODE 7537–01–M

Presenting Advisory Meeting: Dance on Tour Section

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Presenting Advisory Panel (Dance on Tour Section) to the National Council on the Arts will be held on June 26 and 28, 1995 from 3:30 p.m. to 5 p.m. on June 26 and from 9 a.m. to 5 p.m. on June 28. This meeting will be held in Room M–09, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on June 28 from 4:00 p.m. to 5:00 p.m. for a policy and guidelines review.

The remaining portions of this meeting from 3:30 p.m. to 5 p.m. on June 26 and from 9 a.m. to 4 p.m. on June 28 are for the purpose of panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and 9(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

Dated: May 30, 1995.

Yvonne M. Sabine,
Director, Office of Council and Panel Operations, National Endowment for the Arts.
[FR Doc. 95–13651 Filed 6–2–95; 8:45 am]
BILLING CODE 7537–01–M

Amended Notice of Meeting; Museum Advisory Panel, Agenda of Overview Panel Meeting: Correction

May 30, 1995.

ACTION: Notice of correction of agenda to include a closed session.

SUMMARY: This notice corrects the scheduling of open sessions for the Museum Advisory Panel (Overview Section) previously published in the Federal Register on May 25, 1995 (FR page 27796).

This panel, scheduled to meet in room M–07 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington DC, will now include a closed session from 8:30 a.m. to 9:30 a.m. on June 14 for a brief application review. The remainder of the meeting from 9 a.m. to 6 p.m. on June 13 and from 9 a.m. to 3 p.m. will remain open as originally scheduled.

Dated: May 30, 1995.

Yvonne M. Sabine,
Director, Office of Council & Panel Operations, National Endowment for the Arts.
[FR Doc. 95–13649 Filed 6–2–95; 8:45 am]
BILLING CODE 7537–01–M

Visual Arts Advisory Panel Meeting: Works on Paper Fellowships Section

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Visual Arts Advisory Panel (Works on Paper Fellowships Section) to the National Council on the Arts will be held on June 19–23, 1995 from 9 a.m. to 7 p.m. on June 19 to 22 and from 9:30 a.m. to 4:30 p.m. on June 23. This meeting will be held in room 716, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 3:30 p.m. to 4:30 p.m. on June 23 for a policy and guidelines discussion.

The remaining portions of this meeting from 9 a.m. to 7 p.m. on June 19–22 and from 9:30 a.m. to 3:30 p.m. on June 23 are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994 these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

Dated: May 26, 1995.

Yvonne M. Sabine,
Director, Office of Council and Panel Operations, National Endowment for the Arts.
[FR Doc. 95–13650 Filed 6–2–95; 8:45 am]
BILLING CODE 7537–01–M

NATIONAL INDIAN GAMING COMMISSION

Notice of Approval of Class III Tribal Gaming Ordinances

AGENCY: National Indian Gaming Commission.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public of class III gaming ordinances approved by the Chairman of the National Indian Gaming Commission.

FOR FURTHER INFORMATION CONTACT: Christine Lambert at (202) 632–7003, or by facsimile at (202) 632–7066 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulatory Act (IGRA) 25 U.S.C. 2701 *et seq.*, was signed into law on October 17, 1988. The IGRA established the National Indian Gaming Commission (the Commission). Section 2710 of the IGRA authorizes the Commission to approve class II and class III tribal gaming ordinances. Section 2710(d)(2)(B) of the IGRA as implemented by 25 CFR 522.8 (58 FR 5811 (January 22, 1993)), requires the Commission to publish, in the **Federal Register**, approved class III gaming ordinances.

The IGRA requires all tribal gaming ordinances to contain the same requirements concerning ownership of the gaming activity, use of net revenues, annual audits, health and safety, background investigations and licensing of key employees. The Commission, therefore, believes that publication of each ordinance in the **Federal Register** would be redundant and result in unnecessary cost to the Commission. The Commission believes that publishing a notice of approval of each class III gaming ordinance is sufficient to meet the requirements of 25 U.S.C. § 2710(d)(2)(B). Also, the Commission will make copies of approved class III ordinances available to the public upon request. Requests can be made in writing to: National Indian Gaming Commission, 1850 M St., NW., Suite 250, Washington, DC 20036.

The Chairman has approved tribal gaming ordinances authorizing class III gaming for the following Indian tribes:

Blue Lake Rancheria
Cheyenne River Sioux Tribe
Confederated Tribes of the Warm Springs Reservation
Coquille Indian Tribe
Coyote Valley Band of Pomo Indians
Eastern Shawnee Tribe of Oklahoma
Fallon Paiute-Shoshone Tribes
Lake Miwok Indian Nation of the Middletown Rancheria
Mille Lacs Band of Chippewa Indians
Nez Perce Tribe
Ponca Tribe of Oklahoma
Port Gamble S'Klallam Tribe
Pueblo of Isleta
Quechan Indian Tribe
Sac & Fox Tribe of Mississippi in Iowa
Sisseton-Wahpeton Sioux Tribe
St. Croix Chippewa Indians of Wisconsin
Tulalip Tribes of Washington
Tule River Tribe of the Tule River Indian Reservation
Ute Mountain Ute Tribe.

Harold A. Monteau,
Chairman.
[FR Doc. 95–13605 Filed 6–2–95; 8:45 am]
BILLING CODE 7565–01–M

NATIONAL LABOR RELATIONS BOARD

Revision of Statement of Organization and Functions

AGENCY: National Labor Relations Board.

ACTION: Notice of Transferral of El Paso Resident Office from Region 28 to Region 16.

SUMMARY: The National Labor Relations Board gives notice of its intent to transfer its El Paso Resident Office and the three counties in the State of Texas which are serviced by that office, Culberson, El Paso and Hudspeth, from Region 28 to Region 16. This transfer is being effectuated to provide Region 16 with additional resources to deal with an increasing case intake and will enhance our overall administrative efficiency and the service we provide to the public. This transfer will result in having the entire State of Texas be under a single Region's jurisdiction and will be effective as of July 9, 1995. Parties are requested to continue to file all unfair labor practice charges and

representation petitions arising within the counties of Culberson, El Paso and Hudspeth, in the El Paso Resident Office.

Dated, Washington, DC, May 30, 1995.

By Direction of the Board.

Joseph E. Moore,

Acting Executive Secretary.

[FR Doc. 95–13646 Filed 6–2–95; 8:45 am]

BILLING CODE 7545–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–348 and 50–364]

Joseph M. Farley Nuclear Plant, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of its regulations to Facility Operating License Nos. NPF–2 and NPF–8. These licenses are issued to the Southern Nuclear Operating Company (SNC) and the Alabama Power Company for operation of the Joseph M. Farley Nuclear Plant, Units 1 and 2 (Farley), located in Houston County, Alabama.

Environmental Assessment

Identification of Proposed Action

The proposed action is in accordance with the SNC's application dated April 3, 1995, for exemption from certain requirements of 10 CFR 73.55, "Requirements for Physical Protection of Licensed Activities in Nuclear Power Reactors Against Radiological Sabotage." The exemption would allow implementation of a hand geometry biometrics system to control site access at Farley so that photo identification badges for non-SNC employees that have been granted unescorted access into protected and vital areas may be taken offsite.

The Need for the Proposed Action

Pursuant to 10 CFR 73.55, paragraph (a), SNC shall establish and maintain an onsite physical protection system and security organization. Regulation 10 CFR 73.55(d), "Access Requirements," paragraph (1), specifies that the "licensee shall control all points of personnel and vehicle access into a protected area." Regulation 10 CFR 73.55(d)(5) specifies that, "A numbered picture badge identification system shall be used for all individuals who are authorized access to protected areas without escort." Regulation 10 CFR 73.55(d)(5) also states that an individual not employed by the licensee (i.e., contractors) may be authorized access to protected areas without escort provided the individual "receives a picture badge upon entrance into the protected area which must be returned upon exit from the protected area * * *."

Currently, unescorted access into protected areas at the Farley plant is controlled through the use of a photograph on a badge/keycard (hereafter referred to as a "badge"), which is stored at the access point when not in use. The security officers at each entrance station use the photograph on the badge to visually identify the individual requesting access. The badges for both SNC employees and contractor personnel who have been granted unescorted access are given to the individuals at the entrance location upon entry and are returned upon exit. In accordance with 10 CFR 73.55(d)(5), the badges are not allowed to be taken offsite.

Southern Nuclear proposes to implement an alternate unescorted access control system that would eliminate the need to issue and retrieve badges at the entry point and would allow all individuals with unescorted access to keep their badges when departing the site.

An exemption from 10 CFR 73.55(d)(5) is required to permit contractors to take their badges offsite instead of returning them when exiting the site.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of SNC's application. Under the proposed system, each individual who is authorized unescorted access would have the physical characteristics of their hand (hand geometry) registered with their badge number in the access control system. When an individual enters the badge into the card reader and places the hand on the measuring surface, the system would record the individual's hand image. The unique characteristics of the hand image would be compared with the previously stored template to verify authorization for entry. Individuals, including SNC employees and contractors, would be allowed to keep their badge when departing the site.

Based on the Sandia report, "A Performance Evaluation of Biometric Identification Devices," SAND91–0276•UC–906, Unlimited Release, June 1991, that concluded hand geometry equipment possesses strong performance and high detection characteristics, and on its own experience with the current photo-identification system, SNC determined that the proposed hand geometry system would provide the same level of assurance as the current system that access is only granted to authorized individuals. Since both the badge and hand geometry would be necessary for access into the protected areas, the proposed system would provide a positive verification process. Potential loss of a badge by an individual, as a result of taking the badge offsite, would not enable unauthorized entry into protected areas. Southern Nuclear has stated it will implement a process for periodically testing the proposed system to ensure continued overall level of performance equivalent to that specified in the regulation. The Physical Security Plan will be revised to include implementation and testing of the hand geometry access control system and to allow SNC employees and contractors to take their badges offsite.

Southern Nuclear has determined that the proposed hand geometry access control process for identifying personnel will provide the same high assurance objective regarding onsite physical protection as provided by the photo-identification process now in use.

The access process will continue to be under the observation of security personnel. A numbered picture badge identification system will continue to be used for all individuals who are authorized access to protected areas without escorts. Badges will continue to be displayed by all individuals while inside the protected areas.

Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impacts. With regard to potential non-radiological impacts, the proposed action does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed action.

Alternative to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action did not involve the use of any resources not previously considered in the Final Environmental Statement related to operation of the Joseph M. Farley Nuclear Plant, Units 1 and 2, dated June 1972.

Agencies and Persons Consulted

In accordance with its stated policy on May 11, 1995, the staff consulted with the Alabama State official, James McNees of the Alabama Department of Public Health, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption. Based upon the foregoing environmental assessment, the Commission has concluded that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for exemption dated April 3, 1995, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC at the local public document room located at the Houston-Love Memorial Library, 212 W. Burnshaw Street, Post Office Box 1369, Dothan, Alabama.

Dated at Rockville, Maryland, this 30th day of May 1995.

For the Nuclear Regulatory Commission.

Herbert N. Berkow,

Director, Project Directorate II–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–13632 Filed 6–2–95; 8:45 am]

BILLING CODE 7590–01–M

Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a guide for its Regulatory Guide series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft guide is temporarily identified by its Task Number, DG–0008 (which should be mentioned in all correspondence concerning this draft guide). DG–0008, "Applications for the Use of Sealed Sources in Portable Gauging Devices," is being developed to provide guidance to applicants and licensees in preparing applications for new licenses, license amendments, and license renewals for the use of sealed sources in portable gauging devices.

This draft guide is being issued to involve the public in the early stages of the development of a regulatory position in this area. It has not received complete staff review and does not represent an official NRC staff position.

Public comments are being solicited on this draft guide. Comments should be accompanied by supporting data. Written comments may be submitted to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Comments will be most helpful if received by August 31, 1995.

Comments may be submitted electronically, in either ASCII text or Wordperfect format (version 5.1 or later), by calling the NRC Electronic Bulletin Board on FedWorld. The bulletin board may be accessed using a personal computer, a modem, and one of the commonly available communications software packages, or directly via Internet.

If using a personal computer and modem, the NRC subsystem on FedWorld can be accessed directly by dialing the toll free number: 1–800–303–9672. Communication software parameters should be set as follows: parity to none, data bits to 8, and stop bits to 1 (N,8,1,). Using ANSI or VT–100 terminal emulation, the NRC NUREGs and RegGuides for Comment subsystem can then be accessed by selecting the "Rules Menu" option from the "NRC Main Menu." For further information about options available for NRC at FedWorld, consult the "Help/Information Center" from the "NRC Main Menu." Users will find the "FedWorld Online User's Guides" particularly helpful. Many NRC subsystems and databases also have a "Help /Information Center" option that is tailored to the particular subsystem.

The NRC subsystem on FedWorld can also be accessed by a direct dial phone number for the main FedWorld BBS, 703–321–8020, or by using Telnet via Internet, fedworld.gov. If using 703–321–8020 to contact FedWorld, the NRC subsystem will be accessed from the main FedWorld menu by selecting the "Regulatory, Government Administration and State System," then selecting "Regulatory Information Mall." At that point, a menu will be displayed that has an option "U.S. Nuclear Regulatory Commission" that will take you to the NRC Online main menu. The NRC Online area also can be accessed directly by typing "/go nrc" at a FedWorld command line. If you access NRC from FedWorld's main menu, you may return to FedWorld by selecting the "Return to FedWorld" option from the NRC Online Main Menu. However, if you access NRC at FedWorld by using NRC's toll-free number, you will have full access to all NRC systems but you will not have access to the main FedWorld system.

If you contact FedWorld using Telnet, you will see the NRC area and menus, including the Rules menu. Although you will be able to download documents and leave messages, you will not be able to write comments or upload files (comments). If you contact FedWorld using FTP, all files can be accessed and downloaded but uploads are not allowed; all you will see is a list of files without descriptions (normal Gopher look). An index file listing all files within a subdirectory, with descriptions, is included. There is a 15-minute time limit for FTP access.

Although FedWorld can be accessed through the World Wide Web, like FTP that mode only provides access for downloading files and does not display the NRC Rules menu.

For more information on NRC bulletin boards call Mr. Arthur Davis, Systems Integration and Development Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–5780; e-mail AXD3@nrc.gov.

For more information on this Draft Regulatory Guide DG–0008, contact Ms. P.C. Vacca at the Office of the Nuclear Safety and Standards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–7908; e-mail PCV@nrc.gov.

Although a time limit is given for comments on these drafts, comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Requests for single copies of draft guides (which maybe reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Distribution and Mail Service Section. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 16th day of May 1995.

For the Nuclear Regulatory Commission.

Bill M. Morris,

Director, Division of Regulatory Applications, Office of Nuclear Regulatory Research.

[FR Doc. 95–13633 Filed 6–2–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–458]

Gulf States Utilities Company and Cajun Electric Power Cooperative, Inc., River Bend Station, Unit 1, Reevaluation of Antitrust Finding

Notice is hereby given that counsel for Cajun Electric Power Cooperative, Inc., and the Arkansas Cities of Benton, Conway, North Little Rock, Osceloa, Prescott, and West Memphis as well as Farmer's Electric Cooperative Corporation have requested a reevaluation by the Director of the Office of Nuclear Reactor Regulation of the "Finding of No Significant Antitrust Changes" pursuant to the antitrust review of the captioned nuclear unit. After further review, I have decided not to change my finding.

A copy of my finding, the requests for reevaluation, and my reevaluation are available for public examination and copying, for a fee, at the Commission's Public Document Room, 2120 L Street, N.W., Washington, DC 20555.

Dated at Rockville, Maryland, this 30th day of May 1995.

For the Nuclear Regulatory Commission.

William T. Russell,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 95–13634 Filed 6–2–95; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Meeting of the Investment and Services Policy Advisory Committee

AGENCY: Office of the United States Trade Representative.

ACTION: Notice that the June 13, 1995 meeting of the Investment and Services Policy Advisory Committee will be held from 10:00 a.m. to 2:00 p.m. The meeting will be closed to the public from 10:00 a.m. to 1:15 p.m. The meeting will be open to the public from 1:15 p.m. to 2:00 p.m.

SUMMARY: The Investment and Services Policy Advisory Committee will hold a meeting on June 13, 1995 from 10:00 a.m. to 2:00 p.m. The meeting will be closed to the public from 10:00 a.m. to 1:15 p.m. The meeting will include a review and discussion of current issues which influence U.S. trade policy. Pursuant to Section 2155(f)(2) of Title 19 of the United States Code, I have determined that this portion of the meeting will be concerned with matters the disclosure of which would seriously compromise the development by the United States Government of trade policy, priorities, negotiating objectives or bargaining positions with respect to the operation of any trade agreement and other matters arising in connection with the development, implementation and administration of the trade policy of the United States. The meeting will be open to the public and press from 1:15 p.m. to 2:00 p.m. when trade policy issues will be discussed. Attendance during this part of the meeting is for observation only. Individuals who are not members of the committee will not be invited to comment.

DATES: The meeting is scheduled for June 13, 1995, unless otherwise notified.

ADDRESSES: The meeting will be held at the Jefferson Hotel at 16th and M streets NW., Washington, DC, unless otherwise notified.

FOR FURTHER INFORMATION CONTACT: Michaelle Burstin, Director of Public Liaison, Office of the United States Trade Representative, (202) 395–6120.

Michael Kantor,

United States Trade Representative.

[FR Doc. 95–13609 Filed 6–2–95; 8:45 am]

BILLING CODE 3190–01–M

RAILROAD RETIREMENT BOARD

Determination of Quarterly Rate of Excise Tax for Railroad Retirement Supplemental Annuity Program

In accordance with directions in Section 3221(c) of the Railroad Retirement Tax Act (26 U.S.C., Section 3221(c)), the Railroad Retirement Board has determined that the excise tax imposed by such Section 3221(c) on every employer, with respect to having individuals in his employ, for each work-hour for which compensation is paid by such employer for services rendered to him during the quarter beginning July 1, 1995, shall be at the rate of 33 cents.

In accordance with directions in Section 15(a) of the Railroad Retirement Act of 1974, the Railroad Retirement Board has determined that for the quarter beginning July 1, 1995, 34.5 percent of the taxes collected under Sections 3211(b) and 3221(c) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Account and 65.5 percent of the taxes collected under such Sections 3211(b) and 3221(c) plus 100 percent of the taxes collected under Section 3221(d) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Supplemental Account.

Dated: May 26, 1995.

By Authority of the Board.

Beatrice Ezerski,

Secretary of the Board.

[FR Doc. 95–13568 Filed 6–2–95; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application to Withdraw From Listing and Registration; (Pharma Patch, Plc, Class A, Class B, and Class C Warrants) File No. 1–12836

May 30, 1995

Pharma Patch, Plc ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified securities ("Securities") from listing and registration on the Boston Stock Exchange, Inc. ("BSE").

The reasons alleged in the application for withdrawing the Securities from listing and registration include the following:

According to the Company, it desires to have the Securities delisted to avoid paying listing fees in that there has not been any trading whatsoever in the Warrants on the BSE since the Securities were listed in February 1994.

Any interested person may, on or before June 22, 1995 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–13596 Filed 6–2–95; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Strafford County, New Hampshire

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed highway project in the Cities of Dover, Rochester, and Somersworth, in Strafford County, New Hampshire.

FOR FURTHER INFORMATION CONTACT: Mr. William F. O'Donnell, P.E., Environmental Program Manager, Federal Highway Administration, 279 Pleasant Street, Suite 204, Concord, New Hampshire 03301, Telephone: (603) 225–1608 or Mr. Dennis J. Danna, Chief, Technical Services Section, Bureau of Environment, New Hampshire Department of Transportation, P.O. Box 483, John O. Morton Building, Concord, New Hampshire 03302–0483, Telephone: (603) 271–3226.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the New Hampshire Department of Transportation (NHDOT), will prepare an EIS for a proposed highway project to improve access to and from the Spaulding Turnpike (NH Route 16) to the tri-city areas of Dover, Somersworth and Rochester. The project shall study possible locations for a new interchange (Exit 10) and the necessary road networks to connect the new interchange to the highway system east and/or west of the turnpike. Consideration of upgrading existing roadways within the study area, as alternative means of meeting the area's transportation requirements, will also be addressed. Other potential alternative solutions to be studied include: taking no action, applying transportation systems management (TSM) improvements to selected locations on existing roads, transportation demand management, including mass transit, and combinations of these alternatives. Various designs of grade, alignment, geometry and access will be evaluated.

An Advisory Task Force consisting of the Seacoast Metropolitan Planning Organization, public transit operators, Federal Transit Administration, local officials, NHDOT and FHWA will be established to explore and evaluate transportation alternatives and to evaluate project input as this study progresses.

Letters describing the proposed action and soliciting scoping comments will be sent to appropriate Federal, State and local agencies, and to private organizations and citizens who have an interest in this proposal. They will also be invited to a formal scoping meeting. Public information, community and Advisory Task Force meetings will be held in the study area as the project progresses to consider public input in the planning process. A public hearing will be held following distribution of the Draft Environmental Impact Statement (DEIS). Public notice will be given regarding the time and location of this hearing. The DEIS will be available for review and comment by the public and interested agencies.

The formal scoping meeting will be held at MHDOT offices in Concord, New Hampshire on June 29, 1995 at 9:30 a.m. to: (1) confirm the limits of the project study area, (2) help to establish the study framework and the impacts to be analyzed, and (3) help to define a reasonable range of alternatives to be considered. Study area resources to be analyzed include the natural environment (such as farmland, wetlands, floodplains, and water resources), the social environment (such as land use, economic development and community facilities), the cultural environment (historic and archeological resources) and the transportation network. Agencies to be invited to be cooperating agencies are the U.S. Environment Protection Agency (EPA), the U.S. Army Corps of Engineers (ACOE), the New Hampshire State Historic Preservation Office (SHPO) and the New Hampshire Wetlands Board (NHWB).

Comments and suggestions are invited from all interested parties to ensure that the full range of issues related to this proposed action is addressed and all significant issues are identified. Comments or questions concerning this proposed action should be directed to the FHWA or the NHDOT at the addresses provided above.

(Catalog of Federal Domestic Assistance Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program).

Issued on May 24, 1995.

Kathleen O. Laffey,

Division Administration, Concord, New Hampshire.

[FR Doc. 95–13569 Filed 6–2–95; 8:45 am]

BILLING CODE 4910–22–M

Sunshine Act Meetings

Federal Register
Vol. 60, No. 107
Monday, June 5, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, May 30, 1995.
LOCATION: Room 410, East West Towers, 4330 East West Highway, Bethesda, Maryland.
STATUS: Closed to the Public.
MATTER TO BE CONSIDERED:

Enforcement Matter OS# 5010

The Commission was briefed on issues related to enforcement matter OS# 5010.

For a recorded message containing the latest agenda information, call (301) 504–0709.
CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207, (301) 504–0800.

Dated: May 31, 1995.
Sadye E. Dunn,
Secretary.
[FR Doc. 95–13810 Filed 6–1–95; 3:13 pm]
BILLING CODE 6355–01–M

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, June 8, 1995.
LOCATION: Room 420, East West Towers, 4330 East West Highway, Bethesda, Maryland.
STATUS: Open to the Public.
MATTER TO BE CONSIDERED:

Protocol Revisions

The staff will brief the Commission on two new issues raised on a final rule revising the child-resistant packaging test protocols under the Poison Prevention Packaging Act. This matter arises from the Commission's decision on February 9, 1995, to reopen the proceeding and to accept oral and written comments on the newly-raised issues.

For a recorded message containing the latest agenda information, call (301) 504–0709.
CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: May 31, 1995.
Sadye E. Dunn,
Secretary.
[FR Doc. 95–13811 Filed 6–1–95; 3:13 pm]
BILLING CODE 6355–01–M

FEDERAL MARITIME COMMISSION

TIME AND DATE: 10:00 a.m., June 7, 1995.
PLACE: Main Hearing Room—800 North Capitol Street, NW., Washington, DC 20573–0001.
STATUS: Open.
MATTER(S) TO BE CONSIDERED: Docket No. 94–07—*Financial Reporting Requirements and Rate of Return Methodology in the Domestic Offshore Trades*—Consideration of Comments.
CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary, (202) 523–5725.

Joseph C. Polking,
Secretary.
[FR Doc. 95–13748 Filed 6–1–95; 9:15 am]
BILLING CODE 6730–01–M

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of June 5, 1995.

A closed meeting will be held on Wednesday, June 7, 1995, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Roberts, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Wednesday, June 7, 1995, at 10:00 a.m., will be:

Institution of injunctive actions.
Institution of administrative proceedings of an enforcement nature.
Settlement of injunctive action.
Settlement of administrative proceedings of an enforcement nature.
Opinions.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary (202) 942–7070.

Dated: May 31, 1995.
Jonathan G. Katz,
Secretary.
[FR Doc. 95–13803 Filed 6–1–95; 3:13 pm]
BILLING CODE 8010–01–M

federal register

Monday
June 5, 1995

Part II

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 945
Irish Potatoes Grown in Oregon and Idaho; Final Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 945

[Docket No. A0–150–A6; FV92–945–2FR]

Irish Potatoes Grown in Certain Designated Counties in Idaho, and Malheur County, Oregon; Order Further Amending Marketing Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule further amends the marketing agreement and order for potatoes grown in Idaho-Eastern Oregon (order). The amendments include authority to: regulate shipments of potatoes within the production area, change representation and quorum procedures of the committee, set container marking and labeling requirements, and require the committee to consider, at least every six years, changes in committee size or reapportionment of committee membership. Also, they change committee fiscal operations, add confidentiality and verification provisions to the order, and make other miscellaneous changes that are consistent with the amendments. These changes were favored by the subject potato producers in a referendum held from April 3–17, 1995. The amendments will improve the administration, operation and functioning of the marketing order program.

EFFECTIVE DATE: May 31, 1995.

FOR FURTHER INFORMATION CONTACT: Gary Olson, OIC, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 1220 S.W. Third Avenue, room 369, Portland, Oregon 97204; telephone: 503–326–2725, or Fax 503–326–7440; or Valerie L. Emmer or Jim Wendland, Marketing Specialists, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2523–S, P.O. Box 96456, Washington, D.C. 20090–6456, telephone: 202–205–2829 or 720–2170 respectively, or FAX 202–720–5698.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing issued on August 3, 1993, and published in the **Federal Register** on August 11, 1993 (58 FR 42696). Recommended Decision and Opportunity to File Written Exceptions issued on November 23, 1994, and published in the **Federal Register** on November 30, 1994 (59 FR 61286). Secretary's Decision and Referendum Order issued March 3, 1995, and published in the **Federal Register** on March 10, 1995 (60 FR 13080).

Preliminary Statement

This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and is therefore excluded from the requirements of Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this action.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

The final rule was formulated on the record of a public hearing held in Idaho Falls, Idaho, on September 8, 1993, to consider the proposed amendment of the Marketing Agreement and Order No. 945, regulating the handling of potatoes grown in designated counties in Idaho, and Malheur County, Oregon, hereinafter referred to collectively as the "order." Notice of the hearing was published in the August 11, 1993, issue of the **Federal Register** (58 FR 42696).

The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), hereinafter referred to as the Act, and the applicable rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders (7 CFR part 900). The Notice of Hearing contained several amendment proposals submitted by the Idaho-Eastern Oregon Potato Committee (committee) established under the order to assist in local administration of the program.

The proposals pertained to: (1) Redefining "ship or handle" to include shipments of potatoes within the production area; (2) providing seed producers with representation on the committee and adding authority for the committee to recommend to the Secretary changes in the committee size and composition; (3) updating committee representation districts to show the counties currently in each district; (4) requiring the committee to consider, at least every six years, whether to recommend changes in committee size or reapportionment of committee membership; (5) changing committee quorum procedures; (6) removing an outdated assessment limitation of $1 per carload and allowing the committee to impose late payment or interest fees, or both, on late assessment payments, accept advance payments, and borrow monies in an extreme emergency for program administration; (7) adding authority for the committee to recommend container marking and labeling requirements; and (8) specifying confidentiality requirements for handler reports submitted to the committee. The Department of Agriculture proposed authority for adding requirements regarding verification of reports and to make any necessary conforming changes.

Upon the basis of evidence introduced at the hearing and the record thereof, the Acting Assistant Secretary, Marketing and Regulatory Programs, on March 2, 1995, filed with the Hearing Clerk, U.S. Department of Agriculture, a Secretary's Decision and Referendum Order, directing that a referendum be conducted during the period April 3–17, 1995, among producers of Idaho-Eastern Oregon Potatoes to determine whether they favored the proposed amendments to the order. In the referendum, all amendment proposals were favored by more than two-thirds of the producers voting in the referendum. Accordingly, all proposed amendments are included in this order further amending the order.

The amended marketing agreement was subsequently mailed to all potato handlers in the production area for their approval. The marketing agreement was signed by potato handlers representing more than 50 percent of the volume of potatoes handled by all handlers during the representative period of August 1, 1993, to July 31, 1994.

Small Business Considerations

In accordance with the provisions of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Small agricultural service firms, which include handlers regulated under this order, have been defined by the Small Business Administration (SBA) (13 CFR 121.601) as those having annual receipts of less than $5,000,000. Small agricultural producers are defined as those having annual receipts of less than $500,000.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders and rules issued thereunder are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both the RFA and the Act have small entity orientation and compatibility. Interested persons were invited to present evidence at the hearing on the probable impact that the proposed amendments to the order would have on small businesses.

During the 1992–93 crop year, 66 handlers were regulated under Marketing Order No. 945. In addition, there are about 1,600 producers of potatoes in the production area. The Act requires the application of uniform rules on regulated handlers. Since handlers covered under the potato marketing order are predominantly small businesses, the order itself is tailored to the size and nature of these small businesses. Marketing orders and amendments thereto, are unique in that they are normally brought about through group action of essentially small entities for their own benefit. Thus, both the RFA and the Act are compatible with respect to small entities.

This final rule amends certain provisions of the order including: § 945.20 Establishment and membership pertaining to operations of the committee, including providing seed producers representation on the committee; § 945.23 Redistricting and reapportionment authorizing changes in committee size, composition, and representation; § 945.30 Procedure regarding quorum requirements; and § 945.42 Assessments removing a $1 per carload maximum assessment rate and allowing the committee to impose late payment and interest fees on late assessment payments and borrow monies in an extreme emergency for program administration. The record indicates these changes will provide an opportunity for a broader based representation on the committee and more flexibility to adjust to future changes in industry structure, potato production and financial operations. These changes are also designed to enhance the administration and functioning of the order and will have negligible, if any, economic impact on small businesses.

This final rule amends § 945.9 Ship or handle by revising the definition of these terms to include the handling of potatoes in the current of commerce within the counties covered by the order's production area, broadening the scope of the order. This will require all regulated shipments of potatoes for fresh market to be inspected and meet order requirements, including grade, size, quality, pack, and payment of assessments. This final rule will improve the market for potatoes handled within the production area. This will benefit both producers and handlers because minimum grade, size and quality requirements established under the order are important to the industry in fostering consumer satisfaction, increasing the demand for Idaho-Eastern Oregon potatoes, and improving industry returns; and the additional assessment income would improve the financial operations of the order. Any added burden on small businesses should be outweighed by the added benefits accruing to them.

The change to allow the rate of assessment to be based on a hundredweight of potatoes rather than an outdated maximum amount of $1 per railroad carload will improve the financial operations of the order and not adversely impact small businesses. This change will provide more efficient funding of order operations and activities. Fresh potato shipments have stabilized in recent years and the current maximum rate specified will likely not be sufficient to properly fund committee operating costs beyond the next few years if costs continue to rise.

Another change will amend § 945.52 Issuance of regulations to add authority to require accurate and uniform marking and labeling of the containers in which production area potatoes are shipped. The benefits of the expected higher returns that could result from increases in buyer and consumer satisfaction due to accurate marking and labeling should outweigh any potential burden on small businesses.

Another amendment, to § 945.80 Reports, will provide confidentiality requirements for reports submitted to the committee. This will safeguard handlers' proprietary information, including that for small businesses, without imposing any burden on them. Additionally, new § 945.80 provisions will add authority for the Secretary and the committee to verify the correctness of reports filed by handlers, and to verify handler compliance with recordkeeping requirements. The requirement will not have a significant impact on small entities in the industry.

The final rule to make other miscellaneous changes that will be consistent with the changed amendments is necessary so that all sections of the order will be consistent. These changes include deleting and redesignating certain sections of the order.

All these changes are designed to enhance the administration and functioning of the marketing agreement and order to the benefit of the industry. Accordingly, it is determined that the revisions of the order will not have a significant economic impact on handlers or producers.

In compliance with Office of Management and Budget (OMB) regulations (5 CFR Part 1320) which implement the Paperwork Reduction Act of 1980 (44 U.S.C. 35), any reporting and recordkeeping requirements that may result from these amendments will be submitted to OMB for approval.

List of Subjects in 7 CFR Part 945

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

Order Further Amending the Order Regulating the Handling of Irish Potatoes Grown in Certain Designated Counties in Idaho, and Malheur County, Oregon

Findings and Determinations

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the order; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings and Determinations Upon the Basis of the Hearing Record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure effective thereunder (7 CFR part 900), a public hearing was held upon the amendments to the Marketing Agreement and Order No. 945 (7 CFR part 945), regulating the handling of Irish potatoes grown in certain designated counties in Idaho, and Malheur County, Oregon.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The order, as amended, as hereby further amended, and all of the terms

and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The order, as amended, as hereby further amended, regulates the handling of Irish potatoes grown in the production area in the same manner as, and is applicable only to persons in the respective classes of commercial and industrial activity specified in the marketing order upon which hearings have been held;

(3) The order, as amended, as hereby further amended, is limited in application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(4) The order, as amended, as hereby further amended, prescribes, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of potatoes grown in the production area; and

(5) All handling of potatoes grown in the production area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

(b) *Additional findings.* It is necessary and in the public interest to make these order amendments effective not later than May 31, 1995.

A later effective date would unnecessarily delay the implementation of the order amendments and the improvement in operation of the marketing order program. The committee, producers and handlers need as much time as possible to make plans to implement the amended order and discuss needed changes to its handling regulation and committee operating procedures before its June 6, 1995, annual organizational meeting, when it recommends actions for the fast approaching 1995–96 season. The harvesting and marketing of the 1995 crop is expected to begin in August 1995. Hence, Department and industry implementation activities must begin promptly. Some of the committee recommendations for the 1995–96 season will require informal rulemaking by the Department to be implemented.

In view of the foregoing, it is hereby found and determined that good cause exists for making these order amendments effective May 31, 1995, and that it would be contrary to the public interest to delay the effective date of these order amendments for 30 days after its publication in the **Federal Register** (Sec. 553(d), Administrative Procedure Act; 5 U.S.C. 551–559).

(c) *Determinations.* It is hereby determined that:

(1) Handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping potatoes covered by the said order, as amended, as hereby further amended) who, during the period August 1, 1993, through July 31, 1994, handled 50 percent or more of the volume of such potatoes covered by the said order, as amended, as hereby further amended, have signed an amended marketing agreement; and

(2) The issuance of this amendatory order, further amending the aforesaid order, is favored or approved by at least two-thirds of the producers who participated in a referendum on the question of its approval and who, during the period August 1, 1993, through July 31, 1994 (which has been deemed to be a representative period), have been engaged within the Idaho-Eastern Oregon Potato production area in the production of such potatoes for fresh market.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, all handling of Irish potatoes grown in certain designated counties in Idaho, and Malheur County, Oregon, shall be in conformity to, and in compliance with, the terms and conditions of the said order as hereby further amended as follows:

The provisions of the proposed marketing order amendments further amending the order contained in the Recommended Decision issued by the Administrator on November 23, 1994, and published in the **Federal Register** on November 30, 1994 (59 FR 61286), and in the Secretary's Decision issued on March 2, 1995, and published in the **Federal Register** on March 10, 1995 (60 FR 13080), shall be and are the terms and provisions of this order further amending the order, and are set forth in full herein.

PART 945—IRISH POTATOES GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO, AND MALHEUR COUNTY, OREGON

1. The authority citation for 7 CFR part 945 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 945.9 is revised as follows:

§ 945.9 Ship or handle.

Ship or *handle* means to pack, sell, consign, transport or in any other way to place potatoes grown in the production area, or cause such potatoes to be placed, in the current of commerce within the production area or between the production area and any point outside thereof, so as to directly burden, obstruct, or affect any such commerce: *Provided,* That the definition of *ship* or *handle* shall not include the transportation of ungraded potatoes within the production area for the purpose of having such potatoes stored or prepared for market, except that the committee may impose safeguards pursuant to § 945.53 with respect to such potatoes.

3. Section 945.20 is amended by revising paragraph (a) and adding a new paragraph (d) to read as follows:

§ 945.20 Establishment and membership.

(a) The Idaho-Eastern Oregon Potato Committee is hereby established consisting of eight members, of whom four shall currently be producers of potatoes for the fresh market who produced such potatoes during at least three of the last five years; at least one member shall be a producer predominately of potatoes for seed during a similar period; and three shall be handlers. For each member of the committee, there shall be an alternate who shall have the same qualifications as the member. The number of producer and/or handler members and alternates on the committee may be increased and the composition of the committee between producers and handlers may be changed as provided in § 945.23.

* * * * *

(d) At least every six years, the committee shall review committee size, composition, and representation and recommend to the Secretary whether changes should be made, as provided in § 945.23.

4. Sections 945.22 through 945.24 are revised to read as follows:

§ 945.22 Districts.

For the purpose of selecting committee members and alternate members, the following districts of the production area are hereby established: *Provided,* That these districts may be changed as provided in § 945.23.

(a) *District No. 1:* The counties of Bonneville, Butte, Clark, Fremont, Jefferson, Madison, and Teton;

(b) *District No. 2:* The counties of Bannock, Bear Lake, Bingham, Caribou, Franklin, Oneida, and Power; and

(c) *District No. 3:* Malheur County, Oregon, and the remaining designated counties in Idaho included in the production area, and not included in District No. 1 or District No. 2.

§ 945.23 Redistricting and reapportionment.

(a) The Secretary, upon recommendation of the committee, may reestablish districts within the production area, may reapportion committee membership among the various districts, may increase the number of producer and/or handler members and alternates on the committee, and may change the composition of the committee by changing the ratio between producer and handler members, including their alternates. At least every six years, the committee shall review committee size, composition and representation and recommend to the Secretary whether changes should be made. In recommending any such changes, the committee shall give consideration to:

(1) Shifts in potato acreage within districts and within the production area during recent years;

(2) the importance of new potato production in its relation to existing districts;

(3) the equitable relationship between committee membership and districts;

(4) economies to result for producers in promoting efficient administration due to redistricting or reapportionment of members within districts; and

(5) other relevant factors.

(b) Membership of the committee shall be apportioned among the districts of the production area so as to provide the following representation or such other representation as recommended by the committee and approved by the Secretary:

(1) Three producer members, including at least one who predominately produces seed potatoes, and one handler member, with their respective alternates, from District No. 1;

(2) One producer member and one handler member, with their respective alternates, from District No. 2; and

(3) One producer member and one handler member, with their respective alternates, from District No. 3.

§ 945.24 Selection.

Members and alternates of the committee shall be selected by the Secretary on the basis specified in § 945.23 (b) from nominations made pursuant to § 945.25 or from other eligible persons.

5. In § 945.30, paragraph (a) is revised to read as follows:

§ 945.30 Procedure.

(a) A simple majority of all members of the committee, including alternates acting for members, shall be necessary to constitute a quorum or to pass any motion or approve any committee action, except any motion regarding a change in committee size shall require a unanimous vote. At any assembled meeting, all votes shall be cast in person.

* * * * *

6. In § 945.42, paragraph (b) is revised and new paragraphs (d) and (e) are added to read as follows:

§ 945.42 Assessments.

* * * * *

(b) Assessments shall be levied upon handlers at a rate per hundredweight of potatoes or equivalent established by the Secretary. Such rate may be established upon the basis of the committee's budget recommendations, and other available information.

* * * * *

(d) The committee may impose a late payment charge or an interest charge, or both, on any handler who fails to pay, on or before the due date established by the Secretary, the total assessment for which such handler is liable. Such due date and the late payment fee and interest rate shall be recommended by the committee and approved by the Secretary.

(e) In order to provide funds to carry out its function, after the effective date of this subpart the committee may accept advance assessments from handlers. Advance assessments received from a handler shall be credited toward assessments levied against that handler during that fiscal period. In the case of an extreme emergency, the committee may also borrow money on a short term basis to provide funds for the administration of this part. Any such borrowed money shall only be used to meet the committee's current financial obligations, and the committee shall repay all borrowed money by the end of the next fiscal period from assessment income.

7. In § 945.52, paragraph (a)(3) is revised to read as follows:

§ 945.52 Issuance of regulations.

(a) * * *

(3) Fix the size, capacity, weight, dimensions, pack, labeling or marking of the container, or containers, which may be used in the packaging or handling of potatoes, or both; or

* * * * *

8. Section 945.80 is amended by designating the existing undesignated text as paragraph (a) and adding new paragraphs (b) through (d) to read as follows:

§ 945.80 Reports.

* * * * *

(b) All data or other information constituting a trade secret, or disclosing a trade position or business condition of a particular handler shall be treated as confidential and shall at all times be received by and kept in the custody and under the control of one or more designated employees of the committee. Information which would reveal the circumstances of a single handler shall be disclosed to no person other than the Secretary.

(c) Each handler shall maintain for at least two succeeding fiscal periods such records of potatoes received and of potatoes disposed of by such handler as may be necessary to verify reports required pursuant to this section. The committee, with the approval of the Secretary, may prescribe rules and regulations issued pursuant to this section specifying handler records and reports which the committee may need to perform its functions.

(d) For the purpose of assuring compliance and checking and verifying reports filed by handlers, the Secretary and the committee, through its duly authorized agents, shall have access to any premises where applicable records are maintained, where potatoes are held, and, at any time during reasonable business hours, shall be permitted to inspect such handlers' premises and any and all records of such handlers with respect to matters within the purview of this part.

Dated: May 31, 1995.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Regulatory Programs.

[FR Doc. 95–13687 Filed 6–2–95; 8:45 am]

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federal register

Monday
June 5, 1995

Part III

Department of Education

Grants and Cooperative Agreements, Availability, etc.; Tribal Division of Education School Reform Program; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.311]

Tribal Division of Education School Reform Program Notice Inviting Applications for New Awards for Fiscal Year (FY) 1995

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and the Education Department General Administrative Regulations (EDGAR), the notice contains all of the information, application requirements, and instructions needed to apply for a grant under this competition.

Purpose of Program: To assist tribal divisions of education in coordinating school reform plans developed for schools funded by the Bureau of Indian Affairs (BIA) and those plans developed for public schools.

Eligible Applicants: Tribal divisions of education of federally recognized tribes whose students attend BIA-funded and public schools.

Deadline for Transmittal of Applications: July 20, 1995.

Available Funds: $500,000.

Estimated Range of Awards: $50,000 to $75,000.

Estimated Average Size of Awards: $62,500.

Estimated Number of Awards: 8.

Note: These estimates are projections for the guidance of potential applicants. The Department of Education is not bound by any estimates in this notice.

Project Period: Up to 48 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR Part 75 (Direct Grant Programs).

(2) 34 CFR Part 77 (Definitions that Apply to Department Regulations).

(3) 34 CFR Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(4) 34 CFR Part 81 (General Education Provisions Act—Enforcement).

(5) 34 CFR Part 82 (New Restrictions on Lobbying).

(6) 34 CFR Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(7) 34 CFR Part 86 (Drug-Free Schools and Campuses).

SUPPLEMENTARY INFORMATION: The Goals 2000: Educate America Act (Pub. L. 103–227) (20 U.S.C. 5801 *et seq.*) (the Act) promotes systemic education reform through the development and implementation of comprehensive improvement plans based on challenging academic standards and high expectations for all students. One of the basic premises of Goals 2000 is that reform should be promoted from the bottom up in communities, local educational agencies (LEAs), and schools, and guided by the coordination and facilitation of State and local leaders. Consistent with the concept of bottom-up reform, a State educational agency (SEA) awards most of the funds that it receives under title III of the Act to LEAs for local reform initiatives, preservice teacher education, and professional development activities. Only a small portion of the funding is retained by the SEA for the development and implementation of the State improvement plan. Likewise, an LEA awards most of its local reform funds to individual public schools to develop and implement comprehensive school improvement plans that are designed to help all students meet challenging State content and student performance standards.

Title III also reserves for the Secretary of the Interior funds for, among other things, the development of a system-wide reform plan that provides for the fundamental restructuring and improvement of elementary and secondary education in schools funded by the BIA. Similar to SEA grants, the funds to BIA also support the development and implementation of comprehensive school improvement plans—in this case, reform plans for BIA-funded schools (i.e., schools that receive funding from the BIA and are operated either by BIA or a tribe).

Recognizing the importance of coordinating the various school reform initiatives affecting Indian children, Congress has authorized under section 314(a)(4) of the Act grants to tribal divisions of education for coordination efforts between school reform plans developed for public schools and plans developed for BIA-funded schools. The coordination efforts, which include tribal activities in support of the plans, are essential because Indian children from the same tribe are often served by a patchwork of schools from different jurisdictions throughout their elementary and secondary education. In many instances, there is little consistency in educational policy, standards, and curriculum among the various public and BIA-funded schools. Furthermore, the high transfer rates of Indian students among schools and, in some areas, the large number of Indian students in public schools underscore the necessity for improved coordination activities.

Because a recipient tribal division of education under this program would help coordinate the reform efforts of BIA-funded and public schools, eligible applicants are limited to tribal divisions of education of federally recognized tribes. A federally recognized tribe is any Indian tribe, band, Nation, or other organized group or community that is recognized by the Secretary of the Interior as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. A "tribal division of education" would include a department, agency, board, committee, or other institution within the tribe whose primary responsibility is planning, developing, and coordinating existing elementary and secondary education programs for the children of the tribe.

Many school reform plans are being developed and implemented with funds from sources other than Goals 2000. A tribal division of education is eligible to apply for a grant under section 314(a)(4) regardless of whether the relevant schools are receiving Goals 2000 funds to support reform initiatives or are even located in a State that is participating in the Goals 2000 Title III grant program. However, in order for a tribal division of education to be eligible for a grant, the public and BIA-funded schools that the children of the tribe attend must be implementing (or in the process of developing and implementing) comprehensive school reform plans that are designed to meet the needs of their particular student population and help all students meet challenging academic standards.

A tribal division of education receiving a grant under section 314(a)(4) will be given maximum flexibility to implement a program that fits the unique circumstances of the children in the tribe. The grants will assist tribal divisions of education in building partnerships between public and BIA-funded schools, and could be used to support many types of coordination efforts, including activities such as improving consistency and compatibility of curricula among public and BIA-funded schools, assisting in the development of curricula that are culturally sensitive, creating mechanisms to increase communication among parents and the schools that their children attend, increasing tribal participation in the development and implementation of school improvement plans, and conducting professional development programs for local teachers.

The Secretary strongly encourages an applicant to propose coordination efforts that include broad-based outreach and collaborative processes involving parents, teachers, school administrators, and business and tribal leaders, as appropriate. A meritorious proposal would also demonstrate that the relevant public and BIA-funded schools are committed to cooperate with and assist the applicant in its activities.

In demonstrating that there is a specific need for improved coordination efforts between the school reform plans for the BIA-funded schools and the plans for the public schools attended by the children of the tribe, the Secretary encourages applicants to consider factors such as—

(a) The rate of mobility of students between or among public and BIA-funded schools;

(b) The lack of an effective system for tracking the transfer of students between or among public and BIA-funded schools;

(c) The lack of consistency and compatibility in curriculum among public and BIA-funded schools;

(d) Social and academic adjustment problems of students transferring from one school to another;

(e) The number of children from the tribe attending pubic schools; and

(f) Insufficient ongoing coordination efforts between and among public and BIA-funded schools in the development or implementation of their school reform plans.

Selection Criteria

The Secretary will use the selection criteria in 34 CFR 75.210 to evaluate applications under this competition. The Secretary assigns the 15 points that are reserved in 34 CFR 75.210(c) as follows: 10 additional points to selection criterion (3)—Plan of operation—for a total of 25 points for that criterion; 3 additional points to selection criterion (4)—Quality of key personnel—for a total of 10 points for that criterion; and 2 additional points to criterion (6)—evaluation plan—for a total of 7 points for that criterion.

The maximum score for all of the criteria totals 100 points. The maximum score for each criterion is indicated in parenthesis with the criterion. The criteria are as follows:

(1) *Meeting the purposes of the authorizing statute.* (30 points) The Secretary reviews each application to determine how well the project will meet the purposes of the authorizing statute (i.e., sections 2 and 314(a)(4) of the Goals 2000: Educate America Act), including consideration of—

(i) The objectives of the project; and

(ii) How the objectives of the project further the purposes of the authorizing statute.

(2) *Extent of need for the project.* (20 points) The Secretary reviews each application to determine the extent to which the project meets specific needs recognized in the statute that authorizes the program, including consideration of—

(i) The needs addressed by the project;

(ii) How the applicant identified those needs;

(iii) How those needs will be met by the project; and

(iv) The benefits to be gained by meeting those needs.

(3) *Plan of operation.* (25 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(i) The quality of the design of the project;

(ii) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(iii) How well the objectives of the project relate to the purpose of the program;

(iv) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(v) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disability.

(4) *Quality of key personnel.* (10 points)

(i) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraphs (4)(i)(A) and (B) will commit to the project; and

(D) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability.

Note: Section 7(b) of the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638) requires that, to the greatest extent feasible, a grantee under this program (1) give to Indians preferences and opportunities for training and employment in connection with the administration of the grant, and (2) give to Indian organizations and to Indian-owned economic enterprises preference in the award of contracts in connection with the administration of the grant.

(ii) To determine personnel qualifications under paragraphs (4)(i)(A) and (B), the Secretary considers—

(A) Experience and training in fields related to the objectives of the project; and

(B) Any other qualifications that pertain to the quality of the project.

(5) *Budget and effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(i) The budget is adequate to support the project; and

(ii) Costs are reasonable in relation to the objectives of the project.

(6) *Evaluation plan.* (7 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(i) Are appropriate to the project; and

(ii) To the extent possible, are objective and produce data that are quantifiable.

(7) *Adequacy of resources.* (3 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84.311), Washington, D.C. 20202–4725 or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, D.C. time) on the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA#84.311), Room #3633, Regional Office Building #3, 7th and D Streets SW., Washington, D.C.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgment to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708–9494.

(3) The applicant must indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and suffix letter, if any—of the competition under which the application is being submitted.

Application Instructions and Forms

The appendix to this application is divided into three parts plus a statement regarding estimated public reporting burden and various assurances and certifications. These parts and additional materials are organized in the same manner that the submitted application should be organized. The parts and additional materials are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

Part II: Budget Information—Non-Construction Programs (Standard Form 524A) and instructions.

Part III: Application Narrative.

Additional Materials

Estimated Public Reporting Burden.

Assurances—Non-Construction Programs (Standard Form 424B).

Certifications regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013).

Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80–0014, 9/90) and instructions.

Note: ED 80–0014 is intended for the use of grantees and should not be transmitted to the Department.

Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions; and Disclosure of Lobbying Activities Continuation Sheet (Standard Form LLL–A).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. No grant may be awarded unless a completed application form has been received.

FOR FURTHER INFORMATION CONTACT: Sandra L. Spaulding, U.S. Department of Education, 600 Independence Avenue SW., Portals Building, Room 4300, Washington, D.C. 20202–2110, Telephone: (202) 260–1441. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: Section 314(a)(4) of the Goals 2000: Educate America Act, 20 USC 5894(a)(4).

Dated: May 30, 1995.

Thomas W. Payzant,

Assistant Secretary, Elementary and Secondary Education.

BILLING CODE 4000–01–P

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: Application ☐ Construction ☒ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): [ ][ ] – [ ][ ][ ][ ][ ][ ][ ][ ][ ]

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State; B. County; C. Municipal; D. Township; E. Interstate; F. Intermunicipal; G. Special District; H. Independent School Dist.; I. State Controlled Institution of Higher Learning; J. Private University; K. Indian Tribe; L. Individual; M. Profit Organization; N. Other (Specify): _____

8. TYPE OF APPLICATION: ☒ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award; B. Decrease Award; C. Increase Duration; D. Decrease Duration; Other (specify): _____

9. NAME OF FEDERAL AGENCY: U.S Department of Education

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 8 4 . 3 1 1A

TITLE: Tribal Division of Education School Reform Program

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON: DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

SF 424 (REV 4-88) Back

U.S. DEPARTMENT OF EDUCATION

BUDGET INFORMATION

NON-CONSTRUCTION PROGRAMS

OMB Control No. 1875-0102

Expiration Date: 9/30/95

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

Name of Institution/Organization

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

ED FORM NO. 524

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

Name of Institution/Organization

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED FORM NO. 524

INSTRUCTIONS FOR ED FORM NO. 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary
U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e):
For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f):
Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e):
Show the total budget request for each project year for which funding is requested.

Line 12, column (f):
Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Instructions for ED Form 524 (cont.)

Section B - Budget Summary
Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e):
For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f):
Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e):
Show the total matching or other contribution for each project year.

Line 12, column (f):
Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information
Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.

2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.

3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.

4. Provide other explanations or comments you deem necessary.

BILLING CODE 4000-01-C

Instructions for Part III Application Narrative

Before preparing the Application Narrative an applicant should read carefully the information in this notice, including the selection criteria the Secretary uses to evaluate applications.

The narrative should encompass each function or activity for which funds are being requested and should—

1. Begin with an Abstract; that is, a summary of the proposed project;

2. Describe the proposed project in light of each of the selection criteria in the order in which the criteria are listed in this application; and

3. Include any other pertinent information that might assist the Secretary in reviewing the application.

The Secretary strongly requests the applicant to limit the Application Narrative to no more than 20 double-spaced, typed (on one side only), although the Secretary will consider applications of greater length. The Department has found that successful applications for similar programs generally meet this page limit.

Instructions for Estimated Public Reporting Burden

Under terms of the Paperwork Reduction Act of 1980, as amended, and the regulations implementing that Act, the Department of Education invites comment on the public reporting burden in this collection of information. Public reporting burden for this collection of information is estimated to average 40 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. You may send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202–4651; and to the Office of Management and Budget, Paperwork Reduction Project 1810–0573, Washington, D.C. 20503.

(Information collection approved under OMB control number 1810–0573. Expiration date: 4/30/98.)

BILLING CODE 4000-01-P

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

Standard Form 424B (4-88)
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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).
14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.
18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

SF 424B (4-88) Back

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 –

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about–

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will–

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted–

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV. 12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change For Material Change Only: year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known:* Congressional District, *if known:*	Congressional District, *if known:*
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable:* _____
8. Federal Action Number, *if known:*	9. Award Amount, *if known:* $
10. a. Name and Address of Lobbying Entity (*if individual, last name, first name, MI*):	b. Individuals Performing Services (*including address if different from No. 10a*) (*last name, first name, MI*):

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment (*check all that apply*):	13. Type of Payment (*check all that apply*):
$ _____ ☐ actual ☐ planned	☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. Form of Payment (*check all that apply*): ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C.1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____
Print Name: _____
Title: _____
Telephone No.: _____ Date: _____

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Standard Form - LLL

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 mintues per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OMB
0348-0046

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[FR Doc. 95-13689 Filed 6-2-95; 8:45 am]
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CFR CHECKLIST

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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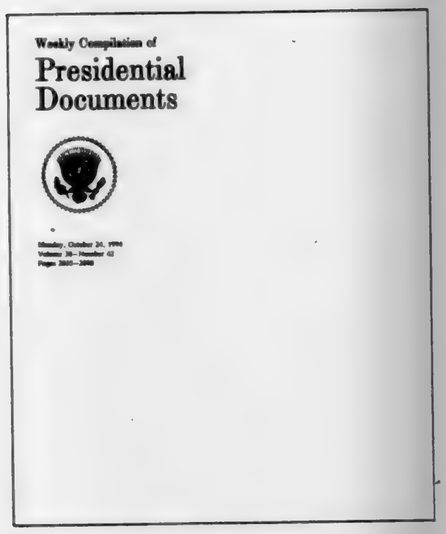
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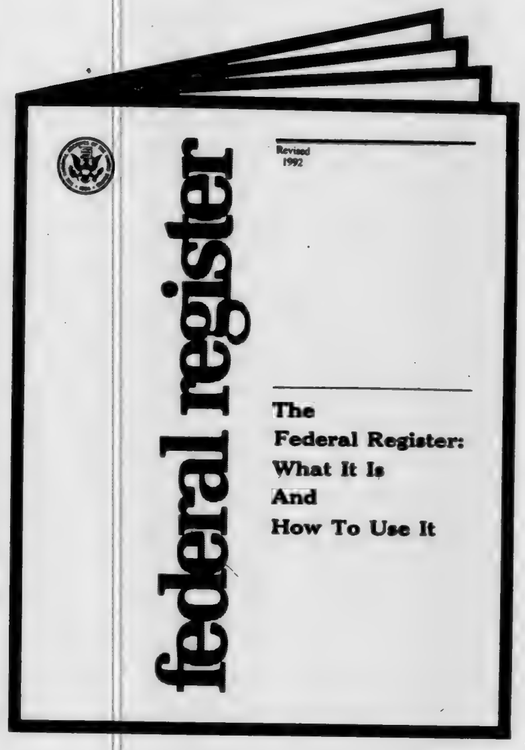
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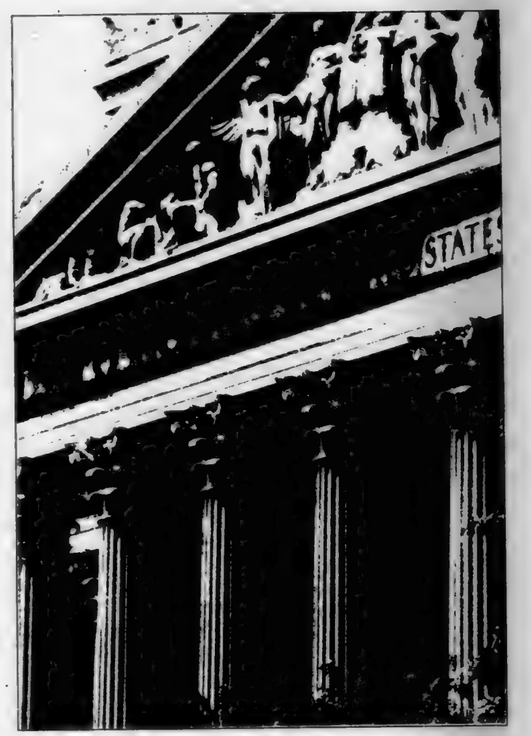
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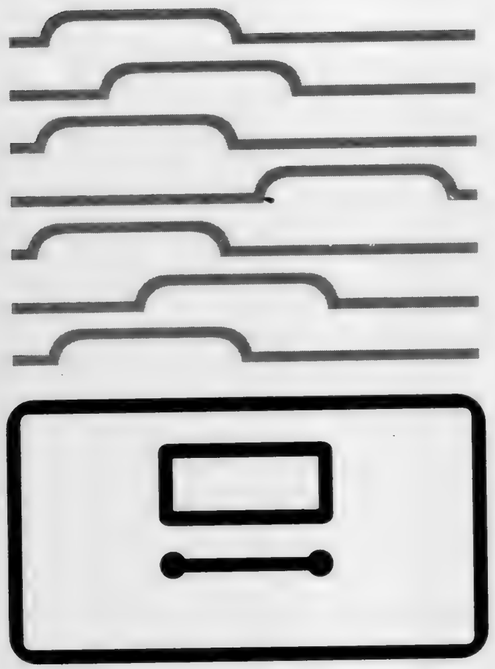
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DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 401

RIN 0563–AB29

General Crop Insurance Regulations; Florida Citrus Endorsement

AGENCY: Federal Crop Insurance Corporation, Agriculture.

ACTION: Interim rule.

SUMMARY: The Federal Crop Insurance Corporation ("FCIC") hereby amends the Florida Citrus Endorsement that supplements the General Crop Insurance Policy. The intended effect of this interim rule is to require that the insured crop unit suffer at least a fifty percent (50%) average percent of damage before an indemnity would be due for any catastrophic risk protection policy.

DATES: This rule is effective on June 6, 1995. Written comments, data, and opinions on this rule will be accepted until close of business August 7, 1995 and will be considered when the rule is to be made final.

ADDRESSES: Written comments, data, and opinion on this interim rule should be sent to Diana Moslak, Regulatory and Procedural Development Staff, Federal Crop Insurance Corporation, United States Department of Agriculture (USDA), Washington, DC 20250. Hand or messenger delivery may be made to Suite 500, 2101 L Street, NW., Washington, DC. Written comments will be available for public inspection and copying in the Office of the Manager, 2101 L Street, NW., 5th Floor, Washington, DC, during regular business hours, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Diana Moslak, Federal Crop Insurance Corporation, United States Department of Agriculture, Washington, DC 20250. Telephone (202) 254–8314.

SUPPLEMENTARY INFORMATION: This action has been reviewed under United States Department of Agriculture ("USDA") procedures established by Executive Order 12866 and Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is May 1, 2000.

This rule has been determined to be "not significant" for the purposes of Executive Order 12866, and therefore, has not been reviewed by the Office of Management and Budget ("OMB").

The information collection requirements contained in these regulations (7 CFR part 401) were previously approved by OMB pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. §§ 3501, *et seq.*), under OMB control numbers 0563–0001, 0563–0003, 0563–0009, 0563–0014, 0563–0029 and 0563–0036. The amendments set forth in this rule do not revise the content or alter the frequency of reporting for any of the forms cleared under the above-referenced dockets. Public reporting burden for the collection of information is estimated to range from 15 to 90 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

It has been determined under section 6(a) of Executive Order 12612, Federalism, that this rule does not have sufficient federalism implication to warrant the preparation of a Federalism Assessment. The policy and procedure contained in this rule will not have a substantial direct effect on states or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

This regulation will not have a significant impact on a substantial number of small entities. This action neither increases nor decreases the paperwork burden on the insured farmer and the reinsured company. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. § 605) and no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance Under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which require intergovernmental consultation with state and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

The Office of the General Counsel has determined that these regulations meet the applicable standards provided in subsection 2(a) and 2(b)(2) of Executive Order 12778. The provisions of this rule will preempt state and local laws to the extent such state and local laws are inconsistent herewith. The administrative appeal provisions located at 7 CFR part 400, subpart J or as promulgated by the National Appeals Division, whichever is applicable, must be exhausted before any judicial action may be brought regarding the provisions of this regulation.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

This interim rule implements the catastrophic risk protection plan of insurance mandated by amendments to the Federal Crop Insurance Act by the Federal Crop Insurance Reform Act of 1994 into the Florida Citrus endorsement.

List of Subjects in 7 CFR Part 401

Crop insurance, Florida Citrus Endorsement.

Interim Rule

Pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends the General Crop Insurance Regulations (7 CFR part 401), effective for the 1996 and succeeding crop years, to read as follows:

PART 401—[AMENDED]

1. The authority citation for 7 CFR part 401 is revised to read as follows:

Authority: 7 U.S.C. 1506(1).

2. Section 401.143 is amended by revising subsection 9.a., paragraphs (2)

and (3) and adding paragraph (4) to read as follows:

§ 401.143 Florida citrus endorsement.

* * * * *

9. Claim for Indemnity

a. * * *

(1) * * *

(2) For limited and additional coverages, by multiplying the result in excess of 10 percent (e.g., 45% − 10%=35% payable), times the amount of insurance for the unit (the amount of insurance for the unit is determined by multiplying the insured acreage on the unit times the applicable amount of insurance per acre); or

(3) For catastrophic risk protection coverage, the result in excess of 50 percent divided by 50 percent (e.g. if the insured's average percent of damage is 75%; the percentage of the guarantee payable is 50 percent, (75% − 50%)÷50%); if the insured's average percent of damage is 60 percent, the percentage of the guarantee payable is 20 percent, (60% − 50%)÷50%) times the amount of insurance for the unit. The amount of insurance for the unit is determined by multiplying the insured acreage on the unit times the applicable amount of insurance per acre. For any average percentage of damage less than 50%, the insured is not eligible for an indemnity payment; and

(4) Multiplying the product obtained in (2) above for limited and additional coverage, or the product obtained in (3) above for catastrophic risk protection, by your share.

* * * * *

Done in Washington DC, on May 24, 1995.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 95–13747 Filed 6–5–95; 8:45 am]

BILLING CODE 3410–08–P

Agricultural Marketing Service

7 CFR Part 947

[Docket No. FV95–947–1IFR]

Oregon-California Potatoes; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule authorizes expenditures and establishes an assessment rate under Marketing Order No. 947 for the 1995–96 fiscal period. Authorization of this budget enables the Oregon-California Potato Committee (Committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

DATES: Effective July 1, 1995, through June 30, 1996. Comments received by July 6, 1995, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this interim final rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, FAX 202–720–5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918, or Teresa L. Hutchinson, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, Green-Wyatt Federal Building, room 369, 1220 Southwest Third Avenue, Portland, OR 97204, telephone 503–326–2724.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 114 and Order No. 947, both as amended (7 CFR part 947), regulating the handling of Irish potatoes grown in Oregon-California. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order now in effect Oregon-California potato handlers are subject to assessments. Funds to administer the Oregon-California potato order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable potatoes during the 1995–96 fiscal period, which begins July 1, 1995, and ends June 30, 1996. This interim final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 550 producers of Oregon-California potatoes under this marketing order, and approximately 40 handlers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of Oregon-California potato producers and handlers may be classified as small entities.

The budget of expenses for the 1995–96 fiscal period was prepared by the Oregon-California Potato Committee, the agency responsible for local administration of the marketing order, and submitted to the Department for approval. The members of the Committee are producers and handlers of Oregon-California potatoes. They are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Oregon-California potatoes. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the Committee's expenses.

The Committee met on March 15, 1995, and unanimously recommended a budget of $46,200, $1,100 more than last season. Budget items for 1995–96 which have increased compared to those budgeted for 1994–95 (in parentheses) are: Annual report, $1,500 ($1,400), audit, $1,000 ($800), inspection fees, $2,500 ($2,000), and miscellaneous, $600 ($300). All other items are budgeted at last year's amounts.

The Committee also unanimously recommended an assessment rate of $0.006 per hundredweight, the same as last season. This rate, when applied to anticipated shipments of 7,920,000 hundredweight, will yield $47,520 in assessment income, which will be adequate to cover budgeted expenses. Funds in the reserve on June 30, 1995, estimated at $27,000, will be within the maximum permitted by the order of one fiscal period's expenses.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the fiscal period begins on July 1, 1995, and the marketing order requires that the rate of assessment for the fiscal period apply to all assessable potatoes handled during the fiscal period; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other budget actions issued in past years; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Part 947

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 947 is amended as follows:

PART 947—IRISH POTATOES GROWN IN MODOC AND SISKIYOU COUNTIES, CALIFORNIA, AND IN ALL COUNTIES IN OREGON, EXCEPT MALHEUR COUNTY

1. The authority citation for 7 CFR part 947 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new § 947.246 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 947.246 Expenses and assessment rate.

Expenses of $46,200 by the Oregon-California Potato Committee are authorized, and an assessment rate of $0.006 per hundredweight of assessable potatoes is established for the fiscal period ending June 30, 1996. Unexpended funds may be carried over as a reserve.

Dated: May 31, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–13792 Filed 6–5–95; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 204

[INS No. 1436–94]

RIN 1115–AC71

Immigrant Petitions; Religious Workers

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule amends the Immigration and Naturalization Service (Service) regulations by providing that all persons, other than ministers, immigrating to the United States as religious workers must immigrate or adjust status to permanent residence before October 1, 1997. This rule implements section 101(a)(27)(C)(ii) of the Immigration and Nationality Act (Act) which provides that religious workers who have 2 years of membership and experience in a religious occupation or vocation qualify as special immigrant religious workers. By statute, this immigrant category for religious workers expires on October 1, 1997. This rule codifies, in regulatory form, the October 1, 1997, statutory deadline.

EFFECTIVE DATE: June 6, 1995.

FOR FURTHER INFORMATION CONTACT: Michael W. Straus, Senior Adjudications Officer, Adjudications Division, Immigration and Naturalization Service, 425 I Street, NW., Room 3214, Washington, DC 20536, telephone (202) 514–3228.

SUPPLEMENTARY INFORMATION: Section 151(a) of the Immigration Act of 1990 (IMMACT), Public Law 101–649, dated November 29, 1990, created a new special immigrant category for religious workers and ministers by amending section 101(a)(27)(C) of the Act. In order to qualify as a minister, the applicant must be an ordained minister of a religious denomination and have carried on the vocation of minister during the 2 years immediately preceding the application for admission. Section 101(a)(27)(C) of the Act also provided special immigrant status for persons, other than ministers, who will work in a religious occupation or vocation for a religious organization in a professional or other capacity. Unlike the provision for ministers, which does not contain a sunset provision, section 101(a)(27)(C)(ii) (II) and (III) of the Act, as enacted by section 151(a) of IMMACT, provided that the other two types of religious workers must "seek to enter the United States * * * before October 1, 1994." In October of 1994, the Immigration and Nationality Technical Corrections Act (INTCA), Pub. L. 103–416, extended the sunset date to October 1, 1997.

As originally promulgated, the regulations implementing IMMACT provided that petitions for professional religious workers and other religious workers must be filed on or before September 30, 1994. See 56 FR 60897–60913, dated November 29, 1991. The statute, however, requires that immigrant religious workers (with the

exception of ministers) actually enter the United States before October 1, 1994 (now October 1, 1997). In other words, in order to immigrate under the special immigrant religious worker category, aliens who are not ministers must have a petition approved on their behalf and either enter the United States as an immigrant or adjust their status to permanent residence before October 1, 1997.

For the sake of clarification, the Service published an interim regulation in the Federal Register which amended 8 CFR 204.5(m)(1) to provide specifically that aliens must obtain permanent resident status through immigration or adjustment of status on or before September 30, 1994, to qualify under the special immigrant religious worker category. See 59 FR 27228–29, dated May 26, 1994. The public was provided with a 30-day period, ending on June 27, 1994, to comment on the interim regulation. The Service received one comment.

Discussion of the Comment

The commenter stated that the Service misinterpreted the term "seek to enter the United States before October 1, 1994" in section 101(a)(27)(C)(ii) (II) and (III) of the Act. The commenter contended that the term "seek to enter" means that the religious worker initiate the immigration process before October 1, 1994. The comment urged the Service to allow special immigrant religious workers to meet the cut-off date by filing a petition before October 1, 1994. In the alternative, the commenter stated that the October 1, 1994, cut-off date could be met by applying for an immigrant visa at a U.S. consulate or by applying for adjustment of status under section 245 of the Act before October 1, 1994.

The Service disagrees with the commenter's interpretation of the statutory language. The language of section 101(a)(27)(C)(ii) of the Act requires that a qualifying religious worker seek to enter the United States before October 1, 1997. Section 101(a)(13) of the Act provides that an "'entry' means any coming of an alien into the United States." Reading section 101(a)(27)(C)(ii) of the Act in conjunction with section 101(a)(13) of the Act, it is clear that not only must the religious worker apply for admission to the United States as an immigrant before October 1, 1997, but he or she must actually seek to "come into," i.e., arrive in the United States with an immigrant visa before October 1, 1997.

As stated in the preamble to the interim rule, a petition must be filed with the Service to establish the alien's eligibility for special immigrant status as a religious worker. See section 204(a)(1)(E) of the Act. At this initial step, an alien is merely seeking to be found classifiable under section 203(b)(4) of the Act. After the Service approves a petition, the next step in this process is an application for an immigrant visa at a U.S. consulate. See section 222 of the Act. After the consulate issues an immigrant visa, the alien must present himself or herself at a Port-of-Entry and apply to enter the United States. See section 221(e) of the Act. It is only at this step in the process that the alien is deemed to be seeking to enter the United States as a special immigrant. Further, it is only when the alien is actually admitted to the United States that he or she affects an "entry." The term "seek to enter before October 1, 1997," therefore, refers only to an alien who is applying for admission to the United States as an immigrant before that date.

This reading of section 101(a)(27)(C) of the Act is consistent with the statutory scheme of the Act. Congress, by using the language "seek to enter before October 1, 1997," evidenced its intent to establish the cut-off date as the time the alien actually enters the United States as an immigrant. Had Congress intended to set the cut-off date as the date a petition was filed with the Service on behalf of the alien religious worker or the date the alien applied for adjustment of status, it would have specifically provided so. Throughout the Act, Congress has enacted provisions using cut-off dates based on the time of application for permanent residence rather than entry. For example, the special immigrant category for certain employees of international organizations and their families requires applicants to apply for an immigrant visa or adjustment of status before a certain date. See section 101(a)(27)(I) of the Act. In addition, the Chinese Student Protection Act of 1992, Pub. L. 102–404, provides that a qualified alien must apply for adjustment of status during a 1-year application period, beginning July 1, 1993. See also section 2(d) of the Immigration Nursing Relief Act of 1989, Pub. L. 101–238.

This interpretation, and consequently the interim rule, is consistent with the Department of State regulation which provides that an immigrant visa issued on behalf of a special immigrant religious worker, other than a minister, shall be valid no later than September 30, 1994. See 22 CFR 42.32(d)(1)(ii). The Service notes that, although the Department of State's regulation erroneously makes reference to a "religious worker" as defined in 8 CFR 204.5(l), rather than 8 CFR 204.5(m), it is clear that this provision can only refer to an alien described in section 101(a)(27)(C) of the Act, other than a minister of religion.

Since the sole amendment to section 101(a)(27)(C)(ii) of the Act made by the INTCA was the extension of the sunset date to October 1, 1997, the final regulation will provide that religious workers, other than ministers, must obtain permanent resident status through immigration or adjustment of status before October 1, 1997, in order to immigrate as special immigrant religious workers.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation, and by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule merely clarifies a statutory deadline for a limited number of aliens to become special immigrant religious workers.

Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order 12612

The regulation will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12606

The Commissioner of the Immigration and Naturalization Service certifies that she has addressed this rule in light of the criteria in Executive Order 12606 and has determined that it will have no effect on family well-being.

List of Subjects in 8 CFR Part 204

Administrative practice and procedure, Aliens, Employment, Immigration, Petitions.

Accordingly, the interim rule amending 8 CFR part 204 which was published at 59 FR 27228–27229 on May 26, 1994, is adopted as a final rule with the following change:

PART 204—IMMIGRANT PETITIONS

1. The authority citation for part 204 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1182, 1186a, 1255; 8 CFR part 2.

§ 204.5 [Amended]

2. In § 204.5, paragraph (m)(1) is amended in the last sentence by revising the entry for the year "1994" to read: "1997".

Dated: May 8, 1995.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 95–13805 Filed 6–5–95; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121, 125, 127, 129, and 135

[Docket No. 18510; SFAR No. 38–11]

RIN 2120–AF73

Special Federal Aviation Regulation No. 38–2; Certification and Operating Requirements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment establishes a new termination date for Special Federal Aviation Regulation [SFAR] No. 38–2, which contains the certification and operating requirements for persons transporting passengers or cargo for compensation or hire. The current termination date for SFAR 38–2 is June 1, 1995. Because the FAA has not completed a rulemaking process to consolidate and codify the certification and operations specifications requirements, an extension of the termination date is necessary. If this rulemaking process is completed before the new termination date of June 1, 1996, the FAA intends to rescind SFAR 38–2 as part of that rulemaking.

DATES: Effective June 1, 1995, SFAR 38–2 terminates June 1, 1996.

Comments must be received on or before August 1, 1995.

ADDRESSES: Send comments on the rule in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–10), Docket No. 18510, 800 Independence Avenue, SW., Washington, DC 20591, or deliver comments in triplicate to: Federal Aviation Administration, Rules Docket, Room 916, 800 Independence Avenue, SW., Washington, DC. Comments may be examined in the Rule Dockets weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Gary Davis, Project Development Branch, AFS–24, Air Transportation Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; Telephone (202) 267–8096.

SUPPLEMENTARY INFORMATION:

Background

On December 12, 1978, the FAA issued SFAR 38 [43 FR 58366; December 14, 1978] as a consequence of the Airline Deregulation Act of 1978 (ADA or Act) (Pub. L. 95–504, 92 Stat. 1705). That act expresses the Congressional intent that the Federal Government diminish its involvement in regulating the economic aspects of the airline industry. To accomplish this, Congress directed that the Civil Aeronautics Board (CAB) be abolished on December 31, 1984, and that certain of its functions cease before that date. Anticipating its sunset, the CAB itself curtailed or suspended much of its regulatory activity during the period 1979–1984. By January 1, 1985, the remaining CAB functions were transferred to the Department of Transportation (DOT).

Because some aspects of FAA safety regulations relied upon CAB definitions and authority, the FAA found it necessary in 1978 to adopt an interim measure to provide for an orderly transition to the change in economic regulatory activities. This action was consistent with the Congressional directive contained in Section 107(a) of the Act that the deregulation of airline economics result in no diminution of the high standard of safety in air transportation that existed when the ADA was enacted. SFAR 38 [43 FR 58366; December 14, 1978] set forth FAA certification and operating requirements applicable to all "air commerce" and "air transportation" operations for "compensation or hire." (SFAR 38 did not address Part 133 External Load Operations, Part 137 Agriculture Aircraft Operations, or Part 91 training and other special purpose operations.)

On December 27, 1984, the FAA issued SFAR 38–1 [50 FR 450; January 4, 1985], which merely extended the termination date of SFAR 38 and allowed the FAA time to propose and receive comments on revising SFAR 38.

On May 28, 1985, the FAA issued SFAR 38–2 [50 FR 23941; June 7, 1985], which updated SFAR 38 in light of changes since 1978 and clarified provisions stating which FAA regulations apply to each operator (including air carriers) and each type of operation. This action was necessary because of the changes in the air transportation industry brought about by economic deregulation. Before deregulation, economic certificates were rigidly compartmentalized, and each air carrier typically was authorized to conduct only one type of operation (domestic, flag, or charter (e.g., supplemental)). The safety certificate issued to the air carrier by the FAA paralleled the authorization granted in the air carrier's economic certificate. Economic deregulation broke down the barriers between the various types of operations. The economic authority granted an air carrier by the DOT is no longer indicative of the safety regulations applicable to the type of operation authorized by the FAA. Thus, it was necessary for the FAA to establish guidelines to determine what safety standards were applicable to an operator's particular operation.

Since that time, the FAA has proposed rulemaking to codify the certification and operations specifications requirements currently found in SFAR 38–2 into a new part 119 [Notice No. 88–16] [53 FR 39852; October 12, 1988].

On April 11, 1990, the FAA reopened the comment period for Notice No. 88–16 [55 FR 14404; April 17, 1990] for comments on the definition of "scheduled operation" and the notification requirement for changes to operations specifications for a period of 30 days. The reopened comment period closed May 17, 1990. Based on the complexity of comments received, the FAA subsequently published an SNPRM on June 8, 1993 [58 FR 32248]; the comment period closed July 23, 1993.

Recently the FAA issued a notice proposing that many part 121 requirements should be imposed on certain part 135 operators [60 FR 16230; March 29, 1995]. If that proposal is adopted, the rules specifying the applicability of parts 121, 125, and 135 would be codified in a new part 119. In that same NPRM, the FAA proposed to rescind SFAR 38–2 if a final rule affecting commuter operators and establishing a new part 119 is issued. However, in the meantime, SFAR 38–2 contains the current requirements for certification and operations

specifications. Thus, the FAA finds it necessary to extend the SFAR until June 1, 1996.

Good Cause Justification for Immediate Adoption

The reasons which justify the adoption, and the subsequent revision,. of SFAR 38 still exist. Therefore, it is in the public interest to establish a new termination date for SFAR 38–2 of June 1, 1996. If the FAA publishes a final rule adopting a new part 119 into the Federal Aviation Regulations before the termination date, that rulemaking will rescind SFAR 38–2. This action is necessary to permit continued operations under SFAR 38–2 and to avoid confusion in the administration of FAA regulations regarding operating certificates and operating requirements.

For this reason, and because this amendment continues in effect the provisions of a currently effective SFAR and imposes no additional burden on any person, I find that notice and public procedures are unnecessary, impracticable, and contrary to the public interest, and that the amendment should be made effective in less than 30 days after publication. However, interested persons are invited to submit such comments as they desire regarding this amendment. Communications should identify the docket number and be submitted in duplicate to the address above. All communications received on or before the close of the comment period will be considered by the Administrator, and this amendment may be changed in light of the comments received. All comments will be available, both before and after the closing date for comments, in the rules docket for examination by interested parties.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires agencies to review rules which may have "a significant economic impact on a substantial number of small entities."

This rule will not impose any additional incremental costs over those that would have been incurred when SFAR 38–2 was first issued. Therefore, I certify that the amendment will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Analysis

The FAA finds this amendment will have no impact on international trade.

Paperwork Reduction Act

Information collection requirements in this SFAR have previously been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned OMB Control Number 2120–0008.

Federalism Implications

The amendment herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this amendment would not have sufficient federalism applications to warrant the preparation of a Federalism Assessment.

Conclusion

The FAA has determined that this document involves an amendment that imposes no additional burden on any person. Accordingly, it has been determined that this action is not significant under Executive Order 12866; it is not significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and the anticipated impact is so minimal that a full regulatory evaluation is not required.

List of Subjects

14 CFR Part 121

Air carrier, Aircraft, Airmen, Air transportation, Aviation safety.

14 CFR Part 125.

Aircraft, Airmen, Airports, Airspace, Air traffic control, Air transportation, Chemicals, Children, Drugs, Flammable materials, Handicapped, Hazardous materials, Infants, Smoking.

14 CFR Part 127

Air carriers, Aircraft, Airmen, Airworthiness.

14 CFR Part 129

Air carriers, Aircraft, Airmen, Air transportation, Aviation safety, Safety.

14 CFR Part 135

Air carriers, Aircraft, Airmen, Air taxis, Air transportation, Airworthiness, Aviation safety, Safety.

Adoption of the Amendment

In consideration of the foregoing SFAR 38–2 (14 CFR parts 121, 125, 127, 129, and 135) of the Federal Aviation Regulations is amended as follows:

PART 121—[AMENDED]

1. The authority citation for part 121 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40101, 40105, 40113, 44701–44702, and 44704–44705.

PART 125—[AMENDED]

2. The authority citation for part 125 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 1153, 40101, 40105, 44113, 44701–44705, 44707–44714, 44716–44717, and 44722.

PART 127—[AMENDED]

3. The authority citation for part 127 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44705, 44710–44711, and 44713.

PART 129—[AMENDED]

4. The authority citation for part 129 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 1511–1522, 40101, 40103–40105, 40113, 40119, 44701, 44901–44904, 44906, 44912, 44914, 44935–44939, and 48107.

PART 135—[AMENDED]

5. The authority citation for part 135 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 1153, 40101, 40105, 44113, 44701–44705, 44707–44717, 44722, and 45303.

6. Special Federal Aviation Regulation No. 38–2 is amended by removing the words "June 1, 1995" in the last paragraph, and by adding in their place the words "June 1, 1996."

Issued in Washington, DC, on May 31, 1995.

David R. Hinson,

Administrator.

[FR Doc. 95–13708 Filed 5–31–95; 4:05 pm]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 522

Animal Drugs, Feeds, and Related Products; Oxytetracycline Injection

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a hybrid new animal drug application (NADA) filed by Cross Vetpharm Group Ltd. The NADA provides for the use of oxytetracycline injection in cattle and swine for the treatment of diseases caused by oxytetracycline susceptible organisms.

EFFECTIVE DATE: June 6, 1995.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1643.

SUPPLEMENTARY INFORMATION: Cross Vetpharm Group Ltd., Broomhill Rd., Tallaght, Dublin 24, Ireland, has filed ANADA 200–117 (hybrid application) which provides for use of oxytetracycline injection as follows: (1) Intramuscular or intravenous use in beef and nonlactating dairy cattle for the treatment of pneumonia and shipping fever associated with *Pasteurella* spp. and *Hemophilus* spp.; infectious bovine keratoconjunctivitis (pinkeye) caused by *Moraxella bovis*; foot rot and diphtheria caused by *Fusobacterium necrophorum*; bacterial enteritis (scours) caused by *Escherichia coli*; wooden tongue caused by *Actinobacillus lignieresi*; leptospirosis caused by *Leptospira pomona*; and wound infections and acute metritis caused by strains of staphylococci and streptococci organisms sensitive to oxytetracycline; (2) intramuscular use in swine for treatment of bacterial enteritis (scours, colibacillosis) caused by *E. coli*; pneumonia caused by *P. multocida*; and leptospirosis caused by *L. pomona*; and (3) intramuscular use in sows for control of infectious enteritis (baby pig scours, colibacillosis) in suckling pigs caused by *E. coli*.

The data submitted in support of this hybrid NADA satisfy the requirements of section 512(b)(1) and (b)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360b(b)(1) and (b)(2)) and 21 CFR part 514 of the regulations. The hybrid NADA has been defined in the Center's Seventh Generic Animal Drug Policy Letter, dated March 20, 1991. The hybrid application relies on the approval of a listed (pioneer) animal drug and contains additional data needed to support the change in the generic product. The hybrid applicant is thus relying on the approval of the listed animal drug to the extent that such reliance is allowed under section 512(n) of the act, to establish the safety and effectiveness of the active ingredient. An application that relies in part on the approval of a listed animal drug is, for this purpose, considered an application described in section 512(b)(2).

Cross Vetpharm Group Ltd.'s ANADA 200–117 for oxytetracycline injection (Oxy-Shot™ LA) is approved as a generic copy of Pfizer's NADA 113–232 for oxytetracycline injection (Liquamycin® LA–200). The ANADA is approved as of April 13, 1995, and the regulations are amended in 21 CFR 522.1660(b) and (c)(2)(iii) to reflect the approval. The basis for approval is discussed in the freedom of information summary.

Additionally, the regulations are amended in 21 CFR 510.600(c) to add Cross Vetpharm Group Ltd. to the list of sponsors of approved applications.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Because this hybrid NADA is reviewed in part as an application under section 512(b)(1) of the act, the hybrid application is eligible for 3 years of exclusivity under section 512(c)(2)(F)(iii) of the act. Under section 512(c)(2)(F)(iii) of the act, this approval for food-producing animals qualifies for 3 years of marketing exclusivity beginning on April 13, 1995, because the supplemental application contains reports of new clinical or field investigations (other than bioequivalence or residue studies) essential to the approval of the application and conducted or sponsored by the applicant.

Under the center's supplemental approval policy (21 CFR 514.106(b)(2)(ii)), this is a Category II change. The approval of this change is not expected to have any adverse effect on the safety or effectiveness of this new animal drug.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 522 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e).

2. Section 510.600 is amended in the table in paragraph (c)(1) by alphabetically adding a new entry for "Cross Vetpharm Group Ltd." and in the table in paragraph (c)(2) by numerically adding a new entry for "061623" to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
Cross Vetpharm Group Ltd., Broomhill Rd., Tallaght, Dublin 24, Ireland.	061623

(2) * * *

Drug labeler code	Firm name and address
061623	Cross Vetpharm Group Ltd., Broomhill Rd., Tallaght, Dublin 24, Ireland.

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

3. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

§ 522.1660 [Amended]

4. Section 522.1660 *Oxytetracycline injection* is amended in paragraph (b) by removing the phrase "000010, 000069, and 059130" and adding in its place

"000010, 000069, 059130, and 061623", and in paragraph (c)(2)(iii) by revising the last sentence to read "Discontinue treatment at least 42 days prior to slaughter when provided by 000010 and 28 days prior to slaughter when provided by 000069, 059130, or 061623."

Dated: May 26, 1995.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 95–13707 Filed 6–5–95; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 886

RIN 1029–AB72

Abandoned Mine Reclamation Grant Procedures

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; correction.

SUMMARY: This document contains corrections to the final regulations which were published Wednesday, February 22, 1995, (60 FR 9974). The regulations related to State grant closeout reports.

EFFECTIVE DATE: June 6, 1995.

FOR FURTHER INFORMATION CONTACT: Norman J. Hess, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue NW., Washington, DC 20240; Telephone: 202–208–2949.

SUPPLEMENTARY INFORMATION: Both the preamble to the proposed rule published on November 8, 1993 (58 FR 59334), and the preamble to the final rule advised that a revised paragraph 886.23(b) would be added to § 886.23 which would require, at the completion of a grant, agency submission of closeout reports as specified by OSM. Specifically, paragraph 886.23(b) required submission of Form OSM–76 upon project completion. This submission was deemed necessary to comply with the requirement in section 403(c) of the Surface Mining Control and Reclamation Act of 1977, Public Law 95–87, as amended, that on a regular basis OSM note on its inventory those projects completed under Title IV. However, paragraph 886.23(b) of the final rule language was inadvertently published without the reference to "upon project completion." The purpose of this document is to reiterate the intent of the regulation which is that Form OSM–76 and any other closeout reports be filed upon project completion, and to correct paragraph 886.23(b) to include the phrase "upon project completion."

Accordingly, the publication on February 22, 1995, of the final regulations which were the subject of FR Doc. 95–4259, is corrected as follows:

§ 886.23 [Corrected]

Paragraph 1. On page 9983, in the first column, in § 886.23, paragraph (b), line one, the words "At the completion of each grant" is corrected to read "Upon project completion."

Dated: May 30, 1995.

Bob Armstrong,

Assistant Secretary, Land and Minerals Management.

[FR Doc. 95–13772 Filed 6–5–95; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD09–93–009]

RIN 2115–AE46

Special Local Regulations; Macomb Daily Offshore Classic, Lake St. Clair, St. Clair Shores, MI

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing Special Local Regulations for the offshore power boat race, Macomb Daily Offshore Classic (formerly Quake On The Lake). This event will be held on Lake St. Clair, St. Clair Shores, MI, Saturday, May 20, 1995, and thereafter annually on the third weekend in May on Lake St. Clair between Masonic Boulevard and Point Huron. This event will have an estimated 30 high performance power boats racing a closed course race on Lake St. Clair which could pose hazards to navigation in the area. Special Local Regulations which would restrict vessel traffic in the area are necessary to ensure the safety of life, limb and property on portions of Lake St. Clair during this event.

EFFECTIVE DATE: July 6, 1995.

FOR FURTHER INFORMATION CONTACT: Marine Science Technician Second Class Jeffrey M. Yunker, Ninth Coast Guard District, Aids to Navigation and Waterways Management Branch, Room 2083, 1240 East Ninth Street, Cleveland, Ohio, 44199–2060, (216) 522–3990.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are Lieutenant Junior Grade Byron D. Willeford, Project Officer, Ninth Coast Guard District, Aids to Navigation and Waterways Management Branch, and Lieutenant Karen E. Lloyd, Project Attorney, Ninth Coast Guard District Legal Office.

Regulatory History

On June 3, 1993, the Coast Guard published a notice of proposed rulemaking entitled Special Local Regulations, Quake on the Lake, Lake St. Clair, St. Clair Shores, MI in the **Federal Register** (58 FR 31488). The deadline for the submission of comments was July 19, 1993. The Coast Guard received no letters commenting on the proposal. A public hearing was not requested and one was not held. The Commander, Ninth Coast Guard District has decided to publish the final rule as proposed.

Background and Purpose

On April 4, 1995, the Lake St. Clair Offshore Racing Association submitted an Application for Approval of Marine Event for the Macomb Daily Offshore Classic. The sponsor held this event on August 8, 1993, as the "Quake on the Lake". A Notice of Proposed Rulemaking was published for this event and no comments were received. The only changes to this event are the name and date it is being held.

Federalism Implications

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard is conducting an environmental analysis for this event pursuant to section 2.B.2.c of Coast Guard Commandant Instruction M16475.1B, and the Coast Guard Notice of final agency procedures and policy for categorical exclusions found at (59 FR 38654; July 29, 1994).

Economic Assessment and Certification

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this regulation to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of the DOT is unnecessary.

Collection of Information

This regulation will impose no collection of information requirements under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Final Regulation

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. In part 100, a new § 100.902 is added to read as follows:

§ 100.902 Macomb Daily Offshore Classic, Lake St. Clair, St. Clair Shores, MI.

(a) *Race course.*

Location: That portion of Lake St. Clair enclosed by:

Latitude	*Longitude*
42° 34.2'N	082° 48.3'W, to
42° 33.8'N	082° 47.5'W, to
42° 31.2'N	082° 49.7'W, to
42° 31.5'N	082° 50.5'W, thence to
42° 34.2'N	082° 48.3'W.

Datum: NAD 1983.

(b) *No entry zone.*

Location: That portion of Lake St. Clair, on the outside of the race course area from Point Huron southwest to:

Latitude	*Longitude*
42° 32.9'N	082° 47.8'W, thence to
42° 33.9'N	082° 50.3'W, thence northeast along the shoreline to Point Huron.

Datum: NAD 1983.

(c) *Regulation:* No vessel may enter the "No Entry Zone" or "Race Course" without prior approval of the Coast Guard Patrol Commander. The "No Entry Zone" will include all of the L'anse Creuse Bay area.

(d) *Caution area*—(1) *Location*: That portion of Lake St. Clair, on the outside of the race course area from a west-northwest line between:

Latitude	*Longitude*
42° 32.9'N	082° 47.8'W, and
42° 33.9'N	082° 50.3'W, southwest along the shoreline to:
42° 31.5'N	082° 52.3'W, thence to
42° 30.5'N	082° 49.6'W, thence to
42° 32.9'N	082° 47.8'W.

Datum: NAD 1983.

(2) *Regulation:* All vessels transiting the "Caution Area" will be operated at bare steerageway, keeping the vessel's wake at a minimum, and exercise a high degree of caution.

(e) *Vessel spectator areas:* Two Vessel Spectator Areas will be established by the Coast Guard Patrol Commander, on the east and west side of the race course.

(1) *Location:* That portion of Lake St. Clair, rectangular in shape, enclosed by:

Western Spectator Area:

Latitude	*Longitude*
42° 33.6'N	082° 49.5'W, to
42° 33.4'N	082° 49.1'W, to
42° 31.8'N	082° 50.8'W, to
42° 32.0'N	082° 51.2'W, thence to
42° 33.6'N	082° 49.5'W.

Eastern Spectator Area:

Latitude	*Longitude*
42° 32.9'N	082° 47.6'W, to
42° 32.7'N	082° 47.2'W, to
42° 30.9'N	082° 48.4'W, to
42° 31.2'N	082° 48.8'W, thence to
42° 32.9'N	082° 47.6'W.

Datum: NAD 1983.

(2) *Regulation:* Vessels will be permitted to anchor to watch the race. All vessels transiting the "Vessel Spectator Areas" will be operated at bare steerageway, keeping the vessel's wake at a minimum, and exercise a high degree of caution.

(f) *Patrol Commander*—(1) The Coast Guard will patrol the regulated areas under the direction of a designated Coast Guard Patrol Commander (Commanding Officer, U.S. Coast Guard Station St. Clair Shores, MI). The Patrol Commander may be contacted on channel 16 (156.8 MHZ) by the call sign "Coast Guard Patrol Commander".

(2) The Patrol Commander may direct the anchoring, mooring, or movement of any boat or vessel within the regulated area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Any vessel so signaled shall stop and shall comply with the orders of the Patrol Commander. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(3) The Patrol Commander may establish vessel size and speed limitations, and operating conditions.

(4) The Patrol Commander may restrict vessel operation within the regulated area to vessels having particular operating characteristics.

(5) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life, limb and property.

(g) *General regulations applicable to all areas*—Commercial vessels desiring to transit the regulated areas shall provide prior notification to the Coast Guard Patrol Commander. Any vessel traffic desiring to transit the regulated areas may do so only with prior approval of the Coast Guard Patrol Commander. Vessels in the regulated areas shall comply with the directions of the Coast Guard Patrol Commander.

(h) *Effective date:* These regulations will become effective from 11 A.M. (EDST) until 2 P.M. (EDST), on May 20, 1995, unless otherwise terminated by the Coast Guard Patrol Commander (Commanding Officer, U.S. Coast Guard Station St. Clair Shores, MI), and thereafter annually on the third weekend in May, at the same prescribed times unless otherwise specified in the Coast Guard Local Notice to Mariners.

Dated: May 8, 1995.

Rudy K. Peschel,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 95–13778 Filed 6–5–95; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 100

[CGD02–95–036]

RIN 2115–AE46

Special Local Regulations; Mississippi Belle II 4th Anniversary Upper Mississippi River Mile 518.5 and 519.0

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: A special local regulation is being adopted for the Mississippi Belle II 4th Anniversary which will be held on the Upper Mississippi River near Clinton, Iowa on June 12, 1995. This rule is needed to control vessel traffic in the immediate vicinity of the event. The regulation will restrict general navigation in the regulated area for the safety of spectators, participants and through traffic.

EFFECTIVE DATE: This regulation is effective from 10 p.m. to 11 p.m. local time on June 12, 1995.

FOR FURTHER INFORMATION CONTACT: LCDR J.O. Jaczinski, Chief, Boating Affairs Branch, Second Coast Guard District, 1222 Spruce Street, St. Louis, Missouri 63103–2832. The telephone number is (314) 539–3971, fax (314) 539–2685.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this regulation are LCDR J.O. Jaczinski, Project Officer, Second Coast Guard District, Boating Safety Division and LT S. Moody, Project Attorney, Second Coast Guard District Legal Office.

Regulatory History

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for this rule and good cause exists for making it effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. Specifically, the sponsor's late submission of the regatta application left insufficient time to publish a notice of proposed rulemaking in advance of the scheduled event. The Coast Guard deems it to be in the public's best interest to issue a regulation immediately.

Background and Purpose

The Mississippi Belle II 4th Anniversary consists of a fireworks display. The fireworks will begin at 10 p.m. local time on June 12, 1995 and will end at 10:30 p.m. The river will be closed from 10 p.m. local time and will reopen 11 p.m. local time. In order to provide for the safety of spectators and participants, and for the safe passage of through traffic, the Coast Guard will restrict vessel movement in the regulated area. The river will be closed during part or all of the effective period to all vessel traffic except official regatta vessels and patrol craft. These regulations are issued pursuant to 33 U.S.C. 1233 and 33 CFR 100.35.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary because of the event's short duration.

Federalism Assessment

The Coast Guard has analyzed this action in accordance with the principles and criteria of Executive Order 12612 and has determined that this rule does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard considered the environmental impact of this rule and concluded that under section 2.B.2.C of Commandant Instruction M16475.1B, (as revised by 59 FR 38654; July 29, 1994) this rule is excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Temporary Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary section 100.35.T02–036 is added, to read as follows:

§ 100.35–T02–036 Upper Mississippi River near Clinton, Iowa.

(a) *Regulated area.* Upper Mississippi River mile 518.5 to 519.0.

(b) *Special local regulations.* (1) Except for official regatta vessels and patrol craft no person or vessel may enter or remain in the regulated area without permission of the Patrol Commander.

(2) The Coast Guard Patrol Commander will be a commissioned or petty officer designated by the Commanding Officer, Marine Safety Office St. Louis, Missouri and may be contacted, during the event, on channel 16 (156.8 MHZ) by the call sign "Coast Guard Patrol Commander." The Patrol Commander may:

(i) Direct the anchoring, mooring, or movement of any vessel within the regulated area,

(ii) Restrict vessel operation within the regulated area to vessels having particular operating characteristics,

(iii) Terminate the marine event or the operation of any vessel when necessary for the protection of life and property, and

(iv) Allow vessels to transit the regulated area whenever an event is not being conducted and the transit can be completed.

(3) Coast Guard commissioned or petty officers will patrol the event on board patrol vessels which display the Coast Guard Ensign. If radio or other voice communications are not available to communicate with a vessel, they will use a series of sharp, short blasts by whistle or horn to signal the operator of any vessel in the vicinity of the regulated area to stop. When signaled, the operator of any vessel in the immediate vicinity of the regulated area shall stop the vessel immediately and shall proceed as directed.

(4) Vessels desiring to transit the regulated area may do so only with the prior approval and direction of the Patrol Commander.

(5) The Patrol Commander will terminate enforcement of this section at the conclusion of the marine event if earlier than the announced termination time.

(c) *Effective Date.* This section is effective from 10 p.m. to 11 p.m. local time on June 12, 1995.

Dated: May 24, 1995.

Frank M. Chliszczyk,

Captain, U.S. Coast Guard, Commander, Second Coast Guard District Acting.

[FR Doc. 95–13773 Filed 6–5–95; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 110

[CGD11–95–001]

RIN 2115–AA98

Anchorage Grounds; Pacific Ocean at Santa Catalina Island, CA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is reducing the Isthmus Cove Anchorage Grounds of Santa Catalina Island, CA, to exclude the area designated as the Wrigley Marine Science Center Marine Life Refuge, formerly known as the Catalina Marine Science Center Marine Life Refuge, from the Isthmus Cove Anchorage Grounds. The Coast Guard is voluntarily reducing the geographic limits of the Anchorage Grounds at the suggestion of the State of California. In establishing the Marine Life Refuge, California has prohibited unauthorized anchoring in the affected area under state law. By excluding the area encompassed by the Marine Life Refuge from the Anchorage Grounds, this action will reduce confusion among recreational and commercial mariners, and enhance the safety of navigation in support of the efforts of the State of California.

EFFECTIVE DATE: This rule is effective July 6, 1995.

FOR FURTHER INFORMATION CONTACT: Lieutenant P.C. Barnett, Aids to Navigation and Waterways Management Branch, telephone (310) 980–4300, extension 513

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Lieutenant P.C. Barnett, Eleventh Coast Guard District, Aids to Navigation and Waterways Management Branch, Project Officer, and Lieutenant R.J. Barber, Eleventh Coast Guard District Legal Office, Project Attorney.

Regulatory History

On February 23, 1995, the Coast Guard published a notice of proposed rulemaking for these regulations in the **Federal Register** (60 FR 10043). The comment period ended April 24, 1995. The Coast Guard received no comments on the proposal. A public hearing was not requested and no hearing was held.

Background and Purpose

The Isthmus Cove Anchorage Grounds (the Anchorage) were codified by final rulemaking CGFR 67–46, published in 32 FR 17728 (December 12, 1967). The Wrigley Marine Science Center (the Center) was built during that same year. The Center's primary function was and continues to be to provide an environment that facilitates scientific investigation. It was intentionally located in close proximity to a virtually undisturbed marine environment to allow researchers the opportunity to conduct long-term underwater investigations of sea life under conditions where human influences are minimal.

In 1988, the state of California established the Wrigley Marine Science Center Marine Life Refuge (the Refuge), formerly known as the Catalina Marine Science Center Marine Life Refuge, near the Center. A portion of the waters of the Refuge is located within the waters of the Anchorage.

In order to protect and preserve the delicate ecosystem of the Refuge and to prevent damage caused by anchors to the valuable scientific equipment being used to conduct research within the Refuge, the state of California, as part of the original legislation establishing the Refuge, prohibits unauthorized anchoring and mooring within the Refuge.

This amendment to the Isthmus Cove Anchorage Grounds reduces the size of the Anchorage by removing from it the waters located in Fisherman Cove and those waters shoreward from a line extending approximately 50 yards from shore connecting Blue Cavern Point to Fisherman Cove. It reduces confusion among recreational and commercial mariners, and enhances the safety of navigation in support of the efforts of the State of California, by excluding the area encompassed by the Marine Life Refuge from the Anchorage Grounds.

This amendment also describes the Anchorage more accurately by using coordinates in addition to making reference to well-known landmarks.

Regulatory Evaluation

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under Section 6(a)(3) of that Order. It has been exempted from review by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rulemaking to be so minimal that a full Regulatory Evaluation under paragraph 10e of the Department of Transportation regulatory policies and procedures is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rulemaking would have significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard considered the environmental impact of this rulemaking and concluded that, under section 2.B.2 of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

Final Regulations

In consideration of the foregoing, the Coast Guard is amending part 110 of title 33, Code of Federal Regulations, as follows:

PART 110—ANCHORAGE REGULATIONS

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035 and 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g). Section 110.1a and each section listed in 110.1a is also issued under 33 U.S.C. 1223 and 1231.

2. Section 110.216 is amended by revising paragraph (a)(2) to read as follows:

§ 110.216 Pacific Ocean at Santa Catalina Island, CA.

(a) * * *

(2) *Isthmus Cove.* All the waters bounded by a line connecting the following coordinates, beginning at 33°–27′–12″ N, 118°–30′–05″ W (the promontory known as Lion Head); thence southeast to 33°–26′–55.5″ N, 118°–28′–44″ W; thence west-southwest to 33°–26′50″ N, 118°–29′–08″ W; thence southwest to 33°–26′–39″ N, 118°–29′–19″ W; thence along the shoreline returning to the point of origin, excluding the following-described non-anchorage area: an area 300 feet wide (170 feet west and 130 feet east of the centerline of the Catalina Island Steamship Line pier), extending 1600 feet from the foot of the pier, and an area 150 feet seaward of the shoreline extending approximately 1500 feet east and 1500 feet northwest of the centerline of said pier.

Datum: NAD 83

* * * * *

Dated: May 25, 1995.

R. A. Appelbaum,

Rear Admiral, U.S. Coast Guard, Commander, Eleventh Coast Guard District.

[FR Doc. 95–13779 Filed 6–5–95; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 117

[CGD01–95–008]

RIN 2115–AE47

Drawbridge Operation Regulations; Apponagansett River, MA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the rules governing opening of the Padanaram Bridge at mile 1.0 over the Apponagansett River in Dartmouth, Massachusetts. This final rule will allow the Padanaram Bridge to open on signal from 1 May through 31 October, once an hour on the hour, between 9 a.m. and 8 p.m. instead of twice an hour on the hour and half hour. This change should help relieve traffic congestion created when the bridge opens and still provide for the needs of navigation.

EFFECTIVE DATE: June 1, 1995.

ADDRESSES: Unless otherwise indicated, documents referred to in this preamble are available for copying and inspection at the first Coast Guard District, Bridge Branch office located in the Captain John Foster Williams Federal Building, 408 Atlantic Ave., Boston, Massachusetts 02110–3350, room 628, between 6:30 a.m. and 3 p.m., Monday through Friday, except federal holidays. The telephone number is (617) 223–8364.

FOR FURTHER INFORMATION CONTACT: Gary Kassof, Bridge Administrator, First Coast Guard District (212) 668–7170.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this final rule are Mr. John W. McDonald, Project Officer, Bridge Branch, and Lieutenant Commander Samuel R. Watkins, Project Counsel, District Legal Office.

Regulatory History

Prior to this rule, this bridge has been the subject of three deviations from its operating regulations. The first deviation for 60 days was published in the **Federal Register** at 58 FR 38056; July 15, 1993. The second deviation for 32 days was published in the **Federal Register** at 58 FR 47067; September 7, 1993. The third deviation for 90 days was published in the **Federal Register** at 59 FR 31931; June 21, 1994.

On February 8, 1995 the Coast Guard published a notice of proposed rulemaking entitled "Drawbridge Operation Regulations; Apponagansett River, Massachusetts" in the **Federal Register** 60 FR 10815. The Coast Guard received one letter commenting on the proposal. No public hearing was requested, and none was held.

Background and Purpose

The Padanaram Bridge over the Apponagansett River between Dartmouth and South Dartmouth has a vertical clearance of 9' above mean high water (MHW) and 12' above mean low water (MLW).

The current operating regulations require that the bridge open on signal on the hour and half hour, 5 a.m. to 9 p.m., 1 May through 31 October. At all other times at least six hours advance notice must be given.

In the spring of 1993, the Town of Dartmouth requested a change from the operating regulations to permit opening once an hour rather than twice an hour. The town selectmen felt that the traffic congestion during peak summer months was a result of the bridge opening every 30 minutes and was causing village commerce to suffer. The selectmen also considered the 30 minute opening schedule a serious risk to public safety because emergency vehicles could not travel to and from South Dartmouth during the traffic delays caused by the bridge opening every half hour. The Town of Dartmouth requested that the bridge be required to open only once an hour between 5 a.m. and 9 p.m. for a test period of 60 days to evaluate the effects on vehicular and marine traffic. This request was approved and the first deviation from the permanent regulations was effective from July 1, 1993, through August 29, 1993, and was published in the **Federal Register** at 58 FR 38056; July 15, 1993. It provided an opportunity to evaluate the effects of the hourly openings on marine and vehicular traffic. The Coast Guard implemented a second deviation for 32 days to evaluate a different alternative opening time period for the Padanaram Bridge. This deviation also was published in the **Federal Register** at 58 FR 47067; September 7, 1993. The second deviation added two time periods when the bridge could still open on the hour and half hour: between 5 a.m. and 9 a.m. and between 8 p.m. and 9 p.m. The Coast Guard received 29 letters commenting on the two deviations. Twenty were in favor of the hourly openings and nine were opposed to the change. Most of the letters in opposition indicated that the lack of facilities to tie up vessels while waiting for openings was a main concern. The Town of Dartmouth installed traffic signals, automatic traffic gates, navigational lights and clearance gauges after the two deviation periods expired.

The Coast Guard authorized a third deviation for a period of 90 days to evaluate the effects of the above improvements to the bridge. This third deviation was effective from June 3, 1994 through August 31, 1994. It allowed the Padanaram Bridge to open on signal on the hour and half hour between 5 a.m. to 9 a.m. and between 8 p.m. and 9 p.m. and once an hour on the hour between 9 a.m. and 8 p.m. The Coast Guard received two letters commenting on the third deviation. One letter favored the hourly openings and one letter was opposed to the hourly openings. The entire regulation is being revised for clarity and to remove paragraph (a)(1) which provides for openings for public vessels, vessels used for safety, and vessels in distress. This requirement is now provided under 33 CFR 117.31 as a general operating regulation for all bridges.

The bridge owner will be required by this rule to maintain clearance gauges at the bridge to assist mariners during times that the bridge is not crewed and to reduce unnecessary openings.

The bridge owners will also be required, as a result of comments from mariners, to maintain mooring facilities for vessels to make fast while waiting for bridge openings.

Discussion of Comments and Changes

One comment letter was received in opposition to the proposed rule; however, a petition was submitted to the Coast Guard with hundreds of names and signatures all in favor of the change to the regulations. No changes to the proposed rule have been made.

In order to allow the bridge to begin the new operating hours for the summer season, the Coast Guard is making this rule effective on June 1, 1995 and under 5 USC § 553(d)(3), in the interest of public safety and to provide relief from the traffic delays that occur during the summer season this rule may be made effective in less than 30 days after publication. Traffic delays could impede emergency vehicles from traveling between Dartmouth and South Dartmouth during the tourist season.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this final rule to be so minimal that a full Regulatory Evaluation, under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This conclusion is based on the fact that the regulation will not prevent mariners from passing through the Padanaram Bridge, but will only require mariners to plan their transits.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this final rule will have a significant economic impact on a substantial number of small entities. "Small entities" may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000. Because of the reasons discussed in the Regulatory Evaluation above the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This final rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this final rule under the principles and criteria contained in Executive Order 12612 and has determined that this final rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this final rule and concluded that, under paragraph 2.B.2.e.(32)(e) of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under "**ADDRESSES.**"

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard is amending 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.587 is revised to read as follows:

§ 117.587 Apponagansett River.

(a) The draw of the Padanaram Bridge mile 1.0 shall open on signal 1 May through 31 October from 5 a.m. to 9 p.m. daily as follows:

(1) The bridge shall open on signal, twice an hour, on the hour and the half hour between 5 a.m. and 9 a.m. and between 8 p.m. and 9 p.m.

(2) The bridge shall open on signal, once an hour, on the hour between 9 a.m. and 8 p.m.

(b) At all other times the bridge shall open if at least four (4) hours advance notice is given.

(c) The owners of this bridge shall provide and maintain mooring facilities for vessels to make fast while waiting for the bridge to open.

(d) The owners of this bridge shall provide and keep in good legible condition, clearance gauges for each draw with figures not less than twelve (12) inches high designed, installed and maintained according to the provisions of section 118.160 of this chapter.

3. Appendix A to Part 117 is amended to add the Apponagansett River entry under the State of Massachusetts subheading to read as follows:

APPENDIX A TO PART 117—DRAWBRIDGES EQUIPPED WITH RADIOTELEPHONES

Waterway	Mile	Location	Bridge name and owner	Call sign	Calling channel	Working channel
Massachusetts						
Apponagansett River	1.0	Dartmouth	Pandanaram, Dartmouth		13	13

Dated: May 15, 1995.

J.L. Linnon,

Rear Admiral, U.S. Coast Guard Commander, First Coast Guard District.

[FR Doc. 95–13775 Filed 6–5–95; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 165

[COTP Paducah 95–002]

RIN 2115–AA97

Safety Zone; Upper Mississippi River Mile 00.0 to 055.3

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the Upper Mississippi River from mile 00.0 to 55.3. This regulation is needed to control vessel traffic in the regulated area to prevent further wake damage to levees and property along the river. The regulations will restrict general navigation in the regulated areas for the safety of vessel traffic and the protection of life and property along the river.

EFFECTIVE DATES: This regulation becomes effective at 11:30 a.m. on May 21, 1995 and terminates at 8 p.m. on June 30, 1995.

FOR FURTHER INFORMATION CONTACT: LTJG Patrick S. Reilly, Operations Officer, Captain of the Port, Paducah, Kentucky at (502) 442–1621.

SUPPLEMENTARY INFORMATION:

Background and Purpose

The Upper Mississippi River and its tributaries have been suffering from high water conditions for a week. This has contributed to unusually wet conditions resulting in the softening of the earth levees which protect the adjacent lowlands. The recent rainfall over the Midwest region has pushed rivers above the flood stage, setting

records for high water. As a result, the waters of the Mississippi River threaten or have already overflowed its banks. The Army Corps of Engineers has reported that additional levees will erode, presenting an imminent danger to ongoing flood relief efforts and to life and property along the river, if the levees are subjected to wakes and wheel wash from passing vessels. The flood conditions also present a hazard to navigation in that the area's rivers are carrying a larger amount of trees and debris which have been washed from the river banks and inundated lowlands; once visible obstructions to navigation are now submerged; and river currents are not following normal patterns. Taken as a whole, these conditions present hazards which greatly hinder the safe navigation of recreational and commercial traffic. The Army Corps of Engineers anticipates that it may take several weeks for the water to recede to normal levels. Subsequently, the Captain of the Port Paducah has closed the Upper Mississippi River from mile 00.0 to 055.3.

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this rule and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Following normal rulemaking procedures would have been impracticable. Publication of a notice of proposed rulemaking and delay of effective date would be contrary to the public interest because immediate action is necessary to prevent injury to human life or damage to property of vessels that would be transiting the area.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary because of the short duration of the closure.

To avoid any unnecessary adverse economic impact on businesses which use the river for commercial purposes, Captain of the Port Paducah will monitor river conditions and will authorize unrestricted entry into the regulated area as conditions permit. Changes will be announced by Marine Safety Information Radio Broadcast (Broadcast Notice to Mariners) on VHF Marine Band Radio, Channel 22 (157.1 MHz). Mariners may also call the Marine Safety Office Paducah for current information.

Small Entities

The Coast Guard finds that the impact on small entities, if any, is not substantial. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*) that this temporary rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no information collection requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under paragraph 2.B.2.g[5] of Commandant Instruction M16475.1B, (as revised by 59 FR 38654; July 29, 1994) this rule is categorically excluded from further environmental documentation as an action to protect public safety. A Categorical Exclusion Determination has been prepared and placed in the rulemaking.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A temporary section 165.T02–017 is added to read as follows:

§ 165.T02–017 Safety Zone; Mississippi River mile 00.0 to 055.3.

(a) *Location.* The following area is a Safety Zone: Mississippi River mile 0.0 to 055.3.

(b) *Effective Dates.* This section becomes effective at 11:30 a.m. on May 21, 1995 and terminates at 8 p.m. on June 30, 1995.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited except as authorized by the Captain of the Port.

Dated: May 21, 1995.

Robert M. Segovis,

Commander, USCG, Captain of the Port.

[FR Doc. 95–13776 Filed 6–5–95; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[COTP St. Louis 95–003]

RIN 2115–AA97

Safety Zone; Missouri River, Mile 0.0 to 366.0

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone on the Missouri River between mile 0.0 and 366.0. This rule is required for the prevention of damage to levees and protection of flooded areas. This rule will restrict general navigation in the regulated area for the protection of life and property along the shore.

EFFECTIVE DATE: This rule is effective on May 16, 1995 and will remain in effect until June 15, 1995 unless terminated sooner by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: LT Robert Siddall, Operations Officer, Captain of the Port, St. Louis, Missouri at (314) 539–3823.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this rule are LTJG A.B. Cheney, Project Officer, Marine Safety Office, St. Louis, Missouri and LT S.M. Moody, Project Attorney, Second Coast Guard District Legal Office.

Regulatory History

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for this rule and good cause exits for making it effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. Specifically, recent heavy rainfall on already saturated ground in portions of the Missouri River Basin has caused portions of the Missouri River Basin to approach and exceed flood stages, leaving insufficient time to publish a proposed rulemaking.

The Coast Guard deems it to be in the public's interest to issue a rule without waiting for comment period since high water conditions present an immediate hazard.

Background and Purpose

The Missouri River from the mouth, mile 0.0, to mile 366.0, has seen a rapid rise in the water level and is above flood stage. This rule is required to protect saturated levees, therefore, all vessels are restricted from the regulated area.

Regulatory Evaluation

This rule is not major under Executive Order 12291 and not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979), it will not have a significant economic impact on a substantial number of small entities, and it contains no collection of information requirements.

The Coast Guard expects the impact of this rule to be so minimal that a Regulatory Evaluation is unnecessary. The imposed restrictions are anticipated to be of short duration. Captain of the Port, St. Louis, Missouri will monitor river conditions and will authorize entry into the closed area as conditions permit. Changes will be announced by Marine Safety Information Radio Broadcast on VHF Marine Band Radio, Channel 22 (157.1 MHZ). Mariners may also call the Port Operations Officer, Captain of the Port, St. Louis, Missouri at (314) 539–3823 for current information.

Small Entities

The Coast Guard finds that the impact on small entities, if any, is not substantial. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this temporary rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501).

Federalism Assessment

Under the principles and criteria of Executive Order 12612, this rule does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2.g.(5) of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation as an action to protect public safety. A Categorical Exclusion Determination has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Temporary Regulation

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A temporary § 165.T02–029 is added, to read as follows:

§ 165.T02–029 Safety Zone: Missouri River.

(a) *Location.* The Missouri River between mile 0.0 and 366.0 is established as a safety zone.

(b) *Effective Dates.* This section is effective on May 16, 1995 and will terminate on June 15, 1995, unless terminated sooner by the Captain of the Port.

(c) *Regulations.* The general regulations under § 165.23 of this part which prohibit vessel entry within the described zone without authority of the Captain of the Port apply. The Captain of the Port, St. Louis, Missouri will authorize entry into and operations within the described zone under certain conditions and limitations as announced by Marine Safety Information Radio Broadcast on VHF Marine Band Radio, Channel 22 (157.1 MHZ).

Dated: May 16, 1995.

S.P. Cooper,

Commander, U.S. Coast Guard, Captain of the Port, St. Louis, Missouri.

[FR Doc. 95–13777 Filed 6–5–95; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A–1–FRL–5216–9]

Determination of Attainment of Ozone Standard for Lewiston-Auburn and Knox and Lincoln Counties, Maine Ozone Nonattainment Areas and Determination Regarding Applicability of Certain Reasonable Further Progress and Attainment Demonstration Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is determining, through direct final procedure, that the Lewiston-Auburn and the Knox and Lincoln Counties moderate ozone nonattainment areas in Maine have attained the National Ambient Air Quality Standard (NAAQS) for ozone. These determinations are based upon three years of complete, quality assured ambient air monitoring data for the years 1992–94 that demonstrate that the ozone NAAQS has been attained in both areas. On the basis of these determinations, EPA is also determining that certain reasonable further progress and attainment demonstration requirements, along with certain other related requirements, of Part D of Title 1 of the Clean Air Act are not applicable to these areas for so long as these areas continue to attain the ozone NAAQS. In the proposed rules section of this **Federal Register**, EPA is proposing these determinations and soliciting public comment on them. If adverse comments are received on this direct final rule, EPA will withdraw this final rule and address these comments in a final rule on the related proposed rule which is being published in the proposed rules section of this **Federal Register**.

DATES: This action will be effective July 21, 1995 unless notice is received by July 6, 1995 that any person wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments may be mailed to Susan Studlien, Acting Director, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Bldg., Boston, MA 02203. Copies of the material relevant to this action are available for public inspection during normal business hours, by appointment at the Air, Pesticides and Toxics

Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA and the Bureau of Air Quality Control, Department of Environmental Protection, 71 Hospital Street, Augusta, ME 04333.

FOR FURTHER INFORMATION CONTACT: Richard P. Burkhart, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Bldg., Boston, MA 02203. Phone: 617–565–3244.

SUPPLEMENTARY INFORMATION:

I. Background

Subpart 2 of Part D of Title I of the Clean Air Act ("CAA") contains various air quality planning and state implementation plan ("SIP") submission requirements for ozone nonattainment areas. EPA believes it is reasonable to interpret provisions regarding reasonable further progress ("RFP") and attainment demonstrations, along with certain other related provisions, so as not to require SIP submissions if an ozone nonattainment area subject to those requirements is monitoring attainment of the ozone standard (i.e., attainment of the NAAQS demonstrated with three consecutive years of complete, quality assured air quality monitoring data). As described below, EPA has previously interpreted the general provisions of subpart 1 of part D of Title I (sections 171 and 172) so as not to require the submission of SIP revisions concerning RFP, attainment demonstrations, or contingency measures. As explained in a memorandum dated May 10, 1995 from John Seitz to the Regional Air Division Directors, entitled Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard, EPA believes it is appropriate to interpret the more specific RFP, attainment demonstration and related provisions of subpart 2 in the same manner.

First, with respect to RFP, section 171(1) states that, for purposes of part D of Title I, RFP "means such annual incremental reductions in emissions of the relevant air pollutant as are required by this part or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable national ambient air quality standard by the applicable date." Thus, whether dealing with the general RFP requirement of section 172(c)(2), or the more specific RFP requirements of subpart 2 for classified ozone nonattainment areas (such as the 15 percent plan requirement of section 182(b)(1)), the stated purpose of RFP is to ensure attainment by the applicable attainment date.[1] If an area has in fact attained the standard, the stated purpose of the RFP requirement will have already been fulfilled and EPA does not believe that the area need submit revisions providing for the further emission reductions described in the RFP provisions of section 182(b)(1).

EPA notes that it took this view with respect to the general RFP requirement of section 172(c)(2) in the General Preamble for the Interpretation of Title I of the Clean Air Act Amendments of 1990 (57 FR 13498 (April 16, 1992)), and it is now extending that interpretation to the specific provisions of subpart 2. In the General Preamble, EPA stated, in the context of a discussion of the requirements applicable to the evaluation of requests to redesignate nonattainment areas to attainment, that the "requirements for RFP will not apply in evaluating a request for redesignation to attainment since, at a minimum, the air quality data for the area must show that the area has already attained. Showing that the State will make RFP towards attainment will, therefore, have no meaning at that point." (57 FR at 13564.)[2]

Second, with respect to the attainment demonstration requirements of section 182(b)(1) an analogous rationale leads to the same result. Section 182(b)(1) requires that the plan provide for "such specific annual reductions in emissions * * * as necessary to attain the national primary ambient air quality standard by the attainment date applicable under this Act." As with the RFP requirements, if an area has in fact monitored attainment of the standard, EPA believes there is no need for an area to make a further submission containing additional measures to achieve attainment. This is also consistent with the interpretation of certain section 172(c) requirements provided by EPA in the General Preamble to Title I, as EPA stated there that no other measures to provide for attainment would be needed by areas seeking redesignation to attainment since "attainment will have been reached." (57 FR at 13564; *see also* September 1992 Calcagni memorandum at page 6.) Upon attainment of the NAAQS, the focus of state planning efforts shifts to the maintenance of the NAAQS and the development of a maintenance plan under section 175A.

Similar reasoning applies to the contingency measure requirements of section 172(c)(9). EPA has previously interpreted the contingency measure requirement of section 172(c)(9) as no longer being applicable once an area has attained the standard since those "contingency measures are directed at ensuring RFP and attainment by the applicable date." (57 FR at 13564; *see also* September 1992 Calcagni memorandum at page 6.) As the section 172(c)(9) contingency measures are linked with the RFP requirements of section 182(b)(1), the requirement no longer applies once an area has attained the standard.

EPA emphasizes that the lack of a requirement to submit the SIP revisions discussed above exists only for as long as an area designated nonattainment continues to attain the standard. If EPA subsequently determines that such an area has violated the NAAQS, the basis for the determination that the area need not make the pertinent SIP revisions would no longer exist. The EPA would notify the State of that determination and would also provide notice to the public in the **Federal Register**. Such a determination would mean that the area would have to address the pertinent SIP requirements within a reasonable amount of time, which EPA would establish taking into account the individual circumstances surrounding the particular SIP submissions at issue. Thus, a determination that an area need not submit one of the SIP submittals amounts to no more than a suspension of the requirement for so long as the area continues to attain the standard.

The State must continue to operate an appropriate air quality monitoring network, in accordance with 40 CFR Part 58, to verify the attainment status of the area. The air quality data relied upon to determine that the area is attaining the ozone standard must be consistent with 40 CFR Part 58 requirements and other relevant EPA guidance and recorded in EPA's Aerometric Information Retrieval System (AIRS).

The determinations that are being made with this **Federal Register** notice

[1] EPA notes that paragraph (1) of subsection 182(b) is entitled "PLAN PROVISIONS FOR REASONABLE FURTHER PROGRESS" and that subparagraph (B) of paragraph 182(c)(2) is entitled "REASONABLE FURTHER PROGRESS DEMONSTRATION," thereby making it clear that both the 15 percent plan requirement of section 182(b)(1) and the 3 percent per year requirement of section 182(c)(2) are specific varieties of RFP requirements.

[2] *See also* "Procedures for Processing Requests to Redesignate Areas to Attainment," from John Calcagni, Director, Air Quality Management Division, to Regional Air Division Directors, September 4, 1992, at page 6 (stating that the "requirements for reasonable further progress * * * will not apply for redesignations because they only have meaning for areas not attaining the standard") (hereinafter referred to as "September 1992 Calcagni memorandum").

are not equivalent to the redesignation of the area to attainment. Attainment of the ozone NAAQS is only one of the criteria set forth in section 107(d)(3)(E) that must be satisfied for an area to be redesignated to attainment. To be redesignated the state must submit and receive full approval of a redesignation request for the area that satisfies all of the criteria of that section, including the requirement of a demonstration that the improvement in the area's air quality is due to permanent and enforceable reductions and the requirements that the area have a fully-approved SIP meeting all of the applicable requirements under section 110 and Part D and a fully-approved maintenance plan.

Furthermore, the determinations made in this notice do not shield an area from future EPA action to require emissions reductions from sources in the area where there is evidence, such as photochemical grid modeling, showing that emissions from sources in the area contribute significantly to nonattainment in, or interfere with maintenance by, other nonattainment areas. EPA has authority under sections 110(a)(2)(A) and 110(a)(2)(D) to require such emission reductions if necessary and appropriate to deal with transport situations.

II. Analysis of Air Quality Data

The EPA has reviewed the ambient air monitoring data for ozone (consistent with the requirements contained in 40 CFR Part 58 and recorded in AIRS) for the Lewiston-Auburn ozone nonattainment area and the Knox and Lincoln Counties ozone nonattainment area in the State of Maine from 1992 through the present time. On the basis of that review, EPA has concluded that these areas attained the ozone standard during the 1992–94 period and continues to attain the standard at this time. The ozone air quality data for the Lewiston-Auburn ozone nonattainment area shows no exceedances of the National Ambient Air Quality Standards since 1992. The ozone air quality data for the Knox and Lincoln Counties ozone nonattainment area shows only one exceedance of the National Ambient Air Quality Standards since 1992. Thus, these areas are no longer recording violations of the air quality standard for ozone. A more detailed summary of the ozone monitoring data for these areas is provided in the EPA technical support document dated May 17, 1995.

III. Final Action

EPA determines that the Lewiston-Auburn ozone nonattainment area and the Knox and Lincoln Counties ozone nonattainment area have attained the ozone standard and continue to attain the standard at this time. As a consequence of EPA's determination that the Lewiston-Auburn area and the Knox and Lincoln Counties area have attained the ozone standard, the requirements of section 182(b)(1) concerning the submission of the 15 percent plan and ozone attainment demonstration and the requirements of section 172(c)(9) concerning contingency measures are not applicable to the area so long as the area does not violate the ozone standard.

In addition, Maine currently does not have conforming transportation improvement programs (TIPs) and transportation plans in the areas discussed in this notice. The previous conforming TIPs and plans lapsed because new conformity determinations using EPA's conformity transitional criteria (40 CFR § 51.448) were required within one year of November 15, 1993. Because Maine had not submitted complete 15% plans, it was not able to meet this criteria. Because EPA is determining in this action that the Lewiston-Auburn area and Knox and Lincoln Counties area have attained the ozone standard and therefore are not required to have 15% plans, conformity can be restored once new conformity determinations by the appropriate metropolitan planning organizations and the United States Department of Transportation have been completed using 40 CFR § 51.410. Because 15% plans are no longer required, the state no longer has to meet the requirements of 40 CFR 51.428, 51.430 and 51.432.

EPA emphasizes that these determinations are contingent upon the continued monitoring and continued attainment and maintenance of the ozone NAAQS in these affected areas. If a violation of the ozone NAAQS is monitored in the Lewiston-Auburn area or the Knox and Lincoln Counties area (consistent with the requirements contained in 40 CFR Part 58 and recorded in AIRS), EPA will provide notice to the public in the **Federal Register**. Such a violation would mean that the applicable area would thereafter have to address the requirements of section 182(b)(1) and section 172(c)(9) since the basis for the determination that they do not apply would no longer exist.

As a consequence of the determinations that these areas in Maine have attained the ozone standard and that the reasonable further progress and attainment demonstration requirements of section 182(b)(1) do not presently apply, the sanctions clock for these two areas started by EPA on January 26, 1994 for the failure to submit a section 182(b)(1) 15 percent plan and associated contingency plan is hereby stopped as the deficiency for which the clock was started no longer exists.

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action will become effective on July 21, 1995. However, if the EPA receives adverse comments by July 6, 1995, then the EPA will publish a notice that withdraws the action, and will address those comments in the final rule on the proposed determination of attainment and determination of applicability of RFP and attainment demonstrations which has been proposed for approval in the proposed rules section of this **Federal Register**.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The Office of Management and Budget exempted this regulatory action from Executive Order 12866 review.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000. Today's determination does not create any new requirements, but allows suspension of the indicated requirements. Therefore, because the approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected.

Under Sections 202, 203 and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State,

local, or tribal governments in the aggregate.

EPA's final action does not impose any federal intergovernmental mandate, as defined in section 101 of the Unfunded Mandates Act, upon the State. No additional costs to State, local, or tribal governments, or to the private sector, result from this action, which suspends the indicated requirements. Thus, EPA has determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector.

Under Section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 7, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen oxides, Ozone, Volatile organic compounds, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: May 22, 1995.

John P. DeVillars,

Regional Administrator, Region I.

Part 52, chapter 1, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U S.C. 7401–7671q.

2. Subpart U is amended by adding § 52.1023 to read as follows:

§ 52.1023 Control strategy: Ozone.

(a) *Determination.* EPA is determining that, as of July 21, 1995, the Lewiston-Auburn ozone nonattainment area has attained the ozone standard and that the reasonable further progress and attainment demonstration requirements of section 182(b)(1) and related requirements of section 172(c)(9) of the Clean Air Act do not apply to the area for so long as the area does not monitor any violations of the ozone standard. If a violation of the ozone NAAQS is monitored in the Lewiston-Auburn ozone nonattainment area, these determinations shall no longer apply.

(b) *Determination.* EPA is determining that, as of July 21, 1995, the Knox and Lincoln Counties ozone nonattainment area has attained the ozone standard and that the reasonable further progress and attainment demonstration requirements of section 182(b)(1) and related requirements of section 172(c)(9) of the Clean Air Act do not apply to the area for so long as the area does not monitor any violations of the ozone standard. If a violation of the ozone NAAQS is monitored in the Knox and Lincoln Counties ozone nonattainment area, these determinations shall no longer apply.

[FR Doc. 95–13812 Filed 6–5–95; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register

Vol. 60, No. 108

Tuesday, June 6, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food and Consumer Service

7 CFR Part 273

[Amendment No. 365]

RIN 0584–AB98

Food Stamp Program: Monthly Reporting on Reservations Provision of the Food Stamp Program Improvements Act of 1994

AGENCY: Food and Consumer Service, USDA.

ACTION: Proposed rulemaking.

SUMMARY: This rulemaking proposes to amend Food Stamp Program regulations to establish procedures for implementing the restrictions concerning use of monthly reporting for households residing on reservations contained in the Food Stamp Program Improvements Act of 1994.

DATES: Comments must be received on or before August 7, 1995 to be assured of consideration.

ADDRESSES: Comments on this proposed rulemaking should be addressed to Margaret Thiel, Acting Supervisor, Eligibility and Certification Regulations Section, Certification and Policy Branch, Program Development Division, Food Stamp Program, Food and Consumer Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302. (Datafax number 703–305–2454). All written comments will be open to public inspection at the office of the Food and Consumer Service, during regular business hours (8:30 a.m. to 5:00 p.m., Monday through Friday), at 3101 Park Center Drive, Alexandria, Virginia, Room 718.

FOR FURTHER INFORMATION CONTACT: Questions regarding this proposed rulemaking should be addressed to Margaret Thiel at the above address or by telephone at (703) 305–2496.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been determined to be not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rulemaking and related Notice(s) to 7 CFR 3105, Subpart V (Cite 48 FR 29115, June 24, 1983; or 48 FR 54317, December 1, 1983, as appropriate, and any subsequent notices that apply), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This proposed rulemaking has also been reviewed with respect to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354, 94 Stat. 1164, September 19, 1980). The Administrator of the Food and Consumer Service (FCS), has certified that this proposal would not have a significant economic impact on substantial number of small entities. The primary impact of the procedures in this rulemaking would be on FCS Regional Offices, State governments, and individuals who might apply for benefits in State agencies that use monthly reporting procedures. To the extent that county or other local governments assist in the administration of the Food Stamp Program, they would also be affected.

Executive Order 12778

This proposed rulemaking has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations, or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the **EFFECTIVE DATE** section of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions all applicable administrative procedures must be exhausted. In the Food Stamp Program the administrative procedures are as follows: (1) For Program benefit recipients—state administrative procedures issued pursuant to 7 U.S.C. 2020(e)(10) and 7 CFR 273.15; (2) for State agencies—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 276.7 (for rules related to nonquality control (QC) liabilities) or Part 283 (for rules related to QC liabilities); (3) for retailers and wholesalers—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 278.8.

Paperwork Reduction Act

Pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), reporting and recordkeeping requirements for monthly reporting and retrospective budgeting have been approved by the Office of Management and Budget (OMB) under current OMB No. 0584–0064. Although the provisions of the proposed rule change the content of certain notices to households, they do not impose additional reporting and recordkeeping burden requirements.

Background

Section 1723 of the Mickey Leland Memorial Domestic Hunger Relief Act (Title XVII of the Food, Agriculture, Conservation, and Trade Act of 1990, Pub. L. 101–624, 104 Stat. 3359, November 28, 1990) amended Section 6(c)(1)(A)(i) of the Food Stamp Act of 1977, as amended (the Act), 7 U.S.C. 2015(c)(1)(A)(i), to exempt households residing on reservations from monthly reporting and retrospective budgeting (MRRB) effective February 1, 1992. The Department announced the regulatory adoption of the requirements of Section 1723 in a final rule amending 7 CFR 273.21(b)(4) published on December 4, 1991, 56 FR 63605, and scheduled to take effect on February 1, 1992.

Since that time, several pieces of legislation were enacted, each delaying the effective date of Section 1723. Implementation was initially postponed by Section 908 of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 (Pub. L. 102–237, 105 Stat. 1818, December 13, 1991) until April 1, 1993, and then by Pub. L. 103–11 (107 Stat. 41, April 1, 1993) until February 1, 1994. In response, in a November 1, 1993, rulemaking, the Department proposed at 58 FR 58459 a new implementation date of February 1,

1994. Following publication of that proposed rule, Section 1 of Pub. L. 103–205 (107 Stat. 2418) was enacted on December 17, 1993, again postponing implementation of the prohibition concerning MRRB on reservations until March 15, 1994. State agencies were notified of this delay through an implementing memorandum dated January 6, 1994.

On March 25, 1994, the Food Stamp Program Improvements Act of 1994 (Pub. L. 103–225 (108 Stat. 106)) was enacted. Section 101(a) of that law modified the prohibition against monthly reporting for households residing on reservations that had been added to section 6(c)(1)(A) of the Act (7 U.S.C. 2015(c)(1), by Section 1723 of the Leland Act. Section 6(c)(1)(C)(iii) now prohibits State agencies which were not requiring households residing on reservations to submit monthly reports on March 25, 1994, from establishing monthly reporting requirements for these households. These households may be retrospectively budgeted. State agencies that were using monthly reporting on March 25, 1994, for households residing on reservations may continue to do so if certain enumerated conditions are met. On August 29, 1994, in the Miscellaneous Provisions of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 and Earned Income Tax Credit Amendment final rule (59 FR 44303), the Department addressed the prohibition against establishing new monthly reporting for households residing on reservations if no monthly reporting system was in place on March 25, 1994.

In this rulemaking, the Department is addressing the provisions in Section 101(a) of Pub. L. 103–225 dealing with the one-month grace period afforded reservation households for submitting required reports, 7 U.S.C. 2015(c)(1)(C)(i) and (ii). This subparagraph establishes the following requirements on a State agency if it requires monthly reporting for households residing on reservations:

(1) Reinstate benefits without requiring a new application for any household that submits a report not later than one month after the end of the issuance month; and

(2) do not delay, reduce, suspend, or terminate the allotment of a household that submits a report not later than one month after the end of the month in which the report is due; and

(3) establish two-year certification periods for households on reservations required to submit monthly reports, unless the State agency is granted a waiver for shorter certification periods.

In order to implement these legislative requirements, the Department is proposing a new paragraph § 273.21(t). The specific provisions of this new paragraph are discussed below.

Definition of Residing on a Reservation

Section 3(j) of the Act defines a reservation as "the geographically defined area or areas over which a tribal organization (as that term is defined in subsection (p) of this section) exercises governmental jurisdiction." Section 3(p) of the Act defines a tribal organization as "the recognized governing body of an Indian tribe (including the tribally recognized intertribal organization of such tribes), * * * , as well as any Indian tribe, band, or community holding a treaty with a State government." Section 10(a) of Pub. L. 103–225 did not modify the Act's definition of a reservation or tribal organization. Accordingly, the Department is proposing in § 273.21(t)(1) to adopt these definitions for the purpose of determining whether a household shall be considered to be residing on a reservation.

Certification Periods

In light of the amendments to Section 6(c)(1) of the Act made by Section 101(a) of Pub. L. 103–225, the Act now requires that State agencies establish two (2) year certification periods for households residing on reservations that are required to submit monthly reports (7 U.S.C. 2015(c)(1)(C)(iv)). In order to implement this requirement, the Department is proposing at § 273.21(t)(2) to require that monthly reporting households residing on a reservation be certified for two (2) years.

However, Section 6(c)(1)(C)(iv) allows FCS to permit a State agency to establish certification periods for households residing on reservations shorter than two (2) years if the State agency can show good cause for a shorter certification period. Therefore, the Department is proposing in 7 CFR 273.21(2)(i) that a State agency may request a waiver to allow it to establish shorter certification periods for those households. In considering a request for a waiver to allow shorter certification periods, the Department has been urged by the Congress to consider both the reasons the State desires to implement a shorter certification period and the burden that households on the particular reservation would face in going through the recertification process more often. *Cong. Rec.* S2905, March 11, 1994. Further, Congress has also indicated that the Department should exercise its discretion to waive the two (2) year certification period requirement only after consultation with the appropriate tribal government and when extraordinary circumstances exist, such as widespread fraud, a substantial change in circumstances on a reservation which results in wide fluctuations in income for large numbers of food stamp recipients, or similar changes which require more frequent certification to protect the financial integrity of the Program and to maintain the lowest practicable error rates. *Cong. Rec.* S2906, March 11, 1994. In considering any approval of a waiver, the Department will be taking into account the administrative burdens of the State agency in administering the two (2) year certification periods, the input of the affected tribal organization, the quality control (QC) error rate for the affected households, and the impact on the households of requiring them to be interviewed more frequently than every two years.

Anecdotal information provided to the Department by State agencies affected by this provision indicates that households frequently move off of and on to reservations. With this in mind, the Department is proposing to allow a State agency to opt either to continue the two-year certification period for any household that moves off a reservation or to shorten the certification period as appropriate to the household's reporting requirements off the reservation. The Department is providing this option to increase flexibility for State agencies and to meet potential concerns about QC error rates. Switching households back and forth between two-year and shorter certification periods is administratively complex. However, the Department recognizes that long certification periods could result in increased payment errors, particularly if a household switches to change reporting when it is off a reservation. Accordingly, in 7 CFR 273.21(2)(ii), the Department is proposing that a State agency may opt to continue the two-year certification period for any household that moves off a reservation. If the State agency adopts this option and the household is still living off a reservation at recertification, the household shall be subject to the certification period requirements in 7 CFR 273.10(f)(4). If the State agency does not adopt this option, any household that moves off a reservation shall have its certification period shortened. A household continuing to be subject to monthly reporting shall not have its certification period shortened to less than six months. A household becoming subject to change reporting shall not have its certification period end any earlier than the month following the month in which the State agency determines that the certification period shall be shortened.

Missing and Incomplete Monthly Reports

Section 101(a) of Pub. L. 103–225 (Section 6(c)(1)(C)(ii), 7 U.S.C. 2015(c)(1)(C)(ii)) prohibits a State agency from delaying, reducing, suspending, or terminating the benefits of a household residing on a reservation that submits a report not later than one month after the end of the month in which the report is due. Normally, if a complete monthly report is not received within the time frames specified in 7 CFR 273.21, the State agency would terminate the household. Under Section 101(a) of Pub. L. 103–225, a State agency must now issue benefits to a household residing on a reservation on its normal issuance date even if it has failed to submit a monthly report. In order to implement this provision, the Department is proposing in § 273.21(t)(3)(i) to require the State agency to provide a household residing on a reservation which does not submit its monthly report by the issuance date with the same benefit amount that the household received the previous month. This issuance must be provided to the household on the household's normal issuance date. If the household's report is received prior to the issuance date, but too late to be processed without delaying the household's issuance, the household shall be issued its benefits on the normal issuance date.

The Department is also proposing in § 273.21(t)(3)(ii) to require a State agency to provide a household residing on a reservation its benefits on the normal issuance date if the household submits an incomplete monthly report that cannot be completed by the normal issuance date. The State agency would be required to attempt to have the household complete the report prior to the normal issuance date, in accordance with the procedures in 7 CFR 273.21(j). Section 101(a) of Pub. L. 103–225 does not address incomplete reports. However, the legislative history indicates that the State agency should not take any action against the household for failing to submit an incomplete report. "The purpose of this grace period is to provide ample opportunity to resolve misunderstandings and ensure that households do not suffer * * * when they unintentionally submit incomplete reports. * * *" *Cong. Rec.* S2905, March 11, 1994. Thus, the intent of the legislation is to provide benefits even if an incomplete report has been submitted.

The legislative intent of the grace period is to ensure that households are not penalized for administrative reasons. Therefore, if there is complete and verified information for some of the monthly report, there is no reason for the State agency to not act on that information. Such action would result in more accurate benefits being provided to the household.

In enacting this legislation, Congress did not intend that households residing on reservations participate indefinitely without submitting monthly reports. "Households that do not submit reports by the end of the grace period would have their benefits suspended." *Cong. Rec.* S2905, March 11, 1994. Accordingly, the Department is proposing in § 273.21(t)(3)(iii) that if a household failed to submit a monthly report or submitted an incomplete monthly report that was never completed and then fails to submit the next consecutive monthly report or submits an incomplete report for the next consecutive monthly report that is not completed by the issuance date, the household would be terminated in accordance with the provisions in 7 CFR 273.21(m).

In § 273.21(t)(3)(iii), the Department is also proposing that the household would not be terminated if it fails to ever submit or complete the first missing monthly report so long as it submits the next report by the end of the month in which it is due. The intent of the grace period is to prevent interruptions in benefits for administrative reasons. Receipt of old information as opposed to more current information does not serve the purpose of requiring monthly reports on household circumstances. To require that the missing or incomplete report be submitted/completed at the same time as requiring the next month's monthly report would be confusing to the households. It would also be an unnecessary administrative burden to require the State agency to process the missing report.

Benefit Determination

Despite the one-month grace period provided to households residing on reservations to submit monthly reports by Section 101(a) of Pub. L. 103–225 (7 U.S.C. 2015(c)(1)(C)(ii)), it is the intent of Congress that benefits be issued based on actual household circumstances. *Cong. Rec.* S2905, March 11, 1994. Therefore, to the extent possible, incomplete reports should be completed prior to the issuance of benefits. The Department is proposing that State agencies follow the procedures in 7 CFR 273.21(j)(1) (i) through (v) to attempt to obtain a complete report prior to the issuance date. The Department is proposing in § 273.21(t)(4) that the State agency repeat the previous month's benefit amount if a report is not received by the issuance date. In addition, the Department is proposing in § 273.21(t)(4) that the State agency issue the household's benefits based on the previously submitted report without regard to any changes in the household's circumstances that were not completed or verified. Finally, the Department is proposing in § 273.21(t)(4) that the State agency adjust the amount of the benefits issued if there is any information on the incomplete report that can be used as submitted. As discussed earlier, the grace period was established to ensure that households were not penalized for administrative reasons. However, there is no reason for the State agency not to adjust benefits to reflect information that is complete and verified.

Reinstatement

Section 101(a) of Pub. L. 103–225 (7 U.S.C. 2015(c)(1)(C)(i)) provides that, if a household is terminated for failing to submit or to complete a monthly report, the household shall be reinstated without being required to submit a new application if a monthly report is received no later than the last day of the month following the month the household was terminated. Accordingly, the Department is proposing at § 273.21(t)(5) to require that a State agency reinstate a household terminated in accordance with § 273.21(t)(3)(iii) without the household's being required to submit a new application if a monthly report is received no later than the last day of the month following the month the household was terminated.

Notices

The changes proposed above that provide for separate and different treatment of monthly reporting households residing on reservations require the notice requirements contained in 7 CFR 273.21(j)(2) to be modified for these households. The intent of Congress is that State agencies provide all the notices currently required for monthly reporting households in 7 CFR 273.21(j)(2), modified as necessary to reflect the alternative termination and reinstatement impacts for missing and incomplete reports. *Cong. Rec.* S2905, March 11, 1994. Accordingly the Department is proposing in § 273.21(t)(6) modified notice requirements.

In § 273.21(t)(6)(i), the Department is proposing that all notices regarding changes in a household's benefits meet the definition of adequate notice as defined in 7 CFR 271.2. This will ensure that households receive due process in any action that may negatively impact their Food Stamp Program participation.

The Department is proposing in § 273.21(t)(6)(ii) that the State agency provide a notice to the household about missing or incomplete reports that requests that the household take the action necessary to submit the missing report or to complete an incomplete report. The notification requirements are the same as those in 7 CFR 273.21(j)(3) except that the notice shall advise the household that, if a report is not submitted or if information provided on the incomplete report is not completed or verified as required, the household's benefits would be issued based on the previous month's circumstances.

In order to ensure that the household receives adequate notice of any State agency action affecting the household's benefits, the Department is proposing in 7 CFR 273.21(t)(5)(iii) that the State agency notify a household, if its report has not been received or if it is incomplete, simultaneously with the issuance that the benefits being provided are based on the previously submitted report and that this benefit does not reflect any changes in the household's circumstances that have not been reported or verified as required. This notice shall also advise the household that, if the next monthly report is not filed timely and completely, the household will be terminated. This notice requirement conforms notice requirements for these special circumstances with current notice requirements for monthly reporting.

Under current regulations at 7 CFR 273.21(m), if a household does not submit a complete monthly report, that household is required to be terminated. Under Section 6(c)(1)(C)(i) and (ii) of the Act, as amended by Section 101(a) of Pub. L. 103–225, households residing on reservations were granted a grace period of one month for non-submittal of a complete monthly report. However, if a household residing on a reservation does not submit a monthly report in the consequent month as well or submits an incomplete report, that household is required to be terminated. In order to ensure that the household is aware of the termination and its right to reinstatement, the Department is proposing in 7 CFR 273.21(t)(6)(iv) that, if the household is terminated in the consequent month, the State agency shall send the notice so the household receives it no later than the date benefits would have been received. This notice shall advise the household of its right to reinstatement if a complete monthly report is submitted by the end of the month following termination. This notice requirement is consistent with current notice requirements for monthly reporting.

Supplements and Claims

As noted above, the Department is not proposing to require that households submit the missing report simultaneously with the submittal or after the submittal of the consequent monthly report. Nevertheless, a household's report may be submitted or completed after the household's issuance has been provided. In this circumstance, the intent of Congress is that the State agency would take action based on the eligibility factors contained in the monthly report when it is submitted. *Cong. Rec.* S2905, March 11, 1994. Therefore, the Department is proposing in 7 CFR 273.21(t)(7) that, if the household submits or completes a monthly report after the issuance date but in the issuance month, the State agency provide the household with a supplement if warranted. Also, if the household submits or completes a monthly report or the State agency becomes aware of a change that would have decreased benefits in some other manner at any time after the issuance date, the Department is proposing that the State agency file a claim for any benefits overissued. The Department is not proposing that households which submit reports after the issuance month receive restored benefits. This is consistent with current food stamp policy in 7 CFR 273.17(a) which provides for restored benefits whenever the loss was caused by an error by the State agency or by an administrative disqualification which was subsequently reversed. Under current regulations, restored benefits are not provided for losses caused by a household error. Failure to submit a complete monthly report is a household error.

Quality Control Procedures

The legislative history provides that "a State [agency] will not be adversely affected in regard to its quality control efforts related to those households whose monthly reports are not submitted until a month after the report is due." *Cong. Rec.* S2905, March 11, 1994. To implement this provision, the Department is proposing that those certification errors attributable to missing or incomplete monthly reports covered under the grace period of this legislation shall be excluded from the error determination process.

Implementation

The Food Stamp Program Improvements Act of 1994 was effective upon enactment, March 25, 1994. On March 31, 1994, the Department issued a memorandum notifying State agencies of the provisions of the legislation and the March 25, 1994, effective date. State agencies were directed to implement the requirements immediately. Recognizing that the statutory amendments regarding the monthly reporting on reservations have already been implemented through the above described memorandum and in order to provide for the orderly implementation of the specific provisions of this proposed rule, the Department is proposing to require that this rule be effective in any given State upon implementation by the State agency but in no event later than the first day of the month 60 days after publication of the final rule. Variances resulting from implementation of this provision would be excluded from the payment error rate for 120 days from the required implementation date, in accordance with section 13951 of Pub. L. 103–66, which amended section 16(c)(3)(A) of the Act, 7 U.S.C. 2025(C)(3)(A).

List of Subjects in 7 CFR Part 273

Administrative practice and procedures, Aliens, Claims, Food stamps, Grant programs—social programs, Penalties, Reporting and recordkeeping requirements, Social security, Students.

Accordingly, 7 CFR part 273 is proposed to be amended as follows:

1. The authority citation of part 273 continues to read as follows:

Authority: 7 U.S.C. 2011–2032.

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

2. In § 273.21, a new paragraph (t) is added to read as follows:

§ 273.21 Monthly Reporting and Retrospective Budgeting (MRRB).

* * * * *

(t) *Monthly reporting requirements for households residing on reservations.* The following procedures shall be used for households which reside on reservations and are required to submit monthly reports:

(1) For purposes of this section, the term "reservation" shall mean the geographically defined area or areas over which a tribal organization exercises governmental jurisdiction. The term "tribal organization" shall mean the recognized governing body of an Indian tribe (including the tribally recognized intertribal organization of such tribes), as well as any Indian tribe, band, or community holding a treaty with a State government.

(2) *Certification periods.* Any household residing on a reservation that is required to submit a monthly report shall be certified for two (2) years.

(i) A State agency may request a waiver from FCS to allow it to establish certification periods of less than two (2) years if it is able to justify the need for the shorter periods. Any request for a waiver shall include input from the affected Indian tribal organization(s) and quality control error rate information for the affected households.

(ii) The State agency may opt to continue the two-year certification period for any household that moves off the reservation. If the State agency adopts this option and the household is still living off the reservation at the time it is subject to required recertification, the household shall be subject to the certification period requirements in § 273.10(f)(4). If the State agency does not adopt this option, any household that moves off the reservation shall have its certification period shortened. A household continuing to be subject to monthly reporting shall not have its certification period shortened to less than six months. A household becoming subject to change reporting shall not have its certification period end any earlier than the month following the month in which the State agency determines that the certification period shall be shortened.

(3) *Missing and incomplete reports.* The State agency shall take the following actions when a household residing on a reservation fails to submit a monthly report or complete a monthly report the State agency has indicated is incomplete:

(i) *Failure to submit a monthly report by the issuance date.* If a household does not submit its monthly report by the issuance date, the State agency shall provide the household with the same issuance that the household received the previous month. This issuance must be provided to the household on the household's normal issuance date. If the household's monthly report is received prior to the issuance date, but too late to be processed without delaying the household's issuance, the household shall be provided its issuance on the normal issuance date.

(ii) *Failure to submit a complete monthly report by the issuance date.* If a household does submit its monthly report prior to the issuance date, but that report is incomplete, the State agency shall attempt to have the household complete the report prior to the normal issuance date, in accordance with the procedures in paragraph (j) of this section. If the report cannot be completed by the normal issuance date, the State agency shall provide the household its issuance on the normal issuance date.

(iii) *Failure to submit two consecutive monthly reports or to complete two consecutive monthly reports.* If a household failed to submit a monthly report or submitted an incomplete monthly report that was never completed and then fails to submit the next consecutive monthly report or submits an incomplete report that is not completed by the issuance date, the household shall be terminated in accordance with the provisions in paragraph (m) of this section. The household shall not be terminated if it fails to ever submit or complete the first missing monthly report but does submit a completed report for the following month.

(4) *Benefit determination.* If a household's report is not completed by the issuance date, the State agency shall issue the household's benefits based on the previously submitted report without regard to any changes in the household's circumstances that were not completed or verified. The State agency shall adjust the benefits issued if there is any information on the incomplete report that can be used as submitted.

(5) *Reinstatement.* If a household is terminated for failing to submit or to complete a monthly report, the household shall be reinstated without being required to submit a new application if a monthly report is submitted no later than the last day of the month following the month the household was terminated.

(6) *Notices.*

(i) All notices regarding changes in a household's benefits shall meet the definition of adequate notice as defined in § 271.2 of this chapter.

(ii) If a household fails to file a monthly report, or files an incomplete report, by the specified filing date, the State agency shall notify the household within five days of the filing date:

(A) That the monthly report is either overdue or incomplete;

(B) What the household must do to complete the form;

(C) If any verification is missing;

(D) That the Social Security number of a new member must be reported, if the household has reported a new member but not the new member's Social Security number;

(E) What the extended filing date is;

(F) That the State agency will assist the household in completing the report; and

(G) That the household's benefits will be issued based on the previous month's submitted report without regard to any changes in the household's circumstances if the missing report is not submitted or if incomplete or unverified information on the incomplete report is not completed or verified as required.

(iii) Simultaneously with the issuance, the State agency shall notify a household, if its report has not been received or if it is incomplete, that the benefits being provided are based on the previous month's submitted report and that this benefit does not reflect any changes in the household's circumstances. This notice shall also advise the household that, if a complete report is not filed timely, the household will be terminated.

(iv) If the household is terminated, the State agency shall send the notice so the household receives it no later than the date benefits would have been received. This notice shall advise the household of its right to reinstatement if a complete monthly report is submitted by the end of the month following termination.

(7) *Supplements and claims.* If the household submits or completes a monthly report after the issuance date but in the issuance month, the State agency shall provide the household with a supplement if warranted. If the household submits or completes a monthly report after the issuance date or the State agency becomes aware of a change that would have decreased benefits in some other manner, the State agency shall file a claim for any benefits overissued.

Dated: May 26, 1995.

William E. Ludwig,

Administrator, Food and Consumer Service.

[FR Doc. 95–13723 Filed 6–5–95; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 204

[INS No. 1633–93]

RIN 1115–AD55

Employment-Based Immigrants

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend the Immigration and Naturalization Service regulations on employment-based immigrant petitions. The promulgation of this proposed rule is necessary to clarify and revise a number of issues concerning employment-based immigrant petitions which have arisen since the enactment of the Immigration Act of 1990. This proposed rule will provide more guidance to the public in filing employment-based immigrant petitions.

DATES: Written comments must be submitted on or before August 7, 1995.

ADDRESSES: Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., Room 5307, Washington, DC 20536. To ensure proper handling, please reference INS No. 1633–93 on your correspondence. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Michael W. Straus, Senior Immigration Examiner, Adjudications Division, Immigration and Naturalization Service, 425 I Street, NW., Room 3214, Washington, DC 20536, telephone (202) 514–3228.

SUPPLEMENTARY INFORMATION: Section 121 of the Immigration Act of 1990 (IMMACT), Public Law 101–649, dated November 29, 1990, amended section 203 of the Immigration and Nationality Act (Act) by creating new classifications and procedures for employment-based immigration. On November 29, 1991, the Immigration and Naturalization Service (Service) promulgated regulations implementing section 121 of IMMACT (see 56 FR 60897–60913). Since the promulgation of its regulation, the Service has encountered a number of issues concerning employment-based petitions which require clarification and revision. On December 12, 1991, the President signed the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991 (MTINA), Public Law 102–232, which modified IMMACT. In light of the changes made by MTINA and the issues which need clarification and revision, the Service proposes to amend 8 CFR 204.5.

Section 203(b) of the Act, as amended by section 121 of IMMACT, created five new employment-based immigrant categories as follows:

1. Priority workers.
   A. Aliens with extraordinary ability;
   B. Outstanding professors and researchers;
   C. Certain multinational executives and managers.
2. Members of the professions holding advanced degrees and aliens of exceptional ability.
3. Skilled workers, professionals, and other workers.
4. Certain special immigrants.
5. Employment creation immigrants.

Since the promulgation of the Service's regulations on employment-based immigrants on November 29, 1991, the Service has encountered a number of issues in adjudicating employment-based petitions which require revision or clarification. This regulation proposes to amend the current regulation on employment-based petitions in order to clarify portions of the regulations which have been problematic for the Service and the public. The proposed rule addresses petitions for employment-based immigrants, as well as priority dates for employment-based petitions, evidence required to show ability to pay the wage offered, and validity of labor certifications and employment-based petitions following changes in employer and job location. The Service will issue a separate proposed regulation on petitions for employment creation aliens at a later date.

Filing of the Petition

Most of the employment-based immigrant categories require that an employer desire and intend to employ an alien within the United States. See section 204(a)(1)(D) of the Act. The present regulation on employment-based petitions does not define the term "employer" as used in the statute. The Service has determined that this term should be clarified to provide some guidance to the public and to adjudicators on whether a petitioner qualifies as an employer. The proposed rule provides that the alien beneficiary must have an employer-employee relationship with the petitioner as indicated by the employer's ability to hire, pay, fire, supervise, or otherwise control the work of the employee. This definition of "United States employer" is consistent with the definition of this term in the H–1B regulations. See 8 CFR 214.2(h)(4)(ii). It is also consistent with the general definition of employment found in case law. See e.g. *Matter of Pozzoli*, 14 I&N Dec. 569 (Reg. Comm. 1974).

In the case of employers who are persons, the proposed regulation limits qualifying employers to individuals who are United States citizens or lawful permanent residents. Aliens, other than lawful permanent residents, may not offer permanent employment to U.S. or other workers who seek to apply for the job offered. Allowing for aliens other than lawful permanent residents to file an immigrant petition is inconsistent with the overall statutory scheme. Specifically, all nonimmigrants who enter the United States, including those for whom there is no maximum duration of stay, are admitted for a limited period of time and for a particular purpose. Upon completion of their purpose for staying in the United States, they must depart, extend, or change their nonimmigrant status. The limited nature of their stay in the United States precludes them from being able to extend a permanent offer of employment and, therefore, from submitting an employment-based petition to accord immigrant status. Consequently, petitioning employers who are in nonimmigrant status are not competent to offer permanent employment, because their status is neither settled, stabilized, nor permanent. See Matter of Thornhill, 18 I&N Dec. 34, 35–36 (Comm. 1981). The Service notes that this proposed regulation is in accord with Department of Labor policy, which precludes nonimmigrants from filing labor certifications due to their temporary status. See Department of Labor, Technical Assistance Guide No. 656, Labor Certifications, at page 136. Accordingly, the Service proposes to limit the persons who are able to submit employment-based petitions to U.S. citizens and lawful permanent residents.

Priority Date

Following the enactment of IMMACT, the Service issued a proposed rule which provided that the priority date for an employment-based petition would be the date of filing an employment-based petition with the Service. See 56 FR 30703–30714, July 5, 1991. After receipt of comments to the proposed rule, the Service decided to continue the established rule on assignment of priority dates, which set the priority date as the date the office within the employment service system of the Department of Labor received the application for labor certification. See 56 FR 60897–60913. The Service also decided to add a new provision which allowed an alien to retain the priority date of any employment-based petition which the Service approved on his or her behalf, unless it is revoked. See 56 FR 60905; 8 CFR 204.5(e).

Before IMMACT became effective, the Department of Labor permitted an employer to substitute qualified labor certification beneficiaries after issuance of the labor certification. The petitioner could return the labor certification to the certifying officer and request that another beneficiary be substituted. See Employment and Training Administration, Technical Assistance Guide No. 656, p. 105. In implementing IMMACT, the Department of Labor eliminated substitution of labor certification beneficiaries. See 56 FR 54920–54930; 20 CFR 656.30(c)(2). The Department of Labor determined that substitution of labor certification beneficiaries was unfair to U.S. workers and other aliens seeking to immigrate, was subject to fraud and abuse, and constituted a significant administrative burden. See 56 FR 54926. In 1994, the United States Court of Appeals for the District of Columbia Circuit enjoined enforcement of the Department of Labor's regulation precluding substitution of labor certification beneficiaries, based on the Administrative Procedure Act. *See Kooritzky* v. *Reich*, 17 F.3d 1509 (D.C. Cir. 1994). As a result of this decision, employers may request substitution of labor certification beneficiaries. In light of the court's decision, the Service has reconsidered its regulations on assigning priority dates.

The Service has concluded that it is unfair to other aliens who seek to immigrate to the United States on employment-based petitions if the substituted alien gains the priority date of the original alien beneficiary, since those aliens would receive a later priority date than a substituted alien. Currently, in certain employment-based immigrant categories, such as the third preference "other worker" category, an alien who benefits from a labor certification substitution can immigrate ahead of another alien who has been waiting for an immigrant visa for several years. Not only would allowing substituted aliens to receive the earlier priority date be unfair to other intending immigrants, it would also be contrary to the Service's policy of assigning a priority date to the alien rather than to the employer (see 8 CFR 204.5(e)).

Providing a priority date based on an employer's substitution of a labor certification beneficiary also carries the potential for fraud and abuse. Continuing this practice may encourage the creation of a market for labor certifications, particularly in categories in which there is a lengthy wait to receive an immigrant visa. For instance, it is conceivable that the original alien beneficiary might be induced to engage in the fraudulent practice of selling his or her status as a labor certification beneficiary to a substituted alien.

The Service, therefore, proposes to set the priority date for an alien who has been substituted for another alien on a labor certification as the date the employer requested the substitution. This proposed rule will be fair to other aliens who apply under employment-based immigrant categories, and would be consistent with the Service's policy of according a priority date to the alien rather than to the employer, thereby eliminating an inducement to commit fraud.

Retention of Employment-Based Priority Dates

The Service's current regulation provides that an alien retains the priority date of any petition filed under the first, second, or third employment-based categories which the Service approved on his or her behalf. See 8 CFR 204.5(e). A petition revoked under sections 204(e) or 205 of the Act, however, will not confer a priority date. Section 205 of the Act permits the Attorney General to revoke an approved petition for good and sufficient cause. The regulations governing revocation distinguish between automatic revocation and revocation on notice. See 8 CFR part 205. For employment-based petitions, automatic revocation occurs upon invalidation of a labor certification, death of the petitioner, written withdrawal by the petitioner, or by dissolution of the petitioner's business. See 8 CFR 205.1(c). The Service has determined that the current regulation is difficult to administer, because the Service is not usually notified of actions which may result in automatic revocation. In addition, the regulation treats those aliens who fall under the automatic revocation provisions differently from those aliens whom the petitioner no longer seeks to employ for various reasons. For example, under the current regulation, if the petitioning employer dissolves or goes out of business, the petition is automatically revoked and the beneficiary loses his or her priority date. See 8 CFR 205.1(c)(4). However, if the petitioning employer remains in business but later decides not to offer the position to the beneficiary, the beneficiary can use the priority date for any subsequent petition filed on his or her behalf. Accordingly, the Service proposes to amend 8 CFR 204.5(e) to state that only a petition revoked on notice pursuant to 8 CFR 205.2 for fraud or misrepresentation will not confer a priority date for any subsequently filed employment-based petition. This change will allow for consistency and fairness in assignment of priority dates and easier administration for the Service.

Maintaining Priority Dates for Employment-Based Petitions Filed Before October 1, 1991

The current regulation states that any petition filed before October 1, 1991, and approved under section 203(a)(3) or 203(a)(6) of the Act, as in effect before October 1, 1991, shall be deemed a petition approved to accord status under section 203(b)(2) or within the appropriate classification under section 203(b)(3) respectively, of the Act, provided the alien applies for an immigrant visa or adjustment of status within the 2 years following notification that an immigrant visa is immediately available. See 8 CFR 204.5(f). As of October 1, 1991, the priority dates for all employment-based immigrant categories were current. Subsequently, however, visa numbers for the other (unskilled) worker subcategory of section 203(b)(3) of the Act quickly became over-subscribed and retrogressed, as did visa numbers for some employment-based categories for natives of India, China, and the Philippines. Because many aliens who were current on October 1, 1991, were unable to complete the immigration process due to the rapid retrogression of visa numbers, this regulation needs to be amended out of fairness to these aliens. To further Congress' intent in enacting section 161(c)(4) of IMMACT, the Service proposes to amend the regulation to state that a petition filed under section 203(a)(3) or 203(a)(6) of the Act before October 1, 1991, and approved on any date, shall be deemed a petition approved under section 203(b)(2) or 203(b)(3) of the Act, provided the alien applies for an immigrant visa or adjustment of status within a 2-year time period during which the immigrant visa is continuously available.

Section 161(c)(4)(B) of IMMACT provides that the automatic conversion of petitions filed under section 203(a)(3) or 203(a)(6) of the Act before October 1, 1991, shall not occur if the priority date for issuance of a visa has been available for a 2-year period. In the current regulation, the 2-year period commences following notification that an immigrant visa is immediately available. See 8 CFR 204.5(f). Since the promulgation of this regulation in 1991, the Service has had difficulty defining the term "notification that an immigrant visa is immediately available." In the case of beneficiaries of approved petitions who apply for adjustment of status under section 245 of the Act, the Service only notifies the alien of the priority date for the approved petition. For alien beneficiaries who apply for immigrant visas, notification depends

on when the alien received immigrant visa forms from a U.S. consulate, the Transitional Immigrant Visa Processing Facility, or the National Visa Center. This method of determining when notification occurs leads to inconsistencies between those aliens who apply for adjustment of status and those who apply for an immigrant visa. For purposes of uniformity, the 2-year period will commence upon approval of the petition or when the priority date becomes available, whichever is later. A visa number must be continuously available during the 2-year period. Should the priority date retrogress within the 2-year period after which a visa number becomes available, the 2-year period provided for under section 161(c)(4)(B) of IMMACT will commence anew at the time the priority date once again becomes current. This change allows for consistency and adheres to the language of IMMACT.

Additional Evidence

The current regulation requires the petitioner to establish ability to pay the wage offered in the form of an annual report, a Federal tax return, or an audited financial statement. See 8 CFR 204.5(g)(2). In appropriate cases, the petitioner may submit or the Service may request additional evidence such as a profit/loss statement, bank account record, or personnel record. During the past 2 years, the Service has found that other documents such as payroll records and W–2 forms are useful types of evidence in establishing ability to pay the wage offered. Therefore, the Service proposes to add these two types of evidence to the list of examples of additional evidence. The proposed addition of these two types of documents does not suggest that the Service intends to allow these documents as primary evidence of ability to pay.

Validity of Section 203(b) Petitions and Labor Certifications

Following the issuance of a labor certification by the Department of Labor or the approval of an employment-based petition by the Service, the job location or the structure and ownership of the petitioning employer may change. Following the implementation of IMMACT, the Service and the Department of Labor entered into an agreement that the Service will determine the validity of labor certifications once the Department of Labor issues a labor certification. The proposed rule at 8 CFR 204.5(h) essentially restates the Department of Labor's regulation on validity and invalidation of labor certifications. See 20 CFR 656.30. In addition, it states that when an alien immigrates under an employment-based immigrant category, based on a labor certification, the labor certification will no longer be valid. The Service believes that an alien should not be able to immigrate and then re-immigrate using the same labor certification. This provision is consistent with Department of Labor policy, which states that a non-Schedule A labor certification is limited to a specific job opportunity. See Employment and Training Administration, Technical Assistance Guide No. 656 at 104. See Matter of Harry Bailen Builders, 19 I&N Dec. 412 (Comm. 1986) (holding that, based on the advice of the Department of Labor, the specific job opportunity ceases to exist when an alien immigrates based on the labor certification). It is not relevant whether the alien commenced the offered employment upon obtaining permanent resident status based on the labor certification. To allow an alien to use a labor certification twice would enable the alien to circumvent the immigration process if he or she abandons or otherwise loses his or her permanent residence and seeks to reimmigrate to the United States. Specifically, if the alien is able to use the labor certification twice, the alien can circumvent the labor certification requirement. Such a situation is not fair to other aliens who seek to immigrate to the United States. Moreover, it encourages fraud by discouraging the alien beneficiary from actually filling the job offered. Accordingly, the Service proposes to amend this regulation to provide that a labor certification is no longer valid when the alien immigrates to the United States under an employment-based category, based on that labor certification.

In furtherance of the agreement with the Department of Labor, the Service proposes to add a new paragraph on validity of labor certifications, based on changes of employer and job location.

I. Changes in Job Location

For non-Schedule A labor certifications, if the location of the job offered to the alien changes after the labor certification is approved, the Service will determine if the labor certification remains valid. The Service will follow existing Department of Labor regulations which provide that a labor certification is valid within the normal commuting distance of the site of the original offer of employment. See 20 CFR 656.30(c)(2); 20 CFR 656.3 (definition of area of intended employment). Any location within a Metropolitan Statistical Area (MSA) is deemed to be within normal commuting distance. See 20 CFR 656.3. A Schedule A labor certification is valid throughout the United States. See 20 CFR 656.30(c)(1).

In the case of non-Schedule A labor certifications where there is a job location change after the approval of an Immigrant Petition for Alien Worker (Form I–140) or labor certification, the petitioning employer must file an I–140 petition with the service center having jurisdiction over the new location where the alien beneficiary will be employed. For Schedule A labor certifications, if there is a change in job location, the alien must submit a signed job offer Form ETA 750 at his or her interview for adjustment of status or immigrant visa.

II. Successorship in Interest

In cases where a petitioning entity changes ownership, the issue may arise whether the employment relationship has so changed as to render the petition invalid. Based on the above-noted agreement with the Department of Labor, the Service will determine whether there has been a "successorship in interest" and, therefore, whether an approved visa petition and/or labor certification remain valid. Generally, if a new employer is a "successor in interest" to the original petitioning employer, the Service will reaffirm the validity of the visa petition and/or labor certification. Successorship in interest can occur when the petitioning employer, or a division thereof, is merged, acquired or purchased by another business. A business restructuring or reorganization should not affect the validity of a petition, unless the job and/or wages offered to the beneficiary have changed. To establish successorship in interest, the successor entity must demonstrate substantial continuity with the original petitioner. The Service proposes that, to establish successorship in interest, the new employer must establish that it has substantially assumed the rights, duties, obligations and assets of the original employer and continues to operate the same type of business as the original employer. The new employer must also submit evidence of ability to pay the proffered wage. In addition, the successor in interest must also demonstrate that the original employer had the ability to pay the proffered wage when the labor certification was filed, if the Service did not approve an employment-based petition on behalf of original employer. See Matter of Dial Auto Repair Shop, Inc., 19 I&N Dec. 481 (Comm. 1986). The Service invites comments on whether the "substantial assumption" standard provides sufficient guidance to the public, reflects current business practice, and preserves the integrity of the immigration process. In addition, the Service welcomes comments on alternative ways to define successorship in interest.

To establish successorship in interest, the new employer must submit a Form I–140 with the service center having jurisdiction over the intended place of employment along with documentation of successorship of interest and ability to pay. If the service center determines that the petitioner fails to qualify as a successor in interest, it will deny the I–140 petition. The petitioner may pursue an appeal with the Administrative Appeals Unit. If the service center finds that the petitioner is a successor in interest, it will approve the petition and accord the beneficiary the priority date of the previously approved petition.

Aliens of Extraordinary Ability

The current regulation at 8 CFR 204.5(h)(2) defines extraordinary ability as a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of a field of endeavor. The regulation lists evidence which needs to be presented to establish extraordinary ability. See 8 CFR 204.5(h)(3). Since the implementation of IMMACT, there has arisen some confusion over the role of various types of evidence listed in 8 CFR 204.5(h)(3). The evidence listed is intended to be a guideline for the petitioner and the Service to determine extraordinary ability in order to make the adjudicative process easier for both the petitioner and the Service. The fact that an alien may meet three of the listed criteria does not necessarily mean that he or she meets the standard of extraordinary ability. The Service adjudicator must still determine whether the alien is one of that small percentage who have risen to the very top of his or her field of endeavor. Accordingly, the Service proposes to amend the regulations to state that meeting three of the evidentiary standards is not dispositive of whether the beneficiary is an alien of extraordinary ability.

By statute, aliens who immigrate under this category do not require a labor certification to work in their area of extraordinary ability, since by definition, they will not be competing with the U.S. labor market. The situation is different, however, where the alien's primary source of earned income will be derived from an activity unrelated to his or her field of extraordinary ability. In such a case, the alien may, in fact, be competing primarily with U.S. workers engaged in the unrelated field, thereby necessitating a test of the labor market and a labor certification. While the Service recognizes that aliens having extraordinary ability may reasonably be expected to engage in secondary activities within their field of extraordinary ability, whether or not for pay, the Service is responsible for ensuring that the alien's entry will not have an adverse impact on the U.S. labor market. The Service, therefore, proposes that the alien's primary source of earned income must come from the specific activity or activities for which he or she seeks priority worker classification.

Outstanding Professors and Researchers

Since the implementation of IMMACT, there has been some confusion over the role of various types of evidence listed in 8 CFR 204.5(i)(3). As in the case of the regulations governing petitions for aliens of extraordinary ability, the evidence listed is intended to be a guideline for the petitioner and the Service to determine whether the beneficiary stands apart in the academic community through eminence and distinction based on international recognition. See 56 FR 30703–30714 dated July 5, 1991. This list of evidence makes the adjudicative process easier for both the petitioner and the Service. The fact that the beneficiary may meet two of the listed criteria does not necessarily mean that he or she has the international recognition to be considered an outstanding researcher or professor. The Service adjudicator must still determine whether the alien is recognized internationally as outstanding in the academic field specified in the petition. The Service, therefore, proposes to amend this regulation to specifically state that having two types of the listed evidence does not compel a finding that the beneficiary is recognized internationally as outstanding.

The Service has also reviewed the five types of evidence listed in 8 CFR 204.5(i)(3)(i). The Service has determined that two of the paragraphs need to be reworded. Paragraph (i)(3)(i)(C) states that the petitioner may submit published material written by others about the beneficiary's work in the academic field. Some petitioners have interpreted this paragraph to mean that any reference to the beneficiary's work, including a reference in a footnote or bibliography, meets the evidentiary criteria of this paragraph. The Service proposes to amend the language of paragraph (i)(3)(i)(C) to require that the publication discuss or analyze the beneficiary's work in the academic field. A short reference to the beneficiary's work in a professional publication does not demonstrate that he or she is recognized as outstanding. A much better indicator of the importance of the alien's work in the academic community is a thorough discussion or analysis of the beneficiary's work.

In 8 CFR 204.5(i)(3)(i)(D), the petitioner may submit evidence of the beneficiary's participation, either individually or on a panel, as the judge of the work of others in the same or related academic field. The Service believes that most college or university professors are involved in judging the work of others, and the Service has found that meeting the criteria under this paragraph is not a good indicator of whether the beneficiary is recognized as outstanding. Judging the work of other authorities and experts in the alien's academic field is a better measure of the beneficiary's international recognition. Therefore, the Service proposes to amend the paragraph to specify that the alien can meet the criteria in paragraph (i)(3)(i)(D) by submitting evidence that the beneficiary has judged the work of other professors, researchers, and Ph.D. candidates in the alien's academic field.

Section 203(b)(1)(B)(iii)(III) of the Act allows a private employer to petition an outstanding professor or researcher to conduct research if the employer has at least three persons engaged in research activities and has achieved documented accomplishments in the academic field. One issue that has arisen is whether a government agency which conducts research can petition an outstanding professor or researcher. It is the position of the Service that some government agencies such as the National Institutes of Health and the Food and Drug Administration should be able to file petitions on behalf of outstanding alien researchers, who may have valuable contributions to bring to the agency's research efforts. In order to allow for government agencies to sponsor certain outstanding researchers, the Service proposes to amend the regulation to include government agencies on the list of United States employers.

Multinational Executives and Managers

Section 203(b)(1)(C) of the Act provides for the immigration of multinational executives and managers if the alien, in the 3 years preceding the time of his or her application for classification and admission into the United States, has been employed for at least 1 year in a managerial or executive position abroad with the same

employer, or a subsidiary or affiliate thereof. To accommodate managers or executives who have been in the United States in nonimmigrant status for over 3 years, 8 CFR 204.5(j)(3)(i)(B) provides that an alien, already working in the Unites States for the same employer or a subsidiary or affiliate of the firm or corporation which employed the alien abroad as a manager or executive during at least one of the 3 years preceding his or her entry as a nonimmigrant, would qualify as a multinational executive or manager. In the case of an alien who is currently outside the United States, he or she must have been employed abroad by an affiliate, branch, or subsidiary of the petitioner as a manager or executive for at least 1 year during the 3-year period immediately preceding the filing of the petition. See 8 CFR 204.5(j)(3)(i)(A). Section 204.5(j)(3) of the regulations inadvertently omitted situations where the alien was in lawful nonimmigrant status while working for an unrelated employer, but worked for a qualifying company abroad in a managerial or executive position during at least 1 of the 3 years preceeding the filing of the petition. The fact that the alien is working in the United States should not preclude him or her from qualifying as a priority worker. Aliens who have worked for an unrelated employer should be treated the same as aliens who are outside the United States for purposes of eligibility. Accordingly, the Service proposes to allow U.S. employers to file petitions on behalf of those aliens for managerial or executive positions.

Advanced Degree Holders and Aliens of Exceptional Ability

The current regulation defines "exceptional ability" as a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. See 8 CFR 204.5(k)(2). The regulation at 8 CFR 204.5(k)(3)(ii) lists evidence which needs to be presented to establish exceptional ability. Since the Implementation of IMMACT, there has been some confusion over the role of various types of evidence listed in the regulation. As in the cases of aliens of extraordinary ability and outstanding professors and researchers, the Service intended that this list of evidence be a guideline for the petitioner and the Service to determine exceptional ability. Providing a list of possible types of evidence makes the adjudicative process simpler for both the petitioner and the Service. The fact that an alien may meet three of the listed criteria does not necessarily mean that he or she meets the standard of exceptional ability. The Service adjudicator must still determine whether the alien has a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. Accordingly, the Service proposes to amend the regulation to state that meeting three of the evidentiary standards is not dispositive of whether the beneficiary is an alien of exceptional ability.

Under section 203(b)(2)(A) of the Act, professionals holding advanced degrees or their equivalent also qualify for classification under the employment-based second category. The Joint Explanatory Statement of the Committee of Conference, made at the time Congress adopted IMMACT, stated that the equivalent of an advanced degree is "a bachelor's degree with at least five years progressive experience in the professions." See H.R. Rep. No. 101–955, 101st Cong., 2d Sess. 121 (1990). Accordingly, the current regulation states that the job offer portion of the labor certification application (Form ETA–750) must demonstrate that the job requires a professional holding an advanced degree or equivalent. See 8 CFR 204.5(k)(4)(i). Since the Service began adjudicating petitions under the current regulation, some petitioners have interpreted this regulation to allow job offers which require only a bachelor's degree, plus 5 years of progressive experience, but not an advanced degree. This interpretation does not comport with the language of section 203(b)(2)(A) of the Act which, on its face, states that a job offer must require an advanced degree or equivalent in order to qualify the beneficiary as an advanced degree holder. Requiring a bachelor's degree and 5 years of experience does not equate to a requirement that the beneficiary hold an advanced degree. In order for the beneficiary to qualify as an advanced degree holder, the job offered in the labor certification must also accept an advanced degree as a minimum job requirement. Therefore, the Service proposes that the regulation be amended to state that if the job offer portion of the labor certification requires a person holding a bachelor's degree, followed by at least 5 years of experience in the specialty, it must also accept an advanced degree holder in the same field as meeting the minimum job requirements.

Section 212(a)(5)(C) of the Act states that a petition filed under the employment-based second category requires a labor certification. Section 203(b)(2)(B) of the Act provides that "the Attorney General may, when he deems it to be in the national interest, waive the requirement * * * that an alien's services in the sciences, arts, professions, or business are sought by an employer in the United States." The Service has determined that a waiver of the job offer constitutes a waiver of the labor certification. See 56 FR 60897–60913 dated November 29, 1991. Soon after the promulgation of the final rule on employment-based immigrant petitions in November of 1991, the President signed the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991 (MTINA). The MTINA added professionals to the list of aliens who are eligible to request a national interest waiver of the labor certification. Accordingly, the Service proposes to amend 8 CFR 204.5(k)(4)(ii) to add professionals to the list of aliens whom the service center director can exempt from the labor certification requirement.

After the Service issued a proposed regulation on employment-based immigrant petitions at 56 FR 30703–30714 on July 5, 1991, several commenters suggested that the Service define the term "national interest." The Service decided not to define the term "national interest" in the final regulation. See 56 FR 60897–60913 dated November 29, 1991. At that time, the Service believed that it was appropriate to leave the application of the national interest waiver as flexible as possible and that each case should be judged on its own merits.

Since the promulgation of the final regulation on November 29, 1991, the Service has received numerous petitions filed under the employment-based second category, which request a waiver of the labor certification requirement in the national interest. Since IMMACT became effective in 1991, the Service has been flexible in approving national interest waivers in a variety of situations. The Administrative Appeals Unit (AAU) has issued a number of non-precedent decisions on the national interest waiver. The AAU has listed some factors which relate to national interest. See Matter of _____, EAC 92 091 50126 (July 21, 1992). They include improving the U.S. economy, improving conditions of U.S. workers, improving education and training of children and under-qualified workers, improving health care, providing affordable housing, improving the environment, and a request from an interested government agency. Although these factors provide a list of national goals or objectives, they do not provide much guidance to the public or to Service adjudicators with respect to which aliens merit a national interest waiver.

Without specific guidelines, the service centers have found it difficult to determine which aliens should qualify for the waiver. It has proven to be very difficult to determine on a case-by-case basis which petitions deserve a "national interest" waiver. The Service believes that, absent published general guidelines, it is very difficult to adjudicate consistently national interest waivers. Based on the Service's experience in adjudicating national interest waivers since 1991, the Service proposes that the petitioner establish four elements to qualify for a national interest waiver. These elements will allow for greater consistency in adjudication of national interest waivers as well as provide guidance to the public. They do not limit, or attempt to define, which types of activities are in the national interest. The four elements do, however, provide common indicators of whether the alien's admission to the United States would benefit the national interest.

The first element is that the alien must have at least 2 years of experience in the area in which he or she will benefit the United States. The Service believes that requiring some background in the area in which the alien will benefit the national interest is an appropriate measure of whether the alien has the commitment to pursue the activity which will promote a national interest, as stated in the petition. Unlike an alien who immigrates based on a labor certification, an alien who immigrates based on a national interest waiver does not require a specific job offer and a sponsoring employer. It is, therefore, more difficult in such waiver cases for the Service to determine whether the alien has the commitment to engage in the activity which will promote a national interest following his or her admission as an immigrant.

To illustrate this problem, the Service notes that it has received a number of petitions, accompanied by a request for a national interest waiver, from professionals who recently received an advanced degree and claim that they will be engaged in activities which will be in the national interest. One example is an attorney who recently passed the state bar examination and promises to devote some of his practice to representing indigent persons. Another example is someone who has just graduated from medical school and states that he or she will practice in a medically under-served area. Such petitions have been problematic for the Service to adjudicate. The aliens claim they will be engaged in activity in which they do not have a "track record." Under the current regulations, the Service has no means to determine whether the alien is truly committed to performing the activity which promotes the national interest. The Service believes that it is appropriate to require the alien to have 2 years of full-time experience in the field of endeavor which will promote the national interest. The Service does not believe, however, that the required period of experience should include time in which the alien was a full- or part-time student. It is the position of the Service that 2 years of full-time experience is the minimum period of time to measure the alien's commitment to work in an area which will promote the national interest. In addition, this 2-year full-time experience requirement is necessary to determine whether the alien has sufficient qualifying experience in the field to play a significant role in an activity which will prospectively benefit the United States.

The second element is that the national interest waiver not be based purely on the alien's ability to ameliorate a local labor shortage. Although the legislative history of IMMACT and MTINA does not address the meaning of the term "national interest," Congress clearly stated, in section 212(a)(5)(C) of the Act, that all aliens who immigrate under the second and third employment-based categories require a labor certification. Section 203(b)(2)(B) of the Act allows the Attorney General to waive the requirement that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States if it is in the national interest. By enacting the national interest waiver, Congress created an exception to the general labor certification requirement. It would, therefore, be superfluous to allow an alien to be exempted from the labor certification requirement based purely on a shortage of available U.S. workers. Congress has delegated to the Department of Labor the determination of whether local labor shortages exist. See section 212(a)(5)(A) of the Act. This does not mean, however, that the existence of a national labor shortage would not be relevant to whether an alien should be granted a national interest waiver. The fact that the alien has skills which are not available in the overall U.S. labor market may be a relevant consideration in deciding whether to grant a national interest waiver. However, should the Service determine that the basis of the request for a national interest waiver is solely to alleviate a local labor shortage, a labor certification will be the appropriate basis to qualify for an employment-based petition.

The plain language of the term "national interest" supports the Service's position on local labor shortages. The dictionary defines the word "national" as "pertaining to a whole nation" or "concerning or encompassing an entire nation." See The Random House College Dictionary (Rev. Ed. 1975). If the basis of the request for a national interest waiver is merely to solve a labor shortage in a limited area of the country, the impact of the alien's employment cannot be said to pertain directly to the entire Nation. There must be an impact on the Nation as a whole.

In conclusion, the Service has determined that local labor market concerns, standing alone, are not an appropriate basis for a national interest waiver, which exempts the alien from the normal labor certification requirement. Accordingly, the Service proposes to preclude aliens from obtaining a national interest waiver based purely on a local labor shortage.

The third element in determining whether the alien should be given a national interest waiver is that the alien will be involved in an undertaking which will substantially benefit prospectively the United States. This requirement follows the statutory language of section 203(b)(2)(B) of the Act, which makes it clear that the waiver request should be premised on an activity which will further an important national goal. The emphasis of this element is on the particular national goal the alien's proposed undertaking will promote.

The fourth element in determining whether the labor certification and job offer should be waived in the national interest is that the alien play a significant role in that activity which will prospectively benefit the United States. The Service has received a large number of requests for a national interest waiver from aliens who play relatively minor roles in an important project or activity which affects the national interest. One example is an alien who is an entry-level engineer who works for a company which conducts important research into new sources of energy, such as fusion. Another example is a physician who claims that he or she will work in primary-care, which the President's health care proposal emphasizes. In both examples, the alien states that he or she will be working in a field which will promote a national goal or cause. While this may be true, merely working in an area which benefits the national interest is not a sufficient basis to grant a national interest waiver. The alien must also establish that he or she will

play a significant role in advancing the particular national interest. In other words, the alien has the burden of proof that he or she will have a significant impact on an activity which will benefit the national interests of the United States.

This proposed regulation will serve as a guideline for aliens who apply for a national interest waiver. It emphasizes both the manner in which the alien will contribute to the national interest, as well as the activity or employment itself. The Service believes that the alien must show that he or she will play a significant role in an undertaking which will prospectively benefit the United States.

Skilled Workers, Professionals, and Other Workers

The employment-based third category under section 203(b)(3) of the Act has subcategories for professionals, skilled workers, and unskilled workers. Although there are 40,000 immigrant visa numbers allocated annually to the employment-based third category, section 203(b)(3)(B) of the Act limits the annual admissions of unskilled workers to 10,000. In order to qualify as a skilled worker, the job offered must require at least 2 years of training or experience. Under the current regulation, the Service determines whether a job offered is skilled or unskilled based on the minimum experience or training requirements which the prospective employer places on the job, as certified by the Department of Labor on Form ETA 750. See 8 CFR 204.5(l)(4). Block number 14 on Form ETA 750A (Offer of Employment) lists the minimum experience for a worker to satisfactorily perform the job offered. As a matter of practice, the Department of Labor permits the minimum experience required to satisfactorily perform the job offered to be in the job offered or in a related occupation.

The Service has received a number of petitions in which the minimum experience requirement in a related occupation is 2 years or more and the minimum experience requirement in the job offered is less than 2 years. This regulation proposes to place the beneficiary into the unskilled category if the experience requirement on Block 14 on Form ETA 750A for the job offered shows less than 2 years of experience. To do otherwise would mean that a job applicant could meet one of the minimum job offer requirements with less than 2 years of experience in the job itself. The Service has determined that focusing on the experience required for the job offered comports with the language of section 203(b)(3)(A)(i) of the Act which defines skilled workers as qualified immigrants who are capable of performing skilled labor, requiring at least 2 years of experience or training. Accordingly, the Service proposes to add a sentence to emphasize that a worker will be considered unskilled if a job applicant can meet the minimum experience requirements in the job offered with less than 2 years of experience.

Religious Workers

Section 151(a) of IMMACT created a new immigrant category for ministers, religious professionals, and other religious workers. Section 101(a)(27)(C)(iii) of the Act provides that in order to qualify under this category, a minister must have been carrying on the vocation of minister during the previous 2 years. The Act also requires professional and other religious workers to carry on the religious work during the previous 2 years. The regulation currently states that ministers and religious workers must have been performing the vocation of minister or religious work continuously, either abroad or in the United States, for at least the 2-year period immediately preceding the filing of the petition. See 8 CFR 204.5(m)(1). The Service proposes to amend the regulation to expressly require that the 2 years of experience be full-time.

Before Congress enacted IMMACT in 1990, section 101(a)(27)(C) of the Act classified ministers as special immigrants. Under this category, the alien had to establish that he was "an immigrant who continuously for at least two years immediately preceding the time of his application for admission to the United States has been, and who seeks to enter the United States solely for the purpose of carrying on the vocation of minister of a religious denomination." This language is virtually identical with the current statute, except that Congress added a category for religious workers. The legislative history indicates that Congress did not intend to overrule pre-existing case law interpreting the experience requirement under former section 101(a)(27)(C) of the Act. See H. Rep. No. 723, 101st Cong., 2nd Sess. 75 (1990). In Matter of Faith Assembly Church, 19 I&N Dec. 391, 393 (Comm. 1986), the Commissioner determined that the term "solely" applies to both the alien's proposed ministerial activities as well as to the alien's previous experience as a religious minister. Because of the legislative history and the similarity in the statutory language, it is appropriate for the Service to require that the 2 years of experience be full-time. In addition, this interpretation is consistent with the statutory framework, under which IMMACT also created a nonimmigrant category for religious workers. See section 101(a)(15)(R) of the Act. The 2-year experience requirement is the only difference between the nonimmigrant and immigrant religious worker category. Compare id with section 101(a)(27)(C)(iii) of the Act. Both categories require 2 years of membership in the religious denomination. Since membership in a religious denomination may entail some part-time volunteer work, part-time employment should not suffice to qualify the alien as a special immigrant religious worker. Permitting such part-time employment to count towards meeting the experience requirement for immigrant religious workers would render the distinction between the two categories, and, therefore, the experience requirement itself, superfluous.

Accordingly, the Service proposes to amend the regulation to expressly require that the 2 years of experience be full-time. In order for the qualifying experience to be considered full-time, the alien must have worked in a qualifying religious vocation or occupation for at least 35 hours per week or more, depending on what constitutes "full-time" experience in the particular religious occupation or vocation.

Regulatory Flexibility Act

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule will not, if promulgated, have a significant adverse economic impact on a substantial number of small entities. This proposed rule merely modifies existing regulations for employment-based immigration. It will not significantly change the number of persons who immigrate to the United States based on employment-based petitions. Any impact on small business entities will be, at most, indirect and attenuated.

Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, § 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order 12612

The regulation will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12606

The Commissioner of the Immigration and Naturalization Service certifies that she has addressed this rule in light of the criteria in Executive Order 12606 and has determined that it will have no effect on family well-being.

List of Subjects in 8 CFR Part 204

Administrative practice and procedure, Aliens, Employment, Immigration, Forms.

Accordingly, part 204 of chapter I of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 204—IMMIGRANT PETITIONS

1. The authority citation for part 204 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1182, 1186a, 1255; 8 CFR part 2.

2. In § 204.5, paragraph (c) is revised to read as follows:

§ 204.5 Petitions for employment-based immigrants.

* * * * *

(c) *Filing petition.* Any United States employer desiring and intending to employ an alien may file a petition for classification of the alien under section 203(b)(1)(B), 203(b)(1)(C), 203(b)(2), or 203(b)(3) of the Act. An alien, or any person in the alien's behalf, may file a petition for classification under section 203(b)(1)(A) or 203(b)(4) of the Act (as it relates to special immigrants under section 101(a)(27)(C) of the Act). For purpose of this part, a United States employer must be a person who is a United States citizen or permanent resident, a firm, corporation, contractor, or other association or organization in the United States which engages a person to work in the United States, which has an employer-employee relationship with respect to employees as indicated by the fact that it may hire, pay, fire, supervise, or otherwise control the work of such employee.

* * * * *

3. In § 204.5, paragraph (d) is amended by adding the following sentence immediately after the first sentence, to read as follows:

§ 204.5 Petitions for employment-based immigrants.

* * * * *

(d) *Priority date.* * * * If the United States employer substitutes another alien on a labor certification, the priority date shall be the date the employer requests the substitution. * * *

* * * * *

4. In § 204.5, paragraph (e) is amended by revising the third sentence to read as follows:

§ 204.5 Petitions for employment-based immigrants.

* * * * *

(e) *Retention of section 203(b)(1), (2), or (3) priority date.*—* * * A petition revoked pursuant to 8 CFR 205.2 for fraud or misrepresentation will not confer a priority date, nor will any priority date be established as a result of a denied petition. * * *

* * * * *

5. In § 204.5, paragraph (f) is revised to read as follows:

§ 204.5 Petitions for employment-based immigrants.

* * * * *

(f) *Maintaining the priority date of a third or sixth preference petition filed prior to October 1, 1991*—Any petition filed before October 1, 1991, and approved on any date, to accord status under section 203(a)(3) or 203(a)(6) of the Act, as in effect before October 1, 1991, shall be deemed a petition approved to accord status under section 203(b)(2) or within the appropriate classification under section 203(b)(3), respectively, of the Act as in effect on or after October 1, 1991, provided that the alien applies for an immigrant visa or adjustment of status within the two-year period following approval of the petition during which an immigrant visa is continuously available for his or her use.

* * * * *

§ 204.5 [Amended]

6. Section 204.5(g)(2) is amended in the last sentence by adding the phrase "payroll records, W–2 forms," immediately after the phrase "bank account records,".

7. In § 204.5, paragraphs (h) through (n) are redesignated as paragraphs (i) through (o), respectively, and a new paragraph (h) is added to read as follows:

§ 204.5 Petitions for employment-based immigrants.

* * * * *

(h) *Validity of section 203(b) petitions and labor certifications*—(1) A petition approved pursuant to section 203(b) of the Act is valid indefinitely unless revoked under section 205 of the Act. A labor certification is valid until the alien immigrates or adjusts status under an employment-based petition based on the labor certification, unless there is a finding by the Service or the State Department that the labor certification was obtained through fraud or a material misrepresentation.

(2) *Changes in job location*—(i) *Non-schedule A labor certificatons.* A labor certification is valid only for the area within normal commuting distance of the site of the original offer of employment. Any location within a Metropolitan Statistical Area is deemed to be within normal commuting distance. If there is a change in job location after a Form I–140 Immigrant Petition for Alien Worker has been approved, the petitioner shall file a new Form I–140 petition with the service center having jurisdiction over the intended place of employment.

(ii) *Schedule A labor certifications.* A Schedule A labor certification is valid anywhere in the United States.

(3) *Successorship in interest.* If there has been a successor in interest to the original petitioning employer, the Service will reaffirm the validity of the labor certification or previously approved Form I–140 petition for the new employer. For purposes of this paragraph, to be a successor in interest, the new employer must have substantially assumed the duties, rights, obligations, and assets of the original employer. In addition, the new employer must offer the same wages and working conditions to its employees, offer the beneficiary the same job as stated in the labor certification, and continue to operate the same type of business as the original employer. The new employer must submit a Form I–140 petition with the service center having jurisdiction over intended place of employment along with evidence that it is a successor in interest and documentation showing the change in ownership and ability to pay the wage offered. If the Service did not approve a petition filed by the original employer, the new employer must also establish that the original employer had the ability to pay the proffered wage when the labor certification was submitted.

* * * * *

8. In § 204.5, newly redesignated paragraphs (i)(4) and (i)(5) are revised to read as follows:

§ 204.5 Petitions for employment-based immigrants.

* * * * *

(i) * * *

(4) If the above standards do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence to establish the beneficiary's eligibility. Meeting three of the evidentiary standards listed in paragraph (i)(3) of this section is not dispositive of whether the beneficiary is an alien of extraordinary ability. The petitioner has the burden of proof to establish that he or she is an alien of extraordinary ability.

(5) *No offer of employment required.* Neither an offer of employment in the United States nor a labor certification is required for this classification; however, the petition must be accompanied by clear evidence that the alien is coming to the United States to continue work in the area of expertise. Such evidence may include letter(s) from prospective employer(s), evidence of prearranged commitments such as contracts, or a statement from the beneficiary detailing plans on how he or she intends to continue his or her work in the United States. The alien's primary source of earned income must come from the specific activity or activities for which he or she seeks classification as an alien of extraordinary ability.

* * * * *

9. Section 204.5 is amended by:

a. Revising newly redesignated paragraph (j)(3)(i) introductory text;

b. Revising newly redesignated paragraph (j)(3)(i) (C) and (D); and by

c. Revising the first sentence in newly redesignated paragraph (j)(3)(iii)(C), to read as follows:

§ 204.5 Petitions for employment-based immigrants.

* * * * *

(j) * * *

(3) * * *

(i) Evidence that the professor or researcher is recognized internationally as outstanding in the academic field specified in the petition. Such evidence shall consist of at least two of the following. Meeting two of the following evidentiary standards listed in paragraph (j)(3)(i) of this section is not dispositive of whether the beneficiary is recognized internationally as outstanding in the academic field specified in the petition. The petitioner has the burden of proof to establish that the beneficiary is an outstanding researcher or professor:

* * * * *

(C) Published material in professional publications written by others discussing or analyzing the alien's work in the academic field. Such material shall include the title, date, and author of the material, and any necessary translation;

(D) Evidence of the alien's participation, either individually or on a panel, as the judge of the work of other professors, researchers, or Ph.D. candidates in the same or related academic field;

* * * * *

(iii) * * *

(C) A department, division, or institute of a private employer or a state, local, or Federal Government agency offering the alien a permanent research position in the alien's academic field.

* * *

* * * * *

10. In § 204.5, newly redesignated paragraph (k)(3)(i) is amended by redesignating paragraphs (k)(3)(i) (C) and (D) as paragraphs (k)(3)(i) (D) and (E) respectively; and by adding a new paragraph (k)(3)(i)(C) to read as follows:

§ 204.5 Petitions for employment-based immigrants.

* * * * *

(k) * * *

(3) * * *

(i) * * *

(C) If the alien is already in the United States working for an employer which is not the same employer or a subsidiary or affiliate of the entity by which the alien was employed overseas, in the three years preceding the filing of the petition, the alien has been employed outside the United States for at least one year in a managerial or executive capacity by a firm or corporation, or other legal entity, or by an affiliate or subsidiary of such a firm or corporation or other legal entity;

* * * * *

11. In § 204.5, newly redesignated paragraphs (l)(1), (l)(3)(iii), and (l)(4) are revised to read as follows:

§ 204.5 Petitions for employment-based immigrants.

* * * * *

(l) *Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability.* (1) Any United States employer may file a petition on Form I–140 for classification of an alien under section 203(b)(2) of the Act as an alien who is a member of the professions holding an advanced degree or an alien of exceptional ability in the sciences, arts, or business. If the alien is seeking an exemption from the requirement of a job offer in the United States pursuant to section 203(b)(2)(B) of the Act, then the alien, or anyone in the alien's behalf, may be the petitioner.

* * * * *

(3) * * *

(iii) If the standards in paragraph (l)(3) do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence to establish the beneficiary's eligibility. Meeting three of the evidentiary standards listed in paragraph (l)(3)(ii) of this section is not dispositive of whether the beneficiary is an alien of exceptional ability. The petitioner has the burden of proof to establish that the alien is an alien of exceptional ability.

(4) *Labor certification or evidence that the alien qualifies for Labor Market Information Pilot Program*—(i) *General.* Every petition under this classification must be accompanied by an individual labor certification from the Department of Labor, by an application for Schedule A designation (if applicable), or by documentation to estabiish that the alien qualifies for one of the shortage occupations in the Department of Labor's Labor Market Information Pilot Program. To apply for Schedule A designation or to establish that the alien's occupation is within the Labor Market Information Program, a fully executed uncertified Form ETA–750 in duplicate must accompany the petition. The job offer portion of the individual labor certification, Schedule A application, or Pilot Program application must demonstrate that the job requires a professional holding an advanced degree or the equivalent, or an alien of exceptional ability. If the job offer portion of the labor certification requires a baccalaureate degree or foreign equivalent degree followed by at least five years of progressive post-baccalaureate experience in the specialty, it must also provide that an advanced degree holder may meet the minimum job requirements.

(ii) *Exemption from job offer.* The director may exempt the requirement of a job offer, and thus of a labor certification, for aliens of exceptional ability in the sciences, arts, or business and members of the professions if exemption would be in the national interest.

(A) To show that such exemption would be in the national interest, the petitioner must establish the following:

(1) The alien has at least two years of full-time experience in the activity in which he or she will benefit the United States;

(2) The alien's request for a waiver of the labor certification requirement is not based purely on a local labor shortage;

(3) The alien will engage in an undertaking which will substantially benefit prospectively the United States; and

(4) The alien will play a significant role in the undertaking described in paragraph (l)(4)(ii)(A)(*3*).

(B) To apply for the exemption, the petitioner must submit Form ETA–750B, Statement of Qualifications of Alien, in duplicate, as well as evidence to support the claim that such exemption would be in the national interest.

* * * * *

12. In § 205.5, newly redesignated paragraph (m)(4) is revised to read as follows:

§ 204.5 Petitions for employment-based immigrants.

* * * * *

(m) * * *

(4) *Differentiating between skilled and other workers.* The determination of whether a worker is a skilled or other worker will be based on the requirements of training and/or experience placed on the job by the prospective employer, as certified by the Department of Labor. A worker will be considered unskilled if the prospective employer's minimum experience requirement, as certified by the Department of Labor, indicates that less than two years of experience, either in the job offered or in a related occupation, is required. In the case of a Schedulo A occupation or a shortage occupation within the Labor Market Pilot Program, the petitioner will be required to establish to the director that the job is a skilled one, i.e., one which requires at least two years of training and/or experience.

* * * * *

§ 204.5 [Amended]

13. In § 204.5, newly redesignated paragraph (n)(1) is amended in the fourth sentence by adding the phrase "on a full-time basis" immediately after the phrase "or other work".

14. In § 204.5, newly redesignated paragraph (n)(3)(ii)(A) is amended by adding the phrase "full-time" between the words "of" and "experience".

15. In § 204.5, newly redesignated paragraph (n)(4) is amended in the second sentence by adding the phrase "and will be working for the religious organization on a full-time basis" immediately after the term "or solicitation of funds for support".

16. In § 204.5, newly redesignated paragraph (o)(1) is revised to read as follows:

§ 204.5 Petitions for employment-based immigrants.

* * * * *

(o) *Closing action*—(1) *Approval.* An approved employment-based petition will be forwarded to the Department of State National Visa Center. If the petition indicates that the alien will apply for adjustment to permanent residence in the United States, the approved petitions will be retained by the Service for consideration with the application for permanent resident (Form I–485).

* * * * *

§ 204.5 [Amended]

17. In § 204.5, newly redesignated paragraph (o)(3) is removed.

Dated: March 3, 1995.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 95–13806 Filed 6–5–95; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 98

[Docket No. 94–006–1]

Importation of Embryos From Ruminants and Swine From Countries Where Rinderpest or Foot-and-Mouth Disease Exists

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations to allow, under specified conditions, the importation of embryos from all ruminants, including cervids, camelids, and all species of cattle, and from swine from countries where rinderpest or foot-and-mouth disease exists. The regulations currently provide for importing only embryos from certain species of cattle in countries where rinderpest or foot-and-mouth disease exists. Research now indicates that embryos from all species of cattle, from ruminants other than cattle, and from swine, which are produced, collected, and handled under certain conditions in countries where rinderpest or foot-and-mouth disease exists, could be imported with virtually no risk of introducing communicable diseases of livestock into the United States. This action would make additional sources of genetic material available to domestic animal breeders.

DATES: Consideration will be given only to comments received on or before August 7, 1995.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 94–006–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Roger Perkins, Staff Veterinarian, Import/Export Animals, National Center for Import and Export, VS, APHIS, Suite 3B05, 4700 River Road Unit 39, Riverdale, MD 20737–1231. Telephone: (301) 734–8170.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 98 (referred to below as the regulations) govern the importation of animal germ plasm so as to prevent the introduction of contagious diseases of livestock or poultry into the United States. Subpart A of part 98 applies to ruminant and swine embryos from countries free of rinderpest and foot-and-mouth disease (FMD), and to embryos of horses and asses. Subpart B applies to certain cattle embryos from countries where rinderpest or FMD exists. Subpart C applies to certain animal semen. Subpart B currently allows for the importation of embryos from cattle (*Bos indicus* and *Bos taurus*) from countries where rinderpest or FMD exists only if embryos are produced, collected, and handled under certain conditions. However, research [1] has demonstrated that the same conditions would effectively ensure that embryos from all species of cattle, and from swine, and from ruminants other than cattle, including camelids and cervids, can also be imported into the United States from countries where rinderpest or FMD exists without significant risk of introducing these diseases.

At this time, only *Bos indicus* and *Bos taurus* cattle embryos may be imported into the United States from countries where rinderpest or FMD exists. The available gene pool for swine and ruminants other than cattle cannot be enlarged by using embryos from animals in countries where rinderpest or FMD exists. Because of this, U.S. livestock interests, except cattle-related interests,

[1] Information about pertinent research may be obtained from the Animal and Plant Health Inspection Service, Veterinary Services, National Center for Import-Export, 4700 River Road Unit 38, Riverdale, Maryland 20737–1231.

cannot fully participate in the growing international market in germ plasm.

Therefore, we are proposing to amend the regulations in subpart B to allow embryos from all ruminants, including cervids and camelids, from countries where rinderpest or FMD exists, to be imported into the United States under the same conditions under which *Bos indicus* and *Bos taurus* cattle embryos may be imported from those countries into the United States. Also, we are proposing to amend the regulations in subpart B to allow embryos from swine from countries where rinderpest or FMD exists to be imported into the United States under conditions that are the same as those for *Bos indicus* and *Bos taurus* cattle embryos, except with respect to the specific diseases for which we would screen.

Under our proposed regulations, the "General prohibitions" in § 98.12, which now apply only to *Bos indicus* and *Bos taurus* cattle embryos, would be amended to cover embryos from all ruminants, including camelids and cervids, and swine. In addition, import permits and health certificates would be required for all ruminant and swine embryos, just as they are now required for *Bos indicus* and *Bos taurus* cattle embryos (see §§ 98.13 and 98.14). Collection, processing, and handling requirements for all ruminant and swine embryos would also be the same as those now in place for *Bos indicus* and *Bos taurus* cattle embryos (see §§ 98.16, 98.17 and 98.18). In addition, requirements concerning arrival and inspection at the port of entry and embryos refused entry would be the same for all ruminant and swine embryos as those now in place for *Bos indicus* and *Bos taurus* cattle embryos (see §§ 98.19 and 98.20).

Health requirements would also be the same for all ruminant embryos as are those now in place for *Bos indicus* and *Bos taurus* cattle embryos (see § 98.15). The health requirements for swine embryos would differ only in regard to the listed diseases for which would screen. The current regulations are designed to ensure that embryos from *Bos indicus* and *Bos taurus* cattle are free of certain listed diseases. These regulations, in part, address the health of the donor dam and the herds in which it was present, the health of the animals in the embryo collection unit with the donor dam, and the presence of specific diseases in the locales of the embryo collection unit and of any herd in which the donor dam was present, over the previous 12 months.

The listed diseases of concern for embryos from *Bos indicus* and *Bos taurus* cattle are bovine spongiform encephalopathy, brucellosis, contagious bovine pleuropneumonia, FMD, Rift Valley fever, rinderpest, tuberculosis, and vesicular stomatitis. All of these diseases may affect other ruminants, including cervids, all other species of cattle, and camelids. Under our proposed regulations, all ruminant embryos would have to meet the same health regulations as *Bos indicus* and *Bos taurus* cattle embryos must now meet, to ensure that they are not infected with any of these diseases. Except for brucellosis and tuberculosis, none of these diseases are present in the United States and we want to prevent their introduction. Brucellosis and tuberculosis are present in the United States. However, we have programs to control their spread and to eradicate them. Therefore, we do not want infected embryos imported into the United States, where they could spread infection and increase the cost and difficulty of controlling and eradicating these diseases.

The proposed diseases of concern for swine embryos, which would be listed in the regulations, are African swine fever, brucellosis, FMD, hog cholera, pseudorabies, rinderpest, swine vesicular disease, tuberculosis, and vesicular stomatitis. Except for brucellosis, pseudorabies, and tuberculosis, these are diseases which are not present in the United States and which may infect swine. Brucellosis, pseudorabies, and tuberculosis are present in the United States. However, we have programs to control their spread and to eradicate them. We therefore do not want infected embryos imported into the United States. Rinderpest is not normally considered a swine disease, but we are proposing to require that swine embryos be free of rinderpest because rare infections do occur in domestic Asiatic swine.

We are also proposing to amend part 98 to remove the definition of *cattle* and add a definition of *ruminant*. Cervids, camelids, and all species of cattle would be included under the proposed definition of *ruminant*. Camelids are often considered to be ruminants. However, they are not true ruminants as they do not have four stomach compartments. There is no disease risk basis to treat them differently than true ruminants under these regulations. Therefore, we propose to include them under the definition of *ruminant*.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for purposes of Executive Order 12866, and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with 5 U.S.C. 603, we have performed an Initial Regulatory Flexibility Analysis, which is set out below, regarding the impact of this proposed rule on small entities. However, we do not currently have all the data necessary for a comprehensive analysis of the effects of this rule on small entities. Therefore, we are inviting comment concerning potential effects. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from implementation of this proposed rule.

In accordance with 21 U.S.C. 111, the Secretary of Agriculture is authorized to promulgate regulations to prevent the introduction or dissemination of any communicable disease of animals from a foreign country into the United States. This proposed rule would allow the importation of certain embryos from swine and ruminants, including camelids, cervids, and all species of cattle, from countries where rinderpest or foot-and-mouth disease exists, under restrictions that appear adequate to prevent the introduction or dissemination of rinderpest, foot-and-mouth disease, and other communicable diseases of livestock.

The annual value of cattle embryos imported during the past several years has averaged in the hundreds of thousands of dollars. We do not expect that this proposed rule change would result in a significant increase in cattle embryo imports, since demand will continue to be predominantly for the *Bos indicus* and *Bos taurus* species. However, APHIS does foresee the importation of embryos of other species, such as water buffalo and certain breeds of sheep and goats from Africa.

At present, ruminants and swine from countries where rinderpest or foot-and-mouth disease exists can only enter the United States following quarantine at the Harry S Truman Animal Import Center (HSTAIC). Allowing embryos of additional ruminant species and swine to be imported would enable importers to forgo quarantine and other costs of importing live animals. For example, we estimate that the cost to importers of importing approximately 500 Boer goats from South Africa would average more than $2,000 per animal for quarantine in HSTAIC. This does not include testing, post-quarantine clean-up expenses, and other costs associated with importing animals through HSTAIC. In addition, importers must undergo the inconvenience and uncertainty of lottery selection (including putting down either a letter of credit or a $50,000 deposit), must bear the costs of qualifying animals for importation through HSTAIC, and must assume the risk that animals may not qualify for importation after quarantine. Quarantine-related costs could easily exceed the cost of implanting an imported embryo. Savings in transporting embryos rather than live animals, both before and after entry into the United States, would also be realized.

This proposed rule contains paperwork and recordkeeping requirements. Under this proposed rule, import permits and health certificates would be required for all ruminant and swine embryos, as they are now required for *Bos indicus* and *Bos taurus* cattle embryos.

The alternatives to this proposed rule would be to take no action, or to allow the importation of embryos under different conditions than those proposed. We did not consider taking no action a reasonable alternative, because it would, in our opinion, prohibit the importation of embryos which pose no significant risk of disease. We also did not consider importation under conditions other than those proposed a viable option. The only available research concerns embryos handled and treated as proposed in this document. Embryos handled and treated using other methods have not been tested. We therefore have no data demonstrating that other methods would be adequate to prevent the importation of rinderpest, foot-and-mouth disease, and other communicable diseases of livestock.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule will be submitted for approval to the Office of Management and Budget. Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please send a copy of your comments to: (1) Docket No. 94–006–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238 and (2) Clearance Officer, OIRM, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250.

List of Subjects in 9 CFR Part 98

Animal diseases, Imports, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 98 would be amended as follows:

PART 98—IMPORTATION OF CERTAIN ANIMAL EMBRYOS AND ANIMAL SEMEN

1. The authority citation for part 98 would be revised to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

Subpart B—Ruminant and Swine Embryos From Countries Where Rinderpest or Foot-and-Mouth Disease Exists

2. The heading for subpart B would be revised to read as set forth above.

3. Section 98.11 would be amended by removing the definition of *Cattle*, and by adding, in alphabetical order, the following definitions to read as follows:

§ 98.11 Definitions.

* * * * *

Ruminant. All animals which chew the cud, including cattle, buffaloes, camelids, cervids (deer, elk, moose, and antelope), sheep, goats, and giraffes.

Swine. The domestic hog and all varieties of wild hogs.

* * * * *

§§ 98.12, 98.13, 98.14 [Amended]

4. In the following sections, the word "Cattle" would be removed and the words "Ruminant, camelid, and swine" would be added in its place:

a. § 98.12(a);
b. § 98.12(b);
c. § 98.13(a); and
d. § 98.14(a), the introductory text.

5. Section 98.15 would be amended as follows:

a. In the introductory paragraph, the word "Cattle" would be removed and the words "Ruminant and swine" would be added in its place.

b. Paragraphs (a)(1) and (a)(2) would be revised to read as set forth below:

c. In paragraph (a)(4), the word "cattle" would be removed and the words "ruminants or swine" would be added in its place.

d. In paragraph (a)(5), the first sentence would be designated as paragraph (a)(5)(i), the second sentence would be designated as paragraph (a)(5)(ii) and revised to read as set forth below, and the third and fourth sentences would be designated as paragraphs (a)(5)(iii) and (a)(5)(iv), respectively.

e. In paragraph (a)(7), the first sentence would be designated as paragraph (a)(7)(i) and revised to read as set forth below, and the second sentence would be designated as paragraph (a)(7)(ii).

f. In paragraph (a)(8), the first sentence would be designated as paragraph (a)(8)(i) and revised to read as set forth below, and the second sentence would be designated as paragraph (a)(8)(ii).

The revisions read as follows:

§ 98.15 Health requirements.

* * * * *

(a) * * *

(1) During the year before embryo collection, no case of the following diseases occurred in the embryo collection unit or in any herd in which the donor dam was present:

(i) Ruminant: Bovine spongiform encephalopathy, contagious bovine pleuropneumonia, foot-and-mouth disease, Rift Valley fever, rinderpest, or vesicular stomatitis; or

(ii) Swine: African swine fever, foot-and-mouth disease, hog cholera, pseudorabies, rinderpest, swine vesicular disease, or vesicular stomatitis.

(2) During the year before embryo collection, no case of the following diseases occurred within 5 kilometers of the embryo collection unit or in any herd in which the donor dam was present:

(i) Ruminant: Bovine spongiform encephalopathy, contagious bovine pleuropneumonia, foot-and-mouth disease, Rift Valley fever, rinderpest, or vesicular stomatitis; or

(ii) Swine: African swine fever, foot-and-mouth disease, hog cholera, pseudorabies, rinderpest, swine vesicular disease, or vesicular stomatitis.

* * * * *

(5)(i) * * *

(ii) The donor dam was determined to be free of foot-and-mouth disease based upon tests of the pair of serum samples. In addition, if any of the following diseases exist in the country of origin, the donor dam was determined to be free of these diseases based upon additional tests of the serum samples:

(A) Ruminant: Contagious bovine pleuropneumonia, Rift Valley fever, rinderpest, or vesicular stomatitis; or

(B) Swine: African swine fever, hog cholera, pseudorabies, rinderpest, swine vesicular disease, or vesicular stomatitis.

* * * * *

(7)(i) Not less than 30 days nor more than 120 days after embryo collection, the donor dam was examined by an official veterinarian and found free of clinical evidence of the following diseases:

(A) Ruminant: Bovine spongiform encephalopathy, brucellosis, contagious bovine pleuropneumonia, foot-and-mouth disease, Rift Valley fever, rinderpest, tuberculosis, and vesicular stomatitis; or

(B) Swine: African swine fever, brucellosis, foot-and-mouth disease, hog cholera, pseudorabies, rinderpest, swine vesicular disease, tuberculosis, and vesicular stomatitis.

* * * * *

(8)(i) Between the time the embryos were collected and all examinations and tests required by this subpart were completed, no animals in the embryo collection unit with the donor dam, or in the donor dam's herd of origin, exhibited any clinical evidence of:

(A) Ruminant: Bovine spongiform encephalopathy, brucellosis, contagious bovine pleuropneumonia, foot-and-mouth disease, Rift Valley fever, rinderpest, tuberculosis, and vesicular stomatitis; or

(B) Swine: African swine fever, brucellosis, foot-and-mouth disease, hog cholera, pseudorabies, rinderpest, swine vesicular disease, tuberculosis, and vesicular stomatitis.

* * * * *

§ 98.16 [Amended]

6. § 98.16 would be amended as follows:

a. In the introductory paragraph, the first sentence, the word "Cattle" would be removed and the words "Ruminant and swine" would be added in its place.

b. In paragraph (b), in the first sentence, the word "cattle" would be removed and the words "embryo donors" would be added in its place.

Done in Washington, DC, this 30th day of May 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–13667 Filed 6–5–95; 8:45 am]

BILLING CODE 3410–34–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[Docket No. PRM–50–61]

Nuclear Energy Institute, Receipt of a Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; Notice of receipt.

SUMMARY: The Nuclear Regulatory Commission (NRC) has received and requests public comment on a petition for rulemaking filed by the Nuclear Energy Institute (NEI) on behalf of the nuclear power industry. The petition has been docketed by the Commission and has been assigned Docket No. PRM–50–61. The petitioner requests that the NRC amend its regulations governing fire protection at nuclear power plants. The petitioner believes such an amendment would provide a more flexible alternative to the current requirements and permit nuclear power plant licensees more discretion in implementing fire protection requirements that would be site-specific without adversely affecting a licensee's ability to achieve the safe shutdown of a facility in the event of a fire.

DATES: Submit comments by September 29, 1995. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Docketing and Services Branch.

Deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:45 am and 4:15 pm on Federal workdays.

For a copy of the petition, write: Rules Review Section, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Comments may be submitted electronically, in either ASCII text or WordPerfect format (version 5.1 or later), by calling the NRC Electronic Bulletin Board (BBS) on FedWorld. The bulletin board may be accessed using a personal computer, a modem, and one of the commonly available communications software packages, or directly via Internet. Background documents on this rulemaking are also available for downloading and viewing on the bulletin board.

If using a personal computer and modem, the NRC rulemaking subsystem on FedWorld can be accessed directly by dialing the toll free number (800) 303–9672. Communication software parameters should be set as follows: parity to none, data bits to 8, and stop bits to 1 (N,8,1). Using ANSI or VT–100 terminal emulation, the NRC rulemaking subsystem can then be accessed by selecting the "Rules Menu" option from the "NRC Main Menu." Users will find the "FedWorld Online User's Guides" particularly helpful. Many NRC subsystems and data bases also have a "Help/Information Center" option that is tailored to the particular subsystem.

The NRC subsystem on FedWorld can also be accessed by a direct dial phone number for the main FedWorld BBS, (703) 321–3339, or by using Telnet via Internet: fedworld.gov. If using (703) 321–3339 to contact FedWorld, the NRC subsystem will be accessed from the main FedWorld menu by selecting the "Regulatory, Government Administration and State Systems," then selecting "Regulatory Information Mall." At that point, a menu will be displayed that has an option "U.S. Nuclear Regulatory Commission" that will take you to the NRC Online main menu. The NRC Online area also can be accessed directly by typing "/go nrc" at a FedWorld command line. If you access NRC from FedWorld's main menu, you may return to FedWorld by selecting the "Return to FedWorld" option from the NRC Online Main Menu. However, if you access NRC at FedWorld by using NRC's toll-free number, you will have full access to all NRC systems, but you will not have access to the main FedWorld system.

If you contact FedWorld using Telnet, you will see the NRC area and menus, including the Rules Menu. Although you will be able to download documents and leave messages, you will not be able to write comments or upload files (comments). If you contact FedWorld using FTP, all files can be accessed and downloaded but uploads are not allowed; all you will see is a list of files without descriptions (normal Gopher look). An index file listing all files within a subdirectory, with descriptions, is available. There is a 15-minute time limit for FTP access.

Although FedWorld also can be accessed through the World Wide Web, like FTP, that mode only provides access for downloading files and does not display the NRC Rules Menu.

For more information on NRC bulletin boards call Mr. Arthur Davis, Systems Integration and Development Branch, NRC, Washington, DC 20555, telephone (301) 415–5780; e-mail AXD3@nrc.gov.

FOR FURTHER INFORMATION CONTACT: Monideep K. Dey, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: 301–415–6443. Michael T. Lesar, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: 301–415–7163 or Toll Free: 800–368–5642.

SUPPLEMENTARY INFORMATION:

Background

The Nuclear Regulatory Commission (NRC) received a petition for rulemaking dated February 2, 1995, submitted by the Nuclear Energy Institute (NEI). The petition was docketed as PRM–50–61 on February 2, 1995. The petitioner requests that the NRC amend the regulations in 10 CFR part 50 that govern fire protection at nuclear power plants. Specifically, the petitioner is seeking an amendment to 10 CFR 50.48 and the addition of a new appendix that it believes will provide a more flexible alternative to the current fire protection requirements in 10 CFR part 50, Appendix R, that the petitioner considers to be overly prescriptive.

The petitioner believes that significant strides have been made in the fire sciences and that licensees' fire protection programs have matured during the period after the current NRC fire protection requirements in 10 CFR 50.48 and 10 CFR Part 50, Appendix R, were adopted. The petitioner also notes that the NRC has gained nearly two decades of experience in reviewing licensee fire protection programs and requests that NRC adopt a more current approach to fire protection that builds on the defense-in-depth concept used to establish the existing requirements.

NEI cites the "NRC Program for Elimination of Requirements Marginal to Safety," published on November 24, 1992 (57 FR 55157), and a separate initiative entitled, "Reducing the Regulatory Burden on Nuclear Licensees," published on June 18, 1992 (57 FR 27187), as examples in which the NRC proposed amending its regulations to continue efforts to eliminate requirements that are marginal to safety and to reduce the regulatory burden when the benefit realized is not commensurate with the resulting cost. The petitioner also notes that the NRC's Regulatory Review Group (RRG) identified the existing rule on fire protection as one of the regulations that should be improved.

The NRC's general fire protection requirements for nuclear power plants were published on February 20, 1971 (36 FR 3255), and are contained in 10 CFR part 50, Appendix A, General Design Criterion (GDC) 3. The current fire protection requirements contained in 10 CFR 50.48 and 10 CFR part 50, Appendix R, were adopted several years after a 1975 fire at the Browns Ferry Nuclear Power Plant following considerable interaction between the NRC staff, the nuclear industry, and other interested parties. The petitioner notes that the NRC used a defense-in-depth approach to fire protection for nuclear power plants that includes key elements of protection, detection, and suppression within a fire protection program to attain the required objective of protecting the safe shutdown capability of the plant. However, the petitioner believes that the current requirements are too prescriptive because they apply equally in all plant areas without providing a mechanism for determining the actual fire hazard in each area.

NEI acknowledges that a prescriptive rule was necessary in 1980 because nuclear power plant fire protection technology was relatively new at that time. However, the petitioner believes that those fire protection standards have been difficult to implement consistently for nuclear power plants and notes that the NRC has granted more than 1,200 exemptions after the inception of the rule. The petitioner believes that the difficulty in implementing the standards results not only from the prescriptiveness of the current rule but also because fire protection standards in other industries are directed primarily toward protection of life and property, whereas fire protection at nuclear power facilities focuses on preserving the plant's safe shutdown capability to adequately protect the public health and safety.

The petitioner states that the proposed rule is based upon fire protection programs already in place at operating power plants and recognizes the expertise developed by the NRC staff and the industry over the past 20 years. The petitioner notes that other Federal agencies, such as the General Services Administration (GSA), have enhanced their fire protection regulations based on recent advances in fire modeling techniques. GSA uses fire modeling to identify fire safety risks and develop performance-based approaches to achieving adequate levels of protection.

The petitioner also notes that the Advisory Committee on Reactor Safeguards has briefed the Commission on the development of performance-based approaches to fire protection at nuclear power plants in the United Kingdom and Canada. NRC is currently participating in a Federal interagency task force to assess the potential implementation of performance-based regulations, which include fire protection. The RRG has specifically recommended that probabilistic safety assessment (PSA) techniques be used to develop fire protection regulations that are more performance-based. The petitioner believes that the proposed rule is consistent with the general philosophy of focusing on key objectives related to measurable performance in order to permit resources to be applied to and attention centered on activities most directly related to protection of the public health and safety.

The petitioner believes that the overall approach of the proposed rule may be characterized as performance-based because its ultimate goal is to adequately maintain the safe shutdown equipment function. NEI states that the proposed rule, unlike the current requirements, requires licensees to establish appropriate measurable parameters to ensure that the adequacy of the plant fire protection features in protecting the safe shutdown capability can be demonstrated based on the actual plant-specific fire risk. The petitioner asserts that rather than focusing on the details of the protective features, the criteria for assessing acceptable performance would be based on the effectiveness of these features in achieving the goal of the current fire protection regulation, the successful protection of the safe shutdown function.

The proposed rule is similar to the current rule in that it would require licensees to perform a fire hazards analysis (FHA). The petitioner states that the proposed rule, however, provides licensees with the flexibility to determine the relative value of various protective measures by supplementing the FHA with insights derived from other sources, such as a fire modeling analysis or a PSA. The petitioner believes that the proposed rule would allow licensees to implement alternative, more effective fire protection measures without compromising plant safety and, therefore, would provide greater flexibility than the current requirements while achieving the same objective.

The petitioner claims that the proposed rule would give licensees the option of demonstrating that they provide adequate protection against postulated fire hazards without having to resort to the more costly and time-consuming exemption process. The petitioner states that the current

language in 10 CFR part 50, Appendix R, would be retained and an alternative way to meet the requirements in 10 CFR 50.48 would be provided by the proposed Appendix S. The petitioner explains that licensees need not implement the proposed Appendix S in its entirety but may substitute, in whole or in part, the specific sections corresponding to Appendix R, as appropriate, in order to provide an equivalent degree of protection. The petitioner believes that the proposed rule provides an alternative means of complying with the fire protection requirements contained in GDC 3.

The proposed rule does not distinguish between older plants and those licensed to operate after January 1, 1979. The petitioner believes that the revised regulation can be applied equally to all plants because the newer plants were licensed pursuant to Branch Technical Position (BTP) 9.5–1, which is contained in NUREG–0800, and because 10 CFR part 50, Appendix R, which applied to older plants, reflects BTP 9.5–1.

The petitioner indicates that the proposed rule amends 10 CFR 50.48 by removing the schedule requirements that are no longer applicable. The proposed rule would also permit licensees to relocate the fire protection program from their technical specifications to the Final Safety Analysis Report as suggested in Generic Letter 88–12, "Removal of Fire Protection Requirements from Technical Specifications" (August 2, 1988). The petitioner envisions that the proposed changes would include the development of a new guidance document by the nuclear industry concurrent with the proposed promulgation of the rule. NRC would accept this guidance and issue a regulatory guide describing acceptable methods of compliance. Although the petitioner notes that licensees would be able to adopt other approaches to comply with the proposed rule, it realizes that the burden of demonstrating the adequacy of an alternative approach would be on the licensee.

The petitioner indicates that many of the prescriptive requirements in Appendix R, such as administrative controls, fire barrier penetration seals, and fire doors, would be removed. Also, the distinction between hot and cold shutdown ability and the requirement for 72-hour cold shutdown would be removed because the petitioner believes these requirements would no longer be applicable. The term "safe shutdown" as applied in the proposed rule would apply to both hot and cold shutdown functions. The petitioner believes that the proposed rule provides an opportunity for licensees to incorporate the advances in fire protection technology that have occurred after the current rule was enacted. As an example, the petitioner provides the requirements for fire hose materials and testing that cannot be altered under the current rule without a specific exemption granted by the NRC. The petitioner believes that the proposed rule provides an opportunity to revise fire hose testing to take into account material improvements.

The petitioner states that under the proposed rule, the licensee would maintain, in auditable form, all supporting analyses of alternatives to its fire protection programs instead of requiring the NRC staff to review and approve the alternatives. The petitioner believes that this type of approach would result in substantial reduction of required reviews by the NRC staff. The petitioner has concluded that under the proposed rule, NRC can effectively satisfy its responsibility of ensuring the public health and safety by monitoring licensee performance.

The petitioner has included an appendix entitled "Supplementary Analyses in Support of the Petition for Rulemaking," which contains analyses of issues that the NRC must consider, including the effect of the proposed action on the environment and small business entities, the paperwork required of those affected by the change, whether a regulatory analysis must be performed, and whether the backfit rule applies to this action.

The NRC is soliciting public comment on the petition submitted by NEI that requests the changes to the regulations in 10 CFR part 50 as discussed below.

The Petitioner

The petitioner is the Nuclear Energy Institute (NEI), the organization responsible for establishing unified nuclear industry policy on matters affecting the nuclear energy industry. NEI's members include all utilities licensed to operate commercial nuclear power plants in the United States, nuclear plant designers, major architect/engineering firms, fuel fabrication facilities, materials licensees, and other organizations and individuals involved in the nuclear energy industry.

Discussion of the Petition

The petitioner has submitted this petition for rulemaking because it believes the current fire protection regulations for nuclear power plants are overly burdensome and prescriptive. The petitioner believes that the proposed Appendix S is more flexible in its application than the current Appendix R and fully meets the requirements in 10 CFR part 50, Appendix A, GDC 3. Under the proposed rule, rather than a blanket requirement for the capability to shut down the plant within 72 hours, the licensee is required to have a cold shutdown capability or to demonstrate the ability to achieve and maintain hot shutdown until a cold shutdown path can be made available. The petitioner believes that the intent of the current fire protection requirement has been to ensure that plant operators can maintain control during a fire and safely shut down the plant. The petitioner states that the proposed rule preserves this intent without imposing an unnecessarily restrictive time limitation by recognizing the success of operating history and accumulated operator training and experience.

The petitioner states that other prescriptive distinctions in the current regulation, such as the distinction between exposure and direct fires and between normal, alternate, and dedicated shutdown systems, are removed. Under the proposed rule, licensees must consider the plant fires that may be credible based on actual plant-specific conditions in demonstrating that the plant could be safely shut down in the event of a fire. The petitioner believes that this action could be achieved through any available means by utilizing either redundancy in safe shutdown equipment or diversity of shutdown methods. The petitioner has concluded that this approach is more flexible than the current requirements and is consistent with the intent of the current regulation.

The petitioner states that the general requirements section of the rule remains essentially unchanged because the goals of the licensee's fire protection program are the same. The reference to "alternative or dedicated shutdown" is removed because the petitioner believes that the overall intent to provide redundancy or diversity in shutdown methods is reflected throughout the revised rule.

The petitioner states that the proposed rule describes the fire main as a "system" instead of a "fire loop." The petitioner believes that this distinction allows licensees to provide water for fire suppression in the most practical manner without a requirement for a specific loop design. The petitioner has concluded that as a general principal the imposition of specific design requirements is overly prescriptive. The petitioner believes that by placing the discussion of appropriate design features in a guidance document, the licensee will have the flexibility to design new systems or modify current systems to more effectively meet the same performance criteria. The proposed rule replaces the current 2-hour supply requirement with a requirement to demonstrate the availability of a water supply sufficient to protect the safe shutdown capability, as determined by the fire hazards analysis. The petitioner believes that this change provides flexibility in selecting water sources while ensuring that these sources are functionally available.

The petitioner has proposed that the current language describing "outside" hydrants be clarified by replacing the term with "exterior plant" to reflect the requirement that valves be installed for hydrants located outside plant buildings. The petitioner believes that this emphasis on performance capability is consistent with NRC staff positions in Generic Letter 86–10 and exemptions granted to date, as well as the Statement of Consideration in the original rulemaking of Appendix R. Also, the limitations of the current rule to "exposure fire hazards" are removed because the petitioner believes that the proposed rule addresses all fires, not just exposure fires. The petitioner indicated that specific detailed requirements for testing manual fire suppression systems are also removed because they are more properly dealt with in the proposed guidance document.

The petitioner believes that the flexibility provided by the proposed alternatives to the current requirements allows licensees to direct their resources more efficiently and is expected to result in an appreciable economic benefit to licensees while maintaining adequate protection. The petitioner claims that accounting for material improvements in design and manufacture of fire hoses can substantially reduce the frequency of hose testing and will result in a $16,000-per-year cost reduction at a two-unit plant. The petitioner states that because detailed provisions for hydrostatic hose tests are more properly included in the proposed guidance document, no need exists for an explicit requirement in the proposed rule.

The petitioner states that the focus of the current regulation on automatic detection "systems" is made more flexible by specifying automatic detection "capability" where determined necessary by the fire hazards analysis. However, the petitioner also indicates that the requirement for detection capability with or without offsite power has been retained in the proposed rule. The petitioner indicates that the guidance document is expected to identify pertinent National Fire Protection Association (NFPA) codes and standards for the design, installation, maintenance, testing, and power supplies for automatic detection systems.

The petitioner states that the section on protecting the safe shutdown capability from fire in the current rule has been to ensure that the safe shutdown capability is not lost as a result of a single fire. The petitioner also notes that three alternative requirements in the current rule, including physical separation, provision of a 3-hour barrier, or provision of a 1-hour barrier with automatic suppression, were established to achieve this goal. The petitioner states that the focus of fire protection for the safe shutdown capability is broadened to the protection of the safety function rather than maintaining the narrow focus on prescribed fire barrier ratings. The petitioner believes that the proposed language allows a licensee to satisfy Section III.G. of Appendix S by demonstrating the adequacy of its defense-in-depth program rather than satisfying the prescriptive requirements of the current regulation. The prescriptive requirements are replaced by the requirement to perform an engineering analysis or use the combination of engineering and probabilistic assessments to demonstrate that adequate time is available to complete the safety function of bringing the facility to a safe shutdown condition.

The petitioner believes that the net effect of making this type of approach part of a licensee's fire protection program is that the proposed rule removes the resource demand on licensees and the NRC staff to prepare and review, respectively, as an exemption any alternative proposed to the 1-hour and 3-hour barrier requirements. Under the proposed rule, the licensee would perform the appropriate evaluation using current analytical tools to demonstrate functionality rather than filing an exemption request based on a deterministic evaluation of the installed defense-in-depth features.

The petitioner states that the original rule adopted the design-basis protection feature because the initiation and propagation of fire was still believed to be so unpredictable at that time that the design-basis fire approach was considered to be impractical. However, today various fire modeling techniques, such as those used in the EPRI FIVE methodology and those developed by the National Institute of Standards and Technology and by the Factory Mutual Research Center, are available to predict the initiation and propagation of fires with a reasonable degree of confidence. The petitioner believes that the proposed rule allows licensees flexibility in evaluating anticipated fire loadings in an area because of the awareness of the existing fire hazards and the determination of fire barrier performance requirements by recognized competent fire initiation and propagation models. The petitioner claims that instead of focusing on a specific aspect such as fire barrier rating, under the proposed rule, the licensee will be able to more effectively utilize these fire protection features to protect the safe shutdown capability. The petitioner has concluded that installing a 1-hour or 3-hour rated fire barrier becomes less important in terms of the effectiveness of the fire protection program because it is only one factor that will be considered in a more comprehensive program than currently exists.

The petitioner states that in many circumstances automatic suppression, along with 1-hour barriers, may not be necessary in some existing plant designs for protection of the safe shutdown capability. The petitioner notes that the in situ combustible loading in an area might be so low that any fire that might occur would be of limited duration, extent, and magnitude. The petitioner believes that existing protective features other than automatic suppression might be capable of protecting the safe shutdown equipment until a suitable manual response could be provided. The proposed rule would permit removal of the requirements for surveillance, maintenance, and testing of unnecessary suppression systems, which the petitioner believes would save approximately $12,000 a year for a typical two-unit plant.

The petitioner also notes that the probability for core damage as a result of various events is being assessed by licensees under the Individual Plant Examination for External Events (IPEEE) programs. Under these programs, licensees must address plant vulnerabilities, including the detrimental effects of fires. The petitioner believes that the current rule severely restricts a licensee's ability to effectively address these effects under the IPEEE programs in stating that the proposed rule would provide needed flexibility to allow these vulnerabilities to be effectively addressed. The petitioner has concluded that Section III.G. of Appendix S is not limited to defining specific fire barrier

effectiveness in isolation from the overall consideration of system functional availability. The petitioner claims that the proposed rule provides additional measures to achieve the overall performance objective of ensuring protection of the safe shutdown function in the event of a single fire, consistent with the intent of the current regulation.

The petitioner recognizes that fire brigade training must still include initial and routine practical training and drills. However, the petitioner believes that the proposed rule removes the detailed prescriptive requirements and addresses those matters in the proposed guidance document to provide flexibility to licensees in the implementation of the proposed rule. The petitioner has concluded that the cost savings of using alternative fire brigade training methods rather than following the specific training requirements of the current rule would be about $12,000 a year at a two-unit plant.

The petitioner notes that the current requirements for emergency lighting specify the same lighting for all areas, no matter how little the lighting is used. The proposed rule would require the licensee to evaluate what lighting would be necessary for achieving safe shutdown and to provide sufficient lighting capacity to support that safe shutdown if the postulated fire could credibly result in the loss of normal and essential lighting consistent with previously granted exemptions. The petitioner believes that implementation of the proposed rule would result in appreciable cost savings to licensees of about $17,000 a year for a two-unit plant.

Although the proposed rule does not contain the detailed administrative requirements of the current rule, the petitioner states that it outlines the scope of the controls to include use, storage, and disposal of combustible and flammable materials and ignition sources, review of work activities, inspections, and emergency planning. The petitioner believes that the proposed rule would provide a more resource-efficient method of area monitoring and estimates that the cost savings from removing the need for currently required work permits would be about $45,000 a year.

The petitioner states that the proposed rule differs from the current rule with respect to shutdown path capability in that it permits the licensee to take advantage of the extensive operational experience with fire protection, prior NRC determinations, and the significant developments in fire sciences in providing appropriate fire protection for the equipment. The proposed rule follows the guidance of Generic Letter 86–10 and previously granted exemptions to Appendix R in order to allow licensees greater flexibility in satisfying 10 CFR Part 50, Appendix A, GDC 3. The petitioner states that because a licensee selecting an alternative under the revised rule must demonstrate the adequacy of the alternative selected, the NRC staff would continue to evaluate the shutdown path capability through audits of licensee programs.

The petitioner believes that the current requirement to categorically assume a loss of offsite power either concurrently with or within 72 hours of a fire anywhere in the plant is overly conservative and unnecessarily prescriptive. Because the petitioner has concluded that only a relatively small set of postulated plant fire scenarios could result in or occur with a simultaneous loss of power, the proposed rule requires that licensees demonstrate their ability to safely shut down the plant without offsite power for only those postulated fires. The petitioner claims that the NRC staff has acknowledged that the 72-hour requirement is somewhat arbitrary and has granted an exemption if a licensee demonstrated the capability to achieve cold shutdown in more than 72 hours utilizing only offsite power. The petitioner believes that the proposed rule satisfies the safe shutdown objective by placing the plant in a controlled and stable condition as defined in the technical specifications until cold shutdown can be achieved. The petitioner has concluded that the flexibility incorporated into the proposed rule would allow a licensee to safely shut down the plant in an orderly manner by using familiar, tested procedures. The petitioner has also concluded that the revised requirements would allow licensees to adopt alternatives that would result in potential cost savings.

The petitioner states that the proposed rule provides an alternative to the detailed penetration seal test acceptance criteria contained in the current rule. The proposed rule would require licensees to demonstrate that the penetration seal either meets the same endurance rating as the barrier in which it is contained or is adequate to withstand the fire hazards in the area for the time necessary for the equipment to perform its safety function. The petitioner has also concluded that the current regulation contains an unnecessarily prescriptive requirement to inspect fire doors semiannually to verify their operability. The proposed rule would remove the inspection schedule and criteria from the rule and provide licensees the flexibility to choose the most appropriate method for a particular fire door. The petitioner believes that although protection against fire in the reactor coolant pump lubricating oil system in a noninerted containment is to be maintained, even considering the possibility of a safe shutdown earthquake, measures to ensure this protection shcuid be based on the licensee's hazards assessment.

The Petitioner's Proposed Amendment

The petitioner requests that 10 CFR Part 50 be amended to overcome the problems the petitioner has itemized and recommends the following revisions to the regulations:

1. The petitioner proposes that § 50.48 be amended by deleting paragraph (e) and by revising paragraphs (b), (c), and (d) to read as follows:

Section 50.48 Fire Protection Requirements

* * * * *

(b) Appendix R to this part, as promulgated on November 19, 1980, and amended May 27, 1988, established fire protection features required to satisfy Criterion 3 of Appendix A to this part with respect to certain generic issues for nuclear power plants licensed to operate before January 1, 1979. Except for the requirements of Sections III.G., III.J., and III.O., the provisions of Appendix R to this part did not apply to nuclear power plants licensed to operate before January 1, 1979, to the extent that fire protection features proposed or implemented by the licensee have been accepted by the NRC staff as satisfying the provisions of Appendix A to Branch Technical Position BTP APCSB 9.5–1 [1] reflected in staff fire protection safety evaluation reports issued before the effective date of this rule, or to the extent that fire protection features were accepted by the staff in comprehensive fire protection safety evaluation reports issued before

[1] Clarification and guidance with respect to permissible alternatives to satisfy Appendix A to BTP APCSB 9.5–1 has been provided in five other NRC documents:

"Supplementary Guidance on Information Needed for Fire Protection Evaluation," dated October 21, 1976.

"Sample Technical Specification," dated May 12, 1977.

"Nuclear Plant Fire Protection Functional Responsibilities, Administrative Control and Quality Assurance," dated June 14, 1977.

"Manpower Requirements for Operating Reactors," dated May 11, 1978.

"Generic Letter 85–01, Fire Protection Policy Steering Committee Report," dated January 9, 1985.

Appendix A to Branch Technical Position BTP APCSB 9.5–1 was published in August 1976. With respect to all other fire protection features covered by Appendix R, all nuclear power plants licensed to operate before January 1, 1979, have been required to satisfy the applicable requirements of Appendix R to this part, including specifically the requirements of Sections III.G., III.J., and III.O.

(c) Nuclear power plants licensed to operate after January 1, 1979, meet the requirements of Appendix R, as promulgated on November 19, 1980, and amended May 27, 1988, and satisfy Criterion 3 of Appendix A to this part by providing fire protection programs in accordance with the provisions of their licenses.

(d) Appendix S to this part provides an alternative method to satisfy fire protection requirements. Licensees may continue to comply with Appendix R, or they may utilize, in whole or in part, the requirements of Appendix S for any matter for which there is a corresponding specific topic in the licensee's fire protection program. This substitution may be exercised by all licensees regardless of the issuance date of their license to operate. Any alteration of a plant's existing fire protection program pursuant to this regulation shall be documented to demonstrate that the changes adopted do not alter the ability of the fire protection program to provide the capability to safely shut down and maintain the plant in a safe shutdown condition in the event of a single fire. The licensee shall document adoption of any substitution provided by Appendix S, where applicable, in the licensee's fire protection program documentation package. All exemptions to Appendix R previously granted to licensees apply in full under the terms of Appendix S.

2. The petitioner proposes that a new Appendix S be added to 10 CFR Part 50 to read as follows:

Appendix S to Part 50—Fire Protection Performance at Nuclear Power Facilities

I. Introduction and Scope

This appendix applies to all licensed nuclear power electric generating stations as set forth in § 50.48. This appendix sets forth the objectives and criteria which constitute a fire protection program adequate for meeting GDC 3 of Appendix A to this part. The specific paragraphs of this appendix have been formatted to parallel those of Appendix R to this part, with corresponding paragraph headings. Paragraphs E. and I. have been intentionally left blank and are reserved because there is no provision in this appendix that corresponds to these sections in Appendix R to Part 50.

Criterion 3 of Appendix A to Part 50 specifies that "Structures, systems, and components important to safety shall be designed and located to minimize, consistent with other safety requirements, the probability and effect of fires and explosions."

This regulation applies to equipment and functions designated as necessary to achieve and maintain safe plant shutdown in the event of a single fire in the plant. The terms "as needed" and "as necessary" are used interchangeably throughout this appendix. The phrase "safe shutdown" will be used throughout this appendix as applying to safely shutting the plant down and maintaining it in a safe shutdown condition at either a hot or cold shutdown condition.

Because fire may affect safe shutdown systems, and because the loss of function of systems used to mitigate the consequences of design-basis accidents under post-fire conditions does not per se impact public safety, the need to limit fire damage to systems required to achieve and maintain safe shutdown conditions is greater than the need to limit fire damage to those systems required to mitigate the consequences of design-basis accidents.

The licensee shall ensure that a safe shutdown path is or can be made available to bring the plant to cold shutdown in the event of a single fire in the plant. If a cold shutdown condition cannot be reached, it must be demonstrated that a hot shutdown can be achieved and maintained until a cold shutdown path is available. The terms "trains" and "paths" are used throughout this regulation to signify any method of shutdown.

Repairs and/or replacements may be instituted to either hot or cold shutdown paths as long as it can be demonstrated, for example, through procedures that such repairs and/or replacements can be conducted within a timeframe commensurate with assuring safe shutdown of the plant and consistent with the plant's technical specifications. Redundant systems used to mitigate the consequences of design-basis accidents but not necessary for safe shutdown may be lost to a single fire.

II. General Requirements

A. *Fire protection program.* A fire protection program shall be established at each nuclear power plant to provide reasonable assurance that structures, systems, and components necessary to safely shut the plant down are capable of fulfilling their intended functions in the event of a single fire. The program shall establish the fire protection policy for the protection of structures, systems, and components that are necessary to achieve and maintain safe shutdown in the event of a single fire, and the procedures, equipment, and personnel required to implement the program at the plant.

The fire protection program shall be under the direction of an individual who has been delegated authority commensurate with the responsibilities of the position and who has available personnel knowledgeable in both fire protection and nuclear safety. Appropriate combinations of fire protection features should be provided to ensure the functional availability of the required safe shutdown equipment located in a fire area. The fire protection program shall extend the concept of defense-in-depth to fire protection areas important to safety, with the following objectives:

- To prevent fires from starting;
- To detect rapidly, control, and extinguish promptly those fires that do occur; and
- To provide protection for structures, systems, and components needed for safe shutdown so that a single fire in the plant that is not promptly extinguished by the fire suppression activities will not prevent the safe shutdown of the plant.

B. *Fire hazards analysis.* A fire hazards analysis shall be performed by fire protection and reactor systems engineers, as necessary, to:

1. Consider potential *in situ* and transient fire hazards;

2. Determine the consequences of fire in any location in the plant on the ability to safely shut down the reactor or on the ability to minimize and control the release of radioactivity to the environment; and

3. Specify measures for fire prevention, detection, suppression, and containment and shutdown capability as required for each fire area containing structures, systems, and components necessary to achieve and maintain safe shutdown.

C. *Fire protection features.* Fire protection features shall meet the following general requirements for all fire areas that contain or present a fire hazard to structures, systems, or components that are necessary to ensure that safe plant shutdown in the event of a fire can be achieved and maintained:

1. *In situ* fire hazards shall be identified and suitable protection provided.

2. Transient fire hazards associated with normal operation, maintenance, repair, or modification activities shall be identified and eliminated where possible. Those transient fire hazards that cannot be eliminated shall be controlled and suitable protection provided.

3. Surveillance procedures shall be established to ensure that fire barriers are in place and that fire suppression systems are capable of performing their intended functions, as necessary to support safe plant shutdown in the event of a fire.

III. Specific Requirements

A. *Water supplies for fire suppression systems.* Two redundant water supplies shall be provided to furnish necessary water volume and pressure to the fire main system. Either redundant suctions from a single large body of water or redundant water storage tanks may be employed in meeting this requirement. These supplies shall be situated such that a failure of one supply will not result in failure of the other supply. Each supply of the fire water distribution system shall be capable of providing the maximum expected water demands as justified by an assessment of the fire hazards in the area. Other water systems used as one of the two fire water supplies shall be permanently connected to the fire main system and shall be capable of automatic alignment to the fire main system. The use of other water systems for fire protection shall not be incompatible with their functions required for safe plant shutdown. Failure of the other system shall not degrade the fire main system.

B. *Sectional isolation valves.* Sectional isolation valves shall be installed in the fire main system to permit isolation of portions of the fire main system for maintenance or repair without interrupting the entire water supply.

C. *Hydrant isolation valves.* Valves shall be installed to permit isolation of exterior plant hydrants from the fire main for maintenance or repair without interrupting the water supply to automatic or manual fire suppression systems in any area containing or presenting a fire hazard to safe shutdown equipment, to the extent that it can be assured that the plant can be safely shut down in the event of a single fire.

D. *Manual fire suppression.* Standpipe and hose systems shall be installed and maintained so that at least one effective hose stream will be able to reach any location that contains or presents a fire hazard to structures, systems, or components as necessary to ensure safe plant shutdown. Access to permit effective functioning of the fire brigade shall be provided to all areas that contain or present a fire hazard to structures, systems, or components that could impact successful safe plant shutdown.

E. [*Reserved*]

F. *Automatic fire detection.* Automatic fire detection capability shall be installed in areas of the plant that contain or present any fire hazard to safe shutdown systems or components, as determined by fire hazard analyses of these areas. These fire detection capabilities shall be capable of operating with or without offsite power.

G. *Fire protection of safe shutdown capability.* A fire protection program shall be instituted to ensure the functional availability of necessary and sufficient equipment to provide for safe shutdown in the event of a single fire in the plant. Engineering analysis or a combination of engineering and probabilistic safety assessments should be used to provide a technical understanding of fire hazards in a particular area. Appropriate combinations of fire barriers, physical separation, fire detection, fixed or automatic fire suppression, manual actions, repairs or replacements, administrative controls, and other means, as necessary, to ensure the functional availability of the required safe shutdown equipment located in that fire area should be provided. The effects of damage from fire suppression activities or rupture or inadvertent operation of fire suppression systems shall be considered for redundant shutdown paths.

H. *Fire brigade.* A site fire brigade trained and equipped for fire fighting shall be established to ensure adequate manual fire-fighting capability for all areas of the plant containing structures, systems, or components important to safety, as necessary, to assure safe plant shutdown in the event of a fire. Training shall include initial and routine practical training, drills, and demonstrations on how to fight live fires.

I. [*Reserved*]

J. *Emergency lighting.* Emergency lighting units shall be provided with sufficient capacity to allow for any necessary manual operation of safe shutdown equipment and for access and egress routes thereto, where the postulated fire may result in the loss of normal and essential lighting.

K. *Administrative controls.* Administrative controls shall be established to minimize fire hazards in areas containing structures, systems, and components necessary to achieve and maintain safe shutdown in the event of a fire. Measures shall be established to govern the use, storage, and disposal of *in situ* and transient combustible and flammable materials, control the use of ignition sources, review proposed work activities to identify potential fire hazards and assure appropriate fire prevention is applied, perform periodic fire prevention inspections, and plan for fire emergencies.

L. *Shutdown Path Capability.* 1. Shutdown path equipment shall be able to (a) Achieve and maintain subcritical reactivity conditions in the reactor; (b) maintain reactor coolant inventory; (c) achieve and maintain hot standby conditions for a PWR or hot shutdown conditions for a BWR, as defined in the plant's Technical Specifications, until cold shutdown path equipment can be made available; (d) achieve cold shutdown conditions; and (e) maintain cold shutdown conditions thereafter. During the post-fire shutdown, the reactor coolant system process variables shall be controlled commensurate with parameters in the plant's emergency operating procedures, and the fission product boundary integrity shall not be affected (i.e., there shall be no fuel clad damage, rupture of any primary coolant boundary, or rupture of the containment boundary). Support equipment necessary to assure control of these capabilities shall also be addressed in the plant's safe shutdown analysis.

2. The shutdown capability shall be demonstrated to provide its required function and shall accommodate anticipated post-fire conditions. When fire in the area may cause interruption of the offsite power supply, safe shutdown capability shall be demonstrated using onsite power not affected by the fire in the area. Procedures shall be in effect to implement this capability.

3. If the capability to achieve and maintain cold shutdown will not be available because of fire damage, the equipment and systems comprising the means to achieve and maintain the hot standby or hot shutdown conditions shall be capable of maintaining such conditions until cold shutdown can be achieved. If such equipment and systems will not be functionally capable of being powered by either onsite or offsite electric power systems, as deemed necessary by the specific scenarios considered, because of fire damage, an independent onsite power system shall be provided. The number of operating shift personnel, exclusive of fire brigade members, required to operate such equipment and systems shall be available in accordance with the site emergency plan.

4. Equipment and systems comprising the means to achieve and maintain cold shutdown conditions shall not be functionally damaged by fire; or the fire damage to such equipment and systems shall be limited so that the systems can be made operable and cold shutdown can be achieved. Materials for such repairs shall be readily available and procedures shall be in effect to implement such repairs. If such equipment and systems used after the fire will not be capable of being powered by either onsite (when conditions warrant) or offsite electric power systems because of fire damage, an independent onsite power system shall be provided.

5. Shutdown systems installed to ensure post-fire shutdown capability need not be designed to meet seismic Category I criteria, single-failure criteria, or other design-basis accident criteria, except where required for other reasons (e.g., because of interface with or impact on existing safety systems).

6. The safe shutdown equipment and systems for each fire area shall be known to be isolated from associated circuits in the fire area so that hot shorts, open circuits, or shorts to ground in the associated circuits will not prevent operation of the safe shutdown equipment.

7. For those fire scenarios that do not result in or from a loss of offsite power (LOOP), plant shutdown may rely on available offsite power sources. Since a relationship could be defined between fire scenarios and a LOOP, the LOOP time duration would reflect appropriate repair/replacement times associated with the scenario.

M. *Fire barrier cable penetration seal qualification.* Penetration seals, when deemed necessary for installation, shall have fire resistance duration ratings comparable to that of the fire barriers they penetrate or adequate to withstand the fire hazards in the area as determined by engineering analysis.

N. *Fire doors.* Fire doors shall be ensured to be closed when necessary during a fire.

O. *Associated scenarios.* Postulated fires or fire protection system failures need not be considered concurrent with other plant accidents or the most severe natural phenomena. However, the effects of a Safe Shutdown Earthquake (SSE) on the reactor coolant pump in a containment that is not inerted during normal plant operation shall be addressed in accordance with paragraph III.G.

The Petitioner's Conclusion

The petitioner has concluded that fire protection requirements specified in 10 CFR 50.48 and Appendix R should be modified because the current requirements are overly burdensome and prescriptive. The petitioner believes that the past 20 years of expertise gained by the NRC and the nuclear industry in fire protection for nuclear power plants will permit licensees to implement more flexible, site-specific alternatives to the current requirements. The petitioner has proposed an amendment to the current regulations in 10 CFR Part 50 that it believes will permit more flexible and cost-effective fire protection requirements at nuclear power plants without adversely affecting the ability of the licensee to bring the plant to a safe shutdown condition in the event of a fire.

Specific Areas for Public Comment

In addition to commenting on the petition for rulemaking (petition) presented above, the NRC staff is soliciting specific comments on the issues presented below. Because the NRC staff has not yet developed its positions on the petition, it is soliciting these comments to obtain information that it will use in to develop its regulatory positions and approaches for a performance-oriented, risk-based fire protection rulemaking.

1. Scope

(a) Petition's focus only on the overall safety objective to safely shut down the plant in the event of a fire.

The current safety objective of the NRC's fire protection regulations is focused on providing reasonable assurance that damage from a single fire is limited such that one train of systems necessary to achieve and maintain safe shutdown (hot shutdown) is free from fire damage, and damage to other important safety structures, systems, and components is minimized. The petitioner has proposed a fire protection rule which focuses only on the safety objective to achieve and maintain safe plant shutdown in the event of a single fire, and proposed that other safety functions not related to safe shutdown in the event of a fire be addressed elsewhere in NRC regulations. The NRC staff is seeking public comment on the petitioner's proposal to limit the proposed rule to provide fire protection to only those systems necessary to achieve and maintain safe plant shutdown, and address other safety functions for fires (those not addressing safe shutdown) elsewhere in NRC regulations or through industrial safety standards and requirements from nuclear insurers that provide for protection against property loss, or whether the proposed rule should include requirements for all safety functions related to fire protection. If other safety functions should be addressed elsewhere in NRC regulations, what are these safety functions, and where in NRC regulations and how should they be addressed? If some safety functions are addressed through industrial safety standards, and requirements from nuclear insurers, should and how will NRC enforce these requirements?

The current NRC fire protection regulations are based on extending the concept of defense-in-depth to fire protection in areas that contain structures, systems, and components not required for safe shutdown but are important to safety. The defense-in-depth objectives are:

(1) To prevent fires from starting;

(2) To detect rapidly, control, and extinguish promptly those fires that do occur; and

(3) To provide protection for structures, systems, and components important to safety so that a fire that is not promptly extinguished by the fire suppression activities will not prevent the safe shutdown of the plant.

Current NRC regulations specifies the minimum requirements for each of these objectives. These objectives establish diversity in fire safety. Strengthening any one of these objectives can compensate for known weaknesses or uncertainties in plant fire protection features and program controls. The proposed rule limits the defense-in-depth concept to only those plant areas needed to shutdown the reactor from full power conditions. The NRC staff is seeking public comments whether the limitations of the petitioner's proposed rule is justified or if a revised regulation should establish a fire protection program based on the defense-in-depth concept for all plant areas that are important to safety.

The petitioner states that the proposed rule provides for licensees and NRC resources to be better focused to those activities most directly related to protection of the public health and safety. This can be accomplished by focusing resources toward the objective of achieving and maintaining safe shutdown in the unlikely event of a fire. Also, the use of a PRA allows the determination of protection features in each fire area as opposed to equal treatment of fire areas without consideration of risk significance. The NRC staff solicits further details, with specific examples, on the extent

elimination or relaxation of requirements marginal to safety in the fire area and if the use of a PRA will result in better focus and coherence in NRC's regulations.

(b) Exclusion of new requirements beyond the scope of the current regulations.

The proposed rule does not consider current fire safety issues that are beyond the scope of the current NRC fire protection regulations. For example, the proposed rule does not address the lessons learned from the results of individual plant external event examinations (IPEEE) and research, or concerns regarding personnel life safety, resolution of fire protection related generic safety issues (e.g., earthquake induced fires), operating experience (nuclear and related industries), performance criteria for compensatory measures, quality assurance, and consideration of fire-related risks during shutdown conditions and plant decommissioning.

Given the history of difficulty and low success rate for attempts to resolve new safety issues simultaneously with improvements to regulatory efficiency, the Commission approved an NRC staff policy for separating regulatory actions for new safety issues from those for improving regulatory efficiency. (See SECY–94–090, "Institutionalization of Continuing Program for Regulatory Improvement," March 31, 1994). Specifically, the Commission approved a plan for fire protection rulemaking in which new safety issues that may arise as a result of implementing the Fire Protection Task Action Plan, would be evaluated, and backfit requirements developed, separate and independent from efforts to improve regulatory efficiency in the fire protection area. If necessary and appropriate, performance-based approaches would be used to promulgate new requirements justified by a backfit analysis.

The NRC staff is soliciting public comment on the above Commission-approved policy, and whether the policy should be maintained in the fire protection area, or if the staff should seek Commission approval to deviate from the established policy to simultaneously promulgate modifications to improve the efficiency of the regulation, and new requirements in the same rulemaking. If the commenter believes the NRC should promulgate new requirements, separately or simultaneously with modifications to improve regulatory efficiency, which of the areas cited above or others should the NRC address? Technical justifications or bases that support the recommendation for NRC to address specific issues are also requested.

2. Safety-Neutral: Demonstration that the proposal is "safety-neutral."

The petitioner claims that the proposed rule will reduce the regulatory burden on licensees without in any way reducing the protection to the public health and safety that the NRC's regulations provide. Because the guidance documents are not yet available, it is not clear how the petition, if accepted, would impact risk. The petition does not include a demonstration of how the proposed rule achieves an equivalent level of fire safety to that currently established by plants having a current NRC-approved fire protection program that meets the current regulations. The NRC staff is seeking public comments on details on the implementation of the proposed rule and the mechanism for licensees to demonstrate that alternative fire protection approaches allowed by the proposed rule, while reducing burden, will have no significant adverse effect on plant risk compared to that achieved by current NRC fire protection regulations. Specifically, the NRC staff is soliciting a supporting technical demonstration, including risk-based analysis, that justifies exclusions or relaxations in its fire protection requirements. For example, how will the focus of requirements for safe shutdown in the proposed rule and exclusion of requirements for structures, systems, and components (SSCs) important to safety result in an overall equivalent level of safety?

3. Implementation Guidance: Extent that judgement can be made on petition given the absence of an industry guideline, and the demonstration of the application of advanced methods in the fire sciences and PRA.

The proposed rule allows the use of fire modeling and risk assessment techniques, but does not include regulatory requirements or a guidance document that would specify methods and criteria for verifying and validating these methods. Experimental data that supports models that predict fire growth in large compartments and the corresponding potential for damage to nuclear power plant SSCs are not cited. In addition, a verification and validation or approval process for these fire models for application at nuclear power plants has not been proposed as yet by the petitioner.

The petition contends that the proposed rule would provide an opportunity for licensees to incorporate the advances in fire sciences and Probabilistic Risk Analysis (PRA) technology that have occurred since the current rule was promulgated. The NRC solicits information on details and specific examples of these advances in fire sciences and PRAs in the nuclear and other industries in the United States and other countries, and how these could be utilized in the U.S. nuclear power industry to increase innovation and the efficiency of NRC's regulations for fire protection. Comments on the applicability of the methods cited in the petition, e.g., EPRI FIVE methodology, and information and examples of application in specific areas of nuclear power plant fire protection regulations is requested. Also, to what extent should prior review and approval of these techniques by the NRC staff be required before application by a licensee, and to ensure consistent application, should a licensee's compliance with these alternatives be reviewed and approved by the NRC before implementation? Alternatively, is licensee certification of the verification, validation, and applicability of these new methods for the intended application sufficient to ensure quality of the techniques utilized in the analysis? In view of the fact that the proposed rule allows the use of new fire modeling and risk assessment techniques, to what extent should the methods and criteria for verifying, validating, and applying these models and methods be specified in the new performance-oriented, risk-based regulation rather than a guidance document?

4. Process for Burden Relief: Extent to which the rule revision is the preferred mechanism for providing the burden relief sought by the petitioner compared to moving the fire protection program to a Safety Analysis Report.

Currently, by implementing the guidance provided in Generic Letter (GL) 86–10, "Implementation of Fire Protection Requirements" (April 24, 1986), licensees can, under 10 CFR 50.59 accomplish many of the items specified in the proposed rule. As examples, licensees who have adopted the standard fire protection license condition specified in GL 86–10, can:

(1) Change surveillance testing of fire suppression and detection systems, fire hose testing, etc., without prior NRC approval provided the changes do not have an adverse impact on safety; and

(2) Evaluate the adequacy of fire area boundaries by assessing the fire hazards in the area.

The NRC staff is seeking public comments regarding the benefits of a new fire protection rule to realize the objectives stated by the petitioner. Specifically, what would be the benefits and advantages of a revised regulation for providing the regulatory relief sought by the petitioner when compared to mechanisms such as those cited above, that are already available? Detailed and specific information on the added flexibility in the different areas of NRC fire protection regulations, and the resulting benefits and cost savings as a result of a performance-based fire regulation is solicited.

The petitioner states that no significant NRC staff resources are expected to be necessary for the proposed rule to ensure continued acceptability of licensee fire protection programs. The proposed rule would allow licensees to have the option of demonstrating that they provide adequate protection against postulated fire hazards without having to submit an exemption and the resultant of consumption of NRC staff and licensee resources. The NRC staff is seeking public comments regarding if and how this proposed rule will reduce the regulatory resources needed to evaluate an alternative approach's safety equivalency and ensure its proper implementation.

5. Content of Performance-Oriented and Risk-Based Regulation: Level of detail and the inclusion of risk-based safety objectives in a revised regulation.

The petitioner proposes an alternative 10 CFR Part 50, Appendix S, which replaces most of the prescriptive fire protection features presently specified in 10 CFR Part 50, Appendix R, with functional safety objectives and acceptance criteria in each area of Appendix R which would be accompanied with guidance documents. Could the same intent be gained by modifying 10 CFR 50.48 to be performance-based with higher level safety objectives than those specified in Appendix S, providing guidance, and disposing of both Appendix R and Appendix S in their entirety, or are the functional safety objectives and acceptance criteria proposed in Appendix S accurate and at the right level for a performance-based regulation? Is an evolutionary approach which maintains the same structure of the regulation as in Appendix R, as proposed by the petitioner, preferred to a more comprehensive modification of NRC fire protection regulations and a high level performance-oriented, risk-based fire protection regulation.

In SECY–94–090, the NRC staff stated that a performance-oriented approach establishes regulatory safety objectives which, to the extent feasible, will be risk-based. Petitioner contends that the proposed rule is performance-based in that the functionality of the safe shutdown equipment is the ultimate goal. Although the proposed rule, allows the use of PRA for determining fire protection features, it does not appear to have been developed from risk considerations and does not contain risk-based objectives which are related to safety goals. Implementation of the proposed rule would not explicitly require consideration of risk. The NRC staff is seeking public comments regarding the need for the proposed rule to establish risk-based safety objectives.

The petitioner states that the overall approach of the proposed rule may be appropriately characterized as performance-based. The proposed rule would require licensees to establish measurable processes or parameters, as appropriate, to ensure that the adequacy of plant fire protection features in protecting the safe shutdown capability can be demonstrated, based on the plant-specific actual fire risk. The NRC solicits further detail and information on the nature of these parameters, and how they could be monitored to ensure adequacy of the protection features for fire risk.

In addition, the petitioner contends that all previously granted exemptions from current NRC fire protection regulations would remain valid and would be exempted from the proposed rule. The NRC staff is requesting public comments regarding if and how previously granted exemptions should be exempted from the scope of a performance-based regulation.

6. Voluntary Adoption in Whole or in Part: Extent to which licensees should be permitted to voluntarily adopt parts of a revised regulation.

The Commission has approved an NRC staff policy (see SECY–94–090) in which any proposed revisions to existing regulations developed by the Regulatory Improvement Program would not be mandatory but would be proposed as alternatives (options) to existing requirements which may be voluntarily adopted by licensees. This policy was formulated because the main objective of the program is to increase regulatory efficiency and to recognize that many licensees have technical programs which they may not wish to modify.

The petitioner has proposed an Appendix S to 10 CFR Part 50 which provides an alternative method to satisfy fire protection requirements. Licensees may continue to comply with 10 CFR Part 50, Appendix R, or they may utilize, in whole or in part, the requirements of Appendix S for any matter for which there is a corresponding specific topic in the licensee's fire protection program. This would provide licensees flexibility to revise its program when it determines it would be cost beneficial without modifying the entire fire protection program. The NRC staff is soliciting public comment on any challenges this partial adoption may present. For example, performance-oriented approaches need to ensure that the new regulation can be objectively inspected and enforced (SECY–94–090). The NRC staff resources to evaluate the licensees implementation of the proposed rule could exceed those required currently to enforce 10 CFR Part 50, Appendix R, and may make effective and consistent inspections and enforcement difficult. The NRC staff is requesting public comments on the pros and cons for adoption of a revised regulation partially, or in its entirety by a licensee.

7. Allowable Repairs During Fire Events: Extent of allowable fire damage and repairs to one train needed for hot shutdown.

One of the safety objectives of the current NRC fire protection regulations is to ensure that one train of systems necessary to achieve and maintain hot shutdown conditions will remain free of fire damage. The proposed rule would permit both trains of systems necessary to achieve and maintain hot shutdown to be damaged by a single fire if the functional availability of the required safe shutdown equipment located in the fire area is ensured.

The safety objective of the current regulation is met by protecting the safe shutdown capability with the fire protection features specified in the rule. When this objective cannot be met, the current rule specifies that alternate or dedicated safe shutdown capability must be provided. The proposed rule replaces the prescriptive requirements to provide fire protection for safe shutdown capability or to provide alternative or dedicated safe shutdown capability with the requirement to perform an engineering analysis or use the combination of engineering and probabilistic assessments to demonstrate that adequate time is available to complete the safety function to bring the reactor to a safe shutdown condition. This approach would allow fire damage to redundant safe shutdown functions provided an analysis demonstrates that a sufficient quantity of shutdown equipment could be made "functionally available" (through repairs) in a time frame commensurate with assuring safe shutdown of the plant. The current regulations do not allow licensees to perform troubleshooting and make repairs in order to achieve and maintain post-fire safe (hot) shutdown conditions. Is the

petitioner's proposal acceptable or should the revised rule retain the performance goals established in the current rule for limiting fire damage so that one train of safe shutdown systems and components is free from fire damage or to provide alternative or dedicated shutdown capability?

8. Automatic Actuation of Suppression Systems: Means to address adverse impacts of inadvertent actuation of suppression systems.

The petitioner has stated the potential for damage to safety equipment and that plant transients from inadvertent actuations of automatic suppression systems can contribute to the overall damage risk in a facility. The probability for core damage due to various events is being assessed by licensees under the Individual Plant Examination for External Events (IPEEE) programs. The petitioner claims, given the potential for inadvertent actuation of automatic suppression systems, the marginal improvement to safety from a defense-in-depth perspective may not warrant the increased risk of water damage to safety systems or exposure to personnel. Is the petitioner's assertion accurate, and, if so, should the proposed rule allow the elimination of some automatic suppression systems on the basis of their adverse impact on safety, or should other means be employed, e.g. plant modifications, to address this issue?

9. Alternative and Dedicated Shutdown Capability:

(a) Need for an independent shutdown path.

For plant areas in which redundant trains of safe shutdown systems may be damaged by fire (e.g., control room, cable spreading room, some plant specific switchgear rooms and relay rooms), current NRC fire protection guidelines and regulations require plants to develop a shutdown capability that is physically and electrically independent of the fire area of concern. The proposed rule does not specifically require this capability, but is stated to be similar to the current rule in that it specifies that shutdown path equipment must be able to achieve and maintain critical functions; namely, achieve subcritical conditions, maintain coolant inventory, achieve and maintain hot standby or hot shutdown conditions until cold shutdown equipment can be made available, and achieve and maintain cold shutdown conditions. The proposed rule differs from the current regulation by allowing licensees to take advantage of the extensive operational experience with fire protection, prior NRC determinations, and the significant developments in fire sciences in providing fire protection for the appropriate equipment. The NRC staff is seeking public comments regarding details of the extensive operational experience, the developments which have been made in the fire sciences, and if and how the use of this information will ensure that an equivalent level of fire safety to that which is currently implemented and incorporated into operating plant designs is maintained.

(b) The need to have abnormal operating procedures that provide guidance on which safe shutdown path is free from fire damage and can be used to achieve and maintain safe shutdown.

Post-fire safe shutdown performance criteria established by the current regulation requires that the reactor coolant system inventory and process variables be maintained within those predicted for a loss of normal a.c. power. The proposed rule changes this performance criteria to allow the reactor coolant process variables to be controlled commensurate with parameters in the plant emergency operating procedures (EOP). Because fires can cause rapid and widespread damage, this may result in unusual conditions requiring the operation of unique plant shutdown equipment in order to meet the established performance goals. The use of EOPs may not be adequate to address the use of alternative or dedicated shutdown systems. Therefore, the NRC is seeking public comments regarding the proposed rule's intent to eliminate the need to develop procedures that address unique fire damage and shutdown conditions, and provide operators with specific guidance on which safe shutdown systems have been properly protected from potential fire damage.

10. 72-Hour Requirement to Achieve Cold Shutdown: Elimination of the requirement to allow repairs and provide flexibility.

The petitioner proposes to eliminate the current 72-hour time requirement to achieve cold shutdown with on-site power stating that it is an overly conservative and unnecessarily prescriptive requirement. Additionally, the petitioner states that inadvertent actuation of protective features designed to address postulated simultaneous loss of offsite power scenarios in the event of a real fire may create abnormal conditions that further unnecessarily challenge operator control of the plant. The intent of this requirement is to effectively limit the extent of repairs necessary to achieve and maintain cold shutdown. The petitioner justifies the elimination of this requirement on the basis that the NRC has granted a number of site-specific exemptions from this requirement. The petitioner states that operational experience has revealed that the plant is in a more safe condition during deliberate and controlled evolutions employing normal and familiar equipment configurations as compared to nonroutine responses to transients using nonroutine equipment and procedures. The petitioner also recognizes the success of operating history and accumulated operator training and experience.

Under the criteria of the proposed rule, the availability of off-site power would be determined from an analysis of the fire area under review and if off-site power could be lost due to fire damage. Generally, plant areas in which a fire may cause a loss of off-site power typically include the control room, certain cable spreading rooms and switchgear rooms, and the turbine building. Therefore, the proposed rule appears to be consistent with the intent of current NRC regulations.

The NRC staff is seeking public comments on the justification of the petitioners proposal to not impose fire damage limits and allow repairs of shutdown equipment that would require more than 72 hours, and maintain hot standby or hot shutdown conditions until cold shutdown equipment can be made available. The NRC staff specifically solicits information on the methods and feasibility of quantifying the risk impact for this relaxation, and the operating history and accumulated operator training and experience cited in the petition.

11. Rulemaking Finding: Necessity of finding of compliance with current requirements.

Paragraph (c) of the petitioner's proposed revision to § 50.48 would include a rulemaking finding that all nuclear power plants licensed after January 1, 1979, met the requirements of 10 CFR Part 50, Appendix R, and satisfy GDC 3. It is not clear why this language is necessary in order to provide an alternative to the requirements of Appendix R. Furthermore, it is unclear whether this rulemaking finding would preclude future NRC determinations (e.g., enforcement action) that licensees are not complying with the requirements of Appendix R and GDC 3. If this is the intent of the petitioner's proposed rule, it is unclear what policy considerations favor adoption of such a rulemaking finding. The Commission requests public comment on these matters.

12. Exemptions: Treatment of exemptions from current requirements when adopting revised requirements.

Paragraph (d) of the petitioner's proposed revision to § 50.48 provides that all exemptions to 10 CFR Part 50, Appendix R, "apply in full under the terms of Appendix S." However, the petition does not explain what relevance or effect an exemption to a specific Appendix R requirement could have if a licensee instead chose to comply with a substitute Appendix S requirement. The language could be interpreted as intending to make clear that licensees who choose to comply with a specific Appendix S provision should not lose its exemptions to those portions of Appendix R for which the licensee continues to be in compliance. The Commission requests comments on how exemptions to 10 CFR Part 50, Appendix R, should be treated if a licensee chooses to comply, in full or part, with the alternative requirements in the proposed Appendix S.

13. Regulatory Analysis: The need for regulatory analysis for rulemakings that reduce burden.

The petition proposes that a regulatory analysis does need not to be prepared for the proposed rulemaking, because it does not impose a new requirement on licensees but instead, provides an alternative means of compliance. The petition also argues that because the proposed rulemaking is intended to result in cost saving for licensees, there is no need for a regulatory analysis. The Commission notes that a regulatory analysis could also provide important information when the Commission is considering reducing regulatory requirements. For example, the regulatory analysis could be utilized to determine whether a proposed change in regulatory requirements in fact would be more efficient in maintaining the desired level of safety while reducing regulatory burden. The regulatory analysis process would also be useful in identifying alternatives for reducing regulatory burden with a different mix of impacts on licensees and the NRC. Therefore, the Commission requests comments on the petition's arguments that a regulatory analysis does not need to be prepared for rulemaking petitions in which regulatory burdens are proposed to be relaxed.

Dated at Rockville, Maryland, this 31st day of May, 1995.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 95–13755 Filed 6–5–95; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–133–AD]

Airworthiness Directives; Boeing Model 757 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Boeing Model 757 series airplanes. This proposal would require modifying the engine fuel indication circuits. This proposal is prompted by numerous reports of false indications of engine fuel valve faults, which have led to the flight crew conducting rejected takeoffs (RTO). The actions specified by the proposed AD are intended to prevent such false indications and the flight crew's consequent execution of an RTO at high speed during takeoff roll, which could result in the airplane overrunning the runway, damage to the airplane, and injury to airplane occupants.

DATES: Comments must be received by August 2, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–133–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Jeff Duven, Aerospace Engineer, Propulsion Branch, ANM–140S, Seattle Aircraft Certification Office, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4065; telephone (206) 227–2688; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–133–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–133–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports of at least fifteen incidents of false indications of engine fuel valve faults that have occurred on Boeing Model 757 series airplanes. The purpose of the engine fuel valve fault indication is to alert the flight crew that the engine-mounted fuel valve is not in the commanded position. In all of the reported incidents, the engine fuel valve was in the commanded position, but the indication system indicated that the valve was not in that position.

In nine of these incidents, the flight crew's response to the false indication was to initiate a rejected takeoff (RTO). The other six incidents resulted in various flight schedule interruptions. There have been no reports of airplane damage or passenger injuries resulting from any of these particular incidents.

Rejected takeoffs that are initiated at high speed should be executed only in response to conditions that preclude the continued safe takeoff of the airplane. False indications of an engine fuel valve fault, such as those that occurred in the

reported incidents, are not a hazard to the continued safe operation of the engines or the airplane and, therefore, should not result in RTO's. The current service history of Model 757 series airplanes has shown, however, that when these false indications occur during the takeoff roll, flight crews are concerned to such a level that they believe an RTO is necessary.

Transport category airplanes, such as the Model 757, are designed to allow an RTO to be safely executed, provided that the maneuver is initiated at or below established airplane speeds. When RTO's are initiated at speeds in excess of the established speeds, or when the established flight crew procedures are not followed, there may not be sufficient distance remaining on the runway to bring the airplane to a safe stop. Service history has documented numerous accidents and incidents in which various models of transport category airplanes have overrun the available stopping area; this has led to consequent damage or destruction of the airplane, and injuries to airplane occupants.

The FAA has reviewed and approved the following two Boeing service bulletins:

1. Boeing Service Bulletin 757–76–0010, dated August 12, 1993, which pertains to Model 757 series airplanes equipped with Pratt & Whitney (P&W) PW2000 engines; and

2. Boeing Service Bulletin 757–76–0011, dated December 2, 1993, which pertains to Model 757 series airplanes equipped with Rolls-Royce RB211–535 engines.

These service bulletins describe procedures for modifying the engine fuel indication circuits to decrease the number of false fault indications of the engine fuel valve. Decreasing the number of these false indications will thereby decrease the number of RTO's initiated for this reason. This modification will not affect correct indications of an engine fuel valve fault.

For Model 757 series airplanes equipped with Rolls-Royce RB211–535 engines, the successful installation of this modification of the engine fuel indication circuits requires that an additional modification of the engine fuel shutoff valve control be installed previously or concurrently. Boeing Service Bulletin 757–76–0007, Revision 2, dated January 23, 1992, describes procedures for modifying the engine fuel shutoff valve control on these airplanes by installing six blocking diodes in the P36 and P37 panels, and modifying the airplane's wiring to accommodate the diode installation. (This modification will reduce the possibility of engine shutdown due to uncommanded closing of the engine fuel shutoff valve.) The FAA has reviewed and approved this service bulletin.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require modifying the engine fuel indication circuits to decrease the number of false fault indications of the engine fuel valve. This proposed AD would also require that modification of the engine fuel shutoff valve control be accomplished on airplanes equipped with the subject Rolls Royce engines prior to or concurrently with the modification of the engine fuel indication circuits. The actions would be required to be accomplished in accordance with the service bulletins described previously.

Operators of airplanes equipped with Rolls Royce engines would be provided a longer compliance time for modification, since the modifications required for those airplanes necessitate more work hours to complete than for the modification of airplanes equipped with P&W engines.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this notice to clarify this long-standing requirement.

There are approximately 272 Model 757 series airplanes equipped with P&W PW2000 engines in the worldwide fleet. The FAA estimates that 219 of these airplanes are currently of U.S. registry and would be affected by this proposed AD. It would take approximately 4 work hours per airplane to accomplish the proposed modification of the engine fuel indication circuits, at an average labor rate of $60 per work hour. The cost of required parts would be negligible. Based on these figures, the total cost impact of the proposed AD on U.S. operators of these airplanes is estimated to be $52,560, or $240 per airplane.

There are approximately 302 Model 757 series airplanes equipped with Rolls Royce RB211–535 engines in the worldwide fleet. The FAA estimates that 119 of these airplanes are currently of U.S. registry and would be affected by this proposed AD. It would take approximately 4 work hours per airplane to accomplish the proposed modification of the engine fuel indication circuits, at an average labor rate of $60 per work hour. The cost of required parts would be $194 per airplane. Based on these figures, the total cost impact of this proposed modification on U.S. operators of these airplanes is estimated to be $51,646, or $434 per airplane.

Additionally, for airplanes equipped with Rolls Royce RB211–535 engines, it would take approximately 28 work hours to accomplish the proposed modification of the engine fuel shutoff valve control, at an average labor rate of $60 per work hour. The cost of required parts would be $470 per airplane. Based on these figures, the total cost impact of this proposed modification on U.S. operators of these airplanes is estimated to be $255,850, or $2,150 per airplane.

The total cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. However, the FAA is aware that the modification of the engine fuel shutoff valve control has already been accomplished on several affected Model 757 series airplanes equipped with Rolls Royce RB211–535 engines; therefore, the future total cost impact of this proposed AD is reduced by that amount.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 94–NM–133–AD.

Applicability: Model 757 series airplanes equipped with Pratt & Whitney PW2000 engines, as listed in Boeing Service Bulletin 757–76–0010, dated August 12, 1993; and Model 757 series airplanes equipped with Rolls-Royce RB211–535 engines, as listed in Boeing Service Bulletin 757–76–0011, dated December 2, 1993; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent false indications of engine fuel valve faults, accomplish the following:

(a) For airplanes equipped with Pratt & Whitney PW2000 engines: Within 6 months after the effective date of this AD, modify the engine fuel valve indication circuits in accordance with Boeing Service Bulletin 757–76–0010, dated August 12, 1993.

(b) For airplanes equipped with Rolls-Royce RB211–535 engines: Within 18 months after the effective date of this AD, accomplish the modifications specified in paragraphs (b)(1) and (b)(2) of this AD. The modification specified in paragraph (b)(1) must be accomplished either prior to or concurrently with the modification specified in paragraph (b)(2). In any case, both modifications must be completed within 18 months after the effective date of this AD.

(1) Modify the engine fuel shutoff valve control in accordance with Boeing Service Bulletin 757–76–0007, Revision 2, dated January 23, 1992.

Note 2: Accomplishment of this modification prior to the effective date of this AD in accordance with Boeing Service Bulletin 757–76–0007 (original issue), dated February 22, 1990, or Revision 1, dated October 31, 1991, is considered acceptable for compliance with paragraph (b)(1) of this AD.

(2) Modify the engine fuel valve indication circuits in accordance with Boeing Service Bulletin 757–76–0011, dated December 2, 1993.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on May 30, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–13784 Filed 6–5–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 95–ANE–32]

Airworthiness Directives; Hamilton Standard 14RF, 247F, 14SF, and 6/5500/F Series Propellers

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to Hamilton Standard 14RF, 247F, 14SF, and 6/5500/F (formerly Hamilton Standard/British Aerospace 6/5500/F) series propellers, that currently requires initial and repetitive inspections of the propeller control unit (PCU) servo ballscrew internal spline (BIS) teeth for wear, and replacement, if necessary, of PCU servo BIS assemblies. This proposed AD would increase the repetitive PCU servo BIS teeth inspection interval from 1,500 to 2,500 hours time in service (TIS) for propellers that have a ballscrew quill damper installed. In addition, this proposed AD would add an optional terminating action to the repetitive PCU servo BIS teeth inspections by installing a Secondary Drive Quill (SDQ). If an SDQ is installed, this proposed AD would require initial and repetitive torque check inspections of the primary ballscrew quill. This proposal is prompted by field service and laboratory test data that indicate that the repetitive inspection interval can be safely increased, and by the development and availability of the SDQ. The actions specified by the proposed AD are intended to prevent inability to control the propeller blade angle due to tooth wear in the PCU servo BIS assembly.

DATES: Comments must be received by July 6, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–ANE–32, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Hamilton Standard, One Hamilton Road, Windsor Locks, CT 06096–1010. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Frank Walsh, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7158, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the

proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–ANE–32." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–ANE–32, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

On October 26, 1994, the Federal Aviation Administration (FAA) issued AD 94–22–12, Amendment 39–9062 (59 FR 55199, November 4, 1994), applicable to Hamilton Standard 14RF, 247F, 14SF, and 6/5500/F (formerly Hamilton Standard/British Aerospace 6/5500/F) series propellers, to increase the repetitive inspection interval from 500 to 1,500 hours time in service (TIS) since last inspection for propellers that have a ballscrew quill damper installed. That action was prompted by the availability of improved hardware that restricts quill motion and enhances the lubrication of the BIS and significantly reduces BIS wear. Severe wear of the BIS affects the ability to control the propeller blade angle. That condition, if not corrected, could result in inability to control the propeller blade angle due to tooth wear in the PCU servo BIS assembly.

Since the issuance of that AD, the FAA has received field service data and additional data accumulated on six controlled PCU's. These six controlled PCU's show no BIS wear in more than 2,500 hours TIS for PCU's with ballscrew quill dampers installed.

In addition, Hamilton Standard has developed redundant design hardware that incorporates a secondary drive path for control between the PCU and the propeller oil transfer tube. This redundant hardware is known as the Secondary Drive Quill (SDQ) installation. The SDQ is currently being installed on new production PCU's. For in-service PCU's, this SDQ installation, accomplished by service bulletin at field repair stations, is optional; however, this proposed AD makes installation of the SDQ terminating action to the repetitive PCU servo BIS teeth inspections. With the SDQ installed, this proposed AD would require initial and repetitive torque check inspections of the primary ballscrew quill.

The FAA has reviewed and approved the technical contents of the following Hamilton Standard Alert Service Bulletins (ASB's), all dated May 5, 1995: No. 14SF–61–A59, Revision 6; No. 14RF–9–61–A53, Revision 7; No. 14RF–19–61–A25, Revision 6; No. 14RF–21–61–A38, Revision 6; No. 247F–61–A3, Revision 5; and No. 6/5500/F–61–A11, Revision 6. These ASB's enable affected propellers with a ballscrew quill damper installed in production or in accordance with the following Hamilton Standard Service Bulletins (SB's), all dated September 27, 1994, to extend the repetitive PCU servo BIS teeth inspection interval from 500 to 2,500 hours TIS since last inspection: No. 14SF–61–67, Revision 2; No. 14RF–9–61–61, Revision 1; No. 14RF–19–61–29, Revision 2; No. 14RF–21–61–48, Revision 2; No. 247F–61–6, Revision 2; and No. 6/5500/F–61–19, Revision 2.

In addition, the FAA has reviewed and approved the technical contents of the following Hamilton Standard SB's, all Revision 1, dated May 17, 1995: No. 14SF–61–82; No. 14RF–9–61–76; No. 14RF–19–61–43; No. 14RF–21–61–62; No. 247F–61–13; and No. 6/5500/F–61–33. These SB's describe procedures for initial and repetitive torque check inspections of the primary ballscrew quill if the SDQ is installed.

Also, the FAA has reviewed and approved the technical contents of the following Hamilton Standard SB's, all Revision 1, dated May 17, 1995; No. 14SF–61–81; No. 14RF–9–61–75; No. 14RF–19–61–41; No. 14RF–21–61–60; No. 247F–61–12; and No. 6/5500/F–61–33. These SB's describe procedures for initial and repetitive torque check inspections of the primary ballscrew quill damper installed.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 94–22–12 to increase the repetitive PCU servo BIS teeth inspection interval from 1,500 to 2,500 TIS for propellers that have a ballscrew quill damper installed. In addition, this proposed AD would add an optional terminating action to the repetitive PCU servo BIS teeth inspections by installing a SDQ. With the SDQ installed, this proposed AD would require an initial torque check inspection of the primary ballscrew quill at 5,000 hours TIS since installation of the SDQ, and thereafter repetitive torque check inspections at intervals not to exceed 5,000 hours TIS since last inspection.

There are approximately 2,506 propellers of the affected design in the worldwide fleet. The FAA estimates that 1,150 propellers installed on aircraft of U.S. registry would be affected by this proposed AD, that it would take approximately 1.5 work hours per propeller to accomplish the PCU servo BIS teeth inspections, and that the average labor rate is $60 per work hour. Based on these figures, and on the average utilization rate of 2,000 hours TIS per year equating to 1.3 inspections per year, the total cost impact of the current AD per year on U.S. operators is estimated to be $134,550. However, this proposed superseding AD would require only 0.8 inspections per year, resulting in an approximate yearly inspection cost of $82,800, which would provide an approximate yearly savings to U.S. operators of $51,750.

The optional terminating action would require 4 work hours to install the SDQ, and required parts would cost approximately $5,500 per propeller. With the SDQ installed, the proposed AD would require initial and repetitive torque check inspections of the primary ballscrew quill. The torque check inspection would take 3 work hours to perform the required actions, and with an average utilization rate of 2,000 hours TIS per year equating to 0.4 inspections per year, resulting in an approximate yearly inspection cost of $72 per propeller.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9062 (59 FR 55199, November 4,1994) and by adding a new airworthiness directive to read as follows:

Hamilton Standard: Docket No. 95–ANE–32. Supersedes AD 94–22–12, Amendment 39–9062.

Applicability: Hamilton Standard Models 14RF–9, 14RF–19, 14RF–21, and 14RF–23; 247F–1; 14SF–5, 14SF–7, 14SF–11, 14SFL11, 14SF–15, 14SF–17, 14SF–19, 14SF–23; and 6/5500/F propellers installed on but not limited to Embraer EMB–120 and EMB–120RT; SAAB–SCANIA SF340B; Aerospatiale ATR42–100, ATR42–300, ATR42–320, ATR72, ATR72–210; DeHavilland DHC–8–100 series, DHC–8–300; Construcciones Aeronauticas SA (CASA) CN–235 and CN–235–100; Canadair CL215T and CL415; and British Aerospace ATP airplanes.

Note: This AD applies to each propeller identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For propellers that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any propeller from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent the inability to control the propeller blade angle due to tooth wear in the propeller control unit (PCU) servo ballscrew internal spline (BIS) assembly, accomplish the following:

(a) Inspect the PCU servo BIS assembly for tooth wear in accordance with the Accomplishment Instructions of the following Hamilton Standard Alert Service Bulletins (ASB), all dated May 5, 1995, as applicable: No. 14RF–9–61–A53, Revision 7; No. 14RF–19–61–A25, Revision 6; No. 14RF–21–61–A38, Revision 6; No. 247F–61–A3, Revision 5; No. 14SF–61–A59, Revision 6; and No. 6/5500/F–61–A11, Revision 6; as follows:

(1) For a PCU with unknown time in service (TIS), and unknown TIS since the last inspection, on the effective date of this airworthiness directive (AD), and that does not have a ballscrew quill damper installed, inspect within 200 hours TIS after the effective date of this AD.

(2) For a PCU with 1,800 or more hours TIS or unknown TIS on the effective date of this AD, and either has not been inspected, or has been inspected more than 500 hours prior to the effective date of this AD, in accordance with the applicable Hamilton Standard ASB listed in paragraph (a) of this AD; and that does not have a ballscrew quill damper installed; inspect within 200 hours TIS after the effective date of this AD.

(3) For a PCU with 1,800 or more hours TIS or unknown TIS on the effective date of this AD, and that has been inspected within the previous 500 hours TIS in accordance with the applicable Hamilton Standard ASB listed in paragraph (a) of this AD, and that does not have a ballscrew quill damper installed, inspect within 500 hours TIS since the last inspection in accordance with the applicable Hamilton Standard ASB listed in paragraph (a) of this AD.

(4) For a PCU with less than 1,800 hours TIS on the effective date of this AD, and that does not have a ballscrew quill damper installed, inspect prior to accumulating 1,800 hours TIS, or within 300 hours TIS after the effective date of this AD, whichever occurs later.

(5) For a PCU that has a ballscrew quill damper installed in production or in accordance with the following applicable Hamilton Standard Service Bulletins (SB), all dated September 27, 1994, or previous revisions: No. 14SF–61–67, Revision 2; No. 14RF–9–61–61, Revision 1; No. 14RF–19–61–29, Revision 2; No. 14RF–21–61–48, Revision 2; No. 247F–61–6, Revision 2; and No. 6/5500/F–61–19, Revision 2; inspect within 2,500 hours TIS since installation of the ballscrew quill damper

(6) Thereafter, inspect at intervals described as follows:

(i) For propellers that have a ballscrew quill damper installed in production or in accordance with the applicable Hamilton Standard SB listed in paragraph (a)(5) of this AD, or previous revisions, inspect at intervals not to exceed 2,500 hours TIS since the last inspection required by this AD.

(ii) For propellers that do not have a ballscrew quill damper installed in production or in accordance with the applicable Hamilton Standard SB listed in paragraph (a)(5) of this AD, inspect at intervals not to exceed 500 hours TIS since the last inspection required by this AD.

(7) If PCU servo BIS teeth are worn beyond the limits specified in the Accomplishment Instructions of the applicable ASB's listed in paragraph (a) of this AD, prior to further flight, replace the PCU with a serviceable assembly in accordance with the Accomplishment Instructions of the applicable ASB's listed in paragraph (a) of this AD, and thereafter reinspect in accordance with paragraphs (a)(6) and (a)(7) of this AD.

(b) Operators have the option of installing a Secondary Drive Quill (SDQ) in accordance with the Accomplishment Instructions of the following applicable Hamilton Standard SB's, all Revision 1, all dated May 17, 1995: No. 14SF–61–82; No. 14RF–9–61–76; No. 14RF–19–61–43; No. 14RF–21–61–62; No. 247F–61–13; and No. 6/5500/F–61–33. Installation of an SDQ constitutes terminating action to the repetitive inspections required by paragraph (a) of this AD.

(c) With an SDQ installed, perform an initial torque check inspection of the primary ballscrew quill at 5,000 hours TIS since installation of the SDQ, and thereafter at intervals not to exceed 5,000 hours TIS since last inspection, and remove from service and replace with a serviceable part, if necessary, in accordance with the following applicable Hamilton Standard SB's, all Revision 1, dated May 17, 1995: No. 14SF–61–81; No. 14RF–9–61–75; No. 14RF–19–61–41; No. 14RF–21–61–60; No. 247F–61–12; and No. 6/5500/F–61–33.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Boston Aircraft Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Boston Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Boston Aircraft Certification Office.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on May 30, 1995.

James C. Jones,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 95–13785 Filed 6–5–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–NM–139–AD]

Airworthiness Directives; Jetstream Model ATP Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Jetstream Model ATP airplanes. This proposal would require modification of certain doors. This proposal is prompted by a report that an operator was unable to unlock a Type I passenger door due to migration of a shootbolt bush. The actions specified by the proposed AD are intended to prevent such migration, which could jam the Type I passenger door, and subsequently could delay or impede the evacuation of passengers during an emergency.

DATES: Comments must be received by June 26, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–139–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–139–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–139–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain Jetstream Model ATP airplanes. The CAA advises it has received a report indicating that an operator was unable to unlock a Type I passenger door. Investigation revealed that shootbolt bush had migrated. This shootbolt bush is also located in the aft baggage door. This condition, if not corrected, could jam the Type I passenger door, which could delay or impede the evacuation of passengers during an emergency.

Jetstream has issued Service Bulletin ATP–52–26–10350B, dated June 29, 1994, which describes procedures for modification of the Type I passenger doors and the aft baggage door. This modification involves installation of locking pins at the shootbolt bush housings of the doors. Accomplishment of the modification ensures that the latching and locking mechanism of the doors cannot become jammed. The CAA classified this service bulletin as mandatory in order to assure the continued airworthiness of these airplanes in the United Kingdom.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require modification of the Type I passenger doors and aft baggage door. The actions would be required to be accomplished in accordance with the service bulletin described previously.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this notice to clarify this long-standing requirement.

The FAA estimates that 10 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 35 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. The cost of the required parts would be nominal. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $21,000, or $2,100 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Jetstream Aircraft Limited (Formerly British Aerospace Commercial Aircraft Limited): Docket 94–NM–139–AD.

Applicability: Model ATP airplanes, constructor's numbers 2002 through 2063 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent migration of a shootbolt bush, which could jam the Type I passenger door, and subsequently could delay or impede the evacuation of passengers during an emergency, accomplish the following:

(a) Within 1,500 hours time-in-service after the effective date of this AD, or within 6 months after the effective date of this AD, whichever occurs first, modify the Type I passenger doors and aft baggage door, in accordance with Jetstream Service Bulletin ATP–52–26–10350B, dated June 29, 1994.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on May 30, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–13783 Filed 6–5–95; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 54

[Docket No. 93N–0445]

Financial Disclosure by Clinical Investigators; Public Hearing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public hearing; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public hearing regarding a proposed regulation that would require disclosure of certain financial interests and arrangements by clinical investigators. The proposed regulation would require that sponsors submitting clinical studies in support of marketing applications for human drugs, biologics, and medical devices either certify to the absence of certain financial interests of clinical investigators or disclose those financial interests. The purpose of the public hearing is to obtain additional comments and information on specific issues for use in developing a final rule, and a proposed rule to extend these requirements to submissions for marketing approval related to human foods, animal foods, and animal drugs. The public hearing will address specific issues on which FDA seeks information and comment, and time will also be set aside after these issues have been addressed during which participants will have an opportunity to address other aspects of the proposed regulation.

DATES: The public hearing will be held on July 20, 1995, from 9 a.m. to 5:30 p.m. Submit written notices of participation, including a brief summary of the presentation and the approximate time requested, by June 30, 1995. Written comments will be accepted until August 20, 1995.

ADDRESSES: The public hearing will be held in the Wilson Auditorium, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD. Submit written notices of participation and comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. To expedite processing, written notices of participation may also be FAXED to 301–594–0113. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Transcripts of

the hearing will be available for review at the Dockets Management Branch (address above).

FOR FURTHER INFORMATION CONTACT: Mary Gross, Office of External Affairs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3390, or FAX 301–594–0113.

SUPPLEMENTARY INFORMATION:

I. Background

FDA will sponsor a public hearing to solicit comments and views on specific aspects of a proposed regulation published in the **Federal Register** of September 22, 1994 (59 FR 48708) that would require disclosure of certain financial information by clinical investigators.

There has been a growing concern for some time, both at FDA and within the academic and scientific communities, that some financial arrangements between clinical investigators and product sponsors, as well as the personal financial interests of clinical investigators, are a potential source of bias in clinical trials. FDA currently has no mechanism to collect information concerning specific financial interests of clinical investigators who conduct studies in support of product marketing. FDA believes that institution of a system to collect and analyze this information will strengthen the product review process.

Under the proposed regulation, every sponsor filing an application for marketing approval would be required to make one of two alternative submissions as part of the application: (1) For any clinical study relied upon by the sponsor to establish that the product meets the regulatory requirements for approval, the sponsor may certify that: (a) The sponsor has not entered into any financial arrangement with any clinical investigator in which the value of financial compensation received by the clinical investigator for conducting the studies could be affected by the outcome of the research; (b) the investigator has not received significant payments of other sorts from the sponsor, such as a grant to fund ongoing research, compensation in the form of equipment, a retainer for ongoing consultation, or honoraria; (c) the clinical investigator has no proprietary interest, such as a patent or other direct financial interest in the clinically tested product; and (d) the clinical investigator holds no significant equity interest in the sponsor's company; or (2) if the sponsor does not provide certification, the sponsor must disclose the specific financial arrangements made with the clinical investigator, the investigator's proprietary and equity interests in the tested product and the sponsor's company, and significant payments of other sorts, and describe steps taken to minimize the potential for bias in data submitted in support of product applications. FDA would refuse to file any marketing application that does not include either certification or disclosure.

FDA received 47 comments on the proposed regulation. Many comments supported the proposed regulation with relatively minor modifications, while others questioned the substantive provisions of the rule. In view of the complexity of some of the issues that were raised, and the diversity of views expressed on these issues, FDA believes that it would be useful to convene a public meeting to provide interested parties with an opportunity to present further comment. At this time, the agency also wishes to provide an opportunity to interested persons to comment on FDA's intention to propose extending financial disclosure requirements to submissions for marketing approval related to human foods, animal foods, and animal drugs.

II. Public Hearing

Consistent with FDA regulations at 21 CFR 10.40(f)(2), the agency is holding a hearing under part 15 (21 CFR part 15) to discuss the proposed rule. Presentations submitted and comments received at the hearing will be included in the administrative record for that regulation. In addition, written comments submitted to the Dockets Management Branch (address above) by August 20, 1995, will also be part of the administrative record.

The format of the hearing is one in which specific issues, as listed below, are dealt with one at a time in the order listed. A block of time will be allotted to discussion of additional issues by participants once the listed issues have been addressed. Issues to be addressed are as follows:

(1) In the proposed regulation, FDA specified four specific financial arrangements or interests of a clinical investigator that would be required to be disclosed, including any significant equity interest in the applicant held by a clinical investigator. For purposes of the regulation, a significant equity interest was defined as any ownership interest, stock options, or other financial interest whose value cannot be readily determined through reference to public prices, or any equity interest in a publicly traded corporation that exceeds 5 percent of total equity. With respect to an equity interest in a publicly traded corporation, a number of comments requested clarification as to whether "5 percent" refers to 5 percent of the investigator's equity, or 5 percent of the equity of the corporation. Other comments argued that a dollar threshold should be set for disclosure of an equity interest in a publicly traded corporation. These comments suggested threshold amounts ranging from $5,000 to $50,000. In specifying an equity interest that exceeds 5 percent of total equity, FDA was referring to equity of a corporation. FDA initially considered specific dollar amounts that might be used to trigger disclosure, but wanted to avoid setting an amount that would be so small as to trigger excessive and not particularly meaningful disclosure. On the other hand, the agency acknowledges that the value of 5 percent of equity in publicly traded companies could vary widely. FDA is interested in further discussion as to what would constitute a reasonable threshold for disclosure of an equity interest in a publicly traded corporation.

(2) The proposed regulation would require disclosure of "significant payments of other sorts," which were defined for purposes of the regulation as payments that exceed $5,000 (e.g., grants to fund ongoing research, compensation in the form of equipment or retainers for ongoing consultation or honoraria) or that exceed 5 percent of the total equity in a publicly held or widely traded company. Comments were divided as to the need to require disclosure of arrangements that would fall under this definition. Some comments held that only payments directly related to the conduct of covered studies should be required to be disclosed. It should also be noted that a number of comments stated that the regulation was intrusive and burdensome, particularly with respect to the need to obtain extensive information from investigators, adding that much of the need to query investigators would be associated with accessing "significant payments of other sorts." FDA seeks additional discussion and views on whether such arrangements should be disclosed, and the value of such disclosure to the intent of the regulation.

(3) In proposed § 54.2(e), FDA defined a clinical study as:

> Any study involving human subjects, including a study to establish bioavailability or bioequivalence, submitted in a marketing application subject to this part, that either: (1) The sponsor identifies as one that the sponsor relies on to establish that the product meets the regulatory requirements for marketing, or (2) FDA identifies as one that it intends to rely on to support its decision to permit the marketing of the product * * *.

Comments suggested that the definition of a covered study be narrowed by exempting, for example, phase 1 safety studies, because they are not as important to evaluation for marketing as phase 2 and 3 studies, and bioavailability and pharmacokinetic studies, because they generally result in quantitative, objective results based on tangible data that are not especially vulnerable to bias. It was also suggested that covered studies be limited to open label (unblinded) studies of a nonpharmacokinetic nature, study designs with subjective endpoints, and single investigator studies. FDA is interested in further discussion as to what should constitute a covered study and whether the scope of the proposed definition might be narrowed.

(4) In proposed § 54.2(d), FDA defined "clinical investigator" as any investigator who is: "(i) Directly involved in the treatment or evaluation of research subjects, or (ii) Could otherwise influence the outcome of the research; * * *." Some comments stated that this definition was overly broad. It was suggested that FDA use for the purposes of this regulation the definition of "clinical investigator" relied on by the agency's investigational drug application regulations at 21 CFR 312.3(b), as follows:

> Investigator means an individual who actually conducts a clinical investigation (i.e., under whose immediate direction the drug is administered or dispensed to a subject). In the event an investigation is conducted by a team of individuals, the investigator is the responsible leader of the team. "Subinvestigator" includes any other individual member of that team.

FDA notes that the term "clinical investigator," was defined in a Public Health Service (PHS) proposed rule on objectivity in research that published in the **Federal Register** of June 28, 1994 (59 FR 33242), as the principal investigator and any other person who is responsible for the design, conduct, or reporting of research. Both FDA's proposed rule and the PHS final rule defined "investigator" as including the spouse and dependent children of the investigator. FDA is interested in obtaining additional views on the definition of "clinical investigator" for purposes of financial disclosure.

(5) In the preamble to the proposed regulation, FDA stated its expectation that disclosed financial interests and steps taken to minimize bias would vary with different applications, and explained that the agency would therefore evaluate and act on these applications on a case-by-case basis. As to what actions the agency might take in response to disclosure of problematic interests, FDA stated that, if a study design is sufficiently robust as a result of factors such as independent data monitoring, multiple investigators, blinding, and independent endpoint assessment, the agency could determine that the financial interest would not likely introduce bias and the data could be accepted. In other situations, there might be sufficient replication of critical results to render questionable data less important, or it might be possible to carry out further analyses or observations (such as reexamination of hospital records or patients) that would provide assurance as to the quality of the data. In still others, intensified scrutiny by FDA's bioresearch monitoring staff might be sufficient to permit FDA to accept the data in support of product marketing applications. In some cases, however, if adequate steps were not taken to minimize potential bias, FDA stated that it might not be able to conclude that the data were reliable and might find it necessary to require sponsors to conduct further studies. This range of actions was listed in proposed § 54.5(c). A number of comments criticized the proposed process as subjective. One comment argued that FDA must develop specific criteria for evaluating the potential impact of financial interests to avoid ad hoc decisionmaking by reviewers. FDA is interested in further discussion of how these evaluations might be conducted, especially with respect to specific criteria that might be applied.

(6) In the preamble to the proposed rule, FDA stated its intention to propose the extension of this rulemaking on financial disclosure to additional products for which sponsors submit data from clinical investigators, or investigators who conduct the equivalent of clinical studies in animals, in support of marketing. Examples of these products include food and color additives, infant formulas, human foods labeled with health claims, animal foods, and animal drugs. FDA is interested in hearing comments on this extension from the industries that would be affected, as well as other interested persons.

III. Notice of Hearing Under 21 CFR Part 15

The Commissioner of Food and Drugs is announcing that the public hearing will be held in accordance with 21 CFR part 15. The presiding officer will be Sharon Smith Holston, Deputy Commissioner for External Affairs. Ms. Holston will be joined by other FDA officials.

Persons who wish to participate must file a written notice of participation with the Dockets Management Branch (address above) on or before June 30, 1995. All notices submitted should be identified with the docket number found in brackets in the heading of this document and should contain the person's name, address, telephone number, FAX number, business affiliation, if any, a brief summary of the presentation, and the approximate time requested for the presentation.

The agency requests that individuals or groups having similar interests consolidate their comments and present them through a single representative. FDA may request joint presentations by persons with common interests. FDA will allocate the time available for the hearing among persons who properly file a notice of participation.

After reviewing the notices of participation and accompanying information, FDA will schedule each appearance and notify each participant by mail, telephone, or FAX, of the time allotted to the person and the approximate time the person's presentation is scheduled to begin. The schedule of the public hearing will be available at the hearing and then placed on file in the Dockets Management Branch (address above) after the hearing under docket number 93N–0445.

Under § 15.30, the hearing is informal, and the rules of evidence do not apply. No participant may interrupt the presentation of another participant. Only the presiding officer and panel members may question any person during or at the conclusion of their presentation.

Public hearings, including hearings under part 15, are subject to FDA's guideline (21 CFR part 10, subpart C) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings. Under § 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants. The hearing will be transcribed as stipulated in § 15.30(b). Orders for copies of the transcript can be placed at the meeting or through the Dockets Management Branch (address above).

To the extent that the conditions for the hearing, as described in this notice, conflict with any provisions set out in part 15, this notice acts as a waiver of those provisions as specified in § 15.30(h).

The administrative record of the proposed rule will remain open until August 20, 1995 to allow comments on matters raised at the hearing. Persons

who wish to provide additional materials for consideration should file these materials with the Dockets Management Branch (address above) by August 20, 1995.

Dated: June 1, 1995.

Ronald G. Chesemore,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 95–13886 Filed 6–5–95; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD13–94–039]

RIN 2115–AE47

Drawbridge Operation Regulations; Lake Washington, Seattle, WA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to amend the regulations governing the operation of the Evergreen Point, State Route 520, floating drawbridge across Lake Washington at Seattle, Washington. The proposed rule would modify five different aspects of the existing operation regulations for the bridge including the notice period for requesting an opening; the length of weekday closed periods; the exemptions from weekday closed periods for Federal holidays and vessels greater than 2000 gross tons; and the requirement that non-self propelled vessels be towed through the draw. Through this action, the Coast Guard seeks to alleviate commuter traffic congestion on the bridge while continuing to meet the reasonable needs of navigation on Lake Washington.

DATES: Comments must be received on or before August 7, 1995.

ADDRESSES: Comments may be mailed to Commander (OAN), Thirteenth Coast Guard District, 915 Second Avenue, Seattle, Washington 98174–1067. The comments and other materials referenced in this notice will be available for inspection and copying at 915 Second Avenue, Room 3410, Seattle, Washington. Normal office hours are between 7:45 a.m. and 4:15 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: John E. Mikesell, Chief, Plans and Programs Section, Aids to Navigation and Waterways Management Branch, (Telephone: (206) 220–7270).

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD13–94–039) and the specific section of this proposal to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments received.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the address listed under **ADDRESSES**. The request should include the reasons why a hearing would be beneficial. If the Coast Guard determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The principal persons involved in drafting this document are Austin Pratt, Project Officer, Aids to Navigation Branch, Thirteenth Coast Guard District, and Lieutenant Commander John C. Odell, Project Counsel, Thirteenth Coast Guard District Legal Office.

Background and Purpose

At the request of the Washington State Department of Transportation (WDOT), the Coast Guard is proposing to amend the drawbridge operation regulations for the Evergreen Point, State Route 520, floating bridge across Lake Washington at Seattle, Washington. The chief purpose of the proposed amendment is to alleviate commuter traffic congestion on the bridge while continuing to meet the reasonable needs of navigation.

In recent years vehicular traffic volumes on the bridge have increased dramatically while requests for openings of the drawspan have declined. State Route 520 is a major four-lane arterial in the Seattle area and is heavily traveled during daily commuting hours. Any opening of the drawspan during commuting hours would cause severe traffic congestion and back ups.

Most of the vessels on Lake Washington are able to pass under the bridge at its two fixed transition spans at either end of the floating segment. With the exception of a few tall-masted sailing vessels, floating construction equipment is the chief user of the drawspan. The predominant navigational use of Lake Washington is recreational.

In recent years, the drawspan has been under extensive repair and refurbishment. This work has required temporary changes to bridge operations. Since September 21, 1992, temporary regulations allowed WDOT to keep the drawspan closed except from 11 p.m. to 2 a.m. during the week and from 11 p.m. to 5 a.m. on weekends. From April 1, 1994, to October 1, 1994, the Coast Guard authorized WDOT to keep the drawspan closed at all times during the final phase of the repair project. Despite the highly restrictive nature of these temporary bridge operation regulations, no objections were received from entities representing commercial or recreational navigation on Lake Washington.

In order to alleviate roadway traffic congestion while continuing to meet the reasonable needs of navigation, the proposed amendment would modify five different aspects of the existing regulations:

First, the proposed amendment would increase the notice period for requesting openings from one hour to two hours. The bridge does not currently have continuous attendance by drawtenders, and in recent years, drawtenders have had difficulty getting to the bridge in time to make requested openings. This difficulty is the result of increased roadway traffic in the Seattle metropolitan area. The proposed increase in the notice period would give drawtenders sufficient time to arrive at the bridge for openings. This proposal would not seriously inconvenience navigation because vessel transits of the drawspan are infrequent and can be planned in advance by vessel operators.

Second, the proposed amendment would increase the period during which the drawspan may remain closed on weekdays. The existing drawbridge operation regulations at 33 CFR 117.1049(c) allow the bridge to remain closed from 6 a.m. to 10 a.m. and from 2 p.m. to 7 p.m. Monday through Friday. The proposed amendment would establish a single, yet substantially increased, closed period from 5 a.m. to 9 p.m. Monday through Friday. The proposed increase in the length of the weekday closed period is necessary to prevent the interruption of commuter traffic on the bridge. A bridge opening during peak traffic hours can produce traffic gridlock on the bridge and its approaches, and openings during the workday must be avoided. The small number of openings requested in recent years and the nature of vessel traffic on Lake Washington indicates that the impact on commercial and recreational navigation from the increased closed period would be minimal.

Third, the proposed amendment would remove Columbus Day from the Federal holiday exemption to normal weekday closed periods. Under the existing Federal holiday exemption contained in 33 CFR 117.1049(c), the normal weekday closed periods do not apply on designated Federal holidays. Unlike other Federal holidays, Columbus Day enjoys no significant reduction in roadway traffic in the Seattle metropolitan area. This difference is due to the fact that most employers in the area do not observe Columbus Day. For this reason, commuter traffic volumes remain substantial on Columbus Day. Removal of Columbus Day from the federal holiday exemption would prevent the serious traffic congestion that would be caused by opening the drawspan during heavy commuter hours.

Fourth, the proposed amendment would remove the provision of 33 CFR 117.1049(c) that requires the drawspan to open during weekday closed periods in order to accommodate piledrivers and vessels greater than 2000 gross tons. In recent years the use of Lake Washington by vessels of this type and size has declined dramatically. Moreover, waters of Lake Washington in the area of the bridge do not form a restricted waterway, and the need for immediate openings for these larger and less maneuverable vessels is therefore less critical. Finally, the passage of such vessels can be planned in such a way as to avoid their arrival at the bridge during the weekday closed periods.

Fifth, the proposed amendment would remove the provision of 33 CFR 117.1049(d) requiring non-self-propelled vessels to be towed through the drawspan. The original purpose of this requirement was to avoid delays to roadway traffic caused by openings requested by vessels powered only by sail. The proposed increase in the length of the weekday closed periods would reduce the significance of such an event, and the possibility of such an event no longer needs to be specifically accounted for in the bridge operation regulations.

Discussion of Proposed Rule

The proposed rule would amend paragraphs (a), (c), and (d) of 33 CFR 117.1049. Paragraph (a) would be changed to require two hours notice for requesting an opening of the drawspan. Paragraph (b) would remain unchanged as it continues to provide accurate information about how to contact the operator for an opening. Paragraph (c) would be changed to specify a closed period from 5 a.m. to 9 p.m. Monday through Friday, except for all Federal holidays other than Columbus Day. This increased weekday closed period would apply on Columbus Day but would not apply on other designated Federal holidays. Paragraph (c) would also be changed to remove the requirement that the drawspan open during the weekday closed periods for piledrivers and vessels greater than 2000 gross tons. Paragraph (d) would be deleted, removing the requirement that vessels powered only by sail be towed through the drawspan.

Regulatory Evaluation

This proposal is not a significant regulatory action under 3(f) of Executive Order 12866 and does not require an assessment of potential cost and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full regulatory evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This expectation is based on the fact that most commercial navigation on Lake Washington can transit the bridge at its two fixed transition spans at either end of the floating segment. Moreover, commercial vessels can plan their transits so that they do not arrive at the bridge during weekday closed periods. Finally, transits of the drawspan by commercial vessels have become increasingly infrequent in recent years.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal, if adopted, will have a significant effect on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). For the reasons stated in the Regulatory Evaluation above, the Coast Guard expects the impact of this proposal to be minimal on all entities. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection-of-information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposal under the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that, under section 2.B.2. of COMDTINST M16475.B, the proposed regulation is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

For the reasons set out in the preamble, the Coast Guard proposes to amend part 117 of title 33, Code of Federal Regulations as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.1049 is amended by revising paragraphs (a) and (c) and by removing paragraph (d) to read as follows:

§ 117.1049 Lake Washington.

* * * * *

(a) The draw shall open on signal if at least two hours notice is given.

* * * * *

(c) The draw need not be opened from 5 a.m. to 9 p.m. Monday through Friday, except for all Federal holidays other than Columbus Day.

Dated: May 23, 1995.

J.W. Lockwood,

Rear Admiral, U.S. Coast Guard, Commander, 13th Coast Guard District.

[FR Doc. 95–13774 Filed 6–5–95; 8:45 am]

BILLING CODE 4910–14–M

POSTAL SERVICE

39 CFR Part 265

Compliance With Subpoenas, Summonses, and Court Orders by Postal Employees Within the Inspection Service Where the Postal Service or the United States Is Not a Party

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: The Postal Service proposes to establish procedures for Postal Service employees within the Postal Inspection Service to respond to subpoenas, summonses, and court orders to produce records or give testimony in cases where the Postal Service is not a party. The purpose of this proposed rule is to minimize disruption of normal Postal Inspection Service functions caused by compliance with those demands, maintain control over release of public information, prevent the disclosure of information that should not legally be disclosed, prevent the Postal Service from being misused for private purposes, and otherwise protect the interests of the United States. These procedures would prohibit postal employees within or assigned to the Postal Inspection Service from complying with subpoenas, summonses, and other court orders in cases where the Postal Service is not a party unless authorized by certain authorizing officials.

DATES: Comments must be submitted on or before July 6, 1995. Comments will be available for public inspection until July 21, 1995.

ADDRESSES: Written comments should be mailed or delivered to James M. Parrott, Associate Counsel, Postal Inspection Service, United States Postal Service, 475 L'Enfant Plaza SW, Room 3411, Washington, DC 20260–2181.

Comments may be delivered to room 3411 at the above address between 8:15 a.m. and 4:45 p.m., Monday through Friday. Copies of all written comments will be available for inspection and photocopying during these hours in room 3411.

FOR FURTHER INFORMATION CONTACT: James M. Parrott, Associate Counsel, Office of the Chief Postal Inspector, (202) 268–4417.

SUPPLEMENTARY INFORMATION: The proposed rule provides that postal employees within or assigned to the Postal Inspection Service must follow certain rules for the release of information in the form of documents or testimony. Giving testimony or releasing a document in legal proceedings where the Postal Service or the United States is not a party must be authorized beforehand. Employees within or assigned to the Inspection Service may comply with subpoenas, summonses, and court orders where the Postal Service or the United States is not a party, with the authorization of specified authorizing officials after consulting Inspection Service legal counsel. The release of the information must be in compliance with applicable laws and regulations and not be against the interests of the United States.

Several federal agencies have enacted regulations that give them the authority to control the release of documents and testimony in legal proceedings where the agency is not a party. Courts have recognized that federal agencies may limit compliance in these situations. See *United States ex rel. Touhy* v. *Ragen*, 340 U.S. 462 (1951). Additionally, subpoenas, summonses, and orders issued by state courts, legislatures, or legislative committees that attempt to assert jurisdiction over federal agencies are inconsistent with the Supremacy Clause of the U.S. Constitution. A federal regulation regarding compliance with those subpoenas reinforces this principle. *McCulloch* v. *Maryland*, 17 U.S. (4 Wheat.) 316 (1819); *United States* v. *McLeod*, 385 F.2d 734 (5th Cir. 1967).

This proposed rule does not apply to situations in which the United States, the Postal Service, or any federal agency is a party in action; Congressional requests, summonses, or subpoenas; consultative services and technical assistance rendered by the Inspection Service in the course of its normal functions; employees serving as expert witnesses; employees making appearances in their private capacity; and when it has been determined by an authorizing official that it is in the public interest.

Proposed new § 265.13 of title 39 of the Code of Federal Regulations will be the Postal Service regulation concerning the compliance with subpoenas, summonses, and court orders by postal employees within the Inspection Service where the Postal Service or the United States is not a party. This section has also been written to reflect the changes in organization that the Inspection Service has undergone. As an example, the position of Regional Chief Inspector no longer exists within the Inspection Service. Current regulations identify that official as responsible for authorizing testimony or the production of documents pursuant to a subpoena, summons, or court order where the Postal Service, the United States, or another federal agency is not a party. Now, the authorizing official, in most cases, is the Postal Inspector in Charge of the affected field Division.

List of Subjects in 39 CFR Part 265

Administrative practice and procedure, Government employees, Release of information.

Accordingly, 39 CFR part 265 is proposed to be amended as set forth below.

PART 265—RELEASE OF INFORMATION

1. The authority citation for part 265 continues to read as follows:

Authority: 39 U.S.C. 401; 5 U.S.C. 552; Inspector General Act of 1978, as amended (Pub. L. 95–452, as amended), 5 U.S.C. App. 3.

2. The heading of § 265.11 is revised to read as follows:

§ 265.11 Compliance with subpoena duces tecum, court orders, and summonses.

3. Paragraphs (b) and (c) of § 265.11 are removed and paragraph (b) is reserved. A new § 265.13 is added to read as follows:

§ 265.13 Compliance with subpoenas, summonses, and court orders by postal employees within the Inspection Service where the Postal Service, the United States, or any other federal agency is not a party.

(a) *Applicability of this section.* These rules apply to all federal, state, and local court proceedings, as well as administrative and legislative proceedings, other than:

(1) Proceedings where the United States, the Postal Service, or any other federal agency is a party;

(2) Congressional requests or subpoenas for testimony or documents;

(3) Consultative services and technical assistance rendered by the Inspection Service in executing its normal functions;

(4) Employees serving as expert witnesses in connection with professional and consultative services under § 447.23 of this chapter and under title 5, Code of Federal Regulations, part 7001, provided that employees acting in this capacity must state for the record that their testimony reflects their personal opinions and should not be viewed as the official position of the Postal Service;

(5) Employees making appearances in their private capacities in proceedings that do not relate to the Postal Service (e.g., cases arising from traffic accidents, domestic relations) and do not involve professional or consultative services; and

(6) When in the opinion of the Counsel or the Counsel's designee, Office of the Chief Postal Inspector, it has been determined that it is in the best interest of the Inspection Service or in the public interest.

(b) *Purpose and scope.* These provisions limit the participation of postal employees within or assigned to the Inspection Service, in private litigation, and other proceedings in which the Postal Service, the United States, or any other federal agency is not a party. The rules are intended to promote the careful supervision of Inspection Service resources and to reduce the risk of inappropriate disclosures that might affect postal operations.

(c) *Definitions.* For the purposes of this section:

(1) *Authorizing official* is the person responsible for giving the authorization for release of documents or permission to testify.

(2) *Case* or *matter* means any civil proceeding before a court of law, administrative board, hearing officer, or other body conducting a judicial or administrative proceeding in which the United States, the Postal Service, or another federal agency is not a named party.

(3) *Demand* includes any request, order, or subpoena for testimony or the production of documents.

(4) *Document* means all records, papers, or official files, including, but not limited to, official letters, telegrams, memoranda, reports, studies, calendar and diary entries, graphs, notes, charts, tabulations, data analyses, statistical or information accumulations, records of meetings and conversations, film impressions, magnetic tapes, computer discs, and sound or mechanical reproductions;

(5) *Employee* or *Inspection Service employee*, for the purpose of this regulation only, refers to a Postal Service employee currently or formerly assigned to the Postal Inspection Service, student interns, contractors and employees of contractors who have access to Inspection Service information and records.

(6) *Inspection Service* means the organizational unit within the Postal Service as outlined in § 224.3 of this chapter.

(7) *Inspection Service Legal Counsel* is an attorney authorized by the Chief Postal Inspector to give legal advice to members of the Inspection Service.

(8) *Inspection Service Manual* is the directive containing the standard operating procedures for Postal Inspectors and certain Inspection Service employees.

(9) *Nonpublic* includes any material or information not subject to mandatory public disclosure under § 265.6(b).

(10) *Official case file* means official documents that relate to a particular case or investigation. These documents may be kept at any location and do not necessarily have to be in the same location in order to constitute the file.

(11) *Postal Inspector reports* include all written reports, letters, recordings, or other memorializations made in conjunction with the duties of a Postal Inspector.

(12) *Testify* or *testimony* includes both in-person oral statements before any body conducting a judicial or administrative proceeding and statements made in depositions, answers to interrogatories, declarations, affidavits, or other similar documents.

(13) *Third-party action* means an action, judicial or administrative, in which the United States, the Postal Service, or any other federal agency is not a named party.

(d) *Policy.* No current or former employee within the Inspection Service may testify or produce documents concerning information acquired in the course of employment or as a result of his or her relationship with the Postal Service in any proceeding to which this subsection applies (see paragraph (a) of this section), unless authorized to do so. Authorization will be provided by:

(1) The Postal Inspector in Charge of the affected field Division, or designee, for Division personnel and records, after that official has determined through consultation with Inspection Service legal counsel that no legal objection, privilege, or exemption applies to such testimony or production of documents.

(2) The Chief Postal Inspector or designee for Headquarters employees and records, after that official has determined through consultation with Inspection Service legal counsel, that no legal objection, privilege, or exemption applies to such testimony or production of documents.

(3) Consideration shall be given to:

(i) Statutory restrictions, as well as any legal objection, exemption, or privilege that may apply;

(ii) Relevant legal standards for disclosure of nonpublic information and documents;

(iii) Inspection Service rules and regulations and the public interest;

(iv) Conservation of employee time; and

(v) Prevention of the expenditure of Postal Service resources for private purposes.

(4) If additional information is necessary before a determination can be made, the authorizing official may, in coordination with Inspection Service legal counsel, request assistance from the Department of Justice.

(e) *Compliance with subpoena duces tecum.* (1) Except as required by part 262 of this chapter, produce any other record of the Postal Service only in compliance with a subpoena *duces tecum* or appropriate court order.

(2) Do not release any record containing information relating to an employee's security or loyalty.

(3) Honor subpoenas and court orders only when disclosure is authorized.

(4) When authorized to comply with a subpoena *duces tecum* or court order, do not leave the originals with the court.

(5) Postal Inspector reports are considered to be confidential internal documents and shall not be released unless there is specific authorization by the Chief Postal Inspector or the Inspector in Charge of the affected field Division, after consulting with Inspection Service legal counsel.

(6) The Inspection Service Manual and other operating instructions issued to Inspection Service employees are considered to be confidential and shall not be released unless there is specific authorization, after consultation with Inspection Service legal counsel. If the requested information relates to confidential investigative techniques, or release of the information would adversely affect the law enforcement mission of the Inspection Service, the subpoenaed official, through Inspection Service legal counsel, may request an *in camera, ex parte* conference to determine the necessity for the release of the information. The entire Manual should not be given to any party.

(7) Notes, memoranda, reports, transcriptions, whether written or recorded and made pursuant to an official investigation conducted by a member of the Inspection Service, are the property of the Inspection Service and are part of the official case file, whether stored with the official file.

(f) *Compliance with summonses and subpoenas ad testificandum.* (1) If an Inspection Service employee is served with a third-party summons or a subpoena requiring an appearance in court, contact should be made with Inspection Service legal counsel to determine whether and which exemptions or restrictions apply to proposed testimony. Inspection Service

employees are directed to comply with summonses, subpoenas, and court orders, as to appearance, but may not testify without authorization.

(2) Postal Inspector reports or records will not be presented during testimony, in either state or federal courts in which the United States, the Postal Service, or another federal agency is not a party in interest, unless authorized by the Chief Postal Inspector or the Postal Inspector in Charge of the affected field Division, who will make the decision after consulting with Inspection Service legal counsel. If an attempt is made to compel production, through testimony, the employee is directed to decline to produce the information or matter and to state that it may be exempted and may not be disclosed or produced without the specific approval of the Chief Postal Inspector or the Postal Inspector in Charge of the affected field Division. The Postal Service will offer all possible assistance to the courts, but the question of disclosing information for which an exemption may be claimed is a matter of discretion that rests with the appropriate official. Paragraph (e) of this section covers the release of Inspection Service documents in cases where the Postal Service or the United States is not a party.

(g) *General procedures for obtaining Inspection Service documents and testimony from Inspection Service employees.* (1) To facilitate the orderly response to demands for the testimony of Inspection Service employees and production of documents in cases where the United States, the Postal Service, or another federal agency is not a party, all demands for the production of nonpublic documents or testimony of Inspection Service employees concerning matters relating to their official duties and not subject to the exemptions set forth in paragraph (a) of this section shall be in writing and conform to the requirements outlined in paragraphs (g)(2) and (g)(3) of this section.

(2) Before or simultaneously with service of a demand described in paragraph (g)(1) of this section, the requesting party shall serve on the Counsel, Office of the Chief Postal Inspector, 475 L'Enfant Plaza SW, Washington, DC 20260–2181, an affidavit or declaration containing the following information:

(i) The title of the case and the forum where it will be heard;

(ii) The party's interest in the case;

(iii) The reasons for the demand;

(iv) A showing that the requested information is available, by law, to a party outside the Postal Service;

(v) If testimony is sought, a summary of the anticipated testimony;

(vi) If testimony is sought, a showing that Inspection Service records could not be provided and used in place of the requested testimony;

(vii) The intended use of the documents or testimony; and

(viii) An affirmative statement that the documents or testimony is necessary for defending or prosecuting the case at issue.

(3) The Counsel, Office of the Chief Postal Inspector, shall act as agent for the receipt of legal process for demands for production of records or testimony of Inspection Service employees where the United States, the Postal Service, or any other federal agency is not a party. A subpoena for testimony or for the production of documents from an Inspection Service employee concerning official matters shall be served in accordance with the applicable rules of civil procedure. A copy of the subpoena and affidavit or declaration, if not previously furnished, shall also be sent to the Chief Postal Inspector or the appropriate Postal Inspector in Charge.

(4) Any Inspection Service employee who is served with a demand shall promptly inform the Chief Postal Inspector, or the appropriate Postal Inspector in Charge, of the nature of the documents or testimony sought and all relevant facts and circumstances.

(h) *Authorization of testimony or production of documents.* (1) The Chief Postal Inspector or the Postal Inspector in Charge of the affected field Division, after consulting with Inspection Service legal counsel, shall determine whether testimony or the production of documents will be authorized.

(2) Before authorizing the requested testimony or the production of documents, the Chief Postal Inspector or the Postal Inspector in Charge of the affected field Division shall consider the following factors:

(i) Statutory restrictions, as well as any legal objection, exemption, or privilege that may apply;

(ii) Relevant legal standards for disclosure of nonpublic information and documents;

(iii) Inspection Service rules and regulations and the public interest;

(iv) Conservation of employee time; and

(v) Prevention of expenditures of government time and resources solely for private purposes.

(3) If, in the opinion of the authorizing official, the documents should not be released or testimony should not be furnished, that official's decision is final.

(4) Inspection Service legal counsel may consult or negotiate with the party or the party's counsel seeking testimony or documents to refine and limit the demand, so that compliance is less burdensome, or obtain information necessary to make the determination whether the documents or testimony will be authorized. If the party or party's counsel seeking the documents or testimony fails to cooperate in good faith, preventing Inspection Service legal counsel from making an informed recommendation to the authorizing official, that failure may be presented to the court or other body conducting the proceeding as a basis for objection.

(5) Permission to testify or to release documents in all cases will be limited to matters outlined in the affidavit or declaration described in paragraph (g)(2) of this section or to such parts as deemed appropriate by the authorizing official.

(6) If the authorizing official allows the release of documents or testimony to be given by an employee, arrangements shall be made for the taking of testimony or receipt of documents by the least disruptive methods to the employee's official duties. Testimony may, for example, be provided by affidavits, answers to interrogatories, written depositions, or depositions transcribed, recorded, or preserved by any other means allowable by law.

(i) While giving a deposition, the employee may, at the option of the authorizing official, be represented by Inspection Service legal counsel.

(ii) While completing affidavits, or other written reports or at any time during the process of preparing for testimony or releasing documents, the employee may seek the assistance of Inspection Service legal counsel.

(7) Absent written authorization from the authorizing official, the employee shall respectfully decline to produce the requested documents, testify, or, otherwise, disclose the requested information.

(8) If the authorization is denied or not received by the return date, the employee, together with counsel, where appropriate, shall appear at the stated time and place, produce a copy of this section, and respectfully decline to testify or produce any document on the basis of these regulations.

(9) The employee shall appear as ordered by the subpoena, summons, or other appropriate court order, unless:

(i) Legal counsel has advised the employee that an appearance is inappropriate, as in cases where the subpoena, summons, or other court order was not properly issued or served, has been withdrawn, discovery has been stayed; or

(ii) Where the Postal Service will present a legal objection to furnishing the requested information or testimony.

(i) *Inspection Service employees as expert or opinion witnesses.* No Inspection Service employee may testify as an expert or opinion witness, with regard to any matter arising out of the employee's duties or functions at the Postal Service, for any party other than the United States, except that in extraordinary circumstances, the Counsel, Office of the Chief Postal Inspector, may approve such testimony in private litigation. An Inspection Service employee may not testify as such an expert or opinion witness without the express authorization of the Counsel, Office of the Chief Postal Inspector. A litigant must first obtain authorization of the Counsel, Office of the Chief Postal Inspector, before designating an Inspection Service employee as an expert or opinion witness.

(j) *Postal liability.* This section is intended to provide instructions to Inspection Service employees and does not create any right or benefit, substantive or procedural, enforceable by any party against the Postal Service.

(k) *Fees.* (1) Unless determined by 28 U.S.C. 1821 or other applicable statute, the costs of providing testimony, including transcripts, shall be borne by the requesting party.

(2) Unless limited by statute, such costs shall also include reimbursement to the Postal Service for the usual and ordinary expenses attendant upon the employee's absence from his or her official duties in connection with the case or matter, including the employee's salary and applicable overhead charges, and any necessary travel expenses as follows:

(i) The Inspection Service is authorized to charge reasonable fees to parties demanding documents or information. Such fees, calculated to reimburse the Postal Service for the cost of responding to a demand, may include the costs of time expended by Inspection Service employees, including attorneys, to process and respond to the demand; attorney time for reviewing the demand and for legal work in connection with the demand; expenses generated by equipment used to search for, produce, and copy the requested information; travel costs of the employee and the agency attorney, including lodging and per diem where appropriate. Such fees shall be assessed at the rates and in the manner specified in § 265.9.

(ii) At the discretion of the Inspection Service where appropriate, fees and costs may be estimated and collected before testimony is given.

(iii) These provisions do not affect rights and procedures governing public access to official documents pursuant to the Freedom of Information Act, 5 U.S.C 552a.

(k) *Acceptance of Service.* These rules in no way modify the requirements of the Federal Rules of Civil Procedure (28 U.S.C. Appendix) regarding service of process.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 95–13252 Filed 6–5–95; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A–1–FRL–5217–1]

Determination of Attainment of Ozone Standard for Lewiston-Auburn and Knox and Lincoln Counties, Maine Ozone Nonattainment Areas and Determination Regarding Applicability of Certain Reasonable Further Progress and Attainment Demonstration Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to determine that the Lewiston-Auburn, Maine and the Knox and Lincoln Counties, Maine ozone nonattainment areas have attained the National Ambient Air Quality Standard (NAAQS) for ozone and that certain reasonable further progress and attainment demonstration requirements, along with certain related requirements, of Part D of Title I of the Clean Air Act are not applicable for so long as the areas continue to attain the ozone standard. In the Final Rules section of this **Federal Register**, EPA is making these determinations without prior proposal. A detailed rationale for the action is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, EPA will withdraw the direct final rule and address the comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this notice. Any parties interested in commenting on this notice should do so at this time.

DATES: Comments on this action must be received by July 6, 1995.

ADDRESSES: Written comments should be mailed to Susan Studlien, Director, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Bldg., Boston, MA 02203. Copies of the relevant material for this notice are available for public inspection during normal business hours, by appointment at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA and the Bureau of Air Quality Control, Department of Environmental Protection, 71 Hospital Street, Augusta, ME 04333.

FOR FURTHER INFORMATION CONTACT: Richard P. Burkhart, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Bldg., Boston, MA 02203. Phone: 617–565–3244.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule published in the Final Rules section of this **Federal Register**.

Dated: May 22, 1995.

John P. DeVillars,

Regional Administrator, Region I.

[FR Doc. 95–13813 Filed 6–5–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 70

[AD–FRL–5216–8]

Clean Air Act Proposed Interim Approval of Operating Permits Program; Sacramento Metropolitan Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed interim approval.

SUMMARY: The EPA proposes interim approval of the Operating Permits Program submitted by the Sacramento Metropolitan Air Quality Management District ("Sacramento" or "District") for the purpose of complying with Federal requirements for an approvable State program to issue operating permits to all major stationary sources, and to certain other sources.

DATES: Comments on this proposed action must be received in writing by July 6, 1995.

ADDRESSES: Comments should be addressed to Ed Pike at the Region IX address. Copies of the State's submittal and other supporting information used in developing the proposed interim approval are available for inspection

during normal business hours at the following location: Air and Toxics Division, US EPA-Region IX, 75 Hawthorne Street, San Francisco, California 94105.

FOR FURTHER INFORMATION CONTACT: Ed Pike (telephone 415/744–1248), Operating Permits Section, A–5–2, Air and Toxics Division, US EPA–Region IX, 75 Hawthorne Street, San Francisco, California 94105.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Introduction

As required under title V of the 1990 Clean Air Act Amendments (sections 501–507 of the Clean Air Act ("the Act")), EPA has promulgated rules which define the minimum elements of an approvable State operating permits program and the corresponding standards and procedures by which the EPA will approve, oversee, and withdraw approval of State operating permits programs (see 57 FR 32250 (July 21, 1992)). These rules are codified at 40 Code of Federal Regulations (CFR) part 70. Title V requires States to develop, and submit to EPA, programs for issuing these operating permits to all major stationary sources and to certain other sources.

The Act requires that States develop and submit these programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within one year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a period of up to two years. If EPA has not fully approved a program by two years after the November 15, 1993 date, or by the end of an interim program, it must establish and implement a Federal program.

B. Federal Oversight and Sanctions

If EPA were to finalize this proposed interim approval, it would extend for two years following the effective date of final interim approval, and could not be renewed. During the interim approval period, the District would be protected from sanctions, and EPA would not be obligated to promulgate, administer, and enforce a Federal permits program for the District. Permits issued under a program with interim approval have full standing with respect to part 70, and the one year time period for submittal of permit applications by subject sources begins upon the effective date of interim approval, as does the three year time period for processing the initial permit applications.

Following final interim approval, if the District failed to submit a complete corrective program for full approval by the date six months before expiration of the interim approval, EPA would start an 18-month clock for mandatory sanctions. If the District then failed to submit a corrective program that EPA found complete before the expiration of that 18-month period, EPA would be required to apply one of the sanctions in section 179(b) of the Act, which would remain in effect until EPA determined that the District had corrected the deficiency by submitting a complete corrective program. Moreover, if the Administrator found a lack of good faith on the part of the District, both sanctions under section 179(b) would apply after the expiration of the 18-month period until the Administrator determined that the District had come into compliance. In any case, if, six months after application of the first sanction, the District still had not submitted a corrective program that EPA found complete, a second sanction would be required.

If, following final interim approval, EPA were to disapprove the District's complete corrective program, EPA would be required to apply one of the section 179(b) sanctions on the date 18 months after the effective date of the disapproval, unless prior to that date the District had submitted a revised program and EPA had determined that it corrected the deficiencies that prompted the disapproval. Moreover, if the Administrator found a lack of good faith on the part of the District, both sanctions under section 179(b) would apply after the expiration of the 18-month period until the Administrator determined that the District had come into compliance. In all cases, if, six months after EPA applied the first sanction, the District had not submitted a revised program that EPA had determined corrected the deficiencies that prompted disapproval, a second sanction would be required.

In addition, discretionary sanctions may be applied where warranted any time after the end of an interim approval period if a District has not timely submitted a complete corrective program or EPA has disapproved a submitted corrective program. Moreover, if EPA has not granted full approval to a District program by the expiration of an interim approval and that expiration occurs after November 15, 1995, EPA must promulgate, administer and enforce a Federal permits program for that District upon interim approval expiration.

II. Proposed Action and Implications

A. Analysis of State Submission

EPA is proposing to grant interim approval to the District's part 70 operating permit program. The program qualifies for interim approval because it substantially, but not fully, meets the requirements of part 70 and meets the requirements for interim approval in 40 CFR 70.4(d). The Technical Support Document ("TSD"), which is included in the docket, includes a detailed analysis of the program elements that meet the requirements of part 70 and the program elements that must be revised to qualify for full approval.

1. Support Materials

The California Air Resources Board ("ARB") submitted an administratively complete part 70 permitting program on behalf of the District on August 1, 1994 with a letter requesting source-category limited interim approval. California law currently exempts agricultural sources from permitting requirements, including title V. The ARB submitted a statement from the California Attorney General and copies of state enabling legislation on behalf of all California air districts on November 16, 1993. The Attorney General stated that California law provides air districts with sufficient authority, including enforcement authority, to implement title V except for permitting agricultural sources.

Sacramento's program includes a description of the permitting program, permitting rules, permit forms, and the District requirements for permit applications (which are contained in Sacramento's "List and Criteria"). EPA intends to finalize an implementation agreement prior to final interim approval of the program. The implementation agreement will address data management, a mechanism for straight delegation of section 112 standards under section 112(1) of the Act, and other implementation details.

2. Regulations and Program Implementation

Sacramento's submittal contains three rules with part 70 requirements. District rule 207 (adopted June 7, 1994) contains most permit program requirements. Rule 201 (as amended June 7, 1994) contains permit exemptions and rule 301 (as amended June 7, 1994) contains fee requirements. The District also submitted its "List and Criteria" and permit application forms to specify the permit application requirements. The program substantially meets part 70 requirements as described below and in the TSD.

a. *Applicability.* The District's regulation requires that all part 70 sources, except agricultural sources exempted under state law, apply for a part 70 permit (rule 207 section 102). Initial applications are due within one year of EPA's approval of the program, except that sources with actual emissions below certain levels are given three years from the date of EPA's approval of the program to apply for permits. The program does not require non-major sources subject to New Source Performance Standards (NSPS) or National Emission Standards for Hazardous Air Pollutants (NESHAP) to obtain permits except as required by EPA.

Sacramento opted for source category limited interim approval. In addition to agricultural sources exempted under state law, the District temporarily excluded sources with the potential to emit at major source levels but actual emissions below certain levels. During the initial three years, Sacramento will defer permitting sources with actual emissions less than fifty percent of the major source threshold for criteria pollutants. The deferred sources must also have hazardous air pollutant (HAP) emissions of less than seven tons per year of each HAP and fifteen tons per year of total HAPs. The District submitted a demonstration that sixty percent of all major sources and eighty percent of the title V emissions inventory will be permitted within the first three years after the program is approved. The District intends to use this time to create federally-enforceable potential to emit limits. These deferred sources must be permitted within the first five years of the program if they do not obtain federally enforceable limits on their potential to emit. The program is consistent with EPA's August 2, 1993 guidance on source-category limited interim approval (memorandum signed by John Seitz, Director of the Office of Air Quality Planning and Standards) except for the District permit issuance deadlines, which must be revised as described under Requirements for Full Approval.

EPA is in the process of changing the District's attainment status for ozone from serious to severe. The redesignation will reduce the major source potential to emit threshold from 50 tons per year to 25 tons per year for nitrogen oxides and volatile organic compounds. EPA expects that this change will be promulgated and effective by June 1, 1995, which is prior to EPA's deadline for final action on the District's title V permitting program. The District's major stationary source definition (District rule 207 section 219) references the title I major source definitions and will automatically incorporate this change.

b. *Permit applications.* The program meets the part 70 requirements for permit application deadlines and permit application content. Rule 207 contains the correct permit application deadlines and requires that sources submit a complete permit application (section 301). The "List and Criteria" and the permit application forms meet the requirements for permit application content and require that sources submit information to verify all applicable requirements and fees. Rule 207 section 208 states that a complete application must contain the requirements in the "List and Criteria" and section 401 states that the District will use the "List and Criteria" to determine whether the application is complete. Rule 207 requires complete applications but does not contain the specific permit application content requirements. EPA is approving the "List and Criteria" and the permit application forms as part of the title V permitting program to ensure that the permit application content requirements are met.

c. *Permit content.* Each part 70 permit must contain emission limitations and standards that assure compliance with all applicable requirements (rule 207 section 305.1). The permit must also contain monitoring, recordkeeping, and other compliance terms sufficient to ensure compliance with the permit terms. The program allows alternative operating scenarios and operational flexibility (rule 207 sections 305 and 308.1).

d. *Public participation and EPA oversight.* The District will provide the public with notice of and an opportunity to comment on all initial permits, permit renewals, reopenings, and significant modifications. Each initial permit, renewal, and significant and minor modification is subject to EPA oversight and veto (rule 207 sections 403 through 406).

e. *Variances.* The District has the authority to issue a variance from requirements (except the requirement to obtain a permit to construct or operate) imposed by state and local law. (See California Health and Safety Code sections 42350–42364 and Sacramento rule 601.) In the opinion submitted with California operating permit programs, California's Attorney General states that "[t]he variance process is *not* part of the title V permitting process and does not affect federal enforcement for violations of the requirements set forth in a title V permit." (Emphasis in original.)

The EPA regards the State and District variance provisions as wholly external to the program submitted for approval under part 70 and consequently is proposing to take no action on these provisions of state and local law. The EPA has no authority to approve provisions of state law that are inconsistent with the CAA. The EPA does not recognize the ability of a permitting authority to grant relief from the duty to comply with a federally enforceable part 70 permit, except where such relief is granted through procedures allowed by part 70. A part 70 permit may be issued or revised (consistent with part 70 permitting procedures) to incorporate those terms of a variance that are consistent with applicable requirements. A part 70 permit may also incorporate, via part 70 permit issuance or revision procedures, the schedule of compliance set forth in a variance. However, EPA reserves the right to pursue enforcement of applicable requirements notwithstanding the existence of a compliance schedule in a permit to operate. This is consistent with 40 CFR 70.5(c)(8)(iii)(C), which states that a schedule of compliance "shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based."

f. Title I modification definition. Sacramento's rule requires a significant permit modification for a permit change that involves a "title I modification" but does not explicitly define the term (rule 207 section 233). The significant modification definition explicitly states that title I modification includes modifications under 40 CFR parts 61 and 63 and case-by-case determinations of emissions limits and standards, but does not explicitly include changes reviewed under the District's minor new source review program ("minor NSR changes"). The EPA is currently in the process of determining the proper definition of "title I modification." As further explained below, EPA has solicited public comment on whether the phrase "modification under any provision of title I of the Act" in 40 CFR 70.7(e)(2)(i)(A)(5) should be interpreted to mean literally any change at a source that would trigger permitting authority review under regulations approved or promulgated under title I of the Act. This would include State preconstruction review programs, including the District's, approved by EPA as part of the State Implementation Plan under section 110(a)(2)(C) of the Clean Air Act.

On August 29, 1994, EPA proposed revisions to the interim approval criteria in 40 CFR 70.4(d) to, among other

things, allow State programs with a more narrow definition of "title I modifications" to receive interim approval (59 FR 44572). The Agency explained its view that the better reading of "title I modifications" includes minor NSR, and solicited public comment on the proper interpretation of that term (59 FR 44573). The Agency stated that if, after considering the public comments, it continued to believe that the phrase "title I modifications" should be interpreted as including minor NSR changes, it would revise the interim approval criteria as needed to allow States with a narrower definition to be eligible for interim approval.

The EPA hopes to finalize its rulemaking revising the interim approval criteria under 40 CFR 70.4(d) expeditiously. If EPA establishes in its rulemaking that the definition of "title I modifications" can be interpreted to exclude changes reviewed under minor NSR programs, Sacramento's definition of "title I modification" would be fully consistent with part 70. Conversely, if EPA establishes through the rulemaking that the definition must include changes reviewed under minor NSR, Sacramento's lack of a "title I modifications" definition that explicitly includes minor NSR will become a basis for interim approval. If the definition becomes a basis for interim approval as a result of EPA's rulemaking, Sacramento would be required to revise its definition to conform to the requirements of part 70.

Accordingly, today's proposed approval does not identify Sacramento's lack of a "title I modification" definition that explicitly includes minor NSR as necessary grounds for either interim approval or disapproval. For similar reasons, the EPA will not construe 40 CFR 70.7(e)(2)(i)(A)(3) to prohibit Sacramento from allowing minor NSR changes to be processed as minor permit modifications. See 59 FR 44573–44574. Again, although EPA has reasons for believing that the better interpretation of "title I modifications" is the broader one, EPA does not believe that it is appropriate to determine whether this is a program deficiency until EPA completes its rulemaking on this issue.

g. Insignificant activities. Section 70.4(b)(2) requires that States include in their part 70 programs any criteria used to determine insignificant activities or emission levels for the purposes of determining complete applications. Section 70.5(c) states that an application for a part 70 permit may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate appropriate fee amounts. Section 70.5(c) also states that EPA may approve as part of a State program a list of insignificant activities and emissions levels which need not be included in permit applications. Under part 70, a State must request and EPA must approve as part of that State's program any activity or emission level that the State wishes to consider insignificant. Part 70, however, does not establish appropriate emission levels for insignificant activities. Instead, the rule requires a case-by-case determination of appropriate levels based on the particular circumstances of the part 70 program under review.

Sacramento provided its current permit exemption lists as its list of insignificant activities. The District did not provide criteria or information on the level of emissions of activities, did not demonstrate that these activities are not likely to be subject to an applicable requirement or fees, and did not explain the basis for determining that these activities are insignificant. Therefore, EPA cannot propose full approval of the program without additional information and/or revisions to the list of insignificant activities.

h. Enhanced new source review changes. New source review modifications that undergo "enhanced" NSR may be administratively incorporated into title V permits to avoid a second review process. Rule 207 section 202.5 requires that enhanced NSR modifications meet the NSR requirements of rule 202, the title V procedural requirements of rule 207 (sections 401 through 408), and the compliance requirements of rule 207 (section 305).

3. Permit Fee Demonstration

The District assesses three types of fees. The District collects equipment fees and emissions fees based on actual emissions. The District stated that at least one quarter of these fees will be used for title V activities. The District also collects separate fees based on the amount of staff time required to issue a title V permit. The District stated that a total of $744,722 will be collected for implementing the title V program during the first three years and that an average of $97 per ton of regulated pollutant (for fee purposes) will be collected. These fees are above the presumptive minimum ($25 adjusted by the Consumer Price Index since 1989) in § 70.9. Therefore, EPA believes that these fees are sufficient to fund the program.

4. Provisions Implementing the Requirements of Other Titles of the Act

a. Authority and commitments for section 112 implementation. Sacramento has demonstrated in its title V program submittal adequate legal authority to implement and enforce all section 112 requirements through the title V permit. This legal authority is contained in the State of California enabling legislation and in rule 207 provisions defining "applicable federal requirements" (section 206) and stating that the permit must incorporate all applicable federal requirements (see section 305). EPA has determined that this legal authority is sufficient to allow Sacramento to issue permits that assure compliance with all section 112 requirements.

EPA is interpreting the above legal authority to mean that Sacramento is able to carry out all section 112 activities. For further rationale on this interpretation, please refer to the Technical Support Document accompanying this rulemaking and the April 13, 1993 guidance memorandum titled "Title V Program Approval Criteria for Section 112 Activities," signed by John Seitz, Director of the Office of Air Quality Planning and Standards, U.S. EPA.

b. *District preconstruction permit program to implement 112(g).* Sacramento will be required to implement the Maximum Achievable Control Technology requirements of section 112(g) of the Act as a component of the part 70 program. Under the interpretive notice EPA has published in the **Federal Register**, State and local agencies may delay implementing 112(g) of the Act until EPA promulgates a final 112(g) rule. Alternatively, State and local agencies may implement the requirements of 112(g) prior to EPA promulgation of the 112(g) rule as a matter of State or local law. See 60 FR 8333 (February 14, 1995). The notice also states that EPA is considering whether to further delay the effective date of section 112(g) beyond the date of promulgation of the Federal rule so as to allow State and local agencies time to adopt rules implementing the Federal rule. EPA will provide for any such additional delay in the final section 112(g) rulemaking. Unless and until EPA provides for such an additional postponement of section 112(g), the District must be able to implement section 112(g) during the period between promulgation of the Federal section 112(g) rule and adoption of implementing District regulations and may choose to implement section 112(g) sooner as a matter of local law.

For this reason, EPA is proposing to approve the use of the District's preconstruction review program (District rule 202) and the District's New Source Guidelines for Toxics (Appendix B–6 of submittal) solely as a mechanism to implement section 112(g) during the transition period between promulgation of the section 112(g) rule and District adoption of rules specifically designed to implement section 112(g). However, since approval is intended soley to confirm that State and local agencies have a mechanism to implement section 112(g) during the transition period, the approval itself will be without effect if EPA decides in the final section 112(g) rule that there will be no transition period. The EPA is proposing that twelve months will be adequate for the District to adopt implementing regulations but solicits comments on whether this timeframe will be adequate.

c. *Program for delegation of section 112 standards as promulgated.* Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 standards as promulgated by EPA, as they apply to part 70 sources. Section 112(l)(5) requires that the District's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, the EPA is also proposing to grant approval under section 112(l)(5) and 40 CFR 63.91 to Sacramento's program for receiving delegation of section 112 standards that are unchanged from the Federal standards as promulgated. Sacramento can accept delegation of section 112 standards through automatic delegation, as provided for by sections 39658 and 42301.10 of the California Health and Safety Code. The details of this delegation mechanism will be set forth in an implementation agreement between Sacramento and EPA, and EPA expects to complete this agreement prior to approval of Sacramento's section 112(l) program for straight delegations. This program applies to both existing and future standards but is limited to sources covered by the part 70 program.

d. *Commitments for title IV implementation.* Sacramento stated in the program description that no title IV affected sources are located in the District. Therefore, EPA is not requiring that the District adopt an acid rain program prior to receiving interim approval. If acid rain sources are constructed in the District or existing sources become subject to the program, the District will be required to adopt an acid rain program expeditiously.

B. Requirements for Full Approval

The EPA is proposing to grant interim approval to the operating permits program submitted by Sacramento on August 1, 1994. If this interim approval is promulgated, the State and the District must make the following changes to receive full approval:

1. Necessary Change to California Enabling Legislation

a. *Legislative source category limited interim approval issue.* Because California state law currently exempts agricultural production sources from permit requirements, the California Air Resources Board has requested source category limited interim approval for all California air districts. EPA is proposing to grant source category limited interim approval to the operating permits program submitted by the California Air Resources Board on behalf of the District on August 1, 1994. In order for this program to receive full approval (and to avoid a disapproval upon the expiration of this interim approval), the California Legislature must revise the Health and Safety Code to eliminate the exemption of agricultural production sources from the requirement to obtain a permit.

2. Necessary Changes to Sacramento's Rule

a. *Agricultural exemption.* The District permit exemption rule also contains a blanket exemption for agricultural operations. The District must also remove the agricultural permit exemption to qualify for full approval.

b. *Insignificant activities.* EPA cannot propose full approval of the District's list of permit exemptions under the insignificant activities provisions of § 70.5(c) because the District did not submit information justifying these exemptions. In addition, EPA has noted several types of activities in rule 201 that are likely to be subject to applicable requirements. For instance, the exemption for internal combustion engines (rule 201 section 112) could apply to a source near the major source threshold. The exemption for cooling systems (rule 201 section 115) will apply to large systems subject to emission standards under title VI. Therefore, the District must revise the list of insignificant activities and provide criteria for determining insignificant activities. The District must also show that information omitted from permit applications will not be necessary to determine the applicability of, or to impose, any applicable requirement or fee.

For other State and local programs, EPA has proposed to accept, as sufficient for full approval, emission levels for insignificant activities of two tons per year and the lesser of 1000 pounds per year, section 112(g) de minimis levels, or other title I significant modification levels for HAPs and other toxics (40 CFR 52.21(b)(23)(i)). EPA believes that these levels, or lower levels for non-attainment pollutants, are sufficiently below applicability thresholds for many applicable requirements to assure that it is unlikely that a unit potentially subject to an applicable requirement will be left off a title V application. EPA is requesting comments on whether these thresholds are appropriate. This request for comment is not intended to restrict Sacramento's ability to propose other emission levels for EPA approval if Sacramento demonstrates that such alternative emission levels are insignificant compared to the types of units that are permitted or subject to applicable requirements and the level of emissions from these units.

c. *Operational flexibility.* The District's limits on operational flexibility are not as explicitly restrictive as the limits in part 70. Section 308.3 of rule 207 does not allow operational flexibility for title I modifications, which is consistent with 70.4(b)(12)(i); however, the reference to "title I modification" is unclear. EPA has interpreted the term title I modification to include all modifications under title I of the Act, and has specifically determined that the term includes section 111 modifications (New Source Performance Standards) and section 112(g) modifications. See 56 FR 21746. Sacramento's use of the term "title I modification" should also be read to include these requirements. Therefore, the District must clarify the rule through guidance or rulemaking changes to explicitly restrict operational flexibility for NSPS and section 112(g) modifications.

On August 29, 1994 (59 FR 44573), EPA requested public comment on whether the definition of title I modification should include other section 112 modifications and minor NSR modifications. EPA may require that the District explicitly add additional restrictions based on the outcome of this rulemaking. EPA believes that other restrictions in section 308.8 of rule 207 are sufficiently clear to prohibit this type of operational flexibility for major NSR modifications.

Sacramento's rule also allows sources to accept a federally enforceable

emissions cap and trade emissions increases and decreases within the facility to meet this cap but does not prohibit this trading if it involves a title I modification. This restriction must be added to the rule along with the correct definition of title I modification (§ 70.4(b)(12)).

d. *Permit issuance deadlines.* The District must change rule 207 and adopt appropriate permit issuance deadlines for sources that are initially deferred from the program due to their actual emissions but do not obtain federally enforceable limits on their potential to emit. These deadlines must ensure that all permits are issued by December 15, 1999, which is required by EPA's August 2, 1993 guidance on source-category limited interim approval.

e. *Emissions trading under applicable requirements.* Sacramento must add emissions trading provisions consistent with § 70.6(a)(10). The permit content section of the rule must allow provisions for trading within the permitted facility where an applicable requirement provides for trading increases and decreases without case-by-case approval.

f. *Inclusion of fugitive emissions in the permit.* The rule must explicitly require that the permit include fugitive emissions in the same manner as stack emissions (§ 70.3(d)).

g. *Public participation.* The District rule must state that the District will provide public notice by means other than newspaper notice and a mailing list when necessary to ensure that adequate notice is given (§ 70.7(h)).

C. Effect of Interim Approval

This interim approval, which may not be renewed, extends for a period of up to two years. During the interim approval period, the District is protected from sanctions for failure to have a program, and EPA is not obligated to promulgate a Federal permits program in the District. Permits issued under a program with interim approval have full standing with respect to part 70. The one year time period for submittal of permit applications by subject sources and the three year time period for processing the initial permit applications begin upon interim approval.

The scope of the part 70 program EPA is proposing to approve in this notice applies to all part 70 sources (as defined in the approved program) within the Sacramento Metropolitan Air Quality Management District except any sources of air pollution over which an Indian Tribe has jurisdiction. See, e.g., 59 FR 55813, 55815–18 (Nov. 9, 1994). The term "Indian Tribe" is defined under the Act as "any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is Federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians." See section 302(r) of the CAA; see also 59 FR 43956, 43962 (Aug. 25, 1994); 58 FR 54364 (Oct. 21, 1993).

Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 standards as promulgated by EPA as they apply to part 70 sources. Section 112(l)(5) requires that the District's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, the EPA is also proposing to grant approval under section 112(l)(5) and 40 CFR 63.91 of the State's program for receiving delegation of section 112 standards that are unchanged from Federal standards as promulgated. This program for delegations only applies to sources covered by the part 70 program.

III. Administrative Requirements

A. Request for Public Comments

The EPA is requesting comments on all aspects of this proposed interim approval. Copies of the State's submittal and other information relied upon for the proposed interim approval are contained in a docket maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this proposed interim approval. The principal purposes of the docket are:

(1) To allow interested parties a means to identify and locate documents so that they can effectively participate in the approval process; and

(2) To serve as the record in case of judicial review. The EPA will consider any comments received by July 6, 1995.

B. Executive Order 12866

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

C. Regulatory Flexibility Act

The EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

D. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated today does not include a federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This federal action approves pre-existing requirements under state or local law, and imposes no new federal requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: May 23, 1995.

David P. Howekamp,

Acting Regional Administrator.

[FR Doc. 95–13788 Filed 6–5–95; 8:45 am]

BILLING CODE 6560–60–P

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40 CFR Part 300

[FRL–5216–7]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete the Action Anodizing, Plating and Polishing Superfund site from the National Priorities List; Request for comments.

SUMMARY: The Environmental Protection Agency (EPA) Region II announces its intent to delete the Action Anodizing, Plating and Polishing (AAPP) site from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended. EPA and the State of New York have determined that no further action is appropriate at the AAPP site under CERCLA. Moreover, EPA and the State have determined that activities conducted at the AAPP site to date have been protective of public health, welfare, and the environment.

DATES: Comments concerning the deletion of the AAPP site from the NPL may be submitted on or before July 5, 1995.

ADDRESSES: Comments may be mailed to: Kathleen C. Callahan, Director, Emergency and Remedial Response Division, U.S. Environmental Protection Agency, Region II, 290 Broadway, 19th Floor, New York, NY 10007.

Comprehensive information on this site is available through the EPA Region II public docket, which is located at EPA's Region II Office in New York City, and is available for viewing, by appointment only, from 9:00 a.m. to 5:00 p.m., Monday through Friday, excluding holidays. For further information or to request an appointment to review the public docket, please contact: Ms. Janet Cappelli, Remedial Project Manager, U.S. Environmental Protection Agency, Region II, 290 Broadway, 20th Floor, New York, NY 10007, (212) 637–4270.

Background information from the Regional public docket related to the AAPP site is also available for viewing at the information repositories noted below:

Copiague Memorial Library, 50 Deauville Boulevard, Copiague, New York 11726
and
Town of Babylon, Department of Environmental Control, 281 Phelps Lane, Control Room 23, North Babylon, New York 11703.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Site Deletion

I. Introduction

EPA Region II announces its intent to delete the AAPP site from the NPL and requests public comment on this action. The NPL constitutes Appendix B to the NCP, which EPA promulgated pursuant to Section 105 of CERCLA. EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substances Superfund Response Trust Fund (Fund). Pursuant to § 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed remedial actions, if conditions at such sites warrant such action.

The EPA will accept comments concerning the AAPP site for thirty days after publication of this notice in the **Federal Register**.

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses how the AAPP site meets the deletion criteria.

II. NPL Deletion Criteria

The NCP establishes the criteria that the Agency uses to delete sites from the NPL. In accordance with 40 CFR 300.425 (e), sites may be deleted from the NPL where no further response is appropriate. In making this determination, EPA will consider whether any of the following criteria has been met:

(i) EPA, in consultation with the State, has determined that responsible or other parties have implemented all appropriate response actions required; or,

(ii) All appropriate Fund-financed responses under CERCLA have been implemented and EPA, in consultation with the State, has determined that no further cleanup by responsible parties is appropriate; or,

(iii) Based on a remedial investigation, EPA, in consultation with the State, has determined that the release poses no significant threat to public health or to the environment and, therefore, taking remedial measures is not appropriate.

III. Deletion Procedures

The NCP provides that EPA shall not delete a site from the NPL until the State in which the release was located has concurred, and the public has been afforded an opportunity to comment on the proposed deletion. Deletion of a site from the NPL does not affect responsible party liability or impede Agency efforts to recover costs associated with response efforts. The NPL is designed primarily for informational purposes and to assist Agency management.

EPA Region II will accept and evaluate public comments before making a final decision to delete. The Agency believes that deletion procedures should focus on notice and comment at the local level. Comments from the local community may be most pertinent to deletion decisions. The following procedures were used for the intended deletion of the AAPP site:

1. EPA Region II has recommended deletion and has prepared the relevant documents. EPA has also made all relevant documents available in the Regional office and local AAPP site information repositories.

2. The State of New York has concurred with the deletion decision.

3. Concurrent with this national Notice of Intent to Delete, a notice has been published in local newspapers and has been distributed to appropriate Federal, state and local officials and other interested parties. This notice announces a thirty (30) day public comment period on the deletion package starting on June 5, 1995 and concluding on July 5, 1995.

4. The Region has made all relevant documents available in the Regional Office and local site information repositories.

The comments received during the comment period will be evaluated before any final decision is made. If necessary, EPA Region II will prepare a Responsiveness Summary which will address any comments received during the public comment period.

If, after consideration of these comments, EPA decides to proceed with deletion, the EPA Regional Administrator will place a Notice of Deletion in the **Federal Register**. The NPL will reflect any deletions in the next final update. Public notices and copies of the Responsiveness Summary will be made available to local residents by Region II.

IV. Basis for Intended Site Deletion

The Action Anodizing Plating and Polishing (AAPP) site is located at 33 Dixon Avenue in the Hamlet of Copiague in the Town of Babylon, Suffolk County, New York. It is approximately one acre in size and is one mile east of the Nassau-Suffolk County line and one-half mile south of Sunrise Highway.

For approximately thirty years prior to 1968, a commercial laundry facility operated on the Site's premises. Since 1968, AAPP has operated at the Site as a small metal-finishing shop. AAPP's operations primarily involve sulfuric acid anodizing of aluminum parts for the electronics industry, cadmium plating, chromate conversion coatings, metal dyeing and vapor degreasing. Liquid wastes from these operations

include rinses of spent caustic and acidic solutions contaminated with cadmium, chromium, zinc and sodium cyanide. According to the operator of the facility, prior to 1980, rinse water was reportedly stored in a concrete waste holding trough in the floor of the facility from which it was pumped into a low pressure steam boiler. The steam was then condensed and reused as process make-up water. The solids from the rinse water were allowed to build up in the boiler tubes until the tubes became plugged, at which time, the boiler would be replaced with a new unit.

The concrete trough had previously been used by the commercial laundry as part of its drainage system. The trough was connected to a septic tank on the north side of the building. Tank overflow fed into a series of six leaching pits on the east side of the building. The bottoms of the pits were reportedly several feet below ground.

During an inspection of the Site by the Suffolk County Department of Health Services (SCDHS) in January 1980, it was discovered that rinse water from AAPP's operation was discharging to the leaching pits rather than the low pressure steam boiler. SCDHS sampled the leaching pits, process tanks, surface soils, and septic tank on the Site. The results showed elevated levels of several metals, notably cadmium, chromium and nickel in the leaching pits. AAPP was told by SCDHS to cease discharge to the leaching pits immediately and remove the soils and sediments of the entire leaching system.

In the spring of 1980, AAPP contracted with the Patterson Chemical Company for the cleanup and closing of the leaching system. This work was supervised and approved by SCDHS. In September 1980, SCDHS notified AAPP that the leaching pits could be back-filled with clean sand and gravel. A 7,500 foot equipment storage area, built in 1984, lies directly on top of the former leaching pits. AAPP reports that its industrial waste is currently hauled off-site for disposal.

In January 1986, the New York State Department of Environmental Conservation (NYSDEC) issued a Phase I Investigation Report which summarized past investigations and included a Hazard Ranking System (HRS) score for the Site. Although groundwater contamination was not documented as part of the Phase I investigation, the potential for groundwater contamination by wastewater discharges to the leaching pools prior to 1980 was the major contributor to the HRS score. Based on the HRS score, the Site was proposed for inclusion on the NPL in June 1988 and was placed on the NPL in March 1989.

Under the direction of EPA, Malcolm Pirnie, Inc. conducted a remedial investigation (RI) from July 1989 to April 1992 to characterize the geology, groundwater hydrology and chemical quality of the soils and groundwater at the AAPP site. The investigation consisted of drilling borings and constructing monitoring wells, collecting soil and groundwater samples, a geophysical survey, and an air-monitoring survey. All sampling results, both organic and inorganic, were compared with New York State and Federal applicable or relevant and appropriate requirements (ARARs). The data were also utilized to prepare a baseline risk assessment for the site.

The risk assessment indicated that the levels of contaminants in the soil, air and groundwater at the Site presented risks which fell within or below the Superfund remediation range. In addition, sampling results indicated the majority of contaminants did not exceed MCLs in the groundwater, or background levels in the soil and air. It appeared that the 1980 SCDHS-ordered remediation of the leaching pits removed the most significant contamination known to exist at the Site.

EPA released the Proposed Plan, detailing the RI results, on April 3, 1992 and held two public meetings and a public availability session for the community before closing the public comment period. At the conclusion of the RI process, EPA, in consultation with the State of New York, issued a Record of Decision (ROD) on June 30, 1992, which determined that the AAPP site does not pose a significant threat to human health or the environment and that no further action was required. However, the ROD did call for a one-year groundwater monitoring program to ensure that the remedy is protective of human health and the environment.

As specified in the ROD, a groundwater monitoring program, consisting of two rounds of samples from four monitoring wells, was conducted by EPA. Samples from both rounds were analyzed for organic and inorganic contaminants. The first round of sampling was conducted in May 1993. Chromium, which had been of concern during the RI, was not detected above New York State or Federal drinking water or groundwater standards, nor were any other inorganics. No volatiles or semi-volatile organic compounds were detected. Only trace levels of two pesticides, both unrelated to past production activities at the Site, were detected. The second round of sampling was conducted in March 1994. During the second round, DEC split samples with EPA for analysis of pesticides only. As with the first round, no contaminants were detected above allowable levels. DEC's analysis verified EPA's findings that pesticides are present in trace levels only. EPA and DEC have determined that no further monitoring is necessary. Having met the deletion criteria, EPA proposes to delete the AAPP site from the NPL.

Dated: March 28, 1995.

William J. Muszynski,

Acting Regional Administrator.

[FR Doc. 95–13789 Filed 6–5–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 95–73, RM–8568]

Radio Broadcasting Services; Boonville and Fayette, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Big Country of Missouri, Inc. proposing the substitution of Channel 230C3 for Channel 230A at Boonville, Missouri, reallotment of the channel from Boonville, Missouri to Fayette, Missouri, and modification of the license for Station KTLH to specify operation on Channel 230C3 at Fayette, Missouri. The coordinates for Channel 230C3 at Fayette are 39–05–00 and 92–28–30. We shall propose to modify the license for Station KTLH in accordance with Section 1.420(g) and (i) of the Commission's Rules and will not accept competing expressions of interest for the use of the channel or require petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before July 24, 1995, and reply comments on or before August 8, 1995.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Frederick A. Polner, Rothman Gordon Foreman & Groudine, P.C., Third Floor, Grant Building, Pittsburgh, Pennsylvania 15219.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 95–73, adopted May 23, 1995, and released June 1, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–13761 Filed 6–5–95; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 95–74, RM–8579]

Radio Broadcasting Services; Benavides and Bruni, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Benavides Communications, permittee of Station KXTM(FM), Channel 299C2, Benavides, Texas, seeking the reallotment of Channel 299C2 from Benavides to Bruni, Texas, as the community's first local aural transmission service, and the modification of Station KXTM(FM)'s construction permit to specify Bruni as its community of license. In addition, we also propose the allotment of Channel 254A to Benavides, Texas. *See* Supplemental Information, *infra*.

DATES: Comments must be filed on or before July 24, 1995, and reply comments on or before August 8, 1995.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Lee J. Peltzman, Esq., Suite 200, 2000 L Street, Washington, DC 20036 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 95–74, adopted May 23, 1995, and released June 1, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Channels 299C2 and Channel 254A can be allotted to Bruni and Benavides, respectively, in compliance with the Commission's minimum distance separation requirements. Channel 299C2 can be allotted to Bruni without the imposition of a site restriction. Channel 254A can be allotted to Benavides with a site restriction of 11.8 kilometers (7.3 miles) south to accommodate Benavides Communications' desired transmitter site. The coordinates for Channel 299C2 at Bruni are 27–25–31 and 98–50–21. The coordinates for Channel 254A at Benavides are 27–29–48 and 98–26–59. In accordance with Section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest in use of Channel 299C2 at Bruni or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties. In addition, since Bruni and Benavides are located within 320 kilometers (199 miles) of the U.S.-Mexican border, concurrence by the Mexican government has been requested.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–13762 Filed 6–5–95; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 95–71; RM–8632]

Radio Broadcasting Services; Pasco, WA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Martin L. Gibbs proposing the allotment of Channel 229A at Pasco, Washington, as the community's third local commercial FM service. Channel 229A can be allotted to Pasco in compliance with the Commission's minimum distance separation requirements with a site restriction of 12.6 kilometers (7.8 miles) southwest to avoid a short-spacing to Station KDRK-FM, Channel 229C, Spokane, Washington. The coordinates for Channel 229A at Pasco are North Latitude 46–09–37 and West Longitude 119–13–07. Since Pasco is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government has been requested.

DATES: Comments must be filed on or before July 24, 1995 and reply comments on or before August 8, 1995.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Martin L. Gibbs, 1708 Road 52, Pasco, Washington 99301 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 95–71, adopted May 17, 1995, and released June 1, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC

Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–13763 Filed 6–5–95; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 649, 650, and 651

[I.D. 052595B]

New England Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Public meeting.

SUMMARY: The New England Fishery Management Council (Council) will hold a public meeting to consider actions affecting New England fisheries in the exclusive economic zone.

DATES: The meeting will begin on Friday, June 9, 1995, at 9 a.m.

ADDRESSES: The meeting will be held at the Days Inn, Wheeler Road and Middlesex Turnpike, Burlington, MA 01803; telephone: (617) 231–0422.

FOR FURTHER INFORMATION CONTACT: Douglas G. Marshall, Executive Director, (617) 231–0422.

SUPPLEMENTARY INFORMATION: The June 9, 1995, meeting is being convened specifically to address groundfish issues. The Groundfish Committee will report on their recommendations for management alternatives to be included in the public hearing document for Amendment 7 to the Northeast Multispecies Fishery Management Plan. The Council hopes to finalize alternatives to address severely overfished stocks, with particular emphasis on cod, haddock, and yellowtail flounder.

If time allows, the Council may consider action on an Atlantic Herring Preliminary Management Plan and any other business relevant to fishery management plans under the Council's jurisdiction.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Douglas G. Marshall (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: May 31, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–13727 Filed 6–5–95; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 60, No. 108

Tuesday, June 6, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 95–036–1]

Availability of Environment Assessments and Findings of No Significant Impact

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that four environmental assessments and findings of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of permits to allow the field testing of genetically engineered organisms. The environmental assessments provide a basis for our conclusion that the field testing of the genetically engineered organisms will not present a risk of introducing or disseminating a plant pest and will not have a significant impact on the quality of the human environment. Based on its findings of no significant impact, the Animal and Plant Health Inspection Service has determined that environmental impact statements need not be prepared.

ADDRESSES: Copies of the environmental assessments and findings of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday and Friday, except holidays. Persons wishing to inspect those documents are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, BBEP, APHIS, Suite 5B05, 4700 River Road Unit 147, Riverdale, MD 20737–1237; (301) 734–7612. For copies of the environmental assessments and findings of no significant impact, write to Mr. Clayton Givens at the same address. Please refer to the permit numbers listed below when ordering documents.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 (referred to below as the regulations) regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained or a notification acknowledged before a regulated article may be introduced into the United States. The regulations set forth the permit application requirements and the notification procedures for the importation, interstate movement, and release into the environment of a regulated article.

In the course of reviewing each permit application, APHIS assessed the impact on the environment that releasing the organisms under the conditions described in the permit application would have. APHIS has issued permits for the field testing of the organisms listed below after concluding that the organisms will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment. The environmental assessment and findings of no significant impact, which are based on data submitted by the applicants and on a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field tests.

Environmental assessments and findings of no significant impact have been prepared by APHIS relative to the issuance of permits to allow the field testing of the following genetically engineered organisms:

Permit No.	Permittee	Date issued	Organisms	Field test location
94–355–01	Betaseed, Incorporated	3–24–95	Sugar beet plants genetically engineered for resistance to beet necrotic yellow vein virus.	California, Idaho.
95–053–01	PanAmerican Seed Company	4–11–95	Petunia plants genetically engineered for resistance to bacteria and fungi.	Florida, Illinois.
94–362–01	Betaseed, Incorporated	4–25–95	Sugar beet plants genetically engineered for tolerance to the herbicide glufosinate.	Idaho.
95–003–01	U.S. Department of Agriculture, Agricultural Research Service.	5–03–95	Strains of the fungus *Fusarium graminearum* genetically engineered to express altered levels of mycotoxin production.	Illinois, Indiana.

The environmental assessments and findings of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372, 60 FR 6000–6005, February 1, 1995).

Done in Washington, DC, this 30th day of May 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–13666 Filed 6–5–95; 8:45 am]

BILLING CODE 3410–34–M

Forest Service

North Shore Project, Lake Tahoe Basin Management Unit (LTBMU), Washoe County, Nevada; Placer County, California

AGENCY: Forest Service, USDA.

ACTION: Notice, intent to prepare environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement on a proposal to implement ecosystem management principles on approximately 7,000 acres of National Forest System lands, north of Lake Tahoe, within the Lake Tahoe Basin. Proposed activities include harvest of approximately twenty to thirty million board feet of both merchantable and unmerchantable wood products. Dead and dying trees would be cut, and thinning of live trees is also proposed to improve forest health and to reduce fire danger. The proposed action also uses prescribed fire and analyzes post sale treatments, including watershed improvement projects. Stream and riparian area enhancement and wildlife habitat improvements are also planned.

DATES: Agencies and the public are invited to participate at any stage of the process; however, the Forest Supervisor requests that individuals concerned with the scope of the analysis comment by July 1, 1995.

ADDRESSES: Written comments concerning the DEIS should be sent to the responsible official, Forest supervisor, LTBMU, 870 Emerald Bay Road, Suite 1, South Lake Tahoe, California, 96150.

FOR FURTHER INFORMATION CONTACT: Direct questions concerning the proposed action and alternatives to Joe Oden, Interdisciplinary team Leader, at (916) 573–2600 or the above address.

SUPPLEMENTARY INFORMATION: The proposed action would harvest dead, dying, and diseased trees over approximately 7,000 acres of an 24,000-acre study area. Trees would be thinned from overstocked stands, over about 6,000 acres, some of which overlap the salvage acreage, and some of which is separate. Some of the 20 to 30 million board feet removed would be useful lumber; much of the timber removed would have no commercial value.

Trees would be removed from slope less than thirty percent by tractor skidding systems. Trees would be flown from slopes over thirty percent by helicopter. No new permanent roads would be constructed; however, construction of additional temporary access roads and landing sites may be required, as well as reconstruction and restoration of existing roads.

The proposed action includes treatments that would follow tree removal activities. This would include (but is not limited to) site preparation, planting, treatment of slash generated by the project, fuel treatment adjacent to residential areas, closing of temporary and unneeded roads, and restoration of landings. The use of prescribed fire will be analyzed, both as a post-harvest treatment and as a means to reintroduce fire to the ecosystem on untreated areas. Wildlife habitat would be improved by thinning stands of small lodgepole pines and underburning older brushfields.

Heritage (historic archaeological) resources are dispersed throughout the study area. Most are the remains of 19th century logging. Sites determined to be significant will be protected. In addition to mitigation negotiated with the Advisory Council of Historic Preservation, a key component of the analysis is to seek and address enhancement opportunities for representative heritage properties.

Watershed restoration projects and road closures are also included in the proposed action if they are, in the language of the National Environmental Policy Act (NEPA—. "connected", "cumulative" or are "ripe for decision".

These actions are proposed to promote stable ecosystems as described in "desired condition" portions of the Forest Plan and the North Shore Ecosystem Report.

Beginning in the 1850's many of the 200–500 year old pine trees around Lake Tahoe were harvested in support of silver mining activities of the Comstock Lode. Earlier, the forest had consisted of diverse species that better resisted drought and insect attacks. After logging slowed in the 1890's, the area began to revegetate naturally. But a new and different forest grew to replace the old. In the absence of frequently recurring fires, dense thickets of moisture-loving fir trees replaced much of the open pine forest that has been cut. The drought that begin in 1987 weakened and killed many of the fir trees that had sprouted after the massive Comstock cutting.

Forty years of fire suppression has dramatically increased the density of trees and the amount of dead wood, both standing and on the ground. Members of the public have expressed concern over the large numbers of dead trees and the amount of forest fuels now present. Many requests have been made for projects to remove timber to reduce safety hazards, fire danger, and to improve visual quality. Such projects would reduce the "fuel loading" and could decrease the risk and severity of a catastrophic fire. Additionally, thinning of overstocked stands can be an effective way to reduce the risk of future catastrophic insect and disease outbreaks.

The environmental analysis provides the decisionmaker—the LTBMU Forest Supervisor—with an evaluation of what will happen if nothing is done, and what may result from the proposed action and other alternatives. Such disclosure will allow a reasoned choice between management options. If an alternative other than No Action is selected the work should proceed without delay. Delaying the removal of dead, dying, or diseased trees can reduce their commercial value. The anticipated high cost of implementation could deter potential bidders as the soundness of the trees declines. Consequently, project implementation is expected to begin during the spring or summer of 1996.

Over sixty agencies, organizations, and individuals were notified of this proposed project through the LTBMU NEPA Status Report. Public meetings were held on March 10, 13 and 24, as part of the scoping process. Some people also provided written comments. Tahoe Regional Planning agency staff was briefed about the project on March 13, 1995.

Participanfs in the planning process will be sent copies of the draft EIS for the public comment period. Availability of the draft EIS will also be noticed in the **Federal Register** and the Tahoe Daily Tribune, the LTBMU's newspaper of record. Written comments received by July 1, 1994 will be addressed in the draft EIS.

The "no action" alternative (Alternative 1) proposes a continuation of the current types of management activities currently conducted in the study area, without imposing impacts from proposed fuels treatments, logging, wildlife or streamzone enhancements, or watershed improvement work.

Alternative 3 emphasizes fuels treatments to reduce the threat of intense wildfires. It harvests dead, dying, diseased, and overcrowded trees over approximately 3,600 acres, concentrating on areas of high tree mortality and areas adjacent to residential neighborhoods. Removal of 15 to 20 MMBF of both merchantable and unmerchantable material is anticipated. This alternative includes all components of the proposed action, except when modified as described: Tree removal activities and prescribed underburning would be located adjacent to proposed fuelbreaks to maximize fire defensible space strategies.

Alternative 4 represents a "wildlife habitat emphasis." It includes harvests of dead, dying, diseased, and overcrowded trees over approximately 3,000 acres, for the purpose of improving wildlife habitat. Removal of about 10 MMBF of both merchantable and unmerchantable material is anticipated. This alternative includes all components of the proposed action, except as modified: while treatment of activity fuels will occur, the use of prescribed fire as a management tool will be limited to improving wildlife habitat; a greater level of road closures would be implemented to reduce disturbance to wildlife.

Implementation of this project requires permits from the Tahoe Regional Planning Agency (TRPA) and the California Regional Water Quality Control Board, Lahontan Region. Additionally, encroachment permits from the California and Nevada Departments of Transportation will be required for project implementation. Consultation with both the California and Nevada State Historic Preservation Offices (SHPO) and the Advisory Council on Historic Preservation (ACHP) in accordance with the National Historic Preservation Act of 1966 (16 U.S.C. 470 et seq.) is required. Concurrence from the U.S. Fish and Wildlife Service is needed if the Forest Service Biological Assessment results in a "may affect" determination.

The decision on this analysis, pursuant to NEPA, is made by Lake Tahoe Basin Management Unit Forest Supervisor, Robert Harris, as the Forest Service is the lead agency under NEPA. There is no other joint lead agency and no cooperating agencies under NEPA.

The draft EIS is anticipated to be filed with the Environmental Protection Agency and made available to the public for comment in September 1995. The final EIS and its Record of Decision is expected in January 1996. The decision will be appealable under Forest Service regulations found at 36 CFR 215.

The comment period for the draft EIS will be 45 days from the date the Environmental Protection Agency's notice of availability appears in the **Federal Register**. The public will also be informed of the availability of the DEIS by news releases issued to the media in the Lake Tahoe region. It is very important that those interested in this proposed action participate at that time. To be the most helpful, comments on the draft EIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see the Council on Environmental Quality Regulations for implementing the procedural provisions of NEPA at 40 CFR 1503.3).

In addition, Federal court decisions have established that reviewers of draft EIS' must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions. "Vermont Yankee Nuclear Power Corp. v. NRDC," 435 U.S. 519, 553 (1978). Environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final EIS. "City of Angoon v. Hodel," (9th Circuit, 1986) and "Wisconsin Heritages, Inc. v. Harris," 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available for the Forest Service at a time when it can meaningfully consider them and respond to them in the final.

Dated: May 23, 1995.

Robert E. Harris,

Forest Supervisor.

[FR Doc. 95–13725 Filed 6–5–95; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Traffic Act of 1930, as amended, may request, in accordance with section 353.22 or 355.22 of the Department of Commerce (the Department) Regulations (19 CFR 353.22/355.22 (1993)), that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity To Request a Review

Not later than June 30, 1995, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in June for the following periods:

	Period
Antidumping Duty Proceedings	
Belgium: Sugar (A–351–077)	06/01/94–05/31/95
Canada:	
Oil Country Tubular Goods (A–122–506)	06/01/94–05/31/95
Red Raspberries (A–122–401)	06/01/94–05/31/95
France:	
Calcium Aluminate Flux (A–427–812)	03/25/94–05/31/95
Large Power Transformers (A–427–030)	06/01/94–05/31/95
Sugar (A–427–078)	06/01/94–05/31/95
Germany:	
Barium Carbonate (A–428–061)	06/01/94–05/31/95
High-Tenacity Rayon Filament Yarn (A–428–810)	06/01/94–05/31/95
Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured (A–428–802)	06/01/94–05/31/95
Sugar (A–428–082)	06/01/94–05/31/95
Italy:	
Large Power Transformers (A–475–031)	06/01/94–05/31/95
Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured (A–475–802)	06/01/94–05/31/95

	Period
Japan:	
Fishnetting of Man-Made Fibers (A–588–029)	06/01/94–05/31/95
Forklift Trucks (A–588–703)	06/01/94–05/31/95
Grain-Oriented Electrical Steel (A–588–831)	02/09/94–05/31/95
Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured (A–588–807)	06/01/94–05/31/95
Large Power Transformers (A–588–032)	06/01/94–05/31/95
Nitrile rubber (A–588–706)	06/01/94–05/31/95
Pet Film (A–588–814)	06/01/94–05/31/95
Korea: Pet Film (A–580–807)	06/01/94–05/31/95
Netherlands: Aramid Fiber Formed of Poly-Phenylene Terephthalamide (A–421–805)	12/16/93–05/31/95
New Zealand: Fresh Kiwifruit (A–614–801)	06/01/94–05/31/95
Romania: Tapered Roller Bearings and Parts Thereof, Finished or Unfinished (A–485–602)	06/01/94–05/31/95
Russia: Ferrosilicon (A–821–804)	06/01/94–05/31/95
Singapore: Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured (A–559–803)	06/01/94–05/31/95
Sweden: Stainless Steel Plate (A–401–040)	06/01/94–05/31/95
Taiwan:	
Carbon Steel Plate (A–583–003)	06/01/94–05/31/95
Oil Country Tubular Goods (A–583–505)	06/01/94–05/31/95
Stainless Steel Butt-Weld Pipe Fittings (A–583–816)	06/01/94–05/31/95
Certain Helical Spring Lock Washers (A–583–020)	06/01/94–05/31/95
The Hungarian People's Republic: Tapered Roller Bearings and Parts Thereof, Finished or Unfinished (A–437–601)	06/01/94–05/31/95
The People's Republic of China:	
Sparklers (A–570–804)	06/01/94–05/31/95
Tapered Roller Bearings and Parts Thereof, Finished or Unfinished (A–570–601)	06/01/94–05/31/95
Silicon Metal (A–570–806)	06/01/94–05/31/95
Venezuela: Ferrosilicon (A–307–807)	06/01/94–05/31/95
Countervailing Duty Proceedings	
Italy: Grain-Oriented Electrical Steel (C–475–812)	02/01/94–12/31/94

In accordance with sections 353.22(a) and 355.22(a) of the regulations, an interested party as defined by section 353.2(k) may request in writing that the Secretary conduct an administrative review. For antidumping reviews, the interested party must specify for which individual producers or resellers covered by an antidumping finding or order it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or resellers. If the interested party intends for the Secretary to review sales of merchandise by a reseller (or a producer if that producer also resells merchandise from other suppliers) which were produced in more than one country of origin, and each country of origin is subject to a separate order, then the interested party must state specifically which reseller(s) and which countries of origin for each reseller the request is intended to cover.

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B–099, U.S. Department of Commerce, Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping Compliance, Attention: Pamela Woods, in room 3065 of the main Commerce Building. Further, in accordance with section 353.31(g) or 355.31(g) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review," for requests received by June 30, 1995. If the Department does not receive, by June 30, 1995, a request for review of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute, but is published as a service to the international trading community.

Dated: May 31, 1995.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 95–13825 Filed 6–5–95; 8:45 am]

BILLING CODE 3510–DS–M

[A–583–009]

Color Television Receivers, Except for Video Monitors, From Taiwan; Recision of Revocation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of recision of revocation.

SUMMARY: On March 8, 1995, the United States Court of International Trade (CIT) ordered the Department of Commerce (the Department) to rescind its revocation of Capetronic (BSR) Ltd. (Capetronic), with respect to the antidumping duty order on color television receivers, except for video monitors, from Taiwan. Pursuant to the order of the CIT, we are rescinding our revocation of Capetronic.

EFFECTIVE DATE: March 18, 1995.

FOR FURTHER INFORMATION CONTACT:

Michael J. Heaney or John Kugelman, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–4475 or 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 9, 1990, the Department issued a revocation of Capetronic based upon no sales at less than fair value for the three consecutive periods October 19, 1983 through March 31, 1985, April 1, 1985 through March 31, 1986, and April 1, 1986 through March 31, 1987 (55 FR 47093). On October 21, 1994, the CIT affirmed the Department's results of redetermination pursuant to court remand for the period October 19, 1983 through March 31, 1985. The Department calculated a rate of 1.36 percent for Capetronic in that redetermination, and we published an amended final results of review on March 3, 1995 (60 FR 11955). On March 8, 1995, the CIT issued an order directing the Department to rescind its previous revocation of Capetronic from the antidumping duty order on color television receivers, except for video monitors, from Taiwan (*Tatung Company* v. *United States* (Court No., 90–12–00645 (March 8, 1995)) (*Tatung*)), because as a result of the redetermination pursuant to court remand Capetronic did not have three consecutive years of no sales at less than fair value.

As a result of our review covering the period April 1, 1986 through March 31, 1987, we calculated a dumping margin of 0.20 percent for Capetronic. Because Capetronic's rate was *de minimis* under 19 CFR 353.6, Capetronic's cash deposit requirement on shipments entered, or withdrawn from warehouse, for consumption on or after March 18, 1985, is zero.

Recision of Revocation

Accordingly, the Department hereby rescinds its revocation with respect to Capetronic, and reinstates Capetronic in the antidumping duty order on color television receivers, except for video monitors, from Taiwan.

Dated: May 26, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–13826 Filed 6–5–95; 8:45 am]

BILLING CODE 3510–DS–M

Determination Not To Revoke an Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Determination not to revoke an antidumping duty order.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the antidumping duty order listed below.

EFFECTIVE DATE: June 6, 1995.

FOR FURTHER INFORMATION CONTACT: Michael Panfeld or the analyst listed under Antidumping Proceeding at: Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, N.W., Washington, D.C. 20230, telephone (202) 482–4737.

SUPPLEMENTARY INFORMATION: The Department of Commerce (the Department) may revoke an antidumping duty order or finding or terminate a suspended investigation, pursuant to 19 CFR 353.25(d)(4)(iii), if no interested party has requested an administrative review for four consecutive annual anniversary months and no domestic interested party objects to the revocation or requests an administrative review.

We had not received a request to conduct an administrative review for the most recent four consecutive annual anniversary months. Therefore, pursuant to § 353.25(d)(4)(i) of the Department's regulations, on May 4, 1994, we published in the **Federal Register** a notice of intent to revoke the antidumping duty order on electrolytic manganese dioxide from Greece and served written notice of the intent to each domestic interested party on the Department's service list. Within the specified time frame, we received objections from domestic interested parties to our intent to revoke this antidumping duty order. Therefore, because domestic interested parties objected to our intent to revoke, we no longer intend to revoke this antidumping duty order.

Respondents in electrolytic manganese dioxide from Greece have requested that the Department revoke the antidumping duty order in this case in accordance with the Court of International Trade's (CIT) holding in *Kemira Fibres Oy* v. *United States*, 861 F. Supp. 144 (Ct. Int'l Trade 1994). The CIT held that, pursuant to 19 CFR 353.25(d)(4)(iii), if no interested party objects to the Department's notice of intent to revoke by the last day of the fifth anniversary month of the order, then the Department must revoke the order, regardless of the time limit for objections specified by the Department in its notice of intent to revoke. The anniversary month for the antidumping duty order on electrolytic manganese dioxide from Greece is April. On May 4, 1994, the Department published its notice of intent to revoke the order on electrolytic manganese dioxide from Greece, and provided interested parties 30 days from the date of the notice within which to file objections. Interested parties objected to the Department's notice on June 2, 1994.

Because no interested party objected to the Department's notice of intent to revoke by the last day of the fifth anniversary month of the above-referenced antidumping duty order, respondents request that the Department revoke the order in accordance with *Kemira Fibres Oy*.

The Department respectfully disagrees with the holding of *Kemira Fibres Oy*, and has appealed the decision to the U.S. Court of Appeals for the Federal Circuit (Federal Circuit). On appeal, the Department argued to the Federal Circuit that 19 CFR 353.25(d) requires issuance of the notice of intent to revoke as a prerequisite to revocation of an antidumping duty order. The Department further argued that the time limits specified in 19 CFR 353.25(d)(4) are provided as a guide for the Department, and, therefore, any belated issuance of the notice of intent to revoke does not limit the Department's authority to honor an objection to revocation. Therefore, pending the outcome of the Federal Circuit's decision in this case, the Department will continue to maintain this order for which an objection was made within the time limit specified by the Department in its notice of intent to revoke.

Dated: May 30, 1995.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 95–13824 Filed 6–5–95; 8:45 am]

BILLING CODE 3510–DS–P

Determination Not To Revoke Antidumping Duty Orders and Findings Nor To Terminate Suspended Investigations

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Determination not to revoke antidumping duty orders and findings nor to terminate suspended investigations.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the antidumping duty orders and findings nor to terminate the suspended investigations listed below.

EFFECTIVE DATE: June 6, 1995.

FOR FURTHER INFORMATION CONTACT: Michael Panfeld or the analyst listed

under Antidumping Proceeding at: Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, N.W., Washington, D.C. 20230, telephone (202) 482–4737.

SUPPLEMENTARY INFORMATION: The Department of Commerce (the Department) may revoke an antidumping duty order or finding or terminate a suspended investigation, pursuant to 19 CFR 353.25(d)(4)(iii), if no interested party has requested an administrative review for four consecutive annual anniversary months and no domestic interested party objects to the revocation or requests an administrative review.

We had not received a request to conduct an administrative review for the most recent four consecutive annual anniversary months. Therefore, pursuant to § 353.25(d)(4)(i) of the Department's regulations, on March 31, 1995, we published in the **Federal Register** a notice of intent to revoke these antidumping duty orders and findings and to terminate the suspended investigations and served written notice of the intent to each domestic interested party on the Department's service list in each case. Within the specified time frame, we received objections from domestic interested parties to our intent to revoke these antidumping duty orders and findings and to terminate the suspended investigations. Therefore, because domestic interested parties objected to our intent to revoke or terminate, we no longer intend to revoke these antidumping duty orders and findings or to terminate the suspended investigations.

Antidumping Proceeding

A–122–085
Canada
Sugar and Syrups
Objection Date: April 5, 1995; April 21, 1995
Objector: American Sugar Cane League et. al.

A–484–801
Greece
Electrolytic Manganese Dioxide
Objection Date: April 13, 1995; April 20, 1995
Objector: Kerr-McGee Chemical Corp., Chemetals Inc.

A–588–401
Japan
Calcium Hypochlorite
Objection Date: April 27, 1995
Objector: Olin Corporation

A–779–602
Kenya
Standard Carnations
Objection Date: April 24, 1995
Objector: Floral Trade Council

Dated: May 26, 1995.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 95–13823 Filed 6–5–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–570–838]

Notice of Preliminary Critical Circumstances Determination: Honey From the People's Republic of China (PRC)

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

EFFECTIVE DATE: June 6, 1995.

FOR FURTHER INFORMATION CONTACT: Karla Whalen or David J. Goldberger, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone (202) 482–6309 and (202) 482–4136, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

Preliminary Critical Circumstances Determination

The Department of Commerce (the Department) published its preliminary determination of sales at less-than-fair-value in this investigation on March 20, 1995 (60 FR 14725). On April 27, 1995, petitioners in this investigation alleged that critical circumstances exist with respect to imports of honey from the PRC. In accordance with 19 CFR 353.16(b)(2)(ii), since this allegation was filed later than 20 days before the scheduled date of the preliminary determination, we must issue our preliminary critical circumstances determination not later than 30 days after the allegation was filed.

Section 733(e)(1) of the Tariff Act of 1930, as amended, provides that the Department will determine that there is a reasonable basis to believe or suspect that critical circumstances exist if:

(A) (i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, *or*

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, *and*

(B) There have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

Imputed Knowledge of Dumping

To determine whether the persons by whom or for whose account the merchandise was imported knew, or should have known, that the exporter was selling the merchandise which is the subject of the investigation at less-than-fair-value, the Department's practice is to impute knowledge of dumping when the estimated margins are of such a magnitude that the importer should have reasonably known that dumping exists with regard to the subject merchandise. Normally we consider estimated margins of 25 percent or greater on sales to unrelated parties and margins of 15 percent or greater on sales through related parties to be sufficient to impute such knowledge. (*See, e.g., Final Determination of Sales at Less Than Fair Value: Silicon Metal from China* (56 FR 16570, April 23, 1991) and *Final Determination of Sales at Less Than Fair Value: Extruded Rubber Thread from Malaysia* (57 FR 38465, August 25, 1992). In this investigation, we found preliminary dumping margins ranging between 127.52 and 157.16 percent. Accordingly, we find that the importers either knew, or should have known, that the imports of honey were being sold at less-than-fair-value.

Because we determine that importers of this merchandise knew, or should have known, that the merchandise was being sold at less-than-fair-value, we do not need to address the question of whether there is a history of dumping of the subject merchandise.

Massive Imports

Under 19 CFR 353.16(f) and 353.16(g), we normally consider the following to determine whether imports have been massive over a relatively short period of time: 1) volume and value of the imports; 2) seasonal trends; and 3) the share of domestic consumption accounted for by the imports.

When examining volume and value data, the Department normally compares the export volume for equal periods immediately preceding and following the filing of the petition (the "pre-filing period" and the "post-filing period"). Under 19 CFR 353.16(f)(2), unless the imports in the post-filing period have increased by at least 15 percent over the imports during the pre-filing period, we will not consider the imports to have been "massive."

Because a determination of critical circumstances should be based on company-specific shipment information (*See, e.g., Final Determination of Sales at Less-Than-Fair-Value: Certain Hot Rolled Carbon Steel Flat Products, Certain Cold Rolled Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate from Belgium*, 58 FR 37083 (July 9, 1993)), we requested shipment information from the four companies for which we calculated preliminary margins (*See, Preliminary Determination of Sales at Less-Than-Fair-Value: Honey From the People's Republic of China* (60 FR 14725, March 20, 1995)). These four companies, (1) Kunshan Xinlong Foods, Ltd. (Xinlong); (2) Jiangsu Native Produce Import and Export (Jiangsu); (3) Jiangxi Native Produce Import and Export (Jiangxi); and (4) Zhejiang Native Produce & Animal By-product Import and Export (Zhejiang), provided shipment information for the period from January, 1993 through April 1995. Pursuant to 19 CFR 353.16(g), in making a critical circumstances determination, the Department normally considers the period beginning on the first day of the month of the initiation and ending at least three months later. The Department considers this period because it is the period immediately prior to a preliminary determination in which exporters of the subject merchandise could take advantage of the knowledge of the dumping investigation to increase exports to the United States without being subject to antidumping duties (*see, e.g., Final Determination of Sales at Less Than Fair Value of Certain Internal-Combustion, Industrial Forklift Trucks from Japan* (53 FR 12552, April 15, 1988)). For purposes of this preliminary determination of critical circumstances, we are using as our comparison period five months prior to and five months subsequent to the filing of the petition in this investigation. As the petition was filed in the first half of October 1994, per Department practice, this month is considered to be part of the "post-petition" period. Thus, the Department analyzed the company specific shipment information for the pre-petition period, May 1994 through September 1994, and the post-petition period, October 1994 through February 1995.

The data we received indicates that Xinlong, Jiangxi, and Zhejiang's shipment of honey to the U.S. decreased over the relevant time period and the increase in Jiangsu's shipments exceeded 15 percent.

Other Factors

Our analysis pursuant to 19 CFR 353.16(f)(1)(ii) indicated that seasonal trends were not a significant factor explaining the increase in Jiangsu's shipments. We were unable to consider the share of U.S. consumption represented by imports from Jiangsu, pursuant to 353.16(f)(1)(iii), because we have insufficient information with regard to Jiangsu's specific market share of domestic consumption.

Jiangsu argues that the increase in its shipments during the post-petition period was a result of the new Chinese export quota system which became effective in April 1994. Specifically, Jiangsu claims that it was forced to ship the remainder of its honey quota by year-end 1994, or it would forfeit the right to export its unused quota. As a result of these circumstances, Jiangsu's shipments worldwide increased in November and December 1994. Jiangsu argues that because its shipments increased in the post-petition period for reasons other than an intent to import large amounts prior to suspension of liquidation, the Department should find that these do not constitute "massive" imports for purposes of critical circumstances. We believe the evidence on the record is insufficient to support the legal and factual bases for this argument, but may reconsider this argument based on verification findings.

Conclusion

We find that critical circumstances do not exist for Xinglong, Jiangxi, and Zhejiang because they did not have massive imports over a relatively short period of time. For Jiangsu, we find that critical circumstances do exist due to: (1) Imputed knowledge of dumping; and (2) Massive imports as evidenced by a significant increase in shipments between the pre- and post-petition comparison period. For the exporters whose responses were not analyzed,[1] we find that critical circumstances do not exist for the following reason. Due to the large number of responding companies in this case, the Department selected only four exporting companies and their respective producers to analyze in the investigation. The Department does not believe it is appropriate to penalize respondents whose individual data have not been analyzed due to the Department's own administrative constraints. Furthermore, based on an aggregate analysis of the four respondents from which we requested shipment data, we conclude that the increase in shipment data for the pre- and post-petition comparison periods is not larger than 15 percent. For all PRC companies which did not respond to the Department's questionnaire, we have made the determination, as BIA, that "massive" imports exist, and we therefore find that critical circumstances do exist for all PRC firms not otherwise named in this notice.

[1] Heilongjiang Native Produce and Animal By-product Import and Export
Inner Mongolia Native Produce and Animal By-product
Chang Cheng Industrial Co. Ltd.
Shaanxi Native Produce Import and Export
Kunshan Foreign Trade Co.
China (TUHSU) Super Food Import and Export
Hubei Native Produce Import and Export
Tianjin Native Produce Import and Export
Chanting Native Produce Import and Export
Qinghai Cereals and Oils Import and Export
Shanghai Native Produce Import and Export
Guangxi Cereals, Oils and Foodstuffs Import and Export Corporation
Sichuan Native Produce Import and Export
China (TUHSU) Flavors and Fragrances Import and Export
Shandong Cereals and Oils Import and Export
Ningbo Native Produce Import and Export
Anhui Cereals & Oils Import and Export
Jiangsu Sweet Foods, Ltd.
Hebei Native Produce Import and Export
Anhui Medicines and Health Produce Import and Export
Xian Native Produce and Animal By-product Import and Export Liaoning Native Produce Import and Export
Liaoning Native Produce Import and Export
Anhui Native Produce Import and Export
Henan Native Produce Import and Export

Final Critical Circumstances Determination

We will make a final determination and address any comments concerning critical circumstances when we make our final determination in this investigation by August 2, 1995.

Suspension of Liquidation

In accordance with section 733(e)(2) of the Act, we are directing the Customs Service to suspend liquidation of all entries of honey from Jiangsu Native Produce Import and Export of the PRC and all other PRC companies not specifically named above that are entered, or withdrawn from warehouse, for consumption on or after December 20, 1994 (*i.e.*, 90 days prior to the date of publication of our preliminary determination in the **Federal Register**). The Customs Service shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margins, as shown below. This suspension of liquidation will remain in effect until further notice.

Producer/manufacturer/exporter	Average margin percentage
Jiangsu Native Produce Import and Export	127.52
Kunshan Xinlong Food, Ltd	*146.37

Producer/manufacturer/exporter	Average margin percentage
Jiangxi Native Produce Import and Export	*131.86
Zhejiang Native Produce & Animal By-product Import and Export	*131.86
All PRC	157.16

The asterisk indicates the rate for continuing the suspension of liquidation for those exporters found preliminarily to have negative critical circumstances.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination.

Public Comment

Since this preliminary critical circumstances determination is being made after the due date for public comment on our preliminary determination of sales at less than fair value in this case, we will accept written comments on this preliminary determination of critical circumstances until the date in which case briefs are to be filed.

This determination is published pursuant to section 733(f) of the Act.

Dated: May 30, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–13822 Filed 6–5–95; 8:45 am]

BILLING CODE 3510–DS–P

North Carolina State University; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This is a decision pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

DECISION: Denied. Applicant has failed to establish that domestic instruments of equivalent scientific value to the foreign instrument for the intended purposes are not available.

REASONS: Section 301.5(e)(4) of the regulations requires the denial of applications that have been denied without prejudice to resubmission if they are not resubmitted within the specified time period. This is the case for the following docket.

Docket Number: 94–103. *Applicant:* North Carolina State University, Campus Box 7212, Raleigh, NC 27695-7212. *Instrument:* Digital Oxygen Electrode. *Manufacturer:* Rank Brothers Ltd., United Kingdom. *Date of Denial without Prejudice to Resubmission:* March 8, 1995.

Frank W. Creel

Director, Statutory Import Programs Staff

[FR Doc. 95–13820 Filed 6–5–95; 8:45 am]

BILLING CODE 3510–DS–F

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 95–030. *Applicant:* University of Pennsylvania, Smell and Taste Center, 3400 Spruce Street, Philadelphia, PA 19104. *Instrument:* Olfactometer, Transformation Unit and Compressor-Vacuum-Unit, Model OM/4. *Manufacturer:* Heinrich Burghart, Germany. *Intended Use:* The instrument will be used to provide accurate and pulsed computer-controlled presentations of an odorant stimulus to the nares of a human being to allow for the recording of electrical brain waves in response to these presentations. The objectives will be achieved through psychophysical measurement, electrophysiological measurement, and computer-controlled generation of very accurate and timed pulses of odorants for evoked potential. The instrument will also be used for educational purposes in the course Interdisciplinary 200 (ID 200). *Application Accepted by Commissioner of Customs:* April 10, 1995.

Docket Number: 95–032. *Applicant:* University of Wisconsin, 1300 University Ave., Madison, WI 53706. *Instrument:* Electron Microscope, Model CM120. *Manufacturer:* Philips, The Netherlands. *Intended Use:* The instrument will be used for experiments related to studying biological phenomena at the ultrastructural level at common electron microscope magnifications. In addition, the instrument will be used in the course Anatomy 660: Introduction to Electron Microscopy to teach faculty, staff and students to operate the microscope to image the specimens prepared to achieve the research goals. *Application Accepted by Commissioner of Customs:* April 10, 1995.

Docket Number: 95–033. *Applicant:* University of South Carolina, Department of Geological Sciences, Columbia, SC 29208. *Instrument:* Mass Spectrometer, Model Optima. *Manufacturer:* Fisons Instruments, United Kingdom. *Intended Use:* The instrument will be used to study the carbon and oxygen isotopic composition of samples of calcite and aragonite, the carbon and nitrogen isotopic composition of marine organic matter, and the carbon isotopic composition of carbon dioxide dissolved in water. The particular focus of the analysis will be on the carbonate shells of forminifera from small samples of marine and lacustrine sediments and on carbon isotopes from both seawater and freshwater samples. In addition, the instrument will be used for educational purposes in the course Geology 715, Stable Isotope Geochemistry to introduce graduate students to different applications of stable geochemistry in the research environment. *Application Accepted by Commissioner of Customs:* April 13, 1995.

Docket Number: 95–034. *Applicant:* Argonne National Laboratory, 9700 S. Cass Avenue, Argonne, IL 60439. *Instrument:* Electron Microscope, Model H-9000NAR. *Manufacturer:* Hitachi, Japan. *Intended Use:* The instrument will be used for studies of pure metals, metallic alloys, semiconductors, and minerals and other ceramics in order to understand the physical origin and rules for occurrence of the phenomena under study. *Application Accepted by Commissioner of Customs:* April 13, 1995.

Docket Number: 95–035. *Applicant:* University of Texas Medical Branch, 301 University Blvd., Galveston, TX 77555. *Instrument:* Electron Microscope, Model CM100. *Manufacturer:* Philips, The Netherlands. *Intended Use:* The instrument will be used by the faculty and staff for a variety of ongoing scientific research activities as listed below:

(a) Analysis of Spotted Fever Rickettsial Antigens,
(b) Mechanisms of Toxic Injury in Vascular Tissue,
(c) Transplacental Transfer of Asbestos in Humans,

(d) Hyperthyroidism Potentiates Aging Effects in Heart,
(e) Bile Canaliculi Injury; Comparing Function to Structure,
(f) Dolphin Mortality an Indicator of Environmental Degradation and
(g) Splenic Toxicity of Aniline.
Application Accepted by Commissioner of Customs: April 19, 1995.

Docket Number: 95–036. *Applicant:* University of South Carolina, Department of Chemistry and Biochemistry, 730 S. Main Street, Columbia, SC 29208. *Instrument:* ICP Mass Spectrometer, Model ELEMENT. *Manufacturer:* Finnigan MAT GmbH, Germany. *Intended Use:* The instrument will be used for studies of trace elements and their isotopes in environmental, geological and marine samples with complex background matrices. In addition, the instrument will be used as a supplement to several courses such as "Environmental and Analytical Chemistry" and seminars on instrument operation to prepare students to analyze their own samples and acquire accurate and precise data. *Application Accepted by Commissioner of Customs:* April 24, 1995.

Docket Number: 95–037. *Applicant:* University of Miami, Chemistry, 1301 Memorial Dr., Room 315, Coral Gables, FL 33145. *Instrument:* L-B Film Deposition Apparatus with Ellipsometric Microscope. *Manufacturer:* Nippon Laser & Electronics Lab., Japan. *Intended Use:* The instrument will be used for studies of lipids, phospholipids, fatty acids, proteins, pigments and other molecules that are surfactant and may be spread at the air/water interface. The objective of these studies is to obtain better knowledge of the aggregation form of these molecules in a molecular model (monolayer) to understand phenomena like membrane rigidity, charge transport, reaction rate, etc. as they take place in living organisms. *Application Accepted by Commissioner of Customs:* April 25, 1995.

Docket Number: 95–039. *Applicant:* Richard L. Roudebush VA Medical Center, 1481 West Tenth Street, Indianapolis, IN 46202. *Instrument:* Electron Microscope, Model CM120. *Manufacturer:* Philips, The Netherlands. *Intended Use:* The instrument will be used in experiments involving collection of surgical, autopsy, and cytologic specimens for evaluation at the ultrastructural level and correlation of these findings with light microscopy and clinical findings to eventually render a pathologic description and diagnosis. In addition, the instrument will be used to provide hands-on experience for pathology residents, fellows, and medical students in visualizing ultrastructural criteria necessary for making a variety of known pathologic diagnoses. *Application Accepted by Commissioner of Customs:* April 28, 1995.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 95–13819 Filed 6–5–95; 8:45 am]

BILLING CODE 3510–DS–F

National Institute of Standards and Technology

[Docket No. 950519137–5137–01]

Manufacturing Extension Partnership Program

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice of availability of funds.

SUMMARY: The National Institute of Standards and Technology invites proposals from qualified organizations for funding projects to provide manufacturing extension services to small- and medium-sized manufacturers in the United States. These projects correspond to the Manufacturing Technology Centers component of the Manufacturing Extension Partnership (MEP).

Manufacturing extension centers must be affiliated with a U.S.-based not-for-profit institution or organization. Support may be provided for a period not to exceed six years. Applicants are required to provide 50% or more of the operating costs for providing these manufacturing extension services in year 1 through 3 and an increasing percentage in years 4 through 6.

DATES: Proposals from qualified applicants must be received at the address below by August 7, 1995. Selection of awards will be made in September 1995.

ADDRESSES: Applicants must submit one signed original and six (6) copies of their proposal along with a Standard Form 424, 424–A, and 424–B (Rev 4–92) and Form CD–511 to the Manufacturing Extension Partnership, Building 301, Room C121, National Institute of Standards and Technology, Gaithersburg, MD 20899–0001. Plainly mark on the outside of the package that it contains a manufacturing extension center proposal.

FOR FURTHER INFORMATION CONTACT: For information regarding this announcement, contact Roger Kilmer of the Manufacturing Extension Partnership by calling (301) 975–5020; or by mailing information requests to the Manufacturing Extension Partnership, Building 301, Room C121, National Institute of Standards and Technology, Gaithersburg, Maryland, 20899–0001. Information packets, which include background materials on MEP, existing centers and the necessary application forms, should be requested via a one page fax sent to (301) 963–6556. Please include name, organization, mailing address, telephone number, and fax number on this request.

SUPPLEMENTARY INFORMATION:

Catalog of Federal Domestic Assistance

The catalog number for the award of Manufacturing Technology Centers funds in the Catalog of Federal Domestic Assistance is 11.611.

Background

In accordance with the provisions of Section 5121 of the Omnibus Trade and Competitiveness Act of 1988 (Public Law 100–418), codified in 15 U.S.C. § 278k, and final rule 15 CFR 290 published September 17, 1990 and amendment published May 2, 1994, NIST will provide assistance for the creation and support of manufacturing extension centers. The objective of these centers is to enhance productivity, technological performance, and strengthen the global competitiveness of small- and medium-sized U.S.-based manufacturing firms.

These manufacturing extension centers will become part of the MEP national system of extension service providers. Currently, MEP is managing 44 centers located throughout the United States. Information regarding MEP and these centers is provided in the information packet which can be obtained as explained above.

Funding Availability

It is anticipated that approximately $41,000,000 will be available to support manufacturing extension centers under this program. The funding level for individual awards is not prescribed. The funding requested by the applicant should be directly related to the level of activity of the center, which is a function of the number of manufacturers in the designated service region, and to the availability of applicant-provided cash and in-kind contributions to be used as cost share.

Invitation for Proposals

Proposals must be received at the address listed above by August 7, 1995.

Award Period

The projects awarded under this program will have an initial performance period of one year. These

projects are renewable on an annual basis up to a maximum of six (6) years subject to the review requirements described in 15 CFR 290.8. Renewal of these projects shall be at the sole discretion of NIST and shall be based upon satisfactory performance, priority of the need for the service, existing legislative authority, and availability of funds.

Cost Share Requirements

A cost sharing contribution from the applicant is required. The applicant must provide 50% or more of the total capital, operating and maintenance costs for the center for years 1 through 3. The applicant's cost share requirement increases to 60% or more in year 4 and 66⅔% or more in years 5 and 6. The applicant's share of the center expenses may include cash and in-kind contributions. In each of the six years, at least 50% of the applicant's total cost share (cash plus in-kind) must be in cash. The source of the cost share, both cash and in-kind, must be documented in the budget submitted in the proposal.

In all cases, a contribution will only be treated as cash cost share if the center director has suitable authority and discretion to control its expenditure. Acceptable cash cost share, which must come from non-federal sources, includes:

—Dollar contributions from state, country, city, industrial or other sources
—Income from fees charged for services performed
—Revenue from licensing, royalties, dividends, and capital gains
—Contributions of full-time personnel from other organizations
—Other contributions as approved by NIST

To qualify as in-kind cost share, the claimed items must be directly related to the tasks to be accomplished and must be utilized solely for the center activities or the cost share must be prorated based upon the percentage of time they are used for these activities. Acceptable in-kind cost share includes:

—Contributions of full-time personnel for which the center director lacks suitable authority and discretion to qualify as cash cost share
—Contributions of part-time personnel from other organizations
—Contributions of equipment, software, rental value of office, laboratory or other space
—Other contributions as approved by NIST

Proposal Content

The proposal must, at a minimum, include the following:

A. An executive summary of the proposed project, consistent with the Evaluation Criteria stated in this notice.
B. A description of the proposed project, sufficient to permit evaluation of the proposal, in accordance with the proposal Evaluation Criteria stated in this notice.
C. A detailed budget for the proposed project which breaks out all expenses for year 1 of operation and identifies all sources of funds to pay these expenses.
D. A budget outline for annual costs and sources of funds for years 2 through 6. It is expected, especially for newly created centers, that year one costs are lower because of a ramp-up of operations from start-up to the point where the center is fully operational and services are being provided. If such a ramp-up of operations is to occur, this should be reflected in the budget outline for years 2 through 6.
E. A description of the qualifications of key personnel who will be assigned to work on the proposed project.
F. A statement of work that discusses the specific tasks to be carried out, including a schedule of measurable events and milestones.
G. A Standard Form 424, 424–A, and 424–B (Rev 4–92) prescribed by OMB circular A–110 and Form CD–511, Certification Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying. The 424 series of forms and form CD–511 will not be considered part of the page count of the proposal.

Proposal Format

The proposal must not exceed 25 typewritten pages in length. The proposal must contain both technical and cost information. The proposal page count shall include every page, including pages that contain words, table of contents, executive summary, management information and qualifications, resumes, figures, tables, and pictures. All proposals shall be printed such that pages are single-sided, with no more than fifty-five (55) lines per page. Use 21.6 x 27.9 cm (8½" x 11") paper or A4 metric paper. Use an easy-to-read font of not more than about 5 characters per cm (fixed pitch font of 12 or fewer characters per inch or proportional font of point size 10 or larger). Smaller type may be used in figures and tables, but must be clearly legible. Margins on all sides (top, bottom, left and right) must be at least 2.5 cm. (1"). The applicant may submit a separately bound document of appendices containing other supporting information. The proposal should be self-contained and not rely on the appendices for meeting criteria. Excess pages in the proposal will not be considered in the evaluation. Applicants must submit one signed original plus six (6) copies of the proposal.

Manufacturing Extension Centers

a. Project Objective

The objective of the projects funded under this program is to provide manufacturing extension services to small- and medium-sized manufacturers in the United States. These services are provided through the coordinated efforts of a regionally-based manufacturing extension center and local technology resources.

The management and operational structure of the manufacturing extension center is not prescribed, but should be based upon the characteristics of the manufacturers in the region and locally available resources. The center should include plans for integration into the MEP national system and linkages to appropriate national resources.

The focus of the center is to provide those manufacturing extension services required by the small- and medium-sized manufacturers in their service region using the most cost effective sources for those services. It is not the intent of this program that centers perform research and development.

b. Evaluation Criteria

All qualified proposals will be evaluated and rated on the basis of the following criteria by an impartial review panel. Each proposal should address all four evaluation criteria, which are assigned equal weighting. Selection will be based upon the total evaluation score of qualified proposals.

(1) *Identification of Target Firms in Proposed Region.* Does the proposal define an appropriate service region with a large enough population of target firms of small- and medium-sized manufacturers which the applicant understands and can serve, and which is not presently served by an existing center?

(i) Market Analysis. Demonstrated understanding of the service region's manufacturing base, including business size, industry types, product mix, and technology requirements.

(ii) Geographical Location. Physical size, concentration of industry, and economic significance of the service region's manufacturing base. Geographical diversity of the centers will be a factor in evaluation of proposals; a proposal for a center located near an existing center may be considered only if the proposal is unusually strong and the population of manufacturers and the technology to be addressed justify it.

(2) *Technology Resources.* Does the proposal assure strength in technical personnel and programmatic resources, full-time staff, facilities, equipment, and linkages to external sources of technology to develop and transfer technologies related to NIST research results and expertise in the technical areas noted in these procedures?

(3) *Technology Delivery Mechanisms.* Does the proposal clearly and sharply define an effective methodology for delivering advanced manufacturing technology to small- and medium-sized manufacturers?

(i) Linkages. Development of effective partnerships or linkages to third parties such as industry, universities, nonprofit economic organizations, and state governments who will amplify the center's technology delivery to reach a large number of clients in its service region.

(ii) Program Leverage. Provision of an effective strategy to amplify the center's technology delivery approaches to achieve the proposed objectives as described in 15 CFR 290.3(e).

(4) *Management and Financial Plan.* Does the proposal define a management structure and assure management personnel to carry out development and operation of an effective center?

(i) Organizational Structure. Completeness and appropriateness of the organizational structure, and its focus on the mission of the center. Assurance of full-time top management of the center.

(ii) Program Management. Effectiveness of the planned methodology of program management.

(iii) Internal Evaluation. Effectiveness of the planned continuous internal evaluation of program activities.

(iv) Plans for Financial Matching. Demonstrated stability and duration of the applicants funding commitments as well as the percentage of operating and capital costs guaranteed by the applicant. Identification of matching fund sources and the general terms of the funding commitments. Evidence of the applicant's ability to become self-sustaining in six years.

(v) Budget. Suitability and focus of the applicants detailed one-year budget and six-year budget outline.

c. Eligibility Criteria

- Eligible applicants for these projects must be affiliated with a non-profit institution or organization.
- The applicant must provide the necessary cost share as specified above.
- Proposals for a center which provides services in a region in which another center already exists may be considered only if the proposal presents strong evidence that the number of manufacturers and the service it proposes to provide justifies it.
- Proposals for an industry sector-specific center or for expansion of an existing center will be considered. These proposals will be evaluated using the same selection criteria as for all other proposals.

Proposal Selection Process

Proposal evaluation and selection will consist of four principal phases: proposal qualification, proposal review, site visits and award determination.

a. Proposal Qualification

All proposals will be reviewed by NIST to assure compliance with the proposal content as described in 15 CFR 290.5 and other basic provisions of this notice. Proposals which satisfy these requirements will be designated as qualified proposals. Non-qualified proposals will not be evaluated and will be returned to the applicant.

b. Proposal Review

NIST will appoint an evaluation panel to review and evaluate all qualified proposals in accordance with the evaluation criteria set forth in this notice. Based upon this review, the panel will select a group of finalists to be site visited.

c. Site Visits

Finalists will be notified and a site visit scheduled. Finalists will be reviewed and assigned numeric scores, assigning equal weight to each of the four criteria. Based upon these scores, the panel will submit recommendations to the Director of NIST, or a designee, for final award determination.

d. Award Determination

The Director of NIST, or a designee, shall make final determination of whether an award should be made to the proposing organization based on a review of the panel's recommendations.

Additional Requirements

(a) Federal Policies and Procedures. Recipients and sub-recipients are subject to all Federal laws and Federal and NIST policies, regulations, and procedures applicable to Federal financial assistance awards.

(b) Indirect Costs. The total dollar amount of the indirect costs proposed in an application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award or 100 percent of the total proposed direct costs dollar amount in the application, whichever is less.

(c) Pre-award Activities. If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any written or verbal assurance that may have been received, there is no obligation on the part of NIST to cover pre-award costs.

(d) Delinquent Federal Debts. No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

(1) The delinquent account is paid in full;
(2) A negotiated repayment schedule is established and at least one payment is received; or
(3) Other arrangements satisfactory to NIST are made.

(e) Past Performance. Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

(f) Name Check Review. All non-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honesty or financial integrity.

(g) Primary Applicant Certification. All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying," and the following explanations are hereby provided.

(1) *Non Procurement Debarment and Suspension.* Prospective participants (as defined at 15 CFR Part 26, Section 105) are subject to 15 CFR 26, "Non procurement Debarment and Suspension" and the related section of the certification form prescribed above applies;

(2) *Drug-free Workplace.* Recipients (as defined at 15 CFR Part 26, Section 605) are subject to 15 CFR Part 26, Subpart F, "Government-wide

Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies;

(3) *Anti-lobbying.* Persons (as defined at 15 CFR Part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

(4) *Anti-lobbying Disclosures.* Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR Part 28, Appendix B.

(h) Lower Tier Certifications. Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to NIST. SF–LLL submitted by any tier recipient or sub-recipient should be submitted to NIST in accordance with the instructions contained in the award document.

(i) False Statements. A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001

(j) American-made Equipment and Products. Applicants are hereby notified that they are encouraged, to the greatest extent practicable, to purchase American-made equipment and products with the funding provided under this program in accordance with Congressional intent.

(k) North American Free Trade Agreement Patent Notification Procedures. Pursuant to Executive Order 12889, the Department of Commerce (DoC) is required to notify the owner of any valid patent covering technology whenever the DoC or its financial assistance recipient, without making a patent search, knows (or has demonstrable reasonable grounds to know) that technology covered by a valid United States patent has been or will be used without a license from the owner. Applicants selected for awards under this program are required to comply with this executive order.

(l) Intergovernmental Review. Applications under this program are not subject to the requirements of Executive Order 12372, "Intergovernmental Review of Federal Programs".

(m) Paperwork Reduction Act. This notice contains collection of information requirements subject to the Paperwork Reduction Act which have been approved by the Office of Management and Budget (OMB Control Number 0693–0005, 0348–0043 and 0348–0044).

Program Execution

(a) Cooperative Agreement. The formal agreement between NIST and the applicant will be in the form of a cooperative agreement. Under this agreement, the NIST MEP will have substantial interactions with the applicant in planning and executing this project. This may include the following:

—Assisting in developing required plans
—Providing access to standard manufacturing extension and related tools
—Facilitating partnering with appropriate organizations both within and outside of the MEP
—Defining measures for evaluation of performance
—Direct involvement in helping to understand, define, and resolve problems in the center's operations

(b) Operating Plan. All recipients of awards are required to submit an Operating Plan within ninety (90) days of the project start date. The Operating Plan is a more detailed statement of work based on project objectives and activities the applicant will undertake to achieve the objectives and incorporates recommendations provided by the evaluation panel and the NIST Program Officer. The Operating Plan must be reviewed and approved by NIST and will be incorporated into the cooperative agreement by amendment. Operating Plan guidelines will be distributed to award recipients.

(c) Project Reporting. Quarterly reports will be submitted to the NIST Program Officer no later than thirty (30) days after the end of each quarter of the award year. The information provided is used to characterize the projects, develop detailed case studies, and evaluate individual examples of outcomes. Quarterly reporting instructions will be distributed to award recipients.

Dated: May 31, 1995.

Samuel Kramer,

Associate Director.

[FR Doc. 95–13764 Filed 6–5–95; 8:45 am]

BILLING CODE 3510–13–M

[Docket No. 950420110–5110–01]

RIN 0693–XX06

Proposed Federal Information Processing Standard (FIPS) for Public Key Cryptographic Entity Authentication Mechanisms

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice; request for comments.

SUMMARY: NIST is proposing a FIPS for Public Key Cryptographic Entity Authentication Mechanisms, which will specify two challenge-response mechanisms by which entities in a computer system may authenticate their identities to one another. This standard defines protocols which are derived from an international standard for entity authentication based on public key cryptography using digital signatures and random number challenges.

Public key based authentication is advantageous because no secret information has to be shared by the entities involved in the exchange. In the authentication process, a user employs a private key to digitally sign a random number challenge issued by the verifying entity. This random number is a time variant parameter which is unique to the authentication exchange. If the verifier can successfully verify the signed response using the claimant's public key, then the claimant has been successfully authenticated.

Prior to the submission of this proposed FIPS to the Secretary of Commerce for review and approval, it is essential to assure that consideration is given to the needs and views of manufacturers, the public, and State and local governments. The purpose of this notice is to solicit such views.

The proposed FIPS contains two sections: (1) An announcement section, which provides information concerning the applicability, implementation, and maintenance of the standard; and (2) a specifications section which deal with the technical aspects of the standard. Only the announcement section of the standard is provided in this notice. Interested parties may obtain copies of the specifications section from the Standards Processing Coordinator, National Institute of Standards and Technology, Technology Building, Room B–64, Gaithersburg, MD 20899, telephone (301) 975–2816.

DATES: Comments on this proposed FIPS must be received on or before September 5, 1995.

ADDRESSES: Written comments concerning the proposed FIPS should be sent to: Director, Computer Systems Laboratory, ATTN: Proposed FIPS for Public Key Authentication, Technology Building, Room B–154, National Institute of Standards and Technology, Gaithersburg, MD 20899.

Written comments received in response to this notice will be made part of the public record and will be made available for inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Mr. James Foti, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone (301) 975–5237.

Dated: May 31, 1995.

Samuel Kramer,

Associate Director.

Federal Information Processing Standards Publication JJJ

Draft 1995—March 13 Draft

Announcing the Draft Standard for Public Key Cryptographic Entity Authentication Mechanisms

Federal Information Processing Standards (FIPS PUBS) are issued by the National Institute of Standards and Technology (NIST) after approval by the Secretary of Commerce pursuant to Section 111(d) of the Federal Property and Administrative Services Act of 1949 as amended by the Computer Security Act of 1987, Public Law 100–235.

1. Name of Standard. Standard for Public Key Cryptographic Entity Authentication Mechanisms (FIPS PUB JJJ).

2. Category of Standard. Computer Security, Subcategory Access Control.

3. Explanation. This standard specifies two challenge-response mechanisms by which entities in a computer system may authenticate their identities to one another. These mechanisms are used during session initiation, and at any other time that entity authentication is necessary. Depending on which protocol is implemented, either one or both entities involved may be authenticated. The defined protocols are derived from an international standard for entity authentication based on public key cryptography using digital signatures and random number challenges.

Public key based authentication has an advantage over many other authentication schemes because no secret information has to be shared by the entities involved in the exchange. A user (claimant) attempting to authenticate oneself must use a private key to digitally sign a random number challenge issued by the verifying entity. This random number is a time variant parameter which is unique to the authentication exchange. If the verifier can successfully verify the signed response using the claimant's public key, then the claimant has been successfully authenticated.

4. Approving Authority. Secretary of Commerce.

5. Maintenance Agency. Department of Commerce, National Institute of Standards and Technology, Computer Systems Laboratory.

6. Cross Index.

a. FIPS PUB 140–1, Security Requirements for Cryptographic Modules.

b. FIPS PUB 171, Key Management Using ANSI X9.17.

c. FIPS PUB 180, Secure Hash Standard.

d. FIPS PUB 186, Digital Signature Standard.

e. FIPS PUB 190, Guideline for the Use of Advanced Authentication Technology Alternatives.

f. ISO/IEC 9798–1:1991, Information technology—Security techniques—Entity authentication mechanisms—Part 1: General model.

g. ISO/IEC 9798–3:1993, Information technology—Security techniques—Entity authentication mechanisms—Part 3: Entity authentication using a public key algorithm.

Other NIST publications may be applicable to the implementation and use of this standard. A list (NIST Publications List 91) of currently available computer security publications, including ordering information, can be obtained from NIST.

7. Applicability. This standard is applicable to all Federal departments and agencies that use public key based authentication systems to protect unclassified information within computer and digital telecommunications systems that are not subject to Section 2315 of Title 10, U.S. Code, or Section 3502(2) of Title 44, U.S. Code. This standard shall be used by all Federal departments and agencies in designing, acquiring and implementing public key based, challenge-response authentication systems at the application layer within computer and digital telecommunications systems. This includes all systems that Federal departments and agencies operate or that are operated for them under contract. In addition, this standard may be used at other layers within computer and digital telecommunications systems.

This standard may be adopted and used by non-Federal Government organizations. Such use is encouraged when it is either cost effective or provides interoperability for commercial and private organizations.

8. Applications. Numerous applications can benefit from the incorporation of public key authentication. Networking applications that require remote login will be able to authenticate clients who have not previously registered with the host, since secret material (e.g., a password) does not have to be exchanged beforehand. Also, point-to-point authentication can take place between users who are unknown to one another. The authentication mechanisms in this standard may be used in conjunction with other public key based systems (e.g., a public key infrastructure that uses public key certificates) to enhance the security of a computer system.

9. Specifications. Federal Information Processing Standard (FIPS) JJJ, *Standard for Public Key Cryptographic Entity Authentication Mechanisms* (affixed).

10. Implementations. The authentication mechanisms described in this standard may be implemented in software, firmware, hardware, or any combination thereof.

11. Export Control. Implementations of this standard are subject to Federal Government export controls as specified in Title 15, Code of Federal Regulations, Parts 768 through 799. Exporters are advised to contact the Department of Commerce, Bureau of Export Administration, for more information.

12. Implementation Schedule. This standard becomes effective (insert six months after approval by the Secretary of Commerce).

13. Qualifications. The authentication technology described in this standard is based upon information provided by sources within the Federal Government and private industry. Authentication systems are designed to protect against adversaries mounting cost-effective attacks on unclassified government or commercial data (e.g., hackers, organized crime, economic competitors). The primary goal in designing an effective security system is to make the cost of any attack greater than the possible payoff.

14. Waivers. Under certain exceptional circumstances, the heads of Federal departments and agencies may approve waivers to Federal Information

Processing Standards (FIPS). The head of such agency may re-delegate such authority only to a senior official designated pursuant to section 3506(b) of Title 44, U.S. Code. Waivers shall be granted only when:

a. Compliance with a standard would adversely affect the accomplishment of the mission of an operator of a Federal computer system, or

b. Cause a major adverse financial impact on the operator which is not offset by Governmentwide savings.

Agency heads may act upon a written waiver request containing the information detailed above. Agency heads may also act without a written waiver request when they determine that conditions for meeting the standard cannot be met. Agency heads may approve waivers only by a written decision which explains the basis on which the agency head made the required finding(s). A copy of each such decision, with procurement sensitive classified portions clearly identified, shall be sent to: National Institute of Standards and Technology, ATTN: FIPS Waiver Decisions, Technology Building, Room B–154, Gaithersburg, MD 20899.

In addition, notice of each waiver granted and each delegation of authority to approve waivers shall be sent promptly to the Committee on Government Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate and shall be published promptly in the **Federal Register**.

When the determination on a waiver applies to the procurement of equipment and/or services, a notice of the waiver determination must be published in the Commerce Business Daily as a part of the notice of solicitation for offers of an acquisition or, if the waiver determination is made after that notice is published, by amendment to such notice.

A copy of the waiver, any supporting documents, the document approving the waiver and any supporting and accompanying documents, with such deletions as the agency is authorized and decides to make under 5 U.S.C. Section 552(b), shall be part of the procurement documentation and retained by the agency.

[FR Doc. 95–13765 Filed 6–5–95; 8:45 am]

BILLING CODE 3510–CN–M

[Docket No. 950411101–5101–01]

RIN 0693–XX07

Proposed Federal Information Processing Standard (FIPS) for Standard for the Exchange of Product Model Data (STEP)

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice; request for comments.

SUMMARY: NIST is proposing a FIPS for STEP that will adopt the voluntary industry specification, International Organization for Standardization (ISO) Product Data Representation and Exchange, ISO 10303:1994.

STEP defines and describes all product data used during the manufacturing life-cycle of a product, the production steps needed to make a product and the order in which they occur. STEP provides a representation of product information along with the necessary mechanisms and definitions to enable product data to be archived, exchanged, or shared among data bases. The STEP specifications are organized as a series of parts, each published separately. Support for specific applications is provided through application protocols (AP). An AP specifies the information requirements for data exchange, the data representation, and the conformance requirements to support the application.

This proposed FIPS contains two sections: (1) An announcement section, which provides information concerning the applicability, implementation, and maintenance of the standard; and (2) a specification section. Only the announcement section of the standard is provided in this notice. Interested parties may obtain copies of the ISO 10303:1994 from the National Computer Graphics Association, 2722 Merrilee Drive, Suite 200, Fairfax, VA 22031, telephone: (703) 698–9600.

DATES: Comments on this proposed standard must be received on or before September 5, 1995.

ADDRESSES: Written comments concerning the adoption of this proposed standard should be sent to: Director, Computer Systems Laboratory, ATTN: Proposed FIPS for STEP, Technology Building, Room B154, National Institute of Standards and Technology, Gaithersburg, MD 20899.

Written comments received in response to this notice will be made part of the public record and will be made available for inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Ms. Lynne Rosenthal, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone: (301) 975–3353.

Dated: May 31, 1995.

Samuel Kramer,

Associate Director.

Proposed Federal Information Processing Standards Publication

(Date)

Announcing the Standard for Product Data Representation and Exchange (STEP)

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology (NIST) after approval by the Secretary of Commerce pursuant to Section 111(d) of the Federal Property and Administration Services Act of 1949 as amended by the Computer Security Act of 1987, Public Law 100–235.

1. Name of Standard. Product Data Representation and Exchange, commonly known as the Standard for the Exchange of Product model data (STEP) (FIPS PUB _____).

2. Category of Standard. Software standard; Product data representation and exchange; industrial automation systems and integration.

3. Explanation. This publication adopts the International Organization for Standardization (ISO) 10303: 1994, Product Data Representation and Exchange standard as a Federal Information Processing Standard (FIPS). ISO 10303, more commonly known as STEP, Standard for the Exchange of Product model data, defines a neutral computer-interpretable representation for describing product data in a manner that is independent from any particular system. ISO 10303 specifies the necessary mechanisms and definitions to enable product data throughout the life cycle of a product, to be exchange, archived, or shared among product databases.

The purpose of the FIPS for STEP is to enable the compatible exchange and sharing of product definition data used by a wide range of dissimilar computer-aided design (CAD), engineering, manufacturing and product support applications. The specification provides a neutral format for the exchange and sharing of digital three-dimensional (3D) vector and solid representations for a stated application context. Two-dimensional (2D) vector representation and the projection of a 3D representation into 2D views is also supported.

Support for specific applications is provided through an Application Protocol (AP). An AP specifies the information requirements for data exchange, the data representation, and the conformance requirements to support the application. APs are defined in ISO 10303.

ISO 10303 is organized as a series of parts, each published separately. ISO 10303–1 presents an overview of ISO 10303 and specifies the functions of the various series of parts and the relationships among them. ISO 10303–31 presents a framework and principles for the conformance testing of implementations of ISO 10303. This FIPS PUB adopts all ISO 10303 parts. However, the parts of ISO 10303 required for implementation and conformance are determined by the AP specification (ISO 10303 200-series documents). Associated with each application protocol is an abstract test suite (ISO 10303 1200 series documents) that specifies the test purposes and verdict criteria which implementations are to be evaluated against.

This FIPS PUB is the beginning of a continuing effort to identify appropriate application protocols that can be used by both vendors and users to specify the information requirements for data exchange of specific end-user applications. This first FIPS for STEP identifies the APs presently required for Federal use. Future APs which are deemed necessary to satisfy Federal user requirements will be added by revision (i.e., change notice in the **Federal Register**) to this FIPS PUB.

4. Approving Authority. Secretary of Commerce.

5. Maintenance Agency. Department of Commerce, National Institute of Standards and Technology (NIST), Manufacturing Engineering Laboratory (MEL).

6. Cross Index. a. International Organization for Standardization (ISO), Product Data Representation and Exchange, ISO 10303:1994:

—Part 1, Overview and fundamental principles;
—Part 11, Description methods: The EXPRESS language reference manual;
—Part 21, Implementation methods: Clear text encoding of the exchange structure;
—Part 31, Conformance testing methodology and framework; General concepts;
—Part 41, Integrated generic resources: Fundamentals of product description and support;
—Part 42, Integrated generic resources: Geometric and topological representation;
—Part 43, Integrated generic resources: Representation structures;
—Part 44, Integrated generic resources: Product structure configuration;
—Part 46, Integrated generic resources: Visual presentation;
—Part 101, Integrated application resources: Draughting;
—Part 201, Application protocol: Explicit draughting;
—Part 203, Application protocol: Configuration controlled design.

7. Related Documents. a. Federal Information Resources Management Regulations (FIRMR) subpart 201–20.303, Standards, and subpart 201–39.1002, Federal Standards, April 1992.

b. Federal ADP and Telecommunications Standards Index, U.S. General Services Administration, Information Resources Management Service, October 1994 (updated periodically).

c. NISTIR 4743, Issues, Requirements, and Recommendations for a STEP Conformance Testing Program.

d. NISTIR 5511 STEP On-line Information System (SOLIS).

e. NISTIR 5535 Initial NIST Testing Policy for STEP.

8. Objectives. The primary objectives of this standard are:

—To reduce the overall life-cycle cost for digital systems by establishing a common exchange format for storing, transferring, accessing and archiving product data digitally across organizational boundaries and independent from any particular system.
—To promote the exchange of product data thereby enabling installations to share data, and reduce time spent in efforts to regenerate product data.
—To specify Application Protocols that can be used by Federal departments and agencies to support exchange of product data.
—To protect the capital investment of users of the standard by ensuring to the extent possible that commercial off-the-shelf products meet the requirements in the standard, thereby providing a know capability which can be expected of any certified product.

9. Applicability. a. This standard is intended for the computer-interpretable representation and exchange of product data used in computer aided design, analysis, manufacture, test and inspection. The FIPS for STEP provides a mechanism for the digital exchange of life cycle product information as well as implementing and sharing product databases and archiving.

b. Implementations acquired for government use which purport to create or read STEP product information shall contain a conforming STEP processor.

c. This FIPS for STEP shall be used when the requirements of the agency's application are satisfied by at least one of the APs specified herein and one or more of the following situations exist:

—A method for complete representation of products through the entire manufacturing process is required.
—The product data is to be used and maintained on different systems.
—A physical file representing product data is to be exchanged between systems.
—An interface to product databases for accessing and sharing data is required.
—The product data is or is likely to be used by organizations outside the Federal Government.
—It is desired to have the product data understood by multiple people, groups, or organizations.

d. The use of an application protocol is required for all implementations of STEP. An AP specifies the scope, context, information requirements, representation of the application information, and conformance requirements. APs are developed by domain experts for the purpose of defining the processes, information flows, and functional requirements of an application. Initial release of FIPS for STEP includes one application protocol, applicable for the exchange of configuration controlled 3D product design data.

—ISO 10303–203: Application protocol: Configuration controlled 3D design of mechanical parts and assemblies is required for applications which exchange or sharing of data pertaining to the shape representation of a part or product, configuration control and management, and description of the bill of material structure of a product within its design phase. Integral to the definition of a mechanical product is the specification of its shape, the specification of its configurations and the applicability of its possibly multiple definitions to a particular configuration. The focus is on the data from the design phase which controls the tracking and management of the product, including the following:
—identification of a product and the link of the design identification of the components which comprise the product;
—the documentation of formal change and release of designs for the product, including the design and change history;

—the structured relationship of each of the components to the product as a whole;
—additional information concerning materials, processes, finishes, other design requirements and the identification of qualified suppliers for the product or the design of the product.

Other stages of the life cycle of a product are not addressed by this part.

10. Specifications. The ISO 10303:1994 standard for STEP, provides a representation of product information along with the necessary mechanisms and definitions to enable product data to be exchanged. ISO 10303–1: Overview and general principles defines concepts which apply to the entire standard. ISO 10303 is divided into six series of parts, each series may have one or more parts. The series are as follows:
—Description methods—Part 10 series which includes part 11 that defines the data specification language used by ISO 10303;
—Integrated resources:
Generic resources—Part 40 series;
Application resources—Part 100 series;
—Application protocols—Part 200 series;
—Conformance testing methodology and framework—Part 30 series;
—Abstract test suites—Part 1200 series, each of which corresponds to an associated application protocol;
—Implementation methods—Part 20 series.

Conformance of an implementation to an application protocol is specified by the conformance requirements within the application protocol. The AP requires at least one implementation method, and references other parts of ISO 10303 for additional conformance requirements. Within an AP, conformance requirements may be grouped into conformance classes. An implementation may conform to one or more conformance class. The scope of conformance testing of a specific implementation is the requirements specified for the conformance class(es) claimed for the implementation in the Protocol Implementation Conformance Statement (i.e., a statement of which capabilities and options are supported within an implementation).

11. Implementation. The implementation of this standard involves four areas of consideration: effective date, acquisition, interpretations, and validation.

11.1 Effective Date. This publication is effective six (6) months after date of publication of final announcement in the **Federal Register**. A transition period of twelve (12) months, beginning on the effective date, allows industry to produce STEP implementations conforming to this standard. Agencies are encouraged to use this standard for solicitation proposals during the transition period. This standard is mandatory for use in all solicitation proposals for STEP implementations (i.e., computer-aided design, engineering, and manufacturing systems) acquired twelve (12) months after the effective date.

11.2 Acquisition. The use of application protocols is required for all STEP implementations. ISO 10303–203 is required for applications which exchange between product data application systems of configuration-controlled 3D designs of mechanical parts and assemblies.

Conformance to this standard should be considered whether the STEP preprocessor or postprocessor are developed internally, acquired as part of a system procurement, acquired by separate procurement, used under a leasing arrangement, or specified for use in contract for programming services.

11.3 Interpretation. Resolution of questions regarding this standard will be provided by NIST. Procedures for interpretations are specified in FIPS PUB 29–3. Questions concerning the content and specifications should be addressed to: Director, Computer Systems Laboratory, ATTN: STEP Interpretation, National Institute of Standards and Technology, Gaithersburg, MD 20899.

11.4 Validation. The following requirements for conformance testing of STEP implementations become effective twelve months after the effective date. Validation requirements apply only to the application protocols required for use by this FIPS PUB. Additional validation requirements may be added in the future as new application protocols complete the standardization process and corresponding executable test suites are developed.

a. The party offering a STEP implementation to ensure its conformance to FIPS for STEP shall be responsible for securing validation of the STEP implementation when it is offered to the Government for purchase, lease, or use in connection with ADP services. STEP implementations shall be validated in accordance with National Institute for Standards and Technology (NIST) Computer Systems Laboratory (CSL) Validation Procedures for the STEP Validation Test Service.

b. To confirm that the specifications of FIPS for STEP have been met, STEP executable test suites have been developed and a STEP–AP 203 Validation Testing Service has been established. Conformance testing shall be performed by either the NIST or a test laboratory accredited by the National Voluntary Laboratory Accreditation Program (NVLAP). Upon request, the CSL will provide a list of test laboratories.

c. Federal agencies shall use the test results of the STEP Validation Testing Service to confirm that a particular STEP implementation meets the specifications of this FIPS PUB. The CSL will issue certificates as specified in the NIST CSL Validation Procedures for the STEP Validation Testing Service.

d. Recommended procurement terminology for validation of FIPS for STEP is contained in the U.S. General Services Administration publication Federal ADP & Telecommunications Standards Index, Chapter 4 Part 2. This GSA publication provides terminology for three validation options: Delayed Validation, Prior Validation Testing, and Prior Validation. The agency may select the appropriate validation option and may specify appropriate time frames for validation and correction of nonconformities.

e. Request for, and questions on STEP Validation Testing Services should be addressed to: Director, Computer Systems Laboratory, Attention: STEP Validation Testing Service, National Institute of Standards and Technology, Gaithersburg, MD 20899 Telephone: (301)975–3353.

12. Waivers. Under certain exceptional circumstances, the heads of Federal departments and agencies may approve waivers to Federal Information Processing Standards (FIPS). The head of such agency may redelegate such authority only to a senior official designated pursuant to section 3506(b) of Title 44, U.S. Code. Waivers shall be granted only when:

a. Compliance with a standard would adversely affect the accomplishment of the mission of an operator of a Federal computer system, or

b. Cause a major adverse financial impact on the operator which is not offset by Government wide savings.

Agency heads may act upon a written waiver request containing the information detailed above. Agency heads may also act without a written waiver request when they determine that conditions for meeting the standard cannot be met. Agency heads may approve waivers only by a written decision which explains the basis on which the agency head made the required finding(s). A copy of each such decision, with procurement sensitive or classified portions clearly identified, shall be sent to: National Institute of Standards and Technology; ATTN: FIPS Waiver Decisions, Technology Building, Room B–154; Gaithersburg, MD 20899.

In addition, notice of each waiver granted and each delegation of authority to approve waivers shall be sent promptly to the Committee on Government Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate and shall be published promptly in the **Federal Register**.

When the determination on a waiver applies to the procurement of equipment and/or services, a notice of the waiver determination must be published in the Commerce Business Daily as a part of the notice of solicitation for offers of an acquisition or, if the waiver determination is made after that notice is published, by amendment to such notice.

A copy of the waiver, any supporting documents, the document approving the waiver and any supporting and accompanying documents, with such deletions as the agency is authorized and decides to make under 5 U.S.C. Sec. 552(b), shall be part of the procurement documentation and retained by the agency.

[FR Doc. 95–13789 Filed 6–5–95; 8:45 am]
BILLING CODE 3510–CN–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Dominican Republic

May 31, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: June 7, 1995.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being increased for carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Also see 60 FR 17321, published on April 5, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 31, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on March 30, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Dominican Republic and exported during the twelve-month period which began on January 1, 1995 and extends through December 31, 1995.

Effective on June 7, 1995, you are directed to increase the limits for the following categories, as provided under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
340/640	784,120 dozen.
342/642	551,803 dozen.
347/348/647/648	1,868,381 dozen of which not more than 991,636 dozen shall be in Categories 647/648.
351/651	852,513 dozen.
433	22,788 dozen.
442	78,671 dozen.
444	75,061 numbers.
633	106,861 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

The guaranteed access levels remain unchanged.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–13749 Filed 6–5–95; 8:45 am]
BILLING CODE 3510–DR–F

DEPARTMENT OF ENERGY

Environmental Management Advisory Board

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), notice is hereby given of the following Advisory Committee meeting:

Name: Environmental Management Advisory Board Formerly Utilized Site Remedial Action Program Committee.
Date and Times:
Tuesday, June 20, 1995 from 8:30 a.m. to 8:00 p.m.
Wednesday, June 21, 1995 from 8:30 a.m. to 4:00 p.m.
Place: Henry VIII Hotel, 4690 North Lindbergh, St. Louis, MO 63044, (314) 731–3040, extension 6186, (314) 731–1228 fax.

FOR FURTHER INFORMATION CONTACT: James T. Melillo, Executive Director, Environmental Management Advisory Board, EM–5, 1000 Independence Avenue, S.W., Washington, DC 20585, (202) 586–4400. The Internet address is: James.Melillo@em.doe.gov.

SUPPLEMENTARY INFORMATION: Purpose of the Board. The purpose of the Board is to provide the Assistant Secretary for Environmental Management (EM) with advice and recommendations on issues confronting the Environmental Management program and the Programmatic Environmental Management Impact Statement, from the perspectives of affected groups and State and local Governments. The Board will help to improve the Environmental Management Program by assisting in the process of securing consensus recommendations, and providing the Department's numerous publics with op portunities to express their opinions regarding the Environmental Management Program including the Formerly Utilized Site Remedial Action Program.

Tentative Agenda

Tuesday, June 20, 1995

8:30 a.m.—Chairman Opens Public Meeting—Overview of Findings

from the May 2–3, 1995 National Stakeholders Meeting in Washington, D.C.
9:30 a.m.—Briefing on effective Department of Energy Technologies/discussions
10:30 a.m.—Break
10:45 a.m.—Environmental Protection Agency Briefing and Discussion
12:00 p.m.—Lunch
1:00 p.m.—Presentation of Issue Papers
3:00 p.m.—Break
3:15 p.m.—Committee/ Public Discussion of Issues
5:00 p.m.—Break for Dinner
7:00 p.m.—Public Comment Session
8:00 p.m.—Meeting Adjourns

Wednesday, June 21, 1995

8:30 a.m.—Chairman Reconvenes Public Meeting
8:35 a.m.—National Stakeholder Forum Issues
10:00 a.m.—Break
10:15 a.m.—Continued Discussion of Issues and Public Recommendations
12:00 p.m.—Lunch
1:00 p.m.—Discussion/ outline of Potential Guiding Principles
2:30 p.m.—Break
2:45 p.m.—Committee Business
3:15 p.m.—Public Comment Session
4:00 p.m.—Meeting Adjourns

A final agenda will be available at the meeting.

Public Participation

The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact James T. Melillo at the address or telephone number listed above. Individuals wishing to orally address the Committee during the public comment session should call (800) 862–8860 and leave a message. Individuals may also register on June 20, 1995 at the meeting site. Every effort will be made to hear all those wishing to speak to the Committee, on a first come, first serve basis. Those who call in and reserve time will be given the opportunity to speak first. The Chairman is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts and Minutes

Meeting minutes will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, DC 20585 between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on June 1, 1995.

Rachel Murphy Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 95–13817 Filed 6–5–95; 8:45 am]

BILLING CODE 6450–01–P

Advisory Committee on External Regulation of Department of Energy Nuclear Safety

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the fourth meeting of the Advisory Committee on External Regulation of Department of Energy Nuclear Safety.

DATE AND TIMES: The Committee session will begin at 8:30 am Wednesday, June 28, 1995 and adjourn at 5:00 pm, with a public comment session to begin at 7:30 pm. The Thursday, June 29, 1995, session will begin at 8:00 am and adjourn at 5:00 pm.

ADDRESSES: Holiday Inn Naperville, 1801 Naper Boulevard, Naperville, Illinois 60563.

FOR FURTHER INFORMATION CONTACT: Thomas H. Isaacs, Executive Director, Advisory Committee on External Regulation of Department of Energy Nuclear Safety, 1726 M Street, NW, Suite 401, Washington, DC 20036, (202) 254–3826.

SUPPLEMENTARY INFORMATION: The Purpose of the Committee is to provide the Secretary of Energy, the White House Council on Environmental Quality, and the Office of Management and Budget with advice, information, and recommendations on how new and existing Department of Energy (DOE) nuclear facilities and operations, except those operations covered under Executive Order 12344 (Naval Propulsion Program), might best be regulated with regard to safety. The Department currently self-regulates many aspects of nuclear safety, pursuant to the Atomic Energy Act of 1954, as amended. The Committee consists of 25 members drawn from Federal and State government and the private sector, and is co-chaired by John F. Ahearne, Executive Director of Sigma Xi, and Gerard F. Scannell, President of the National Safety Council. Members were chosen with environment, safety, and health backgrounds, balanced to represent different public, Federal, State, Tribal, regulatory, and industry interests and experience.

Purpose of the Meeting: To better understand the Department of Energy's existing regulatory structure, the Committee will hear presentations by several senior DOE program officials, by a panel of directors of DOE's research laboratories, and by a panel of laboratory environment, safety, and health managers. The Committee will also consider draft reports from a series of subcommittees set up by the Committee. These draft reports will address current problems with internal regulation, advantages and disadvantages of external regulation, regulatory options and other special issues related to the Committee's charter. The Committee will hold a public comment period to hear views on external regulation from workers and interested members of the public.

Tentative Agenda: In addition to conducting deliberations related to its charter, the Committee will hear from the DOE Assistant Secretary for Environment, Safety and Health, and a member of the Defense Nuclear Facilities Safety Board (both Committee members) on the current processes for internal and external oversight of safety at DOE nuclear facilities and activities. The Committee will also hear observations on external regulation specific to environmental restoration and waste management activities from the DOE Assistant Secretary for Environmental Management. The Committee will hear comments from the DOE Director of the Office of Energy Research and from four National Laboratory Directors, followed by a panel of laboratory environment, safety, and health managers who will recount their experiences with DOE. The agenda will provide an opportunity for public comment at 7:30 pm on June 28, 1995, at the Holiday Inn, Naperville, Illinois. A final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. Members of the public are welcome to make oral statements during the public comment period. Those who wish to do so may pre-register by contacting Glenda Oakley at (301) 924–6169. Individuals may also register on June 28, 1995, at the meeting site. Every effort will be made to hear all those wishing to speak. Written comments are welcomed, and should be mailed to Thomas H. Isaacs, Executive Director, 1726 M Street, NW, Suite 401, Washington, DC 20036. The Committee Co-Chairs are empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts and Minutes: A meeting transcript and minutes will be available for public review and copying four to six weeks after the meeting at the DOE Freedom of Information Public Reading Room, 1E–1990, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 am and 4:00 pm, Monday through Friday, except Federal holidays. The transcript will also be made available at the Department's Field Office Reading Room locations.

Issued at Washington, DC on June 1, 1995.

Rachel Murphy Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 95–13815 Filed 6–5–95; 8:45 am]

BILLING CODE 6450–01–P

Office of Energy Efficiency and Renewable Energy

Advisory Committee on the Demonstration and Commercial Application of Renewable Energy and Energy Efficiency, Open Meeting

Under the provisions of the Federal Advisory Committee Act (Public Law 92–463; 86 Stat. 770), notice is hereby given of the following meeting:

Name: Advisory Committee on the Demonstration and Commercial Application of Renewable Energy and Energy Efficiency Technologies.

Date and Time: June 21, 1995, 10:30 a.m.–4:30 p.m.

Place: The Grand Hotel, 2350 M Street, NW., Washington, DC.

Contact: Thomas W. Sacco, Office of Technical Assistance (EE–542), Energy Efficiency and Renewable Energy, U.S. Department of Energy, Washington, DC 20585, Telephone 202/586–0759.

Purpose of Committee: To advise the Secretary of Energy on the development of the solicitation and evaluation criteria for commercialization ventures, and on otherwise carrying out her responsibilities under the Renewable Energy and Energy Efficiency Technology Competitiveness Act of 1989 (Public Law 101–218, 42 U.S.C. 12005), as amended by the Energy Policy Act of 1992 (Public Law 102–486, 42 U.S.C. 13201).

Tentative Agenda: Briefings and discussions of:

- Review of DOE solicitation for a financial intermediary for program implementation;
- Discussion of contents of final report;
- Other matters requiring Committee consideration;
- Public Comment Period (10 minute rule).

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Thomas W. Sacco at the address or telephone number listed above. Requests to make oral presentations must be received 2 days prior to the meeting; reasonable provision will be made to include the statement in the agenda. The Chair of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of the meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on June 1, 1995.

Rachel Murphy Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 95–13816 Filed 6–5–95; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. ER95–778–000, et al.]

Pacific Gas & Electric Company, et al.; Electric Rate and Corporate Regulation Filings

May 26, 1995.

Take notice that the following filings have been made with the Commission:

1. Pacific Gas and Electric Company

[Docket No. ER95–778–000]

Take notice that on May 16, 1995, Pacific Gas and Electric Company (PG&E), tendered for filing a letter of clarification to the amendment to the System Bulk Power Sale and Purchase Agreement (Bulk Power Agreement) between PG&E and the City of Santa Clara (City of Santa Clara), previously filed in this docket on March 21, 1995. The Bulk Power Agreement was initially filed in FERC Docket No. ER87–498–000 and designated as PG&E Rate Schedule FERC No. 108.

PG&E's filing seeks to clarify § 7.2 of the amendment regarding certain rights to seek unilateral rate changes.

Copies of this filing were served upon Santa Clara and the California Public Utilities Commission.

Comment date: June 9, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. The Cleveland Electric Illuminating Company

[Docket No. EC94–14–000]

The Toledo Edison Company

Take notice that on May 25, 1995, a notice of filing was inadvertently issued in this docket. That notice is hereby rescinded.

3. The Washington Water Power Company

[Docket No. ER95–982–0000]

Take notice that on May 16, 1995, The Washington Water Power Company (WWP), tendered for filing with the Federal Energy Regulatory Commission, a request to withdraw its earlier filing (FERC Docket No. ER95–982–000) of an Agreement for the sale of firm capacity and associated energy to the Inland Power and Light Company.

Comment date: June 9, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. Kansas City Power & Light Company

[Docket No. ER95–1044–000]

Take notice that on May 15, 1995, Kansas City Power & Light Company (KCPL), tendered for filing a Service Agreement dated May 5, 1995, between KCPL and Enron Power Marketing, Inc. (EPMI). KCPL proposes an effective date of May 5, 1995, and requests waiver of the Commission's notice requirement. This Agreement provides for the rates and charges for Non-Firm Transmission Service between KCPL and EPMI.

In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges which are under review by the Commission in Docket No. ER94–1045–000 and which are subject to refund pursuant to the Commission's order in that docket.

Comment date: June 9, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Northeast Utilities Service Company

[Docket No. ER95–1045–000]

Take notice that on May 15, 1995, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement with InterCoast Power Marketing, Inc. (InterCoast) under the NU System Companies' System Power Sales/Exchange Tariff No. 6.

NUSCO states that a copy of this filing has been mailed to InterCoast.

NUSCO requests that the Service Agreement become effective sixty (60) days after receipt of this filing by the Commission.

Comment date: June 9, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Southern California Edison Company

[Docket No. ER95–1046–000]

Take notice that on May 15, 1995, Southern California Edison Company (Edison), tendered for filing the following Supplemental Agreement (Supplemental Agreement) to the 1990 Integrated Operations Agreement (IOA)

between the City of Anaheim (Anaheim) and Edison, FERC Rate Schedule No. 246: Supplemental Agreement For The Integration Of Non-Firm Energy From Platte River Power Authority Between Southern California Edison Company And City of Anaheim.

The Supplemental Agreement sets forth the terms and conditions by which Edison will integrate Anaheim's purchases of non-firm energy under Service Schedule B of the Energy Sales Agreement between Anaheim and Platte River Power Authority. Edison is requesting waiver of the 60-day prior notice requirements, and requests the Commission to assign to the Agreement an effective date of May 16, 1995.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: June 9, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Ruffin Energy Services, Inc.

[Docket No. ER95–1047–000]

Take notice that on May 15, 1995, Ruffin Energy Services, Inc. (Ruffin), an Oklahoma corporation, petitioned the Commission for acceptance of Ruffin, Rate Schedule FERC No. 1, providing for the sale of electricity at market-based rates, the granting of certain blanket approvals, and the waiver of certain Commission regulations.

Comment date: June 9, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Northeast Utilities Service Company

[Docket No. ER95–1048–000]

Take notice that on May 15, 1995, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement with LG&E Power Marketing, Inc. (LG&E) under the NU System Companies' System Power Sales/ Exchange Tariff No. 6.

NUSCO states that a copy of this filing has been mailed to LG&E.

NUSCO requests that the Service Agreement become effective sixty (60) days after receipt of this filing by the Commission.

Comment date: June 9, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Gateway Energy, Inc.

[Docket No. ER95–1049–000]

Take notice that on May 15, 1995,. GPU Service Corporation on behalf of Gateway Energy Inc. tendered for filing an initial rate schedule for the sale of energy and capacity at market-based rates.

Comment date: June 9, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Sonat Power Marketing, Inc.

[Docket No. ER95–1050–000]

Take notice that on May 16, 1995, Sonat Power Marketing Inc. (SPM), filed an application with the Federal Energy Regulatory Commission requesting acceptance of its proposed Rate Schedule FERC No. 1, authorizing market-based rates, granting waivers of certain Commission regulations and granting certain blanket approvals. Consistent with these requests, SPM seeks authority to engage in the business of power marketing and to sell power at market-based rates.

SPM is a wholly and subsidiary of Sonat Energy Services Company and Sonat Inc. SPM is not in the business of generating, transmitting, or distributing electric power.

Comment date: June 9, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. El Paso Electric Company

[Docket No. ER95–1051–000]

Take notice that on May 16, 1995, El Paso Electric Company (EPE), tendered for filing Amendment No. 2 to the West Mesa Reactor Switch Agreement (Agreement) between EPE and Public Service Company of New Mexico (PNM). Amendment No. 2 amends the Agreement by extending its term and amending the provision of operation of the West Mesa reactor switch. EPE requests that the Commission waive the appropriate notice provisions to accept the Agreement, as amended, for filing as of its date of execution, May 5, 1995.

Copies of this filing were served upon PNM and the appropriate state public service commissions.

Comment date: June 9, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. Public Service Company of New Mexico

[Docket No. ER95–1052–000]

Take notice that on May 16, 1995, Public Service Company of New Mexico (PNM), tendered for filing Interim Agreement #2 (Interim Agreement) between PNM and El Paso Electric Company (EPE); Pre-Phase Shifting Transformer New Mexico Transmission Operating Procedure to the Interim Agreement (Revised Exhibit A) between EPE, PNM, Texas-New Mexico Power Company (TNP) and Plains Electric Generating and Transmission Cooperative, Inc. (Plains); the EPE/PNM Operating Procedure No. 10, Incremental Energy Cost (Operating Procedure 10), to the EPE-PNM Interconnection Agreement and a Letter Agreement between EPE and PNM regarding the EPE-Tucson Electric Power Company (TEP) Interconnection Agreement (Letter Agreement).

The Interim Agreement sets forth an understanding between PNM and EPE for the operation of the New Mexico Transmission System. Revised Exhibit A is an operating procedure and provides the basis under which southern New Mexico transmission import capability can be maintained at specified levels prior to the installation of EPE's phase shifting transformer. Operating Procedure 10 establishes EPE's responsibility level for incremental cost incurred by PNM to support a portion of the transmission levels required by EPE. The Letter Agreement provides recognition of the Interconnection Agreement between EPE and Tucson Electric Power Company.

PNM requests waiver of the Commission's notice requirements to permit Interim Agreement #2, Revised Exhibit A and Operating Procedure 10 to become effective as of June 1, 1995 and to permit the Letter Agreement to become effective on the day that the operating status of the 345 kV facilities at the Hidalgo and Luna substations is transferred from PNM to EPE.

Copies of this notice have been mailed EPE, TNP, Plains, TEP and the New Mexico Public Utility Commission.

Comment date: June 9, 1995, in accordance with Standard Paragraph E at the end of this notice.

13. Duquesne Light Company

[Docket No. ER95–1053–000]

Take notice that on May 16, 1995, Duquesne Light Company (Duquesne Light), tendered for filing a Coordination Sales Tariff. The tariff provides for sales of Negotiated Capacity and/or Energy, and Emergency Energy. Duquesne Light states that sales under the tariff will be made at negotiated prices no lower than system incremental energy costs and no higher than the Company's fully allocated cost of capacity, plus 110% of incremental energy costs. Duquesne Light has included with the filing a list of prospective customers under the tariff in lieu of filing service agreements with those customers, and states that service will be provided under the tariff only to customers who sign service agreements. Duquesne Light requests that the Commission accept the tariff for filing and that the normally applicable sixty-day suspension period be waived.

Duquesne Light states that copies of the filing have been served on each potential customer whose name is included on the list attached to the filing.

Comment date: June 9, 1995, in accordance with Standard Paragraph E at the end of this notice.

14. Virginia Electric and Power Company

[Docket No. ER95–1054–000]

Take notice that on May 16, 1995, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement between Kentucky Utilities Company and Virginia Power, dated April 21, 1995 under the Power Sales Tariff to Eligible Purchasers dated May 27, 1994. Under the tendered Service Agreement Virginia Power agrees to provide services to Kentucky Utilities Company under the rates, terms and conditions of the Power Sales Tariff as agreed by the parties pursuant to the terms of Service Schedule B included in the Power Sales Tariff.

Copies of the filing were served upon the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: June 9, 1995, in accordance with Standard Paragraph E at the end of this notice.

15. Consolidated Edison Company of New York, Inc.

[Docket No. ER95–1062–000]

Take notice that on May 18, 1995 Consolidated Edison Company of New York, Inc. ("Con Edison") tendered for filing an agreement to provide interruptible transmission service for Catex Vitol Electric, L.L.C. ("Catex").

Con Edison states that a copy of this filing has been served by mail upon Catex.

Comment date: June 9, 1995, in accordance with Standard Paragraph E at the end of this notice.

16. Public Service Company of Oklahoma

[Docket No. ER95–1065–000]

Take notice that on May 18, 1995, Public Service company of Oklahoma (PSO) tendered for filing a Contract for Electric Service (Contract), dated April 20, 1995, between PSO and Northeast Oklahoma Electric Cooperative, Inc. (NEO) and a Notice of Cancellation of the Second Amendment to the Interconnection Agreement, dated November 11, 1982, between PSO and NEO. Pursuant to the Contract, PSO will provide full-requirements service to NEO at the Mazie, Home, Prior and Sailboat substations. Upon the effectiveness of the Contract, PSO and NEO will no longer have a need for their present interconnection arrangements.

PSO seeks an effective date of May 25, 1995, and, accordingly, seeks waiver of the Commission's notice requirements. Copies of the filing were served on NEO and the Oklahoma Corporation Commission. Copies are also available for public inspection at PSO's offices in Tulsa, Oklahoma.

Comment date: June 8, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–13771 Filed 6–5–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP95–341–000]

Texas Gas Transmission Corporation; Notice of Intent To Prepare an Environmental Assessment for the Proposed Herbert-Cannelton Looping Project and Request for Comments on Environmental Issues

May 31, 1995.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the construction and operation of the facility proposed in the Herbert-Cannelton Looping Project.[1] This EA will be used by the Commission in its decision-making process to determine whether an environmental impact statement is necessary and whether to approve the project.

[1] Texas Gas Transmission Corporation's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

Summary of the Proposed Project

Texas Gas Transmission Corporation (Texas Gas) wants to expand the capacity of its facilities in Ohio and Hancock Counties, Kentucky to transport 500 million British thermal units per day of natural gas to a local distribution company. Texas Gas requests Commission authorization to construct and operate 0.93 mile of 8-inch-diameter pipeline in Ohio and Hancock Counties. Kentucky needed to transport those volumes.

The general location of the project facility is shown in appendix 1.[2]

Land Requirements for Construction

Construction of the proposed facility would disturb about 24.66 acres of land. Following construction, about 2.82 acres would be maintained as new right-of-way. About 4.53 acres are located within an existing right-of-way. The remaining 17.33 acres of land would be restored and allowed to revert to its former use.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping." The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils.
- Water resources, fisheries, and wetlands.
- Vegetation and wildlife.
- Endangered and threatened species.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference and Files Maintenance Branch, Room 3104, 941 North Capitol Street, N.E., Washington, D.C. 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

- Land use.
- Cultural resources.
- Air quality and noise.
- Public safety.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we recommend that the Commission approve or not approve the project.

Currently Identified Environmental Issues

We have already identified two issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Texas Gas. Keep in mind that this is a preliminary list. The list of issues may be added to, subtracted from, or changed based on your comments and our analysis. Issues are:

- Two federally listed endangered or threatened species may occur in the proposed project area.
- Two proposed workspace areas may be located within 50 feet of a residence, one of which may directly impact an adjacent building.

Public Participation

You can make a difference by sending a letter addressing your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please follow the instructions below to ensure that your comments are received and properly recorded:

- Address your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capital Street NE., Washington, D.C. 20426;
- Reference Docket No. CP95–341–000;
- Send a *copy* of your letter to: Ms. Amy Olson, EA Project Manager, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Room 7312, Washington, D.C. 20426; and
- Mail your comments so that they will be received in Washington, D.C. on or before June 30, 1995.

If you wish to receive a copy of the EA, you should request one from Ms. Olson at the above address.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding or become an "intervenor". Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2).

The date for filing of timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your scoping comments considered.

Additional information about the proposed project is available from Ms. Amy Olson, EA Project Manager, at (202) 208–1199.

Lois D. Cashell,

Secretary.

[FR Doc. 95–13728 Filed 6–5–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–37–003]

Alabama-Tennessee Natural Gas Co.; Notice of Filing of Refund Report

May 31, 1995.

Take notice that on May 26, 1995, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee), filed a report of refunds made pursuant to Section 33.3 of the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1.

Accordingly to Alabama-Tennessee, the amounts being refunded result from the partial flow through of a refund received by Alabama-Tennessee from Tennessee Gas Pipeline (Tennessee) pursuant to the settlement of Tennessee's FERC Docket Nos. RP93–147, et al., which the Commission approved on November 15, 1994.

Alabama-Tennessee states that it calculated the portion of Tennessee's refund to be flowed-through by deducting its revised liability to Tennessee resulting from the settlement in FERC Docket Nos. RP93–147, et al., from the amounts actually collected by Alabama-Tennessee from its customers.

Alabama-Tennessee has requested that the Commission grant such waivers as may be necessary to accept and approve Alabama-Tennessee's filing as submitted.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protest should be filed on or before June 7, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–13733 Filed 6–5–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–310–000 and CP94–260–002]

Algonquin Gas Transmission Co.; Notice of Proposed Changes in FERC Gas Tariff

May 31, 1995.

Take notice that on May 26, 1995, Algonquin Gas Transmission Company (Algonquin) submitted pro forma tariff sheets in compliance with the Commission's April 19, 1995, order in Docket No. CP94–260–000. In that order the Commission directed Algonquin to provide service on the proposed Canal Lateral under a separately stated rate schedule under its Part 284 open-access transportation certificate, subject to the General Terms and Conditions of its tariff.

Algonquin further states that copies of this filing was mailed to all participants in Docket No. CP94–260–000 and affected customers of Algonquin and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 7, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–13742 Filed 6–5–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–305–000]

Canyon Creek Compression Company; Notice of Proposed Changes in FERC Gas Tariff

May 31, 1995.

Take notice that on May 26, 1995, Canyon Creek Compression Company (Canyon Creek) tendered for filing to be a part of its FERC Gas Tariff, Third Revised Volume No. 1, Second Revised Sheet Nos. 142 and 148, to be effective May 4, 1995.

Canyon Creek states that the purpose of the filing is to conform with the Commission's Order No. 577, which changed the Commission's Rules and Regulations as follows: (1) prearranged releases of exactly one month are no longer required to have open seasons and (2) the minimum time period before a subsequent short-term prearranged release to the same replacement shipper was shortened to 28 days.

Canyon Creek requested waiver of the Commission's Regulations to the extent necessary to permit the above tariff sheets to become effective May 4, 1995, effective date of the Commission's Order No. 577.

Canyon Creek states that a copy of the filing was mailed to Canyon Creek's jurisdictional transportation customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 7, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–13737 Filed 6–5–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–513–000]

El Paso Natural Gas Co.; Notice of Request Under Blanket Authorization

May 31, 1995.

Take notice that on May 24, 1995, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP95–513–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct and operate a new delivery point located in Yoakum County, Texas, under El Paso's blanket certificate issued in Docket No. CP82–435–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

El Paso proposes to construct and operate a new tap, valve assembly and meter on its existing 30-inch diameter Permian-San Juan Line to provide interruptible transportation and delivery of natural gas for Exxon Company, U.S.A. (Exxon). El Paso states that Exxon will use the gas as fuel to operate its Cornell Field Compressor. El Paso mentions that Exxon had been receiving gas from Shell Western E & P, Inc.'s Wasson Plant which has been closed. El Paso asserts that it will deliver 32,850 Mcf of gas annually and 250 Mcf of gas on a peak day to Exxon. El Paso also states that the estimated $39,800 cost of the proposed facilities would be reimbursed by Exxon and that Exxon would construct approximately 1.5 miles of 2-inch polyethylene pipeline to connect its compressor facilities to El Paso's proposed delivery point.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–13730 Filed 6–5–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–212–000]

Order To Show Cause

Issued May 31, 1995.

In the matter of KansOk Partnership; Kansas Pipeline Partnership; Kansas Natural Partnership; Riverside Pipeline Company, L.P.

On November 30, 1993, KansOk Partnership (KansOk) filed a petition for rate approval in Docket No. PR94–3–000 to justify its firm and interruptible transportation rates for service performed under section 311 of the Natural Gas Policy Act of 1978 (NGPA). Western Resources, Inc. (Western Resources) filed a protest contending that KansOk is an interstate pipeline, and not an intrastate pipeline as claimed, because of the interstate nature of its transportation service. The Commission will address KansOk's rate filing in Docket No. PR94–3–000 in an order issued concurrently with this order. The instant order establishes a separate show cause proceeding, pursuant to sections 5, 7, and 16 of the Natural Gas Act (NGA), to investigate Western Resources' claims.[1]

As discussed below, the Commission is requiring KansOk and its downstream affiliates, Kansas Pipeline Partnership (Kansas Pipeline), Kansas Natural Partnership (Kansas Natural), and Riverside Pipeline Company, L.P. (Riverside), to show cause: (1) Why all four affiliates should not be viewed collectively as one interstate pipeline system subject to the Commission's jurisdiction; and (2) in the alternative, why KansOk, by itself, should not be considered an interstate pipeline subject to the Commission's jurisdiction.

A. Description of the Pipelines

KansOk owns and operates two distinct segments of pipeline, the West Leg and East Leg, totalling approximately 114 miles of pipeline. Both the West Leg and East Leg are

[1] In addition, the Commission notes that at a staff panel proceeding convened on December 1, 1994 in Docket No. PR94–3–000, Missouri Gas Energy also argued that KansOk and its affiliates should be considered an interstate pipeline subject to Commission jurisdiction. See Tr. at 25.

located solely within the state of Oklahoma. At the southern end of the East Leg in Oklahoma, KansOk interconnects with Transok, Inc. (Transok), an intrastate pipeline. KansOk leases capacity on Transok, and has firm contracts for transportation on the East Leg for a maximum of 95,000 MMBtu/day. The West Leg of KansOk interconnects with gathering facilities at its southern terminus and transports only interruptible volumes.

At their northern termini, KansOk's West and East Legs interconnect, respectively, with the western and eastern segments of Riverside. Riverside is an interstate pipeline consisting of: (1) two segments of 1-mile pipeline crossing the Oklahoma-Kansas border at two separate locations; and (2) a third segment of 2-mile pipeline crossing the Kansas-Missouri border. The Kansas-Missouri segment was authorized under NGA section 7 in 1989.[2] In 1992, Riverside constructed the two Oklahoma-Kansas segments pursuant to NGPA section 311.[3]

In Kansas, at their northern termini, the Riverside segments interconnect at two points with Kansas Natural, an intrastate pipeline. Kansas Natural then continues in a northeasterly direction through Kansas where it interconnects at two points with Kansas Pipeline, another intrastate pipeline.[4] The two segments of Kansas Pipeline then continue approximately 64 miles to an interconnection with the Riverside pipeline segment at the Kansas-Missouri border, which completes the network in Kansas City, Missouri. Through this series of interconnections, gas flows from gathering fields in Oklahoma to markets in the Kansas City metropolitan area through five pipeline systems, all of which are affiliated except Transok. Further, KansOk, Riverside, Kansas Natural, and Kansas Pipeline all are operated by Kansas Pipeline Operating Company (KPOC).

On April 19, 1995, Riverside filed a proposal in Docket No. RP95–239–000 to establish a new Multiple Pipeline Transportation service. Riverside would contract for capacity, as available, on its upstream affiliated pipelines to provide transportation on those pipelines for new or existing firm shippers on its own system. The maximum and minimum rates for the proposed service would be the sum of the effective maximum and minimum rates of the transporting pipelines.

B. Prior Commission Orders

On February 6, 1992, a Letter Order was issued by direction of the Commission approving a settlement of the rate issues raised in KansOk's first proceeding, which it filed pursuant to NGPA section 311.[5] At that time, no party contested KansOk's claim to be an intrastate pipeline.[6] The record indicates that KansOk's 1990 actual transportation volumes consisted of 2.6 percent intrastate volumes and 97.4 percent NGPA section 311 volumes.[7]

KansOk's filing in Docket No. PR94–3–000 was made pursuant to a requirement in the February 6 order that KansOk file, on or before December 1, 1993, an application for rate approval to justify its current systemwide rates or to establish new systemwide rates. As stated, this show cause proceeding arises from Western Resources' protest in Docket No. PR94–3–000 claiming that KansOk is not an intrastate pipeline.

C. Western Resources' Protest

Western Resources argues that KansOk is an interstate pipeline, rather than an intrastate pipeline, because of the interstate nature of its transportation service. Specifically, Western Resources states that since June 1991, 100 percent of the volumes transported by KansOk on the East Leg, and over 99 percent of the volumes transported by it on the West Leg, were delivered to the interstate market, to customers in Kansas and Missouri. Only a *de minimis* amount of KansOk's business was intrastate. Specifically, Western Resources claims that the volumes moved intrastate on the West Leg in the first five months of KansOk's operations constituted only 0.3212 percent of the volumes moved on the West Leg, 0.1014 percent of KansOk's interruptible volumes, and 0.0133 percent of KansOk's total system volumes. All of the transportation performed by KansOk on the West Leg was interruptible, while the transportation performed on the East Leg was firm and interruptible. KansOk does not dispute these figures.

In support of its argument that KansOk is an interstate pipeline, Western Resources cites *Midcoast Ventures I (Midcoast)*,[8] where the Commission, finding that the pipeline was an interstate pipeline, stated that it "has never ruled that a company could qualify as an intrastate pipeline without doing any intrastate business in the state where it claims intrastate status."[9] Western Resources argues that, under the *Midcoast* rationale, KansOk's *de minimis* intrastate operations do not qualify it to be an intrastate pipeline. Further, Western Resources points out that KansOk is not regulated by the Oklahoma Corporation Commission. Western Resources contends that, at a minimum, the East Leg of KansOk, which provides no intrastate service, should be treated as an interstate pipeline. Accordingly, Western Resources contends that the Commission should require KansOk to refile its rates under section 4 of the NGA.

D. KansOk's Answer

First, KansOk states that under section 1(b) of the NGA, the Commission is required to regulate the transportation and sale for resale of natural gas "in interstate commerce," and to regulate any "natural gas company" engaged in such transportation or sale.[10] Section 601(a) of the NGPA, however, limits the jurisdiction otherwise resulting from NGA section 1(b) by providing that the Commission's NGA jurisdiction "shall not apply to any transportation in interstate commerce of natural gas if such transportation is * * * authorized by the Commission under" NGPA section 311(a). In addition, section 601(a)(2)(B) of the NGPA provides that the NGA definition of a natural gas company does not include "persons" who provide sales or transportation authorized under section 311 of the NGPA.

KansOk states that, as a corporate entity, it qualifies as an intrastate pipeline within the meaning of section 2(16) of the NGPA.[11] In Order No. 46, the Commission explained that "if a corporate entity qualifies as an intrastate pipeline under section 2(16), it will retain that identity for its entire system even if it constructs a new portion of its system to be used exclusively for section 311(a)(2) transportation."[12]

In response to Western Resources' *Midcoast* arguments, KansOk states that its case differs from *Midcoast* because it had legitimate intrastate business in Oklahoma before it ever transported gas under NGPA section 311. Unlike KansOk, the pipeline in *Midcoast* had no facilities and provided no transportation service in Kansas before conducting its first transaction, purportedly under NGPA section 311. Rather, Midcoast's claim to be an existing intrastate pipeline was based solely on its status as an intrastate pipeline in Texas.

KansOk argues that *Seagull Pipeline Corp. (Seagull)*[13] applies better here. In *Seagull*, the Commission ruled that the company did not lose its intrastate status by constructing new facilities to provide, in part, NGPA section 311(a)(2) transportation. KansOk states that, like the pipeline in *Seagull*, it was engaged in intrastate business prior to conducting its first NGPA section 311 transaction. Further, KansOk points out that when it filed its first rate proceeding under NGPA section 311, no party challenged its status as an intrastate pipeline, and the Commission accepted its intrastate status in approving fair and equitable rates for its section 311 service.

KansOk next states that the lack of state regulation over it has not resulted in harm to its customers, because it has been subject to the Commission's NGPA rate jurisdiction and has charged FERC-approved fair and equitable rates since the inception of its section 311 service. Also, since KansOk makes no retail sales to consumers within the state, it claims that the lack of state regulation is not unusual.

Finally, KansOk argues that the transportation services it provides qualify as service provided "on behalf of" an interstate pipeline, namely Riverside. Under NGPA section 311(a)(2)(A), an intrastate pipeline may transport natural gas in interstate commerce on behalf of any interstate pipeline or local distribution company and be exempt from the Commission's NGA jurisdiction.

E. Discussion

The Commission is concerned that, when viewed as a whole, the KansOk-Riverside-Kansas Natural-Kansas Pipeline systems may, in reality, constitute one interstate pipeline system. At the very least, it appears that KansOk may in fact be an interstate pipeline. The four pipelines are contiguous in three states and move gas from Oklahoma through Kansas and into Missouri. In addition, in its recent filing in Docket No. RP95–239–000, Riverside is proposing an integrated transportation service using the available capacity of its affiliated pipelines.

The Commission recognizes that one purpose of NGPA section 311 is to enable intrastate pipelines to transport gas destined for the interstate market and thus spare interstate pipelines from having to construct duplicative facilities.[14] The NGPA accomplishes this through permitting intrastate pipelines to perform such transportation without becoming subject to NGA jurisdiction over the entirety of their operations. As the Commission stated in *Lear Petroleum Corporation:*

> NGPA sections 601(a)(1)(C) and (a)(2)(A) provide that the intrastate pipelines do not become subject to the NGA by virtue of section 311 transactions. This ensures that intrastate pipelines are only subject to Commission regulation of their rates for section 311 transactions. Intrastate pipelines do not become subject to Commission regulation of their intrastate activities or of construction of facilities used for intrastate transportation.[15]

Nevertheless, the Commission is concerned that what would physically and operationally appear to be one interstate pipeline system from Kansas to Missouri has been broken down artificially into three intrastate systems and one small interstate system consisting only of border crossings. Of concern too is that these four companies are affiliated and operated as one system by KPOC. This suggests that the corporate structure of these companies was designed primarily to avoid the Commission's jurisdiction under the NGA. While the Commission has stated that it is not unusual, much less unlawful, for persons to structure transactions either to qualify for regulation by one entity or to avoid regulation by another,[16] nevertheless at some point such structuring may be contrary to the public interest and inconsistent with the underlying purpose of statutes effecting a federal scheme of regulation.

Here, the Commission recognizes that the present corporate structure of the four companies will not frustrate the Commission's regulation over the rates charged by the companies for services currently performed under NGPA section 311, since the Commission regulates those rates. Rather, the Commission is concerned that the purpose of the NGA may be frustrated because KansOk, Kansas Pipeline, and Kansas Natural do not have to comply with Order No. 636.[17] In Order No. 636, the Commission explained that its "responsibility under the NGA is to protect the consumers of natural gas from the exercise of monopoly power by pipelines in order to ensure consumers access to an adequate supply of gas at a reasonable price."[18] Order No. 636 also required the unbundling of pipeline sales services.

The Commission has some concern that segmenting a single system into three intrastates and one interstate could frustrate the purposes underlying the NGA, Order No. 636, and other policies. For example, if the four pipelines operated by KPOC were found to be one interstate pipeline, they would be required to file a FERC tariff setting forth their terms and conditions of service, comply with the Commission's capacity release requirements under Order No. 636, and be subject to the Commission's NGA sections 4 and 5 authority with respect to their rates. Whereas under their present corporate structure, only Riverside is required to comply with these requirements; the three intrastate pipelines are not.

The Commission recognizes that a finding that the four companies operated by KPOC constitute one interstate pipeline would require the Commission to disregard their corporate forms. However, the Commission has the authority to do so, under certain circumstances. For example, in *General Telephone Co.* v. *U.S.*,[19] the court stated

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[2] *See* Riverside Pipeline Co., L.P., 48 FERC ¶ 61,309 (1989).

[3] *See* responses to Staff Data Request No. 2 in KansOk Partnership, Docket No. PR91–6–000.

[4] By order dated March 17, 1995, the Kansas Corporation Commission authorized Kansas Natural and Kansas Pipeline to merge. The merger has not taken place yet.

[5] *See* KansOk Partnership, 58 FERC ¶ 61,152 (1992).

[6] We note that in authorizing the construction of Riverside's initial system under the NGA, the Commission discussed an argument that the Hinshaw status of Riverside's affiliate, Kansas Pipeline, should be reconsidered. *See* Riverside Pipeline Company, L.P., 48 FERC ¶ 61,309, at 62,015–16 (1989). However, that case involved the issue of a single affiliate in one state, not a chain of affiliates claiming three different types of jurisdictional status.

[7] *See* Exhibit D to KansOk's February 11, 1991 Response to Staff's December 18, 1990 Data Request, which states that KansOk transported 31,672 Mcf of gas intrastate and 1,166,131 Mcf of gas under NGPA section 311, for a yearly total of 1,199,803 Mcf.

[8] Midcoast Ventures I, 61 FERC ¶ 61,029 (1992).

[9] *Id.* at 61, 158.

[10] 15 U.S.C. 717(b) (1988).

[11] *See* 15 U.S.C. 3301(16) which states: The term "intrastate pipeline" means any person engaged in natural gas transportation (not including gathering) which is not subject to the jurisdiction of the Commission under the [NGA] (other than any such pipeline which is not subject to the jurisdiction of the Commission solely by reason of section 1(c) of the [NGA]).

[12] Sales and Transportation of Natural Gas, FERC Stats. & Regs., Regulations Preambles 1977–1981 ¶ 30,081, at 30,536 (1979).

[13] Seagull Pipeline Corp., 11 FERC ¶ 61,267 (1980); *see also* Black Warrior Pipeline, Inc., 8 FERC ¶ 61,241 (1979).

[14] Lear Petroleum Corp., 42 FERC ¶ 61,015, at 61,043 (1988).

[15] *Id. See also* Mustang Energy Corp. v. FERC, 859 F.2d 1447 (10th Cir. 1988).

[16] *See, e.g.*, Riverside Pipeline Co., L.P., 48 FERC ¶ 61,309, at 62,015–16 (1989).

[17] Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, 57 Fed. Reg. 13,267 (Apr. 16, 1992) III FERC Stats. & Regs. Preambles ¶ 30,939 (Apr. 8, 1992); *order on reh'g*, Order No. 636–A, 57 Fed. Reg. 36,128 (Aug. 12, 1992), III FERC Stats. & Regs. Preambles ¶ 30,950 (Aug. 3, 1992); *order on reh'g*, Order No. 636–B, 57 Fed. Reg. 57,911 (Dec. 8, 1992), 61 FERC ¶ 61,272 (Nov. 27, 1992); *reh'g denied*, 62 FERC ¶ 61,007 (1993); *appeal pending sub nom.* United Distribution Companies, *et al.* v. FERC, No. 92–1485 (D.C. Cir.).

[18] Order No. 636, at 30,392.

[19] 449 F.2d 846 (5th Cir. 1971).

that, "[w]here the statutory purpose could * * * be easily frustrated through the use of separate corporate entities, the [Federal Communications Commission] is entitled to look through corporate form and treat the separate entities as one and the same for purposes of regulation." [20] Therefore, if the Commission were to determine here that the corporate structure of the four companies frustrated the statutory purpose of the NGA and was contrary to the public interest, it would have the authority to disregard their corporate forms.

In any event, at the very minimum the Commission believes that KansOk may be an interstate pipeline, based on the nature of its transportation services. At present, it appears that KansOk provides no intrastate service on its East Leg, and only a *de minimis* amount of intrastate service on its West Leg. The Commission recognizes the KansOk's mix of intrastate and interstate transportation volumes has not changed dramatically since the Commission issued its February 6, 1992 order.[21] Although no party contested KansOk's claim to be an intrastate pipeline at that time, Western Resources has raised the issue now.

F. Show Cause

For the reasons discussed above, the Commission is instituting this show cause proceeding, pursuant to sections 5, 7, and 16 of the NGA, to investigate further these matters. To this end, the Commission is ordering the following:

(1) KansOk, Riverside, Kansas Natural, Kansas Pipeline are ordered to show cause why the Commission should not disregard their corporate forms and find them to be one interstate pipeline system subject to the Commission's NGA jurisdiction; and

(2) KansOk is ordered to show cause why, since all but a *de minimis* amount of the service it provides is in interstate commerce, it should not be found to be an interstate pipeline subject to the Commission's NGA jurisdiction.

In their responses, the parties are encouraged to address the concerns raised above by the Commission.

The Commission Orders

(A) Within 30 days of the issuance of this order:

(1) KansOk, Riverside, Kansas Natural, Kansas Pipeline are ordered to show cause why the Commission should not disregard their corporate forms and find them to be one interstate pipeline system subject to the Commission's NGA jurisdiction; and

(2) KansOk is ordered to show cause why, since all but a *de minimis* amount of the service it provides is in interstate commerce, it should not be found to be an interstate pipeline subject to the Commission's NGA jurisdiction.

(B) Notice of this proceeding will be published in the **Federal Register**. Interested persons will have 20 days from the date of publication of the notice to intervene.

By the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 95–13770 Filed 6–5–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–307–000]

Natural Gas Pipeline Company of America; Notice of Proposed Changes in FERC Gas Tariff

May 31, 1995.

Take notice that on May 26, 1995, Natural Gas Pipeline Company of America (Natural) tendered for filing to be a part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Second Revised Sheet Nos. 289 and 297, to be effective May 4, 1995.

Natural states that the purpose of the filing is to conform with the Commission's Order No. 577, which changed the Commission's Rules and Regulations as follows: (1) Prearranged releases of exactly one month are no longer required to have open seasons and (2) the minimum time period before a subsequent short-term prearranged release to the same replacement shipper was shortened to 28 days.

Natural requested waiver of the Commission's Regulations to the extent necessary to permit the above tariff sheets to become effective May 4, 1995, the effective date of the Commission's Order No. 577.

Natural states that a copy of the filing was mailed to Natural's jurisdictional transportation customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 7, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–13739 Filed 6–5–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–5–004]

Northwest Pipeline Corp.; Notice of Proposed Changes in FERC Gas Tariff

May 31, 1995.

Take notice that on May 26, 1995, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets with a proposed effective date of November 6, 1994:

Third Substitute Second Revised Sheet No. 234
Second Substitute First Revised Sheet No. 237
Second Substitute Original Sheet No. 237–A
Third Substitute Original Sheet No. 237–B
Third Substitute Original Sheet No. 237–C

Northwest states that the purpose of this filing is to comply with the directives established by the Federal Energy Regulatory Commission ("Commission") Staff at the April 26, 1995, technical conference ("Conference") which was held to discuss Northwest's Entitlement and Imbalance Filing in Docket No. RP95–5.

On May 12, 1995, Northwest provided all Conference attendees with proposed tariff language which represented Northwest's best attempt to incorporate the suggestions received in protests and at the Conference and to address the concerns presented by the various parties. On May 19, two of the nine parties represented at the Conference, Natural Gas Clearinghouse and Sierra Pacific Power Company, communicated comments to Northwest regarding the May 12 proposal. Northwest further states that the instant filing starts with the May 12 proposal and adds revisions to address the May 19 concerns.

Northwest states that a copy of this filing has been served upon all intervenors in Docket No. RP95–5, upon Northwest's jurisdictional customers, and upon relevant state regulatory commissions.

Any persons desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before June 7, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–13734 Filed 6–5–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–145–002]

Northwest Pipeline Corporation; Notice of Proposed Change in FERC Gas Tariff

May 31, 1995.

Take notice that on May 26, 1995, Northwest Pipeline Corporation (Northwest), tendered for filing and acceptance as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets with a proposed effective date of March 2, 1995:

Second Revised Sheet No. 202
Fourth Revised Sheet No. 231
First Revised Sheet No. 231–A
Original Sheet No. 303
Original Sheet No. 303–A

Northwest states that the purpose of this filing is to respond to the directives of the Commission staff at the technical conference held on April 25, 1995 in Docket No. RP95–145 wherein Northwest was instructed to submit revised tariff sheets to the Commission by May 26, 1995. Northwest states that the proposed tariff provisions establish a new Section 32 in its General Terms and Conditions that allows Northwest to sell: (i) gas that becomes the property of Northwest pursuant to the provisions of terminated transportation or storage agreements or due to tariff provisions relating to interruptible storage or shipper imbalances; and (ii) other volumes of gas in de minimis quantities or in limited or infrequent situations.

Northwest states that it is proposing to credit its customers for certain gas sales revenues through a revenue crediting mechanism or, in the alternative, to credit its customers volumetrically for certain gas that becomes the property of Northwest by reducing the fuel use requirements factors. Likewise, Northwest states that its customers would bear the risk for certain gas that Northwest is unable to recover in imbalance situations.

Northwest further states that it is seeking to withdraw the proposed tariff sheets submitted on January 30, 1995 and March 16, 1995 in this docket.

Northwest is requesting limited waiver of the Commission's conduct and reporting regulations in Order No. 497 with regard to the sales of this gas.

Northwest states that a copy of this filing has been served upon Northwest's jurisdictional customers, upon all intervenors in Docket No. RP95–145–000 and upon interested state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before June 7, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–13735 Filed 6–5–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–304–000]

North Penn Gas Co.; Notice of Filing

May 31, 1995.

Take notice that on May 25, 1995, North Penn Gas Company (North Penn) tendered for filing a request for authority to provide payment to its current customers for (a) past North Penn overrecoveries of take-or-pay (TOP) dollars, as reduced by (b) three percent TOP payments by North Penn. As explained below, application of North Penn's tariff would allow North Penn to provide payment of $63,619 in TOP overrecoveries, which would be the amount owed, including interest, as of July 31, 1995.

As its primary relief, however, North Penn requests authority to provide payment of TOP overrecoveries as of December 29, 1995, which will reflect the remaining North Penn TOP payments of which North Penn is aware. If the Commission denies the primary relief, then North Penn requests authority to provide payment of the aforesaid $63,619.

North Penn requests waiver of any of the Commission's Rules and Regulations as may be required to implement the filing.

North Penn states that copies of the letter of transmittal and all enclosures are being mailed to each of North Penn's affect customers and State Commissions shown on the service list attached to the filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 7, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–13736 Filed 6–5–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ES95–33–000]

Northwestern Public Service Co.; Notice of Application

May 31, 1995.

Take notice that on May 24, 1995, Northwestern Public Service Company (Northwestern) filed an application under § 204 of the Federal Power Act seeking authorization to issue:

(1) not more than 2 million shares of Common Stock, par value $3.50;

(2) not more than $75 million of shares of Cumulative Preferred Stock;

(3) not more than $125 million of New Mortgage Bonds, notes, debentures, subordinated debentures (including securities in connection with a monthly income preferred securities financing), guarantees or other evidences of indebtedness;

(4) not more than $75 million of short-term debt securities; and

(5) not more than $175 million of bridge financing notes, debentures, guarantees or other evidences of indebtedness, until the permanent financing in (1)–(4) is in place.

Northwestern states that it may vary the maximum issuance amounts set forth above for each type of permanent

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[20] *Id.* at 855 (citations omitted). *See also* Taylor v. Standard Gas & Electric Co., 306 U.S. 307, 322 (1939); Transcontinental Gas Pipe Line Corp. v. FERC, 998 F.2d 1313 (5th Cir. 1993).

[21] In 1990, approximately 97.4 percent of KansOk's transportation service was pursuant to NGPA section 311, whereas KansOk does not dispute Western Resources' claim that KansOk now performs approximately 99.9 percent of its services under NGPA section 311.

security, so long as the aggregate issuance amount of all permanent securities does not exceed $300 million.

Also, Northwestern requests exemption from the Commission's competitive bidding and negotiated placement regulations.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before June 14, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–13731 Filed 6–5–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–309–000]

Riverside Pipeline Company L.P.; Notice of Proposed Changes in FERC Gas Tariff

May 31, 1995.

Take notice that on May 26, 1995, Riverside Pipeline Company, L.P. (Riverside) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets, to become effective June 1, 1995:

First Revised Sheet No. 107
First Revised Sheet No. 108
First Revised Sheet No. 109
First Revised Sheet No. 113

Riverside states that the purpose of the instant filing is to revise its capacity release tariff provisions set forth in Section 18 of the General Terms and Conditions of its Volume No. 1 Tariff to comply with Order No. 577 issued March 29, 1995 in Docket No. RM95–5–000.

Riverside is also serving copies of the instant filing on its customers, State Commissions and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Section 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 7, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–13741 Filed 6–5–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–508–000]

Stingray Pipeline Co.; Notice of Request Under Blanket Authorization

May 31, 1995.

Take notice that on May 23, 1995, Stingray Pipeline Company (Stingray), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP95–508–000 a request pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to acquire, own, construct and operate facilities in Vermillion Blocks 321, 348, 362 and 371 Offshore Louisiana, to receive and transport up to 150 Mmcf/day of natural gas for Samedan Oil Corp. Energy Development Corporation and Shell Offshore Inc. (Producers), under Stingray's blanket certificate issued in Docket No. CP91–1505–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Stringray proposes to acquire, own and operate dual 10-inch meter facilities and approximately 0.09 miles of 20-inch lateral to be constructed by the Producers on the production platform being constructed by the Producers in Vermillion Block 371 Offshore Louisiana.

Stingray proposes further to construct, own and operate 15.61 miles of 20-inch lateral from the Vermillion 371 production platform to Stingray's existing facilities in Vermillion Block 321, Offshore Louisiana and a 20-inch subsea tap valve assembly to be available for a future interconnect.

Stringray, in addition, proposes to construct, own and operate a 20-inch and 12-inch subsea tap valve assembly on the proposed 20-inch lateral in Vermillion Block 362 for future interconnects as well as a 12-inch subsea tap valve on the proposed 20-inch lateral in Vermillion Block 348 for a future interconnect.

It is said that the total cost of the facilities proposed for acquisition and construction is estimated to be approximately $9.06 million.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–13729 Filed 6–5–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–306–000]

Stingray Pipeline Co.; Notice of Proposed Changes in FERC Gas Tariff

May 31, 1995.

Take notice that on May 26, 1995, Stingray Pipeline Company (Stingray) tendered for filing to be a part of its FERC Gas Tariff, Third Revised Volume No. 1, Second Revised Sheet Nos. 150 and 156, to be effective May 4, 1995.

Stringray states that the purpose of the filing is to conform with the Commission's Order No. 577, which changed the Commission's Rules and Regulations as follows: (1) prearranged releases of exactly one month are no longer required to have open seasons and (2) the minimum time period before a subsequent short-term prearranged release to the same replacement shipper was shortened to 28 days.

Stingray requested waiver of the Commission's Regulations to the extent necessary to permit the above tariff sheets to become effective May 4, 1995, the effective date of the Commission's Order No. 577.

Stingray states that a copy of the filing was mailed to Stingray's jurisdictional transportation customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20406, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 7, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–13738 Filed 6–5–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–308–000]

Trailblazer Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

May 31, 1995.

Take notice that on May 26, 1995, Trailblazer Pipeline Company (Trailblazer) tendered for filing to be a part of its FERC Gas Tariff, Third Revised Volume No. 1, Second Revised Sheet Nos. 149 and 155, to be effective May 4, 1995.

Trailblazer states that the purpose of the filing is to conform with the Commission's Order No. 577, which changed the Commission's Rules and Regulations as follows: (1) Prearranged releases of exactly one month are no longer required to have open seasons and (2) the minimum time period before a subsequent short-term prearranged release to the same replacement shipper was shortened to 28 days.

Trailblazer requested waiver of the Commission's Regulations to the extent necessary to permit the above tariff sheets to become effective May 4, 1995, the effective date of the Commission's Order No. 577.

Trailblazer states that a copy of the filing was mailed to Trailblazer's jurisdictional transportation customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 7, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–13732 Filed 6–5–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT95–41–000]

Trunkline Gas Co.; Notice of Proposed Changes in FERC Gas Tariff

May 31, 1995.

Take notice that on May 26, 1995, Trunkline Gas Company (Trunkline) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1 revised tariff sheets, as listed on Appendix A attached to the filing, proposed to be effective November 1, 1994, December 1, 1994, February 1, 1995, April 1, 1995 and May 1, 1995.

Trunkline states that this filing is being made in compliance with Section 154.41(b) of the Commission's Regulations. The revised tariff sheets reflect updates to the Index of Firm Customers.

Trunkline states that copies of this filing are being mailed to affected shippers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 7, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–13740 Filed 6–5–95; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5215–6]

National Environmental Education and Training Foundation Inc. Announcement of a New Appointment to the Board of Directors

The National Environmental Education and Training Foundation was created by Public Law #101–619, the National Environmental Education Act of 1990. It is a private 501(c)(3) non-profit organization established to promote and support education and training as necessary tools to further environmental protection and sustainable, environmentally sound development. It provides the common ground upon which leaders from business and industry, all levels of government, public interest groups, and others can work cooperatively to expand the reach of environmental education and training programs beyond the traditional classroom. The Foundation will develop and support a grant program that promotes innovative environmental education and training programs; it will also develop partnerships with government and other organizations to administer projects that promote the development of an environmentally literate public.

The Administrator of the U.S. Environmental Protection Agency, as required by the terms of the Act, announces the appointment of Sam Rowse and Wayne Allen to the National Environmental Education and Training Foundation, Inc. Board of Directors.

Sam Rowse is President of Veryfine Products, Inc., Westford, Massachusetts. Mr. Rowse served as company treasurer from 1972 through 1989 when he was named President. He has served as vice chairman of the board of directors for the Processed Apples Institute and is a member of the National Juice Processors Association. Mr. Rowse is a member of the Joslin Clinic's Boston Committee and serves as trustee of The Deaconess Nashoba Hospital in addition to holding the position of corporator at the Deaconess Hospital in Boston.

Mr. Rowse is a graduate of Lawrence Academy in Groton, Massachusetts and holds a business degree from Nasson College in Springvale, Maine. His term of office is four years.

W.W. (Wayne) Allen is chairman and chief executive officer of Phillips Petroleum Company. Mr. Allen joined Phillips in 1961 as an engineer. After holding various staff engineering positions, Mr. Allen was elected to the board of directors in 1989, in 1991 became president and chief operating

officer and in May 1994 became chairman and chief executive officer.

Mr. Allen is a member of the National Petroleum Council, the Society of Petroleum Engineers, the American Society of Mechanical Engineers, a director of the Federal Reserve Bank of Kansas City, serves as a member and trustee of the Oklahoma State University Foundation Board of Governors, and is a national trustee, Southwest Region of the Boys & Girls Clubs of America.

Mr. Allen is a graduate of Oklahoma State University with a bachelor's degree in mechanical engineering and a master's degree in industrial engineering.

This appointee will join the ten current Board members, who include: Edward Bass, Chairman and CEO of Fine Line, Inc. and Chairman of Space Biospheres Ventures; Dr. James Crowfoot, Professor of Natural Resources and Urban and Regional Planning at the University of Michigan; Mark De Michele, President and CEO of Arizona Public Service Company; James Donnelley, Vice Chairman of the Board of R.R. Donnelley & Sons; Dr. Bonnie F. Guiton, Dean of the McIntire School of Commerce at the University of Virginia; Fred Krupp, Executive Director of the Environmental Defense Fund; Sarah Muyskens, Management Consultant; Leslie Dach, Executive Vice President and General Manager, Edelman Public Relations; and Francis Pandolfi, President and CEO of Times Mirror Magazines, Inc. and Chairman of the Board of The Sporting News Publishing Company.

Great care has been taken to assure that new appointees not only have the highest degree of expertise and commitment but also bring to the Board diverse points of view relating to environmental education and training.

Dated: May 22, 1995.

Carol M. Browner,

Administrator.

[FR Doc. 95–13791 Filed 6–5–95; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

[DA 95–1092]

Applications for Review on Responsible Accounting Officer Letter 25 ("RAO Letter 25")

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This notice invites comments on applications filed for review of Responsible Accounting Officer Letter 25 (April 19, 1995, 60 FR 19591).

The Commission on November 7, 1994, issued the Video Dialtone Reconsideration Order ("VDT Recon Order"). In that Order, the Commission reaffirmed its basic video dialtone framework adopted in the Second Report and Order, and, among other things, required carriers offering video dialtone to establish two sets of subsidiary accounting records to capture the wholly dedicated and shared video dialtone investment, expense and revenue. The VDT Recon Order also requires carriers to file a summary of these subsidiary accounting records with the Commission on a quarterly basis. The Commission delegated to the Common Carrier Bureau the authority to define the content and format of both the subsidiary accounting records and the quarterly reports, and to provide accounting guidance where necessary for uniform classification of video dialtone investment, expense and revenue. Finally, the VDT Recon Order required carriers to file revisions to their cost allocation manuals ("CAMs") to reflect the provision of video dialtone service. On April 3, 1995, the Accounting and Audit Division issued RAO Letter 25 setting forth specific guidance on the requirements for accounting classifications, subsidiary records, and amendments to CAMs for carriers that provide video dialtone service.

DATES: Comments are due May 30, 1995. Reply comments are due June 9, 1995.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Kim Yee, Common Carrier Bureau, Accounting and Audits Division, (202) 418–0810.

SUPPLEMENTARY INFORMATION:

Bell Atlantic Telephone Companies, BellSouth Telecommunications, Inc., GTE Service Corporation, Southwestern Bell Telephone Company, US West Communications, Inc., and National Telephone Cooperative Association File Applications for Review of Responsible Accounting Officer Letter 25

Public Comments Invited

On May 3, 1995, Bell Atlantic Telephone Companies ("Bell Atlantic"), BellSouth Telecommunications, Inc. ("BellSouth"), GTE Service Corporation ("GTE"), Southwestern Bell Telephone Company ("Southwestern"), US West Communications, Inc. ("US West") and National Telephone Cooperative Association ("NTCA") filed with the Commission separate Applications for Review of Responsible Accounting Officer Letter No. 25 (RAO Letter 25), which was issued by the Common Carrier Bureau under delegated authority on April 3, 1995 (DA 95–703). RAO Letter 25 provides guidance on video dialtone accounting to local exchange carriers that receive Section 214 authorizations to provide video dialtone service. It sets forth specific guidance on the requirements for accounting classifications, subsidiary records, and amendments to cost allocation manuals ("CAMs") for LECs that provide video dialtone service.

Bell Atlantic, BellSouth, Southwestern Bell and US West state that RAO Letter 25 exceeds the scope of the Bureau's delegated authority. Bell Atlantic, GTE, Southwestern Bell, BellSouth and US West contend that RAO Letter 25 creates a new product-specific or cost-of-service type of accounting system that is contrary to the Commission's existing Part 32 rules and that it is too costly to implement. BellSouth and Southwestern Bell state that RAO Letter 25 incorrectly classified the asynchronous transfer mode ("ATM") equipment as circuit equipment. BellSouth, GTE and US West also claim that the CAM revisions required by RAO Letter 25 are unnecessary. In addition, GTE also states that RAO Letter 25 conflicts with FCC rules and policies for retirement of investments and depreciation and income tax calculations. All petitioners request the Commission to revise or modify the RAO Letter 25. Finally, BellSouth and NTCA request the Commission to rescind the letter.

Ex Parte Rules—Non Restricted Proceeding. This is a non-restricted notice and comment proceeding. Ex Parte presentations are permitted, provided that they are disclosed as provided in Commission Rules. See generally 47 C.F.R. Sections 1.1202, 1.1203, and 1.106(a).

Parties may file comments on the Applications for Review no later than May 30, 1995. Replies should be filed by June 9, 1995. Comments should reference AAD 95–68. A copy of each pleading should be sent to Kenneth Ackerman and Daniel Gonzalez, Common Carrier Bureau, 2000 L Street, NW., Room 812, Washington, DC 20554, and the International Transcription Service (ITS), 2100 M Street, NW. Suite 140, Washington, DC 20037, (202) 857–3800. Copies of the Applications for Review and any comments will be available for public inspection and copy in the Accounting and Audits public reference room, 2000 L Street, NW., Room 812, Washington, DC Copies are also available from ITC. For further information contact Kenneth Ackerman, or Daniel Gonzalez (202) 418–0810.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–13381 Filed 6–5–95; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL RESERVE SYSTEM

Consumer Advisory Council; Solicitation of Nominations for Membership

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice.

SUMMARY: The Board is inviting the public to nominate qualified individuals for appointment to its Consumer Advisory Council, which is comprised of representatives both of consumer and community interests and of the financial services industry. Nine new members will be selected for three-year terms that will begin in January 1996. The Board expects to announce the selection of new members by year-end 1995.

DATES: Nominations should be received by August 31, 1995.

ADDRESSES: Nominations should be submitted in writing to Dolores S. Smith, Associate Director, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. Information about nominees will be available for inspection upon request.

FOR FURTHER INFORMATION CONTACT: Ann Marie Bray, Secretary to the Council, Division of Consumer and Community Affairs, (202) 452–6470; or for Telecommunications Device for the Deaf (TTD) users *only*, Dorothea Thompson (202) 452–3544; Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: The Consumer Advisory Council was established in 1976 at the direction of Congress to advise the Federal Reserve Board on the exercise of its duties under the Consumer Credit Protection Act and on other consumer-related matters. The Council by law (15 USC 1691(b)) represents the interests both of consumers and of the financial community. Under the Rules of Organization and Procedure of the Consumer Advisory Council (12 CFR 267.3), members serve three-year terms that are staggered to provide the Council with continuity.

New members will be selected for terms beginning January 1, 1996, to replace members whose terms expire this year. *Nominations should include the address and telephone number of the nominee, information about past and present positions held, and a description of special knowledge, interests or experience related to community reinvestment, consumer credit or other consumer financial services.* Persons may nominate themselves as well as other candidates.

The Board is interested in candidates who have some familiarity with community reinvestment or consumer financial services and who are willing to express their viewpoints. Candidates do not have to be experts on all levels of community reinvestment or consumer financial services, but they should possess some basic knowledge of the area. In addition, they should be able to make the necessary time commitment to prepare for and attend meetings (usually two days long including committee meetings) three times a year.

In making the appointments, the Board will seek to complement the qualifications of continuing Council members in terms of affiliation and geographic representation, and to ensure the representation of women and minority groups. The Board expects to announce its selection of new members by year-end.

Council members whose terms end as of December 31, 1995, are:

D. Douglas Blanke, Director of Consumer Policy, Office of the Attorney General, St. Paul, Minnesota
Michael Ferry, Staff Attorney, Consumer Unit, Legal Services of Eastern Missouri, Inc., St. Louis, Missouri
Norma L. Freiberg, Community Activist, New Orleans, Louisiana
Lori Gay, Executive Director, Los Angeles Neighborhood Housing Services, Los Angeles, California
Ronald A. Homer, Chairman and CEO, Boston Bank of Commerce, Boston, Massachusetts
Thomas L. Houston, Executive Director, The Dallas Black Chamber of Commerce, Dallas, Texas
Grace W. Weinstein, Financial Writer and Consultant, Englewood, New Jersey
James L. West, President, Jim West Financial Group, Inc., Tijeras, New Mexico
Robert O. Zdenek, Senior Program Officer, Annie E. Casey Foundation, Baltimore, Maryland

Other Council members whose terms continue through 1996 and 1997, are listed below (together with the expiration date of each one's term of office).

Thomas R. Butler, President and Chief Operating Officer, Discover Card Services, Riverwoods, Illinois, December 31, 1997
Robert A. Cook, Partner, Venable, Baetjer and Howard, Baltimore, Maryland, December 31, 1997
Alvin J. Cowans, President and CEO, McCoy Federal Credit Union, Orlando, Florida, December 31, 1996
Elizabeth G. Flores, Senior Vice President, Laredo National Bank, Laredo, Texas, December 31, 1996
Emanuel Freeman, President, Greater Germantown Housing Development Corporation, Philadelphia, Pennsylvania, December 31, 1997
David C. Fynn, Regulatory Risk Manager, National City Corporation, Cleveland, Ohio, December 31, 1997
Robert G. Greer, Chairman of the Board, Tanglewood Bank, Houston, Texas, December 31, 1997
Kenneth R. Harney, Journalist, Washington Post Writers Group, Chevy Chase, Maryland, December 31, 1997
Gail K. Hillebrand, Litigation Counsel, West Coast Regional Office, Consumers Union of U.S., Inc., San Francisco, California, December 31, 1997
Terry Jorde, President and CEO, Towner County State Bank, Cando, North Dakota, December 31, 1997
Eugene I. Lehrmann, President, American Association of Retired Persons, Madison, Wisconsin, December 31, 1997
Katharine W. McKee, Transition Director, CDFI Fund, Washington, D.C., December 31, 1996
Ronald A. Prill, Vice President, Credit, Dayton Hudson Corporation, Minneapolis, Minnesota, December 31, 1997
Lisa Rice-Coleman, Executive Director, Fair Housing Center, Toledo, Ohio, December 31, 1997
John R. Rines, President, General Motors Acceptance Corporation, Detroit, Michigan, December 31, 1997
Julia M. Seward, Vice President and Corporate Community Reinvestment Officer, Signet Bank, Richmond, Virginia, December 31, 1997
Anne B. Shlay, Associate Director, Institute for Public Policy Studies, Temple University, Philadelphia, Pennsylvania, December 31, 1996
Reginald J. Smith, President, United Missouri Mortgage Company, Kansas City, Missouri, December 31, 1996
John E. Taylor, President and CEO, The National Community Reinvestment Coalition, Washington, D.C., December 31, 1996
Lorraine VanEtten, Vice President and Community Lending Officer, Standard Federal Bank of Troy, Troy, Michigan, December 31, 1996
Lily K. Yao, Chairman and CEO, Pioneer Federal Savings Bank, Honolulu, Hawaii, December 31, 1996.

Board of Governors of the Federal Reserve System, May 31, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–13745 Filed 6–5–95; 8:45am]

BILLING CODE 6210–01–P

Consumer Advisory Council; Notice of Meeting of Consumer Advisory Council

The Consumer Advisory Council will meet on Thursday, June 29, 1995. The meeting, held pursuant to 15 U.S.C. 1691(b) and 12 CFR 267.5, will take place in Terrace Room E of the Martin Building. The meeting, which will be open to public observation, is expected to begin at 9:00 a.m. and to continue until 4:00 p.m., with a lunch break from 1:00 p.m. until 2:00 p.m. The Martin Building is located on C Street, Northwest, between 20th and 21st Streets in Washington, D.C.

The Council's function is to advise the Board on the exercise of the Board's responsibilities under the Consumer Credit Protection Act and on other matters on which the Board seeks its advice. Time permitting, the Council will discuss the following topics:

Community Reinvestment Act Reform. Discussion led by the Bank Regulation Committee regarding the agencies' implementation of new regulations under the Community Reinvestment Act, including (1) what issues should be addressed in the examination procedures and examiner training; (2) what impact the new rules might have on lending in low- and moderate-income areas; and (3) whether additional incentives may be needed to encourage institutions to choose to be evaluated for CRA under the strategic plan option.

Voluntary Data Collection of Personal Characteristics of Credit Applicants. Discussion led by the Consumer Credit Committee of a proposed amendment to the Board's Regulation B (Equal Credit Opportunity) that would allow, but not require, creditors to ask for the race, color, sex, religion and national origin of credit applicants to help ensure compliance with the Equal Credit Opportunity Act and other fair lending laws.

Consumer Leasing Disclosures (Tentative). Further discussion led by the Consumer Credit Committee on possible amendments to the Board's Regulation M (Consumer Leasing) to address technological and other developments in the leasing industry and to simplify compliance and reduce burdens without diminishing consumer protections.

Right of Rescission under the Truth in Lending Act. Presentation by members of the Consumer Credit Committee on the right of rescission, a legal remedy available to all consumers who secure a loan transaction with their homes. (Legislation has been introduced in the Congress that would limit the availability of the right in different ways.)

Legislative Proposals for Regulatory Relief under the Truth in Lending Act. Discussion led by the Consumer Credit Committee on recent legislative proposals that would amend the Truth in Lending Act to, among other things, (1) streamline consumer disclosures required for adjustable rate mortgages, and (2) eliminate, limit, or reduce potential creditor liability for disclosure errors.

Need for Reconciliation of Provisions of the Truth in Lending and Real Estate Settlement Procedures Acts. Discussion led jointly by the Consumer Credit Committee and the Community Affairs and Housing Committee of whether and how provisions of the Truth in Lending Act and the Real Estate Settlement Procedures Act or the implementing regulations should be amended to facilitate compliance.

Governor's Report. Report by Federal Reserve Board Member Lawrence B. Lindsey on economic conditions, recent Board initiatives, and issues of concern, with an opportunity for questions from Council members.

Members Forum. Presentation of individual Council members' views on the economic conditions present within their industries or local economies.

Committee Reports. Reports from Council committees on their work.

Other matters previously considered by the Council or initiated by Council members also may be discussed.

Persons wishing to submit to the Council their views regarding any of the above topics may do so by sending written statements to Ann Marie Bray, Secretary, Consumer Advisory Council, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. Comments must be received no later than close of business Wednesday, June 21, 1995, and must be of a quality suitable for reproduction.

Information with regard to this meeting may be obtained from Ann Marie Bray, 202–452–6470. Telecommunications Device for the Deaf (TDD) users may contact Dorothea Thompson, 202–452–3544.

Board of Governors of the Federal Reserve System, May 31, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–13744 Filed 6–5–95; 8:45am]

BILLING CODE 6210–01–P

Jeffrey Howard Steinberg; Change in Bank Control Notice

Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than June 14, 1995.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. Jeffrey Howard Steinberg, Marlton, New Jersey; to acquire up to 24.9 percent of the voting shares of Continental Bancorporation, Laurel Springs, New Jersey, and thereby indirectly acquire Continental Bank of New Jersey, Laurel Springs, New Jersey.

Board of Governors of the Federal Reserve System, May 31, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–13743 Filed 6–5–95; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

[File No. 932–3150]

Frank A. Latronica, Jr., et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, the distributor and the manufacturer of the Duram Emergency Escape Mask to possess competent and reliable scientific evidence to substantiate claims that their mask will absorb, filter out, or otherwise protect the user from any hazardous gas or fumes associated with fires, and for claims that the mask is appropriate for use in mines.

DATES: Comments must be received on or before August 7, 1995.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Alan E. Krause, Chicago Regional Office, Federal Trade Commission, 55 East Monroe Street, Suite 1437, Chicago, Illinois 60603. (312) 353–8156.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(F) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

In the Matter of Frank A. Latronica, Jr., individually and doing business as Life Safety Products, and Duram Rubber Products, a partnership, Agreement Containing Consent Order to Cease and Desist.

The Federal Trade Commission having initiated an investigation of certain acts and practices of Frank A. Latronica, Jr., individually and doing business as Life Safety Products; and Duram Rubber Products, a partnership, (hereinafter referred to as "proposed respondents"), and it now appearing that proposed respondents are willing to enter into an agreement containing an order to cease and desist from the acts and practices being investigated,

It is hereby agreed by and between Frank A. Latronica, Jr., individually and doing business as Life Safety Products; and Duram Rubber Products, a partnership, and counsel for the Federal Trade Commission that:

1. Proposed respondent Frank A. Latronica, Jr., is an individual doing business as Life Safety Products with his principal office or place of business at 412 North Pacific Coast Highway, Suite 357, Laguna Beach, California 92651.

2. Proposed respondent Duram Rubber Products is a registered partnership of Kibbutz Ramat Hakovesh organized, existing and doing business under and by virtue of the laws of the country of Israel, with its principal office or place of business at Kibbutz Ramat Hakovesh 44930 Israel.

3. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint.

4. Proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) All claims under the Equal Access to Justice Act.

5. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commssion. If this agreement is accepted by the Commission, it, together with the draft of the complaint contemplated hereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft complaint, other than the jurisdictional facts, are true.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to proposed respondents' addresses as stated in this agreement shall constitute service. Proposed respondents waive any right they might have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

8. Proposed respondents have read the complaint and the order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

Definitions

For purposes of this Order, the following definitions shall apply:

(1) "Duram Emergency Escape Mask" shall mean the over-the-head escape hood manufactured by Duram Rubber Products an Israeli Company.

(2) "Substantially similar product" shall mean any mask, hood or other product that is designed or advertised as offering the user protection from the hazards associated with fires.

(3) "Competent and reliable scientific evidence" shall mean tests, analyses, research, studies or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

I

It is ordered that respondents Frank A. Latronica, Jr., individually and doing business as Life Safety Products; and Duram Rubber Products, a partnership, its successors and assigns, and its officers; and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of the Duram Emefgency Escape Mask, or any substantially similar product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication that:

A. Such product is capable of absorbing, removing, filtering out, or otherwise protecting the user from any hazardous gas or fumes associated with fire, unless such representation is true and, at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation; or

B. Such product can protect the user from any hazards associated with fire, unless such representation is true and, at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation; or

C. Such product is appropriate for use in mines, unless such representation is true and, at the time of making such representation, respondents possess and rely upon competent and reliable evidence that substantiates the representation.

II

It is further ordered that respondents Frank A. Latronica, Jr., individually and doing business as Life Safety Products; and Duram Rubber Products, a partnership, its successors and assigns, and its officers; and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, shall include, as specified below, the following disclosure in any advertisement or promotional material for the Duram Emergency Escape Mask, or any substantially

similar product, that is advertised, offered for sale, or sold by respondents that is incapable of absorbing, removing, filtering or otherwise providing significant protection from carbon monoxide, if that advertising or promotional material expressly or impliedly represents that the device protects the user from any hazard associated with fire:

Notice: This device does not filter carbon monoxide—a lethal gas associated with fire.

In any print advertisement or promotional material, the above disclosure shall be printed in a typeface and color that are clear and prominent in at least ten-point bold type print, in close conjunction with the representation. In multipage documents, the disclosure shall appear on the cover or first page.

In any advertisement disseminated on television broadcast, cablecast, home video or theatrical release, the above disclosure shall be displayed in a legible superscript with a simultaneous voice-over recitation of the disclosure in a manner designed to ensure clarity and prominence.

In any radio advertisement, the above disclosure shall be spoken in a manner designed to ensure clarity and prominence.

Nothing contrary to, inconsistent with, or in mitigation of the above disclosure shall be used in any advertisement in any medium.

III

It is further ordered that respondents Frank A. Latronica, Jr., individually and doing business as Life Safety Products; and Duram Rubber Products, a partnership, its successors and assigns, and its officers; and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, shall include, as specified below, the following disclosure on all package labels and package inserts for the Duram Emergency Escape Mask, or any substantially similar product, advertised, offered for sale, or sold by respondents that is incapable of absorbing, removing, filtering or otherwise providing significant protection from carbon monoxide:

Warning: This device does not filter carbon monoxide—a lethal gas associated with fire.

The above-required language shall be printed in at least ten-point bold type print in a typeface and color that are clear and prominent. Nothing contrary to, inconsistent with, or in mitigation of the above disclosure shall be used on any such package label or product insert.

IV

It is further ordered that respondents Frank A. Latronica, Jr., individually and doing business as Life Safety Products; and Duram Rubber Products, a partnership, its successors and assigns, and its officers; and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of any fire protection or safety related product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that any such product protects or assists in protecting the user from respiratory hazards associated with fire, explosions, air pollution, chemical exposure or other environments where normal breathing is impaired, unless, at the time of making such representation, respondents possess and rely upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates the representation.

V

It is further ordered that respondents Frank A. Latronica, Jr., individually and doing business as Life Safety Products; and Duram Rubber Products, a partnership, its successors and assigns, and its officers; and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of any fire protection or safety related product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, the existence, contents, validity, results, conclusions or interpretations of any test or study.

VI

It is further ordered that respondents shall:

A. Within thirty (30) days from the date of service of this Order, deliver by first class mail, a dated notification letter, on Life Safety Products letterhead stationery, in the form set forth in Appendix A to this Order, to each person, partnership or corporation who purchased a Duram Emergency Escape Mask from Life Safety Products. The notification letter shall be delivered by itself in a format that does not include any additional communication from respondent.

B. Within sixty (60) days from the date of service of this Order, deliver by first class mail, a dated notification letter, on Life Safety Products letterhead stationery, in the form set forth in Appendix A to this Order, to each person, partnership, or corporation who purchased a Duram Emergency Escape Mask from any of the catalog retailers to whom Life Safety Products sold the Duram Emergency Escape Mask for resale. The notification letter shall be delivered by itself in a format that does not include any additional communication from respondent.

VII

It is further ordered that for five (5) years after the last date of dissemination of any representation covered by this Order, respondents, or their successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials that were relied upon in disseminating such representations; and

B. All tests, reports, studies, surveys, demonstrations, or other evidence in its possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers.

VIII

It is further ordered that respondents shall:

A. Within thirty (30) days from the effective date of this Order deliver a copy of this Order to each of their officers, agents, representatives, and employees who are engaged in the preparation or placement of advertisements, promotional materials, product labels or other such sales materials covered by this Order.

B. For a period of ten (10) years from the effective date of this Order deliver a copy of this Order to each of their future officers, agents, representatives, and employees who are engaged in the preparation or placement of advertisements, promotional materials, product labels or other such sales materials covered by this Order, within three (3) days after the person assumes such position.

IX

It is further ordered that the respondent Duram Rubber Products shall notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in its partnership structure, including but not limited to dissolution, assignment or sale resulting in the emergence of a successor partnership or corporation, the creation or dissolution of subsidiaries or affiliates, the planned filing of a bankruptcy petition or any other partnership change, that may affect compliance obligations arising under this Order.

X

It is further ordered that respondent Frank A. Latronica, Jr., doing business as Life Safety Products, shall, for a period of ten (10) years from the date this Order becomes final, notify the commission within thirty (30) days of the discontinuance of his present business or employment and of each affiliation with a new business or employment. Each notice of affiliation with any new business or employment shall include his new business address and telephone number, current home address, and a statement describing the nature of the business or employment and the duties and responsibilities. The expiration of the notice provision of this Part X. shall not affect any other obligation arising under this Order.

XI

It is further ordered that respondent shall, within sixty (60) days after service of this Order upon it, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

Appendix A

Dear Purchaser of a Duram Emergency Escape Mask: Please note this important safety information:

The Duram Emergency Escape Mask you purchased does not filter carbon monoxide—a lethal gas associated with fire. This mask will not protect you from the effects of carbon monoxide gas.

This means that if you are wearing the Duram Emergency Escape Mask during a fire, exit immediately. You should know that carbon monoxide is colorless and odorless.

Our company, Life Safety Products, is sending all Duram Emergency Escape Mask ("Duram Mask") purchasers this alert as a result of a consent order with the Federal Trade Commission. According to the Federal Trade Commission, advertisements for the Duram Mask claimed that the mask would protect you from all significant fire hazards for up to 20 minutes. These hazards included toxic smoke, poisonous fumes, and lethal gases.

The advertisements for the Duram Mask did not make it clear that the mask does not filter carbon monoxide—a lethal gas associated with fires.

We have now agreed not to make any claims about the mask's ability to protect you from fire hazards, unless we have reliable scientific evidence to back up these statements.

We also have learned that these masks are not appropriate for use in U.S. mines.

While the Duram Mask will not protect you from carbon monoxide gas, it will protect you from other potentially lethal gases associated with fire. These gases include hydrogen chloride, hydrogen cyanide, nitrogen dioxide, and sulfur dioxide.

Life Safety Products

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from respondents Frank A. Latronica, Jr., doing business as Life Safety Products, and Duram Rubber Products.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

This matter concerns claims made by the respondents in their advertising and other promotional materials that the Duram Emergency Escape Mask will absorb or filter out all significant toxic smoke and poisonous fumes and lethal gases associated with fires; will protect the user from all significant hazards associated with toxic smoke, poisonous fumes and lethal gases in fires for up to twenty minutes; and is appropriate for use in mines. The Commission's complaint charges that respondents' claims are false and misleading because the Duram Emergency Escape Mask will not absorb or filter out all significant toxic smoke and poisonous fumes and lethal gases associated with fires because it does not absorb or filter out carbon monoxide, a lethal gas associated with fires; will not protect the user from all significant hazards associated with toxic smoke, poisonous fumes and lethal gases in fires for up to twenty minutes because it does not absorb or filter out carbon monoxide, a lethal gas associated with fires; and it is not appropriate for use in mines because it does not meet the standards developed by the National Institute for Occupational Safety and Health and the United States Bureau of Mines for Respiratory Protective Devices, as set forth in 30 CFR part 11.

The Commission's complaint also charges that the respondents falsely represented that they possessed and relied upon a reasonable basis that substantiated the above claims. The Commission's complaint alleges that this representation is false and misleading because at the time they made these three representations respondents did not possess and rely upon a reasonable basis that substantiated these claims.

The Commission's complaint also alleges that respondents' failure to disclose to consumers that the Duram Emergency Escape Mask does not absorb or filter out carbon monoxide, is a deceptive practice.

Finally, the Commission's complaint charges that in their advertising and other promotional materials respondents represented, directly or by implication, that scientific tests prove that the Duram Emergency Escape Mask filters 94% of the smoke in an environment filled with smoke. The Commission's complaint alleges that this representation is false and misleading because scientific tests do not prove that the Duram Emergency Escape Mask filters 94% of the smoke in an environment filled with smoke.

The proposed consent order contains provisions designed to remedy the violations charged and to prevent the respondents from engaging in similar acts and practices in the future.

Part I of the proposed order prohibits the respondents from representing, directly or by implication in its advertising or labeling for the Duram Emergency Escape Mask, or any substantially similar product, that such product is capable of absorbing, removing, filtering out, or otherwise protecting the user from any hazardous gas or fumes associated with fire and such product can protect the user from any hazards associated with fire unless such representation are true, and respondents possess and rely upon competent and reliable scientific evidence that substantiates them. Part I of the proposed order also prohibits the respondents from representing, directly or by implication in its advertising or labeling for the Duram Emergency Escape Mask, or any substantially similar product, that such product is appropriate for use in mines, unless such representations are true, and respondents possess and rely upon competent and reliable evidence that substantiates them.

Part II of the proposed order requires respondents to include a disclosure in any advertisement or promotional material for the Duram Emergency Escape Mask or any substantially similar product alerts consumers that the mask is incapable of absorbing, removing, filtering or otherwise providing significant protection from carbon monoxide, if the advertisement or promotional material expressly or impliedly represents that the device protects the user from any hazard associated with fire. The proposed order also specifies the size and placement of such a disclosure for print advertisements and the nature and manner of such a disclosure for audio and visual advertisements.

Part III of the proposed order requires respondents to include a disclosure on all package labels and package inserts for the Duram Emergency Escape Mask or any substantially similar product that alerts consumers that the mask does not filter carbon monoxide, a lethal gas associated with fire. The proposed order also specifies the size of such a disclosure and that it must be in a typeface and color that are clear and prominent.

Part IV of the proposed order prohibits respondents from representing, directly or by implication, that any fire protection or safety related product protects or assists in protecting the user from respiratory hazards associated with fire, explosions, air pollution, chemical exposure or other environments where normal breathing is impaired, unless, at the time of making such representation, respondents possess and rely upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates the representation.

Part V of the proposed order prohibits respondents from misrepresenting, in any manner, directly or by implication, for any fire protection or safety related product, the existence, contents, validity, results, conclusions or interpretations of any test or study.

Part VI of the proposed order requires respondents to mail to each person who has purchased the Duram Emergency Escape Mask from Life Safety Products, or from any catalog retailer to whom Life Safety Products has sold the Duram Emergency Escape Mask for resale, a notification letter informing the consumer that the Duram Emergency Escape Mask they have purchased does not filter carbon monoxide.

The remaining parts of the proposed consent order require the respondents to maintain materials relied upon in disseminating any representation covered by the order, to distribute copies of the order to certain company officials and employees, to notify the Commission of any changes in the corporate structure of Duram Rubber Products or the employment status of Mr. Frank A. Latronica, Jr., that might affect compliance with the order, and that each respondent file one or more compliance reports.

The purpose of this analysis is to facilitate public comment on the proposed consent order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify their terms in any way.

Donald S. Clark,

Secretary.

[FR Doc. 95–13793 Filed 6–5–95; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statewide Immunization Information System Developer's Workshop

The National Immunization Program (NIP) of the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Statewide Immunization Information system (SIIS) Developer's Workshop.

Times and Dates: 8:30 a.m.–4 p.m., August 1, 1995; 8:30 a.m.–4 p.m., August 2, 1995; 8:30 a.m.–4 p.m., August 3, 1995.

Place: Omni Hotel at CNN Center, 100 CNN Center, Atlanta, Georgia 30335, telephone 404/659–0000, (Reservations 404/818–4300).

Status: The meeting will be open to the public, attendance limited only by space available. The meeting room will accommodate approximately 280 people.

Purpose: This workshop will focus on technical issues and guidelines related to the SIIS projects, and CDC's role in the SIIS technical support and implementation.

Matters To Be Discussed: Topics to be discussed will include: SIIS architecture and design; Record Exchange Interface; Gateway Interface Specification design; Data Communication Security; immunization history evaluation algorithms; patient de-duplication algorithms; programming confidentiality; vaccine code structure; Health Level 7 (HL7) data exchange standards; Information Network for Public Health Officials (INPHO); and Clinic Assessment Software Application (CASA).

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Donna Williams, Program Analyst, NIP, CDC, 1600 Clifton Road, NE, (E–62), Atlanta, Georgia 30333, telephone 404/639–8243.

Dated: May 31, 1995.

John C. Burckhardt,

Acting Director, Management Analysis and Services Office Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–13780 Filed 6–5–95; 8:45 am]

BILLING CODE 4163–18–M

Food and Drug Administration

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

FDA has established an Advisory Committee Information Hotline (the hotline) using a voice-mail telephone system. The hotline provides the public with access to the most current information on FDA advisory committee meetings. The advisory committee hotline, which will disseminate current information and information updates, can be accessed by dialing 1–800–741–8138 or 301–443–0572. Each advisory committee is assigned a 5-digit number. This 5-digit number will appear in each individual notice of meeting. The hotline will enable the public to obtain information about a particular advisory committee by using the committee's 5-digit number. Information in the hotline is preliminary and may change before a meeting is actually held. The hotline will be updated when such changes are made.

MEETING: The following advisory committee meeting is announced:

Psychopharmacologic Drugs Advisory Committee

Date, time, and place. July 24 and 25, 1995, 8:30 a.m., Gaithersburg Hilton, Grand Ballroom, 620 Perry Pkwy., Gaithersburg, MD.

Type of meeting and contact person. Open committee discussion, July 24, 1995, 8:30 a.m. to 5 p.m.; open committee discussion, July 25, 1995, 8:30 a.m. to 5 p.m.; open public hearing, 5 p.m. to 6 p.m., unless public participation does not last that long; Michael A. Bernstein, Center for Drug Evaluation and Research (HFD–120), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5521, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Psychopharmacologic Drugs Advisory Committee, code 12544.

General function of committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in the practice of psychiatry and related fields.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before July 17, 1995, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On July 24 and 25, 1995, the committee will discuss issues in the design and conduct of studies involving antipsychotic drugs.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: May 25, 1995.

Linda A. Suydam,

Interim Deputy Commissioner for Operations.

[FR Doc. 95–13752 Filed 6–5–95; 8:45 am]

BILLING CODE 4160–01–F

Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HF (Food and Drug Administration) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (35 FR 3685, February 25, 1970 and 56 FR 29484, June 27, 1991, as amended most recently in pertinent parts at 55 FR 12283, April 2, 1990) is amended to reflect the following reorganization in the Food and Drug Administration (FDA).

The Office of Biotechnology, Office of Operations, is being abolished. The biotechnology industry has evolved to the point where the functions of this office are more appropriately performed by FDA's centers. The office's industry liaison activities will be performed by FDA's Office of External Affairs under its existing liaison functions.

Under section HF–B, Organization:

1. Delete subparagraph Office of Biotechnology (HFA–H), Office of Operations (HFA9), in its entirety.

Prior Delegations of Authority. Pending further delegations, directives, or orders by the Commissioner of Food and Drugs, all delegations of authority to positions of the affected organizations in effect prior to this date shall continue in effect in them or their successors.

Dated: May 17, 1995.

David A. Kessler,

Commissioner of Food and Drugs.

[FR Doc. 95–13710 Filed 6–5–95; 8:45 am]

BILLING CODE 4160–01–M

Health Resources and Services Administration

Advisory Council; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of June 1995:

Name: Council on Graduate Medical Education Medical Licensure Subgroup.

Time: June 23, 1995, 8:30 a.m.–4:00 p.m.

Place: Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, VA 22202.

Open for entire meeting.

Purpose: Review the operations of the American Medical Association's National Credentials Verification System and recommend if appropriate, an alternative credentials verification system or process for physicians that assures nondiscriminatory policies and practices in the operation of the system.

Review the policies and practices of State Medical Boards in licensing international medical graduates and U.S. medical graduates, and determine the effects of such policies and practices.

Report and make recommendations to Congress, the Secretary of Health and Human Services and the Council on Graduate Medical Education regarding the finding of the subgroup.

Agenda: The agenda for the third meeting of the Council on Graduate Medical Education Medical Licensure Subgroup includes a review of the results of the pilot test of the proposed questionnaire for the survey of selected State medical boards. Presentation will be made by the Educational Commission for Foreign Medical Graduates (ECFMG) and the Federation of State Medical Boards (FSMB) regarding their operations and their views on the development of a private sector national credentials verification system.

Anyone requiring information regarding the meeting should contact Stanford Bastacky, D.M.D., M.H.S.A., telephone (301) 443–6785; Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, Room 9A–27, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Agenda Items are subject to change as priorities dictate.

Dated: May 31, 1995.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 95–13709 Filed 6–5–95; 8:45 am]

BILLING CODE 4160–15–P

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Meeting of the Sickle Cell Disease Advisory Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Sickle Cell Disease Advisory Committee, National Heart, Lung, and Blood Institute, June 16, 1995. This meeting will be held at the National Institutes of Health, Federal Building, Conference Room B1–19, 7550 Wisconsin Avenue, Bethesda, Maryland 20892.

The entire meeting will be open to the public from 9:00 a.m. to adjournment, to discuss recommendations on the implementation and evaluation of the Sickle Cell Disease Program. Attendance by the public will be limited to space available.

Ms. Terry Long, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, Bethesda, Maryland 20892, (301) 496–4236, will provide a summary of the meeting and a roster of the committee members upon request.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Secretary in advance of the meeting.

Dr. Clarice D. Reid, Executive Secretary, Sickle Cell Disease Advisory Committee, Division of Blood Diseases and Resources, NHLBI, Two Rockledge Building, Suite 10160, 6701 Rockledge Drive, Bethesda, Maryland 20892, (301) 435–0080, will furnish substantive program information.

This notice is being published less than fifteen days prior to the meeting due to the conflict of schedules of committee members.

(Catalog of Federal Domestic Assistance Program No. 93.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: May 30, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–13712 Filed 6–5–95; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Notice of a Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Heart, Lung, and Blood Special Emphasis Panel (SEP) meeting:

Name of SEP: Refinement on Clinical Use of New Assays for Direct Detection of Viral Nucleic Acids in Donated Blood, Organs and Tissues (Teleconference Call).

Date: June 15, 1995.

Time: 11:00 a.m.

Place: 6701 Rockledge Drive, Room 7178, Bethesda, Maryland.

Contact Person: David M. Monsees, Jr., Ph.D., 6701 Rockledge Drive, Room 7178, Bethesda, Maryland 20892–7294, (301) 435–0270.

Purpose/Agenda: To review and evaluate contract proposals.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: May 30, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–13713 Filed 6–5–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Dental Research; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Dental Research Special Emphasis Panel (SEP) meetings:

Name of SEP: National Institute of Dental Research Special Emphasis Panel—Trigeminal Pain Mechanisms & Control Center.

Dates: June 14–15, 1995.

Time: 8:00 a.m.

Place: Hyatt Hotel Dulles, 2300 Dulles Corner Boulevard, Herndon, VA.

Contact Person: Dr. Yong Shin, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Room 4AN–38J, Bethesda, MD 20892, (301) 594–2372.

Purpose/Agenda: To evaluate and review grant applications and/or contract proposals.

Name of SEP: National Institute of Dental Research Special Emphasis Panel—Advanced Dental Restorative Systems Program Project.

Date: July 18, 1995.

Time: 8:00 a.m.

Place: National Institutes of Health, 4500 Center Drive, Natcher Building, Conf. Room A, Bethesda, MD 20892.

Contact Person: Dr. Yong Shin, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Room 4AN–38J, Bethesda, MD 20892, (301) 594–2372.

Purpose/Agenda: To evaluate and review grant applications and/or contract proposals.

Name of SEP: National Institute of Dental Research Special Emphasis Panel—Dentin Characterization Program Project.

Date: July 19, 1995.

Time: 8:00 a.m.

Place: National Institutes of Health, 4500 Center Drive, Natcher Building, Conf. Room A, Bethesda, MD 20892.

Contact Person: Dr. Yong Shin, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Room 4AN–38J, Bethesda, MD 20892, (301) 594–2372.

Purpose/Agenda: To evaluate and review grant applications and/or contract proposals.

Name of SEP: National Institute of Dental Research Special Emphasis Panel—Facial Profile SBIR.

Dates: August 22, 1995.

Time: 8:00 a.m.

Place: Wellesley College Club Inn, 44 Commonwealth Avenue, Boston, MA.

Contact Person: Dr. George Hausch, Chief, Review Section, 4500 Center Drive, Natcher Building, Room 4AN-38J, Bethesda, MD 20892, (301) 594–2372.

Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.121, Oral Diseases and Disorders Research.)

Dated: May 30, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–13714 Filed 6–5–95; 8:45 am]

BILLING CODE 4140–01–M

Opportunity for a Cooperative Research and Development Agreement (CRADA) and Licensing Opportunity for Testosterone Bucyclate

AGENCIES: National Institute of Child Health and Human Development, National Institutes of Health, Public Health Service, DHHS; and UNDP/UNFPA/WHO/World Bank Special Programme of Research, Development and Research Training in Human Reproduction (WHO/HRP).

ACTION: Notice.

SUMMARY: The National Institutes of Health and the World Health Organization are seeking (a) partner(s) for the further development, evaluation and commercialization of testosterone bucyclate and pharmaceutical compositions thereof. The invention claimed in the issued U.S. patent referenced below is available for either exclusive or non-exclusive licensing. Licensing by NIH is subject to 35 U.S.C. 207 and 37 CFR part 404.

Long-Acting Androgenic Compounds and Pharmaceutical Compositions Thereof

Inventors: Sydney Archer, Gabriel Bialy, Richard P. Blye, Pierre Crabbe, Egon R. Diczfalusy, Carl Djerassi, Josef Fried and Hyun K. Kim

Assignees: National Institutes of Health and the World Health Organization

Issued: August 14, 1990

Patent Number: 4,948,790

To expedite the research, development and commercialization of testosterone bucyclate, the National Institutes of Health and the World Health Organization are seeking one or more CRADA and/or license agreements with pharmaceutical or biotechnology companies in accordance with the regulations governing the transfer of Government-developed agents and WHO's public sector objectives, as outlined below. Any proposal to use or develop these drugs will be considered.

SUPPLEMENTARY INFORMATION:

Androgens are principally employed in therapeutic medicine for replacement or supplementation in androgen deficiency states but also find use in hypopituitarism, menstrual disorders, anemia, promotion of anabolism, suppression of lactation and as a palliative measure in recurrent and metastatic carcinoma of the breast. NIH's and WHO's interest is to develop testosterone bucyclate for use as a hormonal method of male contraception and for androgen replacement in other methods of male contraception which usually compromise the endocrine as well as the gametogenic function of the testis. Long-term androgen therapy is complicated by the side effects and/or poor bioavailability of oral preparations and the need for frequent injections of parenteral products. Two of the most commonly used injectable androgens, testosterone enanthate and testosterone cypionate, must be administered about every two weeks. There is thus a crucial need for longer-acting injectable androgens.

Testosterone bucyclate emanated, in 1980, from a joint NIH–WHO-sponsored steroid synthesis program in which the preparation of selected steroid esters was contracted by WHO and the resulting compounds screened by the Contraceptive Development Branch (CDB) of the National Institute for Child Health and Human Development at its Biological Testing Facility. Chemically, testosterone bucyclate is Testosterone 17β-(*trans*-4-*n*-butyl) cyclohexyl carboxylate. This ester of the natural hormone, testosterone, exhibits prolonged activity when administered intramuscularly as an aqueous crystalline suspension in all species studied, including man. The drug was evaluated, including pharmacokinetics and metabolic studies in both rodents and primates, by CDB. WHO supported studies in primates as well as the first clinical studies in hypogonadal and normal men. The patent is jointly held by NIH and WHO. NIH and WHO intend to continue joint development of testosterone bucyclate.

Although each patentee may proceed with granting a non-exclusive license independently, joint licensing is envisaged. Licensing will include use of testosterone bucyclate as a hormonal method of male contraception, use for androgen replacement in other methods of male contraception, which usually compromise the endocrine as well as the gametogenic function of the testis and use as a therapeutic androgen for patients with androgen deficiency syndromes. A "Notice of Claimed Investigational Exemption For A New Drug" (IND) is currently being prepared.

The National Institute of Child Health and Human Development and the World Health Organization seek partners for the further development and commercialization of testosterone bucyclate.

The role of the National Institute of Child Health and Human Development and the World Health Organization is expected to be as follows:

1. Provide the commercial partner with all biological data on testosterone bucyclate covered by the agreement.
2. Provide samples of the drug and clinical dosage forms.
3. Provide chemical data on testosterone bucyclate, including routes of synthesis, analytical methods employed, purity, stability and formulation.
4. Provide reports of all safety studies of the drug.
5. Continue studies on the pharmacokinetics and biological activity of testosterone bucyclate and formulations thereof.
6. Conduct appropriate studies to optimize formulations of testosterone bucyclate.
7. Prepare the IND.

8. Participate in meetings with the Food and Drug Administration for establishment of the protocols for Phase I, II and III clinical investigations and provide liaison with the FDA.

The role of the commercial partner is expected to be as follows;

1. Obtain a commercialization license from NIH and the WHO.
2. Participate in the development of the IND.
3. Assume responsibility for regulatory affairs.
4. Assume responsibility for preparation and formulation of the drug for pre-Phase III safety studies and Phase III clinical trials.
5. Undertake such additional safety studies as may be required for Phase III clinical trials and for NDA submission.
6. Undertake an orderly sequence of clinical investigations of testosterone bucyclate as a hormonal method of male contraception and for androgen replacement in other methods of male contraception.
7. Assume responsibility for preparation and filing of the NDA.
8. Assume responsibility for commercial manufacture and distribution of the final products.
9. Ensure availability of the final products to the public sector of developing countries in sufficient quantities, at a preferential price, in accordance with WHO's public sector objectives.

Selection criteria for choosing commercial partners will furthermore include, but will not be limited to the following:

1. The proposal must contain a clear statement of capabilities and experience with respect to the tasks to be undertaken. This would include experience in drug development, regulatory affairs and marketing.
2. The proposal must contain a clear and concise outline of the work to be undertaken, a schedule of significant events, an outline of objectives to be accomplished with individual and overall times frames, and details of experimental procedures and techniques to be employed.
3. The proposal must contain the level of financial support which will be supplied for the development of testosterone bucyclate.
4. Agreement to be bound by DHHS and WHO rules and regulations regarding patent rights, the ethical treatment of animals, the involvement of human subjects in clinical investigations and the conduct of randomized clinical trials.
5. Agreement with provisions for equitable distribution of patent rights to any inventions developed under the CRADA and license agreements.

EFFECTIVE DATE: In view of the high priority for developing and commercializing testosterone bucyclate, all proposals must be received no later than September 5, 1995 for priority consideration.

ADDRESSES: CRADA proposals and questions should be addressed to Dr. Gordon Guroff, Deputy Scientific Director, National Institutes of Child Health and Human Development, Building 49, Room 5A64, Bethesda, Maryland 20892 (Telephone: 301/496–4751); with a copy to Director, UNDP/UNFPA/WHO/World Bank Special Programme of Research, Development and Research Training in Human Reproduction, World Health Organization, 20, Avenue Appia, CH–1211 Geneva 27, Switzerland. Responders interested in submitting a CRADA should simultaneously submit a license application concerning the above-mentioned patent rights to NIH and WHO for commercialization of products arising from the CRADA.

Requests for copies of the U.S. patent, license application forms, or questions about the licensing opportunity should be addressed to Ms. Carol Lavrich, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804 (Telephone: 301/496–7735 ext. 287), with a copy to Office of the Legal Counsel, World Health Organization, 20 Avenue Appia, CH–1211 Geneva 27, Switzerland (Telephone: 00–41–22 7912685). Completed license applications should be submitted to the same addresses.

Pertinent information not yet publicly described can be obtained under a Confidential Disclosure Agreement with the appropriate agency.

Dated: May 24, 1995.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 95–13711 Filed 6–5–95; 8:45 am]

BILLING CODE 4140–01–P

National Institute of Nursing Research; Meetings of the National Advisory Council for Nursing Research and its Subcommittees

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Council for Nursing Research, National Institute of Nursing Research, National Institutes of Health; and its Subcommittees, June 16 and June 20–21, 1995.

The meetings will be open to the public as indicated below. Attendance will be limited to space available.

The meetings will be closed to the public as indicated below in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, for the review, discussion and evaluation of individual grant applications. These applications and discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Summaries of meetings, rosters of committee members, and other information may be obtained from the Executive Secretary listed below. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Secretary in advance of the meeting.

Name of Committee: National Advisory Council for Nursing Research.
Date of Meeting: June 20–21, 1995.
Place: National Institutes of Health, Building 45 (Natcher), Conference Room D, Bethesda, MD.
Open: June 20—1:30 p.m. to 5 p.m.
Agenda: NINR Director's Report, Report on Research Roundtable Meetings and Research Training, NACRN Subcommittee Issues, Report on Reinventing Government.
Closed: June 21—8:30 a.m. to adjournment.
Name of Committee: Planning Subcommittee.
Date of Meeting: June 16, 1995 (Telephone Conference).
Place: National Institutes of Health, Building 31, Conference Room 5B03, Bethesda, MD.
Open: 1 p.m. to 2:30 p.m.
Agenda: Discuss long-term and strategic planning and policy issues.
Executive Secretary: Dr. Ernest Marquez, NINR, NIH, Building 45, Room 3AN.12, Bethesda, MD 20892 (301) 594–5965.
Name of Committee: Nursing Research Subcommittee.
Date of Meeting: June 16, 1995 (Telephone Conference).
Place: National Institutes of Health, Building 31, Conference Room 5B03, Bethesda, MD.
Closed: 10:30 a.m. to 12:30 p.m.

(Catalog of Federal Domestic Assistance Program No. 93.361, Nursing Research, National Institutes of Health.)

Dated: May 30, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–13719 Filed 6–5–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Dental Research; Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Committee Name: National Institute of Dental Research Special Review Committee Meeting.
Dates: June 15–16, 1995.
Time: 8:00 a.m.
Place: Hyatt Regency Hotel, Bethesda, One Bethesda Metro Center, Bethesda, Maryland 20814.
Contact Person: Dr. William Gartland, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Room 4AN–38E, Bethesda, MD 20892, (301) 594–2372.
Purpose/Agenda: To evaluate and review grant applications and/or contract proposals.

The meetings will be closed in accordance with the provision set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meeting due to the urgent need to meet timing limitations imposed by the extramural research review cycle.

(Catalog of Federal Domestic Assistance Program No. 93.121, Oral Diseases and Disorders Research.)

Dated: May 30, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–13717 Filed 6–5–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Deafness and Other Communication Disorders; Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel.
Date: June 16, 1995.
Time: 1 p.m. to 3 p.m.
Place: 6120 Executive Boulevard, Room 400C, Rockville, MD 20852.
Contact Person: Marilyn Semmes, Ph.D., Acting Chief, Scientific Review Branch, DEA, NIDCD, NIH, EPS Room 400C, 6120 Executive Boulevard, MSC 7180, Bethesda, MD 20892–7180, 301/496–8683.
Purpose/Agenda: To review and evaluate a contract proposal.

The meeting, which will be conducted as a telephone conference call, will be closed in accordance the provisions set forth in sec. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review cycle.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Communication Disorders.)

Dated: May 30, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–13718 Filed 6–5–95; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.
Name of SEP: Behavioral and Neurosciences.
Date: June 23, 1995.
Time: 8:30 a.m.
Place: Jefferson Hotel, Washington, DC.
Contact Person: Dr. Bob Weller, Scientific Review Administrator, 6701 Rockledge Drive, Room 5204, Bethesda, MD 20892, (301) 435–1261.
Name of SEP: Clinical Sciences.
Date: June 30, 1995.
Time: 8:30 a.m.
Place: Holiday Inn, Chevy Chase, MD.
Contact Person: Dr. Daniel McDonald, Scientific Review Administrator, 6701 Rockledge Drive, Room 4214, Bethesda, MD 20892, (301) 435–1215.
Name of SEP: Clinical Sciences.
Date: July 12, 1995.
Time: 1:00 p.m.
Place: NIH, Rockledge II, Room 4218, Telephone Conference.
Contact Person: Dr. Shirley Hilden, Scientific Review Admin., 6701 Rockledge Drive, Room 4218, Bethesda, MD 20892, (301) 435–1197.
Name of SEP: Biological and Physiological Sciences.
Date: July 14, 1995.
Time: 1:30 p.m.
Place: NIH, Rockledge II, Room 5122, Telephone Conference.
Contact Person: Dr. Michael Lang, Scientific Review Administrator, 6701 Rockledge Drive, Room 5122, Bethesda, MD 20892, (301) 435–1015.

Name of SEP: Behavioral and Neurosciences.
Date: July 24, 1995.
Time: 8:30 a.m.
Place: Jefferson Hotel, Washington, DC.
Contact Person: Dr. Lynwood Jones, Scientific Review Admin., 6701 Rockledge Drive, Room 5204, Bethesda, MD 20892, (301) 435–1261.
Name of SEP: Multidisciplinary Sciences.
Date: July 9–10, 1995.
Time: 6:00 p.m.
Place: Holiday Inn, Chevy Chase, MD.
Contact Person: Dr. Richard Panniers, Scientific Review Admin., 6701 Rockledge Drive, Room 5106, Bethesda, MD 20892, (301) 435–1166.
Purpose/Agenda: To review Small Business Innovation Research Program grant applications.
Name of SEP: Multidisciplinary Sciences.
Date: July 16–18, 1995.
Time: 6:00 p.m.
Place: Hyatt Regency, Bethesda, MD.
Contact Person: Dr. Richard Panniers, Scientific Review Admin., 6701 Rockledge Drive, Room 5106, Bethesda, MD 20892, (301) 435–1166.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 30, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–13716 Filed 6–5–95; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.
Name of SEP: Clinical Sciences.
Date: June 14, 1995.
Time: 8:00 a.m.
Place: Holiday Inn, Bethesda, MD.
Contact Person: Dr. Gopal Sharma, Scientific Review Admin., 6701 Rockledge Drive, Room 4112, Bethesda, MD 20892, (301) 435–1783.
Name of SEP: Clinical Sciences.
Date: July 7, 1995.
Time: 8:30 a.m.
Place: Holiday Inn, Chevy Chase, MD.
Contact Person: Dr. Sooja Kim, Scientific Review Admin., 6701 Rockledge Drive, Room 4120, Bethesda, MD 20892, (301) 435–1191.
Name of SEP: Multidisciplinary Sciences.
Date: July 23–25, 1995.
Time: 6:00 p.m.
Place: Raleigh, NC.
Contact Person: Dr. Nadarajen Vydelingum, Scientific Review Admin., 6701 Rockledge Drive, Room 5210, Bethesda, MD 20892, (301) 435–1176.
Purpose/Agenda: To review Small Business Innovation Research Program grant applications.
Name of SEP: Clinical Sciences.
Date: June 18, 1995.
Time: 1:30 p.m.
Place: NIH, Rockledge II, Room 4112, Telephone Conference.
Contact Person: Dr. Gopal Sharma, Scientific Review Admin., 6701 Rockledge Drive, Room 4112, Bethesda, MD 20892, (301) 435–1783.
Name of SEP: Multidisciplinary Sciences.
Date: July 11–12, 1995.
Time: 8:30 a.m.
Place: Embassy Suites, Washington, DC.
Contact Person: Dr. Nancy Shinowara, Scientific Review Admin., 6701 Rockledge Drive, Room 5216, Bethesda, MD 20892, (301) 435–1173.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.306. 93.333. 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 30, 1965.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–13715 Filed 6–5–95; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

Health Resources and Services Administration; Statement of Organization, Functions and Delegations of Authority

Part H, Chapter HB (Health Resources and Services Administration) of the Statement of Organizations, Functions and Delegations of Authority of the Department of Health and Human Services (47 FR 38409–24, August 31, 1982, as amended most recently at 60 FR 10396–37, February 24, 1995) is amended to reflect the current functions assigned to the Maternal and Child Health Bureau (HBM).

Under Section HB–20, Functions, delete in its entirety the functional statements under the *Maternal and Child Health Bureau (HBM)* and substitute the following:

Maternal and Child Health Bureau (HBM)

Office of the Director (HBM1)

Provides national leadership and policy direction for the planning, development, implementation and evaluation of the programs and activities of the Bureau. These programs are designed to improve the health of women of childbearing age, infants, children, adolescents, and their families, of children with special health needs, and of persons with hemophilia. Specifically: (1) Oversees the day-to-day management and operations of the Bureau's Offices and Divisions; (2) coordinates all internal functions of the Bureau and facilitates effective, collaborative relationships with other health and related programs; (3) establishes a program mission, goals, objectives, and policy positions consistent with legislation and broad Administration guidelines; (4) serves as the focal point for managing the Bureau-wide strategic planning operation as it relates to long and short range programmatic goals and objectives for the Bureau; (5) develops and administers internal operating policies and procedures and provides guidance and direction to regional staff, to State Health Officers, and to State Maternal and Child Health and Special Health Needs Coordinators; (6) serves as principal contact point to the agency, the Public Health Service, the Department, OMB, and the White House on matters concerning the health status of America's mothers and children; (7) directs and coordinates the Bureau's program responsibilities, including the Maternal and Child Health block grants to States, contracts, and other funding arrangements in the areas of research, training, genetics, hemophilia, and health service improvement through regionally and nationally significant projects, a program of consultation, technical assistance and training designed to improve health, nutrition, mental and dental health services for children in Head Start programs, a

national program to improve emergency medical services for children, a Healthy Start program designed to strengthen and improve the delivery of health services, a demonstration program in Pediatric AIDS, and a national service demonstration program for the treatment and prevention of AIDS in persons with hemophilia; (8) directs and coordinates the planning, implementation and monitoring of a national maternal and child health data and information system based in State and local jurisdictions; (9) provides direction and serves as the focal point for international matters of concern to the health of mothers, children, and their families; (10) develops a policy statement and an action plan to address the health needs of mothers and children from culturally diverse groups; (11) directs and coordinates Bureau activities in support of Equal Opportunity programs; (12) provides direction for the Bureau's Civil Rights compliance activities; (13) provides information and reports on the Bureau's programs to public, health, education and related professional associations, the Congress, other Federal and PHS agencies, OMB, and the White House; (14) coordinates public communications and public affairs activities for the Bureau; (15) administers the implementation of the Privacy Act and the Freedom of Information Act in the Bureau; and (16) performs the executive secretariat functions and coordinates responses to General Accounting Office audit reports and monitors the implementation of GAO recommendations.

Office of Operations and Management (HBM15)

Plans, directs, coordinates, and evaluates Bureau-wide administrative and management activities; coordinates and monitors program and administrative policy implementation; and maintains close liaison with officials of the Agency, the Office of the Assistant Secretary for Health, and the Office of the Secretary on matters relating to these activities. Specifically: (1) Serves as the Bureau Director's and Bureau's principal source for management and administrative advice and assistance for Headquarters and Regional Office staff operations; (2) provides or serves as liaison for program support services and resources, such as procurement of equipment and supplies, space, property, etc.; (3) provides leadership on intergovernmental activities of the Bureau which requires central administrative direction or intergovernmental activities of the Bureau which require central direction of cross cutting administrative issues affecting program activities; (4) participates in the development of strategic plans, regulatory activities, policy papers, and legislative proposals relating to MCH programs; (5) serves as liaison with the Division of Personnel, HRSA, and coordinates personnel activities for the Bureau; (6) directs, conducts, and coordinates manpower management activities and advises on the allocation of personnel resources including interagency agreements of Federal assignees to MCH programs; (7) manages the performance appraisal and employee performance management systems; (8) develops and carries out a full range of financial management activities, including the annual budget formulation, presentation, and execution functions; (9) determines State allocations of MCH Block Grant funds based on formula and current census data; (10) is responsible for planning, directing, coordinating, and evaluating Bureau-wide grants management activities, including cooperative agreement operations; (11) coordinates the development and processing of Bureau contract procurement activities and maintains liaison with the Division of Grants and Procurement Management, HRSA, and with the Office of the Assistant Secretary for Health; (12) plans, coordinates, and facilitates the Bureau's intra- and interagency agreement activities; (13) provides organization and management analysis, develops policies and procedures for internal operations, and interprets and implements the Administration's management policies, procedures and systems; (14) coordinates the Bureau's program and administrative delegations of authority activities; (15) provides staff services in the operational planning and program analysis; (16) is responsible for paperwork management functions, including the development and maintenance of manual issuances; (17) provides direction regarding new developments in office management activities; and (18) participates in international health activities of the Bureau.

Office of Program Development (HBM13)

Serves as the Bureau focal point for the management of the planning, evaluation, legislation, and legislative implementation activities, including the development, coordination, and dissemination of program objectives, policy positions, reports and strategic plans. Specifically: (1) Advises and assists the Bureau Director and the Bureau in the development, coordination and management of legislative planning documents, responses to Departmental and HRSA initiatives, and information papers to support Bureau and Administration goals; (2) interprets evaluation requirements, develops, coordinates, and manages preparation of the annual evaluation plans and activities, and conducts or contracts for specific evaluation projects related to the performance of MCHB programs; (3) provides staff services, disseminates information, and develops, coordinates, and manages Bureau activities relating to legislation and regulations, and develops and coordinates legislative proposals and regulations; (4) develops, coordinates, and manages Bureau activities related to the development, clearance, and dissemination of **Federal Register** notices, guidelines, final grant reports, and periodic and annual reports to other Federal and non-Federal agencies; (5) participates in the development of budget submissions related to the office's functions; (6) coordinates activities closely and continuously with the Office of Planning, Evaluation and Legislation, HRSA, and other MCHB Divisions and Offices in promoting program objectives and the mission of the Bureau; (7) provides liaison with public, private, professional, and voluntary organizations on programs related to MCHB planning and legislative issues; and (8) participates in international health activities of the Bureau.

Office of State and Community Health (HBM14)

In collaboration with MCHB Divisions and Offices, serves as the organizational focus for the administration of responsibilities related to the MCH Block Grant to States Program, including guidance to States on community health activities, reporting requirements and assurances, coordination of the provision of technical assistance and consultation, oversight of the Regional staff workplan, and development of national information and data systems for management of the Block Grant Program. Specifically: (1) Provides national leadership, direction, coordination, and administrative oversight related to the development and management of the State MCH Block Grant applications and the annual reports; (2) develops, plans, manages, and monitors a Bureau-wide program of technical assistance and consultation in collaboration with other MCHB Divisions and agencies and organizations and based on review of State Block applications and annual reports, and provides assistance related to the State Block Grant and community health activities; (3) coordinates, facilitates, supports, and monitors the development of national information and data systems for management of the Block Grant; (4) coordinates the analysis of data related to the State Block Grant activities; (5) directly or through grants, contracts, or cooperative agreements, and in concert with the MCHB Divisions, provides for the collection of State MCH health data and assures the utilization of the data in preparation of the Annual Report to the Congress; (6) provides leadership and direction to the ten Regional Office staffs in concert with the MCHB Divisions through the development, implementation, monitoring, and management of the Regional staff/Headquarters workplan guidance; (7) participates in activities related to the Special Projects of Regional and National Significance (SPRANS) program to facilitate the dissemination of effective knowledge related to State MCH functions; (8) manages and monitors interagency agreements of Federal assignees to State MCH programs; (9) maintains liaison with other public, private, professional and voluntary organizations, institutions, and associations dealing with the State MCH Block Grant program; (10) promotes program objectives and the mission of the Bureau; (11) participates in the development of strategic plans, regulatory activities, policy papers, legislative proposals, and budget submissions relating to health services for women of childbearing age, infants, children, adolescents, children with special health care needs and their families; (12) participates in international health activities of the Bureau and coordinates the Pacific Basin activities; and (13) accounts for the administration of funds and other resources for grants, contracts, and cooperative agreements.

Division of Services for Children With Special Health Needs (HBM2)

Provides national leadership in planning, directing, coordinating, monitoring, and evaluating national programs focusing on the promotion of health and prevention of disease among children with special health needs, and their families with special emphasis on the development and implementation of family-centered, comprehensive, care-coordinated, community-based and culturally competent systems of care for such populations. Specifically: (1) Administers a program which supports the development of systems of care and services for children with special health care needs and their families; (2) develops policies and guidelines and promulgates standards for professional services and effective organization and administration of health programs for children with special health care needs, and their families; (3) accounts for the administration of funds and other resources for grants, contracts and programmatic consultation and assistance; (4) coordinates with other MCHB Divisions and Offices in promoting program objectives and the mission of the Bureau; (5) serves as the focal point within the Bureau in implementing programmatic statutory requirements for State programs for children with special health care needs, and their families; (6) provides consultation and technical assistance to State programs for children with special health care needs and to local communities, consistent with a Bureau-wide technical assistance consultation plan, and in concert with other agencies and organizations; (7) provides liaison with public, private, professional and voluntary organizations on programs designed to improve services for children with special health care needs, and their families; (8) develops and implements a national program for those at-risk-for or suffering from genetic diseases, implementing a system of projects related to genetic services, counseling information and referral; (9) develops and implements a national program for persons with hemophilia; (10) develops and implements a national program relating to women, children, and adolescents with HIV infection; (11) develops and implements community-based service and systems of care for children with disabling conditions and chronic illnesses; (12) coordinates within this Agency and with other Federal programs (particularly Title XIX of the Social Security Act) to extend and improve comprehensive, coordinated services and promote integrated State-based systems of care for children with special health care needs, and their families; (13) disseminates information on preventive health services and advances in the care and treatment of children with special health care needs, and their families; (14) participates in the development of strategic plans, regulatory activities, policy papers, legislative proposals, and budget submissions relating to health services for children with special health care needs and their families; (15) provides a focus for international health activities of the Bureau for services for children with special health care needs and their families, and (16) participates in the development of interagency agreements of Federal assignees to State MCH programs.

Division of Maternal, Infant, Child, and Adolescent Health (HBM3)

Provides national leadership in planning, directing, coordinating, monitoring, and evaluating national programs focusing on the promotion of health and prevention of disease among women of childbearing age, infants, children, adolescents, and their families with special emphasis on the development and implementation of family-centered, comprehensive, care coordinated, community based and culturally competent systems of care for such populations. Specifically: (1) Administers a program which supports the development of systems of care and services for women of childbearing age, infants, children, adolescents, and their families; (2) develops policies and guidelines and promulgates standards for professional services and effective organization and administration of health programs for women of childbearing age, infants, children, adolescents, and their families; (3) accounts for the administration of funds and other resources for grants, contracts and programmatic consultation and assistance; (4) coordinates with other MCHB Divisions and Offices in promoting program objectives and the mission of the Bureau; (5) serves as the focal point within the Bureau in implementing programmatic statutory requirements for State programs for women of childbearing age, infants, children, adolescents, and their families; (6) provides consultation and technical assistance to State programs for women of childbearing age, infants, children, adolescents, and their families and to local communities, consistent with a Bureau-wide technical assistance consultation plan, working with other agencies and organizations; (7) provides liaison with public, private, professional and voluntary organizations on programs designed to improve services for women of childbearing age, infants, children, adolescents, and their families; (8) serves as the national focus for reducing unacceptably high rates of infant and maternal mortality and morbidity and associated problems of low birthweight infants; (9) serves as the national focus for improving the health and well-being of adolescents; (10) carries out a national program on school staff development activities; (11) carries out a national program designed to improve the provision of emergency medical services for children; (12) coordinates within this Agency and

with other Federal programs (particularly Title XIX of the Social Security Act) to extend and improve comprehensive, coordinated services and promote integrated State-based systems of care for women of childbearing age, infants, children, adolescents, and their families; (13) disseminates information on preventive health services and advances in the care and treatment of women of childbearing age, infants, children, adolescents, and their families; (14) participates in the development of strategic plans, regulatory activities, policy papers, legislative proposals, and budget submissions relating to health services for women of childbearing age, infants, children, adolescents, and their families; (15) provides a focus for international health activities of the Bureau for services for women of childbearing age, infants, children, adolescents, and their families; and (16) participates in the development of interagency agreement of Federal assignees to State MCH programs.

Division of Science, Education, and Analysis (HBM6)

Provides national leadership in planning, directing, coordinating, monitoring, and evaluating national programs related to research, professional and public education, analysis, and computer science and Information Resources Management (IRM) application activities focusing on the promotion of health and prevention of disease among women of childbearing age, infants, children, adolescents and their families, with special emphasis on the development and implementation of family-centered, comprehensive, care-coordinated, community-based and culturally competent systems of care for such populations. Specifically: (1) Administers a program which supports the development of systems of care and services for mothers, children, and their families; (2) develops policies and guidelines and promulgates standards through research, professional and public education, analysis, and computer science and IRM application activities for the Bureau; (3) accounts for the administration of funds and other resources for grants, contracts and programmatic consultation and assistance; (4) coordinates with other MCHB Divisions and Offices in promoting program objectives and the mission of the Bureau; (5) serves as the focal point within the Bureau, in collaboration with other MCHB Offices and Divisions, in implementing research, professional and public education, quantitative and qualitative analytic activities, and computer science and IRM application requirements for State programs for women of childbearing age, infants, children, adolescents, children with special health care needs, and their families; (6) provides consultation and technical assistance to State programs and local communities, consistent with a Bureau-wide technical assistance consultation plan, working with other agencies and organizations; (7) serves as the focal point in the Bureau for IRM functions and activities, including the planning, directing, and coordination of IRM acquisitions, and development and support of Bureau-wide and Regional Office staff information systems; (8) provides liaison with public, private, professional and voluntary organizations on programs and activities; (9) coordinates within this Agency and with other Federal programs (particularly Title XIX of the Social Security Act) to extend and improve comprehensive, coordinated services and promote integrated State-based systems of care; (10) disseminates information on research, professional and public education, analysis, and computer science and IRM activities to States and localities related to preventive health services, health promotion efforts, and advances in the care and treatment of women of childbearing age, infants, children, adolescents, children with special health care needs, and their families; (11) participates in the development of strategic plans, regulatory activities, policy papers, legislative proposals, and budget submissions; (12) provides a focus for international health activities of the Bureau relating to research, professional and public education, analysis, and computer science and IRM activities for the Bureau; and (13) participates in the development of interagency agreements of Federal assignees to State MCH programs.

Division of Healthy Start (HBM5)

Provides national leadership in planning, directing, coordinating, monitoring and evaluating the implementation of the Presidential Healthy Start Initiative to strengthen and improve the delivery of health services in the 15 Healthy Start communities. Specifically: (1) Administers a national Healthy Start program which collects and analyzes information regarding the Healthy Start projects; (2) provides program policy direction, technical assistance, and professional consultation on Healthy Start activities; (3) accounts for the administration of funds and other resources for grants, contracts and programmatic consultation and assistance; (4) coordinates with other MCHB Divisions and Offices in promoting program objectives and the mission of the Bureau; (5) services as the focal point within the Bureau in implementing programmatic requirements for a national Healthy Start program; (6) coordinates Healthy Start activities within this Agency, particularly with the PHS Interagency Committee on Infant Mortality and with the Office of Communications pertaining to its national public information and public education campaign, and with other Federal programs, such as the Health Care Financing Administration, and the Administration for Children and Families; (7) provides liaison with public, private, professional and voluntary organizations on programs designed to improve delivery of health care and social services for Healthy Start projects; (8) disseminates information on Healthy Start activities; (9) participates in the development of strategic plans, regulatory activities, policy papers, legislative proposals, and budget submissions relating to Healthy Start activities; and (10) provides a focus for international health activities of the Bureau of Healthy Start activities.

Section HB–49, Delegations of Authority

All delegations and redelegations of authorities to officers and employees of the Maternal and Child Health Bureau which were in effect immediately prior to the effective date of this reorganization will be continued in effect in them or their successors, pending further redelegation provided they are consistent with reorganization.

This reorganization is effective February 28, 1995.

Dated: May 24, 1995.

Ciro V. Sumaya,

Administrator.

[FR Doc. 95–13753 Filed 6–5–95; 8:45 am]

BILLING CODE 4165–15–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. FR–3908–D–01]

Redelegation of Authority

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of redelegation of authority.

SUMMARY: In this notice, the Assistant Secretary for Housing—Federal Housing Commissioner redelegates to certain HUD officials in local field offices the power and authority to order Limited Denials of Participation (LDPs). A Limited Denial of Participation is a sanction which may be imposed against contractors and participants in HUD programs under certain circumstances. The Assistant Secretary for Housing redelegates authority, as specified, to the Office of Housing Director in each category AA (Super A) local field office; to the Single Family Housing Division Director for each field office; and to the Multifamily Housing Division Director for each field office.

EFFECTIVE DATE: May 30, 1995.

FOR FURTHER INFORMATION CONTACT: Robert G. Hunt, Department of Housing and Urban Development, 451 7th Street, S.W., Room 9116, Washington, D.C. 20410, (202) 708–0826. A telecommunications device for the hearing-impaired is available at 202–708–4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The HUD regulations at 24 CFR 24.700 provide that officials designated by the Secretary, including the Assistant Secretary for Housing—Federal Housing Commissioner, are authorized to order Limited Denials of Participation (LDPs) and to redelegate this authority. The Assistant Secretary for Housing has redelegated the authority to order LDPs to the Department's Deputy Assistant Secretary for Single Family Housing and Deputy Assistant Secretary for Multifamily Housing; that redelegation, at 59 FR 34857, published July 7, 1994, remains in effect. In addition, the Assistant Secretary for Housing has redelegated to field officials the authority to order LDPs pertaining to certain multifamily housing programs; that redelegation, at 59 FR 62739, published December 6, 1994, also remains in effect.

In the present redelegation, the Assistant Secretary for Housing redelegates to each Office of Housing Director the authority to order Limited Denials of Participation relating to programs under the jurisdiction of the Assistant Secretary for Housing—Federal Housing Commissioner. The Assistant Secretary for Housing also redelegates, within the limits specified, authority to order LDPs relating to single family housing programs to the Single Family Housing Division Director for each field office; and the authority to order LDPs relating to multifamily housing programs (including hospital mortgage insurance programs) to the Multifamily Division Director for each field office.

Accordingly, the Assistant Secretary for Housing—Federal Housing Commissioner redelegates authority as follows:

Section A. Authority Redelegated

The power and authority to order Limited Denials of Participation pursuant to 24 CFR 24.700 are redelegated to HUD officials in the field offices as follows:

1. To the Office of Housing Director in each category AA local field office (also known as a "Super A" or "Double A" office), the authority to order LDPs whenever the program under which the cause for LDP arose is a program under the jurisdiction of the Assistant Secretary for Housing—Federal Housing Commissioner.

2. To the Single Family Housing Division Director for each local field office, the authority to order LDPs whenever the program under which the cause arose is a single family housing program under the jurisdiction of such Director.

3. To the Multifamily Housing Division Director for each local field office, the authority to order LDPs whenever the program under which the cause arose is a multifamily housing program (including but not limited to a hospital mortgage insurance program) under the jurisdiction of such Director.

4. The scope of any LDP issued pursuant to this redelegation of authority shall be limited in accordance with the provisions of 24 CFR 24.710.

Authority: 42 U.S.C. 3535(d).

Dated: May 30, 1995.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 95–13721 Filed 6–5–95; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*):

PRT–802946

Applicant: Dr. Byron J. Freeman, University of Georgia, Athens, Georgia.

Collection and retainment of *Percina antesella, Percina aurolineata, Percina jenkinsi, Etheostoma etowahae,* and *Etheostoma scotti* for the purposes of the enhancement of propagation and survival of the species.

PRT–802948

Applicant: Mr. Hugh L. Porter, Morehead City, North Carolina.

Collection of the dwarf wedge mussel, *Alasmidonta heterdon,* and Carolina heelsplitter, *Lasmigona decorata,* for purposes of enhancement of survival.

Written data or comments on any of these applications should be submitted to: Regional Permit Coordinator, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345. All data and comments must be received within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Permit Coordinator), telephone: 404/679–7110 or fax: 404/679–7280.

Dated: May 30, 1995.

Noreen K. Clough,

Regional Director.

[FR Doc. 95–13781 Filed 6–5–95; 8:45 am]

BILLING CODE 4310–55–P

U.S. Geological Survey

Mineral Exploration Company Consortium; Contribution Acceptance

SUMMARY: Notice is hereby given that the U.S. Geological Survey has accepted from a consortium of twelve major mineral exploration companies a contribution of $9,632 to support studies to determine the effectiveness of electro-geochemical sampling with the newly developed NEOCHIM electrode for locating buried gold deposits in northern Nevada.

DATES: This notice is effective June 6, 1995.

ADDRESSES: Information on the work is available to the public upon request at the following location: U.S. Geological Survey, Branch of Geochemistry, Denver Federal Center, MS–973, P.O. Box 25046, Denver, Colorado 80225–0046.

FOR FURTHER INFORMATION CONTACT: Reinhard Leinz of the U.S. Geological Survey, Branch of Geochemistry, at the

address given above; telephone 303/236–24419 or Donald Hoover, U.S. Geological Survey, Branch of Geophysics; telephone 303/236–1326.

P. Patrick Leahy,

Acting Chief Geologist.

[FR Doc. 95–13724 Filed 6–5–95; 8:45 am]

BILLING CODE 4310–31–M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before May 27, 1995. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127. Written comments should be submitted by June 21, 1995.

Antoinette J. Lee,

Acting Chief of Registration, National Register.

GEORGIA

Taliaferro County

Stephens, A. H., Memorial State Park, GA 22, N side, Crawfordville vicinity, 95000764

SOUTH DAKOTA

Brown County

Karl, Art, Farm, (Rural Resources of Brown County MPS), Jct. of SD 21 and SD 14, SE corner, West Gem Township, Aberdeen vicinity, 95000777,

Modern Woodmen of America Hall, (Rural Resources of Brown County MPS),Jct. of Main and Second Sts., NW corner, Mansfield, 95000775,

Plana School, (Rural Resources of Brown County MPS), 7 mi. N of SD 12 and 1 mi. E of SD 16, Plana vicinity, 95000773

Ryman, Melchior, Farm, (Rural Resources of Brown County MPS), 2 mi. W of SD 281, 3 mi. N of Mansfield, Mansfield vicinity, 95000771

Welsh Presbyterian Church, (Rural Resources of Brown County MPS), 7 mi. N of SD 12 and 1 mi. E of SD 16,, Plana, 95000776

Custer County

Buffalo Gap Historic Commercial District, (Rural Resources of Eastern Custer County MPS), Roughly, area surrounding Main, Second and Walnut Sts., Buffalo Gap, 95000774

Fairburn Historic Commercial District, (Rural Resources of Eastern Custer County MPS), Roughly, area surrounding Main St. between First and Second Sts., Fairburn, 95000772

Streeter, Norman B., Homestead, (Rural Resources of Eastern Custer County MPS), Streeter Ranch, near Beaver Creek, Buffalo Gap vicinity, 95000765

Pennington County

Dean Motor Company, 329 Main St., Rapid City, 95000768

Motor Service Company, 402 St. Joseph St., Rapid City, 95000766

Rapid City Laundry, 312 Main St., Rapid City, 95000767

Rapid City West Boulevard Historic District (Boundary Increase), Roughly, area surrounding 9th, 10th and 11th Sts. from Kansas City St. to St. Andrews St., Rapid City, 95000770

TEXAS

Brazoria County

GENERAL C.B. COMSTOCK (Dredge), Address Restricted, Surfside vicinity, 95000762

WEST VIRGINIA

Taylor County

Tygart Dam, On the Tygart River, 2.25 mi. S of Grafton, Grafton vicinity, 95000763

WISCONSIN

Grant County

Bode—Wad—Mi Rockshelter, (Wisconsin Indian Rock Art Sites MPS), Address Restricted, Castle Rock vicinity, 95000760

Iowa County

Rainbow Cave, (Wisconsin Indian Rock Art Sites MPS), Address Restricted, Barneveld vicinity, 95000761

[FR Doc. 95–13821 Filed 6–5–95; 8:45 am]

BILLING CODE 4310–70–P

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32549]

Burlington Northern, Inc. and Burlington Northern Railroad Company—Control and Merger—Santa Fe Pacific Corporation and The Atchison, Topeka, and Santa Fe Railway Company

Burlington Northern, Inc., and its subsidiary, Burlington Northern Railroad Company, and Santa Fe Pacific Corporation, and its subsidiary, The Atchison, Topeka, and Santa Fe Railway Company, have applied to the Interstate Commerce Commission ("Commission") for authority to merge and consolidate their companies in Finance Docket No. 32549. The proposed merger also includes eleven rail construction projects in the states of Texas, Oklahoma, and Illinois.

The Commission's Section of Environmental Analysis (SEA) has prepared an Environmental Assessment (EA). Based on the information provided and the environmental analysis conducted to date, this EA concludes that this proposal should not significantly affect the quality of the human environment if the recommended mitigation measures set forth in the EA are implemented. Accordingly, SEA preliminarily recommends that the Commission impose on any decision approving the proposed merger and consolidation conditions requiring Burlington Northern/Santa Fe Railway Company to implement the mitigation contained in the EA. The EA will be served on all parties of record as well as all appropriate Federal, state and local officials and will be made available to the public upon request. SEA will consider all comments received in response to the EA in making its final environmental recommendations to the Commission. Because of the expedited schedule in this proceeding, the comment period is 20 days. The Commission will then consider SEA's final recommendations and the environmental record in making its final decision in this proceeding.

Comments (an original and 10 copies) and any questions regarding this Environmental Assessment should be filed with the Commission's Section of Environmental Analysis, Office of Economic and Environmental Analysis, Room 3219, Interstate Commerce Commission, Washington, D.C. 20423, to the attention of Phillis Johnson-Ball (202) 927–6213. Requests for copies of the EA should also be directed to Ms. Johnson-Ball.

Date made available to the public: June 26, 1995.

Comment due date: June 26, 1995.

By the Commission, Elaine K. Kaiser, Chief, Section of Environmental Analysis, Office of Economic and Environmental Analysis.

Vernon A. Williams,

Secretary.

[FR Doc. 95–13929 Filed 6–5–95; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 USC Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection.

(3) Who will be asked or required to respond, as well as a brief abstract;

(4) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) An estimate of the total public burden (in hours) associated with the collection; and,

(6) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 *and* to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer *and* the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, *and* to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/ Information Resources Management/ Justice Management Division, Suite 850 WCTR, Washington, DC 20530.

Extension of a Currently Approved Collection

(1) Application for Registration, Application for Registration Renewal.

(2) DEA Form 225, DEA Form 225a. Drug Enforcement Administration, United States Department of Justice.

(3) Primary: Business or other for-profit. Others: Individual or households, Not-for-profit institutions, State, local or Tribal Government. The Controlled Substance Act requires all firms and individuals who manufacture, distribute, import, export, conduct research, or dispense controlled substances to register with the Drug Enforcement Administration. Registration provides a closed system of distribution to control the flow of controlled substances through the distribution chain.

(4) 10,000 annual respondents at .5 hours per response.

(5) 5,000 annual burden hours.

(6) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: June 1, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–13751 Filed 6–5–95; 8:45 am]

BILLING CODE 4410–05–M

Notice of Lodging of Amendment To Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, and 42 U.S.C. 9622(d)(2), notice is hereby given that a proposed amendment to the consent decree in *United States* v. *GATX Corporation and General American Transportation Corporation*, Civil Action No. 94–312E, was lodged on June 1, 1995 with the United States District Court for the Western District of Pennsylvania. The original Consent Decree requires the defendants to excavate and incinerate contaminated soils and sludges at the Site at the Saegertown Industrial Area Site in Saegertown, Crawford County, Pennsylvania. The Consent Decree also requires the defendants to pay a portion of the United States past and future costs associated with the Site. Further, the consent decree requires the defendants to reimburse the United States for damages caused to the natural resources within the trusteeship of the U.S. Fish and Wildlife Service.

The proposed amendment to the Consent Decree modifies the clean up that the defendants must perform. Instead of on-site incineration, the proposed amendment would require transportation of the sludges and soils to an off-site cement kiln, where the materials will be used as an alternative fuel.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *GATX Corporation and General American Transportation Corporation*, DOJ Ref. #90–11–2–870.

The proposed consent decree may be examined at the office of the United States Attorney, 633 Post Office & Courthouse, 7th & Grant Streets, Pittsburgh, PA 15219; the Region III Office of the Environmental Protection Agency, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $44.55 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Bruce S. Gelbert,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–13804 Filed 6–5–95; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

May 31, 1995.

The Department of Labor has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act (44 U.S.C. Chapter 35) of 1980, as amended (Pub. L. 96–511). Copies may be obtained by calling the Department of Labor Acting Departmental Clearance Officer, Theresa M. O'Malley (202) 219–5095. Comments and questions about the ICRs listed below should be directed to Ms. O'Malley, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OAW/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 10325, Washington, DC 20503 (202) 395–7316.

Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 219–4720 between 1:00 p.m. and 4:00 p.m. Eastern time, Monday through Friday.

Type of Review: Extension.

Agency: Occupational Safety and Health Administration.

Title: Occupational Exposure to Cotton Dust.

OMB Number: 1218–0061.

Frequency: On occasion.

Affected Public: Businesses or other for-profit.
Number of Respondents: 597
Estimated Time Per Respondent: 350 hours.
Total Burden Hours: 209,265.
Description: The Cotton Dust Standard and its information collection requirements is to provide protection for employees from the adverse health effects associated with occupational exposure to Cotton Dust. The Standard requires that employers must establish and maintain a training and compliance program, including exposure monitoring and medical surveillance records. These records are used by employees, physicians, employers and the Occupational Safety and Health Administration (OSHA) to determine the effectiveness of the employers' compliance efforts. Also, the standard requires that OSHA have access to various records to ensure that employers are complying with the disclosure provisions of the Cotton Dust Standard.
Type of Review: Extension.
Agency: Occupational Safety and Health Administration.
Title: Occupational Exposure to Acrylonitrile.
Agency Number: 1218–0126.
Frequency: On occasion.
Affected Public: Businesses or other for-profit.
Number of Respondents: 26.
Estimated Time Per Respondent: 348 hours.
Total Burden Hours: 9,052.
Description: The Acrylonitrile Standard and its information collection requirements is to provide protection for employees from the adverse health effects associated with occupational exposure to Acrylonitrile. The Standard requires that employers must establish and maintain a training and compliance program, including exposure monitoring and medical surveillance records. These records are used by employees, physicians, employers and the Occupational Safety and Health Administration (OSHA) to determine the effectiveness of the employers' compliance efforts. Also, the standard requires that OSHA have access to various records to ensure that employers are complying with the disclosure provisions of the Acrylonitrile Standard.
Type of Review: Extension.
Agency: Pension and Welfare Benefits Administration.
Title: Prohibited Transaction Class Exemption 76–1.
OMB Number: 1210–0058.
Agency Number: 76–1.
Frequency: On occasion.
Affected Public: Businesses or other for-profit; Not-for-profit institutions.
Number of Respondents: 3,000.
Estimated Time Per Respondent: 15 minutes.
Total Burden Hours: 750.
Description: The paperwork requirements included in this Prohibited Transaction Class Exemption 76–1 are maintenance of written records documenting the agreement between a plan and a participating employer concerning payment of delinquent plan contributions; the agreement between a plan and participating employer regarding the terms under which a plan makes a loan to the employer for construction; and, the agreement concerning the leasing of office space, provisions of administrative services or sale/leasing of goods by a plan to an employer.
Type of Review: Extension.
Agency: Employment Standards Administration.
Title: Employment Information Forms English and Spanish.
OMB Number: 1215–0001.
Agency Number: WH–3 and WH–3 Sp.
Frequency: Annually.
Affected Public: Individuals or households; Businesses or other for-profit; Not-for-profit institutions; Federal Government; State, Local or Tribal Government.
Number of Respondents: 30,000.
Estimated Time Per Respondent: 20 minutes.
Total Burden Hours: 10,000.
Description: The WH–3 form, English and Spanish version, is used to obtain information from individuals about alleged violations of various laws enforced by the Wage and Hour Division. It is also used as a screening device to determine whether the Division has jurisdiction in handling the alleged violations.
Type of Review: New.
Agency: Bureau of Labor Statistics.
Title: National Longitudinal Surveys of Youth Profile's Pretest.
Affected Public: Individuals or households.

Instrument	15–23 year olds		12–14 year olds		
	No. of respondents	Minutes per response	No. of respondents	Minutes per response	Burden per instrument
CAT–ASVAB	2,250	150	300	50	352,500.
Interest Finder	2,250	50	300	30	121,500.
On Line Demographic Items	2,250	5	[1]250	5	12,500.
On Line Evaluation	2,250	15	[1]250	15	37,500.
Total Burden	2,250	220	300	100	524,000 mins. or 8,733 hours.

[1] The 50 participants in Study II will not complete the demographics and evaluation items.

The information provided by this pretest will be used by the Department of Labor and other government agencies to evaluate and report on the planning, operation, and administration of the computer-delivery of the Armed Forces Vocational Aptitude Battery (ASVB) and Interest Finder (IF) for the designated age populations in preparation for the National Longitudinal Survey of Youth 1996 study.

Type of Review: Reinstatement.
Agency: Bureau of Labor Statistics.
Title: August 1995 Veterans Supplement to Current Population Survey (CPS).
OMB Number: 1220–0102.
Frequency: On occasion.
Affected Public: Individuals or households.
Number of Respondents: 57,000.
Estimated Time Per Respondents: 1 minute.
Total Burden Hours: 969.

This supplement data will provide estimates of disabled and Vietnam-theater veterans in the labor force, recently separated veterans, the number of veterans who feel their disability affects labor force participation, and information about veterans who use the programs that are available to them. Data are necessary to evaluate veterans' programs.

Theresa M. O'Malley,
Acting Departmental Clearance Officer.
[FR Doc. 95–13750 Filed 6–5–95; 8:45 am]
BILLING CODE 4510–24–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (95–034]

Intent To Grant a Patent License

AGENCY: National Aeronautics and Space Administration.
ACTION: Notice of intent to Grant an Exclusive Patent License.

SUMMARY: NASA intends to grant Total Quality Measures, Inc., a Corporation of the State of New Hampshire, having its headquarters in Merrimack, New Hampshire, an exclusive, royalty-bearing revocable license to practice U.S. Patent No. 5,333,931, entitled Portable Seat Lift. U.S. Patent No. 5,333,931 is for a portable seat lift that can help individuals either (1) lower themselves to a sitting position or (2) raise themselves to a standing position. The portable seat lift consists of a seat mounted on a base with two levers, which are powered by a drive unit. The patent license will be for a limited number of years and will contain appropriate terms and conditions in accordance with the Department of Commerce patent licensing regulations, 37 CFR 404.1 *et seq.* NASA will grant the patent license in accordance with these licensing regulations unless the Director of Patent Licensing receives written objections to the grant, together with any supporting documentation, within 60 days of the date of this notice. The Director of Patent Licensing will review all written objections to the grant and then recommend to the Associate General Counsel (Intellectual Property) whether to grant the license.

DATES: Written objections to this proposal license grant must be received by August 7, 1995.

ADDRESSES: National Aeronautics and Space Administration, Code GP, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Harry Lupuloff, NASA, Director of Patent Licensing at (202) 358–2041.

Dated: May 21, 1995.

Edward A. Frankle,
General Counsel.
[FR Doc. 95–13767 Filed 6–5–95; 8:45 am]
BILLING CODE 7510–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meeting of Humanities Panel

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, as amended), notice is hereby given that the following meeting of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, N.W., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: David C. Fisher, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meeting is for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meeting will consider information that is likely to disclose: (1) trade secrets and commercial or financial information obtained from a person and privileged or confidential; or (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that this meeting will be closed to the public pursuant to subsections (c) (4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* June 29, 1995.
Time: 8:30 a.m. to 5:30 p.m.
Room: 430.
Program: This meeting will review proposals submitted to the May 1, 1995 deadline in the Office of Challenge Grants Program, for projects beginning after December 1, 1995.

David C. Fisher,
Advisory Committee Management Officer.
[FR Doc. 95–13782 Filed 6–5–95; 8:45 am]
BILLING CODE 7536–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–458]

Entergy Operations, Inc. Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–47, issued to Entergy Operations, Inc. (the licensee), for operation of the River Bend Station, Unit 1 (RBS), located in West Feliciana Parish, Louisiana.

Environmental Assessment

Identification of the Proposed Action

The proposed amendment will replace the existing Technical Specifications (TSs) in their entirety with the Improved Technical Specifications (ITSs).

The proposed action is in accordance with the licensee's amendment request dated November 30, 1993, as supplemented January 18, 1995.

The Need for the Proposed Action

It has been recognized that nuclear safety in all plants would benefit from improvement and standardization of the TSs. The "NRC Interim Policy Statement on Technical Specification Improvements for Nuclear Power Reactors," (**Federal Register** 52 FR 3788, February 6, 1987) and later the Final Policy Statement, formalized this need. To facilitate the development of individual ITSs, each reactor vendor owners group (OG) and the NRC staff developed Standard TSs. For General Electric (GE) plants, the Standard TSs (STS) are NUREG–1433 for BWR/4 reactor facilities and NUREG–1434 for BWR/6 facilities. NUREG–1434 formed the basis of the RBS ITSs.

Description of the Proposed Change

The proposed revision to the TSs is based on NUREG–1434 and on guidance provided in the Policy Statement. Its objective is to completely rewrite, reformat, and streamline the existing TSs. Emphasis is placed on human factors principles to improve clarity and understanding. The Bases section has been significantly expanded to clarify and better explain the purpose and foundation of each specification. In addition to NUREG–1434, portions of the existing TSs were also used as the basis for the ITSs. Plant-specific issues (unique design features, requirements, and operating practices) were discussed at length with the licensee, and generic matters with GE and other OGs.

The proposed changes from the existing TSs can be grouped into four general categories, as follows:

1. Non-technical (administrative) changes, which were intended to make the ITSs easier to use for plant operations personnel. They are purely editorial in nature or involve the movement or reformat of requirements without affecting technical content. Every section of the RBS TSs has undergone these types of changes. In order to ensure consistency, the NRC staff and the licensee have used NUREG–1434 as guidance to reformat and make other administrative changes.

2. Relocation of the requirements, which includes items that were in the existing RBS TSs, but did not meet the criteria set forth in the Policy Statement for inclusion in the TSs. In general, the proposed relocation of items in the RBS TSs to the Updated Safety Analysis Report (USAR), appropriate plant-specific programs, procedures and ITS Bases follows the guidance of the BWR/6 STS, NUREG–1434. Once these items have been relocated by removing them from the TSs to other licensee-controlled documents, the licensee may revise them under the provisions of 10 CFR 50.59 or other NRC staff-approved control mechanisms which provide appropriate procedural means to control changes.

3. More restrictive requirements, which consist of proposed RBS ITS items that are either more conservative than corresponding requirements in the existing RBS TSs, or are additional restrictions which are not in the existing RBS TSs, but are contained in NUREG–1434. Examples of more restrictive requirements include: placing a Limiting Condition of Operation (LCO) on plant equipment, which is not required by the present TSs to be operable; more restrictive requirements to restore inoperable equipment; and more restrictive surveillance requirements.

4. Less restrictive requirements, which are relaxations of corresponding requirements in the existing RBS TSs which provided little or no safety benefit and placed unnecessary burden on the licensee. These relaxations were the result of generic NRC action or other analyses. They have been justified on a case-by-case basis for RBS as described in the safety evaluation to be issued with the license amendment, which will be noticed in the **Federal Register**.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revision to the TSs. Changes which are administrative in nature have been found to have no effect on technical content of the TSs, and are acceptable. The increased clarity and understanding these changes bring to the TSs are expected to improve the operator's control of the plant in normal and accident conditions.

Relocation of requirements to other licensee-controlled documents does not change the requirements themselves. Future changes to these requirements may be made by the licensee under 10 CFR 50.59 or other NRC-approved control mechanisms, which assures continued maintenance of adequate requirements. All such relocations have been found to be in conformance with the guidelines of NUREG–1434 and the Policy Statement, and, therefore, to be acceptable.

Changes involving more restrictive requirements have been found to be acceptable.

Changes involving less restrictive requirements have been reviewed individually. When requirements have been shown to provide little or no safety benefit or to place unnecessary burden on the licensee, their removal from the TSs was justified. In most cases, relaxations previously granted to individual plants on a plant-specific basis were the result of a generic NRC action, or of agreements reached during discussions with the OG and found to be acceptable for RBS. Generic relaxations contained in NUREG–1434 have also been reviewed by the NRC staff and have been found to be acceptable.

In summary, the proposed revision to the TSs was found to provide control of plant operations such that reasonable assurance will be provided that the health and safety of the public will be adequately protected.

These TS changes will not increase the probability or consequences of accidents, no changes are being made in the types of any effluent that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed TS amendment.

With regard to potential non-radiological impacts, the proposed amendment involves features located entirely within the restricted areas as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological impacts associated with the proposed amendment.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed amendment, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed amendment, the staff considered denial of the amendment. Denial of the amendment would result in no change in current environmental impacts. The environmental impacts of the proposed amendment and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the Final Environmental Statement for the River Bend Station, Unit 1.

Agencies and Persons Consulted

In accordance with its stated policy, on May 16, 1995, the staff consulted with the Louisiana State official, Dr. Stan Shaw, Assistant Administrator of the Louisiana Radiation Protection Division, Department of Environmental Quality regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed amendment.

For further details with respect to this proposed action, see the licensee's letter dated November 30, 1993, as supplemented January 18, 1995, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, and at the local public document room located at the Government Documents Department, Louisiana State University, Baton Rouge, LA 70803.

Dated at Rockville, Maryland this 30th day of May 1995.

For the Nuclear Regulatory Commission.

David L. Wigginton,

Senior Project Manager, Project Directorate IV–1, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–13757 Filed 6–5–95; 8:45 am]

BILLING CODE 7590–01–M

Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations; Biweekly Notice

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from May 15, 1995, through May 25, 1995. The last biweekly notice was published on Tuesday, May 23, 1995 (60 FR 27334).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By July 7, 1995, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any

limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to *(Project Director)*: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Unit Nos. 1, 2, and 3, Maricopa County, Arizona

Date of amendment requests: March 24, 1995.

Description of amendment requests: The proposed amendments would make numerous changes to Technical Specification (TS) 3/4.8.1, "A.C. Sources," and the associated TS Bases, for Palo Verde Units 1, 2, and 3. The proposed amendments would implement recommended changes from NUREG–1432, "Standard Technical Specifications: Combustion Engineering Plants"; Generic Letter (GL) 94–01, "Removal of Accelerated Testing and Special Reporting Requirements for Emergency Diesel Generators"; and GL 93–05, "Line-Item Technical Specification Improvements to Reduce Surveillance Requirements for Testing During Power Operation." The proposed changes are intended to increase emergency diesel generator (EDG) reliability by reducing the stresses on the EDGs from unnecessary testing. Additional changes have also been proposed to TS 3/4.8.1 to further enhance EDG reliability, to achieve consistency with NUREG–1432, Combustion Engineering Standard TS, and to improve the TS presentation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to TS 3/4.8.1 and the associated Bases affect the required actions in response to inoperable offsite and onsite AC sources, surveillance requirements for the EDG, and reporting requirements for EDG failures. The majority of the proposed changes are based on the recommendations of NUREG 1432, GL 94–01, and GL 93–05. These proposed changes have been extensively reviewed by the NRC during the preparation of these documents, and by APS during the development of this request for TS amendment. The proposed changes are expected to result in improvements in EDG performance and reduce EDG aging due to excessive testing. The proposed changes will permit the elimination of the unnecessary mechanical stress and wear on the EDGs while ensuring that the EDGs will perform their design function. The elimination of mechanical stress and wear will improve reliability and availability of the EDGs which will have a positive effect on the ability of the EDGs to perform their design function. The proposed changes to [do] not affect the availability or the testing requirements of the offsite circuits.

Because the proposed changes do not affect the design or performance of the EDGs or their ability to perform their design function, the changes are expected to result in a decrease in the probability or consequences of an accident previously evaluated. The proposed changes will increase EDG reliability, thereby increasing overall plant safety. Because these changes do not affect the probability of accident precursors (EDGs do not initiate any accidents), the proposed type license amendment does not involve a significant increase in the probability or consequence of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes to TS 3/4.8.1 and the associated Bases do not introduce any new modes of plant operation or new accident precursors, involve any physical alterations to plant configurations, or make any changes to system setpoints which could initiate a new or different kind of accident. The proposed changes do not affect the design or performance characteristics of any EDG or its ability to perform its design function. No new failure modes have been defined nor new system interactions introduced for any plant system or component, nor has any new limiting failure been identified as a result of the proposed changes. The proposed changes will eliminate unnecessary EDG testing, increasing EDG reliability and availability, and thereby having an overall positive affect on plant safety. Accidents concerning loss of offsite power and a single failure (e.g., loss of an EDG) have previously been evaluated. These changes are intended to improve plant safety, decrease equipment degradation, and remove unnecessary burden on personnel resources by reducing the amount of testing that the TS requires during power operation. Therefore, the proposed license amendment does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

Under the proposed changes to TS 3/4.8.1 and the associated Bases, the EDGs will remain capable of performing their safety function. The changes do not affect the design or performance of any EDG, but will increase EDG reliability and availability by reducing the stresses and the effects of aging on the EDG by eliminating unnecessary testing. This will result in an overall increase in plant safety. Since the ability of the EDGs to perform their safety function will not be degraded, the proposed license amendment does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on that review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004.

Attorney for licensees: Nancy C. Loftin, Esq., Corporate Secretary and Counsel, Arizona Public Service Company, P.O. Box 53999, Mail Station 9068, Phoenix, Arizona 85072–3999.

NRC Project Director: William H. Bateman.

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Unit Nos. 1, 2, and 3, Maricopa County, Arizona

Date of amendment requests: March 31, 1995.

Description of amendment requests: The proposed amendment would clarify the shutdown margin definition, change the shutdown margin applicability and surveillance requirements to comply with safety analysis assumptions for subcritical inadvertent control element assembly withdrawal (UFSAR Section 15.4), and expand the applicability for core protection calculator (CPC) operability. In addition, the proposed amendment would add a reference to the Core Operating Limits Report (COLR) for the MODE 6 refueling boron concentration limit. The proposed amendment would also change the power calibration requirements for the linear power level, the CPC delta T power, and CPC nuclear power signals to allow more conservative settings than presently required.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis about the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

These changes are being made to ensure compliance with the safety analysis assumptions for subcritical inadvertent CEA [control elemem assembly] withdrawal. These changes also ensure that the boron concentration in the reactor is sufficient to prevent criticality if an inadvertent withdrawal of a shutdown CEA bank were to occur with all other CEAs inserted. Therefore, the consequences of the inadvertent CEA withdrawal is no greater than those of the event previously evaluated. This change also has no affect on the probability of an accident since it is not introducing or changing any accident initiating mechanism.

The analysis of uncontrolled CEA withdrawal from MODES 2 and 3 subcritical with four RCPs [reactor coolant pumps] running is presented in UFSAR Section 15.4.1 as an anticipated operational occurrence. The consequences of this event are that the acceptable fuel design limits are not exceeded (General Design Criterion 25 as specified in the NRC Standard Review Plan). The proposed change to TS requiring that either the CPCs or Logarithmic Power Level—High trip (trip setpoint lowered to 10^{-4}% of Rated Thermal Power) are Operable in MODES 3, 4, and 5, ensures that an inadvertent CEA withdrawal with less than four pumps operating, results in consequences no greater than those of the previously evaluated uncontrolled CEA withdrawal event.

The revised TS will also ensure that the reactivity worth of any full-length CEAs not capable of being inserted is accounted for in the determination of the shutdown margin. This change will ensure the shutdown margin will continue to be within safety analysis assumptions for previously evaluated accidents.

The proposed changes to TS, replacing the MODE 6 boron concentration specification with the requirement to maintain the boron concentration within the limit specified in the COLR, will not affect the probability or consequences of an accident, because it is not changing the MODE 6 reactivity requirement of K_{eff} less than or equal to 0.95, but provides a specific boron concentration value in the COLR to ensure the MODE 6 required K_{eff} value of less than or equal to 0.95 is met.

The proposed changes will reduce the amount of non-conservatism presently allowed for the linear power level, the CPC delta T power and CPC nuclear power signals. Changing the tolerance range from plus or minus 2% to between −0.5% and 10% between 15% and 80% RATED THERMAL POWER, except during initial post refueling power ascension and restricting recalibration, will allow more conservative settings than currently required.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously analyzed.

The changes revising the mode applicabilities are being made to comply with safety analysis assumptions for subcritical CEA withdrawal. The SR [surveillance requirement] ensures that the shutdown margin is within the safety analysis assumptions when the reactor trip breakers are open and any full-length CEA is not fully inserted. No new or different kind of accident will be initiated since this change will ensure that the required shutdown margin is maintained when the reactor trip breakers are closed.

The proposed change to TS, requiring either the CPCs or Logarithmic Power Level—High trip to be operable, will provide protection from inadvertent CEA withdrawal when less than four RCPs are operating. No new or different kind of accident will be initiated by this change, since this change incorporates TS limitations to ensure protection for an existing accident scenario.

The revised TS shutdown margin definition ensures that the reactivity worth of any full-length CEAs not capable of being inserted is accounted for in the determination of the shutdown margin. This ensures the shutdown margin will continue to be within safety analysis assumptions. Maintaining the shutdown margin within the safety analyses assumption will not create any new or different kind of accident.

The proposed changes to TS power calibration tolerance limits are conservative relative to the current TS requirements and therefore will not create any new or different kind of accident.

The proposed change to TSs replacing the MODE 6 boron concentration specification with the requirement to maintain the boron concentration within the limit specified in the COLR does not create the possibility of a new or different kind of accident from any accident previously analyzed. The proposed change is not changing the MODE 6 reactivity requirements of less than or equal to 0.95 while providing a specific boron concentration value in the COLR to ensure the MODE 6 required K_{eff} value of less than or equal to 0.95.

3. The proposed changes do not involve a significant reduction in a margin of safety.

The proposed change to TS adds an additional requirement for the CPCs or Logarithmic Power Level—High trip to be operable in MODES 3, 4, and 5. This change maintains the margin of safety in the safety analysis by providing a TS that will ensure appropriate protection is provided in the event of an inadvertent CEA withdrawal with less than four RCPs operating.

The proposed changes to TS (Boration Control, Shutdown Margin), revising the mode applicabilities, maintains the margin of safety provided in the TS by ensuring that the safety analysis assumptions for subcritical CEA withdrawal are met. The new SR does not reduce the margin of safety since the shutdown margin assumed in the safety analysis will be maintained by this TS.

The revised TS shutdown margin definition ensures that the reactivity worth of any full length CEAs not capable of being inserted is accounted for in the determination of shutdown margin. This ensures shutdown margin will continue to be within safety analysis assumptions. This change maintains the margin of safety that is currently provided by TS.

The proposed changes to TS, reducing the amount of non-conservatism in the safety system power indications, maintains the margin of safety for design basis events which take credit for the linear power level, the CPC delta T power, and CPC nuclear power signals.

The proposed change to TS moves the specific MODE 6 boron concentration value to COLR. The proposed change does not change the MODE 6 reactivity requirement of K_{eff} of less than or equal to 0.95, but provides a specific boron concentration value in the COLR to ensure the MODE 6 required K_{eff} value of less than or equal to 0.95 is met. Therefore, the margin of safety is not affected by the proposed change.

The NRC staff has reviewed the licensees' analysis and, based on that review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004.

Attorney for licensees: Nancy C. Loftin, Esq., Corporate Secretary and Counsel, Arizona Public Service Company, P.O. Box 53999, Mail Station 9068, Phoenix, Arizona 85072–3999.

NRC Project Director: William H. Bateman.

Commonwealth Edison Company, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendment request: December 8, 1992, as supplemented on September 10, 1993, and May 17, 1995.

Description of amendment request: As a result of findings by a Diagnostic Evaluation Team inspection performed by the NRC staff at the Dresden Nuclear Power Station in 1987, Commonwealth Edison Company (ComEd, the licensee) made a decision that both Dresden Nuclear Power Station and sister site Quad Cities Nuclear Power Station, needed attention focused on the existing custom Technical Specifications (TS) used.

The licensee made the decision to initiate a Technical Specification Upgrade Program (TSUP) for both Dresden and Quad Cities. The licensee evaluated the current TS for both Dresden and Quad Cities against the Standard Technical Specifications (STS) contained in NUREG–0123, "Standard Technical Specifications General Electric Plants BWR/4." The licensee's evaluation identified numerous potential improvements such as clarifying requirements, changing TS to make them more understandable and to eliminate interpretation, and deleting requirements that are no longer considered current with industry practice. As a result of the evaluation, ComEd has elected to upgrade both Dresden and Quad Cities TS to the STS contained in NUREG–0123.

The TSUP for Dresden and Quad Cities is not a complete adaptation of the STS. The TSUP focuses on (1) Integrating additional information such as equipment operability requirements during shutdown conditions, (2) clarifying requirements such as limiting conditions for operations and action statements utilizing STS terminology, (3) deleting superseded requirements and modifications to the TS based on the licensee's responses to Generic Letters (GLs), and (4) relocating specific items to more appropriate TS locations.

The December 8, 1992, application, as supplemented on September 10, 1993, and May 17, 1995, proposed to upgrade only Section 3/4.1 (Reactor Protection System) of the Dresden and Quad Cities TS.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated because:

In general, the proposed amendment represents the conversion of current requirements to a more generic format, or the addition of requirements which are based on the current safety analysis. Implementation of these changes will provide increased reliability of equipment assumed to operate in the current safety analysis, or provide continued assurance that specified parameters remain within their acceptance limits, and as such, will not significantly increase the probability or consequences of a previously evaluated accident.

Some of the proposed changes to the current Technical Specifications (CTS) represent minor curtailments of the current requirements which are based on generic guidance or previously approved provisions for other stations. The proposed amendment for Dresden and Quad Cities Station's Technical Specification Section 3/4.1 are based on BWR–STS (NUREG–0123, Revision 4 "Standard Technical Specifications General Electric Plants BWR/4) guidance or NRC accepted changes at later operating BWR plants. Any deviations from BWR–STS and CTS requirements do not significantly increase the probability or consequences of any previously evaluated accident for Dresden and Quad Cities Station. These proposed changes are consistent with the current safety analyses and have been previously determined to represent sufficient requirements for the assurance and reliability of equipment assumed to operate in the safety analysis, or provide continued assurance that specified parameters remain within their acceptance limits. As such, these changes will not significantly increase the probability or consequences of a previously evaluated accident.

The associated systems that make up the Reactor Protection System are not assumed in any safety analysis to initiate any accident sequence for both Dresden and Quad Cities Stations; therefore, the probability of any accident previously evaluated is not increased by the proposed amendment. In addition, the proposed surveillance requirements for the proposed amendments to these systems are generally more prescriptive than the current requirements specified within the Technical Specifications. These more prescriptive surveillance requirements increase the probability that the Reactor Protection System will perform its intended function. Therefore, the proposed TS will improve the reliability and availability of all affected systems and reduce the consequences of any accident previously evaluated.

(2) Create the possibility of a new or different kind of accident from any previously evaluated because:

In general, the proposed amendment represents the conversion of current requirements to a more generic format, or the addition of requirements which are based on the current safety analysis. Others represent minor curtailments of the current requirements which are based on generic guidance or previously approved provisions for other stations. These changes do not involve revisions to the design of the station. Some of the changes may involve revision in the operation of the station; however, these changes provide for additional restrictions which are in accordance with the current safety analyses, or are to provide for additional testing or surveillances which will not introduce new failure mechanisms beyond those already considered in the current safety analyses. Therefore, these changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment for Dresden and Quad Cities Station's Technical Specification Section 3/4.1 is based on BWR–STS guidelines or NRC accepted changes at later operating BWR plants. The proposed amendment has been reviewed for acceptability at the Dresden and Quad Cities Nuclear Power Stations considering similarity of system or component design versus the BWR–STS or later operating BWRs. Any deviations from BWR–STS or CTS requirements do not create the possibility of a new or different kind of accident than previously evaluated for Dresden and Quad Cities Stations. No new modes of operation are introduced by the proposed changes. Surveillance requirements are changed to reflect improvements in technique, frequency of performance or operating experience at later plants. Proposed changes to action statements in many places add requirements that are not in the present technical specifications or adopt requirements that have been used at other operating BWRs with design similar to Dresden and Quad Cities. The proposed changes maintain at least the present level of operability. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

The associated systems that make up the Reactor Protection System are not assumed in any safety analysis to initiate any accident sequence for Dresden and Quad Cities Stations. In addition, the proposed surveillance requirements for affected systems associated with the Reactor Protection System are generally more prescriptive than the current requirements specified within the Technical Specifications; therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

(3) Involve a significant reduction in the margin of safety because:

In general, the proposed amendment represents the conversion of current requirements to a more generic format, or the addition of requirements which are based on the current safety analysis. Others represent minor curtailments of the current requirements which are based on generic guidance or previously approved provisions for other stations. Some of the later individual items may introduce minor reductions in the margin of safety when compared to the current requirements. However, other individual changes are the adoption of new requirements which will provide significant enhancement of the reliability of the equipment assumed to operate in the safety analysis, or provide enhanced assurance that specified parameters remain within their acceptance limits. These enhancements compensate for the individual minor reductions, such that taken together, the proposed changes will not significantly reduce the margin of safety.

The proposed amendment to Technical Specification Section 3/4.1 implements present requirements, or the intent of present requirements in accordance with the guidelines set forth in the BWR–STS. Any deviations from BWR–STS and CTS requirements do not significantly reduce the margin of safety for Dresden and Quad Cities Stations. The proposed changes are intended to improve reliability, usability, and the understanding of technical specification requirements while maintaining acceptable levels of safe operation. The proposed changes have been evaluated and found acceptable for use at Dresden and Quad Cities based on system design, safety analysis requirements and operational performance. Since the proposed changes are based on NRC accepted provisions at other operating plants that are applicable at Dresden and Quad Cities and maintain necessary levels of system or component readability, the proposed changes do not involve a significant reduction in the margin of safety.

The proposed amendment for Dresden and Quad Cities Stations will not reduce the availability of systems associated with the Reactor Protection System when required to mitigate accident conditions; therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: For Dresden, Morris Area Public Library District, 604 Liberty Street, Morris, Illinois 60450; for Quad Cities, Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

NRC Project Director: Robert A. Capra.

Detroit Edison Company, Docket No. 50–341, Fermi-2, Monroe County, Michigan

Date of amendment request: July 29, 1993.

Description of amendment request: The proposed amendment would extend the instrument calibration intervals for selected plant instrumentation from 18 months to 36 months.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change to extend to 36 months the calibration interval of selected instrumentation does not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. The purpose of the proposed Technical Specification change is to extend calibration interval testing requirements for selected instrumentation. However, because of the continued application of redundant Technical Specification requirements such as channel checks, channel functional tests, and logic system functional tests, the performance of these instruments will be maintained within the acceptance limits assumed in plant safety analyses and required for the successful mitigation of an initiating event. The proposed Technical Specification changes do not affect the capability of the associated systems to perform their intended function within their instrument settings.

These other tests are sufficient to identify failure modes or degradations in instrument performance and ensure operation of the associated systems within acceptance limits. There are no credible failure modes that can be detected by instrument calibration that cannot also be detected by other Technical Specification tests.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated. As discussed above, the proposed Technical Specification changes do not affect the capability of the associated systems to perform their intended function within the acceptance limits assumed in plant safety analyses and required for successful mitigation of an initiating event. All plant systems continue to operate in an identical manner. No new accident modes are created.

(3) Involve a significant reduction in a margin of safety. The current Technical Specification allowable values are based on the maximum analytical limits assumed in the plant safety analyses. These analyses conservatively establish the margin of safety. The proposed Technical Specification changes do not affect the capability of the associated systems to perform their function within the instrument settings used as the basis for the plant safety analyses. Plant and system settings to an initiating events will remain in compliance within the assumptions of the safety analyses, and therefore the margin of safety is not affected.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Attorney for licensee: John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226.

NRC Project Director: Cynthia A. Carpenter, Acting.

Detroit Edison Company, Docket No. 50–341, Fermi-2, Monroe County, Michigan

Date of amendment request: December 15, 1994.

Description of amendment request: The proposed amendment would relocate, revise, or delete various Technical Specification (TS) provisions. Administrative controls on working hours in TS 6.2.2.f, the Independent Safety Engineering Group requirements in TS 6.2.3, the unit staff qualification requirements in TS 6.3, the reportable event requirement for the Onsite Review Organization (OSRO) in TS 6.6.1.b, the radiation protection program requirements in TS 6.11, the record retention requirements in TS 6.10, and the review and audit functions in TS 6.5 (with the exception of TS 6.5.2.8), would be relocated to Chapter 13 of the Updated Final Safety Analysis Report (UFSAR). The review and approval process for temporary changes to each TS 6.8.1 plant procedure listed in TS 6.8.4 would also be relocated to Chapter 13 of the UFSAR.

The requirements of TS 6.5.2.8, the review and approval process for administrative procedures in TS 6.8.2, and the review and approval process for plant procedures in TS 6.8.3, would be relocated to the Fermi 2 Quality Assurance program. The in-plant radiation monitoring program requirements in TS 6.8.5.b, and the high radiation area requirements in TS 6.12 would be relocated to Chapter 12 of the

UFSAR. The radiological environmental monitoring program requirements in TS 6.8.5.f would be relocated to Chapter 11 of the UFSAR. The Process Control Program (PCP) requirements in TS 6.13 would be relocated to the PCP.

The requirements for OSRO to review the Security Plan in TS 6.5.1.6.j and to have Security Plan implementing procedures in TS 6.8.1.e would be relocated to the Fermi 2 Security Plan. The requirements for OSRO to review the Emergency Plan in TS 6.5.1.6.k and to have Emergency Plan implementing procedures in TS 6.8.1.f would be relocated to the Fermi 2 Emergency Plan.

The unit staff qualification requirements, as specified in the H. R. Denton (NRC) letter of March 29, 1980, in TS 6.3, would be deleted. The licensee states these have been superseded by 10 CFR Part 55 and Generic Letter (GL) 87–07. The training requirements in TS 6.4 would be deleted. The licensee states that other Section 6.0 TS and NRC regulations provide sufficient control of these training requirements. The submittal requirement of the annual radioactive effluent release report in TS 6.9.1.8 would be revised from "within 90 days after January 1 * * *" to "prior to May 1. * * *"

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated because the proposed changes are administrative in nature. None of the proposed changes involve a physical modification to the plant, a new mode of operation or a change to the UFSAR transient analyses. No Limiting Condition for Operation, ACTION statement or Surveillance Requirement is affected by any of the proposed changes. Also, these proposed changes, in themselves, do not reduce the level of qualification or training such that personnel requirements would be decreased. Therefore, this change is administrative in nature and does not involve a significant increase in the probability or consequences of an accident previously evaluated. Further, the proposed changes do not alter the design, function, or operation of any plant component and therefore, do not affect the consequences of any previously evaluated accident.

(2) The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed changes do not introduce a new mode of plant operation, surveillance requirement or involve a physical modification to the plant. The proposed changes are administrative in nature. The changes propose to revise, delete or relocate the stated administrative control provisions from the TS to the UFSAR, plant procedures or the QA Program whereby, adequate control of information is maintained. Further, as stated above, the proposed changes do not alter the design, function, or operation of any plant components and therefore, no new accident scenarios are created.

(3) The proposed changes do not involve a significant reduction in a margin of safety because they are administrative in nature. None of the proposed changes involve a physical modification to the plant, a new mode of operation or a change to the UFSAR transient analyses. No Limiting Condition for Operation, ACTION statement or Surveillance Requirement is affected. The proposed changes do not involve a significant reduction in a margin of safety. Additionally, the proposed change does not alter the scope of equipment currently required to be OPERABLE or subject to surveillance testing nor does the proposed change affect any instrument setpoints or equipment safety functions. Therefore, the change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Attorney for licensee: John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226.

NRC Project Director: Cynthia A. Carpenter, Acting.

Duquesne Light Company, et al., Docket No. 50–412, Beaver Valley Power Station, Unit 2, Shippingport, Pennsylvania

Date of amendment request: April 26, 1995.

Description of amendment request: The proposed amendment would add a requirement to Technical Specification (TS) 4.5.2.a to periodically verify that the High Head Safety Injection (HHSI) pump minimum flow valve, 2CHS*MOV373, is maintained open during plant operation in Modes 1, 2, and 3. Valve 2CHS*MOV373 must be maintained open to provide a minimum flowpath for the HHSI pumps and thereby minimize the likelihood of HHSI pump damage due to operating the pumps with insufficient flow. The proposed change would allow flexibility for local verification of valve position or flow indication if the control room indication is not available. The proposed amendment would also make several editorial changes to TS 3/4.5.2 for consistent format with other TSs.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

Maintaining 2CHS*MOV373 in a de-energized locked open position ensures charging/High Head Safety Injection pump (HHSI pump) minimum flow remains available for normal operation and design basis accidents. It has been determined that with 2CHS*MOV373 in the open position there is no significant increase in radiation levels and no change to the existing environmental qualification or personnel access routes. Sufficient injection flow to the core will be maintained during events requiring a Safety Injection (SI) actuation. Potential HHSI pump damage due to low flow will be prevented during periods of high Reactor Coolant System (RCS) pressure following a steam line break and SI. It has also been determined that the HHSI pumps will remain capable of performing their safety function with a continuous minimum flow. There is no impact on analysis assumptions or radiological consequences of an accident.

There are no postulated events in the Updated Final Safety Analysis Report (UFSAR) which require that 2CHS*MOV373 be closed. Thus, the decision to de-energize and lock open the valve ensures adequate minimum flow for the HHSI pumps.

The proposed addition of 2CHS*MOV373 to Technical Specification 3.5.2 enhances the operator's ability to verify the valve position. The proposed surveillances and footnote will be used to monitor the valve position, the status of motor operator, and the valve position indicating lights. Therefore, the proposed change to the technical specification will ensure that the HHSI pump minimum flow is always available.

Several editorial changes were also made to Technical Specification 3.5.2. These changes do not alter the intent of the technical specification and as such have no impact on previously evaluated accident scenarios.

Therefore, the proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed addition of 2CHS*MOV373 to the technical specifications does not involve changes to the physical plant. The proposed change adds surveillance requirements and a footnote which monitor the valve position, the lack of power to the motor operator, and the valve position indicating lights. This assures that the minimum flow valve is open to maintain the HHSI pumps operable under all conditions.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The proposed change provides additional action to ensure that 2CHS*MOV373 remains open and minimum HHSI pump flow remains available. Safety limits and limiting safety system settings are not affected by this proposed change. There are no changes to the offsite dose consequences resulting from this request.

Therefore, use of the proposed technical specification would not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Attorney for licensee: Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz.

Entergy Operations Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: July 18, 1991, as supplemented by letters dated March 16, and December 2, 1994, and March 9, 1995.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TSs) on control Room Air Conditioning System (CRACS) by separating the current composite requirements of TS 3.7.6 into four TSs covering three separate functions; control room emergency air filtration system (two mode sets), control room air temperature, and control room isolation and pressurization. The changes also increase the allowed outage time to identify and correct breaches to the control room envelope, adds requirements for make-up air flow rate to be used in conjunction with existing differential pressure requirements, and adds toxic gas specifications for Modes 5 and 6. The amendment is related to a revision to the Technical Specification Bases approved by the NRC in a letter dated August 9, 1988. The March 16, and December 2, 1994, and March 9, 1995 submittals provided additional information and included some additional restrictions in proposed changes by original application dated July 18, 1991. The original notice was published on September 4, 1991 (56 FR 43808). The additional submittals do not change the no significant hazard consideration determination previously made by the licensee.

Basis for proposed no significant hazards consideration determination: The proposed change would create new Specifications as follows: 3/4.7.6.1 Emergency Air Filtration, Modes 1–4; 3/4.7.6.2 Emergency Air Filtration, Modes 5 and 6; 3/4.7.6.3 Control Room Air Temperature; 3/4.7.6.4 Control Room Isolation and Pressurization. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The limiting accidents against which the CRACS protects are:

- All Chapter 15 scenarios involving a release of radiation to the environment outside the containment,
- Toxic gas releases, and
- Smoke resulting from control room envelope fires.

Limiting accidents against which the emergency air filtration system protects are all Chapter 15 scenarios involving release of radiation to the environment outside the containment.

The probability and consequences of any of the limiting accidents listed above are unchanged by the specialization of the plant TSs. As pointed out in the description of the change, TSs 3/4.7.6.1 and 3/4.7.6.2 have retained all requirements from the existing TS with the addition of one action statement based on the inoperability of both trains, and the exception of one action statement based on one inoperable train in Modes 5 or 6. This action statement is unnecessary since it is only applicable in a mode unlikely to experience the limiting design basis accidents against which this system protects. Therefore, the protection of the original specification is uncompromised for the function of emergency air filtration.

There are two differences between the existing TS and the proposed TS 3/4.7.6.3 regarding control room air temperature. The first is the three hour outage allowed when both air conditioning units are inoperable [this was withdrawn by licensee's March 9, 1995, letter].

This corrects most types of failures. Although three hours are less restrictive than TS 3.0.3, it is not significantly less and therefore, does not seriously reduce the protection of the original specification. The other change is the reduction of the surveillance temperature from 110°F to 80°F. This is more restrictive than the existing version. All other requirements for air conditioning are retained in the proposed TS.

Proposed TS 3/4.7.6.4, which concerns control room isolation and pressurization, allows more limited continued plant operation than the existing TS. When compared to existing actions required for continued operation with a known breach, the proposed specification recognizes the potential consequences that could arise from operation with an unidentified breach in the envelope and imposes more restrictive actions.

Engineering analysis also shows that, for most of the time, toxic chemical concentrations in the control room envelope after a postulated release are largely the result of in-leakage from the RAB [reactor auxiliary building] after isolation. This has the effect of reducing the chemical concentration of gas leaking into the control room by at least an order of magnitude and ultimately results in a control room chemical concentration buildup rate slower than previously assumed. These characteristics make it likely that the operators would have sufficient time to don the breathing apparatus installed in the control room. It is also noteworthy that this emergency breathing apparatus is considered by Regulatory Guide 1.78 to provide sufficient operator protection for those cases where chemical toxicity limits might be exceeded.

The limited continued operation allowed by the proposed change, the design characteristics of the control room, and the installed breathing apparatus provides a reasonable level of protection for plant personnel. Some new restrictions are identified for the control room isolation and pressurization. These were not previously identified and therefore offer enhanced protection to the TS. All existing requirements specific to the isolation and pressurization function are retained in the proposed version. As such, the proposed specification offers more protection than the existing TS.

Based on the above, these revisions to the TS will not adversely affect the reliability or performance of any instalied equipment. There are no design changes associated with this proposed amendment, consequently, all aspects of the safety analysis will remain unchanged and there will be no physical change to the facility, and operation of Waterford 3 in accordance with these proposed changes will not involve a significant increase in the probability or consequence of any accident previously evaluated.

To create a new or different kind of accident, these changes must introduce a new failure path. In this regard, these revisions are benign since they do not alter the system or its operation. With a few exceptions, all existing TS restrictions have been retained. The exceptions have been shown to have insignificant impact. Furthermore, several additional restrictions, not in the existing specification, have been added.

Based on the above information, these changes do not introduce a new failure path and therefore, cannot create a new, unevaluated sequence of events. The current plant safety analyses are bounding and this revision will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Safety margins related to the control room envelope air systems are established for control room temperature and the habitability of the control room following all credible accidents. This change does not modify the equipment installed in the plant or its operation. Therefore, existing margins of safety are retained, and the operation of Waterford 3 in accordance with this proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, LA 70122.

Attorney for licensee: N.S. Reynolds, Esq., Winston & Strawn 1400 L Street N.W., Washington, D.C. 20005–3502.

NRC Project Director: William D. Beckner.

Entergy Operations Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: May 12, 1995.

Description of amendment request: The proposed change modifies surveillance requirements associated with containment leakage Technical Specification (TS) 3.6.1.2 by removing scheduler requirement for Type A tests to be performed specifically at 40 plus or minus 10 month intervals and, instead, reference Type A testing in accordance with 10 CFR part 50, appendix J. The proposed change adopts the wording for primary containment integrated leak rate testing that is consistent with the requirements of the Combustion Engineering Improved Standard Technical Specifications (NUREG–1432). The proposed change also includes several administrative changes. The May 12, 1995, submittal superseded the November 16, 1993, submittal in its entirety. The November 16, 1993, submittal was noticed in **Federal Register** on January 5, 1994 (59 FR 619).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change will not affect the assumptions, design parameters, or results of any accident previously evaluated. The proposed change does not add or modify any existing equipment. The proposed Type A test schedule will continue to be consistent with 10 CFR 50 Appendix J. Therefore, the proposed change will not involve a significant increase in the probability or consequences of any accident previously evaluated.

The proposed change does not involve modifications to any existing equipment. The proposed change will not affect the operation of the plant or the manner in which the plant is operated. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The margin of safety for the containment barrier is, in part, preserved by compliance with 10 CFR 50 Appendix J. Although the proposed change will allow greater flexibility in meeting Appendix J requirements, the TS will continue to preserve compliance with 10 CFR Appendix J. Therefore, the proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

Attorney for licensee: N.S. Reynolds, Esq., Winston & Strawn 1400 L Street N.W., Washington, D.C. 20005–3502.

NRC Project Director: William D. Beckner.

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: May 1, 1995.

Description of amendment request: The proposed amendment would provide a special test exception that would allow an extension of the standby diesel generator (SDG) allowed outage time for a cumulative 21 days on each SDG once per fuel cycle, and it would also allow an extension of the essential cooling water (ECW) loop allowed outage time for a cumulative 7 days on each ECW loop once per fuel cycle. These extended allowed outage times will be used to perform required inspections and maintenance on the SDGs and the ECW system during power operation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The Standby Diesel Generators are not accident initiators, therefore the increase in Allowed Outage Times for this system does not increase the probability of an accident previously evaluated. The three train design of the South Texas Project ensures that even during the seven days the Essential Cooling Water loop is inoperable there are still two complete trains available to mitigate the consequences of any accident. If the Essential Cooling Water loop is not operable during the 21 days the Standby Diesel Generator is inoperable, the Standby Diesel Generator's Engineered Safety Features bus and equipment in the train will be operable. This ensures that all three redundant safety trains of the South Texas Project design are operable. In addition the Emergency Transformer will be available to supply the Engineered Safety Features bus normally supplied by the inoperable Standby Diesel Generator. These actions will ensure that the changes do not involve a significant increase in the consequences of previously evaluated accidents.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes affect only the magnitude of the Standby Diesel Generator and Essential Cooling Water Allowed Outage Times once per fuel cycle as identified by the marked-up Technical Specification. As indicated above, the proposed change does not involve the alteration of any equipment nor does it allow modes of operation beyond those currently allowed. Therefore, implementation of these proposed changes does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes result in no significant increase in core damage or large early release frequencies.

Three sets of PSA results have been presented to the NRC for the South Texas Project. One submitted in 1989 from the initial Level 1 PSA of internal and external events with a mean annual average CDF estimate of $1.7 \times 10(-4)$, a second one submitted in 1992 to meet the IPE requirements from the Level 2 PSA/IPE with a CDF estimate of $4.4 \times 10(-5)$, and an update of the PSA that was reported in the August 1993 Technical Specifications submittal with a variety of CDF estimates for different assumptions regarding the rolling maintenance profile and different combinations of modified Technical Specifications. The South Texas Project PSA was updated in March of 1995 to include the NRC approved Risk-Based Technical Specifications, Plant Specific Data and incorporate the Emergency Transformer into the model. This update resulted in a CDF estimate of $2.07 \times 10(-5)$. When the requested changes are modeled along with the compensatory actions, the resulting CDF estimate is $2.30 \times 10(-5)$. While this is slightly higher (approx. 11%) than the updated results, it is still significantly lower (approx. 46%) than the previous Risk-Based Evaluation of Technical Specification submitted in 1993. Therefore, it is concluded that there is no significant reduction in the margin of safety.

Based on the above evaluation, Houston Lighting & Power has concluded that these changes do not involve any significant hazards considerations.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Local Public Document Room location: Wharton County Junior College, J. M. Hodges, Learning Center, 911 Boling Highway, Wharton, TX 77488.

Attorney for licensee: Jack R. Newman, Esq., Newman & Holtzinger, P.C., 1615 L Street, N.W., Washington, D.C. 20036.

NRC Project Director: William D. Beckner.

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: May 2, 1995.

Description of amendment request: The proposed amendment would revise Technical Specifications 3.4.2.2 and 3.7.1.1 (Table 3.7–2) by relaxing the lift setting tolerances of the pressurizer safety valves from plus or minus 1% to plus or minus 2% and the main steam safety valves from plus or minus 1% to plus or minus 3%, respectively. In addition, a footnote would be added to require that the pressurizer safety valves and main steam safety valves setpoint tolerances be restored to within plus or minus 1% whenever a lift setting is determined to be outside plus or minus 1% following valve testing.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated because:

The proposed changes increase the "as-found" setpoint tolerances for the Pressurizer Safety valves from plus or minus 1% to plus or minus 2% and the Main Steam Safety valves from plus or minus 1% to plus or minus 3%. The proposed changes do not involve any hardware modifications to plant structures, systems, or components. An evaluation has determined that the proposed changes do not significantly affect the structural integrity of either the reactor coolant system or the main steam system.

The proposed setpoint tolerance of plus or minus 2% for the Pressurizer Safety valves and plus or minus 3% for the Main Steam Safety valve "as-found" condition was previously evaluated as part of the evaluation for the transition to VANTAGE 5H fuel. The evaluation was reviewed and approved by the NRC Staff as part of License Amendment Nos. 61 and 50 to Operating License NPF–76 and NPF–80. Since the VANTAGE 5H fuel evaluation incorporated these proposed changes, the calculated radiological release associated with that evaluation is unaffected. Similarly, this applies to the radiological dose associated with a steam generator tube rupture.

Additionally, the proposed change [sic] are consistent with the guidance provided by Section III and XI of the ASME Code.

Based on the above, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated because:

Since the lift setting of a Pressurizer Safety valve or Main Steam Safety valve will be restored to plus or minus 1% whenever it is determined to be outside plus or minus 1%, the "as-left" setpoint tolerances for the Pressurizer Safety valves and Main Steam Safety valves are unchanged. The "as-left" setpoint will continue to satisfy the current technical specification requirement on lift setting tolerance. As such, there is no change in plant operation or equipment performance. Since neither plant operation or equipment performance is affected by the proposed changes, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously analyzed.

3. The proposed change does not involve a significant reduction in a margin of safety because:

Since the proposed changes are consistent with the guidance provided by Section III and XI of the ASME Code, and the proposed lift setting tolerance of plus or minus 2% for the Pressurizer Safety valves and plus or minus 3% for the Main Steam Safety valves has been incorporated into the design basis accident analyses, the proposed changes do not involve a significant reduction in the margin of safety.

Based on the safety evaluation presented above for the proposed changes, Houston Lighting & Power has determined that the health and safety of the public will not be jeopardized. Therefore, the proposed changes do not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Local Public Document Room location: Wharton County Junior College, J. M. Hodges, Learning Center, 911 Boling Highway, Wharton, Texas 77488.

Attorney for licensee: Jack R. Newman, Esq., Newman & Holtzinger, P.C., 1615 L Street, N.W., Washington, D.C. 20036.

NRC Project Director: William D. Beckner.

Indiana Michigan Power Company, Docket No. 50–315, Donald C. Cook Nuclear Plant, Unit No. 1, Berrien County, Michigan

Date of amendment request: April 13, 1995.

Description of amendment request: The proposed amendment would modify the Technical Specifications to allow use of laser-welded sleeves to repair defective steam generator tubes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Conformance of the proposed amendments to the standards for a determination of no significant hazard as defined in 10 CFR 50.92 (three factor test) is shown in the following:

(1) Operation of CNP [Cook Nuclear Plant] Unit 1 in accordance with the proposed license amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The TS [tubesheet] or TSP [tube support plate] intersection LWS [laser-welded sleeve] configuration has been designed and analyzed in accordance with the requirements of the ASME [American Society of Mechanical Engineers] Code and RG [Regulatory Guide] 1.121. Fatigue and stress analyses of the sleeved tube assemblies produced acceptable results. Mechanical testing has shown that the structural strength of the Alloy 690 sleeves under normal faulted and upset conditions is within acceptable limits. Leak testing has demonstrated that primary to secondary leakage is not expected during all plant conditions, including the case where the seal weld is not produced in the lower joint of the TS sleeve. Testing shows that non-welding TS sleeve lower joints remained leaktight at temperature and pressure conditions representative of normal and accident conditions. Since laser welding produces a hermetic seal between the tube and sleeve, no leak path can be realized under any condition. Therefore, installation of LWSs will not influence offsite dose

calculation for a postulated steam line break event.

The proposed technical specification change to support the installation of Alloy 690 LWSs does not adversely impact any previously evaluated design basis accident or the results of accident analyses for the current technical specification minimum reactor coolant system flow rate. The results of the qualification testing, analyses, and plant operating experience demonstrate that the sleeve assembly is an acceptable means of maintaining tube integrity. These aforementioned analyses and tests demonstrate that installation of sleeves spanning degraded areas of the tube will restore the tube to a condition consistent with its original design basis. Plugging limit criteria are established using the guidance of RG 1.121. Furthermore per RG 1.83 recommendations, the sleeved tube can be monitored through periodic inspections with present eddy current techniques.

Conformance of the sleeve design with the applicable sections of the ASME Code and results of the leakage and mechanical tests, support the conclusion that installation of laser-welded tube sleeves will not increase the probability or consequences of an accident previously evaluated. Depending upon the break location for a postulated steam generator tube rupture event, implementation of tube sleeving could act to reduce the radiological consequences to the public due to reduced flow rate through a sleeved tube compared to a non-sleeved tube based on the restriction afforded by the sleeve wall thickness.

(2) The proposed license amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Implementation of laser-welded sleeving will not introduce significant or adverse changes to the plant design basis. Stress and fatigue analysis of the repair has shown the ASME Code and RG 1.121 allowable values are met. Implementation of laser-weld sleeving maintains overall tube bundle structural and leakage integrity during all plant conditions at a level consistent to that of the originally supplied tubing. Leak and mechanical testing of sleeves supports the conclusions of the calculations that the sleeve retains both structural and leakage integrity during all conditions. Sleeving of tubes does not provide a mechanism resulting in an accident outside of the area affected by the sleeves. Any hypothetical accident as a result of potential tube or sleeve degradation in the repaired portion of the tube is bounded by the existing tube rupture accident analysis. Since the sleeve design does not affect any other component or location of the tube outside of the immediate area repaired, in addition to the fact that the installation of sleeves and the impact on current plugging level analyses is accounted for, the possibility that laser-weld sleeving creates a new or different type of accident is not supported.

The design of thermally treated Alloy 600 and 690 sleeved tube assemblies have performed well historically with regard to corrosion. There are no reported instances of Alloy 600 thermally treated or Alloy 690 sleeve degradation for the greater than 35,000 sleeves that Westinghouse has installed in the U.S. Accelerated corrosion test results show the free span laser-weld joint (LWJ) (with post weld heat treatment) is capable of exhibiting a resistance to corrosion of greater that 10 times that of rolled tube transitions. Most LWS corrosion specimens did not experience degradation and were subsequently removed from the corrosion test media after a substantial testing period (supporting the 10x factor compared to roll transitions) was achieved. Several mill annealed Alloy 600 material heats were used for corrosion specimen preparation. All were documented by previous test to have been highly susceptible to PWSCC. The post weld heat treatment process applied to LWS free span joints is designed to achieve a minimum tube OD wall temperature of 1400°F adjacent to the weld and within the laser weld heat affected zone. Since the target temperature of 1400°F is achieved on the tube OD, a slightly higher temperature is achieved at the tube ID surface, where the weld cooling stresses are concentrated. Also, since the axial length of the laser weld and laser weld heat affected zone are relatively narrow compared to other sleeve welding processes, a narrower section of tube is required to be heat treated. Since the length of tube required to be heat treated is shorter in the LWS process than with other sleeving processes, lower residual stresses in the tube can be expected. Accelerated corrosion tests also show that non-heat treated laser-weld free span joints exhibit resistance to stress corrosion cracking equal to or greater than rolled tube transitions. An extensive data base exists on LWS joint performance in foreign plants in which the free span joints are not heat treated. Of the approximately 18,000 non-heat treated joints in service, none has exhibited a rapid corrosion potential. Corrosion testing of the TS sleeve lower joint LWJs exhibit a resistance to corrosion cracking of three to four times that of rolled tube transitions. These factors suggest postulated sleeve/tube assembly degradation would occur at a rate less than rolled transitions, and the potential for a sleeve/tube assembly with accelerated degradation rate characteristics more severe than rolled transitions, and the potential for a sleeve/tube assembly with accelerated degradation rate characteristics more severe than roll transitions is negligible.

Approximately 800 LWSs are currently in operation in the U.S. Some of these have been in service since April 1992. The plants in which these sleeves are installed have not experienced any adverse operational issues (such as primary to secondary leakage) as has been detected at other plants with sleeves which have experienced rapid corrosion of the parent tube.

(3) The proposed license amendment does not involve a significant reduction in a margin of safety.

The laser-welded sleeving repair of degraded steam generator tubes as identified in WCAP–13088 Rev. 3 has been demonstrated to restore the integrity of the tube bundle under normal and postulated accident conditions. The safety factors used in the design of sleeves for the repair of degraded tubes are consistent with the safety factors the ASME Boiler and Pressure Vessel Code used in steam generator design. The plugging limit criteria for the sleeve has been established using the methodology of RG 1.121. The design of the sleeve joints have been verified by testing to preclude leakage during normal and postulated accident conditions. Implementation of laser-welded sleeving will reduce the potential for primary to secondary leakage during a postulated steam line break while maintaining available primary coolant flow area in the event of a LOCA. By removing from service degraded intersections through repair, the potential for tube leakage during a steam line break is reduced. These degraded intersections now are returned to a condition consistent with the design basis. While the installation of a sleeve causes a reduction in flow, the reduction is far below the reduction incurred by plugging. Therefore, far greater primary coolant flow area is maintained through sleeving. Use of RG 1.121 criteria assures that the margin of safety with respect to structural integrity is the same for the sleeves as for the original steam generator tubes.

The portions of the installed sleeve assembly which represent the reactor coolant pressure boundary can be monitored for the initiation and progression of sleeve/tube wall degradation, thus satisfying the requirements of RG 1.83. Portions of the tube bridged by the sleeve joints are effectively isolated from the pressure boundary, and the sleeve then forms the pressure boundary in these areas. The areas of the sleeved tube assembly which require inspection are defined in Attachment 4 [WCAP–13088, "Westinghouse Series 44 and 51 Steam Generator Generic Sleeving Report, Laser Welded Sleeves," January 1994].

In addition, since the installed sleeve represents a portion of the pressure boundary, a baseline inspection of these areas is required prior to operation with sleeves installed. As stated previously, weld fusion zone width is established using UT testing. The minimum acceptable weld width as determined by UT examination is approximately 50% wider than the minimum weld width which satisfies the stress conditions of the ASME Code.

The generic evaluation uses the pressure stress equation of Section NB 3224.1 of the ASME Code which is used to establish the minimum required wall thickness for the sleeve design and subsequently used to determine the level of sleeve wall degradation (depth by eddy current determination) that would require the sleeve to be removed from service. Using the [Delta]$P_{Norm.\ Op.}$ value of 1530 psi from Attachment 4 [WCAP–13088, "Westinghouse Series 44 and 51 Steam Generator Generic Sleeving Report, Laser Welded Sleeves," January 1994] the limiting minimum required sleeve wall thickness is established. The sleeve wall plugging limit (using Attachment 4 [WCAP–13088, "Westinghouse Series 44 and 51 Steam Generator Generic Sleeving Report, Laser Welded Sleeves," January 1994]) of 25% is subsequently established, and includes an allowance of 10% for eddy current uncertainty and 10% for growth, although sleeve wall degradation has not been observed to date in Westinghouse sleeves. The generic evaluation used the ASME Code minimum property values to establish the sleeve plugging limit. Certified material test reports indicate that the sleeve material properties are significantly higher than the ASME Code minimum values. The generic evaluation considered a primary to secondary pressure differential of 1530 psia, with a steam pressure of 720 psia, for normal operating conditions. CNP Units 1 can operate at full power with a reduced T_{hot} value and RCS pressure of 2250 psi. Steam pressure can be maintained as low as 650 psi (to keep T_{hot} as low as possible), but cannot go lower than 650 psi or the steam generator operating requirement of a primary to secondary [Delta]P of 1600 psi (max) will be exceeded. At this [Delta]$P_{Norm.\ Op.}$ value of 1600 psi, the sleeve minimum wall thickness requirement (and subsequently sleeve pressure boundary plugging limit) using ASME Code minimum material properties can be recalculated. For this condition (normal operating [Delta]P equal to 1600 psi), the sleeve minimum wall plugging limit is defined to be 23%. An allowance for eddy current uncertainty and continued degradation are included in this value. The minimum required wall thickness is determined by examining plant conditions at normal, upset, faulted, and test conditions. For Model 51 steam generators, the normal operating condition results in the limiting minimum wall thickness requirement.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW, Washington, DC 20037.

NRC Project Director: Cynthia A. Carpenter, Acting.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of amendment requests: December 20, 1993, as supplemented July 19, 1994, and February 28, 1995.

Description of amendment requests: The proposed amendments would revise the Technical Specifications to change Train A and B emergency loads from 8 hour to composite 4 hour, delete a load on the Train B batteries load list, and revise the operational loads on the Train N batteries. The supplemental submittals, made in response to NRC staff concerns, would also add surveillance requirements for a battery with signs of degradation and modify performance testing requirements.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which was published in the **Federal Register** on February 2, 1994 (59 FR 4939). This analysis was not changed by the supplemental submittals.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests, including the supplemental submittals, involve no significant hazards consideration.

Local Public Document Room location: Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW, Washington, DC 20037.

NRC Project Director: Cynthia A. Carpenter, Acting.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of amendment requests: March 31, 1995.

Description of amendment requests: The proposed amendments would revise the technical specifications to provide increased flexibility in the operation of the containment personnel airlocks during core alterations.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Per 10 CFR 50.92, a proposed change does not involve a significant hazards consideration if the change does not:

1. involve a significant increase in the probability or consequences of an accident previously evaluated,

2. create the possibility of a new or different kind of accident from any accident previously evaluated, or

3. involve a significant reduction in a margin of safety.

Criterion 1

The design basis fuel handling accident is the rupture of the highest rated fuel assembly. As discussed previously [in the application], the consequences of an accident inside containment (i.e., site boundary dose) with both airlock doors are bounded by the existing fuel handling accident currently presented in our UFSAR [Updated Final Safety Analysis Report].

Since the containment airlock doors do not affect the failure mechanism of a fuel assembly during a fuel handling accident, we believe that this amendment request does not involve a significant increase in the probability or consequences of an accident previously evaluated. Additionally, no credit was taken for containment closure in the accident analysis. Therefore, based on these considerations, it is concluded that the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2

As stated in response to criterion one, the position of the containment airlock doors in no way affects the mechanism by which a spent fuel assembly is damaged during a fuel handling accident. Thus, it is concluded that the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3

The margin for safety as defined in 10 CFR 100 has not been reduced. As discussed previously, the existing fuel handling accident analysis for an event inside containment takes no credit for the isolation of containment. As a result, the position of the airlock doors has no impact on the analyzed site boundary doses resulting from such an accident. Based on these considerations, it is concluded that the changes do not involve a significant reduction in a margin of safety. The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW, Washington, DC 20037.

NRC Project Director: Cynthia A. Carpenter, Acting.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: May 2, 1995.

Description of amendment request: This license amendment request revises Surveillance Requirement (SR) 4.7.A.2.f.1 to allow a one-time schedular extension of the two year Type B Local Leak Rate Test (LLRT) interval required for the Drywell Head and Manport (penetrations DWH and X–4 respectively). This extension will allow

the Type B testing of penetrations DWH and X–4 to be deferred from the current due date of July 17, 1995, until Refueling Outage No. 16 (RE–16), which is currently scheduled to commence in October 1995.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The enclosed Technical Specifications change is judged to involve no significant hazards based on the following:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

This license amendment request revises Surveillance Requirement (SR) 4.7.A.2.f.1 to allow the one-time schedular extension of the two year Type B Local Leak Rate Test (LLRT) interval required for the Drywell Head and Manport (Penetrations DWH and X–4 respectively). This extension will allow Penetrations DWH and X–4 to be Type B tested during Refueling Outage No. 16 (RE–16), which is currently scheduled to commence October 1995. Currently, the two year maximum interval for these penetrations comes due July 17, 1995. The District has concluded that a one-time extension of approximately six months beyond the two year limit will not result in a significant increase in the probability of these penetrations failing to perform their safety function. This conclusion is based on the previous LLRT surveillance history of Penetrations DWH and X–4, which have not failed an LLRT in the last 19 years. The surveillance history demonstrates that these penetrations are not subject to leak related failures.

Additionally, the seals associated with these penetrations will not have experienced significantly more radiation and heat exposure by the conclusion of the proposed extension than they would have during the current two year interval. Although some radiation and heat is present during plant shutdowns, the seal degradation resulting from these conditions is significantly slower. Because seal degradation is a function of heat and radiation, and is generally not a function of time, the District has concluded that the one-time extension will not result in a significant increase of seal degradation. Because seal failure for these penetrations is largely based on the rate of seal degradation, the probability of the failure of these penetrations is not significantly increased. Therefore, a significant increase in the probability or consequences of an accident is not created.

This proposed change does not introduce any new modes of plant operation, make any physical changes, or alter any operational setpoints. The change does not degrade the performance of any safety system assumed to function in the accident analysis. Therefore, this proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility for a new or different kind of accident from any accident previously evaluated?

This license amendment request involves the one-time schedular extension of the LLRT interval requirement for Penetrations DWH and X–4. SR 4.7.A.2.f.1 is being revised to extend the surveillance test interval for Penetrations DWH and X–4 to coincide with RE–16, currently scheduled to commence October 1995. A one-time extension of the subject surveillance interval does not involve the creation, deletion, or modification of the function of any structure, system, or component, nor does this change introduce or change any mode of plant operation. This proposed change does not create the possibility for a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change create a significant reduction in the margin of safety?

This license amendment request involves the one-time extension of the two year maximum surveillance test interval for Penetrations DWH and X–4 from the current due date of July 17, 1995, to instead coincide with RE–16, which is scheduled to commence October 1995. By the time these tests are performed, the penetration seals will not have experienced significantly more radiation and heat than they would have during the previous test intervals. Therefore, the penetration seals will not have experienced significant degradation as a result of the extended interval. Furthermore, Penetrations DWH and X–4 have not failed an LLRT in the last 19 years. The surveillance history demonstrates that these penetrations are not subject to leak related failure. This proposed change does not involve any change to plant design, equipment instrument setpoints, or operation. Therefore, this proposed change does not create a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, NE 68305.

Attorney for licensee: Mr. G.D. Watson, Nebraska Public Power District, Post Office Box 499, Columbus, NE 68602–0499.

NRC Project Director: William D. Beckner.

Northeast Nuclear Energy Company, et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: March 29, 1995.

Description of amendment request: The request will revise Technical Specification Section 3.10.5 to allow more than one control bank to be fully withdrawn from the core simultaneously for rod drop time response testing. Specifically, the change will delete, (1) the limiting condition for operation (LCO) 3.10.5.a and (2) a reference to the full length shutdown rods from LCO 3.10.5. The change will also add a statement that "The SHUTDOWN MARGIN requirement of Section 3.1.1.1.2 shall be met without credit for withdrawn control rods." Other editorial changes are to be made for consistency.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration (SHC), which is presented below:

* * * The proposed changes do not involve an SHC because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes cannot initiate an event since the plant will be maintained shutdown at all times. Thus, there is no increase in the probability of occurrence of an accident previously evaluated.

The proposed changes do not degrade the performance of any safety system nor do they alter any assumptions made in the accident analyses. Currently, the technical specifications allow the rod position indication system to be disabled for each control bank while performing this test. In addition, this system is not a safety system credited in the accident analyses. Therefore, allowing more than one bank to have its indication removed during the test does not degrade any safety system. Since the shutdown margin will be maintained without crediting these rods, there is no change to the assumptions made in the accident analyses. Thus, there is no increase in the consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

The proposed changes do not position the control rods into any new configurations or sequence not previously analyzed. Ejected rod worths are evaluated for ARI–1 (all rods in with the most reactive rod out) and, therefore, bound the test configuration. In addition, the reactivity state of the system is maintained shut down by the margin required in Technical Specification 3.1.1.1.2 without crediting the control rods. Therefore, there is no possibility of a new or different type of accident than previously analyzed.

3. Involve a significant reduction in the margin of safety.

The proposed changes do not impact any of the physical protective boundaries, safety systems, or operating conditions. The plant will be maintained shut down without crediting the control rods. The accident analyses is not impacted and, therefore, there is no reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360.

Attorney for licensee: Ms. L.M. Cuoco, Senior Nuclear Counsel, Northeast Utilities Service Company, Post Office Box 270, Hartford, CT 06141–0270.

NRC Project Director: Phillip F. McKee.

Northeast Nuclear Energy Company, et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: April 28, 1995.

Description of amendment request: The request will revise the diesel generator (DG) fuel oil testing that is performed on new fuel prior to the addition of the new fuel to the storage tank.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration (SHC), which is presented below:

* * * The proposed changes do not involve an SHC because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes: correct a typographical error by providing the appropriate range for the Saybolt viscosity; replace the qualitative clear and bright test with a quantitative water and sediment test for new fuel prior to adding it to the storage tank; and clarify that a calculated cetane index may be performed in lieu of obtaining the cetane number for the fuel. The water and sediment test provides a quantitative method for evaluating water and sediment, and will require a more restrictive limit of 0.05 percent by volume of water and sediment than the 0.10 percent recommended by the manufacturer. The cetane index has been shown to be representative of the cetane number for the fuel. The DG capability to start and operate is enhanced by the proposed changes. Therefore, the changes have no negative effect on the consequences of the previously evaluated accidents.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not alter or affect the design, function, failure mode, or operation of the plant. The proposed changes have no adverse effect on the quality of the fuel oil that is utilized by the DG. The proposed changes are administrative in nature and do not involve any physical alteration to any plant system or change the method by which any safety-related system performs its function. For these reasons, there is no possibility of an accident of a different type than previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed changes will assure that the DG fuel oil meets DG manufacturer's quality requirements by the performance of the recommended testing of the DG fuel oil. The proposed changes will not impact the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360.

Attorney for licensee: Ms. L. M. Cuoco, Senior Nuclear Counsel, Northeast Utilities Service Company, Post Office Box 270, Hartford, CT 06141–0270.

NRC Project Director: Phillip F. McKee.

Northeast Nuclear Energy Company, et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: April 28, 1995.

Description of amendment request: The proposed revision to the Action Statement of Limiting Condition for Operation (LCO) 3.7.5 would permit Millstone Unit No. 3 to remain in Modes 1 through 4 with the average water temperature of the ultimate heat sink (UHS) greater than 75°F (but lower than 77°F) for 12 hours. An additional action would be added which would require the plant to be placed in at least HOT STANDBY within 6 hours and in COLD SHUTDOWN within the following 30 hours upon identifying that the UHS temperature is greater than 77°F.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration (SHC), which is presented below:

* * * The proposed changes do not involve an SHC because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed addition of a 12-hour period to monitor the UHS temperature to the Technical Specification LCO Action Statement does not involve an increase in the probability of an accident previously evaluated. The probability of an accident previously evaluated is not increased by a short-term increase in the UHS temperature. The probability of FSAR Chapter 15 Condition IV accidents occurring in conjunction with the short duration increase in service water inlet temperature above 75°F is low enough such that they are not risk significant. Further, an evaluation has been performed that safe shutdown will be achieved and maintained for a loss of offsite power event and a steam generator tube rupture event with the additional consideration of a single failure with service water inlet temperatures as high as 77°F. There has been no significant increase in the consequences of these events previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed technical specification change does not create the possibility of a new or different kind of accident previously evaluated. The addition of a 12-hour time period to monitor the UHS temperature increases the amount of time that is allowed for the plant to be in HOT STANDBY from 6 to 18 hours should the UHS temperature increase above 75°F. This extension of the time allowed for the plant to be in HOT STANDBY does not change the plant configuration. As such, the change does not create the possibility of a new or different kind of accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed technical specification change does not involve a significant reduction in the margin of safety. The addition of a 12-hour time period to monitor the UHS temperature increases the time required for the plant to be in HOT STANDBY from 6 to 18 hours should the UHS temperature exceed 75°F. An evaluation has been performed to demonstrate that the risk significance associated with the increased action time is very low. In addition, safe shutdown capability has been demonstrated for service water inlet temperatures as high as 77°F.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center,

Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360.

Attorney for licensee: Ms. L.M. Cuoco, Senior Nuclear Counsel, Northeast Utilities Service Company, Post Office Box 270, Hartford, CT 06141–0270.

NRC Project Director: Phillip F. McKee.

Northeast Nuclear Energy Company, et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: May 1, 1995.

Description of amendment request: Technical Specifications that specify an 18-month surveillance will be changed to state that these surveillances are to be performed at least once each refueling (i.e., 24 months).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration (SHC), which is presented below:

* * * The proposed change does not involve an SHC because the change would not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed.

The proposed change to Surveillance Requirement 4.6.3.2 of the Millstone Unit No. 3 Technical Specifications extends the frequency for verifying that each containment isolation valve actuates to its required position in response to Phase A and Phase B isolation test signals, and for verifying that each containment purge supply and exhaust isolation valve actuates to its required position in response to a containment high radiation test signal. The proposal would extend the frequency from at least once per 18 months to at least once per refueling interval (24 months).

The proposed change to Surveillance Requirement 4.6.3.2 does not alter the intent or method by which the surveillances are conducted, does not involve any physical changes to the plant, does not alter the way any structure, system, or component functions, and does not modify the manner in which the plant is operated. As such, the proposed change to the frequency of Surveillance Requirement 4.6.3.2 will not degrade the ability of the containment isolation valves to perform their safety function. Also, the containment isolation valve arrangements are not vulnerable to single failures, because they provide at least two barriers between the atmosphere outside the containment and the atmosphere within the containment, the reactor coolant system, or systems that would become connected to the containment atmosphere or the reactor coolant system as a result of, or subsequent to, a DBA.

Additional assurance of containment isolation valve operability is provided by Surveillance Requirements 4.6.3.1 and 4.6.3.3. Surveillance Requirement 4.6.3.1 requires that a containment isolation valve will be restored to an operable status following the performance of work on the containment isolation valve or its ancillaries. Surveillance Requirement 4.6.3.3 requires the confirmation of the mechanical operability of the containment isolation valves by the inservice inspection program. The proposed change does not modify these requirements.

Additionally, Surveillance Requirements 4.3.2.1 and 4.3.3.1 assure the operability of the automatic isolation logic (Phase A and Phase B isolation signals and containment high radiation signal) for the containment isolation valves by performing tests on a monthly basis. This proposed change does not modify these Surveillance Requirements.

Equipment performance over the last four operating cycles was evaluated to determine the impact of extending the frequency of Surveillance Requirement 4.6.3.2. This evaluation included a review of surveillance results, preventive maintenance records, and the frequency and type of corrective maintenance. It has been concluded that the containment isolation valves are highly reliable, and that there is no indication that the proposed extension could cause deterioration in valve condition or performance.

Based on the above, the proposed change to Surveillance Requirement 4.6.3.2 of the Millstone Unit No. 3 Technical Specifications does not involve a significant increase in the probability or consequences of an accident previously analyzed.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

The proposed change to Surveillance Requirement 4.6.3.2 of the Millstone Unit No. 3 Technical Specifications extends the frequency for verifying that each containment isolation valve actuates to its required position in response to Phase A and Phase B isolation test signals, and for verifying that each containment purge supply and exhaust isolation valve actuates to its required position in response to a containment high radiation test signal. The proposal would extend the frequency from at least once per 18 months to at least once per refueling interval (24 months).

The proposed change does not alter the intent or method by which the surveillances are conducted, does not involve any physical changes to the plant, does not alter the way any structure, system, or component functions, and does not modify the manner in which the plant is operated. As such, the proposed change in the frequency of Surveillance Requirement 4.6.3.2 will not degrade the ability of the containment isolation valves to perform their safety function. Also, the containment isolation valve arrangements are not vulnerable to single failures, because they provide at least two barriers between the atmosphere outside the containment and the atmosphere within the containment, the reactor coolant system, or systems that would become connected to the containment atmosphere or the reactor coolant system as a result of, or subsequent to, a DBA.

Based on the above, the proposed change to Surveillance Requirement 4.6.3.2 of the Millstone Unit No. 3 Technical Specifications will not create the possibility of a new or different kind of accident from any previously evaluated.

3. Involve a significant reduction in the margin of safety.

The proposed change to Surveillance Requirement 4.6.3.2 of the Millstone Unit No. 3 Technical Specifications extends the frequency for verifying that each containment isolation valve actuates to its required position in response to Phase A and Phase B isolation test signals, and for verifying that each containment purge supply and exhaust isolation valve actuates to its required position in response to a containment high radiation test signal. The proposal would extend the frequency from at least per 18 months to at least once per refueling interval (24 months).

The proposed change does not alter the intent or method by which the surveillances are conducted, does not involve any physical changes to the plant, does not alter the way any structure, system, or component functions, and does not modify the manner in which the plant is operated. As such, the proposed change in the frequency of Surveillance Requirement 4.6.3.2 will not degrade the ability of the containment isolation valves to perform their safety function. Also, the containment isolation valve arrangements are not vulnerable to single failures, because they provide at least two barriers between the atmosphere outside the containment and the atmosphere within the containment, the reactor coolant system, or systems that would become connected to the containment atmosphere or the reactor coolant system as a result of, or subsequent to, a DBA.

Additional assurance of the operability of the containment isolation valves is provided by Surveillance Requirements 4.6.3.1 and 4.6.3.2. Also, assurance of the operability of the automatic actuation logic of the containment isolation valves is provided by Surveillance Requirements 4.3.2.1 and 4.3.3.1.

Equipment performance over the last four operating cycles was evaluated to determine the impact of extending the frequency of Surveillance Requirement 4.6.3.2. This evaluation included a review of surveillance results, preventive maintenance records, and the frequency and type of corrective maintenance. It has been concluded that the containment isolation valves are highly reliable, and that there is no indication that the proposed extension could cause deterioration in valve condition or performance.

Based on the above, the proposed change to Surveillance Requirement 4.6.3.2 of the Millstone Unit No. 3 Technical Specifications does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360.

Attorney for licensee: Ms. L. M. Cuoco, Senior Nuclear Counsel, Northeast Utilities Service Company, Post Office Box 270, Hartford, CT 06141–0270.

NRC Project Director: Phillip F. McKee

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: May 8, 1995.

Description of amendment request: The proposed amendment would change Technical Specifications 2.3, 3.1, 3.2, 3.3 and 3.6. These changes are in accordance with the guidance of Generic Letter 93–05, "Line Item Technical Specifications Improvements to Reduce Surveillance Requirements for Testing During Power Operation," dated September 27, 1993.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

GL 93–05, Item 4.2, Control Rod Movement Test; Specification 3.2, Table 3–5, Item 2

Omaha Public Power District (OPPD) proposes to extend the control element assembly (CEA) partial movement surveillance test of Specification 3.2, Table 3–5, Item 2 from a biweekly to a quarterly frequency. This change is based on operating experience and the recommendation of Generic Letter (GL) 93–05, Item 4.2.1. A review of previous surveillance tests and interviews with personnel familiar with the test did not identify any prior surveillance test failures. Industry experience has shown that this test can cause reactor trips, dropped rods and unnecessary challenges to safety systems as stated in NUREG–1366, "Improvements to Technical Specification Requirements," dated December 1992. Therefore, extending the frequency of conducting this surveillance test may be beneficial to plant operations and does not involve a significant increase in the probability or consequences of an accident previously evaluated.

GL 93–05, Item 5.1a, Radiation Monitors; Specification 3.1, Table 3–3, Items 3b, 4 and 5b

OPPD proposes to replace descriptive wording in Specification 3.1, Table 3–3, Items 3a/b and 5a/b with defined terms. OPPD also proposes to extend surveillance of the area, post-accident and primary to secondary leak-rate radiation monitors (Specification 3.1, Table 3–3, Items 3b and 5b) from a monthly to a quarterly frequency as recommended by GL 93–05, Item 5.1a. Most of these monitors are new (i.e., installed within the last two cycles) or contain many new components. The value of monthly testing is greatly reduced as the new monitors include self checking circuitry that will indicate monitor failure, loss of power, or loss of background. Although post accident radiation monitors RM–091 A/B are not new, Station operating experience has shown that they are reliable. In cases where new components interface with older components, the older components have a history of reliable operation.

Readings and internal test signals are used to verify instrument operation on a daily basis. In addition, the proposed frequency (quarterly) is the same frequency currently specified for the containment radiation high signal (CRHS) monitors (Specification 3.1, Table 3–2, Item 6b), which generate an engineered safeguards signal. Replacing descriptive words with defined terms ensures consistency and that the surveillance test accomplishes its purpose.

A quarterly surveillance conserves resources, increases the availability of the area, post-accident and primary to secondary leak-rate detection radiation monitors and is consistent with CRHS monitor testing. These proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

OPPD proposes to delete Specification 3.1, Table 3–3, Item 4 on surveillance testing of the emergency plan radiation instruments. These are portable instruments stored in specified locations for use by emergency response personnel in the event of an accident. The instruments may be used to survey onsite/offsite areas for radioactivity or to facilitate the decontamination of personnel following an accident. No limiting condition for operation (LCO) action statement is associated with these instruments. As a result, there is no basis for the TS to contain a surveillance requirement for them. In addition, retaining this surveillance in the TS is unnecessary since it does not meet criteria 1 through 4 of the Final Policy Statement on Technical Specifications Improvements for Nuclear Power Reactors, dated July 22, 1993. Therefore, since these instruments are not utilized until after an accident has occurred, and do not assist in accident mitigation, deleting this surveillance requirement does not involve a significant increase in the probability or consequences of an accident previously evaluated.

GL 93–05, Item 6.1, Reactor Coolant System Isolation Valves; Specification 3.3(2)a

The reactor coolant system (RCS) pressure isolation valves have proven to be very reliable. Therefore, OPPD proposes to extend the time that the plant can be in cold shutdown before the test is required (Specification 3.3(2)a) from 72 hours to 7 days, following the recommendation of GL 93–05, Item 6.1. A review of previous surveillance tests and interviews with personnel familiar with the test did not identify any prior surveillance test failures. This proposed change will reduce radiation exposure and does not involve a significant increase in the probability or consequences of an accident previously evaluated.

GL 93–05, Item 7.4, Accumulator Water Level and Pressure Channel Surveillance Requirements; Specification 2.3(2)g, Specification 3.1, Table 3–2, Item 14a

OPPD proposes to revise Specification 2.3(2)g following the recommendation of GL 93–05, Item 7.4. This revision will clarify that the safety injection tank (SIT) level and/or pressure instrumentation may be inoperable, which does not alter the intent of the Specification, but is more accurate in defining when the Specification applies. This revision also extends the time limit for inoperability of SIT instrumentation from 1 hour to 72 hours, which is justified based upon a review of historical data. As stated in NUREG–1366: "While technically inoperable, the accumulator [SIT] would be available to fulfill its safety function during this time, and thus, this change would have a negligible increase on risk."

Currently, Specification 2.3(2)g allows only one hour for SIT level and pressure instrumentation to be inoperable, which is insufficient time to initiate repairs. A review of historical data determined that SIT water level stays relatively constant while pressure decreases slightly over time. It is unlikely that SIT pressure would decrease below the Specification 2.3(1)c limit of 240 psig during the proposed 72-hour LCO, since SIT pressure is normally maintained around 255 psig (Updated Safety Analysis Report (USAR), Section 6.2.3.5).

OPPD's proposal to revise Specification 3.1, Table 3–2, Item 14a to require shiftly verification that SIT level and pressure are within limits and remove reference to verifying "indications are between independent high and low alarms for level and pressure," is consistent with the guidance of GL 93–05, Item 7.4. As stated in GL 93–05, Item 7.4, the operability of SIT instrumentation is not directly related to the capability of a SIT to perform its safety function. OPPD proposes to suspend this surveillance on the affected SIT while the instrumentation is being repaired, since as stated above, SIT level and pressure are expected to stay within the limits of Specification 2.3(1)c during the proposed 72 hour LCO. Therefore, these proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

GL 93–05, Item 8.1, Containment Spray System; Specification 3.6(2)b

OPPD proposes to extend the surveillance frequency for verifying that the containment spray nozzles are open (Specification 3.6(2)b) from five to ten years following the recommendation of GL 93–05, Item 8.1. Minor revisions to statements in the basis of Specification 3.6 that refer to conducting this test at five year intervals are proposed also. OPPD has not experienced problems with

obstructions in the containment spray nozzles as determined by a review of previous surveillance tests and personnel interviews. Of the three instances reported in NUREG–1366 concerning obstructions of containment spray nozzles, all were problems related to construction errors. Any construction errors in the FCS containment spray system would have been found by previous surveillance tests.

The problem that occurred at San Onofre Unit 1 (clogging of several containment spray nozzles following the application of a coating material to the carbon steel piping) is not a concern at FCS since the FCS containment spray system piping and valves are constructed of stainless steel (USAR Table 6.3–2). Thus, extending the surveillance frequency of Specification 3.6(2)b from five to ten years does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

GL 93–05, Item 4.2, Control Rod Movement Test; Specification 3.2, Table 3–5, Item 2

OPPD's proposal to extend the CEA partial movement surveillance test (Specification 3.2, Table 3–5, Item 2) to a quarterly frequency is based on operating experience and the recommendation of GL 93–05, Item 4.2.1. The proposed change only lengthens the time between surveillance tests and will not result in any physical alterations to the plant configuration, changes to setpoint values, or changes to the application of setpoints or limits. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

GL 93–05, Item 5.14, Radiation Monitors; Specification 3.1, Table 3–3, Items 3b, 4 and 5b

OPPD proposes to replace unnecessary wording in Specification 3.1, Table 3–3, Items 3a/b and 5a/b with defined terms and to extend the surveillance frequency of Items 3b and 5b from monthly to quarterly based on the recommendation of GL 93–05, Item 5.14. Most of the area, post accident and primary to secondary leak-rate detection radiation monitors are new or contain new components. The new monitors include self checking circuitry that provides failure notification. Although post accident radiation monitors RM–091 A/B are not new, they have an excellent operating history. The proposed changes introduce consistent use of terminology and lengthen the time between surveillance tests and will not result in any physical alterations to the plant configuration, changes to setpoint values, or changes to the application of setpoints or limits. Therefore, these proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

OPPD's proposal to delete Specification 3.1, Table 3–3, Item 4 on surveillance testing of the emergency plan radiation instruments will not result in any physical alterations to the plant configuration, changes to setpoint values, or changes to the application of setpoints or limits. Since these instruments are not utilized until after an accident has occurred, and do not assist in accident mitigation, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

GL 93–05, Item 6.1, Reactor Coolant System Isolation Valves; Specification 3.3(2)a

The RCS pressure isolation valves have proven to be very reliable. As a result, OPPD proposes to extend the time that the plant can be in cold shutdown before the test is required (Specification 3.3(2)a) from 72 hours to 7 days following the recommendation of GL 93–05, Item 6.1. The proposed change will reduce radiation exposure and does not result in any physical alterations to the plant configuration, changes to setpoint values, or changes to the application of setpoints or limits. Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

GL 93–05, Item 7.4, Accumulator Water Level and Pressure Channel Surveillance Requirements; Specification 2.3(2)g, Specification 3.1, Table 3–2, Item 14a

OPPD's proposal to revise Specification 2.3(2)g following the guidance of GL 93–05, Item 7.4 more accurately states when the specification should apply and extends the time limit for inoperability of SIT instrumentation from 1 hour to 72 hours based upon a review of historical data. The proposed change will not result in any physical alterations to the plant configuration, changes to setpoint values, or changes to the application of setpoints or limits. As stated in NUREG–1366: "While technically inoperable, the accumulator [SIT] would be available to fulfill its safety function during this time, and thus, this change would have a negligible increase on risk."

OPPD's proposal to revise Specification 3.1, Table 3–2, Item 14a to require shiftly verification that SIT level and pressure are within limits and remove reference to verifying "indications are between independent high and low alarms for level and pressure," is consistent with the guidance of GL 93–05, Item 7.4. As stated in GL 93–05, Item 7.4, the operability of SIT instrumentation is not directly related to the capability of a SIT to perform its safety function. OPPD proposes to suspend this surveillance on the affected SIT while the instrumentation is being repaired, since SIT level and pressure are expected to stay within the limits of Specification 2.3(1)c during the proposed 72 hour LCO. Therefore, since these proposed changes do not result in any physical alterations to the plant configuration, changes to setpoint values, or changes to the application of setpoints or limits, they do not create the possibility of a new or different kind of accident from any accident previously evaluated.

GL 93–05, Item 8.1, Containment Spray System; Specification 3.6(2)b

OPPD's proposal to extend the surveillance frequency for verifying that the containment spray nozzles are open (Specification 3.6(2)b) from five to ten years as recommended by GL 93–05, Item 8.1 is justified by operating experience. OPPD has not experienced problems with obstructions in the containment spray nozzles as determined by a review of previous surveillance tests and personnel interviews. The problem that occurred at San Onofre Unit 1 (clogging of several containment spray nozzles following the application of a coating material to the carbon steel piping) is not a concern at FCS since the FCS containment spray system piping and valves are constructed of stainless steel (USAR Table 6.3–2).

The proposed change only extends the time between surveillance tests and revises associated basis statements to support the extension. The proposed change will not result in any physical alterations to the plant configuration, changes to setpoint values, or changes to the application of setpoints or limits. Therefore, OPPD's proposal to extend the surveillance frequency of Specification 3.6(2)b from five to ten years does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The proposed change does not involve a significant reduction in a margin of safety.

GL 93–05, Item 4.2, Control Rod Movement Test; Specification 3.2, Table 3–5, Item 2

OPPD's proposal to extend the CEA partial movement surveillance test of Specification 3.2, Table 3–5, Item 2 to a quarterly frequency is based on operating experience and the recommendation of GL 93–05, Item 4.2.1. A review of previous surveillance tests and interviews with personnel familiar with the test did not identify any prior surveillance test failures. Industry experience has shown that this test can occasionally cause reactor trips, dropped rods and unnecessary challenges to safety systems as stated in NUREG–1366. Therefore, extending the frequency of conducting this surveillance test may be beneficial to plant operations and does not involve a significant reduction in a margin of safety.

GL 93–05, Item 5.14, Radiation Monitors; Specification 3.1, Table 3–3, Items 3b, 4 and 5b

OPPD proposes to replace descriptive wording in Specification 3.1, Table 3–3, Items 3a/b and 5a/b with defined terms and to extend the surveillance frequency of Items 3b and 5b from monthly to quarterly based on the recommendation of GL 93–05, Item 5.14. Most of the area, post accident and primary to secondary leak-rate detection radiation monitors are new or contain new components. Post accident radiation monitors RM–091 A/B are not new but have a history of reliable operation. The value of monthly testing is greatly reduced since the new monitors include self checking circuitry that provides failure notification. The proposed changes introduce consistent use of terminology and lengthen the time between surveillance tests and therefore do not involve a significant reduction in a margin of safety.

OPPD's proposal to delete Specification 3.1, Table 3–3, Item 4 is justified because the emergency plan radiation instruments are portable instruments that are not utilized until after an accident has occurred. The instruments are checked for proper operation before use and since these instruments do not assist in accident mitigation, the deletion of this surveillance requirement does not involve a significant reduction in a margin of safety.

GL 93–05, Item 6.1, Reactor Coolant System Isolation Valves; Specification 3.3(2)a

The RCS pressure isolation valves have proven to be very reliable. Therefore, consistent with the guidance of GL 93–05, Item 6.1, OPPD proposes to revise Specification 3.3(2)a and extend the time that the plant is allowed to be in cold shutdown before this surveillance test is required from 72 hours to 7 days. This change will reduce radiation exposure and does not involve a significant reduction in a margin of safety.

GL 93–05, Item 7.4, Accumulator Water Level and Pressure Channel Surveillance Requirements; Specification 2.3(2)g, Specification 3.1, Table 3–2, Item 14a

OPPD's proposal to revise Specification 2.3(2)g following the guidance of GL 93–05, Item 7.4 more accurately states when the specification applies and extends the time limit for inoperability of SIT instrumentation from 1 to 72 hours based upon historical data. As stated in NUREG–1366: "While technically inoperable, the accumulator [SIT] would be available to fulfill its safety function during this time, and thus, this change would have a negligible increase on risk."

OPPD's proposal to revise Specification 3.1, Table 3–2, Item 14a to require shiftly verification that SIT level and pressure are within limits and remove reference to verifying "indications are between independent high and low alarms for level and pressure," is consistent with the guidance of GL 93–05, Item 7.4. As stated in GL 93–05, Item 7.4, the operability of SIT instrumentation is not directly related to the capability of a SIT to perform its safety function. OPPD proposes to suspend this surveillance on the affected SIT while the instrumentation is being repaired, since SIT level and pressure are expected to stay within the limits of Specification 2.3(1)c during the proposed 72 hour LCO. Therefore, these proposed changes do not involve a significant reduction in a margin of safety.

GL 93–05, Item 8.1, Containment Spray System; Specification 3.6(2)b

OPPD's proposal to extend the surveillance frequency for verifying that the containment spray nozzles are open (Specification 3.6(2)b) from five to ten years and revise associated basis statements does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102.

Attorney for licensee: James R. Curtiss, Winston & Strawn, 1400 L Street, Washington, DC 20005–3502.

NRC Project Director: William H. Bateman.

Pacific Gas and Electric Company, Docket No. 50–133, Humboldt Bay Power Plant, Unit 3, Humboldt County, California

Date of amendment request: April 10, 1995.

Description of amendment request: The proposed amendment would revise License No. DPR–7, to permit the provisions of 10 CFR 50.59 to be applied with respect to changes to the facility or procedures described in the Decommissioning Plan or changes to the Decommissioning Plan, and the conduct of tests or experiments not described in the Decommissioning Plan.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The probability or consequences of an accident previously evaluated will not be effected by the ability to perform safety analyses. As outlined in 10 CFR 50.59, the impact of performing special tests, experiments, and modifications would be evaluated to verify there would be no impact on previously evaluated accidents or increase the probability or consequences of an accident occurring.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated because there is no physical alteration to any plant system, nor is there a change in the method in which any quality-related activities are performed or any direct change in equipment or system function or operation. The proposed change is administrative in nature.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The proposed change to the HBPP License does not affect the margin of safety of any accident analysis since it does not affect the parameters for any accident analysis, and has no effect on the current operating methodologies or actions that govern plant performance.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the analysis of the licensee and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Humboldt County Library, 636 F Street, Eureka, California 95501.

Attorney for licensee: Christopher J. Warner, Esquire, Pacific Gas & Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Project Director: Seymour H. Weiss.

PECO Energy Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Dockets Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: January 17, 1995 as supplemented by letter dated March 30, 1995.

Description of amendment request: The proposed change revises the Peach Bottom Atomic Power Station, Units 2 and 3 technical specifications to reflect the replacement of the source range monitor (SRM) and intermediate range monitor (IRM) systems with a new system referred to as the wide range neutron monitoring system (WRNMS).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The use of the WRNMS as discussed herein will not increase the probability or consequences of an accident previously evaluated.

The probability (frequency of occurrence) of design basis accidents (DBAs) occurring is not affected by the WRNMS. The only plant safety analysis affected by WRNMS is the Rod Withdrawal Error (RWE) at low power, and a reanalysis assuming use of WRNMS shows that the criteria of 170 cal/gm for fuel enthalpy increase under RWE is satisfied; thus, RWE is not a limiting event. Scram setpoints (equipment settings that initiate automatic plant shutdowns) will be established such that there is no increase in scram frequency due to the WRNMS. No new challenges to safety-related equipment will result from WRNMS.

2. The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

As summarized below, this change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The components of the WRNMS will be supplied to equivalent or better design and qualification criteria than is currently required for the plant. Equipment that could be affected by WRNMS has been evaluated. No new operating mode, safety-related equipment lineup, accident scenario, system interaction, or equipment failure mode was identified. Therefore, the WRNMS will not adversely affect plant equipment.

3. The proposed changes do not involve a significant reduction in a margin of safety.

All the SRM/IRM functions required in the Technical Specifications are replaced with equivalent (more reliable) WRNMS functions. The accuracy and response times of the WRNMS are superior to those of the SRM/IRM subsystems. Implementation of the WRNMS does not affect any fuel or safety limit. The applicable Bases of the Technical Specifications have been rewritten, and the new Bases maintain the equivalent margin of safety as was provided by the SRM/IRM Bases.

The WRNMS (a) does not decrease a channel trip occurrence beyond its acceptable limit, (b) does not increase a channel response time beyond its acceptable limit, (c) increases indicated accuracies, and (d) does not cause any plant parameter for any analyzed event to fall outside of its acceptable limit(s).

The surveillance test frequency change of 7 to 31 days is based on the WRNMS having (1) fixed in-core detectors, (2) greater reliability than the SRMs and IRMs, and (3) self test features. The 13 second allowable value for the WRNM Period-Short surveillance, and the surveillance test frequency change of 184 days to 24 months is based on trip setpoint calculations using GE's standard (NRC approved) setpoint methodology.

The WRNMS will not involve a reduction in a margin of safety, as loads on plant equipment will not increase, and reactions to or results of transients and postulated accidents will not increase from those presently approved by the NRC.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Attorney for Licensee: J.W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, PECO Energy Company, 2301 Market Street, Philadelphia, Pennsylvania 19101.

NRC Project Director: John F. Stolz.

Pennsylvania Power and Light Company, Docket No. 50–387, Susquehanna Steam Electric Station, Unit 1, Luzerne County, Pennsylvania

Date of amendment request: April 11, 1995.

Description of amendment request: This amendment would extend on a one time basis the allowed outage time in the Susquehanna Steam Electric Station Technical Specification 3.8.1.1 from 3 to 7 days for one offsite circuit being out of service. This change will provide additional time if needed to complete modifications to an offsite circuit.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

I. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The consequences of losing offsite power have been evaluated in the FSAR [Final Safety Analysis Report] and the Station Blackout evaluation. Increasing the AOT [allowed outage time] for T–10 [an offsite power source] from 3 to 7 days does not increase the consequences of a LOOP [loss of offsite power] event nor change the evaluation of LOOP events as stated in the FSAR or Station Blackout evaluation.

Allowing T–10 to be removed from service for an additional 4 days does increase slightly the possibility of a LOOP event as shown in PP&L's [Pennsylvania Power & Light Company's] engineering study. However, implementing the following compensatory actions reduces the probability of a LOOP event:

1. prohibiting high risk activities within the confines of the plant or the grid system that may result in a loss of T–20 [the second offsite power transformer] during the T–10 outage,

2. performing the modification during the Fall when the frequency of grid and weather related LOOPs are reduced,

3. requiring a unit shutdown if the HPCI [high pressure core injection] system becomes inoperable during the T–10 outage,

4. requiring a unit shutdown if the SLCS [standby liquid control system] becomes inoperable during the T–10 outage,

5. requiring that within 24 hours prior to taking T–10 out of service, Surveillance 4.8.1.1.2.a.4 be successfully completed on the aligned diesel generators, and

6. maintaining the following equipment operable during the T–10 work window and restoring any failed system/component to operable status as soon as possible (The failed system/component shall be worked around the clock):

- Both CRD [control rod drive] pumps,
- Diesel fire pump, yard fire hydrant (1FH122) and associated hydrant hose station,
- RHR [residual heat removal system]/RHRSW [residual heat removal service water system]/ESW [emergency service water system] for suppression pool cooling,
- RHR/RHRSW cross tie valves,
- RCIC [reactor core isolation cooling]
- CIG [containment instrument gas] 150 psig header and bottles,
- Turbine Building Closed Cooling Water System (one pump and heat exchanger),
- Portable diesel generator,
- HV–141–F019.

Therefore, this change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

II. Create the possibility of a new or different kind of accident from any accident previously evaluated.

Allowing the AOT for T–10 to increase from 3 to 7 days is a one time exemption in order to install the new T–10 tap and 230 kV switch yard. The accident analyses affected by this extension are the LOOP events. The remaining portions of the station and equipment are not altered by this change. The potential for the loss of other plant systems or equipment to mitigate the effects of an accident are not altered. One offsite source of power will be out of service for an additional 4 days and compensatory actions will be initiated to lessen the effect of having the offsite power source out of service for an additional 4 days. Therefore, this change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

III. Involve a significant reduction in a margin of safety.

The proposed change allows, on a one time basis, T–10 to be out of service for an additional 4 days. This increase in AOT for T–10 results in a slight decrease in the margin of safety (defined as core damage frequency) with respect to having two offsite sources available per Specification 3.8.1.1. By implementing the compensatory measures as described in Item 1 above, the margin of safety is increased to be the equivalent of allowing the offsite power source (T–10) to be out of service for 3 days as is allowed by the existing Specification. Therefore, this one time exemption will not involve a significant reduction in safety margin.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Attorney for licensee: Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037.

NRC Project Director: John F. Stolz.

Pennsylvania Power and Light Company, Docket Nos. 50–387 and 50–388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of amendment request: April 10, 1995.

Description of amendment request: This amendment would relocate response time limit tables from the Susquehanna Steam Electric Station Unit 1 and Unit 2 Technical Specifications (TS) to the Final Safety Analysis Report. This modification is a line item improvement to the TS as described in Generic Letter 93–08, "Relocation of the Technical Specification Tables of Instrument Response Time Limits," dated December 29, 1993.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

I. This proposal does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The purpose of the proposed Tech. Spec. [Technical Specification] change is to delete and subsequently relocate Tech. Spec. Table 3.3.1–2, Table 3.3.2–3, and Table 3.3.3–3, to the SSES FSAR consistent with the guidance provided in Generic Letter 93–08. This is a line item Tech. Spec. improvement change recommended by the NRC in Generic Letter 93–08. This change will allow PP&L [Pennsylvania Power & Light Company] to administratively control subsequent changes to the response time limits in accordance with 10CFR50.59. The procedures that contain the various response time limits are also subject to the change control provisions in the Administrative Controls section of the Tech. Specs. The proposed change only relocates the existing response time limits; the surveillance requirements and associated Actions are not affected and remain in the Tech. Specs. Relocating the response time limit information does not affect the analysis of any design basis accident. The response times of these systems will be maintained within the acceptance limits assumed in SSES [Susquehanna Steam Electric Station] safety analyses and required for successful mitigation of an initiating event. Also, since any subsequent changes to the FSAR or procedures will be evaluated in accordance with 10 CFR 50.59, no increase in the probability or consequences of an accident previously evaluated will occur. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

II. This proposal does not increase the possibility of a new or different kind of accident from any accident previously evaluated.

As discussed above, the proposed Tech. Spec. changes do not affect the capability of the associated systems to perform their intended function within the acceptance limits assumed in SSES safety analyses and required for successful mitigation of an initiating event. The proposed change does not involve a physical modification of the plant or changes in methods governing normal plant operations. The proposed change will not impose any different operational or surveillance requirements. This change only proposes to relocate these requirements to other plant documents whereby adequate control of information will be maintained. No new failure modes will be introduced. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

III. This change does not involve a significant reduction in a margin of safety.

The proposed change will not reduce a margin of safety because it has no impact on any safety analysis assumption. The proposed change does not alter the scope of equipment currently required to be OPERABLE or subject to testing, nor does the proposed change affect any instrument setpoints or equipment safety functions. Since any future changes to these requirements in the FSAR or procedures will be evaluated per the requirements of 10 CFR 50.59, no reduction in a margin of safety will occur. Therefore, the change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Attorney for licensee: Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037.

NRC Project Director: John F. Stolz.

Public Service Electric & Gas Company, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: May 2, 1995.

Description of amendment request: The amendments would eliminate the manual start for auxiliary feedwater from the Technical Specification for Engineered Safety Feature (ESF) Actuation System Instrumentation. The manual start will be tested during the quarterly pump test. This change is consistent with NUREG–1431, "Standard Technical Specifications-Westinghouse Plants."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed.

The change to the ESF Actuation Instrumentation specification to eliminate the requirements for manual initiation of the [Auxiliary Feedwater] (AFW) Pumps does not change any operating characteristics of the plant. The change will eliminate unnecessary AFW Pump starts which increase wear on system components. Manual initiation is not credited in the Salem safety analyses. Manual initiation is verified quarterly on a staggered test basis by performance of specification 4.7.1.2.b. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident.

The proposed technical specification modifications do not change system configurations, plant equipment or safety analyses. Therefore, the proposed modifications will not increase the possibility of a new or different kind of accident from any accident previously identified.

3. Involve a significant reduction in a margin of safety.

The proposed change to the ESF Actuation Instrumentation Specification does not affect the ability of the AFW System to perform its design function. The manual initiation of the AFW Pump is not credited in the Salem safety analyses. Manual initiation is verified quarterly by performance of specification 4.7.1.2.b. Therefore, these changes do not involve a significant reduction in any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the

amendment request involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public library, 112 West Broadway, Salem, New Jersey 08079.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Project Director: John F. Stolz.

Tennessee Valley Authority, Docket Nos. 50–259, 50–260 and 50–296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of amendment request: January 4, 1995 (TS 355).

Description of amendment request: The proposed amendment changes the applicability and surveillance requirements for the intermediate range monitor (IRM), average power range monitor (APRM), and APRM Inoperative Trip functions. The proposed amendment adopts provisions of the Improved Standard Technical Specifications (NUREG–1433).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

[1]. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change revises the frequency of functional tests for the IRM and APRM High Flux (15% Scram) Trip Functions and eliminates operability requirements for the IRM, APRM High Flux (15% Scram), and APRM Inoperative Trip Functions in certain modes of operation. The operation of these trip functions is not a precursor to any design basis accident or transient analyzed in the Browns Ferry Updated Final Safety Analysis Report. Therefore, this change does not increase the probability of any previously evaluated accident.

The proposed change will eliminate the requirement to re-perform the functional tests for these trip functions prior to each startup if the test is within its periodicity (once per 7 days). It will also eliminate the operability requirement for the IRM High Flux Trip Function in the Shutdown Mode and IRM, APRM High Flux (15% Scram), and APRM Inoperative Trip Functions during the Refuel Mode except when any control rod is withdrawn from a core cell containing one or more fuel assemblies. The Specifications will still provide for operability of the equipment in Modes where credit is taken in the safety analysis. Therefore, this change does not increase the consequences of any previously evaluated accident.

[2]. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change to the Technical Specification requirements for the IRM, APRM High Flux (15% Scram) and APRM Inoperative Trip Functions does not involve a modification to plant equipment. No new failure modes are introduced. There is no effect on the function of any plant system and no new system interactions are introduced by this change. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

[3]. The proposed amendment does not involve a significant reduction in a margin of safety.

The proposed change will eliminate the requirement to re-perform the functional test for the IRM and APRM High Flux (15% Scram) Trip Functions prior to each startup if the tests are within their periodicity (once per 7 days). The proposed change will also eliminate operability requirements for modes of operation in which the IRM, APRM High Flux (15% Scram) and APRM Inoperative Trip Functions provide no useful function. Since the ability of the trip functions to perform their safety function will not be degraded, the proposed amendment does not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11H, Knoxville, Tennessee 37902.

NRC Project Director: Frederick J. Hebdon.

Tennessee Valley Authority, Docket Nos. 50–259, 50–260 and 50–296, Browns Ferry Nuclear Plant, Units, 1, 2 and 3, Limestone County, Alabama

Date of amendment request: March 31, 1995 (TS 349).

Description of amendment request: The proposed amendment changes the reactor pressure vessel pressure-temperature (P–T) curves, lowering the temperature at which the reactor vessel head bolting studs may be tensioned.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

[1]. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed Units 1, 2, and 3 change deals exclusively with the reactor vessel P–T [pressure-temperature] curves, which define the permissible regions for operation and testing. Failure of the reactor vessel is not a design basis accident. Through the design conservatism used to calculate the P–T curves, reactor vessel failure has a low probability of occurrence and is not considered in the safety analyses. These changes do not alter or prevent the operation of equipment required to mitigate any accident analyzed in the BFN Browns Ferry Nuclear Plant] Final Safety Analysis Report. Therefore, this change does not increase the probability or consequences of any previously evaluated accident.

[2]. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change to the Units 1, 2, and 3 reactor vessel P–T curves does not involve a modification to plant equipment. No new failure modes are introduced. There is no effect on the function of any plant system and no new system interactions are introduced by this change. The calculation of the proposed P–T curves was in accordance with Regulatory Guide 1.99, Revision 2, and the requirements of 10 CFR 50, Appendix G. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

[3]. The proposed amendment does not involve a significant reduction in a margin of safety.

The ductile to brittle transition temperature is shifted approximately 10°F at higher temperatures and approximately 30°F at lower temperatures on the proposed P–T curves. While this represents a decreased margin against non-ductile fracture during heatup, cooldown and hydrotesting, the proposed curves conform to the guidance contained in Regulatory Guide 1.99, Revision 2, and maintain the safety margins specified in 10 CFR 50, Appendix G. Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11H, Knoxville, Tennessee 37902.

NRC Project Director: Frederick J. Hebdon.

Tennessee Valley Authority, Docket Nos. 50–259, 50–260 and 50–296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of amendment request: May 11, 1995 (TS 359).

Description of amendment request: The proposed amendment adds a scram pilot air header low pressure reactor trip to Browns Ferry Unit 3. The proposed amendment also clarifies a note regarding reactor protection system instrumentation requirements for all three units.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

[1]. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The scram pilot air header low pressure switches perform the same function as the high water level switches in the scram charge instrument volume. They automatically initiate control rod insertion (SCRAM) in the event that degraded conditions are detected in the BWR [boiling water reactor] CRD [control rod drive] System. Since the scram pilot air header pressure trip function ensures that the CRD System is available to mitigate the consequence of an accident or transient, and the addition of the scram pilot air header low pressure trip scram function does not affect the precursors for any accident or transient analyzed in Chapter 14 of the BFN Updated Final Safety Analysis Report (UFSAR), there is no increase in the probability of any accident previously evaluated.

The design criteria for the scram system is contained in the generic SER [safety evaluation report], which was transmitted by NRC letter to All BWR Licensees, dated December 9, 1980, BWR Scram Discharge System. The scram pilot air header pressure trip function ensures that the CRD System is available to mitigate the consequence of an accident or transient, and the overall scram system design, with the addition of the scram pilot air header low pressure trip function, satisfies the criteria contained in the generic SER. Since the scram function would be successfully performed, the addition of the scram pilot air header low pressure trip scram function does not involve a significant increase in the consequences of any accident previously evaluated.

The clarification of the description of the SDV [scram discharge volume] high water level bypass in the RPS [reactor protection system] does not, by itself, reflect a modification to plant equipment, maintenance activities, or operating instructions. The revised description does not effect the precursors for any accident or transient analyzed in Chapter 14 of the BFN UFSAR or equipment used in the mitigation of these accidents or transients. Therefore, there is no increase in the probability of any accident previously evaluated nor an increase in the consequences of any accident previously evaluated.

[2]. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The scram pilot air header low pressure trip performs the same protective function as the SDV high water level trip. Both trip functions ensure that a reactor scram is initiated while sufficient volume remains in the SDV to accept discharged water from the CRDs.

The scram inlet and outlet valves are held closed by the air pressure in the scram air header. The scram outlet valves begin to unseat as the air pressure drops below 43 psig (which is higher than the pressure that scram inlet valves begin to unseat). The scram pilot air header low pressure switches detect losses in air pressure and initiate an anticipatory scram to ensure the scram is complete prior to the possible onset of hydraulic locking in the SDV. The proposed trip level setting of 50 psig is conservative and assures a trip signal and successful reactor scram is accomplished prior to hydraulic locking occurring in the SDV as a result of significant flow past the scram outlet valves.

The overall scram system design, with the addition of the scram pilot air header low pressure trip function is in conformance with the generic SER. No new system failure modes are created as a result of adding the scram pilot air header low pressure trip scram function. Therefore, the addition of the scram pilot air header low pressure trip scram function does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The clarification of the description of the SDV high water level bypass in the RPS does not, by itself, reflect a modification to plant equipment, maintenance activities, or operating instructions. No new external threats, system interactions, release pathways, or equipment failure modes are created. Therefore, the clarification of this description does not create the possibility of a new or different kind of accident from any accident previously evaluated.

[3]. The proposed amendment does not involve a significant reduction in a margin of safety.

The overall scram system design, with the addition of the scram pilot air header low pressure trip function is in conformance with the generic SER. Since the scram system would successfully operate to mitigate the consequences of accidents and transients previously analyzed, the proposed amendment does not involve a significant reduction in the margin of safety.

The clarification of the description of the SDV high water level bypass in the RPS does not, by itself, reflect a modification to plant equipment, maintenance activities, or operating instructions. There is no change to the licensing or design basis of the RPS. Therefore, the revised description does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11H, Knoxville, Tennessee 37902.

NRC Project Director: Frederick J. Hebdon.

The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50–440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of amendment request: April 28, 1995.

Description of amendment request: The proposed amendment would remove the license conditions for the Transamerica Delaval, Inc. emergency diesel generators specified by paragraph 2.C.(9) and defined in Attachment 2 to the Operating License.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change involves the removal of license conditions associated with teardowns and certain inspections on the Transamerica Delaval, Inc. (TDI) Emergency Diesel Generators (EDG). A failure of an EDG is not an initiating event for any Updated Safety Analysis Report (USAR) Chapter 15 accident scenario. Accordingly, there could be no increase in the probability of any accident previously evaluated. The availability and reliability of the EDGs will remain within the limits previously assumed in the safety analyses. Eliminating the disassembly and specified inspections would actually tend to decrease the consequences of an accident because, as indicated in Topical Report TDI–EDG–001–A, "Basis for Modification to Inspection Requirements for Transamerica Delaval, Inc., Emergency Diesel Generators," this action will improve the availability of the engines for service, especially during outages, while maintaining current reliability levels. Therefore, removal of the existing conditions from the operating license will not result in an increase in the consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed removal of the license conditions associated with the TDI diesel generators does not affect the design or function of any plant system, structure, or component, nor does it change the way plant systems are operated. No modifications or additions to plant equipment are involved. Therefore, removal of the existing conditions from the operating license will not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not result in a significant reduction in the margin of safety.

The proposed removal of the EDG license conditions from the Operating License does not affect any parameters which would result in a significant reduction in margin of safety because the results of the operational data and inspections have demonstrated that the additional license conditions are not required to ensure that the EDGs will be maintained with a reliability consistent with that assumed for the safety analyses. Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Gail H. Marcus.

Wisconsin Electric Power Company, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Power Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: May 2, 1995.

Description of amendment request: The proposed amendment would modify Technical Specification (TS) Table 15.4.1, "Minimum Frequencies for Checks, Calibrations, and Tests of Instrument Channels." The radiation monitoring system channel requirements would be deleted, the main steam line radiation channel requirements would be added, and the containment high range radiation channel requirements would be changed. Administrative changes, consistent with the proposed modifications, would also be made.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. *The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.* The radiation monitors being removed from Table 15.4.1–1 are not directly involved with mitigating an offsite release in the case of an accident. The surveillance requirements for monitors which would measure and mitigate such a release are listed in Technical Specifications Section 15.7.4, "Radioactive Effluent Monitoring Instrumentation Surveillance Requirements." Post-accident radiation monitors will still be included in Table 15.4.1–1. Monitors to be removed include area and non-RETS [radiological effluent technical specification] required process monitors. These are necessary to monitor plant conditions and will still be subject to surveillance requirements. The removed monitors do not have any safety function with regard to radioactive releases. Therefore, the consequences of an accident will not be increased. The radiation monitors are not initiators for any accident analyses in the FSAR, therefore, the probability of an accident previously evaluated is not increased.

2. *The proposed change would not create the possibility of a new or different kind of accident from any accident previously evaluated.* There is no physical change to the facility, its systems, or its operation, therefore, a new or different kind of accident cannot occur.

3. *The proposed change will not involve a significant reduction in the margin of safety.* The removal of much of the RMS equipment from the Technical Specifications will not affect the surveillance program already in place. The change in test frequency for the post-accident monitoring instrumentation will not have a significant impact on the margin of safety. Test frequencies continue to meet acceptable standards. RETS required effluent monitors, which are of prime importance due to their release mitigation function, are checked quarterly in accordance with Technical Specifications Section 15.7.4, "Radioactive Effluent Monitoring Instrumentation Surveillance Requirements." Therefore, the margin of safety is not reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin 54241.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Gail H. Marcus.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Entergy Operations, Inc., Docket No. 50–313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: May 15, 1995.

Description of amendment request: The proposed amendment would authorize a reconfiguration of the cooling water flow to the reactor building emergency cooling system.

Date of individual notice in the **Federal Register**: May 22, 1995 (60 FR 27144)

Expiration date of individual notice: June 21, 1995.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, AR 72801.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved.

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Maricopa County, Arizona

Date of application for amendments: November 2, 1994.

Brief description of amendments: These amendments delete the condenser vacuum exhaust release point reference on Figure 5.1–3 and combine it with the plant vent exhaust release point on the revised Figure 5.1–3. In addition to the figure change, Bases Section 3/4.3.3.6 is changed to reflect the removal of radiation monitor RU–142 and the relocation of RU–144 and RU–146 from Table 3.3–13 (deleted by amendments 62, 48, and 34, for Units 1, 2, and 3, respectively) to the Offsite Dose Calculation Manual.

Date of issuance: May 25, 1995.

Effective date: May 25, 1995, to be implemented within 45 days of issuance.

Amendment Nos.: Unit 1—Amendment No. 91; Unit 2—Amendment No. 79; Unit 3—Amendment No. 62.

Facility Operating License Nos. NPF–41, NPF–51, and NPF–74: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: December 21, 1994 (59 FR 65810). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 25, 1995. No significant hazards consideration comments received: No.

Local Public Document Room location: Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004.

Consolidated Edison Company of New York, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of application for amendment: April 13, 1994, as supplemented December 20, 1994, January 12, January 31, March 17, and April 5, 1995. Brief description of amendment: The amendment revises TS Sections 3.1.F and 4.13 to allow the repair of steam generator tubes by sleeving using laser welded sleeves.

Date of issuance: May 19, 1995.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 183.

Facility Operating License No. DPR–26: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: May 25, 1994 (59 FR 27051). The December 20, 1994, January 12, January 31, March 17, and April 5, 1995, submittals provided clarifying information that did not change the initial no significant hazards determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 19, 1995. No significant hazards consideration comments received: No.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Consumers Power Company, Docket No. 50–255, Palisades Plant, Van Buren County, Michigan

Date of application for amendment: December 29, 1994, as supplemented February 2 and May 4, 1995.

Brief description of amendment: This amendment revises the iodine removal system Technical Specification (TS) to reflect replacement of the sodium hydroxide requirements with trisodium phosphate requirements. The revised TS defines operability, applicability, and associated action statements for the new system. Associated surveillance requirements and bases have also been revised.

Date of issuance: May 19, 1995.

Effective date: May 19, 1995.

Amendment No.: 165.

Facility Operating License No. DPR–20. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: February 1, 1995 (60 FR 6299). The February 2 and May 4, 1995, submittals provided clarifying information which was within the scope of the initial application and did not affect the staff's initial proposed no significant hazards consideration findings. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 19, 1995. No significant hazards consideration comments received: No.

Local Public Document Room location: Van Wylen Library, Hope College, Holland, Michigan 49423.

Duquesne Light Company, et al., Docket Nos. 50–334 and 50–412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania

Date of application for amendments: April 19, 1994, as supplemented March 31, 1995.

Brief description of amendments: These amendments revise the Appendix A Technical Specifications (TSs) 3.4.9.3 and 3.4.11 to incorporate changes to the power operated relief valve TSs in accordance with the guidance in Generic Letter 90–06, "Resolution of Generic Issue 70, "Power-Operated Relief Valve and Block Valve Reliability," and Generic Issue 94, "Additional Low-Temperature Overpressure Protection for Light-Water Reactors," Pursuant to 10 CFR 50.54(f)," as implemented in the NRC's Improved Standard Technical Specifications (NUREG–1431) with some exceptions and modifications to reflect plant-specific design features. The amendment includes several administrative changes (e.g., renumbering sections, spelling out mathematical symbols, changes in nomenclature for consistency, and relocation of sentences and paragraphs).

Date of issuance: May 15, 1995.

Effective date: May 15, 1995.

Amendment Nos.: 187 and 69.

Facility Operating License Nos. DPR–66 and NPF–73: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: July 6, 1994 (59 FR 34661). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 15, 1995. No significant hazards consideration comments received: No.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Entergy Operations, Inc., Docket No. 50–313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: July 22, 1993.

Brief description of amendment: The amendment revised the value of the Unit 1 reactor building volume as listed in the technical specifications. The amendment was submitted after a more precise calculation of the reactor building volume was completed.

Date of issuance: May 22, 1995.

Effective date: May 22, 1995.

Amendment No.: 181.

Facility Operating License No. DPR–51: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: December 22, 1993 (58 FR 76843). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 22, 1995. No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Mississippi Power & Light Company, Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: June 25, 1993, as supplemented by letter dated April 13, 1995.

Brief description of amendment: This amendment deleted portions of the current Technical Specifications (TSs) Surveillance Requirements (SRs) for the inboard Main Steamline Isolation Valve Leakage Control System (MSIV–LCS) heaters and blowers. The deleted MSIV–LCS SRs will be relocated to documents that are included by reference in the Updated Final Safety Analysis Report (UFSAR) and are controlled by the licensee under the provisions of 10 CFR 50.59. The change is consistent with the format and content of the Improved Standard Technical Specifications (NUREG–1434, Revision O).

Date of issuance: May 22, 1995.

Effective date: May 22, 1995.

Amendment No. 122.

Facility Operating License No. NPF–29. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register**: July 21, 1993 (58 FR 39050). The additional information contained in the supplemental letter dated April 13, 1995, was clarifying in nature and thus, within the scope of the initial notice and did not affect the staff's proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 22, 1995. No significant hazards consideration comments received: No.

Local Public Document Room location: Judge George W. Armstrong Library, 220 S. Commerce Street, Natchez, MS 39120.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of application for amendments: March 18, 1994, as supplemented by letters dated February 28 and March 17, 1995.

Brief description of amendments: The amendments revise Technical Specification (TS) 3/4.3.3.6, Accident Monitoring Instrumentation, TS 3/4.6.4.1, Hydrogen Monitors, and their associated Bases to incorporate the technical substance of Specification 3.3.3 from NUREG–1431, Revision O (Standard Technical Specifications) for the Westinghouse Owners Group.

Date of issuance: May 15, 1995.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment Nos.: 85 and 63.

Facility Operating License Nos. NPF–68 and NPF–81: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: April 28, 1994 (59 FR 22008). The February 28 and March 17, 1995, letters provided clarifying information that did not change the scope of the March 18, 1994, application and initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 15, 1995. No significant hazards consideration comments received: No.

Local Public Document Room location: Burke County Library, 412 Fourth Street, Waynesboro, Georgia 30830.

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: March 16, 1995.

Brief description of amendments: The amendments revised Technical Specification 4.6.1.2, regarding the test frequency requirements for the overall integrated containment leakage rate tests, so that it references 10 CFR part 50, appendix J and approved exemptions, rather than paraphrase the regulation.

Date of issuance: May 19, 1995.

Effective date: May 19, 1995.

Amendment Nos.: Unit 1—Amendment No. 75; Unit 2—Amendment No. 64.

Facility Operating License Nos. NPF–76 and NPF–80. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: April 26, 1995 (60 FR 20517). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 19, 1995. No significant hazards consideration comments received: No.

Local Public Document Room location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488.

Maine Yankee Atomic Power Company, Docket No. 50–309, Maine Yankee Atomic Power Station, Lincoln County, Maine

Date of application for amendment: April 14, 1995.

Brief description of amendment: The amendment allows the use of the Westinghouse Electric Corporation sleeving process for repairing steam generator tubes.

Date of issuance: May 22, 1995.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 150.

Facility Operating License No. DPR–36: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: April 22, 1995 (60 FR 19969). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 22, 1995. No significant hazards consideration comments received: No.

Local Public Document Room location: Wiscasset Public Library, High Street, P.O. Box 367, Wiscasset, ME 04578.

North Atlantic Energy Service Corporation, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: January 25, 1995, and oral request of May 16, 1995.

Description of amendment request: This amendment revises the Appendix A Technical Specifications (TS) relating to the schedule for performing Type A containment Integrated Leak Rate Tests (ILRTs). Specifically, the amendment replaces the prescribed number of ILRTs to be performed and the associated schedule with the requirement to conduct ILRTs at intervals as specified in Appendix J to 10 CFR Part 50.

Date of issuance: May 17, 1995.

Effective date: May 17, 1995.

Amendment No.: 37.

Facility Operating License No. NPF–86. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: February 15, 1995 (60 FR 8754). The licensee's oral request of May 16, 1995, provided a minor clarifying addition, but does not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 17, 1995. No significant hazards consideration comments received: No.

Local Public Document Room location: Exeter Public Library, Founders Park, Exeter, NH 03833.

North Atlantic Energy Service Corporation, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: October 4, 1993.

Description of amendment request: The amendment revises the Appendix A Technical Specifications (TS) relating to A.C. power sources during operation in Modes 1 through 4. Specifically, the amendment deletes the diesel engine speed specification from Surveillance Requirement (SR) 4.8.1.1.2a.5 and replaces the diesel engine speed requirement with an electrical frequency requirement in SR 4.8.1.1.2g.

Date of issuance: May 19, 1995.

Effective date: As of the date of its issuance, to be implemented within 60 days of issuance.

Amendment No.: 38.

Facility Operating License No. NPF–86. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: February 2, 1994 (59 FR 4941). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 19, 1995. No significant hazards consideration comments received: No.

Local Public Document Room location: Exeter Public Library, 47 Front Street, Exeter, NH 03833.

North Atlantic Energy Service Corporation, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: October 7, 1994.

Description of amendment request: The amendment modifies Technical Specification (TS) 6.4.1.6, 6.4.3.8, and 6.7.1 relating to Administrative Controls. Specifically, the amendment removes certain audit responsibilities of the Nuclear Safety Audit Review Committee and certain review responsibilities of the Station Operation Review Committee relating to the Emergency Plan and the Security Plan and their implementing procedures, and deletes the requirements for written procedures relating to the Emergency Plan and Security Plan.

Date of issuance: May 19, 1995.

Effective date: May 19, 1995.

Amendment No.: 39.

Facility Operating License No. NPF–86. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: December 7, 1994 (59 FR 63125). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 19, 1995. No significant hazards consideration comments received: No.

Local Public Document Room location: Exeter Public Library, Founders Park, Exeter, NH 03833.

Northeast Nuclear Energy Company, et al., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of application for amendment: May 6, 1994, supplemented March 27, 1995.

Brief description of amendment: The amendment incorporates additional sections and their associated surveillance requirements and bases into the Millstone Unit 2 TS that impose additional requirements on components that are credited to provide feedwater isolation in the event of a main steam line break inside containment. In addition, the amendment makes modifications to the TS Bases Sections ¾.3.1 and ¾.3.2 by denoting that the feedwater pumps are assumed to trip immediately upon receipt of a main steam line isolation signal; and makes several miscellaneous editorial changes.

Date of issuance: May 17, 1995.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 188.

Facility Operating License No. DPR–65. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: June 22, 1994 (59 FR 32232). The March 27, 1995, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 17, 1995. No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360.

Northeast Nuclear Energy Company, et al., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut Date of application for amendment: April 21, 1994.

Brief description of amendment: The amendment revises Technical Specification (TS) 3.1.2.4, "Charging Pumps-Operating," by adding a note that indicates that the provisions of TS 3.0.4 and 4.0.4 are not applicable for entry into MODE 4 from MODE 5.

Date of issuance: May 18, 1995.

Effective date: As of the date of issuance.

Amendment No.: 189.

Facility Operating License No. DPR–65. Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: Yes (60 FR 21558, May 2, 1995). That notice provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination. No comments have been received. The notice also provided for an opportunity to request a hearing by June 1, 1995, but indicated that if the Commission makes a final no significant hazards consideration determination any such hearing would take place after issuance of the amendment.

The Commission's related evaluation of the amendment, finding of exigent circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated May 18, 1995.

Local Public Document Room location: Learning Resource Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360.

Northeast Nuclear Energy Company, et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: December 9, 1994, as supplemented March 28, 1995.

Brief description of amendment: The amendment eliminates certain surveillance requirements for the emergency diesel generators, in accordance with staff guidance contained in Generic Letter 93–05, "Line Item Technical Specification Improvements to Reduce Surveillance Requirements for Testing during Power Operation," dated September 27, 1993.

Date of issuance: May 12, 1995.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 112.

Facility Operating License No. NPF–49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: February 15, 1995 (60 FR 8749). The March 28, 1995, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 12, 1995. No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, CT 06360.

Northeast Nuclear Energy Company, et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: January 18, 1995.

Brief description of amendment: The amendment revises the Technical Specifications to increase the minimum required boron concentration in the boric acid tank (BAT) from 6300 to 6600 ppm. The increase is required to meet the latest analysis for Cycle 6 which includes additional conservatisms which are meant to ensure the new required boron concentration will bound future cycle variations.

Date of issuance: May 17, 1995.

Effective date: As of the date of issuance to be implemented within 60 days.

Amendment No.: 113.

Facility Operating License No. NPF–49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: February 15, 1995 (60 FR 8753). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 17, 1995. No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, CT 06360.

Northeast Nuclear Energy Company, et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: January 24, 1995, as supplemented March 22 and 29, 1995, and April 25, 1995.

Brief description of amendment: The amendment revises Technical Specification 3.2.3.1.a and Table 2.2–1 to reduce the minimum reactor coolant system (RCS) flow rate by 4%, with corresponding changes in loop flow. The current minimum RCS flow rate of 387,480 gallons per minute (gpm) is reduced to 371,920 gpm for four-loop operation.

Date of issuance: May 23, 1995.

Effective date: As of the date of issuance to be implemented within 60 days.

Amendment No.: 114.

Facility Operating License No. NPF–49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: March 1, 1995 (60 FR 11136) and April 12, 1995 (60 FR 18626). The April 25, 1995, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 23, 1995. No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360.

Northern States Power Company, Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2, Goodhue County, Minnesota

Date of application for amendments: January 9, 1995, as supplemented February 7, March 15, March 27, April 3, and April 20, 1995.

Brief description of amendments: The amendments revise the Technical Specifications (TS) for the Prairie Island Nuclear Plant to allow using an alternate steam generator tube plugging criteria (F*) for the part of the tubes within the tubesheet. The amendments incorporate revised acceptance criteria (F*) for tubes with degradation in the tubesheet roll expansion and enable the licensee to avoid unnecessary plugging of steam generator tubes. NRC will issue a separate safety evaluation for the L* criteria at a later date.

Date of issuance: May 15, 1995.

Effective date: May 15, 1995, with full implementation within 30 days.

Amendment Nos.: 118/111.

Facility Operating License Nos. DPR–42 and DPR–60. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: March 15, 1995 (60 FR 14023). The March 15, March 22, April 3, and April 20, 1995, letters provided updated TS pages and clarifying information in response to NRC's requests for additional information. This information was within the scope of the original application and did not change the staff's initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 15, 1995. No significant hazards consideration comments received: No.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

PECO Energy Company, Public Service Electric and Gas Company Delmarva Power and Light Company, and Atlantic City Electric Company, Docket Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: August 3, 1994.

Brief description of amendments: The amendments implement a snubber functional test surveillance interval of 24 months. The amendments change the current one-time snubber functional test interval to a permanent interval of 24 months.

Date of issuance: May 16, 1995.

Effective date: May 16, 1995.

Amendments Nos.: 201 and 204.

Facility Operating License Nos. DPR–44 and DPR–56: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: January 18, 1995 (60 FR 3676).The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 16, 1995. No significant hazards consideration comments received: No.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Public Service Electric & Gas Company, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: September 29, 1994.

Brief description of amendments: The amendments remove from the Technical Specifications the sections entitled "Seismic Instrumentation" and "Meteorological Instrumentation" and relocate the information and testing requirements to the Salem Updated Final Safety Analysis Report.

Date of issuance: May 22, 1995.

Effective date: May 22, 1995.

Amendment Nos. 167 and 149.

Facility Operating License Nos. DPR–70 and DPR–75. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: November 23, 1994 (59 FR 60385). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 22, 1995. No significant hazards consideration comments received: No.

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, California

Date of application for amendments: November 3, 1993.

Brief description of amendments: These amendments revise Technical Specification (TS) 3/4.6.3, "Containment Isolation Valves," to require valves listed in Section D of existing Table 3.6–1, "Containment Isolation Valves," to be in an action statement when secured in their engineered safety feature actuation system (ESFAS) actuated position. Bases 3/4.6.3 is also revised to reflect these changes.

Date of issuance: May 17, 1995.

Effective date: May 17, 1995, to be implemented within 30 days of issuance.

Amendment Nos.: Unit 2—Amendment No. 119; Unit 3—Amendment No. 108.

Facility Operating License Nos. NPF–10 and NPF–15: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: February 16, 1994 (59 FR 7699). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 17, 1995. No significant hazards consideration comments received: No.

Local Public Document Room location: Main Library, University of California, P. O. Box 19557, Irvine, California 92713.

Virginia Electric and Power Company, et al., Docket Nos. 50–338 and 50–339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of application for amendments: October 25, 1994.

Brief description of amendments: The amendments revise the NA–1&2 Hydrogen Recombiner System surveillance requirements in accordance with Generic Letter 93–05, "Line-Item Technical Specification Improvements to Reduce Surveillance Requirements for Testing During Power Operation." Also, the amendments delete the surveillance requirement to operate the containment purge blower and clarifies that the surveillance requirement applies only to the hydrogen recombiner purge blowers.

Date of issuance: May 12, 1995.

Effective date: May 12, 1995.

Amendment Nos.: 192 and 173.

Facility Operating License Nos. NPF–4 and NPF–7. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: November 23, 1994 (59 FR 60388). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 12, 1995. No significant hazards consideration comments received: No.

Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903–2498.

Virginia Electric and Power Company, et al., Docket Nos. 50–338 and 50–339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of application for amendments: March 2, 1995.

Brief description of amendments: The amendments revise the NA–1&2 Technical Specification 4.6.1.2.a to permit approved exemptions to the containment integrated leak rate test frequency requirements.

Date of issuance: May 15, 1995.

Effective date: May 15, 1995.

Amendment Nos.: 193 and 174.

Facility Operating License Nos. NPF–4 and NPF–7: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: April 12, 1995 (60 FR 18629). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 15, 1995. No significant hazards consideration comments received: No.

Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903–2498.

Washington Public Power Supply System, Docket No. 50–397, Nuclear Project No. 2, Benton County, Washington

Date of application for amendments: September 2, 1992.

Brief description of amendment: The amendment revises Figure 3.1.5–2, "Sodium Pentaborate Tank, Volume Vs. Concentration Requirements," to reflect the actual low-volume-alarm and low-limit values for the standby liquid control tank.

Date of issuance: May 17, 1995.

Effective date: May 17, 1995, to be implemented within 30 days of issuance.

Amendment No.: 138.

Facility Operating License No. NPF–21: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: November 23, 1994 (59 FR 60388). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 17, 1995. No significant hazards consideration comments received: No.

Local Public Document Room location: Richland Public Library, 955 Northgate Street, Richland, Washington 99352.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: March 21, 1995.

Brief description of amendment: This amendment revises Technical Specification Surveillance Requirement 4.6.2.1.d, "Containment Spray System," to change the surveillance interval specified for the performance of an air or smoke flow test through the containment spray header from at least 5 years to at least once per 10 years.

Date of issuance: May 17, 1995.

Effective date: May 17, 1995, to be implemented within 30 days of issuance.

Amendment No.: 86.

Facility Operating License No. NPF–42: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: April 12, 1995 (60 FR 18631). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 17, 1995. No

significant hazards consideration comments received: No.

Local Public Document Room locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621.

Dated at Rockville, Maryland, this 31st day of May, 1995.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Acting Director, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–13759 Filed 6–5–95; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–389A; DD–95–10]

Florida Power & Light Company' St. Lucie Plant, Unit #2; Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission (NRC), has issued the Director's Decision concerning the petition dated July 2, 1993, filed by Robert A. Jablon, Esq., et. al, on behalf of the Florida Municipal Power Agency (petitioner). The petitioner requested that the NRC take certain enforcement actions against the Florida Power & Light Company (FPL) for allegedly violating the antitrust license conditions applicable to Unit 2 of the St. Lucie plant.

After consideration and careful review of the facts available to the staff and the decision reached in a parallel proceeding involving the same parties and similar issues before the Federal Energy Regulatory Commission (FERC), the Director has determined that the issues raised by the petitioner that could be remedied by the NRC have addressed and resolved in the FERC proceeding(s) so as to require no further action by the NRC. As a result, no proceeding in response to the petition will be instituted. The reasons for this decision are explained in the "Director's Decision under 10 CFR 2.206" (DD–95–10), which is published below.

A copy of the Director's Decision has been filed with the Secretary of the Commission for Commission review in accordance with 10 CFR 2.206(c). The Decision will become the final action of the Commission 25 days after issuance, unless the Commission on its own motion institutes review of the Decision within that time as provided in 10 CFR 2.206(c).

Copies of the Petition, dated July 2, 1993, and the Notice of Receipt of Petition for Director's Decision under 10 CFR 2.206 that was published in the **Federal Register** on September 23, 1993 (58 FR 47919), and other documents related to this Petition are available in the NRC Public Document Room, the Gelman Building, 2120 L Street NW. (Lower Level), Washington, DC 20555 and Local Public Document Room at the Indian River Community College, 3209 Virginia Avenue, Ft. Pierce, FL 33450.

Dated at Rockville, Maryland, this 26th day of May 1995.

For the Nuclear Regulatory Commission.

William T. Russell,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 95–13758 Filed 6–5–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–213, 50–245, 50–336, 50–423]

Northeast Utilities; Haddam Neck Plant and Millstone Nuclear Power Station, Units 1, 2, 3; Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has taken action with regard to a Petition dated March 3, 1994, by Mr. Ronald Gavensky (Petition for action under 10 CFR 2.206). The Petition pertains to the Haddam Neck Plant and Millstone Nuclear Power Station, Units 1, 2, and 3.

In the Petition, Petitioner, a quality control receipt inspector raises, numerous concerns regarding receipt inspection activities by Northeast Utilities at both the Haddam Neck Plant and Millstone Nuclear Power Station, Units 1, 2, and 3, Petitioner alleges violations of 10 CFR Part 50, Appendix B, by Northeast Utilities in the receipt inspection area. Petitioner alleges that parts represented as having been inspected and accepted for use were in fact deficient. Petitioner alleges that adequate training, skilled personnel, and necessary tools were not available to perform adequate receipt inspections. Petitioner alleges that he observed unethical and incorrect methods of receipt inspection, and that he sought to identify quality problems within his own department, along with recommendations and solutions, but was not permitted to do so. Finally, Petitioner accuses Northeast Utilities of "white washing" his concerns in the receipt inspection area. Petitioner alleges that, on two occasions, Northeast Utilities' management hired investigators to pursue concerns raised by Petitioner only to conclude that there were no problems. Petitioner requests that the licenses of Northeast Utilities be temporarily revoked until after the NRC conducts an investigation of Petitioner's allegations.

The Director of the Office of Nuclear Reactor Regulation has determined to deny the Petition. The reasons for this denial are explained in the "Director's Decision Pursuant to 10 CFR 2.206" (DD–95–11), the complete text of which follows this notice, and is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, and at the local public document rooms located at the Russell Library, 123 Broad Street, Middletown, CT 06457 for the Haddam Neck Plant, and at the Learning Resources Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, CT 06360, for Millstone Nuclear Power Station, Units 1, 2, and 3.

A copy of the Decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206(c) of the Commissions regulations. As provided by this regulation, the Decision will constitute the final action of the Commission 25 days after the date of issuance unless the Commission on its own motion institutes a review of the Decision within that time.

Dated at Rockville, Maryland, this 31st day of May 1995.

For the Nuclear Regulatory Commission.

William T. Russell,

Director, Office of Nuclear Reactor Regulation.

I. Introduction

On March 3, 1994, Mr. Ronald Gavensky (Petitioner) filed a Petition with the U.S. Nuclear Regulatory Commission (NRC) pursuant to 10 CFR 2.206. In the Petition, the Petitioner, a Northeast Utilities (NU) quality control inspector raised concerns regarding receipt inspection activities by NU at the Haddam Neck Plant and the Millstone Nuclear Power Station.[1]

The Petitioner alleged violations of 10 CFR Part 50, Appendix B, by NU in the receipt inspection area. He alleged that parts represented as having been inspected and accepted for use were in

[1] Northeast Nuclear Energy Company (Millstone licensee), an electric operating subsidiary of Northeast Utilities (NU), holds licenses for the operation of Millstone Nuclear Power Station, Units 1, 2, and 3. The Connecticut Yankee Atomic Power Company (Haddam Neck licensee), an electric operating company owned in part by NU, holds the license for the Haddam Neck Plant. Reference in the Petition to the "license of Northeast Utilities" refers to the licenses of the Haddam Neck Plant and Millstone Nuclear Power Station, Units 1, 2, and 3.

fact deficient; that adequate training, skilled personnel, and necessary tools were not available to perform adequate receipt inspections; and that he had observed unethical and incorrect methods of receipt inspection, and that he had sought to identify quality problems within his own department, along with recommendations and solutions, but had not been permitted to do so. Finally, the Petitioner accused NU of "whitewashing" his concerns. Specifically, the Petitioner alleged that on two occasions NU's management had hired investigators to investigate concerns he had raised only to conclude that there were no problems. The Petitioner requested that the "license of Northeast Utilities" be temporarily revoked until after the NRC investigates his allegations.

On May 9, 1994, I informed the Petitioner that the Petition had been referred to my office for preparation of a Director's Decision. I further informed the Petitioner that his issues were not considered immediate safety concerns and, therefore, did not warrant immediate shutdown of the Haddam Neck Plant and Millstone Nuclear Power Station, Units 1, 2, and 3. I also informed the Petitioner that the NRC would take appropriate action within a reasonable time regarding the specific concerns raised in the Petition. By letter dated November 28, 1994, following a telephone conversation with the Petitioner of November 15, 1994, this office provided him portions of NRC Inspection Reports that relate to his concerns and a copy of a Brookhaven National Laboratory Associated Universities, Inc. report of an evaluation of 30 bolts chosen at random from the Millstone Warehouse in November 1993. This office also provided the Petitioner status reports of the Director's Decision concerning his Petition pursuant to 10 CFR 2.206 of March 3, 1994, by letters dated February 23, and May 9, 1995.

NU voluntarily submitted a response to the NRC on July 26, 1994 (NU response), regarding the issues raised in the Petition. The Petitioner voluntarily submitted a response dated August 16, 1994, regarding the issues raised in the NU response. Based on a review of the issues raised by Petitioner as discussed below, I have concluded that no substantial health and safety issues have been raised that would require the initiation of formal enforcement action.

II. Discussion

In the Petition, the Petitioner raised numerous concerns regarding receipt inspection activities by NU at the Haddam Neck Plant and Millstone Nuclear Power Station, Units 1, 2, and 3. The issues raised in the Petition are summarized and evaluated below.

A. Adequacy of the NU Receipt Inspection Program

The Petitioner alleged that NU did not have skilled personnel or the necessary tools or equipment to perform adequate receipt inspection until 1990 for the Haddam Neck Plant and could not have had a properly executed receipt inspection department until 1989 for the Millstone Nuclear Power Station, Units 1, 2, and 3. He alleged that at the present time there are only two skilled mechanical receipt inspectors at the Millstone Nuclear Power Station. Also, all current receipt inspectors are qualified at Level 2 to ANSI/ASME Standard N45.2.6–1972. However, most lacked the actual experience in mechanical receipt inspection required by the standard to which NU is committed.

The Petitioner alleged that, when he was first employed by NU 16 years ago, he found parts still packed in the original containers unopened but green tagged (acceptable for use). He also found cracked parts, bent parts, mismatched parts, all of which were green tagged, and many bad parts accepted for use by the architect-engineer, Stone and Webster Engineering Corporation (SWEC) and wrongly installed.

The Petitioner also claimed that he had observed unethical and incorrect methods of receipt inspection and that he was prevented from raising quality problems either by his supervisor or the Director of Quality.

Most of the specific concerns raised by the Petitioner appear to relate to NU procurement activities before 1990. At that time, NU, as indicated in the NU response to the Petition, maintained an approved-suppliers list and relied heavily, like most utilities, on vendor audits and certifications to ensure the adequacy of procured parts. Because of extensive use of an approved-suppliers list, NU stated that its internal programs, including elements for ensuring independently the quality of procured parts, were not relied on to the same extent as they are now. NU considered this approach appropriate at the time, given the number of vendors who maintained 10 CFR Part 50, Appendix B quality assurance programs.

As the number of vendors maintaining Appendix B programs declined and the instances of counterfeit and fraudulent products increased, the nuclear industry, including NU, found it necessary to develop more sophisticated internal programs to qualify commercial-grade parts procured for nuclear safety-related applications. Generic Letter 89–02, "Actions To Improve the Detection of Counterfeit and Fraudulently Marketed Products," dated March 21, 1989, describes these emerging procurement issues. To address these issues, Generic Letter 89–02 conditionally endorsed Electric Power Research Institute (EPRI) Report NP–5662, "Guideline for the Utilization of Commercial Grade Items in Nuclear Safety Related Applications (NCIG–07)," dated June 1988. On June 28, 1990, the Nuclear Management and Resources Council (NUMARC) board of directors directed licenses to adhere to the guidance in EPRI Report NP–5652 and to review and strengthen their procurement programs in accordance with specific guidance in NUMARC 90–13, "Nuclear Procurement Program Improvements." The procurement programs for the Haddam Neck Plant and Millstone Units 1, 2, and 3 were significantly upgraded in response to Generic Letter 89–02 and the NUMARC initiatives.

In February 1989, the vendor interface and procurement programs at Haddam Neck were inspected (see NRC Inspection 50–213/89–200 dated May 25, 1989) as part of an initial group of 13 team inspections conducted by the NRC to evaluate licensee procurement and commercial-grade dedication programs. That inspection identified several deficiencies including weaknesses in the procurement and dedication of commercial grade items for safety-related applications at the Haddam Neck Plant.

Upgraded procurement programs have been implemented at the Haddam Neck Plant and Millstone Nuclear Power Station, Units 1, 2, and 3. The programs at the Millstone units were inspected by the NRC (NRC Inspection Reports 50–245/91/–201, 50–336/91–201, and 50–423/92–201 dated November 5, 1991). The upgraded program at the Haddam Neck Plant, while not inspected by the NRC in the level of detail as Millstone, was reviewed in part during the resolution of the identified deficiencies from NRC Inspection 89–200 as well as the 1990 Maintenance Team Inspection. The inspection at Millstone found that, before June 1987, commercial-grade items were purchased and receipt inspected with acceptance criteria primarily based on verification of the correct part number. Between 1988 and 1990, NU upgraded its procedures to upgrade its procurement inspection services. The NRC assessment team noted that NU had made a significant effort to strengthen the commercial-grade dedication program and that its

overall program description was generally consistent with the dedication approaches described in EPRI Report NP 5652. The team found that receipt inspection capabilities at Millstone Nuclear Power Station, Units 1, 2, and 3 had undergone several improvements. The Millstone Nuclear Power Station receipt inspectors had a new enclosed facility. The facility's equipment was being enhanced and included micrometers, gage blocks, a metal sorter, a shadow graph, and a variety of electronic devices. The improved receipt inspection facility and improved testing and inspection equipment had enhanced the capability of the receipt inspection process to detect misrepresented parts, equipment, and material. The procurement inspection services consisted of 12 inspectors and 1 supervisor. The receipt inspectors were certified under requirement established by procedures. The assessment team identified several procedural weakness and implementation weaknesses involving the improper identification of design criteria, safety function(s), critical characteristics, and methods for verifying the critical characteristics. The assessment team found strengths and potential strengths in such areas as receipt inspection testing capabilities at the Metallurgy Laboratory Facilities in Berlin, Connecticut, and at the Millstone Nuclear Power Station site, self assessments of the commercial-grade dedication program, the 4-day procurement and commercial-grade dedication training course, the review project of previous commercial-grade inspections at Millstone Nuclear Power Station and the general consistency of the program with the dedication approaches of EPRI NP–5652. In addition, the quality, attitude, and dedication of the licensee's personnel were evident. The team concluded that, with appropriate modifications to address the weaknesses, the program, if properly implemented, would provide adequate control over the commercial-grade procurement process.

Additional inspections of the procurement programs for the Haddam Neck Plant and Millstone Units 1, 2, and 3 have been conducted by the NRC (NRC Inspection Reports 50–423/92–11 dated May 30, 1992, 50–213/92–14 dated August 12, 1992, 50–423/92–24 dated January 12, 1993, 50–423/93–26 dated January 14, 1994, and 50–336/94–21 dated August 31, 1994). In 1992, after its inspection of the Haddam Neck Plant, the NRC staff concluded that adequate measures were in place to ensure that the level of quality of procured items was commensurate with their safety-related application. In 1993, the NRC staff reported that NU's receipt inspection program at Millstone Nuclear Power Station, Units 1, 2, and 3 was deliberate, controlled, and consistent in the choice of attributes required to be inspected and the documentation of results. After its inspection of NU's procurement program late in 1993, the NRC staff found no significant safety issues. In 1994, the NRC staff reported in NRC Inspection Report 50–336/94–21 that NU's procurement inspection services inspections were performed by personnel certified under NU's Quality Services Department Procedures QSD 1.08, "Department Indoctrination, Training and Qualification," and QSD 2.08, "Selection, Training, Qualification and Certification of Inspection, Examination and Testing Personnel." The Quality Department Inspector Training Program served as the basis of the training required for certification. The program emphasized technical knowledge, skill development, and problem solving. The procurement inspection personnel were well trained, with 10 of 12 inspectors certified to a Level 2 in at least two disciplines. In addition, refresher training was provided to maintain proficiency and certification of personnel. Also in 1994 (NRC Inspection Report 50–336/94–21), the NRC staff reported that NU's procurement inspection services maintained an inventory of over 500 tools for measuring and testing and that appropriate inspectors were trained and certified in the use of these tools. Such tools are typical of many nuclear power plants' inventory. NU also stocked some exceptional tools such as an optical comparitor shadowgraph, an Ames hardness tester and an alloy analyzer. In summary, during these post-1990 inspections, the NRC staff noted procurement program upgrades and found no significant safety issues in the procurement area.

B. Quality of Fasteners Installed at Northeast Utilities Facilities

Petitioner has an extensive background in the area of receipt inspection of fasteners of NU nuclear facilities and has raised a number of specific concerns regarding the quality of fasteners. The focus of the NRC evaluation of the Petitioner's concerns is receipt inspection of fasteners and assurance that fasteners will perform their intended function. NU acknowledged in its response of July 26, 1994, the Petitioner's efforts in raising and aggressively pursuing valid issues. NU acknowledged that, in March 1992, the Petitioner had issued six nonconformance reports (NCRs) based on his visual inspection of various surplus fasteners procured in 1983 for use at Millstone Unit 3. Later, he issued an additional NCR, citing potential programmatic deficiencies by SWEC, concerning procurement of various other materials installed at Millstone Unit 3.

The concerns of the Petitioner were verified in NRC Inspection Report 50–423/92–11 dated May 30, 1992. In the report, the staff noted that an inspection in 1992 by NU of 6 of the 43 items obtained from SWEC stock that were designated for transfer to the Millstone Nuclear Power Station stores resulted in an initial rejection of all 6 items. An item was defined as all of a specific type of bolt or fastener material, e.g., 600 5/16"×4½" bolts were classified as one item. Six NCR reports were written concerning these findings and indicated that all of the material constituting the 6 items was scrapped.

Also, the staff noted that 32 of 48 items that had been transferred from SWEC stock and introduced into Millstone Nuclear Power Station stores in 1990 were receipt inspected and green tagged without proper dedication. These items were considered acceptable for use as safety-related material for installation in the three Millstone Units 1, 2, and 3. An NCR report was written concerning this finding. Further, NU identified work orders indicating that fastener material (bolts, nuts, washers) from the 32 items had been used in Millstone Units 1, 2, and 3 during the previous 2 years. The bolts were used principally in the mounting of electrical components (relays, terminal boards, etc.), fans, ventilation housing, and cable trays. The materials were also used on various safety-related systems, such as Millstone Unit 1 reactor protection system bypass switches, Millstone Unit 2 containment air recirculation fans, and Millstone Unit 3 shutdown margin monitor.

In NRC Inspection Report 50–423/92–11, the staff noted that NU had tested 6 bolts from the lots of the 32 items and had found that the chemical properties and tests to determine tensile properties were acceptable. A Corrective Action Request (CAR) that was initiated on April 27, 1992, as a result of the NCRs, indicated that these 6 bolts were the poorest appearing bolts of the lots. Thus, NU determined that the bolts were functionally acceptable. In NRC Inspection Report 50–423/92–16 dated September 3, 1992, the staff reported that, as a result of its questions about whether the 6 tested fasteners adequately represented the population of fasteners installed, NU tested an additional 30 fasteners randomly selected from the warehouse and one sample chosen by the NRC staff that had linear indications running from the body into the head of the fastener. NU determined that all the fasteners met specification requirements for material and mechanical properties. The NRC staff raised a second concern, that is, that the sample did not represent all the fasteners because all the manufacturers were not represented. NU then took another sample of 30 fasteners from each of 3 manufacturers. The testing of these bolts showed that all the fasteners, except for one cap screw, were acceptable. The one cap screw had a tensile strength of only 121.3 ksi rather than the specified strength of 125 ksi. However, the cap screw did have an acceptable yield strength. The licensee performed a statistical analysis on the results of the testing and determined that the probability of an installed bolt from the 32 items failing to perform its safety function is extremely small (in the order of 1 chance in 345,000). The NRC staff concluded in NRC Inspection Report 50–423/92–24 dated January 12, 1993, that the results for all the fasteners tested except one were acceptable and that the nonconforming conditions, including some visual deficiencies, would not have impaired the capability of the fasteners to perform their functions, and that NU's current inspection program was deliberate and controlled.

NU initially indicated that the remaining fasteners transferred from SWEC to the Millstone Nuclear Power Station stores would be scrapped. However, it did install some of the fasteners in the units after performing additional inspections and dedicating the fasteners before they were installed.

Finally, a random sample of 30 bolts of various sizes was taken from the Millstone Nuclear Power Station warehouse bins during November 1993 for laboratory tests. They were tested by the Brookhaven National Laboratory Associated Universities, Inc., and 26 of the 30 met specification requirements for chemical, mechanical, and dimensional properties. Four bolts did not pass the thread fit inspection with a "Go" gage. However, the discrepancies would not have prevented the bolts from performing their function. (See letter dated May 2, 1994, from Brookhaven National Laboratory Associated Universities, Inc., to Mr. James A. Davis, NRC, which is available in the NRC's Public Document Room). In summary, on the basis of the extensive tests of samples of fasteners taken from the warehouse bins, the NRC staff concludes that materials in the bins are acceptable for use.

The possibility of nonconforming fasteners already installed in safety-related applications was addressed in an NU letter to the NRC staff dated September 22, 1994. NU concluded that this issue did not warrant action for the Haddam Neck Plant and Millstone Units 1, 2, and 3. NU indicated that periodic testing and inspection are performed on installed fastener components. Further, safety-related plant equipment is periodically tested to ensure that fasteners have not degraded. Piping systems and valves are pressure tested periodically and fasteners are visually inspected. Other components, such as pumps, are tested and key fasteners are checked for tightness and degradation. These inspections ensure that components remain fastened. Loose components, when found, are evaluated for generic implications, such as installation errors or defective materials, and are repaired or replaced as necessary. Plant walkdowns are performed in accessible areas at least three times a day by trained individuals able to identify abnormal conditions. Components that have degraded because of fastener problems are more likely to leak initially than suffer a catastrophic failure and are, therefore, likely to be identified and repaired. In addition, the NRC staff notes that fastener installations typically provide for large safety margins in application. Also, fastener inspection continues through the installation phase and nonconforming conditions, particularly visual defects, are likely to be identified and corrected. On the basis of these considerations, the NRC staff concludes that the possibility of installed nonconforming fasteners is not a significant safety issue.

C. Alleged "Whitewashing" of Petitioner's Concerns

The Petitioner alleged that the procurement inspection services supervisor and his manager had performed perfunctory investigations into his concerns related to the adequacy of NU's receipt inspection program and the Millstone Unit 3 construction.

The first investigation was one commissioned by the NU Nuclear Safety Concerns Program (NSCP) and was performed between May 18 and May 29, 1992, by an independent review team (IRT) composed of outside consultants. The IRT investigated five areas of concern identified by the Petitioner. These areas included NU's control and oversight of the SWEC Quality Assurance Program, NU control of vendor activities, adequacy of NU receipt inspection program in the areas of training and adequacy of tools, adequacy of the NCR process in the receipt inspection area, and adequacy of the transfer of materials with respect to "visual damage" inspection. In addition, the IRT interviewed the Petitioner and most, if not all, of the members of the Procurement Inspection Services Department.

In NRC Inspection Report 50–423/92–16 dated September 3, 1992, the NRC staff presented the results of its review of the first investigation. The staff found that the IRT review was cursory in nature in two areas and that the IRT had not supported its conclusions in these areas. Specifically, (1) the IRT had not reviewed, in detail, the SWEC lower tier procedures and procurement documents pertaining to the fasteners transferred from SWEC to the Millstone Nuclear Power Station stores, and (2) the IRT concluded that NU's oversight of SWEC's quality assurance program was satisfactory without determining how the nonconforming fasteners were accepted and placed in stock and whether a programmatic problem existed that allowed the acceptance of the discrepant fasteners.

The NRC staff made an additional observation regarding the IRT review of the concern regarding guidance for inspecting for visual damage. The concern submitted by the Petitioner to the NSCP was the lack of guidance for performing inspections for visual damage during receipt inspection. On the basis of its review, the IRT concluded that damage would be identified. However, the examples chosen to support the claim that instruction was given on identifying visual damage were examples for inservice inspection, not receipt inspection. The Quality Services Director committed to review the definition of visual damage and revise its as necessary for use in receipt inspection.

Although the IRT report may have been cursory in two areas, it was comprehensive in the other areas investigated: the Combustion Engineering reactor head studs inspection, the A&G Engineering Inc. bolting, that tools available for use, and the training received by those performing receipt inspection. In addition, the IRT conducted a substantial number of interviews to support the investigation. During its inspection regarding the adequacy of the IRT report, the NRC staff could find no information that suggested a deliberate effort on the part of NU to color the results of the investigation.

"Whitewash" implies a deliberate act to conceal a fault or defect in an effort to exonerate or give the appearance of soundness. Although the NRC staff found that the IRT investigation and report were not complete in two areas and in regard to the definition of "visual damage," the NRC did not find evidence of a deliberate effort on the part of NU to conceal a defect or falsify records. Thus the NRC does not consider the IRT report as a "whitewash."

NRC Inspection Report 50–423/92–24 dated January 12, 1993, discusses the second investigation. This investigation evolved as a result of the NRC inspection findings on the IRT report concerning the effectiveness of NU's and SWEC's receipt inspection programs. It also was a result of a CAR initiated on April 27, 1992, as a result of several NCRs issued by the Petitioner. The CAR was initiated because a significant amount of bolting material had been transferred from SWEC quality assurance stock to NU and green tagged without proper receipt inspection and because there was a question about the SWEC receipt inspection program. NUNU initiated the CAR to resolve these concerns. The purpose of the CAR was to provide reasonable assurance that, under SWEC's quality assurance program for Category I, non-engineered items, nonconforming items were identified and were prevented from being installed at Millstone Unit 3. To accomplish this, UN reviewed SWEC's program for establishing purchase order and receipt inspections requirements. NU concluded that appropriate procedures existed to ensure the quality of Category I, non-engineered items. To review the implementation of the procedures, NU reviewed approximately 4500 receipt inspection reports (RIRs) and selected for detailed review 1000 that identified nonconforming conditions. From this review, NU concluded in closeout documents that SWEC's program was effective in ensuring the quality of Category I items.

The NRC staff reviewed a sample of RIRs and identified a small number of fasteners that were not inspected for specific attributes, such as the fabrication attribute or coating/preservatives, as required by Quality Assurance Directive (QAD) 7.7, "Receiving Inspection—General." With the exception of these discrepant bolts, there were no other accepted nonengineered items which have subsequently been found to be nonconforming. Therefore, it appeared that the SWEC's receipt inspection program had been effective.

The staff did note that NU had closed the CAR without adequately justifying that SWEC receipt inspections had been conducted in accordance with quality assurance program requirements. The licensee's review of these concerns identified that SWEC inspections for non-engineered items relied heavily on the experience of the inspector and did not strictly follow QAD 7.7. Specifically, the receipt inspector would decide what needed to be inspected by review of procurement documents. The inspector conducted the inspections and documented the results on a generic checklist. Therefore, any required attribute could have been inspected and documented in another attribute of the inspector's choice.

Considering the extensive effort by NU to resolve this issue and in spite of the deficiencies noted during the NRC inspection, the NRC staff could find no information that suggested a deliberate effort on the part of NU to conceal a defect or falsify records. Thus, the NRC staff does not consider the closeout of the CAR as a "whitewash."

III. Conclusion

The institution of proceeding pursuant to 10 CFR 2.206 is appropriate only if substantial health and safety issues have been raised. *See Consolidated Edison Co. of New York* (Indian Point Units 1, 2, and 3) CLI–75–8, 2 NRC 173, 175 (1975) and *Washington Public Power Supply System* (WPPSS Nuclear Project No. 2), DD–84–7 19 NRC 899, 924 (1984). This is the standard that has been applied to the concerns raised by the Petitioner to determine whether the action requested by the Petitioner, or other enforcement action, is warranted.

On the basis of the above assessment, I have concluded that no substantial health and safety issues have been raised regarding the Haddam Neck Plant and Millstone Nuclear Power Station, Units 1, 2, and 3 that would require initiation of formal enforcement action. In particular, safety issues related to the Petitioner's allegations concerning discrepant fasteners were resolved by either removing those fasteners from stores or determining that they were functionally adequate. Therefore, no enforcement action is being taken in this matter.

Although the concerns raised did not warrant the action requested in the Petition, the Petitioner's initiative has led to improvements in the procurement receipt inspection program for the Haddam Neck Plant and the Millstone Nuclear Power Station.

Current inspection plans call for continued NRC inspection effort in this programmatic area for the Haddam Neck Plant and Millstone Units 1, 2, and 3 to ensure compliance with current requirements.

The Petitioner's request for action pursuant to 10 CFR 2.206 is denied. As provided in 10 CFR 2.206(c), a copy of this Decision will be filed with the Secretary of the Commission for the Commission's review. This Decision will constitute the final action of the Commission 25 days after issuance unless the Commission, on its own motion, institutes review of the Decision in that time.

Dated at Rockville Maryland, this 31st day of May 1995.

For the Nuclear Regulatory Commission.

William T. Russell,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 95–13766 Filed 6–5–95; 8:45 am]

BILLING CODE 7590–01–M

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a guide planned for its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft guide is a proposed Revision 1 to Regulatory Guide 1.152, and it is temporarily identified as DG–1039, "Criteria for Digital Computers in Safety Systems of Nuclear Power Plants." The guide will be in Division 1, "Power Reactors." This regulatory guide is being revised to provide current guidance on methods acceptable to the NRC staff for promoting high functional reliability and design quality for the use of digital computers in safety systems of nuclear power plants. The term "computer" is used here has a system that includes computer hardware, software, firmware, and interfaces. This guide endorses the Institute of Electrical and Electronics Engineers Standard Std. 7–4.3.2–1993, "Standard Criteria for Digital Computers in Safety Systems of Nuclear Power Generating Stations."

The draft guide has not received complete staff review and does not represent an official NRC staff position.

Public comments are being solicited on the guide. Comments should be accompanied by supporting data. Written comments may be submitted to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street NW., Washington, DC. Comments will be most helpful if received by July 31, 1995.

Although a time limit is given for comments on this draft guide, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Comments may be submitted electronically, in either ASCII text or Wordperfect format (version 5.1 or later), by calling the NRC Electronic Bulletin Board on FedWorld. The bulletin board may be accessed using a personal computer, a modem, and one of the commonly available communications software packages, or directly via Internet.

If using a personal computer and modem, the NRC subsystem on FedWorld can be accessed directly by dialing the toll free number: 1–800–303–9672. Communication software parameters should be set as follows: parity to none, data bits to 8, and stop bits to 1 (N,8,1). Using ANSI or VT–100 terminal emulation, the NRC NUREGs and RegGuides for Comment subsystem can then be accessed by selecting the "Rules Menu" option from the "NRC Main Menu." For further information about options available for NRC at FedWorld, consult the "Help/Information Center" from the "NRC Main Menu." Users will find the "FedWorld Online User's Guides" particularly helpful. Many NRC subsystems and data bases also have a "Help/Information Center" option that is tailored to the particular subsystem.

The NRC subsystem on FedWorld can also be accessed by a direct dial phone number for the main FedWorld BBS, 703–321–3339, or by using Telnet via Internet, fedworld.gov. If using 703–321–3339 to contact FedWorld, the NRC subsystem will be accessed from the main FedWorld menu by selecting the "Regulatory, Government Administration and State Systems," then selecting "Regulatory Information Mall." At that point, a menu will be displayed that has an option "U.S. Nuclear Regulatory Commission" that will take you to the NRC Online main menu. The NRC Online area also can be accessed directly by typing "/go nrc" at a FedWorld command line. If you access NRC from FedWorld's main menu, you may return to FedWorld by selecting the "Return to FedWorld" option from the NRC Online Main Menu. However, if you access NRC at FedWorld by using NRC's toll-free number, you will have full access to all NRC systems but you will not have access to the main FedWorld system.

If you contact FedWorld using Telnet, you will see the NRC area and menus, including the Rules menu. Although you will be able to download documents and leave messages, you will not be able to write comments or upload files (comments). If you contact FedWorld using FTP, all files can be accessed and downloaded but uploads are not allowed; all you will see is a list of files without descriptions (normal Gopher look). An index file listing all files within a subdirectory, with descriptions, is included. There is a 15-minute time limit for FTP access.

Although FedWorld can be accessed through the World Wide Web, like FTP that mode only provides access for downloading files and does not display the NRC Rules menu.

For more information on NRC bulletin boards call Mr. Arthur Davis, Systems Integration and Development Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301)415–5780; e-mail AXD3@nrc.gov. For more information on this draft regulatory guide, contact S.K. Aggarwal at the NRC, telephone (301)415–6005; e-mail SKA@nrc.gov.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Requests for single copies of draft or final guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Distribution and Mail Services Section; or by fax at (301)415–2260. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 19th day of May 1995.

For the Nuclear Regulatory Commission.

Lawrence C. Shao,

Director, Division of Engineering Technology, Office of Nuclear Regulatory Research.

[FR Doc. 95–13768 Filed 6–5–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 30–31765–CivP, ASLBP No. 95–708–01–CivP]

Oncology Services Corporation, Harrisburg, Pennsylvania; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and Sections 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding:

Oncology Services Corporation, Harrisburg, Pennsylvania
Byproduct Materials License No. 37–28540–01, EA 94–006

This Board is being established pursuant to the request of the Licensee for a hearing regarding an Order issued by the Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support, dated April 24, 1995, entitled "Order Imposing Civil Monetary Penalties" (60 Fed. Reg. 21560–69, April 24, 1995). The order directed the payment of penalties in the amount of $280,000.

The designation of a time and place of any hearing will be issued at a later date.

All correspondence, documents and other materials shall be filed in accordance with 10 CFR 2.701. The Board consists of the following Administrative Judges:

Judge G. Paul Bollwerk III, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555
Judge George C. Anderson, 7719 Ridge Drive NE., Seattle, Washington 98115
Judge A. Dixon Callihan, 400 Avinger Lane, Apt. 408, Davidson, North Carolina 28036.

Issued at Rockville, Maryland, this 30th day of May 1995.

James P. Gleason,

Acting Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 95–13756 Filed 6–5–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 30–32493–CivP ASLBP No. 95–709–02–CivP]

Radiation Oncology Center at Marlton, Marlton, New Jersey; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and Sections 2.105, 2.700,

2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding.

Radiation Oncology Center at Marlton (ROCM), Marlton, New Jersey
Byproduct Materials License No. 29–28685–01, EA 93–072

This Board is being established pursuant to the request of the Licensee for an enforcement hearing regarding an Order issued by the Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support, dated April 24, 1995, entitled "Order Imposing a Civil Monetary Penalty" (60 Fed. Reg. 21570–75, May 2, 1995). The order directed the payment of penalties in the amount of $80,000.

The designation of a time and place of any hearing will be issued at a later date.

All correspondence, documents and other materials shall be filed in accordance with 10 CFR 2.701. The Board consists of the following Administrative Judges:

Judge Charles Bechhoefer, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555
Judge Lester S. Rubenstein, 14540 N. Chalk Creek Drive, Oro Valley, Arizona 85737
Judge James C. Lamb III, 2401 Old Ivy Road, #1204, Charlottesville, Virgina 22903.

Issued at Rockville, Maryland, this 31st day of May 1995.

James P. Gleason,

Acting Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 95–13754 Filed 6–5–95; 8:45 am]

BILLING CODE 7590–01–M

PENSION BENEFIT GUARANTY CORPORATION

Request for a Collection of Information Under the Paperwork Reduction Act; Customer Satisfaction Focus Groups for Premium Payers

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation has requested that the Office of Management and Budget ("OMB") approve a new collection of information under the Paperwork Reduction Act. The purpose of this information collection, which will be conducted through focus group meetings, is to help the agency in assessing the efficiency and effectiveness with which it serves premium payers and in designing actions to address identified problems. The effect of this notice is to advise the public of the PBGC's request for OMB approval of, and to solicit public comment on, this collection of information.

ADDRESSES: All written comments (at least three copies) should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Pension Benefit Guaranty Corporation, 725 17th Street, NW., Room 3208, Washington, DC 20503. The request for approval will be available for public inspection at the PBGC Communications and Public Affairs Department, Suite 240, 1200 K Street, NW., Washington, DC 20005, between the hours of 9 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Holli Beckerman Jaffe, Attorney, Office of the General Counsel, Suite 340, 1200 K Street, NW., Washington, DC 20005, 202–326–4024 (202–326–4179 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTAL INFORMATION: The Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) establishes policies and procedures for controlling the paperwork burdens imposed by Federal agencies on the public. The Act vests the Office of Management and Budget (OMB) with regulatory responsibility over these burdens, and OMB has promulgated rules on the clearance of collections of information by Federal agencies.

Executive Order 12862, Setting Customer Service Standards, states that, in order to carry out the principles of the National Performance Review, the Federal Government must be customer-driven. It directs all executive departments and agencies that provide significant services directly to the public to provide those services in a manner that seeks to meet the customer service standards established in the Executive Order.

The PBGC has decided to comply with Executive Order 12862 with respect to its premium-paying customers through a two-step methodology, *i.e.* focus groups followed by mail surveys. Because the mail surveys will depend, in part, on the customer expectations developed through the focus groups, the PBGC is requesting, at this time, approval of the focus group information collection only. the PBGC will publish, at a later date, an additional notice, with request for comments, on the second step of the proposed methodology, *i.e.*, a mail survey to be sent to a random sample of plan administrators, plan sponsors, and consultants involved in the PBGC premium payment process.

This collection of information will put a slight burden on a very small percentage of the public, and will affect only those members of the public who volunteer to participate. Five focus group meetings of up to 15 customers will be held. The 75 customers will be selected from plan administrators, plan sponsors, and consultants representing the 57,000 defined benefit pension plans subject to the PBGC premium requirement. The PBGC estimates that the total burden hours for each respondent will be 3 hours, consisting of a focus group meeting lasting 2 hours and round-trip transportation time of 1 hour, for a total of 225 burden hours (75 respondents at an estimated 3 hours each).

Issued at Washington, DC, this 1st day of June, 1995.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 95–13809 Filed 6–5–95; 8:45 am]

BILLING CODE 7708–01–M

Request for Extension of Approval Under the Paperwork Reduction Act; Collection of Information Under 29 CFR Part 2648, Redetermination of Withdrawal Liability Upon Mass Withdrawal

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for extension of OMB approval.

SUMMARY: This notice advises the public that the Pension Benefit Guaranty Corporation has requested extension of approval by the Office of Management and Budget for a currently approved collection of information (1212–0034) contained in its regulation on Redetermination of Withdrawal Liability Upon Mass Withdrawal (29 CFR part 2648). Current approval of the collection of information expires on July 31, 1995.

ADDRESSES: All written comments should be addressed to: Office of Management and Budget, Paperwork Reduction Project (1212–0031), Washington, DC 20503. The request for extension will be available for public inspection at the PBGC Communications and Public Affairs Department, Suite 240, 1200 K Street NW., Washington, DC 20005–4026, between the hours of 9 a.m. and 4 p.m..

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, Office of the General Counsel, Suite 340, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026, 202–326–4024 (202–326–4179 for TTY and TDD).

SUPPLEMENTARY INFORMATION: This collection of information is contained in the Pension Benefit Guaranty Corporation's ("PBGC's") regulation on Redetermination of Withdrawal Liability Upon Mass Withdrawal (29 CFR Part 2648).

Section 4219(c)(1)(D) of the Employee Retirement Income Security Act of 1974 ("ERISA") requires that the PBGC prescribe regulations for the allocation of a multiemployer plan's total unfunded vested benefits in the event of a "mass withdrawal," *i.e.*, either (1) A plan termination due to the withdrawal of every employer or (2) a withdrawal of substantially all employers pursuant to an agreement or arrangement to withdraw. The regulation on Redetermination of Withdrawal Liability Upon Mass Withdrawal is issued pursuant to this statutory requirement. The regulation also provides rules under ERISA section 4209(c), dealing with an employer's liability for *de minimis* amounts if the employer withdraws in a "substantial withdrawal," *i.e.*, a withdrawal of substantially all employers within one year (without regard to whether there is an agreement or arrangement to withdraw).

The purpose of the regulation is to protect plan participants and beneficiaries against loss of non-guaranteed vested benefits, and the multiemployer plan insurance program against large claims, by requiring that all unfunded vested benefits be allocated to withdrawing employers. In a non-termination mass withdrawal case, the full allocation of unfunded vested benefits to withdrawing employers also reduces the burden on employers that remain in the plan, thus encouraging continuation of the plan. The reporting requirements in the regulation further these purposes by providing information to the PBGC so that it can monitor the plan.

The reports to the PBGC required by the regulation identify the reporting plan as having experienced a "mass withdrawal" or "substantial withdrawal" and provide certifications that the plan has determined and assessed mass withdrawal liability or liability for *de minimis* amounts, as appropriate. This enables the PBGC to monitor the plan's compliance with the relevant provisions of ERISA and the regulation. By assuring compliance with these rules, the PBGC guards against the increased risk of plan insolvency (with resulting benefit losses to participants and claims against the insurance program) cause by the "mass withdrawal" or "substantial withdrawal."

For purposes of estimating the burden of reporting under the regulation, the PBGC assumes that there is one "mass withdrawal" and one "substantial withdrawal" subject to the regulation each year. (Such events are actually experienced less frequently.) For each "mass withdrawal" subject to the regulation, a plan must send to the PBGC a notice of mass withdrawal (requiring about 40 minutes to prepare) and two certifications that liability has been determined and assessed as required by the regulation (requiring about 30 minutes each to prepare). For each substantial withdrawal subject to the regulation, a plan must sent to the PBGC a combined notice and certification (requiring about 1 hour to prepare). Accordingly, the PBGC estimates that the total annual burden of reporting under the regulation is 2 hours and 40 minutes.

Issued at Washington, DC, this 1st day of June 1995.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 95–13808 Filed 6–5–95; 8:45 am]

BILLING CODE 7708–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–21100; File No. 812–9426]

John Hancock Variable Series Trust I, et al.

May 30, 1995.

AGENCY: Securities and Exchange Commission ("SEC" or the "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: John Hancock Variable Series Trust I (the "Trust"), any series of the Trust which may be established in the future, John Hancock Mutual Life Insurance Company ("John Hancock"), and all registered investment companies for which John Hancock may serve as the investment advisor in the future (the "Funds").

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) of the 1940 Act for exemptions from Section 17(d) and Rule 17d–1 thereunder.

SUMMARY OF APPLICATION: Applicants seek an order permitting the existing series of the Trust to pool daily uninvested cash balances, together with the balances of any futures series of the Trust and any of the Funds, into a joint account for the purpose of investing the cash balances in short-term repurchase agreements, commercial paper and other short-term investments.

FILING DATE: The application was filed on December 19, 1994, and Applicants represent that an amendment to the application will be filed during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on this application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on June 26, 1995 and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, by certificate of service. Hearing requests should state the nature of the interest, the reason for the request and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, D.C. 20549. Applicants: James C. Hoodlet, Law Department, T–55, John Hancock Mutual Life Insurance Company, P.O. Box 111, 200 Clarendon Street, Boston, Massachusetts 02117.

FOR FURTHER INFORMATION CONTACT: Barbara J. Whisler, Senior Counsel, or Wendy Friedlander, Deputy Chief, both at (202) 942–0670, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application, the complete application is available for a fee from the Public Reference Branch of the SEC.

Applicants' Representations

1. The Trust, an open-end diversified management investment company of the series type, currently has nine separate investment portfolios (the "Portfolios"), each of which has separate investment objectives, policies and restrictions.

John Hancock serves as the investment advisor to the Trust. Each Portfolio of the Trust pays John Hancock a management fee based on a percentage of the average daily net assets of that Portfolio. Shares of the Trust are sold to separate accounts (the "Accounts"), funding both variable life insurance

policies and variable annuity contracts issued by John Hancock and John Hancock Variable Life Insurance Company. The Accounts are registered with the Commission as unit investment trusts.

2. Applicants state that at the end of each trading day, it is expected that some or all of the Portfolios will have uninvested cash balances in their custodian accounts. Applicants state that John Hancock would be required by the 1940 Act to purchase short-term investments for these uninvested cash balances on a Portfolio by Portfolio basis. Applicants argue that these separate purchases result in certain inefficiencies which limit the return each of the Portfolios may achieve. Accordingly, Applicants request an order to permit the Portfolios to deposit some or all of the uninvested cash balances into a single joint account. The balance in the joint account would then be used to enter into one or more short-term investment transactions.

3. Applicants state that the proposed joint account arrangement will result in the Portfolios saving significant amounts in yearly transaction fees. Moreover, Applicants argue that it is easier to negotiate a higher yield on large short-term investment transactions than on smaller transactions.

Additionally, Applicants state that, by reducing the number of trade tickets which would have to be written, the proposed joint account arrangement will simplify transactions and reduce the opportunity for errors. Further, Applicants state that flexibility in the management of the Portfolios' cash balances will be enhanced, and the possibility that any Portfolio will have a cash balance uninvested overnight will be reduced. Finally, Applicants argue that the joint account should result in an increase in the number of dealers willing to enter into short-term investment transactions with some of the smaller Portfolios.

4. Applicants state that each Portfolio requires that repurchase agreements always be at least 102% collateralized. The joint account would enter into repurchase agreements collateralized by either cash or United States government or agency securities, *i.e.*, securities issued or guaranteed as to principal or interest by the United States government or by any of its agencies or instrumentalities. The Portfolios will invest in repurchase agreements only to the extent such investment would be consistent with each Portfolio's investment objectives, policies and restrictions. Applicants represent that the joint repurchase transactions will comply with the standards and guidelines set forth in Investment Company Act Release No. 13005 (Feb. 2, 1983) and with any other existing and future positions the Commission or its staff may take regarding repurchase transactions, whether by rule, release, letter or otherwise. Applicants acknowledge that they have a continuing obligation to monitor the Commission's published statements on repurchase agreements, and, in the event that the Commission sets forth different or additional requirements, each Portfolio will modify its standards and guidelines accordingly.

5. Applicants state that the commercial paper purchased by the joint account will be interest bearing or discounted, and may include dollar denominated commercial paper of foreign issuers. Applicants further state that the market value of discounted commercial paper plus accrued interest will equal par value; and, for interest bearing commercial paper, cost, market and par value will be the same. Applicants represent that all commercial paper purchased by the joint account will be a "First Tier Security" as that term is defined in Rule 2a–7 under the 1940 Act.

6. Other short-term instruments purchased by the joint account will include: obligations issued or guaranteed as to principal or interest by the United States government, or any agency or authority thereof; and obligations (including certificates of deposit, time deposits and bankers acceptances) of banks and savings and loan associations which, at the date of the investment, have capital, surplus and undivided profits (as of the date of the most recently published financial statements) in excess of $100,000,000. The obligations may include those of foreign branches of United States banks and United States branches of foreign banks. Each of the obligations of banks and of savings and loan associations purchased by the joint account will qualify as a "First Tier Security" as that term is defined in Rule 2a–7 under the 1940 Act.[1]

7. As with repurchase agreements, Applicants acknowledge that they have an obligation to monitor published statements of the Commission regarding commercial paper and other short-term investment transactions, and, in the event that the Commission or its staff set forth guidelines with respect to such transactions, each Portfolio participating in the joint account will conform its investments to such guidelines and, as necessary, will adopt appropriate standards and guidelines.

8. Applicants state that each of the Portfolios will participate in the joint account on the same basis as every other Portfolio and in conformity with the Portfolio's fundamental investment policies and restrictions. John Hancock will have no monetary participation in the joint account, but will be responsible for investing amounts in the joint account, establishing accounting and control procedures, and ensuring the equal treatment of each Portfolio. Applicants state that the assets of the Portfolios will continue to be held under proper bank custodial procedures.

9. Applicants opine that the investment of a Portfolio in the joint account will not be subject to the claims of creditors, whether brought in bankruptcy, insolvency or other legal proceeding, of any other Portfolio participating in the joint account.

Applicants' Legal Analysis

1. Section 17(d) of the 1940 Act makes it unlawful for an affiliated person of a registered investment company, acting as principal, to effect any transaction in which the registered investment company is a joint or a joint and several participant with such person in contravention of rules and regulations prescribed by the Commission. Rule 17d–1 under the 1940 Act provides that an affiliated person of a registered investment company, acting as principal, shall not participate in, or effect any transaction in connection with, any joint enterprise or other joint arrangement in which the registered investment company is a participant unless the Commission has issued an order approving such arrangement.

2. Each Portfolio, by participating in the proposed joint account, and John Hancock, by managing the proposed joint account, may be joint participants in a transaction within the meaning of Section 17(d), and the proposed joint account could be a joint arrangement or joint enterprise within the meaning of Rule 17d–1 under the 1940 Act.

3. In passing upon applications under Rule 17d–1, the Commission may consider the extent to which an entity's participation in a joint arrangement or enterprise is on a "basis different from or less advantageous than that of other participants." Applicants believe that the proposed joint account could have significant benefits for the participating Portfolios, and that no participating Portfolio will receive fewer relative benefits from the proposed joint account than any other participating Portfolio.

[1] Applicants represent that an amendment to the application will be filed during the notice period and that such amendment will include this representation.

THE PAPER AND INK USED IN THE ORIGINAL PULICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.

Applicants represent that each Portfolio will participate in the proposed joint account on the same basis as every other Portfolio.

4. The trustees of the Trust have considered the proposed joint account and determined that the use of the joint account would be beneficial to each participating Portfolio. Applicants represent that the trustees have satisfied themselves that the proposed method of operation for the joint account will not result in any conflicts of interest between any of the Portfolios or between any Portfolio and John Hancock. The trustees have further determined that: there does not appear to be any basis upon which to predicate greater benefit to one Portfolio than to another; the operation of the joint account will be free of any inherent bias in favor of any one Portfolio over another; and, the anticipated benefits flowing to each Portfolio will fall within an acceptable range of fairness.

5. The trustees believe that the primary beneficiaries will be participating Portfolios and the owners of the contracts issued by the Accounts because the joint account may earn higher returns and result in lower transaction costs for the Portfolios, and will be a more efficient means of administering the Portfolios' daily investment transactions.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions.

1. A separate custodial account will be established for the joint account into which each Portfolio may deposit some or all of its uninvested cash balance after the conclusion of its daily trading activity. The joint account will not be distinguishable from any other accounts maintained by any Portfolio with the custodian except that monies of the Portfolios will be commingled. The joint account will not have any indicia of separate legal existence, and the sole function of the joint custodial account will be to provide a convenient way to aggregate individual transactions necessary for the management of each of the Portfolios' daily uninvested cash balance.

2. Cash in the joint account will be invested in one or more repurchase agreements, commercial paper and/or other short-term investment transactions which will have, with rare exceptions, an overnight, over the weekend, or over the holiday maturity, and in no event will have a maturity in excess of seven days.

3. Each of the Portfolios will participate in an investment through the joint account only to the extent consistent with that Portfolio's investment objectives, policies and restrictions.

4. John Hancock will maintain records in conformity with Section 31 of the 1940 Act and rules and regulations thereunder.

The records will document, for any given day, each Portfolio's aggregate investment in the joint account and its pro rata share of the joint account.

5. Repurchase agreements will be at least 102% collateralized at all times, and will satisfy the uniform standards set by the Portfolios for such investments. The securities subject to the repurchase agreement will be transferred to the joint custodial account and they will not be held by the Portfolio's repurchase counterparty or by an affiliated person of that counterparty.

6. Each portfolio relying upon Rule 2a–7 for valuation of its net assets based on amortized cost will use the average maturity of the investments made by the Portfolio participating in the joint account when computing that Portfolio's average portfolio maturity with respect to the portion of its assets held in the joint account on that day.

7. No Portfolio will be allowed to create a negative balance in the joint account for any reason, although the Portfolio will be permitted to withdraw all or a portion of its balance at any time. No Portfolio will be obligated either to invest in the joint account or to maintain any minimum balance in the joint account.

8. John Hancock will administer the investment of the cash balances in and operation of the joint account as part of John Hancock's duties under the general terms of each Portfolio's existing or any future investment management agreement. John Hancock will not collect any additional or separate fees for the management of the joint account.

9. The administration of the joint account will be within the fidelity bond coverage required by Section 17(g) of the 1940 Act and Rule 17g–1 thereunder.

10. Each of the Portfolios participating in the joint account will adopt procedures pursuant to which the joint account will operate and which will be reasonably designed to provide that the requirements set forth in the application are met. The trustees of the Trust will make and approve changes that they deem necessary to ensure that such procedures are followed. Additionally, the trustees of the Trust will be responsible for assuring that the joint account is operated in accordance with such procedures.

11. The trustees of the Trust and the boards of directors of any future Funds participating in the joint account will evaluate the joint account annually, and will continue the joint account arrangement only if the trustees and/or the boards, as applicable, determine that there is a reasonable likelihood that the joint account will benefit the Trust, the Funds and the owners of the life insurance policies and annuity contracts participating in the Trust and the Funds.[2]

Conclusion

Applicants assert that for the reasons and upon the facts set forth above, the requested exemptions from Section 17(d) of the 1940 Act and Rule 17d–1 thereunder are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–13802 Filed 6–5–95; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 21099; 811–5117]

The Mackenzie Funds Inc.; Notice of Application for Deregistration

May 30, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: The Mackenzie Funds Inc.

RELEVANT ACT SECTION: Order requested under section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring it has ceased to be an investment company.

FILING DATES: The application was filed on April 20, 1995 and amended on may 22, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be

[2] Applicants represent that they will file an amendment during the notice period and that such amendment will contain the representations set forth in condition 11.

received by the SEC by 5:30 p.m. on June 26, 1995, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, Via Mizner Financial Plaza, 700 South Federal Highway, Suite 300, Boca Raton, Florida 33432.

FOR FURTHER INFORMATION CONTACT: Marianne H. Khawly, Staff Attorney, at (202) 942–0562, or C. David Messman, Branch Chief, at (202) 942–0564, (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. On April 16, 1987, applicant incorporated in the state of Maryland under the name The Canada Fund Inc. On the same date, applicant filed a Notification of Registration on Form N–8A and a registration statement on Form N–2 pursuant to section 8(b) of the Act and the Securities Act of 1933. On September 17, 1987, applicant changed its name and filed a pre-effective amendment to its registration statement on Form N–1A that registered an indefinite number of shares. The registration statement was declared effective on November 18, 1987, and applicant's initial public offering commenced shortly thereafter. Applicant consisted of three separate series: Mackenzie Short-Term U.S. Government Securities Fund ("Government Fund"), Mackenzie Canada Fund ("Canada Fund"), and Mackenzie Global Fund ("Global Fund").

2. On September 29, 1994, applicant's Board of Directors ("Board") approved a reorganization plan whereby shares of common stock of each series of applicant would be exchanged for shares of beneficial interest of separate series of Ivy Fund (the "Acquiring Fund"). The Acquiring Fund is a series company organized as a Massachusetts business trust. The Acquiring Fund's Declaration of Trust authorizes the issuance of shares in different series and authorizes the trustees to establish and create additional series and designate the rights and preferences thereof. Pursuant to such authority, the trustees designated three new series of the Acquiring Fund to be known as Ivy Short-Term U.S. Government Securities Fund ("Ivy Short-Term Fund"), Ivy Canada Fund, and Ivy Global Fund (each a "Series").

3. The Board approved the reorganization because the Acquiring Fund would have thirteen series with the capacity to spread certain expenses over a broader shareholder base. As a result, the Board believed that the reorganization would reduce the total operating and administrative expenses now borne by applicant. In addition, the Board believed that the reorganization would attract new shareholders and provide the potential to further produce economies of scale.

4. The investment adviser for the Acquiring Fund, Ivy Management, Inc. is a wholly owned subsidiary of applicant's investment adviser, Mackenzie Investment Management, Inc. ("MIMI"). Accordingly, applicant and Acquiring Fund may be deemed to be affiliated persons by reason of being under the common control of the same investment adviser. Applicant therefore relied on the exemption provided by rule 17a–8 under the Act to effect the transaction. Consequently, the trustees of Acquiring Fund determined, in accordance with rule 17a–8, that the purchase of the assets of applicant by Acquiring Fund was in the best interest of the shareholders of Acquiring Fund, and that such purchase would not result in any dilution to the interests of the existing shareholders of Acquiring Fund.[1]

5. On September 30, 1994 preliminary copies of proxy materials were filed with the SEC. On October 25, 1994, definitive proxy materials were distributed to applicant's shareholders and transmitted to the SEC on November 4, 1994.

6. On December 31, 1994, Government Fund's shareholders approved the reorganization plan. On that date, applicant transferred all of Government Fund's assets and liabilities to Ivy Short-Term Fund in exchange for delivery to applicant of shares of beneficial interest, Class A and Class I shares, of Ivy Short-Term Fund. On that date, Government Fund had 903,236 Class A shares outstanding, and no Class I shares outstanding, with an aggregate and per share net asset value of $8,571,658 and $9.49, respectively.

7. On January 27, 1995, Canada Fund's shareholders approved the reorganization plan. On January 31, 1995, applicant transferred all of Canada Fund's assets and liabilities to Ivy Canada Fund in exchange for delivery to applicant of shares of beneficial interest, Class A and Class B shares, of Ivy Canada Fund. On that date, Canada Fund had 2,427,795.891 Class A shares outstanding, and 86,088.201 Class B shares outstanding, with an aggregate and per share net asset value of $19,896,976.18 and $7.91, respectively.

8. On January 27, 1995, Global Fund's shareholders approved the reorganization plan. On January 31, 1995, applicant transferred all of Global Fund's assets and liabilities to Ivy Global Fund in exchange for delivery to applicant of shares of beneficial interest, Class A and Class B shares, of Ivy Global Fund. On that date, Global Fund had 1,711,237.631 Class A shares outstanding, and 270,011.532 Class B shares outstanding, with an aggregate and per share net asset value of $21,204,845.52 and $10.72, respectively.

9. Shares of each Series were immediately distributed to applicant's shareholders. Each shareholder of the applicant received, in exchange for his or her shares in the applicant, an equal number of shares of each Series having a net asset value equal to the net asset value of his or her shares in the applicant immediately prior to the reorganization.

10. Total expenses of the reorganization were $28,669 for Government Fund, $35,261 for Canada Fund, and $30,963 for Global Fund. Of those amounts, applicant bore $7,228, $8,588, and $7,719, respectively, and the remainder was borne by MIMI and the Acquiring Fund. Such expenses were for printing, mailing, and proxy solicitation fees. The expenses of the dissolution and winding up of applicant's affairs are expected to be $9,000 and will be borne equally by Government Fund, Canada Fund, and Global Fund. Any such expenses in excess of $9,000 shall be borne by MIMI.

11. As of the date of the application, applicant had no shareholders, assets, or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is neither engaged in nor proposes to engage in any business activities other than those necessary for the winding-up of its affairs.

12. On December 30, 1994, applicant terminated Government Fund's existence as a Maryland corporation. On January 31, 1995, applicant terminated Canada and Global Fund's existence as Maryland corporations.

[1] Rule 17a–8 provides relief from the affiliated transaction prohibition of section 17(a) of the Act for a merger of investment companies that may be affiliated persons of each other solely by reason of having a common investment adviser, common directors, and/or common officers.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–13801 Filed 6–5–95; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2780 Alabama; and Contiguous Counties in Tennessee]

Declaration of Disaster Loan Area

Limestone and Madison Counties and the contiguous counties of Jackson, Lauderdale, Lawrence, Marshall, and Morgan in the State of Alabama, and Franklin, Giles, Lawrence and Lincoln Counties in the State of Tennessee constitute a disaster area as a result of damages caused by tornadoes which occurred on May 18, 1995. Applications for loans for physical damage may be filed until the close of business on July 31, 1995 and for economic injury until the close of business on March 1, 1996 at the address listed below: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308 or other locally announced locations.

The interest rates are:

	Percent
For physical damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Other (including non-profit organizations) with credit available elsewhere	7.125
For Economic injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The numbers assigned to this disaster for physical damage are 278012 for Alabama and 278112 for Tennessee. For economic injury the numbers are 853100 for Alabama and 853200 for Tennessee.

Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 30, 1995.

Philip Lader,

Administrator.

[FR Doc. 95–13794 Filed 6–5–95; 8:45 am]

BILLING CODE 8025–01–M

[License No. 02/72–0561]

Prospect Street NYC Discovery Fund, L.P.; Notice of Issuance of a Small Business Investment Company License

On Monday, February 27, 1995, a notice was published in the **Federal Register** (Vol. 60, 38 FR 10628) stating that an application had been filed by Prospect Street NYC Discovery Fund, L.P., at 250 Park Avenue, 17th Floor, New York, NY 10177, with the Small Business Administration (SBA) pursuant to Section 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1994)) for a license to operate as a small business investment company.

Interested parties were given until close of business Tuesday, March 14, 1995 to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 02/72–0561 on May 23, 1995, to Prospect Street NYC Discovery Fund, L.P. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: May 24, 1995.

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 95–13726 Filed 6–5–95; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

May 30, 1995.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0786

Regulation ID Number: IL–50–86 Final (T.D. 8110)

Type of Review: Extension

Title: Sanctions on Issuers and Holders of Registration-Required Obligations Not in Registered Form

Description: The Internal Revenue Service needs the information in order to ensure that purchasers of bearer obligations are not U.S. persons (other than those permitted to hold obligations under section 165(j)) and to ensure that U.S. persons holding bearer obligations properly report income and gain on such obligations. The people reporting will be financial institutions holding bearer obligations.

Respondents: Business or other for-profit

Estimated Number of Respondents: 1,000

Estimated Burden Hours Per Respondent: 20 minutes

Frequency of Response: On occasion

Estimated Total Reporting Burden: 39,742 hours

OMB Number: 1545–0996

Regulation ID Number: EE–113–82 NPRM

Type of Review: Extension

Title: Required Distributions from Qualified Plans and Individual Retirement Plans

Description: The proposed regulations provide rules regarding the minimum distribution requirements applicable to section 403(b) contracts and accounts. Such minimum distribution rules do not apply to benefits accrued before January 1, 1987.

Respondents: State, Local or Tribal Government, Not-for-profit institutions

Estimated Number of Recordkeepers: 8,400

Estimated Burden Hours Per Recordkeeper: 36 minutes

Frequency of Response: On occasion

Estimated Total Recordkeeping Burden: 8,400 hours

OMB Number: 1545–1022

Form Number: IRS Form 7018–C

Type of Review: Revision

Title: Order Blank for Forms

Description: Form 7018–C allows taxpayers who must file information returns a systematic way to order information tax forms materials.

Respondents: Individuals or households, Business or other for-profit

Estimated Number of Respondents: 868,432

Estimated Burden Hours Per Respondent: 3 minutes

Frequency of Response: Annually

Estimated Total Reporting Burden: 43,422 hours

Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 95–13800 Filed 6–5–95; 8:45 am]

BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review

May 26, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0782
Regulation ID Number: LR–7 Final (T.D. 6629)
Type of Review: Extension
Title: Limitation on Reduction in Income Tax Liability Incurred to the Virgin Islands
Description: The Tax Reform Act of 1986 repealed the mandatory reporting and recordkeeping requirements of section 934(d) (1954 Code). The prior exception to the general rule of section 934 (1954 Code) to prevent the Government of the Virgin Islands from granting tax rebates with regard to taxes attributable to income derived from sources within the U.S. was contingent upon the taxpayers' compliance with the reporting requirement of section 934(d). The changes imposed by the Tax Reform Act of 1986 should reduce the number of responses to approximately 500.
Respondents: Individuals or households, Business or other for-profit
Estimated Number of Respondents/ Recordkeepers: 500
Estimated Burden Hours Per Respondent/Recordkeepers: 12 minutes
Frequency of Response: On occasion
Estimated Total Reporting/ Recordkeeping Burden: 184 hours
Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 95–13799 Filed 6–5–95; 8:45 am]

BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review

May 26 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

U.S. Customs Service (CUS)

OMB Number: 1515–0101
Form Number: None
Type of Review: Extension
Title: Records of Serially Numbered Substantial Holders or Containers
Description: The owner of duty-free containers or holders is required to keep adequate records open to inspection by Customs Officers to document that they are being used in international traffic and therefore, are still entitled to duty-free status. Owners are usually companies involved in foreign trade.
Respondents: Business or other for-profit
Estimated Number of Respondents: 20
Estimated Burden Hours Per Respondent: 437 hours
Frequency of Response: On occasion
Estimated Total Reporting Burden: 8,740 hours
Clearance Officer: Norman Waits, (202) 927–1551 U.S. Customs Service, Printing and Records Management Branch, Room 6426, 1301 Constitution Avenue NW., Washington, DC 20229
OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 95–13798 Filed 6–5–95; 8:45 am]

BILLING CODE 4830–02–A

Public Information Collection Requirements Submitted to OMB for Review

May 26, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512–0083
Form Number: ATF F 1582–B (5130.6)
Type of Review: Extension
Title: Drawback on Beer Exported
Description: When taxpaid beer is removed from a brewery and ultimately exported, the brewer exporting the beer is eligible for a drawback (refund) of Federal taxes paid. By completing this form and submitting documentation of exportation, the brewer may have Federal taxes refunded.
Respondents: Business or other for-profit
Estimated Number of Respondents: 100
Estimated Burden Hours Per Respondent: 1 hour
Frequency of Response: On occasion
Estimated Total Reporting Burden: 5,000 hours
OMB Number: 1512–0334
Recordkeeping Requirement ID Number: ATF REC 5150/3
Type of Review: Extension
Title: Usual and Customary Business Records Relating to Tax-Free Alcohol
Description: Tax-free alcohol is used for non-beverage purposes by educational organizations, hospitals, laboratories, etc. Records maintain spirits accountability and protect tax revenue and public safety.
Respondents: Not-for-profit institutions, Federal Government, State, Local or Tribal Government
Estimated Number of Recordkeepers: 4,444

Estimated Burden Hours Per Recordkeeper: 1 hour
Frequency of Response: On occasion
Estimated Total Recordkeeping Burden: 1 hour
OMB Number: 1512–0335
Recordkeeping Requirement ID Number: ATF REC 5150/4
Type of Review: Extension
Title: Letterhead Applications and Notices Relating to Tax-Free Alcohol
Description: Tax-free alcohol is used for non-beverage purposes in scientific research and medicinal uses by educational organizations, hospitals, laboratories, etc. Permits/Applications control authorized uses and flow. Protect tax revenue and public safety.
Respondents: Not-for-profit institutions, Federal Government, State, Local or Tribal Government
Estimated Number of Recordkeepers: 4,444
Estimated Burden Hours Per Recordkeeper: 30 minutes
Frequency of Response: On occasion
Estimated Total Recordkeeping Burden: 2,222 hours
Clearance Officer: Robert N. Hogarth, (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue NW., Washington, DC 20226
OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 95–13795 Filed 6–5–95; 8:45 am]

BILLING CODE 4810–31–P

Public Information Collection Requirements Submitted to OMB for Review

May 30, 1995.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512–0373
Recordkeeping Requirement ID Number: ATF REC 5400/3
Type of Review: Extension
Title: RECORDS AND SUPPORTING DATA: Importation, Receipt, Storage, and Disposition by Licensed Explosives Manufacturers, Importers, Dealers, and Users
Description: These records show daily activities in the importation, manufacture, receipt, storage, and disposition of all explosive materials covered under 18 U.S.C. Chapter 40. The records are used to show where and to whom explosives materials are sent, thereby ensuring that any diversions will be readily apparent and, if lost or stolen, ATF will be immediately notified on discovery of the loss or theft.
Respondents: Business or other for-profit
Estimated Number of Recordkeepers: 13,708
Estimated Burden Hours Per Recordkeeper: 23 hours, 13 minutes
Frequency of Response: Other
Estimated Total Recordkeeping Burden: 318,300 hours
Clearance Officer: Robert N. Hogarth, (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue NW., Washington, DC 20226
OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 95–13796 Filed 6–5–95; 8:45 am]

BILLING CODE 4810–31–P

Public Information Collection Requirements Submitted to OMB for Review

May 26, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

U.S. Customs Service (CUS)

OMB Number: 1515–0081
Form Number: CF 213
Type of Review: Extension
Title: Importer's Premises Visit-Significant Importation Report
Description: The Customs Form 213 constitutes a summary report of an interview conducted at the importer's premises by a Customs Officer. The Customs Form 213 provides for uniformity for the various importers. Customs conducts the interview based on its responsibilities involving appraisement, classification and admissibility with regard to imported merchandise.
Respondents: Business or other for-profit
Estimated Number of Respondents: 7,385
Estimated Burden Hours Per Respondent: 2 hours, 24 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 17,724 hours
OMB Number: 1515–0085
Form Number: CF 247
Type of Review: Revision
Title: Cost Submission
Description: The Customs Form 247 is used by importers to furnish cost information to Customs which is necessary to establish the appraised value of imported merchandise.
Respondents: Business or other for-profit
Estimated Number of Respondents: 1,000
Estimated Burden Hours Per Respondent: 50 hours
Frequency of Response: On occasion
Estimated Total Reporting Burden: 50,000 hours
Clearance Officer: Laverne Williams, (202) 927–0229, U.S. Customs Service, Printing and Records Management Branch, Room 6216, 1301 Constitution Avenue NW., Washington, DC 20229
OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 95–13797 Filed 6–5–95; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review: Locality Pay System Survey (Department of Veterans Affairs Nurse Pay Act of 1990), VA Form 10–0132

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

The Veterans Health Administration (VHA), Department of Veterans Affairs,

has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) the title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Ann Bickoff, Veterans Health Administration (161B4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 565–7407.

Comments and recommendations concerning the proposed information collection should be directed to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. DO NOT send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer by July 6, 1995.

Dated: May 26, 1995.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

Extension of a Currently Approved Collection

1. Locality Pay System Survey (Department of Veterans Affairs Nurse Pay Act of 1990)
2. VA will use this information collection for statistical purposes to determine the rates of pay for registered nurses, nurse anesthetists, and other health care personnel.
3. Business or other for profit—Not for profit institutions—Federal Government—State, Local or Tribal Government
4. 2,531 hours
5. 45 minutes per on-site visit
6. One time
7. 3,375 respondents

[FR Doc. 95–13706 Filed 6–5–95; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register

Vol. 60, No. 108

Tuesday, June 6, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

FEDERAL REGISTER NUMBER: 95–13577.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, June 8, 1995, 10 a.m. Meeting open to the public.

THE FOLLOWING ITEM WAS DELETED FROM THE AGENDA: Advisory Opinion 1995–15: Beth Taylor (AllisonPAC) Allison Engine Company.

THE FOLLOWING ITEM WAS ADDED TO THE AGENDA: Clinton/Gore '92 Committee—Proposed Letter (LRA #420).

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 219–4155.

Delores Hardy,

Administrative Assistant.

[FR Doc. 95–13988 Filed 6–2–95; 3:48 am]

BILLING CODE 6715–01–M

LEGAL SERVICES CORPORATION

Board of Directors' Meeting Notice

TIME AND DATE: The Legal Services Corporation's Board of Directors has scheduled a meeting by telephone for Friday, June 14, 1995. The meeting will commence at 12:00 noon. Members of the public wishing to participate may do so via telecommunications equipment at the location noted below.

LOCATION: Legal Services Corporation, 750 First Street, N.E., 11th Floor, Washington, D.C. 20002, (202) 336–8800.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

Open Session

1. Approval of Agenda.
2. Consider and Act on Proposed Funding Policy for Implementation of Rescission.
3. Consider and Act on Other Business.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, (202) 336–8810.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Ruby McCollum, at (202) 336–8895.

Date issued: June 2, 1995.

Victor M. Fortuno,

General Counsel.

[FR Doc. 95–13997 Filed 6–2–95; 3:53 pm]

BILLING CODE 7050–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of June 5, 12, 19, and 26, 1995.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of June 5

Thursday, June 8

9:30 a.m.
Meeting with Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting)
(Contact: John Larkins, 301–415–7360)

11:00 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Friday, June 9

9:00 a.m.
Briefing by DOE on High Level Waste Program (Public Meeting)

10:30 a.m.
Briefing by DOE on Status of Multi-Purpose Canisters (MPC) (Public Meeting)

Week of June 12—Tentative

Wednesday, June 14

11:30 a.m.
Affirmation Discussion and Vote (Public Meeting)
a. Louisiana Energy Services (Claiborne Enrichment Center); Atomic Safety and Licensing Board March 3, 1995 Memorandum and Order (Docket No. 70–3070–ML) (Tentative)
(Contact: Andrew Bates, 301–415–1963)

Week of June 19—Tentative

Wednesday, June 21

9:00 a.m.
Discussion of Management Issues (CLOSED—Ex. 2 and 6)

10:30 a.m.
Briefing on NRC Use of Expert Elicitation in HLW Performance Assessments (Public Meeting)
(Contact: Janet Kotra, 301–415–6674)

Thursday, June 22

9:30 a.m.
Briefing on Results of Senior Management Review of Operating Reactors, Fuel Facilities, and Related Activities (Public Meeting)
(Contact: Victor McCree, 301–415–1711)

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of June 26—Tentative

Thursday, June 29

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292.

CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415–1661.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, DC 20555 (301–415–1963).

In addition, distribution of this meeting notice over the internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to alb@nrc.gov or gkt@nrc.gov.

Dated; June 2, 1995.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 95–13980 Filed 6–2–95; 3:30 pm]

BILLING CODE 7590–01–M

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federal register

Tuesday
June 6, 1995

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Critical Habitat for the Mexican Spotted Owl; Final Rule

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AD02

Endangered and Threatened Wildlife and Plants; Determination of Critical Habitat for the Mexican Spotted Owl

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) designates critical habitat for the Mexican spotted owl (*Strix occidentalis lucida*), a subspecies federally listed as threatened under the Endangered Species Act of 1973, as amended (Act). The Mexican spotted owl, also referred to herein as spotted owl or owl, inhabits canyon and montane forest habitats across a range that extends from southern Utah and Colorado, through Arizona, New Mexico, and west Texas, to the mountains of central Mexico. The designation includes 107 units totaling 1,874,935 ha (4,632,901 acres) in Arizona, Colorado, New Mexico, and Utah.

This critical habitat designation provides additional protection requirements under section 7 of the Act with regard to activities that are funded, authorized, or carried out by any Federal agency. As required by section 4 of the Act, the Service considered economic and other impacts of designation prior to making a final decision on the size and scope of critical habitat. Critical habitat is located primarily on Federal and Tribal land and, to a lesser extent, on state and private lands.

EFFECTIVE DATE: This rule becomes effective July 6, 1995.

ADDRESSES: The complete administrative record for this rule is on file at the U.S. Fish and Wildlife Service, New Mexico Ecological Services State Office, 2105 Osuna N.E., Albuquerque, New Mexico 87113; telephone: (505) 761–4525. The complete file for this rule will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Jennifer Fowler-Propst, State Supervisor, at the above address.

SUPPLEMENTARY INFORMATION:

Background

The Mexican spotted owl is a medium-sized bird ranging from parts of central Colorado and Utah, south through Arizona, New Mexico, and western Texas, then south through Mexico to the States of Michoacan and Puebla. Mexican spotted owl habitat typically consists of dense, multi-storied, montane forests with closed canopies, and deep, cool, fractured canyons. Analysis by the Mexican Spotted Owl Recovery Team has determined that the owl is threatened primarily by modification of habitat caused by commercial timber harvest methods and wildfires.

Previous Federal Actions

The entire spotted owl species (*Strix occidentalis*) was classified on the Service's 1989 Animal Notice of Review (54 FR 554, January 6, 1989) as a category 2 species. A category 2 species is one for which listing may be appropriate, but for which additional biological information is needed to support a proposed rule. The northern spotted owl subspecies (*S. o. caurina*) was listed as a threatened species on June 26, 1990 (55 FR 26194), and critical habitat was designated for it on January 15, 1992 (57 FR 1796). The California spotted owl subspecies (*S. o. occidentalis*) remains a category 2 candidate.

On December 22, 1989, the Service received a petition submitted by Dr. Robin D. Silver requesting the listing of the Mexican spotted owl as an endangered or threatened species under the Act. On February 27, 1990, the Service found that the petition presented substantial information indicating that listing may be warranted and initiated a status review. In conducting its review, the Service published a notice in the **Federal Register** (55 FR 11413) on March 28, 1990, requesting public comments and biological data on the status of the Mexican spotted owl. On December 6, 1990, the Mexican Spotted Owl Status Review Team completed a draft report, and on February 20, 1991, the Service made a finding, based on the contents of the report, that listing the Mexican spotted owl pursuant to section 4(b)(3)(B)(i) of the Act was warranted. Notice of this finding was published in the **Federal Register** on April 11, 1991 (56 FR 14678). A proposed rule to list the Mexican spotted owl as threatened without critical habitat was published in the **Federal Register** on November 4, 1991 (56 FR 56344).

In the November 4, 1991, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information regarding whether the Mexican spotted owl should be listed. The comment period was reopened from May 11, 1992, to September 1, 1992 (57 FR 20073, May 11, 1992) to allow submission of additional comments. Appropriate Federal and state agencies, and Tribal and county governments, organizations, and other interested parties were directly contacted and requested to comment, and newspaper notices inviting public comment were published in Arizona, New Mexico, Utah, and Colorado. The Service held six public hearings, which were announced in the proposed rule. A notice of the hearing dates and locations was published in the **Federal Register** on January 2, 1992 (57 FR 35), and in notices published in Arizona, New Mexico, Utah, and Colorado newspapers. Interested parties were directly contacted and notified of the hearings.

After a review of all comments received in response to the proposed rule, the Service published a final rule to list the Mexican spotted owl as a threatened species on March 16, 1993 (58 FR 14248). Section 4(a)(3) of the Act requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service's regulations (50 CFR 424.12(a)(2)) state that critical habitat is not determinable if information sufficient to perform required analyses of the impacts of the designation is lacking or if the biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat. At the time of listing, the Service found that, although considerable knowledge of Mexican spotted owl habitat needs had been gathered in recent years, habitat maps in sufficient detail to accurately delineate these areas were not available. Subsequent to listing, the Service began gathering the data necessary to develop a proposed rule. On March 17, 1993, letters requesting information on owl habitat and distribution were sent to 14 Federal agencies. On April 14, 1993, letters requesting information on owl habitat and distribution were sent to 37 Tribal agencies.

On June 25, 1993, and again on August 16, 1993, the Service received petitions to remove the Mexican spotted owl from the List of Endangered and Threatened Wildlife. In subsequent petition findings published in the **Federal Register** (58 FR 49467, 59 FR 15361) the Service addressed the issues raised in the petitions and determined that the delisting petitioners did not present substantial information indicating that the delisting of the Mexican spotted owl was warranted.

The petitioners have challenged this decision in Federal District Court in New Mexico in *Coalition of Arizona/New Mexico Counties for Stable Economic Growth* v. *United States Fish and Wildlife Service, et al.*, CIV 94–1058–MV.

On February 14, 1994, a lawsuit was filed in Federal District Court in Arizona against the Department of the Interior for failure to designate critical habitat for the Mexican spotted owl (*Dr. Robin Silver, et al.* v. *Bruce Babbitt, et al.*, CIV–94–0337–PHX–CAM). On October 6, 1994, the Court ordered the Service to * * * "publish a proposed designation of critical habitat, including economic exclusion pursuant to 16 U.S.C. 1533(b)(2), no later than December 1, 1994, * * * (and) publish its final designation of critical habitat, following the procedure required by statute and Federal regulations for notice and comment," by submitting the final rule to the **Federal Register** no later than May 30, 1995. Pursuant to an extension granted by the court, the Service issued the proposal rule to designate critical habitat on December 7, 1994 (59 FR 63162).

Prior to issuance of the proposed rule, the Service held a press briefing in Albuquerque, New Mexico, on November 30, 1994, announcing the proposal, and issued a press release to major regional newspapers. In addition, the proposed rule was sent to affected Federal, Tribal, state, county, and local agencies and governments, and notice of the availability of the rule were sent to all interested parties on the Service mailing list. Public legal notices of the proposal were also sent to 18 newspapers in Arizona, Colorado, New Mexico and Utah on December 5, 1994. The general and newspaper notices requested data and comments from the government and public on all aspects of the proposal, including data on the economic impacts of the designation. The notice also announced a 90-day comment period open until March 7, 1995.

On December 19, 1994, the Service sent a request for information on the potential economic impacts of designating critical habitat to 13 Federal, 12 Tribal, and 10 state agencies, and 4 Governors' and 42 county government offices. A Draft Economic Analysis (DEA) was prepared based on the information received and notice of its availability was published in the **Federal Register** on March 8, 1995 (60 FR 12728, 60 FR 12730). The publication also proposed several revisions to the original proposal, solicited additional information and comments, opened an additional 60-day comment period extending to May 8, 1995, and announced the schedule and location of public hearings. More than 700 parties on the Service's mailing list also received an announcement of the above subjects. On February 23, 1995, the Service also sent for publication as legal notices in 36 regional newspapers an announcement of the availability of the DEA, solicitation for additional information and comments, the opening of the additional comment period, and the schedule and location of public hearings. Public hearings were held in Santa Fe and Socorro, New Mexico, on March 22 and 23, 1995, and Tucson and Flagstaff, Arizona, on March 29 and 30, 1995. Comments from the public on the critical habitat proposal and DEA were recorded and evaluated for input to the final designation. More than 800 letters addressing the proposal were received during the comment periods. The correspondence and comments have been evaluated in the decision whether to designate critical habitat. Numerous other Federal actions have occurred in relation to the Mexican spotted owl, including the Service's recovery planning effort, plus management actions by other Federal agencies. Those topics are discussed under "*Management Considerations*", below.

Habitat Characteristics

The physical and biological habitat features essential to the conservation of the Mexican spotted owl, referred to as the primary constituent elements, include those that support nesting, roosting, and foraging. These elements were determined from studies of Mexican spotted owl behavior and habitat use throughout the range of the owl.

The vegetative communities and structural attributes used by the owl vary across the range of the subspecies. The vegetative communities consist primarily of warm-temperate and cold-temperate forests, and, to a lesser extent, woodlands and riparian deciduous forests. The mixed-conifer community appears to be most frequently used throughout most portions of its range (Skaggs and Raitt 1988; Ganey and Balda 1989, 1994; Service 1995).

Mixed-conifer forests contain several species of overstory trees. The most common are white fir (*Abies concolor*), Douglas fir (*Pseudotsuga menziesii*), and ponderosa pine (*Pinus ponderosa*). Less common species are southwestern white pine (*P. strobiformis*), limber pine (*P. flexilis*), aspen (*Populus tremuloides*), and corkbark fir (*Abies lasiocarpa* var. *arizonica*). The understory within mixed-conifer communities provides important roosting sites for Mexican spotted owls. The understory usually contains the same conifer species found in the overstory, with Gambel oak (*Quercus gambelii*), maples (*Acer grandidentatum* and *A. glabrum*), and New Mexico locust (*Robinia neomexicana*) also present. Montane riparian canyon bottoms used by owls in the mixed-conifer zone may contain box elder (*Acer negundo*), narrowleaf cottonwood (*Populus angustifolia*), maples (*Acer* spp.), and alders (*Alnus* spp.).

In southeastern Arizona, owl habitat types include mixed-conifer and Madrean Evergreen Forest and Woodland (Ganey and Balda 1989a; Duncan and Taiz 1992). Below the mixed-conifer vegetative zone are found two series of Madrean Evergreen Woodland: the upper oak-pine occurs at 1,675 to 2,200 meters (5,500 to 7,200 feet), and the lower evergreen oak (encinal) occurs at 1,525 to 1,980 meters (5,000 to 6,500 feet). Within these vegetative zones, and particularly at lower elevations, Mexican spotted owls are usually found in steep, forested canyons with rocky cliffs.

At the northern edge of their range in northeastern Arizona, southwestern Colorado, and southern Utah, Mexican spotted owls occur during the breeding season between 1,340 to 2,160 meters (4,400 to 7,100 feet) in canyon habitats within pinyon-juniper woodland (*Pinus edulis* and *Juniperus osteosperma*) or mixed-conifer forests. Canyon habitat is characterized by the cool, humid conditions found in the deep, steep-walled, fractured structures of sandstone slickrock. Canyons frequently contain riparian and conifer pockets, and adjacent slopes and mesa tops are vegetated by a variety of plant associations. Although no studies have been completed, preliminary studies show most Mexican spotted owl activity during the breeding season to occur within and in proximity to canyons. Owls roost in the riparian and coniferous pockets of canyon bottoms, on ledges, or in cavities in the slickrock canyon walls (Gutiérrez and Rinkevich 1991; van Riper and Willey 1992).

Structural characteristics associated with forested Mexican spotted owl habitat vary depending on the behavioral function it supports. Although Mexican spotted owl habitat is also regionally variable, some general attributes are common to the subspecies' life-history requirements throughout its range. Studies of nest and roost habitat use at both stand and site scales indicate that areas selectively used by owls contain attributes typically associated with older forest stands (Service 1995 and references therein). The attributes of

forested nesting and roosting habitat typically include a high basal area of large diameter trees; a moderate to high canopy closure; a pronounced large-tree component; a wide range of tree sizes suggestive of uneven-age stands; a multi-layered canopy with large overstory trees of various species; high plant species richness; high snag basal area; and high volumes of fallen trees and other woody debris. These attributes usually develop with increasing forest age, but their occurrence may vary by location, past forest management practices or disturbance events, forest type, and productivity. These characteristics may also develop in younger stands, especially when the stands contain remnant large trees or patches of large trees from earlier stands. Certain forest management practices may also enhance tree growth and mature stand characteristics where the older, larger trees are allowed to persist.

Spotted owls apparently use a wider array of habitat types for foraging than for nesting and roosting, including fairly open and non-contiguous forest, small openings, pure ponderosa pine stands, woodland, and rocky slopes. Ganey and Balda (1994) found a greater selectivity in forested habitat used for foraging than for random sample sites. As for roosting sites, foraging areas had larger logs, greater canopy cover, and higher densities and basal areas of both trees and snags than random sites. Owls also appeared to avoid foraging in stands in which the overstory had been partially harvested. However, the significance of this analysis may be low because of the limited sample size.

Little is known about the habitat requirements for dispersal. Habitat that meets the subspecies' needs for nesting and roosting may also provide for foraging and dispersal. The definition of the term "dispersal" is frequently limited to post-fledging movements of juveniles. For the purposes of this rule, the Service considers the term to include all movement, including winter shifts in territory and dispersal from natal areas, and to encompass the important biological concepts of connectivity within and between clusters of Mexican spotted owl territories. Although habitat that allows for dispersal may be marginal or unsuitable for nesting or roosting, it provides connectivity between blocks of nesting habitat both locally and over the Mexican spotted owl's range that is essential to demographic interaction and genetic flow. Thus, dispersal habitat includes unoccupied habitat of varying quality that may support intermittent use as a "stepping stone" between occupied areas.

Mexican spotted owls occur in relatively isolated mountain ranges, often separated by wide expanses of Sonoran, Chihuahuan, and Great Basin desert and other nonforested lands. Preliminary studies of juvenile owl dispersal in southern Utah (Willey 1993) and New Mexico (Peter Stacey, University of Nevada, Reno, *in litt.*, 1993) have shown movements across a wide variety of habitat types, including both riparian areas and vegetation types considered too open for consistent use by Mexican spotted owls.

The results of a 3 year telemetry study of owls and habitat in southern Utah have shown seasonal shifts in habitat use (van Riper and Willey 1992, Willey 1993). During the breeding season, up to 25 percent of adult owl locations occurred outside of steep canyon terrain. During the fall and winter seasons, about half of the locations occurred on mesa-tops, benches, and warm slopes above the canyons. Movements out of the summer home ranges during the winter season were highly variable. A few owls moved completely out of their summer ranges, several shifted into adjacent areas with some overlap of seasonal ranges, and others remained within the same area year round.

Current Situation

Federal, state, Tribal, and private lands contain habitat for the owl. The Forest Service, Bureau of Indian Affairs (BIA), National Park Service (NPS), Bureau of Land Management (BLM), and Department of Defense are the Federal land managing agencies for much of the lands harboring owl habitat and known owl sites. Efforts to estimate habitat acreage and survey efforts for owls have varied between agencies, with the most intensive work being done by the Forest Service.

Currently, most land-managing agencies characterize Mexican spotted owl habitat under the term "suitable." Suitable habitat is often only applied to habitat able to sustain the combined nesting, roosting, and foraging needs of the Mexican spotted owl's life history. The definition often excludes additional habitat utilized only for foraging, and may underestimate the total habitat available within an owl territory and across the subspecies' range.

The Forest Service estimates that it manages about 1,853,000 ha (4,579,000 acres) of suitable owl habitat on 18 national forests in Arizona, New Mexico, Utah, and Colorado (Fletcher and Hollins 1994). Forest Service land in Arizona and New Mexico contains 1,161,000 ha (2,869,000 acres) of this total, with an additional 432,400 ha (1,068,500 acres) described as being "capable" of returning to suitable habitat condition. Colorado national forests are estimated to have about 355,300 ha (878,000 acres) and Utah national forests are estimated to have about 336,700 ha (832,000 acres) of forested suitable habitat. However, under a narrower set of definitions, a second recent estimate places suitable canyon habitat in Utah national forests at about 58,000 ha (143,000 acres) (Kate Grandison, Dixie National Forest, *in litt.*, 1994). No capable acreage figure is available for Utah and Colorado. Addition of the capable habitat figure yields a total owl habitat acreage of 1,593,500 ha (3,937,500 acres) for Forest Service lands in Arizona and New Mexico.

Forest Service inventories through 1994 resulted in the establishment of 841 management territories (MTs) in Arizona and New Mexico (Fletcher and Hollis 1994). Four MTs have been established from the six sites with owl detection records in Utah (K. Grandison, pers. comm., 1994). No MTs have been established from the six owl sites in Colorado (John Verner, Pike/San Isabel National Forests, pers. comm., 1994). Each MT represents the occurrence of either a single owl or pair of owls, and was either established from confirmed nest or roost locations, or from nighttime calling responses.

There are potentially up to 435,000 ha (1,075,000 acres) of Mexican spotted owl habitat on Indian reservations. The actual amount of habitat may be lower because estimates may be developed from forest cover timber-type maps containing little information about understory conditions or slope. On the other hand, the estimates may also omit minimally or non-forested canyon habitat acreage. Complete information is not available on owl survey efforts or results from several Tribes. As of the end of 1992, seven owl sites (three pairs and four singles) have been located on the Fort Apache Indian Reservation (White Mountain Apache Tribe, *in litt.*, 1993). No recent estimates were made available by the Tribe. Owl surveys on the Navajo Reservation have resulted in the confirmation of owls at 26 sites (13 pairs and 13 singles) (John Nysted, Navajo Fish and Wildlife Department, pers. comm., 1994). The Jicarilla and the Hualapai wildlife departments have conducted owl surveys; however, no owls have been detected. Current owl records exist, but only limited information is available on population estimates for the San Carlos Apache and Mescalero Apache Indian Reservations.

Only limited information specific to the Southern Ute Indian Reservation is available; however, presently the are no known owls, although occupied habitat on adjacent lands indicate owls may occur on Reservation land.

A total of 297,000 ha (734,000 acres) of potential owl habitat occurs on BLM lands in Colorado, Utah, Arizona, and New Mexico (BLM, Colorado State Office, *in litt.* 1990; BLM, Utah State Office, *in litt.* 1990; BLM, New Mexico State Office, *in litt.* 1990; Ted Cordery, Arizona BLM, pers. comm., 1992). In 1993, a total of 25 owl locations were known from BLM lands. There were 15 locations in Utah, 7 locations in Colorado, and 1 location in New Mexico. There are several historical records and two current records for sites on BLM lands in Arizona.

Most Mexican spotted owl habitat on national parks and monuments consists of minimally forested, steep, shaded canyons in the northern part of the owl's range. It is difficult to estimate acreage for this type of habitat. The NPS estimated that 23 parks and monuments in the southwest contained between 96,000 and 177,000 ha (238,000 to 438,000 acres) of Mexican spotted owl habitat (NPS, Southwest Region, *in litt.* 1990; NPS, Rocky Mountain Region, *in litt.* 1990; J. Ray, NPS, Grand Canyon National Park, pers. comm., 1990). As of 1995, the NPS had records for a total of 37 sites in Utah, Colorado, and New Mexico (NPS, unpublished data). No recent records were available for NPS land in Arizona.

Between 72,000 and 82,000 ha (177,000 to 202,000 acres) of New Mexico and Arizona State lands contain forests and canyons that could be suitable Mexican spotted owl habitat. Several historical and recent records exist for New Mexico State lands. In Arizona, surveys conducted by the Arizona State Land Department and the Coconino National Forest resulted in the establishment of three MTs. No information was available on suitable Mexican spotted owl habitat on State lands in Utah and Colorado. However, a single owl was recorded on Utah State lands in 1992.

Private lands in Arizona and New Mexico are currently estimated to contain up to 53,000 ha (130,000 acres) of owl habitat (Service 1994). No estimates exist for owl habitat acreage on private lands in Colorado and Utah. This is partly due to the difficulty in assessing the extent of existing canyon habitat in the Colorado Plateau physiographic province, and partly a result of the insufficient amount of owl surveys currently accomplished to accurately determine the limit of the subspecies' range.

The estimates, as reported by individual land managing agencies, of Mexican spotted owl suitable habitat within the United States total about 2,959,400 ha (7,312,500 acres). These estimates of habitat available for nesting and roosting activity are derived from median figures where estimates were given as an acreage range, include capable habitat estimates where available, and include the lower estimate for suitable habitat on Forest Service land in Utah. The approximate proportion of habitat for the Forest Service is 68 percent; Tribal, 15 percent; BLM, 10 percent; NPS, 5 percent; the States of Arizona and New Mexico, 1 percent; and private lands, 2 percent.

The proportion of total habitat for each landowner is probably fairly accurate. However, the total acreage of owl habitat is likely overestimated. The error is a result of inadequate information on land status and disagreement about the types of vegetative communities that provide owl habitat. For instance, the Forest Service included many acres of the ponderosa pine community type in its estimate of suitable and capable habitat. Several agencies expressed uncertainty about the accuracy of their habitat estimates.

Ninety-one percent of Mexican spotted owls known at the end of 1990 occurred on national forests, 4 percent on Indian reservations, 4 percent on national parks, and 1 percent on BLM lands. Because the Service has received incomplete 1991 to 1994 survey data, it is not possible to identify exact percentages since 1990.

Definition of Critical Habitat

Critical habitat is defined in section 3(5)(A) of the Act as: "(i) the specific areas within the geographic area occupied by a species * * * on which are found those physical and biological features (I) essential to the conservation of the species, and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon determination that such areas are essential for the conservation of the species." The term "conservation," as defined in section 3(3) of the Act, means "* * * to use and the use of all methods and procedures which are necessary to bring an endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary," i.e., the species is recovered and removed from the list of endangered and threatened species.

The Service is required to base critical habitat designations upon the best scientific and commercial data available (50 CFR 424.12) after taking into account economic impacts and other relevant data. In designating critical habitat for the Mexican spotted owl, the Service has reviewed the overall approach to the conservation of the Mexican spotted owl undertaken by land management agencies since its proposed listing in 1991. The Service has also reviewed available information that pertains to the habitat requirements of this subspecies, including material received during the public comment periods from state and Federal agencies, and other entities. Finally, the Service considered the economic and other relevant impacts of designation prior to making this final determination.

Role in Species Conservation

The use of the term "conservation" in the definition of critical habitat indicates that its designation should identify lands needed for a species' eventual recovery and delisting. However, when critical habitat is proposed or designated at the time a species is listed, the Service frequently does not know precisely what may be needed for recovery. In this regard, critical habitat serves to preserve options for a species' eventual recovery.

The designation of critical habitat will not, in itself, lead to recovery, but, through regulations under section 7 of the Act, may assist the Service and all Federal agencies in preventing the further deterioration of habitat and, in this way, contributing toward a species' conservation. Critical habitat helps focus conservation activities by identifying areas that contain essential habitat features (primary constituent elements), regardless of whether they are currently occupied by the listed species, thus alerting the public and land managing agencies to the importance of an area in the conservation of a listed species. Critical habitat also identifies areas that may require special management or protection. Critical habitat receives protection from destruction or adverse modification through required consultation under section 7 of the Act with regard to actions carried out, funded, or authorized by a Federal agency. Aside from the added protection provided under section 7, the Act does not provide other forms of protection to lands designated as critical habitat. The added protection of these areas may shorten the time needed to achieve recovery.

Designating critical habitat does not create a management plan for a listed species. Designation does not establish numerical population goals, prescribe specific management actions (inside or outside of critical habitat), nor does it have a direct effect on areas not designated as critical habitat. Recovery planning and critical habitat designation are different processes. Specific management recommendations for critical habitat are most appropriately addressed in recovery plans, management plans, and through section 7 consultation.

Critical habitat identifies specific areas essential to the conservation of a species. Areas not currently containing all of the essential features, but with the capability to do so in the future, may also be essential for the long-term recovery of the species, particularly in certain portions of its range, and may be designated as critical habitat. However, not all areas containing the features of a listed species' habitat are necessarily essential to the species' survival. Areas not included in critical habitat that contain one or more of the primary constituent elements are still important to a species' conservation and may be addressed under other facets of the Act, and other conservation laws and regulations.

Primary Constituent Elements

In identifying areas as critical habitat, the Service considers those physical and biological attributes that are essential to a species' conservation. In addition, the Act stipulates that the areas containing these elements may require special management considerations or protection. Such physical and biological features, as outlined in 50 CFR 424.12, include, but are not limited to, the following:

—Space for individual and population growth, and for normal behavior;
—Food, water, or other nutritional or physiological requirements;
—Cover or shelter;
—Sites for breeding, reproduction, or rearing of offspring; and
—Habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

The primary constituent elements of critical habitat for the Mexican spotted owl include, but are not limited to, those habitat components providing or with the potential to provide for nesting, roosting, or foraging activities. Forested habitats used for nesting and roosting are typically characterized as supporting mature stand attributes including high canopy closure, multi-canopied structure, coniferous vegetation (sometimes including a hardwood understory), large diameter trees, high basal areas of live trees and snags, and high log volumes. Nesting and roosting habitat also supports owl foraging activity; however, a wider array of habitat attributes may be found in areas used solely for foraging, including fairly open and non-contiguous forest, small openings, woodland, and rocky slopes. Canyon habitat is typically characterized by the cool, humid conditions found in deep, steep-walled, fractured structures. Canyons frequently contain riparian and conifer pockets, and adjacent slopes and mesa tops are vegetated by a variety of plant associations. Owl habitat may also exhibit a combination of attributes between the forested and canyon habitat types. Habitat that meets the subspecies' needs for nesting, roosting, and foraging also provides for dispersal. However, habitat that provides for dispersal may not support the other primary constituent elements. Currently, little is known about the habitat requirements for foraging or dispersal.

Areas of designated critical habitat include both "suitable" and "unsuitable" forest and canyon habitat. Several definitions of "suitable" are currently used by different land managing agencies; however, the term "suitable" generally refers to habitat that supports the combined activities of nesting, roosting, and foraging. This critical habitat designation is not limited to habitat that meets "suitable" definitions, but includes habitat with any of the primary constituent elements described above.

Criteria for Identifying Candidate Critical Habitat Units

The primary objective in designating critical habitat is to identify existing and potential Mexican spotted owl habitat considered essential for the conservation of the subspecies, and to highlight specific areas where management considerations should be given highest priority. The Service focused on available nesting and roosting habitat to identify locales that provide a nucleus for delineation of critical habitat units. Additional habitat was added as needed to develop units based on the criteria described below. In the designation of critical habitat, the Service has considered all habitat types needed by the subspecies through its definition of the primary constituent elements.

The Service used owl habitat and territory maps, vegetation maps, aerial photography, and field verification to identify areas for designation as critical habitat. Because habitat maps available to the Service were generally based on the varying definitions of "suitable habitat" used by the agencies, the major focus was on habitat that provides nesting, roosting, and some foraging attributes. To assist in these determinations, the Service relied upon the following principles developed by the Interagency Scientific Committee (Thomas *et al.* 1990) for the northern spotted owl, and by others working in the field of conservation biology:

—Develop and maintain large contiguous blocks of habitat to support multiple reproducing pairs of owls;
—Minimize fragmentation and edge effect to improve habitat quality;
—Minimize distance between blocks to facilitate dispersal among blocks of breeding habitat; and
—Maintain range-wide distribution of habitat to facilitate recovery.

Several qualitative criteria were considered when determining identification of critical habitat. The following discussion describes the criteria and provides an explanation of their use in selecting and designating specific areas.

(1) *Currently Suitable Habitat:* The Service concentrated on the existence of currently suitable Mexican spotted owl forested and canyon habitat (primarily nesting and roosting, but also foraging) that contained one or more of the primary constituent elements. The Service evaluated the quality of existing habitat based on available habitat maps and delineated the best available habitat (i.e., the least fragmented, most contiguous forest habitat areas; areas showing characteristic topographic features of canyon habitat) in the critical habitat units.

(2) *Large Contiguous Blocks of Habitat:* The Service identified, where available, large, contiguous blocks of habitat or areas that mostly consist of Mexican spotted owl habitat. In forested habitat, areas were selected so that critical habitat units would include as little low quality habitat as possible. In canyon habitat, drainage systems and adjacent terrain determined the branching shape of critical habitat units.

(3) *Occupied Habitat:* In evaluating potential critical habitat units, the Service gave primary consideration to habitat currently occupied by pairs or resident singles; however, some unoccupied areas were selected if they were important for other reasons (e.g., territory cluster contiguity). Some habitat within units was selected based on suitability although no surveys were yet conducted. All areas selected, however, have potential for supporting the territorial needs of Mexican spotted owls.

(4) *Rangewide Distribution:* The Service is designating critical habitat units well distributed within the existing United States range of the Mexican spotted owl to maintain demographic connectivity and genetic variation between territory clusters.

(5) *Special Management or Protection:* The Service evaluated the need for special management because of the existing situation (e.g., current quality of existing habitat), low population density, the relative importance of territory clusters, or management activities and threats. All areas were selected because of their need for special management or protection.

(6) *Adequacy of Existing Regulatory Mechanisms:* The Service considered the existing legal status of areas (i.e., reserved areas such as wilderness or parks) and, with few exceptions, has not designated reserved areas as critical habitat. In general, the current classification of wilderness areas and parks provides adequate protection against potential habitat-altering activities because they are primarily managed as natural ecosystems. These lands are often essential to the conservation of the subspecies, as they provide important links and contain large areas of habitat in relatively pristine condition. However, these lands by themselves do not provide adequate habitat to support a viable range-wide Mexican spotted owl population. The Service considered their relative contribution to the Mexican spotted owl's conservation but did not include them in critical habitat because of the protection afforded by their current classification unless there was a threat of significant impacts to habitat in these areas or they were inclusions within larger surrounding critical habitat units.

Critical Habitat Designation

The designation includes 107 critical habitat units totaling 1,874,935 ha (4,632,901 acres) in Arizona, New Mexico, Utah and Colorado. The approximate acreage of critical habitat by land ownership is shown in Table 1.

TABLE 1.—CRITICAL HABITAT ACREAGE BY LAND OWNERSHIP AND STATE

	Arizona	New Mexico	Colorado	Utah	Total
Forest Service	1,510,148	[a]1,848,351	34,500	188,386	[a]3,581,385
Bureau of Land Management	0	10,743	562	72	11,377
National Park Service	45,892	0	0	0	45,892
Department of Defense	2,013	0	0	0	2,013
State	3,333	5,847	620	20	9,820
Tribal	401,829	[b]407,604	61,531	0	[b]870,964
Private	28,395	[b]75,621	5,890	543	[a]111,450
Total	1,991,611	[a][b]2,348,166	104,103	189,021	[a][b]4,632,901
Total critical habitat units	35	52	7	1	[c]107

[a] Includes a correction to acreages cited in the proposed rule.
[b] Includes changes to ownership and deletion of Jicarilla Apache acreages cited in the proposed rule.
[c] One critical habitat unit overlaps two States.

Management Considerations

Forest Practices

Management direction for lands with Mexican spotted owl habitat varies within and between agencies. A multiple-use management emphasis is in effect on much of Forest Service and Tribally managed land. Much BLM Mexican spotted owl habitat is managed primarily for natural resources extraction, including oil, gas, minerals, and timber, but is still available for wildlife and recreation. National Park Service lands are managed for recreation and preservation of natural values. State lands within owl habitat are typically intermingled with Federal lands and are usually not large enough to support owl territories of their own. State lands are managed to generate maximum financial return to the State trusts. Management emphasis on private lands providing Mexican spotted owl habitat varies.

Current Forest Service management plans call for harvestable timber land in Arizona and New Mexico to be primarily managed under even-aged shelterwood systems. Commercial forests on the Navajo Indian Reservation are being converted to shelterwood management (James Carter, BIA, pers. comm., 1990). Other commercial forests on Indian lands in the Southwest are managed primarily as uneven-aged stands by selective logging. Under the shelterwood system, a stand is scheduled for a series of harvests culminating in a full rotation cycle in 120 years or less. This cycle maximizes timber production, but does not provide enough time for stands to reach the mature to old-growth conditions characteristic of most forested Mexican spotted owl habitat, and results in forest age distributions unnaturally skewed toward younger stands. The past and threatened conversion of complex structured forest stands to even-aged stands was identified by the Service (Service 1991, 1993, 1995) as the greatest threat facing the Mexican spotted owl.

Half of all shelterwood management on national forests has been occurring in forest habitat suitable for nesting and foraging. The Service has determined habitat loss trends from current national forest plans, which provide the only available data on timber harvest trends into the future. An estimated 0.4 percent of Mexican spotted owl habitat is projected to be made unsuitable for breeding each year in the future if timber extraction continues as outlined under current forest plans.

Region 3 of the Forest Service is currently in the process of amending forest plans to incorporate the recommendations contained in the Service's draft Mexican Spotted Owl Recovery Plan (Service 1995), and to change the dominant silvicultural system in the southwest from even- to uneven-age management. Uneven-aged management maintains and promotes development of complex forest structures. Methods include individual tree selection and group selection. Individual tree selection entails the harvest of trees selected from a size-distribution curve appropriate for forest type, site conditions, and desired regeneration levels. Trees of various size and age classes are retained, and multi-storied attributes and vertical diversity are maintained. Group selection creates

openings in the forest stand from a fraction to a hectare (¼ to 2.5 acres) in size, developing small even-aged clumps of trees and within-stand horizontal diversity. The Service considers the use of uneven-age management the silvicultural method most compatible with maintenance of Mexican spotted owl habitat.

Previous Management Attempts

Prior to listing, the Migratory Bird Treaty Act (MBTA) provided the only Federal statutory protection for the Mexican spotted owl. Under the provisions of the MBTA, it is unlawful to pursue, hunt, take, capture, or kill in any manner any migratory bird unless permitted by regulations. Although the Mexican spotted owl typically remains in its summer range throughout the year, it is included on the list of birds protected under the MBTA.

An interagency agreement with the purpose of ensuring population viability of the spotted owl (*Strix occidentalis*), including the Mexican spotted owl, was signed by the Service, BLM, NPS, and Forest Service on August 12, 1988 (U.S. Department of Interior 1988). Under this agreement, each agency agreed to manage its lands to provide owl habitat, to carry out habitat and population inventories sufficient to indicate long term trends, and to carry out research activities sufficient to provide empirical information on the validity of planning assumptions. The degree to which this agreement has been implemented has varied within and among agencies.

The States of Arizona, Utah and Colorado list the Mexican spotted owl as a threatened species. Capture, handling, transportation, and take of the Mexican spotted owl are regulated by game laws and special licenses for live wildlife. Thus, the States only regulate hunting, recreation, and scientific investigation. Habitat management is not considered.

Most Federal agencies have policies to protect State threatened or endangered species, and some agencies also protect species that are candidates for Federal listing. The NPS Organic Act protects all wildlife on national parks and monuments. However, these general policies lack standards and guidelines that can be used to measure policy success. The Service believes that until agencies develop specific protection guidelines, evaluate them for adequacy, and test them through implementation, it is uncertain whether any general agency policies will adequately protect the Mexican spotted owl.

Specific management policies for the Mexican spotted owl have been developed by BLM in Colorado and New Mexico. The policy in Colorado states, "In areas with a confirmed nest or roost site, surface management activities will be limited and will be determined on a case by case basis to allow as much flexibility as possible outside of the core area." Management policy in New Mexico states that habitat core areas and territories of appropriate size will be established and preserved wherever owls are found. The Service believes these policies are likely to be too general to ensure the Mexican spotted owl will be adequately protected on BLM lands.

Mexican spotted owl protection guidelines have been developed by the White Mountain Apache, Mescalero Apache, and Jicarilla Apache Tribes. The White Mountain Apache Mexican Spotted Owl Management Plan was discussed in some detail in the proposed rule for critical habitat designation. Details of the Mescalero Apache conservation plan are considered proprietary by the Tribe and are not available for release by the Service. The Jicarilla Apache conservation plan addresses the identified threats to owl habitat by maintaining sufficient suitable habitat across the landscape and the site-specific retention of complex forest structure following timber harvest. Nest/roost habitat, primarily mixed conifer and steep slope areas, are not managed for timber extraction and are to remain in suitable nest-roost condition. Foraging habitat consisting of ponderosa pine is to be managed almost entirely by uneven-aged methods. Timber harvest may lower the quality of a fraction of the foraging habitat base, but adequate residual structure remains such that the habitat rapidly reattains suitable condition. At any point in time the majority of foraging habitat remains in suitable foraging condition across the landscape. Site-specific management of territories address both habitat conditions and behavioral disturbance within owl territories. Territorial management includes the establishment of 300-acre protected activity centers around nest-roost sites. No timber, and oil and gas development is to occur within these areas, and no behaviorally disturbing activities are permitted within ¼ mile of any nest or roost site during the breeding season. Habitat in the areas surrounding the protected activity centers are to be managed as described above.

Detailed guidelines for Mexican spotted owl management have been developed by the Forest Service Southwest Region. The guidelines were first issued as Mexican spotted owl Interim Directive (ID) No. 1 in June 1989, and reissued as Mexican spotted owl ID No. 2 in June 1990. Utah and Colorado national forests adopted ID No. 2 in 1991. The guidelines expired December 26, 1991, but the Forest Service is continuing to manage under ID No. 2. The IDs require establishment of a Mexican spotted owl MT around each nest or roost site. Each MT has a core area of 182 ha (450 acres) and an overall size of 810 ha (2,000 acres). Activities within the core area are limited to road construction. Within the MT, activities, including timber harvest, are limited to a maximum of 314 ha (775 acres). The intent of the guidelines is to retain at least 405 ha (1,000 acres) of suitable habitat within the MT after proposed management activities are identified and located. Forest Service estimates indicate that suitable habitat within MTs currently averages 466 ha (1,150 acres) for territories in New Mexico and Arizona. In Utah, MTs encompass 1,340 ha (3,350 acres) with a core of 350 ha (875 acres) (K. Grandison, pers. comm., 1994). The IDs provide no protection for unoccupied suitable Mexican spotted owl habitat, nor do they address forest activities not related to timber harvest.

In March of 1995, the Service released for public review the draft Mexican Spotted Owl Recovery Plan (Service 1995). That plan, when finalized, will become the Service's policy on recommendations for managing Mexican spotted owls in the southwest. As previously mentioned, the Forest Service has shown interest in adopting the recommendations in the recovery plan by amending forest plans for National Forests in Arizona and New Mexico. It is the Service's hope that other involved Federal agencies, including other regions of the Forest Service, will adopt the Service's final recovery recommendations as spotted owl management policy.

Summary of Economic Impacts

The Act requires that critical habitat be designated after consideration of the economic impact, and any other relevant impact, of specifying any specific area as critical habitat. An area may be excluded from designation if the benefits of its exclusion outweigh the benefits of its inclusion in critical habitat, unless failure to designate the area would result in extinction of the species concerned. The Service has analyzed the probable impacts of designating critical habitat for the Mexican spotted owl. Availability of a draft economic analysis was announced in the **Federal Register** on March 8, 1995 (60 FR 12730), simultaneous with publication of a supplementary

proposed rule that proposed to exclude certain areas from critical habitat on economic grounds (60 FR 12728). Pursuant to an order of the United States District Court for the District of Arizona issued December 30, 1994, the Service was required to publish any proposed exclusions from the critical habitat for the Mexican spotted owl in the **Federal Register** and provide a 60-day comment period on them. Consequently, the only areas potentially subject to economic exclusion from this final designation are those treated in the supplementary proposal.

A final economic analysis has now been completed and will soon be made available to the public. Its principal findings are summarized below.

The study estimates the incremental economic effects of designating critical habitat for the owl. It does not estimate the economic benefits and costs related to other conservation measures in place as a result of listing the owl, or the economic effects of actions taken by other Federal or state agencies. The study assesses impacts on activities that occur on Federal land or are authorized, funded, or carried out by agencies of the Federal government. Activities that occur on private lands and that do not involve Federal authorization, funding, or assistance are not affected by critical habitat designation.

Analytical Methodology

The economic region described in the study includes 28 counties in four states that contain land proposed for designation as critical habitat for the owl. The subregions are groups of counties that allow evaluation of economic impacts in a smaller area. The Northeast subregion contains 2 counties in Colorado (Archuleta and La Plata) and 9 in New Mexico (Colfax, Los Alamos, Mora, Rio Arriba, Sandoval, San Miguel, Santa Fe, Taos, Torrance). The Southeast subregion comprises two counties in southern New Mexico (Lincoln and Otero). The West subregion is the largest and most populated, and includes 7 counties in Arizona (Apache, Coconino, Gila, Graham, Greenlee, Navajo, and Yavapai), 7 counties in New Mexico (Catron, Cibola, Grant, McKinley, San Juan, Sierra, and Socorro), and 1 in Utah (San Juan).

The economic subregions are defined by county boundaries, which are the smallest economic divisions available for analysis with the database used in the study. The subregions approximate as nearly as possible the counties in which critical habitat has been proposed. The profile of the economy of the region describes economic activity in 1991, prior to Federal listing of the owl and the proposal to designate critical habitat. The economic descriptions and the modeling of economic impacts were conducted primarily with Micro IMPLAN (Taylor et al. 1993) and the Micro IMPLAN database.

The economic analysis is restricted to effects anticipated in the foreseeable future within proposed CHUs. The effects of the proposed action on Federal agencies and other entities were estimated using data requested by the Service from Federal, state, county, and Tribal entities known to be involved in land management or ownership within the counties containing proposed critical habitat. The agencies were asked to estimate current and planned timber harvest that involved modification or destruction of owl habitat and that would be affected by the proposed action.

The economic effects of designation include those that result in changes in social welfare. Regional (distributional) economic impacts may include household income foregone from employees permanently displaced through critical habitat designation; changes in specific county tax revenues due to changes in land use; regional social costs and benefits from factors such as transient unemployment, job training, or redistribution of existing job-mix categories. The analysis of effects of critical habitat designation considers both national economic efficiency effects and regional (distributional) impacts when possible. These include effects on the changes in total employment, changes in household income, and the effects on local communities.

Regional Demographic Profile

Land Ownership

More than three-fourths of the acres proposed for critical habitat designation are federally owned, primarily under jurisdiction of the Forest Service. Much of the remaining land is within the boundaries of Tribal Reservations (20 per cent).

Critical habitat designation for the owl was proposed on 922,600 acres of Native American Tribal lands including land owned by five Tribes: Jicarilla Apache, Mescalero Apache, Navajo, San Carlos Apache, and Southern Ute. Tribal lands are included in CHUs in all three subregions, and represent 17 percent of the total proposed designated critical habitat in the Northeast and West subregions, and 38 percent of the Southeast subregion.

Human Population

The 1990 census reported the region's residents numbered 1,054,800, 20 percent higher than a decade earlier and double the population of 1960. The 1990 census reported 19 counties in the region that each had fewer than 50,000 residents; population exceeded 100,000 in one of the 28 counties in the region.

The region includes six incorporated communities with populations that exceeded 25,000 in 1990, including Flagstaff and Prescott, Arizona; and Alamogordo, Farmington, Rio Rancho, and Santa Fe, New Mexico. Santa Fe was the largest community in the region, reporting a 1990 census of 55,900 residents. The Arizona counties containing Phoenix (Maricopa County) and Tucson (Pima) and the New Mexico county containing Albuquerque (Bernalillo) are excluded from the region defined for this impact analysis because their large economies would substantially deemphasize the economic impacts in the remainder of the region. Pima County, which includes the Tucson metropolitan area, contains almost 34,000 acres proposed for critical habitat designation; however, current Forest Plans do not include timber harvest from the CHUs in Pima County.

Native Americans account for 24 percent of the population in the region, and the 250,000 residents of Native American descent represent 13 percent of the Native Americans in the United States. Residents of Hispanic descent account for 24 percent of the 1990 population in the region, or 258,000 residents.

Regional Economic Profile

Employment

Employment in the Mexican spotted region totaled 451,000 full- and part-time workers in 1991. The most striking characteristic of the region's employment base is the predominance of government employment. Nearly one-quarter (23.7 percent) of all jobs in the region in 1991 were based on Federal, State, and local governments—much higher than the rate of government employment in the national economy. Relative to the national economy, the region provided a higher proportion of employment in the Government, Retail Trade and Mining sectors, and a lower proportion of jobs in the Manufacturing and Services sectors. Employment in the Solid Wood & Paper sector represented 1.1 percent of the region's total job base, nearly matching the national rate of 1.2 percent.

Household Income

Household income totaled $13.9 billion in the region in 1991. The largest proportion of household income, $5.7 billion or 40.8 percent, was provided by sources outside the region, including pensions, government support payments, other "unearned" income, and wages paid by firms outside the region (e.g., wages paid to a resident of Sandoval County who works in Bernalillo County). The Government sector generated the second largest proportion of household income in the region (20.1 percent), followed by Services (12.8 percent). The Solid Wood & Paper sector provided $107.9 million in household income (0.8 percent of total) in the region in 1991.

Sales Revenues

Gross sales revenues (including resale of domestic and foreign imports and excepting the Trade sector which reports value added) in the region totaled $27.2 billion in 1991. The Mining sector generated about $4.5 billion in sales (16.6 percent of total), followed by the Services sector, the sales from which totaled $4.3 billion (15.8 percent). The Solid Wood & Paper sector generated $516 million (1.9 percent) of sales revenues in the region in 1991.

Role of Forests in the Region

Forests in the owl's range contribute to the regional economy as timber, a commodity input to the Solid Wood & Paper sector, and nontimber, a recreation resource and contributor to quality of life. The impacts created by commodity uses are market-based and measurable. The second set of impacts are partially nonmarket in nature, and are acknowledged to exist but often are difficult to quantify.

Timber Resources

Few timber harvest data are available for non-Federal lands in the region. The following analysis relates to timber harvest from Forest Service land, unless otherwise noted. Forest Service timber statistics for the Southwestern Region (includes all of Arizona and New Mexico) were used, and thus reflect an area slightly different than the region included in critical habitat. (The Southwestern Region statistics exclude the three counties in Colorado and Utah, and they include more than a dozen counties in Arizona and New Mexico outside the region).

During the last 20 years, timber harvest in the Southwestern Region exhibited two distinct periods, punctuated by the national recession in the early 1980s. From 1975 to 1980, harvest of all timber species averaged 378 million board feet (MMBF) annually. From 1983 to 1989, annual harvest averaged 460 MMBF. Timber harvests declined sharply in 1990 and again in 1993 as changes in forest management policies occurred. In 1990, the Forest Service projected a peak in employment in softwood lumber and plywood industries in the Rocky Mountain region (includes 12 States from Montana to New Mexico) by the turn of the century, with a steady decline in employment thereafter. The Forest Service forecast identified reduced harvest potential and the continued implementation of labor-saving technology as bases for the decline. Timber harvest from the Southwestern Region totaled 141 MMBF in 1993. The Southwestern Region supplied about 5.0 percent of the volume of timber harvested from the western U.S. during the last decade, ranging from 3.5 percent in 1993 (141 MMBF harvested from Arizona and New Mexico) to 5.9 percent in 1992.

The average price of timber harvested from Forest Service land has varied widely since 1975, but it has risen since 1990 (prices not adjusted for inflation). Timber price averaged $48/thousand board feet (MBF) from 1975 to 1990, before doubling to $103/MBF in 1993. Through the first nine months of 1994, 133 MMBF had been harvested with an average price of $113/MBF.

Employment

Timber cutting in the region directly provides employment in timber harvesting and processing industries. Employment also is generated indirectly in firms providing services and supplies to timber-related industries and their employees.

State-wide direct employment in wood industries in Arizona and New Mexico totaled 9,800 jobs in 1990. Direct employment in Solid Wood and Paper industries in the region totaled nearly 4,800 full- and part-time workers in 1991, just over one percent of the total jobs in the region. Sawmills provided the most jobs among Wood industries in 1991, followed by Logging Camps.

Household Income

Household income generated by the Solid Wood and Paper sector in the region totaled approximately $108 million in 1991, less than one percent of the $13.9 billion total household income in the region. Sawmills provided $40 million in household income in 1991 (37 percent of the Solid Wood and Paper sector's total in the region), followed by paper mills with $29 million (27 percent). Logging camps and millwork industries each provided about $11 million in household income in 1991.

Nontimber Forest Uses

Forests in the region support a variety of uses in addition to providing raw materials for wood and paper industries. Recreation, biological diversity, water quality protection, and intrinsic benefits all are generated by forests in the owl range. Some of these activities contribute directly to the regional economy; others are nonmarket impacts that benefit the public without affecting the market economy.

Reduced timber harvest on Federal land may improve natural resource-based recreational opportunities in the owl range if public access is not significantly affected. Recreation activities that depend on water quality (fishing, swimming, and boating), the presence and abundance of wildlife (wildlife viewing and nature study), and the general quality of forest surroundings (motorized and nonmotorized travel for sightseeing, camping, and picnicking) may increase in frequency and value with improved forest quality.

Spending on outdoor recreation by nonresidents brings money into the economy of the region. If the quality of natural resources declines, total spending by residents of the region is unlikely to change significantly; rather, spending will be redistributed from recreation to nonrecreation activities, or residents may increase recreation outside the region. In either case, the reduced quality of natural resources is likely to result in lower recreation expenditures in the region. That portion of spending that relocates outside the region represents a loss of economic activity due to the degradation of natural resources.

Recreational fishing occurred frequently throughout the region in 1991. Approximately 639,000 anglers fished in the region in 1991, recording nearly 4.9 millon angler days. These anglers spent about $50.42 per day, or $245.3 million in the region in 1991. About 196,000 anglers (31 percent) were nonresidents who fished 1.2 million angler days (24 percent) and spent about $88.17 per day, or $104.1 million (44 percent). More than 440,000 resident anglers averaged about $38.32 spending per day during 3.7 million angler days to record $141.2 million total spending.

Net benefits due to recreational fishing can be estimated for these fishing trips. Walsh et al. (1990) summarized net economic benefits for 39 coldwater fishing trips and found

these averaged about $30.62 per day in 1988. Assuming a per-day value of $36.69 ($30.62 adjusted for inflation to 1991 dollars), the 4.9 million fishing-days provided an estimated annual consumer surplus to anglers of $179.8 million in 1991.

Recreational hunting was pursued by 240,000 participants during 1991. These hunters recorded about 1.9 million days while hunting in the region, and spent about $29.49 per day, or $56.0 million during the year. About 48,000 participants (20 percent of total) were nonresidents who hunted 278,000 days (15 percent), averaging about $85.93 per day in expenditures, or $23.9 million annually (43 percent). The 192,000 resident hunters recorded 1.6 million days and spent $19.71 per day, or $31.6 million for the year.

Net benefits from recreational hunting can be estimated for these trips. Walsh et al. (1990) summarized net economic benefits for big-game and small-game hunting. Big-game hunting estimates in 1990 for net value per person per day averaged $45.47 while small-game hunting averaged $30.82. Assuming a daily value for hunting of $49.37 (inflation-adjusted weighted average of big- and small-game hunting), the 1.9 million days provided an estimated annual consumer surplus to hunters of $93.8 million.

Throughout the region in 1991, 884,000 participants observed, photographed, and fed wildlife. Nonresident participants numbered 340,000 (38 percent), while 544,000 participants lived in the region. In total, 4.6 million trips occurred during 7.1 million days in 1991 involving nonconsumptive wildlife activities.

These 884,000 participants spent an average $57.62 per day on nonconsumptive wildlife activities, for a total $50.9 million in 1991. These expenses included items such as field guides, binoculars and spotting scopes, cameras and accessories, bird seed, and feeder boxes. Net benefits can be estimated using the average of $22.20 per person per day obtained by Walsh et al. (1990) for wildlife observation. In 1991, the 7.1 million participant-days, at $26.60 per day ($22.20 adjusted for inflation to 1991 dollars) generated total net benefits for the region of $188.9 million.

A national survey sponsored by the Forest Service in April 1994 found there is strong support for conservation of public forests and preservation of threatened and endangered species. The survey results indicate the public's support for reduced commercial and recreation uses and increased conservation uses of national forests. When asked whether "threatened and endangered species in American public forests and grasslands should be protected even if it has a negative economic impact on U.S. citizens," 61 percent of the survey respondents agreed or strongly agreed, while 24 percent disagreed or strongly disagreed. A larger majority (79 percent) agreed or strongly agreed with the statement "(l)ong term health of public forest land should not be compromised by the short term need for natural resources."

The survey indicates the environmental importance of the public lands over commercial uses and concern for future impacts of public forest uses. Eighty-two percent of respondents agreed that "(t)he primary purpose of managing public forests is to maintain a healthy environment." The statement "(t)he consumer needs of the American public should be satisfied even if the natural resources on public forests are eventually depleted" elicited disagreement from 73 percent of respondents. Ninety percent of survey participants agreed or strongly agreed that "(t)he Federal government has the responsibility of conserving public forest resources for future generations," and 80 percent agreed that "(t)he need for the conservation of natural resources on public forest lands will increase in the 21st century."

Economic Consequences of Designating Critical Habitat for the Mexican Spotted Owl

The Service has identified commercial timber harvest as the primary activity to be curtailed by proposed critical habitat designation, and concluded that activities such as recreational uses, cutting firewood for personal use, and surface disturbances (e.g., minerals extraction) that do not affect standing timber will not be affected by the proposed action. The time constraints under which the Economic Analysis was conducted allowed no independent estimates of timber harvest and little verification of agency responses. With few exceptions, therefore, the economic consequences are based on projections from the respondents outlined below.

Agency Responses

Three scenarios were presented to more than 80 Federal, State, county, and Tribal agencies by the Service in the request for information on economic impacts resulting from the proposed critical habitat designation. Two of the three centered on impacts resulting from changes to timber harvest volumes. "Alternative 1" was defined as the current management guidelines or baseline harvest, "Alternative 2" described the implementation of the draft Recovery Plan, and "Alternative 3" defined additional restrictions associated with the proposed designation of critical habitat above those described in the draft Recovery Plan. Therefore, the Economic Analysis estimates the reduction in timber harvest and accompanying costs in incremental steps, first from baseline harvest to allowable harvest under the draft Recovery Plan and then from that level to allowable harvest with critical habitat designation in place. The Economic Analysis also includes a measurement of impacts that would result from the critical habitat designation if the draft Recovery plan were not implemented, which essentially are the combined impacts on timber harvest under the draft Recovery Plan and critical habitat designation. This range of alternatives was presented to allow the Economic Analysis to fully consider the entire range of economic impacts that could result from the various management approaches to timber harvest.

During the comment period following publication of the proposed rule, there were numerous discussions within and between the Service and the Forest Service regarding various criteria to be used to determine potential effects to the owl and its critical habitat from timber harvest. As a result, Region 2 of the Service issued an interim policy on April 14, 1995, to clarify how section 7 consultations would be conducted. The interim policy stated, "* * * any activity in compliance with the draft recovery plan should be considered insignificant in terms of effects on the species' recovery and survival." and therefore would not be required to undergo formal section 7 consultation. In essence, the policy made protective measures under the draft Recovery Plan and the proposed critical habitat designation equivalent; no additional restrictions would be applied within critical habitat units. Therefore, in the economic analysis, the costs attributable to critical habitat designation in areas managed to implement the Recovery Plan reflect a worst-case scenario, and are greater than what is expected under the interim policy. The costs resulting from the critical habitat designation are expected to be equivalent to those predicted under the draft Recovery Plan. The impacts on timber harvest within the region from the proposed action are presented in Table 2.

TABLE 2.—REDUCTIONS IN TIMBER HARVEST (IN THOUSAND BOARD FEET) FROM MANAGEMENT ALTERNATIVES

	Baseline level	Enaction of the proposed recovery plan	Critical habitat after enaction of the proposed recovery plan	Critical habitat without enaction of the proposed recovery plan
Non-Tribal Timber Harvest:				
Northeast	14,800	(3,400)	(3,400)	(6,800)
Southeast	1,500	(800)	(0)	(800)
West	57,700	(42,200)	(6,800)	(49,000)
Total	74,000	(46,400)	(10,200)	(56,000)
Tribal Timber Harvest:				
Northeast	3,600	(2,700)	(500)	(3,200)
Southeast	6,100	(4,400)	(700)	(5,100)
West	18,700	(10,800)	(7,700)	(17,800)
Total	28,400	(17,900)	(8,200)	(26,100)
Total Timber Harvest:				
Northeast	18,100	(6,100)	(3,900)	(10,000)
Southeast	7,600	(5,200)	(700)	(5,900)
West	76,400	(53,000)	(13,800)	(66,800)
Total	102,400	(64,300)	(18,400)	(82,700)

The following Federal agencies and Tribes responded to the Service's request to estimate impacts resulting from designating critical habitat as proposed.

The Acting Area Director of the Phoenix office of the Bureau of Indian Affairs (BIA) objected to the proposal to designate critical habitat on Tribal lands as "contrary to policy direction and principles" of standing agreements. Information he provided regarding possible impacts to the San Carlos Apache Tribe is described below.

The Acting Area Director of the Albuquerque office of the BIA objected to the proposal to designate critical habitat on Tribal lands for several primarily biological reasons. He estimated the impacts of the proposed critical habitat designation on the Jicarilla Apache, Mescalero Apache, and Southern Ute Tribes. His reply regarding timber harvest levels is also described below.

The Bureau of Land Management's (BLM) State offices in Arizona and New Mexico did not foresee economic or other impacts due to the proposed critical habitat designation. The BLM'S Colorado State office identified one area of potential timber harvest, but stated "there are no current or future plans to harvest or conduct forest operations in the area." The area, if accessible, could yield 1.2 MMBF of timber. Because there are no plans to harvest this timber due to access problems, this timber volume was not included in the impact modeling. The Utah State office did not respond to the Service's request for data.

The NPS administers two sites (Canyon de Chelly and Walnut Canyon National Monument) in its Southwest Region that may be affected by the proposed critical habitat designation. The NPS Regional Director identified potential impacts to Native American residents at Canyon de Chelly, but was unable to quantify the effects or estimate the probability of the impacts being realized.

As requested, the Southwestern Region of the Forest Service provided three levels of timber harvest for each National Forest affected by the proposed critical habitat designation.

The Regional Forester from the Rocky Mountain Region (includes Colorado) foresaw no impacts due to critical habitat designation as proposed because no harvest is planned in CHUs.

The Intermountain Region of the Forest Service (includes Utah) did not expect Alternative 2 to impact timber sales, except in very limited areas (along the mesa rims) where mixed conifer occurs. With respect to Alternative 3, an Acting Forest Supervisor responded "it is difficult to determine the costs and benefits from implementing these prescriptions because similar guidelines are already being considered in order to maintain ecosystem complexity and other rare species."

The Acting Area Director of the Albuquerque Office of the BIA estimated the effect of the proposed designation on the Jicarilla Apache, Mescalero Apache, and Southern Ute Tribes. The BIA estimated that, currently, 23.5 MMBF are harvested annually from 9,700 acres (2,400 BF/acre), with a value of $7.8 million ($332/MBF). He stressed that Tribes have high unemployment and low per capita annual income, and that 60 percent of the jobs generated by timber harvest on the Reservations are held by Tribal members.

The BIA estimated that 184 jobs and $3.7 million in annual payroll ($20,100 per job annually) would be lost by implementing the proposed Recovery Plan and the proposed designation of critical habitat. The BIA's estimate of harvest quantity impacts to the three Tribes was difficult to evaluate for several reasons: (1) Alternative 1 was defined as the current management, yet the BIA predicted a reduction of harvest from present levels; (2) harvest levels under each alternative were not specified—impacts were stated in terms of protected activity centers (PACs), but the number of PACs was not specified; and (3) the effects for all three Tribes were aggregated. Timber harvests under each alternative were based on reduction patterns derived from other respondents (primarily the Forest Service).

The Southern Ute Tribe's timber harvest averaged about 1.6 MMBF during the last six years. Based on the Tribe's estimate of seven jobs per MMBF, just over 11 jobs per year were

created in the Solid Wood & Paper sector. Administration and reclamation efforts employ another six to nine persons annually, several of whom are Tribal members. For this analysis these are treated as direct jobs in the Solid Wood & Paper sector. The Tribe estimates critical habitat designation will affect about 75 percent of the Southern Ute timber harvest, impacting 1.4 MMBF (allowable harvest) and presumably a similar portion of jobs. This represents a slight increase of job losses (and a corresponding impact to income and revenues) from impacts originally estimated using data from the BIA.

The impact analysis assumes the timber harvested was processed in the counties according to the BIA reply. Two of the mills were located in Otero County, at which the timber (13.5 MMBF) from the Mescalero Apache Reservation was assumed to be processed. The remaining 10 MMBF were processed in Rio Arriba County and assumed to be harvested from the Southern Ute or Jicarilla Apache Reservations.

The current timber program of the Navajo Nation produced 12.4 MMBF in 1994 from the Chuska/Tsaile forest (within proposed critical habitat), and 6.7 MMBF from the Defiance Plateau forest (outside proposed critical habitat). This 19.1 MMBF of annual timber harvest was processed by the Navajo Forest Products Industry (NFPI) mill in Navajo, New Mexico, which provided 130 direct jobs before its temporary closure in July 1994 (approximately seven jobs per MMBF). The NFPI mill closed in July 1994 because the Navajo Nation Ten Year Forest Management Plan [FMP] was not complete. All timber harvest on the Navajo Nation has ceased until the FMP is complete, which is estimated to be around June or July 1996. The Navajo Nation reports that "18 million board feet is needed for NFPI to operate feasibly" and that critical habitat designation would reduce timber harvest below this level. The NFPI attempted to remain open (prior to closing in mid-1994) by purchasing timber outside of the Navajo Nation, but was unable to do so. Current Navajo Nation policies prohibit selling timber off the Reservation.

The Navajo Nation estimated that implementing the proposed Recovery Plan (Alternative 2) would reduce timber harvest from the Chuska/Tsaile forest to 6.2 MMBF (50 percent reduction), reducing potential timber harvest to 12.9 MMBF annually (including the undiminished harvest from the Defiance Plateau), a harvest level too low for the NFPI mill to operate. According to the Tribe, designating critical habitat as proposed will eliminate all harvest from the Chuska/Tsaile forest, thereby reducing the Nation's potential timber harvest to 6.7 MMBF (the harvest from the Defiance Plateau), also too low for the NFPI mill to operate profitably.

Per capita income in the Navajo Nation totaled $5,300 in 1994, much lower than the national average of $18,700 in 1990 (U.S. Bureau of the Census 1994). Unemployment in the Navajo Nation measured nearly 39 percent in 1992, sharply higher than the 28 percent rate in 1990, and matching the 39 percent unemployment in 1980. The Solid Wood & Paper sector provided 1.5 percent of employment to the Navajo Nation in 1992, a level slightly higher than regional (1.1 percent) and national (1.2 percent) proportions of the preceding year. Information provided by the Navajo Nation indicates the proportion of employment of wood-related employment was considerably lower by 1994. The NFPI mill was the 10th largest employer in the Navajo Nation before its temporary closure in mid-1994.

For purposes of the analysis, the sequence of implementation of management alternatives is essential to estimating the effects of critical habitat designation to the Navajo Nation. If the Recovery Plan is implemented *before* critical habitat designation (Alternative 2), the Nation's timber harvest already will have fallen to 12.9 MMBF, resulting in the closure of NFPI. Because the mill already will have closed (or not reopened) due to insufficient harvest, and timber is not sold off the Reservation, there would be no incremental effect of the designation. However, if critical habitat were designated first, the Navajo Nation timber harvest would fall from 19.1 MMBF to 6.7 MMBF—and the effects of the mill closure (or failure to reopen) would be attributable to the designation. These scenarios assume the mill's closure is temporary and will reopen upon approval of the FMP.

The proposed designation was estimated to disrupt timber availability to the San Carlos Apache sawmill, thereby possibly causing the enterprise's closure and loss of 31 Tribal jobs. Closing the sawmill would "impair economic development [of the Tribe] beyond the sawmill enterprise." Neither the BIA nor the San Carlos Apache Tribe provided estimates of timber harvest under the three scenarios. The impact analysis assumes that harvest levels on the San Carlos Reservation are affected in proportions similar to those in other forests in the region.

Several state or county agencies provided information to the Service, as described below.

The Arizona Game and Fish Department concluded that it would not be affected by the proposed action.

The Arizona State Land Department (ASLD) identified four timber product sales that might be affected by designating critical habitat as proposed for the owl, one of which is planned for sale in 1995 and three of which will be sold in consecutive years beginning in 2007. According to the ASLD, none of the sales is "likely to adversely affect the MSO." The impact analysis reflects the ASLD response that designating critical habitat for the owl will not affect timber harvest on Arizona State lands.

Graham County, Arizona estimated direct, indirect, and induced impacts totaling nearly $37 million due to factors ranging from reduced Federal timber harvest to decreased livestock grazing to canceled campground expansions. The impacts identified by the County included effects from spending multipliers, lost wages from displaced workers, and forfeited county share of Federal receipts. Because most impacts were site-specific the Arizona Ecological Services State Office reviewed the County's projections, and provided the following comments:

(1) The County estimated impacts of $24 million due to canceling construction-expansion on 8.6 acres at the Steward Observatory. Informal consultations in November 1993 on a portion of the 24-acre Observatory site had resulted in a "'not likely to adversely affect'" finding for the owl. If the Service conducted a section 7 consultation on the Steward Observatory project, it would be highly unlikely that an "adverse modification" determination would be made for these proposed actions; therefore only discretionary recommendations would be given by the Service. The action agency may choose whether or not to implement these recommendations.

(2) The County estimated impacts of $12 million due to canceling construction activities at Discovery Park, including a new visitor center and its access road. The visitor center is understood to be planned outside forested habitat, however, and therefore will not have an effect on proposed critical habitat. Repaving Discovery Trail in its existing road bed would not cause direct loss of critical habitat, while widening or realignment of the road would likely cause some habitat loss, but it is highly unlikely that enough habitat would be affected for

adverse modification to occur. Thus, only discretionary recommendations would likely be given.

(3) Impacts to timber harvesting (Federal timber and firewood use) will cost Graham County $78,000 annually in gross timber sale revenues, according to the County. Federal impacts are discussed above. Firewood harvest should not be impacted by designating critical habitat, and extractive use of small and mid-diameter trees is not a component that has been limited as a result of Service review and recommendations. In fact, projects (such as thinning and prescribed fire) that have sought to address some of the structural changes resulting in increased fire danger have been strongly encouraged by the Service.

(4) Graham County estimated impacts of $179,000 annually to electronic sites at Heliograph Peak due to the "potential to adversely affect the communications industry." The existing electronic sites at Heliograph Peak are on a small unforested site, however, and given the site characteristics it would appear that no habitat modifying activity would be necessary to continue to operate this facility. There thus should be no effect attributable to critical habitat.

(5) The County estimated impacts to grazing would cost Graham County $445,000 annually. However, at this time there is no direct evidence that grazing adversely affects Mexican spotted owl critical habitat, and thus grazing allotments should not be affected by critical habitat designation. Further, the Service has not required discontinuation of grazing to protect the owl in any action related to critical habitat designation.

(6) The County estimated canceling expansions at three campgrounds would cause impacts of more than $120,000 annually. The sites may be affected by critical habitat designation, depending on their location and size. One of the three campgrounds identified by the County was issued an incidental take permit during previous formal consultations. The other two campgrounds could, but are not likely to, adversely modify critical habitat.

Graham County likely will incur added costs due to project redesigns or added costs of consultation, but these presently are not quantifiable. The impact to Graham County from reduced commercial timber harvest on Federal land as identified by the Forest Service is described below under "Economic Impacts and Effects."

Assessing the potential impacts to private landowners requires separation of the effects due to listing the owl and those of designation of critical habitat. Activities on private lands are affected by the designation only when a Federal nexus exists, such as mandatory authorization or permits, or when Federal funding is involved. Given that commercial timber harvest is the primary activity affected by the designation, private landowners are unlikely to be impacted by the proposal. None of the Federal agencies contacted by the Service identified ways in which private landowners might be affected indirectly by the proposed action.

Economic Impacts and Effects

The following are estimates of short-term consequences of the proposed designation of critical habitat for the Mexican spotted owl. Economic costs are created when the losses of income and employment are not temporary. Historically, a number of small communities in the region have received substantial employment and income generated by timber industries. Reducing a community's reliance on timber as a commodity to one based on other economic activity may negatively impact some communities.

From the agencies' responses, two levels of employment impacts were estimated: (1) Job losses attributable to implementing the proposed Recovery Plan, and (2) job losses attributable to the proposed critical habitat designation following the enactment of the proposed Recovery Plan. If the proposed Recovery Plan is not implemented the impacts from critical habitat designation as proposed would be the combined impacts of Alternatives 2 and 3. Once again, these estimates are based on an assumption that critical habitat designation has effects over and above those of implementing a recovery plan. Under current consultation policies, this assumption causes an overestimate of the impacts of designation. Short-term regional economic consequences are presented in Table 3.

Employment

Curtailing timber harvest due to the proposed designation of critical habitat will result in job losses in the short run, primarily in the timber industry. In addition to those jobs "directly" affected by reduced timber harvest, others will lose employment "indirectly" due to the reduced spending by employees and firms in the Solid Wood and Paper sector. To gauge the proportional impact, direct employment losses should be compared to employment in the Solid Wood and Paper sector, while total impacts (direct plus indirect) should be compared to employment in all sectors (Table 3).

The economy of the region would lose 366 jobs (0.08 percent of total regional employment) from implementation of the draft Recovery Plan. Of these, 271 jobs are direct employment in the Solid Wood and Paper sector (5.7 percent of 1991 employment in wood industries) and 94 are jobs in other sectors. Reduced Tribal timber harvest would account for the loss of 156 jobs of the 271 jobs lost in the Solid Wood and Paper sector (58 percent of direct employment losses), and 26 of 94 jobs lost in other sectors (28 percent of indirect employment losses).

The economy of the region would lose 147 jobs (0.03 percent of total regional employment), if the proposed critical habitat designation follows implementation of the proposed Recovery Plan. Of these, 120 jobs are direct employment in the Solid Wood and Paper sector (2.5 percent of 1991 employment in wood industries), and 27 are jobs in other sectors. Reduced Tribal timber harvest would account for the loss of 95 of 120 jobs lost in the Solid Wood and Paper sector (80 percent of direct employment losses), and 12 of 27 jobs lost in other sectors (44 percent of indirect employment losses).

The economy of the region would lose 513 jobs (0.11 percent of total regional employment), if critical habitat is designated without the proposed Recovery Plan having been implemented. Of these, 391 jobs are direct employment in the Solid Wood and Paper sector (8.1 percent of 1991 employment in wood industries), and 121 are jobs in other sectors. Reduced Tribal timber harvest would account for the loss of 250 of 391 jobs in the Solid Wood and Paper sector (64 percent of direct employment losses), and 37 of 121 jobs lost in other sectors (30 percent of indirect employment losses).

Household Income

The household income of some residents in the region will decline in the short run due to the proposed action. The households at greatest risk of income loss are those of employees of the timber industries. As timber industries reduce spending, the employment and income levels of other nontimber firms will also be negatively affected. Household income totaled $13.9 billion for the region in 1991 (Table 3).

TABLE 3.—REGION-WIDE SHORT-TERM EMPLOYMENT LOSSES AND REDUCTIONS IN HOUSEHOLD INCOME AND SALES REVENUES FROM MANAGEMENT ALTERNATIVES

	Baseline level	Enaction of the proposed recovery plan	Critical habitat after enaction of the proposed recovery plan	Critical habitat without enaction of the proposed recovery plan
Employment (in full- and part-time jobs):				
All sectors	451,050	(366)	(147)	(513)
Solid wood and paper sectors	4,770	(271)	(120)	(391)
Household income (in $ million):				
All sectors	13,939	(4.7)	(1.3)	(6.0)
Solid wood and paper sectors	108	(3.3)	(0.9)	(4.2)
Sales revenues (in $ million):				
All sectors	27,189	(20.7)	(5.9)	(26.5)
Solid wood and paper sectors	516	(15.9)	(4.5)	(20.4)

The economy of the region would lose $4.7 million in household income (0.03 percent of total regional household income) from implementation of the proposed Recovery Plan. Of this amount, $3.3 million would be lost from the Solid Wood and Paper sector (3.0 percent of regional household income from the sector), and $1.4 million from other sectors. The loss of household income due to reduced Tribal timber harvest would total $1.4 million (30 percent of tribal household income lost).

The economy of the region would lose $1.3 million household income (0.01 percent of total regional household income), if the proposed critical habitat designation follows implementation of the proposed Recovery Plan. Losses from the Solid Wood and Paper sectors would total $0.9 million (0.8 percent of sector total), and $0.4 million from other sectors. Reduced Tribal timber harvest would account for the loss of $0.7 million (50 percent of tribal household income lost).

The economy of the region would lose $6.0 million household income (0.04 percent of total regional household income) from designating critical habitat if the proposed Recovery Plan has not been implemented. Of this amount, $4.2 million (3.8 percent of sector total household income) would be from the Solid Wood and Paper sector, and $1.8 million from nonwood industries. The household income lost from reduced Tribal timber harvest would total $2.0 million in (33 percent of tribal household income lost).

Sales Revenues

As timber harvests are curtailed throughout the region, business activity dependent on timber industries will slacken in the short run as well. Local governments' tax receipts may fall accordingly in the short-term. Total gross sales in the region totaled $27,189 million in 1991 (excepting the Trade sector, which reports value added), including gross sales revenues in the Solid Wood and Paper sector totaling $516 million (Table 3).

Gross sales revenues in the region economy would fall $20.7 million (0.08 percent of total regional sales revenues) from implementation of the proposed Recovery Plan. Of this, $15.9 million revenues would be lost from the Solid Wood and Paper sector (3.1 percent of 1991 sales by wood industries), and $4.8 million would be lost from other sectors.

Gross sales revenues in the economy of the region would fall $5.9 million (0.02 percent of total regional sales revenues), if the proposed critical habitat designation follows implementation of the proposed Recovery Plan. Of this, $4.5 million revenues would be lost from wood industries (0.9 percent of 1991 sales revenues by the Solid Wood and Paper sector), and $1.4 million of the reduction would be borne by nonwood sectors.

The economy of the region would experience a loss of $26.5 million of gross sales revenues (0.10 percent of total regional gross sales) if critical habitat is designated without enacting the proposed Recovery Plan. Of this amount, gross sales in the Solid Wood and Paper sector would fall by $20.4 million (3.9 percent of 1991 sales revenues in wood industries), and $6.1 million would be lost from other sectors.

Impacts to Local Communities and Counties

The proposed action could affect smaller communities and counties whose economies are closely tied to timber harvests. Most of the impacts that will occur from efforts to protect the owl probably have occurred already, brought about by listing of the owl and other species and by other management changes within the Forest Service. Nonetheless, the proposed critical habitat designation can further impact these counties by reducing taxable sales revenues and curtailing payments from Federal agencies.

Forest Service payments to counties may be reduced by the proposed critical habitat designation. The Forest Service pays 25 percent of its timber and other receipts to counties for support of county roads and schools. Most of the receipts in the region are from timber harvest. Forest Service receipts from timber harvest totaled about $32 million in 1989 and dropped to $22 million in 1993. Counties' shares totaled about $8 million in 1989 and about $5.4 million in 1993.

However, the actual impact to communities from reductions in Forest Service payments may be less than it seems at first. For most communities, reductions in payments from the Forest Service are offset by increases in other payments. Counties receive funds from the Federal government through payments in lieu of taxes (PILT). Among the factors that determine the amount of PILT paid to counties is Forest Service receipts. As Forest Service receipts decline, PILT payments increase. The impact on most counties is small, although a few counties in the region receive a substantial share of funds from the Forest Service and decreased timber receipts may not be offset entirely by higher PILT payments.

Catron County is one of the counties that receive a substantial share of Forest Service payments. In 1993, Catron County received $209,000 in county road and school funds from the Forest Service, an amount which would not be fully compensated for by PILT if it is lost. While it is unlikely that all of the Forest Service payments would be

eliminated, this amount is at risk in Catron County. Coconino County also is at risk from reduced timber harvests. The county received about $2.5 million in 1993 from Forest Service timber sales receipts. As with Catron County, a portion of these payments is at risk of not being replaced with PILT increases.

Nonmarket Benefits and Costs

Society stands to realize benefits and costs from the proposed designation of critical habitat for the owl. Economic benefits and costs are created when the effects of designation are not temporary, or do not adjust after the economy's transition. Benefits may include sustained biodiversity of the region, heightened intrinsic benefits from ensuring future environmental quality, and increases in the value of recreation opportunities. According to the Forest Service, "Areas managed for Mexican spotted owl and northern goshawk habitat will have beneficial effects on the soil, water, and air resources due to restrictions on ground-disturbing activities." Costs may include increased expenses related to fire danger from limitations on some timber harvest activities, reduction of income to some sectors of the economy, and impact on tax receipts.

Arguments persist as to the economic sustainability of Federal timber programs in Arizona and New Mexico: critics point to Forest Service reports that show timber harvests in the region are conducted below cost, and claim harvest reductions will reduce losses to the U.S. Treasury. Supporters counter that Federal timber programs sustain the economies of rural communities and reduce the risk of stand replacing forest fires. An independent evaluation was not conducted for this analysis.

The nonmarket benefits accruing to society from species preservation are sometimes costly to quantify. Costs, in contrast, are more easily estimable and attract notice because effects often are market-based and localized. To properly compare benefits and costs, the full range of each must be considered. Benefits such as preserving species and increased environmental quality accrue to a large regional or national constituency. Costs follow an opposite trend; they are most significant locally but diminish rapidly as the focus becomes more national in scale. Data are not available at this time to estimate specifically the nonmarket costs and benefits of the designation.

One nonmarket benefit of the proposed action is the complementary impact on other listed and candidate species. The New Mexico Ecological Services State Office of the Service has described the benefits related to biological diversity that may result from the proposed critical habitat designation for the owl. The description is provided in the complete Economic Analysis.

Valuing Species and Their Habitat

Nonmarket economic benefits stemming from ecological preservation have not been quantified for the proposed action. However, other research has estimated benefits gained from preserving rare or endangered species and their habitat.

Estimates of species and habitat values, usually stated in terms of "willingness to pay per household," range from $5.55/year per household (1984 dollars) for preserving habitat of the striped shiner to $86.32/year per household (1991 dollars) to preserve northern spotted owls and their old-growth habitat in the Pacific Northwest. These figures could be extrapolated from their sample sizes to a range of between $12 million per year for the striped shiner to residents of Wisconsin, and $8.287 billion per year for the northern spotted owl to households nationwide. Residents might be expected to be willing to pay within this range to preserve the Mexican spotted owl and its habitat.

Other empirical research offers evidence of nonmarket benefits of preserving components of ecological systems, including preventing forests from being developed, preserving air quality in parklands in the American Southwest, protecting spotted owls and old-growth forests in the Pacific Northwest, preserving river basins and preserving open space and ranchland from urbanization. These studies provide insights about public values for the presence (existence value), availability for future use (option value), and ability to preserve the resource for future generations (bequest value).

Nonconsumptive and recreation uses of the owl, such as viewing and photography, may be limited due to its nocturnal nature. However, protection of the owl's habitat may provide for recreation uses in the region, including increased enjoyment of a nonlogged environment and enhanced hiking and camping, photography, bird watching, and similar nonconsumptive uses.

Fishing, picnicking, horseback riding, and backpacking are examples of outdoor recreation that may be enjoyed in the range of the owl. These activities are not always sold in identifiable markets and thus their value must be quantified indirectly. Increased economic value from recreation can be observed from their contributions to sales and employment in sectors that provide outdoor recreationists with goods and services. In addition, "net value" to the consumer measures additional economic value after all costs to the consumer are subtracted. One survey-based study has estimated values on these types of outdoor recreation at between $17 and $49 per person per day (Walsh et al. 1990). These studies conclude that millions of dollars of net benefits are created annually for participants in these recreational activities.

The increased threat of fire is a potential cost of designation. Curtailing timber harvest within CHUs may cause an increase in tree density and fuel loads within the forest. This can increase fire danger, decreasing the value of the forests and increasing the threat to those living or recreating in or near forests. This threat may be mitigated in part through removal of the timber creating the danger.

According to the Forest Service (USDA 1994) fire suppression has allowed buildup of natural fuels, increasing the probability of fire spread and intensity. The Forest Service states that fire potential is affected by management activities—changing the age, distribution, density, and species selection can impact how fire affects the forest and habitat for the owl. The Forest Service supports proactive management practices such as prescribed fire and thinning treatments. A major obstacle preventing thinning may be the cost, as thinning has been supported by receipts from timber harvest.

The Service expressed concern for fire and other forest health issues when the owl was listed, and acknowledged that fire suppression has resulted in large tracts of small trees at high densities that are now susceptible to wildfires. The Service supports thinning and prescribed fire used to control the increased fire danger. The increased threat of fire danger is a factor related to forest management practices of the past, including fire suppression and timber harvest regimes in the region. The analysis does not assess specifically the economic consequences of increased fire threat.

The total value of social benefits of species preservation has been shown to be substantial in a variety of studies. The value of these benefits is expected to continue to rise over time as the number of households, relative to species and natural areas, increases. Given the information at hand, and without better understanding the network of consequences from management alternatives, it is not possible to disaggregate the sum of benefits to identify that portion directly attributable to the designation.

Exclusion Process and Indian Lands

The maintenance of stable, self-sustaining, and well-distributed populations of Mexican spotted owls throughout their range is dependent upon habitat quality and its ability to support clusters of successfully reproducing owls that are sufficiently integrated to avoid or reduce demographic and/or genetic problems through time. Native American lands upon which units of critical habitat were designated were considered in a hierarchial fashion, first in terms of the quality of habitat and size of the cluster of owl territories, then for their relationship to surrounding units, and ultimately for their contribution to groups of units in larger, regional populations.

Native American lands occur in four general areas within the range of the Mexican spotted owl: the Four Corners Area where the states of Arizona, New Mexico, Utah, and Colorado meet; the Mogollon Rim Area extending in an arc across Arizona and New Mexico; the Western Basin and Range encompassing a small portion of southwestern New Mexico and the majority of southern Arizona; and the Eastern Basin and Range of central and eastern New Mexico.

The majority of the Four Corners Area is dominated by Great Basin desert scrub, grassland and woodland at lower elevations, and Petran montane conifer forests at higher elevations. Riparian vegetation is primarily confined to a relatively narrow band along water courses and is most apparent along major streams. Owl habitat is found in both montane forests and minimally or non-forested canyon habitats.

Navajo Nation

The habitat of the Mexican spotted owl on lands of the Navajo Reservation lie within the Chuska and Carrizo mountains. This region has had very limited survey work, and current records are restricted to 9 locales. The region may be an important demographic link between the subpopulations of owls to the east and southeast, and those owl clusters in the Colorado Plateau further to the northwest.

Due to rugged terrain, habitat in much of the forested and non-forested canyon habitat is expected to be in good condition. The more accessible forested areas on the mesas, the above-canyon flats, and foothills have had considerable overstory removal and are primarily second-growth, particularly on the Defiance Plateau. Even-aged silvicultural management across large management units has resulted in fairly extensive modifications of habitat (typically to those areas most likely to be utilized as foraging habitat).

Continued adverse modification of forest habitat is the greatest threat to habitat occupancy. Thorough application of even-age silviculture to large management units may result in extensive areas lacking minimal amounts of habitat able to sustain occupancy. Demographic persistence and connectivity between the smaller CHUs in the area may be hindered by the compounding factors of naturally disjunct habitat, the potential decrease in immigrants from larger neighboring clusters (AZ–NAIR–1), and the (primarily foraging) forest habitat being converted to young/mid-age and even-age/even-structure condition. The risk of catastrophic habitat loss due to fire at the lower and middle elevations is moderately high.

Critical Habitat Units

AZ–NAIR–1, AZ–NAIR–2, AZ–NAIR–3, AZ–NAIR–4, and AZ–NAIR–5

The CHUs comprise a chain of forested montane and canyon habitats in the Chuska Mountains and the adjacent Carrizo Mountains to the north; additionally units are located at the upper reaches of the Canyon de Chelly drainage system, and the Defiance Plateau.

Voluntary Tribal Conservation Measures

The Service is currently working with the Navajo Nation in the development of a Habitat Conservation Plan and the tribe and BIA are currently working on a 10-year management plan. However, these efforts have not yet culminated in planning documents. Although the Navajo Nation has not provided information concerning management and/or conservation of the Mexican spotted owl on the Reservation, the service understands that no timber harvesting will take place until those documents and the associated NEPA processes are completed, which is estimated to occur in June or July 1996.

Jicarilla Apache Indian Tribe

The Jicarilla Apache Indian Tribe and the Southern Ute Indian Tribe are also located in the Four Corners Area, in close proximity to the Santa Fe National Forest, Carson National Forest, and San Juan National Forest.

The region spans a large area at the interface of the Colorado Plateau and the Southern Rocky Mountains. Habitat ranges from heavily forested canyons and mesas, to rocky canyons with thin conifer/riparian stringers. Many of the territories have a high component of pinyon-juniper woodland in the more xeric areas. Rocky exposures may be an important component of owl habitat even at the close proximity to and influence of Southern Rocky Mountains. Habitat conditions vary between landownership. The habitats in the Southern Ute and the Jicarilla Apache Indian Reservations are managed with selective logging methods in the ponderosa pine stands, and minimal use is made of the mixed conifers that typically occurs on steep slopes. The CHUs on the San Juan and Santa Fe National Forests exhibit even-age/size and minimal mature overstory structure in most of the accessible, lower elevation forest stands. CHUs on the Carson National Forest are not exploited for timber, but are heavily roaded and have a high density of oil and gas well pads in many areas.

The region supports a long string of habitat and CHUs, it is directly connected by mostly forest and woodland habitat to the Jemez Mountains (Santa Fe National Forest) to the south, and less directly connected by woodland and grassland to Bureau of Land Management lands in Utah and Colorado.

Continued adverse modification of forest habitat and high levels of oil and gas development are the greatest localized threats to sustaining or recovering the subpopulation in the region. Demographic recovery and connectivity within the region and between this region and other critical habitat may be hindered by the compounding factors of naturally disjunct habitat, long dispersal distances, and much of the inter-CHU forest habitat being in generally young/mid-age and even-age/even-structure condition. The risk of catastrophic habitat loss due to fire is moderately high at lower and middle elevations.

Critical Habitat Units

NM–JAIR–1, NM–JAIR–2, NM–JAIR–3, NM–JAIR–4, and NM–JAIR–5

The five CHUs within the Jicarilla Apache Indian Reservation run north-south along a series of canyon incised mesas, and lie between the CHUs in the Santa Fe National Forest to the south and the Colorado-New Mexico State line. A parallel north-south series of CHUs in the Jicarilla Ranger District of the Carson National Forest lie 5 to 18 kilometers to the west. The majority of the high-potential breeding habitat (steep slope, mixed conifer) receives little or no timber management, and the

surrounding foraging habitat is managed primarily under uneven-age silviculture. The habitat within the Jicarilla Apache Indian Reservation has had limited survey to date. There are no known owls; however, two historical records exist for the Reservation, and territories and records exist for habitat to the north in Colorado, in the nearby Jicarilla Ranger District of the Carson National Forest, and on the adjacent Archuleta Mesa in NM–BLM–5. NM–JAIR–1 is contiguous to CO–SUIR–3.

Voluntary Tribal Conservation Measures

Informal discussions between the Service and the Jicarilla Game and Fish Department on owl-related issues were initiated during the data collection period for critical habitat development in early summer 1993. Continued discussions led to a mutual recognition of the significant differences between resource management and habitat conditions on federally administered lands and Jicarilla Reservation lands. These differences afforded an opportunity to address the threats identified in the listing proposal through the development of a tribal management plan for the owl. Working independently, the Jicarilla Game and Fish Department developed a draft "Conservation Plan for the Mexican Spotted Owl on the Jicarilla Apache Reservation, New Mexico" and requested review of the document by the Service at a meeting on November 21, 1994. Reviews were conducted and recommendations provided by the Service at that meeting and during subsequent telephone conversations with representatives of the Tribe. On December 16, 1994, the Jicarilla Apache Tribal Council approved the plan and formally submitted it to the Service.

The plan fully incorporates the Service's recommendations for management of critical habitat. These recommendations were adopted, in part, from the recommended guidelines outlined in the Draft Recovery Plan prepared by the Mexican Spotted Owl Recovery Team. In addition, the Jicarilla plan has increased protection in ponderosa pine foraging habitat above those levels identified in the Draft Recovery Plan.

Based on the removal of identified threats to the Mexican spotted owl and on the commitment of the Jicarilla Apache Tribe to enforce the Conservation Plan, the Service has proposed that the lands of the Jicarilla Reservation (101,923 acres within 5 critical habitat units) be deleted from further consideration for designation.

Southern Ute Indian Tribe

CO–SUIR–1, CO–SUIR–2, and CO–SUIR–3

The CHUs comprise a series of mesas with incised canyons. The habitat ranges from minimally forested canyon stringers to heavily forested slopes and mesa-tops. CO–SUIR–1 is contiguous and complementary to habitat in CO–SJNF–1; CO–SUIR–2 is contiguous and complementary to CO–SJNF–2; and CO–SUIR–3 is contiguous and complementary to NM–JAIR–1 and CO–BLM–4. The areas encompassed by the CHUs have not been surveyed, and no owls are known on the Reservation; however, a current record exists on BLM land (NM–BLM–5) across the Colorado-New Mexico State line in contiguous habitat.

Voluntary Tribal Conservation Measures

The Southern Ute Indian Tribe is engaged in continuing discussions with the Service. One of the goals of the discussions has been the development of a Memorandum of Understanding to facilitate cooperation between the Tribe and the Service. In a letter of April 28, 1995, on the proposal to designate critical habitat, the Southern Ute Tribe stated that, once a Memorandum of Understanding is in place, it is anticipated that cooperative efforts can be undertaken to develop mutually acceptable conservation plans for threatened and endangered species. At this time, no conservation plan for the Mexican spotted owl has been provided by the Tribe to the Service.

San Carlos Apache Indian Reservation

Owl habitat on the San Carlos Apache Reservation is located primarily in the Western Basin and Range province, and a portion of the Mogollon Rim area. The province is characterized by numerous mountain ranges that rise abruptly from broad plain-like valleys and basins. Within southern Arizona the mountain ranges are sometimes referred to as the "Sky Islands", and include the Mazatzal Mountains and the Natanes Plateau on the San Carlos Indian Reservation.

The isolated mountain ranges are vegetated by Madrean evergreen/oak woodland and chaparral, Madrean pine/oak forest, and mixed conifer forest; the mountains are surrounded by Sonoran and Chihuahuan desert-scrub.

Other CHUs of this region are administered by the Prescott, Tonto, Apache-Sitgreaves, and Coronado National Forests. The Army administers the lands within Fort Huachuca in the Huachuca Mountains. Although not included within critical habitat units, the Saguaro and the Chiricahua National Monuments also harbor some owl habitat.

Forested owl habitat on the San Carlos Apache Indian Reservation is predominately inaccessible and is in mostly suitable condition. Demographic persistence and connectivity may be hindered by the compounding factors of naturally disjunct habitat and the potential decrease in immigrants from larger neighboring clusters. The risk of catastrophic habitat loss due to wildfire is moderately high throughout the region.

Critical Habitat Units

AZ–SCIR–1, AZ–SCIR–2, and AZ–SCIR–3

The CHUs include fairly rugged forested and canyon habitats. Portions are contiguous with and complementary to habitat in AZ–FAIR–1 and AZ–ASNF–2. The habitat is mostly timber-unsuitable and in suitable habitat condition.

Voluntary Tribal Conservation Measures

Discussions between the Service and the San Carlos Apache Tribe are ongoing but have not yet resulted in the formulation of a conservation plan. Although there is good forested habitat on the reservation, much is inaccessible to timber harvest.

Mescalero Apache Indian Tribe

The Mescalero Indian Reservation encompasses a portion of the Sacramento Mountains, within the Eastern Basin and Range province that includes much of central and eastern New Mexico. The area is characterized by broad, flat basins and relatively isolated mountain ranges. The province includes the Manzano, San Andres, Sacramento, and Guadalupe mountains. The vegetation in the majority of this province is Chihuahuan desert scrub and Great Basin grasslands, with Great Basin woodland and Petran montane conifer forest at higher elevations. The Mescalero Indian Reservation borders sections of the Lincoln National Forest and includes a large area of critical habitat.

Forest habitat within the majority of the Sacramento Mountains had been railroad logged in the early part of the century. The high site productivity of the montane forests allowed for rapid regeneration of much of the owl habitat within 70 to 90 years. Currently, the majority of habitat is in suitable breeding and foraging condition. Habitat on the Mescalero Apache Indian Reservation is managed primarily under an uneven-age (selective) silviculture system. In general, most habitat on the Reservation appears in suitable breeding habitat condition. In some areas, however, the widely applied uneven-age harvest methods appear to have resulted in homogenous stand conditions across the forested landscape. Large areas appear "thinned" and show little structural variance between stands. Stands may retain adequate structure and remain suitable for foraging, and be able to return rapidly to a suitable nesting condition, but at any one time, the lack of any significant amount of suitable nesting habitat may result in large areas subject to intermittent owl occupancy and unable to support breeding pairs.

The Sacramento Mountains support one of the largest owl clusters in the Southwest. Currently, there are 123 established territories on the Lincoln National Forest. There very limited available data on population size or owl occupancy for the Mescalero Apache Indian Reservation; however, the proximity of the Reservation lands to the Lincoln National Forest would lend support to the expectation of a significant number of territories (approximately 100) on the Reservation. Applying to this figure the average occupancy rates from the Lincoln National Forest gives an estimate of about 58 territories occupied by pairs, 21 territories occupied by single adults, and 21 unoccupied territories. This figure may be an overestimate, as occupancy rates are expected to be somewhat lower for the habitat patches at the northern end of the range (NM–LINF–1, NM–LINF–2, NM–LINF–3, and NM–LINF–4) due to disjunct habitat patches, small patch size, and relatively greater inter-habitat distances, and perhaps poorer habitat quality.

Continued adverse modification of forest habitat is the greatest threat to habitat occupancy. The area may also play an important role in source/sink dynamics with neighboring clusters. Diminished emigrant rates from the Sacramento Mountains may threaten the viability of the smaller, proximate clusters. The risk of catastrophic habitat loss due to fire at the lower and middle elevations is moderately high.

Critical Habitat Unit

NM–MAIR–1

The CHU is a large block of habitat comprising most of the northern half of the Sacramento Mountains. It is contiguous to NM–LINF–10 to the south, and NM–LINF–8, NM–LINF–6, and the White Mountain Wilderness to the north. There are no available data on owl occupancy; however, extrapolation of occupied habitat patterns to the north and south of the Reservation permits an estimate of about 100 territories for the CHU.

Voluntary Tribal Conservation Measures

The Service has met with representatives of the Tribe to discuss conservation planning for the Mexican spotted owl. The Mescalero Apache Tribe provided a rough draft (without biological or management details) of a conservation plan on May 3, 1995, for review by the Service. However, insufficient time remained in the comment period on the proposed designation of critical habitat to discuss Service recommendations for the document with the Mescalero Apache Tribe.

Delineation Criteria Applied to Indian Lands

Over and above the biological criteria used to delineate all areas, regardless of ownership, to be included in the proposal to designate critical habitat for the Mexican spotted owl, the Service also addressed the following considerations in determining to either retain or delete Native American lands in the final designation.

The restrictions are reasonable and necessary for the conservation of the Mexican spotted owl; and are the least restrictive available to achieve the conservation purpose.

The inclusion of Indian lands within critical habitat units was based solely on biology and the contribution of those lands to the conservation of the species. Where determined to be unnecessary, as with the removal of threats to the owl by the implementation of conservation plans by the White Mountain and Jicarilla Apache Tribes, the lands were either not proposed, or have been deleted from the final designation.

The interdependence of critical habitat and the recovery goals and management recommendations in the draft Mexican Spotted Owl Recovery Plan also present reasonable and necessary restrictions for the conservation of the species. The Mexican Spotted Owl Recovery Team has assembled and analyzed the best available data on the species, which were issued in the March 1995 publication of the Draft Recovery Plan. The goals are flexible and the guidelines for owl habitat management are considered the least restrictive for achieving recovery. The guidelines primarily limit management to protection of occupied sites and the highest quality nest/roost habitat. These are the minimum needed to ensure stable populations for the time necessary to assess population trends.

The restrictions do not discriminate against Indian activities.

The restrictions of critical habitat derive from the obligation, under the Endangered Species Act, of Federal agencies to ensure that their actions do not result in the destruction or adverse modification of critical habitat. The identified range-wide threat to the Mexican spotted owl is timber management relying on harvest methodologies that convert habitat that supports Mexican spotted owl to habitat that cannot. There is no prohibition of timber activities, nor of any other activity upon which the Indian Tribes might rely.

The Mexican Spotted Owl Recovery Team has a representative selected by the Tribal land management agencies. In addition, the Recovery Team frequently communicated with and solicited information from the Tribal land management agencies and governments. Tribal input was actively sought and received throughout the process.

The selection of Tribal lands for critical habitat was based on the biological significance of the contribution of those lands to the conservation of the Mexican spotted owl. The threats and the opportunities for recovery were considered on a range-wide basis and were not identified to discriminate or favor particular land owners.

The restrictions are necessary because current voluntary tribal conservation measures are not adequate to achieve the conservation purpose.

The proposed rule to designate critical habitat stated that "If agreements can be reached (with the Tribes) and implementation ensured so that special protection is not necessary, the Service may consider excluding those areas from critical habitat." Conservation or management plans have been developed by the Jicarilla Apache and the White Mountain Apache tribes that meet these conservation objectives. Discussions are ongoing with several other tribes to develop conservation plans. However, at this time, implementation of those remaining plans under discussion is not ensured, and there are no final commitments that insure that owl populations and habitat will be managed to contribute to the survival and recovery of the species.

Consideration of Exclusions

Based on the analysis described above, the Service has considered whether the benefits of excluding any area proposed as critical habitat exceed the benefits of including it in the final designation. In particular, the areas proposed for potential exclusion in the

March 8, 1995, supplemental proposal have been considered for exclusion. At that time, lands of the Navajo Nation, and the Southern Ute, Mescalero Apache, and San Carlos Apache Tribes were proposed for exclusion under section 4(b)(2) of the Act contingent upon receipt and review by the Service of specific economic information pertinent to these lands and biological data concerning the presence, distribution, and habitat use of owls on these lands.

As described above, the data concerning the lands proposed for exclusion are presently inconclusive, and at this time do not provide an adequate basis upon which to exclude them from designation as critical habitat. Consequently, they have been retained within the critical habitat designated in this final rule. The Service will continue to provide technical assistance to the Tribes to develop an adequate database upon which to determine whether the benefits of their exclusion would exceed the benefits of including them in the designation.

The March 8 supplemental proposal also proposed to exclude lands of the Jicarilla Apache Tribe from final designation, not under section 4(b)(2) of the Act, but because that Tribe's Mexican Spotted Owl Conservation Plan, approved by the Jicarilla Apache Tribal Council, adequately addressed the conservation needs of the species and rendered these lands no longer in need of special management consideration or protection as specified in the Act's definition of critical habitat. The Service continues to consider the existing management of lands of the Jicarilla Apache Tribe to disqualify them from designation as critical habitat, and consequently critical habitat units NM–JAIR–1, NM–JAIR–2, NM–JAIR–3, NM–JAIR–4, and NM–JAIR–5 have been excluded from the final designation on these grounds.

The Service will continue to provide assistance to and cooperate with the other tribes on whose land critical habitat is being designated, with the goal of developing acceptable Mexican spotted owl conservation plans. When effective management regimes are developed for these lands as was done for those on the White Mountain Apache and Jicarilla Apache lands, the Service will propose revision of critical habitat to remove them from designation.

The final rule includes several revisions to the acreage indicated in the proposed rule. The change in the Forest Service acreage reflects a correction to an error in acreage accounting. The changes to BLM, Tribal, and private acres reflects a change in ownership for an area initially incorporated into critical habitat on the Jicarilla Apache Indian Reservation and subsequently removed from the final designation. The revisions are tabulated below in Table 4.

TABLE 4.—REVISIONS TO CRITICAL HABITAT ACREAGE BY LAND OWNERSHIP

	Proposed rule	Final rule	Revision
Forest Service	3,616,366	[a]3,581,385	−34,981
Bureau of Land Management	11,424	11,377	−47
National Park Service	45,892	45,892	0
Department of Defense	2,013	2,013	0
State	9,820	9,820	0
Tribal	962,694	[b]870,964	−91,730
Private	122,014	[b]111,450	−10,564
Total	4,770,223	[a b]4,632,901	−137,322

[a] Includes a correction to acreages cited in the proposed rule.
[b] Includes changes to ownership and deletion of Jicarilla Apache acreages cited in the proposed rule.

Available Conservation Measures

Recovery Planning

Recovery planning under Section 4(f) of the Act provides the guidance for the Act's activities and promotes a species' conservation and eventual delisting. Section 4(f)(1) requires the Secretary of Interior (usually delegated to the Director of the Service) to "* * * develop and implement (recovery) plans for the conservation of endangered species and threatened species * * *" Recovery plans may include population and habitat trend objectives, habitat management recommendations, and the steps necessary to remove a species from the List of Threatened and Endangered Wildlife and Plants.

The Service appointed the Mexican Spotted Owl Recovery Team (Team) in March 1993. Since that time, the Team has assembled all available data on Mexican spotted owl biology, the threats faced across the subspecies' range, current protection afforded the subspecies, and other pertinent information. Using that information, the Team developed the draft Mexican Spotted Owl Recovery Plan (Service 1995)(Plan or Recovery Plan) that outlines an initial short-term management strategy. If made final, the Plan will guide management until long-term guidelines are developed prior to delisting. The Plan recommends a short-term landscape management strategy to conserve the subspecies as population and habitat trends are assessed. Although a recovery plan is not a regulatory document, management recommendations outlined in the Plan are considered for application to critical habitat. The Forest Service Southwest Region has informally communicated its intent to incorporate the Plan's recommendations into all 11 national forests' Forest Land and Resource Management Plans (Forest Plans).

Section 7 Consultation

Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to destroy or adversely modify critical habitat. Regulations found at 50 CFR 402.02 define destruction or adverse modification of critical habitat as a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations that adversely modify any of those physical or biological features that were the basis for determining the habitat to be critical. This Federal responsibility accompanies, and is in addition to, the requirement in section 7(a)(2) of the Act that Federal agencies ensure their actions do not jeopardize the continued existence of any listed species. As required by 50 CFR 402.14, a Federal agency must consult with the Service if it determines an action may affect a listed species or critical habitat. Thus, the requirement to consider adverse modification of critical habitat is an incremental section 7 consideration above and beyond section 7 review to evaluate jeopardy and incidental take of the species. Regulations implementing this interagency cooperation provision of the Act are found at 50 CFR part 402.

The Act's definition of critical habitat indicates that its purpose is to contribute to a species' conservation, which by definition is the process of bringing a species to the point of recovery and removal from the lists of endangered an threatened species. Section 7 prohibitions against the destruction or adverse modification of critical habitat apply to actions that would impair survival and recovery of a listed species, thus providing a regulatory means of ensuring that Federal actions within critical habitat are considered in relation to the goals and recommendations of a recovery plan. As a result of the direct link between critical habitat and recovery, the prohibition against destruction or adverse modification of the critical habitat should provide for the protection of the critical habitat's ability to contribute fully to a species' recovery.

A number of Federal agencies or departments fund, authorize, or carry out actions that may affect lands the Service is designating as critical habitat. Among these agencies are the Forest Service, BIA, BLM, Department of Defense, Bureau of Mines, and Federal Highway Administration. The Service has identified numerous activities proposed within the range of the Mexican spotted owl that are currently the subject of formal or informal section 7 consultations.

Examples of Proposed Actions

Section 4(b)(8) of the Act requires, for any proposed or final regulation to designate critical habitat, a brief description of those activities (public or private) that may adversely modify such habitat or may be affected by such designation. Activities that would have no effect on the critical habitat's primary constituent elements would not adversely affect critical habitat. However, although an action may not adversely affect critical habitat, it may still affect individual spotted owls (e.g., through disturbance) and, therefore, be subject to consultation under the jeopardy standard of section 7 of the Act.

An activity cannot cause adverse modification of critical habitat in an area that does not contain or have the potential to contain the physical and biological features comprising the primary constituent elements. Due to the limitations in the fineness of the mapping data and the interspersed nature of suitable and unsuitable habitat types, some such areas are incidentally included in the designation.

Activities that disturb or remove the primary constituent elements within designated critical habitat units may adversely modify the owl's critical habitat. These activities may include actions that reduce the canopy closure of a forest stand, reduce the density or the average diameter of the trees in a stand, modify the multi-layered structure of a stand, reduce the availability of nesting structures and sites, reduce regeneration or modify the structure of riparian habitat, reduce the suitability of the landscape to provide adequate cover, or reduce the abundance or availability of prey species.

Areas designated as critical habitat for the spotted owl support a number of existing and proposed commercial and noncommercial activities. Some of the commercial activities that may affect spotted owl critical habitat include timber harvest, timber salvage, tree density control activities such as thinning, insect and disease suppression activities, snag removal, livestock grazing in riparian habitat, certain fire suppression activities such as fire break construction and use of chemical fire retardants. Additional actions include land disturbance activities such as those associated with oil and gas leases, sand and gravel extraction, mining, military maneuvers, road development, construction of hydroelectric facilities, geothermal development, and construction of campgrounds, ski areas and associated facilities. However, whether the above activities would be prohibited or require modification under section 7(a) of the Act would depend on their magnitude of effects.

Actions not likely to destroy or adversely modify critical habitat include livestock grazing in upland habitats, "personal use" commodity production such as fuelwood, latilla and viga, and Christmas tree cutting, and most recreational activities including hiking, camping, fishing, hunting, cross-country skiing, off-road vehicle use, and various activities associated with nature appreciation. The Service does not expect any restrictions to those activities as a result of critical habitat designation.

Some activities may be considered to be of benefit to Mexican spotted owl habitat and, therefore, would not be expected to adversely modify critical habitat. Examples of activities that could benefit critical habitat may include some protective measures such as fire suppression, prescribed burning, brush control, snag creation, and certain silvicultural activities such as thinning.

Consultation Process

Federal agencies are responsible for determining the effects of an action and whether or not to consult with the Service. When requested, the Service will review the action agency's determination on a case-by-case basis to determine concurrence on whether the action is or is not likely to adversely affect critical habitat. Section 7 consultation on critical habitat focuses on the effects of actions on owl habitat regardless of occupancy. The presence or absence of individual or pairs of spotted owls does not factor into the determination on whether an action does or does not initiate section 7 consultation on effects to critical habitat. The trigger initiating consultation on critical habitat is the action agency's determination that a project may affect any of the primary constituent elements of critical habitat or reduce the potential of critical habitat to develop these elements, and is independent from any action that would affect known individuals. Federal project assessments should also take into consideration actions outside critical habitat that may affect areas within critical habitat.

In section 7 evaluation of proposed activities within critical habitat, the Service uses project descriptions and biological assessments provided by the action agency. Proposed actions are individually examined in terms of site-specific impacts to the primary constituent elements and the reasons for which the critical habitat unit has been designated. In addition to assessment of individual proposed actions, the Service also considers the additive effects of past, on-going, and proposed actions. Proposed projects within critical habitat are also examined spatially to determine adverse effects to habitat across the surrounding landscape. The additive effects of actions in proximity to the proposed project may collectively result in the appreciable reduction of the value of a critical habitat unit. Conversely, an isolated proposed action within a large expanse of unmodified habitat may not adversely affect the function for which a critical habitat unit was designed.

The range of the owl is subdivided into a number of provincial areas discussed in the Recovery Unit (RU) section of the draft Recovery Plan (Service 1995), which constitute the demographic units by which recovery is to be measured. These geographic subdivisions are based partly on physiographic and biotic factors, and patterns of owl distribution. The provinces and local sub-populations of owls are for the most part interrelated

and interconnected. Provinces, subprovinces, and individual critical habitat units are all part of a habitat network important to maintaining a stable and well-distributed population over the range of the owl. The loss of one or more provinces, or even a major part of a province, could lead to genetic and demographic isolation of parts of the subspecies' range. Potential isolation could have a greater near-term effect on some areas (e.g., the Southern Rocky Mountains—New Mexico and Colorado RU) because of the present status of owl numbers and distribution within those areas, than on other areas (e.g., Upper Gila Mountain RU). Population stability for the owl may depend on the relative location of large stable population reserves that act as sources for areas where mortality exceeds recruitment, or where owls are subject to population fluctuation, or exhibit low reproductive success (Thomas *et al.* 1990; Service 1995).

For a wide-ranging subspecies such as the Mexican spotted owl, where multiple critical habitat units are designated, each unit has both a local, regional, and rangewide role in contributing to the conservation of the subspecies. The loss of a single unit may not jeopardize the continued existence of the subspecies, but may result in local demographic instability and declines in local population trends. This may affect dispersal and connectivity, and thus, have a detrimental effect on the stability of the regional population or at the least on that portion of the region's population where the loss occurred. This, in turn, may have an adverse effect on linkage to other provinces leading to further isolation and instability, and reduce the likelihood of survival of the subspecies. Section 7 analysis of proposed activities should assess the baseline condition and expected role of the unit at several scales to determine whether any particular action would appreciably diminish the value of a critical habitat unit for the survival and recovery of the owl. These scales should include the management area and immediate surroundings, and the individual critical habitat unit and collective units that constitute a recovery unit.

Reasonable and Prudent Alternatives and Conservation Recommendations

Where a proposed action is likely to result in the destruction or adverse modification of critical habitat, the Service is required to provide reasonable and prudent alternatives to the proposed action, if any, in its biological opinion. Reasonable and prudent alternatives are designed to allow the intended purpose of the proposed action to go forward, and to remove or mitigate the conditions that would adversely modify critical habitat. The Service recommends that an action agency initiate discussions early enough in the planning process to reduce the likelihood that an action may result in the destruction or adverse modification of critical habitat, and to ensure that the planning process is not to the point where the development of alternatives is infeasible. Reviewing widespread and long-term actions such as timber sale and forest health programs on a programmatic basis would facilitate this process.

For actions that result in adverse effects but do not result in the destruction or adverse modification of critical habitat, the Service may provide discretionary conservation recommendations to minimize or avoid the adverse effects of a proposed action. The Service may suggest minor modifications to a proposed action that results in moderate impacts to critical habitat. For projects that may result in more severe impacts, more substantial project changes may be recommended. For example, in the case of a timber sale, the Service may recommend that certain cutting units be reduced in size, reconfigured, relocated, or dropped altogether to avoid impacts to primary constituent elements. The Service may also recommend alternate timber harvest prescriptions, or that specific features such as a minimum of large diameter live trees be retained for snag recruitment.

Other Conservation Measures

To the maximum extent possible, state and private lands were excluded from the delineation and designation of critical habitat. If an action carried out by a non-Federal entity affects spotted owls, that action would be subject to the prohibitions under section 9 of the Act, that prohibit intentional and non-intentional "take" of listed species and applies regardless of whether or not the lands are within critical habitat. The term "take", as defined by the Act, means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.

There may be some instances where activities on non-Federal lands may be subject to section 7 requirements. For example, a private party may require a right-of-way permit through critical habitat on Federal lands for an action on private lands. In this type of case a section 7 consultation may be required on the Federal land right-of-way permit because the action requires Federal involvement. The Service does not expect that there will be many of these types of situations and most may be handled through informal consultation. However, if a biological opinion is required, recommendations will be provided to help avoid impacts to critical habitat consistent with those examples identified in the previous section.

Frequently actions taken on Indian lands are authorized, funded or carried out by a federal agency. In those circumstances, that federal agency, which is frequently the Bureau of Indian Affairs, is required to consult under section 7 to insure that the action does not jeopardize a protected species or adversely modify or destroy critical habitat. However, a number of Tribes (and federal agencies as well) have begun working with the Service early in their resource management planning stage to insure that the plan builds in protections for listed and candidate species and their protected habitat. Although section 7 consultations may still be necessary, sound resource development/conservation plans minimize the need for additional mitigation measures.

Section 7 and section 10(a)(1)(B) authorize the Service to permit the taking of listed species incidental to otherwise lawful activities such as timber harvesting. Biological opinions completed as part of formal section 7 consultation may authorize a set amount of incidental take associated with Federal activities. For non-Federal actions, incidental take permit applications must be supported by a Habitat Conservation Plan (HCP) that identifies conservation measures that the permittee agrees to implement to conserve the species, usually on the permittee's lands. A key element of the Service's review of an HCP is a determination of the plan's effect upon the long-term conservation of the species. An HCP would be approved and a section 10(a) permit issued if it would minimize and mitigate the impacts of the taking and would not appreciably reduce the likelihood of the survival and recovery of that species in the wild.

The Service expects limited Federal involvement for projects on state lands and, therefore, few formal section 7 consultations on state lands that are included in designated critical habitat. For those areas of private land within critical habitat, section 7 would apply only for actions that are funded, authorized, or carried out by a Federal agency. The states and private individuals are still subject to the "take" prohibitions under section 9 of the Act, however, and may enter into the section 10 HCP process where appropriate.

Other Federal laws, such as the National Forest Management Act, the Federal Land and Policy Management Act, the National Environmental Policy Act, and various other state and Federal laws and regulations, also require the conservation of endangered and threatened species.

Summary of Comments

The final rule listing the Mexican spotted owl as threatened was published in the **Federal Register** on March 16, 1993 and announcements of the listing and availability of the final rule were mailed to Federal, Tribal, state, county, and local agencies and governments, and all interested parties on the Service mailing list. The rule announced that the Service had concluded that designation of critical habitat was prudent, but found that critical habitat was not presently determinable, and was initiating the gathering of information and the studies needed to ascertain critical habitat areas. Based on the information received, the Service issued the proposal rule to designate critical habitat on December 7, 1994. The proposed rule was sent to affected Federal, Tribal, state, county, and local agencies and governments, and notices of the availability of the rule was sent to all interested parties on the Service's mailing list. Public notices of the proposal for publication as legal notices were also sent to 18 newspapers throughout the four-state region on December 5, 1994. The general mailing and newspaper notices requested data and comments from the government and public on all aspects of the proposal, including data on the economic impacts of the designation. The notice also announced a 90-day comment period open until March 7, 1995. On December 19, 1994, the Service sent a request for information on the potential economic impacts of designating critical habitat to 13 Federal, 12 Tribal, and 10 state agencies, and 4 Governor's and 42 county government offices. A Draft Economic Analysis (DEA) was prepared based on the information received and a notice of the availability of that draft was published in the **Federal Register** on March 8, 1995 (60 FR 12728; 60 FR 12730). The publication also proposed several revisions to the original proposal, solicited additional information and comments, opened an additional 60-day comment period extending to May 8, 1995, and announced the schedule and location of public hearings. More than 700 parties on the Service's mailing list also received an announcement of the above subjects. On February 23, 1995, the Service also sent for publication as legal notices in 36 regional newspapers, an announcement of the availability of the DEA, solicitation for additional information and comments, the opening of the additional comment period, and the schedule and location of public hearings.

Because of anticipated widespread public interest, the Service held 4 public hearings. Approximately 532 people attended the hearings. About 23 people attended the hearing in Santa Fe, New Mexico; 138 in Socorro, New Mexico; 46 in Tucson, Arizona; and 325 in Flagstaff, Arizona. Transcripts of these hearings are available for inspection by appointment (see **ADDRESSES**).

A total of 844 written comments were received at the Service's Ecological Services State Office in Albuquerque, New Mexico: 25 supported the proposed listing; 249 opposed the proposed listing; 9 either commented on information in the proposed rule but expressed neither support nor opposition, provided additional information only, or were non-substantive or irrelevant to the proposed listing; and 561 form letters expressed opposition to the designation. Oral or written comments were received from 158 parties at the hearings: 10 supported the proposed listing, 146 opposed the proposed listing, and 2 expressed neither support nor opposition.

In total, oral or written comments were received from 29 Federal, Tribal, and state agencies and offices; 31 local government offices; and 172 private organizations, universities, companies, and individuals. All comments, both oral and written, received during the comment period are addressed in the following summary. Comments of a similar nature are grouped into a number of general issues. These issues and the Service's response to each, are discussed below. Issues that were addressed in the final rule to list and the petition findings to remove the owl from the list of threatened species have not been reiterated and may be found in those **Federal Register** publications.

General Issues

Issue 1: The Service has characterized owl nesting and roosting habitat as having a high incidence of large trees with various deformities but has not quantified these attributes. In addition the term old-growth is not properly used or defined when describing owl habitat and does not correspond to the definition used by the Forest Service. These inaccuracies preclude the inclusion of this habitat in critical habitat.

Service Response: The owl uses a variety of forest types, including deciduous riparian woodlands, pinyon-juniper, pine-oak, mixed conifer, and spruce-fir. The features and proportion of habitat serving the various life history needs of the owl also vary throughout the range of the subspecies and upon vegetation type. However, forested habitat used for nesting and roosting often contains mature or old-growth stands with complex structure (Skaggs and Raitt 1988; Ganey and Balda 1989a, 1989b; Kroel and Zwank 1991; Service 1995 and other references therein). The characteristics typically include a significant component of mature trees, high basal area, high canopy closure, multi-storied forest structure, and abundant dead and down woody material.

The commenter is correct in noting that old-growth definitions are often not quantified when used and may vary among both agencies and individuals using the term. However, the Service's use of the term has been limited to noting the incidence of specific attributes in mature and old-growth habitat, and summarizing the conclusions reached by studies that may use the term. Quantification of these attributes is not necessary for qualitative or summary descriptions of owl habitat, and detailed definitions and methodology may be found in the original literature source. Features such as large diameter trees, multi-layered canopy, and snags, may be found in any of numerous definitions of mature and old-growth conditions. Furthermore, the identification of owl habitat areas considered for inclusion in critical habitat did not depend on the identification of old-growth. Identification of habitat was based primarily on the owl habitat information provided by land-managing agencies to the Service.

Issue 2: Some commenters stated that pure ponderosa pine vegetative types are not suitable habitat for nesting and roosting, and should therefore not be included within critical habitat. Others believe that ponderosa pine is a habitat type used by the owl and should be included in critical habitat.

Service Response: Ponderosa pine is found in numerous vegetative associations. The Service does not consider ponderosa pine associations where other coniferous tree species such as Douglas fir and hardwoods such as Gambel oak are not found or exist as minor accidental occurrences to be habitat suitable for nesting and roosting. However, relatively pure ponderosa

pine associations may be used for foraging where they are found in proximity to other vegetative associations that do support nesting and roosting activity. Where ponderosa pine exists as a codominant with other tree species, the habitat may support the combined nesting, roosting, and foraging needs of territorial owls. The inclusion of ponderosa pine habitat types within critical habitat was determined by its presence in known owl territories and proximity to other nest/roost habitat. It also may occur as inclusions and intervening stretches between other habitat types. However, extensive areas of pure ponderosa pine were generally not included in critical habitat. Where these areas do occur and have no potential for use by foraging owls, they may be considered lacking primary constituent elements and be managed as unsuitable habitat.

Issue 3: The Service's premise that foraging areas may be determined by their proximity to areas serving as nest/roost habitat is unsubstantiated.

Service Response: Many of the habitat components that serve the nesting and roosting needs of individual owls are more restrictive and less widespread than those found in areas used solely for foraging activity, and are likely to be a limiting factor in determining owl presence and habitat use. In most cases, known territories determined the areas for inclusion in critical habitat. Where unsurveyed habitat or areas with low owl densities were considered, the Service identified areas of "suitable" or nest/roost habitat as essential "nuclei" for the delineation of habitat that may support the territorial needs of owls. Activity centers are areas within which owls find nest and roost sites, and in which a significant amount of foraging activity occurs (Gutiérrez *et al.* 1992; Service 1995). Owls appear to concentrate foraging activity within a relatively small portion of the home range, and this activity center is typically located around nest or roost sites. Foraging habitat can only be used by territorial owls if it lies within the effective radius of an owl home range. Therefore, it is reasonable to assume that, adjacent to habitat determined by land managing agencies to be suitable for nesting and roosting, may be areas available for foraging activity. Examination of territories delineated by land-managing agency biologists on the basis of detection locations supports this conclusion.

Issue 4: Owls may disperse in a wide variety of habitats. The inclusion in critical habitat of areas for facilitating dispersal is not justified.

Service Response: There is little information available on the dispersal behavior of the Mexican spotted owl. Consequently, it is not possible to describe any primary constituent elements or manage for the habitat attributes necessary to support this behavior. The Service did not select for inclusion in critical habitat any areas capable only of supporting dispersal movements. This type of habitat may be found only as inclusions and intervening stretches within larger areas identified with the potential to support owl territories.

Issue 5: The term "capable habitat" is not defined or supported by research, and should be excluded from critical habitat.

Service Response: The term "capable" is used in the proposed rule in the following context: "* * * capable of returning to suitable condition * * *" It is a term used by other land-managing agencies and in the geographic information provided to the Service. The Service acknowledges the qualitative nature of the term.

Issue 6: Total critical habitat acreage is greater than prior estimates of suitable owl habitat. Critical habitat contains much unsuitable habitat that should be excluded from the designation. Lands that are not occupied by the Mexican spotted owl and/or do not exhibit the physical and biological features essential to the owl should not be included in critical habitat. Potential habitat should not be included in critical habitat.

Service Response: Owl habitat includes a wide variety of vegetative and topographic features, and is fairly heterogeneous at both landscape and home-range scales. Habitat characterized by land-managing agencies as "suitable" is defined as areas able to support the combined nesting, roosting, and foraging needs of the subspecies. Suitable habitat occurs in a matrix of habitat suitable only for less restrictive behavioral needs such as foraging and dispersal, and may itself have inclusions and intervening stretches of unsuitable habitat. Based on previous land-managment agency estimates, there exists a wide range in the proportion of suitable habitat within owl home ranges. Frequently, the proportion of suitable to other habitat types may comprise half of a home range area. In canyon habitat characterized by minimal forest cover, the vegetative types classed as suitable may comprise a small fraction of the total area within a home range. Therefore, suitable and unsuitable habitat may occur in a combined area two to several times as large as the 2 to 4 million acres of suitable habitat cited by various agencies and Service estimates. Areas lacking or without the potential to regain primary constituent elements may be considered and managed as unsuitable habitat.

The use of the term "potential" in the proposed rule refers to the capability of a site that has undergone past habitat modification to return to a condition in which it may become owl habitat again. It does not refer specifically to any successional processes or management objectives to create owl habitat where none existed before. It also does not refer to uncertainty in whether an area actually serves as habitat.

Issue 7: The Service used data provided by the USFS Southern Forest Experiment Station (SFES) to determine the vegetation type of each proposed critical habitat unit. These data show that about 95% of the land included in critical habitat are not forest types the Service considers to be critical.

Service Response: The data compiled for the identification of areas to be included in critical habitat came from many disparate sources and land-managing agencies. None of the data used by the Service came directly from SFES, although some agencies may have derived some or all of their data from this source, and in turn have provided it to the Service. The "95%" figure cited from Table A3 of the Draft Economic Analysis does represent land cover summaries derived exclusively from SFES data. Further analysis of this data set showed that it used vegetative classifications that did not readily identify other vegetative associations and did not represent complete floristic compositions. Therefore, the ponderosa pine class in the SFES data set frequently includes other coniferous and hardwood tree species that under other classifications may be considered pine-oak or mixed conifer. Analysis of critical habitat using a more detailed data set provided a more accurate representation of vegetative associations within critical habitat. Table 5 below shows vegetative associations derived from U.S. Geological Survey land coverage (figures reflect revised acreages). As discussed previously, vegetative associations such as mixed conifer or pine-oak that support the combined nesting, roosting, and foraging needs ("suitable") of the owl comprise only a portion of the total habitat utilized, and may occur within unsuitable habitat or habitat used only for foraging. Furthermore, within owl habitat there are inclusions of less frequently or non-utilized areas. These factors combine to limit the relative proportion of critical habitat that comprises nest/roost habitat.

TABLE 5.—VEGETATION LAND COVER IN CRITICAL HABITAT BY STATE

Land cover	Arizona	Colorado	New Mexico	Utah	Total	Percent total
Agriculture	31,736	351	44,998	33,023	110,108	2.4
Alpine	.....	.....	285	.....	285	<0.1
Chaparral	82,508	.....	70,938	14,657	168,103	3.6
Grassland	4,461	.....	251	.....	4,712	0.1
Madrean Woodland	65,702	.....	64,465	.....	130,167	2.8
Mixed Conifer	505,588	67,255	1,103,408	53,759	1,730,110	37.3
Pine-Oak	81,352	494	29,931	1,589	113,366	2.4
Pinyon-Juniper	269,494	22,463	383,516	59,696	735,169	15.9
Ponderosa Pine	899,560	13,541	641,945	18,694	1,573,740	34.0
Shrub Steppe	50,862	.....	7,688	7,603	66,613	1.4
Water	247	.....	741	.....	988	<0.1
Total	1,991,610	104,104	2,348,166	189,021	4,632,901	100
Percent total	43.0	2.2	50.7	4.1	100	.....

Source: National Biological Service, Midcontinent Ecological Science Center.

Issue 8: The Service has not surveyed or determined that critical habitat possesses any or all of the components of suitable habitat. The macroanalysis of aerial photography and forest type maps is inadequate to distinguish the elements that the Service claims comprise suitable owl habitat.

Service Response: The Service relied primarily on map identification of owl habitat and occupancy provided by the land-managing agencies for the delineation of critical habitat. Additional information such as forest type maps and aerial photography was used to supplement owl habitat and site maps. Forest type maps may be compiled by land-managing agencies by use of information at a variety scales. Most scales are fine enough to locate specific areas to within a hundred feet. The Service used 1:24,000 scale aerial photography sufficiently detailed to pick out individual trees and identify vegetation types. Although nest/roost habitat comprises only a portion of the total critical habitat area at the home range scale and primary constituent elements are also only found in a subset of habitat at finer scales, all critical habitat areas have the capability of supporting territories at the landscape scale.

Issue 9: Regulations pertaining to the designation of critical habitat state that the entire geographic range that can be occupied by a species is not to be included in critical habitat. Unoccupied habitat may only be designated if determined to be essential to the conservation of the species.

Service Response: The Service has not designated the entire potential geographic range of the subspecies. However, critical habitat does include the entire subset of the known or expected owl population where there exist resource management actions with known or expected adverse habitat impacts. The Service believes that the current owl population is adequate to achieve delisting should the central subpopulations show stable or increasing demographic trends. Therefore, all known territories and supporting habitat are essential to the recovery and conservation of the subspecies.

Habitat may be unoccupied due to such disparate factors as demographic inviability and extirpation, or natural intermittency and movement between different habitat areas or alternate home ranges. Critical habitat includes some areas with low owl densities and intermittent occupancy. However, no critical habitat units were designated that are incapable of supporting spotted owls.

Issue 10: The Service cites the minimization of fragmentation as a guideline used in the delineation of critical habitat. Southwestern forests are naturally fragmented, and the guideline is not applicable to Mexican spotted owl habitat.

Service Response: The Service agrees that southwestern forests and owl habitat are characterized by heterogeneous and discontinuous vegetative cover types. The minimization of fragmentation, a principle emphasized by the Interagency Scientific Committee for the northern spotted owl (Thomas *et al.* 1990) and others working in the field of conservation biology, was only used in infrequent instances where there was some choice between areas of habitat fragmented because of management activities and other relatively unmodified areas. For the most part, delineation was determined by the presence of owl territories. Extensive tracts of unsuitable habitat were not included to increase the contiguity of critical habitat units.

Issue 11: The Service offers no evidence to support the statement in the proposed rule that National Park Service lands and wilderness areas are not sufficient to support a viable population of owls.

Service Response: The proposed rule states that "* * * these lands by themselves do not provide adequate habitat to support a viable *range-wide* Mexican spotted owl population * * *" (emphasis added). National Parks and wildernesses do not constitute a well-distributed land base nor contain a significant proportion of owl habitat. The largest of the wilderness areas supporting Mexican spotted owls are the Aldo Leopold and Gila Wildernesses. These fairly contiguous areas may support a relatively sizeable subpopulation of owls. However, the long-term viability of a population limited to the combined wilderness areas is low because of the local extent of available habitat and the susceptibility of relatively small populations to genetic, demographic and environmentally random events. The great distances between park and wilderness areas further reduce their ability to support viable populations without the complementary function of additional habitat outside the reserved areas. There is ample support for this

general observation in the available literature on the dynamics of small populations.

Issue 12: Exclusion of wilderness areas and National Parks from critical habitat is not justifiable.

Service Response: The Service considers management practices in place and threats to specific areas when determining which areas are in need of special management or protection and therefore meet the definition of critical habitat. The Service acknowledges that some resource extraction and human-caused habitat changes occur in both National Parks and wilderness areas. However, the threat of even-age timber management has been identified as a primary threat to owl habitat, and critical habitat was predominately identified in areas where that activity may occur. The Service is unaware of any plans for logging in wilderness areas or National Parks.

Issue 13: Successional changes in forest habitat types have resulted in forest health problems. Management of owl habitat will increase tree densities, canopy layers, and fuel loads, and in turn, increase the risk and intensity of wildfire. Critical habitat will also preclude the implementation of fire prevention activities.

Service Response: The Service agrees that many vegetative communities have undergone successional and structural changes as a result of past and current management practices. These practices include, to varying degrees, the combined effects of long-term and widespread fire suppression, reduction in surface fuels, rates of tree overstory removal and regeneration treatments on cycles shorter than those found in natural disturbance regimes, inadequate control of tree densities responding to fire suppression and tree harvest, and in xeric forest types, decreases in the proportion of the landscape in stands composed of more fire resistant large-diameter trees. The Service also agrees that the vegetative structural and landscape changes may require proactive management to restore an appropriate distribution of age classes, control regeneration densities, and reintroduce some measure of natural disturbance processes such as fire events. This may include prescribed fire and thinning treatments, restoration of the frequency and spatial extent of such disturbances as regeneration treatments, and implementation of prescribed natural fire management plans where feasible. The Service considers use of such treatments to be compatible with the ecosystem management of habitat mosaics and the best way to reduce the threats of catastrophic wildfire. The Service will fully support land management agencies in addressing the management of fire to protect and enhance natural resources under their stewardship.

Critical habitat objectives do not include the conversion of forest vegetative types, nor the prevention of actions designed to alleviate the risk of wildfire. Management approaches considered for critical habitat primarily focus on the maintenance of mature forest attributes in mixed conifer and pine-oak habitat types over a portion of the landscape and in areas that support existing territories. It does not emphasize the creation of these features where they do not currently exist. It also does not preclude the proactive treatments mentioned above. Clearly, the loss of owl habitat by catastrophic fire is counter to critical habitat management objectives.

It is important to stress several principles in the Service's policy on fire management. The first is that the Service always defers to the expertise and authority of the land-managing agency during response actions to fires. The second is that firefighter safety is of paramount importance and is never superseded by wildlife management objectives. The third is the Service has a responsibility to assist in the protection of life and property. The Service's primary role in dealing with the combined issues of both fire and critical habitat management is to assist in the development and implementation of management practices that incorporate the objectives discussed above without violating the aforementioned principles. These principles are set forth in an issue paper signed May 16, 1995, by the Regional Forester of the Southwest Region of the U.S. Forest Service and the Acting Regional Director of the U.S. Fish and Wildlife Service.

Issue 14: The range of the Mexican spotted owl has changed over the last 100 years. Pre-settlement forests were more open and dominated by ponderosa pine, and were therefore not owl habitat. Fire suppression allowed conversion of ponderosa pine forests to mixed conifer forests, allowing the spotted owl to occupy formerly unoccupied areas. Critical habitat should be limited to the historic distribution of mixed conifer forests.

Service Response: The Service agrees that some areas now occupied by spotted owls may not have been occupied in pre-settlement forests, which in certain vegetative associations were more open-canopied and composed of ponderosa pine rather than mixed conifer species. However, the Service is unaware of any way to estimate how many sites are "recently" occupied, nor can it determine where those sites are.

Conversely, the spotted owl was known to nest in the mature forests that dominated the lowland riparian areas in pre-settlement times but are now largely absent. Again, the Service is unable to quantify the number of nesting territories supported by that forest type. The result is that some formerly important areas have become unable to support owls, while other areas have only become owl nesting and roosting habitat recently. These phenomena undoubtedly offset one another but are not quantifiable. The Service recognizes that forest structure is the result of dynamic processes, but must base its decision on the current situation and the best available information.

Issue 15: According to the Forest Service, mixed conifer forest faces severe threats from insects and disease. This supports the position that before fire suppression these forests were less dense, and failure to treat this threat by timber harvest poses a significant threat to the owl.

Service Response: The Service acknowledges that this link may exist, especially in drier mixed conifer associations that under natural fire regimes experienced frequent low-intensity and spatially extensive understory fire events. These mixed conifer associations may have developed higher densities of small-diameter stems that have escaped the thinning effects of fire. In these situations, there may be some benefit from understory and small and mid-diameter tree density regulation. Designation of critical habitat does not preclude this type of management.

Issue 16: In the final rule to list the Mexican spotted owl as threatened, the Service stated that the national forest plans call for a conversion of habitat to an unsuitable condition at an annual rate of 0.4 percent. At that conversion rate it would take 250 years for suitable owl habitat to be completely destroyed. The Service stated in the listing rule that it takes 80 years for habitat recovery of a harvested area. This means that at least 60 percent of owl habitat will always remain, even at 1991 logging levels.

Service Response: The 0.4 percent conversion rate would represent a 250 year "cycle" assuming that the national forests operated on such a rotation length. However, most timber lands operate on cycles of 120 years or less, meaning that a stand would be "regenerated" as it begins to regain complex structural attributes.

Furthermore, stands that are managed under even-age systems become designated to continue under such a system, and will mostly remain as habitat incapable of supporting the more restrictive habitat needs of nesting and roosting owls. Continued conversion of habitat cumulatively adds to the habitat indefinitely retained in a modified condition.

The Service's statement in the listing rule that 80 years is required for habitat to recover was made in the context of forest habitat on the Lincoln National Forest where high site indices permit rapid recovery. Forest habitat in most other areas of the Southwest have lower indices and may be expected to require longer recovery periods. Fletcher (1990) estimated that 44 percent of habitat modified on national forests would require more than 100 years to recover. This implies that for recent modifications 100 years may be a minimal period of time for recovery. Actual recovery time may be expected to be greatly dependent on site quality, the nature and intensity of the initial modifying event, residual habitat components, and subsequent treatments or management actions.

Issue 17: The northern goshawk guidelines provide adequate protection for owl habitat. Critical habitat is not required where the goshawk guidelines are applied.

Service Response: In general, the guidelines outlined in "Management Recommendations for the Northern Goshawk in the Southwestern United States" (Reynolds *et al.* 1992) (guidelines) may support the development of some of the forest habitat attributes suitable for owl foraging activities. However, several premises to the guidelines result in conditions that are inadequate for their use as a comprehensive owl forest habitat management plan. The guidelines use a rotational system based on "balanced" (evenly apportioned) age/size classes or vegetative structural stages (VSS) not tempered by such factors as site quality, growing conditions, and management intensity. Inclusion of these factors into the calculation of VSS can result in figures significantly different from the allocations specified in the guidelines. The management strategy of apportioning percentages of the forest base to various VSS may also only be workable where each stage accurately reflects the length of time required by each successional phase, particularly in the older age classes. Currently, however, the application by the national forests of the guideline's VSS allocation percentages typically does not incorporate or reflect these factors, and may, therefore, result in landscapes deficient in or without late successional forest stands. In addition, the short time (between 0 and 65 years depending on said factors) allotted for a stand to abide in old-growth condition may not permit development of senescent forest features such as snags and large diameter logs.

The management guidelines also use a period of time that inadequately represents forest age rotations. Currently, the VSS allocations are based on the selection of a maximum growth period derived from the average life expectancy of individual trees. However, the low to moderate survivorship curves exhibited by populations of many tree species may be expected to heavily weigh and reduce the average life expectancy to relatively short lengths of time. Where a small proportion of all regeneration reaches maximum longevity, the use of median life expectancy may be a more appropriate target for setting forest age rotations.

Other guideline specifics such as the number of large diameter trees retained following harvest may result in deficiencies in age-size classes available for snag recruitment and large diameter logs. In addition, the guidelines are only applied to occupied habitat (with the exception of the forest-wide application by the Kaibab National Forest). Occupancy, and therefore management objectives may change over time and prevent the implementation of the long-term objectives required for development and maintenance of the amounts and distribution of late successional forest stages and forested owl habitat needed for the survival and recovery of the owl.

Issue 18: The Service is required to complete an Environmental Assessment and Environmental Impact Statement on the designation of critical habitat as required under the National Environmental Policy Act of 1969 (NEPA).

Service Response: The Service has determined that an Environmental Assessment or Environmental Impact Statement, as defined under the authority of the NEPA, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244). The Ninth Circuit recently upheld this interpretation in *Douglas County* v. *Babbitt*, 48 F.2d 1498 (9th Cir. 1995), petition for rehearing pending. The Ninth Circuit reversed lower court decision and found the requirements for designating critical habitat pursuant to the Endangered Species Act displaced the requirements of NEPA; that NEPA does not apply to federal actions which do nothing to alter the natural physical environment; and the ESA, by preserving the environment and preventing the irretrievable loss of natural resources, furthers the goals of NEPA without requiring an Environmental Impact Statement. Before the Ninth Circuit issued its decision, a federal district court in New Mexico took the opposite position in *Board of County Commissioners of the County of Catron, New Mexico* v. *United States Fish and Wildlife Service*, No. 93–730–HB (D.N.M., October 13, 1994), appeal pending. There the federal district court set aside the final designation of critical habitat for two endangered fish: the spikedace and loach minnow, until NEPA compliance was completed. That case is currently on appeal before the Tenth Circuit. *Catron County Board* v. *U.S.F.W.S.*, No. 94–2280 (10th Cir.).

Issue 19: Following the filing of the lawsuit *Dr. Robin Silver, et al.* v. *Bruce Babbitt, et al.*, the Federal District Court in Arizona in October 1994, ordered the Service to "publish a proposed designation of critical habitat, including economic exclusion pursuant to U.S.C. Sec. 1533(b)(2)." The proposed rule does not contain any information on the areas to be excluded for economic reasons.

Service Response: An amendment to the proposed rule for the designation of MSO critical habitat, published December 7, 1994 (59 FR 63162), was published in the **Federal Register** on March 8, 1995 (Supplemental Proposed Rule, 60 FR 12728). The Supplemental Proposed Rule identified the critical habitat areas proposed for exclusion based on information obtained in the draft economic analysis indicating the designation might have disparate economic impacts in certain areas. Comment on the proposed revisions was specifically solicited. At the same time, the Service also published notice of the availability of the economic analysis (60 FR 12730), announced the dates, times and places for four public hearings and reopened the public comment period for an additional 60 days to assure that the public had an opportunity to comment on the economic analysis, the proposed rule and the proposed exclusions.

Issue 20: The conservation agreements developed or being pursued by the Service with various Tribal governments constitute major Federal actions and are subject to the NEPA process. The specifics in the conservation plan for the Mexican spotted owl developed by

the White Mountain Apache Tribe should be described in the proposed rule since it led to the exclusion of proposed critical habitat on the Tribe's lands.

Service Response: Although many have referred to "conservation agreements" with various tribes, actually individual tribes have been developing their own resource management plans. The Service has offered technical assistance in reviewing these plans to assure they contain adequate protections for protected species and habitat. However, the action is not a federal action, but a Tribal action. Both the White Mountain Apache and the Jicarilla Apache Tribes took this approach.

The Service, after examining the White Mountain Apache and Jicarilla Apache management plans for the Mexican spotted owl and each Tribe's ability and willingness to enforce the plans, determined the areas under these tribally managed plans did not require special federal management considerations or protection. Although the lands still had the physical and biological features essential to the conservation of the species, they no longer met the second half of the definition of critical habitat. See section 3(5)(A). It is the Service's position that NEPA process is not required for such decisions, since the process for designating critical habitat under the Endangered Species Act displaces further NEPA requirements. See *Douglas County* v. *Babbitt*, 48 F.2d 1498 (9th Cir. 1995), petition for rehearing pending; for further discussion, see Service's Response to Issue 16.

The Navajo Nation is taking another approach. They are developing a Habitat Conservation Plan (HCP) which will include protections for numerous species and their habitat. NEPA compliance will be done for both the HCP and for any application for an accompanying section 10(a) permit.

Issue 21: The Service failed to adequately notify the public of the proposed rulemaking and public hearings. The Service is required to provide for adequate input by the public and other affected parties such as counties and local governments.

Service Response: The Service has exceeded the requirements of the Administrative Procedure Act and the Endangered Species Act for public notification. The final rule listing the Mexican spotted owl as threatened was published in the **Federal Register** on March 16, 1993 (58 FR 14248), and announcements of the listing and availability of the final rule were mailed to Federal, Tribal, state, county, and local agencies and governments, and all interested parties on the Service's mailing list. The rule announced that the Service had concluded that designation of critical habitat was prudent, but found that critical habitat was not then determinable, and was initiating the gathering of information and the studies needed to ascertain critical habitat areas. On March 17, 1993, letters requesting information on owl habitat and distribution were sent to 14 Federal agencies. On April 14, 1993, letters requesting information on owl habitat and distribution were sent to 37 Tribal agencies. Based on the information received, the Service issued the proposal rule to designate critical habitat on December 7, 1994 (59 FR 63162). Prior to issuance of the proposed rule, the Service held a press briefing in Albuquerque, New Mexico, on November 30, 1994, announcing the proposal. In addition, the proposed rule was sent to affected Federal, Tribal, state, county, and local agencies and governments, and notices of the availability of the rule were sent to all interested parties on the Service mailing list. Public notices of the proposal for publication as legal notices were also sent to 18 newspapers throughout the four-state region on December 5, 1994. The general and newspaper notices requested data and comments from the government and public on all aspects of the proposal, including data on the economic impacts of the designation. The notice also announced a 90-day comment period open until March 7, 1995. On December 19, 1994, the Service sent a request for information on the potential economic impacts of designating critical habitat to 13 Federal, 12 Tribal, and 10 state agencies, and 4 Governors' and 42 county government offices. A Draft Economic Analysis (DEA) was prepared based on the information received, and a notice of the availability of that draft was published in the **Federal Register** on March 8, 1995 (60 FR 12728, 60 FR 12730). The publication also proposed several revisions to the original proposal, solicited additional information and comments, opened an additional 60-day comment period extending to May 8, 1995, and announced the schedule and location of public hearings. More than 700 parties on the Service's mailing list also received an announcement of the above subjects. On February 23, 1995, the Service also sent for publication as legal notices in 36 regional newspapers, an announcement of the availability of the DEA, solicitation for additional information and comments, the opening of the additional comment period, and the schedule and location of public hearings. Public hearings were held in Santa Fe and Socorro, New Mexico, on March 22 and 23, 1995, and Tucson and Flagstaff, Arizona, on March 29 and 30, 1995. Comments from the public on the critical habitat proposal and DEA were recorded and evaluated for input to the final designation. More than 800 letters addressing the proposal were received during the comment periods. The correspondence and comments have been evaluated in the decision whether to designate critical habitat.

Issue 22: The Service is incorrect in citing the use of clearcutting as the prevailing method of timber harvest, and timber harvest as the primary threat to the owl.

Service Response: The Service does not consider clearcutting to be the prevailing method of timber harvest. The final rule to list the owl as threatened and the proposed rule to designate critical habitat identify the even-age harvest methods of shelterwood treatments as the prevailing method of timber harvest, and their use and rate of implementation as the primary threat to the subspecies.

Issue 23: The Service should disclose the analysis and specific scientific data from it which derived its estimates and on which it based the proposal to designate critical habitat.

Service Response: The data and information used to develop the proposed rule to designate critical habitat were summarized in that document, as well as in the proposed and final rule to list the species as threatened, and the two delisting petition finding notices published in the **Federal Register**. Additional information is available in the references cited in these rules and notices. This final rule incorporates information from previous rules and notices, comments received on the proposed rule to designate critical habitat, and data presented in the draft Recovery Plan.

Issue 24: The conclusions drawn from the northern spotted owl (Interagency Scientific Committee) are not applicable to the Mexican spotted owl.

Service Response: The Service used four general principles developed by the Interagency Scientific Committee and others working in the field of conservation biology during the initial process of delineating proposed critical habitat units (see Background section, "Criteria for Identifying Candidate Critical Habitat Units"). These principles are widely accepted by biologists as a means to achieve viable populations throughout the range of a species, and to facilitate species' long-term survival and recovery. Specific conclusions drawn during the processes of listing and designation of critical habitat for the northern spotted owl were not used as a basis for this final rule.

Issue 25: Management of critical habitat will have impacts on highway maintenance and safety.

Service Response: Existing highway corridors typically do not have the habitat components relevant to management of owl critical habitat. Therefore, consultations on critical habitat would not be required where there is an action agency determination of "no effect". In instances where an action may affect critical habitat, consultation will be required. However, the Service does not anticipate that significant modification of planned highway projects will result from consultation on critical habitat.

Issue 26: Management of critical habitat will have an impact on livestock grazing.

Service Response: Livestock grazing is not known to have any direct impact to the components of upland forest and canyon owl habitats, and will likely not be subject to consultation or restriction in these areas. Livestock grazing may have both direct and indirect effects to the structural components of canyon and montane riparian habitat and to owl prey communities. If requested by Federal action agencies, consultation will likely entail the monitoring of grazing use, the establishment of conservative maximum allowable use levels and the implementation of grazing use standards that would attain or restore good to excellent range conditions in riparian habitats. Much of the consultation on livestock grazing in riparian habitat is expected to deal with implementation of *existing* action agency guidelines and standards.

Issue 27: Critical habitat will prevent recreational activities and access to public lands.

Service Response: Most recreational activities are not known to have any direct impact to the structural habitat components of upland forest and canyon habitats, and will likely not be subject to consultation on critical habitat in these areas. Some recreational activities may have both direct and indirect effects to the structural components of canyon and montane riparian habitat. If requested by Federal action agencies, consultation will likely entail the monitoring and regulation of the volume of recreational use where riparian habitat impacts have occurred or have the potential to occur. Few, if any, restrictions on recreational use of critical habitat areas are likely to result from critical habitat designation.

Issue 28: Water development projects for the City of Blanding, Utah, may be impacted by the designation of critical habitat.

Service Response: Future development of the City of Blanding's water rights on the Manti-La Sal National Forest is already subject to Forest Service review processes, including review for consistency with the Forest Plan standards and guidelines and NEPA procedures. Review of the effects of water development on critical habitat would be part of that process, and so should not impose an additional procedural burden on project applicants. Any activities proposed within the critical habitat unit would be evaluated for effects to primary constituent elements. The scope of such projects mostly entails limited, site-specific impacts that are unlikely to adversely affect the value of the critical habitat unit.

Issue 29: Management of critical habitat for the Mexican spotted owl will conflict with the management objectives of other animal and plant species, ecosystem objectives, and the Mexican gray wolf reintroduction program proposed for southern Apache National Forest.

Service Response: The comments received did not specify how conflicts may arise between owl critical habitat and other management objectives. Critical habitat management primarily focuses on the maintenance of habitat features in mixed conifer and pine-oak habitat types that support existing territories, and the maintenance of good montane riparian habitat conditions. It does not emphasize the creation of these features where they do not currently exist, or do not have the potential to naturally occur. It also does not require maintenance of owl habitat components across all areas.

The management approach to critical habitat addresses diversity at the landscape scale by maintaining spatial variation and distribution of age classes, and at the stand scale by managing for complex within-stand structure. The methods to attain or conserve the desired measure of diversity vary, but are designed to maintain existing mature/old forest characteristics while allowing some degree of timber harvest and management of other objectives such as tree density control and prescribed fire. Older forests are productive successional stages that provide favorable environments for diverse assemblages of plants and animals. The maintenance of this underrepresented seral stage at landscape and stand scales will provide and enhance biological diversity. Therefore, critical habitat management does not preclude managing for other objectives. In addition, critical habitat management is adaptive and will incorporate new information on the interaction between natural disturbance events and forest ecology. The Service continues to support sound ecosystem management and maintenance of biodiversity.

Issue 30: Areas within critical habitat with little or no timber harvest threats to owl habitat should be deleted from the final designation.

Service Response: The use and rate of timber harvest under even-age harvest systems were identified by the Service as the primary threat to the habitat of the Mexican spotted owl. However, other habitat modifying activities have also been identified in the proposed rule as potentially affecting owl habitat, and may require consideration of habitat impacts and consultation. These include vegetative treatments to manage insects and disease, timber salvage, density control of forest and woodland stands, and fire prevention and control programs. However, areas where there is no threat to owl habitat components are functionally excluded from critical habitat since no consultation would be required.

Issue 31: Critical habitat should be modified to reflect changing management practices. Specific areas of critical habitat should revised to reflect new or more detailed information.

Service Response: The Service will incorporate new or more detailed information as it becomes available and will reevaluate critical habitat areas as needed. Periodic modification of critical habitat may occur at later dates. The Service will work with interested agencies or entities with expertise and available data on the refinement and revision of designated critical habitat; however, the Service's court-ordered deadline and requirements for public notice and comment on exclusions preclude any significant revisions at this time.

Issue 32: One commenter maintained that critical habitat designation would have a significant economic impact on the Mount Graham Steward Observatory, Discovery Park and State Highway 366, electronic site development, and campground expansion projects.

Service Response: The Service's position (also stated in the Draft Economic Analysis) is that there is little or no potential for economic impacts as a result of consultation requirements to these proposed or ongoing projects. The

reasons for this are the limited amount of habitat affected by the projects and the negligible effects to the viability of the Pinalenos Mountains Critical Habitat Unit expected from these site-specific actions. Therefore, significant impact to these projects from critical habitat designation are unlikely.

Issue 33: The Service should describe the criteria used in the preparation of the management alternatives outlined in its request to land-managing agencies/governments for information on economic impacts of critical habitat designation. The Service should also describe how progress towards meeting critical habitat objectives is to be ascertained.

Service Response: The alternatives were developed based on existing and proposed management guidelines for owl habitat. The first alternative describes the guidelines developed by the Forest Service and in place up until formal adoption of the Mexican Spotted Owl Recovery Plan. The second alternative constitutes a summary of the draft Recovery Plan management recommendations for mixed conifer and pine/oak forest types. The third alternative includes the same Plan recommendations with additional management guidelines considered for ponderosa pine habitat types. The Service would measure progress towards achieving management objectives by evaluating action agency compliance during consultation.

Issue 34: The Forest Service is committed to implementing the Mexican Spotted Owl Recovery Plan; therefore, the Plan precludes the need for special management and critical habitat for the subspecies.

Service Response: The Service commends the Forest Service for initiating a process to incorporate recovery plan recommendations into their Forest Planning process and to move to mostly uneven age silvicultural regimes. However, the Recovery Plan is a draft document at this time, and the Service is awaiting the results of extensive peer review and public comment, which could result in a final recovery plan that differs from the draft document. In addition, the Recovery Plan is not a "decision document" as defined by NEPA, and does not allocate resources on public lands. The implementation of the recovery plan is the responsibility of Federal and state management agencies in areas where the subspecies occurs. Implementation is accomplished by the incorporation, as regulatory mechanisms, of the appropriate portions of the Recovery Plan into agency decision documents such as forest plans, park management plans, and state game management plans. Such documents are then subject to the NEPA process for public review and selection of alternatives. At that point, if implementation is effective, it may supersede the need for special management, and critical habitat may be withdrawn. Until public comment is received and analyzed on both the Recovery Plan and the Forest Service NEPA process, consideration of changes in Forest Service management would be predecisional and premature.

Issue 35: Service acceptance of management plans that preclude designation of critical habitat on certain lands is inappropriate.

Service Response: The Act provides for numerous mechanisms to conserve both listed and unlisted species. Critical habitat is one of those mechanisms. To qualify as critical habitat, an area must be one that may be in need of special management considerations or protection. The Service interprets that requirement to mean that if adequate management for a species is already in place, "special management considerations or protection" are not necessary, and the species can be conserved without the added regulatory requirements associated with critical habitat.

Issue 36: The Forest Plans are outdated and are not being followed in many respects. The Service should consider the management practices actually implemented in recent years. The Service should also consider the Forest Plan amendments in progress that provide for the needs of the subspecies. The Service should also consider a management plan for ponderosa pine habitats approved by the Manti-La Sal National Forest in 1994.

Service Response: The Service understands that the Forest Plans are outdated, and that other regulatory mechanisms such as Interim Directive #2 (ID2) have been in place to direct management of owl habitat. The Service is also aware of the amendments being prepared for all the national forests in the Southwest Region of the Forest Service. However, past practices such as ID2 and forest plan standards and guidelines were assessed as inadequate regulatory mechanisms and resulted in the listing of the owl. In addition, ongoing policy changes are often in flux, are sometimes contradictory, and until completed, do not constitute established policy that may be used to determine management objectives and directions.

The management plan for ponderosa pine habitats on the Manti-La Sal National Forest has not been provided to the Service by the Forest. Furthermore, the plan is an internal guideline and has not been incorporated into the Forest Plan. However, the Service strongly encourages the development and implementation of improved management plans, and their incorporation into Forest Plans.

Issue 37: The proposal to designate critical habitat does not coincide with the draft Mexican Spotted Owl Recovery Plan. For example, the recovery plan allows "unrestricted" management practices above 8,000 feet on the Kaibab Plateau, yet a considerable amount of critical habitat proposed in that area is above that elevation.

Service Response: Recovery planning and the designation of critical habitat are two different processes, each with its own time lines and purposes under the Act. Critical habitat designation is required, if both prudent and determinable, to be designated concurrently with the listing of a species. If not determinable at the time of listing, an additional year is allowed under law. Recovery plans, however, are not under statutory deadlines, although Service policy is to have final recovery plans in place within 30 months of listing a species as threatened or endangered. Thus, as a general rule, critical habitat precedes recovery plan development.

In the case of the Mexican spotted owl, the development of a critical habitat proposal was begun before the recovery planning process had begun, and was published in the **Federal Register** before the draft Recovery Plan was completed. The requirements of the Act and its implementing regulations, as enforced by a Federal Court, did not allow enough time for the Service to go back to the beginning of the critical habitat development process, develop a new proposed rule, and finalize critical habitat by the deadline ordered.

Critical habitat identifies areas containing the physical and biological features essential to the life history needs of a listed species, and that may need special management or protection. Designation of critical habitat does not specify what those special management considerations or protections are; those questions are addressed during the recovery planning process. In other words, critical habitat areas are those where the Service believes greatest management emphasis for a listed species should be placed, while recovery planning explains what that management should be.

In the specific instance involving the Kaibab Plateau, the area is "unrestricted" only if no nesting or roosting owls are located. The Recovery Team believes nesting and roosting is unlikely to occur; however, the plan may be modified should a significant resident owl population be discovered prior the Service's adoption of a final recovery plan. At any rate, once a final recovery plan is adopted, the Service will consider whether to revise critical habitat through a separate rule making process.

Issue 38: Owl use of the habitat above canyon rims is minimal on the Monticello Ranger District of the Manti-La Sal National Forest. Radio telemetry indicates that fewer than 10 percent of recorded locations occur in these areas, with no data on actual use of the area.

Service Response: The Service agrees that very little, if any, nest/roost habitat exists on the mesa tops that constitute the critical habitat unit on the Manti-La Sal National Forest. However, radio telemetry data indicate owl presence in this habitat, and the 10 percent figure cited by the Forest may be considered a minimum, with radio locations probably making up between 10 to 25 percent of all locations (David Willey, High Desert Research Collective, pers. comm., 1995). The commenter is correct in noting that there are no data on the behavioral use of the habitat at the various locations. This is a limitation inherent in this method of analyzing the spatial use of habitat.

Issue 39: Additional areas in Utah should be considered since critical habitat contains less than five percent of known owl sites in Utah. In addition, these owl sites and habitat may experience threats from such sources as recreational activities.

Service Response: The Service, in the final rule to list and the critical habitat proposal, determined that the primary threat to the species was commercial timber harvest. The majority of owl sites in Utah are found in steep canyon habitats within areas not managed for timber harvest. Although there are other threats to canyon-nesting owls besides stand modifying activities, the Service has been unable to find evidence that these threats are significant to the owl population as a whole. The determination was made that these actions can be dealt with through consultation under section 7 of the Act without designation of critical habitat.

Economic Issues

Issue 40: Each critical habitat unit is a separate "area" as that term is used in 16 U.S.C. 1533(b)(2), and requires the Service to consider economic impacts by individual unit.

Service Response: The Service is required to use the best available data to conduct its economic analyses under the Endangered Species Act. In the case of the Mexican spotted owl, county level data were not sufficiently reliable to be used to estimate economic impacts for each of the 28 counties. Therefore, the data were aggregated into three subregions. This was the required aggregation for the purposes of creating a viable economic model that could be used in estimating economic impacts.

Issue 41: Several commenters were concerned that the economic analysis hides and dilutes the impact of actions on rural communities, especially when data includes large urban areas.

Service Response: The smallest subdivision with standard, meaningful economic data typically is an individual county; thus, economic impacts are based on county data for regional effects, whereas statewide or nationwide data and effects are addressed only when they become economically relevant. As stated in the economic analysis, urban areas within the region, including Albuquerque, Phoenix, and Tucson, were not included in order to avoid diluting impacts.

Issue 42: Several people stated that the economic analysis does not consider the multiplier effect of base manufacturing impacts including secondary and primary manufacturing jobs and sales, support industries, government jobs, and revenues to local counties.

Service Response: The analysis considers the full impacts due to changes in wood sector businesses and suppliers and the impact due to employee spending changes, all of which are the components of the multipliers. Impacts on communities' revenues and taxes were considered, based on available information, including what was provided by county officials.

Issue 43: Some respondents noted that the economic analysis did not consider reduced property and sales taxes due to the proposed action, and stated that the analysis used Federal payments in lieu of taxes (PILTs) as justification for reductions in counties' shares of timber sale receipts.

Service Response: The economic analysis discusses impacts on property taxes and offsetting PILT payments. According to sources used in the analysis, the net impact will not affect most counties, but will affect two counties more than others. While PILT payments are not stumpage taxes paid by the U.S. Forest Service, they are offsetting funds paid to the counties. Since they offset other taxes, they have little impact to the U.S. Treasury.

Issue 44: A few groups commented that the economic analysis fails to consider the increased cost of doing business for forest products companies, and fails to consider the potential impact to shareholders of the companies.

Service Response: The analysis reports changes in sales revenue for the region, which includes impacts to shareholders of companies in the region. The increased cost of doing business that may occur as a result of higher timber prices is a distributional effect within the region, in that the owners of the timber will benefit from higher timber prices.

Issue 45: One commenter noted that the analysis does not analyze the effects of the withdrawal of Federal timber from the market nor the subsequent changes in property and timber values for private timber owners.

Service Response: Critical habitat designation affects only Federal timber harvest; however, reductions in timber harvest from public lands could increase the value of timber on private lands, thereby benefitting non-Federal timber owners.

Issue 46: One comment was received that the proposed action would cause loss of employment for government workers involved in timber sales, and noted that the economic analysis does not adequately address the costs of not having a forest products industry in the Southwest operating on Federal forests.

Service Response: Most Federal forests in the region are not affected by the proposed action. The proposed CHUs within national forests represent less than 19 percent of the Federal forest acres in the Southwest region of the Forest Service—the timber harvest is estimated to decline about the same amount. This proposed action will not close down the forest products industry in the Southwest, nor substantially affect Federal employment related to timber sales.

Issue 47: One individual noted that the analysis does not address the impacts of designating critical habitat for the Mexican spotted owl to other previously listed species across the U.S.

Service Response: The impacts estimated in the report reflect only the proposed critical habitat designation for the Mexican spotted owl, as directed by the Endangered Species Act. Appendix E of the economic analysis provides information from the Service about other species that may be affected by this proposed action.

Issue 48: One commenter stated that public opinion polls and non-scientific work have no place in the economic analysis.

Service Response: Data from all credible available sources were considered in conducting the analysis.

In some cases, information requested from Federal, State, local, and Tribal agencies was not provided. Surveys relevant to the topics were used to indicate public preferences for policy actions, an important consideration to public agencies mandated to manage public resources.

Issue 49: A few comments were received maintaining that the exercise was conducted to prove that critical habitat designation is a minor inconvenience, and that the analysis was not an unbiased attempt to describe regional econofnic impacts.

Service Response: The analysis was undertaken without bias toward a particular goal or level of economic impacts. The results reflect appropriate impacts considering that most timber acres in the Southwest region are not affected by the proposed critical habitat designation.

Issue 50: One group stated that the nonmarket benefits mentioned in the economic analysis assume increased value due to recreational uses such as fishing, hunting, and picnicking, and ignore that these activities occur presently and historically, and that these activities are complementary to timber harvesting. The same group maintained that access to the forest will be reduced due to lack of road maintenance.

Service Response: Some recreational activities may benefit from timber harvest programs (e.g., hunting for species that rely on forest edges), while others (e.g., sightseeing and wilderness camping) will not. While timber programs may contribute to forest access, recreating in areas from which timber has been cut recently may be discontinued. The acres proposed as CHUs will continue to be accessible for recreational uses.

Issue 51: One person wrote that the economic analysis made nonmarket items appear to be the major areas of value resulting from the protection of the owl. Nonmarket values are value judgments, not pure science.

Service Response: Nonmarket values are likely to be the primary benefit resulting from the proposed action. Individuals hold values for resources for personal use and other reasons. People may value continued existence of a resource they do not personally use because of environmental concerns, to preserve the option to use the resource in the future, or to endow the resource to coming generations. Nonmarket values are estimated using contingent valuation method (CVM). This technique is generally accepted as an appropriate means of evaluating this class of values.

Issue 52: Several commenters criticized the report for not including dollar estimates of the nonmarket benefits resulting from the proposed action.

Service Response: Quantifying species benefits is a costly and lengthy process that was not possible within the time constraints of the project. Even with results from such a study, allocating the benefits of preservation and recovery of an endangered species among the various actions required is an extremely difficult task. If species conservation were accomplished entirely through designation of critical habitat, then the full value of benefits could be attributed to that action. However, conservation is achieved with multiple interactive actions (e.g., Federal listing, protection under State laws), each of which may be essential to recovery and no one of which can be singled out as the sole means by which a species is conserved or recovery attained. Without a clear delineation of the results of each management action, it is not possible to disaggregate the sum of benefits to identify that portion directly attributable to critical habitat designation.

Issue 53: The comment was made that the economic analysis omitted major items such as total cost when the Forest Service implemented its pre-listing owl management guidelines, and the resulting impacts on activities such as recreation, grazing, and mining.

Service Response: The economic analysis estimates the impact of the proposed critical habitat designation for the Mexican spotted owl. The Service has indicated in the proposal that the activity of concern is timber harvest. Other activities, such as recreation, mining, and grazing, would not be affected by the proposed action unless they involve changes to constituent elements of critical habitat. Listing a species provides protection under the jeopardy standard. Additional protection is provided through the adverse modification standard after critical habitat is designated. These are separate actions between which the economic analysis clearly distinguishes.

Issue 54: Several letters were received commenting that the analysis excluded the impacts of wildfire that will result from the proposed action.

Service Response: The Service recognizes the danger fire poses to the owl. When the owl was listed and when critical habitat was proposed the Service encouraged reducing this risk with proper forest management. A relatively small portion of the region identified by commenters as being "under threat of catastrophic fire" is proposed for designation. The 3.6 million acres of U.S. Forest Service land affected by this proposal represents less than 20 percent of the land under the agency's jurisdiction in the 28 counties. The trend of increased fire danger began decades ago with forest management practices since the 1950s, including fire suppression. This is not a new threat in the region, nor one that has suddenly arisen because of the proposed action. The forest in its current condition is noted as being highly susceptible to fire, *before* critical habitat was proposed.

Issue 55: One timber industry representative asked whether Table 8 reflects total national forest harvests or the harvest from CHUs.

Service Response: The annual harvest levels provided in the report reflect only the harvests projected from the proposed CHU acres. This harvest level was indicated by forest managers. More than 80 percent of Federal forests, and all of non-Federal forests are not affected by the proposed action, and timber harvest can continue in addition to the harvest levels estimated in the report.

Issue 56: Several respondents claimed the regulations proposed under critical habitat designation are targeted at specific mills or industries. Several letters stressed the importance of preserving and enhancing private sector employment in an area where over 23 percent of jobs are in government.

Service Response: While the impacts reflect changes in Federal and private sector activity, no specific firms or industries are targeted by the proposed action for closure or elimination.

Issue 57: A group of counties in eastern Arizona noted that the analysis failed to take into account the impacts of proposed timber harvest restrictions on local schools. For example, one county noted its schools depend heavily on Federal timber fees to maintain their programs—15 percent of the school district budget is derived from U.S. Forest Service fees. The counties claim loss of these revenues will result in closure of the schools.

Service Response: The county cited as an example has approximately 492,000 acres of National Forest, with about 164,000 acres (about one-third of the acres) proposed for inclusion in critical habitat. Based on the data from this comment, this implies that less than five percent (one-third of 15 percent) of the budget of these schools would be affected if all timber harvest and other activities were eliminated in the critical habitat units. This worst case scenario is unlikely to occur.

Issue 58: One letter stated that Appendix D of the draft economic analysis reviews below-cost timber sales and indicates that critical habitat will reduce losses to the U.S. Treasury, in turn benefitting private timber owners who hold only 85,000 acres in proposed CHUs. The analysis was alleged to be incomplete, failing to account for gross ineffiencies of the Forest Service management, increased costs due to environmental regulations, and increased costs of managing forests under the National Environmental Policy Act.

Service Response: Appendix D provides an overview of below-cost timber sales, pointing out that the U.S. Treasury could benefit if timber harvests were reduced. The analysis recognizes but does not quantify the added costs of the proposed action to the U.S. Forest Service. The agency presently incurs management costs, and the cost of environmental and National Environmental Policy Act compliance. Adding to the costs incurred by the U.S. Forest Service would generate even larger deficits. The analysis cited one of the possible benefits as increased demand for timber from all private landowners in the region, not only the 85,000 acres in the critical habitat units.

Issue 59: Several people noted that increased sales from changes in recreation occur outside the region and do not provide additional value to the population within the region.

Service Response: Part of expenditures by those who recreate is outside the region, but part is within the region, possibly including lodging, gas, food, and other supplies, thereby increasing the economic level of the local community. Increased expenditures can include both increased levels per person and increased numbers of recreationists.

Issue 60: One writer stated that designation of critical habitat caused the closure of most sawmills in the region since 1989.

Service Response: The designation of critical habitat only becomes effective 30 days from the date of this final rule.

Issue 61: The analysis used 1991 data as a baseline, which does not isolate the impacts of critical habitat designation, rather it includes four years of impacts including listing. This fatally flaws the entire analysis.

Service Response: The baseline year used in the analysis is provided as a basis of comparison only, and is not intended to imply the changes have occurred since that year. The impact analysis was conducted using a "with and without" framework for comparison, rather than with a "before and after" framework in which the impacts would have included previous actions to protect the owl. The 1991 data are the most current available for conducting the impact analysis.

Issue 62: The economic analysis failed to consider impacts due to lumber price increases. The average framing lumber price in 1990 of $233.54 per 1000 board feet rose to a 1994 price of $411.02.

Service Response: Any recent changes in timber price are not due to the proposed action because the regulation has not yet been enacted.

National Environmental Policy Act

The Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Regulatory Flexibility Act and Executive Order 12866 (E.O. 12866)

This rule was not subject to Office of Management and Budget review under E.O. 12866. The Department of the Interior certifies that this designation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Also, no direct costs, enforcement costs, information collection, or recordkeeping requirements are imposed on small entities by this designation. Further, the rule contains no recordkeeping requirements as defined by the Paperwork Reduction Act of 1980.

Takings Implications Assessment

The Service has analyzed the potential takings implications of designating critical habitat for the owl in a Takings Implications Assessment prepared pursuant to requirements of Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights." The Takings Implications Assessment, available upon request (see **ADDRESSES**) concludes that the designation does not pose significant takings implications.

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the New Mexico Ecological Services State Office (see **ADDRESSES** above).

Author(s)

This final rule was prepared by Steve Spangle, U.S. Fish and Wildlife Service, Ecological Services—Endangered Species, Albuquerque, New Mexico; and Jennifer Fowler-Propst, Sonya Jarhrsdoerfer, and Marcos Gorresen, U.S. Fish and Wildlife Service, Ecological Services (see **ADDRESSES**).

The economic analysis was prepared by Richard L. Johnson and Dirk D. Draper, U.S. Fish and Wildlife Service, National Biological Services, Midcontinent Ecological Science Center, Fort Collins, Colorado; and Earl Ekstrand and John R. McKean, Colorado State University, Fort Collins, Colorado.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

§ 17.11 [Amended]

2. Section 17.11(h) is amended by revising the "Critical habitat" entry for "Owl, Mexican spotted," under Birds, to read "§ 17.95(b)".

3. Section 17.95(b) is amended by adding critical habitat for the Mexican spotted owl *(Strix occidentalis lucida)*, in the same alphabetical order as this species occurs in § 17.11(h).

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(b) * * *

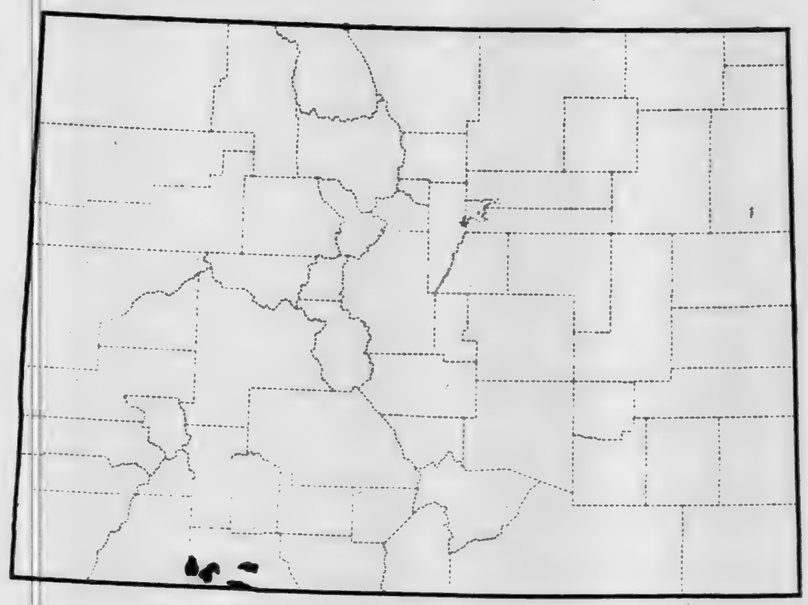
Mexican Spotted Owl *(Strix occidentalis lucida).*

For the States of Arizona, Colorado, New Mexico, and Utah, critical habitat units are depicted on maps on file and are available for inspection by appointment at: U.S. Fish and Wildlife Service, Arizona Ecological Services State Office, 2321 West Royal Palm Road, Phoenix, Arizona 85021, telephone (602) 640–2720; U.S. Fish and Wildlife Service, Colorado State Sub-Office, 764 Horizon Drive, South Annex A, Grand Junction, Colorado 81506, telephone (970) 243–2778; U.S. Fish and Wildlife Service, New Mexico Ecological Services State Office, 2105

Osuna N.E., Albuquerque, New Mexico 87113, telephone (505) 761–4525; U.S. Fish and Wildlife Service, Utah Ecological Services Field Office, Lincoln Plaza, 145 East 1300 South, Suite 404, Salt Lake City, Utah 84115, telephone (801) 524–5001.

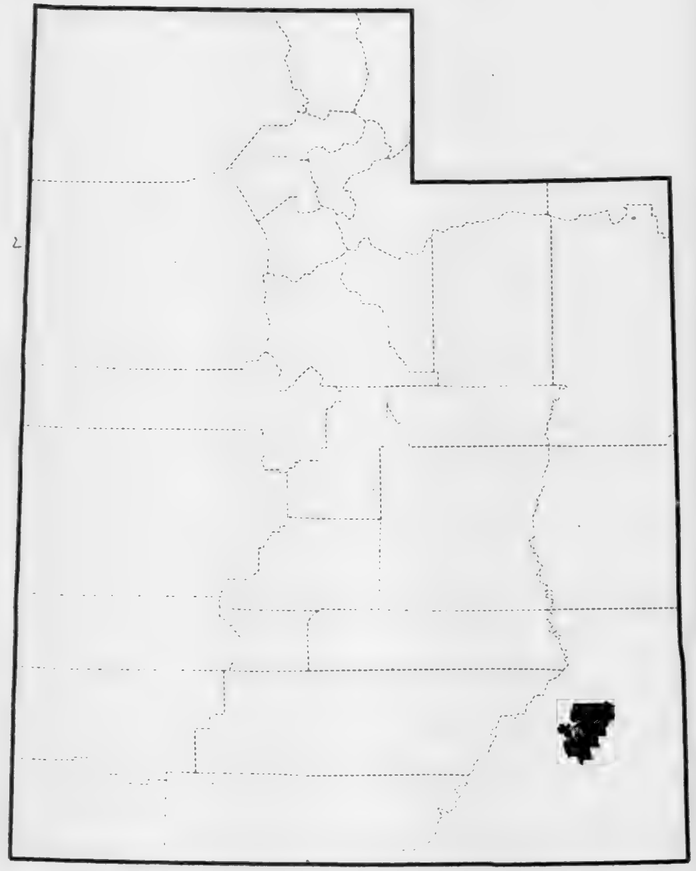
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GENERAL CONFIGURATION OF
MEXICAN SPOTTED OWL
CRITICAL HABITAT UNITS IN COLORADO

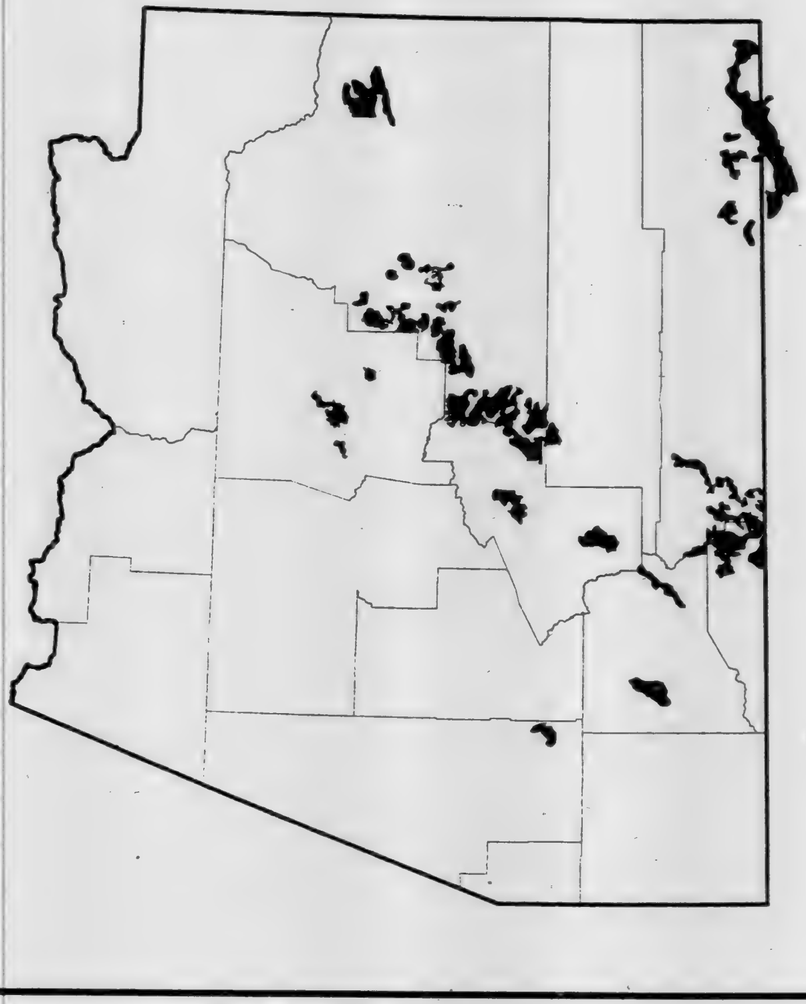


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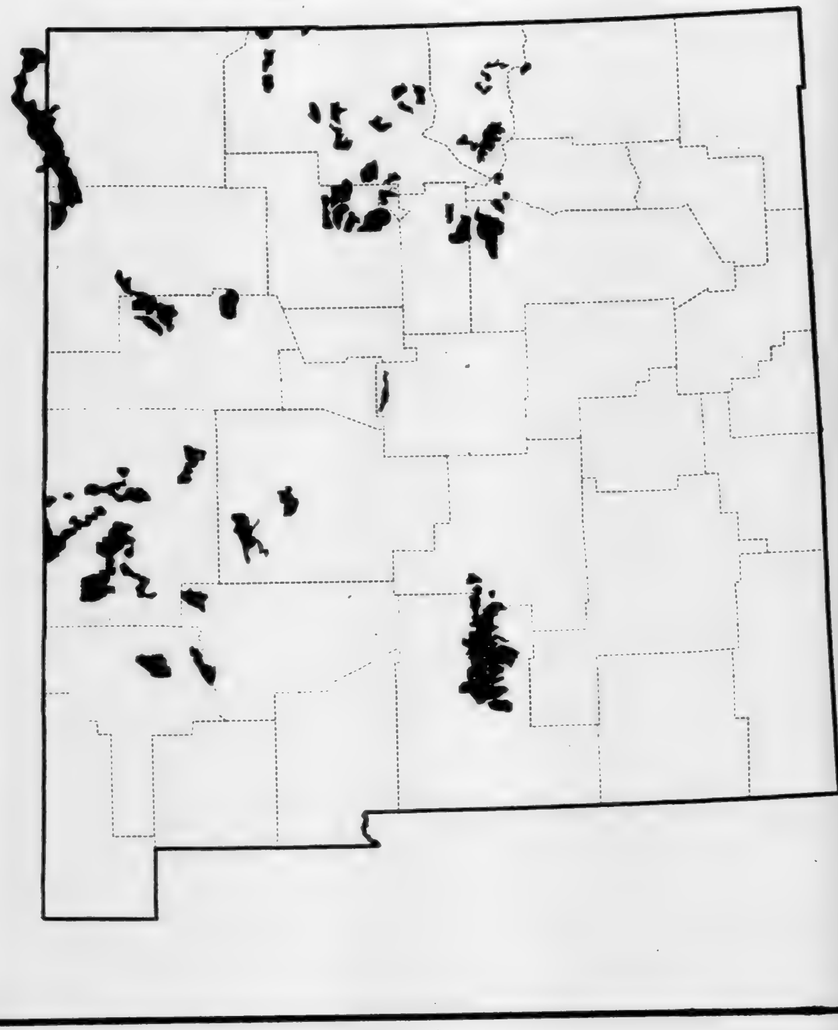
GENERAL CONFIGURATION OF
MEXICAN SPOTTED OWL
CRITICAL HABITAT UNITS IN UTAH



GENERAL CONFIGURATION OF
MEXICAN SPOTTED OWL
CRITICAL HABITAT UNITS IN ARIZONA



GENERAL CONFIGURATION OF
MEXICAN SPOTTED OWL
CRITICAL HABITAT UNITS IN NEW MEXICO



BILLING CODE 4310-55-C

Primary constituent elements: Mexican spotted owl habitat that includes, but is not limited to, those habitat components providing or with the potential to provide for nesting, roosting, or foraging. Forested habitats used for nesting and roosting are characterized as supporting mature stand attributes including high canopy closure, multi-layered canopies, coniferous vegetation (sometimes including a hardwood understory), large diameter trees, high basal areas of live trees and snags, and high volumes of large logs. Nesting and roosting habitat also supports owl foraging activity; however, a wider array of habitat attributes may be found in areas used solely for foraging, including fairly open and non-contiguous forest, small openings, woodland, and rocky slopes. Canyon habitat is typically characterized by the cool, humid conditions found in deep, steep-walled, fractured structures. Canyons frequently contain patches or stringers of riparian and conifer forest, and adjacent slopes and mesa tops are vegetated by a variety of plant associations. Owl habitat may exhibit a mixture of attributes between the forested and canyon habitat types.

Dated: May 25, 1995.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 95–13606 Filed 6–5–95; 8:45 am]

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Part III

Environmental Protection Agency

40 CFR Part 9
OMB Approval Numbers Under the Paperwork Reduction Act; Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 9

[FRL–5216–6]

OMB Approval Numbers Under the Paperwork Reduction Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Technical amendment.

SUMMARY: In compliance with the Paperwork Reduction Act, this document displays the Office of Management and Budget (OMB) control numbers issued under the Paperwork Reduction Act (PRA) for the ICR entitled "Underground Storage Tanks: Technical and Financial Requirements, and State Program Approval Procedures".

EFFECTIVE DATE: June 6, 1995.

FOR FURTHER INFORMATION CONTACT: Amy Haseltine, 703–308–8898.

SUPPLEMENTARY INFORMATION: EPA is today amending the table of currently approved information. Today's amendment is prompted by the Office of Management and Budget's recent renewal and consolidation of the Office of Underground Storage Tank's ICRs into a single ICR entitled "Underground Storage Tanks: Technical and Financial Requirements, and State Program Approval Procedures". The affected regulations are codified at 40 CFR part(s) 280 and 281. EPA will continue to present OMB control numbers in a consolidated table format to be codified in 40 CFR Part 9 of the Agency's regulations, and in each CFR volume containing EPA regulations. The table lists the section numbers with reporting and recordkeeping requirements, and the current OMB control numbers. This display of the OMB control number(s) and its subsequent codification in the Code of Federal Regulations satisfies the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and OMB's implementing regulations at 5 CFR 1320.

The ICRs were previously subject to public notice and comment prior to OMB approval. As a result, EPA finds that there is "good cause" under sections 553(b)(B) and (d)(3) of the Administrative Procedure Act (5 U.S.C. 553(b)(B) and (d)(3)) to amend this table without prior notice and comment. Due to the technical nature of the table, further notice and comment would be unnecessary.

List of Subjects in 40 CFR Part 9

Reporting and recordkeeping requirements.

Dated: May 8, 1995.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble 40 CFR part 9 is amended as follows:

1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 et seq., 136-y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 et seq., 1311, 1313d, 1314, 1321, 1326, 1330, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 et seq., 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. In § 9.1 the table is amended by revising the entries under the indicated headings to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * * * *	
Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks (USTs)	
280.11(a)	2050–0068
280.20(a)–(b)	2050–0068
280.20(e)	2050–0068
280.22(a)–(f)	2050–0068
280.22(g)	2050–0068
280.31	2050–0068
280.33(f)	2050–0068
280.34(a)	2050–0068
280.34(b)	2050–0068
280.34(c)	2050–0068
280.40	2050–0068
280.43	2050–0068
280.44	2050–0068
280.45	2050–0068
280.50	2050–0068
280.53	2050–0068
280.61	2050–0068
280.62	2050–0068
280.63	2050–0068
280.64	2050–0068
280.65	2050–0068
280.66(a)	2050–0068
280.66(c)	2050–0068
280.66(d)	2050–0068
280.67	2050–0068
280.71(a)	2050–0068
280.72(a)	2050–0068
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280.97	2050–0068
280.98	2050–0068
280.99	2050–0068
280.100	2050–0068
280.101	2050–0068
280.102	2050–0068
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280.105	2050–0068
280.106	2050–0068
280.107	2050–0068
280.108	2050–0068
280.109(a)	2050–0068
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280.110	2050–0068
280.111	2050–0068
280.111(b)(11)	2050–0068
280.114(a)–(d)	2050–0068
280.114(e)	2050–0068
Approval of State Underground Storage Tank Programs	
28.120(a)	2050–0068
28.120(g)	2050–0068
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28.122	2050–0068
28.124	2050–0068
28.125	2050–0068
28.140	2050–0068
28.143(a)	2050–0068
28.150	2050–0068
28.152	2050–0068
28.161	2050–0068
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[FR Doc. 95–13790 Filed 6–5–95; 8:45 am]

BILLING CODE 6560–50–P

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Part IV

The President

Proclamation 6807—National Homeownership Day, 1995

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Presidential Documents

Title 3—

The President

Proclamation 6807 of June 2, 1995

National Homeownership Day, 1995

By the President of the United States of America

A Proclamation

Throughout the more than two hundred years since our Nation was founded, Americans have embraced the dream of homeownership. Strengthening families, establishing communities, and fostering prosperity, homeownership is the cornerstone of our economy and a common thread in our national life. Thanks to a tradition of cooperation between government and industry, the doors of homeownership have been opened to millions of Americans. And the United States is one of the first countries in the world to make homeownership a reality for a majority of its people.

For the better part of this century, America has made homeownership a priority of national policy. The National Housing Act of 1934 created the Federal Housing Administration's home mortgage insurance program, empowering more than 23 million Americans to buy their own homes. In 1944, the GI Bill of Rights set up the Veterans Administration's home loan guaranty program, enabling millions of veterans to start a new life for themselves and their families. The Housing Act of 1949 declared that every American family should enjoy a "decent home and a suitable living environment"—an ideal that has been reaffirmed in myriad ways since then.

Our country's long-standing commitment to this goal is a testament to the tremendous rewards of homeownership. Homeownership spurs the production and sales of goods and services, generating new jobs and brightening America's economic horizon. It encourages savings and investment, promotes economic and civic responsibility, and enhances the financial security of the American people. Perhaps most important, homeownership gives Americans pride in their neighborhoods and hope for a brighter tomorrow.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim June 5, 1995, as "National Homeownership Day." I urge all of our citizens to observe this day with appropriate programs, ceremonies, and activities that celebrate the great American Dream.

IN WITNESS WHEREOF, I have hereunto set my hand this second day of June, in the year of our Lord nineteen hundred and ninety-five, and of the Independence of the United States of America the two hundred and nineteenth.

William J. Clinton

[FR Doc. 95-14039
Filed 6-5-95; 10:33 am]
Billing code 3195-01-P

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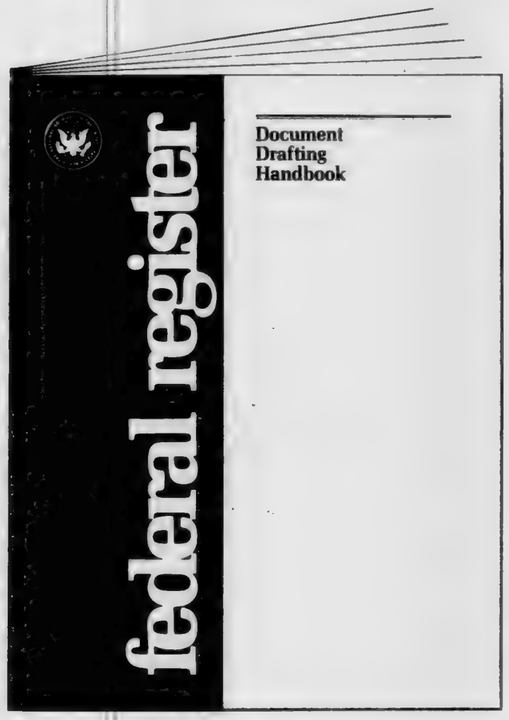
LIST OF PUBLIC LAWS

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H.R. 1421/P.L. 104–14

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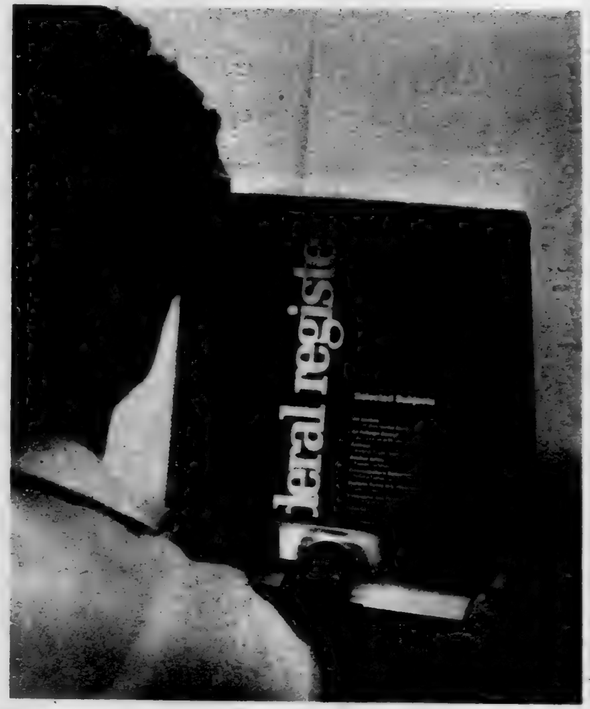
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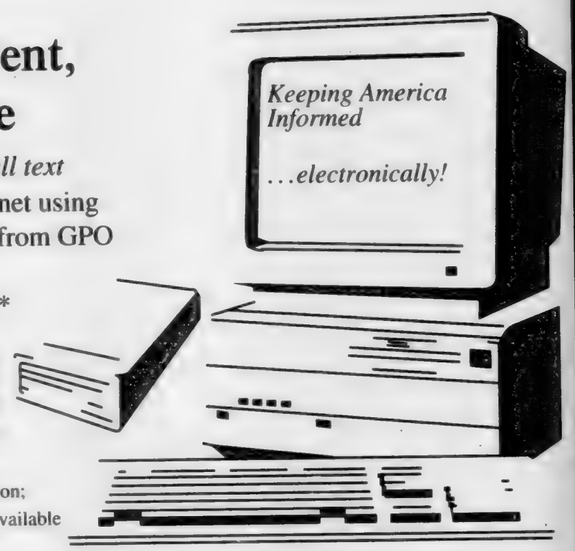
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Rules and Regulations

Federal Register
Vol. 60, No. 109
Wednesday, June 7, 1995

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Parts 401, 443, and 457

RIN 0563–AB28

General Crop Insurance Regulations, Various Endorsements; Hybrid Seed Crop Insurance Regulations; and Common Crop Insurance Regulations, Sunflower Seed Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation.

ACTION: Interim rule.

SUMMARY: The Federal Crop Insurance Corporation ("FCIC") hereby amends the General Crop Insurance Regulations, Hybrid Sorghum Seed and Rice Endorsements; the Hybrid Seed Crop Insurance Regulations; and the Common Crop Insurance Regulations, Sunflower Seed Crop Insurance Provisions; applicable for the 1995 crop year only, by revising the prevented planting coverage. The intended effect of this regulation is to allow an insured to collect both a guaranteed deficiency payment under the so-called 50/92 and 0/92 provisions of the wheat, feed grains, cotton, and rice programs administered by the United States Department of Agriculture ("USDA") under the authority of the Agricultural Act of 1949, as amended, and a prevented planting indemnity under the crop insurance program.

DATES: This rule is effective January 1, 1995. Written comments, data, and opinions on this rule will be accepted until close of business August 7, 1995 and will be considered when the rule is to be made final.

ADDRESSES: Written comments, data, and opinion on this interim rule should be sent to Diana Moslak, Regulatory and Procedural Development Staff, Federal Crop Insurance Corporation, USDA, Washington, D.C. 20250. Hand or messenger delivery may be made to 2101 L Street, N.W., Suite 500, Washington D.C. Written comments will be available for public inspection and copying in the Office of the Manager, 2101 L Street, N.W., 5th Floor, Washington, D.C., during regular business hours, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Diana Moslak, Regulatory and Procedural Development Staff, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250. Telephone (202) 254–8314.

SUPPLEMENTARY INFORMATION: This action has been reviewed under United States Department of Agriculture ("USDA") procedures established by Executive Order 12866 and Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for hybrid sorghum seed is May 1, 2000; rice is August 29, 1998; hybrid seed is October 1, 1997; and sunflower seed is March 1, 1999.

This rule has been determined to be "not significant" for the purposes of Executive Order 12866, and therefore, has not been reviewed by the Office of Management and Budget ("OMB").

The information collection requirements contained in these regulations (7 CFR parts 401, 443, and 457) were previously approved by OMB pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), under OMB control numbers 0563–0001, 0563–0003, 0563–0014, 0563–0023, 0563–0025, 0563–0029, 0563–0032, and 0563–0036. The amendments set forth in this rule do not revise the content or alter the frequency of reporting for any of the forms cleared under the above-referenced dockets. Public reporting burden for the collection of information is estimated to range from 15 to 90 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

It has been determined under section 6(a) of Executive Order 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions and procedures contained in this rule will not have a substantial direct effect on states or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

This regulation will not have a significant impact on a substantial number of small entities. The amount of work required of the insurance companies delivering these policies and the procedures therein will not increase from the amount of work currently required to deliver previous policies to which this regulation applies. This rule does not have any greater or lesser impact on the insured farmer. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which require intergovernmental consultation with state and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

The Office of the General Counsel has determined that these regulations meet the applicable standards provided in subsections 2(a) and 2(b)(2) of Executive Order 12778. The provisions of this rule will preempt state and local laws to the extent such state and local laws are inconsistent herewith. The provisions of this rule are retroactive to January 1, 1995, so as to make the benefits hereunder available to all insureds for the applicable 1995 crop year. The implementation of the provision is not adverse to any insured. The administrative appeal provisions located at 7 CFR part 400, subpart J, or promulgated by the National Appeals Division, whichever is applicable, must be exhausted before judicial action may be brought.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

The Omnibus Budget Reconciliation Act of 1993 (OBRA) made the 50/92 and the 0/92 provisions available to producers who were prevented from planting or had failed acreage for crop years 1994 through 1997. Currently, the prevented planting crop insurance provisions prohibit prevented planting coverage for any acreage considered to have been left unplanted under any other United States Department of Agriculture program. By this rule, an insured may collect both a guaranteed deficiency payment under the "0/85" and "0/92" provisions of the various commodity programs administered by United States Department of Agriculture under the Agricultural Act of 1949, as amended, and a prevented planting indemnity under the crop insurance program. Because the weather conditions in various parts of the midwest have not been conducive to timely planting of various 1995 program crops, an emergency situation exists for many producers which requires that this rule be made effective retroactive to January 1, 1995, without prior notice and comment. Comments are solicited for 60 days after the date of publication in the **Federal Register** and will be considered by FCIC before this rule is made final.

List of Subjects

7 CFR Part 401

Crop insurance, hybrid sorghum seed, rice.

7 CFR Part 443

Crop insurance, hybrid seed.

7 CFR Part 457

Crop insurance, sunflower seed.

Interim Rule

Pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends the General Crop Insurance Regulations (7 CFR Part 401) by amending the Hybrid Sorghum Seed (§ 401.109) and Rice (§ 401.120) Endorsements; the Hybrid Seed Crop Insurance Regulations (7 CFR Part 443); and the Common Crop Insurance Regulations (7 CFR Part 457) by amending the Sunflower Seed Crop Insurance Provisions (§ 457.108); applicable for the 1995 crop year only, to read as follows:

PARTS 401, 443, AND 457—[AMENDED]

1. The authority citation for 7 CFR part 401 is revised to read as follows:

Authority: 7 U.S.C. 1506(1).

2. Section 401.109 is amended by revising subparagraph 12.(d)(3)(iii)(C) of the Hybrid Sorghum Seed Endorsement to read as follows:

§ 401.109 Hybrid sorghum seed endorsement.

* * * * *

12. Late Planting and Prevented Planting

* * * * *

(d) * * *
(3) * * *
(iii) * * *

(C) Land used for conservation purposes or intended to be left unplanted under any program administered by the United States Department of Agriculture (Proof that the insured had the inputs available to plant and produce a crop with the expectation of at least producing the production guarantee may be required.);

* * * * *

3. Section 401.120 is amended by revising subparagraph 10.(d)(3)(ii)(C) of the Rice Endorsement to read as follows:

§ 401.120 Rice endorsement.

* * * * *

10. Late Planting and Prevented Planting

* * * * *

(d) * * *
(3) * * *
(ii) * * *

(C) Land used for conservation purposes or intended to be left unplanted under any program administered by the United States Department of Agriculture (Proof that the insured had the inputs available to plant and produce a crop with the expectation of at least producing the production guarantee may be required.);

* * * * *

4. The authority citation for 7 CFR part 443 is revised to read as follows:

Authority: 7 U.S.C. 1506(l).

5. Section 443.7(d) is amended by revising subparagraph 17.(d)(3)(iii)(C) of the Hybrid Seed Crop Insurance Policy to read as follows:

§ 443.7 The application and policy.

* * * * *

(d) * * *

17. Late Planting and Prevented Planting

* * * * *

(d) * * *
(3) * * *
(iii) * * *

(C) Land used for conservation purposes or intended to be left unplanted under any program administered by the United States Department of Agriculture (Proof that the insured had the inputs available to plant and produce a crop with the expectation of at least producing the production guarantee may be required.);

* * * * *

6. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l).

7. Section 457.108 is amended by revising subparagraph 13.(d)(3)(iv)(C) of the Sunflower Seed Crop Provisions to read as follows:

§ 457.108 Sunflower Seed Crop Insurance Provisions.

* * * * *

13. Late Planting and Prevented Planting

* * * * *

(d) * * *
(3) * * *
(iv) * * *

(C) Land used for conservation purposes or intended to be left unplanted under any program administered by the United States Department of Agriculture (Proof that the insured had the inputs available to plant and produce a crop with the expectation of at least producing the production guarantee may be required.);

* * * * *

Done in Washington, D.C., on June 2, 1995.

Suzette M. Dittrich,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 95–14032 Filed 6–6–95; 8:45 am]

BILLING CODE 3410–08–P

Agricultural Marketing Service

7 CFR Part 1220

RIN 0581–AB18

[No. LS–94–003]

Soybean Promotion and Research: Amend the Order To Adjust Representation on the United Soybean Board and Adjust Number of Board Meetings Required

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule adjusts the number of members for certain States on the United Soybean Board (Board) to reflect changes in production levels which have occurred since the Board was appointed in 1991 and decreases the number of required Board meetings from four a year to three a year.

EFFECTIVE DATE: June 7, 1995.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Chief, Marketing Programs Branch; Livestock and Seed Division; Agricultural Marketing Service (AMS), USDA, room 2606–S; P.O. Box 96456; Washington, D.C. 20090–6456. Telephone number 202/720–1115.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding: Proposed Rule—Soybean Promotion and Research: Amend the Order to Adjust Representation on the United Soybean Board and Adjust Number of Board Meetings Required published March 22, 1995 (60 FR 15082).

Executive Orders 12866 and 12778 and Regulatory Flexibility Act

The Department of Agriculture is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order No. 12778, Civil Justice Reform. It is not intended to have a retroactive effect.

The Soybean Promotion, Research, and Consumer Information Act (Act) provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 1971 of the Act, a person subject to the Soybean Promotion and Research Order (Order) may file with the Secretary a petition stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order is not in accordance with law and requesting a modification of the Order or an exemption from the Order. The petitioner has the opportunity for a hearing on the petition. After a hearing the Secretary will rule on the petition. The statute provides that the district court of the United States in any district in which the person resides or carries on a business has jurisdiction to review a ruling on the petition if a complaint for that purpose is filed not later than 20 days after the date of entry of the ruling.

Further, section 1974 of the Act provides, with certain exceptions, that nothing in the Act may be construed to preempt or supersede any other program organized and operated under the laws of the United States relating to soybean promotion, research, consumer industry, or industry information. One exception in the Act concerns assessments collected by Qualified State Soybean Boards (QSSBs). This exception provides that, in order to ensure adequate funding of the operations of QSSBs under the Act, no State law or regulation may limit or have the effect of limiting the full amount of assessments that a QSSB in that State may collect, and which is authorized to be credited under the Act. Another exception concerns certain referenda conducted during specified periods by a State relating to the continuation or termination of a QSSB or State soybean assessment.

This action has also been reviewed under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This final rule adjusts representation on the Board to reflect changes in production levels that have occurred since the Board was appointed in 1991. It also decreases the number of required Board meetings from four a year to three a year. The Administrator of AMS has determined that this rule will not have a significant economic impact on a substantial number of small business entities.

Background

The Act (7 U.S.C. 6301–6311) provides for the establishment of a coordinated program of promotion and research designed to strengthen the soybean industry's position in the marketplace, and to maintain and expand domestic and foreign markets and uses for soybeans and soybean products. The program is financed by an assessment of 0.5 of 1 percent of the net market price of soybeans sold by producers. Pursuant to the Act, an Order was made effective July 9, 1991. The Order established a Board of 60 members. For purposes of establishing the Board, the United States was divided into 31 geographic units. Representation on the Board from each unit was determined by the level of production in each unit. The Secretary appointed the initial Board on July 11, 1991.

Section 1220.201(c) of the Order provides that at the end of each 3 year period, the Board shall review soybean production levels in the geographic units throughout the United States. The Board may recommend to the Secretary modification in the levels of production necessary for Board membership for each unit. At its September 1994 meeting and again at its December 1994 meeting, the Board voted to recommend to the Secretary that no modification be made.

Section 1220.201(d) of the Order provides that at the end of each 3 year period, the Secretary must review the volume of production of each unit and adjust the boundaries of any unit and the number of Board members from each such unit as necessary to conform with the criteria set forth in § 1220.201(e): (1) To the extent practicable, States with annual average soybean production of less than 3,000,000 bushels shall be grouped into geographically contiguous units, each of which has a combined production level equal to or greater than 3,000,000 bushels, and each such group shall be entitled to at least one member on the Board; (2) units with at least 3,000,000 bushels, but fewer than 15,000,000 bushels shall be entitled to one Board member; (3) units with 15,000,000 bushels or more but fewer than 70,000,000 bushels shall be entitled to two Board members; (4) units with 70,000,000 bushels or more but fewer than 200,000,000 bushels shall be entitled to three Board members; and (5) units with 200,000,000 bushels or more shall be entitled to four members.

Representation on the Board, effective with this final rule, is based on average production levels for the years 1989–1993 (excluding the crops in the years in which production was the highest and in which production was the lowest) as reported by the National Agricultural Statistics Service of the U.S. Department of Agriculture.

Based on the average production levels for the years 1989–1993, this rule adjusts the number of geographic units from 31 to 30; and Board members from 60 to 59. Florida is no longer a separate unit. It joins the Eastern Region, and is represented by its Board representative. Georgia and South Carolina each lose one member and Wisconsin and Maryland each gain one member.

This adjustment is effective with the 1995 nominations and appointments.

Section 1220.212(a) of the Order provides that the Board shall meet at least four times a year, and more often if necessary for the Board to carry out its responsibilities. The Board, which operates under a 5 percent administrative cap, has recommended to the Secretary that in order to reduce its administrative costs and comply with the 5 percent cap, § 1220.212(a) be amended to reduce the number of required yearly Board meetings to three. This rule reduces the required minimum number of Board meetings from four to three a year.

On March 22, 1995, AMS published in the **Federal Register** (60 FR 15082) a proposed rule adjusting representation on the Board and adjusting the number of Board meetings required.

The proposed rule was published with a request for comments to be submitted by April 21, 1995.

The Department received four written comments. The comments and our responses follow:

The South Carolina Soybean Board (South Carolina Board) and the Georgia Agricultural Commodity Commission for Soybeans (Georgia Commission) objected to the proposed reapportionment because it would reduce Board membership for each State by one seat. Both assert that the Department did not adhere directly to the Act and Order by using the 1989–1993 crop production data to adjust representation on the Board. Based on their interpretation they suggest that the crop production years used in the proposed reapportionment should be 1988–1992. The South Carolina Soybean Association's (Association) and the Georgia Soybean Association's

(Association) comments also objected to the proposed reapportionment.

The Department decision to use the crop production years 1989–1993 was based on section 1969(b)(2)(E) of the Act and § 1220.201 of the Order which provides that at the end of each 3 year period starting on the effective date of the Order (July 9, 1991) the Secretary shall review the volume of production of each State or unit and shall adjust the number of Board members to conform with the volume of production specified in the Act and Order. The Act and Order also state that average annual soybean production shall be determined by using the average of the production for the State or unit over the five previous years, excluding the crops in which production was the highest and lowest.

Accordingly, in July of 1994, at the end of the first 3 year period, the Department reviewed the volume of production for the required 5 years. The five previous years data available in july 1994 were 1989–1993. Since the commenters' assertions are not consistent with the requirements of the Act and Order, no change is being made in this final rule.

The South Carolina Board and the Georgia Commission argue that reapportionment of the Board should have been made effective with the 1994 appointments to the Board. The two State Associations commented in support of this position.

To ensure sufficient time for Departmental clearance and appointment by December, the nomination and selection process for Board appointment has been initiated prior to July each year. Thus, the nominations for 1994 appointments by the Secretary had already been submitted based on the allocation of Board seats established by the initial Order when the reapportionment process began in July of 1994. Also, in order for the appointments to be made under a revised allocation based on reapportionment, a final rule must be promulgated which establishes the new allocation of Board seats. Consequently, the 1995 appointments rather than 1994 appointments are the first appointments which can be made under this reapportionment. Accordingly, no change is being made in this final rule.

Effective Date

Pursuant to 5 U.S.C. 553 it is found and determined that good cause exists for not postponing the effective date of the action until 30 days after publication of this rule in the **Federal Register**. This rule adjusts representation on the Board and reduces the required number of meetings of the Board and should be made effective upon publication in order to begin the 1995 nomination and appointment process and to allow the Board to schedule fiscal year 1995 meetings accordingly.

List of Subjects in 7 CFR Part 1220

Agricultural research, Reporting and recordkeeping requirements, Soybeans.

For the reasons set forth in the preamble, 7 CFR is amended as follows:

PART 1220—SOYBEAN PROMOTION, RESEARCH, AND CONSUMER INFORMATION

1. The authority citation for 7 CFR part 1220 continues to read as follows:

Authority: 7 U.S.C. 6301–6311.

2. Section 1220.201 is amended by revising the section heading and paragraph (a), removing paragraph (f), and redesignating paragraph (g) as paragraph (f) as follows:

§ 1220.201 Membership of board.

(a) For the purposes of nominating and appointing producers to the Board, the United States shall be divided into 30 geographic units and the number of Board members from each unit, subject to paragraphs (d) and (e) of this section shall be as follows:

Unit	No. of members
Illinois	4
Iowa	4
Minnesota	3
Indiana	5
Missouri	3
Ohio	3
Arkansas	3
Nebraska	3
Mississippi	2
Kansas	2
Louisiana	2
South Dakota	2
Tennessee	2
North Carolina	2
Kentucky	2
Michigan	2
Virginia	2
Maryland	2
Wisconsin	2
Georgia	1
South Carolina	1
Alabama	1
North Dakota	1
Delaware	1
Texas	1
Pennsylvania	1
Oklahoma	1
New Jersey	1
Eastern Region (New York, Massachusetts, Connecticut, Florida, Rhode Island, Vermont, New Hampshire, Maine, West Virginia, District of Columbia, and Puerto Rico)	1
Western Region (Montana, Wyoming, Colorado, New Mexico, Idaho, Utah, Arizona, Washington, Oregon, Nevada, California, Hawaii, and Alaska)	1

* * * * *

3. In § 1220.212, paragraph (a) is revised to read as follows:

§ 1220.212 Duties.

* * * * *

(a) To meet not less than three times annually, or more often if required for the Board to carry out its responsibilities pursuant to this subpart.

* * * * *

Dated: June 1, 1995.

Lon Hatamiya,

Administrator.

[FR Doc. 95–13921 Filed 6–6–95; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 1230

RIN 0581–AB36

[No. LS–94–010]

Pork Promotion, Research, and Consumer Information Act of 1985—Increase in Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Pursuant to the Pork Promotion, Research, and Consumer Information Act of 1985 (Act) and the Pork Promotion, Research, and Consumer Information Order (Order) thereunder, this final rule increases the rate of assessment of 0.35 percent of market value of porcine animals to 0.45 percent; and adjusts the amount of assessment per pound due on imported pork and pork products to reflect the assessment rate increase of 0.10 percent and the decrease in the 1994 average price for domestic barrows and gilts. The assessment increase and the adjustment in assessments on imported pork and pork products will increase annual funding of the promotion, research, and consumer information program by an estimated $10 million to $12 million over a 12-month period.

EFFECTIVE DATE: September 3, 1995.

ADDRESSES: Ralph L. Tapp, Chief; Marketing Programs Branch; Livestock and Seed Division; Agricultural Marketing Service (AMS), USDA; P.O. Box 96456, Room 2606–S; Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Chief, Marketing Programs Branch, 202/720–1115.

SUPPLEMENTARY INFORMATION:

Executive Orders 12866 and 12778 and Regulatory Flexibility Act

This rule has been determined to be not significant for purposes of Executive Order 12866, and therefore has not been reviewed by the Office of Management and Budget.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This final rule is not intended to have a retroactive effect. The Act states that the statute is intended to occupy the field of promotion and consumer education involving pork and pork products and of obtaining funds thereof from pork producers and that the regulation of such activity (other than a regulation or requirement relating to a matter of public health or the provision of State or local funds for such activity) that is in addition to or different from the Act may not be imposed by a State.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 1625 of the Act, a person subject to an order may file a petition with the Secretary stating that such order, a provision of such order or an obligation imposed in connection with such order is not in accordance with law; and requesting a modification of the order or an exemption from the order. Such person is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in the district in which the person resides or does business has jurisdiction to review the Secretary's determination, if a complaint is filed not later than 20 days after the date such person receives notice of such determination.

Information available to the Department indicates that nearly all of the estimated 278,000 pork producers and many of the estimated 200 importers can be classified as small entities. This final rule increases the rate of the assessment from 0.35 percent of the market value of porcine animals to 0.45 percent, and increases the cents per pound and per kilogram of assessments on imported pork and pork products subject to assessment. Adjusting the rate of assessment from 0.35 to 0.45 percent and increasing the assessment on imported pork and pork products results in an estimated increase in assessments of $10 million to $12 million over a 12-month period. However, the gross market value of all swine marketed in the United States during 1993 exceeded $10.6 billion. The economic impact of the assessments will not be a significant part of the total market value of swine.

This rule also adjusts importer assessments to reflect the increase in the assessment rate from 0.35 to 0.45 percent and to reflect a decrease in the 1994 average market price for domestic barrows and gilts. The combined effect of the assessment rate increase and the decrease in the average market price increases the assessments on imported pork and pork products subject to assessments by two- to four-hundredths of a cent per pound, or as expressed in cents per kilogram, four- to nine-hundredths of a cent per kilogram. Adjusting the assessments on imported pork and pork products would result in an estimated increase in assessments of $175,000 over a 12-month period.

Accordingly, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

The information collection requirements contained in part 1230, subparts A and B, have been previously approved by the Office of Management and Budget (OMB) and have been assigned OMB Control Number 0851–0151.

The Act (7 U.S.C. 4801–4819) approved December 23, 1985, authorized the establishment of a national pork promotion, research, and consumer information program. The program is funded by an assessment rate of 0.35 percent of the market value of all porcine animals marketed in the United States and an equivalent amount of assessment on imported porcine animals, pork, and pork products. The final Order establishing a pork promotion, research, and consumer information program was published in the September 5, 1986, issue of the **Federal Register** (51 FR 31898; as corrected, at 51 FR 36383, and amended at 53 FR 1909, 53 FR 30243, 56 FR 4, and 56 FR 51635). Assessments began on November 1, 1986.

The Order requires that producers pay to the Board an assessment of 0.35 percent of the market value of each porcine animal upon sale. However, for purposes of collecting and remitting assessments, porcine animals are divided into three separate categories (1) feeder pigs, (2) slaughter hogs, and (3) breeding stock. The Order specifies that purchasers of feeder pigs, slaughter hogs, and breeding stock shall collect an assessment on these animals if assessments are due. The Order further provides that for the purpose of collecting and remitting assessments persons engaged as a commission merchant, auction market or livestock market in the business of receiving such porcine animals for sale on commission for or on behalf of a producer shall be deemed to be a purchaser.

The Order requires importers of porcine animals to pay the U.S. Customs Service (USCS), upon importation, the assessment of 0.35 percent of the porcine animal's declared value and importers of pork and pork products to pay USCS, upon importation, the assessment of 0.35 percent of the market value of the live porcine animals from which such pork and pork products were produced.

The procedures for collection and remittance of assessments are specified in § 1230.71 of the Order.

Pursuant to section 1620 of the Act, the assessment rate of 0.25 percent of the market value of porcine animals, pork, or pork products sold or imported was established in the initial Order and was changed to 0.35 percent on December 1, 1991. Based on the assessment rate of 0.35 percent, the total annual assessments collected during 1994 were approximately $42 million. Assessments on imported pork and pork products accounted for about $1.5 million of the total.

The Act and § 1230.71 of the Order contain provisions for increasing the initial rate of assessment. Section 1620(b)(2) of the Act provides that the rate of the assessment in the initial Order may be increased by not more than 0.1 percent per year upon recommendation of the National Pork Producers Delegate Body (Delegate Body) whose producer and importer members are appointed annually by the Secretary. The Act further provides that the rate of assessment may be increased by no more than 0.1 percent annually not to exceed 0.5 percent of the market value unless the Delegate Body recommends a greater increase and the increase is approved in a referendum.

The 1994 Delegate Body, at its annual meeting on March 3–5, 1994, in Kansas City, Missouri, voted overwhelmingly to recommend to the Secretary that the rate of assessment of 0.35 percent be increased to 0.45 percent. There were 170 Delegate Body members appointed by the Secretary in 1994. At the Delegate Body meeting 154 delegates were present during voting and voted 37,226 valid share votes. States and importers are allotted one share per $1,000 of the

aggregated amount of assessment collected. There were 31,089 share votes cast in favor of the 0.1 percent increase.

On February 15, 1995, AMS published in the **Federal Register** (60 FR 8579) a proposed rule to increase the rate of assessment of 0.35 percent of market value of porcine animals to 0.45 percent; and adjust the amount of assessment per pound due on imported pork and pork products to reflect the assessment rate increase of 0.10 percent and the decrease in the 1994 average price for domestic barrows and gilts. The proposed rule was published with a request for comments by March 17, 1995.

The following example will illustrate the effect of the increase of 0.10 percent on a per head basis. Based on the 1994 annual average five market price of $39.57 per hundredweight for barrows and gilts with an average weight of 248 pounds as reported in the USDA's publication "Livestock, Meat, and Wool Weekly Summary and Statistics" published in January 1995, the total assessment per head at the assessment rate of 0.45 percent would be 44 cents. At the assessment rate of 0.35 percent, the total per-head assessment would be 34 cents. Based on the Delegate Body's recommendation in accordance with § 1230.71(d) of the Order, this final rule increases the rate of assessment from 0.35 to 0.45 percent, which would increase assessments collected $10 million to $12 million over a 12-month period.

This final rule also increases the amount of assessment on all of the imported pork and pork products subject to assessment as published in the **Federal Register** as a final rule September 8, 1994, and effective on October 11, 1994 (59 FR 46323). This adjustment reflects the increase in the assessment rate to 0.45 percent and would be consistent with the decrease in the annual average price of domestic barrows and gilts for calendar year 1994 as reported by USDA, AMS, Livestock and Grain Market News (LGMN) Branch. This adjustment in assessments will make the equivalent market value of the live porcine animal from which the imported pork and pork products were derived reflect the recent decrease in the market value of domestic porcine animals, thereby promoting comparability between the importer and domestic assessments.

The methodology for determining the per-pound amounts for imported pork and pork products was described in the supplementary information accompanying the Order and published in the September 5, 1986, **Federal Register** at 51 FR 31901. The weight of imported pork and pork products is converted to a carcass weight equivalent by utilizing conversion factors which are published in the USDA Statistical Bulletin No. 616 "Conversion Factors and Weights and Measures." These conversion factors take into account the removal of bone, weight lost in cooking or other processing, and the nonpork components of pork products. Secondly, the carcass weight equivalent is converted to a live animal equivalent weight by dividing the carcass weight equivalent by 70 percent, which is the average dressing percentage of porcine animals in the United States. Thirdly, the equivalent value of the live porcine animal is determined by multiplying the live animal equivalent weight by an annual average market price for barrows and gilts as reported by the USDA, AMS, LGMN Branch. The annual average price, which was based on price data from six major markets, is now based on only five markets as one of the six markets—St. Louis—closed in 1994. This average price is published on a yearly basis during the month of January in the LGMN Branch's publication "Livestock, Meat, and Wool Weekly Summary and Statistics." Finally, the equivalent value is multiplied by the applicable assessment rate of 0.45 percent due on imported pork and pork products. The end result is expressed in an amount per pound for each type of pork or pork product. To determine the amount per kilogram for pork and pork products subject to assessment under the Act and Order, the cent-per-pound assessments are multiplied by a metric conversion factor 2.2046 and carried to the sixth decimal.

The formula in the preamble for the Order at 51 FR 31901 contemplated that it would be necessary to recalculate the equivalent live animal value of imported pork and pork products to reflect increases in the rate of assessments or changes in the annual average price of domestic barrows and gilts to maintain equity of assessments between domestic porcine animals and imported pork and pork products.

Substituting the assessment rate of 0.45 percent in the formula and using the 1994 average annual five market price for domestic barrows and gilts of $39.57 per hundredweight results in an increase in assessments for all the Harmonized Tariff Systems (HTS) numbers in the table in § 1230.110, 59 FR 46323; September 8, 1994, of an amount equal to two- to four-hundredths of a cent per pound, or as expressed in cents per kilogram, four- to nine-hundredths of a cent per kilogram. Based on Department of Commerce, Bureau of Census, data on the volume of imported pork and pork products available for the period January 1, 1994, through September 30, 1994, the increase in the assessment amounts would result in an estimated $175,000 increase in importer assessments over a 12-month period.

The Department's review of the supplementary information revealed that the location of the March 3–5, 1994, Delegate Body meeting was incorrectly listed as Denver, Colorado. The meeting was held in Kansas City, Missouri, and the supplementary information has been corrected.

The Department received 87 comments after the publication of the proposed rule. Thirty-four commenters, including the National Pork Board, the National Pork Producers Council, 23 State pork producer associations representing over 62,000 producers which represents a significant proportion of the estimated State producer association members nationwide, and 9 individuals supported the rate increase stating that it would provide additional opportunities for enhanced returns to pork producers and it is consistent with industry goals and plans. Fifty-one individual commenters did not support the rate increase, citing the decline in live hog prices, disfavor with the program and suggesting that the current rate was high enough or that there should be no assessment at all. Two commenters did not specifically address the proposed assessment rate increase; however they both believed the pork promotion program was successful.

One of the two commenters argued that the comment period of 30 days was not sufficient time for producers to review the proposed rule and submit comments since most pork producers do not receive the **Federal Register**. The Department believes that a 30 day comment period is sufficient to allow for public comment. A press release was issued when the proposed rule was published to facilitate timely notification of interested parties of their opportunity to comment. The press release also indicated that interested persons could request copies of the proposed rule either by the phone or mail and listed the phone number and address. The other commenter expressed concern about the magnitude of the price spread between the wholesale price and retail price for pork.

The Department carefully considered the comments, the recommendation of the Delegate Body and additional information regarding the usefulness of the proposed assessment rate increase. It has been determined that the additional revenues which will be gained from the increase will be useful in strengthening the position of the pork industry in the marketplace and in maintaining, developing, and expanding markets for pork and pork products.

The increase in total annual assessments, resulting from the increase in the assessment rate from .35 to .45 percent, will enable the pork promotion and research program to continue the funding pattern that has helped keep pork competitive with other meats and poultry since 1987. The increase will also provide the necessary funding to finance the pork industry's long range strategic plan which will address issues and initiatives that pork producers and importers believe will have the most significant economic impact on the future of the industry. These issues include environmental management, odor control, animal care, swine health, and food safety. The increase in annual assessment will provide the additional funding necessary to help producers take full advantage of the enhanced foreign trade opportunities created by NAFTA and GATT. In voting for the assessment rate increase, the National Pork Producers Delegate Body believed that the increase was necessary to make sure all producers have access to the latest research, technology, and information available to help them remain competitive in a rapidly changing industry.

Accordingly, this final rule adopts the increase in the assessment rate from 0.35 percent of market value of porcine animals to 0.45 percent as proposed; and the adjustment in the amount of assessment per pound due on imported pork and pork products to reflect the assessment rate increase of 0.10 percent and the decrease in the 1994 average price for domestic barrows and gilts as proposed.

List of Subjects in 7 CFR Part 1230

Administrative practice and procedure, Advertising, Agriculture research, Marketing agreement, Meat and meat products, Pork and pork products.

For the reasons set forth in the preamble, 7 CFR part 1230 is amended as set forth below:

PART 1230—PORK PROMOTION, RESEARCH, AND CONSUMER INFORMATION

1. The authority citation for 7 CFR Part 1230 continues to read as follows:

Authority: 7 U.S.C. 4801–4819.

Subpart—[Amended]

2. Subpart B—Rules and Regulations is amended by revising § 1220.110 to read as follows:

§ 1230.110 Assessments on imported pork and pork products.

(a) The following HTS categories of imported live porcine animals are subject to assessment at the rate specified.

Live porcine animals	Assessment
0103.10.0000	0.45 percent Customs Entered Value.
0103.91.0000	0.45 percent Customs Entered Value.
0103.92.0000	0.45 percent Customs Entered Value.

(b) The following HTS categories of imported pork and pork products are subject to assessment at the rates specified.

Pork and pork products	Assessment	
	cents/lb	cents/kg
0203.11.0000	.25	.551150
0203.12.1010	.25	.551150
0203.12.1020	.25	.551150
0203.12.9010	.25	.551150
0203.12.9020	.25	.551150
0203.19.2010	.30	.661380
0203.19.2090	.30	.661380
0203.19.4010	.25	.551150
0203.19.4090	.25	.551150
0203.21.0000	.25	.551150
0203.22.1000	.25	.551150
0203.22.9000	.25	.551150
0203.29.2000	.30	.661380
0203.29.4000	.25	.551150
0206.30.0000	.25	.551150
0206.41.0000	.25	.551150
0206.49.0000	.25	.551150
0210.11.0010	.25	.551150
0210.11.0020	.25	.551150
0210.12.0020	.25	.551150
0210.12.0040	.25	.551150
0210.19.0010	.30	.661380
0210.19.0090	.30	.661380
1601.00.2010	.35	.771610
1601.00.2090	.35	.771610
1602.41.2020	.38	.837748
1602.41.2040	.38	.837748
1602.41.9000	.25	.551150
1602.42.2020	.38	.837748
1602.42.2040	.38	.837748
1602.42.4000	.25	.551150
1602.49.2000	.35	.771610
1602.49.4000	.30	.661380

3. Subpart B–Rules and Regulations is amended by revising § 1230.112 to read as follows:

§ 1230.112 Rate of assessment.

In accordance with § 1230.71(d) the rate of assessment shall be 0.45 percent of market value.

Dated: June 1, 1995.

Lon Hatamiya,

Administrator.

[FR Doc. 95–13920 Filed 6–6–95; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL RESERVE SYSTEM

12 CFR Part 202

[Regulation B; Docket No. R–0865]

Equal Credit Opportunity

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; official staff interpretation.

SUMMARY: The Board is revising its official staff commentary to Regulation B (Equal Credit Opportunity). The commentary applies and interprets the requirements of Regulation B and is a substitute for individual staff interpretations. The revisions to the commentary provide guidance on several issues including disparate treatment, special purpose credit programs, credit scoring systems, and marital status discrimination.

EFFECTIVE DATE: June 5, 1995.

FOR FURTHER INFORMATION CONTACT: Jane Jensen Gell, Sheilah Goodman, Natalie E. Taylor, or Manley Williams, Staff Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667 or 452–2412; for the hearing impaired only, contact Dorothea Thompson, Telecommunications Device for the Deaf, (202) 452–3544.

SUPPLEMENTARY INFORMATION:

I. Background

The Equal Credit Opportunity Act (ECOA), 15 U.S.C. 1691–1691f, makes it unlawful for creditors to discriminate in any aspect of a credit transaction on the basis of sex, marital status, age, race, national origin, color, religion, receipt of public assistance, or the exercise of rights under the Consumer Credit Protection Act. The Board's Regulation B (12 CFR Part 202) implements this statute. In addition, the Board's official staff commentary (12 CFR Part 202 (Supp. I)) interprets the regulation. The commentary provides general guidance in applying the regulation to various credit transactions and is updated periodically.

II. Summary of Revisions to the Commentary

In December 1994 (59 FR 67235, December 29, 1994), the Board proposed amendments to the staff commentary to Regulation B. The Board received nearly 100 letters on the proposal. After reviewing the comment letters and upon further analysis, the Board is adopting final amendments to the staff commentary.

Section 202.2—Definitions

2(c)(1)(i) Application for Extension of Credit

The Board proposed a new comment 2(c)(2)(iii)–2 to address court decisions that misapplied portions of that section. Commenters suggested that to the extent the comment defined types of adverse action, it more clearly fit under section 202.2(c)(1)(i). The Board agrees. The Board is adopting comment 2(c)(1)(i)–1 to clarify that the refusal to refinance or extend the term of a business or other loan is adverse action if the applicant applied in accordance with the creditor's procedures.

2(c)(2)(iii) Application for Increase in Available Credit

The Board proposed comment 2(c)(2)(iii)–2 to clarify that a denial of an application to increase available credit or for a change in terms is adverse action. Many commenters expressed concern that the phrase "change in terms" was overly broad, requiring a creditor to provide an adverse action notice in a variety of situations in which it is not now required. The Board has changed the comment heading and has narrowed its scope to refer only to applications to increase credit.

2(p) Empirically Derived and Other Credit Scoring Systems

The Board has adopted comment 2(p)–3, regarding pooled data scoring systems, as proposed.

The proposed comment 2(p)–4 clarified that a credit scoring system—even if "empirically derived, demonstrably and statistically sound"—is subject to review under the ECOA and Regulation B. When a scoring system is used in conjunction with individual discretion, disparate treatment could still occur. In addition, a system could have a disparate impact on a prohibited basis, and could be challenged. Whether such a challenge would be successful depends on a variety of factors, as commenters noted.

More generally, commenters questioned how the standards set out in the proposed comment related to the discussion of disparate impact in comment 6(a)–2. Commenters believed that the proposal's reference to disparate impact was attempting to describe a highly complex area of law in a condensed manner. The Board has deleted the proposed reference to the standards of proof and burdens of persuasion the parties must meet, and instead has added a reference to comment 6(a)–2.

Section 202.4—General Rule Prohibiting Discrimination

Comment 4–1 addresses the legal concept known as "disparate treatment," which is a particular type of discrimination. The proposed amendment clarified that disparate treatment might be found even absent a conscious will to discriminate. Some commenters expressed concern that the proposal meant that "intent," as that term has been interpreted by courts in discrimination cases, is not an element of disparate treatment. The Board has revised the comment to clarify that treating individuals differently is not unlawful *per se*. However, treating individuals differently on a prohibited basis is unlawful discrimination ("disparate treatment") if there is no credible, nondiscriminatory reason that explains the difference in treatment. In the examples given, the differential treatment would constitute disparate treatment if the creditor lacked a legitimate nondiscriminatory reason for its action, or if the asserted reason was found to be a pretext for discrimination.

Section 202.5a—Rules on Providing Appraisal Reports

5a(a) Providing Appraisals

The Board proposed comment 5a(a)–1 to clarify that section 202.5a applies to applications for credit to be secured by a dwelling, whether the credit is for a business or a consumer purpose. Commenters generally supported the proposed comment. It was suggested that the Board should eliminate a reference to the "consumer's" dwelling, given the definition of "dwelling" used in sections 202.5a(a) and (c). It was noted that "consumer's dwelling" could be read as both more limited than "dwelling" (including only transactions that involve a consumer's dwelling, as "consumer" is defined elsewhere) and more expansive (any dwelling, not limited to one-to-four family dwellings). The Board has revised the comment accordingly.

The Board proposed comment 5a(a)–2 to clarify that section 202.5a applies to a request for renewal of an existing extension of credit secured by a dwelling if the creditor obtains and uses a new appraisal report in evaluating the request.

Section 202.5a does not apply if a consumer requests renewal of existing credit and the creditor does not obtain a new appraisal. Commenters supported this clarification.

5a(a)(2)(i) Notice

The Board proposed comment 5a(a)(2)(i)–1 to clarify the rule for credit involving more than one applicant, which parallels the rule in section 202.9 concerning notices of action taken where there is more than one applicant. Commenters supported this clarification.

5a(a)(2)(ii) Delivery

The Board proposed a new comment 5a(a)(2)(ii)–1 to clarify that in all cases creditors may seek reimbursement for photocopy and postage costs incurred in providing the copy of the appraisal report unless prohibited by state or other law, or unless the consumer has already paid for the report.

The proposal provided that if the creditor does not otherwise charge for the report, as in "no closing cost" loans, the creditor may not require payment solely from those consumers who request a copy of the report. Commenters were divided on this issue. Some noted that these loans benefit consumers by reducing the upfront costs of applying for credit. Several commenters believed that a prohibition on reimbursement for an appraisal report for "no closing cost" loans would have a chilling effect on creditors' willingness to offer these products. Commenters said that for no-cost loans that close, creditors who waive closing costs (including the cost of an appraisal) recover those costs over the term of the loan; they do not recover the cost of the appraisal for no-cost loans that are denied or withdrawn. Commenters requested that in such cases, the Board allow creditors to charge for the cost of the appraisal when applicants ask for a copy of the report.

The statute gives a creditor the right to require an applicant to reimburse the creditor for the cost of the appraisal. Upon further analysis, the Board believes that creditors may collect the costs of an appraisal unless the consumer has already paid for the report.

5a(c) Definitions

New comments 5a(c)–1 and 5a(c)–2 address the scope of the term "appraisal report." Under the proposal, publicly available listings of valuations for dwellings, such as published home sales prices or mortgage amounts, are not covered. The appraisal rules guard against discriminatory evaluations of a dwelling's value. The Board believes that publicly available reports of home sales prices or tax assessments, among others, are unlikely to be influenced by the type of subjectivity the law is intended to eliminate.

Commenters generally supported the clarifications to the definitions. The Board has adopted the comments as proposed.

Section 202.6—Rules Concerning Evaluation of Applications

6(a) General Rule Concerning Use of Information

The Board did not propose commentary under this section. In addressing the issue of disparate impact under proposed comment 2(p)–4, however, many commenters discussed comment 2 to this section. The commenters uniformly expressed concern, in regard to this comment and comment 2(p)–4, about the Board's articulation of the standards of proof and burdens of persuasion under a disparate impact analysis (sometimes referred to as the effects test). The Board recognizes that this is an evolving area of law, one in which creditors and consumers alike would benefit from more specificity. However, given that the Board did not propose any amendments to this section of the commentary, the only change to the existing commentary is the addition of a reference to the Civil Rights Act of 1991, which codifies the standards used for disparate impact under Title VII. The Board will consider addressing these issues further in future commentary proposals.

6(b)(1) Prohibited Basis—Marital Status

The Board proposed to revise comment 6(b)(1)–1 to clarify that if a creditor chooses to offer joint credit, the creditor generally may not take the applicants' marital status into account in credit evaluations, except to the extent necessary for determining rights and remedies under state law. Commenters generally supported this clarification.

A few commenters requested clarification on how the commentary applied to other parties such as cosigners or guarantors. Creditors are not required to combine the debts and incomes of two parties when one of them is a cosigner or guarantor for the other. (Comment 7(d)(5)–1 provides guidance on standards that creditors may use in requesting additional parties.)

Section 202.8—Special-Purpose Credit Programs

8(a) Standards for Programs

The Board proposed comments 8(a)–5 and –6 to clarify the requirements that for-profit organizations must meet to establish special-purpose credit programs under section 202.8(a).

Commenters generally supported both comments. In response to some commenters' concerns, the Board has added language to comment 8(a)–5 clarifying that the program can be designed to benefit a class of people who would otherwise receive credit on less favorable terms, as well as those who would be denied credit.

Two issues have been clarified in comment 8(a)–6. First, some commenters were concerned about the statement that the plan should specify the length of time that it will be in effect and that it be reevaluated after that time. Some commenters said that this added regulatory burden. The Board believes that because special purpose credit programs are designed to fulfill a particular need, they must be reevaluated periodically to determine if there is a continuing need for the program. The comment has been amended to reflect this position. Second, the reference to avoiding a negative effect on individuals who are not in the class the program was designed to benefit, by denying them rights or opportunities they might otherwise have, has been deleted because it is not clear precisely how this condition applies in the credit context.

Section 202.9—Notifications

The Board proposed comment 9–5 to address when a creditor must send a notice of action taken under prequalification, preapproval, and similar programs. The comment clarified that the guidance provided in the commentary to section 202.2(f), addressing applications and inquiries, applies to all types of inquiries, including prequalification and preapproval programs. Thus, if a creditor—in giving information to a consumer about a prequalification or preapproval program—decides it will not grant credit, and communicates this to the consumer, the creditor has treated the inquiry as an application (by virtue of having made a credit decision) and must comply with the notification rules in § 202.9. Commenters generally supported the guidance provided in the proposal.

Appendix C of Supplement I to Part 202—Sample Notification Forms

The Board proposed a comment to Appendix C to provide examples of additions that may be made to Model Form C–9. The commenters supported the comment and the Board has adopted it as proposed.

List of Subjects in 12 CFR Part 202

Aged, Banks, banking, Civil rights, Credit, Federal Reserve System, Marital status discrimination, Penalties, Religious discrimination, Reporting and recordkeeping requirements, Sex discrimination.

For the reasons set forth in the preamble, the Board is amending 12 CFR part 202 as set forth below:

PART 202—EQUAL CREDIT OPPORTUNITY (REGULATION B)

1. The authority citation for part 202 continues to read as follows:

Authority: 15 U.S.C. 1691–1691f.

2. In Supplement I to Part 202, *Section 202.2—Definitions*, is amended as follows:

a. Under *2(c) Adverse action.*, preceding 1. *Move from service area.*, a new paragraph heading 2(c)(1)(i), a new paragraph 1., and a new paragraph heading 2(c)(1)(ii) are added;

b. Under Paragraph (2)(c)(2)(iii), a new paragraph 2. is added; and

c. Under *2(p)*, the paragraph heading for *2(p)* is revised and new paragraphs 3. and 4. are added.

The additions and revision read as follow:

Supplement I to Part 202—Official Staff Interpretations

* * * * *

Section 202.2 Definitions

2(c) Adverse action.

Paragraph 2(c)(1)(i)

1. *Application for credit.* A refusal to refinance or extend the term of a business or other loan is adverse action if the applicant applied in accordance with the creditor's procedures.

Paragraph 2(c)(1)(ii)

1. *Move from service area.* * * *

* * * * *

Paragraph 2(c)(2)(iii)

* * * * *

2. *Application for increase in available credit.* A refusal or failure to authorize an account transaction at the point of sale or loan is not adverse action, except when the refusal is a denial of an application, submitted in accordance with the creditor's procedures, for an increase in the amount of credit.

* * * * *

2(p) Empirically derived and other credit scoring systems.

* * * * *

3. *Pooled data scoring systems.* A scoring system or the data from which to develop such a system may be obtained from either a single credit grantor or multiple credit grantors. The resulting system will qualify as an empirically derived, demonstrably and statistically sound, credit scoring system provided the criteria set forth in paragraph (p)(1) (i) through (iv) of this section are met.

4. *Effects test and disparate treatment.* An empirically derived, demonstrably and statistically sound, credit scoring system may include age as a predictive factor (provided that the age of an elderly applicant is not assigned a negative factor or value). Besides age, no other prohibited basis may be used as a variable. Generally, credit scoring systems treat all applicants objectively and thus avoid problems of disparate treatment. In cases where a credit scoring system is used in conjunction with individual discretion, disparate treatment could conceivably occur in the evaluation process. In addition, neutral factors used in credit scoring systems could nonetheless be subject to challenge under the effects test. (See comment 6(a)–2 for a discussion of the effects test).

* * * * *

3. In Supplement I to part 202, under *Section 202.4—General Rule Prohibiting Discrimination*, four new sentences are added at the end of paragraph 1. To read as follows:

* * * * *

Section 202.4—General Rule Prohibiting Discrimination

1. *Scope of section.* * * * Disparate treatment on a prohibited basis is illegal whether or not it results from a conscious intent to discriminate. Disparate treatment would be found, for example, where a creditor requires a minority applicant to provide greater documentation to obtain a loan than a similarly situated nonminority applicant. Disparate treatment also would be found where a creditor waives or relaxes credit standards for a nonminority applicant but not for a similarly situated minority applicant. Treating applicants differently on a prohibited basis is unlawful if the creditor lacks a legitimate nondiscriminatory reason for its action, or if the asserted reason is found to be a pretext for discrimination.

* * * * *

4. In Supplement I to part 202, a new *Section 202.5a*, is added in numerical order to read as follows:

* * * * *

Section 202.5a—Rules on Providing Appraisal Reports

5a(a) Providing appraisals.

1. *Coverage.* This section covers applications for credit to be secured by a lien on a dwelling, as that term is defined in § 202.5a(c), whether the credit is for a business purpose (for example, a loan to start a business) or a consumer purpose (for example, a loan to finance a child's education).

2. *Renewals.* If an applicant requests that a creditor renew an existing extension of credit, and the creditor obtains a new appraisal report to evaluate the request, this section applies. This section does not apply to a renewal request if the creditor uses the appraisal report previously obtained in connection with the decision to grant credit.

5a(a)(2)(i) Notice.

1. *Multiple applicants.* When an application that is subject to this section involves more than one applicant, the notice about the appraisal report need only be given to one applicant, but it must be given to the primary applicant where one is readily apparent.

5a(a)(2)(ii) Delivery.

1. *Reimbursement.* Creditors may charge for photocopy and postage costs incurred in providing a copy of the appraisal report, unless prohibited by state or other law. If the consumer has already paid for the report—for example, as part of an application fee—the creditor may not require additional fees for the appraisal (other than photocopy and postage costs).

5a(c) Definitions.

1. *Appraisal reports.* Examples of appraisal reports are:

i. A report prepared by an appraiser (whether or not licensed or certified), including written comments and other documents submitted to the creditor in support of the appraiser's estimate or opinion of value.

ii. A document prepared by the creditor's staff which assigns value to the property, if a third-party appraisal report has not been used.

iii. An internal review document reflecting that the creditor's valuation is different from a valuation in a third party's appraisal report (or different from valuations that are publicly available or valuations such as manufacturers' invoices for mobile homes).

2. *Other reports.* The term "appraisal report" does not cover all documents relating to the value of the applicant's property. Examples of reports not covered are:

i. Internal documents, if a third-party appraisal report was used to establish the value of the property.

ii. Governmental agency statements of appraised value.

iii. Valuations lists that are publicly available (such as published sales prices or mortgage amounts, tax assessments, and retail price ranges) and valuations such as manufacturers' invoices for mobile homes.

* * * * *

5. In Supplement I to Part 202, *Section 202.6—Rules Concerning Evaluation of Applications*, is amended as follows:

a. Under *6(a) General rule concerning use of information.*, the first sentence in paragraph 2. is revised; and

b. Under Paragraph 6(b)(1), three new sentences are added at the end of paragraph 1.

The additions and revision read as follow:

* * * * *

Section 202.6—Rules Concerning Evaluation of Applications

6(a) General rule concerning use of information.

* * * * *

2. *Effects test.* The effects test is a judicial doctrine that was developed in a series of employment cases decided by the Supreme Court under Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.), and the burdens of proof for such employment cases were codified by Congress in the Civil Rights Act of 1991 (42 U.S.C. 2000e-2). * * *

* * * * *

Paragraph 6(b)(1)

1. *Prohibited basis—marital status.* * * * Except to the extent necessary to determine rights and remedies for a specific credit transaction, a creditor that offers joint credit may not take the applicants' marital status into account in credit evaluations. Because it is unlawful for creditors to take marital status into account, creditors are barred from applying different standards in evaluating married and unmarried applicants. In making credit decisions, creditors may not treat joint applicants differently based on the existence, the absence, or the likelihood of a marital relationship between the parties.

* * * * *

6. In Supplement I to Part 202, *Section 202.8—Special Purpose Credit Programs*, under *8(a) Standards for programs.*, new paragraphs 5. and 6. are added to read as follows:

* * * * *

Section 202.8—Special Purpose Credit Programs

8(a) Standards for Programs

* * * * *

5. *Determining need.* In designing a special-purpose program under § 202.8(a), a for-profit organization must determine that the program will benefit a class of people who would otherwise be denied credit or would receive it on less favorable terms. This determination can be based on a broad analysis using the organization's own research or data from outside sources including governmental reports and studies. For example, a bank could review Home Mortgage Disclosure Act data along with demographic data for its assessment area and conclude that there is a need for a special-purpose credit program for low-income minority borrowers.

6. *Elements of the program.* The written plan must contain information that supports the need for the particular program. The plan also must either state a specific period of time for which the program will last, or contain a statement regarding when the program will be reevaluated to determine if there is a continuing need for it.

* * * * *

7. In Supplement I to Part 202, *Section 202.9—Notifications*, a new paragraph 5. is added to read as follows:

* * * * *

Section 202.9—Notifications

* * * * *

5. *Prequalification and preapproval programs.* Whether a creditor must provide a notice of action taken for a prequalification or preapproval request depends on the creditor's response to the request, as discussed in the commentary to section 202.2(f). For instance, a creditor may treat the request as an inquiry if the creditor provides general information such as loan terms and the maximum amount a consumer could borrow under various loan programs, explaining the process the consumer must follow to submit a mortgage application and the information the creditor will analyze in reaching a credit decision. On the other hand, a creditor has treated a request as an application, and is subject to the adverse action notice requirements of § 202.9 if, after evaluating information, the creditor decides that it will not approve the request and communicates that decision to the consumer. For example, if in reviewing a request for prequalification, a creditor tells the consumer that it would not approve an application for a mortgage because of a bankruptcy in the consumer's record, the creditor has denied an application for credit.

* * * * *

8. In Supplement I to Part 202, a new Appendix C—Sample Notification Forms is added at the end to read as follows:

* * * * *

Appendix C—Sample Notification Forms

Form C–9. Creditors may design their own form, add to, or modify the model form to reflect their individual policies and procedures. For example, a creditor may want to add:

i. A telephone number that applicants may call to leave their name and the address to which an appraisal report should be sent.

ii. A notice of the cost the applicant will be required to pay the creditor for the appraisal or a copy of the report.

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority, June 1, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–13862 Filed 6–6–95; 8:45 am]

BILLING CODE 6210–01–P

12 CFR Part 226

[Regulation Z; Docket No. R–0858]

Truth in Lending; Mortgage Disclosures; Correction

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Corrections to final regulation.

SUMMARY: This document contains corrections to the final rule (Docket No. R–0858) which was published Friday, March 24, 1995 (60 FR 15463). The amendments to Regulation Z concerned new disclosure requirements on certain home loans bearing rates or fees above a certain percentage or amount and on reverse mortgage transactions.

EFFECTIVE DATE: June 7, 1995.

FOR FURTHER INFORMATION CONTACT: Jane Ahrens, Senior Attorney, or Kyung Cho-Miller, Sheilah Goodman, or Kurt Schumacher, Staff Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667 or 452–2412; for the hearing impaired *only*, Dorothea Thompson, Telecommunications Device for the Deaf, at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

Background

The regulation that is the subject of the corrections is Regulation Z (12 CFR part 226), which implements the Truth in Lending Act (15 U.S.C. 1601–1666j). The act (TILA) requires creditors to disclose credit terms for consumer transactions. The final rule implemented the Home Ownership and Equity Protection Act of 1994 (HOEPA), contained in the Riegle Community Development and Regulatory Improvement Act of 1994 (Pub. L. 103–325, 108 Stat. 2160). Section 152 of the HOEPA adds a new section 129 to the TILA dealing with certain mortgages bearing rates or fees above a certain percentage or amount.

Need for Correction

As published, the final rule implementing new TILA section 129 contains errors which could be confusing and should be clarified.

Correction of Publication

Accordingly, the publication on March 24, 1995, of the final regulation (Docket No. R–0858), which was the subject of FR Doc. 95–7231, is corrected as follows:

§ 226.31 [Corrected]

On page 15472, in the first column, in § 226.31, in paragraph (g), in the third line, the phrase "annual percentage yield" is corrected to read "annual percentage rate".

§ 226.32 [Corrected]

On page 15472, in the second column, in § 226.32, in paragraph (b)(1)(iii), in the first and second lines, the phrase "required to be disclosed under" is corrected to read "listed in".

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board, June 1, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–13863 Filed 6–6–95; 8:45 am]

BILLING CODE 6210–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 121 and 124

Small Business Size Regulations; Minority Small Business and Captial Ownership Development Assistance

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: The Small Business Administration (SBA) hereby amends its regulations governing the Minority Small Business and Capital Ownership Development program authorized by sections 7(j)(10) and 8(a) of the Small Business Act, 15 U.S.C. 636(j)(10), 637(a). This final rule amends both eligibility requirements for and contractual assistance provisions within the 8(a) program. It is designed to streamline the operation of the 8(a) program and to ease certain restrictions perceived to be burdensome on Program Participants.

EFFECTIVE DATE: Except for § 124.311(a)(2), this rule is effective on June 7, 1995.

Section 124.311(a)(2) shall be effective August 7, 1995. It is applicable for all 8(a) requirements accepted by SBA on or after August 7, 1995.

FOR FURTHER INFORMATION CONTACT: Michael P. McHale, Deputy Associate Administrator for Minority Enterprise Development, (202) 205–6410.

SUPPLEMENTARY INFORMATION: On August 30, 1994, SBA published a proposed rule in the **Federal Register** (59 FR 44652) to amend both eligibility requirements for and contractual assistance provisions within the SBA's section 8(a) program. That proposal called for a 30-day comment period which was scheduled to close on September 29, 1994. In response to concerns raised that the 30-day comment period may not have been a sufficient amount of time to permit proper and thoughtful public comments, SBA, on October 27, 1994, extended the comment period through November 28, 1994. 59 FR 53947.

SBA received a total of 175 comments in response to its proposed rule. After reviewing these comments, SBA now issues this final rule.

SBA proposed this rule initially in order to simplify the operation of the

8(a) program, to make clarifying changes to the regulations deemed necessary through experience, and to permit program participants to proceed in a more entrepreneurial manner, while maintaining a high degree of program integrity. After considering the comments received, and after further review of all proposed changes, SBA has concluded that the number and scope of the proposed changes was broader than was necessary to achieve SBA's immediate and most important objectives. Accordingly, this final rule is limited to only those changes that will streamline the operation of the 8(a) program or are particularly significant, as set forth below. The remaining proposed changes will be considered as part of a more far-reaching review of the 8(a) program and will not be implemented at the present time.

This rule makes eleven significant revisions to current regulations, as follows:

(1) It permits participation in the 8(a) program by qualified small businesses owned by Community Development Corporations to an extent that is not consistent with the requirements of the 8(a) program as imposed by the Small Business Act.

(2) It simplifies 8(a) contracting procedures by eliminating the distinction established in SBA's regulations between "local buy" and "national buy" requirements, except with regard to construction projects.

(3) It eliminates the restriction on the dollar value of 8(a) contracts received by Program Participants previously imposed by SBA regulations.

(4) It eliminates the separate treatment for applying the requirements for 8(a) competitive procurements which has existed for indefinite quantity or indefinite delivery type contracts.

(5) It eliminates the separate treatment for individuals who are owners and participants of 8(a) concerns in the developmental stage of program participation so that they, like owners and principals of 8(a) concerns in the transitional stage, are eligible if their includable net worth is $750,000 or less.

(6) It streamlines procedures by eliminating the requirement that an 8(a) concern be notified twice of a termination or graduation action.

(7) It makes it easier for an 8(a) firm to add SIC codes to its business plan. Previously, concerns would have to show that a proposed new business SIC was a logical progression from its existing SIC. Under the new regulations, a concerned need merely show that it has a sound business explanation for requesting the new SIC code.

(8) It eases the ownership restrictions placed on former Program Participants.

(9) It streamlines SBA regulations by eliminating provisions dealing with SBA's expired authority to grant exemptions to the requirements of the Walsh-Healey Act and Miller Act.

(10) In response to a Court of Federal Claims directive, it establishes eligibility requirements for small disadvantaged business joint ventures.

(11) It reduces reporting requirements imposed on program participants.

Each of these changes is discussed below in SBA's summary of and response to the comments received to its August 30, 1994 proposed rule. This final rule also makes various technical changes to the regulations necessary to implement these significant revisions.

Summary of Issues Raised by Public Comment

Initially, many commenters objected to the brevity of the 30-day comment period and requested that SBA extend it. As a result of these requests, SBA extended the comment period until November 28, 1994.

SBA received many comments regarding provisions for its 8(a) regulations that were not the subject of proposed changes.

Because such comments are outside the scope of this rulemaking process, SBA does not respond to them in this final rule. One commenter objected to the process by which the regulations were proposed on the grounds that SBA failed to adhere to economic analysis, planning, review, and comment requirements mandated by Executive Order 12866. SBA maintains that its issuance of the proposed rule was proper. SBA submitted the proposed rule to the Office of Management and Budget (OMB) in conformity with the requirements of the Executive Order. OMB did not believe that a full analysis of the proposed rule under Executive Order 12866 was necessary and directed SBA to publish the rule without its review under the Executive Order.

Addition of CDC-owned businesses to the 8(a) Program.

The rule adds a new § 124.114 which specifically authorizes CDC-owned small business concerns to participant in the 8(a) program. The regulation prohibits more than one concern with the same primary industry classification owned by the same CDC from entry into the program. It also establishes that disadvantaged individuals involved in the management and control of the business are not considered to have used up their eligibility under § 124.108(c) even if their personal disadvantage is used to establish eligibility of the CDC-owned concern.

This rule also makes a technical amendment to § 121.401(b) that recognizes that concerns owned by a Community Development Corporation (CDC), authorized by 42 U.S.C. 9805 *et seq.*, are not deemed to be affiliated with the CDC. This exemption from affiliation is contained in the proposed rule at § 124.114(b). SBA believes that it should also appear in this section as well. In making this amendment, the final rule separates the various provisions of § 121.401(b) into distinct paragraphs for clarity and ease of use.

This final rule adds definitions of the term "CDC-owned concern" and "Community Development Corporation or CDC" to § 124.100. Finally, the rule makes minor technical changes to §§ 124.101(a), 124.101(b), 124.102(a), 124.103, 124.104, and 124.109(d) in order to recognize the eligibility of CDC-owned concerns for participation in the 8(a) program.

A number of commenters objected to the participation of CDCs in the 8(a) program generally. As noted in the proposed rule, the participation of CDCs in the 8(a) program is required by statute and cannot be administratively eliminated by SBA.

In addition, one commenter, an association representing CDCs, urged that SBA not require that the management and control of a CDC-owned business be in the hands of one or more disadvantaged individuals. The commenter pointed out that CDCs may acquire already existing business concerns, and that it may not be a prudent business decision to immediately replace nondisadvantaged managers of such a concern in order to meet 8(a) eligibility requirements. After further review, SBA has decided to revise the rule.

In issuing regulations implementing the inclusion of CDCs pursuant to 42 U.S.C. 9815, SBA has analogized CDCs to Indian tribes. In the case of an applicant concern that is tribally-owned, section 8(a)(4)(B)(ii) of the Small Business Act, 15 U.S.C. 637(a)(4)(B)(ii), permits the management and daily business operations of the concern to be controlled by one or more members of an economically disadvantaged Indian tribe. Thus, a tribally-owned concern need not be controlled by an individual determined to be socially and economically disadvantaged. SBA believes that similar treatment can be provided to CDC-owned companies. This result is also consistent with the treatment of concerns owned by Alaska Native Corporations (ANCs), which are entities established for the economic development of their villages or regions. ANC-owned concerns are not required to be controlled by Alaska Natives in order to participate in the 8(a) program. The Alaska Native Claims Settlement Act provides that a concern owned by an ANC shall be deemed to be both owned and controlled by such ANC. Thus, the final rule provides that a concern that is at least 51% owned by a CDC shall be deemed to be controlled by such CDC and eligible for participation in the 8(a) program, provided that it meets other eligibility criteria and its management and daily business operations are conducted by one or more individuals determined to have managerial or technical experience and competency directly related to the primary industry in which the applicant concern is seeking certification. Because of this change, the requirement that a CDC-owned concern be controlled by socially and economically disadvantaged individuals is deleted from the final rule.

Simplifying 8(a) Contracting Procedures by Eliminating the Distinction Established in SBA's Regulations Between "Local Buy" and "National Buy" Requirements, Except With Regard to Construction Projects

The rule eliminates the definitions for "local buy" and "national buy" requirements from § 124.100. The limitations in former § 124.311 (h)(3) and (h)(4) effecting who may bid on local contracts has been eliminated, except for construction contracts. All requirements other than construction requirements will now be open to eligible 8(a) Participants nationally. Construction requirements are exempt from this change because section 8(a)(11) of the Small Business Act, 15 U.S.C. 637(a)(11), requires, "to the maximum extent practicable," that 8(a) construction contracts "be awarded within the county or State where the work is to be performed." The final rule limits competition for 8(a) construction contracts to those Program Participants within the geographical boundaries of one or more SBA district offices. SBA believes that a Program Participant may be considered as being located within a geographical boundary if it regularly maintains an office which employs at least one full-time individual within that geographical boundary. SBA also believes that a procuring agency may offer a local sole source 8(a) construction requirement to SBA on behalf of a concern that regularly maintains an office which employs at least one full-time individual within that geographical boundary.

Several commenters expressed concern that eliminating the distinction between local and national buy requirements will adversely affect new or smaller 8(a) firms. Based on its experience with the operation of the present regulations, SBA believes that the adverse effect on new and smaller 8(a) firms will be negligible. In addition, SBA believes that the elimination of the local/national buy distinction will eliminate artificial barriers and promote national competition, something necessary for the survival of 8(a) concerns once they leave the program.

One commenter claimed that the elimination of the local/national buy distinction would restrict procurement opportunities to all but those firms located around major procurement centers such as Washington, DC, and Los Angeles, CA. SBA believes that the physical location of firms will have little bearing on where they can market themselves. In fact, 8(a) firms will have more opportunities to market themselves because they will not be restricted by district or regional boundaries.

One Federal agency opposed the elimination of the definitions for local and national buys because it believed that such elimination would create an increased opportunity for fraud and abuse. SBA does not believe fraud and abuse will increase simply by permitting 8(a) concerns to seek 8(a) contracts nationwide. SBA remains committed, however, to opposing any kind of fraud in the 8(a) program, and will work with procuring agencies to thwart such possibilities.

Eliminating Support Requirements

Section 124.307 is amended by redesignating paragraph (d) as paragraph (e) and by adding a new paragraph (d) that eliminates approved 8(a) support levels as a basis for denying 8(a) contract awards in excess of those levels. Most of the commenters supported the proposed rule. One commenter recommended that 124.307(d) be amended by adding the clause "or approved remedial plan" after the words "competitive business mix" and before the words "imposed by 124.312" for clarification. SBA believes that this is a logical clarification of the intent of this proposed rule, and as such, it is to be incorporated into the final rule.

The SBA Inspector General recommended that there should be some type of support level requirements. He urged that if annual levels are impractical, SBA should establish an overall dollar limit of 8(a) contracts that any individual company can receive. According to the comment, this would simplify administration of the program concerning continued eligibility and would eliminate concentration of 8(a) contracts within a small number of companies. SBA believes that a maximum support level, whether on an annual or some other basis, is not necessary with careful enforcement of competitive business mix requirements. SBA also believes that support levels unnecessarily impede the growth of 8(a) firms that are in full compliance with the mix requirements. Therefore, this recommendation was not incorporated into the final rule.

Indefinite Quantity, Indefinite Delivery

This rule also amends § 124.311(a) concerning how the competitive threshold requirements should be applied for indefinite quantity and indefinite delivery (IDIQ) requirements. Before this amendment, § 124.311(a)(2) specified that "[f]or purposes of indefinite quantity/delivery contracts, the thresholds will be applied to the guaranteed minimum value of the contract." Based on its experience with the rule, SBA now believes this provision to be unacceptable because of the wide differences commonly occurring between the "guaranteed minimum" amounts on procurements offered to the 8(a) program and the amounts actually expended under the procurements.

The prior regulation was subject to substantial criticism. Under the prior rule, procuring agencies could offer very large procurement requirements to the 8(a) program as indefinite quantity type requirements with guaranteed minimum amounts below the applicable 8(a) competitive threshold in order that such contracts could be procured on a sole source basis, even though the procurement would very likely exceed the applicable competitive threshold during the performance of the contract. SBA believes that requirements that traditionally were procured through other contract types were being offered and accepted into the 8(a) program as indefinite quantity requirements solely to take advantage of the guaranteed minimum rule and avoid the necessity for competition. In order to eliminate this potential abuse, SBA proposed to amend its regulation to specify that the competitive threshold requirements which would be applied for *all* types of contracts, including quantity/delivery contracts, would be the Government estimate of the requirement, including options, as identified by the procuring agency.

SBA received 96 comments regarding this proposal. Most of the comments

objected to the proposed change. Many comments suggested that the change would result in a decline in the number of requirements being offered to the 8(a) program, and that this would increase costs to Program Participants as they would have to compete for requirements outside the confines of the 8(a) program that were previously accepted as sole source 8(a) awards.

Many of the individual comments that opposed the proposed change were reflected also in the comments made by the National Association of Minority Business (NAMB). NAMB opposed the change because it contended that many IDIQ contracts do not exceed the guaranteed minimum value, and that many procuring activities do not exercise options on such contracts. Accordingly, they believed that the guaranteed minimum amount is a more accurate reflection of the value of the contract than any other figure. NAMB also claimed that the expansion work under an IDIQ contract is the direct result of strong performance by the 8(a) company, and that the proposed change would, therefore, penalize 8(a) firms for good performance.

SBA's Inspector General and the Department of the Treasury submitted strong comments in support of the proposed change, citing various abuses they have found conducting periodic reviews of 8(a) contracts.

SBA shares some of the same concerns voiced by NAMB.

Clearly, not all IDIQ contracts ultimately exceed the guaranteed minimum amount. Many commenters, NAMB among them, argue that most contracts do not exceed the guaranteed minimum amount and some fall short even of that figure. Certainly, reliance on a contract's maximum authorized amount as a basis for determining the contract's value could leave small disadvantaged firms with inflated expectations and adversely affect their business development under the 8(a) program. It is for these same reasons that SBA initially adopted the separate competitive threshold requirement for IDIQ requirements.

SBA now believes, however, that the frequency of abuses to the 8(a) procurement process caused by the inappropriate use of IDIQ contracts outweighs the possible disruption to business planning caused when a guaranteed minimum amount is not exceeded. Because of the overriding need for controlling the potential for abuse in this area, SBA adopts the proposed language in this final rule, although the formatting of the section is changed for clarity from the proposed rule.

In addition, as pointed out in the NAMB analysis, SBA believes that a majority of IDIQ contracts, even when measured by the Government estimate, do not exceed the applicable competitive threshold amount. Because most IDIQ contracts will not exceed the competitive threshold, the change made in this final rule should not greatly affect the number of requirements offered to the 8(a) program.

Other commenters felt that no change was needed to the IDIQ requirement because the newly enacted Government-wide Small Disadvantaged Business (SDB) program will consolidate competitive requirements and will result in the entry of fewer firms into the 8(a) program. However, SBA does not believe that the enactment of a Government-wide SDB program lessens SBA's responsibility to deal with the inappropriate use of 8(a) IDIQ contracts.

Because of the change concerning IDIQ requirements, one commenter was concerned that procuring agencies would circumvent the competitive threshold requirement, and, thus, perpetuate past abuses of the program, by dividing one contract that exceeds the threshold amount into several smaller contracts, each below the competitive threshold amount and all to be awarded as sole source 8(a) contracts to the same Program Participant. SBA agrees that such a division would not be appropriate where a procuring agency seeks to award one large requirement to one 8(a) concern through a series of smaller sole source 8(a) awards. SBA has made a change to the regulation to take this concern into account. Specifically, the new provision will state that an 8(a) requirement with an estimated value exceeding the applicable competitive threshold amount shall not be divided into several requirements for lessor amounts in order to use 8(a) sole source procedures for award to a single contractor. SBA does not, however, believe that it would be inappropriate for a procuring agency to divide a large contract into smaller sole source contracts where different Program Participants would be awarded the smaller contracts. Such an action would be consistent with the developmental purposes of the 8(a) program and with the statutory requirement that SBA equitably distribute 8(a) awards.

Under the prior rule, contracting agencies were obligated to let contracts competitively among 8(a) concerns if the estimated value of the contract was more than $5 million for manufacturing work or more than $3 million for all other types of work. Where the anticipated price of the contracts was less than this threshold, the contracting agency was permitted to use a sole source even when the negotiated contract amount exceeded the threshold. A requirement of good faith on the part of the contracting agencies was implicit in the prior rule. The new rule makes the good faith requirement explicit, and requires that the ultimate price arrived at through negotiations not be significantly higher than the competitive threshold amount.

Economic Disadvantage Threshold for Individuals Who Are Principals or Owners of Concerns in the Developmental Stage

This rule also amends § 124.111(a)(2) to establish a $750,000 net worth economic disadvantage threshold for Program Participants in either the development or transitional stage. Previously, concerns in the developmental stage were subject to possible termination or graduation from the program if their principals had an includable net worth in excess of $500,000. This rule operated to penalize success in the program and to discourage entrepreneurship and risk-taking. Under the amended rules, concerns in the developmental stage have the same threshold as concerns in the transitional stage. SBA received no objections to this proposed elimination of a different net worth figure for firms in the developmental stage of program participation.

Streamlining Termination and Graduation

Sections 124.208(c) and 124.209(b) streamline the procedures governing graduation and termination of 8(a) Program Participants respectively. This rule eliminates the second letter of notification and the second 45 day response period provided in § 124.208(c) and § 124.209(b). SBA received no objections to this amendment, which will improve SBA's efficiency by eliminating an unneeded procedural step.

Making it Easier To Add SIC Codes to a Concern's Business Plan

Section 124.302 eases the restrictions on adding SIC codes once a concern is admitted to the 8(a) program, and shortens the time it takes SBA to respond to a request for a change in SIC code designations from 45 days to 30 days. Henceforth, a concern need not show that the new SIC Codes will be a logical extension of the old ones; just that there is a sound business reason for them. These amendments will make it easier for 8(a) concerns to maintain a diversified portfolio of products and services. No comments were received regarding these provisions, and they remain unchanged in the final rule.

Easing Ownership Restrictions on Former Program Participants

Section 124.103 is amended to permit a former Program Participant (except those that have been terminated from 8(a) program participation pursuant to § 124.209) to have an equity ownership interest of up to 20 percent in a current 8(a) concern in the same or similar line of business. SBA believes that allowing such ownership, and thus easing the previous restriction imposed by SBA, will enhance the development of both current and former 8(a) Participants. SBA received forty-four comments in support of this provision. Two commenters, however, were concerned that this change would permit current 8(a) concerns to become "fronts" for former 8(a) concerns, and, thus, prolong their participation, albeit indirect, in the 8(a) program. SBA believes that there are enough safeguards in place to protect against abuse of this sort. The regulations require that management and control be in the hands of the disadvantaged owners of current 8(a) concerns. Failure to meet this requirement, which is confirmed yearly during the annual review process, is grounds for termination from the 8(a) program under § 124.209 and may cause termination of previously awarded 8(a) contracts under § 124.317. In addition, § 124.314 requires the current 8(a) concern itself (and not a subsidiary of or another concern affiliated with the 8(a) concern) to perform specified percentages of awarded 8(a) contracts. Thus, a current 8(a) participant could not shift performance of an 8(a) contract to the former 8(a) concern partial owner. Finally, one commenter recommended that SBA increase the allowable equity ownership interest by a former Program Participant to 35%. SBA believes that such an increase could give former Program Participants undue influence in current 8(a) Participants, and, thus, rejects it.

Streamlining Regulations by Removing References to Expired Authority

The final rule repeals § 124.304, (implementing statutory authority given SBA to grant Program Participants in the developmental stage of program participation a maximum of two exemptions to the requirements of the Walsh-Healey Act). It also repeals § 124.305 (implementing statutory authority given SBA to grant Program Participants exemptions from Miller Act bonding requirements). The rule reserves these sections. The former legislative authority expired on October 1, 1992, and the latter on October 1, 1994.

Establishing Joint Venture Rules for Small Disadvantaged Businesses

The final rule institutes criteria for joint ventures for small disadvantaged business (SDB) set-asides and for SDB evaluation preferences. The majority of such joint venture's earnings must accrue to the socially and economically disadvantaged individuals in the small disadvantaged business, and disadvantaged individuals must own at least 51% of the joint venture as a whole. Thus, as the examples make explicit, where a small disadvantaged concern which is 51% owned by one or more disadvantaged individuals enters a joint venture with a small concern which is 100% owned by nondisadvantaged individuals, the joint venture is not eligible even if the small disadvantaged concern earns 90% of the contract's proceeds, since 51% of 90% is only 45.9%.

SBA received seven comments pertaining to the section. For the most part, the commenters concurred with the provisions proposed by SBA. However, some commenters urged more restrictive provisions to protect against the possibility that a small disadvantaged business will "front" for a nondisadvantaged business. SBA has concluded that the present language, which requires that both a majority of the joint venture's proceeds and 51% of its ownership accrue directly to disadvantaged individuals, is sufficient protection against abuse.

Eliminating Quarterly Reporting Requirements

Section 124.501 adds a new paragraph (c) and redesignates current paragraph (c) as paragraph (d). The newly established § 124.501(c) requires the submission of annual audited financial statements only by larger 8(a) Program Participants, those with revenues in excess of $5 million. The requirement to submit such financial statements is not a change in SBA policy. The requirement for financial statements is currently contained in §§ 124.312 (b)(7) and (c)(10) (which have elsewhere been redesignated as paragraphs (b)(4) and (c)(7) in this final rule), and failure to comply with it is referenced as a basis for finding good cause to terminate a Program Participant in § 124.209(a)(6)(i). An earlier SBA Notice had established guidelines regarding these reporting requirements.

A majority of the comments concerning this provision of the proposed rule opposed it because of cost. Taking into account this concern, SBA has determined that it should reduce the overall reporting requirements imposed by SBA on Program Participants. Accordingly, this rule eliminates the quarterly reporting requirements previously imposed by §§ 124.312 (b)(7) and (c)(10), and the reference to a failure to submit quarterly financial statements as a basis for termination contained in § 124.209. This will lessen the paperwork burden imposed on Program Participants, and is consistent with the Agency's initiative to streamline the operation of the 8(a) program.

SBA is particularly sensitive to imposing administrative burdens on 8(a) participants. The rule as proposed was designed to make compliance as inexpensive as possible. Only Program Participants with annual gross income of $5 million or more need submit audited financial statements prepared by a licensed independent public accountant. Program Participants with a gross annual income of at least $1 million and less than $5 million need only submit reviewed financial statements prepared by a licensed independent public accountant. Program Participants with annual gross revenues of less than $1 million need merely submit an annual statement prepared by a licensed independent public accountant. The actual cost of this last type of report is negligible, and in many cases is prepared as part of tax preparation. In addition, the regulation authorizes the District Director to waive the requirement for an audited financial statement for the first year a concern is required to submit one, and authorizes the Associate Administrator for Minority Enterprise Development to waive the requirement in subsequent years. One of the grounds for waiver can be financial hardship. SBA believes that the benefits to program integrity which will result from clear and accurate financial accounting requirements is significant, and that the elimination of quarterly financial statements will reduce the overall administrative burden placed on 8(a) concerns.

Compliance With Executive Orders 12612, 12778, and 12866, the Regulatory Flexibility Act (5 U.S.C. 601, et seq.), and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

SBA certifies that this rule does not have a significant economic impact on a substantial number of small entities within the meaning of Executive Order 12866 or the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. This rule is necessary to resolve several points regarding eligibility for SBA's Section

8(a) program, eliminate certain regulatory restrictions imposed on the amount of 8(a) contract dollars and the type of 8(a) contracts received by a given 8(a) Program Participant, and to ensure that the statutory requirement governing which 8(a) requirements must be competed among eligible 8(a) Program Participants not be circumvented. Whether a particular 8(a) concern is eligible for participation in, or once in, whether it, as opposed to another 8(a) concern, would be awarded a particular 8(a) contract can be affected by the rule.

As discussed above in the supplementary information, several commenters were concerned that the change in this rule relating to the application of the competitive threshold requirement in the IDIQ context would cause a reduction in the number of procurement requirements offered to the 8(a) program. SBA does not believe that any such possible reduction will be significant. In addition, also as discussed above, SBA believes that the potential for abuse that a failure to change the regulation would perpetuate outweighs any loss of contract dollars to the program. Therefore, it is not likely to have an annual economic effect of $100 million or more, result in a major increase in costs or prices, or have a significant adverse effect on competition or the United States economy.

For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA certifies that this rule contains no new reporting or record keeping requirements. In fact, it eliminates a prior requirement imposed on Program Participants to submit quarterly financial statements to SBA.

For purposes of Executive Order 12612, SBA certifies that this rule has no federalism implications warranting the preparation of a Federalism Assessment.

For purposes of Executive Order 12778, SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in Section 2 of that Order.

List of Subjects

13 CFR Part 121

Government procurement; Government property; Grant programs—business; Loan programs—business; Small businesses.

13 CFR Part 124

Government procurement; Hawaiian natives; Minority businesses; Reporting and recordkeeping requirements; Technical assistance; Tribally-owned concerns.

For the reasons set forth above, SBA hereby amends part 121 of title 13, Code of Federal Regulations, and subpart A, part 124 of title 13, Code of Federal Regulations (CFR), as follows:

PART 121—[AMENDED]

1. The authority citation for 13 CFR part 121 continues to read as follows:

Authority: 15 U.S.C. 632(a), 634(b)(6), 637(a) and 644(c); and Pub. L. 102–486, 106 Stat. 2776, 3133.

2. Section 121.401(b) is revised to read as follows:

§ 121.401 Affiliation.

* * * * *

(b) *Exclusion from affiliation coverage.* (1) Portfolio or client concerns owned in whole or substantial part by investment companies licensed, or development companies qualifying, under the Small Business Investment Act of 1958, as amended, or by Investment Companies registered under the Investment Company Act of 1940, as amended, are not considered affiliates of such investment companies or development companies.

(2) Business concerns owned and controlled by Indian Tribes, Alaska Regional or Village Corporations organized pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601, *et seq.*), or Native Hawaiian Organizations are not considered affiliates of such tribes, Alaska Regional or Village Corporations, or Native Hawaiian Organizations, or with other concerns owned by these entities solely because of their common ownership. However, affiliation with other concerns owned by these entities may be caused by circumstances other than common ownership under this section.

(3) Business concerns owned and controlled by a Community Development Corporation (CDC) authorized by 42 U.S.C. 9805 *et seq.* are not considered affiliates of such CDC or with other concerns owned by the CDC solely because of their common ownership. However, affiliation with other concerns owned by a CDC may be caused by circumstances other than common ownership under this section.

* * * * *

PART 124—[AMENDED]

Subpart A—Minority Small Business and Capital Ownership Development

3. The authority citation for part 124 is revised to read as follows:

Authority: 15 U.S.C. 634(b)(6), 636(j), 637(a), and 637(d), Pub. L. 99–661, sec. 1207, Pub. L. 100–656, Pub. L. 101–37, Pub. L. 101–574, and 42 U.S.C. 9815.

§ 124.7 [Amended]

4. Section 124.7(b) is amended by removing paragraph (b)(1) and by redesignating paragraph (b)(2) as paragraph (b).

5. Section 124.100 is amended by removing the terms "Local buy item" and "National buy item", and adding, in alphabetical order, the following new definitions of the terms "Community Development Corporation or CDC", and "CDC-owned concern":

§ 124.100 Definitions.

* * * * *

CDC-owned concern means any concern at least 51 percent owned by a Community Development Corporation as defined in this section.

* * * * *

Community Development Corporation or CDC means a nonprofit organization responsible to residents of the area it serves which has received financial assistance under 42 U.S.C. 9805 *et seq.*

* * * * *

6. Section 124.101 is amended by adding the following new sentence after the third sentence in paragraph (a), and by revising the first sentence in paragraph (b) to read as follows:

§ 124.101 The 8(a) program: General eligibility.

(a) * * * An applicant concern owned and controlled by a Community Development Corporation must meet the requirements set forth in § 124.114 and in §§ 124.102 through 124.109, as applicable. * * *

(b) In order to continue its participation in the 8(a) program, a Program Participant must continue to meet all eligibility requirements described in §§ 124.102 through 124.109, § 124.111(a), and § 124.112, § 124.113 or § 124.114, if applicable. * * *

* * * * *

7. Section 124.102(a) is revised to read as follows:

§ 124.102 Small business concern.

(a) In order to be approved for participation in the 8(a) program, an applicant concern must qualify as a small business concern as defined in part 121 of this title. The particular size standard to be applied will be based on the primary industry classification of the applicant concern. The size of a tribally-owned concern, a concern owned by a Native Hawaiian Organization, or a concern owned by a Community Development Corporation shall be additionally determined by reference to § 124.122, § 124.113 or § 124.114, respectively.

* * * * *

8. Section 124.103 is amended by revising the introductory text and the first sentence of paragraph (h) to read as follows:

§ 124.103 Ownership requirements.

Except for concerns owned by Indian tribes, Alaska Native Corporations, Native Hawaiian Organizations, or Community Development Corporations, as defined in § 124.110, in order to be eligible to participate in the 8(a) program, an applicant concern must be at least 51 percent unconditionally owned by an individual(s) who is a citizen of the United States (specifically excluding permanent resident alien(s)) and who is determined by SBA to be socially and economically disadvantaged. Special ownership requirements for concerns owned by Indian tribes and Alaska Native Corporations are set forth in § 124.112. Ownership requirements for Native Hawaiian Organizations are set forth in § 124.113. Ownership requirements for Community Development Corporations are set forth in § 124.114.

* * * * *

(h) A non-8(a) concern in the same or similar line of business is prohibited from having an equity ownership interest in an 8(a) concern which exceeds 10 percent, except that a former Program Participant (except those that have been terminated from 8(a) program participation pursuant to § 124.209) may have an equity ownership interest of up to 20 percent in a current 8(a) concern in the same or similar line of business. * * *

* * * * *

9. Section 124.104 is amended by revising the introductory text to read as follows:

§ 124.104 Control and management.

Except for concerns owned by Indian tribes, Alaska Native Corporations (ANCs), Native Hawaiian Organizations, or Community Development Corporations (CDCs), as defined in § 124.100, an applicant concern's management and daily business operations must be conducted by one or more owners of the applicant concern who have been determined to be socially and economically disadvantaged. (See § 124.112 for the requirements for tribally-owned entities and those owned by ANCs, § 124.113 for requirements for concerns owned by Native Hawaiian Organizations, and § 124.114 for requirements for CDC-owned concerns). In order for a disadvantaged individual to be found to control the concern, that individual must have managerial or technical experience and competency directly related to the primary industry in which the applicant concern is seeking certification.

* * * * *

10. Section 124.109 is amended by revising paragraph (d) to read as follows:

§ 124.109 Ineligible businesses.

* * * * *

(d) *Non-profit organizations.* A non-profit organization does not meet the general definition of a concern as set forth in part 121 and § 124.100 of these regulations and is, therefore, ineligible for 8(a) program participation. In addition, a business entity owned by a non-profit organization is not eligible for 8(a) program participation because such a concern does not meet the requirement of being owned and controlled by disadvantaged *individuals.* Nothing in this paragraph affects the eligibility of a for-profit concern owned and controlled by an Indian tribe, including an Alaskan Native Corporation, a Native Hawaiian Organization or a Community Development Corporation (*see* §§ 124.112, 124.113 and 124.114).

* * * * *

11. Section 124.111 is amended by revising paragraph (a)(2) to read as follows:

§ 124.111 Continued 8(a) program eligibility.

(a) * * *

(2) In order for a Program Participant to maintain continued 8(a) program eligibility, the net worth of an individual claiming to be socially and economically disadvantaged cannot exceed $750,000, as calculated pursuant to § 124.106(a)(2)(i). An individual whose personal net worth exceeds $750,000, as calculated pursuant to § 124.106(a)(2)(i), will not be considered economically disadvantaged.

* * * * *

12. A new § 124.114 is added to read as follows:

§ 124.114 Concerns owned by Community Development Corporations.

(a) Concerns owned at least 51% by Community Development Corporations (CDCs), as defined in § 124.100, are eligible for participation in the 8(a) program and other federal programs requiring SBA to determine social and economic disadvantage as a condition of eligibility. Such concerns must meet all eligibility criteria set forth in §§ 124.102 through 124.109 and § 124.111(a) of this part.

(b) A concern that is at least 51% owned by a CDC shall be deemed to be controlled by such CDC and eligible for participation in the 8(a) program, provided it meets all eligibility criteria set forth or referred to in this section and its management and daily business operations are conducted by one or more individuals determined to have managerial or technical experience and competency directly related to the primary industry in which the applicant concern is seeking certification.

(c) A concern owned by a CDC must qualify as a small business concern as defined for purposes of Government procurement in part 121 of this title. The particular size standard to be applied shall be based on the primary industry classification of the applicant concern. Ownership by the CDC will not, in and of itself, cause affiliation with the CDC or with other CDC-owned entities. However, affiliation with the CDC or other CDC-owned entities may be caused by circumstances other than common CDC ownership.

(d) No CDC shall own more than one current or former 8(a) Program Participant having the same primary industry classification.

(e) SBA does not deem an individual involved in the management or daily business operations of a CDC-owned concern to have used his or her individual eligibility within the meaning of § 124.108(c).

13. Section 124.208 is amended by removing paragraph (c)(2), by redesignating paragraphs (c)(3), (c)(4), (c)(5), and (c)(6) as paragraphs (c)(2), (c)(3), (c)(4), and (c)(5), and by revising the first sentence in newly redesignated paragraph (c)(2) to read as follows:

§ 124.208 Program graduation.

* * * * *

(c) * * *

(2) *Recommendation of the Division.* Following the 45 day response period, the Division Director will consider the facts of the proposed graduation, including all information submitted by the Participant. * * *

* * * * * * *

14. Section 124.209 is amended by removing paragraph (b)(2), by redesignating paragraphs (b)(3), (b)(4), (b)(5) and (b)(6) as paragraphs (b)(2), (b)(3), (b)(4) and (b)(5), by revising the first sentence of paragraph (a)(6)(i) and newly redesignated paragraph (b)(2), and by adding the following new sentence to the end of newly redesignated paragraph (b)(3) to read as follows:

§ 124.209 Program termination

(a) *General.* * * *

(6) * * *

(i) Failure by the concern to provide required financial statements to SBA

pursuant to §§ 124.312 (b)(4), 124.312(c)(7), and 124.501(c). * * *

* * * * *

(b) * * *

(2) *Recommendation of the Division.* Following the 45-day response period, the Division Director will have 15 days to consider the facts of the proposed termination, including all information submitted by the Participant. The Division Director may, if he/she deems it necessary, request additional information from the Participant. If the grounds for the proposed termination continue to exist, the Division Director shall recommend in writing to the AA/MSB&COD that the Participant be terminated.

(3) *Decision of the AA/MSB&COD.* * * * Unless appealed to OHA, the decision of the AA/MSB&COD to terminate a Program Participant shall be effective 45 days after its issuance.

* * * * *

15. Section 124.302 is amended by revising paragraph (c)(1)(i)(A) and (c)(2) to read as follows:

§ 124.302 Review and modification of business plan.

* * * * *

(c) *Changes in SIC code designations.* * * *

(1) * * *

(i)(A) A sound business explanation exists for obtaining the requested SIC code, including, for example, the acquisition of the capability to perform contracts in an industry, even if unrelated to the 8(a) concern's primary SIC code;

* * * * *

(2) SBA will make a decision on such request within 30 days from the date it receives the request.

* * * * *

§ 124.303 [Amended]

16. Section 124.303 is amended by removing paragraphs (c)(3) and (c)(4), and by redesignating paragraphs (c) (5) through (7) of paragraph (c) as paragraphs (c)(3) through (c)(5).

17. Section 124.303 is further amended by changing the reference in paragraph (d)(1) to "paragraphs (c)(1), (c)(2), (c)(6) and (c)(7) of this section" to a reference to "paragraphs (c)(1), (c)(2), (c)(4) and (c)(5) of this section."

§ 124.304 [Removed and Reserved]

18. Section 124.304 is removed and reserved.

§ 124.305 [Removed and Reserved]

19. Section 124.305 is removed and reserved.

20. Section 124.307 is amended by redesignating paragraphs (d) and (e) as paragraphs (e) and (f), and by adding the following new paragraph (d):

§ 124.307 Contractual assistance.

* * * * *

(d) While a Program Participant's projected level of 8(a) contract support is required as part of its business plan under § 124.302(b) as a planning and development tool, the level approved by SBA will not prevent contract awards above that level so long as SBA determines the concern to be competent and responsible to perform any such contracts and the Participant is in compliance with any applicable competitive business mix requirement, or approved remedial plan, imposed by § 124.312.

* * * * *

21. Section 124.308 is amended by revising paragraph (d), the first sentence of paragraph (f)(1), and paragraph (f)(2), to read as follows:

§ 124.308 Procedures for obtaining and accepting procurements for the 8(a) program.

* * * * *

(d) *Acceptance of the requirement.* Upon receipt of the procuring agency's offer of a procurement requirement, SBA will determine whether it will accept the requirement for the 8(a) program. SBA's decision whether to accept the requirement will be transmitted to the procuring agency in writing within 15 working days of receipt of the written offering letter, unless SBA requests, and the procuring agency grants, an extension. SBA is not required to accept any particular procurement offered to the 8(a) program.

(1) Where SBA decides to accept an offering of a sole source 8(a) procurement, SBA will accept the offer both on behalf of the program and in support of the approved business plan of a specific 8(a) Program Participant.

(2) Where SBA decides to accept an offering of a competitive 8(a) procurement, SBA will accept the offer for the 8(a) program generally.

(3) Except for requirements assigned a construction SIC code by the procuring agency contracting officer, all competitive 8(a) requirements accepted by SBA may be competed among all eligible 8(a) Program Participants nationally. The only geographic restrictions pertaining to 8(a) competitive requirements, other than those for construction requirements, would be those imposed by the solicitations themselves.

* * * * *

(f) *Open requirements.* * * *

(1) If the procurement is a construction requirement, SBA will examine the portfolio of 8(a) concerns for the SBA district office where the work is to be performed for selection of a qualified 8(a) concern. * * *

(2) If the procurement is anything other than a construction requirement, SBA may select any eligible, responsible Program Participant nationally to perform the contract.

* * * * *

§ 124.308 [Amended]

22. Section 124.308 is further amended by removing the words "approved 8(a) business support level or the" contained in paragraph (e)(1)(iii).

23. Section 124.311 is amended by revising paragraph (a)(2), by removing paragraph (b), by redesignating paragraphs (c), (d), (e), (f), (g), (h), and (i) as paragraphs (b), (c), (d), (e), (f), (g), and (h), respectively, by adding a sentence to the end of newly redesignated paragraph (d) introductory text, by removing newly redesignated (d)(1) and (d)(2), and by revising newly redesignated paragraphs (g)(3) and (g)(4), to read as follows:

§ 124.311 8(a) competition.

(a) * * *

(2) The anticipated award price of the contract, including options, will exceed $5,000,000 for contracts assigned manufacturing Standard Industrial Classification (SIC) codes and $3,000,000 for all other contracts.

(i) For *all* types of contracts, the applicable competitive threshold amounts will be applied to the procuring agency estimate of the total value of the contract, including all options.

(ii) Where a procuring agency good faith estimate of the total value of a proposed 8(a) contract is less than the applicable competitive threshold amount and the requirement is accepted as a sole source requirement on that basis, award may be made even though the ultimate price arrived at through negotiations exceeds the competitive threshold, provided that the ultimate price is not significantly greater than the competitive threshold amount.

Example. If the anticipated award price for a professional services requirement is determined to be $2.7 million and it is accepted as a sole source 8(a) requirement on that basis, a sole source award will be valid even if the contract price arrived at after negotiation is $3.1 million.

(iii) A proposed 8(a) requirement with an estimated value exceeding the applicable competitive threshold amount shall not be divided into several requirements for lesser amounts in order

to use 8(a) sole source procedures for award to a single contractor.

* * * * *

(d) *Sole source above thresholds.* * * * SBA will accept a contract opportunity above the applicable competitive threshold as a sole source 8(a) requirement only if there are not two eligible offerors in the United States capable of performing the requirement at a fair price.

* * * * *

(g) *Restricted Competition.* * * *

(3) *Construction competitions.* Where a construction requirement offered to the 8(a) program exceeds the $3 million competitive threshold, SBA will determine, based on its knowledge of the 8(a) portfolio, whether the competition should be limited only to those Program Participants located within the geographical boundaries of one or more SBA district offices, an entire SBA regional office, or adjacent SBA regional offices. Only those Participants located within the appropriate geographical boundaries are eligible to submit offers.

(4) *Competition for all non-construction requirements.* Except for construction requirements, all eligible Program Participants nationally may submit offers in response to any solicitation for a competitive 8(a) procurement requirement.

* * * * *

24. Section 124.311 is further amended by removing the Example following newly redesignated paragraph (e)(4)(iii), by adding the word "and" after the semi-colon (";") in newly redesignated paragraph (e)(5)(iii), by removing newly redesignated paragraph (e)(5)(iv) in its entirety, by redesignating paragraph (e)(5)(v) as paragraph (e)(5)(iv), and by revising newly redesignated paragraph (e)(5)(iv) to read as follows:

§ 124.311 8(a) competition.

* * * * *

(e) * * *

(5) * * *

(iv) If the firm is in the transitional stage of program participation, whether it has achieved its competitive business mix targets under § 124.312, or is in compliance with a remedial plan that does not include the denial of future 8(a) contracts.

* * * * *

§ 124.311 [Amended]

25. Section 124.311 is further amended by revising the reference in newly redesignated paragraph (e)(7) to "paragraph (f)(5) of this section" to a reference to "paragraph (e)(5) of this section."

26. Section 124.312 is amended by removing paragraphs (b)(4), (b)(5), and (b)(6), by redesignating paragraph (b)(7) as paragraph (b)(4), and by revising the first sentence of newly redesignated paragraph (b)(4) to read as follows:

§ 124.312 Competitive business mix.

* * * * *

(b) * * *

(4) *Reporting and verification of business activity.* Once admitted to the 8(a) program, a Program Participant must provide annual financial statements to SBA in accord with § 124.501(c). * * *

27. Section 124.312 is further amended by removing paragraphs (c)(2), (c)(3), and (c)(9), by redesignating paragraphs (c)(4), (c)(5), (c)(6), (c)(7), (c)(8), (c)(10), (c)(11), and (c)(12) as paragraphs (c)(2), (c)(3), (c)(4), (c)(5), (c)(6), (c)(7), (c)(8), and (c)(9), respectively, by revising the reference to "paragraphs (c)(4) and (c)(5)" in the last sentence of newly redesignated paragraph (c)(7) to a reference to "paragraphs (c)(2) and (c)(3)", and by revising the first sentence of newly redesignated paragraph (c)(7) to read as follows:

§ 124.312 Competitive business mix.

* * * * *

(c) * * *

(7) Reporting and verification of business activity. Program Participants during the transitional stage shall provide annual financial statements to SBA with a breakdown of 8(a) and non-8(a) revenue in accord with § 124.501(c). * * *

* * * * *

§ 124.312 [Amended]

28. Section 124.312 is further amended by changing the reference in paragraph (c)(1) to "paragraph (c)(4) of this section" to a reference to "paragraph (c)(2) of this section" and by changing the reference in the same paragraph to "paragraph (c)(5) of this section" to a reference to "paragraph (c)(3) of this section".

29. Section 124.312 is further amended by changing the reference in newly designated paragraph (c)(8) to "paragraph (c)(12) of this section" to a reference to "paragraph (c)(9) of this section".

30. Section 134.312 is further amended by changing the reference in newly designated paragraph (c)(9) to "paragraphs (c)(4) and (c)(5) of this section" to a reference to "paragraphs (c)(2) and (c)(3) of this section".

31. Section 124.321 is amended by adding a new paragraph (i) to read as follows:

§ 124.321 Joint venture agreements.

* * * * *

(i) *Joint ventures for Small Disadvantaged Business Set-Asides and Small Disadvantaged Business Evaluation Preferences.* Joint ventures are permitted for Small Disadvantaged Business (SDB) set-asides and SDB evaluation preferences, provided that the requirements set forth in this paragraph are met.

(1) For purposes of this paragraph, the term joint venture has the same meaning as that set forth in § 121.401(l) of this chapter. Two or more concerns that form an ongoing relationship to conduct business would not be considered "joint venturers" within the meaning of this paragraph, and would also not be eligible as an entity owned and controlled by one or more socially and economically disadvantaged individuals.

(2) A concern that is owned and controlled by one or more socially and economically disadvantaged individuals entering into a joint venture agreement with one or more other business concerns is considered to be affiliated for size purposes with such other concern(s). The combined annual receipts or employees of the concerns entering into the joint venture must meet the applicable size standard corresponding to the SIC code designated for the contract.

(3) The majority of the venture's earnings must accrue directly to the socially and economically disadvantaged individuals in the SDB concern(s) in the joint venture.

(4) The percentage ownership involvement in a joint venture by disadvantaged individuals must be at least 51 percent.

Example 1. Small business concern A is 100% owned by disadvantaged individuals. Small business concern B is 100% owned by nondisadvantaged individuals. The percentage involvement by concern A in a joint venture between A and B must be at least 51%.

Example 2. Small business concern C is 51% owned by disadvantaged individuals. Small business concern D is 100% owned by nondisadvantaged individuals. Any joint venture between C and D would be ineligible because the amount of ownership involvement in such a joint venture by disadvantaged individuals would be less than 51%. Even a 90% involvement by concern C in a joint venture with D would mean an overall ownership involvement by disadvantaged individuals of only 45.9% (51% of 90), and an overall ownership involvement by nondisadvantaged individuals of 54.1% (10+(49% of 90)).

32. Section 124.501 is amended by redesignating paragraph (c) as paragraph

(d) and by adding the following new paragraph (c):

§ 124.501 Miscellaneous reporting requirements.

* * * * *

(c) *Submission of financial statements.* (1) Program Participants with actual gross annual receipts of $5,000,000 or more must submit to SBA audited annual financial statements prepared by a licensed independent public accountant (as defined in part 107, appendix I, paragraph II. B) within 120 days after the close of the concern's fiscal year.

(i) Upon request by the Program Participant, SBA may waive the requirement for audited financial statements. Waivers under this paragraph may be granted by the appropriate District Director only for the first year that audited financial statements are required. Beyond such first year, only the AA/MSB&COD may waive this requirement for good cause shown by the Program Participant.

(ii) Circumstances where waivers of audited financial statements may be granted include, but are not limited to, the following:

(A) The concern has an unexpected increase in sales towards the end of its fiscal year that creates an unforeseen requirement for audited statements;

(B) The concern unexpectedly experiences severe financial difficulties which would make the cost of audited financial statements a particular burden; and

(C) The concern has been an 8(a) Program Participant less than 12 months.

(2) Program Participants with actual gross annual receipts of $1,000,000 to $4,999,999 shall submit to SBA reviewed annual financial statements prepared by a licensed independent public accountant (as defined in part 107, appendix I, paragraph II. B) within 90 days after the close of the concern's fiscal year.

(3) Program Participants with actual gross annual receipts of less than $1,000,000 shall submit to SBA an annual statement prepared in-house or a compilation statement prepared by a licensed independent public accountant (as defined in part 107, appendix I, paragraph II. B), verified as to accuracy by an authorized officer, partner, or sole proprietor of the 8(a) concern, by signature and date, within 90 days after the close of the concern's fiscal year.

(4) Any audited financial statements submitted to SBA pursuant to § 124.501(c) shall be prepared in accordance with Generally Accepted Accounting Principles and reflect the independent public accountant's opinion.

(5) While financial statements need not be submitted until 90 or 120 days after the close of an 8(a) concern's fiscal year, depending on the receipts of the concern, a concern seeking to be awarded an 8(a) contract between the close of its fiscal year and such 90 or 120-day time period must submit a final sales report signed by the CEO or President to SBA in order for SBA to determine/verify the concern's size and its compliance with competitive business mix targets. This report must show a breakdown of 8(a) and non-8(a) sales.

(6) Notwithstanding a concern's gross annual receipts, audited or reviewed annual and/or quarterly statements may be required whenever SBA determines it is necessary to obtain a more thorough verification of a concern's assets, liabilities, income and/or expenses, or to determine the concern's capacity to perform a specific 8(a) contract.

* * * * *

Dated: April 5, 1995.

Philip Lader,

Administrator.

[FR Doc. 95–13722 Filed 6–6–95; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91–CE–25–AD; Amendment 39–9248; AD 95–11–15]

Airworthiness Directives; Alexander Schleicher GmbH & Co. Model ASK 21 Gliders

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to Alexander Schleicher GmbH & Co. (Alexander Schleicher) Model ASK 21 gliders. The required action requires replacing the parallel rocker with a part of improved design, and incorporating flight manual revisions. Two incidents of the parallel rocker breaking at the elevator connection on the affected gliders prompted this action. The actions specified by this AD are intended to prevent possible loss of elevator control that could result from a broken parallel rocker.

DATES: Effective July 14, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 14, 1995.

ADDRESSES: Service information that applies to this AD may be obtained from Alexander Schleicher GmbH & Company, D–36163, Poppenhausen-Wasserkuppe, Germany; or Eastern Sailplane, Heath Stage Route, Shelburne Falls, Massachusetts 01370; telephone (413) 625–6059. This information may also be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Herman Belderok, Project Officer, Gliders, Small Airplane Directorate, Aircraft Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426-6932; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Alexander Schleicher Model ASK 21 gliders was published in the **Federal Register** on January 18, 1995 (60 FR 3579). The action proposed to require replacing the parallel rocker at the automatic elevator connection with a part of improved design, and incorporating flight manual revisions. Accomplishment of the proposed action would be in accordance with Alexander Schleicher ASK 21 Technical Note No. 22, dated November 26, 1990.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

The compliance time of this AD is in calendar time instead of hours time-in-service (TIS). The average monthly usage of the affected gliders ranges throughout the fleet. For example, one owner may operate the glider 25 hours TIS in one week, while another operator may operate the glider 25 hours in one year. For this reason, the FAA has determined that, in order to ensure that all of the affected gliders have parallel rockers of improved design installed, a calendar compliance time is used.

The FAA estimates that 35 gliders in the U.S. registry will be affected by this AD, that it will take approximately 1 workhour per glider to accomplish the required action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $45 per glider. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $3,675. This figure is based upon the assumption that no affected glider owner/operator has accomplished the required replacement.

Alexander Schleicher has informed the FAA that improved design parallel rockers have been distributed for all 35 affected gliders. Assuming that each of these parts is installed on one of the affected gliders, the required action will not impose any cost impact upon U.S. operators.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new AD to read as follows:

95–11–15 Alexander Schleicher: Amendment 39–9248; Docket No. 91–CE–25–AD.

Applicability: Model ASK 21 gliders (all serial numbers), certificated in any category.

Note 1: This AD applies to each glider identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For gliders that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (g) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any glider from the applicability of this AD.

Compliance: Required within the next 30 calendar days after the effective date of this AD, unless already accomplished.

To prevent possible loss of elevator control that could result from a broken parallel rocker, accomplish the following:

(a) Replace the parallel rocker with an improved and stronger part (part number 99.000.4940 with modification status 1) in accordance with the instructions in Alexander Schleicher ASK 21 Technical Note No. 22, dated November 26, 1991.

(b) Incorporate the flight manual revisions included with the technical note referenced above.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the glider to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(e) The replacement required by this AD shall be done in accordance with Alexander Schleicher ASK 21 Technical Note No. 22, dated November 26, 1990. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Alexander Schleicher GmbH & Company, D–36163, Poppenhausen-Wasserkuppe, Germany; or Eastern Sailplane, Heath Stage Route, Shelburne Falls, Massachusetts 01370. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment (39–9248) becomes effective on July 14, 1995.

Issued in Kansas City, Missouri, on May 22, 1995.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–12948 Filed 6–6–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 92–CE–13–AD; Amendment 39–9256; AD 95–12–06]

Airworthiness Directives; Jetstream Aircraft Limited (formerly British Aerospace, Regional Aircraft Limited) Jetstream Models 3101 and 3201 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Jetstream Aircraft Limited (JAL) Jetstream Models 3101 and 3201 airplanes. The action requires modifying the shear fitting at the top of each escape hatch. A report of interference between the shear fitting on an escape hatch and a ceiling panel found while removing the escape hatch on one of the affected airplanes prompted this AD. The actions specified by this AD are intended to prevent the inability to utilize an escape hatch during an emergency situation because of interference.

DATES: Effective July 24, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 24, 1995.

ADDRESSES: Service information that applies to this AD may be obtained from Jetstream Aircraft Limited, Manager Product Support, Prestwick Airport, Ayrshire, KA9 2RW Scotland; telephone

(44–292) 79888; facsimile (44–292) 79703; or Jetstream Aircraft Inc., Librarian, P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029; telephone (703) 406–1161; facsimile (703) 406–1469. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond A. Stoer, Program Officer, Brussels Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B–1000 Brussels, Belgium; telephone (322) 513.3830; facsimile (322) 230.6899; or Mr. Sam Lovell, Project Officer, Small Airplane Directorate, Airplane Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6934; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain JAL Models 3101 and 3201 airplanes was published in the **Federal Register** on February 10, 1995 (60 FR 7921). The action proposed to require modifying the shear fitting at the top of each escape hatch. Accomplishment of the proposed action would be in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Jetstream Service Bulletin 52–JM 7752, dated December 17, 1991.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

The FAA estimates that 120 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 3 workhours per airplane to accomplish the required action, and that the average labor rate is approximately $60 an hour. Rework of existing parts costs approximately $165 per airplane. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $41,400. This figure is based on the assumption that no affected owner/operator has accomplished the required modification. The FAA has no way of determining how many airplanes have incorporated this modification (reworked the existing parts), but anticipates that numerous operators have already reworked the existing parts. This would reduce the cost impact of this AD on U.S. operators.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

95–12–06 Jetstream Aircraft Limited: Amendment 39-9256; Docket No. 92–CE–13–AD.

Applicability: Jetstream Models 3101 and 3201 airplanes (serial numbers 757 through 912), certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required within the next 50 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent occupant injury during an emergency situation because of the inability to remove an escape hatch, accomplish the following:

(a) For both Models 3101 and 3201 airplanes, modify the shear fitting at the top of the right-hand escape hatch in accordance with PART A of the ACCOMPLISHMENT INSTRUCTIONS section of Jetstream Service Bulletin (SB) 52–JM 7752, dated December 17, 1991.

(b) For Model 3201 airplanes, modify the shear fitting at the top of the left-hand escape hatch in accordance with PART B of the ACCOMPLISHMENT INSTRUCTIONS section of Jetstream SB 52–JM 7752, dated December 17, 1991.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Office (ACO), FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B–1000 Brussels, Belgium. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Brussels ACO.

(e) The modification required by this AD shall be done in accordance with Jetstream Service Bulletin 52–JM 7752, dated December 17, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Jetstream Aircraft Limited, Manager Product Support, Prestwick Airport, Ayrshire, KA9 2RW Scotland; or Jetstream Aircraft Inc., Librarian, P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment (39–9256) becomes effective on July 24, 1995.

Issued in Kansas City, Missouri, on May 26, 1995.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–13623 Filed 6–6–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–NM–241–AD; Amendment 39–9253; AD 95–12–03]

Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F28 Mark 0100 series airplanes, that requires installation of reinforcement plates at certain fuselage stations. This amendment is prompted by a report indicating that cracks were found in the frame strips at certain fuselage stations on a Model F28 Mark 0100 series airplane test article due to fatigue-related stress. The actions specified by this AD are intended to prevent such fatigue-related cracking, which could result in reduced structural integrity of the fuselage pressure vessel.

DATES: Effective July 7, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 7, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2141; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Fokker Model F28 Mark 0100 series airplanes was published in the **Federal Register** on March 3, 1995 (60 FR 11944). That action proposed to require installation of reinforcement plates at left and right fuselage stations 14911 and 17011.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 45 airplanes of U.S. registry will be affected by this AD, that it will take approximately 160 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $3,800 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $603,000, or $13,400 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–12–03 Fokker: Amendment 39–9253. Docket 94–NM–241–AD.

Applicability: Model F28 Mark 0100 series airplanes, serial numbers 11244 through 11371 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent cracking in the frame strips at fuselage stations 14911 and 17011, which could result in reduced structural integrity of the fuselage pressure vessel, accomplish the following:

(a) Prior to the accumulation of 24,000 total flight cycles, or within 6 months after the effective date of this AD, whichever occurs

later, install reinforcement plates at left and right fuselage stations 14911 and 17011, in accordance with Fokker Service Bulletin SBF100–53–072, dated March 12, 1993.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this 0AD can be accomplished.

(d) The installation shall be done in accordance with Fokker Service Bulletin SBF100–53–072, dated March 12, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on July 7, 1995.

Issued in Renton, Washington, on May 26, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–13502 Filed 6–6–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 94–CE–26–AD; Amendment 39–9249; AD 95–11–16]

Airworthiness Directives; SOCATA Groupe AEROSPATIALE TBM 700 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain SOCATA Groupe AEROSPATIALE (Socata) TBM 700 airplanes. This action requires installing pneumatic deicers on the elevator horn leading edges. Ice accumulation on one of the affected airplanes during flight testing in icing conditions prompted the required action. The actions specified by this AD are intended to prevent ice accumulation on the elevator horn, which could lead to loss of control of the airplane.

DATES: Effective July 19, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 19, 1995.

ADDRESSES: Service information that applies to this AD may be obtained from the SOCATA Groupe AEROSPATIALE, Socata Product Support, Aeroport Tarbes-Ossun-Lourdes, B P 930, 65009 Tarbes Cedex, France; telephone 62.41.74.26; facsimile 62.41.74.32; or the Product Support Manager, U.S. AEROSPATIALE, 2701 Forum Drive, Grand Prairie, Texas 75053; telephone (214) 641–3614; facsimile (214) 641–3527. This information may also be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond A. Stoer, Program Officer, Brussels Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B–1000 Brussels, Belgium; telephone (322) 513.38.30; facsimile (322) 230.68.99; or Mr. Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut Street, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6934; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Socata TBM 700 airplanes was published in the **Federal Register** on January 20, 1995 (60 FR 4117). The action proposed to require installing pneumatic deicers on the elevator horn leading edges. Accomplishment of the proposed installation would be in accordance with Socata Technical Instruction of Modification No. OPT70 K020–30, dated February 1993.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the one comment received.

Socata recommends that AD action is not justified because it believes all owners/operators of the affected airplanes have installed pneumatic deicers on the elevator horn leading edges. The FAA does not concur that AD action is not justified even if all owners/operators may have already complied. AD's are issued to assure that each affected airplane is in compliance with the action, and that those airplanes continue to be in compliance. Even if all owners/operators have complied with this action, the AD will ensure that these airplanes continue to have these pneumatic deicers installed and that any airplanes added to the U.S. registry will have pneumatic deicers installed. The AD is unchanged as a result of this comment.

No comments were received on the FAA's determination of the cost to the public.

After careful review of all available information including the comment discussed above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

The FAA estimates that 20 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 25 workhours per airplane to accomplish the required action, and that the average labor rate is approximately $60 an hour. Parts cost $3,710 per airplane. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $104,200. This figure is based upon the assumption that no affected airplane/operator has accomplished the required action. Socata has informed the FAA that it believes all affected airplane owners/operators have already accomplished the required installation. With this in mind, this action will impose no cost impact upon U.S. operators.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new AD to read as follows:

95–11–16 SOCATA Groupe AEROSPATIALE: Amendment 39–9249; Docket No. 94–CE–26–AD.

Applicability: TBM 700 airplanes, serial numbers 1 to 49, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent ice accumulation on the elevator horn, which could lead to loss of control of the airplane, accomplish the following:

(a) Install pneumatic deicers on the elevator horn leading edges in accordance with Socata Technical Instruction of Modification No. OPT70 K020–30, dated February 1993. This installation is referenced in Socata TBM Service Bulletin SB 70–020–30, dated February 1993.

(b) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Office (ACO), FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B–1000 Brussels, Belgium. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Brussels ACO.

(d) The installation required by this AD shall be done in accordance with Socata Technical Instruction of Modification No. OPT70 K020–30, dated February 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from SOCATA Groupe AEROSPATIALE, Socata Product Support, Aeroport Tarbes-Ossun-Lourdes, B P 930, 65009 Tarbes Cedex, France; or the Product Support Manager, U.S. AEROSPATIALE, 2701 Forum Drive, Grand Prairie, Texas 75053. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment (39–9249) becomes effective on July 19, 1995.

Issued in Kansas City, Missouri, on May 23, 1995.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–13126 Filed 6–6–95; 8:45 am]

BILLING CODE 4910–13–U

RAILROAD RETIREMENT BOARD

20 CFR Part 200

RIN 3220–AB12

General Administration

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board (Board) amends its regulations to explain when the Board will provide custom tailored information to a member of the public and to set forth the charges for such special services. In addition, the Board amends its regulations to explain when custom tailored information will be provided without charging for that service.

EFFECTIVE DATE: June 7, 1995.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Michael C. Litt, Bureau of Law, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751–4929, TDD (312) 751–4701.

SUPPLEMENTARY INFORMATION: OMB Circular A–25 establishes Federal policy regarding fees to be assessed for special benefits. In the case of the Railroad Retirement Board those benefits would be the provision of custom tailored or non-routine information services. The regulation requires payment of the Board's actual costs, as defined in the regulation, for the provision of such services. Consistent with OMB Circular A–25, the regulation provides that if it is determined that the identity of the specific beneficiary is obscure and that provision of the information can be considered primarily as benefiting broadly the general public, then the Board may determine in a particular case not to charge for the service. However, consistent with the authority contained in section 12(d) of the Railroad Unemployment Insurance Act (which is incorporated into the Railroad Retirement Act by section 7(b)(3) of that Act), the regulation provides that charges may be assessed in any specific case. This regulation does not cover information which is required to be disclosed by statute or regulation such as information required to be disclosed under the Freedom of Information Act.

On March 2, 1995, the Board published this rule as a proposed rule (60 FR 11639), inviting comments on or before May 1, 1995. One comment was received. The commentor suggested three amendments to the proposed regulation: (1) Railroad employers should be allowed to seek custom-tailored information without charge as such services are paid by railroad employers through employer taxes which pay for the administrative expenses of the Board; (2) if fees are charged, the Board should be required to provide the estimated cost within a specified period; and (3) the limit of $1,000.00 for waiver of fees without approval of the three-member Board is too low. In response thereto: (1) The Board believes that, although the costs of administration of the agency as a whole are borne by the railroad industry, it is more equitable to shift the costs for providing information to those elements of that industry which use the service in question than to have the entire industry pay for those services indirectly through employment taxes;

(2) while the Board believes that an estimate should be provided within a reasonable period of time the Board does not believe that the regulation should contain a specific time limit in view of the wide ranging types of requests that could be made; and (3) the cap of $1,000.00 for waiver of fees without approval of the three-member Board reflects the desire of the Board itself to maintain close control over expenditures by the agency. Accordingly, the Board has not amended the text of the proposed rule.

The Board, in conjunction with the Office of Management and Budget, has determined that this is not a significant regulatory action for purposes of Executive Order 12866. Therefore, no regulatory impact analysis is required. There are no information collections associated with this rule.

List of Subjects in 20 CFR Part 200

Railroad employees, Railroad retirement, Railroad unemployment insurance.

For the reasons set out in the preamble, title 20, chapter II, part 200 of the Code of Federal Regulations is amended as follows:

PART 200—GENERAL ADMINISTRATION

1. The authority citation for part 200 continues to read as follows:

Authority: 45 U.S.C. 231f(b)(5) and 45 U.S.C. 362; § 200.4 also issued under 5 U.S.C. 552; § 200.5 also issued under 5 U.S.C. 552a; § 200.6 also issued under 5 U.S.C. 552b; and § 200.7 also issued under 31 U.S.C. 3717.

2. Section 200.4 is amended by adding paragraphs (o) and (p) to read as follows:

§ 200.4 Availability of information to public.

* * * * *

(o) *Custom tailored information services; Fees charged.* This paragraph and paragraph (p) of this section set forth the policy of the Railroad Retirement Board with respect to the assessment of a fee for providing custom tailored information where requested. Except as provided in paragraphs (o)(4)(vii) and (p) of this section, a fee shall be charged for providing custom tailored information.

(1) *Definition: Custom tailored information.* Custom tailored information is information not otherwise required to be disclosed under this part but which can be created or extracted and manipulated, reformatted, or otherwise prepared to the specifications of the requester from existing records. For example, the Board needs to program computers to provide data in a particular format or to compile selected items from records, provide statistical data, ratios, proportions, percentages, etc. If this data is not already compiled and available, the end product would be the result of custom tailored information services.

(2) *Providing custom tailored information.* The Board is not required to provide custom tailored information. It will do so only when the appropriate fees have been paid as provided in paragraph (o)(4) of this section and when the request for such information will not divert staff and equipment from the Board's primary responsibilities.

(3) *Requesting custom tailored information.* Information may be requested in person, by telephone, or by mail. Any request should reasonably describe the information wanted and may be sent to the Director of Administration, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

(4) *Fee schedule.* Requests for custom tailored information are chargeable according to the following schedule:

(i) *Manual searching for records.* Full cost of the time of the employees who perform the service, even if records cannot be found, management and supervisory costs, plus the full costs of any machine time and materials the employee uses. Consulting and other indirect costs will be assessed as appropriate.

(ii) *Photocopying or reproducing records on magnetic tapes or computer diskettes.* The charge for making photocopies of any size document shall be $.10 per copy per page. The charge for reproducing records on magnetic tapes or computer diskettes is the full cost of the operator's time plus the full cost of the machine time and the materials used.

(iii) *Use of electronic data processing equipment to obtain records.* Full cost for the service, including computer search time and computer runs and printouts, and the time of computer programmers and operators and of other employees.

(iv) *Certification or authentication.* Full cost of certification and authentication.

(v) *Providing other special services.* Full cost of the time of the employee who performs the service, management and supervisory costs, plus the full costs of any machine time and materials the employee uses. Consulting and other indirect costs will be assessed as appropriate.

(vi) *Special forwarding arrangements.* Full cost of special arrangements for forwarding material requested.

(vii) *Statutory supersession.* Where a Federal statute prohibits the assessment of a charge for a service or addresses an aspect of that charge, the statute shall take precedence over this paragraph (o).

(p) *Assessment of a fee with respect to the provision of custom tailored information where the identification of the beneficiary is obscure and where provision of the information can be seen as benefiting the public generally.* When the identification of a specific beneficiary with respect to the provision of custom tailored information is obscure, the service can be considered primarily as benefiting broadly the general public, and the estimated cost of providing the information is less than $1,000.00, the Director of Administration shall determine whether or not a fee is to be charged. In any such case where the cost is $1,000.00 or more, the request shall be referred by the Director of Administration to the three-member Board for a determination whether or not a fee is to be assessed.

Dated: May 30, 1995.
By Authority of the Board.
For the Board.
Beatrice Ezerski,
Secretary to the Board.
[FR Doc. 95–13845 Filed 6–6–95; 8:45 am]
BILLING CODE 7905–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Dexamethasone Injection

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Phoenix Pharmaceutical, Inc. The ANADA provides for use of dexamethasone injection in cattle for the treatment of primary bovine ketosis and in dogs, cats, cattle, and horses as an anti-inflammatory agent.

EFFECTIVE DATE: June 7, 1995.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1643.

SUPPLEMENTARY INFORMATION: Phoenix Pharmaceutical, Inc., 4621 Easton Rd., P.O. Box 6457 Farleigh Station, St. Joseph, MO 64506–0457, has filed ANADA 200–108, which provides for intravenous or intramuscular use of Dexamethasone Solution (2 milligrams (mg) of dexamethasone per milliliter (mL)) in cattle for the treatment of primary bovine ketosis and in dogs, cats, cattle, and horses as an anti-inflammatory agent.

Phoenix Pharmaceutical, Inc.'s, ANADA 200–108 for Dexamethasone Solution (2 mg/mL) is approved as a generic copy of Schering-Plough Animal Health Corp.'s NADA 12–559 for Azium® (dexamethasone solution). The ANADA is approved as of April 13, 1995, and the regulations are amended in 21 CFR 522.540(a)(2) to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. Section 522.540 is amended by revising paragraph (a)(2) to read as follows:

§ 522.540 Dexamethasone injection.

(a) * * *

(2) *Sponsor.* See Nos. 000061 and 057319 in § 510.600(c) of this chapter.

* * * * *

Dated: May 23, 1995.
Stephen F. Sundlof,
Director, Center for Veterinary Medicine.
[FR Doc. 95–13830 Filed 6–6–95; 8:45 am]
BILLING CODE 4160–01–F

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Gentamicin Sulfate Injection

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Sanofi Animal Health, Inc. The ANADA provides for use of gentamicin sultate injection in day-old chickens for the prevention of early mortality caused by *Escherichia coli*, *Salmonella typhimurium*, and *Pseudomonas aeruginosa* susceptible to gentamicin sulfate.

EFFECTIVE DATE: June 7, 1995.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1643.

SUPPLEMENTARY INFORMATION: Sanofi Animal Health, Inc., 7101 College Blvd., Overland Park, KS 66210, has filed ANADA 200–147, which provides for use of gentamicin sulfate injection in day-old chickens for the prevention of early mortality caused by *E. coli*, *S. typhimurium*, and *P. aeruginosa* susceptible to gentamicin sulfate.

Sanofi Animal Health, Inc.'s, ANADA 200–147 for gentamicin sulfate injection (100 milligrams of gentamicin per milliliter (mg/mL) solution) is approved as a generic copy of Schering-Plough Animal Health's NADA 101–862 for Garasol (50 and 100 mg of gentamicin/mL solution) injection. The ANADA is approved as of April 10, 1995, and the regulations are amended in § 522.1044 (21 CFR 522.1044) to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In addition, the regulation failed to reflect that Schering-Plough's NADA 101–862 was approved for use of 100 mg of gentamicin/mL as well as 50 mg of gentamicin/mL injection. At this time, § 522.1044 is amended to indicate that both concentrations of the drug are approved for use in day-old chickens.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. Section 522.1044 is amended by revising paragraphs (a) and (b)(1) and by adding new paragraph (b)(4) to read as follows:

§ 522.1044 Gentamicin sulfate injection.

(a) *Specifications.* Each milliliter of sterile aqueous solution contains gentamicin sulfate equivalent to either 5, 50, or 100 milligrams of gentamicin.

(b) *Sponsors.* (1) See No. 000061 in § 510.600(c) of this chapter for use of 5 milligrams-per-milliliter solution in swine as in paragraph (d)(4) of this section, for use of 50 milligrams-per-solution in dogs, cats, and chickens as in paragraph (d)(1) and (d)(3) of this section, for use of 100 milligrams-per-

milliliter solution in chickens as in paragraph (d)(3) of this section.

* * * * *

(4) See No. 050604 for use of 100 milligrams-per-milliliter solution in chickens as in paragraph (d)(3) of this section.

* * * * *

Dated: May 22, 1995.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 95–13828 Filed 6–6–95; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 1220

[Docket No. 95N–0120]

Regulations Under the Tea Importation Act; Tea Standards

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is announcing the establishment of tea standards for the year beginning May 1, 1995, and ending April 30, 1996. The tea standards are provided for under the Tea Importation Act (the Act). The Act prohibits the importation of a tea that is inferior to the annual tea standard. Under the Act, the importation of a tea may be withheld until FDA examines the tea and is sure that it complies with the annual standard.

DATES: Effective May 1, 1995; written comments by July 7, 1995.

ADDRESSES: Submit written comments to the Docket Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Michelle A. Smith, Center for Food Safety and Applied Nutrition (HFS–158), Food and Drug Administration, 200 C St. SW., Washington, DC 20204,. 202–205–5099.

SUPPLEMENTARY INFORMATION: Because of the unique nature of the decisionmaking process for establishing annual standards for tea, the procedural protections that are part of this process, and the short period within which standards must be set, FDA has never, since the enactment in 1897 of the Act (21 U.S.C. 41), used notice and comment rulemaking for tea standards.

Each final rule setting the standards is based on the recommendations of the Board of Tea Experts (the board), which is comprised of tea experts who are representative of the tea trade. The board selects standards each year according to the provisions of the Act. The board bases its selection on tea samples submitted by members of the tea trade to the board. Relying primarily on organoleptic examination, the board selects one tea to represent the standard for each major type of tea imported into the United States. In choosing a standard, the board tries to select one at least equal in quality to that of the previous year. The Act prohibits the importation of a tea that is inferior to the annual tea standard. Under the Act, the importation of a tea may be withheld until FDA examines the tea and is sure that it complies with the annual standard.

The annual meeting of the board is open to the public and is announced in advance in the **Federal Register**. At the annual meeting any interested person may present data, information, or views orally or in writing regarding new standards.

The annual tea standards are prepared and submitted to the Secretary of Health and Human Services by the board (21 CFR 1220.41).

Should a tea importer be dissatisfied with an FDA tea examiner's rejection of a shipment of tea, the importer can refer its complaint to the U.S. Board of Tea Appeals and then to the U.S. Court of Appeals. FDA is unaware of any complaints or arguments having ever occurred concerning a designated standard, despite the many years since the enactment of the Act.

FDA concludes that notice and comment rulemaking to set tea standards is impracticable, contrary to the public interest, and unnecessary by virtue of the factors discussed above, i.e., the unique, longstanding procedures that apply to establishing a standard, the fact that standards are based principally on organoleptic examinations by tea experts, the public participation opportunities already provided, and the timeframes required for issuing annual standards. Hence, the agency is not following notice and comment rulemaking procedures in establishing the final tea standards for 1995.

Environmental Impact

The agency has determined under 21 CFR 25.24(b)(1) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because the tea standards, used by buyers for the U.S. market, protect consumers, importers, and sellers from acceptance of teas that are inferior in purity, quality, and fitness for consumption, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

Interested persons may, on or before July 7, 1995, submit to the Dockets Management Branch (address above) written comments regarding this regulation. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. Any changes in this regulation justified by such comments will be the subject of a further amendment.

List of Subjects in 21 CFR Part 1220

Administrative practice and procedure, Customs duties and inspection, Imports, Public health, Tea.

Therefore, under the authority delegated to the Secretary of Health and Human Services by the Tea Importation Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 1220 is amended as follows:

PART 1220—REGULATIONS UNDER THE TEA IMPORTATION ACT

1. The authority citation for 21 CFR part 1220 continues to read as follows:

Authority: 21 U.S.C. 41–50; 19 U.S.C. 1311.

2. Section 1220.40 is amended by revising paragraph (a) to read as follows:

§ 1220.40 Tea standards.

(a) Samples for standards of the following teas, prepared, identified, and submitted by the Board of Tea Experts on February 28, 1995, are hereby fixed and established as the standards of purity, quality, and fitness for consumption under the Tea Importation Act for the year beginning May 1, 1995, and ending April 30, 1996:

(1) Black Tea (for all teas except those from the People's Republic of China (China), Taiwan (Formosa), Iran, Japan, Russia, Turkey, and Argentina).

(2) Black Tea (for Argentina teas).

(3) Black Tea (for teas from the People's Republic of China (China), Taiwan (Formosa), Iran, Japan, Russia, and Turkey).

(4) Green Tea (of all origins).

(5) Formosa Oolong.

(6) Canton Oolong (for all Canton types from the People's Republic of China (China) and Taiwan (Formosa)).

(7) Scented Black Tea.

(8) Spiced Tea.

These standards apply to tea shipped from abroad on or after May 1, 1995.

* * * * *

Dated: May 31, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–13885 Filed 6–6–95; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF STATE

22 CFR Part 21

[Pub. Not. 2210]

Office of the Legal Adviser; Indemnification of Department of State Employees

AGENCY: Department of State.

ACTION: Final rule and statement of policy.

SUMMARY: This statement announces a Department of State policy to permit payment of Department funds to indemnify Department employees who suffer adverse money judgments as a result of acts within the scope of their employment and to settle personal damages claims involving such acts, as determined by the Under Secretary for Management or his or her designee. This rule is similar to regulations adopted by other Federal agencies, including the Department of Justice (28 CFR part 50), the Department of the Treasury (31 CFR part 3) and the Agency for International Development (22 CFR part 207).

EFFECTIVE DATE: June 7, 1995.

FOR FURTHER INFORMATION CONTACT: Jean Bailly, Attorney-Adviser, Office of the Assistant Legal Adviser for Legislation and Management, U.S. Department of State, (202) 647–5154.

SUPPLEMENTARY INFORMATION: Lawsuits against federal employees in their individual capacities have proliferated since the 1971 Supreme Court decision in *Bivens* v. *Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388. These suits personally attack officials at all levels of government and target many federal activities, particularly law enforcement. The Federal Liability Reform and Tort Compensation Act of 1988, Public Law 100–694, permits substitution of the Government in many personal liability tort suits against officials. However, substitution is not possible in some cases, notably claims arising under the Constitution and claims arising under foreign law. Although the Department has had few such cases, the risk of personal liability and the burden of defending suits for money damages is clearly present for Department employees. An adverse judgment in such a case has detrimental consequences to the employee, both monetary and otherwise. Fear of personal liability also has potentially adverse consequences for State Department operations, decisionmaking, and policy determinations. The prospect of personal liability, and even the uncertainty as to what conduct may result in a lawsuit against an employee personally, may tend to intimidate employees and stifle initiative and decisive action.

The Department believes a policy with respect to indemnification in such cases will serve to minimize this impediment to Department operations and would accord Department employees the same protection now enjoyed by most state and local government employees as well as those of most corporate employers. This policy is supported by the general principle that an agency has the authority to expend appropriated funds to further the mission of the agency and the objectives underlying the appropriation. Pursuant to this principle, the Department of State believes that indemnification is related both to the Department's mission and to the objectives underlying its general appropriations.

The indemnification policy will permit, but does not require, the Department to indemnify a Department employee who faces an adverse verdict, judgment or other monetary award, provided that the actions giving rise to the judgment were taken within the scope of employment and that such indemnification is in the interest of the United States, as determined by the Under Secretary for Management or his or her designee.

Absent exceptional circumstances, the Department will not agree either to indemnify or to settle a case before entry of an adverse judgment. This approach is intended to discourage the filing of lawsuits against federal employees in their individual capacities solely in order to pressure the Government into settlement. In the usual case, the Department will not settle a case before trial and judgment merely because a dispositive motion filed on behalf of the employee has been denied.

Personal services contractors are considered employees for purposes of this policy. This policy is applicable to any actions pending against Department employees as of its effective date.

In addition to the general indemnification provisions contained in these proposed regulations, the Department will follow its more specific indemnification policy with respect to damages awarded against Department health care personnel for malpractice claims within the scope of 22 U.S.C. 2702. The Department anticipates publishing regulations relating to this policy of indemnification.

Paperwork Reduction Act

This regulation is not subject to the Paperwork Reduction Act because it deals solely with internal Department rules governing personnel.

Cost/Regulatory Analysis

Because this rule relates solely to agency management and personnel, it is not subject to the notice and delayed effective date provisions of the Administrative Procedure Act (5 U.S.C. 553). It is likewise exempt from the procedures of E.O. 12866 (Regulatory Planning and Review). Because no notice of proposed rulemaking is required for this rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601–612) do not apply.

List of Subjects in 22 CFR Part 21

Administrative practice and procedure, Government employees, Tort claims.

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Accordingly, 22 CFR is hereby amended by adding a new part 21 as follows:

PART 21—INDEMNIFICATION OF EMPLOYEES

Authority: 5 U.S.C. 301; 22 U.S.C. 2658.

§ 21.1. Policy.

(a) The Department of State may indemnify an employee for any verdict, judgment, or other monetary award which is rendered against such employee, provided that the conduct giving rise to the verdict, judgment, or award was taken within the scope of employment and that such indemnification is in the interest of the United States, as determined as a matter of discretion by the Under Secretary for Management or his or her designee.

(b) The Department of State may settle or compromise a personal damages claim against an employee by the payment of available funds at any time, provided the alleged conduct giving rise to the personal damages claim was taken within the scope of employment and that such settlement or compromise is in the interest of the United States, as determined as a matter of discretion by the Under Secretary for Management or his or her designee.

(c) The Director General of the Foreign Service and Director of Personnel ("Director General") shall be the designee of the Under Secretary for Management with respect to determinations under paragraphs (a) and (b) of this section in cases which involve:

(1) Foreign courts or foreign administrative bodies and

(2) Requests of less than five thousand dollars.

(d) Absent exceptional circumstances as determined by the Under Secretary for Management or his or her designee, the Department will not entertain a request either to agree to indemnify or to settle a personal damages claim before entry of an adverse verdict, judgment, or award.

(e) When an employee in the United States becomes aware that an action has been filed against the employee in his or her personal capacity as a result of conduct taken within the scope of his or her employment, the employee shall immediately notify the Department through the Executive Director of the Office of the Legal Adviser that such an action is pending. Employees overseas shall notify their Administrative Counselor who shall then notify the Assistant Legal Adviser for Special Functional Problems. Employees may be authorized to receive legal representation by the Department of Justice in accordance with 28 CFR 50.15.

(f) The employee may thereafter request indemnification to satisfy a verdict, judgment, or award entered against the employee. The employee shall submit a written request, with appropriate documentation including copies of the verdict, judgment, award, or settlement proposal if on appeal, to the Legal Adviser. Except as provided in paragraph (g) of this section, the Legal Adviser and the Director General shall then, in coordination with the Bureau of Finance and Management Policy, forward the request with their recommendation to the Under Secretary for Management for decision. The Legal Adviser may seek the views of the Department of Justice, as appropriate, in preparing this recommendation.

(g) Cases in which the Director General is the designee under paragraph (c) of this section may be forwarded by the Assistant Legal Adviser for Special Functional Problems, along with the views of the employee and the bureau or post as appropriate, to the Director General for decision.

(h) Personal services contractors of the Department are considered employees for purposes of the policy set forth in this part.

(i) Any payment under this part either to indemnify a Department of State employee or to settle a personal damages claim shall be contingent upon the availability of appropriated funds.

(j) In addition to the indemnification provisions contained in the regulations in this part, the Department will also follow any specific policies or regulations adopted with respect to damages awarded against Department health care personnel for malpractice claims within the scope of 22 U.S.C. 2702.

Dated: May 5, 1995.

Richard M. Moose,

Under Secretary for Management.

[FR Doc. 95–13838 Filed 6–6–95; 8:45 am]

BILLING CODE 4710–08–M

UNITED STATES INFORMATION AGENCY

22 CFR Part 502

[Rulemaking No. 202]

Educational, Scientific, and Cultural Material; World-Wide Free Flow (Export-Import) of Audio-Visual Materials

AGENCY: United States Information Agency.

ACTION: Final rule.

SUMMARY: The Agency is adopting a final rule amending existing regulations governing the United States Information Agency's administration of the Agreement for Facilitating the International Circulation of Visual and Auditory Materials of an Educational, Scientific and Cultural Character, of 1948, by permitting the issuance of serial certifications in certain circumstances. The amendment reinstates into the regulations a provision omitted in a previous revision of the regulations, and allows for certification of time sensitive materials in serial format, thus facilitating the free flow of eligible materials.

EFFECTIVE DATE: June 7, 1995.

FOR FURTHER INFORMATION CONTACT: Neila Sheahan, Assistant General Counsel, Office of the General Counsel, Room 700, United States Information Agency, 301 4th Street SW., Washington, DC 20547, (202) 619–5030.

SUPPLEMENTARY INFORMATION: The United States Information Agency implements and administers the Agreement for Facilitating the International Circulation of Visual and Auditory Materials of an Educational, Scientific and Cultural Character ("Beirut Agreement"), enacted by the Third General Session of the United Nations Educational, Cultural and Scientific Organization (UNESCO), in Beirut, Lebanon in 1948, 17 U.S.T. 1578. In order to reconcile the terms of the Beirut Agreement with recent judicial decisions and statutory requirements, the Agency published revisions to the regulations covering implementation of the Agreement, at 59 FR 18963 on April 21, 1994. Those regulations made changes in the substantive criteria by which the Agency evaluates the character of audio visual material for certification, and renumbered the regulations. The regulations, however, omitted the provision for serial certifications, a practice followed informally from 1963 and formally incorporated into Agency regulations in 1984, at 22 CFR 502.6(b)(6). The provision for serial certifications was not challenged by judicial decisions; nor was its alteration or elimination required by statute.

On April 18, 1995 the Agency published in 60 FR 19385 a proposed rule to reinstate the provision for serial certification. It allows for the certification of otherwise eligible materials that (1) are produced in series form (e.g. weekly, bi-weekly, monthly), (2) are extremely time sensitive; and therefore the normal processing of certification decisions thereon would result in unreasonable delays and monetary loss to the producer, and (3) samples are provided and the educational character of the future programs can be generally described before certification and can be verified by a post-certification review of the items or through descriptive material such as a script of the narration. The Agency received one comment on the proposed amendment to the existing regulations, which agreed that the amendment was necessary to facilitate the free flow of eligible information to interested audiences.

Regulatory Analysis and Notices

In accordance with 5 U.S.C. 605(5), the Agency certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not considered to be a major rule within the meaning of section 1(b) of Executive Order 12291, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612.

No additional burden under the Paperwork Reduction Act, 44 U.S.C. Chapter 35, will result from the promulgation of this rule.

List of Subjects in 22 CFR Part 502

Audiovisual material, Education, Exports, Imports, Trade Agreement.

For the reasons set out in the preamble, 22 CFR part 502 is amended as follows:

PART 502—WORLD-WIDE FREE FLOW OF AUDIO-VISUAL MATERIALS

1. The authority citation for part 502 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 2051, 22 U.S.C. 1431 *et seq;* Pub. L. 102–138, E.O. 11311, 31 FR 13413, 3 CFR 1966–1970 comp., page 593.

2. Section 502.2 is amended by adding, in alphabetical order, a definition for "serial certification" to read as follows:

§ 502.2 Definitions.

* * * * *

Serial certification—means certification by the Agency of materials produced in series form and which, for time-sensitive reasons, cannot be reviewed prior to production; but samples are provided on application, and the materials are subject to post-certification review.

* * * * *

3. Section 502.3 is amended by adding new paragraphs (d) and (e) to read as follows:

§ 502.3 Certification and authentication criteria.

* * * * *

(d) The Agency may certify or authenticate materials which have not been produced at the time of application upon an affirmative determination that:

(1) The materials will be issued serially,

(2) Representative samples of the serial material have been provided at the time of application,

(3) Future titles and release dates have been provided to the Agency at the time of application,

(4) The applicant has affirmed that:

(i) Future released materials in the series will conform to the substantive criteria for certification delineated at paragraphs (a) through (c) of this section;

(ii) Such materials will be similar to the representative samples provided to the Agency on application; and

(iii) The applicant will provide the Agency with copies of the items themselves or descriptive materials for post-certification review.

(e) If the Agency determines through a post-certification review that the materials do not comply with the substantive criteria for certification delineated at paragraphs (a) through (c) of this section, the applicant will no longer be eligible for serial certifications. Ineligibility for serial certifications will not affect an applicant's eligibility for certification of materials reviewed prior to production.

Dated: June 1, 1995.

Les Jin,

General Counsel.

[FR Doc. 95–13959 Filed 6–6–95; 8:45 am]

BILLING CODE 8230–01–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1236

RIN 3095–AA51

Management of Vital Records

AGENCY: National Archives and Records Administration.

ACTION: Final rule.

SUMMARY: This regulation revises NARA regulations on Federal agencies' management of vital records in order to place the vital records program in the context of agency emergency management responsibilities. The vital records program is intended to ensure continuity of agency operations and protect rights of citizens and the Government. The regulation affects all Federal agencies.

EFFECTIVE DATE: This rule is effective June 7, 1995.

FOR FURTHER INFORMATION CONTACT: Mary Ann Hadyka or Nancy Allard at 301–713–6730.

SUPPLEMENTARY INFORMATION: NARA published a notice of proposed rulemaking on May 31, 1994 (59 FR 28033) for a 60-day comment period. The proposed rule expanded the vital records program to incorporate contingency planning and records disaster mitigation and recovery. Twenty written comments were received. It was clear that the extension of the regulation on vital records to a broader context was perceived by the agencies to be confusing, redundant, and burdensome. Consequently, NARA has revised the regulation to limit its application to vital records responsibilities, in the context of the larger emergency management program. Additional information will be provided in a forthcoming NARA management guide. The guide will provide more detail on vital records program planning, identifying vital records, training agency staff, and assessing records damaged in an emergency or disaster to determine what steps, if any, should be taken to recover the information in them. Its provisions will be advisory, rather than mandatory.

Following is a section-by-section discussion of the major issues raised in the written comments.

Section-by-Section Analysis

Section 1236.10 Purpose

One agency thought that vital records should be presented as part of the disaster recovery program, rather than the reverse. Another agency recommended that the rule clarify the relationship between contingency planning, vital records, and records disaster mitigation and recovery. This section has been modified to reflect the revised scope of the regulation.

Section 1236.12 Authority

NARA reconsidered the authorities cited for this regulation and deleted 44 U.S.C. 3105 because that section of the law relates to unauthorized disposal. It supports the records disposition regulations at 36 CFR 1228 and has no direct relationship to regulations on vital records.

Section 1236.14 Definitions

One agency noted that the definition of contingency planning actually described risk analysis. Another agency recommended that the definition of emergency operating records be modified to clearly cover records

needed to operate during and after an emergency in addition to records containing procedures for operating during an emergency. That agency also suggested that the definition of records disaster mitigation and recovery was too broad and recommended that it be clearly limited to emergency situations. The definitions of contingency planning and emergency operating records have been revised. In response to a third agency recommendation, the definition of off-site was added. NARA changed rights-and-interests records to legal and financial rights records because the latter term is more precise. The definitions of emergency coordinator, hazard, and vital records manager, were deleted because they are not used in the revised regulation.

Sections 1236.20 through 1236.24

These sections, originally proposed to cover contingency planning, have been deleted. Contingency planning for emergencies is adequately covered in FEMA issuances such as the "Federal Response Planning Guide, Continuity of Operations (COOP) Planning Guidance (FRPG 01–94)."

Section 1236.30 Vital Records Program

Six agencies questioned one or more of the elements of the vital records program described in this section, including issuance of a separate directive for the program, establishing a separate position for the vital records manager, providing training, and conducting annual reviews. NARA did not intend this section to require separate directives, full-time positions, elaborate training, or burdensome reviews. Management of vital records should be the responsibility of the agency records manager. It is one of many records management functions that should be addressed in agency records management directives, training, and program reviews. This section was modified to include only the basic requirements relating specifically to vital records.

Section 1236.32 Identifying, Using and Protecting Vital Records

This section has been divided into three sections, now designated § 1236.22, § 1236.24, and § 1236.26. One agency recommended that the inventory of vital records be integrated into the records scheduling process. NARA did not intend that this inventory necessarily duplicate inventorying for scheduling. Section 1236.22 clarifies that point, and further explanation will be provided in the forthcoming guide. Another agency suggested that common vital records be so designated in the General Records Schedules. NARA declines to accept this suggestion because many vital records common to many agencies are permanent and therefore not in the General Records Schedules (GRS). Many other vital records are unique to individual agencies. As vital records are identified in the course of contingency planning, NARA believes it inappropriate to mandate that specific series in the GRS be treated as vital records.

One agency recommended that this section more clearly address electronic records and security backup copies. In particular, the agency asked if electronic records could be regarded as the vital record copy, even if it is not an exact duplicate. In § 1236.22, NARA modified the regulation to clarify that it is the informational content, not the form, of the records that must be considered. Also, § 1236.26 indicates that copies of electronic records created for security purposes are adequate for protecting vital information, even if the copies include records not containing vital information. Additional guidance on electronic records will be provided in the forthcoming guide.

Two agencies raised questions about copies of vital records, and one recommended a risk analysis to determine whether duplication is necessary. Section 1236.24 clarifies that agencies determine when copies are needed.

Several agencies questioned the restriction on use of Federal Records Centers (FRC's) to copies of legal and financial rights records. We have modified the rule at § 1236.26(c) to allow agencies to store emergency operating records at FRC's under certain conditions.

One agency pointed out that not all vital record copies are cycled, and two agencies stated that the disposition of the copies may not be the same as the originals. This rule was clarified on these points.

Sections 1236.40 and 1236.42 Records Disaster Mitigation and Recovery Program

Three agencies found § 1236.40, Records protection, confusing in relation to the scope of the records protection plan. Three agencies raised questions about the scope of § 1236.42, Elements of a records disaster mitigation and recovery program. One recommended that the program be integrated with information security plans and contingency of operations plans. Another objected to the requirement that agencies test records recovery programs for all offices. The third asked if a plan was required for each series or for records in each medium. NARA reconsidered the propriety of including this level of detail about the broader emergency management program in its regulations on vital records and deleted the entire section. NARA concluded that the proposed regulation was confusing to agencies, duplicative of requirements imposed by FEMA on emergency management and by GSA on computer security, and unnecessarily burdensome.

The Administrative Procedures Act (5 U.S.C. 553(d)) provides that the effective date of a final rule may be less than 30 days after publication in the **Federal Register** when the rule relieves a restriction. This rule will allow agencies to store their emergency operating vital records in the Federal Records Centers. Previously, only legal and financial rights vital records could be transferred to a records center. Accordingly, we are making this final rule effective immediately.

This rule is not a significant regulatory action for purposes of Executive Order 12866 of September 30, 1993, and has not been reviewed under the Order by the Office of Management and Budget. As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on small entities.

List of Subjects in 36 CFR 1236

Archives and records.

For the reasons set forth in the preamble, 36 CFR chapter XII is amended by revising part 1236 to read as follows:

PART 1236—MANAGEMENT OF VITAL RECORDS

Subpart A—General

Sec.
1236.10 Purpose.
1236.12 Authority.
1236.14 Definitions.

Subpart B—Vital Records

1236.20 Vital records program objectives.
1236.22 Identification of vital records.
1236.24 Use of vital records and copies of vital records.
1236.26 Protection of vital records.
1236.28 Disposition of original vital records.

Authority: 44 U.S.C. 2104(a), 2904(a), 3101; E. O. 12656, 53 FR 47491, 3 CFR, 1988 Comp., p. 585.

Subpart A—General

§ 1236.10 Purpose.

This part prescribes policies and procedures for establishing a program for the identification and protection of vital records, those records needed by agencies for continuity of operations before, during, and after emergencies, and those records needed to protect the legal and financial rights of the Government and persons affected by Government activities. The records may be maintained on a variety of media including paper, magnetic tape or disk, photographic film, and microfilm. The management of vital records is part of an agency's continuity of operations plan designed to meet emergency management responsibilities.

§ 1236.12 Authority.

Heads of agencies are responsible for the vital records program under the following authorities:

(a) To make and preserve records containing adequate and proper documentation of the agency's organization, functions, policies, procedures, decisions, and essential transactions, and to furnish information to protect the legal and financial rights of the Government and of persons directly affected by the agency's activities (44 U.S.C. 3101).

(b) To perform national security emergency preparedness functions and activities (Executive Order 12656).

§ 1236.14 Definitions.

Basic records management terms are defined in 36 CFR 1220.14. As used in part 1236:

Contingency planning means instituting policies and procedures to mitigate the effects of potential emergencies or disasters on an agency's operations and records. Contingency planning is part of the continuity of operations planning required under Federal Preparedness Circulars and other guidance issued by the Federal Emergency Management Agency (FEMA) and Executive Order 12656.

Cycle means the periodic removal of obsolete copies of vital records and their replacement with copies of current vital records. This may occur daily, weekly, quarterly, annually or at other designated intervals.

Disaster means an unexpected occurrence inflicting widespread destruction and distress and having long-term adverse effects on agency operations. Each agency defines what a long-term adverse effect is in relation to its most critical program activities.

Emergency means a situation or an occurrence of a serious nature, developing suddenly and unexpectedly, and demanding immediate action. This is generally of short duration, for example, an interruption of normal agency operations for a week or less. It may involve electrical failure or minor flooding caused by broken pipes.

Emergency operating records are that type of vital records essential to the continued functioning or reconstitution of an organization during and after an emergency. Included are emergency plans and directive(s), orders of succession, delegations of authority, staffing assignments, selected program records needed to continue the most critical agency operations, as well as related policy or procedural records that assist agency staff in conducting operations under emergency conditions and for resuming normal operations after an emergency.

Legal and financial rights records are that type of vital records essential to protect the legal and financial rights of the Government and of the individuals directly affected by its activities. Examples include accounts receivable records, social security records, payroll records, retirement records, and insurance records. These records were formerly defined as "rights-and-interests" records.

National security emergency means any occurrence, including natural disaster, military attack, technological emergency, or other emergency, that seriously degrades or threatens the national security of the United States, as defined in Executive Order 12656.

Off-site storage means a facility other than an agency's normal place of business where vital records are stored for protection. This is to ensure that the vital records are not subject to damage or destruction from an emergency or disaster affecting an agency's normal place of business.

Vital records mean essential agency records that are needed to meet operational responsibilities under national security emergencies or other emergency or disaster conditions (emergency operating records) or to protect the legal and financial rights of the Government and those affected by Government activities (legal and financial rights records).

Vital records program means the policies, plans, and procedures developed and implemented and the resources needed to identify, use, and protect the essential records needed to meet operational responsibilities under national security emergencies or other emergency or disaster conditions or to protect the Government's rights or those of its citizens. This is a program element of an agency's emergency management function.

Subpart B—Vital Records

§ 1236.20 Vital records program objectives.

The vital records program is conducted to identify and protect those records that specify how an agency will operate in case of emergency or disaster, those records vital to the continued operations of the agency during and after an emergency or disaster, and records needed to protect the legal and financial rights of the Government and of the persons affected by its actions. An agency identifies vital records in the course of contingency planning activities carried out in the context of the emergency management function. In carrying out the vital records program agencies shall:

(a) Specify agency staff responsibilities;

(b) Ensure that all concerned staff are appropriately informed about vital records;

(c) Ensure that the designation of vital records is current and complete; and

(d) Ensure that vital records and copies of vital records are adequately protected, accessible, and immediately usable.

§ 1236.22 Identification of vital records.

Vital records include emergency plans and related records that specify how an agency is to respond to an emergency as well as those records that would be needed to continue operations and protect legal and financial rights. Agencies should consider the informational content of records series and electronic records systems when identifying vital records. Only the most recent and complete source of the vital information needs to be treated as vital records.

§ 1236.24 Use of vital records and copies of vital records.

Agencies shall ensure that retrieval procedures for vital records require only routine effort to locate needed information, especially since individuals unfamiliar with the records may need to use them during an emergency or disaster. Agencies also shall ensure that all equipment needed to read vital records or copies of vital records will be available in case of emergency or disaster. For electronic records systems, agencies also shall ensure that system documentation adequate to operate the system and access the records will be available in case of emergency or disaster.

§ 1236.26 Protection of vital records.

Agencies shall take appropriate measures to ensure the survival of the vital records or copies of vital records in

case of emergency or disaster. In the case of electronic records, this requirement is met if the information needed in the event of emergency or disaster is available in a copy made for general security purposes, even when the copy contains other information.

(a) *Duplication.* Computer backup tapes created in the normal course of system maintenance or other electronic copies that may be routinely created in the normal course of business may be used as the vital record copy. For hard copy records, agencies may choose to make microform copies. Standards for the creation, preservation and use of microforms are found in 36 CFR part 1230, Micrographic Records Management. The Computer Security Act of 1987 (40 U.S.C. 759, Pub. L. 100–235), OMB Circular A–130, and 36 CFR part 1234, Electronic Records Management, and 41 CFR part 201, subchapter B, Management and Use of Information and Records, specify protective measures and standards for electronic records.

(b) *Storage.* When agencies choose duplication as a protection method, the copy of the vital record stored off-site is normally a duplicate of the original record. Designating and using duplicate copies of original records as vital records facilitates destruction or deletion of obsolete duplicates when replaced by updated copies, whereas original vital records must be retained for the period specified in the agency records disposition schedule. The agency may store the original records off-site if protection of original signatures is necessary, or if it does not need to keep the original record at its normal place of business.

(c) *Storage considerations.* Agencies need to consider several factors when deciding where to store copies of vital records. Copies of emergency operating vital records need to be accessible in a very short period of time for use in the event of an emergency or disaster. Copies of legal and financial rights records may not be needed as quickly. In deciding where to store vital records copies, agencies shall treat records that have the properties of both categories, that is, emergency operating and legal and financial rights records, as emergency operating records.

(1) Under certain circumstances, Federal records centers (FRC's) may store copies of emergency operating vital records. FRC's will store small volumes of such records, but may not be able to provide storage for large collections or ones requiring constant recycling of the vital records, except under reimbursable agreement. Prior to preparing the records for shipment, the agency must contact the FRC to determine if the center can accommodate the storage requirements and return copies in an acceptable period of time.

(2) The off-site copy of legal and financial rights vital records may be stored at an off-site agency location or, in accordance with § 1228.156 of this chapter, at an FRC.

(3) When using an FRC for storing vital records that are duplicate copies of original records, the agency must specify on the SF 135, Records Transmittal and Receipt, that they are vital records (duplicate copies) and the medium on which they are maintained. The agency shall also periodically cycle (update) them by removing obsolete items and replacing them with the most recent version, when necessary.

(4) Agencies that transfer permanent, original vital records maintained on electronic or microform media to the custody of the National Archives may designate such records as their off-site copy. That designation may remain in effect until the information in such transferred records is superseded or becomes obsolete.

§ 1236.28 Disposition of original vital records.

The disposition of original vital records is governed by records schedules approved by NARA (see part 1228, Disposition of Federal Records). Original records that are not scheduled may not be destroyed or deleted.

Dated: May 30, 1995.

Trudy Huskamp Peterson,

Acting Archivist of the United States.

[FR Doc. 95–13951 Filed 6–6–95; 8:45 am]

BILLING CODE 7515–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPPTS–50615A; FRL–4916–3]

RIN 2070–AB27

Organotin Lithium Compound; Revocation of Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Revocation of final rule.

SUMMARY: EPA is revoking a significant new use rule (SNUR) promulgated under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for the chemical substance described generically as an organotin lithium compound which was the subject of premanufacture notice (PMN) P–93–1119. EPA initially published this SNUR using direct final rulemaking procedures. EPA received adverse comments on this rule. Therefore, the Agency is revoking this rule, as required under the expedited SNUR rulemaking process. In a separate notice of proposed rulemaking in today's issue of the **Federal Register**, EPA is proposing a SNUR for this substance with a 30–day comment period.

EFFECTIVE DATE: This action is effective on June 7, 1995.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 27, 1994 (59 FR 27474), EPA issued several direct final SNURs including a SNUR for the substance described generically as organotin lithium compound, PMN P–93–1119. As described in 40 CFR 721.160, EPA is revoking the rule issued for P–93–1119 under direct final rulemaking procedures because the Agency received adverse comments. Pursuant to § 721.160(c)(3)(ii), EPA is proposing a revised SNUR for this chemical substance elsewhere in today's issue of the **Federal Register**. For details regarding EPA's expedited process for issuing SNURs, interested parties are directed to 40 CFR part 721, subpart D. The record for the direct final SNUR which is being revoked was established at OPPTS–50615. That record includes information considered by the Agency in developing the rule and includes the adverse comments to which the Agency is responding with this notice of revocation. The docket control number for the revocation is OPPTS–50615A. For more information, refer to the proposal published elsewhere in today's issue of the **Federal Register**. The relevant portions of the original docket for the direct final SNUR are being incorporated under OPPTS–50615B, which is established for the proposed rule.

A public version of the record without any confidential business information is available in the TSCA Nonconfidential Information Center (NCIC) from 12 noon to 4 p.m., Monday through Friday, except legal holidays. The TSCA NCIC is located in Rm. NE–B607, 401 M St., SW., Washington, DC 20460.

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous materials, Reporting and recordkeeping requirements, Significant new uses.

Dated: May 19, 1995.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

Therefore, 40 CFR part 721 is amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

§ 721.9668 [Removed]

2. By removing § 721.9668.

[FR Doc. 95–13963 Filed 6–6–95; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified base (100-year) flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW, Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below of the final determinations of modified base (100-year) flood elevations for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Associate Director has resolved any appeals resulting from this notification.

The modified base (100-year) flood elevations are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified base (100-year) flood elevation determinations are available for inspection.

The modifications are made pursuant to Section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR Part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in base (100-year) flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base (100-year) flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
California: Orange (FEMA Docket No. 7125).	City of Brea	December 1, 1994, December 8, 1994, *Brea Progress.*	The Honorable Glenn Parker, Mayor, City of Brea, No. 1 Civic Center Circle, Brea, California 92621.	November 8, 1994	060214
California: Riverside (FEMA Docket No. 7125).	City of Corona ..	December 1, 1994, December 8, 1994, *Press Enterprise.*	The Honorable Bill Miller, Mayor, City of Corona, 815 West Sixth Street, Corona, California 91720.	November 9, 1994	060250
California: Solano (FEMA Docket No. 7131).	City of Fairfield .	January 4, 1995, January 11, 1995, *Daily Republic.*	The Honorable Chuck Hammond, Mayor, City of Fairfield, 1000 Webster Street, Fairfield, California 94533–4883.	December 5, 1994	060370
California: Sacramento (FEMA Docket No. 7131).	City of Folsom ..	January 4, 1995, January 11, 1995, *Folsom Telegraph.*	The Honorable Bob Holderness, Mayor, City of Folsom, 50 Natoma Street, Folsom, California 95630.	November 18, 1994	060263
California: Los Angeles (FEMA Docket No. 7125).	Unincorporated areas.	December 23, 1994, December 30, 1994, *Daily Commerce.*	The Honorable Yvonne Burke, Chairperson, Los Angeles County, Board of Supervisors, 500 West Temple Street, Los Angeles, California 90012.	November 18, 1994	065043
California: Riverside (FEMA Docket No. 7125).	City of Norco	December 1, 1994, December 8, 1994, *Press Enterprise.*	The Honorable Bill Vaughn, Mayor, City of Norco, P.O. Box 428, Norco, California 91760.	November 9, 1994	060256
California: Shasta (FEMA Docket No. 7121).	Unincorporated areas.	November 17, 1994, November 24, 1994, *Record-Searchlight.*	The Honorable Francie Sullivan, Chairperson, Shasta County, Board of Supervisors, 1815 Yuba Street, Redding, California 96001.	October 28, 1994	060358
California: Solano (FEMA Docket No. 7131).	Unincorporated areas.	January 4, 1995, January 11, 1995, *Daily Republic.*	The Honorable William Carroll, Chairman, Solano County, Board of Supervisors, 580 Texas Street, Fairfield, California 94533–6378.	December 5, 1994	060631
Colorado: Douglas (FEMA Docket No. 7125).	Town of Castle Rock.	December 14, 1994, December 21, 1994, *Douglas County News Press.*	The Honorable Mark Williams, Mayor, Town of Castle Rock, 680 North Wilcox Street, Castle Rock, Colorado 80104.	November 21, 1994	080050
Colorado: Douglas (FEMA Docket No. 7125).	Unincorporated areas.	December 21, 1994, December 28, 1994, *Douglas County News.*	The Honorable M. Michael Cooke, Chairperson, Douglas County, Board of Commissioners, 101 Third Street, Castle Rock, Colorado 80104.	November 18, 1994	080049
Colorado: Weld (FEMA Docket No. 7125).	City of Greeley ..	December 21, 1994, December 28, 1994, *Greeley Daily Tribune.*	The Honorable Willie Morton, Mayor, City of Greeley, City Hall, 1000 Tenth Street, Greeley, Colorado 80631.	November 23, 1994	080184
Colorado: La Plata (FEMA Docket No. 7131).	Unincorporated areas.	January 6, 1995, January 13, 1995, *Durango Herald.*	The Honorable Frank Joswick, Chairperson, La Plata County, Board of Commissioners, 1060 East Second Avenue, Durango, Colorado 81301.	November 29, 1994	080097
Colorado: Douglas (FEMA Docket No. 7125).	Town of Larkspur.	December 21, 1994, December 28, 1994, *Douglas County News Press.*	The Honorable Florence Burnch, Mayor, Town of Larkspur, P.O. Box 310, Larkspur, Colorado 80118.	November 18, 1994	080309
Colorado: Weld (FEMA Docket No. 7125).	Unincorporated areas.	December 21, 1994, December 28, 1994, *Greeley Daily Tribune.*	The Honorable W.H. Webster, Chairperson, Weld County, Board of Commissioners, P.O. Box 758, Greeley, Colorado 80632.	November 23, 1994	080266
Kansas: Johnson (FEMA Docket No. 7125).	City of Overland Park.	December 21, 1994, December 28, 1994, *Johnson County Sun.*	The Honorable Ed Eilert, Mayor, City of Overland Park, City Hall, 8500 Santa Fe Drive, Overland Park, Kansas 66212.	December 5, 1994	200174
New Mexico: Bernalillo (FEMA Docket No. 7121).	City of Albuquerque.	November 18, 1984, November 25, 1994, *Albuquerque Tribune.*	The Honorable Martin Chavez, Mayor, City of Albuquerque, P.O. Box 1293, Albuquerque, New Mexico 87103.	October 27, 1994	350002
New Mexico: Bernalillo (FEMA Docket No. 7125).	City of Albuquerque.	December 23, 1994, December 30, 1994, *Albuquerque Tribune.*	The Honorable Martin Chavez, Mayor, City of Albuquerque, P.O. Box 1293, Albuquerque, New Mexico 87103.	November 15, 1994	350002
Oklahoma: Cleveland (FEMA Docket No. 7121).	City of Norman .	November 16, 1994, November 23, 1994, *Norman Transcript.*	The Honorable Bill Nations, Mayor, City of Norman, 201 West Gray Street, Building A, Norman, Oklahoma 73069.	November 2, 1994	400046

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Oklahoma: Oklahoma (FEMA Docket No. 7121).	City of Oklahoma City.	November 16, 1994, November 23, 1994, *Journal Record.*	The Honorable Ronald J. Norick, Mayor, City of Oklahoma City, 200 North Walker Avenue, Oklahoma City, Oklahoma 73102.	October 28, 1994	405378
Texas: Tarrant County (FEMA Docket No. 7125).	City of Arlington	December 15, 1994, December 22, 1994, *Fort Worth Star Telegram.*	The Honorable Richard Greene, Mayor, City of Arlington, P.O. Box 231, Arlington, Texas 76004–0231.	November 30, 1994	485454
Texas: Dallas (FEMA Docket No. 7121).	City of Carrollton	November 17, 1994, November 24, 1994, *Metrocrest News.*	The Honorable Milburn Gravely, Mayor, City of Carrollton, P.O. Box 110535, Carrollton, Texas 75011–0535.	October 31, 1994	480167
Texas: Dallas (FEMA Docket No. 7131).	City of Carrollton	January 5, 1995, January 12, 1995, *Metrocrest News.*	The Honorable Milburn Gravely, Mayor, City of Carrollton, P.O. Box 110535, Carrollton, Texas 75011–0535.	December 13, 1994	480167
Texas: Tarrant (FEMA Docket No. 7131).	City of Colleyville.	January 4, 1995, January 11, 1995, *Fort Worth Star Telegram.*	The Honorable Cheryl Seigel, Mayor, City of Colleyville, P.O. Box 165, Colleyville, Texas 76034.	December 13, 1994	480590
Texas: Collin (FEMA Docket No. 7121).	Unincorporated areas.	November 17, 1994, November 24, 1994, *Courier Gazette.*	The Honorable Ron Harris, County Judge, Collin County, 210 South McDonald Street, McKinney, Texas 75069.	October 31, 1994	480130
Texas: El Paso (FEMA Docket No. 7131).	City of El Paso ..	January 3, 1995, January 10, 1995, *El Paso Times.*	The Honorable William S. Tilney, Mayor, City of El Paso, Two Civic Center Plaza, El Paso, Texas 79901.	December 12, 1994	480214
Texas: Dallas (FEMA Docket No. 7125).	City of Grand Prairie.	December 15, 1994, December 22, 1994, *Grand Prairie Daily News.*	The Honorable Charles England, Mayor, City of Grand Prairie, 317 College Street, Grand Prairie, Texas 75053.	November 30, 1994	485472
Texas: Tarrant (FEMA Docket No. 7131).	City of Grapevine.	January 4, 1995, January 11, 1995, *Fort Worth Star Telegram.*	The Honorable William D. Tate, Mayor, City of Grapvine, 413 South Main Street, Grapevine, Texas 76051.	December 13, 1994	480598
Texas: Harris (FEMA Docket No. 7125).	Unincorporated areas.	December 9, 1994, December 16, 1994, *The Houston Post.*	The Honorable Jon Lindsay, Harris County Judge, 1001 Preston, Suite 911, Houston, Texas 77002.	November 30, 1994	480287
Texas: Collin (FEMA Docket No. 7121).	City of McKinney	November 17, 1994, November 24, 1994, *Courier Gazette.*	The Honorable John Gay, Mayor, City of McKinney, P.O. Box 517, McKinney, Texas 75069.	October 31, 1994	480135
Texas: Collin (FEMA Docket No. 7131).	City of Plano	January 4, 1995, January 11, 1995, *Dallas Morning News.*	The Honorable James N. Muns, Mayor, City of Plano, P.O. Box 860358, Plano, Texas 75086–0358.	November 29, 1994	480140

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: May 31, 1995.

Frank H. Thomas,

Deputy Associate Director for Mitigation.

[FR Doc. 95–13908 Filed 6–6–95; 8:45 am]

BILLING CODE 6718–03–P

44 CFR Part 65

[Docket No. FEMA–7143]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (100-year) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base (100-year) flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Associate Director, Mitigation Directorate, reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base (100-year) flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW, Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The modified base (100-year) flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base (100-year) flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed

conditions, or upon new scientific or technical data.

The modifications are made pursuant to Section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR Part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base (100-year) flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This interim rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
California: Orange ..	City of Irvine	April 20, 1995, April 27, 1995, *Irvine World News.*	The Honorable Michael Ward, Mayor, City of Irvine, P.O. Box 19575, Irvine, California 92713.	March 30, 1995 ..	060222
California: Kern	Unincorporated areas.	April 19, 1995, April 26, 1995, *Bakersfield Californian.*	The Honorable Ken Peterson, Chairman, Kern County Board of Supervisors, 1115 Truston Avenue, Fifth Floor, Bakersfield, California 93301.	March 15, 1995 ..	060075
California: Orange ..	City of Lake Forest.	April 19, 1995, April 26, 1995, *Saddle Back Valley News.*	The Honorable Richard Dixon, Mayor, City of Lake Forest, 23778 Mercury Road, Lake Forest, California 92630.	March 30, 1995 ..	060759
California: Kern	City of Tehachapi.	April 19, 1995, April 26, 1995, *Tehachapi News.*	The Honorable Philip Smith, Mayor, City of Tehachapi, P.O. Box 668, Tehachapi, California 93581.	March 15, 1995 ..	060084
Colorado: Douglas .	Town of Castle Rock.	April 19, 1995, April 26, 1995, *Douglas County News Press.*	The Honorable Mark Williams, Mayor, Town of Castle Rock, 680 North Wilcox Street, Castle Rock, Colorado 80104.	March 20, 1995 ..	080050
Colorado: Douglas .	Unincorporated areas.	April 19, 1995, April 26, 1995, *Douglas County News Press.*	The Honorable Robert A. Christensen, Chairperson, Douglas County Commissioners, 101 Third Street, Castle Rock, Colorado 80104.	March 20, 1995 ..	080049
Hawaii: Honolulu	City and County of Honolulu.	April 18, 1995, April 25, 1995, *Honolulu, Advertiser.*	The Honorable Jeremy Harris, Mayor, City and County of Honolulu, 530 South King Street, Room 300, Honolulu, Hawaii 96813.	March 21, 1995 ..	150001
Iowa: Tama	City of Tama	April 20, 1995, April 27, 1995, *Tama News Herald.*	The Honorable Richard Gibson, Mayor, City of Tama, 305 Siegel Street, Tama, Iowa 52339.	March 20, 1995 ..	190262
Missouri: St. Louis .	City of Arnold	April 19, 1995, April 26, 1995, *The Press Journal.*	The Honorable Marion Becker, Mayor, City of Arnold, 2101 Jeffco Boulevard, Arnold, Missouri 63010.	March 24, 1995 ..	290188
Missouri: St. Louis .	City of Maryland Heights.	April 19, 1995, April 26, 1995, *St. Louis Post-Dispatch.*	The Honorable Michael O'Brien, Mayor, City of Maryland Heights, 212 Millwell Drive, Maryland Heights, Missouri 63043.	March 22, 1995 ..	290889
Texas: Tarrant	City of Azle	April 20, 1995, April 27, 1995, *Azle News.*	The Honorable C. Y. Rone, Mayor, City of Azle, 613 Southeast Parkway, Azle, Texas 76020–3694.	March 29, 1995 ..	480584

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Texas: Bexar	Unincorporated areas.	April 4, 1995, April 11, 1995, *San Antonio Express News.*	The Honorable Cyndi Taylor Krier, Bexar County Judge, Bexar County Courthouse, First Floor, San Antonio, Texas 78205–3036.	March 13, 1995 ..	480035
Texas: Dallas	City of Dallas	April 12, 1995, April 19, 1995, *The Dallas Morning News.*	The Honorable Steve Bartlett, Mayor, City of Dallas, 1500 Marilla, Room 5E, Dallas, Texas 75201.	March 20, 1995 ..	480171
Texas: Hardin	Unincorporated areas.	April 19, 1995, April 26, 1995, *Hardin County News.*	The Honorable Tom Mayfield, Hardin County Judge, Hardin County Courthouse, P.O. Box 760, Kountze, Texas 77625.	March 29, 1995 ..	480284
Texas: Collin	City of McKinney	April 4, 1995, April 11, 1995, *McKinney Courier Gazette.*	The Honorable John Gay, Mayor, City of McKinney, P.O. Box 517, McKinney, Texas 75069.	March 13, 1995 ..	480135
Texas: Tarrant	City of North Richland Hills.	April 20, 1995, April 27, 1995, *Mid-Cities News.*	The Honorable Tommy Brown, Mayor, City of North Richland Hills, 7301 North East Loop 820, North Richland Hills, Texas 76180.	March 28, 1995 ..	480607
Texas: Collin	City of Plano	April 19, 1995, April 26, 1995, *Plano Star Courier.*	The Honorable James N. Muns, Mayor, City of Plano, P.O. Box 860358, Plano, Texas 75086–0358.	March 30, 1995 ..	480140
Texas: Bexar	Town of Shavano Park.	April 4, 1995, April 11, 1995, *San Antonio Express News.*	The Honorable Thomas Peyton, Mayor, Town of Shavano Park, City Hall, 99 Saddletree Road, Shavano Park, Texas 78231.	March 13, 1995 ..	480047

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: May 31, 1995.

Frank H. Thomas,

Deputy Associate Director for Mitigation.

[FR Doc. 95–13907 Filed 6–6–95; 8:45 am]

BILLING CODE 6718–03–P

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (100-year) flood elevations and modified base (100-year) flood elevations are made final for the communities listed below. The base (100-year) flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the FIRM is available for inspection as indicated on the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes final determinations listed below of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the **Federal Register**.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR Part 67.

FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR Part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended to read as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
ARIZONA	
Flagstaff (city), Coconino County (FEMA Docket No. 7126)	
Fanning Drive Wash:	
Just upstream of Interstate Highway 40 (west side)	*6,784
Approximately 100 feet downstream of Industrial Drive	*6,800
Approximately 300 feet downstream of U.S. Highway 89	*6,824
At Fanning Drive	*6,834
Penstock Avenue Wash:	
Approximately 2,000 feet downstream of Atchison, Topeka, and Santa Fe Railroad spur	*6,767
At Railhead Avenue	*6,785
Approximately 340 feet upstream of Commerce Avenue	*6,810
Maps are available for inspection at City Hall, City of Flagstaff, City Clerk's Office, Flagstaff, Arizona.	
Coconino County (unincorporated areas) (FEMA Docket No. 7126)	
Fanning Drive Wash:	
Approximately 90 feet downstream of Atchison, Topeka, and Santa Fe Railroad	*6,806
Approximately 3,600 feet upstream of Atchison, Topeka, and Santa Fe Railroad	*6,824
Maps are available for inspection at Coconino County Community Development, Planning and Zoning, 219 East Cherry Street, Flagstaff, Arizona.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maricopa County (Incorporated areas) (FEMA Docket No. 7126)	
Rainbow Wash:	
At confluence with Gila River	*717
Approximately 12,000 feet upstream of confluence with Gila River	*790
Approximately 20,000 feet upstream of confluence with Gila River	*837
Just upstream of State Route 85	*907
Approximately 19,400 feet upstream of State Route 85	*991
Rainbow Wash Tributary:	
At confluence with Rainbow Wash	*892
Approximately 8,000 feet upstream of confluence with Rainbow Wash	*924
Luke Wash:	
At confluence with Gila River	*784
At Narramore Road	*829
Just downstream of Southern Pacific Railroad	*857
Minor Tributary to Luke Wash:	
Approximately 2,050 feet upstream of confluence with Luke Wash	*826
Approximately 6,700 feet upstream of confluence with Luke Wash	*858
East Main Tributary to Luke Wash:	
At Telegraph Pass Road	*823
Just downstream of Southern Pacific Railroad	*854
East Subtributary to Luke Wash:	
At Telegraph Pass Road	*823
Approximately 3,500 feet upstream of Telegraph Pass Road	*837
Sand Tank Wash:	
At North Indian Road	*662
At South Indian Road	*717
At Interstate 8	*768
Bender Wash:	
At confluence with Sand Tank Wash	*720
At South Main Street	*749
At Interstate 8	*779
Unnamed Wash No. 1 (Tributary to Bender Wash):	
At confluence with Bender Wash	*746
At Interstate 8	*834
Approximately 2,600 feet upstream of Interstate 8	*852
Unnamed Wash No. 2 (Tributary to Bender Wash):	
At confluence with Unnamed Wash No. 1	*746
At Business Route 8	*801
Approximately 5,600 feet upstream of Business Route 8	*839
Scott Avenue Wash:	
At Watermelon Road	*677
At Southern Pacific Railroad	*739
At Interstate 8	*755
Star Wash:	
Approximately 8,700 feet upstream of confluence with Jackrabbit Wash	*1,410
Approximately 5,100 feet upstream of confluence with Tank Wash	*1,485
At confluence with Tributary D	*1,549
Approximately 1,400 feet upstream of Haul Road	*1,606
Tributary A:	
Approximately 5,800 feet upstream of confluence with Star Wash	*1,534
At confluence with Tributary B	*1,551
Tributary B:	
At confluence with Tributary A	*1,551
Approximately 200 feet upstream of Haul Road	*1,593

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Tributary C:	
At confluence with Star Wash	*1,579
Approximately 4,100 feet upstream of confluence with Star Wash	*1,610
Tributary D:	
At confluence with Star Wash	*1,539
Approximately 4,500 feet upstream of confluence with Tributary E	*1,600
Tank Wash:	
Approximately 3,300 feet upstream of confluence with Star Wash	*1,470
Approximately 20,000 feet upstream of confluence with Star Wash	*1,560
Approximately 4,900 feet upstream of confluence with South Branch Tank Wash	*1,650
South Branch Tank Wash:	
Approximately 1,000 feet upstream of confluence with Tank Wash	*1,626
Approximately 4,600 feet upstream of confluence with Tank Wash	*1,649
Powerline Wash:	
Approximately 4,800 feet upstream of confluence with Star Wash	*1,443
Approximately 27,700 feet upstream of confluence with Star Wash	*1,570
Approximately 55,000 feet upstream of confluence with Star Wash	*1,741
Daggs Wash:	
Approximately 900 feet upstream of confluence with Hassayampa River	*1,255
Just upstream of Central Arizona Project Canal	*1,382
Approximately 35,700 feet upstream of confluence with Hassayampa River	*1,482
Approximately 50,000 feet upstream of confluence with Hassayampa River	*1,564
Just upstream of Peakview Road	*1,672
West Breakout Wash:	
At downstream confluence with Daggs Wash	*1,610
At upstream confluence with Daggs Wash	*1,655
East Split Flow:	
At downstream confluence with Daggs Wash	*1,610
At upstream confluence with Daggs Wash	*1,628
Apache Wash:	
Approximately 12,700 feet downstream of confluence with Paradise Wash	*1,660
At confluence with Paradise Wash	*1,736
At New River Road	*1,886
Approximately 2,500 feet upstream of confluence with Apache Wash West Fork	*2,022
Apache Wash-Split Flow:	
At downstream confluence with Apache Wash	*1,786
At upstream confluence with Apache Wash	*1,811
West Fork Apache Wash:	
At confluence with Apache Wash	*1,992
Approximately 3,000 feet above confluence with Apache Wash	*2,044
Paradise Wash:	
At confluence with Apache Wash	*1,736
At confluence with Ranieri Tank Wash	*1,832
Approximately 7,100 feet upstream of New River Road	*2,015
West Fork Paradise Wash:	
At confluence with Paradise Wash	*1,794

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 5,100 feet upstream of Carefree Highway	*1,851
Ranieri Tank Wash:	
At confluence with Paradise Wash	*1,832
Approximately 3,850 feet upstream of unnamed road	*1,892
Desert Hills Wash:	
At confluence with Apache Wash	*1,740
At Carefree Highway	*1,780
Approximately 50 feet upstream of 20th Street	*1,898
Desert Hills Wash Tributary:	
At confluence with Desert Hills Wash	*1,885
Approximately 50 feet upstream of LaSalle Road	*1,902
East Fork Desert Lake Wash:	
At confluence with Desert Lake Wash	*1,781
Approximately 1,100 feet upstream of 10th Street	*1,797
Desert Lake Wash:	
At confluence with Desert Hills Wash	*1,775
Approximately 1,200 feet upstream of Gavin Road	*1,796
Mesquite Tank Wash:	
Approximately 900 feet downstream of Cave Buttes Recreational Area boundary limits	*1,657
Approximately 7,700 feet upstream of Cave Buttes Recreational Area boundary limits	*1,722
Beardsley Canal Wash:	
Approximately 4,900 feet downstream of Northern Avenue	*1,200
At Olive Avenue	*1,275
Approximately 2,600 feet upstream of Peoria Avenue Extended	*1,322
Cholla Wash:	
At confluence with Beardsley Canal	*1,249
At Olive Avenue	*1,299
Approximately 17,600 feet upstream of Olive Avenue	*1,843
North Fork Cholla Wash:	
At confluence with Cholla Wash	*1,675
Approximately 2,770 feet upstream of confluence with Cholla Wash	*1,950
Waterfall Wash:	
At confluence with Beardsley Canal	*1,278
Approximately 18,800 feet upstream of confluence with Beardsley Canal	*1,646
White Tank No. 3 Wash:	
Approximately 9,400 feet downstream of Northern Avenue Extended	*1,198
Approximately 7,300 feet upstream of Northern Avenue Extended	*1,444
Bedrock Wash:	
Approximately 4,700 feet downstream of confluence with North Fork Bedrock Wash	*1,199
Approximately 6,900 feet upstream of confluence with North Fork Bedrock Wash	*1,466
North Fork Bedrock Wash:	
At confluence with Bedrock Wash	*1,239
Approximately 9,200 feet upstream of confluence with Bedrock Wash	*1,442
Jackrabbit Trail Wash:	
Approximately 3,650 feet downstream of Interstate 10 eastbound off ramp	*1,041
At Indian School Road	*1,156
At Medlock Drive	*1,186
Tuthill Dike Wash:	
Approximately 4,800 feet downstream of Interstate 10	*1,144
At Indian School Road Extended	*1,214

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 2,700 feet upstream of Camelback Road Extended	*1,286
Bulldozer Wash:	
At confluence with Tuthill Dike Wash	*1,095
Approximately 13,800 feet upstream of confluence with Tuthill Dike Wash	*1,678
Caterpillar Wash:	
At confluence with Tuthill Dike Wash	*1,191
Approximately 11,750 feet upstream of confluence with Tuthill Dike Wash	*1,402
Tractor Wash:	
At confluence with Tuthill Dike Wash	*1,213
Approximately 3,400 feet upstream of Camelback Road Extended	*1,452
Caterpillar Dike Wash:	
At confluence with Tuthill Dike Wash	*1,285
Approximately 2,700 feet upstream of Caterpillar Proving Grounds Road	*1,296
White Granite Wash:	
Approximately 2,000 feet downstream of Caterpillar Proving Grounds Road	*1,348
Approximately 5,600 feet upstream of Caterpillar Proving Grounds Road	*1,512
North Fork White Granite Wash:	
At confluence with White Granite Wash	*1,399
Approximately 3,500 feet upstream of confluence with White Granite Wash	*1,510
91st Avenue Wash:	
Approximately 600 feet downstream of McDowell Road	*1,057
At Indian School Road	*1,135
Approximately 4,700 feet upstream of Camelback Road	*1,166
Perryville Road Wash:	
Approximately 2,500 feet downstream of the intersection of Camelback Road and Perryville Road	*1,121
Approximately 900 feet upstream of Northern Avenue	*1,229
Bullard Wash:	
Approximately 900 feet downstream of Lower Buckeye Road	*944
At McDowell Road	*944
Approximately 23,900 feet upstream of McDowell Road	*1,063
Lower El Mirage Wash:	
At confluence with Agua Fria River	*1,096
Approximately 1,550 feet upstream of Dysart Road	*1,147
Lower El Mirage Wash Tributary:	
At confluence with Lower El Mirage Wash	*1,119
At Greenway Road	*1,166
At the intersection of Greenway Road and Litchfield Road	*1,182
Litchfield Wash:	
Approximately 5,700 feet downstream of Litchfield Road	*1,064
At Litchfield Road	*1,077
Interstate 10:	
At confluence with Jackrabbit Trail Wash	*1,071
Just downstream of Tuthill Dike	*1,089
In the City of Avondale, maps are available for inspection at 1211 South Fourth Street	
In the Town of Buckeye, maps are available for inspection at 100 North Apache	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
In the Town of Carefree, maps are available for inspection at 100 Easy Street	
In the Town of Cave Creek, maps are available for inspection at 37622 North Cave Creek Road	
In the City of Chandler, maps are available for inspection at 200 East Commonwealth Avenue	
In the City of El Mirage, maps are available for inspection at 14405 North Palm Street	
In the Town of Gila Bend, maps are available for inspection at 644 West Pima Street	
In the Town of Gilbert, maps are available for inspection at 1025 South Gilbert Road	
In the City of Glendale, maps are available for inspection at 5850 West Glendale Avenue, Third Floor	
In the City of Goodyear, maps are available for inspection at 119 North Litchfield Road	
In the Town of Guadalupe, maps are available for inspection at 9050 South Avenida del Yaqui	
In the City of Litchfield Park, maps are available for inspection at 214 West Indian School Road	
In Maricopa County, maps are available for inspection at 301 West Jefferson Street, Tenth Floor	
In the Town of Paradise Valley, maps are available for inspection at 6517 East Lincoln Drive	
In the City of Phoenix, maps are available for inspection at 200 West Washington Street, Fifth Floor	
In the City of Scottsdale, maps are available for inspection at 3939 North Civic Center Boulevard	
In the City of Surprise, maps are available for inspection at 12425 West Bell Road, Building D–100	
In the City of Tempe, maps are available for inspection at 31 East Fifth Street	
CALIFORNIA	
Anderson (city), Shasta County (FEMA Docket No. 7106)	
Tormey Drain:	
Approximately 370 feet upstream of Davey Way	*401
Approximately 200 feet downstream of Rupert Road	*408
Approximately 450 feet upstream of Stingy Lane	*411
Approximately 700 feet northeast of the intersection of Balls Ferry Road and Stingy Lane	#1
Approximately 1,400 feet southeast of the intersection of Julie Lane and Travelled Way	#1
Approximately 2,200 feet southeast of the intersection of Julie Lane and Travelled Way	#3
At the intersection of Sharon Avenue and North Street	#1
Approximately 900 feet north of the intersection of East Street and Mill Street	#1

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps are available for inspection at City Hall, City of Anderson, 1887 Howard Street, Anderson, California.	
El Dorado County (unincorporated areas) (FEMA Docket No. 7126)	
New York Creek:	
Approximately 500 feet downstream of Green Valley Road	*583
Approximately 100 feet upstream of Green Valley Road	*594
Approximately 650 feet upstream of Timberline Ridge Drive	*600
Approximately 3,000 feet upstream of Timberline Ridge Drive	*651
Approximately 2,000 feet downstream of St. Andrews Drive	*707
Approximately 100 feet upstream of St. Andrews Drive	*730
Approximately 1,150 feet downstream of Harvard Way	*747
Approximately 150 feet upstream of Harvard Way	*770
Governor Drive Tributary:	
Approximately 550 feet downstream of Tam O'Shanter Drive	*720
Approximately 80 feet downstream of El Dorado Hills Boulevard	*735
Approximately 400 feet upstream of El Dorado Hills Boulevard	*745
Approximately 50 feet upstream of Merrium Lane	*761
Maps are available for inspection at the Department of Transportation, El Dorado County, 2850 Fairlane County, Placerville, California.	
Shasta County (unincorporated areas) (FEMA Docket No. 7106)	
Tormey Drain:	
Just upstream of Dodson Lane	*405
Approximately 1,300 feet upstream of Dodson Lane	*405
Approximately 1,600 feet northwest of the intersection of Brenda and Shelly Lanes	#1
Approximately 3,000 feet northwest of the intersection of Balls Ferry Road and Shelly Lane	#1
Approximately 2,600 feet northwest of the intersection of Brenda and Shelly Lanes	#2
Maps are available for inspection at the Department of Public Works, 7855 Placer Street, Redding, California.	
Sonoma County (unincorporated areas) (FEMA Docket No. 7126)	
Russian River:	
Approximately 9,500 feet upstream of State Highway 128	*181
Approximately 12,700 feet upstream of State Highway 128	*184
Approximately 17,000 feet upstream of State Highway 128	*188
Approximately 6,800 feet downstream of Geyersville Road	*199
Approximately 5,400 feet downstream of Geyersville Road	*202
Maps are available for inspection at Sonoma County Permits & Resource Management, 575 Administration Way, Room 114A, Santa Rosa, California.	
HAWAII	
Honolulu (city and county) (FEMA Docket No. 7126)	
Kapakahi Stream:	
Approximately 3,860 feet downstream of Farrington Highway	*2
Approximately 320 feet downstream of Farrington Highway	*10
Approximately 900 feet upstream of Farrington Highway	*15
Makaha Stream:	
Just upstream of Farrington Highway	*13
Approximately 3,700 feet upstream of Farrington Highway	*83
Approximately 600 feet upstream of Huipu Drive	*237
Wailani Canal:	
Approximately 90 feet downstream of Waipio Access Road	*2
Approximately 900 feet upstream of Waipio Access Road	*2
Approximately 3,100 feet upstream of Waipio Access Road	*5
Maps are available for inspection at the Department of Land Utilization, Information Center, Honolulu Municipal Building, First Floor, 650 South King Street, Honolulu, Hawaii.	
Kauai County (unincorporated areas) (FEMA Docket No. 7103)	
Kalama Stream:	
Approximately 2,500 feet upstream of Puuopae Road	*327
Approximately 4,770 feet upstream of Puuopae Road	*350
Approximately 7,300 feet upstream of Puuopae Road	*400
Hanamaulu Stream:	
Approximately 1,100 feet upstream of confluence with Hanamaulu Bay	*11
Approximately 80 feet upstream of Access Road	*35
Approximately 120 feet downstream of Kuhio Highway	*89
Approximately 1,200 feet upstream of Kuhio Highway	*116
Hanamaulu Stream Tributary:	
At confluence with Hanamaulu Stream	*106
Approximately 500 feet upstream of Maalo Road	*106
Waikomo Stream:	
At confluence with Omao Stream	*223
Just upstream of Maluhia Road	*217
Just upstream of Cane Road	*220
Approximately 1,000 feet upstream of Wailaau Road	*223
Waikomo Stream Tributary:	
At confluence with Waikomo Stream	*221
Approximately 50 feet downstream of Wailaau Road	*221
Maps are available for inspection at the Department of Public Works, Engineering Division, 3021 Umi Street, Lihue, Kauai, Hawaii.	
Kauai County (unincorporated areas) (FEMA Docket No. 7126)	
Pacific Ocean:	
In the vicinity of the intersection of Kaumualii Highway and Akekeke Road	*10–14
In the vicinity of the intersection of Kaumualii Highway and Aukuu Road	*8–12
In the vicinity of Kikiaola Harbor	*10–11
In the vicinity of the intersection of Pokole Road and Laau Road	*9–13
In the vicinity of the intersection of Kaalani Road and Kuiloko Road and Port Allen Airport	*5–14
At Hanapepe Bay, in the vicinity of the mouth of Hanapepe River	*9–13
At Kukuiula Bay, in the vicinity of the intersection of Lawai Road and Alania Road	*13–16
At Nahumaalo Point, near the mouth of Waikomo Stream	*16–17
In the vicinity of the intersection of Hoone Road with Nalo Road and Maa Road	*16–19
At Keoniloa Bay	*10
Maps are available for inspection at the Kauai County Department of Public Works, 3021 Umi Street, Lihue, Hawaii.	
KANSAS	
Dodge City (city), Ford County (FEMA Docket No. 7126)	
Arkansas River:	
Approximately 7,000 feet downstream of South Second Avenue	*2,474
Approximately 4,000 feet downstream of South Second Avenue	*2,478
Approximately 600 feet downstream of South Second Avenue	*2,482
Approximately 150 feet downstream of the Atchison, Topeka, and Santa Fe Railroad	*2,486
Approximately 100 feet downstream of 14th Avenue	*2,488
Chilton Creek:	
Approximately 100 feet downstream of Wyatt Earp Boulevard	*2,489
Approximately 175 feet downstream of West Ash Street	*2,514
Approximately 175 feet downstream of Comanche Street	*2,536
Approximately 1,200 feet upstream of Comanche Street	*2,550
Approximately 2,450 feet upstream of Comanche Street	*2,562
Maps are available for inspection at the City Engineer's Office, City of Dodge City, 705 First Avenue, Dodge City, Kansas.	
Ford County (unincorporated areas) (FEMA Docket No. 7126)	
Arkansas River:	
Approximately 160 feet downstream of an unimproved road	*2,456
Approximately 700 feet downstream of South East Bypass Bridge	*2,467
Approximately 900 feet upstream of 14th Avenue	*2,490

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 6,550 feet upstream of 14th Avenue	*2,495
Approximately 7,860 feet upstream of 14th Avenue	*2,497
Maps are available for inspection at the Ford County Engineer's Office, 100 Gunsmoke, Dodge City, Kansas.	
MISSOURI	
Branson (city), Taney County (FEMA Docket No. 7132)	
Roark Creek:	
At confluence with White River (Lake Taneycomo)	*714
Approximately 700 feet upstream of U.S. Highway 65	*720
Approximately 8,200 feet upstream of U.S. Highway 65	*749
Approximately 3,800 feet downstream of Shepherd of the Hills Expressway	*772
Approximately 3,400 feet upstream of Shepherd of the Hills Expressway	*801
Cooper Creek:	
Approximately 2,000 feet downstream of Fall Creek Road	*727
Approximately 200 feet upstream of Fall Creek Road	*764
Approximately 2,700 feet upstream of Fall Creek Road	*804
Maps are available for inspection at City Hall, City of Branson, 110 West Maddux, Branson, Missouri.	
NEW MEXICO	
Las Cruces (City) and Dona Ana County (Unincorporated Areas) (FEMA Docket No. 7122)	
Flow Path 3 (Alameda Main Arroyo):	
Upstream of U.S. Government Dam	*4,107
Approximately 170 feet upstream of Road Runner Parkway	*4,136
Just upstream of confluence of North Fork (Tributary 2) Alameda Arroyo	*4,218
Just upstream of Jornada Road South	*4,226
Approximately 2,070 feet upstream of Jornada Road South	*4,250
South Fork (Tributary 1) Alameda Arroyo:	
At confluence with Flow Path 3 (Alameda Main Arroyo)	*4,184
Just upstream of Jornada Road South	*4,234
Approximately 2,360 feet upstream of Jornada Road South	*4,268
North Fork (Tributary 2) Alameda Arroyo:	
At confluence with Flow Path 3 (Alameda Main Arroyo)	*4,218
Just downstream of an unnamed road located approximately 480 feet upstream of confluence with Flow Path 3 (Alameda Main Arroyo)	*4,224
Just downstream of an unnamed road located just upstream of confluence of North Fork (Tributary 3) Alameda Arroyo	*4,249
At the upstream Limit of Detailed Study located approximately 2,550 feet upstream of confluence with North Fork (Tributary 3) Alameda Arroyo	*4,290
North Fork (Tributary 3) Alameda Arroyo:	
At confluence with North Fork (Tributary 2) Alameda Arroyo	*4,248
Just downstream of Jornada Road South	*4,254
Approximately 2,270 feet upstream of Jornada Road South	*4,288
Flow Path 8 (North Fork Las Cruces Arroyo):	
Upstream of U.S. Government Dam	*4,107
Just downstream of Road Runner Parkway	*4,144
Just upstream of Paseo De Onate Road	*4,182
Approximately 1,570 feet upstream of Paseo De Onate Road	*4,203
Flow Path 9 (South Fork Las Cruces Arroyo):	
Upstream of U.S. Government Dam	*4,107
Upstream of Road Runner Parkway	*4,148
Just upstream of unnamed road	*4,207
Little Dam Arroyo:	
Approximately 950 feet downstream of Foothills Road	*4,125
Approximately 150 feet upstream of Foothills Road	*4,156
Approximately 80 feet upstream of Paseo De Onate Road	*4,209
Approximately 3,700 feet upstream of Paseo De Onate Road	*4,268
North Fork Moreno Arroyo:	
Approximately 1,320 feet upstream of El Camino Real	*3,928
Just downstream of Moreno Road	*3,976
Just upstream of northbound Interstate Highway 25	*4,026
Approximately 75 feet upstream of Del Rey Boulevard	*4,072
Approximately 5,510 feet upstream of Del Rey Boulevard	*4,217
Approximately 8,780 feet upstream of Del Rey Boulevard	*4,286
Ponding area located upstream of El Camino Real (Zone AH)	*3,914
Zone AO located approximately 1,300 feet upstream of El Camino Real	#3
South Fork Moreno Arroyo:	
Approximately 1,300 feet upstream of El Camino Real	*3,929
Approximately 30 feet upstream of Kennedy Road	*3,972
Just upstream of Elks Road	*4,013
At Del Rey Boulevard	*4,073
Approximately 4,430 feet upstream of Del Rey Boulevard	*4,185
Approximately 7,450 feet upstream of Del Rey Boulevard	*4,268
South Fork Moreno Arroyo Split Flow at Interstate 25:	
At Del Rey Boulevard	*4,072
Maps are available for inspection at the City Engineer's Office, City of Las Cruces, 200 North Church Street, Las Cruces, New Mexico.	
Maps are available for inspection at the Office of Flood Commission, Dona Ana County, 108 West Amador, Las Cruces, New Mexico.	
TEXAS	
Kaufman County (unincorporated areas) (FEMA Docket No. 7122)	
Kings Creek (Upper Reach):	
At Highway 34	*443
At confluence of Harding Branch	*450
At Airport Road	*451
At College Mound Road	*458
At Fransis Street	*486
Hardin Branch:	
At Airport Road	*451
Maps are available for inspection at the Kaufman County Courthouse, 3950 South Huston Street, Kaufman, Texas.	
UTAH	
Riverdale (city), Weber County (FEMA Docket No. 7122)	
Weber River:	
Approximately 5,800 feet downstream of Riverdale Road	*4,327
Approximately 3,350 feet downstream of Riverdale Road	*4,337
Just upstream of Riverdale Road	*4,351
Approximately 4,000 feet upstream of Riverdale Road	*4,363
At confluence of Weber Canal	*4,371
Approximately 2,400 feet upstream of Weber Canal	*4,385
Approximately 3,500 feet upstream of Weber Canal	*4,388
Maps are available for inspection at the Building and Zoning Office, 4600 South Weber River Drive, Riverdale, Utah.	
Weber County (unincorporated areas) (FEMA Docket No. 7122)	
Weber River:	
Approximately 200 feet upstream of confluence with Burch Creek	*4,332
Approximately 1,300 feet upstream of confluence with Burch Creek	*4,336
Approximately 2,400 feet upstream of confluence with Weber Canal	*4,385
Approximately 3,500 feet upstream of confluence with Weber Canal	*4,388
Approximately 4,000 feet upstream of confluence with Weber Canal	*4,394
Maps are available for inspection at the County Planning Commission, 2510 Washington Boulevard, Odgen, Utah.	

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: May 31, 1995.

Frank H. Thomas,

Deputy Associate Director for Mitigation.

[FR Doc. 95–13909 Filed 6–6–95; 8:45 am]

BILLING CODE 6718–03–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

[DA 95–1053]

General Information

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Federal Communications Commission is modifying a section of the Commission's Rules that implements the Freedom of Information Act (FOIA) fee schedule. This modification pertains to the charge for recovery of the full, allowable direct costs of searching for and reviewing records requested under the FOIA and § 0.460(e) or § 0.461 of the Commission's rules, unless such fees are restricted or waived in accordance with § 0.470. The fees are being revised to correspond to modifications in the rate of pay approved by Congress.

EFFECTIVE DATE: July 7, 1995.

FOR FURTHER INFORMATION CONTACT: Judy Boley, Freedom of Information Act Officer, Records Management Branch, Room 234, Federal Communications Commission, 1919 M Street NW., Washington, DC 20554, (202) 418–0210.

SUPPLEMENTARY INFORMATION: The FCC is modifying 47 CFR 0.467(a) of the Commission's Rules. This rule pertains to the charges for searching and reviewing records requested under the Freedom of Information (FOIA). The FOIA requires federal agencies to establish a schedule of fees for the processing of requests for agency records in accordance with fee guidance issued by the Office of Management and Budget (OMB). In 1987, OMB issued its Uniform Freedom of Information Act Fee Schedule and Guidelines. However, because the FOIA requires that each agency's fees be based upon its direct costs of providing FOIA services, OMB did not provide a unitary, government-wide schedule of fees. The Commission based its FOIA fee schedule on the grade level of the employee who processes the request. Thus, the fee schedule was computed at a Step 5 of each grade level based on the General Schedule effected January 1995. The instant revisions correspond to modifications in the rate of pay recently approved by Congress.

Regulatory Procedures

This proposed rule has been reviewed under Executive Order No. 12866 and has been determined not to be a "significant rule" since it will not have an annual effect on the economy of $100 million or more.

In addition, it has been determined that this proposed rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 47 CFR Part 0

Freedom of information.

Federal Communications Commission.

Richard D. Lee,

Deputy Managing Director.

Amendatory Text

Part 0 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 0—COMMISSION ORGANIZATION

1. The authority citation for Part 0 continues to read as follows:

Authority: 47 U.S.C. 155, 225, unless otherwise noted.

2. Section 0.467 is amended by revising the table in paragraph (a)(1) and its note, and paragraph (a)(2) to read as follows:

§ 0.467 Search and review fees.

(a)(1) * * *

Grade	Hourly fee
GS—1	8.27
GS—2	9.01
GS—3	10.15
GS—4	11.40
GS—5	12.76
GS—6	14.21
GS—7	15.79
GS—8	17.49
GS—9	19.33
GS—10	21.28
GS—11	23.37
GS—12	28.01
GS—13	33.32
GS—14	39.36
GS—15	46.31

Note: These fees will be modified periodically to correspond with modifications in the rate of pay approved by Congress.

(2) The fees in paragraph (a)(1) of this section were computed at Step 5 of each grade level based on the General Schedule effective January 1995 and include 19 percent for personnel benefits.

* * * * *

[FR Doc. 95–13875 Filed 6–6–95; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF ENERGY

48 CFR Parts 915, 931, 942, 951, 952, and 970

RIN 1991–AB12

Independent Research and Development and Bid and Proposal Costs Policy

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) amends its Acquisition Regulation to effect changes to Independent Research and Development (IR&D) and Bid and Proposal Costs (B&P); and reflect Federal Acquisition Regulation (FAR) changes to the Cost Accounting Standards (CAS). Additionally, there are technical changes updating references, correcting editorial errors, and clarifying language.

EFFECTIVE DATE: June 7, 1995.

FOR FURTHER INFORMATION CONTACT: Terrence D. Sheppard (202) 586–8174, Business and Financial Policy Division (HR–51), Office of Procurement and Assistance Management, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C., 20585.

SUPPLEMENTARY INFORMATION:

I. Background
II. Procedural Requirements
A. Review Under Executive Order 12866
B. Review Under Executive Order 12778
C. Review Under the Regulatory Flexibility Act
D. Review Under the Paperwork Reduction Act
E. Review Under the National Environmental Policy Act
F. Review Under Executive Order 12612

I. Background

DOE published a notice of proposed rulemaking in the **Federal Register** on October 31, 1994. The public comment period closed December 30, 1994. No public comments were received. However, those portions of the proposed rule which addressed reimbursement of contractor travel costs (sections 970.3102–17(c)(7), 970.5204–13(e)(35), and 970.5204–14(e)(33)) have been withdrawn from this final rule, because section 2191 of the Federal Acquisition Streamlining Act of 1994, Pub. L. 103–355, repealed the statutory basis for the policy. A detailed list of changes follows:

1. The authority citation for Parts 915, 931, 942, 951, and 952 is restated.

2. Subsection 915.805–5 is amended to delete the requirement in paragraph (c)(1) that a copy of the audit request be sent to the DOE Inspector General (IG). Pursuant to interagency agreements, the DOE contract audit agency is the Defense Contract Audit Agency (DCAA); the Department of Health and Human Services (HHS) has audit cognizance for most educational institutions.

3. Subparagraph 915.970–8(d)(1) is revised to add a reference to the relocation of the CAS to FAR Appendix B (Federal Acquisition Circular (FAC) 90–12, August 31, 1992).

4. Subsection 931.205–18 is revised to add the acronyms "IR&D" and "B&P" to the title. The DEAR reference to the FAR is changed from (c)(3) to (c)(2), because the FAR amendment (FAC 90–13, September 24, 1992) deleted FAR (c)(3). Paragraph (c)(4) is deleted in its entirety, except for a portion of the first sentence of (c)(4) which was moved to (c)(2). Also, FAC 90–13 replaced the requirement for separate advance agreements with temporary limits (for a 3-year period) on allowable IR&D/B&P costs. DOE has chosen not to institute the temporary limits, but rather to allow for full recovery, immediately. Thus, the text was amended to reflect the DOE policy that generally IR&D costs are allowable if reasonable, allocable, and they have a potential benefit or relationship to the DOE program. B&P costs are generally allowable if they are reasonable and allocable.

5. Section 942.003, paragraph (a) is revised to delete references to the Department of Defense (DOD) services; the services no longer have individual plant residencies. This revision reflects the current DOD structure for contract administration.

6. Section 942.101 is amended by deleting the reference to the Air Force Contract Management Division (AFCMD) and the DOE IG in paragraphs (a)(2) and (c), respectively. The AFCMD no longer exists and the Office of Procurement and Assistance Management now negotiates the interagency agreements with DCAA and HHS. Paragraph (a)(3) is redesignated as (a)(2) to accommodate the deletion of AFCMD.

7. Subsection 942.705–1 is revised at paragraph (a)(3) by deleting the statement that a listing of business units, for which DOE has final indirect cost rate negotiation responsibility, is published in the DOE Order System. The listing is no longer published in the DOE Order System. The revised paragraph (b)(1) clarifies the proscription that contractors shall neither be required nor directed to submit final indirect cost rate proposals to the auditor.

8. Subsection 942.705–3 is revised to correct the statement that negotiated rates are "centrally maintained" when, in fact, they are only "distributed" by the Office of Policy.

9. Subsection 942.705–4 is revised to correct the statement that negotiated rates are maintained by the Office of Policy, when, in fact, they are only distributed by the Office.

10. Subsection 942.705–5 is revised to correct the statement that negotiated rates are maintained by the Office of Policy, when, in fact, they are only distributed by the Office.

11. Subpart 942.10 is removed as a result of concomitant changes to the IR&D/B&P advance agreements (see item 4, foregoing). There is no longer a requirement to negotiate advance agreements; thus, the coverage is removed in its entirety.

12. Subsection 942.7003–6 is revised to add the word "Administration" to the title of FAR Part 30, which was changed as a result of FAC 90–12, August 31, 1992. Additionally, the reference to Public Law 91–379, which established the CAS, is deleted due to the subsequent incorporation of the CAS in FAR Appendix B and their application to civilian agencies pursuant to Public Law 100–679.

13. Subsection 942.7004 is revised at paragraph (a) to incorporate the results of the interagency agreements between the Office of Procurement and Assistance Management and DCAA and HHS. References to the DOE IG are deleted. Paragraphs (b), (c), and (d) are deleted as they describe internal operating procedures that, in large part, are no longer valid.

14. Subsection 951.7000 is revised to delete the reference to outdated General Services Administration (GSA) Bulletin A–95. The reference to the Federal Property Management Regulations (FPMRs) is sufficient.

15. Subsection 951.7001 is revised to delete the reference to outdated GSA Bulletin A–95 in the introductory paragraph. Paragraphs (a), (b), and (c) are deleted as they duplicate information contained in clause 952.251–70.

16. Subsection 952.251–70 is amended to correct a referenced citation at paragraph (a) from "Property Management Regulation (FPMR), Temporary Regulation A–30" to "Travel Regulation (FTR), Part 301–15, Travel Management Programs."

17. The authority citation for Part 970 is restated.

18. Subsection 970.3001–1 is revised to reflect the relocation of the CAS, within the FAR, from Part 30 to Appendix B.

19. Subsection 970.3001–2 is revised to correct the cross reference from "970.3102–10" to "970.3102–3."

20. Subsection 970.3102–17 is amended by revising paragraph (c)(2)(i) and adding a new paragraph (c)(6). In (c)(2)(i), line 1, the letter "s" is deleted from the word "Regulations" to reflect the new title. New subparagraph (c)(6) is added to reflect changes in FAR 31.205–46, "Travel costs" as a result of FAC 90–7 which provided for downward adjustments to the maximum per diem rates when no lodging costs are incurred or on partial travel days.

21. Subsection 970.7104–33 is revised to reflect the relocation of the Cost Accounting Standards, within the FAR, from Part 30 to Appendix B.

II. Procedural Requirements

A. Review Under Executive Order 12866

Today's regulatory action has been determined not to be a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," (58 FR 51735, October 4, 1993). Accordingly, this action was not subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

B. Review Under Executive Order 12778

Section 2 of Executive Order 12778 instructs agencies to adhere to certain requirements in promulgating new regulations and reviewing existing regulations. These requirements, set forth in Sections 2(a) and (b), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards for affected conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation: specifies clearly any preemptive effect; describes any administrative proceedings to be available prior to judicial review and any provisions for the exhaustion of such administrative proceedings; and defines key terms. DOE certifies that today's rule meets the requirements of sections 2(a) and (b) of Executive Order 12778.

C. Review Under the Regulatory Flexibility Act

This rule was reviewed under the Regulatory Flexibility Act of 1980, Public Law 96–354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. DOE certifies that this rule will not have a significant economic impact on a substantial number of small entities,

and, therefore, no regulatory flexibility analysis has been prepared.

D. Review Under the Paperwork Reduction Act

No new information or recordkeeping requirements are imposed by this rulemaking. Accordingly, no OMB clearance is required under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*).

E. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of this rule falls into a class of actions which would not individually or cumulatively have significant impact on the human environment, as determined by DOE's regulations (10 CFR Part 1021, Subpart D) implementing the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*). Specifically, this rule is categorically excluded from NEPA review because the amendments to the DEAR do not change the environmental effect of the rule being amended (categorical exclusion A5). Therefore, this rule does not require an environmental impact statement or environmental assessment pursuant to NEPA.

F. Review Under Executive Order 12612

Executive Order 12612 (52 FR 41685, October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the National Government and the States, or in the distribution of power and responsibilities among the various levels of Government. If there are sufficient substantial direct effects, then the Executive Order requires the preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action. This rule revises certain policy and procedural requirements. States which contract with DOE will be subject to this rule. However, DOE has determined that this rule will not have a substantial direct effect on the institutional interests or traditional functions of the States.

List of Subjects in 48 CFR Parts 915, 931, 942, 951, 952, and 970

Government procurement.

Richard H. Hopf,

Deputy Assistant Secretary for Procurement and Assistance Management.

For the reasons set out in the preamble, Chapter 9 of Title 48 of the Code of Federal Regulations is amended as set forth below.

PART 915—CONTRACTING BY NEGOTIATION

1. The authority citation for Parts 915, 931, 942, and 951 continues to read as follows:

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c).

2. Subsection 915.805–5 is amended by revising paragraph (c)(1) to read as set forth below:

915.805–5 Field pricing support.

* * * * *

(c)(1) When an audit is required pursuant to 915.805–70, "Audit as an aid in proposal analysis," the request for audit shall be sent directly to the Federal audit office assigned cognizance of the offeror or prospective contractor. When the cognizant agency is other than the Defense Contract Audit Agency or the Department of Health and Human Services, and an appropriate interagency agreement has not been established, the need for audit assistance shall be coordinated with the Office of Policy, within the Headquarters procurement organization.

* * * * *

3. Section 915.970–8(d) is amended by revising paragraph (d)(1) introductory text to read as set forth below:

915.970–8 Weighted guidelines application considerations.

* * * * *

(d) *Capital investment (facilities).* (1) This element relates to the consideration to be given in the profit objective in recognition of the investment risk associated with the facilities employed by the contractor. Measurement of the amount of facilities capital employed is discussed in (FAR Appendix B) 48 CFR 9904.414. Five to twenty percent of the net book value of facilities capital allocated to the contract is the normal range of weight for this profit factor. The key factors that the negotiating official shall consider in evaluating this factor are:

* * * * *

PART 931—CONTRACT COST PRINCIPLES AND PROCEDURES

4. Subsection 931.205–18 is revised to read as follows:

931.205–18 Independent research and development (IR&D) and bid and proposal (B&P) costs.

(c)(2) IR&D costs are recoverable under DOE contracts to the extent they are reasonable, allocable, not otherwise unallowable, and have potential benefit or relationship to the DOE program. The term "DOE program" encompasses the DOE total mission and its objectives. B&P costs are recoverable under DOE contracts to the extent they are reasonable, allocable, and not otherwise unallowable.

PART 942—CONTRACT ADMINISTRATION

5. Section 942.003 is amended by revising paragraph (a) as set forth below:

942.003 Organizational structure.

(a) The Department of Defense has initiated a formal system of independent organizations responsible for performance of post-award management functions. A field structure of Contract Administration Offices (CAO) responsible for contract management and administration of contracts for major defense contractors has been established. DOD has organized plant residencies of contract management specialists for specific DOD contractors and their various business units. The Defense Logistics Agency performs contract management functions both at onsite residencies of contractors and on a mobile basis from centrally located management areas for other defense contractors. A complete listing of the DOD contract administration service components is contained in the Defense Directory cited in (FAR) 48 CFR 42.102.

* * * * *

6. Section 942.101 is amended by removing paragraph (a)(2); redesignating paragraph (a)(3) as (a)(2); and revising paragraph (c) to read as follows:

942.101 Policy.

* * * * *

(c) The Department of Energy has executed memoranda of understanding with the Defense Contract Audit Agency and the Office of Audit of the Department of Health and Human Services to provide audit support service to the DOE in support of its procurement mission. Procedures for acquiring these services are discussed in 942.70.

7. Subsection 942.705–1 is revised to read as follows:

942.705–1 Contracting officer determination procedure.

(a)(3) The Department of Energy shall use the contracting officer determination procedure for all business units for which it shall be required to negotiate final indirect cost rates. A listing of such business units is maintained by the Office of Policy, within the Headquarters procurement organization.

(b)(1) Pursuant to (FAR) 48 CFR 52.216–7, Allowable Cost and Payment,

contractors shall be requested to submit their final indirect cost rate proposals reflecting actual cost experience during the covered periods to the cognizant contracting officers responsible for negotiating their final indirect rates. The DOE negotiating official shall request all needed audit service in accordance with the procedures in 942.70, Audit Services.

8. Subsection 942.705–3 is revised to read as follows:

942.705–3 Educational institutions.

(a)(2) The negotiated rates established for the institutions cited in OMB Circular No. A–88 are distributed, to the Cognizant DOE Office (CDO) assigned lead office responsibility for all DOE indirect cost matters relating to a particular contractor, by the Office of Policy, within the Headquarters procurement organization.

9. Subsection 942.705–4 is revised to read as follows:

942.705–4 State and local governments.

A list of cognizant agencies for State/local government organizations is periodically published in the **Federal Register** by the Office of Management and Budget (OMB). The responsible agencies are notified of such assignments. The current negotiated rates for State/local government activities are distributed to each CDO by the Office of Policy, within the Headquarters procurement organization.

10. Subsection 942.705–5 is revised to read as follows:

942.705–5 Nonprofit organizations other than educational and state and local governments.

OMB Circular A–122 establishes the rules for assigning cognizant agencies for the negotiation and approval of indirect cost rates. The Federal agency with the largest dollar value of awards (contracts plus Federal financial assistance dollars) will be designated as the cognizant agency. There is no published listing of assigned agencies. The Office of Policy, within the Headquarters procurement organization, distributes to each CDO the rates established by the cognizant agency.

Subpart 942.10 [Removed]

11. Subpart 942.10 (including 942.1004 and 942.1008) is removed.

12. Subsection 942.7003–6 is revised to read as follows:

942.7003–6 CAS disclosure statements.

The audit activity is available and, in accordance with (FAR) 48 CFR part 30, Cost Accounting Standards Administration, is responsible for making recommendations to the contracting officer as to whether the CAS disclosure statement, submitted by the contractor as a condition of the contract, adequately describes the actual or proposed cost accounting practices and is in compliance with the Cost Accounting Standards required under the terms of the contract. The contracting officer shall request the auditor to review all Disclosure Statements submitted by a contractor or potential contractor.

13. Section 942.7004 is revised to read as follows:

942.7004 Procedures.

The Department of Energy Headquarters procurement organization has established formal interagency arrangements with the Defense Contract Audit Agency (DCAA) and the Department of Health and Human Services, Office of Inspector General. Audits are available to contracting officers pursuant to terms of these arrangements. DCAA, as the DOE cognizant auditor, is responsible for performing audits, when requested, for all DOE prime contractors and DOE Management and Operating contractors' subcontractors, except where another agency has cognizance of a contractor. HHS, for example, has contract audit cognizance for most educational institutions.

PART 951—USE OF GOVERNMENT SOURCES BY CONTRACTORS

14. Section 951.7000 is revised to read as follows:

951.7000 Scope of subpart.

The General Services Administration (GSA) and, in some cases, the Department of Defense (DOD) Military Traffic Management Command negotiate agreements with commercial organizations to provide certain discounts to contractors traveling under Government cost-reimbursable contracts. In the case of discount air fares and hotel/motel room rates, the GSA has established agreements with certain airlines and thousands of hotels/motels to extend discounts which were previously only available to Federal employees on official travel status. DOD has negotiated agreements with car rental companies for special rates with unlimited mileage which were also to be used by only Federal employees on official Government business. GSA Federal Property Management Regulations (FPMRs) make these three travel discounts available to Government cost-reimbursable contractors at the option of the vendor.

15. Section 951.7001 is revised to read as follows:

§ 951.7001 General policy.

Contracting officers will encourage DOE cost-reimbursable contractors (CRCs) to use Government travel discounts to the maximum extent practicable in accordance with contractual terms and conditions. Vendors providing the service may require that Government contractor employees furnish a letter of identification signed by the authorizing contracting officer. Contracting officers shall provide CRCs with a "Standard Letter of Identification" when appropriate to do so. An example of a "Standard Letter of Identification" is at 952.251–70(e).

PART 952—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

16. The authority citation for part 952 continues to read as follows:

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c); 42 U.S.C. 13524.

16a. Subsection 952.251–70 is amended by revising paragraph (a) of the clause to read as follows:

952.251–70 Contractor employee travel discounts.

* * * * *

(a) *Contracted airlines.* Airlines participating in travel discounts are listed in the Federal Travel Directory (FTD), published monthly by the General Services Administration (GSA). Regulations governing the use of contracted airlines are contained in the Federal Travel Regulation (FTR), 41 CFR Part 301–15, Travel Management Programs. It stipulates that cost-reimbursable contractor employees may obtain discount air fares by use of a Government Transportation Request (GTR), Standard Form 1169, cash or personal credit cards. When the GTR is used, contracting officers may issue a blanket GTR for a period of not less than two weeks nor more than one month. In unusual circumstances, such as prolonged or international travel, the contracting officer may extend the period for which a blanket GTR is effective to a maximum of three months. Contractors will ensure that their employees traveling under GTR provide the GTR number to the contracted airlines for entry on individual tickets and on month-end billings to the contractor.

* * * * *

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

17. The authority citation for part 970 continues to read as follows:

Authority: Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), sec. 644 of the Department of Energy Organization Act, Public Law 95–91 (42 U.S.C. 7254).

18. Subsection 970.3001–1 is revised to read as follows:

970.3001–1 Applicability.

The provisions of (FAR) 48 CFR part 30 and (FAR Appendix B) 48 CFR 9904.414 shall be followed for management and operating contracts.

19. Subsection 970.3001–2 is revised to read as follows:

970.3001–2 Limitations.

Cost of money as an element of the cost of facilities capital (CAS 414) and as an element of the cost of capital assets under construction (CAS 417) is not recognized as an allowable cost under contracts subject to 48 CFR part 970 (See 970.3102–3).

20. Subsection 970.3102–17 is amended by revising paragraph (c)(2)(i) and by adding paragraph (c)(6) to read as follows:

970.3102–17 Travel costs.

* * * * *

(c) * * *

(2) * * *

(i) Federal Travel Regulation prescribed by the General Services Administration, for travel in the conterminous 48 United States.

* * * * *

(6)(i) The maximum per diem rates referenced in paragraph (c)(2) of this section generally would not constitute a reasonable daily charge:

(A) When no lodging costs are incurred; and/or

(B) On partial travel days (e.g., same day of departure and return).

(ii) Appropriate downward adjustments from the maximum per diem rates would normally be required under these circumstances. While these adjustments need not be calculated pursuant to the Federal Travel Regulation, Joint Travel Regulations, or Standardized Regulations, they must result in a reasonable charge.

21. Subsection 970.7104–33 is revised to read as follows:

970.7104–33 Cost Accounting Standards.

The provisions of (FAR) 48 CFR 30 and (FAR Appendix B) 48 CFR 9904.414 shall apply to purchases by management and operating contractors.

[FR Doc. 95–13436 Filed 6–6–95; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 1–21, Notice 13]

RIN 2127–AE99

Federal Motor Vehicle Safety Standards Theft Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This rule makes a temporary change in the requirement of Standard No. 114, *Theft Prevention*, that vehicles with automatic transmissions be equipped with a transmission lock that prevents key removal unless the transmission is locked in park or becomes locked in park as a direct result of removing the key. The purpose of this requirement is to prevent rollaway crashes caused by unattended children pulling the transmission lever out of park. Due to apparent confusion concerning the scope of the requirement and the effect of that confusion on transmission designs, the requirement will be changed until September 1, 1996. Until that time, the transmission lock will only be required to prevent key removal when the transmission is fully engaged in a detent position other than park (e.g., reverse, neutral, drive). After that date, the requirements will revert to their previous form, prohibiting key removal in all positions other than park.

This rule also corrects, by technical amendment, an error in the language of the provision that permits transmission lock override devices to facilitate towing disabled vehicles. The existing language inadvertently requires steering lock-up even for vehicles whose override devices are operated by the vehicle key. Requiring steering column lock-up on automatic transmission locks with a key operated override device would not provide added protection against theft since the key that would operate the device would also unlock the steering. The technical amendment excludes these vehicles from the steering lock-up requirement.

DATES: This rule is effective July 7, 1995. Petitions for reconsideration of this rule must be received no later than July 7, 1995.

ADDRESSES: Petitions for reconsideration should refer to the docket number and notice number and be submitted in writing to: Administrator, National Highway Traffic Safety Administration, Room 5220, 400 Seventh Street, SW., Washington DC, 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Jere Medlin, Office of Vehicle Safety Standards, NRM–15, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC, 20590. Telephone: (202) 366–5276.

SUPPLEMENTARY INFORMATION:

The Mazda Petition

Background

On May 30, 1990, NHTSA amended Federal Motor Vehicle Safety Standard No. 114, *Theft Protection*, to protect against injuries to children caused by the rollaway of unattended automatic transmission vehicles in which children were able to shift the transmission. 55 FR 21868. The amendment required automatic transmission vehicles with a "park" position to have a key-locking system that prevents removal of the key unless the transmission is locked in "park" or becomes locked in "park" as the direct result of removing the key. The amendment was intended to ensure that the automatic transmissions of unattended parked vehicles cannot be shifted by a child. The amendment became effective on September 1, 1992.

On June 21, 1990, NHTSA denied a petition for rulemaking from Mr. W. A. Barr. Mr. Barr had requested that the agency amend the standard to require manufacturers to design transmissions that assure that the parking pawl (a "tooth" that fits into a transmission gear to prevent it from turning) engages when the driver puts the shift lever in park. He believed that transmission designs of Ford and other manufacturers generate a "back pressure" on the shift lever that pushes the lever out of park and toward reverse. To counter that force, the driver has to pull the shift lever "sideways" into a slot to assure that the lever does not spontaneously move out of park and into reverse. Mr. Barr considered these designs defective because they place the responsibility for assuring that the shift lever is "locked" in park on the driver. He referred to the situation in which the driver does not properly place the shift lever in park as "mispositioning."

In its denial of Mr. Barr's petition, NHTSA stated "[w]ithout data suggesting current Federal motor vehicle safety standards are allowing or not addressing an unreasonable safety risk, the agency will not commence [rulemaking]." The agency also stated "the agency's review of available data on incidents of inadvertent vehicle movement indicated that the potential for this problem is relatively small." In justifying the denial, the agency made no mention of the previous month's amendment. That amendment addressed his concern to a limited extent, i.e., it prevented key removal when the transmission is not locked in park for whatever reason, including mispositioning.

In a November 20, 1992 letter to Ford, NHTSA declined to adopt a request by that company to interpret Standard No. 114 as prohibiting key removal only when the transmission shift lever is in one of the available gear positioning detents other than park, i.e., reverse, neutral, drive, first, or second, and thus not when the lever is at points between those detents. The agency stated that

> Key removal must be prevented in all circumstances save those specified in S4.2.1. Neither the transmission nor the transmission shift lever is locked in "park" when the lever is between the gear selector positioning detents.

After issuing the interpretation letter, NHTSA conducted compliance testing for Standard No. 114 and discovered apparent noncompliance with the transmission-locking requirement in vehicles of several manufacturers. NHTSA sent letters of notification of apparent noncompliance to Ford, Honda, GM, Suzuki, Hyundai, and Mazda. In its letter to Mazda, the agency enclosed a copy of the November 1992 interpretation letter it had sent to Ford.

On February 2, 1993, Mazda submitted a petition for rulemaking requesting that the agency amend the provision added by the May 1990 final rule by revising the compliance test procedure so that it would provide for testing for the possibility of key removal only when the transmission lever was in any of the detent positions. Mazda said that the procedure was needed to clarify the requirement to make the compliance test procedure "objective."

In its petition, Mazda characterized the agency's November 1992 interpretation as permitting "intentional mispositioning" of the transmission shift lever during compliance testing. Mazda argued that the rulemaking record did not indicate that the agency ever contemplated guarding against what that company terms "intentional mispositioning" of the transmission shift lever. Mazda argued that during its design and development of the vehicles which were the subject of the agency's testing, it never understood "intentional mispositioning" to be a reasonable and legitimate compliance test condition under Standard No. 114. Mazda also argued that, by not specifying what that company termed as an objective test procedure for determining compliance, the standard fails to satisfy the requirement of 49 U.S.C. 30111(a) that standards "be stated in objective terms."

On March 14, 1994, in response to Mazda's petition, NHTSA issued a Notice of Proposed Rulemaking (NPRM) proposing to amend Standard No. 114 to prevent key removal only when the shift lever is fully placed in any designated shift position other than park. In issuing the notice, NHTSA rejected Mazda's "lack of objective test procedure" argument because the requirements were clear on their face, but found reason to reexamine the rule on other grounds.

In the NPRM, the agency tentatively concluded that the safety implications of the proposal were nonexistent or minuscule. For those noncomplying vehicles that required a deliberate effort to defeat the transmission shift lock, there would be no safety consequences from the adoption of the proposal, since there was no reason to believe that drivers would make such a deliberate effort. For those noncomplying vehicles that would allow the driver to inadvertently move the shift lever into what appeared to be the park position and remove the key when the lever is not actually in park—referred to as a "misshift"—the agency tentatively concluded that the safety impacts would be "minuscule." This is because two rare events (the driver inadvertently moving the shift lever to a position just short of park *and* a child subsequently playing with the shift lever) would have to coincide for a rollaway accident to occur.

The NPRM proposed a compliance test procedure that would define whether the vehicle was "fully placed" in the various shift positions and whether it was "locked in 'park'." For the shift lever to be regarded as "fully placed" in one of the detent positions, the NPRM provided that position would have to be displayed on the transmission gear selection indicator and the vehicle would have to respond in a certain way to confirm that the transmission was actually in the indicated detent position. "Fully placed in park" was defined as being when the vehicle does not roll away ("rollaway" being defined as moving more than 100 mm) on a 10 percent grade after the parking brake is released. "Fully placed in neutral" was defined as being when activation of the accelerator pedal does not cause the car to move. "Fully placed in a forward or reverse drive position" was defined as being when the vehicle can be driven under its own power.

Summary of Comments to Notice of Proposed Rulemaking

Industry commenters supported the proposed change to the transmission locking requirements, without explaining their reasons for doing so. Mazda stated only that the proposed requirements were sufficiently objective. Chrysler agreed that the less stringent transmission lock requirements in the NPRM provide greater flexibility for the manufacturers, but found it "difficult to imagine mechanical systems" designed to prevent key removal only at detent positions. However, Chrysler did "not object" to the rulemaking.

The industry commenters all shared two objections to the proposed rule. The first resulted from the NPRM's substitution of the word "or" for "and" in S4.2.1(a). The existing requirement in that paragraph states ". . . shall prevent removal of the key unless the transmission *or* transmission shift lever is locked in 'park'. . ." (emphasis added). Ford, GM, and Chrysler objected to the NPRM's change in the conjunctive language of S4.2.1(a)(1) from "or" to "and" because it requires lockup of *both* the transmission and the shift lever, rather than only one or the other. Ford believed that this change was inadvertent because NPRM's preamble did not reflect a desire to require manufacturers to change current designs. Instead, it indicated an intent to provide manufacturers with greater flexibility. Ford stated that locking both the transmission and the shift lever would require design changes. GM stated that the added requirement was unnecessary and implied that it was impractical, because shifting into park may initially only position the parking pawl on the top of a tooth of the planetary carrier, and that further vehicle movement may be necessary to permit pawl engagement in a slot between the teeth. Chrysler believed locking either the transmission or the shift lever is adequate to protect against injuries.

Ford, GM, and Chrysler also urged the agency to increase the amount of vehicle movement (100 mm) that is permitted in the compliance procedure before the vehicle is considered to have experienced "rollaway." Ford stated that a small percentage of "light truck type vehicles with large tires" may travel slightly more than 100 mm, and suggested increasing the distance to 150 mm. Chrysler also suggested 150 mm as an appropriate distance.

GM objected even more strongly to the 100 mm rollaway definition. GM commented that the compliance test

procedure for rollaway is unnecessarily stringent and impracticable. Because of the many different combinations of axle ratios, transmission and suspension designs, and tire sizes that have to be accommodated, GM suggests deleting the distance limit altogether. Rather than selecting an "arbitrary" distance, GM stated "park" should be defined as being when the vehicle becomes stationary within five seconds of releasing the parking brake. GM recommended that, if NHTSA insists on using a distance, the distance be increased from 100 mm to at least 400 mm. GM stated that this is necessary to account for extreme situations, such as vehicles with tires greater than 30 inches in diameter, which GM calculates may require up to 40 degrees of rotation to fully engage the parking pawl and eliminate gear lash. Without explaining why, GM also stated that a 10 percent grade was unnecessarily steep and suggested a 2–3 percent grade instead.

A number of lawyers and a consumer safety advocacy group commented that changing the standard as proposed in the NPRM would be detrimental to motor vehicle safety. Many of them offered examples of specific crashes that they believed would be permitted under the relaxed standard. Some of these crashes may be attributable to misshifting.

Mr. Robert Palmer, a Missouri attorney, stated that he handled a "string of cases" in the 1980's in which he said Ford's defective transmission locks allowed the driver to "place the vehicle in what he thought was 'Park' and then the vehicle would move into 'Reverse'." These are misshift situations. He appeared to believe that NHTSA is rescinding the transmission lock requirement altogether, and objected because it is saving "countless" lives.

Mr. Victor Fleming, an Arkansas lawyer, wrote about another misshift accident. He believed that the standard fails to address the issue of "unsuspecting adults" causing rollaway accidents. He also appeared to believe that NHTSA is rescinding the transmission lock requirement.

Mr. Kenneth Obenski, president of a firm that investigates accidents for insurers and litigants, stated that 0.5 percent of the accidents that his firm has investigated involved vehicles parked but inadequately secured by drivers. Some of these accidents may be caused by misshifts.

Mr. John Stilson, a consulting safety and automotive engineer, is engaged as an expert on behalf of a woman injured after her Mazda rolled over her. The accident apparently involved a misshift situation, although it is unclear whether the vehicle was equipped with a transmission lock.

Mr. Ralph Hoar, of Ralph Hoar and Associates, asserted that NHTSA files reveal "numerous recalls by many manufacturers for shift indicator misalignment or problems with the shift mechanism that would mislead the operator into believing that they had selected the intended gear." He concluded that, if vehicle operators are being misled about the transmission position, it follows that the transmission may be between gears. An operator who can remove the key in such a situation would be falsely led to believe that the vehicle is secured. He states that this history of recalls and complaints indicates it is not in the interest of safety to allow misshifts.

Advocates for Highway and Auto Safety's (Advocates) main argument was that the agency has no idea of the magnitude of the safety benefits that it is eliminating in this rulemaking. Advocates stated that NHTSA has not produced any data to support the NPRM's conclusion that the chance of misshifting is small, or that the chance of misshifting coupled with horseplay on the part of children is remote. Advocates quoted the 1990 final rule as asserting that the existing requirement provides "absolute assurance" of transmission lock after key removal. Advocates asserted that "(t)he agency is obligated to determine the extent of the probable exposure, and the degree of risk, to which children will be newly exposed prior to amending the rule * * *"

Advocates noted that the 1990 Final Regulatory Evaluation (FRE) acknowledged a "special obligation" to reduce crashes involving children, and expressed the opinion that this may make it worth maintaining the existing rule and requiring the involuntary redesign of some vehicle transmissions.

A related argument of Advocates was that the magnitude of the safety problem is likely much larger than NHTSA's estimates because the number of noncompliant vehicles exceeds NHTSA's figures. Advocates stated that the 1990 FRE predicated its estimate of 50–100 child injuries prevented per year on the assumption that only 4 percent, or 470,000, of the 1987 vehicles were not in compliance. Advocates stated that 40 percent more, or 668,000 vehicles in 1993 permit misshifts. Advocates argued that this increased exposure will be repeated annually and even increased if more manufacturers decide to start producing transmission locks that permit misshifting. Advocates estimated that the NPRM, if adopted, might result in an additional 50–100 child injuries annually.

Advocates also faulted NHTSA for not providing any information on the number of different kinds of transmissions that would have to be redesigned, or the costs of doing so. It stated that if transmission redesign were enormously burdensome, manufacturers would not have improved from approximately 69 percent compliance in mid-1990 to the 1993 level of well over 90 percent compliance in just two years. Advocates concluded that NHTSA has provided no economic argument to support the NPRM.

Finally, Advocates asserted that NHTSA conducted this rulemaking merely to bring the manufacturers into compliance and to avoid the costs of redesigning defective transmissions. It suggested that NHTSA address noncompliances using existing procedures and not allow misinterpretations of its standards to cause it to "roll back" safety protection. Advocates stated that the current standard is clear, as outlined in NHTSA's interpretation letter to Ford, and that the NPRM represents an improper use of rulemaking authority.

Agency Analysis of Issues and Adoption of Final Rule

After carefully considering the public comments, NHTSA has decided to temporarily, instead of permanently, reduce the stringency of the transmission locking requirement. Simply replacing the existing requirement with the proposed one is not appropriate. Vehicles manufactured before September 1, 1996 will be subject to a requirement along the lines of the proposal. Vehicles manufactured on or after that date will be subject to the slightly more stringent requirement originally adopted by the agency in May 1990. The rationale for this decision is set forth in greater detail below.

The agency concludes that a change in the locking requirement is necessary because of the consequences of confusion in the industry about the original requirement. The confusion was apparently engendered in part by an event that occurred shortly after the issuance of the May 1990 final rule, i.e., the agency's June 1990 denial of a petition for rulemaking by Mr. W.A. Barr concerning misshifting of transmissions. The industry apparently read these nearly contemporaneous decisions together to indicate that the agency had not intended to address any aspect of the misshift problem in the May 1990 rulemaking on Standard No. 114.

While the agency issued an interpretation in November 1992 clarifying the reach of the May 1990 final rule, that interpretation did not eliminate the practical consequences of the industry's confusion, since the manufacturers could not immediately comply with it. The agency's efforts to address those consequences led it to grant Mazda's petition for rulemaking and to take the more fundamental step of reexamining the rationale for the agency's adoption of the requirement. That reexamination led to the agency's issuing the March 1994 NPRM proposing a more limited requirement to address rollaway incidents, on the ground that the misshift aspect of the rollaway problem might be too small to address at all. Final adoption of the proposal would have eliminated the practical consequences of the confusion.

The agency is changing the transmission locking requirement on only a temporary basis because a relatively short-term change is sufficient to eliminate consequences of confusion within the industry over the extent of the original requirement. Nearly all manufacturers have told NHTSA in response to noncompliance investigation letters that they are now in compliance with the more stringent requirements. Considering the relatively minor nature and expense of the necessary design changes, the agency concludes that the relatively few remaining vehicles that do not satisfy the more stringent requirement can be modified to do so by September 1, 1996.

An additional consideration leading the agency to make the change a temporary one is that while it believes the difference in safety benefits between the existing requirement and the less stringent temporary one is small, eliminating even the small possibility of misshift-induced rollaway is justified because the likely beneficiaries are children, which the agency has historically taken special care to protect.

NHTSA observes that the rollaway accidents at issue that could arise from misshifting are a part of the problem the agency was intending to address in the earlier rulemaking, i.e., crashes resulting from the rollaway of parked vehicles with automatic transmissions as a result of children moving the shift mechanism out of the "park" position. Apart from the issue of dealing with the legacy of the industry's confusion, there is no reason to single out this part of the problem for special treatment. Indeed, this part of the problem is addressed by the same basic countermeasure as the rest of the problem, i.e., a transmission shift lever lock.

NHTSA believes that the brief duration of less stringent transmission lock requirement will minimize the possibility of any adverse safety impacts from this rulemaking. As already noted, nearly all manufacturers are now in compliance with the more stringent requirements. The duration of the more limited requirement is so short that it would not be worthwhile for vehicle manufacturers to redesign transmissions to allow misshifting for only a year. The agency believes that manufacturers will respond to this notice by quickly redesigning any remaining transmissions that do not comply with the future requirements.

NHTSA believes that its decision to adopt the less stringent requirement on a temporary, short-term basis renders moot all or most of the commenters' concerns about a possible loss of safety benefits. As indicated above, some commenters argued that the agency lacked any basis for saying that the safety risks associated with misshifts was such a small part of the rollaway problem. They further argued that NHTSA had underestimated the noncompliant portion of the vehicle population being produced annually. They also suggested that the noncompliant vehicle population might increase. The agency notes that those concerns were expressed in response to the proposed permanent change in the requirement.

NHTSA notes further that its analysis of the original May 1990 final rule indicated that installation of the required technology in its estimate of the number of the cars and light trucks not voluntarily equipped by the standard's effective date would prevent an estimated 50 to 100 child-injuring rollaway accidents annually. While the agency cannot provide a precise estimate of the extent to which these benefits could have been reduced by permanently adopting the proposed more limited requirement, NHTSA believes that it would have been small. This is because any such reduced child injury prevention benefits would occur only in the rare combination of events described above, and only for the few vehicles still in noncompliance with the existing requirement. Regarding Advocates' comment that the agency does not have enough information on the costs and benefits of this rule, NHTSA notes that it has provided estimates within the limits of available data.

In response to Advocates' charge that the agency underestimated the noncompliant portion of the fleet, thereby also underestimating the benefits in 1990 (and the costs of this rule), the agency notes that its analysis would not have changed markedly had it used Advocates' higher estimate. Most of the benefits projected in the 1990 rule are already being achieved since they are associated with the addition of a transmission lock. Transmission locks have been added to all cars equipped with automatic transmissions. Thus, benefits are being obtained even from those vehicles that do not satisfy the more stringent requirements. Moreover, as stated above, any potential degradation of safety is marginal because their current transmission locks allow misshifting events only under very rare circumstances.

In summary, the agency believes that twin goals of addressing the legacy of the industry's confusion and securing the benefits of the existing requirement can be most reasonably achieved by allowing vehicles manufactured before September 1, 1996 to meet the more limited requirements proposed in the March 1994 NPRM and requiring vehicles manufactured on or after that date to meet the slightly more stringent requirement originally adopted by the agency in May 1990.

NHTSA believes that there are essentially no costs associated with this final rule. The only relevant costs are those associated with the May 1990 final rule which will be temporarily suspended and then reinstated on September 1, 1996. The basic cost is related to the addition of a transmission shift lever lock. Such a lock is needed to meet either the more limited, temporary requirement or the more stringent, permanent requirement. For vehicles which currently meet only the more limited requirement, some minor design changes will be needed in the lock to meet the more stringent requirement when it again becomes effective. By providing over one year of leadtime before the broader requirement must be met, those residual costs of the May 1990 final rule will be minimized.

The agency agrees with the industry commenters that the change of the conjunctive "or" to "and" in S4.2.1(a) was not necessary and that locking either the transmission shift lever or the transmission itself, will have the same practical effect. Therefore, the regulatory text has been corrected to make it clear that locking of either the transmission or the shift lever is sufficient, provided this action prevents vehicle rollaway.

NHTSA also agrees that the NPRM's "rollaway" definition of more than 100 mm of vehicle movement is unnecessarily restrictive. However, it cannot agree to allow an unspecified amount of movement, or up to 400 mm

of movement, as GM suggests. GM's 400 mm figure is a worst-case estimate of how far certain trucks might roll. This larger amount of movement would be more likely to create the possibility of trapping children and adults under the car than would lesser amounts of movement. It is unclear to this agency why GM products cannot satisfy the 150 mm criterion suggested by Ford and Chrysler. Therefore, to account for some amount of "play" in U-joints, the amount of gear lash in transmissions, transfer cases, and differentials, plus the fact that a vehicle may have to roll slightly to completely engage the parking pawl, NHTSA has increased the amount of permissible roll to 150 mm.

NHTSA does not agree with GM's comment that the 10 percent grade specification in the test procedure is unnecessarily steep, and has retained the specification in the final rule. The agency notes that the grade level differential associated with the transmission grade holding ability in S7.7 of the parking brake test in Standard No. 105, *Hydraulic Brake Systems*, is 10 percent. That test requires the vehicle to hold on a 20 percent grade with the parking brake and on a 30 percent grade with the automatic transmission in "park" and with the parking brake on. NHTSA notes that the vehicle-on-grade test specified in this rule is not intended to verify the performance of the holding capability already required of vehicles in Standard No. 105, but to verify that the transmission is operating in a vehicle holding mode.

The GM Petition

In response to comments about the need to move disabled vehicles, the agency amended Standard No. 114 on March 26, 1991 to permit a key-operated override device which would allow the transmission to be moved from park after key removal. The final rule did not require steering lock-up to occur as a result of using the override device. In response to petitions for reconsideration, on January 17, 1992, the agency again amended the rule to permit override devices operated by means other than the key. In allowing keyless override devices, the preamble stated that the agency would require that steering lock-up occur as a result of using keyless override devices. The lock-up would act as a theft deterrent. The preamble concluded "the agency emphasizes that the amendment permits a keyless emergency override only if theft protection is ensured by a steering lock" (58 FR 12467). However, while the preamble discussed steering lockup only for keyless override devices, the regulatory language of S4.2.2 required steering lockup for any override device, including those operated by a key.

On March 22, 1994, NHTSA received a petition for rulemaking from Mr. Gerald Gannon of GM's legal staff, suggesting that the words "provided that steering is prevented when the key is removed" were misplaced in the regulatory text. He correctly assumed that NHTSA did not intend to require steering lockup for override devices operated by a key. Indeed, moving these words as GM suggests produces the intended result.

There is adequate cause to amend the rule, pursuant to the GM petition, using only a technical amendment. The preamble of the 1990 rule, which addresses steering locks for keyless override devices only, supports the suggestion that an error was made in the regulatory text of the January 1992 final rule. The focus of that preamble indicates that key-operated override devices were not intended to be covered by the restriction. Moreover, it is illogical from an anti-theft perspective to require steering lockup in a vehicle when the transmission lock override device itself is operated by the key that would unlock the steering anyway. Thus, with evidence in the record that the word placement was in error and with the existing requirement being illogical, a technical amendment is appropriate. Notice and comment procedures are not necessary.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impacts of this rulemaking action under E.O. 12866 and the Department of Transportation's regulatory policies and procedures. This action has been determined to be not "significant" under either. As explained above, the amendments would impose no new requirements but would temporarily provide additional flexibility to manufacturers, with respect to transmission shift lock designs, with no measurable impact on safety or costs. No manufacturer of vehicles that satisfy the preexisting requirements is likely to redesign its transmissions in response to this rule.

The cost of making the minor changes to the few transmission locks that are still being produced not in compliance with the existing rule is likely to be a small but undeterminable fraction of the cost of adding transmission locks. NHTSA notes that these costs are attributable to and were already counted in the 1990 rule. As stated earlier, the portion of the fleet that currently does not satisfy the more stringent requirements is likely to be much smaller than the 668,000 vehicles that the NPRM estimated, based on manufacturer responses to NHTSA's investigation. NHTSA cannot quantify how much smaller the portion is now because it has not conducted any recent compliance testing. Due to the probable minimal cost of compliance per vehicle and the small number of vehicles affected, NHTSA believes that the remaining costs of the 1990 rule are insignificant.

Since this final rule does not increase costs or provide any cost savings, a full regulatory evaluation is not warranted.

Regulatory Flexibility Act

NHTSA has also considered the effects of this regulatory action under the Regulatory Flexibility Act. I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. The vehicle manufacturers affected by the requirements typically do not qualify as small businesses. Further, since no price changes should be associated with this rule, small businesses, small organizations and small governmental entities will not be affected in their capacity as purchasers of new vehicles.

Executive Order 12612 (Federalism)

The agency has analyzed this rule in accordance with the principles and criteria set forth in Executive Order 12612. NHTSA has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Civil Justice Reform

This rule does not impose any retroactive burdens. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. § 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, 49 CFR part 571 is amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30162; delegation of authority at 49 CFR 1.50.

2. Section 571.114 is amended by revising S1, S4.2.1, and S4.2.2, and adding new paragraphs S5 through S5.3, to read as follows:

§ 571.114 Standard No. 114; Theft protection.

S1 *Purpose and Scope.* This standard specifies requirements primarily for theft protection to reduce the incidence of crashes resulting from unauthorized operation of a motor vehicle. It also specifies requirements to reduce the incidence of crashes resulting from the rollaway of parked vehicles with automatic transmissions as a result of children moving the shift mechanism out of the "park" position.

* * * * *

S4.2.1(a)(1) Except as provided in S4.2.2(a) and (b), the key-locking system required by S4.2 in each vehicle which is manufactured prior to September 1, 1996, and which has an automatic transmission with a "park" position shall, when tested under the test procedures in S5(a), prevent removal of the key:

(i) Whenever the shift lever or other shifting mechanism is fully placed in any designated shift position other than "park," unless the transmission or transmission shift mechanism become locked in "park" as the direct result of removing the key; and

(ii) Whenever the shift lever or other shifting mechanism is fully placed in the park position, unless the transmission or transmission shift mechanism are locked in park or become locked in "park" as the direct result of removing the key.

(2) Except as provided in S4.2.2(a) and (b), the key-locking system required by S4.2 in each vehicle which is manufactured on or after September 1, 1996, and which has an automatic transmission with a "park" position shall, when tested under the procedures in S5(b), prevent removal of the key unless the transmission or transmission shift lever is locked in "park" or becomes locked in "park" as the direct result of removing the key.

(3) Each vehicle shall not move more than 150 mm on a 10 percent grade when the transmission or transmission shift lever is locked in "park."

S4.2.2(a) Notwithstanding S4.2.1, provided that steering is prevented upon the key's removal, each vehicle specified therein may permit key removal when electrical failure of this system (including battery discharge) occurs or may have a device which, when activated, permits key removal. The means for activating any such device shall be covered by a non-transparent surface which, when installed, prevents sight of and activation of the device. The covering surface shall be removable only by use of a screwdriver or other tool.

(b) Notwithstanding S4.2.1, each vehicle specified therein may have a device which, when activated, permits moving the transmission shift lever from "park" after the removal of the key. The device shall either be operable:

(1) By the key, as defined in S3; or

(2) By another means, provided that steering is prevented when the key is removed from the ignition, and provided that the means for activating the device is covered by a non-transparent surface which, when installed, prevents sight of and activation of the device. The covering surface shall be removable only by use of a screwdriver or other tool.

* * * * *

S5. *Compliance Test Procedure for vehicles with automatic transmissions.*

S5.1 *Test Conditions.*

(a) The vehicle shall be tested at curb weight plus 91 kg (including the driver).

(b) Except where specified otherwise, the test surface shall be level.

S5.2 *Test procedure for vehicles manufactured before September 1, 1996.*

(a) Drive the vehicle forward and stop with the service brakes. Apply the parking brake (if present). Try to remove the ignition key from each possible key position.

(b) Repeat the procedure in S5.2(a) with the transmission shift mechanism in each forward drive shift detent position.

(c) Drive the vehicle backward and stop with the service brakes. Apply the parking brake. Try to remove the ignition key from each possible key position.

(d) Move the transmission shift mechanism to the "neutral" detent position. Try to remove the ignition key from each possible key position.

(e) Drive the vehicle forward up a 10 percent grade and stop it with the service brakes. Apply the parking brake. Move the shift mechanism to the "park" position. Apply the service brakes. Release the parking brake. Release the service brakes. Remove the key. Verify that the transmission shift mechanism or transmission is locked in "park." Verify that vehicle movement was less than or equal to 150 mm after release of the service brakes.

S5.3 *Test procedure for vehicles manufactured on or after September 1, 1996.*

(a) Move the transmission shift mechanism to any position where it will remain without assistance, including a position between the detent positions, except for the "park" position. Try to remove the key from each possible key position in each such shift position.

(b) Drive the vehicle forward up a 10 percent grade and stop it with the service brakes. Apply the parking brake (if present). Move the shift mechanism to the "park" position. Apply the service brakes. Release the parking brake. Release the service brakes. Remove the key. Verify that the transmission shift mechanism or transmission is locked in "park." Verify that vehicle movement was less than or equal to 150 mm after release of the service brakes.

Issued on June 1, 1995.

Ricardo Martinez,

Administrator.

[FR Doc. 95–13867 Filed 6–6–95; 8:45 am]

BILLING CODE 4910–59–P

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1023

[Ex Parte No. MC–100 (Sub-No. 6)]

Single State Insurance Registration

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: The Commission is revising the receipt provisions of its regulations pertaining to registration by motor carriers with states. Pursuant to a court remand, the Commission has reexamined provisions permitting motor carriers to make copies of registration receipts. Under the revised rules, states will issue official copies of receipts, and motor carrier copying will be prohibited.

EFFECTIVE DATE: July 7, 1995.

FOR FURTHER INFORMATION CONTACT: Kenneth H. Schwartz, (202) 927–5299 or Joseph H. Dettmar, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: In a decision in *Single State Insurance Registration*, 9 I.C.C.2d 610 (1993), Notice published at 58 FR 28932 on

May 18, 1993, the Commission adopted final regulations that replaced a multi-state motor vehicle and operating authority registration system with a simplified, single-state, insurance-based registration system. The Commission acted in accordance with Congressional revisions to 49 U.S.C. 11506—Registration of Motor Carriers by a State, which required the Commission to prescribe amendments to the regulations that had governed the registration system under the old law.

On judicial review, in *Nat'l Ass'n of Regulatory Util. Comm'rs* v. *ICC*, 41 F.3d 721 (D.C. Cir. 1994), the court found that the Commission had improperly balanced conflicting policy goals in adopting regulations giving motor carriers the authority to copy the registration receipts required by law to be kept in each motor vehicle. The court remanded such provisions to the Commission for further consideration. The Commission requested comments in light of the court's decision.

Upon consideration of the court's opinion and the comments received from the trucking and insurance industries, state regulatory agencies, and other interested parties, the Commission is revising the receipt provisions of the regulations. Under the revised rules, states will issue official copies of registration receipts, and motor carriers will be required to maintain an official copy in each reported motor vehicle. Motor carrier copying of receipts will be prohibited.

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Interstate Commerce Commission Building, 1201 Constitution Avenue NW., Room 2229, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD service (202) 927–5721.]

Regulatory Flexibility Certification

Pursuant to 5 U.S.C. 605(b), we conclude that our action in this proceeding will not have a significant economic impact on a substantial number of small entities. No new regulatory requirements are imposed, directly or indirectly, on such entities. As before, all motor carriers registering with participating states will be required to distribute copies of registration receipts to their vehicles; but, under the revised regulations, motor carriers are relieved of the burden of reproducing the receipt copies. The economic impact on small entities, if any, should be positive but is not likely to be significant within the meaning of the Regulatory Flexibility Act.

Environmental and Energy Considerations

We conclude that this action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects in 49 CFR Part 1023

Insurance, Motor carriers, Surety bonds.

For the reasons set forth in the preamble, title 49, chapter X, part 1023 of the Code of Federal Regulations is amended as follows:

PART 1023—STANDARDS FOR REGISTRATION WITH STATES

1. The authority citation for part 1023 continues to read as follows:

Authority: 49 U.S.C. 10321 and 11506; 5 U.S.C. 553.

2. Section 1023.5 is revised to read as follows:

§ 1023.5 Registration receipts.

(a) On compliance by a motor carrier with the annual or supplemental registration requirements of § 1023.4, the registration State must issue the carrier a receipt reflecting that the carrier has filed the required proof of insurance and paid fees in accordance with the requirements of that section. The registration State also must issue a number of official copies of the receipt equal to the number of motor vehicles for which fees have been paid.

(1) The receipt and official copies must contain only information identifying the carrier and specifying the States for which fees were paid. Supplemental receipts and official copies need contain only information relating to their underlying supplemental registrations.

(b) Receipts and official copies issued pursuant to a filing made during the annual registration period specified in § 1023.4(b)(2) must be issued within 30 days of filing of a fully acceptable registration application. All other receipts and official copies must be issued by the 30th day following the date of filing of a fully acceptable supplemental registration application. All receipts and official copies shall expire at midnight on the 31st day of December of the registration year for which they were issued.

(c) A carrier is permitted to operate its motor vehicles only in those participating States with respect to which it has paid appropriate fees, as indicated on the receipts and official copies. It may not operate more motor vehicles in a participating State than the number for which it has paid fees.

(d) A motor carrier may not copy or alter a receipt or an official copy of a receipt.

(e) A motor carrier must maintain in each of its motor vehicles an official copy of its receipt indicating that it has filed the required proof of insurance and paid appropriate fees for each State in which it operates.

(f) A motor carrier may transfer its official copies of its receipts from vehicles taken out of service to their replacement vehicles.

(g) The driver of a motor vehicle must present an official copy of a receipt for inspection by any authorized government personnel on reasonable demand.

(h) No registration State shall require decals, stamps, cab cards, or any other means of registering or identifying specific vehicles operated by a motor carrier.

Decided: May 24, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioners Simmons and McDonald. Vice Chairman Owen commented with a separate expression.

Vernon A. Williams,

Secretary.

[FR Doc. 95–13935 Filed 6–6–95; 8:45 am]

BILLING CODE 7035–01–P

Proposed Rules

Federal Register
Vol. 60, No. 109
Wednesday, June 7, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1150

[DA–95–15]

Dairy Promotion Program; Invitation To Submit Comments on Proposed Amendments to the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document invites written comments on a proposal to amend the Dairy Research and Promotion Order to modify the term expiration date for National Dairy Board members, effective December 1, 1996. The proposal was submitted by the National Dairy Promotion and Research Board which contends the action is necessary to enable it to operate more effectively.

DATES: Comments are due no later than July 7, 1995.

ADDRESSES: Comments should be sent to: USDA/AMS/Dairy Division, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Silvio Capponi, Jr., Deputy Director, USDA/AMS/Dairy Division, Room 2953, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–4664.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed rule would not have a significant economic impact on a substantial number of small entities. The proposed amendment would modify the term expiration date of National Dairy Board members and would not have an economic effect on any entity engaged in the dairy industry.

The Department is issuing this proposed rule in conformance with Executive Order 12866.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have a retroactive effect. The Dairy and Tobacco Adjustment Act of 1983 provides in section 121(a) that nothing in the Act may be construed to preempt or supersede any other program relating to dairy product promotion organized and operated under the laws of the United States or any State.

The Dairy and Tobacco Adjustment Act of 1983 provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 118(a) of the Act, any person subject to an order issued under the Act may file with the Secretary a petition stating that any such order or any provisions of the order or obligation imposed in connection with the order is not in accordance with law and request a modification of an order or to be exempted from the order. A petitioner is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the person is an inhabitant or carries on business has jurisdiction to review the Secretary's ruling on the petition, provided a complaint is filed not later than 20 days after the date of the entry of the ruling.

Section 1150.132(b) of the Dairy Research and Promotion Order currently provides that each member of the Board shall serve until April 30 of the year in which his/her term expires, except that a retiring member may serve until a successor is appointed. The proposed amendment would modify the term expiration date from April 30 to November 30.

The National Dairy Promotion and Research Board, which administers the order, contends that the proposed amendment is necessary to enable it to operate more effectively to conclude yearly business. The Board indicates that the proposed amendment would take effect with the Board members seated at its annual meeting in December 1996. Additionally, it states that the proposed term of December through November closely corresponds with its fiscal year of January 1 through December 31.

Accordingly, it may be appropriate to amend the aforesaid provision, effective December 1, 1996.

List of Subjects in 7 CFR Part 1150

Dairy products, Reporting and recordkeeping requirements, Research.

The proposed amendment, as set forth below, has not received the approval of the Secretary of Agriculture.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 1150 be amended as follows:

PART 1150—[AMENDED]

1. The authority citation for 7 CFR Part 1150 continues to read as follows:

Authority: Pub. Law 98–180, 97 Stat. 1128.

Proposed by the National Dairy Promotion and Research Board

2. Section 1150.132(b) is revised to read as follows:

§ 1150.132 Term of Office.

* * * * *

(b) Each member of the Board shall serve until November 30 of the year in which his/her term expires, except that a retiring member may serve until a successor is appointed.

* * * * *

Dated: June 1, 1995.

Lon Hatamiya,

Administrator.

[FR Doc. 95–13922 Filed 6–6–95; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL RESERVE SYSTEM

12 CFR Part 203

[Regulation C; Docket No. R–0881]

Home Mortgage Disclosure

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule; staff interpretation.

SUMMARY: The Board is publishing for comment a staff commentary to Regulation C (Home Mortgage Disclosure). The commentary applies and interprets the requirements of Regulation C. The proposed commentary provides guidance on various issues including the treatment under Regulation C of prequalifications, participations, refinancings, home

equity lines, mergers, and loan applications received through a broker. The Board believes the proposed commentary will reduce burden and ease compliance by clarifying a number of issues, by providing flexibility in compliance, and by consolidating the guidance that is currently available from a variety of sources.

DATES: Comments must be received on or before August 7, 1995.

ADDRESSES: Comments should refer to Docket No. R–0881 and may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. Comments also may be delivered to Room B–2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building courtyard on 20th Street, NW. (between Constitution Avenue and C Street) at any time. Comments received will be available for inspection in Room MP–500 of the Martin Building between 9 a.m. and 5 p.m. weekdays, except as provided in 12 CFR 261.8 of the Board's rules regarding availability of information.

FOR FURTHER INFORMATION CONTACT: Jane Jensen Gell, W. Kurt Schumacher, or Manley Williams, Staff Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667 or (202) 452–2412; for the hearing impaired *only*, Dorothea Thompson, Telecommunications Device for the Deaf, at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

I. Background

The Board's Regulation C (12 CFR Part 203) implements the Home Mortgage Disclosure Act of 1975 (HMDA) (12 U.S.C. 2801 *et seq*). HMDA requires most mortgage lenders located in metropolitan areas to collect data about their housing-related lending activity. Annually, lenders must file reports with their federal supervisory agencies and make disclosures available to the public. The reports and disclosures cover loan originations, applications that do not result in originations (for example, applications that are denied or withdrawn), and loan purchases. Information reported includes the location of the property to which the loan or application relates; the race or national origin, gender, and gross annual income of the borrower or applicant; and the type of purchaser for loans sold in the secondary market.

The Board has received many requests from other supervisory agencies and from financial institutions suggesting adoption of a staff commentary to Regulation C to provide guidance on compliance with the regulation. In response, the Board is proposing to issue a staff commentary (12 CFR part 203 (Supp. I)) that interprets the regulation. The Board believes the commentary will provide significant assistance to institutions by clarifying a number of issues and providing flexibility in compliance with the regulation. The proposed commentary follows the narrative format used in most of the Board's other staff commentaries, such as those issued to interpret Regulation Z (12 CFR part 226) and Regulation B (12 CFR part 202). The proposed commentary provides general guidance in applying the regulation to various transactions, and would be updated periodically to address significant questions that arise.

II. Explanation of Proposed Commentary

The proposed commentary incorporates much of the guidance in *A Guide to HMDA Reporting—Getting It Right!*, developed by member agencies of the Federal Financial Institutions Examination Council (FFIEC) (the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, the National Credit Union Administration, and the Federal Reserve Board), and the Department of Housing and Urban Development. Other sources of material in the proposed commentary include supplementary information published in the **Federal Register** notice of the amendments to Regulation C recently adopted by the Board (59 FR 63698, December 9, 1994) and other **Federal Register** notices on Regulation C, and portions of Appendix A to the regulation. The Board believes that consolidating the guidance that is currently available from a variety of sources into one source will ease compliance and reduce burden.

The Board solicits suggestions on additional issues that are not addressed in this proposal but that may need clarification, and will consider adding commentary material to address such issues in the final version of the commentary.

In cases where provisions of Regulation C have been modified by the amendments issued by the Board in December 1994 (scheduled to take effect on a mandatory basis in calendar year 1996), the relevant commentary provisions relate to those amendments rather than the existing regulatory requirements.

Most of the proposed commentary material is self-explanatory. The following discussion, however, provides some explanation on a few of the points covered in the proposal.

Section 203.1—Authority, Purpose, and Scope

1(c) Scope

Refinancings

Proposed comments 1(c)–3 and –4 clarify that an origination includes the refinancing of a home purchase loan for purposes of determining coverage and exemptions from coverage. The comments provide guidance on alternate ways an institution may identify transactions to determine coverage and data collection requirements.

Participations

Proposed comment 1(c)–7 would allow the reporting of an institution's partial interest in a participation loan, at the institution's option. Among other things, this would allow an institution to report its partial interest in a large-dollar home purchase or home improvement loan. Of course, given the exclusion in section 203.4(d) from reporting the purchase of an interest in a loan pool, the present comment is intended to allow the reporting of partial interests where the reporting institution has a direct interest in the loan itself, and not an interest in a security such as a mortgage-backed security.

The Board solicits comment on whether reporting participation interests in this manner will address home mortgage lending by a consortium of lenders. A consortium may be structured in several ways. If a consortium is a nonprofit mortgage lender, it would not be covered under Regulation C. If the consortium is a for-profit mortgage lender that meets the tests for coverage under Regulation C, it would report applications and loans originated by the consortium. If the consortium is structured so that participating lenders underwrite and originate a loan, each lender may report its partial interest in the loan.

Section 203.2—Definitions

2(b) Application

Prequalifications

Financial institutions must report action taken upon applications for (as well as originations and purchases of) home purchase and home improvement loans (including refinancings). Institutions have asked the Board for clarification on the correct treatment under Regulation C of prequalification and preapproval programs.

In its amendments to Regulation C issued in December 1994, the Board deferred a final determination on whether and how lenders ought to report prequalifications (or preapprovals). Instead, the Board provided that institutions need not include data about prequalifications (or preapprovals) in their HMDA submissions for calendar year 1994 or 1995.

The Board believes that prequalification requests (as that term is used in the proposed commentary) are not applications for purposes of Regulation C, even though they may be applications under Regulation B. Proposed comment 2(b)–2 provides guidance so that institutions can distinguish a request for a prequalification from an application under Regulation C.

The Board may consider proposing amendments to Regulation C to address prequalifications and preapprovals, including whether institutions should be required to report some or all preapproval requests. (A preapproval request is generally considered to be a request by an applicant for a commitment from an institution to lend a specific amount, subject to the applicant's selection of residential property that is satisfactory to the institution. A preapproval program may be part of or separate from the institution's mortgage loan application program.) If, for example, coverage included all preapprovals, the Board might consider adding to the purpose codes "code 5. Preapproval" to distinguish preapprovals from other application procedures. The Board may also consider adding a new action taken code, such as "code 7. Loan preapproved" to distinguish situations where a loan is preapproved but not originated from other actions taken on applications.

2(e) Financial Institution

Foreign banks

Proposed comments 2(e)–1 and –2 discuss coverage of various types of branches and other offices of foreign banks for purposes of Regulation C. The definition of a covered institution in HMDA refers, in part, to banks as defined in the Federal Deposit Insurance Act (FDI Act). The FDI Act definition of "bank" includes certain types of branches and offices of foreign banks, and excludes other types. Accordingly, certain branches and offices of foreign banks, which meet the FDI Act definition of "bank," are covered by HMDA as depository institutions (assuming they are not excluded by some other exemption). Other branches and offices of foreign banks, which do not meet the FDI Act definition, are covered by HMDA only if they meet the tests for coverage of nondepository institutions.

2(g) Home-purchase Loan

Home Equity Lines

Under Regulation C, institutions have the option to report that portion of a home equity line of credit that the borrower indicates, at the time of application or when the account is opened, will be used for home improvement purposes. Proposed comment 2(g)–6 sets forth the same position with regard to home equity lines to be used for home purchase purposes. As in the case of home equity lines for home improvement, the institution may choose not to report home equity lines at all. If the institution reports home equity originations, the institution must also report home equity applications that did not result in originations. If the institution chooses to report a home equity line, it should report only the amount indicated at time of application or establishing the credit line, to be used for purposes of purchasing a dwelling.

Section 203.3—Exempt Institutions

3(a) Exemption Based on Location, Asset Size, or Number of Home-purchase Loans

Mergers

Proposed comment 3(a)–2 deals with reporting responsibilities in situations where two financial institutions merge. The proposed comment is based on material in the *Guide to HMDA Reporting*, but additional detail has been added concerning mergers involving a covered and an exempt institution. (Other material from the section of the *Guide* relating to mergers and changes in supervisory agencies appears in proposed comments 3(a)–3 and 5(a)–1.)

Section 203.4—Compilation of Loan Data

4(a) Data Format and Itemization

Paragraph 4(a)(6)

Location of Property—BNAs

Proposed comment 4(a)(6)–4 allows institutions to report block numbering areas (BNAs) for properties located in counties for which census tracts have not been established. This option would provide more detailed information that may be used to examine and assess an institution's housing-related lending.

Paragraph 4(a)(7)

Income of Applicants

Proposed comment 4(a)(7)–5 provides guidance regarding data reporting requirements for applicant income. The comment clarifies that institutions must report all income used to make the credit decision. This figure would include any income the institution considers in qualifying the applicant, even if the funds are not factored into the debt-to-income ratio analysis.

III. Form of Comment Letters

Comment letters should refer to Docket No. R–0881. The Board requests that, when possible, comments be prepared using a standard courier typeface with a type size of 10 or 12 characters per inch. This will enable the Board to convert the text into machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Comments may also be submitted on computer diskettes, using either the 3.5" or 5.25" size, in any IBM-compatible DOS-based format. Comments on computer diskettes must be accompanied by a hard copy version.

List of Subjects in 12 CFR Part 203

Banks, banking, Consumer protection, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Board proposes to amend 12 CFR part 203 as follows:

PART 203—HOME MORTGAGE DISCLOSURE (REGULATION C)

1. The authority citation for part 203 continues to read as follows:

Authority: 12 U.S.C. 2801–2810.

2. Part 203 would be amended by adding a new Supplement I—Staff Interpretations after the Appendices to read as follows:

Supplement I to Part 203—Staff Interpretations

Introduction

1. *Status.* This commentary in this supplement is the vehicle by which the staff of the Division of Consumer and Community Affairs of the Federal Reserve Board issues staff interpretations of Regulation C (12 CFR part 203).

Section 203.1—Authority, Purpose, and Scope

1(c) Scope.

1. *General.* The comments in this section address issues affecting coverage of institutions, exemptions from coverage, and data collection requirements. (Paragraphs I., II., IV. and V. of Appendix A of this part.)

2. *Meaning of refinancing.* A refinancing of a loan is the satisfaction and replacement of an existing obligation by a new obligation by the same borrower. The term "refinancing" refers to the new obligation. If the existing obligation is not satisfied and replaced, but is only renewed or modified (such as in certain "modification, extension, and consolidation agreements"), the transaction is not a refinancing. (Paragraph V.A.5. Code 3. of Appendix A of this part.)

3. *Refinancing—coverage.* For purposes of determining whether an institution is covered by Regulation C or is exempt, an origination of a home purchase loan includes the refinancing of a home purchase loan. (Paragraphs I.B., I.C. and I.D. of Appendix A of this part.) When an institution refinances an existing obligation, the institution must either:

i. Assume that if the refinancing results in a new obligation secured by a lien on a dwelling, the new obligation is a refinancing of a home purchase loan under Regulation C (and may assume, if the new obligation is not secured by a lien on a dwelling, that it is not a refinancing of a home purchase loan); or

ii. Determine the purpose of the existing obligation. The institution may use the following guidelines:

a. The institution may rely on the statement of the applicant or borrower.

b. If the existing obligation was secured, the institution may assume that it was for home purchase purposes, and that the new obligation is a refinancing of a home purchase loan under Regulation C.

c. If the existing obligation was unsecured, the institution may assume that it was not for home purchase purposes, and that the new obligation is not a refinancing of a home purchase loan under Regulation C.

4. *Refinancing—data collection.* For purposes of data collection (paragraph V.A.5. Code 3. of Appendix A of this part) an institution must either:

i. Assume that if a refinancing results in a new obligation secured by a lien on a dwelling, the new obligation is a refinancing of a home purchase or home improvement loan under Regulation C (and may assume, if the new obligation is not secured by a lien on a dwelling, that it is not a refinancing of a home purchase or home improvement loan); or

ii. Determine the purpose of the existing obligation. The institution may use the following guidelines:

a. The institution may rely on the statement of the applicant or borrower.

b. If the existing obligation was secured, the institution may assume that it was for home purchase or home improvement purposes, and that the new obligation is a refinancing under Regulation C.

5. *Meaning of "broker" and "investor institution."* The term "broker" (or correspondent) refers to any party (whether a bank, thrift, credit union, mortgage banker, mortgage broker, or other type of depository or nondepository institution) that takes and processes loan applications from applicants and that has an arrangement with another party (an "investor institution") under which the investor institution (1) reviews the application prior to closing, (2) makes a credit decision, and (3) determines whether to acquire the loan at or after closing. (Paragraphs IV.A. and V.B.1. of Appendix A of this part.)

6. *The broker rule—originations.* If an investor institution reviews a loan application from a broker prior to closing, makes a decision to extend credit, and then acquires the loan at or after closing, the investor institution originates that loan for purposes of Regulation C, whether the loan closes in the name of the broker or the investor institution. If a broker submits a loan application to more than one investor, each investor reports the action it has taken on the application. For example, each investor denying the application reports a denial. (Paragraphs IV.A. and V.B.1. of Appendix A of this part.)

7. *Broker's use of investor institution's underwriting criteria.* A broker makes a decision to extend credit based on underwriting criteria set by an investor institution, but without the investor institution's review before closing. Under these facts, the broker originates that loan for purposes of Regulation C (unless the broker is an agent or contract underwriter for the investor institution), and the investor institution that acquires the loan after closing purchases the loan under Regulation C. If the broker is subject to Regulation C, the broker reports as originations the loans that it approves and closes, and reports as denials the loan applications that it turns down (either because they do not meet the investor's underwriting guidelines or for some other reason).

8. *Post-closing review by the investor institution.* An investor institution agrees with a broker to purchase loans that meet the investor institution's underwriting guidelines, which the broker uses in making credit decisions on loan applications. The investor institution reviews loans only after closing to confirm that the loans meet its underwriting guidelines. Under these facts, the broker originates the loans and the investor institution purchases the loans under Regulation C. If the broker is covered by Regulation C, the broker reports as originations the loans that it approves and closes, and reports as denials the loan applications that it turns down. The investor reports only those loans it purchases.

9. *Third-party underwriting guidelines.* An investor institution agrees to purchase from a broker loans that have government or private insurance, but does not review loan applications prior to closing. The broker evaluates loan applications using the insurer's guidelines, or delivers applications to the insurer for a determination on whether it will insure the loan. After closing, the investor institution purchases those loans that have been insured. Under these facts, the broker makes the credit decisions and the investor institution purchases the loans under Regulation C. The investor reports those loans it purchases; it does not report other loans. If the broker is covered by Regulation C, it reports as originations the loans that it approves and closes, and reports as denials the loan applications that it turns down.

10. *Participation loan.* If an institution participates in the underwriting and origination of a home purchase or home improvement loan, it may report the transaction as an origination to the extent of its participation interest, or it may choose not to report the transaction. If an institution chooses to report originations, it must also report applications that do not result in originations (for example, denials). When a single institution originates the loan and subsequently sells participation interests to other institutions, those institutions report their interests as purchased loans. (Paragraphs I., II., IV. and V. of Appendix A of this part.)

Section 203.2—Definitions

(2)(b) Application.

1. *Consistency with Regulation B.* The definition of "application" in Regulation C is virtually identical to the definition of "application" in Regulation B (Equal Credit Opportunity, 12 CFR Part 202). Accordingly, guidance in the official staff commentary to Regulation B is generally applicable to the definition of an application under Regulation C. (Paragraph IV.A. of Appendix A of this part.)

2. *Prequalification.* A prequalification request is generally considered to be a request by a prospective loan applicant to a lending institution for a preliminary determination on whether the prospective applicant would likely qualify for credit under the institution's standards, or on how much credit the prospective applicant would likely qualify for. Further, a prequalification request is generally evaluated by the institution through a procedure that is separate from the institution's normal loan application process. A prequalification request is not an application under Regulation C, even though it may constitute an application under Regulation B, requiring a lender to notify an applicant of the action taken. (Paragraphs I. and IV.A. of Appendix A of this part.)

(2)(c) Branch office.

1. *Depository institution.* A branch of a depository institution does not include a loan production office or the office of an affiliate, nor does it include the office of a third party such as a loan broker. (Paragraphs I., V.A.6. and V.C. of Appendix A of this part.)

2. *Nondepository institution.* A branch of a nondepository institution does not include the office of an affiliate or other third party. (Paragraphs I., V.A.6. and V.C. of Appendix A of this part.) (But see paragraph V.C.6. of Appendix A of this part, requiring nondepository institutions to report property location even in MSAs where they do not have a physical location.)

(2)(d) Dwelling.

1. *Scope.* The definition of "dwelling" is not limited to the principal or other residence of the applicant or borrower. Thus, vacation or second homes and rental properties are dwellings under Regulation C. Dwellings include mobile or manufactured homes, multifamily structures (such as apartment buildings), and condominium and cooperative units. Recreational vehicles such as boats or campers are not dwellings. (Paragraphs I.B., IV., and V.A.5. of Appendix A of this part.)

(2)(e) Financial institution.

1. *Branches of foreign banks—treated as a bank.* Both a federal branch and a state-licensed insured branch of a foreign bank are a "bank" under the Federal Deposit Insurance Act, and are covered if they meet the tests for a depository institution found in §§ 203.2(e)(1) and 203.3(a)(1). (Paragraphs I.A. and I.B. of Appendix A of this part.)

2. *Branches and offices of foreign banks—treated as a for-profit mortgage lending institution.* Federal agencies, state-licensed agencies, state-licensed uninsured branches of foreign banks, commercial lending companies owned or controlled by foreign banks, and entities operating under section 25A or 25 of the Federal Reserve Act (Edge Act and agreement corporations) are covered by Regulation C if they meet the tests for a nondepository mortgage lending institution found in §§ 203.2[e)(2) and 203.3(a)(2). (Paragraphs I.C. and I.D. of Appendix A of this part.)

(2)(f) Home-improvement loan.

Paragraph (2)(f)(1).

1. *Home improvement.* A home improvement loan is a loan to be used for improvements to a dwelling or to the real property on which the dwelling is located. (Paragraphs IV. and V.A.5. Code 2. of Appendix A of this part.) Examples include:

i. Installation of a swimming pool;

ii. Construction of a detached garage;

iii. Landscaping; or

iv. Purchase of appliances to be installed as fixtures to the dwelling.

2. *Multiple properties.* A home improvement loan includes a loan secured by one dwelling, with the proceeds to be used to improve another dwelling. (Paragraphs IV. and V.A.5. Code 2. of Appendix A of this part.)

3. *Mixed-use property.* A loan to improve property used primarily for residential purposes (for example, an apartment building containing a convenience store) is a home improvement loan. (Paragraphs IV. and V.A.5. Code 2.)

4. *Multipurpose loan.* A loan to make home improvements (even though less than 50 percent of the total loan proceeds are to be used for this purpose) may be treated as a home improvement loan provided that the institution classifies the loan as a home improvement loan. (Paragraphs IV. and V.A.5. Code 2. of Appendix A of this part.)

5. *Home equity lines.* An institution may report the part of a home equity line of credit that is for home improvement. An institution that reports the origination of home equity lines must also report applications that did not result in originations. (Paragraphs IV. and V.A.5. Code 2.c. of Appendix A of this part.)

6. *Reliance on statement of borrower.* An institution may rely on the oral or written statement of an applicant or borrower that the loan proceeds will be used for home improvement purposes. (Paragraphs IV. and V.A.5. Code 2.c of Appendix A of this part.)

Paragraph (2)(f)(2).

1. *Classification.* The requirement that a loan be "classified" as a home improvement loan provides flexibility to institutions in determining which loans to report. An institution meets the requirement if it has entered a loan on its books as a home improvement loan, or has otherwise identified or coded the loan as a home improvement loan. For example, an institution that has marketed a loan, "booked" it, or reported it on a "call report" as home improvement loan has "classified" it as a home improvement loan. (Paragraphs IV. and V.A.5. Code 2. of Appendix A of this part.)

(2)(g) Home-purchase loan.

1. *Multiple properties.* A home purchase loan includes a loan secured by one dwelling, with the proceeds to be used to purchase another dwelling. (Paragraphs IV. and V.A.5. Code 1. of Appendix A of this part.)

2. *Mixed-use property.* A loan to purchase property used primarily for residential purposes (for example, an apartment building containing a convenience store) is a home purchase loan. (Paragraphs IV.A., IV.B.1. and V.A.5. Code 1. of Appendix A of this part.)

3. *Commercial and other loans.* A home purchase loan includes a loan for home purchase purposes originated outside an institution's mortgage lending division (such as a loan for the purchase of an apartment building handled by the institution's commercial loan department). (Paragraphs IV. and V.A.5. Code 1. of Appendix A of this part.)

4. *Farm loan.* If the property being purchased is used primarily for agricultural purposes—even if the property includes a dwelling—a loan to purchase the property is not a home purchase loan. (Paragraphs IV.B.1. and V.A.5. Code 1. of Appendix A of this part.)

5. *Construction/permanent loan.* Construction-only loans are "temporary" financings under Regulation C and are not reported. If the institution commits to provide both the construction and the permanent financing, however, the loan is a home purchase loan for purposes of Regulation C. (Paragraphs IV.A. and B.2 and V.A.5. Code 1. of Appendix A of this part.)

6. *Home equity lines.* An institution may report the part of a home equity line of credit that is for home purchase. An institution may rely on the oral or written statement of an applicant or borrower that the loan proceeds will be used for home purchase purposes. An institution that reports the origination of home equity lines must also report applications that did not result in originations. (Paragraphs IV. and V.A.5. Code 1. of Appendix A of this part.)

Section 203.3—Exempt Institutions

3(a) Exemption based on location, asset size, or number of home-purchase loans.

1. *General.* An institution that ceases to be a financial institution (as that term is defined in § 203.2(e)) or that becomes an exempt institution under this section may stop collecting HMDA data beginning with the first calendar year after the event that resulted in noncoverage. For example, a bank whose assets drop to $10 million or less on December 31 of a given year collects data for that full calendar year, but need not collect data for the succeeding year. (Paragraph I. of Appendix A of this part.)

2. *Coverage after a merger.* Data collection responsibilities under several scenarios are described below for the calendar year of the merger. (Paragraph I. of Appendix A of this part.)

i. Two institutions are exempt from Regulation C. The institutions merge, producing a covered institution. No data collection is required; the surviving institution begins HMDA data collection in the following calendar year.

ii. A covered and an exempt institution merge. The covered institution is the surviving institution. Data collection is required for the covered institution's transactions; data collection is optional for transactions of the previously exempt institution (for example, transactions handled in offices of the previously exempt institution).

iii. A covered and an exempt institution merge. The exempt institution is the surviving institution. Data collection is required for the covered institution's transactions taking place prior to the merger, and is optional for transactions taking place after the merger date and attributable to the covered institution.

iv. Two covered institutions merge. The surviving institution is required to collect all data for both institutions; it may file a consolidated submission or separate submissions for that year.

3. *Mergers versus purchases in bulk.* If a covered institution acquires loans in bulk from another institution (for example, the receiver of a failed institution), but no merger or acquisition is involved, the institution treats the loans as purchased loans. (Paragraph V.B. of Appendix A of this part.)

Section 203.4—Compilation of Loan Data

4(a) Data format and itemization.

1. *Quarterly updating.* An institution should make a good-faith effort to enter all data concerning covered transactions—loan originations (including refinancings), loan purchases, and the disposition of applications that did not result in an origination—fully and accurately within 30 days after the end of each calendar quarter. If the quarterly update shows that some data are inaccurate or incomplete despite this good-faith effort, the error or omission is not a violation of Regulation C. (Paragraph II.E. of Appendix A of this part.)

Paragraph 4(a)(1).

1. *Application date—consistency.* In reporting the date of application, an institution enters the date an application was received or the date shown on the application. The institution should be consistent in its practice. (Paragraph V.A.2. of Appendix A of this part.)

2. *Application date—application received through broker.* For an application forwarded by a broker, an institution enters the date the application was received by the broker, the date the application was received by the institution, or the date shown on the application. The institution should be consistent in its practice. (Paragraph V.A.2. of Appendix A of this part.)

3. *Application date—reinstated application.* If an applicant asks an institution to reinstate a counteroffer that the applicant previously rejected (or to reconsider a denied application), the institution may treat the request as the

continuation of a single transaction if the applicant's request occurs within the same calendar year as the prior disposition of the application. Alternatively, the institution may treat the request as a separate transaction and the date of the request as the application date. (Paragraph V.A.2. of Appendix A of this part.)

Paragraph 4(a)(3).

1. *Loans outside an MSA.* If a loan relates to property not located in an MSA (or to property in an MSA where the institution has no home or branch office under Regulation C), the institution may report the actual occupancy status or use the code for "not applicable." (Paragraphs V.A.7.c. and V.C.6. of Appendix A of this part.)

2. *Multiple properties.* If a loan relates to multiple properties, the institution reports the owner-occupancy status for the property that is reported under comment 1 to paragraph 203.4(a)(6). (Paragraph V.A.6. of Appendix A of this part.)

Paragraph 4(a)(4).

1. *Multiple purpose loan.* If a loan relates to other purposes in addition to home purchase or home improvement, the institution reports the entire amount of the loan, even though not all of the proceeds are for home purchase or home improvement. (Paragraph V.A.8. of Appendix A of this part.)

2. *Home equity line of credit.* An institution that reports home equity lines reports only the amount that the applicant indicates will be used for home improvement or home purchase purposes. (Paragraph V.A.8.c. of Appendix A of this part.)

3. *Counteroffer.* If an institution makes a counteroffer to lend an amount different from an applicant's initial request and the counteroffer is accepted, the institution reports the loan amount as the amount actually granted. If the counteroffer is rejected or if the applicant fails to respond to the counteroffer, the institution reports the amount initially requested. (Paragraph V.A.8.f. of Appendix A of this part.)

4. *Participation loan.* An institution reporting a participation loan origination enters the amount of its interest. (Paragraph V.A.8. of Appendix A of this part.)

Paragraph 4(a)(5).

1. *Action taken—counteroffer.* If an institution makes a counteroffer to lend an amount different from an applicant's initial request and the counteroffer is accepted, the institution reports the loan as an origination. If the counteroffer is rejected or if the applicant fails to respond to the counteroffer, the institution reports the action taken as a denial. (Paragraph V.B. of Appendix A of this part.)

2. *Action taken—rescinded transaction.* If an applicant rescinds a transaction after closing, an institution reports the action taken as an origination or as approved but not accepted. (Paragraph V.B. of Appendix A of this part.)

3. *Action taken—purchased loan.* An institution reports only purchased loans, not loans that the institution has declined to purchase. (Paragraph V.B. of Appendix A of this part.)

4. *Action taken—conditional approval.* If an institution issues a loan approval subject to the applicant's meeting certain underwriting or other conditions and the conditions are not met, the institution reports the action taken as a denial. (Paragraph V.B. of Appendix A of this part.)

5. *Action taken date—approved but not accepted.* For a loan approved by the institution but not accepted by the applicant, the institution reports either the date of the commitment letter sent to the applicant or any deadline that the institution gave the applicant for accepting the offer. The institution should be consistent in its practice. (Paragraph V.B.3.b. of Appendix A of this part.)

6. *Action taken date—origination.* Generally, for originations, an institution enters the settlement or closing date. For a loan that an investor institution acquired through a broker and reports as an origination, the institution enters the settlement date, the closing date, or the date the institution acquired the loan from the broker. The institution should be consistent in its practice. (Paragraph V.B.3. of Appendix A of this part.)

7. *Action taken date—construction/permanent loan.* For a construction/permanent loan, the institution reports the date the institution enters into the construction-loan transaction or when the loan converts to the permanent financing. The institution should be consistent in its practice. (Paragraph V.B.3. of Appendix A of this part.)

Paragraph 4(a)(6).

1. *Multiple properties.* For a loan secured by one dwelling and made for the purpose of purchasing or improving another dwelling or dwellings, an institution reports the location of the property taken as security. For a loan secured by two or more dwellings, and for the purpose of purchasing or improving one of those dwellings, an institution reports the location of the purchased property. (Paragraph V.C. of Appendix A of this part.) For example:

i. For a loan to purchase or improve property A, secured by property B, report the location of B (the property taken as security);

ii. For a loan to purchase or improve properties A and B, secured by property C, report the location of C (the property taken as security);

iii. For a loan to purchase or improve property A, secured by properties A and B, report the location of A (the property purchased or improved); and

iv. For a loan to purchase or improve properties A and B, secured by properties A and B, the institution may report the location of A or B (one of the properties taken as security). Alternatively, the institution may report the loan in two entries on its Loan/Application Register (using unique identifiers and allocating the loan amount between A and B).

2. *Loans purchased from another institution.* The requirement to report the location of a property in an MSA where the institution has a home or branch office applies not only to loan applications and originations but also to loans purchased from another institution. This includes loans purchased from an institution that itself did not have a home or branch office in that MSA (and thus may not have collected the property location information). (Paragraph V.C. of Appendix A of this part.)

3. *Mobile or manufactured home.* If information about the potential site of a mobile or manufactured home is not available, an institution may enter the code for "not applicable." (Paragraph V.C. of Appendix A of this part.)

4. *Use of BNA permitted.* Block numbering areas (BNAs) are statistical subdivisions delineated by state agencies and the U.S. Census Bureau for grouping and numbering blocks in counties for which census tracts have not been established. BNAs (which generally are identified in census data by numbers in the range 9501 to 9999.99) may be entered if no census tract number exists. (Paragraph V.C.4. of Appendix A of this part.)

Paragraph 4(a)(7).

1. *Applicant data—joint applicant.* If a joint applicant does not file the application in person and does not provide the monitoring information, the institution reports using the code for information not provided by applicant in mail or telephone application. (Paragraph V.D. of Appendix A of this part.)

2. *Applicant data—application completed in person.* When an applicant meets with a loan officer to complete an application that was begun previously (for example by mail or telephone), the institution must treat the application as taken in person and request the monitoring information. A loan closing is not a meeting with a loan officer to complete an application. (Paragraph V.D. of Appendix A of this part.)

3. *Applicant data—completion by applicant.* An institution reports the monitoring information an applicant provides. If an applicant fails to provide the requested information for an application taken in person, the institution enters the data on the basis of visual observation or surname. If an applicant checks the "other" box the institution must report using the "other" code. (Paragraph V.D. of Appendix A of this part.)

4. *Applicant data—interactive video application.* An institution that uses an interactive application process with video capabilities should treat these applications as taken in person and collect the information about race or national origin and sex of applicants. (Paragraph V.D. of Appendix A of this part.) (See Appendix B of this part for procedures to be used for data collection.)

5. *Income data—income relied upon.* Except for income of cosigners (sureties) and guarantors, an institution enters the gross annual income relied on in evaluating the creditworthiness of applicants. For example, if an institution uses an applicant's salary to compute a debt-to-income ratio, but also relies on the applicant's annual bonus to meet underwriting standards and approve the loan, the institution reports both salary and bonus. (Paragraph V.D.5. of Appendix A of this part.)

6. *Income data—co-applicant.* If two persons jointly apply for a loan and both list income on the application, but the institution relies only on the income of one applicant in evaluating creditworthiness, the institution should report only the income of the one applicant. (Paragraph V.D.5. of Appendix A of this part.)

7. *Income data—cosigners and guarantors.* Although an institution may rely on the income of cosigners and guarantors in making a credit decision, an institution does not report this income. Because cosigners and guarantors generally are not "applicants" under Regulation B, they are not treated as co-applicants under Regulation C. (Paragraph V.D.5. of Appendix A of this part.)

8. *Income data—loan to employee.* An institution may enter "NA" in the income field for a loan to its employee for privacy reasons, even though the institution may have relied on income in making its credit decisions. (Paragraph V.D.5. of Appendix A of this part.)

Paragraph 4(a)(8).

1. *Type of purchaser—loan participation interests sold to more than one entity.* Where a loan is originated by one institution but is sold to more than one entity, the originating institution reports the type of purchaser based on the entity purchasing a majority interest, if any. Otherwise, the institution uses the code for loans not sold in the calendar year covered by the register. (Paragraph V.E. of Appendix A of this part.)

4(c) Optional data.

1. *Agency requirements.* The reporting of reasons for denial, although optional under HMDA and Regulation C, may be required information for institutions that are regulated by an agency such as the Office of Thrift Supervision. (Paragraph V.F. of Appendix A of this part.)

4(d) Excluded data.

1. *Loan pool.* The purchase of an interest in a loan pool (such as a mortgage-participation certificate, a mortgage-backed security, or a real estate mortgage investment conduit or "REMIC") is a purchase of an interest in a security and is not reported. (Paragraph IV.B.5. of Appendix A of this part.)

Section 203.5—Disclosure and Reporting

5(a) Reporting to agency.

1. *Change in supervisory agency.* If the supervisory agency of a covered institution changes, the institution reports data for the year of the change and subsequent years to its new supervisory agency. (Paragraphs I., III. and IV. of Appendix A of this part.)

2. *Subsidiaries.* An institution is a subsidiary of a bank or savings association (for purposes of reporting HMDA data to the parent's supervisory agency) if the bank or savings association holds or controls an ownership interest that is greater than 50 percent of the institution. (Paragraph I.E. of Appendix A of this part.)

5(e) Notice of availability.

1. *Poster—suggested text.* The wording of the poster text provided in Appendix A ("Instructions for Completing the HMDA-LAR") is optional. An institution may use other text that meets the requirements of the regulation. (Paragraph III.G. of Appendix A of this part.)

Section 203.6—Enforcement

6(b) Bona fide errors.

1. *Bona fide error—data from third parties.* Although an institution may obtain the property location information for applications and loans from third parties (such as appraisers or "geocoding" vendors), the reporting institution is responsible for ensuring that the data are correct. An incorrect census tract number can be treated as a bona fide error (and is thus not a violation of the act or regulation) only if the institution has maintained procedures reasonably adopted to avoid the error, such as performing an audit of the information. (Paragraph V.C. of Appendix A of this part.)

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority, June 1, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95-13861 Filed 6-6-95; 8:45 am]

BILLING CODE 6210-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM-111; Notice No. SC-95-4-NM]

Special Conditions: Israel Aircraft Industries Model Galaxy Series Airplane, High Altitude Operation

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the Israel Aircraft Industries (IAI) Ltd. Model Galaxy airplane. This new airplane will have an unusual design feature associated with an unusually high operating altitude (45,000 feet), for which the applicable airworthiness regulations do not contain adequate or appropriate safety standards. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Comments must be received on or before July 24, 1995.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, Attn.: Rules Docket (ANM-7), Docket No. NM-111, 1601 Lind Avenue SW., Renton, Washington, 98055-4056; or delivered in duplicate to the Office of the Assistant Chief Counsel at the above address. Comments must be marked "Docket No. NM-111." Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Timothy Dulin, FAA, Standardization Branch, ANM-113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055-4056, telephone (206) 227-2141.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these proposed special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket and special conditions number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. These special conditions may be changed in light of the comments received. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this request must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM-111." The postcard will be date stamped and returned to the commenter.

Background

On July 29, 1992, IAI Ltd., Ben-Gurion International Airport, 70100, Israel, applied for a new type certificate in the transport airplane category for the Model Galaxy airplane. The IAI Model Galaxy airplane is a derivative of the IAI Model 1125 Westwind Astra and is designed to be a long range, high speed swept low wing airplane with two aftfuselage mounted Pratt & Whitney PW 306A engines and a conventional empennage.

The type design of the Model Galaxy contains a number of novel and unusual design features for an airplane type certificated under the applicable provisions of part 25 of the Federal Aviation Regulations (FAR). Those features include the relatively small passenger cabin volume and a high maximum operating altitude. The applicable airworthiness requirements do not contain adequate or appropriate safety standards for the IAI Galaxy; therefore, special conditions are necessary to establish a level of safety

equivalent to that established in the regulations.

Type Certification Basis

Under the provisions of § 21.17 of the FAR, IAI Ltd. must show that the Galaxy meets the applicable provisions of part 25, effective February 1, 1965, as amended by Amendments 25–1 through 25–77. The certification basis may also include later amendments to part 25 that are not relevant to these special conditions. In addition, the certification basis for the Galaxy includes part 34, effective September 10, 1990, plus any amendments in effect at the time of certification; and part 36, effective December 1, 1969, as amended by Amendments 36–1 through the amendment in effect at the time of certification. These special conditions form an additional part of the type certification basis. In addition, the certification basis may include other special conditions that are not relevant to these special conditions.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25, as amended) do not contain adequate or appropriate safety standards for the Galaxy because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29, and become part of the type certification basis in accordance with § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Feature

The IAI Galaxy will incorporate an unusual design feature in that it will be certified to operate up to an altitude of 45,000 feet.

The FAA considers certification of transport category airplanes for operation at altitudes greater than 41,000 feet to be a novel or unusual feature because current part 25 does not contain standards to ensure the same level of safety as that provided during operation at lower altitudes. Special conditions have therefore been adopted to provide adequate standards for transport category airplanes previously approved for operation at these high altitudes, including certain Learjet models, the Boeing Model 747, Dassault-Breguet Falcon 900, Canadair Model 600, Cessna Model 650, Israel Aircraft Industries Model 1125 Westwind Astra, and Cessna Model 560. The special conditions for the Learjet Model 45 are considered the most applicable to the Galaxy and its proposed operation and are therefore used as the basis for the special conditions described below.

Damage tolerance methods are proposed to be used to ensure pressure vessel integrity while operating at the higher altitudes, in lieu of the ½-bay crack criterion used in some previous special conditions. Crack growth data are used to prescribe an inspection program that should detect cracks before an opening in the pressure vessel would allow rapid depressurization. Initial crack sizes for detection are determined under § 25.571, as amended by Amendment 25–72. The maximum extent of failure and pressure vessel opening determined from the above analysis must be demonstrated to comply with the pressurization section of the proposed special conditions, which state that the cabin altitude after failure must not exceed the cabin altitude/time curve limits shown in Figures 3 and 4.

In order to ensure that there is adequate fresh air for crewmembers to perform their duties, to provide reasonable passenger comfort, and to enable occupants to better withstand the effects of decompression at high altitudes, the ventilation system must be designed to provide 10 cubic feet of fresh air per minute per person during normal operations. Therefore, these special conditions require that crewmembers and passengers be provided with 10 cubic feet of fresh air per minute per person. In addition, during the development of the supersonic transport special conditions, it was noted that certain pressurization failures resulted in hot ram or bleed air being used to maintain pressurization. Such a measure can lead to cabin temperatures that exceed human tolerance. Therefore, these special conditions require airplane interior temperature limits following probable and improbable failures.

Continuous flow passenger oxygen equipment is certificated for use up to 40,000 feet; however, for rapid decompressions above 34,000 feet, reverse diffusion leads to low oxygen partial pressures in the lungs, to the extent that a small percentage of passengers may lose useful consciousness at 35,000 feet. The percentage increases to an estimated 60 percent at 40,000 feet, even with the use of the continuous flow system. Therefore, to prevent permanent physiological damage, the cabin altitude must not exceed 25,000 feet for more than 2 minutes, or 40,000 feet for any time period. The maximum peak cabin altitude of 40,000 feet is consistent with the standards established for previous certification programs. In addition, at high altitudes the other aspects of decompression sickness have a significant, detrimental effect on pilot performance (for example, a pilot can be incapacitated by internal expanding gases).

Decompression resulting in cabin altitudes above the 37,000-foot limit depicted in Figure 4 approaches the physiological limits of the average person; therefore, every effort must be made to provide the pilots with adequate oxygen equipment to withstand these severe decompressions. Reducing the time interval between pressurization failure and the time the pilots receive oxygen will provide a safety margin against being incapacitated and can be accomplished by the use of mask-mounted regulators. These special conditions therefore require pressure demand masks with mask-mounted regulators for the flightcrew. This combination of equipment will provide the best practical protection for the failures covered by the special conditions and for improbable failures not covered by the special conditions, provided the cabin altitude is limited.

As discussed above, these special conditions are applicable to the IAI Model Galaxy. Should IAI Ltd. apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain design features on the IAI Ltd. Model Galaxy airplane. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. app. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f–10, 4321 et seq.; E.O. 11514; and 49 U.S.C. 106(g).

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for the IAI Ltd. Model Galaxy series airplanes:

Operation to 45,000 Feet

1. *Pressure Vessel Integrity.*

(a) The maximum extent of failure and pressure vessel opening that can be demonstrated to comply with paragraph 4 (Pressurization) of this special condition must be determined. It must be demonstrated by crack propagation and damage tolerance analysis supported by testing that a larger opening or a more severe failure than demonstrated will not occur in normal operations.

(b) Inspection schedules and procedures must be established to ensure that cracks and normal fuselage leak rates will not deteriorate to the extent that an unsafe condition could exist during normal operation.

2. *Ventilation.* In lieu of the requirements of § 25.831(a), the ventilation system must be designed to provide a sufficient amount of uncontaminated air to enable the crewmembers to perform their duties without undue discomfort or fatigue, and to provide reasonable passenger comfort during normal operation conditions and also in the event of any probable failure of any system that could adversely affect the cabin ventilating air. For normal operations, crewmembers and passengers must be provided with at least 10 cubic feet of fresh air per minute per person, or the equivalent in filtered, recirculated air based on the volume and composition at the corresponding cabin pressure altitude of not more than 8,000 feet.

3. *Air Conditioning.* In addition to the requirements of § 25.831, paragraphs (b) through (e), the cabin cooling system must be designed to meet the following conditions during flight above 15,000 feet mean sea level (MSL):

(a) After any probable failure, the cabin temperature-time history may not exceed the values shown in Figure 1.

(b) After any improbable failure, the cabin temperature-time history may not exceed the values shown in Figure 2.

4. *Pressurization.* In addition to the requirements of § 25.841, the following apply:

(a) The pressurization system, which includes for this purpose bleed air, air conditioning, and pressure control systems, must prevent the cabin altitude from exceeding the cabin altitude-time history shown in Figure 3 after each of the following:

(1) Any probable malfunction or failure of the pressurization system. The existence of undetected, latent malfunctions or failures in conjunction with probable failures must be considered.

(2) Any single failure in the pressurization system, combined with the occurrence of a leak produced by a complete loss of a door seal element, or a fuselage leak through an opening having an effective area 2.0 times the effective area that produces the maximum permissible fuselage leak rate approved for normal operation, whichever produces a more severe leak.

(b) The cabin altitude-time history may not exceed that shown in Figure 4 after each of the following:

(1) The maximum pressure vessel opening resulting from an initially detectable crack propagating for a period encompassing four normal inspection intervals. Mid-panel cracks and cracks through skin-stringer and skin-frame combinations must be considered.

(2) The pressure vessel opening or duct failure resulting from probable damage (failure effect) while under maximum operating cabin pressure differential due to a tire burst, engine rotor burst, loss of antennas or stall warning vanes, or any probable equipment failure (bleed air, pressure control, air conditioning, electrical source(s), etc.) that affects pressurization.

(3) Complete loss of thrust from all engines.

(c) In showing compliance with paragraphs 4(a) and 4(b) of these special conditions (Pressurization), it may be assumed that an emergency descent is made by approved emergency procedure. A 17-second crew recognition and reaction time must be applied between cabin altitude warning and the initiation of an emergency descent.

Note: For the flight evaluation of the rapid descent, the test article must have the cabin volume representative of what is expected to be normal, such that IAI Ltd. must reduce the total cabin volume by that which would be occupied by the furnishings and total number of people.

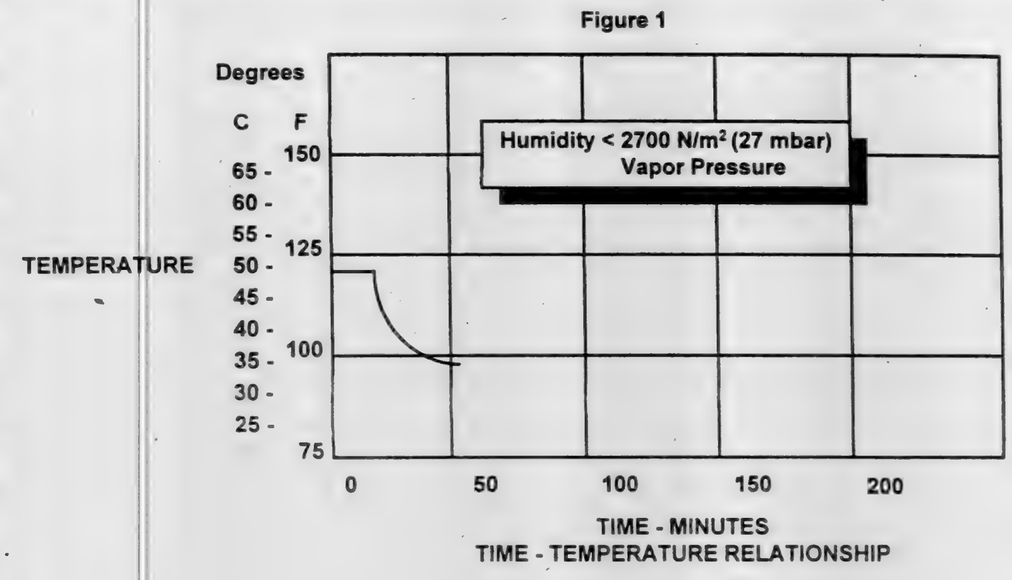
5. *Oxygen Equipment and Supply.*

(a) A continuous flow oxygen system must be provided for the passengers.

(b) A quick-donning pressure demand mask with mask-mounted regulator must be provided for each pilot. Quick-donning from the stowed position must be demonstrated to show that the mask can be withdrawn from stowage and donned within 5 seconds.

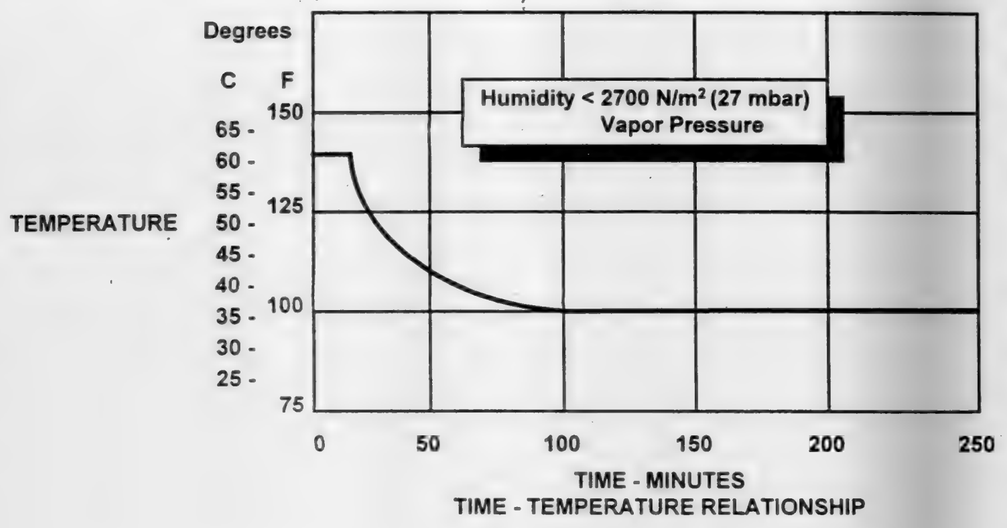
BILLING CODE 4910-13-M

Figure 1



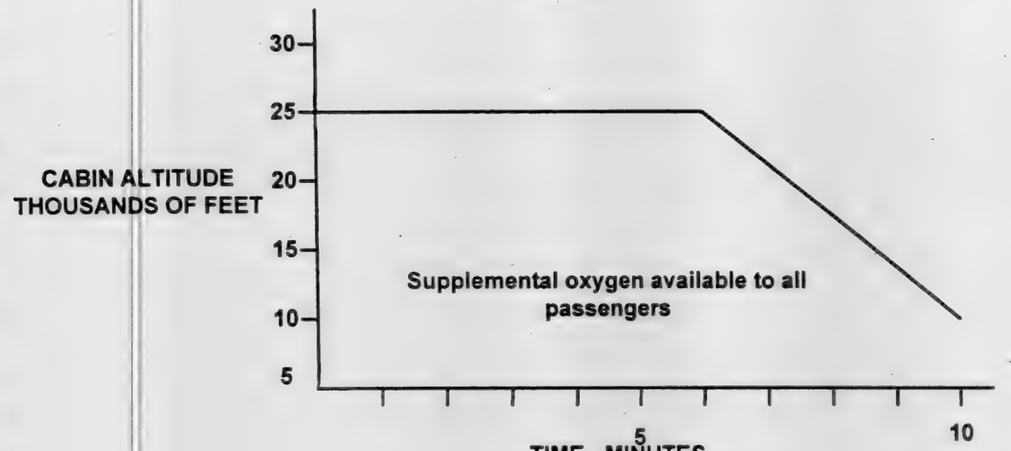
TIME - TEMPERATURE RELATIONSHIP

Figure 2



TIME - TEMPERATURE RELATIONSHIP

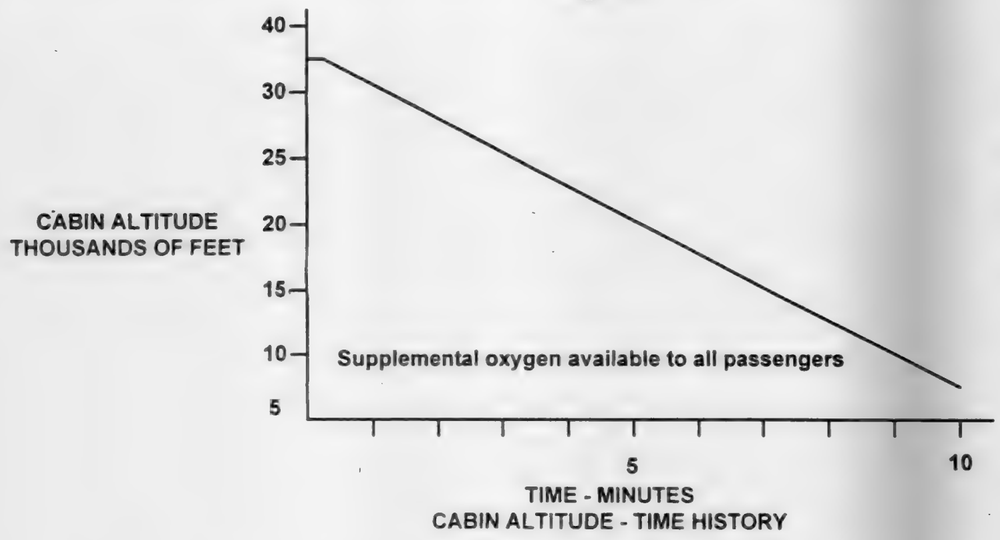
Figure 3



CABIN ALTITUDE - TIME HISTORY

NOTE: For figure 3, time starts at the moment cabin altitude exceeds 8,000 feet during depressurization. If depressurization analysis shows that the cabin altitude limit of this curve is exceeded, the following alternate limitations apply: After depressurization, the maximum cabin altitude exceedence is limited to 30,000 feet. The maximum time the cabin altitude may exceed 25,000 feet is 2 minutes; time starting when the cabin altitude exceeds 25,000 feet and ending when it returns to 25,000 feet.

Figure 4



NOTE: For figure 4 , time starts at the moment cabin altitude exceeds 8,000 feet during depressurization. If depressurization analysis shows that the cabin altitude limit of this curve is exceeded, the following alternate limitations apply: After depressurization, the maximum cabin altitude exceedence is limited to 40,000 feet. The maximum time the cabin altitude may exceed 25,000 feet is 2 minutes; time starting when the cabin altitude exceeds 25,000 feet and ending when it returns to 25,000 feet.

BILLING CODE 4910–13–C

Issued in Renton, Washington, on May 26, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 95–13940 Filed 6–6–95; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 95–AAL–1]

Proposed Establishment and Alteration of Class E Airspace; Fort Yukon, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a Class E2 airspace area and amend the Class E5 airspace area at Fort Yukon, Alaska. The intended effect of this proposal is to provide controlled airspace for aircraft executing the Standard Instrument Approach Procedure (SIAP) at the Fort Yukon Airport. The area would be depicted on aeronautical charts.

DATES: Comments must be received on or before July 10, 1995.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, AAL–530, Federal Aviation Administration, Docket No. 95–AAL–1, 222 West 7th Avenue, #14, Anchorage, AK 99513–7587.

The official docket may be examined in the Office of the Assistant Chief Counsel for the Alaskan Region at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Robert C. Durand, AAL–531, 222 West 7th Avenue #14, Anchorage, AK 99513–7587; telephone: (907) 271–5898.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 95–AAL–1." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, System Management Branch, AAL–530, 222 West 7th Avenue, #14, Anchorage, AK 99513–7587 or by calling (907) 271–5898. Communications must identify the notice number of this NPRM. Persons interested in being placed on mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish new Class E airspace and revise the existing Class E airspace to provide additional controlled airspace for Instrument Flight Rules (IFR) procedures at the Fort Yukon Airport. The FAA has recomputed the terminal airspace requirements for all the SIAP's and installed an Automated Weather Observation Station (AWOS) at the Fort Yukon Airport. The additional airspace would provide required controlled airspace for IFR procedures at the Fort Yukon Airport. The area would be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures. Class E airspace designations for airspace areas designated as a surface area for an airport are published in paragraph 6002 of FAA Order 7400.9B, dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1, and Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9B, dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 6002 Class E Airspace Areas Designated as a Surface Area for an Airport.

* * * * *

AAL AK E2 Fort Yukon, AK [New]

Fort Yukon Airport, AK
(Lat. 66°34'18" N, long. 145°15'01" W)
Yukon River, NDB
(Lat. 66°34'48" N, long. 145°12'46" W)
Fort Yukon VORTAC
(Lat. 66°34'28" N, long. 145°16'36" W)

That airspace extending upward from the surface within a 4-mile radius of the Fort Yukon Airport and within 2.5 miles each side of the Yukon River NDB 059° bearing extending from the 4-mile radius to 8.2 miles northeast of the airport and within 3.3 miles each side of the Fort Yukon VORTAC 075° radial extending from the 4-mile radius to

11.6 miles east of the airport and within 3.3 miles each side of the Fort Yukon VORTAC 213° radial extending from the 4-mile radius to 12.4 miles southwest of the airport. This Class E airspace area is effective during the specific dates and times established in advance by Notice to Airmen. The effective date and time will thereafter be continuously published in the Supplement Alaska (Airport/Facility Directory).

* * * * *

Paragraph 6005 Class E Airspace Areas Extending From 700 Feet or More Above the Surface of the Earth.

* * * * *

AAL AK E5 Fort Yukon, AK [Revised]

Fort Yukon Airport, AK
(Lat. 66°34'18" N, long. 145°15'01" W)
Yukon River, NDB
(Lat. 66°34'48" N, long. 145°12'46" W)
Fort Yukon VORTAC
(Lat. 66°34'28" N, long. 145°16'36" W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Fort Yukon Airport and within 4 miles each side of the 213° radial of the Fort Yukon VORTAC extending from the 6.5-mile radius to 15.4 miles southwest of the airport and within 4 miles each side of the 075° radial or the Fort Yukon VORTAC extending from the 6.5-mile radius to 14.6 miles east of the airport and within 3 miles each side of the Yukon River NDB 059° bearing extending from the 6.5-mile radius to 11.3 miles northeast of the airport.

* * * * *

Issued in Anchorage, Alaska on May 12, 1995.

Trent S. Cummings,

Acting Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 95–13936 Filed 6–6–95; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 95–ACE–5]

Proposed Amendment to Class E Airspace; Scott City, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Class E airspace area at Scott City, KS. The development of a new standard instrument approach procedure (SIAP) at Scott City Municipal Airport, Scott City, KS, utilizing the Scott City NDB has made the proposal necessary. The intended effect of this proposal is to provide controlled airspace for aircraft executing the SIAP at Scott City, KS.

DATES: Comments must be received on or before June 30, 1995.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Operations Branch, ACE–530, Federal Aviation Administration, Docket No. 95–ACE–5, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Assistant Chief Counsel for the Central Region at the same address between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the office of the Manager, Air Traffic Operations Branch, Air Traffic Division, at the address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, ACE–530c, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 95–ACE–5." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to provide additional controlled airspace for a new Instrument Flight Rules (IFR) procedure at the Scott City Municipal Airport. The area would be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9B, dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending From 700 Feet or More Above the Surface of the Earth

* * * * *

ACE IA E5 Scott City, KS [New]

Scott City Municipal Airport, KS.
(Lat. 38°28'30"N, long. 100°53'05"W)
Scott City NDB
(Lat. 38°28'49"N, long. 100°53'18"W)

That airspace extending upward from 700 feet above the surface within 6.5-mile radius of the Scott City Municipal Airport and within 2.5 miles each side of the 169° bearing from the Scott City NDB extending from the 6.5-mile radius to 7 miles south of the airport.

* * * * *

Issued in Kansas City, MO, on May 8, 1995.

Herman J. Lyons, Jr.,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 95–13937 Filed 6–6–95; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 95–AGL–02]

Proposed Amendment of Class E Airspace; Cadillac, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend Class E Airspace at Cadillac, MI. A Global Positioning System (GPS) standard instrument approach procedure (SIAP) to Runway 25 has been developed for the Wexford County Airport. Additional controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed for aircraft executing the approach. The intended effect of this proposal is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

DATES: Comments must be received on or before July 19, 1995.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 95–AGL–02, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, System Management Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Jeffrey L. Griffith, Air Traffic Division, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (708) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 95–AGL–02." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of the Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend Class E airspace at Cadillac, MI; this proposal would provide adequate Class E airspace for IFR operators executing the GPS Runway 25 SIAP at Wexford County Airport. Controlled airspace extending from 700 to 1200 feet AGL is needed for aircraft executing the approach. The intended effect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions. Aeronautical maps and charts would reflect the defined area which would enable pilots to circumnavigate the area in order to comply with applicable visual flight rules requirements.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only effect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a

substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

AGL MI E5 Cadillac, MI [Revised]

(lat. 44°16'31" N., long. 85°25'08" W.)

That airspace extending upward from 700 feet above the surface within a 7.4 mile radius of the Wexford County Airport and within 3.9 miles either side of the 246 degree bearing from the airport extending from the 7.4 mile radius to 8.3 miles southwest of the airport, and within 1.7 miles either side of the 062 degree bearing from the airport extending from the 7.4 mile radius to 10.3 miles northeast of the airport.

* * * * *

Issued in Des Plaines, Illinois on May 22, 1995.

Roger Wall,

Manager, Air Traffic Division.

[FR Doc. 95–13939 Filed 6–6–95; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 792

[Docket No. 950525141–5141–01]

Administration of State Log Exports Ban

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Advance notice of proposed rulemaking with request for comments.

SUMMARY: This notice announces the Department of Commerce's intention to issue regulations implementing the ban on the export of unprocessed timber originating from non-Federal public lands in 17 western states pursuant to the Forest Resources Conservation and Shortage Relief Act of 1990, as amended (FRCSRA). This notice delineates the actions the Department is considering taking to implement the FRCSRA and requests public comments on these actions.

DATES: Comments must be received by July 7, 1995.

ADDRESSES: Written comments (three copies) should be sent to: Steven C. Goldman, Acting Director, Office of Chemical and Biological Controls and Treaty Compliance, Bureau of Export Administration, U.S. Department of Commerce, Washington, D.C. 20230, Telephone: (202) 482–3825, Fax (202) 482–0751.

FOR FURTHER INFORMATION CONTACT: Bernard Kritzer, Manager, Short Supply Program, Office of Chemical and Biological Controls and Treaty Compliance, Bureau of Export Administration, U.S. Department of Commerce, Washington, D.C. 20230, Telephone: (202) 482–0894, Fax (202) 482–0751.

SUPPLEMENTARY INFORMATION:

Background

Section 491 of the Forest Resources Conservation and Shortage Relief Act of 1990, (Pub. L. 101–382, 16 U.S.C. 620 et seq.) (the Act), requires the Secretary of Commerce to issue orders restricting the export of unprocessed timber originating from non-Federal public lands located west of the 100th meridian in the contiguous United States (state timber). Prior to its amendment in 1993, the Act required the affected States to issue and implement regulations administering the export ban. On May 4, 1993, the U.S. Ninth Circuit Court of Appeals held unconstitutional the provisions of the Act that required the States to implement the Act's prohibitions.

On July 1, 1993, the President signed into law Public Law 103–45, the Forest Resources Conservation and Shortage Relief Amendments Act of 1993 (the Amendments Act). The Amendments Act reassigned the export control implementation responsibilities from the States to the Federal government (Federal Program), specifically to the Secretary of Commerce. It also allows individual states to petition the Secretary to approve their own programs to implement the ban on exports of state timber (State Program). If the Secretary approves a State Program, it applies in that State in lieu of the Federal Program.

Scope of the Export Ban

Pursuant to the FRCSRA, on August 23, 1993, the Secretary of Commerce signed a General Order (Order) prohibiting the export of State timber effective June 1, 1993 (58 F.R. 55038). This Order affects Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, New Mexico, Nevada, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, and Wyoming (the affected States). The export ban, however, excludes public lands in the State of Alaska and lands held in trust by any Federal or State official or agency for a recognized Indian tribe or for any member of such tribe.

The Order includes restrictions on who may purchase state timber to prevent the direct or indirect substitution of such timber for exported private timber. It also provides exemptions for certain prior contracts. For States with annual sales greater than 400 million board feet (MBF), the Order expires December 31, 1995. For States with annual sales of less than 400 MBF, the Order remains in effect permanently.

For States with annual sales of more than 400 MBF, section 491 (b)(2)(B) of the FRCSRA requires the Secretary to issue an Order, not later than September 30, 1995, for all periods on or after January 1, 1996, prohibiting the export of the lesser of 400 MBF or the annual sales volume in that State of unprocessed timber originating from public lands.

The FRCSRA allows the governor of each affected State to request that the Secretary of Commerce approve a State Program for the administration of its own state timber export controls in lieu of the Federal Program. On August 17, 1993, the Secretary authorized Washington to continue administering its pre-existing export control program on an interim basis. On March 10, 1994, the Secretary authorized Oregon to continue administering its pre-existing export control program on an interim basis. On June 1, 1995, the Secretary gave final authorization to Oregon and Washington to administer their pre-existing programs pursuant to Section 491(d) of the FRCSRA.

Proposed Elements of the Federal Program

This notice announces the Department of Commerce's intention to issue regulations implementing the ban on the export of state timber originating in the 15 States identified in the Order which have not had programs approved or had FRCSRA's prohibitions modified or removed pursuant to Section 491(h). Before drafting regulations, however, the Department seeks comments from interested parties on the following proposed elements of the Federal Program:

1. *Procedures to identify and mark State timber.* Pursuant to section 491(c)(1) of the FRCSRA, the Department proposes to require *owners/purchasers* of State timber:

(a) To identify and paint, by means described at subparagraphs (b) and (c) of this paragraph, State timber (sometimes hereafter "logs requiring domestic processing");

(b) To use highway yellow paint to identify logs requiring domestic processing. Before removal from the harvest area, the owner must paint each log at each end with a spot of highway yellow paint not less than three inches square;

(c) To retain the identification placed on an unprocessed log until the log is domestically processed. If a log is cut into two or more segments before processing, the owner is required to identify each segment in the same manner as the original log. The marking requirement would include all State timber;

2. *Procedures for documenting transfers of State timber.* Pursuant to Sections 492(a)(3) and 492(a)(4) of the FRCSRA, the Department proposes to require the following reporting procedures for the receipt and disposition of the unprocessed public timber:

(a) *Documenting the transfer of unprocessed State timber.* Each person who transfers to another person State timber must, before completing the transfer:

(i) Provide to the other person a written document identifying the public lands from which the timber originated and giving notice to the person of the prohibition against exporting the State timber or substituting it for exported private timber;

(ii) receive from the purchaser written acknowledgement of the notice, and a written agreement that the recipient of the timber will comply with all the requirements of the FRCSRA; and

(iii) provide annually to the Secretary of Commerce copies of all notices, acknowledgements, and agreements referred to in paragraphs (3)(a)(i) and (3)(a)(ii).

(b) *Documenting the acquisition of unprocessed State timber.* Each person who directly or indirectly acquires or processes State timber shall report the receipt and disposition of the timber to the Secretary of Commerce as follows:

(i) the source of the State timber acquired.

(ii) from whom the timber was acquired and to whom the timber was sold, transferred or otherwise conveyed; and

(iii) an accounting by source, in net board feet Scribner, or cubic feet, of the volume of State timber acquired, the volume domestically processed by the purchaser and the volume sold for domestic processing.

This requirement would apply to all intermediate parties until a purchaser sends the logs to a domestic sawmill and they are processed;

3. *Procedures for assessing civil penalties and applying administrative remedies for violations of the FRCSRA.* Pursuant to Section 492(c)(1)(B), if the Secretary of Commerce finds, on the record and after an opportunity for a hearing, that a person has exported or caused to be exported State timber with willful disregard of the Secretary's Orders, the Secretary may assess a civil penalty on such person. The civil penalty may be up to $500,000 for each violation or 3 times the gross value of unprocessed timber involved in the violation, whichever amount is greater.

Pursuant to Section 492(c)(2)(B), if the Secretary of Commerce finds on the record and after an opportunity for a hearing, that a person has violated any provision of the FRCSRA or any regulation issued under the FRCSRA relating to the export of unprocessed timber originating from public lands, whether or not the violation caused the export of unprocessed timber from public lands in violation of the FRCSRA, the Secretary may impose a civil penalty of up to $75,000 for each violation or up to $500,000 depending on the nature of the violation.

4. *Definition.* Pursuant to Section 493(7) of the FRCSRA, the term unprocessed timber means trees or portions of trees or other roundwood not processed to standards and specifications suitable for end product use. It does not include among other things chips, pulp, or pulp products and pulp logs or cull logs.

Petitions for Minimizing the Reporting Burdens on Those States That Do Not Export Timber From Public Lands

The Department is aware that a number of the states subject to the export ban have very small state timber sales volumes or do not sell state timber at all. The Department also is aware that some states do not have any unprocessed timber exported from state public lands. The Department is prepared to consider requests from such states for removal or modification of state restrictions, including reporting requirements of the Federal Program, pursuant to section 491(h) of the FRCSRA.

Particularly Useful Comments

The Department invites written comments from interested parties that may assist it in implementing the Federal Program. Specifically, information concerning the following would be particularly useful:

1. Under what circumstance should the Secretary include substitution as part of the rules for the Federal Program?

2. Are the Department's procedures for identifying and marking export-restricted State timber adequate to track such timber and prevent unauthorized export? Should the Department require persons/purchasers of State timber to hammer brand a log on each end with a brand approved for use by the Forest Supervisor of the State Forest in each affected State?

3. Are there more cost-effective ways to identify and track export-restricted State timber?

4. Is the Department's annual reporting requirement sufficient to track the flow of State timber?

Comment Procedures

The Department will consider public comments in the development of proposed regulations. The Department encourages interested persons who wish to comment to do so at the earliest possible time to permit the fullest consideration of their views.

The following procedures will apply to any comments submitted pursuant to this procedure:

1. Interested parties are invited to submit written comments (3 copies), opinions, data, information, or advice with respect to this notice to the address above by the dates specified above.

2. The Department will consider all comments received by the close of the comment period in developing proposed regulations. While comments received after the end of the comment period will be considered if possible, this cannot be assured.

3. All public comments on this advanced notice of proposed rulemaking will be a matter of public record and will be available for public inspection and copying. (Communications from agencies of the United States Government or foreign governments will not be made available for public inspection).

4. In the interest of accuracy and completeness, the Department requires comments in written form. Oral comments must be followed by written memoranda which will also be a matter of public record and will be available for public review and copying.

5. The Department will *not* accept public comments accompanied by a request that part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the person submitting the comments and will *not* consider them in the development of final regulations, and;

6. The comments received in response to this notice will be maintained in the Bureau of Export Administration, Freedom of Information Records Inspection Facility, Room 4525, Department of Commerce, 14th Street and Pennsylvania Avenue, N.W., Washington, DC 20239. Interested parties may inspect and copy records in this facility, including written public comments and memoranda summarizing the substance of oral communications, in accordance with regulations published in Part 4 of Title 15 of the Code of Federal Regulations. Information about the inspection and copying of records may be obtained from Margaret Cornejo, Bureau of Export Administration, Management Analyst, at the above address or by calling (202) 482–5653.

Rulemaking Requirements

The rule which is likely to be proposed based on this notice was determined to be significant under Executive Order 12866.

Dated: June 2, 1995.

Sue E. Eckert,

Assistant Secretary for Export Administration.

[FR Doc. 95–14038 Filed 6–6–95; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 872

[Docket No. 95N–0033]

Dental Devices; Effective Date of Requirement for Premarket Approval of Endodontic Dry Heat Sterilizer

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; opportunity to request a change in classification.

SUMMARY: The Food and Drug Administration (FDA) is proposing to require the filing of a premarket approval application (PMA) or a notice of completion of a product development protocol (PDP) for the endodontic dry heat sterilizer, a medical device. The agency also is summarizing its proposed findings regarding the degree of risk of illness or injury designed to be eliminated or reduced by requiring the device to meet the statute's approval requirements, and the benefits to the public from use of the device. In addition, FDA is announcing the opportunity for interested persons to request the agency to change the classification of the device based on new information.

DATES: Written comments by September 5, 1995; requests for a change in classification by June 22, 1995. FDA intends that, if a final rule based on this proposed rule is issued, PMA's will be required to be submitted within 90 days of the effective date of the final rule.

ADDRESSES: Submit written comments or requests for a change in classification to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ–84), Food and Drug Administration, 2094 Gaither Rd., Rockville, MD 20850, 301–594–4765.

SUPPLEMENTARY INFORMATION:

I. Background

Section 513 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c) requires the classification of medical devices into one of three regulatory classes: Class I (general controls), class II (special controls), and class III (premarket approval). Generally, devices that were on the market before May 28, 1976, the date of enactment of the Medical Device Amendments of 1976 (the amendments) (Pub. L. 94–295), and devices marketed on or after that date that are substantially equivalent to such devices, have been classified by FDA. For the sake of convenience, this preamble refers to both the devices that were on the market before May 28, 1976, and the substantially equivalent devices that were marketed on or after that date as "preamendments devices."

Section 515(b)(1) of the act (21 U.S.C. 360e(b)(1)) establishes the requirement that a preamendments device that FDA has classified into class III is subject to premarket approval. A preamendments class III device may be commercially distributed without an approved PMA or notice of completion of a PDP until 90 days after FDA issues a final rule requiring premarket approval for the device, or 30 months after final classification of the device under section 513 of the act, whichever is later. Also, a preamendments device, subject to the rulemaking procedure under section 515(b) of the act, is not required to have an approved investigational device exemption (IDE) (21 CFR part 812) contemporaneous with its interstate distribution until the date identified by FDA in the final rule requiring the submission of a PMA for the device.

Section 515(b)(2)(A) of the act provides that a proceeding to issue a final rule to require premarket approval shall be initiated by publication of a notice of proposed rulemaking containing: (1) The proposed rule; (2) proposed findings with respect to the degree of risk of illness or injury designed to be eliminated or reduced by requiring the device to have an approved PMA or a declared completed PDP and the benefit to the public from the use of the device; (3) an opportunity for the submission of comments on the proposed rule and the proposed findings; and (4) an opportunity to request a change in the classification of the device based on new information relevant to the classification of the device.

Section 515(b)(2)(B) of the act provides that if FDA receives a request for a change in the classification of the device within 15 days of the publication of the notice, FDA shall, within 60 days of the publication of the notice, consult with the appropriate FDA advisory committee and publish a notice denying the request for change of classification or announcing its intent to initiate a proceeding to reclassify the device under section 513(e) of the act. If FDA does not initiate such a proceeding, section 515(b)(3) of the act provides that FDA shall, after the close of the comment period on the proposed rule and consideration of any comments received, issue a final rule to require premarket approval, or publish a notice terminating the proceeding. If FDA terminates the proceeding, FDA is required to initiate reclassification of the device under section 513(e) of the act, unless the reason for termination is that the device is a banned device under section 516 of the act (21 U.S.C. 360f).

If a proposed rule to require premarket approval for a preamendments device is made final, section 501(f)(2)(B) of the act (21 U.S.C. 351(f)(2)(B)) requires that a PMA or a notice of completion of a PDP for any such device be filed within 90 days of the date of issuance of the final rule or 30 months after final classification of the device under section 513 of the act, whichever is later. If a PMA or a notice of completion of a PDP is not filed by the later of the two dates, commercial distribution of the device is required to cease. The device may, however, be distributed for investigational use if the manufacturer, importer, or other sponsor of the device complies with the IDE regulations. If a PMA or a notice of completion of a PDP is not filed by the later of the two dates, and no IDE is in effect, the device is deemed to be adulterated within the meaning of section 501(f)(1)(A) of the act, and subject to seizure and condemnation under section 304 of the act (21 U.S.C. 334) if its distribution continues. Shipment of the device in interstate commerce will be subject to injunction under section 302 of the act (21 U.S.C. 332), and the individuals responsible for such shipment will be subject to prosecution under section 303 of the act (21 U.S.C. 333). FDA has in the past requested that manufacturers take action to prevent the further use of devices for which no PMA has been filed and may determine that such a request is appropriate for endodontic dry heat sterilizers.

The act does not permit an extension of the 90-day period after issuance of a final rule within which an application or a notice is required to be filed. The House Report on the amendments states that:

> the thirty month 'grace period' afforded after classification of a device into class III * * * is sufficient time for manufacturers and importers to develop the data and conduct the investigations necessary to support an application for premarket approval.
>
> (H. Rept. 94–853, 94th Cong., 2d sess. 42 (1976).)

A. Classification of Endodontic Dry Heat Sterilizers

In the **Federal Register** of August 12, 1987 (52 FR 30082), FDA issued a final rule (§ 872.6730 (21 CFR 872.6730)) classifying the endodontic dry heat sterilizer into class III. The preamble to the proposal to classify the device published in the **Federal Register** of December 30, 1980 (45 FR 86155), included the recommendation of the Dental Device Classification Panel (the panel), of the Medical Devices Advisory Committee, an FDA advisory committee, regarding the classification of the device.

The panel recommended that the device be in class III (premarket approval) because the device presented an unreasonable risk of illness or injury. According to the panel, the devices failed to sterilize adequately various endodontic and dental instruments. The panel felt that the failures could be the result of: (1) The device not reaching and maintaining an adequate temperature because of a faulty thermostat or (2) the result of unequal heat distribution by the glass beads throughout the well despite sufficient heat. The panel believed that it was not possible to establish an adequate performance standard for the device because satisfactory performance had never been demonstrated. The panel recommended the device to be subject to premarket approval to assure that manufacturers of the device demonstrate satisfactory performance and that further study was necessary to determine the causes of the device's ineffectiveness.

FDA agreed with the panel's recommendation that endodontic dry heat sterilizers be classified into class III. FDA believed that there was an unreasonable risk of illness or injury because of the potential failure of the device to sterilize dental instruments adequately. FDA believed that there was inadequate information to determine if general controls or a performance standard would provide reasonable assurance of safety and effectiveness.

B. Dates New Requirements Apply

In accordance with section 515(b) of the act, FDA is proposing to require that a PMA or a notice of completion of a PDP be filed with the agency for the endodontic dry heat sterilizer within 90 days after issuance of any final rule based on this proposal. An applicant whose device was legally in commercial distribution before May 28, 1976, or has been found by FDA to be substantially equivalent to such a device, will be permitted to continue marketing the endodontic dry heat sterilizer during FDA's review of the PMA or notice of completion of the PDP. FDA intends to review any PMA for the device within 180 days, and any notice of completion of a PDP for the device within 90 days of the date of filing. FDA cautions that, under section 515(d)(1)(B)(i) of the act, FDA may not enter into an agreement to extend the review period for a PMA beyond 180 days unless the agency finds that " * * * the continued availability of the device is necessary for the public health."

FDA intends that, under § 812.2(d), the preamble to any final rule based on this proposal will state that, as of the date on which a PMA or a notice of completion of a PDP is required to be filed, the exemptions in § 812.2 (c)(1) and (c)(2) from the requirements of the IDE regulations for preamendments class III devices will cease to apply to any endodontic dry heat sterilizer which is: (1) Not legally on the market on or before that date; (2) legally on the market on or before that date but for which a PMA or notice of completion of a PDP is not filed by that date; or (3) for which PMA approval has been denied or withdrawn.

If a PMA or a notice of completion of a PDP for the endodontic dry heat sterilizer is not filed with FDA within 90 days after the date of issuance of any final rule requiring premarket approval for the device, commercial distribution of the device must cease. The device may be distributed for investigational use only if the requirements of the IDE regulations are met. FDA would not consider an investigation of an endodontic glass bead sterilizer to pose a significant risk as defined in the IDE regulation provided that instruments processed in the device are terminally sterilized by a sterilization process which can be biologically monitored, such as steam, ethylene oxide, or dry heat. If the investigation cannot be so designed, the investigation would constitute a significant risk. The requirements for significant risk devices include submitting an IDE application to FDA for its review and approval. An approved IDE is required to be in effect before an investigation of the device may be initiated or continued. FDA, therefore, cautions that IDE applications should be submitted to FDA at least 30 days before the end of the 90-day period after the final rule is published to avoid interrupting investigations.

C. Description of Device

Endodontic dry heat sterilizers are small electrically heated dry heat sterilizers with a central well containing a heat transfer medium. The types of

heat transfer media used in these units have included glass beads, molten metal, metal beads, and salt. The instruments which are to be sterilized are inserted directly into the heat transfer medium. The units are defined in § 872.6730 as devices used to sterilize endodontic and other dental instruments by the application of dry heat which is supplied by the glass beads which have been heated by electricity.

The proposed rule to require premarket approval of the endodontic dry heat sterilizer applies to devices that were being commercially distributed before May 28, 1976, and to devices that were introduced into commercial distribution since that date which have been found to be substantially equivalent to predicate endodontic dry heat sterilizers.

D. Proposed Findings With Respect to Risks and Benefits

As required by section 515(b) of the act, FDA is publishing its proposed findings regarding: (1) The degree of risk of illness or injury designed to be eliminated or reduced by requiring endodontic dry heat sterilizers to have an approved PMA or a declared completed PDP; and (2) the benefits to the public from the use of the device.

E. Risk Factors

The panel identified the primary risk to health as infection by stating that "The inability of the device to sterilize adequately endodontic and other dental instruments may lead to transmission of microorganisms among patients and subsequent spread of infection."

A review of the literature on endodontic dry heat sterilizers has identified the following problems associated with the use of these devices which contribute to the inability of endodontic dry heat sterilizers to sterilize instruments, including general medical instruments.

1. Temperature Variation Within the Well

There are many reports in the literature describing the temperature variation found within the wells of glass bead sterilizers (Refs. 2, 3, 4, 7, 10, and 11). Engelhardt et al. (Ref. 4) measured the temperature distribution in four brands of glass bead sterilizers at two different sites from the center and at six different depths in the well. He reported that the temperature within the well varied significantly depending upon location. The temperature was highest closest to the wall and midway down from the surface (Ref. 4). Corner also reported that near the periphery of the well the temperature varied by as much as 10 °C over time (Ref. 5). According to Ingle, glass bead sterilizers should not be used as a substitute for dry heat convection or steam sterilizers because of the temperature variations (Ref. 7).

2. Lack of Methods to Monitor the Recommended Exposure Times for Sterilization of the Instruments

The manufacturers' recommended exposure times for sterilization of instruments vary from as short as 2 seconds to 45 seconds for sterilizers whose purported operating temperatures are from 218 °C to 260 °C. However, location of the instruments in the well, the size and mass of the instruments, the number of instruments, and the shape of the instruments must be factored into the amount of time required for sterilization. Larger instruments composed of more metal take more time to heat than smaller instruments. Koehler reported that the time required to raise an instrument's temperature was dependent upon its size. Small instruments such as root canal files heated rapidly, while large instruments such as cotton pliers never reached the specified operating temperature (Ref. 6). Corner reported that instruments such as forceps, scalpels, spatulas, and scissors sterilized in rapid succession caused the temperature in the well to drop an average of 7 °C for each instrument and that it took 15 minutes for the temperature of the well to recover (Ref. 2). Smith reported sterilization times of 15 seconds to kill orthodontic bands contaminated with *Staphylococcus albus* and 45 seconds for bands contaminated with *Bacillus subtilis* spores; but if five bands were sterilized simultaneously, then the sterilization times doubled (Ref. 10). Fahid reported that a No. 60 file, which was the largest file tested in the study, was the most difficult to sterilize. The difficulty was attributed to two factors: the large mass of the file, and the air trapped in the deep trough since air is a poor heat conductor (Ref. 5). Engelhardt described sterilization times for endodontic instruments ranging from 15 to more than 100 seconds in glass bead sterilizers, and in some cases, the 100 seconds were not sufficient to achieve sterilization (Ref. 4). Schutt et al. found that it took 60 seconds to sterilize dental burs. He also emphasized that the temperature at the depth of the immersion of the burs should be measured and that the minimum temperature should be at least 175 °C at 2 millimeters (mm) below the surface and 240 °C at 15 mm below the surface (Ref. 9). It has been reported in the literature that glass bead sterilizers have been shown to be effective only with small instruments that can be imbedded into the heat transfer media and that their effectiveness has not been demonstrated for instruments of larger bulk. The insertion of large instruments would reduce the temperature of the glass beads below the minimum temperature required for sterilization (Ref. 1). Heat conduction in a large, partially imbedded device would be variable.

Precleaning of the instruments before insertion into the glass bead sterilizer is critical to the effectiveness of the device. Engelhardt demonstrated that if endodontic instruments were contaminated with a protein load (blood), the time required for sterilization was more than doubled. Such adverse conditions can easily be found in infected or gangrenous pulp. Spores, which are more resistant to sterilization processes than vegetative organisms, have been found in the oral cavity and cultured from pulp material (Ref. 4).

3. Lack of Methods to Monitor the Performance/Sterilization Efficacy of the Device

There are no identified methods for the routine monitoring of the sterilization efficacy of the endodontic dry heat sterilizer such as the ones which exist with the traditional sterilization methods, i.e., steam autoclaves, hot air dry heat sterilizers, or ethylene oxide sterilizers. Chemical and biological indicators are available for routine monitoring of the efficacy of the cycle parameters and for the validation of the process specifications for these traditional sterilizers. The data in the literature, as noted above, suggest that the user can not be assured that instruments inserted into an endodontic dry heat sterilizer will be reliably exposed to the minimum cycle parameters required for sterilization, i.e., exposure of the device to a set temperature for a specified time.

4. Variability of the Warm-up Times for Glass Bead Sterilizers

Reported warm-up times for these devices range from 15 minutes to 50 minutes with the average of 15–20 minutes. However, Corner reported that it took up to 30 minutes for the temperature of the glass beads to stabilize even though the manufacturer claimed that the device reached operating temperature within 10 minutes (Ref. 2).

5. Maintenance of Sterility After Removal From the Device

The instructions for use for most of the devices do not instruct the user on the proper procedure to remove instruments from the device, and on how to maintain sterility of the instruments or the processed portion of the instrument during the cool down period. There also exists the possibility that the heat transfer medium could serve as a source of contamination between patients. Because of the reported temperature gradients within the wells, there exists the possibility that heat resistant microorganisms could survive in the cooler regions near the top of the well and contaminate the instruments used upon the next patient as they are removed from the well. Furthermore, because endodontic dry heat sterilizers only process that portion of the instrument which has been inserted into the glass beads, there is the potential of contaminating a sterile field with a device which had not been properly processed.

6. Possibility of the Heat Transfer Medium Remaining Upon The Devices

Occasionally the heat transfer media has been observed to adhere to wet instruments. If the particles are not detected before the devices are inserted into the site, then they could cause blockage of the wound site or other adverse effects. This would cause significant problems if the heat transfer media were glass beads or molten metal (Ref. 1).

F. Benefit of the Devices

The endodontic dry heat sterilizer could be used to decontaminate endodontic instruments during a procedure on a single patient provided the instruments are properly cleaned to remove organic debris before insertion into the unit. In theory the number of microorganisms that would be introduced into the same site or into a new site on the same patient during a single procedure would be reduced. Once the procedure is over, the instruments should be processed using traditional methods of decontamination and sterilization before use in the next patient.

G. Need for Information for Risk/Benefit Assessment of the Device

The data in the literature indicate the lack of uniform sterilization parameters among the various glass bead sterilizers which have been marketed. Because of the temperature variation found within the wells of glass bead sterilizers, exposure of an instrument to an adequate sterilizing temperature is difficult to determine and must be confirmed independently for each instrument. Also determination of the sterilization exposure time is dependent upon instrument size and mass. As Koehler noted, some instruments never reach the appropriate temperature because of their size and mass (Ref. 6); and, as noted in the American Dental Association's "Accepted Dental Therapeutics," 40th ed., endodontic dry heat sterilizers are not appropriate for large bulk instruments (Ref. 1).

Review of the claims being made for these devices suggests that manufacturers are expanding the claims beyond those originally defined in § 872.6730. The claims have been expanded to include the sterilization of general medical instruments and electrolysis and acupuncture needles, and to devices not regulated by FDA such as manicurist's instruments. The claims imply that these devices can be used as a substitute for the traditional methods of sterilization. Scarlett noted that endodontic dry heat sterilizers are not sterilizers, but are decontaminating devices and that they should not be used to sterilize instruments between patients (Ref. 8). No system exists for (1) Monitoring the exposure of the instrument to sterilization conditions, or (2) demonstrating that the sterilization exposure parameters have been achieved within the well. Only the portion of the instrument which is inserted into the heat transfer medium has the potential of being sterilized; the portion which is not inserted into the glass beads is not sterilized. The use of endodontic dry heat sterilizers with general medical instruments and with the implication as a substitute sterilization method raises serious safety and effectiveness questions which the manufacturers of these devices have not adequately addressed. There is the serious risk of infection through the use of inadequately processed instruments.

FDA believes that sufficient information may exist regarding the risks and benefits associated with the device, but the information must be assembled in such a way as to enable FDA to determine if the information provides reasonable assurance of the safety and effectiveness of the device for its intended use as defined in 21 CFR 860.7.

FDA classified the endodontic dry heat sterilizer into class III because it determined that insufficient information existed to determine that general controls would provide reasonable assurance of the safety and effectiveness of the device or to establish a performance standard to provide such assurance. FDA has determined that the special controls that may now be applied to class II devices under the Safe Medical Devices Act of 1990 also would not provide such assurance. FDA has weighed the probable risks and benefits to the public health from the use of the device and believes that the literature reports and other information discussed above present evidence of significant risks associated with use of the device. These risks must be addressed by the manufacturers of endodontic dry heat sterilizers. FDA believes that the endodontic dry heat should undergo premarket approval to establish effectiveness and to determine whether the benefits to the patient are sufficient to outweigh any risk.

II. PMA Requirements

A PMA for this device must include the information required by section 515(c)(1) of the act. Such a PMA should also include a detailed discussion of the risks identified above, as well as a discussion of the effectiveness of the device for which premarket approval is sought.

A PMA should include valid scientific evidence obtained from well-controlled studies, with detailed data, in order to provide reasonable assurance of the safety and effectiveness of the endodontic dry heat sterilizer for its intended use. The data must include the following information:

a. A general description of the sterilizer including its specifications, process parameters and process monitors;

b. An overview of the sterilization process with accompanying charts, graphs, or other visuals explaining all parameters;

c. A description of any test packs used in validating the performance of the endodontic dry heat sterilizer and in routine monitoring of the device;

d. Physical tests which demonstrate that the sterilizer achieves and maintains the physical process lethality conditions within specifications. The testing should describe how the process parameters and specifications were determined;

e. The microbiological performance tests must demonstrate that the device can sterilize to an acceptable sterilization assurance level all medical products identified in the labeling when used in accordance with the directions for use. The tests should be consistent with those used to validate sterilization processes including simulated and actual use tests;

f. Material compatibility tests must show that the medical devices identified in the labeling are compatible with the

sterilization process of the endodontic dry heat sterilizer; and

g. Final qualification tests from at least three consecutive runs under worst case loading conditions as indicated in the labeling.

Additional information about the validation of sterilization processes can be found in: "Guidance on Premarket Notification (510(k)) Submissions for Sterilizers Intended for Use in Health Care Facilities" (available upon request from the Center for Devices and Radiological Health, Division of Small Manufacturers Assistance (HFZ–220), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850); the American Association of Medical Instrumentation's (AAMI) voluntary standards describing the validation requirements for sterilization processes; and the publication entitled "Sterile Medical Devices, A GMP Workshop Manual, 4th Ed., HHS Publication (FDA) 84–4147.

The PMA should contain a detailed discussion with supporting simulated- and in-use studies, as described in the above guidance, of: (1) All risks that have been identified in this proposed rule; and (2) the effectiveness of the specific endodontic dry heat sterilizer that is the subject of the application. In addition, the submission should contain all data and information on: (1) Risks known to the applicant that have not been identified in this proposed rule; (2) summaries of all existing simulated- and in-use data from investigations on the safety and effectiveness of the device for which premarket approval is sought; and (3) the results of simulated- and in-use studies conducted by or for the applicant. Applicants should submit any PMA in accordance with the FDA's "Guideline for the Arrangement and Content of a PMA Application." The guideline is available from the Center for Devices and Radiological Health, Division of Small Manufacturers Assistance (address above).

III. Comments

Interested persons may, on or before September 5, 1995, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments or requests are to be identified with the docket number found in brackets in the heading of this document. Received comments and requests may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

IV. Opportunity to Request a Change in Classification

Before requiring the filing of a PMA or a notice of completion of a PDP for a device, FDA is required by section 515 (b)(2)(A)(i) through (b)(2)(A)(iv) of the act and 21 CFR 860.132 to provide an opportunity for interested persons to request a change in the classification of the device based on new information relevant to its classification. Any proceeding to reclassify the device will be under the authority of section 513(e) of the act.

A request for a change in the classification of the endodontic dry heat sterilizer is to be in the form of a reclassification petition containing the information required by § 860.123 (21 CFR 860.123), including new information relevant to the classification of the device, and shall, under section 515(b)(2)(B) of the act, be submitted by June 22, 1995.

The agency advises that, to ensure timely filing of any such petition, any request should be submitted to the Dockets Management Branch (address above) and not to the address provided in § 860.123(b)(1). If a timely request for a change in the classification of the endodontic dry heat sterilizer is submitted, the agency will, by August 7, 1995, after consultation with the appropriate FDA advisory committee and by an order published in the **Federal Register**, either deny the request or give notice of its intent to initiate a change in the classification of the device in accordance with section 513(e) of the act and 21 CFR 860.130 of the regulations.

V. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. American Dental Association, "Accepted Dental Therapeutics," 40th ed., pp. 138–139, Chicago, IL, 1984.
2. Corner, G. A., "An Assessment of the Performance of a Glass Bead Sterilizer," *Journal of Hospital Infection*, 10:308–311, 1987.
3. Dayoub, M. B., and M. J. Devine, "Endodontic Dry-Heat Sterilizer Effectiveness," *Journal of Endodontics*, 2:343–344, 1976.
4. Engelhardt, M. P., L. Grun, and H. Dahl, "Factors Affecting Sterilization in Glass Bead Sterilizers," *Journal of Endodontics*, 10:454–470, 1984.
5. Fahid, A., and J. P. Tainter, "The Influence of File Size, Cleaning, and Time on the Effectiveness of Bead Sterilizers," *Oral Surgery*, 58:443–445, 1984.
6. Koehler, H. M., and J. J. Hefferren, "Time-Temperature Relations of Dental Instruments Heated in Root-Canal Instrument Sterilizers," *Journal of Dental Research*, 41:182–195, 1962.
7. Ingle, J. I., *Endodontics*, 3d Ed., Philadelphia, Lea & Febiger, pp. 615–616.
8. Jakush, J., "Infection Control Procedures and Products: Cautions and Common Sense," *Journal of The American Dental Association*, 117:293–301, 1988.
9. Schutt, R. W., and W. J. Starsiak, "Glass Bead Sterilization of Surgical Dental Burs," *International Journal of Oral and Maxillofacial Surgery*, 19:250–251, 1990.
10. Smith, G. E., "Glass Bead Sterilization of Orthodontic Bands," *American Journal of Orthodontics Dentofacial Orthopedics*, 90:243–249, 1986.
11. Windeler, A. S., and R. G. Walter, "The Sporicidal Activity of Glass Beads Sterilizers," *Journal of Endodontics*, 1:273–275, 1975.

VI. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VII. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the proposed rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because PMA's for this device could have been required by FDA as early as February 12, 1990, and because firms that distributed this device prior to May 28, 1976, or whose device has been found by FDA to be substantially equivalent will be permitted to continue marketing the endodontic dry heat sterilizer during FDA's review of the PMA or notice of completion of the PDP, the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities.

Therefore, under the Regulatory Flexibility Act, no further analysis is required.

List of Subjects in 21 CFR Part 872

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 872 be amended as follows:

PART 872—DENTAL DEVICES

1. The authority citation for 21 CFR part 872 is revised to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 522, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371).

2. Section 872.6730 is amended by revising paragraph (c) to read as follows:

§ 872.6730 Endodontic dry heat sterilizer.

* * * * *

(c) *Date premarket approval application (PMA) or notice of completion of product development protocol (PDP) is required.* A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before (90 days after the effective date of a final rule based on this proposed rule), for any endodontic dry heat sterilizer that was in commercial distribution before May 28, 1976, or that has on or before (90 days after the effective date of a final rule based on this proposed rule), been found to be substantially equivalent to the endodontic dry heat sterilizer that was in commercial distribution before May 28, 1976. Any other endodontic dry heat sterilizer shall have an approved PMA or declared completed PDP in effect before being placed in commercial distribution.

Dated: May 24, 1995.

D. B. Burlington,

Director, Center for Devices and Radiological Health.

[FR Doc. 95–13831 Filed 6–6–95; 8:45 am]
BILLING CODE 4160–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[TX–001; FRL–5217–7]

Clean Air Act Proposed Interim Approval Operating Permits Program for the State of Texas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed interim approval.

SUMMARY: The EPA proposes source category-limited interim approval of the operating permits program submitted by the Governor of Texas for the State of Texas for the purpose of complying with Federal requirements which mandate that States develop and submit to EPA programs for issuing operating permits to all major stationary sources, with the exception of sources on Indian Lands. Source category-limited interim approval was specifically requested by the Governor for this submission.

DATES: Comments on this proposed action must be received in writing by July 7, 1995.

ADDRESSES: Written comments on this action should be addressed to Ms. Jole C. Luehrs, Chief, New Source Review (NSR) Section, at the EPA Region 6 Office listed below. Copies of the State's submittal and other supporting information used in developing the proposed interim approval are available for inspection during normal business hours at the following locations. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before visiting day.

Environmental Protection Agency, Region 6, Air Programs Branch (6T–AN), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

Texas Natural Resource Conservation Commission, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: David F. Garcia, New Source Review Section, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone 214–665–7217.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Introduction

As required under title V of the Clean Air Act, as amended on November 15, 1990 ("the Act"), the EPA has promulgated rules which define the minimum elements of an approvable State operating permits program and the corresponding standards and procedures by which the EPA will approve, oversee, and withdraw approval of a State operating permits program (see 57 **Federal Register** 32250, July 21, 1992). These rules are codified at 40 Code of Federal Regulations (CFR) part 70 ("the part 70 regulation"). Title V requires States to develop, and submit to the EPA, programs for issuing these operating permits to all major stationary sources and to certain other sources.

The Act requires that States develop and submit these programs to the EPA by November 15, 1993, and that the EPA act to approve or disapprove each program within one year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulation which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, the EPA may grant the program interim approval for a period of up to two years. Where a State requests source category-limited interim approval and demonstrates compelling reasons in support thereof, the EPA may also grant such an interim approval. If the EPA has not fully approved a program by two years after the date of November 15, 1993 or by the end of an interim program, it must establish and implement a Federal program.

B. Federal Oversight and Sanctions

If the EPA were to finalize this proposed source category-limited interim approval, it would grant that approval for a period of two years following the effective date of final interim approval, and the interim approval could not be renewed. During the interim approval period, the State of Texas would be protected from sanctions, and the EPA would not be obligated to promulgate, administer, and enforce a Federal permits program for the State of Texas. Permits issued under a program with interim approval have full standing with respect to part 70, and the State will permit sources based on the transition schedule provided in Regulation XII, Title 31 of the Texas Administrative Code (TAC).

Following final interim approval, if Texas has failed to submit a complete corrective program for full approval by the date six months before expiration of the interim approval, the EPA would start an 18-month clock for mandatory sanctions. If Texas then failed to submit a corrective program that the EPA found complete before the expiration of that 18-month period, the EPA would be required to apply one of the sanctions

in section 179(b) of the Act, which would remain in effect until the EPA determined that Texas had corrected the deficiency by submitting a complete corrective program. Moreover, if the Administrator found a lack of good faith on the part of Texas, both sanctions under section 179(b) would apply after the expiration of the 18-month period until the Administrator determined that Texas had come into compliance. In any case, if six months after application of the first sanction, Texas still had not submitted a corrective program that the EPA found complete, a second sanction would be required.

If following final interim approval, the EPA were to disapprove Texas' complete corrective program, the EPA would be required to apply one of the section 179(b) sanctions on the date 18 months after the effective date of the disapproval, unless prior to that date Texas had submitted a revised program and the EPA had determined that it corrected the deficiencies that prompted the disapproval. Moreover, if the Administrator found a lack of good faith on the part of Texas, both sanctions under section 179(b) would apply after the expiration of the 18-month period until the Administrator determined that Texas had come into compliance. In any case, if six months after application of the first sanction, Texas still had not submitted a corrective program that the EPA found complete, a second sanction would be required.

In addition, discretionary sanctions may be applied where warranted any time after the end of an interim approval period if Texas has not timely submitted a complete corrective program or the EPA has disapproved a submitted corrective program. Moreover, if the EPA has not granted full approval to Texas' program by the expiration of an interim approval, and that expiration occurs after November 15, 1995, the EPA must promulgate, administer, and enforce a Federal permits program for Texas upon interim approval expiration.

II. Proposed Action and Implications

A. Analysis of State Submission

1. Support Materials

Pursuant to section 502(d) of the Act, the Governor of each State is required to develop and submit to the Administrator an operating permits program under State or local law or under an interstate compact meeting the requirements of title V of the Act. Texas submitted, under the signature of former Governor Ann W. Richards, the operating permits program submittal to be implemented in all areas of the State of Texas with the exception of Indian Lands. The State of Texas requested that the EPA approve its operating permit program as a source category-limited interim program for a period of two years.

In the State's operating permits program submittal, Texas does not assert jurisdiction over Indian lands or reservations. To date, no tribal government in Texas has authority to administer an independent air program in the State. Upon promulgation of regulations under section 301(d) of the Act, Indian tribes will be able to apply for treatment as States under the Act, and receive the authority from the EPA to implement an operating permits program under title V of the Act. The EPA will, where appropriate, conduct a Federal title V operating permits program in accordance with forthcoming EPA regulations, for those Indian tribes which do not apply for treatment as States under the Act.

The Texas Air Control Board (TACB) was the traditional implementing authority for the Act and all of its amendments. The submittal, including the rules, were adopted by the TACB. The TACB's operations and legal responsibilities were consolidated with operations of other Texas environmental agencies. Therefore, effective September 1, 1993, the Texas Air Control Board became part of a new State of Texas environmental agency, the Texas Natural Resource Conservation Commission (TNRCC). All rules, permits, orders, and any other final actions of the TACB remain in full legal effect unless and until revised by the TNRCC.

40 CFR 70.4(b)(1) requires that the submittal contain a program description of the State's operating permits program describing how it intends to carry out its responsibilities under the part 70 regulations. The Texas Federal Operating Permits program description, volume 1 of the submittal, explains that the Texas operating permits program was developed to satisfy all of the requirements of the part 70 regulation. The operating permit in Texas will be used to consolidate relevant applicable requirements into one permit document.

The program description provides a broad overview of the State's program, a broad description of how the Federal operating permits program in Texas will be implemented in accordance with part 70, and a description of how the program will implement the applicable requirements set forth in other titles of the Act, specifically title I, title III, title IV, and title VII. The State projects over 3,000 sites will be subject to the operating permits program.

Pursuant to 40 CFR 70.4(b)(3), the Governor is required to submit a legal opinion from the Attorney General (or the attorney for a State air pollution control agency that has independent legal counsel), demonstrating adequate authority to carry out all aspects of a title V operating permits program. The Texas Attorney General submitted such an opinion in Volume 5 (the submittal supplement), demonstrating adequate legal authority as required by Federal law and regulation for interim approval.

40 CFR 70.4(b)(4) requires the submission of relevant permitting program documentation not contained in the regulations, such as permit forms and relevant guidance to assist in the State's implementation of its permits program. The State addresses this requirement in the Texas Federal Operating Permits Program Submittal Supplement in Volume 5 (the submittal supplement). The supplemental volume contains a model permit, application forms (including the standard phase II acid rain forms), monitoring, recordkeeping and reporting forms, public notice examples and guidance to implement the operating permits program. The detailed guidance addresses many part 70 requirements including documentation on permit applicability, permit application procedures, permit issuance, permit revisions and reopenings, permit renewals, compliance plan and certifications, and monitoring, reporting and recordkeeping.

2. Regulations and Program Implementation

The State of Texas has submitted TACB Regulation XII, Title 31 of TAC, Chapter 122—"Federal Operating Permits" ("the Texas permit regulation") and TACB General Rules, Title 31 of TAC, section 101.27 ("the Texas fee regulation"), for implementing the State's operating permits program as required by 40 CFR 70.4(b)(2). Sufficient evidence of their procedurally correct adoption was submitted in the Texas Federal Operating Permits Program Volumes 1 and 2 of the submittal. Copies of all applicable State and local statutes and regulations which authorize the part 70 program, including those governing State administrative procedures, were submitted with the State's program in Volumes 3 and 4.

The following discusses how the Texas permit regulation meets or does not meet the existing part 70 regulation. However, due to pending litigation involving sections of the part 70 regulation, revisions have been proposed, and more proposed revisions may be forthcoming. Any revisions to the part 70 regulation may alter or obviate the need for the State to make the regulatory changes identified in this notice. During the State's rulemaking process proposing to make changes necessary for full title V approval, the EPA will comment on the State's proposal using the criteria in whatever regulation is in place at that time. In the **Federal Register** notice proposing action on the State's submittal for full approval, the EPA will use the criteria in whatever is the final part 70 regulation, whether it be the existing July 21, 1992, regulation or a later version ("part 70").

The following requirements, set out in the part 70 regulation, are addressed in the State's submittal: (1) Provisions to determine applicability (40 CFR 70.3(a)): 31 TAC section 122.120; (2) Provisions to determine complete applications (40 CFR 70.5(a)(2)): 31 TAC section 122.134 and the forms (40 CFR 70.4(b)(4)): Supplemental Volume, Operating Permits Guidance; (3) Public Participation (40 CFR 70.7(h)): 31 TAC sections 122.150–122.155; (4) Provisions for minor permit modifications (40 CFR 70.7(e)(2)): 31 TAC sections 122.215–122.217; (5) Provisions for permit content (40 CFR 70.6(a)): 31 TAC sections 122.141–122.145; (6) Provisions for operational flexibility (40 CFR 70.4(b)(12)): 31 TAC section 122.221; (7) Provisions to determine insignificant activities (40 CFR 70.5(c)): 31 TAC section 122.010 (definition of applicable requirement) and sections 122.215–122.217; (8) Enforcement provisions (40 CFR 70.4(b)(5) and 70.4(b)(4)(ii)): Supplemental Volume "State of Texas Office of the Attorney General" and Volume 3, "Texas Health and Safety Code", section 382.082(b).

The following requirements of 40 CFR part 70 are addressed in the Texas permit regulation:

(a) Applicability criteria, including any criteria used to determine insignificant activities or emissions levels (40 CFR 70.4(b)(2)). These provisions require all sources subject to the operating permits regulations to have a permit to operate that assures compliance by the source with all applicable requirements. The State is to submit a program that, at a minimum, assures adequate authority to issue permits in compliance with all the applicable requirements of title V of the Act and the part 70 regulation. 40 CFR 70.2 defines the term "applicable requirement" to include: any standard or other requirement provided for in the applicable implementation plan approved or promulgated by the EPA through rulemaking under title I of the Act that implements the relevant requirements of the Act; any term or condition of any preconstruction permit issued pursuant to regulation approved or promulgated through rulemaking under title I including Part C or D, of the Act; and additional requirements listed in 40 CFR 70.2. 40 CFR part 70 requires all applicable requirements to be adequately addressed in the permit application and the operating permit.

Section 122.010 of the Texas permit regulation defines the term "applicable requirement." Paragraph A of the definition makes specific reference to the Texas State Implementation Plan (SIP) approved chapters which the State considers relevant requirements of title I of the Act. Paragraph B uses the qualifier "Part C (Prevention of Significant Deterioration) or Part D (Nonattainment Review)" to further specify what constitute applicable requirements. This definition excludes certain minor NSR permitting activities as applicable requirements. Under the Texas permitting structure, any reasonably available control technology (RACT), maximum achievable control technology (MACT), section 112, or section 111 requirements applicable to minor units at major sources (whether reflected in a minor source permit or not) will be included as part of major source's original title V permit. Any non-RACT, non-111, and non-112 minor NSR permitting requirement will not be included in the major source's title V permit. For this reason, the proposed definition is inconsistent with the definition contained in the part 70 regulation. The EPA interprets the Federal definition of "applicable requirement" to include terms and conditions of "any preconstruction permits issued pursuant to regulations approved or promulgated through rulemaking under title I", including all minor new source review permits.

However, on August 29, 1994, (see 59 FR 44574, Operating Permits Program Interim Approval Criteria), the EPA proposed revisions to 40 CFR part 70 to allow interim approval for States such as Texas whose programs do not provide for incorporating into permits all requirements established through EPA-approved minor NSR programs, and that can show compelling reasons for receiving interim approval. The State of Texas has argued that the State's existing minor NSR program is so stringent as to make the integration of a minor NSR permit into part 70 permits infeasible, and from the standpoint of environmental protection, unnecessary. The EPA acknowledges that Texas' minor NSR program is a very stringent one. The Texas program requires authorization prior to the construction of any new facility or the modification of an existing facility. The term "facility" is broadly defined to include any "point of origin" of air contaminants, so there is no opportunity for a source to "net out" of minor NSR. Moreover, Texas mandates best available control technology (BACT) as the emission control technology which applies to all minor NSR changes. Texas further subjects each minor NSR permit and permit amendment to a health effects evaluation which considers the cumulative effect of the proposed action, together with other air contaminant sources, on ambient air quality. Finally, where the Texas minor NSR program provides for public notice of a permit action, the program provides citizens the right to request a full evidentiary hearing on the action. Texas has also pointed to the exceptionally large number of part 70 sources which are located in the State and which are candidates for minor NSR. On the basis of the showing of compelling reasons described above, the EPA believes that a State or local permitting authority with minor NSR/part 70 integration difficulties such as Texas would warrant interim approval.

The following sections of the permit regulation are directly related and are considered part of the minor NSR/part 70 integration issue: permit application (sections 122.130–122.139), permit revisions (sections 122.210–122.221), and permit content (section 122.141–122.145). For full approval, these sections must be revised to be consistent with part 70.

The August 29, 1994, proposal for Operating Permits Program Interim Approval Criteria requires that, in such interim approval situations, a State: (1) Include a statement in permits that certain minor NSR requirements are not included in permits issued during the interim period; (2) include a cross-reference in each operating permit to the minor NSR permit for that source; and (3) require reopening of permits for incorporation of minor NSR permit conditions upon completion of the interim approval period. If the August proposal is finalized, it is the EPA's position that the Texas program can be granted interim authorization as long as the State complies with the three conditions discussed above.

Section 122.120 of the Texas permit regulation addresses 40 CFR 70.3(a), regarding applicability of part 70. Section 122.120 requires the owner or operator of a site to submit an application for a Federal operating permit if the site contains one or more of the following: (1) Any major source as defined in section 122.010 (relating to

general definitions); (2) any affected source as defined in section 122.012 (relating to acid rain definitions); (3) any solid waste incineration unit required to obtain a Federal operating permit pursuant to section 129(e) of title I of the Act; and (4) any non-major source which the EPA, through further rulemaking, has designated as no longer exempt from the obligation to obtain a Federal operating permit. The State further identifies in sections 122.120(4)(A)–(C) any non-major source subject to section 111, any non-major source subject to section 112 or "any source in a source category designated by the Administrator pursuant to title III of the Act". The State's provision regarding applicability is inconsistent with the Federal definition. Sections (4) (A) and (B) each appear to define non-major source as "*any source*, including an area source," subject to standards under section 111 or 112 of the Act. Section 122.120(4) could potentially be interpreted as exempting any source, even a major source, from the requirement to obtain a part 70 permit. For full approval, the State must revise sections 122.120(4) (A) and (B) to clarify source applicability. Additionally, section 122.120(4)(C) of the permit regulation defines non-major source as "any source in a source category designated by the Administrator pursuant to Title III of the Act." 40 CFR 70.3(a) includes a number of different types of sources other than section 112 sources. For full approval, section 122.120(4)(C) of the permit regulation must be modified to be consistent with 40 CFR 70.3(a).

Section 122.010 of the Texas permit regulation defines major source as "any site which emits or has the potential to emit air pollutants as described in subparagraphs (A), (B), and (C) of this definition." The permit regulation defines "site" to allow research and development (R & D) operations to be treated as a separate site from any manufacturing facility with which they are co-located. The State's permit regulation is inconsistent with 40 CFR 70.3 which requires that a State's operating permits program provide for the permitting of all major sources, and 40 CFR 70.4(b)(3)(i) which requires that the State demonstrate adequate legal authority to issue permits and assure compliance with each applicable requirement by all part 70 sources.

Confusion over this issue has occurred as a result of language in the preamble to the final July 21, 1992, 40 CFR part 70 rulemaking (57 FR 32264). The preamble language indicates that States would have the flexibility in many cases to treat R & D facilities separately from the manufacturing facilities with which they are co-located. The EPA intended for this language to clarify the flexibility in part 70 for allowing R & D facilities to be treated separately in cases where the R & D facility has a different two-digit Standard Industrial Classification ("SIC") code and is not a support facility. This approach is consistent with the treatment of R & D facilities in the New Source Review program.

The Texas permit regulation could cause certain part 70 major sources, as defined in 40 CFR 70.2, or portions of such sources with the same SIC code, to be treated as separate sources. This could cause some part 70 sources to be exempted from coverage by part 70 permits which must ensure all part 70 requirements for these sources are met. For full part 70 approval, the Texas permit regulations must treat research and development activities consistent with part 70.

Pursuant to 40 CFR 70.5(c), a permit application must describe all emissions of regulated air pollutants emitted from any emission unit. However, the Administrator may approve, as part of a State program, a list of insignificant activities and emission levels which need not be included in the permit application. The Texas operating permit program is designed to require the applicant to certify all emission units subject to an applicable or potential applicable requirement be described in the permit application.

Section 122.132 of the Texas permit regulation discusses the required information the permittee is to include in the operating permit application. The permit application shall include for each emission unit, or group of similar emission units: (1) Information identifying each applicable requirement, any corresponding emission limitation and any corresponding monitoring, reporting, and recordkeeping requirements; and (2) information identifying potentially applicable requirements for that particular type of emission unit and the basis for the determination that those applicable requirements do not apply.

Therefore, it is necessary for the applicant to identify all potential applicable requirements for each unit and give a basis for all negative applicable determinations. In other words, where a unit has a limitation or a specific characteristic of an emission unit that is limited by a regulation, but the applicant claims the unit is not subject to that regulation, the applicant is required to justify why. The applicant is responsible and is liable for including all applicable and potentially applicable requirements in the permit application. The potential applicable requirement language as a practical manner will require the source to characterize operations and emissions in a manner that is comprehensive enough to allow the State to independently verify which requirements are applicable. This process is subject to audits by State field inspectors, and action could be taken if violations of the Texas Permit Regulation exist.

Pursuant to section 122.120(1) of the Texas permit regulation, the owner or operator of a site shall submit an application to the TNRCC if the source is a major source. Major source applicability is calculated on a site's potential to emit air pollutants. When the applicant is calculating major source applicability, all emissions at each unit will be accounted for at the site, regardless if a unit is potentially subject to an applicable requirement. The operating permit application requires the applicant to indicate all air pollutants that are major at the site. The operating permit will reference pre-construction permits in which specific emission data for each emission unit will reside. Additionally, more detail of specific emission data is contained in an emission inventory database.

The design and approach the State uses to keep activities out of the operating permit application is considered practical and equivalent to part 70. This design attains the same results as a list of insignificant activities or emissions thresholds for units. The EPA believes the procedure set forth in the Texas permit regulation to identify insignificant activities achieves the goal and intent of the part 70 regulation and therefore is consistent and acceptable.

The part 70 regulation requires the permit application to describe all emissions of regulated air pollutants emitted from any emissions unit. A regulated air pollutant includes any pollutant subject to a standard promulgated under section 112 or other requirement established under section 112 of the Act, including sections 112(g), (j), and (r). The Texas permit regulation defines the term "air pollutant" and does not define "regulated air pollutant." It defines air pollutant to include "any pollutant listed in section 112(b) or section 112(r) of the Act *and* subject to a standard promulgated under section 112 of the Act." The term "air pollutant" is also used in the Texas definitions for "potential to emit" and "major source." This creates an inconsistency with the part 70 regulation, in which applicability is based on a source's potential to emit any air pollutant, including those *listed* pursuant to section 112, rather than on pollutants which are subject to a promulgated standard. For full approval, the definition of "air pollutant" must be modified to be consistent with the part 70 regulation.

Section 122.010 of the Texas permit regulation defines "major source" and further identifies the twenty-seven stationary source categories required to include a source's fugitive emissions in determining when a source is major. Category xxvii states that, for "any other stationary source category which, as of August 7, 1980, is being regulated under sections 111 or 112 of the Act," fugitives must be counted in determining if the source is major. This is inconsistent with the current 40 CFR 70.2 which requires fugitive emissions to be counted for all section 111 and 112 standards, and which does not limit the stationary source categories to those which existed as of August 7, 1980. For full approval, the State must be consistent with part 70.

Section 122.010 of the Texas permit regulation defines "title I modification" as a change at a site that qualifies as a modification under section 111 of title I of the Act or section 112(g) of title I of the Act, or as a major modification under part C or part D of title I of the Act. The State's definition of "title I modification" does not include changes reviewed under a minor source preconstruction review program ("minor NSR changes"), nor does it include changes that trigger the application of National Emission Standards for Hazardous Air Pollutants (NESHAP) established pursuant to section 112 of the Act prior to the 1990 Amendments. The EPA is currently in the process of determining the appropriate interpretation of "title I modification". As further explained below, the EPA has solicited public comment on whether the phrase "modification under any provision of title I of the Act" in 40 CFR 70.7(e)(2)(i)(A)(5) should be interpreted to mean literally any change at a source that would trigger permitting authority review under regulations approved or promulgated under title I of the Act. This would include minor State preconstruction review programs approved by the EPA as part of the State Implementation Plan under section 110(a)(2)(C) of the Clean Air Act and regulations addressing source changes that trigger the application of NESHAP established pursuant to section 112 of the Act prior to the 1990 Amendments.

In the August 29, 1994, proposed revisions to the interim approval criteria at 40 CFR section 70.4(d) the EPA proposes to allow State programs with a narrower definition of "title I modification" to receive interim approval (59 FR 44572). The EPA in that notice states its belief that the better reading of "title I modification" would include minor NSR and pre-1990 NESHAP requirements, but solicited public comment on the appropriate interpretation of the term (59 FR 44573). If the definition of "title I modification" is finalized to include minor NSR changes, States such as Texas which have a narrower definition are eligible for interim but not final approval. If the final definition excludes changes reviewed under minor NSR and changes that trigger a pre-1990 NESHAP requirement, the State's definition of "title I modification" would be consistent with part 70.

For similar reasons, the EPA will not construe 40 CFR section 70.7(e)(2)(i)(A)(3) to prohibit the State from receiving interim approval because it allows minor NSR case-by-case determination changes to be processed as minor permit modifications. Again, although the EPA has reasons for believing that the better interpretation of "title I modification" is the broader one, the EPA does not believe that it is appropriate to deny interim approval to a State such as Texas on such grounds.

(b) Permit application requirements (40 CFR 70.5(c)). These requirements are addressed in sections 122.130–122.139 of the Texas permit regulation. A transition plan is included in the permit regulation which accounts for six SIC codes subject to the Texas interim approval program. The Texas permit regulation requires the owner or operator to submit a timely and complete application for each site subject to the requirements of the permit regulations.

Pursuant to 40 CFR 70.5(c)(8)(iii)(C), a compliance schedule is required for sources out of compliance at the time of permit issuance. Section 122.132(b)(3)(B) of the Texas permit regulation addresses compliance schedules but appears to not require that schedules be at least as stringent as any consent decree or administrative order to which the source is subject. For full part 70 approval, the State must revise the permit regulation to be consistent with the part 70 regulation.

(c) Permit issuance and revision procedures (40 CFR 70.7). These requirements are provided for in subchapter C of the permit regulation. The State has requested that the EPA approve the proposed operating permits program as a source category-limited interim program for a period of two years. Section (II)(B) of this notice (referring to options for approval/disapproval and implications) further discusses the sites subject to the interim approval program and the Texas rationale for requesting interim approval.

Section 122.241 of the Texas permit regulation requires permit applications for renewal at least six months prior to the date of permit expiration, but not more than eighteen months prior to the date of permit expiration. The permit regulation contains criteria for determining completeness of applications consistent with 40 CFR 70.5(a)(2).

Pursuant to 40 CFR 70.7, the State's program must prohibit a source from operating after the time that the source is required to submit a timely and complete application, except in compliance with a permit issued under a part 70 program. Section 122.138 of the Texas permit regulation allows an application shield if there is a timely and complete application for permit issuance, significant permit modification to a permit, or renewal. The site's failure to have a Federal operating permit is not a violation until the State takes final action on the permit. The application shield provided for in 40 CFR 70.7(b) does not apply to significant modifications, but only applies to a "complete application for permit issuance (including for renewal)". For this reason, section 122.138 of the Texas permit regulation is inconsistent with 40 CFR 70.7. For full approval, the Texas permit regulation must be made consistent with the part 70 regulation by deleting the reference in section 122.138 to "significant permit modification to a permit."

Sections 122.211–122.213 of the Texas permit regulation contain the requirements of 40 CFR 70.7(d) for administrative amendments, but do not require the Administrator's approval for similar changes allowed by section 122.211. This is inconsistent with 40 CFR 70.7(d)(1)(vi) which requires that, in order for changes other than those specified in 40 CFR 70.7(d) (i) through (v) to be made as administrative amendments, they must first be determined by the Administrator, as part of the approved part 70 program, to be similar to those specified in 70.7(d)(1) (i) through (iv). For full approval, section 122.211 must be revised to specifically list the types of changes that the State proposes to be eligible for processing as administrative amendments, for the Administrator's approval as part of the State's part 70 program.

Sections 122.215–122.217 of the Texas permit regulation requires certain permit revisions to be processed as "permit additions". The criteria for "permit additions" appear to be the same as the Federal criteria for some types of changes noted under minor permit modification provisions (40 CFR 70.7) and for some changes allowed as "off permit" changes under 40 CFR 70.4(b)(14). The State proposes to implement the "permit addition" criteria in the interest of providing adequate, streamlined, and reasonable procedures for processing permit revisions. However, the EPA does not consider the streamlined procedures set out in sections 122.215–122.217 of the Texas permit regulation to be equivalent to the minor permit modification procedures found in the part 70 regulation. For full approval, the permit additions rule and all other Texas permit revisions rules must be modified to be consistent with part 70.

The criteria to qualify for permit additions in section 122.215 include the following: A change at a site may qualify as a permit addition if the change is not addressed or prohibited by the Federal operating permit, does not violate any existing term or condition of the Federal operating permit, does not violate any applicable requirement, and is not a title I modification.

Section 122.215(c) also allows a change at a site to be processed as a permit addition if the change "does not require or change a determination of an emission limitation under section 112(g) or section 112(j) of title I of the Act * * *". The Federal part 70 regulation contains a similar provision at 40 CFR 70.7(e)(2)(i)(A)(3) with respect to minor permit modification procedures, but the Federal provision is written in general terms to prohibit modifications that change a "case-by-case" determination of an emission limitation or standard. Section 122.215(c) of the Texas permit regulation does not require case-by-case reasonably available control technology (RACT) changes to be processed as significant permit modifications. The EPA interprets 40 CFR 70.7(e)(2)(i)(A)(3) provisions prohibiting changes in "case-by-case" determinations to apply to RACT equivalency determinations. Therefore, the EPA does not consider the Texas provision to be equivalent to the part 70 regulation. For full approval, the permit regulation must be modified consistent with part 70.

Section 122.215(c)(2) of the Texas permit regulation defines "significant changes to monitoring, reporting or recordkeeping requirements in the permit." The definition includes the "removal of monitoring, recordkeeping, or reporting terms and conditions, or a substitution in those terms and conditions promulgated pursuant to Federal New Source Performance Standards or National Emission Standards for Hazardous Air Pollutants." This definition of significant changes to monitoring, reporting or recordkeeping requirements is acceptable under the current part 70 rule. If any additional rulemaking is promulgated by the EPA on this subject, the State must change its definition consistent with the new rulemaking.

Section 122.216 of the Texas permit regulation allows applications for permit additions to be submitted to the State no later than 90 days after the owner or operator has obtained or qualified for a preconstruction authorization. However, under this rule after the source receives its preconstruction permit, it may make the requested operating change before submitting the operating permit application within the 90-day timeframe. 40 CFR 70.7(e)(2)(v) requires that no operating change be made if a source is changing a term in its original part 70 permit until the source has submitted the operating permit revision application. For full approval, the Texas permit regulation must be revised to be consistent with part 70.

Section 122.217 addresses the procedures used to process permit additions and states "the permit addition shall not become final until after the EPA's 45-day review period at renewal." For the EPA to consider permit additions equivalent to the procedures in 40 CFR 70.7(e)(2), the EPA must have the opportunity to review and object to the issuance in writing within 45 days of receipt of the proposed permit. For full approval, the Texas permit regulation must be consistent with part 70 and allow for timely EPA review.

The Texas permit addition procedures addressed in section 122.217 provide that, within 90 days after receipt of a complete application, the agency is to determine that the requested modification does not meet the permit addition criteria and that it should therefore be reviewed under the significant modification procedure, or the agency is to revise the draft permit addition and transmit to the EPA the new proposed permit addition. This section does not include a deadline for the TNRCC to issue or deny a permit addition modification. The minor permit modification procedures contained in 40 CFR 70.7(e)(2) require a State to issue or deny the permit modification within 90 days or 15 days after the end of the Administrator's 45 day review period, whichever is later. For full approval, the Texas permit regulation must be consistent with part 70.

Subchapter E of the Texas permit regulation contains the acid rain provisions, as well as the deadlines for submitting acid rain permit applications. The provisions and timelines are consistent with those required by title IV of the Act. Section 122.139 of the Texas permit regulation regarding action on permit applications and section 122.136 regarding additional information are consistent with 40 CFR 70.4(b)(6) and 70.7(a)(4).

Pursuant to the part 70 regulation, a permit must be reopened and revised for cause when an additional applicable requirement becomes applicable to a permitted site with a remaining permit term of three or more years. Sections 122.231 and 122.233 of the Texas permit regulation discuss the criteria and procedures for permit reopenings and meet the requirements of 40 CFR 70.7(f).

Provisions for public notice have been contained in section 122.153 of the Texas permit regulation and in section 122.202(a)(3) for general permits. Those sections provide for procedures for public notice and an opportunity for public comment for all permit issuance proceedings, including initial permit issuance, significant modifications, renewals, and initial general permits. 40 CFR 70.7(h) requires the public notice to include the emissions change involved in any permit modification. For full approval, the State must revise its permit regulation to be consistent with part 70.

Provisions for the EPA and affected State review to be accomplished in an expeditious manner as required by 40 CFR 70.8 have been provided for in sections 122.310 and 122.311 of the Texas permit regulation. Section 122.132 of the Texas permit regulation requires the applicant, rather than the permitting authority, to submit the permit application directly to the Administrator. This is acceptable and meets the requirements of 40 CFR 70.8.

40 CFR 70.8(a)(3) requires each State permitting authority to keep records for five years. The State did not address this requirement in the Texas permit regulation. However, the TNRCC is subject to, and must comply with, the State of Texas Records Retention Schedule that is approved by the State Auditor's Office and the Texas State Library and Archives Commission (signed and dated April 7, 1993) requiring permit files to be maintained for three years after a file is closed. A closed file is one that is closed, terminated, expired, or settled. Therefore, records will be maintained for the life of the permitted facility plus an additional three years. This is consistent with and meets the requirements of 40 CFR 70.8(a)(3).

(d) Permit Content (40 CFR 70.6(a)). The permit content requirements are contained in sections 122.141–122.145 of the Texas permit regulation. 40 CFR 70.3(d) requires fugitive emissions from a part 70 source to be included in the operating permit in the same manner as stack emissions. The definition of an "emission unit" in section 122.010 of the Texas permit regulation includes fugitive emissions to be collectively considered as an emission unit. The operating permit will consolidate already existing federally enforceable requirements at relevant emission units. This raises the minor NSR/part 70 integration issue as discussed in section II(A)(2)(a) above because of the manner in which Texas has defined "applicable requirement". Under 40 CFR 70.3, a permit application must describe all emissions of regulated air pollutants emitted from any emission unit, including fugitive emissions from emission units not subject to an applicable requirement. Because of the issue discussed in section II(A)(2)(a) of this notice regarding the State's definition of applicable requirement, the State's operating permit program does not ensure that this part 70 requirement will be met. For full approval, Texas must revise the Texas permitting regulation to be consistent with part 70.

The Texas permit regulation allows for such changes as emission trading and anticipated operating scenarios provided the permittee meets the requirements set forth in section 122.221 (operational flexibility), that the permittee comply with Regulation VI (Control of Air Pollution by Permits for New Construction or Modification), and provided the Texas SIP allows it. Regulation VI does not allow for a facility to "trade emissions" without best available control technology and an impacts review, nor does Regulation VI allow a source to vary its operating scenario, unless expressly allowed under an existing preconstruction authorization. The Texas permit regulation has adequately addressed emission trading and operating scenarios.

40 CFR 70.6(b) requires all terms and conditions of a permit, including any provisions designed to limit a source's potential to emit, to be enforceable by the EPA and citizens, unless such terms and conditions are specifically designated as not federally enforceable. The State submitted section 122.122 (relating to establishment of federally enforceable restrictions on potential to emit) as a SIP revision on September 17, 1993. Section 122.122 establishes a procedure for grandfathered sources, (i.e. sources exempted from having a State NSR permit because they were constructed or operated prior to 1971), to submit a certification to the State that establishes a limit on potential to emit that is enforceable as a matter of State law. If section 122.122 is approved by the EPA into the SIP, these limits would be federally enforceable as well. The EPA is taking no action on section 122.122 in this notice. A separate action will be taken on the State's proposed SIP revision at a later date.

On January 25, 1995, the EPA's Office of Air Quality Planning and Standards issued guidance which, among other things, announced the availability of a two-year transition period during which a State could give sources additional options for seeking federally enforceable limitations on potential to emit. These options allow a source with a practicably enforceable limit on potential to emit in a State enforceable permit and/or limitations established by State rule (such as by certificates of registration issued pursuant to section 122.122), to certify to the EPA that it accepts the Federal enforceability of that limit for the duration of the transition period. Certifications developed pursuant to section 122.122 will serve as the basis for exercise of this transition policy, provided Texas wishes to exercise this option, and an acceptable certification process is developed between Texas and the EPA addressing the source's acceptance of Federal enforceability.

40 CFR 70.4 requires the State to issue permits for a fixed term of five years in the case of permits for acid rain and all other permits for a period not to exceed five years. 40 CFR 70.4(b)(3)(iv) provides that permits issued for solid waste incineration units combusting municipal waste subject to provisions under section 129(e) of the Act can have a fixed permit term of twelve years. Rather than making the distinction between five and twelve years, section 382.0543(a) of the Texas Clean Air Act provides that an operating permit is subject to renewal at least every five years. This approach for solid waste incineration units combusting municipal waste is acceptable and meets the requirements of the part 70 regulation. The Texas permit regulation does not, however, limit the general permit term to a maximum of five years. For full approval, the State of Texas must revise the general permit term to be consistent with part 70.

Temporary sources, as allowed by 40 CFR 70.6(e), are provided for in section 122.204 of the Texas permit regulation. This section meets the requirements of the part 70 regulation.

The concept of a permit shield is discussed in 40 CFR 70.6(f) as a means by which States could allow an enforcement shield as a permit provision, provided certain criteria were met. The State determined that the permit shield was too broad in scope and too difficult to apply properly. Therefore, the State chose not to include the permit shield as described in the part 70 regulation. Instead, the State adopted section 122.145(e) through which the State intends to provide for an enforcement shield in those situations where the interpretation of a rule is required and may be subject to change.

The EPA believes the intent of the rule is worthy, but is concerned about its ambiguities. Therefore, the EPA believes it can not go forward with a final action granting interim approval to the State of Texas unless the EPA receives a written commitment from the board of the TNRCC or designee agreeing to process any actions taken pursuant to section 122.145(e) as follows: (1) The interpretation made pursuant to section 122.145(e) shall be limited to applicability issues only; (2) the EPA shall have the opportunity to review and veto every section 122.145(e) action; and (3) the interpretation will be based upon the most current EPA guidance, and any guidance developed by the TNRCC must be in writing and preapproved by the EPA. Additionally, for full part 70 approval, the TNRCC must revise section 122.145(e) of the Texas permit regulation to reflect the three previous provisions.

Emergency provisions are provided for in 40 CFR 70.6(g). Section 122.143 of the Texas permit regulation references chapter 101 (General Rules), which contains notification requirements for major upsets. Under this chapter, the owner or operator of a facility must notify the Executive Director of the TNRCC as soon as possible of any major upset condition which causes or may cause an excessive emission that contravenes the intent of the statute or the regulations. In the event that the information required in the notification is unknown at the time of the initial notification, then such information must be provided as soon as possible, and submitted as a written report no later than two weeks from the onset of the upset condition. This allowance for time of agency notification by the permittee is

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inconsistent with the part 70 regulation. 40 CFR 70.6(g)(3) requires the permittee to submit notice of the emergency to the permitting authority within two working days. For full approval, the Texas permitting rule must be consistent with the part 70 regulation.

The part 70 regulation requires an operating permits program to allow for operational flexibility. 40 CFR 70.4(b)(12) allows for "section 502(b)(10) changes without requiring a permit revision, if the changes are not modifications under any provision of title I of the Act and the changes do not exceed emissions allowable under the permit." "Section 502(b)(10) changes" are not defined or included in the Texas permit regulation; therefore, it is not clear what types of changes can be processed through the State's operational flexibility provision. Section 122.221 of the Texas permit regulation could be interpreted to allow changes which violate what the EPA considers an applicable requirement. This is inconsistent with the definition of "Section 502(b)(10) changes" in the part 70 regulation. Therefore, for full approval, the State must revise its permit regulation such that the definition of "Section 502(b)(10) changes" is consistent with part 70.

(e) Off-permit (40 CFR 70.4(b)(14) and 70.4(b)(15)). Section 122.215 of the Texas permit regulation defines off-permit changes under part 70 as changes which qualify as permit additions. Because of the State's narrow definition of applicable requirement, some changes which would be allowed as "off-permit" changes under the Texas rule would not be considered "off-permit" under the Federal definition of changes which can be made without a permit revision under 40 CFR 70.4(b)(14). Section (II)(A)(2)(a) of this notice identifies issues regarding the definition of applicable requirement that must be addressed prior to full approval.

3. Permit Fee Demonstration

In the fee regulation, the State proposes to charge an emission fee for sources subject to title V in Fiscal Year 1994 (FY 1994) and FY 1995 equivalent to at least the part 70 presumptive minimum fee of $25 per ton of regulated air pollutants, adjusted per the consumer price index (CPI). The emission fee rate for FY 1994 is set at $25 per ton of regulated pollutants including carbon monoxide (CO). Texas does not charge fees above the 4,000 ton per year cap. The State will collect $40 million per year to support all applicable part 70 activities. The generation of $40 million in revenue, if CO emissions were excluded, corresponds to an average of $30.77 per ton of regulated pollutants. This average rate is above the presumptive minimum adjusted by the CPI. The emission fee rate for FY 1995 averages $26 per ton of criteria pollutants including the collection for CO emissions. The fee rate will be reviewed in early calendar year 1995 and every two years thereafter. The fee review will account for projected CPI adjustment, additional staffing needs, and/or emission reductions that may require increasing the fee rate.

Pursuant to 40 CFR 70.4(b)(8), the State must include in the fee demonstration an estimate of the permit program costs for the first four years after approval and a plan detailing how the State plans to cover these costs. The EPA has received the TNRCC FY 1994 and FY 1995 operating budget. Since the EPA has not received a complete four year projection, this will be required for full approval.

4. Provisions Implementing the Requirements of Other Titles of the Act

The State of Texas request for approval of a part 70 program also serves as a request for approval of the State's rulemaking process as a mechanism to gain delegation, when requested by the State for a particular standard, of unchanged section 112 standards under the authority of section 112(l). At this time, the State plans to use the mechanisms of adoption-by-reference and case-by-case adoption to adopt unchanged Federal section 112 requirements into its regulations. The State of Texas may, at any time, exercise its option to request, under section 112(l) of the Act, delegation of section 112 requirements in the form of State regulations which the State demonstrates are equivalent to the corresponding section 112 provisions promulgated by the EPA. The State will receive delegation of those remaining standards and programs through the section 112(l) delegation process.

The radionuclide NESHAP is a section 112 regulation and therefore also an applicable requirement under the State operating permits program for part 70 sources. There is not yet a Federal definition of "major" for radionuclide sources. Therefore, until a major source definition for radionuclides is promulgated, no source would be a major section 112 source solely due to its radionuclide emissions. However, a radionuclide source may, in the interim, be a major source under part 70 for another reason, thus requiring a part 70 permit. The EPA will work with the State in the development of its radionuclide program to ensure that permits are issued in a timely manner.

Texas has demonstrated in its operating permits program submittal adequate legal authority to implement and enforce all section 112 requirements through the title V permit. This legal authority is contained in Texas enabling legislation and in regulatory provisions defining "applicable requirements" and stating that the permit must incorporate all applicable requirements. The EPA has determined that this legal authority is sufficient to allow Texas to issue permits that assure compliance with all section 112 requirements.

The State of Texas will pursue delegation of rules and programs, as appropriate, to implement and enforce the existing and future requirements of sections 111, 112, and 129 of the Act, and all MACT standards promulgated in the future, in a manner consistent with State law, to ensure all applicable requirements of part 70 are met.

Section 112(g) of the Act requires that, after the effective date of a permits program under title V, no person may construct, reconstruct, or modify any major source of hazardous air pollutants unless the State determines that the MACT emission limitation under section 112(g) will be met. The EPA has announced its interpretation of the Act in the **Federal Register** (see 60 FR 8333, February 14, 1995) (hereafter Interpretive Notice). The Interpretive Notice postpones the effective date of section 112(g) until after the EPA has promulgated a final rule addressing that provision. The rationale for the revised interpretation was explained in detail in the Interpretive Notice.

The Interpretive Notice explains that the EPA is still considering whether the effective date of section 112(g) should be delayed beyond the date of promulgation of the Federal rule to allow States time to adopt rules implementing the Federal rule. If a decision is made to allow such additional delay in the implementation of section 112(g), the EPA will announce that decision in the final section 112(g) rulemaking.

The State of Texas adopted, and incorporated by reference, the provisions of 40 CFR part 72 in effect on the date of this action for purposes of implementing an acid rain program that meets the requirements of title IV of the Act. It is the EPA's position that this State program meets the requirements of the Federal acid rain program.

5. Enforcement Provisions

40 CFR part 70 requires each operating permit program to provide enforcement authority to address

violations of program requirements by permitted sources. The Texas enforcement provisions are contained in the Texas Clean Air Act (TCAA) and are discussed in the Attorney General's Opinion. Pursuant to 40 CFR 70.11(a)(3)(ii), the permitting authority shall have the authority to recover penalties against any person who knowingly violates any applicable requirement, any permit condition, or any fee or filing requirement. These fees shall be recoverable in a maximum amount of not less than $10,000 per day per violation. The TCAA contains provisions which exceed the $10,000 per day per violation for all cases except for the filing fee criminal enforcement provision. This filing fee provision contained in section 382.092 of the TCAA imposes a penalty for failing to pay a required fee which is punishable "for an individual by a fine of not more than twice the amount of the required fee, confined in jail not to exceed 90 days, or both fine and confinement and, for a corporation or association, by a fine of not more than twice the amount of the required fee." The preamble to part 70 regulation recommends that State enforcement authorities consider as criminal penalties not only fines, but also incarceration, so that State prosecutors will have more inducement to prosecute environmental crimes. Because this provision imposes a range of fines, confinement in jail, and imprisonment, the EPA is proposing to accept that the TCAA meets the criminal enforcement provisions of part 70. The EPA believes the filing fee provision achieves the goal and intent of 40 CFR part 70. The EPA is soliciting comments on the proposed position.

Texas' operating permits program submittal adequately addressed the enforcement requirements of 40 CFR 70.4(b)(4) and 70.4(b)(5) in Volume 1 and the supplemental volume. The submittal contains permit program documentation such as draft copies of the permit forms, application forms, public notice forms, certification forms, and compliance/enforcement reporting forms. Monitoring requirements are contained in this guidance material including the types of monitoring used to demonstrate compliance. However, this guidance may be subject to change once the part 64 enhanced monitoring rules are promulgated. The enforcement program is described in the document "Guidance on Compliance and Enforcement Matters" found in attachment IV of the State's submittal. Volume 1 contains a complete description of the State's compliance tracking and enforcement program which includes an agreement between the State and the EPA, entitled "Fiscal Year 1993 Memorandum of Understanding between the Texas Air Control Board and the U.S. Environmental Protection Agency."

6. Summary

The State of Texas submitted to the EPA its operating permits program, requesting the EPA to grant interim approval to the Texas operating permits program. The submittal has been reviewed for adequacy to meet the requirements of 40 CFR part 70 (1992). The results of this review are included in the technical support document, which will be available at the docket at the locations noted above. The submittal has adequately addressed all 11 elements required for interim approval as discussed in the part 70 regulation. However, the EPA has in this notice described inconsistencies between the Texas permit regulation and the part 70 regulation. These inconsistencies involve both the permit regulation and program implementation, with regard to applicability, permit application requirements, and permit issuance and revision. It is essential that these inconsistencies be remedied by the State consistent with the Act and 40 CFR part 70 prior to the EPA granting full approval of the State's operating permits program.

Due to pending litigation involving sections of 40 CFR part 70, the part 70 regulation may be revised. Any final revisions may require the State to make regulatory and statutory changes.

The State of Texas addressed all requirements necessary to receive interim approval of the State operating permits program pursuant to title V, 1990 Amendments and part 70 (1992).

B. Options for Approval/Disapproval and Implications

Pursuant to 40 CFR 70.4(d), Texas requested that the EPA approve the Texas Operating Permits Program as a source category-limited interim program for a period of two years. The EPA is proposing to grant interim approval to the operating permits program submitted by Texas on November 15, 1993, for a period of two years.

Volume 1 of the Texas operating permits program submittal includes the rationale for requesting interim approval. The State projects that over 3,000 major sources will be subject to the operating permits program. Many of these sources are complex. The EPA recognizes that a large percentage of the Nation's title V sources will be permitted by a single agency and that a ramp-up period is essential. The time following interim approval will allow the State to hire additional engineers and train experienced engineers to write quality permits that consolidate all applicable requirements into one document. Furthermore, the additional time is necessary to develop a computer information management system that will manage the permits, permit applications, and additional documentation. This computer system will be the mechanism used to interchange information between the TNRCC, the EPA, the affected States, the regulated community, and the general public. Such a database will give interested parties an efficient mechanism to review the current applicable requirements and the compliance status of a source. The EPA is satisfied that the State has demonstrated compelling reasons for a source category-limited interim approval.

Between the interim program and the full program, the transition schedule requires the State to take final action on applications for 400 sites each of the first two years, 1,000 sites the third year, and 600 sites each of the last two years. Therefore, it is projected that 60 percent of the sources required to obtain operating permits will obtain those permits in the first three years of the program.

State-specific circumstances preclude the TNRCC from demonstrating coverage of sources which are responsible for at least 80 percent of the aggregate emissions during the interim period. The State will be required to permit complex stationary sources such as refineries and petrochemical plants. These complex plants can have as many as 3,000 emission units per source. The State's rationale for requesting interim approval is to permit these complex sources toward the end of the permit issuance period (rather than during the first two years). The State designed the interim program to bring in similar types of sources and those which have the fewest number of emission points. This will enable the State to spend its resources on writing quality permits that are federally enforceable. The EPA is confident that the State is addressing enough sources in those first three years to represent a significant portion of the program.

III. Proposed Rulemaking Action

In this action, the EPA is proposing source category-limited interim approval of the operating permits program submitted by the State of Texas. The program was submitted by the State to the EPA for the purpose of complying with Federal requirements

found in title V of the Act and in 40 CFR part 70, which mandate that States develop, and submit to the EPA, programs for issuing operating permits to all major stationary sources, and to certain other sources with the exception of Indian Lands.

Requirements for title V approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a mechanism for delegation of Federal section 112 standards as they apply to part 70 sources. Section 112(l)(5) requires that the State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under 40 CFR part 70. Therefore, as part of this interim approval, the EPA is also proposing to grant approval under section 112(l)(5) and 40 CFR 63.91 ðf the State's mechanism for receiving delegation of section 112 standards that are unchanged from Federal standards as promulgated when requested by the State. The State will receive delegation of the remaining standards through other section 112(l) delegation processes.

The EPA has reviewed this submittal of the Texas operating permits program and is proposing source category-limited interim approval for a period of two years. Certain defects in the State's permit regulation and program implementation preclude the EPA from granting full approval of the State's operating permits program at this time. The EPA is proposing to grant interim approval, subject to the State obtaining the needed regulatory and program implementation revisions within 18 months after the Administrator's approval of the Texas title V program pursuant to 40 CFR 70.4.

IV. Administrative Requirements

A. Request for Public Comments

The EPA is requesting comments on all aspects of this proposed interim approval. Copies of the State's submittal and other information relied upon for the proposed interim approval are contained in a docket maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, the EPA in the development of this proposed interim approval. The principal purposes of the docket are:

(1) To allow interested parties a means to identify and locate documents so that they can effectively participate in the approval process, and

(2) To serve as the record in case of judicial review. The EPA will consider any comments received by July 7, 1995.

B. Executive Order 12866

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

C. Regulatory Flexibility Act

The EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permit programs submitted to satisfy the requirements of 40 CFR part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 70

Administrative practice and procedure, Air pollution control, Environmental protection, Intergovernmental relations, Operating permits, and Reporting and recordkeeping requirements.

VI. Miscellaneous

A. Interim Approval

Proposed interim approval of the part 70 operating permits program for the State of Texas.

Authority: 42 U.S.C. 7401–7671q.

Dated: May 3, 1995.

A. Stanley Meiburg,

Deputy Regional Administrator (6D).

[FR Doc. 95–13926 Filed 6–6–95; 8:45 am]

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40 CFR Part 81

[FRL–5217–3]

Clean Air Act Reclassification; Arizona-Phoenix Nonattainment Area; PM–10

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In this action EPA proposes to find that the Phoenix metropolitan PM–10 nonattainment area has not attained the PM–10 national ambient air quality standards (NAAQS) by the Clean Air Act (CAA) mandated attainment date for moderate nonattainment areas. Section 188(c)(1) of the Act established an attainment date of no later than December 31, 1994 for areas classified as moderate nonattainment areas under section 107(d)(4)(B) of the CAA. This proposed finding is based on monitored air quality data for the PM–10 NAAQS during the years 1992–94. If EPA takes final action on this proposed finding, the Phoenix Planning Area (PPA) will be reclassified by operation of law as a serious nonattainment area for PM–10 under section 188(b)(2)(A) of the CAA.

DATES: Comments on this proposed finding must be received in writing by July 7, 1995.

ADDRESSES: Comments should be addressed to Robert Pallarino, U.S. Environmental Protection Agency, Region 9, Air and Toxics Division, Air Planning Branch, Plans Development Section (A–2–2), 75 Hawthorne Street, San Francisco, California 94105.

FOR FURTHER INFORMATION CONTACT: Robert S. Pallarino, U.S. EPA, Region 9, Air and Toxics Division, Air Planning Branch, Plans Development Section (A–2–2), 75 Hawthorne Street, San Francisco, California 94105, (415) 744–1212.

SUPPLEMENTARY INFORMATION:

I. Background

A. CAA Requirements and EPA Actions Concerning Designation and Classification

On November 15, 1990, the date of enactment of the 1990 Clean Air Act Amendments, PM–10 areas meeting the qualifications of section 107(d)(4)(B) of the Act were designated nonattainment by operation of law. Once an area is designated nonattainment, section 188 of the Act outlines the process for classification of the area and establishes the area's attainment date. Pursuant to section 188(a), all PM–10 nonattainment areas were initially classified as moderate by operation of law upon designation as nonattainment. These nonattainment designations and moderate area classifications were codified in 40 CFR part 81 in a **Federal Register** document published on November 6, 1991 (56 FR 56694).

States containing areas which were designated as moderate nonattainment by operation of law under section 107(d)(4)(B) were to develop and submit state implementation plans (SIPs) to provide for the attainment of the PM–10 NAAQS. Pursuant to section 189(a)(2), those SIP revisions were to be submitted to EPA by November 15, 1991.

B. Reclassification as Serious Nonattainment

EPA has the responsibility, pursuant to sections 179(c) and 188(b)(2) of the Act, of determining within 6 months of the applicable attainment date, whether PM–10 nonattainment areas have attained the NAAQS. Section 179(c)(1) of the Act provides that these determinations are to be based upon an area's "air quality as of the attainment date", and section 188(b)(2) is consistent with this requirement. EPA makes the determinations of whether an area's air quality is meeting the PM–10 NAAQS based upon air quality data gathered at monitoring sites in the nonattainment area and entered into the Aerometric Information Retrieval System (AIRS). These data are reviewed to determine the area's air quality status in accordance with EPA guidance at 40 CFR part 50, Appendix K.

Pursuant to Appendix K, attainment of the annual PM–10 standard is achieved when the annual arithmetic mean PM–10 concentration is equal to or less than 50 μg/m³. Attainment of the 24 hour standard is determined by calculating the expected number of exceedances of the 150 μg/m³ limit per year. The 24 hour standard is attained when the expected number of exceedances is 1.0 or less. A total of 3 consecutive years of clean air quality data is generally necessary to show attainment of the 24 hour and annual standards for PM–10. A complete year of air quality data, as referred to in 40 CFR part 50, Appendix K, is comprised of all 4 calendar quarters with each quarter containing data from at least 75 percent of the scheduled sampling days.

Under section 188(b)(2)(A) a moderate PM–10 nonattainment area must be reclassified as serious by operation of law after the statutory attainment date if the Administrator finds that the area has failed to attain the NAAQS. Pursuant to section 188(b)(2)(B) of the Act, EPA must publish a document in the **Federal Register** identifying those areas that failed to attain the standard and the resulting reclassifications.

II. Today's Action

EPA is, by today's action, proposing to find that the PPA did not attain the PM–10 NAAQS by the required attainment date of December 31, 1994. As discussed below, this proposed finding is based upon air quality data which revealed violations of the PM–10 NAAQS during 1992–1994.

A. Ambient Air Monitoring Data

The following table lists each of the monitoring sites in the PPA where the 24 hour PM–10 NAAQS has been exceeded during 1992–1994:

Monitoring site	24 hour concentration	Date
4732 S. Central, PX.	171 μg/m³	11/20/92
4732 S. Central, PX.	158 μg/m³	12/2/92
1475 E. Pecos, CHAN.	156 μg/m³	11/20/92

The two monitoring sites in the PPA that recorded exceedances of the PM–10 NAAQS operate on a one in six day sampling schedule. Generally, if PM–10 sampling is scheduled less than every day, EPA requires the adjustment of observed exceedances to account for incomplete sampling. The method for adjusting the observed exceedances is described in 40 CFR Part 50, Appendix K, section 3.1. In the case of the Phoenix site, two exceedances of the 24 hour NAAQS were observed in 1992. After adjusting for incomplete sampling, the number of exceedances of the NAAQS in 1992 at this site was 13.1. In the case of the Chandler site, one exceedance of the 24 hour NAAQS was observed in 1992. After adjusting for incomplete sampling, the number of exceedances of the NAAQS in 1992 at this site was 11.5.

According to 40 CFR part 50, the 24 hour NAAQS is attained when the expected number of days per calendar year with a 24 hour average concentration above 150 μg/m³ is equal to or less than one. In the simplest case, the number of expected exceedances at a site is determined by recording the number of exceedances in each calendar year and then averaging them over the past three calendar years. Therefore from 1992–1994, the number of expected exceedances at the Phoenix and Chandler monitoring sites were 4.4 and 3.8, respectively. These exceedances cause both the Phoenix site and the Chandler site to be in violation of the 24 hour PM–10 NAAQS.

In addition to violations of the 24 hour NAAQS, the annual standard has not been attained at one monitoring site. The East Pecos site in Chandler had an annual average of 55 μg/m³, based on the monitoring data collected during 1992–1994.

B. SIP Requirements for Serious Areas

PM–10 nonattainment areas reclassified as serious under section 188(b)(2) of the CAA are required to submit, within 18 months of the area's reclassification, SIP revisions providing for the implementation of best available control measures (BACM) no later than four years from the date of reclassification. The SIP also must contain a demonstration that the implementation of BACM will provide for attainment of the PM–10 NAAQS no later than December 31, 2001. EPA has provided specific guidance on developing serious area PM–10 SIP revisions in an addendum to the General Preamble to Title I of the Clean Air Act. See 59 FR 41998 (August 16, 1994).

III. Request for Public Comment

The EPA is requesting comment on all aspects of today's proposal. As indicated at the outset of this notice, EPA will consider any comments received by July 7, 1995.

IV. Executive Order (EO) 12866

Under E.O. 12866, 58 FR 51735 (October 4, 1993), EPA is required to determine whether regulatory actions are significant and therefore should be subject to OMB review, economic analysis, and the requirements of the Executive Order. The Executive Order defines a "significant regulatory action" as one that is likely to result in a rule that may meet at least one of the four criteria identified in section 3(f), including, under paragraph (1), that the rule may "have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities."

The Agency has determined that the finding of failure to attain proposed today would result in none of the effects identified in section 3(f). Under section 188(b)(2) of the CAA, findings of failure to attain and reclassification of nonattainment areas are based upon air quality considerations and must occur by operation of law in light of certain air quality conditions. They do not, in-and-of-themselves, impose any new requirements on any sectors of the economy. In addition, because the statutory requirements are clearly defined with respect to the differently classified areas, and because those requirements are automatically triggered by classifications that, in turn, are triggered by air quality values, findings of failure to attain and reclassification cannot be said to impose a materially adverse impact on State, local, or tribal governments or communities.

V. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

As discussed in section IV of this notice, findings of failure to attain and

reclassification of nonattainment areas under section 188(b)(2) of the CAA do not in-and-of-themselves create any new requirements. Therefore, I certify that today's proposed action does not have a significant impact on small entities.

VI. Unfunded Mandates

Under sections 202, 203 and 205 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act), signed into law on March 22, 1995, EPA must assess whether various actions undertaken in association with proposed or final regulations include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local or tribal governments in the aggregate.

EPA believes, as discussed earlier in section IV of this notice, that the proposed finding of failure to attain and reclassification of the Phoenix Planning Area are factual determinations based upon air quality considerations and must occur by operation of law and, hence, do not impose any federal intergovernmental mandate, as defined in section 101 of the Unfunded Mandates Act.

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter.

Authority: 42 U.S.C. 7401–7671q.

Dated: May 25, 1995.

David P. Howekamp,

Acting Regional Administrator.

[FR Doc. 95–13925 Filed 6–6–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 180

[PP 0F3885/R2142; FRL–4958–9]

RIN 2070–AC18

Burkholderia (Pseudomonas) Cepacia Type Wisconsin; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that an exemption from the requirement of a tolerance be established for residues of the biological pesticide *Burkholderia (Pseudomonas) cepacia* type Wisconsin in or on all raw agricultural commodities, resulting from use on plant roots or seedling roots. EPA is proposing this regulation on its own initiative. The proposal would amend the existing tolerance exemption for this organism, which is limited to the seed treatment use.

DATES: Comments identified by the docket number, [PP 0F3885/R2142], must be received on or before July 7, 1995.

ADDRESSES: Submit written comments by mail to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Public Docket, Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures as set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. The public docket is available for public inspection in Rm. 1132 at the above address, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [PP 0F3885/R2142]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Denise Greenway, Biopesticides and Pollution Prevention Division (7501W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. CS51L6, Crystal Station #1, 2800 Crystal Drive, Arlington, VA 22202, (703)-308-8263; e-mail: greenway.denise@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 3, 1991 (56 FR 13642), EPA issued a notice that Stine Microbial Products, 4722 Pflaum Rd., Madison, WI 53704, had submitted pesticide petition (PP) 0F3885 to EPA proposing to amend 40 CFR part 180 by establishing a regulation pursuant to the Federal Food, Drug and Cosmetic Act (21 U.S.C. 346a and 371), to exempt from the requirement of a tolerance the residues of the biological pesticide *Pseudomonas cepacia* type Wisconsin in or on all raw agricultural commodities when applied as a seed treatment for growing agricultural crops in accordance with good agricultural practices. There were no comments received in response to the notice.

In the **Federal Register** of December 23, 1992 (57 FR 61003), an exemption from the requirement of a tolerance was established for residues of the biological pesticide *Pseudomonas cepacia* type Wisconsin in or on all raw agricultural commodities when applied as a seed treatment for growing agricultural crops in accordance with good agricultural practices.

Stine Microbial Products has subsequently proposed a new use site, plant roots or seedling roots. Like the seed treatment use for which an exemption from the requirement of a tolerance now exists (40 CFR 180.1115), *Pseudomonas cepacia* type Wisconsin applied to plant roots or seedling roots will colonize the developing root system, and by producing antibiotics, protect the seedling or plant from a range of plant pathogenic fungi and nematodes. The Agency has determined that this presents no new hazard issues and that the following originally submitted data can support the registration for use as a soil, seed, or seedling treatment:

The organism is a naturally occurring biotype of the bacterial species *Pseudomonas cepacia* which is found world wide. The original isolates of *Pseudomonas cepacia* type Wisconsin were identified as colonizers of the roots and rhizospheres of maize. Further testing indicated that this biotype will colonize roots of many crop plants. *Pseudomonas cepacia* type Wisconsin has been shown to produce antibiotics which are effective against a diverse range of plant pathogenic fungi. *Pseudomonas cepacia* type Wisconsin is not generally regarded as a human or animal pathogen. Products containing this organism are intended to be used for formulating other end-use products or as a seed treatment (and the proposed plant root and seedling root use). When applied to seeds (or plant or seedling roots), the bacteria colonize the developing root system, and by producing antibiotics, protect the seedling from a range of plant pathogenic fungi and nematodes.

The data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the exemption from the requirement of a tolerance include an acute oral toxicity/pathogenicity study, an acute dermal toxicity study, an acute pulmonary toxicity/pathogenicity study, and an acute intravenous toxicity/pathogenicity study. All studies were conducted with the rat as the test animal. A review of these studies indicated that the organism was not acutely toxic to test animals when administered via dermal and intravenous routes. The active ingredient was not infective or pathogenic to test animals when administered via the oral, pulmonary, or intravenous route. No reports of hypersensitivity have been recorded from personnel working with this organism. All of the toxicity studies submitted are considered acceptable. The toxicity data provided are sufficient to show that there are no foreseeable health hazards to humans or domestic animals likely to arise from the use of this organism as a seed (or seedling root or plant root) treatment.

Residue chemistry data were not required; such data are necessary only if the submitted toxicity studies indicate that additional Tier II or Tier III toxicology data are needed. These additional data were not needed. Therefore, no residue data are required to establish an exemption from the requirement of a tolerance for the biological pesticide *Pseudomonas cepacia* type Wisconsin in or on all raw agricultural commodities when applied to plant roots and seedling roots or used as a seed treatment for growing agricultural crops in accordance with good agricultural practices.

Acceptable daily intake (ADI) and maximum permissible intake (MPI) considerations are not relevant to this petition because the data submitted demonstrated that this biological control agent is not toxic to humans. No enforcement actions are expected. Therefore, the requirement for an analytical method for enforcement purposes is not applicable to this exemption request.

The Agency hereby takes the initiative to amend the current tolerance exemption (40 CFR 180.1115) by expanding it to include the proposed use on plant roots and seedling roots. The Agency also proposes that the exemption from the requirement of a tolerance be further amended to update the organism name. There has been a recent change in the bacterial taxonomy affecting the generic affiliation of the RNA group II pseudomonads and moving them from the genus *Pseudomonas* to the newly described genus *Burkholderia*. To reduce confusion by completely changing the organism name, it is proposed that the former genus name be inserted parenthetically after the new one, *Burkholderia (Pseudomonas) cepacia*.

Burkholderia (Pseudomonas) cepacia type Wisconsin is considered useful for the purposes for which the exemption from the requirement of a tolerance is sought. Based on the information considered, the Agency concludes that the establishment of a tolerance is not necessary to protect the public health. Therefore, EPA proposes that an exemption from the requirement of a tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains the ingredient listed herein, may request within 30 days after the publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA).

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 0F3885/R2142]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch at the above address from 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays.

A record has been established for this rulemaking under docket number [PP 0F3885/R2142] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-Docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

The Office of Management and Budget has exempted this document from the requirement of review pursuant to Executive Order 12866.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 1, 1995.

Janet L. Andersen,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.1115 is revised to read as follows:

§ 180.1115 Burkholderia (Pseudomonas) cepacia type Wisconsin; exemption from the requirement of a tolerance.

The biological pesticide *Burkholderia (Pseudomonas) cepacia* type Wisconsin is exempted from the requirement of a tolerance in or on all raw agricultural commodities when applied to plant roots and seedling roots, or as a seed treatment for growing agricultural crops

in accordance with good agricultural practices.

[FR Doc. 95–13961 Filed 6–6–95; 8:45 am]
BILLING CODE 6560–50–F

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40 CFR Part 721

[OPPTS–50615B; FRL–4916–4]

RIN 2070–AB27

Organotin Lithium Compound; Proposed Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for the chemical substance described generically as an organotin lithium compound which is the subject of premanufacture notice (PMN) P–93–1119. This proposal would require certain persons who intend to manufacture, import, or process this substance for a significant new use to notify EPA at least 90 days before commencing any manufacturing, importing, or processing activities for a use designated by this SNUR as a significant new use. The required notice would provide EPA with the opportunity to evaluate the intended use and, if necessary, to prohibit or limit that activity before it can occur.

DATES: Written comments must be received by EPA by July 7, 1995.

ADDRESSES: Each comment must bear the docket control number OPPTS–50615B. All comments should be sent in triplicate to: OPPT Document Control Officer (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–G99, 401 M St., SW., Washington, DC 20460. All comments which are claimed confidential must be clearly marked as such. Three additional sanitized copies of any comments containing confidential business information (CBI) must also be submitted. Nonconfidential versions of comments on this proposed rule will be placed in the rulemaking record and will be available for public inspection. See Unit VII. of this document for further information.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: ncic@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number OPPTS–50615B. No CBI should be submitted through e-mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in Unit VIII. of this document.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: This proposed SNUR would require persons to notify EPA at least 90 days before commencing the manufacture, import, or processing of P–93–1119 for the significant new uses designated herein. The required notice would provide EPA with information with which to evaluate an intended use and associated activities.

I. Authority

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule after considering all relevant factors, including those listed in section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, section 5(a)(1)(B) of TSCA requires persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the chemical substance for that use. Section 26(c) of TSCA authorizes EPA to take action under section 5(a)(2) with respect to a category of chemical substances.

Persons subject to this SNUR would comply with the same notice requirements and EPA regulatory procedures as submitters of premanufacture notices under section 5(a)(1) of TSCA. In particular, these requirements include the information submission requirements of sections 5(b) and (d)(1), the exemptions authorized by section 5(h)(1), (h)(2), (h)(3), and (h)(5), and the regulations at 40 CFR part 720. Once EPA receives a significant new use notice (SNUN), EPA may take regulatory action under section 5(e), 5(f), 6, or 7 to control the activities for which it has received a SNUN. If EPA does not take action, section 5(g) of TSCA requires EPA to explain in the **Federal Register** its reasons for not taking action.

Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret section 12(b) appear at 40 CFR part 707.

II. Applicability of General Provisions

General regulatory provisions applicable to SNURs are codified at 40 CFR part 721, subpart A. On July 27, 1988 (53 FR 28354), and July 27, 1989 (54 FR 31298), EPA promulgated amendments to the general provisions which apply to this SNUR. In the **Federal Register** of August 17, 1988 (53 FR 31252), EPA promulgated a "User Fee Rule" (40 CFR part 700) under the authority of TSCA section 26(b). Provisions requiring persons submitting SNUNs to submit certain fees to EPA are discussed in detail in that **Federal Register** document. Interested persons should refer to these documents for further information.

III. Background

EPA published a direct final SNUR for the chemical substance which was the subject of PMN P–93–1119 in the **Federal Register** of May 27, 1994 (59 FR 27474). EPA received adverse comments following publication for this chemical substance. Therefore, as required by 40 CFR 721.160, the final SNUR for P–93–1119 is being revoked elsewhere in this issue of the **Federal Register** and this proposed rule on the substance is being issued.

The comments were submitted by the PMN submitter's customer for this substance. The commenter proposed changing the requirements of the SNUR. Based on potential toxicity to the environment, the direct final SNUR required notification if the substance was predictably or purposefully released to surface waters. The commenter proposed a SNUR requiring notification if the substance was predictably or purposefully released to surface waters above a concentration of 1 ppb (part per billion) according to the formula in 40 CFR 721.90.

The direct final SNUR was based on the information in the PMN that manufacture and use of the PMN substance as a catalyst would not result in releases to surface waters. The commenter demonstrated through a pilot study and analytical measurements that the substance would be released to surface waters. The commenter also demonstrated that treatment at that particular plant site would result in surface water concentrations below EPA's original 1 ppb concern concentration. Because the data demonstrate that releases to water could occur but would not exceed the 1 ppb concern level at the intended site of manufacture, EPA is proposing this SNUR with a water trigger of 1 ppb as a significant new use.

EPA is not soliciting and will not respond in this proposal to comments on any of the other SNURs that were published in the May 27, 1994 **Federal Register** because those rules either became final, effective July 25, 1994, or EPA is addressing written comments concerning those rules in a separate rulemaking. Except for the use of the 1 ppb level, the supporting rationale and background to this proposal are more fully set out in the preamble to the direct final SNUR for this substance and in the preamble to EPA's first direct final SNURs published in the **Federal Register** of April 24, 1990 (55 FR 17376). Consult those preambles for further information on the objectives, rationale, and procedures for the proposal and on the basis for significant new use designations including provisions for developing test data.

IV. Substance Subject to This Rule

EPA is proposing significant new use and recordkeeping requirements for the following chemical substance under 40 CFR part 721.

PMN Number P–93–1119

Chemical name: (generic) Organotin lithium compound.

CAS number: Not available.

Toxicity concern: The substance will be used as a catalyst. Test data on organotin pesticides indicate that the substance may cause toxicity to aquatic organisms. Based on these data, EPA expects toxicity to aquatic organisms to occur at a concentration of 1 ppb of the substance in surface waters. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because the substance would not be released to surface waters above a concentration of 1 ppb. EPA has determined that manufacture, processing, and use of the substance for uses other than as a catalyst could result in releases to surface waters above 1 ppb. Based on this information, the substance meets the concern criteria at § 721.170(b)(4)(iii).

Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400), a daphnid acute toxicity study (40 CFR 797.1300), and an algal acute toxicity study (40 CFR 797.1050) would help characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.9668.

V. Applicability of SNUR to Uses Occurring Before Effective Date of the Final SNUR

EPA has decided that the intent of section 5(a)(1)(B) is best served by designating a use as a significant new use as of the date of proposal rather than as of the effective date of the rule. Because this SNUR was first published on May 27, 1994, as a direct final rule, that date will serve as the date after which uses would be considered to be new uses. If uses which had commenced between that date and the effective date of this rulemaking were considered ongoing, rather than new, any person could defeat the SNUR by initiating a significant new use before the effective date. This would make it difficult for EPA to establish SNUN requirements. Thus, persons who begin commercial manufacture, import, or processing of the substance for uses that would be regulated through this SNUR after May 27, 1994, would have to cease any such activity before the effective date of the rule. To resume their activities, such persons would have to comply with all applicable SNUN requirements and wait until the notice review period, including all extensions, expires. EPA, not wishing to unnecessarily disrupt the activities of persons who begin commercial manufacture, import, or processing for a proposed significant new use before the effective date of the SNUR, has promulgated provisions to allow such persons to comply with this proposed SNUR before it is promulgated. If a person were to meet the conditions of advance compliance as codified at § 721.45(h), the person would be considered to have met the requirements of the final SNUR for those activities. If persons who begin commercial manufacture, import, or processing of the substance between proposal and the effective date of the SNUR do not meet the conditions of advance compliance, they must cease that activity before the effective date of the rule. To resume their activities, these persons would have to comply with all applicable SNUN requirements and wait until the notice review period, including all extensions, expires.

VI. Economic Analysis

EPA evaluated the potential costs of establishing SNUN requirements for potential manufacturers, importers, and processors of the chemical substance at the time of the direct final rule. The analysis is unchanged for the substance in this proposed rule. The Agency's complete economic analysis is available in the public record for this proposed rule (OPPTS–50615B).

VII. Comments Containing Confidential Business Information

Any person who submits comments containing information claimed as CBI must mark the comments as "confidential," "trade secret," or other appropriate designation. Comments not claimed as confidential at the time of submission will be placed in the public file without further notice to the submitter. Any comments marked as confidential will be treated in accordance with the procedures in 40 CFR part 2. Any party submitting comments claimed to be confidential must prepare and submit a nonconfidential public version in triplicate of the comments that EPA can place in the public file.

VIII. Rulemaking Record

A record has been established for this rulemaking under docket number OPPTS–50615B (including comments and data submitted electronically as described below). EPA will accept additional materials for inclusion in the record at any time between this proposal and designation of the complete record. EPA will identify the complete rulemaking record by the date of promulgation. A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center, Rm. NE–B607, 401 M St., SW., Washington, DC 20460.

Electronic comments can be sent directly to EPA at:
ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

IX. Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines a "significant regulatory action" as an action likely to lead to a rule (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, it has been determined that this proposed rule would not be "significant" and is therefore not subject to OMB review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that this proposed rule would not have a significant impact on a substantial number of small businesses. EPA has determined that approximately 10 percent of the parties affected by this proposed rule could be small businesses. However, EPA expects to receive few SNUNs for this substance. Therefore, EPA believes that the number of small businesses affected by this proposed rule will not be substantial, even if all of the SNUN submitters were small firms.

C. Paperwork Reduction Act.

OMB has approved the information collection requirements contained in this proposed rule under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and has assigned OMB control number 2070–0012. Public reporting burden for this collection of information is estimated to vary from 30 to 170 hours per response, with an average of 100 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch (2131), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information requirements contained in this proposal.

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous materials, Reporting and recordkeeping requirements, Significant new uses.

Dated: May 19, 1995.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

Therefore, it is proposed that 40 CFR part 721 be amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 would continue to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

2. By adding new § 721.9668 to subpart E to read as follows:

§ 721.9668 Organotin lithium compound.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as organotin lithium compound (PMN P–93–1119) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N = 1 ppb).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

[FR Doc. 95–13964 Filed 6–6–95; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–7142]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (100-year) flood elevations and proposed base (100-year) flood elevation modifications for the communities listed below. The base (100-year) flood elevations and modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW, Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 Amended

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/ county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
Arkansas	Bryant (City), Saline County.	Crooked Creek	At corporate limits	*351	*349
			At Mills Park Road	*354	*354
			At Ridgecrest Road	*373	*373
		Bryant Tributary	At confluence with Crooked Creek	*353	*352
			At private drive	*372	*372
		Trailer Park Ditch	At downstream corporate limit	None	*348
			At upstream corporate limit	None	*348
			At confluence of Bryant Tributary and Crooked Creek.	None	*352
Maps are available for inspection at 210 Southwest Third Street, Bryant, Arkansas.					
Send comments to The Honorable Roy Bishop, Mayor of Bryant, 210 Southwest Third Street, Bryant, Arkansas 72022.					
Arkansas	Saline County, (Unincorporated Areas).	Crooked Creek	At Brookwood Road (County Road 612)	*336	*336
			Approximately 215 feet upstream of Brookwood Road (County Road 612).	None	*337
			Approximately 1,110 feet upstream of Brookwood Road (County Road 612).	None	*345
		Trailer Park Ditch	At Brookwood Road	None	*348
		Bryant Tributary	At confluence with Crooked Creek	None	*352
			At corporate limit	None	*365
Maps are available for inspection at the Saline County Assessor's Office, 215 North Main, Benton, Arkansas.					
Send comments to The Honorable Terry Parsons, Saline County Judge, 200 North Main, Benton, Arkansas 72015.					
Colorado	Fort Collins (City), Larimer County.	Cooper Slough	Approximately 150 feet downstream of the Colorado & Southern Railroad.	None	*4,938
			At confluence of East Island Divide	None	*4,944
			At divergence of East Island Divide	None	*4,951
			Just upstream of Vine Drive	None	*4,957
		Sherry Drive Overflow	Just upstream of Prospect Road	None	*4,902
			Approximately 1,000 feet upstream of Prospect Road.	None	*4,903
			Approximately 3,400 feet upstream of Prospect Road.	None	*4,913
			Approximately 4,300 feet upstream of Prospect Road.	None	*4,916
		East Island Divide	At confluence with Cooper Slough	None	*4,944

State	City/town/ county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
			1,000 feet upstream of confluence with Cooper Slough.	None	*4,947
			At divergence with Cooper Slough	None	*4,951
		State Highway 14 Overflow.	Approximately 300 feet above confluence with Lake Canal.	None	*4,914
			Approximately 800 feet above confluence with Lake Canal.	None	*4,916
		Spring Creek	At confluence with Cache La Poudre River.	*4,896	*4,899
			Just upstream of East Prospect Road	*4,909	*4,905
			Just upstream of Timberline Road	*4,914	*4,907
			Just downstream of the Union Pacific Railroad.	*4,917	*4,916
			Just upstream of Welch Street	*4,938	*4,937
			Just upstream of Lemay Avenue	*4,949	*4,942
			Just upstream of Stover Street	*4,967	*4,960
			Just upstream of Remington Street	*4,981	*4,980
			Approximately 650 feet upstream of South College Avenue.	*4,989	*4,993
			Just upstream of South Shields Street	*5,016	*5,013
			Just upstream of West Drake Road	*5,056	*5,057
			Just upstream of South Taft Hill Road	None	*5,083
			Approximately 3,000 feet upstream of South Taft Hill Road.	None	*5,096
			Approximately 5,300 feet upstream of South Taftt Hill Road.	None	*5,110
			Just upstream of West Horsetooth Road	None	*5,137
			Approximately 1,450 feet upstream of West Horsetooth Road.	None	*5,149
		Cache La Poudre River South of Burlington Northern Railroad Embankment.	Approximately 4,300 feet upstream of confluence with Boxelder Creek.	*4,878	*4,872
		Cache La Poudre River North of Burlington Northern Railroad Embankment.	At confluence of Boxelder Creek	*4,869	*4,866
			At confluence of Cache La Poudre Low Flow Channel.	*4,874	*4,873
			At confluence of Cache La Poudre Left Flow Path (LPATH).	*4,883	*4,879
		Cache La Poudre River	Just downstream of the Burlington Northern Railroad.	*4,863	*4,858
			At divergence with Cache La Poudre Low Flow Channel.	*4,884	*4,883
			Approximately 3,500 feet downstream of East Prospect Road.	*4,884	*4,886
			Just upstream of East Prospect Road	*4,895	*4,889
			At confluence of Spring Creek	*4,897	*4,900
			At confluence of Cache La Poudre Right Flow Path (RPATH).	*4,902	*4,902
			At divergence of Cache La Poudre Left Flow Path (LPATH).	*4,914	*4,913
			At confluence of Lincoln Avenue Overflow (LINC).	*4,918	*4,918
			At divergence of Cache La Poudre Right Flow Path (RPATH).	*4,923	*4,921
			Just upstream of Lemay Avenue	*4,933	*4,933
			At divergence of Lemay Avenue Overflow (Lemayds).	*4,935	*4,935
			Just downstream of Lincoln Avenue	*4,950	*4,947
			At divergence of Lincoln Avenue Overflow (LINC).	*4,952	*4,951
			Just upstream of North College Avenue	*4,966	*4,965
			Approximately 3,300 feet upstream of Lake Canal Diversion Dam.	*4,977	*4,977
		Cache La Poudre Low Flow Channel.	At confluence with Cache La Poudre River.	*4,874	*4,873
			Approximately 2,600 feet upstream of confluence with Cache La Poudre River.	*4,880	*4,877

State	City/town/ county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
			At divergence with Cache La Poudre River.	*4,884	*4,885
		Cache La Poudre Left Flow Path (LPATH).	At confluence with Cache La Poudre River.	*4,883	*4,879
			Approximately 2,000 feet upsteam of confluence with Cache La Poudre River.	*4,887	*4,883
			Approximately 5,000 feet upstream of confluence with Cache La Poudre River.	*4,891	*4,897
			At divergence from Cache La Poudre River.	*4,914	*4,913
		Cache La Poudre Right Flow Path (RPATH).	At confluence with Cache La Poudre River.	*4,902	*4,902
			Approximately 3,000 feet upstream of confluence with Cache La Poudre River.	*4,913	*4,905
			At divergence from Cache La Poudre River.	*4,923	*4,921
		Lincoln Avenue Overflow (LINC).	Just upstream of North Lemay Avenue	*4,941	*4,940
			Just upstream of Second Street	*4,947	*4,948
			At divergence from Cache La Poudre River.	*4,952	*4,951
		Lemay Avenue Overflow (Lamayds).	Approximately 900 feet downstream of Lemay Avenue.	*4,932	*4,932
			At North Lemay Avenue	*4,934	*4,934

Maps are available for inspection at the Stormwater Utilities Department, City of Fort Collins, 235 Mathews, Fort Collins, Colorado.
Send comments to The Honorable Ann Azari, Mayor, City of Fort Collins, P.O. Box 580, Fort Collins, Colorado 80522.

Colorado	Larimer County (Unincorporated Areas).	Cooper Slough	Just upstream of State Highway 14	None	*4,928
			Shallow flooding north of State Highway 14.	None	#3
			Just upstream of Colorado & Southern Railroad.	None	*4,943
			Just downstream of Vine Drive	None	*4,954
		State Highway 14, Overflow.	Just upstream of Lake Canal	None	*4,913
			Just downstream of State Highway 14	None	*4,926
			Just upstream of State Highway 14	None	*4,628
			At the intersection of Weicke Drive and John Deere Road.	None	#3
		Sherry Drive Overflow	Approximately 80 feet upstream of Prospect Road.	None	*4,902
			Approximately 1,600 feet upstream of Prospect Road.	None	*4,904
			Approximately 500 feet downstream of Sherry Drive.	None	*4,916
			Approximately 750 feet upstream of Sherry Drive.	None	*4,920
		Spring Creek	Approximately 960 feet upstream of South Taft Hill Road.	None	*5,083
			Approximately 2,600 feet upstream of South Taft Hill Road.	None	*5,093
			Just downstream of West Horsetooth Road.	None	*5,137
			Approximately 1,900 feet upstream of West Horsetooth Road.	None	*5,155
		Cache La Poudre River South of Burlington Northern Railroad Embankment.	At Horsetooth Road	*4,855	*4,855
			Approximately 300 feet upstream of Horsetooth Road.	*4,858	*4,856
			Approximately 2,500 feet upstream of Horsetooth Road.	*4,866	*4,860
			Approximately 4,000 feet above confluence with Boxelder Creek.	*4,876	*4,872

State	City/town/ county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
		Cache La Poudre River North of Burlington Northern Railroad Embankment.	Approximately 300 feet upstream of Horsetooth Road.	*4,858	*4,856
			At confluence with Boxelder Creek	*4,869	*4,866
			Approximately 6,000 feet upstream of confluence with Boxelder Creek.	*4,880	*4,876
		Cache La Poudre River	Approximately 200 feet upstream of Boxelder Ditch Diversion Dam.	*4,884	*4,894
			At confluence of Lincoln Avenue Overflow	*4,918	*4,918
			Just upstream of Lemay Avenue	*4,933	*4,933
			Just upstream of Shields Street	*4,988	*4,986
			Approximately 300 feet upstream of Josh Ames Diversion Dam.	*4,993	*4,994
			Northeast of intersection of Taft Hill Road and Burlington Northern Railroad.	*5,012	*5,009
			Approximately 500 feet upstream of Taft Hill Road.	*5,017	*5,020
			Just upstream of Overland Trail	*5,059	*5,053
			Just upstream of N Dam	None	*5,078
			Just upstream of State Highway 28	None	*5,106
			Approximately 1,800 feet upstream of State Highway 28.	None	*5,116
		Cache La Poudre Lincoln Avenue Overflow (LINC).	Approximately 7,900 feet upstream of State Highway 14.	*4,941	*4,940
		Lemay Avenue Overflow (Lemayds).	At the intersection of Industrial Drive and Lincoln Avenue.	*4,920	*2
			Just downstream of Airpark Road	*4,924	*4,925
			Just upstream of Link Lane	*4,931	*4,930
			Just upstream of Lemay Avenue	*4,936	*4,935
		Cache La Poudre Left Flow Path (LPATH).	Just upstream of Prospect Road	*4,895	*4,891
			Approximately 5,300 feet upstream of Prospect Road.	*4,907	*4,906
			Approximately 6,250 feet upstream of Prospect Road.	*4,911	*4,909
			At confluence with Cache La Poudre River.	*4,917	*4,918
		Dry Creek	Just upstream of State Highway 14	*4,920	*4,920

Maps are available for inspection at the Larimer County Courthouse, Engineering Department, 218 West Mountain Street, Fort Collins, Colorado.

Send comments to The Honorable Janet S. Duvall, Chairperson, Larimer County Board of County Commissioners, P.O. Box 1190; Fort Collins, Colorado 80522.

Louisiana	Calcasieu Parish (Unincorporated Areas).	Kayouche Coulee	At Interstate Highway 10	*11	*11
			At Legion Street	*12	*12
		Addison Lateral	Approximately 100 feet downstream of Gauthier Road.	None	*14
			Approximately 4,300 feet upstream of Addison Lane.	None	*15
		Airport Lateral	At Gauthier Road	None	*11
			Approximately 100 feet downstream of Gulf Highway.	None	*13
			Approximately 3,000 feet upstream of Gulf Highway.	None	*14
		Belfield Lateral	At confluence with Little Indian Bayou	None	*22
			At Sharon Lane	None	*23
		Black Bayou	Just upstream of Gauthier Road	None	*12
			At confluence with Higgins Lateral	None	*15
			At Louisiana Highway 14	None	*20
		Greathouse Lateral	Approximately 100 feet downstream of Gauthier Road.	None	*12
			Approximately 3,200 feet upstream of Gauthier Road.	None	*15
		Higgins Lateral	At confluence with Black Bayou	None	*15
			Just downstream of Louisiana Highway 14.	None	*18
			Just upstream of Louisiana Highway 14	None	*19

State	City/town/ county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
		Kinner Gully	Approximately 4,600 feet downstream of Mark LeBleu Road.	None	*12
			At Claude Hebert Road	None	*17
			Approximately 7,100 feet upstream of State Highway 3059.	None	*19
		LeBleu Canal	Approximately 5,350 feet downstream of River Road.	None	*16
			At Bowman Road	None	*18
			At Parish Barn Road	None	*19
		Little Indian Bayou	Approximately 9,100 feet downstream of North Perkins Ferry Road.	None	*18
			Approximately 1,800 feet upstream of North Perkins Ferry Road.	None	*20
			At confluence with Belfield Lateral	None	*22
		McFillen Lateral	Approximately 100 feet downstream of Gauthier Road.	None	*15
			Approximately 50 feet upstream of Marty Lane.	None	*17
			Approximately 1,920 feet upstream of Marty Lane.	None	*17

Maps are available for inspection at the Calcasieu Parish Government Building, 1015 Pithon Street, Lake Charles, Louisiana.

Send comments to The Honorable S. Mark McMurry, Calcasieu Parish Administrator, 1015 Pithon Street, Lake Charles, Louisiana 70601.

Louisiana	Ruston (City), Lincoln Parish.	Chautauqua Creek	Just downstream of Jefferson Avenue	None	*1,176
			Approximately 100 feet upstream of Jefferson Avenue.	None	*1,179
			Approximately 100 feet upstream of Greenwood Drive.	None	*215
			Just upstream of south service road of Interstate Highway 20.	None	*247
		Colvin Creek	At northern corporate limits located approximately 1,130 feet downstream of Frazier Road.	*184	*183
			Approximately 50 feet upstream of Frazier Road.	*188	*188
			Just upstream of East Kentucky Avenue	*208	*207
			Just upstream of south service road of Interstate Highway 20.	None	*259
			Approximately 125 feet downstream of Florida Avenue.	None	*277
		Colvin Creek Tributary	Approximately 300 feet upstream of confluence with Colvin Creek.	None	*199
			Approximately 40 feet upstream of Cedar Creek Road.	*205	*205
			Approximately 1,350 feet upstream of East Kentucky Avenue.	None	*214
		Choudrant Creek	At eastern corporate limits located approximately 2,500 feet downstream of Illinois Central Gulf Railroad.	*202	*201
			Just downstream of Santiam Road	*218	*218
			Just upstream of Oak Park Road	None	*234
			Approximately 400 feet upstream of Oak Park Road.	None	*237
		Choudrant Creek Tributary	At confluence with Choudrant Creek	None	*209
			At McDonald Avenue	None	*219

Maps are available for inspection at the Department of Public Works, City Hall, City of Ruston, 401 North Trenton, Ruston, Louisiana.

Send comments to The Honorable Hilda Taylor Perritt, Mayor, City of Ruston, P.O. Box 280, Ruston, Louisiana 71273–0280.

Texas	Borger (City), Hutchinson County.	Hill Creek	At corporate limits located approximately 660 feet downstream of State Highway 136.	None	*3,125
			Approximately 40 feet upstream of State Highway 136.	None	*3,127
			Approximately 90 feet upstream of Quail Hollow Street.	None	*3,157
			At the western corporate limits located approximately 1,010 feet upstream of Quail Hollow Street.	None	*3,165

State	City/town/ county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
		Tributary 1	At corporate limits located approximately 1,560 feet downstream of confluence of Tributary 2.	None	*3,080
			Approximately 60 feet downstream of FM 1551.	None	*3,118
			At upstream corporate limits located approximately 2,540 feet upstream of FM 1551.	None	*3,170
		Tributary 2	Approximately 200 feet upstream of confluence with Tributary 1.	None	*3,095
			Approximately 40 feet upstream of Philview Avenue.	None	*3,117
			Approximately 850 feet upstream of Philview Avenue.	None	*3,122
		Tributary 3	Approximately 70 feet upstream of confluence with Tributary 1.	None	*3,102
			Approximately 50 feet downstream of FM 1551.	None	*3,123
		Tributary 4	Approximately 100 feet downstream of FM 1551.	None	*3,117
			Approximately 80 feet upstream of FM 1551.	None	*3,120
			Approximately 1,770 feet upstream of FM 1551.	None	*3,156

Maps are available for inspection at the City of Borger, Planning Department, City Hall, 600 North Main Street, Borger, Texas.
Send comments to The Honorable Judy Flanders, City of Borger, 600 North Main Street, Borger, Texas 79007.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: May 31, 1995.

Frank H. Thomas,

Deputy, Associate Director for Mitigation.

[FR Doc. 95–13906 Filed 6–6–95; 8:45 am]

BILLING CODE 6718–03–P

COMMISSION ON CIVIL RIGHTS

45 CFR Chapter VII

Semiannual Agenda of Regulations

June 2, 1995.

AGENCY: Commission on Civil Rights.

ACTION: Withdrawal of proposed agenda item.

SUMMARY: On May 8, 1995, on page 23922, item 3542, the CCR proposed to issue regulations for the officers and employees of the Commission that supplement the Standards of Ethical Conduct for Employees of the Executive Branch. Pending further review, the CCR is now withdrawing the proposal.

FOR FURTHER INFORMATION CONTACT: Miguel A. Sapp, Acting Solicitor, U.S. Commission on Civil Rights, 624 Ninth Street, NW., Suite 632, Washington, DC 20425, (202) 376–8351.

Miguel A. Sapp,

Acting Solicitor.

[FR Doc. 95–13943 Filed 6–6–95; 8:45 am]

BILLING CODE 6335–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 32

[CC Docket No. 95–60; FCC 95–182]

Uniform System of Accounts to Raise the Expense Limit for Certain Items of Equipment

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission has adopted a Notice of Proposed Rulemaking ("NPRM") which proposes to amend its rules regarding Uniform System of Accounts for Class A and Class B Telephone Companies to Raise the Expense Limit for Certain Items of Equipment from $500 to $750. This action is taken to recognize the effects of inflation, the increased competitive environment, and the rapid technological changes that have occurred since the Commission last changed the expense limit in 1988.

DATES: Comments are to be filed on or before July 24, 1995; reply comments are to be filed on or before August 8, 1995.

ADDRESSES: Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Tom Petras, Common Carrier Bureau, Accounting and Audits Division, (202) 418–0809.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rulemaking in CC Docket No. 95–60, adopted May 2, 1995 and released May 31, 1995. The complete text of this NPRM is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, N.W., Washington, D.C. 20554, and may also be purchased from the Commission's copy contractor, International Transcription Service, Inc. at 2100 M Street, N.W., Suite 140, Washington, D.C. 20037, or call (202) 847–3800.

Synopsis of Notice of Proposed Rulemaking

1. This NPRM proposes to amend Section 32.2000(a)(4), of Part 32, Uniform System of Accounts for Class A and Class B Telephone Companies by raising the expense limit for certain items of equipment from $500 to $750. The Commission seeks comments on this proposal.

2. The Commission also seeks comments on whether carriers should be permitted to amortize the undepreciated, embedded assets covered by such an amendment to our rules, and if so, over what period of time.

3. The Commission also seeks comments on whether the proposed expense limit change is an economic cost and what effect, if any, on carriers' cash flow it may have that would qualify this accounting change for exogenous treatment under Price Cap regulation.

4. Accordingly, it is ordered that, pursuant to Section 4(i), 4(j) and 220 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j) and 220, Notice is hereby given of the proposed amendment to Part 32 of the Commission's rules, 47 CFR part 32, as described below. In conjunction with this notice, we delegate authority to the Chief, Common Carrier Bureau to request and obtain from the Regional Bell Operating Companies and GTE any data necessary to evaluate the possible revenue requirement impact of the proposed change.

List of Subjects in 47 CFR Part 32

Uniform System of Accounts.

Federal Communications Commission.

LaVera F. Marshall,

Acting Secretary.

Rule Changes

Part 32 of Title 47 of the CFR is proposed to be amended as follows:

PART 32—UNIFORM SYSTEM OF ACCOUNTS FOR TELECOMMUNICATIONS COMPANIES

1. The authority citation for part 32 continues to read as follows:

Authority: secs. 4(i), 4(j) and 220 as amended; 47 U.S.C. 154(i), 154(j) and 220 unless otherwise noted.

2. Paragraph 32.2000(a)(4) is revised to read as follows:

§ 32.2000 Instructions for telecommunications plant accounts.

(a) * * *

(4) The cost of individual items of equipment, classifiable to Accounts 2112, Motor Vehicles; 2113, Aircraft; 2114, Special Purpose Vehicles; 2115, Garage Work Equipment; 2116, Other Work Equipment; 2122, Furniture; 2123, Office Equipment; and 2124, General Purpose Computers, costing $750 or less or having a useful life less than one year shall be charged to the applicable Plant Specific Operating Expense accounts. If the aggregate investment in the items is relatively large at the time of acquisition, such amounts shall be maintained in an applicable material and supplies account until items are used.

* * * * *

[FR Doc. 95–13876 Filed 6–6–95; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 36

[CC Docket No. 80–286; FCC 95–189]

Establishment of a Joint Board

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Communications Commission proposes to change the separations rules applicable to local exchange carriers ("LECs") for allocating the Other Billing and Collecting ("OB&C") expenses[1] portion of Account 32.6623, Customer services,[2] between state and interstate jurisdictions. These permanent separations rules would replace the interim procedures that LECs currently use to allocate OB&C costs. The FCC proposes a fixed allocation method which would allocate a specified percentage of costs to the interstate jurisdiction. The FCC invited comment on four fixed allocation methodologies and it asked parties to suggest alternative approaches. The FCC also invited comment on the need for a contingency provision that would be triggered by one or more of the interexchange carriers substantially reducing their use of LEC billing and collection services. The FCC referred the issues involving the OB&C separations rules to the Federal State Joint Board established in the CC Docket 80–286 Joint Board proceeding for a recommendation.

DATES: Comments are due July 14, 1995; Reply Comments are due August 14, 1995.

ADDRESSES: FCC, 1919 M St., N.W., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Deborah Dupont, telephone number 202–418–0850.

SUPPLEMENTARY INFORMATION: This is a summary of the FCC's Notice of Proposed Rulemaking in Amendment of Part 36 of the Commission Rules and Establishment of a Joint Board, FCC 95–189, CC Docket No. 80–286, adopted May 4, 1995 and released May 15, 1995. The Commission has made the full text of the Notice of Proposed Rulemaking available for inspection and copying during normal business hours in the Commission's Reference Center, Room 239, 1919 M Street, N.W., Washington, DC 20554, and will publish it in the FCC Record. The full text of the Notice of Proposed Rulemaking may also be purchased from the commission's duplicating contractor, International Transcription Service, 2100 M Street, N.W., Suite 140, Washington, DC 20037, telephone number 202–857–3800.

Synopsis of Notice of Proposed Rulemaking

OB&C expenses are the costs incurred by LECs in preparing and rendering customer bills (other than carrier access charge bills), and in accounting for revenues generated by those billings. LECs allocate most of the interstate OB&C costs to nonregulated activities and recover these costs through untariffed charges for non-regulated services. The sole exception is the billing and collecting cost for the federal end user common line charge which LECs recover through the common line access rate element.

Prior to 1987, the FCC rules had complex and administratively-burdensome rules in place. In 1987 the FCC replaced those rules with a new approach which it expected to simplify the separation of OB&C expenses.[3] The new rules, however, applied a formula that inadvertently set the intestate share of OB&C expenses at thirty-three percent for LECs that continued to provide billing and collecting functions for AT&T. The interstate allocations had typically amounted to approximately twenty percent. This unanticipated result led the Commission, in 1988, on reconsideration to reinstate on an interim basis a portion of the allocation rules that were in effect prior to 1987.[4]

The FCC believes that LECs generally cannot attribute OB&C services to any specific service and, therefore, it proposes a fixed allocation factor to replace the interim OB&C allocation procedures. The FCC also believes that a fixed allocation factor would provide greater administrative simplicity, certainty and auditability than the interim rules. The FCC proposed four alternative fixed allocation methods and invited parties to propose other possible methods as well. The FCC requests that parties comment on (1) whether the allocation procedures should be based upon a fixed allocation factor, rather than on a direct measurement of actual interstate usage, and (2) whether the

[1] The phrase "OB&C expenses" refers to the Other Billing and Collecting Expenses described in 47 CFR 36.380 (1994).

[2] *See* 47 CFR 32.6623.

[3] MTS and WATS Market Structure, Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, CC Docket Nos. 78–72 and 80–286, 2 FCC Rcd 2078, 2083 (1987), 52 FR 18408, May 15, 1987; Amendment of Part 67 (New Part 36) of the Commission's Rules and Establishment of a Federal-State Joint Board, 2 FCC Rcd 2639 (1987), 52 FR 17228, May 6, 1987.

[4] Amendment of Part 67 (New Part 36) of the Commission's Rules and Establishment of a Federal-State Joint Board, 3 FCC Rcd 5518 (1988), 53 FR 33010, August 29, 1988.

allocation factor should be adjusted to reflect substantial changes in the interexchange carriers usage of LEC billing services.

The FCC also seeks comments on whether its permanent OB&C allocation rules should include a contingency provision that would alter separations procedures if interexchange carriers substantially reduce their use of LEC billing and collecting services, and if so, what form this "trigger" provision should take. The FCC proposes two possible adjustment triggers and invites comments on its proposals and related issues as well as suggestions for alternative approaches.

Finally, the FCC invites comments on the separations procedures applicable to OB&C expenses and refers this issue to the Docket 80–286 Joint Board for a recommendation for a permanent solution. It requests that interested parties address the extent to which the proposed procedures: (1) Would reflect cost-causation principles; (2) would affect the division of costs between the jurisdictions; and (3) would prove burdensome to implement and administer.

Accordingly, it is ordered that, pursuant to sections 1, 4(i), 4(j), 403, and 410(c) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 403, and 410(c), NOTICE IS HEREBY GIVEN of proposed permanent amendments to Part 36, Subpart D of the Commission's Rules, 47 CFR part 36, subpart D, as described in the Notice of Proposed Rulemaking.

It is further ordered, pursuant to Section 410(c) of the Communications Act of 1934, as amended, 47 U.S.C. 410(c), that the issues relating to permanent changes in the Commission's Part 36 Revenue Accounting Expense rules, 47 CFR 36.380, shall be and hereby are referred to the Federal State Joint Board established in the CC Docket No. 80–286 proceeding for a recommended decision regarding the issues raised herein.

List of Subjects in 47 CFR Part 36

Uniform System of Accounts.

Federal Communications Commission.

LaVera F. Marshall,

Acting Secretary.

[FR Doc. 95–13849 Filed 6–6–95; 8:45 am]

BILLING CODE 6712–01–M

Notices

Federal Register

Vol. 60, No. 109

Wednesday, June 7, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 95–041–1]

Receipt of Petition for Determination of Nonregulated Status for Genetically Engineered Corn

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has received a petition from the Monsanto Company seeking a determination of nonregulated status for a corn line designated as MON 80100 that has been genetically engineered for insect resistance. The petition has been submitted in accordance with our regulations concerning the introduction of certain genetically engineered organisms and products. In accordance with those regulations, we are soliciting public comments on whether this corn line presents a plant pest risk.

DATES: Written comments must be received on or before August 7, 1995.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 95–041–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1237. Please state that your comments refer to Docket No. 95–041–1. A copy of the petition and any comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing access to that room to inspect the petition or comments are asked to call in advance of visiting at (202) 690–2817.

FOR FURTHER INFORMATION CONTACT: Dr. Ved Malik, Biotechnologist, Biotechnology Permits, BBEP, APHIS, Suite 5B05, 4700 River Road Unit 147, Riverdale, MD 20737–1237; (301) 734–7612. To obtain a copy of the petition, contact Ms. Kay Peterson at (301) 734–7601.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests," regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered "regulated articles."

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Paragraphs (b) and (c) of § 340.6 describe the form that a petition for determination of nonregulated status must take and the information that must be included in the petition.

On April 3, 1995, APHIS received a petition (APHIS Petition No. 95–093–01p) from the Monsanto Company (Monsanto) of St. Louis, MO, requesting a determination of nonregulated status under 7 CFR part 340 for an insect-resistant corn line designated as MON 80100. The Monsanto petition states that the subject corn line should not be regulated by APHIS because it does not present a plant pest risk.

As described in the petition, corn line MON 80100 has been genetically engineered with the *cryIA(b)* gene that encodes for a CryIA(b) insect control protein derived from the common soil bacterium *Bacillus thuringiensis* subsp. *kurstaki* (*Btk*). This protein is a member of a class of insecticidal proteins, also known as delta-endotoxins, that are produced as parasporal crystals by *B. thuringiensis* in nature, and are known to be quite selective in their toxicity to specific organisms, while nontoxic to all other organisms. *Btk* proteins are effective against certain lepidopteran insects, including European corn borer (ECB). ECB is a major corn pest that reduces yield by disrupting normal plant physiology and causing damage to the leaves, stalks, and ears. Results of field tests conducted by Monsanto under permits and notifications granted by APHIS and under an experimental use permit obtained from the Environmental Protection Agency (EPA) indicate that corn plants producing the CryIA(b) protein were protected throughout the growing season from leaf and stalk feeding damage caused by ECB. In addition to expressing the CryIA(b) protein, the plants also express the selectable marker enzyme 5-enolpyruvylshikimate-3-phosphate synthase (CP4 EPSPS). The *cryIA(b)* gene and the CP4 EPSPS marker gene were introduced into the subject corn line by a particle acceleration method and their expression is under the control of the enhanced 35S promoter derived from the plant pathogen cauliflower mosaic virus.

Monsanto's MON 80100 corn line is currently considered a regulated article under the regulations in 7 CFR part 340 because it contains gene sequences derived from plant pathogenic sources. The subject corn line was evaluated in field trials conducted under APHIS permits or notifications from 1992 through 1994. In the process of reviewing the applications for field trials of the subject corn, APHIS determined that the vectors and other elements were disarmed and that the trials, which were conducted under conditions of reproductive and physical containment or isolation, would not present a risk of plant pest introduction or dissemination.

In the Federal Plant Pest Act, as amended (7 U.S.C. 150aa *et seq.*), "plant pest" is defined as "any living stage of: Any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants or reproductive parts thereof, viruses, or any organisms similar to or allied with any of the foregoing, or any infectious substances, which can directly or indirectly injure or cause disease or damage in any plants or parts thereof, or any processed, manufactured or other products of plants." APHIS views this definition very broadly. The definition covers direct or indirect injury, disease, or damage not just to agricultural crops, but also to plants in general, for example, native species, as

well as to organisms that may be beneficial to plants, for example, honeybees, rhizobia, etc.

This genetically engineered corn line is also currently subject to regulation by other agencies. The EPA is responsible for the regulation of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (7 U.S.C. 136 *et seq.*). FIFRA requires that all pesticides, including insecticides, be registered prior to distribution or sale, unless exempted by EPA regulation. Accordingly, Monsanto has submitted to the EPA an application to register the transgenic plant pesticide *Btk* CryIA(b) insect control protein as produced in corn.

Under the Federal Food, Drug, and Cosmetic Act (FFDCA) (21 U.S.C. 301 *et seq.*), pesticides added to raw agricultural commodities generally are considered to be unsafe unless a tolerance or exemption from tolerance has been established. Foods containing unsafe pesticides are deemed to be adulterated. Residue tolerances for pesticides are established by the EPA under the FFDCA; the Food and Drug Administration (FDA) enforces the tolerances set by the EPA. Monsanto has also submitted to the EPA a pesticide petition (PP 5F4473) proposing to amend 40 CFR part 180 to establish a tolerance exemption for residues of the plant pesticide active ingredient *B. thuringiensis* delta-endotoxin as produced in corn by a *cryIA(b)* gene and its controlling sequences.

Consistent with the "Coordinated Framework for Regulation of Biotechnology" (51 FR 23302–23350, June 26, 1986), APHIS and the EPA are coordinating their review of this genetically engineered corn line to avoid duplication and ensure that all relevant issues are addressed.

The FDA published a statement of policy on foods derived from new plant varieties in the **Federal Register** on May 29, 1992 (57 FR 22984–23005). The FDA statement of policy includes a discussion of the FDA authority for ensuring food safety under the FFDCA, and provides guidance to industry on the scientific considerations associated with the development of foods derived from new plant varieties, including those plants developed through the techniques of genetic engineering.

In accordance with § 340.6(d) of the regulations, we are publishing this notice to inform the public that APHIS will accept written comments regarding the Petition for Determination of Nonregulated Status from any interested person for a period of 60 days from the date of this notice. The petition and any comments received are available for public review, and copies of the petition may be ordered (see the **ADDRESSES** section of this notice).

After the comment period closes, APHIS will review the data submitted by the petitioner, all written comments received during the comment period, and any other relevant information. Based on the available information, APHIS will furnish a response to the petitioner, either approving the petition in whole or in part, or denying the petition. APHIS will then publish a notice in the **Federal Register** announcing the regulatory status of Monsanto's MON 80100 corn line and the availability of APHIS' written decision.

Authority: 7 U.S.C. 150aa–150jj, 151–167, and 1622n; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(c).

Done in Washington, DC, this 1st day of June 1995.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–13919 Filed 6–6–95; 8:45 am]

BILLING CODE 3410-34-M

Commodity Credit Corporation

Secretary of Agriculture's Special Cotton Quota Announcement Number 1

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice.

SUMMARY: Special import quota for upland cotton equal to 46,757,469 kilograms (103,082,657 pounds) is established in accordance with section 103B(a)(5)(F) of the Agricultural Act of 1949, as amended (1949 Act). This quota is established under Proclamation 6301 of June 7, 1991, and is referenced as the Secretary of Agriculture's Special Cotton Quota Announcement Number 1, chapter 99, subchapter III, subheading 9903.52.01 of the Harmonized Tariff Schedule (HTS).

DATES: The quota was established on April 12, 1995, and applies to upland cotton purchased not later than July 10, 1995 (90 days from the date the quota was established) and entered into the United States not later than October 8, 1995 (180 days from the date the quota was established).

FOR FURTHER INFORMATION CONTACT: Janise Zygmont, Consolidated Farm Service Agency, United States Department of Agriculture, room 3756–S, PO Box 2415, Washington, DC 20013–2415 or call (202) 720–8841.

SUPPLEMENTARY INFORMATION: The 1949 Act requires that a special import quota be determined and announced immediately if, for any consecutive 10-week period, the Friday through Thursday average price quotation for the lowest-priced U.S. growth, as quoted for Middling 1 3/32 inch cotton, C.I.F. northern Europe, (U.S. Northern Europe price), adjusted for the value of any cotton user marketing certificates issued, exceeds the Northern Europe price by more than 1.25 cents per pound. This condition was met during the consecutive 10-week period that ended April 6, 1995. The quota amount is equal to 1 week's consumption of upland cotton by domestic mills at the seasonally-adjusted average rate of the most recent 3 months for which data are available—December 1994 through February 1995. The special import quota identifies quantity of imports that is not subject to the over-quota tariff rate of a tariff-rate quota. The quota is not divided by staple length or by country of origin. The quota does not affect existing tariff rates or phytosanitary regulations. The quota does not apply to Extra Long Staple cotton.

Authority: 7 U.S.C. 1444–2(a) and U.S. Note 6(a), Subchapter III, Chapter 99 of the HTS.

Signed at Washington, DC, on May 25, 1995.

Dan Glickman,

Secretary.

[FR Doc. 95–13914 Filed 6–6–95; 8:45 am]

BILLING CODE 3410-05-M

Secretary of Agriculture's Special Cotton Quota Announcement Number 2

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice.

SUMMARY: A special import quota for upland cotton equal to 46,757,469 kilograms (103,082,657 pounds) is established in accordance with section 103B(a)(5)(F) of the Agricultural Act of 1949, as amended (1949 Act). This quota is established under Proclamation 6301 of June 7, 1991, and is referenced as the Secretary of Agriculture's Special Cotton Quota Announcement Number 2, chapter 99, subchapter III, subheading 9903.52.02 of the Harmonized Tariff Schedule (HTS).

DATES: The quota was established on April 19, 1995, and applies to upland cotton purchased not later than July 17, 1995 (90 days from the date the quota was established) and entered into the United States not later than October 15, 1995 (180 days from the date the quota was established).

FOR FURTHER INFORMATION CONTACT: Janise Zygmont, Consolidated Farm Service Agency, United States Department of Agriculture, room 3756–S, PO Box 2415, Washington, DC 20013–2415 or call (202) 720–8841.

SUPPLEMENTARY INFORMATION: The 1949 Act requires that a special import quota be determined and announced immediately if, for any consecutive 10-week period, the Friday through Thursday average price quotation for the lowest-priced U.S. growth, as quoted for Middling 1 3/32 inch cotton, C.I.F. northern Europe, (U.S. Northern Europe price), adjusted for the value of any cotton user marketing certificates issued, exceeds the Northern Europe price by more than 1.25 cents per pound. This condition was met during the consecutive 10-week period that ended April 13, 1995. The quota amount is equal to 1 week's consumption of upland cotton by domestic mills at the seasonally-adjusted average rate of the most recent 3 months for which data are available—December 1994 through February 1995. The special import quota identifies a quantity of imports that is not subject to the over-quota tariff rate of a tariff-rate quota. The quota is not divided by staple length or by country of origin. The quota does not affect existing tariff rates or phytosanitary regulations. The quota does not apply to Extra Long Staple cotton.

Authority: 7 U.S.C. 1444–2(a) and U.S. Note 6(a), Subchapter III, Chapter 99 of HTS.

Signed at Washington, DC, on May 25, 1995.

Dan Glickman,

Secretary.

[FR Doc. 95–13915 Filed 6–6–95; 8:45 am]

BILLING CODE 3410-05-M

Secretary of Agriculture's Special Cotton Quota Announcement Number 3

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice.

SUMMARY: A special import quota for upland cotton equal to 46,757,469 kilograms (103,082,657 pounds) is established in accordance with section 103B(a)(5)(F) of the Agricultural Act of 1949, as amended (1949 Act). This quota is established under Proclamation 6301 of June 7, 1991, and is referenced as the Secretary of Agriculture's Special Cotton Quota Announcement Number 3, chapter 99, subchapter III, subheading 9903.52.03 of the Harmonized Tariff Schedule (HTS).

FOR FURTHER INFORMATION CONTACT: Janise Zygmont, Consolidated Farm Service Agency, United States Department of Agriculture, room 3756–S, PO Box 2415, Washington, DC 20013–2415 or call (202) 720–8841.

SUPPLEMENTARY INFORMATION: The 1949 Act requires that a special import quota be determined and announced immediately if, for any consecutive 10-week period, the Friday through Thursday average price quotation for the lowest-priced U.S. growth, as quoted for Middling 1-3/32 inch cotton, C.I.F. northern Europe, (U.S. Northern Europe price), adjusted for the value of any cotton user marketing certificates issued, exceeds the Northern Europe price by more than 1.25 cents per pound. This condition was met during the consecutive 10-week period that ended April 20, 1995. The quota amount is equal to 1 week's consumption of upland cotton by domestic mills at the seasonally-adjusted average rate of the most recent 3 months for which data are available—December 1994 through February 1995. The special import quota identifies a quantity of imports that is not subject to the over-quota tariff rate of tariff-rate quota. The quota is not divided by staple length or by country of origin. The quota does not affect existing tariff rates or phytosanitary regulations. The quota does not apply to Extra Long Staple cotton.

Authority: 7 U.S.C. 1444–2(a) and U.S. Note 6(a), Subchapter III, Chapter 99 of the HTS.

Signed at Washington, DC on May 25, 1995.

Dan Glickman,

Secretary.

[FR Doc. 95–13916 Filed 6–6–95; 8:45 am]

BILLING CODE 3410-05-M

Secretary of Agriculture's Special Cotton Quota Announcement Number 4

AGENCY: Commodity Credit Corporation.

ACTION: Notice.

SUMMARY: A special import quota for upland cotton equal to 48,036,600 kilograms (105,902,662 pounds) is established in accordance with section 103B(a)(5)(F) of the Agriculture Act of 1949, as amended (1949 Act). This quota is established under Proclamation 6301 of June 7, 1991, and is referenced as the Secretary of Agriculture's Special Cotton Quota Announcement Number 4, chapter 99, subchapter III, subheading 9903.52.04 of the Harmonized Tariff Schedule (HTS).

DATES: The quota was established on May 3, 1995, and applies to upland cotton purchased not later than July 31, 1995 (90 days from the date the quota was established) and entered into the United States not later than October 29, 1995 (180 days from the date the quota was established).

FOR FURTHER INFORMATION CONTACT: Janise Zygmont, Consolidated Farm Service Agency, United States Department of Agriculture, room 3756–S, PO Box 2415, Washington, DC 20013–2415 or call (202) 720–8841.

SUPPLEMENTARY INFORMATION: The 1949 Act requires that a special import quota be determined and announced immediately if, for any consecutive 10-week period, the Friday through Thursday average price quotation for the lowest-priced U.S. growth, as quoted for Middling 1 3/32 inch cotton, C.I.F. northern Europe, (U.S. Northern Europe price), adjusted for the value of any cotton user marketing certificates issued, exceeds the Northern Europe price by more than 1.25 cents per pound. This condition was met during the consecutive 10-week period that ended April 27, 1995. The quota amount is equal to 1 week's consumption of upland cotton by domestic mills at the seasonally-adjusted average rate of the most recent 3 months for which data are available—January 1995 through March 1995. The special import quota identifies a quantity of imports that is not subject to the over-quota tariff rate of a tariff-rate quota. The quota is not divided by staple length or by country of origin. The quota does not affect existing tariff rates or phytosanitary regulations. The quota does not apply to Extra Long Staple cotton.

Authority: 7 U.S.C. 1444–2 (a) and U.S. Note 6(a), Subchapter III, Chapter 99 of the HTS.

Signed at Washington, DC on May 25, 1995.

Dan Glickman,

Secretary.

[FR Doc. 95–13917 Filed 6–6–95; 8:45 am]

BILLING CODE 3410-05-M

Secretary of Agriculture's Special Cotton Quota Announcement Number 5

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice.

SUMMARY: A special import quota for upland cotton equal to 48,036,600 kilograms (105,902,662 pounds) is established in accordance with section 103B(a)(5)(F) of the Agricultural Act of 1949, as amended (1949 Act). This quota is established under Proclamation 6301 of June 7, 1991, and is referenced as the Secretary of Agriculture's Special Cotton Quota Announcement Number 5, chapter 99, subchapter III, subheading 9903.52.05 of the Harmonized Tariff Schedule (HTS).

DATES: The quota was established on May 10, 1995, and applies to upland cotton purchased not later than August 7, 1995 (90 days from the date the quota was established) and entered into the United States not later than November 5, 1995 (180 days from the date the quota was established).

FOR FURTHER INFORMATION CONTACT: Janise Zygmont, Consolidated Farm Service Agency, United States Department of Agriculture, room 3756–S, PO Box 2415, Washington, DC 20013–2415 or call (202) 720–8841.

SUPPLEMENTARY INFORMATION: The 1949 Act requires that a special import quota be determined and announced immediately if, for any consecutive 10-week period, the Friday through Thursday average price quotation for the lowest-priced U.S. growth, as quoted for Middling 1-3/32 inch cotton, C.I.F. northern Europe (U.S. Northern Europe price), adjusted for the value of any cotton user marketing certificates issued, exceeds the Northern Europe price by more than 1.25 cents per pound. This condition was met during the consecutive 10-week period that ended May 4, 1995. The quota amount is equal to 1 week's consumption of upland cotton by domestic mills at the seasonally-adjusted average rate of the most recent 3 months for which data are available—January 1995 through March 1995. The special import quota identifies a quality of imports that is not subject to the over-quota tariff rate of a tariff-rate quota. The quota is not divided by staple length or by country of origin. The quota does not affect existing tariff rates or phytosanitary regulations. The quota does not apply to Extra Long Staple cotton.

Authority: 7 U.S.C. 1444–2(a) and U.S. Note 6(a), Subchapter III, Chapter 99 of the HTS.

Signed at Washington, DC on May 25, 1995.

Dan Glickman,

Secretary.

[FR Doc. 95–13918 Filed 6–6–95; 8:45 am]

BILLING CODE 3410–05–M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

ADAAG Review Advisory Committee; Meetings

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meetings.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) gives notice of the dates and locations of subcommittee meetings of the ADAAG Review Advisory Committee.

DATES: The subcommittees of the ADAAG Review Advisory Committee will meet as follows:

Accessible Routes Subcommittee, June 19 and 20, 1995.
Plumbing Subcommittee, June 27 and 28, 1995.
Special Occupancies Subcommittee, July 6 and 7, 1995.

ADDRESSES: The Accessible Routes Subcommittee and the Plumbing Subcommittee meetings will be held at the offices of the President's Committee on Employment of People with Disabilities, 1331 F Street, NW., Washington, DC in the training room on the third floor of the building. The Special Occupancies Subcommittee meetings will be held at the offices of the Paralyzed Veterans of America, 801 18th Street NW., Washington, DC in the conference room on the second floor of the building.

FOR FURTHER INFORMATION CONTACT: For further information regarding the meetings, please contact Marsha Mazz, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street NW., suite 1000, Washington, DC 20004–1111. Telephone (202) 272–5434 ext. 21 (voice); (202) 272–5449 ext. 21 (TTY). This document is available in alternate formats (cassette tape, braille, large print, or computer disk) upon request.

SUPPLEMENTARY INFORMATION: In September 1994, the Access Board established an advisory committee to review the Americans with Disabilities Act Accessibility Guidelines (ADAAG) for buildings and facilities. 36 CFR part 1191, appendix A. The Advisory Committee will make recommendations to the Access Board for updating ADAAG to ensure that the guidelines remain a state-of-the-are document which is generally consistent with technological developments and changes in national standards and model codes, and continue to meet the needs of individuals with disabilities. The Advisory Committee is composed of organizations representing individuals with disabilities, model code organizations, professional associations, State and local governments, building owners and operators, and other organizations. The Advisory Committee has formed the following subcommittees to assist in its work: Editorial, Accessible Routes, Plumbing, Communications, and Special Occupancies. The subcommittees will present their recommendations to the full advisory committee in November 1995. The full advisory committee will review the subcommittee recommendations and present final recommendations to the Access Board by April 1996.

The Accessible Routes Subcommittee, Plumbing Subcommittee, and Special Occupancies Subcommittee will meet in June and July 1995 on the specific dates and at the locations announced in this notice. The meetings are open to the public. The meeting sites are accessible to individuals with disabilities. Individuals with hearing impairments who require sign language interpreters should contact Marsha Mazz at least three full business days prior to the meeting date by calling (202) 272–5434 ext 21 (voice) or (202) 272–5434 ext 21 (TTY).

Lawrence W. Roffee,

Executive Director.

[FR Doc. 95–13944 Filed 6–6–95; 8:45 am]

BILLING CODE 8150–01–M

DEPARTMENT OF COMMERCE

International Trade Administration, Commerce

Export Trade Certificate of Review

ACTION: Notice of Application.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the application and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: W. Dawn Busby, Director, Office of Export Trading Company Affairs, International Trade Administration, 202-482-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. An original and five (5) copies should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1800H, Washington, D.C. 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 95–00004." A summary of the application follows.

Summary of the Application

Applicant: United Products of America, Inc. ("UPA, Inc."), P.O. Box 3264, Fredericksburg, Virginia 22402
Contact: Kindra Rokhsaz, Telephone: (703) 891-2645
Application No.: 95–00004
Date Deemed Submitted: April 30, 1995.

United Products of America, Incorporated, ("UPA, Inc.") seeks a Certificate to cover the following specific Export Trade, Export Markets, and Export Trade Activities and Methods of Operations.

Export Trade

1. Products
   All products
2. Services
   All Services
3. Technology Rights
   Technology rights, including, but not limited to, patents, trademarks, copyrights, and trade secrets, that relate to Products and Services.
4. *Export Trade Facilitation Services (as they relate to the Export of Products, Services and Technology Rights)*
   Export Trade Facilitation Services include professional services in the areas of export management, procurement management, market research and analysis, feasibility analysis, customer and supplier location, government relations and assistance with state and federal programs, foreign trade and business protocol, consulting, collection of information on trade opportunities, marketing, negotiations, joint ventures, shipping, export licensing, advertising, documentation and services related to compliance with customs requirements, insurance and financing, trade show exhibitions, organizational development, business management and labor strategies, technology transfer, transportation, and facilitating the formation of shippers associations.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

With respect to the sale of Products and Services, Licensing and Technology Rights and provisions of Export Trade Facilitation Services, UPA, Inc. may:

1. Provide and/or arrange for the provision of Export Trade Facilitation Services;
2. Engage in promotional and marketing activities and collect information on trade opportunities in the Export Markets and distribute such information to clients;
3. Enter into exclusive and/or non-exclusive licensing and/or sales agreements with Suppliers for the export of Products, Services, and/or Technology Rights in Export Markets;
4. Enter into exclusive and/or non-exclusive agreements with distributors and/or sales representatives in Export Markets;
5. Allocate export sales or divide Export Markets among Suppliers for the sale and/or licensing of Products, Services and/or Technology Rights;
6. Allocate export orders among Suppliers;
7. Establish the price for Products, Services, and/or Technology Rights for sale and/or licensing in Export Markets.
8. Negotiate, enter into, and/or manage licensing agreements for the export of Technology Rights;
9. Enter into contracts for shipping;
10. Exchange information on a one-to-one basis with individual Suppliers regarding inventories and near-term production schedules for the purpose of determining the availability of Products for export and coordinating exports with distributors.

Definitions

For the purposes of this certificate application, the following term is defined:

1. "Supplier" means a person who produces, provides, licenses, or sells a Product, Service, or Technology Right.

Dated: June 1, 1995.

W. Dawn Busby,

Director, Office of Export Trading Company Affairs.

[FR Doc. 95–13865 Filed 6–6–95; 8:45 am]

BILLING CODE 3510–25–P

National Oceanic and Atmospheric Administration

[I.D. 050895E]

Marine Mammals and Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of scientific research permit no. 957 (P771 #71).

SUMMARY: Notice is hereby given that Dr. Howard Braham, National Marine Mammal Laboratory, Alaska Fisheries Science Center, National Marine Fisheries Service, 7600 Sand Pt. Way NE, Bin C15700, Seattle, WA 98115–0070, has been issued a permit to satellite tag 50 beluga whales (*Delphinapterus leucas*) for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment, in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289); and

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668 (907/586–7221).

SUPPLEMENTARY INFORMATION: On April 11, 1995, notice was published in the **Federal Register** (60 FR 18395) that a request for a scientific research permit to satellite tag beluga whales had been submitted by the above-named individual. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972,

as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Dated: May 31, 1995.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–13859 Filed 6–6–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 053095D]

Small Takes of Marine Mammals Incidental to Specified Activities; Offshore Seismic Activities in Southern California

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of receipt of application and proposed authorization for a small take exemption; request for comments.

SUMMARY: NMFS has received a request from the Exxon Company, U.S.A., Thousand Oaks, CA, for authorization to take small numbers of cetaceans by harassment incidental to conducting a three-dimensional (3–D) seismic survey in the Santa Ynez Unit (SYU), located in the western portion of the Santa Barbara Channel, offshore California, in Federal waters. Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to authorize Exxon to incidentally take, by harassment, small numbers of cetaceans in the above mentioned area for a period of 1 year.

DATES: Comments and information must be received no later than July 7, 1995.

ADDRESSES: Comments on the application should be addressed to Chief, Marine Mammal Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225. A copy of the application and a list of references used in this document may be obtained by writing to this address or by telephoning one of the contacts listed below.

FOR FURTHER INFORMATION CONTACT: Kenneth Hollingshead, Office of Protected Resources at 301–713–2055, or Craig Wingert, Southwest Regional Office at 310–980–4021.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued.

Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s); will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses; and the permissible methods of taking and requirements pertaining to the monitoring and reporting of such taking are set forth.

On April 30, 1994, the President signed Public Law 103–238, The Marine Mammal Protection Act Amendments of 1994. One part of this law added a new subsection 101(a)(5)(D) to the MMPA to establish an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. The MMPA defines "harassment" as:

> * * * any act of pursuit, torment, or annoyance which (a) has the potential to injure a marine mammal or marine mammal stock in the wild; or (b) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.

New subsection 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On May 11, 1995, NMFS received an application from Exxon requesting an authorization for the harassment of small numbers of cetaceans incidental to conducting a 3–D seismic survey within the SYU, located in the western portion of the Santa Barbara Channel, off Southern California, in U.S. waters. As described in their application (Exxon, 1995) Exxon's survey will cover an area of approximately 303 km² of the outer continental shelf and will require approximately 2 months, commencing in August 1995, to complete. The survey will provide subsurface data that will enable Exxon to more accurately assess the oil and gas reservoirs in order to optimally locate future development wells from existing platforms.

Deep seismic surveys obtain data about formations several thousands of meters deep, such as the hydrocarbon-bearing Monterery Formation in the SYU. These surveys are accomplished by transmitting sound waves into the earth, which are reflected off subsurface formations and recorded with detectors in the water column. A typical marine seismic source is an airgun array that releases compressed air into the water, creating an acoustical energy pulse that is directed into the earth. Hydrophones spaced along a streamer cable just below the surface of the water receive the reflected energy from the subsurface formations and transmit data to the seismic vessel. On board the vessel, the signals are amplified, digitized, and recorded on magnetic tape.

The contract survey vessel will transverse the SYU area along east-west lines, approximately 24.9 km in length parallel to the coastline, with a few south-north lines approximately 9.65 km in length to be acquired over key geological features. There will be approximately 64 east-west transects and 6 south-north transects over the 2-month period. Field operations will be conducted 24 hours a day, although about half of that time will be consumed by turning the vessel and maneuvering. The airgun arrays will be shut down during turning and maneuvering and will be powered up slowly over a 5-minute period when turned back on. Eighty to 90 percent of the proposed survey will be accomplished with a single vessel. A second vessel will be used to undershoot platform structures and some complex subsurface geological features of limited areal extent. Two vessels abreast each other will be used for undershooting. The survey is designed to acquire the maximum amount of data in the minimum amount of time. Exxon plans to initiate the survey around August 1, 1995, and complete data collection approximately October 1, 1995, prior to the onset of adverse weather and gray whale migration in the Santa Barbara Channel area.

Exxon will employ a 90-m seismic vessel to acquire the survey data. The seismic source will consist of dual airgun arrays deployed 37.5 m apart and fired alternately to acquire separate records. Each array will consist of 18 airguns of differing strengths producing a total of 8.62 megapascals peak to peak energy. The airguns will be sleeve type guns towed at a depth of 5 to 10 m below the water surface. Paravanes will be deployed to separate the airgun arrays.

The proposed survey could potentially affect marine mammals due to disturbance by sound (i.e., acoustic harassment).

Description of Habitat and Marine Mammal Affected by the Activity

The Southern California Bight (SCB) including the Channel Islands, supports a diverse assemblage of marine mammals including cetaceans (whales, dolphins, and porpoises) and pinnipeds (seals and sea lions). A detailed description of the SCB and its associated marine mammals can be found in the **Federal Register** (56 FR 1606, January 16, 1991) and need not be repeated here.

Approximately 34 species of marine mammals inhabit the SCB. They include 6 species of pinnipeds and 27 species of cetaceans. The status of these species has been reviewed previously (NMFS, 1991 [1]). Recently, NMFS released draft revised stock assessment reports (59 FR 40527; August 9, 1994).[2] These reports include information on status and trends of marine mammals and an assessment of all human-caused mortality and serious injury of the various stocks of marine mammals.

It is possible that acoustic harassment by seismic survey operations could potentially occur for mysticete whales and possibly the sperm whale, since they represent the only species assumed to hear well the noise associated with airguns. Given the survey location and the time period within which the survey will be conducted, the species of whales that could be potentially affected are the following: (1) Blue whale (*Balaenoptera musculus*); (2) fin whale (*Balaenoptera physalus*); (3) humpback whale (*Megaptera novaeangliae*); (4) minke whale (*Balaenoptera acutorostrata*); (5) sperm whale (*Physeter macrocephalus;* (6) pygmy sperm whale (*Kogia breviceps*); (7) sei whale (*Balaenoptera borealis*); and (8) Bryde's whale (*Balaenoptera edeni*). In addition, because this proposed authorization may extend into the period of time when gray whales (*Eschrichtius robustus*) may be present, that species may also be affected. Detailed descriptions of the distribution and abundance of these species in California waters can be found in Barlow (1994, 1995), Forney (1994) Forney et al. (1995) and NMFS (1993).

Potential Effects of Seismic Surveys on Marine Mammals

The airguns emit pulsed energy primarily at frequencies in the 10 to 300 Hz range. Dolphin, porpoise, seal, and sea lion hearing is believed to be poor at frequencies less than 1,000 Hz, and thus it is unlikely that the airgun noise would significantly affect them. Acoustic harassment takes, therefore, need to be assessed only for mysticete whales and the sperm whale, because they represent the only group that is believed to be able to hear or possibly react to the sound associated with seismic activities.

To determine the numbers of whales that could potentially be subject to acoustic harassment, marine mammal densities were applied over the anticipated zone of potential disturbance (ZPD). The densities utilized (Barlow, 1995) were obtained along the California coast during the summer and fall seasons of the year, which is consistent with the time period of the proposed survey.

The ZPD was conservatively assumed to be the entire survey area (303 km²) plus an additional area to account for the travel of sound outside the survey area perimeter. To determine the outer boundary of the affected area, it was concluded that the 160 dB level could be considered a conservative end point for potential marine mammal acoustic harassment. Tyack (1988) indicates that avoidance behavior occurs only at relatively close ranges at decibels greater than 160–170 dB for pulsed sounds such as those from airguns. It has been presumed that less than 10 percent of animals located beyond the 160 dB range would be subjected to acoustic harassment (Malme et al., 1984; LGL Assoc., 1991). Therefore, NMFS has adopted a level of 160 dB (re 1μPa) as an acceptable level for impulsive noise based upon the best scientific evidence available.

For the proposed survey, the 160 dB isopleth occurs at a radius of approximately 5.2 km from the seismic source (Exxon, 1995). The ZPD was calculated by expanding the entire perimeter of the SYU survey area by 5.2 km. This area was calculated to be 470 km², and when added to the survey area 303 km², resulted in a total ZPD of 773 km². However, at any instant of time, harassment would be limited to an area approximately 84.9 km², with a radius of 5.2 km around the airgun array when the array is generating sound.

Using the above information and assumptions, the number of marine mammals that could potentially be subject to acoustic harassment is as follows:

Whale species	Density[3] (number/km²)	Number of animals[4] acoustic harassment
Blue whale	0.033	26
Fin whale	0.013	10
Humpback whale	0.009	7
Minke whale	0.008	6
Sperm whale	0.011	9
Pygmy sperm whale	0.013	10
Sei whale	0.001	1
Bryde's whale	0.001	1
Gray whale	0.014	11
Total		81

[3] From Barlow (1995).
[4] Density X ZPD=No. Animals.

[1] A list of references used in this document can be obtained by writing to the address provided above (see **ADDRESSES**).

[2] NMFS has established a bulletin board for electronic retrieval of marine mammal stock assessment reports. The reports are stored as Wordperfect 5.1 files and may be downloaded by a modem link to the following telephone number: (703) 218–2595. Within your communications software, specify 8 data bits, no parity, and 1 stop bit. Set up as an ANSI terminal and use your appropriate baud rate up to 19,200. Instructions to download files are available on screen.

However, because the potential exists that the survey schedule could be delayed and overlap with the southbound gray whale migration, some or all of the survey could also potentially result in harassing gray whales. To cover that possibility, a proposed authorization for harassment takes of gray whales has been included. Applying Forney et al.'s (1995) gray whale density from the winter/spring surveys (0.014) to the ZPD (773 km^2 indicates that 11 gray whales could potentially be subject to acoustic harassment.

Also, while the assumption can be made that a population of 70–81 cetaceans may be harassed during the SYU survey, because the 160 dB ZPH at any one instant of time is only a portion of the entire 773 km^2 ZPD, and because the seismic array is turned off while repositioning on the succeeding transect, these cetaceans, at least theoretically, may be harassed more than once during the course of the survey, unless they leave the area as a result of either normal transitting (migration) or seismic noise.

NMFS estimates that each east-west and south-north transect would have a ZPH approximately 344 km^2 and 147.3 km^2, respectively and each of the 64 east-west or 6 south-north transects comprise approximately 45 percent or 19 percent respectively, of the total ZPD. As a result, theoretically there is the potential for the SYU seismic survey to result in 2,360 harassment takings proportionally divided as follows:

Whale species	Density (No./km^2	Total ZPD (km^2)	Total number of harassment takes
Blue whale	0.033	22,900	756
Fin whale	0.013	22,900	298
Humpback whale	0.009	22,900	206
Minke whale	0.008	22,900	183
Sperm whale	0.011	22,900	252
Pygmy sperm whale	0.013	22,900	298
Sei whale	0.001	22,900	23
Bryde's whale	0.001	22,900	23
Gray whale	0.014	22,900	[5]321

[5] As gray whales generally migrate from feeding grounds to breeding lagoons offshore Baja California from November–December, if the seismic survey is delayed from its anticipated commencement date, some harassment of this species may occur.

Mitigation

To avoid potential injury to marine mammals, NMFS proposes to: (1) Require airguns to be ramped-up to operating levels over a 5-minute period at the commencement of operations, when beginning a new trackline or anytime that the array is powered down; (2) recommend not turning the array off at times when restarting the array would occur during nighttime hours; and (3) if marine mammals are observed within the 195 dB isopleth (91.5 m (300 ft) of the source), starting operations must be delayed until all marine mammals are outside the 195 dB zone. It is proposed that NMFS-approved observers be required to make these observations.

Monitoring

NMFS proposes that the holder of the Incidental Harassment Authorization will monitor the impact of seismic activities on the marine mammal populations within the SYU. Monitoring will be conducted during daylight hours by NMFS-approved observers. In addition, monitoring will begin 30 minutes prior to any time the seismic array is turned on and will continue until turned off. Monitoring will consist of noting the numbers and species of all marine mammals seen within the ZPH, and any behavioral responses or modifications due either to the seismic array or by the vessel. A report on this monitoring program will be required to be submitted to NMFS within 90 days of completion of the survey. Specific monitoring and reporting requirements will be specified in the Incidental Harassment Authorizaion, if issued.

Consultation

Under section 7 of the Endangered Species Act, NMFS has begun consultation on the proposed issuance of this authorization. Consultation will be concluded upon completion of the comment period and consideration of those comments in the final determination on issuance of an authorization.

Conclusions

NMFS has determined preliminarily that the short-term impact from conducting a 3–D seismic survey within the SYU may result in a temporary modification in behavior by certain species of cetaceans. While behavioral modifications may be made by these species of cetaceans to avoid seismic noise, this behavioral change is expected to have only a negligible impact on the animals.

There is no known recent subsistence use of marine mammals in southern California.

Proposed Authorization

NMFS proposes to issue an incidental harassment authorization for 1 year for a 3–D seismic survey within the SYU provided the above mentioned monitoring and reporting requirements are incorporated. NMFS has preliminarily determined that the proposed seismic activity would result in the harassment of only small numbers of mysticete cetaceans, sperm whales, and possibly pygmy sperm whales; will have a negligible impact on these cetacean stocks; and will not have an unmitigable adverse impact on the availability of this stock for subsistence uses.

Information Solicited

NMFS requests interested persons to submit comments, information, and suggestions concerning this request (see **ADDRESSES**).

Dated: June 2, 1995.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–13966 Filed 6–6–95; 8:45 am]

BILLING CODE 3510–22–W

[I.D. 060195A]

Shark Operations Team; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Shark Operations Team (OT) will hold a meeting on June 8, 1995, at NMFS in Silver Spring, MD.

DATES: The meeting will be held on June 8, 1995 from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at NMFS, 1315 East-West Highway, Room 12836, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: C. Michael Bailey, telephone: (301) 713-2347, Fax (301–713–0596).

SUPPLEMENTARY INFORMATION: The following topics will be discussed:

(1) 1995 Shark Evaluation Annual Report;

(2) First semi-annual fishing season for sharks;

(3) Results of recent management measures;

(4) Possible permit moratorium;

(5) Possible fishing season modifications;

(6) Data collections issues; and

(7) Possible changes in management measures of whale shark, *Rhincodon typus*, basking shark, *Cetorhinus maximus* and white shark, *Carcharodon carcharias*.

The meeting may be lengthened or shortened based on the progress of the meeting. The meeting is open for the public to attend. This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to C. Michael Bailey at least 5 days prior to the meeting date.

Dated: June 1, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–13858 Filed 6–2–95; 9:22 am]

BILLING CODE 3510–22–F

Patent and Trademark Office

Determination of New Expiration Dates of Certain Patents

AGENCY: Patent and Trademark Office, Commerce.

ACTION: final Determination.

SUMMARY: The Patent and Trademark Office (PTO) has determined the expiration date of patents that:

(1) Are in force on June 8, 1995, and, therefore, are entered to the greater of a term of 20 years from their relevant filing date, or 17 years from grant, and

(2) Have received a term extension under section 155 or 156 of title 35, United States Code, or will receive a term extension under section 156 in the future.

All patents falling in this category are entitled to the longer term of either (a) 17 years from grant, supplemented by the period of extension obtained under section 155 or 156, or (b) 20 years from their relevant filing date.

FOR FURTHER INFORMATION CONTACT: H. Dieter Hoinkes, by telephone at (703) 305–9300, by facsimile at (703) 305–8885, or by mail marked to his attention addressed to the Commissioner of Patents and Trademarks, Box 4, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: Under section 156 of title 35, United States Code, patent term extensions are issued for eligible patents from the original expiration date of the patent. Since this provision was enacted in 1984, the PTO has issued 195 certificates of patent term extension in accordance with section 156. Under the Uruguay Round Agreements Act ("URAA"), Public Law 103–465, patents in force on June 8, 1995, are entitled to a patent term of 17 years from grant or 20 years from their earliest filing date, whichever is greater (See 35 U.S.C. 154(c)(1)).

On February 16, 1995, the PTO held a public hearing to elicit comments on what action it should take regarding patents that are entitled to a longer patent term under the URAA and that had previsouly been extended under section 156. (See 60 FR 3398 (Jan. 17, 1995)). After having considered all the comments, both written and oral, the PTO requested public comments on its intent to publish the new expiration date of all patents that fall into the category mentioned above (See 60 FR 15748 (March 27, 1995)), using the following three criteria:

(1) A patent that would have expired under the original 17-year patent term before June 8, 1995, but that has received a patent term extension for a period beyond June 8, 1995, is a patent "in force" on June 8, 1995, even though the rights derived from that patent are circumscribed by section 156(b) of title 35.

(2) The "original expiration date of the patent" referred to in section 156(a) of title 35 is the date on which the patent would have expired if it had not been extended under section 156 to expire at a later date. Therefore, the "original expiration date" of the patents under consideration is the date on which the 20-year term from filing expires.

(3) The extension already issued on the basis of the 17-year term is added to the 20-year term, subject to the limitation by imposed by section 156(c)(3) of title 35. That provision limits the period remaining in the term of an extended patent to fourteen years counted from the date on which the product under review received approval for commercial marketing by the relevant regulatory authority.

After analyzing the written comments received regarding the PTO's proposed intent to determine the expiration dates of the relevant patents, taking into account the three criteria noted above, it has been concluded that criterion (2) is in error and that, therefore, the steps outlined in criterion (3) are not an appropriate course of action. The provisions of section 156 cannot be applied *in vacuo* without obtaining results that could not have been intended by the URAA or that are inconsistent with section 156 itself.

The entire argument in favor of adding an extension obtained under section 156 to a 20-year term obtained under the URAA, was the manner of interpreting the provision in section 156(a), requiring that the term of a patent be extended from its "original expiration date". The term "original expiration date" was proposed to be the date of a patent's expiration without the aid of an extension period, which was proposed to be the end of the 20-year term for those patents entitled to such term.

This narrow interpretation of section 156, however, did not take into account that the term "original" has several meanings, all of which must be taken into consideration to avoid an improper interpretation of the relationship between section 154(c)(1), added to title 35 by the URAA, and section 156, enacted in 1984. To that end, considering the expiration of the longer 20-year term to be *the* original expiration date, ignores the fact that when the patent was issued, it originally had an expiration date of 17 years from grant. That date must continue to be considered "original" for two reasons.

One is, that this was the date on which the patent, when granted, was set to expire. Accordingly, if a patent is now entitled to a longer 20-year term, such is merely an added time period beyond the original expiration date. The other reason is the impossibility of having more than one "original expiration date" without having to refer to one as the first "original" and to the other as the second or new "original", the latter being a contradiction in terms.

Had criteria (2) and (3) been adopted, additional anomalies would have arisen. For example, the term "original expiration date" means the date on which a patent would have expired without the extension added by section 156. In the case of many patents in question, their being in force on June 8, 1995, and their entitlement, therefore, to the longer term of 20 years from filing, was solely due to an extension of the

original patent term under section 156. In other words, their entitlement to a 20-year term rests on a patent term extension. It is not reasonable, therefore, to ascribe to the end of such 20-year term the appellation "original expiration" which under the provisions of section 156(a) was supposed to have been achieved without the aid of an extended term.

Moreover, in cases where the 17-year term expires before June 8, 1995, and the patent is kept in force on that date by virtue of an extension under section 156, transposing such extension to the end of the 20-year term would have resulted in applying at least some of the extended period twice to the term of the patent. This result would have been especially curious in instances where both the original 17 and the 20-year terms expired before June 8, 1995.

Another vexing problem that would have arisen had the PTO proposal been adopted, concerns the question of the rights that a patent holder derives during the period of extension under section 156. If this period had been added to the 20-year term, a patentee would have had full exclusionary rights until the end of the 17-year term, followed by rights only to equitable remuneration with respect to a certain class of infringers during the period from the end of the 17-year term to the end of the 20-year term, and followed by a restoration of full exclusionary rights with respect to the approved product during the continuing period of extension under section 156. A more reasonable solution, such as a continuation of limited patent rights during the period of extension, has no statutory foundation, because section 154(c)(2) added by the URAA does not address extensions under section 156, which itself contains an explicit provision regarding a patentee's rights during the period of extension.

In analyzing section 156(a), it must be remembered that at the time of its enactment in 1984, only one patent term—seventeen years from grant—was available and that all extensions granted under section 156 until now were added to that patent term. Because the URAA does not address the question of patent term extension under section 156, the extensions of all patents issued before June 8, 1995, must continue to be calculated by the PTO on the basis of the 17-year term from grant and added to that term. This is necessitated by the fact that all patents in that category have an original expiration of 17 years from grant, even though they may be entitled to a term of 20 years from filing under the URAA. Further, where the 20-year term from filing exceeds the original term of 17 years from grant, the provisions of the URAA are satisfied in cases where the extension under section 156, added to the 17-year term, expires later than 20 years from the filing date.

All patents in force on June 8, 1995, were originally issued with a term of 17 years from grant. The fact that on June 8, 1995, these patents are entitled to a term of 20 years from filing, if that term exceeds the 17-year term, does not move the original expiration date from which a period of extension continues, if granted under section 156. It only provides a new—albeit not original—expiration date. Accordingly, all patents in this category are entitled either to the 17-year term, as augmented by an extension under section 156, or to a 20-year term from the relevant filing date, whichever is longer. This determination is fully consistent with section 154(c)(1) of title 35, as added by the URAA, because extensions under section 156 are not addressed by section 154(c)(1) and are, therefore, left untouched.

Of course, all patents issued after June 8, 1995, on applications filed before that date, are also entitled to a term that is the greater of 17 years from grant or 20 years from their relevant filing date. Extensions under section 156 granted to these patents must be calculated with reference to whatever term is applicable at their time of issue and will then be added to that term. As these patents have only one term at issue, there is no question regarding their original expiration date.

Further, under the provisions of section 155 of title 35, 33 patents were extended, each for a length of time to be measured from the date a "stay of regulation of approval was imposed" (December 5, 1975) to the date commercial marketing was permitted (October 22, 1981). This time period amounts to 2,148 days. One of these 33 patents expired in 1992, leaving 32 in force on June 8, 1995.

Section 155 differs from section 156 in providing that "the term of a patent * * * shall be extended * * * by a length of time * * *", rather than that the term of a patent shall be extended "from the original expiration date." This difference, however, has no practical effect because the 33 patents that originally were eligible for extension under section 155 already have been extended, as required by that provision. The provisions of section 154(c)(1), therefore, would only have had an effect, if the 20-year term to which 21 patents are entitled, exceeded the 17-year patent term, as extended by 2,148 days. Applying the provisions of section 154(c)(1) to these patents, however, reveals that its requirements are already satisfied, because all previously extended terms exceed a term of 20 years from the patents' relevant filing dates. Accordingly, section 154(c)(1) does not benefit any of the patents already extended under section 155.

Comments

Nine written comments were received in response to PTO's request for comments mentioned above. Responses to significant comments follow.

1. Comment: One comment urged that any period of patent term extension used to keep a patent in force on June 8, 1995, not be added to the 20-year term and that only the portion of the extended patent term past June 8, 1995, be added.

Response: The suggestion has not been adopted because neither section 156 of title 35, nor section 154(c)(1), as added by the URAA, contains a provision that would permit apportioning a term of patent extension in the manner suggested.

2. Comment: Two comments suggested that all patents that received an extension under section 156 prior to June 8, 1995, were extended from an "original expiration date" and that neither the URAA nor section 156 authorizes any alteration. It was suggested, therefore, that any patent in force on June 8, 1995, should expire either at the end of the term extension under section 156 as added to the 17-year term, or at the end of 20 years from filing, whichever is longer.

Response: The suggestion has been adopted for the reasons given above.

3. Comment: Four comments endorsed the PTO's proposal to move the term of extension from the original expiration date of the patent to its new expiration date, although two of the comments took issue with the proposal that the period of extension comply with the limitation proposed by section 156(c)(3).

Response: In light of the fact that the original PTO proposal has not been followed, the question of the applicability of section 156(c)(3) is moot. Nevertheless, it appears anomalous that some supporters of the original PTO proposal would have looked to section 156 for support of transposing the period of extension, while disclaiming the validity of other provisions in section 156 that materially affect that extension.

4. Comment: One comment suggested that the PTO certify the new patent expiration date upon the patentee's request.

Response: The suggestion has not been adopted, as this final determination of the expiration dates of the relevant patents makes certification unnecessary.

It should be noted that any patent in force on June 8, 1995, and any patent issued on the basis of an application filed before June 8, 1995, are entitled to the longer term of 17 years from grant or 20 years from the relevant filing date. Because patents issued before June 8, 1995, were initially given a term of 17 years from grant, any extension under section 156 must begin from the original expiration date, which is the end of the 17-year term. If the term of 20 years from the relevant filing date exceeds the expiration of the extended term, the patent is entitled to such later expiration date. Patents issued after June 8, 1995, on the basis of applications filed before such date, are also entitled to the greater one of the two terms mentioned above. However, as this term attaches at the time of issue, the question of what term is extended under section 156 does not arise.

As the information to determine the applicable expiration dates of all these patents is readily available from relevant patent documents, publication of their expiration dates is not necessary for the purpose of clarification.

Dated: June 1, 1995.

Bruce A. Lehman,

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

[FR Doc. 95–13848 Filed 6–2–95; 1:42 pm]

BILLING CODE 3510–16–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Privacy Act of 1974; Notice To Add a Record System

AGENCY: Office of the Secretary of Defense, DOD.

ACTION: Notice to Add a Record System.

SUMMARY: The Office of the Secretary of Defense proposes to add one system of records notices to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The addition will be effective on July 7, 1995, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to Chief, Records Management and Privacy Act Branch, Washington Headquarter Services, Correspondence and Directives, Records Management Division, 1155 Defense Pentagon, Washington, DC 20301–1155.

FOR FURTHER INFORMATION CONTACT: Mr. Dan Cragg at (703) 695–0970 or DSN 225–0970.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on May 23, 1995, to the Committee on Government Reform and Oversight of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated July 25, 1994 (59 FR 37906, July 25, 1994).

Dated: June 1, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DWHS P29

SYSTEM NAME:

Personnel Security Adjudications File.

SYSTEM LOCATION:

Directorate for Personnel and Security, Washington Headquarters Services, Consolidated Adjudications Facility, 1725 Jefferson Davis Highway, Suite 212A, Arlington, VA 22202–4191.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Civilian employees of the Office of the Secretary of Defense, its components and supported organizations, the Defense Agencies (excluding the Military Departments, the Defense Intelligence Agency, the Defense Mapping Agency, the Office of the Joint Staff, the National Security Agency, and contractors), and certain personnel selected for assignment to the United States Mission to NATO.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records relating to an individual's personnel security clearance/adjudication actions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. Section 301, Executive Order 12356, Executive Order 10450, Executive Order 9397.

PURPOSE(S):

To be used by officials of the Consolidated Adjudications Facility, Directorate for Personnel and Security, Washington Headquarters Services, to issue, deny, and revoke security clearances.

To be used by members of the Washington Headquarters Services Clearance Appeal Board to determine appeals of clearance denials and revocations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of OSD's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Hard copy files are maintained in file folders; computer files are stored on magnetic tape and disk.

RETRIEVABILITY:

Active personnel security adjudication files are maintained alphabetically by last name of subject, or by Social Security Number.

Inactive personnel security adjudication files are serially numbered and indexed alphabetically.

SAFEGUARDS:

Files are maintained under the direct control of office personnel in the Consolidated Adjudications Facility during duty hours. Office is locked and alarmed during non-duty hours. Computer media is stored in controlled areas. Dial-up computer terminal access is controlled by user passwords that are periodically changed.

RETENTION AND DISPOSAL:

Routine cases or those containing only minor derogatory information that result in a favorable determination for the individual are destroyed 15 years after completion date of the last investigative action for that file.

Files on persons who are considered for affiliation with the DoD will be destroyed after 1 year if the affiliation is not completed.

Cases containing significant derogatroy information are destroyed 25 years after the date of the last action, except those files deemed to be of historcial value and/or or widespread public or congressional interest, which

may be retired to the National Archives after 15 years..

SYSTEM MANAGER(S) AND ADDRESS:

Director for Personnel and Security, Washington Headquarters Services, 1155 Defense Pentagon, Room 3B347, Washington, DC 20301–1155.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Consolidated Adjudications Facility, Washington Headquarters Services, Personnel and Security Directorate, 1725 Jefferson Davis Highway, Suite 212A, Arlington, VA 22202–4191.

Requesters should provide full name and any former names used, date and place of birth, and Social Security Number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to Consolidated Adjudications Facility, Washington Headquarters Services, Personnel and Security Directorate, 1725 Jefferson Davis Highway, Suite 212A, Arlington, VA 22202–4191.

Requesters should provide full name and any former names used, date and place of birth, and Social Security Number.

Requests must be signed and notarized or, if the individual does not have access to notary services, preceded by a signed and dated declaration verifying the identity of the requester, in substantially the following form: *'I certify that the information provided by me is true, complete, and accurate to the best of my knowledge and belief and this request is made in good faith. I understand that a knowing and willful false, fictitious or fraudulent statement or representation can be punished by fine or imprisonment or both.' (Signature).*

CONTESTING RECORDS PROCEDURES:

The OSD's rules for accessing records, for contesting contents and appealing initial agency determinations are contained in OSD Administrative Instruction No. 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is received from individuals, their attorneys and other authorized representatives; investigative reports from Federal investigative agencies; personnel security records and correspondence; medical and personnel records, reports and evaluations; and correspondence from employing agencies, and DoD and other Federal organizations, agencies and offices.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Portions of this system may be exempt from certain provisions of 5 U.S.C. 552a(k)(5), as applicable.

An exemption rule for this record system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b) (1), (2), and (3), (c) and (e) and published in 32 CFR part 311. For additional information contact the system manager.

[FR Doc. 95–13971 Filed 6–6–95; 8:45 am]

BILLING CODE 5000–04–F

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review; Notice

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title and OMB Control Number: DoD FAR Supplement, Part 244, Subcontracting Policies and Procedures; OMB Control Number 0704–0253

Type of Request: Extension

Number of Respondents: 375

Responses per Respondent: 1

Annual Responses: 375

Average Burden per Response: 80 hours

Annual Burden Hours: 30,000

Needs and Uses: In accordance with Subpart 244.305–70 of the DoD FAR Supplement, contractors are requested to submit plans for correction of deficiencies noted in Contractor Performance System Reviews (CPSRs) within 15 days following completion of the CPSR. The information collected hereby, is used to make decisions regarding purchasing system approval, as a result of the CPSR.

Affected Public: Businesses or other for-profit; Not-for-profit institutions

Frequency: On occasion

Respondent's Obligation: Required to obtain or retain a benefit

OMB Desk Officer: Mr. Peter N. Weiss. Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: June 2, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–13970 Filed 6–6–95; 8:45 am]

BILLING CODE 5000–04–F

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review; Notice

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title; Applicable Forms; and OMB Control Number: Lock Performance Monitoring System (PMS) Waterway Traffic Report; ENG Forms 3102C and 3102D; OMB Control Number 0710–0008

Type of Request: Reinstatement

Number of Respondents: 3,000

Responses Per Respondent: 251.2

Annual Responses: 753,600

Average Burden Per Response: 2.5 minutes

Annual Burden Hours: 30,898

Needs and Uses: In accordance with 5 USC 554, owners, masters, and clerks of vessels arriving at or departing from certain localities submit waterway traffic log data on ENG Forms 3102C and 3102D. The information collected hereby, is used primarily by the Corps of Engineers in conducting a system-wide approach to planning and management of the waterways. It is additionally used in responding to requests for summary data from Federal, state, and local government agencies, and trade associations and publications.

Affected Public: Businesses or other for-profit; Small businesses or organizations

Frequency: On occasion

Respondent's Obligation: Mandatory

OMB Desk Officer: Mr. Matthew Mitchell. Written comments and recommendations on the proposed information collection should be sent to Mr. Mitchell at the Office of Management and Budget, Desk Officer for DoD, Room 10202, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: June 2, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–13969 Filed 6–6–95; 8:45 am]

BILLING CODE 5000–04–F

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review; Notice

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title: Terminal and Transfer Facilities Survey; WRSC Forms 1, 2, 3, 4, 5, 6, 7, 8, and 9; OMB Control Number 0710–0007

Type of Request: Reinstatement

Number of Respondents: 1,489

Responses per Respondent: 1

Annual Responses: 1,489

Average Burden per Response: 15 minutes

Annual Burden Hours: 372

Needs and Uses: The information collected hereby, is used by the Corps of Engineers (COE) to compile the annual Port Series Reports required by the Rivers and Harbors Act. It is additionally used within COE for navigation and planning functions, by the Coast Guard for marine safety inspections, by the Department of the Navy for guidance in providing safe passage in time of national emergency, by the Department of the Army for mission deployment planning, and by the public for general reference, planning, and various studies.

Affected Public: State of local governments, Businesses of other for-profit; Small businesses or organizations

Frequency: Annually

Respondent's Obligation: Voluntary

OMB Desk Officer: Mr. Matthew Mitchell

Written comments and recommendations on the proposed information collection should be sent to Mr. Mitchell at the Office of Management and Budget, Desk Officer for DoD, Room 10202, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: June 2, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–13967 Filed 6–6–95; 8:45 am]

BILLING CODE 5000–04–F

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review; Notice

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title: Intercontinental Ballistic Missile Hardened Intersite Cable System Right-of-Way Landowner/Tenant Questionnaire

Type of Request: Existing collection

Number of Respondents: 4,000

Responses per Respondent: 1

Annual Responses: 4,000

Average Burden per Response: 15 minutes

Annual Burden Hours: 1,000

Needs and Uses: The questionnaire is designed to report changes in ownership/lease information, conditions of missile cable route and associated appurtenances, and projected building/excavation projects. The information collected hereby, is used to ensure system integrity and to maintain a close contact public relations program with involved personnel and agencies.

Affected Public: Individuals or households; Farms

Frequency: Biennially

Respondent's Obligation: Voluntary

OMB Desk Officer: Mr. Edward C. Springer Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: June 2, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–13968 Filed 6–6–95; 8:45 am]

BILLING CODE 5000–04–F

Department of the Air Force

USAF Scientific Advisory Board Meeting

The Human Systems & Biotechnology Panel of the USAF Scientific Advisory Board will meet on 28 June 1995 at The University of Pennsylvania, PA from 8:00 a.m. to 5:00 p.m.

The purpose of the meeting is to gather data in support of the 1995 Summer Study on New World Vistas.

The meeting will be opened to the public in accordance with Section 552b of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–8845.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 95–13841 Filed 6–6–95; 8:45 am]

BILLING CODE 3910–01–F

USAF Scientific Advisory Board Meeting

The Materials Panel of the USAF Scientific Advisory Board will meet on 29–30 June 1995 at Wright Patterson AFB, OH from 8:00 a.m. to 5:00 p.m.

The purpose of the meeting is to gather data in support of the 1995 Summer Study on New World Vistas.

The meeting will be opened to the public in accordance with Section 552b of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–8845.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 95–13843 Filed 6–6–95; 8:45 am]

BILLING CODE 3910–01–F

USAF Scientific Advisory Board Meeting

The Materials Panel of the USAF Scientific Advisory Board will meet on 6–7 July 1995 at Palo Alto, CA from 8:00 a.m. to 5:00 p.m.

The purpose of the meeting is to gather data in support of the 1995 Summer Study on New World Vistas.

The meeting will be opened to the public in accordance with Section 552b of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–8845.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 95–13840 Filed 6–6–95; 8:45 am]

BILLING CODE 3910–01–P

USAF Scientific Advisory Board Meeting

The Attack Panel of the USAF Scientific Advisory Board will meet on 7–8 July 1995 at Beckman Center, Irvine, CA from 8:00 a.m. to 5:00 p.m.

The purpose of the meeting is to gather data in support of the 1995 Summer Study on New World Vistas.

The meeting will be closed to the public in accordance with Section 552b of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–8845.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 95–13842 Filed 6–6–95; 8:45 am]

BILLING CODE 3910–01–P

USAF Scientific Advisory Board Meeting

The USAF Scientific Advisory Board's 1995 Summer Study Meeting will meet on 10–21 July 1995 at The Beckman Center, Irvine, CA from 0730 to 5:00 p.m.

The purpose of the meeting is to produce a draft report, highlighting the results of the Technology and Application panels in support of New World Vistas.

The meeting will be closed to the public in accordance with Section 552b of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–8845.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 95–13844 Filed 6–6–95; 8:45 am]

BILLING CODE 3910–01–P

Department of the Army

Privacy Act of 1974; Notice To Delete Systems of Records

AGENCY: Department of the Army, DOD.

ACTION: Notice to delete systems of records.

SUMMARY: The Department of the Army proposes to delete six systems of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: The deletions are effective June 7, 1995.

ADDRESSES: U.S. Army Information Systems Command, ATTN: ASOP-MP, Fort Huachuca, AZ 85613–5000.

FOR FURTHER INFORMATION CONTACT: Ms. Pat Turner at (602) 538–6856 or DSN 879–6856.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The deletions are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: June 2, 1995.

Patricia Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

AAFES 0307.01

SYSTEM NAME:

Carpooling Program *(February 22, 1993, 58 FR 10005).*

Reason: The carpooling program is no longer in effect. Records have been destroyed.

AAFES 0403.05

SYSTEM NAME:

Employee Examination Records *(February 22, 1993, 58 FR 10007).*

Reason: This system is obsolete. AAFES does not require employee examination tests. Records have been destroyed.

AAFES 0408.05

SYSTEM NAME:

Individual Trainee Files *(February 22, 1993, 58 FR 10011).*

Reason: This system is obsolete and no longer maintained by AAFES. Records have been destroyed.

AAFES 0704.07

SYSTEM NAME:

Fidelity Bond Files *(February 22, 1993, 58 FR 10020).*

Reason: This system is obsolete. AAFES no longer requires fidelity bonds. Records have been destroyed.

AAFES 1300.01

SYSTEM NAME:

Resource Management and Cost Accounting Files *(February 22, 1993, 58 FR 10022).*

Reason: This system is obsolete. Records have been destroyed.

[FR Doc. 95–13972 Filed 6–6–95; 8:45 am]

BILLING CODE 5000–04–F

National Security Agency/Central Security Service

Privacy Act of 1974; Notice To Amend a Record System

AGENCY: National Security Agency/ Central Security Service, DOD.

ACTION: Notice to amend a record system.

SUMMARY: The National Security Agency/Central Security Service proposes to amend a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The amendment will be effective on July 7, 1995, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to Deputy Director of Policy, National Security Agency, 9800 Savage Road, Ft. Meade, MD 20755–6000.

FOR FURTHER INFORMATION CONTACT: Ms. Pat Schuyler at (301) 688–6527.

SUPPLEMENTARY INFORMATION: The National Security Agency/Central Security Service notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed amendment is not within the purview of subsection (r) of the Privacy Act (5 U.S.C. 552a), as amended, which would require the submission of a new or altered system report for each system. The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety.

Dated: June 2, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

GNSA 08

SYSTEM NAME:

NSA/CSS Payroll and Claims *(February 22, 1993, 58 FR 10538).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete second paragraph and replace with 'Decentralized elements of this system may be located at the Defense Intelligence Agency (DIA) Headquarters and DIA field elements, DoD activities supported by DIA, and NSA field elements as authorized and appropriate. For official mailing addresses for any of the decentralized system locations, write to the Deputy Director of Policy, National Security Agency/Central Security Service, Ft. George G. Meade, MD 20755–6000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'Civilian employees and applicants, military assignees, contractors, reemployed annuitants, and personnel under contract or traveling on invitational travel orders employed by NSA/CSS, DIA, and DoD activities supported by DIA.'

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with 'National Security Agency Act of 1959, 50 U.S.C. 402 note (Pub. L. 86-36); 50 U.S.C. App. 2160; Titles 5, 10, 31, and 37 of the U.S.C.; Titles 2, 4, 5, and 6 GAO Policy and Procedures Manual for Guidance of Federal Agencies.'

PURPOSE(S):

Delete entry and replace with 'To maintain effective control over and accountability for all relevant appropriated funds; to provide accounting data to support budget requests and control the execution of budgets; to provide financial information required by the Office of Management and Budget; to provide financial information for agency management and payroll activities.'

* * * * *

SAFEGUARDS:

Delete last sentence.

* * * * *

GNSA 08

SYSTEM NAME:

NSA/CSS Payroll and Claims.

SYSTEM LOCATION:

Primary System - National Security Agency/Central Security Service, Ft. George G. Meade, MD 20755–6000.

Decentralized elements of this system may be located at the Defense Intelligence Agency (DIA) Headquarters and DIA field elements, DoD activities supported by DIA, and NSA field elements as authorized and appropriate. For official mailing addresses for any of the decentralized system locations, write to the Deputy Director of Policy, National Security Agency/Central Security Service, Ft. George G. Meade, MD 20755–6000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Civilian employees and applicants, military assignees, contractors, reemployed annuitants, and personnel under contract or traveling on invitational travel orders employed by NSA/CSS, DIA, and DoD activities supported by DIA

CATEGORIES OF RECORDS IN THE SYSTEM:

File may consist of records on time and attendance; overtime; shift and holiday work; absent without leave reports; payroll deductions, allotments and allowances; requests for leave; payments for travel performed in connection with permanent change of station, temporary duty, invitations, interviews, pre-employment interviews and initial entry on duty. Also included are Pay Adjustment Authorizations (DD Form 139) and Cash Collection Vouchers (DD Form 1131) and, in connection with pay claims, waivers, requests for waivers, documents, correspondence, background data, recommendations and decisions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Security Agency Act of 1959, 50 U.S.C. 402 note (Pub. L. 86-36); 50 U.S.C. App. 2160; Titles 5, 10, 31, and 37 of the U.S.C.; Titles 2, 4, 5, and 6 GAO Policy and Procedures Manual for Guidance of Federal Agencies.

PURPOSE(S):

To maintain effective control over and accountability for all relevant appropriated funds; to provide accounting data to support budget requests and control the execution of budgets; to provide financial information required by the Office of Management and Budget; to provide financial information for agency management and payroll activities.'

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Disclosures from this system may also be made to other federal entities as necessary to effectuate repayment of debts owed the Government.

To other governmental entities in connection with Social Security deductions, unemployment compensation claims, job-related injury and death benefits, tax audit and collections, claims or actions.

The 'Blanket Routine Uses' set forth at the beginning of the NSA/CSS' compilation of systems of records notices apply to this system.

DISCLOSURES TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to 'consumer reporting agencies' as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a (f) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701 (a) (3)). The purpose of this disclosure is to aid in the collection of outstanding debts owed to the Federal Government; typically, to provide an incentive for debtors to repay delinquent Federal Government debts by making these debts part of their credit records.

Disclosure of records is limited to the individual's name, address, Social Security Number, and other information necessary to establish the individual's identify, the amount, status, and history of the claim; and the agency program under which the claim arose. This disclosure will be made only after the procedural requirement of 31 U.S.C. 3711(f) has been followed.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders; file cards; computer paper printouts; machine-readable cards; computer magnetic tapes, disks and other computer storage media.

RETRIEVABILITY:

By name, Social Security Number.

SAFEGUARDS:

For paper, computer printouts and microfilm - Secure limited access facilities, within those facilities secure

limited access rooms and within those rooms lockable containers. Access to information is limited to authorized individuals. For machine records stored on magnetic tape, disk or other computer storage media within the computer processing area - additional secure limited access facilities, specific processing requests from authorized persons only, specific authority to access stored records and delivery to authorized persons only. Remote terminals are secured, are available to authorized persons only, and certain password and other identifying information available to authorized users only is required.

RETENTION AND DISPOSAL:

Records are reviewed annually and retired or destroyed as appropriate. Permanent records are retired to the St. Louis Federal Records Center after completion of audit. Computer records are purged and updated consistent with these retention policies.

SYSTEM MANAGER(S) AND ADDRESS:

Director, National Security Agency/ Central Security Service, Ft. George G. Meade, MD 20755–6000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Deputy Director of Policy, National Security Agency/Central Security Service, Ft. George G. Meade, MD 20755–6000.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Deputy Director of Policy, National Security Agency/ Central Security Service, Ft. George G. Meade, MD 20755–6000.

CONTESTING RECORD PROCEDURES:

The NSA/CSS rules for contesting contents and appealing initial determinations are published at 32 CFR part 322 or may be obtained by written request addressed to the Deputy Director of Policy, National Security Agency/Central Security Service, Ft. George G. Meade, MD 20755–6000.

RECORD SOURCE CATEGORIES:

Forms, cards, requests and other documentation submitted by individuals, supervisors, claims officers, Personnel File data, Time, Attendance and Access File data, and other sources as appropriate and required.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Individual records in this file may be exempt pursuant to 5 U.S.C. 552a(k)(1) and (k)(2), as applicable.

An exemption rule for this record system has been promulgated according to the requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 322. For additional information contact the system manager.

[FR Doc. 95–13973 Filed 6–6–95; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF EDUCATION

Intent To Repay to the Commonwealth of Pennsylvania Department of Education Funds Recovered as a Result of a Final Audit Determination

AGENCY: Department of Education.

ACTION: Notice of intent to award grantback funds.

SUMMARY: Under section 459 of the General Education Provisions Act (GEPA), the U.S. Secretary of Education (Secretary) intends to repay to the Commonwealth of Pennsylvania Department of Education, the State educational agency (SEA), an amount equal to 75 percent of the $210,000 recovered by the U.S. Department of Education (Department) as a result of a final audit determination. This notice describes the SEA's plan, submitted on behalf of the Philadelphia School District, the local educational agency (LEA), for the use of the repaid funds and the terms and conditions under which the Secretary intends to make those funds available. The notice invites comments on the proposed grantback.

DATES: All comments must be received on or before July 7, 1995.

ADDRESSES: Comments concerning the grantback should be addressed to Mary Jean LeTendre, Director, Compensatory Education Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 600 Independence Avenue SW (Portals Building, Room 4400), Washington, D.C. 20202–6132.

FOR FURTHER INFORMATION CONTACT: S. Colene Nelson, U.S. Department of Education, 600 Independence Avenue SW (Portals Building, Room 4400), Washington, D.C. 20202–6132. Telephone: (202) 260–0979. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

A. Background

The Department has recovered $210,000 from the SEA in satisfaction of claims arising from an audit of the LEA covering fiscal year (FY) 1987. The claims involved the SEA's administration of Chapter 1 of the Education Consolidation and Improvement Act of 1981 (Chapter 1, ECIA), a program that provided financial assistance to State and local agencies to address the special educational needs of educationally deprived children in areas with high concentrations of children from low-income families.

Specifically, the auditors found that for the period July 1, 1986 through March 18, 1987, the LEA's Office of Planning, Research and Evaluation (OPRE) prorated staff did not maintain time and effort reports properly to support $604,611 of allocable charges under Chapter 1. Alternative documentation in the form of sign-in sheets and evaluation reports was reviewed by the auditors and also found to be inadequate for allocating OPRE salaries to Chapter 1 because it did not demonstrate the actual time that prorated staff spent on Chapter 1 activities. The auditors therefore questioned $604,611 of salaries, fringe benefits, and indirect costs.

On March 19, 1987, the LEA implemented a time and effort reporting system to be used by the OPRE staff. However, the auditors found that for the period March 19, 1987 through June 30, 1987, the time and effort reports maintained by OPRE-prorated staff did not support the full amount of Chapter 1 claims submitted by the LEA. The auditors therefore questioned an additional $20,066 improperly charged to the Chapter 1 program for salaries, fringe benefits, and indirect costs for the remainder period of time. The auditors recommended a total refund to the Department in the amount of $624,677 for the first finding.

In a second finding, the auditors found that the LEA failed to retain documentation supporting student eligibility for the Chapter 1 Reading and English to Speakers of Other Languages (ESOL) projects. Therefore, the teachers' salaries and fringe benefits charged to the Chapter 1 program for the Reading and ESOL projects during the period July 1, 1986 through June 30, 1987 were unsupported. As a result, the auditors identified $137,661 of Chapter 1 salaries, fringe benefits, and indirect costs charged to the Chapter 1 program, for the Reading and ESOL teachers, for which student eligibility documentation could not be located.

Based on these two findings, the Assistant Secretary for Elementary and Secondary Education (Assistant Secretary) issued a final determination on March 29, 1991, that concluded that salaries, fringe benefits, and indirect costs charged to the Chapter 1 program were unsupported or incorrectly calculated. The determination required a refund totaling $762,338.

The SEA appealed the final determination of the Assistant Secretary through the Office of Administrative Law Judges. Review of additional documentation submitted during this period of appeal and negotiations between the school district and the Department resulted in an order of dismissal issued on April 15, 1992, by the Department settling the audit at $210,000 in questioned costs. Subsequently, on June 4, 1992, the LEA submitted a check for $210,000.

B. Authority for Awarding a Grantback

Section 459(a) of GEPA, 20 U.S.C. 1234h(a), provides that whenever the Secretary has recovered program funds following a final audit determination, the Secretary may consider those funds to be additional funds available for the program and may arrange to repay to the SEA or LEA affected by the determination an amount not to exceed 75 percent of the recovered funds. The Secretary may enter into this grantback arrangement if the Secretary determines that—

(1) Practices or procedures of the SEA or LEA that resulted in the audit determination have been corrected, and the SEA or LEA is, in all other respects, in compliance with the requirements of the applicable program;

(2) SEA has submitted to the Secretary a plan for the use of the funds to be awarded under the grantback arrangement that meets the requirements of the program, and, to the extent possible, benefits the population that was affected by the failure to comply or by the misexpenditures that resulted in the audit exception; and

(3) Use of funds to be awarded under the grantback arrangement in accordance with the SEA's plan would serve to achieve the purposes of the program under which the funds were originally granted.

C. Plan for Use of Funds Awarded Under a Grantback Arrangement

Pursuant to section 459(a)(2) of GEPA, the SEA has applied for a grantback of $157,500—75 percent of the principal amount recovered by the Department—and has submitted a plan on behalf of the LEA for use of the grantback funds to meet the special educational needs of educationally deprived children in programs administered under Chapter 1, ESEA (20 U.S.C. 2701 *et seq.* (1988)).

According to the plan, the LEA will use the grantback funds under Chapter 1 to provide six weeks of summer kindergarten to be held at eight schoolwide project sites, two classes per site for a total of 16 classrooms. Participating teachers will attend one planning meeting (2 hours) and a full day of staff development (5 hours) in June in preparation for the program that will begin for students on July 5 and end on August 15, 1995. The participating schools will be selected based on the following two factors: (1) A high concentration of students about to enter first grade who have not had a kindergarten experience, and (2) a high concentration of poverty. The Office of Accountability and Assessment will identify the targeted schools. If space is available, children who entered kindergarten after January 1995 will also be included. Teachers and classroom assistants will telephone parents to keep attendance high.

Each class will be staffed by a teacher and a classroom assistant. The teacher-student ratio will be one to fifteen. The standardized kindergarten curriculum for the LEA will be used as the basis for instruction. Schools will be invited to pilot some special materials to increase hands-on interactive, developmentally appropriate instruction. These materials will be selected by the principal and teachers at the school to coordinate with the instructional model in use at the school. For the sixth week, the first grade teachers to whom the students have been assigned will attend and work with the students. The Early Primary Progress Report (EPPR), a developmentally appropriate kindergarten checklist, will be administered to each participant at the completion of the summer program. Children will be rated as competent, making progress, or making improvement. The results will be summarized to determine attainment of objectives for each class and the program as a whole.

Also, the LEA staff, in consultation with nonpublic school authorities and parents of Chapter 1 students, decided to allocate grantback funds to support summer professional development for 20 teachers of Chapter 1 students, in order to provide these teachers with an opportunity to focus on the needs of the Chapter 1 children they teach and to align the regular education program with Chapter 1 support activities in their schools. Twenty nonpublic schools with the highest concentrations of Chapter 1 program students will be selected for participation. Attendance will be recorded at each staff development session and participating teachers will complete a workshop evaluation survey at the end of the two-week session.

D. The Secretary's Determinations

The Secretary has carefully reviewed the plan submitted by the SEA. Based upon that review, the Secretary has determined that the conditions under section 459 of GEPA have been met. These determinations are based upon the best information available to the Secretary at the present time. If this information is not accurate or complete, the Secretary may take appropriate administrative action. In finding that the conditions of section 459 of GEPA have been met, the Secretary makes no determination concerning any pending audit recommendations or final audit determinations.

E. Notice of the Secretary's Intent To Enter Into a Grantback Arrangement

Section 459(d) of GEPA requires that, at least 30 days before entering into an arrangement to award funds under a grantback, the Secretary must publish in the **Federal Register** a notice of intent to do so, and the terms and conditions under which payment will be made.

In accordance with section 459(d) of GEPA, notice is hereby given that the Secretary intends to make funds available to the SEA under a grantback arrangement. The grantback award would be in the amount of $157,500.

F. Terms and Conditions Under Which Payments Under a Grantback Arrangement Would Be Made

The SEA and LEA agree to comply with the following terms and conditions under which payment under a grantback arrangement would be made:

(1) The funds awarded under the grantback must be spent in accordance with—

(a) All applicable statutory and regulatory requirements;

(b) The plan that the SEA submitted and any amendments to that plan that are approved in advance by the Secretary; and

(c) The budget that was submitted with the plan and any amendments to the budget that are approved in advance by the Secretary.

(2) All funds received under the grantback arrangement must be obligated by September 30, 1995, in accordance with section 459(c) of GEPA and the SEA's plan.

(3) The SEA, on behalf of the LEA, will, not later than December 31, 1995, submit a report to the Secretary that—

(a) Indicates that the funds awarded under the grantback have been spent in accordance with the proposed plan and approved budget; and

(b) Describes the results and effectiveness of the project for which the funds were spent.

(4) Separate accounting records must be maintained documenting the expenditures of funds awarded under the grantback arrangement.

Dated: June 1, 1995.

Thomas W. Payzant,

Assistant Secretary for Elementary and Secondary Education.

(Catalog of Federal Domestic Assistance Number 84.010, Educationally Deprived Children—Local Educational Agencies)

[FR Doc. 95–13850 Filed 6–6–95; 8:45 am]

BILLING CODE 4000–01–P

[CFDA No. 84.116N]

Fund for the Improvement of Postsecondary Education—Special Focus Competition: North American Mobility in Higher Education

Notice inviting applications for new awards for fiscal year (FY) 1995.

Purpose of Program: To provide grants or enter into cooperative agreements to improve postsecondary education opportunities by focusing on problem areas or improvement approaches in postsecondary education.

Supplemental Information: This program is a targeted special focus competition under 34 CFR 630.11(b).

Eligible Applicants: Institutions of higher education or combinations of such institutions and other public and private nonprofit educational institutions and agencies.

Deadline for Transmittal of Applications: July 31, 1995.

Deadline for Intergovernmental Review: September 29, 1995.

Applications Available: June 7, 1995.

Available Funds: $1,200,000.

Estimated Range of Awards: $100,000–$150,000 for three years.

Estimated Average Size of Awards: $120,000 for three years.

Estimated Number of Awards: 10.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75 (except as noted in 34 CFR 630.4(a)(2)), 77, 79, 80, 82, 85, and 86; and (b) the regulations for this program in 34 CFR Part 630.

Priorities

Invitational Priorities

Under 34 CFR 75.105(c)(1) and 34 CFR 630.11(b)(1), the Secretary is particularly interested in applications that meet the following invitational priority. However, an application that meets this invitational priority does not receive competitive or absolute preference over other applications.

Invitational Priority: Projects that support trilateral consortia of institutions of higher education that promote institutional cooperation and student mobility among the United States, Mexico, and Canada.

Selection Criteria

In evaluating applications for grants under this program competition, the Secretary uses the following selection criteria chosen from those listed in 34 CFR 630.32:

(a) *Significance for Postsecondary Education.* The Secretary reviews each proposed project for its significance in improving postsecondary education by determining the extent to which it would—

(1) Achieve the purposes of the particular program competition as referenced in 34 CFR 630.11;

(2) Address the program priorities for the particular program competition;

(3) Address an important problem or need;

(4) Represent an improvement upon, or important departure from, existing practice;

(5) Involve learner-centered improvements;

(6) Achieve far-reaching impact through improvements that will be useful in a variety of ways and in a variety of settings; and

(7) Increase the cost-effectiveness of services.

(b) *Feasibility.* The Secretary reviews each proposed project for its feasibility by determining the extent to which—

(1) The proposed project represents an appropriate response to the problem or need addressed;

(2) The applicant is capable of carrying out the proposed project, as evidenced by, for example—

(i) The applicant's understanding of the problem or need;

(ii) The quality of the project design, including objectives, approaches, and evaluation plan;

(iii) The adequacy of resources, including money, personnel, facilities, equipment, and supplies;

(iv) The qualifications of key personnel who would conduct the project; and

(v) The applicant's relevant prior experience;

(3) The applicant and any other participating organizations are committed to the success of the proposed project, as evidenced by, for example—

(i) Contribution of resources by the applicant and by participating organizations;

(ii) Their prior work in the area; and

(iii) The potential for continuation of the proposed project beyond the period of funding (unless the project would be self-terminating); and

(4) The proposed project demonstrates potential for dissemination to or adaptation by other organizations, and shows evidence of interest by potential users.

(c) *Appropriateness of funding projects.* The Secretary reviews each application to determine whether support of the proposed project by the Secretary is appropriate in terms of availability of other funding sources for the proposed activities.

In accordance with 630.32 the Secretary announces the methods that will be used in applying the selection criteria.

The Secretary gives equal weight to the selection criteria on significance, feasibility, and appropriateness. Within each of these criteria, the Secretary gives equal weight to each of the subcriteria listed above. In applying the criteria, the Secretary first analyzes a preapplication or application in terms of each individual criterion and subcriterion. The Secretary then bases the final judgment of an application on an overall assessment of the degree to which the applicant addresses all selection criteria.

For Applications or Information Contact: Fund for the Improvement of Postsecondary Education (FIPSE), U.S. Department of Education, 600 Independence Avenue, S.W., Room 3100, ROB–3, Washington, D.C. 20202–5175. Telephone: (202) 708–5750 between the hours of 8 a.m. and 5 p.m., Eastern time, Monday through Friday, to order applications or for information. Individuals may request applications by submitting the name of the competition, their name, and postal mailing address to the e-mail address FIPSE@ED.GOV. Individuals may obtain the application text from Internet a ddress http://www.ed.gov/prog_info/FIPSE/. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 20 U.S.C. 1135–1135a–3.

Dated: May 31, 1995.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 95–13851 Filed 6–6–95; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER94–1188–005, et al.]

LG&E Power Marketing Inc., et al.; Electric Rate and Corporate Regulation Filings

May 30, 1995.

Take notice that the following filings have been made with the Commission:

1. LG&E Power Marketing Inc.

[Docket No. ER94–1188–005]

Take notice that on May 1, 1995, LG&E Power Marketing Inc. tendered for filing certain information as required by the Commission's order dated August 19, 1994. Copies of the informational filing are on file with the Commission and are available for public inspection.

2. ACME Power Marketing, Inc.

[Docket No. ER94–1530–003]

Take notice that on May 18, 1995, ACME Power Marketing, Inc. (ACME), filed certain information as required by the Commission's October 18, 1994, order in Docket No. ER94–1530–000. Copies of ACME's informational filing are on file with the Commission and are available for public inspection.

3. IGI Resources, Inc.

[Docket No. ER95–1034–000]

Take notice that on May 11, 1995, IGI Resources, Inc., (IGI) tendered for filing a petition for waivers and blanket approvals under various regulations of the Commission, and for an order accepting its Rate Schedule No. 1, to be effective the earlier of July 10, 1995 or the date of a Commission order granting approval of this Rate Schedule.

IGI intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where IGI purchases power, including capacity and related services from electric utilities, qualifying facilities, and independent power producers, and resells such power to other purchasers, IGI will be functioning as a marketer. In IGI's marketing transactions, IGI proposes to charge rates mutually agreed upon by the parties. In transactions where IGI does not take title to the electric power and/or energy, IGI will be limited to the role of a broker and will charge a fee for its services. IGI is not in the business of producing nor does it contemplate acquiring title to any electric power transmission facilities.

Rate Schedule No. 1 provides for the sale of energy and capacity at agreed-upon prices.

Comment date: June 12, 1995, in accordance with Standard Paragraph E at the end of this notice.

3a. Madison Gas and Electric Company

[Docket No. ER95–1043–000]

Take notice that on May 15, 1995, Madison Gas and Electric Company (MGE) tendered for filing a service agreement with NorAm Energy Services, Inc., under MGE's Power Sales Tariff. MGE requests an effective date 60 days from the filing date.

Comment date: June 12, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. CINergy Services, Inc., The Cincinnati Gas & Electric Company and PSI Energy, Inc.

[Docket No. ER95–1056–000]

Take notice that on May 17, 1995, CINergy Services, Inc., on behalf of The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI) (together CINergy), filed, pursuant to § 205 of the Federal Power Act and Part 35 of the Commission's Regulations, Notices of Cancellation for CINergy Services to cancel the Interconnection Agreement, dated September 1, 1970, as amended, between CG&E and PSI.

CINergy Services has requested an effective date of October 24, 1994. Said date is the first day of operation of CINergy.

Copies of the filing were served on CG&E, PSI and the state regulatory commissions of Indiana, Ohio and Kentucky.

Comment date: June 12, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Northern States Power Company (Minnesota Company)

[Docket No. ER95–1057–000]

Take notice that on May 17, 1995, Northern States Power Company (Minnesota), (NSP-MIN), tendered for filing an Electric Services Agreement dated February 28, 1994, between NSP-MIN, Northern States Power Company (Wisconsin), (NSP-WI), and the City of Wisconsin Rapids. NSP-MIN files this agreement on behalf of NSP-WI, Wisconsin Rapids and itself.

The Electric Services Agreement provides for the interchange of electrical power and energy between the parties. NSP requests the Commission waive its Part 35 Notice requirements and accept this Agreement for filing effective July 1, 1995.

Comment date: June 12, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. New England Power Company

[Docket No. ER95–1058–000]

Take notice that on May 17, 1995, New England Power Company filed a Service Agreement and Certificate of Concurrence with Louis Dreyfus Electric Power, Inc. For sales and exchanges under NEP's FERC Electric Tariff, Original Volume No. 5.

Comment date: June 12, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Sierra Pacific Power Company

[Docket No. ER95–1059–000]

Take notice that on May 17, 1995, Sierra Pacific Power Company (Sierra), tendered for filing pursuant to § 205 of the Federal Power Act (the Act) and Part 35 of the Commission's Regulations, Amendment No. 1 to the General Transfer Agreement (GTA) between Sierra and Bonneville Power Administration (BPA). (Amendment No. 1 shall hereafter be referred to as the Amendment).

Sierra states that the purpose of the Amendment is to provide for increases in transmission service provided by Sierra under the existing GTA. The Amendment provides for various charges consistent with such increases in service. Sierra requests that the Amendment be accepted and made effective, without change, as of July 16, 1995, that being 60 days after its tender of filing at the Commission. While Sierra states its belief that no waivers of the Act or the Commission's Rules or Regulations are necessary to make effective the Amendment pursuant to its terms, Sierra requests any such waiver necessary or desirable for that purpose.

Sierra asserts that the filing has been served on BPA and on the regulatory commission of Nevada.

Comment date: June 12, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Wisconsin Power and Light Company

[Docket No. ER95–1060–000]

Take notice that on May 17, 1995, Wisconsin Power and Light Company (WPL), tendered for filing a supplement to the existing interconnection and interchange agreement between WPL and Dairyland Power Cooperative.

WPL requests that an effective date concurrent with the contract effective date be assigned. WPL states that copies of the agreement and the filing have been provided to Dairyland Power Cooperative and the Wisconsin Public Service Commission.

Comment date: June 12, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Florida Power & Light Company

[Docket No. ER95–1061–000]

Take notice that on May 17, 1995, Florida Power & Light Company (FPL), tendered for filing proposed Service Agreements with the Orlando Utilities Commission for transmission service under FPL's Transmission Tariff Nos. 2 and 3.

FPL requests that the proposed Service Agreement be permitted to become effective on April 18, 1995, or as soon thereafter as practicable. FPL states that this filing is in accordance with Part 35 of the Commission's Regulations.

Comment date: June 12, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Century Power Corporation

[Docket No. ER95–1067–000]

Take notice that on May 19, 1995, Century Power Corporation (Century), filed an Assignment and Amendment No. 2 to the Assumption Agreement and an Assignment and Amendment No. 2 to the Amended and Restated Interconnection Agreement. Under these agreements, Tucson provides step-up transformation, transmission, exchange and ancillary services to Century and Century's permitted assignee for power produced at San Juan Unit to Tri-State Generation and Transmission Association, Inc., and the filed assignments and amendments transfer to Tri-State rights to service under the agreements. The assignments and amendments are to become effective upon the closing of the sale of the interest in the unit.

Century also has submitted (a) a Notice of Cancellation of the Assumption Agreement as Century FERC Rate Schedule No. 18 and of the Amended and Restated Interconnection Agreement as Century FERC Rate Schedule No. 17, and (b) a Notice of Cancellation of Service Agreement No. 25 under Century's FERC Electric Tariff Original Volume No. 1. These rate schedule cancellations are to become effective coincident with the assignments and amendments described above.

Comment date: June 12, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. Public Service Company of New Mexico

[Docket No. ER95–1068–000 New Mexico]

Take notice that on May 19, 1995, Public Service Company of New Mexico (PNM) submitted for filing a copy of an Assignment and Assumption Agreement (Agreement) to be executed between Century Power Corporation (Century) and Tri-State Generation and Transmission Association, Inc. (Tri-State), in connection with Tri-State's intended purchase from Century of an interest in San Juan Generating Station Unit 3. PNM requests that the Agreement be effective the date of the closing of the said purchase transaction and that the Commission's notice requirements be waived.

Copies of this filing have been served upon Century, Tri-State, Tucson Electric Power Company and the New Mexico Public Utility Commission.

Comment date: June 12, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. Southwestern Public Service Company

[Docket No. ER95–1069–000]

Take notice Southwestern Public Service Company (Southwestern) on May 19, 1995, tendered for filing a proposed amendment to its rate schedule for service to Central Valley Electric Cooperative, Inc. (Central Valley).

The proposed amendment reflects changes in the maximum commitment at several delivery points as well as adding an additional delivery point for service to Central Valley.

Comment date: June 12, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–13881 Filed 6–6–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP95–509–000, et al.]

Northwest Pipeline Corporation, et al.; Natural Gas Certificate Filings

May 26, 1995.

Take notice that the following filings have been made with the Commission:

1. Northwest Pipeline Corporation

[Docket No. CP95–509–000]

Take notice that on May 23, 1995, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed in Docket No. CP95–509–000 a request pursuant to Sections 157.205, 157.216 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216, 157.211) for authorization to abandon certain facilities at the Moses Lake Meter Station in Grant County, Washington and to construct and operate replacement facilities at this station to provide existing delivery obligations at this point to Cascade Natural Gas Corporation (Cascade) under Northwest's blanket certificate issued in Docket No. CP82–433–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northwest proposes to modify the Moses Lake Meter Station, originally certificated in Docket No. G–8934, by replacing the two existing 4-inch orifice meters with two new 6-inch turbine meters and appurtenances to accommodate wide flow rate fluctuations. Northwest also proposes to install a new 750,000 Btu heater and electronic flow measurement equipment. Northwest states that the proposed modifications will not affect the design capacity of the meter station which is limited by existing regulators to 9,300 Dth per day at 300 psig.

Northwest estimates the total cost of the proposed facility modification at the Moses Lake Meter Station to be approximately $312,350, including the cost of removing the old facilities. Northwest states that it will not require any cost reimbursement from Cascade.

Comment date: July 10, 1995, in accordance with Standard Paragraph G at the end of this notice.

2. Northwest Pipeline Corporation

[Docket No. CP95–510–000]

Take notice that on May 23, 1995, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP95–510–000 a request pursuant to Sections 157.205, 157.211, and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211, and 157.216) for authorization to replace certain obsolete and undersized facilities at its Winlock Meter Station in Lewis County, Washington, in order to better accommodate its existing firm maximum daily delivery obligations (MDDO) to Washington Natural Gas Company.(Washington Natural), under Northwest's blanket certificate issued in Docket No. CP82–433–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northwest states that it presently has firm obligations to deliver up to a total of 400 Dt per day (at 400 psig) under Rate Schedule TF–1, to Washington Natural at the Winlock delivery point. Northwest further states that the Winlock Meter Station has a maximum design delivery capacity of approximately 280 Dt per day (at 400 psig). Since the maximum design capacity of the Winlock Meter Station is less then Northwest's firm delivery obligation to Washington Natural, Northwest is proposing to upgrade the Winlock Meter Station by replacing the two existing undersized 1-inch regulators with two new 1-inch regulators, with 1/4-inch trim; and by replacing the obsolete 2-inch positive displacement meter with one new 2-inch turbine meter and one new 2-inch Roots meter and appurtenances. Northwest states that it is installing two replacement meters in order to more accurately measure the high and low flows through the meter station. It is stated that the proposed facility upgrade will increase the maximum design delivery capacity of the Winlock Meter Station from 280 Dt per day to approximately 425 Dt per day at a pressure of 400 psig.

Northwest has estimated the cost of the proposed facility upgrade at the Winlock Meter Station to be approximately $59,446 which includes the cost of removing the old facilities. Northwest avers that since this expenditure is necessary in order for Northwest to accommodate existing MDDO's at the Winlock Meter Station, Northwest will not require any cost reimbursement from Washington Natural.

Comment date: July 10, 1995, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–13880 Filed 6–6–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP95–514–000, et al.]

Northern Natural Gas Company, et al.; Natural Gas Certificate Filings

May 30, 1995

Take notice that the following filings have been made with the Commission:

1. Northern Natural Gas Company

[Docket No. CP95–514–000]

Take notice that on May 24, 1995, Northern Natural Gas Company (Northern), P.O. Box 3330, Omaha, Nebraska 68103–0330, filed in Docket No. CP95–514–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to upgrade an existing delivery point to accommodate increased natural gas deliveries to Northern States Power—Wisconsin (NSP–W), for delivery at the Hudson town border station, located in St. Croix County, Wisconsin, under the blanket certificate issued in Docket No. CP82–401–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern states that NSP–W has requested the upgrade of the delivery point to accommodate growth of gas requirements in this area. Northern asserts that the proposed peak day volumes will increase from 8,500 Mcf to 12,000 Mcf and the annual volumes will increase from 1,100,000 Mcf to 2,444,000 Mcf and will be used for residential, commercial and industrial consumption. Northern claims that the deliveries of the estimated volumes to NSP–W at the upgraded delivery point will be made pursuant to Northern's currently effective throughput service agreements with NSP–W.

Northern estimates that the proposed cost to upgrade the delivery point is $181,000 and NSP–W will reimburse Northern for the cost of upgrading the delivery point.

Northern states that the delivery of NSP–W's volumes will impact Northern's peak day and annual deliveries. Northern claims that the total volumes to be delivered to the customer after the request do not exceed the total volumes authorized prior to the request. Northern claims that the proposed activity is not prohibited by its existing tariff and that it has sufficient capacity to accommodate the proposed changes without detriment to Northern's other customers.

Comment date: July 14, 1995, in accordance with Standard Paragraph G at the end of this notice.

2. Questar Pipeline Company

[Docket No. CP95–520–000]

Take notice that on May 25, 1995, Questar Pipeline Company (Questar), 79 South State Street, Salt Lake City, Utah 84111, filed in Docket No. CP95–520–000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.216) for permission and approval to abandon a 12-inch meter run and a 12-inch meter located within the confines of Questar's jurisdictional Bonanza Measuring and Regulating Station (Bonanza M&R) in Uintah, Utah. Questar makes such request under its blanket certificates issued in Docket No. CP82–491–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Questar is proposing to abandon, by removal, a 12-inch meter run comprising approximately 40 feet of 12¾-inch diameter pipe and a 12 inch meter located at Questar's Bonanza M&R in Section 30, Township 9 South, Range 25 East, Uintah County, Utah. Questar explains that it has been 11 years since the Bonanza 12-inch meter run was last utilized as a custody-transfer point. Questar states that it proposes to remove the 12-inch meter run to provide space for the installation of a 100-barrel slug catcher required for the removal of liquids from Questar's Main Line No. 68. Questar states that the total investment associated with the Bonanza 12-inch meter run proposed to be abandoned is $8,575.

Comment date: July 14, 1995, in accordance with Standard Paragraph G at the end of this notice.

3. Equitrans, Inc.

[Docket No. CP95–523–000]

Take notice that on May 25, 1995, Equitrans, Inc. (Equitrans), 3500 Park Lane, Pittsburgh, Pa 15275, filed in Docket No. CP95–523–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, and 157.212) for approval to construct and operate a delivery tap located in the City of Waynesburg, Pa for delivery of natural gas to Equitable Gas Company (Equitable), an affiliate, for redelivery to its customer, Ralph D. Black, an individual, under the blanket certificate issued in Docket No. CP83–508–000 and transferred to Equitrans in Docket No. CP86–676–000, pursuant to Section 7(c) of the Natural Gas Act (NGA), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Equitrans proposes to construct a delivery tap on its transmission line F–119 in the City of Waynesburg, Pennsylvania. Equitrans indicates that it will charge Equitable the applicable transportation rate contained in Equitrans' FERC Gas Tariff on file and approved by the Commission. Equitrans further indicates that it will offer the proposed service within the existing certificated transportation entitlement of Equitable under Equitrans' Rate Schedule FTS. Equitrans states that its tariff does not prohibit this type of service.

Equitrans projects that the quantity of gas to be delivered through the proposed delivery tap will be approximately one Mcf on a peak day. It is indicated that the total volumes to be delivered to Equitable after this request do not exceed the total volumes authorized prior to this request. It is further indicated that the one Mcf per day of peak service requested is within the entitlement of Equitable. Equitrans states that the new delivery tap will not impact its peak day and annual deliveries. Equitrans further state that it has sufficient capacity to accomplish the deliveries without detriment to its other customers.

Comment date: July 14, 1995, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs:

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–13882 Filed 6–6–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. ER95–571–000]

Central Vermont Public Service Corp.; Notice of Filing

June 1, 1995.

Take notice that on April 10, 1995, Central Vermont Public Service Corporation (Central Vermont) tendered for filing additional supporting cost data to its Transformer Joint Ownership Agreement.

Central Vermont requests the Commission to waive its notice of filing requirement to permit the amendment to become effective on the in-service date of the transformer. In support of its request Central Vermont states that allowing the Service Agreement to become effective as provided will enable the Company and its customers to achieve mutual benefits.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before June 8, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–13855 Filed 6–6–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP94–342–001 and MT95–11–000]

Crossroads Pipeline Co.; Notice of Initial Tariff Filing

June 1, 1995.

Take notice that on May 19, 1995, Crossroads Pipeline Company (Crossroads), 801 East 86th Avenue, Merrillville, Indiana 46410, filed in Docket Nos. CP94–342–001 and MT95–11–000 its FERC Gas Tariff, Original Volume No. 1, with a proposed effective date of June 1, 1995.

Crossroads states that the initial tariff filing reflects the modifications made in the *pro forma* tariff and rates appended to Crossroads' original certificate application in compliance with the Commission's April 21, 1995, order granting Crossroads its certificate in Docket No. CP94–342–000, 71 FERC ¶61,076.

Any person desiring to be heard or to protest the subject filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure: 18 CFR 385.211 and 385.214. All such motions and protests should be filed on or before June 12, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–13854 Filed 6–6–95; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 1986 Oregon]

Oregon Trail Electric Consumers Cooperative Inc.; Notice Soliciting Applications

June 1, 1995.

On July 1, 1991, Oregon Trail Electric Consumers Inc., licensee for the Rock Creek Hydroelectric Project No. 1986, filed a notice of intent to file an application for a new license, pursuant to Section 15(b)(1) of the Federal Power Act (Act). The original license for Project No. 1986 was issued effective June 30, 1946, and expires June 29, 1996. The project occupies 6.29 acres of lands of the United States within the Whitman National Forest.

The project is located on the Rock Creek, a tributary of the Powder River, in Baker County, Oregon. The principal project works consist of: (a) a low concrete diversion dam; (b) a 8,800-foot-long flume; (c) a regulating forebay of about 7-acre-feet; (d) a 2,720-foot-long penstock; (e) a powerhouse with a total installed capacity of 800 kW; (f) a transmission line; and (g) appurtenant facilities.

The licensee did not file an application for new license which was due by June 29, 1994. Pursuant to Section 16.25 of the Commission's Regulations, the Commission is soliciting applications from potential applicants other than the existing licensee. This is necessary because the deadline for filing an application for new license and any competing license applications, pursuant to Section 16.20 of the regulations, was June 29, 1994, and no other applications for license for this project were filed.

Pursuant to § 16.19 of the Commission's Regulations, the licensee is required to make available certain information described in Section 16.7 of the regulations. Such information is available from the licensee at 3275 Baker Street, Baker City, OR 97814.

A potential applicant that files a notice of intent within 90 days from the date of issuance of this notice: (1) may apply for a license under part I of the Act and part 4 (except Section 4.38) of the Commission's Regulations within 18 months of the date on which it files its notice; and (2) must comply with the requirements of Section 16.8 of the Commission's Regulations.

Lois D. Cashell,

Secretary.

[FR Doc. 95–13853 Filed 6–6–95; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2931, Maine]

S. D. Warren Co.; Notice of Intent To File an Application for a New License

June 1, 1995.

Take notice that the S. D. Warren Company, the existing licensee for the Gambo Power Station, Project No. 2931, filed a timely notice of intent to file an application for a new license, pursuant to 18 CFR 16.6 of the Commission's Regulations. The original license for Project No. 2931 was issued effective April 1, 1962, and expires April 31, 2000.

The project is located on the Presumpscot River in Cumberland County, Maine. The principal works of the Gambo Project include a 250-foot-long, 24-foot-high concrete overflow dam; a reservoir with a normal water surface elevation of 138.8 feet m.s.l.; a structure with sluice gates; a 15-foot-deep, 737-foot-long concrete lined canal; a concrete and brick powerhouse containing two 950-Kw generators; generator leads, step-up transformer, and an eight-mile-long transmission line; and appurtenant facilities.

Pursuant to 18 CFR 16.7, the licensee is required henceforth to make available certain information to the public. This information is now available from the licensee at 89 Cumberland Street, P.O. Box 5000, Westbrook, Maine 04098–1597.

Pursuant to 18 CFR 16.8, 16.9 and 16.10, each application for a new license and any competing license applications must be filed with the Commission at least 24 hours prior to the expiration of the existing license. All applications for license for this project must be filed by August 31, 1998.

Lois D. Cashell,

Secretary.

[FR Doc. 95–13852 Filed 6–6–95; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–140232; FRL–4953–4]

Syracuse Research Corporation and SRA Technologies, Inc.; Access to Confidential Business Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, Syracuse Research Corporation (SRC) of Syracuse, New York, and SRC's subcontractor, SRA Technologies, Inc. (SRA) of Falls Church, Virginia, for access to information which has been submitted to EPA under sections 4, 5, 6, 8, and 21 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATES: Access to the confidential data submitted to EPA will occur no sooner than June 21, 1995.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, TSCA Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: Under contract number 68–D5–0012, contractor SRC of Merrill Lane, Syracuse, NY 13210 and its subcontractor SRA of 8110 Gatehouse Rd., Suite 600, Falls Church, VA 22042 will assist the Office of Pollution Prevention and Toxics (OPPT) in performing hazard and exposure assessments, risk assessments, organizing review panels and workgroups, and assisting in developing test guidelines and standards.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number 68–D5–0012, SRC and SRA will require access to CBI submitted to EPA under sections 4, 5, 6, 8, and 21 of TSCA to perform successfully the duties specified under the contract. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under sections 4, 5, 6, 8, and 21 of TSCA that EPA may provide SRC and SRA access to these CBI materials on a need-to-know basis only. Access to TSCA CBI will take place at EPA Headquarters, at SRC's site at 1745 Jefferson Davis Highway, Arlington, VA and at SRA's Falls Church, VA site. The EPA TSCA Security Staff has inspected SRC's facility and has determined that the facility is in compliance with the *TSCA Confidential Business Information Security Manual*. The EPA TSCA Security Staff will also perform the required inspection of SRA's facility, and ensure that the facility is in compliance with the manual.

Clearance for access to TSCA CBI under this contract may continue until January 31, 2000.

SRC and SRA personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

List of Subjects

Environmental protection, Access to confidential business information.

Dated: May 8, 1995.

George A. Bonina,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 95–13962 Filed 6–6–95; 8:45 am]

BILLING CODE 6560–50–F

[OPP–34077; FRL 4956–2]

Notice of Receipt of Requests for Amendments to Delete uses in Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendment by registrants to delete uses in certain pesticide registrations.

DATES: Unless a request is withdrawn, the Agency will approve these use deletions and the deletions will become effective on September 5, 1995.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location for commercial courier delivery and telephone number: Room 216, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5761; e-mail: hollins.james@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

II. Intent to Delete Uses

This notice announces receipt by the Agency of applications from registrants to delete uses in the 26 pesticide registrations listed in the following Table 1. These registrations are listed by registration number, product names, active ingredients and the specific uses deleted. Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant before September 5, 1995 to discuss withdrawal of the applications for amendment. This 90–day period will also permit interested members of the public to intercede with registrants prior to the Agency approval of the deletion.

TABLE 1.—REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

EPA Reg No.	Product Name	Active Ingredient	Delete From Label
000279–03014	Pounce 3.2 EC Insecticide	Permethrin, mixed CIS, trans	Cotton, pears (summer use only), fennel, mushrooms, sweet corn (fresh market use in FL)
000279–03051	Pounce 25 WP Insecticide	Permethrin, mixed CIS, trans	Cotton, pears (summer use only), fennel, mushrooms, sweet corn (fresh market use in FL)
000279–03083	Pounce WSB Insecticide	Permethrin, mixed CIS, trans	Cotton, pears (summer use only, fennel, mushrooms, sweet corn (fresh market use in FL)
000352–00400	Oxamyl Technical 42	Oxamyl	Ornamental uses
000499–00367	Whitmire PT 275 Dur-O-Cap Microencapsulated Chlorpyrifor Liquid Concentrate	Chlorpyrifos	Indoor pest control
002217–00765	Embark 1–L Plant Growth Regulator	Potassium mefluidide	Highway rights-of-way, utility rights-of-way, roads
002548–00027	Max Kill Malathion 57–WE	Malathion	Sunflower seed storage & processing facilities, vegetables grown in commercial greenhouses (cucumbers, endive, lettuce, radish, tomatoes, watercress), hogs, sheep, goats, horses, beef nonmilking cattle, poultry (chicken ducks, geese, turkeys), domestic pets (dogs & cats), plants processing dry milk, crack & crevice treatment in food handling establish ments (food areas & nonfood areas)
002724–00340	Zoecon RF–256 Aerosol	Propetamphos	Food processing (mills dairies), meat & poultry plants, food packing (canning, bottling), food and/or feed warehouses
004816–00628	PY-SY Concentrate	Pyrethrins, Resmethrin	Greenhouses
005549–00049	Cythion 5–EC		Stored grains, grains going into storage, residual storage treatments, indoor uses, pet & domestic animal uses
007501–00029	Lorsban 50 SL Seed Treatment	Chlorpyrifos	Field corn use against soil insects

TABLE 1.—REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS—Continued

EPA Reg No.	Product Name	Active Ingredient	Delete From Label
007501–00031	Lorsban 30 Flowable	Chlorpyrifos	Field corn use against soil insects
010182–00018	Ambush Insecticide	Permethrin, mixed CIS, trans	Cotton, pears (summer use only, fennel, mushrooms, sweet corn (fresh market use in FL)
010182–00035	Ambush 25W Insecticide	Permethrin, mixed CIS, trans	Cotton, pears (summer use only, fennel, mushrooms, sweet corn (fresh market use in FL)
010182–00110	Ambush 25W Insecticide, Water Soluble Packet	Permethrin, mixed CIS, trans	Cotton, pears (summer use only, fennel, mushrooms, sweet corn (fresh market use in FL)
010182–00152	EPTAM 6–E Selective Herbicide	EPTC	Table beets flax, sweet potatoes, green peas
010182–00155	EPTAM 5–G Selective Herbicide	EPTC	Sweet potatoes
010182–00160	EPTAM 10–G Selective Herbicide	EPTC	Table beets, flax
010182–00199	EPTAM 20–G Selective Herbicide	EPTC	Table beets & flax
010182–00220	MPTAM 7–E Selective Herbicide	EPTC	Table beets, flax, sweet Potatoes, green peas
010370–00064	Ford's Dursban Insecticide Concentrate	Chlorpyrifos	Broad area mosquito control
010370–00256	Ford's Malathion 57% EC	Malathion	All vegetable crops, fruit & nut crops, vegetables grown in commercial greenhouses, field crops, pasture & range grasses, stored almonds, stored peanuts
045728–00024	UCB Thiram 65 WP	Thiram	Dust application on apples and strawberries
051036–00152	Chlorpyrifos 2E	Chlorpyrifos	Mosquito use
051036–00154	Chlorpyrifos 4E	Chlorpyrifos	Mosquito use
067517–00002	Purina Malathion Spray	Malathion	Buildings, poultry, poultry ranges, beef cattle, horses, hogs, sheep, goats, sugar beet tops, soybeans, stored grain (rice, grain sorghum, field or garden seed, wheat, oats, corn rye, barley), boxcars (packaged cereals, pet foods, bagged flour, feedstuffs), dogs & cats, cauliflower, beets, apples, peaches, cherries, plums pears, pecan, grapes, ornamental shrubs, grains going into storage, stored grain surfaces, melons

The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA company number.

TABLE 2.—REGISTRANTS REQUESTING AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

Company No.	Company Name and Address
000279	FMC Corp., Agricultural Chemical Group, 1735 Market St., Philadelphia, PA 19103.
000352	DuPont Agricultural Products, Walker's Mill, Barley Mill Plaza, P.O. Box 80038, Wilmington, DE 19880.
000499	Whitmire Research Laboratories Inc., 3568 Tree Court Industrial Blvd., St. Louis, MO 63122.
002217	PBI/Gordon Corp., P.O. Box 014090, 1217 West 12th St., Kansas City, MO 64101.
002548	Research Products Co., Div. of McShares, Inc., 1835 E. North St., P.O. Box 1460, Salina, KS 67402.
002724	Sandoz Agro, Inc., 1300 E. Touhy Ave., Des Plaines, IL 60018.
004816	Roussel Uclaf Corp., 95 Chestnut Ridge Road, Montvale, NJ 07645.
005549	Coastal Chemical Corp., P.O. Box 856, Greenville, NC 27834.
007501	Gustafson, Inc., P.O. Box 660065, Dallas, TX 75266.
010182	Zeneca Ag Products, P.O. Box 15458, Wilmington, DE 19850.

TABLE 2.—REGISTRANTS REQUESTING AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS—Continued

Company No.	Company Name and Address
010370	Agrevo Environmental Health, 95 Chestnut Ridge Road, Montvale, NJ 07645.
045728	UCB Chemicals Corp., c/o Compliance Services International, 2001 Jefferson Davis Hwy., Suite 1010, Arlington, VA 22202.
051036	Micro Flo Co., P.O. Box 5948, Lakeland, FL 33807.
067517	PM Resources, Inc., 13001 St. Charles Rock Rd., Bridgeton, MO 63044.

III. Existing Stocks Provisions

The Agency has authorized registrants to sell or distribute product under the previously approved labeling for a period of 18 months after approval of the revision, unless other restrictions have been imposed, as in special review actions.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: May 25, 1995.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

[FR Doc. 95–13786 Filed 6–6–95; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2076]

June 2, 1995.

Petition for Reconsideration of Actions in Rulemaking Proceedings

Petition for reconsideration has been filed in the Commission rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of this document is available for viewing and copying in Room 239, 1919 M Street, N.W., Washington, D.C. or may be purchased from the Commission's copy contractor ITS, Inc. (202) 857–3800. Opposition to this petition must be filed June 22, 1995. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to the opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Price Cap Regulation of Local Exchange Carriers—Rate-of-Return Sharing and Lower Formula Adjustment. (CC Docket No. 93–179)

Number of Petition Filed: 1

Subject: Amendment of Section 73.606(b), Table of Allotments, Television Broadcast Stations. (Osage Beach, Missouri)

Number of Petition Filed: 1

Subject: Amendment of Section 73.202(b), Table of Assignments, FM Broadcast Stations. (Chatom, Alabama)

Number of Petition Filed: 1.

Federal Communication Commission.

LaVera F. Marshall,

Acting Secretary.

[FR Doc. 95–13860 Filed 6–6–95; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1053–DR]

Illinois; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Illinois (FEMA–1053–DR), dated May 30, 1995, and related determinations.

EFFECTIVE DATE: May 30, 1995.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated May 30, 1995, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Illinois, resulting from severe storms and flooding on May 15, 1995 and continuing is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Illinois.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas. Public Assistance may be added at a later date, if requested and warranted. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Phil Zaferopulos of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Illinois to have been affected adversely by this declared major disaster:

The counties of Madison and St. Clair for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 95–13904 Filed 6–6–95; 8:45 am]

BILLING CODE 6718–02–F

[FEMA–1052–DR]

South Dakota; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of South Dakota (FEMA–1052–DR), dated May 26, 1995, and related determinations.

EFFECTIVE DATE: May 26, 1995.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated May 26, 1995, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of South Dakota, resulting from severe storms, flooding, and ground saturation due to high water tables on March 1, 1995, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (the Stafford Act). I, therefore, declare that such a major disaster exists in the State of South Dakota.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas. Disaster Unemployment Assistance may be provided at a later date, if warranted. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint David P. Grier, IV of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of South Dakota to have been affected adversely by this declared major disaster:

The counties of Aurora, Beadle, Brookings, Brown, Brule, Buffalo, Butte, Campbell, Charles Mix, Clark, Codington, Davison, Day, Deuel, Edmunds, Faulk, Gergory, Hamlin, Hand, Hanson, Hughes, Hyde, Jerauld, Jones, Kingsbury, Lawrence, Lyman, McPherson, Marshall, Meade, Pennington, Potter, Roberts, Sanborn, Spink, Stanley, Sully, and Tripp for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Dated: May 30, 1995.

James L. Witt,

Director.

[FR Doc. 95–13905 Filed 6–6–95; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL RESERVE SYSTEM

First Citizens Bancorporation of South Carolina, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than July 3, 1995.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. First Citizens Bancorporation of South Carolina, Inc., Columbia, South Carolina; to merge with SNB Financial Corporation, Summerville, South Carolina, and thereby indirectly acquire Summerville National Bank, Summerville, South Carolina.

Board of Governors of the Federal Reserve System, June 1, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–13878 Filed 6–6–95; 8:45 am]

BILLING CODE 6210–01–F

Stewart Associates; Change in Bank Control Notice

Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than June 21, 1995.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. Stewart Associates, York, Pennslyvania; to retain 15 percent of the voting shares of Drovers Bancshares Corporation, York, Pennsylvania, and thereby indirectly retain Drovers and Mechanics Bank, York, Pennyslvania.

Board of Governors of the Federal Reserve System, June 1, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–13879 Filed 6–6–95; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRANSIT ADMINISTRATION

Environmental Impact Statement on the Metro-North Commuter Railroad Dover Plains Branch Improvement Program Between Dover Plains and Wassaic, Dutchess County, NY

AGENCY: Federal Transit Administration (FTA).

ACTION: Notice of Intent.

SUMMARY: The Federal Transit Administration (FTA) and Metro-North Commuter Railroad (Metro-North) intend to prepare an environmental impact statement (EIS), in accordance with the National Environmental Policy Act of 1969, on a proposal by Metro-North to extend commuter railroad service for approximately 5 miles on the Dover Plains Branch of the Harlem Line from the Village of Dover Plains to the Hamlet of Wassaic in the Town of Amenia, Dutchess County, New York.

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The Proposed Action, also known as the Wassaic Extension Project, will extend north on the former Penn Central owned right-of-way from the existing Dover Plains Station, pass immediately to the west of the Wassaic Developmental Center (WDC) paralleling NYS Route 22/343, pass through the hamlet of Wassaic, and terminate approximately 3,200 feet (0.6 mile) north of the hamlet adjacent to NYS Route 22/343. The action also includes the construction of a rail yard, station, and 250 parking spaces (150 paved, 100 unpaved) to be located on a site along the alignment just north of Wassaic at the terminus of the proposed extension. A smaller passenger station will be constructed at the WDC with a parking lot of 50 spaces. The total length of the extension project is 5 miles.

The proposed project is intended to help relieve an existing congested parking situation at Dover Plains station, increase the operating efficiency of Metro-North and expand Metro-North's market.

In addition to the Proposed Action, the EIS will evaluate a No-Build alternative and two (2) Build alternatives, as well as any additional alternative(s) generated through the scoping process.

Scoping will be accomplished through correspondence with interested persons and organizations, as well as with federal, state, and local agencies. One (1) public scoping meeting will be conducted.

COMMENT DUE DATE: Written comments on the scope of alternatives and impacts should be submitted by July 20 to Ms. Janet Mainiero, Metro-North Commuter Railroad, 347 Madison Avenue, New York City, New York 10017. Verbal comments should be made at the scoping meeting scheduled below. Verbal comments made at the scoping meeting will be transcribed. Assistance will be provided for the hearing impaired.

SCOPING MEETING: The public scoping meeting concerning the proposed Wassaic Extension Project will be held on: June 20, 1995, 7:00 p.m., Town Hall, Amenia, New York.

FOR FURTHER INFORMATION CONTACT: Ms. Letitia A. Thompson, Deputy Regional Administrator, Federal Transit Administration, 26 Federal Plaza, New York, New York 10278 at 212–264–8162 or Janet Mainiero, Project Director, Metro-North Railroad, 347 Madison Avenue, New York, New York 10017 at 212–340–4834.

SUPPLEMENTARY INFORMATION: FTA and Metro-North Commuter Railroad invite all interested individuals and organizations, as well as federal, state, and local agencies, to participate in identifying the alternatives to be evaluated in the EIS and identifying any significant social, economic, and environmental issues related to the Proposed Action and Alternatives described below. During the scoping process, comments should focus on identifying specific social, economic, and/or environmental issues to be evaluated and suggesting alternatives which may be less costly or less environmentally damaging, while achieving similar transportation objectives. Scoping is not the appropriate forum in which to indicate preference for a particular alternative. Comments on preferences should be communicated after the draft EIS has been completed and issued for review and comment. If you wish to be placed on the mailing list to receive further information as the project develops, contact Ms. Mainiero as described above. Following the public scoping meeting a scoping document will be prepared that will contain the transcript from the public scoping meeting, any written comments received, an outline of the decisions that have been made during the scoping process, and a summary of the issues to be evaluated in a draft EIS.

Description of the Study Area and Project Need

The corridor is approximately 5 miles long, stretching between the village of Dover Plains and the Hamlet of Wassaic, in the Town of Amenia, Dutchess County, New York. It is oriented on a north-south axis. The proposed project is intended to provide service to people residing beyond the current Dover Plains terminus, expand Metro-North's market, help relieve an existing congested parking situation at the Dover Plains station, provide more frequent service to the area, and improve the quality of life in the region by implementing a transit project which conforms to the intent of the Clean Air Act Amendments (CAAA) of 1990. In addition, the proposed rail yard will allow Metro-North to increase the efficiency of its operation.

Previous Activity

Metro-North has performed some preliminary analysis on the feasibility of extending the Dover Plains Branch service. Meetings were held with locally elected officials regarding this work. Furthermore, the project has been discussed at public meetings conducted by the Poughkeepsie-Dutchess County Metropolitan Planning Organization (MPO) in 1993 and 1994.

Alternatives

The alternatives proposed for evaluation include:

(1) No Build—This alternative involves no change to transportation services or facilities in the corridor.

(2) The Proposed Action—The Proposed Action involves a 5-mile extension of the Dover Plains Branch on the Harlem Line to a point 3,200 feet (0.6 mile) north of the hamlet of Wassaic where a rail yard, passenger station, and a parking lot consisting of approximately 250 spaces will be constructed. In addition, a small passenger station will also be constructed at the WDC with a parking lot of 50 spaces.

(3) Alternative 1—Alternative 1 includes all the elements of the Proposed Action, except for one passenger station and parking lot. The passenger station and approximately 250-space parking lot will be constructed within the hamlet of Wassaic.

(4) Alternative 2—Alternative 2 involves the extension of the Dover Plains Branch on the Harlem Line to a point approximately 2,000 feet (0.4 mile) north of the existing terminus of Dover Plains. A rail yard and a 250-space parking lot will be constructed in an agricultural parcel immediately north of the Tenmile River. The parking lot will serve the existing station at Dover Plains.

In addition to the construction discussed above, the Build Alternatives will also require track replacement, bridge rehabilitation, and other improvements to bring the existing rail line up to operational standards. The extent of this work is dependent upon the distance of track required for each alternative.

The proposed project and alternatives are based upon the initial technical work performed to date and consultations with local and state officials.

Since the proposed action is preliminary, consideration will be given to modifications to it and the existing alternatives, as well as additional reasonable alternatives. Regard also would be provided to any relevant concerns.

Probable Effects

In the EIS, FTA/Metro-North will evaluate all significant social, economic, and environmental effects, or impacts, of the alternatives. Environmental and social impacts proposed for analysis include water quality, wetlands, cultural resources, community facilities, and traffic and parking impacts near stations. Impacts on land use, aesthetics, hazardous waste sites, and noise and vibration will also be addressed. The impacts will be evaluated for the construction period and for the long-term period of operation. Measures to mitigate any significant adverse impacts will be considered.

FTA Procedures

The EIS process will be performed in accordance with Federal Transit Laws and FTA's regulations and guidelines for preparing an Environmental Impact Statement. The impacts of the project will be assessed and, if necessary, the scope of the project will be revised or refined to minimize and mitigate any adverse impacts. After its publication, the draft EIS will be available for public and private agency review and comment. One public hearing will be held. On the basis of the draft EIS and comments received, the project will be revised or further refined as necessary and the final EIS completed.

Issued on June 5, 1995.

Letitia A. Thompson,

Deputy Regional Administrator.

[FR Doc. 95–14069 Filed 6–5–95; 2:20 pm]

BILLING CODE 4910–57–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Request for Nominations for Members on Public Advisory Committees; Veterinary Medicine Advisory Committee

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for members to serve on the Veterinary Medicine Advisory Committee in FDA's Center for Veterinary Medicine. Nominations will be accepted for vacancies that will or may occur during the next 16 months.

FDA has a special interest in ensuring that women, minority groups, and individuals with disabilities are adequately represented on advisory committees and, therefore, extends particular encouragement to nominations for appropriately qualified female, minority, or disabled candidates.

DATES: No cutoff date is established for receipt of nominations.

ADDRESSES: All nominations for membership should be submitted to Gary E. Stefan (address below).

FOR FURTHER INFORMATION CONTACT: Gary E. Stefan, Center for Veterinary Medicine (HFV–244), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1769.

SUPPLEMENTARY INFORMATION: FDA is requesting nominations for members to serve on the committee. The function of the committee is to review and evaluate available data concerning safety and effectiveness of marketed and investigational new animal drugs, feeds, and devices for use in the treatment and prevention of animal disease and increased animal production.

Criteria for Members

Persons nominated for membership on the Veterinary Medicine Advisory Committee shall have adequately diversified experience appropriate to the work of the committee in such fields as companion animal medicine, food animal medicine, avian medicine, microbiology, biometrics, toxicology, pathology, pharmacology, animal science, and chemistry. The specialized training and experience necessary to qualify the nominee as an expert suitable for appointment is subject to review, but may include experience in medical practice, teaching, and/or research relevant to the field of activity of the committee. The term of office is 4 years.

Nomination Procedures

Any interested person may nominate one or more qualified persons for membership on the committee. Nominations shall state that the nominee is willing to serve as a member of the committee and appears to have no conflict of interest that would preclude committee membership. FDA will ask the potential candidates to provide detailed information concerning such matters as employment, financial holdings, consultancies, and research grants or contracts to permit evaluation of possible sources of conflict of interest.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: May 25, 1995.

Linda A. Suydam,

Interim Deputy Commissioner for Policy.

[FR Doc. 95–13829 Filed 6–6–95; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 95M–0121]

EP Technologies, Inc.; Premarket Approval of EPT–1000 Cardiac Ablation System

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by EP Technologies, Inc., Sunnyvale, CA, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of the EPT–1000 Cardiac Ablation System. After reviewing the recommendation of the Circulatory System Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of October 28, 1994, of the approval of the application.

DATES: Petitions for administrative review by July 7, 1995.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Mark Massi, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8609.

SUPPLEMENTARY INFORMATION: On September 28, 1992, EP Technologies, Inc., Sunnyvale, CA 94086, submitted to CDRH an application for premarket approval of the EPT–1000 Cardiac Ablation System. The device is a radio frequency-powered cardiac catheter ablation system and is indicated for interruption of accessory atrioventricular (AV) conduction pathways associated with tachycardia, treatment of AV nodal re-entrant tachycardia, and for creation of complete AV block in patients with a rapid ventricular response to an atrial arrhythmia-typically chronic, drug refractory atrial fibrillation.

On May 2, 1994, the Circulatory System Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, reviewed and recommended approval of the application. On October 28, 1994, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the

Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act, for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before July 7, 1995, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: May 26, 1995.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 95–13827 Filed 6–6–95; 8:45 am]

BILLING CODE 4160–01–F

Health Resources and Services Administration

Grants to Improve Emergency Medical Services and Trauma Care in Rural Areas

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of extension of application due date.

SUMMARY: This notice extends the application due date for grants to improve emergency medical services (EMS) and trauma care in rural areas. The application due date for the EMS/trauma care grants in rural areas is extended to July 19, 1995. All other aspects of the April 20, 1995, **Federal Register** notice (60 FR 19753) remain the same.

Dated: June 1, 1995.

Ciro V. Sumaya

Administrator.

[FR Doc. 95–13883 Filed 6–6–95; 8:45 am]

BILLING CODE 4160–15–P

National Practitioner Data Bank: Change in User Fee

The Health Resources and Services Administration (HRSA), Public Health Service (PHS), Department of Health and Human Services (DHHS), is announcing a change in the fee charged to entities authorized to request information from the National Practitioner Data Bank (Data Bank).

The user fee of $6.00 for queries submitted by diskette or telecommunications network, with a $4.00 surcharge added for queries submitted on paper, was announced in the **Federal Register** on June 1, 1993 (58 FR 31215).

The Data Bank is authorized by the Health Care Quality Improvement Act of 1986 (the Act), title IV of Public Law 99–660, as amended (42 U.S.C. 11101 *et seq.*). Section 427(b)(4) of the Act authorizes the establishment of fees for the costs of processing requests for disclosure and of providing such information.

Final regulations at 45 CFR part 60 set forth the criteria and procedures for information to be reported to and disclosed by the Data Bank. Section 60.3 of these regulations should be consulted for the definition of terms used in this announcement.

A reassessment of the full operating costs related to processing requests for disclosure of Data Bank information, as required by the DHHS Appropriations Act of 1994 (title II of Pub. L. 103–112, dated October 21, 1993), as well as the comparative costs of the various methods for filing and paying for queries, has resulted in a decision to further reduce fees for users when they both query and receive responses via the telecommunications network as well as pay query fees by credit card, electronic funds transfer or such other electronic transfer options as may be offered in the future. The options to query and pay user fees by these means facilitate the querying process and make it less costly to both users and the Data Bank than all other available options.

Accordingly, the Department is reducing the basic user fee to $3.00 per name per query submitted and paid via the method described above, with receipt by electronic method. A $3.00 surcharge will be charged for queries submitted electronically on diskette to pay for the extra handling and mailing costs for these queries. A $4.00 surcharge will be charged for all queries which are paid for by check or money order to cover the cost of debt management. Paper queries will no longer be accepted except practitioner self-queries. These changes are effective June 26, 1995.

The criteria set forth in § 60.12(b) of the regulations and allowable costs as required in the Appropriations Act of 1994 were used in determining the amount of this new fee. The criteria include such cost factors as: (1) Electronic data processing time, equipment, materials, computer programmers and operators or other employees; and (2) preparation of reports—materials, photocopying, postage, and administrative personnel.

When a request is for information on one or more physician, dentist, or other health care practitioner, the appropriate total fee will be $3.00 (plus a $3.00 and/or a $4.00 surcharge for submission and payment as described above) times the number of individuals about whom information is being requested. For examples, see the table below.

The fee charged will be reviewed periodically, and revised as necessary, based upon experience. Any changes in the fee, and the effective date of the change, will be announced in the **Federal Register**.

Query method	Fee per name in query, by method of payment	Examples
Electronic (Telecom network)	$3.00 (if paid electronically via credit card or other electronic means and response received electronically).	10 names in query. 10×$3=$30.00
Electronic (Diskette)	$6.00 (if paid electronically via credit card or other electronic means and response received on paper).	10 names in query. 10×$6=$60.00
Electronic (Telecom network)	$7.00 (if not paid via credit card or other electronic means)	10 names in query. 10×$7=$70.00
Electronic (Diskette)	$10.00 (if not paid via credit card or other electronic means)	10 names in query. 10×$10=$100.00

* Paper queries will no longer be accepted except practitioner self-queries

Dated: June 1, 1995.

Ciro V. Sumaya,

Administrator.

[FR Doc. 95–13884 Filed 6–6–95; 8:45 am]

BILLING CODE 4160–15–P

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Committee Name: National Institute of General Medical Sciences, Special Emphasis Panel—Instrumentations.

Date: June 29–30.

Time: 8:30 a.m.–5 p.m.

Place: 45 Center Drive, Conference Room B, Bethesda, MD 20892–6200.

Contact Person: Dr. Richard Martinez, Scientific Review Administrator, NIGMS, 45 Center Drive, Room 1AS–19b, Bethesda, MD 20892–6200.

Purpose: To review grant applications.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. The discussions of these applications could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.821, Biophysics and Physiological Sciences; 93.859, Pharmacological Sciences; 93.862, Genetics Research; 93.863, Cellular and Molecular Basis of Disease Research; 93.880, Minority Access Research Careers [MARC]; and 93.375, Minority Biomedical Research Support [MBRS]).

Dated: May 31, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–13872 Filed 6–6–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Aging; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Name of Subcommittee: Biological and Clinical Aging Review Subcommittee A.

Date: July 11, 1995.

Time: 1:00 p.m. to adjournment.

Place: The Bethesda Gateway Building, 7201 Wisconsin Avenue, 5th Floor Conference Room, Bethesda, Maryland 20852–9205.

Contact Person: Dr. Arthur Schaerdel, Scientific Review Administrator, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892–9205, (301) 496–9666.

Purpose/Agenda: For the review, discussion, and evaluation of individual research grant applications.

The meeting will be closed in accordance with the provisions set forth in sec. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.866, Aging Research, National Institutes of Health.)

Dated: May 31, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

Division of Research Grants; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Clinical Sciences.

Date: June 21–23, 1995.

Time: 8:00 a.m.

Place: Holiday Inn, Bethesda, MD.

Contact Person: Dr. Daniel McDonald, Scientific Review Admin., 6701 Rockledge Drive, Room 4214, Bethesda, MD 20892, (301) 435–1215.

Name of SEP: Microbiological and Immunological Sciences.

Date: June 21–23, 1995.

Time: 8:30 a.m.

Place: Holiday Inn, Chevy Chase, MD.

Contact Person: Dr. Lynwood Jones, Scientific Review Admin., 6701 Rockledge Drive, Room 4192, Bethesda, MD 20892, (301) 435–1153.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 31, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–13871 Filed 6–6–95; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given to amend the notice of the National Cancer Institute Board of Scientific Counselors, Division of Cancer Etiology meeting which was published in the **Federal Register** (60–FR–19600) on April 19, 1995.

The Board was originally scheduled to be open on June 15 from 9 am to recess and closed on June 16 from 9 am to adjournment. The Board meeting will now be open from 8:30 am to approximately 3 pm on June 15. The meeting will be closed on June 15 from approximately 3 pm to recess and from 8:30 am to adjournment on June 16.

Dated: May 31, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–13869 Filed 6–6–95; 8:45 am]

BILLING CODE 4140–01–M

Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HN (National Institutes of Health) (NIH) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (40 FR 22859, May 27, 1975, as amended most recently at 60 FR 18607, April 12, 1995), is amended to reflect the reorganization of the Office of Administration, Office of the Director, NIH (OA/OD/NIH) (HNAB). This reorganization is consistent with Administration objectives related to the National Performance Review (NPR) and the Continuous Improvement Program (CIP)—specifically, streamlining, delayering, and decreasing the ratio of supervisors to employees in accordance with effective management practices. The reorganization consists of the following: (1) Retitle three division-level components of the OA to offices to ensure consistent nomenclature (2) consolidate the small and disadvantaged business function (currently in two OA divisions, the Division of Procurement and the Division of Contracts and Grants) into open office in the Office of Contracts and Grants Management; and (3) consolidate the ADP support function (from the Division of Contracts and Grants and the Division of Logistics) and move it to the Office of the Director, OA.

Specifically, the reorganization will: (1) rename the Division of Contracts and Grants to the Office of Contracts and Grants Management (OCGM); (2) rename the Division of Logistics to the Office of Logistics Management (OLM); (3) rename the Division of Procurement to the Office of Procurement Management (OPM); (4) revise the functional statements for NIH/OD/OA/OD, OCGM, and OPM.

Section HN–B, Organization and Functions, is amended as follows:

Under the heading *Office of the Director, Office of Administration (HNAB1),* revise the functional statement to the following: (1) Plans and directs the activities of the Office of Administration; (2) conducts audit follow-ups for reviews conducted by the Office of Management Assessment's Division of Program Integrity and the OIG Office of Investigations; (3) provides ADP support to OA components; and (4) provides administrative management support to all OA subcomponents in human resource relations, organization development, and other administrative services.

Under the heading *Office of the Director, Division of Contracts and Grants (HNAB2),* change the title to Office of Contracts and Grants Management and revise the functional statement to the following: (1) Advises the NIH Director and staff and provides leadership and direction for NIH contracting and grants management activities; (2) plans, develops, and recommends NIH-wide research and development negotiated contracting policies, procedures, and practices; (3) provides contracting officer services to those NIH components which have a small volume of research contracts; (4) maintains a continuing review of contracting operations in those Institutes, Centers, and Divisions (ICDs) with decentralized authority to ensure adherence to FPR, DHHS, PHS, and NIH policies and standards; (5) provides NIH research contracting operating units with price/cost analysis services and comprehensive advice on the financial responsibility of prospective contractors; (6) participates with other offices in the Office of the Director, NIH, and with NIH awarding components in the formulation, coordination, and implementation of DHHS, PHS, and NIH policies and procedures pertaining to grants administration, and serves as focal point of liaison with the management staffs of grantee institutions; (7) in coordination with PHS, maintains liaison with the Audit Agency, Office of the Assistant Secretary Comptroller, and the Office of Grants and Procurement Management, OS, on contracts and grants management policy, procedural, and operating matters including the resolution of audit reports; (8) conducts and monitors NIH-wide programs in Small and Minority Businesses in accordance with applicable Small Business and Civil Rights Legislation; (9) provides technical assistance in specification preparation in Small and Disadvantaged Business opportunities; (10) analyzes requirements for and coordinates NIH IMPAC and higher-level research and development contract data systems for the NIH; and (11) analyzes, develops, and coordinates DHHS, PHS, and NIH initiatives in automated data and documentation systems, procurement planning and control, contract forms management, and contract closure.

Under the heading *Office of the Director, Division of Logistics (HNAB3),* change the title to Office of Logistics Management.

Under the heading *Office of the Director, Division of Procurement (HNAB4),* change the title to Office of Procurement Management (HNAB4) and revise the functional statement to the following: (1) Responsible for all aspects of station support and intramural procurement; (2) manages the program using small purchases, formal advertisement, and negotiated contracting procedures; (3) provides for follow-up on orders and for continuing contract administration; (4) formulates and disseminates policies and procedures to implement Federal and Departmental regulations (meeting needs for guidance in the procurement function); and (5) provides oversight and technical assistance (manuals and training guides) to decentralized station support procurement operations.

Dated: May 25, 1995.

Harold Varmus,

Director, NIH.

[FR Doc. 95–13873 Filed 6–6–95; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–921–05–1320–01–P; MTM 83907]

Coal Leases, Exploration Licenses, etc.: Montana; Correction

AGENCY: Bureau of Land Management, Montana State Office.

ACTION: Correction.

SUMMARY: In notice document 95–12074 on page 26453 in the issue of Wednesday, May 17, 1995, make the following correction:

On page 26453, in the first column in the twenty-second line from the top, the description previously published in the **Federal Register** was Sec. 23: NE¼NE¼SE¼NW¼. This should be changed to Sec. 23: NE¼NE¼, SE¼NW¼.

Dated: May 31, 1995.

Howard A. Lemm,

Acting State Director.

[FR Doc. 95–13950 Filed 6–6–95; 8:45 am]

BILLING CODE 4310–DN–P

[NM–030–1220–00]

Establishment of Visitor Restrictions for Designated Sites, Special Recreation Management Areas, and Other Public Land in the Las Cruces District, New Mexico

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Proposed Visitor Restrictions; Request for Comment.

SUMMARY: The proposed visitor restrictions are necessary for the management of actions, activities, and use on public land including those which are acquired or conveyed to the BLM. Supplementary rule making is provided for under Title 43 CFR Subpart 8365. These proposed regulations establish rules of conduct for the protection of persons, property, and public land resources. As a visitor to public land, the user is required to follow certain rules designed to protect the land and the natural environment, to ensure the health and safety of visitors, and to promote a pleasant and rewarding outdoor experience.

This notice supersedes previous notices published in the **Federal Register**, December 15, 1988 (Vol. 53, No. 241); July 24, 1989 (Vol. 54, No. 140); August 17, 1989 (Vol. 54, No. 158); August 31, 1989 (Vol. 54, No. 168); May 10, 1990 (Vol. 55, No. 91); July 9, 1991 (Vol. 56, No. 131); January 22, 1991 (Vol. 56, No. 14); and correction to Supplementary Rules No. 2., February 1, 1991 (Vol. 56, No. 28), establishing Supplementary Rules for Designated Recreation Sites, Special Recreation Management Areas and Other Public Land in New Mexico.

More specifically, the purpose falls into the following categories:

• Implementation of Management Plans—Certain prohibited activities have been recommended as rules for designated recreation sites and Special Recreation Management Areas (SRMAs). In order to implement these recommendations, they must be published as specific prohibited acts in the **Federal Register**. Use of the Supplementary Rules Section of 43 CFR, Subpart 8365, is the most appropriate way of implementation. Rationale for these recommendations is presented in its entirely in the resource management plan or recreation management plan for the specific area.

• *Mitigation of User Conflict*—Certain other rules are recommended because of specific user conflict problems. Prohibiting the reservation of camping space in developed campgrounds will allow such space to be available on a first-come, first-served basis. This will prevent people from monopolizing the use of limited developed camping space. Prohibition of motorized vehicle free-play (operation of any 2-, 3-, or 4-wheel motor vehicle for purposes other than accessing a campsite) is necessary to minimize the noise and nuisance factors that such activities represent in developed recreation sites.

• *Public Health and Safety*—The erection and maintenance of unauthorized toilet facilities or other containers for human waste on the public land could represent a major threat to public safety and health. It should be noted that shooting restrictions recommended do not prohibit legitimate hunting activities except within ½ mile of developed sites. Recreational shooters will be encouraged to use public land where such shooting restrictions do not apply and this use does not significantly conflict with other uses.

• *Complementary Rules*—Some rules, such as parking or camping near water sources, are recommended to complement those of State and local agencies. Because these rules provide for the protection of persons and resources in the interest and spirit of cooperation with the responsible agencies, these rules are deemed necessary.

Definitions

As used in these supplementary rules, the term:

—*A SRMA*—means an area where special or more intensive types of resource and user management are needed.

—*A developed recreation site and area* means sites and areas that contain structures or capital improvements primarily used for recreation purposes by the public. Development may vary from limited development for protection of the resource and the safety of users to a distinctly defined site in which developed facilities that meet the Land and Water Conservation Fund Act of 1965 (as amended) criteria for a fee collection site are provided for concentrated public recreation use.

—*Public Land* means any land, interest in land, or related waters owned by the United States and administered by the BLM. Related waters are waters which lie directly over or adjacent to public land and which require management to protect Federally administered resources or to provide for enhanced visitor safety and other recreation experiences.

—*Camping* means the erecting of a tent or shelter of natural or synthetic material, preparing a sleeping bag or other bedding material for use, or the parking of a motor vehicle, motor home, or trailer for the apparent purpose of overnight occupancy. Occupying a developed camp site or an approved location within developed recreation areas and sites during the established night period of 10:00 p.m. to 6:00 a.m. will be considered overnight camping for fee collection and enforcement purposes.

—*Campfire* means a controlled fire occurring outdoors for cooking, branding, personal warmth, lighting, ceremonial, or aesthetic purposes.

—*Abandonment* means the voluntary relinquishment of control of property for longer than a period specified with no intent to retain possession.

—*Administrative activities* means those activities conducted under the authority of the BLM for the purpose of safeguarding persons or property, implementing management plans and policies developed in accordance and consistent with regulations or repairing or maintaining facilities.

—*Pet* means a dog, cat, or any domesticated companion animal.

—*Occupancy* means the taking or holding possession of a camp site, other location, or residence on public land.

—*Vehicle* means any motorized or mechanized device, including bicycles, hang gliders, ultra lights, and hot air balloons which is propelled or pulled by any living or other energy source, and capable of travel by any means over ground, water, or air.

—*Authorized Officer* means any employee of the BLM who has been delegated the authority to perform under Title 43.

—*Stove fire* means a fire built inside an enclosed stove or grill, a portable brazier, or a pressurized liquid or gas stove, including space-heating devices.

—*Weapon* means a firearm, compressed gas or spring-powered pistol or rifle, bow and arrow, crossbow, blowgun, spearguns, slingshot, explosive device, or any other implement designed to discharge missiles or projectiles; hand-thrown spear, edged weapons, nun-chucks, clubs, billy-clubs, and any device modified for use or designed for use as a striking instrument; and includes any weapon the possession of which is prohibited under New Mexico law.

—*Historic or prehistoric structure or ruin site* means any location at least 50 years old which meets the standards for inclusion on the National Register of Historic Places as

defined in 36 CFR 60.4, without regard to whether the site has been nominated or accepted.

Supplementary Rules—All Public Lands

In addition to regulations contained in 43 CFR 8365.1, the following supplementary rules apply to all public land including those lands acquired or conveyed to the BLM and related waters. The following are prohibited unless authorized by written permit or for administrative use:

Sanitation

- To construct or maintain any unauthorized toilet facility.
- The dumping or disposal of sewage or sewage treatment chemicals from self-contained or containerized toilets except at facilities provided for that purpose.
- To shower or bathe at any improved or developed water source, outdoor hydrant pump, faucet or fountain, or rest room water faucet unless such water source is designated for that purpose.

Occupancy and Use

- To camp or occupy any site on public land or any approved location, including those in developed recreation areas and sites or SRMA, for a period longer than 14 days within any period of 28 consecutive days. Exceptions, which will be posted, include areas closed to camping and areas or sites with other designated camping stay limits. The 28-day period begins when a camper initially occupies a specific location on public land. The 14-day limit may be reached either through a number of separate visits or through 14 days of continuous occupation. After the 14 days of occupation, campers must move beyond a 25-mile radius from the previous location. When a camping limit has been reached, use of any public land site within the 25-mile radius shall not occur again until at least 30 days have elapsed from the last day of authorized use.
- To park any motor vehicle for longer than 30 minutes, or camp within 300 yards of any spring, manmade water hole, water well, or watering tank used by wildlife or domestic stock. Hunters with valid hunting licenses may not park within 300 yards of these water sources.
- To dispose of any burning or smoldering material except at sites or falicities provided for that purpose.
- Unauthorized cutting, removing, or transporting woody materials including, but not limited to:

1. Any type or variety of vegetation (excluding dead and downed),
2. Fuelwood or firewood, either green or standing deadwood or,
3. Live plants (except for consumption, medicinal purposes, study or personal collection).

- Removing or transporting any mineral resources including rock, sand, gravel, and other minerals on or from public land without written consent, proof of purchase, or a valid permit. Collection of specimens and samples in reasonable amounts for personal noncommercial use, under 43 CFR 8365.1–5(b) is not affected by this section.
- Failure to prevent a pet from harassing, molesting, injuring, or killing humans, wildlife or livestock.
- Violation of the terms, stipulations, or conditions of any permit or use authorization.
- Failure to show a permit or use authorization to any BLM employee upon request.
- Camp or occupy or build any fire on, or in, any historic or prehistoric structure or ruin site.
- Competitive or commercial operations or events without a Special Recreation Permit.

Vehicles

- Operation of an off-road vehicle without full time use of an approved spark arrester and muffler.
- Failure to display the required State off-road vehicle registration.
- Lubricating or repairing any vehicle, except repairs necessitated by emergency.
- Operate, park, or leave a motorized vehicle in violation of posted restrictions or in such a manner or location as to:

1. Create a safety hazard,
2. Interfere with other authorized users or uses,
3. Obstruct or impede normal or emergency traffic movement,
4. Interfere with or impede administrative activities,
5. Interfere with the parking of other vehicles, or
6. Endanger property or any person.

Public Health and Safety

- Possession or use of fireworks.
- Leaving a campfire unattended, or failing to completely extinguish a fire after use.
- The sale or gift of an alcoholic beverage to a person under 21 years of age.
- The possession of an alcoholic beverage by a person under 21 years of age.
- Ignition or burning of any material containing or producing toxic or hazardous material.
- Carrying of weapons in violation of State or Federal law.
- Abandonment of animals.

State and Local Laws

- Failure to comply with all applicable State of New Mexico regulations for boating safety, equipment, and registration.

Supplementary Rules—Developed Recreation Sites/Areas and Special Recreation Management Areas

In addition to the regulations contained in 43 CFR 8365.1, 8365.2 and those listed above, the following rules will be applied in accordance with 43 CFR 8365.2 The following activities are prohibited unless authorized by written permit or for administrative uses:

- Failure to pay use fees at Aguirre Spring Campground, Dripping Springs Natural Area, Datil Well Campground, or Three Rivers Recreation Area.
- Failure to immediately remove and dispose of in a sanitary manner, all pet fecal material, trash, garbage or waste created.
- Failing to physically restrain a pet at all times within developed campsites and picnic areas. Pets are prohibited where posted on all designated nature or interpretive trails and from entering caves. Animals trained to assist handicapped persons are exempt from this rule.
- Reserving space, except within established guidelines for group facility reservations at Aguirre Spring Campground or Dripping Springs Natural Area. Camping and picnicking space is available on a first-come, first-served basis.
- Failure to maintain quiet between the hours of 10:00 p.m. to 6:00 a.m. or other hours posted. During this period, no person shall create noise which disturbs other visitors.
- Vehicles off existing or designated roads and trails unless facilities have been specifically provided for such use. Motorized vehicles will be operated for access to and from developed facilities only.
- To park or occupy a parking space posted or marked for handicapped use without displaying an official identification tag or plate.
- Posting or distribution of any signs, posters, printed material, or commercial advertisements.
- The discharge of firearms or other weapons, hunting and trapping within ½ mile of developed recreation sites and areas.

- Using, displaying, or carrying loaded weapons within developed campsites or picnic areas.
- Disposing of any waste or grey water except where facilities are provided.
- Bringing equine stock, llama, cattle, or other livestock within campgrounds or picnic areas unless facilities have been specifically provided for such use.
- Unauthorized gathering or collecting woody plants or any other natural resource, minerals, cultural, or historical artifacts that require permits.
- Not adhering to fire danger ratings issued by Government.
- Climbing, walking on, ascending, descending or traversing on the earthwork of Fort Craig National Historic Site, or historic structures within the Dripping Springs Natural Area, the Lake Valley Historic Site, or Fort Cummings.
- Wood fires are prohibited within the Dripping Springs Natural Area unless the firewood is provided by the BLM.
- Aguirre Spring Campground use is limited to overnight campers after 10:00 p.m. The entrance gate will be closed at 8:00 p.m. during summer hours (approximately April 1 to September 30) and at 6:00 p.m. during winter hours (approximately October 1 to March 31).
- The Dripping Springs Natural Area will be managed as a day-use area (no overnight camping). The entrance gate located in T. 23 S., R. 3 E., Section 3 on the Dripping Springs road (controlling access to La Cueva Picnic Area, A.B. Cox Visitor Center, and Dripping Springs Natural Area) will be locked at sunset.
- Pets are prohibited on the Dripping Springs Trail uphill (southeast) of the Crawford Trail junction (located in T. 23 S., R. 3 E., Section 12, NW¼SE¼NE¼). All hikers beyond this point are required to stay on trails or in established use areas in order to reduce damage to the Dripping Springs Ruins and to protect endangered plants in the area.
- Swimming, wading, and bathing are prohibited at the pond at the Dripping Springs Natural Area.
- Discharge of firearms, walking off established trails, or unauthorized overnight camping are prohibited within the fenced enclosure at Fort Cummings, Lake Valley, or the Fort Craig National Historic Site.
- Overnight camping, discharge of firearms, and wood fires are prohibited within The Box Special Management Area.
- Lake Valley Historic Site use is limited to posted hours.
- Pets are prohibited on the Petroglyph Trail and the Pit House Village Trail within the Three Rivers Recreation Area.

List of Developed Recreation Sites/Areas and Special Recreation Management Areas

1. Aguirre Spring Campground (Mimbres Resource Area)
T. 22 S., R. 4 E., NMPM
Sec. 29.

2. Dripping Springs Natural Area (Mimbres Resource Area)
T. 23 S., R. 3 E., NMPM
Secs. 1, 2.
T. 23 S., R. 4 E., NMPM
Sec. 7.

3. Three Rivers Recreation Area (Caballo Resource Area)
T. 11 S., R. 9½ E., NMPM
Secs. 17, 20, 21, 28.

4. Datil Well Campground (Socorro Resource Area)
T. 2 S., R. 10 W., NMPM
Secs. 10, 11.

5. Fort Craig National Historic Site (Socorro Resource Area)
T. 8 S., R. 2 W., NMPM
Secs. 10, 11.

6. Paleozoic Trackways (Mimbres Resource Area)
T. 22 S., R. 1 E., NMPM
Sec. 19.

7. Organ Mountains Recreation Lands SRMA (Mimbres Resource Area)
T. 22–26 S., R. 3–4 E., NMPM

8. Gila Lower Box SRMA (Mimbres Resource Area)
T. 19 S., R. 19 W., NMPM
Secs. 7–10, 15–19, 30.
T. 19 S., R. 20 W., NMPM
Secs. 13–17, 20–29.

9. Fort Cummings SRMA (Mimbres Resource Area)
T. 21 S., R. 8 W., NMPM
Secs. 22, 23.

10. The Box Special Management Area (Socorro Resource Area)
T. 3 S., R. 1 W., NMPM
Sec. 31.

11. Lake Valley Historic Site (Caballo Resource Area)
T. 18 S., R. 7 W., NMPM
Sec. 28.

DATES: Comments on the proposed rule will be accepted until July 7, 1995. Comments received or postmarked after this date may not be considered in the decision-making process on the final rulemaking.

ADDRESSES: Comments should be sent to the New Mexico State Director (933), BLM, P.O. Box 27115, Santa Fe, New Mexico 87502–0115. All written comments made pursuant to this action will be made available for public inspection during normal business hours (8 a.m. to 4 p.m., MST) at 1474 Rodeo Road, Santa Fe, New Mexico 87505.

FOR FURTHER INFORMATION CONTACT:

- Mark Hakkila, Outdoor Recreation Planner, BLM Mimbres Resource Area, 1800 Marquess, Las Cruces, NM 88005, (505) 525–4341.
- Kevin Carson, Outdoor Recreation Planner, BLM Socorro Resource Area, 198 Neel Ave. NW, Socorro, NM 87801, (505) 835–0412.
- Joe Sanchez, Outdoor Recreation Planner, BLM Caballo Resource Area, 1800 Marquess, Las Cruces, NM 88005, (505) 525–4391.

SUPPLEMENTARY INFORMATION: The Las Cruces District Manager is establishing these supplementary rules, which are necessary for the protection of persons, property, and public land and resources currently under the Bureau's administration within the Las Cruces District, New Mexico and those lands acquired for inclusion within the administrative jurisdiction of the BLM as provided for in 43 CFR 8365.1–6. These supplementary rules apply to all persons using public land. Violations of these rules are punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months.

Exceptions to these visitor restrictions may be permitted by the authorized officer subject to limits and restrictions of controlling Federal and State law. Persons granted use exemptions must possess written authorization from the BLM Office having jurisdiction over the area. Users must further comply with the zoning, permitting, rules, or regulatory requirements of other agencies, where applicable.

Dated: May 24, 1995.

Richard A. Whitley,

Acting State Director.

[FR Doc. 95–13949 Filed 6–6–95; 8:45 am]

BILLING CODE 4310–FB–M

[NV–930–1430–01; NVN–58399]

Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The following described public lands in Lander County, Nevada, have been examined and found suitable for conveyance (patent) to Lander

County under the provisions of the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C 869 *et seq.*). Lander County proposes to use the lands for a municipal solid waste disposal site to serve Austin, Nevada, and the surrounding area.

Mount Diablo Meridian, Nevada

T. 19 N., R. 43 E.,
Sec. 26, NW¼SE¼.
Containing 40 acres, more or less.

The lands are not needed for Federal purposes. Conveyance is consistent with current BLM land use planning and would be in the public interest. The patent, when issued will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States pursuant to the Act of August 30, 1890 (43 U.S.C. 945);

2. All mineral deposits shall be reserved to the United States, together with the right to prospect for, mine, and remove such deposits under applicable laws and regulations as the Secretary of the Interior may prescribe;

will contain the following provisions:

1. Lander County, its successors or assigns, assumes all liability for and shall defend, indemnify, and save harmless the United States and its officers, agents, representatives, and employees (hereinafter referred to in this clause as the United States), from all claims, loss, damage, actions, causes of action, expense, and liability (hereinafter referred to in this clause as claims) resulting from, brought for, or on account of, any personal injury, threat of personal injury, or property damage received or sustained by any person or persons (including the patentee's employees) or property growing out of, occurring, or attributable directly or indirectly, to the disposal of solid waste on, or the release of hazardous substances from Mount Diablo Meridian, Nevada, T. 19 N., R. 43 E., sec. 26, NW¼SE¼, regardless of whether such claims shall be attributable to: (1) The concurrent, contributory, or partial fault, failure, or negligence of the United States, or (2) the sole fault, failure, or negligence of the United States;

2. Provided, that the title shall revert to the United States upon a finding, after notice and opportunity for a hearing, that the patentee has not substantially developed the land in accordance with the approved plan of development on or before the date five years after the date of conveyance. No portion of the land shall under any circumstances revert to the United States if any such portion has been used for solid waste disposal or for any other purpose which may result in the disposal, placement, or release of any hazardous substance;

3. If, at any time, the patentee transfers to another party ownership of any portion of the land not used for the purpose specified in the application and approved plan of development, the patentee shall pay the Bureau of Land Management the fair market value, as determined by the authorized officer, of the transferred portion as of the date of transfer, including the value of any improvements thereon;

4. The above described land has been conveyed for utilization as a solid waste disposal site by Lander County, Nevada. Upon closure, the site may contain small quantities of commercial and household hazardous waste as determined in the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6901), and defined in 40 CFR 261.4 and 261.5. Although there is no indication these materials pose any significant risk to human health or the environment, future land uses should be limited to those which do not penetrate the liner or final cover of the landfill unless excavation is conducted subject to applicable State and Federal requirements;

and will be subject to valid existing rights.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Battle Mountain District, 50 Bastian Road, Battle Mountain, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed conveyance or classification of the lands to the District Manager, Battle Mountain District, P.O. Box 1420, Battle Mountain, Nevada 89820.

Classification Comments: Interested parties may submit comments involving the suitability of the land for a municipal solid waste disposal site. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a municipal solid waste disposal site.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification of the land will become effective 60 days from the date of publication in the **Federal Register**. The lands will not be conveyed until after the classification becomes effective.

Dated: May 26, 1995.

Michael C. Mitchel,

Acting District Manager.

[FR Doc. 95–13957 Filed 6–6–95; 8:45 am]

BILLING CODE 4310–HC–P

[NV–930–1430–01; NVN–58945]

Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The following described public lands in Eureka County, Nevada, have been examined and found suitable for conveyance (patent) to Eureka County under the provisions of the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C 869 *et seq.*). Eureka County proposes to use the lands for a municipal solid waste disposal site to serve Eureka, Nevada, and the surrounding area.

Mount Diablo Meridian, Nevada

T. 19 N., R. 53 E.,
Sec. 13, NE¼NW¼.
Containing 40 acres, more or less.

The lands are not needed for Federal purposes. Conveyance is consistent with current BLM land use planning and would be in the public interest. The patent, when issued will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States pursuant to the Act of August 30, 1890 (43 U.S.C. 945);

2. All mineral deposits shall be reserved to the United States, together with the right to prospect for, mine, and remove such deposits under applicable laws and regulations as the Secretary of the Interior may prescribe;

will contain the following provisions:

1. Eureka County, its successors or assigns, assumes all liability for and shall defend, indemnify, and save harmless the United States and its officers, agents, representatives, and employees (hereinafter referred to in this clause as the United States), from all claims, loss, damage, actions, causes of action, expense, and liability (hereinafter referred to in this clause as claims) resulting from, brought for, or on account of, any personal injury, threat of personal injury, or property damage received or sustained by any person or persons (including the patentee's employees) or property growing out of, occurring, or attributable directly or indirectly, to the disposal of solid waste on, or the release of hazardous substances from Mount Diablo Meridian, Nevada, T. 19 N., R. 53 E., sec. 13, NE¼NW¼, regardless of whether such claims shall be attributable to: (1) the concurrent, contributory, or partial fault, failure, or negligence of the United States, or (2) the sole fault, failure, or negligence of the United States;

2. Provided, that the title shall revert to the United States upon a finding, after notice and opportunity for a hearing, that the patentee has not substantially developed the land in accordance with the approved plan of development on or before the date five years after the date of conveyance. No portion of the land shall under any circumstances revert to the United States if any such portion has been used for solid waste disposal or for any other purpose which may result in the disposal, placement, or release of any hazardous substance;

3. If, at any time, the patentee transfers to another party ownership of any portion of the land not used for the purpose specified in the application and approved plan of development, the patentee shall pay the Bureau of Land Management the fair market value, as determined by the authorized officer, of the transferred portion as of the date of transfer, including the value of any improvements thereon;

4. The above described land has been conveyed for utilization as a solid waste disposal site by Eureka County, Nevada. Upon closure, the site may contain small quantities of commercial and household hazardous waste as determined in the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6901), and defined in 40 CFR 261.4 and 261.5. Although there is no indication these materials pose any significant risk to human health or the environment, future land uses should be limited to those which do not penetrate the liner or final cover of the landfill unless excavation is conducted subject to applicable State and Federal requirements;

and will be subject to valid existing rights.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Battle Mountain District, 50 Bastian Road, Battle Mountain, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed conveyance or classification of the lands to the District Manager, Battle Mountain District, P.O. Box 1420, Battle Mountain, Nevada 89820.

Classification Comments: Interested parties may submit comments involving the suitability of the land for a municipal solid waste disposal site. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a municipal solid waste disposal site.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification of the land will become effective 60 days from the date of publication in the **Federal Register**. The lands will not be conveyed until after the classification becomes effective.

Dated: May 26, 1995.

Michael C. Mitchel,

Acting District Manager.

[FR Doc. 95–13958 Filed 6–6–95; 8:45 am]

BILLING CODE 4310–HC–P

Fish and Wildlife Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Service's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Service Clearance Officer and the Office of Management and Budget, Paperwork Reduction Project (1018–XXXX), Washington, D.C. 20503, telephone 202–395–7340.

Title: 1996 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation

OMB Approved Number: New collection

Abstract: The Bureau of the Census is conducting the 1996 National Survey of Fishing, Hunting, and Wildlife Associated Recreation for the Fish and Wildlife Service. The Service has sponsored national surveys of fishing and hunting at 5-year intervals since 1965 at the request of the States through the International Association of Fish and Wildlife Agencies. The 1996 national survey will be a comprehensive data base of fish and wildlife-related recreation activities and expenditures that are needed for identifying and developing management priorities at both national and state levels. This survey is the only comprehensive national data base of uses and users of fish and wildlife resources. It will provide national and state level statistics that are not available from other sources. The survey data are needed to help the Service effectively administer the fish and wildlife restoration grant programs, and to help the states develop project proposals and conservation programs. It provides essential information on present recreation demands and a basis for projecting future demands. Data are needed to identify trends in fish and wildlife-related recreation. This

information is used in formulating policies and developing programs.
Service Form Number(s): FH–2, FH–3 and FH–4
Frequency: Once every 5 years
Description of Respondents: Individuals and households
Estimated Completion Time: The reporting burden is estimated to average 15 minutes per response for hunters and/or fishers and 11 minutes for the nonconsumptive users
Annual Responses: 172,010
Annual Burden Hours: 36,037
Service Clearance Officer: Phyllis H. Cook, 703–358–1943
Mail Stop—224 Arlington Square, U.S. Fish and Wildlife Service, Washington, D.C. 20240

Dated: May 18, 1995.

Daniel M. Ashe,

Deputy Director—External Affairs.

[FR Doc. 95–13846 Filed 6–6–95; 8:45 am]

BILLING CODE 4310–55–M

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT–803186

Applicant: International Center for Gibbon Studies, Santa Clarita, CA

The applicant requests a permit to import one male captive-held dark-handed gibbon (*Hylobates agillis agillis*) from Primates Preservation and Education Centre, Eindhoven, Netherlands for the purpose of enhancement of the species through captive-propagation and scientific research.

PRT–63110

Applicant: St. Louis Zoological Park, St. Louis, MO

The applicant requests a permit to import up to 30 tissue samples taken from captive born banteng (*Bos javanicus brimanicus*) held at the Khao Kheow Open Zoo, Sriracha, Chonburi, Thailand, for the purpose of enhancement of the species through scientific research.

PRT–802771

Applicant: U.S. Fish and Wildlife Service, Concord, NH

The applicant requests a permit to export four captive hatched, preserved specimens of the American burying beetle (*Nicrophorus americanus*) to the Osaka Museum of Natural History, Osaka, Japan, for the purpose of enhancement of the species through scientific research.

PRT–801464

Applicant: Ron & Joy Holiday & Charles Lizza, Alachua, FL

The applicant requests a permit to export/reimport one captive-born clouded leopard (*Neofelis nebulosa*), and progeny of the animal currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers the activities conducted by the applicant over a three year period.

PRT–798403

Applicant: Tarzan Zerbini Circus, Webb City, MO

The applicant requests a permit to export/reimport one captive-held Asian elephant (*Elephas maximus*), and progeny of the animal currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers the activities conducted by the applicant over a three year period.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: June 2, 1995.

Caroline Anderson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 95–13960 Filed 6–6–95; 8:45 am]

BILLING CODE 4310–55–P

National Biological Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Service's clearance officer at the phone number listed below. Comments and suggestions on the proposal should be made directly to the bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project, Washington, D.C. 20503, telephone (202) 395–7340, with copies of Anne Frondorf, Information and Technology Services, MS 3660, National Biological Service, 1849 C St. N.W., Washington, D.C. 20240.

Title: Information Surveys for the National Biological Information Infrastructure.
Abstract: The National Biological Service is developing a National Biological Information Infrastructure (NBII) which will provide increased electronic (Internet) access to data and information on biological resources that are available from many different sources around the U.S. NBS works with public agencies and private organizations that wish to make the biological data and information they maintain more accessible through the NBII by helping them prepare, describe, and electronically serve their data and information. NBS wishes to collect information, through a set of three related surveys, to better identify prospective sources of biological data and information that could be made electronically accessible to the public through the NBII. Information will be collected through surveys in the following three areas: identifying and describing State-level biological data and information bases, identifying and describing sources of taxonomic expertise, and identifying and describing research systematics collections.
Bureau form number: none.
Frequency: Three related surveys will each be completed one time. Resulting information will be made electronically accessible via the National Biological Information Infrastructure.
Description of respondents: Individuals, Federal, State, and local government agencies, non-profit institutions, and businesses and other for-profits.
Estimated completion time: 1 hour for the survey of State biological data and information bases; .5 hour for the survey of taxonomic expertise; 1 hour for the survey of systematics collections.
Annual responses: 500 for the survey of State biological data and information bases; 500 for the survey of taxonomic expertise; 500 for the survey of systematics collections.
Annual burden hours: 500 for the survey of State biological data and information bases; 250 for the survey of taxonomic expertise; 500 for the survey of systematics collections.
Bureau clearance officer: Don W. Minnich, (202) 482–4838.

Dated: May 25, 1995.

Doyle G. Frederick,

Assistant Director.

[FR Doc. 95–13847 Filed 6–6–95; 8:45 am]

BILLING CODE 4310–DP–M

INTERNATIONAL TRADE COMMISSION

[Investigation 332–363]

Chemicals and Chemical Products: Probable Effect of Certain Modifications to North American Free Trade Agreement Rules of Origin Pertaining to Such Products

AGENCY: International Trade Commission.

ACTION: Institution of investigation and scheduling of public hearing.

EFFECTIVE DATE: May 31, 1995.

SUMMARY: Following receipt on May 5, 1995, of a request from the United States Trade Representative (USTR), the Commission instituted investigation No. 332–363, Chemicals and Chemical Products: Probable Effect of Certain Modifications to North American Free Trade Agreement Rules of Origin Pertaining to Such Products, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)).

FOR FURTHER INFORMATION CONTACT: Information on industry sectors may be obtained from Edmund Cappuccilli, Office of Industries (202–205–3368) or Elizabeth Nesbitt, Office of Industries (202–205–3355); and on legal aspects, from William Gearhart, Office of the General Counsel (202–205–3091). The media should contact Margaret O'Laughlin, Office of Public Affairs (202–205–1819). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202–205–1810).

BACKGROUND: Chapter 4 and Annex 401 of the North American Free Trade Agreement (NAFTA), which entered into force on January 1, 1994, contain the rules of origin for application of the tariff provisions of the Agreement to trade in goods.

Section 202(q) of the North American Free Trade Agreement Implementation Act authorizes the President, subject to the consultation and layover requirements of section 103 of the Act, to proclaim such modifications to the rules as may from time to time be agreed to by the NAFTA countries. One of the requirements set out in section 103 is that the President obtain advice, regarding any proposed modification in the Rules contained in Annex 401, from the United States International Trade Commission.

In its report the Commission will, as requested by the USTR in his letter of May 5, 1995, seek to provide advice on the probable effect of the proposed revised rules of origin attached to the letter. As requested, the Commission will seek to provide such advice by September 5, 1995. Copies of the proposed revised rules, which cover the goods described in Chapters 28 through 38 of the Harmonized Tariff Schedule of the United States, will be available from the Office of the Secretary at the Commission or from the Commission's Internet web server (http://www.usitc.gov).

PUBLIC HEARING: A public hearing in connection with the investigation will be held at the U.S. International Trade Commission Building, 500 E Street SW, Washington, DC, beginning at 9:30 a.m. on July 11, 1995. All persons shall have the right to appear, by counsel or in person, to present information and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 500 E Street SW, Washington, DC, 20436, no later than 5:15 p.m. on June 28, 1995. Any prehearing briefs (original and 14 copies) should be filed not later than 5:15 p.m., June 28, 1995; the deadline for filing post-hearing briefs or statements is 5:15 p.m., July 18, 1995. In the event that, as of the close of business on June 28, 1995, no witnesses are scheduled to appear at the hearing, the hearing will be cancelled. Any person interested in attending the hearing as an observer or non-participant may call the Secretary to the Commission (202–205–2000) after June 28, 1995, to determine whether the hearing will be held.

WRITTEN SUBMISSIONS: In lieu of or in addition to participating in the hearing, interested parties are invited to submit written statements concerning the matters to be addressed by the Commission in its report on this investigation. Commercial or financial information that a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section § 201.6 of the Commission's *Rules of Practice and Procedure* (19 C.F.R. 201.6). All written submissions, except for confidential business information, will be made available in the Office of the Secretary of the Commission for inspection by interested parties. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted to the Commission at the earliest practical date and should be received no later than the close of business on July 18, 1995. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW, Washington, DC 20436. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

Issued: May 31, 1995.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–13903 Filed 6–6–95; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 337–TA–349]

Certain Diltiazem Hydrochloride and Diltiazem Preparations; Notice of Commission Decisions Affirming in Part, Taking No Position in Part, and Vacating in Part an Initial Determination; Granting of a Joint Motion To Terminate Certain Respondents on the Basis of a Settlement Agreement; Denial of a Motion To Intervene

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to affirm the claim interpretation and infringement findings and to take no

position on the issues of validity and unenforceability in the initial determination (ID) issued by the presiding administrative law judge (ALJ) on February 1, 1995, in the above-captioned investigation in accordance with *Beloit Corporation* v. *Valmet Oy, TVW Paper Machines, Inc. and the United States International Trade Commission*, 742 F.2d 1421 (Fed. Cir. 1984). The Commission has also vacated as moot ALJ Order No. 52. Finally, the Commission has determined to grant a joint motion to terminate certain respondents on the basis of a settlement agreement, and to deny a motion to intervene in the investigation.

FOR FURTHER INFORMATION CONTACT: Cynthia P. Johnson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3098.

SUPPLEMENTARY INFORMATION: On February 1, 1993, Tanabe Seiyaku Co., Ltd. (Tanabe) and Marion Merrell Dow, Inc. (MMD) (collectively "complainants") filed a complaint under section 337 alleging unfair acts in the importation and sale of diltiazem hydrochloride and diltiazem preparations ("diltiazem") by nine proposed respondents: (1) Abic Ltd. of Netanya, Israel ("Abic"); (2) Gyma Laboratories of America, Inc. of Garden City, New York ("Gyma"); (3) Profarmaco Nobel SRL of Milan, Italy; (4) Mylan Pharmaceuticals, Inc. of Morgantown, West Virginia; (5) Mylan Laboratories, Inc. of Pittsburgh, Pennsylvania (collectively referred to as the "Profarmaco respondents"); (6) Orion Corporation Fermion of Espoo, Finland; (7) Interchem Corporation of Paramus, New Jersey; (8) Copley Pharmaceuticals, Inc. of Canton, Massachusetts; and (9) Rhone-Poulenc Rorer, Inc. of Collegeville, Pennsylvania (collectively referred to as the "Fermion respondents"). Complainants alleged infringement of claim 1 of U.S. Letters Patent 4,438,035 ("the '035 patent"). On March 25, 1993, the Commission voted to institute an investigation of the complaint of Tanabe and MMD. 58 FR 16846 (March 31, 1993).

On May 6, 1993, complainants moved to amend the complaint and notice of investigation to add Plantex U.S.A., Inc. as a respondent. On May 20, 1993, the ALJ issued an ID amending the complaint and notice of investigation to add Plantex as a respondent. Plantex participated in the investigation with respondent Abic, Inc.

On February 1, 1995, the presiding ALJ issued his final ID finding that there was no violation of section 337. He found that claim 1 of the '035 patent was not infringed by any of respondents' processes, that claim 1 was invalid as obvious under 35 U.S.C. 103, and that the '035 patent was unenforceable because of complainants' inequitable conduct during reexamination proceedings before the U.S. Patent and Trademark Office. In a separate order (Order No. 52), issued on the same date, the ALJ granted respondents' motion for evidentiary sanctions against complainants.

On March 30, 1995, the Commission determined to review the following issues in the ID: (1) Claim interpretation; (2) whether claim 1 of the '035 patent is infringed by respondents' processes; (3) whether claim 1 of the '035 patent is invalid as obvious under 35 U.S.C. 103; (4) whether the '035 patent is unenforceable; and (5) Order No. 52. Order No. 52 was considered to be part of the ID. The Commission posed several specific questions for the parties. The Commission also requested information on the status of the Abic respondents.

On April 13, 1995, complainants and Abic Ltd. and Plantex U.S.A. ("the Abic respondents") filed a joint motion to terminate the investigation as to the Abic respondents on the basis of a settlement agreement. Additionally, on April 13, 1995, Mr. James Gambrell filed a motion to intervene in the investigation.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission interim rule 210.56 (19 CFR 210.56).

Copies of the Commission's Order, the Commission Opinion in support thereof, the nonconfidential version of the ID, and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

Issued: June 1, 1995.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–13902 Filed 6–6–95; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

[No. 41573 [1]]

Anacomp, Inc.; Crest Manufacturing Incorporated; Godfrey Marine; Harrison International Incorporated; Health and Personal Care Distribution Conference, Inc.; National Small Shipments Traffic Conference, Inc.; and Truckpro Parts & Service, Inc.—Petition for Declaratory Order—Certain Rates and Practices of Churchill Truck Lines, Inc. (Trans-Allied Audit Company, Inc.)

AGENCY: Interstate Commerce Commission.

ACTION: Institution of declaratory order proceeding.

SUMMARY: The Commission is instituting a proceeding under 49 U.S.C. 10321 and 5 U.S.C. 554(e) to determine whether the collection of undercharges by or on behalf of Churchill Truck Lines, Inc. (Churchill) or Trans-Allied Audit Company, Inc. (Trans-Allied), based on recharacterization of the service provided by Churchill as regular route instead of irregular route, constitutes an unreasonable practice under 49 U.S.C. 10701(a).

DATES: Comments by or on behalf of Churchill or Trans-Allied and any person desiring to submit comments in support of their position are due June 27, 1995. Petitioners' replies and any comments from all other interested persons are due July 7, 1995.

ADDRESSES: The original and 10 copies of comments and replies, which should refer to No. 41573, must be sent to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Avenue, N.W., Washington, DC 20423. One copy of comments by or on behalf of Churchill or Trans-Allied must be served simultaneously on petitioners' representatives: Richard H. Streeter, 1401 Eye Street, N.W., Suite 500, Washington, DC 20005; and Daniel J. Sweeney, 1750 Pennsylvania Ave., NW., Washington, DC 20006.

[1] This notice embraces docket Nos. 41561, 41567, 41574, and 41575, which involve separately filed petitions seeking declaratory relief from undercharges sought by Churchill Truck Lines, Inc., so that the parties in those proceedings may be served with a copy of this notice. Those proceedings are not consolidated with this one, but parties to those proceedings may request that their proceedings be held in abeyance pending resolution of this proceeding. In No. 41561, a procedural schedule was established by decision served April 18, 1995; in No. 41567, a procedural schedule was established by decision served April 28, 1995; and in Nos. 41574 and 41575, procedural schedules will be established unless the parties request otherwise.

FOR FURTHER INFORMATION CONTACT: Marty Schwimmer, (202) 927–6289. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: On May 11, 1995, Anacomp, Inc.; Crest Manufacturing Incorporated; Godfrey Marine; Harrison International Incorporated; Health and Personal Care Distribution Conference, Inc.; National Small Shipments Traffic Conference, Inc.; and Truckpro Parts & Service, Inc. (petitioners) jointly filed a petition for declaratory order pursuant to the provisions of 5 U.S.C. 554(e). Petitioners request that the Commission take expedited or emergency action in order to bring an immediate halt to what they characterize as an aggressive undercharge campaign being waged by Trans-Allied on behalf of Churchill against the petitioners and hundreds of other shippers.

For many years, Churchill maintained discount tariffs applicable to services provided to points for which it held irregular route authority. Petitioners state that prior to ceasing operations in early 1994, Churchill filed tariffs with this Commission [ICC CHTL 681, ICC CHTL 604 and ICC CHTL 627 series] that included a note providing that "* * * the discounts named herein apply only to and from irregular route points actually served direct by CHTL."

Beginning in January 1995, petitioners, who had previously used Churchill's services, began receiving dunning letters from Trans-Allied accompanied by "balance due freight bills." Subsequently, further letters were received from Trans-Allied claiming: that the discounts provided to shippers by Churchill's Tariff ICC CHTL 682 contain an unambiguous provision that restricted their application to shipments moving to and/or from irregular route service points only; that legal effect must be given to every provision of a tariff; that the movements covered by the balance due bills were less-than-truckload shipments moving to points specified in Churchill's regular route certificate and to which Churchill provided a regular less-than-truckload service; that under the filed rate doctrine reaffirmed in *Maislin Indus.* v. *Primary Steel*, 497 U.S. 116 (1990), Churchill must seek payment of the undiscounted rates on shipments to regular route shipping points; and that shippers are not entitled to discounts off the applicable class rates.

The facts as presented by petitioners suggest that the services involved could have been performed under either Churchill's regular route or its irregular route authority. Petitioners point out that, during its many years of service, Churchill never contended that the discounts did not apply to shipments moving to and from all points for which it held irregular route authority, regardless of whether or not they also happen to be points for which it held regular route authority. Only after Churchill ceased operations did its auditor assert that the published discounts were not applicable to shipments moving to irregular route points that were also named in Churchill's regular route certificates.

Petitioners contend that Trans-Allied's theory of recovery is fatally flawed. They claim, that, under the Supreme Court's decision in *Hewitt-Robins, Incorporated* v. *Eastern Freight-Ways*, 371 U.S. 84 (1962), if two routes are available (in that case, one interstate and the other intrastate), the carrier is legally obligated to use the lower-rated route. The Court, according to petitioners, specifically condemned the use of principles of misrouting to collect a higher tariff charge as being an unlawful practice under the Interstate Commerce Act and the common law. Petitioners argue that Churchill's shippers are entitled to the lowest published tariff rate between two points.

Citing *Hewitt-Robins, Inc.* v. *Eastern Freight-Ways*, 302 I.C.C. 173, 174 (1957), petitioners conclude that "when no routing instructions are given, a motor carrier has a duty to select the least expensive route, unless it is an unreasonable one." 302 I.C.C. at 174. *See also Great Atlantic & Pacific Tea Co.* v. *Ontario Frt. Lines*, 46 M.C.C. 237, 239, 242–243 (1946); *Mentzner Stove Repairs Co.* v. *Ranft*, 47 M.C.C. 151, 154 (1947); *Murray Co. of Texas, Inc.* v. *Marron, Inc.*, 54 M.C.C. 442, 444 (1952). They urge that the application of the *Hewitt-Robins* principles to the Churchill situation leaves no room for Trans-Allied to argue that Churchill is entitled to a non-discounted rate because, if it handled shipments in regular route service, rather than its irregular route service, it did so without consulting the shipper. Petitioners, therefore, ask the Commission to declare that Churchill had an affirmative duty to route its shippers' movements in irregular route service in order to take advantage of its published tariff discounts, and that, if it routed them in non-discounted regular route service, Churchill engaged in an unreasonable practice.

Petitioners also argue that Trans-Allied's position is not supported by the literal wording of the tariff note cited above. They contend that Trans-Allied's rationale must be rejected because it erroneously reads into the note the nonexistent words "in irregular route service." They emphasize that there is no such qualification within the four corners of Churchill's tariff rule and that, as numerous courts have reasoned, tariff construction requires that "the four corners of the instrument must be visualized and all the pertinent provisions considered together, giving effect so far as possible to every word, clause, and sentence therein contained." *United States* v. *Missouri-Kansas-Texas R. Co.*, 194 F.2d 777, 778 (5th Cir. 1952).

Petitioners contend that the shipper is entitled to the benefit of the doubt if the tariff is ambiguous, and that, because there are no such qualifying words to alert the potential shipper to the possibility that it would be forced to pay higher rates for shipments handled pursuant to Churchill's regular route certificates, rather than its irregular route certificate, Trans-Allied's construction must be rejected. "[A]ny ambiguity or reasonable doubt as to their meaning must be resolved against the carriers." *Id.* at 778. Citing *Carrier Service, Inc.* v. *Boise Cascade Corp.*, 795 F.2d 640, 642 (8th Cir. 1986), petitioners argue that, to the extent that Churchill's tariffs "would lend themselves to misinterpretation by the ordinary users of such tariffs," they must be construed in favor of the shippers.

Finally, petitioners submit copies of correspondence to shippers in which Churchill's representatives adopted an interpretation consistent with petitioners' position that the published discount "applies only on shipments either originating at or destined to all of Churchill's direct interstate points." Petitioners argue that such representations clearly indicate that Churchill intended that shippers would receive the discount, and that without such competitive rates these shipments would have been shipped via other carriers.

Because it appears that a controversy exists within the meaning of 5 U.S.C. 554(e), the petition will be granted and a declaratory order proceeding instituted. Churchill and Trans-Allied will be directed to file comments on the issues presented, and the petitioners will be directed to file reply comments. All other interested persons may also file comments. The parties are specifically directed to address whether the collection of undercharges by or on behalf of Churchill Truck Lines, Inc. or Trans-Allied Audit Company, Inc., based on recharacterization of the service provided by Churchill, as regular route instead of irregular route, constitutes an unreasonable practice under 49 U.S.C. 10701(a).

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. A declaratory order proceeding is instituted to consider the issues raised in this proceeding.

2. Comments by or on behalf of Churchill or Trans-Allied are due June 27, 1995.

3. Petitioners' replies and any comments from all other interested persons are due July 7, 1995.

4. A copy of this notice will be served on the parties in Nos. 41561, 41567, 41574, and 41575.

Decided: May 25, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioners Simmons and McDonald.

Vernon A. Williams,

Secretary.

[FR Doc. 95–13934 Filed 6–6–95; 8:45 am]

BILLING CODE 7035–01–P

[Docket No. AB–402 (Sub-No. 3X)]

Fox Valley & Western Ltd.—Abandonment Exemption—in Portage and Waupaca Counties, WI; Exemption and Notice of Interim Trail Use or Abandonment

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission, under 49 U.S.C. 10505, exempts from the prior approval requirements of 49 U.S.C. 10903–10904 the abandonment by Fox Valley & Western Ltd. of an 18.5-mile rail line extending between milepost 61.0 in Scandinavia and milepost 79.5 in Plover, in Portage and Waupaca Counties, WI, subject to standard labor protective conditions, environmental conditions, and, between mileposts 61.0 and 78.6, a trail use condition.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on July 7, 1995. Formal expressions of intent to file an offer[1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by June 19, 1995; petitions to stay must be filed by June 22, 1995; requests for a public use condition must be filed by June 27, 1995; and petitions to reopen must be filed by July 3, 1995.

ADDRESSES: Send pleadings referring to Docket No. AB–402 (Sub-No. 3X) to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Avenue, NW., Washington, DC 20423, and (2) Janet H. Gilbert, P. O. Box 5062, Rosemont, IL 60017–5062.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Interstate Commerce Commission Building, 1201 Constitution Avenue, NW., Room 2229, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5271.]

Decided: May 24, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioners Simmons and McDonald.

Vernon A. Williams,

Secretary.

[FR Doc. 95–13933 Filed 6–6–95; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32696]

Northern Ohio & Western Railway, L.L.C.—Operation Exemption—Line of Sandusky County-Seneca County-City of Tiffin Port Authority

Northern Ohio & Western Railway, L.L.C. (NOWRR), a noncarrier, has filed a notice of exemption to operate over 25.5 miles of rail line presently owned by Sandusky County-Seneca County-City of Tiffin Port Authority (Port of Tiffin), from milepost 41.5 near Tiffin, Seneca County, OH to milepost 67.0 near Woodville Township, Sandusky County, OH.[1] NOWRR's operation of the line was expected to be consummated on May 16, 1995, and will result in NOWRR becoming a class III carrier.

Any comments must be filed with the Commission and served on: Louis E. Gitomer, Ball, Janik & Novack, Suite 1035, 1101 Pennsylvania Ave., N.W., Washington, DC 20004.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

[1] The Port of Tiffin acquired the line segment from Consolidated Rail Corporation through a feeder line application in *Sandusky County, et al.—Feeder Line Appl.—Conrail*, 6 I.C.C.2d 568 (1990).

Decided: May 31, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–13947 Filed 6–6–95; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32701]

Portage Private Industry Council, Inc., and Akron Barberton Cluster Railway Company—Acquisition and Operation Exemption—Consolidated Rail Corporation

Portage Private Industry Council, Inc. (PPIC), a noncarrier "non-profit coalition of business and professional leaders engaged in economic development activities in Portage County, Ohio," and Akron Barberton Cluster Railway Company (ABCR), a class III rail carrier, have jointly filed a verified notice under 49 CFR Part 1150, Subpart D—*Exempt Transactions* for PPIC to acquire from Consolidated Rail Corporation and for ABCR to operate a 7.23-mile rail line between milepost 182.82±, at Ravenna, and milepost 190.05±, at Kent, in Portage County, OH. The transaction was to have been consummated on or about May 15, 1995.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to reopen will not stay the exemption's effectiveness. An original and 10 copies of all pleadings, referring to Finance Docket No. 32701, must be filed with the Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423. In addition, a copy of each pleading must be served on Norman L. Christley, 215 West Garfield Road, Suite 230, Aurora, OH 44202, and Terence M. Hynes, Sidley & Austin, 1722 Eye Street, N.W., Washington, DC 20006.

Decided: May 30, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–13948 Filed 6–6–95; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) Who will be asked or required to respond, as well as a brief abstract;

(4) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) An estimate of the total public burden (in hours) associated with the collection; and

(6) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 *And* to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer *And* the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, *And* to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/Information Resources Management/Justice Management Division, Suite 850, WCTR, Washington, DC 20530.

New Collection

(1) Albania Claims Program.

(2) FCSC Form 1–95. Foreign Claims Settlement Commission, United States Department of Justice.

(3) Primary: Individuals or households. Others: Not-for-profit institutions. Information collected will be used as the basis for determining entitlement of claimants to awards payable by the Department of the Treasury out of Albania Compensation Fund in claims of U.S. nationals against the Albanian government for expropriation of property.

(4) 500 annual respondents at 2 hours per response.

(5) 1,000 annual burden hours.

(6) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–13857 Filed 6–6–95; 8:45 am]

BILLING CODE 4410–01–M

Federal Bureau of Investigation

DNA Advisory Board Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given that the DNA Advisory Board (DAB) will meet on June 22, 1995, from 11 am until 5 pm at the Arlington Renaissance Hotel, Master's Ballroom, 950 North Stafford Street, Arlington, VA 22203. All attendees will be admitted only after displaying personal identification which bears a photograph of the attendee.

The DAB's objectives and scope are: To develop, and if appropriate, periodically revise, recommended standards for quality assurance to the Director of the FBI, including standards for testing the proficiency of forensic laboratories, and forensic analysts, in conducting analyses of DNA; To recommend standards to the Director of the FBI which specify criteria for quality assurance and proficiency tests to be applied to the various types of DNA analyses used by forensic laboratories; and, To make recommendations to the Director of the FBI for a system for grading proficiency testing performance to determine whether a laboratory is performing acceptably.

The topics discussed at this meeting include: clarification of the range of topics which may be considered within the scope of the DAB; discussion of by-laws and procedures related to the administration of the DAB; relationship of the DAB to the Technical Working Group on DNA Analysis Methods; and, background presentations on the status of forensic DNA analysis in the United States, including accreditation and certification programs.

The meeting is open to the public on a first-come, first seated basis. Anyone wishing to address the DAB must notify the Designated Federal Employee (DFE) in writing at least twenty-four hours before the DAB meets. The notification must include the requestor's name, organizational affiliation, a short statement describing the topic to be addressed, and the amount of time requested. Oral statements to the DAB will be limited to five minutes and limited to subject matter directly related to the DAB's agenda, unless otherwise permitted by the Chairman.

Any member of the public may file a written statement for the record concerning the DAB and its work before or after the meeting. Written statements for the record will be furnished to each DAB member for their consideration and will be included in the official minutes of a DAB meeting. Written statements must be type written on 8½" × 11" xerographic weight paper, one side only, and bound only by a paper clip (not stapled). All pages must be numbered. Statements should include the Name, Organizational Affiliation, Address, and Telephone number of the author(s). Written statements for the record will be included in minutes of the meeting immediately following the receipt of the written statement, unless the statement is received within three weeks of the meeting. Under this circumstance, the written statement will be included with the minutes of the following meeting. Written statements for the record should be submitted to the DFE.

Inquiries may be addressed to the DFE, Mr. James J. Kearney, Chief, Scientific Analysis Section, Laboratory Division, Tenth Street Northwest, Washington, DC 20535, (202) 324–4416, FAX (202) 324–1462.

Dated: June 2, 1995.

James J. Kearney,

Chief, Scientific Analysis Section, Federal Bureau of Investigation.

[FR Doc. 95–13868 Filed 6–6–95; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 95–40; Exemption Application No. D–09694, et al.]

Grant of Individual Exemptions; General Motors Hourly-Rate Employees Pension Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the

Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

General Motors Hourly-Rate Employees Pension Plan; General Motors Retirement Program for Salaried Employees; Saturn Individual Retirement Plan for Represented Team Members; and Saturn Personal Choices Retirement Plan for Non-Represented Team Members (collectively, the Plans) Located in New York, New York; Exemption

[Prohibited Transaction Exemption 95–40; Application Nos. D–09694 thru D–09697]

The restrictions of section 406(b)(2) of the Act shall not apply to the stock index "exchange of futures for physicals" (EFP) transaction between the General Motors Retirement Program for Salaried Employees (the Salaried Plan) and the General Motors Hourly-Rate Employees Pension Plan, Saturn Individual Retirement Plan for Represented Team Members, and Saturn Personal Choices Retirement Plan for Non-Represented Team Members (together, the Hourly Plan) which occurred on November 30, 1993 in the amount of approximately $730 million, provided the following conditions were met:

(a) The terms of the EFP transaction were at least as favorable to the Plans as the terms which would have been available in an arm's-length EFP transaction involving unrelated parties;

(b) Each Plan received a price in the EFP transaction which was equal to the midpoint between the highest independent bid and lowest independent offer for buying and selling the futures involved on November 30, 1993, based on EFP quotations obtained from at least six independent broker-dealers capable of engaging in such an EFP at the time of the transaction;

(c) Wells Fargo Institutional Trust Company, N.A. (WFITC), as an independent fiduciary for the Salaried Plan, determined that the EFP transaction was prudent and in the best interests of the Salaried Plan and its participants and beneficiaries at the time of the transaction;

(d) WFITC monitored the EFP transaction on behalf of the Salaried Plan and took whatever action was necessary to safeguard the interests of the Salaried Plan at the time of the transaction;

(e) General Mofors Investment Management Corporation (GMIMCo), as the fiduciary for the Hourly Plan, determined that the EFP transaction was prudent and in the best interests of the Hourly Plan and its participants and beneficiaries at the time of the transaction; and

(f) GMIMCo monitored the EFP transaction on behalf of the Hourly Plan and took whatever action was necessary to safeguard the interests of the Hourly Plan at the time of the transaction.

EFFECTIVE DATE: The exemption is effective November 30, 1993.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption (the Proposal) published on March 13, 1995, at 60 FR 13467.

WRITTEN COMMENTS: The Department received three comment letters on the Proposal.

Two of the comment letters, submitted by individuals who are participants in the Salaried Plan, objected to the granting of an exemption for the EFP transaction. However, these individuals subsequently withdrew their adverse comments after a discussion of the issues involved with a representative of the Department.

The third letter received by the Department was a general inquiry from representatives of the GM Alumni Club in San Diego, California, requesting clarification of the EFP transaction. The Department responded to this inquiry by telephone and answered the particular questions raised by these commenters.

No other comment letters were received by the Department on this matter.

Accordingly, the Department has determined to grant the exemption.

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department at (202) 219–8194. (This is not a toll-free number.)

Analex Corporation (Analex), Analex Corporation Retirement Plan (the Plan) Located in Brook Park, OH; Exemption

[Prohibited Transaction Exemption 95–41; Application No. D–09786]

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply retroactively to the past loan (the Past Loan) made by the Plan to Analex (the Employer) in accordance with the following conditions:

(1) The terms and conditions of the Past Loan were at least as favorable to the Plan as those obtainable by the Plan under similar circumstances in arm's-length transactions with unrelated parties;

(2) The amount of the Plan's assets involved in the Past Loan did not exceed 15% of the Plan's total assets at any time during the transaction;

(3) The Past Loan was at all times secured by collateral which was valued at not less than 200% of the value of the Past Loan;

(4) Prior to the disbursement under the Loan agreement, an independent, qualified fiduciary determined on behalf of the Plan that the Past Loan was in the best interests of the Plan as an investment for the Plan's portfolio, and protective of the Plan and its participants and beneficiaries;

(5) The independent, qualified fiduciary reviewed the terms and conditions of the exemption and the Past Loan, including the applicable interest rate, the sufficiency of the collateral, the financial condition of the Employer and compliance with the 15% of Plan assets maximum loan amount, prior to approving the disbursement under the Loan agreement;

(6) The fiduciary is monitoring the Past Loan to ensure compliance with the terms and conditions of the exemption and the Loan agreement;

(7) The Plan suffers no loss as a result of the Past Loan; and

(8) The Past Loan will be fully repaid by May 31, 1995.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on April 7, 1995 at 60 FR 17821.

TEMPORARY NATURE OF EXEMPTION: This exemption is effective for the period from July 12, 1994 through May 31, 1995, the date by which the Past Loan will be repaid.

FOR FURTHER INFORMATION CONTACT: Virginia J. Miller of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

Washington Mortgage Corporation, Inc. (WMC) Located in Seattle, Washington; Exemption

[Prohibited Transaction Exemption 95–42; Exemption Application No. D–09814]

I. The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to: 1) the sale, exchange or transfer between WMC and its affiliates and certain employee benefit plans (the Plans) of certain construction loans or participation interests therein to non-party in interest entities; and 2) the sale, exchange or transfer between WMC and its affiliates and the Plans of any construction or permanent loan made by a Plan to a party in interest, and the resulting extension of credit therefrom, provided that:

(a) The terms of the transactions are not less favorable to the Plans than the terms generally available in arm's-length transactions between unrelated parties;

(b) Such sales, exchanges or transfers are expressly approved by a Plan fiduciary independent of WMC and its affiliates who has authority to manage or control those Plan assets being invested in mortgages or participation interests therein;

(c) No investment management, advisory, underwriting fee or sales commission or similar compensation is paid to WMC or any of its affiliates with regard to such sale, exchange or transfer;

(d) The decision to invest in a loan or a participation interest therein is not part of an arrangement under which a fiduciary of a Plan, acting with the knowledge of WMC or its affiliate, causes a transaction to be made with or for the benefit of a party in interest (as defined in section 3(14) of the Act) with respect to the Plan;

(e) At the time of its acquisition of a loan or participation interest therein, no Plan will have more than 25% of its assets invested in construction and permanent mortgages;

(f) WMC and its affiliates do not and will not act as fiduciaries with regard to any Plan investing in permanent and construction loans and interests therein as described in this exemption; and

(g) WMC shall maintain or will cause to be maintained, for the duration of any loan or participation interest therein sold to a Plan pursuant to this exemption, such records as are necessary to determine whether the conditions of this exemption have been met. The records mentioned above must be unconditionally available at their customary location for examination for purposes reasonably related to protecting rights under the Plans, during normal business hours, by: Any trustee, investment manager, employer of Plan participants, employee organization whose members are covered by a Plan, participant or beneficiary of a Plan.

II. The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975 (c)(1)(A) through (D) of the Code shall not apply to any transactions to which such restrictions would otherwise apply merely because WMC or any of its affiliates is deemed to be a party in interest with respect to a Plan by virtue of providing services to the Plan in connection with the subject loan transactions (or because it has a relationship to such service provider described in section 3(14)(F), (G), (H), or (I) of the Act), solely because of the ownership of a loan or participation interest therein as described in this exemption by such Plan.

III. Definitions. For purposes of this exemption,

(a) An "affiliate" of WMC includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with WMC,

(2) Any officer, director, employee, relative of, or partner in any such person, and

(3) Any corporation or partnership of which such person is an officer, director, partner or employee.

(b) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on April 7, 1995 at 59 FR 38205.

TEMPORARY NATURE OF EXEMPTION: This exemption is effective only for those transactions entered into within eight years of the date on which the Final Grant of this exemption is published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Welborn Clinic Employees' Retirement Plan (the Plan) Located in Evansville, Indiana; Exemption

[Prohibited Transaction Exemption 95–43; Exemption Application No. D–09890]

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale by the Plan of certain improved real property (the Property) located in Evansville, Indiana, to WANC Leasing Company, a party in interest with respect to the Plan; provided the following conditions are satisfied:

(A) All terms and conditions of the transaction are no less favorable to the Plan than those which the Plan could obtain in an arm's-length transaction with an unrelated party;

(B) The Plan receives a cash purchase price of no less than the greater of (1) $8,555,000, or (2) the Property's fair market value as of the sale date; and

(C) The Plan does not incur any expenses with respect to the transaction.

For a more complete statement of the facts and representations supporting this exemption, refer to the notice of proposed exemption published on March 13, 1995 at 60 FR 13473.

WRITTEN COMMENTS: The Department received one written comment, submitted by a Plan participant, and no requests for a hearing. The Department forwarded the comment to the applicant, the Citizens National Bank of Evansville as trustee of the Plan (the Trustee), for responses to the points raised therein. The points raised by the comment, and the Trustee's responses, are summarized as follows:

(1) The commenter states that improvements have been made to the Property since December 31, 1993, the date of one of the two appraisals utilized by the parties to determine the

minimum purchase price for the Property. The commenter believes that a reappraisal of the Property should be required before the exemption is granted.

The Trustee responds that the Property will be reappraised prior to final determination of the purchase price, as described in the Summary. The Trustee and the representatives of WANC Leasing Company (WANC) have agreed that as part of the sale transaction the Property is to be reappraised by both C. David Matthews and William R. Bartlett II, and if the mean of the two reappraisals is higher than $8,555,000 the purchase price will be increased to such higher mean. As part of the application for the proposed exemption, the Trustee explained that the agreement with respect to the purchase price for the Property resulted from arm's-length negotiations between the Trustee and WANC over a two-month period.

(2) The commenter states that a recently-approved casino river boat project will affect values of real estate in downtown Evansville in ways which should be taken into consideration in establishing the purchase price of the Property. .

The Trustee again notes that the Property will be reappraised by Matthews and Bartlett prior to final determination of the purchase price. The Trustee states that any increase in the Property's value attributable to the casino river boat project will be reflected in the reappraisals. The Trustee further maintains, however, that its own investigation into the matter indicates that the site of the river boat development, in the southwest corner of downtown, is too far from the Property's location, in the northeast section of downtown, to affect the value of the Property.

(3) The commenter, referring to the Summary's description of WANC as a partnership with 65 general partners, states that the actual number of general partners is in excess of 65.

The Trustee responds that the comment is correct and that the actual number of general partners is 80.

After careful consideration of the entire record, the Department has determined to grant the exemption.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

The Neiman Marcus Group, Inc., Employee Savings Plan (the Plan), Located in Chestnut Hill, Massachusetts; Exemption

[Prohibited Transaction Exemption 95–44; Exemption Application No. D–09917]

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1) (A) through (E) of the Code, shall not apply to (1) Loans to the Plan (the Loans) by The Neiman Marcus Group, Inc., the sponsor of the Plan, with respect to guaranteed investment contract number 62638 (the GIC) issued by Confederation Life Insurance Company (Confederation Life); and (2) the Plan's potential repayment of the Loans (the Repayments); provided that the following conditions are satisfied:

(A) No interest and/or expenses are paid by the Plan;

(B) The Loans are made in lieu of amounts due the Plan under the terms of the GIC;

(C) The Repayments are restricted to cash proceeds paid to the Plan by Confederation Life and/or any state guaranty association or other responsible third party making payment with respect to the GIC (the GIC Proceeds), and no other Plan assets are used to make the Repayments; and

(D) The Repayments will be waived to the extent the Loans exceed the GIC Proceeds.

For a more complete statement of the facts and representations supporting this exemption, refer to the notice of proposed exemption published on April 14, 1995 at 60 FR 1909.

WRITTEN COMMENTS: The Department received one written comment and no requests for a hearing. The comment was submitted by a Plan participant who expressed support for the proposed exemption. After consideration of the entire record, the Department has determined to grant the exemption.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 2nd day of June, 1995.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 95–13911 Filed 6–6–95; 8:45 am]

BILLING CODE 4510–29–P

[Application No. D–09909, et al.]

Proposed Exemptions; Phillips Petroleum Company

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Phillips Petroleum Company (Phillips), Located in Bartlesville, OK; Proposed Exemption

[Application No. D–09909]

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to (1) The proposed making of interest-free loans to the Thrift Plan of Phillips Petroleum Company (the Plan) by Phillips, the Plan sponsor pursuant to the terms of a credit facility arrangement; and (2) the proposed repayment of such loans by the Plan to Phillips.

This proposed exemption is conditioned on the following requirements:

(a) Each loan executed under the proposed credit facility arrangement provides short-term funds to the Plan in connection with inter-fund transfers, withdrawals and participant loans and permits the orderly disposal of Phillips common stock.

(b) Each loan made under the proposed credit facility arrangement is unsecured and no interest, commissions or expenses are paid by the Plan.

(c) In the event of a loan default or delinquency, Phillips has no recourse against the Plan.

(d) Each loan is initiated, accounted for and administered by an independent fiduciary who monitors the terms and conditions of the exemption, if granted.

Summary of Facts and Representations

1. Phillips, which maintains its principal place of business in Bartlesville, Oklahoma, was incorporated in the State of Delaware on June 13, 1917. Phillips is engaged in various business activities ranging from worldwide petroleum exploration and production to the production and distribution of chemicals. Phillips is also a leader in research and development and it holds 3,400 patents in technology that support company business lines. As of December 31, 1993, Phillips had assets of approximately $10.9 billion, liabilities of approximately $7.8 billion, annual revenues totaling $12.5 billion and net income of $243 million. As of September 30, 1994, Phillips had 74,300 shareholders and 18,796 employees.

2. The Plan, of which Phillips is the sponsor, is a defined contribution plan having 15,394 participants and total assets of $1.27 billion as of May 16, 1994. The trustee of the Plan (the Trustee) is Bankers Trust Company of New York, New York.

3. The Plan permits participants to direct the investment of their account balances among several investment funds (the Funds) and to receive participant loans from their accounts. Generally, any regular employee on the payroll of Phillips is eligible to participate in the Plan except non-managerial retail outlet marketing employees. Plan participants may have up to 15 percent of their pay deposited in the Plan each month. The first 5 percent is designated as regular deposits with any excess being designated as supplemental deposits. Deposits may be further designated by a participant as "before-tax" or "after-tax" deposits. Before-tax deposits represent participant contributions made pursuant to an election by the participant under section 401(k) of the Code to have his or her salary reduced in exchange for the contribution. Before-tax deposits are participant contributions to the Plan that are made from participant earnings prior to the payment of Federal or state taxes. After-tax deposits are Plan contributions made by a participant from the participant's pay after Federal and state taxes have been paid. Plan participants are allowed to change their investment directions and deposit rates only during designated enrollment periods.

4. Employee deposits are placed in a special investment fund called the "Temporary Investment Fund." The deposits are initially invested in certain short-term securities for up to 45 days after receipt by the Trustee. Then, the deposits and earnings thereon are paid into four other Funds, namely, Funds A, B, E or F as directed by the participant, and invested as follows:

a. In Fund A, a commingled trust government/corporate bond index fund held by Wells Fargo Institutional Trust Company.

b. In Fund B which holds Phillips common stock.

c. In Fund E, a Standard and Poor's equity index commingled fund held by the Trustee.

d. In Fund F, a commingled money market fund managed by the Trustee.[1]

[1] The applicant represents that investments by the Plan in Fund E and Fund F are covered by and comply with section 408(b)(8) of the Act. However,

Continued

In addition to the above, there are two other Funds that comprise the trust funds. They are Fund C and Fund D. Fund C is composed primarily of Phillips common stock. Fund D, which is closed to new deposits, holds guaranteed investment contracts.

Phillips contributes 25 percent of an employee's regular deposits to Fund B and 15 percent of regular deposits to any of the other investment Funds. The interest of a participant in each Fund is represented by units allocated to such participant.

5. The Plan allows a participant to elect a direct rollover of most distributions to an individual retirement account (the IRA) or to another tax qualified plans. The Plan also provides for participant loans as well as for transfers among certain of the Funds. In this regard, the Plan does not permit transfers to Fund C, Fund D or the Temporary Investment Fund.[2] However, it does allow transfers from these Funds with limited exceptions.[3]

6. Phillips represents that the right to transfer monthly from Fund to Fund and to borrow from the Plan has given participants greater control of their plan investments. Thus, for any valuation date (the Valuation Date) (i.e., the first working day for the Trustee and The New York Stock Exchange following the 14th of each month), participants may elect (to the extent permitted by the Plan) to transfer their account balances from one investment alternative to another, to withdraw funds or to borrow a portion of their account. As of the Valuation Date, Phillips common stock will be valued based on the closing sales prices for such stock. The steps that a participant may undertake in effecting transfers, withdrawals or participant loans are described as follows:

a. Inter-Fund Transfers. In order to transfer assets from one Fund to another, a participant must complete a standard transfer form applicable to all transfers or withdrawals. The transfer form must be delivered to the Plan Administrator by the last business day before the monthly Valuation Date. The transfer will be effective on the next Valuation Date.

b. Withdrawals from Funds. If the participant wishes to withdraw assets from a Fund, the procedure for withdrawal is essentially the same as that to transfer Funds. The participant must complete a withdrawal form and deliver it to the Plan Administrator by the last business day before the monthly Valuation Date. The withdrawal is effective as of the Valuation Date and it is usually paid within two weeks. If the participant intends to have the assets paid to an IRA or a qualified plan, the participant must provide the Plan Administrator with descriptive information concerning such plan or IRA, including the name and address. The participant must also verify that the recipient plan or IRA will accept the direct payment from the Plan.

c. Participant Loans. Assuming the participant requests a participant loan, such participant must be an active employee of Phillips with a vested account in the Plan of $2,000 or more. A participant may have up to two regular loans (any loan except a home loan) and one home loan outstanding at any one time. The maximum amount of any loan is limited to the lesser of: $50,000 less the highest loan balance in the last 12 months (determined as of the previous month's Valuation Date) or 50 percent of the vested account balance less the current outstanding loan balance for all loans, with values determined as of the previous month's Valuation Date. A participant may not apply for a loan if he or she has the maximum number of loans outstanding, has borrowed the maximum amount in the last 12 months or has an outstanding loan that is delinquent. The minimum amount of any single loan is $1,000.[4]

A participant may apply for a participant loan by telephone, then sign a transaction authorization form approved by the Plan Administrator and consent to irrevocable payroll deductions that will provide the amount necessary to repay the loan. Loan applications can be made only by telephone during the first 10 calendar days of each month. Loans will be processed once a month on the applicable Valuation Date. Proceeds will be paid within two to three weeks after the date the loan is processed. Participants may not make a withdrawal on the same Valuation Date that the loan is processed, even if the withdrawal form is submitted first.

7. To effect the aforementioned transfers, withdrawals or participant loans, the Trustee is required to liquidate assets held in the Fund or Funds from which the proceeds are needed. In this regard, the Plan document provides that the Trustee must take reasonable steps to invest deposits received for Funds B and C in Phillips common stock as soon as reasonably possible provided, however, that up to $10 million of cash equivalent investments may be maintained in the Funds to effect transfers, withdrawals and loans on the next regular Valuation Date. The Trustee must take reasonable steps to effect transfers, withdrawals or participant loans from Funds B and C[5] within 5 business days (on which both the Trustee and The New York Stock Exchange are in business) following the appropriate Valuation Date. The Trustee is also required to spread the sales of Phillips common stock that will be used to effect the transfers, withdrawals or participant loans ratably over the remaining trading days before the next regular Valuation Date.[6] However, if the number of shares which are to be sold would result in ratable sales of less than 10,000 shares a day, the Trustee is not required to sell less than 10,000 shares per day.

To the extent that the cash necessary to effect the transfers, withdrawals and participant loans within the 5 day trading period exceeds $10 million, the Trustee is permitted to borrow funds to provide sufficient liquidity to Funds B and C. Expenses and other costs attributable to such borrowings will be allocated to Funds B and C.

8. To bridge the gap between the immediate need for assets to fund transfers, withdrawals or participant loans and the disposal of Phillips common stock, the Trustee entered into a one-year, renewable revolving credit facility arrangement with NationsBank of Dallas, Texas on July 14, 1993. By its terms, the credit facility arrangement initially permitted the Trustee, on behalf of the Plan, to borrow up to $50 million on a short-term and unsecured basis. Interest is charged on a sliding scale margin above the London Interbank Offered Rate. The Plan is required to repay each loan in cash within 30 days of its making with proceeds from the sale of Phillips common stock. In addition, NationsBank charges the Plan a commitment fee of .10 percent of any unused amount of funds and a margin of .25 percent over NationsBank's actual cost of funds.

The Trustee has drawn upon the credit facility arrangement three times, resulting in loans to the Plan in the following amounts over the following time frames: (a) $3.3 million for 10 days; (b) $850,000 for 12 days; and (c) $10,000 for 8 days. As of March 10, 1995, the Plan had repaid all principal for the loans, including interest and expenses totaling $94,144. Although the credit facility arrangement was expected to expire in July 1994, it has been extended by NationsBank until July 12, 1995. However, the credit facility amount has been reduced from $50 million to $25 million.

9. The Plan wishes to terminate its credit facility arrangement with NationsBank. Therefore, Phillips requests an administrative exemption from the Department in order that it may provide the Plan with a similar lending arrangement. Phillips represents that it is aware that Prohibited Transaction Exemption (PTE) 80–26 (45 FR 28545, April 29, 1980) permits interest-free loans to a plan by a party in interest. In this regard, Phillips notes that PTE 80–26 permits an unsecured loan by a party in interest to a plan for a purpose incidental to the ordinary operation of the plan and for a period not exceeding 3 days. If the loan proceeds are used only for the payment of operating expenses of the plan, including the payment of benefits, Phillips explains that no time limit is imposed under PTE 80–26.

In view of the foregoing, Phillips represents that the extent to which PTE 80–26 would cover the proposed credit facility arrangement is unclear. Phillips believes that the inter-fund transfers and participant loans that would be initially funded by its proposed extension of credit may not be viewed as ordinary operating expenses of the Plan under PTE 80–26. Even if viewed as ordinary operating expenses, Phillips states that it is not clear whether the loans could be repaid within 3 days inasmuch as the Plan documents require the Trustee to spread sales of stock ratably over a Plan month to prevent sales from negatively impacting the market.

10. Under its proposed credit facility arrangement, Phillips will extend an initial line of credit of $25 million. The line of credit may be renewed annually by Phillips and the Plan. Each loan made thereunder will be unsecured and no administrative fees or interest will be charged to the Plan in connection with any of the loans. Each loan will be repaid within 31 days of its making. Funds for repaying the loans will be derived from the Trustee's sale of stock held in Funds B and C. Assets held in the other investment Funds will not be utilized for such repayments. Further, Phillips will have no recourse against the Plan or against any participant in the event of a loan default or delinquency and it will also not charge any late fees.

11. The Trustee will serve on behalf of the Plan as the independent fiduciary and, in such capacity, it will activate and administer the proposed credit facility arrangement. The Trustee represents that it is a leading provider of global financial services and that it has been providing services to employee benefit plans since 1927. As of March 10, 1995, the Trustee represents that it had employee benefit plan assets under management of over $165 billion and serves as a trustee for more than $115 billion in defined contribution plan assets. As of December 31, 1994, the Trustee states that it provided trust/custody services to 575 clients with total assets under administration of approximately $394 billion.

The Trustee represents that it is familiar with the Plan and its investment portfolios since it has access to information regarding Plan assets and can ascertain the extent to which the proposed credit facility arrangement will affect the Plan's investment needs. The Trustee also represents that it is independent of Phillips. In this regard, the Trustee states that during 1994, the fees paid to it by Phillips represented less than one percent of its total fiduciary and funds management revenues.

The Trustee explains that the Plan and its trust document were amended in 1993 to permit the credit facility arrangement with NationsBank. In view of its experience in negotiating and monitoring the NationsBank credit facility on behalf of the Plan, the Trustee states that it is fully familiar with the terms and costs associated with such arrangements. The Trustee points out that it has had to resort to the NationsBank credit facility arrangement on only a small number of occasions in the past 18 months. However, the costs associated with using the facility and assuring its continued availability could be avoided if Phillips were permitted to make similar, short-term extensions of credit to the Plan on an interest-free basis.

Consistent with relevant Plan provisions, the Trustee states that it will be responsible for determining when and how much to borrow and to cause the Plan to repay each loan within a 31 day period. The Trustee represents that it will not receive an additional fee or other compensation from the Plan as the result of the proposed credit facility arrangement between the Phillips and the Plan.

In view of the above, the Trustee concludes that the proposed interest-free loan program is in the best interest of the Plan and its participants and beneficiaries. The Trustee believes that such arrangement will result in cost savings to the Plan and enable the Plan to complete transactions in a timely manner. Further, the Trustee asserts that its ongoing, independent involvement in and oversight of the program will provide protection for the Plan and its participants and beneficiaries.

12. In summary, it is represented that the proposed transactions will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) Each loan executed under the proposed credit facility arrangement will provide short-term funds to the Plan in connection with inter-fund transfers, withdrawals and participant loans and it will permit the orderly disposal of Phillips common stock.

(b) Each loan made under the proposed credit facility arrangement will be unsecured and no interest, commissions or expenses will be paid by the Plan.

(c) In the event of a loan default or delinquency, Phillips will have no recourse against the Plan.

(d) Each loan will be initiated, accounted for and administered by the Trustee, which will also monitor the terms and conditions of the exemption, if granted.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Universal Underwriters Group Thrift Plan (the Plan), Located in Overland Park, Kansas; Proposed Exemption

[Application No. D–09947]

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If

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the Department expresses no opinion herein on whether such investments satisfy the terms and conditions of section 408(b)(8) of the Act.

[2] For example, with respect to the Temporary Investment Fund, the applicant represents that its purpose is to hold participant contributions until they are transferred to the elected investment Fund. Due to the short-term nature of this Fund, the applicant explains that participants are not entitled to transfer deposits to the Temporary Investment Fund from any other Fund.

[3] In the case of Fund C, the applicant explains that participants may make a one-time transfer from Fund C after retirement. In the case of Fund D, the applicant represents that a participant may not transfer from Fund D except to transfer upon the expiration of such participant's Class Year (guaranteed investment contract) Account.

[4] The applicant represents that the Plan's participant loan provisions are designed and administered to comply with section 408(b)(1) of the Act and applicable regulations. However, the Department expresses no opinion herein on whether such loans satisfy the terms and conditions of section 408(b)(1) of the Act and the regulations promulgated thereunder.

[5] Although transfers are restricted from Fund C, withdrawals are permitted of vested company contributions. Loans can be taken from Fund C after all of the other Funds have been depleted subject to the loan limitation rules in the Plan.

[6] Although the Department expresses no opinion herein on the requirement that the Trustee spread the sales of Phillips common stock over the remaining trading days before the next regular Valuation Date, it notes that Trustee's decision to spread stock sales should be in the interests of the Plan and consistent with the provisions of section 404 of the Act.

the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to (1) the proposed extensions of credit (the Loans) to the Plan from Universal Underwriters Insurance Company (the Employer), with respect to a guaranteed investment contract (the GIC) issued by Confederation Life Insurance Company (Confederation); (2) the Plan's potential repayment of the Loans upon the receipt by the Plan of payments under the GIC; and (3) the assignment by the Plan to the Employer of all claims or causes of action it may have against the Plan's former GIC placement advisor for recommending that the Plan purchase the GIC; provided the following conditions are satisfied:

(A) All terms and conditions of such transaction are no less favorable to the Plan than those which the Plan could obtain in arm's-length transactions with unrelated parties;

(B) No interest or expenses are paid by the Plan in connection with the proposed transaction;

(C) The Loans will be repaid only out of amounts paid to the Plan by Confederation, its successors, or any other responsible third party;

(D) Repayment of the Loans will be waived to the extent that the Loans exceed GIC proceeds;

(E) A qualified independent fiduciary will represent the interests of the Plan throughout the duration of the proposed transaction; and

(F) The Employer's recovery resulting from a cause of action assigned to the Employer by the Plan will be limited to the amount necessary to pay for litigation expenses and to pay off the Plan's outstanding Loan balance and any excess recovery will be transferred back to the Plan.

Summary of Facts and Representations

1. The Plan is a defined contribution 401(k) plan which provides for individual participant accounts and participant-directed investments. The Plan had approximately 1,100 participants as of December 30, 1993 and $45,924,914.96 in assets as of June 30, 1994. The Plan trustee is United Missouri Bank, N.A. (UMB), located in Kansas City, Missouri. The Employer is a Missouri corporation that provides insurance protection for automobile dealerships and other businesses. Under the terms of the Plan, participants have the option of investing in any of six investment funds, including the Stable Interest Fund, which invests primarily in interest-paying contracts with insurance companies. As of December 31, 1994, the Stable Interest Fund held ten guaranteed investment contracts and several other interest bearing contracts, as well as approximately $74,413 in a deposit account. The GIC, which was issued on February 10, 1994, is part of the Stable Interest Fund. The GIC is a single-deposit non-participating contract which allows the Plan to make benefit-responsive withdrawals to fund benefit payments, investment fund transfers, hardship withdrawals and participant loans (collectively, the Withdrawal Events). The terms of the GIC provide for interest on the $5,500,000 principal amount at a guaranteed interest rate of 6.12% over a period of 61 months. Interest payments are to be made annually to the Plan on April 1 (beginning April 1, 1995), up to the scheduled maturity date of April 1, 1999. As of June 30, 1994, the GIC had an accumulated book value of $5,615,769.50.

2. Confederation is a Canadian corporation doing business in the United States through branches in Michigan and Georgia. The Employer represents that on August 11, 1994, the Canadian insurance regulatory authorities placed Confederation into a liquidation and winding-up process, and on August 12, 1994, the insurance authorities of the State of Michigan commenced legal action to place the U.S. operations of Confederation into a rehabilitation proceeding. As a result of these actions, Confederation suspended interest and maturity payments under the GIC and significantly limited the circumstances under which withdrawals may be obtained from the GIC. The Employer represents that it has established a separate fund to which the portion of the Stable Interest Fund attributable to the GIC has been transferred. This separate fund has been frozen so that no payments for Withdrawal Events are permitted.[7]

3. The Employer proposes to advance interest free loans to the Plan at such times and in such amounts as required to fully realize the interest payments due the Plan under the GIC, but only to the extent that such amounts are not timely paid by or on behalf of Confederation. Consequently, each Loan will be reduced by any amounts actually received by the Plan, with respect to the particular interest payment due, from Confederation or any other party making payment with respect to Confederation's obligations under the GIC. In addition to the Loans required to guarantee interest payments, the Employer is also proposing a final Loan upon the GIC's final maturity date to the extent that Confederation fails to pay the full amount due. The amount of interest accrual and the final maturity payment due will be determined on the basis of the GIC's principal plus interest at the guaranteed rate, less previous withdrawals, as of the date of the Loan.

4. The Loans and their repayments will be made pursuant to a written agreement (the Loan Agreement) between the Plan and the Employer. The Plan and the Employer will also enter into a separate agreement (the Assignment Agreement) under which the Plan will agree to assign to the Employer any and all claims or causes of action it may have as holder of the GIC against the Plan's former GIC placement adviser, Buck Pension Fund Services, Inc. and its employees, agents, and related entities (collectively referred to as Buck). The Employer's recovery under the Assignment Agreement will be limited to the amount necessary to pay for litigation expenses and to pay off the Plan's outstanding Loan balance. If, pursuant to a cause of action assigned by the Plan, the Employer recovers from Buck an amount exceeding such litigation expenses and the outstanding Loan balance, the excess recovery will be transferred back to the Plan.

5. UMB (see section 1—above) has agreed to serve as independent fiduciary on behalf of the Plan throughout the duration of the transaction. UMB has acknowledged its duties, responsibilities and liabilities in acting as a fiduciary with respect to the proposed transaction. UMB represents that the Employee Benefit Division of its Trust Department has extensive experience as a provider of services to employee benefit plans. UMB maintains that less than 1% of its business is associated with the Employer. As independent fiduciary, UMB has concluded that the proposed transaction is in the best interests of, and protective of, the rights of the Plan's participants and beneficiaries. In this regard, UMB represents that the Loan Agreement will ensure that the Plan suffers no investment loss from its investment in the GIC, will make it possible for Plan Participants to gain access to their funds which have been frozen, and will allow the Plan to reinvest the funds that were previously invested in the GIC. In addition, UMB represents that the proposed transaction is protective of the Plan in that it provides the Plan with the cash it needs to fund Withdrawal Events and permits the Employer to pursue any claims that the Plan may have against the Plan's former GIC placement advisor. UMB represents that, under this arrangement, the Employer, not the Plan bears the risk of an uncertain recovery on a claim that would be expensive and time consuming for the Plan to pursue. If the Employer does bring any claim or cause of action against Buck, UMB has agreed to monitor the division of any recovery obtained in such litigation to assure that the Plan receives the portion to which it is entitled.

6. The Employer represents that it wishes to enter into the proposed transaction in order to protect the Plan participants from the effects of a prolonged rehabilitation process and from any potential loss resulting from Confederation's inability to meet its obligations under the GIC. In this regard, the Employer represents that the proposed transaction would ensure the availability of benefits equivalent to those anticipated by participants prior to the failure of Confederation, at no additional cost to participants. In addition, the Employer represents that the Loans will contribute to the Plan's ability to fund Withdrawal Events. The Employer also represents that the Loans will be non-interest-bearing and the Plan will not incur any expenses in connection with the proposed transaction.

7. Repayment of the Loans under the Agreement is limited to payments made to the Plan by or on behalf of Confederation, or its successor, or any other responsible third parties. No other assets of the Plan will be available for repayment of the Loans. If the payments by or on behalf of Confederation are not sufficient to fully repay the Loans, the Loan Agreement provides that the Employer will have no recourse against the Plan, or against any participants or beneficiaries of the Plan, for the unpaid amount. To the extent the Plan receives GIC proceeds in excess of the total amount of the Loans, such additional amounts will be retained by the Plan and allocated among the accounts of the Plan's participants.

8. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Act because: (1) The transaction will preserve the Plan's ability to timely fund participants' benefits; (2) The transaction will preserve any cause of action that may exist against the Plan's GIC placement advisor; (3) The Plan will not incur any expenses with respect to the transaction; (4) Repayment of the Loans will be made only from amounts paid to the Plan by Confederation, its successor, or any other third party; (5) If the payments by or on behalf of Confederation are not sufficient to fully repay the Loans, the Employer will have no recourse against the Plan, or against any participants or beneficiaries of the Plan, for the unpaid amount; and (6) Repayment of the Loans will be waived with respect to the amount by which the Loans exceed the amount the Plan receives from GIC proceeds.

FOR FURTHER INFORMATION CONTACT: Virginia J. Miller of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

BlackRock Financial Management L.P. (BlackRock), Located in New York, New York; Proposed Exemption

[Application No. D–09963]

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a)(1)(A) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) of the Code, shall not apply to the proposed cross-trading of equity or debt securities between various accounts managed by BlackRock (the Accounts) where at least one Account involved in any cross-trade is an employee benefit plan account (Plan Account) for which BlackRock acts as a fiduciary.

Conditions and Definitions

This proposed exemption is subject to the following conditions:

1. (a) A Plan's participation in the cross-trade program is subject to a written authorization executed in advance by a fiduciary with respect to each such Plan, the fiduciary of which is independent of BlackRock;

(b) The authorization referred to in paragraph (a) is terminable at will without penalty to such Plan, upon receipt by BlackRock of written notice of termination; and

(c) Before an authorization is made, the authorizing Plan fiduciary must be furnished with any reasonably available information necessary for the authorizing fiduciary to determine whether the authorization should be made, including (but not limited to) a copy of this exemption (if granted), an explanation of how the authorization may be terminated, a description of BlackRock's cross-trade practices, and any other reasonably available information regarding the matter that the authorizing fiduciary requests.

2. (a) No more than three (3) business days prior to the execution of any cross-trade transaction, BlackRock must inform an independent fiduciary of each Plan involved in the cross-trade transaction: (i) That BlackRock proposes to buy or sell specified securities in a cross-trade transaction if an appropriate opportunity is available; (ii) the current trading price for such securities; and (iii) the total number of shares to be acquired or sold by each such Plan;

(b) Prior to each cross-trade transaction, the transaction must be authorized either orally or in writing by the independent fiduciary of each Plan involved in the cross-trade transaction;

(c) If a cross-trade transaction is authorized orally by an independent fiduciary, BlackRock will provide written confirmation of such authorization in a manner reasonably calculated to be received by such independent fiduciary within one (1) business day from the date of such authorization;

(d) The authorization referred to in this paragraph (2) will be effective for a period of three (3) business days; and

(e) No more than ten (10) days after the completion of a cross-trade transaction, the independent fiduciary authorizing the cross-trade transaction must be provided a written confirmation of the transaction and the price at which the transaction was executed.

3. (a) Each cross-trade transaction is effected at the current market value for the security on the date of the transaction, which shall be, for equity securities, the closing price for the security on the date of the transaction, and for debt securities, the fair market value for the security as determined in accordance with paragraph (b) of Rule 17a–7 issued by the Securities and Exchange Commission (SEC) under the Investment Company Act of 1940 (the 1940 Act);

(b) The cross-trade transaction is effected at a price that: (1) In the case of any equity security, is within 10 percent of the closing price for the security on the day before the date on which BlackRock receives authorization from the independent Plan fiduciary to engage in the cross-trade transaction; and (2) in the case of any debt security, is within 10 percent of the fair market value of the security on the last valuation date preceding the date on which BlackRock receives authorization by the independent Plan fiduciary to engage in the cross-trade transaction as

[7] The Department notes that the decisions to acquire and hold the GIC are governed by the fiduciary responsibility requirements of Part 4, Subtitle B, Title I of the Act. In this regard, the Department is not herein proposing relief for any violations of Part 4 which may have arisen as a result of the acquisition and holding of the GIC issued by Confederation.

determined in accordance with SEC Rule 17a–7(b) of the 1940 Act;

(c) The securities involved in the cross-trade transaction are those for which there is a generally recognized market;

(d) The cross-trade transaction is effected only where the trade involves less than five (5) percent of the aggregate average daily trading volume of the securities which are the subject of the transaction for the week immediately preceding the authorization of the transaction. A cross-trade transaction may exceed this limit only by express authorization of independent fiduciaries on behalf of Plans affected by the transaction, prior to the execution of the cross-trade.

4. For all accounts participating in the cross-trading program, if the number of units of a particular security which any accounts need to sell on a given day is less than the number of units of such security which any accounts need to buy, or vice versa, the direct cross-trade opportunity must be allocated among the buying or selling accounts on a pro rata basis.

5. (a) BlackRock furnishes the authorizing Plan fiduciary at least once every three months, and not later than 45 days following the period to which it relates, a report disclosing: (i) a list of all cross-trade transactions engaged in on behalf of the Plan; and (ii) with respect to each cross-trade transaction, the prices at which the securities involved in the transaction were traded on the date of such transaction; and

(b) The authorizing Plan fiduciary is furnished with a summary of the information required under this paragraph 4(a) at least once per year. The summary must be furnished within 45 days after the end of the period to which it relates, and must contain the following: (i) A description of the total amount of Plan assets involved in cross-trade transactions during the period; (ii) a description of BlackRock's cross-trade practices, if such practices have changed materially during the period covered by the summary; (iii) a statement that the Plan fiduciary's authorization of cross-trade transactions may be terminated upon receipt by BlackRock of the fiduciary's written notice to that effect; and (iv) a statement that the Plan fiduciary's authorization of the cross-trade transactions will continue in effect unless it is terminated.

6. The cross-trade transaction does not involve assets of any Plan established or maintained by BlackRock or any of its affiliates.

7. All Plans that participate in the cross-trade program have total assets of at least $25 million.

8. BlackRock receives no fee or other compensation (other than its agreed upon investment management fee) with respect to any cross-trade transaction.

9. BlackRock is a discretionary investment manager with respect to Plans participating in the cross-trade program.

10. For purposes of this proposed exemption:

(a) *Cross-trade transaction* means a purchase and sale of securities between accounts for which BlackRock or an affiliate is acting as an investment manager;

(b) *Affiliate* means any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with BlackRock;

(c) *Plan Account* means an account holding assets of one or more employee benefit plans that are subject to the Act, for which BlackRock acts as a fiduciary.

Summary of Facts and Representations

1. BlackRock is a Delaware limited partnership with its principal office located in New York City. BlackRock Management Partners L.P. (BMP) is the general partner of BlackRock. The partners of BlackRock and BMP executed an agreement with PNC Bank on February 28, 1995, whereby all of the interests in BlackRock and BMP were sold to a wholly-owned subsidiary of PNC Bank, N.A. In this regard, BlackRock continues to conduct its business in the same manner as it did prior to the sale. BlackRock provides a broad range of financial services to a variety of clients, including corporations, financial institutions, registered investment companies and employee benefit plans. BlackRock serves as investment manager for a substantial number of qualified pension plans and currently has more than $24 billion of assets under management.

2. With respect to the employee benefit plans that will participate in the proposed cross-trading program (the Plans), BlackRock will be acting as a discretionary investment manager. The Plan Accounts maintained by BlackRock are all considered "managed accounts" under which BlackRock and the sponsor or other named fiduciary of the underlying Plan have agreed that the investment of the assets in question will be managed actively at the discretion of BlackRock, pursuant to written guidelines as to which types of securities to buy or sell for the account.

Under the investment guidelines for many of the Plan Accounts, BlackRock manages the assets in accordance with investment parameters that are designed to invest the assets in various types of fixed-income securities, such as mortgage-backed securities, U.S. Government securities or corporate debt securities. BlackRock primarily manages such Plan assets using duration management techniques with the performance and composition of the assets for the Plan Account measured against a specified benchmark, such as various Salomon Brothers, Lehman Brothers or Merrill Lynch indices that are selected by the Plan sponsor or other named fiduciary. The duration of the assets held by the Plan Account will be comparable to the portfolio specified by the referenced benchmark. BlackRock states that the objective factors contained in or required by these investment parameters may not be changed or otherwise altered without the prior written approval of the Plan sponsor or other named fiduciary. The types of securities held in these accounts are generally the same for each Plan Account that retains BlackRock for purposes of managing such an account, although the specific mix of securities varies depending on the investment objectives of the particular Plan Account.

3. Securities sales and purchases for Plan Accounts may result from either: (a) The active decision-making by BlackRock's account manager relating to new investments for the Plan Account; or (b) a change in the overall level of investment as a result of investments and withdrawals made to the Plan Account by the Plan sponsor or other named fiduciary requiring a rebalancing of the account with transactions involving the Plan Account's existing securities. Under either of these circumstances, BlackRock's disposition of a particular security for one Plan Account may involve a security that is desirable for another Plan Account, presenting an opportunity to save substantial dealer markups for both the liquidating Plan Account and the acquiring Plan Account. This saving could be effected by a cross-trade transaction, which involves matching BlackRock's sell orders for a particular day with its buy orders for the same day in nondealer transactions.

The execution of such cross-trades between various BlackRock accounts could involve trades between Plan Accounts, or between Plan Accounts and investment companies managed by BlackRock, or between Plan Accounts and private institutional accounts managed by BlackRock. In this regard, because BlackRock has special expertise in fixed-income securities, registered investment companies and institutional accounts for which BlackRock or an affiliate serves as the investment advisor also hold the same types of securities as the Plan Accounts, although in different combinations based on their particular investment objectives.

4. BlackRock proposes to take advantage of opportunities to eliminate unnecessary third-party dealer markups by cross-trading securities, whenever possible, directly between Plan Accounts or directly between Plan Accounts and other client accounts. BlackRock represents that comparable trades of such securities on the open market between unrelated parties often require dealer markups equal to between one-sixteenth to one percent of the price of the securities for each sale or purchase transaction. BlackRock proposes to execute cross-trade transactions on behalf of the Plan Accounts without charging any commissions or receiving any dealer markups.

5. BlackRock represents that by participating in the cross-trading program, the Plan Accounts will benefit by not incurring the cost, in terms of price, of dealing with a person or firm acting as "market-maker" for the particular security involved in the cross-trade transaction. This cost is generally measured by the spread between the bid and offer prices for the security which would be paid to the market-maker. The Plan Accounts will also benefit under the cross-trading program by avoiding false pricing differentials that result in transactions with a market-maker where the securities in question are traded in odd-lot sizes. For example, in the case of debt securities, BlackRock states that both buyer and seller will benefit by cross-trading because the securities involved will be priced either by reference to the last sale price for the securities on the date of the transaction or, if no transactions have occurred that day, by averaging the spread between the highest independent bid and lowest independent offer obtained from at least two independent dealers, in accordance with SEC Rule 17a–7(b) of the 1940 Act (see Paragraph 10 below). Thus, in situations where an average of the current bid/offer prices is used, the seller will receive a higher price than the dealers' bid price and the buyer will pay a lower price than the dealers' offer price, which would not, in all instances, be the case in an open market transaction or a transaction directly with a dealer. BlackRock states further that where trading of a particular debt or equity security is "thin" (i.e. limited number of securities available) or round lots are not available, participation in the cross- trading program may enable the Plan Accounts to obtain early opportunities to acquire or sell such securities at favorable prices. Therefore, by participating in the cross-trading program, BlackRock represents that the Plan Accounts will incur substantially lower expenses for the particular transactions and will be better able to effect purchase and sale transactions.

6. BlackRock makes decisions regarding which securities to purchase or sell for client accounts considering all of the relevant facts and circumstances, including the composition of the portfolios and the liquidity requirements of the accounts. BlackRock states that such decisions will not be influenced by the fact that an opportunity for a cross-trade may be available. In this regard, BlackRock represents that the matching of sale and purchase orders for its accounts on any particular day will be largely automatic.

With respect to the allocation of cross-trade opportunities among various accounts, including the Plan Accounts, BlackRock proposes to use a non-discretionary pro-rata allocation system. For example, if the number of units of a particular security that any accounts need to sell on a given day is less than the number of units of such security which other accounts need to buy on that date, the cross-trade opportunity would be allocated among the buying accounts on a pro-rata basis. The same procedure would apply where the number of units of a particular security to be sold by various accounts is more than the number of units of such security which other accounts need to buy on that date, so that in such instances the cross-trade opportunity would be allocated among the selling accounts on a pro-rata basis. Thus, all accounts participating in BlackRock's cross-trading program, including the Plan Accounts, will have opportunities to participate on a proportional basis in cross-trade transactions during the operation of the program. BlackRock represents that this aspect of the cross-trading program will be part of the information disclosed in writing to the fiduciaries of the Plan Accounts prior to their authorization for participation in the program (as discussed further below).

7. Under the requested exemption, only Plans with at least $25 million in total assets will be eligible to participate in the cross-trading program. A Plan fiduciary that is independent of BlackRock must provide written authorization allowing the Plan's participation in the program before any specific cross-trade transactions can be executed for such Plan. This authorization will be terminable at will upon written notice by the appropriate independent Plan fiduciary. BlackRock will receive no fee or other compensation (other than its agreed upon investment management fee) with respect to any cross-trade transaction. Thus, a Plan will not pay any separate fees to BlackRock for cross-trading services. No penalty or other charge will be made as a result of the termination of a Plan's participation in the cross-trading program. In addition, before any authorization is made by a Plan for participation in the cross-trading program, BlackRock must provide the authorizing Plan fiduciary with all materials necessary to permit an evaluation of the program. These materials will include a copy of the proposed exemption and final exemption, if granted, an explanation of how the authorization may be terminated, a description of BlackRock's cross-trading practices, and any other available information that the authorizing Plan fiduciary may reasonably request.

8. In addition to requiring a general authorization of a Plan's participation in BlackRock's cross-trading program, an independent fiduciary of each Plan must specifically authorize each cross-trade transaction. Any such authorization will be effective only for a period of three (3) business days and will be subject to certain pricing limitations (as discussed below in Paragraph 10). The authorization to proceed with the transaction may be either oral or written. If a cross-trade transaction is authorized orally by an independent fiduciary, BlackRock will provide a written confirmation of such authorization in a manner reasonably calculated to be received by the independent fiduciary within one (1) business day from the date of the authorization. The Plan fiduciary will be sent a written confirmation of the cross-trade, including the price at which it was executed, within ten (10) days of the completion of the transaction.

9. BlackRock will provide the authorizing Plan fiduciary with a report, at least once every three (3) months and not later than forty-five (45) days following the period to which it relates, that sets forth: (a) A list of all the cross-trade transactions conducted on behalf of the Plan Account during the previous period; and (b) with respect to each cross-trade transaction, the prices at which the subject securities were traded on the date of the transaction. Each Plan fiduciary will also be provided with a summary of the quarterly reports, at least once a year and not later than 45 days after the end of the period to which

it relates, that includes: (a) A description of the total amount of Plan assets involved in cross-trade transactions completed during the year; (b) a statement that the Plan fiduciary's authorization to participate in the cross-trading program can be terminated without penalty upon BlackRock's receipt of a written notice to that effect; (c) a statement that the fiduciary's authorization of the Plan's participation in the program will continue unless it is terminated; and (d) a description of any material change in BlackRock's cross-trade practices during the period covered by the summary. These reports will provide the Plan fiduciaries with a mechanism for monitoring the operation of the cross-trade program. The applicant represents that the authorization of each cross-trade will prevent BlackRock from favoring one account at the expense of another in the cross-trade transaction.

10. The securities involved in any cross-trade transaction will be only those for which there is a generally recognized market. BlackRock represents that each cross-trade transaction will be effected at the current market value for the securities on the date of the transaction. For all equity securities, the current market value shall be the closing price for the security on the date of the transaction. For all debt securities, the current market value shall be the fair market value of the security as determined on the date of the transaction in accordance with SEC Rule 17a–7 under the 1940 Act. In this regard, SEC Rule 17a–7(b) contains four possible means of determining "current market value" depending on such factors as whether the security is a reported security and whether its principal market is an exchange. This Rule is also applicable to registered investment companies for which BlackRock acts as an investment advisor.

In addition, BlackRock states that each cross-trade transaction will be effected at a price that: (a) In the case of any equity security, is within 10 percent of the closing price for the security on the day before the date on which BlackRock receives authorization from the independent Plan fiduciary to engage in the cross-trade transaction; and (b) in the case of any debt security, is within 10 percent of the fair market value of the security on the last valuation date preceding the date on which BlackRock receives authorization by the independent Plan fiduciary to engage in the cross-trade transaction. This safeguard prevents BlackRock from effecting cross-trades at prices that were not contemplated at the time the independent fiduciary authorized the transaction.

Finally, each cross-trade transaction will be effected only where the trade involves less than five (5) percent of the aggregate average daily trading volume of the securities which are the subject of the transaction for the week immediately preceding the authorization of the transaction. BlackRock states that a particular cross-trade transaction may exceed this limit only by express authorization of independent fiduciaries on behalf of Plans affected by the transaction, prior to the execution of the cross-trade.

11. In summary, the applicant represents that the proposed transactions will satisfy the statutory criteria of section 408(a) of the Act because, among other things: (a) An independent Plan fiduciary must provide written authorization, terminable at will and without penalty, for each Plan's participation in the cross-trading program; (b) oral or written authorization must be provided by the independent Plan fiduciary to BlackRock prior to each cross-trade transaction; (c) all cross-trades will be executed at the current market price for the security on the date of the transaction, as determined by an independent third party source; (d) a cross-trade transaction will be effected only if certain price requirements are satisfied; (e) all securities involved in cross-trades will be ones for which there is a generally recognized market; (f) BlackRock will receive no commissions or additional fees as a result of the proposed cross-trades; (g) BlackRock will provide periodic reporting on cross-trade transactions to the participating Plan's independent fiduciary; (h) Plans participating in the cross-trading program will realize savings on their transactions due to the elimination of brokerage commissions, transaction fees and dealer markups; (i) the Plans participating in the cross-trading program will have assets of at least $25 million; and (j) the Plans participating in the cross-trading program will not include any employee benefit plan established or maintained by BlackRock or its affiliates.

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department, telephone (202) 219–8194. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 2nd day of June, 1995.

Ivan Strasfeld,

Director of Exemption Determinations Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 95–13910 Filed 6–6–95; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL INSTITUTE FOR LITERACY

Agency Information Collection Activities Under OMB Review

AGENCY: National Institute for Literacy.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before June 16, 1995.

FOR FURTHER INFORMATION CONTACT: Susan Green at (202) 632–1509.

SUPPLEMENTARY INFORMATION:

Title

Application for Literacy Leader Fellowships which will provide assistance to individuals pursing careers in adult education or literacy in the areas of instruction, management, research, or innovation and adult new learners. Under the program, career literacy workers and adult learners are applicants for fellowships.

Abstract

The National Literacy Act of 1991 established the National Institute for Literacy and required that the Institute award fellowships to engage in research, education, training, technical assistance, or other activities to advance the field of adult education or literacy, including the training of volunteer literacy providers at the national, State, or local level. Evaluations to determine successful applicants will be made by a panel of literacy experts using the published criteria. The Institute will use this information to make a maximum of four fellowships for a period of no less than 3 nor more than 12 months of full-time activity or the equivalent in less than full-time participation.

Burden Statement: The burden for this collection of information is estimated at 4 hours per response. This estimate includes the time needed to review instructions, complete the form, and review the collection of information.

Respondents: Individuals.

Estimated Number of Respondent: 100.

Estimated number of Responses Per Respondent: 1.

Estimated Total Annual Burden on Respondents: 400 hours.

Frequency of Collection: One time. Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden to: Susan Green, National Institute for Literacy, 800 Connecticut Ave., NW, Suite 200, Washington, DC 20006, and Dan Chenok, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th St., NW, Washington, DC 20503.

Dated: Dated: June 2, 1995.

Andrew J. Hartman,

Director, NIFL.

[FR Doc. 95–14068 Filed 6–6–95; 8:45 am]

BILLING CODE 6055–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–255]

Consumers Power Company; Palisades Plant Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from Facility Operating License No. DPR–20, issued to Consumers Power Company, (the licensee), for operation of the Palisades Plant located in Van Buren County, Michigan.

Environmental Assessment

Identification of the Proposed Action

This Environmental Assessment has been prepared to address potential environmental issues related to the licensee's application of March 17, 1995, as supplemented April 26, 1995. The proposed action would exempt the licensee from the requirements of 10 CFR Part 50, Appendix J, Paragraph III.D.1.(a), to the extent that a one-time interval extension for the Type A test (containment integrated leak rate test) by approximately 21 months from the May 1995 refueling outage to the 1997 refueling outage would be granted.

The Need for the Proposed Action

The proposed action is needed to permit the licensee to defer the Type A test from the May 1995 refueling outage to the 1997 refueling outage, thereby saving the cost of performing the test and eliminating the test period from the critical path time of the outage.

Environmental Impact of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the proposed one-time exemption would not increase the probability or consequences of accidents previously analyzed and the proposed one-time exemption would not affect facility radiation levels or facility radiological effluents. The licensee has analyzed the results of previous Type A tests performed at the Palisades Plant to show adequate containment performance and will continue to be required to conduct the Type B and C local leak rate tests which historically have been shown to be the principal means of detecting containment leakage paths with the Type A tests confirming the Type B and C test results. It is also noted that the licensee, as a condition of the proposed exemption, would perform the visual containment inspection although it is only required by Appendix J to be conducted in conjunction with Type A tests. The NRC staff considers that these inspections, though limited in scope, provide an important added level of confidence in the continued integrity of the containment boundary. The change will not increase the probability or consequences of accidents, no changes are being made in the types or amounts of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the NRC staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Palisades Plant dated June 1972 and its addendum dated February 1978.

Agencies and Persons Consulted

In accordance with its stated policy, on May 4, 1995, the NRC staff consulted with the Michigan State official, Dennis Hahn of the Michigan Department of Public Health, Nuclear Facilities and Environmental Monitoring, regarding

the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letters dated March 17 and April 26, 1995, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Van Wylen Library, Hope College, Holland, Michigan 49423.

Dated at Rockville, Maryland, this 31st day of May 1995.

For the Nuclear Regulatory Commission.

Janet L. Kennedy,

Project Manager, Project Directorate III–1, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–13975 Filed 6–6–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–458]

Entergy Operations, Inc.; River Bend Station, Unit 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of its regulations to Facility Operating License No. NPF–47, issued to Entergy Operations, Inc. (the licensee), for operation of the River Bend Station, Unit 1 (RBS), located in West Feliciana Parish, Louisiana.

Environmental Assessment

Identification of Proposed Action

The proposed action is in accordance with the licensee's application dated October 24, 1994, for exemption from certain Requirements of 10 CFR 73.55, "Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage." The exemption would allow implementation of a hand geometry biometric system for site access control such that picture badges and access control cards for certain non-employees can be taken offsite.

The Need for the Proposed Action

Pursuant to 10 CFR 73.55, paragraph (a), the licensee shall establish and maintain an onsite physical protection system and security organization.

10 CFR 73.55(d), "Access Requirements," paragraph (1), specifies that "licensee shall control all points of personnel and vehicle access into a protected area." 10 CFR 73.55(d)(5) specifies that "A numbered picture badge identification system shall be used for all individuals who are authorized access to protected areas without escort." 10 CFR 73.55(d)(5) also states that an individual not employed by the licensee (i.e., contractors) may be authorized access to protected areas without escort provided the individual "receives a picture badge upon entrance into the protected area which must be returned upon exit from the protected area . . ."

Currently, employee and contractor identification/access control badges are issued and retrieved on the occasion of each entry to and exit from the protected areas of the River Bend site. Station security personnel are required to maintain control of the badges while the individuals are offsite. Security personnel retain each identification/access control badge when not in use by the authorized individual, within appropriately designed storage receptacles inside a bullet-resistant enclosure. An individual who meets the access authorization requirements is issued the individual picture identification/access control card which allows entry into preauthorized areas of the station. While entering the plant in the present configuration, an authorized individual is "screened" by the required detection equipment. The individual provides a personal identification number (PIN) to the issuing guard and is screened again by the issuing security officer using the picture identification on the access card. Having received the badge, the individual proceeds to the access portal, inserts the access control card into the card reader, and passes through the turnstile which is unlocked by the access card. Once inside the station, the access card allows entry only to preauthorized areas and the individual's PIN is no longer required.

This present procedure is labor intensive since security personnel are required to verify badge issuance, ensure badge retrieval, and maintain the badge in orderly storage until the next entry into the protected area. The regulations permit employees to remove their badge from the site, but an exemption from 10 CFR 73.55(d)(5) is required to permit contractors to take their badge offsite instead of returning them when exiting the site.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the licensee's application. Under the proposed system, all individuals authorized to gain unescorted access will have the physical characteristics of their hand (hand geometry) recorded with their badge number. Since the hand geometry is unique to each individual and its application in the entry screening function would preclude unauthorized use of a badge, the requested exemption would allow employees and contractors to keep their badges at the time of exiting the protected area. The process of verifying badge issuance, ensuring badge retrieval, and maintaining badges could be eliminated while the balance of the access procedure would remain intact. Firearm, explosive, and metal detection equipment and provisions for conducting searches will remain as well. The security officer responsible for the last access control function (controlling admission to the protected area) will also remain isolated within a bullet-resistant structure in order to assure his or her ability to respond or to summon assistance.

Use of a hand geometry biometrics system exceeds the present verification methodology's capability to discern an individual's identity. Unlike the photograph identification badge, hand geometry is nontransferable. During the initial access authorization or registration process, hand measurements are recorded and the template is stored for subsequent use in the identity verification process required for entry into the protected area. Authorized individuals insert their access authorization card into the card reader and the biometrics system records an image of the hand geometry. The unique features of the newly recorded image are then compared to the template previously stored in the database. Access is ultimately granted based on the degree to which the characteristics of the image match those of the "signature" template.

Since both the badge and hand geometry would be necessary for access into the protected area, the proposed system would provide for a positive verification process. Potential loss of a badge by an individual, as a result of taking the badge offsite, would not enable an unauthorized entry into protected areas.

The access process will continue to be under the observation of security personnel. The system of identification/access control badges will continue to be used for all individuals who are authorized access to protected areas without escorts. Badges will continue to be displayed by all individuals while inside the protected area. Addition of a hand geometry biometrics system will provide a significant contribution to effective implementation of the security plan at each site.

The change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does involve features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternative to the Proposed Action

Since the Commission has concluded there is not measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statements related to operation of River Bend Station, Unit 1.

Agencies and Persons Consulted

In accordance with its states policy, on May 16, 1995, the staff consulted with the Louisiana State official, Dr. Stan Shaw, Assistant Administrator of the Louisiana Radiation Protection Division, Department of Environmental Quality, regarding the environmental impact of the proposed action. The State official had no comments.

Findings of No Significant Impact

Based on the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to this proposed action, see the request for exemption dated October 24, 1994, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Government Documents Department, Louisiana State University, Baton Rouge, LA 70803.

Dated at Rockville, Maryland this 30th day of May 1995.

For the Nuclear Regulatory Commission.

David L. Wigginton,

Senior Project Manager, Project Directorate IV–1, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–13979 Filed 6–6–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–498 and 499]

Houston Lighting & Power Company City Public Service Board of San Antonio Central Power and Light Company City of Austin, Texas; South Texas Project, Units 1 and 2 Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from Facility Operating License Nos. NPF–76 and NPF–80, issued to Houston Lighting & Power Company (HL&P) acting on behalf of itself and for the City Public Service Board of San Antonio (CPS), Central Power and Light Company (CPL), and City of Austin, Texas (COA) (the licensees), for operation of the South Texas Project, Units 1 and 2, (STP) located in Matagorda County, Texas.

Environmental Assessment

Identification of the Proposed Action

The proposed action would allow implementation of a hand geometry biometric system of site access control such that photograph identification badges can be taken offsite.

The proposed action is in accordance with the licensee's application dated March 27, 1995, for exemption from certain requirements of 10 CFR 73.55, "Requirements for physical protection of licensed activities in nuclear power plant reactors against radiological sabotage."

The Need for the Proposed Action

Pursuant to 10 CFR 73.55, paragraph (a), the licensee shall establish and maintain an onsite physical protection system and security organization.

"Access Requirements," of 10 CFR 73.55(d), paragraph (1), specifies that "licensee shall control all points of personnel and vehicle access into a protected area. . . ." It is specified in 10 CFR 73.55(d)(5) that "A numbered picture badge identification system shall be used for all individuals who are authorized access to protected areas without escort." It also states that an individual not employed by the licensee (i.e., contractors) may be authorized access to protected areas without escort provided the individual "receives a picture badge upon entrance into the protected area which must be returned upon exit from the protected area. . . ."

Currently, unescorted access into protected areas of STP is controlled through the use of a photograph on a combination badge and keycard (hereafter referred to as a badge). The security officers at each entrance station use the photograph on the badge to visually identify the individual requesting access. The badges for both licensee employees and contractor personnel, who have been granted unescorted access, are issued upon entrance at each entrance/exit location and are returned upon exit. The badges are stored and are retrievable at each entrance/exit location. In accordance with 10 CFR 73.55(d)(5), contractor individuals are not allowed to take badges offsite. In accordance with the plants' physical security plans, neither licensee employees nor contractors are allowed to take badges offsite.

The licensee proposes to implement an alternative unescorted access control system which would eliminate the need to issue and retrieve badges at each entrance/exit location and would allow all individuals with unescorted access to keep their badges with them when departing the site.

An exemption from 10 CFR 73.55(d)(5) is required to permit contractors to take their badges offsite instead of returning them when exiting the site.

The Commission has completed its evaluation of the proposed action. Under the proposed system, each individual who is authorized for unescorted entry into protected areas would have the physical characteristics of their hand (hand geometry) registered with their badge number in the access control system. When an individual

enters the badge into the card reader and places the hand on the measuring surface, the system would record the individual's hand image. The unique characteristics of the extracted hand image would be compared with the previously stored template to verify authorization for entry. Individuals, including licensee employees and contractors, would be allowed to keep their badge with them when they depart the site.

Based on a Sandia report entitled "A Performance Evaluation of Biometric Identification Devices" (SAND91—0276 UC—906 Unlimited Release, Printed June 1991), and on its experience with the current photo-identification system, the licensee concludes that the proposed hand geometry system will provide the same high assurance objective regarding onsite physical protection that is achieved by the current system. Since both the badge and hand geometry would be necessary for access into the protected area, the proposed system would provide for a positive verification process. Potential loss of a badge by an individual, as a result of taking the badge offsite, would not enable an unauthorized entry into protected areas. The licensee will implement a process for testing the proposed system to ensure a continued overall level of performance equivalent to that specified in the regulation. The Physical Security Plans for both sites will be revised to include implementation and testing of the hand geometry access control system and to allow licensee employees and contractors to take their badges offsite.

The access process will continue to be under the observation of security personnel. A numbered picture badge identification system will continue to be used for all individuals who are authorized access to protected areas without escorts. Badges will continue to be displayed by all individuals while inside the protected area.

Environmental Impacts of the Proposed Action

The change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to the action would be to deny the request. Such action would not change any current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the "Final Environmental Statement related to the operation of South Texas Project, Units 1 and 2," dated August 1986.

Agencies and Persons Consulted

In accordance with its stated policy, on May 12, 1995, the staff consulted with the Texas State official, Arthur C. Tate of the Bureau of Radiation Control, Texas Department of Health, regarding the environmental impact of the proposed action. The State official had no comments.

Findings of No Significant Impact

Based on the environmental assessment, the Commission concludes that the proposed action will not have a significant impact on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated March 27, 1995, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Wharton County Junior College, J.M. Hodges Learning Center, 911 Boling Highway, Wharton, TX 77488.

Dated at Rockville, Maryland, this 31st day of May 1995.

For the Nuclear Regulatory Commission.

Thomas W. Alexion,

Project Manager, Project Directorate IV–1, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–13978 Filed 6–6–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–443]

North Atlantic Energy Service Corporation, Seabrook Station, Unit No. 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from Facility Operating License No. NPF–86, issued to North Atlantic Energy Service Corporation (the licensee or North Atlantic), for operation of the Seabrook Station, Unit No. 1 (Seabrook) located in Rockingham County, New Hampshire.

Environmental Assessment

Identification of the Proposed Action

This Environmental Assessment has been prepared to address potential environmental issues related to North Atlantic's request for exemption dated October 17, 1994, as supplemented by letters dated February 13, 1995, April 26, 1995, and May 12, 1995. The proposed action would exempt North Atlantic from certain requirements of 10 CFR 73.55. The proposed action would allow North Atlantic to eliminate issuing and retrieving photograph identification badges at the entrance and exit location to the Seabrook protected area upon implementation of a biometric (hand geometry) system of site access control. North Atlantic would be authorized to permit all individuals with unescorted access, including North Atlantic employees, contractor personnel, NRC employees, and others to retain their badges when leaving the Seabrook protected area.

The Need for the Proposed Action

The requirements for the establishment and maintenance of a physical protection system against theft of special nuclear material and against radiological sabotage at certain sites where special nuclear material is used are prescribed in 10 CFR Part 73. Facilities licensed under 10 CFR Part 50 are included in the scope of 10 CFR Part 73. Paragraph 73.55(a) specifies the general performance objectives and requirements of an onsite physical protection system and security organization, and paragraphs 73.55(b) through 73.55(h) specify minimum

specific requirements for the onsite physical protection system and security organization. Access requirements are specified in 73.55(d). Paragraph 73.55(d)(1) requires that licensees control all points of personnel and vehicle access into a protected area, and 73.55(d)(5) requires a numbered picture badge identification system to be used for all individuals who are authorized access to protected areas without escort. Paragraph 73.55(d)(5) also states that an individual not employed by the licensee may be authorized access to protected areas without escort provided the individual receives a picture badge upon entrance into the protected area which must be returned upon exit from the protected area.

Currently, unescorted access into protected areas of Seabrook is controlled through the use of a numbered picture badge and an attached but separate keycard (containing encoded information to relate the keycard to the badged individual) which is used to actuate the entrance turnstile for access into the protected area and certain other specific areas authorized within the protected area. The badges and keycards for all individuals who have been granted unescorted access, including North Atlantic employees, contractor personnel, NRC employees, and others, are stored by security personnel at the entrance to the protected area whenever they are not being used by the authorized individuals. Security personnel stationed at the entrance to the protected area use the photograph on the badge to visually verify the identity of an individual requesting access. After verification, the badge and keycard are issued to the individual to allow entrance to the protected area. The badge and keycard are retrieved when the individual is exiting the protected area. In accordance with the Seabrook Physical Security Plan and Safeguards Contingency Plan, no individual is allowed to retain a badge and keycard when leaving the protected area.

North Atlantic proposes to implement an alternative unescorted access control system which would eliminate the need to issue and retrieve badges and keycards at the protected area entrance/exit location and, instead, would allow all individuals with unescorted access to retain their badges and keycards when leaving the protected area.

An exemption from 10 CFR 73.55(d)(5) is required to permit individuals who are not North Atlantic employees to take their numbered picture badges from the protected area.

The Commission has completed its evaluation of the proposed action. Under the proposed system, each individual who is authorized for unescorted entry into the protected area would have the physical characteristics of their hand (hand geometry) registered with their badge number and keycard in the access control system. When an individual inserts the keycard into the card reader and places the hand on the measuring surface, the system would record the individual's hand image. The unique characteristics of the extracted hand image would be compared with the previously stored template associated with that badge and keycard to verify authorization for entry. All individuals authorized for unescorted access would be allowed to retain their badge and keycard when leaving the protected area.

Based on Sandia Laboratory report, SAND91—0276 UC—906, *A Performance Evaluation of Biometric Identification Devices*, (Unlimited Release, Printed June 1991), and on North Atlantic's experience with the current photo-identification system, North Atlantic demonstrated that the proposed hand geometry system would provide enhanced site access control. Since the badge, keycard, and hand geometry would be necessary for access into the protected area, the proposed system would provide for a positive verification process. Loss of either a picture badge, keycard or both badge and keycard outside the protected area would not enable an unauthorized entry into the protected area. North Atlantic will implement a process for testing the proposed system to ensure continued overall level of performance equivalent to that specified in the regulation. The Physical Security Plan and Safeguards Contingency Plan for Seabrook will be revised to include implementation and testing of the hand geometry access control system and to allow badges and keycards to be taken from the protected area.

The access will continue to be under the observation of security personnel. A numbered picture badge identification system will continue to be used for all individuals who are authorized access to protected areas without escorts, and picture badges will continue to be displayed by all individuals while inside the protected area.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed exemption and concludes that there will be no changes to Seabrook or the environment as a result of this action. The proposed exemption does not in any way affect the manner by which the facility is operated or change the facility itself. Accordingly, the Commission concludes that the proposed action would result in no radiological or nonradiological environmental impact.

Alternatives to the Proposed Action

Since the Commission has concluded there is no environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to the action would be to deny the request. Such action would not change any current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Seabrook Station, Unit No. 1.

Agencies and Persons Consulted

In accordance with its stated policy, on May 17, 1995 the NRC staff consulted with the Massachusetts State official, Mr. James Muckerheid of the Massachusetts Emergency Management Agency regarding the environmental impact of the proposed action. On May 18, 1995 the NRC staff consulted with the New Hampshire State official, Mr. George Iverson of the New Hampshire Emergency Management Agency. The State officials had no comments.

Finding of No Significant Impact

Based on the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see North Atlantic's letters dated October 17, 1994, February 13, 1995, April 26, 1995, and May 12, 1995, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Exeter Public Library, Founders Park, Exeter, NH 03833.

Dated at Rockville, Maryland, this 31st day of May 1995.

For the Nuclear Regulatory Commission.

Phillip F. McKee,

Director, Project Directorate I–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–13977 Filed 6–6–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–275 and 50–323]:

Pacific Gas and Electric Company Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR–80 and DPR–82, issued to Pacific Gas and Electric Company (the licensee), for operation of Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, located in San Luis Obispo County, California.

Environmental Assessment

Identification of the Proposed Action

The proposed action would allow the storage of fuel in new and spent fuel racks with enrichments up to and including 5.0 weight percent U–235, would clarify that substitution of fuel rods with filler rods is acceptable for fuel designs that have been analyzed with applicable NRC-approved codes and methods, and would allow the use of ZIRLO fuel cladding in the future in addition to Zircaloy–4. The proposed action is in accordance with the licensee's application for amendment dated February 6, 1995, as supplemented by letters dated March 23, and May 22, 1995.

The Need for the Proposed Action

The proposed action is needed so that the licensee can use higher fuel enrichment to provide the flexibility of extending the fuel irradiation and to permit future operation with longer fuel cycles.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revisions to the technical specifications. The proposed revisions would permit storage of fuel enriched to a nominal 5.0 weight percent Uranium 235. The safety considerations associated with storing new and spent fuel of a higher enrichment have been evaluated by the NRC staff. The staff has concluded that such changes would not adversely affect plant safety. The proposed changes have no adverse effect on the probability of any accident. No changes are being made in the types or amounts of any radiological effluents that may be released offsite. There is no significant increase in the allowable individual or cumulative occupational radiation exposure.

The environmental impacts of transportation resulting from the use of higher enrichment fuel and extended irradiation (an enveloping case for the Diablo Canyon Power Plant since burnup remains unchanged) were published and discussed in the staff assessment entitled, "NRC Assessment of the Environmental Effects of Transportation Resulting from Extended Fuel Enrichment and Irradiation," dated July 7, 1988, and published in the **Federal Register** (53 FR 30355) on August 11, 1988, as corrected on August 24, 1988 (53 FR 32322) in connection with Shearon Harris Nuclear Power Plant Unit 1: Environmental Assessment and Finding of No Significant Impact. As indicated therein, the environmental cost contribution of the proposed increase in the fuel enrichment and irradiation limits are either unchanged or may, in fact, be reduced from those summarized in Table S–4 as set forth in 10 CFR 51.52(c). Accordingly, the Commission concludes that there are no significant radiological environment impacts associated with the proposed amendment.

With regard to potential nonradiological impacts of reactor operation with higher enrichment, the proposed action involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2.

Agencies and Persons Consulted

In accordance with its stated policy, on May 22, 1995, the staff consulted with the California State official, Mr. Steve Hsu of the Department of Health Services, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated February 6, 1995, as supplemented by letters dated March 23, and May 22, 1995, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW, Washington, DC, and at the local public document room located at the California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Louis Obispo, California 93407.

Dated at Rockville, Maryland, this 1st day of June 1995.

For the Nuclear Regulatory Commission.

William H. Bateman,

Director, Project Directorate IV–2, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–13976 Filed 6–6–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–277 and 50–278]

PECO Energy Company; Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR–44 and DPR–56 issued to PECO Energy Company (the licensee) for operation of the Peach Bottom Atomic Power Station, Units 2 and 3, located at York County, Pennsylvania.

The proposed amendment would revise the technical specification (TS) limiting condition for operation (LCO) for the Peach Bottom emergency diesel generators (EDGs). The LCOs will be revised to allow a single EDG to be out of service for a period of 30 days

provided a recently installed tie-line from the Conowingo Hydroelectric Station is operable. The allowed out of service time (AOT) for a single EDG will revert to the existing 7 day AOT if the Conowingo line is inoperable. The LCO will also be modified to address instances where either the Conowingo line or an EDG become inoperable if the other is already inoperable. The proposed amendment will add a TS reporting requirement if the Conowingo line is inoperable for 15 days. The proposed amendment will also add a surveillance requirement to verify the operability of the Conowingo line once per month.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By July 7, 1995, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Government Publications Section, State Library of Pennsylvania, (Regional Depository) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularly the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference schedule in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to reply in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to John F. Stolz: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to J. W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, PECO Energy Company, 2301 Market Street, Philadelphia, Pennsylvania 19101, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated April 7, 1994, as supplemented by letters dated June 2, and September 6, 1994, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and the Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Dated at Rockville, Maryland, this 31st day of May, 1995.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–13974 Filed 6–6–95; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–35786; File No. SR–Amex–94–51]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 1 and 2 to the Proposed Rule Change by the American Stock Exchange, Inc. Relating to the In Person Trading Volume Requirement for Registered Option Traders

May 31, 1995.

On November 18, 1994, the American Stock Exchange, Inc. ("Amex" or "Exchange"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] filed with the Securities and Exchange Commission ("Commission") a proposal regarding the in person[3] trading volume requirement for Registered Options Traders ("Traders").[4] Notice of the proposal appeared in the **Federal Register** on December 12, 1994.[5] No comment letters were received on the proposed rule change. The Exchange filed Amendment No. 1 to the proposal on January 9, 1995,[6] and Amendment No. 2 on April 6, 1995.[7] This order approves the proposal, as amended.

Specifically, the Exchange proposes to amend Rule 958 to: (1) Require Traders to execute at least 25% of his or her individual options transactions and total contract volume in each calendar quarter in person and not through the use of orders;[8] (2) require Traders to have at least 75% of their trading activity (measured in terms of contract volume) in the classes of options to which they are assigned, as opposed to the 50% currently required;[9] and (3) extend market maker capital and margin treatment for a Trader's opening off-floor orders provided that at least (i) 80% of their total transactions and contract volume on the Exchange in each calendar quarter are executed in person and not through the use of orders and (ii) the Trader satisfies its obligations pursuant to Rule 958.[10] In addition, the proposal requires Traders to satisfy the market making obligations set forth in Amex Rule 958[11] for all off-floor orders for which a Trader receives market maker treatment and, in general, that those orders be effected only for purposes of hedging, reducing the risk of, rebalancing, or liquidating open positions of the Trader.

Currently, under Amex Rule 958 there is no in person trading volume or transaction requirement for Traders. The Exchange believes, however, that establishing an in person requirement for Traders of at least 25% of a Trader's individual transactions and total contract volume during each calendar quarter will result in better, more liquid markets because Traders will be available in trading crowds to contribute to the maintenance of fair and orderly markets, and will encourage Traders to make more competitive bids and offers and trade for their own account when there exists a lack of price continuity, a temporary disparity between the supply of and demand for options contracts, or a temporary distortion of the price relationships between options.

With regard to market maker treatment for off-floor options transactions, Amex Rule 958(g) currently provides that only option transactions initiated on the Amex's floor count as market maker transactions. Thus, only on-floor market maker transactions qualify for favorable capital and margin treatment under the Amex's rules, even if such orders are entered to adjust or hedge the risk of positions of the Trader that result from the Trader's on-floor market making activity.[12]

The Amex states that because a Trader currently cannot effectively adjust his or her positions or engage in hedging or other risk limiting opening transactions from off the Exchange floor without incurring a significant economic penalty, Amex Traders must either be physically present on the floor at all times while the market is open, or face significant risks of adverse market movements during those times when they must necessarily be absent from the trading floor. The Amex argues that by imposing costs on certain hedging or risk-adjusting transactions of Traders, the Amex's current rules may prevent Traders from effectively discharging their market making obligations and expose them to unacceptable levels of risk. The Amex believes that the amended proposal addresses these concerns by offering Traders the opportunity to obtain market maker treatment for up to 20% of their off-floor opening transactions.

Traders who elect market maker treatment for off-floor opening transactions but fail to satisfy the proposal's requirements, including the 80% in person requirement, will be referred to the Amex's Committee on Specialist and Registered Trader Performance and subject to the disciplinary measures provided in Article V of the Exchange's Constitution.[13] Under Article V of the Exchange's Constitution, the Exchange

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[3] "In person" means that options transactions are personally executed by a Trader on the Amex floor and not through the use of orders given to a floor broker or left on a specialist's book.

[4] Traders are considered specialists for purposes of the Act. *See* Amex Rule 958, Commentary .01.

[5] *See* Securities Exchange Act Release No. 35050 (December 5, 1994), 59 FR 64002.

[6] As discussed herein, in Amendment No. 1 the Exchange clarifies the obligation of Traders receiving market maker treatment for off-floor transactions and proposes disciplinary measures for Traders improperly accepting market maker treatment for such transactions. *See* Letter from Claire McGrath, Managing Director and Special Counsel, Derivative Securities, Amex, to Michael Walinskas, Branch Chief, Office of Market Supervision ("OMS"), Division of Market Regulation ("Division"), Commission, dated January 9, 1995 ("Amendment No. 1").

[7] In Amendment No. 2, the Exchange proposes to amend Amex Rule 958, Commentary .01 and .03, to provide that Traders must have at least 75% of their trading activity in classes in which they are assigned. Additionally, the Exchange proposes that Traders who elect market maker treatment for off-floor opening transactions but fail to satisfy the requirements of Rule 958 will be referred to the Exchange's Committee on Specialist and Registered Trader Performance rather than the Exchange's Minor Floor Violation Disciplinary Committee as provided in Amendment No. 1. *See* Letter from Claire McGrath, Managing Director and Special Counsel, Derivative Securities, Amex, to Michael Walinskas, Branch Chief, OMS, Division, Commission, dated April 5, 1995 ("Amendment No. 2").

[8] The proposal also gives the Exchange the authority to increase the 25% in person requirement if the Exchange, in its discretion, deems such increase to be necessary. The Exchange would not have the authority to lower the in person requirement below 25% without the prior approval of the Commission pursuant to a rule filing under Section 19b of the Act.

[9] *See* Amendment No. 2, *supra* note 7.

[10] *See* Amendment No. 1, *supra* note 6. Currently, Rule 958, Commentary .03 provides, among other things, that except for unusual circumstances, at least 50% of a Trader's trading activity in any calendar quarter (in terms of contract volume) must ordinarily be in classes of options to which the Trader is assigned. In Amendment No. 2, the Exchange proposes to amend this requirement so that at least 75% of total activity (in terms of contract volume) must be in assigned classes. *See* Amendment No. 2, *supra* note 7.

[11] These obligations include, but are not limited to, requiring that such transactions contribute to the maintenance of fair and orderly markets, and requiring market makers to bid and offer within prescribed parameters.

[12] Questions of margin and capital treatment do not arise in connection with closing transactions initiated from off the floor, because they only reduce or eliminate existing positions.

[13] *See* Amendment No. 2, *supra* note 7.

may impose appropriate discipline for violations of the Act and the Exchange's rules, including expulsion, suspension, limitation of activities, fines, censure, or any other suitable sanction.[14]

The Amex believes that the amended proposal presents a more appropriate and realistic treatment of Trade transactions initiated from both off the trading floor and in person than what is provided for under existing Exchange Rule 958. The Amex believes that requiring Traders to execute at least 25% of their transactions and total contract volume in each calendar quarter in person and, further, extending favorable margin and capital treatment for off-floor transactions only to those Traders who satisfy the 80% in person transaction and trading volume requirement, should have the effect of increasing the extent to which Trader transactions contribute to liquidity and to the maintenance of fair and orderly markets on the Amex by providing for a greater degree of in person trading by Traders and by enabling Traders to better manage the risk of their market making activities. Thus, the Amex believes that the proposal is consistent with and in furtherance of the objectives of Section 6(b)(5) and Section 11(a) of the Act in that it will promote the maintenance of fair and orderly markets on the Amex and will contribute to the protection of investors and the public interest.

The Commission finds that the proposal rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b)(5) in that the proposal is designed to promote just and equitable principles of trade and to protect investors and the public interest.[15] In addition, the Commission finds that the proposal is consistent with the requirement under Section 11(b) of the Act and the rules thereunder that require market maker transactions to be consistent with the maintenance of fair and orderly markets.[16]

The Commission believes that the proposal is a reasonable effort by the Amex to accommodate the needs of Traders to effect off-floor opening transactions while reinforcing the requirement under Amex Rule 958 that Traders' transactions constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market. The Commission believes that the proposed 25% minimum in person trading requirement, the 75% minimum assigned class requirement, and the 80% in person requirement for market maker treatment for off-floor trades, taken together, will help to ensure that Traders' transactions continue to contribute to the maintenance of fair and orderly markets while, at the same time, enabling Traders to better manage the risk of their market making activities.

As the Amex has noted, under the current requirements, Traders who adjust existing positions for hedging purposes while not physically present on the Exchange floor cannot receive market maker margin treatment for such orders under any circumstances and must decide whether to close out their positions or place their orders in a customer margin account requiring 50% margin. While this may not be an unreasonable result in many cases, the Commission believes that the Amex has set forth a reasonable proposal that permits market maker treatment for certain off-floor orders under very limited circumstances that ensure that such orders must contribute to the maintenance of fair and orderly markets and that require Traders to comply with a heightened 80% in person trading requirement.

Moreover, by requiring that a percentage of Traders' transactions be effected in person and by strengthening the requirement that a substantial percentage of Traders' transactions be effected in their appointed classes, the proposal will improve Amex market maker capabilities. The Commission believes these requirements will help to ensure that Traders will be physically present in their appointed classes to respond to public orders and to improve the price and size of the markets made on the Amex floor. In addition, the proposal will have the effect of reducing the extent to which Amex Traders can effectively function as privileged investors by entering the Amex floor only long enough to drop off orders with a floor broker, without ever actually making competitive quotations or otherwise affirmatively functioning as market makers. Thus, the Commission believes the Amex proposal will serve to maintain fair and orderly markets and generally promote the protection of investors and the public interest.[17]

In summary, the Commission believes that the introduction of an in person trading requirement, an increase in the required percentage of trades in assigned classes, and the availability of market maker treatment for a limited number of off-floor transactions, as described above, should help to ensure the stability and orderliness of the Amex's markets.

The Commission expects the Amex to closely monitor those Traders electing to receive market maker treatment for off-floor orders as provided under the proposal to ensure that they are meeting the in person trading requirements in addition to their other market making obligations required under Rule 958, as amended. The Amex has represented that market makers who choose to receive favorable margin and capital treatment under the proposal but fail to satisfy the proposal's requirements will be referred to the Exchange's Committee on Specialist and Registered Trader Performance and subject to the sections available under Article V of the Exchange's Constitution.[18] The Commission expects the Exchange to impose strict sanctions for violations of the rule, particularly in cases of egregious or repeated failures to comply with the rule's requiremets.[19]

Finally, the Commission notes that the staff of the Board of Governors of the Federal Reserve System ("Board") has previously issued a letter raising no objection to the Commission's approval of a substantively similar proposal by the CBOE based on the Commission's belief that the off-floor transactions of market makers for which they can receive market maker treatment will be designed to contribute to the maintenance of a fair and orderly market and would be consistent with the obligations of a specialist under Section 11 of the Act.[20]

The Commission finds good cause for approving Amendment Nos. 1 and 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Specifically, the Commission notes that Amendment

[14] *Id.*

[15] 15 U.S.C. 78f(b)(5)(1988).

[16] 15 U.S.C. 78k (1982) and 17 CFR 240.11b–1.

[17] *See* Securities Exchange Act Release No. 21008 (June 1, 1984), 49 FR 23721 (June 7, 1984), (order approving proposed rule change by the Chicago Board Options Exchange ("CBOE") establishing minimum in person and assigned class trading requirements for market makers).

[18] *See* Amendment No. 2, *supra* note 7.

[19] The Amex plans to issue a circular to its membership describing the rule change and emphasizing the importance of monitoring off-floor trading activity. Telephone conversation between Claire McGrath, Managing Director and Special Counsel, Derivative Securities, Amex, and Brad Ritter, Senior Counsel, OMS, Division, Commission, on January 10, 1995.

[20] *See* Securities Exchange Act Release No. 34104 (May 25, 1994), 59 FR 28438 (June 1, 1994), note 13 (*citing* letter from Scott Holz, Senior Attorney, Board, to Howard Kramer, Associate Director, Division, Commission, dated March 9, 1994) ("Exchange Act Release No. 34104").

Nos. 1 and 2 are more restrictive than the original proposal, which was published for the full 21-day comment period without any comments being received by the Commission.[21] Additionally, the Commission notes that Amendment Nos. 1 and 2 conform the Amex proposal, in most respects, to the CBOE proposal previously approved by the Commission.[22] Accordingly, the Commission believes it is consistent with Sections 6(b)(5) and 19(b)(2) of the Act to approve Amendment Nos. 1 and 2 to the proposed rule change on an accelerated basis.

Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment Nos. 1 and 2 to the proposed rule change. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–94–51 and should be submitted by June 28, 1995.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[23] that the proposed rule change (File No. SR–Amex–94–51), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[24]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–13892 Filed 6–6–95; 8:45 am]

BILLING CODE 8010–01–M

[21] The Commission believes the amended proposal is more restrictive in that it clarifies the obligations that Traders must satisfy in order to obtain market maker treatment for off-floor opening transactions and obligates the Exchange to initiate disciplinary proceedings against members who improperly accept market maker treatment for such transactions.

[22] *See* Exchange Act Release No. 34104, *supra* note 20.

[23] 15 U.S.C. 78s(b)(2) (1988).

[24] 17 CFR 200.30–3 (a)(12) (1994).

[Release No. 34–35784; File No. SR–Amex–95–18]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the American Stock Exchange, Inc. Relating to the Use of the Series 7A and 7B Examination Modules

May 31, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 22, 1995, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex is seeking approval to utilize the Series 7A examination administered by the New York Stock Exchange, Inc. ("NYSE") for members seeking to conduct a professional customer business from the Amex Floor. The Amex is also seeking approval to utilize the Series 7B examination for clerks of such members.

The text of the proposed rule change is available at the Amex and the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Exchange Rule 50(a) requires every applicant for regular or options principal membership to pass a qualifying examination prior to undertaking active duties on the Floor, and the Amex administers six such examinations.[1] The contents of these examinations and related materials were approved by the Commission, pursuant to Rule 19b–4 under the Act.[2] In addition, some members choose to take the Series 7 examination (administered by the National Association of Securities Dealers, Inc.), an industry-wide qualification examination for persons seeking registration as general securities representatives.

A new more specialized examination, the Series 7A (administered by the NYSE), is designed only to qualify an exchange Floor member to accept orders from professional customers for execution on an exchange trading floor.[3] The Exchange is now proposing to permit members who pass the Series 7A examination to accept orders from professional customers for execution on the Amex trading Floor.[4] Those members who anticipate receiving orders in listed options from such customers will also be required to pass the Listed Put and Call Options Questionnaire for Registered Personnel, which is administered by the Amex. The use of this examination was previously approved by the Commission.[5] Clerks of the Floor members would be required to pass the new Series 7B examination, which is administered by the NYSE.

It should be noted that the Commission has approved the content and use of both the Series 7A and 7B examinations.[6]

[1] The following examinations are administered by the Amex: the Qualification Examination for Regular Members, the Qualification Examination for Options Principal Members, the Put and Call Stock Option Exam, the Put and Call Option Questionnaire for Registered Personnel, the Specialist Exam and the Registered Equity Trader and Registered Equity Market Maker Exam.

[2] *See* Securities Exchange Act Release No. 35488 (Mar. 14, 1995) 60 FR 14986 (File No. SR–Amex–94–46).

[3] Professional customers are defined as a: bank, trust company, insurance company, investment trust, state or political subdivision thereof, charitable or nonprofit educational institution regulated under the laws of the United States, or any state, or pension or profit-sharing plan subject to ERISA or of any agency of the United States, or any state or a political subdivision thereof or any person (not including a natural person) who has, or has under management, net tangible assets of at least sixteen million dollars.

[4] Exchange Rule 50(c) provides that: The Exchange may require that a member pass additional examinations before undertaking particular types of activities.

[5] See Securities Exchange Act Release No. 35488 (Mar. 14, 1995) 60 FR 14986 (File No. SR–Amex–94–46).

[6] See Securities Exchange Act Release Nos. 32698 (July 29, 1993), 58 FR 41539 (File No. SR–NYSE–93–10); 34334 (July 8, 1994) 59 FR 35964 (File No. SR–NYSE–94–13).

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Sections 6(b)(5) and 6(c)(3) in particular in that it is designed to examine the training, experience and competence of Amex members and persons associated with them, and to verify the qualifications of such persons with respect to Amex membership. In addition, the proposed rule change serves to protect investors and the public interest by helping to assure member competence.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–95–18 and should be submitted by June 28, 1995.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder pertaining to a national securities exchange. In particular, the Commission believes that the proposed rule change is consistent with Sections 6(b)(5) and 6(c)(3)(B) of the Act.[7] Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Section 6(c)(3)(B) provides that a national securities exchange may examine and verify the qualifications of an applicant to become a person associated with a member in accordance with procedures established by the rules of the exchange, and require any person associated with a member, or any class of such persons, to be registered with the exchange in accordance with procedures so established.

The Commission also believes that the proposed rule change is consistent with Section 15(b)(7) of the Act,[8] which stipulates that prior to effecting any transaction in, or inducing the purchase or sale of, any security, a registered broker or dealer must meet certain standards of operational capability, and that such broker or dealer and all natural persons associated with such broker or dealer must meet certain standards of training, experience, competence, and such other qualifications as the Commission finds necessary or appropriate in the public interest or for the protection of investors.

The Commission believes that the proposed requirement that members who accept orders from profession customers for execution on the Amex trading Floor pass the Series 7A examination is consistent with the Act. Moreover, the Commission believes that the proposed requirement that the clerks of such Floor members pass the new Series 7B examination also is consistent with the Act. These requirements should help to ensure that only those Floor members and Floor clerks with a comprehensive knowledge of Exchange rules and the Act are able to accept orders from professional customers for execution on the trading Floor.[9]

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that accelerated approval is appropriate given the prior approval of the examinations and their use on the NYSE and because the accelerated approval will allow Amex to begin utilizing the examinations as soon as practicable.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–Amex–95–18) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–13898 Filed 6–6–95; 8:45 am]

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[7] 15 U.S.C. 78f(b)(5) and (c)(3)(B) (1988 & Supp. V 1993).

[8] 16 U.S.C. 78o(b)(7) (1988).

[9] The Exchange will continue to require the successful completion of the Series 7 examination for members and their Floor clerks seeking to become registered representatives dealing with other than professional customers. In addition, any person who has successfully completed the Series 7 Examination will not be required to complete the Series 7A and 7B Examinations.

[10] 15 U.S.C. § 78s(b)(2) (1988).

[11] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–35785; File No. SR–CBOE–94–54]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to the Proposal Relating to Firm Quote Responsibilities

May 31, 1995.

On January 4, 1995, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to expand the applicability of CBOE Rule 8.51, its firm quote rule, to certain two-part equity option orders in an attempt to allow public customers to execute defined risk strategies, such as spreads and straddles, at the disseminated market quotes.

Notice of the proposed rule change was published for comment and appeared in the **Federal Register** on February 14, 1995.[3] No comments were received on the proposal. On May 24, 1995, the CBOE submitted Amendment No. 1 to the filing ("Amendment No. 1") in order to clarify certain non-substantive matters.[4] This order approves the proposal, as amended.

[1] 15 U.S.C. § 78s(b)(1) (1988 & Supp. V 1993).

[2] 17 CFR 240.19b–4 (1994).

[3] See Securities Exchange Act Release No. 35345, 60 FR 8433.

[4] See Letter from Michael L. Meyer, Schiff Hardin & Waite, to Michael A. Walinskas, Chief, Options Branch, SEC, dated May 24, 1995. Specifically,

Continued

I. Description of the Proposal

The purpose of the proposed rule change is to expand the applicability of CBOE Rule 8.51, its firm quote ("firm quote") or ten-up ("ten-up") rule, to include two-part equity option orders in which the component series are on opposite sides of the market and in a one-to-one ratio. The CBOE believes this change will enhance the ability of public customers to execute defined risk strategies, such as spreads and straddles, at the disseminated market quotes.[5]

CBOE Rule 8.51 places the responsibility on the trading crowd to ensure that non-broker-dealer customer orders are sold or bought, up to ten contracts, at the quoted offer or bid, respectively. This "firm quote" or "ten-up" requirement is meant to provide confidence that the displayed quotes may be relied upon by the investing public and to ensure that public customer orders will be executed at those quotes, or better.

From its inception the ten-up rule was intended to apply to, and has been interpreted to apply only to, single part orders, *i.e.*, either a buy order or a sell order for a particular option series. The Exchange has determined, however, that public customers would be served better if the interpretation were expanded to include a requirement to provide a ten-up market in two-part equity option orders in which the components of the order are on opposite sides of the market and in a one-to-one ratio to each other. The expansion in the interpretation of this rule would make it possible for public customers to execute both sides of a defined risk strategy, for up to ten contracts on each side, such as a spread or a straddle, at the disseminated prices. The exchange believes the rule change should help it compete more effectively for public customer order flow and trading activity.

The Exchange does not believe this rule change would be burdensome to market-makers because, under the current interpretation, the market-makers would be required to satisfy the ten-up requirement as to each leg of a spread or straddle if each was placed as a separate order. This rule change would merely ensure that these two components may be done at the same time, as one order, and at the same prevailing market quotes. The Exchange believes, however, that it is inappropriate, under any circumstance, to extend the firm-quote treatment to multipart orders with all parts on the same side of the market as this would effectively impose the burden on options market-makers of making markets in the underlying security. For example, a position in a long call and a short put is economically equivalent to being long the underlying stock; and thus, requiring a trading crowd to provide firm quote treatment to an order for this position would essentially be requiring the option market-makers to act as market-makers in the underlying security.[6]

II. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5).[7] In particular, the Commission believes the proposal is consistent with the Section 6(b)(5) requirement that the rules of an exchange be designed to promote just and equitable principles of trade and not to permit unfair discrimination between customers, issuers, brokers, and dealers.

The Commission believes that the CBOE's proposal to modify its current ten-up rule should expand the benefits to public customers associated with ten-up markets. In general, the ten-up rule results in faster executions of public customer orders and improves the quality of the Exchanges' options markets and market maker performance. Specifically, the proposal will extend the ten-up rule to each leg of certain two-part equity options. Accordingly, small public customers will be assured order execution for both parts of the order at the same time and at the best bid or offer to a minimum depth of ten contracts. Accordingly, the proposal should result in better executions for these types of non-broker dealer customer orders.

The Commission also believes the proposal will provide greater depth to the option markets without imposing any undue burdens upon market makers. Because market makers are already required to satisfy the ten-up requirement as to each leg of two part equity option orders as if each was placed as a separate order, the Commission does not believe the proposal will impose any additional unnecessary burdens or capital risks upon market makers.

The Commission also notes that the proposal will only apply to two-part equity option orders in which the components are on opposite sides of the market and in a one-to-one ratio. The Commission believes these conditions are reasonable measures that should help ensure that the proposal will not allow the simultaneous execution of certain types of orders that otherwise might effectively raise the firm quote requirements above the current ten contracts limit, which could create disparate firm quote treatment for "one" versus "two" part orders.

The Commission finds good cause for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 1 adopts Interpretation and Policy .06 to Rule 8.51, which reflects in summary form the policy described in the Regulatory Circular. Because the Regulatory Circular was included as part of the filing, the substance and policy of which were discussed in the notice, the Commission does not believe that Amendment No. 1 raises any new or substantive issues. Therefore, the Commission believes it is consistent with Sections 6(b)(5) and 19(b)(2) of the Act to approve Amendment No. 1 to the proposal on an accelerated basis.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–CBOE–94–54 and should be submitted by June 28, 1995.

It Therefore Is Ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–CBOE–94–54) is approved, as amended.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–13899 Filed 6–6–95; 8:45 am]

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Amendment No. 1 proposes to add Interpretation and Policy .06 to CBOE Rule 8.51.

[5] In its filing, the CBOE included a draft regulatory circular to be issued to members describing the change in policy applicable to the ten-up guarantee under CBOE Rule 8.51.

[6] Under existing Rule 8.51, the firm quote size minimum will continue to not apply whenever a "fast market" is declared under Rule 6.6, and may be suspended for any class or series on a case by case basis as determined by the Market Performance Committee.

[7] 15 U.S.C. 78f(b)(5) (1982).

[8] 15 U.S.C. § 78s(b)(2) (1988)

[9] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–35789; File No. SR–CBOE–95–05]

Self-Regulatory Organizations; Order Approving Proposed Rule Changes and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 1, 2, and 3 to the Proposed Rule Changes by the Chicago Board Options Exchange, Incorporated, Relating to Trading Halts, Trading Suspensions, the Re-opening of Trading after a Trading Halt or Suspension, and the Suspension of the Retail Automatic Execution System

May 31, 1995.

I. Introduction

On January 18, 1995, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange"), filed proposed rule changes with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4[2] thereunder, to: (1) Codify the Exchange's existing practice regarding the factors considered and circumstances under which the Exchange could decide to halt or suspend trading in its markets; (2) establish procedures for the resumption of trading after a halt or suspension is lifted; and (3) grant the senior person in charge of the CBOE Control Room the authority to turn off the Retail Automatic Execution System ("RAES") if the Control Room receives a credible indication that trading has stopped in the underlying stock. The Exchange filed Amendment No. 1 to the proposal on February 21, 1995,[3] Amendment No. 2 to the proposal on May 10, 1995,[4] and Amendment No. 3 to the proposal on May 31, 1995.[5]

Notice of the proposal was published for comment and appeared in the **Federal Register** on February 27, 1995.[6] No comment letters were received on the proposed rule changes. This order approves the Exchange's proposal, as amended.

II. Description of the Proposal

The CBOE proposes to amend its rules and Regulatory Circulars RG94–17 ("Inter-Exchange Procedures in Volatile Markets") and RG93–58 (formerly RG92–40 ("Trading Halt Policy") to codify existing practices regarding the factors the Exchange considers in deciding whether to halt or suspend trading and the circumstances under which trading is generally halted or suspended by the Exchange. The CBOE also proposes to establish procedures for the resumption of trading after a halt or suspension is lifted, and to grant the senior person in charge of the Control Room the authority to turn off RAES[7] for a particular stock option if the Control Room receives a credible indication that trading in the underlying stock has been halted.

A. Status of Rotation as Factor Considered in Halt or Suspension

Specifically, the CBOE proposes to amend Rules 6.3(a), 6.4(a) and 24.7(a) to include the status of the trading rotation[8] as a factor that may be considered in a decision whether to halt or suspend trading. Although not presently explicit in the CBOE rules, the Exchange states that its current practice includes consideration of the rotation status in deciding whether to halt or suspend trading. An explicit statement would notify members and the public that, when deciding whether to halt trading, Floor Officials may consider the extent to which the rotation has been completed and other factors regarding the status of the rotation. When deciding whether to suspend trading, the Board of Directors similarly would be able to consider the extent to which the rotation is complete and other factors regarding the status of the rotation.

B. Regulatory Halt or Suspension

CBOE further proposes to add Interpretation .04 to Rule 6.3 and Interpretation .01 to Rule 6.4 to reflect the current CBOE practice that, in general, trading in a stock option will be halted when a regulatory halt in the underlying stock has occurred in the primary market for that stock. Pursuant to Rule 6.3, any two Floor Officials may halt trading in any security in the interests of a fair and orderly market for a period not in excess of two consecutive business days. Similarly, the proposal reflects the current CBOE practice that, in general, trading in a stock option will be suspended when a regulatory suspension in the underlying stock has occurred in the primary market for that stock. In the case of a regulatory suspension, the Board of Directors is authorized under Rule 6.4 to suspend trading in any security in the interests of a fair and orderly market for an indefinite period.

Rules 6.3 and 6.4 list factors considered in deciding whether to halt or suspend trading. While the factors listed are considered in deciding whether to halt trading, when a regulatory halt in the underlying stock has been declared in the primary market, generally the Exchange will halt or suspend trading in the overlying stock option. The Exchange believes that the close relationship between the underlying stock and the pricing of stock options overlying that security typically justify such a result. When a regulatory halt is declared in the underlying stock, it often is because some news is pending regarding the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 proposes to delete the reference to Rule 6.3A in paragraph (c) of Rule 24.7, because the rule change proposes the deletion of Rule 6.3A in its entirety. *See* Letter from Michael Meyer, Schiff, Hardin & Waite, to John Ayanian, Attorney, Office of Market Supervision ("OMS"), Division of Market Regulation ("Market Regulation"), Commission, dated February 17, 1995. ("Amendment No. 1".)

[4] Amendment No. 2 proposes to amend Interpretation .05 to CBOE Rule 6.3 to indicate that the senior person in the Control Room may rely on a *verified report* from the CBOE trading crowd as a credible indication of a trading halt or suspension in the primary market of an underlying security.

CBOE also proposes to clarify that its proposed rescission of CBOE Rule 6.3A is intended to encompass the two Interpretations and Policies previously adopted for that rule. See Letter from Michael Meyer, Schiff, Hardin & Waite, to John Ayanian, Attorney, Market Regulation, OMS, Commission, dated May 10, 1995. ("Amendment No. 2".)

[5] Amendment No. 3 proposes to amend Regulatory Circular RG93–58 to indicate that two Floor Officials may permit trading to continue for more than 15 minutes after a failure of last sale and/or quotation dissemination from either the Exchange or the Options Price Reporting Authority ("OPRA") only with the concurrence of a senior Exchange official. *See* Letter from Michael Meyer, Schiff, Hardin & Waite, to John Ayanian, Attorney, Market Regulation, OMS, Commission, dated May 31, 1995. ("Amendment No. 3".)

[6] *See* Securities Exchange Act Release No. 35397 (February 21, 1995), 60 FR 10621 (February 27, 1995).

[7] RAES automatically executes public customer market and marketable orders of a certain size against participating market makers in the CBOE trading crowd at the best bid or offer reflected in the CBOE quotation system. A more detailed description of RAES is provided in Securities Exchange Act Release No. 22015 (May 6, 1985), 50 FR 19832 (May 10, 1985).

[8] A "trading rotation" is a series of very brief time periods during which bids, offers, and transactions in only a single, specific option contract can be made. *See* CBOE Rule 6.2.

underlying stock and the primary market wants to allow time for the dissemination of such news. For the same reason, the CBOE believes it generally is appropriate in that circumstance to halt trading in the overlying stock option.

CBOE also proposes to amend Rules 6.3(a)(iii) and 6.4(a)(ii) to clarify that these rules are only applicable to non-option securities. Securities other than options include, for example, securities traded at CBOE that are subject to Chapter 30 of the CBOE Rules. Securities presently subject to Chapter 30 include stock, warrants (which term includes currency and index warrants except as otherwise expressly provided or as the context otherwise requires), UIT interests, and such other securities instruments and contracts as the Board of Directors may from time to time declare subject to Chapter 30. The Exchange believes the changes are necessary to clarify that Rules 6.3(a)(iii) and 6.4(a)(ii) do not apply to stock options or any other options traded at CBOE, but only to securities traded at CBOE other than options.

C. Circuit Breaker Halts and Subsequent Reopening Rotations

The proposal also would rescind Rule 6.3A, which provides for a trading halt in all equity and index options when there has been a floor-wide New York Stock Exchange ("NYSE") halt or suspension as a result of activation of circuit breakers on the NYSE. The CBOE believes that this rule is unnecessary because the only circumstances under which Rule 6.3A could apply are situations that Rule 6.3B already expressly governs. Presently, there are only two circuit breakers that lead to a New York Stock Exchange floor-wide halt; when there has been a decline in the Dow Jones Industrial Average of 250 or more points below the previous day's closing value, and when on the same day there is a cumulative decline of 400 or more points from the previous day's closing value. Rule 6.3B already governs trading halts under both of these circumstances. Under Rule 6.3B, the mandatory circuit breaker halt would terminate automatically after the expiration of the applicable one hour or two hour time period.

The proposal would eliminate the requirements contained in Rule 6.3A that, prior to a reopening rotation, (i) an additional determination must be made that a halt or suspension is not in effect in the primary market where the underlying security for each class of options is traded; (ii) a determination must be made, in the case of index options, that a halt or suspension is not in effect in the primary market of the securities constituting 50% or more of the index value; and (iii) two Floor Officials, in consultation with a designated senior executive officer, must conclude in their judgment that the interests of a fair and orderly market are served by a resumption of trading. The effect of this proposal is that after a circuit breaker halt, trading would resume automatically unless the Exchange affirmatively acted to declare a further halt or suspension pursuant to other rules, such as Rules 6.3, 6.4 or 24.7.

CBOE believes that trading should generally resume after a circuit breaker halt, subject only to the rules regarding trading halts and suspensions. Pursuant to Rules 6.3, 6.4 and 24.7, a halt or suspension in the underlying security (to which Rule 6.3A refers) are among the factors considered in the decision to suspend or halt trading, but these factors do not necessarily *require* a halt or suspension nor limit the Exchange's ability to exercise judgment in these circumstances. CBOE believes that the interests of a fair and orderly market are better served when the rules allow Exchange officials the discretion to evaluate market conditions and circumstances and to exercise their judgment as to when to halt or suspend trading, without the restrictions on the exercise of that judgment that are contained in Rule 6.3A.

The rescission of Rule 6.3A also removes the current requirement that, if trading is halted due to activation of circuit breakers, reopening rotations *shall* be held. Rule 6.3A makes a reopening rotation mandatory and prevents Exchange officials from reopening without a rotation. CBOE believes the interests of a fair and orderly market are better served when the rules allow Exchange officials the discretion to evaluate market conditions and circumstances and to exercise their judgment as to whether to reopen with or without a rotation.

Procedures regarding reopening rotations after a halt triggered by circuit breakers will be added by amending Rule 6.3B, Interpretation .02. The amended Interpretation .02 would require a reopening rotation unless two Floor Officials, or an Order Book Official acting on authorization from a senior Exchange official, conclude it is appropriate under the circumstances to employ a different method of reopening, including but not limited to, no rotation, an abbreviated rotation, or a variation in the manner of the rotation. The senior Exchange official could authorize the order Book Officials to deviate from normal reopening rotation procedures by making a general announcement to all Order Book Officials. The CBOE believes it is reasonable to presume that a reopening rotation will be held after a circuit breaker halt because, after a floorwide halt, it is physically difficult to have two Floor Officials available at each trading post to make a decision regarding the resumption of trading. The Exchange believes that the presumption allows for a universal treatment of the reopening after a circuit breaker halt, yet still permits appropriate Exchange officials to exercise judgment to deviate from this presumed course of action when a different method of reopening is appropriate.

D. Corresponding Amendments to Regulatory Circulars

1. Regulatory Circular RG94–17

The Exchange also proposes to amend Regulatory Circular RG94–17, which addresses inter-exchange procedures in volatile markets, to make the content of the circular consistent with the proposed amended Interpretation .02 to Rule 6.3B. Regulatory Circular RG94–17 discusses the CBOE's procedures during a halt in options trading due to a DJIA drop of 250 or more points below the previous day's closing trading value, or a cumulative drop of 400 points in the DJIA on the same day. Pursuant to the proposed change to Interpretation .02 to Rule 6.3B, after the expiration of the one or two hour period set forth in Rule 6.3B, a reopening rotation would be held in each class of options unless two Floor Officials (or an Order Book Official acting upon authorization from a senior Exchange official) conclude a different method of reopening is appropriate. Additionally, Regulatory Circular RG95–17 would be amended to delete the requirements contained in Rule 6.3A that, before reopening after a circuit breaker halt, the Exchange must verify that (1) there is no halt or suspension in effect in the primary market where the underlying stock is traded and (2) with respect to an index option, there is no halt or suspension in the primary market of the securities constituting 50% of the index.

2. Regulatory Circular RG93–58

The CBOE further proposes to amend Regulatory Circular RG93–58, which addresses trading halt policy for options on individual equity securities, to make the circular consistent with the proposed amendment to Rule 6.3.[9] Regulatory Circular RG93–58 would be further amended to state that it does not address the Exchange's trading halt policy when a halt has been declared as a result of the operation of a circuit breaker pursuant to Rule 6.3B, due to a 250 or 400 point intra-day drop in the DJIA.

Consistent with Rule 6.3, Regulatory Circular RG93–58 would be amended to provide that two Floor Officials may exercise judgment regarding trading halts without the concurrence of a senior Exchange staff official. Presently, Rule 6.3 provides that a decision regarding whether to halt trading may be made by any "two Floor Officials." This amendment would make the guidelines in Regulatory Circular RG93–58 consistent with the Rule 6.3. The Exchange believes that Floor Officials need to be able to exercise their judgment without obtaining the concurrence of a senior Exchange staff official because it may be physically difficult for a senior Exchange staff official to be present at all trading posts during circumstances where a trading halt may be simultaneously necessary in multiple options classes.

Regulatory Circular RG93–58 provides Floor Officials with non-mandatory guidelines to assist them in their decision regarding a trading halt. Pursuant to Rule 6.3, "[a]ny two Floor Officials may halt trading in any security in the interests of a fair and orderly market." Rule 6.3 permits Floor Officials to exercise judgment and discretion in deciding whether to halt trading. The language of rule 6.3 is discretionary and does not require that Floor Officials declare a trading halt. The proposed amendments to Regulatory Circular RG93–58 delete language that would limit Floor Official's discretion by imposing mandatory criteria.

The proposal would further amend Regulatory Circular RG93–58 to reflect the CBOE's general practice, as set forth in the proposed interpretation to Rule 6.3, to halt trading in an overlying stock option when a regulatory halt in the underlying stock has been declared in the primary market for that stock.

Regulatory Circular RG93–58 would be further amended to delete the requirement that, in connection with a halt due to no last sale and/or quotation dissemination either by the Exchange or the Options Price Reporting Authority ("OPRA"),[10] trading may only resume 15 minutes after notification to the news wire services. The guidelines provide that the news wire services will be notified of the dissemination difficulty.

However, under such circumstances, since trading presumably would have been proceeding in other markets, it is important for the options market to resume trading as soon as practical after the dissemination difficulty which led to the halt is no longer present. CBOE believes that waiting 15 minutes to resume trading would be inordinately long and may be contrary to the interests of a fair and orderly market. Nonetheless, the proposed amendments would specifically state CBOE's general practice to notify member firms and news wire services before the resumption of trading.

The language in paragraph one of Regulatory Circular RG93–58 would be further amended to clarify that there is a preference, but not a requirement, to halt trading if two Floor Officials believe that the dissemination problem will last more than 15 minutes. Additionally, the language would be amended to limit the discretion of the Floor Officials by requiring the concurrence of a senior Exchange official if two Floor Officials want to permit trading to continue for more than 15 minutes after a failure of last sale and/or quotation dissemination. The language would be further amended to clarify that, if the two Floor Officials believe that the dissemination problem *will* be resolved within the next 15 minutes, then there is no preference for a halt—even if that expectation proves to be incorrect. The present language would be further amended to clarify that trading *ordinarily* will continue if two Floor Officials believe it is likely the dissemination problem will be resolved in less than 15 minutes. The present language appears to require trading to continue under such circumstances. Again, the Exchange believes these guidelines should not limit Floor Officials' discretion, since Rule 6.3 provides for discretion in such circumstances. If a systems problem prevented CBOE or OPRA from disseminating CBOE's last sale or quote data, this would be an unusual market condition and, pursuant to Rule 6.3, two Floor Officials *may* halt trading.

The CBOE proposes to delete the requirement in paragraph four of Regulatory Circular RG93–58 that, in connection with a primary market floor-wide trading halt not subject to Rule 6.3B, and despite the determination by two Floor Officials that sufficient markets will support trading other than at the primary market, trading may resume only upon a one hour notification to the news wire services. Again, since trading of the underlying stock is continuing at an exchange other than the primary exchange, the CBOE believes that waiting one hour to resume options trading at the CBOE could be inordinately long and might be contrary to the interests of a fair and orderly market. Instead, paragraphs one and six of Regulatory Circular RG93–58 would be amended so that the guidelines for the resumption of trading would be consistent with Rule 6.3(b), which provides that trading in a security that has been the subject of a halt may resume upon a determination by two Floor Officials that the conditions which led to the halt are no longer present, or that the interests of a fair and orderly market are best served by a resumption of trading. However, the proposed amendments would specifically state CBOE's general practice to notify member firms and news wire services before the resumption of trading.

E. RAES

Finally, the proposal would add Interpretation .05 to Rule 6.3 to grant authority to the senior person then in charge of the Exchange's Control Room to turn off RAES with respect to a stock option if that senior person confirms that the Control Room has received a credible indication (including, but not limited to, a verified report from the trading crowd)[11] that trading in the underlying stock has been halted or suspended. After exercising such authority, that senior person would

[9] Regulatory Circular RG93–58 is a reprint of Regulatory Circular RG92–40, dated July 8, 1992.

[10] OPRA is a National Market System Plan approved by the Commission pursuant to Section 11A of the Act and Rule 11Aa3–2. Securities Exchange Act Release No. 17638 (March 18, 1981). OPRA provides for the collection and dissemination of last sale and quotation information on options that are traded on the five exchanges participating in the plan. The exchanges include the CBOE, the Philadelphia Stock Exchange, the American Stock Exchange, the Pacific Stock Exchange, and the New York Stock Exchange. The OPRA plan was implemented in response to directives of the SEC that provisions be made for the consolidated reporting of transactions in eligible options contracts listed and traded on national securities exchanges.

[11] CBOE represents that if information of a trading halt or suspension comes from the trading crowd or from a source other than authoritative information in the Control Room, the senior person in charge of the Control Room would first attempt to independently verify the information before turning off RAES. To verify the existence of a trading halt or suspension, the senior person in charge of the Control Room would seek to identify and obtain authoritative information in the Control Room, including (1) the quote of the underlying security being pulled from the Class Display Screen, (2) an ST or H appearing on the Class Display Screen via the Consolidated Tape, (3) a print-out in the Control Room confirming the halt or suspension of trading in the underlying security, and (4) notification of the trading halt or suspension via the "Hoot and Holler" system. The Hoot and Holler system is a voice linkage between all of the exchanges and the Commission. Telephone conversation between Edward Joyce, Executive Vice President, CBOE, and John Ayanian, Attorney, OMS, Market Regulation, Commission, on February 16, 1995.

need to immediately seek confirmation of this decision from two Floor Officials. The purpose of this interpretation is to prevent orders from being placed on RAES during the interval after the trading in the underlying stock has been halted or suspended but before two Floor Officials have declared a trading halt pursuant to Rule 6.3(a) or before a Post Director or Order Book Official has suspended trading pursuant to Interpretation .01 to Rule 6.3. The CBOE believes this provision is necessary because, if trading in a stock is halted due to pending news, the effect of the news may be anticipated and, while Floor Officials are being called to a post to decide whether to halt trading, orders could still be placed on RAES. Under the current Interpretations to Rule 6.3, the Post Director or Order Book Official must turn off RAES concurrently with any suspension of trading. If an "ST" symbol (for an exchange listed security) or an "H" symbol (for a security traded primarily in the over-the-counter market) is displayed on the Class Display Screen that displays current market information for the underlying security, the Order Book Official or Post Director may suspend trading in the related equity option for a period not to exceed five minutes and concurrently shall turn off RAES for the affected options class or classes.[12] The Control Room, however, may receive information that trading has stopped in the underlying stock before the Post Director or Order Book Official sees the "ST" symbol or "H" symbol on the Class Display Screen for the underlying stock. Consequently, the CBOE believes it is important for the Control Room to have authority to turn off RAES without being required to wait for the Post Director or Order Book Official to act, or in a circumstance where the senior person in charge of the Control Room confirms that the Control Room has received a credible indication that trading in the underlying stock has been halted or suspended.

The proposal provides that the Post Director, Order Book Official, or their representative will re-start RAES after the trading halt or suspension has ceased. This would be consistent with Rules 6.8(f) and 24.15(f), which provide that each day RAES is available, a Post Director or his representative will start RAES.

[12] *See* Securities Exchange Act Release No. 34126 (May 27, 1994), 59 FR 29309 (June 6, 1994) (Approval Order giving the Order Book Officials or the Post Director the authority to suspend trading, and to turn off RAES for the affected options class or class whenever trading in the underlying security is halted).

III. Commission Finding and Conclusions

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act[13] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, while protecting investors and the public interest.

Specifically, the Commission believes it is appropriate to amend Rules 6.3(a), 6.4(a) and 24.7(a) to include the status of the trading rotation as a factor that may be considered in a decision whether to halt or suspend trading. The Commission notes that there may be circumstances in which it could be in the interest of a fair and orderly market to complete a rotation before calling a halt or suspension in trading. For example, CBOE officials may want to consider the status of a trading rotation in the event of extreme market volatility or a pending news announcement. Allowing Floor Officials, in the case of a trading halt, and the Board of Directors, in the case of a suspension of trading, to evaluate the status of the rotation in determining whether to halt or suspend trading may contribute to their evaluation of how best to maintain a fair and orderly market.

The Commission further believes that it is appropriate to add Interpretation .04 to Rule 6.3 and Interpretation .01 to Rule 6.4 to state that, in general, trading in a stock option will be halted or suspended when a regulatory halt or suspension in the underlying stock has occurred in the primary market for that stock. The Commission believes that a general practice whereby trading is halted on the CBOE when investors lack access to current pricing information in the primary market for the underlying stock, should contribute to the maintenance of fair and orderly markets. Moreover, the Commission believes that the CBOE's proposal to amend its Regulatory Circular RG93–58 to parallel the provisions of Interpretation .04 to Rule 6.3 and Interpretation .01 to Rule 6.4 will help make such procedures readily known and available to floor members.

[13] 15 U.S.C. 78f(b)(15).

The Commission further believes that it is appropriate to amend Rules 6.3(a)(iii) and 6.4(a)(ii) to clarify that these rules are only applicable to non-option securities. Currently, Rule 6.3(a)(iii) and Rule 6.4(a)(ii) state that the rules apply to any security other than a stock option. The Commission believes that the amendments clarify the proper application of the rule to non-option securities such as stock, UIT interests, and warrants.

Further, the Commission believes that it is appropriate to rescind Rule 6.3A, which provides for a halt in trading of all equity and index options when there has been a floor-wide New York Stock Exchange halt or suspension as a result of activation of circuit breakers on the New York Stock Exchange. The Commission understands that the only circumstances under which Rule 6.3A could apply are situations that Rule 6.3B already expressly governs and, as a result, the rule is redundant. The rescission of Rule 6.3A will have the effect of removing the mandatory reopening rotation (and related procedures) following a floor-wide NYSE trading halt. However, the Commission believes that the proposed amendment to Interpretation .02 to Rule 6.3B appropriately addresses this circumstance. Interpretation .02 to Rule 6.3B requires a reopening rotation in each class of options following a circuit breaker halt unless two Floor Officials (or an Order Book Official acting upon authorization from a senior Exchange official) conclude that a different method of reopening is appropriate under the circumstances, including but not limited to, no rotation, an abbreviated rotation, or any other variation in the manner of the rotation. Moreover, the Commission believes that the CBOE's proposal to amend and redistribute Regulatory Circular RG94–17 to parallel the provisions of Interpretation .02 to Rule 6.3B, and notice the rescission of Rule 6.3A, are necessary in order to notify to CBOE members of these reopening procedures.

The Commission also believes it is appropriate to amend CBOE Regulatory Circular RG93–58 to reflect the discretion granted to Floor Officials in Rule 6.3, as amended. Currently, CBOE Regulatory Circular RG93–58 contains limiting language regarding the Floor Officials' discretion when addressing trading halt and resumption of trading procedures. The CBOE's proposed amendments to the Regulatory Circular address the need to provide parallel guidelines between the rules and regulatory circulars regarding trading halt and resumption of trading procedures.

The Commission also believes that it is appropriate for the CBOE to add Interpretation .05 to Rule 6.3 to grant the authority to the senior person then in charge of the Exchange's Control Room to turn off RAES for a particular stock option if that senior person confirms that the Control Room has received a credible indication that trading in the underlying stock has been halted or suspended. The proposed rule change should protect investors and the public interest by enabling the senior person in charge of the Control Room to take prompt action in response to trading halts in underlying securities verified in the Control Room, before the "ST" or "H" symbol appears on the Class Display Screen, or the Post Director or Order Book Official has acted. The Commission notes that if information of an impending halt or suspension comes from the trading crowd or from a source other than authoritative information in the Control Room, the senior person in charge of the Control Room must first verify the information before turning off RAES.[14]

The Commission also finds good cause for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Specifically, Amendment No. 1 merely corrects a technical error in the proposed amendment to Rule 24.7. As filed, the proposed amendment showed "no change" to paragraph (c) of that rule. In fact, CBOE proposes to amend paragraph (c) to delete the reference to Rule 6.3A, because the rule change proposes the deletion of the latter rule in its entirety. Accordingly, the Commission believes it is consistent with Section 6(b)(5) of the Act to approve Amendment No. 1 to the CBOE's proposal on an accelerated basis.

Additionally, the Commission finds good cause for approving Amendment No. 2 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. This amendment clarifies that when the senior person in charge of the Control Room receives a report from the trading crowd that trading in the underlying stock has been halted or suspended in the primary market, the report from the trading crowd must first be verified before turning off the RAES system with respect to the stock option. The Commission believes that this amendment clarifies the responsibilities of the senior person in charge of the Control Room when invoking this interpretation and is substantially similar to the original proposal. Accordingly, the Commission believes that it is consistent with Section 6(b)(5) of the Act to approve Amendment No. 2 to CBOE's proposed rule changes on an accelerated basis.

The Commission also finds good cause for approving Amendment No. 3 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Specifically, Amendment No. 3 clarifies that, pursuant to Regulatory Circular RG93–58, two Floor Officials may permit trading to continue for more than 15 minutes after a failure of dissemination only with the concurrence of a senior Exchange official. The Commission believes that this amendment clarifies the scope of authority granted to the Floor Officials when invoking this provision and raises no new regulatory issues. Accordingly, the Commission believes that it is consistent with Section 6(b)(5) of the Act to approve Amendment No. 3 to CBOE's proposed rule changes on an accelerated basis.

Interested persons are invited to submit written data, views and arguments concerning Amendment Nos. 1, 2 and 3. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–95–05 and should be submitted by June 28, 1995.

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[15] that the proposed rule changes (File No. SR–CBOE–95–05), as amended, are approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

[14] *See supra* note 11.

[15] 15 U.S.C. 78s(b)(2).

[16] 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 95–13900 Filed 6–6–95; 8:45 am]
BILLING CODE 8010–01–M

[Release No. 34–35781; File No. SR–PHLX–95–29]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to an Increase in the Maximum AUTO–X Order Size for U.S. Top 100 Index Options

May 30, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 22, 1995, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Currently, public customer market and marketable limit orders for up to 25 option contracts, as determined by the specialist, are eligible for execution through AUTO–X, the automatic execution feature of the PHLX's Automated Options Market ("AUTOM") system. The PHLX proposes to increase the maximum AUTO–X order size eligibility for public customer market and marketable limit orders in U.S. Top 100 Index ("TPX") options from 25 to 50 contracts.

The text of the proposed rule change is available at the Office of the Secretary, PHLX, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the

most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposal is to increase the maximum AUTO–X order size eligibility for public customer market and marketable limit orders in TPX options from 25 to 50 contracts.

AUTO–X, the automatic execution feature of AUTOM, was approved by the Commission as part of the AUTOM pilot program in 1991.[1] AUTOM, which has operated on a pilot basis since 1988 and was most recently extended through December 31, 1995,[2] is an on-line system that allows electronic delivery of options orders from member firms directly to the appropriate specialist on the Exchange's trading floor. Currently, orders for up to 100 options contracts are eligible for AUTOM and public customer market and marketable limit orders for up to 25 contracts are eligible for AUTO–X.[3] AUTO–X orders are executed automatically at the disseminated quotation price on the Exchange and reported to the originating firm. Orders that are not eligible for AUTO–X are handled manually by the specialist.

TPX options were approved recently for trading on the Exchange as broad-based index options.[4] The PHLX now proposes to permit the use of AUTO–X for public customer market and marketable limit orders of up to 50 contracts in TPX options. The Exchange believes that the proposed expanded AUTO–X parameter should improve the AUTOM system by offering the benefits of AUTO–X to investors in TPX options who place a high premium on prompt and efficient automatic executions for 50-lot orders at the displayed price. The Exchange notes that the increase from a maximum of 25 to 50 contracts is in line with prior changes; for example, the Commission previously approved an AUTO–X increase for public customer orders from 10 to 20 contracts.[5]

According to the PHLX, the proposed expansion of the maximum AUTO–X order size should not impose significant burdens on the operation and capacity of the AUTOM system. Instead, the PHLX believes that increasing the number of public customer orders eligible for automatic execution, and thereby reducing manual processing, may enhance AUTOM's effectiveness. In addition, the Exchange notes that the Commission has previously approved the automatic execution of 50 contracts for a broad-based index.[6]

The PHLX believes that the proposal is consistent with Section 6(b) of the Act, in general, and, in particular, with Section 6(b)(5), in that it is designed to promote just and equitable principles of trade and to prevent fraudulent and manipulative acts and practices, as well as to protect investors and the public interest by extending the benefits of AUTO-X to a larger number of public customer orders.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days after May 22, 1995, the date on which it was filed, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five days prior to the filing date, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(e)(6) thereunder. In particular, the Commission believes that the proposal does not significantly affect the protection of investors or the public interest and does not impose any significant burden on competition.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by June 28, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–13896 Filed 6–6–95; 8:45 am]

BILLING CODE 8010–01–M

[1] See Securities Exchange Act Release No. 28978 (March 15, 1991), 56 FR 12050 (order approving File No. SR–PHLX–90–34).

[2] See Securities Exchange Act Release No. 35183 (December 30, 1994), 60 FR 2420 (January 9, 1995) (order approving File No. SR–PHLX–94–41). See also Securities Exchange Act Release Nos. 25540 (March 31, 1988), 53 FR 11390 (order approving AUTOM on a pilot basis); 25868 (June 30, 1988), 53 FR 25563 (order approving File No. SR–PHLX–88–22, extending pilot through December 31, 1988); 26354 (December 13, 1988), 53 FR 51185 (order approving File No. SR–PHLX–88–33, extending pilot program through June 30, 1989); 26522 (February 3, 1989), 54 FR 6465 (order approving File No. SR–PHLX–89–1, extending pilot through December 31, 1989); 27599 (January 9, 1990), 55 FR 1751 (order approving File No. SR–PHLX–89–03, extending pilot through June 30, 1990); 28625 (July 26, 1990), 55 FR 31274 (order approving File No. SR–PHLX–90–16, extending pilot through December 31, 1990); 28978 (March 15, 1991), 56 FR 12050 (order approving File No. SR–PHLX–90–34), extending pilot through December 31, 1991); 29662 (September 9, 1991), 56 FR 46816 (order approving File No. SR–PHLX–91–31, permitting AUTO–X orders up to 20 contracts in Duracell options only); 29782 (October 3, 1991), 56 FR 55146 (October 24, 1991) (order approving File No. SR–PHLX–91–33, permitting AUTO–X for up to 20 contracts for all strike prices and expiration months); 29837 (October 18, 1991), 56 FR 36496 (order approving File No. SR–PHLX–90–03, extending pilot through December 31, 1993); 32906 (September 15, 1993), 58 FR 15168 (order approving File No. SR–PHLX–92–38, permitting AUTO–X orders up to 25 contracts in all options); and 33405 (December 30, 1993), 59 FR 790 (order approving File No. SR–PHLX–93–57, extending pilot through December 31, 1994).

[3] The Commission recently approved a PHLX proposal to codify the use of AUTOM and AUTO–X for index options. *See* Securities Exchange Act Release No. 34920 (October 31, 1994), 59 FR 5510 (November 7, 1994) (order approving File No. SR–PHLX–94–40). In addition, the Commission has approved a PHLX proposal to codify the Exchange's practice of accepting certain orders for AUTOM and AUTO–X. *See* Securities Exchange Act Release No. 35601 (April 13, 1995), 60 FR 19616 (April 19, 1995) (order approving File No. SR–PHLX–95–18).

[4] See Securities Exchange Act Release No. 35591 (April 11, 1995), 50 FR 19423 (April 18, 1995) (order approving File No. SR–PHLX–95–07).

[5] See Securities Exchange Act Release No. 29837, *supra* note 2.

[6] See Securities Exchange Act Release No. 33894 (April 11, 1994), 59 FR 18429 (April 18, 1994) (order approving File No. SR–Amex–93–32, permitting the use of Auto-Ex on the American Stock Exchange, Inc., for up to 50 contracts for public customer market and marketable limit orders in Hong Kong Index options).

[7] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–35788; File No. SR–NASD–95–21]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Freely Tradeable Direct Participation Program Securities

May 31, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. § 78s(b)(1), notice is hereby given that on May 23, 1995, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is herewith filing a proposed rule change to Article III, Section 34 of the Rules of Fair Practice. Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

Direct Participation Programs

Sec. 34.

* * * * *

Suitability

(3)(A) A member or person associated with a member shall not underwrite or participate in a public offering of a direct participation program unless standards of suitability have been established by the program for participants therein and such standards are fully disclosed in the prospectus and are consistent with the provisions of subparagraph (B) of this section.

(B) In recommending to a participant the purchase, sale or exchange of an interest in a direct participation program, a member or person associated with a member shall:

(i) have reasonable grounds to believe, on the basis of information obtained from the participant concerning his investment objectives, other investments, financial situation and needs, and any other information known by the member or associated person, that:

a. the participant is or will be in a financial position appropriate to enable him to realize to a significant extent the benefits described in the prospectus, including the tax benefits where they are a significant aspect of the program;

b. the participant has a fair market net worth sufficient to sustain the risks inherent in the program, including loss of investment and lack of liquidity; and

c. the program is otherwise suitable for the participant; and

(ii) maintain in the files of the member documents disclosing the basis upon which the determination of suitability was reached as to each participant.

(C)[D] Notwithstanding the provisions of subparagraphs (A) and (B) hereof, no member shall execute any transaction in a direct participation program in a discretionary account without prior written approval of the transaction by the customer.

(D)[C] Subparagraph*s* 3(A) and 3(B), *and, only in situations where the member is not affiliated with the direct participation program, Subparagraph 3(C),* shall not apply to:

(i) a secondary public offering of or a secondary market transaction in a unit, depositary receipt, or other interest in a direct participation program for which quotations are displayed on Nasdaq or which is listed on a registered national securities exchange, or

(ii) an initial public offering of a unit, depositary receipt or other interest in a direct participation program for which an application for inclusion on Nasdaq or listing on a registered national securities exchange has been approved by Nasdaq or such exchange and the applicant makes a good-faith representation that it believes such inclusion on Nasdaq or listing on an exchange will occur within a reasonable period of time following the formation of the program.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Article III, Section 34 of the Rules of Fair Practice regulates participation by members and persons associated with a member in direct participation programs and limited partnership rollup transactions ("DPP rule"). The DPP rule generally prohibits a member or a person associated with a member from participating in a public distribution of a direct participation program or a limited partnership rollup transaction unless the distribution or transaction conforms to certain suitability and disclosure requirements and standards of fairness and reasonableness.

Since the adoption of the DPP rule in 1982,[2] an increasing number of direct participation programs, such as master limited partnerships, have issued partnership units, depositary receipts for such units, or assignee units of limited partnership units that are freely tradeable in a manner generally analogous to common stock and are quoted on Nasdaq and listed on registered national stock exchanges. A direct participation program security is considered freely-tradeable under Section 34 if it is either (1) a secondary public offering of or a secondary market transaction in a direct participation program security for which quotations are displayed on Nasdaq or which is listed on a registered national securities exchange, or (2) a primary offering of a direct participation program for which

[1] The proposal was originally filed with the Commission on May 10, 1995. The NASD subsequently submitted Amendment No. 1 to the filing which amends Subsections (b)(3)(C) (i) and (ii) to Article III, Section 34 of the Rules of Fair Practice, by replacing the phrase "the NASDAQ System" in Subsections (i) and (ii) and the word "NASDAQ" in Subsection (ii) with the word "Nasdaq." Letter from Suzanne E. Rothwell, Associate General Counsel, NASD, to Mark P. Barracca, Branch Chief, Over-the-Counter Regulation, Division of Market Regulation, SEC, dated May 22, 1995.

[2] The DPP rule was initially approved by the Commission as Appendix F to Article III, Section 34 on September 16, 1982 (Securities Exchange Act Release No. 19054); 47 FR 42226 (September 24, 1982).

an application for inclusion on Nasdaq or listing on a registered national securities exchange has been approved.

In order to address the increased transparency and liquidity associated with the nature of the secondary markets for freely tradeable direct participation program securities, the NASD amended the DPP rule to, among other things, exempt freely tradeable direct participation program securities from the suitability requirements of Subsections 34(b)(3) (A) and (B) of the DPP rule.[3] At the time, the NASD determined that since the disclosure requirements in the DPP rule were primarily designed for direct participation program securities that lacked liquidity and marketability, no purpose was served by applying the same criteria to freely tradeable direct participation program securities.

Freely tradeable direct participation program securities, however, continue to be subject to the discretionary account prohibitions of Article III, Section 34. Currently, Subsection 34(b)(3)(D) of the DPP rule states, in part, that "* * * no member shall execute any transaction in a direct participation program in a discretionary account without prior written approval of the transaction by the customer." The provision applies to transactions in all direct participation program securities, whether freely tradeable or not. The NASD considers discretionary transactions in direct participation program securities which are illiquid and for which no ready market exists to be an improper use of discretionary power. Recently, the NASD considered whether Monthly Income Preferred Securities ("MIPS"), a new financial instrument which is a freely tradeable direct participation program security, ought to be subject to the discretionary account restrictions in Article III, Section 34.[4] In its consideration, the NASD determined that the concerns which attach to the use of discretionary authority for illiquid, unmarketable direct participation program securities are not present with freely tradeable direct participation program securities. Therefore, the NASD is proposing reversing the order of current Subsections (b)(3)(C) and (D) to Section 34 and to add a reference to Subparagraph 3(C) in new Subparagraph 3(D) to exclude freely-tradeable direct participation program securities from the prohibition on transactions in discretionary accounts without written approval. The exclusion for freely tradeable direct participation program securities in newly designated Subparagraph (3)(D) also restricts the availability of the exclusion to members that are not affiliated with the direct participation program. Where such an affiliation is present, the NASD believes that substantial conflict of interest and regulatory concerns continue to exist and the exclusion should not be made available.

The NASD believes that recognizing the use of discretionary authority for transactions in freely tradeable direct participation program securities is consistent with 1986 amendments to Section 34 exempting freely tradeable participation program securities from the suitability and disclosure requirements of Section 34. Such suitability and disclosure requirements, which are necessary where direct participation program securities lack liquidity and marketability, were found to be unnecessary where a ready, liquid market exists.

Nothwithstanding the relief provided by the proposed rule from the prohibition in Article III, Section 34 against discretionary transactions in freely tradeable direct participation program securities, such transactions would, however, remain subject to the general discretionary account requirements contained in Article III, Section 15 of the Rules of Fair Practice.

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[5] which require that the rules of the Association be designed to prevent fraudulent and manipulative acts and promote just and equitable principles of trade, in that the proposed rule change relieves members of their obligation to comply with prohibitions against discretionary transactions in direct participation program securities in situations which do not present the regulatory concerns that the prohibitions were intended to address, and provides for regulatory consistency in the treatment of discretionary transactions in freely tradeable securities.

[3] See, Securities Exchange Act Release No. 23619 (September 15, 1986); 51 FR 33968 (September 24, 1986).

[4] MIPS are preferred securities issued by a parent company's subsidiary, which is structured as a limited partnership or limited liability company. The subsidiary issues MIPS to investors and invests the proceeds in convertible subordinated debentures of the parent. Interest on the debentures of the parent are paid to the subsidiary, which in turn pays the equivalent rate of interest to MIPS holders in the form of dividends. MIPS are eligible to be listed on a national securities exchange or The Nasdaq Stock Market and have flow-through tax consequences for investors, which means that they are considered direct participation programs and, therefore, subject to Section 34.

[5] 15 U.S.C. 78o-3.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–95–21 and should be submitted by June 28, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–13897 Filed 6–6–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35776; File No. SR–NYSE–95–13]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Amendments to the Exchange's Allocation Policy and Procedures

May 30, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 31, 1995, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change, and on May 17, 1995, filed Amendment No. 1 to the proposed rule change,[1] as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of amendments to the Exchange's Allocation Policy and Procedures which would permit Floor broker Senior Floor Officials to replace Governors for quorum purposes.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The intent of the Exchange's Allocation Policy and Procedures ("Policy") is to ensure that each security is allocated in the fairest manner possible to the best specialist unit for that security. In accordance with this intent, the Exchange recently amended the Policy to increase the number of Floor broker Governors[2] on the Allocation Committee from one to three.[3] Formerly, only one Floor broker Governor served as a member of the Allocation Committee. The Exchange believes that the Floor broker Governors on the Allocation Committee add a comprehensive knowledge of specialist performance and a broad perspective and expertise relating to the Exchange. In conjunction with this amendment, the Exchange amended the Policy's quorum requirement to require at least two Floor broker Governors to be present at Allocation Committee meetings. Prior to the amendment, the Policy required only one such Governor to be present.[4] These rule changes were implemented by the Exchange in October, 1994.

In order to avoid the appearance of a conflict of interest on the part of an Allocation Committee member, the Policy requires an Allocation Committee member whose firm has an investment banking/underwriting relationship with a listing company or is affiliated with a specialist unit applicant, to abstain from deliberations with respect to that particular stock. Since the implementation of the amendments discussed above, the Exchange has found that the conflict of interest exclusion may, at times, impede the Exchange's efforts to maintain the maximum presence of three Floor broker Governors on the Allocation Committee. The Exchange believes that conflict of interest abstentions, among other matters, could lead to situations in which the quorum requirement for Floor broker Governors could not be met. In order to respond to this concern, the Exchange is proposing to amend the Policy to permit Senior Floor Officials[5] to substitute for Floor broker Governors on the Allocation Committee for purposes of satisfying quorum requirements.

The Allocation Committee membership is drawn from the Allocation Panel, which consists of 28 Floor brokers, 8 allied members,[6] the 8 Floor broker Governors (who are part of the Allocation Panel by virtue of their appointment as Governors), and the 4 allied members serving on the Exchange's Market Performance Committee.[7] The Exchange would also amend the Policy to expand the Allocation Panel by appointing a minimum of 5 Senior Floor Officials each year. The Senior Floor Officials on the Allocation Panel would constitute a separate category, distinguished from the 28 Floor brokers.

In the event that any of the Floor broker Governors on the standing Allocation Committee were not able to attend an Allocation Committee meeting, or to participate in the allocation of a particular stock, the Exchange would first seek to substitute for such Governor(s) with another Floor broker Governor on the Allocation Panel. If no such Governor was available, in order to maximize the seniority of the Allocation Committee membership, a Senior Floor Official broker on the Allocation Panel that is not a standing member of the Allocation Committee would be sought as a substitute for the absent Governor(s). In instances where no Senior Floor Official broker was available from the Allocation Panel, any Senior Floor Official broker on the standing Allocation Committee may substitute for the absent Governor(s) for purposes of meeting the Governor quorum requirement.

In the event that no current Floor broker or allied member is available from the Allocation Panel, a former Allocation Committee chairman may substitute for a standing Allocation Committee member who cannot attend a meeting or participate in a particular allocation decision. However, a former Allocation Committee chairman may not substitute for a Floor broker Governor for the purpose of meeting the Floor broker Governor quorum requirement unless such former Allocation Committee chairman is a Senior Floor Official.

The Exchange is also amending the "Term of Service" provision for Panel members to include a provision for Senior Floor Officials. Senior Floor

[1] See Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Elisa Metzger, Staff Attorney, SEC, dated May 16, 1995.

[2] A Floor broker Governor is an individual, designated as such by the Chairman of the Exchange's Board of Directors, who is empowered to perform any duty, make any decision or take any action assigned to or required of a Floor Director as prescribed by the rules of the Exchange's Board of Directors.

[3] This committee determines which specialist unit will specialize in a particular security. See Securities Exchange Act Release No. 34626 (September 1, 1994), 59 FR 46457.

[4] See Securities Exchange Act Release No. 34626 (September 1, 1994), 59 FR 46457.

[5] A Senior Floor Official is a former Governor or a former Floor Director.

[6] An allied member is a general partner, principal executive officer or employee who controls a member firm or member organization. See New York Stock Exchange, Inc., Constitution, Art. 1, Sec. 3(c).

[7] The Allocation Panel comprises the pool of individuals from which the Allocation Committee is formed. The Allocation Panel members are selected through an annual appointment process with input from the membership. Panel members are appointed to serve a one-year term; Floor broker Governors, however, remain on the Allocation Panel for as long as they are Floor broker Governors.

Officials are subject to annual reappointment, but are not subject to the two committee term restriction that floor brokers and allied members are subject to, and are not limited to a maximum of six consecutive one-year terms.

2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(5) that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The proposed rule changes are consistent with these objectives in that they enable the Exchange to further enhance the process by which stocks are allocated.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC, 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–95–13 and should be submitted by June 28, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–13894 Filed 6–6–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35782; File No. SR–PHLX–95–30]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to an Increase in the Maximum Size of Optioned Orders Eligible for Delivery Through the Automated Options Market System

May 30, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 23, 1995, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Currently, orders of up to 100 option contracts are eligible for delivery through the Automated Options Market ("AUTOM") system, the PHLX's electronic order routing and delivery system for equity and index options. The PHLX proposes to amend its rules to allow a maximum of 500 contracts to be delivered through AUTOM. Currently, only public customer orders of 25 option contracts or less are eligible for automatic execution through AUTO–X, the automatic execution feature of AUTOM. The proposal does not affect AUTO–X order size eligibility.

The text of the proposed rule change is available at the Office of the Secretary, PHLX, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposal is to increase the maximum eligible order size for the delivery of equity and index option orders through AUTOM from 100 to 500 contracts.

AUTOM, which has operated on a pilot basis since 1988 and was not recently extended through December 31, 1995,[1] is an on-line system that allows

[1] *See* Securities Exchange Act Release No. 35183 (December 30, 1994), 60 FR 2420 (January 9, 1995) (order approving File No. SR–PHLX–94–41). *See also* Securities Exchange Act Release Nos. 25540 (March 31, 1988), 53 FR 11390 (order approving AUTOM on a pilot basis); 25868 (June 30, 1988), 53 FR 25563 (order approving File No. SR–PHLX–88–22, extending pilot through December 31, 1988); 26354 (December 13, 1988), 53 FR 51185 (order approving File No. SR–PHLX–88–33, extending pilot program through June 30, 1989); 26522 (February 3, 1989), 54 FR 6465 (order approving File No. SR–PHLX–89–1, extending pilot through December 31, 1989); 27599 (January 9, 1990), 55 FR 1751 (order approving File No. SR–PHLX–89–03, extending pilot through June 30, 1990); 28625 (July 26, 1990), 55 FR 31274 (order approving File No. SR–PHLX–90–16, extending pilot through December 31, 1990); 28978 (March 15, 1991), 56 FR 12050 (order approving File No. SR–PHLX–90–34, extending pilot through December 31, 1991); 29662 (September 9, 1991), 56 FR 46816 (order approving File No. SR–PHLX–91–31, permitting AUTO–X orders up to 20 contracts in Duracell options only); 29782 (October 3, 1991), 56 FR 55146 (order approving File No. SR–PHLX–91–33, permitting AUTO–X for all strike prices and expiration months); 29837 (October 18, 1991), 56 FR 36496 (order approving File No. SR–PHLX–90–03, extending pilot through December 31, 1993); 32906 (September 15, 1993), 58 FR 15168 (order approving File No. SR–PHLX–92–38, permitting AUTO–X orders up to 25 contracts in all options); and 33405 (December 30, 1993), 59 FR 790 (order approving File No. SR–PHLX–93–57, extending pilot through 31, 1994).

[2] The Commission recently approved a PHLX proposal to codify the use of AUTOM and AUTO–X for index options. *See* Securities Exchange Act Release No. 34920 (October 31, 1994), 59 FR 5510 (November 7, 1994) (order approving File No. SR–PHLX–94–40). In addition, the Commission has approved a PHLX proposal to codify the Exchange's practice of accepting certain orders for AUTOM and AUTO–X. *See* Securities Exchange Act Release No. 35601 (April 13, 1995), 60 FR 19616 (April 19, 1995) (order approving File No. SR–PHLX–95–18). AUTO–X was approved as part of the AUTOM pilot program in 1991. *See* Securities Exchange Act Release No. 28978, *supra* note 1.

[3] *See* Securities Exchange Act Release No. 28516 (October 3, 1990), 55 FR 41408 (October 11, 1990) (order approving File No. SR–PHLX–90–18).

electronic delivery of options orders from member firms directly to the appropriate specialist on the Exchange's trading floor. Currently, orders for up to 100 options contracts are eligible for AUTOM and public customer orders for up to 25 contracts are eligible for AUTO–X, the automatic execution feature of AUTOM.[2] AUTO–X orders are executed automatically at the disseminated quotation price on the Exchange and reported to the originating firm. Orders that are not eligible for AUTO–X are handled manually by the specialist. The current proposal does not impact AUTO–X order size eligibility.

The Exchange proposes to increase the maximum eligible size of AUTOM orders from 100 to 500 contracts. This change is intended to extend the benefits of AUTOM to additional users. The Exchange notes that the maximum AUTOM order size has remained the same since 1990. In light of the PHLX's experience with AUTOM over the past seven years, including five years during which the maximum AUTOM order size has been 100 contracts, the Exchange believes that it is appropriate, at this time, to increase the maximum size of the option orders eligible for routing and delivery through AUTOM to 500 contracts. The PHLX notes that the most recent change, in 1990, increased the eligible order size for AUTOM from 10 to 100 contracts.[3]

The PHLX states that the AUTOM system has sufficient capacity to operate with a maximum order size of 500 contracts, such that AUTOM and AUTO–X functioning would not be adversely affected by the proposal.

Accordingly, the PHLX believes that the proposal is consistent with Section 6(b) of the Act, in general, and, in particular, with Section 6(b)(5), in that it is designed to promote just and equitable principles of trade and to prevent fraudulent and manipulative acts and practices, as well as to protect investors and the public interest by extending the benefits of AUTOM, including prompt and efficient order handling, to orders for up to 500 contracts.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days after May 23, 1995, the date on which it was filed, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five days prior to the filing date, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(e)(6) thereunder. In particular, the Commission believes that the proposal does not significantly affect the protection of investors or the public interest and does not impose any significant burden on competition.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by June 28, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–13895 Filed 6–6–95; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21104; No. 812–9200]

The Guardian Insurance & Annuity Company, Inc., et al.

May 31, 1995.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 ("1940 Act").

APPLICANTS: The Guardian Insurance & Annuity Company, Inc. ("Guardian"), The Guardian Separate Account K ("Separate Account") and Guardian Investor Services Corporation ("Guardian Services").

RELEVANT 1940 ACT SECTIONS Order requested under Section 6(c) granting exemptions from the provisions of Sections 2(a)(32), 2(a)(35), 22(c), 26(a)(1), 26(a)(2), 27(a)(1), 27(c)(1), 27(c)(2), 27(d), and 27(e) of the 1940 Act, and paragraphs (b)(1), (b)(12), (b)(13)(i), (b)(13)(iii), (b)(13)(iv), (b)(13)(v), (b)(13)(vii), (c)(1), (c)(4) of Rule 6e–2, and Rules 6e–3(T)(c)(4)(v), 22c–1 and 27e–1 thereunder.

SUMMARY OF APPLICATION: Applicants request an order that would permit them to offer and sell certain variable whole life insurance contracts with modified scheduled premiums ("Contracts") that provide for: (1) A death benefit that may or may not vary based on investment experience; (2) a sales charge deducted from premium payments and as a contingent deferred sales charge; (3) a contingent deferred administrative charge; (4) deduction from Account Value for cost of insurance charges, guaranteed insurance amount charges, substandard mortality risks and incidental insurance benefits, including

[4] 17 CFR 200.30–3(a)(12) (1994).

a Premium Skip Option; (5) values and charges based on the 1980 Commissioners' Standard Ordinary Mortality Tables ("1980 CSO Tables"); (6) the holding of underlying fund shares by the Separate Account without the use of a trustee under an open account arrangement and without trust indenture; and (7) a waiver of notice of refund and withdrawal rights.

Applicants also request exemptive relief to deduct a charge from premium payments received under the Contracts, and from premiums received under certain single premium, scheduled premium and flexible premium variable life insurance contracts ("Other Contracts") to be issued by Guardian through the Separate Account or any other separate account established by Guardian ("Future Accounts"), to compensate Guardian for its increased federal tax burden resulting from the receipt of such premiums.[1]

FILING DATE: The application was filed on August 29, 1994 and amended on May 4, 1995. Applicants have represented that the application will be amended during the notice period to reflect certain representations made herein.

HEARING OR NOTIFICATION OF HEARING: An order granting the Application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on June 26, 1995, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requestor's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549. Applicants: Richard T. Potter, Esq., The Guardian Insurance & Annuity Company, Inc., 201 Park Avenue, South, New York, New York 10003.

FOR FURTHER INFORMATION CONTACT: Yvonne M. Hunold, Assistant Special Counsel, or Wendy Friedlander, Deputy Chief, at (202) 942–0670, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations

1. Guardian is a stock life insurance company and a wholly-owned subsidiary of The Guardian Life Insurance Company of America. Guardian is authorized to conduct a life insurance business in all 50 States and the District of Columbia.

2. The Separate Account is registered as a unit investment trust ("UIT) under the 1940 Act and interests in the Contracts are registered under the Securities Act of 1933 ("1933 Act"). Future Accounts will be registered under the 1940 Act as UITs. The Separate Account and the Future Accounts will be used to support the Contracts or the Other Contracts.

The Separate Account currently consists of six investment divisions ("Investment Divisions"), each investing in a corresponding fund registered under the 1940 Act as a diversified open-end management company ("Fund" or collectively, "Funds"). The Funds serve as underlying funding vehicles for the Contracts. Each Fund is managed by a registered investment adviser. Additional Investment Divisions may be established in the future and may invest in the Funds or in other underlying investment vehicles.

3. Guardian Services, the principal underwriter for the Contracts, is a registered broker-dealer under the Securities Exchange Act of 1934 and a member of the National Association of Securities Dealers, Inc.

4. Under the Contracts, premiums may be paid on a scheduled or an unscheduled basis (collectively, "Premium Payments"), subject to certain exceptions and conditions. Each Premium Payment is subject to "Premium Assessments" which are paid in connection with a Contract issued on a substandard basis and for supplemental insurance benefits provided by rider or endorsement. If, however, the "Premium Skip Option" is elected,[2] 90.5% of Premium Assessment otherwise payable from Premium Payments is deducted from Account Value. The remaining Premium Payment ("Basic Scheduled Premium")[3] is used to purchase base Contract coverage and is reduced by certain Premium Charges, discussed below.[4]

Each unscheduled Premium Payment also is subject to deduction of Premium Charges, including the remaining 9.5% of Premium Assessment otherwise payable from Premium Payments if the Premium Skip Option is in effect. Thus, Premium Assessments usually are deducted from Premium Payments before sales load and other charges against Premiums are imposed. Premium Assessments deducted from Account Value (under the Premium Skip Option), in effect, are deductions from amounts previously subject to Premium Charges (which are equal to a total of 9.5% of Premiums until the cumulative total of Basic Scheduled Premiums and unscheduled Premium Payments is an amount equal to twelve Basic Scheduled Premiums). Accordingly, a discounting of Premium Assessments deducted from Account Value reflects the fact that the deductions are being made from post-premium charge amounts. Net Premiums are credited to Account Value and allocated to the Investment Divisions, or to the Fix-Rate Option, as specified by the Contract owner.

5. Two Death Benefit Options are available: (1) "Option 1 Death Benefit," equal to the Face Amount of a Contract until the Contract Anniversary nearest the insured's 100th birthday; and (2) "Option 2 Death Benefit," equal to the Face Amount of a Contract plus the excess of Account Value on the date of death over a Contract's "Benchmark Value" for the applicable Contract Year, adjusted to the date of death until the Anniversary nearest the insured's 100th birthday. Under either Option, Death Benefits are guaranteed not to be less then a Contract's then-current Face Amount as long as Premium Payments are made, or excused, and there is no outstanding Contract Debt. If, however, a greater Death Benefit would be provided under either one of two "Alternative Death Benefits," (a) the minimum death benefit required under Section 7702 of the Code, or (b) the variable insurance amount, then the greater Alternative Death Benefit will be paid. Thus, the Death Benefit under either Option 1 or Option 2 varies with investment experience when the Account Value is sufficiently large that: (a) the Death Benefit is increased in order for a Contract to qualify as life insurance for federal tax law purposes; or if greater, (b) the Death Benefit is increased to the variable insurance amount. This may occur because of favorable investment experience, unscheduled Premium Payments, imposition of lower than guaranteed charges, or a combination of these factors.

6. Various fees and expenses are deducted from Premium Payments under the Contracts:

a. Premium Charges: The following charges are deducted from each Premium Payment:

(1) *Sales Charge:* A Premium Sales Charge equal to 6.0% of all Premium Payments until the cumulative total of all such Payments is equal to twelve Basic Scheduled Premiums; thereafter, the charge will be equal to 3.0% of all such payments.

(2) *Premium Tax Charge:* A State Premium Tax Charge of 2.5% which is an approximate average of the rates Guardian expects to pay in all states over the lifetime of the insureds covered by the Contracts. Guardian reserves the right to increase if its premium taxes increase due to a change in state law.

(3) *Federal Premium Tax Burden Charge:* A charge of 1.0% to compensate Guardian for an increase in its federal income tax burden resulting from the application of Section 848 of the Internal Revenue Code of 1986 ("Code"), as amended by the Omnibus Budget Reconciliation Act of 1990 ("OBRA").

(4) *Processing Charge:* Guardian reserves the right to impose a maximum charge of $2.00 from each unscheduled Premium Payment received for processing costs, including recordkeeping. Guardian does not expect a profit from this fee, if imposed.

b. Transaction Charges: The following charges are deducted proportionately from Account Value attributable to the Investment Divisions until the Account value is depleted, and then from the Fixed-Rate Option:

(1) *Surrender Charge:* A Contingent Deferred Sales Charge ("CDSC") and a Contingent Deferred Administrative Charge ("CDAC") are deducted during the first 12 Contract Years upon withdrawal, surrender, reduction in Face Amount, or lapse.

(A) CDSC:[5] For an insured age 78 or less, the lesser of (i) 36% of the annual Basic Scheduled Premium payable for the first Contract Year, less the sum of 3% of all Basic Scheduled Premiums and unscheduled Premium Payments actually paid under the Contract up to the date that the Surrender Charge is incurred and any deferred sales charges deducted for prior Face Amount reductions; or (ii) a percentage of the then payable annual Basic Scheduled Premium specified in the following chart for the Contract Year during which the Surrender Charge is applied:

Contract year[6]	Percentage
1	36
2	33
3	30
4	27
5	24
6	21
7	18
8	15
9	12
10	9
11	6
12	3
13+	0

(B) CDAC: The CDAC compensates Guardian for certain administrative expenses as follows (per $1,000 Base Contract Face Amount), subject to certain decreases associated with a reduction in Face Amount:

ADMINISTRATIVE SURRENDER CHARGE

Year (ages)	1	2	3	4	5	6	7	8	9	10	11	12	13+
00–27	2.4	2.20	2.0	1.80	1.6	1.40	1.2	1.00	0.8	0.60	0.4	0.20	.00
28–29	3.0	2.75	2.5	2.25	2.0	1.75	1.5	1.25	1.0	0.75	0.5	0.25	.00
30–31	3.6	3.30	3.0	2.70	2.4	2.10	1.8	1.50	1.2	0.90	0.6	0.30	.00
32–33	4.2	3.85	3.5	3.15	2.8	2.45	2.1	1.75	1.4	1.05	0.7	0.35	.00
34–80	4.8	14.40	4.0	3.60	3.2	2.80	2.4	2.00	1.6	1.20	0.8	0.40	.00

(2) *Partial Withdrawal Administration Charge:* The lesser of $25 or 2% of the amount withdrawn for certain administrative costs. Guardian does not expect to profit from this charge.

(3) *Transfer Charge:* Guardian reserves the right to deduct $25 for each transfer in excess of four transfers during a Contract Year. No transfer charge will be imposed in connection with dollar cost averaging feature or loans. Guardian does not expect to profit from this charge.

(4) *Premium Skip Option Charge:* An amount equal to 90.5% of any Premium Assessment that otherwise would be deducted from an annual Premium will be deducted on each Contract Anniversary on which the "skipped" Premium otherwise would be due or, if later, on the date the Premium Skip Option is effected. The remaining 9.5% is deducted as part of the Premium Charges for any unscheduled Premium Payment.

c. Monthly Deductions: The following charges are deducted monthly proportionately from Account Value attributable to each Investment Division and the Fixed-Rate Option, ending on

[1] Applicants represent that the application will be amended during the notice period to delete Future Accounts as applicants and to request that exemptive relief to deduct such a charge be extended to Future Accounts in connection with the offering of Other Contracts.

[2] A Premium Skip Option permits the Contract owner, after the first Contract Year, to skip annual Premium Payments without the Contract lapsing, subject to certain conditions.

[3] The Basic Scheduled Premium initially is calculated at the issuance of the Contract and thereafter on each subsequent date that a Contract premium is due until the later of: (a) the Contract Anniversary nearest the insured's 70th birthday; or (b) the 10th Contract Anniversary ("Guaranteed Premium Period"). After the Guaranteed Premium Period, the Basic Scheduled Premium will be reviewed on each "Contract Review Date" (the monthly date prior to each Contract anniversary). If on that date the Account Value is: (a) less than the "Benchmark Value," then the Basic Scheduled Premium will be increased to no more than the "maximum" amount set forth in the Contract; or (b) higher than the Benchmark Value, then the Basic Scheduled Premium could be reduced to no less than the Basic Scheduled Premium payable during the Guaranteed Premium Period.

The Benchmark Value approximately equals the Account Value needed on a Contract Anniversary for the Contract to endow at age 100 for the Face Amount, assuming (a) all Basic Scheduled Premiums are paid when due and do not increase after the Guaranteed Premium Period due to re-determination on a Review Date; (b) no unscheduled payments, partial withdrawals, reductions in Face Amount, or loans have been or will be made; (c) a level net annual rate of return on Account Value of 4%; and (d) deduction on each Monthly Date of the maximum Contract Charge, Administrative Charge, Guaranteed Insurance Amount and Cost of Insurance Charges.

[4] The portion of a Premium Payment that consists of Premium Assessments is not subject to Premium Charges.

[5] The total sales charge (Premium Sales Charge and CDSC) is subject to a maximum of 9% of Basic Scheduled Premiums paid under the Contract over the shorter of 20 years or the insured's anticipated life expectancy.

[6] In order to preclude the possibility that Guardian would be required to refund any sales load, the Contracts provide that the CDSC imposed during the first two Contract Years will be no greater than the sum of: 24% of payments made during the first Contract Year up to an amount equal to an annual Basic Scheduled Premium; plus 4% of payments made during the second Contract Year up to an amount equal to an annual Basic Scheduled Premium; plus 3% of all unscheduled payments made during the first two Contract Years.

the Contract Anniversary nearest the insured's 100th birthday:

(1) *Contract Charge and Administration Charge:* The Contract charge is equal to $10 per month during Contract Years 1 through 3, and $4 per month thereafter (guaranteed not to exceed $8 per month). The Administrative Charge is equal to $0.02 to $0.04 (increasing with issue age) per $1,000 of Face Amount during the first 12 Contract Years, and $0.015 per $1,000 of Face Amount thereafter, for underwriting, issuing and maintaining the Contract. Guardian does not expect to profit from these charges.[7]

(2) *Guaranteed Insurance Amount Charge:* $0.01 per $1,000 of Face Amount to compensate Guardian for the risk it assumes by guaranteeing that a Contract will remain in force if all premiums have been paid when due and no loans have been taken, regardless of the investment experience of the Investment Division; and

(3) *Cost of Insurance Charge:* A charge, based on the 1980 CSO Tables (discounted at the monthly equivalent of 4% per year), is deducted and calculated by multiplying the net amount at risk on a Monthly Date (amount by which the Death Benefit on the first day of the Contract month exceeds the Account Value on the same day, after monthly deductions for contract and administration charges and the Guaranteed Insurance Amount charge have been processed) by the applicable monthly cost of insurance rate, divided by $1,000.

d. Separate Account Charges: Each Investment Division currently is assessed a charge for mortality and expense risks that Guardian assumes, at a current effective annual rate of .60% of the value of its assets. Guardian reserves the right to increase the mortality and expense risk charge up to a maximum effective annual rate of .90%, subject to further Commission authorization. Guardian assumes a mortality risk under the Contracts that insured may live for shorter periods of time than estimated, and assumes an expense risk that its actual costs of issuing and administering the Contracts may be more than it estimated. No charge currently is deducted from Separate Account assets for income taxes attributable to the Separate Account or the Contracts. Guardian reserves the right to impose such charges if the income tax treatment of variable life insurance changes, or if there is a change in Guardian's tax status.

e. Fund Expenses: Charges for investment advisory and other expenses incurred by the Funds are deducted from assets of the relevant Fund and are indirectly borne by Contract owners.

Applicants' Legal Analysis

Section 6(c) authorizes the Commission, by order and upon application, to exempt any person, security, or transaction, or class of persons, securities, or transactions, from any provisions of the 1940 Act. The Commission grants relief under Section 6(c) to the extent an exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. For the reasons stated below, Applicants assert that the requested exemptions satisfy the standards of Section 6(c).

A. Request for Exemptions Relating to Definition of "Variable Life Insurance Contract"

1. Applicants note that Rule 6c–3 under the 1940 Act provides that a separate account that meets the requirements of Rule 6e–2(a)[8] and registers as an investment company under the 1940 Act also is exempt from the 1940 Act provisions set forth in Rule 6e–2(b), except for Sections 7 and 8(a), under the same terms and conditions as a separate account claiming exemption directly under Rule 6e–2.[9] Applicants state that the Separate Account satisfies the conditions of Rule 6e–2(a) and, therefore, is entitled to rely on Rule 6e–3. Accordingly, the Separate Account is exempt from the provisions of the 1940 Act specified in paragraph (b) of Rule 6e–2, except for Sections 7 and 8(a) of the 1940 Act, under the same terms and conditions as a separate account claiming exemption under Rule 6e–2.

Rule 6e–2(c)(1) defines a "variable life insurance contract" to include only life insurance contracts that provide both a death benefit and a cash surrender value which vary to reflect the investment experience of the separate account, and that guarantee that the death benefit will not be less than an initial dollar amount stated in a contract. The required guaranteed minimum death benefit need be provided only so long as payments are duly made in accordance with the contract's terms.

2. Applicants submit that under the Contracts the Death Benefit varies to reflect investment experience within the meaning of Rule 6e–2(c)(1). Applicants concede, however, that the Death Benefit is not precisely the type of variable death benefit contemplated when Rule 6e–2 was adopted, and that the Contracts also contain other provisions that are not specifically addressed in Rule 6e–2.

3. Applicants believe that Option 2 Death Benefit falls within the requirement that it "vary to reflect the investment experience of the separate account," although it varies only when Account Value exceeds Benchmark Value. Applicants submit that this situation is analogous to more conventional scheduled premium variable life insurance contracts where death benefits are increased when investment experience exceeds an assumed investment rate. Applicants assert that Rule 6e–2(c)(1) clearly contemplates that a death benefit would vary only if it exceeds a guaranteed minimum death benefit.

4. Applicants state, however, that Option 1 will fail to satisfy this requirement if the Death Benefit has not been otherwise increased to provide the minimum death benefit required by Section 7702 of the Code of the variable insurance amount.

5. Applicants request exemptions from the definition of "variable life insurance contract" in Rule 6e–2(c)(1) and from all Sections of the 1940 Act and rules thereunder specified in Rule 6e–2(b) (other than Sections 7 and 8(a)), under the same terms and conditions applicable to a separate account that satisfies the conditions set forth in Rule 6e–2(a), and to the extent necessary to permit the offer and sale of the Contracts in reliance on Rule 6e–2, except as otherwise set forth herein.[10]

[7] Applicants represent that each of these fees is reasonable, and in an amount that does not exceed the expenses to which such charge relates that are currently anticipated to be incurred over the lifetime of the Contracts. The maximum amount of each of these fees or charges is guaranteed not to increase during the term of the Contract. Guardian does not anticipate realizing a profit from these charges.

[8] Rule 6e–2(a) states that "a separate account * * * shall, except for the exemptions provided in paragraph (b) [of Rule 6e–2], be subject to all provisions of [the 19040 Act] * * * as though such separate account were a registered investment company issuing periodic payment plan certificates," provided that the conditions set forth in Rule 6e–2(a) are met. Thus, Rule 6e–2(a) contemplates that a variable life separate account relying on Rule 6e–2 will not be registered under the 1940 Act.

[9] Accordingly, all registered separate accounts issuing variable life insurance products do so in reliance on Rule 6c–3, and not directly in reliance on Rules 6e–2 or 6e–3(T), as applicable. Applicants represent that the application will be amended during the notice period to reflect these statements.

[10] Both Death Benefit Options provide for a guaranteed minimum death benefit at least equal to the Contract's initial Face Amount, as required by Rule 6e–2(c)(1). The Contracts also permit a reduction in Face Amount (including reductions through partial withdrawals). Certain provisions of

6. Applicants submit that the definition of "variable life insurance contract" in Rule 6e–2(c)(1) was drafted at a time when all the variable life insurance contracts then contemplated clearly met this definition, and that the considerations that led the Commission to grant the exemptions in Rule 6e–2 did not depend in any material way upon the fact that the death benefit, as well as cash values, varied with investment experience. Nor did such considerations depend on whether a scheduled premium contract also provided for substantial premium payment flexibility and other features so long as the scheduled premiums, if paid when due, provided for a minimum death benefit guaranteed to at least equal the initial face amount.

7. Applicants further submit that the extent to which favorable investment experience is used to increase death benefits rather than cash values differs considerably among the contracts offered by different issuers in reliance on Rule 6e–2. Applicants also submit that, under all contract designs, the degree to which investment performance changes the death benefit necessarily has an impact on cash values under the Contracts.

8. Applicants represent, that, generally, higher death benefits require higher cost of insurance deductions which, in turn, result in lower cash values. Applicants state that it is desirable for purchasers to be free to choose a benefit structure which they believe suits their own needs with respect to the relationship of cash value, death benefit and investment performance. Applicants also state that Contract owners can do this by, for example, deciding whether to apply excess value to purchase extra death benefit. Using excess value for this purpose will maximize the guaranteed death benefit in the event of favorable investment experience, but will cause Account Value to be less than it otherwise would be.

9. Applicants also submit that the considerations that led the Commission to adopt Rules 6c–3 and 6e–2 apply equally to the Separate Account and the Contracts, and that the exemptions provided by these rules would be granted to the Separate Account and to the other Applicants on the terms specified in those rules, except to the extent that further exemption from those terms is specifically requested herein.

B. Request for Exemptions Relating to Sales and Administrative Charges

1. Applicants request exemptions from Sections 2(a)(32), 2(a)(35), 22(c), 26(a)(2), 27(a)(1), 27(c)(2), 27(d) and Rules 6e–2(b)(1), (b)(12), (b)(13)(i), (b)(13)(iv), (b)(13)(v) and (c)(4), and Rule 22c–1 to the extent necessary to permit deductions of: (a) part of a Contract's sales charge from premium payments and part from Account Value as a CDSC, and (b) the CDAC from Account Value. Both the CDSC and the CDAC will be deducted on surrender, Face Amount reduction (including upon partial withdrawals), or lapse.

2. *Section 2(a)(35) and Rules 6e–2 (b)(1) and (c)(4).* Applicants assert that Section 2(a)(35)[11] and Rules 6e–2 (b)(1) and (c)(4)[12] may be read to contemplate that the sales charge for a variable life insurance contract will be deducted from premium payments. Applicants submit that Guardian's deduction of the CDSC from Account Value may be deemed inconsistent with these provisions. Further, deduction of the CDSC also may be deemed inconsistent with Rule 6e–2(c)(4) because, in order to facilitate the payment and other flexibility features under the Contracts, the CDSC is computed based on the lesser of actual payments made or Basic Scheduled Premiums payable (rather than as the excess of actual premium payments made over certain amounts, as required by the literal terms of that provision). Accordingly, Applicants request exemptions from Section 2(a)(35) and Rule 6e–2 (b)(1) and (c)(4) to the extent necessary to permit part of the Contracts' sales charge to be deducted from premium payments and part as a CDSC upon surrender, Face Amount reduction (including upon partial withdrawal) or lapse of a Contract.

In addition, Applicants argue that Rule 6e–2(c)(4) can be construed to allow the imposition of a sales charge on other than premiums because the definition of "sales load" in the Rule does not reflect the actual methodology of administering variable life insurance contracts, referring in subparagraphs (i) and (ii), for example, to other amounts that are not deducted from payments. To this extent, Applicants assert that the applicability of the definition need not be limited to any particular form of sales load. Accordingly, Applicants submit that the CDSC is consistent with the definition of "sales load" set forth in Rule 6e–2(c)(4). Applicants, however, request the exemptions noted above in order to avoid any question concerning full compliance with the 1940 Act and any regulations thereunder.

3. *Section 27(a)(1) and Rule 6e–2(b)(13)(i).* Section 27(a)(1) limits sales load in terms of a maximum percentage, of payments to be made on a periodic payment plan certificate. Rule 6e–2(b)(13)(i) limits the amount of sales charges on a variable insurance contract to a maximum of 9% of the payments to be made under the contract during a period equal to or the lesser of (a) 20 years or (b) the anticipated life expectancy of the insured, based on the 1958 Commissioners' Standard Ordinary Mortality Table ("1958 CSO Tables").

Applicants assert that Section 27(a)(1) and Rule 6e–2(b)(13)(i) could be read to contemplate that the sales charge under the Contracts will be deducted from Premium Payments prior to their allocation to the Separate Account. Consequently, Guardian's deduction of part of its sales charge as a CDSC may be deemed inconsistent with the foregoing provisions to the extent that the sales charge is deducted from other than premium payments. Applicants thus request exemptions from Section 27(a)(1) and Rule 6e–2(b)(13)(i) to the extent necessary to permit part of the Contracts' sales charge to be deducted as a CDSC upon surrender, Face Amount reduction (including upon partial withdrawal) or lapse.

4. *Sections 26(a)(2) and 27(c)(2).* Applicants state that Sections 26(a)(2)[13]

Rule 6e–2, such as paragraph (c)(3), recognize the existence of partial withdrawals; in addition, partial withdrawals and reductions in Face Amount are common features in Contracts governed by Rule 6e–2. Applicants do not seek exemptive relief in this regard.

Applicants also state that they believe the Contract Options provide an additional benefit to a Contract owner by making it possible to continue insurance protection and participation in the Separate Account, if desired, even though the Contract owner may not continue to pay Contract Premiums. Similarly, Applicants believe the existence of the Primary Insured Term Rider and Fixed-Rate Option enhance the benefits available to a Contract owner. Applicants believe the availability of these options does not modify the basic characteristics of the Contract and, therefore, is consistent with the fundamental nature of the Contracts as variable life insurance contracts under paragraph (c)(1) of Rule 6e–2.

[11] "Sales load" is defined under Section 2(a)(35), in relevant part, as:

"the difference between the price of a security to the public and that portion of the proceeds from its sale which is received and invested or held for investment by the issuer (or in the case of a unit investment trust, by the depositor or trustee), less any portion of such difference deducted for trustee's or custodian's fees, insurance premiums, issue taxes, or administrative expenses or fees which are not properly chargeable to sales or promotional activities."

[12] Under Rule 6e–2(b)(1), "sales load" has the meaning set forth in Rule 6e–2(c)(4), which defines "sales load" charged on any payment as the excess of the payment over the sum of certain other amounts.

[13] Section 26(a)(2) provides, in relevant part, that: "no principal underwriter for a depositor of a registered unit investment trust shall sell any

Continued

and 27(c)(2)[14] may be read to require that proceeds of all Premium Payments under a Contract be deposited in the Separate Account, and that no payment be made from the Separate Account to any Applicant, or any affiliated person thereof, except for bookkeeping and other administrative services. Accordingly, Guardian's imposition of the CDSC may be deemed to be inconsistent with the foregoing provisions to the extent that the deduction could constitute payment for an expense not specifically permitted. Applicants thus request exemptions from Sections 26(a)(2) and 27(c)(2) to the extent necessary to permit the CDSC to be deducted upon surrender, Face Amount reduction (including upon partial withdrawal) or lapse of a Contract.

5. *Sections 2(a)(32), 27(c)(1) and 27(d), Rules 6e–2(b)(12), (b)(13)(iv) and (b)(13)(v).* Sections 2(a)(32), 27(c)(1) and 27(d) prohibit Applicants from selling a Contract unless it is a "redeemable security," defined under Section 2(a)(32) as entitling an owner of a Contract, upon surrender, to receive approximately his or her proportionate share of the Separate Account's current net assets. Section 27(d) provides a Contract owner with certain surrender and sales charge refund rights.

Rules 6e–2(b)(12), (b)(13)(iv) and (b)(13)(v) provide exemptions from Section 27(a)(1), and Rule 6e–2(b)(13)(iv) and (b)(13)(v) afford exemptions from Section 27(d), to the extent necessary for cash value to be regarded as satisfying the redemption and sales charge refund requirements of the 1940 Act. Applicants note, however, that the exemptions afforded by Rules 6e–2(b)(12), 6e–2(b)(13)(iv) and (b)(13)(v) may not contemplate the deduction of the Surrender Charge (*i.e.*, the CDSC and the CDAC). Guardian's deduction of the Surrender Charge can be viewed as reducing the proceeds that the Contract owner would receive on surrender below a Contract owner's proportionate share of the Separate Account's current net assets.

Further, Applicants note that Rule 6e–2 was adopted at a time when less flexibility regarding payments and other contract features was offered than subsequently has been permitted. Because of these features, Applicants state that it is unclear how the technical sales load computation provisions in Rule 6e–2 apply to the Contracts. Accordingly, because certain provisions of the Contracts' sales charge structure may be inconsistent with the provisions of Sections 2(a)(32), 27(c)(1) and 27(d) and paragraphs (b)(12), (b)(13)(iv) and (b)(13)(v) of Rule 6e–2, Applicants request exemptions from those provisions to the extent necessary to permit part of the Contracts' sales charge to be deducted from Premium Payments and part to be deducted as a CDSC, and to permit the deduction of the CDAC on surrender, Face Amount reduction (including upon partial withdrawal) or lapse.

In addition, Applicants submit that, although Section 2(a)(32) does not specifically contemplate the imposition of a sales charge and an administrative charge at the time of redemption, such charges are not necessarily inconsistent with the definition of "redeemable security." Applicants further submit that the charges are little different, for this purpose, from the "redemption" charge authorized in Section 10(d)(4) of the 1940 Act. Applicants argue that Congress intended that such a redemption charge, expressly described as a "discount from net asset value," be deemed consistent with the concept of "proportionate share" under Section 2(a)(32).

Consistent with Section 2(a)(32), Applicants therefore assert that the Contracts will be "redeemable securities" because the Contracts provide for full surrender for the Net Cash Surrender Value and are expected to provide for partial withdrawals of Cash Surrender Value in excess of the Benchmark value. Applicants represent that the prospectus for the Contracts will disclose the contingent deferred nature of part of the sales charge and of the administrative charges. Accordingly, Applicants state that there will be no restriction on, or impediment to, surrender that should cause the Contracts to be considered other than a redeemable security. Upon surrender or lapse, a Contract owner will receive his or her proportionate share of the Separate Account (*i.e.*, the amount of net Basic Scheduled Premiums and unscheduled payments made, reduced by the amount of all charges and deductions and increased or decreased by the amount of investment performance credited to a Contract).

6. *Section 22(c) and Rules 6e–2(b)(12) and 22c–1.* Applicants state that Rule 22c–1 prohibits the redemption of a Contract except at its current net asset value next computed after receipt of the request for surrender or partial withdrawal. Rule 6e–2(b)(12) provides exemptions from the redemption procedures mandated by Rule 22c–1. Nonetheless, Applicants submit that the rule may not contemplate the deduction of the Surrender Charge, which can be viewed as causing a Contract to be redeemed at a price based on less than a Contract's current net asset value next computed after full or partial surrender of a Contract. Consequently, the Surrender Charge may be deemed to be inconsistent with the foregoing rules.

Applicants submit that Rule 22c–1 and Rule 6e–2(b)(12) together impose requirements with respect to both the amount payable on surrender and the time as of which such amount is calculated. The requirement of these rules regarding the amount payable to a Contract owner on surrender is essentially the same as the requirements that are explicit or implicit in certain other provisions of the 1940 Act and rules thereunder from which Applicants are requesting exemptions.

Regarding the timing requirement of Rule 22c–1, Applicants state that they will determine the Net Cash Surrender Value under a Contract consistent with their current procedures and in accordance with Rules 6e–2(b)(12)(i) and 22c–1, and on a basis next computed after receipt of a Contract owner's request for surrender of a Contract or partial withdrawal. In addition, Applicants assert that the Commission's purpose in adopting Rule 22c–1 was to minimize (i) dilution of the interests of the other security holders and (ii) speculative trading practices that are unfair to such holders. Applicants state that the CDSC would in no way have the dilutive effect that Rule 22c–1 is designed to prohibit because a surrendering Contract owner would "receive" no more than an amount equal to the Net Cash Surrender Value determined pursuant to the formula set out in his or her Contract and after receipt of the request. Further, variable life insurance contracts do not lend themselves to the kind of speculative short-term trading that Rule 22c–1 was aimed against, and, further, the CDSC would discourage, rather than encourage, any such trading.

security of which the trust is the issuer unless the instrument pursuant to which the security is issued provides that no payment to the depositor of or the principal underwriter for such trust, or to any affiliated person of such depositor or underwriter, shall be allowed the trustee or custodian as an expense, expect that provision may be made for the payment to any such person of a fee, not exceeding such reasonable amount as the Commission may prescribe, as compensation for performing bookkeeping and other administrative services of a character normally performed by the trustee or custodian itself."

[14] Section 27(c)(2) provides, in relevant part, that: "it shall be unlawful for any registered investment company issuing periodic payment plan certificates, or for any depositor of or underwriter for such company, to sell any such certificate unless the proceeds of all payments on such certificate (except such amounts as are deducted for sales load) are deposited with a trustee or custodian having specified qualifications and are held by such trustee or custodian under an indenture or agreement containing specified provisions."

7. In support of their request for exemptions relating to sales and administrative charges, discussed above, Applicants submit that the deduction on a contingent deferred basis of part of the sales charge and the administrative charge will be advantageous to Contract owners for the following reasons.

a. First, the deferred charge structure has been accepted as an appropriate feature of life insurance products under Rule 6e–3(T) as well as pursuant to exemptive relief granted by the Commission, expands investors choices without sacrificing investor protection, and reinforces the intention that the product be held as a long term investment.

b. Second, the amount of a Contract owner's premium payment allocated to the Separate Account and available to earn a return for a Contract owner will be greater than it otherwise would have been if the sales and administrative charges were deducted from Premiums.

c. Third, Applicants represent that the total dollar amount of a sales load payable under a Contract is no higher than would be permitted by Rule 6e–2(b)(13), if taken entirely as front-end deductions from Premium Payments under a Contract for which all Premium Payments have been paid, as well as from any unscheduled Premium Payments. Moreover, for a Contract owners who does not lapse or surrender in the early Contract years, the dollar amount of the sales load is lower than otherwise would be permitted if taken entirely as front-end deductions. Furthermore, no Surrender Charge is deducted from any Death Benefit paid under a Contract.

Similarly, the total dollar amount of the CDAC under a Contract is no higher than if the charge were taken in full for the first Contract year, and is less for Contract owners who do not lapse, reduce the Face Amount by request or partial withdrawal, or surrender prior to the thirteenth Contract year. Applicants represent that this charge has not been increased to take into account the time value of money or the fact that not all Contract owners will incur the charge. Applicants state that Guardian does not anticipate a profit on the CDAC.[15]

d. Fourth, the allocation of a greater amount of Premium Payments to the Separate Account initially reduces the net amount at risk (Death Benefit less Account Value), upon which the cost of insurance charge is based.

8. Applicants submit that if Guardian is not permitted to charge sales and administrative charges in the form of contingent deferred charges and deducts these charges entirely from premiums, it could be charging continuing Contract owners more than otherwise may be necessary to recover the distribution and issuance costs attributable to such Contract owners. Applicants contend that their charge structure, by contrast, provides greater equity among both Contract owners who surrender and those who continue as Contract owners.

9. Applicants state that the CDSC, consistent with the definition in Section 2(a)(35), is an amount "chargeable to sales or promotional activities." Although not imposed on "payments," Applicants submit that the charge will cover expenses associated with the offer and sales of the Contracts, including commissions paid to sales personnel, promotional expenses and sales administration expenses. Similarly, the CDAC is for estimated administrative expenses connected with the Contracts. Applicants represent that these administrative expenses exclude any costs properly attributable to sales or distribution activity.

10. Applicants contend that the fact that the timing of the imposition of the Surrender Charge may not fall within the literal pattern of all the provisions discussed herein does not change the essential nature of the sales charge structure.

11. Although the methodology for computing sales charges under the Contracts may not have been contemplated by Rule 6e–2 as originally adopted, Applicants represent that the percentage of sales load imposed during the first two Contract Years will be no greater than the sum of: 30% of payments made during the first Contract Year up to an amount equal to an annual Basic Scheduled Premium, plus 10% of payments made during the second Contract Year up to an amount equal to an annual Basic Scheduled Premium, plus 9% of all unscheduled Premium Payments made during the first two Contract Years. Additionally, the percentage of sales load under the Contract will not exceed 9% of Basic Scheduled Premiums expected to be paid over the shorter of 20 years or the expected life expectancy of the insured. Moreover, Guardian does not anticipate making a profit on the CDAC. Therefore, Applicants submit that the Contract is consistent with the principals and policies underlying the limitations of Section 27 and Rule 6e–2(b)(13).

C. Deductions From Account Value of the Cost of Insurance, Guaranteed Insurance Amount Charge and Premium Assessments

1. Applicants submit that Sections 26(a)(2) and 27(c)(2), read together, could be interpreted to prohibit Guardian from deducting the following charges from Account Value: (a) Cost of insurance charge, (b) guaranteed insurance amount charge, and (c) if a Contract Premium is "skipped," charges for Premium Assessments in connection with the Premium Skip Option. Accordingly, Applicants request exemptions from Sections 26(a)(2) and 27(c)(2) and Rule 6e–2(b)(13)(iii)[16] to the extent necessary to permit deduction of these charges from Account Value.[17] Applicants submit that, as described above, the method of deducting these charges is fair and reasonable in that the charges are not designed to yield more revenues than if they were assessed solely against premium payments.

2. *Cost of Insurance Charges.* Applicants submit that the method of deducting this charge is fair and reasonable. Applicants represent that they believe all other variable life insurance contracts provide for cost of insurance deductions from cash value, which under a Contract consists of the unloaned Account Value.

3. *Premium Assessments.* As described above, Premium Assessments are deducted from Premium Payments before the Basic Scheduled Premium (net of Premium Charges) is allocated to the Separate Account. However, when, pursuant to the Premium Skip Option, Premiums are "skipped," and not paid, an amount equal to 90.5% of any Premium Assessment that otherwise would be deducted from a premium will be deducted from Account Value on

[15] Guardian intends to rely on Rule 6e–2(b)(13)(iii)(C) with regard to the CDAC.

[16] Rule 6e–2(b)(13)(iii) provides an exemption from Sections 27(c)(2) and 26(a)(2), subject to certain conditions, which Applicants submit they satisfy as noted herein.

[17] Applicants state that they are not seeking exemptions from these provisions with regard to the maximum handling fee for unscheduled premium payments that may be imposed under the Contracts (which will be deducted from premium payments in reliance on Rule 6e–2(c)(4)(iv), or the CDAC, the partial withdrawal charge, the transfer charge that may be imposed under the Contracts, or the Contract and Administration Charges deducted as part of the monthly deduction (each of which will be deducted pursuant to Rule 6e–2(b)(13)(iii). Applicants state that each of these charges is reasonable, and in an amount that does not exceed the expenses to which such charge relates that are currently anticipated to be incurred by Guardian over the lifetime of the insureds covered by the Contracts. Applicants represent that the maximum amount of each of these fees and charges is guaranteed not to increase during the term of the Contracts. Guardian does not anticipate realizing a profit on these fees or charges.

each Contract Anniversary on which the "skipped" Premium otherwise would be due or, in later, on the date the Premium Skip Option is effected. The remaining 9.5% is deducted as part of the Premium Charges when any unscheduled Premium Payment is made. Thus, part of the Premium Charges applied to any unscheduled Payment is to collect charges covered by Rules 6e–2(c)(4)(vi) and (vii), which refer to charges for substandard risk and for incidental insurance benefits deducted from Account Value.

Applicants represent that if Premium Assessments were required to be deducted solely from Premiums, it would be necessary for Guardian: (a) to reduce Contract payment flexibility, and/or (b) further limit the classes of insureds for whom a Contract will be available and limit or eliminate the rider benefits to be made available under a Contract. Applicants submit that purchasers and prospective purchasers of a Contract would find these results undesirable.

Rule 6e–2(c)(4), among other things, requires that charges referred to in Rule 6e–2(c)(4)(vi) and (vii) be subtracted from gross payments in determining amounts of "sales load." Rule 6e–2(c)(7) requires the amount of gross premiums attributable to such charges to be subtracted for purposes of determining the amount of "payments" on which sales load percentages are calculated in order to evaluate compliance with Rule 6e–2's various sales load limitations. Accordingly, Applicants subtract any Premium Assessments (including that deducted from Premiums and from Account Value upon exercise of Premium Skip Option) from Premium Payments to compute "sales load" under Rule 6e–2(c)(4) and to compute the amount of payments under Rule 6e–2(c)(7).

Where, because of the payment and other flexibility features of a contract, the entire Premium for a Contract Year is not paid, Rule 6e–2(c)(7) might still require Applicants to deduct certain amounts from any payments that were made, for sales load compliance purposes. These deductions would be for payments made that would be deemed "attributable" to charges for substandard risks and incidental insurance benefits. If this were so, Applicants would subtract the same amount in determining the amount of sales load under paragraph (c)(4) of Rule 6e–2. The amount would be the same, because part of any payments deemed "attributable" to such charges would, in effect, be deducted as a portion of Premium Charges, and part would be deducted as a portion of Account Value upon exercise of the Premium Skip Option.

4. *Guaranteed Insurance Amount Charge.* Applicants represent that the guaranteed insurance amount charge compensates Guardian for the risk that it assumes in guaranteeing death benefits under a Contract. Applicants submit that this charge essentially is an insurance charge that was not contemplated at the time that the 1940 Act was adopted. Although Rule 6e–2(c)(4)(iii) provides for such a charge, it does not expressly authorize it to be deducted from Account Value.

Applicants submit that Rule 6e–3(T) authorizes deductions from Account Value for a minimum death benefit guarantee charge in connection with variable life insurance contracts qualified to rely on that rule, conditioned on the life insurer's making certain representations. Further, proposed amendments to Rule 6e–2 would similarly authorize such deductions from Account Value. Accordingly, Guardian makes the following representations and undertakings, which are consistent with the proposed amendments:

(a) The level of the guaranteed insurance amount charge is reasonable in relation to the risks assumed by Guardian under the Contracts. The methodology used to support this representation is based on an analysis of the pricing structure of the Contracts, including all charges, and an analysis of the various risks, including special risks arising out of Contract provisions that allow unscheduled payments and, in certain circumstances, skipping Premiums. Guardian undertakes to keep and make available to the Commission on request the documents or memoranda used to support this representation.

(b) Guardian has concluded that: the proceeds from the sales charges may not cover the expected costs of distribution; surplus arising from the guaranteed insurance amount charge (among other sources) may be used to cover the distribution costs; and there is a reasonable likelihood that the distribution financing arrangements of the Separate Account will benefit the Separate Account and the Contracts owners. Guardian undertakes to keep and make available to the Commission on request a memorandum setting forth basis of this representation; and

(c) The Separate Account will invest only in management investment companies that have undertaken, in the event they should adopt any plan under Rule 12b–1 to finance distribution expenses, to have a board of directors (or trustees, as appropriate), a majority of whom are not interested persons of the company, formulate and approve such plan.

D. Request for Exemptions Relating to Use of 1980 CSO Tables

1. As discussed above, Rule 6e–2(b)(1) makes the definition of "sales load" in Rule 6e–2(c)(4) applicable to the Contracts. Section 27(a)(1) prohibits an issuer of periodic payment plan certificates from imposing a sales load exceeding 9% of the payments to be made on such certificates. Rule 6e–2(b)(13)(i) provides an exception from Section 27(a)(1) to the extent that sales load, as defined in Rule 6e–2(c)(4), does not exceed 9% of payments to be made on the variable life insurance contract during the period equal to the lesser of 20 years or the anticipated life expectancy of the insured based on the 1958 CSO Tables. Rule 6e–2(c)(4), in defining sales load, contemplates the deduction of an amount for the cost of insurance based on the 1958 CSO Tables and an assumed investment rate specified in the contract.[18]

2. Applicants assert it is appropriate that the deduction for the cost of insurance be based on the 1980 CSO Tables in determining what is deemed to be the sales load under the Contracts because: (a) the 1980 CSO Tables [19] reflect more recent information and data about mortality than the 1958 CSO Tables; (b) use of either the 1958 CSO Tables or the 1980 CSO Tables be permitted under proposed amendments to Rule 6e–2 for purposes of Rule 6e–2(b)(13)(i) and (c)(4), depending on which relates to the insurance rates guaranteed under a contract; and (c) the 1980 CSO Tables must be used for all contracts that rely on Rule 6e–3(T).

3. Applicants further represent that: (a) Guardian uses the 1980 CSO Tables to establish Premium rates and determine reserve liabilities for the Contracts; (b) the guaranteed cost of insurance rates under the Contracts are based on the 1980 Tables; (c) the mortality rates reflected in the 1980 CSO Tables more nearly approach the mortality experience which Guardian believes will apply to the Contracts; and (d) for Contracts issued for insured at advance ages, appropriate adjustments have been made in the CDSC structure to ensure that, subject to the other exemptive relief requested herein, the 9% standard prescribed by Rule 6e–2(b)(13)(i) will be met over the expected lifetimes of such insureds, based on the 1980 CSO Tables.

E. Request for Exemptions Relating to Custodianship Arrangements

1. Applicants state that Section 26(a)(1) and Section 26(a)(2), in effect, prohibit Applicants from selling the Contracts unless the Contracts are issued pursuant to a trust indenture or other such instrument that designates one or more qualified trustees or custodians to have possession of all securities in which Guardian and the Separate Account invest. Applicants submit that Section 27(c)(2), in effect, could be read to prohibit Applicants from selling the Contracts unless the proceeds of all Premium Payments are deposited with a qualified trustee or custodian. Applicants further submit that Rule 6e–2(b)(13)(iii), in relevant part, provides an exemption from Sections 26(a)(1), 26(a)(2) and 27(c)(2), provided that Guardian complies with all other applicable provisions of Section 26 as though it were a trustee or custodian for the Separate Account and assuming it meets the other requirements set forth in the rule.

2. Applicants assert that the holding of Fund shares by Guardian and the Separate Account under an open account arrangement, without having possession of share certificates and without a trust indenture or other such instrument, may be deemed to be inconsistent with the foregoing provisions. Nevertheless, Applicants represent that current industry practice calls for separate accounts organized as UITs, such as the Separate Account, to hold shares of management investment companies in uncertificated form. This practice is believed to contribute to efficiency in the purchase and sale of such shares by separate accounts and to bring about cost savings generally. Therefore, Applicants submit that the requirements of the 1940 Act and Rule 6e–2 regarding share ownership are inconsistent with current industry practice and its rationale.

3. Applicants further note that the Commission has adopted and proposed the following rules which would grant the requested exemptions: (a) Rules 6e–3(T)(b)(13)(iii)(B) and (C), in effect, grant the requested exemptions, but only for contracts covered by Rule 6e–3(T); (b) proposed Rule 6e–2(b)(13)(iii)(B) would permit a life insurer, such as Guardian, to hold the assets of a separate account without a trust indenture or other such instrument; (c) proposed Rule 6e–2(b)(13)(iii)(C) would permit a separate account organized as a UIT to hold the securities of registered investment companies, such as the Funds, that offer shares to the Separate Account in uncertificated form; and (d) Rule 26a–2, adopted by the Commission, affords exemption essentially similar to those requested here regarding variable annuity contracts. Applicants presume, based on information and belief, that the Commission adopted or proposed the foregoing exemptive rules based on a determination that safekeeping of separate account assets does not necessarily depend on the presence of a trustee, custodian or trust indenture or the issuance of share certificates, where state insurance law protects separate account assets, and open account arrangements foster administrative efficiency and cost savings.

4. The proposed exemptive provisions of Rule 6e–2(b)(13)(iii)(B) and (C) subject a life insurer to certain conditions. Guardian represents that it will: (a) comply with conditions of Rule 6e–2(b)(13)(iii)(B) and (C); (b) comply with all other applicable provision of Section 26 as if it were a trustee or custodian for the Separate Account (subject to the other exemptive relief requested in this application); and (c) will file with the insurance regulatory authority of Delaware an annual statement of its financial condition in the form prescribed by the National Association of Insurance Commissioners, which most recent statement indicates that it (i) has a combined capital and surplus of not less than $1 million, (ii) is examined from time-to-time by the insurance regulatory authority of Delaware as to its financial condition and other affairs, and (iii) is subject to supervision and inspection with respect to its separate account operations.

5. Applicants further believe that the Commission has determined that compliance with such conditions, which contemplate state protection of separate account assets, will help assure that the exemptions will be consistent with the public interest, the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

F. Request for Exemptions Relating to Waiver of Notice of Withdrawal and Refund Rights

1. Section 27(e) and Rules 27e–1 and 6e–2(b)(13)(vii),[20] in effect require a notice of right of withdrawal and refund on Form N–271–1 to be provided to Contract owners entitled to a refund of sales load in excess of the limits permitted by Rule 6e–2b(13)(v). The Contracts limit the amount of the CDSC that may be deducted by excess sales load limits consistent with those set forth in Rule 6e–2(b)(13)(v)(A). Thus, under the Contracts' sales load structure, no excess sales load will be paid by or refunded to a Contract owner surrendering, effecting a Face Amount reduction or lapsing in the first two Contract years.[21]

2. Rule 27e–1(a) specifies that no notice need be mailed when there is otherwise no entitlement to receive any refund of sales load. Rule 27e–1 and Rule 6e–2 were both adopted in the context of front-end loaded products only, and in the broader context of the companion requirements in Section 27 for the depositor or underwriter to maintain segregated funds as security to assure the refund of any excess sales load.

3. Applicants submit that requiring delivery of Form N–271–1 could confuse Contract owners and potentially encourage a Contract owner to surrender during the first two Contract Years against the Contract owner's best

[18] An assumed investment rate of 4% is specified in the Contract and used for purposes of determining the required Basic Scheduled Premiums. "Assumed investment rate" is defined by Rule 6e–2(c)(5) to be the net rate of investment return specified in the contract which would result in neither an increase nor a decrease in the variable death benefit of the contract above or below the guaranteed minimum death benefit. Applicants submit that this definition accurately describes the Contract's 4% assumed investment rate only so long as all other assumptions used in establishing Basic Scheduled Premiums holds true and only until the Death Benefit is increased in order for the Contract to qualify as life insurance for federal tax law purposes or the variable insurance amount is applicable. Applicants assert, however, the Rule 6e–2(c)(5) has never been interpreted to require that a contract's death benefit always vary in relation to performance above or below the assumed investment rate. Applicants believe it is appropriate to consider 4% to be the assumed investment rate for purposes of Rule 6e–2(c)(5) and, thus, seek no exemptive relief in this regard.

[19] Applicants state that the 1980 CSO Tables were adopted by the National Association of Insurance Commissioners subsequent to adoption of Rule 6e–2 by the Commission.

[20] Section 27(e) requires, with respect to any periodic payment plan certificate sold subject to Section 27(d) (which requires the refund of any excess sales load paid during the first 18 months after issuance), written notification of the right to surrender and receive a refund of the excess sales load. Rule 27(e) establishes the requirements for the notice mandated by Section 27(e) and prescribes Form N–271–1 for that purpose. Rule 6e–2(b)(13), which modifies the requirements of Section 27 and the rules thereunder, adopts Form N–271–1 and requires it to be sent to a contract owner upon issuance of a contract and again during any lapse period in the first two contract years. The Form requires statements of (i) the contract owner's right to receive back excess sales load for a surrender during the first two contract years, (ii) the date that the right expires, and (iii) the circumstances in which the right may not apply upon lapse.

[21] Applicants submit that the application of the technical sales load computation provisions in Rule 6e–2 to a modified scheduled premium contract is unclear. Applicants state that the reduction of the CDSC during the first two Contract Years is intended to reflect the requirements of Rule 6e–2 and take into account the Contract's payment flexibility in a manner that is consistent with Rule 6e–3(T)(b)(13)(v)(A), which specifically addresses flexible premium variable life insurance products.

interest to do so. Further, an owner of a variable insurance contract with a declining deferred sales charge, unlike a front-ended contract, does not foreclose his or her opportunity at the end of the first two contract years to receive a refund of monies spent. Not only has such an owner not paid any excess load, but because the deferred charge declines over the life of the Contract, the Contract owner may never have to pay it. Applicants submit that encouraging a surrender during the first two Contracts years could cost a Contract owner more in total sales load (relative to total payments) than he or she otherwise would pay if the Contract, which is designed as a long-term investment vehicle, were held for the period originally intended.

4. Because of the absence of excess sales load, and therefore, the absence of an obligation to assure repayment of that amount, Applicants believe that the Contracts do not create the right in a Contract owner which Form N–271–1 was designed to highlight. In the absence of this right, Applicants submit that the notification contemplated by Form N–271–1 creates an unnecessary and counterproductive administrative burden the cost of which appears unjustified. Any other purpose potentially served by the Form would already be addressed by the required Form N–271–2 Notice of Withdrawal Right, generally describing the charges associated with a Contract, and prospectus disclosure detailing a Contract's sales load structure. Applicants assert that neither Congress, in enacting Section 27, nor the Commission, in adopting Rule 27e–1 and Rule 6e–2, could have contemplated the applicability of Form N–271–1 in the context of a Contract with a declining contingent deferred sales charge.

G. Deduction of Charge for Section 848 Deferred Acquisition Costs

1. Applicants request exemptive relief from Section 27(c)(2) of the 1940 Act to permit the deduction of the 1.0% charge from each Premium Payment received under the Contracts, and from premiums received under Other Contracts to be issued by Guardian through the Future Accounts to reimburse Guardian for its increased federal tax burden resulting from the application of Section 848 of the Code, as amended, to the receipt of those premiums. Applicants also request exemptions from subparagraph (c)(4)(v) of Rules 6e–2 and 6e–3(T) under the 1940 Act to permit the proposed deductions to be treated as other than "sales load," as defined under Section 2(a)(35) of the 1940 Act, for purposes of Section 27 and the exemptions from various provisions of that Section found in Rules 6e–2 and 6e–3(T), respectively.

2. Applicants state that Section 848, as amended, requires life insurance companies to capitalize and amortize over ten years certain general expenses for the current year rather than deduct these expenses in full from the current year's gross income, as allowed under prior law. Section 848 effectively accelerates the realization of income from specified contracts and, consequently, the payment of taxes on that income. Taking into account the time value of money, Section 848 increases the insurance company's tax burden because the amount of general deductions that must be capitalized and amortized is measured by the premiums received under the Contracts.

3. Deductions subject to Section 848 equal a percentage of the current year's net premiums received (*i.e.*, gross premiums minus return premiums and reinsurance premiums) under life insurance or other contracts categorized under this Section. The Contracts will be categorized under Section 848 as life insurance contracts requiring 7.7% of the net premiums received to be capitalized and amortized under the schedule set forth in Section 848(c)(1).

4. The increased tax burden on every $10,000 of net premiums received under the Contracts is quantified by Applicants as follows. For each $10,000 of net premiums received in a given year, Guardian must capitalize $770 (*i.e.*, 7.7% of $10,000), and $38.50 of this amount may be deducted in the current year. The remaining $731.50 ($770 less $38.50) is subject to taxation at the corporate tax rate of 35% and results in $256.03 (.35% × $731.50) more in taxes for the current year than Guardian otherwise would have owned prior to OBRA 1990. However, the current tax increase will be offset partially by deductions allowed during the next ten years, which result from amortizing the remainder of the $770 ($77 in each of the following nine years and $38.50 in year ten).

5. It is Guardian's business judgement that it is appropriate to use a discount rate of 10% in evaluating the present value of its future tax deductions for the following reasons. Guardian has computed its cost of capital as the after-tax rate of return that it seeks to earn on its surplus, which is in excess of 10%. To the extent that surplus must be used by Guardian to pay its increased federal tax burden under Section 848, such surplus will be unavailable for investment. Thus, the cost of capital used to satisfy this increased tax burden essentially will be the after-tax rate of return Guardian seeks on its surplus, which is in excess of 10%. Accordingly, Applicants submit that the rate of return on surplus is appropriate for use in this present value calculation.

6. To the extent that the 10% discount rate is lower than Guardian's actual rate of return on surplus, the calculation of this increased tax burden will continue to be reasonable over time, even if the corporate tax rate applicable to Guardian is reduced, or its targeted rate of return is lowered.

7. In determining the after-tax rate of return used in arriving at the discount rate, Guardian considered a number of factors that apply to itself and to its parent, including market interest rates, anticipated long-term growth rates, the risk level for this type of business that is acceptable, inflation, and available information about the rate of return obtained by other life insurance companies. Guardian represents that these are appropriate factors to consider.

8. First, Guardian projects its future growth rate, including the future growth rate of its parent, based on sales projections, current interest rates, inflation rate and amount of surplus that can be provided to support such growth. Guardian then uses the anticipated growth rate and the other factors to set a rate of return on surplus that equals or exceeds this rate of growth. Of these other factors, market interest rates, acceptable risk level and inflation rate receive significantly more weight than information about the rates of return obtained by other companies.

9. Guardian and its parent seek to maintain a ratio of surplus to assets that is established based on its judgment of the risks represented by various components of its assets and liabilities. Maintaining the ratio of surplus to assets is critical to offering competitively priced products and to maintaining the superior ratings now assigned to Guardian and its parent by various rating agencies. Consequently, Guardian's surplus should grow at least at the same rate as its assets.

10. Using a federal corporate tax rate of 35%, and assuming a discount rate of 10%, the present value of the tax effect of the increased deductions allowable in the following ten years, which partially offsets the increased tax burden, comes to $152.96. The effect of Section 848 on the Contracts is therefore an increased tax burden with a present value of $91.15 for each $10,000 of net premiums (*i.e.*, $244.11 less $152.96).

11. Guardian does not incur incremental federal income tax when it passes on state premium taxes to Contract Owners because state premium taxes are deductible in computing federal income taxes. Conversely, federal income taxes are not deductible in computing Guardian's federal income taxes. To compensate Guardian fully for the impact of Section 848, Guardian must impose an additional charge to make it whole for the $91.15 additional tax burden attributable to Section 848, as well as the tax on the additional $91.15 itself, which can be determined by dividing $91.15 by the complement of 35% federal corporate income tax rate (*i.e.*, 65%), resulting in an additional charge of $140.23 for each $10,000 of net premiums, or 1.40%.

12. Based on its prior experience, Guardian reasonably expects to fully take almost all future deductions. It is Guardian's judgment that a charge of 1.00% of Basic Scheduled Premiums and unscheduled Premium Payments would reimburse it for the increased federal income tax liabilities under Section 848. Applicants represent that the 1.00% charge will be reasonably related to Guardian's increased federal income tax burden under Section 848. This representation takes into account the benefit to Guardian of the amortization permitted by Section 848 and the use of a 10% discount rate (which is equivalent to Guardian's rate of return on surplus) in computing the future deductions resulting from such amortization.

13. Guardian believes, however, that the 1.00% charge would have to be increased if future changes in, or interpretations of, Section 848 or any successor provision result in a further increased tax burden due to receipt of premiums. The increase could be caused by a change in the corporate tax rate, or in the 7.7% figure, or in the amortization period. The Contracts will reserve the right to increase the 1.00% charge in response to future changes in, or interpretations of, Section 848 or any successor provisions that increase Guardian's tax burden.

14. Applicants assert that it is appropriate to deduct this charge, and to exclude the deduction of this charge from sales load, because it is a legitimate expense of the company and not for sales and distribution expenses. Applicants represent that this charge will be reasonably related to Guardian's increased federal tax burden.

15. The Separate Account is, and the Future Accounts will be, regulated under the 1940 Act as issuers of periodic payment plan certificates. Accordingly, the Separate Account, the Future Accounts, Guardian (as depositor), and Guardian Services (as principal underwriter) are deemed to be subject to Section 27 of the 1940 Act.

16. Section 27(c)(2) prohibits the sale of periodic payment plan certificates unless the following conditions are met. The proceeds of all payments (except amounts deducted for "sales load" must be held by a trustee or custodian having the qualifications established under Section 26(a)(1) for the trustees of UITs. Sales loads, as defined under Section 2(a)(35), are limited by Sections 27(a)(1) and 27(h)(1) to a maximum of 9% of total payments on periodic payment plan certificates. These proceeds also must be held under an indenture or agreement that conforms with the provisions of Section 26(a)(2) and Section 26(a)(3) of the 1940 Act.

17. Certain provisions of Rules 6e–2 and 6e–3(T) provide a range of exemptive relief. Rule 6e–2 provides exemptive relief if the separate account issues scheduled variable life insurance contracts as defined in Rule 6e–2(c)(1). Rule 6e–3(T) provides exemptive relief if the separate account issues flexible premium variable life insurance contracts, as defined in subparagraph (c)(1) of that Rule.

18. Applicants state that paragraph (b)(13)(iii) of Rule 6e–2 implicitly provides, and paragraph (b)(13)(iii) of Rule 6e–3(T) explicitly provides, exemptive relief from Section 27(c)(2) to permit an insurer to make certain deductions, other than sales load, including the insurer's tax liabilities from receipt of premium payments imposed by states or by other governmental entities. Applicants assert that the proposed deduction with respect to Section 848 of the Code arguably is covered by subparagraph (b)(13)(iii) of each Rule. Applicants note, however, that the language of paragraph (c)(4) of the Rules appears to require that deductions for federal tax obligations from receipt of premium payments be treated as "sales load."

19. Applicants state that paragraph (b)(1), together with paragraph (c)(4), of each Rule provides an exemption from the Section 2(a)(35) definition of "sales load" by substituting a new definition to be used for purposes of each respective Rule. Rule 6e–2(c)(4) defines "sales load" charged on any payment as the excess of the payment over certain specified charges and adjustments, including a deduction for state premium taxes. Rules 6e–3(T)(c)(4) defines "sales load" during a period as the excess of any payments made during that period over certain specified charges and adjustments, including a deduction for state premium taxes. Under a literal reading of paragraph (c)(4) of the Rules, a deduction for an insurer's increased federal tax burden does not fall squarely into those itemized charges or deductions, arguably causing the deduction to be treated as part of "sales load."

20. Applicants state that the public policy that underlies paragraph (b)(13) of each Rule, and particularly subparagraph (b)(13)(i), like that which underlies paragraphs (a)(1) and (h)(1) of Section 27, is to prevent excessive sales loads from being charged for the sale of periodic payment plan certificates. Applicants submit that this legislative purpose is not furthered by treating a federal income tax charge based on premium payments as a sales load because the deduction is not related to the payment of sales commissions or other distribution expenses. Applicants assert that the Commission has concurred with this conclusion by excluding deductions for state premium taxes from the definition of sales load in paragraph (c)(4) of each Rule.

21. Applicants submit that the source for the definition of "sales load" found in paragraph (c)(4) of each Rule supports this analysis. Applicants believe that, in adopting paragraph (c)(4) of each Rule, the Commission intended to tailor the general terms of Section 2(a)(35) to variable life insurance contracts to ease verification by the Commission of compliance with the sales load limits of subparagraph (b)(13)(i) of each Rule. Just as the percentage limits of Section 27(a)(1) and 27(h)(1) depend on the definition of sales load in Section 2(a)(35) for their efficacy, Applicants assert that the percentage limits in subparagraph (b)(13)(i) of each Rule depend on paragraph (c)(4) of each Rule, which does not depart, in principal, from Section 2(a)(35).

22. Applicants submit that the exclusion from the definition of "sales load" under Section 2(a)(35) of deductions from premiums for "issue taxes" suggests that it is consistent with the policies of the 1940 Act to exclude from the definition of "sales load" in Rules 6e–2 and 6e–3(T) deductions made to pay an insurer's costs attributable to its federal tax obligations. Additionally, the exclusion of administrative expenses or fees that are "not properly chargeable to sales or promotional activities" also suggests that the only deductions intended to fall within the definition of "sales load" are those that are properly chargeable to sales or promotional activities. Applicants state that the proposed deductions will be used to compensate Guardian for its increased federal tax burden attributable to the receipt of premiums and not for sales or promotional activities. Therefore, Applicants believe the language in

Section 2(a)(35) further indicates that not treating such deductions as sales load is consistent with the policies of the 1940 Act.

23. Finally, Applicants submit that it is probably an historical accident that the exclusion of premium tax in subparagraph (c)(4)(v) of Rules 6e–2 and 6e–3(T) from the definition of "sales load" is limited to state premium taxes. When these Rules were each adopted and, in the case of Rule 6e–3(T), later amended, the additional Section 848 tax burden attributable to the receipt of premiums did not yet exist.

24. Applicants submit that the terms of the relief requested with respect to Other Contracts to be issued through Future Accounts are also consistent with the standards of Section 6(c). Without the requested relief, Guardian would have to request and obtain such exemptive relief for each Other Contract to be issued through a Future Account. Such additional requests for expensive relief would present no issues under the 1940 Act that have not already been addressed in this Application.

25. The requested relief is appropriate in the public interest because it would promote competitiveness in the variable life insurance market by eliminating the need for Guardian to file redundant exemptive applications regarding the federal tax charge, thereby reducing its administrative expenses and maximizing the efficient use of its resources. The delay and expense involved in having to repeatedly seek exemptive relief would impair Guardian's ability to effectively take advantage of business opportunities as they arise.

26. The requested relief is consistent with the purposes of the 1940 Act and the protection of investors for the same reasons. If Guardian were required to repeatedly seek exemptive relief with respect to the same issues regarding the federal tax charge addressed in this Application, investors would not receive any benefit or additional protection thereby and might be disadvantaged as a result of Guardian's increased overhead expenses.

27. Conditions for Relief:

a. Guardian will monitor the reasonableness of the charge to be deducted pursuant to the requested exemptive relief.

b. The registration statement for the Contracts, and for any Other Contracts under which the above-referenced federal tax charge is deducted, will: (a) disclose the charge; (b) explain the purpose of the charge; and (c) state that the charge is reasonable in relation to Guardian's increased federal tax burden under Section 848 of the Code.

c. The registration statement for the Contracts, and for such Other Contracts, providing for the above-referenced deduction will contain as an exhibit an actuarial opinion as to: (1) The reasonableness of the charge in relation to Guardian's increased federal tax burden under Section 848 of the Code resulting from the receipt of premiums; (2) the reasonableness of the rate of return on surplus that is used in calculating such charge; and (3) the appropriateness of the factors taken into account by Guardian in determining such targeted rate of return.

Conclusion

For the reasons and upon the facts set forth above, Applicants submit that the requested exemptions from Sections 2(a)(32), 2(a)(35), 22(c), 26(a)(1), 26(a)(2), 27(a)(1), 27(c)(1), 27(c)(2), 27(d), and 27(e) of the 1940 Act and paragraphs (b)(1), (b)(12), (b)(13)(i), (b)(13)(iii), (b)(13)(iv), (b)(13)(v), (b)(13)(vii), (c)(1), (c)(4) of Rule 6e–2, and Rules 6e–3(T)(c)(4)(v), 22c–1 and 27e–1 thereunder, are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act and, therefore, satisfy the standards set forth in Section 6(c) of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–13893 Filed 6–6–95; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice 2214]

Determination Under Section 620(f) of the Foreign Assistance Act of 1961, As Amended

Pursuant to section 620(f)(2) of the Foreign Assistance Act (FAA) of 1961, as amended (22 U.S.C. 2370(f)(2)), and section 1–201(a)(12) of Executive Order No. 12163, as amended, I hereby determine that the removal of Laos from the application of section 620(f) of the FAA is important to the national interest of the United States. I therefore direct that Laos be henceforth removed, for an indefinite period, from the application of section 620(f) of the FAA, as amended.

This determination shall be reported to the Congress immediately and published in the **Federal Register**.

Dated: May 12, 1995.

Peter Tarnoff,

Acting Secretary of State.

[FR Doc. 95–13837 Filed 6–6–95; 8:45 am]

BILLING CODE 4710–10–M

Bureau of Political-Military Affairs

[Public Notice 2217]

Imposition of Chemical and Biological Weapons Proliferation Sanctions On Foreign Persons

AGENCY: Bureau of Political-Military Affairs, Department of State.

ACTION: Notice.

SUMMARY: The United States Government has determined that two companies have engaged in chemical weapons proliferation activities that require the imposition of sanctions pursuant to the Arms Export Control Act and the Export Administration Act of 1979 (the authorities of which were most recently continued by Executive Order 12924 of August 19, 1994), as amended by the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991.

EFFECTIVE DATE: May 19, 1995.

FOR FURTHER INFORMATION CONTACT: Vann H. Van Diepen, Office of Chemical, Biological and Missile Nonproliferation, Bureau of Political-Military Affairs, Department of State (202–647–4930).

SUPPLEMENTARY INFORMATION: Pursuant to Sections 81(a) and 81(b) of the Arms Export Control Act (22 U.S.C. 2798(a), 2798(b)), Sections 11C(a) and 11C(b) of the Export Administration Act of 1979 (50 U.S.C. app. 2410c(a), 2410c(b)), Section 305 of the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991 (P.L. 102–182), Executive Order 12851 of June 11, 1993, and State Department Delegation of Authority No. 145 of February 4, 1980, as amended, the United States Government determined that the following foreign persons have engaged in chemical weapons proliferation activities that require the imposition of the sanctions described in Section 81(c) of the Arms Export Control Act (22 U.S.C. 2798(c)) and Section 11C(c) of the Export Administration Act of 1979 (50 U.S.C. app. 2410c(c)):

1. GE Plan (Austria)
2. Mainway Limited (Germany)

Accordingly, the following sanctions are being imposed:

(A) Procurement Sanction.—The United States Government shall not procure, or enter into any contract for the Procurement of, any goods or services from the sanctioned persons; and

(B) Import Sanction.—The importation into the United States of products produced by the sanctioned persons shall be prohibited.

These sanctions apply not only to the companies described above, but also to their divisions, subunits, and any successor entities. Questions as to whether a particular transaction is affected by the sanctions should be referred to the contract listed above. The sanctions shall commence on May 18, 1995. They will remain in place for at least one year and until further notice.

These measures shall be implemented by the responsible agencies as provided in Executive Order 12851 of June 11, 1993.

Dated: May 19, 1995.

Eric D. Newsom,

Acting Assistant Secretary of State for Political-Military Affairs.

[FR Doc. 95–13836 Filed 6–6–95; 8:45 am]

BILLING CODE 4710–25–M

Office of Defense Trade Controls

[Public Notice 2216]

Statutory Debarment Under the International Traffic in Arms Regulations

AGENCY: Office of Defense Trade Controls, Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of which persons have been statutorily debarred pursuant to § 127.7(c) of the International Traffic in Arms Regulations (ITAR) (22 CFR Parts 120–130).

EFFECTIVE DATE: June 7, 1995.

FOR FURTHER INFORMATION CONTACT: Philip S. Rhoads, Chief, Compliance Enforcement Branch, Office of Defense Trade Controls, Department of State (703–875–6650).

SUPPLEMENTARY INFORMATION: Section 38(g)(4)(A) of the Arms Export Control Act (AECA), 22 U.S.C. 2778, prohibits licenses or other approvals for the export of defense articles and defense services to be issued to a person, or any party to the export, who has been convicted of violating certain U.S. criminal statutes, including the AECA. The term "person", as defined in 22 CFR 120.14 of the International Traffic in Arms Regulations (ITAR), means a natural person as well as a corporation, business association, partnership, society, trust, or any other entity, organization or group, including governmental entities. The ITAR, specifically § 126.7(e), defines the term "party to the export" to include the president, the chief executive officer, and other senior officers and officials of the license applicant; the freight forwarders or designated exporting agent of the license applicant; and any consignee or end-user of any item to be exported. The statute permits certain limited exceptions to this prohibition to be made on a case-by-case basis. 22 U.S.C. 2778(g)(4).

The ITAR, section 127.7, authorizes the Assistant Secretary of State for Political-Military Affairs to prohibit certain persons convicted of violating, or conspiring to violate, the AECA, from participating directly or indirectly in the export of defense articles or in the furnishing of defense services for which a license or approval is required. Such a prohibition is referred to as a "statutory debarment," which may be imposed on the basis of judicial proceedings that resulted in a conviction for violating, or of conspiring to violate, the AECA. *See* 22 CFR 127.7(c). The period for debarment will normally be three years from the date of conviction. At the end of the debarment period, licensing privileges may be reinstated at the request of the debarred person following the necessary interagency consultations, after a thorough review of the circumstances surrounding the conviction, and a finding that appropriate steps have been taken to mitigate any law enforcement concerns, as required by the AECA, 22 U.S.C. 2778(g)(4).

Statutory debarment is based solely upon a conviction in a criminal proceeding, conducted by a United States court. Thus, the administrative debarment procedures, as outlined in the ITAR, 22 CFR part 128, are not applicable in such cases.

The Department of State will not consider applications for licenses or requests for approvals that involve any person or any party to the export who has been convicted of violating, or of conspiring to violate, the AECA during the period of statutory debarment. Persons who have been statutorily debarred may appeal to the Under Secretary for International Security Affairs for reconsideration of the ineligibility determination. A request for reconsideration must be submitted in writing within 30 days after a person has been informed of the adverse decision. 22 CFR 127.7(d).

The Department of State policy permits debarred persons to apply for reinstatement of export privileges one year after the date of the debarment, in accordance with the AECA, 22 U.S.C. 2778(g)(4)(A), and the ITAR, section 127.7. A reinstatement request is made to the Director of the Office of Defense Trade Controls. Any decision to reinstate export privileges can be made only after the statutory requirements under section 38(g)(4) of the AECA have been satisfied through a process administered by the Office of Defense Trade Controls. If reinstatement is granted, the debarment will be suspended.

Pursuant to the AECA, 22 U.S.C. 2778(g)(4)(A), and the ITAR, 22 CFR 127.7, the Assistant Secretary for Political-Military Affairs has statutorily debarred twelve persons who have been convicted of conspiring to violate or violating the AECA.

These persons have been debarred for a three-year period following the date of their conviction, and have been so notified by a letter from the Office of Defense Trade Controls. Pursuant to ITAR, section 127.7(c), the names of these persons, their offense, date(s) of conviction and court(s) of conviction are hereby being published in the **Federal Register**. Anyone who requires additional information to determine whether a person has been debarred should contact the Office of Defense Trade Controls.

This notice involves a foreign affairs function of the United States encompassed within the meaning of the military and foreign affairs exclusion of the Administrative Procedure Act. Because the exercise of this foreign affairs function is discretionary, it is excluded from review under the Administrative Procedure Act.

In accordance with these authorities the following persons are debarred for a period of three years following their conviction for conspiring to violate or violating the AECA (name/address/offense/conviction date/court citation):

1. Paul LaVista, 2520 Olive Springs Rd., Marietta, GA 30060, 22 U.S.C. § 2778 (violating the AECA), September 25, 1992, *United States* v. *Paul LaVista*, U.S. District Court, Western District of Washington, Criminal Docket No. CR92–346C.

2. Satish Shah, 46 Glynn Court, Parlin, NJ 08859, 18 U.S.C. § 371 (conspiracy to violate 22 U.S.C. § 2778), May 10, 1993, *United States* v. *Tzvi Rosenfeld, et al.*, U.S. District Court, Middle District of Tennessee, Criminal Docket No. 3:91–00163–04.

3. Menachim Rosenfeld, c/o Lionel Lufton, 174 East Bay Street, Suite 302, Charleston, SC 29402, 18 U.S.C. § 371 (conspiracy to violate 22 U.S.C. § 2778), August 23, 1993, *United States* v. *Tzvi Rosenfeld, et al.*, U.S. District Court, Middle District of Tennessee, Criminal Docket No. 3:91–00163–01.

4. Mohd A.M. Anwahi, 295 West Wyoming Ave., Stoneham, MA 02180, 22 U.S.C. § 2778 (violating the AECA), September 28, 1993, *United States* v. *Mohd A.M. Anwahi*, U.S. District Court, District of Colorado, Criminal Docket No. 93–CR–132.

5. Willem Louw, 26 Andre Ave., President Ridge, Randburg, South Africa, 22 U.S.C. § 2778 (violating the AECA), October 18, 1993, *United States* v. *Tzvi Rosenfeld, et al.*, U.S. District Court, Middle District of Tennessee, Criminal Docket No. 3:91–00163–02.

6. Ronald Hendron, 1029 Olive Way, Palm Springs, CA 92262, 18 U.S.C. § 371 (conspiring to violate 22 U.S.C. § 2778) and 22 U.S.C. § 2778 (violating the AECA), April 18, 1994, *United States* v. *Ronald Hendron*, U.S. District Court, Eastern District of New York, Criminal Docket No. CR–92–424(S–2).

7. Aziz Muthana, 4856 N. Ridgeway, 3rd Floor, Chicago, IL 60625, 22 U.S.C. § 2778 (violating the AECA), April 20, 1994, *United States* v. *Aziz Muthana*, U.S. District Court, Northern District of Illinois, Criminal Docket No. 93–CR–580.

8. Louis Clarence Thomasset, 24 Rue de la Croix, Echampen, France 77440, 22 U.S.C. § 2778 (violating the AECA), May 16, 1994, *United States* v. *Louis Clarence Thomasset*, U.S. District Court, Southern District of Texas, Criminal Docket No. H–94–15.

9. Manfred Felber, 1150 John Street, 13–15, Vienna, Austria, 22 U.S.C. § 2778 (violating the AECA), June 6, 1994, *United States* v. *Manfred Felber*, U.S. District Court, District of Oregon, Criminal Docket No. CR–94–60044.

10. Joseph D'Addezio, 133 Greenmeadow Dr., Deer Park, NY 11729, 18 U.S.C. § 371 (conspiracy to violate 22 U.S.C. 2778), July 20, 1994, *United States* v. *Joseph D'Addezio*, U.S. District Court, Southern District of New York, Criminal Docket No. 90–CR–810.

11. Oskar Benevidez Vann, 919 Santa Maria, Laredo, TX 78040–2745, 18 U.S.C. § 371 (conspiring to violate 22 U.S.C. § 2778), September 23, 1994, *United States* v. *Oskar Benevidez Vann, et al.*, U.S. District Court, Western District of Louisiana, Criminal Docket No. CR–93–60012–01.

12. Rexon Technology Corp., 70 Old Turnpike Road, Wayne, NJ 07470, 22 U.S.C. § 2778 (violating the AECA), February 22, 1995, *United States* v. *Rexon Technology Corp., et al.*, U.S. District Court, District of New Jersey, Criminal Docket No. 93–610.

Dated: May 19, 1995.

William J. Lowell,

Director, Office of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State.

[FR Doc. 95–13833 Filed 6–6–95; 8:45 am]

BILLING CODE 4710–25–M

[Public Notice 2207]

Office of Defense Trade Controls; Munitions Exports Involving Teledyne Wah Chang Albany, Extraco Ltd., Weco Industrial Products Export GmbH, Edward Johnson, Christian Demesmaeker, and International Commerce Promotion S.P.R.L.

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given that all existing license and other approvals, granted pursuant to section 38 of the Arms Export Control Act, that authorize the export or transfer by, for or to, TELEDYNE INDUSTRIES, INC., D/B/A TELEDYNE WAH CHANG ALBANY, EXTRACO LTD., WECO INDUSTRIAL PRODUCTS EXPORT GMBH, EDWARD JOHNSON, CHRISTIAN DEMESMAEKER, AND INTERNATIONAL COMMERCE PROMOTION S.P.R.L., and any of their subsidiaries or associated companies, of defense articles or defense services are suspended effective July 13, 1994. In addition, it shall be the policy of the Department of State to deny all export license applications and other requests for approval involving, directly or indirectly, the above cited entities. This action also precludes the use in connection with such entities of any exemptions from license or other approvals included in the International Traffic in Arms Regulations (ITAR) (22 CFR Parts 120–130).

EFFECTIVE DATE: December 12, 1994.

FOR FURTHER INFORMATION CONTACT: Mary F. Sweeney, Acting Chief, Compliance and Enforcement Branch, Office of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State (703–875–6650).

SUPPLEMENTARY INFORMATION: A four (4) count indictment was returned on July 13, 1994, in the U.S. District Court for the District of Columbia, charging TELEDYNE INDUSTRIES, INC., D/B/A TELEDYNE WAH CHANG ALBANY (TWCA), Oregon; EXTRACO LTD, Athens Greece; WECO INDUSTRIAL PRODUCTS EXPORT GMBH, Germany and Belgium; EDWARD JOHNSON (employee of TWCA); CHRISTIAN DEMESMAEKER (employee of Weco Industrial Products Export GmbH); and INTERNATIONAL COMMERCE PROMOTION S.P.R.L., Belgium; with conspiracy (18 U.S.C. 371) to violate and violation of section 38 of the Arms Export Control Act (AECA) (22 U.S.C. 2778) and its implementing regulations, the International Traffic in Arms Regulations (ITAR) (22 CFR Parts 120–130). The indictment charges that the defendants conspired to conceal a scheme to sell and export zirconium compacts to Greece, for reexport to Jordan, without having first obtained the U.S. Department of State requisite authorization. (*United States* v. *Teledyne Industries, Inc., d/b/a Teledyne Wah Chang Albany, et al.*, U.S. District Court for the District of Columbia, Criminal Docket No. 94–286).

Effective July 13, 1994, the Department of State suspended all licenses and other written approvals (including all activities under manufacturing license and technical assistance agreements) concerning exports of defense articles and provision of defense services by, for or to the defendants and any of their subsidiaries or associated companies. Furthermore, the Department precluded the use in connection with the defendants of any exemptions from license or other approval included in the ITAR.

This action has been taken pursuant to sections 38 and 42 of the Arms Export Control Act (AECA) (22 U.S.C. 2778 & 2791) and 22 CFR 126.7(a)(2) and 126.7(a)(3) of the ITAR. It will remain in force until rescinded.

Exceptions may be made to this policy on a case-by-case basis at the discretion of the Office of Defense Trade Controls. However, such an exception would be granted only after a full review of all circumstances, paying particular attention to the following factors: whether an exception is warranted by overriding foreign policy or national security interests; whether an exception would further law enforcement concerns; and whether other compelling circumstances exist which are consistent with foreign policy or national security interests of the United States, and which do not conflict with law enforcement concerns.

A person named in an indictment for an AECA-related violation may submit a written request for reconsideration of the suspension/denial decision to the office of Defense Trade Controls. Such request for reconsideration should be supported by evidence of remedial measures taken to prevent future violations of the AECA and/or the ITAR and other pertinent documented information showing that the person would not be a risk for future violations of the AECA and/or the ITAR. The Office of Defense Trade Controls will evaluate the submission in consultation with the Department of Treasury, Justice, and other necessary agencies. After a decision on the request for reconsideration has been rendered by the Assistant Secretary for Political-Military Affairs, the requester will be notified whether the exception has been granted.

Dated: December 12, 1994.

Thomas E. McNamara,

Assistant Secretary, Bureau of Political-Military Affairs, U.S. Department of State.

[FR Doc. 95–13835 Filed 6–6–95; 8:45 am]

BILLING CODE 4710–25–M

[Public Notice 2206]

Office of Defense Trade Controls; Rescission of Suspended Exports Regarding Teledyne Wah Chang Albany

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given that Public Notice 1871, effective July 26, 1993, suspending all existing licenses and other approvals, granted by the Department of State pursuant to section 38 of the Arms Export Control Act ("AECA"), that authorized the export or transfer of defense articles or defense services by, for or to, Teledyne Wah Chang Albany is rescinded.

EFFECTIVE DATE: January 26, 1995.

FOR FURTHER INFORMATION CONTACT: Philip S. Rhoads, Chief Compliance and Enforcement Branch, Office of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State (703–875–6650).

SUPPLEMENTARY INFORMATION: On July 26, 1993, the Office of Defense Trade Controls, Department of State, suspended and denied all existing licenses and other approvals, granted pursuant to section 38 of the AECA, that authorized the export or transfer by, for or to, Teledyne Wah Chang Albany, and any other subsidiaries or associated companies, of defense articles or defense services. That suspension action was taken pursuant to section 38 and 40 of the AECA (22 U.S.C. 2778 and 2780) and §§ 126.7(a)(2) and 126.7(a)(3) of the International Traffic in Arms Regulations ("ITAR") (22 CFR 126.7(a)(2) & (3)).

An indictment was returned, on May 26, 1993, in the U.S. District Court, Southern District of Florida charging Teledyne Wah Chang Albany, with one count of conspiracy (18 U.S.C. 371) to violate section 38 of the Arms Export Control Act (AECA, 22 U.S.C. 2778) and the ITAR (22 CFR Parts 120–130), and three substantive counts of violating the AECA and the ITAR. The indictment charged that the defendants conspired to conceal a scheme to illegally export United States origin ordnance-grade zirconium to Chile, for use in cluster bombs and other munitions for Iraq, without having first obtained the U.S. Department of State requisite authorization. On July 13, 1994, an indictment was returned in the U.S. District Court for the District of Columbia charging Teledyne Industries, Inc., d/b/a Teledyne Wah Chang Albany with one count of conspiracy (18 U.S.C. 371) to violate section 38 of the AECA and the ITAR, and one substantive count of violating the AECA and the ITAR. The indictment charged that the defendants conspired to conceal a scheme to sell and export zirconium compacts to Greece, for reexport to Jordan, without having first obtained the U.S. Department of State requisite authorization.

On January 26, 1995 in the U.S. District Court for the Southern District of Florida, Teledyne Industries, Inc., d/b/a Teledyne Wah Chang Albany entered a guilty plea to conspiring to violate and violating the AECA. On January 27, 1995 in the U.S. District Court for the District of Columbia, they entered a guilty plea of violating the AECA. Pursuant to a Consent Agreement, between Teledyne Industries, Inc., d/b/a Teledyne Wah Chang Albany and the Department of State, and an Order signed by the Assistant Secretary of State for Political-Military Affairs, the Department of State's suspension relating to Teledyne Industries, Inc., d/b/a Teledyne Wah Chang Albany imposed on July 26, 1993 (noticed in the September 23, 1993 **Federal Register**) and a second suspension imposed on July 24, 1994, is rescinded, effective January 27, 1995.

Dated: April 27, 1995.

William J. Lowell,

Director, Office of Defense Trade Controls, U.S. Department of State.

[FR Doc. 95–13834 Filed 6–6–95; 8:45 am]

BILLING CODE 4710–25–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Dockets 50228 and 50229]

Applications of Omni Air Express, Inc., for Issuance of New Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause (Order 95–6–1).

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order (1) Finding Omni Air Express, Inc., fit, willing, and able, and (2) awarding it certificates of public convenience and necessity to engage in interstate and foreign charter passenger air transportation.

DATES: Persons wishing to file objections should do so no later than June 19, 1995.

ADDRESSES: Objections and answers to objections should be filed in Dockets 50228 and 50229 and addressed to the Documentary Services Division (C–55, room PL–401), U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Mr. James A. Lawyer, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590, (202) 366–1064.

Dated: June 2, 1995.

Patrick V. Murphy,

Acting Assistant Secretary for Aviation and International Affairs.

[FR Doc. 95–13952 Filed 6–6–95; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

Air Traffic Procedures Advisory Committee

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public that a meeting of the Federal Aviation Administration Air Traffic Procedures Advisory Committee (ATPAC) will be held to review present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures.

DATES: The meeting will be held from July 10 through July 13, 1995, from 9 a.m. to 5 p.m. each day.

ADDRESSES: The meeting will be held July 10–13 at the Doubletree Club Hotel, 137 Union Boulevard, Lakewood, Colorado.

FOR FURTHER INFORMATION CONTACT: Mr. W. Frank Price, Executive Director, ATPAC, Air Traffic Rules and Procedures, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267–3725.

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 2), notice is hereby given of a meeting of the ATPAC to be held from July 10 through July 13, 1995, at the Doubletree Club Hotel, 137 Union Boulevard, Lakewood, Colorado.

The agenda for this meeting will cover: a continuation of the Committee's review of present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures. It will also include:

1. Approval of Minutes.
2. Submission of Discussion of Areas of Concern.
3. Discussion of Potential Safety Items.
4. Report from Executive Director.
5. Items of Interest.
6. Discussion and agreement of location and dates for subsequent meetings.

Attendance is open to the interested public but limited to the space available. With the approval of the Chairperson, members of the public may present oral statements at the meeting. Persons desiring to attend and persons desiring to present oral statements should notify the person listed above not later than July 7, 1995. The next quarterly meeting of the FAA ATPAC is planned to be held from October 23–26, 1995, in Washington, DC. Any member of the public may present a written statement to the Committee at any time at the address given above.

Issued in Washington, DC, on June 1, 1995.

W. Frank Price,

Executive Director, Air Traffic Procedures Advisory Committee.

[FR Doc. 95–13946 Filed 6–6–95; 8:45 am]

BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee Meetings

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting to solicit information from the aviation maintenance community concerning maintenance, preventive maintenance, rebuilding and alteration, and inspection of certain aircraft. The information is requested to assist the Aviation Rulemaking Advisory Committee (ARAC) in its deliberations.

DATES: The meeting will be held on June 21, 1995, beginning at 7 p.m.

ADDRESSES: The meeting will be held at the Adams Mark Hotel, St. Louis, Missouri.

FOR FURTHER INFORMATION CONTACT: Ms. Christine Leonard, Professional Aviation Maintenance Association, 1008 Russell Lane, West Chester, PA 19382; telephone (610) 399–1744.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. app. II), notice is hereby given of a meeting to solicit information from the aviation maintenance community concerning maintenance, preventive maintenance, rebuilding and alteration, and inspection of certain aircraft. The information is requested to assist the Aviation Rulemaking Advisory Committee in its deliberations with regard to a task assigned to ARAC by the Federal Aviation Administration.

Specifically, the task is as follows:

Review Title 14 Code of Federal Regulations, parts 43 and 91, and supporting policy and guidance material for the purpose of determining the course of action to be taken for rulemaking and/or policy relative to the issue of general aviation aircraft inspection and maintenance, specifically section 91.409, part 43, and Appendices A and D of part 43. In your review, consider any inspection and maintenance initiatives underway throughout the aviation industry affecting general aviation with a maximum certificated takeoff weight of 12,500 pounds or less. Also consider ongoing initiatives in the areas of: maintenance recordkeeping; research and development; the age of the current aircraft fleet; harmonization; the true cost of inspection versus maintenance; and changes in technology.

Attendance is open to the interested public but may be limited to the space available. In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting is held. Arrangements may be made by contacting the meeting coordinator listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on May 31, 1995.

Frederick J. Leonelli,

Assistant Executive Director, Air Carrier/General Aviation Maintenance Issues, Aviation Rulemaking Advisory Committee.

[FR Doc. 95–13942 Filed 6–6–95; 8:45 am]

BILLING CODE 4910–13–M

RTCA, Inc.; Technical Management Committee

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for the RTCA Technical Management Committee meeting to be held June 23, 1995, starting at 9 a.m. The meeting will be held at RTCA, Inc., 1140 Connecticut Avenue, NW., suite 1020, Washington, DC, 20036.

The agenda will include:

(1) Chairman's Remarks;

(2) Review and Approve Summary of April 23, Meeting;

(3) Consider and Approve: a. Proposed Change No. 1 to DO–213, Minimum Operational Performance Standards for Nose-Mounted Radomes (RTCA Paper 299–95/TMC–172, previously distributed) prepared by SC–173; b. Proposed Change No. 1 to DO–220, Minimum Operational Performance Standards for Airborne Weather Radar with Forward-Looking Windshear Capability (RTCA Paper No. 303–95/TMC–174, previously distributed) prepared by SC–173; c. Proposed Final Draft, Minimum Operational Performance Standards for Lithium Batteries (RTCA Paper No. 290–95/TMC–171, previously distributed;

(4) Consider reports on: a. Actions directed by the TMC concerning the proposed final draft document previously approved by the TMC when submitted as the MLS MOPS, b. Response from the FAA concerning comment and recommendations on the proposed work relating to cockpit moving map displays;

(5) Develop and formalize the Special Committee Work Program;

(6) Other Business;

(7) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information, should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036; (202) 833–9339 (phone) or (202) 833–9434 (fax). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on May 30, 1995.

Janice L. Peters,

Designated Official.

[FR Doc. 95–13938 Filed 6–6–95; 8:45 am]

BILLING CODE 4810–13–M

Notice of Intent to Rule on Application To Impose and Use the Revenue from a Passenger Facility Charge (PFC) at Florence Regional Airport, Florence, SC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Florence Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before July 7, 1995.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Atlanta Airports District Office, Campus Building, 1701 Columbia Ave., suite 2–260, College Park, GA 30337–2747.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Harvey Senseney, Executive Director of the Florence City-County Airport Commission at the following address: 2100 Terminal Drive, Florence, SC 29506.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Florence City-County Airport Commission under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Cathy Nelmes, Program Manager, Atlanta Airports District Office, Campus Building, 1701 Columbia Ave., suite 2–260, College Park, GA 30337–2747, (404) 305–7148. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Florence Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On May 31, 1995, the FAA determined that the application to impose and use the revenue from a PFC submitted by Florence City-County Airport Commission was substantially complete within the requirements of § 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than August 5, 1995. The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: December 1, 1995.

Proposed charge expiration date: October 31, 1999.

Total estimated PFC revenue: $881,600.

Brief description of proposed project(s): Runway identification lighting; rehabilitation of medium intensity runway lights for runway 18/36; storm water drainage and terminal apron; abbreviated airport master plan update; terminal expansion and renovation; airfield signs and pavement marking; taxiway edge lighting and precision approach path indicator; expansion of the airport access road.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air carriers operating under Federal Aviation Regulation Part 135 or Part 298 on an on-demand, non-scheduled basis, and not selling tickets to individual passengers.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.** In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Florence City-County Airport Commission.

Issued in Atlanta, Georgia on May 31, 1995.

Dell T. Jernigan,

Manager, Atlanta Airports District Office, Southern Region.

[FR Doc. 95–13945 Filed 6–6–95; 8:45 am]

BILLING CODE 4910–13–M

Research and Special Programs Administration

[Docket No. P–94–2W; Notice 1]

Transportation of Hazardous Liquid by Pipeline Petition for Waiver; Alyeska Pipeline Service Company

SUMMARY: Alyeska Pipeline Service Company (Alyeska) has petitioned the Research and Special Programs Administration (RSPA) for an amendment to the May 19, 1975, waiver from compliance with the coating and cathodic protection requirements of 49 CFR 195.238(a)(5) and 195.242(a) regarding buried mainline insulated piping. RSPA proposes to grant the amendment with the noted stipulations.

DATES: Comments must be submitted on or before July 24, 1995.

FOR FURTHER INFORMATION CONTACT: L.E. Herrick, 202–366–5523 regarding the subject matter of this notice or the Dockets Unit, 202–366–5046, regarding copies of this notice or other material that is referenced herein.

ADDRESSES: Comments may be mailed to the Dockets Branch, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC, 20590. All comments and Docket material may be reviewed in the Dockets Branch, room 8421, between the hours of 8:30 a.m. to 5:00 p.m. Monday through Friday, except federal holidays.

SUPPLEMENTARY INFORMATION: By letters dated March 19 and May 3, 1975, Alyeska requested a waiver from compliance with the coating and cathodic protection requirements of 49 CFR 195.238(a)(5) and 195.242(a) with respect to thermally insulated mainline piping on the Trans-Alaska Pipeline System (TAPS). 49 CFR 195.238(a)(5) requires that each component in a hazardous liquid pipeline that is to be buried or submerged must have an external protective coating that supports any supplemental cathodic protection. In addition, if an insulating-type coating is used, it must have low moisture absorption and provide high electrical resistance. 49 CFR 195.242(a) requires a cathodic protection system be installed for all buried or submerged hazardous liquid facilities to mitigate corrosion that might result in a structural failure. A test procedure must be developed to determine whether adequate cathodic protection has been achieved.

The affected areas were specified as (1) three special buried, refrigerated sections totaling 4.3 miles, (2) approximately 240 short buried transitions sections, each approximately 60–80 feet, and (3) approximately 20 buried "sag bend" sections each approximately 120 feet long.

On May 19, 1975, RSPA granted Alyeska the requested waiver (Docket No. Pet. 75–41). The waiver was granted on the premise that the applied thermal insulation design would mitigate corrosion from occurring under insulation. Although the thermal insulation design has been generally effective on the buried insulated mainline piping in preventing thawing of the permafrost and external corrosion that requires repair based on structural analysis of the pipe using methods prescribed by 49 CFR 195.416(h), the design has not prevented all corrosion from occurring.

During routine internal inspection tool corrosion surveys, Alyeska reported evidence of corrosion on 300 of 1850 approximately 40 foot long pipe joints covered by the waiver (16 percent). Alyeska reported this corrosion to OPS on September 2, 1994 by letter. To date, all fifteen joints that have been excavated have been found to have non-injurious corrosion.

Accordingly, RSPA proposes to amend the May 1975 waiver prohibiting further installations on TAPS of buried mainline piping coated with thermal insulation not meeting all coating and cathodic protection requirements of CFR 195.238(a)(5) and 195.242(a).

RSPA further proposes to allow Alyeska to continue under the May 1975 waiver regarding coating and cathodic

protection requirements of 49 CFR 195.238(a)(5) and 195.242(a) for existing insulated piping addressed by the waiver, subject to the following amendments:

1. Alyeska will continue to inspect all thermally insulated mainline pipe by a program of annual internal inspection tool corrosion surveys capable of detecting and assessing potentially injurious corrosion. RSPA's Office of Pipeline Safety (OPS) and Alyeska concur that Alyeska should conduct the next internal inspection tool corrosion survey during the spring of 1996, a period of approximately 18 months from the previous survey. This one-time deviation from an annual schedule is required to place the timing of internal inspection tool corrosion surveys in the early spring of the year.

Running the survey in the spring of 1996 will minimize the adverse affects of wax precipitation on data quality, which would be encountered if a summer or fall 1995 survey were conducted and will avoid the serious weather constraints of a survey taking place during the 1995/1996 winter. Running the survey in the spring of 1996 will permit the completion of scheduled improvements to the corrosion inspection tool. Running the survey in the spring of 1996 will also allow full evaluation of that data with data from the survey conducted during the summer/fall of 1994.

Subsequent internal inspection tool surveys will continue to be conducted annually until OPS determines from the technical data presented by Alyeska that a reduced monitoring frequency is justified.

2. If evaluation of the internal inspection tool corrosion survey data indicates areas of potentially injurious corrosion:

A. An excavation and evaluation of actual corrosion found shall be made in accordance with 49 CFR 195.416(h) to determine if structural repairs are necessary.

B. Structural repairs, if required shall be made in accordance with requirements of ASME B31.4 and Alyeska's Maintenance and Repair Manual (MR–48).

C. Recoating and cathodic protection of excavated piping will be applied in accordance with the requirements of 49 CFR 195.238(a)(5) and 195.242(a).

3. Alyeska will submit to OPS the following engineering studies, which may provide the technical basis for future modification of this proposed waiver.

A. A detailed study of all insulated joints with identified corrosion including a comparison with joints previously identified as being corroded. Results will be used to evaluate the ability of internal inspection tools used on the TAPS to reliably and repeatedly detect, measure and assess corrosion that may impact structural integrity. Results of this study may also be used to provide the most desirable location to do at least one investigation of the corrosion mechanism described in item 3B below.

B. A completed analysis of mechanisms of corrosion under insulation to determine if the observed corrosion is active or dormant will be completed. This study will include review of internal inspection tool corrosion survey data, field observations from at least one dig and laboratory testing to confirm corrosion mechanisms. Field testing may include the installation of corrosion monitoring devices such as electrical resistance probes or corrosion rate coupons.

C. No later than December 1, 1996, a completed feasibility study of remediation designs and options to be used for the effective control of corrosion under mainline insulated piping. The feasibility study will consider corrosion mechanisms determined previously. A schedule will be provided so that OPS will have the opportunity to witness the internal inspection tool corrosion survey evaluation and installation of any remedial corrective systems.

Interested parties are invited to comment on the proposed amendment to waiver by submitting in duplicate such data, views, or arguments as they may desire. RSPA specifically requests comments on the adequacy of the proposed action regarding 195.238(a)(5) and 195.242(a). Comments should identify the Docket and Notice numbers, and be submitted to the Dockets Unit.

All comments received before July 24, 1995 will be considered before final action is taken. Late filed comments will be considered so far as practicable. No public hearing is contemplated, but one may be held at a time and place set in a Notice in the **Federal Register** if requested by an interested person desiring to comment at a public hearing and raising a genuine issue.

Issued in Washington, DC on June 1, 1995.

Cesar De Leon,

Acting Associate Administrator for Pipeline Safety.

[FR Doc. 95–13930 Filed 6–6–95; 8:45 am]

BILLING CODE 4910–60–P

[Docket No. P–95–1W; Notice 1]

Transportation of Hazardous Liquid by Pipeline Petition for Waiver; Alyeska Pipeline Service Company

SUMMARY: Alyeska Pipeline Service Company (Alyeska) has petitioned the Research and Special Programs Administration (RSPA) for an amendment to the August 16, 1975, waiver (Docket No. Pet. 75–13W) from compliance with the coating and cathodic protection requirements of 49 CFR 195.238(a)(5) and 195.242(a) regarding buried pump station and terminal insulated piping. RSPA proposes to grant this amendment subject to the noted stipulations.

DATES: Comments must be submitted on or before July 24, 1995.

FOR FURTHER INFORMATION CONTACT: L.E. Herrick, 202–366–5523 regarding the subject matter of this notice or the Dockets Branch, 202–366–5046, regarding copies of this notice or other material that is referenced herein.

ADDRESSES: Comments may be mailed to the Dockets Branch, U.S. Department of Transportation, 400 Seventh Street, Washington, DC 20590. All comments and Docket material may be reviewed in the Dockets Branch, room 8421, between the hours of 8:30 a.m. to 5:00 p.m. Monday through Friday, except federal holidays.

SUPPLEMENTARY INFORMATION: By letter dated November 24, 1975, Alyeska requested a waiver from compliance with the coating and cathodic protection requirements of 49 CFR 195.238(a)(5) and 195.242(a) with respect to thermally insulated pump station and terminal piping on the Trans-Alaska Pipeline System (TAPS). 49 CFR 195.238(a)(5) requires that each component in a hazardous liquid pipeline that is to be buried or submerged must have an external protective coating that supports any supplemental cathodic protection. In addition, if an insulating-type coating is used, it must have low moisture absorption and provide high electrical resistance. 49 CFR 195.242(a) requires a cathodic protection system be installed for all buried or submerged hazardous liquid facilities to mitigate corrosion that might result in structural failure. A test procedure must also be developed to determine whether adequate cathodic protection has been achieved.

On August 16, 1976, RSPA granted Alyeska this waiver (Docket No. Pet. 75–13W) on the premise that the applied thermal insulation design would prevent corrosion from occurring on the piping. However, subsequent inspections of the insulated piping discovered that the annular insulation system was not sufficiently effective in preventing external corrosion on portions of the buried piping.

Alyeska estimates 14,500 linear feet of piping was originally installed subject to the 1976 waiver. To date, Alyeska has rerouted approximately 11,000 linear feet of above ground piping or installed cathodic protection with a design meeting the requirements of 195.238(a)(5) and 195.2424(a). In general, this rerouting or repair was made on areas with the greatest corrosion. For the remaining approximately 3500 feet of below ground insulated piping, RSPA proposes to prohibit any further use of thermal insulation design installed during construction and to amend the waiver on the existing insulated piping subject to the following stipulations: 1. At Pump Station No. 1. In 1995, Alyeska will install an insulated box containing cathodic protection on approximately 450 feet of 48-inch mainline piping and will also complete tie-in of the 2-inch fuel gas separator drain line. This will complete the installation of cathodic protection to all active piping at Pump Station No. 1 that is subject to 49 CFR 195.

2. At Pump Station No. 2. Alyeska will conduct annual sample inspections of approximately 220 feet of piping for injurious corrosion and repair as required until pump station No. 2 is removed from service.

3. Pump Station No. 5 piping subject to this amendment is approximately 1490 feet. At Pump Station No. 5 Alyeska will either:

A. Install insulated boxes containing cathodic protection or move the piping above ground by December 31, 1996; or,

B. If Alyeska determines by September 1995 that Pump Station No. 5 will be removed from service prior to December 31, 1999, continue to perform annual sample inspections for corrosion and repair as required until Pump Station No. 5 is removed from service.

4. The North Pole Meter Station piping subject to this amendment and extension is approximately 560 feet between the 48-inch mainline and the meter building. At the North Pole Meter Station Alyeska will either:

A. Provide cathodic protection to existing 8-inch crude supply and 6-inch residuum return piping by December 31, 1996, and conduct sample inspections for corrosion in 1995, or

B. Upgrade the meter station connection and replace with new larger diameter piping meeting 49 CFR Part 195 requirements by December 31, 1996.

5. At transition piping at pump stations and Valdez Marine Terminal (VMT), the above ground insulated piping that transitions to below ground non-insulated piping occurs at the seven non-permafrost stations (pump station No. 4 and Nos. 7–12) and the VMT. Typical repair consists of removal of the below ground insulation and coating, followed by coating replacement and an outer mechanical protective layer. Alyeska will repair and complete inspections of ten percent of the insulated transitions at each of the applicable pump stations and at VMT by the end of 1995.

Inspections of ten percent of the transitions were completed at each of the pump stations 4, 9, and 12 in 1994 with the following results: PS–4, two transitions inspected with no corrosion; PS–9, three transitions inspected, two with no corrosion and one with slight corrosion with a 65 mil pit; and PS–12, three transitions inspected with no corrosion at two locations and less than 30 mils pitting at the other location. A total of five transitions were inspected at the VMT in 1994, a total of five per cent, with no corrosion found at any location.

In 1995, Alyeska will conduct inspections of ten percent of the transitions at pump stations Nos. 7,8,10, and 11 and an additional five transitions at VMT. Alyeska will continue an inspection and repair program based upon the results of these and future inspections. Transition piping subject to this amendment and extension is approximately 800 feet.

For the purpose of this amendment sample inspect/sample inspection means to excavate and expose a portion of a line segment, typically 3 feet to 20 feet in length, for the purpose of visual examination and measurement of corrosion. Portions of pipe segments with no inspection information will be given priority, and reinspection frequency will be based upon the severity of corrosion found, line service, and pipe accessibility. The maximum interval for sample inspection will not exceed 5 years.

Injurious corrosion means corrosion to the extent that replacement or repair is required as determined by 49 CFR 195.416(h). Repair means structural repair of piping and/or coating repairs.

Interested parties are invited to comment on the proposed amendment to waiver by submitting in duplicate such data, views, or arguments as they may desire. RSPA specifically requests comments on the adequacy of the proposed action regarding 195.238(a)(5) and 195.242(a). Comments should identify the Docket and Notice numbers, and be submitted to the Dockets Unit, Room 8421, Research and Special Programs Administration, 400 Seventh Street, SW, Washington, D.C. 20590.

All comments received before July 24, 1995 will be considered before final action is taken. Late filed comments will be considered as practicable. No public hearing is contemplated, but one may be held at a time and place set in a Notice in the **Federal Register** if requested by an interested person desiring to comment at a public hearing and raising a genuine issue.

Issued in Washington, D.C. on June 1, 1995.

Cesar De Leon,

Acting Associate Administrator for Pipeline Safety.

[FR Doc. 95–13931 Filed 6–6–95; 8:45 am]

BILLING CODE 4910–60–P

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Sunshine Act Meetings

Federal Register
Vol. 60, No. 109
Wednesday, June 7, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, June 12, 1995.

PLACE: William McChesney Martin, Jr. Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Research System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: June 2, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–14010 Filed 6–5–95; 9:15 am]

BILLING CODE 6210–01–M

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

TIME AND DATE: 10:00 a.m. (EDT), June 19, 1995.

PLACE: 4th Floor, Conference Room, 1250 H Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the May 15, 1995, Board meeting.
2. Thrift Savings Plan activity report by the Executive Director.
3. Annuity vendor evaluation criteria.

CONTACT PERSON FOR MORE INFORMATION: Tom Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: June 2, 1995.

John J. O'Meara,

Executive Director (Acting), Federal Retirement Thrift Investment Board.

[FR Doc. 95–14011 Filed 6–5–95; 9:16 am]

BILLING CODE 6760–01–M

LEGAL SERVICES CORPORATION

Board of Directors Meeting Notice; Changes

CITATION OF PREVIOUS "FEDERAL REGISTER" NOTICE: June 7, 1995.

PREVIOUSLY ANNOUNCED TIME AND DATE: Friday, June 14, 1995, at 12 p.m.

CHANGES IN THE MEETING: The meeting will be held on Wednesday, June 14, 1995, at 12 p.m.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, (202) 336-8810.

Date issued: June 5, 1995.

Victor M. Fortuno,

General Counsel.

[FR Doc. 95–14078 Filed 6–5–95; 2:26 pm]

BILLING CODE 7050–01–P

Corrections

Federal Register
Vol. 60, No. 109
Wednesday, June 7, 1995

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 91–074–6]

RIN 0579–AA47

Importation of Logs, Lumber, and Other Unmanufactured Wood Articles

Correction

In rule document 95–12789 beginning on page 27665 in the issue of Thursday, May 25, 1995, make the following corrections:

§ 319.40–6 [Corrected]

1. On page 27679, in § 319.40–6(b)(2), in the fourth line, delete "wholly".
2. On the same page, in § 319.40–6(c), the third line should read "except places in Asia that are".
3. On the same page, in § 319.40–6(c), in the fourth and fifth lines, delete the phrase "wholly or in part".

BILLING CODE 1505–01–D

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 130

[Docket No. 92-174-1]

RIN 0579-AA67

Import/Export User Fees

Correction

In proposed rule document 95–12999 beginning on page 27913 in the issue of Friday, May 26, 1995, make the following corrections:

§130.7 [Corrected]

On page 27921, in §130.7(a), in the third column, in the table, under the "User fee" column, in the 7th line, "0.50 per head" should read "0.25 per head" and in the 13th line, "0.025 per head" should read "0.25 per head".

BILLING CODE 1505–01–D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 651

[Docket No. 950410096–5135–02; I.D. 050595B]

RIN 0648–AH66

Northeast Multispecies Fishery; Exemption Supplement to Framework 9

Correction

In rule document 95–12320 beginning on page 26841 in the issue of Friday, May 19, 1995, make the following corrections:

§ 651.20 [Corrected]

1. On page 26843, in § 651.20(8)(i), in the third line, insert "Small Mesh Area 1; " after "in".
2. On the same page, in § 651.20(8)(ii), in the third line, insert "Small Mesh Area 2; and" after "in".

BILLING CODE 1505–01–D

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No. 950501124–5124–01]

RIN 0651–AA74

Revision of Patent and Trademark Fees

Correction

In proposed rule document 95–12751 beginning on page 27934 in the issue of Friday, May 26, 1995, make the following corrections:

1. On page 27935, in the first column, under *Statutory Provisions*, in the second full paragraph, in the third line, "34 U.S.C." should read "35 U.S.C.".

§ 1.19 [Corrected]

2. On page 27938, in § 1.19(a)(1)(iii), in the fifth line, "consumer" should read "customer".

§ 1.20 [Corrected]

3. On the same page, in § 1.20(g), in the fifth line, "field" should read "filed".

§ 1.492 [Corrected]

4. On page 27939, in § 1.492(a)(5), in the fourth line, "Patient" should read "Patent".
5. On the same page, in § 1.492(d), in the fifth line, "applicant." should read "application.".

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD11-94-007]

RIN 2115-AE84

Regulated Navigation Area; San Francisco Bay Region, CA

Correction

In rule document 95–8124 beginning on page 16793 in the issue of Monday, April 3, 1995, make the following corrections:

1. On page 16793, in the **SUMMARY** section, in the third column, in the eighth line, "with" should read "will".

§165.1114 [Corrected]

2. On page 16797, in the first column, in §165.1114(c)(1)(i), in the first line, the coordinate "27°47′18″N" should read "37°47′18″N".
3. On the same page, in the same column, in the same section, in the 11th line, the coordinate "27°49′22″N" should read "37°49′22″N".
4. On the same page, in the third column, in §165.1114(c)(1)(ii)(F)(4), in the nineth line, the coordinate "38°03′23″N"should read "38°03′13″N".
5. On page 16798, in the first column, in §165.1114(c)(1)(ii)(F)(7), in the 10th line, the coordinate "122°21′12″W;" should read "122°22′12″W;".
6. On the same page, in the same column, in the same paragraph, in the 11th line, the coordinate "37°48′26″N;" should read "37°47′26″N;".
7. On the same page, in the third column, in §165.1114(e)(3)(i)(B)(*2*), in the third line, "transmit" should read "transit".

BILLING CODE 1505–01–D

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federal register

Wednesday
June 7, 1995

Part II

Department of Education

34 CFR Part 700

Standards for the Conduct and Evaluation of Activities Carried Out by the Office of Educational Research and Improvement—Evaluation of Applications for Grants and Cooperative Agreements and Proposals for Contracts; Proposed Rule

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DEPARTMENT OF EDUCATION

34 CFR Part 700

RIN 1850–AA51

Standards for the Conduct and Evaluation of Activities Carried Out by the Office of Educational Research and Improvement (OERI)—Evaluation of Applications for Grants and Cooperative Agreements and Proposals for Contracts

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Assistant Secretary for Educational Research and Improvement proposes to add regulations that establish standards for the evaluation of applications for grants and cooperative agreements and proposals for contracts. The development of these standards is required by the Office of Educational Research and Improvement's authorizing legislation, the "Educational Research, Development, Dissemination, and Improvement Act of 1994." The standards will ensure that such application and proposal evaluation activities meet the highest standards of professional excellence.

DATES: Comments must be received on or before July 24, 1995.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Edward J. Fuentes, U.S. Department of Education, 555 New Jersey Avenue, N.W., Room 600, Washington, D.C. 20208–5530. Comments may also be sent through Internet to stan___comments@inet.ed.gov.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Edward J. Fuentes. Telephone (202) 219–1895. Internet electronic mail address: stan___questions@inet.ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background

On March 31, 1994, President Clinton signed Public Law 103–227, which includes Title IX—the "Educational Research, Development, Dissemination, and Improvement Act of 1994" (the Act). The Act restructured the Office of Educational Research and Improvement (OERI) and endowed it with a broad mandate to conduct an array of research, development, dissemination, and improvement activities aimed at strengthening the education of all students. The Act also required the establishment of a National Educational Research Policy and Priorities Board (the Board) to work collaboratively with the Assistant Secretary to identify priorities to guide the work of OERI.

Statutory Requirements

The legislation directed the Assistant Secretary to develop, in consultation with the Board, such standards as may be necessary to govern the conduct and evaluation of all research, development, and dissemination activities carried out by the Office to ensure that such activities meet the highest standards of professional excellence. Such standards shall at a minimum—

(a) Require that a process of open competition be used in awarding or entering into all grants, contracts, and cooperative agreements under the Act;

(b) Require that a system of peer review be utilized by the Office for—

(1) Reviewing and evaluating all applications for grants and cooperative agreements and proposals for those contracts which exceed $100,000;

(2) Evaluating and assessing the performance of all recipients of grants from and cooperative agreements and contracts with the Office; and

(3) Reviewing and designating exemplary and promising programs in accordance with section 941(d) of the Act;

(c) Describe the general procedures which shall be used by each peer review panel in its operations;

(d)(1) Describe the procedures which shall be utilized in evaluating applications for grants and cooperative agreements and contract proposals; and

(2) Specify the criteria and factors which shall be considered in making such evaluations;

(e) Describe the procedures which shall be utilized in reviewing educational programs for designation as exemplary or promising programs; and

(f) Require that the performance of all recipients of grants from and contracts and cooperative agreements with the Office shall be periodically evaluated, both during and at the conclusion of their receipt of assistance.

The Act also requires that the Assistant Secretary review the procedures utilized by the National Institutes of Health (NIH), the National Science Foundation (NSF), and other Federal departments or agencies engaged in research and development and actively solicit recommendations from research organizations and members of the general public. OERI has: (1) Reviewed peer review procedures used by NIH, NSF, and various program offices within the Department of Education; (2) requested recommendations from research organizations and associations; and (3) solicited public comment on standards of peer review and program evaluation activities through a general notice requesting comments on the implementation of the Office's new authorizing legislation published in the **Federal Register** on July 7, 1994 (59 FR 34802).

Proposed Standards

These proposed standards have been developed by the Assistant Secretary in consultation with the Board. The standards proposed in this NPRM—

- Require that a process of open competition be used in awarding or entering into all grants, cooperative agreements and contracts funded under the Act;
- Require that a system of peer review be used for reviewing and evaluating all applications for grants and cooperative agreements and proposals for those contracts which exceed $100,000;
- Establish principles for selecting qualified peer reviewers to evaluate and review applications for grants and cooperative agreements and proposals for contracts;
- Establish general procedures to be followed by the peer reviewers when evaluating applications or proposals;
- Establish improved evaluation criteria; and
- Describe the process by which applications or proposals are selected for funding.

In accordance with section 912(i)(3)(C) of the Act, § 700.2 of the proposed regulations provides that these standards shall be binding on all activities carried out by OERI using funds appropriated under section 912(m) of the Act. The OERI activities carried out with funds appropriated pursuant to section 912(m) of the Act are specified in § 700.2(b) of the proposed regulations.

The Secretary believes that these standards will ensure that applications for grant and cooperative agreement awards and proposals for contract awards are reviewed and evaluated in a rigorous, nonpartisan manner by highly qualified experts. The standards require that each application for a grant or cooperative agreement be evaluated by at least three peer reviewers except for awards of less than $50,000 when fewer reviewers may be used and for awards of more than $1,000,000 when at least five reviewers must be used. These requirements reflect the Secretary's belief that the number of reviewers used should reflect the complexity of the activities that are the subject of the competition and that competitions involving larger awards generally are more complex than those involving smaller awards. Therefore, applications for grant awards should be reviewed by a group large enough to provide the breadth of perspectives necessary to evaluate the proposed work.

The Secretary believes that conflicts of interest for peer reviewers should be determined by applying established Department policy. Accordingly, peer reviewers for grants and cooperative agreements will be considered employees of the agency for the purposes of conflicts of interest analysis. As employees of the agency, peer reviewers will be subject to 18 U.S.C. Section 108, the criminal statute regarding conflicts of interest for government employees and, 5 CFR Section 2635.502, the Office of Government Ethics regulations.

To the extent practicable, the Secretary believes that these standards should apply to all research, development, dissemination, demonstration, and school improvement activities carried out by OERI. Furthermore, the Secretary believes that in many instances, the proposed peer review standards and evaluation criteria may be relevant to the research, development, and dissemination activities carried out by other offices in the Department. Therefore, § 700.3 authorizes the Secretary to elect to apply these standards to other activities carried out by the Department. The Secretary will announce through the grant application notice published in the **Federal Register**, the extent to which the standards are applicable for a given competition.

In accordance with section 912(i)(2)(D)(ii) of the Act, Subpart D of these proposed regulations specifies the evaluation criteria that may be used by reviewers to evaluate applications for grant and cooperative agreements and proposals for contracts. For each competition, the Secretary will select the criteria that best enable the Department to identify the highest quality applications consistent with the program purpose, statutory requirements and any priorities established. The Secretary may add to any individual criterion one or more specific factors within that criterion. For example, in the case of a national research center competition, the Secretary may select the criterion "National Significance"; the Secretary may evaluate a national research center in terms of its potential contribution to increased knowledge or understanding of educational problems, issues, or effective strategies and the potential contribution of the project to the development and advancement of theory and knowledge in the field of study. In the case of a field initiated study competition, the Secretary may evaluate the national significance of a project in terms of the importance of the problem to be addressed and the potential of the project to contribute to the development and advancement of theory and knowledge in the field of study. In the case of a competition for demonstration activities, the Secretary may evaluate the national significance of a project in terms of whether the project involves the development or demonstration of creative or innovative strategies that build on, or are alternatives to, existing strategies and the potential for generalizing from project findings or results. For some competitions, the Secretary may select the criterion, "National Significance" without selecting specific factors.

The proposed standards provide an opportunity to improve significantly the manner in which OERI carries out its mandate by establishing a menu of evaluation criteria that: (1) Provide OERI the flexibility to choose a set of criteria tailored to a given competition; and (2) obviate the need to create specific evaluation criteria through individual program regulations.

The Assistant Secretary will publish at a later date additional proposed regulations to establish procedures to be used to designate programs as exemplary or promising and to evaluate the performance of all recipients awarded grants, cooperative agreements, or contracts by the Office.

Executive Order 12866

Assessment of Costs and Benefits

These proposed regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those determined by the Secretary as necessary for administering this program effectively and efficiently. Burdens specifically associated with information collection requirements, if any, are identified and explained elsewhere in this preamble under the heading Paperwork Reduction Act of 1980.

In assessing the potential costs and benefits—both quantitative and qualitative—of these proposed regulations, the Secretary has determined that the benefits of the proposed regulations justify the costs.

The Secretary has also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

To assist the Department in complying with the specific requirements of Executive Order 12866, the Secretary invites comment on whether there may be further opportunities to reduce any potential costs or increase potential benefits resulting from these proposed regulations without impeding the effective and efficient administration of the program.

Clarity of the Regulations

Executive Order 12866 requires each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed regulations clearly stated? (2) Do the regulations contain technical terms or other wording that interferes with their clarity? (3) Does the format of the regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity? Would the regulations be easier to understand if they were divided into more (but shorter) sections? (A "section" is preceded by the symbol "§" and a numbered heading; for example, § 700.11 Who may serve as peer reviewers.) (4) Is the description of the regulations in the "Supplementary Information" section of this preamble helpful in understanding the regulations? How could this description be more helpful in making the regulations easier to understand? (5) What else could the Department do to make the regulations easier to understand?

A copy of any comments that concern how the Department could make these proposed regulations easier to understand should be sent to Stanley M. Cohen, Regulations Quality Officer, U.S. Department of Education, 600 Independence Avenue, S.W. (Room 5121, FB–10B), Washington, D.C. 20202–2241.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

The small entities that would be affected by these proposed regulations are small local educational agencies (LEAs) and private schools receiving Federal funds under this program. However, the regulations would not have a significant economic impact on the small LEAs and private schools affected because the regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations would impose minimal requirements to ensure the proper expenditure of program funds.

Paperwork Reduction Act of 1980

Section 700.30 contains information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of this section to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h))

These regulations affect the following types of entities eligible to apply for grants and cooperative agreements: State or local governments, businesses or other for profit organizations, nonprofit institutions, and any combinations of these types of entities. The Department needs and uses the information to evaluate applications for funding.

Annual public reporting and recordkeeping burden for this collection of information is estimated to range from 15 hours for each of the approximately 750 applications expected for a field initiated study competition to 150 hours for ten or fewer applications expected for a national research center. Therefore, the actual burden will be determined by the type of project to be supported in the particular competition.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 3002, New Executive Office Building, Washington, D.C. 20503; Attention: Daniel J. Chenok.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 600, 555 New Jersey Avenue, N.W., Washington, D.C., between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

List of Subjects in 34 CFR Part 700

Education, Educational research, Elementary and secondary education, Government contracts, Grant programs—education, Libraries, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Number does not apply.)

Dated: May 31, 1995.

Sharon P. Robinson,

Assistant Secretary for Educational Research and Improvement.

The Secretary proposes to amend chapter VII of Title 34 of the Code of Federal Regulations by adding a new Part 700 to read as follows:

PART 700—STANDARDS FOR THE CONDUCT AND EVALUATION OF ACTIVITIES CARRIED OUT BY THE OFFICE OF EDUCATIONAL RESEARCH AND IMPROVEMENT (OERI)—EVALUATION OF APPLICATIONS FOR GRANTS AND COOPERATIVE AGREEMENTS AND PROPOSALS FOR CONTRACTS

Subpart A—General

Sec.

700.1 What is the purpose of these standards?
700.2 What activities must be governed by these standards?
700.3 What additional activities may be governed by these standards?
700.4 What definitions apply?
700.5 What are the processes of open competition?

Subpart B—Selection of Peer Reviewers

700.10 When is the peer review process used?
700.11 Who may serve as peer reviewers?
700.12 What constitutes a conflict of interest for grants and cooperative agreements?
700.13 What constitutes a conflict of interest for contracts?

Subpart C—The Peer Review Process

700.20 How many peer reviewers will be used?
700.21 How are applications for grants and cooperative agreements evaluated?
700.22 How are proposals for contracts evaluated?

Subpart D—Evaluation Criteria

700.30 What evaluation criteria are used for grants and cooperative agreements?
700.31 What additional evaluation criteria shall be used for grants and cooperative agreements?
700.32 What evaluation criteria shall be used for contracts?

Subpart E—Selection for Award

700.40 How are grant and cooperative agreement applications selected for award?
700.41 How are contract proposals selected for award?

Authority: 20 U.S.C. 6011(i), unless otherwise noted.

Subpart A—General

700.1 What is the purpose of these standards?

(a) The standards in this part implement section 912(i) of the Educational Research, Development, Dissemination, and Improvement Act of 1994.

(b) These standards are intended to ensure that activities carried out by the Office of Educational Research and Improvement meet the highest standards of professional excellence.

(Authority: 20 U.S.C. 6011(i)(1))

§ 700.2 What activities must be governed by these standards?

(a) The standards in this part are binding on all activities carried out by the Office using funds appropriated under section 912(m) of the Educational Research, Development, Dissemination, and Improvement Act of 1994.

(b) Activities carried out with funds appropriated under section 912(m) of the Act include activities carried out by the following entities or programs:

(1) The National Research Institutes.

(2) The Office of Reform Assistance and Dissemination.

(3) The Educational Resources Information Center Clearinghouses.

(4) The Regional Educational Laboratories.

(5) The Teacher Research Dissemination Demonstration Program.

(6) The Goals 2000 Community Partnerships Program.

(7) The National Educational Research Policy and Priorities Board.

(Authority: 20 U.S.C. 6011(i)(1))

§ 700.3 What additional activities may be governed by these standards?

(a) The Secretary may elect to apply the standards in this part to activities carried out by the Department using funds appropriated under an authority other than section 912(m) of the Act.

(b)(1) If the Secretary elects to apply these standards to a competition for new grant or cooperative agreement awards, the Secretary announces in a notice published in the **Federal Register**, the extent to which these standards are applicable to the competition.

(2) If the Secretary elects to apply these standards to a solicitation for a contract award, the Secretary announces in the request for proposals the extent to which these standards are applicable to the solicitation.

(Authority: 20 U.S.C. 6011(i))

§ 700.4 What definitions apply?

(a) *Definitions in the Educational Research, Development, Dissemination, and Improvement Act of 1994.* The following terms used in this part are defined in 20 U.S.C. 6011(l):

Development
Dissemination
Educational Research Office
National Research Institute
Technical Assistance

(b) *Definitions in Education Department General Administrative Regulations.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Department
Grant
Project
Secretary

(c) *Definitions in the Federal Acquisition Regulation.* The following terms used in this part are defined in 48 CFR Chapter 1:

Contracting Officer
Employee of an Agency
Proposal
Solicitation

(d) *Other definitions.* The following definitions also apply to this part:

Act means the Educational Research, Development, Dissemination, and Improvement Act of 1994 (title IX of Pub. L. 103–227, 108 Stat. 212).

EDAR means the Department of Education Acquisition Regulation, 48 CFR chapter 34.

EDGAR means the Department of Education General Administrative Regulations, 34 CFR parts 74, 75, 76, 77, 79, 80, 81, 82, 85 and 86.

FAR means the Federal Acquisition Regulation, 48 CFR chapter 1.

(Authority: 20 U.S.C. 6011)

§ 700.5 What are the processes of open competition?

The Secretary uses a process of open competition in awarding or entering into all grants, cooperative agreements, and contracts governed by these standards. The processes of open competition are the following:

(a) For all new awards for grants and cooperative agreements, the Secretary will make awards pursuant to the provisions of EDGAR with the exception of the provisions in 34 CFR 75.100(c)(5), 75.200 (b)(3), (b)(5), 75.210, and 75.217 (b)(1), (b)(2), (c), and (d).

(b) For contracts, the Department will conduct acquisitions pursuant to this part in accordance with the requirements of the Competition in Contracting Act, 41 U.S.C. 253, and the FAR.

(Authority: 20 U.S.C. 6011(i)(2); 41 U.S.C. 253)

Subpart B—Selection of Peer Reviewers

§ 700.10 When is the peer review process used?

The Secretary uses a peer review process—

(a) To review and evaluate all applications for grants and cooperative agreements and proposals for those contracts which exceed $100,000;

(b) To review and designate exemplary and promising programs in accordance with section 941(d) of the Act; and

(c) To evaluate and assess the performance of all recipients of grants from and cooperative agreements and contracts with the Office.

(Authority: 20 U.S.C. 6011(i)(2)(B))

§ 700.11 Who may serve as peer reviewers?

(a) An individual may serve as a peer reviewer for purposes of reviewing and evaluating applications for new awards for grants and cooperative agreements and contract proposals if the individual—

(1) Possesses one or more of the following qualifications:

(i) Demonstrated expertise, including training and experience, relevant to the subject of the competition.

(ii) In-depth knowledge of policy and practice in the field of education.

(iii) In-depth knowledge of theoretical perspectives or methodological approaches relevant to the subject of the competition; and

(2) Does not have a conflict of interest, as determined in accordance with § 700.12.

(b)(1) Except as provided in paragraph (b)(2) of this section, for each competition for new awards for grants and cooperative agreements—

(i) Department staff shall not serve as peer reviewers except in exceptional circumstances as determined by the Secretary; and

(ii) The majority of reviewers shall be persons not employed by the Federal Government.

(2) For each review of an unsolicited grant or cooperative agreement application—

(i) Department employees may assist the Secretary in making an initial determination under 34 CFR 75.222(b); and

(ii) Department employees may not serve as peer reviewers in accordance with 34 CFR 75.222(c).

(c) To the extent feasible, the Secretary selects peer reviewers for each competition who represent a broad range of perspectives.

(Authority: 20 U.S.C. 6011(i)(2)(B))

§ 700.12 What constitutes a conflict of interest for grants and cooperative agreements?

(a) Peer reviewers for grants and cooperative agreements are considered employees of the agency for the purposes of conflicts of interest analysis.

(b) As employees of the agency, peer reviewers are subject to the provisions of 18 U.S.C. 208, 5 CFR 2635.502, and the Department policies used to implement those provisions.

(Authority: 20 U.S.C. 6011(i)(2)(B))

§ 700.13 What constitutes a conflict of interest for contracts.

(a) Peer reviewers for contract proposals are considered employees of the agency in accordance with FAR, 48 CFR 3.104–4(h)(2).

(b) As employees of the agency, peer reviewers are subject to the provisions of the FAR, 48 CFR Part 3 Improper Business Practices and Personal Conflict of Interest.

(Authority: 41 U.S.C. 423)

Subpart C—The Peer Review Process

§ 700.20 How many peer reviewers will be used?

(a) Each application for a grant or cooperative agreement award shall be reviewed and evaluated by at least three peer reviewers except—

(1) For those grant and cooperative agreement awards under $50,000, fewer than three peer reviewers may be used if the Secretary determines that adequate peer review can be obtained using fewer reviewers; and

(2) For those grant and cooperative agreement awards of more than

$1,000,000, at least five reviewers will be used.

(b) Each contract proposal shall be read by at least three reviewers unless the contracting officer determines that an adequate peer review can be obtained by fewer reviewers.

(c) Before releasing contract proposals to peer reviewers outside the Federal Government, the contracting officer shall comply with FAR, 48 CFR 15.413–2(f).

(Authority: 20 U.S.C. 6011(i)(2)(B))

§ 700.21 How are applications for grants and cooperative agreements evaluated?

(a) Each peer reviewer shall be given a number of applications to evaluate.

(b) Each peer reviewer shall—

(1) Independently evaluate each application;

(2) Evaluate and rate each application based on the reviewer's assessment of the quality of the application according to the evaluation criteria and the weights assigned to those criteria; and

(3) Support the rating for each application with concise written comments based on the reviewer's analysis of the strengths and weaknesses of the application with respect to each of the applicable evaluation criteria.

(c) After each peer reviewer has evaluated and rated each application independently, those reviewers who evaluated a common set of applications will be convened to discuss the strengths and weaknesses of those applications. Each reviewer may then independently reevaluate and re-rate an application with appropriate changes made to the written comments.

(d) Following discussion and any reevaluation and re-rating, reviewers shall independently place each application in one of two categories, either "recommended for funding" or "not recommended for funding."

(e) After the peer reviewers have evaluated, rated, and made funding recommendations regarding the applications, the Secretary prepares a rank order of the applications based solely on the peer reviewers' evaluations.

(Authority: 20 U.S.C. 6011(i)(2)(C))

§ 700.22 How are proposals for contracts evaluated?

(a) Each peer reviewer shall be given a number of technical proposals to evaluate.

(b) Each peer reviewer shall—

(1) Independently evaluate each technical proposal;

(2) Evaluate and rate each proposal based on the reviewer's assessment of the quality of the proposal according to the technical evaluation criteria and the importance or weight assigned to those criteria; and

(3) Support the rating for each proposal with concise written comments based on the reviewer's analysis of the strengths and weaknesses of the proposal with respect to each of the applicable technical evaluation criteria.

(c) After each peer reviewer has evaluated each proposal independently, those reviewers who evaluated a common set of proposals may be convened to discuss the strengths and weaknesses of those proposals. Each reviewer may then independently reevaluate and re-rate a proposal with appropriate changes made to the written comments.

(d) Following discussion and any reevaluation and re-rating, reviewers shall rank proposals and advise the contracting officer of each proposal's acceptability for contract award as "acceptable," "capable of being made acceptable without major modifications," or "unacceptable." Reviewers may also submit technical questions to be asked of the offeror regarding the proposal.

(Authority: 20 U.S.C. 6011(i)(2)(C))

Subpart D—Evaluation Criteria

§ 700.30 What evaluation criteria are used for grants and cooperative agreements?

(a) Except as provided in paragraph (d) of this section, the Secretary announces the applicable evaluation criteria for each competition and the assigned weights in a notice published in the **Federal Register**.

(b) In determining the evaluation criteria to be used in each grant and cooperative agreement competition, the Secretary selects from among the evaluation criteria in paragraph (e) of this section and may select from among the specific factors listed under each criterion.

(c) The Secretary assigns relative weights to each selected criterion and factor.

(d) In determining the evaluation criteria to be used for unsolicited applications, the Secretary selects from among the evaluation criteria in paragraph (e) of this section, and may select from among the specific factors listed under each criterion, the criteria which are most appropriate to evaluate the activities proposed in the application.

(e) The Secretary establishes the following evaluation criteria:

(1) *National significance.* (i) The Secretary considers the national significance of the proposed project.

(ii) In determining the national significance of the proposed project, the Secretary may consider one or more of the following factors:

(A) The importance of the problem or issue to be addressed.

(B) The potential contribution of the project to increased knowledge or understanding of educational problems, issues, or effective strategies.

(C) The scope of the project.

(D) The potential for generalizing from project findings or results.

(E) The potential contribution of the project to the development and advancement of theory and knowledge in the field of study.

(F) Whether the project involves the development or demonstration of creative or innovative strategies that build on, or are alternatives to, existing strategies.

(G) The nature of the products (such as information, materials, processes, or techniques) likely to result from the project and the potential for their effective use in a variety of other settings.

(H) The extent and quality of plans for disseminating results in ways that will allow others to use the information.

(2) *Quality of the project design.* (i) The Secretary considers the quality of the design of the proposed project.

(ii) In determining the quality of the design of the proposed project, the Secretary may consider one or more of the following factors:

(A) Whether the goals, objectives, and outcomes to be achieved by the project are clearly specified and measurable.

(B) Whether there is a conceptual framework underlying the proposed activities and the quality of that framework.

(C) Whether the proposed activities constitute a coherent, sustained program of research and development in the field, including a substantial addition to an ongoing line of inquiry.

(D) Whether a specific research design has been proposed, and the quality and appropriateness of that design, including the scientific rigor of the studies involved.

(E) The extent to which the research design includes a thorough, high-quality review of the relevant literature, a high-quality plan for research activities, and the use of appropriate theoretical and methodological tools, including those of a variety of disciplines, where appropriate.

(F) The quality of the demonstration design and procedures for documenting project activities and results.

(G) The extent to which development efforts include iterative testing of products and adequate quality controls.

(H) The likelihood that the design of the project will successfully address the intended, demonstrated educational needs or needs.

(I) How well and innovatively the project addresses statutory purposes, requirements and any priority or priorities announced for the program.

(J) The quality of the plan for evaluating the functioning and impact of the project, including the objectivity of the evaluation and the extent to which the methods of evaluation are appropriate to the goals, objectives, and outcomes of the project.

(3) *Quality and potential contributions of personnel.* (i) The Secretary considers the quality and potential contributions of personnel for the proposed project.

(ii) In determining the quality and potential contributions of personnel for the proposed project, the Secretary may consider one or more of the following factors:

(A) The qualifications, including training and experience, of the project director or principal investigator.

(B) The qualifications, including training and experience, of key project personnel.

(C) The qualifications, including training and experience, of proposed consultants or subcontractors.

(D) Past performance of any personnel in any previous Department-supported grants or cooperative agreements.

(4) *Adequacy of resources.* (i) The Secretary considers the adequacy of resources for the proposed project.

(ii) In determining the adequacy of resources for the proposed project, the Secretary may consider one or more of the following factors:

(A) The adequacy of support from the lead applicant organization.

(B) The relevance and commitment of each partner in the project to the implementation and success of the project.

(C) Whether the budget is adequate to support the project.

(D) Whether the costs are reasonable in relation to the objectives, design, and potential significance of the project.

(E) The cost-effectiveness of the project and the adequacy of the support provided by the applicant organization in any previous Department-supported grant or cooperative agreement.

(F) The potential for continued support of the project after federal funding ends.

(5) *Quality of the management plan.* (i) The Secretary considers the quality of the management plan of the proposed project.

(ii) In determining the quality of the management plan of a proposed project, the Secretary may consider one or more of the following factors:

(A) The adequacy of the management plan to achieve the objectives of the project, including the specification of staff responsibility, timelines, and benchmarks for accomplishing project tasks.

(B) The adequacy of plans for ensuring high-quality products and services.

(C) The adequacy of plans for ensuring continuous improvement in the operation of the project.

(D) Whether time commitments of the project director or principal investigator and other key personnel are appropriate and adequate to meet project objectives.

(E) How the applicant will ensure that a diversity of perspectives are brought to bear in the operation of the project, including those of parents and teachers, where appropriate.

(F) How the applicant will ensure that persons who are otherwise eligible to participate in the project are selected without regard to race, color, national origin, gender, age, or disability.

(G) The adequacy of plans for widespread dissemination of project results and products in ways that will assist others to use the information.

(Authority: 20 U.S.C. 6011(i)(2)(D)(ii))

§ 700.31 What additional evaluation criteria shall be used for grants and cooperative agreements?

In addition to the evaluation criteria established in § 700.30(e), criteria or factors specified in the applicable program statute shall be used to evaluate applications for grants and cooperative agreements.

(Authority: 20 U.S.C. 6011(i)(2)(D)(ii))

§ 700.32 What evaluation criteria shall be used for contracts?

(a) The evaluation criteria to be considered in the technical evaluation of contract proposals are contained in the FAR at 48 CFR 15.605. The evaluation criteria that apply to an acquisition and the relative importance of those factors are within the broad discretion of agency acquisition officials.

(b) At a minimum, the evaluation criteria to be considered shall include cost or price and quality. Evaluation factors related to quality are called technical evaluation criteria.

(c) Technical evaluation criteria may include, but are not limited to, the following:

(1) Technical excellence.

(2) Management capability.

(3) Personnel qualifications.

(4) Prior experience.

(5) Past performance.

(6) Schedule compliance.

(Authority: 20 U.S.C. 6011(i)(2)(D)(ii))

Subpart E—Selection for Award

§ 700.40 How are grant and cooperative agreement applications selected for award?

(a) The Secretary determines the order in which applications will be selected for grants and cooperative agreement awards. The Secretary considers the following in making these determinations:

(1) An applicant's ranking.

(2) Recommendations of the peer reviewers with regard to funding or not funding.

(3) Information concerning an applicant's performance and use of funds under a previous Federal award.

(4) Amount of funds available for the competition.

(5) Any other information relevant to a priority or other statutory or regulatory requirement applicable to the selection of applications for new awards.

(b) In the case of unsolicited applications, the Secretary uses the procedures in EDGAR (34 CFR 75.222 (d) and (e)).

(Authority: 20 U.S.C. 6022(i)(2)(D)(i))

§ 700.41 How are contract proposals selected for award?

Following evaluation of the proposals, the contracting officer shall select for award the offeror whose proposal is most advantageous to the Government considering cost or price and the other factors included in the solicitation.

(Authority: 20 U.S.C. 6011(i)(2)(D)(i))

[FR Doc. 95–13690 Filed 6–6–95; 8:45 am]

BILLING CODE 4000–01–P

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federal register

Wednesday
June 7, 1995

Part III

Department of the Interior

Bureau of Indian Affairs

Receipt of Petition for Federal Acknowledgment of Existence as an Indian Tribe; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Receipt of Petition for Federal Acknowledgment of Existence as an Indian Tribe

This is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 83.9(a) (formerly 25 CFR 54.8(a)) notice is hereby given that the Fernandeno/Tataviam Tribal Council, 11640 Rincon Avenue, Sylmar, California 91342 has filed a petition for acknowledgment by the Secretary of the Interior that the group exists as an Indian tribe. The petition was received by the Bureau of Indian Affairs (BIA) on April 24, 1995, and was signed by members of the group's governing body.

This is a notice of receipt of petition and does not constitute notice that the petition is under active consideration. Notice of active consideration will be sent by mail to the petitioner and other interested parties at the appropriate time.

Under Section 83.9(a) (formerly 54.8(d)) of the Federal regulations, interested parties may submit factual and/or legal arguments in support of or in opposition to the group's petition. Any information submitted will be made available on the same basis as other information in the BIA's files. Such submissions will be provided to the petitioner upon receipt by the BIA. The petitioner will be provided an opportunity to respond to such submissions prior to a final determination regarding the petitioner's status.

The petition may be examined, by appointment, in the Department of the Interior, Bureau of Indian Affairs, Branch of Acknowledgment and Research, Room 1362–MIB, 1849 C Street, N.W.; Washington, D.C. 20240, Phone: (202) 208–3592.

Dated: May 30, 1995.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 95–13864 Filed 6–6–95; 8:45 am]

BILLING CODE 4310–02–P

VOL 60 ISS 109 JE 7 995 UMI

federal register

Wednesday
June 7, 1995

Part IV

Department of Agriculture

Agricultural Marketing Services

7 CFR Part 982

Filberts/Hazelnuts Grown in Oregon and Washington; Recommended Decision on Proposed Further Amendment of Marketing Agreement and Order No. 982; Proposed Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 982

[Docket No. AO–205–A7; FV94–982–1]

Filberts/Hazelnuts Grown in Oregon and Washington; Recommended Decision on Proposed Further Amendment of Marketing Agreement and Order No. 982

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and opportunity to file exceptions.

SUMMARY: This recommended decision invites written exceptions on proposed amendments to Marketing Agreement and Order No. 982 (order). The agreement and order regulate the handling of filberts/hazelnuts grown in Oregon and Washington. The proposed amendments would make changes in order provisions regarding: Volume control; nomination and membership of the Filbert/Hazelnut Marketing Board (Board); collecting assessments; and the administration and operation of the program. The proposed amendments were submitted by the Board to make the order more consistent with current industry conditions and needs. The Fruit and Vegetable Division, Agricultural Marketing Service (AMS), is proposing conforming and other necessary changes. The proposed amendments are designed to improve order operations.

DATES: Written exceptions must be filed by July 7, 1995.

ADDRESSES: Written exceptions should be filed with the Hearing Clerk, U.S. Department of Agriculture, room 1081–S, Washington, D.C. 20050–9200, FAX (202) 720–9776. Four copies of all written exceptions should be submitted and should reference the docket number and the date and page number of this issue of the **Federal Register**. Exceptions will be made available for public inspection in the Office of the Hearing Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Teresa Hutchinson, Marketing Specialist, Northwest Marketing Field Office, Fruit and Vegetable Division, Agricultural Marketing Service, USDA, 1220 SW Third Ave., room 369, Portland, OR 97204; telephone (503) 326–2724, FAX (503) 326–7440; or Tom Tichenor, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2523–S, P.O. Box 96456, Washington, D.C. 20090–6456; telephone: 202–720–6862; FAX 202–720–5698.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Public Hearing issued on February 24, 1994, and published in the February 28, 1994, issue of the **Federal Register** (59 FR 9425).

This administrative action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code, and, therefore, is excluded from the requirements of Executive Order 12866.

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to the proposed further amendment of Marketing Agreement and Order No. 982 and of the opportunity to file written exceptions thereto. For the purposes of this document and this formal rulemaking proceeding, Marketing Agreement and Order No. 982 is referred to as the "order" and the term filberts and filberts/hazelnuts is hereinafter referred to as hazelnuts. Copies of this decision may be obtained from Teresa Hutchinson or Tom Tichenor, at the addresses listed above.

This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), hereinafter referred to as the "Act," and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900).

The proposed further amendment of the order is based on the record of a public hearing held in Newberg, Oregon, on March 8, 1994. Notice of this hearing was published in the **Federal Register** on February 28, 1994. The notice of public hearing listed 12 proposals submitted by the Board, the agency responsible for local administration of the order, and one proposal by the Fruit and Vegetable Division (Division), of the Agricultural Marketing Service (AMS), U.S. Department of Agriculture (Department), concerning conforming changes.

The proposals would: (1) Change the name of the commodity covered under the order from "filberts" to "hazelnuts;" (2) for purposes of volume regulation, establish the trade demand area as the entire United States and allow the Board, with the Secretary's approval, to make changes in the inshell trade acquisition distribution area; (3) change the length of Board members' terms of office and the number of consecutive terms that may be held, make changes in the criteria used for nominating handler members and for weighting handler votes when electing handler nominees, and change the voting procedures used for nominating members; (4) allow Board telephone votes to remain unconfirmed until the next public Board meeting; (5) remove the "verbatim" reporting requirement on Board marketing policy meetings; (6) provide the Board with some flexibility in recommending final free and restricted percentages; (7) authorize different identification standards for inspected and certified hazelnuts; (8) correct current language that specifies handler credit for ungraded hazelnuts; (9) change the procedures for establishing bonding requirements for deferred restricted obligations and allow the Board to purchase excess restricted credits from handlers; (10) clarify that mail order sales outside the production area are not exempt from order requirements; (11) allow the Board to accept advance assessment payments, provide discounts for such payments, and accept voluntary contributions; and (12) make such changes as are necessary to conform with any amendment that may result from the hearing.

The public hearing was held to: (1) Receive evidence about the economic and marketing conditions which relate to the proposed amendments of the order; (2) determine whether there is a need for the proposed amendments to the order; and (3) determine whether the proposed amendments, or appropriate modifications thereof, will tend to effectuate the declared policy of the Act.

No person testified in opposition to the proposals offered at the hearing and no alternative proposals were offered.

At the conclusion of the hearing, the administrative law judge fixed April 8, 1994, as the final date for interested persons to file corrections to the hearing transcript, proposed findings and conclusions, and written arguments or briefs based on the evidence received at the hearing. Corrections to the hearing transcript were filed by the Division with the Hearing Clerk on April 5, 1994. No other corrections, findings, conclusions, arguments or briefs were filed.

Small Business Considerations

In accordance with the provisions of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities. Small agricultural service firms, which include handlers regulated under this order, have been defined by the Small Business Administration (SBA) (13 CFR 121.601) as those having annual receipts for the last three years of less than $5,000,000. Small agricultural producers are defined as those having annual receipts of less than $500,000.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Interested persons were invited to present evidence at the hearing on the probable regulatory and informational impact of the proposed amendments on small businesses. The record indicates that handlers would not be unduly burdened by any additional regulatory requirements, including those pertaining to reporting and recordkeeping, that might result from this proceeding. The record also indicates that a majority of handlers and producers would meet the SBA definitions of small agricultural service firms and small agricultural producers, respectively.

During the 1993–94 marketing year, approximately 25 handlers were regulated under the order. In addition, there were approximately 950 producers of hazelnuts in the production area. The Act requires the application of uniform rules on regulated handlers. Since handlers covered under the order are predominantly small businesses, the order itself is tailored to the size and nature of small businesses. Marketing orders and amendments thereto, are unique in that they are normally brought about through group action of essentially small entities for their own benefit. Thus, both the RFA and the Act are compatible with respect to small entities.

For discussion of the anticipated impact on small businesses, the proposed amendments have been grouped into programmatic categories. Amendments concerning the order's marketing and volume control programs would: Change the name of the commodity to "hazelnuts" (§ 982.4); add the State of Hawaii to the trade demand area and allow the Board to make changes in the trade demand area, with the approval of the Secretary (§ 982.16); provide the Board the flexibility to release up to 15 percent of the average three year inshell trade acquisitions for desirable carryout (§ 982.40); correct the current language that determines handler credit for ungraded hazelnuts (§ 982.51); establish the bonding rate for deferred restricted obligations at the estimated value of restricted credits for the current marketing year and allow the Board to use defaulted bond payments to purchase excess restricted credits (§ 982.54); and clarify that mail order sales are not exempt from order requirements (new § 982.57). These proposed amendments are designed to assist the Board in its domestic and export marketing efforts. The amendments would allow the Board to make program and management decisions that are more consistent with changing market conditions and better respond to changing marketing needs. Because the Board acts in the best interests of the industry, increased Board decision making flexibility should benefit the industry and, thus, small businesses in the industry.

Regarding nomination and Board membership, the proposed amendments would: Change from one to two years the length of Board member and alternate member terms of office (§ 982.33); limit the number of consecutive terms members and alternate members may hold to three two-year terms (§ 982.33); and make conforming changes and a correction in the qualifications for nominating members (§§ 982.30 and 982.32). The amendments are proposed to ease the burden of conducting nomination meetings every year and enhance the Board's efficiency. The amendments are administrative in nature and would not impose additional costs on small businesses.

Other recommended amendments to the order's administrative procedures and operations would: Allow Board telephone votes to remain unconfirmed in writing until the next public Board meeting (§ 982.37); remove the "verbatim" reporting requirement on Board marketing policy meetings (§ 982.39); allow the Board to accept advance assessment payments and provide discounts for such payments (§ 982.61); and allow the Board to accept voluntary contributions (new § 982.63). These proposed amendments are intended to improve the operations of the Board, lessen the administrative burden on Board members and staff, and improve management of the order's financial resources. As such, the proposed changes would have negligible, if any, economic impact on small entities.

Finally, one amendment would provide the Board with the authority to establish more up-to-date identification standards (§ 982.46), which would make order identification and certification provisions consistent with current industry practices and enable handlers more flexibility in meeting identification requirements.

All of these changes are designed to enhance the administration and functioning of the order and benefit the entire industry. Any added costs are not expected to be significant because the benefits of the proposed amendments are expected to outweigh the costs. Finally, the proposed amendments would have no significant impact or burden on small businesses' recordkeeping and reporting requirements.

The amendments proposed herein have been reviewed under Executive Order 12778, Civil Justice Reform and are not intended to have retroactive affect. If adopted, the proposed amendments would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the amendments.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), any additional reporting and recordkeeping requirements that might result from the proposed amendments would be submitted to the Office of Management and Budget (OMB). The provisions would not be effective until after receiving OMB approval.

Material Issues

The material issues of record addressed in this decision are:

(1) Whether to change the name of the commodity from "filberts" to "hazelnuts;"

(2) whether the inshell trade acquisition (trade demand) distribution area should be expanded to include the entire United States; whether the Board, with the approval of the Secretary, should be allowed to make changes in the trade demand distribution area; and, whether inshell hazelnuts shipped to export markets should be restricted from importation into all trade demand distribution areas;

(3) whether to extend the length of Board members' and alternate members'

terms of office to two years, limit the number of consecutive terms which may be held to three two-year terms, make conforming changes to the qualifications for nominating members, make a correction in the weighting of handler votes, and clarify voting procedures;

(4) whether Board telephone votes should remain unconfirmed in writing until the next public Board meeting;

(5) whether to remove the "verbatim" reporting requirement on Board marketing policy meetings;

(6) whether the Board should have additional flexibility in recommending final free and restricted percentages;

(7) whether to provide the Board with the authority, subject to the approval of the Secretary, to establish different identification standards for inspected and certified hazelnuts;

(8) whether to correct the factor used to convert kernel weight to inshell equivalent weight when calculating the volume of hazelnuts withheld for restricted credit;

(9) whether the Board should use the estimated value of restricted credits when establishing bonding rates, and whether to allow the Board to purchase restricted credits;

(10) whether to clarify that mail order sales are not exempt from order requirements;

(11) whether the Board should have authority to accept advance assessment payments, provide discounts for such payments, borrow money, and accept voluntary contributions; and

(12) whether any conforming changes should be made to the order if any or all of these proposals were to become effective.

Findings and Conclusions

The findings and conclusions on the material issues, all of which are based on evidence provided at the hearing and the record thereof, are:

(1) The terms "filberts" and "filberts/hazelnuts" should be revised to read "hazelnuts." Section 982.4 defines filberts to mean filberts or hazelnuts produced in the States of Oregon and Washington from trees of the genus Corylus.

Over the years, the use of the term "filberts" has lessened both within and outside the industry. "Hazelnuts" is widely used in the industry to describe the tree nut covered under the order and in international marketing efforts.

While some handlers continue to refer to the product as filberts, record evidence indicates that changing the name in the order will not have an adverse effect on those handlers who have traditionally referred to the product as "filberts" or use the term in the company name or logo. Further, changing the term would be consistent with public practice because, in 1989, the hazelnut—not filbert—was declared the official state nut of Oregon. Record evidence indicates that, in the production area, the tree is generally referred to as a filbert tree while the nuts are referred to as hazelnuts.

In recognition of the more prominent use of the term "hazelnuts," the Board recommended that the tree nut defined as "filberts" in the order and the title of the Board, and the term "filbert/hazelnut" in the order's title be defined as "hazelnuts" throughout the order and the order's rules and regulations. Thus, the title of the order should be amended to read "Hazelnuts Grown in Oregon and Washington," the definition for filberts should be amended to read, "Hazelnuts means hazelnuts or filberts produced in the States of Oregon and Washington from trees of the genus Corylus," and the title "Filbert Control Board" should be changed to "Hazelnut Marketing Board." Wherever the term "filberts" appears in *Subpart—Order Regulating Handling* and *Subpart—Grade and Size Regulations*, it should be changed to "hazelnuts." Such changes should be made in the table of contents and the following sections: 982.4, 982.6, 982.7, 982.8, 982.11, 982.12, 982.13, 982.14, 982.15, 982.16, 982.18, 982.19, 982.20, 982.30, 982.32, 982.34, 982.39, 982.40, 982.41, 982.45, 982.46, 982.50, 982.51, 982.52, 982.53, 982.54, 982.55, 982.56, 982.57, 982.58, 982.61, 982.65, 982.66, 982.67, 982.69, 982.71, 982.86, and 982.101, including Exhibit A. Wherever the term "filberts/hazelnuts" appears in *Subpart—Administrative Rules and Regulations*, it should be changed to "hazelnuts." Such changes should be made in the following sections: 982.446, 982.450, 982.452, 982.453, 982.455, 982.456, 982.466, 982.468, and 982.471. Finally, references to "F/H Form * * *", followed by a letter or number, or both, should be changed to read "H Form", followed by a letter or number, or both sections 982.450, 982.452, 982.453, 982.454, 982.455, 982.456, 982.460, 982.466, and 982.468.

(2) In § 982.16, Inshell trade acquisitions, the inshell trade demand area should include all 50 states of the United States, and not just the continental United States, and the Board, with the Secretary's approval, should be authorized to make changes in the distribution area. Therefore, this amendment would make two changes in the order: (1) Include all 50 states of the United States in the trade demand area, thus, adding Hawaii, and (2) provide authority to the Board to make changes to the trade demand area through informal rulemaking procedures. For the purposes of these findings and conclusions, trade demand area is synonymous with inshell trade acquisition distribution area.

Under the order's volume regulations, shipments of inshell hazelnuts to the continental U.S. are limited to a prescribed percentage of the industry's supply, subject to regulation each marketing year. Currently, the continental U.S. comprises the "domestic market" under the order. All markets outside the continental U.S., including Hawaii, are currently export markets to which handlers may ship inshell hazelnuts without regard to volume regulations established under the order. This amendment would expand the trade demand area to include Hawaii, thus, making that state part of the "domestic market."

Inshell trade acquisitions are defined as the quantity of inshell hazelnuts acquired by the trade (commercial buyers) from all handlers during a marketing year for distribution in the continental United States. The trade demand for any given year is based on inshell trade acquisitions during the preceding three years. The domestic inshell market volume is restricted under volume regulations. Restricted hazelnuts are shelled or exported inshell to other countries, or are held in satisfaction of the handler's restricted obligation.

The effect of the first change would be to add Hawaii to the trade demand area. When the order was promulgated in 1949, "trade demand" was defined as the quantity of filberts/hazelnuts acquired for "distribution in the continental U.S., Alaska, Hawaii, Puerto Rico and the Canal Zone; except that there may also be considered in the making of such computations such acquirements for distribution in Canada or Cuba, whenever the Board is of the opinion that such distribution may be made to the particular country at prices to handlers approximating such prices on distribution in the Continental United States." (14 FR 5657, September 15, 1949.) This definition was amended in 1959 (24 FR 5305, June 30, 1959) to include only the continental U.S. because it was determined that the other areas would better serve the industry as export outlets for restricted hazelnuts. The Board now recommends that all 50 states be included in the trade demand area.

However, testimony presented at the hearing did not provide any economic analysis, data, or other persuasive reasons that would support adding Hawaii to the trade demand area. The Department believes that the addition of Hawaii to the trade demand area should be evaluated on the same bases as other markets which might be added to the trade demand area. Should the second part of this material issue, as described below, be approved in this formal rulemaking procedure, the Board would be able to recommend adding Hawaii to the trade demand area through informal rulemaking procedures. Thus, this recommended decision denies that portion of the second material issue which recommends adding Hawaii to the trade demand area.

The second change would provide authority to the Board to make changes to the trade demand area, through informal rulemaking procedures. The Board now believes that it is in the best interest of the industry that the Board have the flexibility to respond to changing market conditions by adding a country or marketing region, when appropriate, to the trade demand area.

As currently provided, changes to the trade demand area require formal rulemaking procedures which include a public hearing, a recommended decision, an industry referendum and a final rulemaking decision. However, marketing policy decisions need to be made on a yearly basis, particularly those decisions that require computation to determine the amount of inshell hazelnuts available to be sold without restriction. The formal rulemaking procedure does not provide the Board with the flexibility or the timeliness it needs to respond to changing markets in other countries. Informal rulemaking authority, which requires a Board recommendation and Secretarial approval, would enable the Board to make more timely responses to changing market conditions in countries or regions outside the U.S.

The record indicates that a recommendation to add a country or region to the trade demand area would first be considered by the Board's Export Committee when it develops and recommends to the Board an annual export marketing policy. Changes in the trade demand area would then be considered by the Board and recommended to the Secretary. Notice of these meetings would be made to hazelnut growers and handlers in Oregon and Washington and the meetings would be open to all members of the industry.

According to the hearing record, a Board recommendation to add a country or region to the trade demand area would be based primarily on the potential market conditions and opportunities in the country or region. Market considerations could include: Transportation modes and costs for getting product to the country or region; non-restrictive or at least neutral import and customs requirements; marketing infrastructure; consumption habits, holidays or cultural factors to which marketing efforts could be tied; economic outlook in the country; and other financial and economic factors.

The record evidence indicates that the characteristics of markets in some countries are very close to market characteristics in the United States. For instance, Canada, an export market country, is an example of a market that could be reviewed in a Board recommendation to expand the trade demand area. There is a considerable difference in price between hazelnuts sold in the U.S. and the same product sold in Canada. Inshell hazelnuts are marketed primarily during the end-of-the-year holiday season—which is also widely celebrated in Canada. The standard of living and disposable income levels in Canada are similar to those in the U.S. Thus, the record indicates that, for instance, the Board could recommend including Western Canada, or possibly all of Canada, in the trade demand area. Other examples of countries or areas which could be considered for inclusion in the trade demand area include Puerto Rico, and all or part of Mexico.

The Board would necessarily need to consider the effect adding a new country or region to the trade demand area would have on the U.S. inshell market. If the inshell supply designated for the trade demand area is not increased to meet the expected demand increase in new countries or regions, the inshell supply available to the U.S. market would be reduced. Thus, the addition of one or more new inshell markets, without an increase in inshell supply, could affect the amount of inshell hazelnuts available for shipment to domestic U.S. markets.

Any Board recommendation to shift a country or region from the export market to the trade demand area would likely result in a corresponding recommendation regarding the free and restricted volumes shipped. The Board should include the projected volume for the new country or region in inshell trade acquisitions when determining free and restricted percentages in its marketing policy recommendation to the Secretary. For instance, if Canada is added to the trade demand area, inshell shipments to Canada would be included in inshell trade acquisitions.

"Export" sales would be only hazelnut sales to those countries or regions that are not designated as being in the trade demand area.

Record evidence also indicates that the Board could recommend to the Secretary that a country or region be removed from the trade demand area if desired marketing results are not achieved. Indicators of failure could include: The volume of sales of hazelnuts in the new market were below expectations; the expected prices in the new market were not sustained; or the new market resulted in a negative or depressing affect on the marketing of hazelnuts in the remainder of the trade demand area.

The record does not suggest a minimum amount of time that a new country would be in the trade demand area before the Board could recommend its removal to the Secretary. The Board analyzes and recommends its marketing policy to the Secretary on an annual basis. Such analysis should include a complete and thorough review of any changes to the trade demand area that were made during the previous marketing season. Any recommendation to remove a country or region from the trade demand area would be reviewed by the Export Committee and recommended to the Board. Discussions for such a recommendation would be held at meetings open to industry members and the public prior to any recommendation to the Secretary. Thus, it is apparent that implementation of such a recommendation would preclude action to remove a country during the same marketing year it was added to the trade demand area.

A conforming change should be made in paragraph (b) of § 982.52 Disposition of restricted filberts. This amendment was listed as proposed material issue 9 in the Notice of Hearing but is discussed in this material issue as a conforming change.

Testimony submitted at the hearing indicates that free hazelnuts shipped to the trade demand area are marketed at prices higher than export prices. There is concern that exported inshell hazelnuts not be re-exported back to the U.S. at prices less than domestic market prices. The fourth sentence of § 982.52(b) currently provides that exporting handlers obtain certification from buyers that they will not re-export inshell hazelnuts back into the U.S. Record evidence indicates that, because foreign countries may be added to the trade demand area, inshell export sales to countries not in the trade demand area should not be exported or shipped onward to any country designated in the trade demand area. Thus, certifications signed by importers in export countries should include provisions that exported inshell hazelnuts not be exported again to any country or region that is part of

the trade demand area. Inshell hazelnut shipments may be shipped from one trade demand area country or market to other countries or markets that are also in the trade demand area. Based on hearing testimony, the United States is one region and should not be subdivided into two or more regions for the purpose of removing some states from the trade demand area.

The proposed amendments should provide the Board with the flexibility to take advantage of changing market conditions and do so on a timely basis. Thus, § 982.16 should be changed to: (1) Include all states in the U.S. in the inshell trade acquisition distribution area; and (2) allow the Board, with the approval of the Secretary, to add or remove countries or regions to or from the trade demand area. The proposed amendment would also make corresponding changes in the first sentence of paragraph (b) of § 982.52 to include all states of the United States in the trade demand area and add other countries or regions to the trade demand area, as recommended by the Board and approved by the Secretary. Likewise, a corresponding change should be made in the fourth sentence of paragraph (b) to prevent inshell export sales from being exported to countries or regions that are included in the trade demand area.

(3) In paragraph (b) of § 982.33, Selection and term of office, the length of Board member and alternate member terms of office should be changed from one to two years and the number of consecutive terms a member could serve should be limited to three terms. Conforming changes should be made in provisions covering the qualifications of handlers nominating handler members (§ 982.30(b)) and weighting handler votes in the nomination process (§ 982.32(b)), and a minor change should be made in § 982.32(a) to remove the reference to initial Board members. Finally, when nominating the fourth handler member and alternate member, as provided in § 982.32(c), a correction in the criteria used to calculate a handler's minimum weighted vote should be made and the voting procedure should be amended to provide that eligible handlers vote for both the fourth member and fourth alternate member.

The term of office for Board members and alternates has been amended twice since promulgation of the order. The record indicates the reason for this amendment to change the term of office from one to two years is to relieve the administrative burden that yearly nominations procedures place on industry members and the Board's administrative staff. Nomination meetings, industry voting and ballot counting, and resultant certification paperwork have been required of the industry and the Board every year since 1959. When two-year terms were in effect from 1959 to 1986, the terms were staggered, so that half the members were nominated and selected each year. Staggered terms required that nomination referenda be held each year and, thus, did not relieve the burden on industry members or the Board's administrative staff.

This amendment would establish two-year terms of office for Board members and alternate members with all terms beginning and ending at the same time. Thus, the nomination process would be conducted only once every two years, thereby reducing by half the administrative burden on industry members and the Board's administrative staff. Record evidence indicates that, because of the infrequent turnover of new members, the lack of staggered terms should not affect the continuity of Board membership.

Also, record evidence indicates that moving to two year terms of office would be beneficial to the Board's public member and alternate public member. The timing for annual nomination and selection of the Board's public member prevents that member from being an active and effective participant on the Board. Currently, the public member and alternate is nominated at the first meeting of the new Board, usually in late August. However, by the time the public member and alternate is subsequently selected by the Secretary, many important Board activities have been completed for the year. The proposed amendment to establish two-year terms of office would enable the public member and alternate public member to more actively participate in Board decisions because these members would be on the Board for a two-year period.

If the term of office is changed from one to two years, changes also should be made to three provisions regarding Board membership. Sections 982.30 and 982.32, regarding establishment of the Board and nomination of Board members, respectively, should be amended to provide that nominations of the three largest handler members be based on the handlers' tonnage during the previous two marketing years. Currently, nominations are based on the previous year's handled volume.

Paragraph (c) of § 982.32 contains an error in the wording which specifies the minimum weighted vote handlers may cast in nominating the fourth handler member and alternate to serve on the Board. The current language says that if a handler eligible to vote for the fourth handler position handles less than one "percent," the handler's vote should be weighted as one ton. The term "percent" does not have any meaning without a reference as a percent of something. Testimony on this provision in the 1986 formal rulemaking proceeding shows that the intent of the industry was for the term to be ton and not percent. This error inadvertently occurred between publication of the proposed rule (50 FR 42545, October 21, 1985) and final rule (51 FR 29547, August 19, 1986) in the previous formal rulemaking proceeding in 1985/86. The Board has recognized the intent of the provision and has correctly recorded handlers' weighted votes when tabulating votes for the fourth handler member and alternate member. Thus, in the third sentence of paragraph (c) of § 982.32, the term "percent" should be replaced with the term "ton."

Paragraph (c) of § 982.32 should also be amended by changing the last sentence regarding the casting of votes for the fourth handler member and alternate member. Current paragraph (c) provides that handlers vote for one candidate and the candidate receiving the highest number of votes shall be the fourth handler member nominee and the candidate receiving the second highest number of votes shall be the fourth handler alternate member nominee. This proposal provides that each eligible handler shall cast two separate votes: one for the fourth handler member and one for the fourth handler alternate member. The candidates who receive the highest numbers of votes in each category would be the nominees.

Currently, paragraph (b) of § 982.33 limits the number of consecutive one year terms a member may serve to six terms. To maintain the order's intent that members and alternates should not serve more than six consecutive years, paragraph (b) should be amended to provide for a maximum of three consecutive two-year terms of office. If approved in referendum and by the Secretary, the three term limit would begin with the first nominations held after completion of this formal rulemaking process. Thus, any standing Board members and alternates nominated and selected for the first two year term would be eligible to serve two additional terms, regardless of past service. Also, this amendment would not restrict a member who has served three consecutive terms from then serving three consecutive terms as an alternate member or for an alternate member who has served three consecutive terms from then serving three consecutive terms as a member.

The Board recommended a minor wording change in § 982.32(a) which would remove the reference to "initial" Board members as those members serving prior to the amendment of the order. This change would simplify the wording of the paragraph and make it consistent with the changing nature of Board membership. The proposed amended paragraph would provide that members and alternate members of the Board serving immediately prior to the effective date of this amended subpart shall continue to serve until their respective successors have been selected.

Thus, § 982.33 should be amended to provide two year terms of office for Board members and alternate members. Sections 982.30 and 982.32 covering nominating qualifications, weighting handler votes, voting procedures, and consecutive terms should also be changed for consistency and conformity with two-year office terms.

(4) In paragraph (b) of § 982.37, Procedure, the requirement that Board votes by telephone, telegraph or other means of long distance communication be confirmed in writing should be amended to provide that such votes remain unconfirmed until the next public Board meeting.

The Board generally meets twice a year. At least once each year over the last five years, the Board has found it necessary to vote on an issue by telephone. The issue has been the final budget which must be submitted to the Department at a time when there are no scheduled Board meetings.

Record evidence indicates that it is difficult to obtain written confirmation of all telephone votes cast by Board members. All telephone votes must be confirmed, and written confirmation must be unanimous. Even though a ballot is mailed to each member, and follow-up calls are made to those who have not submitted their written ballot, some members fail to respond.

Because of such confirmation delays, some telephone votes have been confirmed at the next public Board meeting. At these meetings, the members confirm their original vote and reaffirm their position. This procedure should be on the record and so recorded in the committee minutes. Reaffirmation must be unanimous. The record indicates that, under the proposed amendment, if any member were to change his or her original vote, the issue would be debated again and a new vote by all committee members would be taken. The second vote would require passage by a simple majority.

The record indicates that telephone votes should be taken only on issues that are known to be non-controversial. If an issue is known to have any one member or industry group against it, a telephone vote on the issue would not be taken and a public meeting would have to be called for consideration of the issue.

The record also indicates that a vote cast by facsimile transmission is considered a vote by "other means of communication." While a facsimile transmission produces a piece of paper which is received and held by the Board staff, the vote would still have to be confirmed at the next public Board meeting.

Thus, § 982.37(b) should be amended to provide that Board votes cast by telephone, telegraph or other means of communication shall be confirmed at the next regularly scheduled Board meeting and that such confirmation shall require ten concurring votes.

(5) In paragraph (i) of § 982.39, Duties, the requirement that the Board furnish verbatim reports of its marketing policy meetings to the Secretary should be amended to require that summary reports of such meetings be furnished to the Secretary.

The promulgation documentation provided that a "complete report of the proceedings" of the Board meeting establishing a marketing policy recommendation be reported to the Secretary (14 FR 5669, September 15, 1949). Because the Board in 1959 was providing verbatim reports of marketing policy deliberations, the verbatim requirement was added to the reporting requirement (24 FR 4173, May 23, 1959) and the requirement was moved to paragraph (5) of § 982.39 Duties (24 FR 5307, June 30, 1959). The amendment stated that only that portion of a meeting dealing directly with marketing policy discussions be reported verbatim.

However, the record indicates that verbatim reports are impractical because either a court reporter has to be contracted or a recording would have to be exactly transcribed by a Board employee. Either of these alternatives requires an extra expense for the Board and results in a delay in completing the report.

This amendment would establish that the Board tape record all meetings and then summarize the proceedings using the tape recording to ensure a complete and thorough report. The record testimony reports that this process should take considerably less time and be less costly than making a direct transcript of the recording. This revised procedure is expected to maintain the accuracy of the meeting report.

Thus, § 982.39(i) should be amended to provide that the Board furnish the Secretary a report of the proceedings of each meeting of the Board held for the purpose of marketing policy recommendations.

(6) In paragraph (c)(2) of § 982.40, Marketing policy and volume regulation, the Board should be provided some flexibility in recommending final free and restricted percentages. In the 1985–86 amendment of the order, development of the Board's annual marketing policy and volume regulation action were established to follow specific procedures and formula computations. This amendment would enable the Board to better respond to market conditions when recommending the final free and restricted percentages.

On or before November 15, the Board meets to recommend to the Secretary, the establishment of interim final and final free and restricted percentages. The interim final percentage results in the release of 100 percent of the inshell trade demand previously computed by the Board. Paragraph (c)(2) of § 982.40 now requires that the final percentages release an additional 15 percent of the average of the preceding three years' trade acquisitions of inshell hazelnuts for desirable carryout.

This amendment focuses on the mandatory release of the final 15 percent. Record evidence indicates that the mandatory release of the entire tonnage resulting from the additional 15 percent can sometimes be harmful to the market and may not always be in the best interest of the industry. For instance, the mandatory release of the final 15 percent could place an excess supply of hazelnuts on the market and result in a weak market. Market conditions may be such that release of a smaller final percentage would be a wiser marketing policy. This amendment provides the Board with that flexibility when recommending the final free and restricted percentages.

In addition to complying with the provisions of the marketing order, the Board must also consider the Department's 1982 "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" (Guidelines) when recommending marketing policy computations. Volume control regulation provides the industry a means of collectively limiting the supply of inshell hazelnuts available for sale in the trade demand area. The Guidelines provide that the trade demand area have available a quantity equal to at least 110 percent of recent years' sales in the trade demand area before volume regulations can be implemented. This provides for

plentiful supplies for consumers and for market expansion while retaining a mechanism for dealing with oversupply situations.

The hazelnut industry in Oregon and Washington has satisfied the Guidelines' 110 percent requirement. Pursuant to § 982.40(b), each year the Board may, for market expansion purposes, increase inshell trade demand by an amount up to 25 percent of the previous 3 years' average inshell trade acquisitions. In addition, the Board must add to the adjusted inshell trade demand a total of 15 percent of the 3-year inshell trade acquisition average to meet the desirable carryout requirement of § 982.40(c)(2). This more than meets the 110 percent requirement.

Over the years, the authority for these increases has caused the Board to exceed the Guidelines' 110 percent requirement. It is possible that the Board could choose to recommend a market expansion increase and a final free and restricted percentage increase that totalled less than the Guidelines' 110 percent requirement. However, based on present Board practices, such a recommendation is not expected. Any Board recommendation that totalled less than the 110 percent requirement could be referred by the Secretary back to the Board.

Thus, § 982.40(c)(2) should be amended to provide that the final free and restricted percentages may release up to an additional 15 percent of the average of the preceding three years' trade acquisitions of inshell hazelnuts for desirable carryout.

(7) In paragraph (b) of § 982.46, Inspection and certification, specific identification practices for the handling and withholding of restricted obligation hazelnuts should be amended to provide that all inspected and certified hazelnuts shall be identified as prescribed by the Board.

Traditionally, hazelnuts were inspected and certified as either free or restricted before or during handling, or before being set aside as withheld for restricted obligation. Paragraph (b) provides that handlers use seals, stamps, tags or other identification fixed to the containers to identify lots set aside as either free or restricted hazelnuts. However, the record indicates that, since 1975, industry practices have changed significantly and now allow handlers to substitute fresh hazelnut lots for free and restricted lots that have been set aside. It is no longer necessary for handlers to meet their volume control obligations by maintaining restricted lots that are sealed, stamped, tagged, or otherwise so identified.

Under the proposed amendment, the Board may prescribe other methods of identification of restricted obligation hazelnuts. The record indicates that the Board currently allows handlers to carryover hazelnuts which are reported as either undeclared, declared restricted, or declared free. The hazelnuts are reported as one or the other, but do not have to be specifically so marked.

These relaxed identification procedures would enable handlers to continue to meet identification requirements for restricted obligation hazelnuts without setting aside specific, identifiable lots. The amended procedures would bring the marketing order provisions up-to-date with current industry practices. Thus, § 982.46(b) should be amended to provide that hazelnuts inspected and certified for free and restricted use shall be identified as prescribed by the Board.

(8) In paragraph (a) of § 982.51, Restricted credit for ungraded inshell hazelnuts and for shelled hazelnuts, the current language that authorizes handler credit for ungraded hazelnuts should be amended to delete an incorrect and misleading term.

This provision allows handlers to receive merchantable credit for ungraded inshell hazelnuts they hold to meet their restricted obligation. The hazelnuts must be inspected to determine kernel weight, which is converted back to an inshell equivalent. The industry uses a conversion factor of 60 percent shell or waste product and 40 percent kernel weight. Thus, it takes 2.5 pounds of inshell hazelnuts to make 1 pound of hazelnut kernels—a conversion factor of 2.5 to 1.

However, the first sentence of paragraph (a) of § 982.51 states that the conversion factor is 2.5 "percent." The term "percent" is not correct and, in fact, greatly reduces the conversion factor. If the conversion factor was to be represented as a percentage, it would be 250 percent. This error evidently occurred when § 982.51 was amended in 1986. The Board and industry handlers have been operating on the correct conversion factor of 2.5 to 1. Thus, the language that specifies handler credit for ungraded hazelnuts in § 982.51 should be amended to correct the conversion factor as stated herein.

(9) In § 982.54, Deferment of restricted obligation, several changes and conforming changes should be made to provisions regarding bonding values and rates, the use of defaulted bond funds, and the Board's flexibility when dispensing defaulted bond funds.

Prior to or upon shipping inshell hazelnuts to the trade demand area, handlers are required to withhold from handling a quantity of hazelnuts equal to the restricted obligation resulting from that shipment. Hazelnuts so withheld may be exported inshell or shelled. The withholding obligation also may be deferred. Section 982.54 provides that a handler may post a bond as a guarantee that the handler will eventually fulfill the handler's restricted obligations. Hearing testimony indicates that the provision establishing the bonding rate currently specified in the order is too high and too burdensome on handlers under present marketing conditions.

Handlers may either shell or export inshell as many hazelnuts as they wish, but they are limited in the amount of inshell hazelnuts they can sell as free tonnage in the trade demand area when volume regulations are in effect. Volume regulations under the order require that, prior to or upon shipping inshell hazelnuts to the trade demand area, handlers shall withhold from handling a quantity of hazelnuts equal to the restricted obligation resulting from that shipment. Hazelnuts so withheld may be certified merchantable, inspected ungraded, or certified shelled. The domestic inshell market is extremely seasonal with most of the shipments occurring in October or early November, the same period when hazelnuts are harvested and delivered to handlers. During this period, handlers do not have enough hazelnuts certified, inspected, or shelled to meet their restricted obligations. Therefore, handlers use the bonding provisions in the order to defer a large part of their obligations.

As domestic use of inshell hazelnuts has declined and production has increased, the percent of the crop going to the primary inshell market has dropped. For example, in the 1993–94 marketing season, the free percentage was only 13 percent—resulting in a restricted obligation nearly 6.7 times the quantity handled for the free market. Such a high restricted obligation-to-handling ratio makes a bonding rate based on the price for inshell hazelnuts very burdensome. Such a high bonding rate is not necessary as long as the bonding rate reflects the difference between the domestic inshell price and the returns available in authorized markets for restricted hazelnuts such as inshell exports or shelling.

Inshell exports have been a large and growing market for restricted hazelnuts. In some years, the average reported value for inshell exports has exceeded domestic quotations for domestic sales of U.S. No. 1 large hazelnuts. This apparently results from a willingness of some foreign buyers to pay a significant premium for the largest sizes of hazelnuts. Thus, restricted disposition credits earned by exporting inshell hazelnuts may reflect little or no loss compared to the domestic inshell market.

The order authorizes the transfer of restricted disposition credits between handlers, and some handlers use this authority.

The record shows that members of the Board, particularly its handler members, have knowledge of the marketing opportunities in various restricted outlets and knowledge of the transfer of restricted disposition credits. Thus, the Board should be capable of using these factors to calculate an appropriate bonding rate that is financially acceptable but not so low as to encourage handlers to default on their bonds.

The proposed amendments would change the method by which the Board determines the rate of the bond. Paragraphs (b), (c), (d), (e) and (f) of § 982.54 would be amended to replace terminology that ties bonding rates to the value of quantities handled or certified for handling. Instead, bonding rates would be tied to the estimated value of restricted credits as established by the Board. A bonding rate based on the value of restricted disposition credits should provide adequate protection against default and would be much less burdensome.

Paragraph (b) provides that the bonding value for each handler be established by multiplying the deferred restricted obligation poundage bearing the lowest bonding rate by the applicable bonding rate. Under the proposed amended paragraph (b), the bonding value would be determined by multiplying the deferred restricted obligation poundage by the applicable bonding rate.

Paragraph (c) provides for a bonding rate for each pack withheld which is the amount per pound as established by the Board. Under the proposed amended paragraph (c), the Board would establish the bonding rate based on the Board's estimated value of restricted credits. Record evidence indicates that the value of credits should be based on the value of hazelnuts in all markets—restricted as well as free. Because restricted market hazelnuts usually have less market value than free hazelnuts, the credit value usually is less than the actual market value of free hazelnuts. Thus, a bond based on credit value would lower the value of the bond, making it a more acceptable burden for handlers. The record also indicates that a bond value based on credits would be high enough to discourage handlers from voluntarily defaulting on their bond.

Paragraph (d) requires the Board to use the funds collected from defaulted bond payments to purchase quantities of certified merchantable hazelnuts on which the restricted obligations have been met. To make paragraph (d) consistent with amended paragraph (c), the Board would use defaulted bond funds to purchase restricted credits from handlers.

Paragraph (e) provides that unexpended funds resulting from defaulted bond payments remaining at the end of the marketing year would be used by the Board to pay its expenses and in the purchase of hazelnuts as provided in paragraph (d). Consistent with amended paragraph (d), a conforming change would be made in amended paragraph (e) to provide that unexpended funds resulting from defaulted bond payments remaining at the end of the marketing year could be used by the Board to purchase restricted credits, rather than merchantable hazelnuts, on which the restricted obligation has been met.

The last sentence in paragraph (e) provides that any balance of funds collected from defaulted bond obligations remaining at the end of the marketing year after payment of Board expenses, including administrative costs and the purchase of hazelnuts, would be returned pro-rata to all handlers. However, experience indicates that no such unused funds have remained at the end of recent marketing years to be refunded to handlers. Bond payments based on restricted credit values are expected to result in fewer defaults and less default funds collected. Thus, a marketing year that would produce an excess of defaulted bond funds is not likely to occur. In addition, paragraph (b) of § 982.62 provides Board authority to return excess funds at the end of each marketing year.

Paragraph (f) currently provides that merchantable hazelnuts purchased by the Board as provided in paragraph (d) shall be turned over to handlers who have defaulted on their bonds for disposal by the handlers as restricted hazelnuts. A conforming change would be made in amended paragraph (f) to provide that the restricted credits purchased by the Board under amended paragraph (d) would be turned over to those handlers who have defaulted on their bonds for liquidation of their restricted obligation.

The record indicates that some small handlers only shell hazelnuts and have no need to use the bonding authority. This proposed amendment would have no effect on these handlers. All handlers who use the bonding authority would benefit from the reduced cost of the lower bonding rates.

Therefore, paragraphs (b), (c) and (d) of § 982.54 should be amended to provide, respectively, that: the bonding value be determined by multiplying the deferred restricted obligation poundage by the applicable bonding rate; the bonding rate be based on the estimated value of restricted credits; and the Board use handlers' defaulted bond funds to purchase restricted credits. Conforming changes should also be made to paragraphs (e) unexpended sums and (f) transfer of purchases.

(10) Section 982.57, Exemptions, should be amended to clarify that mail order sales are not exempt from order requirements.

This provision was amended in 1986 to clarify that hazelnuts sold directly to end users (consumers) at a grower's ranch or orchard, or at roadside stands and farmers markets are exempt from regulatory and assessment provisions of the order. No testimony was provided at the amendment hearing in 1985 to suggest that mail order sales should be exempt from order regulations. However, some growers and handlers in the industry believe that the exemption provision applies also to mail order sales.

To help correct this misinterpretation the Board proposed that § 982.57 be amended by adding a sentence at the end of paragraph (b) to clarify that mail order sales are not considered exempt from order requirements.

The added sentence that appeared in the Notice of hearing for this rulemaking (59 FR 9428; February 28, 1994) included a phrase that could cause further confusion among industry members. The proposed sentence in the Notice of hearing reads, "Mail order sales to destinations outside the area of production are not considered to be exempt sales under this part." The phrase "to destinations outside the area of production" could be interpreted to mean that mail order sales to destinations inside the States of Oregon and Washington would be exempt from order requirements. However, this is not consistent with Board policy.

It is current Board policy that no exemptions are authorized for mail order sales, regardless of destination. Hearing testimony indicated that the Board has always considered that no mail order sales are exempt from order regulations. Testimony further indicates that this amendment is not a change in policy. Thus, the proposed clarifying sentence should read: "Mail order sales are not exempt sales under this part."

Therefore, paragraph (b) of 982.57 should be amended by adding the clarification that mail order sales are not exempt sales under the order.

(11) A new paragraph (b) of § 982.61, Assessments, should be established to allow the Board to accept advance assessment payments, provide discounts for such advanced payments, and borrow funds. Also, a new § 982.63 Contributions, should be established to allow the Board to accept voluntary contributions for payment of research, promotion, and market development activities.

The marketing order's fiscal period begins July 1, which is three months before the hazelnut harvest and four months before receipt of assessment payments for the new marketing year. During the initial four months, the Board's access to funds is limited. The first proposed amendment is intended to increase the Board's ability to obtain funds on a temporary basis early in the marketing year. While marketing order reserve funds may be used to pay for planned research and promotion programs and other administrative obligations, record evidence indicates that the Board would prefer to accept advance assessment payments or borrow funds rather than draw from the order's reserve funds to pay for financial obligations that might occur prior to the accumulation of assessment funds.

The second amendment would allow the Board to increase funds—through contributions—to pay expenses incurred under § 982.58, Research, promotion and market development. A minor change would be added to § 982.52 to make that provision consistent with the proposed new paragraph. The record indicates that these amendments are not proposed in response to any specific program or current need.

Testimony indicates that with access to additional funds the Board would have the opportunity to enter into significant marketing or promotional programs in conjunction with other commodity groups. Likewise, the Board would have the ability to meet unforeseen increases in administrative obligations that may occur at the start of a marketing year. While such promotional opportunities or emergency needs have not occurred in the past, the Board believes it is important that the Board have the ability to accrue additional funds, if needed.

Record evidence does not provide guidelines or procedures as to how the Board would announce and collect advanced assessment payments or borrow funds. The record does indicate, however, that after approval of the proposed amendment, guidelines and procedures to implement the amendment would be discussed by the Board in a public meeting and recommended to the Secretary for approval through informal rulemaking procedures.

To encourage advance payment, the Board recommended that advance assessment payments be discounted. Record evidence indicates that the amount of discount could be closely tied to prevailing commercial bank interest rates. A discount assessment rate based on commercial bank interest rates would encourage handlers who pay advanced assessments because they would not lose more money than they would accrue if their advanced assessment payment was held in a commercial bank interest bearing account. Discounted assessment payment opportunities should be available to all handlers throughout the production area.

The record confirms that a decision to accept advance assessment payments and offer discounts for such payments would be made at public meetings open to all industry members. Any additional administrative and operating procedures needed for the collection of advance assessment payments and the calculation of appropriate advance payment discounts should be recommended by the Board to the Secretary for approval. The record evidence indicates that the Board's administrative staff has the capability to assure that advance assessment payments and borrowed funds would be properly budgeted and expended for the authorized purposes for which they would be collected.

This recommendation would be established by designating the current assessment provision as paragraph (a) and adding a new paragraph (b) to provide that the Board should have the authority to offer handlers the opportunity to pay assessments in advance and receive a discount on such assessments paid. New paragraph (b) would provide the Board with authority, with Secretarial approval, to borrow funds early in the marketing year. Such borrowed funds would be used to meet program or fiscal needs as described above.

The record indicates that funds should be borrowed from lending institutions rather than from industry handlers. The Board would make the decision to borrow funds based on recommendations of the appropriate committee that establishes the need for the borrowed funds. For example, the Executive Promotion Committee and the Promotion Committee could recommend that the Board should borrow funds for a specified promotion project or program. The record also suggests that borrowed funds should be paid back within the same marketing year, so as not to encumber future Boards with the financial obligations of its predecessors.

The Board proposes that a new § 982.63, Contributions, be established to provide the Board with the authority to accept contributions. Such contributions would be used only to pay for production research, market research and development, and market promotion programs, including paid advertising. Such research and development programs would be designed to improve or promote the marketing, distribution, consumption or efficient production of hazelnuts. The Board would not be able to accept contributions that might have stipulations or other provisos on the expenditure of contributed funds. Thus, the Board would have complete control over the expenditure of contributed funds. The record indicates that the Board has not received contribution offers but would like the authority to accept contributions in the future should they be offered.

The record also indicates that the proviso specifying contributions be free from any encumbrances by the donor is not intended to prevent the Board from entering into joint promotional programs with other agencies. However, funding for such joint programs may not come from donations which specify the intended use of the donated funds.

Therefore, § 982.61 should be amended by adding a new paragraph (b) that provides the Board with the authority to collect advance assessment payments, offer discounts for such payments, and borrow money to provide funds for administration of the order during the early months of the marketing period. Also, a new § 982.63, Contributions, should be established to provide the Board with the authority to accept contributions, provided that such contributions are used to pay expenses incurred pursuant to § 982.58 and are free of any encumbrances by the donor. A conforming change should be made to § 982.58, adding contributions as a source of funds that may only be used to pay research, promotion and market development expenses.

(12) The Department proposed in the public hearing to make such changes as are necessary to conform with any amendment that may result from the hearing. This proposal was supported at the hearing without opposition. Record evidence supports these changes.

Rulings on Briefs of Interested Persons

The presiding officer of the hearing set April 8, 1994, as the final date for filing briefs with respect to the evidence presented at the hearing and the conclusions which should be drawn therefrom. No briefs were received.

General Findings

Upon the basis of the record, it is found that:

(1) The findings hereinafter set forth are supplementary to the previous findings and determinations which were made in connection with the issuance of the marketing agreement and order and each previously issued amendment thereto. Except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein, all of the said prior findings and determinations are hereby ratified and affirmed;

(2) The marketing agreement and order, as amended, and hereby proposed to be further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(3) The marketing agreement and order, as amended, and as hereby proposed to be further amended, regulate the handling of hazelnuts grown in the production area in the same manner as, and are applicable only to, persons in the respective classes of commercial and industrial activity specified in the marketing agreement and order upon which a hearing has been held;

(4) The marketing agreement and order, as amended, and as hereby proposed to be further amended, are limited in their application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act; and

(5) All handling of hazelnuts grown in the production area as defined in the marketing agreement and order, as amended, and as hereby proposed to be further amended, is in the current of interstate or foreign commerce or directly burdens, obstructs or affects such commerce.

List of Subjects in 7 CFR Part 982

Filberts, Hazelnuts, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 982 is proposed to be amended as follows:

PART 982—FILBERTS/HAZELNUTS GROWN IN OREGON AND WASHINGTON

1. The authority citation for 7 CFR part 982 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In part 982 all references to "filbert", "filberts", "filbert/hazelnut", "filberts/hazelnuts" are revised to read as "hazelnut", "hazelnuts", "hazelnut", and hazelnuts", respectively.

3. Section 982.4 is revised to read as follows:

§ 982.4 Hazelnuts.

Hazelnuts means hazelnuts or filberts produced in the States of Oregon and Washington from trees of the genus Corylus.

4. Section 982.16 is revised to read as follows:

§ 982.16 Inshell trade acquisitions.

Inshell trade acquisitions means the quantity of inshell hazelnuts acquired by the trade from all handlers during a marketing year for distribution in the continental United States and such other distribution areas as may be recommended by the Board and established by the Secretary.

5. Section 982.30 is amended by revising paragraphs (a), (b)(1), (b)(2), and (b)(3) to read as follows:

§ 982.30 Establishment and membership.

(a) There is hereby established a Hazelnut Marketing Board consisting of 10 members, each of whom shall have an alternate member, to administer the terms and provisions of this part. Each member and alternate shall meet the same eligibility qualifications. The 10 member positions shall be allocated as follows:

(b) * * *

(1) One member shall be nominated by the handler who handled the largest volume of hazelnuts during the two marketing years preceding the marketing year in which nominations are made;

(2) One member shall be nominated by the handler who handled the second largest volume of hazelnuts during the two marketing years preceding the marketing year in which nominations are made;

(3) One member shall be nominated by the handler who handled the third largest volume of hazelnuts during the two marketing years preceding the marketing year in which nominations are made;

* * * * *

6. In § 982.32, paragraphs (a), (b), (c) and (f) are revised to read as follows:

§ 982.32 Initial members and nomination of successor members.

(a) Members and alternate members of the Board serving immediately prior to the effective date of this amended subpart shall continue to serve on the Board until their respective successors have been selected.

(b) Nominations for successor handler members and alternate members specified in § 982.30(b) (1) through (3) shall be made by the largest, second largest, and third largest handler determined according to the tonnage of certified merchantable hazelnuts and, when shelled hazelnut grade and size regulations are in effect, the inshell equivalent of certified shelled hazelnuts (computed to the nearest whole ton) recorded by the Board as handled by each such handler during the two marketing years preceding the marketing year in which nominations are made.

(c) Nominations for successor handler member and alternate handler member positions specified in § 982.30(b)(4) shall be made by the handlers in that category by mail ballot. All votes cast shall be weighted according to the tonnage of certified merchantable hazelnuts and, when shelled hazelnut grade and size regulations are in effect, the inshell equivalent of certified shelled hazelnuts (computed to the nearest whole ton) recorded by the Board as handled by each handler during the two marketing years preceding the marketing year in which nominations are made. If less than one ton is recorded for any such handler, the vote shall be weighted as one ton. Voting will be by position, and each eligible handler can vote for a member and an alternate member. The person receiving the highest number of weighted votes for each position shall be the nominee for that respective position.

* * * * *

(f) Nominations received in the foregoing manner by the Board for all handler and grower member and alternate member positions shall be certified and sent to the Secretary at least 60 days prior to the beginning of each two-year term of office, together with all necessary data and other information deemed by the Board to be pertinent or requested by the Secretary. If nominations are not made within the time and manner specified in this subpart, the Secretary may, without regard to nominations, select the Board members and alternates on the basis of the representation provided for in this subpart.

* * * * *

7. In § 982.33, paragraph (b) is revised to read as follows:

§ 982.33 Selection and term of office.

* * * * *

(b) *Term of office.* The term of office of Board members and their alternates shall be for two years beginning on July 1 and ending on June 30, but they shall serve until their respective successors are selected and have qualified: Provided, That beginning with the 199____–9____ marketing year, no member shall serve more than three consecutive two-year terms as member and no alternate member shall serve more than three consecutive two-year terms as alternate unless specifically exempted by the Secretary. Nomination elections for all Board grower and handler member and alternate positions shall be held every two years.

* * * * *

8. In § 982.37, paragraph (b) is revised to read as follows:

§ 982.37 Procedure.

* * * * *

(b) The Board may vote by mail, telephone, telegraph, or other means of communication: *Provided,* That any votes (except mail votes) so cast shall be confirmed at the next regularly scheduled meeting. When any proposition is submitted for voting by any such method, its adoption shall require 10 concurring votes.

* * * * *

9. In § 982.39, paragraph (i) is revised to read as follows:

§ 982.39 Duties.

* * * * *

(i) To furnish to the Secretary a report of the proceedings of each meeting of the Board held for the purpose of making marketing policy recommendations.

10. In § 982.40, paragraph (c)(2) introductory text is amended by removing the word "shall" in the third sentence and adding in its place the word "may".

11. In § 982.46, paragraph (b) is revised to read as follows:

§ 982.46 Inspection and certification.

* * * * *

(b) All hazelnuts so inspected and certified shall be identified as prescribed by the Board. Such identification shall be affixed to the hazelnut containers by the handler under direction and supervision of the Board or the Federal-State Inspection Service, and shall not be removed or altered by any person except as directed by the Board.

* * * * *

§ 982.51 [Amended]

12. In § 982.51, paragraph (a) is amended by removing the word "percent" at the end of the first sentence.

13. In § 982.52, paragraph (b) is revised to read as follows:

§ 982.52 Disposition of restricted hazelnuts.

* * * * *

(b) *Export.* Sales of certified merchantable restricted hazelnuts for shipment to destinations outside the United States and such other distribution areas as may be recommended by the Board and established by the Secretary shall be made only by the Board. Any handler desiring to export any part or all of that handler's certified merchantable restricted hazelnuts shall deliver to the Board the certified merchantable restricted hazelnuts to be exported, but the Board shall be obligated to sell in export only such quantities for which it may be able to find satisfactory export outlets. Any hazelnuts so delivered for export which the Board is unable to export shall be returned to the handler delivering them. Sales for export shall be made by the Board only on execution of an agreement to prevent exportation into the area designated in § 982.16. A handler may be permitted to act as an agent of the Board, upon such terms and conditions as the Board may specify, in negotiating export sales, and when so acting shall be entitled to receive a selling commission as authorized by the Board. The proceeds of all export sales, after deducting all expenses actually and necessarily incurred, shall be paid to the handler whose certified merchantable restricted hazelnuts are so sold by the Board.

* * * * *

14. In § 982.54, paragraphs (b), (c), (d), (e) and (f) are revised to read as follows:

§ 982.54 Deferment of restricted obligation.

* * * * *

(b) *Bonding requirement.* Such bond or bonds shall, at all times during their effective period, be in such amounts that the aggregate thereof shall be no less than the total bonding value of the handler's deferred restricted obligation. The bonding value shall be the deferred restricted obligation poundage multiplied by the applicable bonding rate. The cost of such bond or bonds shall be borne by the handler filing same.

(c) *Bonding rate.* Said bonding rate shall be an amount per pound as established by the Board. Such bonding rate shall be based on the estimated value of restricted credits for the current marketing year. Until bonding rates for a marketing year are fixed, the rates in effect for the preceding marketing year shall continue in effect. The Board should make any necessary adjustments once such new rates are fixed.

(d) *Restricted credit purchases.* Any sums collected through default of a handler on the handler's bond shall be used by the Board to purchase restricted credits from handlers, who have such restricted credits in excess of their needs, and are willing to part with them. The Board shall at all times purchase the lowest priced restricted credits offered, and the purchases shall be made from the various handlers as nearly as practicable in proportion to the quantity of their respective offerings of the restricted credits to be purchased.

(e) *Unexpended sums.* Any unexpended sums which have been collected by the Board through default of a handler on the handler's bond, remaining in the possession of the Board at the end of a marketing year, shall be used to reimburse the Board for its expenses, including administrative and other costs incurred in the collection of such sums, and in the purchase of restricted credits as provided in paragraph (d) of this section.

(f) *Transfer of restricted credit purchases.* Restricted credits purchased as provided for in this section shall be turned over to those handlers who have defaulted on their bonds for liquidation of their restricted obligation. The quantity delivered to each handler shall be that quantity represented by sums collected through default.

* * * * *

15. In § 982.57, paragraph (b) is revised to read as follows:

§ 982.57 Exemptions.

* * * * *

(b) *Sales by growers direct to consumers.* Any hazelnut grower may sell hazelnuts of such grower's own production free of the regulatory and assessment provisions of this part if such grower sells such hazelnuts in the area of production directly to end users at such grower's ranch or orchard or at roadside stands and farmers' markets. The Board, with the approval of the Secretary, may establish such rules, regulations, and safeguards and require such reports, certifications, and other conditions, as are necessary to ensure that such hazelnuts are disposed of only as authorized. Mail order sales are not exempt sales under this part.

16. In § 982.58, the last sentence of paragraph (a) is revised to read as follows:

§ 982.58 Research, promotion, and market development.

(a) * * * The expenses of such projects shall be paid from funds collected pursuant to § 982.61, § 982.63, or credited pursuant to paragraph (b) of this section.

* * * * *

17. Section 982.61 is amended by designating the existing undesignated paragraph as paragraph (a) and adding a new paragraph (b) to read as follows:

§ 982.61 Assessments.

(a) * * *

(b) In order to provide funds for the administration of the provisions of this part during the first part of a fiscal period before sufficient operating income is available from assessments on the current year's shipments, the Board may accept the payment of assessments in advance, and may also borrow money for such purpose. Further, payment discounts may be authorized by the Board upon the approval of the Secretary to handlers making such advance assessment payments.

18. A new § 982.63 is added to read as follows:

§ 982.63 Contributions.

The Board may accept voluntary contributions but these shall only be used to pay expenses incurred pursuant to § 982.58. Furthermore, such contributions shall be free from any encumbrances by the donor and the Board shall retain complete control of their use.

Dated: May 24, 1995.

Lon Hatamiya,

Administrator.

[FR Doc. 95–13928 Filed 6–6–95; 8:45 am]

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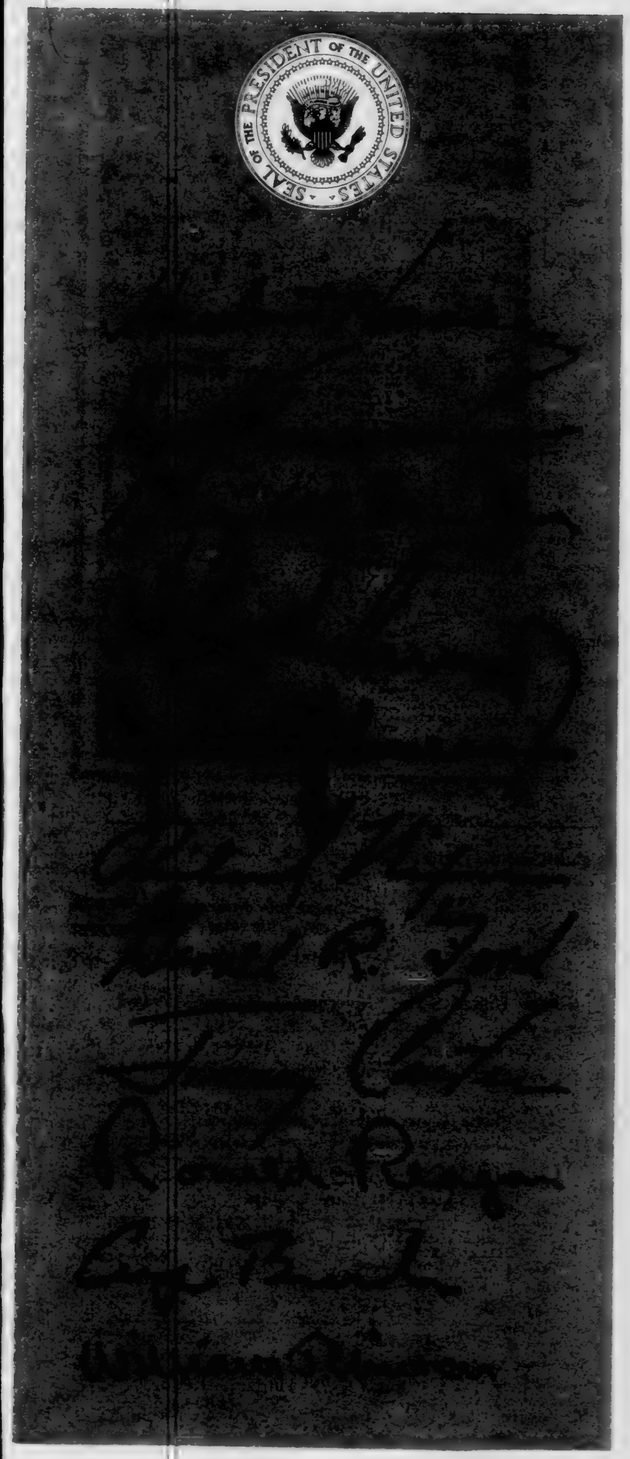
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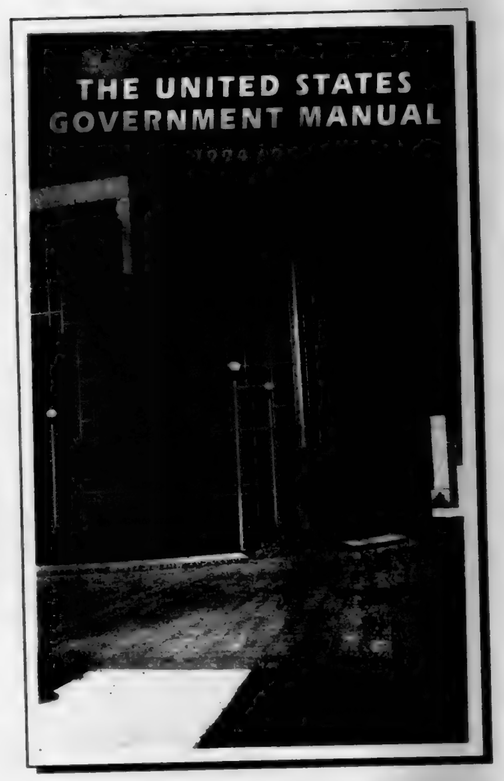
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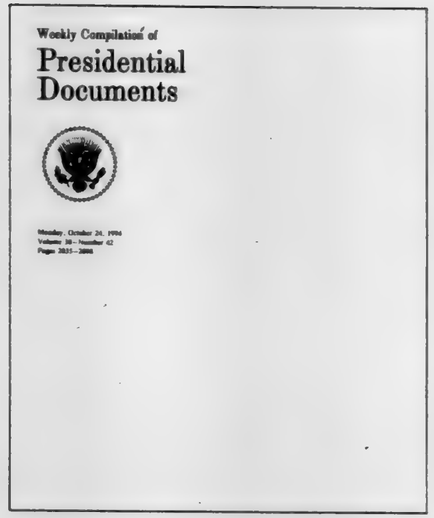
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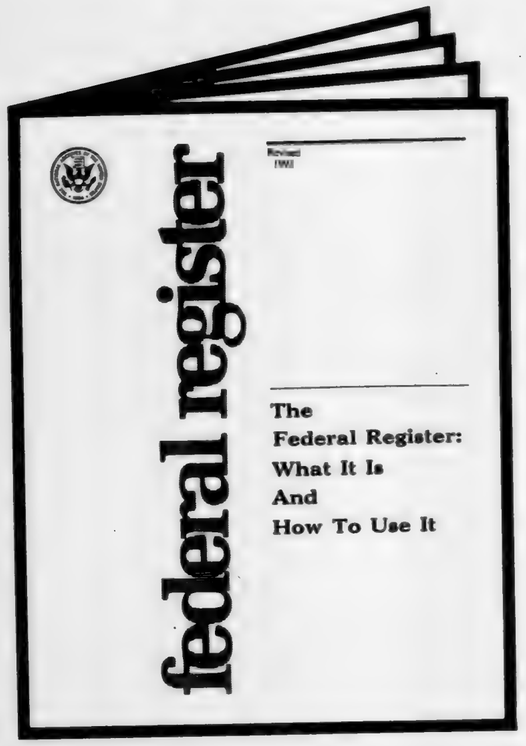
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Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 19

[Docket No. 95–09]

RIN 1557–AB15

Uniform Rules of Practice and Procedure

AGENCY: The Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is amending a provision of the Uniform Rules of Practice and Procedure adopted by the OCC (Uniform Rules). The final rule is intended to clarify that the Uniform Rules' provisions relating to ex parte communications conform to the requirements of the Administrative Procedure Act (APA). The final rule is needed to clarify that the Uniform Rules' ex parte provisions do not apply to intra-agency communications, which are governed by a separate provision of the APA.

EFFECTIVE DATE: July 10, 1995.

FOR FURTHER INFORMATION CONTACT: Daniel Stipano, Director, Enforcement and Compliance (202–874–4800), or Daniel Cooke, Attorney, Legislative and Regulatory Activities Division (202–874–5090).

SUPPLEMENTARY INFORMATION:

Background

Section 916 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), Pub. L. 73, 103 Stat. 183 (1989) required the OCC, Board of Governors of the Federal Reserve System (Board of Governors), Federal Deposit Insurance Corporation (FDIC), Office of Thrift Supervision (OTS), and National Credit Union Administration (NCUA) (collectively, the "agencies") to develop uniform rules and procedures for administrative hearings. The agencies issued a joint notice of proposed rulemaking on June 17, 1991 (56 FR 27790) and issued their final Uniform Rules in August 1991 (OCC, 56 FR 38024, August 9, 1991; Board of Governors, 56 FR 38052, August 9, 1991; FDIC, 56 FR 37975, August 9, 1991; OTS, 56 FR 38317, August 12, 1991; and NCUA, 56 FR 37767, August 8, 1991).

On November 22, 1994 (59 FR 60094), the Board of Governors proposed to amend its Uniform Rules relating to ex parte communications to clarify that the Uniform Rules parallel the requirements of the APA. The OCC issued a similar notice of proposed rulemaking (proposal) on December 12, 1994 (59 FR 63936). The OTS, FDIC, and NCUA also proposed the amendment (FDIC, 59 FR 60921, November 29, 1994; OTS, 59 FR 62354, December 5, 1994; NCUA, 59 FR 67655, December 30, 1994).

The Board of Governors issued a final rule on December 19, 1994 (59 FR 65244).

As adopted in 1991, § 19.9 of the Uniform Rules prohibited a party, the party's counsel, or another interested person from making an ex parte communication to the Comptroller or other decisional official concerning the merits of an adjudicatory proceeding. When the agencies proposed the Uniform Rules in 1991, they explained that the section on ex parte communications would adopt the rules and procedures set forth in the APA (5 U.S.C. 551(14) and 557(d)) regarding ex parte communications. The OCC did not intend at that time to impose a rule more restrictive than that imposed by the APA.

Scope of the APA

The APA contains two provisions relating to communications with agency decisionmakers. The first, the ex parte communication provision, restricts communications between an interested person *outside* the agency, on the one hand, and the agency head, the administrative law judge (ALJ), or an agency decisional employee, on the other. 5 U.S.C. 557(d).

The second, the intra-agency communications provision, governs the separation of functions *within* an agency. 5 U.S.C. 554(d). That section prohibits agency investigative or prosecutorial staff from participating or advising in the decision, recommended decision, or agency review of an adjudicatory matter pursuant to 5 U.S.C. 557 except as witness or counsel. The provision provides that the ALJ in an adjudicatory matter may not consult any party on a fact in issue unless the other parties have an opportunity to participate. 5 U.S.C. 554(d)(1). The separation of functions provision does not prohibit agency investigatory or prosecutorial staff from seeking the amendment of a notice or the settlement or termination of a proceeding.

The Uniform Rules as proposed and adopted in 1991, however, do not mention the separation of functions concept explicitly. Consequently, the Uniform Rules could have been interpreted to apply the ex parte communication prohibition to all communications concerning the merits of an adjudicatory proceeding between the agency head, ALJ, or decisional employee, on one hand, and any party, the party's counsel, or another person interested in the proceeding on the other hand.

This interpretation of § 19.9 would limit an agency's investigatory or prosecutorial staff's ability to seek approval of amendments to, or terminations of, existing enforcement actions. Thus, as adopted in 1991, § 19.9 could be interpreted to expand the ex parte communication prohibition beyond the scope of the APA. The OCC did not and does not intend that interpretation. The final rule, therefore, makes clear that § 19.9 is no broader than the APA.

The Final Rule

The final rule conforms the Uniform Rules to the APA by: (1) Limiting the prohibition on ex parte communications to communications to or from interested persons outside the agency and the ALJ, agency head, and agency decisional employees (5 U.S.C. 557(d)); and (2) incorporating explicitly the APA's separation of functions provision (5 U.S.C. 554(d)). This approach is also consistent with the most recent Model Adjudication Rules prepared by the Administrative Conference of the United States (ACUS). ACUS, *Model Adjudication Rules* (December, 1993).

In addition, § 19.9(a)(1) of the final rule conforms the definition of "ex parte communication" to the language of 5 U.S.C. 557(d), which prohibits ex parte

communications "relevant to the merits" of a proceeding. The final rule's definition of ex parte communications substitutes the words "relevant to the merits" of an adjudicatory proceeding for the words "concerning the merits" of an adjudicatory proceeding, which appear in the current rule.

Comment Received

The OCC received one comment on its proposal. The comment supported the proposal and suggested that the OCC explain the so-called "Chinese wall" that prevents those staff members involved in the prosecutorial function from communicating with those who advise the Comptroller on a particular matter. The final rule specifically sets out the APA's separation of functions provision, which prohibits agency prosecutorial personnel in one case from participating in the Comptroller's decision on that or a factually related case.

The final rule prohibits prosecutorial staff from communicating about the merits of a case with those staff members who advise the Comptroller regarding a final decision in the case. Therefore, the OCC believes that it is unnecessary, in a rulemaking, to set out the OCC's internal procedures for maintaining the statutorily required communication barrier. In conformance with the APA and this rule, OCC investigative and prosecutorial staff do not make communications to decisional employees that are relevant to the merits of an adjudicatory proceeding without putting the communications on the record and without giving reasonable prior notice to all parties.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, the OCC hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

The final rule makes a minor amendment to a rule of practice already in place and affects agency procedure exclusively. Thus, it will not result in additional burden for regulated institutions. The purpose of the proposal is to conform the provisions of the regulation to those imposed by statute.

Executive Order 12866

The OCC has determined that this rule is not a significant regulatory action as defined in Executive Order 12866.

Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 (Unfunded Mandates Act) (signed into law on March 22, 1995) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. As discussed in the preamble, this final rule is limited in application to the internal procedures of the OCC. The OCC has therefore determined that the final rule will not result in expenditures by State, local, or tribal governments or by the private sector of more than $100 million. Accordingly, the OCC has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

List of Subjects in 12 CFR Part 19

Administrative practice and procedure, Crime, Investigations, National banks, Penalties, Securities.

Authority and Issuance

For the reasons set out in the preamble, part 19 of chapter I of title 12 of the Code of Federal Regulations is amended as follows:

PART 19—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 19 is revised to read as follows:

Authority: 5 U.S.C. 504, 554–557; 12 U.S.C. 93(b), 164, 505, 1817, 1818, 1820, 1831o, 1972, 3102, 3108(a), and 3909; 15 U.S.C. 78(h) and (i), 78o–4(c), 78o–5, 78q–1, 78u, 78u–2, 78u–3, and 78w; and 31 U.S.C. 330.

2. In § 19.9, paragraphs (a)(1) and (b) are revised and a new paragraph (e) is added to read as follows:

§ 19.9 Ex parte communications.

(a) *Definition*—(1) *Ex parte communication* means any material oral or written communication relevant to the merits of an adjudicatory proceeding that was neither on the record nor on reasonable prior notice to all parties that takes place between:

(i) An interested person outside the OCC (including such person's counsel); and

(ii) The administrative law judge handling that proceeding, the Comptroller, or a decisional employee.

* * * * *

(b) *Prohibition of ex parte communications.* From the time the notice is issued by the Comptroller until the date that the Comptroller issues his or her final decision pursuant to § 19.40(c):

(1) No interested person outside the OCC shall make or knowingly cause to be made an ex parte communication to the Comptroller, the administrative law judge, or a decisional employee; and

(2) The Comptroller, administrative law judge, or decisional employee shall not make or knowingly cause to be made to any interested person outside the OCC any ex parte communication.

* * * * *

(e) *Separation of functions.* Except to the extent required for the disposition of ex parte matters as authorized by law, the administrative law judge may not consult a person or party on any matter relevant to the merits of the adjudication, unless on notice and opportunity for all parties to participate. An employee or agent engaged in the performance of investigative or prosecuting functions for the OCC in a case may not, in that or a factually related case, participate or advise in the decision, recommended decision, or agency review of the recommended decision under § 19.40, except as witness or counsel in public proceedings.

Dated: June 2, 1995.

Eugene A. Ludwig,

Comptroller of the Currency.

[FR Doc. 95–14008 Filed 6–7–95; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–SW–13–AD; Amendment 39–9252; AD 95–12–02]

Airworthiness Directives; Hiller Aircraft Corporation Model UH–12A, UH–12B, UH–12C, UH–12D, and UH–12E Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Hiller Aircraft Corporation (Hiller) Model UH–12A, UH–12B, UH–12C, UH–12D, and UH–12E helicopters. This action requires a dye-penetrant inspection of the head of the main rotor outboard tension-torsion (T-T) bar pin for cracks; a visual inspection of the outboard T-T bar pin for proper alignment, and an adjustment, if necessary; and, installation of shims at the inboard end of the drag strut. This amendment is prompted by two accidents involving failure of the outboard T-T bar pin on Hiller UH–12E helicopters. The actions specified by this AD are intended to prevent cracks in the head area of the outboard T-T bar pin, which could result in loss of in-plane stability of the main rotor blade and subsequent loss of control of the helicopter.

DATES: Effective on June 23, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of June 23, 1995.

Comments for inclusion in the Rules Docket must be received on or before August 7, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–SW–13–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

The service information referenced in this AD may be obtained from Hiller Aircraft Corporation, 7980 Enterprise Drive, Newark, California 94560–3497. This information may be examined at the FAA, Office of the Assistant Chief Counsel, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Matheis, Aerospace Engineer, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Blvd., Lakewood, California 90712–4137, telephone (310) 627–5235, fax (310) 627–5210.

SUPPLEMENTARY INFORMATION: This amendment adopts a new AD that is applicable to Hiller Model UH–12A, UH–12B, UH–12C, UH–12D, and UH–12E helicopters. This AD is prompted by two accidents, both involving Model UH–12E helicopters, in which failure of the outboard T-T bar pin, part number (P/N) 51452, was subsequently determined to be the cause of the accidents. The Hiller Model UH–12E helicopter main rotor system design is similar to the main rotor system design of the Hiller Model UH–12A, UH–12B, UH–12C, and UH–12D helicopters. The outboard T-T bar pin extends from the main rotor blade root fork and serves as an attachment point for the inboard end of the main rotor blade drag strut. The drag strut fixes the in-plane stability of the main rotor blade and transfers the drag forces applied by the main rotor blade to the main rotor hub.

The National Transportation Safety Board (NTSB) issued Safety Recommendation A–94–189, dated November 30, 1994, which states that both failures resulted from fatigue cracks that originated from the bolt through-hole of an outboard T-T bar pin. The NTSB investigation revealed that improper alignment and excessive play between the outboard T-T bar pin and the inboard end of the drag strut can introduce large operating stresses in the head of the outboard T-T bar pin. A fracture of the outboard T-T bar pin allows the main rotor blade to rotate freely about the blade hub, resulting in a loss of in-plane stability. Any cracks in the head of the outboard T-T bar pin create an unsafe condition. Due to the criticality of the outboard T-T bar pin in maintaining main rotor blade stability, and the relatively short compliance time, this AD is being issued immediately to correct an unsafe condition. The actions required by this AD include an inspection for cracks in the head of the outboard T-T bar pin using a dye-penetrant inspection method; an inspection to ensure the proper alignment of the outboard T-T bar pin; and, the installation of shims between the inboard end of the drag strut and the outboard T-T bar pin. The FAA has determined that correcting any misalignment can reduce large stresses, and can therefore reduce the likelihood of cracking the head of the outboard T-T bar pin. That condition, if not corrected, could result in loss of in-plane stability of the main rotor blade and subsequent loss of control of the helicopter.

The FAA has reviewed Hiller Aviation Service Bulletin (SB) No. 51–9, dated April 8, 1983, which describes procedures for the installation of shims between the inboard end of the drag strut and the outboard T–T bar pin; and Hiller Aviation Service Letter (SL) 51–2, dated March 31, 1978, which describes procedures for an inspection to ensure proper alignment of the outboard T–T bar pin, and an inspection of the head of the outboard T–T bar pin for cracks using a dye-penetrant inspection method. The FAA has determined that the compliance times prescribed in those service documents are not adequate to ensure safety of flight, and is revising those compliance times in this AD.

Since an unsafe condition has been identified that is likely to exist or develop on other Hiller Model UH–12A, UH–12B, UH–12C, UH–12D, and UH–12E helicopters of the same type design, this AD is being issued to prevent cracks in the head area of the outboard T–T bar pin. This AD requires, within 25 hours time-in-service (TIS) or at the next 100 hours TIS inspection, whichever occurs first, and thereafter at intervals not to exceed 100 hours TIS: (1) an inspection of the alignment of the outboard T–T bar pin and an adjustment, if necessary; and (2) an inspection for cracks in the head of the outboard T–T bar pin using a dye penetrant inspection method. Additionally, this AD requires, within 25 hours TIS or at the next 100 hours TIS inspection, whichever occurs first, the installation of shims between the inboard end of the drag strut and the outboard T–T bar pin. The procedures to perform these actions are required to be accomplished in accordance with the service bulletin and service letter described previously, but in accordance with the compliance times stated in this AD.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments,

in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 95–SW–13–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR section 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

95–12–02 Hiller Aircraft Corporation: Amendment 39–9252. Docket No. 95–SW–13–AD.

Applicability: Model UH–12A, UH–12B, UH–12C, UH–12D, and UH–12E helicopters, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (e) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent cracks in the head area of the main rotor outboard tension-torsion (T–T) bar pin, which could result in loss of in-plane stability of the main rotor blade and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 25 hours time-in-service (TIS) after the effective date of this AD, or at the next 100 hours TIS inspection, whichever occurs first, and thereafter at intervals not to exceed 100 hours TIS, inspect the alignment of the outboard T–T bar pin, part number (P/N) 51452, and adjust the alignment, if necessary, in accordance with Hiller Aviation Service Letter (SL) 51–2, dated March 31, 1978.

(b) Inspect the head of the outboard T-T bar pin for cracks using a dye-penetrant inspection method.

(c) Report the results of the dye-penetrant inspections required by paragraph (b) of this AD within 7 days following each inspection to the Manager, Los Angeles Aircraft Certification Office, Attention: Charles Matheis, ANM–120L, 3960 Paramount Blvd., Lakewood, California 90712–4137. Include the helicopter model number, serial number, and total TIS of the outboard T–T bar pin in the report. Reporting requirements have been approved by the Office of Management and Budget and assigned OMB control number 2120–0056.

(d) Within 25 hours TIS after the effective date of this AD, or at the next 100 hours TIS inspection, whichever occurs first, install shims between the inboard end of the drag strut and the outboard T-T bar pin in accordance with the Accomplishment Instructions of Hiller Aviation Service Bulletin No. 51–9, dated April 8, 1983.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used when approved by the Manager, Los Angles Aircraft Certification Office, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR sections 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(g) The inspections, modifications, and adjustments, if necessary, shall be done in accordance with Hiller Aviation Service Bulletin No. 51–9, dated April 8, 1983, and Hiller Aviation Service Letter 51–2, dated March 31, 1978. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Hiller Aircraft Corporation, 7980 Enterprise Drive, Newark, California 94560–3497. Copies may be inspected at the FAA, Office of the Assistant Chief Counsel, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(h) This amendment becomes effective on June 23, 1995.

Issued in Fort Worth, Texas, on May 25, 1995.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 95–13410 Filed 6–7–95; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM95–5–001; Order No. 577–A]

Release of Firm Capacity on Interstate Natural Gas Pipelines

Issued May 31, 1995.

AGENCY: Federal Energy Regulatory Commission; Energy.

ACTION: Final rule; order granting rehearing.

SUMMARY: The Federal Energy Regulatory Commission is amending its capacity release regulations, which permit shippers to release capacity without having to comply with the Commission's advance posting and bidding requirements. The current regulation permits such releases for a full calendar month. The Commission is revising the regulation to permit exempt releases for up to 31 days in order to accommodate releases crossing calendar months.

EFFECTIVE DATE: The final rule becomes effective July 10, 1995.

FOR FURTHER INFORMATION CONTACT: Michael Goldenberg, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208–2294.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 3104, 941 North Capitol Street NE., Washington DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 19200, 14400, 12000, 9600, 7200, 4800, 2400, 1200, or 300 bps, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this document will be available on CIPS for 60 days from the date of issuance in ASCII and WordPerfect 5.1 format. After 60 days the document will be archived, but still accessible. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 3104, 941 North Capitol Street, NE., Washington DC 20426.

Before Commissioners: Elizabeth Anne Moler, Chair; Vicky A. Bailey, James J. Hoecker, William L. Massey, and Donald F. Santa, Jr.

Order Granting Rehearing

On May 1, 1995, Great Lakes Gas Transmission Limited Partnership (Great Lakes) filed a request for rehearing and clarification of Order No. 577, issued March 29, 1995.[1] For the reasons discussed below, the Federal Energy Regulatory Commission (Commission) will grant rehearing and revise § 284.243(h) of its regulations.

[1] Release of Firm Capacity on Interstate Natural Gas Pipelines, Order No. 577, 60 FR 16979 (Apr. 4, 1995), III FERC Stats. & Regs. Preambles ¶ 31,017 (Mar. 29, 1995).

Background

In Order No. 577, the Commission revised § 284.243(h) of its capacity release regulations to promote a more effective and efficient capacity release mechanism as well as reduce administrative burdens. The prior regulations permitted shippers to release their firm capacity for less than one calendar month without having to comply with the Commission's requirements to post release offers for bidding. In Order No. 577, the Commission extended the advance posting and bidding exception to one full calendar month to comport with the industry's practice of making gas and capacity decisions on a calendar month basis and to reduce administrative burdens resulting from the use of so-called "29/1" day deals to effectuate full month releases.

Great Lakes seeks rehearing or clarification as to whether the Commission intended to exempt short term capacity release transactions spanning two calendar months from the bidding requirements. Great Lakes states that, in its restructuring proceeding under Order No. 636, the Commission required Great Lakes to permit an exception from its bidding requirements for short-term capacity releases of less than 30 days that extended over parts of two months.[2] Great Lakes argues that in the March 29, 1995 order in this rulemaking docket, the Commission seemed to adopt a different approach to short-term releases spanning two calendar months.

Great Lakes points to the Commission's rejection of a request by a commenter that the regulation refer to releases of 31 days, rather than to a calendar month, in order to permit releases of 31 days spanning two calendar months (*i.e.*, January 15 to February 15). The Commission found that limiting the exception to a calendar month synchronized the short-term exception with the industry's practice of purchasing gas and capacity on a monthly basis. The Commission further concluded that substitution of the phrase "31 days" was not needed to effectuate mid-month releases. Great Lakes points out that this procedure is not only inconsistent with its tariff, but is burdensome because it entails two postings and two separate contracts.

Discussion

The Commission's restructuring orders were inconsistent in interpreting whether releases crossing calendar months were permissible.[3] To ensure that this rule does not limit flexibility shippers already possess, the Commission will revise the language of the regulation to substitute "31 days" for "calendar month." This will permit parties to execute releases of up to 31 days without complying with the Commission's advance posting and bidding requirements. This revision will increase shipper flexibility and also reduce administrative burdens by eliminating the need for one bid, two postings, and two contracts in order to consummate short-term releases across calendar months.

Effective Date

The final rule will take effect July 10, 1995.

List of Subjects in 18 CFR Part 284

Continental shelf, Natural gas, Reporting and recordkeeping requirements.

By the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

In consideration of the foregoing, the Commission amends Part 284, Chapter I, Title 18, Code of Federal Regulations, as set forth below.

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

1. The authority citation for Part 284 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C 7101–7532; 43 U.S.C 1331–1356.

2. In § 284.243, paragraph (h)(1) is revised to read as follows:

§ 284.243 Release of firm capacity on interstate pipelines.

* * * * *

(h)(1) A release of capacity by a firm shipper to a replacement shipper for any period of 31 days or less, or for any term at the maximum tariff rate applicable to the release, need not comply with the notification and bidding requirements of paragraphs (c) through (e) of this section. A release under this paragraph may not exceed the maximum rate. Notice of a firm release under this paragraph must be provided on the

[2] Great Lakes Gas Transmission Limited Partnership, 64 FERC ¶ 61,017 at 61,171 (1993).

[3] *Compare* Northwest Pipeline Corporation, 63 FERC ¶ 61,124 at 61,803 (1993); Kern River Gas Transmission Company, 62 FERC ¶ 61,191 at 62,270 (1993) (no cross month releases) *with* Great Lakes Gas Transmission Limited Partnership, 64 FERC ¶ 61,017 at 61,171 (1993); Columbia Gas Transmission Corporation, 64 FERC ¶ 61,060 at 61,530 (1993) (permitting cross month releases).

pipeline's electronic bulletin board as soon as possible, but not later than forty-eight hours, after the release transaction commences.

* * * * *

[FR Doc. 95–14012 Filed 6–7–95; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Part 41

[Public Notice 2220]

Visas: Documentation of Nonimmigrants Under the Immigration and Nationality Act, as Amended; Waiver of Passport and Visa Requirements

AGENCY: Bureau of Consular Affairs, State.

ACTION: Final rule.

SUMMARY: This rule amends Department of State regulations to authorize a waiver of the passport and visa requirements of INA 212(a)(7)(B)(i) for members of the armed forces of certain additional foreign countries. Such a waiver would be granted under INA 212(d)(4) by the Attorney General and the Secretary of State acting jointly. This rule amends the regulations by removing Albania, Bulgaria, Czechoslovakia, Estonia, German Democratic Republic, Hungary, Latvia, Lithuania, Poland, Romania, and the Union of Soviet Socialist Republics from the list of countries to whom the waiver cannot apply.

DATES: Effective June 8, 1995.

FOR FURTHER INFORMATION CONTACT: Stephen K. Fischel, Chief, Legislation and Regulations Division, Visa Office, (202) 663–1204.

SUPPLEMENTARY INFORMATION: The Department of State, after consultation with the Immigration and Naturalization Service and the Department of Defense, has determined that it is no longer in the national interest to prohibit aliens on active duty in the armed forces of Albania, Armenia, Azerbaijan, Belarus, Bulgaria, the Czech Republic, Estonia, Georgia, Hungary, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, Poland, Romania, Russia, the Slovak Republic, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan from benefiting from a waiver of the passport and visa requirement of INA 212(a)(7)(b)(i) in specific circumstances. In fact, the Department of Defense has been working with certain non-NATO nations to enter into bilateral, Status of Forces agreements similar to those in effect with NATO nations. The Department of State is, therefore, publishing amendments to the regulations at 22 CFR 41.3.

The rule is not expected to have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This rule imposes no reporting or recordkeeping action from the public requiring the approval of the Office of Management and Budget under the Paperwork Reduction Act requirements. This rule has been reviewed as required by E.O. 12778 and certified to be in compliance therewith. This rule is exempted from E.O. 12866 but has been reviewed to ensure consistency therewith.

List of Subjects in 22 CFR Part 41

Aliens, Armed Forces, Nonimmigrants, Visas, Passports, Waivers.

In view of the foregoing 22 CFR part 41 is amended as follows:

PART 41—[AMENDED]

1. The authority citation for Part 41 continues to read:

Authority: 8 U.S.C. 1104, 1182.

2. Section 41.3 is amended by revising paragraph (e) to read as follows:

§ 41.3 Waiver by joint action of consular and immigration officers of passport and/or visa requirements.

* * * * *

(e) *Members of armed forces of foreign countries; visa and passport waiver.* An alien on active duty in the armed forces of a foreign country and a member of a group of such armed forces traveling to the United States, on behalf of the alien's government or the United Nations, under advance arrangements made with the appropriate military authorities of the United States. The waiver does not apply to a citizen or resident of Cuba, Mongolian People's Republic, North Korea (Democratic People's Republic of Korea), Vietnam (Socialist Republic of Vietnam), or the People's Republic of China.

* * * * *

Dated: June 2, 1995.

Mary A. Ryan,

Assistant Secretary for Consular Affairs.

[FR Doc. 95–14077 Filed 6–7–95; 8:45 am]
BILLING CODE 4710–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 254

Teacher and Teacher's Aide Placement Assistance Program (Troops to Teachers)

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Interim final rule: amendment.

SUMMARY: This interim rule amendment implements "National Defense Authorization Act for Fiscal Year 1995," by extending eligibility in the Department of Defense Teacher and Teacher's Aide Placement Assistance program to Service members that were separated or released from active duty during the 9 year period beginning October 1, 1990. Service members that were separated or released before the Department of Defense established the program on January 19, 1994, but on or after October 1, 1990, have until October 5, 1995, to apply. The effect of this change is to give Service members until October 5, 1995, to apply for the program if their date of discharge or release from active duty falls on or after October 1, 1990, but before January 19, 1994.

This interim rule amendment also provides that civilian employees of the Department of Defense and Department of Energy must apply within 1 year following termination of their employment.

DATES: This document is effective November 25, 1994. Forward comments no later than August 7, 1995.

ADDRESSES: Forward comments to Department of Defense, Office of the Assistant Secretary of Defense (Force Management Policy) (PSF&E) (DoDEA), The Pentagon, room 3E784, Washington, DC 20301–4000.

FOR FURTHER INFORMATION CONTACT: Mr. Otto Thomas (703) 696–4384.

SUPPLEMENTARY INFORMATION: Executive Order 12866, "Regulatory Planning and Review" It has been certified that this amendment to the interim final rule, in conformance with Executive Order 12866, does not:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order.

This amendment to the interim final rule is necessary to initiate the program so as to benefit as many personnel as may otherwise be eligible. This program is time-sensitive and is authorized upon publication in the **Federal Register** until October 1, 1999. Comments will be considered in determining whether to amend this amendment to the interim final rule.

Public Law 96–354, "Regulatory Flexibility Act" This amendment to the interim rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) and does not have a significant impact on a substantial number of small businesses. The primary target for this program will be local educational agencies that are entitled to Chapter 1 funds pursuant to Title I, Elementary and Secondary Education Act of 1965 (20 U.S.C. 2701 *et seq.*). The program also will provide those contract employees whose DoD contract has been terminated as a result of completion or termination of a defense contract or program in defense spending.

Public Law 96–511, "Paperwork Reduction Act" This amendment to the interim rule does not impose any reporting or record keeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520).

List of Subjects in 32 CFR Part 254

Elementary and secondary education, Military personnel.

Accordingly, 32 CFR part 254 is amended to read as follows:

PART 254—TEACHER AND TEACHER'S AIDE PLACEMENT ASSISTANCE PROGRAM

1. The authority citation for part 254 is revised to read as follows:

Authority: 10 U.S.C. 1151, 1598, 2410C.

2. In § 254.2, paragraphs (d) introductory text, (d)(1) and (d)(2) are revised to read as follows:

§ 254.2 Definition.

* * * * *

(d) *Eligible personnel.* Service members, civilian employees of the Department of Defense and the Department of Energy, and defense contractor employees who meet the specific requirements identified in paragraphs (d) (1) through (3) of this section. All persons selected shall have a baccalaureate or advanced degree (associate degree or higher for teacher's aide applicants) from an accredited institution of higher learning and, if selected, shall be willing to agree to obtain certification or licensure as an elementary or secondary school teacher or teacher's aide and to accept an offer of full-time employment as an elementary or secondary school teacher or teacher's aid for not fewer than 5 school years in a school that serves a concentration of children from low-income families.

(1) *Eligible service members.* Members of the Armed Forces who during the 9-year period beginning on October 1, 1990 are discharged or released from active duty after 6 or more years of continuous active duty immediately before discharge or release, and are not discharged or released from service under other than honorable conditions. Application must be made within 1 year after discharge or release, except that Service members whose date of discharge or release is on or after October 1, 1990, but before January 19, 1994, shall apply by October 5, 1995. Service members who do not meet the degree requirements at the time of discharge shall be considered to be eligible upon satisfying degree requirements with 5 years after discharge from active duty. In such case, former Service members must make application within 1 year after earning the applicable degree.

(2) *Eligible Nonmilitary Government Employees.* Full time civilian employees of the Department of Defense or the Department of Energy who have served at least 5 years in a civil service position and are terminated from Government employment as a result of reductions in defense spending or the closure of realignment of a military installation as determined by the Secretary of Defense or the Secretary of Energy. Application must be made after receipt of a notice of termination but not later than 1 year following termination.

* * * * *

3. In § 254.4, paragraphs (6) and (c) are revised to read as follows.

§ 254.4 Procedures.

* * * * *

(b) Eligible Service members shall apply for participation in the program not later than 1 year after the date of discharge or release, except that eligible Service members whose date of discharge or release is on or after October 1, 1990 but before January 19, 1994, shall apply by October 5, 1995. Service members who are not eligible on their date of separation because they do not meet the degree requirements required to participate in the program, but who earn an applicable degree within 5 years after separation, shall apply not later than 1 year after earning such a degree. Service members are also encouraged to register in the Public Community Service Registry their interest in pursuing employment as an elementary or secondary school teacher or teacher's aide. Information about the Registry is provided during preseparation counseling as part of the transition assistance program.

(c) Eligible Department of Defense or Department of Energy civilian employees shall apply after they have received written notice of termination of employment but not later than 1 year following the date of such termination. DANTES shall provide program information to civilian personnel offices that will allow civilian personnel offices to make an initial determination of eligibility and refer interested employees to installation education centers for program information and to DANTES for selection purposes.

* * * * *

Dated: May 31, 1995.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–13956 Filed 6–7–95; 8:45 am]
BILLING CODE 5000–04–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[UT24–1–7036a; FRL–5218–6]

Determination of Attainment of Ozone Standard for Salt Lake and Davis Counties, Utah, and Determination Regarding Applicability of Certain Reasonable Further Progress and Attainment Demonstration Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is determining, through direct final procedure, that the Salt Lake and Davis Counties ozone nonattainment area has attained the National Ambient Air Quality Standard (NAAQS) for ozone. This determination

is based upon three years of complete, quality assured ambient air monitoring data for the years 1992, 1993, and 1994 that demonstrate that the ozone NAAQS has been attained in this area. On the basis of this determination, EPA is also determining that certain reasonable further progress and attainment demonstration requirements, along with certain other related requirements, of Part D of Title 1 of the Clean Air Act are not applicable to the area for so long as the area continues to attain the ozone NAAQS. Also, in the proposed rules section of this **Federal Register**, EPA is proposing these determinations and soliciting public comment on them. If adverse comments are received on this direct final rule, EPA will withdraw this final rule and address these comments in a final rule on the related proposed rule which is being published in the proposed rules section of this **Federal Register**.

EFFECTIVE DATES: This action will be effective July 24, 1995 unless written adverse comments are received by July 10, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: A copy of the air quality data and EPA's analysis are available for inspection at the following address: United States Environmental Protection Agency, Region 8, Air Programs Branch, 999 18th Street, Suite 500, Denver, Colorado 80202–2466.

Written comments should be addressed to: Douglas M. Skie, Chief, Air Programs Branch (8ART-AP), United States Environmental Protection Agency, Region 8, 999 18th Street, Suite 500, Denver, Colorado 80202–2466.

FOR FURTHER INFORMATION CONTACT: Tim Russ, Air Programs Branch (8ART-AP), United States Environmental Protection Agency, Region 8, 999 18th Street, Suite 500, Denver, Colorado 80202–2466 Phone: (303) 293–1814.

SUPPLEMENTARY INFORMATION:

I. Background

Subpart 2 of Part D of Title I of the Clean Air Act (CAA) contains various air quality planning and State Implementation Plan (SIP) submission requirements for ozone nonattainment areas. EPA believes it is reasonable to interpret provisions regarding reasonable further progress (RFP) and attainment demonstrations, along with certain other related provisions, so as not to require SIP submissions if an ozone nonattainment area subject to those requirements is monitoring attainment of the ozone standard (i.e., attainment of the NAAQS demonstrated with three consecutive years of complete, quality assured air quality monitoring data). As described below, EPA has previously interpreted the general provisions of subpart 1 of part D of Title I (sections 171 and 172) so as not to require the submission of SIP revisions concerning RFP, attainment demonstrations, or contingency measures. As explained in a memorandum dated May 10, 1995, from John Seitz, Director, Office of Air Quality and Planning Standards, to the Regional Air Division Directors, entitled "Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard", EPA believes it is appropriate to interpret the more specific RFP, attainment demonstration and related provisions of subpart 2 in the same manner.

First, with respect to RFP, section 171(1) of the CAA states that, for purposes of part D of Title I, RFP "means such annual incremental reductions in emissions of the relevant air pollutant as are required by this part or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable national ambient air quality standard by the applicable date." Thus, whether dealing with the general RFP requirement of section 172(c)(2), or the more specific RFP requirements of subpart 2 for classified ozone nonattainment areas (such as the 15 percent plan requirement of section 182(b)(1)), the stated purpose of RFP is to ensure attainment by the applicable attainment date.[1] If an area has in fact attained the standard, the stated purpose of the RFP requirement will have already been fulfilled and EPA does not believe that the area need submit revisions providing for the further emission reductions described in the RFP provisions of section 182(b)(1).

EPA notes that it took this view with respect to the general RFP requirement of section 172(c)(2) in the General Preamble for the Interpretation of Title I of the Clean Air Act Amendments of 1990 (57 FR 13498 dated April 16, 1992), and it is now extending that interpretation to the specific provisions of subpart 2. In the General Preamble, EPA stated, in the context of a discussion of the requirements applicable to the evaluation of requests to redesignate nonattainment areas to attainment, that the "requirements for RFP will not apply in evaluating a request for redesignation to attainment since, at a minimum, the air quality data for the area must show that the area has already attained. Showing that the State will make RFP towards attainment will, therefore, have no meaning at that point." (57 FR at 13564.)[2]

Second, with respect to the attainment demonstration requirements of section 182(b)(1), an analogous rationale leads to the same result. Section 182(b)(1) requires that the plan provide for "such specific annual reductions in emissions . . . as necessary to attain the national primary ambient air quality standard by the attainment date applicable under this Act." As with the RFP requirements, if an area has in fact monitored attainment of the standard, EPA believes there is no need for an area to make a further submission containing additional measures to achieve attainment. This is also consistent with the interpretation of certain section 172(c) requirements provided by EPA in the General Preamble to Title I, as EPA stated there that no other measures to provide for attainment would be needed by areas seeking redesignation to attainment since "attainment will have been reached." (57 FR at 13564; *see also* the September 4, 1992, John Calcagni memorandum entitled "Procedures for Processing Requests to Redesignate Areas to Attainment" at page 6.) Upon attainment of the NAAQS, the focus of state planning efforts shifts to the maintenance of the NAAQS and the development of a maintenance plan under section 175A.

Similar reasoning applies to other related provisions of subpart 2. The first of these are the contingency measure requirements of section 172(c)(9). EPA has previously interpreted the contingency measure requirement of section 172(c)(9) as no longer being applicable once an area has attained the standard since those "contingency measures are directed at ensuring RFP and attainment by the applicable date." (57 FR at 13564; *see also* the September 4, 1992, John Calcagni memorandum entitled "Procedures for Processing Requests to Redesignate Areas to Attainment" at page 6.)

[1] EPA notes that paragraph (1) of subsection 182(b) is entitled "PLAN PROVISIONS FOR REASONABLE FURTHER PROGRESS" and that subparagraph (B) of paragraph 182(c)(2) is entitled "REASONABLE FURTHER PROGRESS DEMONSTRATION," thereby making it clear that both the 15 percent plan requirement of section 182(b)(1) and the 3 percent per year requirement of section 182(c)(2) are specific varieties of RFP requirements.

[2] *See also* "Procedures for Processing Requests to Redesignate Areas to Attainment," from John Calcagni, Director, Air Quality Management Division, to Regional Air Division Directors, September 4, 1992, at page 6 (stating that the "requirements for reasonable further progress . . . will not apply for redesignations because they only have meaning for areas not attaining the standard").

EPA emphasizes that the lack of a requirement to submit the SIP revisions discussed above exists only for as long as an area designated nonattainment continues to attain the standard. If EPA subsequently determines that such an area has violated the NAAQS, the basis for the determination that the area need not make the pertinent SIP revisions would no longer exist. The EPA would notify the State of that determination and would also provide notice to the public in the **Federal Register**. Such a determination would mean that the area would have to address the pertinent SIP requirements within a reasonable amount of time, which EPA would establish taking into account the individual circumstances surrounding the particular SIP submissions at issue. Thus, a determination that an area need not submit one of the SIP submittals amounts to no more than a suspension of the requirement for so long as the area continues to attain the standard.

The State must continue to operate an appropriate air quality monitoring network, in accordance with 40 CFR Part 58, to verify the attainment status of the area. The air quality data relied upon to determine that the area is attaining the ozone standard must be consistent with 40 CFR Part 58 requirements and other relevant EPA guidance and recorded in EPA's Aerometric Information Retrieval System (AIRS).

The determinations that are being made with this **Federal Register** notice are not equivalent to the redesignation of the area to attainment. Attainment of the ozone NAAQS is only one of the criteria set forth in section 107(d)(3)(E) that must be satisfied for an area to be redesignated to attainment. To be redesignated, the state must submit and receive full EPA approval of a redesignation request.

Furthermore, the determinations made in this notice do not shield an area from future State or EPA action to require emissions reductions from sources in the area where there is evidence, such as photochemical grid modeling, showing that emissions from sources in the area contribute significantly to nonattainment in, or interfere with maintenance by, other nonattainment areas. EPA has authority under sections 110(a)(2)(A) and 110(a)(2)(D) to require such emission reductions if necessary and appropriate to deal with transport situations.

II. Analysis of Air Quality Data

The EPA has reviewed the ambient air monitoring data for ozone (consistent with the requirements contained in 40 CFR Part 58 and recorded in AIRS) for the Salt Lake and Davis Counties ozone nonattainment area in the State of Utah for 1992, 1993, and 1994. On the basis of that review EPA has concluded that the area has attained the ozone standard. Thus, this area is no longer recording violations of the air quality standard for ozone. A summary table of the relevant air quality data is provided below. A more detailed description of the ozone monitoring data for the area is provided in the EPA technical support document for this action.

The values in the table below present the maximum recorded ozone measurements expressed, for each year, in parts per million (ppm).

Monitor name	AIRS ID No.	1992	1993	1994
Bountiful (Davis County)	49–011–0001 1	0.103	0.104	0.117
Salt Lake County	49–035–0003 1	0.104	0.111	[1]0.124
Salt Lake City	49–035–3001 2	0.094	0.100	0.115

[1] EPA's ozone monitoring guideline provides that a measured exceedence of the ozone standard does not occur until a measured value of 0.125 ppm is recorded. Refer to EPA's "Guideline for the Interpretation of Ozone Air Quality Standards", EPA–450/4–79–003, OAQPS No. 1.2–108, dated January, 1979.

FINAL ACTION: EPA has determined that the Salt Lake and Davis Counties ozone nonattainment area has attained the ozone standard for 1992, 1993, and 1994. As a consequence of EPA's determination that the Salt Lake and Davis Counties area has attained the ozone standard, the requirements of section 182(b)(1) concerning the submission of the 15 percent plan and ozone attainment demonstration and the requirements of section 172(c)(9) concerning contingency measures are not applicable to the area so long as the area does not violate the ozone standard.

Specific to the Salt Lake and Davis Counties' ozone nonattainment area, Governor Michael Leavitt submitted a Redesignation Request and Maintenance Plan on November 12, 1993. On January 13, 1995, the Governor submitted revisions to that initial submittal that included revised emission inventories.

Because the State submitted an Ozone Redesignation Request and Maintenance Plan SIP revision for Salt Lake and Davis Counties, in lieu of a 15 percent SIP revision, Salt Lake and Davis Counties have been subject to the motor vehicle emissions budget in the Ozone Redesignation Request and Maintenance Plan SIP revision for transportation conformity purposes (see 40 CFR 93.128(i)).

Pursuant to EPA's new May 10, 1995, policy, the State may continue to demonstrate conformity to this submitted motor vehicle emissions budget, or the State may choose to withdraw the applicability of the motor vehicle emissions budget in the Ozone Redesignation Request and Maintenance Plan SIP revision for transportation conformity purposes, through the submittal of a letter from the Governor. If the applicability of the submitted motor vehicle emissions budget is withdrawn for transportation conformity purposes, only the build/no-build and less-than-1990 tests will apply until the Ozone Redesignation Request and Maintenance Plan are approved. If the applicability of the submitted motor vehicle emissions budget is not withdrawn for transportation conformity purposes, it will continue to apply.

EPA emphasizes that the above determinations are contingent upon the continued monitoring and continued attainment and maintenance of the ozone NAAQS in the affected area. If a violation of the ozone NAAQS is monitored in the Salt Lake and Davis Counties area (consistent with the requirements contained in 40 CFR Part 58 and recorded in AIRS), EPA will provide notice to the public in the **Federal Register**. Such a violation would mean that the area would thereafter have to address the requirements of section 182(b)(1) and section 172(c)(9) since the basis for the determination that they do not apply would no longer exist.

As a consequence of the determinations that the area has attained and that the reasonable further progress and attainment demonstration requirements of section 182(b)(1), and the contingency measures requirement of section 172(c)(9), do not presently apply, the sanctions clock started by EPA on January 19, 1994, for the failure to submit a section 182(b)(1) 15 percent plan and attainment demonstration, and

section 172(c)(9) contingency measures, is hereby stopped as the deficiencies for which the clock was started no longer exist.

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action will become effective on July 24, 1995. However, if the EPA receives adverse comments by July 10, 1995, then the EPA will publish a notice that withdraws the action, and will address those comments in the final rule on this action which has been proposed for approval in the proposed rules section of this **Federal Register**.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The Office of Management and Budget exempted this regulatory action from Executive Order 12866 review.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et. seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000. Today's determination does not create any new requirements, but allows suspension of the indicated requirements. Therefore, because the approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected.

Under Sections 202, 203 and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

EPA's final action does not impose any federal intergovernmental mandate, as defined in section 101 of the Unfunded Mandates Act, upon the State. No additional costs to State, local, or tribal governments, or to the private sector, result from this action, which suspends the indicated requirements. Thus, EPA has determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector.

Under Section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 7, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2)).

Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Section 6 of Executive Order 12866.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen oxides, Ozone, Volatile organic compounds, Intergovernmental relations, Reporting and record keeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: May 31, 1995.

William P. Yellowtail,

Regional Administrator.

40 CFR part 52, Subpart TT, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q

Subpart TT—Utah

2. Section 52.2332 is added to read as follows:

§ 52.2332 Control strategy: Ozone.

Determination—EPA is determining that, as of May 17, 1995, the Salt Lake and Davis Counties ozone nonattainment area has attained the ozone standard based on air quality monitoring data from 1992, 1993, and 1994, and that the reasonable further progress and attainment demonstration requirements of section 182(b)(1) and related requirements of section 172(c)(9) of the Clean Air Act do not apply to the area for so long as the area does not monitor any violations of the ozone standard. If a violation of the ozone NAAQS is monitored in the Salt Lake and Davis Counties ozone nonattainment area, these determinations shall no longer apply.

[FR Doc. 95–14067 Filed 6–7–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 70

[UT–001; FRL–5217–8]

Clean Air Act Final Full Approval of Operating Permits Program; Approval of Construction Permit Program Under Section 112(l); State of Utah

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final full approval.

SUMMARY: The EPA is promulgating full approval of the Operating Permits Program submitted by the State of Utah for the purpose of complying with Federal requirements for an approvable State Program to issue operating permits to all major stationary sources, and to certain other sources. EPA is also approving the Utah Construction Permit Program under section 112(l) of the Clean Air Act for the purpose of creating Federally enforceable permit conditions for sources of hazardous air pollutants listed pursuant to section 112(b) of the Clean Air Act.

EFFECTIVE DATE: July 10, 1995.

ADDRESSES: Copies of the State's submittal and other supporting information used in developing the final full approval are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 8, 999 18th Street, suite 500, Denver, Colorado 80202.

FOR FURTHER INFORMATION CONTACT: Laura Farris, 8ART–AP, U.S. Environmental Protection Agency, Region 8, 999 18th Street, suite 500, Denver, Colorado 80202, (303) 294–7539.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

Title V of the 1990 Clean Air Act Amendments (sections 501–507 of the Clean Air Act ("the Act")), and implementing regulations at 40 Code of Federal Regulations (CFR) part 70 (part 70) require that States develop and submit operating permits programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within one year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a period of up to two years. If EPA has not fully approved a program by two years after the November 15, 1993 date, or by the end of an interim program, it must establish and implement a Federal program.

On March 22, 1995, EPA proposed full approval of the Operating Permits Program for the State of Utah (PROGRAM). See 60 FR 15105. EPA received public comments on the proposal, and is taking final action to promulgate full approval of the Utah PROGRAM.

II. Final Action and Implications

A. Analysis of State Submission

The Governor of Utah submitted an administratively complete title V Operating Permit Program (PROGRAM) for the State of Utah on April 14, 1994. The Utah PROGRAM, including the operating permit regulations (Utah Administrative Code Rule R307–15, Operating Permit Requirements), fully meets the requirements of 40 CFR parts 70.2 and 70.3 with respect to applicability; parts 70.4, 70.5, and 70.6 with respect to permit content including operational flexibility; part 70.5 with respect to complete application forms and criteria which define insignificant activities; part 70.7 with respect to public participation and minor permit modifications; and part 70.11 with respect to requirements for enforcement authority.

R307–15–3 contains the PROGRAM definitions. EPA is aware that other Utah regulations may contain similar, but not identical, definitions as those contained in R307–15–3. For purposes of this PROGRAM approval, EPA wishes to clarify that the binding definitions are those contained in R307–15–3.

R307–15–5(5) of the State's permitting regulation lists the insignificant activities that sources do not have to include in their operating permit application. This list includes specific activities and sources which are considered to be insignificant. This provision states that the source's application may not omit information needed to determine applicable requirements or to evaluate the fee amount required.

Utah has the authority to issue a variance from requirements imposed by State law. Section 16–2–113, Utah Code Ann., provides that any person may apply to the board for a variance from its rules. The board may grant the requested variance, "if it determines that the hardship imposed by compliance would outweigh the benefit to the public." This authority is limited by regulation: Utah Administrative Code section R307–1–2.3 provides that the board may grant variances to the extent provided under law, unless prohibited by the Act. Other statutory provisions of State law require that the operating permit program must meet the requirements of title V of the Act. See, section 19–2–104(1)(f) and 19–1–109.1(c)–(d), Utah Code Ann.

In addition to these limitations, EPA regards Utah's variance provision as wholly external to the PROGRAM submitted for approval under part 70, and consequently is proposing to take no action on this provision of State law. EPA has no authority to approve provisions of State law, such as the variance provision referred to, which are inconsistent with part 70. EPA does not recognize the ability of a permitting authority to grant relief from the duty to comply with a Federally enforceable part 70 permit, except where such relief is granted through procedures allowed by part 70. If the State uses its variance provision strictly to establish a compliance schedule for a source that will be incorporated into a title V permit, then EPA would consider this an acceptable use of a variance provision. However, the routine process for establishing a compliance schedule is through appropriate enforcement action. EPA reserves the right to enforce the terms of the part 70 permit where the permitting authority purports to grant relief from the duty to comply with a part 70 permit in a manner inconsistent with part 70 procedures.

Part 70 of the Federal operating permit regulation requires prompt reporting of deviations from the permit requirements. Section 70.6(a)(3)(iii)(B) of that regulation requires the permitting authority to define prompt in relation to the degree and type of deviation likely to occur and the applicable requirements. Although the permit program regulations should define prompt for purposes of administrative efficiency and clarity, an acceptable alternative is to define prompt in each individual permit. The EPA believes that prompt should generally be defined as requiring reporting within two to ten days of the deviation. Two to ten days is sufficient time in most cases to protect public health and safety as well as to provide a forewarning of potential problems. For sources with a low level of excess emissions, a longer time period may be acceptable. However, prompt reporting must be more frequent than the semiannual reporting requirement, given this is a distinct reporting obligation under section 70.6(a)(3)(iii)(A) of the Federal operating permit regulation. Where "prompt" is defined in the individual permit but not in the program regulations, EPA may veto permits that do not contain sufficiently prompt reporting of deviations. The Utah PROGRAM will define prompt reporting of deviations in each permit consistent with the degree and type of deviation likely and the applicable requirements (see subsection R307–15–6(1)(c)(iii)(B) of the Utah permitting rule). Deviations from permit requirements due to unavoidable breakdowns shall be reported according to the unavoidable breakdown provisions of the Utah Administrative Code section R307–1–4.7.

R307–15–7(5)(a)(v) correctly allows the State to incorporate the terms of a construction permit (i.e., an "approval order") into an operating permit using the administrative permit amendment process. This process will be available when a source requests enhanced procedures in the issuance of its construction permit that are "substantially equivalent" to the operating permit issuance or modification procedures. "Substantial equivalence" between the construction permit and operating permit issuance procedures necessarily includes, among other things, public and affected state review as well as EPA's 45-day review period and veto authority.

B. Response to Comments

The comments received on the March 22, 1995 **Federal Register** notice proposing full approval of the Utah PROGRAM, and EPA's response to those comments, are as follows:

Comment #1: One commenter objected to EPA's statement that the Utah SIP currently does not allow for emission trading within a permitted facility without requiring a permit revision. The commenter stated that the federally-approved PM10 SIP for Utah currently contains a plant-wide emissions limitation for their specific source for the purposes of providing operational flexibility and further stated that they do not need to request operational flexibility under R307–15–7(a)(ii) since their specific source has existing operational flexibility that is provided in this SIP limit. The commenter stated that R307–15–7(a)(ii) is not applicable to their plant-wide annual emissions limitation.

EPA Response: EPA would like to clarify its statement that "the approved

Utah SIP does not provide for such trading [as allowed in 40 CFR 70.4(b)(12)(ii)] at this time." When it made this statement, EPA was thinking only in terms of a generic trading program. EPA was not addressing whether or not the SIP includes operational flexibility for an individual source. Furthermore, EPA only included the statement for informational purposes. Given that the presence or absence of an emissions trading program in the SIP, whether generic or plant-specific, has no bearing on the approvability of the part 70 PROGRAM, EPA has deleted from this notice the language related to 40 CFR 70.4(b)(12)(ii) which appeared in the notice of proposed rulemaking. Finally, if the Utah SIP includes plant-specific operational flexibility as the commenter suggests, the determination of the applicability of specific part 70 provisions to the exercise of such flexibility is not an approval issue, but an implementation issue. Because Utah's PROGRAM meets all of the requirements of part 70 and Title V of the Act, the commenter's assertions have no bearing on EPA's decision to approve Utah's PROGRAM. Questions pertaining to applicability of specific provisions of Utah's PROGRAM will be addressed during State implementation of the PROGRAM.

Comment #2: One commenter suggested that Utah does not have the authority to impose case-by-case maximum achievable control technology (MACT) limitations under 307–1–3, unless the final section 112(g) rule imposes National Emission Standards for Hazardous Air Pollutants (NESHAP). The commenter also stated that the only conditions applicable to hazardous air pollutants (HAPs) under Utah's construction review program are best available control technology and NESHAPs, but not MACT.

EPA Response: The EPA is aware that Utah lacks a program designed specifically to implement section 112(g). However, Utah does have a construction review program that can serve as a procedural vehicle for establishing a case-by-case MACT or offset determination and making these requirements federally enforceable. The EPA approval of Utah's construction review program clarifies that it may be used for this purpose during any transition period to meet the requirements of section 112(g). An alternative would be for Utah to disallow construction and modifications subject to 112(g) during any transition period if the States are not given a grace period in the final 112(g) rule. See also EPA's response to comment #4.

Comment #3: One commenter indicated that Utah's construction review program, as approved under section 112(l), is an appropriate mechanism for establishing limits on the potential-to-emit hazardous air pollutants. However, this mechanism may only be used if a source voluntarily requests a limit on their potential-to-emit hazardous air pollutants.

EPA Response: EPA agrees with the commenter and does not consider this an adverse comment.

Comment #4: One commenter stated that EPA is proposing to approve Utah's construction review program, found in R307–1–3 of the State's regulations, solely for the purpose of implementing section 112(g) during the transition period between federal promulgation of a section 112(g) rule and the adoption of State implementing regulations. However, the commenter continued on to indicate objection to EPA's proposed approval of the Utah construction review program to implement section 112(g) because (a) Utah's PROGRAM may not conform to the section 112(g) requirements once they have been issued by EPA; and (b) EPA is proposing to approve the PROGRAM without clarifying whether Utah's PROGRAM addresses the critical threshold questions of how a source is to determine if an emissions increase is or is not greater than de minimis, and whether or not it has been offset satisfactorily. The commenter also stated that, until the Agency completes its 112(g) rulemaking, there is no legal basis for allowing Utah to implement section 112(g).

EPA Response: EPA agrees with the commenter's first statement that EPA is proposing to approve Utah's construction review program, found in R307–1–3 of the State's regulations, solely for the purpose of implementing section 112(g) during the transition period between federal promulgation of the section 112(g) rule and the adoption of State implementing regulations. However, EPA disagrees with the remaining comments. The **Federal Register** notice dated March 22, 1995 (60 FR 15107) proposing full approval of the Utah Operating Permits PROGRAM, under "b. Implementation of Section 112(g)," clearly stated that "On February 14, 1995 EPA published an interpretive notice (see 60 FR 8333) that postpones the effective date of section 112(g) until after EPA has promulgated a rule addressing that provision." Questions regarding the threshold for determining when an emission increase is greater than de minimis and when it has been offset satisfactorily will be addressed in the final section 112(g) rule. The 112(g) interpretive notice explains that EPA is still considering whether the effective date of section 112(g) should be delayed beyond the date of promulgation of the Federal rule so as to allow States time to adopt rules implementing the Federal rule, and that EPA will provide for any such additional delay in the final section 112(g) rulemaking. However, unless and until EPA provides for such an additional postponement of section 112(g), Utah must be able to implement section 112(g) during the period between promulgation of the Federal section 112(g) rule and adoption of implementing State regulations. EPA believes that, if necessary, Utah can utilize its construction review program to serve as a procedural vehicle for implementing Section 112(g) and making these requirements federally enforceable between promulgation of the Federal section 112(g) rule and adoption of implementing State regulations. EPA's approval of Utah's construction review program may be used solely for the purpose of implementing section 112(g) during the transition period to meet the requirements of section 112(g). EPA is limiting the duration of the approval to 12 months following promulgation by EPA of its section 112(g) rule and this approval will be without effect if EPA decides in the final section 112(g) rule that sources are not subject to the requirements of the rule until State regulations are adopted.

C. Final Action

The EPA is promulgating full approval of the Operating Permits Program submitted by the State of Utah on April 14, 1994. Among other things, Utah has demonstrated that the PROGRAM will be adequate to meet the minimum elements of a State operating permits program as specified in 40 CFR part 70. EPA is also approving the Utah Construction Permit Program found in section R307–1–3 of the State's regulations under section 112(l) of the Act for the purpose of creating Federally enforceable permit conditions for sources of hazardous air pollutants listed pursuant to section 112(b) of the Act, and, under the authority of title V and 40 CFR part 70, for the purpose of providing a mechanism to implement section 112(g) of the Act during any transition period between EPA's promulgation of a section 112(g) rule and adoption by the State of rules to implement section 112(g).

Since EPA proposed full approval of Utah's PROGRAM, EPA has learned that the Utah Legislature adopted two laws which provide a privilege related to Environmental Self-Evaluations—S.B. 84 and S.J.R. 6, codified at 19–7–101—19–7–108, Utah Code Annotated, and Rule 508 of the Utah Rules of Evidence. It is not clear at this time what effect, if any, this privilege might have on title V enforcement actions. However, EPA regards these bills as being wholly external to the PROGRAM submitted for approval under part 70, and consequently is taking no action in this approval on these provisions of State law. If, during PROGRAM implementation, EPA determines that these provisions interfere with Utah's enforcement responsibilities under part 70, EPA will consider this grounds for withdrawing PROGRAM approval in accordance with 40 CFR 70.10(c).

In Utah's part 70 program submission, the State indicated that it is not seeking approval from EPA to administer the State's part 70 PROGRAM within the exterior boundaries of Indian Reservations in Utah. In this notice, EPA is approving Utah's part 70 PROGRAM for all areas within the State except the following: lands within the exterior boundaries of Indian Reservations (including the Uintah and Ouray, Skull Valley, Paiute, Navajo, Goshute, White Mesa, and Northwestern Shoshoni Indian Reservations) and any other areas which are "Indian Country" within the meaning of 18 U.S.C. 1151 (excepted areas).

In not extending the scope of Utah's part 70 PROGRAM to sources located in the excepted areas, EPA is not making a determination that the State either has adequate jurisdiction or lacks jurisdiction over such sources. Should the State of Utah choose to seek program approval within these areas, it may do so without prejudice. Before EPA would approve the State's part 70 PROGRAM for any portion of the excepted areas, EPA would have to be satisfied that the State has authority, either pursuant to explicit Congressional authorization or applicable principles of Federal Indian law, to enforce its laws against existing and potential pollution sources within any geographical area for which it seeks program approval and that such approval would constitute sound administrative practice.

Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 standards as promulgated by EPA as they apply to part 70 sources. Section 112(l)(5) requires that the State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, the EPA is promulgating approval under section 112(l)(5) and 40 CFR 63.91 of the State's PROGRAM for receiving delegation of section 112 standards that are unchanged from Federal standards as promulgated. This program for delegations applies to sources covered by the part 70 program, as well as non-part 70 sources.

III. Administrative Requirements

A. Docket

Copies of the State's submittal and other information relied upon for the final full approval, including public comments received and reviewed by EPA on the proposal, are maintained in a docket at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this final full approval. The docket is available for public inspection at the location listed under the **ADDRESSES** section of this document.

B. Executive Order 12866

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

C. Regulatory Flexibility Act

The EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: May 26, 1995.

Jack W. McGraw,

Acting Regional Administrator.

Part 70, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. Appendix A to part 70 is amended by adding the entry for Utah in alphabetical order to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Utah.

(a) Utah Department of Environmental Quality—Division of Air Quality: submitted on April 14, 1994; effective on July 10, 1995.

(b) [Reserved]

[FR Doc. 95–13927 Filed 6–7–95; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST Docket No. 1; Amdt. 1–270]

Organization and Delegation of Powers and Duties Transfer of Delegations From the Administrator of the Research and Special Programs Administration to the Director of the Bureau of Transportation Statistics

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: Responsibility for the Department's aviation information program has been transferred from the Administrator of the Research and Special Programs Administration to the Director of the Bureau of Transportation Statistics. This rule amends the delegations to be in accordance with the changed responsibilities. The rule is necessary to reflect the delegations in the Code of Federal Regulations.

EFFECTIVE DATE: This rule is effective on May 28, 1995.

FOR FURTHER INFORMATION CONTACT: Steven B. Farbman, Office of the Assistant General Counsel for Regulation and Enforcement (202) 366–9306, United States Department of Transportation, 400 7th Street SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: Responsibility for the Department's aviation information program is being transferred from the Administrator of the Research and Special Programs Administration (RSPA) to the Director of the Bureau of Transportation Statistics (BTS). The office within RSPA that has had this responsibility is the Office of Airline Statistics (OAS), formerly known as the Office of Aviation Information Management (OAIM). The name change occurred as part of a 1990 reorganization of RSPA. Although the Code of Federal Regulations (CFR) was not revised to reflect the name change, the industry was informed of the change by a directive issued by RSPA.

The office within BTS that is receiving the responsibility is the Office of Airline Information. This rule

amends the delegations to be in accordance with the transfer. Included among the delegations is the authority to make and amend whatever regulations are necessary to carry out the provisions of 49 U.S.C. 40101 *et seq.*, formerly the Federal Aviation Act of 1958, as amended. (Pub. L. 103–272, enacted July 5, 1994, revised and recodified the Federal Aviation Act within Subtitle VII of Title 49.) We will publish another final rule that will redesignate the Department's regulation that sets forth the authority of the Director of OAIM and will revise those portions of the CFR that still refer to RSPA and OAIM with respect to the aviation information program.

Since this rule relates to departmental management, organization, procedure, and practice, notice and public comment are unnecessary. For the same reason, good cause exists for not publishing this rule at least 30 days before its effective date, as is ordinarily required by 5 U.S.C. 553(d). Because the date of the transfer of responsibility for the aviation information program is May 28, 1995, that is the effective date of this rule.

List of Subjects in 49 CFR Part 1

Authority delegations (Government agencies), Organizations and functions (Government agencies).

PART 1—[AMENDED]

1. The authority citation for Part 1 continues to read as follows:

Authority: 49 U.S.C. 322; Pub. L. 101–552, 28 U.S.C. 2672, 31 U.S.C. 3711(a)(2).

§ 1.2 [Amended]

2. Section 1.2 is amended by adding a new paragraph (j) to read as follows:

* * * * * *

(j) The Director of the Bureau of Transportation Statistics.

§ 1.3 [Amended]

3. Section 1.3(b) is amended by adding a new paragraph (b)(10) to read as follows:

* * * * *

(10) The Bureau of Transportation Statistics, headed by the Director.

§ 1.4 [Amended]

4. Section 1.4 is amended by adding a new paragraph (l) to read as follows:

* * * * *

(l) *The Bureau of Transportation Statistics.* Is responsible for:

(1) Compiling, analyzing, and publishing a comprehensive set of transportation statistics to provide timely summaries and total (including industrywide aggregates and multiyear averages) of transportation-related information;

(2) Establishing and implementing, in cooperation with the modal administrators, the States, and other Federal officials, a comprehensive, long-term program for the collection and analysis of data relating to the performance of the national transportation system;

(3) Issuing guidelines for the collection of information by the Department required for statistics to be compiled pursuant to 49 U.S.C. 111(c)(1) in order to ensure that such information is accurate, reliable, relevant, and in a form that permits systematic analysis;

(4) Coordinating the collection of information by the Department required for statistics to be compiled pursuant to 49 U.S.C. 111(c)(1) with related information-gathering activities conducted by the other Federal departments and agencies collecting appropriate data not elsewhere gathered;

(5) Making the statistics published under this subsection readily accessible, in compliance with all disclosure laws, regulations, and requirements; and.

(6) Identifying information that is needed in accordance with 49 U.S.C. 111(c)(1) but which is not being collected, reviewing such needs at least annually with the Advisory Council on Transportation Statistics, and making recommendations to appropriate Department of Transportation research officials concerning extramural and intramural research programs to provide such information.

§ 1.53 [Amended]

5. Section 1.53(g) is removed and reserved.

6. A new § 1.71 is added as follows:

§ 1.71 Delegations to the Director of the Bureau of Transportation Statistics.

The Director of the Bureau of Transportation Statistics is delegated authority to exercise powers and perform duties under the following statutes:

(a) *Aviation information.* (1) 49 U.S.C. 329(b)(1), relating to collection and dissemination of information on civil aeronautics;

(2) Section 4(a)(7) of the Civil Aeronautics Board Sunset Act of 1984 (October 4, 1984; Pub. L. 98–443), relating to the reporting of the extension of unsecured credit to political candidates (section 401, Federal Election Campaign Act of 1971; 2 U.S.C. 451), in conjunction with the General Counsel and the Assistant Secretary for Aviation and International Affairs; and

(3) 49 U.S.C. 40113 (relating to taking such actions and issuing such regulations as may be necessary to carry out responsibilities under the Act), 49 U.S.C. 41702 (relating to the duty of carriers to provide safe and adequate service), 49 U.S.C. 41708 and 41709 (relating to the requirement to keep information and the forms in which it is to be kept), and 49 U.S.C. 41701 (relating to establishing just and reasonable classifications of carriers and rules to be followed by each) as appropriate to carry out the responsibilities under this paragraph in conjunction with the General Counsel and the Assistant Secretary for Aviation and International Affairs.

(b) [Reserve].

Issued at Washington, DC this 25th day of May 1995.

Federico Peña,

Secretary of Transportation.

[FR Doc. 95–13877 Filed 6–7–95; 8:45 am]

BILLING CODE 4910–62–M

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 92–59; Notice 2]

RIN 2127–AE58

Federal Motor Vehicle Safety Standards; Brake Hoses and Motor Vehicle Brake Fluids

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule.

SUMMARY: This rule amends Federal Motor Vehicle Safety Standards No. 106, *Brake hoses*, and No. 116, *Motor vehicle brake fluids* to specify a new referee material to be used in the compatibility testing of brake hoses and brake fluids. Referee material is used to test specimens of brake hose and fluid for compliance with the standards' requirements. This action is necessary because the present referee material, RM–66–03, will become commercially unavailable. The intended effect of this rule is to ensure the continued availability of the referee material used to test brake hoses and fluids.

DATES: *Effective Date:* This final rule is effective July 10, 1995. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 10, 1995.

Petitions for Reconsideration: Any petition for reconsideration of this final rule must be received by NHTSA not later than July 10, 1995.

ADDRESSES: Petitions for reconsideration should refer to the docket and notice numbers set forth at the beginning of this rule and be submitted to the following: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, D.C. 20590. It is requested, but not required, that 10 copies of any petition be submitted.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Carter, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW Washington, D.C. 20590. Mr. Carter's telephone number is: (202) 366–5274.

SUPPLEMENTARY INFORMATION: Federal Motor Vehicle Safety Standards No. 106, *Brake hoses*, and No. 116, *Motor vehicle brake fluids*, specify performance requirements for brake hoses and motor vehicle brake fluid. Included in the performance requirements for Standard No. 106 is a brake fluid compatibility test, and included in Standard No. 116 are compatibility and chemical stability tests. The procedures for the compatibility and chemical stability tests currently reference the referee material brake fluid specified by the Society of Automotive Engineers (SAE) in J1703. SAE develops, blends, packages, and distributes referee material fluids for use by NHTSA and others for these tests.

Brake fluid compatibility is considered an important factor in establishing brake hose life and strength characteristics. Standard No. 106's compatibility test measures hydraulic brake hose compatibility with brake fluid. The brake hose that is being tested is filled with the SAE Compatibility Fluid for a specified number of hours at specified temperatures, and then is subjected to constriction and burst strength tests. The current compatibility fluid—RM–66–03 Compatibility Fluid (i.e., "RM–66–03")—is referenced in the test procedures for the standard's brake fluid compatibility test.

Standard No. 116's compatibility requirements determine the compatibility of brake fluid used in motor vehicles with a referee material. The SAE compatibility fluid that is used in these tests as a referee material should be representative of the fluids found in a braking system in service. The tests measure the compatibility of fluids of different chemical bases by checking whether there are undesirable chemical interactions resulting from the mixture of fluids. Section S6.10 determines the compatibility of a brake fluid with other brake fluids. This section currently references RM–66–03 compatibility fluid as the referee material used in the test procedure.

The current compatibility fluid, RM–66–03, is a blend of four proprietary, commercial brake fluids: Dow HD50–4, Delco Supreme II, Dow 455, and Olin HDS–79. However, because one of these fluids is no longer available and a second one will soon be removed from the market, this compatibility fluid is no longer being produced. Existing quantities of the compatibility fluid have been exhausted. The SAE has already replaced RM–66–03 with a new referee material, RM–66–04.

Rulemaking Petition and Proposal

On December 27, 1991, SAE petitioned the agency to amend portions of Standard No. 106 and Standard No. 116 to specify the RM–66–04 referee material in place of the then used, but soon to be outdated, RM–66–03 compatibility fluid. The RM–66–04 material was developed specifically for the SAE J1703 *Motor Vehicle Brake Fluid* standard. It consists of four American, one Asian and one European fluid, blended equally by volume.

NHTSA proposed amending Standard Nos. 106 and 116 to specify the use of RM–66–04 referee material in place of RM–66–03. 57 FR 49162, October 30, 1992. The agency tentatively concluded that the new compatibility fluid should be specified in the standard since it will be commercially available and the current fluid would not. The agency further believed that the new referee material would be more representative of fluids that will be in service. The agency noted that the International Standards Organization (ISO) is also proposing to use RM–66–04, and that use of the same material would be consistent with international harmonization.

The agency also proposed that the change to the RM–66–04 compatibility fluid be effective on January 1, 1995, but that optional use of RM–66–04 would be permitted 30 days after publication of a final rule. The effective date is discussed further in the "Effective date" section.

Comments on the NPRM

In response to the NPRM, the agency received comments from Chrysler, Ford and General Motors. All three commenters supported the wording of the proposed regulatory text. Ford supported the proposed effective date of the amendment and the proposal to permit optional compliance.

Agency Decision

Since all comments supported its proposals, NHTSA adopts the proposals as final. Accordingly, the agency amends S5.3.9 and S6.7.1(a) of Standard No. 106, and S6.5.4.1 through S6.5.4.3, S6.10.1 through S6.10.3(a), and S7.2 of Standard No. 116. In addition, this final rule incorporates by reference Appendix B of SAE Standard J1703 JAN 1995, "Motor Vehicle Brake Fluid." This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Society of Automotive Engineers, 400 Commonwealth Drive, Warrendale, PA 15096. Copies may be inspected at the NHTSA Docket Room, 400 Seventh Street, S.W., Room 5109, Washington, D.C. 20590. (Docket hours are 9:30 a.m. to 4 p.m. Monday through Friday), or at the Office of the Federal Register, 800 North Capitol St., N.W., Suite 700, Washington, D.C.

No adverse impact on safety is anticipated from the use of the new referee material in the test procedures of Standards No. 106 and 116. On the contrary, since the RM–66–03 compatibility fluid is no longer commercially available, ascertaining whether hoses and fluids comply with criteria related to compatibility and boiling points will be difficult. Amending the standards to allow the use of RM–66–04 compatibility fluid in place of RM–66–03 ensures that a compatibility fluid representative of today's brake fluids is readily available for the compliance tests of those standards.

Effective Date

There is good cause for the effective date for this rule. The agency believes an expedited effective date is appropriate since the RM–66–03 material is no longer being produced. Since RM–66–03 is no longer available, manufacturers should be permitted the option of using the new RM–66–04 compatibility fluid almost immediately. This rule permits manufacturers to use the RM–66–04 compatibility fluid 30 days after publication of this rule.

Rulemaking Analyses and Notice

1. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule was not reviewed under E.O. 12866, "Regulatory Planning and Review." NHTSA has considered the impact of this rulemaking action under the Department of Transportation's regulatory policies and procedures. The agency believes that a

full regulatory evaluation is not required because the rule will have only minimal economic impacts. The rule will only have a minimal cost impact on manufacturers and users of brake fluids because one referee material will merely replace another referee material. No change is expected in the cost of the new referee material. RM–66–03 fluid was sold at $8.00 per quart. The agency anticipates that RM–66–04 fluid will be sold at the same price.

2. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this action on small entities. Based upon this evaluation, I certify that the final rule would not have a significant economic impact on a substantial number of small entities. Accordingly, no regulatory flexibility analysis has been prepared. The final rule only specifies that manufacturers of brake fluid are to substitute one type of referee material for another type of referee material. Therefore, there should be no cost impacts that would affect the purchase price of brake hoses or brake fluid. Thus, neither manufacturers of motor vehicles, nor small businesses, small organizations, and small governmental units which purchase motor vehicles, would be significantly affected by the amendment.

3. National Environmental Policy Act

The agency has also considered the environmental implications of this final rule in accordance with the National Environmental Policy Act of 1969 and determined that the final rule would not significantly affect the human environment.

4. Executive Order 12612 (Federalism)

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612. It has been determined that the final rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. No state laws would be affected.

5. Civil Justice Reform

This final rule would not have any retroactive effect. Under 49 U.S.C. section 30103, whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. section 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Incorporation by reference, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

PART 571—[AMENDED]

In consideration of the foregoing, 49 CFR Part 571 is amended as follows.

1. The authority citation for Part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

§ 571.189 [Amended]

2. In Section 571.106, S5.3.9 and paragraph (a) of S6.7.1 are revised to read as follows:

* * * * *

S5.3.9 *Brake fluid compatibility, constriction, and burst strength.* Except for brake hose assemblies designed for use with mineral or petroleum-based brake fluids, a hydraulic brake hose assembly shall meet the constriction requirement of S5.3.1 after having been subjected to a temperature of 200 °F for 70 hours while filled with SAE RM–66–04 Compatibility Fluid, as described in Appendix B of SAE Standard J1703 JAN 1995, "Motor Vehicle Brake Fluid." It shall then withstand water pressure of 4,000 psi for 2 minutes and thereafter shall not rupture at less than 5,000 psi (S6.2). (SAE RM–66–03 Compatibility Fluid, as described in Appendix A of SAE Standard J1703 NOV83, "Motor Vehicle Brake Fluid," November 1983, may be used in place of SAE RM–66–04 until January 1, 1995.)

* * * * *

S6.7.1 *Preparation.*

(a) Attach a hose assembly below a 1-pint reservoir filled with 100 ml. of SAE RM–66–04 Compatibility Fluid as shown in Figure 2. (SAE RM–66–03 Compatibility Fluid, as described in Appendix A of SAE Standard J1703 NOV83, "Motor Vehicle Brake Fluid," November 1983, may be used in place of SAE RM–66–04 until January 1, 1995.)

* * * * *

§ 571.189 [Amended]

3. In Section 571.116, S6.5.4 is republished for the convenience of the reader; S6.5.4.1, S6.5.4.2, S6.5.4.3, S6.10.1, S6.10.2, paragraph (a) of S6.10.3 and S7.2 are revised to read as follows:

S6.5.4 *Chemical stability.*

S6.5.4.1 *Materials.* SAE RM–66–04 Compatibility Fluid as described in Appendix B of SAE Standard J1703 JAN 1995, "Motor Vehicle Brake Fluid." (SAE RM–66–03 Compatibility Fluid as described in Appendix A of SAE Standard J1703 Nov83, "Motor Vehicle Brake Fluid," November 1983, may be used in place of SAE RM–66–04 until January 1, 1995.)

S6.5.4.2 *Procedure.*

(a) Mix 30 ± 1 ml. of the brake fluid with 30 ± 1 ml. of SAE RM–66–04 Compatibility Fluid in a boiling point flask (S6.1.2(a)). Determine the initial ERBP of the mixture by applying heat to the flask so that the fluid is refluxing in 10 ± 2 minutes at a rate in excess of 1 drop per second, but not more than 5 drops per second. Note the maximum fluid temperature observed during the first minute after the fluid begins refluxing at a rate in excess of 1 drop per second. Over the next 15 ± 1 minutes, adjust and maintain the reflux rate at 1 to 2 drops per second. Maintain this rate for an additional 2 minutes, recording the average value of four temperature readings taken at 30 second intervals as the final ERBP.

(b) Thermometer and barometric corrections are not required.

S6.5.4.3 *Calculation.*

The difference between the initial ERBP and the final average temperature is the change in temperature of the refluxing mixture. Average the results of the duplicates to the nearest 0.5 °C (1.0 °F).

* * * * *

S6.10.1 *Summary of the procedure.*

Brake fluid is mixed with an equal volume of SAE RM–66–04 Compatibility Fluid, then tested in the same way as for water tolerance (S6.9) except that the bubble flow time is not measured. This test is an indication of the compatibility of the test fluid with other motor vehicle brake fluids at both high and low temperatures.

S6.10.2 *Apparatus and materials.*

(a) *Centrifuge tube.* See S7.5.1(a).

(b) *Centrifuge.* See S7.5.1(b).

(c) *Cold Chamber.* See S6.7.2(b)

(d) *Oven.* See S6.9.2(d)

(e) *SAE RM–66–04 Compatibility Fluid.* As described in Appendix B of SAE Standard J1703 JAN 1995 "Motor Vehicle Brake Fluid." (SAE RM–66–03 Compatibility Fluid as described in Appendix A of SAE Standard J1703 NOV83, "Motor Vehicle Brake Fluid," November 1983, may be used in place of SAE RM–66–04 until January 1, 1995.)

S6.10.3 *Procedure.*

(a) *At low temperature.*

Mix 50 ± 0.5 ml. of the brake fluid with 50 ± 0.5 ml. of SAE RM–66–04 Compatibility Fluid. Pour this mixture into a centrifuge tube and stopper with a clean dry cork. Place tube in the cold chamber maintained at minus 40° ± 2 °C (minus 40° ± 3.6 °F) After 24 ± 2 hours, remove tube, quickly wipe with a clean lint-free cloth saturated with ethanol (isopropanol when testing DOT 5 fluids) or acetone. Examine the test specimen for evidence of sludging, sedimentation, or crystallization. Test fluids, except DOT 5 SBBF, shall be examined for stratification.

* * * * *

S7.2 *Water content of motor vehicle brake fluids.* Use analytical methods based on ASTM D1123–59, "Standard Method of Test for Water in Concentrated Engine Antifreezes by the Iodine Reagent Method," for determining the water content of brake fluids, or other methods of analysis yielding comparable results. To be acceptable for use, such other method must measure the weight of water added to samples of the SAE RM–66–04 and TEGME Compatibility Fluids within ± 15 percent of the water added for additions up to 0.8 percent by weight, and within ± 5 percent of the water added for additions greater than 0.8 percent by weight. The SAE RM–66–04 Compatibility Fluid used to prepare the samples must have an original ERBP of not less than 205 °C (401 °F) when tested in accordance with S6.1. The SAE TEGME fluid used to prepare the samples must have an original ERBP of not less than 240 °C (464 °F) when tested in accordance with S6.1.

* * * * *

Issued on: June 2, 1995.

Ricardo Martinez,

Administrator.

[FR Doc. 95–13932 Filed 6–7–95; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 950206041–5041–01; I.D. 053095A]

Groundfish of the Gulf of Alaska; Pollock in Area 61

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for pollock in Statistical Area 61 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the second quarterly allowance for pollock in this area.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), June 2, 1995, until 12 noon, A.l.t., July 1, 1995.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

The second quarterly allowance of pollock total allowable catch in Statistical Area 61 was established by the final 1995 harvest specifications of groundfish (60 FR 8470, February 14, 1995) as 7,595 metric tons (mt), determined in accordance with § 672.20(c)(1)(ii)(A).

The Director, Alaska Region, NMFS (Regional Director), has determined, in accordance with § 672.20(c)(2)(ii), that the 1995 second quarterly allowance of pollock in Statistical Area 61 soon will be reached. Therefore, the Regional Director has established a directed fishing allowance of 6,835 mt after determining that 760 mt will be taken as incidental catch in directed fishing for other species in Statistical Area 61 in the GOA. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 61 in the GOA.

Directed fishing standards for applicable gear types may be found in the regulations at § 672.20(g).

Classification

This action is taken under 50 CFR 672.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 2, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management.

[FR Doc. 95–13953 Filed 6–2–95; 3:04 pm]

BILLING CODE 3510–22–F

50 CFR Part 672

[Docket No. 950206041–5041–01; I.D.053095C]

Groundfish of the Gulf of Alaska; Pollock in Area 63

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 63 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the second quarterly allowance for pollock in this area.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), June 5, 1995, until 12 noon, A.l.t., July 1, 1995.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

The second quarterly allowance of pollock total allowable catch in Statistical Area 63 was established by the final 1995 harvest specifications of groundfish (60 FR 8470, February 14, 1995) as 4,078 metric tons (mt), determined in accordance with § 672.20(c)(1)(ii)(A).

The Director, Alaska Region, NMFS (Regional Director), has determined, in accordance with § 672.20(c)(2)(ii), that the 1995 second quarterly allowance of pollock in Statistical Area 63 soon will be reached. Therefore, the Regional Director has established a directed fishing allowance of 3,670 mt after determining that 408 mt will be taken as incidental catch in directed fishing for other species in Statistical Area 63 in the GOA. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 63.

Directed fishing standards for applicable gear types may be found in the regulations at § 672.20(g).

Classification

This action is taken under 50 CFR 672.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 2, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–13954 Filed 6–2–95; 3:04 pm]

BILLING CODE 3510–22–F

50 CFR Part 672

[Docket No. 950206041–5041–01; I.D. 053095B]

Groundfish of the Gulf of Alaska; Pollock in Area 62

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 62 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the second quarterly allowance for pollock in this area.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), June 5, 1995, until 12 noon, A.l.t, July 1, 1995.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

The second quarterly allowance of pollock total allowable catch in Statistical Area 62 was established by the final 1995 harvest specifications of groundfish (60 FR 8470, February 14, 1995) as 3,826 metric tons (mt), determined in accordance with § 672.20(c)(1)(ii)(A).

The Director of the Alaska Region, NMFS (Regional Director), has determined, in accordance with § 672.20(c)(2)(ii), that the 1995 second quarterly allowance of pollock in Statistical Area 62 soon will be reached. Therefore, the Regional Director has established a directed fishing allowance of 3,443 mt after determining that 383 mt will be taken as incidental catch in directed fishing for other species in Statistical Area 62 in the GOA. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 62.

Directed fishing standards for applicable gear types may be found in the regulations at § 672.20(g).

Classification

This action is taken under 50 CFR 672.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 2, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–13955 Filed 6–2–95; 3:04 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register

Vol. 60, No. 110

Thursday, June 8, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Federal Housing Enterprise Oversight

12 CFR Part 1750

RIN 2550–AA03

Minimum Capital

AGENCY: Office of Federal Housing Enterprise Oversight, HUD.

ACTION: Proposed rule.

SUMMARY: The Office of Federal Housing Enterprise Oversight (OFHEO) proposes to issue a regulation for determining the minimum capital requirement for the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation (collectively, the Enterprises). The proposed regulation defines the necessary terms and sets forth the methodology for computing the minimum capital level. The proposed regulation also establishes procedures for the filing of quarterly minimum capital reports by each Enterprise. In addition, the proposed regulation establishes procedures under which OFHEO will determine the capital classification of each Enterprise on a quarterly basis.

DATES: Written comments on the proposed regulation must be received by August 7, 1995.

ADDRESSES: All comments concerning the proposed regulation should be addressed to Anne E. Dewey, General Counsel, Office of Federal Housing Enterprise Oversight, 1700 G Street NW., 4th Floor, Washington, D.C. 20552. Copies of all communications received will be available for examination by interested parties at the Office of Federal Housing Enterprise Oversight.

FOR FURTHER INFORMATION CONTACT: Gary L. Norton, Deputy General Counsel (202/414–3800); or Michael P. Scott, Assistant Director, Office of Research, Analysis and Capital Standards (202/414–3800), 1700 G Street NW., 4th Floor, Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION:

I. Background

Title XIII of the Housing and Community Development Act of 1992, Pub. L. No. 102–550, known as the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, 12 U.S.C. 4501 *et seq.* (Act), established the Office of Federal Housing Enterprise Oversight (OFHEO). OFHEO is an independent office within the Department of Housing and Urban Development with responsibility for ensuring that the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Enterprises) are adequately capitalized and operating in a safe and sound manner. Included among the express statutory authorities of the Director of OFHEO is the authority to issue regulations establishing the capital level requirements.[1]

On February 8, 1995, OFHEO published an Advance Notice of Proposed Rulemaking[2] as the first step toward developing the risk-based capital regulation required by section 1361 of the Act.[3] The risk-based capital requirements will be based on a stress test to be developed by OFHEO. The stress test will determine the amount of capital that an Enterprise must hold to absorb the projected losses associated with credit and interest rate risks during a ten-year period of economic stress. That amount plus an additional 30 percent to cover management and operations risks will constitute the risk-based capital level of the Enterprise.

Separate from the risk-based capital requirements, section 1362 of the Act prescribes the minimum capital requirement for the Enterprises.[4] Unlike the risk-based capital requirements, which are based on the stress test, the minimum capital level is computed largely on the basis of statutorily established ratios that are applied to certain defined on- and off-balance sheet items of the Enterprises.

An Enterprise's capital serves as a cushion to absorb financial losses, thereby reducing the risk of failure. As specified by the Act, the minimum capital level of an Enterprise represents an essential amount of capital needed as protection against the broad categories of risk in its businesses. The minimum capital level is not designed to address the risks of specific exposures within these categories. In addition, none of the capital levels specified in the Act represents the amount needed by an Enterprise to operate safely and soundly under all circumstances.

Section 1364 of the Act[5] requires the Director of OFHEO to determine the capital classification of each Enterprise not less than quarterly. The proposed minimum capital regulation provides procedures for each Enterprise to file a minimum capital level report each quarter and at other times, as required by the Director. In addition, it implements the provisions of section 1368 of the Act,[6] which require OFHEO to provide each Enterprise with notice and an opportunity to comment on its capital classification.

II. Interim Procedures

As discussed below, the Act specifies the minimum capital ratios applicable to on-balance sheet assets and to certain off-balance sheet obligations, *e.g.*, mortgage-backed securities (MBS), but requires adjustment of the minimum capital ratio applicable to other off-balance sheet obligations. Following the appointment of the Director of OFHEO, OFHEO implemented the statutory minimum capital and capital classification provisions by establishing, through administrative action, interim procedures for computing the minimum capital level. These interim procedures will continue to be used until the effective date of the final minimum capital regulation.

On-Balance Sheet Assets

The interim procedures apply the minimum capital ratio applicable to on-balance sheet assets as specified in section 1362(a)(1) of the Act.[7] That section establishes a minimum capital ratio of 2.50 percent of the aggregate on-balance sheet assets of the Enterprises determined in accordance with generally accepted accounting principles (GAAP).

[1] Act, section 1313(b)(1) (12 U.S.C. 4513(b)(1)).
[2] 60 FR 7468, Feb. 8, 1995.
[3] 12 U.S.C. 4611.
[4] 12 U.S.C. 4612.
[5] 12 U.S.C. 4614.
[6] 12 U.S.C. 4618.
[7] 12 U.S.C. 4612(a)(1).

Mortgage-Backed Securities[8]

For MBS, the interim procedures apply the minimum capital ratio specified in section 1362(a)(2) of the Act.[9] That section establishes a minimum capital ratio of 0.45 percent of the unpaid principal balance of outstanding MBS and substantially equivalent off-balance sheet instruments[10] that the Enterprises issue or guarantee. It only applies to MBS and substantially equivalent instruments that are not included among the on-balance sheet items of the Enterprises.

Other Off-Balance Sheet Obligations

Section 1362(a)(3) of the Act[11] requires OFHEO to adjust the minimum capital ratios for off-balance sheet obligations other than MBS. That adjustment must reflect the differences between the credit risk of such obligations and the credit risk of MBS. That section further provides that commitments in excess of 50 percent of the average dollar amount of the commitments outstanding each quarter over the preceding four quarters are to be excluded from minimum capital level computations. The following discussion describes the interim procedures for determining minimum capital requirements for off-balance sheet obligations other than MBS.

Commitments[12]

OFHEO determined that there is no significant difference between the credit risk of commitments and the credit risk of MBS. Therefore, the interim procedures set a minimum capital ratio for commitments of 0.45 percent, which is applied to 50 percent of the average of the dollar amounts of commitments outstanding on the date for which the minimum capital level is being computed and the dates of the three preceding quarter-ends.

[8] Mortgage-backed securities are defined in the proposed regulation as securities, investments, or substantially equivalent instruments that represent an interest in a pool of loans secured by mortgages or deeds of trust where the principal or interest payments to the investor in the security or substantially equivalent instrument are guaranteed or effectively guaranteed by an Enterprise.

[9] 12 U.S.C. 4612(a)(2).

[10] An off-balance sheet obligation is defined in the proposed regulation to mean a binding agreement, contract, or similar arrangement that requires or may require future payment(s) in money or kind by another party to an Enterprise or that effectively guarantees all or part of such payment(s) to third parties, where such agreement or contract is a source of credit risk for an Enterprise not included on its balance sheet.

[11] 12 U.S.C. 4612(a)(3).

[12] A commitment is defined in the proposed regulation to mean any contractual, legally binding arrangement that obligates an Enterprise to purchase mortgages for portfolio or securitization.

Multifamily Credit Enhancements

Multifamily credit enhancements (MFCEs) are guarantees by an Enterprise of payments on multifamily mortgage revenue bonds issued by state and local housing finance agencies. The guarantees permit state and local agencies to obtain a lower cost of funds. The bonds are collateralized by multifamily mortgages to which the Enterprise has recourse in the event of a default. OFHEO concluded that the risk of MFCEs is most analogous to the risk of multifamily MBS. Therefore, the interim procedures apply the minimum capital ratio for MBS (0.45 percent) to the outstanding principal amount of bonds with MFCEs.

Sold Portfolio Remittances Pending

Sold portfolio remittances pending are funds held in custodial accounts awaiting collection by one of the Enterprises for disbursement to the holders of MBS. The obligations associated with these funds arise from the MBS accounting cycle in the accounting system of one of the Enterprises. Once payments of mortgage principal are received by a seller-servicer and placed in custodial accounts, the Enterprise reduces the reported amount of the MBS, or sold portfolio. The Enterprise eventually passes the mortgage principal payments to MBS investors.

OFHEO concluded that the sold portfolio remittances pending are essentially part of MBS. Sold portfolio remittances pending are reflected separately only as a result of the accounting treatment used by one Enterprise. Therefore, the interim procedures apply the same minimum capital ratio for MBS (0.45 percent) to the dollar amount of sold portfolio remittances pending.

Interest Rate and Foreign Exchange Rate Contracts

The Enterprises use interest rate contracts[13] to obtain more desirable financing terms and hedge interest rate risk exposure. Fannie Mae uses foreign exchange rate contracts[14] to fix the United States dollar costs of debt issued in foreign currencies. The credit risk associated with interest rate and foreign exchange rate contracts is the risk of loss that may result when a counterparty defaults.

Because the credit risk of interest rate and foreign exchange rate contracts is not fundamentally different than the risk of those contracts to banks and bank holding companies, the interim procedures apply substantially the same requirements as the risk-based requirements that are applicable to banks and bank holding companies. Those bank-related requirements are contained in guidelines that have been adopted by the Board of Governors of the Federal Reserve System at 12 C.F.R. Part 208, Appendix A, for state member banks, and at 12 C.F.R. Part 225, Appendix A, for bank holding companies; by the Comptroller of the Currency at 12 C.F.R. Part 3, Appendix A, for national banks; and by the Federal Deposit Insurance Corporation at 12 C.F.R. Part 325, Appendix A, for federally insured state nonmember banks (hereinafter referred to as the Guidelines).[15]

The Guidelines convert off-balance sheet items into balance sheet equivalents by determining a credit equivalent amount (CEA) for each item. Risk-weights are applied to the CEA based on the type of counterparty and on the extent to which qualifying collateral has been posted.

The CEA for interest rate and foreign exchange rate contracts is an estimate of the overall credit exposure associated with such contracts. Under the Guidelines, the CEA is the sum of two components: (1) the current exposure and (2) the potential future exposure. The current exposure (often referred to as "replacement cost") of a contract is equal to the contract's market value or zero, if its market value is negative. The potential future exposure of an interest rate or foreign exchange rate contract (often referred to as the "add-on") is calculated for each contract, regardless of its current market value.[16] Potential future exposure is calculated by multiplying the notional amount of the contract by a credit conversion factor, which is determined by the remaining maturity and by the type of the contract (0.0 percent for interest rate contracts expiring in less than one year and 0.5 percent for those expiring in more than one year; 1.0 percent for foreign exchange contracts expiring in less than one year and 5.0 percent for those expiring in more than a year).

[13] Interest rate contracts include single currency interest rate swaps, basis swaps, forward rate agreements, interest rate options purchased (including caps, collars, and floors), and other instruments that give rise to similar credit risks (including when-issued securities and forward deposits accepted).

[14] Foreign exchange rate contracts include cross-currency interest rate swaps, forward foreign exchange contracts, currency options purchased, and other instruments that give rise to similar credit risks.

[15] The Guidelines are based upon a framework developed jointly by supervisory authorities from the countries that are represented on the Basle Committee on Banking Regulations and Supervisory Practices.

[16] Because the floating rates associated with basis swaps are highly correlated, potential future exposure is not material; the credit exposure for these contracts is evaluated solely on the basis of the mark-to-market values.

Once the CEA of an interest rate or foreign exchange rate contract has been determined, the amount of the contract is assigned a risk-weight (20 or 50 percent) appropriate to the counterparty or, if relevant, the nature of any collateral or guarantees. Total risk-weighted assets are then multiplied by 8.0 percent[17] to determine the amounts included in the Enterprise's minimum capital level.

The interim procedures allow the Enterprises to recognize the risk-reducing benefits of qualifying bilateral netting contracts as outlined in the Federal Reserve Board's final rule amending the risk-based capital guidelines (59 FR 62987, Dec. 7, 1994). Thus, the Enterprises may net positive and negative mark-to-market values of interest rate and foreign exchange rate contracts in the determination of the current exposure portion of the CEA.

The interim procedures supplement the Guidelines in the area of foreign exchange rate contracts. Fannie Mae includes items associated with foreign exchange rate contracts on its balance sheet. With respect to such contracts, OFHEO determines the amount that would be required under the Guidelines and compares it to the amount that would result from applying the 2.50 percent ratio for on-balance sheet assets contained in the Act, and applies the higher amount.

III. Basis for the Proposed Minimum Capital Regulation[18]

The proposed regulation continues the interim approach with respect to on-balance sheet items, MBS, commitments, multifamily credit enhancements, and sold portfolio remittances pending. However, the proposed regulation modifies the interim approach with respect to interest rate and foreign exchange rate contracts. A discussion of how OFHEO arrived at the approach adopted by the proposed regulation follows.

The Act requires OFHEO to adjust the statutory minimum capital ratio applicable to any class of off-balance sheet obligations if the credit risk of that class of obligations differs from the credit risk of MBS. OFHEO believes that the credit risk of interest rate and foreign exchange rate contracts, as measured by their CEAs, is significantly greater than that of MBS. Accordingly, the proposed regulation contains a minimum capital ratio for interest rate and foreign exchange rate contracts that is higher than the ratio applicable to MBS. Under the proposed regulation, this ratio will be applied to the CEAs of these contracts. The proposed regulation provides a relatively lower ratio for exposures that are collateralized than for those that are not collateralized. However, the proposed regulation does not distinguish between different types of counterparties. The minimum capital amount associated with interest rate and foreign exchange rate contracts under the proposed regulation is not expected to be substantially different than it is under the interim procedures.

Risk of MBS

In developing the proposed regulation, OFHEO analyzed the relative risk of interest rate and foreign exchange rate contracts as compared with MBS. The source of credit risk of MBS to the Enterprises is the risk of defaults and losses on the underlying mortgages. Guarantee fees provide a continuing source of income to offset these losses.

The aggregate risk associated with the Enterprises' underlying mortgages is low because the Enterprises have—

- Very broad geographic diversification;
- Strict and consistent mortgage underwriting standards; and
- Requirements for minimum initial collateralization of 125 percent (*i.e.*, maximum 80 percent loan-to-value ratio) or supplemental mortgage insurance, as well as increasing levels of collateralization as loans amortize and property values increase.

Neither Enterprise has experienced a net credit loss on its MBS. Annual losses to date have ranged from two basis points to ten basis points (expressed as a percentage of the outstanding portfolio) and have been easily covered by guarantee fee income, which has ranged from 20 to 25 basis points.

Risks of Interest Rate and Foreign Exchange Rate Contracts

The Enterprises limit the credit risk of interest rate and foreign exchange rate contracts by restricting their business to high quality counterparties and adjusting collateral requirements on the basis of the current replacement cost and counterparty credit quality of interest rate and foreign exchange rate contracts. Notwithstanding these limitations of risk, interest rate and foreign exchange rate contracts entail the following risks beyond those of MBS:

- Large swings in market rates, on which interest rate and foreign exchange rate contracts are based, may simultaneously increase exposure to, and risk of default by, one or more counterparties, which are typically financial firms.
- While losses may be infrequent, systemic problems could cause disproportionately high losses when they do occur.
- Counterparty risk is concentrated. The loss resulting from the default of a single counterparty could be many times larger than the amount of capital that would be associated with the application of a 0.45 percent capital ratio.
- The interest rate and foreign exchange rate contracts market is

[17] Eight percent represents the required ratio of total capital to risk-weighted assets contained in the Guidelines.

[18] In the course of developing this proposed regulation, OFHEO solicited and received comments and recommendations from the Enterprises regarding alternative approaches. One Enterprise asserted that a low minimum capital ratio for interest rate and foreign exchange rate contracts is justified because these contracts are not used for speculative purposes; credit losses on these contracts have not been experienced; the contracts are mostly executed under master netting agreements with counterparties that are investment-grade; and, depending on counterparty credit quality, require the posting of collateral or other credit enhancements. The Enterprise suggested that OFHEO continue to apply the Guidelines to calculate the CEA to measure the credit exposure of interest rate and foreign exchange rate contracts, but that OFHEO apply a fixed ratio of 0.45 percent to the CEA, rather than apply the 8.00 percent ratio and various risk-weights, as required by the Guidelines. The Enterprise suggested the elimination of risk-weights because it believes they do not measure credit quality. The Enterprise suggested that the enforcement of strict credit and performance standards for its counterparties, coupled with aggressive collateral requirements for credit exposure, eliminates the need for credit differentiation among counterparties and the corresponding risk-weights. The Enterprise also recommended that OFHEO's regulations reflect, without amendment, the proposed and final changes to the Guidelines related to the calculation of current and potential future exposure. These changes would incorporate the impact of bilateral netting in the calculation of credit exposure, extend the capital treatment under the Guidelines to activities other than interest rate and currency contracts, and add higher credit conversion factors for longer-term contracts.

The other Enterprise supported the application of the Guidelines to calculate the CEA and recommended that OFHEO apply, as a starting point, a capital ratio of 0.45 percent to that amount. It made further recommendations that would collectively have the effect of lowering the capital requirements, namely, that OFHEO consider: (1) easing the requirements under which bilateral netting contracts become "qualifying," enabling an institution to "net" and thus reduce its current and potential future exposure; (2) increasing the benefit of netting over what proposed amendments to the Guidelines provide by applying the "net-to-gross ratio" (the current net positive market value of swaps divided by their current gross positive market value) on a portfolio-wide basis rather than counterparty-by-counterparty, and applying it to 100 percent of the notional amount rather than 50 percent; and (3) adjusting the 0.45 percent capital ratio applied to the CEA of interest rate and foreign exchange rate contracts downward based on the credit ratings of the counterparties, collateral arrangements, and other credit enhancements.

comparatively new; therefore, the functioning of this market is less predictable in terms of operational and legal risk.

• Interest rate and foreign exchange rate contract exposures are not as fully-collateralized as are the mortgages underlying the Enterprises' MBS.

• There is no current stream of fee income to offset losses on interest rate and foreign exchange rate contracts associated with counterparty failures.

The effect of these differences is difficult to quantify. Derivative markets are relatively new. While the Enterprises have not experienced any losses on interest rate or foreign exchange rate contracts, recent losses by major participants make clear that the unexpected, sudden failure of a financial firm that is a counterparty is a risk that must be seriously considered.

Based on a weighing of these factors, the proposed regulation applies a higher ratio to the CEAs of interest rate and foreign exchange rate contracts than to MBS. The proposed regulation applies a ratio of 3.00 percent to uncollateralized exposure and a ratio of 1.50 percent to collateralized exposure. OFHEO believes that the proposed regulation will encourage prudent management of counterparty risk by reducing the capital requirement by half to the extent a counterparty posts collateral that qualifies under the Guidelines. This approach is consistent with a minimum capital level that focuses on the general risk characteristics of instruments rather than the credit quality of third parties.

The proposed regulation continues to allow the Enterprises to recognize the risk-reducing benefits of qualifying bilateral netting contracts. As under the interim procedures, the Enterprises are allowed to net positive and negative mark-to-market values of interest rate and foreign exchange rate contracts in the determination of the current exposure portion of the CEA.[19]

In developing this proposal, OFHEO compared the results of the application of the interim procedures and the proposed regulation with respect to interest rate and foreign exchange rate contracts. For each of the past five quarters, OFHEO determined the weighted average capital ratio that resulted from the application of the interim procedures for all interest rate and foreign exchange rate contracts. The weighted average capital ratio for each Enterprise over this period ranged between 2.24 percent and 3.41 percent. Had the ratios in the proposed regulation been used, the average ratio for each Enterprise would have ranged from 2.32 percent to 3.00 percent. Thus, the application of the ratios in the proposed regulation will result in a minimum capital level roughly consistent with the minimum capital level under the interim procedures.

OFHEO considered the argument that because MBS are accorded a much lower capital ratio by the Act than MBS under the Guidelines, consistency requires that interest rate and foreign exchange rate contracts be accorded a similarly lower ratio. Unlike the Enterprises, institutions subject to the Guidelines do not issue MBS that are fully guaranteed by the institutions. The Guidelines would apply the same capital ratio to MBS backed by the issuers' guarantees as is applied to mortgages held in portfolio. Banks' mortgage loans held in portfolio are considerably more risky than the mortgages underlying the Enterprises' MBS because they are not as well-diversified, on average have experienced higher loss rates, are not required to be as well-collateralized, and are not protected by a stream of guarantee fee income.

OFHEO has also considered the argument that OFHEO should establish a low minimum capital ratio for interest rate and foreign exchange rate contracts in recognition of the steps the Enterprises take to manage that risk. Further, OFHEO has considered the argument that OFHEO should apply different minimum capital ratios for interest rate and foreign exchange rate contracts based on the specific counterparty risk of the contract. OFHEO believes that these arguments are inconsistent with the purpose of minimum capital requirements. The proposed minimum capital regulation is designed to establish an essential amount of capital that an Enterprise, with given levels of outstanding business, must hold to address broad categories of risks. The minimum capital ratios should reflect risk inherent in types of instruments, not the Enterprises' current practices.

IV. Proposed Minimum Capital Regulation: Section-by-Section Summary

The proposed regulation sets forth the minimum capital requirements that will replace the interim procedures currently in use. The proposed minimum capital regulation also establishes procedures for the filing of minimum capital reports by the Enterprises each quarter, or at other times as required by the Director. The proposed minimum capital regulation also requires OFHEO to provide each Enterprise with notice and opportunity to comment on its capital classification. A summary of the treatment of the on- and off-balance sheet items, the filing procedures, and the notice of capital classification follows.

On-Balance Sheet Assets

The minimum capital ratio for on-balance sheet assets is specified in section 1362(a)(1) of the Act.[20] That section establishes a minimum capital ratio equal to 2.50 percent of the aggregate on-balance sheet assets of the Enterprises determined in accordance with GAAP. The proposed regulation adopts that ratio.

Mortgage-Backed Securities

Section 1362(a)(2) of the Act[21] establishes a minimum capital ratio of 0.45 percent of the unpaid principal balance of outstanding MBS and substantially equivalent instruments issued or guaranteed by the Enterprises that are not included in the on-balance sheet assets of the Enterprises. The proposed regulation adopts that ratio.

Other Off-Balance Sheet Obligations

Section 1362(a)(3) of the Act[22] also establishes a minimum capital ratio of 0.45 percent for all other off-balance sheet obligations, except as adjusted by the Director to reflect the differences in the credit risk of those off-balance sheet obligations in relation to MBS and substantially equivalent instruments. The proposed regulation continues the interim treatment for three of the four major categories of off-balance sheet obligations: (1) commitments will require capital equal to 0.45 percent of 50 percent of the average dollar amount of commitments outstanding each quarter over the preceding four quarters, (2) multifamily credit enhancements will require capital equal to 0.45 percent of the unpaid principal balance, and (3) sold portfolio remittances pending will require capital equal to 0.45 percent of the dollar amount.[23] Any individual interest rate and foreign exchange rate contract or group of contracts subject to a recognized netting agreement will require capital equal to 3.00 percent of the CEA, except to the extent that the Enterprises hold qualifying collateral. The portion of the CEA equal to the market value of the collateral for that contract or group of contracts will equal 1.50 percent.

Minimum Capital Report

The proposed regulation requires that each Enterprise file with the Director of OFHEO a minimum capital report each quarter or at other times, as required by the Director. The report will contain the information required by OFHEO in written instructions to the Enterprise, including, but not limited to, an estimate of the minimum capital level and an estimate of core capital overage or shortfall relative to the estimated minimum capital level. The proposed regulation provides the Director flexibility to determine the specific items to be included in the minimum capital report. The proposed regulation also addresses the timing, certification, and amendment of the report. The information provided by each Enterprise in the minimum capital report will be used by OFHEO in determining the capital classification of the Enterprise.

Notice of Capital Classification

Section 1368 of the Act[24] requires OFHEO to provide the Enterprises with notice of, and an opportunity to comment on, the proposed minimum capital classification. This proposed regulation provides that before OFHEO determines the capital classification of an Enterprise, OFHEO will provide the Enterprise with written notice of the proposed classification and a 30-day period during which each Enterprise may submit its views regarding the classification. The proposed regulation provides that OFHEO may extend the period for up to 30 days and may shorten the period to less than 30 days if the Director determines that the condition of an Enterprise so warrants. Following the expiration of the response period, OFHEO will take into consideration any comments received from an Enterprise prior to issuing the final notice of capital classification.

Regulatory Impact

Executive Order 12606, The Family

This proposed regulation does not have potential for significant impact on family formulation, maintenance, and general well-being, and thus, is not subject to review under Executive Order 12606.

Executive Order 12612, Federalism

This proposed regulation has no federalism implications that warrant the preparation of a Federalism Assessment in accordance with Executive Order 12612.

Executive Order 12866, Regulatory Planning and Review

This proposed regulation has been reviewed by the Office of Management and Budget pursuant to Executive Order 12866.

Unfunded Mandates Reform Act of 1995

This proposed regulation does not include a federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year. As a result, this proposed regulation does not warrant the preparation of an assessment statement in accordance with the Unfunded Mandates Reform Act of 1995.

Regulatory Flexibility Act

This proposed regulation will not have significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This proposed regulation contains no information collection requirements that require the approval of the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 12 CFR Part 1750

Minimum capital, capital classifications.

Accordingly, for the reasons set forth in the preamble, OFHEO proposes to amend Chapter XVII of Title 12 of the Code of Federal Regulations by adding Part 1750 to read as follows:

[19] Proposals by the Comptroller of the Currency (59 FR 45243, Sept. 1, 1994) and the Board of Governors of the Federal Reserve System (59 FR 43508, Aug. 24, 1994) would make other changes to the Guidelines. First, they would increase the number of credit conversion factors that are used to measure the potential future exposure, subjecting contracts with longer maturities to higher factors. Second, they would set new credit conversion factors for contracts related to equities, precious metals, and other commodities. (These are not currently relevant to the Enterprises.) Finally, they would change the way that potential future exposure is calculated when the contracts are subject to a qualifying bilateral netting agreement, resulting in a reduction in the amount of capital required for the netted interest rate and foreign exchange rate contracts.

OFHEO will continue to review the progress of the banking agency proposals which permit similar risk-reducing benefits of netting in the calculation of potential future exposure and which address other issues identified in this proposal. OFHEO will make a determination of the appropriateness of the inclusion of these changes in the minimum capital regulation if and when these banking agency proposals become effective.

[20] 12 U.S.C. 4612(a)(1).

[21] 12 U.S.C. 4612(a)(2).

[22] 12 U.S.C. 4612(a)(3).

[23] Freddie Mac accounts for these funds held by seller-servicers in custodial accounts separately from MBS until principal payments are passed on to MBS investors. Fannie Mae includes these custodial accounts in its MBS accounts.

[24] 12 U.S.C. 4618.

PART 1750—CAPITAL

Subpart A—Minimum Capital

Sec.
1750.1 General.
1750.2 Definition.
1750.3 Procedure and timing.
1750.4 Minimum capital level computation.
1750.5 Notice of capital classification.

Appendix A to Subpart A of Part 1750—Minimum Capital Level Components for Interest Rate and Foreign Exchange Rate Contracts

Subpart B—[Reserved]

Authority: 12 U.S.C. 4513, 4514, 4612, 4614, 4618.

Subpart A—Minimum Capital

§ 1750.1 General.

The regulation contained in this Subpart A establishes the minimum capital requirements for each Enterprise. The board of directors of each Enterprise is responsible for ensuring that the Enterprise maintains capital at a level that is sufficient to ensure the continued financial viability of the Enterprise and in excess of the minimum capital level contained in this Subpart A.

§ 1750.2 Definitions.

For purposes of this Subpart A, the following definitions shall apply.

Act means the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, found at Title XIII of the Housing and Community Development Act of 1992, Pub. L. No. 102–550, 12 U.S.C. 4501 *et seq.*

Affiliate means any entity that controls, is controlled by, or is under common control with, an Enterprise, except as otherwise provided by the Director.

Commitment means any contractual, legally binding arrangement that obligates an Enterprise to purchase mortgages for portfolio or securitization.

Core Capital (1) means the sum of—

(i) the par or stated value of outstanding common stock,

(ii) the par or stated value of perpetual, noncumulative preferred stock,

(iii) paid-in capital, and

(iv) retained earnings; and

(2) Does not include any amounts the Enterprise could be required to pay at the option of an investor to retire capital or debt instruments.

Director means the Director of OFHEO.

Enterprise means the Federal National Mortgage Association and any affiliate thereof or the Federal Home Loan

Mortgage Corporation and any affiliate thereof.

Foreign exchange rate contracts means cross-currency interest rate swaps, forward foreign exchange contracts, currency options purchased, and any other instruments that give rise to similar credit risks.

Interest rate contracts means single currency interest rate swaps, basis swaps, forward rate agreements, interest rate options purchased (including caps, collars and floors purchased), and any other instruments that give rise to similar credit risks (including when-issued securities and forward deposits accepted).

Mortgage-backed security means a security, investment, or substantially equivalent instrument that represents an interest in a pool of loans secured by mortgages or deeds of trust where the principal or interest payments to the investor in the security or substantially equivalent instrument are guaranteed or effectively guaranteed by an Enterprise.

Multifamily credit enhancement means a guarantee by an Enterprise of the payments on a multifamily mortgage revenue bond issued by a state or local housing finance agency.

Notional amount means the face value of the underlying financial instrument(s) on which an interest rate or foreign exchange rate contract is based.

Off-balance sheet obligation means a binding agreement, contract, or similar arrangement that requires or may require future payment(s) in money or kind by another party to an Enterprise or that effectively guarantees all or part of such payment(s) to third parties, where such agreement or contract is a source of credit risk that is not included on its balance sheet.

OFHEO means the Office of Federal Housing Enterprise Oversight.

Other off-balance sheet obligations means all off-balance sheet obligations of an Enterprise that are not mortgage-backed securities or substantially equivalent instruments.

Perpetual, noncumulative preferred stock means preferred stock that (1) does not have a maturity date, (2) provides the issuer the ability and the legal right to eliminate dividends and does not permit the accruing or payment of impaired dividends, (3) cannot be redeemed at the option of the holder, and (4) has no other provisions that will require future redemption of the issue, in whole or in part, or that will reset the dividend periodically based, in whole or in part, on the Enterprise's current credit standing, such as auction rate, money market, or remarketable preferred stock, or that may cause the dividend to increase to a level that could create an incentive for the issuer to redeem the instrument, such as exploding rate stock.

Qualifying collateral means cash on deposit, securities issued or guaranteed by the central governments of the OECD-based group of countries,[1] United States Government agencies, or United States Government-sponsored agencies, and securities issued or guaranteed by multilateral lending institutions or regional development banks.

§ 1750.3 Procedures and timing.

(a) Each Enterprise shall file with the Director a minimum capital report each quarter or at such other times as the Director requires, in his or her sole discretion. The report shall contain the information that responds to all of the items required by OFHEO in written instructions to the Enterprise, including, but not limited to:

(1) estimate of the minimum capital level;

(2) estimate of core capital coverage or shortfall relative to the estimated minimum capital level;

(3) such other information as may be required by the Director.

(b) The quarterly minimum capital report shall be submitted not later than April 30, July 30, October 30, and January 30 of each year.

(c) Each minimum capital report shall be submitted in writing and in such other format as may be required by the Director.

(d) In the event an Enterprise makes an adjustment to its financial statements for a quarter or a date for which the information was requested, which would cause an adjustment to a minimum capital report, the Enterprise shall file with the Director an amended minimum capital report not later than 3 business days after the date of such adjustment.

(e) Each minimum capital report or any amended minimum capital report shall contain a declaration by an officer authorized by the board of directors of the Enterprise to make such a declaration, including, but not limited to a president, vice president, or treasurer, that the report is true and correct to the best of such officer's knowledge and belief.

§ 1750.4 Minimum capital level computation.

(a) The minimum capital level for each Enterprise shall be computed by adding the following amounts:

(1) 2.50 percent times the aggregate on-balance sheet assets of the Enterprise;

(2) 0.45 percent times the unpaid principal balance of mortgage-backed securities and substantially equivalent instruments that were issued or guaranteed by the Enterprise;

(3) 0.45 percent of 50 percent of the average dollar amount of commitments outstanding each quarter over the preceding four quarters;

(4) 0.45 percent of the outstanding principal amount of bonds with multifamily credit enhancements;

(5) 0.45 percent of the dollar amount of sold portfolio remittances pending;

(6) (i) 3.00 percent of the credit equivalent amount of interest rate and foreign exchange rate contracts except to the extent of the current market value of posted qualifying collateral, computed in accordance with Appendix A to this subpart;

(ii) 1.50 percent of the credit equivalent amount of interest rate and foreign exchange rate contracts equal to the market value of posted qualifying collateral, computed in accordance with Appendix A to this subpart; and

(7) 0.45 percent of the outstanding amount of other off-balance sheet obligations, excluding commitments, multifamily credit enhancements, sold portfolio remittances pending, and interest rate contracts and foreign exchange rate contracts, except as adjusted by the Director to reflect differences in the credit risk of such obligations in relation to mortgage-backed securities.

(b) Any asset or financial obligation that can be properly classified in more than one of the categories enumerated in paragraphs (a)(1) through (7) of this section shall be classified in the category that yields the highest minimum capital level.

(c) As used in this section, the term "preceding four quarters" means the last day of the quarter just ended (or the date for which the minimum capital report is filed, if different), and the three preceding quarter-ends.

§ 1750.5 Notice of capital classification.

(a) Pursuant to section 1364 of the Act (12 U.S.C. 4614), OFHEO is required to determine the capital classification of each Enterprise on a not less than quarterly basis.

(b) The determination of the capital classification shall be made following a notice to, and opportunity to respond by, the Enterprise.

(1) Not later than 60 calendar days after the date for which the minimum capital report is filed, OFHEO will provide each Enterprise with a proposed notice of classification in accordance with section 1368 of the Act (12 U.S.C. 4618). The proposed notice shall contain the following information:

(i) the proposed classification;

(ii) the proposed minimum capital level; and

(iii) the summary computation of the proposed minimum capital level.

(2) Each Enterprise shall have a period of 30 calendar days following receipt of a proposed notice of classification to submit a response regarding the proposed classification. The response period may be extended for up to 30 additional calendar days at the sole discretion of the Director. The Director may shorten the response period with the consent of the Enterprise or without such consent if the Director determines that the condition of the Enterprise requires a shorter period.

(3) The Director shall take into consideration any response to the proposed notice received from the Enterprise and shall issue a final notice of capital classification for each Enterprise not later than 30 calendar days following the end of the response period in accordance with section 1368 of the Act (12 U.S.C. 4618).

Appendix A to Subpart A of Part 1750—Minimum Capital Level Components for Interest Rate and Foreign Exchange Rate Contracts

The minimum capital level components for interest rate and foreign exchange rate contracts are computed on the basis of the credit equivalent amounts of such contracts. Credit equivalent amounts are computed for each of the following off-balance sheet interest rate and foreign exchange rate instruments:

1. *Interest Rate Contracts*

a. Single currency interest rate swaps.
b. Basis swaps.
c. Forward rate agreements.
d. Interest rate options purchased (including caps, collars, and floors).
e. Any other instrument that gives rise to similar credit risks (including when-issued securities and forward deposits accepted).

2. *Foreign Exchange Rate Contracts*

a. Cross-currency interest rate swaps.
b. Forward foreign exchange rate contracts.
c. Currency options purchased.
d. Any other instrument that gives rise to similar credit risks.

Foreign exchange rate contracts with an original maturity of 14 calendar days or less and instruments traded on exchanges that require daily payment of variation margins are excluded from the minimum capital level computation. Over-the-counter options purchased, however, are included and treated in the same way as the other interest rate and foreign exchange rate contracts.

3. *Calculation of Credit Equivalent Amounts*

a. The credit equivalent amount of an off-balance sheet rate contract that is not subject to a qualifying bilateral netting contract in accordance with this Appendix A is equal to the sum of the current exposure (sometimes referred to as the replacement cost) of the contract and an estimate of the potential future credit exposure over the remaining life of the contract.

b. The current exposure is determined by the mark-to-market value of the contract. If the mark-to-market value is positive, then the current exposure is the mark-to-market value. If the mark-to-market value is zero or negative, then the current exposure is zero. Mark-to-market values are measured in United States dollars, regardless of the currency or currencies specified in the contract, and should reflect changes in the relevant rates, as well as counterparty credit quality.

c. The potential future credit exposure of a contract, including a contract with a negative mark-to-market value, is estimated by multiplying the notional principal amount of the contract by a credit conversion factor. The Enterprises shall use the effective rather than the apparent or stated notional amount in this calculation. The credit conversion factors are:

Remaining maturity	Interest rate contracts (percent)	Foreign exchange rate contracts (percent)
One year or less	0.0	1.0
Over one year	0.5	5.0

d. Because foreign exchange rate contracts involve an exchange of principal upon maturity, and foreign exchange rates are generally more volatile than interest rates, higher conversion factors have been established for foreign exchange rate contracts than for interest rate contracts.

e. No potential future credit exposure is calculated for single currency interest rate swaps in which payments are made based upon two floating rate indexes, so-called floating/floating or basis swaps. The credit exposure on these contracts is evaluated solely on the basis of their mark-to-market values.

4. *Avoidance of Double Counting*

In certain cases, credit exposures arising from the interest rate and foreign exchange instruments covered by this Appendix A may already be reflected, in part, on the balance sheet. To avoid double counting such exposures in the assessment of capital adequacy, counterparty credit exposures arising from the types of instruments covered by this Appendix A may need to be excluded from balance sheet assets in calculating the minimum capital level.

5. *Collateral*

The sufficiency of collateral and guarantees for off-balance sheet items is determined by the market value of the collateral in relation to the credit equivalent amount. Collateral held against a netting contract is not recognized for minimum capital level purposes unless it is legally available to support the single legal obligation credit by the netting contract. The only forms of collateral that are formally recognized by the minimum capital level framework are cash on deposit in the bank; securities issued or guaranteed by the central governments of the OECD-based group of countries,[1] United States Government agencies, or United States Government-sponsored agencies; and securities issued by multilateral lending institutions or regional development banks. Excess collateral held against one contract or a group of contracts for which a recognized netting agreement exists may not be considered.

6. *Netting*

a. For purposes of this Appendix A, netting refers to the offsetting of positive and negative mark-to-market values in the determination of a current exposure to be used in the calculation of a credit equivalent amount. Any legally enforceable form of bilateral netting (that is, netting with a single counterparty) of interest rate contracts and foreign exchange rate contracts is recognized for purposes of calculating the credit equivalent amount provided that:

i. The netting is accomplished under a written netting contract that creates a single legal obligation, covering all included individual contracts, with the effect that the Enterprise would have a claim to receive, or obligation to pay, only the net amount of the sum of the positive and negative mark-to-market values on included individual contracts in the event that a counterparty, or a counterparty to whom the contract has been validly assigned, fails to perform due to default, insolvency, liquidation, or similar circumstances.

ii. The Enterprise obtains a written and reasoned legal opinion(s) representing that in the event of a legal challenge—including one resulting from default, insolvency, liquidation, or similar circumstances—the relevant court and administrative authorities would find the Enterprise's exposure to be such a net amount under:

[1] The OECD-based group of countries is comprised of all full members of the Organization for Economic Cooperation and Development (OECD), as well as countries that have concluded special lending arrangements with the International Monetary Fund (IMF) associated with the Fund's General Arrangements to Borrow. The OECD includes the following countries: Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States. Saudi Arabia has concluded special lending arrangements with the IMF associated with the IMF's General Arrangements to Borrow.

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—The law of the jurisdiction in which the counterparty is chartered or the equivalent location in the case of noncorporate entities, and if a branch of the counterparty is involved, then also under the law of the jurisdiction in which the branch is located;
—The law that governs the individual contracts covered by the netting contract; and
—The law that governs the netting contract.

iii. The Enterprise establishes and maintains procedures to ensure that the legal characteristics of netting contracts are kept under review in the event of possible changes in relevant law.

iv. The Enterprise maintains in its files documentation adequate to support the netting of rate contracts, including a copy of the bilateral netting contract and necessary legal opinions.

b. A contract containing a walkaway clause is not eligible for netting for purposes of calculating the credit equivalent amount.[2]

c. By netting individual contracts for the purpose of calculating its credit equivalent amount, the Enterprise represents that it has met the requirements of this Appendix A and all the appropriate documents are in the Enterprise's files and available for inspection by OFHEO. OFHEO may determine that an Enterprise's files are inadequate or that a netting contract, or any of its underlying individual contracts, may not be legally enforceable under any one of the bodies of law described in this Appendix A. If such a determination is made, the netting contract may be disqualified from recognition for minimum capital level purposes or underlying individual contracts may be treated as though they are not subject to the netting contract.

d. The credit equivalent amount of rate contracts that are subject to a qualifying bilateral netting contract is calculated by adding the current exposure of the netting contract and the sum of the estimates of the potential future credit exposures on all individual contracts subject to the netting contract, estimated in accordance with section 3 of this Appendix A. Offsetting contracts in the same currency maturing on the same date will have lower potential future exposure as well as lower current exposure. Therefore, for purposes of calculating potential future credit exposure to a netting counterparty for foreign exchange rate contracts and other similar contracts in which notional principal is equivalent to cash flows, total notional principal is defined as the net receipts falling due on each value date in each currency.

e. The current exposure of the netting contract is determined by summing all positive and negative mark-to-market values of the individual contracts included in the netting contract. If the net sum of the mark-to-market values is positive, then the current exposure of the netting contract is equal to that sum. If the net sum of the mark-to-market values is zero or negative, then the current exposure of the netting contract is zero. OFHEO may determine that a netting contract qualifies for minimum capital level netting treatment even though certain individual contracts may not qualify. In such instances, the nonqualifying contracts should be treated as individual contracts that are not subject to the netting contract.

f. In the event a netting contract covers contracts that are normally excluded from the minimum capital level computation—for example, foreign exchange rate contracts with an original maturity of fourteen calendar days or less, or instruments traded on exchanges that require daily payment of variation margin—an Enterprise may elect consistently either to include or exclude all mark-to-market values of such contracts when determining net current exposure.

[2] A walkaway clause is a provision in a netting contract that permits a non-defaulting counterparty to make lower payments than it would make otherwise under the contract, or no payment at all, to a defaulter or to the estate of a defaulter, even if the defaulter or the estate of the defaulter is a net creditor under the contract.

Subpart B—[Reserved]

Dated: June 1, 1995.

Aida Alvarez,

Director, Office of Federal Housing Enterprise Oversight.

[FR Doc. 95–13913 Filed 6–7–95; 8:45 am]

BILLING CODE 4220–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–72–AD]

Airworthiness Directives; Boeing Model 757 Series Airplanes Equipped With Pratt & Whitney Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain Boeing Model 757 series airplanes, that would have required inspection of certain fuse pins, and replacement of certain fuse pins with certain other fuse pins. That proposal was prompted by the development of new corrosion-resistant steel fuse pins. This action revises the proposed rule by including a requirement for inspections of refinished straight fuse pins and replacement of cracked refinished straight fuse pins with certain other straight fuse pins. The actions specified by this proposed AD are intended to prevent cracking of the midspar fuse pins, which may lead to separation of the strut and engine from the wing of the airplane.

DATES: Comments must be received by June 29, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–72–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Carrie Sumner, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2778; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–72–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–72–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain Boeing Model 757 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on August 9, 1994 (59 FR 40490). That NPRM would have superseded AD 93–16–09, amendment 39–8666 (58 FR 45044, August 26, 1993) to require:

1. inspections to detect cracking of straight fuse pins,
2. replacement of cracked straight fuse pins with either new 15–5PH corrosion-resistant steel fuse pins or like pins,
3. replacement of bulkhead fuse pins with new 15–5PH corrosion-resistant steel fuse pins, and
4. repetitive inspections of newly-installed fuse pins. (Installation of the new 15–5PH corrosion-resistant steel fuse pins would allow a longer repetitive inspection interval than was previously provided by AD 93–16–09.)

That NPRM was prompted by the development of new 15–5PH corrosion-resistant steel fuse pins. Cracking of the midspar fuse pins, if not detected and corrected in a timely manner, could result in separation of the strut and engine from the wing of the airplane.

Due consideration has been given to the comments received in response to that NPRM.

One commenter requests that the proposal be revised to clarify the replacement requirements. The commenter questions whether straight fuse pins may be replaced independently of the other fuse pins in the same pylon when only one fuse pin is cracked. Further, the commenter questions whether steel fuse pins having part number (P/N) 311N5067–1 may be installed on the same pylon as corrosion-resistant steel (CRES) fuse pins having P/N 311N5217–1. The FAA concurs that clarification is warranted. It is not the FAA's intent to require replacement of uncracked fuse pins. However, the FAA has determined that it is unacceptable to mix the types of fuse pins on the same strut since fuse pin double shear load depends upon the type of fuse pin. Therefore, a steel fuse pin having part number (P/N) 311N5067–1 may not be installed on the same strut that has a corrosion-resistant steel (CRES) fuse pin having P/N 311N5217–1 installed on that strut. However, each strut must have fuse pins of the same type, which may differ from fuse pins on another strut. A new paragraph (e) has been added to this supplemental NPRM to clarify the replacement requirements.

One commenter requests that the proposal be revised to include repetitive inspections of refinished straight fuse pins. The commenter asserts that these pins should be inspected repetitively until cracking is found, at which time they should be replaced with the new 15–5PH fuse pins. The FAA concurs. The FAA's intent was to continue the requirements of AD 93–16–09 to inspect repetitively currently installed refinished straight fuse pins. However, this requirement was inadvertently excluded from the originally issued NPRM; therefore, a new paragraph (b) has been added to this supplemental NPRM to specify this.

[All paragraphs subsequent to paragraph (b) have been redesignated in this supplemental NPRM to accommodate the new paragraph (b).]

One commenter requests that the proposed requirement in paragraph (b) of the NPRM, which would require replacement of the bulkhead fuse pins within 90 days, be extended to 3,000 flight cycles. The commenter notes that there have been no reports of cracking or corrosion on 68 bulkhead fuse pins that had accumulated between 4,500 and 6,000 flight cycles. Further, the commenter states that its suggested 3,000-flight cycle compliance time will not adversely affect safety, since test results indicate that these fuse pins will maintain limit load beyond 5,000 flight cycles after the detection of an initial crack. Additionally, the commenter asserts that the fail-safe capability of the strut on Model 757 series airplanes can withstand full limit load with a total failure (i.e., failure of both shear planes) of the midspar fuse pin.

The FAA concurs. The FAA has reviewed the test data submitted by this commenter and has determined that extending the compliance time for replacement to 3,000 flight cycles will not adversely affect safety, since the strut of Model 757 series airplanes has fail-safe capability and can withstand full limit load, even with total failure of a midspar fuse pin. Paragraph (c) of this supplemental NPRM specifies this revised compliance time.

One commenter requests that the proposed repetitive inspection interval of 3,000 flight cycles for inspection of the new 15–5PH fuse pins be revised to coincide with operators' regularly scheduled maintenance visits at 3,500 landings. The FAA concurs. The FAA finds that extending the compliance time by 500 flight cycles will not adversely affect safety, and will allow the modification to be performed at a base during regularly scheduled maintenance where special equipment and trained maintenance personnel will be available if necessary. Therefore, paragraphs (a)(2)(ii), (d)(1), and (d)(2)(ii) of the supplemental NPRM specify a repetitive inspection interval of 3,500 flight cycles for inspection of the new 15–5PH corrosion-resistant steel fuse pins.

One commenter states that Boeing Service Bulletin 757–54A0019, Revision 5, dated March 17, 1994 (which is referenced in the proposal as the appropriate source of service information), does not describe procedures for eddy current inspections of the new 15–5PH corrosion-resistant steel fuse pins. Therefore, the commenter requests that the proposal be revised to reference another source of service information for accomplishing the eddy current inspections. The FAA does not concur. However, since these procedures are the same as those for the old style fuse pins, part number 311N5067–1, the FAA finds that the procedures in the referenced service bulletin also apply to the new 15–5PH fuse pins. Therefore, paragraph (a)(1)(ii) and (d)(2)(ii) of this supplemental NPRM reference the procedures described in the service bulletin to perform the eddy current inspections of the new 15–5PH corrosion-resistant steel fuse pins.

The FAA has recently reviewed the figures it has used over the past several years in calculating the economic impact of AD activity. In order to account for various inflationary costs in the airline industry, the FAA has determined that it is necessary to increase the labor rate used in these calculations from $55 per work hour to $60 per work hour. The economic impact information, below, has been revised to reflect this increase in the specified hourly labor rate.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect

compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this supplemental notice to clarify this long-standing requirement.

Since these changes expand the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

There are approximately 273 Model 757 series airplanes equipped with Pratt & Whitney engines of the affected design in the worldwide fleet. The FAA estimates that 237 airplanes of U.S. registry would be affected by this proposed AD.

The inspections that were previously required by AD 93–16–09, and retained in this supplemental proposal take approximately 8 work hours per fuse pin at an average labor rate of $60 per work hour. There are 4 fuse pins per airplane. Based on these figures, the total cost impact of these inspections on U.S. operators is estimated to be $455,040, or $1,920 per airplane, per cycle. However, since the integrity and strength of the new steel fuse pins permit longer inspection intervals, the cost impact for these inspections would actually be lessened because the proposed inspections are not required to be performed as frequently as currently required by AD 93–16–09.

The proposed replacement would take approximately 56 work hours per fuse pin at an average labor rate of $60 per work hour. (There are 4 fuse pins per airplane.) Required parts would be provided by the manufacturer at no cost to the operator. Based on these figures, the total cost impact of the proposed replacement on U.S. operators is estimated to be $3,185,280, or $13,440 per airplane.

The total cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The FAA recognizes that the obligation to maintain aircraft in an airworthy condition is vital, but sometimes expensive. Because AD's require specific actions to address specific unsafe conditions, they appear to impose costs that would not otherwise be borne by operators. However, because of the general obligation of operators to maintain aircraft in an airworthy condition, this appearance is deceptive. Attributing those costs solely to the issuance of this AD is unrealistic because, in the interest of maintaining safe aircraft, most prudent operators would accomplish the required actions even if they were not required to do so by the AD.

A full cost-benefit analysis has not been accomplished for this proposed AD. As a matter of law, in order to be airworthy, an aircraft must conform to its type design and be in a condition for safe operation. The type design is approved only after the FAA makes a determination that it complies with all applicable airworthiness requirements. In adopting and maintaining those requirements, the FAA has already made the determination that they establish a level of safety that is cost-beneficial. When the FAA, as in this proposed AD, makes a finding of an unsafe condition, this means that this cost-beneficial level of safety is no longer being achieved and that the proposed actions are necessary to restore that level of safety. Because this level of safety has already been determined to be cost-beneficial, a full cost-benefit analysis for this proposed AD would be redundant and unnecessary.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8666 (58 FR 45044, August 26, 1993), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 94–NM–72–AD. Supersedes AD 93–16–09, Amendment 39–8666.

Applicability: Model 757 series airplanes equipped with Pratt & Whitney engines, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (f) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

Note 2: Inspections accomplished prior to the effective date of this amendment in accordance with the procedures described in Boeing Service Bulletin 757–54A0019, Revision 4, dated May 27, 1993; Revision 3, dated March 26, 1992; or Revision 2, dated October 11, 1989; are considered acceptable for compliance with the applicable inspection specified in this amendment.

To prevent cracking of the midspar fuse pins, which may lead to separation of the strut and engine from the wing of the airplane, accomplish the following:

(a) For airplanes equipped with straight fuse pins, part number (P/N) 311N5067–1: Prior to the accumulation of 3,800 total flight cycles on the straight fuse pin, perform an eddy current inspection to detect cracking in the straight fuse pins, in accordance with Boeing Service Bulletin 757–54A0019, Revision 5, dated March 17, 1994.

(1) If no cracking is detected, repeat the inspection thereafter at intervals not to exceed 1,000 flight cycles on the straight fuse pin.

(2) If any cracking is detected, prior to further flight, accomplish the requirements of either paragraph (a)(2)(i) or (a)(2)(ii) of this AD.

(i) Replace the cracked straight fuse pin with a new straight fuse pin, P/N 311N5067–1. Prior to the accumulation of 3,800 total flight cycles on that newly installed straight fuse pin, perform an eddy current inspection to detect cracking in that straight fuse pin, in accordance with the service bulletin. Repeat the inspection thereafter at intervals not to exceed 1,000 flight cycles on that newly installed straight fuse pin. Or

(ii) Replace the cracked straight fuse pin with a new 15–5PH fuse pin, P/N 311N5217–1. Prior to the accumulation of 14,000 total flight cycles on that newly installed 15–5PH fuse pin, perform an eddy current inspection to detect cracking in that newly installed 15–5PH fuse pin, in accordance with the procedures described in the service bulletin. Repeat the inspection thereafter at intervals not to exceed 3,500 flight cycles on that newly installed 15–5PH fuse pin.

(b) For airplanes equipped with refinished straight fuse pins, P/N 311N5067–1: Prior to the accumulation of 1,000 total flight cycles on the refinished straight fuse pin, perform an eddy current inspection to detect cracking in the refinished straight fuse pins, in accordance with Boeing Service Bulletin 757–54A0019, Revision 5, dated March 17, 1994.

(1) If no cracking is detected, repeat the inspection thereafter at intervals not to exceed 1,000 flight cycles on the refinished straight fuse pin.

(2) If any cracking is detected, prior to further flight, accomplish the requirements of either paragraph (b)(2)(i), (b)(2)(ii), or (b)(2)(iii) of this AD, in accordance with the service bulletin.

(i) Replace the cracked refinished straight fuse pin with a crack-free refinished straight fuse pin, P/N 311N5067–1. Prior to the accumulation of 1,000 total flight cycles on that newly installed refinished straight fuse pin, perform an eddy current inspection to detect cracking in that newly installed refinished straight fuse pin, in accordance with the procedures described in the service bulletin. Repeat this inspection thereafter at intervals not to exceed 1,000 flight cycles on the newly installed refinished straight fuse pin. Or

(ii) Replace the cracked refinished straight fuse pin with a new straight fuse pin, P/N 311N5067–1. Prior to the accumulation of 3,800 total flight cycles on that newly installed straight fuse pin, perform an eddy current inspection to detect cracking in that newly installed straight fuse pin, in accordance with the service bulletin. Repeat the inspection thereafter at intervals not to exceed 1,000 flight cycles on that newly installed straight fuse pin. Or

(iii) Replace the cracked refinished straight fuse pin with a new 15–5PH fuse pin, P/N 311N5217–1. Prior to the accumulation of 14,000 total flight cycles on that newly installed 15–5PH fuse pin, perform an eddy current inspection to detect cracking in that newly installed 15–5PH pin, in accordance with the procedures described in the service bulletin. Repeat the inspection thereafter at intervals not to exceed 3,500 flight cycles on that newly installed 15–5PH fuse pin.

(c) For airplanes equipped with bulkhead fuse pins, P/N 311N5211–1: Within 3,000 flight cycles after the effective date of this AD, replace the bulkhead fuse pins with 15–5PH fuse pins, P/N 311N5217–1, in accordance with Boeing Service Bulletin 757–54A0019, Revision 5, dated March 17, 1994, and accomplish the requirements of paragraph (d) of this AD.

(d) For airplanes equipped with 15–5PH fuse pins: Prior to the accumulation of 14,000 total flight cycles on the 15–5PH fuse pins, perform an eddy current inspection to detect cracking in those 15–5PH fuse pins, in accordance with the procedures described in Boeing Service Bulletin 757–54A0019, Revision 5, dated March 17, 1994.

(1) If no cracking is detected, repeat the inspection thereafter at intervals not to exceed 3,500 flight cycles on the 15–5PH fuse pin.

(2) If any cracking is detected, accomplish the requirements of both paragraphs (d)(2)(i) and (d)(2)(ii) of this AD.

(i) Prior to further flight, replace any cracked 15–5PH fuse pin with a new 15–5PH fuse pin, P/N 311N5217–1, in accordance with the procedures described in the service bulletin. And

(ii) Prior to the accumulation of 14,000 total flight cycles on that newly installed 15–5PH fuse pin, perform an eddy current inspection to detect cracking in that newly installed 15–5PH fuse pin, in accordance with the procedures described in the service bulletin. Repeat the inspection thereafter at intervals not to exceed 3,500 flight cycles on that newly installed 15–5PH fuse pin.

(e) Fuse pins must be of the same type on the same strut. For example, a steel fuse pin having P/N 311N5067–1 may not be installed on the same strut that has a corrosion-resistant steel (CRES) fuse pin having P/N 311N5217–1 installed on that strut. However, fuse pins on one strut may differ from those on another strut, provided the fuse pins are not of mixed types on the same strut.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on June 2, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–14055 Filed 6–7–95; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[INTL–0024–94]

RIN 1545–AS63

Taxpayer Identifying Numbers (TIN)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Withdrawal of notice of proposed rulemaking; Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document withdraws the notice of proposed rulemaking relating to taxpayer identifying numbers published in the **Federal Register** on September 27, 1990, at 55 FR 39486. This document also contains proposed amendments to the regulations relating to requirements for furnishing a taxpayer identifying number on returns, statements, or other documents. These amendments set forth procedures for requesting a taxpayer identifying number for certain alien individuals for whom a social security number is not available. These numbers would be called "IRS individual taxpayer identification numbers." These amendments also require certain foreign persons to furnish a taxpayer identifying number on their tax returns. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written comments and outlines of the oral comments to be presented at the public hearing scheduled for 10 a.m. on September 28, 1995, must be received by September 7, 1995.

ADDRESSES: Send submissions to: CC:DOM:CORP:T:R (INTL–0024–94), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:T:R (INTL–0024–94), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. The public hearing will be held in the Internal Revenue Service Auditorium, 7400 corridor, 1111

Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Lilo A. Hester (202) 874–1490; concerning submissions and the hearing, Christina Vasquez (202) 622–7180 (not a toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, PC:FP, Washington, DC 20224.

The collection of information from certain resident alien individuals and foreign persons required to furnish taxpayer identifying numbers under section 6109 of the Internal Revenue Code (Code) is found in § 301.6109–1. This information will be used by the IRS for tax administration purposes. The likely respondents and recordkeepers are certain resident alien individuals and foreign persons such as nonresident alien individuals and foreign corporations who make a return of tax.

The burden for the collection of information contained in § 301.6109–1(d) is reflected in the burden of Form W–7.

Background

This document withdraws the notice of proposed rulemaking under section 6109 published in the **Federal Register** on September 27, 1990 at 55 FR 39486. This document also contains proposed amendments to 26 CFR part 301 to provide rules under section 6109 of the Internal Revenue Code relating to a new type of taxpayer identifying number.

Explanation of Provisions

In General

Section 6109(a) of the Code provides that, when required by regulations, a person must furnish a taxpayer identifying number (TIN) for securing proper identification of that person on any return, statement, or other document made under the Code. The assignment of a unique and permanent number to each taxpayer is important for the effective operation of the IRS automatic data processing system. The numbering system improves the IRS' ability to identify and access database records; to match information provided on tax and information returns, statements, and other documents with the proper taxpayers; and to provide better customer service to taxpayers.

The Treasury Department and the IRS are concerned about individuals who are filing tax returns but who are unable to obtain a social security number. In order to insure that all taxpayers required to provide a TIN for tax purposes are able to obtain one, the IRS is developing a separate numbering system that will make unique and permanent numbers available to those individuals. The proposed regulations explain how alien individuals, whether resident or nonresident, can obtain an IRS individual taxpayer identification number from the IRS.

The regulations require any foreign person who makes a return to provide a TIN on the return. This TIN may be an employer identification number, a social security number, or a new IRS individual taxpayer identification number in the case of an alien individual who does not have a social security number and cannot obtain one.

The Treasury Department and the IRS are also considering changes to the procedures that apply to withholding tax on payments to foreign persons in order to encourage compliance and reduce paperwork burden. The Treasury Department and the IRS are aware that significant changes in this area will impact some aspects of transactions subject to withholding. Accordingly, the Treasury Department and the IRS intend to move very cautiously, particularly by considering the possible effect of changes in these procedures on investment decisions by foreign persons and by considering the adequacy of existing procedures for those taxpayers who wish to continue to comply with current rules. Generally, no new procedures will be adopted without adequate opportunity for public comment and appropriate transition periods before taking effect. This will not, however, preclude the Treasury Department and the IRS from adopting new procedures to replace the current address rule for dividends.

Specific Changes

The most significant changes proposed by these regulations are described below. The first change is the introduction of a new IRS-issued TIN for use by alien individuals who currently do not have, and are not eligible to obtain, social security numbers. The number is called an IRS individual taxpayer identification number (ITIN). This number is intended to be issued to alien individuals, whether resident or nonresident, who are currently required to furnish a number for tax purposes but who are not entitled to obtain social security numbers. Therefore, these amendments are designed to help taxpayers maintain compliance with TIN requirements under the Code and regulations. The Social Security Administration limits its assignment of social security numbers to individuals who are U.S. citizens and alien individuals legally admitted to the United States for permanent residence or under other immigration categories which authorize U.S. employment. Therefore, IRS-issued numbers are necessary for those individuals who need a TIN but cannot qualify for a social security number.

The second change is to modify the existing rule set forth in § 301.6109–1(g) that currently excludes from the general requirement of providing a TIN, foreign persons that do not have either (1) income effectively connected with the conduct of a U.S. trade or business or (2) a U.S. office or place of business or a U.S. fiscal or paying agent. Under the proposed regulations, the exclusion is modified to require that any foreign person who makes a return of tax furnish its TIN on that return. This change is intended solely to address the IRS' and Treasury's concern that, without TINs, taxpayers cannot be identified and tax returns cannot be processed effectively.

The Treasury Department and the IRS are giving added thought to applying the TIN requirement to facilitate changes to the procedures that apply to withholding taxes on payments to foreign persons. Decisions with respect to the withholding tax system have yet to be made, and when made, will be proposed in subsequent regulations. The Treasury Department and the IRS will proceed cautiously in expanding the scope of the TIN requirement and will consider the adequacy of existing procedures for those taxpayers who wish to continue to comply with current rules.

The IRS individual taxpayer identification numbers issued under this regulation will differ from, and replace, the "temporary" TINs the IRS currently issues under the authority of section 6109(c). For example, after declaring in Rev. Rul. 84–158, 1984–2 C.B. 262, that a partnership must request the social security numbers of its individual partners (including a nonresident alien limited partner), the IRS announced in Rev. Rul. 85–61, 1985–1 C.B. 355, that it would issue temporary numbers to nonresident alien limited partners who do not have, and cannot obtain, social security numbers. All of these temporary numbers, however, will be retired upon subsequent revocation of these revenue rulings.

IRS individual taxpayer identification numbers are intended for tax use only. For example, the numbers will create no inference regarding the immigration status of a foreign person or the right of that person to be legally employed in the United States. The IRS individual taxpayer identification numbers and the information obtained by the IRS as a result of issuing numbers constitute confidential taxpayer information. Section 6103 strictly prohibits the disclosure of this information to other government agencies, private entities, or citizens. Disclosure in violation of the restrictions under section 6103 may lead to civil or criminal penalties.

Section-by-Section Analysis

Proposed § 301.6109–1(a)(1)(i) provides a general description of the types of TINs, including the new IRS individual taxpayer identification number. The IRS individual taxpayer identification number will begin with a specific number designated by the IRS and will otherwise resemble a social security number. Proposed § 301.6109–1(a)(1)(ii) provides general rules for use of the different TINs, including the rule for an estate to obtain and furnish its employer identification number when required, such as in its capacity as a payor or payee of royalties. This rule for estates was announced previously in the proposed regulations under section 6109 published in the **Federal Register** at 55 FR 39486 on September 27, 1990.

The requirement for foreign persons to provide a TIN if they have income effectively connected with the conduct of a U.S. trade or business, if they have a U.S. office or place of business, or a U.S. fiscal or paying agent during the taxable year, or if they are treated as resident alien individuals under section 6013(g) or (h), is restated without change in proposed §§ 301.6109–1(b)(2) and (c). However, proposed § 301.6109–1(b)(2)(iv) modifies the exclusion currently provided in § 301.6109–1(g) with respect to other foreign persons by providing that a foreign person filing a return of tax is subject to the TIN requirements under section 6109. For this purpose, a return of tax includes income, estate, and gift tax returns but excludes information returns, statements or other documents. This requirement is proposed to be effective for foreign persons who file returns of tax after December 31, 1995.

The provisions of § 301.6109–1(d)(2) dealing with obtaining an employer identification number are unchanged except to specify that a Form SS–4 will be available from U.S. consular offices abroad. This change is intended to accommodate those foreign persons that are required to provide an employer identification number.

The procedures governing the new IRS individual taxpayer identification number, including procedures for obtaining such a number, are set forth in proposed § 301.6109–1(d)(3). An IRS individual taxpayer identification number is applied for on Form W–7, Application for IRS Individual Taxpayer Identification Number. Under normal procedures, the application is submitted to the IRS for processing together with required documentation designed to substantiate foreign status, as well as true identity. Further guidance will be issued to specify the types of acceptable documentation. Because the IRS intends to rely as much as possible on the identifying documents that are customarily used in a foreign jurisdiction to identify a resident in that jurisdiction, the documentation requirements are likely to vary from country to country. Comments and suggestions are solicited regarding the type of documents that could be used reliably to establish the identity of taxpayers and their foreign status.

The IRS is planning a wide distribution of application forms in the United States and abroad and will insure that the form is easily available to the public. Further, in order to facilitate the application process and to expedite the issuance of the TINs, the regulations propose to authorize agreements that would permit certain persons to act as an applicant's agent. These agents are called acceptance agents. Generally, an acceptance agent may include financial institutions or educational institutions, i.e., institutions that are likely to come in contact with a large number of foreign taxpayers earning U.S. source income and that can establish to the IRS that they have the resources and procedures necessary to undertake the duties expected from an acceptance agent.

Under an agreement with the IRS, an acceptance agent would assume responsibility for providing the necessary information to the IRS for the issuance of a number, together with a certification that the applicant is a foreign person. The certification would be issued on the basis of prescribed documentation obtained from the applicant. Under this procedure, no documentation generally would be required to be furnished to the IRS, except as part of a verification process by which the IRS may periodically verify the agent's compliance with the agreement. In order to streamline the process and facilitate the agent's due diligence under the agreement, the agreement would specify the type of documentation that must be obtained to verify foreign status and true identity of an applicant.

Proposed § 301.6109–1(d)(4) provides rules for the coordination of the different TINs. A person entitled to a social security number will not be issued an IRS individual taxpayer identification number. Once a person has a social security number, that number must be used for all tax purposes, even though the person is a nonresident alien. A nonresident alien who is issued an IRS individual taxpayer identification number and later becomes entitled to a social security number (e.g., becomes a U.S. resident under an immigration visa) must apply for a social security number and must stop using the IRS number. IRS matching systems will help the IRS detect taxpayers who are incorrectly using an IRS individual taxpayer identification number. The IRS will contact those individuals and request that they obtain a social security number.

Section 301.6109–1(f) is modified to cross reference the new penalty provisions under sections 6721 through 6724.

Proposed § 301.6109–1(g)(1) provides the general rule that, in the IRS records, a person with a social security number or an employer identification number will normally be identified as a U.S. person. Regulations to be issued at a later time may make it important for a person to be identified correctly in the IRS records as a U.S. or a foreign person. Accordingly, these proposed regulations provide that the foreign person with a social security number or an employer identification number may establish foreign status with the IRS. Any foreign person that holds an employer identification number issued prior to the effective date of this proposed regulation may continue to use its employer identification number for tax purposes. However, when requested by the IRS, such persons must apply for a new employer identification number that is exclusively dedicated to foreign persons. Proposed § 301.6109–1(g)(1) also provides that an IRS individual taxpayer identification number is considered by the IRS to belong to a nonresident alien individual if the foreign status of the individual is established upon initial application for the number. If foreign status is not

established, the IRS will generally require the individual to apply for a social security number. In rare cases when a resident alien individual is not eligible for a social security number, the taxpayer will be entitled to use an IRS individual taxpayer identification number, and the IRS will note in its records that the number belongs to a U.S. person.

No re-filings are required in order to maintain foreign status described in proposed § 301.6109–1(g)(1). However, proposed § 301.6109–1(g)(2) provides that if circumstances change (for example, a taxpayer becomes a U.S. resident), then the taxpayer must notify the IRS to record the change of status. The IRS will issue guidance on procedures for notifying the IRS of a person's status or changes thereof.

Proposed § 301.6109–1(g)(3) concerns disclosure provisions. In order to make the acceptance agent's procedures possible, it is necessary that taxpayers requesting a TIN through an acceptance agent authorize the disclosure of taxpayer information to the extent necessary to allow communications between the IRS and the acceptance agent in the course of the issuance and administration of the number. Accordingly, the application form will include a waiver of the prohibition against disclosure of taxpayer information in order to permit the IRS to communicate with an acceptance agent regarding matters related to the assignment of a TIN.

Proposed Effective Date

These regulations would apply to returns, statements, or documents filed after December 31, 1995, except the provision relating to the requirement for an estate to obtain an employer identification number applies on and after January 1, 1984. Thus, these regulations would apply to foreign persons described in proposed § 301.6109–1(b)(2)(iv) who file a return of tax after December 31, 1995.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments that are submitted timely (preferably a signed original and eight (8) copies) to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for 10 a.m. on September 28, 1995. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit written comments and an outline of the topics to be discussed and the time to be devoted to each topic by September 7, 1995.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these proposed regulations is Lilo A. Hester of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, IRS. However, other personnel from the IRS and Treasury Department participated in their development.

Withdrawal of Proposed Regulations

The previously proposed regulations under § 301.6109–1, as published in the **Federal Register** on September 27, 1990, at 55 FR 39486, are hereby withdrawn.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 301.6109–1 also issued under 26 U.S.C. 6109(a), (c), and (d). * * *

Par. 2. Section § 301.6109–1 is amended as follows:

1. Paragraphs (a)(1), (b), (c), and (d)(2) are revised.
2. Paragraphs (d)(3) and (4) are added.
3. Paragraphs (f), (g), and (h) are revised.

The revisions and additions read as follows:

§ 301.6109–1 Identifying numbers.

(a) *In general*—(1) *Taxpayer identifying numbers*—(i) *Types.* There are generally three types of taxpayer identifying numbers: social security numbers, Internal Revenue Service (IRS) individual taxpayer identification numbers, and employer identification numbers. Social security numbers take the form 000–00–0000, IRS individual taxpayer identification numbers take the form 000–00–0000 but begin with a specific number designated by the IRS, and employer identification numbers take the form 00–0000000. Both social security numbers and IRS individual taxpayer identification numbers identify individual persons. For the definition of social security number and employer identification number, see §§ 301.7701–11 and 301.7701–12, respectively. For the definition of IRS individual taxpayer identification number, see paragraph (d)(3) of this section.

(ii) *Uses.* Except as otherwise provided in applicable regulations under this title or on a return, statement, or other document, and related instructions, taxpayer identifying numbers must be used as follows:

(A) Except as otherwise provided in paragraphs (a)(1)(ii)(B) and (D) of this section, an individual required to furnish a taxpayer identifying number must use a social security number.

(B) Except as otherwise provided in paragraph (a)(1)(ii)(D) of this section, an individual required to furnish a taxpayer identifying number but who is not eligible to obtain a social security number, must use an IRS individual taxpayer identification number.

(C) Any person other than an individual (such as corporations, partnerships, nonprofit associations, trusts, estates, and similar nonindividual persons) that is required to furnish a taxpayer identifying number must use an employer identification number.

(D) An individual, whether U.S. or foreign, who is an employer or who is engaged in trade or business as a sole proprietor should use an employer identification number as required by

returns, statements, or other documents and their related instructions.

* * * * *

(b) *Requirement to furnish one's own number*—(1) *U.S. persons.* Every U.S. person who makes under this title a return, statement, or other document must furnish its own taxpayer identifying number as required by the forms and the accompanying instructions. A U.S. person whose number must be included on a document filed by another person must give the taxpayer identifying number so required to the other person on request. For penalties for failure to supply taxpayer identifying numbers, see sections 6721 through 6724. For provisions dealing specifically with the duty of employees with respect to their social security numbers, see § 31.6011(b)–2 (a) and (b) of this chapter (Employment Tax Regulations). For provisions dealing specifically with the duty of employers with respect to employer identification numbers, see § 31.6011(b)–1 of this chapter (Employment Tax Regulations).

(2) *Foreign persons.* The provisions of paragraph (b)(1) of this section regarding the furnishing of one's own number shall apply to the following foreign persons—

(i) A foreign person that has income effectively connected with the conduct of a U.S. trade or business at any time during the taxable year;

(ii) A foreign person that has a U.S. office or place of business or a U.S. fiscal or paying agent at any time during the taxable year;

(iii) A nonresident alien treated as a resident under section 6013(g) or (h); and

(iv) Any other foreign person who makes a return of tax under this title (including income, estate, and gift tax returns) but excluding information returns, statements, or documents.

(c) *Requirement to furnish another's number.* Every person required under this title to make a return, statement, or other document must furnish such taxpayer identifying numbers of other U.S. persons and foreign persons that are described in paragraph (b)(2) (i), (ii), or (iii) of this section as required by the forms and the accompanying instructions. If the person making the return, statement, or other document does not know the taxpayer identifying number of the other person, such person must request the other person's number. A request should state that the identifying number is required to be furnished under authority of law. When the person making the return, statement, or other document does not know the number of the other person, and has complied with the request provision of this paragraph, such person must sign an affidavit on the transmittal document forwarding such returns, statements, or other documents to the Internal Revenue Service, so stating. A person required to file a taxpayer identifying number shall correct any errors in such filing when such person's attention has been drawn to them.

(d) * * *

(2) *Employer identification number.* Any person required to furnish an employer identification number must apply for one, if not done so previously, on Form SS–4. A Form SS–4 may be obtained from any office of the Internal Revenue Service, U.S. consular office abroad, or from an acceptance agent described in paragraph (d)(3)(iv) of this section. The person must make such application in advance of the first required use of the employer identification number to permit issuance of the number in time for compliance with such requirement. The form, together with any supplementary statement, must be prepared and filed in accordance with the form, accompanying instructions, and relevant regulations, and must set forth fully and clearly the requested data.

(3) *IRS individual taxpayer identification number*—(i) *Definition.* The term *IRS individual taxpayer identification number* means a taxpayer identifying number issued to an alien individual by the Internal Revenue Service, upon application, for use in connection with filing requirements under this title. The term *IRS individual taxpayer identification number* does not refer to a social security number or an account number for use in employment for wages. For purposes of this section, the term *alien individual* means an individual who is not a citizen or national of the United States.

(ii) *General rule for obtaining number.* Any individual who is not eligible to obtain a social security number and is required to furnish a taxpayer identifying number must apply for an IRS individual taxpayer identification number on Form W–7, Application for IRS Individual Taxpayer Identification Number, or such other form as may be prescribed by the Internal Revenue Service. Form W–7 may be obtained from any office of the Internal Revenue Service, U.S. consular office abroad, or any acceptance agent described in paragraph (d)(3)(iv) of this section. The individual shall furnish the information required by the form and accompanying instructions, including the individual's name, address, foreign tax identification number (if any), and specific reason for obtaining an IRS individual taxpayer identification number. The individual must make such application in advance of the first required use of the IRS individual taxpayer identification number to permit issuance of the number in time for compliance with such requirement. The application form, together with any supplementary statement and documentation, must be prepared and filed in accordance with the form, accompanying instructions, and relevant regulations, and must set forth fully and clearly the requested data.

(iii) *General rule for assigning number.* Under procedures issued by the Internal Revenue Service, an IRS individual taxpayer identification number will be assigned to an individual upon the basis of information reported on Form W–7 (or such other form as may be prescribed by the Internal Revenue Service) and any such accompanying documentation that may be required by the Internal Revenue Service. An applicant for an IRS individual taxpayer identification number must submit such documentary evidence as the Internal Revenue Service may prescribe in order to establish alien status and identity. Examples of acceptable documentary evidence for this purpose may include items such as an original (or a certified copy of the original) passport, driver's license, birth certificate, identity card, or U.S. visa.

(iv) *Acceptance agents*—(A) *Agreements with acceptance agents.* A person described in paragraph (d)(3)(iv)(B) of this section will be accepted by the Internal Revenue Service to act as an acceptance agent for purposes of the regulations under this section upon entering into an agreement with the Internal Revenue Service, under which the acceptance agent will be authorized to act on behalf of taxpayers seeking to obtain a taxpayer identifying number from the Internal Revenue Service. The agreement must contain such terms and conditions as are necessary to insure proper administration of the process by which the Internal Revenue Service issues taxpayer identifying numbers to foreign persons, including proof of their identity and foreign status. In particular, the agreement may contain—

(*1*) Procedures for providing Form SS–4 and Form W–7, or such other necessary form to applicants for obtaining a taxpayer identifying number;

(*2*) Procedures for providing assistance to applicants in completing

the application form or completing it for them;

(3) Procedures for collecting, reviewing, and maintaining, in the normal course of business, a record of the required documentation for assignment of a taxpayer identifying number;

(4) Procedures for submitting the application form and required documentation to the Internal Revenue Service, or if permitted under the agreement, submitting the application form together with a certification that the acceptance agent has reviewed the required documentation and that it has no actual knowledge or reason to know that the documentation is not complete or accurate;

(5) Procedures for assisting taxpayers with notification procedures described in paragraph (g)(2) of this section in the event of change of foreign status;

(6) Procedures for making all documentation or other records furnished by persons applying for a taxpayer identifying number promptly available for review by the Internal Revenue Service, upon request; and

(7) Provisions that the agreement may be terminated in the event of a material failure to comply with the agreement, including failure to exercise due diligence under the agreement.

(B) *Persons who may be acceptance agents.* An acceptance agent may include any financial institution as defined in section 265(b)(5) or § 1.165–12(c)(1)(v) of this chapter, any college or university that is an educational organization as defined in § 1.501(c)(3)–1(d)(3)(i) of this chapter, any federal agency as defined in section 6402(f) or any other person or categories of persons that may be authorized by regulations or Internal Revenue Service procedures. A person described in this paragraph (d)(3)(iv)(B) that seeks to qualify as an acceptance agent must have an employer identification number for use in any communication with the Internal Revenue Service. In addition, it must establish to the satisfaction of the Internal Revenue Service that it has adequate resources and procedures in place to comply with the terms of the agreement described in paragraph (d)(3)(iv)(A) of this section.

(4) *Coordination of taxpayer identifying numbers*—(i) *Social security number.* Any individual who is duly assigned a social security number or who is entitled to a social security number will not be issued an IRS individual taxpayer identification number. The individual can use the social security number for all tax purposes under this title, even though the individual is, or later becomes, a nonresident alien individual. Further, any individual who has an application pending with the Social Security Administration will be issued an IRS individual taxpayer identification number only after the Social Security Administration has notified the individual that a social security number cannot be issued. Any alien individual duly issued an IRS individual taxpayer identification number who later becomes a U.S. citizen, or an alien lawfully permitted to enter the United States either for permanent residence or under authority of law permitting U.S. employment, will be required to obtain a social security number. Any individual who has an IRS individual taxpayer identification number and a social security number, due to the circumstances described in the preceding sentence, must notify the Internal Revenue Service of the acquisition of the social security number and must use the newly-issued social security number as the taxpayer identifying number on all future returns, statements, or other documents filed under this title.

(ii) *Employer identification number.* Any individual with both a social security number (or an IRS individual taxpayer identification number) and an employer identification number may use the social security number (or the IRS individual taxpayer identification number) for individual taxes, and the employer identification number for business taxes as required by returns, statements, and other documents and their related instructions. Any alien individual duly assigned an IRS individual taxpayer identification number who also is required to obtain an employer identification number must furnish the previously-assigned IRS individual taxpayer identification number to the Internal Revenue Service on Form SS–4 at the time of application for the employer identification number. Similarly, where an alien individual has an employer tax identification number and is required to obtain an IRS individual taxpayer identification number, the individual must furnish the previously-assigned employer identification number to the Internal Revenue Service on Form W–7, or such other form as may be prescribed by the Internal Revenue Service, at the time of application for the IRS individual taxpayer identification number.

* * * * *

(f) *Penalty.* For penalties for failure to supply taxpayer identifying numbers, see sections 6721 through 6724.

(g) *Special rules for taxpayer identifying numbers issued to foreign persons*—(1) *General rule*—(i) *Social security number.* A social security number is generally identified in the records and database of the Internal Revenue Service as a number belonging to a U.S. citizen or resident alien individual. A person may establish a different status for the number by providing proof of foreign status with the Internal Revenue Service under such procedures as the Internal Revenue Service shall prescribe, including the use of a form as the Internal Revenue Service may specify. Upon accepting an individual as a nonresident alien individual, the Internal Revenue Service will assign this status to the individual's social security number.

(ii) *Employer identification number.* An employer identification number is generally identified in the records and database of the Internal Revenue Service as a number belonging to a U.S. person. However, the Internal Revenue Service may establish a separate class of employer identification numbers solely dedicated to foreign persons which will be identified as such in the records and database of the Internal Revenue Service. A person may establish a different status for the number either at the time of application or subsequently by providing proof of U.S. or foreign status with the Internal Revenue Service under such procedures as the Internal Revenue Service shall prescribe, including the use of a form as the Internal Revenue Service may specify. The Internal Revenue Service may require a person to apply for the type of employer identification number that reflects the status of that person as a U.S. or foreign person.

(iii) *IRS individual taxpayer identification number.* An IRS individual taxpayer identification number is generally identified in the records and database of the Internal Revenue Service as a number belonging to a nonresident alien individual. If the Internal Revenue Service determines at the time of application or subsequently, that an individual is not a nonresident alien individual, the Internal Revenue Service may require that the individual apply for a social security number. If a social security number is not available, the Internal Revenue Service may accept that the individual use an IRS individual taxpayer identification number, which the Internal Revenue Service will identify as a number belonging to a U.S. resident alien.

(2) *Change of foreign status.* Once a taxpayer identifying number is identified in the records and database of the Internal Revenue Service as a number belonging to a U.S. or foreign person, the status of the number is permanent until the circumstances of the taxpayer change. A taxpayer whose status changes (for example, a nonresident alien individual with a social security number becomes a U.S. resident alien) must notify the Internal Revenue Service of the change of status under such procedures as the Internal Revenue Service shall prescribe, including the use of a form as the Internal Revenue Service may specify.

(3) *Waiver of prohibition to disclose taxpayer information when acceptance agent acts.* As part of its request for an IRS individual taxpayer identification number or submission of proof of foreign status with respect to any taxpayer identifying number, where the foreign person acts through an acceptance agent, the foreign person will agree to waive the limitations in section 6103 regarding the disclosure of certain taxpayer information. However, the waiver will apply only for purposes of permitting the Internal Revenue Service and the acceptance agent to communicate with each other regarding matters related to the assignment of a taxpayer identifying number and change of foreign status.

(h) *Effective date.* The provisions of this section generally are effective for any return, statement, or other document to be filed after December 31, 1995. However, the provision of paragraph (a)(1)(ii) of this section that requires an estate to obtain an employer identification number applies on and after January 1, 1984.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 95–13618 Filed 6–7–95; 8:45 am]

BILLING CODE 4830–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[UT24–1–7036b; FRL–5218–5]

Determination of Attainment of Ozone Standard for Salt Lake and Davis Counties, Utah, and Determination Regarding Applicability of Certain Reasonable Further Progress and Attainment Demonstration Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to determine that the Salt Lake and Davis Counties ozone nonattainment area has attained the National Ambient Air Quality Standard (NAAQS) for ozone and that certain reasonable further progress and attainment demonstration requirements, along with certain other related requirements, of Part D of Title 1 of the Clean Air Act are not applicable to the area for so long as the area continues to attain the ozone NAAQS. In the Final Rules section of this **Federal Register**, EPA is making these determinations without prior proposal. A detailed rationale for the action is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, EPA will withdraw the direct final rule and address the comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this notice. Any parties interested in commenting on this notice should do so at this time.

DATES: Comments on this action must be received by July 10, 1995.

ADDRESSES: Written comments should be addressed to: Douglas M. Skie, Chief, Air Programs Branch (8ART-AP), United States Environmental Protection Agency, Region 8, 999 18th Street, Suite 500, Denver, Colorado 80202–2466.

A copy of the air quality data and EPA's analysis are available for inspection at the following address: United States Environmental Protection Agency, Region 8, Air Programs Branch, 999 18th Street, Suite 500, Denver, Colorado 80202–2466.

FOR FURTHER INFORMATION CONTACT: Tim Russ, Air Programs Branch (8ART-AP), United States Environmental Protection Agency, Region 8, 999 18th Street, Suite 500, Denver, Colorado 80202–2466 Phone: (303) 293–1814

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule published in the Final Rules section of this **Federal Register**.

Dated: May 31, 1995.

William P. Yellowtail,

Regional Administrator.

[FR Doc. 95–14066 Filed 6–7–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 455

[FRL–5214–7]

RIN 2040–AC21

Pesticide Chemicals Category, Formulating, Packaging and Repackaging Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards; Supplemental Notice

AGENCY: Environmental Protection Agency.

ACTION: Supplemental notice to proposed rule.

SUMMARY: EPA is publishing this Supplemental Notice to obtain public comment on two topics for which comments were received on the proposed rulemaking (59 FR 17850, April 14, 1994) for the Pesticides Formulating, Packaging and Repackaging (PFPR) Industry. EPA seeks comment on the scope and applicability of the rulemaking as they pertain to commenters' requests for the exemption of certain pesticide active ingredients (PAIs) and certain wastewater discharges from the rulemaking.

In addition, EPA is soliciting comment on a regulatory option under consideration by the Agency that is comprised of two alternatives between which industry may choose: (1) Achieving zero discharge or (2) incorporating specific pollution prevention (or best management) practices and treatment technologies and achieving an allowable discharge of small quantities of pollutants.

EPA's addition of the pollution prevention alternative to achieving zero discharge provides benefits to the environment by reducing the cross-media impacts that would otherwise occur from hauling and incinerating the non-reusable portion of PFPR wastewaters. The provision of an alternative compliance method also provides flexibility to industry in meeting the effluent limitations guidelines and standards. Reducing the scope of the rule will reduce regulatory burden without compromising environmental protection. This notice also solicits comment on various means of implementing a pollution prevention alternative to zero discharge.

EPA has estimated the compliance costs and economic impacts expected to result from a rule comprised of a zero discharge and a pollution prevention alternative (referred to as the Zero/P2 Option) as specified in this notice. The Agency has determined that the Zero/P2 Option will result in a similar removal of toxic pound equivalents per year

(approximately 30 million toxic pound equivalents) as the proposed zero discharge option alone. At the same time, the Zero/P2 Option is expected to result in a reduced annualized cost ($32.7 million in $1988 or $39.4 million in $1995) and fewer facility closures (no facility closures) and line closures (162) than would result from the zero discharge option in the proposed rule. EPA has determined that the Zero/P2 Option is economically achievable.

DATES: Comments on the proposed rule must be received in writing by July 10, 1995 at the following address.

ADDRESSES: Send comments in writing to Ms. Shari H. Zuskin, Engineering & Analysis Division (4303), U.S. EPA, 401 M Street SW., Washington, DC 20460.

The complete record for this rulemaking is available for review at EPA's Water Docket; 401 M Street, SW., Washington, DC 20460. For access to Docket materials, call (202) 260–3027 between 9 a.m. and 3:30 p.m. for an appointment. The EPA public information regulation (40 CFR part 2) provides that a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For additional technical information write or call Ms. Zuskin at (202) 260–7130. For additional information on the economic impact analyses contact Dr. Lynne G. Tudor at the above address or by calling (202) 260–5834.

SUPPLEMENTARY INFORMATION:

I. Background
II. Changes to Scope
A. Sanitizers
B. Pool Chemicals
C. Other Pesticide Active Ingredients
1. Microorganisms
2. Mixtures
3. PAIs That Have Been Determined Not To Pass Through
D. Wastewater Sources
E. Clarification of Definitions
III. Pollution Prevention Alternative
A. Authority
B. Background
C. Structure of the Alternative
1. Alternative to Zero
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I. Background

In a Notice of Proposed Rulemaking on April 14, 1994 (59 FR 17850), EPA proposed effluent limitations guidelines and standards for the control of wastewater pollutants from the Pesticide Formulating, Packaging and Repackaging (PFPR) industry. This proposed rulemaking would have established a zero discharge limitation of wastewater pollutants for almost all of the formulating, packaging and repackaging of FIFRA registered pesticide active ingredients. Only a small number of PAIs were not completely covered by the proposed zero discharge.

As result of disproportionate economic impacts, EPA proposed a partial exemption for the exterior wastewaters [1] from small sanitizer facilities. Small sanitizer facilities were defined as those facilities which formulate, package or repackage 265,000 lbs/yr or less of all FIFRA registered products containing one or more sanitizer active ingredients (listed in Table 8 of the regulation) and no other active ingredients at a single pesticide producing establishment (i.e., a single PFPR facility). The production cutoff of 265,000 lbs/yr represents the production level (of these sanitizer products) at the largest facility that would experience economic impacts if there was no exemption of wastewater treatment requirements for non-interior wastewater sources. (See Section II.A. of this notice for a description of revisions made to this exemption).

EPA based the zero discharge limitation on pollution prevention, recycle/reuse and, when necessary, treatment through the Universal Treatment System (UTS) for reuse. EPA visualized the UTS as a flexible system consisting of a variety of treatment technologies that have been determined to be effective for treating PFPR wastewaters. In calculating compliance costs, EPA included costs for treatment technologies such as emulsion breaking, hydrolysis, chemical oxidation, metals precipitation and carbon adsorption. EPA also included costs for contract hauling treatment residuals (sludges) from the UTS for incineration. Because of the estimates of reduced wastewater volumes based on the increase in reuse/recycle practices, the overall volume of wastewaters being contract hauled off-site for incineration was not expected to increase. Thus, EPA did not include additional costs for contract hauling of PFPR wastewaters in the original proposal. Based on comments, revised costs for the proposed zero discharge option have been included in this notice.

The public comment on the proposed rule was originally 60 days and was extended for 30 additional days. EPA received 93 individual comment letters, including those requesting an extension of the comment period. The subject of the comments spanned a variety of topics, including changes to scope of the regulation, EPA's pesticide cross-contamination policy and its effect on the industry's ability to meet zero discharge, increased cross-media impacts due to contract hauling of wastewater for incineration to meet zero discharge, and requests for a discharge allowance when following specific pollution prevention practices.

II. Changes to Scope

A large portion of the comment letters addressed issues concerning the scope and applicability of the proposed regulation. Many commenters requested that the partial exemption of the listed sanitizer active ingredients be expanded to be a total exemption from the regulation for all antimicrobial active ingredients. Others requested that the exemption for sodium hypochlorite (bleach) be extended to other "pool chemicals." Commenters also requested that EPA exempt from the regulation certain low risk PAIs, such as cloves and citronella; specific wastewater sources such as aerosol leak test water, safety equipment cleaning water, laboratory equipment rinse water and storm water; and experimental/ research facilities. In response to the information and data supplied by commenters, EPA is considering whether to revise some aspects of the scope of the proposed PFPR effluent guidelines. EPA is using today's notice to solicit comment on these issues.

If the Agency determines to exclude any of the pollutants discussed in this section of the notice from the scope of the rule, PFPR facilities that discharge such pollutants directly into navigable waters (i.e., direct discharge PFPR/ Manufacturers) will still need to comply with the general NPDES permitting requirements, including the possible establishment by the permitting authority of case-by-case effluent limitations based upon Best Professional Judgement (BPJ) under CWA section 402(a)(1)(B). (See 40 CFR 125.3). In addition, those PFPR facilities that indirectly discharge such excluded PAI pollutants to navigable waters through a POTW would remain subject to the Pass Through and Interference prohibitions contained in the general pretreatment regulations (40 CFR 403.5(a)(1)). PFPR facilities that are indirect dischargers of the excluded PAIs could also be subject to local limits established by the POTW receiving the facility's wastewater (40 CFR 403.5(d)).

[1] At the time of proposal, exterior wastewaters included: exterior equipment cleaning water, floor wash, leak and spill cleanup water, safety equipment cleaning water, DOT aerosol test bath water, air pollution control scrubber water, laboratory rinsate and contaminated precipitation runoff.

A. Sanitizers

A large number of the comments received by EPA were requests for an exemption for antimicrobial products from the scope of the regulation. Although EPA did propose to partially exempt a list of sanitizer active ingredients due to economic reasons (i.e., disproportionate economic impacts), commenters requested expansion of this list. In today's notice EPA is soliciting comment on the exemption of indoor/home use and similar institutional sanitizer products from the regulation in addition to those sanitizer active ingredients initially listed in Table 8 of the proposed regulation (See Appendix A to this notice). The exemption would apply to both interior and exterior wastewater sources and would no longer be limited by a maximum production level because it is no longer solely based on disproportionate impacts (see discussion on production cutoff in Section I). However, EPA is not planning to exempt sporicidals or industrial preservatives. EPA has also included, in Appendix A, a list of those PAIs that are considered, under FIFRA, to be inert ingredients when used with antimicrobial active ingredients.

In addition to economic impacts, EPA believes that there are a number of other factors to be considered in broadening the scope of the proposed sanitizer exemption. First, these indoor home use sanitizer products are formulated for the purposes of their labeled use to "go down the drain" (i.e., toilet bowl cleaners and tub and tile cleaners). All labels for registered products, including the use and disposal statements, are reviewed by EPA. Second, these same chemicals go to Publicly Owned Treatment Works (POTWs), possibly in higher concentrations and volumes, from their approved labeled use in homes than from equipment cleaning at PFPR facilities. Third, EPA has not been able to identify any reported upsets to POTWs caused by these sanitizer active ingredients. EPA did receive biodegradation data for some of these sanitizer active ingredients which supports a hypothesis that these PAIs also do not pass through POTWs. Finally, these sanitizer active ingredients represent a large portion of the low toxicity PAIs considered for regulation at the time of proposal.

For the purpose of exempting indoor/ home use (and similar institutional) sanitizers, EPA would make use of the following definition in the final regulation:

> Sanitizer Products means pesticide products that (1) contain the sanitizer active ingredients listed in Table 8 of the regulation and no other active ingredient; or (2) pesticide products that are intended to disinfect or sanitize, reducing or mitigating growth or development of microbiological organisms including bacteria, fungi or viruses on surfaces or inanimate objects in the household and or institutional environment, as provided in the directions for use on the product label. The only institutional antimicrobial products which are included by this definition are those with formulations similar to the household sanitizer products.

For the purposes of identifying the PAIs which EPA is considering exempting from the scope of this rule and in order to estimate compliance costs to the industry for this notice, EPA was able to use the 1988–1991 FATES (FIFRA and TSCA Enforcement System) database which was previously used in developing costs for the proposal. In addition to the database, EPA used the definition shown above to construct the expanded list of sanitizer active ingredients that would receive an exemption from the final regulation. The expanded list of exempted sanitizer active ingredients used to develop revised compliance costs is contained in Appendix A, Table 1 of this notice. The discussion of estimating the revised compliance costs is contained in Section IV of this notice. EPA solicits comment on both the definition and its use, and whether to use the definition in conjunction with a list or to use a list only.

B. Pool Chemicals

In the proposed regulation EPA exempted sodium hypochlorite (bleach) from the pretreatment standards. EPA solicited comment on additional chemicals that should also be excluded along with sodium hypochlorite. Commenters suggested that several other chemicals, that are mainly used in the swimming pool industry, including calcium hypochlorite, potassium hypochlorite, lithium hypochlorite, chlorinated isocyanurate compounds and several halogenated hydantoins should be included in this exemption.

EPA did not include these "pool chemicals" in the exemption, at the time of proposal, because EPA believed that the formulating, packaging and repackaging of these chemicals did not involve the use of water (e.g., dry production). After review of the comments and a site visit to a "pool chemicals" facility, EPA understands that although the products are dry, the addition of water is necessary in certain instances.

Throughout the course of normal dry operations, small amounts of product fall on the floor or accumulate on equipment surfaces and become contaminated with ordinary dust and dirt. These chemicals act as strong oxidizing agents and left untreated, the sweepings pose a serious fire and safety hazard. Facilities treat (de-activate) these chemicals with the addition of water and neutralizing chemicals such as sodium hydroxide or sodium carbonate. With this treatment, the available chlorine in the water is converted to a pH neutral salt which can be discharged to the POTW.

Commenters also provided additional reasons for the sodium hypochlorite exemption, stating that the chemical does not survive in the sanitary waste stream and would be converted to sodium chloride long before it reaches the POTW. Commenters supplied data on the degradation of sodium hypochlorite in water. This data is available for review in the public record for this notice. In addition, EPA notes that calcium hypochlorite, potassium hypochlorite and lithium hypochlorite exhibit similar chemistry and half-lives as sodium hypochlorite. EPA also received comment requesting the extension of the exemption to sodium carbonate, phosphoric acid and hydrochloric acid. Phosphoric acid and hydrochloric acid fall under the original sanitizer exemption and sodium carbonate is considered an inert ingredient when used in formulations with other sanitizer chemicals; therefore, EPA does not believe it is necessary to list these chemicals under the pool chemicals exemption. EPA is considering whether to exempt the chemicals on Table 2 in Appendix A from these categorical pretreatment standards (PSES and PSNS) in the final regulation. In addition, EPA is considering using a definition for pool chemicals in conjunction with the list in Appendix A. This would provide more flexibility to newly registered chemicals that are deserving of the pool chemicals exemption to receive it in the future. EPA solicits comment on a definition for this group of chemicals.

C. Other PAIs

Based on comments received, EPA performed a more extensive investigation to develop options for appropriate treatment technologies for certain PAIs. Upon completing this

more recent evaluation, EPA was left with two groups of PAIs for which insufficient information was available to identify best available control technologies. The two groups are identified as microorganisms and mixtures and are discussed below. In addition, comments were received requesting the exemption of specific low risk pesticides that fall into the "mixtures" grouping.

1. Microorganisms

EPA is considering whether to exclude microorganisms that are registered for pesticidal use, such as Bacillus thuringiensis, from these regulations. Although, EPA has little information on the formulation, packaging and repackaging of such pesticides or the generation and characteristics of wastewaters from such operations, EPA believes these "pesticides" are not formulated in a similar fashion as other PAIs covered by the proposed rule. Microorganisms which have registered pesticidal uses are generally created through a fermentation process, similar to those found in some food processing plants. Fermentation is a biological process, where as other pesticides are manufactured and formulated through chemical and physical processes.

In addition, almost all the microorganisms registered as pesticide products are exempt from the requirement of obtaining a (residue) tolerance for pesticide chemicals in or on raw agricultural commodities (40 CFR 180.1001). Under Part 180 Subpart D - Exemptions From Tolerance- it states that "an exemption from a tolerance shall be granted when it appears that the total quantity of the pesticide chemical in or on all raw agricultural commodities for which it is useful under conditions of use currently prevailing or proposed will involve no hazard to the public health." Also, some of these microorganisms will not survive in aquatic environments, and therefore, pose no harm to aquatic life. These microorganisms are listed in Appendix A of this notice. EPA solicits comment on the exemption of these pesticides from the PFPR regulation.

2. Mixtures

EPA had difficulty in finding information on appropriate treatment technology options for a second group of PAIs, which will be referred to as "mixtures." This group of mixtures represents those PAIs that are made up of a number of substances. The molecular weights, solubilities and aromaticity of these pesticides are not easily defined because they are comprised of a variety of compounds. For example, oil of eucalyptus contains cineole, alpha-pinene, phellandrene, terpineol, citronellal, geranyl acetate, eudesmol, eudesmil acetate, piperitone and volatile aldehydes.

This group of mixtures can be separated into two subgroups. The first subgroup of mixtures was the subject of several comments requesting exemption for these PAIs from the proposed rule. This first subgroup contains active ingredients that are plants, extracts from plants, non-toxic household items, foods or constituents of foods. In addition, many of these pesticides have been determined to be Generally Regarded As Safe (GRAS) under Food and Drug Administration (FDA) regulation (20 CFR 170.1). Examples of these pesticides include: oil of anise, rosemary herbs, thyme herbs, cloves, oil of citronella, lanolin, cottonseed oil, soybean oil, oil of lemongrass, cedarwood oil, soap and sawdust. EPA is considering whether to exclude this subgroup of mixtures from the PFPR effluent guidelines regulation. The list of these mixtures can be found in Appendix A of this notice. EPA solicits comment on the exclusion of these pesticides and requests information on additional pesticides which should be included in this group of mixtures.

The other subgroup of mixtures is not as easily defined. This subgroup also contains mixtures of a number of substances of varying nature whose identifying characteristics are not easily identified. EPA has not been able to identify treatability data for these pesticides in the available literature. Many of these mixtures, such as kerosene, petroleum distillate oils, xylene range aromatic solvent and heavy aromatic naphtha, are typically found in the organic chemicals industry or are used as inert ingredients in the PFPR industry; however, in some instances they have been registered for pesticidal uses. EPA does not believe there is sufficient data to exclude these PAIs from this regulation; therefore, EPA is considering whether to reserve regulation of these types of pesticides and evaluate them at a later time. Specific identification of this subgroup of mixtures is contained in Appendix A of this notice.

3. PAIs That Have Been Determined Not to Pass Through

As discussed in the preamble to the proposed regulation, under the pesticide manufacturing effluent limitations guidelines and pretreatment standards, EPA found that four organic chemicals considered to be priority pollutants did not pass through POTWs (59 FR 17872). The four chemicals are phenol, 2-chlorophenol, 2,4-dichlorophenol and 2,4-dimethylphenol (58 FR 50649; September 28, 1993). In addition to being a priority pollutant, phenol is considered a PAI under the proposed PFPR effluent guidelines.

EPA did not propose to exempt these four chemicals from the PFPR effluent limitations and categorical pretreatment standards. EPA proposed to establish a categorical pretreatment standard of zero discharge. EPA based this zero discharge standard upon the technology of recycling, reuse, treatment, and/or off-site disposal, which would be most likely shown by "no flow" of a PFPR facility's entire process wastewater stream. EPA found that PFPR facilities do not typically isolate their process wastewater streams; therefore the four "no pass through" pollutants would not be discharged in a separate wastewater stream. The zero discharge standard (premised upon a no flow technology) applied equally to all PAIs and priority pollutants, resulting in the removal of pass through pollutants and the incidental removal of those four pollutants that do not pass through. Thus, the Agency determined that it was unnecessary to exempt any PAI or priority pollutant from the pretreatment standards on the basis that it does not pass through a POTW. (59 FR 17872).

However, EPA is considering whether to add a pollution prevention alternative (see Section III) to the regulation which would provide for an allowable level of discharge where facilities are performing specified pollution prevention practices. With this proposed alternative, EPA believes it would be appropriate to exclude phenol, 2-chlorophenol, 2,4-dichlorophenol and 2,4-dimethylphenol from regulation in these categorical pretreatment standards (PSES and PSNS) for this alternative because they have been found not to pass through and facilities would no longer have to achieve no flow of process wastewater. EPA solicits comments on this determination.

D. Wastewater Sources

Commenters requested exemption of Department of Transportation (DOT) aerosol leak test water, safety equipment cleaning water, laboratory rinsates and storm water from the definition of process wastewater. After reviewing the information and data supplied by commenters and performing additional data gathering, EPA believes that, in certain situations, these wastewaters should be exempted from the rule.

DOT aerosol leak test baths are used by PFPR facilities that package their products into aerosol cans. The leak test is performed as a requirement prior to transporting the cans. Test baths must be kept at 130°F, cans must be fully submerged, and the baths must be visually monitored for leaking or bursting cans.

EPA believes that unless there are leaking or bursting cans, the water in the bath should not contain pollutants from the formulations. When facilities are not using continuous overflow baths, they will change the water periodically. This is usually due to the build up of small amounts of oil and grease from the exterior surface of the cans themselves (or the silk screened labels). EPA is considering whether to exclude discharges from DOT test bath water from the rule when a facility operates a batch bath where no leaks have been detected or where cans have not burst from the time of the last water change out. EPA solicits comment on this exclusion (See Section III for a discussion on non-excluded DOT test bath water and the pollution prevention alternative.)

EPA has also reexamined the inclusion of discharges from safety equipment cleaning water in the rule. Commenters requested the exemption of safety equipment cleaning water from the zero discharge requirement on the basis that it contains only small amounts of pollutants. Commenters also stated that a zero discharge limitation on discharges from safety equipment cleaning water would create a disincentive for testing safety showers and eye washes and would create worker safety problems. Safety showers and eye washes are typically tested by running water through the equipment long enough to ensure that water is flowing freely to the unit and that associated alarms are functioning. EPA proposed exempting wastewater discharges from the operation of employee showers, laundry facilities and the fire protection equipment test water for similar reasons, including worker safety issues. In addition, the water from testing this safety equipment should not contain any pesticide active ingredients or other pollutants of concern. Therefore, EPA is considering whether to exclude discharges from the testing of safety showers and eye washes from coverage under the final rule. However, other wastewater associated with cleaning safety equipment, such as rinsing respirators or boots, would still be covered by the rule and the pollution prevention alternative (see Section III) as it would be expected to contain some level of pollutants. EPA solicits comment on this exclusion.

Laboratory equipment rinse water is another wastewater source which commenters considered to contain low levels of PAIs. Typically, a finished product is analyzed prior to packaging as part of the facility's quality control program. A small sample, referred to as the retain sample, is taken into the laboratory for testing.

EPA believes that the only measurable amounts of PAI would come from the retain sample itself and the container that is used to bring it into the laboratory. Facilities can usually reuse the retain sample back into a future formulation of the same product. Wastewaters originating from water that is used to rinse other laboratory glassware, such as graduated cylinders, beakers and pipets should contain non-detectible levels of pesticide active ingredients. In addition, while performing analytical testing other chemicals may be used to perform extractions and render the glassware rinsates non-reusable. Therefore, EPA is considering whether to exclude wastewater discharges from cleaning analytical equipment in on-site laboratories from these regulations. However, EPA would not be excluding wastewater from the retain sample itself or the water used to clean the container that is used to bring the sample into the laboratory. EPA solicits comment on this exclusion.

In the proposed regulation, EPA included contaminated precipitation runoff (storm water) that collects in tank farms, secondary containment structures or on loading pads. Commenters requested the exclusion of storm water from the zero discharge regulation because it was not reusable and because storm water is covered by the Storm Water Regulations (57 FR 41297; September 9, 1992).

In the proposed regulation, EPA suggested the use of the Universal Treatment System (UTS) for achieving zero discharge for wastewaters that could not be reused directly into product. EPA suggested that, for example, floor wash could be treated through the UTS and reused as floor wash. Commenters disagreed with this suggestion in terms of storm water, stating that storm water cannot not be reused for its original purpose following treatment.

In addition, comments were received on the redundancy of the proposed effluent guidelines regulations with the storm water regulations (57 FR 41297). In response to comment, EPA has reviewed the recent storm water regulations and has made a determination that except for the repackaging establishments, storm water at PFPR facilities is already covered by the individual or general NPDES permits issued to cover storm water from industrial activity. For general permits and most individual permits, the storm water regulations require a very detailed pollution prevention plan which must contain a list of site specific best management practices, plans for employee training, and schedules for inspections. EPA believes that the pollution prevention plan required by the storm water regulations mandates practices similar to those outlined in the pollution prevention alternative (see Section III.B.3.). To avoid duplicative regulatory coverage, EPA is considering whether to exempt storm water discharges from the PFPR rule for the Subcategory C facilities (which does not include repackaging establishments). (See Section II.E for a discussion on the change from "refilling establishments" to "repackaging establishments.")

The coverage of storm water at repackaging establishments is not as clearly defined. The primary SIC code describing repackaging establishments is SIC 5191 and is not specifically included as one of the SIC codes covered under the definition of industrial activity (55 FR 47990) in the storm water regulations (although storm water in storage areas including tank farms is included). EPA believes a gap may be created if storm water from repackaging establishments is not covered in the PFPR effluent guidelines or the storm water regulations. EPA also believes that storm water collected from secondary containment at repackaging establishments where refilling of agricultural pesticides into minibulk containers is conducted, is not different than the type of storm water collected from tank farms at PFPR facilities. EPA solicits comment on the inclusion of the requirements for general storm water permits (i.e., storm water pollution prevention plan) into the PFPR guidelines for Subcategory E facilities (repackaging establishments) or into the storm water regulations under a separate rulemaking.

In addition, EPA believes that the possible contamination of storm water at repackaging establishments can be reduced through use of good housekeeping practices, closed loop refilling systems and small enclosures or roofs around pumps and valves. EPA solicits comment on these or other best management practices associated with repackaging establishments that could be employed to reduce the level of wastewater pollutants found in storm water at these facilities. EPA also requests comment from repackaging establishments that are not able to reuse

storm water or rinsates as make up water for use in applications, if it is in accordance with the product label.

E. Clarification of Definitions

Commenters requested clarification on several issues and definitions in the proposed regulations. Commenters requested specific definitions for formulating, packaging and repackaging, as well as, clarification between pesticide formulating and pesticide manufacturing when they occur at the same facility. Clarification was also requested for the determination that on-site incineration meets the requirements of zero discharge for this regulation. The definition of repackaging establishments, particularly in reference to "retail sales," also prompted comment.

EPA considers the formulation of pesticide products to mean the process of mixing, blending or diluting one or more PAIs with one or more active or inert ingredients, without a chemical reaction that changes one active ingredient into another active ingredient, to obtain a manufacturing use product or an end use product. EPA considers the packaging of pesticide products to mean enclosing or placing a formulated pesticide product into a marketable container. EPA considers the repackaging of pesticide products to mean the direct transfer of a single PAI or single formulation from any marketable container to another marketable container, without intentionally mixing in any inerts, diluents, solvents, other ingredients or other materials of any sort.

Pesticide manufacturers may sometimes add a solvent to a manufactured PAI or intermediate for the purpose of stabilizing transport or at the request of the formulator who is receiving the PAI as a raw material. EPA would like to clarify that manufacturers can perform such operations without being subject to the PFPR effluent guidelines. Typically, such operations are performed without placing the pesticide in a marketable container (i.e., they are shipped in bulk via tank truck, rail car or tote tank). However, PFPR facilities should not conclude that they can receive PAIs (that they do not manufacture), even in bulk quantities, and dilute it with solvent or other carrier without being subject to the PFPR effluent guidelines, as this would be considered formulating.

Although EPA proposed zero discharge limitations with pollution prevention, recycle/reuse and treatment for reuse as the basis for the zero discharge limitation, facilities may meet the requirement of zero discharge to water through a number of other options. Most of these options include hauling wastewater to off-site destinations. These destinations include incinerators, deep wells and commercial waste treaters and, in some cases, wastes are returned to the registrant or manufacturer. EPA received comment requesting clarification of on-site incineration as a means of achieving zero discharge. For purposes of this regulation only, EPA considers on-site incineration a valid option for achieving zero discharge of PFPR process wastewater. Wet scrubbing devices used for air pollution control on these on-site incinerators are not subject to the PFPR effluent guidelines. The only existing on-site incinerators at facilities covered by the PFPR regulation are at facilities which also manufacture pesticide active ingredients. Scrubber wastewater discharges from these incineration activities are currently regulated under the pesticide manufacturing effluent guidelines (58 FR 50638, September 28, 1993) for the PAIs manufactured at these facilities.

Based on comments received, EPA intends to clarify how the PFPR effluent guidelines would apply to refilling establishments. EPA proposed that the PFPR limitations and standards (proposed Section 455.60) would apply to refilling establishments that repackage agricultural pesticides whose primary business is retail sales (59 FR 17904). This is the same scope used in the proposed Standards for Pesticide Containers and Containment regulations (59 FR 6712, February 11, 1994). EPA chose to specify a subset of the universe of refilling establishments within the proposed containment rule to require secondary containment only at agricultural pesticide refilling facilities where there was documented evidence of environmental contamination from leaks and spills. Specifically, EPA believed that it did not have sufficient information regarding the practices and environmental problems at formulators and manufacturers where pesticide refilling may occur to prescribe containment requirements (59 FR 6754).

EPA received comments from State of Minnesota officials on the proposed PFPR effluent guidelines stating that there are refilling establishments whose business is primarily wholesale sales located in their state that repackage agricultural chemicals into refillable containers.

The EPA believes that in an attempt to be consistent with the language in the proposed containment regulations, it may have misstated the intended scope of the PFPR effluent guidelines. EPA believes that the types of refilling establishments used as the basis for extrapolating data to all refilling establishments in the PFPR industry included facilities whose primary business is wholesale and/or retail sales and did not include pesticide formulators or manufacturers or repackagers of non-agricultural pesticides.

EPA intends to clarify the scope of Subpart E of the proposed PFPR effluent guidelines, § 455.60. However, this change in the definition, may cause the regulated community confusion, as there would be two definitions of the term "refilling establishment." Therefore, EPA is considering keeping the term refilling establishment for the Container regulations and using the term repackaging establishments for the final PFPR effluent guidelines. In this situation § 455.60 would read "a repackaging establishment is an establishment where the activity of repackaging agricultural pesticide product into refillable containers occurs, whose primary business is wholesale or retail sales, and where no pesticide manufacturing, formulating, or packaging occurs". EPA solicits comment on this clarification.

III. Pollution Prevention Alternative

This section discusses the background on the pollution prevention alternative incorporated in the Zero/P2 Option, including the comments received which led to today's supplemental notice and solicitation for comments. The structure of the alternative and the pollution prevention (P2) practices are described. The notice solicits comment on the degree to which these practices should be specified in the regulatory text (i.e., specified vs. guidance). The wastewater treatment cost savings and pollutant loading reductions that are associated with the P2 practices are briefly discussed. In addition, several options for implementation of the P2 alternative on which EPA seeks comment are described including self-certification, submittal of a plan to permitting authorities, and greater flexibility for the permitting authorities to use best professional judgement (BPJ).

In response to the zero discharge proposal, a variety of commenters stated that PFPR facilities should be given the opportunity to conduct various pollution prevention practices and thereby limit the level of PAIs which would be discharged into navigable waters. Commenters cited to a list of such practices that the Agency had already developed in its Development Document for the proposed rule. These same commenters argued that the zero discharge limitations and standards were inappropriate given the non-water quality environmental impacts that would arguably result from the increased amount of incineration of process wastewater that would need to occur. Commenters also raised concerns about the costs of the proposed zero discharge standard.

Given these set of comments concerning costs and non-water quality impacts, EPA believes that it is appropriate to consider a pollution prevention (P2) alternative to the proposed zero discharge limitations and standards. As described in more detail below, PFPR facilities would generally have a choice of either meeting the relevant zero discharge standard or limitation or choosing to conduct the listed P2 practices as set forth in Tables B–1 and B–2 of this supplemental notice. Two variations in the structure of the P2 alternative are discussed below, they vary in the practices that would be specified in the regulatory text of the final regulation (see Section III.C.3).

For either variation of the pollution prevention alternative chosen for final promulgation, those PFPR facilities which choose to conduct the P2 practices would need to also agree to make the P2 alternative enforceable, *e.g.*, direct dischargers would need to agree to have the P2 practices included in their NPDES permits and indirect dischargers would need to file notices of intent to use the P2 practices with the POTW. (See Part III.C.4 for discussion and solicitation of comment on several approaches that EPA anticipates could be utilized to implement the P2 alternative.)

If a PFPR facility chooses to adopt the P2 alternative by conducting the P2 practices, agreeing to its enforceability, complying with specified record keeping requirements, and, in certain instances, treating the process wastewater, the facility would be permitted to discharge those levels of PAIs and priority pollutants which remain in the process wastewater stream. The Agency believes that the level of PAIs and priority pollutants remaining in the process wastewater should be considerably reduced and, in most cases, should pose no environmental harm.

Direct dischargers of the covered PAIs which choose to adopt the P2 alternative in lieu of meeting the zero discharge limitations may be subject to the establishment by the permitting authority of more stringent effluent limitations based on applicable water quality standards. See 40 CFR 122.44. In addition, those PFPR facilities that are indirect dischargers which adopt the P2 alternative would remain subject to the Pass Through and Interference prohibitions contained in the general pretreatment regulations. 40 CFR 403.5(a)(1). Indirect dischargers which choose to be subject to the P2 alternative could also be subject to local limits established by the pretreatment authority receiving the facility's wastewater. 40 CFR 403.5(d).

A. Authority

EPA believes that promulgation of this pollution prevention alternative is authorized under the Clean Water Act (CWA) for a number of reasons. In promulgating Best Available Technology Economically Achievable (BAT) effluent limitations, EPA is authorized to consider a number of factors, including, among other things, non-water quality environmental impacts (including energy requirements) (CWA section 303(b)(2)(B)). In addition, in establishing BAT limitations, EPA is to identify the degree of effluent reduction attainable, *e.g.*, the level of pollutant removal attained through implementation of the effluent limitation (CWA section 304(b)(2)(A)). While not required under the CWA, EPA also evaluates the cost-effectiveness of the BAT effluent limitations.

Pretreatment Standards for Existing Sources (PSES) under CWA section 307(b) are designed to prevent the discharge of pollutants that pass through, interfere with, or are otherwise incompatible with the operation of POTWs. The CWA authorizes EPA to establish pretreatment standards for pollutants that pass-through POTWs or interfere with treatment processes or sludge disposal methods at POTWs. The legislative history of the 1977 Act indicates that pretreatment standards are to be technology-based and analogous to the BAT effluent limitations for removal of toxic pollutants. Thus, in proposing the zero discharge PSES limitation, EPA analyzed the same factors which were assessed for the proposed BAT zero limitation standard.

For example, in proposing the original BAT and PSES effluent limitations and the standards for new sources for PFPR facilities, EPA determined that zero discharge represents the best available and that zero discharge was economically achievable for the PFPR industry (59 FR 17891 and 17898). EPA also estimated the pounds of pollutants removed under a zero discharge limitation and determined that such a limitation option was cost-effective by estimating the cost per toxic pound equivalent removed from PFPR process wastewaters (59 FR 17894–99). EPA also evaluated the non-water quality environmental impacts by assessing the effects a zero discharge limitation and standard would have on air pollution, solid waste generation, and energy requirements (59 FR 17900). Based upon those evaluations and analyses of the other factors to be considered in promulgating the BAT and PSES effluent limitations, the Agency found zero discharge to be an appropriate limitation for pollutants in wastewater from PFPR facilities.

However, in response to the proposed rule, a number of commenters argued that EPA had underestimated the non-water quality environmental impacts of a zero discharge limitation. In particular, commenters stated that air pollution would increase because of the increased use of incineration as an option for disposal of process wastewater. In addition, commenters argued that energy requirements resulting from BAT and PSES zero discharge limitations would be greater than those estimated by EPA because of the increased consumption of fuel for use in transporting wastewater to incineration facilities or deep well injection sites and the increased fuel needed for burning these dilute wastewaters in an incinerator.

In response to these comments, EPA re-evaluated its position on the degree to which the non-water quality environmental impacts effect this regulation and now recognizes that under a zero discharge BAT or PSES limitation for this industry, significantly increased amounts of process wastewater that cannot be recycled, reused, or treated may be transported to incinerators for disposal (resulting in an increase in air emissions) and that increased amounts of energy may have to be used for such transport and for incineration of these dilute wastewaters.

Neither this revised assessment of non-water environmental quality impacts or the revised economic assessment (see Section V) alter EPA's determination that a zero discharge limitation is an appropriate BAT and PSES limitation for pollutants in PFPR process wastewater. However, in response to concerns raised by commenters about the costs and non-water quality environmental impacts of the zero discharge option, EPA believes it is appropriate to consider the Pollution Prevention (P2) alternative presented by these commenters.

To evaluate economic impact and economic efficiency, EPA has grouped the zero discharge proposal and the P2 alternative as proffered by commenters into the Zero Discharge/P2 Option

(Zero/P2 Option). Under this Option, all PFPR facilities subject to the final rule would have a choice of either meeting the zero discharge limitation (or pretreatment standard) or employing the P2 practices and discharging the small amount of PAI pollutants that remain in the process wastewater.

EPA believes that this Zero/P2 Option addresses both the economic cost and non-water quality environmental impacts which commenters believed were not adequately considered by the Agency in its proposed zero discharge option. As discussed in more detail in Section V, under the Zero/P2 Option both the costs impacts and the cost effectiveness compare favorably to the proposed Zero Discharge Option alone. Moreover, the Zero/P2 Option will reduce the level of adverse non-water quality environmental impacts which may occur in comparison to those resulting from a Zero Discharge limitation and standard alone by using pollution prevention practices to decrease the use of cross-media transfers (off-site disposal to incineration, deep-well injection, central waste treaters, etc. * * *).

Under the Zero/P2 Option, PFPR facilities would need to agree to implement the listed P2 practices in lieu of complying with the zero discharge limitation or standard and also agree to make compliance with the P2 practices enforceable. For PFPR facilities that directly discharge (only PFPR/Manufacturers) the covered PAIs into navigable waters, EPA believes that the P2 alternative is authorized under the CWA as a system of best management practices ("BMPs") that may be incorporated into any NPDES permit. (CWA section 304(e)). BMPs are defined, in part, to mean "schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of "waters of the United States * * *." 40 CFR 122.2 EPA believes that the list of pollution prevention practices contained in Tables B–1 and B–2 fit within that definition. The NPDES regulations authorize permitting authorities to include BMPs in NPDES permits under a number of conditions. 40 CFR 122.44(k). EPA believes that incorporation of these pollution prevention practices as BMPs into an NPDES permit is authorized because they carry out the purposes and intent of the CWA. 40 CFR 122.44(k)(3).

EPA recognizes that in the proposed rule, the Agency took the position that regulating PFPR facilities on a nationwide basis through the use of BMPs may not be appropriate because they may not provide the needed flexibility for the many different facilities subject to any final rule (59 FR 17901, April 14, 1994). However, EPA has provided for the needed flexibility in the Zero/P2 Option by making only certain pollution prevention practices mandatory if a facility chooses the P2 alternative, i.e., those practices contained in Table B–1. The other pollution prevention practices (Table B–2) may be modified under a variety of circumstances. In addition, EPA is soliciting comment on a variation of the P2 alternative where only practices which directly reduce pollutant loadings to wastewater are specified in the regulatory text and where water conservation practices are only provided as guidance (see Section III.C for discussion on this variation).

For PFPR facilities that discharge covered PAIs into navigable waters indirectly through a POTW, EPA believes that the Zero/P2 Option is appropriate as an alternative pretreatment standard under CWA section 307(b) and does not conflict with the implementation of the general pretreatment regulations. 40 CFR Part 403. Pretreatment standards for existing and new sources are designed to prevent the discharges of pollutants that pass through, interfere with, or are otherwise incompatible with the operations of POTWs. (CWA 307(b)).

As stated above, in establishing pretreatment standards for existing and new facilities, EPA is authorized to evaluate the same factors that it assesses in establishing BAT limitations. In assessing the removal of pollutants from wastewater, the cost impact, cost effectiveness, and non-water quality impacts of the P2 alternative for both the Zero Discharge proposed PSES and PSNS standards and the P2 alternative, EPA has found that the P2 alternative (as part of the Zero/P2 Option) compares either favorably (cost impact, cost effectiveness, non-water quality impacts) or similarly (pollutant removal) with the Zero Discharge Option. Thus, EPA believes that it is appropriate to consider the P2 alternative as pretreatment standards for existing and new sources.

B. Background

As discussed in Section I, EPA proposed a zero discharge regulation for wastewaters generated by the formulating, packaging and repackaging of pesticide products, with the exception of exterior wastewaters from facilities formulating, packaging and repackaging certain sanitizer active ingredients. The basis for the proposed zero discharge regulation was pollution prevention, recycle/reuse and treatment and reuse when necessary. EPA received comment on the technical feasibility and economic achievability of the proposed zero discharge regulation. Many comments focused on circumstances where wastewater was not completely reusable. Commenters requested that EPA reduce both the cross-media and economic impacts associated with the proposed regulation.

One situation where commenters believe complete reuse is not achievable concerns EPA's existing policy on cross-contamination. Currently, EPA sets a standard of zero for cross-contamination. This means that an active ingredient may not be present at any concentration in a FIFRA registered product where it is not listed on the confidential statement of formula (CSF) of that product. During the study phase for the development of the proposal, the industry practice was to triple rinse containers and equipment. Because of recent EPA enforcement actions, industry commented that additional rinsing is being used to comply with the cross-contamination policy. EPA is currently reviewing the pesticide cross-contamination policy.

Commenters believe that more aggressive enforcement of a zero-standard cross-contamination policy would create additional wastewaters that would not be reusable and that were not taken into account when the proposed zero discharge regulation was developed. According to commenters, a facility that performs a triple rinse of the equipment interiors when changing from formulating one product to another, may have to perform additional rinses (e.g., a five times rinse) to ensure a level of zero cross-contamination. Commenters stated that even in cases where the rinsate from the multiple rinse could be stored for use in a future formulation, the additional rinses create more rinsewater than could be reused and that these very dilute wastewaters would have to be contract hauled for off-site disposal to achieve zero discharge. Commenters believe this additional contract hauling of wastewater not only makes the proposed regulation economically unachievable, but increases the opportunity for cross-media impacts.

A second situation described by commenters focuses on the need for periodic blowdown of the treatment system. Commenters believe that even when using an appropriate treatment system, such as the Universal Treatment System (UTS), continuous reuse is not technically feasible (i.e., PFPR wastewater is not reusable indefinitely). Commenters state this is due to a buildup of salts in the system that would require a periodic blowdown to maintain a well operated treatment system. To achieve zero discharge this blowdown wastewater would have to be contract hauled for off-site disposal, increasing the economic impact to the industry and increasing the opportunity for cross-media transfers.

The third situation described by commenters concerns the reuse of water following treatment. In the proposed regulation, EPA demonstrated, in the discussion on estimation of compliance costs, that it did not expect facilities to reuse wastewaters that had been treated directly into product or for cleaning equipment interiors (59 FR 17876). Although some facilities do reuse treated wastewaters in this way, only interior rinsates that could be reused without treatment and could, therefore, be directly reused into formulation or stored for reuse in a future formulation of the same or compatible product formed the basis for the proposed zero discharge. EPA recommended that wastewaters that needed treatment prior to reuse could be reused for their original purpose (i.e., treated floor wash can be used to wash floors). However, commenters felt that EPA did not account for wastewaters that could not be reused for their original purpose such as interior wastewaters that could not be stored due to concerns for microbial growth or interior wastewaters generated when changing a formulating or packaging line from a solvent-based product to a water-based product. EPA notes that cost estimates for the proposed regulation did include costs for contract hauling similar excess wastewaters for off-site incineration. However, EPA does recognize that, as stated previously, contract hauling these wastewaters for incineration may increase economic and cross-media impacts.

Due to the concerns described above, many commenters requested a discharge allowance for these excess or non-reusable wastewaters. Commenters suggested that they would be willing to agree to use specified pollution prevention or best management practices and pointed to the pollution prevention, recycle and reuse practices described in the preamble to the proposal (59 FR 17866) and the technical development document [EPA #821–R–94–002]. In some cases commenters provided examples of possible additional practices they would be willing to agree to use. EPA believes that a discharge allowance ("pollution prevention allowable discharge") may provide an added incentive to increase the use of pollution prevention and recycle practices while ensuring that facilities are maximizing pollutant reductions in the wastewater without increasing cross-media impacts.

The following sections describe the possible variations in the structure of the pollution prevention alternative, the practices which may be included as part of final regulation for either variation, and the various approaches for implementing the final rule.

C. Structure of the Alternative

For purposes of soliciting comment on today's supplemental notice, two variations of the structure of the pollution prevention alternative, as they might appear in the final regulation are discussed below. EPA has also provided possible regulatory text in Appendix B of this notice to assist commenters in focusing their written comments. Appendix B to this notice focuses on a version of the P2 alternative which would list all the pollution prevention, recycle and reuse practices that would be specified in the final regulatory text. The other version of the P2 alternative would specify, in the final rule, only those pollution prevention, recycle and reuse practices that directly reduce pollutant loadings in the wastewater, while only recommending the use of the water conservation practices and equipment as guidance. For example, in this case the use of a floor scrubber would not be specified in the regulation; however, floor wash from cleaning liquid production area floors would still require treatment prior to being considered a P2 allowable discharge. Thus, floor scrubbers would be recommended because they can reduce the size and cost of the treatment system by reducing the volume of wastewater requiring treatment. (See Section III.C.4 for a discussion on an implementation approach which could increased the use of BPJ in reference to the specified practices).

EPA believes that although most facilities would choose to use both the specified and recommended practices, this approach may be more difficult to permit and enforce. Also, this approach does not ensure that the total pounds of pollutants in the discharged wastewaters are at desirable levels. Without the use of certain flow equipment devices, the maximum reusability of certain wastewater sources, particularly interior equipment rinsates, may not be possible (i.e., facilities may have too much rinsewater volume than is called for in the formulation). In addition, in the case where water conservation practices are not incorporated into the final regulatory text, the use of dilution to achieve the P2 allowable concentrations may be encouraged.

In addition to soliciting comment on these variations, EPA is soliciting comment on the approach related to implementation of the pollution prevention alternative. (See Section III.C.4. for a discussion on implementation).

1. *Alternative to Zero*

The pollution prevention alternative has been designed to serve as an alternative to the proposed zero discharge regulation. This means that if a facility agrees to comply with the prescriptive practices (and any local limits which may be more stringent) and make them enforceable, the facility would be allowed a discharge allowance (P2 allowable discharge). However, if a facility does not agree to comply with the requirements of the alternative they would be subject to a zero discharge limitation or standard.

2. *Definition of Pollution Prevention Allowable Discharge*

EPA has extensively evaluated the definition of the P2 allowable discharge for use in the pollution prevention alternative. EPA is not planning to set a numerical definition of P2 allowable discharge for many of the same reasons that EPA did not set numerical limitations and standards in the proposed regulation (59 FR 17875). Briefly, the reasons included the lack of data, such as long term monitoring data necessary to set numerical limitations, lack of analytical methods for testing for many of the PAIs in wastewater, and the large annual cost that would be associated with compliance monitoring for all PAIs that a PFPR facility may use in production over a year's time.

In general, the definition as described would require that, in addition to performing the specified practices, certain waste streams be treated (or pretreated) prior to being eligible for consideration as an "allowable discharge." In order to allow additional flexibility, EPA is considering allowing permitting authorities (NPDES or pretreatment authority) to use BPJ to make a special modification to this definition in which treatment would not be necessary for a specific facility. EPA solicits comments on the use of a special modification to the definition. The remainder of this section focuses on the definition of pollution prevention allowable discharge.

Use of a definition for P2 allowable discharge should account for the difference between waste streams of high concentration and other waste streams (e.g., interior wastewaters, floor

wash and spill and leak cleanup water versus DOT test bath water or safety equipment cleaning water). Due to the additional pollutant removals afforded by treatment at the POTW, EPA has developed similar but separate definitions for indirect and direct dischargers. In brief, treatment would be required for any waste streams discharged to the nation's waters by direct dischargers. The definition of P2 allowable discharge for direct dischargers will be discussed later in this section. The definition of P2 allowable discharge for indirect dischargers that send wastewater to POTWs is constructed as a two-part definition, which would apply to waste streams of different raw concentrations.

For PFPR process wastewaters, excluding interior equipment cleaning, floor wash and spill and leak cleanup water, EPA believes that (1) many of these sources contain lower concentrations of pollutants prior to pretreatment and (2) the use of the specified pollution practices alone will sufficiently reduce the pollutant loadings in the wastewater when followed by treatment at a POTW. However, based on raw wastewater characterization data collected on sampling visits to PFPR facilities, pretreatment may be necessary for interior equipment cleaning, floor wash and spill and leak cleanup water to reduce the levels of pesticide active ingredients and other pollutants. Thus, EPA is requesting comment on the following two part definition of pollution prevention allowable discharge for indirect dischargers:

Pollution prevention allowable discharge (excluding interior wastewaters, leak/spill cleanup water and floor wash) means: the quantity of/concentrations in PFPR process wastewaters that remain after a facility has demonstrated that it is using the specified practices of the Pollution Prevention Alternative as listed.

Pollution prevention allowable discharge for interior wastewaters, leak/spill cleanup water, and floor wash means: the quantity of/concentrations in PFPR process wastewaters that remain after a facility has demonstrated that it is using the specified practices of the Pollution Prevention Alternative as listed *AND* that have been pretreated using appropriate pollution control technologies which can be used individually or in conjunction with one another as listed in Appendix C, or an equivalent system to achieve a sufficient level of pollutant reduction. Facilities must demonstrate that the appropriate pollution control technology is properly maintained and operated.

Appendix C contains those pollutant control technologies, such as hydrolysis, chemical oxidation, metals precipitation and activated carbon adsorption, which have been used for estimating compliance costs on a PAI specific basis. In general, these treatment technologies have been determined to be effective in treating pesticide containing wastewaters in literature, in bench or pilot scale treatability studies or in the Pesticide Manufacturing effluent guidelines.[2] These are the same technologies that were presented as part of the Universal Treatment System at the time of proposal. However, these technologies are PAI specific and may need to be used in conjunction with one another to provide treatment for all PAIs used at a facility over a period of time. In addition, facilities may experience difficulties treating wastewaters that contain emulsions, therefore, "appropriate" treatment for emulsified wastewaters must include an emulsion breaking step.

Note: EPA has costed facilities for these types of dynamic treatment needs.

In the proposed regulation, EPA recognized that although the 1978 regulation for the pesticides industry set a zero direct discharge limitation (BPT) on wastewaters generated from the formulating, packaging and repacking of pesticide products, some facilities were directly discharging PFPR wastewaters. These facilities manufacture pesticide active ingredients, as well as, perform PFPR activities (referred to as PFPR/Manufacturers in the proposed regulation) and were able to comply with zero discharge (BPT) by treating these wastewaters through the same treatment system used for treating their pesticide manufacturing wastewaters without an additional allowance for PFPR wastewater pollutants in the facility's pesticide manufacturing discharge limits. These facilities should be the only PFPR facilities currently discharging directly to the nation's waters.

These direct discharging pesticide manufacturing facilities have treatment systems that are required to meet the BAT pesticide manufacturing limitations (57 FR 50368). However, because these facilities discharge directly into the nation's waters without the removals afforded by secondary treatment at POTWs, EPA believes that, unlike indirect dischargers, these facilities may have to treat all PFPR wastewaters. Therefore, the following definition of pollution prevention allowable discharge would apply to direct dischargers who formulate, package or repackage pesticides and manufacture pesticides.

Pollution prevention allowable discharge (for PFPR/Manufacturers) means: the quantity of/concentrations in all PFPR process wastewaters that remain after a facility has demonstrated that it is using the specified practices of the Pollution Prevention Alternative as listed *AND* that have been treated using appropriate pollution control technologies which can be used individually or in conjunction with Manufacturer's treatment systems or one another as listed in Appendix C, or an equivalent system to achieve a sufficient level of pollutant reduction. Facilities must demonstrate that the appropriate pollution control technology is properly maintained and operated.

By using the above definition, EPA would be including wastewaters into the pollution prevention alternative generated at these facilities by the PFPR of pesticides that are manufactured and formulated, packaged and/or repackaged as well as the wastewaters from the PFPR of those pesticides that are not also manufactured. In the case of these PFPR/Manufacturers, the term "appropriate" pollution control technology takes on additional meaning than the one discussed above for indirect dischargers. It also implies that when the pollution control technology in place for treating their manufacturing wastewater is not identified in Appendix C, in literature, or in treatability studies as an effective treatment technology for a PAI that they only use in formulating and packaging operations, they must add to their existing treatment system. EPA is soliciting comment on the above definition.

In the above definitions, for both indirect and direct discharges, EPA makes reference to allowable amounts of pollutants in terms of concentration and quantity.

Note: EPA is considering a variation of the P2 alternative which would specify certain P2 practices while providing water conservation practices solely as guidance.

The main purpose for including volume in the definition of P2 allowable discharge is that in lieu of setting a mass-based definition, the incorporation of volume or flow reduction is meant to discourage the use of dilution of wastewaters to create concentrations that appear to be at an allowable level. In addition, EPA notes that when facilities use water conservation technologies to control the volume of wastewater they generate, they can more easily store and reuse interior rinsates, which may result in additional pollutant removals. Also, the use of flow reduction practices or equipment reduces the volume of water that must be treated before it can be considered a P2 allowable discharge. Reduced volumes require smaller treatment systems that, therefore, cost less to install and operate and run more efficiently, and in using certain technologies, such as precipitation/clarification, will result in reduced effluent pollutant loadings. Some facilities may adopt flow reduction strategies to save money and incidentally save loadings.

EPA believes that the definition of P2 allowable discharge can be implemented for this industry without the use of numerical limitations. In the pollution prevention alternative, EPA has included the requirement for paperwork that would include a discussion describing how a facility would demonstrate to their permitting authority (NPDES or pretreatment authority) that they are operating a well maintained treatment system (UTS or equivalent) that includes pollution control technologies that are appropriate for the PAIs handled at their facility. In addition, the paperwork would have to include the rationale for choosing the method of demonstration. For example, a facility may determine a surrogate method for determining breakthrough of their carbon adsorption unit. This method could be used instead of performing analytical testing for all or any of the PAIs that may have been in production at the facility over a specific period of time.

Note: EPA will submit an ICR to the Office of Management and Budget concerning this paperwork prior to final promulgation.

In addition, some indirect discharge facilities may be able to achieve complete pollution prevention, recycle and reuse of some wastewater sources, such as interior equipment cleaning rinsates, that would otherwise require treatment prior to being considered allowable discharges under the pollution prevention alternative. Such facilities would not have to incur the cost of treatment to discharge their remaining streams to the POTW (assuming no local limits requiring treatment). These facilities would not be operating treatment systems to comply with this regulation and; therefore, would not need to include a discussion in the necessary paperwork that demonstrates they are operating a well maintained treatment system. However, these facilities should indicate in the necessary paperwork that the wastewater sources which remain and which they are discharging are not the wastewater sources that require treatment under the pollution prevention alternative. In addition, there may also be facilities that choose comply with the zero discharge track of the Zero/P2 Option. For example, these facilities may choose to recycle and reuse wastewaters to the best of their ability and contract haul remaining wastewaters to avoid incurring the costs associated with installing and operating a treatment system.

3. *Description of Pollution Prevention Practices*

EPA has developed a list of pollution prevention, recycle and reuse practices for the pollution prevention alternative. The list is derived from the pollution prevention, recycle and reuse practices that have been demonstrated in the PFPR industry and are documented in the public record to the proposed rule. (See Section 7 of the Technical Development Document for the proposed rule [EPA 821–R–94–002].) If performed, these practices will reduce the pollutant loading of the wastewater and reduce the volume of wastewater by creating opportunities for reuse. In some instances the water conservation aspect of the practices will discourage the practice of dilution of the wastewater to create concentrations that appear to be at an allowable level.

For use as part of the pollution prevention alternative, the list has been separated into two tiers: (1) Practices that discharger must agree to comply with without any modification; and (2) other practices that discharger must agree to with acceptable justification. The second list has been set up to include possible modification based on comments received on the proposed rule or during meetings with industry. These modifications are discussed below. Both sets of pollution prevention, recycle, and reuse practices are included in Appendix B of this supplemental notice.

The list of pollution prevention practices for which no modification is provided includes: the use of flow reduction on hoses; the use of good housekeeping practices such as using drip pans and performing preventive maintenance; specific practices concerning the reuse of rinsate from rinsing drums that contain liquid PAI (or inerts) for formulation of water-based products; the sweeping of dry production areas prior to rinsing; and the use of recirculation (with periodic blowdown) when operating air pollution control wet scrubbers and continuous overflow DOT aerosol leak test baths. In addition, this list of pollution prevention practices includes a provision for some equipment dedication that is contingent on the ability to reuse interior rinsates as discussed on the second list (See discussion below). In the version of the P2 alternative, where water conservation practices and equipment would only be included as guidance and not specified in the regulatory text, the list above would be modified. The use of flow reduction devices on hoses and the use of recirculating air pollution control scrubbers and DOT test baths would not be included in the regulatory text of the final regulation and would only be recommended. EPA solicits comment on the practices contained in Table B–1 of Appendix B and whether the water conservation practices and equipment discussed above should be used only in guidance.

The second list sets forth other pollution prevention, recycle and reuse practices that may be modified with acceptable justification. In Appendix B, acceptable justification for modifying an individual practice is described following the description of the practice itself. A modification, for purposes of the pollution prevention alternative, means that a facility would no longer have to perform a listed practice or that it would need to comply with the described alternative practice. However, the modification only applies to the specific practice from the second list for which the modification has been justified and to no other listed practices. Facilities would be required to discuss all modifications in the paperwork necessary for the pollution prevention alternative.

The pollution prevention, recycle and reuse practices on the second list include: practices concerning the reuse of rinsates from rinsing drums that contain liquid PAI (or inert) for formulation of solvent-based products; the use of low volume/high pressure rinsing equipment for rinsing PFPR equipment interiors when rinsing with water; the use of floor scrubbing machines or mops for cleaning floors in liquid production areas; the segregation of production equipment for water and solvent based production; and the storage of interior equipment rinsates for use in future formulation of the same or compatible product. Water conservation equipment such as low volume/high pressure rinsing equipment, floor scrubbing machines, and mops and buckets that do not directly reduce pollutant loadings to the wastewater and, therefore, may not be specified in the regulatory text of the final rule. Instead, they may be discussed as guidance.

Upon reviewing the comments to the proposed regulation and discussions

[2] EPA is still determining the appropriate treatment technologies for a number of inorganic pesticide chemicals. Activated carbon (AC) adsorption was only used to provide a conservative cost estimate. Therefore, listed technologies for such PAIs are subject to change for final regulation.

with facilities on post-proposal site visits, EPA has determined situations where it may be justified not to conduct these practices. For example, facilities may not always be able to store interior equipment rinsates for use in future formulation of the same or compatible product for a variety of reasons. These reasons include: microbial growth in the stored product or other deterioration such as phase separation or formation of precipitate; space limitations; dropping of product registration or discontinuation of production for a specific product; customer specifications (e.g., manufacturer/formulator for which a toll formulating contract directs otherwise); and the facility only packages but does not formulate the product. EPA is soliciting comment on the above reasons for modification and whether the water conservation equipment discussed above should be used only in guidance.

Facilities who modify a practice must provide justification. For example, facilities who modify the practice of storing rinsate for future formulation for any of the reasons above must provide justification such as: evidence of microbial growth or deterioration or written statement from the customer for which they are contract toll formulating directing otherwise (e.g., the contract specifies that the rinsate be sent back to customer or sent for off-site disposal). In some instances in which modifications are allowed, specific alternative practices must be agreed to and conducted in addition to those in the list of specified practices (Table B–1, Appendix B). These specific alternative requirements are listed with the second list of pollution prevention, recycle and reuse practices in Table B–2, Appendix B and would be incorporated into the regulatory text at the time of promulgation. For example, where a facility cannot store interior rinsates for use in future formulation due to space limitations, the facility would have to store rinsates for use in future formulation of the same or compatible product only for their most frequently produced products.

There is also a contingent practice in the first list of pollution prevention practices (Table B–1, Appendix B) which mandates some dedication of equipment that will reduce rinsates from changeover. Under this contingent practice, facilities would not have to dedicate all equipment, but instead would have to dedicate equipment in at least one of the following ways, by: frequently produced products (i.e., top production products); hard to clean products (e.g., viscous, sticky or colored products); product families; or a portion of the formulating/packaging equipment (e.g., just the mix tank, just the agitator, just the transfer hoses). Facilities would not have to dedicate equipment for the same products where they cannot store the interior rinsates for future formulation. EPA believes such a contingent practice would be over prescriptive and would possibly be economically unachievable at some PFPR facilities. The purpose of this contingent practice for dedication is to avoid the generation of wastewater where plausible in order to off-set the wastewater generated when a facility has modified the specified practice. EPA solicits comment and data on the pollutant loadings in wastewater and the volume of wastewater saved by the use of dedicated equipment in any of the ways listed in the above discussion.

In general, EPA believes that the use of the practices specified by the pollution prevention alternative, including practices focusing on water conservation, create the opportunity for increased source reduction through reusability of wastewaters. This would lead to large pollutant reductions and, in the case of water conservation practices, smaller, less expensive treatment systems. Use of the practices as part of the pollution prevention alternative (with a P2 discharge allowance) should also limit cross-media impacts by reducing the amount of process wastewater that would otherwise be transported off-site and incinerated.

4. *Implementation of the Pollution Prevention Alternative*

This section describes several implementation options for this effluent guideline. EPA solicits comment from all interested parties. In addition, EPA hopes to provide guidance on the implementation of the final rulemaking through the use of a guidance manual and regional workshops. EPA is soliciting comment on additional forms of guidance that would be useful.

EPA believes that either variation of the pollution prevention alternative (all practices specified vs. some as guidance only) could be implemented in a variety of ways. Each PFPR facility subject to this regulation, if promulgated with the Zero/P2 Option, will need to make an initial choice: to either comply with the Zero Discharge effluent limitation or pretreatment standard or choose to agree to conduct the listed pollution prevention practices and also agree to make the practices and the pollution prevention discharge allowance enforceable. However, beyond this initial choice, the continued implementation of the Zero/P2 Option will differ for direct and indirect dischargers.

For direct dischargers, the Zero/P2 Option will be implemented through the NPDES permitting process. For each direct discharging PFPR/Manufacturer or new facility, the facility would need to make the initial choice at the permitting or permit renewal stage. If the facility chooses the P2 alternative over the zero discharge limitation, the permitting authority would include all of the P2 practices and the specified treatment technologies in the facility's NPDES permit. The pollution prevention practices and treatment technologies included in such a NPDES permit would be enforceable under CWA sections 309 and 505.

PFPR facilities which are indirect dischargers would also need to make an initial choice of meeting the zero discharge pretreatment standard or adopting and implementing the P2 practices and the treatment technologies (if so specified). If the indirect discharging PFPR facility chooses the P2 alternative, EPA would propose that the facility file a Notice of Intent (NOI) with the pretreatment authority. In addition, indirect discharging PFPR facilities which choose the P2 alternative would need to self-certify in writing that they are performing the listed practices or provide the necessary justification for modifying certain of the pollution prevention practices as listed in Table B–2. This certification would require a signature by the appropriate manager in charge of overall operations of the facility to assure that information provided is true, accurate, and complete to the best of his or her knowledge. The pretreatment authority, as part of its approved pretreatment program, must have the authority to ensure compliance with a pretreatment standard (40 CFR 403.8(f)(1)(ii)) and to carry out inspections of the indirect dischargers' self-certifications and of the paperwork described below. 40 CFR 403.8(e)(1)(v).

Both direct and indirect discharging facilities would be required to keep certain paperwork on-site and available for permitting authorities and enforcement officials. For each facility, this necessary paperwork would include, at a minimum, descriptions of the practices that are being employed and how they are being implemented, discussions of any modifications that are made and the justification for each modification (including records that indicate, for example, microbial growth, space limitations, infrequent or intermittent production). The necessary paperwork must also include: (1) A discussion on demonstrating that the treatment system being used contains the appropriate treatment technologies (i.e., listed by PAI in Appendix C or equivalent established in literature) for removing PAIs that are used in production at their facility and could be in their wastewater; (2) and establishes a method for demonstrating that the treatment system is well operated and maintained; and (3) the rationale for choosing the method of demonstration.

Permitting authorities could, after receipt of the NOI or at the time of issuing, reissuing, or modifying the NPDES permit, inspect the PFPR facility to see that the listed practices are being employed, that the treatment system is well operated and maintained and that the necessary paperwork provides sufficient justification for any modifications. EPA solicits comment on this approach to implementation of the pollution prevention alternative.

EPA also requests comment on a second implementation option. Instead of utilizing self-certification, this approach could require facilities to submit the necessary paperwork to the permit writer or pretreatment authority for approval. For this option, EPA is requesting comment on whether the submitted paperwork should support the practices as listed in Appendix B of this notice or be based on the practices listed in Appendix B, but allow flexibility to the permitting authority. More specifically, the permitting authority could add to or replace practices in Appendix B with new or innovative practices that are more effective at reducing the pollutant loading (directly or indirectly) from a specific facility to the environment, based on best professional judgement (BPJ). EPA realizes that requiring submittal of paperwork to and approval from the permitting authority would increase the burden and may cause untimely delays in implementing this option. In addition, EPA believes that it may be difficult for the permitting authority to review a facility specific plan that is not based wholly on the listed practices found in Appendix B of this notice. This approach may provide more flexibility for the industry and the permitting authority; however, it will substantially increase the burden on the permitting authorities.

As in other effluent guidelines and pretreatment standards, the compliance deadline for the PFPR pretreatment standards for existing sources would be three years following promulgation and the date of issue, reissue or modification of the NPDES permit for direct discharging PFPR/Manufacturing facilities. New source standards and limitations (PSNS and NSPS) must be complied with when a facility commences the discharging of wastewater.

IV. Costing Methodology

This section will briefly describe the revisions that have been made to the costing methodology that was used to estimate compliance costs and the pollutant removals for the proposed rule. These revisions are discussed more thoroughly in the updated version of the Cost and Loadings Report and the Treatability Database Report which can be found in the public docket.

In addition to the changes that are made due to the revisions to the scope that are being considered (as discussed in Section II), there are three areas where changes have been made to the costing methodology. These include revisions to: (1) The treatability database to include activated carbon adsorption (AC) as the treatment technology for certain PAIs where additional treatability information has been identified; (2) the costs for the zero discharge alternative to include costs for off-site incineration of non-reusable wastewaters; and (3) the computer model used to develop costs and pollutant removals for the proposed rule to estimate compliance costs and pollutant removals for the pollution prevention alternative.

In order to adjust the estimated compliance costs and pollutant loadings to account for the exemption of specific PAIs and wastewater sources (see Section II for discussion of exemptions), EPA had to remove the PAIs from the influent database. In addition, EPA had to make adjustments to account for the volume of wastewater previously contributed by the PFPR of these PAIs. In the situation where exempted PAIs are the only PAIs used in a product or on a line, it is not difficult to zero out the associated pollutant removals, treatment cost estimates or the wastewater related to production of the exempted PAIs. However, when exempted PAIs are used in conjunction (in products or on shared lines) with PAIs that are covered by the rule, only the pollutant loading contributed by the exempted PAIs can be excluded; the total wastewater related to the production must still be costed. A more extensive description on the revisions to wastewater volumes due to the exemption of certain PAIs (including PAIs with non-surveyed production) can be found in the updated Cost & Loadings Report. These revisions tend to reduce an individual facility's annualized compliance cost estimates as compared to the proposed rule.

EPA revised the treatability database to assign activated carbon as the treatment technology for certain PAIs where additional treatability information has been identified. In addition to deciding which treatment technologies were appropriate for these PAIs through literature searches and technology transfers, EPA used the same transfer basis as was used in the proposal to transfer achievable effluent concentrations (i.e., the 90th percentile highest achievable effluent concentration) for these PAIs. This information was added to the treatability database for the PFPR industry. This revision tends to increase annualized compliance cost estimates for some facilities as compared to costs estimated at proposal.

In addition to the overall revisions above, revisions were made specifically to the cost estimates for achieving zero discharge of wastewater for the proposed rule. In the proposed rule, EPA only included costs for contract hauling to off-site incineration of treatment system sludges. Based on comment, EPA has revised the costing methodology for the zero discharge option to reflect additional contract hauling of interior equipment rinsates to off-site incineration, and to account for possible water balance problems. Interior equipment cleaning rinsates from lines where detergents or solvents were used are now costed for contract hauling for off-site incineration rather than treatment and reuse. Based on comment, EPA also increased overall, the percentage of the blowdown (bleed off stream) from the UTS. This revision accounts for the volume of wastewater that cannot be reused due to either a salt buildup or a water balance problem at the facility. The percent for blowdown has been increased from 0.2% in the proposed rule to 5% in this notice.

Note: EPA continued to use a blowdown of 0.2% for estimations for the pollution prevention alternative, because under this alternative facilities can discharge these excess wastewater under the P2 discharge allowance.

A third revision was made which was applied to both the revised zero discharge cost estimates and those estimated for the pollution prevention alternative. For the proposal, EPA costed directly reusable rinsewaters that were stored for longer than 90 days to be treated prior to reuse. This conservative approach was used to address the Resource Conservation and Recovery Act (RCRA) limitation for accumulating hazardous wastes for more than 90 days without a permit or interim status (40 CFR 262.34). Instead, EPA is using a more realistic approach by assuming that since these rinsewaters

are directly reusable (i.e., do not require treatment prior to reuse, and due to stringent product specifications, do not contain constituents that are not used in the product) they would not be considered a waste, and therefore, would not trigger the 90 day RCRA accumulation limitation on listed or characteristic hazardous wastewaters. Therefore, EPA has revised the cost model so that it no longer costs stored interior equipment cleaning rinsates that have been stored for greater than 90 days for treatment through the UTS. Instead, these reusable rinsewaters are costed for storage only (not RCRA storage costs).

Note: To avoid speculative accumulation, 75% of these directly reusable rinsewaters must be reused within a calendar year.

Estimated annualized compliance costs to achieve zero discharge tend to decrease due to changes in scope, but increase in the aggregate due to the three revisions described in the above discussion as compared to the proposed rule.

Finally, EPA also developed estimated annualized compliance costs and pollutant removals for the pollution prevention alternative. This cost estimate is based on the version of the P2 alternative which would specify the pollution prevention, recycle and reuse practices in the regulatory text of the final rule (see Section III.C). However, it can also be viewed as a conservative estimate for the P2 alternative where water conservation practices are not specified in the regulatory text, but are instead provided as guidance.

The computer model used for estimating costs was altered slightly to estimate costs for the pollution prevention alternative. Capital costs were added to account for equipment (e.g., cost of floor scrubbing machine or other flow reduction devices) needed to perform the specific practices. In reference to this equipment, EPA applied an 80% reduction to floor wash and exterior equipment cleaning volumes. Also, revisions were made to include removing the cost of pretreatment for the wastewater sources that would not require treatment prior to discharge to a POTW (e.g., DOT aerosol test bath water or safety equipment cleaning). [Note: EPA has not estimated costs for direct discharging stand alone PFPR facilities because these facilities are currently considered to be at zero discharge]. Wastewaters that would require treatment prior to discharge under a pollution prevention discharge allowance were costed for treatment through the UTS (including a 0.2% blowdown costed for contract hauling sludges for incineration). As mentioned above, EPA did not include costs for treating interior equipment cleaning rinsates that are stored for greater than 90 days. In addition, interior equipment cleaning rinsates from lines where detergents were used were costed for treatment and discharge under the P2 discharge allowance. In the cases of indirect dischargers, many facilities benefited from the decrease in the size of the UTS necessary to treat their wastewater remaining after utilizing the specified practices. For the purpose of conducting the economic analysis, including determining the incremental cost-effectiveness (see Section V), EPA revised the costs and loadings of Option 2 (from proposal) to reflect the costs and loadings associated with the pollution prevention alternative. Both the pollution prevention alternative and Option 2 from the proposal are based on pollution prevention with treat and discharge; however, the pollution prevention alternative would only allow reduced discharge and is designed so that it would not have to require numerical limitations for compliance, as did Option 2 in the proposal.

EPA requests comment on the revisions to the costing methodology.

V. Estimated Costs, Economic Impacts, and Cost-Effectiveness

A. Options at Proposal

EPA considered 5 PSES options at proposal. Options 1 and 2 were not zero discharge options but involved treatment of wastewater and discharge to POTWs. Options 3, 4, and 5 were zero discharge options but involved different compliance methods with differing costs and impacts.

Option 1 consisted of end-of-pipe treatment for all wastewaters through the Universal Treatment System (UTS) and discharge to POTWs. Option 1 was rejected because it did not include pollution prevention, did not incorporate the best available technology available and because the Agency would be unable to control the discharge of all pollutants due to a lack of analytical methods for some active ingredients. Option 1 would require significant additional data on a large number of pollutants for which the Agency would have to establish standards and for which facilities would need to monitor. See 59 FR 17875.

Option 2 added pollution prevention by recycling wastewaters from cleaning the interiors of formulating and packaging equipment, and raw material and shipping containers into the product to recover product value in the wastewaters. Other wastewaters were still expected to be treated through the UTS and discharged to POTWs. Option 2 contained pollution prevention provisions but was rejected for the analytical and monitoring reasons stated above, as it still required numerical limitations.

Option 3 employed the same technology and pollution prevention practices as Option 2 but achieved zero discharge of all process wastewater by recycling the wastewater back to the facility after treatment through the UTS. Option 3/S', the proposed option, is a variant on Option 3 which expanded the coverage of the regulation to PAIs not covered by the Section 308 survey and exempted certain waste streams associated with specific sanitizer PAIs from the zero discharge requirement.

Option 4 incorporated the pollution prevention aspects of Options 2 and 3, but instead of treatment, added off-site disposal to an incinerator for the rest of the wastewater. Option 4 was rejected because it relied on transferring wastewater pollutants to another media and resulted in higher costs with no increased benefits.

Option 5 assumed that all wastewater would be disposed of through off-site incineration. Option 5 was rejected because it did not contain any pollution prevention provisions and for the same reasons as Option 4.

A complete discussion of the estimated compliance costs, impacts, and cost-effectiveness at proposal can be found in the *Economic Impact Analysis of Proposed Effluent Limitations Guidelines and Standards for the Pesticide Formulation, Packaging, and Repackaging Industry (EIA) and the Cost-Effectiveness Analysis Of Proposed Effluent Limitations Guidelines And Standards For The Pesticide Formulating, Packaging, And Repackaging Industry.* Both of these documents are available for review in the public docket of this rulemaking.

B. Compliance Costs

For the purposes of economic analysis, EPA re-estimated the annualized compliance costs and economic impacts for two of the regulatory options presented at proposal (Options 1 and 4) to incorporate the changes in scope discussed in this notice. EPA also estimated compliance costs and economic impacts for a new regulatory option referred to as the Zero/P2 Option. The Zero/P2 Option consists of two alternatives. When implemented, facilities would either meet zero discharge limitations, as the proposed rule required, or would be allowed a reduced discharge (P2 allowable discharge) if they met certain pollution prevention and treatment practices. The Zero/P2 Option revises both Options 2 and 3/S' presented at proposal, and incorporates them into one option, allowing industry to choose between these alternatives. The new pollution prevention alternative is different from the old Option 2 in that the pollution prevention practices are specified and must be used for compliance and does not require numerical limitations (which could not be developed due to insufficient data). As stated in III.A. of this notice, the Agency now believes that it may also be appropriate to establish an alternate BAT and PSES limitations that allow a discharge of pollutants as long as PFPR facilities comply with certain pollution prevention practices. It also differs from the old Option 2 in that as part of the Zero/P2 Option, the Agency believes that the pollution prevention alternative can be implemented without the use of numerical limitations (see Section III.C.2). EPA did not re-estimate costs for Option 5 because it is not a viable option given that it achieves the same results as the new regulatory option and Option 4 (i.e., zero discharge) at substantially higher costs.

EPA previously estimated the total annualized compliance cost of the proposed rule at $56.1 million (1988) (which equals $67.4 million in 1995). EPA is using 1988 dollars because it is the base year for the survey data that was collected and because costs were presented in 1988 dollars in the proposal. As shown in Table 1, total annualized compliance costs (including amortized capital costs and operating and maintenance costs) equal $32.7 (1988) million ($39.4 million in 1995) for the Zero/P2 Option. In choosing between the two components of the Zero/P2 Option, industry is expected to choose the lower cost compliance alternative for each facility. For some facilities, particularly those with low volumes of wastewater, achieving zero discharge will be the less expensive alternative (even when they comply by contract hauling wastewaters for off-site incineration); for most facilities, achieving the P2 allowable discharge by complying with pollution prevention practices and treatment of certain waste streams is less expensive. The cost estimate for the Zero/P2 Option selects the least costly alternative for each facility.

As discussed in the proposed rule (59 FR 17896), EPA expanded the scope of the rule to account for facilities that formulate PAIs other than those PAIs covered by the 1988 survey questionnaire. In the proposal, EPA referred to these additional PAIs as the "non 272" PAIs. Several of the non-272 PAIs are being considered for exemption from the final rule (see Section II. A of this notice). Consistent with the methodology used at proposal, EPA assumed that facilities using only non-272 PAIs have the same average compliance costs, percent of impacted facilities, and average pollutant removals as facilities covered by the survey.

TABLE 1.—NATIONAL ESTIMATES OF COSTS AND IMPACTS FOR SUB-CATEGORY C PSES OPTIONS IN 1988 DOLLARS

(Assuming Zero Cost Pass-Through)

	Zero/P2 option	Proposed option 3/S'
All facilities:		
# of Facilities Projected to Incur Costs	551	559
Total Annualized Compliance Costs (million dollars)[1]	$32.7	$56.1
Facility Closures: (Severe Economic Impacts)	0	2
Moderate Economic Impacts	162	250

[1] Total annualized compliance costs are in $1988 and therefore differ from the costs used in the cost-effectiveness section below.

C. Economic Impacts

EPA re-estimated the economic impacts resulting from the compliance costs using the methodology presented in the EIA for the proposed rule. EPA projected two categories of economic impacts that may result from regulation: severe impacts measured as projected facility closures, and moderate impacts measured as conversion of PFPR product lines to non-pesticide formulating, packaging and repackaging operations, or compliance costs in excess of five percent of facility revenue. Under the proposed option, EPA projected facility closures at two facilities and moderate economic impacts at 250 facilities (see Table 1). Under the new combined Zero/P2 Option, EPA projects no severe impacts and moderate impacts at 162 facilities, a substantial decrease from the proposed rule.

D. Cost-Effectiveness

Cost-effectiveness analysis is used in the effluent guidelines process to compare the efficiency of one regulatory option in removing pollutants to another regulatory option, and to compare the regulation with other promulgated regulations. Cost-effectiveness is defined as the incremental annual cost of a pollution control option in an industry or industry subcategory per incremental pollutant removal. The increments considered are relative to another option or benchmark such as existing treatment. The cost-effectiveness value, therefore, represents the marginal cost of removing the next pound of pollutant.

For this cost-effective analysis, the costs were annualized using a social discount rate of seven percent. To facilitate comparison among rules promulgated in different years, cost-effectiveness values are always reported in 1981 dollars. Pollutant removals are measured in copper-based toxic "pounds-equivalent". This adjustment accounts for differences in toxicity among the regulated pollutants. (Note that the analysis presented here is not strictly comparable with that presented at proposal because the toxic weighting factor used for pyrethrin has decreased significantly since proposal as a result of a new calculation method.)

Table 2 presents the total annualized costs, total pounds, total pounds-equivalent of pollutants removed, and average cost per pound removed for the three options (Options 1, Zero/P2, and 4). Table 3 presents the incremental cost-effectiveness for the three options.

TABLE 2.—NATIONAL ESTIMATE OF ANNUALIZED COSTS AND REMOVALS UNDER PSES[1] SUBCATEGORY C FACILITIES

Options	Annualized cost, MM$ (1981 dollars)	Pound removals[3]	Pound equivalent removals[3]	Average cost/pound removed
Zero/P2[2]	$26.1	266,336	29,832,701	$0.87
1[4]	44.9	269,181	29,943,443	1.50
4	383.3	269,738	29,973,224	12.79

[1] These removals are not strictly comparable with those presented in the cost-effectiveness at proposal as the toxic weighting factor used to calculate pound equivalent removals for Pyrethrin has decreased significantly since proposal.
[2] EPA is considering giving industry the choice of complying with zero discharge or the pollution prevention alternative which allows a reduced discharge. This choice was proposed by industry. Option Zero/P2 combines revised Options 2 and 3/S' into a single option of choice.
[3] The removal numbers presented here are not precise. All options have virtually identical removals (2.7×10^5 pounds and 3.0×10^7 lb-eq). The precision with which we can estimate the removals is not precise enough to accurately differentiate such small differences. The Zero/P2 Option is the least costly alternative and removes approximately the same number of pounds as the other Options.
[4] Option 1 requires numerical limitations. EPA did not set numerical limitations and standards in the proposed regulation (59 FR 17875) because of the lack of data such as the long term monitoring data necessary to set numerical limitations, lack of analytical methods for testing for many of the PAIs in wastewater, and the large annual cost that would be associated with compliance monitoring for all PAIs that a PFPR facility may use in production over a years time. The revised Option 1 costs presented here underestimate the true costs associated with Option 1 because they only include monitoring costs associated with the original 272 PAIs. They do not include monitoring costs associated with the Non-272 PAIs, because analytical methods have not currently been identified for all of them.

TABLE 3.—NATIONAL ESTIMATE OF INDUSTRY COST EFFECTIVENESS UNDER PSES[1] ALL SUBCATEGORY C FACILITIES

Option	Incremental costs	Incremental lb-eq removed[3]	Cost-effectiveness in $/lb-eq
Least cost alternative zero or P2[2]	26.1	29,832,701	$0.87
1[4]	18.9	110,742	170.22
4	$338.3	29,781	11,361

[1] Dollar values are in constant 1981 dollars. These removals are not strictly comparable with those presented in the cost-effectiveness at proposal as the toxic weighting factor used to calculate pound equivalent removals for Pyrethrin has decreased significantly since proposal.
[2] EPA is considering giving industry the choice of complying with zero discharge or the pollution prevention alternative which allows a reduced discharge. This choice was proposed by industry. Option Zero/P2 combines revised Options 2 and 3/S' into a single option of choice.
[3] The cost effectiveness numbers presented here are for illustrative purposes only. All options have virtually identical removals (2.7×10^5 lbs. and 3.0×10^7 lb-eq). The precision with which we can estimate the removals is not precise enough to differentiate such small differences. EPA has determined that the Zero/P2 alternative is the least costly, and thus the most cost-effective.
[4] Option 1 requires numerical limitations. EPA did not set numerical limitations and standards in the proposed regulation (59 FR 17875) because of the lack of data such as the long term monitoring data necessary to set numerical limitations, lack of analytical methods for testing for many of the PAIs in wastewater, and the large annual cost that would be associated with compliance monitoring for all PAIs that a PFPR facility may use in production over a years time. The revised Option 1 costs presented here underestimate the true costs associated with Option 1 because they only include monitoring costs associated with the original 272 PAIs. They do not include monitoring costs associated with the Non-272 PAIs, because analytical methods have not currently been identified for all of them.

VI. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (the Act), P.L. 104–4, which was signed into law on March 22, 1995, EPA generally must prepare a written statement for rules with Federal mandates that may result in estimated costs to State, local, and tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is required for EPA rules, under section 205 of the Act EPA must identify and consider alternatives, including the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law. Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must develop under section 203 of the Act a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

EPA has determined that the alternative Zero/P2 Option discussed in this notice does not include a Federal mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate, or to the private sector, in any one year. EPA has estimated that the annual costs of the Zero/P2 Option to the private sector to be $32.7 million in 1988 dollars or $39.4 million in 1995). Although EPA has not empirically estimated the annual costs to States, local, or tribal governments resulting from implementation of the Zero/P2 Option, the Agency expects the annualized costs to be much less than those which the private sector, i.e., the PFPR facilities will face. States, local, or tribal governments will face the costs of issuing NPDES permits or conducting inspections of facilities; however, EPA does not expect these costs to produce any significant increase to the costs that these entities incur by issuing an NPDES permit or discharge agreement prior to the promulgation of the effluent limitations or pretreatment standards. EPA solicits comment on this estimate.

As to section 203 of the Act, EPA has determined that the Zero/P2 Option discussed in this notice will not significantly or uniquely affect small governments, including tribal governments. EPA recognizes that small governments may own or operate POTWs that receive wastewater from PFPR facilities subject to the pretreatment standards contained in this notice, including the Zero/P2 Option. Thus, there may be certain small governments which receive notices of intent from PFPR facilities that choose to avail themselves of the P2 alternative. These same small governments will need to enforce the pretreatment standards through compliance mechanisms, including inspections. However, these mandates are already contained in the existing general Pretreatment Standards, which include requirements for an approved POTW pretreatment program. 40 CFR 403.8. Thus, EPA believes that any mandates resulting from this notice are not significant or unique.

EPA has, however, sought meaningful and timely input from the private sector, states, and local governments on the development of this notice. After receiving comment on the pollution prevention alternative, EPA met with members of private sector who requested that such meetings be held to discuss this alternative. EPA shared a draft version of the pollution prevention alternative with the Effluent Guidelines Task Force, the members of which include industry, environmental groups, state governments, and owner/operators of POTWs. EPA officials also presented the pollution prevention alternative at a conference held by the Association of Metropolitan Sewerage Agencies, which includes representatives from, primarily, large and medium municipal sewer authorities (POTWs) from across the United States. EPA also plans to distribute this **Federal Register** notice to several smaller POTWs which service different small communities throughout the United States in an attempt to seek timely and meaningful input from small governments. Thus, EPA expects that any applicable requirements of section 203 of the Act will have been satisfied prior to promulgating a final rule.

VII. Solicitation of Comment

In addition to those areas where EPA specifically requested comment throughout this notice, EPA solicits comment in the following areas:

- Research and development (R&D) facilities—EPA has received comment from stand alone R&D facilities that develop new formulations and perform efficacy and field testing on these new formulations. These facilities requested exemption from the PFPR effluent guidelines for several reasons. First, the majority of wastewater that is generated at these facilities is due to operation of a greenhouse or residue laboratory. EPA notes that even if these facilities are included in the final regulation, these wastewaters should not be considered process wastewater associated with pesticide formulating, packaging and repackaging operations.

Second, the remainder of wastewater is generated by the operation of a quality control (QC) laboratory or by cleaning the pilot scale formulating equipment. Both of these wastewater sources would have been considered PFPR process wastewaters under the proposed rule. However, as discussed in today's notice, EPA is considering whether to exempt laboratory equipment rinsates from cleaning analytical equipment from the definition of PFPR process wastewater. In the case of rinsate generated from cleaning the experimental formulation equipment, commenters stated that they could not meet the proposed regulation of zero discharge based on reuse. Since these facilities do not produce the same pesticides again once they have completed testing, they do not have the same ability to reuse water as a typical PFPR facility. EPA is soliciting comment and additional information on whether stand alone R&D facilities that perform PFPR operations should be exempted from the PFPR effluent guidelines rule. EPA is not considering exempting wastewaters generated by R&D activities at PFPR facilities.

- Stand alone direct discharging PFPR facilities—EPA requests comment on allowing stand alone direct discharging PFPR facilities (i.e., PFPR facilities that do not perform pesticide manufacturing operations) to have the option of complying with the pollution prevention alternative. [Note: During the development of the proposed regulation, EPA estimated that there were only two direct discharging PFPR stand alone facilities (one of which was both an indirect and a direct discharger).] Based on available data, EPA does not believe that stand alone PFPR facilities have the necessary treatment in place to discharge directly to the nation's waters; therefore, Appendix B does not include BAT and NSPS limitations for PFPR stand alone direct discharging facilities.

Triple rinse and the pollution prevention allowable discharge—EPA solicits comment and data on concentrations of pollutants (PAIs and other pollutants) found in the second and third rinses of a triple rinse from cleaning equipment interiors or raw material drums. In discussions with industry, EPA was asked whether the second or third rinses of a triple rinse could be considered a P2 allowable discharge for the purposes of the pollution prevention alternative. Under the pollution prevention alternative, as it is presented today, these rinses would have to be reused because EPA believes that these subsequent rinses contain pollutant loadings which are at high enough levels to be reused. However, if sufficient data is available, EPA may reconsider specifying reuse of these rinses and allow discharge (possibly only after treatment) in the final regulation. [Note to commenters providing data: please indicate if data represents concentrations in second or third rinses and if from drum rinsing, interior equipment rinsing, minibulk or bulk tank rinsing.]

Burden to permitting authorities (NPDES and Pretreatment)—EPA solicits comment from POTWs and NPDES permit writers on the burden to them associated with both the variations of the pollution prevention alternative and on the different implementation approaches. EPA believes the burden for either of the variations of the P2 alternative and for implementation by self-certification is no larger than what is associated with the proposed zero discharge limitation as on-site inspections would still be the expected method of demonstrating compliance. EPA notes that implementation by self-certification of the pollution prevention alternative does not require analytical testing on the part of the permitting authority. However, EPA solicits comment, including estimates of burden, on whether there would be a substantial additional burden associated with increased use of guidance (versus the use of all practices being specified in the regulatory text). In addition, EPA solicits estimates of the burden associated with requiring submittal of paperwork for approval to the permitting authority (NPDES and/or pretreatment authority).

The following four appendices (A–D) are the appendices which are referred to in this Supplemental Notice.

Appendix A.—Pesticide Active Ingredients Considered for Exemption

TABLE 1.—PAIS THAT ARE SANITIZER CHEMICALS

Shaughnessey code	PAI code	Chemical name [1]	Previously proposed as sanitizer PAI [2]
000101		Glycolic acid	
004206		Rosin amine D	
009601		Oxalic acid	
045901		Hydrogen chloride	
046607		Heptadecyl hydroxyethylimidazolinium chloride	
046621		Alkyl*-1-benzyl-1-(2-hydroxyethyl)-2-imidazolinium chloride	✔
046914		PVP iodine	
046915		Octylphenoxypolyethoxyethanol—iodine complex	
046923		Tetraglycine hydroperiodide	
046925		Alkyl*-omega-hydroxy-poly(oxyethylene)poly(oxypropylene)-iod.	
046926		Polyethylene glycol ether of linear secondary alcohol—iodi	
059804	051	Oxine-sulfate	✔
062201		o-Benzyl-p-chlorophenol	
062212		Chloro-2-biphenylol, sodium salt	
062215		Chloro-4-biphenylol, sodium salt	
063604		Potassium peroxymonosulfate	
064103	211	Phenylphenol	
064210		Trichlorophenol	
069104		Alkyl* dimethyl benzyl ammonium chloride *(60%C14, 30%C16, 5	✔
069105	056	Alkyl dimethyl benzyl ammonium chloride (Hyamine 3500)	✔
069106		Alkyl* dimethyl benzyl ammonium chloride *(50%C12, 30%C14, 1	✔
069107		Benzyl dimethyl tetradecyl ammonium chloride	
069108		Benzyl hexadecyl dimethyl ammonium chloride	
069110		Alkyl* dimethyl 3,4-dichlorobenzyl ammonium chloride *(50%C1.	
069111		Alkyl* dimethyl ethylbenzyl ammonium chloride *(50%C12, 30%C	✔
069112		Alkyl* dimethyl 1-naphthylmethyl ammonium chloride *(98%C12,	✔
069118		Dialkyl* methyl benzyl ammonium chloride *(60% C14, 30% C16,	✔
069122	105	Benzethonium Chloride (Hyamine 1622)	✔
069125		Dodecylbenzyl trimethyl ammonium chloride	✔
069129	162	Hyamine 2389 (Methyl dodecylbenzyltrimethyl ammonium chlorid	✔
069134	159	Methylbenzethonium chloride	✔
069136		Dialkyl* dimethyl ammonium chloride *(47%C12, 18%C14, 10%C18	
069137		Alkyl* dimethyl benzyl ammonium chloride *(60%C14, 25%C12, 1	✔
069138		Dialkyl* dimethyl ammonium chloride *(as in fatty acids of c	
069140		Alkyl* dimethyl benzyl ammonium chloride *(61% C12, 23% C14,	✔
069141		Alkyl* dimethyl benzyl ammonium chloride *(58%C14, 28%C16, 1	✔
069143		Alkyl* dimethyl benzyl ammonium chloride *(67%C12, 24%C14, 9	
069144		Alkyl* dimethyl 3,4-dichlorobenzyl ammonium chloride *(61%C1	
069145		Alkyl* dimethyl 3,4-dichlorobenzyl ammonium chloride *(90%C1	✔
069149		Didecyl dimethyl ammonium chloride	✔
06951		Alkyl* trimethyl ammonium chloride *(90%C18, 10%C16)	
069154		Alkyl* dimethyl ethylbenzyl ammonium chloride *(68%C12, 32%C	✔
069156		Cetyl dimethyl ethyl ammonium bromide	
069157		Alkyl* dimethyl benzyl ammonium chloride *(65%C12, 25%C14, 1	
069158		Alkyl* dimethyl benzyl ammonium chloride *(93%C14, 4%C12, 3%	
069162		Dialkyl* dimethyl ammonium chloride *(85% C18, 15% C16)	
069165		Octyl decyl dimethyl ammonium chloride	✔
069166		Dioctyl dimethyl ammonium chloride	✔
069167		Alkyl* dimethyl ethylbenzyl ammonium chloride *(60%C14, 30%C	
069173		Oxydiethylenebis(alkyl* dimethyl ammonium chloride) *(as in	✔
069175		Alkyl* dimethyl benzyl ammonium chloride *(67%C12, 25%C14, 7	
069177		Dialkyl* dimethyl ammonium chloride *(50% C12, 30% C14, 20%	
069184		Alkyl* dimethyl benzyl ammonium chloride *(95%C14, 3%C12, 2%	
069189		Alkyl* dimethyl benzyl ammonium chloride *(61% C12, 23% C14,	
069192		Alkyl* dimethyl benzyl ammonium chloride *(70% C12, 30% C14)	
069194		Alkyl* dimethyl benzyl ammonium chloride *(90% C14, 5% C12,	✔
073201		Sodium bisulfate	
076001		Phosphoric acid	
078101		Sulfamic acid	
079005		Ethoxylated nonylphenol	
081405		Mono(trichloro)tetra(monopotassium dichloro))penta-s-triazin	
099001	036	2-(Hydroxymethyl) amino ethanol (HAE)	✔
104001		Hydroxymethyl)amino)-2-methyl-1-propanol	
107601		Alkoxy*-2-hydroxypropyl trimethyl ammonium chloride *(100% C	
124201		Chlorinated trisodium phosphate	
128875		Isobornyl acetate	
128919		Octanoic acid	

TABLE 1.—PAIS THAT ARE SANITIZER CHEMICALS—Continued

Shaughnessey code	PAI code	Chemical name [1]	Previously proposed as sanitizer PAI [2]
128928		Alkyl* dimethyl benzyl ammonium chloride *(67%C12, 25%C14, 7	
128955		Capric acid	
169101		Alkyl* dimethyl 3,4-dichlorobenzyl ammonium chloride *(50%C1	
169105		Alkyl* dodecylbenzyl dimethyl ammonium chloride *(70% C12, 3	
169108		Alkyl* dimethyl benzyl ammonium chloride *(as in fatty acids	
169124		Alkyl* trimethyl ammonium chloride *(70% C12, 30% C14)	
169128		Alkyl* bis(2-hydroxyethyl)benzyl ammonium chloride *(57%C10,	
169131		Alkyl* amino betaine *(46%C12, 24%C14, 10%C16, 8%C10, 7%C8,.	
		PAIs That Are Inert When Used With Sanitizer PAIs	
001501		Ethyl alcohol	
004205		Ethylenediamine	
009603		Ammonium oxalate	
011102		Borax	
011601		Ethanolamine	
013905		Sodium chloride	
016001		Carbon	
028002		Dimethyl phthalate	
039101		Ethylenediaminetetraacetic acid	
039107		Tetrasodium ethylenediaminetetraacetate	✔
039110		Ethylenediaminetetraacetic acid, trisodium salt	
039113		Tripotassium ethylenediaminetetraacetate	
039115		Disodium ethylenediaminetetraacetate	
039122		Sodium dihydroxyethylglycine	
044008		Sodium diacetate	
044101		Acetone	
046903		Nonylphenoxypolyethoxyethanol—iodine complex	
047501		Isopropanol	
051601		Menthol	
068604		Dipropylene glycol	
072604		Sodium metasilicate	
073504		Potassium carbonate	
073506		Sodium carbonate	✔
073507		Sodium sesquicarbonate	
076403		Sodium phosphate ($Na_2H(PO_4)$)	
076404		Sodium tripolyphosphate	
076406		Trisodium phosphate	
076409		Monosodium phosphate	
076601		Methyl salicylate	
079007		Polyoxyethylene sorbitol, mixed ether ester	
079011		Sodium lauryl sulfate	
079019		Sodium xylenesulfonate	
079020		Triethanolamine dodecylbenzenesulfonate	
079022		Potassium myristate	
079023		Potassium ricinoleate	
079046		Triethanolamine lauryl sulfate	
079058		Toluene sulfonic acid	
079701		Limonene	
081201		Trichloroethane	
085501		Undecylenic acid	
086802		Xylene	
098002		Dodecylbenzenesulfonic acid.	

[1] Shaughnessey codes and chemical names are taken directly from the FATES database. Several chemical names are truncated because the chemical names listed in the FATES database are limited to 60 characters.

[2] Two chemicals previously proposed as sanitizer PAIs, essential oils (Code 40501) and pine oil (Code 67002), are included on the PAI Mixtures table.

TABLE 2.— PAIS THAT ARE POOL CHEMICALS

Shaughnessey code	Chemical name
006315	1-Bromo-3-chloro-5,5-dimethylhydantoin.
014701	Calcium hypochlorite.
014702	Lithium hypochlorite.
014703	Bleach (or Sodium hypochlorite.
081401	Dichloro-s-triazinetrione.
081403	Potassium dichloro-s-triazinetrione.
081404	Sodium dichloro-s-triazinetrione.
081405	Trichloro-s-triazinetrione.
081407	Sodium dichloroisocyanurate dihydrate.

TABLE 3.—PAIS THAT ARE MICROORGANISMS

Shaughnessey code	Chemical name [1]
006401	Bacillus thuringiensis subsp. israelensis.
006402	Bacillus thuringiensis subsp. kurstaki.
006405	Bacillus thuringiensis subsp. tenebrionis.
006422	Bacillus thuringiensis subsp. kurstaki strain EG 2424.
006423	Bacillus thuringiensis subsp. kurstaki strain EG2371.
006424	Bacillus thuringiensis subsp. kurstaki strain EG2348.
006426	Bacillus thuringiensis subsp. aizawai strain GC–91.
006440	Pseudomonas fluorescens EG–1053 (previously coded 006418).
054501	Bacillus popilliae and B. lentimorbus.

TABLE 3.—PAIS THAT ARE MICROORGANISMS—Continued

Shaughnessey code	Chemical name [1]
111301	Phytophthora palmivora, chlamydospores of.
114201	Agrobacterium radiobacter.
128902	Trichoderma polysporum (ATCC 20475).
128903	Trichoderma harzianum (ATCC 20476).
128946	Bacillus thuringiensis subsp. San Diego.
129000	Gliocladium virens G–21.
129069	Streptomyces griseoviridis.
129084	Lagenidium giganteum, mycelium or oospores.
226300	Colletotrichum gloeosporioides spores.

[1] Shaughnessey codes and chemical names are taken directly from the FATES database. Several chemical names are truncated because the chemical names listed in the FATES database are limited to 60 characters.

TABLE 4.—PAIS THAT ARE MIXTURES

Shaughnessey code	Chemical name [1,2]	Mixtures That are reserved
000611	Dried blood	✔
002201	Sabadilla alkaloids	✔
004301	Oil of anise	
006501	Aromatic petroleum derivative solvent	✔
006602	Heavy aromatic naphtha	✔
010801	Bone oil	
021901	Oil of citronella	
022003	Coal tar	✔
025001	Coal tar neutral oils	✔
025003	Creosote oil (Note: Derived from any source)	✔
025004	Coal tar creosote	✔
031601	Lanolin	
031602	Cottonseed oil	
031605	Soybean oil	
031607	Ethoxylated lanolin	
031801	Ammonium salts of C8–18 and C18' fatty acids	✔
040501	Essential oils	
040502	Oil of lemongrass	
040503	Oil of eucalyptus	
040505	Cedarwood oil	
040509	Oil of Pennyroyal	
040517	Oil of orange	
040519	Oils, rue	
055601	BNOA	✔
056704	Tobacco dust	
063501	Kerosene	✔
063502	Mineral oil—includes paraffin oil from 063503	✔
063503	Petroleum distillate, oils, solvent, or hydrocarbons; also p	✔
063506	Mineral spirits	✔
067002	Pine oil	
067003	Terpineols (unspec.)	✔
067205	Pine tar oil	✔
067207	Ester gum	✔
067209	Canadian balsam	
067302	Amines, N-coco alkyltrimethylenedi-, acetates	✔
069152	Amines, coco alkyl, hydrochlorides	✔
070801	Red Squill glycoside	✔
071004	Cube Resins other than rotenone	✔
071501	Ryania speciosa, powdered stems of	✔
079009	Soap.	
079014	Turkey red oil	✔
079021	Potassium salts of fatty acids	✔
079029	Fatty alcohols (52–61% C10, 39–46% C8, 0–3% C6, 0–3% C12)	✔

TABLE 4.—PAIS THAT ARE MIXTURES—Continued

Shaughnessey code	Chemical name [1,2]	Mixtures That are reserved
079034	Methyl esters of fatty acids (100% C8–C12)	✔
079059	Fatty alcohols (54.5% C10, 45.1% C8, 0.4% C6)	✔
086803	Xylene range aromatic solvent	✔
105101	Putrescent whole egg solids	
107302	Polyhedral inclusion bodies of Douglas fir tussock moth nucl	✔
107303	Polyhedral inclusion bodies of gypsy moth nucleopolyhedrosis	✔
107304	Polyhedral inclusion bodies of n. sertifer	✔
116902	Gibberellin A4 mixt. with Gibberellin A7	✔
117001	Nosema locustae	✔
128827	Garlic oil	
128888	Lactofen (ANSI)	✔
128892	Mint Herbs	
128893	Rosemary Herbs	
128894	Thyme Herbs	
128895	Clove, Crushed	
129029	Bergamot Oil	✔
129083	Sawdust	
224600	Diethanolamides of the fatty acids of coconut oil (coded 079)	✔
505200	Isoparaffinic hydrocarbons	✔

[1] Shaughnessey codes and chemical names are taken directly from the FATES database. Several chemical names are truncated because the chemical names listed in the FATES database are limited to 60 characters.
[2] Two chemicals previously proposed as sanitizer PAIs, essential oils (Code 40501) and pine oil (Code 67002), are included on this table.

Appendix B.—Sample Regulatory Text Considered for the Final Rule

General Definitions

(g) Sanitizer Products means pesticide products that (1) contain the sanitizer active ingredients listed in Table 8 of the proposed regulation and no other active ingredient; or (2) pesticide products that are intended to disinfect or sanitize, reducing or mitigating growth or development of microbiological organisms including bacteria, fungi or viruses on surfaces on surfaces or inanimate objects in the household and or institutional environment, as provided in the directions for use on the product label. The only institutional antimicrobial products which are included by this definition are those with formulations similar to the household sanitizer products in their active ingredients and relative concentrations.

(h) Repackaging Establishment means an establishment where the activity of repackaging agricultural pesticide product into refillable containers occurs, whose primary business is wholesale or retail sales and where no pesticide manufacturing, formulating, or packaging occurs.

(i) Interior Cleaning Wastewater Sources means wastewater that is generated from cleaning or rinsing the interior of pesticide formulating, packaging or repackaging equipment, or from cleaning or rinsing the interior of raw materials containers, shipping containers or bulk storage tanks.

(j) Pool Chemicals means the pesticide active ingredients that are listed in Table 2, Appendix A of this notice as pool chemicals.

(k) Microorganisms means registered pesticide active ingredients that are biological agents listed in 40 CFR 150.20 (a)(3) including Eucaryotes (protozoa, algae and fungi), Procaryotes (bacteria) and Viruses and/or are listed in Table 3, Appendix A of this notice.

(l) Mixtures means the pesticide active ingredients listed in Table 4, Appendix A of this notice.

Subcategory C—PFPR and PFPR/ Manufacturers

Applicability; Description of the Pesticide Chemicals Formulating, Packaging and Repackaging Subcategory

(a) The provisions of this subpart are applicable to discharges resulting from all pesticide formulating, packaging and repackaging operations except as provided in paragraphs (b), (c) and (d) of this section.

(b) The provisions of this subpart do not apply to repackaging of agricultural pesticides performed at repackaging establishments, as defined in the General Definitions Section. (See Subpart E for provisions that apply to repackaging establishments.)

(c) The provisions of this subpart do not apply to wastewater discharges from the operation of employee showers and laundry facilities; testing fire protection equipment, safety shower and eye washes; storm water; DOT aerosol leak test bath water from a non-continuous overflow bath (batch bath) where from the time of the last water change-out no leaks have been detected or where cans have not burst; and on-site laboratory wastewaters from cleaning analytical equipment. [This does not exclude the retain batch sample being tested or the water used to clean the container used to bring this sample into the laboratory.]

(d) The provisions of this subpart do not apply to wastewater discharges from the formulation, packaging and or repackaging of sanitizer products, pool chemicals, microorganisms and mixtures, as defined under General Definitions.

Specialized Definitions for Subcategory C

For Indirect Dischargers

Pollution prevention allowable discharge (excluding interior wastewaters, leak/spill cleanup water and floor wash) means: the quantity of/concentrations in PFPR process wastewaters that remain after a facility has demonstrated that it is using the specified practices of the Pollution Prevention Alternative as listed.

Pollution prevention allowable discharge for interior wastewaters, leak/spill cleanup water, and floor wash means: the quantity of/concentrations in PFPR process wastewaters that remain after a facility has demonstrated that it is using the specified practices of the Pollution Prevention Alternative as listed and that have been pretreated using appropriate pollution control technologies which can be used individually or in conjunction with one another as listed in Appendix C, or an

equivalent system to achieve a sufficient level of pollutant reduction. Facilities must demonstrate that the appropriate pollution control technology is properly maintained and operated.

For Direct Dischargers

Pollution prevention allowable discharge (for PFPR/Manufacturers) means: the quantity of/concentrations in all PFPR process wastewaters that remain after a facility has demonstrated that it is using the specified practices of the Pollution Prevention Alternative as listed and that have been treated using appropriate pollution control technologies which can be used individually or in conjunction with Manufacturer's treatment systems or one another as listed in Appendix C, or an equivalent system to achieve a sufficient level of pollutant reduction. Facilities must demonstrate that the appropriate pollution control technology is properly maintained and operated.

The following provisions apply to existing and new indirect discharge PFPR and PFPR/Manufacturers:

Pretreatment Standards for Existing Sources (PSES) for Subcategory C

(a) Except as provided in paragraph (b) of this section, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR part 403 and achieve the pretreatment standards for existing sources as follows: There shall be no discharge of process wastewater pollutants.

(b) Any pesticides formulating, packaging and repackaging facility may use the Pollution Prevention Alternative when it demonstrates that it has met the requirements of the Pollution Prevention Alternative listed on Table B–1 and Table B–2 (or received a modification for requirements on Table B–2) and has notified the pretreatment authority of their intent and has made a written statement of certification to be kept on-site concerning these practices and has kept any necessary paperwork on-site and readily available for pretreatment authorities. This paperwork shall: (1) Describe the facility specific practices which are to be practiced as part of the Pollution Prevention Alternative; (2) describe any justification allowing modification to practices listed on Table B–2; (3) include a written discussion demonstrating that the treatment system being used contains the appropriate treatment technologies for removing PAIs; (4) establish a method for demonstrating to the pretreatment authority that the treatment system is well operated and maintained; and (5) include a discussion of the rationale for choosing the method of demonstration. Any wastewater from the formulating, packaging and repackaging of pesticides at any existing facility which has been described in this paragraph and which introduces pollutants into a publicly owned treatment works must comply with 40 CFR part 403 and achieve the pretreatment standards for existing sources as follows: There shall be allowed a pollution prevention allowable discharge of wastewater pollutants, as defined in the Specialized Definition Section.

Pretreatment Standards for New Sources (PSNS) for Subcategory C

(a) Except as provided in paragraph (b) of this section, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR part 403 and achieve the pretreatment standards for new sources as follows: There shall be no discharge of process wastewater pollutants.

(b) Any new pesticides formulating, packaging and repackaging facility may use the Pollution Prevention Alternative when it demonstrates that it has met the requirements of the Pollution Prevention Alternative listed on Table B–1 and Table B–2 (or received a modification for requirements on Table B–2) and has notified the pretreatment authority of their intent and has made a written statement of certification to be kept on-site concerning these practices and has kept any necessary paperwork on-site and readily available for pretreatment authorities. This paperwork shall: (1) describe the facility specific practices which are to be practiced as part of the Pollution Prevention Alternative; (2) describe any justification allowing modification to practices listed on Table B–2; (3) include a written discussion demonstrating that the treatment system being used contains the appropriate treatment technologies for removing PAIs; (4) establish a method for demonstrating to the pretreatment authority that the treatment system is well operated and maintained; and (5) include a discussion of the rationale for choosing the method of demonstration. Any wastewater from the formulating, packaging and repackaging of pesticides at any new facility which has been described in this paragraph and which introduces pollutants into a publicly owned treatment works must comply with 40 CFR part 403 and achieve the pretreatment standards for new sources as follows: There shall be allowed a pollution prevention allowable discharge of wastewater pollutants, as defined in the Specialized Definitions Section.

The following provisions apply to existing and new direct discharge PFPR/Manufacturers only:

Effluent Limitations Guidelines Representing the Degree of Effluent Reduction Attainable by the Application of the Best Available Technology Economically Achievable (BAT) for Subcategory C

(a) Except as provided in 40 CFR 125.30 through 125.32, and as provided in paragraph (b) of this section, any existing point source subject to this subpart which must achieve effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable: There shall be no discharge of process wastewater pollutants.

(b) Any existing pesticides formulating, packaging and repackaging facility may use the Pollution Prevention Alternative when it demonstrates that it has met the requirements of the Pollution Prevention Alternative listed on Table B–1 and Table B–2 (or received a modification for requirements on Table B–2) and has notified their NPDES permit writer at renewal or modification of their permit and has kept any necessary paperwork on-site and readily available for the permitting authority. This paperwork shall: (1) Describe the facility specific practices which are to be practiced as part of the Pollution Prevention Alternative; (2) describe any justification allowing modification to practices listed on Table B–2; (3) include a written discussion demonstrating that the treatment system being used contains the appropriate treatment technologies for removing PAIs; (4) establish a method for demonstrating to the pretreatment authority that the treatment system is well operated and maintained; and (5) include a discussion of the rationale for choosing the method of demonstration. Any existing source must achieve effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable: There shall be allowed a pollution prevention allowable discharge of wastewater pollutants, as defined in the Specialized Definition Section.

New Source Performance Standards (NSPS) for Subcategory C

(a) Any new source, except as provided in paragraph (b) of this section, subject to this subpart which discharges process wastewater must meet the following standards: There shall be no discharge of process wastewater.

(b) Any new pesticides formulating, packaging and repackaging facility may use the Pollution Prevention Alternative when it demonstrates that it has met the requirements of the Pollution Prevention Alternative listed on Table B–1 and Table B–2 (or received a modification for requirements on Table B–2) and has notified the NPDES permit writer through the application process and has kept any necessary paperwork on-site and readily available for permitting authorities. This paperwork shall: (1) Describe the facility specific practices which are to be practiced as part of the Pollution Prevention Alternative; (2) describe any justification allowing modification to practices listed on Table B–2; (3) include a written discussion demonstrating that the treatment system being used contains the appropriate treatment technologies for removing PAIs; (4) establish a method for demonstrating to the pretreatment authority that the treatment system is well operated and maintained; and (5) include a discussion of the rationale for choosing the method of demonstration. Any wastewater from the formulating, packaging and repackaging of pesticides at any new facility which has been described in this paragraph which discharges process wastewater must meet the following standards: There shall be allowed a pollution prevention allowable discharge of wastewater pollutants, as defined in the Specialized Definition Section.

Subcategory E—Repackaging of Agricultural Pesticides Performed by Repackaging Establishments

Applicability; Description of the Repackaging Establishment Subcategory

(a) The provisions of this subpart are applicable to discharges resulting from all repackaging of agricultural pesticide products into refillable containers that occurs at repackaging establishments, as defined in the General Definitions Section except as provided in paragraphs (b), and (c) of this section.

(b) The provisions of this subpart do not apply to wastewater discharges from the operation of employee showers and laundry facilities; and testing of fire protection equipment, safety showers and eye washes.

(c) The provisions of this subpart do not apply to wastewater discharges from the repackaging of microorganisms, as defined under General Definitions.

TABLE B–1.—LIST OF POLLUTION PREVENTION ALTERNATIVE PRACTICES

1. Must use spray nozzles on hoses used for rinsing (or other flow reduction devices).
2. Must practice good housekeeping:
   (1) perform preventative maintenance on all valves and fittings and repair leaky valves and fittings in a timely manner;
   (2) use drip pans under leaky valves/fittings, collect for reuse when possible; and
   (3) perform quick cleanup of leaks and spills in outdoor bulk storage or process areas.
3. When performing drum rinsing (of liquid PAI or inert) for formulation of water-based products ♦
   Must reuse the drum/shipping container rinsate DIRECTLY into the formulation at the time of formulation, store for use in next formulation or use-staged drum rinsing station (counter current rinsing).
4. If all interior rinsate cannot be reused for a reason listed in Table B–2, # 5, ♦
   Must dedicate some equipment in at least one of the ways listed below.
   Dedicate to:
   (a) frequently produced product (i.e., top production product);
   (b) hard to clean products (i.e., viscous, sticky, colored products)
   (c) product families
   (d) a portion of the formulating/packaging equipment (i.e., just the mix tank or just the agitator)
5. Must sweep or vacuum dry production areas prior to rinsing with water.
6. If operating air pollution control wet scrubbers must operate as recirculating scrubbers (periodic blowdown is allowed as needed).
7. If operating continuous overflow Department of Transportation (DOT) aerosol leak test baths must operate with some recirculation.

Note:
(1) After following the practices above, some wastewaters may require treatment prior to discharge to POTWs. See definition of pollution prevention allowable discharge.
(2) After following the practices above, all wastewaters require treatment prior to discharge directly to the nation's waters. See definition of pollution prevention allowable discharge.

TABLE B–2.—LIST FOR POLLUTION PREVENTION ALTERNATIVE—OTHER PRACTICES

[May be modified with acceptable justification]

A modification to the list of practices on this table that an individual facility must comply with to be eligible for the pollution prevention alternative is allowed with acceptable justification. A modification, for purposes of this table, means that a facility would no longer have to perform a listed practice or would need to comply with a modified practice. However, the modification only applies to the specific practice for which the modification has been justified and to no other listed practices. Facilities are required to thoroughly discuss all modifications in the "necessary" paperwork as described above in the limitations and standards.

1. When performing drum rinsing (of liquid PAI or inert) for formulation of solvent-based products ——♦
   Must reuse the drum/shipping container rinsate (solvent) DIRECTLY into the formulation at the time of formulation or store for use in next formulation.
   [Modification allowed when: drums are going to a drum refurbisher/recycler and they will only accept drums rinsed with water.]
2. Must use low volume/high pressure rinsing equipment for rinsing PFPR equipment interiors when rinsing with water.
   [Modification allowed when: rinsing narrow transfer lines or piping where sufficient rinsing is better achieved by flushing with water.]
3. Must use a floor scrubbing machine to clean floors in liquid production areas.
   [Modification allowed when: facility has uneven floor surfaces or crowded areas where floor scrubber cannot fit, BUT must then use a mop and bucket.]
4. Must dedicate PFPR production equipment by water-based versus solvent-based products.
   [Modification allowed when: facility can provide evidence, such as production information, of infrequent/very intermittent formulation of one or the other or facility has installed and is using a solvent recovery system.]
5. Must store the rinsate from interior rinsing for future formulation of SAME or compatible product.
   [Modification allowed when:
   (a) evidence of biological growth or other product deterioration over typical storage period;
   (b) space limitations, BUT must still store rinsates for most frequently produced products;
   (c) manufacturer (or formulator contracting for toll formulating) has directed otherwise (i.e., send back to them or send for off-site disposal); or
   (d) facility is dropping registration or production of formulation at the facility after present campaign;
   (e) facility only performs packaging of the pesticide product from which interior rinsate is generated.]

Note:
(1) After following the practices above, some wastewaters may require treatment prior to discharge to POTWs. See definition of pollution prevention allowable discharge.
(2) After following the practices above, all wastewaters require treatment prior to discharge directly to the nation's waters. See definition of pollution prevention allowable discharge.

Appendix C—List of PAI Specific Treatment Technologies

This Appendix C contains those pollutant control technologies, such as hydrolysis, chemical oxidation, metals precipitation and activated carbon adsorption, which have been used for estimating compliance costs on a PAI specific basis. In general, these treatment technologies have been determined to be effective in treating pesticide containing wastewaters in literature, in bench or pilot scale treatability studies or in the Pesticide Manufacturing effluent guidelines.[1] These are the same technologies that were presented as part of the Universal Treatment System at the time of proposal. However, these technologies are PAI specific and may need to be used in conjunction with one another to provide treatment for all PAIs used at a facility over a period of time. In addition, facilities may experience difficulties treating wastewaters that contain emulsions, therefore, "appropriate" treatment for emulsified wastewaters must include an emulsion breaking step. [Note: EPA has costed facilities for these types of dynamic treatment needs.]

TABLE C–1.—TABLE OF TREATABILITY INFORMATION FOR THE 272 PAIS AND THE NON-272 PAIS LISTED IN THE 1988 FATES DATABASE[1]

PAI name[2]	PAI code[3]	Shaughnessy code[4]	PAI classification[5]	Structural group[5]	Treatment technology bases for cost[6]	Inert[7]
Dicofol	001	10501		DDT	Hydrolysis	
Maleic Hydrazide	002	51501		Hydrazide	Activated Carbon	
EDB	003	42002		EDB	Activated Carbon	
Vancide TH	004	82901		s-Triazine	Activated Carbon	
1,3–Dichloropropene	005	29001		EDB	Hydrolysis	
Thenarsazine Oxide	006	12601		Organoarsenic	Precipitation	
Dowicil 75	007	17901		NR4	Activated Carbon	
Triadimefon	008	109901		s-Triazine	Activated Carbon	
Hexachlorophene	009	44901		Chlorophene	Activated Carbon	
Tetrachlorophene	010			Chlorophene	Activated Carbon	
Dichlorophene	011	55001		Chlorophene	Activated Carbon	
Dichlorvos	012	84001		Phosphate	Hydrolysis	
Landrin-2	013			Carbamate	Activated Carbon	
2,3,6–T, S&E or Fenac	014	82605		2,4-D	Activated Carbon	
2,4,5-T and 2,4,5-T, S&E	015	*		2,4-D	Activated Carbon	
2,4-D (2,4-D, S&E)	016	*		2,4-D	Chemical Oxidation	
2,4-DB, S&E	017	*		2,4-D	Activated Carbon	
Dyrene or Anilazine	018	80811		s-Triazine	Activated Carbon	
Dinocap	019	36001		Phenylcrotonate	Activated Carbon	
Dichloran or DCNA	020	31301		Aryl Halide	Activated Carbon	
Busan 90	021	8707		Miscellaneous	Activated Carbon	
Mevinphos	022	15801		Phosphate	Hydrolysis	
Sulfallate	023			Dithiocarbamate	Activated Carbon	
Chlorfenvinphos	024	84101		Phosphate	Activated Carbon	
Cyanazine or Bladex	025	100101		s-Triazine	Activated Carbon	
Propachlor	026	19101		Acetanilide	Activated Carbon	
MCPA, S&E	027	*		2,4-D	Activated Carbon	
Octhilinone	028	99901		Heterocyclic	Activated Carbon	
Pindone	029	67703		Miscellaneous	Activated Carbon	
Dichlorprop, S&E	030	*		2,4-D	Activated Carbon	
MCPP, S&E or Mecoprop.	031	*		2,4-D	Activated Carbon	
Thiabendazole	032	60101		Heterocyclic	Activated Carbon	
Beiclene 310	033	80815		s-Triazine	Activated Carbon	
Chlorprop, S&E	034	21202		2,4-D	Activated Carbon	
Busan 72 or TCMTB	035	35603		Heterocyclic	Hydrolysis	
Chlorophacinone	037	67707		Miscellaneous	Activated Carbon	
Landrin-1	038			Carbamate	Activated Carbon	
Pronamide	039	101701		Chlorobenzamide	Activated Carbon	
Methiocarb or Mesurol	040	100501		Carbamate	Hydrolysis	
Propanil	041	28201		Chloropropionanilide	Activated Carbon	
Polyphase	042	107801		Carbamate	Activated Carbon	
Coumafuryl or Fumarin	043	86001		Coumarin	Activated Carbon	
DNOC	044			Phenol	Activated Carbon	
Metribuzin	045	101101		Triazathione	Activated Carbon	
CPA, S&E	046	*		2,4-D	Activated Carbon	
MCPB, S&E	047	19202		2,4-D	Activated Carbon	
Aminocarb	048			Carbamate	Hydrolysis	
Etridiazole	049	84701		Heterocyclic	Activated Carbon	
Ethoxyquin	050	55501		Quinolin	Activated Carbon	
Acephate or Orthene	052	103301		Phosphoroamidothioate	Activated Carbon	

[1] EPA is still determining the appropriate treatment technologies for a number of inorganic pesticide chemicals. Activated carbon (AC) adsorption was only used to provide a conservative cost estimate. Therefore, listed technologies for such PAIs are subject to change for final promulgation.

TABLE C–1.—TABLE OF TREATABILITY INFORMATION FOR THE 272 PAIS AND THE NON-272 PAIS LISTED IN THE 1988 FATES DATABASE [1]—Continued

PAI name [2]	PAI code [3]	Shaughnessy code [4]	PAI classification [5]	Structural group [5]	Treatment technology bases for cost [6]	Inert [7]
Acifluorfen	053	114402		Benzoic Acid	Activated Carbon	
Alachlor	054	90501		Acetanilide	Activated Carbon	
Aldicarb	055	98301		Carbamate	Hydrolysis	
Allethrin	057	*		Pyrethrin	Activated Carbon	
Ametryn	058	80801		s-Triazine	Activated Carbon	
Amitraz	059	106201		Iminamide	Activated Carbon	
Atrazine	060	80803		s-Triazine	Hydrolysis	
Bendiocarb	061	105201		Carbamate	Hydrolysis	
Benomyl	062	99101		Carbamate	Hydrolysis	
BHC	063			Lindane	Hydrolysis	
Benzyl Benzoate	064	9501		Ester	Activated Carbon	
Lethane 60	065			Thiocyanate	Activated Carbon	
Bifenox	066	104301		Nitrobenzoate	Activated Carbon	
Biphenyl	067	17002		Aryl	Activated Carbon	
Bromacil (Lithium Salt)	068	*		Uracil	Activated Carbon	
Bromoxynil	069	*		Benzonitrile	Activated Carbon	
Butachlor	070			Acetanilide	Activated Carbon	
Giv-gard	071	101401		Miscellaneous	Activated Carbon	
Cacodylic Acid	072	*		Organoarsenic	Precipitation	
Captafol	073			Phthalimide	Hydrolysis	
Captan	074	81301		Phthalimide	Hydrolysis	
Carbaryl	075	56801		Carbamate	Hydrolysis	
Carbofuran	076	90601		Carbamate	Hydrolysis	
Carbosulfan	077			Carbamate	Activated Carbon	
Chloramben	078	*		Benzoic Acid	Activated Carbon	
Chlordane	079	58201		Tricyclic	Activated Carbon	
Chloroneb	080	27301		Aryl Halide	Chemical Oxidation	
Chloropicrin	081	81501		Alkyl Halide	Chemical Oxidation	
Chlorothalonil	082	81901		Chloropropionanilide	Activated Carbon	
Chloroxuron	083			Urea	Activated Carbon	
Stirofos	084	83701		Phosphate	Hydrolysis	
Chlorpyrifos Methyl	085	59102		Phosphorothioate	Hydrolysis	
Chlorpyrifos	086	59101		Phosphorothioate	Chemical Oxidation	
Mancozeb	087	14504		Dithiocarbamate	Activated Carbon	
Bioquin (Copper)	088	24002		Organocopper	Precipitation	
Copper EDTA	089	39105		Organocopper	Precipitation	
Pydrin or Fenvalerate	090	109301		Pyrethrin	Activated Carbon	
Cycloheximide	091			Cyclic Ketone	Activated Carbon	
Dalapon	092	*		Alkyl Halide	Activated Carbon	
Dienochlor	093	27501		HCp	Activated Carbon	
Demeton	094			Phosphorothioate	Hydrolysis	
Desmedipham	095	104801		Carbamate	Hydrolysis	
Amobam	096			Miscellaneous	Activated Carbon	
DBCP	097			EDB	Activated Carbon	
Dicamba	098	*		Aryl Halide	Activated Carbon	
Dichlone	099	29601		Quinone	Activated Carbon	
Thiophanate Ethyl	100	103401		Carbamate	Hydrolysis	
Perthane	101			DDT	Activated Carbon	
EXD	102			Dithiocarbamate	Activated Carbon	
Diazinon	103	57801		Phosphorothioate	Hydrolysis	
Diflubenzuron	104	108201		Urea	Activated Carbon	
Dimethoate	106	35001		Phosphorodithioate	Hydrolysis	
Parathion Methyl	107	53501		Phosphorothioate	Hydrolysis	
Dicrotophos	108	35201		Phosphate	Activated Carbon	
Crotoxyphos	109	58801		Phosphate	Activated Carbon	
DCPA	110	78701		Aryl Halide	Activated Carbon	
Trichlorofon	111	57901		Phosphonate	Activated Carbon	
Dinoseb	112	37505		Phenol	Activated Carbon	
Dioxathion	113	37801		Phosphorodithioate	Hydrolysis	
Diphacinone	114	67701		Indandione	Activated Carbon	
Diphenamide	115	36601		Acetamide	Activated Carbon	
Diphenylamine	116	38501		Aryl Amine	Activated Carbon	
MGK 326	117	47201		Ester	Activated Carbon	
Nabonate	118	63301		Isocyanate	Chemical Oxidation	
Diuron	119	35505		Urea	Activated Carbon	
Metasol DGH	120	44303		NR4	Activated Carbon	
Dodine	121	44301		NR4	Activated Carbon	
Endosulfan	122	79401		Tricyclic	Activated Carbon	
Endothall (Endothall S&E).	123	*		Bicyclic	Activated Carbon	

TABLE C–1.—TABLE OF TREATABILITY INFORMATION FOR THE 272 PAIS AND THE NON-272 PAIS LISTED IN THE 1988 FATES DATABASE [1]—Continued

PAI name [2]	PAI code [3]	Shaughnessy code [4]	PAI classification [5]	Structural group [5]	Treatment technology bases for cost [6]	Inert [7]
Endrin	124	41601		Tricyclic	Activated Carbon	
Ethalfluralin	125	113101		Toluidine	Activated Carbon	
Ethion	126	58401		Phosphorodithioate	Hydrolysis	
Ethoprop	127	41101		Phosphorodithioate	Activated Carbon	
Fenamiphos	128	100601		Phosphoroamidate	Activated Carbon	
Chlorobenzilate	129	28801		Aryl Halide	Activated Carbon	
Butylate	130	41405		Thiocarbamate	Activated Carbon	
Famphur	131			Phosphorothioate	Hydrolysis	
Fenarimol	132	206600		Pyrimidine	Activated Carbon	
Fenthion or Baytex	133	53301		Phosphorothioate	Hydrolysis	
Ferbam	134	34801		Dithiocarbamate	Activated Carbon	
Fluometuron	135	35503		Urea	Activated Carbon	
Fluoroacetamide	136			Acetamide	Activated Carbon	
Folpet	137	81601		Phthalimide	Hydrolysis	
Glyphosate (Glyphosate S&E).	138	*		Phosphoroamidate	Chemical Oxidation	
Glyphosine	139			Phosphoroamidate	Activated Carbon	
Heptachlor	140	44801		Tricyclic	Activated Carbon	
Cycloprate	141			Thiocarbamate	Activated Carbon	
Hexazinone	142	107201		s-Triazine	Activated Carbon	
Isofenphos	143	109401		Phosphoroa midothioate	Activated Carbon	
Isopropalin	144	100201		Toluidine	Activated Carbon	
Propham	145			Carbamate	Hydrolysis	
Karabutilate	146	97401		Carbamate	Hydrolysis	
Lindane	147	9001		Lindane	Activated Carbon	
Linuron	148	35506		Urea	Chemical Oxidation	
Malachite Green	149	39504		NR4	Activated Carbon	
Malathion	150	57701		Phosphorodithioate	Hydrolysis	
Maneb	151	14505		Dithiocarbamate	Activated Carbon	
Manam	152			Dithiocarbamate	Activated Carbon	
Mefluidide	153	114002		Carbamate	Activated Carbon	
Methamidophos	154	101201		Phosphoroamidothioate	Activated Carbon	
Methidathion	155	100301		Phosphorodithioate	Activated Carbon	
Methomyl	156	90301		Carbamate	Hydrolysis	
Methoprene	157	*		Ester	Activated Carbon	
Methoxychlor	158	34001		DDT	Hydrolysis	
Methyl Bromide	160	53201		Alkyl Halide	Activated Carbon	
Monosodium Methyl Arsenate.	161	*		Organoarsenic	Precipitation	
Nalco D–2303	163	68102		Thiocyanate	Activated Carbon	
Quinomethionate	164	54101		Miscellaneous	Activated Carbon	
Metolachlor	165	108801		Acetanilide	Activated Carbon	
Mexacarbate	166			Carbamate	Hydrolysis	
Metiram	167	14601		Dithiocarbamate	Activated Carbon	
Monuron TCA	168	35502		Urea	Activated Carbon	
Monuron	169	35501		Urea	Activated Carbon	
Napropamide	170	103001		Carbamate	Activated Carbon	
Deet	171	80301		Toluamide	Activated Carbon	
Nabam	172	14503		Dithiocarbamate	Chemical Oxidation	
Naled	173	34401		Phosphate	Hydrolysis.	
Norea	174			Urea	Activated Carbon	
Norflurazon	175	105801		Heterocyclic	Activated Carbon	
Naptalam or Neptalam	176	30703		Phthalamide	Activated Carbon	
MGK 264	177	57001		Bicyclic	Activated Carbon	
Benfluralin	178	84301		Toluidine	Activated Carbon	
Sulfotepp	179	79501		Phosphorothioate	Activated Carbon	
Aspon	180			Phosphorothioate	Activated Carbon	
Coumaphos	181	36501		Phosphorothioate	Hydrolysis	
Fensulfothion	182	32701		Phosphorothioate	Hydrolysis	
Disulfoton	183	32501		Phosphorodithioate	Hydrolysis	
Fenitrothion	184	105901		Phosphorothioate	Hydrolysis	
Phosmet	185	59201		Phosphorodithioate	Hydrolysis	
Azinphos Methyl (Guthion).	186	58001		Phosphorodithioate	Hydrolysis	
Oxydemeton Methyl	187	58702		Phosphorothioate	Activated Carbon	
Organo-Arsenic Pesticides.	188			Organoarsenic	Precipitation	
Organo-Cadmium Pesticides.	189			Organocadmium	Precipitation	

TABLE C–1.—TABLE OF TREATABILITY INFORMATION FOR THE 272 PAIS AND THE NON-272 PAIS LISTED IN THE 1988 FATES DATABASE [1]—Continued

PAI name [2]	PAI code [3]	Shaughnessy code [4]	PAI classification [5]	Structural group [5]	Treatment technology bases for cost [6]	Inert [7]
Organo-Copper Pesticides.	190	*		Organocopper	Precipitation	
Organo-Mercury Pesticides.	191	*		Organomercury	Precipitation	
Organo-Tin Pesticides	192	*		Organotin	Precipitation	
o-Dichlorobenzene	193	59401		Aryl Halide	Activated Carbon	
Oryzalin	194	104201		Sulfanilamide	Activated Carbon	
Oxamyl	195	103801		Carbamate	Hydrolysis	
Oxyfluorfen	196	111601		Miscellaneous	Activated Carbon	
Bolstar	197	111501		Phosphorodithioate	Activated Carbon	
Sulprofos Oxon	198			Phosphorothioate	Hydrolysis	
Santox (EPN)	199	41801		Phosphorodithioate	Hydrolysis	
Fonofos	200	41701		Phosphorodithioate	Hydrolysis	
Propoxur	201	47802		Carbamate	Hydrolysis	
p-Dichlorobenzene	202	61501		Aryl Halide	Activated Carbon	
Parathion Ethyl	203	57501		Phosphorothioate	Hydrolysis	
Pendimethalin	204	108501		Benzeneamine	Activated Carbon	
PCNB	205	55502		Aryl Halide	Activated Carbon	
PCP or Penta	206	*		Phenol	Activated Carbon	
Perfluidone	207			Sulfonamide	Activated Carbon	
Permethrin	208	109701		Pyrethrin	Activated Carbon	
Phenmedipham	209	98701		Carbamate	Hydrolysis	
Nemazine	210	64501		Heterocyclic	Activated Carbon	
Phorate	212	57201		Phosphorodithioate	Hydrolysis	
Phosalone	213	97701		Phosphorodithioate	Hydrolysis	
Phosphamidon	214	18201		Phosphate	Hydrolysis	
Picloram	215	*		Pyridine	Activated Carbon	
Piperonyl Butoxide	216	67501		Ester	Activated Carbon	
PBED or WSCP (Busan 77).	217	69183		NR4	Activated Carbon	
Busan 85 or Arylane	218	34803		Dithiocarbamate	Chemical Oxidation	
Busan 40	219	102901		Dithiocarbamate	Chemical Oxidation	
KN Methyl	220	39002		Dithiocarbamate	Chemical Oxidation	
Metasol J26	221	101301		Miscellaneous	Activated Carbon	
Profenofos	222	111401		Phosphorothioate	Activated Carbon	
Prometon or Caparol	223	80804		s-Triazine	Chemical Oxidation	
Prometryn	224	80805		s-Triazine	Activated Carbon	
Propargite	225	97601		Miscellaneous	Activated Carbon	
Propazine	226	80808		s-Triazine	Activated Carbon	
Propionic Acid	227	77702		Alkyl Acid	Activated Carbon	
Previcur N	228	119301		Carbamate	Hydrolysis	
Pyrethrin Coils	229	69004		Pyrethrin	Activated Carbon	
Pyrethrum I	230	69001		Pyrethrin	Hydrolysis	
Pyrethrum II	231	69002		Pyrethrin	Hydrolysis	
Pyrethrins	232	*		Pyrethrin	Hydrolysis	
Resmethrin	233	*		Pyrethrin	Activated Carbon	
Fenchlorphos or Ronnel	234	56301		Phosphorothioate	Hydrolysis	
Mexide or Rotenone	235	71003		Miscellaneous	Activated Carbon	
DEF	236	74801		Phosphorotrithioate	Activated Carbon	
Siduron or Tupersan	237	35509		Urea	Activated Carbon	
Silvex	238	*		2,4-D	Activated Carbon	
Simazine	239	80807		s-Triazine	Activated Carbon	
Sodium Bentazon	240	103901		Heterocyclic	Chemical Oxidation	
Carbam-S or Sodam	241	34804		Dithiocarbamate	Chemical Oxidation	
Sodium Fluoroacetate	242	75003		Acetamide	Activated Carbon	
Vapam or Metham Sodium.	243	39003		Dithiocarbamate	Chemical Oxidation	
Sulfoxide	244	57101		Miscellaneous	Activated Carbon	
Cycloate or Ro-Neet	245	41301		Thiocarbamate	Activated Carbon	
EPrecipitationC or Eptam.	246	41401		Thiocarbamate	Activated Carbon	
Molinate	247	41402		Thiocarbamate	Activated Carbon	
Pebulate or Tillman	248	41403		Thiocarbamate	Activated Carbon	
Vernolate or Vernam	249	41404		Thiocarbamate	Activated Carbon	
HPrecipitationMS	250	35604		Thiosulphonate	Activated Carbon	
Bensulide or Betesan	251	9801		Phosphorodithioate	Activated Carbon	
Tebuthiuron	252	105501		Urea	Activated Carbon	
Temephos	253	59001		Phosphorothioate	Hydrolysis	
Terbacil	254	12701		Uracil	Activated Carbon	
Terbufos or Counter	255	105001		Phosphorodithioate	Activated Carbon	

TABLE C–1.—TABLE OF TREATABILITY INFORMATION FOR THE 272 PAIS AND THE NON-272 PAIS LISTED IN THE 1988 FATES DATABASE [1]—Continued

PAI name [2]	PAI code [3]	Shaughnessy code [4]	PAI classification [5]	Structural group [5]	Treatment technology bases for cost [6]	Inert [7]
Terbuthylazine	256	80814		s-Triazine	Activated Carbon	
Terbutryn	257	80813		s-Triazine	Activated Carbon	
Tetrachlorophenol	258	53004		Phenol	Activated Carbon	
Dazomet	259	35602		Heterocyclic	Chemical Oxidation	
Thiophanate Methyl	260	102001		Carbamate	Hydrolysis	
Thiram	261	79801		Dithiocarbamate	Activated Carbon	
Toxaphene	262	80501		Bicyclic	Activated Carbon	
Merphos	263	74901		Phosphorotrithioate	Hydrolysis	
Trifluralin or Treflan	264	36101		Toluidine	Activated Carbon	
Warfarin	265	*		Coumarin	Activated Carbon	
Zinc MBT	266	51705		Organozinc	Precipitation	
Zineb	267	14506		Dithiocarbamate	Activated Carbon	
Ziram	268	34805		Dithiocarbamate	Activated Carbon	
Triallate	269	78802		Thiocarbamate	Activated Carbon	
Phenothrin	270	69005		Pyrethrin	Activated Carbon	
Tetramethrin	271	69003		Pyrethrin	Activated Carbon	
Chloropropham	272	18301		Carbamate	Hydrolysis	
Non-272 PAIs						
CFC 11		13	Non-Aromatic >100		Activated Carbon	
CFC 12		14	Non-Aromatic >100		Activated Carbon	
Gluconic acid		104	Non-Aromatic >100		Activated Carbon	
Polyethylene		152	Polymer		Activated Carbon	
Hydrogen peroxide		595	Inorganic		Activated Carbon	
Acrolein		701	Non-Aromatic <100		Activated Carbon	
Dimethyl-m-dioxan-4-ol acetate.		1001	Non-Aromatic >100		Activated Carbon	
Ethyl alcohol		1501	Non-Aromatic <100		Activated Carbon	I
Dodecyl alcohol		1509	Non-Aromatic >100		Activated Carbon	
Tetradecyl alcohol		1510	Non-Aromatic >100		Activated Carbon	
Rosin amine D acetate		4201	Non-Aromatic >100		Activated Carbon	
Ethylenediamine		4205	Non-Aromatic <100		Activated Carbon	I
Triethanolamine		4208	Non-Aromatic >100		Activated Carbon	
Dihydroabietylamine acetate.		4213	Non-Aromatic >100		Activated Carbon	
Amitrole		4401	Non-Aromatic <100		Activated Carbon	
Allyl isothiocyanate		4901	Non-Aromatic <100		Activated Carbon	
AMS		5501	Non-Aromatic >100		Activated Carbon	
Calcium sulfate		5602	Inorganic		Activated Carbon	
Tartar emetic		5201	Non-Aromatic >100		Activated Carbon	
Diphenylstibene 2-ethylhexanoate.		5202	Aromatic		Activated Carbon	
Streptomycin		5306	Non-Aromatic >100		Activated Carbon	
Oxytetracycline hydrochloride.		5308	Aromatic		Activated Carbon	
Streptomycin sesquisulfate.		5310	Aromatic		Activated Carbon	
Neomycin sulfate		6313	Aromatic		Activated Carbon	
Antimycin A		6314	Aromatic		Activated Carbon	
1,3-Dibromo-5,5-dimethylhydantoin.		6317	Non-Aromatic >100		Activated Carbon	
Calcium oxytetracycline		6321	Aromatic		Activated Carbon	
Espesol 3A		6501	Not Classified		Activated Carbon	
Arsenic acid		6801	Metallic		Precipitation	
Arsenic acid anhydride		6802	Metallic		Precipitation	
Arsenous acid anhydride		7001	Metallic		Precipitation	
Copper oxychloride		8001	Metallic		Precipitation	
Basic cupric sulfate		8101	Metallic		Precipitation	
Bromine		8701	Inorganic		Activated Carbon	
Bromophos		8705	Aromatic		Activated Carbon	
Benzyl bromoacetate		8710	Aromatic		Activated Carbon	
Benzoic acid		9101	Aromatic		Activated Carbon	
Benzyl diethyl ((2,6-xylylcarbamoyl)methyl) ammonium benzoat.		9105	Aromatic		Activated Carbon	
Benzyl alcohol		9502	Aromatic		Activated Carbon	
Ammonium oxalate		9503	Inorganic		Activated Carbon	
Ammonium oxalate		9503	Non-Aromatic >100		Activated Carbon	I
3-Chloro-p-toluidine hydrochloride.		9901	Aromatic		Activated Carbon	

TABLE C–1.—TABLE OF TREATABILITY INFORMATION FOR THE 272 PAIS AND THE NON-272 PAIS LISTED IN THE 1988 FATES DATABASE [1]—Continued

PAI name [2]	PAI code [3]	Shaughnessy code [4]	PAI classification [5]	Structural group [5]	Treatment technology bases for cost [6]	Inert [7]
Butoxyethoxy)ethyl thiocyanate.	.....	10002	Non-Aromatic >100	.....	Activated Carbon	
2-Naphthol	.....	10301	Aromatic	.....	Activated Carbon	
Boric acid	.....	11001	Inorganic	.....	Activated Carbon	
Barium metaborate	.....	11101	Inorganic	.....	Activated Carbon	I
Borax	.....	11102	Inorganic	.....	Activated Carbon	
Boron sodium oxide (B8 Na2O13), tetrahydrate (12280–03–4).	.....	11103	Inorganic	.....	Activated Carbon	
Sodium metaborate (NaBO2).	.....	11104	Inorganic	.....	Activated Carbon	
Boron sodium oxide (B8 Na2O13) (12008–41–2).	.....	11107	Inorganic	.....	Activated Carbon	
Boron sodium oxide (B4Na2O7), pentahydrate (12179–04–3).	.....	11110	Inorganic	.....	Activated Carbon	
Boron sodium oxide (B4Na2O7) (1330–43–4).	.....	11112	Inorganic	.....	Activated Carbon	
Polybutene	.....	11402	Polymer	.....	Activated Carbon	
Polyisobutylene	.....	11403	Polymer	.....	Activated Carbon	
Butyl cellosolve	.....	11501	Non-Aromatic >100	.....	Activated Carbon	
Ethanolamine	.....	11601	Non-Aromatic <100	.....	Activated Carbon	I
Butoxypolypropylene glycol.	.....	11901	Polymer	.....	Activated Carbon	
Neburon (ANSI)	.....	12001	Aromatic	.....	Activated Carbon	
Methyltrimethylenedioxy)bis(4-methyl-1,3,2-dioxaborinane).	.....	12401	Non-Aromatic >100	.....	Activated Carbon	
Oxybis(4,4,6-trimethyl-1,3,2-dioxaborinane).	.....	12402	Non-Aromatic >100	.....	Activated Carbon.	
Cadmium chloride	.....	12902	Metallic	.....	Precipitation	
Lead arsenate, basic	.....	13502	Metallic	.....	Precipitation	
Lead arsenate	.....	13503	Metallic	.....	Precipitation	
Sodium arsenate	.....	13505	Metallic	.....	Precipitation	
Sodium arsenite	.....	13603	Metallic	.....	Precipitation	
Potassium bromide	.....	13903	Inorganic	.....	Activated Carbon	
Sodium chloride	.....	13905	Inorganic	.....	Activated Carbon	I
Aluminum sulfate	.....	13906	Inorganic	.....	Activated Carbon	
Sodium bromide	.....	13907	Inorganic	.....	Activated Carbon	
Camphor	.....	15602	Non-Aromatic >100	.....	Activated Carbon	
Carbon	.....	16001	Inorganic	.....	Activated Carbon	I
Carbon disulfide	.....	16401	Inorganic	.....	Activated Carbon	
Carbon tetrachloride	.....	16501	Non-Aromatic >100	.....	Activated Carbon	
Dry Ice	.....	16601	Inorganic	.....	Activated Carbon	
Barban (ANSI)	.....	17601	Aromatic	.....	Activated Carbon	
Chloro-2-propenyl)-3, 5,7,triaza-1-azoniatricyclo (3.3.1.1(sup.	.....	17902	Non-Aromatic >100	.....	Activated Carbon	
Chlormequat chloride	.....	18101	Non-Aromatic >100	.....	Activated Carbon	
Chloromethoxypropylmercuric acetate.	.....	18401	Metallic	.....	Precipitation	
Allidochlor	.....	19301	Non-Aromatic >100	.....	Activated Carbon	
Chlorine	.....	20501	Inorganic	.....	Activated Carbon.	
Sodium chlorite	.....	20502	Inorganic	.....	Activated Carbon	
Chlorine dioxide	.....	20503	Inorganic	.....	Activated Carbon	
Bromine chloride	.....	20504	Inorganic	.....	Activated Carbon	
Chromic acid	.....	21101	Metallic	.....	Precipitation	
Chromic oxide	.....	21103	Metallic	.....	Precipitation	
Citric acid	.....	21801	Non-Aromatic >100	.....	Activated Carbon	
Cresol (unspec) (Cresylic acid).	.....	22101	Aromatic	.....	Activated Carbon	
Cresol	.....	22102	Aromatic	.....	Activated Carbon	
Copper (metallic)	.....	22501	Metallic	.....	Precipitation	
Copper ammonium carbonate.	.....	22703	Metallic	.....	Precipitation	
Copper carbonate	.....	22901	Metallic	.....	Precipitation	

TABLE C–1.—TABLE OF TREATABILITY INFORMATION FOR THE 272 PAIS AND THE NON-272 PAIS LISTED IN THE 1988 FATES DATABASE [1]—Continued

PAI name [2]	PAI code [3]	Shaughnessy code	PAI classification [5]	Structural group [5]	Treatment technology bases for cost [6]	Inert [7]
Copper hydroxide	.....	23401	Metallic	.....	Precipitation	
Copper chloride hydroxide (Cu2Cl(OH)3).	.....	23501	Metallic	.....	Precipitation	
Copper oxychloride sulfate.	.....	23503	Metallic	.....	Precipitation	
Copper sulfate	.....	24401	Metallic	.....	Precipitation	
Copper (from triethanolamine complex).	.....	24403	Metallic	.....	Precipitation	
Copper as metallic (in the form of chelates of copper citrat.	.....	24405	Metallic	.....	Precipitation	
Copper as elemental from copper—ethylenediamine complex.	.....	24407	Metallic	.....	Precipitation	
Copper sulfate (anhydrous).	.....	24408	Metallic	.....	Precipitation	
Copper(I) oxide	.....	25601	Metallic	.....	Precipitation	
Cuprous thiocyanate	.....	25602	Metallic	.....	Precipitation	
Cyclohexane	.....	25901	Non-Aromatic <100	.....	Activated Carbon	
Cyclohexanone	.....	25902	Non-Aromatic <100	.....	Activated Carbon	
Dichlobenil	.....	27401	Aromatic	.....	Activated Carbon	
Dimethyl phthalate	.....	28002	Aromatic	.....	Activated Carbon	I
Dichloro-5,5-dimethylhydantoin.	.....	28501	Non-Aromatic >100	.....	Activated Carbon	
Diquat dibromide	.....	32201	Aromatic	.....	Activated Carbon	
Dimethrin (ANSI)	.....	34101	Non-Aromatic >100	.....	Activated Carbon	
Dicapthon	.....	34502	Aromatic	.....	Activated Carbon	
Ziram, cyclohexylamine complex.	.....	34805	Non-Aromatic >100	.....	Activated Carbon	
Butyl dimethyl trithioper oxycarbamate.	.....	34807	Non-Aromatic >100	.....	Activated Carbon	
Ferric sulfate	.....	34902	Inorganic	.....	Activated Carbon	
Daminozide	.....	35101	Non-Aromatic >100	.....	Activated Carbon	
Bis(trichloro methyl) sulfone.	.....	35601	Non-Aromatic >100	.....	Activated Carbon	
Bis(bromoacet oxy)-2-butene.	.....	35605	Non-Aromatic >100	.....	Activated Carbon	
Dazomet, sodium salt	.....	35607	Non-Aromatic >100	.....	Activated Carbon	
Butonate	.....	35701	Non-Aromatic >100	.....	Activated Carbon	
Trifluoro-4-nitro-m-cresol (**) = alpha, alpha, alpha-.	.....	36201	Aromatic	.....	Activated Carbon	
Triethanolamine dinoseb (2-sec-Butyl-4,6-dinitrophenol).	.....	37506	Aromatic	.....	Activated Carbon	
Sodium 4,6-dinitro-o-cresylate.	.....	37508	Non-Aromatic >100	.....	Activated Carbon	
Dinitrophenol	.....	37509	Aromatic	.....	Activated Carbon	
Alkanol° amine dinoseb (2-sec-butyl-4,6-dinitrophenol) °(s.	.....	37511	Aromatic	.....	Activated Carbon	
Sodium dinoseb (2-sec-Butyl-4,6-dinitrophenol).	.....	37512	Aromatic	.....	Activated Carbon	
Ethylenediaminetetraacetic acid.	.....	39101	Non-Aromatic >100	.....	Activated Carbon	I
Ethylenediaminetetraacetic acid, sodium salt.	.....	39103	Non-Aromatic >100	.....	Activated Carbon	
Nitrilotriacetic acid, trisodium salt.	.....	39106	Non-Aromatic >100	.....	Activated Carbon	
Tetrasodium ethylenediaminetetraacetate.	.....	39107	Non-Aromatic >100	.....	Activated Carbon	I
Trisodium (2-hydroxyethyl) ethylenedi aminetriacetate.	.....	39109	Non-Aromatic >100	.....	Activated Carbon	
Ethylenediaminetetraacetic acid, trisodium salt.	.....	39110	Non-Aromatic >100	.....	Activated Carbon	I

TABLE C–1.—TABLE OF TREATABILITY INFORMATION FOR THE 272 PAIS AND THE NON-272 PAIS LISTED IN THE 1988 FATES DATABASE [1]—Continued

PAI name [2]	PAI code [3]	Shaughnessy code [4]	PAI classification [5]	Structural group [5]	Treatment technology bases for cost [6]	Inert [7]
Tripotassium ethylenediamine tetraacetate.	.....	39113	Non-Aromatic >100		Activated Carbon	I
Disodium di(2-hydroxyethyl) ethylenediamine diacetate.	.....	39114	Non-Aromatic >100		Activated Carbon	
Disodium ethylene diaminetetraacetate.	.....	39115	Non-Aromatic >100		Activated Carbon	I
Ammonium ethylene diaminetetraacetate.	.....	39117	Non-Aromatic >100		Activated Carbon	
Pentasodium diethyl enetriaminepentaacetate.	.....	39120	Non-Aromatic >100		Activated Carbon	
Sodium dihydroxyethylglycine.	.....	39122	Non-Aromatic >100		Activated Carbon	I
Ethyl-1,3-hexanediol	.....	41001	Non-Aromatic >100		Activated Carbon	
Ethylene	.....	41901	Non-Aromatic <100		Activated Carbon	
EDC	.....	42003	Non-Aromatic <100		Activated Carbon	
Methylene chloride	.....	42004	Non-Aromatic <100		Activated Carbon	
Methoxyethanol	.....	42202	Non-Aromatic <100		Activated Carbon	
Ethylene glycol	.....	42203	Non-Aromatic <100		Activated Carbon	
Butylene glycol	.....	42205	Non-Aromatic <100		Activated Carbon	
Ethylene oxide	.....	42301	Non-Aromatic <100		Activated Carbon	
Copper(II) oxide	.....	42401	Metallic		Precipitation	
Cuprous and cupric oxide, mixed.	.....	42403	Metallic		Precipitation	
Propylene oxide	.....	42501	Non-Aromatic <100		Activated Carbon	
Formaldehyde	.....	43001	Non-Aromatic <100		Activated Carbon	
Paraformaldehyde	.....	43002	Polymer		Activated Carbon	
Bis (2-butylene) tetrahydro-2-furaldehyde.	.....	43302	Aromatic		Activated Carbon	
Gibberellic acid	.....	43801	Aromatic		Activated Carbon	
Potassium gibberellate	.....	43802	Non-Aromatic >100		Activated Carbon	
Glutaral	.....	43901	Non-Aromatic >100		Activated Carbon	
Copper citrate	.....	44005	Metallic		Precipitation	
Sodium diacetate	.....	44008	Non-Aromatic >100		Activated Carbon	I
Acetone	.....	44101	Non-Aromatic <100		Activated Carbon	I
Methyl nonyl ketone	.....	44102	Non-Aromatic >100		Activated Carbon	
Methyl-2-pentanone	.....	44105	Non-Aromatic >100		Activated Carbon	
Monosodium 2, 2′-methylenebis(3,4,6-trichlorophenate).	.....	44902	Aromatic		Activated Carbon	
Potassium 2,2′-methylene bis(3,4,6-trichlorophenate).	.....	44904	Aromatic		Activated Carbon	
Hexachloro epoxy octahydro-endo, exo-dimethanonaphthalene 85%.	.....	45001	Non-Aromatic >100		Activated Carbon	
Chlorhexidine diacetate	.....	45502	Aromatic		Activated Carbon	
Chlorhexidine digluconate.	.....	45504	Aromatic		Activated Carbon	
Hydrocyanic acid	.....	45801	Inorganic		Activated Carbon	
Hydroxyethyl octyl sulfide.	.....	46301	Aromatic		Activated Carbon	
Heptadecenyl-2-(2-hydroxyethyl)-2-imidazolinium chloride.	.....	46608	Aromatic		Activated Carbon	
Hydroxyethyl)-2-alkyl-2-imidazoline (as in fatty acids of t.	.....	46609	Aromatic		Activated Carbon.	
IBA	.....	46701	Aromatic		Activated Carbon	
Dihydropyrone	.....	46801	Non-Aromatic >100		Activated Carbon	
Butoxy polypropoxy polyethoxyet hanol—iodine complex.	.....	46901	Polymer		Activated Carbon	
Nonylp henoxypolyet hoxyethanol—iodine complex.	.....	46903	Polymer		Activated Carbon	I

TABLE C–1.—TABLE OF TREATABILITY INFORMATION FOR THE 272 PAIS AND THE NON-272 PAIS LISTED IN THE 1988 FATES DATABASE [1]—Continued

PAI name [2]	PAI code [3]	Shaughnessy code [4]	PAI classification [5]	Structural group [5]	Treatment technology bases for cost [6]	Inert [7]
Polyethoxypoly propoxyet hanol—iodine complex.	.....	46904	Polymer		Activated Carbon	
Iodine	.....	46905	Inorganic		Activated Carbon	
Use code no. 046904	.....	46909	Polymer		Activated Carbon	
Iodine—potassium iodide complex.	.....	46917	Inorganic		Activated Carbon	
Alkyl-omega-hydroxypoly (oxyethylene)—iodine complex °(100%.	.....	46921	Polymer		Activated Carbon	
Isopropanol	.....	47501	Non-Aromatic <100		Activated Carbon	I
Lead acetate	.....	48001	Metallic		Precipitation	
Ferrous sulfate heptahydrate.	.....	50502	Inorganic		Activated Carbon	
Nickel sulfate hexahydrate.	.....	50505	Metallic		Precipitation	
Ferrous ammonium sulfate.	.....	50506	Inorganic		Activated Carbon	
Ferrous sulfate monohydrate.	.....	50507	Inorganic		Activated Carbon.	
Maleic hydrazide, diethanolamine salt.	.....	51502	Non-Aromatic >100		Activated Carbon	
Maleic hydrazide, potassium salt.	.....	51503	Non-Aromatic >100		Activated Carbon	
Menthol	.....	51601	Non-Aromatic >100		Activated Carbon	
Sodium 2-mercapto benzothiolate.	.....	51704	Aromatic		Activated Carbon	
Mercuric chloride	.....	52001	Metallic		Precipitation	
Mercurous chloride	.....	52201	Metallic		Precipitation	
Metaldehyde	.....	53001	Non-Aromatic >100		Activated Carbon	
Methyl alcohol	.....	53801	Non-Aromatic <100		Activated Carbon	
Methylated naphthalenes.	.....	54002	Aromatic		Activated Carbon	
Chloro-2-(2,4-dichloro phenoxy) phenol.	.....	54901	Aromatic		Activated Carbon	
Sodium 2,2′-methylenebis (4-chlorophenate).	.....	55005	Aromatic		Activated Carbon	
Naphthalene	.....	55801	Aromatic		Activated Carbon	
NAD	.....	56001	Aromatic		Activated Carbon	
NAA (1-Naphthaleneacetic Acid).	.....	56002	Aromatic		Activated Carbon	
Potassium 1-naphthaleneacetate.	.....	56003	Aromatic		Activated Carbon	
Ammonium 1-naphthaleneacetate.	.....	56004	Aromatic		Activated Carbon	
Sodium 1-naphthaleneacetate.	.....	56007	Aromatic		Activated Carbon	
Ethyl 1-naphthaleneacetate.	.....	56008	Aromatic		Activated Carbon	
Nitrophenol	.....	56301	Aromatic		Activated Carbon	
Nicotine	.....	56702	Aromatic		Activated Carbon	
Carbop henothion (ANSI).	.....	58102	Aromatic		Activated Carbon	
Sodium 5-chloro-2-(4-chloro-2-(3-(3,4-dichlorophenyl)ureido).	.....	58802	Aromatic		Activated Carbon	
Monocrotophos	.....	58901	Non-Aromatic >100		Activated Carbon	
Chlordimeform	.....	59701	Aromatic		Activated Carbon	
Chlordimeform hydrochloride.	.....	59702	Aromatic		Activated Carbon	
Thiabendazole hypophosphite.	.....	60102	Aromatic		Activated Carbon	
Hexachlorobenzene	.....	61001	Aromatic		Activated Carbon	
Methyl 4-hydroxybenzoate.	.....	61201	Aromatic		Activated Carbon	
Butyl paraben	.....	61205	Aromatic		Activated Carbon	
Paraquat dichloride	.....	61601	Aromatic		Activated Carbon	

TABLE C–1.—TABLE OF TREATABILITY INFORMATION FOR THE 272 PAIS AND THE NON-272 PAIS LISTED IN THE 1988 FATES DATABASE [1]—Continued

PAI name [2]	PAI code [3]	Shaughnessy code [4]	PAI classification [5]	Structural group [5]	Treatment technology bases for cost [6]	Inert [7]
Potassium 2-benzyl-4-chlorophenate.	.....	62202	Aromatic	.....	Activated Carbon	
Sodium 2-benzyl-4-chlorophenate.	.....	62203	Aromatic	.....	Activated Carbon	
Chloro-4-phenylphenol ..	.....	62205	Aromatic	.....	Activated Carbon	
Chloro-2-phenylphenol ..	.....	62208	Aromatic	.....	Activated Carbon	
Chloro-2-biphenylol, potassium salt.	.....	62209	Aromatic	.....	Activated Carbon	
Chloro-2-phenylphenol ..	.....	62210	Aromatic	.....	Activated Carbon	
Chloro-2-phenylphenol, potassium salt.	.....	62211	Aromatic	.....	Activated Carbon	
Peroxyacetic acid	.....	63201	Non-Aromatic <100	.....	Activated Carbon	
Sodium phenate	.....	64002	Aromatic	.....	Activated Carbon	
Amylphenol	.....	64101	Aromatic	.....	Activated Carbon	
Sodium o-phenylphenate	.....	64104	Aromatic	.....	Activated Carbon	
Phenylphenol, potassium salt.	.....	64108	Aromatic	.....	Activated Carbon	
Amylphenol, potassium salt.	.....	64111	Aromatic	.....	Activated Carbon	
Amylphenol, sodium salt	.....	64112	Aromatic	.....	Activated Carbon	
Butylphenol, sodium salt	.....	64115	Aromatic	.....	Activated Carbon	
Ammonium 2-phenylphenate.	.....	64116	Aromatic	.....	Activated Carbon	
Chloro-2-cyclopentylphenol.	.....	64202	Aromatic	.....	Activated Carbon	
Bithionolate sodium	.....	64203	Aromatic	.....	Activated Carbon	
Chloro-3-cresol	.....	64206	Aromatic	.....	Activated Carbon	
Sodium 2,4,5-trichlorophenate.	.....	64217	Aromatic	.....	Activated Carbon	
Aluminum phosphide	.....	66501	Inorganic	.....	Activated Carbon	
Phosphorus	.....	66502	Inorganic	.....	Activated Carbon	
Magnesium phosphide ..	.....	66504	Inorganic	.....	Activated Carbon	
1-(Alkyl* amino)-3-aminopropane *(Fatty acids of coconut oil).	.....	67301	Non-Aromatic >100	.....	Activated Carbon	
Alkyl* amino)-3- amino propane *(53% C12, 19% C14, 8.5% C16, 7% C8.	.....	67305	Non-Aromatic >100	.....	Activated Carbon	
Alkyl* amino)-3-aminopropane benzoate* (fatty acids of coconut.	.....	67307	Aromatic	.....	Activated Carbon	
Alkyl* dipropoxyamine *(47% C12, 18% C14, 10% C18, 9% C10, 8.	.....	67308	Non-Aromatic >100	.....	Activated Carbon	
Alkyl* amino)-3-aminopropane hydroxy acetate* (acids of coconut.	.....	67309	Non-Aromatic >100	.....	Activated Carbon	
Alkyl* amino)-3-amino propane* (42% C12, 26% C18, 15% C14, 8% C16.	.....	67310	Non-Aromatic >100	.....	Activated Carbon	
Alkyl*amino) -3-aminopropane diacetate* (fatty acids of coconu.	.....	67313	Non-Aromatic >100	.....	Activated Carbon	
Octadecenyl -1,3-propanediamine monogluconate.	.....	67316	Non-Aromatic >100	.....	Activated Carbon	
Alkyl* amine acetate *(5% C8, 7% C10, 54% C12, 19% C14, 8% C16.	.....	67329	Non-Aromatic >100	.....	Activated Carbon	
Pindone sodium salt	.....	67704	Aromatic	.....	Activated Carbon	
Diphacinone, sodium salt.	.....	67705	Aromatic	.....	Activated Carbon	

TABLE C–1.—TABLE OF TREATABILITY INFORMATION FOR THE 272 PAIS AND THE NON-272 PAIS LISTED IN THE 1988 FATES DATABASE [1]—Continued

PAI name [2]	PAI code [3]	Shaughnessy code [4]	PAI classification [5]	Structural group [5]	Treatment technology bases for cost [6]	Inert [7]
Isovaleryl-1,3-indandione, calcium salt.	.....	67706	Aromatic	.....	Activated Carbon	
Methyl isothiocyanate	.....	68103	Non-Aromatic <100	.....	Activated Carbon	
Potassium dichromate ...	.....	68302	Inorganic	.....	Activated Carbon	
Sodium chromate	.....	68303	Inorganic	.....	Activated Carbon	
Sodium dichromate	.....	68304	Metallic	.....	Precipitation	
Potassium permanganate.	.....	68501	Inorganic	.....	Activated Carbon	
Propylene glycol	.....	68603	Non-Aromatic <100	.....	Activated Carbon	
Dipropylene glycol	.....	68604	Non-Aromatic <100	.....	Activated Carbon	
Alkenyl* dimethyl ethyl ammonium bromide* (90% C18', 10% C16').	.....	69102	Non-Aromatic >100	.....	Activated Carbon	
Alkyl*-N-ethyl morpholinium ethyl sulfate *(92% C18, 8% C16).	.....	69113	Non-Aromatic >100	.....	Activated Carbon	
Alkyl* isoquinolinium bromide *(50% C12, 30% C14, 17% C16, 3.	.....	69115	Aromatic	.....	Activated Carbon	
Alkyl* methyl isoquinolinium chloride *(55% C14, 12% C12, 17% C.	.....	69116	Aromatic	.....	Activated Carbon	
Cetyl trimethyl ammonium bromide.	.....	69117	Non-Aromatic >100	.....	Activated Carbon	
Cetyl pyridinium bromide	.....	69118	Aromatic	.....	Activated Carbon	
Dodecyl dimethyl benzyl ammonium naphthenate.	.....	69127	Aromatic	.....	Activated Carbon	
Alkyl* dimethyl ethylbenzyl ammonium cyclohexyl sulfamate *(5.	.....	69135	Aromatic	.....	Activated Carbon	
Alkyl* dimethyl ethyl ammonium bromide *(90% C14, 5% C16, 5%.	.....	69146	Aromatic	.....	Activated Carbon	
Alkyl*-N-ethyl morpholinium ethyl sulfate *(66% C18, 25% C16,.	.....	69147	Non-Aromatic >100	.....	Activated Carbon	
Alkyl* trimethyl ammonium bromide *(95% C14, 5% C16).	.....	69153	Non-Aromatic >100	.....	Activated Carbon	
Benzyl ((dodecylcarbamoyl) methyl) dimethyl ammonium chloride.	.....	69159	Aromatic	.....	Activated Carbon	
Cetyl pyridinium chloride	.....	69160	Aromatic	.....	Activated Carbon	
Alkyl* dimethyl ethyl ammonium bromide *(85% C16, 15% C18).	.....	69186	Non-Aromatic >100	.....	Activated Carbon	
Cetyl-N-ethylmorp holinium ethyl sulfate.	.....	69187	Non-Aromatic >100	.....	Activated Carbon	
Use code no. 069102 (Alkenyl* Dimethyl Ammonium bromide).	.....	69198	Non-Aromatic >100	.....	Activated Carbon	
p-Aminopyridine	.....	69201	Aromatic	.....	Activated Carbon	
Nitrapyrin (ANSI)	.....	69203	Aromatic	.....	Activated Carbon	
Alkyl pyridines	.....	69205	Aromatic	.....	Activated Carbon	
Pyrazon (ANSI)	.....	69601	Non-Aromatic >100	.....	Activated Carbon	
Capsaicin (in oleoresin of capsicum).	.....	70701	Aromatic	.....	Activated Carbon	
Ryanodine	.....	71502	Aromatic	.....	Activated Carbon	
Silver	.....	72501	Inorganic	.....	Activated Carbon	
Silver chloride	.....	72506	Inorganic	.....	Activated Carbon	
Silica gel	.....	72602	Inorganic	.....	Activated Carbon	
Sodium metasilicate	.....	72604	Inorganic	.....	Activated Carbon	

TABLE C–1.—TABLE OF TREATABILITY INFORMATION FOR THE 272 PAIS AND THE NON-272 PAIS LISTED IN THE 1988 FATES DATABASE [1]—Continued

PAI name [2]	PAI code [3]	Shaughnessy code [4]	PAI classification [5]	Structural group [5]	Treatment technology bases for cost [6]	Inert [7]
Silicon dioxide		72605	Inorganic		Activated Carbon	
Silver thiuronium acrylate co-polymer.		72701	Polymer		Activated Carbon	
Sodium chlorate		73301	Inorganic		Activated Carbon	
Potassium carbonate		73504	Inorganic		Activated Carbon	
Sodium carbonate		73506	Inorganic		Activated Carbon	
Sodium sesquicarbonate		73507	Non-Aromatic >100		Activated Carbon	
Calcium cyanide		74001	Inorganic		Activated Carbon	
Sodium cyanide		74002	Inorganic		Activated Carbon	
Cryolite		75101	Non-Aromatic >100		Activated Carbon	
Sodium fluoride		75202	Inorganic		Activated Carbon	
Ammonium fluosilicate		75301	Inorganic		Activated Carbon	
Sodium fluosilicate		75306	Inorganic		Activated Carbon	
Potassium hydroxide (K(OH)).		75602	Inorganic		Activated Carbon	
Sodium hydroxide		75603	Inorganic		Activated Carbon	
Calcium oxide		75604	Inorganic		Activated Carbon	
Potassium iodide		75701	Inorganic		Activated Carbon	
Potassium tetrathionate		75903	Non-Aromatic >100		Activated Carbon	
Potassium nitrate		76103	Inorganic		Activated Carbon	
Sodium nitrate		76104	Inorganic		Activated Carbon	
Sodium nitrite		76204	Inorganic		Activated Carbon	
Sodium phosphate (Na2H (PO4)).		76403	Inorganic		Activated Carbon	I
Sodium tripolyphosphate		76404	Polymer		Activated Carbon	I
Trisodium phosphate		76406	Inorganic		Activated Carbon	I
Monosodium phosphate		76409	Inorganic		Activated Carbon	I
Benzenesulfonamide, N-chloro-, sodium salt.		76501	Aromatic		Activated Carbon	
Methyl salicylate		76601	Aromatic		Activated Carbon	I
Salicylic acid		76602	Aromatic		Activated Carbon	
Ethoxyethyl p-methoxycinnamate.		76604	Aromatic		Activated Carbon	
Calcium polysulfide		76702	Polymer		Activated Carbon	
Strychnine		76901	Aromatic		Activated Carbon	
Strychnine sulfate		76902	Aromatic		Activated Carbon	
Trichloromelamine		77101	Aromatic		Activated Carbon	
Niclosamide		77401	Aromatic		Activated Carbon	
Dibromosalicylanilide		77402	Aromatic		Activated Carbon	
Tribromsalan		77404	Aromatic		Activated Carbon	
Dibromosalicylanilide		77405	Aromatic		Activated Carbon	
Chlorosalicylanilide		77406	Aromatic		Activated Carbon	
Sulfur		77501	Inorganic		Activated Carbon	
Sulfur dioxide7		7601	Inorganic		Activated Carbon	
Sulfaquinoxaline		7901	Aromatic		Activated Carbon	
Sulfacetamide		7904	Aromatic		Activated Carbon	
Sulfuric acid		78001	Inorganic		Activated Carbon	
Sulfuryl fluoride		78003	Non-Aromatic >100		Activated Carbon	
Sodium bisulfite		78201	Inorganic		Activated Carbon	
Tetrachloroethylene		78501	Non-Aromatic >100		Activated Carbon	
Ethoxylated isooctylphenol.		79004	Aromatic		Activated Carbon	
Polyoxyethylene sorbitol, mixed ether ester.		79007	Polymer		Activated Carbon	I
Sodium dodecylbenzene sulfonate.		79010	Aromatic		Activated Carbon	
Sodium lauryl sulfate		79011	Non-Aromatic >100		Activated Carbon	I
Lauric diethanolamide		79018	Non-Aromatic >100		Activated Carbon	
Sodium xylenesulfonate		79019	Aromatic		Activated Carbon	I
Triethanolamine dodecylbenzene sulfonate.		79020	Aromatic		Activated Carbon	I
Potassium myristate		79022	Non-Aromatic >100		Activated Carbon	I
Potassium ricinoleate		79023	Non-Aromatic >100		Activated Carbon	I
Triethanolamine oleate		79025	Non-Aromatic >100		Activated Carbon	
Dioctyl sodium sulfosuccinate.		79027	Non-Aromatic >100		Activated Carbon	
Use code no. 069179		79036	Not Classified		Activated Carbon	
Decanol		79038	Non-Aromatic >100		Activated Carbon	

TABLE C–1.—TABLE OF TREATABILITY INFORMATION FOR THE 272 PAIS AND THE NON-272 PAIS LISTED IN THE 1988 FATES DATABASE [1]—Continued

PAI name [2]	PAI code [3]	Shaughnessy code [4]	PAI classification [5]	Structural group [5]	Treatment technology bases for cost [6]	Inert [7]
Alkyl* diethanolamide *(70% C12, 30% C14).		79045	Non-Aromatic >100		Activated Carbon	
Triethanolamine lauryl sulfate.		79046	Non-Aromatic >100		Activated Carbon	I
Toluene sulfonic acid		79058	Aromatic		Activated Carbon	I
Sulfonated oleic acid, sodium salt.		79064	Non-Aromatic >100		Activated Carbon	
Tetradecyl formate		79068	Non-Aromatic >100		Activated Carbon	
Polyoxyethylene sorbitol oleate-laurate.		79075	Polymer		Activated Carbon	
Polyethoxylated stearylamine.		79094	Polymer		Activated Carbon	
Capric diethanolamide		79099	Non-Aromatic >100		Activated Carbon	
Limonene		79701	Aromatic		Activated Carbon	I
Calcium thiosulfate		80101	Inorganic		Activated Carbon	
Ammonium thiosulfate		80103	Inorganic		Activated Carbon	
Thymoxydi chloroacetic acid.		80401	Aromatic		Activated Carbon	
Thymol		80402	Aromatic		Activated Carbon	
Sodium trichloroacetate		81001	Non-Aromatic >100		Activated Carbon	
Trichloroacetic acid		81002	Non-Aromatic >100		Activated Carbon	
Trichloroethane		81201	Non-Aromatic >100		Activated Carbon	I
Use code no. 082053		82072	Not Classified		Activated Carbon	
Use code no. 082555		82572	Not Classified		Activated Carbon	
Hexahydro-1,3,5-tris(2-hydroxyethyl)-s-triazine.		83301	Aromatic		Activated Carbon	
Triethylene glycol		83501	Non-Aromatic >100		Activated Carbon	
2-(Hydroxymethyl)-2-nitro-1,3-propanediol.		83902	Non-Aromatic >100		Activated Carbon	
Bornyl		84201	Non-Aromatic >100		Activated Carbon	
Turpentine		84501	Non-Aromatic >100		Activated Carbon	
Chloro-1- (2,5- dichlorophenyl) vinyl) O,O-diethyl phosphorothi.		84901	Aromatic		Activated Carbon	
Undecylenic acid		85501	Non-Aromatic >100		Activated Carbon	I
Chloroxylenol		86801	Aromatic		Activated Carbon	
Xylene		86802	Aromatic		Activated Carbon	I
Zinc chloride		87801	Metallic		Precipitation	
Zinc 2-pyridinethiol-1-oxide.		88002	Metallic		Precipitation	
Hydroxy-2-(1H)-pyridinethione, sodium salt.		88004	Aromatic		Activated Carbon	
Omadine TBAO		88005	Aromatic		Activated Carbon	
Zinc naphthenate		88301	Metallic		Precipitation	
Zinc oxide		88502	Metallic		Precipitation	
Zinc phosphide (Zn3P2)		88601	Metallic		Precipitation	
Zinc phenol sulfonate		89002	Metallic		Precipitation	
Zinc sulfate, basic		89101	Metallic		Precipitation	
Dimetilan		90101	Non-Aromatic >100		Activated Carbon	
Carboxin		90201	Non-Aromatic >100		Activated Carbon	
Oxycarboxin		90202	Aromatic		Activated Carbon	
Benzocaine		97001	Aromatic		Activated Carbon	
Piperalin		97003	Aromatic		Activated Carbon	
Tetracaine hydrochloride		97005	Aromatic		Activated Carbon	
Formetanate hydrochloride.		97301	Non-Aromatic >100		Activated Carbon	
Dodecyl benzene sulfonic acid.		98002	Aromatic		Activated Carbon	I
Azacosterol HCl		98101	Non-Aromatic >100		Activated Carbon	
Use code no. 039502		98401	Not Classified		Activated Carbon	
Ammonium alum		98501	Inorganic		Activated Carbon	
Bismuth subgallate		98601	Metallic		Precipitation	
Chlorflurenol, methyl ester.		98801	Non-Aromatic >100		Activated Carbon	
Benzisothiazolin-3-one		98901	Aromatic		Activated Carbon	

TABLE C–1.—TABLE OF TREATABILITY INFORMATION FOR THE 272 PAIS AND THE NON-272 PAIS LISTED IN THE 1988 FATES DATABASE [1]—Continued

PAI name [2]	PAI code [3]	Shaughnessy code [4]	PAI classification [5]	Structural group [5]	Treatment technology bases for cost [6]	Inert [7]
Methyl 2-benzimidazolecarbamate phosphate.	.....	99102	Aromatic	.....	Activated Carbon	
Ethephon	.....	99801	Non-Aromatic >100	.....	Activated Carbon	
Pentanethiol	.....	100701	Non-Aromatic >100	.....	Activated Carbon	
Nitrobutyl) morpholine ...	.....	100801	Aromatic	.....	Activated Carbon	
Ethyl-2-nitrotri methylene) dimorpholine.	.....	100802	Aromatic	.....	Activated Carbon	
Tolyl diiodomethyl sulfone.	.....	101002	Aromatic	.....	Activated Carbon	
Isobutyric acid	.....	101502	Non-Aromatic <100	.....	Activated Carbon	
Dibromo-3-nitrilopropionamide.	.....	101801	Non-Aromatic >100	.....	Activated Carbon	
Polyethoxylated oleylamine.	.....	101901	Non-Aromatic >100	.....	Activated Carbon	
Dinitramine (ANSI)	.....	102301	Aromatic	.....	Activated Carbon	
Phenylethyl propionate ..	.....	102601	Aromatic	.....	Activated Carbon	
Eugenol	.....	102701	Aromatic	.....	Activated Carbon	
Tricosene	.....	103201	Non-Aromatic >100	.....	Activated Carbon	
Tricosene	.....	103202	Non-Aromatic >100	.....	Activated Carbon	
Sodium 1,4',5'-trichloro-2'-(2,4,5-trichlorophenoxy) methanes.	.....	104101	Aromatic	.....	Activated Carbon	
Hexahydro-1,3,5-tris(2-hydroxypropyl)-s-triazine.	.....	105601	Aromatic	.....	Activated Carbon	
Methazole	.....	106001	Aromatic	.....	Activated Carbon	
Difenzoquat methyl sulfate.	.....	106401	Non-Aromatic >100	.....	Activated Carbon	
Butralin	.....	106501	Aromatic	.....	Activated Carbon	
Fosamine ammonium	.....	106701	Non-Aromatic >100	.....	Activated Carbon	
Asulam	.....	106901	Aromatic	.....	Activated Carbon	
Sodium asulam	.....	106902	Aromatic	.....	Activated Carbon	
Hydroxy methoxy methyl-1-aza-3,7-dioxabicyclo (3.3.0) octane.	.....	107001	Non-Aromatic >100	.....	Activated Carbon	
Hydroxy methyl-1-aza-3,7- dioxabicyclo (3.3.0) octane.	.....	107002	Non-Aromatic >100	.....	Activated Carbon	
Hydroxypoly (methyleneoxy)* methyl-1-aza-3,7-dioxabicyclo (3.3.	.....	107003	Non-Aromatic >100	.....	Activated Carbon	
Chloro-2-methyl-3(2H)-isothiazolone.	.....	107103	Non-Aromatic >100	.....	Activated Carbon	
Methyl-3(2H) -isothiazolone.	.....	107104	Non-Aromatic >100	.....	Activated Carbon	
Trimethoxysilyl) propyl dimethyl octadecyl ammonium chloride.	.....	107401	Non-Aromatic >100	.....	Activated Carbon	
Kinoprene	.....	107502	Non-Aromatic >100	.....	Activated Carbon	
Triforine (ANSI)	.....	107901	Non-Aromatic >100	.....	Activated Carbon	
Pirimiphos-methyl (ANSI).	.....	108102	Aromatic	.....	Activated Carbon	
Thiobencarb	.....	108401	Aromatic	.....	Activated Carbon	
Ancymidol (ANSI)	.....	108601	Aromatic	.....	Activated Carbon	
Oxadiazon (ANSI)	.....	109001	Aromatic	.....	Activated Carbon	
Mepiquat chloride	.....	109101	Non-Aromatic >100	.....	Activated Carbon	
Fluvalinate	.....	109302	Aromatic	.....	Activated Carbon	
Chloro-N-(hydroxymethyl) acetamide.	.....	109501	Non-Aromatic >100	.....	Activated Carbon	
Dikegulac sodium	.....	109601	Non-Aromatic >100	.....	Activated Carbon	
Iprodione (ANSI)	.....	109801	Aromatic	.....	Activated Carbon	
Phenylmethyl)-9-(tetrahydro -2H-pyran-2-yl) -9H-purin amine.	.....	110001	Aromatic	.....	Activated Carbon	
Prodiamine	.....	110201	Aromatic	.....	Activated Carbon	
Erioglaucine	.....	110301	Aromatic	.....	Activated Carbon	

TABLE C–1.—TABLE OF TREATABILITY INFORMATION FOR THE 272 PAIS AND THE NON-272 PAIS LISTED IN THE 1988 FATES DATABASE [1]—Continued

PAI name [2]	PAI code [3]	Shaughnessy code [4]	PAI classification [5]	Structural group [5]	Treatment technology bases for cost [6]	Inert [7]
Tartrazine	.....	110302	Aromatic	.....	Activated Carbon	
Dodemorph acetate	.....	110401	Non-Aromatic >100	.....	Activated Carbon	
Ethofumesate (ANSI)	.....	110601	Aromatic	.....	Activated Carbon	
Aldoxycarb (ANSI)	.....	110801	Non-Aromatic >100	.....	Activated Carbon	
Diclofop-methyl	.....	110902	Aromatic	.....	Activated Carbon	
Bromo-1-(bromomethyl)-1,3- propanedicar bonitrile.	.....	111001	Non-Aromatic >100	.....	Activated Carbon	
Poly (iminoimidocar bonyliminoimi docar bonyliminohexa methylene).	.....	111801	Polymer	.....	Activated Carbon	
Imazalil	.....	111901	Aromatic	.....	Activated Carbon	
Bromadiolone	.....	112001	Aromatic	.....	Activated Carbon	
Brodifacoum	.....	112701	Aromatic	.....	Activated Carbon	
Bromethalin (ANSI)	.....	112802	Aromatic	.....	Activated Carbon	
Fluridone (ANSI)	.....	112900	Not Classified	.....	Activated Carbon	
Vinclozolin	.....	113201	Aromatic	.....	Activated Carbon	
Metalaxyl	.....	113501	Aromatic	.....	Activated Carbon	
Propetamphos (ANSI) ...	.....	113601	Non-Aromatic >100	.....	Activated Carbon	
Methyl-1-naphthyl) malei mide.	.....	113701	Aromatic	.....	Activated Carbon	
Hexadecadien-1-yl acetate.	.....	114101	Non-Aromatic >100	.....	Activated Carbon	
Hexadecadien-1-yl acetate.	.....	114102	Non-Aromatic >100	.....	Activated Carbon	
Epoxy-2-methyloctadecane.	.....	114301	Non-Aromatic >100	.....	Activated Carbon	
Thiodicarb (ANSI)	.....	114501	Non-Aromatic >100	.....	Activated Carbon	
Dimethyloxazolidine (8CA & 9CA).	.....	114801	Non-Aromatic >100	.....	Activated Carbon	
Trimethyloxazolidine	.....	114802	Non-Aromatic >100	.....	Activated Carbon	
Hydroxy phenyl) oxoacetohy droximic chloride.	.....	114901	Aromatic	.....	Activated Carbon	
EEEBC	.....	115001	Not Classified	.....	Activated Carbon	
MDM Hydantoin	.....	115501	Non-Aromatic >100	.....	Activated Carbon	
DMDM Hydantoin	.....	115502	Non-Aromatic >100	.....	Activated Carbon	
Triclopyr (ANSI)	.....	116001	Aromatic	.....	Activated Carbon	
Triethylamine triclopyr ...	.....	116002	Aromatic	.....	Activated Carbon	
Butoxyethyl triclopyr	.....	116004	Aromatic	.....	Activated Carbon	
Decenyl) dihydro-2(3H)-furanone.	.....	116501	Non-Aromatic >100	.....	Activated Carbon	
Cytokinins	.....	116801	Not Classified	.....	Activated Carbon	
Benzyladenine	.....	116901	Aromatic	.....	Activated Carbon	
Clopyralid, monoethanolamine salt.	.....	117401	Aromatic	.....	Activated Carbon	
Clopyralid (ANSI)	.....	117403	Aromatic	.....	Activated Carbon	
Flucythrinate (ANSI)	.....	118301	Aromatic	.....	Activated Carbon	
Hydra methylnon (ANSI)	.....	118401	Aromatic	.....	Activated Carbon	
Chlorsulfuron	.....	118601	Aromatic	.....	Activated Carbon	
Dimethipin	.....	118901	Non-Aromatic >100	.....	Activated Carbon	
Hexadecenal	.....	120001	Non-Aromatic >100	.....	Activated Carbon	
Tetradecenal	.....	120002	Non-Aromatic >100	.....	Activated Carbon	
Thidiazuron	.....	120301	Non-Aromatic >100	.....	Activated Carbon	
Metronidazole	.....	120401	Non-Aromatic >100	.....	Activated Carbon	
Erythrosine B	.....	120901	Aromatic	.....	Activated Carbon	
Sethoxydim	.....	121001	Non-Aromatic >100	.....	Activated Carbon	
Clethodim	.....	121011	Not Classified	.....	Activated Carbon	
Cyromazine	.....	121301	Aromatic	.....	Activated Carbon	
Tralomethrin	.....	121501	Aromatic	.....	Activated Carbon	
Azadirachtin	.....	121701	Non-Aromatic >100	.....	Activated Carbon	
Tridecen-1-yl acetate	.....	121901	Non-Aromatic >100	.....	Activated Carbon	
Tridecen-I-yl acetate	.....	121902	Non-Aromatic >100	.....	Activated Carbon	
Sulfometuron methyl	.....	122001	Aromatic	.....	Activated Carbon	
Metsulfuron-methyl	.....	122010	Aromatic	.....	Activated Carbon	
Propiconazole	.....	122101	Aromatic	.....	Activated Carbon	
Furanone, dihydro-5-pentyl-.	.....	122301	Non-Aromatic >100	.....	Activated Carbon	

TABLE C–1.—TABLE OF TREATABILITY INFORMATION FOR THE 272 PAIS AND THE NON-272 PAIS LISTED IN THE 1988 FATES DATABASE [1]—Continued

PAI name [2]	PAI code [3]	Shaughnessy code [4]	PAI classification [5]	Structural group [5]	Treatment technology bases for cost [6]	Inert [7]
Furanone, 5- heptyldi hydro-.	.....	122302	Non-Aromatic >100	.....	Activated Carbon	
Abamectin (ANSI)	.....	122804	Non-Aromatic >100	.....	Activated Carbon	
Fluazifop-butyl	.....	122805	Aromatic	.....	Activated Carbon	
Fluazifop-R-butyl	.....	122809	Aromatic	.....	Activated Carbon	
Flumetralin	.....	123001	Not Classified	.....	Activated Carbon	
Fosetyl-Al	.....	123301	Non-Aromatic >100	.....	Activated Carbon	
Methanol, (((2-(dihydro-5-methyl-3(2H)-oxazolyl)-1-methyl)et.	.....	123702	Non-Aromatic >100	.....	Activated Carbon	
Fomesafen	.....	123802	Not Classified	.....	Activated Carbon	
Tridiphane	.....	123901	Aromatic	.....	Activated Carbon	
POE isooctadecanol	.....	124601	Non-Aromatic >100	.....	Activated Carbon	
Periplanone B	.....	124801	Non-Aromatic >100	.....	Activated Carbon	
Fenoxycarb	.....	125301	Not Classified	.....	Activated Carbon	
Clomazone	.....	125401	Aromatic	.....	Activated Carbon	
Clofentezine	.....	125501	Aromatic	.....	Activated Carbon	
Paclobutrazol	.....	125601	Aromatic	.....	Activated Carbon	
Flurprimidol	.....	125701	Aromatic	.....	Activated Carbon	
Isoxaben	.....	125851	Aromatic	.....	Activated Carbon	
Isazofos	.....	126901	Non-Aromatic >100	.....	Activated Carbon	
Triadimenol	.....	127201	Aromatic	.....	Activated Carbon	
Fenpropathrin	.....	127901	Non-Aromatic >100	.....	Activated Carbon	
Sulfosate	.....	128501	Not Classified	.....	Activated Carbon	
Fenoxaprop-ethyl	.....	128701	Non-Aromatic >100	.....	Activated Carbon	
Quizalofop-ethyl	.....	128711	Aromatic	.....	Activated Carbon	
Bensulfuron-methyl	.....	128820	Aromatic	.....	Activated Carbon	
Imazapyr	.....	128821	Not Classified	.....	Activated Carbon	
Bifenthrin	.....	128825	Aromatic	.....	Activated Carbon	
Dichloro-5-ethyl-5-methylhydantoin.	.....	128826	Non-Aromatic >100	.....	Activated Carbon	
Amazapyr, isopropylamine salt.	.....	128829	Not Classified	.....	Activated Carbon	
Sodium salt of 1-carboxymethyl-3,5,7-triaza-1-azoniatricyclo.	.....	128832	Non-Aromatic >100	.....	Activated Carbon	
Linalool	.....	128838	Non-Aromatic >100	.....	Activated Carbon	
Imazaquin, monoammonium salt.	.....	128840	Aromatic	.....	Activated Carbon	
Imazethabenz	.....	128842	Aromatic	.....	Activated Carbon	
Thifensulfuron methyl	.....	128845	Not Classified	.....	Activated Carbon	
Imazaquin	.....	128848	Aromatic	.....	Activated Carbon	
Myclobutanil (ANSI)	.....	128857	Aromatic	.....	Activated Carbon	
Zinc borate (3ZnO, 2B03, 3.5H2O; mw 434.66).	.....	128859	Metallic	.....	Precipitation	
Cyhalothrin	.....	128867	Aromatic	.....	Activated Carbon	
Potassium cresylate	.....	128870	Aromatic	.....	Activated Carbon	
Triflumizole	.....	128879	Aromatic	.....	Activated Carbon	
Tribenuron methyl	.....	128887	Not Classified	.....	Activated Carbon	
Cyhalothrin	.....	128897	Aromatic	.....	Activated Carbon	
Chlorimuron-ethyl	.....	128901	Aromatic	.....	Activated Carbon	
Dodecen-1-yl acetate	.....	128906	Non-Aromatic >100	.....	Activated Carbon	
Dodecen-1-yl acetate	.....	128907	Non-Aromatic >100	.....	Activated Carbon	
DDOL	.....	128908	Non-Aromatic >100	.....	Activated Carbon	
Farnesol	.....	128910	Non-Aromatic >100	.....	Activated Carbon	
Nerolidol	.....	128911	Non-Aromatic >100	.....	Activated Carbon	
Tefluthrin	.....	128912	Not Classified	.....	Activated Carbon	
Bromoxynil heptanoate ..	.....	128920	Aromatic	.....	Activated Carbon.	
Imazethapyr	.....	128922	Not Classified	.....	Activated Carbon	
Imazethapyr, ammonium salt.	.....	128923	Not Classified	.....	Activated Carbon	
Chitosan	.....	128930	Polymer	.....	Activated Carbon	
Nitrogen, Liquid	.....	128934	Inorganic	.....	Activated Carbon	
Sulfuric acid, monourea adduct.	.....	128961	Non-Aromatic <100	.....	Activated Carbon	
Hydroprene	.....	128966	Non-Aromatic >100	.....	Activated Carbon	
Triasulfuron	.....	128969	Aromatic	.....	Activated Carbon	
Primisulfuron-methyl	.....	128973	Aromatic	.....	Activated Carbon	
Uniconazole (ANSI)	.....	128976	Aromatic	.....	Activated Carbon	

TABLE C–1.—TABLE OF TREATABILITY INFORMATION FOR THE 272 PAIS AND THE NON-272 PAIS LISTED IN THE 1988 FATES DATABASE [1]—Continued

PAI name [2]	PAI code [3]	Shaughnessy code [4]	PAI classification [5]	Structural group [5]	Treatment technology bases for cost [6]	Inert [7]
Tetradecenyl acetate	.....	128980	Non-Aromatic >100	.....	Activated Carbon	
Chitin	.....	128991	Polymer	.....	Activated Carbon	
Sulfluramid	.....	128992	Non-Aromatic >100	.....	Activated Carbon	
Dithiopyr (ANSI)	.....	128994	Not Classified	.....	Activated Carbon	
Nicosulfuron	.....	129008	Not Classified	.....	Activated Carbon	
Zinc	.....	129015	Metallic	.....	Precipitation	
Tetradecen-1-ol, acetate, (E)-.	.....	129019	Non-Aromatic >100	.....	Activated Carbon	
Imazaquin, sodium salt .	.....	129023	Aromatic	.....	Activated Carbon	
Dodecadien-1-ol	.....	129028	Non-Aromatic >100	.....	Activated Carbon	
Ionone	.....	129030	Non-Aromatic >100	.....	Activated Carbon	
Ionone	.....	129030	Non-Aromatic >100	.....	Activated Carbon	
Dicamba, aluminum salt	.....	129042	Aromatic	.....	Activated Carbon	
Benzene methana . minium, N-(2-((2,6-dimethylphenyl) amino)-2-oxo.	.....	129045	Aromatic	.....	Activated Carbon	
Fenoxaprop-p-Ethyl	.....	129092	Aromatic	.....	Activated Carbon	
Alkyl* bis(2-hydroxyethyl) ammonium acetate *(as in fatty ac.	.....	169103	Non-Aromatic >100	.....	Activated Carbon	
Alkenyl* dimethyl ammonium acetate *(75% C18', 25% C16').	.....	169104	Non-Aromatic >100	.....	Activated Carbon	
Amines, N-coco alkyltri methylenedi-, adipates.	.....	169109	Non-Aromatic >100	.....	Activated Carbon	
Dialkyl* dimethyl ammonium bentonite *(as in fatty acids of,	.....	169111	Non-Aromatic >100	.....	Activated Carbon	
Alkyl* bis(2-hydroxyethyl) amine acetate *(65% C18, 30% C16,.	.....	169125	Non-Aromatic >100	.....	Activated Carbon	
Dodecyl bis (hydroxyethyl) dioctyl ammonium phosphate.	.....	169154	Non-Aromatic >100	.....	Activated Carbon	
Dodecyl bis(2-hydroxyethyl) octyl hydrogen ammonium phosphat.	.....	169155	Non-Aromatic >100	.....	Activated Carbon	
Didecyl-N-methyl-3-(trimethoxysilyl) propanaminium chloride.	.....	169160	Non-Aromatic >100	.....	Activated Carbon	
Cholecalciferol	.....	202901	Non-Aromatic >100	.....	Activated Carbon	
Use code no. 202901	.....	208700	Non-Aromatic >100	.....	Activated Carbon	
Alkyl* N,N-bis(2-hydroxyethyl)amine *(100% C8–C18).	.....	210900	Non-Aromatic >100	.....	Activated Carbon	
Bromo-2-nitropropane-1,3-diol.	.....	216400	Non-Aromatic >100	.....	Activated Carbon	
Use code no. 114601	.....	229300	Not Classified	.....	Activated Carbon	
Diethatyl ethyl	.....	279500	Non-Aromatic >100	.....	Activated Carbon	
Hydroprene (ANSI)	.....	486300	Non-Aromatic >100	.....	Activated Carbon	
Zinc sulfate monohydrate.	.....	527200	Metallic	.....	Precipitation	
Geraniol	.....	597501	Non-Aromatic >100	.....	Activated Carbon	

[1] The 272 Pesticide Active Ingredients (PAIs) are listed first, by PAI code, followed by the non-272 PAIs from the 1988 FIFRA and TSCA Enforcement System (FATES) Database, which are listed in Shaughnessy code order. PAIs that were exempted or reserved from the supplemental PFPR effluent guidelines are not listed in the table.

[2] The non-272 PAI names are taken directly from the 1988 FATES database. Several of the PAI names are truncated because the PAI names listed in the FATES database are limited to 60 characters.

[3] The non-272 PAIs do not have PAI codes.

[4] All Shaughnessy codes are taken from the 1988 FATES database. Some of the 272 PAIs are not listed in the 1988 FATES database; therefore, no Shaughnessy codes are listed for these PAIs.

[5] The PAI classification and structural group are not provided for every PAI. Structural groups are provided for the 272 PAIs, and classifications are provided for the non-272 PAIs.

[6] The listed treatment technology represents the technology used as the basis for developing treatment costs for wastewaters containing the PAI. The analysis of treatment technologies has not been completed for all PAIs, therefore some non-272 PAIs were costed for activated carbon as a temporary treatment technology to give a conservatively high cost estimate.

[7] PAIs with an "I" in this column are considered to be active ingredients only when used on combination with other active ingredients listed in this table.

*This PAI code represents a category or group of PAIs; therefore, it has multiple Shaughnessy codes.

Appendix D—List of Acronyms

AC	Activated Carbon.
BAT	Best Available Technology Economically Achievable.
BCT	TBest Conventional Pollutant Control Technology.
BPT	Best Practicable Control Technology Currently Available.
CSF	Confidential Statement of Formula.
DOT	Department of Transportation.
FATES	FIFRA and TSCA Enforcement System.
FDA	Food and Drug Administration.
FIFRA	Federal Insecticide, Fungicide, and Rodenticide Act.
GRAS	Generally Regarded as Safe.
NOI	Notice of Intent.
NPDES	National Pollutant Discharge Elimination System.
NSPS	New Source Performance Standards.
PAIs	Pesticide Active Ingredients.
PFPR	Pesticide Formulating, Packaging, and Repackaging.
POTWs	Publicly Owned Treatment Works.
PSES	Pretreatment Standards for Existing Sources.
PSNS	Pretreatment Standards for New Sources.
QC	Quality Control
R&D	Research and Development.
RCRA	Resource Conservation and Recovery Act.
SIC	Standard Industrial Classification.
TSCA	Toxic Substances Control Act.
UTS	Universal Treatment System.

Dated: May 24, 1995.

Robert Perciasepe,

Assistant Administrator for Water.

[FR Doc. 95–13541 Filed 6–7–95; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF ENERGY

48 CFR Chapter 9

Acquisition Regulation; Regulatory Reduction

AGENCY: Department of Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Energy (DOE) proposes to amend the Department of Energy Acquisition Regulation (DEAR) in its continuing effort to achieve the goals of several Executive Orders (EO), including: EO 12861, Elimination of One-Half of Executive Branch Internal Regulations; EO 12931, Federal Procurement Reform; and EO 12866, Regulatory Planning and Review. This proposed rule would delete existing regulatory material that has been determined to be unnecessary. Specific material to be deleted from the DEAR is summarized in the "Section-by-Section Analysis" appearing later in this document.

DATES: Written comments should be forwarded no later than August 7, 1995.

ADDRESSES: Send written comments to Kevin M. Smith, Procurement Policy Division (HR–51), Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Kevin M. Smith, (202) 586–8189.

SUPPLEMENTARY INFORMATION:

I. Background
II. Section-by-Section Analysis
III. Procedural Requirements
A. Review Under Executive Order 12866
B. Review Under Executive Order 12778
C. Review Under the Regulatory Flexibility Act
D. Review Under the Paperwork Reduction Act
E. Review Under Executive Order 12612
F. Review Under the National Environmental Policy Act
G. Public Hearing Determination

I. Background

Executive Order (EO) 12861, dated September 11, 1993, Elimination of One-Half of Executive Branch Internal Regulations, was issued by the President to streamline Government operations, improve productivity, and improve customer service. EO 12931, dated October 13, 1994, Federal Procurement Reform, calls for significant changes to make the Government procurement process more effective and efficient. EO 12866, dated October 4, 1993, Regulatory Planning and Review, requires agencies to review regulations to improve effectiveness and to reduce regulatory burden. This proposed rule eliminates existing regulatory material that is unnecessary. In promulgating this rule, the Department will further the objectives of the EOs by reducing the volume of the DEAR; streamlining operations; reducing constraints, prescriptive requirements, and administrative processes; making requirements outcome oriented vs. process oriented; and, defining roles and responsibilities at the lowest appropriate level within the procurement organization by lowering certain responsibilities from the Head of the Contracting Activity to the contracting officer. The DEAR coverage proposed for removal includes material that is for informational purposes only and nonregulatory in nature; internal guidance and procedures; regulations that constrain the Department's own procuring activities; coverage that is more restrictive than the Federal Acquisition Regulation (FAR); and coverage that is repetitive of the FAR or of other regulations.

II. Section-by-Section Analysis

The following sections of the DEAR are proposed to be eliminated:

1. Section 901.103, second sentence, addressing the applicability of the DEAR to procurements using nonappropriated funds; this is recommended guidance and is nonregulatory in nature.

2. Subsection 901.103–70, identifying those types of actions excluded from the scope of the DEAR; this is for informational purposes only and is nonregulatory in nature.

3. Subsection 901.104–3, third sentence of paragraph (a), and paragraph (b), identifying distribution procedures of the DEAR; this is for informational purposes only and is nonregulatory in nature.

4. Section 901.170, explaining references to organizations within DOE; this is for informational purposes only and is nonregulatory in nature.

5. Subsection 901.301–71, addressing the amendment procedure; this is internal procedural information and is nonregulatory in nature.

6. Subsection 901.301–72, paragraphs (a), (b), and (c), detailing other issuances related to acquisition; this is for informational purposes only and is nonregulatory in nature.

7. Subsection 901.601–70, prescribing the use of internal controls for DOE activities; this is internal oversight procedure and is nonregulatory in nature.

8. Subsection 901.603–70, addressing modification to existing contracting officer authority; this is internal oversight procedure and is nonregulatory in nature.

9. Subsection 901.603–71, addressing the responsibility of other Government personnel; this is internal oversight procedure and is nonregulatory in nature.

10. Subsection 901.603–72, paragraph (b), addressing contracting officer subordinates; this is for informational purposes only and is nonregulatory in nature.

11. Subpart 902.1, providing definitions; this is for informational purposes only and is nonregulatory in nature.

12. Subsection 903.101–3, last four sentences, requiring a standards of conduct notebook to be maintained at all contracting activities; this is unduly constrictive oversight of the Department's contracting offices.

13. Section 904.402, paragraph (b), second and third sentences, and paragraphs (c) through (k), providing cross-reference information on security issues; this is for informational purposes only and is nonregulatory in nature.

14. Section 904.403, providing cross-reference information on restricted data; this is for informational purposes only and is nonregulatory in nature.

15. Section 904.601, providing information on contract reporting; this is for informational purposes only and is nonregulatory in nature.

16. Subsection 904.601–70, providing information on contract reporting; this is for informational purposes only and is nonregulatory in nature.

17. Subsection 904.601–71, paragraphs (a) and (b), providing information on contract reporting; this is for informational purposes only and is nonregulatory in nature.

18. Section 904.702, paragraph (b), second sentence, explaining the need for longer retention periods of certain records; this is for informational purposes only and is nonregulatory in nature.

19. Subpart 905.2, addressing research and development advance notices; coverage at FAR 5.205 is sufficient.

20. Subpart 905.3, providing cross-reference information on notices of awards; this is for informational purposes only and is nonregulatory in nature.

21. Subsection 906.303–1, first sentence, which references FAR justification requirements for other than full and open competition; coverage at FAR 6.303–1 is sufficient.

22. Subpart 907.1, addressing acquisition plans; coverage at FAR 7.102 is sufficient.

23. Subpart 907.4, addressing Lease or Purchase requirements; coverage at FAR 7.4 and Federal Property Management Regulation (FPMR) 101–25.5 is sufficient.

24. Section 908.802, the last sentence, addressing forms and instructions to contractors on the acquisition of printing and related supplies; this is procedural information that is already addressed within the section.

25. Subpart 908.70, addressing the use of excess materials from General Services Administration inventories; this is internal procedural information and is nonregulatory in nature.

26. Subpart 908.72, addressing Nevada Test Site support services; this is site-specific policy and is not appropriate for DOE-wide regulations.

27. Section 909.404, addressing debarment, suspension and ineligibility procedures; the separate DOE List of Debarred, Suspended, Ineligible and Voluntarily Excluded Awardees is no longer maintained.

28. Part 910, addressing specifications, standards and other purchase descriptions; this is internal oversight procedure and is nonregulatory in nature.

29. Subpart 912.5, addressing approval of stop work orders; this requirement is more restrictive than the requirement at FAR 12.503(b).

30. Subsection 913.505–3, addressing the use of SF 44's; the coverage at FAR 13.505–3 is sufficient.

31. Subpart 914.2, addressing solicitation of bids; this is for informational purposes only and is nonregulatory in nature.

32. Section 914.401, addressing the opening and receipt of bids; the coverage at FAR 14.401 is sufficient.

33. Subsection 914.402–1, addressing unclassified bids; the coverage at FAR 14.402–1 is sufficient.

34. Subsection 915.406–5, addressing representations and instructions; the coverage at FAR 15.406–5 is sufficient.

35. Section 915.610, addressing written or oral discussions; the coverage at FAR 15.610 is sufficient.

36. Section 915.801, providing a definition of field pricing support; the coverage at FAR 15.801 is sufficient.

37. Subsection 915.804–8, prescribing the use of FAR clauses; the coverage at FAR 15.804–8 is sufficient.

38. Subsection 915.804–70, addressing the submission of uncertified cost or pricing data; the coverage at FAR 15.804–6 is sufficient.

39. Subsection 915.805–70, paragraphs (a), (b), (c), and (f), addressing the use of audits; this is for informational purposes only and is nonregulatory in nature.

40. Section 915.807, addressing prenegotiation plans; coverage at FAR 15.807 is sufficient.

41. Section 915.808, addressing the price negotiation memorandum; coverage at FAR 15.808 is sufficient.

42. Section 916.207, addressing approval for the use of firm-fixed-price, level-of-effort contracts; this requirement is more restrictive than the requirement at FAR 16.207.

43. Subsection 916.301–3, addressing limitations on the use of cost-reimbursement contracts; the referenced determination and findings, prescribed at FAR 16.301–3(c), are no longer required.

44. Section 916.303, providing a cross-reference within DEAR; this is for informational purposes only and is nonregulatory in nature.

45. Subpart 916.6 addressing letter contract definitization and funding requirements; these requirements are more restrictive than the requirements at FAR 16.603–2.

46. Subsection 919.705–2, addressing subcontracting plans; coverage at FAR 19.705–2 is sufficient.

47. Subsection 919.705–5, addressing awards involving subcontracting plans; coverage at FAR 19.705–5 is sufficient.

48. Section 919.708, addressing the use of incentives for subcontracting; this is more restrictive than the requirement at FAR 19.708(c).

49. Part 920, addressing labor surplus area concerns; coverage at FAR Part 20 is sufficient.

50. Subpart 922.4, addressing construction contract labor standards; coverage at FAR 22.4 is sufficient.

51. Part 924, providing cross-reference information on protection of privacy and Freedom of Information policies; this is for informational purposes only and is nonregulatory in nature.

52. Subpart 925.5, addressing payment in foreign currency; coverage at FAR 25.5 is sufficient.

53. Subsection 928.103–2, addressing the need for performance bonds; coverage at FAR 28.103–2 is sufficient.

54. Subpart 928.2, addressing sureties; coverage at FAR 28.2 is sufficient.

55. Subpart 933.2, addressing the contracting officer's written findings in a dispute; coverage at FAR 33.211 is sufficient.

56. Section 935.007, providing a cross-reference to Program Research and Development Announcements; this is for informational purposes only and is nonregulatory in nature.

57. Section 935.015, providing a cross-reference to special research contracts coverage; coverage on that subject was removed in a prior rulemaking and this section is no longer necessary.

58. Section 936.202, paragraphs (a) and (b), addressing specifications for construction contracts; FAR coverage at 36.202 is sufficient.

59. Subpart 937.2, providing a cross-reference to internal directives on consulting services; this is for informational purposes only and is nonregulatory in nature.

60. Section 937.7010, addressing protective services; this is for informational purposes only and is nonregulatory in nature.

61. Section 937.7020, addressing continuity of protective services; this is for informational purposes only and is nonregulatory in nature.

62. Section 937.7030, addressing continuity of protective services; this is for informational purposes only and is nonregulatory in nature.

63. Section 942.000 addressing post award activity; this is for informational purposes only and is nonregulatory in nature.

64. Section 942.001, addressing contract administration; this is for informational purposes only and is nonregulatory in nature.

65. Section 942.002, addressing monitoring of contracts; coverage at FAR Part 42 is sufficient.

66. Section 942.003, providing an explanation of organizations that perform post-award contract management functions; this is for informational purposes only and is nonregulatory in nature.

67. Subpart 942.1, providing an explanation of cross-servicing contract management activity; this is for informational purposes only and is nonregulatory in nature.

68. Subpart 942.2, addressing the reporting of contract administration assignment; this is internal procedural information and is nonregulatory in nature.

69. Section 942.708, addressing quick closeout procedures; this requirement is more restrictive than the requirement at FAR 42.708.

70. Subpart 942.14, addressing traffic and transportation management; this is internal procedural information and is nonregulatory in nature.

71. Part 943 addressing the extension of contracts resulting from unsolicited proposals and the use of forms; this is internal procedural information and is nonregulatory in nature.

72. Subpart 944.1, providing definitions; this is for informational purposes only and is nonregulatory in nature.

73. Subpart 944.2, addressing consent to subcontract; coverage at FAR 44.2 is sufficient.

74. Subsection 945.104–70, addressing the review and correction of contractor property management systems; coverage in the DOE Property Management Regulations at 41 CFR 109–1.52 is sufficient.

75. Section 945.304, providing cross-references on motor vehicle policies; this is for informational purposes only and is nonregulatory in nature.

76. Section 945.501, providing definitions; this is for informational purposes only and is nonregulatory in nature.

77. Subsection 945.502–70, addressing physical protection of property; coverage at FAR 45.5 and in the DOE Property Management Regulations at 41 CFR 109–1.51 is sufficient.

78. Subsection 945.502–71, addressing control of sensitive items of property; coverage at FAR 45.5 and in the DOE Property Management Regulations at 41 CFR 109–1.51 is sufficient.

79. Subsection 945.502–72, addressing the management of precious metals; coverage in the DOE Property Management Regulations at 41 CFR 109–27.53 is sufficient.

80. Section 945.508, specifying the frequency of physical inventories; coverage in the DOE Property Management Regulations at 41 CFR 109–1.51 is sufficient.

81. Section 945.570, addressing motor vehicle and aircraft management; coverage at FAR 45.304 and in the DOE Property Management Regulations at 41 CFR 109–38 is sufficient.

82. Subsection 945.570–1, classifying types of motor vehicles; this is for informational purposes only and is nonregulatory in nature.

83. Subsection 945.570–3, addressing the selection of type of motor vehicle; coverage in the DOE Property Management Regulations at 41 CFR 109–38 is sufficient.

84. Subsection 945.570–4, addressing the identification of motor vehicles; coverage in the DOE Property Management Regulations at 41 CFR 109–38 is sufficient.

85. Subsection 945.570–5, addressing the utilization of motor vehicles; coverage in the DOE Property Management Regulations at 41 CFR 109–38 is sufficient.

86. Subsection 945.570–6, addressing the maintenance of motor vehicles; coverage in the DOE Property Management Regulations at 41 CFR 109–38 is sufficient.

87. Subsection 945.570–9, addressing the purchase and use of aircraft; coverage in the DOE Property Management Regulations at 41 CFR 109–38 is sufficient.

88. Subpart 947.1, addressing transportation insurance and cost-reimbursement contracts; the coverage at FAR 47.1 is sufficient.

89. Subsection 949.108–4, addressing authorization for subcontract settlements; this requirement is more restrictive than the requirement at FAR 49.108–4.

90. Subsection 949.108–8, addressing the assignment of rights under subcontracts; this requirement is more restrictive than the requirement at FAR 49.108–8.

91. Subsection 949.112–1, addressing partial payments; this requirement is more restrictive than the requirement at FAR 49.112–1.

92. Subpart 949.2, addressing the submission of settlement proposals and the bases for settlement proposals; these requirements are more restrictive than the requirements at FAR 49.2.

93. Subpart 949.3, addressing the submission of settlement proposals; this requirement is more restrictive than the requirement at FAR 49.3.

94. Subpart 951.2, addressing contractor use of interagency motor pool vehicles; the coverage at FAR 51.2 is sufficient.

95. Section 951.7000, addressing contractor travel discounts; this is for informational purposes only and is nonregulatory in nature.

96. Section 951.7001, addressing contractor use of Government travel discounts; this is for informational purposes only and is nonregulatory in nature.

97. Subpart 971.2, prescribing contracting activity review requirements; this is unduly constrictive oversight of the Department's contracting offices.

98. Subpart 971.3, addressing procurement management system reviews; these reviews are no longer performed within the Department.

III. Procedural Requirements

A. Review Under Executive Order 12866

This regulatory action has been determined not to be a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," (58 FR 51735, October 4, 1993). Accordingly, this action was not subject to review, under that Executive Order, by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

B. Review Under Executive Order 12778

Section 2 of Executive Order 12778 instructs each agency to adhere to certain requirements in promulgating new regulations and reviewing existing regulations. These requirements, set forth in sections 2(a) and (b)(2), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards for affected legal conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation specifies clearly any preemptive effect, effect on existing Federal law or regulation, and retroactive effect; describes any administrative proceedings to be available prior to judicial review and any provisions for the exhaustion of such administrative proceedings; and defines key terms. DOE certifies that this proposed rule meets the requirements of sections 2(a) and (b) of Executive Order 12778.

C. Review Under the Regulatory Flexibility Act

This proposed rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96–354, which requires preparation of a regulatory flexibility analysis for any rule that is likely to have a significant economic impact on a substantial number of small entities. This proposed rule will have no impact on interest rates, tax policies or liabilities, the cost of goods or services, or other direct economic factors. It will also not have any indirect economic consequences such as changed construction rates. DOE certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

D. Review Under the Paperwork Reduction Act

No new information collection or recordkeeping requirements are imposed by this proposed rule. Accordingly, no OMB clearance is required under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, et seq.).

E. Review Under Executive Order 12612

Executive Order 12612, entitled "Federalism," 52 FR 41685 (October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the Federal Government and the States, or in the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action. DOE has determined that this proposed rule will not have a substantial direct effect on the institutional interests or traditional functions of States.

F. Review Under the National Environmental Policy Act

Pursuant to the Council on Environmental Quality Regulations (40 CFR 1500–1508), the Department has established guidelines for its compliance with the provisions of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, et seq.). Pursuant to Appendix A of Subpart D of 10 CFR 1021, National Environmental Policy Act Implementing Procedures (Categorical Exclusion A6), DOE has determined that this proposed rule is categorically excluded from the need to prepare an environmental impact statement or environmental assessment.

G. Public Hearing Determination

DOE has concluded that this proposed rule does not involve any significant issues of law or fact. Therefore, consistent with 5 U.S.C. 553, DOE has not scheduled a public hearing.

List of Subjects in 48 CFR Parts 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 912, 913, 914, 915, 916, 919, 920, 922, 924, 925, 928, 933, 935, 936, 937, 942, 943, 944, 945, 947, 949, 951, and 971

Government procurement.

Issued in Washington, D.C., on June 1, 1995.

Richard H. Hopf,

Deputy Assistant Secretary for Procurement and Assistance Management.

For the reasons set out in the preamble, Chapter 9 of Title 48 of the Code of Federal Regulations is proposed to be amended as set forth below.

1. The authority citation for Parts 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 912, 913, 914, 915, 916, 919, 920, 922, 924, 925, 928, 933, 935, 936, 937, 942, 943, 944, 945, 947, 949, 951, and 971 continues to read as follows:

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c).

PART 901—FEDERAL ACQUISITION REGULATIONS SYSTEM

901.103 [Amended]

2. Section 901.103 is amended by removing the second sentence.

901.103–70 [Removed]

3. Subsection 901.103–70 is removed.

901.104–3 [Amended]

4. Subsection 901.104–3 is amended by removing the third sentence of paragraph (a), and by removing paragraph (b).

901.170 [Removed]

5. Section 901.170 is removed.

901.301–71 [Removed]

6. Subsection 901.301–71 is removed.

901.301–72 [Amended]

7. Subsection 901.301–72 is amended by removing paragraphs (a), (b), and (c).

901.601–70 [Removed]

8. Subsection 901.601–70 is removed.

901.603–70 [Removed]

9. Subsection 901.603–70 is removed.

901.603–71 [Removed]

10. Subsection 901.603–71 is removed.

901.603–72 [Amended]

11. Subsection 901.603–72 is amended by removing paragraph (b).

PART 902—DEFINITIONS OF WORDS AND TERMS

902.1 [Removed]

12. Subpart 902.1 is removed.

PART 903—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

903.101–3 [Amended]

13. Subsection 903.101–3 is amended by removing the second through fifth sentences.

PART 904—ADMINISTRATIVE MATTERS

904.402 [Amended]

14. Section 904.402 is amended in paragraph (b) by removing the second and third sentences, and by removing paragraphs (c), (d), and (k).

904.403 [Removed]

15. Section 904.403 is removed.

904.601 [Removed]

16. Section 904.601 is removed.

904.601–70 [Removed]

17. Subsection 904.601–70 is removed.

904.601–71 [Amended]

18. Subsection 904.601–71 is amended by removing paragraphs (a) and (b).

904.702 [Amended]

19. Section 904.702 is amended in paragraph (b) by removing the second sentence.

PART 905—PUBLICIZING CONTRACT ACTIONS

905.2 [Removed]

20. Subpart 905.2 is removed.

905.3 [Removed]

21. Subpart 905.3 is removed.

PART 906—COMPETITION REQUIREMENTS

906.303–1 [Amended]

22. Subsection 906.303–1 is amended in paragraph (a) by removing the first sentence.

PART 907—ACQUISITION PLANNING

907.1 [Removed]

23. Subpart 907.1 is removed.

907.4 [Removed]

24. Subpart 907.4 is removed.

PART 908—REQUIRED SOURCES OF SUPPLIES AND SERVICES

908.802 [Amended]

25. Section 908.802 is amended in paragraph (b) by removing the last sentence.

908.70 [Removed]

26. Subpart 908.70 is removed.

908.72 [Removed]

27. Subpart 908.72 is removed.

PART 909—CONTRACTOR QUALIFICATIONS

909.404 [Removed]

28. Section 909.404 is removed.

PART 910—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS [REMOVED]

29. Part 910 is removed.

PART 912—CONTRACT DELIVERY OR PERFORMANCE

912.5 [Removed]

30. Subpart 912.5 is removed.

PART 913—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

913.505–3 [Removed]

31. Subsection 913.505–3 is removed.

PART 914—SEALED BIDDING

914.2 [Removed]

32. Subpart 914.2 is removed.

914.401 [Removed]

33. Section 914.401 is removed.

914.402–1 [Removed]

34. Subsection 914.402–1 is removed.

PART 915—CONTRACTING BY NEGOTIATION

915.406–5 [Removed]

35. Subsection 915.406–5 is removed.

915.610 [Removed]

36. Section 915.610 is removed.

915.801 [Removed]

37. Section 915.801 is removed.

915.804–6 [Removed]

38. Subsection 915.804–6 is removed.

915.804–70 [Removed]

39. Subsection 915.804–70 is removed.

915.805–70 [Amended]

40. Subsection 915.805–70 is amended by removing paragraphs (a), (b), (c), and (f).

915.807 [Removed]

41. Section 915.807 is removed.

915.808 [Removed]

42. Section 915.808 is removed.

PART 916—TYPES OF CONTRACTS

916.207 [Removed]

43. Section 916.207 is removed.

916.301–3 [Removed]

44. Subsection 916.301–3 is removed.

916.303 [Removed]

45. Section 916.303 is removed.

916.6 [Removed]

46. Subpart 916.6 is removed.

PART 919—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

919.705–2 [Removed]

47. Subsection 919.705–2 is removed.

919.705–5 [Removed]

48. Subsection 919.705–5 is removed.

919.708 [Removed]

49. Section 919.708 is removed.

PART 920—LABOR SURPLUS AREA CONCERNS [REMOVED]

50. Part 920 is removed.

PART 922—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITION

922.4 [Removed]

51. Subpart 922.4 is removed.

PART 924—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION [REMOVED]

52. Part 924 is removed.

PART 925—FOREIGN ACQUISITION

925.5 [Removed]

53. Subpart 925.5 is removed.

PART 928—BONDS AND INSURANCE

928.103–2 [Removed]

54. Subsection 928.103–2 is removed.

928.2 [Removed]

55. Subpart 928.2 is removed.

PART 933—PROTESTS, DISPUTES AND APPEALS

933.2 [Removed]

56. Subpart 933.2 is removed.

PART 935—RESEARCH AND DEVELOPMENT CONTRACTING

935.007 [Removed]

57. Section 935.007 is removed.

935.015 [Removed]

58. Section 935.015 is removed.

PART 936—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

936.202 [Amended]

59. Section 936.202 is amended by removing paragraphs (a) and (b).

PART 937—SERVICE CONTRACTING

937.2 [Removed]

60. Subpart 937.2 is removed.

937.7010 [Removed]

61. Section 937.7010 is removed.

937.7020 [Removed]

62. Section 937.7020 is removed.

937.7030 [Removed]

63. Section 937.7030 is removed.

PART 942—CONTRACT ADMINISTRATION

942.000 [Removed]

64. Section 942.000 is removed.

942.001 [Removed]

65. Section 942.001 is removed.

942.002 [Removed]

66. Section 942.002 is removed.

942.003 [Removed]

67. Section 942.003 is removed.

942.1 [Removed]

68. Subpart 942.1 is removed.

942.2 [Removed]

69. Subpart 942.2 is removed.

942.708 [Removed]

70. Section 942.708 is removed.

942.14 [Removed]

71. Subpart 942.14 is removed.

PART 943—CONTRACT MODIFICATIONS [REMOVED]

72. Part 943 is removed.

PART 944—SUBCONTRACTING POLICIES AND PROCEDURES

944.1 [Removed]

73. Subpart 944.1 is removed.

944.2 [Removed]

74. Subpart 944.2 is removed.

PART 945—GOVERNMENT PROPERTY

945.104–70 [Removed]

75. Subsection 945.104–70 is removed.

945.304 [Removed]

76. Section 945.304 is removed.

945.501 [Removed]

77. Section 945.501 is removed.

945.502–70 [Removed]

78. Subsection 945.502–70 is removed.

945.502–71 [Removed]

79. Subsection 945.502–71 is removed.

945.502–72 [Removed]

80. Subsection 945.502–72 is removed.

945.508 [Removed]

81. Section 945.508 is removed.

945.570 [Removed]

82. Section 945.570 is removed.

945.570–1 [Removed]

83. Subsection 945.570–1 is removed.

945.570–3 [Removed]

84. Subsection 945.570–3 is removed.

945.570–4 [Removed]

85. Subsection 945.570–4 is removed.

945.570–5 [Removed]

86. Subsection 945.570–5 is removed.

945.570–6 [Removed]

87. Subsection 945.570–6 is removed.

945.570–9 [Removed]

88. Subsection 945.570–9 is removed.

PART 947—TRANSPORTATION

947.1 [Removed]

89. Subpart 947.1 is removed.

PART 949—TERMINATION OF CONTRACTS

949.108–4 [Removed]

90. Subsection 949.108–4 is removed.

949.108–8 [Removed]

91. Subsection 949.108–8 is removed.

949.112–1 [Removed]

92. Subsection 949.112–1 is removed.

949.2 [Removed]

93. Subpart 949.2 is removed.

949.3 [Removed]

94. Subpart 949.3 is removed.

PART 951—USE OF GOVERNMENT SOURCES BY CONTRACTORS

951.2 [Removed]

95. Subpart 951.2 is removed.

951.7000 [Removed]

96. Section 951.7000 is removed.

951.7001 [Removed]

97. Section 951.7001 is removed.

PART 971—REVIEW AND APPROVAL OF CONTRACT ACTIONS

971.2 [Removed]

98. Subpart 971.2 is removed.

971.3 [Removed]

99. Subpart 971.3 is removed.

[FR Doc. 95–13866 Filed 6–7–95; 8:45 am]
BILLING CODE 5450–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 227

[I.D. 042795A]

Listing Endangered and Threatened Species and Designating Critical Habitat: Petition To List Chinook Salmon Throughout its Range in California, Oregon, Washington, and Idaho

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of petition finding; request for information.

SUMMARY: NMFS has received a petition to list chinook salmon (*Oncorhynchus tshawytscha*) throughout its range in California, Oregon, Washington, and Idaho, and to designate critical habitat under the Endangered Species Act of 1973 (ESA). The petition presents substantial scientific information indicating that the request for listing may be warranted. Therefore, NMFS is initiating a status review to determine if the petitioned action is warranted. To ensure that the review is comprehensive, NMFS is soliciting information and data regarding this action. Information received during the comment period for this status review will be used in NMFS' ongoing review of West Coast chinook salmon populations.

DATES: Comments and information must be received by August 7, 1995.

ADDRESSES: Requests for copies of the petition and comments regarding the species populations in Washington, Oregon, and Idaho should be submitted to Dr. Jacqueline Wyland, Chief, Environmental and Technical Services Division, NMFS, 525 NE Oregon Street, Suite 500, Portland, OR 97232. Comments regarding species populations in California should be submitted to James H. Lecky, Chief, Protected Species Management Division, NMFS, Southwest Region, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: Garth Griffin, 503–231–2005; Craig Wingert, 310–980–4021; or Marta Nammack, 301–713–1401.

SUPPLEMENTARY INFORMATION:

Background

Section 4 of the ESA contains provisions allowing interested persons to petition the Secretary of the Interior or the Secretary of Commerce (Secretary) to add a species to or remove a species from the List of Endangered and Threatened Wildlife and to designate critical habitat. Section 4(b)(3)(A) of the ESA requires that, to the maximum extent practicable, within 90 days after receiving such a petition, the Secretary make a finding whether the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted.

Petition Received

On February 1, 1995, the Secretary received a petition from the Oregon Natural Resources Council (ONRC) and Richard K. Nawa to list chinook salmon throughout its range in California, Oregon, Washington, and Idaho, and to designate critical habitat under the ESA. The Assistant Administrator for Fisheries, NOAA (AA), makes a finding that the petition presents substantial scientific information indicating that a listing may be warranted based on the criteria specified in 50 CFR 424.14(b)(2), and based on evidence presented in the petition that the petitioned populations may qualify as "species" under the ESA, in accordance with NMFS' Policy on Applying the Definition of Species under the Endangered Species Act to Pacific Salmon (56 FR 58612, November 20, 1991). Under section 4(b)(3)(A) of the ESA, this finding requires that a review of the status of chinook salmon populations in California, Oregon,

Washington, and Idaho be conducted to determine if the petitioned action is warranted. Information received during this status review will be used in NMFS' ongoing review of West Coast chinook salmon populations (59 FR 46808, September 12, 1994).

Listing Factors and Basis for Determination

Under section 4(a)(1) of the ESA, a species can be determined to be endangered or threatened for any of the following reasons: (1) Present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; or (5) other natural or manmade factors affecting its continued existence. In addition, under section 4(b)(7) of the ESA, the Secretary may at any time issue an emergency regulation if there exists a significant risk to the well-being of the species. In such a case, the Secretary must publish a **Federal Register** notice detailing the reasons for an emergency listing. Listing determinations are made solely on the best scientific and commercial data available.

Information Solicited

To ensure that the chinook salmon status review is complete and is based on the best available scientific and commercial data, NMFS is soliciting information and comments concerning: (1) Whether or not the populations qualify as "species" under the ESA in accordance with NMFS' Policy on Applying the Definition of Species Under the Endangered Species Act (56 FR 58612, November 20, 1991); and (2) whether or not the populations are endangered or threatened based on the above listing criteria. Specifically, NMFS is soliciting information in the following areas: Influence of historical and present hatchery fish releases on naturally spawning populations of chinook salmon, separation of hatchery and natural chinook salmon escapement, alteration of chinook salmon freshwater and marine habitats, disease epizootiology of chinook salmon, age structure of chinook salmon populations, migration timing and behavior of juvenile and adult chinook salmon, and interactions of chinook salmon with other salmonids. This information should address all chinook salmon populations in California, Oregon, Washington, and Idaho. NMFS is also soliciting information regarding factors which have contributed to the decline of west coast chinook salmon populations, and any efforts being made to protect this species. In conducting this status review, NMFS will consider information received in response to a very similar request for information published in the **Federal Register** (59 FR 46808, September 12, 1994) in conjunction with NMFS' decision to conduct a review of West Coast chinook salmon populations. Consequently, it is not necessary for parties to submit the same information for this request. Copies of the petition are available (see **ADDRESSES**).

Critical Habitat

NMFS is also requesting information on areas that may qualify as critical habitat for California, Oregon, Washington, and Idaho populations of chinook salmon. Areas that include the physical and biological features essential to the recovery of the species should be identified. Areas outside the present range should also be identified if such areas are essential to the recovery of the species. Essential features should include, but are not limited to: (1) Space for individual and population growth, and for normal behavior; (2) food, water, air, light, minerals, or other nutritional or physiological requirements; (3) cover or shelter; (4) sites for reproduction and rearing of offspring; and (5) habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of the species.

For areas potentially qualifying as critical habitat, NMFS is requesting information describing: (1) The activities that affect the area or could be affected by the designation, and (2) the economic costs and benefits of additional requirements of management measures likely to result from the designation.

The economic cost to be considered in the critical habitat designation under the ESA is the probable economic impact of the (critical habitat) designation upon proposed or ongoing activities (50 CFR 424.19). NMFS must consider the incremental costs specifically resulting from a critical habitat designation that are above the economic effects attributable to listing the species. Economic effects attributable to listing include actions resulting from section 7 consultations under the ESA to avoid jeopardy to the species and from the taking prohibitions under section 9 of the ESA. Comments concerning economic impacts should distinguish the costs of listing from the incremental costs that can be directly attributed to the designation of specific areas as critical habitat.

Data, information, and comments should include: (1) Supporting documentation such as maps, bibliographic references, or reprints of pertinent publications; and (2) the person's name, address, and association, institution, or business.

Dated: June 2, 1995.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–13965 Filed 6–7–95; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 60, No. 110
Thursday, June 8, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Notice of Intent To Prepare an Environmental Impact Statement To Evaluate Aquifer Appropriations at the Burr Well Field and To Fund the Design and Construction of the Northeast Phase of the Lincoln-Pipestone Rural Water System

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of intent.

SUMMARY: The Rural Utilities Service (RUS), USDA announces its intent to prepare an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act of 1969 (NEPA) (U.S.C. 4231 *et seq.*) in accordance with the Council on Environmental Quality regulations for implementing the procedural provisions of NEPA (40 CFR 1500–1508) and Agency regulations 7 CFR 1940–G. The primary scope of the EIS is to evaluate water appropriations from a hydrological subunit of the Prairie Coteau Aquifer at the Burr Well Field for the Lincoln-Pipestone Rural Water System (LPRWS) in southwestern Minnesota and its potential affects on surface water bodies and wetlands in the area and to evaluate the environmental impacts of an expansion phase of LPRWS—the Northeast Phase. With this notice, RUS invites any affected Federal, State, and local Agencies and other interested persons to comment on the scope and the significant issues to be analyzed in depth in the EIS.

DATES: Written comments on the scope of the EIS will be accepted 30 days after the public scoping meetings are held.

ADDRESSES: Comments should be sent to Mark S. Plank, USDA, Rural Economic and Community Development Services, Rural Utilities Service, Program Support Staff, AG Box 0761, Washington, DC 20250, telephone (202) 720–1640 or Fax (202) 690–4335.

FOR FURTHER INFORMATION CONTACT: John J. Melbo, USDA, Rural Economic and Community Development Services, 410 AgriBank Building, 375 Jackson Street, St. Paul, MN 55101–1853, telephone (612) 290–3842 or Mark S. Plank, USDA, Rural Economic and Community Development Services, Rural Utilities Service, Program Support Staff, AG Box 0761, Room 6309, Washington, DC 20250–0761, telephone (202) 720–1640.

SUPPLEMENTARY INFORMATION: From a historic perspective, water in adequate quantity and quality has been difficult to obtain in southwest Minnesota. Periodic drought conditions often deplete already marginal supplies. Shallow farm wells in the area have been affected by drought and pollution from agricultural run-off that has resulted in nitrate and pesticide contamination. Deeper wells in the area are costly to construct and usually yield highly mineralized water with high levels of iron, manganese, and sulfates. In an attempt to resolve water supply difficulties, the LPRWS, headquartered in Lake Benton, Minnesota, was organized as a Minnesota municipality for the sole purpose of delivering and supplying high quality water supplies to rural users and various municipalities. LPRWS is governed by a board of commissioners who are appointed by the District Court. Water supply costs are borne by LPRWS customers and through various federal grants.

LPRWS currently provides water service to 1,700 rural customers and seventeen cities in southwest Minnesota. LPRWS has constructed its water system in various phases and has utilized several well fields to provide water for the different phases. The current phase, in which concerns have been raised, is the *Existing System North/Lyon County Expansion* project. The well field designed to supply water for this phase and future service areas in the Burr Well Field. The Burr Well Field is utilizing a subunit of the Prairie Coteau aquifer. The Prarie Coteau aquifer is collectively defined as numerous lenticular bodies of glacial outwash buried beneath a surficial layer of glacial till and within a thick layer of glacial drift.

RUS, and its predecessor agencies, has provided a series of loans and grants to fund infrastructure development for the LPRWS. As required by NEPA, RUS has prepared a series of Environmental Assessments (EA) for the various phases. The previous EA conducted for the Existing North/Lyon County Expansion phase was completed in 1992 with an issuance of a Finding of No Significant Impact (FONSI) on February 17, 1992. During the construction phase of the water treatment plant at the Burr Well Field concerns were raised by local citizens and state regulatory bodies concerning potential impacts to surface water bodies and wetland areas from groundwater appropriations at the Burr Well Field. To respond to these concerns RUS decided to amend the earlier EA and re-examine the issues raised by concerned parties. Upon completion of the EA amendment, RUS concluded that an Environmental Impact Statement was necessary to fully evaluate the technical issues raised by the concerned parties.

The primary unresolved concern includes, but is not limited to, the appropriation of water from the Prairie Coteau aquifer at the Burr Well Field site. As mentioned above, the Burr Well Field is utilizing a subunit of the Prairie Coteau aquifer. This subunit appears to be one of the aforementioned lenticular bodies of outwash within a larger deposit of glacial drift and is under artesian conditions within its areal extent and at the well head site. The artesian nature of the outwash body is the source of the concern. It is hypothesized that due to localized artesian conditions, numerous surface water bodies and wetland areas receive, through a hydraulic connection, an undetermined quantity of water as recharge and that the recharge sustains water levels in these areas. Since the Burr Well Field is utilizing this aquifer; it is alleged that sustained appropriation of water at the well head may adversely reduce recharge to area wetlands and lakes, thus altering water budgets for these resources. The EIS will attempt to evaluate these concerns, as well as, evaluate environmental impacts from the construction of the Northeast Phase.

Two public meetings will be held in the project area to receive oral and written comments. One meeting will be held in Minnesota and the other one in South Dakota. Detail about these meetings will be announced later in area newspapers. Oral comments received at

this meeting will be accorded the same weight as written comments. The U.S. Environmental Protection Agency will participate in the EIS process as a cooperating agency.

After the scoping process and the initial environmental analysis are completed RUS will issue a Draft EIS. A Notice of Availability of the Drift EIS will be published in the **Federal Register** and area newspapers, and public comments will again be solicited. Those persons who choose not to comment on the scope of the document at this time but desire a copy of the Draft EIS should sent their names and addresses to Mark S. Plank at the address listed above. RUS anticipates releasing a final EIS in about 16–18 months.

Dated: June 1, 1995.

Adam M. Golodner,

Acting Administrator, Rural Utilities Service.

[FR Doc. 95–14003 Filed 6–7–95; 8:45 am]

BILLING CODE 3410–15–M

Environmental Impact Statement: Water Supply Development for the Catoosa Utility District and Upper Cumberland Plateau Region of East Tennessee

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of intent clarification.

SUMMARY: This notice clarifies the Tennessee Valley Authority's (TVA) Notice of Intent (NOI) that was published on February 8, 1995, at 60 FR 7623–7624. In that notice, TVA announced that it and the Rural Utilities Service (RUS) would be cooperating in the preparation of an Environmental Impact Statement (EIS), pursuant to the National Environmental Policy Act (NEPA), on a water supply development proposal for the Catoosa Utility District (CUD) and Upper Cumberland Plateau Region of East Tennessee. One clarification is that the NOI issued by TVA was published on behalf of RUS, the lead agency. Also in today's notice, the agencies clarify their roles in the preparation of the EIS and its focus.

ADDRESSES: Comments should be sent to Dale V. Wilhelm, NEPA Liaison, Tennessee Valley Authority, 400 West Summit Drive, WT 8B, Knoxville, Tennessee 37902, phone (615) 632–7182.

FOR FURTHER INFORMATION CONTACT: Jack L. Davis, Manager, Water Resource Projects, Tennessee Valley Authority, 400 West Summit Drive, Knoxville, Tennessee 37902, phone (615) 632–7183 or Tom Mayberry, USDA, Rural Economic and Community Development, 3322 West End Ave., Suite 300, Nashville, TN 37203, phone (615) 783–1345.

SUPPLEMENTARY INFORMATION: RUS has been asked by the CUD to provide financial assistance for a proposed water supply dam and impoundment on Clear Creek, a tributary of the Obed River. The CUD is considering the construction of a 100-acre water supply impoundment, a 1.5 million gallons per day treatment plant, and transmission lines that feed into existing water distribution systems. Subsequent to this request, RUS decided to prepare an EIS on the proposed action. Pursuant to RUS's status as lead agency for this action, RUS requested TVA participate in the preparation of the EIS as a cooperating agency. TVA's status as a cooperating agency is defined by two factors: TVA's regulatory status in reviewing and approving impoundment structures in the Tennessee River and its tributaries under Section 26a of the TVA Act; and TVA's specialized expertise in evaluating community and regional water supply needs, developing appropriate responses to defined needs, and the design and construction of dams and impoundments. RUS, as consistent with its lead agency status, shall supervise the preparation of the EIS.

The primary focus of the EIS will be to analyze design and engineering alternatives for achieving the goal of providing a reliable source of water to people utilizing CUD's services. A secondary focus of the EIS, as required by NEPA, is to consider and evaluate reasonable alternative water supply scenarios which, in this case, includes those supply options from a more regional perspective. The necessity to evaluate a more regional water supply perspective is prompted by numerous communities on the Upper Cumberland Plateau Region of eastern Tennessee who have expressed an interest to RUS for consideration of future financial assistance in developing reliable water sources for their citizens. This EIS will assist RUS in determining the economic feasibilities and environmental impacts of a range of water supply options. Alternatives that may be considered for both the primary and secondary forces of the EIS include: Construction of a water impoundment structure on Clear Creek or other water courses; installation of a water pipeline from Watts Bar, Center Hill, or Dale Hollow Reservoirs; and regional water supply options.

TVA and RUS, also, issued a notice on March 27, 1995, at 60 FR 15810, that announced an extension of the public scoping period until June 5, 1995. The agencies will continue to accept written comments on the scope of the EIS through that date. In addition, the comments provided at the April 4, 1995, public scoping meeting will continue to be considered.

Dated: June 1, 1995.

Adam M. Golodner,

Acting Administrator Rural Utilities Service.

[FR Doc. 95–14004 Filed 6–7–95; 8:45 am]

BILLING CODE 3410–15–M

Forms Under Review by Office of Management and Budget

June 2, 1995.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) Who will be required or asked to report; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) Name and telephone number of the agency contract person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404-W Admin. Bldg., Washington, D.C. 20250, (202) 690–2118.

Extension

- Consolidated Farm Service Agency
7 CFR 1435 Price Support Loan Program for Sugar Beets and Sugarcane
SU–2, SU–3, SU–4, SU–5, SU–6 and CCC–278
Business or other for-profit; 330 responses; 841 hours
Dave Wolf, (202) 720–4704
- Rural Economic & Community Development
7 CFR 1944–D, Farm Labor Housing and Grant Policies, Procedures, and Authorizations
Not-for-profit institutions; Farms; State, Local or Tribal Government; 770 responses; 8,762 hours
Jack Holston, (202) 720–9736
- Forest Service
Recreation Fee Permit Envelope
FS–2300–26, 26A
Individuals or households; 2,000,000 responses; 60,000 hours
Jon Meade, (202) 205–1129

Revision

- Agricultural Research Service
National Nutrient Database for Child Nutrition Program (NNDCNP)
Business or other for-profit; Federal Government; 1,500 responses; 4,125 hours
Rena Cutrufelli, (301) 734–5639
- Consolidated Farm Service Agency
7 CFR Part 1435, Sugar and Fructose Marketing Allotment
Regulations for Fiscal Years 1992 through 1998
CCC–831, CCC–832, CCC–835, CCC–833
Individuals or households; Business or other for-profit; Farms; 936 responses; 23,460 hours
Bob Barry, (202) 720–3391

Reinstatement Without Change

- Consolidated Farm Service Agency
7 CFR Part 7 and Title 5 U.S.C. 1104, Application for County Employment and Supplemental Qualifications Statement ASCS–650 and ASCS–675
Individuals or households; responses 15,000; hours 16,000
Don Samuels, (202) 720–7517

Donald E. Hulcher,

Deputy Departmental Clearance Officer.

[FR Doc. 95–14005 Filed 6–7–95; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 28–95]

Foreign-Trade Zone 145—Shreveport, Louisiana; Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Caddo-Bossier Port Commission, grantee of Foreign-Trade Zone 145, requesting authority to expand its zone in the Shreveport, Louisiana, area, within the Shreveport-Bossier City Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on May 30, 1995.

FTZ 145 was approved on January 7, 1988 (Board Order 370, 53 FR 1503, 1/20/88). The zone currently consists of a 116-acre site on U.S. Highway 171 at Baird Road, Shreveport. The zone project also includes subzone status for the AT&T Shreveport Works.

The applicant is now requesting authority to expand the general-purpose zone to include the new Port of Shreveport-Bossier terminal complex (2,000 acres), located 4 miles south of Shreveport in Caddo Parish, Louisiana. The Port complex primarily is owned and operated by the applicant, with some privately-owned facilities.

No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is August 7, 1995. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to August 22, 1995).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

Office of the Port Director, U.S. Customs Service, 6125 Interstate Drive, Bay 11, Shreveport, Louisiana 71109

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th and Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: June 2, 1995.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 95–14071 Filed 6–7–95; 8:45 am]

BILLING CODE 3510–DS–P

[Order No. 748]

Grant of Authority for Subzone Status, Loop Inc. (Crude Oil Terminal System) Lafourche and St. James Parishes, LA

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a-81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the South Louisiana Port Commission, grantee of Foreign-Trade Zone 124, for authority to establish special-purpose subzone status for the crude oil terminal system operated by LOOP Inc. in Lafourche and St. James Parishes, Louisiana, was filed by the Board on November 17, 1994, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 37–94, 59 FR 60951, 11/29/94); and,

Whereas, the Board has found that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby authorizes the establishment of a subzone (Subzone 124D) at the LOOP Inc. facilities in Lafourche and St. James Parishes, Louisiana, at the location described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 1st day of June, 1995.

Susan G. Esserman,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 95–14072 Filed 6–7–95; 8:45 am]

BILLING CODE 3510–DS–P

[Order No. 750]

Grant of Authority for Subzone Status, Merck & Co., Inc., (Pharmaceuticals), Rahway, New Jersey

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a-81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Port Authority of New York and New Jersey, grantee of Foreign-Trade Zone 49, for authority to establish special-purpose subzone status at the pharmaceutical manufacturing facility of Merck & Co., Inc., in Rahway, New Jersey, was filed by the Board on May 20, 1994, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 21–94, 59 FR 28052, 5–31–94); and,

Whereas, the Board has found that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby authorizes the establishment of a subzone (Subzone 49D) at the plant site of Merck & Co., Inc., in Rahway, New Jersey, at the location described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 1st day of June 1995.

Susan G. Esserman,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 95–14073 Filed 6–7–95; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

[A–475–818, A–489–805]

Initiation of Antidumping Duty Investigations: Certain Pasta From Italy and Turkey

AGENCY: Import Administration, International Trade Administration, Department of Commerce

EFFECTIVE DATE: June 8, 1995.

FOR FURTHER INFORMATION CONTACT: John Brinkmann at (202) 482–5288, or Greg Thompson at (202) 482–3003, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

Initiation of Investigations

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA).

The Petition

On May 12, 1995, the Department of Commerce (the Department) received a petition filed in proper form by Borden, Inc., Hershey Foods Corp., and Gooch Foods, Inc. (the petitioners), three U.S. producers of certain pasta. Supplements to the petition were filed on May 26 and June 1, 1995.

In accordance with section 732(b) of the Act, the petitioners allege that imports of certain pasta from Italy and Turkey are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring, or threatening material injury to, a U.S. industry.

The petitioners state that they have standing to file the petition because they are interested parties, as defined under section 771(9)(C) of the Act.

Determination of Industry Support for the Petition

Section 732(c)(4)(A) of the Act requires the Department to determine, prior to the initiation of an investigation, the domestic industry supports an antidumping petition. A petition meets this requirement if (1) the domestic producers or workers who support the petition account for at least 25 percent of the total production of the domestic like product; and (2) the domestic producers or workers who support the petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition.

A review of the industry support data provided in the petition and other production information readily available to the Department indicates that the petitioners account for more than 25 percent of the total production of the domestic like product and for more than 50 percent of that produced by companies expressing support for, or opposition to, the petition. The Department received no expressions of opposition to the petition from any interested party. Accordingly, the Department determines that this petition is supported by the domestic industry.

Scope of the Investigations

The Department has inherent authority to redefine and clarify the scope of an investigation, as set forth in a petition, whenever it determines that the petition language is overly broad, or insufficiently specific to allow proper investigation, or is in any other way defective. *See NTN Bearing Corp.* v. *United States, 747 F. Supp. 726 (CIT 1990).* We revised the petitioners' proposed scope to eliminate channel of trade as a scope criterion in order to ensure that it would be clear and administrable.

The scope of these investigations consists of certain non-egg dry pasta in packages of five pounds (or 2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastases, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons or polyethylene or polypropylene bags, of varying dimensions.

Excluded from the scope of these investigations are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white.

The merchandise under investigation is currently classifiable under items 1902.19.20 of the *Harmonized Tariff Schedule of the United States (HTSUS).* Although the *HTSUS* subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Italy

Export Price and Normal Value

The petitioners based export price on two sources. First, the petitioners based export price on the average unit values (AUVs) derived from the IM–146 monthly import statistics for HTSUS subheading 1902.19.20, published by the U.S. Department of Commerce, for the months of December 1994 and January and February 1995. These AUVs corresponded to the months the available home market price lists were in effect. The AUVs, which represent the f.o.b. Italy price of the subject pasta, were not adjusted for foreign inland freight. We find the AUVs a reasonable basis for export price because 1) the HTSUS subheading is inclusive of all sales of the subject merchandise, 2) there were limited imports of non-subject pasta under this subheading, and 3) a market research report submitted by the petitioners shows the AUVs to be consistent with the average export values of non-egg pasta from Italy to the U.S.

The second methodology used by the petitioners was based on U.S. retail prices obtained from 1) the domestic industry's weekly sales reports compiled by the petitioners' own sales representative for November and December of 1994, and 2) *InfoScan Markets*, which reports published weekly prices charged by U.S. retailers for pasta for the month of January 1995. The prices used were for brand name products of two Italian producers, and were adjusted downward for U.S. ocean freight and other movement charges.

The petitioners used Italian producer price lists to wholesale customers obtained from a market research report as the basis for normal value. For comparisons to the three U.S. retail prices, the petitioners selected a single "regular or regular cut" pasta price from the appropriate producer's price list. For comparisons to the U.S. AUVs, the petitioners selected a single price from a producers' price list. Because the prices were reported in Italian lire per kilogram (kg), the petitioners calculated the lire per pound (lb) equivalent for each product listed and then converted to U.S. dollars per pound using the average exchange rate for the two month period that is used to calculate the U.S. prices. The petitioners deducted a nine percent quantity discount and 7.5 percent "other discount" based on the Italian market research report. Finally, the petitioners made an adjustment to normal value for U.S. and Italian imputed credit expenses.

We find the petitioners' selection of home market prices not to be representative comparisons to the U.S. export price to which they are being compared. In the case of the AUVs, the petitioners have selected a single price of a specific pasta type to compare to an export price which is an average of all imports of the subject pasta from Italy. For purposes of this initiation, we have revised the normal value to a simple average of all of the subject pasta prices that are listed in the producer's price list used by the petitioners in their fair value comparisons. In the case of the export prices based on the three retail prices described as "regular or regular cuts," we have revised the normal value to be a simple average of the subject pasta prices that are listed in producer's price list used by the petitioners that are described in that price list as "regular" pasta.

Based on comparisons of export price to normal value, the estimated dumping margins for certain pasta from Italy range from 21.85 percent to 71.49 percent.

Turkey

Export Price and Normal Value

The petitioners based export price on the AUVs derived from the IM–146 monthly import statistics for HTSUS subheading 1902.19.20, published by the U.S. Department of Commerce for the months of January and February, 1995. Claiming that Turkey's economy is hyperinflationary, the petitioners used AUVs for the month when the comparison home market sales occurred as the basis for export price. Specifically, petitioners state that Turkey experienced an annual inflation rate of 70 percent during 1994, which rose to approximately 130 percent in early 1995. The AUVs were not adjusted for foreign inland freight. We find the AUVs a reasonable basis for export price for the same reasons stated above for Italy.

The petitioners based normal value on January and February 1995 prices between a Turkish producer and its wholesaler which were obtained by a market researcher. The gross home market prices were adjusted downward for the following costs: value added taxes, quantity discounts, special annual rebate, and average delivery costs. The petitioners converted the unit price quotes in Turkish lire to U.S. dollars using the exchange rates that were in effect on or about the time the home market sales occurred.

In accordance with Section 773(b)(2) of Act, the petitioners alleged that sales of certain pasta in the home market were made at prices below the cost of production (COP). The components of COP, as enumerated in Section 773(b)(3) of the Act, are the cost of manufacture (COM), packing and selling, general, and administrative (SG&A) expenses. SG&A includes the company's net financing expense.

The petitioners calculated COM based on their own production experience for January and February 1995, adjusted for known differences between costs incurred to produce certain pasta in the United States and production costs incurred for the merchandise in Turkey. For SG&A expenses, the petitioners used their own 1994 audited annual financial statements because they could not obtain financial statements for a Turkish pasta or food processing company. The Department normally uses cost information specific to the home market. However, the petitioners documented that they attempted to obtain financial statements through various sources but were unable to gather financial data on the Turkish pasta or food processing industry.

The allegation that the Turkish producers are selling the foreign like product in their home market at prices below its COP is based upon a comparison of the adjusted home market prices with the calculated COP. Based on this reasonably available information, we find reasonable grounds to believe or suspect that sales of the foreign like product may have been made at prices below COP in accordance with section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating a cost investigation with respect to Turkey.

The petitioners calculated a constructed value (CV) using the same COM, packing and SG&A figures used to compute the Turkish home market costs for pasta. The petitioners also added to CV an amount for profit. To calculate profit, the petitioners relied on 1993 audited financial statements reported by a major Italian producer. Although the petitioners demonstrated significant efforts in attempting to obtain Turkish specific financial data for the pasta and food processing industries, we do not consider the profit of an Italian pasta producer an acceptable alternative. For purposes of this initiation, we have rejected the estimated margin based on CV, and have instead relied solely on the comparison of export price to the home market price above COP.

Based on this comparison of export price to normal value, the estimated dumping margin for certain pasta from Turkey is 63.29 percent.

Fair Value Comparisons

Based on the data provided by the petitioners, there is reason to believe that imports of certain pasta from Italy and Turkey are being, or likely to be, sold at less than fair value. If it becomes necessary at a later date to consider the petition as a source of facts available, we may review the calculations.

Initiation of Investigations

We have examined the petition on certain pasta from Italy and Turkey and have found that it meets the requirements of section 732 of the Act, including the requirements concerning allegations of material injury or threat of material injury to the domestic producers of a domestic like product by reason of the complained-of imports, allegedly sold at less than fair value. Therefore, we are initiating antidumping duty investigations to determine whether imports of certain pasta from Italy and Turkey are being, or are likely to be, sold in the United States at less than fair value. Unless extended, we will make our preliminary determinations by October 19, 1995.

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act, copies of the public versions of the petition have been provided to the representatives of the governments of Italy and Turkey. We will attempt to provide copies of the public versions of the petition to all the exporters named in the petition.

International Trade Commission (ITC) Notification

We have notified the ITC of our initiations, as required by section 732(d) of the Act.

Preliminary Determination by the ITC

The ITC will determine by June 26, 1995, whether there is a reasonable indication that imports of certain pasta from Italy and Turkey are causing material injury, or threatening to cause material injury, to a U.S. industry. A negative ITC determination in either investigation will result in the respective investigation being terminated; otherwise, these investigations will proceed according to statutory and regulatory time limits.

Dated: June 1, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–13982 Filed 6–7–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–301–602]

Certain Fresh Cut Flowers From Colombia; Preliminary Results of Antidumping Duty Administrative Review, Partial Termination of Administrative Reviews, and Notice of Intent To Revoke Order (In Part)

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative reviews, partial termination of administrative reviews, and notice of intent to revoke in part the antidumping duty order.

SUMMARY: In response to requests from interested parties, the Department of Commerce (the Department) is conducting three concurrent administrative reviews of the antidumping duty order on certain fresh cut flowers from Colombia. These reviews cover a total of 336 producers and/or exporters of this merchandise to the United States for at least one of the following periods: March 1, 1991 through February 29, 1992; March 1, 1992 through February 28, 1993; and March 1, 1993 through February 28, 1994. The reviews indicate the existence of dumping margins for certain firms during the relevant periods.

We are terminating the administrative reviews with respect to 18 producers/exporters, because the Department either received timely withdrawal of review requests from these firms, or the firms were no longer subject to the order due to exclusion or revocation actions taken by the Department. We are also announcing our intent to revoke the antidumping duty order for the following exporters/growers: Cultivos Miramonte, Flores Aurora, the Funza Group, and Industrial Agricola. We determined that these firms have not sold the subject merchandise at less than foreign market value (FMV) in these reviews and for at least three consecutive administrative review periods, and these firms have submitted certifications that they will not sell at less than FMV in the future.

We have preliminarily determined that sales have been made below the FMV. If these preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs to assess antidumping duties equal to the difference between the United States price (USP) and the FMV.

We invite interested parties to comment on these preliminary results and intent to revoke.

EFFECTIVE DATE: June 8, 1995.

FOR FURTHER INFORMATION CONTACT: J. David Dirstine or Richard Rimlinger, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On March 5, 1992, March 12, 1993, and March 4, 1994, the Department published notices in the **Federal Register** of "Opportunity to Request Administrative Review" (57 FR 7910, 58 FR 13583, and 59 FR 10368, respectively) of the antidumping duty order on certain fresh cut flowers from Colombia. On May 21, 1992, May 28, 1993, and May 2, 1994, in accordance with 19 CFR 353.22(c), we initiated administrative reviews of this order for over 500 Colombian firms covering the periods March 1, 1991 through February 29, 1992 (the 5th review), March 1, 1992 through February 28, 1993 (the 6th review), and March 1, 1993 through February 28, 1994 (the 7th review), respectively (*see* 57 FR 21643, 58 FR 31010, and 59 FR 22579, respectively).

On May 9, 1994, the Department notified interested parties of its decision to collapse these three reviews for the record, and to conduct the three reviews concurrently. *See* Memorandum To File dated May 9, 1994.

We have preliminarily determined to revoke the antidumping duty order for the following exporters/growers: Cultivos Miramonte, Flores Aurora, the Funza Group, and Industrial Agricola. These firms have submitted requests in accordance with 19 CFR 353.25(b) to revoke the order with respect to their sales of flowers to the United States. Their requests were accompanied by certifications that they have not sold flowers to the United States at less than FMV for at least a three-year period, including the subject review periods, and will not do so in the future. Since we preliminarily determine that these firms have not sold the subject merchandise at less than FMV in these reviews, and have not sold the subject merchandise at less than FMV for at least the required three-year period, we intend to revoke the order with respect to these companies.

The Department has now conducted the administrative reviews in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of Review

Imports covered by these reviews are shipments of certain fresh cut flowers from Colombia (standard carnations, miniature (spray) carnations, standard chrysanthemums and pompon chrysanthemums). These products are currently classifiable under item numbers 0603.10.30.00, 0603.10.70.10, 0603.10.70.20, and 0603.10.70.30 of the Harmonized Tariff Schedule (HTS). The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Although we initiated reviews on over 500 firms, we have actually reviewed a total of 336 firms for at least one of the three review periods.

There was one firm, Agroteusa, which was not included in our initiation notices but was included in these reviews because of its close relationship to another firm for which reviews were initiated.

Subsequent to the publication of our initiation notices, we received timely withdrawals of requests for Agricola Sagasuca (6th and 7th reviews), Daflor Ltda. (7th review), Flores el Tandil Ltda. (7th review), Industrial Agricola (7th review), the Santana Flowers Group

(consisting of Hacienda Curubital, Inversiones Istra, and Santana Flowers) (7th review), and Velez de Monchaux e Hijos y Cia (6th review). Because there were no other requests for review for the companies and administrative review periods indicated above from any other interested parties, we are terminating these particular reviews with respect to these companies in accordance with 19 CFR 353.22(a)(5).

We are also terminating the 5th and 6th administrative reviews initiated for the Flores Colombianas Group (including Agrosuba Ltda., Flores Colombianas, Jardines de los Andes S.A., and Productos de Cartucho S.A.) and Flores Condor, because these firms were subsequently revoked from the antidumping order in an earlier review. Moreover, we are terminating the 5th and 6th administrative reviews with respect to Flores Timana Ltda., because this firm was originally excluded from the order, and these reviews should not have been initiated.

In addition, at the request of the petitioner, we initiated reviews for Agriflora (5th, 6th, and 7th reviews), Elite Farms (7th review), Emerald Farms (7th review), and Comercializadora Caribbean (7th review). The first three firms have informed us that they are flower importers, and the last firm informed us that it is a freight facilitator. Consequently, we are preliminarily terminating the reviews with respect to these four firms.

During the course of these reviews, we learned that several respondents were sufficiently related for us to collapse these firms, or group of firms, into one entity for purposes of calculating a dumping rate. The firms we considered one entity are: (1) Agricola las Cuadras and Flores de Hacaritama; (2) Agricola de la Fontana, Flores de Hunza, Flores Tibati, and Inversiones Cubivan; (3) Cultivos Miramonte S.A. and Flores Mocari S.A.; (4) Agricola Guacari S.A., Flores Altamira S.A., Flores de Exportacion S.A., Flores de Salitre, Four Farmers Inc, S.B. Taleo, and Santa Helena S.A.; (5) MG Consultores, Flores Canelon, Flores la Valvanera, Flores del Hato, Agroindustrial del Riofrio, Jardines de Chia, Queen's Flowers de Colombia, and Jardines Fredonia (this group is hereinafter referred to as the "Queen's Flowers Group"). *See* Memorandum to File "Collapsing Related Parties": Farm Fresh Flowers Group, dated November 14, 1994; Florex Group, dated November 15, 1994, and November 21, 1994; Miramonte Group, dated November 15, 1994; and Queen's Flowers Group, dated November 17, 1994, and January 10, 1995 [1]. In the previous review covering the period March 1, 1990 through February 28, 1991, we also collapsed (1) Agricola Las Cuadras and Flores Hacaritama (2) Agricola Guacari S.A., Flores Altamira S.A., Flores de Exportacion S.A., Four Farmers Inc, and Santa Helena S.A., and (3) Jardines de Chia, Queen's Flowers de Colombia, and Jardines Fredonia.

Finally, we initiated reviews for a large number of firms which could not be located in spite of our requests for assistance from such diverse sources as the Floral Trade Council (the FTC), Asocolflores, the American Embassy in Bogotá, and the U.S. Customs Service. Therefore, we were unable to conduct administrative reviews for these firms, and any entries into the United States on the part of these firms will continue to be assessed duties equal to the "all others" rate of 3.10 percent from the less-than-fair-value (LTFV) investigation. The firms in question are

Achalay
Agricola Altiplano
Agricola de Los Alisos Ltda.
Agricola de Occidente
Agricola del Monte
Agricola Megaflor Ltda.
Agrocaribu Ltd.
Agro de Narino
Agroindustrial Madonna, S.A.
Agroindustrias de Narino Ltda.
Agropecuaria la Marcela
Agropecuaria Mauricio
Agrocosas
Agrotabio Kent
Aguacarga
Alcala
Alstroflores Ltda.
Amoret
Andalucia
Ancas Ltda.
A.Q.
Arboles Azules Ltda.
Caico
Carcol Ltda.
Classic
Clavelez
Coexflor
Color Explosion
Consorcio Agroindustrial
Columbiano S.A. "CAICO"
Cota
Crest D'or
Crop S.A.
Cultivos Guameru
Cypress Valley
Degaflor
Del Monte
Del Tropico Ltda.
Disagro Ltda.
Diveragricola
El Dorado
Elite Flowers
El Milaro
El Tambo
El Timbul Ltda.
Euroflora
Exoticas
Exotic Flowers
Exotico
Exportadora
F. Salazar
Ferson Trading
Flamingo Flowers
Flor y Color
Flores Abaco S.A.
Flores Agromonte
Flores Ainsus
Flores Alcala Ltda.
Flores Calichana
Flores Cerezangos
Flores Corola
Flores de Guasca
Flores de Iztari
Flores de Memecon/Corinto
Flores de la Cuesta
Flores de la Hacienda
Flores de la Maria
Flores del Cielo Ltda.
Flores del Cortijo
Flores del Tambo
Flores el Talle Ltda.
Flores Flamingo Ltda.
Flores Fusu
Flores Gloria
Flores la Cabanuela
Flores la Pampa
Flores la Union/Santana
Flores Montecarlo
Flores Palimana
Flores Saint Valentine
Flores San Andres
Flores Santana
Flores Sausalito
Flores Sindamanoi
Flores Suasuque
Flores Tenerife Ltda.
Flores Urimaco
Flores Violette
Florexpo
Floricola
Floricola la Ramada Ltda.
Florisol
Florpacifico
Flower Factory
Flowers of the World/Rosa
Four Seasons
Fracolsa
Fresh Flowers
Garden and Flowers, Ltda.
German Ocampo
Granja
Gypso Flowers
Hacienda La Embarrada
Hacienda Matute
Hana/Hisa Group
Flores Hana Ichi de Colombia Ltda.
Flores Tokai Hisa

[1] In these memos, we collapsed an additional 12 companies into the Queen's Flowers Group. However, for purposes of these preliminary results, we are considering only these eight companies as one entity.

Hernando Monroy
Hill Crest Gardens
Horticultura de la Sasan
Horticultura Montecarlo
Illusion Flowers
Indigo S.A.
Industria Santa Clara
Industrial Terwengel, Ltda.
Innovacion Andina, S.A.
Inversiones Bucarelia
Inversiones Maya, Ltda.
Inversiones Playa
Inversiones & Producciones Tecnicas
Inversiones Silma
Inversiones Sima
Jardin de Carolina
Jardines Choconta
Jardines Darpu
Jardines de Los Andes
Jardines de Timana
Jardines Natalia Ltda.
Jardines Tocarema
J.M. Torres
Karla Flowers
Kingdom S.A.
La Colina
La Embairada
La Flores Ltda.
La Floresta
Laura Flowers
L.H.
Loma Linda
Loreana Flowers
M. Alejandra
Mauricio Uribe
Merastec
Morcoto
Nasino
Olga Rincon
Otono
Pinar Guameru
Piracania
Prismaflor
Reme Salamanca
Rosa Bella
Rosales de Suba Ltda.
Rosas y Jardines
Rose
San Ernesto
San Valentine
Sarena
Select Pro
Shila
Solor Flores Ltda.
Starlight
Sunbelt Florals
Susca
The Rose
Tomino
Tropical Garden
Villa Diana
Zipa Flowers

Best Information Available

In accordance with section 776(c) of the Tariff Act, we have preliminarily determined that the use of best information otherwise available (BIA) is appropriate for certain firms. In determining what is BIA, our regulations provide that we may take into account whether a party refuses to provide information (19 CFR 353.37(b)). For purposes of these reviews, we have used the most adverse BIA—generally, the highest rate for any company for this same class or kind of merchandise from this or any prior segment of the proceeding—whenever a company refused to cooperate with the Department or otherwise significantly impeded the proceeding. When a company substantially cooperated with our requests for information, but failed to provide all the information requested in a timely manner or in the form requested, we used as BIA the higher of (1) the highest rate (including the "all others" rate) ever applicable to the firm for the same class or kind of merchandise from the same country from either the LTFV investigation or a prior administrative review; or (2) the highest calculated rate in this review for any firm for the same class or kind of merchandise from the same country. *See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany, et al.; Final Results of Antidumping Duty Administrative Review*, 56 FR 31692, 31704 (July 11, 1991); *see also Allied-Signal Aerospace Co. v. United States*, 996 F.2d 1185 (Fed. Cir. 1993).

Because a number of firms failed to respond to our requests for information, we have used the highest rate ever found in this proceeding to establish their margins. This rate is 75.92 percent for the 5th administrative review and 83.61 percent for the 6th and 7th administrative reviews. The firms that have received adverse BIA rates and the review periods for which these firms are receiving a BIA rate (as indicated in parentheses) are:

Agricola Jicabal (5,6,7)
Agricola Malqui (5,6,7)
Agricola Monteflor Ltda. (7)
Agrobloom Ltda. (7)
Agrokoralia (5,6,7)
Bali Flowers (7)
Bloomshares (7)
Bogota Flowers (5,6,7)
Ciba Geigy (5,6,7)
Claveles Tropicales (7)
Colony International Farm (5,6,7)
Conflores Ltda. (5,6,7)
Cultivos el Lago (5,6,7)
Fernando de Mier (7)
Flora Bellisima (5,6,7)
Flores Alfaya (5,6,7)
Flores Arco Iris (5,6,7)
Flores Balu (7)
Flores Catalina (7)
Flores de Fragua (7)
Flores de la Pradera Ltda. (5,6,7)
Flores del Pradro (7)
Flores el Majui (7)
Flores Guaicata Ltda. (5,6,7)
Flores Magara
Flores Naturales (7)
Flores Petaluma Ltda.(5,6,7)
Flores Rio Grande (7)
Flores Santa Lucia (5,6,7)
Flores Suesca (5,6)
Flores Tejas Verdes (5,6,7)
Fribir Ltda. (7)
Groex S.A. (5,6)
Hacienda Susata (7)
Inpar (5,6,7)
Inter Flores (7)
Interflora Ltda. (5,6,7)
Internacional Flowers (7)
Invernavas (5,6,7)
Inversiones del Alto (7)
Inversiones Nativa Ltda. (5,6,7)
Jardin (5,6,7)
Jardines del Muna (5,6,7)
La Florida (5,6,7)
My Flowers Ltda. (7)
Naranjo Exportaciones e Importaciones (7)
Plantas Ornamentales de Colombia S.A. (7)
Rosas y Flores (5,6,7)
Rosicler Ltda. (5,6,7)
Sabana Flowers (5,6,7)
Sunset Farms (5,6,7)
Tempest Flowers (5,6,7)

As previously discussed under the *Scope of Review* section of this notice, we have preliminarily determined that eight flower companies are significantly related to each other to warrant collapsing their sales and production information into the Queen's Flowers Group. Although these companies provided responses to our questionnaire and supplemental questionnaires, we did not receive complete information regarding the interrelationships between these companies. In addition, one firm had purchased major inputs from other members of the group but failed to provide requested information establishing the arm's-length nature of these transactions. Other members of the group failed to identify their suppliers of inputs when requested to do so. Another firm claimed it had no transactions with two particular customers, both members of the group; however, there is information on the record from these customers indicating that they had purchased subject merchandise from this firm during the POR. Moreover, several companies failed to notify the Department that they had included shared administrative expenses in their constructed value response. Finally, one company improperly amortized certain production expenses in an optional crop adjustment methodology and failed to correct the problem in response to a supplemental questionnaire. These problems precluded the Department from merging sales and constructed value data to form one consolidated response for these related entities. Therefore, we preliminarily determine that the members of the Queen's Flowers Group have significantly impeded our reviews and we have used as uncooperative, or first-tier, BIA, the highest rate for any company for this same class or kind of merchandise from this or any prior segment of the proceeding.

Based on the responses provided by these eight respondents, we believe that there are an additional 12 companies with strong ties to the Queen's Flowers Group. We are giving these 12 companies an opportunity to respond to our questionnaire. Since these companies were not included in our "Notice of Initiation," there will not be a preliminary margin applicable to these companies. If, however, in our final results of review, we conclude that any or all of these companies are significantly related to the Queen's Flowers Group to be considered to be one entity, the rates for the group will apply to these companies as well.

Two firms, Agricola Uzatama and Proflores Ltda., responded to our original questionnaire, but failed to respond to our requests for supplemental information. We preliminarily determine that these companies have not cooperated with our requests for information. Therefore, we have preliminarily applied a first-tier BIA rate to these firms for the seventh review, which is 83.61 percent, the highest rate for any firm in any segment of this proceeding.

Although Iturrama and Santa Helena submitted responses to our supplemental questionnaires, these firms failed to provide information allowing us to correct serious deficiencies in their cost responses. Therefore we were unable to use their cost data for comparison purposes. However, because these firms substantially cooperated with our requests for information, we have preliminarily applied a cooperative, or second-tier, BIA rates to sales made by these companies.

Flores el Zorro, Ltda., substantially cooperated with our requests for information and provided complete sales and cost data for its U.S. sales. However, the data provided by Flores el Zorro contained numerous problems and deficiencies (specifically in the areas of indirect selling expenses incurred in the United States, indirect selling expenses incurred in the home market, financial expenses, and financial income). Since insufficient information was placed on the record by Flores el Zorro to correct these problems and we were unable to use the firm's response to make comparisons because of the existing deficiencies, we have preliminarily applied second-tier BIA rates to sales made by Flores el Zorro for all three reviews.

We conducted verification of responses submitted by the Agrodex Group, Cultivos Miramonte, Floralex, Flores Aurora, Flores Depina, the Funza Group, Flores de la Vereda, Flores Juanambu, the Florex Group, the Guacatay Group, the HOSA Group, Industrial Agricola, the Santana Group, Senda Brava, and the Tinzuque Group. We encountered serious verification problems with respect to Flores de la Vereda and Floralex. During the verification of Flores de la Vereda, we could not successfully verify completeness and accuracy of the company's sales data. Also, during the verification of Floralex, we were unable to verify the accuracy of the constructed value information submitted by this firm. Because Flores de la Vereda and Floralex have substantially cooperated with our requests for information, we have preliminarily applied a second-tier BIA rate to these firms for all three reviews.

Also, we are applying a second-tier BIA rate to sales made by Colflores, Flores Estrella, Flores Mountgar, and Flor Colombia S.A. These firms are no longer in business, and we have preliminarily determined, in accordance with the standards enunciated in *Certain Fresh Cut Flowers From Colombia; Final Results of Antidumping Duty Administrative Review, and Notice of Revocation of Order (in Part)*, 59 FR 15159 (March 31, 1994), that they are unable to respond to the Department's questionnaire.

In certain situations, we found it necessary to use partial BIA for a number of firms to correct for more limited response deficiencies. In a supplemental questionnaire, Flores de Aposentos reported aggregate carnation sales totals made through resellers which it knew were destined for sale in the United States. Since these sales were not broken down in the company's response as required by the Department's questionnaire, we applied the BIA rate for cooperative firms and limited its application to the particular sales involved.

In the case of Las Amalias, we found that the firm had reported its sales prices to a related importer for certain U.S. sales transactions instead of its sales prices to the first unrelated U.S. customer as required by our questionnaire. We applied the BIA rate for cooperative firms to these particular transactions.

United States Price

Pursuant to section 777A of the Tariff Act, we determined that it was appropriate to average U.S. prices on a monthly basis in order (1) to use actual price information that is often available only on a monthly basis, (2) to account for large sales volumes, and (3) to account for perishable product pricing practices (*see Final Results of Antidumping Duty Administrative Review; Certain Fresh Cut Flowers from Colombia* (56 FR 50554, October 7, 1991)).

In calculating USP, we used purchase price when sales were made to unrelated purchasers in the United States prior to the date of importation, or exporter's sales price (ESP) when sales were made to unrelated purchasers in the United States after the date of importation, both pursuant to section 772 of the Tariff Act.

We calculated purchase price based on the packed price to the first unrelated purchaser in the United States. The terms of purchase price sales were either f.o.b. Bogotá or c.i.f. Miami. We made deductions, where appropriate, for foreign inland freight, air freight, brokerage and handling, U.S. customs duties, and return credits.

ESP, for sales made on consignment or through a related affiliate, was calculated based on the packed price to the first unrelated customer in the United States. We made adjustments, where appropriate, for foreign inland freight, brokerage and handling, air freight, box charges, credit expenses, returned merchandise credits, royalties, U.S. duty, and either commissions paid to unrelated U.S. consignees or indirect U.S. selling expenses of related consignees.

Foreign Market Value

Section 733(a)(1)(A) of the Tariff Act requires the Department to compare sales in the United States with viable home market sales of such or similar merchandise sold in the home market or a third-country market in the ordinary course of trade. Although some companies reported either viable home or third-country markets for sales of particular flower types, consistent with our discussion in *Certain Fresh Cut Flowers from Colombia; Final Results of Antidumping Duty Review, and Notice of Revocation of Order (in Part)* (59 FR 15159, March 31, 1994), we have concluded that home market and third-

country sales are not an appropriate basis for FMV.

The FTC, representing domestic parties in this proceeding, argues that most of the conditions on which the above decision was based have changed with respect to third-country sales for these reviews. The FTC claims that sales by Colombian growers to third countries have increased, and the FTC argues that Colombian growers now have greater, unrestricted access to third-country markets, resulting in more stable annual sales to those countries. Also, the FTC argues, this increase in third-country demand for Colombian-grown flowers has affected the production decisions of the Colombian growers and has helped to lessen the seasonal disparities in market demand.

Based on our review of the questionnaire responses and other data on the record, we have preliminarily concluded that the conditions which governed sales in third countries have not changed significantly between our last review and the current reviews. While we have found that Colombian flower producers enjoy greater access and sales to third-country markets, we find that the other conditions on which we based our original decision to disregard third-country sales as a basis for FMV still apply.

Although the petitioner argues that holidays in third countries coincide with holidays in the United States, we find that, with a few exceptions, such as Christmas, this is not the case. For example, there are no flower-giving holidays in third countries that coincide with Valentine's Day or Mother's Day, and there are no United States flower-giving holidays that coincide with All Souls Day.

We find that the market patterns differ greatly between third countries and the United States. The United States market is extremely volatile, and can experience great price swings depending on the season and whether there is a holiday. For example, flower prices on Valentine's Day can increase by more than one hundred percent. This is because United States consumers tend to purchase flowers only on special occasions. On the other hand, third-country customers, particularly those in Europe, tend to purchase flowers more for everyday use. Therefore, demand and prices are much more stable in Europe than in the United States. While price swings do exist, they do not occur on the same order of magnitude as in the United States.

We find the FTC's argument that the correlation between flower prices in the United States and in Europe justify the use of third-country prices as FMV to be unconvincing. While the charts submitted by the FTC in support of its argument indicate that there is a correlation between flower prices in Miami, Florida, and flower prices in Europe, we find the correlation to be weak, and we observed that prices in the two markets moved in the opposite direction in approximately half of the months of the year. The FTC also alleges that the prices of flowers in California more closely correlate with the prices in Europe. While the charts petitioner submitted indicate a moderate correlation, we again observed that Californian and European prices moved in opposite directions in nearly half of the months out of the year. Also, the vast majority of Colombian flowers enter the United States in Miami, Florida, and are sold there. In addition, we noted that the information submitted by the FTC is for only one flower type and only covered part of the 5th review period.

For these reasons, we have not used third-country sales as the basis for FMV. Instead, we used constructed value as defined in section 773(e) of the Tariff Act for all companies. The constructed value represents the average per-flower cost for each type of flower, based on the costs incurred to produce that type of flower over each review period.

The Department used the materials, fabrication, and general expenses reported by respondents. The per-unit average constructed value was based on the quantity of export quality flowers sold by the grower/exporter to the United States. We consider non-export quality flowers (culls) which are produced in conjunction with export quality flowers to be by-products. Therefore, revenue from the sales of culls was used as an offset against the cost of producing the export quality flowers.

For cases in which actual general expenses exceeded the statutory minimum of 10 percent of the cost of materials and fabrication, we used the actual general expenses to calculate constructed value. For cases in which actual general expenses were less than the statutory minimum of 10 percent of the cost of materials and fabrication, we used the statutory minimum of 10 percent. Because imputed credit was included in constructed value, we reduced the actual interest expense reported in the companies' financial statements to prevent double-counting.

When respondents indicated that the actual profit for merchandise of the same general class or kind could not be calculated or was less than eight percent of the sum of the cost of production and general expenses, the Department used the eight percent statutory minimum for profit. We added U.S. packing to constructed value. Adjustments to constructed value were made for credit and indirect selling expenses.

Finally, according to the 1993 edition of *Doing Business in Colombia*, published by Price Waterhouse, there has been a change in the Colombian generally accepted accounting practices effective January 1, 1992. Firms are now required to revalue certain financial statement accounts in order to reflect the effects of inflation experienced during each financial reporting period. As part of this revaluation, firms must restate their fixed asset accounts and their corresponding depreciation expense. Respondents' restated depreciation expenses are not reflected in the constructed value calculations used in our preliminary results. We intend, however, to ask respondents to provide additional data to allow us to make this adjustment for our final results. We invite comments from interested parties on this matter.

Preliminary Results of Review

As a result of our comparison of USP with FMV, we preliminarily determine the margins for the 5th, 6th, and 7th administrative reviews to be:

Producer/exporter	5th	6th	7th
Abaco Tulipanex de Colombia	(1)	(1)	(1)
Agrex de Oriente	(2)	(2)	(1)
AGA Group	(2)	(2)	9.03
Agricola la Celestina			
Agricola la Maria			
Agricola Benilda Ltda			
Agricola Acevedo Ltda	0.96	4.38	1.89
Agricola Arenales Ltda	2.98	2.67	2.10
Agricola Benilda	(1)	(1)	8.78
Agricola Bonanza Ltda	(1)	(1)	(1)

Producer/exporter	5th	6th	7th
Agricola Circasia Ltda	14.21	0.41	1.29
Agricola el Cactus	2.21	1.70	1.16
Agricola el Redil	0.46	0.37	0.42
Agricola Guali S.A	(1)	(1)	(1)
Agricola Jicabal	75.92	83.61	83.61
Agricola la Corsaria	4.85	2.89	1.78
Agricola las Cuadras Group	1.71	3.87	1.44
Agricola Las Cuadras Ltda			
Flores de Hacaritama			
Agricola La Siberia	(2)	(2)	26.94
Agricola Maiqui	75.92	83.61	83.61
Agricola Monteflor Ltda	(2)	(2)	83.61
Agricola Uzatama	(2)	(2)	83.61
Agricola Yuldama	(2)	(2)	(1)
Agrobloom Ltda	(2)	(2)	83.61
Agrodex Group	0.90	0.17	1.00
Agricola El Retiro Ltda			
Agricola Los Gaques Ltda			
Agrodex Ltda			
Degaflores Ltda			
Flores Camino Real Ltda			
Flores de la Comuna Ltda			
Flores De Las Mercedes Ltda			
Flores De Los Amigos Ltda			
Flores De Los Arrayanes Ltda			
Flores De Mayo Ltda			
Flores Del Gallinero Ltda			
Flores Del Potrero Ltda			
Flores Dos Hectareas Ltda			
Flores De Pueblo Viejo Ltda			
Flores El Puente Ltda			
Flores El Trentino Ltda			
Flores La Conejera Ltda			
Flores Manare Ltda			
Florlinda Ltda			
Inversiones Santa Rosa ARW Ltda			
Horticola El Triunfo			
Horticola Montecarlo Ltda			
Agroindustrial Don Eusebio Group	4.03	1.68	1.30
Agroindustrial Don Eusebio Ltda			
Celia Flowers			
Passion Flowers			
Primo Flowers			
Temptation Flowers			
Agrokoralia	75.92	83.61	83.61
Agromonte Ltda	7.51	1.40	2.10
Agropecuria Cuernavaca Ltda	2.59	4.59	1.70
Aspen Gardens Ltda	(2)	(2)	12.28
Astro Ltda	(1)	20.25	20.59
Bali Flowers	(2)	(2)	83.61
Becerra Castellanos y Cia	2.86	0.29	64.05
Bloomshare	(2)	(2)	83.61
Bogota Flowers	75.92	83.61	83.61
Bojaca Group	75.92	19.96	0.21
Agricola Bojaca			
Universal Flowers			
Flores Y Plantas Tropicales			
Caicedo Group	0.19	2.53	8.64
Agro Bosque, S.A			
Aranjuez S.A			
Exportaciones Bochica S.A			
Floral Ltda			
Flores Del Cauca			
Inversiones Targa Ltda			
Productos El Zorro			
Cantarrana Group	1.74	4.89	1.07
Cantarrana Ltda			
Agricola Los Venados Ltda			
Ciba Geigy	75.92	83.61	83.61
Cienfuegos Group	5.14	2.75	6.15
Cienfuegos Ltda			
Flores La Conchita			
Cigarral Group	4.97	36.16	45.90

Producer/exporter	5th	6th	7th
Flores Cigarral			
Flores Tayrona			
Claveles Colombianas Group	5.74	3.80	4.42
Claveles Colombianos Ltda			
Fantasia Flowers Ltda			
Splendid Flowers Ltda			
Sun Flowers Ltda			
Claveles De Los Alpes Ltda	0.95	6.38	3.77
Claveles Tropicales de Colombia	(2)	(2)	83.61
Colflores	75.92	83.61	83.61
Colibri Flowers Ltda	3.19	2.05	2.93
Colony International Farm	75.92	83.61	83.61
Combiflor	(2)	(2)	0.37
Conflores Ltda	75.92	83.61	83.61
Cultiflores Ltda	(2)	0.00	5.51
Cultivos el Lago	75.92	83.61	83.61
Cultivos Medellin Ltda	4.51	0.02	3.47
Cultivos Miramonte Group	0.27	0.10	0.11
Cultivos Miramonte S.A			
Flores Mocari S.A			
Cultivos Tahami Ltda	3.90	0.06	1.08
Daflor Ltda	0.16	0.31	(2)
De la Pava Guevara e Hijos Ltda	(1)	(1)	(1)
Dianticola Colombiana Ltda	2.59	22.23	8.16
Dynastry Roses Ltda	(2)	(2)	(1)
El Antelio S.A	(2)	(2)	(1)
Envy Farms Group	(2)	(2)	0.00
Envy Farms			
Flores Marandua Ltda			
Expoflora Ltda	(1)	(1)	(1)
Exporosas	(2)	(2)	(1)
Falcon Farms De Colombia S.A (formerly Flores de Cajibio Ltda.).	0.00	0.00	0.13
Farm Fresh Flowers Group	1.30	0.72	1.49
Agricola de la Fontana			
Flores de Hunza			
Flores Tibati			
Inversiones Cubivan			
Fernando de Mier	(2)	(2)	83.61
Flor Colombiana S.A	(2)	(2)	64.05
Flora Bellisima Ltda	75.92	83.61	83.61
Flora Intercontinental	(1)	(1)	(1)
Floralex Ltda	75.92	83.61	83.61
Florandia Herrera Camacho y Cia	(1)	(1)	(1)
Floraterra Group	17.31	5.37	9.04
Flores Casablanca S.A			
Flores San Mateo S.A			
Siete Flores S.A			
Floreales Group	(1)	8.93	4.56
Floreales			
Kimbaya			
Florenal (Flores el Arenal) Ltda	0.62	13.89	7.70
Flores Acuarela S.A	(1)	(1)	(1)
Flores Aguila	0.02	(1)	(1)
Flores Ainsuca Ltda	(2)	(2)	2.74
Flores Alfaya Ltda	75.92	83.61	83.61
Flores Andinas	(1)	(1)	(1)
Flores Arco Iris	75.92	83.61	83.61
Flores Aurora Ltda	0.03	0.31	0.01
Flores Bachue	(1)	(1)	(1)
Flores Balu	(2)	(2)	83.61
Flores Carmel S.A	(2)	(2)	2.24
Flores Catalina	(2)	(2)	83.61
Flores Colon Ltda	0.90	1.96	1.08
Flores Comercial Bellavista Ltda	2.40	0.20	1.75
Flores de Aposentos Ltda	(2)	(2)	2.83
Flores de Fragua	(2)	(2)	83.61
Flores de la Montana	6.27	0.14	4.51
Flores de la Parcelita	(1)	(1)	(1)
Flores de la Pradera	75.92	83.61	83.61
Flores de la Sabana S.A	7.43	1.10	1.54
Flores de la Vega Ltda	3.09	0.18	1.50
Flores de la Vereda	75.92	83.61	83.61
Flores del Campo Ltda	4.95	3.85	4.51

Producer/exporter	5th	6th	7th
Flores del Lago Ltda	3.74	0.14	1.55
Flores del Pradro	(2)	(2)	83.61
Flores del Rio Group	0.15	5.03	4.16
Agricola Cardenal S.A			
Flores Del Rio S.A			
Indigo S.A			
Flores de Oriente	(2)	(2)	3.31
Flores Depina Ltda	8.95	0.00	7.65
Flores de Serrezuela Ltda	1.23	0.26	0.13
Flores de Suba	8.53	3.10	5.37
Flores de Tenjo Ltda	(1)	(1)	(1)
Flores el Lobo	(2)	14.75	1.59
Flores el Majui	(2)	(2)	83.61
Flores el Molino S.A	0.26	0.94	4.66
Flores el Rosal Ltda	23.77	6.51	2.24
Flores el Zorro Ltda	75.92	83.61	83.61
Flores Estrella	75.92	83.61	(2)
Flores Galia Ltda	(1)	(1)	(1)
Flores Gicro Group	5.82	5.78	5.09
Flores Gicro Ltda			
Flores de Colombia			
Flores Guaicata Ltda	75.92	83.61	83.61
Flores Hacienda Bejucol	(2)	(2)	(1)
Flores Juanambu Ltda	0.69	1.08	1.62
Flores Juncalito Ltda	(1)	(1)	(1)
Flores la Fragrancia	11.03	23.93	11.05
Flores la Gioconda	(2)	(2)	1.99
Flores la Lucerna	(1)	(1)	(1)
Flores la Macarena	(1)	(1)	(1)
Flores la Union/Gomez Arango & Cia	0.37	0.00	0.00
Flores las Caicas	34.46	83.61	42.77
Flores las Mesitas	(2)	(2)	(1)
Flores los Sauces	(2)	(2)	1.35
Flores Magara	(2)	(2)	83.61
Flores Monserrate Ltda	1.49	3.32	1.09
Flores Monteverde Ltda	5.03	3.20	3.42
Flores Mountgar	43.02	83.61	(2)
Flores Naturales	(2)	(2)	83.61
Flores Petaluma Ltda	75.92	83.61	83.61
Flores Ramo Ltda	(1)	(1)	(1)
Flores Rio Grande	(2)	(2)	83.61
Flores S.A	(1)	(1)	(1)
Flores Sagaro	0.17	1.12	2.59
Flores Sairam Ltda	(2)	(2)	(1)
Flores San Carlos	(1)	(1)	(1)
Flores San Juan S.A	(2)	(2)	3.50
Flores Santa Fe Ltda	2.50	3.78	4.07
Flores Santa Lucia	75.92	83.61	83.61
Flores Selectas	(2)	(2)	(1)
Flores Silvestres	2.10	0.09	1.57
Flores (de) Suesca	75.92	83.61	(2)
Flores Tejas Verdes Ltda	75.92	83.61	83.61
Flores Tiba S.A	1.06	2.20	0.09
Flores Tocarinda	0.00	0.25	0.52
Flores Tomine Ltda	1.17	0.00	1.17
Flores Tropicales (Happy Candy) Group	1.25	4.77	6.14
Flores Tropicales Ltda			
Happy Candy Ltda			
Mercedes Ltda			
Rosas Colombianas Ltda			
Florex Group	6.47	6.85	5.47
Agricola Guacari			
Flores Altamira S.A			
Flores de Exportacion S.A			
Santa Helena S.A			
Flores del Salitre Ltda			
S.B. Talee de Colombia			
Floricola La Gaitana S.A	0.02	0.17	0.01
Florimex Colombia Ltda	(2)	(2)	(1)
Floval	(2)	(2)	7.22
Fribir Ltda	(2)	(2)	83.61
Funza Group	0.04	0.25	0.47

Producer/exporter	5th	6th	7th
Flores Alborada			
Flores de Funza S.A			
Flores del Bosque Ltda			
Green Flowers	(2)	(2)	12.57
Groex S.A	75.92	83.61	(1)
Grupo Andes	3.43	0.35	0.22
Cultivos Buenavista Ltda			
Flores De Los Andes Ltda			
Flores Horizante Ltda			
Inversiones Penas Blancas Ltda			
Grupo el Jardin	(2)	(2)	0.40
Agricola el Jardin Ltda			
La Marotte S.A			
Orquideas Acatayma Ltda			
Guacatay Group	3.00	2.70	3.32
Agricola Guacatay S.A			
Jardines Bacata Ltda			
Hacienda Susata	(2)	(2)	83.61
Horticultura El Molino	(2)	(2)	(1)
Hosa Group	0.65	0.18	1.26
Horticultura De La Sabana S.A			
Innovacion Andina S.A			
Minispray S.A			
HOSA Ltda			
Prohosa Ltda			
Industrial Agricola Ltda	0.39	0.43	(2)
Ingro Ltda	8.23	0.02	1.20
Inpar	75.92	83.61	83.61
Interflora Ltda	75.92	83.61	83.61
Inter Flores Ltda	(2)	(2)	83.61
Internacional Flowers	(2)	(2)	83.61
Invernavas	75.92	83.61	83.61
Inverpalmas	0.90	10.93	3.78
Inversiones Almer Ltda	(1)	(1)	(1)
Inversiones Cota	(2)	(2)	(1)
Inversiones el Bambu Ltda	(1)	(1)	(1)
Inversiones Flores del Alto	(2)	(2)	83.61
Inversiones Morcote	(1)	(1)	(1)
Inversiones Morrosquillo	(2)	(2)	4.73
Inversiones Nativa Ltda	75.92	83.61	83.61
Inversiones Santa Rita Ltda	15.41	17.85	19.05
Inversiones Supala S.A	(2)	3.36	3.23
Inversiones Valley Flowers Ltda	(2)	(2)	29.38
Iturrama S.A	75.92	83.61	83.61
Las Amalias Group	8.89	4.05	2.80
Las Amalias S.A			
Pompones Ltda			
La Fleurette de Colombia Ltda			
Ramiflora Ltda			
Jardin	75.92	83.61	83.61
Jardines de America	(2)	(2)	0.85
Jardines del Muna	75.92	83.61	83.61
La Florida	75.92	83.61	83.61
La Plazoleta Ltda	(1)	(1)	(1)
Linda Colombiana Ltda	1.11	2.11	1.32
Las Flores	(1)	(1)	(1)
Los Geranios Ltda	6.69	0.29	1.19
Luisa Flowers	(2)	(2)	(1)
Manjui Ltda	(2)	0.01	0.06
Maxima Farms Group	0.33	0.64	0.10
Agricola los Arboles S.A			
Polo Flowers			
Rainbow Flowers			
Maxima Farms Inc			
Monteverde Ltda	5.03	3.20	3.42
My Flowers Ltda	(2)	(2)	83.61
Naranjo Exportaciones e Importaciones	(2)	(2)	83.61
Natuflora Ltda./San Martin Bloque B	2.12	1.12	1.49
Oro Verde Group	2.10	1.05	0.19
Inversiones Miraflores S.A			
Inversiones Oro Verde S.A			
Papagayo Group	3.23	9.52	2.11
Agricola Papagayo Ltda.			
Inversiones Calypso S.A			
Petalos De Colombia Ltda	13.63	3.28	2.82

Producer/exporter	5th	6th	7th
Pisochago Ltda	(2)	(2)	8.77
Plantaciones Delta Ltda	(1)	(1)	(1)
Plantas Ornamentales De Colombia S.A	0.02	3.85	83.61
Plantas S.A	(1)	(1)	(1)
Profiores Ltda	(2)	(2)	83.61
Propagar Plantas	(1)	(1)	(1)
Queen's Flowers Group	75.92	83.61	83.61
Queen's Flowers De Colombia Ltda			
Jardines De Chia Ltda			
Jardines Fredonia Ltda			
Agrodindustrial del Rio Frio			
Flores Canelon			
Flores del Hato			
Flores La Valvanera Ltda			
M.G. Consultores Ltda			
Rosaflor	(1)	(1)	(1)
Rosales de Colombia Ltda	(1)	(1)	(1)
Rosalinda Ltda	(2)	(2)	(1)
Rosas de Colombia	(1)	(1)	(1)
Rosas Sabanilla Group	0.22	0.49	0.17
Flores La Colmena Ltda			
Rosas Sabanilla Ltda			
Inversiones La Serena			
Agricola La Capilla			
Rosas y Flores Ltda	75.92	83.61	83.61
Roselandia	(1)	(1)	(1)
Rosex Ltda	(1)	(1)	(1)
Rosicler Ltda	75.92	83.61	83.6
Sabana Flowers	75.92	83.61	83.6
Sansa Flowers	(1)	(1)	(1)
Santa Rosa Group	9.27	7.53	2.38
Flores Santa Rosa Ltda			
Floricola la Ramada Ltda			
Santana Flowers Group	0.26	1.76	(2)
Hacienda Curubital			
Inversiones Istra			
Santana Flowers			
Senda Brava Ltda	13.12	0.00	1.53
Shasta Flowers y Compania Ltda	3.61	0.19	0.00
Siempreviva	(1)	(1)	(1)
Soagro Group	8.66	10.01	3.71
Agricola el Mortino Ltda			
Flores Aguaclara Ltda			
Flores del Monte Ltda			
Flores la Estancia			
Jaramillo y Daza			
Sunset Farms	75.92	83.61	83.61
Superflora Ltda	(2)	(2)	5.58
Sweet Farms	(2)	(2)	(1)
Tag Ltda	0.20	0.56	2.66
Tempest Flowers	75.92	83.61	83.61
The Beall Company	(1)	(1)	(1)
Tinzuque Group	5.26	0.02	0.00
Tinzuque Ltda			
Catu S.A			
Toto Flowers Group	1.19	1.93	0.06
Flores De Suesca S.A			
Toto Flowers			
The Tuchany Group	0.52	0.43	0.55
Tuchany S.A			
Flores Sibate S.A			
Flores Munya S.A			
Flores Tikaya Ltda			
Uniflor Ltda	5.54	0.68	2.75
Velez de Monchaux Group	3.78	4.76	4.51
Velez De Monchaux e Hijos Y			
Cia. S. en C			
Agroteusa			
Victoria Flowers	0.62	2.13	1.6
Villa Cultivos Ltda	(2)	(2)	2.4
Vuelven Ltda	(2)	3.16	2.33

[1] No U.S. sales during this review period
[2] No review requested for this period.

Parties to the proceeding may request disclosure within 5 days and interested parties may request a hearing not later than 10 days after publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication of this notice. Rebuttal briefs, limited to issues raised in case briefs, may be filed no later than 7 days after the time limit for filing case briefs. Any hearing, if requested, will be held 7 days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 353.38(e). Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in any event not later than the date the case briefs, under 19 CFR 353.38(c), are due. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

Upon completion of the final results in this review, the Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between USP and FMV may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(1) of the Tariff Act: (1) The cash deposit rates for the reviewed companies will be those rates established for the last covered period in the final results of these reviews; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) for all other producers and/or exporters of this merchandise, the cash deposit rate shall be 3.10 percent, the adjusted "all others" rate from the fair value investigation. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative reviews.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during these review periods. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and section 353.22 of the Department's regulations (19 CFR 353.22(c)(5)).

Dated: May 26, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–14074 Filed 6–7–95; 8:45 am]

BILLING CODE 3510–DS–P

[C–475–819, C–489–806]

Notice of Initiation of Countervailing Duty Investigations: Certain Pasta ("Pasta") From Italy and Turkey

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 8, 1995.

FOR FURTHER INFORMATION CONTACT: Jennifer Yeske (Italy) and Elizabeth Graham (Turkey), Office of Countervailing Investigations, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone (202) 482–0189 and (202) 482–4105, respectively.

Initiation of Investigations

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act effective January 1, 1995 (the Act).

The Petition

On May 12, 1995, the Department of Commerce (the Department) received a petition filed in proper form by Borden Inc., Hershey Foods Corp., and Gooch Foods, Inc. (the petitioners), three U.S. producers of pasta. Supplements to the petition were filed on May 26, 1995, and May 31, 1995.

In accordance with section 701(a) of the Act, petitioners allege that manufacturers, producers, or exporters of the subject merchandise in Italy and Turkey receive countervailable subsidies.

The petitioners state that they have standing to file the petition because they are interested parties, as defined under section 771(9)(C) of the Act.

Determination of Industry Support for the Petition

Section 702(c) of the Act requires the Department to determine, prior to the initiation of an investigation, that a minimum percentage of the domestic industry supports a countervailing duty petition. A petition meets this requirement if (1) domestic producers or workers who support the petition account for at least 25 percent of the total production of the domestic like product; and (2) those domestic producers or workers who support the petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition.

A review of the production data provided in the petition and other information readily available to the Department indicates that the petitioners account for more than 25 percent of the total production of the domestic like product and for more than 50 percent of that produced by companies expressing support for, or opposition to, the petition. The Department received no expressions of opposition to the petition from any interested party. Accordingly, the Department determines that this petition is supported by the domestic industry.

Injury Test

Because Italy and Turkey are "Subsidies Agreement Countries" within the meaning of section 701(b) of the Act, Title VII of the Act applies to this investigation. Accordingly, the U.S. International Trade Commission ("ITC") must determine whether imports of the subject merchandise from Italy and Turkey materially injure, or threaten material injury to, a U.S. industry.

Scope of the Investigation

The Department has inherent authority to redefine and clarify the scope of an investigation, as set forth in a petition, whenever it determines that the petition language is overly broad, or insufficiently specific to allow proper

investigation, or in any other way defective. *See NTN Bearing Corp.* v. *United States*, 747 F. Supp. 726 (CIT 1990). We revised the petitioners' proposed scope to eliminate channel of trade as a scope criterion in order to ensure that it would be clear and administrable.

The scope of these investigations consists of certain non-egg dry pasta in packages of five pounds (or 2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastases, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market in fiberboard or cardboard cartons or polyethylene or polypropylene bags, of varying dimensions.

Excluded from the scope of these investigations are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white.

The merchandise under investigation is currently classifiable under subheading 1902.19.20 of the *Harmonized Tariff Schedule of the United States* (*HTS*). Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Allegation of Subsidies

Section 702(b) of the Act requires the Department to initiate a countervailing duty proceeding whenever an interested party files a petition, on behalf of an industry, that (1) alleges the elements necessary for an imposition of a duty under section 701(a), and (2) is accompanied by information reasonably available to petitioners supporting the allegations.

Initiation of Countervailing Duty Investigations

The Department has examined the petition on pasta from Italy and Turkey and found that it complies with the requirements of section 702(b) of the Act. Therefore, in accordance with section 702(b) of the Act, we are initiating countervailing duty investigations to determine whether manufacturers, producers, or exporters of pasta from Italy and Turkey receive subsidies.

A. Italy

We are including in our investigation the following programs alleged in the petition to have provided subsidies to producers of the subject merchandise in Italy:

1. *Law 675/77—Capital Grants*
2. *Law 675/77—VAT Reductions*
3. *Laws 227/77, 394/81, and 304/90—Preferential Export Financing and Export Promotion*
4. *Law 64/86—Industrial Investment Development Assistance*
5. *ILOR & IRPEG Tax Exemptions*
6. *Law 345/92—Social Security Exemptions*
7. *Law 1329/65—Interest Contributions Under the Sabatini Law*
8. *Law 181—Urban Redevelopment Packages*
9. *Pasta Export Restitution Program*
10. *European Regional Development Fund ("ERDF") Aid*
11. *European Social Fund ("ESF") Aid*
12. *Miscellaneous EU Subsidies*

We are not including in our investigation the following programs alleged to be benefitting producers of the subject merchandise in Italy:

1. Law 675/77—Interest Contributions on Bank Loans, Interest Grants for Loans Financed by IRI Bond Issues, Ministry of Industry Mortgage Loans, and Personnel Retraining Grants

Law 675 has been investigated and found countervailable in prior investigations, *i.e., Final Affirmative Countervailing Duty Determination: Certain Steel from Italy* (58 FR 37327, July 9, 1993 ("*Certain Steel*") and *Final Affirmative Countervailing Duty Determination: Grain-Oriented Electrical Steel from Italy* (59 FR 18357, April 18, 1994) ("*GOES*"). However, the determination of countervailability in those cases was based on a finding that the automobile and steel industries were dominant users of Law 675 benefits. In *Certain Steel*, the Department verified that the steel and automobile industries together accounted for 66 percent of the total assistance provided under Law 675. The remaining portion of the benefits provided under this law were spread among nine other industries. Petitioners have noted that the agro-food industry is one of the other nine industries which received benefits. However, petitioners have not provided any basis to believe or suspect that the pasta industry, in particular, was a dominant user; nor have they provided any other basis to believe that benefits under this program are specific to the pasta industry. For these reasons, we are not including the above-named portions of Law 675 in our investigation.[1]

2. Law 796/76—Exchange Rate Guarantee Program

Law 796 provides exchange rate guarantees on foreign currency loans obtained under ECSC Article 54 and/or the Council of European Resettlement ("CER") Fund. This program has been investigated in the past and has been found countervailable on the basis of dominant use by the steel industry (*see, Preliminary Affirmative Countervailing Duty Determination: Oil Country Tubular Goods From Italy*, (59 FR 61870)). In that case, the information provided by the GOI showed that the steel industry received 25 percent of the benefits under this program. Petitioners have alleged that because CER loans are available to agriculture, tourism, and handicraft, pasta producers may have received benefits under this program. However, petitioners have not provided any basis to believe or suspect that the pasta industry, in particular, was a dominant user; nor have they provided any other bases to believe that benefits under this program are specific to the pasta industry. Moreover, in accordance with section 355.43(b)(8) of our *Countervailing Duties: Notice of Proposed Rulemaking and Request for Public Comments*, 54 FR 23366 (May 31, 1989) (*Proposed Regulations*), a program cannot be found specific solely on the basis of being limited to agriculture. Therefore, we are not including this program in our investigation.

Although the Department has withdrawn the *Proposed Regulations*, references to the *Proposed Regulations* are provided for further explanation of the Department's CVD practice.

3. Council of Europe Resettlement ("CER") Loans

In their discussion of the Exchange Rate Guarantee program, petitioners request that the Department initiate an investigation of CER loans independent of the Exchange Rate Guarantee program to determine whether CER funds are provided at preferential rates or otherwise provide a benefit to recipient companies. However, petitioners have neither provided evidence that CER loans are provided at preferential rates nor provided evidence that these loans are specific to the pasta industry. For these reasons, we are not including CER loans in our investigation.

4. Law 46/82—Research and Development Grants

This program was found to be not countervailable in *GOES*, because benefits under the program are not

[1] Two types of benefits under this program, (*i.e.*, Capital Grants and VAT Reductions) were found in *GOES* to be available only in the Mezzogiorno region of Italy, making them regionally specific. Therefore, we have included those benefits under Law 675 in our investigation, as indicated above.

limited to a specific enterprise or industry or group of enterprises or industries. Petitioners acknowledge this finding, but argue that there is no indication that the Department considered a 1985 amendment to Law 46/82. Specifically, Article 14 of the law was amended at that time to authorize government assistance for several additional agricultural and/or industrial purposes. Innovations in pasta production is one of the newly enumerated purposes. Petitioners also claim that under Article 14 pasta may have received a disproportionate share of the benefits.

Petitioners have not provided a sufficient basis to believe that the program has changed since the determination of non-countervailability in *GOES*. Because the period of investigation for *GOES* was 1992, the Department's specificity analysis did take into account any changes to Law 46/82 made in 1985. In addition, petitioners have not provided a sufficient basis to believe that pasta received a disproportionate share of the benefits under this program. Therefore, we are not including Law 46/82 grants in our investigation.

5. Miscellaneous Italian Government Subsidies

Petitioners have reviewed the annual reports of four Italian pasta producers and noted numerous references to items such as "subsidies" which petitioners were unable to link to any alleged programs. Petitioners recognize that many of these items might be covered by programs which have been alleged; however, they request that we investigate them under a separate program of Miscellaneous Italian Government Subsidies.

The allegation does not provide a basis for investigating these as subsidy programs. However, to the extent that our investigation includes the four relevant producers as respondents, we will make appropriate inquiries about the items in question.

6. European Investment Bank ("EIB") Loans

Petitioners allege that Italian pasta producers may have received countervailable loans from the EIB.

These loans have been investigated in past investigations and, most recently, were found not countervailable in the *Final Affirmative Countervailing Duty Determinations: Certain Steel Products From Belgium* (58 FR 37273, 37285, July 9, 1993). In that case the Department found at verification that the EIB provides loans to numerous sectors in all parts of the various EU countries. However, petitioners have not addressed this finding. Petitioners have neither alleged that the circumstances have changed nor that pasta producers may have received a disproportionate share of the benefits provided by this program. For these reasons, we are not including EIB loans in our investigation.

7. European Agriculture Fund ("EAGGF") Aid

The EAGGF is a Structural Fund initiative similar to the ERDF and the ESF. However, while the ERDF and ESF have been investigated previously, the EAGGF has not. Petitioners allege that because these funds are allocated specifically to agriculture, pasta producers may have received benefits.

However, petitioners have provided no information regarding the types of benefits available under this program. In addition, section 355.43(b)(8) of our Proposed Regulations, which reflects our past practice, states that a program cannot be found specific solely on the basis of being limited to agriculture. For these reasons, we are not including EAGGF aid in our investigation.

B. Turkey

We are including in our investigation the following programs alleged in the petition to have provided subsidies to producers of the subject merchandise in Turkey:

1. *The Support and Price Stabilization Fund*
2. *Payments for Exports Shipped on Turkish Ships*
3. *Export Promotion Program*
4. *Pre-Shipment Export Loans*
5. *Export Credit Program*
6. *Tax Exemption for Export Earnings/ Advance Refunds of Tax Savings*
7. *Export Credit Through Foreign Trade Corporate Companies Rediscount Credit Facility*
8. *Normal Foreign Currency Export Loans*
9. *Performance Foreign Currency Export Loans*
10. *Export Credit Insurance*
11. *Regional Subsidy Programs*
    a. *Investment Allowances*
    b. *Mass Housing Fund Levy Exemptions*
    c. *Customs Duty Exemption*
    d. *Rebate of VAT on Domestic Goods*
    e. *Postponement of VAT on Imported Goods*
    f. *Additional Refunds of VAT*
    g. *Other Tax Exemptions*
    h. *Payment of Certain Obligations of Firms Undertaking Large Investments*
    i. *Corporate Tax Deferral*
    j. *Subsidized Turkish Lira Credit Facilities*
    k. *Subsidized Credit for Proportion of Fixed Expenditures*
    l. *Subsidized Credit in Foreign Currency*
    m. *Land Allocation*
12. *General Incentives Program*
    a. *Exemptions from Customs Duties*
    b. *Investment Allowances*
    c. *Employee Tax Exemptions*
    d. *Investment Financing Fund*
    e. *Building Construction Licensing Charge Immunity*
    f. *Tax, Duty and Charge Exemptions*
    g. *Foreign-Exchange Allocation*
    h. *Other Tax, Duty and Charge Exemptions*
    i. *Interest Spread Return*
    j. *Deferment of VAT on Machinery and Equipment*
    k. *Incentive Premium on Domestically Obtained Goods*
    l. *Incentive Credit for Investment Goods Manufacturers*
    m. *Wharfage Exemption*
    n. *Authorization to Seek Foreign Financing*
    o. *Interest Rebates on Export Financing*
13. *Exemption from Mass Housing Fund Levy (Duty Exemptions)*

We are not including in our investigation the following programs alleged to be benefitting producers of the subject merchandise in Turkey:

1. Direct Payments to Exporters of Wheat Products to Compensate for High Domestic Input Prices; Resource Utilization Support Fund; Preferential Export Financing

Petitioners have asked the Department to investigate three programs which, based on all evidence, were terminated prior to 1994. Petitioners argue that the Government of Turkey ("GOT") has a practice of revoking and reinstituting programs, and as such, the Department should investigate whether these programs were available in 1994.

Petitioners' assertion that the GOT revokes and reinstitutes programs is based solely on the revision of the Export Tax Rebate and Supplemental Tax Rebate Programs described in *Final Affirmative Countervailing Duty Determination: Acetylsalicylic Acid (Aspirin) from Turkey* (52 FR 24404, July 1, 1987) ("*Aspirin*"). We do not believe this action provides a sufficient basis for us to conclude that the Turkish government has reinstated the programs at issue here. Therefore, we are not including these three programs in our investigation.

2. Direct Payments to Exporters of Wheat Products Based on Tonnage Exported

Petitioners allege that in December 1994, the GOT introduced a program to

encourage exports of wheat flour. This program provides exporters of wheat flour $35 per ton, for up to 20 percent of the total value of the exports. Petitioners assert that because the program is available for one wheat product, wheat flour, it is likely to be provided also for other wheat-based products.

Petitioners based their allegation on information contained in the *1995 Annual Report of Grain and Feed*, prepared by the American Embassy in Ankara. This publication provides no evidence that pasta producers are eligible for benefits under this program. Therefore, we are not including this program in our investigation.

3. Rebates of Various Taxes Upon Exportation

Petitioners allege that the GOT imposes a three percent customs duty on imported durum wheat, a raw material used in the production of pasta. Manufacturers are allowed to claim duty drawback from the Customs and Excise Authority for customs duties levied on raw materials which are used in the manufacture of exported goods and packaging materials. Petitioners allege that this drawback may be the same program that was found countervailable in both *Aspirin* and *Pipe and Tube*. Petitioners acknowledge that during the 1980's the GOT reduced the rebate rates in line with current economic policies. However, petitioners assert that there is a lack of correlation between the taxes actually paid and amounts rebated, and therefore, the Department should investigate this program.

Although petitioners' public summary of its market research describes this program as a duty drawback program, petitioners' other sources refer to an export tax rebate program. To the extent that this is an export tax rebate, we note that one of the publications petitioners used to support their allegation indicates that tax rebate rates for exports were reduced during the 1980's, and in 1989 the rates were reduced to zero. In fact, we determined the export tax rebate program to be terminated for exports of aspirin to the United States in *Aspirin*. Moreover, because the *Pipe and Tube* and *Aspirin* investigations involved tax rebates, not duty drawback, we have no reason to believe or suspect that these programs are related.

Finally, to the extent that this is a duty drawback program, we do not consider duty drawback on inputs consumed in production of the exported product to be countervailable subsidies unless excessive. We have no basis to believe or suspect that the duty drawback is excessive. For the foregoing reasons, we are not including this program in our investigation.

4. Supplemental Tax Rebates

Petitioners allege that the GOT provides supplemental tax rebates to exporters that have annual exports of more than $2 million, with the rate of rebate increasing as the value of a company's annual exports increases. These supplemental tax rebates are provided in addition to the export tax rebates described in 3. above.

This program was found countervailable in *Aspirin*. However, we also determined in *Aspirin* that the program had been terminated for exports of aspirin to the United States. Further, as indicated above, one of petitioners' sources indicates that tax rebate rates for exports were reduced to zero in 1989. Given these circumstances, and given that we treated the Supplemental Tax Rebate program as related to the Export Tax Rebate program (discussed immediately above), petitioners have not provided a sufficient basis to believe that the Supplemental Tax Rebate program remains in existence. On this basis, we are not including this program in our investigation.

5. Foreign Exchange Risk Insurance Scheme

Petitioners allege that in 1984 the GOT established the Foreign Exchange Risk Insurance Scheme to encourage domestic producers to obtain financing for the importation of capital goods. This scheme allegedly provided insurance against foreign exchange losses which was not otherwise available in the market.

Because the program is aimed at importation of capital equipment, it does not appear to be limited to exporters or any industry or group of industries in particular. Since petitioners have provided no information which indicates that this program provides benefits to a specific enterprise or industry or group of enterprises or industries, we are not including this program in our investigation.

6. Provision of Wheat to Beslen

Petitioners assert that the GOT, through the Soil Crops Corporation ("TMO"), became a joint venture partner in pasta producer Beslen Makarna Gida Sanayi ve Ticaret ("Beslen"). In return for providing the company with a quantity of its durum wheat, TMO was given a 45 percent equity stake in the company. Petitioners request that the Department investigate this arrangement to determine whether the provision of durum wheat by TMO constitutes an equity infusion into an unequityworthy company. If the Department treats Beslen as equityworthy, petitioners request that the Department investigate whether the equity stake obtained by TMO was adequate remuneration for the quantity of wheat provided under the arrangement.

Petitioners have provided no basis for considering this transaction to involve a subsidy. Petitioners have simply asked the Department to investigate whether TMO made an equity infusion into an unequityworthy company, without providing any evidence that the government's investment was inconsistent with the usual investment practices of private investors, including the practice regarding the provision of risk capital in Turkey. Similarly, petitioners have asked the Department to investigate whether TMO paid adequate remuneration, without providing any evidence regarding this matter. Because petitioners have not provided sufficient evidence to support their allegations, we are not including the provision of wheat to Beslen in our investigation.

7. Aid From the European Union

Petitioners assert that Turkey is an associate member of the EU, and as such, is eligible for aid from the EU. Petitioners have provided the 1993 European Investment Bank Annual Report which lists amounts for loans and grant aid going to Turkey (as well as Syria, Egypt, Lebanon, and other Mediterranean countries).

We have established that Turkey is an associate member of the EU. However, associate members of the EU are not part of the customs union known as the EU. Benefits conferred upon Turkish products from entities outside Turkey do not constitute subsidies within the meaning of sections 701(a) and 771(3) of the Act (*see* also General Issues Appendix to *Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria* (58 FR 37217, 37233, July 9, 1993) ("*General Issues Appendix*")). On this basis, we are not including EU aid in our investigation.

8. Exemption From Mass Housing Fund Levy (Duty Drawback)

The GOT imposes a Mass Housing Fund levy on the importation of certain raw materials and finished or semifinished goods. For wheat, this levy amounted to $100 per metric ton. Petitioners have analyzed this part of the program as a duty drawback scheme.

Duty drawback on inputs consumed in the production process of exported products is not a subsidy, unless excessive. (See Agreement on Subsidies and Countervailing Measures, Annex I, item i of the Illustrative List). Because petitioners have not alleged that the duty drawback is excessive, we are not including the Mass Housing Fund Duty Drawback in our investigation. As noted earlier, however, we are initiating an investigation of the Mass Housing Fund Levy program which provides duty exemptions for pasta producers when importing durum wheat, regardless of whether the pasta is sold domestically or exported.

9. Employee Wage and Salary Tax Exemption (GIP/Regional Subsidies Programs)

Employees working in facilities constructed in First or Second Priority areas or in priority industries are partially exempt from income tax on their wages and salaries.

Section 355.44(j) of our Proposed Regulations (*see* also *General Issues Appendix*) states that the provision by a government of financial assistance to workers confers a countervailable benefit to the extent that such assistance relieves a firm of an obligation which it would normally incur. Since there is no indication that this program provides benefits to the employer and not the employee, we are not including this program in our investigation.

Creditworthiness

Petitioners assert that the Department should investigate whether the pasta producers in Turkey are creditworthy. Petitioners claim there is a lack of financial information available about the producers but that their analysis shows that Turkish producers are selling below cost in their home market. The existence of dumping margins based on a comparison of U.S. prices with the producers' cost of production shows that they are also not covering their costs in their largest export market.

The Department does not consider the creditworthiness of a firm absent a specific allegation by the petitioner which is supported by information establishing a reasonable basis to believe or suspect that the firm is uncreditworthy. This information would normally cover three years prior to the year in which the company is alleged to be uncreditworthy. Because petitioners have not provided sufficient evidence of the Turkish pasta producers' uncreditworthiness, we are not including a creditworthiness analysis in our investigation at this time.

Distribution of Copies of the Petition

In accordance with section 702(b)(4)(A)(i) of the Act, copies of the public version of the petition have been provided to the representatives of Italy and Turkey. We will attempt to provide copies of the public version of the petition to all the exporters named in the petition.

ITC Notification

Pursuant to section 702(d) of the Act, we have notified the ITC of these initiations.

Preliminary Determination by the ITC

The ITC will determine by June 26, 1995, whether there is a reasonable indication that an industry in the United States is being materially injured, or is threatened with material injury, by reason of imports from Italy and Turkey of pasta. Any ITC determination which is negative will result in the investigations being terminated; otherwise, the investigations will proceed according to statutory and regulatory time limits.

This notice is published pursuant to 702(c)(2) of the Act.

Dated: June 1, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–13984 Filed 6–7–95; 8:45 am]

BILLING CODE 3510–DS–P

[C–549–501]

Certain Circular Welded Carbon Steel Pipes and Tubes From Thailand: Preliminary Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Countervailing Duty Administrative Review.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the countervailing duty order on certain circular welded carbon steel pipe and tubes from Thailand. We preliminarily determine the net subsidy to be 0.23 percent *ad valorem* for Saha Thai Pipe and Tube Company (Saha Thai) and all other companies for the period January 1, 1993, through December 31, 1993. Because the net subsidy is *de minimis*, if the final results are the same as these preliminary results of administrative review, we will instruct U.S. customs to liquidate entries without regard to countervailing duties. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: June 8, 1995.

FOR FURTHER INFORMATION CONTACT: Stephen Lebowitz and Kelly Parkhill, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, Room B099, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone (202) 482–1503 or 482–4126, respectively.

SUPPLEMENTARY INFORMATION

Background

On August 14, 1985, the Department published in the **Federal Register** (50 FR 32751) the countervailing duty order on certain circular welded carbon steel pipes and tubes from Thailand. On August 3, 1994, the Department published a notice of "Opportunity to Request an Administrative Review" (59 FR 39543) of this countervailing duty order. We received a timely request from Saha Thai.

We initiated the review, covering the period January 1, 1993, through December 31, 1993, on September 16, 1994 (59 FR 47609). The review covers one manufacturer/exporter of the subject merchandise and nine programs. The final results of the last administrative review in this case were published October 9, 1991 (56 FR 50852).

Applicable Statute and Regulations

The Department is conducting this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act). Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

Scope of Review

On March 29, 1994, the Department clarified the Harmonized Tariff Schedule (HTS) numbers that were applicable to the subject merchandise (*see Memorandum to Susan Esserman from Susan Kuhbach*, available in the Central Records Unit, Room B099, Main Commerce Building). This clarification was necessary because of annual changes in the HTS. The scope now reads:

Imports covered in this review are shipments of circular welded carbon steel pipes and tubes (pipes and tubes) with an outside diameter of 0.375 inch or more but not over 16 inches, of any wall thickness. These products, commonly referred to in the industry as standard pipe or structural tubing, are produced to various ASTM specifications, most notably A–120, A–53 and A–135. During the review period, this merchandise was classified under item numbers 7306.30.10 and 7306.30.50 of the HTS. The HTS numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period January 1, 1993, through December 31, 1993.

Calculation Methodology for Assessment and Cash Deposit Purposes

We calculated the net subsidy on a country-wide basis by first calculating the subsidy rate for Saha Thai. As this was the only exporter of the subject merchandise, we used Saha Thai's rate as the country-wide rate. Since the country-wide rate calculated using this methodology was *de minimis*, as defined by 19 CFR § 355.7(1994), no further calculations were necessary.

Analysis of programs

I. Program Conferring Subsidies

Export Packing Credits

Export packing credits (EPCs) are short-term loans used for pre-shipment export financing. The loans are issued by commercial banks in baht for up to 180 days. The commercial banks are required to charge no more than a maximum interest rate of 10 percent *per annum* on the loan. Interest is paid on the due date of the loan. To obtain these loans, exporters issue promissory notes to the lending bank. The notes must be supported by an irrevocable letter of credit, a sales agreement, a purchase order, warehouse receipt, or issuance export bill. Commercial banks can lend up to the amount of the shipment. The commercial banks may rediscount 50 percent of the loan with the Bank of Thailand (BOT). On the date the loan is due, the BOT debits the commercial bank's account for the principal and the interest due. The commercial bank, in turn, debits the exporter's account or extends further credit at negotiated, commercial rates to the exporter.

If the exporter fails to export the total value of the goods by the due date, the BOT automatically charges the commercial bank a penalty retroactive to the first day of the loan. In case of non-performance by the exporter on the due date of the loan, this penalty is passed on to the exporter. During the period of review (POR), the penalty interest rate was 6.5 percent *per annum* on the entire loan. This penalty is forgiven and the exporter receives the EPC preferential rate if it makes the export shipment or receives payment in foreign currency for the product within 60 days after the due date of the promissory note. Because EPCs are available only to exporters, they are countervailable to the extent that the loans are provided at preferential rates.

To determine whether the loans are preferential, we ordinarily use as the benchmark the interest rate for the predominant source of short-term financing in the country in question. Where there is no single, predominant source of short-term financing, we may use a benchmark composed of the interest rates for two or more sources of short-term financing in the country in question, weighted, whenever possible, according to the value of the financing granted by each source. In *Final Countervailing Duty Determination and Countervailing Duty Order: Steel Wire Rope from Thailand* (56 FR 46299; Sept. 11, 1991) (*Steel Wire Rope*), the Department concluded that the minimum loan rate (MLR) and the minimum overdraft rate (MOR) as reported in the BOT Quarterly Bulletin are more representative of the prevailing short-term interest rates in Thailand than the rates used in previous cases. Based on that determination and on the recent United States Court of International Trade (CIT) decision in *Royal Thai Government and TTU Industrial Corp.* v *United States*, 850 F. Supp. 44 (CIT 1994), which said that the average rate of the MLR and MOR rates was the appropriate benchmark for short term loans, we are using the average of the 1993 MLR and MOR rates as reported in the BOT Quarterly Bulletin for 1993. That rate was 11.18 percent, which exceeded the maximum interest rate on EPCs of 10 percent. Therefore, we preliminarily determine that EPC loans are preferential.

To calculate the benefit provided to Saha Thai, currently the only known producer/exporter of the subject merchandise,[1] by the EPC loans during the POR, we compared the amount of interest actually paid to the amount that would have been paid at the benchmark rate. During the verification of the 1992 administrative review, we noted that the company had to specify the destination of the merchandise in order to receive the EPC loans. (*See, Certain Circular Welded Carbon Steel Pipes and Tubes From Thailand: Preliminary Results of Countervailing Duty Administrative Review* (60 FR 15901; March 28, 1995).) Because Saha Thai had to specify the destination of the subject merchandise for approval and because they exported only the subject merchandise to the United States, we divided the benefit by its total exports of the subject merchandise to the United States to arrive at a net bounty or grant of 0.23 percent *ad valorem*.

[1] S.A.F. is an export trading company that is related to Saha Thai that began operations in 1993. All pipe exported by S.A.F. is produced by Saha Thai. We are treating the two companies as one corporate entity for purposes of our calculations.

II. Programs Preliminary Found Not To Be Used

We also examined the following programs and preliminarily determine that Saha Thai did not apply for or receive benefits under these programs for the review period.

1. Tax Certificates for Exporters
2. Electricity Discounts for Exporters
3. Tax and Duty Exemptions Under Section 28 of the Investment Promotion Act
4. Repurchase of Industrial Bills
5. Export Processing Zones
6. International Trade Promotion Fund/ Export Promotion Fund
7. Reduced Business Taxes for Producers of Intermediate Goods for Export Industries
8. Additional Incentives under the IPA.

Preliminary Results of Review

For the period of January 1, 1993, through December 31, 1993, we preliminarily determine the net subsidy to be 0.23 percent *ad valorem* for all exporters and producers of pipe and tube from Thailand. In accordance with 19 CFR § 355.7, any rate less than 0.5% *ad valorem* is *de minimis*.

If the final results of this review remain the same as these preliminary results, the Department intends to instruct the U.S. Customs Service to liquidate, without regard to countervailing duties, all shipments of the subject merchandise from Thailand exported on or after January 1, 1993, and on or before December 31, 1993.

The Department intends to instruct the Customs Service to collect cash deposits of zero percent *ad valorem* of the f.o.b. invoice price on all shipments of this merchandise entered, or withdrawn from the warehouse, for consumption on or after the date of publication of the final results of this administrative review.

Parties to the proceeding may request disclosure of the calculation methodology and interested parties may request a hearing not later than 10 days after the date of publication of this written notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Any hearing, if requested, will be held seven days after the

scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 355.38(e).

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 355.38(c), are due. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

The administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: May 26, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–13983 Filed 6–7–95; 8:45 am]

BILLING CODE 3510–DS–P

[Docket Number 950531143–5143–01]

International Buyer Program (Formerly Known as the Foreign Buyer Program); Support for Domestic Trade Shows

AGENCY: International Trade Administration, Commerce.

ACTION: Notice and Call for Applications for the FY'97 International Buyer Program (October 1, 1996, through September 30, 1997).

SUMMARY: This notice sets forth objectives, procedures and application review criteria associated with the U.S. Department of Commerce's International Buyer Program (IBP), formerly known as the Foreign Buyer Program, to support domestic trade shows: Selection in the International Buyer Program for Fiscal Year 1997.

The International Buyer Program was established to bring international buyers together with U.S. firms by promoting leading U.S. trade shows in industries with high export potential. The International Buyer Program emphasizes cooperation between the U.S. Department of Commerce (DOC) and trade show organizers to benefit U.S. firms exhibiting at selected events and provides practical, hands-on assistance to U.S. companies interested in exporting such as export counseling and market analysis. The assistance provided to show organizers includes worldwide overseas promotion of selected shows to potential international buyers, end-users, representatives and distributors. The worldwide promotion is executed through the offices of the Commerce Department's Commercial Service of the United States of America (Commercial Service), formerly referred to as United States and Foreign Commercial Service, in 69 countries representing America's major trading partners, and also through U.S. Embassies in countries where the Commercial Service does not maintain offices. The Department expects to select approximately 22 shows for FY97 from among applicants to the program. Shows selected for the International Buyer Program will provide a venue for U.S. companies interested in expanding their sales into international markets. Successful applicants will be required to enter into a Memorandum of Understanding (MOU) that sets forth the specific actions to be performed by the show organizer and the DOC. The MOU constitutes a participation agreement between the DOC and the show organizer specifying which services are to be rendered by DOC as part of the IBP and, in turn, what responsibilities must be assumed by the show organizer. Anyone wishing to apply will be sent a copy of the MOU along with the application package. The services to be rendered by DOC will be carried out by the Commercial Service of the United States of America unless otherwise indicated.

DATES: Applications must be received within July 24, 1995. A contribution of $5,000 is required for each show selected by the IBP for inclusion in the FY97 program.

ADDRESSES: Export Promotion Services/International Buyer Program, Commercial Service of the United States of America, International Trade Administration, U.S. Department of Commerce, Room 2116, 14th and Constitution Avenue, N.W., Washington, D.C. 20230. Telephone: (202) 482–0481 (Facsimile applications will not be accepted.)

FOR FURTHER INFORMATION CONTACT: Contact Jim Boney, Product Manager, International Buyer Program, Room 2116, Export Promotion Services, U.S. and Foreign Commercial Service, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230. Telephone: (202) 482–0481 or Fax: (202) 482–0115.

SUPPLEMENTARY INFORMATION: The International Trade Administration (ITA) of the U.S. Department of Commerce is accepting applications for the International Buyer Program (IBP) for events taking place between October 1, 1996, and September 30, 1997.

Under the IBP, the Department seeks to bring international buyers together with U.S. firms by selecting and promoting in international markets domestic trade shows in industries with high export potential. Selection of a trade show is one-time, i.e., a trade show organizer seeking selection for a recurring event must submit a new application for selection for each occurrence of the event. If the event occurs more than once in the 12-month period covering this announcement, the trade show organizer must submit a separate application for each event.

The Department will select approximately 22 events to support during this 12-month period. The Department will select those events that, in its judgment, most clearly meet the Department's objectives and selection criteria mentioned below.

Selection indicates that the Department has found the event to be a leading international trade show appropriate for participation by U.S. exporting firms and promotion in overseas markets by U.S. Embassies and Consulates. Selection does not constitute a guarantee by the U.S. Government of the show's success. Selection is not an endorsement of the show organizer except as to its International Buyer Program activities. Non-Selection should not be viewed as a finding that the event will not be successful in the promotion of U.S. exports.

Exclusions

Trade shows that are either first-time or horizontal (non-industry specific) events will not be considered. Annual trade shows will not be selected for this program more than twice in any three-year period (e.g., shows selected for fiscal years 1995 and 1996 are not eligible for inclusion in this program in fiscal year 1997, but can be considered in subsequent years).

The Office of Management and Budget has approved the information collection requirements of the application to this program under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et. seq.) (OMB control no. 0625–0151 approved for use through 10/31/97).

General Selection Criteria

Subject to Departmental budget and resource constraints, those events will be selected that, in the judgment of the Department, most clearly meet the following criteria:

(a) Export Potential

The products and services to be promoted at the trade show are from U.S. industries that have high export potential, as determined by U.S. Department of Commerce sources, i.e., best prospects lists and U.S. export statistics. (Certain industries are rated as priorities by our domestic and international commercial officers in their Country Commercial Guides.)

(b) International Interest

The trade show meets the needs of a significant number of overseas markets covered by the Commercial Service and corresponds to marketing opportunities as identified by the posts in their Country Commercial Guides (e.g., best prospects lists). Previous international attendance at the show may be used as an indicator.

(c) Scope of the Show

The trade show offers a broad spectrum of U.S. made products and/or services for the subject industry. Trade shows with a majority of U.S. firms will be given preference.

(d) Stature of the Show

The trade show is clearly recognized by the industry it covers as a leading event for the promotion of that industry's products and services both domestically and internationally and as a showplace for the latest technology or services in that industry.

(e) Exhibitor Interest

There is demonstrated interest on the part of U.S. exhibitors in receiving international business visitors during the trade show. A significant number of these exhibitors should be new-to-export or seeking to expand sales into additional international markets.

(f) Overseas Marketing

There has been demonstrated effort made to market prior shows overseas. In addition, the applicant should describe in detail the international marketing program to be conducted for the event, explaining how efforts should increase individual and group international attendance.

(g) Logistics

The trade show site, facilities, transportation services and availability of accommodations are in the stature of an international-class trade show.

(h) Cooperation

The applicant demonstrates willingness to cooperate with the Commercial Service of the United States of America to fulfill the program's goals and to adhere to target dates set out in the Memorandum of Understanding and the event timetable, both of which are available from the program office.

Past experience in the IBP will be taken into account in evaluating current applications to the program.

Authority: The statutory authority authorizing the Department to provide the type of assistance contemplated under the International Buyer Program is 15 U.S.C. 4724.

John Klinglehut,

Acting Director, Office of Public/Private Initiatives, Commercial Service of the United States of America, International Trade Administration, U.S. Department of Commerce.

[FR Doc. 95–14033 Filed 6–7–95; 8:45 am]

BILLING CODE 3510–25–P

National Oceanic and Atmospheric Administration

Notice of Closure Areas To Conduct Restoration Activities in the Key Largo National Marine Sanctuary, Within the Florida Keys National Marine Sanctuary

AGENCY: Sanctuaries and Reserves Division (SRD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) will temporarily close to public access two specified areas of the Key Largo National Marine Sanctuary (KLNMS), within the Florida Keys National Marine Sanctuary (FKNMS) between June 15 to September 15, 1995. The areas will be closed in order for NOAA, the U.S. Army Corps of Engineers (COE), and authorized contractors to conduct construction restoration activities to restore coral reefs and associated Sanctuary resources injured or destroyed as a result of the M/V *Elpis* and M/V *Alec Owen Maitland* grounding incidents, which occurred on October 25, and November 11, 1989, respectively. During the period for which the areas are closed, public access will be prohibited in order to efficiently allow and implement restoration and recovery activities, and to ensure protection of life and property during these complex construction activities.

FOR FURTHER INFORMATION CONTACT: Dr. Charles M. Wahle, Chief, Technical Projects Branch, Sanctuaries and Reserves Division, National Oceanic and Atmospheric Administration, 1305 East West Highway, SSMC4, 12th Floor, Silver Spring, Maryland 20910, 301–713–3141.

SUPPLEMENTARY INFORMATION: In accordance with the National Marine Sanctuaries Act (NMSA), Florida Keys National Marine Sanctuary and Protection Act (FKNMSPA), and particularly the KLNMS regulations at 15 CFR Part 929.7(b), NOAA will temporarily close to public access specified areas of the KLNMS, within the FKNMS.

Background

On October 25, and November 11, 1989, two large freighters grounded within the KLNMS, now part of the KFNMS. These groundings, as well as subsequent attempts by the operators to free the vessels from the reef, resulted in significant injuries to the reef substrate and resident marine organisms. Coral colonies, sponges and sea fans at the site were destroyed and attempts to free the vessels created holes in the reef's surface. In addition, the resulting debris continues to threaten living resources in the vicinity of the grounding site. Since the groundings, the excavations have expanded and will continue to do so in the absence of restoration efforts.

Section 312 of the NMSA authorizes NOAA to pursue civil actions to recover response costs and damages from parties who destroy, cause the loss of, or injury Sanctuary resources. Damage claims include, among other things, the cost of restore, replace, or acquire the equivalent of destroyed, lost or injured Sanctuary resources; the value of lost uses pending recovery of Sanctuary resources; the cost of conducting damage assessments; and the reasonable costs of monitoring. NOAA pursued natural resource damage actions under the NMSA to recover costs and damages from the responsible parties in order to restore the damaged reefs. The two grounding cases were settled in 1991 and the recovered monies are being used by NOAA to fund the coral reef restoration efforts.

NOAA, COE and authorized contractors will implement coral reef restoration work at the two grounding sites/Closure Areas in the KLNMS. The first phase of this project will be to stabilize the damaged reef habitat and re-create the overall physical structure of the coral reef surface, thereby enhancing rates of recovery of the coral communities that exited prior to the groundings.

At Closure Area 1, 40 large, pre-cast concrete structures will be placed over

the unstable excavations in the reef's surface which were caused by these groundings, and then cemented together. At Closure Area 2, quarried limestone boulders will be placed in large blow holes and sand poured around the boulders to form a continuous natural surface. These structures will recreate typical three-dimensional habitat relief and act as a stable, natural framework on which coral may be transplanted and coral larvae can colonize, thereby increasing the habitat value of the area.

Section 929.7(b) of the KLNMS regulations provide for closing to public use the KLNMS, or certain areas therein, in the event of emergency conditions endangering life or property, and/or to permit recovery of the living resources from overuse, or provide scientific research relating to protection and management. NOAA has deemed it necessary to close these two areas to public use to efficiently implement coral reef restoration and recovery activities and to ensure the protection of life and property during the conduct of such activities. Heavy construction materials and equipment (e.g., barges and cranes, concrete structures, and boulders) will be used at both sites to conduct the coral reef restoration activities. Consequently, it is necessary to secure a work area that adequately protects persons working on the site and the general public, as well as the equipment used to conduct the coral reef restoration activities. However, to minimize disruption of public access to the area, NOAA will close only the amount of area necessary to complete these coral reef restoration activities, including buffer zones to moor support vessels and provide an extra margin of public safety. Furthermore, these areas will be closed no longer than necessary to complete the coral restoration activities.

Locations and Boundaries of Closure Areas

The two Closure Areas are located approximately 5.6 nautical miles offshore northern Key Largo, or 40 nautical miles south-southwest of Government Cut at Miami Beach. The total area of the two Closure Areas consists of approximately one-half of a square nautical mile (snm), or one-quarter snm per site. The total area closed includes less than one percent of the total area of the KLNMS. The boundary of these exclusion areas will be marked by visible buoys.

Closure Area 1 (*Maitland* site) is approximately 1.5 nautical miles south-southwest of the Carysfort Light. Closure Area 1 is bounded by the following coordinates:

	State Plane Coordinates		Latitude	Longitude
	Northing	Easting		
A	316,430 N	755,480 E	25° 12′ 9.0″ N	80° 13′ 37.6″ W
B	315,705 N	756,810 E	25° 12′ 1.8″ N	80° 13′ 23.2″ W
C	314,380 N	756,085 E	25° 11′ 48.7″ N	80° 13′ 31.1″ W
D	315,105 N	754,770 E	25° 11′ 56.0″ N	80° 13′ 45.4″ W

Closure Area 2 (*Elpis* site) is approximately 0.25 nautical miles east-northeast of the Elbow Reef Light. Closure Area 2 is bounded by the following coordinates:

	State Plane Coordinates		Latitude	Longitude
	Northing	Easting		
E	296,955 N	746,345 E	25° 8′ 56.7″ N	80° 15′ 18.3″ W
F	297,860 N	747,410 E	25° 9′ 5.6″ N	80° 15′ 6.6″ W
G	296,840 N	748,265 E	25° 8′ 55.4″ N	80° 14′ 57.3″ W
H	295,675 N	746,880 E	25° 8′ 43.9″ N	80° 15′ 12.5″ W
I	296,310 N	746,340 E	25° 8′ 50.3″ N	80° 15′ 18.3″ W

Time frame

Closure Areas 1 and 2 will be closed to public access from June 15 to September 15, 1995. Notice of the removal of the Closure Areas restriction will be issued by NOAA once coral reef restoration activities are completed.

Penalties

Pursuant to the NMSA, regulations at 15 CFR Part 922, and KLNMS regulations at 15 CFR § 929.9, any violation of the NMSA or regulations, including unauthorized entry into the Closure Areas, is subject to a Maximum civil penalty of $100,000 per violation per day. Furthermore, the NMSA and regulations authorize a proceeding *in rem* against any vessel used in violation of any such regulation.

Section 929.7(b) of the LKNMS regulations provides that public notice of closures will be provided through local news media and posting of placards at the John Pennekamp Coral Reef State Park, if deemed necessary. In addition to providing notice in the **Federal Register**, NOAA will provide public notice of the closures in a notice to mariners, local newspaper notices, bulletin boards, and brochures.

Dated: June 2, 1995.

W. Stanley Wilson,

Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 95–14070 Filed 6–7–95; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.083]

Women's Educational Equity Act Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1995

Purpose of Program: To promote gender equity in education; to promote equity in education for women and girls who suffer from multiple forms of discrimination based on sex and race, ethnic origin, limited English proficiency, disability or age; and to provide financial assistance to enable educational agencies to meet the requirements of title IX of the Education Amendments of 1972.

Eligible Applicants: Public agencies, private nonprofit agencies, organizations, institutions, student groups, community groups, and individuals.

Deadline for Transmittal of Applications: July 24, 1995.

Deadline for Intergovernmental Review: September 22, 1995.

Applications Available: June 19, 1995.

Available Funds: $3.2 million.

Estimated Range of Awards: Implementation Grants: $210,000–$310,000; Research and Development Grants: $80,000–$200,000.

Estimated Average Size of Awards: Implementation Grants: $260,000; Research and Development Grants: $140,000.

Estimated Number of Awards: Implementation Grants: 10; Research and Development Grants: 4.

Note: The Department is not bound by any estimates in the notice.

Project Period: Up to 48 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86.

SUPPLEMENTARY INFORMATION: The Department will award two types of grants: (1) grants for the *implementation* of gender equity programs in schools; and (2) *research and development* grants to develop model equity programs. Examples of authorized activities under the program include—

Implementation Grants

(a) Assisting educational agencies and institutions to implement policies and practices to comply with title IX of the Education Amendments of 1972;

(b) Training for teachers, counselors, administrators, and other school personnel, especially preschool and elementary school personnel, in gender-equitable teaching and learning practices;

(c) Leadership training for women and girls to develop professional and marketable skills to compete in the global marketplace, improve self-esteem, and benefit from exposure to positive role models;

(d) School-to-work transition programs, guidance and counseling activities, and other programs to increase opportunities for women and girls to enter a technologically demanding workplace and, in particular, to enter highly skilled, high-paying careers in which women and girls have been underrepresented;

(e) Enhancing educational and career opportunities for those women and girls who suffer multiple forms of discrimination, based on sex and on race, ethnic origin, limited-English proficiency, disability, socioeconomic status, or age;

(f) Assisting pregnant students and students rearing children to remain in or to return to secondary school, graduate, and prepare their preschool children to start school;

(g) Evaluating exemplary model programs to assess the ability of such programs to advance educational equity for women and girls;

(h) Introduction into the classroom of textbooks, curricula, and other materials designed to achieve equity for women and girls;

(i) Programs and policies to address sexual harassment and violence against women and girls and to ensure that educational institutions are free from threats to the safety of students and personnel;

(j) Nondiscriminatory tests of aptitude and achievement and of alternative assessments that eliminate biased assessment instruments from use;

(k) Programs to increase educational opportunities, including higher education, vocational training, and other educational programs for low-income women, including underemployed and unemployed women, and women receiving Aid to Families with Dependent Children benefits;

(l) Programs to improve representation of women in educational administration at all levels; and

(m) Planning, development, and initial implementation of—

(i) Comprehensive institution or districtwide evaluation to assess the presence or absence of gender equity in educational settings;

(ii) Comprehensive plans for implementation of equity programs in State and local educational agencies and institutions of higher education, including community colleges; and

(iii) Innovative approaches to school-community partnerships for educational equity.

Research and Development Activities

(a) Research and development of innovative strategies and model training programs for teachers and other education personnel;

(b) The development of high-quality and challenging assessment instruments that are nondiscriminatory;

(c) The development and evaluation of model curricula, textbooks, software, and other educational materials to ensure the absence of gender stereotyping and bias;

(d) The development of instruments and procedures that employ new and innovative strategies to assess whether diverse educational settings are gender equitable;

(e) The development of instruments and strategies for evaluation, dissemination, and replication of promising or exemplary programs designed to assist local educational agencies in integrating gender equity in their educational policies and practices;

(f) Updating high-quality educational materials previously developed through Women's Educational Equity Act grants;

(g) The development of policies and programs to address and prevent sexual harassment and violence to ensure that educational institutions are free from threats to safety of students and personnel;

(h) The development and improvement of programs and activities to increase opportunity for women, including continuing educational activities, vocational education, and programs for low-income women, including underemployed and unemployed women, and women receiving Aid to Families with Dependent Children; and

(i) The development of guidance and counseling activities, including career education programs, designed to ensure gender equity.

Selection Criteria

The selection criteria for implementation grants and research and development grants, respectively, are included, in full, in the WEEA application package. These selection criteria were established based on the Department's Notice of Optional Procedure for Conducting Fiscal Year 1995 Grant Competitions Under the Improving America's Schools Act of 1994, which was published in the **Federal Register** on March 7, 1995.

The respective criteria provide that the Secretary may award up to 100 points for the selection criteria for that competition. The selection criteria for each competition include all the EDGAR selection criteria in 34 CFR 75.210. The Secretary has also established the following additional selection criteria for the respective competitions by assigning the number of points indicated to particular WEEA statutory provisions identified below. The Secretary awards points under these criteria according to how well the applicant addresses the statutory provision:

Additional Implementation Grant Criteria

(a) *Project as a component of a comprehensive plan*—20 U.S.C. 7235(a)(2)(C)—(5 points).

(b) *Implementing an institutional change strategy*—20 U.S.C. 7235(a)(2)(D)—(5 points).

(c) *Meeting local needs*—20 U.S.C. 7235(a)(2)(B)—(5 points).

Additional Research and Development Grant Criteria

(a) *Addressing multiple discrimination*—20 U.S.C. 7235(a)(2)(A)—(5 points).

(b) *Addressing issues of national significance*—20 U.S.C. 7235(b)(3)(D)—(5 points).

Priorities

Under 34 CFR 75.105(c)(1) and 20 U.S.C. 7235, the Secretary invites and encourages applications that meet the following invitational priorities for implementation grant and research and development grant competitions, respectively. The Secretary is particularly interested in applications that meet these priorities. However, an application that meets the respective invitational priority does not receive competitive or absolute preference over other applications.

Implementation Grants

Projects that address the educational needs of women and girls who suffer multiple or compound discrimination based on sex and on race, ethnic origin, disability, or age.

Research and Development Grants

Projects to update high-quality educational materials developed through previous WEEA grants. These products are identified and described in the WEEA application package.

Note: In funding projects to update previously developed materials, the Department will utilize its license under 34 CFR 74.145 and 80.34 to use, and authorize others to use, copyrighted material for Federal Government purposes. These purposes include implementing WEEA's statutory authorization to develop, maintain, and disseminate materials and resources relating to education equity for women and girls and to update education materials previously developed through WEEA grants. In addition, the Department expects to fund only one project to update any individual WEEA product.

FOR APPLICATIONS OR INFORMATION CONTACT: Carrolyn N. Andrews, U.S. Department of Education, 600 Independence Avenue, SW., Portals Room 4500, Washington, DC 20202–6140. Telephone (202) 260–2670. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 20 U.S.C. 7231–7238.

Dated: June 1, 1995.

Thomas W. Payzant,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 95–14009 Filed 6–7–95; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM95–3–49–000]

Williston Basin Interstate Pipeline Co.; Notice of Annual Take-or-Pay Reconciliation Filing

June 2, 1995.

Take notice that on May 31, 1995, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing its Annual Take-or-Pay Reconciliation Filing pursuant to Sections 36 and 37 of the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1, more specifically, Williston Basin filed the following tariff sheets:

Primary: Second Revised Volume No. 1

Eleventh Revised Sheet No. 15
Fourteenth Revised Sheet No. 16
Eleventh Revised Sheet No. 18
Tenth Revised Sheet No. 21
Second Revised Sheet No. 308
Second Revised Sheet No. 320
Second Revised Sheet No. 321

Original Volume No. 2

Fifty-seventh Revised Sheet No. 11B

Williston Basin has requested that the Commission accept this filing to become effective July 1, 1995.

Williston Basin states that the revised tariff sheets are being filed to reflect recalculated fixed monthly surcharges and revised throughput surcharges to be effective during the period July 1, 1995 through June 30, 1996 pursuant to the procedures contained in Sections 36 and 37 of the General Terms and Conditions of Williston Basin's FERC Gas Tariff, Second Revised Volume No. 1.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before June 9, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–14031 Filed 6–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM95–3–86–000]

Pacific Gas Transmission Co.; Notice of Change in Rates

June 2, 1995.

Take notice that on May 31, 1995, Pacific Gas Transmission Company (PGT) tendered for filing and acceptance proposed tariff sheets to be a part of its FERC Gas Tariff, First Revised Volume No. 1–A and Second Revised Volume No. 1.

PGT requests these tariff sheets become effective on July 1, 1995.

PGT further states that it is submitting these tariff sheets to comply with Paragraphs 37 and 23 of the terms and conditions of First Revised Volume No. 1–A and Second Revised Volume No. 1, respectively of its FERC Gas Tariff, "Adjustment for Fuel, Line Loss and Other Unaccounted For Gas Percentages." These tariff changes reflect the new fuel and line loss surcharge percentage to become effective July 1, 1995. Also included, as required by Paragraphs 37 and 23, are workpapers showing the derivation of the current fuel and line loss percentage in effect for each month the fuel tracking mechanism has been in effect.

PGT further states that a copy of this filing has been served on PGT's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 9, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–14030 Filed 6–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–528–000]

ANR Storage Co., Notice of Request Under Blanket Authorization

June 2, 1995.

Take notice that on May 26, 1995, ANR Storage Company (ANR) 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP95–528–000, a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to add and operate a delivery point (the Rapid River Delivery Point) in Rapid River Township, Kalkaska County, Michigan under the blanket certificate issued in Docket No. CP82–523–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

ANR proposes to add the Rapid River Delivery Point where ANR is currently physically interconnected with ANR Pipeline Company in the Township of Rapid River. ANR relates that the interconnect was authorized by a May 1, 1992, Commission order in Docket No. CP91–2705–000. ANR states that it does not propose to increase its maximum authorized storage deliveries, abandon any service, nor construct any new facilities. ANR states that the gas delivered or redelivered at the proposed new delivery point will be measured by measuring equipment owned by ANR Pipeline Company. ANR asserts that the new delivery point will not impact the storage services ANR currently provides to its existing customers other than to offer ANR's current and future customers the additional flexibility of another delivery point to deliver gas for storage or withdraw gas from storage.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–14029 Filed 6–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–529–000]

Northwest Pipeline Corp.; Notice of Request Under Blanket Authorization

June 2, 1995.

Take notice that on May 26, 1995, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed in Docket No. CP95–529–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate delivery point facilities in Franklin County, Washington, to accommodate deliveries of natural gas to Cascade Natural Gas Corporation (Cascade), under Northwest's blanket certificate issued in Docket No. CP82–433–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northwest proposes to construct and operate the North Pasco Meter Station to accommodate the delivery of approximately 263 dt equivalent of gas per day. It is stated that the design capacity of the meter station would permit Northwest to deliver up to 1,700 dt equivalent of gas per day to Cascade. It is further stated that Northwest is authorized to transport gas for Cascade under the terms of its Rate Schedule TF–1. The construction cost of the facilities is estimated at approximately $365,100. It is asserted that the new facilities are required to serve new residential and commercial customers in Franklin County. It is further asserted that no significant impact on Northwest's peak day deliveries will result from the proposed construction of the North Pasco Meter Station.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–14028 Filed 6–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–312–000]

KN Interstate Gas Transmission Co., Notice of Proposed Changes in FERC Gas Tariff

June 2, 1995.

Take notice that on May 31, 1995, KN Interstate Gas Transmission Co. (KN Interstate) tendered for filing certain revised tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1–A. KN Interstate requests that the tendered sheets be accepted for filing and permitted to become effective on June 1, 1995.

KN Interstate states that the purpose of its filing is to comply with the Commission's Order Issued May 2, 1995 in Docket No. CP95–187–000 and with its commitment to its customers pursuant to its settlement in its most recent rate case in Docket No. RP94–93–000. In the instant filing, KN Interstate submits rate revisions which reduce its open access storage, SCS and no notice rates by removing from its rates the costs associated with the storage facilities which are being abandoned pursuant to authority granted in Docket No. CP95–187–000. In addition, KN Interstate submits revised tariff sheets removing references to the storage fields which are being abandoned.

KN Interstate states that a copy of its filing was served on all storage customers and on all interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission; 825 North Capitol Street NE, Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 9, 1995. Protests will be considered

by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–14026 Filed 6–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–313–000]

Northern Natural Gas Co.; Notice of Proposed Changes in FERC Gas Tariff

June 2, 1995.

Take notice that on May 31, 1995, Northern Natural Gas Company (Northern), tendered for filing changes in its FERC Gas Tariff, Fifth Revised Volume No. 1.

Northern states that the filing revises the current Stranded Account No. 858 surcharge, which is designed to recover costs incurred by Northern related to its contracts with third-party pipelines. Therefore, Northern has filed 1 Rev Seventeenth Revised Sheet Nos. 50 and 51 to revise this surcharge effective July 1, 1995.

Northern states that copies of this filing were served upon the Company's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 9, 1995. All protests will be considered by the Commission in determining the appropriate action to be taken in this proceeding, but will not serve to make protestant a party to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–14025 Filed 6–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–315–000]

ANR Pipeline Co.; Notice of Proposed Changes in FERC Gas Tariff

June 2, 1995.

Take notice that on May 31, 1995, ANR Pipeline Company (ANR), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with a proposed effective date of June 1, 1995:

Eighth Revised Sheet No. 8
Tenth Revised Sheet No. 9
Tenth Revised Sheet No. 13
Tenth Revised Sheet No. 16
Eleventh Revised Sheet No. 18

ANR states that the above-referenced tariff sheets are being filed pursuant to the approved recovery mechanism of its Tariff to implement recovery of $9.2 million of costs that are associated with its obligations to Dakota Gasification Company (Dakota). ANR proposes a reservation surcharge applicable to its Part 284 firm transportation customers to collect ninety percent (90%) of the Dakota costs and an adjustment to the maximum base tariff rates of Rate Schedule ITS and overrun rates applicable to Rate Schedule FTS–2 so as to recover the remaining ten percent (10%).

ANR states that the filing also reflects an update to the Eligible MDQ used to calculate the reservation surcharge, as required by ANR's tariff.

ANR states that all of its Volume No. 1 customers and interested State Commissions have been mailed a copy of this filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests must be filed on or before June 9, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–14024 Filed 6–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–316–000]

ANR Pipeline Co.; Notice of Proposed Changes in FERC Gas Tariff

June 2, 1995.

Take notice that on May 31, 1995, ANR Pipeline Company (ANR), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets:

Twelfth Revised Sheet No. 18
Third Revised Sheet No. 177
Second Revised Sheet No. 180
Third Revised Sheet No. 181

ANR states that the above-referenced tariff sheets are being filed to restate its currently effective Gas Supply Realignment (GSR) and Pricing Differential (PD) Reservation Surcharges, to reflect the impact of the annual update of the Eligible MDQ that is used to calculate those Surcharges, and to make a change to its existing tariff mechanism to incorporate a permanent change to the timing of all such subsequent update filings. ANR has requested that the Commission accept the tendered sheets to become effective June 1, 1995.

ANR states that all of its Volume No. 1 FERC Gas Tariff customers and interested State Commissions have been mailed a copy of this filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such motions or protests should be filed on or before June 9, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of the application are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–14023 Filed 6–7–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–317–000]

ANR Pipeline Co.; Notice of Proposed Changes in FERC Gas Tariff

June 2, 1995.

Take notice that on May 31, 1995, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheet, proposed to be effective July 1, 1995:

Second Revised Sheet No. 179

ANR states that the above-referenced tariff sheet is being filed to extend by two years ANR's pricing differential mechanism.

ANR states that all of its Volume No. 1 customers and interested State Commissions have been mailed a copy of this filing.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before June 9, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone wishing to become a party to the proceeding must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–14022 Filed 6–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–318–000]

Williston Basin Interstate Pipeline Co.; Notice of Proposed Changes in FERC Gas Tariff

June 2, 1995.

Take notice that on May 31, 1995, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing a revised tariff sheet to Second Revised Volume No. 1 of its FERC Gas Tariff.

Williston Basin states that the revised tariff sheet is being submitted to effectuate the termination of small customer transportation service to Frannie–Deaver Utilities Company and to eliminate such reference from Rate Schedule ST–1.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before June 9, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–14021 Filed 6–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–319–000]

Iroquois Gas Transmission System, L.P.; Notice of Proposed Changes in FERC Gas Tariff

June 2, 1995.

Take notice that on May 31, 1995, Iroquois Gas Transmission, System, L.P. (Iroquois) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets, with a proposed effective date of June 1, 1995:

First Revised Tariff Sheet No. 93
First Revised Tariff Sheet No. 94

Iroquois states that the purpose of the proposed changes is to bring its tariff into conformity with recent regulatory changes promulgated by the Commission in Order No. 577, revising 18 CFR 284.243(h), which provides for limited exemptions to the advance posting and bidding requirements of the Commission's capacity release regulations. Specifically, these revised tariff sheets; (i) permit shippers to enter into pre-arranged releases of one calendar month or less without complying with the advance posting and bidding requirements; (ii) allow a releasing customer to make another exempt release to a replacement customer 28 days after the previous exempt release; and (iii) provide that Iroquois will post notice of an exempt transaction at the maximum rate as soon as possible, but not later than 48 hours after the release transaction commences.

Iroquois states that copies of this filing were served upon all jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such petitions or protests should be filed on or before June 9, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–14020 Filed 6–7–95; 8:45am]

BILLING CODE 6717–01–M

[Docket No. RP95–320–000]

Northwest Pipeline Corp.; Notice of Account No. 191 Report

June 2, 1995.

Take notice that on May 31, 1995, Northwest Pipeline Corporation (Northwest) tendered for filing with the Federal Energy Regulatory Commission an Account No. 191 report pursuant to Section 28.7(c) of the General Terms and Conditions of Northwest's FERC Gas Tariff, Third Revised Volume No. 1. Northwest states that Section 28.7(c) requires Northwest to file a report with the Commission within 60 days of the amortization period pertaining to the Account No. 191 payments by Conversion Customers (as defined in Section 28.3 of Northwest's General Terms and Conditions) showing the total amounts billed to each customer and containing workpapers supporting the amounts billed and paid by each customer.

Northwest states that a copy of this filing has been served upon Northwest's Conversion Customers and interested state regulatory commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 9, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–14019 Filed 6–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–322–000]

El Paso Natural Gas Co.; Notice of Tariff Filing

June 2, 1995.

Take notice that on May 31, 1995, El Paso Natural Gas Company (El Paso) tendered for filing pursuant to Part 154 of the Federal Energy Regulatory Commission's Regulations Under the Natural Gas Act Second Revised Sheet No. 254 to its Second Revised Volume No. 1–A Tariff.

El Paso states that the tendered tariff sheet proposes to revise certain tariff provisions applicable to its Gas Research Institute (GRI) Funding Mechanism to provide that when a releasing Shipper releases capacity at less than the maximum reservation charge(s) and reservation surcharge(s), pursuant to the provisions of Section 28.4 of El Paso's Second Revised Volume No. 1–A Tariff, the GRI reservation surcharge(s) will be the first rate increment discounted. El Paso further states that it will not assess the GRI reservation surcharge(s) on any capacity that is released and acquired at a discount greater than the GRI reservation surcharge(s).

El Paso respectfully requested that the Commission accept the tendered tariff sheet for filing and permit it to become effective on July 1, 1995. El Paso states that it is requesting this effective date to coincide with its monthly accounting and billing cycle.

El Paso states that copies of the filing were served upon all of El Paso's interstate pipeline system transportation customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 9, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary

[FR Doc. 95–14018 Filed 6–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–321–000]

El Paso Natural Gas Co.; Notice of Tariff Filing

June 2, 1995.

Take notice that on May 31, 1995, El Paso Natural Gas Company (El Paso), tendered for filing pursuant to Part 154 of the Federal Energy Regulatory Commission's Regulations Under the Natural Gas Act and Section 31 of the General Terms and Conditions of its Volume No. 1–A Tariff, certain tariff sheets.

El Paso states that Section 31.4(b) of its tariff provides the mechanism by which El Paso adjusts the interest calculated on the unrecovered balance of its stranded investment cost in the Washington Ranch Storage Facility and then adjusts the Monthly Amortized Amount allocated to each Shipper. The tariff further provides that El Paso will adjust its rates for any differences resulting from the use of the estimated interest versus the actual interest and such difference shall be added to or deducted from the estimated interest for the upcoming six (6) month period.

El Paso states that the Monthly Amortized Amount has been adjusted to reflect the projected interest and the difference in the previously estimated interest and actual interest utilizing the appropriate interest rate calculated pursuant to Section 154.67(c)(2)(iii) of the Commission's Regulations. El Paso states that the projected interest was calculated on the remaining unrecovered balance of the stranded investment costs. El Paso states that the revised Washington Ranch Reservation Surcharges and resulting Monthly Billed Amounts are shown on the tendered tariff sheets

El Paso respectfully requests that the Commission accept the tendered tariff sheets for filing and permit them to become effective on July 1, 1995, which is not less than thirty (30) days after the date of the filing.

El Paso states that copies of the filing were served upon all of El Paso's affected interstate pipeline system transportation customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 9, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–14017 Filed 6–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–323–000]

Southern Natural Gas Co.; Notice of Transition Cost Recovery Filing

June 2, 1995

Take notice that on May 31, 1995 Southern Natural Gas Company (Southern) set forth its revised demand surcharges that will be charged in connection with its recovery of transition costs associated with payments made by Company (1) under contracts for the transmission and compression of gas by others, (2) to terminate or reduce the cost or volume obligations under existing transmission and compression agreements, and (3) to Southern Energy Company pursuant to Section 6 of its FERC Gas Tariff, Original Volume No. 1 during the period February 1, 1995 through April 30, 1995. These costs have arisen as a direct result of customers' elections during restructuring to terminate their sales entitlements under Order No. 636.

Southern submitted the following tariff sheets to its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets, with the proposed effective date of July 1, 1995.

Nineteenth Revised Sheet No. 15
Second Revised Sheet No. 15a
Nineteenth Revised Sheet No. 17
Second Revised Sheet No. 17a

Southern states that copies of the filing were served upon Southern's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 9, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–14016 Filed 6–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–324–000]

Southern Natural Gas Co.; Notice of GSR Cost Recovery Filing

June 2, 1995.

Take notice that on May 31, 1995, Southern Natural Gas Company (Southern) set forth its revised demand surcharges and revised interruptible rates that will be charged in connection with this recovery of GSR cots associated with the payment of price differential costs under realigned gas supply contracts or contract buyout costs associated with continuing realignment efforts during the period February 1, 1995 through April 30, 1995. These GSR costs have arisen as a direct result of customers' elections during restructuring to terminate their sales entitlements under Order No. 636.

Southern submitted the following tariff sheets to its FERC Gas Tariff, Seventh Revised Volume No. 1, with the proposed effective date of July 1, 1995.

Eighteenth Revised Sheet No. 15
Eighteenth Revised Sheet No. 17
Eleventh Revised Sheet No. 18

Southern states that copies of the filing were served upon Southern's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 2, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Southern's filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–14015 Filed 6–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–325–000]

El Paso Natural Gas Co.; Notice of Request for Approval of Procedures

June 2, 1995.

Take notice that on May 31, 1995, El Paso Natural Gas Company (El Paso) submitted a Notice of Procedures for Implementation of Gas Research Institute (GRI) crediting of 1994 GRI over-collections as a result of the Federal Energy Regulatory Commission's May 3, 1995, order issued at Docket No. RP95–124–001. El Paso requested that the Commission approve this methodology so that El Paso can coordinate with GRI to facilitate Releasing and Acquiring Shippers receiving any applicable GRI collections which were assessed to such shippers for capacity released at less than the maximum reservation charge(s) and reservation surcharge(s).

El Paso states that once the Commission approves this methodology, El Paso will provide GRI with the necessary amounts in order to facilities GRI's return to El Paso of all GRI collections which were assessed to Releasing and Acquiring Shippers for capacity released at less than the maximum rate, i.e., the discount exceeded the GRI surcharge rate. El Paso states that it thereafter will immediately flow-through these funds to all affected shippers.

El Paso states that based on this methodology, GRI will refund and El Paso will flow-through 1994 over-collections of $1,848,012.51 to all affected shippers: $1,361,521.39 to Releasing Shippers and $486,491.12 to Acquiring Shippers.

El Paso states that assuming the Commission approves El Paso's proposed July 1, 1995, effective date for its concurrent tariff filing, El Paso will cease GRI collections on the capacity release transactions where the discount is greater than the GRI surcharge beginning with July, 1995 business and calculate and flow-through 1995 over-collections through June 30, 1995 utilizing identical procedures as it used for the 1994 over-collections.

El Paso states that copies of the filing were served upon all affected transportation customers of El Paso and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 9, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–14014 Filed 6–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM95–4–32–000]

Colorado Interstate Gas Co.; Notice of Tariff Filing

June 2, 1995.

Take notice that on May 31, 1995, Colorado Interstate Gas Company (CIG) filed as part of its FERC Gas Tariff, First Revised Volume No. 1, Twelfth Revised Sheet No. 11, reflecting a decrease in the fuel reimbursement percentage for Lost, Unaccounted-For and Other Fuel Gas from (1.08%) to (1.16%) effective July 1, 1995.

CIG states that copies of this filing have been served on CIG's jurisdictional customers and public bodies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR Sections 385.214 and 385.211). All such petitions or protests should be filed on or before June 9, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–14013 Filed 6–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–502–000, et al.]

Columbia Gas Transmission Corporation, et al.; Natural Gas Certificate Filings

June 1, 1995.

Take notice that the following filings have been made with the Commission:

1. Columbia Gas Transmission Corporation

[Docket No. CP95–502–000]

Take notice that on May 17, 1995, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. CP95–502–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to operate as jurisdictional facilities, two existing delivery point facilities, constructed under Section 311 (a) of the Natural Gas Policy Act of 1978, under Columbia's blanket certificate issued in Docket No. CP83–76–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Columbia proposes to operate as jurisdictional facilities an existing delivery point located in Stark County, Ohio to serve Power Resources Operating Company and an existing delivery point located in Clay County, West Virginia to serve Wagner Gas Company. Columbia asserts that these facilities would be used for Part 284 Subpart G transportation service under Columbia's Blanket Certificate in Docket No. CP86–240–000. Columbia states that deliveries to the Stark County point, which cost $35,400, would be 4,000 Dth of gas per day and deliveries to the Clay County point, which cost $13,562, would be 10 Dth of gas per day.

Columbia states that the quantities of gas to be provided through the new delivery points would be within its authorized level of services and there would be no adverse impact on its existing customers.

Comment date: July 17, 1995, in accordance with Standard Paragraph G at the end of this notice.

2. ANR Pipeline Company

[Docket No. CP95–507–000]

Take notice that on May 22, 1995, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed a request with the Commission in Docket No. CP95–507–000 pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (NGA) to construct and operate an interconnection to the City of Gallatin (Gallatin), authorized in blanket certificate issued in Docket No. CP82–480–000, all as more fully set forth in the request on file with the Commission and open to public inspection.

ANR proposes to construct an interconnection which would consist of a tie-in that would provide delivery of natural gas to the City of Gallatin, located in Harrison County, Missouri. The interconnection would consist of a tie-in to ANR's existing 4-inch lateral, one 2-inch turbine meter, one 2-inch displacement meter, electronic measurement and a yard building in addition to approximately 100 feet of 3-inch yard pipe. ANR states that the costs of the proposed facilities would be approximately $162,000 and further states that facilities would provide Gallatin with a maximum capacity of 10 Mmcf/d.

Comment date: July 17, 1995, in accordance with Standard Paragraph (G) at the end of this notice.

3. Northern Natural Gas Company

[Docket No. CP95–515–000]

Take notice that on May 24, 1995, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed a prior notice request with the Commission in Docket No. CP95–515–000 pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to upgrade an existing delivery point in Cumings County, Nebraska, under Northern's blanket certificate issued in Docket No. CP82–401–000 pursuant to Section 7 of the NGA, all as more fully set forth in the request which is open to the public for inspection.

Northern proposes to upgrade the existing West Point Town Border Station (TBS) #1, Cumings County, Nebraska, in order to accommodate natural gas deliveries to UtiliCorp United Inc. (UCU) under currently effective throughput service agreements. Northern states that the incremental peak day and annual gas deliveries at the West Point TBS #1 would increase by 451 MMBtu and 17,740 MMBtu, respectively. Northern further states that the total volumes to be delivered to UCU would not exceed the currently certificated volumes and that Northern's tariff does not prohibit the proposed upgrade.

Northern also states that the upgrade would enable Northern to meet peak day requirements; maintain the operational integrity and efficiency of the meter, and assure UCU's continuous service to their residential, industrial, and commercial customers. Northern estimates that the proposed West Point TBS #1 upgrade would cost approximately $15,000.

Comment date: July 17, 1995, in accordance with Standard Paragraph (G) at the end of this notice.

4. Enron Gulf Coast Gathering, Limited Partnership

[Docket No. CP95–516–000]

Take notice that on May 25 1995, Enron Gulf Coast Gathering, Limited Partnership (EGCG), P. O. Box 1188, Houston, Texas 77251–1188, filed a petition in Docket No. CP95–516–000, requesting that when EGCG acquires Northern Natural Gas Company's (Northern) Matagorda Offshore Pipeline System (MOPS), located in offshore and onshore Texas, that the Commission declare that the MOPS facilities are gathering facilities exempt from the provisions of the Natural Gas Act (NGA), all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

It is stated that on May 24, 1995, EGCG and Northern entered into a contract where EGCG will acquire MOPS from Northern, subject to certain conditions, including a determination by the Commission that the MOPS' facilities are nonjurisdictional gathering facilities not subject to Commission jurisdiction under Section 1(b) of the NGA. EGCG states that after abandonment of MOPS by Northern and its transfer to EGCG, it will still be subject to the Outer Continental Shelf Lands Act (OCSLA). EGCG asserts that it will provide open and nondiscriminatory access to all shippers in accordance with Section 5(f) of the OCSLA by offering gathering, treating, dehydrating and compression services to producers and shippers seeking such services.

EGCG submits that MOPS meets the criteria of "gathering facilities" under Section 1(b) of the NGA as interpreted by the Commission under the "modified primary function" test, as set forth in *Amerada Hess Corp., et al.*, as amended. 52 FERC ¶ 61,268 (1990). EGCG notes that the pipeline diameters in MOPS vary from 4" for the smallest tie lines up to 24" for the final segment of the line which gathers the gas before being dehydrated and delivered to any of seven onshore delivery points on interstate and intrastate downstream pipelines. EGCG states that the diameter of the larger lines is simply a function of the number of tie lines and wells, the fact that it is an offshore pipeline and the distance of the gas from interconnecting points to the market. EGCG argues that it must be recognized that the capacity of a given pipeline is a function not only of the diameter of the pipe, but also of the pressure at which the line is operated and the geographic area where it is located. EGCG notes that, typically, pipelines operating in the Gulf Coast are operated at high pressures.

EGCG relates that the central point for this analysis is Tivoli. EGCG says that the system's configuration is similar to that in *Koch Hydrocarbon Corp.*, 59 FERC ¶ 61,110 (1992), where the Commission found as significant the fact that the stubs downstream of a plant were relatively short in length as compared to the remaining gathering system. EGCG states the minimal facilities downstream of Tivoli are necessary for the gas production to reach various interconnection facilities. EGCG states that the geographic configuration is similar to an inverted "y", typical of other offshore systems found to be gathering, and that the aggregate length of all the gathering pipeline in MOPS is 101 miles which EGCG says supports a finding that the configuration of the system and the distance between the area of production and the nearest interconnecting points with transmission facilities of an interstate or intrastate pipeline are consistent with the criteria which constitutes gathering.

EGCG indicates that the wells attached to MOPS are located throughout the Texas Gulf Coast producing areas where Northern operates its MOPS facilities. EGCG states that the MOPS facilities gather gas from various producing areas in the OCS for ultimate delivery to Tivoli, and redelivery to any of seven onshore transporters. EGCG further relates that the gas flowing through the system is unprocessed gathered gas, and if compressor facilities are needed, the gas is compressed on Northern's MAT 686 platform to a pressure sufficient to allow the gas to flow into the downstream onshore dehydration facilities and to third party separation facilities located onshore at Tivoli or to onshore delivery points. EGCG says the pressure at which MOPS usually operates is 1,200 psig, which the Commission has found to be consistent with that of offshore gathering systems. Finally, EGCG relates that upon EGCG's purchase of MOPS, those facilities will be owned and operated by an entity which will be engaged in the gathering of natural gas on the OCS as its primary business.

EGCG requests that its petition be consolidated with Northern's abandonment application filed in Docket No. CP95–519–000 which involves the abandonment by sale of what is commonly known as Northern's MOPS facilities.

Comment date: June 22, 1995, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

5. Northern Natural Gas Company

[Docket No. CP95–517–000]

Take notice that on May 25, 1995, Northern Natural Gas Company, (Northern), P.O. 3330, Omaha Nebraska 68103–0330, filed in Docket No. CP95–517–000 a request for an order declaring that certain facilities be functionalized as transmission facilities for rate purposes and requests expedited action, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Northern lists certain facilities in its Exhibit 1 and states that such facilities are located on Northern's transmission system and perform purification and/or dehydration of natural gas in interstate commerce. Northern states that application of the primary function test leads to the conclusion that these facilities serve transmission-related functions and, therefore, the costs associated with the facilities are appropriately recovered in Northern's transmission rates.

Comment date: June 22, 1995, in accordance with Standard Paragraph F at the end of this notice.

6. Transwestern Pipeline Company

[Docket No. CP95–518–000]

Take notice that on May 25, 1995, Transwestern Pipeline Company (Transwestern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP95–518–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate two taps and two valves as a new point of delivery in Mohave County, Arizona under Transwestern's blanket certificate issued in Docket No. CP82–534–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Transwestern proposes to install and operate two taps and two side valves as a new point of delivery to North Star Steel Company.

Comment date: July 17, 1995, in accordance with Standard Paragraph (G) at the end of this notice.

7. Northern Natural Gas Company

[Docket No. CP95–519–000]

Take notice that on May 25, 1995, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed, in Docket No. CP95–519–000, an application pursuant to Section 7(b) of the Natural Gas Act (NGA) and Part 157 of the Commission's Regulations for permission and approval to abandon, by sale to Enron Gulf Coast Gathering, Limited Partnership (EGCG), its interest in certain compression, pipeline, and dehydration facilities, with appurtenances, located in offshore and onshore Texas, and more commonly known as Northern's Matagorda Offshore Pipeline System (MOPS) facilities, as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northern states that the MOPS facilities are non-contiguous to Northern's traditional transmission pipeline system and are no longer needed by Northern as its role in the marketplace has changed from a merchant of natural gas to a transporter of natural gas. Northern relates that the MOPS facilities are located on the Outer Continental Shelf (OCS) and are subject to Sections 5(e) and 5(f) of the OCS Lands Act (OCSLA), 43 USC § 1334 (e) and (f). Northern states that it proposes to transfer its interest in the MOPS facilities to an affiliated company, EGCG, which will operate the facilities on a non-jurisdictional basis. Northern notes that upon its abandonment of the facilities, EGCG will be subject to the OCSLA.

Northern states it is currently providing transportation service on the facilities which will be terminated on the effective date of the sale of the MOPS facilities to EGCG. Northern says that EGCG will assume Northern's obligations and perform the services needed as non-jurisdictional gathering services during the remaining term for any transportation contracts whose primary terms have not expired by the effective date of the sale. Northern has submitted in Exhibit U, Part 2, a proposed default agreement to be used by EGCG to provide continuity of service to existing customers utilizing the MOPS facilities.

Northern says it will be seeking abandonment of Rate Schedule X–87 (an exchange agreement with TGPL) and Rate Schedule X–103 (an exchange agreement with Pan-Alberta Gas Inc.),

both which contain receipt and delivery points on the MOPS facilities. Northern requests that if abandonment authorization for these two rate schedules has not been received prior to the approval of the instant application, that abandonment authorization be issued concurrently.

Exhibit T to the application identifies the receipt and delivery points on MOPS facilities which Northern will eliminate upon abandonment.

Exhibit X to the application contains pro forma tariff sheet No. 221 to be included in Northern's FERC Gas Tariff, Fifth Revised Volume No. 1. The pro forma tariff sheet sets forth language for standards of conduct for affiliate gathering consistent with recent Commission direction. *Field Gas Gathering Inc.*, 67 FERC ¶ 61,259 (1994).

Northern states that EGCG will be assuming the entire economic risk of the MOPS facilities and any remaining service obligations associated with the MOPS facilities. Northern asserts that it will not seek any Order No. 636, *et al.* stranded facility costs associated with its MOPS facilities.

Northern requests that its petition in Docket No. CP95–519–000 be consolidated with EGCG's Petition for a Declaratory Order in Docket No. CP95–516–000 which seeks a determination that the MOPS facilities, once conveyed to EGCG, are gathering facilities not subject to the Commission's jurisdiction pursuant to Section 1(b) of the NGA.

Comment date: June 22, 1995, in accordance with Standard Paragraph (F) at the end of this notice.

8. Northwest Pipeline Corporation

[Docket No. CP95–521–000]

Take notice that on May 25, 1995, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed in Docket No. CP95–521–000 a request pursuant to Sections 157.205, 157.211 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to abandon delivery point facilities and construct and operate replacement facilities in Snohomish County, Washington, to accommodate deliveries of natural gas to Cascade Natural Gas Corporation (Cascade), under Northwest's blanket certificate issued in Docket No. CP82–433–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northwest proposes to modify its existing Deming Meter Station by replacing obsolete metering facilities with new ones. It is stated that the replacement is necessary to accommodate more efficient deliveries to Cascade and to increase the capacity of the meter station. The cost of the proposed modification of facilities is estimated at $46,020, including both removal and construction. It is asserted that Northwest is authorized to provide a firm transportation service for Cascade under the terms of its Rate Schedules TF–1 and TF–2. It is asserted that no significant impact on Northwest's peak day or annual deliveries will result from the proposed modification of the Deming Meter Station.

Comment date: July 17, 1995, in accordance with Standard Paragraph (G) at the end of this notice.

9. Williams Natural Gas Company

[Docket No. CP95–525–000]

Take notice that on May 25, 1995, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP95–525–000 a request pursuant to Sections 157.205, 157.216, 157.208 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216, 157.208, 157.212) for authorization: (1) to abandon approximately 3.7 miles of WNG's South Iola 8-inch pipeline and to construct and operate approximately 3.7 miles of replacement 6-inch pipeline; (2) to construct approximately 1.2 miles of 6-inch pipeline to connect WNG's existing Iola 8-inch pipeline and its new South Iola 6-inch pipeline; (3) to relocate two domestic customers and the Western Resources, Inc. Dry Lake town border from the South Iola 8-inch pipeline to the new 6-inch pipeline and (4) to relocate the Coffman meter setting from the Iola 8-inch pipeline to the new South Iola 6-inch pipeline, all located in Allen County, Kansas, under WNG's blanket certificate issued in Docket No. CP82–479–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

WNG states that since it will operate the new 6-inch pipeline at a higher pressure than the existing 8-inch pipeline, it does not anticipate any change in delivery capability. WNG estimates the total construction cost to be $803,000.

Comment date: July 22, 1995, in accordance with Standard Paragraph (G) at the end of this notice.

10. Columbia Gas Transmission Corporation

[Docket No. CP95–527–000]

Take notice that on May 26, 1995, Columbia Gas Transmission Corporation (Columbia), P.O. Box 1273, Charleston, West Virginia 25325–1273, filed in Docket No. CP95–527–000 an abbreviated joint application pursuant to Section 7(b) of the Natural Gas Act, as amended, and Sections 157.7 and 157.18 of the Federal Energy Regulatory Commission's (Commission) regulations thereunder, for permission and approval to abandon a natural gas transportation service for Weirton Steel Corporation (Weirton Steel) [1], all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Columbia states that it received up to 35,000 Dth per day of gas for Weirton Steel's account from Kentucky-West Virginia Gas Company (Kentucky West) at existing points of interconnection near Maytown or Dwale, Floyd County, Kentucky. It is indicated that Columbia then transported this gas under authority granted by the Commission in Docket No. CP83–364–000 [2] and under Rate Schedule X–111 on an interruptible basis, less retainage, for the account of Weirton Steel to Mountaineer Gas Company (Mountaineer) [3] for ultimate delivery to Weirton Steel's plant in Weirton, West Virginia. Columbia further states that its obligation to transport the gas was subject to the limits of available capacity in its existing facilities, to its obligation to customers served pursuant to its FERC Gas Tariff, Volume No. 1, to the transportation of Columbia's own gas production and purchases, and to precedent transportation and exchange agreements.

Columbia indicates that it provided written notice to National Steel and to Weirton Steel on July 6, 1993, of termination of the transportation agreement. Columbia states that volumes were last transportation under Rate Schedule X–111 in January 1983 and there are no outstanding imbalances.

Comment date: June 22, 1995, in accordance with Standard Paragraph (G) at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–14058 Filed 6–7–95; 8:45 am]

BILLING CODE 6717–01–P

[1] Formerly National Steel Group

[2] *See* order at 27 FERC ¶ 61,368 (1984)

[3] Formerly Columbia Gas of West Virginia, Inc.

[Project No. 11265–001 Oregon]

Portland General Electric Co.; Notice of Surrender of Preliminary Permit

June 2, 1995.

Take notice that Portland General Electric Company, Permittee for the Clackamas Creeks Project No. 11265, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 11265 was issued June 29, 1992, and would have expired May 31, 1995. The project would have been located on the Clackamas River, Clackamas County, Oregon.

The Permittee filed the request on May 15, 1995, and the preliminary permit for Project No. 11265 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–14027 Filed 6–7–95; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5219–3]

Notice of Meeting on Targeted Legislative Changes to RCRA

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of meeting.

SUMMARY: On April 28, 1995, EPA announced in the **Federal Register** (volume 60, No. 82: 20992) an opportunity for interested individuals to present their ideas and suggestions for improving the solid and hazardous waste system under RCRA. This notice announces an additional meeting that EPA has scheduled for June 13, 1995. This additional meeting will focus primarily on issues faced by communities and small businesses. A limited number of individuals have been invited to sit on a panel and participate in a public, facilitated dialogue on various issues. Space is available for other members of the public to observe and comment on the dialogue as well. EPA's notice of April 28, 1995 also provided information on the initiative, and solicited input from all interested individuals.

DATES: EPA will accept public comments on this initiative until June 15, 1995. Both written and electronic comments must be submitted on or before this date.

An additional public panel discussion has been scheduled. Representatives from a cross-section of communities, local environmental interest groups, Environmental Justice groups, small businesses and states will be invited to participate in a panel discussion. There will also be an opportunity for public comment.

ADDRESSES: The Meeting (open to the public) will be held as follows: June 13, 1995, 9 a.m. until 4 p.m., Crystal City Marriott, 1999 Jefferson Davis Highway, Washington, DC 22202. Commenters must send an original and two copies of their comments referencing docket number F–95–LRRA–FFFFF to: RCRA Docket Information Center (5305), Office of Solid Waste (5305), U.S. Environmental Protection Agency (EPA, HQ), 401 M Street, SW., Washington, DC 20460.

Comments also may be submitted electronically by sending electronic mail to RCRA-Docket@epamail.epa.gov. Comments in electronic format should also be identified by the docket number F–95–LRRA–FFFFF. All electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments will also be accepted on 3.5" disks in WordPerfect in 5.1 file format or ASCII file format.

Commenters should not submit electronically any Confidential Business Information (CBI). An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Control Officer, Office of Solid Waste (5305), U.S. EPA, 401 M Street, SW., Washington, DC 20460.

Public comments and relevant documents are available for viewing in the RCRA Information Center (RIC) located in room M2616, at the EPA address listed above. The RIC is open from 9 a.m. to 4 p.m. Monday through Friday, excluding Federal holidays. To review docket materials, the public must make an appointment by calling (202) 260–9327. Materials may be copied for $0.15 per page. Charges under $25.00 are waived. For information on accessing paper and/or electronic copies of the materials, see the **SUPPLEMENTARY INFORMATION** Section.

Individuals interested in the June 13 meeting should contact Denise Madigan of JAMS–ENDISPUTE at (202) 942–9180 if you wish to attend, as space may be limited.

FOR FURTHER INFORMATION CONTACT: One of the following individuals at EPA in the Office of Solid Waste, RCRA Legislative Reform Team may be contacted for further information: David Hockey at (202) 260–7596, Ginny Kronke at (202) 260–4498, or Judy Kertcher at (202) 260–4522.

SUPPLEMENTARY INFORMATION: As called for in the President's plan for "Reinventing Environmental Regulation", EPA is seeking to identify a package of targeted legislative improvements to the Resource Conservation and Recovery Act (RCRA). The Agency will consider the views of all stakeholders and communicate the results, findings, and recommendations to Congress by July 15, 1995. EPA is providing an opportunity for interested individuals to present their ideas and suggestions for improving the solid and hazardous waste system under RCRA.

Paper copies of this **Federal Register** and other relevant materials (meeting summaries, public comments) are available in the RCRA Docket at the address listed in the previous section. These materials will also be available in electronic format on the Internet System. Follow these instructions to access information electronically:

Gopher: gopher.epa.gov.
WWW: http://www.epa.gov
Dial-up: (919) 558–0335
These materials can be accessed off the main EPA Gopher menu, in the directory: EPA Offices and Regions/ Office of Solid Waste and Emergency Response (OSWER)/Office of Solid Waste (RCRA)/RCRA General/Notice of Meetings
FTP: ftp.epa.gov
Login: Anonymous
Password: Your Internet Address.
Files are located in /pub/gopher/ OSWRCRA

The Federal Register notices, minutes of the public meetings, and copies of all comments submitted also will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed paper form as they are received, and will place the paper copies in the public record which will place the paper copies in the public record which will also include all comments submitted directly in writing. The official public record is the paper record maintained at the address in "Addresses" at the beginning of this notice.

This notice is also available electronically through INDIANnet, operated by Americans for Indian Opportunity. For information and assistance with using INDIANnet, call 1–605–345–9642.

This document is also available on the EPA's Clean-up Information Bulletin Board (CLU-IN). To access CLU-IN with a modem of up to 28,800 baud, dial (301) 589–8366. First-time users will be asked to input some initial registration information. Next, select "D" (download) from the main menu. Input the file name "RCRA.REF" to download this notice. Follow the on-line instructions to complete the download. For additional help with these instructions, telephone the CLU-IN help line at (301) 589–8368.

Background

The Resource Conservation and Recovery Act has been an enormously effective tool in achieving a dramatic transformation in the way that we manage hazardous waste. RCRA has allowed the Agency to develop a cradle-to-grave system to ensure the protection of human health and the environment when generating, transporting, storing, or disposing of hazardous waste. The Agency believes that a successful legislative process to make targeted changes to RCRA, could make the statute an even more effective tool in safely managing our solid and hazardous waste.

EPA has already held three roundtable meetings as one of its methods of soliciting input from a wide range of stakeholders. This notice announces an additional meeting scheduled for June 13, 1995. This meeting will focus primarily on issues faced by communities and small businesses, such as reporting requirements, public access to information, disproportionate impacts and tailored requirements.

In developing the package of targeted legislative reforms for RCRA, EPA will be following the principles for reinventing environmental protection outlined in the President's plan:

- Protecting public health and the environment is an important national goal, and individuals, businesses and government must take responsibility for the impact of their actions.
- Regulation must be designed to achieve environmental goals in a manner that minimizes costs to individuals, businesses, and other levels of government.
- Environmental regulations must be performance-based, providing maximum flexibility in the means of achieving our environmental goals, but requiring accountability for the results.
- Preventing pollution, not just controlling or cleaning it up, is preferred.
- Market incentives should be used to achieve environmental goals, whenever appropriate.
- Environmental regulation should be based on the best science and economics, subject to expert and public scrutiny, and grounded in values Americans share.
- Government regulations must be understandable to those who are affected by them.
- Decisionmaking should be collaborative, not adversarial, and decisionmakers must inform and involve those who must live with the decisions.
- Federal, state, tribal and local governments must work as partners to achieve common environmental goals, with non-federal partners taking the lead when appropriate.
- No citizen should be subjected to unjust or disproportionate environmental impacts.

Dated: June 6, 1995.

James H. Mathews,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 95–14194 Filed 6–7–95; 8:45 am]

BILLING CODE 6560–50–M

[OPPTS–59347; FRL–4959–5]

Certain Chemicals; Approval of a Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated this application as TME–95–9. The test marketing conditions are described below.

DATES: This notice becomes effective May 31, 1995. Written comments will be received until June 23, 1995.

ADDRESSES: Written comments, identified by the docket number [OPPTS–59347] and the specific TME number should be sent to: TSCA Nonconfidential Information Center (NCIC), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. NEB–607 (7407), 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: ncic@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by [OPPTS–59347]. No CBI should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found under "SUPPLEMENTARY INFORMATION".

FOR FURTHER INFORMATION CONTACT: Shirley Howard, New Chemicals Branch, Chemical Control Division (7405), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–447H, 401 M St. SW., Washington, DC 20460, (202) 260–3780.

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to human health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

EPA hereby approves TME–95–9. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and within the time period and restrictions specified below, will not present an unreasonable risk of injury to human health or the environment. Production volume, use, and the number of customers must not exceed that specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

Inadvertently the notice of receipt of the application was not published. Therefore, an opportunity to submit comments is being offered at this time. EPA may modify or revoke the test marketing exemption if comments are received which cast significant doubt on its finding that the test marketing activities will not present an unreasonable risk of injury.

The following additional restrictions apply to TME–95–9. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME. In addition, the applicant shall maintain the following records until five years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. Records of the quantity of the TME substance produced and the date of manufacture.
2. Records of dates of the shipments to each customer and the quantities supplied in each shipment.
3. Copies of the bill of lading that accompanies each shipment of the TME substance.

TME–95–9

Date of Receipt: April 18, 1995. The extended comment period will close (insert date 15 days after date of publication in the **Federal Register**).

Applicant: IPS Corporation.
Chemical: (G) Polyester polyols.
Use: (G) Industrial Adhesive.
Production Volume: 223 kg.
Number of Customers: 150.
Test Marketing Period: Six months, commencing on first day of commercial manufacture.
Risk Assessment: EPA identified no significant health or environmental concerns for the test market substance. Therefore, the test market activities will not present any unreasonable risk of injury to human health or the environment.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information that comes to its attention cast significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to human health or the environment.

A record has been established for this notice under docket number [OPPTS–59347] (including comments and data submitted electronically a described above). A public version of this record, including printed, paper versions of electronic comments, which does not include any information calimed as CBI, is avaiable for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the NCIC, at the above address.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

List of Subjects

Environmental protection, Test marketing exemptions.

Dated: May 31, 1995.

Paul J. Campanella,

Chief, New Chemicals Branch Office of Pollution Prevention and Toxics.

[FR Doc. 95–14064 Filed 6–7–95; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

June 2, 1995.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800. For further information on this submission contact Dorothy Conway, Federal Communications Commission, (202) 418–0217 or via internet at DConway@FCC.GOV. Persons wishing to comment on this information collection should contact Timothy Fain, Office of Management and Budget, Room 10214 NEOB, Washington, DC 20503, (202) 395–3561.

OMB Number: 3060–0027.
Title: Application for Construction Permit for Commercial Broadcast Station.
Form No.: FCC 301.
Action: Revision to a currently approved collection.
Respondents: Businesses or other for-profit.
Frequency of Response: On occasion.
Estimated Annual Burden: 1,924 responses; 73.6 hour burden per response; 141,611 hours total annual burden.
Needs and Uses: FCC 301 is used to apply for authority to construct a new commercial AM, FM or TV broadcast station, or to make changes to existing facilities. The data is used by FCC staff to determine if the applicant meets basic statutory requirements to become a Commission licensee.

Federal Communications Commission.
LaVera F. Marshall,
Acting Secretary.
[FR Doc. 95–14040 Filed 6–7–95; 8:45 am]
BILLING CODE 6712–01–F

FEDERAL RESERVE SYSTEM

The Bank of New York Company, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 3, 1995.

A. Federal Reserve Bank of New York (William L. Rutledge, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. The Bank of New York Company, Inc., New York, New York; to acquire 100 percent of the voting shares of The Putnam Trust Company of Greenwich, Greenwich, Connecticut.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Simmons First National Corporation, Pine Bluff, Arkansas; to merge with DSB Bancshares, Inc., Dermott, Arkansas, and thereby indirectly acquire Dermott State Bank, Dermott, Arkansas.

C. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1 First State Bancorporation, Albuquerque, New Mexico; to acquire 100 percent of the voting shares of First Bank of Grants, Grants, New Mexico.

Board of Governors of the Federal Reserve System, June 2, 1995.
William W. Wiles,
Secretary of the Board.
[FR Doc. 95–14034 Filed 6–7–95; 8:45 am]
BILLING CODE 6210–01–F

Mountain Bancshares, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 22, 1995.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Mountain Bancshares, Inc., Yellville, Arkansas; to invest in Financial Institution Services, Inc., Green Forest, Arkansas, a joint venture with First National Bank of Berryville, Berryville, Arkansas, and First National Bank of Green Forest, Green Forest, Arkansas, and thereby engage in providing data processing and data transmission services for financial institutions, pursuant to § 225.25(b)(7) of the Board's Regulation Y. The geographic scope for these activities is Green Forest, Arkansas, and the surrounding area.

Board of Governors of the Federal Reserve System, June 2, 1995.
William W. Wiles,
Secretary of the Board.
[FR Doc. 95–14035 Filed 6–7–95; 8:45 am]
BILLING CODE 6210–01–F

Federal Open Market Committee: Domestic Policy Directive of March 28, 1995

In accordance with § 271.5 of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on March 28, 1995.[1] The directive was issued to the Federal Reserve Bank of New York as follows:

The information reviewed at this meeting suggests that the expansion of economic activity has moderated considerably in early 1995. Nonfarm payroll employment rose appreciably further in January and February, but at a pace below the average monthly gain in 1994; the civilian unemployment rate, after rising in January, fell back in February to its December level of 5.4 percent. Advances in industrial production also moderated in January and February and capacity utilization rates generally changed little from already high levels. Total retail sales were about unchanged over the two months. Housing starts have declined somewhat after posting sizable gains on balance during the closing months of 1994. Orders for nondefense capital goods point to a still strong expansion of spending on business equipment, but with tentative signs of some deceleration; nonresidential construction has been trending appreciably higher. The nominal deficit on U.S. trade in goods and services widened sharply in January from its average rate in the fourth quarter. Broad indexes of consumer and producer prices increased faster on average over January and February.

On February 1, 1995, the Board of Governors approved an increase from 4-3/4 to 5-1/4 percent in the discount rate, and in keeping with the Committee's decision at the January 31-February 1 meeting, the increase was allowed to show through fully to interest rates in reserve markets. Nonetheless, most market interest rates have declined somewhat since the Committee meeting; the largest declines have been concentrated in intermediate- and long-term obligations. In foreign exchange markets, the trade-weighted value of the dollar in terms of the other G-10 currencies was down substantially further over the intermeeting period. The Mexican peso has continued to depreciate against the dollar.

M2 and M3 weakened in February, though data for the first part of March pointed to some rebound. Growth of total domestic nonfinancial debt has picked up a little in recent months.

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. In furtherance of these objectives, the Committee at its meeting on January 31-February 1 established ranges for growth of M2 and M3 of 1 to 5 percent and 0 to 4 percent respectively, measured from the fourth quarter of 1994 to the fourth quarter of 1995. The Committee anticipated that money growth within these ranges would be consistent with its broad policy objectives. The monitoring range for growth of total domestic nonfinancial debt was lowered to 3 to 7 percent for the year. The behavior of the monetary aggregates will continue to be evaluated in the light of progress toward price level stability, movements in their velocities, and developments in the economy and financial markets.

In the implementation of policy for the immediate future, the Committee seeks to maintain the existing degree of pressure on reserve positions. In the context of the Committee's long-run objectives for price stability and sustainable economic growth, and giving careful consideration to economic, financial, and monetary developments, somewhat greater reserve restraint would or slightly lesser reserve restraint might be acceptable in the intermeeting period. The contemplated reserve conditions are expected to be consistent with moderate growth in M2 and M3 over coming months.

By order of the Federal Open Market Committee, June 2, 1995.
Normand Bernard,
Deputy Secretary, Federal Open Market Committee.
[FR Doc. 95–14036 Filed 6–7–95; 8:45 am]
BILLING CODE 6210–01–F

[1] Copies of the Minutes of the Federal Open Market Committee meeting of March 28, 1995, which include the domestic policy directive issued at that meeting, are available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's annual report

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR–93]

Notice of Intent To Revise the Public Health Assessment Process

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Public Health Service (PHS), Department of Health and Human Services (HHS).

ACTION: Notice of intent to revise ATSDR's public health assessment process.

SUMMARY: This notice announces proposed revisions in ATSDR's current public health assessment process. The revisions are intended to: (1) Produce earlier, more targeted evaluations that can be more effectively integrated into the Superfund Program and; (2) incorporate administrative improvements in ATSDR's Superfund mandates.

This process will begin through a pilot program, which includes an initial appraisal of the impact of program changes by July 30, 1995. The purpose of this pilot is to allow us to effect the planned changes over time, while receiving valuable feedback from all stakeholders, including the Environmental Protection Agency (EPA), State and local environmental and health departments and communities. (The term "EPA," when used to designate the lead Federal remediation agency, applies to respective Federal agencies operating Federal Superfund facilities). An ongoing evaluation of the success of the revised public health assessment process and progress/success of the pilot is essential to the design of the program.

FOR FURTHER INFORMATION CONTACT: Robert C. Williams, P.E., D.E.E., Director, Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Mailstop E–32, Atlanta Georgia 30333, telephone (404) 639–0610 or FAX 639–0654.

SUPPLEMENTARY INFORMATION: Section 104(i)(6)(A) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended [42 U.S.C. 9604(i)(6)(A)], requires ATSDR to conduct health assessments of sites on or proposed for inclusion on the National Priorities List established by the Environmental Protection Agency (EPA). In addition, section 104(i)(6)(B) of CERCLA provides that any person or group of persons may submit evidence of a release of or exposure to a hazardous substance to ATSDR and request ATSDR to perform a health assessment. Further, section 3019(b) of the Resource Conservation and Recovery Act of 1984 (RCRA), as amended [42 U.S.C. 6939a] provides that when, in the judgment of the U.S. EPA or a State, a landfill or surface impoundment poses a substantial potential risk to human health, the EPA or State may request ATSDR to perform a health assessment.

Under the revised process, neither the definition nor the purpose of public health assessments will change. The purposes of health assessments, as defined by CERCLA, are to assist in determining whether actions should be taken to reduce human exposure to hazardous substances from a facility and whether additional information on human exposure and associated health risks is needed. ATSDR's public health assessments are evaluations of data and information on the release of hazardous substances into the environment in order to assess any current or future impact on public health, develop health advisories or other recommendations, and identify studies or actions needed to evaluate and mitigate or prevent human health effects. These purposes will not change.

Although ATSDR will continue to perform public health assessments, as set out in the legislation, we plan to initiate a phased approach to conducting them. This means that ATSDR may provide input to the EPA, States, and communities at any point in the Superfund process, thus allowing for the possible production of several site-related documents or reports. Those documents could then be utilized by the EPA or State and local health departments as they make decisions (e.g., early actions) related to particular sites. This would ensure that public health perspectives are considered at critical points in the process.

Key phases in the revised process, which are designed to coincide with the EPA's site evaluation and remediation process under Superfund, will include one or more of the following:

(1) *Site Assessment Activities*, which could include performing site visits,

evaluating preliminary environmental characterization data, releasing initial findings and public health decisions, and initializing community involvement and education efforts;

(2) *Sampling Strategies,* which could include participating in the design of multiple media sampling and analysis plans that assist in identifying human exposure pathways;

(3) *Community Health Outreach,* such as initiating early community contact, designing the public health agenda, developing sampling and analysis strategies to help define human exposure levels, and collaborating with decision-makers regarding on- and off-site remediation strategies for characterizing environmental contamination;

(4) *Public Health Evaluation,* which includes the comparison of existing morbidity and mortality data on diseases that may be associated with the observed levels of exposure. Also included are exposure investigations, which involve gathering and analyzing site-specific information, to determine if human populations have been exposed to hazardous substances, and release of comprehensive findings from evaluations;

(5) *Public Health Actions,* which could be short-term, including providing health professional education, medical intervention, and health studies; or long-term actions, which could include providing surveillance, medical monitoring, and registries;

(6) *Remediation and Site Closure Planning,* which could include providing a public health analysis of environmental monitoring plans, evaluating final sampling data, and releasing comprehensive public health findings regarding efficacy of cleanup efforts in mitigating or reducing human exposure; and

(7) *Customer Satisfaction Evaluations* to confirm the effectiveness of activities through reader/customer surveys, pilot projects, questionnaires, and community meetings.

Greater participation of communities and remediation decisionmakers will be fundamental to the implementation of the revised process, and interaction with stakeholders will be an integral part in each of the activities noted above. Community involvement will be emphasized throughout ATSDR's activities. In particular, efforts to facilitate community outreach will be undertaken through actions such as increased use of Public Availability Sessions, poster sessions, direct contact with community groups, focus group workshops for team-building, distribution of Community Notices and Fact Sheets, and establishing Community Assistance Panels. In addition, ATSDR will continue to provide independent peer-review of a sample of our public health assessments.

Dated: June 1, 1995.

Claire V. Broome,

Deputy Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 95–14046 Filed 6–7–95; 8:45 am]

BILLING CODE 4163–70–P

Centers for Disease Control and Prevention

[Announcement 551]

Announcement of Cooperative Agreement to the North Carolina Department of Environment, Health and Natural Resources

Summary

The Centers for Disease Control and Prevention (CDC) announces the availability of funds for fiscal year (FY) 1995 for a sole source cooperative agreement with the North Carolina Department of Environment, Health and Natural Resources (NCDEHNR) to support the Efficacy of a Mandatory Substance Abuse Assessment Program in Reducing Repeat Arrest for Driving While Impaired. Approximately $50,000 is available in FY 1995 to support this project. It is expected the award will begin on or about September 30, 1995, and will be made for a 12-month budget period with a one-year project period. The funding estimate is subject to change based on the availability of funds.

The purpose of this project is to evaluate the effectiveness of the Mandatory Substance Abuse Assessment Program in North Carolina's in decreasing repeat driving while impaired (DWI) arrests. The study will test the following two hypotheses:

1. Drivers convicted of DWI for the first time (first offenders who complete North Carolina's Mandatory Substance Abuse Assessment Program (MSAAP)) will be less likely than other first offenders to have a repeat arrest for DWI.

2. Among first offenders who are subsequently arrested for DWI, the time interval between the first conviction and the second arrest will be greater for those drivers who have completed North Carolina's MSAAP.

The CDC will develop a research protocol for the evaluation of the MSAAP, analyze and interpret the data, produce a report that describes the results of the MSAAP evaluation, and disseminate the results via publication in peer reviewed journals, the MMWR and other literature and means.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2000," a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Unintentional Injuries (Objective 4.1) which calls for a reduction in alcohol-related crash deaths. In addition, *Injury Control in the 1990s: A National Plan for Action* (Recommendation 15) calls for the implementation and strengthening of programs for reducing impaired driving. (For ordering a copy of "Healthy People 2000," see the Section **WHERE TO OBTAIN ADDITIONAL INFORMATION.**)

Authority

This program is authorized under Sections 301, 317, 391, 392 and 394 of the Public Health Service Act, (42 U.S.C. 241, 247b, 280b, 280b-1 and 280b-2), as amended. Program regulations are set forth in 42 CFR Part 52.

Smoke-Free Workplace

PHS strongly encourages all grant recipients to provide a smoke-free workplace and to promote the nonuse of all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Eligible Applicant

Assistance will be provided only to NCDEHNR. No other applications are solicited. The program announcement and application kit have been sent to NCDEHNR.

NCDEHNR is the only organization able to conduct the work under this cooperative agreement because North Carolina is the only State meeting all of the following requirements:

1. North Carolina requires all drivers who are convicted of driving while impaired (DWI) to obtain a substance abuse assessment and comply with treatment requirements before they can get their license back. This provides an important opportunity to evaluate the effectiveness of mandatory substance abuse assessment and treatment for drivers with a first conviction for DWI (first offenders)—a population who may be more responsive to treatment.

2. North Carolina's substance abuse assessment and treatment requirement for drivers convicted of DWI is administered along with other license sanctions (e.g., license suspension). Participation in the State's MSAAP does not result in less severe sentencing. This combination of substance abuse assessment and treatment with strict license sanctions is considered the preferred approach to administering such a program; therefore, it is particularly important to determine the effectiveness of such a program.

3. During 1988 and 1989, North Carolina pilot-tested the use of the MSAAP for all first offenders in 10 counties. Consequently, there has been sufficient time since then to evaluate the long-term effect of the program on the driving behavior of program participants.

4. The Injury Control Program in the NCDEHNR was recently involved in a study to assess the risk of dying in alcohol-related motor vehicle crashes among drivers who were arrested for DWI. The evaluation of the State's MSAAP will build on this research by assessing the effectiveness of mandatory substance abuse assessment and treatment in reducing the risk of rearrest for DWI.

5. NCDEHNR works closely with the State's Highway Safety Research Center (HSRC). The HSRC retains copies of the State's driver history files—which will be used for this evaluation—and provides the programming and technical assistance needed to work with the State's driver history files.

Executive Order 12372 Review

This program is subject to Intergovernmental Review of Federal Programs as governed by Executive Order (E.O.) 12372. E.O. 12372 sets up a system for State and local government review of proposed Federal assistance applications. The applicant should contact their State Single Point of Contact (SPOC) as early as possible to alert them to the prospective application and receive any necessary instructions on the State process. If the SPOC has any State process recommendations on the application, they should be sent to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–13, Atlanta, GA 30305, no later than 60 days after the application deadline date. The Announcement Number and Program Title should be referenced on the document. The granting agency does not guarantee to "accommodate or explain" for State process recommendations it receives after that date.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 93.136.

Where To Obtain Additional Information

If you are interested in obtaining additional information regarding this project, please refer to Announcement 551 and contact Adrienne Brown, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 E. Paces Ferry Road, NE., Mailstop E–13, Atlanta, GA 30305, telephone (404) 842–6634.

A copy of "Healthy People 2000" (Full Report; Stock No. 017–001–00474–0) or "Healthy People 2000" (Summary Report; Stock No. 017–001–00473–1) referenced in the **SUMMARY** may be obtained through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512–1800.

Dated: June 1, 1995.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–14045 Filed 6–7–95; 8:45 am]

BILLING CODE 4163–18–P

[CDC 573]

Project Grant to Assess Tuberculosis Control Efforts on College and University Campuses in the United States

Summary

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1995 project grant funds for a sole source grant to the American College Health Association (ACHA). Approximately $60,000 is available in FY 1995 to support this project. It is expected the award will begin on or about September 30, 1995, for a 12-month budget and project period. The funding estimate may vary and is subject to change.

The purpose of this grant is to assess: (1) implementation of student prematriculation and staff screening for tuberculosis (TB) infection; (2) attitudes toward and barriers to implementing screening; (3) practices concerning preventive therapy and therapy for TB cases; and (4) the impact of TB control policies on college and university campuses.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2000," a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority areas of HIV Infection and Immunization and Infectious Diseases. (To order a copy of "Healthy People 2000," see the section **WHERE TO OBTAIN ADDITIONAL INFORMATION.**)

Authority

This grant is authorized under Sections 301(a) and 317(a) of the Public Health Service Act (42 U.S.C. 241 and 247b) as amended. Applicable program regulations are found in part 51 (b), subparts A, of Title 42, Code of Federal Regulations.

Smoke-Free Workplace

The PHS strongly encourages all grant recipients to provide a smoke-free workplace and to promote the non-use of all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Eligible Applicant

Assistance will only be provided to ACHA for this project. No other applications are solicited. The program announcement and application kit have been sent to ACHA.

ACHA is the most appropriate and qualified agency to provide the services specified under this program announcement because: ACHA is a voluntary, nonprofit organization representing over 850 colleges and universities in the United States, Canada, and internationally, as well as more than 2600 individual health professionals. ACHA's operations are national in scope and are implemented via six regions: New York/New England; Mid-Atlantic; South/Southwest; Mid-America; Rocky Mountain and Pacific Coast. ACHA promotes cooperative efforts among schools of higher education, shares knowledge on important college health issues and is a central resource for development of educational materials and programs concerning health policies for colleges and universities. Only ACHA has the

following characteristics that are essential to this study: (1) previous experience executing studies in colleges and the required methodology to do so; (2) the only national focus on the target audience for this study and a unique relationship with colleges which can enhance their interest and willingness to participate; and (3) a unique relationship with and access to college and university health programs that have been identified as the best and most reliable source for the information to be collected. No other multi-university consortium of student health programs exists with these features and such extensive experience in health related issues. Limiting eligibility to ACHA will also ensure the most timely and cost-effective start up and completion of the project. Therefore, ACHA is uniquely qualified, and the only eligible applicant for this study.

Executive Order 12372 Review

This application is not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 93.947, TB Demonstration, Research, Public and Professional Education Projects.

Other Requirements

Confidentiality

Applicants must have in place systems to ensure the confidentiality of patient records.

Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services' Regulations, 45 CFR part 46, regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

Where to Obtain Additional Information

If you are interested in obtaining additional information regarding this project, please refer to Announcement 573 and contact Manuel Lambrinos, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–16, Atlanta, GA 30305, telephone (404) 842–6777.

Applicant may obtain a copy of "Healthy People 2000" (Full Report, Stock No. 017–001–00474–0) or "Healthy People 2000" (Summary Report, Stock No. 017–001–00473–1) referenced in the **SUMMARY** through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512- 1800.

Dated: June 2, 1995.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–14042 Filed 6–7–95; 8:45 am]

BILLING CODE 4163–18–P

[CDC–504]

Cooperative Agreement Program With the Black College Satellite Network to Improve Interaction Between Public Health Practice Officials and Minority and Underserved Populations

Summary

The Centers for Disease Control and Prevention (CDC) announces a fiscal year (FY) 1995 cooperative agreement program with the Black College Satellite Network (BCSN) to assist them in developing a program to improve the interaction between public health practitioners and minority and underserved populations. One award for approximately $50,000 will be awarded subject to the availability of FY 1995 funding. It is expected that the award will begin on or about September 29, 1995, and will be made for a 12-month budget period within a project period of up to five years. Funding estimates may vary and are subject to change. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

This award will assist the BCSN in the production and distribution of a series of satellite video conferences on the whole range of public health priority issues. This cooperative agreement will permit BCSN to enhance the preparation of public health workers thus improving the interaction between public health practitioners and minority and underserved populations.

The CDC will: (1) provide technical assistance through telephone calls, correspondence, and site visits in the areas of video conference content development, production treatment, selection of faculty, and preparation of faculty; (2) provide technical assistance and consultation for agenda and proposed project activities; (3) assist in the reporting and dissemination of results of video conferences to appropriate Federal, State, and local agencies, academic institutions, and the general public; (4) participate in activities related to acquisition of downlink sites and coordinate sites with BCSN; and (5) coordinate the roles and responsibilities of the state distance learning coordinators.

The Public Health Service is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2000," a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to all the priority areas of "Healthy People 2000." (For ordering a copy of "Healthy People 2000," see the section "Where to Obtain Additional Information.")

Authority

This program is authorized under section 301(a) of the Public Health Service Act, 42 U.S.C. 241(a), and the President's Executive Order 12876 of 1993.

Smoke-Free Workplace

PHS strongly encourages all grant recipients to provide a smoke-free workplace and to promote the non-use of all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Eligible Applicant

Assistance will be provided only to the Black College Satellite Network (BCSN). No other applications are solicited. The program announcement and application kit have been sent to the BCSN. The BCSN is the only organization with the capacity to perform the activities of this cooperative agreement. BCSN is the only minority organization that provides comprehensive telecommunications services to all Historically Black Colleges and Universities (HBCU's) in the United States and the Virgin Islands. The Network provides the HBCU's and Predominantly Black colleges and universities with programming, orientation, and satellite technology training sessions for faculty, staff, and students on satellite technology, program development and productions, and the integration of telecommunications into the curriculum. BCSN assists the member institutions: (1) in securing funding for productions to be broadcast to other campuses; and (2) with productions and uplinking of line programs from the colleges and universities.

BCSN provides in-service workshops for the colleges and universities as well as technical assistance in telecommunications to the faculty, administration, and students. There is no other telecommunications group with a comparable record and experience, minority or otherwise. The BCSN Board consists of 18 presidents of the member universities. The Network staff has over 100 years of combined experience and service to HBCU's.

Executive Order 12372 Review

The application is not subject to review as governed by Executive Order 12372, entitled "Intergovernmental Review of Federal Programs."

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 93.283.

Where To Obtain Additional Information

If you are interested in obtaining additional information regarding this project, please refer to Announcement 504 and contact Van Malone, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 320, Mailstop E–15, Atlanta, GA 30305, telephone (404) 842–6872.

A copy of "Healthy People 2000" (Full Report, Stock No. 017–001–00474–0) or "Healthy People 2000" (Summary Report, Stock No. 017–001–00473–1) referenced in the "Summary" may be obtained through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512–1800.

Dated: June 2, 1995.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–14043 Filed 6–7–95; 8:45 am]

BILLING CODE 4163–18–P

[Announcement 548]

Fellowship Program in Violence Prevention for Minority Medical Students

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1995 funds for a cooperative agreement for a Fellowship Program in Violence Prevention for Minority Medical Students.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2000," a PHS-led national activity to reduce morbidity and mortality and to improve the quality of life. This announcement is related to the priority area of Violent and Abusive Behavior. (For ordering a copy of "Healthy People 2000," see the section "Where to Obtain Addition Information.")

Authority

This program announcement is authorized under sections 391(a) and 393(a), of the Public Health Service Act (42 U.S.C. 280b(a), and 280b-2(a)), as amended.

Smoke-Free Workplace

PHS strongly encourages all grant recipients to provide a smoke-free workplace and to promote the non-use of all tobacco products, and Public law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Eligible Applicants

Applications may be submitted by public and private, nonprofit and for-profit organizations, and governments and their agencies. Thus, universities, colleges, research institutions, hospitals, other public and private organizations, State and local governments or their bona fide agents, federally recognized Indian tribal governments, Indian tribes or Indian tribal organizations are eligible to apply.

Availability of Funds

Approximately $50,000 is available in FY 1995 to fund one award. It is expected that the award will begin on or about September 30, 1995, and will be made for a 12-month budget period with a project period of 1 year.

Purpose

The purpose of this cooperative agreement is to provide minority medical students with training in violence prevention and epidemiologic research. Specifically, this award is intended to:

A. Develop and strengthen minority physicians leadership in violence prevention;

B. Provide education and research opportunities in violence prevention for minority medical students;

C. Provide a model for future violence prevention training programs at the undergraduate medical school level and;

D. Provide 8–12 week fellowships for four fellows, in rotation, to participate in epidemiologic research on violence and in violence prevention projects.

Program Requirements

Applicants must:

1. Demonstrate a 5-year history of developing and managing fellowship assistance and/or specialized training for minority medical students;

2. Demonstrate that faculty/staff committed to this project have experience supervising medical fellows and medical fellowship programs and;

3. Demonstrate experience in providing and managing fellowship programs which places no fewer than 30 fellows in a one year period, and which has placed no fewer than 250 fellows over the life of the program.

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under A. (Recipient Activities), and CDC will be responsible for the activities listed under B. (CDC Activities).

A. Recipient Activities:

Provide two fellows to participate in an 8–12 week program for each of two periods of performance, one in the fall of 1995, and the other in the winter of 1996, who will:

1. Review existing literature and data on violence prevention efforts and organize the information into text and table for a report;

2. Evaluate violence prevention strategies;

3. Analyze data and prepare written manuscripts for publication;

4. Observe technical assistance to local violence prevention projects; and

5. Make clear, concise presentations of projects completed during the fellowship period.

Fellows should be:

a. Second or third year medical students;

b. Able to organize and analyze data;

c. Interested in pursing a career in public health research, practice, or teaching.

B. CDC Activities:

1. Coordinate and facilitate orientation on CDC Division activities;

2. Provide related background and reading materials;

3. Coordinate site visits to funded projects and;

4. Coordinate and assign project activities.

Review and Evaluation Criteria

Applications will be reviewed and evaluated according to the following criteria (maximum 100 total points):

A. Background and Need (20%)

The extent to which the applicant presents data justifying need for the program in terms of magnitude of the related injury problem and the need for minority medical students' training in violence prevention. The extent to which a description of current and previous related experiences: (a) is inclusive in terms of fellowship activities and success, evaluation capability and coordination activities, and (b) demonstrates capacity to conduct the program.

B. Goals and Objectives (15%)

The extent to which the applicant has included goals which are relevant to the purpose of the proposal and feasible to be accomplished during the project period, and the extent to which these are specific, and measurable. The extent to which the applicant has included objectives which are feasible to be accomplished during the budget period, and which address all activities necessary to accomplish the purpose of the proposal. The extent to which the objectives are specific, time-phased, and measurable.

C. Methods (35%)

The extent to which the applicant provides a detailed description of proposed activities which are likely to achieve each objective and overall program goals and which includes designation of responsibility for each action undertaken. The extent to which the applicant provides a reasonable and complete schedule for implementing all activities. The extent to which roles of each Fellow and CDC are described, and coordination and supervision of Fellows in proposed activities is delineated. The extent to which documentation of program organizational location is clear. The extent to which position descriptions, CV's and lines of command are appropriate to accomplishment of program goals and objectives. The extent to which concurrence with the applicant's plans by all other involved parties is specific and documented.

D. Evaluation (30%)

The extent to which the proposed evaluation system is detailed and will document program process, effectiveness, impact, and outcome. The extent to which the applicant demonstrates potential data sources for evaluation purposes, and documents staff availability, expertise, and capacity to perform the evaluation. The extent to which a feasible plan for reporting evaluation results and using evaluation information for programmatic decisions is included.

E. Budget and Justification (Not Scored)

The extent to which the applicant provides a detailed budget and narrative justification consistent with stated objectives and planned program activities.

Executive Order 12372 Review

This program is not subject to the Executive Order 12372 review.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 93.136.

Other Requirements

Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations, 45 CFR part 46, regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

In addition to other applicable committees, Indian Health Service (IHS) institutional review committees also must review the project if any component of IHS will be involved or will support the research. If any American Indian community is involved, its tribal government must also approve that portion of the project applicable to it.

Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and are funded by the cooperative agreement will be subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Application Submission and Deadline

The original and two copies of the application PHS Form 5161–1 (OMB Number 0937-0189) must be submitted to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–13, Atlanta, GA 30305, on or before July 31, 1995.

1. Deadlines: Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date; or

b. Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. Late Applications:

Applications which do not meet the criteria in 1.a. or 1.b. above are considered late. Late applications will not be considered in the current competition and will be returned to the applicant.

Where To Obtain Additional Information

To receive additional written information call (404) 332–4561. You will be asked to leave your name, address and phone number and will need to refer to Announcement 548. You will receive a complete program description, information on application procedures, and application forms.

If you have any questions after reviewing the contents of all the documents, business management technical assistance may be obtained from Adrienne Brown, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–13, Atlanta, GA 30305, telephone (404) 842–6630.

Programmatic technical assistance may be obtained from Timothy Thornton, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Mailstop K–60, Atlanta, GA 30333, telephone (404) 488–4389.

Please refer to Announcement 548 when requesting information and submitting an application.

Potential applicants may obtain a copy of "Healthy People 2000" (Full Report, Stock No. 017–001–00474–0) or "Healthy People 2000" (Summary Report, Stock No. 017–001–00473–1) referenced in the "Introduction" through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512–1800.

Dated: June 1, 1995.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–14044 Filed 6–7–95; 8:45 am]

BILLING CODE 4163–18–P

Food and Drug Administration

[Docket Nos. 95P–0061, 95S–0117, 95S–0126, and 95S–0135]

Patent Term Extensions Under the Uruguay Round Agreements Act and Their Effects on Marketing Applications for Human and Animal Drug Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of its response to a citizen petition from Glaxo Pharmaceuticals, Inc. (Glaxo). The petition requested that the agency announce how the Uruguay Round Agreements Act (URAA) will affect the patent information submission and patent certification requirements for applications to market drug products under the Federal Food, Drug, and Cosmetic Act (the act). FDA responded to the petition on May 25, 1995. The response provides applicants with current information on how the URAA will affect patent term extension requirements for applications to market human and animal drugs.

DATES: Amended patent information, reflecting any extended patent terms under the URAA, should be submitted to FDA before July 8, 1995, but no earlier than June 8, 1995.

ADDRESSES: Copies of the citizen petition (95P–0061/CP1), comments submitted to FDA regarding the citizen petition, and FDA's response to the citizen petition may be obtained from the Freedom of Information Staff (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857. Copies are also available for public examination at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Wayne H. Mitchell, Center for Drug Evaluation and Research (HFD–362), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1049.

SUPPLEMENTARY INFORMATION: On December 8, 1994, the URRA (Pub. L. 103–465) was signed into law. The URAA made amendments to Title 35 of the United States Code. These amendments relate to patent terms for existing and future patents, and they will become effective on June 8, 1995. Certain provisions of the URAA patent amendments will change the terms of some existing patents from 17 years from the date of the granting of the patent to 20 years from the filing of the patent application.

On February 16, 1995, the Patent and Trademark Office (PTO) held a public hearing on the patent provisions amended by the URAA. The PTO devoted a portion of the hearing to addressing several issues pertaining to the effect of these changes in patent law on FDA's enforcement of the act. (See the **Federal Register** notice of January 17, 1995 (60 FR 3398).) Oral testimony was given at the hearing and written submissions were made to PTO and FDA. Glaxo submitted its citizen petition to FDA on March 7, 1995. The petition requested that the agency announce the effect the URAA will have on the patent information submission and patent certification requirements for applicants to market drug products under the act. FDA has received a number of responses to Glaxo's citizen petition from generic and innovator drug manufacturers. Glaxo submitted an additional comment on the responses dated April 13, 1995. These documents are included in Docket No. 95P–0061. These oral and written submissions were considered by FDA in developing its response to the petition.

A brief summary of FDA's position on patent term extensions under the URAA is set out below in this document. A fuller exposition of the agency's position may be found in the response to Glaxo's petition.

I. Submission of Patent Information

FDA has determined that if the patent term expiration date for a listed human or animal drug product is extended by the URAA, the new drug application (NDA) or new animal drug application (NADA) holder must submit information on the new patent term expiration date to FDA after June 8, 1995, but before July 8, 1995. NDA holders who have already submitted information indicating that listed patents will be extended by the URAA should resubmit this information on or after June 8, 1995.

Two copies of amended patent information pertaining to human drug products regulated under section 505 of the act (21 U.S.C. 355) by the Center for Drug Evaluation and Research (CDER) should be submitted to the assigned reviewing division. The submission should bear the pertinent NDA number. Two copies of amended patent information pertaining to human drug products regulated under section 505 of the act by the Center for Biologics Evaluation and Research (CBER) should be sent to the Document Control Center, Center for Biologics Evaluation and Research (HFM–99), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448.

To expedite the availability to the public of the updated patent information, a third copy of the amended patent information pertaining to human drug products regulated under section 505 of the act by either CDER or CBER should be sent to the Drug Information Services Branch, Center for Drug Evaluation and Research, Food and Drug Administration (HFD–84), 5600 Fishers Lane, Rockville, MD 20857.

Amended patent information pertaining to animal drug products should be sent to the Document Control Unit, Center for Veterinary Medicine (HFV–199), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855.

II. Public Availability of Updated Patent Information

Updated information related to patents on human drug products regulated by CDER will be placed on public display in the Dockets Management Branch (address above) under Docket No. 95S–0117, after June 8, 1995. Updated information related to patents on human drug products regulated by CBER will be placed on

public display in the Dockets Management Branch under Docket No. 95S–0135. Updated information related to patents on animal drug products will be placed on public display in the Dockets Management Branch under Docket No. 95S–0126. Updated patent information for human drug products will be published in the monthly supplements to "Approved Drug Products with Therapeutic Equivalence Evaluations" (the Orange Book) and updated patent information for animal drug products will be published in the monthly supplements to "FDA Approved Animal Drug Products" (the Green Book) after June 8, 1995.

III. Amended Patent Certifications

Abbreviated new drug applications (ANDA's), abbreviated new animal drug applications (ANADA's), and applications provided for in section 505(b)(2) of the act (505(b)(2) applications) pending before the agency on June 8, 1995, including such applications that may have received tentative approval letters, must be amended to respond to the URAA-extended patent expiration dates, if information on the new expiration dates is submitted to the agency by the NDA or NADA holder in a timely manner. ANDA's, ANADA's, and 505(b)(2) applications submitted after June 8, 1995, likewise must provide patent certifications with respect to the URAA-extended patent expiration dates. After June 8, 1995, FDA will not approve any application that does not contain a correct certification with respect to a URAA-extended patent expiration date that was submitted in a timely manner to the agency. The agency expects that an applicant that wishes to market a drug under an approved ANDA, ANADA, or 505(b)(2) application before the expiration of a URAA-extended patent, for which information was submitted to FDA in a timely manner, will file a paragraph IV certification with respect to that patent (See sections 505(b)(2)(A), (j)(2)(A)(vii), and 512(n)(1)(H) of the act.)

Amended patent certification statements for abbreviated new drug applications (ANDA's) and 505(b)(2) applications reviewed by the Office of Generic Drugs should be sent to the Office of Generic Drugs, Center for Drug Evaluation and Research (HFD–600), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. Amended patent certification statements for 505(b)(2) applications reviewed by the new drug reviewing divisions within CDER should be sent to the appropriate review division. Amended patent certification statements pertaining to animal drug products should be sent to the Document Control Unit, Center for Veterinary Medicine (HFV–199), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. Amended patent certification statements pertaining to biological products should be sent to the Document Control Center, Center for Biologics Evaluation and Research (HFM–99), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448.

Dated: June 2, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–14060 Filed 6–5–95; 2:29 pm]

BILLING CODE 4160–01–F

[Docket No. 95M–0119]

Chartex International plc; Premarket Approval of Femidom® Female Condom

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application submitted by Chartex International plc, London, U.K., for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of the Femidom® Female Condom. The device is to be manufactured under an agreement with Wisconsin Pharmacal Co., Inc., Jackson, WI, which has authorized Chartex International plc to incorporate information contained in its approved premarket approval application for the Reality™ Female Condom (P910064). FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of April 14, 1995, of the approval of the application.

DATES: Petitions for administrative review by July 10, 1995.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Colin M. Pollard, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1180.

SUPPLEMENTARY INFORMATION: On September 30, 1994, Chartex International plc, London, U.K., submitted to CDRH an application for premarket approval of the Femidom® Female Condom. The device is an intravaginal barrier device and is indicated for use to help prevent pregnancy and sexually transmitted diseases (STD's), including the human immunodeficiency virus (HIV) infection during vaginal intercourse. The application includes authorization from Wisconsin Pharmacal Co., Inc., Jackson, WI, 53037, to incorporate information contained in its approved premarket approval application for the Reality™ Female Condom (P910064). In accordance with the provisions of section 515(c)(2) of the act as amended by the Safe Medical Devices Act of 1990, this PMA was not referred to the Obstetrics and Gynecology Devices Panel, an FDA advisory panel, for review and recommendation because the information in the PMA substantially duplicates information previously reviewed by this panel.

On April 14, 1995, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act, for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before July 10, 1995, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: May 26, 1995.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 95–14058 Filed 6–7–95; 8:45 am]

BILLING CODE 4160–01–F

Substance Abuse and Mental Health Services Administration (SAMHSA)

Competitive Supplements for Integrated Children and Family Services

AGENCY: Substance Abuse and Mental Health Services Administration (SAMHSA), HHS.

ACTION: Notice of availability of supplemental funds for certain programs of the Center for Mental Health Services (CMHS), Center for Substance Abuse Prevention (CSAP) and Center for Substance Abuse Treatment (CSAT).

SUMMARY: This notice informs the public that SAMHSA is making available approximately $2–3 million in Fiscal Year 1995 for up to 10 supplemental awards to existing grantees who have a minimum of 3 years of Federal grant support remaining as of September 1995, as reflected on the current Notice of Grant Award. Funds are being provided to support 3 year supplemental projects designed to implement and evaluate the effectiveness of integrated service delivery approaches for families with children from birth to 7 years of age, who are affected by alcohol, drug abuse and/or mental health disorders or who are at risk for such disorders.

Eligibility is limited to grantees with 3 years remaining in the following SAMHSA programs in order to be able to evaluate the effects of funding such integrated approaches in a known, well-defined project where the various strengths and other grantee characteristics have already been generally identified. Thus, most of the variables affecting performance are known so that the direct effects of the supplemental funding can be better measured than would be possible in an untested environment. This control in supplementing a variety of different programs allows the maximum insight to be obtained with the limited resources available. The grantees will need to have 3 years remaining since we do not anticipate having measurable results to evaluate in a shorter period.

Eligible program	CFDA No.	Statutory authority PHS Act
CMHS:		
Cooperative Agreements for ACCESS—Demonstration Projects for Homeless Persons with Severe Mental Illness.	93.125	520A
Grants for Comprehensive Community Mental Health Services for Children and Adolescents with Serious Emotional Disturbances.	93.104	561, Pt. E, Title V
CSAP:		
The Community Prevention Coalitions Demonstration Grant Program	93.194	501(d)(5); 516
Substance Abuse Prevention Demonstration Grants for High Risk Youth Populations (excluding Module D-Replications).	93.144	517
CSAT:		
Services Grant Program for Residential Treatment for Pregnant and Postpartum Women	93.101	508
Demonstration Grant Program for Residential Treatment for Women and Their Children	93.102	510
Cooperative Agreements for Substance Abuse Treatment and Recovery Systems for Rural, Remote and Culturally Distinct Populations.	93.122	510(b)(1)

The receipt date for applications is July 25, 1995. The application review and award process will be handled in an expedited manner. Applications will be evaluated for technical merit by a panel of expert non-Federal and Federal reviewers. Awards will be made on the basis of the award criteria set forth in the supplemental guidelines subject to the availability of funds. Awards will be made no later than September 30, 1995.

FOR FURTHER INFORMATION CONTACT: Questions concerning program issues should be directed to SAMHSA Project Officers for the existing SAMHSA grants. Questions concerning grants management issues should be directed to SAMHSA Grants Management Specialists for the existing SAMHSA grants.

Dated: June 2, 1995.

Richard Kopanda,

Acting Executive Officer, SAMHSA.

[FR Doc. 95–13985 Filed 6–7–95; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N–95–3909; FR–3904–C–02]

Notice of Fund Availability (NOFA) for Supportive Housing for the Elderly; Correction

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of fund availability for Fiscal Year (FY) 1995; Correction.

SUMMARY: This notice corrects the NOFA for Supportive Housing for the Elderly, published in the **Federal**

Register on May 24, 1995 (60 FR 27612). A sentence in the NOFA mistakenly describes the maximum total number of points an application can earn. This notice corrects the sentence to provide that an application can earn a maximum total of 110 points, including bonus points.

FOR FURTHER INFORMATION CONTACT:

Margaret Milner, Acting Director, Office of Elderly and Assisted Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6130, Washington, DC 20410; telephone number (202) 708–4542 (voice); (202) 708–4594 (TDD). (These numbers are not toll-free).

SUPPLEMENTARY INFORMATION: The Fiscal Year (FY) 1995 Notice of Funding Availability (NOFA) for Supportive Housing for the Elderly was published in the Federal Register on May 24, 1995 (60 FR 27612). At the end of the "Selection Criteria" section of the NOFA (60 FR 27615), HUD included a sentence intended to clarify that section by providing the maximum total number of points. However, in this final sentence, HUD mistakenly described the total number of bonus points available. This notice establishes that, according to the selection criteria as described in the NOFA, an application can earn an additional 10 bonus points for a maximum total of 110 points.

Accordingly, FR Doc. 95–12716, the FY 1995 NOFA for Supportive Housing for the Elderly, published in the Federal Register on May 24, 1995 (60 FR 27612), is corrected as follows:

1. On page 27615, column 3, in section I.D.3., under the heading "Selection Criteria," paragraph (d) is corrected to read as follows:

I. Purpose and Substantive Description

* * * * *

D. Initial Screening, Technical Processing, and Selection Criteria

* * * * *

3. Selection Criteria

* * * * *

(d) The project will be located within the boundaries of a Federally-designated Empowerment Zone, Urban Supplemental Empowerment Zone, Enterprise Community, or Urban Enhanced Enterprise Community (5 bonus points).

The maximum number of points an application can earn without bonus points is 100. An application can earn an additional 10 bonus points for a maximum total of 110 points.

Dated: June 1, 1995.

Camille Acevedo,

Assistant General Counsel for Regulations.

[FR Doc. 95–14080 Filed 6–7–95; 8:45 am]

BILLING CODE 4210–27–M

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N–95–3714; FR–3832–N–02]

NOFA for Public and Indian Housing Family Investment Centers: Amendment

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Amendment of NOFA.

SUMMARY: This Notice amends a NOFA that was published in the Federal Register on February 15, 1995, to announce a set-aside to two Housing Agencies not funded under the FY 1994 NOFA for this program only because of a technical, computational error.

FOR FURTHER INFORMATION CONTACT: Marcia Y. Martin, Office of Community Relations and Involvement (OCRI), Room 4106, or Charles V. Bell, Office of Native American Programs (ONAP), Room P8204, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, DC 20410; telephone Numbers: OCRI (202) 708–4214; and ONAP (202) 755–0088 (these are not toll-free numbers). Hearing- or speech-impaired persons may use the Telecommunications Devises for the Deaf (TDD) by contacting the Federal Information Relay Services on 1–800–877–TDDY (1–800–877–8339) or 202–708–9300 (not a toll-free number) for information on the program.

SUPPLEMENTARY INFORMATION: Accordingly, FR Doc. 95–3731, the NOFA for Public and Indian Housing Family Investment Centers, published at 670 FR 8900 (February 15, 1995), is amended as follows:

1. On page 8900, beginning in the second column, the second paragraph under the heading "B. Allocation Amounts" in Section I, Purpose and Substantive Description, of the NOFA is revised to read as follows:

Of the up to $60 million total current funds, $1,709,500 has been set-aside to two housing authorities not funded in the FY 1994 funding cycle because of a technical, computational error, and up to $42,820,129 is being made available under this NOFA. In accordance with the FY 1994 NOFA, the Housing Authority of Milwaukee, Wisconsin will receive $1,000,000 and the Kodiak Island Housing Authority, Alaska will receive $709,500 to conduct renovation/supportive services activities. In addition, the Department intends to use $10 million of the current funds for a Youth Development Initiative for the purposes of curbing crime among youth, and for youth leadership and development programs that will provide young individuals in public housing with better access to comprehensive education, employment opportunities, and supportive services to achieve self-sufficiency. (Indian Housing Authorities (IHAs) are not eligible for the Youth Development Initiative; however, additional IHAs may be funded through the regular FIC allocation under this NOFA.) In FY 1994, the Department awarded $5 million of FIC funds under this Initiative. A separate NOFA announcing these funds will be published in the Federal Register.

* * * * *

Dated: June 1, 1995.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 95–14081 Filed 6–7–95; 8:45 am]

BILLING CODE 4210–33–M

Office of the Assistant Secretary for Community Planning and Development

[Docket No. D–95–1060; FR–3674–D–02]

Amendment to Field Reorganization; Redelegation of Authority

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of Amendment to Redelegation of Authority.

SUMMARY: This notice amends the Revocation and Redelegation of Authority (59 FR 18280), published April 15, 1994. In that redelegation, the Department implemented the field reorganization for the Office of Community Planning and Development. This amendment expands the authority redelegated to the field regarding the HOPE and the HOME programs. In addition, it adds Technical Assistance Awards and General Administrative Functions to the list of program and administrative areas redelegated to the field. The April 15, 1994 Revocation and Redelegation of Authority (59 FR 18280) remains in effect, as amended by this notice.

EFFECTIVE DATE: June 2, 1995.

FOR FURTHER INFORMATION CONTACT: Richard R. Burk, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th St., S.W., Room 7152, Washington, D.C. 20410, 202–708–5484. A telecommunications device for the hearing-impaired is available at 202–708–2565. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: In November of 1993, the Secretary announced the reorganization of HUD's field structure to improve HUD's performance and provide HUD's customers—members of the public and program beneficiaries—more efficient service and less bureaucracy by empowering HUD's employees to more effectively serve these customers. On April 15, 1994, the Department published a notice revoking and redelegating program authority to meet the objectives of the reorganization for the Office of Community Planning and Development. The notice redelegated to Directors and Deputy Directors of Community Planning and Development in HUD field offices all powers and authorities necessary to carry out specified Office of Community Planning and Development program functions within their jurisdictions.

This document amends the April 15th redelegation. In this document, the HUD officials in the field are redelegated authority to carry out additional functions pursuant to the HOPE and the HOME programs. These officials are also redelegated authority regarding technical assistance awards under various programs and general management functions.

Accordingly, the Assistant Secretary for Community Planning and Development amends the redelegation of authority at 59 FR 18280 (April 15, 1994) and redelegates authority to Directors and Deputy Directors of CPD in HUD field offices as follows:

Section A. Authority Redelegated

At Section B, paragraph 2, of 59 FR 18280 (April 15, 1994), under the heading entitled "2. The Home Program: HOME Investment Partnerships, other than the Indian Tribe Component (Title II, National Affordable Housing Act of 1990 (NAHA), 42 U.S.C. 12721)", the list of duties redelegated is amended to read as follows:

—Approve deadline extensions unless required by statute or regulation.
—Approve HOME program descriptions.
—Execute SF 40093 HOME Improvement Partnership Agreements.
—Designate new HOME participating jurisdictions.
—Conduct environmental reviews and releases (and determine whether an applicant has the capacity to carry out environmental reviews).
—Revoke a jurisdiction's designation as a participating jurisdiction pursuant to Section 216 of NAHA.
—Effect remedies for noncompliance pursuant to Section 223 of NAHA.

The list of duties not redelegated is amended to read as follows:

—Determine allocation and reallocation amounts pursuant to Section 217 of NAHA.

At Section B, paragraph 3, of 59 FR 18280, dated April 15, 1994, under the heading entitled "3. HOPE for Homeownership of Single Family Homes (Title IV, Subtitle C, National Affordable Housing Act of 1990, 42 U.S.C. 12891 (HOPE 3)", the list of duties redelegated is amended to read as follows:

—Sign all grant approval documents, including approval letters and grant agreements.
—Approve deadline extensions unless deadline required by statute or regulation.
—Monitor and close out projects.
—Sign IPA audit correspondence.
—Sign Inspector General audit correspondence.
—Sign congressional correspondence.
—Authority to extend a grantee's close-out date up to 12 months pursuant to 24 CFR 572.210(f).

At Section B of 59 FR 18280 (dated April 15, 1994), after paragraph 12, two new paragraphs are added to the list of program areas and responsibilities under which authority is redelegated to Directors and Deputy Directors of Community Planning and Development in HUD field offices, and the redelegation at 59 FR 18280 is amended to read as follows:

13. Technical Assistance Awards (Section 107 of the Housing and Community Development Act of 1974, 42 U.S.C. 5307; Sections 233 and 242 of the Cranston-Gonzalez National Affordable Housing Act, 42 U.S.C. 12773 and 12782; and Section 423 of the Stuart B. McKinney Homeless Assistance Act, 42 U.S.C. 11383);

—Sign Grant Agreements, SF 718 Funds Reservation, grant award letters, grant amendments, closeout agreements, IPA audit correspondence, and all correspondence to grantees.
—Conduct environmental reviews and releases.
—Approve deadline extensions.
—Amend approved budgets.
—Waive Handbook and Notice provisions not required by statute or regulation.

14. General Management and Administrative Responsibilities Common to All CPD Programs:

In addition to redelegating powers and authorities which are specific to the running of particular CPD programs, this document redelegates the following powers and authorities common to the general management and operation of all CDP programs:

—Sign CPD correspondence, grantee correspondence, and all other public (non-Congressional) inquiries. (Requests for information under the Freedom of Information Act are excluded from this redelegation.)
—Approve performance awards for bargaining unit employees in accordance with Departmental guidelines.
—Approve selections for merit staffed positions in grades GS–12 and below.
—Approve compensatory time and advanced leave for bargaining unit employees.
—Restore "use or lose" leave for bargaining unit employees.
—Approve non-remunerative awards for all employees.

Authority: Sec. 7(d) of the Department of HUD Act (42 U.S.C. 3535(d)).

Dated: June 2, 1995.

Andrew M. Cuomo,

Assistant Secretary for Community Planning and Development.

[FR Doc. 95–14082 Filed 6–7–95; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Application(s) for Permit

The following Applicant(s) have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

PRT–802956

Applicant: Mr. John O. Mills, White Sands Missile Range, New Mexico

The Applicant requests a permit to take the northern aplomado falcon (*Falco femoralis septentrionalis*) on White Sands Missile Range, New Mexico, for the purpose of scientific research, recovery actions, and survival of the species as prescribed by Service recovery documents.

PRT–803203

Applicant: Mr. Howard C. Higgins, TRC Mariah Associates, Inc., Albuquerque, New Mexico.

The Applicant requests a permit to take the southwestern willow flycatcher (*Empidomax traillii extimus*), for the purpose of scientific research, recovery actions, and survival of the species as prescribed by Service recovery documents.

Address: Written data or comments should be submitted to the Assistant Regional Director, Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103, and must be received by the Assistant Regional Director within 30 days for the date of this publication.

Documents and other information submitted with this application are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the above office within 30 days of the date of publication of this notice. (See **ADDRESS** above.)

James A. Young,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 95–14048 Filed 6–7–95; 8:45 am]

BILLING CODE 4310–55–M

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife, Interior.

ACTION: Notice of receipt of applications.

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

Permit No. PRT–799075

Applicant: Samuel S. Sweet, Santa Barbara, California

The applicant requests a permit to take (capture, handle, PIT tag, radio tag, relocate, and release) the arroyo southwestern toad (*Bufo microscaphus californicus*) throughout the species' range in southern California for scientific research for the purpose of enhancing the survival of the species. These activities were previously authorized under the Regional Director's permit no. PRT–702361.

Permit No. 802456

Applicant: A.G. Crook Company, Beaverton, Oregon

The applicant requests a permit to take (capture and release) the shortnose sucker (*Chasmistes brevirostris*) and the Lost River Sucker (*Deltistes luxatus*) for presence/absence surveys in the upper Klamath Lake area, Klamath Falls, Oregon, for the purpose of enhancing the survival of the species.

Permit No. 802453

Applicant: Mary Price, Riverside, California

The applicant requests a permit to take (capture, weigh, mark, collect hair follicle samples, and release) the Stephens' kangaroo rat (*Dipodomys stephensi*) and the Pacific pocket mouse (*Perognathus longimembris pacificus*) in San Diego, Orange, and Riverside Counties, California, for presence/absence surveys for the purpose of enhancing the survival of the species. Activities for the kangaroo rat were previously authorized under the Regional Director's permit No. PRT–702361.

Permit No. 802450

Applicant: Arthur Davenport, Murrieta, California

The applicant requests a permit to take (capture and release) the arroyo southwestern toad (*Bufo microscaphus californicus*), the Pacific pocket mouse (*Perognathus longimembris pacificus*), and the desert pupfish (*Cyprinodon macularius*), and to take (capture, mark, and release) the Stephens' kangaroo rat (*Dipodomys stephensi*), and to take (survey using taped vocalizations and monitor nests) the least Bell's vireo (*Vireo bellii pusillus*), and southwestern willow flycatcher (*Epidonax traillii extimus*), and to take (survey using taped vocalizations) the Yuma clapper rail (*Rallus longirostris yumanensis*), and to take (capture, collect, sacrifice, and release) the Riverside fairy shrimp (*Streptocephalus wootoni*) in San Bernardino, Los Angeles, Riverside, Orange, San Diego, and Imperial Counties, California, for various ecological studies and presence/absence surveys for the purpose of enhancing the survival of the species.

Permit No. 802449

Applicant: Joan Callahan, Hemet, California

The applicant requests a permit to take (capture, measure, and release) the arroyo southwestern toad (*Bufo microscaphus californicus*) throughout the species' range in southern California for presence/absence surveys for the purpose of enhancing the survival of the species.

Permit No. 802466

Applicant: Louis Courtois, Ventura, California

The applicant requests a permit to take (capture and release) the unarmored threespine stickleback (*Gasterosteus accolades williamson*), the tidewater goby (*Eucyclogobius newberryi*), the arroyo southwestern toad (*Bufo microscaphus californicus*), the Riverside fairy shrimp (*Streptocephalus wootoni*), the conservancy fairy shrimp (*Branchinecta conservatio*), the longhorn fairy shrimp (*Branchinecta longiantenna*), and the vernal pool tadpole shrimp (*Lepidurus packardi*) throughout the species' range in southern California for presence/absence surveys for the purpose of enhancing the survival of the species.

Permit No. 802445

Applicant: Elaine Harding-Smith, Scotts Valley, California

The applicant requests a permit to take (capture and release) the salt marsh harvest mouse (*Reithrodontomys raviventris*) in the San Francisco Bay National Wildlife Refuge and the City of Palo Alto Marshes in Alameda, Santa Clara, and San Mateo Counties, California for population studies for the purpose of enhancing the survival of the species.

DATES: Written comments on the permit applications must be received within 30 days of the date of publication.

ADDRESSES: Written data or comments should be submitted to the Chief, Division of Consultation and Conservation Planning, Ecological Services, U.S. Fish and Wildlife Service, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181. Please refer to the respective permit number for each application when submitting comments.

FOR FURTHER INFORMATION CONTACT: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents, within 30 days of the date of publication of this notice, to the following office: U.S. Fish and Wildlife Service, Ecological Services, Division of Consultation and Conservation Planning, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181. Telephone: 503–231–2063; FAX: 503–231–6243. Please refer to the respective permit number for each application when requesting copies of documents.

Dated: June 1, 1995.

Thomas Dwyer,

Deputy Regional Director, Region 1, Portland, Oregon.

[FR Doc. 95–14049 Filed 6–7–95; 8:45 am]

BILLING CODE 4310–55–P

Finding of No Significant Impact for Incidental Take Permit for the Construction of a Single Family Residence Travis County, TX

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Fish and Wildlife Service (Service) has prepared an Environmental Assessment for issuance of a Section 10(a)(1)(B) permit for the incidental take of the Federally endangered golden-cheeked warbler (*Dendroica chrysoparia*) during the construction and operation of a single-family residence in Travis County, Texas.

Proposed Action

The proposed action is the issuance of a permit under Section 10(a)(1)(B) of the Endangered Species Act to authorize the incidental take of the golden-cheeked warbler.

The Applicant (Richard S. Baggett) plans to construct a single-family residence at the specific site indicated as Lot 2, Block L, Long Canyon, Phase IIB, aka 9611 Bell Mountain Drive, Austin, Travis County, Texas, (PRT–800131).

The proposed construction and operation of the single-family residence will comply with all local, State, and Federal environmental regulations addressing environmental impacts associated with this type of development. Details of the mitigation are provided in the Environmental Assessment/Habitat Conservation Plan. The conservation plan actions ensure that the criteria established for issuance of an incidental take permit will be fully satisfied.

Alternatives Considered

1. Proposed action,
2. Alternate site locations,
3. Alternative site designs,
4. Wait for issuance of a regional Section 10(a)(1)(B) permit,
5. No action.

Determination

Based upon information contained in the Environmental Assessment/Habitat Conservation Plan, the Service has determined that this action is not a major Federal action which would significantly affect the quality of the human environment with the meaning of Section 102(2)(c) of the National Environmental Policy Act of 1969. Accordingly, the preparation of an Environmental Impact Statement on the proposed action is not warranted.

It is my decision to issue the Section 10(a)(1)(B) permit for the construction and operation of the single-family residence at the site specified above in Travis County, Texas.

Lynn B. Starnes,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 95–14047 Filed 6–7–95; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Reclamation

Tongue River Basin Project

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability and notice of public hearings on draft environmental impact statement INT–DES–95–26.

SUMMARY: Pursuant to the National Environmental Polcy Act of 1969, as amended, the Department of the Interior, Bureau of Reclamation (Reclamation), in conjunction with the Northern Cheyenne Tribe (NCT) and the Montana Department of Natural Resources and Conservation (DNRC), has prepared a draft environmental impact statement (DEIS) on the proposed Tongue River Basin Project. The DEIS describes and presents the environmental effects of three alternatives, including no action, for a dam repair and enlargement project that would provide additional water to the NCT in partial fulfillment of the Northern Cheyenne Indian Reserved Water Rights Settlement Act of 1992 and enhance fish and wildlife habitat in the Tongue River Basin. Public hearings will be held to receive comments from interested organizations and individuals on the environmental impacts of the proposal.

DATES: A public review period commences with the publication of this notice and ends August 4, 1995. The public hearings are scheduled as follows:

Date	Time	City and state
July 17, 1995.	12:30 p.m.	Busby, MT.
July 17, 1995.	5:30 p.m. ..	Lame Deer, MT.
July 18, 1995.	12:30 p.m.	NCT Reservation.
July 18, 1995.	5:30 p.m. ..	Ashland, MT.
July 19, 1995.	12:30 p.m.	Birney Village, MT.
July 19, 1995.	5:30 p.m. ..	Sheridan, WY
July 20, 1995.	5:30 p.m. ..	Miles City, MT.
July 21, 1995.	5:30 p.m. ..	Billings, MT.

ADDRESSES: Addresses for public hearings are as follows:

- Busby, MT, Busby School Auditorium.
- Lame Deer, MT, Dull Knife Auditorium.
- NCT Reservation, Muddy Community Center.
- Ashland, MT, St. Labre Mission Auditorium.
- Birney Village, MT, Catholic Church.
- Sheridan, WY, Holiday Inn Conference Room.
- Miles City, MT, Miles City Community College.
- Billings, MT, Fireside Inn Conference Room.

Requests for copies of the DEIS should be addressed to:

- Area Manager, Bureau of Reclamation, Attention: MT–422, P.O. Box 30137, Billings, MT 59107–0137; telephone: (406) 247–2312.
- Director, Northern Cheyenne Natural Resources Department, P.O. Box 128, Lame Deer, MT 59043: telephone: (406) 477–6503.
- Director, Montana Department of Natural Resources and Conservation, 1520 East Sixth Avenue, Helena, MT 59620–2301: telephone: (406) 444–6701.

Copies of the DEIS will be available for inspection at the above addresses and libraries in the project vicinity.

FOR FURTHER INFORMATION CONTACT: Mark Albers, Tongue River Basin Project Coordinator, Montana Area Office; telephone (406) 247–7312.

SUPPLEMENTARY INFORMATION: The Tongue River Basin Project, which includes the repair and enlargement of the Tongue River Dam and the partial fulfillment of the Northern Cheyenne Indian Reserved Water Rights Settlement Act of 1992 (Pub. L. 102–374, 106 Stat. 1186) (Settlement Act), is being undertaken to alleviate dam safety concerns and protect downstream lives and property, to protect all existing water use contracts held in the Tongue River Reservoir, and to provide up to an additional 20,000 acre-feet of water to the Northern Cheyenne Tribe. An additional requirement of the project is to enhance fish and wildlife habitat throughout the Tongue River Basin. All project goals are components of the Settlement Act, which ratified the Water Rights Compact entered into on June 11, 1991, by the Northern Cheyenne Tribe and the State of Montana.

Three alternatives, including no action, are considered in the draft statement. The two action alternatives are: (1) Labyrinth Weir Spillway Design, and (2) Roller Compacted Concrete (RCC) Spillway Design. Both action

alternatives would rehabilitate the inadequate Tongue River Dam spillway and raise its crest elevation 4 feet. The resultant increased in Tongue River Reservoir capacity would provide additional water to the NCT and thus partially fulfill the provisions of the Settlement Act. A fundamental component of both action alternatives provides for the enhancement of fish and wildlife habitat in the Tongue River Basin. In addition to the two action plans and the No Action Plan, the DEIS also evaluates in less detail several nonviable alternatives.

The principle environmental consequences that would result from the two action plans include:

- Hydrology. Increased reservoir capacity and contents following construction; short-term reductions in downstream flows during construction; increased upstream ice formation due to increased reservoir contents; short-term reductions in downstream water quality during construction; increased peak outflow from the spillway following construction (Alternative 1 only).
- Aquatics/Fisheries. Short-term drawdown and reduced reservoir capacity during construction; increased reservoir capacity and contents following construction; more stable downstream releases following construction.
- Vegetation. Inundation of approximately 400 acres of vegetation due to increased reservoir capacity and contents following construction; short-term disturbances and reduced productivity to vegetation due to staging area activities, county road realignment, and aggregate mining activities.
- Biodiversity. Potential short-term reductions in biodiversity during construction; increased biodiversity following completion of fish and wildlife habitat enhancement component of project.
- Economic Environment. Increased employment due to project construction; cost to public sector for project construction and operation.
- Transportation. Short-term impacts to local roads from project construction; potential short-term impacts to streets in Sheridan, WY during construction (only if the Sheridan rail load-out facility is used to transport construction-related materials).
- Recreation. Short-term reductions in Tongue River State Park access during construction; short-term reductions in project area recreational experience during construction; short-term increases in exposure to navigational hazards in the reservoir due to construction-related drawdowns; short-term limitations in access to boating facilities due to construction-related drawdowns; short-term limitations in access to boating facilities due to construction-related drawdowns.
- Appearance. Permanent alterations in dam and spillway appearance following construction (Alternative 1 would differ in appearance from the existing spillway due to its labyrinth (zigzag) crest, and Alternative 2 would have a different dam embankment profile as compared to the existing embankment due to the RCC secondary and emergency spillways).
- Project Cost. Alternative 1 is estimated to have a cost 50 percent greater than Alternative 2.

Hearing Process Information: Organizations and individuals wishing to present statements at the hearings should contact the Bureau of Reclamation, Great Plains Region, at the above address. Requests for scheduled presentations will be accepted through 4 p.m. on June 30, 1995.

Oral comments at the hearings will be limited to 10 minutes. The hearing officer may allow any speaker to provide additional oral comments after all persons wishing to comment have been heard. Whenever possible, speakers will be scheduled according to the time preference mentioned in their letter or telephone requests. Speakers not present when called will lose their privilege in the scheduled order and will be recalled at the end of the scheduled speakers.

Written comments from those unable to attend or those wishing to supplement their oral presentations at the hearing should be received by Reclamation's Montana Area Office at the address above by August 4, 1995, for inclusion in the hearing record.

Dated: May 30, 1995.

Katherine Jabs,

Area Manager.

[FR Doc. 95–13986 Filed 6–7–95; 8:45 am]

BILLING CODE 4310–94–M

Bay-Delta Advisory Council Meeting

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of meeting.

SUMMARY: The Bay-Delta Advisory Council (BDAC) will meet to discuss several issues including: Council by-laws and procedural matters; overview of the CALFED Bay-Delta Program; function and objectives of BDAC; and orther items. The meeting is open to the public. Interested persons may make oral statements to the BDAC or may file written statements for consideration.

DATES: The Bay-Delta Advisory Council will meet from 10:00 am to 4:00 pm on Thursday, June 29, 1995.

ADDRESSES: The Bay-Delta Advisory Council will meet at the Beverly Garland Hotel, 1780 Tribute Road (at Exposition Boulevard/West), Sacramento, CA.

CONTACT PERSON FOR MORE INFORMATION: Sharon Gross, CALFED Bay-Delta Program, at (916) 657–2666.

SUPPLEMENTARY INFORMATION: The San Francisco Bay/Sacramento-San Joaquin Delta Estuary is a critically important part of California's natural environment and economy. In recognition of the serious problems facing the region and the complex resource management decisions that must be made, the State of California and the Federal Government are working together to stabilize, protect, restore, and enhance the Bay-Delta Estuary. The State and Federal agencies with management and regulatory responsibilities in the Bay-Delta Estuary are working together as CALFED to provide policy direction and oversight for the process.

One area of Bay-Delta management includes the establishment of a joint State-Federal process to develop long-term solutions to problems in the Bay-Delta Estuary related to fish and wildlife, water supply reliability, natural disasters, and water quality. The intent is to develop a comprehensive and balanced plan which addresses all of the resource problems. This effort will be carried out under the policy direction of CALFED. A group of citizen advisors representing California's agricultural, environmental, urban, business, fishing, and other interests who have a stake in finding long-term solutions for the problems affecting the Bay-Delta Estuary has been chartered under the Federal Advisory Committee Act (FACA) as the Bay-Delta Advisory Council (BDAC) to advise CALFED on the program mission, problems to be addressed, and objectives for the CALFED Bay-Delta Program. BDAC will provide a forum to help ensure public participation, and will review reports and other materials prepared by CALFED staff. Minutes of the meeting will be maintained by the CALFED Bay-Delta Program, Suite 1155, 1416 Ninth Street, Sacramento, CA 95814, and will be available for public inspection during regular business hours, Monday through Friday, within 30 days following the meeting.

Dated: June 1, 1995.

Roger Patterson,

Regional Director, Mid-Pacific Region.

[FR Doc. 95–13987 Filed 6–7–95; 8:45 am]

BILLING CODE 4310–94–M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 388 (Sub-No. 1)]

Intrastate Rail Rate Authority—Alabama

AGENCY: Interstate Commerce Commission.

ACTION: Notice of provisional recertification.

SUMMARY: The State of Alabama has filed an application for recertification. The Commission, under *State Intrastate Rail Rate Authority*, 5 I.C.C.2d 680, 685 (1989), provisionnally recertifies the State of Alabama to regulate intrastate rail rates, classifications, rules, and practices. After its review, the Commission will issue a recertification decision or take other appropriate action.

DATES: This provisional recertification will be effective on June 8, 1995.

FOR FURTHER INFORMATION CONTACT: Elaine Sehrt-Green, (202) 927–5269 or Beryl Gordon, (202) 927–5610 [TDD for hearing impaired: (202) 927–5721].

Decided: June 1, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–14057 Filed 6–7–95; 8:45 am]

BILLING CODE 7035–01–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Proposed Long Range Plan for the Federal Courts

AGENCY: Judicial Conference of the United States.

ACTION: Notice of Conference actions concerning the Proposed Long Range Plan for the Federal Courts.

On March 14, 1995, the Judicial Conference of the United States received from its Committee on Long Range Planning a Proposed Long Range Plan for the Federal Courts. The Proposed Plan is similar in format and content to the tentative proposal that the Committee circulated to the public last November (59 FR 55704) but contains changes made by the Committee to reflect comments received in writing and at public hearings with respect to the earlier version.

In receiving the Proposed Plan, the Judicial Conference authorized public distribution of the document and took the following actions regarding the provisions of the Plan:

1. The Conference allowed its individual members until April 11, 1995, to request referral of any specific numbered recommendations to the appropriate Conference committees for further study and report to the September 1995 Conference session.

2. The Conference approved, effective April 12, 1995, all recommendations in the Proposed Plan not subsequently identified for further study and report as described above. Approval of a Plan recommendation includes the corresponding implementation strategies but not the supporting commentary.

In accordance with this procedure, the following items were approved, effective April 12, 1995, as part of the Long Range Plan for the Federal Courts:

Recommendations	Implementation strategies
1–3	
4	4a–4c.
5–8	
9	9a–9b.
10–11	
12	12a–12c.
13–15	
16	16a–16c.
17–18	
20	
22–25	
27	
28	28a–28b.
29	
30	30a–30c.
33	
	39b–39c.
42	42a–42b.
44	44a.
	45c.
48	
49	49a–49b.
52	52a–52c.
55–68	
70	70a–70c.
72–76	
89	
90	
92	92a–92g.
	94d.
96	
98	
19	
21	
26	
31	
32	32a–32b.
34	
35	35a–35d.
36–38	
39	39a, 39d–39e.
40–41	
43	
45	45a–45b.
46	46a–46b.
47	
50–51	
53	53a–53b.
54–57	
58	58a–58b.
59–62	
63	63a–63d.
64	
69	
71	
77–80	
81	81a–81b.
82–88	
91	91a–91c.
93	93a–93e.
94	94a–94c.
95	
97	
99	99a–99e.
100–101	

Also, in accordance with the prior decision of the Judicial Conference, individual Conference members requested that Conference action on the following items in the Proposed Plan be deferred pending further study by the appropriate committees:

Because most of the deferred items involve policy issues, they were assigned to the Conference committees with responsibility for the programs or topics in question and will be the subject of reports at the September 1995 Conference session. The Conference's Executive Committee was also assigned to consider the 11 recommendations (1–3, 5–6, 9, 11, 16, 30 76, 98) and one implementation strategy (39b) on which purely technical questions were raised. After consulting with Conference members, the Executive Committee, on May 31, 1995, approved those 12 items on the Conference's behalf with minor word changes intended to clarify, improve accuracy, or adjust tone without altering substantive meaning.

The Long Range Plan is a guide to policy making and administrative action by the Conference and other judicial branch authorities. However, only those items approved by the Judicial Conference represent Conference policies. All commentary on recommendations and implementation strategies and all other Plan provisions (including the recommendations and implementation strategies on which Conference members have requested further study) merely reflect the views of the Committee on Long Range Planning unless expressly approved by the Conference in subsequent proceedings.

FOR FURTHER INFORMATION CONTACT: Long Range Planning Office, Administrative Office of the United States Courts, Suite 4–170, One Columbus Circle, N.E., Washington, D.C. 20544, 202–273–1810.

Dated: June 1, 1995.

L. Ralph Mecham,

Secretary to the Judicial Conference of the United States.

[FR Doc. 95–14056 Filed 6–7–95; 8:45 am]

BILLING CODE 2210–01–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated April 4, 1995, and published in the **Federal Register** on April 12, 1995, (60 FR 18617), Games Chemicals, Inc., Industrial Park Road, Pennsville, New Jersey 08070, made application to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Methylphenidate (1724)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Glutethimide (2550)	II
Methadone (9250)	II
Methadone-intermediate (9254)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II

Two registered manufacturers filed a written request for a hearing with respect to Methylphenidate (1724). A third registered manufacturer filed a comment that the firm wishes to participate if a hearing is requested for Methylphenidate. Therefore, pursuant to Section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, Section 1301.54(e), the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted with the exception of Methylphenidate (1724).

Dated: May 31, 1995.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 95–13996 Filed 6–7–95; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on April 5, 1995, Radian Corporation, P.O. Box 201088, Mopac Blvd., Austin, Texas 78720, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Cathinone (1235)	I
Methcathinone (1237)	I
N-Ethylamphetamine (1475)	I
N,N-Dimethylamphetamine (1480)	I
Aminorex (1585)	I
4-Methylaminorex (cis isomer) (1590).	I
Methaqualone (2565)	I
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
3,4-Methylenedioxyamphetamine (7400).	I
3,4-Methylenedioxy-N-ethylamphetamine (7404).	I
3,4-Methylenedioxymethamphetamine (7405).	I
4-Methoxyamphetamine (7411)	I
Psilocybin (7437)	I
Psilocyn (7438)	I
Dihydromorphine (9145)	I
Normorphine (9313)	I
Acetylemthadol (9601)	I
Alphacetylmethadol except Levo-Alphacetylmethadol (9603).	I
Normethadone (9635)	I
3-Methylfentanyl (9813)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Methylphenidate (1724)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Phencyclidine (7471)	II
1-Piperidinocyclohexanecarbonitrile (8603).	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Benzoylecgonine (9180)	II
Ethylmorphine (9190)	II
Hydrocodone (9193)	II
Isomethadone (9226)	II
Meperidine (9230)	II
Methadone (9250)	II
Methadone-intermediate (9254)	II
Morphine (9300)	II
Levo-alphacetylmethadol (9648)	II
Oxymorphone (9652)	II
Alfentanil (9737)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

The firm plans to manufacture deuterated and non-deuterated analytical reference standards.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. Federal Register Representative (CCR), and must be filed no later than July 10, 1995.

Dated: May 31, 1995.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 95–13995 Filed 6–7–95; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on April 24, 1995, Research Triangle Institute, Kenneth H. Davis, Jr., Hermann Building, East Institute Drive, P.O. Box 12194, Research Triangle Park, North Carolina 27709, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Marihuana (7360)	I
Cocaine (9041)	II

The Institute will manufacture Marihuana cigarettes for the National Institute on Drug Abuse (NIDA) and the Cocaine will be used for reference standards, human and animal research, as dictated by NIDA.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than July 10, 1995.

Dated: May 30, 1995.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 95–13989 Filed 6–7–95; 8:45 am]

BILLING CODE 4410–09–M

Importation of Controlled Substances; Notice of Application

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Section 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on April 24, 1995, Research Triangle Institute, Kenneth H. Davis, Jr., Hermann Building, East Institute Drive, P.O. Box 12194, Research Triangle Park, North Carolina 27709, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Marihuana (7360)	I
Cocaine (9041)	II

The Institute plans to import the listed controlled substances to make Marihuana cigarettes and reference standards under the Institute's manufacturer registration.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of these basic classes of controlled substances may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1216.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Division Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than (30 days from publication).

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import basic classes of any controlled substances in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Division Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e), and (f) are satisfied.

Dated: May 30, 1995.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 95–13994 Filed 6–7–95; 8:45 am]

BILLING CODE 4410–09–M

Information of Controlled Substances; Notice of Application

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Section 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on April 15, 1995, Radian Corporation, 8501 Mopac Blvd., P.O. Box 201088, Austin, Texas 78720, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Ibogaine (7260)	I
Etorphine (except HC1) (9056)	I
Heroin (9200)	I
Cocaine (9041)	II
Codeine (9050)	II
Oxycodone (9143)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Morphine (9300)	II
Thebaine (9333)	II
Oxymorphone (9652)	II

The firm plans to import small quantities of the listed controlled substances for the manufacture of analytical reference standards.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of these basic classes of controlled substances may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than July 10, 1995.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import basic classes of any controlled substances in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e), and (f) are satisfied.

Dated: May 30, 1995.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 95–13993 Filed 6–7–95; 8:45 am]

BILLING CODE 4410–09–M

Importation of Controlled Substances; Notice of Application

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Section 1311.42 of Title 21, Code of Federal

Regulations (CFR), notice is hereby given that on March 17, 1995, Stanford Seed Company, 340 South Muddy Creek Road, Denver, Pennsylvania 17517, made application to the Drug Enforcement Administration to be registered as an importer of Marihuana (7360), a basic class of controlled substance in Schedule I.

The firm plans to import Marihuana seed which will be rendered non-viable and used as bird seed.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than July 10, 1995.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e), and (f) are satisfied.

Dated: May 30, 1995.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 95–13992 Filed 6–7–95; 8:45 am]

BILLING CODE 4410–09–M

Importation of Controlled Substances; Notice of Application

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Section 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on February 15, 1995, Roxane Laboratories, Inc., 1809 Wilson Road, P.O. Box 16532, Columbus, Ohio 43216–6532, made application to the Drug Enforcement Administration to be registered as an importer of Cocaine (9041) a basic class of controlled substance in Schedule II.

The firm plans to import Cocaine to make topical solutions under its manufacturer registration for distribution to the firms customers.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than July 10, 1995.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42(b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e), and (f) are satisfied.

Dated: May 30, 1995.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 95–13991 Filed 6–7–95; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on March 16, 1995, Johnson & Johnson Pharmaceutical Partners, HC02 State Road 933, KMO.1 Mamey Ward, HC–02 Box 19250, Gurabo, Puerto Rico 00778–9629, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Alfentanil (9737)	II
Sufentanil (9740)	II

The firm plans to manufacture the listed controlled substances for bulk distribution to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than July 10, 1995.

Dated: May 30, 1995.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 95–13990 Filed 6–7–95; 8:45 am]

BILLING CODE 4410–09–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (95–035)]

Intent to Grant an Exclusive Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant a patent license.

SUMMARY: NASA hereby gives notice of intent to grant Cellulose Conversion Technology, Bedford, Texas 76095, a partially exclusive license to practice the invention protected by U.S. patent No. 5,196,069 entitled "Cellulose Processing Using Microwave Pretreatment," which was issued March 23, 1993, by the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The partially exclusive license will contain appropriate terms and conditions to be negotiated in accordance with the Department of Commerce patent licensing regulations (37 CFR part 404). NASA will negotiate the final terms and conditions and grant the license unless within 60 days of the date of this notice, the Director of Patent Licensing receives written objections to the grant, together with supporting documentation. The Director of Licensing will review all written responses to the notice and then recommend to the Associate General Counsel (Intellectual Property) whether to grant the license.

DATES: Comments to the notice must be received by August 7, 1995.

ADDRESS: National Aeronautics and Space Administration, Code GP, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Harry Lupuloff, NASA, Director of Patent Licensing, (202) 358–2041.

Dated: June 1, 1995.

Edward A. Frankle,

General Counsel.

[FR Doc. 95–14083 Filed 6–7–95; 8:45 am]

BILLING CODE 7510–01–M

[Notice (95–036)]

Intent To Grant a Patent License

AGENCY: National Aeronautics and Space Administration.

SUMMARY: NASA intends to grant Total Quality Measures, Inc., a corporation of the State of New Hampshire, having its headquarters in Merrimack, New Hampshire, an exclusive, royalty-bearing, revcable license to practice U.S. Patent No. 5,267,950, entitled "Automatic Locking Orthotic Knee Device" and U.S. Patent Application Serial No. 08/422,961, entitled "Automatic Locking Knee Brace Joint." U.S. Patent No. 5,267,950 and Serial 08/422,961 pertain to hinge-like devices for knee brace that automatically lock in place under pressure. The patent license will be for a limited number of years and will contain appropriate terms and conditions negotiated in accordance with the Department of Commerce patent licensing regulations, 37 CFR 404.1 *et seq.* NASA will grant the patent license in accordance with its licensing regulations unless the Director of Patent Licensing receives written objections to the grant, together with any supporting documentation, within 60 days of the date of this notice. The Director of Patent Licensing will review all written objections to the grant and then recommend to the Associate General Counsel (Intellectual Property) whether to grant the license.

DATES: Written objections to this proposed license grant must be received by August 7, 1995.

ADDRESS: National Aeronautics and Space Administration, Code GP, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Harry Lupuloff, NASA, Director of Patent Licensing at (202) 358–2041.

Dated: June 1, 1995.

Edward A. Frankie,

General Counsel.

[FR Doc. 95–14084 Filed 6–7–95; 8:45 am]

BILLING CODE 7510–01–M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Center for Excellence in the Environment Request for Public Participation

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Center for Excellence in the Environment, a component of the Corporation for National and Community Service (the Corporation), seeks input from organizations and persons knowledgeable in the area of environmental training and technical assistance.

DATES: The Corporation seeks the participation of the public in this process until June 23, 1995.

ADDRESSES: Responses to this notice should be sent to the Center on Excellence in the Environment, P.O. Box 29995, The Presidio, San Francisco, CA 94129; fax (415) 561–5955. For individuals with disabilities, the information contained in this notice will be made available in alternative formats, upon request.

FOR FURTHER INFORMATION CONTACT: Pipo Bui, tel. (415) 561–5950.

SUPPLEMENTARY INFORMATION: The Corporation is a government corporation that engages Americans of all ages and backgrounds in community-based service. This service addresses the nation's education, public safety, human, and environmental needs to achieve direct and demonstrable results. In doing so, the Corporation fosters civic responsibility, strengthens the ties that bind us together as a people, and provides educational opportunity for those who make a substantial commitment to service.

Pursuant to the National and Community Service Act of 1990, as amended, 42 U.S.C. 12501 *et seq.*, the Corporation may "conduct, directly or by grant or contract, appropriate training programs" to promote leadership development in national service programs. The Corporation has established the Presidio Leadership Center (PLC) to carry out this objective.

The Center for Excellence in the Environment (the Center), which operates within the PLC, is designed to provide technical assistance to the Corporation's environmental national service programs. This assistance may include disseminating information, designing educational materials, creating networks of persons knowledgeable in environmental training and technical assistance, identifying model service programs and sharing "lessons" learned from ongoing programs. The Center plans to build a communications infrastructure of environmental programs, through regional networks of trainers and/or consultants, conferences, and other forms of communication between such programs. The Center seeks to develop training and technical assistance programs addressing both natural and neighborhood (or community) aspects of the environment.

The Center seeks input from persons and programs with experience in forming networks of trainers and environmental experts, planning and hosting conferences, and managing and supporting a decentralized network of national service programs. After receiving this input, the Center will decide whether and how to implement a program, directly or by grant or contract, with appropriate public notice published in the **Federal Register**.

Dated: June 5, 1995.

Terry Russell,

General Counsel.

[FR Doc. 95–14075 Filed 6–7–95; 8:45 am]

BILLING CODE 6050–28–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–21108; 812–7689]

Frank Russell Investment Company, et al.; Notice of Application

June 2, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Frank Russell Investment Company ("FRIC"), Russell Insurance Funds, Inc. ("RIF"), Frank Russell Investment Management Company ("FRIMCo"), Frank Russell Company ("FRC"), and Russell Fund Distributors, Inc. ("RFD").

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) of the Act from the provisions of section 15(a) and rule 18f–2; and from certain disclosure requirements set fort in item 22 of Schedule 14A under the Securities Exchange Act of 1934 (the "Exchange Act"); items 2, 5(b)(iii), and 16(a)(iii) of Form N–1A; item 3 of Form N–14; item 48 of Form N–SAR; and sections 6–07(2)(a), (b), and (c) of Regulation S–X.

SUMMARY OF APPLICATION: Applicants seek a conditional order permitting FRIMCo to enter into sub-advisory contracts without receiving prior shareholder approval, and permitting FRIC and RIF (the "Funds") to disclose only aggregate sub-advisory fees for each fund in their prospectuses and other reports.

FILING DATES: The application was filed on February 19, 1991, and amended and restated on December 20, 1993, April 15, 1994, May 3, 1995, and May 10, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 27, 1995, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, D.C. 20549. Applicant, 909 A Street, Tacoma, Washington 98402.

FOR FURTHER INFORMATION CONTACT: Mary Kay Frech, Senior Attorney, at (202) 942–0579, or C. David Messman, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. FRIC is a registered no-load, open-end management investment company organized as a Massachusetts business trust. FRIC has twenty-two separate series, each constituting a different investment portfolio. All of FRIC's series follow the conventional practice of paying their investment advisory fee from the series' assets. Ten of FRIC's series require investors to pay an additional investment services fee directly to their investment adviser, FRIMCo, for shareholder services (the "External Fee FRIC Funds").[1] The remaining twelve series pay no investment services fee. FRIC's shares are offered predominantly to institutional fiduciaries, such as bank trust departments and registered investment advisers, which have investment discretion over their clients' accounts. A limited number of shares are offered to smaller institutional investors such as endowment funds and to individual investors who have a direct, contractual relationship with FRIMCo. Each investor in each of FRIC's series executes an asset management services agreement with FRTAMCo, the different forms of which reflect the different services required by different categories of investors.

2. RIF is a registered no-load, open-end management investment company organized as a Maryland corporation. It is proposed to consist of several separate series, each constituting a different investment portfolio. RIF shares initially will be offered exclusively to insurance separate accounts as the funding vehicle for variable and fixed annuity and life insurance products. Each series of RIF follows the conventional practice of paying FRIMCo an advisory fee from the series' assets. The Funds' separate series are referred to herein as the "Portfolios."

3. FRIMCo is a registered investment adviser, organized as a Washington corporation. The Funds have engaged FRIMCo as their investment adviser pursuant to an investment management agreement. FRIMCo as engaged, or will engage, one or more sub-advisers ("Money Managers") pursuant to an investment management agreement ("Portfolio Management Agreement") to exercise investment discretion over the assets of each Portfolio. Each Portfolio, except for the money market Portfolios and a real estate securities Portfolio, has two or more Money Managers.

4. FRC, the parent company of FRIMCo, is a registered investment adviser, organized as a Washington corporation. FRC provides portfolio structuring and Money Manager evaluation services to FRIMCo, but receives no separately stated fee from the Funds for its services.

5. RFD is a registered broker-dealer, organized as a Washington corporation. RFD is a wholly-owned subsidiary of FRIMCo and serves as the distributor of the Funds' shares.

6. In contrast to the majority of investment companies that have a single organization serving as the manager/administrator and the investment adviser, the Funds divide responsibility for corporate management and investment advice between FRIMCo and the Money Managers. The Funds employ a "multi-style, multi-manager" method of investment, under which FRIMCo, using the consulting services of FRC, selects and monitors for each Portfolio multiple Money Managers using a range of manager styles.

7. FRIMCo performs internal due diligence on prospective Money Managers for each Portfolio and thereafter monitors their performance through quantitative and qualitative analysis, as well as actual consultations with the Money Managers. FRIMCo has responsibility for communicating performance expectations and evaluations to the Money Managers, supervising compliance with the Portfolios' investment policies and objectives, recommending to the board of directors of the Funds whether Portfolio Management Agreements should be renewed, modified, or terminated, and recommending to the Funds' directors the addition of new Money Managers. For its services, FRIMCo receives a management fee from the Portfolios. FRIMCo pays the Money Managers from these fees.

8. In 1981, the SEC issued an order to permit the FRIC Portfolios to hire and contract with Money Managers without obtaining shareholder approval through a proxy solicitation, and to exempt the FRIC Portfolios from the requirement to discuss the fees paid for FRIMCo to the Money Managers of the funds.[2] In 1988, the SEC issued an order to exempt the RIF Funds from the requirement to disclose the fees paid by FRIMCo to the Money Managers of the RIF Portfolios.[3] The requested order would supersede the 1981 and 1988 orders.

9. Applicants request an exemption from section 15(a) and rule 18f–2 to permit FRIMCo to enter into Portfolio Management Agreements with Money Managers, other than Money Managers that are affiliated persons (as defined in section 2(a)(3) of the Act) of the Fund for FRIMCo other than by reason of serving as a Money Manager to one or more of the Funds (an "Affiliated Money Manager"), without such agreements being approved by the shareholders of the applicable Partfolio. In lieu of the shareholder voting requirement, applicants will provide shareholders with an information statement that includes all the information concerning a new Money Manager or Portfolio Management Agreement that would be included in a proxy statement.

10. Applicants propose to disclose (both as a dollar amount and as a percentage of a Portfolio's net assets) in the Funds' registration statements and other public documents only the aggregate amount of fees paid by FRIMCo to all the Money Managers of a Portfolio ("Aggregate Fee Disclosure"). Aggregate Fee Disclosure means: (a) the total advisory fee charged by FRIMCo to the Portfolio; (b) the aggregate fees paid by FRIMCo to all Money Managers managing assets of the Portfolio; and (c) the net advisory fee retained by FRIMCo with respect to the Portfolio after FRIMCo pays all Money Managers managing assets of that Portfolio. For any Fund that employs an Affiliated Money Manager, "Aggregate Fee Disclosure" also will include separate disclosure of any fees paid to such Affiliated Money Manager.

Applicants' Legal Analysis

1. Section 15(a) makes it unlawful for any person to act as an investment adviser to a register investment company except pursuant to a written contract that has been approved by a majority of the investment company's outstanding securities. Rule 18f–2 provides that each series or class of stock in a series company affected by a matter must approve such matter if the Act requires shareholder approval.

2. Applicants state that primary responsibility for management of the Funds, in particular, the selection and supervision of the Money Managers, will be vested in FRIMCo, subject to oversight and approval by the Funds' directors. Applicants argue that the multi-manager, multi-style structure used by FRIMCo is clearly described in the Funds' prospectuses, and that shareholders invest in the Funds expecting FRIMCo to change Money Managers when appropriate. Applicants also assert that requiring shareholders to approve every Money Manager change would prevent FRIMCo from performing on a timely and effective basis the principal function the shareholders are paying it to perform—the selection, monitoring, and changing of Money Managers. Applicants contend that requiring shareholder approval would not only result in unnecessary administrative expense to a Portfolio, but could result in harmful delays in executing changes in Money Managers that FRIMCo and the Funds' directors may determine are necessary.

3. Section 15(a)(1) provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except pursuant to a written contract which "precisely describes all compensation to be paid thereunder."

4. Items 2, 5(b)(iii), and 16(a)(iii) of Form N–1A require the Funds to disclose in their prospectuses the investment adviser's compensation and the method of computing the advisory fee.

5. Item 3 of Form N–14, the registration form for business combinations involving mutual funds, requires the inclusion of a "table showing the current fees for the registrant and the company being acquired and pro forma fees, if different, for the registrant after giving effect to the transaction using the format prescribed" in item 2 of Form N–1A.

6. Rule 20a–1 under the Act requires proxies solicited with respect to an investment company to comply with Schedule 14A under the Exchange Act. Item 22 of Schedule 14A sets forth the requirements concerning the information that must be included in a proxy statement. Item 22(a)(3)(iv) requires a proxy statement for a shareholder meeting at which a new fee will be established or an existing fee increased to include a table of the current and pro forma fees using the format prescribed in item 2 of Form N–1A. Items 122(c)(1)(ii), 22(c)(1)(iii), 22(c)(8), and 22(c)(9), taken together, require that a proxy statement for a shareholder meeting at which an advisory contract is to be voted upon shall include the "rate of compensation of the investment adviser," the "aggregate amount of the investment adviser's fee," the "terms of the contract to be acted upon," and, if a change in fees is proposed, the existing and proposed rate schedule for advisory fees paid to their advisers, including the Money Managers.

7. Item 48 of Form N–SAR provides that the Funds must disclose the rate schedule for advisory fees paid to their advisers, including the Money Managers.

8. Items 6–07(2) (a), (b), and (c) of Regulation S–X require that the Funds' financial statements contain information concerning fees paid to the Money Managers.

9. Applicants submit that it is consistent with the policy of the Act and the protection of investors to exempt applicants from the requirement to disclose individual Money Manager fees because applicants believe that such disclosure is likely to inhibit or eliminate FRIMCo's ability to negotiate fees below the Money Managers' "posted" fee schedules. Applicants argue that any advantage that FRIMCo would gain in negotiating fee arrangements with Money Managers would inure ultimately to the benefit of the shareholders of the Portfolios because it would be possible for FRIMCo to pass the benefits of a lower sub-advisory fee on to the Portfolios, although FRIMCo is not legally or contractually obligated to do so.[4] They also maintain that the ability to negotiate fee reductions is a critical element in their multi-style, multi-manager fund structure and the Funds' ability to offer investors a multi-manager investment product at a price which is competitive with single adviser funds.

10. Applicants assert that because all shareholders of the Funds will be fully advised of the fees charged by FRIMCo for its management services (which include compensating the Money Managers), each shareholder will have the information to determine whether, in its judgment, the total package of

[1] Investors in the External Fee FRIC Funds include (a) banking institutions, broker-dealers, investment advisers, charitable foundations, endowments, and qualified pension plans, including IRA plans, which have negotiated and entered into a written agreement with FRIMCo establishing the investment services fee to be paid FRIMCo for assets invested in the External Fee FRIC Funds by those entities both for their own account as well as on behalf of their clients for whom they may be acting in either an agency or discretionary capacity, and (b) individuals with investable assets of $5 million or more, who have negotiated and entered into a written agreement wit FRIMCo for all assets invested in the External Fee FRIC Funds. Applicants also may make shares of the External Fee FRIC Funds available to employees of FRC and its affiliates. These employees will pay an investment services fee to FRIMCo which is consistent for all employees.

[2] Investment Company Act Release Nos. 11944 (Sept. 21, 1981) (notice) and 11986 (Oct. 14, 1981) (order). At the time of the 1981 order, FRIC had only seven portfolios, all of whose investors paid an advisory fee directly to FRIMCo.

[3] Investment Company Act Release Nos. 16309 (Mar. 9, 1988) (notice) and 16351 (Apr. 7, 1988) (order).

[4] Fund directors would be required to take the amounts paid by FRIMCo to the Money Managers into account when assessing the profitability of the advisory agreements to FRIMCo during the course of their annual review of the Funds' management and sub-advisory arrangements under sections 15 and 36(b) of the Act.

services is priced reasonably in relation to the services and costs that the investor could obtain elsewhere. Moreover, applicants believe that the Aggregate Fee Disclosure will provide investors of each Portfolio with sufficient and clear information to determine whether they are receiving good value from FRIMCo and the Money Managers of that Portfolio and whether to redeem their shares if dissatisfied.

11. Section 6(c) authorizes the Commission to exempt persons or transactions from the provisions of the Act to the extent that such exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act. Applicants assert that the section 6(c) standards for exemption are met.

Applicants' Conditions

Applicants agree that the following conditions may be imposed in any order of the Commission granting the requested relief:

1. Each Fund will disclose in its registration statement the Aggregate Fee Disclosure.

2. FRIMCo will not enter into a Portfolio Management Agreement with any Affiliated Money Manager without such agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Portfolio.

3. At all times, a majority of the Funds' directors or trustees will be persons each of whom is not an "interested person" of the Funds as defined in section 2(a)(19) of the Act ("Independent Directors"), and the nomination of new or additional Independent Directors will be placed with the discretion of the then existing Independent Directors.

4. When a Money Manager change is proposed for a Portfolio with an Affiliated Money Manager, the Funds' directors or trustees, including a majority of the Independent Directors, will make a separate finding, reflected in each applicable Fund's board minutes, that such change is in the best interests of the Portfolio and its shareholders and does not involve a conflict of interest from which FRIMCo or the Affiliated Money Manager derives an inappropriate advantage.

5. Independent counsel knowledgeable about the Act and the duties of Independent Directors will be engaged to represent the Independent Directors of the Funds. The selection of such counsel will be placed within the discretion of the then existing Independent Directors.

6. FRIMCo will provide the Funds' directors, no less frequently than quarterly, information about FRIMCo's profitability on a per-Portfolio basis. Such information will reflect the impact on profitability of the hiring or termination of any Money Manager during the applicable quarter.

7. Whenever a Money Manager is hired or terminated, FRIMCo will provide the Funds' directors information showing the expected impact on FRIMCo's profitability.

8. FRIMCo will provide general management and administrative services to the Funds, and, subject to review and approval by their directors will: (a) set the Funds' overall investment strategies; (b) select Money Managers; (c) allocate and, when appropriate, reallocate the Portfolios' assets among Money Managers; (d) monitor and evaluate the performance of Money Managers; and (e) ensure that the Money Managers comply with the Funds' investment objectives, policies, and restrictions.

9. Each RIF Fund will obtain the consent of its sole shareholders before relying upon the order with respect to shareholder approval of Money Manager changes. Existing Portfolios of the FRIC Funds will proceed promptly (within one year) to obtain shareholder approval to operate the Portfolios in accordance with the order, but, prior to the holding of the shareholder meeting, will continue to operate in accordance with the 1981 order. Portfolios of the Funds created after the issuance of the order will disclose their reliance on the order in their prospectuses and will have such reliance approved by consent of their sole shareholder.

10. Within 60 days of the hiring of any new Money Manager or the implementation of any proposed material change in a Portfolio Management Agreement, FRIMCo will furnish shareholders all information about a new Money Manager or Portfolio Management Agreement that would be included in a proxy statement, except as modified by the order with respect to the disclosure of fees paid to the Money Managers. Such information will include Aggregate Fee Disclosure and any change in such disclosure caused by the addition of a new Money Manager or any proposed material change in a Portfolios's Management Agreement. FRIMCo will meet this condition by providing shareholders, within 60 days of the hiring of a Money Manager or the implementation of any material change to the terms of a Portfolio Management Agreement, with an information statement meeting the requirements of Regulation 14C and Schedule 14C under the Exchange Act. The information statement also will meet the requirements of Schedule 14A, except as modified by the order with respect to the disclosure of fees paid to the Money Managers.

11. No director, trustee, or officer of the Funds or FRIMCo will own directly or indirectly (other than through a polled investment vehicle that is not controlled by any such director, trustee, or officer) any interest in a Money Manager except for (a) ownership of interests in FRIMCo or any entity that controls, is controlled by, or is under common control with FRIMCo; or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly-traded company that is either a Money Manager or an entity that controls, is controlled by, or is under common control with a Money Manager.

12. The Funds will disclose in their prospectuses the existence, substance, and effect of any order granted pursuant to the application.

By the Commission.

Johathan G. Katz,

Secretary.

[FR Doc. 95–14002 Filed 6–7–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35787; File No. 600–23]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Order Approving Application for Extension of Temporary Registration as a Clearing Agency

May 31, 1995.

On February 3, 1995, Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") a request pursuant to Section 19(a)[1] of the Securities Exchange Act of 1934 ("Act") that the Commission grant GSCC full registration as a clearing agency under Section 17A of the Act[2] or in the alternative extend GSCC's temporary registration as a clearing agency until such time as the Commission is able to grant GSCC permanent registration.[3] On March 13, 1995, GSCC filed with the commission an amended Form CA–1. The Commission published notice of GSCC's request in the **Federal Register** on April 24, 1995.[4] No comments were received. This order extends GSCC's temporary registration as a clearing agency through November 31, 1995.

GSCC provides automated clearance and settlement services to its members for their transactions in government securities.[5] One of the primary reasons for GSCC's registration was to provide comparison services for transactions in government securities. GSCC offers its members netting and comparison services including services for next-day settling trades, forward settling trades, auction takedown activity, the multilateral meeting of trades, the novation of netted trades, and the daily marking-to-the-market. In connection with GSCC's clearance and settlement services, GSCC provides a centralized loss allocation procedure and maintains margin to offset netting and settlement risks.

As a part of GSCC's request for full clearing agency registration, GSCC has requested that the Commission remove GSCC's exemption from the participation standards of Sections 17A(b)(3)(B) and 17A(b)(4)(B) of the Act.[6] The Commission recently has approved two proposed rule changes that increase the categories of those eligible for membership in GSCC's netting system,[7] as well as a proposed rule change which establishes minimum financial standards for insurance companies applying for GSCC membership.[8] In addition, GSCC has asserted that its current selection process for its board of directors, which permits any GSCC member to nominate candidates for election to the Board and to vote for candidates so nominated, assures fair representation.[9] GSCC further has stated that it recognizes future membership growth may require GSCC to adjust the selection process to ensure fair member representation on the Board.[10]

GSCC has made substantial progress toward satisfying the requirements enumerated in Section 17A(b) of the Act. However, the Commission believes that GSCC's exemptions from the participation standards set forth in Sections 17A(b)(3)(B) and 17A(b)(4)(B) of the Act should be continued at this time. Although GSCC has made advancements to encourage participation by the establishment of new membership categories, the Commission notes GSCC has had little practical experience with the utilization of the new categories. To date only two of these new categories for membership, the futures commission merchant and the Category 2 dealer netting member, have been employed, and within these categories only there new GSCC members have been added.[11] Furthermore, during the continued temporary approval period, GSCC will gain experience with its new procedures described above, and the Commission will be able to better evaluate GSCC's compliance with Section 17A of the Act.[12]

It is therefore ordered that GSCC's temporary registration as a clearing agency (File No. 600–23) be and hereby is extended through November 31, 1995 subject to the terms set forth above.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[13]

Jonathan G. Katz,

Secretary.

[FR Doc. 95–14001 Filed 6–7–95; 8:45 am]

BILLING CODE 8010–01–M

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[1] 15 U.S.C. 78s(a)(1) (1988).

[2] 15 U.S.C. 78q–1 (1988).

[3] Letter from Charles A. Moran, President, GSCC, to Brandon Becker, Director, Division of Market Regulation, Commission (February 3, 1995) ("Registration Letter"). On May 24, 1988, the Commission granted GSCC's initial application for registration as a clearing agency pursuant to Sections 17A and 19(a) of the Act and Rule 17Ab2–1 (17 CFR 240.17Ab2–1 (1994)) thereunder for a period of three years. Securities Exchange Act Release No. 25740 (May 24, 1988), 53 FR 19639. The Commission subsequently extended GSCC's registration until May 31, 1995. Securities Exchange Act Release Nos. 29067 (April 11, 1991), 56 FR 15652 and 32385 (June 3, 1993), 58 FR 32405.

[4] Securities Exchange Act Release No. 35618 (April 17, 1995), 60 FR 20131.

[5] "Government securities" means securities issued or guaranteed by the United States ("U.S."), U.S. government agencies and instrumentalities, and U.S. government-sponsored corporations. 15 U.S.C. 3(a)(42) (1990).

[6] At the time of GSCC's initial registration, the Commission determined that GSCC's rules did not enumerate the statutory categories of membership as required by Section 17A(b)(3)(B) and the financial standards for applicants and members as contemplated by Section 17A(b)(4)(B) of the Act. 15 U.S.C. 78q–1(b)(3)(B), 78q–1(b)(4)(B) (1988). In addition, the Commission determined that while the composition of GSCC's Board of Directors reasonably reflected GSCC's anticipated initial membership, it would be appropriate to reevaluate whether GSCC's process for selecting its Board of Directors complied with the fair representation requirements in Section 17A(b)(3)(C) of the Act before granting full registration as a clearing agency. 15 U.S.C. 78q–1(b)(3)(C) (1988).

[7] Securities Exchange Act Release Nos. 34935 (November 3, 1994), 59 FR 56100 (order approving establishment of new categories of netting system membership for futures commission merchants) and 32722 (August 5, 1993), 58 FR 42993 (order approving establishment of new categories of netting system membership for dealer ("Category 2") and interdealer brokers, issuers of government securities, insurance companies, registered clearing agencies, and registered insurance companies). A Category 2 dealer netting member has a lower net worth threshold but more stringent margin requirements than for other ("Category 1") dealer netting members. Since establishment of the new membership categories, a futures commission merchant and two Category 2 dealers have been admitted to netting system membership under the new categories.

[8] Securities Exchange Act Release No. 35640 (April 24, 1995), 60 FR 21014 (order approving establishment of minimum financial requirements for insurance companies seeking GSCC membership).

[9] Registration Letter, *supra* note 3.

[10] *Id.*

[11] *Supra* note 7.

[12] The Commission also will continue GSCC's exemption from the fair representation standards for Section 17A(b)(3)(C) during the temporary registration period. Prior to granting permanent registration, the Commission will continue to evaluation GSCC's criteria for selecting its Board of Directors to ensure that the selection criteria is sufficiently flexible and assures adequate representation among GSCC's membership consistent with Section 17A(b)(3)(C) of the Act.

[13] 17 CFR 200.30–3(a)(50)(i) (1994).

SMALL BUSINESS ADMINISTRATION

Notice of Action Subject to Intergovernmental Review

AGENCY: Small Business Administration.

ACTION: Notice of action subject to Intergovernmental Review Under Executive Order 12372.

SUMMARY: This notice provides for public awareness of SBA's intention to refund twenty-three existing Small Business Development Centers (SBDCs) on October 1, 1995. Currently there are 56 SDBCs operating in the SDBC program. The following SDBCs are intended to be refunded, subject to the availability of funds: Alabama, Alaska, Connecticut, Delaware, Iowa, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Mississippi, Missouri, New York, Ohio, Puerto Rico, Dallas, Houston, Lubbock, San Antonio, Vermont, Virgin Islands, West Virginia, and Wyoming. This notice also provides a description of the SBDC program by setting forth a condensed version of the program announcement which has been furnished to each of the SBDCs to be refunded. This publication is being made to provide the State single points of contact, designated pursuant to Executive Order 12372, and other interested State and local entities, the opportunity to comment on the proposed refunding in accord with the Executive Order and SBA's regulations found at 13 CFR part 135.

EFFECTIVE DATE: September 6, 1995.

ADDRESSES: Comments should be addressed to Ms. Johnnie L. Albertson, Associate Administrator for SBDC Program, U.S. Small Business Administration, 409 Third Street, SW., Suite 4600, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Same as above.

Notice of Action Subject to Intergovernmental Review

SBA is bound by the provisions of Executive Order 12372, "Intergovernmental Review of Federal

Programs." SBA has promulgated regulations spelling out its obligations under that Executive Order. See 13 CFR part 135, effective September 30, 1983.

In accord with these regulations, specifically 135.4, SBA is publishing this notice to provide public awareness of the pending application of twenty-three existing Small Business Development Centers (SBDCs) for refunding. Also, published herewith is an annotated program announcement describing the SBDC program in detail.

This notice is being published three months in advance of the expected date of refunding these SBDCs. Relevant information identifying these SBDCs and providing their mailing address is provided below. In addition to this publication, a copy of this notice is being simultaneously furnished to the affected State single point of contact which has been established under the Executive Order.

The State single point of contact and other interested State and local entities are expected to advise the relevant SBDC of their comments regarding the proposing refunding in writing as soon as possible. The SBDC proposal cannot be inconsistent with any area-wide plan providing assistance to small business, if there is one, which has been adopted by an agency recognized by the State government as authorized to do so. Copies of such written comments should also be furnished to Ms. Johnnie L. Albertson, Associate Administrator for SBDC Program, U.S. Small Business Administration, 409 Third Street, SW., Suite 4600, Washington, DC 20416. Comments will be accepted by the relevant SBDC and SBA for a period of 90 days from the date of publication of this notice. The relevant SBDC will make every effort to accommodate these comments during the 90–day period. If the comments cannot be accommodated by the relevant SBDC, SBA will, prior to refunding the SBDC, either attain accommodation of any comments or furnish an explanation of why accommodation cannot be attained to the commentor prior to refunding the SBDC.

Description of the SBDC Program

The SBDC operates under the general management and oversight of SBA, but with recognition that a partnership exists between the Agency and the SBDC for the delivery of assistance to the small business community. SBDC services shall be provided pursuant to a negotiated Cooperative Agreement with full participation of both parties.

SBDCs operate on the basis of a state plan to provide assistance within a state or designated geographical area. The initial plan must have the written approval of the Governor. As a condition to any financial award made to an applicant, non-Federal funds must be provided from sources other than the Federal Government. SBDCs operate under the provisions of Public Law 96–302, as amended by Public Law 98–395, a Notice of Award (Cooperative Agreement) issued by SBA, and the provisions of this Program Announcement.

Purpose and Scope

The SBDC Program is designed to provide quality assistance to small businesses in order to promote growth, expansion, innovation, increased productivity and management improvement. To accomplish these objectives, SBDCs link resources of the Federal, State, and local governments with the resources of the educational system and the private sector to meet the specialized and complex needs of the small business community. SBDCs also coordinate with other SBA programs of business development and utilize the expertise of these affiliated resources to expand services and avoid duplication of effort.

Program Objectives

The overall objective of the SBDC Program is to leverage Federal dollars and resources with those of the state, academic community and private sector to:

(a) Strengthen the small business community;

(b) Contribute to the economic growth of the communities served;

(c) Make assistance available to more small businesses than is now possible with present Federal resources;

(d) Create a broader based delivery system to the small business community.

SBDC Program Organization

SBDCs are organized to provide maximum services to the local small business community. The lead SBDC receives financial assistance from the SBA to operate a statewide SBDC Program. In states where more than one organization receives SBA financial assistance to operate an SBDC, each lead SBDC is responsible for Program operations throughout a specific regional area to be served by the SBDC. The lead SBDC is responsible for establishing a network of SBDC subcenters to offer service coverage to the small business community. The SBDC network is managed and directed by a full-time Director. SBDCs must ensure that at least 80 percent of Federal funds provided are used to provide services to small businesses. To the extent possible, SBDCs provide services by enlisting volunteer and other low cost resources on a statewide basis.

SBDC Services

The specific types of services to be offered are developed in coordination with the SBA district office which has jurisdiction over a given SBDC. SBDCs emphasize the provision of indepth, high-quality assistance to small business owners or prospective small business owners in complex areas that require specialized expertise. These areas may include, but are not limited to: management, marketing, financing, accounting, strategic planning, regulation and taxation, capital formation, procurement assistance, human resource management, production, operations, economic and business data analysis, engineering, technology transfer, innovation and research, new product development, product analysis, plant layout and design, agri-business, computer application, business law information, and referral (any legal services beyond basic legal information, and referral require the endorsement of the State Bar Association) exporting, office automation, site selection, or any other areas of assistance required to promote small business growth, expansion, and productivity within the State. The SBDC shall also ensure that a full range of business development and technical assistance services are made available to small businesses located in rural areas.

The degree to which SBDC resources are directed towards specific areas of assistance is determined by local community needs, SBA priorities and SBDC Program objectives and agreed upon by the SBA district office and the SBDC.

The SBDC must offer quality training to improve the skills and knowledge of existing and prospective small business owners. As a general guideline, SBDCs should emphasize the provisions of training in specialized areas other than basic small business management subjects. SBDCs should also emphasize training designed to reach particular audiences such as members of SBA priority and special emphasis groups.

SBDC Program Requirements

The SBDC is responsible to the SBA for ensuring that all programmatic and financial requirements imposed upon them by statute or agreement are met. The SBDC must assure that quality assistance and training in management and technical areas are provided to the State small business community through the State SBDC network. As a condition of this agreement, the SBDC must perform, but not be limited to, the following activities:

(a) The SBDC ensures that services are provided as close as possible to small business population centers. This is accomplished through the establishment of SBDC subcenters.

(b) The SBDC ensures that lists of local and regional private consultants are maintained at the lead SBDC and each SBDC subcenter. The SBDC utilizes and provides compensation to qualified small business vendors such as private management consultants, private consulting engineers, and private testing laboratories.

(c) The SBDC is responsible for the development and expansion of resources within the State, particularly the development of new resources to assist small business that are not presently associated with the SBA district office.

(d) The SBDC ensures that working relationships and open communications exist within the financial and investment communities, and with legal associations, private consultants, as well as small business groups and associations to help address the needs of the small business community.

(e) The SBDC ensures that assistance is provided to SBA special emphasis groups throughout the SBDC network. This assistance shall be provided to veterans, women, exporters, the handicapped, and minorities as well as any other groups designated a priority by SBA. Services provided to special emphasis groups shall be performed as part of the Cooperative Agreement.

Advance Understandings

The Lead SBDC and all SBDC subcenters shall operate on a forty (40) hour week basis, or during the normal business hours of the State or Host Organization, throughout the calendar year. The amount of time allowed the Lead SBDC and subcenters for staff vacations and holidays shall conform to the policy of the Host organization.

Date: May 19, 1995.

Philip Lader,

Administrator.

Addresses of Relevant SBDC State Directors

Mr. Robert McKinley, Region Director, Univ. of Texas at San Antonio, 1222 North Main Street, San Antonio, TX 78212, (210) 558–2450

Mr. John P. O'Connor, State Director, University of Connecticut, Box U–41, Room 422, Storrs, CT 06269–2041, (203) 468–4135

Mr. Ronald Manning, State Director, Iowa State University, 137 Lynn Avenue, Ames, IA 50010, (515) 292–6351

Ms. Liz Klimback, Region Director, Dallas Community College, 1402 Corinth Street, Dallas, TX 75212, (214) 565–5833

Mr. John Ciccarelli, State Director, University of Massachusetts, School of Management, Amherst, MA 01003, (413) 545–6301

Mr.Raleigh Byars, State Director, University of Mississippi, Old Chemistry Building, University, MS 38677, (601) 232–5001

Mr. James L. King, State Director, State University of New York, SUNY Plaza, S–523, Albany, NY 12246, (518) 443–5398

Dr. Elizabeth Gatewood, Region Director, University of Houston, 1100 Louisiana, Suite 500, Houston, TX 77002, (713) 752–8444

Mr. Donald L. Kelpinski, State Director, Vermont Technical College, P.O. Box 422, Randolph Center, VT 05060, (802) 728–9101

Ms. Hazel Kroesser, State Director, Governor's Office of Community and Industrial Development, 950 Kanawha Boulevard, East, Charleston, WV 25301, (304) 558–2960

Ms. Mariluz Frontera, Acting Director, University of Puerto Rico, Box 5253—College Station, Mayaguez, PR 00681, (809) 834–3590

Mr. Clinton Tymes, State Director, University of Delaware, Suite 005–Purnell Hall, Newark, DE 19711, (302) 831–2747

Ms. Janet Holloway, State Director, University of Kentucky, 225 Business & Economics Bldg., Lexington, KY 40506–0034, (606) 257–7668

Mr. Thomas McLamore, State Director, Department of Economic and Employment Development, 217 East Redwood St., 9th Floor, Baltimore, MD 21202, (410) 333–6995

Mr. Ron Hall, State Director, Wayne State University, 2727 Second Avenue, Detroit, MI 48201, (313) 964–1798

Mr. Max Summers, State Director, University of Missouri, Suite 300, University Place, Columbia, MO 65211, (314) 882–0344

Ms. Holly Schick, State Director, Ohio Department of Development, 77 South High Street, Columbus, OH 43226–1001, (614) 466–2711

Mr. Craig Bean, State Director, Texas Tech University, 2579 South Loop 289, Suite 114, Lubbock, TX 79423–1637, (806) 745–3973

Mr. Chester Williams, Director, University of the Virgin Islands, 8000 Nisky Center, Suite 202, St. Thomas, US V. Islands 00802, (809) 776–3206

Mr. David Mosely, State Director, University of Wyoming, College of Business, Laramie, WY 82071–3275, (307) 766–3505

[FR Doc. 95–14076 Filed 6–7–95; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice 2219]

New International Railroad Bridge, Laredo, Texas: Issuance of Presidential Permit

SUMMARY: The Department of State is announcing the issuance to the Union Pacific Railroad/Missouri Pacific Railroad Company of a Presidential Permit for a new international railroad bridge between Laredo, Texas, and Nuevo Laredo, Tamaulipas, Mexico. The Permit was issued on May 11, 1995, pursuant to the International Bridge Act of 1972 (33 U.S.C. 535 *et seq.*) and E.O. 11423, 33 FR 11741 (1968) as amended by E.O. 12847, 58 FR 29511 (1993).

ADDRESSES: Copies of the Presidential Permit may be obtained from Stephen R. Gibson, Coordinator, U.S.-Mexico Border Affairs, Office of Mexican Affairs, room 4258, Department of State, Washington, D.C. 20520 (Telephone 202–647–8529).

SUPPLEMENTARY INFORMATION: Notice of the application by the Union Pacific Railroad for a permit to build a new international railroad bridge across the Rio Grande between Laredo, Texas, and Nuevo Laredo, Tamaulipas, Mexico was published in the **Federal Register** on April 7, 1994, at 59 FR 16682. The new railroad bridge will be located 6.5 miles northwest of the existing international railroad crossing at Laredo. The project will involve approximately 1.7 miles of new track on the United States side of the Rio Grande, the construction of a 1,169-foot bridge spanning the river and 8.95 miles of new track in Mexico. The number of rail cars using the present downtown bridge increased from 50,000 in 1989 to 100,000 in 1993. It is expected that the new bridge will eliminate about 90 percent of Union Pacific rail traffic from downtown Laredo, reduce inconvenience to the public due to blocked crossings, and allow for anticipated future rail traffic growth generated by the North American Free Trade Agreement (NAFTA). The application for the Presidential Permit was reviewed and approved by over 20 federal and state agencies.

Date: June 2, 1995.

Stephen R. Gibson,

Coordinator, U.S.-Mexico Border Affairs, Office of Mexican Affairs.

[FR Doc. 95–14000 Filed 6–7–95; 8:45 am]

BILLING CODE 4710–29–P

[Public Notice 2218]

New International Railroad Bridge, Laredo, Texas: Finding of No Significant Impact

SUMMARY: The Department of State is issuing a finding of no significant impact on the environment for the new international railroad bridge project sponsored by the Union Pacific Railroad/Missouri Pacific Railroad Company. A draft environmental assessment of the proposed Laredo international railroad bridge project was prepared by HDR Engineering, Inc. of Omaha, Nebraska for the Presidential Permit applicant, Union Pacific Railroad/Missouri Pacific Railroad Company (Union Pacific Railroad Company), under the guidance and supervision of the Department of State. A Public Notice regarding the availability for inspection of the Union Pacific Railroad Company's Permit application and the draft environmental assessment was published in the **Federal Register** on April 7, 1994, at 59 FR 16682. No comments were received from the public.

Over 20 federal and state agencies reviewed the draft environmental assessment. All comments received from these agencies were responded to, either by expanding the analysis contained in the draft environmental assessment or by proposing mitigation measures, as appropriate. Additionally, the Permit applicant corresponded and met with several agencies to discuss ways of meeting their concerns and, where appropriate, to discuss mitigation measures. The outcome of this dialogue was recorded in correspondence. Agencies participating in this process were the Immigration and Naturalization Service, Customs Service, Food and Drug Administration, Animal and Plant Health Inspection Service, General Services Administration, International Boundary and Water Commission—U.S. Section, Department of Defense, Department of Transportation, Coast Guard, Federal Highway Administration, Federal Railroad Administration, Interstate Commerce Commission, Federal Emergency Management Agency, Department of the Interior, Department of Commerce, Environmental Protection Agency, Department of State, and the appropriate Texas State agencies—Parks and Wildlife Department, Department of Transportation, Historical Commission, Railroad Commission, South Texas Development Council and Natural Resource Conservation Commission. The draft environmental assessment, the comments submitted by the agencies, the response to these comments, and all correspondence between the agencies and the Permit applicant addressing the agencies' concerns, together, constitute the final environmental assessment.

Based on the final environmental assessment and information developed during the review of the Company's application and of the draft environmental assessment, the Department has concluded that issuance of the Permit will not have a significant impact on the quality of the human environment within the United States. In accordance with Council on Environmental Quality Regulations, 40 CFR 1501.4 and 1508.13, and with State Department Regulations, 22 CFR 161.8(c), an environmental impact statement will therefore not be prepared.

A Finding of No Significant Impact was adopted on May 5, 1995.

ADDRESSES: Copies of the Finding of No Significant Impact may be obtained from Stephen R. Gibson, Coordinator, U.S.-Mexico Border Affairs, Office of Mexican Affairs, Room 4258, Department of State, Washington, DC 20520 (Telephone 202–647–8529).

SUPPLEMENTARY INFORMATION: The Department of State is charged with issuance of Presidential Permits for the construction of international bridges under the International Bridge Act of 1972, 86 Stat. 731; 33 U.S.C. 535 *et seq.*, and Executive Order 11423, 33 FR 11741 (1968), as amended by Executive Order 12847 of May 17, 1993, 58 FR 29511 (1993).

Union Pacific Railroad Company, Texas, requested from the Department of State a Permit to build a new railroad bridge between Laredo, Texas, and Nuevo Laredo, Tamaulipas, Mexico, a project which will include the construction of rail lines in both countries to connect the new bridge to existing mainline tracks. The proposed railroad bridge will be located 6.5 miles northwest of the existing international railroad bridge crossing at Laredo, at about mile 367.97 on the Rio Grande. The work involves the construction of approximately 1.7 miles of new track on the United States side; the construction of a 1,169-foot bridge spanning the Rio Grande and the border; and the construction of 8.95 miles of new track in Mexico. It is expected that the new rail bridge will:

- Eliminate about 90 percent of Union Pacific rail traffic from downtown Laredo;
- Reduce inconvenience to the public due to blocked crossings; and
- Allow for anticipated future rail traffic growth generated by the North American Free Trade Agreement (NAFTA).

Earthwork and grading for the project will be designed and constructed to permit the operation of a double mainline track. However, the second mainline will be constructed in the future as demand increases. The proposed rail corridor will be between 200 and 400 feet wide, with the additional width required for construction of the curved transition into the existing tracks.

The corridor will traverse undeveloped land and will not require purchase or relocation of any homes or businesses.

Dated: June 2, 1995.

Stephen R. Gibson,

Coordinator, U.S.-Mexico Border Affairs, Office of Mexican Affairs.

[FR Doc. 95–13999 Filed 6–7–95; 8:45 am]

BILLING CODE 4710–29–P

[Public Notice 2221]

Overseas Schools Advisory Council; Notice of Re-Scheduling of Meeting

The Annual Meeting of the Overseas Schools Advisory Council of the Department of State has been re-scheduled for Thursday, July 20, 1995 in room 6320, Department of State, 2201 C Street NW., Washington, D.C.at 9:30 a.m. For details of the meeting please refer to the announcement which appeared in the Federal Register, Public Notice 2185, published on Thursday, April 6, 1995, Volume 60, Number 66.

If you need further information, please contact the office of Dr. Ernest N. Mannino, Department of State, Office of Overseas Schools, SA–29, Room 245, Washington, D.C. 20522–2902, telephone 703–875–7800.

Dated: June 5, 1995.

Ernest N. Mannino,

Executive Secretary, Overseas Schools Advisory Council.

[FR Doc. 95–14092 Filed 6–7–95; 8:45 am]

BILLING CODE 4710–24–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Approval of Noise Compatibility Program; Palm Beach International Airport, West Palm Beach, Florida

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by Palm Beach County under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96–193) and 14 CFR Part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96–52 (1980). On February 1, 1993, the FAA determined that the noise exposure maps submitted by Palm Beach County under Part 150 were in compliance with applicable requirements. On November 18, 1994, the FAA determined that the revised future noise exposure map was in compliance with applicable requirements. On may 17, 1995, the Administrator approved the Palm Beach International Airport noise compatibility program. Twenty-four (24) recommendations of the program were approved and one (1) recommendation was partially approved.

EFFECTIVE DATE: The effective date of the FAA's approval of the Palm Beach International Airport noise compatibility program is May 17, 1995.

FOR FURTHER INFORMATION CONTACT: Tommy J. Pickering, P.E., Federal Aviation Administration, Orlando Airports District Office, 9677 Tradeport Drive, Suite 130, Orlando, Florida 32827–3596, (407) 648–6583. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for the Palm Beach International Airport, effective May 17, 1995.

Under Section 104(a) of the Aviation Safety and Noise Abatement Act (ASNA) of 1979 (hereinafter referred to as "the Act"), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) Part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measure should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act, and is limited to the following determinations:.

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types of classes of aeronautical users, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR Part 150, Section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where Federal funding is sought, requests for project grants must be submitted to the FAA Airports District Office in Orlando, Florida.

Palm Beach County submitted to the FAA on January 29, 1993, the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from March 21, 1991, through October 4, 1994. The Palm Beach International Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on February 1, 1993. A revised future noise exposure map was submitted to the FAA on October 6, 1994. The revised future noise exposure map was determined by FAA to be in compliance with applicable requirements on November 18, 1994. Notice of these determinations was published in the **Federal Register.**

The Palm Beach International Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to the year 1998. It was requested that FAA evaluate and approve this material as a noise compatibility program as described in Section 104(b) of the Act. The FAA began its review of the program on November 19, 1994, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be approval of such program.

The submitted program contained twenty-five (25) proposed actions for noise mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The overall program, therefore, was approved by the Administrator effective May 17, 1995.

Outright approval was granted for twenty-four (24) of the specific program elements. One (1) program element for local environmental review was partially approved. Measures pertaining to FAR Part 77 height criteria associated with Part 77 height/hazard zoning was disapproved. The approval action was for the following program elements:

Measure and description	NCP pages
Operational Elements:	
1. Noise Abatement Flight Paths for Turbojet Aircraft. Runways 27R, 13 and 31: Eliminate multiple noise abatement flight paths from these runways. All departing aircraft shall be assigned runway heading or corresponding wind correlated heading, regardless of Part 36 Stage. Runway 9L: Continue the use of multiple departure flight paths but eliminate the north turn departure track (075 heading) at the point in time at which the elimination of the northern track would not increase the cumulative noise level at any residential noise-sensitive area within the 65 dB DNL contour by 1.5 dB or greater. After the north departure path is eliminated, all aircraft shall be assigned runway heading, or corresponding wind corrected heading regardless of Part 36 Stage. The flight track improvements reduce the population within the [DNL 65 dB] noise contours by approximately 13%, from 9,889 to 8,636. FAA Action: Approved as a voluntary measure, wind weather and traffic permitting. The airport operator intends to prepare annual DNL contours (Measure 17, below), which will assist in carrying out the recommendations for Runway 9L. In response to the FAA's notice about the PBIA Part 150 NCP, the FAA received 59 comments, 54 of which were from residents of communities east of the airport (Runway 9 end) and supported continuation of multiple flight tracks. The NCP and a February 15, 1995, letter from the airport sponsor indicate that the Part 150 Technical Advisory Committee (TAC) carefully considered the alternative of continued use of multiple flight tracks. The TAC included, among others, voting representatives from the Town of Haverhill, the City of West Palm Beach, the Town of Palm Beach, the Citizens Committee on Aircraft Noise, the Old El Cid Noise Reduction Committee, and counsel for the residents who sued the airport in 1989. The alternative selected was considered a compromise because only some neighborhoods to the east supported continuation or increase of fanning, while the City of West Palm Beach Commission, by Resolution, and the majority within West Palm Beach supported total elimination of fanning. The majority of the population within the five-year DNL 65 dB contour reside in West Palm Beach.	NCP, pages 31–34, Tables 2.2 (page 15) and 3.2 (page 61); PBIA Noise Abatement Bulletin.
2. Preferential Runway Use Program. Corporate jet departures will be assigned Runway 31 when in the west flow. During the hours of 10 p.m. to 10 a.m. (off peak), Runway 27R will be the preferred runway, when safety and weather permit; it also will be the preferred calm wind runway during this period. During the hours of 10 a.m. to 10 p.m. (peak traffic period), runway 9L will be the preferred and designated calm wind runway. FAA Action: Approved as a voluntary measure.	NCP, pages 35–36, Tables 2.2 and 3.1; PBIA Noise Abatement Bulletin; Appendix Volume, Table 1, TAC Meeting #9, page 4.
3. Noise Abatement Departure Procedures. The Department of Airports (DOA) is in the process of analyzing the two Noise Abatement Departure Procedures (NADP) alternatives from the revised AC 91–53A. Based on the results of that analysis, the DOA will work with the Citizen's Committee on Aircraft Noise (CCAN) to select a procedure (or procedures, if the FAA permits) for implementation at the airport. The DOA will provide test results and final recommendations to the FAA at the earliest possible date, including an evaluation of any effect on the Noise Exposure Maps (NEM). FAA Action: Approved as a voluntary measure. Analysis of NADP alternatives for air carriers greater than 75,000 pounds (mgtw) is approved FOR STUDY ONLY. The airport operator may submit supplemental information, including the noise benefits, upon completion of its study and may request approval under Part 150 of specific departure procedure(s) to be used for large aircraft.	NCP, pages 36–38, and Tables 2.2 and 3.1; PBIA Noise Abatement Bulletin, FAA Advisory Circular 91–53A, and letters dated 1/12/95 and 3/14/95 from PBIA.
4. Maintenance Runup Procedures. No procedural changes are necessary for maintenance runups except that a revised runup request form should be implemented for better record-keeping. FAA Action: Approved.	NCP, pages 38–39, Figures 2.4, and Tables 2.2 and 3.1; PBIA Noise Abatement Bulletin; Appendix Volume, Section 1 of Appendix A.2, Section 2.7 of Appendix I.2.
Land Use Elements: A combination of strategies in areas within the five year forecast 65 dB LDN contours and neighboring "buffer zones" for implementation were identified as being the most appropriate for inclusion in the revised NCP.	
5. Sound Insulation. The ongoing program proposed for the revised NCP will have three main phases: Development of sound insulation program; validation of the sound insulation; and procedures for program implementation. Modifications may be made based on the technical assistance of the demonstration program. Any modifications will be based on DOT/FAA/PP–92–5 "Guidelines for the Sound Insulation of Residences Exposed to Aircraft Operations." After the DOA assesses the success of the demonstration program and the potential for the development of a large-scale sound insulation program, prospective participates will be notified. The DOA will follow FAA guidelines by encouraging and possibly requiring participating homeowners to grant an aviation easement in exchange for sound insulation modifications. The DOA will enter into a Homeowner Participation Agreement with interested residents and implement the program as funding becomes available. Four non-residential noise sensitive sites within the revised 5-year NEM will also be offered the opportunity to participate. The same guidelines will apply to these non-residential sites. FAA Action: Approved.	NCP, pages 41 and 42, Tables 2.2 and 3.1; and Appendix J.2.
6. Easement Acquisition. The previous Noise Abatement and Mitigation Study (NAMS) recommended the use of avigation easements as a remedial land use strategy. The DOA has, on an on-going basis, acquired avigation easements. However, the easement acquisitions have not been part of a formal program. As a recommended measure of the revised NCP, the easement acquisition program will be implemented on a formal basis. Similar to the sound insulation program, the DOA will enter into an easement acquisition agreement and implement the program as funding becomes available. FAA Action: Approved.	NCP, page 42, Figure 2.5, and Tables 2.2 and 3.1.

Measure and description	NCP pages
7. Transaction Assistance. Transaction assistance was recommended in the previous NCP; however, this measure was never implemented. The measure relates to assurances by the DOA that a homeowner, within the noise exposure area, will receive assistance in the sale of affected structures. In exchange, the homeowner would grant to the DOA an avigation easement. The form of the assistance will be agreed to by the homeowner and the DOA and will be determined for specific structures on an individual basis. Homeowners' participation is voluntary. The DOA will publicize this program and contact homeowners who may be eligible for participation. FAA Action: Approved. This measure is subject to an evaluation at the time of implementation with respect to Airport Improvement Program (AIP) eligibility because some elements of the proposed transaction assistance program may be ineligible for Federal funding.	NCP, page 42, Figure 2.6, and Tables 2.2 and 3.1.
8. Land Acquisition and Relocation. The three previously described remedial land use measures (sound insulation, easement acquisition, and transaction assistance) are the primary remedial measures. If an individual or group of property/home owner(s) and the DOA determine that the implementation of any of the previous remedial measures are inadequate, then land acquisition and relocation will be considered. The DOA will follow all FAA noise land grant provisions for the purchase and disposal of property purchased under this program. FAA Action: Approved.	NCP, pages 45–46, and Tables 2.2 and 3.1.
9. Comprehensive Planning: Local comprehensive plans presently reflect other impacts. Aircraft noise should also be considered. It is recommended that local governments be strongly encouraged to amend their plans through plan amendments. In order to implement this measure successfully, the DOA will coordinate with each juriadiction as to the timing and content of plan amendments. FAA Action: Approved.	NCP, page 47, and Tables 2.2 and 3.1.
10. Zoning. The previous noise study recommended zoning be addressed through the land development regulations. Draft text amendments have been developed which address the conversion of incompatibility zoned land to compatibly zoned. The DOA is working with the Palm Beach County Planning, Building, and Zoning Departments on strengthening the ordinance. It is a recommendation that the ordinance include: specific reference to the NEMs and the affected areas (including references to the current annual maps within the body of the ordinance), a change in the use regulation table to include a noise/land use compatibility determination, specific prohibition on zoning approval for noise sensitive sites within the designated noise affected areas. FAA Action: Approved.	NCP, page 47, Appendix J.2, and Tables 2.2 and 3.1.
11. Local Environmental Review. A formal local environmental review program should be established, with thresholds or mechanisms to trigger a local environmental review of proposed development if it lies within the environs surrounding PBIA. The following measures are recommended: designation of a governmental/airport liaison staff position to address, among other issues, airport/community development issues; environmental review of new development shall include zoning review, building structure and content, height review using FAR Part 77 criteria and local land use regulations, noise/land use compatibility based on FAR Part 150 guidelines and, when approved, the Palm Beach County airport land use compatibility zoning ordinance; and formal coordination meetings between the liaison and other local government staff be held on a monthly basis. FAA Action: Approved except for measures pertaining to FAR Part 77 height criteria, which is disapproved for purposes of Part 150. Part 77 height/hazard zoning is not a noise mitigation measure and is not approvable under Part 150. The airport operator is encouraged to incorporate Part 77 into its overall environmental review process.	NCP, pages 48 and Tables 2.2 and 3.1.
12. Real Estate Disclosure. This measure involves disclosure to a potential property/homeowner of a property's location relative to noise exposure contours of PBIA. A real estate disclosure program addressing the following is recommended: Make the revised NEMs and NCP matters of public record; update the public record of the NEMs and NCP annually; provide all officially listed realtors in Palm Beach County with information detailing noise contours every six months; and include a noise notice in the public record and real estate information. Guidelines of the Florida DOT and Real Estate Code, agents are obligated to inform prospective buyers of any known or potential issues of which they are aware. The burden of notification is shifted from the DOA to the real estate agents. FAA Action: Approved.	NCP, pages 48–49 and Tables 2.2 and 3.1.
13. Building Code Revision. This measure references the revision of the local building codes (Southern Standard) to require that proper noise insulating materials are used in new construction or re-development. This measure was recommended in the original NCP and is included as a recommendation of the Revised NCP. The April 1987 PBIA Noise Abatement and Mitigation Study (NAMS) provided detailed information on how the codes should be revised, in section 5 of the document. The information contained in that report is still valid and is reprinted in Appendix J.2. DOT/FAA document PP–92–5, "Guidelines for the Sound Insulation of Residences Exposed to Aircraft Operations" will be made available at all local government building departments. FAA Action: Approved.	NCP, page 49, Tables 2.2 and 3.1, Appendix J.2.
14. Easement Acquisition—Undeveloped Land. This measure involves acquisition of avigation easements for undeveloped parcels within and in close proximity to the DNL 65 and DNL 70 noise contours as added protection from noncompatible future development. The DOA, through local government/airport liaison, will identify all undeveloped parcels. Based on the level of success of the other preventive measures, for those parcels that may still be zoned to allow incompatible development, the DOA will contact the property owners regarding the acquisition of an avigation easement from the undeveloped parcel's property rights. FAA Action: Approved. The airport operator intends to purchase an easement to prevent noncompatible development.	NCP, page 49, Figure 2.5, and Tables 2.2 and 3.1.

Measure and description	NCP pages
15. Land Acquisition—Undeveloped Land. In some instances, none of the recommended preventive land use strategies would prevent an undeveloped parcel from being developed incompatibly. In those instances, the DOA may consider acquiring the property. The use of the local environmental review measure [Measure 11 in this Record of Approval] will provide notification to the DOA of such instances. The implementation process will follow the same procedures as those for developed land [Measure 8 in this ROA]. FAA Action: Approved. This measure is subject to an evaluation at the time of implementation that the property is within the DNL 65 dB contour, and to a determination that the undeveloped property either has been zoned incompatibly or is in imminent danger of being developed incompatibly unless it is acquired by the airport operator.	NCP, page 49, Tables 2.2 and 3.1.
Implementation, Monitoring, and Review Actions:	
16. Noise and Operations Monitoring System. The DOA will acquire and install a noise and operations monitoring system to support implementation, monitoring, and review of other NCP elements. The major components of the system will be flight track monitoring, aircraft performance monitoring, noise monitoring, user interface & database management, meteorological monitoring, audio & tower radio monitoring & recording capabilities, and aircraft & flight identification components. FAA Action: Approved.	NCP, page 50 and Tables 2.2 and 3.1.
17. Prepare Annual L_{dn} Contours. The DOA Noise Office will continue to develop annual L_{dn} contours to meet a PBIA commitment to an ongoing annual review of the noise contours. FAA Action: Approved..	NCP, page 50 and Tables 2.2 and 3.1.
18. Annual Review of Magnetic Headings. It is recommended that the FAA Air Traffic Control Tower, with DOA assistance, review the magnetic headings annually and revise the departure instructions to pilots to reflect changes in the magnetic heading of the airport's runways. FAA Action: Approved.	NCP, page 51 and Tables 2.2 and 3.1.
19. NEM/NCP Review, At a minimum, the NCP should call for updating the NEM at the end of the five year forecast period. If traffic levels either exceed the forecast levels by 15% or drop below the current level by 15% the DOA should review the NEM. In addition, should the annual contours show a significant difference between the annual contours and the approved NEM contours, the DOA should consider more in-depth noise analysis and potential revision of the NCP and NEM. A significant change is defined as an area of non-compatible land use within the 65 dB LDN contour where the annual contour exceeds the relevant NEM contour set by 1.5 decibels or greater. When PBIA has a 100 percent Stage 3 airline fleet, it would be appropriate to review the NEM and NCP. FAA Action: Approved.	NCP, page 51 and Tables 2.2 and 3.1.
20. Runway 27R ILS. The DOA is moving ahead with plans to install an Instrument Landing System (ILS) on Runway 27R. This ILS will greatly improve adherece to the preferred arrival track for that runway. This measure was a recommended action of the previous NCP. FAA Action: Approved.	NCP, page 51 and Tables 2.2 and 3.1.
21. Program Publicity: Pilot Handout. Figure 2.8 presents a draft recommended pilot handout. The pilot handout would provide information on various noise abatement policies, including: detailed description of noise abatement flight paths; requested use of FAA AC 91–53 procedures and Teteboro noise abatement departure procedures; preferential runway use program; and ground runup procedures. The DOA will distribute the bulletin. Copies also would be posted. The "Teterboro procedure" is similar to National Business Aircraft Association's (NBAA) departure procedures for aircraft weighing less than 75,000 pounds. The airport operator has stated that: (1) this is an existing NADP that is recommended as a first preference for those pilots who are familiar with the procedure and (2) the NBAA procedure is recommended for other pilots (page 38 of the NCP) and (3) pilots groups have reviewed the procedures (Air Line Pilots Association, Aircraft Owners and Pilots Association, and NBAA) (March 14, 1995, letter from PBIA). FAA Action: Approved. The most current version of the above-referenced FAA AC is 91–53A and should be appropriately referenced. The pilot handout should reflect the voluntary nature of the flight procedures, as indicated under the appropriate sections in this ROA (Measures 1, 2, and 3).	NCP, page 51, Figure 2.8, and Tables 2.2 and 3.1; PBIA Noise Abatement Bulletin; March 14, 1995, letter from PBIA.
22. Revise FAA Tower Order. Changes to the preferential runway use and multiple noise abatement departure flight track assignment elements in the PBIA Noise Compatibility Program will necessitate changes to FAA Order 8400.9. FAA Action: Approved. These procedures have been approved as voluntary measures in this ROA (Measures 2 and 3). The FAA by formal order under 49 USC 40103 would implement these measures, which would also be subject to applicable environmental requirements prior to implementation.	NCP, page 54, Figure 2.9, and Tables 2.2 and 3.1.
23. Program Publicity: National Publications. There are a number of nationally recognized publications that provide pilots with information on airport operating procedures. The DOA will request that these publications include appropriate summaries of the PBIA noise abatement procedures. FAA Action: Approved.	NCP, page 54 and Tables 2.2 and 3.1.
24. Public Participation: Ongoing Citizens Meetings. The DOA will continue to meet on a routine basis with the CCAN or a similar group to continue promotion of public participation and to review ongoing noise abatement measures and the implementation of the recommendations of this study. FAA Action: Approved.	NCP, page 54 and Tables 2.2 and 3.1.
25. Program Publicity: AIRWAVES Newsletter. The DOA will continue to publish newsletters at regular intervals to update residents and other interested parties of the status of PBIA's noise abatement program. FAA Action: Approved.	NCP, page 54 and Tables 2.2 and 3.1.

These determinations are set forth in detail in a Record of Approval endorsed by the Administrator on May 17, 1995. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of Palm Beach County.

Issued in Orlando, Florida, on May 23, 1995.

Charles E. Blair,

Manager, Orlando Airports District Office.

[FR Doc. 95–13941 Filed 6–7–95; 8:45 am]

BILLING CODE 4910–13–M

Sunshine Act Meetings

Federal Register
Vol. 60, No. 110
Thursday, June 8, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, June 13, 1995 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, June 15, 1995 at 2 p.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Advisory Opinion 1995–14: Colleen M. Nolan on behalf of Oral and Maxillofacial Surgery PAC ("OMSPAC").

Advisory Opinion 1995–15: Beth Taylor (AllisonPAC) Allison Engine Company.

Regulations:

MCFL Rulemaking: Explanation and Justification for Express Advocacy Definition and Qualified Nonprofit Corporation Regulations.

Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 219–4155.

Delores Hardy,

Administrative Assistant.

[FR Doc. 95–14225 Filed 6–6–95; 3:01 pm]

BILLING CODE 6715–01–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, June 8, 1995.

PLACE: Room 600, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Peabody Coal Co.*, Docket Nos. KENT 93–318–R, etc. (Issues include whether the judge erred in finding that Peabody's violations of 30 C.F.R. § 70.100(a) were caused by its high negligence and unwarrantable failure to comply with the standard.)

2. *Jim Walter Resources, Inc.*, Docket No. SE 94–244–R (Issues include whether the judge erred in failing to find that the violation of 30 C.F.R. § 75.400 was significant and substantial, and caused by JWR's unwarrantable failure to comply with the standard.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(e).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653–5629/for toll free TDD Relay 1–800–877–8339.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 95–14151 Filed 6–6–95; 2:59 pm]

BILLING CODE 6735–01–M

UNITED STATES INTERNATIONAL TRADE COMMISSION

TIME AND DATE: June 22, 1995 at 2:30 p.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting
2. Minutes
3. Ratification List
4. Inv. No. 731–TA–702 (Final) (Ferrovanadium and Nitrided Vanadium from Russia)—briefing and vote.
5. Outstanding action jackets:
   1. GC–95–033, Failure to serve documents in an investigation under Title VII of the Tariff Act of 1930.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: June 5, 1995.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–14182 Filed 6–6–95; 3:01 pm]

BILLING CODE 7020–02–M

NATIONAL TRANSPORTATION SAFETY BOARD

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 60, No. 104/Wednesday, May 31, 1995.

PREVIOUSLY ANNOUNCED TIME AND DATE: 9:30 a.m., Tuesday, June 6, 1995.

CHANGE IN MEETING: A majority of the Board Members determined by recorded vote that the business of the Board required deleting the following item on the agenda at this time and that no earlier announcement was possible.

6405B Special Investigation Report: Robinson R22 Helicopter Loss of Main Rotor Control and In-flight Breakup Accidents.

FOR MORE INFORMATION, CONTACT: Bea Hardesty, (202) 382–6525.

Dated: June 5, 1995.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 95–14235 Filed 6–6–95; 3:01 pm]

BILLING CODE 7533–01–M

UNITED STATES ENRICHMENT CORPORATION BOARD OF DIRECTORS

TIME AND DATE: 8:00 a.m., Thursday, June 8, 1995.

PLACE: USEC Corporate Headquarters, 6903 Rockledge Drive, Bethesda, Maryland 20817.

STATUS: The meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

- Review of commercial and financial issues of the Corporation
- Procedural matters

CONTACT PERSON FOR MORE INFORMATION: Barbara Arnold, 301–564–3354.

Dated: June 5, 1995.

William H. Timbers, Jr.,

President and Chief Executive Officer.

[FR Doc. 95–14146 Filed 6–6–95; 2:58 pm]

BILLING CODE 8720–01–M

federal register

Thursday
June 8, 1995

Part II

Department of Health and Human Services
Public Health Service
42 CFR Part 84

Department of Labor
Mine Safety and Health Administration
30 CFR Parts 11, 49, 56, 57, 58, 70, 72, and 75

Department of Labor
Mine Safety and Health Administration

Department of Health and Human Services
Centers for Disease Control and Prevention

Respiratory Protective Devices; Final Rules and Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 84

RIN 0905–AB58

Respiratory Protective Devices

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention, Public Health Service, HHS.

ACTION: Final rule.

SUMMARY: This final rule addresses NIOSH and the Department of Labor/Mine Safety and Health Administration (MSHA) certification requirements for respiratory protective devices. Specifically, the rule replaces MSHA regulations with new public health regulations, while also upgrading testing requirements for particulate filters.

This action is the first of a series of modules that will incrementally upgrade current respirator approval requirements. This modular approach will allow improvements to be implemented on a safety and health priority basis as well as facilitate adaptation to new requirements by the manufacturers and users of respirators. It will also expedite the incorporation of technological advancements and will allow for the expeditious response to emerging hazards.

Except for the particulate-filter requirements, most requirements of the existing regulations are incorporated into the new regulations without change. The revised testing requirements for particulate filters significantly improve the effectiveness of evaluating air-purifying filters to remove toxic particulates from the ambient air. These requirements are consistent with two decades of advances in respiratory protection technology.

The certification of air-purifying respirators under the final rule will also enable respirator users to select from a broader range of certified respirators that meet the performance criteria recommended by CDC for respiratory devices used in health-care settings for protection against *Mycobacterium tuberculosis* (Mtb), the infectious agent that causes tuberculosis (TB).

Elsewhere in this separate part of the **Federal Register**, MSHA is publishing a final rule to remove existing regulations which are made obsolete by this final rule.

EFFECTIVE DATES: This final rule is effective on July 10, 1995. The incorporation by reference of certain publications used in the regulations is approved by the Director of the Federal Register as of July 10, 1995.

FOR FURTHER INFORMATION CONTACT: Richard W. Metzler, NIOSH, 1095 Willowdale Road, Morgantown, West Virginia 26505–2888. The telephone number is (304) 285–5907.

SUPPLEMENTARY INFORMATION:

I. Availability of Copies and Access to Final Rule

Additional copies of this final rule can be obtained by calling the NIOSH toll-free information number (1–800–35–NIOSH, option 5, 9:00 AM–4:00 PM ET). Arrangements have also been made for this final rule to be listed on the electronic bulletin boards of the Government Printing Office and of the Department of Labor; the telephone numbers are (202) 512–1387 and (202) 219–4784, respectively. This final rule may also be obtained from the NIOSH Home Page on the World-Wide Web. The location for the NIOSH Home Page is http://www.cdc.gov/niosh/homepage.html.

II. Paperwork Reduction Act

This final rule contains information collections that have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980 and assigned control Number 0920–0109. The title, description, and respondent description of the information collection are shown below with an estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: Respiratory Protective Devices.

Description: This rule prescribes requirements and procedures which must be met in filing applications for approval by NIOSH of respirators and modifications of respirators.

Description of Respondents: Businesses and other for-profits.

Estimated Annual Reporting and Recordkeeping Burden:

Section	Annual number of respondents	Annual frequency	Average burden per response	Annual burden hours
84.35	56	10.5	79.45 hr	46,716 hr.
84.41	56	10.5	22.70 hr	13,347 hr.
84.43	56	10.5	56.75 hr	33,369 hr.
Total				130,805 hr.

The above citations are currently cleared under 30 CFR Part 11 as OMB control Number 0920–0109.

A Paperwork Reduction package is being submitted to OMB, requesting approval of the requirement for labeling to be effected by § 84.33. A document will be published in the **Federal Register** when such approval has been obtained.

III. Background

NIOSH published a proposed rule (59 FR 26850) to establish a new 42 CFR part 84, on May 24, 1994. On May 26, 1994, NIOSH published a notice in the **Federal Register** (59 FR 27257) for an extension of the public comment period and a rescheduling of a public meeting. A public meeting was held to obtain comments on the proposal in Washington, D.C. on June 23–24, 1994.

The proposal and public meeting received response from the full complement of affected parties in the public. Commenters included safety professionals, respirator manufacturers, representatives of industrial and health-care facilities, and workers' associations. Three hundred and three commenters responded to the proposed rule. One hundred twenty six commenters represented health-care workers. Ninety six commenters represented health-care facilities. Fifteen commenters represented associations of health-care professionals. Fifteen commenters represented associations of health-care facilities. Seventeen commenters represented respirator manufacturers. Eight commenters represented trade or manufacturers' associations. Eight individuals commented as private citizens. Six commenters represented regulatory agencies (federal, state, county). Five commenters represented respiratory protection experts. Three commenters represented workers' organizations. Two commenters represented test instrument manufacturers. One commenter represented industrial hygiene professionals. One commenter represented a Federal Advisory Committee. These figures include the 18 presenters at the Public Meeting held in Washington, D.C. on June 23 and 24, 1994.

IV. Summary of Major Changes in Response to Comments

The requirements of the final rule differ from those proposed (59 FR 26850) in 8 major areas. These changes, discussed in sections V. Administrative and Procedural Matters of Final Rule and VI. Discussion of Final Rule, are summarized as follows:

1. Three categories (series) of particulate filters (N-, R-, and P-series) are included rather than two (solid and liquid and solid);
2. Maximum allowable inhalation and exhalation airflow resistance values have been slightly increased and labelling changes are included to identify the certified efficiency level to users;
3. The new certification categories apply only to non-powered air-purifying respirators. Powered air-purifying particulate respirators (PAPRs) will be approved only with filters meeting the requirements for 30 CFR part 11 high-efficiency filters;
4. A new subpart KK has been added for the issuance of extensions of existing 30 CFR part 11 approvals to address respirator non-conformances when there is a demonstrated safety or health need during the transition period and for the approval of PAPRs;
5. Fit testing during the certification process is not included for particulate respirators;
6. The number of tested units has been reduced and the test data will no longer be treated statistically;
7. The period for sale and shipment of 30 CFR part 11 certified particulate respirators has been increased. The period for processing part 11 applications has been eliminated, except for demonstrated need; and
8. Testing parameters are stated more explicitly.

A summary listing of the section-by-section changes from the proposal to this final rule is provided in Appendix A—Comparison of Technical Requirements Final Rule to Proposed Rule. Each of these changes is discussed in detail in the following preamble.

V. Administrative and Procedural Matters of Final Rule

A. Modular Approach

The proposed rule explained the intent to promulgate modifications to the requirements of 30 CFR part 11 in a series of modules. There are numerous benefits to utilizing a modular approach to promulgate changes to the existing requirements. Among these are the following considerations:

1. Improvements can be implemented on a priority basis, assuring that those expected to contribute most to improving worker protection are implemented first;
2. Incremental promulgation of improvements should facilitate adaptation to new requirements by the respirator manufacturer and user communities, minimizing the potential for any disruption in the supply of certified respirators;
3. Public participation in the rulemaking process will be facilitated by proposing important regulatory changes in individual segments of separate rulemaking; and
4. Improvements made to limited segments of the rule can be implemented in a much shorter time period than comprehensive revisions to the entire rule. Therefore implementation of technological advancements and response to emerging hazards will be expedited.

Comments overwhelmingly endorsed the concept of the modular approach with only two comments specifically opposed to this approach. More than 250 comments supported the proposal's approach and approximately 40 specifically endorsed and offered recommendations for changes in the modular scheduling. Some commenters expressed concerns about this new rulemaking procedure. These predominantly questioned the interaction of modules and implementation schedules. Module interaction concerns included added costs, confusion, transition periods (grandfathering) of interrelated modules, and redesign of respirators due to effects of multiple modules. Concerns of scheduling included the priority of modules, additional module topics, transition periods for products to meet prior requirements, timetable for completion of revisions, and availability of NIOSH resources to support work on multiple modules simultaneously.

The modular approach represents a continuous improvement strategy for rulemaking. With this process, NIOSH expects regulations and products to be incrementally improved and updated to address worker health concerns and prevent any disruption in the supply of respirators. Each module will constitute a separate rulemaking activity. The modular approach undertaken by NIOSH provides clear advantages over the comprehensive approach to rulemaking. No specific time period has been identified in which all certification standards will be revised. The Institute recognizes that a predetermined revision cycle could ensure the periodic re-examination of standards. However, a requirement of this type would also diminish the capability of the Institute, with its limited resources, to address priority respiratory protection needs. The Institute has determined that a flexible approach is required that will permit expeditious responses to emerging respiratory protection priorities. These can change rapidly as technological advancements, international harmonization, changed working conditions, or the emergence of new hazards make current standards obsolete. As discussed below the Institute will balance industry's need for planning and adjustment time associated with future modules by having ample public involvement in setting the priorities for module selection and with judicious selection of transition periods.

NIOSH is aware of the needs of the respirator community to be able to plan future production and purchasing needs. This is true for consumers as well as manufacturers of respirators. NIOSH announced at the informal public meeting its intention to hold ample public meetings in advance of any proposed future modules so that these concerns could be addressed. The concerns expressed in the comments can be addressed in these informal public meetings and with the use of appropriate transition periods.

NIOSH intends to establish transition periods for implementing the requirements of each module. These transition periods will be determined by an assessment of the industry's ability to adopt the new requirements, ongoing transition periods from prior modules, and the public health implications of the changes.

Anticipated subjects and sequence of the NIOSH rulemaking were outlined in the proposed rule. Numerous comments were received providing suggestions for additional module subjects and their priority. Suggested additional subjects included powered air-purifying respirators, smoke masks, fit testing, supplied air respirators, gas masks, and combination respirators. Suggestions on scheduling priorities indicated a diversity in perceived needs. Based on the public interest in the future module

subject areas and timetable, NIOSH will conduct a public meeting to further develop the schedule with input from all interested parties. The location and date for this meeting will be announced in the **Federal Register**, Morbidity and Mortality Weekly Report (MMWR), and other media.

The Institute coordinated the development and implementation of the modular approach with OSHA and MSHA. The specific requirements of this first module were reviewed and accepted by both agencies to ensure that 42 CFR part 84 properly links with OSHA and MSHA respirator use regulations. Both agencies will participate in the development by NIOSH of appropriate user guidelines. NIOSH and MSHA developed a Memorandum of Understanding to delineate roles for the continuing joint approval under 42 CFR part 84 of respirators used for mine emergencies and mine rescue. The Institute will continue to collobrate with MSHA and OSHA as future modules are developed.

B. User's Guide

The proposal stated the intent to develop a user's notice or guide to explain the use of respirators certified for protection against particulate exposures under the new 42 CFR part 84 that would replace the existing filter respirators certified under 30 CFR part 11 subparts K and M. Commenters indicated that this user's guide should be developed in a public forum with public involvement. One commenter stated that the user's guide should be issued prior to the finalization of part 84. Another believed that its availability should coincide with the publication of the final rule. Constraints on releasing specific information as to the contents of the final rule prior to its publication limits the availability of information needed for development of a user's guide, thus making its development with public input prior to or concurrent with this rule impossible. NIOSH agrees with the commenters that public input into the user's guide will result in a better product. An informational respirator user's guide for part 84 respirators will be developed with public involvement.

The user's guide will address both the use of part 11 and part 84 respirators during the transition period. Assigned Protection Factor (APF) values are used in the respirator selection process to indicate the expected protection level for the respirator wearer. NIOSH recommends APFs for respirators certified under 30 CFR part 11 in its Guide to Industrial Respiratory Protection and in the Respirator Decision Logic. The future user's guide will recommend APFs appropriate for use with the part 84 particulate respirators until APFs can be addressed through future rulemaking. It will also provide information and recommendations on a variety of other respirator use issues associated with this current rulemaking.

During review of this rule, both OSHA and MSHA expressed strong interest in the APF values for the new part 84 particulate filter classifications. Both agencies agreed with NIOSH that APFs could not be addressed properly in this first module. They therefore urged NIOSH to develop a subsequent module defining APFs for all respirators. In the interim, OSHA regulations under Title 29 and the MSHA regulations under Title 30 will allow the use of the new part 84 particulate classifications with the APFs to be established by NIOSH in the users' guide. OSHA is in the process of updating its respirator use regulations, and the current proposal specifies acceptance of APFs developed and promulgated under part 84.

C. Use of Particulate Respirators for Protection Against TB

While the requirements in this final rule were not developed specifically to certify respirators against biological agents, this rule will address the important public health need to control the transmission of *Mycobacterium tuberculosis*, the causative agent of TB, in health-care and other facilities through the use of respiratory protective devices.

In response to the recognized risk of TB transmission in health-care facilities, increases in TB in many areas, and recent outbreaks of multidrug-resistant TB, CDC published "Guidelines for Preventing the Transmission of *Mycobacterium tuberculosis* in Health-Care Facilities, 1994", in the **Federal Register** (59 FR 54242) and MMWR (Volume 43, No. RR–13) on October 28, 1994. These guidelines enumerate four performance criteria that CDC has determined are necessary for respiratory protective devices used in health-care settings for protection against TB. The only currently certified air-purifying respirator class that meets all the respiratory protection performance criteria in the CDC Guidelines is a respirator with a high efficiency (HEPA) filter. Many comments were received from the health-care community supporting the positive impact of the proposed rule on compliance with the CDC Guidelines.

All nine classes of air-purifying, particulate respirators to be certified under the provisions of the new particulate filter tests (filter efficiency) in part 84 meet or exceed the performance recommendations contained in the CDC Guidelines. Several of these new classes of air-purifying, particulate respirators are expected to be less expensive than respirators with HEPA filters. Consequently, implementation of the modifications included in this rule should promote a substantial increase in respiratory protection provided to health-care and other workers potentially exposed to the *M. tuberculosis* droplet nuclei in health-care and other occupational settings.

D. Conversion From 30 CFR Part 11 to 42 CFR Part 84

Since 1974, the Mine Enforcement and Safety Administration (MESA), MSHA, and the Occupational Safety and Health Administration (OSHA) have regulated the selection, use, and maintenance of respirators in the workplace under their respective enforcement authorities. NIOSH is not including the requirements of §§ 11.2 and 11.2–1 with this redesignation to 42 CFR part 84. Sections 11.2(a) and 11.2–1 refer to respirator use and selection criteria that since have been superseded by OSHA and MSHA respirator regulations.

Section 11.2(b) allows for the continued manufacture and sale of gas masks approved under the former U.S. Bureau of Mines (BOM) Schedule 14F (dated April 23, 1955). This Schedule was replaced by the requirements in Subpart I of 30 CFR part 11 in 1972. Gas masks approved under Subpart I of 30 CFR part 11 (14G canisters) are widely available and only a limited number of types of 14F canisters are marketed. MSHA experience indicates that few of the 14F respirators are currently sold or used. MSHA also indicated that removal of the provisions in § 11.2(b) would remove the authority to market these respirators as approved devices.

NIOSH is not transferring the requirements of § 11.2(b) to 42 CFR Part 84 since NIOSH does not have the capability to process applications for these respirators. The approval records on these BOM-approved respirators no longer exist and therefore NIOSH has no way of monitoring the production of these respirators to assure that they continue to meet the approved design. Thus, NIOSH will not authorize the sale and shipment of the Schedule 14F respirators under this part 84.

In addition, the codification of the redesignated sections into a non-hyphenated numbering system results in several general heading sections that contained no substantive requirements

not being included in this redesignation. These include §§ 11.85, 11.102, 11.124, 11.140, and 11.162.

NIOSH is making a limited revision to the existing requirements of 30 CFR part 11 in this first module, requiring updated particulate filter tests. This revision eliminates the need for unique tests for particulate respirators used for different types of aerosols, such as dust/mist, dust/fume/mist, paint spray, and pesticides. The new certification tests use the most penetrating aerosol size, 0.3μm, and either a non-degrading particulate, sodium chloride, or a highly degrading oil, dioctylphthalate. Consequently, particulate filters certified under these new procedures can be used without regard to aerosol size, taking into consideration only the degrading or nondegrading nature of particulates and the APF required by exposure concentrations. To revise respirator nomenclature to be consistent with this fundamental change in certification philosophy, the words dust, fume and mist are replaced with particulate in the final rule.

Existing subpart M of part 11 (§§ 11.170 through 11.183–7) addresses the requirements for pesticide respirators. The requirements of subpart M are not included in this redesignation to 42 CFR part 84. This rule eliminates this category and the tests specific to it, leaving subpart M reserved. All references to subpart M and pesticides as a classification for approval are eliminated. NIOSH will discontinue issuance of certifications that classify these respirators as suitable for use against a specific particulate.

The existing test requirements in §§ 11.124–21 through 11.124–24 specify that a test subject wearing the respirator be exposed to an abrasive blasting environment in which the blasting agent is composed of 99+ percent free silica (SiO_2). This requirement is not included in this redesignation to 42 CFR part 84. The purpose of this requirement was to determine the adequacy of protection provided in such environments. NIOSH administratively suspended such tests over 20 years ago because they placed test subjects at risk of exposure to fractured crystalline silica. These tests are not included in this final rule. Requirements for abrasive blasting and other atmosphere supplying respirators as well as fit testing for all respirator types will be addressed in a future module. In the interim, NIOSH will continue the administrative policy of the past two decades of conducting quantitative fit testing in lieu of the tests stipulated in §§ 11.124–21 through 11.124–24.

Two comments recommended the inclusion of administrative policies to the rule. One commenter suggested that §§ 11.124–21 through 11.124–24 (referring to air-line respirators) be restored or replaced with the current administrative policy of quantitative fit testing. Another commenter was concerned that the NIOSH policy of allowing a mixed-gas Self Contained Breathing Apparatus for fire fighting was not included in the proposed rule. NIOSH agrees with these commenters that administrative policies related to specific changes in a module should be incorporated. However, the topics of concern to these commenters addressed administrative policies in subject areas that were not proposed to be changed in this module, therefore, they have not been incorporated.

NIOSH has not included the test procedures of §§ 11.124–21 through 11.124–24 due to NIOSH's concern of health risks to test subjects during pre-submission testing performed by a manufacturer seeking approval of a respirator intended for use in an abrasive blasting environment. Although no Type AE or BE respirators have ever been certified, Type AE, BE, and CE respirators may be certified for use in an abrasive blasting environment. These respirators will be tested using Air-supplied Respirator Section Test Procedure Number 23 Abrasive-Blast, Type CE. Copies of this procedure are available from the Certification and Quality Assurance Branch, 1095 Willowdale Road, Morgantown, West Virginia, 26505–2888.

E. MSHA's Regulatory Role

The final 42 CFR part 84 regulation is consistent with the current MSHA and NIOSH respirator approval program, placing responsibility for certifying most respirators with NIOSH. MSHA and NIOSH will continue to jointly review and approve respirators used for mine emergencies, mine rescue, and the associated service-life plans, user's manuals, and other documentation. Among the types of devices for which this role is particularly important are self-contained self-rescue devices. The final rule preserves MSHA's current role in the certification of such respirators whose unique use in mining is an important part of safeguarding the health and safety of miners. In addition, MSHA will continue to test electrical and electronic components of respirators for use in potentially explosive atmospheres in gassy underground mines and issue a separate MSHA approval under 30 CFR part 18 for the electrical components of such respirators.

In implementing the final regulation, NIOSH and MSHA have developed a new Memorandum of Understanding (MOU) that reflects administrative matters related to respirator approval, including immediate notification to MSHA of field complaints and identified deficiencies concerning approved respirators. Three commenters recommended that the public be allowed to review and comment on the MSHA/NIOSH Memorandum of Understanding. It was indicated by an agency representative that such comments on the contents of the MOU would be welcomed. Two of these commenters were concerned that the responsibilities and accountability, specifically MSHA's involvement in the certification of mining-specific respiratory protective devices, be maintained in the Memorandum of Understanding. The third commenter was unsure if the Memorandum of Understanding would have an effect on the notice of public rulemaking. Comments submitted subsequent to the public meeting reiterated the concerns stated at the meeting. These comments were considered in the MOU's development and have subsequently been addressed. Copies of the MOU will be available from NIOSH and MSHA.

The new Memorandum of Understanding between MSHA and NIOSH delineates the interaction between the agencies in carrying out the responsibilities and authorities provided for in the Mine Safety and Health Act of 1977 (30 USC § 801 et seq) and this final rule. It defines the method of implementation of the regulation and has no effect on its content. The agency has determined that this MOU is most appropriately developed between the two agencies and thus, commenters did not directly participate in the development of the MOU. As indicated above, public comments on the MOU are welcome.

F. Transition Period

The proposal included provisions for phasing out part 11 particulate respirators. Specifically, no applications were to be accepted after the effective date of part 84, with a maximum of 6 months for processing in-house applications. Sale and shipment (distribution) of part 11 particulate respirators would have been allowed for only 2 years from the effective date of part 84.

Several commenters indicated that these transition periods were much shorter than the 5-year phase-out period proposed by NIOSH in 1987. Some comments on the proposed schedule stated that there must be an appropriate

time to develop new products, receive certification, and initiate production of the new respirators. Commenters were also concerned the use of the term distribution implied manufacturer control of the distributer system and the resale market. Several commenters recommended 4 years for NIOSH-processing of part 11 applications, and for sale and shipment of part 11 respirators. NIOSH is expanding the phase-out period from two to three years to address these concerns.

With the effective date of part 84, MSHA and NIOSH will no longer accept applications for new approvals or extensions of approval of respirators under part 11 provisions. All applications received after the effective date of part 84 will be considered as applications for a new or extension of approval under part 84. Valid part 11 applications that were received prior to the effective data of part 84 will be processed for approval under part 11 provisions. A subpart KK containing the part 11 requirements for particulate respirators has been added to the final rule to provide continued authority for NIOSH to issue extensions of approvals needed to address respirator recall and retrofit matters that are associated with health and safety issues for workers. Respirators listed as certified under the provisions of 30 CFR part 11, subparts K or M, may not be sold or shipped by the approval holder as NIOSH/MSHA certified respirators effective July 10, 1998. Continued use of distributed particulate respirators is under the jurisdiction of OSHA and MSHA and therefore is not affected by this rule. Because certifications will not be revoked for part 11 devices sold and shipped by the approval holder prior July 10, 1998, NIOSH anticipates that OSHA and MSHA would permit continued use of those part 11 respirators.

This 3 year period was selected to ensure the timely replacement of the part 11 respirators that exhibit low initial efficiency levels while allowing an ample supply of respirators to remain available for use. This timeframe will provide sufficient time for manufacturers to have respirators approved and manufactured in quantities to meet demand. Manufacturers' comments to the proposed rule support this timeframe, as some manufacturers appear ready to provide part 84 respirators immediately. At least one commenter stated, without reservation, preparedness to submit applications to meet the new requirements. Several commenters requested that NIOSH accept applications for part 84 respirators upon publication, rather than the effective date of part 84. One manufacturer commented that NIOSH should anticipate at least 10 applications from each manufacturer upon part 84 becoming effective. NIOSH also expects a significant number of presently certified particulate respirators, in addition to new designs, to meet the requirements of this rule. Therefore, a high initial application rate for approval of part 84 particulate respirators is expected.

Some commenters expressed concern that NIOSH would not be able to expeditiously process the part 84 applications, thereby delaying introduction of the new respirators to the marketplace. Delays in processing the part 84 applications would prolong the time needed for transition to these new respirators. Division of the NIOSH staff and resources between processing part 84 applications and pending part 11 applications, along with routine extensions of existing part 11 particulate respirator certifications, may initially slow the certification and availability of part 84 respirators. However, the Institute has determined that it cannot reject without action part 11 applications that were validly prepared and submitted while the provisions of part 11 remain in effect. NIOSH therefore will process all valid part 11 applications that were received by NIOSH before the effective date of part 84. The authority for the approval holder to sell and ship particulate respirators under any part 11 certification issued under these conditions will expire along with the other part 11 certifications on July 10, 1998.

The new technical requirements of part 84 only address air-purifying respirators. Other classes of respirators, such as self-contained breathing apparatus, gas masks, etc., are not affected by the new filter penetration test requirements. Therefore, NIOSH intends to continue issuing new and extension of approval numbers in the same format designation (TC number) as issued under existing part 11 for those respirator types whose technical requirements for approval under part 84 have not been modified from existing part 11. A new approval number series will be initiated for the products whose technical requirements have been upgraded under part 84. By checking the approval number, respirator users will be able to quickly and easily distinguish those products that have demonstrated the improved performance requirements of the new part 84 from those that have demonstrated compliance with only the existing part 11 standards that are transferred to part 84. NIOSH further intends to issue public notices of the new approval designations to be used for products demonstrating performance to the improved standards.

VI. Discussion of Final Rule

A. Certification Fit Testing

The proposal contained two sections (§§ 84.181 and 84.182) that would have retained the existing Part 11 particulate respirator fit test protocols using isoamyl acetate. These tests were proposed to redesignate the existing §§ 11.140–1 and 11.140–2 with the tests unchanged to minimize the scope of the changes proposed in the first module.

The currently required particulate respirator facepiece fit tests of part 11 use isoamyl acetate, an organic vapor, as the test agent. Under existing part 11, such tests are required for high efficiency (HEPA) and dust, fume, and mist (DFM) respirators, but not dust/mist (DM) respirators. Since particulate filters are not intended to filter organic vapors, the tested respirators must often be modified by the addition of an activated charcoal layer. This added charcoal layer prevents penetration of the isoamyl acetate through the filter so that the respirator-to-face fit can be evaluated. As a result, the certification program tests surrogate respirators that may have fitting characteristics that differ from the marketed (certified) respirators.

Numerous and varied comments were provided on these sections. A number of commenters suggested that NIOSH eliminate fit testing as a condition of certification. Two commenters recommended that the rule should require manufacturers to submit test data showing good fit characteristics in lieu of NIOSH conducting fit testing. Other commenters requested that NIOSH test the respirator-to-face fit, or otherwise assure that proper fitting characteristics were provided by every certified respirator. Several other commenters requested that fit testing be made a meaningful test. Several others suggested that a quantitative protocol rather than a qualitative fit protocol should be used. Two commenters stated support for the fit tests as proposed.

Several of the reasons given for eliminating fit testing were that fitting respirators to individuals in the certification program does not predict the fit of an individual wearer; fit testing of individual workers at the worksite is required by OSHA and that is the appropriate setting for fit testing; the isoamyl acetate test has not been validated; and, the isoamyl acetate test has to be performed on modified respirators.

The comments requesting that fit testing be made a meaningful test were based on reasoning similar to those suggesting elimination of the test. In lieu of elimination, they suggested that some inadequacies could be resolved with modification of the test protocol to use a particulate aerosol, such as Bitrex, as the test agent. Changing the test protocol to test with a particulate would at least permit the tested respirator filters to be as certified, thereby eliminating specially-made surrogates.

Commenters endorsing NIOSH continuation of fit testing believed that the present certification process provides an assurance that the respirator will properly fit a given worker when use of the respirator is needed in the workplace.

The problems associated with testing the facepiece-fit in a certification program have been recognized for years. Efforts have been made to seek more meaningful test results; nevertheless, the validity of the test results remain questionable.

Successful fit testing in the certification process provides no assurance that the respirator will properly fit a given worker when used in the workplace. The only means presently available to assess the fit achieved on the worker is a respirator-to-face fit test conducted on that individual with the chosen respirator. Even this test procedure, conducted on the individual, cannot assure that the respirator will maintain a proper fit when use of the respirator is needed in the workplace. This concern is compounded when the fit is determined with a surrogate respirator.

During review of this rule, both OSHA and MSHA favored inclusion of respirator fit testing and fit checking procedures as part of NIOSH respirator certifications under the new part 84 particulate filter classifications. Both agencies accepted the determination by NIOSH that these issues cannot be properly addressed in this first module. Both agencies therefore urged NIOSH to develop a face fit module to include respirator fit testing and fit checking procedures for all respirators.

The purpose of face fit testing in the certification program has been to assure that respirators have generally good face fitting characteristics. However, at this time NIOSH does not have studies that define the effectiveness of either the isoamyl acetate or American National Standards Institute (ANSI)/OSHA accepted fit tests in predicting actual workplace protection provided to workers. NIOSH is presently conducting research for this purpose. In the interim, lacking validation and correlation of testing protocols, workers' health concerns are best served through the application of fit-testing and fit-checking procedures on individual workers in a quality respirator program. Therefore, the isoamyl acetate fit tests proposed in §§ 84.181 and 84.182 are not included in this final rule. NIOSH will address issues associated with face-fit efficacy in a separate module upon completion of the necessary research.

B. Powered Air-purifying Particulate Respirators

The proposed regulation included filter efficiency requirements for powered air-purifying respirators (PAPRs). The solid and liquid and solid categories were to be tested with sodium chloride (NaCl) and dioctyl phthalate (DOP), respectively. The classes to be certified were the 99.97 and 99% efficiency levels. The remaining design and test parameters for PAPRs were retained from part 11 without change.

Commenters questioned why the efficiency levels proposed for PAPRs were not the same as non-powered respirators. The proposal specified three efficiency levels for non-powered (95, 99, 99.97) and only two levels for PAPRs (99 and 99.97). Commenters indicated many present filter cartridges are interchangeable between the non-powered and PAPR units, recommending corresponding filter efficiencies between the non-powered and PAPR units to retain this broader market for a filter design.

Numerous commenters stated a concern that the proposed requirements of subpart K did not adequately address PAPRs. These commenters indicated that the respiratory protection provided by PAPRs is dependent on the respirator components working together as a system. The proposed rule, focusing on filter efficiency, did not address the system requirements for these respirators. These commenters reasoned that the performance of these complicated respirator systems deserves special consideration because of unique problems addressing airflow, filter efficiency, and fit. These commenters suggested that the requirements for powered units be removed from subpart K, to be addressed in a separate module.

Other commenters addressing PAPR requirements stated concerns over sodium chloride (NaCl) filter test instrumentation capabilities. With the present state-of-the-art capabilities, the proposed PAPR loading requirements are difficult to achieve. This leads to a number of testing difficulties including instrumentation availability, time consuming tests, reproducibility of results, and system costs. NIOSH agrees with these concerns and will address them in the forthcoming module.

Commenters to the proposal also acknowledged that the resultant part 84 filters would be a significant improvement over those currently certified and marketed under part 11. Two commenters recognized the concern over the performance of part 11 powered dust, fume, mist respirators. They indicated that this concern could be addressed by incorporating only part 11 high-efficiency filter requirements for PAPRs approved under part 84. NIOSH agrees and has revised the rule to permit the continued use of part 11 high efficiency filters for PAPRs approved under part 84.

NIOSH also agrees with commenters that the proposed filter efficiency requirements alone do not adequately address the operational parameters of PAPRs that should be revised. The sections of subpart K have therefore been modified to be applicable only to non-powered air-purifying particulate respirators. The requirements for the powered units will be addressed in a forthcoming module. In the interim, powered air-purifying particulate respirators equipped with HEPA filters will be approved under the provisions of subpart KK.

C. Filter Classification

The proposal provided for six classes of filters in a filter classification system with three filter efficiency levels and two categories of filter degradation resistance. The three efficiency levels (99.97, 99, and 95%) were determined by testing with the most penetrating aerosol size until a maximum loading of 200 mg was reached. The two degradation resistance categories were established by the choice of either NaCl or DOP as the test challenge aerosol. Sodium Chloride is only mildly degrading to filter media while DOP is a liquid oil that is highly degrading. Accordingly, filters tested with the NaCl aerosol were recognized as not highly resistant to degradation and only appropriate for use with solid aerosols in the workplace. Filters tested with the liquid DOP oil were recognized as highly resistant to degradation and considered appropriate for both liquid and solid workplace aerosols.

The categories and classes of filters that would have been certified under the proposal are summarized below:

Category	Class	Efficiency	Test agent
Solid and liquid	A	99.97	DOP

Category	Class	Efficiency	Test agent
Solid	A	99.97	NaCl
Solid and liquid	B	99	DOP
Solid	B	99	NaCl
Solid and liquid	C	95	DOP
Solid	C	95	NaCl

The behavior of filters to challenge by each of the two test aerosols depends on the filter type. Mechanical filters and electrostatic filters are the two fundamental types of particulate filters on the market. Mechanical filters' efficiencies are determined by mechanical features such as the diameter, orientation, and arrangement of the fibers that comprise the filter. Electrostatic filters have a static electric charge on the filter fibers to enhance the attraction and retention of the aerosolized particles. The enhanced efficiency due to the electrical charge means that an electrostatic filter generally offers lower breathing resistance than a mechanical filter with the same initial efficiency. This occurs because fewer fibers are needed in the electrostatic filter to achieve the same level of efficiency as a mechanical filter. However, the efficiency of electrostatic filters can be significantly reduced by exposure to certain aerosols while mechanical filters are generally more resistant to degradation.

Comments concerning resistance of filters to degradation were generally of two conflicting schools of thought. One school favored replacing the two proposed tests with a single, more severe test. The other favored retaining the two proposed tests at the same or reduced level of severity.

Commenters opposing the proposed classification system stated it was not a severe enough test of resistance to filter degradation because it did not represent a worst-case test. They recommended testing all filters with a DOP aerosol with the test continued until there was no further decrease in filter efficiency. Those supporting this position argued that the proposed filter classification system could result in overexposure of workers as workplace aerosols degrade some filters to a level below the certified efficiency level. It was indicated that various workplace contaminants can cause the beneficial filtering effects of the charge on electrostatic filters to become partially or totally ineffective without indication to the wearer. As the electrostatic charge on the filter fibers is masked by the deposition of aerosol, the efficiency of the filter can be reduced to below the anticipated level of protection, based on the certified efficiency level. Further, these contaminants have been identified as solids as well as liquids. With no warning to alert the wearer of a decrease in the performance level of the filter, these commenters believed that the proposed tests to determine filter efficiency should be modified to assure that the filters are tested until the minimum level of efficiency is achieved. The stated advantage of such an approach is that filters could be used with any aerosol for indefinite time periods without concern of filter degradation.

The other school argued that the two proposed categories were either appropriate or too severe. They suggested continuing with the two categories either as proposed or with a reduction in the amount of filter loading (to reduce the severity of the test). They argued that the two proposed filter tests, being a combination of worst-case and severe test parameters, would assure adequate filter performance in the workplace.

Several commenters stated that the great majority of respirator applications are in worksites with aerosols that do not significantly diminish the efficiency level of the electrostatic filters. Workplace studies were submitted to support the conclusion that, because of the highly degrading nature of DOP and the proposed high loading level, the proposed test were many times more severe than conditions realistically encountered by workers. These commenters recommended, not only the certification of two categories as proposed, but that the proposed test loading levels for both the NaCl and DOP aerosols be reduced to more closely simulate workplace exposures.

The advantage of the proposed tests was the benefit of potentially lower breathing resistance, with the resulting increased comfort, of electrostatic filters for the great majority of respirator wearers who are not exposed to highly degrading workplace aerosols. Further, the electrostatic filter types were reported by commenters to have a potentially lower cost than their mechanical filter counterparts.

This final rule provides for the needs of both the majority workers with no need for filters highly resistant to degradation and workers needing filters most resistant to degradation. To that end, this rule provides for a third category of filters added to the two categories provided for in the proposal. The new filter category is tested with the highly degrading DOP until no further decrease in filter efficiency is observed.

As discussed under VI. Discussion of Final Rule, D. Section-by-Section Discussion, § 84.170, NIOSH is introducing a new terminology for the three filter categories. The solid only filters in the proposal are labeled N-series filters in this final rule. The proposal's solid or liquid filters are now labeled R-series filters. Filters of the new, third category are labeled P-series filters. The three categories, therefore, provide filters for a complete range of applications.

Further, to address concerns about the use of A, B, and C in the proposal to indicate the efficiency level, the final rule uses numerical notations of 100, 99, or 95 to indicate filter efficiency. The rationale for retaining the proposed efficiency levels of 99.97, 99, and 95% is discussed in VI. Discussion of Final Rule, D. Section-by-Section Discussion, § 84.170(c)(3). The terminology of this final rule is related to that of the proposal as follows:

Final	Proposal
N100	Solid only/type A.
N99	Solid only/type B.
N95	Solid only/type C.
R100	Solid & Liquid/type A.
R99	Solid & Liquid/type B.
R95	Solid & Liquid/type C.
P100	(Not included in proposal).
P99	(Not included in proposal).
P95	(Not included in proposal).

As stated in the proposal, NIOSH selected the test criteria to be a combination of worst-case and very severe test conditions. The N- and R-series filters will be tested to a specified maximum loading level as in the proposal. Performance of these two filter classes at loadings beyond that maximum will not be evaluated. Furthermore, NIOSH is aware that few data are available to assess the performance of these respirators in workplace settings over an extended period of time. Therefore, the N- and R-series filters will be certified with the recognition that in some settings time-use limitations should be applied. A single shift limitation, for example, may be appropriate to guard against possible degradation of performance below the efficiency certified by NIOSH. In addition to possible time-use restrictions, the N-series filters should be restricted to use in those workplaces free of oil aerosols because the N-series certification tests will involve challenge with non-degrading sodium chloride aerosols. The R-series filters should require no such aerosol-use restrictions because R-series certification tests will involve challenge with highly degrading dioctylphthalate aerosols. Because the P-series certification tests will involve challenge with this highly degrading aerosol that will continue until the filter efficiency declines to its lowest level, the P-series may require neither aerosol-use nor time-use limitations. As for any filter, service time will be limited by considerations of hygiene and increased breathing resistance due to filter loading.

Guidelines for the use and selection of part 84 particulate respirators, as described in V. Administrative and Procedural Matters of Final Rule, B. User's Guide, are to be developed with public input. The user's guide will include detailed guidance concerning use limitations for these three filter series.

D. Section-by-Section Discussion.

All sections redesignated to 42 CFR part 84 without modification from 30 CFR part 11 are excluded in this discussion of the final rule. The sections redesignated without modification will be revised, where appropriate, to:

(1) remove references to MSHA, except for those related to certain mining applications,

(2) update the NIOSH certifying organization to the Certification and Quality Assurance Branch, Division of Safety Research, NIOSH, 1095 Willowdale Road, Morgantown, West Virginia 26505–2888,

(3) remove references to subpart M, pesticide respirators, and tests for protection during abrasive blasting,

(4) correct nonsubstantive typographical errors and reference the new part 84 section designations, and

(5) update references to incorporation-by-reference documents.

The sections redesignated without modification are as follows:

84.1, 84.11, 84.12, 84.21, 84.22, 84.30, 84.31, 84.32, 84.34, 84.35, 84.36, 84.40, 84.41, 84.42, 84.43, 84.50, 84.51, 84.53, 84.60, 84.62, 84.63, 84.64, 84.65, 84.66, 84.70, 84.71, 84.72, 84.73, 84.74, 84.75, 84.76, 84.77, 84.78, 84.79, 84.80, 84.81, 84.82, 84.83, 84.84, 84.85, 84.86, 84.87, 84.88, 84.89, 84.90, 84.91, 84.92, 84.93, 84.94, 84.95, 84.96, 84.97, 84.98, 84.99, 84.100, 84.101, 84.102, 84.103, 84.104, 84.110, 84.111, 84.112, 84.113, 84.114, 84.115, 84.116, 84.117, 84.118, 84.119, 84.120, 84.121, 84.122, 84.123, 84.124, 84.126, 84.130, 84.131, 84.132, 84.133, 84.134, 84.135, 84.136, 84.137, 84.138, 84.139, 84.140, 84.141, 84.142, 84.143, 84.144, 84.145, 84.146, 84.147, 84.148, 84.149, 84.150, 84.151, 84.152, 84.153, 84.154, 84.155, 84.156, 84.157, 84.158, 84.159, 84.160, 84.161, 84.162, 84.163, 84.172, 84.173, 84.174, 84.175, 84.176, 84.178, 84.182, 84.190, 84.191, 84.192, 84.193, 84.194, 84.195, 84.196, 84.197, 84.198, 84.199, 84.200, 84.201, 84.202, 84.204, 84.205, 84.207, 84.250, 84.251, 84.252, 84.253, 84.254, 84.255, 84.256, 84.257, and 84.258.

The following section-by-section analysis discusses each new or revised section to 42 CFR part 84. All part and section references for part 11 are to Title 30 of the Code of Federal Regulations (30 CFR). All part and section references for part 84 are to Title 42 of the Code of Federal Regulations (42 CFR).

Subpart A—General Provisions

Section 84.2—Definitions

This section is redesignated and revised from § 11.3. This section is unmodified from the proposal.

The existing definitions for air contamination level, Bureau, concentration limits for radionuclides, DOP, MESA, pesticide, radionuclides, and smoke are deleted. These terms are used in provisions that are modified or deleted as a result of the filter penetration test changes included in this final rule. These definitions have, therefore, become unnecessary.

The existing definition for Testing and Certification Laboratory is modified to reflect the present name of the organization as the Certification and Quality Assurance Branch. One commenter suggested the definition of respirator be modified to require a respirator to have one-way airflow with inspiratory and expiratory valves, able to be properly positive and negative fit-checked under usual working conditions. Additionally, this commenter recommended adding a definition for mask as any device that protects the wearer against inhalation of a hazardous atmosphere.

The primary purpose of a respirator is to provide respiratory protection for the wearer. Neither requiring inhalation and exhalation valves nor reclassifying respirators as masks would enhance worker protection. Thus NIOSH retained the current definition.

Section 84.3 Respirators For Mine Rescue or Other Emergency Use In Mines

This section is new and maintains MSHA's role in the approval of respirators designed for mine rescue or other mine emergency use. This section is unmodified from the proposal. Under this provision, MSHA and NIOSH will conduct joint review and certification of respirators used for mine emergencies and mine rescue. This provision recognizes MSHA's expertise in identifying the special needs and considerations for respirators used in the mining environment. This role replaces MSHA's existing role as a joint approver of all respirators. Several commenters, while endorsing the transfer of the authority for the regulation, recognized MSHA's unique expertise relating to mine-specific respiratory protective devices. These commenters strongly supported MSHA's continued close involvement in this equipment including, but is not limited to, filter self-rescuers, self-contained self-rescuers, and emergency rescue equipment.

Paragraph (a) specifies that NIOSH and MSHA will jointly certify any respirator designed for mine emergencies, mine rescue or other emergency use in mines. This joint review and certification includes any associated service-life plans, user's manuals, and other supporting documentation. This paragraph further specifies that certifications for these respirators include any identified use limitations related to mine safety and health as a condition of certification.

Paragraph (b) specifies NIOSH and MSHA will jointly address recall and retrofit matters arising from field complaints or identified deficiencies concerning any respirators used in the mining environment. A new Memorandum of Understanding is to further delineate MSHA's role in such matters, including participation in any related field or manufacturing site audits.

Subpart B—Application for Approval

Section 84.10 Application Procedures

This section is redesignated from existing § 11.10 with only paragraph (e) modified. This section is unmodified from the proposal. Paragraph (e) retains the existing requirement for inspection, examination, and testing by MSHA of electrical and electronic components to be permissible in accordance with 30 CFR part 18 for respirators intended for use in mining environments and having permissible electrical or electronic components. MSHA will continue to conduct this testing and issue a separate MSHA approval number for those respirators found acceptable. The process for conducting the permissibility evaluation of these components and their identification remains unchanged from the existing policies and practices.

Subpart C—Fees

Section 84.20 Examination, Inspection, and Testing of Complete Respirator Assemblies; Fees

This section is redesignated from existing § 11.20, and modified only to reflect the new particulate filter classification scheme. This section is unmodified from the proposal.

Subpart D—Approval and Disapproval

Section 84.33 Approval Labels and Markings; Approval of Contents; Use

This section is redesignated from existing § 11.33. This section is unmodified from the proposal.

Paragraph (b) specifies the use of the NIOSH emblem on the approval label, replacing the MSHA emblem.

Paragraph (e) of this section is modified to identify the existing dust, fume, and mist class of respirator as a particulate respirator. The new designation is consistent with the testing criteria under which these respirators are certified. The table in paragraph (e) identifying the approval label requirements is modified by the removal of references specific to paint spray and pesticide respirators, also consistent with the changes associated with the non-powered air-purifying particulate filter efficiency level determination test.

Subpart F—Classification of Approved Respirators; Scope of Approval; Atmospheric Hazards; Service Time

Section 84.52 Respiratory Hazards; Classification

This section is redesignated from existing § 11.52. This section is unmodified from the proposal.

It is modified only to delete paragraph (d). Reference to the pesticide classification is no longer appropriate with the introduction of the particulates classification.

Subpart G—General Construction and Performance Requirements

Section 84.61 General Construction Requirements

This section is redesignated from § 11.61. This section is unmodified from the proposal.

The provision for respirator components to meet the permissibility requirements of 30 CFR part 18 [paragraph (e)] has been deleted because MSHA's workplace regulations separately and independently establish this requirement for certain mining applications. This change is consistent with existing practice, whereby, MSHA conducts the evaluation and testing of these components and issues a separate approval to cover this aspect of respirator design.

Subpart I—Gas Masks

Section 84.125 Particulate Tests; Canisters Containing Particulate Filters; Minimum Requirements.

This section is redesignated from existing § 11.102–4, without modification except to specify the new requirements that respirators for protection against particulates (dusts, fumes, mists, and smokes) in combination with gases, vapors, or gases and vapors, must meet. Except for reference to the redesignated section numbers of subpart K, this section is unmodified from the proposal. With the exception of the airflow resistance test of § 84.181, these respirators are required to meet the requirements specified in §§ 84.170 through 84.183.

Subpart K—Non-Powered Air-Purifying Particulate Respirators

Section 84.170 Non-Powered Air-Purifying Particulate Respirators; Description

This section, derived from § 11.130, is revised to define non-powered air-purifying particulate respirators in a more concise way than previously provided for respirators designed for protection against dusts, fumes, mists, paint sprays, and pesticides. An essential benefit to filter-mask purchasers of new certifications under this part is that they will no longer have to be knowledgeable about the contaminant particle sizes. Under the provisions of this part, NIOSH will certify filter performance with a test aerosol size chosen so that filter performance for essentially all other aerosol sizes will be higher than that certified by NIOSH.

Paragraph (a) describes non-powered air-purifying particulate respirators as those with air drawn through the air purifying filter as a result of the negative pressure generated with the inhalation of the wearer. Non-powered respirators include respirators that depend solely on the inhalation and exhalation of the wearer to provide an adequate supply of purified breathing air to the wearer. These respirators are designed with filters to provide respiratory protection against atmospheres that contain adequate oxygen to support life and are contaminated with particulates not immediately dangerous to life or health. Particulates for which these respirators provide protection include contaminants such as dusts, fumes, mists and smoke.

Paragraph (b) establishes three series of non-powered air-purifying particulate respirators designated as N-series, R-series, and P-series. The N-series respirators are intended for use in those workplaces free of oil aerosols. The R-series and P-series respirators are intended for removal of any particulate that includes oil-based liquid particulates.

Paragraph (c) establishes the classification of non-powered air-purifying particulate respirators according to the efficiency level of the filter(s) when tested to the requirements of part 84.

Paragraph (c)(1) requires N100, R100, and P100 filters to demonstrate a minimum efficiency level of 99.97 percent.

Paragraph (c)(2) requires N99, R99, and P99 filters to demonstrate a minimum efficiency level of 99 percent.

Paragraph (c)(3) requires N95, R95, and P95 filters to demonstrate a minimum efficiency level of 95 percent.

As discussed previously, some commenters supported the two-classification system that was proposed while others stated only one class was needed. NIOSH agrees with commenters that a class of respirators should be available for use in environments where the filter efficiency level is not diminished by the worksite aerosol (N-series). Insufficient studies have been conducted to definitively characterize workplace aerosols and their effect upon filter efficiencies. Therefore, NIOSH will certify the new filter categories recognizing potential aerosol-use and time-use limitations as discussed above and in VI. Discussion of Final Rule, C. Filter Classification.

Many commenters expressed concerns of confusion in the selection of the proposed new particulate respirators. Various commenters pointed to the proposed multiple (two) classes, class nomenclatures (Solid Only and Liquid and Solid), type nomenclature (A, B, and C), and filter color requirements as sources for this confusion.

Several commenters recommended that the designations (A, B, and C) for the types be changed to eliminate confusion of the particulate respirator classes with other approved respirator types. Some of these commenters suggested nomenclatures similar to P3, P2, and P1 used for particulate filters in the European community. Another of these commenters recommended a further delineation of the alphabetic notation with each type and class designated by a unique letter (A, B, C, D, E, and F) for clarification. Still another commenter suggested that the nomenclatures be changed but made no specific suggestion.

To address concerns about confusion in the selection of respirators under part 84, NIOSH has developed new category classifications and will develop a user's guide, as discussed in V. Administrative and Procedural Matters of Final Rule, B. User's Guide.

Numerous comments were also received regarding the proposed efficiency levels. Many commenters supported the three efficiency levels as proposed, while others suggested levels different than proposed. A 90% filter efficiency level was the most frequently recommended alternative, sometimes suggested as a fourth class.

NIOSH recognizes that the efficiency requirements contained in the proposed rule are to some extent technology-forcing. However, HEPA-level respirators that perform at an efficiency level proposed under part 84 have been available for years. One commenter (a manufacturer) stated that the technology for producing 95% (Class C) efficiency level respirator is practical, reasonable, and available. This commenter further stated that a Class C respirator could be marketed at a price not exceeding the price of a 30 CFR part 11 disposable DFM respirator.

The principal advantage of a 90% efficiency class would be to permit a larger percentage of filters certified under part 11 to be certified without modification under the new part 84 tests. The best performing of the current DM and DFM respirators are expected to meet the requirements of a 95% class, but a significant number of DM respirators would not be expected to meet the requirements even of a 90% class. Limiting the minimum filter efficiency to 95% will minimize worker exposure to airborne contaminants from filter penetration. This is important because it is the most controllable element of protection afforded by respiratory protection programs. The human variables in these programs are more difficult to guarantee: that workers are provided the appropriate class of respirator; that the workers are effectively fit tested; that they achieve and maintain an effective face seal each time they wear a respirator; and that they replace disposable respirators and filters before their effectiveness is diminished. Some commenters urged, for these reasons, that all filters should have greater than 99% efficiency. Such high filter efficiency poses technologic challenges, increases costs to manufacturers and users, and increases breathing difficulty for respirator wearers. NIOSH believes that a 95% minimum efficiency best balances the public health concern and these competing considerations.

Although a number of manufacturers have indicated they are prepared now to submit filters for certification under these new test procedures, there may be some who are not. These manufacturers will have three years to develop this capacity while they continue to market their existing products.

Section 84.171 Non-powered Air-purifying Particulate Respirators; Required Components

This section is redesignated from existing § 11.131, modified only to incorporate the new terminology of particulates to describe dusts, fumes and mists. This section is unmodified from the proposal, except for the title change.

Section 84.177 Inhalation and Exhalation Valves; Minimum Requirements

This section is redesignated from existing § 11.137, modified only to delete reference to the silica dust tests for single-use respirators of § 11.140–5. This section is unmodified from the proposal. The respirator performance requirements of these tests are replaced by the non-powered air-purifying particulate filter efficiency level determination test contained in this rule.

Section 84.179 Non-powered Air-purifying Particulate Respirators; Filter Identification

This section requires the identification of non-powered air-purifying particulate respirators by labeling with a new classification system for the series and efficiency of the filters. The new terminology of non-powered air-purifying particulate respirator replaces the existing dust, fume, and mist respirator, as discussed previously.

The requirement for the manufacturer to specify the filter-series and efficiency level classification in the certification application is contained in paragraph (a). This classification would include the series of the filter and the expected efficiency of the filter based on the test requirements specified in § 84.182.

The information to be included on the label of a filter for a certified non-powered air-purifying particulate respirator is specified in paragraphs (b)(1) through (b)(9). This labeling defines the efficiency level achieved in the performance testing (i.e., 99.97%, 99%, or 95%) and the series of the filter (i.e., N, R, or P). This information is necessary to allow the user to make an informed decision on selecting the appropriate respiratory protection.

To facilitate this selection process, the P100 filters are color coded magenta to allow them to be easily distinguished from the other filter types. The filters other than the P100 can be of any color except magenta. This color coding is consistent with the present universally accepted color code convention which identifies the best performing filters (HEPAs) by their magenta color.

NIOSH has modified these labeling requirements from the proposal in agreement with the commenters who stated that the labelling should clearly state the certified efficiency rating numerically and include the series on the filter, filter package, or respirator box.

One commenter suggested that all classes of certified respirators should be color coded for user identification; another stated that the high efficiency filters of each series should be magenta. It was also requested that color coding as well as letter designation be specified for all respirators. A more complex color-coding system may add confusion to the respirator selection process. With the more descriptive classification identifying labels required by this final rule, the potential for confusion in selection of the appropriate respirator has been reduced. Therefore, NIOSH has not adopted these suggestions.

Section 84.180 Airflow Resistance Tests

Section 84.180 is derived from § 11.140–9. It is modified to delete the final inhalation resistance requirements. The non-powered air-purifying particulate filter efficiency level determination tests are not designed to simulate loading of the filter at the worksite. Therefore, these requirements are not appropriate with the introduction of these new tests.

Paragraph (a) provides for determining the inhalation-resistance of the complete non-powered air-purifying particulate respirator. This value corresponds to the pressure drop across the complete respirator mounted on a test fixture with air drawn inward through it at a continuous rate of 85±2 liters per minute. Tolerance limits have been added to the test flow rates as suggested by commenters.

The final rule does not include final breathing resistance limits as requested in some comments. The final breathing resistances previously included in the 30 CFR part 11 requirements were based on filters loading and clogging with a silica dust. The loading experienced at actual worksites is not represented by such a test. The inclusion of final breathing resistances as part of a certification would primarily address two concerns. The first is that the breathing resistance does not exceed physiological limits or pose undue discomfort on the wearer. Wearers will replace filters before breathing resistances reach such levels. The second concern is that the filter efficiency is still at an acceptable level at the certification final resistance value. The filter efficiency level determination

and respirator classifications provided for in this rule are sufficiently severe to alleviate this concern.

One commenter questioned NIOSH's intent for restricting final inhalation resistance for particulate filters used in conjunction with chemical cartridges. This commenter pointed to § 84.203 requirements which specify maximum allowable final inhalation resistances for these combinations. The final inhalation value is to be measured at the end of the service life tests for the chemical cartridge portion of the combination. NIOSH will continue to measure the initial and final inhalation and exhalation resistances of the combination in conjunction with the service life test of the chemical cartridge. The inhalation and exhalation resistances need not be measured for these combinations in conjunction with the particulate efficiency level determination tests.

Paragraph (b) states the inhalation resistance of the complete respirator is not to exceed 35 millimeters of water-column height. The exhalation resistance of the complete respirator is not to exceed 25 millimeters of water-column height.

The proposed rule would have limited the inhalation and exhalation resistances to 30 and 20 millimeters of water-column height, respectively. Several commenters requested that the values be increased. Increased breathing resistance values will permit the effective use of presently available filter material in respirators re-designed to meet the efficiency level determination tests at a reasonable cost. Others expressed a concern that respirators with higher breathing resistances are less likely to be fitted properly, often intentionally due to the discomfort. Commenters expressed that this may be true in the health-care profession where the use of certified respirators is new.

The final rule has increased the maximum acceptable breathing resistance values slightly from the proposed levels to those suggested by commenters. The proposed resistance levels of 30 and 20 millimeters of water-column height corresponded to the maximum allowable resistance values in part 11 for any particulate respirator. The new resistance levels remain below the acceptable limits for some non-particulate respirator classes under the existing part 11 provision. For example, chemical cartridge respirators, which have use patterns similar to particulate filter respirators, have a maximum initial inhalation resistance of 40 millimeters water-column height. This increase in acceptable breathing resistance for particulate respirators will enable manufacturers to produce respirators meeting the new requirements more expeditiously and at lower cost than the proposal would have allowed. This small increase in maximum allowable breathing resistance for particulate respirators does not add substantially to physiologic burden for respirator users, and will be compensated by increased worker protection provided by the new filter efficiency tests and classification system. The acceptable breathing resistance levels for the non-particulate respirator classes are not affected.

Section 84.181 Non-powered Air-Purifying Particulate Filter Efficiency Level Determination

This section is new and specifies the test criteria and acceptable performance criteria for the new non-powered air-purifying particulate filter efficiency level determination. This section has been retitled from particulate instantaneous-penetration-filter test in response to a comment. The new title more appropriately represents the intent of the tests in this section to determine the efficiency level of the filters.

Paragraph (a) requires the filter efficiency testing of 20 filters of each non-powered air-purifying particulate respirator model. Testing is conducted using a solid sodium chloride or equivalent particulate aerosol for N-series certification or a dioctyl phthalate or equivalent liquid particulate aerosol for R-series and P-series certification.

Paragraph (b) requires the filters, including holders and gaskets; when separable, to be tested mounted on a test fixture in the manner as used on the respirator. This provides for testing of the assembly in a configuration as it will be actually used.

Paragraph (c) describes preconditioning requirements for the 20 N-series filters to be tested. After removal from their packaging, the 20 filters are placed in an environment of 85±5 percent relative humidity at 38±2.5 °C for 25±1 hours. The filters shall be stored in a gas-tight container until tested. Testing for the filter efficiencies must be performed within 10 hours following preconditioning. These preconditioning requirements apply only to N-series filters differing from the proposal which would have had filters of each series subjected to preconditioning.

Paragraph (d) provides for blocking the exhalation valves to ensure that any valve leakage is not included in the filter efficiency level evaluation. This only applies when the filters do not have separable holders and gaskets.

Paragraph (e) specifies the continuous test aerosol flow rates for the filter efficiency testing. Single filters are tested at a rate of 85±4 liters per minute; filters used in pairs are tested at a rate of 42.5 ± 2 liters per minute through each filter.

Paragraph (f) describes the penetration test aerosols and the test criteria to be used. A sodium chloride or equivalent solid aerosol is used when testing for filter efficiency for N-series filters. A neutralized-dioctyl phthalate (DOP), or equivalent oil, liquid aerosol is specified as the testing agent when testing for filter efficiency of R- and P-series filters. For P-series filters, the filter efficiency test will be continued until minimum efficiency is obtained. However, for N- and R-series respirators it will be terminated when an aerosol mass of 200±5 mg has contacted the filter unit, if minimum efficiency has not been obtained.

Paragraph (f)(1) identifies the test conditions for the sodium chloride or equivalent solid aerosol to be at 25±5 °C and relative humidity of 30±10 percent. The aerosol specified to be used in these tests will be neutralized to the Boltzmann equilibrium state, and the maximum concentration will not exceed 200 mg/m³. The relative humidity of the sodium chloride aerosol has been changed from the proposal in response to a comment. This change, a small increase in the relative humidity of the aerosol, allows testing at the values normally encountered with the test instruments commonly used.

Paragraph (f)(2) specifies the DOP or equivalent oil liquid particulate aerosol. The test conditions for the liquid aerosol are specified to be at 25±5 °C. The aerosol specified to be used in these tests will be neutralized to the Boltzmann equilibrium state, and the maximum concentration will not exceed 200 mg/m³.

Paragraph (g) specifies the particle size limitations at the test conditions for the filter efficiency test aerosols. The sodium chloride aerosol will have a particle size distribution with count median diameter between 0.075±0.020 micrometer and a standard geometric deviation not exceeding 1.86. The liquid particulate aerosol has a particle size distribution with count median diameter between 0.185±0.020 micrometer and a standard geometric deviation not exceeding 1.60. NIOSH will make these particle size distribution determinations at the specified test conditions with a scanning mobility particle sizer (SMPS) or equivalent. The specification of a scanning mobility particle sizer represents newer technology than the

differential mobility particle sizer that was specified in the proposal. This reference to the newer technology was added in response to comments from the public. NIOSH will accept manufacturer's size verification data determined by SPMS or an equivalent particle sizing instrument that provides particle sizing information consistent with an SPMS.

Paragraph (h) requires the efficiency of the filter (i.e., the amount of aerosol particles that pass through the filter) to be monitored and recorded throughout the test period by a suitable forward-light-scattering photometer or equivalent instrumentation.

Paragraph (i) requires the minimum filter efficiency for each of the 20 filters to be determined and recorded. The minimum efficiency of each tested filter is to be greater than or equal to 99.97% for P100, R100 and N100 filters; 99% for P99, R99 and N99 filters; and 95% for P95, R95 and N95 filters.

Many comments were received on all aspects of the testing requirements. Comments were received regarding the proposed loading levels, test agents, preconditioning requirements, number of filters to be tested, and test equipment specifications.

The proposal included a statistical treatment of the filter efficiency test results (U statistic). Thirty filter samples were to be tested for each certification application. The number of samples tested and the test statistic used in the treatment of the data was intended to provide a 95% confidence interval of 95% conformance (95% tolerance interval) of manufacturers' product to the certification criterion. These methods rely on the applicability of the "normal" or Gaussian distribution for test data. A similar statistical treatment of the test data was included in the 1987 NIOSH proposal.

A number of commenters expressed concern with the use of a NIOSH proposed U statistic (based on a 95% tolerance interval for the 95th percentile) to determine if the performance of filters submitted by manufacturers meet the requirements for requested classification (type). Comments concerned the use of the constant 2.22 for the calculation of the U statistic, suggesting that this is too strict a criterion for manufacturers to meet and implying that 95% tolerance intervals based on some lower percentile (e.g., 90th) would be more appropriate. Other comments concerned the distribution assumptions inherent in the calculation of the U statistic. Commenters expressed concern that the assumption that test data represent a sample from a Gaussian distribution is incorrect and that the application of tolerance interval methods for this data is inappropriate.

Other commenters questioned NIOSH's justification to "knowingly" allow the certification of respirators that do not meet the performance requirements. They interpreted the statistical criterion as NIOSH accepting up to 5% of the distributed respirators to be less than the stated class minimum. This analysis of the data would imply that some of the distributed certified respirators perform below the inferred minimum performance level of its class. The commenters expressed concern that this would cause an unacceptably large number of workers to have inadequate respirator protection.

One commenter pointed out that the use of the U statistic was an attempt to predict future production variability. This commenter further asserted that respirators submitted for certification testing do not constitute a random sample of a manufacturer's product. Production variability, this commenter continued, is to be controlled by the separate quality control program.

NIOSH concurs with the commenter that the proposed statistical approach addressing pre-market production samples is inconsistent with determining product quality in a controlled process. NIOSH further agrees that the samples submitted for certification testing are not random samples. Therefore, the final rule does not include an acceptance criterion based upon the statistical treatment of test data.

A significant portion of the cost attributed to the proposed regulations (25 to 30% of the cost, by one estimate) resulted from the statistical treatment of data. Manufacturers stated that this cost impact would be reduced if a 95% tolerance interval based on a 90 percentile (i.e., 95% confidence of 90% conformance) were used. Manufacturers and others suggested that a pass/fail criterion should be offered. Several commenters suggested reducing the number of test samples and using a pass/fail criterion.

A pass/fail criterion is consistent with the current respirator acceptance criterion, and is generally accepted as appropriate for a certification program with testing of pre-production units. The pass/fail criterion presents another advantage in that it establishes the minimum acceptable performance level consistent with the class definition. A member of a 95% class will not be in compliance with the certification if it has an efficiency below that level when tested. The statistical test criterion could allow some individual units to have performance test measurements below 95% but still meet certification requirements.

Based on these comments, NIOSH has reconsidered the use of the tolerance interval approach for the analysis of respirator performance data. NIOSH agrees that the application of the tolerance interval approach is inconsistent with type approval and recognizes that respirators submitted for certification do not constitute a random sample of a manufacturer's product. Consequently, the final rule has been modified to test 20 respirators for laboratory performance, with certification if all 20 units meet the specifications.

The proposal specified both sodium chloride (NaCl) as the solid test aerosol and dioctyl phthalate (DOP) as the liquid test aerosol. Although DOP is a suspected carcinogen, the set up of the test instruments precludes laboratory personnel exposure to the aerosol. Sodium chloride does not pose a suspected health hazard. Dioctyl phthalate is the most severe liquid, or degrading test aerosol known. It has been used for decades as the test aerosol for certification of the best (HEPA) part 11 filters. Sodium chloride is a solid test aerosol that provides some degrading characteristics. Sodium chloride has also been used for years as the solid test agent in the European (CEN) certification standards.

No comments were received against the use of NaCl as the solid test aerosol for non-powered respirators. One commenter, a former employee of the Department of Defense, questioned its use because the military does not use it in their mask testing. Another commenter, accepting the use of NaCl, stated that part 84 should allow equivalent test aerosols as well. The only negative comments received to the NaCl test aerosol were due to the difficulties associated with the testing of powered air-purifying respirators (PAPRs). The requirements for PAPRs was discussed previously in V. Discussion of Final Rule, B. Powered Air-Purifying Particulate Respirators.

Commenters interested in the use of certified respirators for protection against TB suggested the use of biological agents (bioaerosols) for the certification testing. It is not necessary to subject filter respirators to a bioaerosol as a condition of certification. By using test aerosols of the most penetrating size range, the efficiency-level determination of the certification testing will be the lowest obtainable for any size aerosol. Therefore, the efficiency level against

any bioaerosol for any certified respirator will meet or exceed the certified efficiency level.

Comments concerning the choice of liquid test aerosols were varied. Several different test agents were suggested including paraffin oil, Emery 3004, and hydrofluoric acid. Paraffin oil was suggested because it is consistent with the European (CEN) standards. The U.S. military has adopted Emery 3004 as a DOP replacement in instantaneous testing of filter efficiency. A commenter suggested that because hydrofluoric acid aerosol is common in many industries, it would be a more realistic test agent.

Each of the suggested alternative liquid aerosols would provide essentially the same initial or lightly loaded filter efficiency levels. The initial efficiency level of a filter is defined primarily by the particle size of the aerosol, not its degrading ability. The CEN standards use paraffin oil as the liquid test aerosol, but the filters are not loaded to a significant level. Emery 3004 has been adopted as a replacement for DOP by the military in initial efficiency testing as performed for the part 11 HEPA filters. Unlike DOP, none of the recommended alternative test aerosols provide severe degrading effects of the filters. This severity is an integral part of the part 84 testing, and addressing the uncertainties of the effects of actual workplace aerosols.

In considering these options, NIOSH is aware that no single test agent is used by every prominent standard-setting agency or organization. The CEN standard uses NaCl as a solid test aerosol. The current draft for revising the ANSI Z88.8 standard proposes NaCl and DOP as the test aerosols. No choice of test aerosol would provide consistency with all other standards, as sought by commenters. A fundamental purpose of the new testing standards is to assure that at least one class of filters is highly resistant to degradation by workplace aerosols. The DOP aerosol was selected for this purpose specifically because of its severe effect on filter efficiency level. The proposed alternatives demonstrate less severe effects on the filter media; therefore, they have been considered inappropriate for the evaluation intended by NIOSH.

The generation method of dioctyl phthalate aerosol was a concern to many commenters. Commenters questioned the particle size distribution for this test aerosol specified in the proposal being greater than that specified in the existing part 11 requirements. Commenters also questioned differences in test results based on the use of thermally generated (hot) or cold-nebulized DOP aerosol. Although the proposal did not specify any aerosol generation technique to be used for DOP testing, much of NIOSH's research used as a basis for the proposal was performed with cold-nebulized DOP and NIOSH testing has demonstrated that correlation in results obtained between the two aerosol generation techniques is possible. Some commenters believed that the DOP aerosol generation method must be specified to ensure reproducible test results. These commenters used data from Industrial Safety Equipment Association-sponsored "round robin" testing of mechanical and electrostatic filter material. Complete data and specifics of the round robin testing were not provided to NIOSH. These tests were conducted among the majority of the air-purifying respirator manufacturers that are ISEA members. The test results indicated excellent correlation between the two aerosol generation methods for efficiency of standardized mechanical filter media. For standardized electrostatic media, a divergence in efficiency with increased filter loading was reported between the two aerosol generation methods. These commenters also reported that both the initial and stabilized efficiencies of the electrostatic media correlated well between the two aerosol generation methods. The divergence reported appears to be a different degradation rate between the two aerosols.

Moreover, several of the participants provided some additional insights into the circumstances of the testing. A significant portion of the manufacturers had recently acquired the cold-nebulized test instruments. The reproducibility problems reported, they admitted, could have resulted from operator inexperience. One of the participants with extensive experience with both aerosol generation methods related some of the experience gained by that manufacturer. Excellent correlation is maintained between this commenter's numerous cold-nebulized DOP instruments in use world-wide. Also, the commenter reported having encountered no reproducibility problems between thermally-generated and cold-nebulized instruments in testing electrostatic media when new DOP is used.

In NIOSH testing, some tests have provided good correlation of results between the two aerosol generation methods, while others have not. DOP changes chemically as it ages, becoming less pure. The thermal-generation method induces a similar chemical change, simulating accelerated aging of the DOP. Recent NIOSH testing indicates that the chemically-changed DOP may cause the test instruments to fluctuate from the stated testing parameters. If monitored closely, and kept within the specified parameters, equivalent results are obtained with either aerosol generation method. Therefore, to accommodate these concerns, the final rule specifies a test using a neat cold-nebulized DOP test, or equivalent test. Allowing equivalent test methods permits the use of tests that respirator manufacturers may have already developed. As part of the established certification process, NIOSH evaluates the test results submitted by the applicant by comparing them to the results of NIOSH testing. Any test method yielding results equivalent to the NIOSH testing will be acceptable.

To further address the testing reproducibility concerns expressed by commenters, NIOSH is initiating a program whereby a standard mechanical and electrostatic filter media sample will be made available upon request for applicant correlation testing. NIOSH will run characterization tests on these standardized media and send a data sheet showing the test results with the samples. NIOSH has traditionally conducted correlation testing for applicants requesting such testing to document the agreement of their test instruments and procedures and those of NIOSH. This new procedure will continue the service provided to the applicants of assuring that the results they obtain on their instruments and with their procedures provide results comparable with NIOSH's certification tests. This new process will reduce the NIOSH resource requirements for corroborating the test results of the large number of applicants that NIOSH anticipates will be requesting this service and expedite the correlation process.

Several comments were received on the humidity preconditioning requirement for filters. One commenter stated that the proposed preconditioning time (24 hours) was inadequate to have much of an effect on the performance of electrostatic filter media. The commenter suggested a thirty-day preconditioning period. Information provided regarding the ISEA round-robin testing stated that the effects of the preconditioning were insignificant when testing with the DOP aerosol. This assessment agrees with NIOSH testing experience. The other commenters had concerns that the proposal did not provide: detail regarding uniform preconditioning, the size of the container, the allowable time after conditioning at which filter media must be placed within the container and the allowable time for the filter to remain within the container until tested.

The final rule has been modified to require only N-series filters be taken out of their packaging and humidity preconditioned prior to filter efficiency level testing at 85±5 percent relative humidity at 38±2.5 °C for 25±1 hours. The final rule states that following the preconditioning, the filters shall be sealed in a gas-tight container and tested within 10 hours. R- and P-series filters do not have to be preconditioned because they are tested against DOP which is much more severe than humidity in regard to reducing filter efficiency. The preconditioning requirement is retained for the N-series filters to address the effect of humidity on the filter's efficiency because the sodium chloride aerosol is less severe than DOP in reducing filter efficiency. The 10-hour limitation on storage of the filters before efficiency testing will eliminate the variability concerns.

The final rule has been modified to specify a scanning mobility particle sizer (SMPS) or equivalent, as recommended by commenters, to be consistent with the latest technology. One commenter suggested a flame photometer be allowed for measurement of sodium chloride. The same commenter also stated that other sizing devices such as the Tyndall Owl have been used for years and should be an acceptable measuring instrument. NIOSH is aware that other instrumentation can provide sizing information that can equate to the values specified in the rule. In specifying the particle size, it is important to identify the technology used in its determination. The differential mobility particle sizer (DMPS) was specified in the proposed rule because this is the technology traditionally used by NIOSH to determine the particle sizes of this test. The use of these other instruments is acceptable and all other such equipment does not have to be specified in the final rule. To make size verification measurements manufacturers may use any particle sizing instrument that provides particle sizing information consistent with an SPMS.

Subpart L—Chemical Cartridge Respirators

Section 84.203 Breathing Resistance Tests; Minimum Requirements

This section is redesignated from existing § 11.162–1. This section is unmodified from the proposal.

It is modified only to delete reference to various classifications, such as paints and pneumoconiosis and fibrous producing dusts, that are no longer appropriate with the introduction of the particulates classification with the new instantaneous-penetration test.

Section 84.206 Particulate Tests; Respirators With Filters; Minimum Requirements; General

This section is redesignated from existing § 11.162–7. This section is unmodified from the proposal. It is modified only to delete reference to various classifications, such as paints and pneumoconiosis and fibrous producing dusts, that are no longer appropriate with the introduction of the particulates classification with the new instantaneous-penetration test.

Subpart KK—Dust, Fume, and Mist; Pesticide; Paint Spray Respirators and Combination Gas Masks

This subpart has been added to continue the part 11 requirements for the existing dust, fume, and mist; pesticide; paint spray respirators and combination gas masks during the transition period to part 84.

These sections are derived from existing 30 CFR part 11, subpart K. They are modified to update them to part 84 section numbers.

This subpart also included the upgraded requirements for PAPRs to include only high efficiency filters (HEPA).

Derivation Table

The following derivation table lists (1) each section number of the final rule (New Section); and (2) the section number of the existing standard from which the proposed standard is derived (Old Section).

DERIVATION TABLE

New section	Old section
42 CFR	30 CFR
84.1	11.1
84.2	11.3
84.3	11.4
84.4	New.
84.10	11.10
84.11	11.11
84.12	11.12
84.20	11.20
84.21	11.21
84.22	11.22
84.30	11.30
84.31	11.31
84.32	11.32
84.33	11.33
84.34	11.34
84.35	11.35
84.36	11.36
84.40	11.40
84.41	11.41
84.42	11.42
84.43	11.43
84.50	11.50
84.51	11.51
84.52	11.52
84.53	11.53
84.60	11.60
84.61	11.61
84.62	11.62
84.63	11.63
84.64	11.64
84.65	11.65
84.66	11.66
84.70	11.70
84.71	11.71
84.72	11.72
84.73	11.73
84.74	11.74
84.75	11.75
84.76	11.76
84.77	11.77
84.78	11.78
84.79	11.79
84.80	11.79–1
84.81	11.80
84.82	11.81
84.83	11.82
84.84	11.83
84.85	11.84
84.86	11.85–1
84.87	11.85–2
84.88	11.85–3
84.89	11.85–4
84.90	11.85–5
84.91	11.85–6
84.92	11.85–7
84.93	11.85–8
84.94	11.85–9
84.95	11.85–10
84.96	11.85–11
84.97	11.85–12
84.98	11.85–13
84.99	11.85–14
84.100	11.85–15
84.101	11.85–16
84.102	11.85–17
84.103	11.85–18
84.104	11.85–19
84.110	11.90
84.111	11.91
84.112	11.92
84.113	11.93
84.114	11.94
84.115	11.95
84.116	11.96
84.117	11.97
84.118	11.98
84.119	11.99
84.120	11.100
84.121	11.101
84.122	11.102–1
84.123	11.102–2
84.124	11.102–3
84.125	11.102–4
84.126	11.102–5
84.130	11.110
84.131	11.111
84.132	11.112
84.133	11.113
84.134	11.114
84.135	11.115
84.136	11.116
84.137	11.117
84.138	11.118

DERIVATION TABLE—Continued

New section	Old section
84.139	11.119
84.140	11.120
84.141	11.121
84.142	11.122
84.143	11.123
84.144	11.124–1
84.145	11.124–2
84.146	11.124–3
84.147	11.124–4
84.148	11.124–5
84.149	11.124–6
84.150	11.124–7
84.151	11.124–8
84.152	11.124–9
84.153	11.124–10
84.154	11.124–11
84.155	11.124–12
84.156	11.124–13
84.157	11.124–14
84.158	11.124–15
84.159	11.124–16
84.160	11.124–17
84.161	11.124–18
84.162	11.124–19
84.163	11.124–20
84.170	11.130
84.171	11.131
84.172	11.132
84.173	11.133
84.174	11.134
84.175	11.135
84.176	11.136
84.177	11.137
84.178	11.138
84.179	New.
84.180	11.140–9
84.181	New.
84.182	11.140–10
84.190	11.150
84.191	11.151
84.192	11.152
84.193	11.153
84.194	11.154
84.195	11.155
84.196	11.156
84.197	11.157
84.198	11.158
84.199	11.158–1
84.200	11.159
84.201	11.160
84.202	11.161
84.203	11.162–1
84.204	11.162–2
84.205	11.162–3
84.206	11.162–7
84.207	11.162–8
84.250	11.200
84.251	11.201
84.252	11.202
84.253	11.203
84.254	11.204
84.255	11.205
84.256	11.206
84.257	11.207
84.258	11.208
84.1100	New.
84.1101	11.3
84.1102	11.20
84.1103	11.33
84.1130	11.102–4, 11.130, 11.170
84.1131	11.91, 11.131, 11.171
84.1132	11.95, 11.132, 11.175
84.1133	11.96, 11.133, 11.176
84.1134	11.97, 11.134, 11.177
84.1135	11.98, 11.135, 11.178
84.1136	11.99, 11.136, 11.179
84.1137	11.100, 11.137, 11.180
84.1138	11.101, 11.138, 11.181
84.1139	11.139, 11.182
84.1140	11.140
84.1141	11.140–1
84.1142	11.140–2
84.1143	11.140–3
84.1144	11.140–4
84.1145	11.140–5
84.1146	11.140–6
84.1147	11.140–7
84.1148	11.140–8
84.1149	11.140–9
84.1150	11.140–10
84.1151	11.140–11
84.1152	11.140–12
84.1153	11.102–4
84.1154	11.172, 11.173
84.1155	11.174
84.1156	11.183, 11.183–1, 11.183–3, 11.183–4, 11.183–5, 11.183–6, 11.183–7
84.1157	11.162, 11.162–1, 11.162–4, 11.162–5, 11.162–6, 11.162–8
84.1158	11.162–7

Distribution Table

The following distribution table lists (1) the section number of the existing part 11 standard (Old Section); and (2) each section number of the final rule (New Section).

DISTRIBUTION TABLE

Old section	New section
30 CFR	42 CFR
11.1	84.1
11.2	Removed.
11.2–1	Removed.
11.3	84.2, 84.1101
11.4	84.3
11.10	84.10
11.11	84.11
11.12	84.12
11.20	84.20, 84.1102
11.21	84.21
11.22	84.22
11.30	84.30
11.31	84.31
11.32	84.32
11.33	84.33, 84.1103
11.34	84.34
11.35	84.35
11.36	84.36
11.40	84.40
11.41	84.41
11.42	84.42
11.43	84.43
11.50	84.50
11.51	84.51
11.52	84.52
11.53	84.53
11.60	84.60
11.61	84.61
11.62	84.62
11.63	84.63
11.64	84.64
11.65	84.65
11.66	84.66
11.70	84.70
11.71	84.71
11.72	84.72
11.73	84.73
11.74	84.74
11.75	84.75
11.76	84.76
11.77	84.77
11.78	84.78
11.79	84.79
11.79–1	84.80
11.80	84.81
11.81	84.82
11.82	84.83
11.83	84.84
11.84	84.85
11.85	Removed.
11.85–1	84.86
11.85–2	84.87
11.85–3	84.88
11.85–4	84.89
11.85–5	84.90
11.85–6	84.91
11.85–7	84.92
11.85–8	84.93
11.85–9	84.94
11.85–10	84.95
11.85–11	84.96
11.85–12	84.97
11.85–13	84.98
11.85–14	84.99
11.85–15	84.100
11.85–16	84.101
11.85–17	84.102
11.85–18	84.103
11.85–19	84.104
11.90	84.110
11.91	84.111, 84.1131
11.92	84.112
11.93	84.113
11.94	84.114
11.95	84.115, 84.1132
11.96	84.116, 84.1133
11.97	84.117, 84.1134
11.98	84.118, 84.1135
11.99	84.119, 84.1136
11.100	84.120, 84.1137
11.101	84.121, 84.1138
11.102	Removed.
11.102–1	84.122
11.102–2	84.123
11.102–3	84.124
11.102–4	84.125, 84.1130, 84.1153
11.102–5	84.126

DISTRIBUTION TABLE—Continued

Old section	New section
11.110	84.130
11.111	84.131
11.112	84.132
11.113	84.133
11.114	84.134
11.115	84.135
11.116	84.136
11.117	84.137
11.118	84.138
11.119	84.139
11.120	84.140
11.121	84.141
11.122	84.142
11.123	84.143
11.124	Removed.
11.124–1	84.144
11.124–2	84.145
11.124–3	84.146
11.124–4	84.147
11.124–5	84.148
11.124–6	84.149
11.124–7	84.150
11.124–8	84.151
11.124–9	84.152
11.124–10	84.153
11.124–11	84.154
11.124–12	84.155
11.124–13	84.156
11.124–14	84.157
11.124–15	84.158
11.124–16	84.159
11.124–17	84.160
11.124–18	84.161
11.124–19	84.162
11.124–20	84.163
11.124–21	Removed.
11.124–22	Removed.
11.124–23	Removed.
11.124–24	Removed.
11.130	84.170, 84.1130
11.131	84.171, 84.1131
11.132	84.172, 84.1132
11.133	84.173, 84.1133
11.134	84.174, 84.1134
11.135	84.175, 84.1135
11.136	84.176, 84.1136
11.137	84.177, 84.1137
11.138	84.178, 84.1138
11.139	84.1139
11.140	84.1140
11.140–1	84.1141
11.140–2	84.1142
11.140–3	84.1143
11.140–4	84.1144
11.140–5	84.1145
11.140–6	84.1146
11.140–7	84.1147
11.140–8	84.1148
11.140–9	84.180, 84.1149
11.140–10	84.182, 84.1150
11.140–11	84.1151
11.140–12	84.1152
11.150	84.190
11.151	84.191
11.152	84.192
11.153	84.193
11.154	84.194
11.155	84.195
11.156	84.196
11.157	84.197
11.158	84.198
11.158–1	84.199
11.159	84.200
11.160	84.201
11.161	84.202
11.162	84.1157
11.162–1	84.203, 84.1157
11.162–2	84.204
11.162–3	84.205
11.162–4	84.1157
11.162–5	84.1157
11.162–6	84.1157
11.162–7	84.206, 84.1158
11.162–8	84.207, 84.1157
11.170	84.1130
11.171	84.1131
11.172	84.1154
11.173	84.1154
11.174	84.1155
11.175	84.1132
11.176	84.1133
11.177	84.1134
11.178	84.1135
11.179	84.1136
11.180	84.1137
11.181	84.1138
11.182	84.1139
11.183	84.1156
11.183–1	84.1156
11.183–2	Removed.
11.183–3	84.1156
11.183–4	84.1156
11.183–5	84.1156
11.183–6	84.1156
11.183–7	84.1156
11.200	84.250
11.201	84.251
11.202	84.252
11.203	84.253
11.204	84.254
11.205	84.255
11.206	84.256
11.207	84.257
11.208	84.258

VII. Executive Order 12866 and Regulatory Flexibility Act

Section 1 of Executive Order 12866 requires that before promulgating a new regulation, an agency must weigh many competing factors. In particular, the agency must assess the need for the regulation, identify and assess alternatives, determine whether the regulation is designed to achieve the agency's objectives in the most cost-effective manner, and, to the extent feasible, use performance standards. In addition, Section 5 of the Order requires an assessment of the burden imposed by existing regulations, to identify those that have become unjustified or unnecessary as a result of changed circumstances. The Regulatory Flexibility Act (the Act) also requires that the agency periodically review existing regulations and consider reforming those that burden small entities, taking into account the degree to which technology or other factors have changed in the area affected by the rule. NIOSH is promulgating these regulatory changes in compliance with both sections of the Executive Order and the Act.

Dose-response data are inadequate to permit a quantitative description of the risks that would be faced by American workers if respirators were not used. Neither are there dose-response data that can support a quantitative description of the risk reduction that will be achieved by the revised filter performance standards in 42 CFR part 84. Employers frequently lack the economic means or the technical expertise to make detailed workplace hazard assessments. For the great majority of occupational settings, environmental data on the airborne concentrations of toxic materials are completely lacking. When exposure data are available, they tend to be limited at best. Consequently, it is difficult to establish quantitative exposure-response relationships. Most often, occupational exposure data demonstrate the association between exposure and response, but do not support a precise exposure-response curve, Extrapolation from exposure to dose is subject to even greater uncertainty. The variability in exposure between and within workplaces, exposures over long working lifetimes, possibly inconsistent or improper use of respiratory protection, and undetected episodes of substandard respirator performance, among other factors, all make it very difficult to determine what a worker's dose may be even if there are measured exposure levels.

Employers, both large and small, rely upon respirators to protect their employees from airborne toxic contaminants. The preferred and most effective means of protecting workers is to prevent hazards entering their breathing zone in the first place, but it is not technologically or economically feasible in all instances to reduce airborne concentrations to safe levels. In those workplaces, respiratory protection is required to minimize workers' risks of acute and chronic health effects. Although the incremental risk reduction associated with this rulemaking cannot be quantified, it is evident that increased filtering efficiency and enhanced filter reliability must increase the margin of safety for respirator users.

As the last, and occasionally the only, defense against some acute and chronic health hazards at work it is important that respirators be reliable and that they perform in the manner and to the extent the user and employer expect. If respirators fail to perform as expected, the user will be at greatly increased risk of suffering serious, sometimes fatal,

occupational disease or injury. In most circumstances the respirator user has no way of knowing if respirator performance is substandard. Except for the most acute responses to substandard respirator performance, it is not possible to attribute health effects to a failure of respiratory protection. Most of the serious occupational diseases have long latency periods, so respirator users typically would not know if they used an inferior device. Even the relationship to workplace exposures can be obscured because of the presumption that respirators provide effective protection.

Respriator purchasers and users expect and deserve to be able to select respirators with complete confidence that they will perform with a specific efficiency for a specific purpose. They rely on the NIOSH, formerly MSHA/NIOSH, performance standards and certification program to assure them that they can have that confidence.

These new particulate filter efficiency tests are needed to reduce potential health risks that may result from leakage of small particulates through some filters certified under the current regulations (30 CFR part 11). For over a decade the filter penetration tests contained in 30 CFR part 11 have been known to be deficient. Leakage of small aerosols has been recognized as a problem that could be corrected only by revising that regulation.

The magnitude of the filter leakage problem came into sharper focus in the early 1990's when NIOSH and other researchers used modern methods not available under the provisions of part 11 to measure performance over a range of particle sizes. For certain models, leakages higher than 50% were found. Not all respirator models exhibit this high level of leakage, but 30 CFR part 11 testing does not distinguish adequate from inadequate filters.

The respirator community acknowledges filter leakage to be a problem. The American National Standards Institute (ANSI) Z88.2–1992 national standard, for example, states that 2 of the 3 types of particulate respirators certified under 30 CFR part 11 should be used only when the workplace particulate contaminant is know to have a mass median aerodynamic diameter (MMAD) greater that 2 micrometer.

Compliance with aerosol size limitations such as those of the ANSI Z88.2 would represent a major technologic and economic burden for respirator users. Those burdens are great even for the largest employers and exceed the capacity of smaller employers. Adequate worker protection with DM and DFM respirators certified under 30 CFR part 11 can be assured only if employers conduct sophisticated and expensive measurements of the size distribution of the aerosol in each workplace. This is simply too expensive for the great majority of respirator users, who may elect to use DM or DFM respirators without evaluating aerosols in their workplaces, thereby placing their workers at increased risk of occupational disease or disability. The only alternative at present is for those employers to provide costly high efficiency (HEPA) filters. The difficult and costly aerosol size measurements are not needed when HEPA filters are used because they are tested with the most penetrating size of aerosol. HEPA filters are therefore known to be effective against any aerosol regardless of size.

The new 42 CFR part 84 filter efficiency tests use only the most penetrating aerosol size, so all filters certified under these new procedures will be effective against any size aerosol. This new rule thereby corrects an acknowledged deficiency in existing filter efficiency tests, removes from the workplace respirators that fail to deliver the expected degree of worker protection, relieves employers of the need to perform costly and difficult measurements of aerosol size distribution, and provides alternatives to the expensive HEPA filters in workplaces where the aerosol size is either unknown or is known to be small.

This new rule continues to limit, as does the current 30 CFR part 11, the breathing resistance (inhalation and exhalation resistance) of the respirator. Breathing resistance is significant to respirator wearers in three ways. First, higher breathing resistance increases leakage at the face seal of the respirator. Face seal leakage is directly proportional to breathing resistance, other factors being equal. Second, respirators with lower breathing resistance are more comfortable and more acceptable to wearers. If a respirator is uncomfortable to wear, workers are less inclined to use their respirator as often as they should. Third, high breathing resistance can be an unacceptable physiological burden on some workers. For a worker with impaired pulmonary or cardiovascular function, high breathing resistance may make respirator use impossible. In this rule, NIOSH has increased the allowable inhalation and exhalation resistance in consideration of minimizing economic impact, but NIOSH has maintained the breathing resistance at a level that still will minimize adverse impacts on the respirator user.

E.O. 12866 further requires the agency to determine whether the proposed rule is "economically significant" (e.g., it does not have an annual effect on the economy of $100 million). NIOSH generally prepares a regulatory flexibility analysis, in accordance with the Act, if the rule is expected to have a significant impact on a substantial number of small entities. NIOSH does not believe that this final rule will have an annual impact on the economy of $100 million, nor does NIOSH believe that the rule will have a significant impact on a substantial number of small firms.

This regulatory change affects only particulate respirators. A total of 56 manufacturers hold respirator approvals, and 33 of these hold approvals for particulate respirators. Based on inquiries received, NIOSH believes that several additional manufacturers are planning to submit applications for particulate filter products under this new regulation.

Data are not available to define company size, market share, or diversity of products for the current approval-holders. Projections of impact are based on an understanding of manufacturers—dependence on existing approved particulate respirators. Of the 33 manufacturers that have particulate filer approvals, 24 hold additional approvals for devices other than particulate respirators, and nine have only particulate filter approvals. One of these manufacturer holds approvals for DM, DFM and HEPA respirators, while the remaining eight each hold only a single particulate filter approval. Because all existing HEPA filters are expected to pass the new certification tests, it appears that only eight of 56 respirator manufacturers might be dependent upon particulate filter respirators possibly at risk of not passing the new certification tests without redesign. At least one of these eight manufacturers commented favorably on this proposed rule, indicating readiness to meet these new criteria.

Any manufacturer that cannot meet the new criteria immediately will have three years in which to develop new products or face removal from the approved respirator market. However, loss of approved respirator status does not prohibit sales of the devices as non-approved units. The non-approved respirator market appears to be very lucrative, with several of the larger manufacturers participating. Non-approved respirators are sold in many retail outlets including hardware, auto supply, and department stores. Consumers purchase these devices for use against nuisance dusts while performing various home and hobby-related activities.

While some current respirator manufacturers may experience negative impacts, other manufacturers that are not now approval holders have indicated an intention to enter this market. The new rule thus will stimulate competition as new technologies are introduced and new markets are developed. Furthermore, this rule enhances the ability of domestic manufacturers to compete globally, especially in the European Community. NIOSH expects to see more new approval holders develop as a result of the new rule.

A high percentage of the respirator manufacturers are large corporations or subsidiaries and are international in nature, although several employ 100 or fewer persons. NIOSH does not have an estimate of the total number employed by the 33 manufacturers of particulate respirators. Neither does NIOSH have any indication of how many employees are engaged solely in the manufacture of particulate respirators. However, the respirator manufacturing industry in general is mature and stable. A 1982 survey of the industry performed for NIOSH covered 29 firms that were active at that time, the majority of which continue to manufacture respirators in 1995. Of these, 12 were subsidiaries of larger firms. Median total employment was 375. A large portion of these workers were believed to be engaged in activities unrelated to particulate respirator manufacturing. Sales figures indicated respirator sales ranged from less than 1% to 10–15% of total corporate sales.

NIOSH believes the industry profile remains basically the same it was in 1982. That is, respirators do not represent the primary source of sales income for any of the manufacturers that will be affected. Because respirators represent a low percentage of overall sales, the percentage of total employees involved in the manufacture of respirators is believed also to be low. Therefore, few employees are likely to be severely impacted by the new rule. Indeed, the increased competition and opening of markets expected to result from the rule may well enhance aggregate employment for both current and new approval holders.

Most employers rely on government standards to determine acceptable levels of respirator performance. It would be inefficient and unreasonably costly for each of millions of occasional purchasers of these inexpensive devices to independently attempt to determine which devices operate effectively to filter out submicron toxic particles.

This rule removes a regulatory impediment to the improved design of respirators by substituting a performance standard for an obsolete specifications standard. The practical effect of this will be to enable firms to substitute a more effective and efficient filter material in lower-cost respirators. Respirators already using high efficiency filters meeting 30 CFR part 11 requirements will not be affected by this proposal. These respirators will not require modification to be certified under this final rule, although the certification may not be at the new P100 efficiency level. Although the category of performance may be reduced from the previous HEPA rating, no design or development costs are associated with the certification of these products.

NIOSH received limited responses to its request for comments and data for projected estimates of cost for materials and labor for these improved respirators. Several respirator manufacturers referred to a survey conducted by their trade association as suggesting that costs of this module would exceed $100 million, but specific cost estimates for this module were not provided. The trade association reported that their estimate was based largely on the surveyed manufacturers' projections of procuring new equipment, procuring new materials, plant retooling, and the like. The largest manufacturer of respirators did not project the same cost impact on its products, even though that manufacturer recommended changing the proposed rule to eliminate the least costly class of proposed respirators and to increase the severity of two testing parameters. Another manufacturer stated that the "projected increased user cost for disposables of 42 CFR part 84 would be between $440 and $990 million," based solely on impacts to that manufacturer's products. This manufacturer forecast that prices to end users would rise by 1.7- to 2.9-fold or 9- to 16-fold depending on filter type.

Very limited data were submitted in support of any of these estimates, but it appears that the large discrepancy between NIOSH and industry cost estimates are attributable to 3 principal factors:

(1) Cost estimates by industry included many capital investmet costs rather than recurring annual costs, inclusion of which improperly inflated the annual cost projections.

(2) An erroneous assumption made by the manufacturer projecting the greatest cost impact. That manufacturer assumed that the proposed fit test would require all disposable respirators to have an elastomeric flange. Additional costs attributed to consumer reaction to this assumption were:

(a) expensive reusable elastomeric cartridge respirators replacing inexpensive disposable models, and

(b) costly respirator maintenance and training programs associated with reusable respirators.

Neither NIOSH nor other manufacturers projected either of these as a consequence of the fit testing. In any event, the requirement for fit testing was eliminated from the final rule. That represents a cost saving in itself but this change also renders moot the question of elastomeric flanges for disposable respirators.

(3) Two additional elements of the proposed rule were identified as having significant cost impact: statistical evaluation of certification test results and limitations on inhalation/exhalation resistance. These were changed in the final rule to eliminate the statistical criterion and to adopt the inhalation/exhalation resistance levels requested by the manufacturers. As a result and as discussed below under specific topics, NIOSH does not believe that this rule will approach the $100 million threshold. In fact, NIOSH believes that over time manufacturers' costs and prices to users will fall.

Commenters stated that the statistical treatment of test data as included in the proposal would "add greatly to the cost of filters and respirators." One commenter estimated that the added manufacturing and waste costs attributable to this provision would be 25–30% of the costs attributable to the proposal. According to the commenters, the replacement of the proposed statistical treatment of test data with the less stringent statistical treatment proposed by NIOSH in 1987 or a pass/fail criterion would remove the added cost implications of the proposed rule.

As discussed previously, NIOSH has replaced the proposed requirement for the statistical treatment of test data with the recommended pass-fail criterion. Twenty filters are to be tested, reduced from 30 to be required under the proposal. This change in the final rule, based on technical concerns discussed previously, will significantly reduce the cost implications of the final rule from the estimated costs of the proposal.

The fit test requirements proposed under §§ 84.181 and 84.182 were identified as another source of a significant portion of the costs attributed to the proposed rule. The increased costs resulted from the interpretation that the isoamyl acetate testing would necessitate elastomeric inner flanges to be added to all certified disposable respirators in all categories.

This interpretation led to two conclusions that increased the cost estimates. The first conclusion was that all disposable filter respirators would need to be redesigned to include a costly elastomeric facepiece. The estimated increased costs of disposable respirators led to the second conclusion that the currently inexpensive and widely used disposable particulate respirators would be replaced by costly reusable elastomeric cartridge masks. This increased use of reusable masks was estimated to increase users' costs of respirator maintenance and training programs not associated with disposable respirators. The costs associated with the use of an isoamyl acetate represented a substantial portion of the projected cost impact of the proposed rule.

As discussed earlier, NIOSH has reconsidered the proposed requirement for isoamyl acetate fit-testing of these respirators. Based on technical considerations, the isoamyl acetate tests have not been included in the final rule. NIOSH anticipates that currently accepted, fit-testing procedures will continue to be used to assure a proper respirator-to-face seal for each respirator user. Based on prior experience with currently certified disposable respirators using these procedures, no redesign of the facepiece seal of disposable respirators will be required as a result of this final rule. Therefore, the cost implications attributed to the isoamyl acetate fit tests are not applicable to this final rule.

It is our understanding that substituting better filter material will have negligible effects on the costs of filters, over the long run. The material costs may be slightly increased, but are relatively small compared to those estimates for statistical evaluation and fit testing. The costs associated with these latter two have been greatly reduced by the requirements in the final rule.

The demonstrated level of performance for filters will be substantially more effective. Instead of an efficiency rate of 95 percent for removing particles sized at 1 to 2 micrometers in diameter, they will demonstrate the ability to remove particles of less than 1 micrometer in diameter at a typical efficiency rate of 95 to 99.97 percent. The importance of this change will vary considerably from workplace setting to setting. However, in at least some settings the benefits will be considerable.

For example, the classes of particulate filter respirators certified under this rule will meet or exceed the recommendations for respiratory protective devices used for M. tuberculosis. Of the currently NIOSH-certified respirators, only high-efficiency particulate air (HEPA) filters meet or exceed these recommendations. The certification to an enhanced performance level will create options for the choice of respirators that adhere to the recommendations at reduced expense. A disposable (one-time use) HEPA filter respirator generally sells for around $7 to $10 and replaceable respirators equipped with HEPA filters can cost $20 or more, with replacement filters costing about $5 each. Replacement non-HEPA filters cost about $1 to $2 each. Disposable non-HEPA filters cost about $1 to $8 each when purchased in bulk. Costs for a N95 filter are expected to be less than those of a current HEPA filter. Applications of new filter technologies and market competition is expected to generally have the impact of reducing the cost of the new respirators. At least one commenter has already indicated that the 95% efficiency level respirators will be priced not exceeding the cost of 30 CFR part 11 disposable DFM respirators, $5 to $8 each.

NIOSH would expect similar effects—both improved health and cost avoidance—in many other settings. NIOSH estimates that as many as seven million workers use respirators at some time each year. NIOSH estimates that employers annually purchase over 110 million disposable respirators.

There are approximately 35 manufacturers of these respiratory devices. Most of these already possess or have access to test equipment needed to perform the new filter tests. As is currently required under 30 CFR part 11, NIOSH will continue to require that applicants conduct or have conducted examinations, inspections, and tests of respirator performance at least equivalent to those set by the respirator certification tests. This is to assure that all necessary research and development is conducted by the applicant prior to submitting an application to the Federal Government for testing of the respirator by NIOSH. For those manufacturers that do not currently possess this capability, NIOSH estimates that the purchase of this equipment represents an investment of approximately $60,000. Amortized over time, this would not represent a significant cost for most manufacturers.

Commenters indicated that the projected costs of new, updated test instruments for the filter efficiency testing contributed significantly to the costs reported to be attributable to the proposed rule. NIOSH agrees that if manufacturers opt to purchase newly developed instruments, this represents a significant investment. As discussed previously, the filter efficiency tests of this final rule can be conducted using the instrumentation previously specified for the testing of high efficiency filters under 30 CFR part 11. Therefore, the purchase of new test instruments is not required for most manufacturers. Further, the purchase of test instruments represents a capital investment amortized over time, not an annual recurring cost.

Filter materials are currently available that can be substituted into present filter designs with minimal redesign (if any) to meet the performance requirements of the new tests. Some currently NIOSH-certified respirators have, when tested using the new standards, demonstrated acceptable performance. Therefore, little or no cost will be needed to develop suitable filtration materials or redesign existing devices. However, NIOSH does realize that additional development and redesign costs may be incurred to augment the presently available products. NIOSH specifically requested relevant data and comments on projected costs of redesign of respirators.

One commenter cited the cost of commercially available filter media to meet the proposed standards as dramatically increased over the present cost of the existing 30 CFR part 11 disposable dust/mist requirements. The cost of present dust/mist media was stated as between 60 cents and one dollar per square yard, whereas the cost of commercially available filter media to meet the proposed 42 CFR part 84 requirements is between 12 dollars and 17 dollars per square yard, depending on the type (A, B, or C), and whether it is for the "solids" or "liquid/solids" category. Two other commenters indicated the availability of prototype respirators and filters that could be marketed for little or no cost increase from existing dust/fume/mist respirators and filters.

Several comments were received stating that the combination of proposed initial inhalation and exhalation resistance limits and efficiency levels might require increasing the surface area of filters. It was asserted that an increase in filter surface area to meet these requirements would "increase substantially the raw material and manufacturing costs of respirator protection." For the technical reasons discussed previously, the initial inhalation and exhalation resistances have been increased in the final rule to the values recommended by these commenters. Adoption of these values will allow "latitude to develop filters at a reasonable cost without compromising safety or comfort to the user," according to the comments.

In summary, NIOSH did not believe the proposed rule change was "economically significant" within the definition of E.O. 12866 based on the cost projections attributable to the proposal that were provided to NIOSH and those modifications incorporated into the final rule.

Notwithstanding these general conclusions, there may be some manufacturers that will find it financially difficult, or a poor investment, to meet the new standards. NIOSH expects such problems to result from free market competition rather than the specific standards of these final regulations. That is, most knowledgeable employers would purchase more cost-effective respirators voluntarily and force major changes in the market if the present regulatory barriers were removed.

List of Subjects in 42 CFR Part 84

Administrative practice and procedure, Incorporation by reference, Labeling, Mine safety and health, Occupational safety and health, Personal protective equipment, Reporting and recordkeeping requirements, Respirators.

Dated: April 14, 1995.

Philip R. Lee,

Assistant Secretary for Health.

Dated: April 14, 1995.

Donna E. Shalala,

Secretary.

For the reasons set out in the preamble, 42 CFR part 84 is added to read as follows:

PART 84—APPROVAL OF RESPIRATORY PROTECTIVE DEVICES

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Authority: 29 U.S.C. 577a, 651 et seq., and 657(g); 30 U.S.C. 3, 5, 7, 811, 842(h), 844.

Subpart A—General Provisions

§ 84.1 Purpose.

The purpose of the regulations contained in this part 84 is:

(a) To establish procedures and prescribe requirements which must be met in filing applications for approval by the National Institute for Occupational Safety and Health of respirators or changes or modifications of approved respirators;

(b) To establish a schedule of fees to be charged each applicant for the inspections, examinations, and testing conducted by the Institute under the provisions of this part;

(c) To provide for the issuance of certificates of approval or modifications of certificates of approval for respirators which have met the applicable construction, performance, and respiratory protection requirements set forth in this part; and

(d) To specify minimum requirements and to prescribe methods to be employed by the Institute and by the applicant in conducting inspections, examinations, and tests to determine the effectiveness of respirators used during entry into or escape from hazardous atmospheres.

§ 84.2 Definitions.

As used in this part—

(a) *Applicant* means an individual, partnership, company, corporation, association, or other organization that designs, manufactures, assembles, or controls the assembly of a respirator and who seeks to obtain a certificate of approval for such respirator.

(b) *Approval* means a certificate or formal document issued by the Institute stating that an individual respirator or combination of respirators has met the minimum requirements of this part, and that the applicant is authorized to use and attach an approval label to any respirator, respirator container, or instruction card for any respirator manufactured or assembled in conformance with the plans and specifications upon which the approval was based, as evidence of such approval.

(c) *Approved* means conforming to the minimum requirements of this part.

(d) *Auxiliary equipment* means a self-contained breathing apparatus, the use of which is limited in underground mine rescue and recovery operations to situations where the wearer has ready access to fresh air and at least one crew equipped with approved self-contained breathing apparatus of 2 hours or longer rating, is in reserve at a fresh-air base.

(e) *Certification and Quality Assurance Branch* means the Certification and Quality Assurance Branch, Division of Safety Research, Appalachian Laboratory for Occupational Safety and Health, National Institute for Occupational Safety and Health, 1095 Willowdale Road, Morgantown, West Virginia 26505–2888.

(f) *Compressed-breathing gas* means oxygen or air stored in a compressed state and supplied to the wearer in gaseous form.

(g) *dBA* means sound pressure levels in decibels, as measured with the A-weighted network of a standard sound level meter using slow response.

(h) *Dust* means a solid mechanically produced particle with a size ranging from submicroscopic to macroscopic.

(i) *Respirators for entry into and escape from* means respiratory devices providing protection during entry into and escape from hazardous atmospheres.

(j) *Respirators for escape only* means respiratory devices providing protection only during escape from hazardous atmospheres.

(k) A *facepiece* or *mouthpiece* is a respirator component designed to provide a gas-tight or dust-tight fit with the face and may include headbands, valves, and connections for canisters, cartridges, filters, or respirable gas source.

(l) *Final inspection* means that activity carried out on a product after all manufacturing and assembly operations are completed to insure completeness and adherence to performance or other specifications, including satisfactory appearance.

(m) *Fume* means a solid condensation particle, generally less than 1 micrometer in diameter.

(n) *Gas* means an aeriform fluid which is in a gaseous state at ordinary temperature and pressure.

(o) *Hazardous atmosphere* means:

(1) Any atmosphere containing a toxic or disease producing gas, vapor, dust, fume, mist, or pesticide, either immediately or not immediately dangerous to life or health; or

(2) Any oxygen-deficient atmosphere.

(p) A *hood* or *helmet* is a respirator component which covers the wearer's head and neck, or head, neck, and shoulders, and is supplied with incoming respirable air for the wearer to breathe. It may include a headharness and connection for a breathing tube.

(q) *Immediately dangerous to life or health* means conditions that pose an immediate threat to life or health or conditions that pose an immediate threat of severe exposure to contaminants, such as radioactive materials, which are likely to have adverse cumulative or delayed effects on health.

(r) *Incoming inspection* means the activity of receiving, examining, and accepting only those materials and parts whose quality conforms to specification requirements.

(s) *In-process inspection* means the control of products at the source of production and at each step of the manufacturing process, so that departures from specifications can be

corrected before defective components or materials are assembled into the finished product.

(t) *Institute* means the National Institute for Occupational Safety and Health, Department of Health and Human Services.

(u) *Liquefied-breathing gas* means oxygen or air stored in liquid form and supplied to the wearer in a gaseous form.

(v) *Mist* means a liquid condensation particle with a size ranging from submicroscopic to macroscopic.

(w) *MSHA* means the Mine Safety and Health Administration, U.S. Department of Labor.

(x) *Not immediately dangerous to life or health* means any hazardous atmosphere which may produce physical discomfort immediately, chronic poisoning after repeated exposure, or acute adverse physiological symptoms after prolonged exposure.

(y) *Oxygen-deficient atmosphere* means an atmosphere which contains an oxygen partial pressure of less than 148 millimeters of mercury (19.5 percent by volume at sea level).

(z) *Powered air-purifying respirator* means a device equipped with a facepiece, hood, or helmet, breathing tube, canister, cartridge, filter, canister with filter, or cartridge with filter, and a blower.

(aa) *Respirator* means any device designed to provide the wearer with respiratory protection against inhalation of a hazardous atmosphere.

(bb) *Single-use respirator* means a respirator that is entirely discarded after excessive resistance, sorbent exhaustion, or physical damage renders it unsuitable for further use.

(cc) *Vapor* means the gaseous state of a substance that is solid or liquid at ordinary temperature and pressure.

§ 84.3 Respirators for mine rescue or other emergency use in mines.

(a)(1) NIOSH and the Mine Safety and Health Administration (MSHA), U.S. Department of Labor, shall jointly review and issue certifications for respirators used for mine emergencies and mine rescue, including any associated service-life plans, users' manuals and other supporting documentation.

(2) Each certification for a respirator designed for mine rescue or other emergency use in mines shall include, as a condition of approval, any use limitations related to mine safety and health.

(b) NIOSH and MSHA shall jointly determine appropriate recall and retrofit remedies for field complaints or identified deficiencies involving any respirators used in the mining environment.

Subpart B—Application for Approval

§ 84.10 Application procedures.

(a) Inspection, examination, and testing leading to the approval of the types of respirators classified in subpart F of this part shall be undertaken by the Institute only pursuant to written applications which meet the minimum requirements set forth in this subpart B.

(b) Applications shall be submitted to the Certification and Quality Assurance Branch, and shall be accompanied by a check, bank draft, or money order in the amount specified in subpart C of this part, payable to the order of the National Institute for Occupational Safety and Health.

(c) Except as provided in § 84.64, the examination, inspection, and testing of all respirators shall be conducted by the Certification and Quality Assurance Branch.

(d) Applicants, manufacturers, or their representatives may visit or communicate with the Certification and Quality Assurance Branch in order to discuss the requirements for approval of any respirator or the proposed designs thereof. No charge shall be made for such consultation and no written report shall be issued to applicants, manufacturers, or their representatives by the Institute as a result of such consultation.

(e) Respirators having electrical or electronic components that are required to be permissible under chapter I of title 30 shall be tested in accordance with 30 CFR part 18. Applications for approval of such respirators by MSHA shall be submitted in writing to: MSHA, Approval and Certification Center, Box 251, Industrial Park Road, Triadelphia, West Virginia 26059.

§ 84.11 Contents of application.

(a) Each application for approval shall contain a complete written description of the respirator for which approval is requested together with drawings and specifications (and lists thereof) showing full details of construction of the respirator and of the materials used.

(b) Drawings shall be titled, numbered, and dated; any revision dates shall be shown on the drawings, and the purpose of each revision being sought shall be shown on the drawing or described on an attachment to the drawing to which it applies.

(c) Each application for approval shall contain a proposed plan for quality control which meets the minimum requirements set forth in subpart E of this part.

(d) Each application shall contain a statement that the respirator has been pretested by the applicant as prescribed in § 84.64, and shall include the results of such tests.

(e) Each application for approval shall contain a statement that the respirator and component parts submitted for approval are either prototypes, or made on regular production tooling, with no operation included which will not be incorporated in regular production processing.

(The information collections contained in this section are approved under OMB control number 0920–0109)

§ 84.12 Delivery of respirators and components by applicant; requirements.

(a) Each applicant shall, when an application is filed pursuant to § 84.10, be advised by the Institute of the total number of respirators and component parts required for testing.

(b) The applicant shall deliver, at his own expense, the number of completely assembled respirators and component parts required for testing, to the Certification and Quality Assurance Branch.

(c) Respirators and component parts submitted for approval must be made from materials specified in the application.

(d) One completely assembled respirator approved under the provisions of this part may be retained by the Institute as a laboratory exhibit, the remaining respirators may be returned to the applicant at his own expense, upon written request within 30 days after notice of approval. If no such request is made, the respirators will be disposed of by the Institute in such manner as it deems appropriate.

(e) Where a respirator fails to meet the requirements for approval set forth in this part, all respirators and components delivered in accordance with this section may be returned to the applicant at his own expense, upon written request within 30 days after notice of disapproval. If no such request is made, the respirators will be disposed of by the Institute in such manner as it deems appropriate.

Subpart C—Fees

§ 84.20 Examination, inspection, and testing of complete respirator assemblies; fees.

Except as provided in § 84.22, the following fees shall be charged by the Institute for the examination, inspection and testing of complete respirator assemblies:

Self-contained breathing apparatus:	
Entry and escape, 1 hour or more	$3,500
Entry and escape, less than 1 hour	2,750
Escape only	2,000
Gas masks:	
Single hazard	1,100
Type N	4,100
Supplied-air respirators	750
Particulate respirators	1,250
Chemical cartridge respirators	1,150

§ 84.21 Examination, inspection, and testing of respirator components or subassemblies; fees.

Except as provided in § 84.22, the following fees shall be charged by the Institute for the examination, inspection and testing of the individual respirator components or subassemblies:

Facepieces	$450
Canisters	900
Cartridges	600
Filters	650
Hoses	250
Blowers	250
Harnesses	100

§ 84.22 Unlisted fees; additional fees; payment by applicant prior to approval.

(a) Applications for the examination, inspection and testing of complete respirator assemblies which are not listed in § 84.20, or for the examination, inspection, and testing of respirator components or subassemblies which are not listed in § 84.21, shall be accompanied by the following deposits:

Complete respirator assembly	$1,500
Each individual component or subassembly	500

(b) The Institute reserves the right to conduct any examination, inspection, or test it deems necessary to determine the quality and effectiveness of any listed or unlisted respirator assembly or respirator component or subassembly, and to assess the cost of such examinations, inspections, or tests against the applicant prior to the issuance of any approval for such assembly, component, or subassembly.

(c) The fees charged for the examination, inspection, and testing of unlisted respirator assemblies, unlisted individual respirator components or subassemblies, and for the additional examination, inspection, and testing of listed respirator assemblies and components or subassemblies shall be at the rate of $100 per day for each man-day required to be expended by the Institute.

(d) Upon completion of all examinations, inspections, and tests of unlisted respirator assemblies or components, or following the completion of any additional examination, inspections, or tests of listed assemblies, or components or subassemblies, including retesting subsequent to disapproval, the Institute shall advise the applicant in writing of the total cost assessed and the additional amount, if any, which must be paid to the Institute as a condition of approval.

(e) In the event the amount assessed by the Institute for unlisted assemblies, or components or subassemblies is less than the amount of the deposit submitted in accordance with paragraph (a) of this section, the Institute shall refund the overpayment upon the issuance of any approval or notice of disapproval.

Subpart D—Approval and Disapproval

§ 84.30 Certificates of approval; scope of approval.

(a) The Institute shall issue certificates of approval pursuant to the provisions of this subpart only for individual, completely assembled respirators which have been examined, inspected, and tested, and which meet the minimum requirements set forth in subparts H through L of this part, as applicable.

(b) The Institute will not issue certificates of approval for any respirator component or for any respirator subassembly.

(c) The Institute shall not issue an informal notification of approval. However, if the application for approval, submitted in accordance with § 84.11, states that the submitted respirator and component parts are only prototypes, the Institute will examine, inspect, and test such respirator and component parts in accordance with the provisions of this part. If, upon completion of such examinations, inspections and tests, it is found that the prototype meets the minimum requirements set forth in this part, the Institute may inform the applicant, in writing, of the results of the examinations, inspections, and tests, and may require him to resubmit respirators and component parts made on regular production tooling, with no operations included which will not be incorporated in regular production processing, for further examination, inspection, and testing, prior to issuance of the certificate of approval.

(d) Applicants required to resubmit respirators and component parts made on regular production tooling, with no operation included which will not be incorporated in regular production processing, shall be charged fees in accordance with subpart C of this part.

§ 84.31 Certificates of approval; contents.

(a) The certificate of approval shall contain a classification and a description of the respirator or combination of respirators for which it is issued, as provided in this part.

(b) The certificate of approval shall specifically set forth any restrictions or limitations on the respirator's use in hazardous atmospheres.

(c) Each certificate of approval shall be accompanied by the drawings and specifications (and lists thereof) submitted by the applicant in accordance with § 84.11. These drawings and specifications shall be referenced in the certificate of approval, and shall be maintained by the applicant. The drawings and specifications listed in each certificate of approval shall set forth in detail the design and construction requirements which shall be met by the applicant during commercial production of the respirator.

(d) Each certificate of approval shall be accompanied by a reproduction of the approval label design to be employed by the applicant with each approved respirator, as provided in § 84.33.

(e) No test data or specific laboratory findings will accompany any certificate of approval, however, the Institute will release pertinent test data and specific findings upon written request by the applicant, or as required by statute or regulation.

(f) Each certificate of approval shall also contain the approved quality control plan as specified in § 84.42.

§ 84.32 Notice of disapproval.

(a) If, upon the completion of the examinations, inspections, and tests required to be conducted in accordance with the provisions of this part, it is found that the respirator does not meet the minimum requirements set forth in this part, the Institute shall issue a written notice of disapproval to the applicant.

(b) Each notice of disapproval shall be accompanied by all pertinent data or findings with respect to the defects of the respirator for which approval was sought with a view to the possible correction of any such defects.

(c) The Institute shall not disclose, except to the applicant or as required by statute or regulation, any data, findings, or other information with respect to any respirator for which a notice of disapproval is issued.

§ 84.33 Approval labels and markings; approval of contents; use.

(a) Full-scale reproductions of approval labels and markings, and a sketch or description of the method of application and position on the harness, container, canister, cartridge, filter, or

other component, together with instructions for the use and maintenance of the respirator shall be submitted to the Institute for approval.

(b) Approval labels shall bear the emblem of the National Institute for Occupational Safety and Health and the seal of the Department of Health and Human Services, the applicant's name and address, an approval number assigned by the Institute and, where appropriate, restrictions or limitations placed upon the use of the respirator by the Institute. The approval number assigned by the Institute shall be designated by the prefix TC and a serial number.

(c) The Institute shall, where necessary, notify the applicant when additional labels, markings, or instructions will be required.

(d) Approval labels and markings shall only be used by the applicant to whom they were issued.

(e) Legible reproductions or abbreviated forms of the label approved by the Institute for use on each respirator shall be attached to or printed at the following locations:

Respirator type	Label type	Location
Self-contained breathing apparatus	Entire	Harness assembly and canister (where applicable).
Gas mask	Entire	Mask container and canister.
Supplied air respirator	....do	Respirator container or instruction card.
Particulate respirator	....do	Respirator container and filter container.
	Abbreviated	Filters.
Chemical-cartridge respirator	Entire	Respirator container, cartridge container, and filter containers (where applicable).
	Abbreviated	Cartridges and filters and filter containers.

(f) The use of any Institute approval label obligates the applicant to whom it is issued to maintain or cause to be maintained the approved quality control sampling schedule and the acceptable quality level for each characteristic tested, and to assure that it is manufactured according to the drawings and specifications upon which the certificate of approval is based.

(g) Each respirator, respirator component, and respirator container shall, as required by the Institute to assure quality control and proper use of the respirator, be labeled distinctly to show the name of the applicant, and the name and letters or numbers by which the respirator or respirator component is designated for trade purposes, and the lot number, serial number, or approximate date of manufacture.

§ 84.34 Revocation of certificates of approval.

The Institute reserves the right to revoke, for cause, any certificate of approval issued pursuant to the provisions of this part. Such causes include, but are not limited to, misuse of approval labels and markings, misleading advertising, and failure to maintain or cause to be maintained the quality control requirements of the certificate of approval.

§ 84.35 Changes or modifications of approved respirators; issuance of modification of certificate of approval.

(a) Each applicant may, if he desires to change any feature of an approved respirator, request a modification of the original certificate of approval issued by the Institute for such respirator by filing an application for such modification in accordance with the provisions of this section.

(b) Applications shall be submitted as for an original certificate of approval, with a request for a modification of the existing certificate to cover any proposed change.

(c) The application shall be accompanied by appropriate drawings and specifications, and by a proposed quality control plan which meets the requirements of subpart E of this part.

(d) The application for modification, together with the accompanying material, shall be examined by the Institute to determine whether testing will be required.

(e) The Institute shall inform the applicant of the fee required for any additional testing and the applicant will be charged for the actual cost of any examination, inspection, or test required, and such fees shall be submitted in accordance with the provisions of subpart C of this part.

(f) If the proposed change or modification meets the requirements of this part, a formal certificate of modification will be issued, accompanied, where necessary, by a list of new and revised drawings and specifications covering the change(s) and reproductions of revised approval labels.

(The information collections contained in this section are approved under OMB control number 0920–0109.)

§ 84.36 Delivery of changed or modified approved respirator.

An approved respirator for which a formal certificate of modification has been issued shall be delivered, with proper markings and containers, by the applicant to the Certification and Quality Assurance Branch, as soon as it is commercially produced.

Subpart E—Quality Control

§ 84.40 Quality control plans; filing requirements.

As a part of each application for approval or modification of approval submitted pursuant to this part, each applicant shall file with the Institute a proposed quality control plan which shall be designed to assure the quality of respiratory protection provided by the respirator for which approval is sought.

§ 84.41 Quality control plans; contents.

(a) Each quality control plan shall contain provisions for the management of quality, including:

(1) Requirements for the production of quality data and the use of quality control records;

(2) Control of engineering drawings, documentations, and changes;

(3) Control and calibration of measuring and test equipment;

(4) Control of purchased material to include incoming inspection;

(5) Lot identification, control of processes, manufacturing, fabrication, and assembly work conducted in the applicant's plant;

(6) Audit of final inspection of the completed product; and

(7) The organizational structure necessary to carry out these provisions.

(b) Each provision for incoming and final inspection in the quality control plan shall include a procedure for the selection of a sample of respirators and the components thereof for testing, in accordance with procedures set forth in Military Standard MIL–STD–414, 11 June 1957, including Change Notice No. 1, "Sampling Procedures and Tables for Inspection by Variables for Percent Defective," or an approved equivalent sampling procedure, or an approved combination of sampling procedures. The procedure of Military Standard MIL–STD–105D, 29 April 1963, "Sampling Procedures and Tables for Inspection by Attributes," is an example of an equivalent sampling procedure. MIL–STD–414 is incorporated by reference and has been approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from DODSSP, Standardization Document Order Desk, 700 Robbins Avenue, Bldg. 4D, Philadelphia, PA 19111–5094. Copies may be inspected at the NIOSH, Certification and Quality Assurance Branch, 1095 Willowdale Road, Morgantown, WV 26505–2888, or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC. Copies of MIL–STD–105D may be inspected or obtained from the NIOSH, Certification and Quality Assurance Branch, 1095 Willowdale Road, Morgantown, WV 26505–2888. Incoming bulk raw material inspection or verification of specification, and in-process inspection shall be sufficient to ensure control of product quality through the manufacturing cycle.

(c) The sampling procedure shall include a list of the characteristics to be tested by the applicant or his agent.

(d) The characteristics listed in accordance with paragraph (c) of this section shall be classified according to the potential effect of such defect and grouped into the following classes:

(1) *Critical.* A defect that judgment and experience indicate is likely to result in a condition immediately hazardous to life or health for individuals using or depending upon the respirator;

(2) *Major A.* A defect, other than critical, that is likely to result in failure to the degree that the respirator does not provide any respiratory protection, or a defect that reduces protection and is not detectable by the user;

(3) *Major B.* A defect, other than Major A or critical, that is likely to result in reduced respiratory protection, and is detectable by the user; and

(4) *Minor.* A defect that is not likely to materially reduce the usability of the respirator for its intended purpose, or a defect that is a departure from established standards and has little bearing on the effective use or operation of the respirator.

(e) The quality control inspection test method to be used by the applicant or his agent for each characteristic required to be tested shall be described in detail.

(f) Each item manufactured shall be 100 percent inspected for defects in all critical characteristics and all defective items shall be rejected.

(g) The Acceptable Quality Level (AQL) for each major or minor defect so classified by the applicant shall be:

(1) *Major A.* 1.0 percent;

(2) *Major B.* 2.5 percent; and

(3) *Minor.* 4.0 percent.

(h) Except as provided in paragraph (i) of this section, inspection level IV as described in MIL–STD–414, 11 June 1957, including Change Notice No.1, "Sampling Procedures and Tables for Inspection by Variables for Percent Defective," or an equivalent procedure, shall be used for major and minor characteristics and 100 percent inspection for critical characteristics. Inspection level II as described in MIL–STD–105D, 29 April 1963, "Sampling Procedures and Tables for Inspection by Attributes," is an example of an equivalent procedure.

(i) Subject to the approval of the Institute, where the quality control plan provisions for raw material, processes, manufacturing, and fabrication, inspections are adequate to ensure control of finished article quality, destructive testing of finished articles may be conducted at a lower level of inspection than that specified in paragraph (h) of this section.

(The information collections contained in this section are approved under OMB control number 0920–0109)

§ 84.42 Proposed quality control plans; approval by the Institute.

(a) Each proposed quality control plan submitted in accordance with this subpart shall be reviewed by the Institute to determine its effectiveness in ensuring the quality of respiratory protection provided by the respirator for which an approval is sought.

(b) If the Institute determines that the proposed quality control plan submitted by the applicant will not ensure adequate quality control, the Institute shall require the applicant to modify the procedures and testing requirements of the plan prior to approval of the plan and issuance of any certificate of approval.

(c) Approved quality control plans shall constitute a part of and be incorporated into any certificate of approval issued by the Institute, and compliance with such plans by the applicant shall be a condition of approval.

§ 84.43 Quality control records; review by the Institute; revocation of approval.

(a) The applicant shall keep quality control inspection records sufficient to carry out the procedures required in MIL–STD–414, 11 June 1957, including Change Notice No. 1, "Sampling Procedures and Tables for Inspection by Variables for Percent Defective," or an approved equivalent sampling procedure. MIL–STD–414 is incorporated by reference and has been approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from DODSSP, Standardization Document Order Desk, 700 Robbins Avenue, Bldg. 4D, Philadelphia, Pa. 19111–5094. Copies may be inspected at the NIOSH, Certification and Quality Assurance Branch, 1095 Willowdale Road, Morgantown, WV 26505–2888, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC. Copies of MIL–STD–105D may be inspected or obtained from the NIOSH, Certification and Quality Assurance Branch, 1095 Willowdale Road, Morgantown, WV 26505–2888.

(b) The Institute reserves the right to have its representatives inspect the applicant's quality control test methods, equipment, and records, and to interview any employee or agent of the applicant in regard to quality control test methods, equipment, and records.

(c) The Institute reserves the right to revoke, for cause, any certificate of approval where it is found that the applicant's quality control test methods, equipment, or records do not ensure effective quality control over the respirator for which the approval was issued.

(The information collections contained in this section are approved under OMB control number 0920–0109)

Subpart F—Classification of Approved Respirators; Scope of Approval; Atmospheric Hazards; Service Time

§ 84.50 Types of respirators to be approved; scope of approval.

Approvals shall be issued for the types of respirators which have been classified pursuant to this subpart F, have been inspected, examined and tested by the Institute, in accordance with the provisions of subparts G through L of this part, and have been found to provide respiratory protection for fixed periods of time against the hazards specified in such approval.

§ 84.51 Entry and escape, or escape only; classification.

Respirators described in subparts H through L of this part shall be classified for use as follows:

(a) *Entry and escape.* Respirators designed and approved for use during

entry into a hazardous atmosphere, and for escape from a hazardous atmosphere; or

(b) *Escape only.* Respirators designed and approved for use only during escape from a hazardous atmosphere.

§ 84.52 Respiratory hazards; classification.

Respirators described in subparts H through L of this part shall be classified as approved for use against any or all of the following respiratory hazards:

(a) Oxygen deficiency;

(b) Gases and vapors; and

(c) Particles, including dusts, fumes and mists.

§ 84.53 Service time; classification.

(a) Respirators described in subparts H through L of this part shall be classified, where applicable, as approved for use during the following prescribed service times:

(1) Four hours;
(2) Three hours;
(3) Two hours;
(4) One hour;
(5) Forty-five minutes;
(6) Thirty minutes;
(7) Fifteen minutes;
(8) Ten minutes;
(9) Five minutes; or
(10) Three minutes.

(b) Other service times may be prescribed by the Institute.

Subpart G—General Construction and Performance Requirements

§ 84.60 Construction and performance requirements; general.

(a) The Institute shall issue approvals for the types of respirators described in subparts H through L of this part which have met the minimum requirements set forth for such respirators in this part.

(b) In addition to the types of respirators specified in subparts H through L of this part, the Institute shall issue approvals for other respiratory protective devices not specifically described in this part subject to such additional requirements as may be imposed in accordance with § 84.63(c).

§ 84.61 General construction requirements.

(a) Respirators will not be accepted by the Institute for examination, inspection and testing unless they are designed on sound engineering and scientific principles, constructed of suitable materials and evidence good workmanship.

(b) Respirator components which come into contact with the wearer's skin shall be made of nonirritating materials.

(c) Components replaced during or after use shall be constructed of materials which will not be damaged by normal handling.

(d) Mouthpieces, hoods, helmets, and facepieces, except those employed in single-use respirators, shall be constructed of materials which will withstand repeated disinfection as recommended by the applicant in his instructions for use of the device.

§ 84.62 Component parts; minimum requirements.

(a) The component parts of each respirator shall be:

(1) Designed, constructed, and fitted to insure against creation of any hazard to the wearer;

(2) Assembled to permit easy access for inspection and repair of functional parts; and

(3) Assembled to permit easy access to parts which require periodic cleaning and disinfecting.

(b) Replacement parts shall be designed and constructed to permit easy installation and to maintain the effectiveness of the respirator.

§ 84.63 Test requirements; general.

(a) Each respirator and respirator component shall when tested by the applicant and by the Institute, and meet the applicable requirements set forth in subparts H through L of this part.

(b) Where a combination respirator is assembled from two or more types of respirators, as described in this part, each of the individual respirator types which have been combined shall, as applicable, meet the minimum requirements for such respirators set forth in subparts H through L of this part, and such combination respirators, except as specified in § 84.70(b)(2), will be classified by the type of respirator in the combination which provides the least protection to the user.

(c) In addition to the minimum requirements set forth in subparts H through L of this part, the Institute reserves the right to require, as a further condition of approval, any additional requirements deemed necessary to establish the quality, effectiveness, and safety of any respirator used as protection against hazardous atmospheres.

(d) Where it is determined after receipt of an application that additional requirements will be required for approval, the Institute will notify the applicant in writing of these additional requirements, and necessary examinations, inspections, or tests, stating generally the reasons for such requirements, examinations, inspections, or tests.

§ 84.64 Pretesting by applicant; approval of test methods.

(a) Prior to making or filing any application for approval or modification of approval, the applicant shall conduct, or cause to be conducted, examinations, inspections, and tests of respirator performance which are equal to or exceed the severity of those prescribed in this part.

(b) With the application, the applicant shall provide a statement to the Institute showing the types and results of the examinations, inspections, and tests required under paragraph (a) of this section and state that the respirator meets the minimum requirements of subparts H through L of this part, as applicable. Complete examination, inspection, and test data shall be retained on file by the applicant and be submitted, upon request, to the Institute.

(c) The Institute may, upon written request by the applicant, provide drawings and descriptions of its test equipment and otherwise assist the applicant in establishing a test laboratory or securing the services of a testing agency.

(d) No approval will be issued until the Institute has validated the applicant's test results.

§ 84.65 Conduct of examinations, inspections, and tests by the Institute; assistance by applicant; observers; recorded data; public demonstrations.

(a) All examinations, inspections, and tests conducted pursuant to subparts H through L of this part will be under the sole direction and control of the Institute.

(b) The Institute may, as a condition of approval, require the assistance of the applicant or agents of the applicant during the assembly, disassembly, or preparation of any respirator or respirator component prior to testing or in the operation of such equipment during testing.

(c) Only Institute personnel, persons assisting the Institute pursuant to paragraph (b) of this section, and such other persons as are requested by the Institute or the applicant to be observers, shall be present during any examination, inspection, or test conducted prior to the issuance of an approval by the Institute for the equipment under consideration.

(d) The Institute shall hold as confidential any analyses, drawings, specifications, or materials submitted by the applicant and shall not disclose any principles or patentable features of such equipment, except as required by statute or regulation.

(e) As a condition of each approval issued for any respirator, the Institute reserves the right, following the issuance of such approval, to conduct such public tests and demonstrations of the approved respiratory equipment as is deemed appropriate.

§ 84.66 Withdrawal of applications; refund of fees.

(a) Any applicant may, upon a written request submitted to the Institute, withdraw any application for approval of any respirator.

(b) Upon receipt of a written request for the withdrawal of an application, the Institute shall determine the total man-days expended and the amount due for services already performed during the course of any examinations, inspections, or tests conducted pursuant to such application. The total amount due shall be determined in accordance with the provisions of § 84.22 and assessed against the fees submitted by the applicant. If the total amount assessed is less than the fees submitted, the Institute shall refund the balance together with a statement of the charges made for services rendered.

Subpart H—Self-Contained Breathing Apparatus

§ 84.70 Self-contained breathing apparatus; description.

(a) Self-contained breathing apparatus, including all completely assembled, portable, self-contained devices designed for use as respiratory protection during entry into and escape from or escape only from hazardous atmospheres, are described as follows:

(1) *Closed-circuit apparatus.* An apparatus of the type in which the exhalation is rebreathed by the wearer after the carbon dioxide has been effectively removed and a suitable oxygen concentration restored from sources composed of:

(i) Compressed oxygen; or
(ii) Chemical oxygen; or
(iii) Liquid-oxygen.

(2) Open-circuit apparatus. An apparatus of the following types from which exhalation is vented to the atmosphere and not rebreathed:

(i) *Demand-type apparatus.* An apparatus in which the pressure inside the facepiece in relation to the immediate environment is positive during exhalation and negative during inhalation; or

(ii) *Pressure-demand-type apparatus.* An apparatus in which the pressure inside the facepiece in relation to the immediate environment is positive during both inhalation and exhalation.

(b) The following respirators may be classified as designed and approved for use during emergency entry into a hazardous atmosphere:

(1) A combination respirator which includes a self-contained breathing apparatus; and

(2) A Type "C" or Type "CE" supplied air respirator, where—

(i) The self-contained breathing apparatus is classified for 3-, 5-, or 10-minute service time and the air line supply is used during entry; or

(ii) The self-contained breathing apparatus is classified for 15 minutes or longer service time and not more than 20 percent of the rated capacity of the air supply is used during entry.

(c) Self-contained breathing apparatus classified for less than 1 hour service time will not be approved for use during underground mine rescue and recovery operations except as auxiliary equipment.

(d) Self-contained breathing apparatus classified for less than 30 minutes' service time will not be approved for use as auxiliary equipment during underground mine rescue and recovery operations.

§ 84.71 Self-contained breathing apparatus; required components.

(a) Each self-contained breathing apparatus described in § 84.70 shall, where its design requires, contain the following component parts:

(1) Facepiece or mouthpiece, and noseclip;
(2) Respirable breathing gas container;
(3) Supply of respirable breathing gas;
(4) Gas pressure or liquid level gages;
(5) Timer;
(6) Remaining service life indicator or warning device;
(7) Hand-operated valves;
(8) Breathing bag;
(9) Safety relief valve or safety relief system; and
(10) Harness.

(b) The components of each self-contained breathing apparatus shall meet the minimum construction requirements set forth in subpart G of this part.

§ 84.72 Breathing tubes; minimum requirements. Flexible breathing tubes used in conjunction with breathing apparatus shall be designed and constructed to prevent:

(a) Restriction of free head movement;

(b) Disturbance of the fit of facepieces and mouthpieces;

(c) Interference with the wearer's activities; and

(d) Shutoff of airflow due to kinking, or from chin or arm pressure.

§ 84.73 Harnesses; installation and construction; minimum requirements.

(a) Each apparatus shall, where necessary, be equipped with a suitable harness designed and constructed to hold the components of the apparatus in position against the wearer's body.

(b) Harnesses shall be designed and constructed to permit easy removal and replacement of apparatus parts and, where applicable, provide for holding a full facepiece in the ready position when not in use.

§ 84.74 Apparatus containers; minimum requirements.

(a) Apparatus may be equipped with a substantial, durable container bearing markings which show the applicant's name, the type and commercial designation of the respirator it contains, and all appropriate approval labels.

(b) Containers supplied by the applicant for carrying or storing self-contained breathing apparatus will be inspected, examined, and tested as components of the respirator for which approval is sought.

(c) Containers for self-contained breathing apparatus shall be designed and constructed to permit easy removal of the apparatus.

§ 84.75 Half-mask facepieces, full facepieces, mouthpieces; fit; minimum requirements.

(a) Half-mask facepieces and full facepieces shall be designed and constructed to fit persons with various facial shapes and sizes, either:

(1) By providing more than one facepiece size; or

(2) By providing one facepiece size which will fit varying facial shapes and sizes.

(b) Full facepieces shall provide for the optional use of corrective spectacles or lenses which shall not reduce the respiratory protective qualities of the apparatus.

(c) Apparatus with mouthpieces shall be equipped with noseclips which are securely attached to the mouthpiece or apparatus and provide an airtight seal.

(d) Facepieces shall be designed to prevent eyepiece, spectacle, and lens fogging.

§ 84.76 Facepieces; eyepieces; minimum requirements.

(a) Facepieces shall be designed and constructed to provide adequate vision which is not distorted by the eyepiece.

(b) All eyepieces shall be designed and constructed to be impact and penetration resistant. Federal Specification, Mask, Air Line: and Respirator, Air Filtering, Industrial, GGG–M–125d, October 11, 1965 with interim amendment-1, July 30, 1969, is an example of an appropriate standard for determining impact and penetration resistance. Copies of GGG–M–125d may be obtained from the NIOSH, Certification and Quality Assurance

Branch, 1095 Willowdale Road, Morgantown, WV 26505–2888.

§ 84.77 Inhalation and exhalation valves; minimum requirements.

(a) Inhalation and exhalation valves shall be provided where necessary and protected against damage and distortion.

(b) Exhalation valves shall be—

(1) Protected against external influence; and

(2) Designed and constructed to prevent inward leakage of contaminated air.

§ 84.78 Head harnesses; minimum requirements.

(a) Facepieces shall be equipped with adjustable and replaceable head harnesses designed and constructed to provide adequate tension during suspension and an even distribution of pressure over the entire area in contact with the face.

(b) Mouthpieces shall be equipped, where applicable, with adjustable and replaceable harnesses designed and constructed to hold the mouthpiece in place.

§ 84.79 Breathing gas; minimum requirements.

(a) Breathing gas used to supply apparatus shall be respirable and contain no less than 19.5 (dry atmosphere) volume percent of oxygen.

(b) Oxygen, including liquid oxygen, shall contain not less than 99.0 percent, by volume, of pure O_2, not more than 0.03%, by volume, carbon dioxide, and not more than 0.001%, by volume, carbon monoxide. Methods for making these determinations can be found in the U.S. Pharmacopeia National Formulary. Containers used for oxygen must not be treated with any toxic, sleep-inducing, narcosis-producing, or respiratory tract irritating compounds.

(c) Compressed, gaseous breathing air shall meet the applicable minimum grade requirements for Type I gaseous air set forth in the Compressed Gas Association Commodity Specification for Air, G–7.1, 1966 (Grade D or higher quality). G–7.1 is incorporated by reference and has been approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from American National Standards Institute, Inc., 1430 Broadway, New York, NY 10018. Copies may be inspected at the NIOSH, Certification and Quality Assurance Branch, 1095 Willowdale Road, Morgantown, WV 26505–2888, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(d) Compressed, liquefied breathing air shall meet the applicable minimum grade requirements for Type II liquid air set forth in the Compressed Gas Association Commodity Specification for Air, G–7.1, 1966 (Grade B or higher quality). G–7.1 is incorporated by reference and has been approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from American National Standards Institute, Inc., 1430 Broadway, New York, NY 10018. Copies may be inspected at the NIOSH, Certification and Quality Assurance Branch, 1095 Willowdale Road, Morgantown, WV 26505–2888, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

§ 84.80 Interchangeability of oxygen and air prohibited.

Approvals shall not be issued by the Institute for any apparatus, combination of respirator assemblies, or any apparatus or respirator component which is designed or constructed to permit the interchangeable use of oxygen and air.

§ 84.81 Compressed breathing gas and liquefied breathing gas containers; minimum requirements.

(a) Compressed breathing gas and liquefied breathing gas containers shall meet the minimum requirements of the Department of Transportation for interstate shipment of such containers when fully charged.

(b) Such containers shall be permanently and legibly marked to identify their contents, e.g., compressed breathing air, compressed breathing oxygen, liquefied breathing air, or liquefied breathing oxygen.

(c) Containers normally removed from apparatus for refilling shall be equipped with a dial indicating gage which shows the pressure in the container.

(d) Compressed breathing gas contained valves or a separate charging system or adapter provided with each apparatus shall be equipped with outlet threads specified for the service by the American Standards Association, Compressed Gas Cylinder Valve Outlet and Inlet Connections, B57.1–1965. B57.1–1965 is incorporated by reference and has been approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from American National Standards Institute, Inc., 1430 Broadway, New York, NY Copies may be inspected at the NIOSH, Certification and Quality Assurance Branch, 1095 Willowdale Road, Morgantown, WV 26505–2888, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

§ 84.82 Gas pressure gages; minimum requirements.

(a) Gas pressure gages employed on compressed breathing gas containers shall be calibrated in pounds per square inch.

(b) Liquid-level gages shall be calibrated in fractions of total container capacity, or in units of liquid volume.

(c) Gas pressure gages other than those specified in paragraphs (a) and (b) of this section shall be calibrated in:

(1) Pounds per square inch; or

(2) In fractions of total container capacity; or

(3) Both in pounds per square inch and fractions of total container capacity.

(d)(1) Dial-indicating gages shall be reliable to within ±5 percent of full scale when tested both up and down the scale at each of 5 equal intervals.

(2) The full-scale graduation of dial-indicating gages shall not exceed 150 percent of the maximum rated cylinder pressures specified for the container in applicable Department of Transportation specifications or permits.

(e)(1) Stem-type gages shall be readable by sight and by touch and shall have a stem travel distance of not less than one-fourth inch between each graduation.

(2) A minimum of five graduations shall be engraved on the stem of each gage and these graduations shall include readings for empty, one-quarter, one-half, three-quarters, and full.

(3) Stem gage readings shall not vary from true readings by more than one-sixteenth inch per inch of stem travel.

(f) The loss of gas through a broken gage or severed gage connection shall not exceed 70 liters per minute when the cylinder pressure is 6,900 kN/m.^{2} (1,000 pounds per square inch gage) or when the liquid level is at one-half.

(g) Where gages are connected to the apparatus through a gage line, the gage and line shall be capable of being isolated from the apparatus except where the failure of the gage or line would not impair the performance or service life of the apparatus.

(h) Oxygen pressure gages shall have the words "Oxygen" and "Use No Oil" marked prominently on the gage.

(i)(1) Apparatus using compressed breathing gas, except apparatus classified for escape only, shall be equipped with gages visible to the wearer which indicate the remaining gas content in the container.

(2) Apparatus using liquefied breathing gas, except apparatus classified for escape only, shall be equipped with gages visible to the wearer which indicate the remaining liquid content in the container; however, where the liquid content cannot be rapidly vented, and the service time of the device begins immediately after filling, a timer shall be provided in place of a visible gage.

§ 84.83 Timers; elapsed time indicators; remaining service life indicators; minimum requirements.

(a) Elapsed time indicators shall be provided for apparatus with a chemical oxygen source, except:

(1) Apparatus used for escape only; or

(2) Liquefied breathing gas apparatus equipped with gages visible to the wearer which indicate the remaining liquid content in the container.

(b) The timer or other indicator shall be accurately calibrated in minutes of remaining service life.

(c) Timers shall be readable by sight and by touch during use by the wearer.

(d) Timers shall be equipped with automatically preset alarms which will warn the wearer for a period of 7 seconds or more after the preset time has elapsed.

(e) Remaining service-life indicators or warning devices shall be provided in addition to a pressure gage on compressed gas self-contained breathing apparatus, except apparatus used for escape only, and shall operate automatically without preadjustment by the wearer.

(f) Each remaining service-life indicator or warning device shall give an alarm when the remaining service life of the apparatus is reduced within a range of 20 to 25 percent of its rated service time.

§ 84.84 Hand-operated valves; minimum requirements.

(a) Hand-operated valves shall be designed and constructed to prevent removal of the stem from the valve body during normal usage to insure against a sudden release of the full pressure of the container when the valve is opened.

(b) Valves shall be designed or positioned to prevent accidental opening and closing, and damage from external forces.

(c) Valves operated during use of the apparatus shall be installed in locations where they can be readily adjusted by the wearer.

(d) Main-line valves, designed and constructed to conserve gas in the event of a regulator or demand valve failure, shall be provided in addition to gas container valves, except when such failure will not affect performance.

(e) Hand-operated bypass systems designed and constructed to permit the wearer to breathe and to conserve his gas supply in the event of a regulator or demand valve failure, shall be provided where necessary.

(f) Valves installed on apparatus shall be clearly distinguishable from one another by sight and touch.

(g) The bypass system valve control shall be colored red.

(h) A main-line or bypass valve or system will not be required on apparatus for escape only.

(i) Safety relief valves or systems, designed and constructed to release excess pressure in the breathing circuit, shall be provided on closed-circuit apparatus, and shall meet the following requirements:

(1) The relief valve or system shall operate automatically when the pressure in the breathing circuit on the inhalation side of the breathing bag reaches 13 mm. (one-half inch) water-column height of pressure above the minimum pressure required to fill the breathing bag, within the breathing resistance requirements for the apparatus.

(2) The relief valve or system shall be designed to prevent external atmospheres from entering the breathing circuit.

(3) The relief valve or system shall be designed to permit manual overriding for test purposes and in the event of a failure in the valve or system.

§ 84.85 Breathing bags; minimum requirements.

(a) Breathing bags shall have sufficient volume to prevent gas waste during exhalation and to provide an adequate reserve for inhalation.

(b) Breathing bags shall be constructed of materials which are flexible and resistant to gasoline vapors.

(c) Breathing bags shall be installed in a location which will protect them from damage or collapse by external forces, except on apparatus classified for escape only.

§ 84.86 Component parts exposed to oxygen pressures; minimum requirements.

Each applicant shall certify that the materials employed in the construction of component parts exposed to oxygen pressures above atmospheric pressure are safe and compatible for their intended use.

§ 84.87 Compressed gas filters; minimum requirements.

All self-contained breathing apparatus using compressed gas shall have a filter downstream of the gas source to effectively remove particles from the gas stream.

§ 84.88 Breathing bag test.

(a) Breathing bags will be tested in an air atmosphere saturated with gasoline vapor at room temperature (24–30 °C./75–85 °F.) for a continuous period of twice the rated time of the apparatus (except for apparatus for escape only where the test period shall be the rated time of the apparatus).

(b) The bag will be operated during this test by a breathing machine with 24 respirations per minute and a minute-volume of 40 liters.

(c) A breathing machine cam with a work rate of 622 kp.-m./min. will be used. The dimensions of a suitable breathing machine cam are available from the Institute upon request.

(d) The air within the bag(s) shall not contain more than 100 parts per million of gasoline vapor at the end of the test.

§ 84.89 Weight requirement.

(a) The completely assembled and fully charged apparatus shall not weigh more than 16 kg. (35 pounds); however, where the weight decreases by more than 25 percent of its initial charge weight during its rated service life, the maximum allowable weight of a completely assembled and fully charged apparatus shall be 18 kg. (40 pounds).

(b) Where an apparatus employs equipment which contributes materially to the wearer's comfort, e.g., a cooling system, the completely assembled and fully charged apparatus shall not weigh more than 18 kg. (40 pounds) regardless of the decrease in weight during use.

§ 84.90 Breathing resistance test; inhalation.

(a) Resistance to inhalation airflow will be measured in the facepiece or mouthpiece while the apparatus is operated by a breathing machine as described in § 84.88.

(b) The inhalation resistance of open-circuit apparatus shall not exceed 32 mm. (1.25 inch) water-column height (at a flow rate of 120 liters per minute).

(c) The inhalation resistance of closed-circuit apparatus shall not exceed the difference between exhalation resistance (§ 84.91(e)) and 10 cm. (4 inches) water-column height.

§ 84.91 Breathing resistance test; exhalation.

(a) Resistance to exhalation airflow will be measured in the facepiece or mouthpiece of open-circuit apparatus with air flowing at a continuous rate of 85 liters per minute.

(b) The exhalation resistance of demand apparatus shall not exceed 25 mm. (1 inch) water-column height.

(c) The exhalation resistance of pressure-demand apparatus shall not exceed the static pressure in the facepiece by more than 51 mm. (2 inches) water-column height.

(d) The static pressure (at zero flow) in the facepiece shall not exceed 38 mm. (1.5 inches) water-column height.

(e) Resistance to exhalation airflow will be measured in the facepiece or mouthpiece of closed-circuit apparatus with a breathing machine as described in § 84.88, and the exhalation resistance shall not exceed 51 mm. (2 inches) water-column height.

§ 84.92 Exhalation valve leakage test.

(a) Dry exhalation valves and valve seats will be subjected to a suction of 25 mm. (1 inch) water-column height while in a normal operating position.

(b) Leakage between the valve and the valve seat shall not exceed 30 milliliters per minute.

§ 84.93 Gas flow test; open-circuit apparatus.

(a) A static-flow test will be performed on all open-circuit apparatus.

(b) The flow from the apparatus shall be greater than 200 liters per minute when the pressure in the facepiece of demand-apparatus is lowered by 51 mm. (2 inches) water-column height when full container pressure is applied.

(c) Where pressure demand apparatus are tested, the flow will be measured at zero gage pressure in the facepiece.

(d) Where apparatus with compressed-breathing-gas containers are tested, the flow test shall also be made with 3,450 kN/m.² (500 p.s.i.g.) container pressure applied.

§ 84.94 Gas flow test; closed-circuit apparatus.

(a) Where oxygen is supplied by a constant-flow device only, the rate of flow shall be at least 3 liters per minute for the entire rated service time of the apparatus.

(b) Where constant flow is used in conjunction with demand flow, the constant flow shall be greater than 1.5 liters per minute for the entire rated service time.

(c) All demand-flow devices shall provide at least 30 liters of oxygen per minute when in the fully open position.

§ 84.95 Service time test; open-circuit apparatus.

(a) Service time will be measured with a breathing machine as described in § 84.88.

(b) The open-circuit apparatus will be classified according to the length of time it supplies air or oxygen to the breathing machine.

(c) The service time obtained on this test will be used to classify the open-circuit apparatus in accordance with § 84.53.

§ 84.96 Service time test; closed-circuit apparatus.

(a) The closed-circuit apparatus will be classified according to the length of time it supplies adequate breathing gas to the wearer during man test No. 4 described in Table 4 of this subpart.

(b) The service time obtained on man test No. 4 will be used to classify the closed-circuit apparatus in accordance with § 84.53.

§ 84.97 Test for carbon dioxide in inspired gas; open- and closed-circuit apparatus; maximum allowable limits.

(a) Open-circuit apparatus:

(1) The concentration of carbon dioxide in inspired gas in open-circuit apparatus will be measured at the mouth while the apparatus mounted on a dummy head is operated by a breathing machine. An acceptable method for measuring the concentration of carbon dioxide is described in Bureau of Mines Report of Investigations 6865, A Machine-Test Method for Measuring Carbon Dioxide in the Inspired Air of Self-Contained Breathing Apparatus, 1966. Copies of Report of Investigations 6865 may be inspected or obtained from the NIOSH, Certification and Quality Assurance Branch, 1095 Willowdale Road, Morgantown, WV. 26505–2888.

(2) The breathing rate will be 14.5 respirations per minute with a minute-volume of 10.5 liters.

(3) A sedentary breathing machine cam will be used.

(4) The apparatus will be tested at a temperature of 27 ± 2° C. (80 ± 5° F.).

(5) A concentration of 5 percent carbon dioxide in air will be exhaled into the facepiece.

(b) Closed-circuit apparatus. The concentration of carbon dioxide in inspired gas in closed-circuit apparatus will be measured at the mouth while the parts of the apparatus contributing to dead-air space are mounted on a dummy head and operated by the breathing machine as in paragraphs (a)(1) through (5) of this section.

(c) During the testing required by paragraphs (a) and (b) of this section, the concentration of carbon dioxide in inspired gas at the mouth will be continuously recorded, and the maximum average concentration during the inhalation portion of the breathing cycle shall not exceed the following limits:

Where the service time is	Maximum allowable average concentration of carbon dioxide in inspired air percent by volume
Not more than 30 minutes	2.5
1 hour	2.0
2 hours	1.5
3 hours	1.0
4 hours	1.0

(d) In addition to the test requirements for closed-circuit apparatus set forth in paragraph (b) of this section, gas samples will be taken during the course of the man tests described in Tables 1, 2, 3, and 4 of this subpart. These gas samples will be taken from the closed-circuit apparatus at a point downstream of the carbon dioxide sorbent, and they shall not contain more than 0.5 percent carbon dioxide at any time, except on apparatus for escape only, using a mouthpiece only, the sample shall not contain more than 1.5 percent carbon dioxide at any time.

§ 84.98 Tests during low temperature operation.

(a) The applicant shall specify the minimum temperature for safe operation and two persons will perform the tests described in paragraphs (c) and (d) of this section, wearing the apparatus according to applicant's directions. At the specified temperature, the apparatus shall meet all the requirements described in paragraph (e) of this section.

(b) The apparatus will be precooled at the specified minimum temperature for 4 hours.

(c) The apparatus will be worn in the low temperature chamber for 30 minutes, or for the service time of the apparatus, whichever is less.

(d) During the test period, alternate 1-minute periods of exercise and rest will be required with the exercise periods consisting of stepping onto and off a box 21.5 cm. (8½ inches) high at a rate of 30 cycles per minute.

(e)(1) The apparatus shall function satisfactorily at the specified minimum temperature on duplicate tests.

(2) The wearer shall have sufficient unobscured vision to perform the work.

(3) The wearer shall not experience undue discomfort because of airflow restriction or other physical or chemical changes in the operation of the apparatus.

(f) Auxiliary low-temperature parts which are commercially available to the user may be used on the apparatus to meet the requirements described in paragraph (e) of this section.

§ 84.99 Man tests; testing conditions; general requirements.

(a) The man tests described in Tables 1, 2, 3, and 4 of this subpart represent the workload performed in the mining, mineral, or allied industries by a person wearing the apparatus tested.

(b) The apparatus tested will be worn by Institute personnel trained in the use of self-contained breathing apparatus, and the wearer will, before participating in these tests, pass a physical examination conducted by a qualified physician.

(c) All man tests will be conducted by the Institute.

(d) The apparatus will be examined before each man test to ensure that it is in proper working order.

(e) Breathing resistance will be measured within the facepiece or mouthpiece and the wearer's pulse and respiration rate will be recorded during each 2 minute sample period prescribed in tests 1, 2, 3, and 4.

(f) Man tests 1, 2, 3, 4, 5, and 6 will be conducted in duplicate.

(g) If man tests are not completed through no fault of the apparatus, the test will be repeated.

§ 84.100 Man tests 1, 2, 3, and 4; requirements.

Man tests 1, 2, 3, and 4, set forth in Tables 1, 2, 3, and 4 of this subpart, respectively, prescribe the duration and sequence of specific activities. These tests will be conducted to—

(a) Familiarize the wearer with the apparatus during use;

(b) Provide for a gradual increase in activity;

(c) Evaluate the apparatus under different types of work and physical orientation; and

(d) Provide information on the operating and breathing characteristics of the apparatus during actual use.

§ 84.101 Man test 5; requirements.

(a) Test 5 will be conducted to determine the maximum length of time the apparatus will supply the respiratory needs of the wearer while he is sitting at rest.

(b) The wearer will manipulate the devices controlling the supply of breathing gas to the advantage of the apparatus.

(c) Samples of inspiration from within the apparatus facepiece or mouthpiece shall be taken once every 15 minutes, and shall meet the minimum requirement for oxygen specified in § 84.79(a), and the maximum allowable average concentration of carbon dioxide specified in § 84.97(c).

(d) One sample of inspiration will be taken in the case of 3-, 5-, and 10-minute apparatus.

§ 84.102 Man test 6; requirements.

(a) Man test 6 will be conducted with respect to liquefied breathing gas apparatus only.

(b) This test will be conducted to evaluate operation of the apparatus in other than vertical positions.

(c) The wearer will lie face downward for one-fourth the service life of the apparatus with a full charge of liquefied breathing gas, and then a one-quarter full charge of liquefied breathing gas.

(d) The test will be repeated with the wearer lying on each side and on his back.

(e) The oxygen content of the gas supplied to the wearer by the apparatus will be continuously measured.

§ 84.103 Man tests; performance requirements.

(a) The apparatus shall satisfy the respiratory requirements of the wearer for the classified service time.

(b) Fogging of the eyepiece shall not obscure the wearer's vision, and the wearer shall not experience undue discomfort because of fit or other characteristics of the apparatus.

(c) When the ambient temperature during testing is 24±6 °C. (75±10 °F.), the maximum temperature of inspired air recorded during man tests shall not exceed the following, after correction for deviation from 24 °C. (75 °F.):

Where service life of apparatus is—	Where percent relative humidity of inspired air is—	Maximum permissible temperature of inspired air shall not exceed—	
		°F.	°C.
¼ hour or less	0–100	135	57
¼ hour to ¾ hour	0–50	125	52
	50–100	[1]110	[1]43
1 to 2 hours	0–50	115	46
	50–100	[1]105	[1]41
3 hours	0–50	110	43
	50–100	[1]100	[1]38
4 hours	0–50	105	41
	50–100	[1]95	[1]35

[1] Where percent relative humidity is 50–100 and apparatus is designed for escape only, these maximum permissible temperatures will be increased by 5°C (10°F).

§ 84.104 Gas tightness test; minimum requirements.

(a) Each apparatus will be tested for tightness by persons wearing it in an atmosphere of 1,000 p.p.m. isoamyl acetate.

(b) Six persons will each wear the apparatus in the test concentrations specified in paragraph (a) of this section for 2 minutes and none shall detect the odor or taste of the test vapor.

Tables to Subpart H of Part 84

TABLE 1.—DURATION AND SEQUENCE OF SPECIFIC ACTIVITIES FOR TEST 1, IN MINUTES

[42 CFR part 84, subpart H]

Activity	Service time—							
	3 minutes	5 minutes	10 minutes	15 minutes	30 minutes	45 minutes	1 hour	2, 3, and 4 hours
Sampling and readings	.....	.....	.....	2	2	2	2	Perform 1 hour test 2, 3, or 4 times respectively.

TABLE 1.—DURATION AND SEQUENCE OF SPECIFIC ACTIVITIES FOR TEST 1, IN MINUTES—Continued
[42 CFR part 84, subpart H]

Activity	Service time—							
	3 minutes	5 minutes	10 minutes	15 minutes	30 minutes	45 minutes	1 hour	2, 3, and 4 hours
Walks at 4.8 km. (3 miles) per hour.	3	5	3	4	8	12	18	
Sampling and readings ..	.....	.....	2	2	2	2	2	
Walks at 4.8 km. (3 miles) per hour.	.....	.....	3	5	8	12	18	
Sampling and readings ..	.....	.....	2	2	2	2	2	
Walks at 4.8 km. (3 miles) per hour.	.....	.....	.....	.....	6	13	16	
Sampling and readings ..	.....	.....	.....	.....	2	2	2	

TABLE 2.—DURATION AND SEQUENCE OF SPECIFIC ACTIVITIES FOR TEST 2, IN MINUTES
[42 CFR part 84, subpart H]

Activity	Service time—							
	3 minutes	5 minutes	10 minutes	15 minutes	30 minutes	45 minutes	1 hour	2, 3 and 4 hours [1]
Sampling and readings	.....	.....	.....	2	2	2	2	2
Walks at 4.8 km. (3 miles) per hour.	.....	.....	1	1	3	4	6	10.
Carries 23 kg. (50 pound) weight over overcast.	.....	.....	1 time in 2 minutes.	1 time in 2 minutes.	2 times in 4 minutes.	3 times in 6 minutes.	4 times in 8 minutes.	5 times in 10 minutes.
Walks at 4.8 km. (3 miles) per hour.	.....	.....	.....	1	3	3	3	5.
Climbs vertical treadmill [2] (or equivalent).	1	1	1	1	1	1	1	1.
Walks at 4.8 km. (3 miles) per hour.	.....	1	1	.....	.....	2	3	5
Climbs vertical treadmill (or equivalent).	.....	1	.....	.....	.....	1	1	1.
Sampling and readings	.....	.....	.....	.....	2	2	2	2.
Walks at 4.8 km. (3 miles) per hour.	.....	.....	.....	2	2	3	5	11.
Climbs vertical treadmill (or equivalent).	.....	.....	.....	1	1	1	1	1.
Carries 23 kg. (50 pound) weight over overcast.	.....	.....	.....	1 time in 2 minutes.	3 times in 6 minutes.	4 times in 8 minutes.	5 times in 10 minutes.	5 times in 10 minutes.
Sampling and readings	.....	.....	2	.....	.....	2	2	2.
Walks at 4.8 km. (3 miles) per hour.	.....	.....	.....	1	3	3	3	
Climbs vertical treadmill (or equivalent).	.....	.....	1	1	1	1	1	Then repeat above activities once.
Walks at 4.8 km. (3 miles) per hour.	.....	.....	2	.....	.....	2	3	
Climbs vertical treadmill (or equivalent).	.....	.....	.....	.....	.....	1	1	
Carries 20 kg. (45 pound) weight and walks at 4.8 km. (3 miles) per hour.	1	.....	.....	.....	.....	.....	2	
Walks at 4.8 km. (3 miles) per hour.	1	2	.....	.....	.....	1	4	
Sampling and readings	.....	.....	.....	2	2	2	2	

[1] Total test time for Test 2 for 2-hour, 3-hour, and 4-hour apparatus is 2 hours.
[2] Treadmill shall be inclined 15° from vertical and operated at a speed of 1 foot per second.

TABLE 3.—DURATION AND SEQUENCE OF SPECIFIC ACTIVITIES FOR TEST 3, IN MINUTES
[42 CFR part 84, subpart H]

Activity	Service time—							
	3 minutes	5 minutes	10 minutes	15 minutes	30 minutes	45 minutes	1 hour	2, 3 and 4 hours [1]
Sampling and readings	.....	.....	.....	2	2	2	2	(2)
Walks at 4.8 km. (3 miles) per hour.	.....	.....	1	1	2	2	3	.....
Runs at 9.7 km. (6 miles) per hour.	1	1	1	1	1	1	1	.....
Pulls 20 kg. (45 pound) weight to 5 feet.	.....	15 times in 1 minute.	.....	30 times in 2 minutes.	30 times in 2 minutes.	30 times in 2 minutes.	60 times in 6 minutes.	.....
Lies on side	1/2	1	1	2	3	4	5	.....
Lies on back	1/2	1	1	2	2	3	3	.....
Crawls on hands and knees	1	1	1	2	2	2	2	.....
Sampling and readings	.....	.....	2	.....	2	2	2	.....
Runs at 9.7 km. (6 miles) per hour.	.....	.....	.....	1	1	1	1	.....
Walks at 4.8 km. (3 miles) per hour.	.....	.....	.....	.....	2	8	10	.....
Pulls 20 kg. (45 pound) weight to 5 feet.	.....	.....	30 times in 2 minutes.	.....	60 times in 6 minutes.	60 times in 6 minutes.	60 times in 6 minutes.	.....
Sampling and readings	.....	.....	.....	2	.....	2	2	.....
Walks at 4.8 km. (3 miles) per hour.	.....	.....	1	.....	3	4	10	.....
Lies on side	.....	.....	.....	.....	.....	2	4	.....
Lies on back	.....	.....	.....	.....	.....	2	1	.....
Sampling and readings	.....	.....	.....	.....	2	2	2	.....

[1] Total test time for Test 3 for 2-hour, 3-hour, and 4-hour apparatus is 2 hours.
[2] Perform test No. 3 for 1 hr. apparatus; then perform test No. 1 for 1 hour apparatus.

TABLE 4.—DURATION AND SEQUENCE OF SPECIFIC ACTIVITIES FOR TEST 4, IN MINUTES
(42 CFR part 84, subpart H)

Activity	Service time—									
	3 minutes	5 minutes	10 minutes	15 minutes	30 minutes	45 minutes	1 hour	2 hours	3 hours	4 hours
Sampling and readings				2	2	2	2	(2)	(3)	(4)
Walks at 4.8 km. (3 miles) per hour				2	2	2	2			
Climbs vertical treadmill [1] (or equivalent)	1			1	1	1	1			
Walks at 4.8 km. (3 miles) per hour		1		1	2	2	2			
Pulls 20 kg. (45 pound) weight to 5 feet		30 times in 2 minutes.	30 times in 2 minutes.	30 times in 2 minutes.	60 times in 5 minutes.	60 times in 5 minutes.	60 times in 5 minutes.			
Walks at 4.8 km. (3 miles) per hour		1	1	1	2	2	3			
Carries 23 kg. (50 pound) weight over overcast				1 time in 1 minute.	1 time in 1 minute.	2 times in 3 minutes.	4 times in 8 minutes.			
Sampling and readings				2	2	2	2			
Walks at 4.8 km. (3 miles) per hour				1	3	3	4			
Runs at 9.7 km. (6 miles) per hour				1	1	1	1			
Carries 23 kg. (50 pound) weight over overcast				1 time in 1 minute.	2 times in 3 minutes.	4 times in 6 minutes.	6 times in 9 minutes.			
Pulls 20 kg (45 pound) weight to 5 feet				15 times in 1 minute.	60 times in 5 minutes.	30 times in 2 minutes.	30 times in 3 minutes.			
Sampling and readings				2	2	2	2			
Walks at 4.8 km. (3 miles) per hour				1	1	1	1			
Pulls 20 kg. (45 pound) weight to 5 feet				1	2	2	6			
Carries 20 kg. (45 pound) weight and walks at 4.8 km. (3 miles) per hour.						60 times in 5 minutes.	60 times in 5 minutes.			
Sampling and readings						2	2			

[1] Treadmill shall be inclined 15° from vertical and operated at a speed of 30 cm. (1 foot) per second.
[2] Perform test No. 1 for 30-minute apparatus; then perform test No. 4 for 1-hour apparatus.
[3] Perform test No. 1 for 1-hour apparatus; then perform test No. 4 for 1-hour apparatus; then perform test No. 4 for 1-hour apparatus twice (i.e., two one-hour tests).
[4] Perform test No. 1 for 1-hour apparatus; then perform test No. 4 for 1-hour apparatus; then perform test No. 1 for 1-hour apparatus twice (i.e., two one-hour tests).

Subpart I—Gas Masks

§ 84.110 Gas masks; description.

(a) Gas masks including all completely assembled air purifying masks designed for use as respiratory protection during entry into atmospheres not immediately dangerous to life or health or escape only from hazardous atmospheres containing adequate oxygen to support life are described as follows:

(1) *Front-mounted or back-mounted gas mask.* A gas mask which consists of a full facepiece, a breathing tube, a canister at the front or back, a canister harness, and associated connections.

(2) *Chin-style gas mask.* A gas mask which consists of a full facepiece, a canister which is usually attached to the facepiece, and associated connections.

(3) *Escape gas mask.* A gas mask designed for use during escape only from hazardous atmospheres which consists of a facepiece or mouthpiece, a canister, and associated connections.

(b) Gas masks shall be further described according to the types of gases or vapors against which they are designed to provide respiratory protection, as follows:

Type of front-mounted or back-mounted gas mask:
Acid gas [1 2 3]
Ammonia
Carbon monoxide
Organic Vapor [1 2 3]
Other gas(es) and vapor(s) [1 2 3]
Combination of two or more of the above gases and vapors. [1 2 3]
Combination of acid gas, ammonia, carbon monoxide, and organic vapors. [1 2 3]
Type of chin-style gas mask:
Acid gas [1 2 3]
Ammonia
Carbon monoxide
Organic vapor [1 2 3]
Other gas(es) and vapor [1 2 3]
Combination of two or more of the above gases and vapors. [1 2 3]
Type of escape gas mask:
Acid gas [1 2 3 4]
Ammonia [4]
Carbon monoxide
Organic vapor [1 2 3 4]
Other gas(s) and vapor(s) [1 2 3 4]
Combination of two or more of the above gases and vapors. [1 2 3 4]

[1] Approval may be for acid gases or organic vapors as a class or for specific acid gases or organic vapors.
[2] Not for use against gases or vapors with poor warning properties (except where MSHA or Occupational Safety and Health Administration standards permit such use for a specific gas or vapor), or those which generate high heats or reaction with sorbent materials in the canister.
[3] Use of the gas mask may be limited by factors such as lower explosive limit, toxicological effects, and facepiece fit. Limitations on gas mask service life and sorbent capacity limitations shall be specified by the applicant in instructions for selection, use and maintenance of the gas mask.
[4] Eye protection may be required in certain concentrations of gases and vapors.

(c) Gas masks for respiratory protection against gases and vapors other than those specified in paragraph (b) of this section, may be approved upon submittal of an application in writing for approval to the Certification and Quality Assurance Branch listing the gas or vapor and suggested maximum use concentration for the specific type of gas mask. The Institute will consider the application and accept or reject it on the basis of effect on the wearer's health and safety and any field experience in use of gas masks for such exposures. If the application is accepted, the Institute will test such masks in accordance with the requirements of this subpart.

§ 84.111 Gas masks; required components.

(a) Each gas mask described in § 84.110 shall, where its design requires, contain the following component parts:
(1) Facepiece or mouthpiece and noseclip;
(2) Canister or cartridge;
(3) Canister harness;
(4) External check valve; and
(5) Breathing tube.
(b) The components of each gas mask shall meet the minimum construction requirements set forth in subpart G of this part.

§ 84.112 Canisters and cartridges in parallel; resistance requirements.

Where two or more canisters or cartridges are used in parallel, their resistance to airflow shall be essentially equal.

§ 84.113 Canisters and cartridges; color and markings; requirements.

The color and markings of all canisters and cartridges or labels shall conform with the requirements of the American National Standards Institute, American National Standard for Identification of Air-Purifying Respirator Canisters and Cartridges, ANSI K13.1–1973. ANSI K13.1 is incorporated by reference and has been approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from American National Standards Institute, Inc., 1430 Broadway, New York, NY 10018. Copies may be inspected at the NIOSH, Certification and Quality Assurance Branch, 1095 Willowdale Road, Morgantown, WV 26505–2888, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

§ 84.114 Filters used with canisters and cartridges; location; replacement.

(a) Particulate matter filters used in conjunction with a canister or cartridge shall be located on the inlet side of the canister or cartridge.
(b) Filters shall be incorporated in or firmly attached to the canister or cartridge and each filter assembly shall, where applicable, be designed to permit its easy removal from and replacement in the canister or cartridge.

§ 84.115 Breathing tubes; minimum requirements.

Flexible breathing tubes used in conjunction with gas masks shall be designed and constructed to prevent:
(a) Restriction of free head movement;
(b) Disturbance of the fit of facepieces or mouthpieces;
(c) Interference with the wearer's activities; and
(d) Shutoff of airflow due to kinking, or from chin or arm pressure.

§ 84.116 Harnesses; installation and construction; minimum requirements.

(a) Each gas mask shall, where necessary, be equipped with a suitable harness designed and constructed to hold the components of the gas mask in position against the wearer's body.
(b) Harnesses shall be designed and constructed to permit easy removal and replacement of gas mask parts, and where applicable, provide for holding a full facepiece in the ready position when not in use.

§ 84.117 Gas mask containers; minimum requirements.

(a) Gas masks shall be equipped with a substantial, durable container bearing markings which show the applicant's name, the type and commercial designation of mask it contains and all appropriate approval labels.
(b) Containers for gas masks shall be designed and constructed to permit easy removal of the mask.

§ 84.118 Half-mask facepieces, full facepieces, and mouthpieces; fit; minimum requirements.

(a) Half-mask facepieces and full facepieces shall be designed and constructed to fit persons with various facial shapes and sizes either:
(1) By providing more than one facepiece size; or
(2) By providing one facepiece size which will fit varying facial shapes and sizes.
(b) Full facepieces shall provide for optional use of corrective spectacles or

lenses, which shall not reduce the respiratory protective qualities of the gas mask.

(c) Half-mask facepieces shall not interfere with the fit of common industrial safety spectacles, as determined by the Institute's facepiece tests in § 84.124.

(d) Gas masks with mouthpieces shall be equipped with noseclips which are securely attached to the mouthpiece or gas mask and provide an airtight seal.

(e) Facepieces shall be designed to prevent eyepiece fogging.

§ 84.119 Facepieces; eyepieces; minimum requirements.

(a) Full facepieces shall be designed and constructed to provide adequate vision which is not distorted by the eye.

(b) All eyepieces shall be designed and constructed to be impact and penetration resistant. Federal Specification, Mask, Air Line: and Respirator, Air Filtering, Industrial, GGG–M–125d, October 11, 1965 with interim amendment-1, July 30, 1969, is an example of an appropriate standard for determining impact and penetration resistance. Copies of GGG–M–125d may be obtained from the NIOSH, Certification and Quality Assurance Branch, 1095 Willowdale Road, Morgantown, WV 26505–2888.

§ 84.120 Inhalation and exhalation valves; minimum requirements.

(a) Inhalation and exhalation valves shall be provided where necessary and protected against damage and distortion.

(b) Inhalation valves shall be designed and constructed to prevent excessive exhaled air from adversely affecting cartridges, canisters, and filters.

(c) Exhalation valves shall be protected against external influence, and designed and constructed to prevent inward leakage of contaminated air.

§ 84.121 Head harnesses; minimum requirements.

(a) Facepieces shall be equipped with adjustable and replaceable head harnesses, designed and constructed to provide adequate tension during use and an even distribution of pressure over the entire area in contact with the face.

(b) Mouthpieces shall be equipped, where applicable, with adjustable and replaceable harnesses designed and constructed to hold the mouthpiece in place.

§ 84.122 Breathing resistance test; minimum requirements.

(a) Resistance to airflow will be measured in the facepiece or mouthpiece of a gas mask mounted on a breathing machine both before and after each test conducted in accordance with §§ 84.124, 84.125, and 84.126, with air flowing at a continuous rate of 85 liters per minute.

(b) The maximum allowable resistance requirements for gas masks are as follows:

MAXIMUM RESISTANCE

[mm. water-column height]

Type of gas mask	Inhalation		Exhalation
	Initial	Final [1]	
Front-mounted or back-mounted (without particulate filter)	60	75	20
Front-mounted or back-mounted (with approved particulate filter)	70	85	20
Chin-style (without particulate filter)	40	55	20
Chin-style (with approved particulate filter)	55	80	20
Escape (without particulate filter)	60	75	20
Escape (with approved particulate filter)	70	85	20

[1] Measured at end of the service life specified in Tables 5, 6, and 7 of this subpart.

§ 84.123 Exhalation valve leakage test.

(a) Dry exhalation valves and valve seats will be subjected to a suction of 25 mm. water-column height while in a normal operating position.

(b) Leakage between the valve and valve seat shall not exceed 30 milliliters per minute.

§ 84.124 Facepiece tests; minimum requirements.

(a) The complete gas mask will be fitted to the faces of persons having varying facial shapes and sizes.

(b) Where the applicant specifies a facepiece size or sizes for the gas mask, together with the approximate measurements of faces they are designed to fit, the Institute will insure that test subjects suit such facial measurements.

(c) Any gas mask parts which must be removed to perform the facepiece or mouthpiece fit test shall be replaceable without special tools and without disturbing the facepiece or mouthpiece fit.

(d) The facepiece or mouthpiece fit test, using positive or negative pressure recommended by the applicant and described in his instructions will be used before each test specified in paragraph (e) of this section, and in § 84.125.

(e)(1) Each wearer will enter a chamber containing 100 p.p.m. isoamyl acetate vapor for a half-mask facepiece and 1,000 p.p.m. isoamyl acetate vapor for a full facepiece or mouthpiece.

(2) The facepiece or mouthpiece may be adjusted, if necessary, in the test chamber before starting the tests.

(3) Each wearer will remain in the chamber for 8 minutes while performing the following activities:

(i) Two minutes, nodding and turning head;

(ii) Two minutes, calisthenic arm movements;

(iii) Two minutes, running in place; and

(iv) Two minutes, pumping with a tire pump into a 28 liter (1 cubic foot) container.

(4) Each wearer shall not detect the odor of isoamyl acetate during the test.

§ 84.125 Particulate tests; canisters containing particulate filters; minimum requirements.

Gas mask canisters containing filters for protection against particulates (e.g. dusts, fumes, mists, and smokes) in combination with gases, vapors, or gases and vapors, shall also comply with the requirements as prescribed in §§ 84.170 through 84.183, except for the airflow resistance test of § 84.181.

§ 84.126 Canister bench tests; minimum requirements.

(a)(1) Bench tests, except for carbon monoxide tests, will be made on an apparatus that allows the test atmosphere at 50±5 percent relative humidity and room temperature (25±2.5 °C.) to enter the canister continuously at concentrations and rates of flow specified in Tables 5, 6, and 7 of this subpart.

(2) Three canisters will be removed from containers and tested as received from the applicant.

(3) Two canisters, other than those described in paragraph (a)(2) of this section, will be equilibrated at room temperature by passing 25 percent relative humidity air through them at 64 liters per minute for 6 hours.

(4) Two canisters, other than those described in paragraphs (a) (2) and (3) of this section, will be equilibrated at room temperature by passing 85 percent relative humidity air through them at 64 liters per minute for 6 hours.

(5) The equilibrated canisters will be resealed, kept in an upright position at room temperature, and tested within 18 hours.

(b) Front-mounted and back-mounted gas mask canisters will be tested and shall meet the minimum requirements set forth in Table 5 of this subpart.

(c)(1) Front-mounted, and back-mounted, and chin-style canisters designated as providing respiratory protection against gases, ammonia, organic vapors, carbon monoxide and particulate contaminants shall have a window or other indicator to warn the gas mask wearer when the canister will no longer satisfactorily remove carbon monoxide from the inhaled air.

(2) Other types of front- and back-mounted canisters may also be equipped with a window or other indicator to warn of imminent leakage of other gases or vapors.

(3) The window indicator canisters will be tested as regular canisters, but shall show a satisfactory indicator change or other warning before the allowable canister penetration has occurred.

(d) Chin-style gas mask canisters shall meet the minimum requirements set forth in Table 6 of this subpart.

(e) Escape gas mask canisters shall meet the minimum requirements set forth in Table 7 of this subpart.

Tables to Subpart I of Part 84

TABLE 5.—CANISTER BENCH TESTS AND REQUIREMENTS FOR FRONT-MOUNTED AND BACK-MOUNTED GAS MASK CANISTERS

[42 CFR part 84, subpart I]

Canister type	Test condition	Test atmosphere			Number of tests	Maximum allowable penetratin (parts per million)	Minimum service life (minutes) [1]
		Gas or vapor	Concentration (parts per million)	Flow rate (liters per minute)			
Acid gas	As received	SO_2	20,000	64	3	5	12
	Equilibrated	Cl_2	20,000	64	3	5	12
		SO_2	20,000	32	4	5	12
		Cl_2	20,000	32	4	5	12
Organic vapor	As received	CCl_4	20,000	64	3	5	12
	Equilibrated	CCl_4	20,000	32	4	5	12
Ammonia	As received	NH_3	30,000	64	3	50	12
	Equilibrated	NH_3	30,000	32	4	50	12
Carbon monoxide	As received	CO	20,000	[4] 64	2	[3]	60
	Equilibrated	CO	5,000	[2] 32	3	[3]	60
		CO	3,000	[2] 32	3	[3]	60
Combination of 2 or 3 of above types [5]							
Combination of all above types [6]							

[1] Minimum life will be determined at the indicated penetration.
[2] Relative humidity of test atmosphere will be 95±3pct; temperature of test atmosphere will be 25±2.5° C.
[3] Maximum allowable CO penetration will be 385 cm [3] during the minimum life. The penetration shall not exceed 500 p/m during this time.
[4] Relative humidity of test atmosphere will be 95±3pct; temperature of test atmosphere entering the test fixture will be 0±2.5°C – 0°C.
[5] Test conditions and requirements will be applicable as shown in this table.
[6] Test conditions and requirements will be applicable as shown in this table, except the minimum service lives for acid gas, organic vapor, and ammonia will be 6 min instead of 12 min.

TABLE 6—Canister Bench Tests and Requirements for Chin-Style Gas Mask Canisters

[42 CFR part 84, subpart I]

Canister type	Test condition	Test atmosphere			Number of tests	Maximum allowable penetration (parts per million)	Minimum service life (minutes) [1]
		Gas or vapor	Concentration (parts per million)	Flow rate (liters per minute)			
Acid gas	As received	SO_2	50,000	64	3	5	12
	Equilibrated						
		Cl_2	5,000	64	3	5	12
		SO_2	5,000	32	4	5	12
		Cl_2	5,000	32	4	5	12
Organic vapor	As received	CCl_4	5,000	64	3	5	12
	Equilibrated						
		CCl_4	5,000	32	4	5	12
Ammonia	As received	NH_3	5,000	64	3	50	12
	Equilibrated						
	As received	NH_3	5,000	32	4	50	12
	Equilibrated						
Carbon monoxide	As received	CO	20,000	[2] 64	2	[3]	60
		CO	5,000	[4] 32	3	[3]	60

TABLE 6—Canister Bench Tests and Requirements for Chin-Style Gas Mask Canisters
[42 CFR part 84, subpart I]

Canister type	Test condition	Test atmosphere			Number of tests	Maximum allowable penetration (parts per million)	Minimum service life (minutes) [1]
		Gas or vapor	Concentration (parts per million)	Flow rate (liters per minute)			
Combination of 2 or 3 of above types [5] Combination of all above types [6]		CO	3,000	[2] 32	3	[3]	50

[1] Minimum life will be determined at the indicated penetration.
[2] Relative humidity of test atmosphere will be 95 ± 3pct; temperature of test atmosphere will be 25 ± 2.5° C.
[3] Maximum allowable CO penetration will be 385 cm^3 during the minimum life. The penetration shall not exceed 500 p/m during this time.
[4] Relative humidity of test atmosphere will be 95 ± 3pct; temperature of test atmosphere entering the test fixture will be 0 ± 2.5° C – 0° C.
[5] Test conditions and requirements will be applicable as shown in this table.
[6] Test conditions and requirements will be applicable as shown in this table, except the minimum service lives for acid gas, organic vapor, and ammonia will be 6 min instead of 12 min.

TABLE 7.—CANISTER BENCH TESTS AND REQUIREMENTS FOR ESCAPE GAS MASK CANISTERS
[42 CFR part 84, subpart I]

Canister type	Test condition	Test atmosphere			Number of tests	Maximum allowable penetration (parts per million)	Minimum service life (minutes) [1]
		Gas or vapor	Concentration (parts per million)	Flow rate (liters per minute)			
Acid gas	As received	SO_2	5,000	64	3	5	12
	Equilibrated	Cl_2	5,000	64	3	5	12
		SO_2	5,000	32	4	5	12
		Cl_2	5,000	32	4	5	12
Organic vapor	As received	CCl_4	5,000	64	3	5	12
	Equilibrated	CCl_4	5,000	32	4	5	12
Ammonia	As received	NH_3	5,000	64	3	50	12
	Equilibrated	NH_3	5,000	32	4	50	12
Carbon monoxide	As received	CO	10,000	[2] 32	2	[3]	[4] 60
		CO	5,000	[5] 32	3	[3]	60
		CO	3,000	[2] 32	3	[3]	60

[1] Minimum life will be determined at the indicated penetration.
[2] Relative humidity of test atmosphere will be 95 ± 3pct; temperature of test atmosphere will be 25±2.5° C.
[3] Maximum allowable CO penetration will be 385 cm^3 during the minimum life. The penetration shall not exceed 500 p/m during this time.
[4] If effluent temperature exceeds 100° C during this test, the escape gas mask shall be equipped with an effective heat exchanger.
[5] Relative humidity of test atmosphere will be 95±3 pct; temperature of test atmosphere entering the test fixture will be 0±2.5° C—0° C.

Subpart J—Supplied-Air Respirators

§ 84.130 Supplied-air respirators; description.

Supplied-air respirators, including all completely assembled respirators designed for use as respiratory protection during entry into and escape from atmospheres not immediately dangerous to life or health are described as follows:

(a) *Type "A" supplied-air respirators.* A hose mask respirator, for entry into and escape from atmospheres not immediately dangerous to life or health, which consists of a motor-driven or hand-operated blower that permits the free entrance of air when the blower is not operating, a strong large-diameter hose having a low resistance to airflow, a harness to which the hose and the life-line are attached and a tight-fitting facepiece.

(b) *Type "AE" supplied-air respirators.* A Type "A" supplied-air respirator equipped with additional devices designed to protect the wearer's head and neck against impact and abrasion from rebounding abrasive material, and with shielding material such as plastic, glass, woven wire, sheet metal, or other suitable material to protect the window(s) of facepieces, hoods, and helmets which do not unduly interfere with the wearer's vision and permit easy access to the external surface of such window(s) for cleaning.

(c) *Type "B" supplied-air respirators.* A hose mask respirator, for entry into and escape from atmospheres not immediately dangerous to life or health, which consists of a strong large-diameter hose with low resistance to airflow through which the user draws inspired air by means of his lungs alone, a harness to which the hose is attached, and a tight-fitting facepiece.

(d) *Type "BE" supplied-air respirators.* A type "B" supplied-air respirator equipped with additional devices designed to protect the wearer's head and neck against impact and abrasion from rebounding abrasive material, and with shielding material such as plastic, glass, woven wire, sheet metal, or other suitable material to protect the window(s) of facepieces, hoods, and helmets which do not unduly interfere with the wearer's vision and permit easy access to the external surface of such window(s) for cleaning.

(e) *Type "C" supplied-air respirators.* An airline respirator, for entry into and escape from atmospheres not immediately dangerous to life or health, which consists of a source of respirable breathing air, a hose, a detachable coupling, a control valve, orifice, a demand valve or pressure demand valve, an arrangement for attaching the hose to the wearer, and a facepiece, hood, or helmet.

(f) *Type "CE" supplied-air respirators.* A type "C" supplied-air respirator equipped with additional devices designed to protect the wearer's head and neck against impact and abrasion from rebounding abrasive material, and with shielding material such as plastic, glass, woven wire, sheet metal, or other suitable material to protect the window(s) of facepieces, hoods, and helmets which do not unduly interfere with the wearer's vision and permit easy access to the external surface of such window(s) for cleaning.

§ 84.131 Supplied-air respirators; required components.

(a) Each supplied-air respirator described in § 84.130 shall, where its design requires, contain the following component parts:

(1) Facepiece, hood, or helmet;

(2) Air supply valve, orifice, or demand or pressure-demand regulator;

(3) Hand operated or motor driven air blower;

(4) Air supply hose;

(5) Detachable couplings;

(6) Flexible breathing tube; and

(7) Respirator harness.

(b) The component parts of each supplied-air respirator shall meet the minimum construction requirements set forth in subpart G of this part.

§ 84.132 Breathing tubes; minimum requirements.

Flexible breathing tubes used in conjunction with supplied-air respirators shall be designed and constructed to prevent:

(a) Restriction of free head movement;

(b) Disturbance of the fit of facepieces, mouthpieces, hoods, or helmets;

(c) Interference with the wearer's activities; and

(d) Shutoff of airflow due to kinking, or from chin or arm pressure.

§ 84.133 Harnesses; installation and construction; minimum requirements.

(a) Each supplied-air respirator shall, where necessary, be equipped with a suitable harness designed and constructed to hold the components of the respirator in position against the wearer's body.

(b) Harnesses shall be designed and constructed to permit easy removal and replacement of respirator parts, and where applicable, provide for holding a full facepiece in the ready position when not in use.

§ 84.134 Respirator containers; minimum requirements.

Supplied-air respirators shall be equipped with a substantial, durable container bearing markings which show the applicant's name, the type and commercial designation of the respirator it contains, and all appropriate approval labels.

§ 84.135 Half-mask facepieces, full facepieces, hoods, and helmets; fit; minimum requirements.

(a) Half-mask facepieces and full facepieces shall be designed and constructed to fit persons with various facial shapes and sizes either:

(1) By providing more than one facepiece size; or

(2) By providing one facepiece size which will fit varying facial shapes and sizes.

(b) Full facepieces shall provide for optional use of corrective spectacles or lenses, which shall not reduce the respiratory protective qualities of the respirator.

(c) Hoods and helmets shall be designed and constructed to fit persons with various head sizes, provide for the optional use of corrective spectacles or lenses, and insure against any restriction of movement by the wearer.

(d) Facepieces, hoods, and helmets shall be designed to prevent eyepiece fogging.

§ 84.136 Facepieces, hoods, and helmets; eyepieces; minimum requirements.

(a) Facepieces, hoods, and helmets shall be designed and constructed to provide adequate vision which is not distorted by the eyepiece.

(b) All eyepieces except those on Types B, BE, C, and CE supplied-air respirators shall be designed and constructed to be impact and penetration resistant. Federal Specification, Mask, Air Line: and Respirator, Air Filtering, Industrial, GGG–M–125d, October 11, 1965 with interim amendment-1, July 30, 1969, is an example of an appropriate standard for determining impact and penetration resistance. Copies of GGG–M–125d may be obtained from the NIOSH, Certification and Quality Assurance Branch, 1095 Willowdale Road, Morgantown, WV 26505–2888.

(c)(1) The eyepieces of AE, BE, and CE type supplied-air respirators shall be shielded by plastic, glass, woven wire, sheet metal, or other suitable material which does not interfere with the vision of the wearer.

(2) Shields shall be mounted and attached to the facepiece to provide easy access to the external surface of the eyepiece for cleaning.

§ 84.137 Inhalation and exhalation valves; check valves; minimum requirements.

(a) Inhalation and exhalation valves shall be provided where necessary and protected against distortion.

(b) Exhalation valves shall be:

(1) Protected against damage and external influence; and

(2) Designed and constructed to prevent inward leakage of contaminated air.

(c) Check valves designed and constructed to allow airflow toward the facepiece only shall be provided in the connections to the facepiece or in the hose fitting near the facepiece of all Type A, AE, B, and BE supplied-air respirators.

§ 84.138 Head harnesses; minimum requirements.

Facepieces shall be equipped with adjustable and replaceable head harnesses which are designed and constructed to provide adequate tension during use, and an even distribution of pressure over the entire area in contact with the face.

§ 84.139 Head and neck protection; supplied-air respirators; minimum requirements.

Type AE, BE, and CE supplied-air respirators shall be designed and constructed to provide protection against impact and abrasion from rebounding abrasive materials to the wearer's head and neck.

§ 84.140 Air velocity and noise levels; hoods and helmets; minimum requirements.

Noise levels generated by the respirator will be measured inside the hood or helmet at maximum airflow obtainable within pressure and hose length requirements and shall not exceed 80 dBA.

§ 84.141 Breathing gas; minimum requirements.

(a) Breathing gas used to supply supplied-air respirators shall be respirable breathing air and contain no less than 19.5 volume-percent of oxygen.

(b) Compressed, gaseous breathing air shall meet the applicable minimum grade requirements for Type I gaseous air set forth in the Compressed Gas Association Commodity Specification for Air, G–7.1, 1966 (Grade D or higher quality). G–7.1 is incorporated by reference and has been approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from American National Standards Institute, Inc., 1430 Broadway, New York, NY 10018. Copies may be

inspected at the NIOSH, Certification and Quality Assurance Branch, 1095 Willowdale Road, Morgantown, WV 26505–2888, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(c) Compressed, liquefied breathing air shall meet the applicable minimum grade requirements for Type II liquid air set forth in the Compressed Gas Association Commodity Specification for Air, G–7.1, 1966 (Grade B or higher quality). G–7.1 is incorporated by reference and has been approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from American National Standards Institute, Inc., 1430 Broadway, New York, NY 10018. Copies may be inspected at the NIOSH, Certification and Quality Assurance Branch, 1095 Willowdale Road, Morgantown, WV 26505–2888, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

§ 84.142 Air-supply source; hand-operated or motor driven air blowers; Type A supplied-air respirators; minimum requirements.

(a) Blowers shall be designed and constructed to deliver an adequate amount of air to the wearer with either direction of rotation, unless constructed to permit rotation in one direction only, and to permit the free entrance of air to the hose when the blower is not operated.

(b) No multiple systems, whereby more than one user is supplied by one blower, will be approved, unless each hose line is connected directly to a manifold at the blower.

§ 84.143 Terminal fittings or chambers; Type B supplied-air respirators; minimum requirements.

(a) Blowers or connections to air supplies providing positive pressures shall not be approved for use on Type B supplied-air respirators.

(b) Terminal fittings or chambers employed in Type B supplied-air respirators, shall be:

(1) Installed in the inlet of the hose.

(2) Designed and constructed to provide for the drawing of air through corrosion resistant material arranged so as to be capable of removing material larger than 0.149 mm. in diameter (149 micrometers, 100-mesh, U.S. Standard sieve).

(3) Installed to provide a means for fastening or anchoring the fitting or chamber in a fixed position in a zone of respirable air.

§ 84.144 Hand-operated blower test; minimum requirements.

(a) Hand-operated blowers shall be tested by attaching them to a mechanical drive and operating them 6 to 8 hours daily for a period of 100 hours at a speed necessary to deliver 50 liters of air per minute through each completely assembled respirator. Each respirator shall be equipped with the maximum length of hose with which the device is to be approved and the hose shall be connected to each blower or manifold outlet designed for hose connections.

(b) The crank speed of the hand-operated blower shall not exceed 50 revolutions per minute in order to deliver the required 50 liters of air per minute to each facepiece.

(c) The power required to deliver 50 liters of air per minute to each wearer through the maximum length of hose shall not exceed one-fiftieth horsepower, and the torque shall not exceed a force of 2.3 kg. (5 pounds) on a 20 cm. (8-inch) crank, as defined in § 84.146.

(d) The blower shall operate throughout the period without failure or indication of excessive wear of bearings or other working parts.

§ 84.145 Motor-operated blower test; minimum requirements.

(a) Motor-operated blowers shall be tested by operating them at their specified running speed 6 to 8 hours daily for a period of 100 hours when assembled with the kind and maximum length of hose for which the device is to be approved and when connected to each blower or manifold outlet designed for hose connections.

(b) The connection between the motor and the blower shall be so constructed that the motor may be disengaged from the blower when the blower is operated by hand.

(c) The blower shall operate throughout the period without failure or indication of excessive wear of bearings or other working parts.

(d) Where a blower, which is ordinarily motor driven, is operated by hand, the power required to deliver 50 liters of air per minute to each wearer through the maximum length of hose shall not exceed one-fiftieth horsepower, and the torque shall not exceed a force of 2.3 kg. (5 pounds) on a 20 cm. (8-inch) crank, as defined in § 84.146.

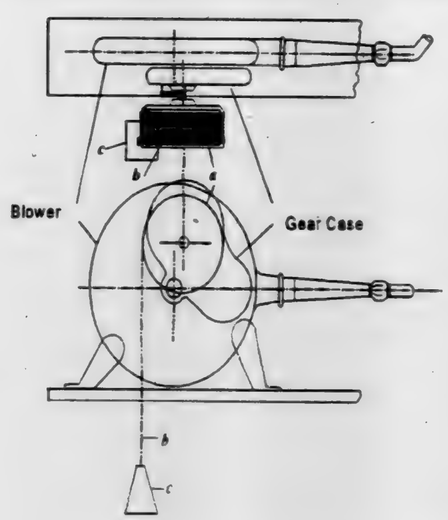
(e) Where the respirator is assembled with the facepiece and 15 m. (50 feet) of the hose for which it is to be approved, and when connected to one outlet with all other outlets closed and operated at a speed not exceeding 50 revolutions of the crank per minute, the amount of air delivered into the respiratory-inlet covering shall not exceed 150 liters per minute.

§ 84.146 Method of measuring the power and torque required to operate blowers.

As shown in Figure 1 of this section, the blower crank is replaced by a wooden drum, a (13 cm. (5 inches) in diameter is convenient). This drum is wound with about 12 m. (40 feet) of No. 2 picture cord, b. A weight, c, of sufficient mass to rotate the blower at the desired speed is suspended from this wire cord. A mark is made on the cord about 3 to 4.5 m. (10 to 15 feet) from the weight, c. Another mark is placed at a measured distance (6–9 m./ 20–30 feet is convenient) from the first. These are used to facilitate timing. To determine the torque or horsepower required to operate the blower, the drum is started in rotation manually at or slightly above the speed at which the power measurement is to be made. The blower is then permitted to assume constant speed, and then as the first mark on the wire leaves the drum, a stopwatch is started. The watch is stopped when the second mark leaves the drum. From these data the foot-pounds per minute and the torque may be calculated.

BILLING CODE 4160–19–P

Figure 1—Apparatus for measuring power required to operate blower. (42 CFR part 84, subpart J, § 84.146)



BILLING CODE 4160–19–C

§ 84.147 Type B supplied-air respirator; minimum requirements.

No Type B supplied-air respirator shall be approved for use with a blower or with connection to an air supply device at positive pressures.

§ 84.148 Type C supplied-air respirator, continuous flow class; minimum requirements.

(a) Respirators tested under this section shall be approved only when they supply respirable air at the pressures and quantities required.

(b) The pressure at the inlet of the hose connection shall not exceed 863 kN/m.² (125 pounds per square inch gage).

(c) Where the pressure at any point in the supply system exceeds 863 kN/m.² (125 pounds per square inch gage), the respirator shall be equipped with a pressure-release mechanism that will prevent the pressure at the hose connection from exceeding 863 kN/m.² (125 pounds per square inch gage) under any conditions.

§ 84.149 Type C supplied-air respirator, demand and pressure demand class; minimum requirements.

(a) Respirators tested under this section shall be approved only when used to supply respirable air at the pressures and quantities required.

(b) The manufacturer shall specify the range of air pressure at the point of attachment of the air-supply hose to the air-supply system, and the range of hose length for the respirator. For example, he might specify that the respirator be used with compressed air at pressures ranging from 280–550 kN/m.² (40 to 80 pounds per square inch) with from 6 to 76 m. (15 to 250 feet) of air-supply hose.

(c) The specified air pressure at the point of attachment of the hose to the air-supply system shall not exceed 863 kN/m.² (125 pounds per square inch gage).

(d)(1) Where the pressure in the air-supply system exceeds 863 kN/m.² (125 pounds per square inch gage), the respirator shall be equipped with a pressure-release mechanism that will prevent the pressure at the point of attachment of the hose to the air-supply system from exceeding 863 kN/m.² (125 pounds per square inch gage).

(2) The pressure-release mechanism shall be set to operate at a pressure not more than 20 percent above the manufacturer's highest specified pressure. For example, if the highest specified pressure is 863 kN/m.² (125 pounds per square inch), the pressure-release mechanism would be set to operate at a maximum of 1,035 kN/m.² (150 pounds per square inch).

§ 84.150 Air-supply line tests; minimum requirements.

Air supply lines employed on Type A, Type B, and Type C supplied-air respirators shall meet the minimum test requirements set forth in Table 8 of this subpart.

§ 84.151 Harness test; minimum requirements.

(a)(1) Shoulder straps employed on Type A supplied-air respirators shall be tested for strength of material, joints, and seams and must separately withstand a pull of 113 kg. (250 pounds) for 30 minutes without failure.

(2) Belts, rings, and attachments for life lines must withstand a pull of 136 kg. (300 pounds) for 30 minutes without failure.

(3) The hose shall be firmly attached to the harness so as to withstand a pull of 113 kg. (250 pounds) for 30 minutes without separating, and the hose attachments shall be arranged so that the pull or drag of the hose behind an advancing wearer does not disarrange the harness or exert pull upon the facepiece.

(4) The arrangement and suitability of all harness accessories and fittings will be considered.

(b)(1) The harness employed on Type B supplied-air respirators shall not be uncomfortable, disturbing, or interfere with the movements of the wearer.

(2) The harness shall be easily adjustable to various sizes.

(3) The hose shall be attached to the harness in a manner that will withstand a pull of 45 kg. (100 pounds) for 30 minutes without separating or showing signs of failure.

(4) The design of the harness and attachment of the line shall permit dragging the maximum length of hose considered for approval over a concrete floor without disarranging the harness or exerting a pull on the facepiece.

(5) The arrangement and suitability of all harness accessories and fittings will be considered.

(c) The harness employed on Type C respirators shall be similar to that required on the Type B respirator, or, it may consist of a simple arrangement for attaching the hose to a part of the wearer's clothing in a practical manner that prevents a pull equivalent to dragging the maximum length of the hose over a concrete floor from exerting pull upon the respiratory-inlet covering.

(d) Where supplied-air respirators have a rigid or partly rigid head covering, a suitable harness shall be required to assist in holding this covering in place.

§ 84.152 Breathing tube test; minimum requirements.

(a)(1) Type A and Type B supplied-air respirators shall employ one or two flexible breathing tubes of the nonkinking type which extend from the facepiece to a connecting hose coupling attached to the belt or harness.

(2) The breathing tubes employed shall permit free head movement, insure against closing off by kinking or by chin or arm pressure, and they shall not create a pull that will loosen the facepiece or disturb the wearer.

(b) Breathing tubes employed on Type C supplied-air respirators of the continuous flow class shall meet the minimum requirements set forth in paragraph (a) of this section, however, an extension of the connecting hose may be employed in lieu of the breathing tubes required.

(c)(1) A flexible, nonkinking type breathing tube shall:

(i) Be employed on Type C supplied-air respirators of the demand and pressure-demand class; and

(ii) Extend from the facepiece to the demand or pressure-demand valve, except where the valve is attached directly to the facepiece.

(2) The breathing tube shall permit free head movement, insure against closing off by kinking or by chin or arm pressure, and shall not create a pull that will loosen the facepiece or disturb the wearer.

§ 84.153 Airflow resistance test, Type A and Type AE supplied-air respirators; minimum requirements.

(a) Airflow resistance will be determined when the respirator is completely assembled with the respiratory-inlet covering, the air-supply device, and the maximum length of air-supply hose coiled for one-half its length in loops 1.5 to 2.1 m. (5 to 7 feet) in diameter.

(b) The inhalation resistance, drawn at the rate of 85 liters (3 cubic feet) per minute when the blower is not operating or under any practical condition of blower operation shall not exceed the following amounts:

Maximum length of hose for which respirator is approved		Maximum resistance, water column height	
Feet	Meters	Inches	Millimeters
75	23	1.5	38
150	46	2.5	64
250	76	3.5	89
300	91	4.0	102

(c) The exhalation resistance shall not exceed 25 mm. (1 inch) of water-column height at a flow rate of 85 liters (3 cubic feet) per minute when the blower is not operating or under any practical condition of blower operation.

§ 84.154 Airflow resistance test; Type B and Type BE supplied-air respirators; minimum requirements.

(a) Airflow resistance shall be determined when the respirator is completely assembled with the respiratory-inlet covering and the hose in the maximum length to be considered for approval, coiled in loops 1.5 to 2.1 m. (5 to 7 feet) in diameter.

(b) Airflow resistance shall not exceed 38 mm. (1.5 inches) of water-column height to air drawn at the flow rate of 85 liters (3 cubic feet) per minute.

(c) The exhalation resistance shall not exceed 25 mm. (1 inch) of water-column height at this flow rate.

§ 84.155 Airflow resistance test; Type C supplied-air respirator, continuous flow class and Type CE supplied-air respirator; minimum requirements.

The resistance to air flowing from the respirator shall not exceed 25 mm. (1 inch) of water-column height when the air flow into the respiratory-inlet covering is 115 liters (4 cubic feet) per minute.

§ 84.156 Airflow resistance test; Type C supplied-air respirator, demand class; minimum requirements.

(a) Inhalation resistance shall not exceed 50 millimeters (2 inches) of water at an air flow of 115 liters (4 cubic feet) per minute.

(b) The exhalation resistance to a flow of air at a rate of 85 liters (3 cubic feet) per minute shall not exceed 25 millimeters (1 inch) of water.

§ 84.157 Airflow resistance test; Type C supplied-air respirator, pressure-demand class; minimum requirements.

(a) The static pressure in the facepiece shall not exceed 38 mm. (1.5 inches) of water-column height.

(b) The pressure in the facepiece shall not fall below atmospheric at inhalation airflows less than 115 liters (4 cubic feet) per minute.

(c) The exhalation resistance to a flow of air at a rate of 85 liters (3 cubic feet) per minute shall not exceed the static pressure in the facepiece by more than 51 mm. (2 inches) of water-column height.

§ 84.158 Exhalation valve leakage test.

(a) Dry exhalation valves and valve seats will be subjected to a suction of 25 mm. water-column height while in a normal operating position.

(b) Leakage between the valve and valve seat shall not exceed 30 milliliters per minute.

§ 84.159 Man tests for gases and vapors; supplied-air respirators; general performance requirements.

(a) Wearers will enter a chamber containing a gas or vapor as prescribed in §§ 84.160, 84.161, 84.162, and 84.163.

(b) Each wearer will spend 10 minutes in work to provide observations on freedom of the device from leakage. The freedom and comfort allowed the wearer will also be considered.

(c) Time during the test period will be divided as follows:

(1) *Five minutes.* Walking, turning head, dipping chin; and

(2) *Five minutes.* Pumping air with a tire pump into a 28-liter (1 cubic foot) container, or equivalent work.

(d) No odor of the test gas or vapor shall be detected by the wearer in the air breathed during any such test, and the wearer shall not be subjected to any undue discomfort or encumbrance because of the fit, air delivery, or other features of the respirator during the testing period.

§ 84.160 Man test for gases and vapors; Type A and Type AE respirators; test requirements.

(a) The completely assembled respirator will be worn in a chamber containing 0.1±0.025 percent isoamyl acetate vapor, and the blower, the intake of the hose, and not more than 25 percent of the hose length will be located in isoamyl acetate-free air.

(b) The man in the isoamyl acetate atmosphere will draw his inspired air through the hose, connections, and all parts of the air device by means of his lungs alone (blower not operating).

(c) The 10-minute work test will be repeated with the blower in operation at any practical speed up to 50 revolutions of the crank per minute.

§ 84.161 Man test for gases and vapors; Type B and Type BE respirators; test requirements.

(a) The completely assembled respirator will be worn in a chamber containing 0.1±0.025 percent isoamyl acetate vapor, and the intake of the hose, and not more than 25 percent of the hose length will be located in isoamyl acetate-free air.

(b) The man in the isoamyl acetate atmosphere will draw his inspired air through the hose and connections by means of his lungs alone.

§ 84.162 Man test for gases and vapors; Type C respirators, continuous-flow class and Type CE supplied-air respirators; test requirements.

(a) The completely assembled respirator will be worn in a chamber containing 0.1±0.025 percent isoamyl acetate vapor, the intake of the hose will be connected to a suitable source of respirable air, and not more than 25 percent of the hose length will be located in isoamyl acetate-free air.

(b) The minimum flow of air required to maintain a positive pressure in the respiratory-inlet covering throughout the entire breathing cycle will be supplied to the wearer, provided however, that airflow shall not be less than 115 liters per minute for tight-fitting and not less than 170 liters per minute for loose-fitting respiratory inlet-coverings.

(c) The test will be repeated with the maximum rate of flow attainable within specified operating pressures.

§ 84.163 Man test for gases and vapors; Type C supplied-air respirators, demand and pressure-demand classes; test requirements.

(a) The completely assembled respirator will be worn in a chamber containing 0.1±0.025 percent isoamyl acetate vapor, the intake of the hose will be connected to a suitable source of respirable air, and not more than 25 percent of the hose length will be located in isoamyl acetate-free air.

(b) The test will be conducted at the minimum pressure with the maximum hose length and will be repeated at the maximum pressure with the minimum hose length.

Tables to Subpart J of Part 84

TABLE 8—AIR-SUPPLY-LINE REQUIREMENTS AND TESTS

[42 CFR part 84, subpart J]

Specific requirements	Requirements for the air-supply lines of the indicated type of supplied-air respirators		
	Type A	Type B	Type C
Length of hose	Maximum of 91 m. (300 feet), in multiples of 7.6 m. (25 feet).	Maximum of 23 m. (75 feet) in multiples of 7.6 m. (25 feet).	Maximum of 91 m. (300 feet) in multiples of 7.6 m. (25 feet). It will be permissible for the applicant to supply hose of the approved type of shorter length than 7.6 m. (25 feet) provided it meets the requirements of the part.
Air flow	None	None	The air-supply hose with air regulating valve or orifice shall permit a flow of not less than 115 liters (4 cubic feet) per minute to tight-fitting and 170 liters (6 cubic feet) per minute to loose-fitting respiratory-inlet coverings through the maximum length of hose for which approval is granted and at the minimum specified air-supply pressure. The maximum flow shall not exceed 425 liters (15 cubic feet) per minute at the maximum specified air-supply pressure with the minimum length of hose for which approval is granted.

TABLE 8—AIR-SUPPLY-LINE REQUIREMENTS AND TESTS—Continued
[42 CFR part 84, subpart J]

Specific requirements	Requirements for the air-supply lines of the indicated type of supplied-air respirators		
	Type A	Type B	Type C
Air flow	....do	....do	The air-supply hose, detachable coupling, and demand valve of the demand class or pressure-demand valve of the pressure-demand class for Type C supplied-air respirators, demand and pressure-demand classes, shall be capable of delivering respirable air at a rate of not less than 115 liters (4 cubic feet) per minute to the respiratory-inlet covering at an inhalation resistance not exceeding 50 millimeters (2 inches) of water-column height measured in the respiratory-inlet covering with any combination of air-supply pressure and length of hose within the applicant's specified range of pressure and hose length. The air-flow rate and resistance to inhalation shall be measured while the demand or pressure-demand valve is actuated 20 times per minute by a source of intermittent suction. The maximum rate of flow to the respiratory-inlet covering shall not exceed 425 liters (15 cubic feet) per minute under the specified operating conditions.
Air-regulating valve	....do	....do	If an air-regulating valve is provided, it shall be so designed that it will remain at a specific adjustment, which will not be affected by the ordinary movement of the wearer. The valve must be so constructed that the air supply with the maximum length of hose and at the minimum specified air-supply pressure will not be less than 115 liters (4 cubic feet) of air per minute to tight-fitting and 170 liters (6 cubic feet) of air per minute of loose-fitting respiratory inlet coverings for any adjustment of the valve. If a demand or pressure-demand valve replaces the air-regulating valve, it shall be connected to the air-supply at the maximum air pressure for which approval is sought by means of the minimum length of air-supply hose for which approval is sought. The outlet of the demand or pressure-demand valve shall be connected to a source of intermittent suction so that the demand or pressure-demand valve is actuated approximately 20 times per minute for a total of 100,000 inhalations. To expedite this test, the rate of actuation may be increased if mutually agreeable to the applicant and NIOSH. During this test the valve shall function without failure and without excessive wear of the moving parts. The demand or pressure-demand valve shall not be damaged in any way when subjected at the outlet to a pressure or suction of 25 cm. (10 inches) of water gage for 2 minutes.
Noncollapsibility	The hose shall not collapse or exhibit permanent deformation when a force of 90 kg. (200 pounds) is applied for 5 minutes between 2 planes 7.6 cm. (3 inches) wide on opposite sides of the hose.	Same as Type A	None.

TABLE 8—AIR-SUPPLY-LINE REQUIREMENTS AND TESTS—Continued
[42 CFR part 84, subpart J]

Specific requirements	Requirements for the air-supply lines of the indicated type of supplied-air respirators		
	Type A	Type B	Type C
Nonkinkability	None	None	A 7.6 m. (25 foot) section of the hose will be placed on a horizontal-plane surface and shaped into a one-loop coil with one end of the hose connected to an airflow meter and the other end of the hose supplied with air at the minimum specified supply pressure. The connection shall be in the plane of the loop. The other end of the hose will be pulled tangentially to the loop and in the plane of the loop until the hose straightens. To meet the requirements of this test the loop shall maintain a uniform near-circular shape and ultimately unfold as a spiral, without any localized deformation that decreases the flow of air to less than 90 percent of the flow when the hose is tested while remaining in a straight line.
Strength of hose and couplings.	Hose and couplings shall not separate or fail when tested with a pull of 113 kg. (250 pounds) for 5 minutes.	Same as Type A	Hose and couplings shall not exhibit any separation or failure when tested with a pull of 45 kg. (100 pounds) for 5 minutes and when tested by subjecting them to an internal air pressure of 2 times the maximum respirator-supply pressure that is specified by the applicant or at 173 kN/m. 2 (25 pounds per square inch) gage, whichever is higher.
Tightness	No air leakage shall occur when the hose and couplings are joined and the joint(s) are immersed in water and subjected to an internal air pressure of 35 kN/m. 2 (5 pounds per square inch) gage.	None	Leakage of air exceeding 50 cc. per minute at each coupling shall not be permitted when the hose and couplings are joined and are immersed in water, with air flowing through the respirator under a pressure of 173 kN/m. 2 (25 pounds per square inch) gage applied to the inlet end of the air-supply hose, or at twice the maximum respirator-supply pressure that is specified by the applicant, whichever is higher.
Permeation of hose by gasoline.	The permeation of the hose by gasoline will be tested by immersing 7.6 m. (25 feet) of hose and one coupling in gasoline, with air flowing through the hose at the rate of 8 liters per minute for 6 hours. The air from the hose shall not contain more than 0.01 percent by volume of gasoline vapor at the end of the test.	Same as for Type A	Same as for Type A, except the test period shall be 1 hour.
Detachable coupling	None	None	A hand-operated detachable coupling by which the wearer can readily attach or detach the connecting hose shall be provided at a convenient location. This coupling shall be durable, remain connected under all conditions of normal respirator use, and meet the prescribed tests for strength and tightness of hose and couplings.

Subpart K—Non-Powered Air-Purifying Particulate Respirators

§ 84.170 Non-powered air-purifying particulate respirators; description.

(a) Non-powered air-purifying particulate respirators utilize the wearer's negative inhalation pressure to draw the ambient air through the air-purifying filter elements (filters) to remove particulates from the ambient air. They are designed for use as respiratory protection against atmospheres with particulate contaminants (e.g., dusts, fumes, mists) that are not immediately dangerous to life or health and that contain adequate oxygen to support life.

(b) Non-powered air-purifying particulate respirators are classified into three series, N-, R-, and P-series. The N-series filters are restricted to use in those workplaces free of oil aerosols. The R- and P-series filters are intended for removal of any particulate that includes oil-based liquid particulates.

(c) Non-powered air-purifying particulate respirators are classified according to the efficiency level of the filter(s) as tested according to the requirements of this part.

(1) N100, R100, and P100 filters shall demonstrate a minimum efficiency level of 99.97 percent.

(2) N99, R99, and P99 filters shall demonstrate a minimum efficiency level of 99 percent.

(3) N95, R95, and P95 filters shall demonstrate a minimum efficiency level of 95 percent.

§ 84.171 Non-powered air-purifying particulate respirators; required components.

(a) Each non-powered air-purifying particulate respirator described in § 84.170 shall, where its design requires, contain the following component parts:

(1) Facepiece, mouthpiece with noseclip, hood, or helmet;

(2) Filter unit;

(3) Harness;

(4) Attached blower; and

(5) Breathing tube.

(b) The components of each non-powered air-purifying particulate respirator shall meet the minimum construction requirements set forth in subpart G of this part.

§ 84.172 Breathing tubes; minimum requirements.

Flexible breathing tubes used in conjunction with respirators shall be designed and constructed to prevent:

(a) Restriction of free head movement;

(b) Disturbance of the fit of facepieces, mouthpieces, hoods, or helmets;

(c) Interference with the wearer's activities; and

(d) Shutoff of airflow due to kinking, or from chin or arm pressure.

§ 84.173 Harnesses; installation and construction; minimum requirements.

(a) Each respirator shall, where necessary, be equipped with a suitable harness designed and constructed to hold the components of the respirator in position against the wearer's body.

(b) Harnesses shall be designed and constructed to permit easy removal and replacement of respirator parts, and, where applicable, provide for holding a full facepiece in the ready position when not in use.

§ 84.174 Respirator containers; minimum requirements.

(a) Except as provided in paragraph (b) of this section each respirator shall be equipped with a substantial, durable container bearing markings which show the applicant's name, the type of respirator it contains, and all appropriate approval labels.

(b) Containers for single-use respirators may provide for storage of more than one respirator, however, such containers shall be designed and constructed to prevent contamination of respirators which are not removed, and to prevent damage to respirators during transit.

§ 84.175 Half-mask facepieces, full facepieces, hoods, helmets, and mouthpieces; fit; minimum requirements.

(a) Half-mask facepieces and full facepieces shall be designed and constructed to fit persons with various facial shapes and sizes either:

(1) By providing more than one facepiece size; or

(2) By providing one facepiece size which will fit varying facial shapes and sizes.

(b) Full facepieces shall provide for optional use of corrective spectacles or lenses, which shall not reduce the respiratory protective qualities of the respirator.

(c) Hoods and helmets shall be designed and constructed to fit persons with various head sizes, provide for the optional use of corrective spectacles or lenses, and insure against any restriction of movement by the wearer.

(d) Mouthpieces shall be equipped with noseclips which are securely attached to the mouthpiece or respirator and provide an airtight seal.

(e) Facepieces, hoods, and helmets shall be designed to prevent eyepiece fogging.

(f) Half-mask facepieces shall not interfere with the fit of common industrial safety corrective spectacles.

§ 84.176 Facepieces, hoods, and helmets; eyepieces; minimum requirements.

Facepieces, hoods, and helmets shall be designed and constructed to provide adequate vision which is not distorted by the eyepieces.

§ 84.177 Inhalation and exhalation valves; minimum requirements.

(a) Inhalation and exhalation valves shall be protected against distortion.

(b) Inhalation valves shall be designed and constructed and provided where necessary to prevent excessive exhaled air from adversely affecting filters, except where filters are specifically designed to resist moisture.

(c) Exhalation valves shall be:

(1) Provided where necessary;

(2) Protected against damage and external influence; and

(3) Designed and constructed to prevent inward leakage of contaminated air.

§ 84.178 Head harnesses; minimum requirements.

(a) All facepieces shall be equipped with head harnesses designed and constructed to provide adequate tension during use and an even distribution of pressure over the entire area in contact with the face.

(b) Facepiece head harnesses, except those employed on single-use respirators, shall be adjustable and replaceable.

(c) Mouthpieces shall be equipped, where applicable, with adjustable and replaceable harnesses, designed and constructed to hold the mouthpiece in place.

§ 84.179 Non-powered air-purifying particulate respirators; filter identification.

(a) The respirator manufacturer, as part of the application for certification, shall specify the filter series and the filter efficiency level (i.e., "N95", "R95, "P95", "N99, "R99", "P99", "N100", "R100", or "P100") for which certification is being sought.

(b) Filters shall be prominently labeled as follows:

(1) N100 filters shall be labeled "N100 Particulate Filter (99.97% filter efficiency level)" and shall be a color other than magenta.

(2) R100 filters shall be labeled "R100 Particulate Filter (99.97% filter efficiency level)" and shall be a color other than magenta.

(3) P100 filters shall be labeled "P100 Particulate Filter (99.97% filter efficiency level)" and shall be color coded magenta.

(4) N99 filters shall be labeled "N99 Particulate Filter (99% filter efficiency level)" and shall be a color other than magenta.

(5) R99 filters shall be labeled "R99 Particulate Filter (99% filter efficiency level)" and shall be a color other than magenta.

(6) P99 filters shall be labeled "P99 Particulate Filter (99% filter efficiency level)" and shall be a color other than magenta.

(7) N95 filters shall be labeled as "N95 Particulate Filter (95% filter efficiency level)" and shall be a color other than magenta.

(8) R95 filters shall be labeled as "R95 Particulate Filter (95% filter efficiency level)" and shall be a color other than magenta.

(9) P95 filters shall be labeled as "P95 Particulate Filter (95% filter efficiency level)" and shall be a color other than magenta.

§ 84.180 Airflow resistance tests.

(a) Resistance to airflow will be measured in the facepiece, mouthpiece, hood, or helmet of a particulate respirator (complete respirator) mounted on a test fixture with air flowing at continuous rate of 85±2 liters per minute, before each test conducted in accordance with § 84.182.

(b) The resistances for particulate respirators upon initial inhalation shall not exceed 35 mm water column height pressure and upon initial exhalation shall not exceed 25 mm water column height pressure.

§ 84.181 Non-powered air-purifying particulate filter efficiency level determination.

(a) Twenty filters of each non-powered air-purifying particulate respirator model shall be tested for filter efficiency against:

(1) A solid sodium chloride particulate aerosol as per this section, if N-series certification is requested by the applicant.

(2) A dioctyl phthalate or equivalent liquid particulate aerosol as per this section, if R-series or P-series certification is requested by the applicant.

(b) Filters including holders and gaskets; when separable, shall be tested for filter efficiency level, as mounted on a test fixture in the manner as used on the respirator.

(c) Prior to filter efficiency testing of 20 N-series filters, the 20 to be tested shall be taken out of their packaging and placed in an environment of 85±5 percent relative humidity at 38±2.5 °C for 25±1 hours. Following the pre-conditioning, filters shall be sealed in a gas-tight container and tested within 10 hours.

(d) When the filters do not have separable holders and gaskets, the exhalation valves shall be blocked so as to ensure that leakage, if present, is not included in the filter efficiency level evaluation.

(e) For non-powered air-purifying particulate respirators with a single filter, filters shall be tested at a continuous airflow rate of 85±4 liters per minute. Where filters are to be used in pairs, the test-aerosol airflow rate shall be 42.5±2 liters per minute through each filter.

(f) Filter efficiency test aerosols.

(1) When testing N-series filters, a sodium chloride or equivalent solid aerosol at 25±5 °C and relative humidity of 30±10 percent that has been neutralized to the Boltzmann equilibrium state shall be used. Each filter shall be challenged with a concentration not exceeding 200 mg/m³.

(2) When testing R-series and P-series filters, a neat cold-nebulized dioctyl phthalate (DOP) or equivalent aerosol at 25±5 °C that has been neutralized to the Boltzmann equilibrium state shall be used. Each filter shall be challenged with a concentration not exceeding 200 mg/m³.

(3) The test shall continue until minimum efficiency is achieved or until an aerosol mass of at least 200±5 mg has contacted the filter. For P-series filters, if the filter efficiency is decreasing when the 200±5 mg challenge point is reached, the test shall be continued until there is no further decrease in efficiency.

(g) The sodium chloride test aerosol shall have a particle size distribution with count median diameter of 0.075±0.020 micrometer and a standard geometric deviation not exceeding 1.86 at the specified test conditions as determined with a scanning mobility particle sizer or equivalent. The DOP aerosol shall have a particle size distribution with count median diameter of 0.185±0.020 micrometer and a standard geometric deviation not exceeding 1.60 at the specified test conditions as determined with a scanning mobility particle sizer or equivalent.

(h) The efficiency of the filter shall be monitored and recorded throughout the test period by a suitable forward-light-scattering photometer or equivalent instrumentation.

(i) The minimum efficiency for each of the 20 filters shall be determined and recorded and be equal to or greater than the filter efficiency criterion listed for each level as follows:

P100, R100 and N100: Efficiency ≥99.97%
P99, R99 and N99: Efficiency ≥99%
P95, R95 and N95: Efficiency ≥95%

§ 84.182 Exhalation valve leakage test; minimum requirements.

(a) Dry exhalation valves and valve seats will be subjected to a suction of 25 mm. water-column height while in a normal operating position.

(b) Leakage between the valve and valve seat shall not exceed 30 milliliters per minute.

Subpart L—Chemical Cartridge Respirators

§ 84.190 Chemical cartridge respirators: description.

(a) Chemical cartridge respirators including all completely assembled respirators which are designed for use as respiratory protection during entry into or escape from atmospheres not immediately dangerous to life and health, are described according to the specific gases or vapors against which they are designed to provide respiratory protection, as follows:

Type of chemical cartridge respirator[1]	Maximum use concentration, parts per million
Ammonia	300
Chlorine	10
Hydrogen chloride	50
Methyl amine	100
Organic vapor	[2] 1,000
Sulfur dioxide	50
Vinyl chloride	10

[1] Not for use against gases or vapors with poor warning properties (except where MSHA or Occupational Safety and Health Administration standards may permit such use for a specific gas or vapor) or those which generate high heats of reaction with sorbent material in the cartridge.

[2] Maximum use concentrations are lower for organic vapors which produce atmospheres immediately hazardous to life or health at concentrations equal to or lower than this concentration.

(b) Chemical cartridge respirators for respiratory protection against gases or vapors, which are not specifically listed with their maximum use concentration, may be approved if the applicant submits a request for such approval, in writing, to the Institute. The Institute shall consider each such application and accept or reject the application after a review of the effects on the wearer's health and safety and in the light of any field experience in use of chemical cartridge respirators as protection against such hazards.

§ 84.191 Chemical cartridge respirators; required components.

(a) Each chemical cartridge respirator described in § 84.190 shall, where its design requires, contain the following component parts:

(1) Facepiece, mouthpiece, and noseclip, hood, or helmet;

(2) Cartridge;

(3) Cartridge with filter;

(4) Harness;

(5) Breathing tube; and

(6) Attached blower.

(b) The components of each chemical cartridge respirator shall meet the minimum construction requirements set forth in subpart G of this part.

§ 84.192 Cartridges in parallel; resistance requirements.

Where two or more cartridges are used in parallel, their resistance to airflow shall be essentially equal.

§ 84.193 Cartridges; color and markings; requirements.

The color and markings of all cartridges or labels shall conform with the requirements of the American National Standards Institute, American National Standard for Identification of Air-Purifying Respirator Canisters and Cartridges, ANSI K13.1–1973. ANSI K13.1 is incorporated by reference and has been approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from American

National Standards Institute, Inc., 1430 Broadway, New York, NY 10018. Copies may be inspected at the NIOSH, Certification and Quality Assurance Branch, 1095 Willowdale Road, Morgantown, WV 26505–2888, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

§ 84.194 Filters used with chemical cartridges; location; replacement.

(a) Particulate matter filters used in conjunction with a chemical cartridge shall be located on the inlet side of the cartridge.

(b) Filters shall be incorporated in or firmly attached to the cartridge and each filter assembly shall, where applicable, be designed to permit its easy removal from and replacement on the cartridge.

§ 84.195 Breathing tubes; minimum requirements.

Flexible breathing tubes used in conjunction with respirators shall be designed and constructed to prevent:

(a) Restriction of free head movement;

(b) Disturbance of the fit of facepieces, mouthpieces, hoods, or helmets;

(c) Interference with the wearer's activities; and

(d) Shutoff of airflow due to kinking, or from chin or arm pressure.

§ 84.196 Harnesses; installation and construction; minimum requirements.

(a) Each respirator shall, where necessary, be equipped with a suitable harness designed and constructed to hold the components of the respirator in position against the wearer's body.

(b) Harnesses shall be designed and constructed to permit easy removal and replacement of respirator parts and, where applicable, provide for holding a full facepiece in the ready position when not in use.

§ 84.197 Respirator containers; minimum requirements.

Respirators shall be equipped with a substantial, durable container bearing markings which show the applicant's name, the type and commercial designation of the respirator it contains and all appropriate approval labels.

§ 84.198 Half-mask facepieces, full facepieces, mouthpieces, hoods, and helmets; fit; minimum requirements.

(a) Half-mask facepieces and full facepieces shall be designed and constructed to fit persons with various facial shapes and sizes either:

(1) By providing more than one facepiece size; or

(2) By providing one facepiece size which will fit varying facial shapes and sizes.

(b) Hoods and helmets shall be designed and constructed to fit persons with various head sizes, provide for the optional use of corrective spectacles or lenses, and insure against any restriction of movement by the wearer.

(c) Mouthpieces shall be equipped with noseclips which are securely attached to the mouthpiece or respirator and provide an airtight fit.

(d) Full facepieces shall provide for optional use of corrective spectacles or lenses which shall not reduce the respiratory protective qualities of the respirator.

(e) Facepieces, hoods, and helmets shall be designed to prevent eyepiece fogging.

§ 84.199 Facepieces, hoods, and helmets; eyepieces; minimum requirements.

Facepieces, hoods, and helmets shall be designed and constructed to provide adequate vision which is not distorted by the eyepieces.

§ 84.200 Inhalation and exhalation valves; minimum requirements.

(a) Inhalation and exhalation valves shall be provided where necessary and protected against distortion.

(b) Inhalation valves shall be designed and constructed to prevent excessive exhaled air from entering cartridges or adversely affecting canisters.

(c) Exhalation valves shall be—

(1) Protected against damage and external influence; and

(2) Designed and constructed to prevent inward leakage of contaminated air.

§ 84.201 Head harnesses; minimum requirements.

(a) (1) Facepieces for chemical cartridge respirators other than single-use vinyl chloride shall be equipped with adjustable and replaceable head harnesses designed and constructed to provide adequate tension during use and an even distribution of pressure over the entire area in contact with the face.

(2) Facepieces for single-use vinyl chloride respirators shall be equipped with adjustable head harnesses designed and constructed to provide adequate tension during use and an even distribution of pressure over the entire area in contact with the face.

(b) Mouthpieces shall be equipped where applicable, with an adjustable and replaceable harness designed and constructed to hold the mouthpiece in place.

§ 84.202 Air velocity and noise levels; hoods and helmets; minimum requirements.

Noise levels generated by the respirator will be measured inside the hood or helmet at maximum airflow obtainable and shall not exceed 80 dBA.

§ 84.203 Breathing resistance test; minimum requirements.

(a) Resistance to airflow will be measured in the facepiece, mouthpiece, hood, or helmet of a chemical cartridge respirator mounted on a test fixture with air flowing at a continuous rate of 85 liters per minute, both before and after each test conducted in accordance with §§ 84.206 through 84.207.

(b) The maximum allowable resistance requirements for chemical cartridge respirators are as follows:

MAXIMUM RESISTANCE

[Millimeter water column height]

Type of chemical-cartridge respirator	Inhalation		Exhalation
	Initial	Final[1]	
Other than single-use vinyl chloride respirators:			
For gases, vapors, or gases and vapors	40	45	20
For gases, vapors, or gases and vapors, and particulates	50	70	20
Single-use respirator with valves:			
For vinyl chloride	20	25	20
For vinyl chloride and particulates	30	45	2
Single-use respirator without valves:			
For vinyl chloride	15	20	(2)
For vinyl chloride and particulates	25	40	(2)

[1] Measured at end of service life specified in Table 11 of this subpart.

[2] Same as inhalation.

§ 84.204 Exhalation valve leakage test; minimum requirements.

(a) Dry exhalation valves and valve seats will be subjected to a suction of 25 mm. water-column height while in a normal operating position.

(b) Leakage between the valve and valve seat shall not exceed 30 milliliters per minute.

§ 84.205 Facepiece test; minimum requirements.

(a) The complete chemical cartridge respirator will be fitted to the faces of persons having varying facial shapes and sizes.

(b) Where the applicant specifies a facepiece size or sizes for the respirator together with the approximate measurement of faces they are designed to fit, the Institute will provide test subjects to suit such facial measurements.

(c) Any chemical cartridge respirator part which must be removed to perform the facepiece or mouthpiece fit test shall be replaceable without special tools and without disturbing facepiece or mouthpiece fit.

(d) The facepiece or mouthpiece fit test using the positive or negative pressure recommended by the applicant and described in his instructions will be used before each test.

(e) (1) Each wearer will enter a chamber containing 100 p.p.m. isoamyl acetate vapor for half-mask facepieces, and 1,000 p.p.m. for full facepieces, mouthpieces, hoods, and helmets.

(2) The facepiece or mouthpiece may be adjusted, if necessary, in the test chamber before starting the test.

(3) Each wearer will remain in the chamber for 8 minutes while performing the following activities:

(i) Two minutes, nodding and turning head;

(ii) Two minutes, calisthenic arm movements;

(iii) Two minutes, running in place; and

(iv) Two minutes, pumping with a tire pump into a 28-liter (1 cubic-foot) container.

(4) Each wearer shall not detect the odor of isoamyl-acetate vapor during the test.

§ 84.206 Particulate tests; respirators with filters; minimum requirements; general.

(a) Three respirators with cartridges containing, or having attached to them, filters for protection against particulates will be tested in accordance with the provisions of § 84.207.

(b) In addition to the test requirements set forth in paragraph (a) of this section, three such respirators will be tested, as appropriate, in accordance with the provisions of §§ 84.179 through 84.183; however, the maximum allowable resistance of complete particulate, and gas, vapor, or gas and vapor chemical cartridge respirators shall not exceed the maximum allowable limits set forth in § 84.203.

§ 84.207 Bench tests; gas and vapor tests; minimum requirements; general.

(a) Bench tests will be made on an apparatus that allows the test atmosphere at 50±5 percent relative humidity and room temperature, approximately 25 °C, to enter the cartridges continuously at predetermined concentrations and rates of flow, and that has means for determining the test life of the cartridges.

(b) Where two cartridges are used in parallel on a chemical cartridge respirator, the bench test will be performed with the cartridges arranged in parallel, and the test requirements will apply to the combination rather than to the individual cartridges.

(c) Three cartridges or pairs of cartridges will be removed from containers and tested as received from the applicant.

(d) Two air purifying cartridges or pairs of cartridges will be equilibrated at room temperature by passing 25 percent relative humidity air through them at the flow rate of 25 liters per minute (l.p.m.) for 6 hours.

(e) Two air purifying cartridges or pairs of cartridges will be equilibrated by passing 85 percent relative humidity air through them at the flow rate of 25 l.p.m.

(f) All cartridges will be resealed, kept in an upright position, at room temperatures, and tested within 18 hours.

(g) Cartridges will be tested and shall meet the minimum requirements set forth in Table 11 of this subpart.

Tables to Subpart L of Part 84

TABLES 9 AND 10 [RESERVED]

TABLE 11–CARTRIDGE BENCH TESTS AND REQUIREMENTS

[42 CFR part 84, subpart L]

Cartridge	Test condition	Test atmosphere		Flowrate (l.p.m.)	Number of tests	Penetration[1] (p.p.m.)	Minimum life[2] (min.)
		Gas or vapor	Concentration (p.p.m.)				
Ammonia	As received	NH_3	1000	64	3	50	50
Ammonia	Equilibrated	NH_3	1000	32	4	50	50
Chlorine	As received	Cl_2	500	64	3	5	35
Chlorine	Equilibrated	Cl_2	500	32	4	5	35
Hydrogen chloride	As received	HCl	500	64	3	5	50
Hydrogen chloride	Equilibrated	HCl	500	32	4	5	50
Methylamine	As received	CH_3NH_2	1000	64	3	10	25
Methylamine	Equilibrated	CH_3NH_2	1000	32	4	10	25
Organic vapors	As received	CCl_4	1000	64	3	5	50
Organic vapors	Equilibrated	CCl_4	1000	32	4	5	50
Sulfur dioxide	As received	SO_2	500	64	3	5	30
Sulfur dioxide	Equilibrated	SO_2	500	32	4	5	30

[1] Minimum life will be determined at the indicated penetration.

[2] Where a respirator is designed for respiratory protection against more than one type of gas or vapor, as for use in ammonia and in chlorine, the minimum life shall be one-half that shown for each type of gas or vapor. Where a respirator is designed for respiratory protection against more than one gas of a type, as for use in chlorine and sulfur dioxide, the stated minimal life shall apply.

Subpart M—[Reserved]

Subpart N—Special Use Respirators

§ 84.250 Vinyl chloride respirators; description.

Vinyl chloride respirators, including all completely assembled respirators which are designed for use as respiratory protection during entry into and escape from vinyl chloride atmospheres containing adequate oxygen to support life, are described according to their construction as follows:

(a) Front-mounted or back-mounted gas masks;

(b) Chin-style gas masks;

(c) Chemical-cartridge respirators;

(d) Powered air-purifying respirators; and

(e) Other devices, including combination respirators.

§ 84.251 Required components.

(a) Each vinyl chloride respirator described in § 84.250 shall, where its design requires, contain the following component parts:

(1) Facepiece;

(2) Canister with end-of-service-life indicator;

(3) Cartridge with end-of-service-life indicator;

(4) Harness;

(5) Attached blower; and

(6) Breathing tube.

(b) The components of each vinyl chloride respirator shall meet the minimum construction requirements set forth in Subpart G of this part.

§ 84.252 Gas masks; requirements and tests.

(a) Except for the tests prescribed in § 84.126, the minimum requirements and performance tests for gas masks, prescribed in Subpart I of this part, are applicable to vinyl chloride gas masks.

(b) The following bench tests are applicable to canisters designed for use with gas masks for entry into and escape from vinyl chloride atmospheres containing adequate oxygen to support life:

(1) Four canisters will be equilibrated at 25±5 °C by passing 85±5 percent relative humidity air through them at 64 liters per minute for six hours.

(2) The equilibrated canisters will be resealed, kept in an upright position at room temperature, and tested according to paragraph (b)(3) of this section within 18 hours.

(3) The canisters equilibrated and stored as described in paragraphs (b) (1) and (2) of this section will be tested on an apparatus that allows the test atmosphere at 85±5 percent relative humidity and 25±5 °C to enter the canister continuously at a concentration of 25 ppm vinyl chloride monomer at a total flow rate of 64 liters per minute.

(4) The maximum allowable penetration after six hours of testing according to paragraph (b)(3) of this section shall not exceed 1 ppm vinyl chloride.

(c) Where canisters are submitted for testing and approval with a service life of more than four hours, the period of time for testing for vinyl chloride penetration will be performed at 150% of the service life specified in the manufacturer's application. (Example: If a manufacturer requests approval of a respirator for six hours use against exposure to vinyl chloride, the maximum allowable penetration after nine hours of testing shall not exceed 1 ppm vinyl chloride.)

§ 84.253 Chemical-cartridge respirators; requirements and tests.

(a) Except for the tests prescribed in §§ 84.206 and 84.207, the minimum requirements and performance tests for chemical-cartridge respirators prescribed in Subpart L of this part are applicable to replaceable-cartridge and single-use vinyl chloride chemical-cartridge respirators.

(b) The following bench tests are applicable to cartridges designed for use with chemical-cartridge respirators for entry into and escape from vinyl chloride atmospheres containing adequate oxygen to support life:

(1) Where two cartridges are used in parallel on a chemical-cartridge respirator, the bench test requirements will apply to the combination rather than the individual cartridges.

(2) Four cartridges or pairs of cartridges will be equilibrated at 25±5 °C by passing 85±5 percent relative humidity air through them at 25 liters per minute for six hours.

(3) The equilibrated cartridges will be resealed, kept in an upright position, at room temperature, and tested according to paragraphs (b)(4) and (b)(5) of this section for other than single-use respirators or according to paragraphs (b)(6) and (b)(7) of this section for single-use respirators within 18 hours.

(4) The cartridges or pairs of cartridges for other than single-use respirators, equilibrated and stored as described in paragraphs (b)(1), (b)(2), and (b)(3) of this section, will be tested on an apparatus that allows the test atmosphere at 85±5 percent relative humidity and 25±5 °C to enter the cartridge or pairs of cartridges continuously at a concentration of 10 ppm vinyl chloride monomer at a total flowrate of 64 liters per minute.

(5) The maximum allowable penetration after 90 minutes testing of cartridges or pairs of cartridges for other than single-use respirators, according to paragraph (b)(4) of this section shall not exceed 1 ppm vinyl chloride.

(6) The single-use respirators, equilibrated and stored as described in paragraphs (b)(2) and (b)(3) of this section, will be tested on an apparatus that allows a test atmosphere at 85±5 percent relative humidity and 25±5 °C to be cycled through the respirator by a breathing machine at a concentration of 10 ppm vinyl chloride monomer at the rate of 24 respirations per minute at a minute volume of 40±0.6 liters. Air exhaled through the respirator will be 35±2 °C with 94±3 percent relative humidity.

(7) The maximum allowable penetration after 144 minutes testing of respirators, according to paragraph (b)(6) of this section, shall not exceed 1 ppm vinyl chloride.

§ 84.254 Powered air-purifying respirators; requirements and tests.

(a) Except for the tests prescribed in § 84.207, the minimum requirements and performance tests for powered air-purifying respirators prescribed in subpart L of this part are applicable to vinyl chloride powered air-purifying respirators.

(b) The following bench tests are applicable to cartridges designed for use with powered air-purifying respirators for entry into and escape from vinyl chloride atmospheres containing adequate oxygen to support life:

(1) Four cartridges will be equilibrated at 25± °C by passing 85±5 percent relative humidity air through them at 115 liters per minute for tight-fitting facepieces and 170 liters per minute for loose-fitting hoods and helmets, for six hours.

(2) The equilibrated cartridges will be resealed, kept in an upright position at room temperature and tested according to paragraph (b)(3) of this section within 18 hours.

(3) The cartridges equilibrated and stored as described in paragraphs (b) (1) and (2) of this section will be tested on an apparatus that allows the test atmosphere at 85±5 percent relative humidity and 25±5 °C to enter the cartridge continuously at a concentration of 25 ppm vinyl chloride monomer at a total flow rate of 115 liters per minute for tight-fitting facepieces and 170 liters per minute for loose-fitting hoods and helmets.

(4) The maximum allowable penetration after six hours of testing according to paragraph (b)(3) of this section shall not exceed 1 ppm vinyl chloride.

§ 84.255 Requirements for end-of-service-life indicator.

(a) Each canister or cartridge submitted for testing and approval in accordance with §§ 84.252, 84.253, and 84.254 shall be equipped with a canister or cartridge end-of-service-life indicator which shows a satisfactory indicator change or other obvious warning before 1 ppm vinyl chloride penetration occurs. The indicator shall show such change or afford such warning at 80±10 percent of the total service life to 1 ppm leakage, as determined by continuing each test described in §§ 84.252(b), 84.253(b), and 84.254(b) until a 1 ppm leakage of vinyl chloride occurs.

(b) The applicant shall provide sufficient pretest data to verify the performance of the end-of-service-life indicator required in paragraph (a) of this section.

§ 84.256 Quality control requirements.

(a) In addition to the construction and performance requirements specified in §§ 84.251, 84.252, 84.253, 84.254, and 84.255, the quality control requirements in paragraphs (b), (c), and (d) of this section apply to approval of gas masks, chemical cartridge respirators, and powered air-purifying respirators for entry into and escape from vinyl chloride atmospheres containing adequate oxygen to support life.

(b) The respirators submitted for approval as described in paragraph (a) of this section shall be accompanied by a complete quality control plan meeting the requirements of subpart E of this part.

(c) (1) The applicant shall specify in the plan that a sufficient number of samples will be drawn from each bulk container of sorbent material and that where activated carbon is used, the following specific tests will be performed:

(i) Apparent density;

(ii) Iodine number;

(iii) Moisture content;

(iv) Carbon tetrachloride number; and

(v) Mesh size.

(2) The tests in paragraph (c)(1) of this section shall be performed in a quantity necessary to assure continued satisfactory conformance of the canisters and cartridges to the requirements of this subpart.

(d) Final performance quality control tests on the complete canisters and cartridges shall be accomplished using the bench tests and procedures prescribed in §§ 84.252, 84.253, 84.254, and 84.255.

§ 84.257 Labeling requirements.

(a) A warning shall be placed on the label of each gas mask, chemical-cartridge respirator, and powered air-purifying respirator, and on the label of each canister and cartridge, alerting the wearer to the need for a fitting test in accordance with the manufacturer's facepiece fitting instructions, providing service life information, providing specific instructions for disposal, and advising that the wearer may communicate to NIOSH any difficulties that may be experienced in the design and performance of any gas mask, chemical-cartridge respirator, or powered air-purifying respirator approved under the requirements of this subpart. The service lives of respirators meeting the test requirements of this subpart shall be specified as follows:

Chemical-cartridge respirator	1 hour.
Gas mask	4 hours.
Powered air-purifying respirator	4 hours.

(b) Where the service life of a respirator is approved for more than four hours, the service life for which the respirator has been approved will be specified.

§ 84.258 Fees.

The following fees shall be charged for the examination, inspection, and testing of complete assemblies and components of respirators described in §§ 84.250 and 84.251:

Complete gas mask	$1,100
Complete chemical-cartridge respirator	1,150
Complete powered air-purifying respirator	1,500
Canister or cartridge only	750

Subparts O through JJ [Reserved]

Subpart KK—Dust, Fume, and Mist; Pesticide; Paint Spray; Powered Air-Purifying High Efficiency Respirators and Combination Gas Masks

§ 84.1100 Scope and effective dates.

The purpose of this subpart KK is to establish procedures and requirements for issuing extensions of approval of particulate respirators certified prior to July 10, 1995 under the provisions of 30 CFR part 11 (See 30 CFR part 11 edition, as revised July 1, 1994.), new approvals and extensions of approval of particulate respirators for applications that are in NIOSH receipt on July 10, 1995, and approval of powered air-purifying respirators.

(a) Air-purifying respirators with particulate filters approved under the provisions of this subpart after July 10, 1995 will have a 30 CFR part 11 approval label.

(b) Only changes or modifications of non-powered air-purifying respirators with particulate filters approved under the provisions of subparts I, K, L, or M of 30 CFR part 11 or paragraph (a) of this section and deemed necessary by NIOSH to ensure the health and safety of the wearer will be approved until July 10, 1998 and will have a 30 CFR part 11 approval label.

(c) Only changes or modifications of powered air-purifying respirators with particulate filters approved under the provisions of subparts I, K, L, or M of 30 CFR part 11 or paragraph (a) of this section and deemed necessary by NIOSH to ensure the health and safety of the wearer will be approved under this subpart until July 10, 1998 and will have a 30 CFR part 11 label.

(d) Approval of powered air-purifying respirators will be issued under this subpart. Particulate filters for powered air-purifying respirators approved under the provisions of this subpart shall be only high-efficiency (HEPA) as described in § 84.1130(a)(4) and will carry a 42 CFR part 84 approval label. In addition, changes or modifications of powered HEPA air-purifying respirators approved under the provisions of this subpart KK will be approved under this subpart and will have a 42 CFR part 84 approval label.

§ 84.1101 Definitions.

As used in this subpart

(a) *Air Contamination Level* means the standards of contaminant levels prescribed by the Secretary of Labor in accordance with the provisions of the Occupational Safety and Health Act of 1970 (Pub. L. 91–596; 84 Stat. 1590).

(b) *DOP* means a homogenous liquid aerosol, having a particle diameter of 0.3 micrometer, which is generated by vaporization and condensation of dioctyl phthalate.

(c) *Pesticide* means:

(1) Any substance or mixture of substances (including solvents and impurities) intended to prevent, destroy, repel, or mitigate any insect, rodent, nematode, fungus, weed, or other form of plant or animal life or virus; and

(2) Any substance or mixture of substances (including solvents and impurities) intended for use as a plant regulator, defoliant, or desiccant, as defined in the Federal Insecticide,

Fungicide, and Rodenticide Act of 1947, as amended (7 U.S.C. 135–135k), excluding fumigants which are applied as gases or vapors or in a solid or liquid form as pellets or poured liquids for subsequent release as gases or vapors.

(d) *Radionuclide* means an atom identified by the constitution of its nucleus (specified by the number of protons Z, number of neutrons N, and energy, or, alternatively, by the atomic number Z, mass number A=(N+Z), and atomic mass) which exists for a measurable time; decays or disintegrates spontaneously, emits radiation, and results in the formation of new nuclides.

(e) *Smoke* means the products of incomplete combustion of organic substances in the form of solid and liquid particles and gaseous products in air, usually of sufficient concentration to perceptibility obscure vision.

§ 84.1102 Examination, inspection and testing of complete respirator assemblies; fees.

The following fees shall be charged by the Institute for the examination, inspection and testing of complete respirator assemblies approved under this subpart:

(a) Gas masks with particulate filter, including pesticide gas masks—

(1) Single hazard—$1,100.

(2) Type N—$4,100.

(b) Dust, fume and mist respirators—

(1) Single particulate hazard having an Air Contamination Level more than 0.05 mg./m.^{3} or 2 million particles per cubic foot—$500.

(2) Combination particulate hazards having an Air Contamination Level more than 0.05 mg./m.^{3} or 2 million particles per cubic foot—$750.

(3) Particulate hazards having an Air Contamination Level less than 0.05 mg./m.^{3} or 2 million particles per cubic foot, radon daughters —$1,250.

(4) All dusts, fumes and mists—$2,000.

(c) Paint spray respirators—$1,600.

(d) Pesticide respirators—$1,600.

(e) Chemical cartridge respirators with particulate filter—$1,150.

§ 84.1103 Approval labels and markings; approval of contents; use.

(a) Full-scale reproductions of approval labels and markings, and a sketch or description of the method of application and position on the harness, container, canister, cartridge, filter, or other component, together with instructions for the use and maintenance of the respirator shall be submitted to MSHA and the Institute for approval.

(b) Approval labels for non-powered and powered air-purifying dust, fume, mist respirators approved prior to July 10, 1995 under the provisions of subpart K of 30 CFR part 11 (See 30 CFR Part 11 edition, revised as of July 1, 1994.) shall bear the emblem of the Mine Safety and Health Administration and the seal of the Department of Health and Human Services, the applicant's name and address, an approval number assigned by the Institute, a statement that the respirator was tested and approved under subpart K of 30 CFR part 11 and, where appropriate, restrictions or limitations placed upon the use of the respirator by the Institute. The approval number assigned by the Institute shall be designated by the prefix TC and a serial number.

(c) Approval labels for powered air-purifying respirators approved under the provisions of this subpart shall bear the emblem of the National Institute for Occupational Safety and Health and the seal of the Department of Health and Human Services, the applicant's name and address, an approval number assigned by the Institute, a statement stating the respirator was tested under the provisions of this subpart, and, where appropriate, restrictions or limitations placed upon the use of the respirator by the Institute. The approval number assigned by the Institute shall be designated by the prefix TC and a serial number.

(c) The Institute shall, where necessary, notify the applicant when additional labels, markings, or instructions will be required.

(d) Approval labels and markings shall only be used by the applicant to whom they were issued.

(e) Legible reproductions or abbreviated forms of the label approved by the Institute for use on each respirator shall be attached to or printed at the following locations:

Respirator type	Label type	Location
Gas mask with a particulate filter, including pesticide gas mask.	Entire	Mask and container.
Dust, fume, and mist respirators	Entire	Respirator container and filter container.
	Abbreviated	Filters.
Chemical-cartridge respirator with a particulate filter, including paint spray respirator.	Entire	Respirator container, cartridge container, and filter containers (where applicable).
	Abbreviated	Cartridges and filters and filter containers.
Pesticide respirator	Entire	Respirator container, and cartridge and filter containers.
	Abbreviated	Cartridges and filters.

(f) The use of any MSHA and Institute approval label obligates the applicant to whom it is issued to maintain or cause to be maintained the approved quality control sampling schedule and the acceptable quality level for each characteristic tested, and to assure that it is manufactured according to the drawings and specifications upon which the certificate of approval is based.

(g) Each respirator, respirator component, and respirator container shall, as required by the Institute to assure quality control and proper use of the respirator, be labeled distinctly to show the name of the applicant, and the name and letters or numbers by which the respirator or respirator component is designated for trade purposes, and the lot number, serial number, or approximate date of manufacture.

§ 84.1130 Respirators; description.

(a) Dust, fume, and mist respirators, including all completely assembled respirators designed for use as respiratory protection during entry into and escape from atmospheres which contain adequate oxygen to support life and hazardous particulates, are described as follows:

(1) Air-purifying respirators, either with replaceable or reusable filters, designed as respiratory protection against dusts:

(i) Having an air contamination level not less than 0.05 milligram per cubic meter of air, including but not limited to coal, arsenic, cadmium, chromium, lead, and manganese; or

(ii) Having an air contamination level not less than 2 million particles per cubic foot of air, including but not limited to aluminum, flour, iron ore, and free silica, resulting principally from the disintegration of a solid, e.g., dust clouds produced in mining, quarrying, and tunneling, and in dusts produced during industrial operations, such as grinding, crushing, and the general processing of minerals and other materials.

(2) Air-purifying respirators, with replaceable filters, designed as respiratory protection against fumes of various metals having an air contamination level not less than 0.05 milligram per cubic meter, including but not limited to aluminum, antimony, arsenic, cadmium, chromium, copper, iron, lead, magnesium, manganese, mercury (except mercury vapor), and zinc, which result from the sublimation or condensation of their respective vapors, or from the chemical reaction between their respective vapors and gases.

(3) Air-purifying respirators, with replaceable filters, designed as respiratory protection against mists of materials having an air contamination level not less than 0.05 milligram per cubic meter or 2 million particles per cubic foot, e.g., mists produced by spray coating with vitreous enamels, chromic acid mist produced during chromium plating, and other mists of materials whose liquid vehicle does not produce harmful gases or vapors.

(4) Air-purifying respirators, with replaceable filters, designed as respiratory protection against dusts, fumes, and mists having an air contamination level less than 0.05 milligram per cubic meter, including but not limited to lithium hydride and beryllium, and against radionuclides.

(5) Air-purifying respirators, with replaceable filters, designed as respiratory protection against radon daughters, and radon daughters attached to dusts, fumes, and mists.

(6) Air-purifying respirators, with replaceable filters, designed as respiratory protection against asbestos-containing dusts and mists.

(7) Air-purifying respirators, with replaceable filters, designed as protection against various combinations of particulate matter.

(8) Air-purifying dust respirators designed as respiratory protection against pneumoconiosis- and fibrosis-producing dusts, or dusts and mists, including but not limited to aluminum, asbestos, coal, flour, iron ore, and free silica.

(b) Gas masks containing filters for protection against dusts, fumes, mists, and smokes in combination with gases, vapors, or gases and vapors. These respirators are not for use against gases or vapors with poor warning properties (except where MSHA or Occupational Safety and Health Administration standards may permit such use for a specific gas or vapor) or those which generate high heats of reaction with sorbent material in the canister.

(c) Pesticide respirators, including all completely assembled respirators which are designed for use as respiratory protection during entry into and escape from atmospheres which contain pesticide hazards, are described according to their construction as follows:

(1) Front-mounted or back-mounted gas masks;

(2) Chin-style gas mask;

(3) Chemical cartridge;

(4) Air-purifying respirator with attached blower; and,

(5) Other devices, including combination respirators.

(d) Respirators with cartridges containing or having attached to them, filters for protection against mists of paints, lacquers, and enamels. These respirators are not for use against gases or vapors with poor warning properties (except where MSHA or Occupational Safety and Health Administration standards may permit such use for a specific gas or vapor) or those which generate high heats of reaction with sorbent material in the cartridge.

(e) Respirators with cartridges containing or having attached to them filters for protection against dusts, fumes, and mists, except the mists of paints, lacquers, and enamels. These respirators are not for use against gases or vapors with poor warning properties (except where MSHA or Occupational Safety and Health Administration standards may permit such use for a specific gas or vapor) or those which generate high heats of reaction with sorbent material in the cartridge.

§ 84.1131 Respirators; required components.

(a) Each respirator described in § 84.1130 shall, where its design requires, contain the following component parts:

(1) Facepiece, mouthpiece with noseclip, hood, or helmet;

(2) Filter unit, canister with filter, or cartridge with filter;

(3) Harness;

(4) Attached blower; and

(5) Breathing tube.

(b) The components of each respirator shall meet the minimum construction requirements set forth in Subpart G of this part.

§ 84.1132 Breathing tubes; minimum requirements.

(a) Flexible breathing tubes used in conjunction with respirators shall be designed and constructed to prevent:

(1) Restriction of free head movement;

(2) Disturbance of the fit of facepieces, mouthpieces, hoods, or helmets;

(3) Interference with the wearer's activities; and

(4) Shutoff of airflow due to kinking, or from chin or arm pressure.

§ 84.1133 Harnesses; installation and construction; minimum requirements.

(a) Each respirator shall, where necessary, be equipped with a suitable harness designed and constructed to hold the components of the respirator in position against the wearer's body.

(b) Harnesses shall be designed and constructed to permit easy removal and replacement of respirator parts, and, where applicable, provide for holding a full facepiece in the ready position when not in use.

§ 84.1134 Respirator containers; minimum requirements.

(a) Except as provided in paragraph (b) of this section each respirator shall be equipped with a substantial, durable container bearing markings which show the applicant's name, the type of respirator it contains, and all appropriate approval labels. Except for dust, fume, and mist respirators, the commercial designation of the respirator it contains shall be shown.

(b) Containers for single-use respirators may provide for storage of more than one respirator, however, such containers shall be designed and constructed to prevent contamination of respirators which are not removed, and to prevent damage to respirators during transit.

(c) Containers for gas masks combinations shall be designed and constructed to permit easy removal of the mask.

§ 84.1135 Half-mask facepieces, full facepieces, hoods, helmets, and mouthpieces; fit; minimum requirements.

(a) Half-mask facepieces and full facepieces shall be designed and constructed to fit persons with various facial shapes and sizes either:

(1) By providing more than one facepiece size; or

(2) By providing one facepiece size which will fit varying facial shapes and sizes.

(b) Full facepieces shall provide for optional use of corrective spectacles or lenses, which shall not reduce the respiratory protective qualities of the respirator.

(c) Hoods and helmets shall be designed and constructed to fit persons with various head sizes, provide for the optional use of corrective spectacles or lenses, and insure against any restriction of movement by the wearer.

(d) Mouthpieces shall be equipped with noseclips which are securely attached to the mouthpiece or respirator and provide an airtight seal.

(e) Facepieces, hoods, and helmets shall be designed to prevent eyepiece fogging.

(f) Half-mask facepieces shall not interfere with the fit of common industrial safety corrective spectacles, as determined by the Institute's facepiece tests in §§ 84.1141, 84.1142, and 84.1156(b).

§ 84.1136 Facepieces, hoods, and helmets; eyepieces; minimum requirements.

(a) Facepieces, hoods, and helmets shall be designed and constructed to provide adequate vision which is not distorted by the eyepieces.

(b) All eyepieces of gas masks combinations shall be designed and constructed to be impact and penetration resistant. Federal Specification, Mask, Air Line: and Respirator, Air Filtering, Industrial, GGG–M–125d, October 11, 1965, with interim amendment-1, July 30, 1969, is an example of an appropriate standard for determining impact and penetration resistance. Copies of GGG–M–125d may be obtained from the NIOSH, Certification and Quality Assurance Branch, 1095 Willowdale Road, Morgantown, WV 26505–2888.

§ 84.1137 Inhalation and exhalation valves; minimum requirements.

(a) Inhalation and exhalation valves shall be protected against distortion.

(b) Inhalation valves shall be designed and constructed and provided where necessary to prevent excessive exhaled air from adversely affecting filters, cartridges, and canisters, except where filters of dust, fume, and mist respirators are specifically designed to resist moisture as prescribed in § 84.1145.

(c) Exhalation valves shall be:

(1) Provided where necessary;

(2) Protected against damage and external influence; and

(3) Designed and constructed to prevent inward leakage of contaminated air.

§ 84.1138 Head harnesses; minimum requirements.

(a) All facepieces shall be equipped with head harnesses designed and constructed to provide adequate tension during use and an even distribution of pressure over the entire area in contact with the face.

(b) Facepiece head harnesses, except those employed on single-use dust, fume, and mist respirators, shall be adjustable and replaceable.

(c) Mouthpieces shall be equipped, where applicable, with adjustable and replaceable harnesses, designed and constructed to hold the mouthpiece in place.

§ 84.1139 Air velocity and noise levels; hoods and helmets; minimum requirements.

Noise levels generated by the respirator will be measured inside the hood or helmet at maximum airflow obtainable and shall not exceed 80 dBA.

§ 84.1140 Dust, fume, and mist respirators; performance requirements; general.

Dust, fume, and mist respirators and the individual components of each such device shall, as appropriate, meet the requirements for performance and protection specified in the tests described in §§ 84.1141 through 84.1152 and prescribed in Tables 12 and 13.

§ 84.1141 Isoamyl acetate tightness test; dust, fume, and mist respirators designed for respiratory protection against fumes of various metals having an air contamination level not less than 0.05 milligram per cubic meter; minimum requirements.

(a) The respirator will be modified in such a manner that all of the air that normally would be inhaled through the inhalation port(s) is drawn through an efficient activated charcoal-filled canister, or cartridge(s), without interference with the face-contacting portion of the facepiece.

(b) The modified respirator will be worn by persons for at least 2 minutes each in a test chamber containing 100 parts (by volume) of isoamyl-acetate vapor per million parts of air.

(c) The odor of isoamyl-acetate shall not be detected by the wearers of the modified respirator while in the test atmosphere.

§ 84.1142 Isoamyl acetate tightness test; respirators designed for respiratory protection against dusts, fumes, and mists having an air contamination level less than 0.05 milligram per cubic meter, or against radionuclides; minimum requirements.

(a) The applicant shall provide a charcoal-filled canister or cartridge of a size and resistance similar to the filter unit with connectors which can be attached to the facepiece in the same manner as the filter unit.

(b)(1) The canister or cartridge will be used in place of the filter unit, and persons will each wear a modified half-mask facepiece for 5 minutes in a test chamber containing 100 parts (by volume) of isoamyl-acetate vapor per million parts of air.

(2) The following work schedule will be performed by each wearer in the test chamber:

(i) Two minutes walking, nodding, and shaking head in normal movements; and

(ii) Three minutes exercising and running in place.

(3) The facepiece shall be capable of adjustment, according to the applicant's instructions, to each wearer's face, and the odor of isoamyl-acetate shall not be detectable by any wearer during the test.

(c) Where the respirator is equipped with a full facepiece, hood, helmet, or mouthpiece, the canister or cartridge will be used in place of the filter unit, and persons will each wear the modified respiratory-inlet covering for 5 minutes in a test chamber containing 1,000 parts (by volume) of isoamyl-acetate vapor per million parts of air, performing the work schedule specified in paragraph (b)(2) of this section.

§ 84.1143 Dust, fume, and mist air-purifying filter tests; performance requirements; general.

Dust, fume, and mist respirators will be tested in accordance with the schedule set forth in Table 13 of this subpart to determine their effectiveness as protection against the particulate hazards specified in Table 13.

§ 84.1144 Silica dust test for dust, fume, and mist respirators; single-use or reusable filters; minimum requirements.

(a) Three non-powered respirators with single-use filters will be tested for periods of 90 minutes each at a continuous airflow rate of 32 liters per minute.

(b) The relative humidity in the test chamber will be 20–80 percent, and the room temperature approximately 25° C.

(c) The test suspension in the chamber will not be less than 50 nor more than 60 milligrams of flint (99+ percent free silica) per cubic meter of air.

(d) The flint in suspension will be ground to pass 99+ percent through a 270-mesh sieve.

(e) The particle-size distribution of the test suspension will have a geometric mean of 0.4 to 0.6 micrometer, and the standard geometric deviation will not exceed 2.

(f) The total amount of unretained test suspension in samples taken during testing shall not exceed 1.5 milligrams for a non-powered air-purifying respirator.

(g) Three non-powered respirators with reusable filters will be tested and shall meet the requirements specified in paragraphs (a) through (f) of this section; each filter shall be tested three times: Once as received; once after cleaning; and once after recleaning. The applicant's instructions shall be followed for each cleaning.

§ 84.1145 Silica dust test; non-powered single-use dust respirators; minimum requirements.

(a) Three respirators will be tested.

(b) As described in § 84.1144, airflow will be cycled through the respirator by a breathing machine at the rate of 24 respirations per minute with a minute volume of 40 liters; a breathing machine cam with a work rate of 622 kg.-m.2/minute shall be used.

(c) Air exhaled through the respirator will be 35° ±2° C. with 94 ±3 percent relative humidity. #

(d) Air inhaled through the respirator will be sampled and analyzed for respirator leakage.

(e) The total amount of unretained test suspension, after drying, in samples taken during testing, shall not exceed 1.8 milligrams for any single test.

§ 84.1146 Lead fume test for dust, fume, and mist respirators; minimum requirements.

(a) Three non-powered respirators will be tested for a period of 312 minutes each at a continuous airflow rate of 32 liters per minute.

(b) The relative humidity in the test chamber will be 20–80 percent, and the room temperature approximately 25° C.

(c) The test suspension in the test chamber will not be less than 15 nor more than 20 milligrams of freshly generated lead-oxide fume, calculated as lead (Pb), per cubic meter of air.

(d) The fume will be generated by impinging an oxygen-gas flame on molten lead.

(e) Samples of the test suspension will be taken during each test period for analysis.

(f) The total amount of unretained test suspension in the samples taken during testing, which is analyzed and calculated as lead (Pb), shall not exceed 1.5 milligrams of lead for a non-powered air-purifying respirator.

§ 84.1147 Silica mist test for dust, fume, and mist respirators; minimum requirements.

(a) Three non-powered respirators will be tested for a period of 312 minutes each at a continuous airflow rate of 32 liters per minute.

(b) The room temperature in the test chamber will be approximately 25°C.

(c) The test suspension in the test chamber will not be less than 20 nor more than 25 milligrams of silica mist, weighed as silica dust, per cubic meter of air.

(d) Mist will be produced by spraying an aqueous suspension of flint (99+ percent free silica), and the flint shall be ground to pass 99+ percent through a 270-mesh sieve.

(e) Samples of the test suspension will be taken during each test period for analysis.

(f) The total amount of silica mist unretained in the samples taken during testing, weighed as silica dust, shall not exceed 2.5 milligrams for a non-powered air-purifying respirator.

§ 84.1148 Tests for respirators designed for respiratory protection against more than one type of dispersoid; minimum requirements.

Respirators designed as respiratory protection against more than one particulate hazard (dust, fume, or mist) shall comply with all the requirements of this part, with respect to each of the specific hazards involved.

§ 84.1149 Airflow resistance tests; all dust, fume, and mist respirators; minimum requirements.

(a) Resistance to airflow will be measured in the facepiece, mouthpiece, hood, or helmet of a dust, fume, or mist respirator mounted on a test fixture with air flowing at a continuous rate of 85 liters per minute, both before and after each test conducted in accordance with §§ 84.1144 through 84.1147.

(b) The maximum allowable resistance requirements for dust, fume, and mist respirators are as follows:

MAXIMUM RESISTANCE

[mm. water-column height]

Type of respirator	Initial inhalation	Final inhalation	Exhalation
Pneumoconiosis- and fibrosis-producing dusts, or dusts and mists	12	15	15
Dust, fume, and mist, with single-use filter	30	50	20
Dust, fume, and mist, with reusable filter	20	40	20
Radon daughter	18	[1] 25	15
Asbestos dust and mist	18	25	15

[1] Measured after silica dust test described in § 84.1144.

§ 84.1150 Exhalation valve leakage test; minimum requirements.

(a) Dry exhalation valves and valve seats will be subjected to a suction of 25 mm. water-column height while in a normal operating position.

(b) Leakage between the valve and valve seat shall not exceed 30 milliliters per minute.

§ 84.1151 DOP filter test; respirators designed as respiratory protection against dusts, fumes, and mists having an air contamination level less than 0.05 milligram per cubic meter and against radionuclides; minimum requirements.

(a) All single air-purifying respirator filter units will be tested in an atmosphere concentration of 100 micrograms of DOP per liter of air at continuous flow rates of 32 and 85 liters per minute for a period of 5 to 10 seconds.

(b) Where filters are to be used in pairs, the flow rates will be 16 and 42.5 liters per minute, respectively, through each filter.

(c) The filter will be mounted on a connector in the same manner as used on the respirator, and the total leakage for the connector and filter shall not exceed 0.03 percent of the ambient DOP concentration at either flow rate.

§ 84.1152 Silica dust loading test; respirators designed as protection against dusts, fumes, and mists having an air contamination level less than 0.05 milligram per cubic meter and against radionuclides; minimum requirements.

(a) Three non-powered respirators will be tested in accordance with the provisions of § 84.1144, or equivalent, and shall meet the minimum requirements of §§ 84.1144 and 84.1149.

(b) Three powered air-purifying respirators will be tested in accordance with the provisions of § 84.1144 except they will be tested for a period of 4 hours each at a flowrate not less than 115 liters per minute to tight-fitting facepieces, and not less than 170 liters per minute to loose-fitting hoods and helmets. The total amount of unretained test suspension in samples taken during testing shall not exceed 14.4 milligrams for a powered air-purifying respirator with tight-fitting facepiece, and 21.3 milligrams for a powered air-purifying respirator with loose-fitting hood or helmet. They shall meet the minimum requirements of § 84.1149.

§ 84.1153 Dust, fume, mist, and smoke tests; canister bench tests; gas masks canisters containing filters; minimum requirements.

(a) Gas mask canisters containing filters for protection against dusts, fumes, mists, and smokes in combination with gases, vapors, or gases and vapors, will be tested as prescribed in § 84.1140 except for the breathing resistance which will be in accordance with § 84.122.

(b) Gas mask canisters designed for protection against smokes will be tested in an atmospheric concentration of 100 micrograms of dioctyl phthalate per liter of air at continuous flow rates of 32 liters per minute and 85 liters per minute for a period of 5 to 10 seconds, and the DOP leakage through the canister shall not exceed 0.03 percent of the test concentration.

(c) Gas mask canisters containing filters for protection against dusts, fumes, mists, and smokes in combination with gases, vapors, or gases and vapors, will be tested as prescribed in § 84.126.

§ 84.1154 Canister and cartridge requirements.

(a) Where two or more canisters or cartridges are used in parallel, their resistance to airflow shall be essentially equal.

(b) The color and markings of all canisters and cartridges or labels shall conform with the requirements of the American National Standards Institute, American National Standard for Identification of Air-Purifying Respirator Canisters and Cartridges, ANSI K13.1–1973. ANSI K13.1 is incorporated by reference and has been approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from American National Standards Institute, Inc., 1430 Broadway, New York, NY 10018. Copies may be inspected at the NIOSH, Certification and Quality Assurance Branch, 1095 Willowdale Road, Morgantown, WV 26505–2888, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

§ 84.1155 Filters used with canisters and cartridges; location; replacement.

(a) Particulate matter filters used in conjunction with a canister or cartridge shall be located on the inlet side of the canister or cartridge.

(b) Filters shall be incorporated into or firmly attached to the canister or cartridge and each filter assembly shall, where applicable, be designed to permit its easy removal from and replacement on the canister or cartridge.

§ 84.1156 Pesticide respirators; performance requirements; general.

Pesticide respirators and the individual components of each such device shall, as appropriate, meet the following minimum requirements for performance and protection:

(a) *Breathing resistance test.* (1) Airflow resistance will be measured in the facepiece, mouthpiece, hood, or helmet of a pesticide respirator mounted on a test fixture with air flowing at a continuous rate of 85 liters per minute, both before and after each test conducted in accordance with paragraphs (c) and (f) of this section.

(2) The maximum allowable resistance requirements for pesticide respirators are as follows:

MAXIMUM RESISTANCE
[mm. water-column height]

Type of pesticide respirator	Inhalation		Exhalation
	Initial	Final [1]	
Front- or back-mounted gas mask	70	85	20
Chin-style gas mask	65	80	20
Powered air-purifying [2]	[2] 50	[2] 70	20
Chemical Cartridge	50	70	20

[1] Measured at end of the service life specified in Table 14 of this subpart.
[2] Resistance of filter(s), cartridge(s), and breathing tube(s) only with blower not operating.

(b) *Facepiece test.* (1) The complete pesticide respirator will be fitted to the faces of persons having varying facial shapes and sizes.

(2) Where the applicant specifies a facepiece size or sizes for his respirator together with the approximate measurements of faces they are designed to fit, the Institute will provide test subjects to suit such facial measurements.

(3) Any pesticide respirator part which must be removed to perform the facepiece fit test shall be replaceable without special tools and without disturbing facepiece fit.

(4) The facepiece or mouthpiece fit test using positive or negative pressure recommended by the applicant and described in his instructions will be used during each test.

(5)(i) Each wearer will enter a chamber containing 1,000 p.p.m. isoamyl-acetate vapor for a respirator equipped with a full facepiece, mouthpiece, hood, or helmet and 100 p.p.m. isoamyl-acetate vapor for a respirator equipped with a half-mask facepiece.

(ii) The facepiece, mouthpiece, hood, or helmet may be adjusted, if necessary, in the test chamber before starting the test.

(iii) Each wearer will remain in the chamber while performing the following activities:

(A) Two minutes, nodding and turning head;

(B) Two minutes, calisthenic arm movements;

(C) Two minutes, running in place; and

(D) Two minutes, pumping with a tire pump into a 28-liter (1 cubic foot) container.

(iv) Each wearer shall not detect the odor of isoamyl-acetate during the test.

(c) *Silica dust test.* Three completely assembled pesticide respirators will be tested with a mechanical-testing apparatus as follows:

(1) Temperature in the test chamber will be approximately 25° C.

(2) Continuous airflow through the respirator will be 32 liters per minute for front-mounted, back-mounted, and chin-style gas mask pesticide respirators and chemical cartridge pesticide respirators, and not less than 115 (4 cubic feet) liters per minute to tight-fitting facepieces and 170 liters (6 cubic feet) per minute to loose-fitting hoods and helmets of powered air-purifying respirators.

(3) The test aerosol will contain 50–60 milligrams of 99+ percent free silica per cubic meter of air.

(4) The particle size distribution of the test suspension will have a geometric mean diameter of 0.4 to 0.6 micrometer, with a standard geometric deviation less than 2.

(5) Front-mounted, back-mounted, and chin-style gas mask pesticide respirators and chemical cartridge pesticide respirators will be tested for 90 minutes and powered air-purifying respirators will be tested for 4 hours.

(d) *Lead fume test.* Three completely assembled pesticide respirators will be tested with a mechanical-testing apparatus as follows:

(1) Continuous airflow through the respirator will be 32 liters per minute for front-mounted, back-mounted, and chin-style gas mask pesticide respirators and chemical cartridge pesticide respirators and not less than 115 liters (4 cubic feet) per minute, for powered air-purifying respirators with tight-fitting facepieces, and not less than 170 liters (6 cubic feet) per minute for powered air-purifying respirators with loose-fitting hoods and helmets.

(2) The test aerosol will contain 15–20 milligrams of freshly generated lead-oxide fume, calculated as lead, per cubic meter of air.

(3) The fume will be generated by impinging an oxygen-gas flame on molten lead.

(4) Front-mounted, back-mounted, and chin-style gas mask pesticide respirators and chemical cartridge pesticide respirators will be tested for 90 minutes and powered air-purifying pesticide respirators will be tested for 4 hours.

(5) The total amount of unretained test suspension, which is analyzed and calculated as lead, shall not exceed:

(i) 0.43 milligram for any 90-minute test;

(ii) 4.8 milligrams for any 4-hour test made at 115 liters (4 cubic feet) per minute; or

(iii) 6.2 milligrams for any 4-hour test made at 170 liters (6 cubic feet) per minute.

(e) *Dioctyl-phthalate test.* (1) All canisters submitted for use with front-mounted and back-mounted gas mask pesticide respirators will be tested in an atmospheric concentration of 100 micrograms of dioctyl-phthalate per liter of air at continuous flow rates of 32 and 85 liters per minute for a test period of 5 to 10 seconds.

(2) The DOP leakage through the canister shall not exceed 0.03 percent of the ambient DOP concentration.

(f) *Bench tests for pesticide respirators.* (1)(i) Bench tests will be made on an apparatus that allows the test atmosphere at 50±5 percent relative humidity and at room temperature (25°±2.5° C.) to enter the canister or cartridge at predetermined concentrations and rates of flow, and that has a means for determining the test life of the canister or cartridge against carbon tetrachloride.

(ii) Canisters and cartridges will be tested as they are used on each pesticide respirator, either singly or in pairs.

(iii) Three canisters or cartridges or pairs of cartridges will be removed from containers and tested as received from the applicant.

(iv) Two canisters, cartridges, or pairs of cartridges will be equilibrated at room temperature by passing 25 percent relative humidity air through them at the following flow rates (expressed as liters per minute (l.p.m.)) for 6 hours:

Type of canister or cartridge	Airflow rate, l.p.m.
Air-purifying canister	64
Air-purifying cartridge	25
Powered air-purifying with tight-fitting facepiece	115
Powered air-purifying with loose-fitting hood or helmet	170

(v) Two canisters, cartridges, or pairs of cartridges will be equilibrated at room temperature by passing 85 percent relative humidity air through them at the flow rates stated in paragraph (f)(1)(iv) of this section for 6 hours.

(vi) The equilibrated canisters or cartridges will be resealed, kept in an upright position at room temperature, and tested within 18 hours.

(2) Canisters and cartridges tested in accordance with the provisions of this section shall meet the requirements specified in Table 14 of this subpart.

§ 84.1157 Chemical cartridge respirators with particulate filters; performance requirements; general.

Chemical cartridge respirators with particulate filters and the individual components of each such device shall, as appropriate, meet the following minimum requirements for performance and protection:

(a) *Breathing resistance test.* (1) Resistance to airflow will be measured in the facepiece, mouthpiece, hood, or helmet of a chemical cartridge respirator mounted on a test fixture with air flowing at a continuous rate of 85 liters per minute, both before and after each test conducted in accordance with paragraphs (d) through (f) of this section.

(2) The maximum allowable resistance requirements for chemical cartridge respirators are as follows:

MAXIMUM RESISTANCE
[mm. water-column height]

Type of chemical cartridge respirator	Inhalation		Exhalation
	Initial	Final [1]	
For gases, vapors, or gases and vapors, and dusts, fumes, and mists	50	70	20
For gases, vapors, or gases and vapors, and mists of paints, lacquers, and enamels	50	70	20

[1] Measured at end of service life specified in Table 11 in subpart L of this part.

(b) *Facepiece test.* The facepiece test will be conducted as specified in § 84.205.

(c) *Lacquer and enamel mist tests; general.* (1) Three respirators with cartridges containing or having attached to them, filters for protection against mists of paints, lacquers, and enamels shall be tested in accordance with the provisions of paragraph (f) of this section.

(2) In addition to the test requirements set forth in paragraph (c)(1) of this section, three such respirators will be tested against each aerosol in accordance with the provisions of paragraphs (d) and (e) of this section.

(d) *Lacquer mist test.* (1) Temperature in the test chamber will be approximately 25° C.

(2) Continuous airflow through the respirator will be 32 liters per minute for air-purifying respirators, and not less than 115 liters per minute to tight fitting facepieces and 170 liters per minute to

loose-fitting hoods and helmets of powered air-purifying respirators.

(3) Airflow through the chamber will be 20–25 air changes per minute.

(4) The atomizer employed will be a No. 64–5 nozzle with setup 3, or equivalent, operating at 69 kN/m.^{2} (10 pounds per square inch gage).

(5) The test aerosol will be prepared by atomizing a mixture of one volume of clear cellulose nitrate lacquer and one volume of lacquer thinner. The lacquer described in Federal Specification TT–L–31, October 7, 1953, is an example of an acceptable lacquer. Copies of TT–L–31 may be inspected or obtained from the NIOSH, Certification and Quality Assurance Branch, 1095 Willowdale Road, Morgantown, WV 26505–2888.

(6) The concentration of cellulose nitrate in the test aerosol will be 95–125 milligrams per cubic meter.

(7) The test aerosol will be drawn to each respirator for a total of 156 minutes for air-purifying respirators and 240 minutes for powered air-purifying respirators.

(8) The total amount of unretained mist in the samples taken during testing, weighed as cellulose nitrate, shall not exceed 5 milligrams for an air-purifying respirator, 28 milligrams for a powered air-purifying respirator with tight-fitting facepiece, and 41 milligrams for a powered air-purifying respirator with loose-fitting hood or helmet.

(e) *Enamel mist test.* (1) Temperature in the test chamber will be approximately 25° C.

(2) Continuous airflow through the respirator will be 32 liters per minute for air-purifying respirators, and not less than 115 liters per minute to tight-fitting facepieces and 170 liters per minute to loose-fitting hoods and helmets of powered air-purifying respirators.

(3) Airflow through the chamber will be 20–25 air changes per minute.

(4) The atomizer employed will be a No. 64 nozzle with setup 1A, or equivalent, operating at 69 kN/m.^{2} (10 pounds per square inch gage).

(5) The test aerosol will be prepared by atomizing a mixture of 1 volume of white enamel and 1 volume of turpentine. The enamel described in Federal Specification TT-E–489b, May 12, 1953, with amendment-1 of 9 November 1955 is an example of an acceptable enamel. Copies of TT-E–489b may be inspected or obtained from the NIOSH, Certification and Quality Assurance Branch, 1095 Willowdale Road, Morgantown, WV 26505–2888.

(6) The concentration of pigment in the test aerosol, weighed as ash, will be 95–125 milligrams per cubic meter.

(7) The test aerosol will be drawn to each respirator for a total of 156 minutes for air-purifying respirators and 240 minutes for power air-purifying respirators.

(8) The total amount of unretained mist in the samples taken during testing, weighed as ash, shall not exceed 1.5 milligrams for any air-purifying respirator, 8.3 milligrams for a powered air-purifying respirator with tight-fitting facepiece, and 12.3 milligrams for a powered air-purifying respirator with loose-fitting hood or helmet.

(f) *Bench tests; gas and vapor tests.* (1) Bench tests will be made in accordance with § 84.207 and tested cartridges shall meet the minimum requirements set forth in Table 11 of subpart L of this part. Cartridges will be equilibrated in accordance with paragraph (f)(2) of this section.

(2)(i) Two powered air-purifying cartridges or pairs of cartridges will be equilibrated at room temperature by passing 25 percent relative humidity air through them at the following flow rates (expressed in liters per minute (l.p.m.)) for 6 hours:

Type of cartridge	Airflow rate, l.p.m.
Powered air purifying with tight-fitting facepiece	115
Powered air purifying with loose-fitting hood or helmet	170

(ii) Two powered air-purifying cartridges or pairs of cartridges will be equilibrated by passing 85 percent relative humidity air through them at the flow rates stated in paragraph (f)(2)(i) of this section.

(iii) All cartridges will be resealed, kept in an upright position, at room temperatures, and tested within 18 hours.

§ 84.1158 Dust, fume, and mist tests; respirators with filters; minimum requirements; general.

(a) Three respirators with cartridges containing, or having attached to them, filters for protection against dusts, fumes, and mists, except the mists of paints, lacquers, and enamels, will be tested in accordance with the provisions of § 84.1157(f).

(b) In addition to the test requirements set forth in paragraph (a) of this section, three such respirators will be tested, as appropriate, in accordance with the provisions of §§ 84.1141 through 84.1152; however, the maximum allowable resistance of complete dust, fume, and mist, and gas, vapor, or gas and vapor chemical cartridge respirators shall not exceed the maximum allowable limits set forth in § 84.1157(a)(2).

Tables to Subpart KK of Part 84

TABLE 12.—FACEPIECE TEST REQUIREMENTS

[42 CFR Part 84, Subpart KK]

Respirator types	Pressure tightness test [1]	Isoamyl acetate test	
		84.1141	84.1142
Dusts: Air Contamination Level not less than 0.05 mg/M^3 or 2 mppcf	X		
Fumes: Air Contamination Level not less than 0.05 mg/M^3	X	X	
Mists: Air Contamination Level not less than 0.05 mg/M^3 or 2 mppcf	X		
Dusts, Fumes, and Mists: Air Contamination Level less than 0.05 mg/M^3 or 2 mppcf, and radionuclides	X		X
Radon daughters	X	X	
Asbestos-containing dusts and mists	X		

[1] Test is required only where applicable.

TABLE 13.—AIR-PURIFYING AND POWERED AIR-PURIFYING RESPIRATOR FILTER TESTS REQUIRED FOR APPROVAL

[42 CFR Part 84, Subpart KK]

Respirator types	Silica dust tests			Lead fume test 84.1146	Silica mist test 84.1147	DOP test 84.1151
	84.1144	84.1145	84.1152			
Dusts: Air Contamination Level not less than 0.05 mg/M^3 or 2 mppcf	X					
Fumes: Air Contamination Level not less than 0.05 mg/M^3				X		
Mists: Air Contamination Level not less than 0.05 mg/M^3 or 2 mppcf					X	
Dusts, Fumes, and Mists: Air Contamination Level less than 0.05 mg/M^3 or 2 mppcf, and radionuclides			X			X
Radon daughters	[1] X				[2] X	
Asbestos-containing dusts and mists	[2] X				[3] X	
Single use dust and mist respirators		[3] X			[3] X	

[1] For resistance only.
[2] For penetration only.
[3] Test required only where applicable.

TABLE 14.—CARBON TETRACHLORIDE BENCH TESTS AND REQUIREMENTS FOR CANISTERS AND CARTRIDGES

[42 CFR part 84, Subpart KK]

Type of pesticide respirator	Test concentration p.p.m. CCl_4	Flow rate l.p.m.	Number of tests	Minimum life minutes [1]
Chest-mounted or back-mounted gas mask (as received)	20,000	64	3	12
Chest-mounted or back-mounted gas mask (equilibrated)	20,000	32	4	12
Chin-style gas mask (as received)	5,000	64	3	12
Chin-style gas mask (equilibrated)	5,000	32	4	12
Chemical Cartridge respirator (as received)	1,000	64	3	50
Chemical cartridge respirator (equilibrated)	1,000	32	4	50
Powered air-purifying respirator (tight-fitting facepiece, as received)	1,000	[2] 115	3	50
Powered air-purifying respirator (tight-fitting facepiece, equilibrated)	1,000	[2] 115	4	25
Powered air-purifying respirator (loose-fitting hood or helmet, as received)	1,000	[3] 170	3	50
Powered air-purifying respirator (loose-fitting hood or helmet, equilibrated)	1,000	[3] 170	4	25

[1] Minimum life will be determined at 5 p.p.m. leakage.
[2] The flow rate shall be the effective flow rate of the device, but shall be not less than 115 l.p.m.
[3] The flow rate shall be the effective flow rate of the device, but shall be not less than 170 l.p.m.

Note: The following appendix will not appear in the Code of Federal Regulations.

APPENDIX A TO PREAMBLE—COMPARISON OF FINAL RULE TO PROPOSED RULE

Proposed section	Final section	Change from proposal to final
84.1	84.1	No change from proposal.
84.2	84.2	No change from proposal.
84.3		Incorporation by reference section is not included in the final rule because of format requirements of the **Federal Register**.
84.4	84.3	No change from proposal.
84.10	84.10	No change from proposal.
84.11	84.11	No change from proposal.
84.12	84.12	No change from proposal.
84.20	84.20	No change from proposal.
84.21	84.21	No change from proposal.
84.22	84.22	No change from proposal.
84.30	84.30	No change from proposal.
84.31	84.31	No change from proposal.
84.32	84.32	No change from proposal.
84.33	84.33	No change from proposal.
84.34	84.34	No change from proposal.
84.35	84.35	No change from proposal.
84.36	84.36	No change from proposal.
84.40	84.40	No change from proposal.
84.41	84.41	Changed from proposal to final rule for new incorporation by reference wording.
84.42	84.42	No change from proposal.
84.43	84.43	No change from proposal.
84.50	84.50	No change from proposal.
84.51	84.51	No change from proposal.
84.52	84.52	No change from proposal.

APPENDIX A TO PREAMBLE—COMPARISON OF FINAL RULE TO PROPOSED RULE—Continued

Proposed section	Final section	Change from proposal to final
84.53	84.53	No change from proposal.
84.60	84.60	No change from proposal.
84.61	84.61	No change from proposal.
84.62	84.62	No change from proposal.
84.63	84.63	No change from proposal.
84.64	84.64	No change from proposal.
84.65	84.65	No change from proposal.
84.66	84.66	No change from proposal.
84.70	84.70	No change from proposal.
84.71	84.71	No change from proposal.
84.72	84.72	No change from proposal.
84.73	84.73	No change from proposal.
84.74	84.74	No change from proposal.
84.75	84.75	No change from proposal.
84.76	84.76	Changed from proposal to final rule for new incorporation by reference wording.
84.77	84.77	No change from proposal.
84.78	84.78	No change from proposal.
84.79	84.79	Changed from proposal to final rule for new incorporation by reference wording.
84.80	84.80	No change from proposal.
84.81	84.81	Changed from proposal to final rule for new incorporation by reference wording.
84.82	84.82	No change from proposal.
84.83	84.83	No change from proposal.
84.84	84.84	No change from proposal.
84.85	84.85	No change from proposal.
84.86	84.86	No change from proposal.
84.87	84.87	No change from proposal.
84.88	84.88	Changed from proposal to final rule for new incorporation by reference wording.
84.89	84.89	No change from proposal.
84.90	84.90	No change from proposal.
84.91	84.91	No change from proposal.
84.92	84.92	No change from proposal.
84.93	84.93	No change from proposal.
84.94	84.94	No change from proposal.
84.95	84.95	No change from proposal.
84.96	84.96	No change from proposal.
84.97	84.97	Changed from proposal to final rule for new incorporation by reference wording.
84.98	84.98	No change from proposal.
84.99	84.99	No change from proposal.
84.100	84.100	No change from proposal.
84.101	84.101	No change from proposal.
84.102	84.102	No change from proposal.
84.103	84.103	No change from proposal.
84.104	84.104	No change from proposal.
84.110	84.110	No change from proposal.
84.111	84.111	No change from proposal.
84.112	84.112	No change from proposal.
84.113	84.113	Changed from proposal to final rule for new incorporation by reference wording.
84.114	84.114	No change from proposal.
84.115	84.115	No change from proposal.
84.116	84.116	No change from proposal.
84.117	84.117	No change from proposal.
84.118	84.118	No change from proposal.
84.119	84.119	Changed from proposal to final rule for new incorporation by reference wording.
84.120	84.120	No change from proposal.
84.121	84.121	No change from proposal.
84.122	84.122	No change from proposal.
84.123	84.123	No change from proposal.
84.124	84.124	No change from proposal.
84.125	84.125	No change from proposal.
84.126	84.126	No change from proposal.
84.130	84.130	No change from proposal.
84.131	84.131	No change from proposal.
84.132	84.132	No change from proposal.
84.133	84.133	No change from proposal.
84.134	84.134	No change from proposal.
84.135	84.135	No change from proposal.
84.136	84.136	Changed from proposal to final rule for new incorporation by reference wording.
84.137	84.137	No change from proposal.
84.138	84.138	No change from proposal.
84.139	84.139	No change from proposal.
84.140	84.140	No change from proposal.

APPENDIX A TO PREAMBLE—COMPARISON OF FINAL RULE TO PROPOSED RULE—Continued

Proposed section	Final section	Change from proposal to final
84.141	84.141	Changed from proposal to final rule for new incorporation by reference wording.
84.142	84.142	No change from proposal.
84.143	84.143	No change from proposal.
84.144	84.144	No change from proposal.
84.145	84.145	No change from proposal.
84.146	84.146	No change from proposal.
84.147	84.147	No change from proposal.
84.148	84.148	No change from proposal.
84.149	84.159	No change from proposal.
84.150	84.150	No change from proposal.
84.151	84.151	No change from proposal.
84.152	84.152	No change from proposal.
84.153	84.153	No change from proposal.
84.154	84.154	No change from proposal.
84.155	84.155	No change from proposal.
84.156	84.156	No change from proposal.
84.157	84.157	No change from proposal.
84.158	84.158	No change from proposal.
84.159	84.159	No change from proposal.
84.160	84.160	No change from proposal.
84.161	84.161	No change from proposal.
84.162	84.162	No change from proposal.
84.163	84.163	No change from proposal.
84.170	84.170	1. Changed to limit requirements to non-powered air-purifying respirators. Added description of non-powered air-purifying respirator. 2. Changed classification from "solid" and "liquid and solid" to "N-series, R-series, and P-series." 3. Changed efficiency level designations from A (99.97%), B(99%), and C (95%) to N100, R100, P100 (99.97%), N99, R99, P99(99%), N95, R95, and P95(95%).
84.171	84.171	Changed to limit requirements to non-powered air-purifying respirators.
84.172	84.172	No change from proposal.
84.173	84.173	No change from proposal.
84.174	84.174	No change from proposal.
84.175	84.175	No change from proposal.
84.176	84.176	No change from proposal.
84.177	84.177	No change from proposal.
84.178	84.178	No change from proposal.
84.179		Air velocity and noise levels for hoods and helmets is not included in final rule because these are applicable to powered air-purifying respirators only.
84.180	84.179	1. Changed to limit requirements to non-powered air-purifying respirators. 2. Changed classification from "solid" and "liquid and solid" to "N-series, R-series, and P-series." 3. Changed efficiency level designations from A (99.97%), B(99%), and C (95%) to N100, R100, P100 (99.97%), N99, R99, P99(99%), N95, R95, and P95(95%). 4. Changed labelling from S and L&S (e.g., Type A/L&S) to series and efficiency level (e.g., P100 particulate filter (99.97% filter efficiency level)).
84.181		Isoamyl acetate tightness test for particulate respirators with filters not intended to be replaced is not included in the final rule to avoid confusion and complications in the certification process.
84.182		Isoamyl acetate tightness test for respirators with replaceable filters is not included in the final rule to avoid confusion and complications in the certification process.
84.183	84.180	1. Changed to increase initial inhalation resistance from 30 mm water-column height to 35 mm. 2. Changed to increase initial exhalation resistance from 20 mm water-column height to 25 mm.
84.184	84.181	1. Changed to limit requirements to non-powered air-purifying respirators. 2. Changed test terminology from filter penetration to filter efficiency. 3. Changed to reduce the number of tested units from 30 to 20. 4. Changed the test acceptance criterion from a statistical treatment of results to a pass/fail criterion. 5. Changed the tolerances for measurements to address testing consistency concerns. 6. Changed aerosol loading of tested filters to add the P-series test until there is no further decrease in efficiency. 7. Changed the description of dioctyl phthalate (DOP) aerosol to add a purity requirement. 8. Changed to require only N-series filters (formerly solid only) to be preconditioned before testing. The proposal required precondition of all filters before testing.
84.185		Powered particulate respirator flow requirements are not included in the final rule.
84.186	84.182	No change from proposal.
84.190	84.190	No change from proposal.
84.191	84.191	No change from proposal.
84.192	84.192	No change from proposal.
84.193	84.193	Changed from proposal to final rule for new incorporation by reference wording.
84.194	84.194	No change from proposal.
84.195	84.195	No change from proposal.
84.196	84.196	No change from proposal.
84.197	84.197	No change from proposal.
84.198	84.198	No change from proposal.
84.199	84.199	No change from proposal.

APPENDIX A TO PREAMBLE—COMPARISON OF FINAL RULE TO PROPOSED RULE—Continued

Proposed section	Final section	Change from proposal to final
84.200	84.200	No change from proposal.
84.201	84.201	No change from proposal.
84.202	84.202	No change from proposal.
84.203	84.203	No change from proposal.
84.204	84.204	No change from proposal.
84.205	84.205	No change from proposal.
84.206	84.206	No change from proposal.
84.207	84.207	No change from proposal.
84.250	84.250	No change from proposal.
84.251	84.251	No change from proposal.
84.252	84.252	No change from proposal.
84.253	84.253	No change from proposal.
84.254	84.254	No change from proposal.
84.255	84.255	No change from proposal.
84.256	84.256	No change from proposal.
84.257	84.257	No change from proposal.
84.258	84.258	No change from proposal.

Subpart KK (Dust, Fume, and Mist; Pesticide; Paint Spray; Powered Air-Purifying High Efficiency Respirators and Combination Gas Masks) has been added to the final rule to allow needed applications for extensions of approvals for dust/fume/mist respirators previously approved under 30 CFR Part 11. This subpart also includes the requirements for powered air-purifying respirators.

84.1100 Scope and effective dates.
84.1101 Definitions.
84.1102 Examination, inspection and testing of complete respirator assemblies; fees.
84.1103 Approval labels and markings; approval of contents; use.
84.1130 Respirators; description.
84.1131 Respirators; required components.
84.1132 Breathing tubes; minimum requirements.
84.1133 Harnesses; installation and construction; minimum requirements.
84.1134 Respirator containers; minimum requirements.
84.1135 Half-mask facepieces, full facepieces, hoods, helmets, and mouthpieces; fit; minimum requirements.
84.1136 Facepieces, hoods, and helmets; eyepieces; minimum requirements.
84.1137 Inhalation and exhalation valves; minimum requirements.
84.1138 Head harnesses; minimum requirements.
84.1139 Air velocity and noise levels; hoods and helmets; minimum requirements.
84.1140 Dust, fume, and mist respirators; performance requirements; general.
84.1141 Isoamyl acetate tightness test; dust, fume, and mist respirators designed for respiratory protection against fumes of various metals having an air contamination level not less than 0.05 milligram per cubic meter; minimum requirements.
84.1142 Isoamyl acetate tightness test; respirators designed for respiratory protection against dusts, fumes, and mists having an air contamination level less than 0.05 milligram per cubic meter, or against radionuclides; minimum requirements.
84.1143 Dust, fume, and mist air-purifying filter tests; performance requirements; general.
84.1144 Silica dust test for dust, fume, and mist respirators; single-use or reusable filters; minimum requirements.
84.1145 Silica dust test; non-powered single-use dust respirators; minimum requirements.
84.1146 Lead fume test for dust, fume, and mist respirators; minimum requirements.
84.1147 Silica mist test for dust, fume, and mist respirators; minimum requirements.
84.1148 Tests for respirators designed for respiratory protection against more than one type of dispersoid; minimum requirements.
84.1149 Airflow resistance tests; all dust, fume, and mist respirators; minimum requirements.
84.1150 Exhalation valve leakage test; minimum requirements.
84.1151 DOP filter test; respirators designed as respiratory protection against dusts, fumes, and mists having an air contamination level less than 0.05 milligram per cubic meter and against radionuclides; minimum requirements.
84.1152 Silica dust loading test; respirators designed as protection against dusts, fumes, and mists having an air contamination level less than 0.05 milligram per cubic meter and against radionuclides; minimum requirements.
84.1153 Dust, fume, mist, and smoke tests; canister bench tests; gas mask canisters containing filters; minimum requirements.
84.1154 Canister and cartridge requirements.
84.1155 Filters used with canisters and cartridges; location; placement.
84.1156 Pesticide respirators; performance requirements; general.
84.1157 Chemical cartridge respirators with particulate filters; performance requirements; general.
84.1158 Dust, fume, and mist tests; respirators with filters; minimum requirements; general.

[FR Doc. 95–13287 Filed 6–2–95; 12:10 pm]
BILLING CODE 4160–19–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 11, 49, 56, 57, 58, 70, 72, 75

RIN 1219–AA85

Respiratory Protective Devices

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Final rule.

SUMMARY: This final rule, in conjunction with the National Institute for Occupational Safety and Health (NIOSH) final rule published concurrently in this **Federal Register**, transfers to NIOSH existing Mine Safety and Health Administration (MSHA) regulations pertaining to the testing, performance, and joint MSHA-NIOSH approval of respirators under the Mine Act. MSHA retains existing provisions related to the selection, use, and maintenance of respirators for coal and metal and nonmetal mines. Under the NIOSH rule, MSHA retains joint approval responsibility for certain mining-related respiratory protective devices. MSHA's transfer of the respirator approval program to NIOSH will more accurately reflect the respective roles of the two agencies in the approval of respirators. A memorandum of understanding (MOU) between MSHA and NIOSH delineates the roles of both agencies in the respirator approval program. This MOU is published elsewhere in this separate part of the **Federal Register**. MSHA's final rule will not affect the compliance responsibilities of mine operators.

EFFECTIVE DATE: This final rule is effective on July 10, 1995. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of July 10, 1995.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA, 703–235–1910.

SUPPLEMENTARY INFORMATION:

I. Background

Until 1972, the U.S. Bureau of Mines (BOM) was solely responsible for testing and approving respirators. In 1972, BOM and NIOSH jointly published 30 CFR part 11 which replaced BOM's rules and procedures and delineated the responsibilities of the two agencies. Under these regulations, BOM evaluated respirator performance and NIOSH administered the quality control provisions. BOM also tested the intrinsic safety of electrical components of respirators intended for use in potentially explosive atmospheres in underground mines under the requirements of 30 CFR part 18.

A memorandum of understanding (MOU) between the two agencies, dated May 30, 1972, refined their respective roles. In 1973, 30 CFR part 11 was amended and NIOSH acquired primary responsibility for performance testing of respirators, although all approvals continued to be issued jointly. BOM retained its responsibility for testing the intrinsic safety of electrical components of respirators intended for use in underground gassy mines.

In 1974, the Mining Enforcement and Safety Administration (MESA), MSHA's predecessor agency, was created and BOM's responsibilities under 30 CFR were transferred to that agency. MESA continued to test the electrical components of certain respirators for intrinsic safety under 30 CFR part 18 and issue supplemental approvals permitting these components to be used in underground gassy mines.

When it was created in 1978, MSHA took over the responsibilities for respirator testing and approval which previously had been conducted by MESA. In addition, MSHA currently reviews applications for respirator approvals and has conducted some product evaluations, laboratory testing, and quality assurance product audits for certain respirators. The testing and approval activities specified by 30 CFR part 11 continue to be conducted primarily by NIOSH.

II. Discussion of Final Rule

A. General Discussion

MSHA is transferring the requirements for approval of respirators from 30 CFR part 11 to NIOSH, which is publishing the requirements elsewhere in this separate part of the **Federal Register** as a new 42 CFR part 84. To effectuate the transfer, MSHA is publishing this final rule removing 30 CFR part 11. NIOSH also is upgrading the testing requirements for particulate filters, which improve the current approach to evaluating the effectiveness of an air-purifying respirator's filter to remove toxic particulates from the ambient air. The new testing requirements for particulate filters update existing provisions to be consistent with two decades of advances in respiratory protection technology.

Under 42 CFR part 84, MSHA and NIOSH will continue to review and jointly approve respirators for mine rescue and other mine emergencies and their associated service-life plans and users manuals. These respirators include devices such as filter self-rescuers (FSR), self-contained self-rescuers (SCSR), mine rescue apparatus (long duration, closed and open circuit devices), and other self-contained breathing apparatus (SCBA). Retention of joint approval under the NIOSH final rule preserves MSHA's role in the approval of certain respirators whose use in mines is an important part of safeguarding the health and safety of miners. In addition, MSHA will continue to test the intrinsic safety of electrical components of respirators to be used in underground coal mines and underground gassy metal and nonmetal mines and issue a separate MSHA approval under 30 CFR part 18 for such respirator components.

To facilitate implementing this rule, NIOSH and MSHA have developed a new MOU which delineates the roles of both agencies in the respirator approval program. For example, the MOU establishes procedures to be followed by both agencies for joint approval of respirators used for mine rescue and other mine emergencies; it establishes guidelines for consultation and exchange of information between MSHA and NIOSH with respect to issues dealing with respirator approval and related matters; and it provides that NIOSH and MSHA notify each other immediately of field complaints and identified deficiencies concerning approved respirators.

MSHA and NIOSH have coordinated their rulemaking activities to ensure that the level of protection provided miners and other affected workers by the existing standards will not be lessened. In particular, all technical data and commenter information have been shared by the respective agencies.

B. Comments to MSHA's Proposed Rule

MSHA received few comments from the mining community and the public. Most comments were addressed to NIOSH. Generally, comments to MSHA supported the transfer of the respirator approval program to NIOSH. One commenter explained that the transfer and redesignation would enhance accountability for regulatory actions, improve and expedite the approval process, and consolidate responsibility in one agency. This same commenter requested an opportunity to participate in the development of the MOU to ensure that MSHA retains a strong role with regard to mine-specific respiratory devices because of MSHA's expertise in the field. A commenter to NIOSH also expressed concern that MSHA's role would be diminished under the transfer and asked to participate in the development of the MOU.

MSHA and NIOSH have concluded that the MOU is most appropriately developed by the two agencies because it is an administrative tool to delineate their respective roles. The MOU does not impose any additional obligations on the mining industry. Recognizing the concerns of commenters, however, the MOU carefully details how MSHA will continue to have a strong role with respect to respiratory protective devices used in the mining industry.

A commenter requested that MSHA incorporate by reference the most recent American National Standards Institute (ANSI) standard for respiratory protective devices, "ANSI Z88.2–1992," in the recodification of §§ 11.2–1 and 11.4 which incorporate by reference ANSI Z88.2–1969 "Practices for Respiratory Protection." ANSI Z88.2 addresses respiratory protection programs which include the selection, fit, use, and maintenance of respirators. The 1992 ANSI standard differs substantively from the 1969 ANSI standard. Incorporating by reference the 1992 ANSI standard is beyond the scope of this rulemaking which addresses the administrative transfer of the respirator approval program to NIOSH and, as discussed below, the nonsubstantive recodification of §§ 11.2–1 and 11.4. Although ANSI Z88.2–1969 is retained in this final rule, MSHA currently is addressing respiratory protection programs in its air quality rulemaking.

C. Other Sections Affected

The final rule removes 30 CFR part 11; however, it retains those provisions which relate to the selection, use, and maintenance of respirators. Section 11.2(a) requires the use of approved respirators and the maintenance of such

respirators in an approved condition. As discussed previously, §§ 11.2–1 and 11.4 require the selection, fitting, use, and maintenance of respirators in accordance with ANSI Z88.2. Because these provisions are use-related, as opposed to approval-related, MSHA addresses them in separate standards for the use of respirators. MSHA had proposed that these provisions be recodified in 30 CFR parts 70 and 71. Instead, MSHA is recodifying these provisions in 30 CFR part 72, "Health Standards for Coal Mines" to ease understanding and eliminate duplication. This final rule does not change the requirements for metal and nonmetal mines in 30 CFR 56/57.5005 which already reference ANSI Z88.2–1969.

This final rule makes conforming, nonsubstantive editorial and nomenclature revisions to standards in title 30 that reference the use of respirators approved under 30 CFR part 11 to reflect the transfer of those standards to 42 CFR part 84. These revisions do not change the compliance responsibility of mine operators who continue to be required to provide miners with "approved" respirators.

D. Grandfathering of Respirators Approved Under 30 CFR Part 11

Approvals issued under 30 CFR part 11 for all respirators, except particulate filter respirators, will be unaffected by 42 CFR part 84. For 3 years from July 10, 1995, NIOSH will continue to authorize manufacturers to sell, as MSHA–NIOSH "approved" devices, particulate filter respirators which had been approved under 30 CFR part 11. This will allow adequate time for manufacturers to convert to production of respirators meeting the new particulate filter requirements of 42 CFR part 84. Until supplies of particulate filter respirators which had been approved under 30 CFR part 11 are depleted, MSHA will allow their use as "approved" devices.

As discussed in the preamble to 42 CFR part 84, applications for approval or extensions of approval received prior to the effective date of 42 CFR part 84 will be processed under the requirements of 30 CFR part 11. Applications for approval or extensions of approval received on or after the effective date of 42 CFR part 84 will be processed under the provisions of 42 CFR part 84. For additional information on the transition from 30 CFR part 11 to 42 CFR part 84, see the NIOSH final rule published elsewhere in this separate part of the **Federal Register**.

The new 42 CFR part 84 does not include the provisions of 30 CFR 11.2(b) which allowed gas masks approved under the former BOM Schedule 14F (dated April 23, 1955) to continue to be accepted as "approved" devices for use in hazardous atmospheres. MSHA's experience indicates that few of these 14F gas masks currently are sold or used. As indicated in the preamble to 42 CFR part 84, published elsewhere in this separate part of the **Federal Register**, the approval records on these BOM-approved respirators no longer exist and, therefore, NIOSH has no way of monitoring their production to ensure that they continue to meet the approved design. Thus, the removal of the provisions in 30 CFR 11.2(b) removes the authority to continue marketing these respirators as "approved" devices.

III. Executive Order 12866 and Regulatory Flexibility Act

This is not a significant rule under Executive Order 12866. In addition, this rule does not have a significant economic impact on a substantial number of small entities as it only removes the regulations in 30 CFR part 11; retains certain responsibilities for the use of respirators in mining; and makes nonsubstantive revisions. The Agency, therefore, has not prepared a regulatory flexibility analysis.

IV. Paperwork Reduction Act

The recordkeeping and reporting requirements in 30 CFR part 11 have been transferred to 42 CFR part 84.

List of Subjects

30 CFR Part 11

Administrative practice and procedure, Mine safety and health, Pesticides and pests, Reporting and recordkeeping requirements.

30 CFR Parts 49, 56, 57, 58, 70, and 75

Mine safety and health, Personal protective equipment, Reporting and recordkeeping requirements, Respirators.

30 CFR Part 72

Coal, Incorporation by reference, Mine safety and health, Personal protective equipment, Respirators.

For the reasons set out in the preamble and under the authority of 30 U.S.C. 957, 30 CFR chapter I is amended as follows.

§§ 11.2–1 and 11.4 [Redesignated as § 72.710]

1. Sections 11.2–1 and 11.4 are redesignated as § 72.710, paragraphs (a) and (b) respectively, in subpart E of part 72.

PART 11—[REMOVED]

2. Part 11 is removed.

PART 49—[AMENDED]

3. The authority citation for part 49 is revised to read as follows:

Authority: 30 U.S.C. 811, 825(e), 957.

4. Section 49.6 is amended by revising paragraph (a)(1) to read as follows:

§ 49.6 Equipment and maintenance requirements.

(a) * * *

(1) Twelve self-contained oxygen breathing apparatus, each with a minimum of 2 hours capacity (approved by MSHA and NIOSH under 42 CFR part 84, subpart H), and any necessary equipment for testing such breathing apparatus;

* * * * *

PART 56—[AMENDED]

5. The authority citation for part 56 is revised to read as follows:

Authority: 30 U.S.C. 811, 957, 961.

6. Section 56.5005 is amended by revising paragraph (a) to read as follows:

§ 56.5005 Control of exposure to airborne contaminants.

* * * * *

(a) Respirators approved by NIOSH under 42 CFR part 84 which are applicable and suitable for the purpose intended shall be furnished and miners shall use the protective equipment in accordance with training and instruction.

* * * * *

PART 57—[AMENDED]

7. The authority citation for part 57 is revised to read as follows:

Authority: 30 U.S.C. 811, 957, 961.

8. Section 57.5005 is amended by revising paragraph (a) to read as follows:

§ 57.5005 Control of exposure to airborne contaminants.

* * * * *

(a) Respirators approved by NIOSH under 42 CFR part 84 which are applicable and suitable for the purpose intended shall be furnished and miners shall use the protective equipment in accordance with training and instruction.

* * * * *

9. Section 57.5044 is revised to read as follows:

§ 57.5044 Respirators.

In environments exceeding 1.0 WL, miners shall wear respirators approved by NIOSH for radon daughters prior to July 10, 1995 or under the equivalent section of 42 CFR part 84 and such respirator use shall be in compliance with § 57.5005.

10. Section 57.15030 is revised to read as follows:

§ 57.15030 Provision and maintenance of self-rescue devices.

A 1-hour self-rescue device approved by MSHA and NIOSH under 42 CFR part 84 shall be made available by the operator to all personnel underground. Each operator shall maintain self-rescue devices in good condition.

11. Section 57.22315 is amended by revising the second sentence to read as follows:

§ 57.22315 Self-contained breathing apparatus (V–A mines).

* * * Such apparatus shall be approved by MSHA and NIOSH under 42 CFR part 84 and shall be maintained in accordance with manufacturers' specifications. * * *

PART 58—[AMENDED]

12. The authority citation for part 58 is revised to read as follows:

Authority: 30 U.S.C. 811, 957, 961.

13. Section 58.610 is amended by revising paragraph (a) to read as follows:

§ 58.610 Abrasive blasting.

(a) *Surface and underground mines.* When an abrasive blasting operation is performed, all exposed miners shall use in accordance with 30 CFR 56.5005 or 57.5005 respirators approved for abrasive blasting by NIOSH under 42 CFR part 84, or the operation shall be performed in a totally enclosed device with the miner outside the device.

* * * * *

PART 70—[AMENDED]

14. The authority citation for part 70 is revised to read as follows:

Authority: 30 U.S.C. 811, 813(h), 957, 961.

15. Section 70.300 is revised to read as follows:

§ 70.300 Respiratory equipment; respirable dust.

Respiratory equipment approved by NIOSH under 42 CFR part 84 shall be made available to all persons whenever exposed to concentrations of respirable dust in excess of the levels required to be maintained under this part. Use of respirators shall not be substituted for environmental control measures in the active workings. Each operator shall maintain a supply of respiratory equipment adequate to deal with occurrences of concentrations of respirable dust in the mine atmosphere in excess of the levels required to be maintained under this part.

§ 70.300–1 [Removed]

16. Section 70.300–1 is removed.

17. Section 70.305 is revised to read as follows:

§ 70.305 Respiratory equipment; gas, dusts, fumes, or mists.

Respiratory equipment approved by NIOSH under 42 CFR part 84 shall be provided to persons exposed for short periods to inhalation hazards from gas, dusts, fumes, or mist. When the exposure is for prolonged periods, other measures to protect such persons or to reduce the hazard shall be taken.

§ 70.305–1 [Removed]

18. Section 70.305–1 is removed.

PART 72—[AMENDED]

19. The authority citation for part 72 is revised to read as follows:

Authority: 30 U.S.C. 811, 813(h), 957, 961.

20. Section 72.610 is amended by revising paragraph (a) to read as follows:

§ 72.610 Abrasive blasting.

(a) *Surface and underground mines.* When an abrasive blasting operation is performed, all exposed miners shall properly use respirators approved for abrasive blasting by NIOSH under 42 CFR part 84, or the operation shall be performed in a totally enclosed device with the miner outside the device.

* * * * *

21. Newly redesignated § 72.710 is revised to read as follows:

§ 72.710 Selection, fit, use, and maintenance of approved respirators.

In order to ensure the maximum amount of respiratory protection, approved respirators shall be selected, fitted, used, and maintained in accordance with the provisions of the American National Standards Institute's "Practices for Respiratory Protection ANSI Z88.2–1969," which is hereby incorporated by reference. This publication may be obtained from the American National Standards Institute, Inc., 1430 Broadway, New York, NY 10018, and may be inspected at any Coal Mine Health and Safety district and subdistrict office, or at MSHA's Office of Standards, 4015 Wilson Boulevard, Arlington, VA, and at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

PART 75—[AMENDED]

22. The authority citation for part 75 is revised to read as follows:

Authority: 30 U.S.C. 811, 957, 961.

23. Section 75.2 is amended by adding the following definitions in alphabetical order to read as follows:

§ 75.2 Definitions.

* * * * *

Filter Self-Rescuer (FSR). A type of gas mask approved by MSHA and NIOSH under 42 CFR part 84 for escape only from underground mines and which provides at least 1 hour of protection against carbon monoxide.

* * * * *

Self-Contained Self-Rescuer (SCSR). A type of closed-circuit, self-contained breathing apparatus approved by MSHA and NIOSH under 42 CFR part 84 for escape only from underground mines.

* * * * *

24. Section 75.1714 is amended by revising paragraph (a) to read as follows:

§ 75.1714 Availability of approved self-rescue devices; instruction in use and location.

(a) Each operator shall make available to each miner who goes underground, and to visitors authorized to enter the mine by the operator, an approved self-rescue device or devices which is adequate to protect such person for 1 hour or longer.

* * * * *

25. Section 75.1714–1 is revised to read as follows:

§ 75.1714–1 Approved self-rescue devices.

The requirements of § 75.1714 shall be met by making available to each person referred to in that section a self-rescue device or devices, which have been approved by MSHA and NIOSH under 42 CFR part 84, as follows:

(a) A 1-hour SCSR;

(b) A SCSR of not less than 10 minutes and a 1-hour canister; or

(c) Any other self-contained breathing apparatus which provides protection for a period of 1 hour or longer and which is approved for use by MSHA as a self-rescue device when used and maintained as prescribed by MSHA.

26. Section 75.1714–2 is amended by revising the introductory text of paragraph (e), the introductory text of paragraph (e)(1), paragraphs (e)(1)(v), (e)(2), (e)(3), (f), and the introductory text of paragraph (g) to read as follows:

§ 75.1714–2 Self-rescue devices; use and location requirements.

* * * * *

(e) A mine operator may apply to the District Manager under § 75.1101–23 for

permission to place the SCSR more than 25 feet away.

(1) The District Manager shall consider the following factors in deciding whether to permit an operator to place a SCSR more than 25 feet from a miner:

* * * * *

(v) Proposed location of SCSRs,

* * * * *

(2) Such application shall not be approved by the District Manager unless it provides that, while underground, all miners whose SCSR is more than 25 feet away shall have a FSR approved by MSHA and NIOSH under 42 CFR part 84 sufficient to enable each miner to get to a SCSR.

(3) An operator may not obtain permission under paragraph (e) of this section to place SCSRs more than 25 feet away from miners on trips into and out of the mine.

(f) If a SCSR is not carried out of the mine at the end of a miner's shift, the place of storage must be approved by the District Manager, a sign with the word "SELF-RESCUER" or "SELF-RESCUERS" shall be conspicuously posted at each storage place, and direction signs shall be posted leading to each storage place.

(g) Where devices of not less than 10 minutes and 1 hour are made available in accordance with § 75.1714–1(b), such devices shall be used and located as follows:

* * * * *

27. Section 75.1714–3 is amended by revising paragraphs (c) and (d) to read as follows:

§ 75.1714–3 Self-rescue devices; inspection, testing, maintenance, repair, and recordkeeping.

* * * * *

(c) All FSRs approved by MSHA and NIOSH under 42 CFR part 84, except devices using vacuum containers as the only method of sealing, shall be tested at intervals not exceeding 90 days by weighing each device on a scale or balance accurate to within +1 gram. A device that weighs more than 10 grams over its original weight shall be removed from service.

(d) All SCSRs approved by MSHA and NIOSH under 42 CFR part 84 shall be tested in accordance with instructions approved by MSHA and NIOSH. Any device which does not meet the specified test requirements shall be removed from service.

* * * * *

Dated: May 24, 1995.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 95–13286 Filed 6–7–95; 12:10 pm]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Memorandum of Understanding Between the Mine Safety and Health Administration and the National Institute for Occupational Safety and Health Regarding the Respirator Approval Program

AGENCY: Mine Safety and Health Administration, Labor and National Institute for Occupational Safety and Health, CDC, HHS.

ACTION: Notice.

SUMMARY: This notice is to advise the public of the issuance of a memorandum of understanding (MOU) between the Mine Safety and Health Administration (MSHA), U.S. Department of Labor, and the National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control, U.S. Department of Health and Human Services. This MOU delineates the roles of both agencies in a new respirator approval program under the provisions of 42 CFR part 84. Concurrently, MSHA is removing 30 CFR part 11 which contained the provisions of the existing respirator approval program. Both the MSHA and NIOSH final rules are published elsewhere in this separate part of the **Federal Register**.

DATES: This MOU will become operative on July 10, 1995.

FOR FURTHER INFORMATION CONTACT: Peter M. Turcic, Chief, MSHA Approval and Certification Center, 304–547–2029, or Richard W. Metzler, Chief, Certification and Quality Assurance Branch, NIOSH Division of Safety Research, 304–285–5907.

SUPPLEMENTARY INFORMATION: On December 10, 1984, MSHA and NIOSH entered into an agreement for consultation, coordination, and cooperation in effectively and efficiently carrying out their respective safety and health functions under the Federal Mine Safety and Health Act of 1977. This MOU supplements the 1984 agreement and, to the extent inconsistent with that agreement, supersedes it. This MOU is being published concurrently with the MSHA and NIOSH final rules addressing the approval of respirators to aid in understanding these rulemakings.

Dated: May 24, 1995.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health, U.S. Department of Labor.

Dated: May 24, 1995.

Linda Rosenstock,

Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, U.S. Department of Health and Human Services.

Memorandum of Understanding Between the Mine Safety and Health Administration and the National Institute for Occupational Safety and Health

I. Introduction

A. Background

The Federal Mine Safety and Health Act of 1977 (Mine Act) provides for the protection of the health and safety of our Nation's miners. In furtherance of the goals of the Mine Act, the Secretaries of Health and Human Services (HHS) and Labor coordinate their expertise and activities in the field of mine health and safety. This Memorandum of Understanding (MOU) sets out the procedures to be followed by the Secretaries in coordinating their responsibilities with respect to the joint approval of respirators.

On May 4, 1978, the National Institute for Occupational Safety and Health (NIOSH) of the Department of Health, Education and Welfare, predecessor to HHS, entered into an Agreement with the Mine Safety and Health Administration (MSHA), Department of Labor, to ensure full and effective use of the capabilities and resources of NIOSH and MSHA to assist in planning research and to provide the maximum utilization of technological developments resulting from mine health and safety research. That Agreement was revised on December 10, 1984. This Memorandum of Understanding (MOU) supplements the above mentioned Agreements and, to the extent inconsistent with those Agreements, supersedes them.

B. Purpose

The purpose of this MOU is to establish procedures to be followed by MSHA and NIOSH in exercising their respective responsibilities for joint approval of certain respirators under the provisions of 42 CFR Part 84. It also establishes guidelines for interaction between MSHA and NIOSH with respect to issues dealing with respirator certification and related matters. These issues include but are not limited to: certification, quality assurance, and field complaints.

C. Authority

This MOU is consistent with, and is entered into under the authority of, the Mine Act.

II. Joint Approval of Respirators Used for Mine Rescue and Other Mine Emergencies

A. Respirators Subject to Joint Approval

1. NIOSH will conduct the examinations, inspections and tests of respirators submitted for certification pursuant to the requirements of 42 CFR Part 84.

2. Except for those respirators used for mine rescue and other mine emergencies, NIOSH is solely responsible to evaluate and certify respirators under the provisions of 42 CFR part 84.

3. MSHA and NIOSH will jointly evaluate respirators used for mine rescue and other mine emergencies and subsequently issue a joint certification of approval for such respirators.

4. Respirators used for mine rescue and other mine emergencies include filter self-rescuers (FSRS), self-contained self-rescuers (SCSR), mine rescue apparatus (long duration, closed and open circuit devices), and other self-contained breathing apparatus (SCBA). In the event a new class of respirator is submitted for certification, NIOSH will consult with MSHA concerning the potential for mine use and the need for joint approval.

5. In the event of disagreement as to whether a particular class of respirator is used for mine rescue and other mine emergencies, MSHA will make a final determination.

B. Preapproval Procedures

Prior to MSHA/NIOSH joint approval of respirators used for mine rescue and other mine emergencies, the following procedures will be followed to assist in the determination of whether a candidate respirator has fulfilled the applicable requirements of 42 CFR part 84:

1. MSHA and NIOSH will provide such consultation and assistance to each other as necessary to assure the proper joint approval of respirators and fulfill the intent of 42 CFR Part 84.

2. MSHA will, by mutual agreement with NIOSH, provide subjects for NIOSH testing of jointly approved respirators in accordance with the pertinent requirements of 45 CFR Part 46 and the Human Subject Review Board.

3. As coequals in the joint approval of respirators used for mine rescue and other mine emergencies, MSHA and NIOSH will share access to all examinations, inspections, tests, evaluations and other pertinent information leading to the certification of such respirators.

4. MSHA and NIOSH will jointly evaluate the respirator service life plans and user's manuals for jointly approved respirators.

5. MSHA and NIOSH will jointly establish any limitations to be required for jointly approved respirators.

C. Joint Approval

1. NIOSH will conduct all examinations, inspections and tests of respirators pursuant to the requirements of 42 CFR Part 84.

2. NIOSH and MSHA will jointly determine whether a candidate respirator intended for mine rescue and other mine emergencies has fulfilled the requirements of 42 CFR Part 84. Upon such determination, NIOSH and MSHA will issue a joint respirator approval, which shall include appropriate use limitations.

3. NIOSH and MSHA shall sign the approval certificate and each Agency shall maintain timely processing procedures.

III. Quality Assurance

1. NIOSH and MSHA will notify each other in advance of the intent to conduct audits of respirators and/or manufacturing sites for

jointly approved respirators and will invite joint participation in such activities. Care will be taken to prevent duplication or repetition of audit activities.

2. The results of NIOSH or MSHA audits of jointly approved respirators will be shared immediately with the other Agency through established procedures.

3. Discrepancies or nonconformances identified in audits of jointly approved respirators and/or manufacturing sites for jointly approved respirators will be resolved jointly by MSHA and NIOSH.

4. NIOSH will notify MSHA of all respirator discrepancies and nonconformances identified with any respirator bearing the NIOSH certification. If MSHA determines that the respirator in question has significant mine use, MSHA will consult with NIOSH and jointly participate in resolution of mine use problems.

IV. Post-Approval Complaints

1. Reports of discrepancies or nonconformances involving jointly approved respirators will be shared immediately between the two agencies and investigations of such discrepancies and nonconformances will be jointly conducted by NIOSH and MSHA.

2. MSHA and NIOSH will jointly participate in the planning and resolution of complaints involving MSHA/NIOSH approved respirators. Such joint participation will include all activities related to product retrofit, recalls, stop sale notices, user notices, and revocation of prior certifications.

3. MSHA and NIOSH will promptly notify each other of respirator field complaints received by either Agency. MSHA will participate with NIOSH in resolution of such complaints only if MSHA determines that the cause of the complaint or its resolution has an impact on the mining industry.

V. Respirators With Electrical Components

1. Respirators having electrical components and intended for use in mines where methane may be present must be permissible and are subject to the requirements of 30 CFR Part 18. These respirators will be approved for permissibility solely by MSHA. MSHA will independently conduct the examinations, inspections and tests of respirators submitted for certification pursuant to the requirements of 30 CFR Part 18. NIOSH will provide consultation as requested by MSHA.

2. MSHA will independently conduct audits, nonconformance investigations, and resolve nonconformances associated with the electrical components of respirators approved in accordance with 30 CFR Part 18 requirements. A report of all such audit results will be promptly provided to NIOSH by MSHA.

3. MSHA will notify NIOSH in advance of the intent to audit Part 18 respirators. Care will be taken to coordinate audit activities and prevent duplication or unnecessary repetition of audit efforts.

VI. Administration

This MOU will be administered on behalf of MSHA by the Chief, Approval and Certification Center or by such other representative as the Assistant Secretary for Mine Safety and Health designates in writing to NIOSH.

This MOU will be administered on behalf of NIOSH by the Chief, Certification and Quality Assurance Branch or by such other representative as the Director of NIOSH designates in writing to MSHA.

VII. Effective Date, Amendment and Termination

This MOU will become operative on the effective date of 42 CFR part 84 and upon execution of this MOU by both parties. It may be modified or terminated only upon written agreement executed by both parties.

Dated: May 4, 1995.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health, U.S. Department of Labor.

Dated: May 4, 1995.

Linda Rosenstock,

Director, National Institute for Occupational Safety and Health, U.S. Department of Health and Human Services.

[FR Doc. 95–13288 Filed 6–2–95; 12:10 pm]

BILLING CODE 4510–43–M

VOL 60 ISS 110 JE 8 995 UMI

federal register

Thursday
June 8, 1995

Part III

Federal Trade Commission

16 CFR Part 310
Telemarketing Sales Rule; Proposed Rule

FEDERAL TRADE COMMISSION

16 CFR Part 310

Telemarketing Sales Rule

AGENCY: Federal Trade Commission.

ACTION: Revised notice of proposed rulemaking.

SUMMARY: In this document, the Federal Trade Commission ("FTC" or "Commission") issues a revised notice of proposed rulemaking to implement the Telemarketing and Consumer Fraud and Abuse Prevention Act ("Telemarketing Act" or "the Act"). Section 3 of that Act directs the FTC to prescribe rules, within 365 days of enactment of the Act, prohibiting deceptive telemarketing acts or practices and other abusive telemarketing acts or practices.

DATES: Written comments must be submitted on or before June 30, 1995. Due to the time constraints of this rulemaking proceeding, the Commission does not contemplate any extensions of this comment period or any additional periods for written comment or rebuttal comment.

ADDRESSES: Six paper copies of each written comment should be submitted to the Office of the Secretary, Room 159, Federal Trade Commission, Washington, D.C. 20580. To encourage prompt and efficient review and dissemination of the comments to the public, all comments also should be submitted, if possible, in electronic form, on either a 5¼ or a 3½ inch computer disk, with a label on the disk stating the name of the commenter and the name and version of the word processing program used to create the document. (Programs based on DOS are preferred. Files from other operating systems should be submitted in ASCII text format to be accepted.) Individuals filing comments need not submit multiple copies of comments in electronic form. Submissions should be captioned: "Proposed Telemarketing Sales Rule," FTC File No. R411001.

FOR FURTHER INFORMATION CONTACT: Judith M. Nixon, (202) 326–3173, or David M. Torok, (202) 326–3140, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION:

Section A. Background

On August 16, 1994, the President signed into law the Telemarketing Act,[1] which directs the Commission to prescribe rules, within 365 days of enactment of the Act, prohibiting deceptive and abusive telemarketing acts or practices. The Commission published a notice of proposed rulemaking ("NPR") in the **Federal Register** on February 14, 1995.[2]

In response to the NPR, the Commission received over 300 comments from industry, law enforcement and consumer representatives, as well as from individual consumers and businesses.[3] In general, consumers commented that the initially proposed Rule did not go far enough to stop unwanted telemarketing calls. Law enforcement officials uniformly praised the Commission's proposal for its thorough and useful treatment of the various means employed by fraudulent telemarketers to get consumers' money through deception or abuse. Finally, most industry representatives generally maintained that the initially proposed Rule unnecessarily burdened legitimate businesses, adding needless costs through overbroad proposals that failed to aim specifically at deceptive and abusive telemarketing practices.

Between April 18 and 20, 1995, staff of the Commission conducted a public workshop conference in Chicago, Illinois. Twenty associations or individual businesses, each with an affected interest and ability to represent others with similar interests, were selected to engage in a roundtable discussion.[4] Howard Bellman served as the conference facilitator. Participants discussed various aspects of the initially proposed Rule, addressed each other's comments and questions, and responded to questions from Commission staff members. The conference was open to the public, and more than 150 observers attended. Oral comments from members of the public were invited each day, and 37 individuals spoke during the course of the three-day conference. The entire proceeding was transcribed, and the transcript was placed on the public record.[5]

On May 3, 1995, Commission staff briefed all the Commissioners, in an open meeting, about the rulemaking process, the issues raised in the written comments and the public workshop, and stated possible approaches to address the issues commenters raised. The briefing was transcribed and the transcript was placed on the public record. The entire public record to date, including the comments, the conference transcript, and the Commission open briefing transcript is available on CD–ROM and has been placed on the Internet.[6]

Based on the Act's legislative history, the written comments received, and the information learned at the workshop conference, the Commission has decided to modify its regulatory approach in this revised proposed Rule. The Commission believes this modification is necessary to effectuate appropriately Congress' directive that the FTC in its rulemaking "develop criteria of behavior" and "issue a * * * rule [that is] flexible enough to encompass the changing nature of [deceptive] activity, while at the same time providing telemarketers with guidance as to the general nature of the prohibited conduct."[7] The Commission's revised approach addresses many commenters' concerns that the initially proposed Rule cast too broad a net and imposed unnecessary burdens on the legitimate telemarketing industry without adequately focussing on deceptive and abusive telemarketing practices. Additionally, the revised proposed Rule addresses law enforcement concerns that the Rule needs to provide enough enforcement flexibility to reach deceptive and abusive telemarketing acts or practices currently unknown. The Commission believes additional public comment on a revised proposal will assist in producing a final Rule that most effectively prohibits deceptive and abusive telemarketing practices, while not unduly burdening legitimate businesses.

Section B of this notice discusses, on a section-by-section basis, the Commission's revised proposed Rule.

Appendix

List of Commenters and Acronyms

Acronym and Commenter

ADS ADS Teleservices
ADVANTA Advanta Corp.
ALIC Allstate Life Insurance Co.
AMCI Allstate Motor Club., Inc.
A-MARK A-Mark Precious Metals, Inc.
AAF American Advertising Federation

[1] 15 U.S.C. 6101–08.

[2] 60 FR 8313–33.

[3] A list of the commenters, and the acronyms which will be used to identify each commenter in this notice, is appended to Section A of this notice.

[4] The selected participants were: AARP, ATA, ATFA, APAC, ANA, DMA, DSA—Nev., DSA, EMA, ISA, ICTA, MPA, Monex, NAAG, NACAA, NAPA, NCL, NRF, PMAA, and USPS.

[5] References to the conference transcript are cited as "Tr." followed by the appropriate page designation. References to comments are cited as "[acronym of commenter] at [page number]."

[6] The FTC gopher server address is CONSUMER.FTC.GOV 2416. For World Wide Web access, the URL is GOPHER://CONSUMER.FTC.GOV:2416.

[7] H. R. Rep. No. 20, 103rd Cong., 1st Sess. 8; S. Rep. No. 80, 103rd Cong., 1st Sess. 9 (hereinafter referred to as "House Report" and "Senate Report," respectively).

AAAA American Association of Advertising Agencies, Inc.
AARP American Association of Retired Persons
ABA American Bankers Association
ACRA American Car Rental Association
ACA American Cemetery Association
ADC American Distributing Company
AMEX American Express Company
AFSA American Financial Services Association
AIG American Impact Group
APN American Publishers Network, Inc.
ARDA American Resort Development Association
ASAE American Society of Association Executives
ASTA American Society of Travel Agents
ATA American Telemarketing Association
ATFA American Telephone Fundraisers Association
AWMI American West Marketing, Inc.—Barry Engels
AWMI American West Marketing, Inc.—Sandra Sawyer
AMERINET AmeriNet, Inc.
ANDREWS Andrews Satellite & Home Theater
ANN ARBOR Ann Arbor News
APAC APAC TeleServices
ABI Archbold Buckeye, Inc.
AMOC Arizona Mail Order Company, Inc.
ARA Arizona Retailers Association
A&H Arter & Hadden
ACB Associated Credit Bureaus, Inc.
AAP Association of American Publishers
AITS Association of Independent Television Stations, Inc.
ANA Association of National Advertisers
ATLANTA Atlanta Journal & Atlanta Constitution
AT&T AT&T Corp.
AUTOSCRIBE AutoScribe Corporation
BAGGS Baggs, Andrew
BAGWELL Bagwell, Linda L.
BOB Bank of Boston
BAY CITY Bay City Times
BELLEVILLE Belleville News-Democrat
BMCA Beneficial Management Corporation of America
BNC Birmingham News Company
BRADLEY Bradley, MJP
BRANTLEY Brantley, Lamar
BREWSTER Brewster, The Honorable Bill K.
BFC Brown Forman Corporation
BPIA Business Products Industry Association
SAMPLER Business Sampler Advertising, Inc.
BSA Business Software Alliance
CAPITAL Capital Press
CAPUTO Caputo, Harriet Q.
CCA Career College Association
CME Center for Media Education
CHASE Chase Manhattan Bank (USA)
CHEMICAL Chemical Bank
CHERNIKOFF Chernikoff, J.D.
CDI Circulation Development, Inc
CITICORP Citicorp/Citibank
COALITION "Coalition"—various companies
CPA Colorado Press Association
CHC Columbia House Company
COMCAST Comcast Corporation/Jones Intercable
CA Commercial Appeal
CBA Consumer Bankers Association
CFA Consumer Federation of America
CONWAY Conway National Bank
CORNELL Cornell Group
CMOR Council for Marketing and Opinion Research
COX Cox Newspapers, Inc.
CRILLY Crilly, Thomas W.
CUCI CUC International
DCR Daily Court Review
DAILY NEWS Daily News
DMBE Department of Marketing and Business Environment, Florida International University
DMI DialAmerica Marketing, Inc.
DMT&H Dickinson, Mackaman, Tyler & Hagan, P.C.
DW&Z Dierman, Wortley & Zola, Inc.
DSA-NEV. Direct Sales Association of Nevada
DSI Direct Sales International (2 copies of letter, 1 of comment)
DMA Direct Marketing Association
DMSI Direct Marketing Services, Inc.
DSA Direct Selling Association
DIVERSIFIED Diversified Marketing Service, Inc.
DONREY Donrey Media Group
DOUBLEDAY Doubleday Book & Music
DOW JONES Dow Jones & Co., Inc.
OREGONIAN East Oregonian
BAUER Eddie Bauer, Inc.
EDMUND Edmund Scientific Company
EMA Electronic Messaging Association
EMMONS Emmons, Ethel B.
EQUIFAX Equifax Credit Information Services, Inc.
EHRLICH Ehrlich, The Honorable Robert L., Jr.
ERIE Erie Construction Mid-West, Inc.
ERNST Ernst, Michael
F&W F&W Publications
FedEx Federal Express
FRB Federal Reserve Banks
FRB–SF Federal Reserve Bank of San Francisco
FINGERHUT The Fingerhut Companies
FLINT Flint Journal
FORNEY Forney Messenger Inc.
FRANKLIN Franklin Mint
GABRIEL Gabriel, Mrs. Harry J., Jr.
GANNET Gannett Co., Inc.
GE GE Appliances
GA OCA Georgia Office of Consumer Affairs
GRA Georgia Retail Association
GIBSON Gibson, Stewart & Jean
GGP Gift Gallery Promotions
GCM Good Cents Marketing
GREENE Greene, Russ
GRIDER Grider, Felicia
GROLIER Grolier TeleMarketing, Inc.
GHA Group Health Association of America
GUTHY Guthy-Renker
HHDM Harte-Hanks Direct Marketing
HHMS Harte-Hanks Marketing Services
HAWES Hawes Center, Inc.
HEAD Head, W.L.
HEARST Hearst Magazines
HNM&T Hearst New Media & Technology
HELMS Helms, The Honorable Jesse
HERRERA Herrera, Barbara
HERTZ Hertz Corporation
HSN Home Shopping Network
HOUSEHOLD Household Bank
HFC Household Finance Corp.
HII Household International, Inc.
H&H Howe & Hutton, Ltd.—March 14 comment
H&H Howe & Hutton, Ltd.—March 30 comment
HUDSON Hudson City Savings Bank
HUNTINGTON Huntington National Bank
HUNTSVILLE Huntsville Times/Huntsville News
IDAG Idaho Attorney General
IMSP IMS Promotions
IRC Indiana Retail Council, Inc.
ICTA Industry Council for Tangible Assets
IMC InfoCision Management Corporation
INFOMALL Infomall TV Network
IMSI Infomercial Monitoring Service, Inc.
INSP Inspirational Network
ISA Interactive Services Association
IBM International Business Machines Corporation
IFI International Fabricare Institute
IFA International Franchise Association
IMS International Magazine Service of Northern California
IRL International Readers League of Indianapolis
IH Investment Hotlines
IA DOJ Iowa Department of Justice
ITI ITI Marketing Services, Inc.
PENNEY J.C. Penney Company, Inc.
JACKSON Jackson Citizen Patriot
RIVERS Joan Rivers Products, Inc.
JOHNSTON Johnston, Gloria
KALAMAZOO Kalamazoo Gazette
KAPLAN Kaplan, Jules
KIKENDALL Kikendall, Thomas J.
KLEID Kleid Company
KNIGHT Knight Ridder
KNOXVILLE Knoxville News Sentinel Co.—Mashburn
KNOXVILLE Knoxville News Sentinel Co.—Stevens
LANDMARK Landmark Community Newspapers, Inc.
LARK Lark In The Morning
LAURENZA Laurenza, Joseph
LCS LCS Direct Marketing Service
LEIBACHER Leibacher, Philip J. (2 copies)
LENOX Lenox, Inc.
LA TIMES The Los Angeles Times
LOWE'S Lowe's Studio
MPA Magazine Publishers of America
MSSC Magazine Subscription Sales Coalition
MRG Marketing Response Group & Laser Co., Inc.
MARKETLINK Marketlink
MARTIN Martin Direct
MASTERCARD Mastercard Int'l, Inc. & Visa USA, Inc.
MBNA MBNA America Bank, N.A.
MCI MCI Telecommunications Corporation
MCKNIGHT McKnight Management Company
MELLON Mellon Bank Corporation
MELTON Melton, Carol A.
MM Merchant Masters
MS Merchant Sampler
MGCB Merchants Gift Check Book
MGC Merchants Golden Checks
MP Merchants Promotions
M–I Messenger-Inquirer
MRA Michigan Retailers Association
MILLS Mills, Susan
MS PRESS The Mississippi Press

MOPA Missouri Press Association
MORA Missouri Retailers Association
MOBILE Mobile Media
MPR Mobile Press Register
MONEX MONEX
WARD Montgomery Ward
MMC Moore Medical Corporation
MORSE Morse, Larry E.
MBAA Mortgage Bankers Association of America
MPG MPG Newspapers
MTD MTD Services
MURRAY Murray Ledger & Times
MUSKEGON Muskegon Chronicle
MUTUAL Mutual of Omaha Companies
NAAG National Association of Attorneys General
NACAA National Association of Consumer Agency Administrators
NAR National Association of Realtors
NAPA National Automated Payment Association
NAMA National Automatic Merchandising Association
NBR National Bank of the Redwoods
NCTA National Cable Television Association, Inc.
NCL National Consumers League
NCMC National Credit Management Corporation
NFIB National Federation of Independent Business
NFN National Federation of Nonprofits
NFA National Futures Association
NNA National Newspaper Association
NPS National Promotional Services
NRF National Retail Federation
NSF National Science Foundation
NB NationsBank
NIE Nationwide Insurance Enterprise
NPC Neighborhood Periodical Club
NETWORK Network Direct
NHI New Hampton, Inc.
NYSCPB New York State Consumer Protection Board
NYTC New York Times Company
NEWS News Publishing Company
NAA Newspaper Association of America
NIMA NIMA International
NORDSTROM Nordstrom
NARDA North American Retail Dealers Association
NASAA North American Securities Administrators Association
NYNEX NYNEX
OHIO Ohio Health Care Products, Inc.
OLAN Olan Mills, Inc.
GLOBE Old Globe
OPC Oregonian Publishing Company
ORKIN Orkin Lawn Care
ORKIN Orkin Maid
ORKIN Orkin Pest Control—March 23 comment
ORKIN Orkin Pest Control—March 30 comment
ORKIN Orkin Plantscaping
PACESETTER Pacesetter Corporation
PTG Pacific Telesis Group
PATRIOT Patriot News
PEPPERTREE Peppertree Resorts, Ltd.
PLP Personal Legal Plans
PETERSON,P Peterson, Phyllis G.
PETERSON,R Peterson, Rosie Marie
PPI Phone Programs Inc.
PLAIN Plain Dealer
Plantscaping (see Orkin)
PCI Private Citizen, Inc. (initial letter & comment)
Private Citizen (addendum)
PCH Programmers Clearing House
PMAA Promotional Marketing Association of America & Incentive Federation
PRUDENTIAL Prudential Home Mortgage
PCH Publishers Clearing House
PDW Publishers Discount Warehouse—Barclay Fisher
PDW Publishers Discount Warehouse—Gina Lewis
PDW Publishers Discount Warehouse—J.B. Owen
PDW Publishers Discount Warehouse—David Rains
PDW Publishers Discount Warehouse—Jimmy Riggle
P&C Pullman & Comley
QUICKCARD QuickCard Systems
QVC QVC, Inc.
RDA Reader's Digest Association, Inc.
SEARCHLIGHT Record Searchlight—Kjellin
SEARCHLIGHT Record Searchlight—Dawson
REGAL COMM Regal Communications Corporation
REGAL GROUP Regal Group
REICHWEIN Reichwein, Kay
RPOA Resort Property Owners Association
RPI Resource Publications, Inc.
RICE Rice, Rodger D. and Barbara L.
RICH Rich, David G.
RITCHIE Ritchie Swimwear
RMH RMH Telemarketing
RODRIGUEZ Rodriguez, Ann
ROLLINS Rollins Inc. (2 copies)
RPS Rollins Protective Services
WEBER Ron Weber and Associates
ROTENBERG Rotenberg, Marion
SSI SafeCard Services, Inc.
SAGINAW Saginaw News
SFNA San Francisco Newspaper Agency
SEARS Sears Merchandise Group
SIASSR Securities Industry Association
SCIC Service Contract Industry Council (SCIC)
SHI Shop at Home
SHULMAN Shulman, Betty
SIGNATURE The Signature Group
S&S Simpson & Simpson, P.C.
SMITH Smith, R.
SDRA South Dakota Retailers Association
SBTC Southwestern Bell Telephone Company
SPIEGEL Spiegel, Inc.
SPRINT Sprint Corporation
STAR Star-Ledger
SIA Staten Island Advance
SMSI Strategic Marketing Specialists, Inc.
STUART Stuart News
S&W Sullivan & Worcester
SUN Sun Newspapers
SSE Superstar Satellite Entertainment
SUTTON Sutton Marketing
SYRACUSE Syracuse Newspapers
TALK800 Talk800
TMGI Telatron Marketing Group, Inc.
TELENATIONAL Telenational Marketing
TCPS Telephone Check Payment Systems
TPA Tennessee Press Association, Inc.
TEZANOS Tezanos, Maritza
TCI Thomas Cook, Inc.
TIEDT Tiedt, Thomas N.
TIMEWARNER Time Warner
T-I Times-Independent
TP Times Picayune
TITUS Titus, The Honorable Dina (2 letters)
TMG TMG (Television Marketing Group)
TMW TMW Marketing
TMO Total Marketing Outbound, Inc.
TUPPERWARE Tupperware Worldwide (2 copies)
TVMARKET TV Marketplace, Inc.
UCI United Color, Inc.
UPS United Parcel Service, Inc.
USTA United States Telephone Association
UMI Universal Media Inc.
USD University of San Diego, Center for Public Interest Law
USCE U.S. Coin Exchange
U.S. Coin Exchange (addendum)
USPS U.S. Postal Service
USWI US West, Inc.
VIACOM Viacom International
VINCENT Vincent, Chorey, Taylor & Feil
VIRGINIA Virginia State Corporation Commission
WACHOVIA Wachovia Corporation
WASHINGTON The Washington Post
WAUGH Waugh, John C.
WTO West Telemarketing Outbound
WU Western Union
WESTVACO Westvaco, Corp.
WILLIAMS Williams Television Time
WTC Wilmington Trust Company
WILSON Wilson Daily Times
WINCHESTER Winchester Sun
WINDSOR Windsor Vineyards
WINONA Winona Post
WFNNB World Financial Network National Bank
YOUNGBERG Youngberg, Arthur D.

Section B. Discussion of the Revised Proposed Rule

Section 310.1 Scope of the Regulations

Section 310.1 of the revised proposed Rule makes clear that this Rule does not apply to any activity excluded from the Commission's jurisdiction.[8] Thus, pursuant to the following jurisdictional limitations set forth in Section 5(a)(2) of the Federal Trade Commission Act ["FTC Act"],[9] this Rule does not apply to:

Banks, savings and loan institutions described in section 18(f)(3),[10] Federal credit unions described in section 18(f)(4),[11] common carriers subject to the Acts to regulate commerce, air carriers and foreign air carriers subject to the Federal Aviation Act of 1958, and persons, partnerships, or corporations insofar as they are subject to the Packers and Stockyards Act, 1921, as

[8] The Telemarketing Act states that "no activity which is outside the jurisdiction of the [FTC] Act shall be affected by this Act." 15 U.S.C. 6105(a).

[9] 15 U.S.C. 45(a)(2).

[10] Section 18(f)(3) of the FTC Act, 15 U.S.C. 57(f)(3), describes "savings associations as defined in section 3 of the Federal Deposit Insurance Act," 12 U.S.C. 1811 *et seq.*

[11] Section 18(f)(4) of the FTC Act, 15 U.S.C. 57(f)(4), describes "Federal credit unions under sections 120 and 206 of the Federal Credit Union Act (12 U.S.C. 1766 and 1786)."

amended, except as provided in Section 406(b) of said Act.

In addition, this Rule does not apply to any entity that is not "organized to carry on business for its own profit or that of its members."[12] Finally, this Rule does not apply to any entity engaged in the business of insurance to the extent that such business is regulated by State law.[13]

Section 310.2 Definitions

The revised proposed Rule amends, adds, or deletes certain definitions. The following definitions were deleted: "business venture," "goods or services," "premium," and "verifiable retail sales price." The Commission amended the definitions of; "credit card," "credit card sales draft," "credit card system," "investment opportunity," "merchant," "merchant agreement," "prize," "prize promotion," "seller," "telemarketer," "telemarketing, and "telephone solicitation." A definition for the term "credit" was added. Each of these changes, as well as a discussion of the definition of the term "material," are discussed below.

1. *Business venture.* Section 310.2(a) of the initially proposed Rule defined the term "business venture" as any "business arrangement, however denominated, including * * * 'a franchise' as * * * defined in the Commission's Franchise Rule * * *"[14] which consists of the payment of any consideration for: "(1) the right or means to offer, sell, or distribute goods or services (whether or not identified by a trademark, trade name, advertising, or other commercial symbol); and (2) the promise of more than nominal assistance * * * in connection with or incidental to the establishment, maintenance, or operation of a new business or the entry by an existing business into a new line or type of business."[15] This definition came into play in Section 310.3(a)(3) of the initially proposed Rule, which prohibited sellers or telemarketers from misrepresenting important information in connection with the offer, offer for sale or sale of any business venture. In addition, the initially proposed rule, at Section 310.4(a)(8), prohibited certain abusive practices concerning the use of shills in the sale of business ventures.

The Commission's Franchise Rule contains requirements and prohibitions that apply to franchises and business opportunities. Subsequent to the publication of the NPR in this proceeding, the Commission issued a request for comments on the Franchise Rule as part of its periodic regulatory review of Commission trade regulation rules and guides.[16] The Commission believes it is more appropriate to consider within the framework of that review process whether any new regulatory action is needed to address the sale of business ventures. Following this approach, the Commission ensures that any new regulatory requirement or prohibition applicable to franchises or business ventures will be codified in one regulation—the Franchise Rule—not spread out over two separate Rules. Accordingly, the definition of "business venture," as well as the Sections of the initially proposed Rule prohibiting misrepresentations and abusive practices described above, have been deleted from the revised proposed Rule.

2. *Credit-related definitions.* The initially proposed Rule defined various credit-related terms that are used primarily in Section 310.3(c) relating to credit card laundering. These terms include "acquirer," "cardholder," "credit card," "credit card sales draft," "credit card system," "merchant," and "merchant agreement." Very few commenters expressed concern about the foregoing proposed definitions, but some did suggest minor technical changes to reflect more accurately the credit card industry's terminology and practices.[17] Based on those comments, the Commission proposes the following changes.

The Commission proposes adding under Section 310.2(e) a definition of the term "credit" to mean "the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment." This definition has been added to clarify the scope of Section 310.3(c) relating to credit card laundering. It was apparent from several comments that clarification was necessary. Some commenters wanted to include all electronic payment systems under credit card laundering.[18] Based on the plain language of the statute and its legislative history,[19] however, Congress clearly meant to prohibit credit card laundering predicated upon the definition of "credit" used throughout the consumer credit statutes, and did not contemplate coverage of all electronic payment systems. Therefore, the proposed definition of "credit" tracks the statutory definition of "credit" under the Truth in Lending Act ["TILA"],[20] conforming the scope of Section 310.3(c) to that intended by Congress.

Based on comments similar to those that prompted the addition of the definition of the term "credit," the Commission has modified the term "credit card" in Section 310.2(f) to make it consistent with the term as defined in the TILA, thereby explicitly limiting Section 310.3(c) to credit card laundering. The revised definition of "credit card" states: "*Credit card* means any card, plate, coupon book, or other credit device existing for the purpose of obtaining money, property, labor, or services on credit." The revised definition is identical to the statutory definition of "credit card" contained in the TILA.[21]

The Commission has revised Section 310.2(g) defining the term "credit card sales draft" to drop any reference to specific forms of records. The revised definition states: "*Credit card sales draft* means any record or evidence of a credit card transaction." This revision is designed to be flexible enough to anticipate future technological changes in how credit card transactions are handled. The modification is not intended to contract the range of recordkeeping formats that would be acceptable under the Rule.

The Commission also has modified the definition of the term "credit card system" in Section 310.2(h) to address concerns Visa and MasterCard raised that the initially proposed definition could be construed to cover any system put in place, including a system put in place by a deceptive telemarketer.[22] Visa and MasterCard suggested language that would preclude such an outcome by clarifying the intention to include only a credit card system to process credit card transactions involving credit cards issued or licensed by the credit card system operator. The Commission agrees with the observations and suggested language advanced by Visa and MasterCard. The revised proposed definition states: "*Credit card system* means any method or procedure used to process credit card transactions involving credit cards issued or licensed by the operator of that system."

In Sections 310.2 (l) and (m),[23] the Commission has revised the definitions of "merchant" and "merchant agreement." In the initially proposed Rule, these definitions used the phrase

[12] *See* 15 U.S.C. 44.

[13] *See* Section 2 of the McCarran-Ferguson Act, 15 U.S.C. 1012(b).

[14] The term "franchise" is defined in the FTC's "Franchise Rule," 16 CFR 436.2(a).

[15] 60 FR 8328.

[16] 60 FR 17656 (April 7, 1995).

[17] *See generally* MasterCard; NAAG; USPS; NCL.

[18] *See, e.g.,* MasterCard at 5.

[19] *See generally* House Report at 2; Senate Report at 2, 10.

[20] 15 U.S.C. 1603(e).

[21] 15 U.S.C. 1603(k).

[22] *See* MasterCard at 6.

[23] Initially proposed Rule Sections 310.2 (m) and (n), respectively.

"honor or accept, transmit or process credit cards in payment for goods or services." Visa's and MasterCard's comments pointed out that, according to prevailing industry usages, a merchant "honors or accepts" a credit card for payment, but does not "transmit or process" credit cards. By the same token, a merchant "transmits or processes" credit card payments, but does not "honor or accept" credit card payments.[24] Therefore, the language of these definitions has been redrafted to reflect more precisely these distinctions.

3. *Goods or services.* Many commenters expressed confusion over the scope of the definition of the term "goods or services."[25] The Commission initially included a definition of "goods or services"[26] intending to clarify that all tangible and intangible goods and services are covered under the initially proposed Rule, including leases, licenses, memberships, and certain charitable solicitations. Based on the confusion that this attempt at "clarification" engendered, the Commission has deleted the definition of "goods or services" from the revised proposed Rule. That deletion does not reflect any intention to contract the scope of coverage of the Rule; nor does it mean that any of the foregoing goods or services and similar intangible goods or services are not covered under the Rule.

4. *Investment opportunity.* The initially proposed Rule defined the term "investment opportunity"[27] to include "anything, tangible or intangible, excluding a business venture, that is offered, offered for sale, sold, or traded (1) to be held, wholly or in part, for purposes of profit or income; or (2) based wholly or in part on representations, either express or implied, about past, present or future income, profit, or appreciation."[28] A number of commenters suggested that this definition should be based solely on the objective test set forth in the second part of the definition; namely, the representations made by the seller.[29] In this way, sellers will be given clear notice that their products are covered by the Rule. These commenters believed that the first part of the definition, based on the customer's subjective intent in making a purchase, should be eliminated. The Commission agrees with this suggestion, and the revised proposed definition is now based solely on the express or implied representations about income, profit or appreciation.

The initially proposed definition also expressly stated that the term "investment opportunity" includes, but is not limited to, "any business arrangement where persons acquire, or purportedly acquire, government-issued licenses or interests in one or more businesses derived from the possession of such licenses." Upon further consideration, the Commission believes this clause is unnecessary because government-issued licenses or interests derived from such licenses are indisputably within the jurisdiction of the Commission. The Commission therefore has deleted the foregoing extraneous clause from the revised proposed Rule, but has added clarification that the definition of the term, "investment opportunity" *does not* include "sales of franchises subject to the Commission's [Franchise Rule] (cite omitted)."

5. *Material.* Some commenters expressed uncertainty as to what specifically is meant by the term "material," as used in Section 310.2(k).[30] The Commission intends this term and its definition to comport with the Commission's Deception Statement and established Commission precedent. *Cliffdale Associates,* 103 FTC 110 (1984); *Thompson Medical Co.,* 104 FTC 648 (1984), *aff'd,* 791 F.2d 189 (D.C. Cir. 1986), *cert. denied,* 107 S.Ct. 1289 (1987); and the Commission's Deception Statement attached as an appendix to *Cliffdale Associates.* The Commission believes that further explanation of the term in the Rule is unnecessary given the comprehensible guidance in the cited case law and policy statement.

6. *Premium.* The Commission, in its revised proposed Rule, has deleted the initially proposed Rule provisions relating to premiums. The Commission believes that those deletions obviate the need to define this term. The deletion of the definition of the term "premium" and its associated provisions are not intended to be construed to eliminate from the Rule's coverage the misrepresentation of a premium's value in a telemarketing transaction.

7. *Prize and prize promotion.* Some modifications have been made to the initially proposed definition of the term "prize."[31] NAAG suggested in its comment that the reference to "no obligation to purchase" should be deleted from the definition.[32] NAAG pointed out that many fraudulent telemarketers seek to create the impression that consumers must purchase something in order to receive a prize, even though the promotion technically does not include such a requirement. In such cases, it may be difficult for law enforcement authorities to prove that there was "no obligation to purchase," making inapplicable the definition of "prize" and the protections the revised proposed Rule would provide for consumers with respect to prize promotions. The Commission believes this is a valid concern and, because the limiting language about an obligation to purchase is not necessary to accomplish the definition's purpose, has deleted the language from the definition.

Another concern addressed in the revised proposed Rule involves the element of chance in the definition of "prize." USPS noted that a typical deceptive prize scheme will involve a solicitation listing four or five items, with the consumer being told, without specificity, that he or she is guaranteed to receive one of them.[33] Because a consumer is "guaranteed" to receive one of the stated items, it could be construed that there is no element of "chance" involved in the offer and the item therefore is not a "prize." The Commission believes this concern should be addressed and has therefore clarified the term "chance" included in the revised proposed definition of "prize." The revised definition of the term "prize" states that "chance exists if a person is guaranteed to receive an item and, at the time of the offer or purported offer, the telemarketer does not identify the specific item that the person will receive."

The initially proposed Rule defined "prize promotion"[34] to include

[24] *See* MasterCard at 6.

[25] *See, e.g.,* IFI at 1–2; ATFA at 8–12.

[26] Initially proposed Rule Section 310.2(j).

[27] Initially proposed Rule Section 310.2(k).

[28] As noted in the NPR, Sections 3(d) and (e) of the Telemarketing Act, 15 U.S.C. 6102(d) and (e), exclude from Rule coverage any of the following persons: a broker, dealer, transfer agent, municipal securities dealer, municipal securities broker, government securities broker, government securities dealer [as those terms are defined in Section 3(a) of the Securities and Exchange Act of 1934, 15 U.S.C. 78c(a)], an investment adviser [as that term is defined in Section 202(a)(11) of the Investment Advisers Act of 1940, 15 U.S.C. 80b-2(a)(11)], an investment company [as that term is defined in Section 3(a) of the Investment Company Act of 1940, 15 U.S.C. 80a-3(a)], any individual associated with those persons, or any persons described in Section 6(f)(1) of the Commodity Exchange Act, 7 U.S.C. 8, 9, 15, 13b, 9a.

[29] *E.g.,* ICTA at 28–30; Monex at 6; A-Mark at 2–4.

[30] *See generally* TMW; Monex. In the initially proposed Rule, the definition of "material" was numbered Section 310.2(l).

[31] The initially proposed Rule defined "prize" as "anything offered, or purportedly offered, to a person at no cost and with no obligation to purchase goods or services and given, or purportedly given, by chance." Initially proposed Rule Section 310.2(q).

[32] NAAG at 9. *See also* IA DOJ at 20.

[33] USPS at 3.

[34] Initially proposed Rule Section 310.2(r).

traditional sweepstakes or other games of chance, as well as any oral or written representation that a person has won, has been selected to receive, or may be eligible to receive a prize or purported prize. The currently proposed definition has been revised slightly, (Section 310.2(q) of the revised proposed Rule), to make clear that the representations about winning may be either express or implied. This addresses a concern, raised by NAAG,[35] that fraudulent telemarketers often artfully craft their sales pitches to avoid express representations while delivering an implied message that a consumer has won a prize.

8. *Seller and telemarketer.* Another definition that elicited comments was the term "seller."[36] Many commenters expressed the view that the definition needed clarification as to what constitutes a "seller" under the Rule, particularly with respect to its application to diversified companies or divisions within one parent organization. For example, as it explained during the workshop conference, ANA represents many members that have divisions of large diversified companies, such as Orkin.[37] ANA explained that in addition to pest and termite control that people are familiar with, Orkin also offers a number of other services unrelated to pests and termites.[38]

After careful consideration, the Commission believes that the definition of the term "seller" is clear. The Commission intends that this definition encompass distinct corporate divisions as separate "sellers." The determination as to whether distinct divisions of a single corporate organization will be treated as separate sellers will depend on such factors as: (1) Whether there exists substantial diversity between the operational structure of the division and other divisions or the corporate organization and (2) whether the nature or type of goods or services offered by the division are substantially different from those offered by other divisions or the corporate organization.

The term "telemarketer," included in revised Section 310.2(t),[39] also elicited numerous requests for clarification. The Commission believes that the definition is clear. The Commission intends that the definition of the term "telemarketer" apply to persons making a telephone call to, or receiving a telephone call from, a customer[40] in connection with or about the purchase of goods or services. It does not include persons making or receiving customer service calls or similar tangential telephone contacts unless a sales offer is made and accepted during such calls. To provide industry with further guidance as to the intended scope of the term "telemarketer," the Commission has substituted the phrase "telephone calls to" in place of "telephonic communication."

Commenters also raised concerns about whether sellers and telemarketers should be held jointly liable under the Rule for the actions of the other. The Commission finds nothing in the statute or legislative history to support the view that it is the intent of Congress to impose joint and several liability between a seller and a telemarketer. Nor does the Commission intend such a result. However, the revised proposed Rule's provisions state that a seller or a telemarketer can be held liable for violating various parts of the Rule if either engages in the prohibited acts or practices. Additionally, liability can be imposed on a seller or telemarketer for assisting and facilitating a Rule violation if either meets the standard set forth in Section 310.3(b). Therefore, although the Rule does not impose joint and several liability, a seller or telemarketer can be held liable if either engages directly, or substantially assists or facilitates the other, in any violation of this Rule.

9. *Telemarketing.* The definition of "telemarketing," in Section 310.2(u),[41] engendered more comments by far than any other definition. Based on the comments submitted by law enforcement and industry representatives, the Commission proposes a revised definition of "telemarketing." The revised definition states:

Telemarketing means a plan, program, or campaign which is conducted to induce the purchase of goods or services by use of one or more telephones and which involves more than one interstate telephone call. The term does not include the solicitation of sales through the mailing of a catalog which: contains a written description or illustration of the goods or services offered for sale; includes the business address of the seller; includes multiple pages of written material or illustrations; and has been issued not less frequently than once a year, when the person making the solicitation does not solicit customers by telephone but only receives calls initiated by customers in response to the catalog and during those calls takes orders only without further solicitation. For purposes of the previous sentence, the term "further solicitation" does not include providing the customer with information about, or attempting to sell, any other item included in the same catalog which prompted the customer's call or in a substantially similar catalog.

The revised definition of "telemarketing" follows more closely the statutory definition set forth by Congress in the Telemarketing Act.[42] The Commission has carefully considered suggestions that the initially proposed definition exceeded the Commission's statutory authority and has determined that closer adherence to the statutory language is the more appropriate approach.[43] This change also limits the definition of "telemarketing" to telephone calls and excludes from coverage other "telephonic mediums." After considering many comments that objected to the Rule's coverage of on-line services, the Commission acknowledges that it does not have the necessary information available to it to support coverage of on-line services under the Rule.[44]

The revised definition of "telemarketing" also eliminates specific language relating to coverage of inbound calls. Many commenters expressed concern that inclusion of such calls went beyond the Commission's statutory authority.[45] As will be discussed further in the discussion of Section 310.6, given the abundant, unambiguous legislative history on this point,[46] and the omission from the statute of any indication that inbound calls are not within its ambit, the Commission rejects this view. Other commenters[47] stated that including inbound calls in the proposed definition caused confusion about the applicability

[35] NAAG at 10.

[36] Initially proposed Rule Section 310.2(s).

[37] Tr. at 666.

[38] *Id.*

[39] Initially proposed Rule Section 310.2(u).

[40] Revised Section 310.2(i) defines "customer" as "any person who is or may be required to pay for goods or services offered through telemarketing."

[41] Initially proposed Rule Section 310.2(v).

[42] 15 U.S.C. 6106(4).

[43] The Commission, however, does not adopt the view that the definition of "telemarketing" in the initially proposed Rule went beyond the Telemarketing Act. In enacting the Telemarketing Act, Congress clearly intended to cover purchases of tangible as well as intangible goods or services, including leases and licenses. House Report at 11; Senate Report at 8. In any "purchase" there is an exchange of consideration, in other words a "payment." Because deceptive telemarketers could construe the term "purchase" to apply only to the acquisition of a "tangible" good or service, the Commission substituted the term "payment" for "purchase." The Commission intended to clarify that sales of intangible goods or services were included in the term "telemarketing," as they still are under the revised proposed Rule.

[44] Such media remain subject to the Commission's jurisdiction under the FTC Act, 15 U.S.C. 41 *et seq.* See, e.g., FTC v. Corzine, dba Chase Consulting No. CIV-S–94–1146–DFL JFM (E.D. Cal. Dec. 1994).

[45] *See, e.g.,* DSA at 6; NRF at 20–21.

[46] House Report at 2; Senate Report at 7–8.

[47] *E.g.,* DMA at 17–18; MPA at 8–9.

of the proposed general advertising exemption contained in Section 310.6 of the initially proposed Rule. Because the definition of "telemarketing" encompasses coverage of inbound calls under the Rule, it is no longer necessary to include such calls explicitly within the revised definition of "telemarketing." Furthermore, the inbound call exemption has been clarified in Section 310.6 to eliminate the confusion expressed in the comments. The revised proposed Rule's coverage, however, extends to inbound calls.

Many industry comments addressed the term "further solicitation" used in the part of the "telemarketing" definition that exempts from coverage solicitation of sales through the mailing of a catalog.[48] Numerous industry commenters suggested that reputable catalog companies have substantially similar catalogs in the public domain that mirror each other but may also be targeted to a particular season, activity, or product. For example, a mail order clothing seller may have summer and spring catalogs that include many of the same products, but they are different catalogs nevertheless. Commenters suggested that offering a caller goods or products contained in a catalog substantially similar to the catalog that generated the call should not trigger Rule coverage for a catalog seller.[49] Counterbalancing this point is the Commission's concern that exemptions from coverage be narrowly drawn to discourage exploitation of a perceived loophole by unscrupulous telemarketers. The revised proposed Rule therefore is modified to accommodate legitimate industry's practice of regularly mailing seasonal and similar catalogs, at the same time limiting the exemption to those catalogs that are "substantially similar" to the catalog that generated the customer's call.

Several commenters also expressed uncertainty as to whether "telemarketing" included calls to schedule appointments for subsequent face-to-face sales presentations and calls to inform persons about upcoming store sales or promotions.[50] The Commission believes that the definition clearly reflects the intention to cover those telephone calls that result in the sale of goods or services over the telephone without any opportunity by the customer to examine the goods or services. Obviously, a face-to-face sales presentation provides such an opportunity and the notification of upcoming sales or promotions inviting a customer to come into a store or other in-person setting does not culminate in a telephone sale.

10. *Telephone solicitation.* The initially proposed Rule included a definition of the term "telephone solicitation." As noted in the NPR, the definition was "intended to include only outbound sales calls, *i.e.*, telephone calls that are initiated by a telemarketer to a customer to induce payment for goods or services."[51] Based on the comments received about other Sections of the initially proposed Rule that used the term "telephone solicitation," the intended coverage of only outbound sales calls was not clear.[52] In order to clarify this point, the revised proposed Rule now defines the term "outbound telephone call" in Section 310.2(n) to mean "a telephone call initiated by a telemarketer to induce the purchase of goods or services," and uses it in every instance where the initially proposed Rule used the term "telephone solicitation."

11. *Verifiable retail sales price.* The initially proposed Rule defined the term "verifiable retail sales price."[53] The Commission has deleted all references to "verifiable retail sales price" in the revised proposed Rule. The Commission does not believe including a definition of "verifiable retail sales price" is necessary in this revised proposed Rule. Where appropriate, the Commission has used the term "value" in the Rule. The Commission intends that any represented value have a reasonable basis in fact.

Section 310.3 Deceptive Telemarketing Acts or Practices

1. *Prohibited Deceptive Telemarketing Acts or Practices.* Revised Section 310.3(a) continues to require affirmative disclosures and prohibits misrepresenting material information. As in the initial version of the proposed Rule, Section 310.3(a)(1) requires affirmative disclosures of general categories of material information. Many industry commenters, however, expressed concern about the uncertain scope of the affirmative disclosure obligation embodied in Section 310.3(a)(1).[54] The Commission has carefully considered these concerns and revised the proposed Rule accordingly. Specifically, the initially proposed rule required disclosure of "the total costs, terms, and material restrictions, limitations, or conditions of receiving any goods or services." Revised Section 310.3(a)(1) now requires disclosure of "the total costs * * * [and] all material restrictions, limitations, or conditions *to purchase, receive or use* any goods or services *that are the subject of the sales offer.*" This revision is intended to narrow and clarify the scope of the disclosure obligation. The initially proposed rule also specified that the disclosures required by Section 310.3(a)(1) be made "before payment is requested * * * and in the same manner and form as the payment request." In response to strong industry urging for greater flexibility in the manner and timing of essential disclosures,[55] the revised proposed rule specifies only that the disclosures be made "before a customer pays" and that they be made "in a clear and conspicuous manner." These disclosures may be made either orally or in writing. The determining factor for when a customer pays, regardless of whether by cash, check, credit card, demand draft, or otherwise, is when a customer sends funds by any means or provides credit card or bank account information to the seller or telemarketer to purchase goods or services. Additionally, Section 310.3(a)(1) no longer requires an affirmative disclosure of a seller's refund, cancellation, exchange, or repurchase policies, *unless* the seller or telemarketer chooses to make representations relating to such policies a part of the sales offer. If a seller or telemarketer chooses to make such policies a part of the sales offer, then the seller or telemarketer must disclose all the *material aspects* of the terms and conditions of such policies, orally or in writing, before a customer pays for the goods or services offered. Finally, a seller or telemarketer must disclose that no purchase is necessary to win if a prize promotion is offered in conjunction with a sales offer of goods or services.

Section 310.3(a)(2) continues to prohibit misrepresentations of several categories of material information. The information deemed material under Section 310.3(a)(2) is based on established case law and the Commission's deception policy statement. The Commission, however, has determined to drop the lengthy enumeration of specific prohibited misrepresentations contained in Sections 310.3(a)(2)(viii)-(xxiv) of the initially proposed Rule. These specific prohibited misrepresentations, each of

[48] *See, e.g.*, APAC at 9; NRF at 23–25; MPA at 10.
[49] *E.g.*, NRF at 24.
[50] See, e.g., WFNNB at 1.
[51] 60 FR at 8315.
[52] *See, e.g.*, MPA at 19; NRF at 35.
[53] Initially proposed Rule Section 310.2(x).
[54] *See* NIMA at 11; ACAR at 12; TR. at 292 (Monex), 296–97 (PMAA), 303–05 (ICTA)
[55] *See* PMAA at 80; OPC at 2–3; ADS at 1; MORA at 1.

which was based on allegations in complaints filed in recent years by the Commission under Section 13(b) of the FTC Act,[56] are no longer necessary because they are subsumed in the general prohibitions against misrepresentations set forth in Section 310.3(a)(2) of the revised proposed Rule. No inference should be drawn that these deletions in any way alter the Commission's view that the misrepresentations enumerated initially in proposed Sections 310.3(a)(2)(viii)-(xxiv) would violate the FTC Act as well as the revised proposed Rule. The Commission believes that this more concise regulatory approach effectuates Congress' legislative intent and addresses the concerns of many commenters, consumer groups,[57] law enforcement,[58] and industry[59] alike, who asserted that a general standard of deception was necessary either in addition to or instead of the enumerated acts or practices.

Sections 310.3(a)(2)(i)-(ii) prohibit misrepresenting information required to be disclosed under Section 310.3(a)(1). The scope of Sections 310.3(a)(2)(i)-(ii) has been delineated more precisely than their counterparts in the initially proposed Rule Sections 310.3(a)(2)(i)-(iii). Revised Sections 310.3(a)(2)(i)-(ii) now include the limiting phrases "to purchase, receive, or use" and "that are the subject of a sales offer." The same clarifying phrases have been added to revised Section 310.3(a)(2)(iii), which specifies that misrepresenting "any material aspect of the performance, efficacy, nature, or central characteristics of goods or services that are the subject of the sales offer" violates this Rule. Commission case law and policy are clear that such information is material to a person's choice of or conduct regarding the purchase of goods or services. Similarly, representations as to a seller's refund, cancellation, exchange, or repurchase policies are material to a person's purchase decision. Section 310.3(a)(2)(iv) (identical to Section 310.3(a)(2)(v) of the initially proposed Rule) therefore prohibits misrepresenting the latter category of information.

Section 310.3(a)(2)(v) of the revised proposed Rule prohibits misrepresenting "any material aspect of a prize promotion, including but not limited to the odds of winning, the nature or value of a prize, or that payment is required to receive a prize." The Commission has enumerated specific examples of material aspects of a prize promotion based on misrepresentations that the Commission has alleged in complaints filed under Section 13(b) of the FTC Act. The Commission believes that treating prize promotions as a separate general category is warranted given the great number of deceptive prize promotions and the distinct characteristics associated with such promotions.[60] Moreover, the legislative history clearly shows that Congress specifically intended that the Rule cover prizes or awards.[61] Because there are certain aspects of a prize promotion that could be construed to be outside the scope of provisions narrowly limited to "the subject of a sales offer," the Commission believes that it is necessary to include revised Section 310.3(a)(2)(v). The prohibitions against prize promotion misrepresentations under Section 310.3(a)(2)(v) are in addition to the other prohibitions set forth in Section 310.3(a)(2).

Similarly, Section 310.3(a)(2)(vi) prohibits misrepresenting material aspects of an investment opportunity. The legislative history reflects Congress' recognition that deceptive investment opportunities account for a considerable percentage of deceptive telemarketing.[62] Moreover, since 1991, deceptive investment scams account for approximately 43% of the Commission's telemarketing cases. The amount at risk for a consumer is generally far greater in investment scams than in deceptive schemes involving other types of consumer goods or services. Thus, investment opportunities are an area of heightened concern for consumers and the Commission. The revised proposed rule includes Section 310.3(a)(2)(vi), prohibiting misrepresentation of specified aspects of investment opportunities. This provision is included to obviate any possible construction that might exclude investment opportunities from the scope of Sections 310.3(a)(2)(i)-(iii). These general initial provisions are designed to embrace a limitless range of goods or services but are narrowly drawn to prohibit misrepresentations centered on purchase, receipt or use, or upon "performance, efficacy, nature, or central characteristics," which are unlike investment-specific attributes such as risk, liquidity, earnings potential, or profitability. The prohibitions on misrepresentations under Section 310.3(a)(2)(vi) are in addition to, not in lieu of, other provisions under Section 310.3(a)(2).

Finally, the Commission has included Section 310.3(a)(2)(vii) that prohibits misrepresenting "a seller's or telemarketer's affiliation with, or endorsement by, any government or third-party organization." The Commission believes that this Section is necessary based on its own experience in law enforcement actions against deceptive telemarketers as well as the information state law enforcement agencies provided. Based on the Commission's enforcement experience, deceptive telemarketers bolster their credibility by misrepresenting that they are endorsed by or affiliated with charitable, police, civic, or similar organizations. A separate category is required because these types of misrepresentations, again, could be construed as outside the apparent scope of Sections 310.3(a)(2)(i)-(iii). However, Section 310.3(a)(2)(vii) is in addition to, not in lieu of, other provisions under Section 310.3(a)(2).

The Commission has deleted Section 310.3(a)(3) relating to business ventures. The Commission, as stated in Section 310.2, believes it is more appropriate to consider business ventures in the context of the Commission's recently-initiated Franchise Rule review. This should not be construed to mean, however, that if a business venture is sold through telemarketing and does not meet the coverage requirements under the Franchise Rule as currently in effect, it is exempt under this Rule. Such a "business venture" will still be deemed to be covered under this Rule as a good or service and be subject to the Rule's disclosure requirements and prohibitions.

Revised Section 310.3(a)(3) generally prohibits "making a false or misleading statement to induce any person to pay for goods or services." This general provision subsumes Sections 310.3(a)(4) and (5) of the initially proposed Rule. Former Section 310.3(a)(4) required written authorization before taking any funds from a consumer's checking, savings, or similar account. Former Section 310.3(a)(5) required express authorization before "obtaining any amount of money from a person through any means." The revised Section, through more economical means, reflects how deceptive sellers and telemarketers gain access to consumers' money through false and misleading statements regardless of the payment system used. While addressing these deceptive practices, revised Section

[56] 15 U.S.C. 53(b).
[57] *See, e.g.*, AARP at 10.
[58] *See, e.g.*, USPS at 4.
[59] *See, e.g.*, APAC at 2; ATA at 5; DMA at 19; Monex at 8–9.
[60] Almost 32% of the 141 telemarketing cases brought by the Commission since 1991 related to deceptive prize promotions.
[61] *See* Senate Report at 8.
[62] *See* Senate Report at 8.

310.3(a)(3) also avoids unduly burdening legitimate industry's nondeceptive use of various payment systems.[63]

2. *Assisting and Facilitating.* Section 310.3(b) received substantial attention from commenters. Law enforcement and consumer groups generally were favorable but some suggested including a more general prohibition against assisting and facilitating.[64] Industry comments raised concerns that the knowledge standard in the initially proposed Rule was too vague or harsh and that the liability for assisting and facilitating should attach only where the assistance or support is directly linked and material to the Rule violation.[65] Some industry commenters suggested that the Rule include exemptions for certain practices and that this Section not impose any affirmative duties on third parties.[66] All commenters raised valid and important issues that the Commission has considered.

To address concerns that the "knew or should have known" standard initially proposed may have swept too broadly and exposed those only casually associated with deceptive telemarketing to liability as assistors or facilitators, the Commission now proposes the "actual knowledge or conscious avoidance" standard advanced by a number of participants in the public workshop.[67] This standard is similar to the knowledge standard applicable in actions under Section 13(b) of the FTC Act governing individual liability to pay restitution to consumers for injury resulting from law violations of a corporation controlled by the individual[68]—a type of vicarious liability somewhat analogous to assistor and facilitator liability. The Commission intends that this revision delineate the scope of assistor and facilitator liability more clearly and more narrowly than did the "know or should have known" standard.

The Commission also believes it appropriate to specify that there be some connection between the substantial assistance provided to a deceptive telemarketer and resulting violations of core provisions of the revised proposed Rule. Revised proposed Section 310.3(b) therefore requires that there be substantial assistance related to the commission or furtherance of a core rule violation. The provision now reads as follows:

> It is a deceptive telemarketing act or practice and a violation of this Rule for a person to provide substantial assistance or support to any seller or telemarketer when that person knows or consciously avoids knowing that the seller or telemarketer is engaged in any act or practice that violates §§ 310.3 (a) or (c) or 310.4 of this Rule and such substantial assistance is related to the commission or furtherance of that act or practice.

Section 310.3(b)(2) of the initially proposed Rule set forth five specific examples of conduct deemed to meet the "substantial assistance" prong of the two-prong test for "assisting and facilitating" set forth in Section 310.3(b)(1), which, when coupled with knowledge required by the second prong, would constitute a violation of this Rule. The prevailing view among industry commenters was that this list of examples would be interpreted as condemning a range of commercial activities that, in and of themselves, are not injurious to consumers or unlawful.[69] The resulting chilling effect could result in unnecessary costs to industry, which, of course, would ultimately be borne by consumers. This detrimental effect, combined with the potential for the Section to be construed as limiting the scope of assisting and facilitating to *only* the listed activities, and thus hindering effective law enforcement efforts, outweighed any benefits such intended guidance could likely provide. The Commission has eliminated examples from the prohibition, but still considers the acts or practices enumerated in former Section 310.3(b)(2) to be illustrative of those that provide substantial assistance to Rule violators when coupled with knowledge and a relationship to a specified Rule violation. Acts of substantial assistance that could meet the Section 310.3(b) liability standard include: providing lists of contacts to a seller or telemarketer that identify persons over the age of 55, persons who have bad credit histories, or persons who have been victimized previously by deceptive telemarketing or direct sales; providing any certificate or coupon which may later be exchanged for travel-related services; providing any script, advertising, brochure, promotional material, or direct marketing piece used in telemarketing; or providing an appraisal or valuation of a good or service sold through telemarketing when such an appraisal or valuation has no reasonable basis in fact or cannot be substantiated at the time it is rendered.

3. *Credit Card Laundering.* The Commission received very few comments that offered changes or that were critical of Section 310.3(c), which pertains to credit card laundering. Comments that did address this Section suggested that agents, licensees, and independent contractors be included under the definition of "merchant."[70] Visa and MasterCard stated that they believed this Section to be "well designed to attack a critical link in telemarketing fraud," but proposed adding language that would not prohibit access to the credit card system if the credit card system permits such access through means other than a written merchant agreement.[71]

The Commission believes that the distinction between "launderers" and others who exploit the credit card system, and "merchants" and others who make legitimate use of such systems, rests on whether the operator of the system has given permission for such access. For example, some merchants have the permission of their credit card system operator to permit lessees to deposit their sales transactions through the merchant's account. On the other hand, the hallmark of prohibited laundering is providing access to a merchant account to an entity not *authorized* by the system operator to have such access. Based on the foregoing, the Commission does not believe it is wise to broaden the definition of "merchant." An underlying purpose of this Section is to delineate clearly, in accordance with legitimate industry standards, those persons who are deemed to properly have access to the credit card system. However, the comments of Visa and MasterCard point out a way that the provision can be modified to allow for situations where a credit card system expressly permits access to the applicable system, other than through a written merchant agreement. Because such a modification will give rise to no foreseeable problems of proof to law enforcement efforts, the Commission concludes that this modification is appropriate.[72] The Commission therefore has determined that the modifications needed to Section 310.3(c) are to add language to the preamble to state that "except where expressly permitted by the applicable credit card system * * *" and to add similar language to the end of Section 310.3(c)(3).

[63] Several commenters and workshop participants provided information tending to refute the proposition that demand drafts are characteristic solely of deceptive telemarketers. *See, e.g.*, NAPA; Autoscribe; Olan.

[64] *See generally* NCL at 8; USPS at 7–8.

[65] *See, e.g.*, WFNNB at 2; MPA at 11–13; ATA at 6; DMA at 22–24; NRF at 29; Monex at 11–13.

[66] *See generally* PMAA; ADS; LCS; DMA; ISA.

[67] *See e.g.*, Tr. at 372–73 (Monex); 382–85 (DMA).

[68] Under these cases, the knowledge requirement is well-established and can be fulfilled by showing either actual knowledge, reckless indifference to the truth or falsity of the representation, or an awareness of a high probability of fraud coupled with an intentional avoidance of the truth. *E.g., FTC v. American Standard Credit Systems, Inc.*, CV 93–2623 LGB (JRx) (C.D. Cal. Aug. 15, 1994); *FTC v. Amy Travel Serv.*, 875 F.2d 564, 573–74 (7th Cir.), cert. denied, 493 U.S. 954 (1989); *FTC v. Kitco of Nevada, Inc.*, 612 F. Supp. 1282, 1292 (D. Minn 1985); *FTC v. International Diamond Corp.*, 1983–2 Trade Cas. (CCH) 65,725 at 69,707 (N.D. Cal. 1983). This knowledge standard has not imposed any unduly onerous problems of proof on the Commission in its Section 13(b) telemarketing fraud cases and has not impeded the Commission's ability to obtain restitution from individual defendants.

[69] *See generally* DMA; PMAA.

[70] *E.g.*, DMA at 24; NRF at 30.

[71] *See* MasterCard at 10–11.

[72] NCL requested in its comments pertaining to credit card laundering that the Commission consider protections relating to the use of "credit card checks" and "credit card cash advances." *See* NCL at 31. NCL expressed concern that credit card protections contemplated in Section 310.3(c) and the Fair Credit Billing Act ["FCBA"], 15 U.S.C. 1666, do not extend to those alternative credit methods. There is no indication in the legislative history or the Telemarketing Act that Congress intended to include under credit card laundering the alternative credit methods NCL describes. Moreover, the Commission does not have the authority under the Act to expand or affect the scope of the FCBA. The Commission believes, however, that transactions effected through the use of the alternative credit methods NCL described are adequately protected under the FCBA dispute procedures. *Id.*

[73] IA DOJ at 13; AARP at 14.

[74] ADC at 1; ARDA at 21.

Section 310.4 Abusive Telemarketing Acts or Practices

1. *Abusive Conduct Generally.* Section 310.4(a) of the initially proposed Rule set forth eight different prohibited abusive telemarketing acts or practices. The revised proposed Rule deletes four of those provisions, and amends the other four prohibited practices. Each of these practices will be discussed in turn.

(a) *Threats, intimidation, or the use of profane or obscene language.* The initially proposed Rule prohibited threats or intimidation in Section 310.4(a)(1). The Commission believes such acts are clearly abusive in telemarketing transactions, and this prohibition remains in the revised proposed Rule. Commenters noted that threats are a means of perpetrating a fraud on vulnerable victims, and that many older people can be particularly vulnerable to threats and intimidation.[73] Other commenters expressed the view that the terms "threats" and "intimidation" are vague and need to be defined.[74] The Commission does not believe further definition of these terms is necessary in the text of the Rule; as drafted, this Section clearly contemplates that all threats be covered, including those particularly stressed by NCL—threats of bodily injury and financial ruin and threats to ruin credit. It also prohibits intimidation—acts which put undue pressure on a consumer or which call into question a person's intelligence, honesty, reliability, or concern for family. Repeated calls to an individual who has declined to accept an offer may also be an act of intimidation.[75]

The Commission has also added under this Section a prohibition against the use of profane or obscene language. The legislative history of the Telemarketing Act indicates that the Commission should consider prohibiting such abusive practices, and should "draw upon its experience in enforcing standards established under the Fair Debt Collection Practices Act ["FDCPA"], 15 U.S.C. 1692, in defining these terms."[76] The FDCPA includes a specific prohibition on the use of profane or obscene language,[77] and the Commission believes such a prohibition is equally appropriate in this Rule.

(b) *Courier pickups.* The initially proposed Rule prohibited any seller or telemarketer from providing for or directing a courier to pick up payment from a customer.[78] Law enforcement and consumer representatives generally applauded this provision.[79] IA DOJ noted: "A critical component of a fraudulent telemarketing scheme is getting the victim's money before the victim has the opportunity to reconsider, or before a third party, such as a relative, banker, or law enforcement authority becomes involved."[80] In addition, NCL stated that over 45% of all telemarketing complaints it receives involve shipment by private courier, and almost all of these shipments contain personal checks. According to NCL, a personal check sent via a private courier is the single most popular method of removing money from the pockets of victims.[81]

On the other hand, many industry representatives opposed this provision.[82] Commenters noted various ways this prohibition would harm legitimate businesses, including: prohibiting C.O.D. transactions;[83] preventing newspaper carriers from making door-to-door collections on their paper routes;[84] eliminating the merchant coupon book industry;[85] and precluding cable operators and others from using couriers to pick up payments from customers who are in arrears and who wish to avoid disconnection of their service.[86]

After reviewing these comments, the Commission agrees that a ban on the use of courier pickups of consumer payments is unworkable. There is nothing inherently deceptive or abusive about the use of couriers by legitimate business, and the comments show that many legitimate businesses use them. While fraudulent telemarketers often use couriers to obtain quickly the spoils of their deceit, such telemarketers engage in other acts or practices that clearly are deceptive or abusive, and that are prohibited by this Rule. Thus, the prohibition of courier use is unnecessary, and it has been deleted from the revised proposed Rule.

(c) *Credit repair services.* Section 310.4(a)(3) of the initially proposed Rule prohibited any seller or telemarketer from requesting or receiving payment of any fee or consideration for goods or services represented to improve a person's credit history, credit record, or credit rating until the contract for the services had expired and the promised results had been achieved.[87] A number of commenters strongly supported this prohibition as a necessary limitation on the telemarketing of deceptive credit repair services.[88] The Commission agrees, and is retaining this provision in the revised proposed Rule, with the following two amendments suggested by commenters.

First, NCL suggested, and the Commission agrees, that the prohibition on advance payments should extend to services that promise to remove derogatory information from a consumer's credit record, in addition to those services that simply promise to improve a person's credit history, record or rating.[89] Second, the revised proposed Rule will not permit, as documentation that the promised results have been achieved, records from the original furnisher or provider of the derogatory information to the consumer reporting agency. As noted by NYSCPB the original furnisher of such information cannot control the actions of the consumer reporting agencies.[90]

[75] NCL at 32–33. *Accord*, USPS at 11.

[76] *See, e.g.*, House Report at 8.

[77] Section 806(2) of the FDCPA, 15 U.S.C. 1692d(2).

[78] Initially proposed Rule Section 310.4(a)(2).

[79] *See, e.g.*, NAAG at 23–24; USPS at 11–12; CFA at 3; AARP at 14–15.

[80] IA DOJ at 6.

[81] NCL at 33–35.

[82] *See, e.g.*, Monex at 13–14; A-Mark at 10.

[83] DMA at 25; PMAA at 84; DMSI at 5; MRG at 4; UPS at 2.

[84] CDI at 1; CA at 3; Cox at 11; Gannet at 6; NAA at 15; Washington at 17.

[85] AWMI at 1; GGP at 2; GCM at 1; MGC at 1; MI at 1.

[86] Comcast at 5, n.5.

[87] Revised proposed Rule Section 310.4(a)(2).

[88] NAAG at 24; CFA at 3; USD at 4; NCL at 37; USPS at 12. ABA "commends" the Commission for this provision. ABA at 9.

[89] NCL at 38.

[90] NYSCPB at 8.

Thus, for a variety of reasons, a consumer's credit report may not be changed, even though the original furnisher has documentation requesting such a change to occur. The Commission, therefore, has revised the initially proposed Rule to require the examination of a consumer's credit report, to determine if the services have been provided, before the seller or telemarketer may request or receive payment from the customer.

A number of commenters suggested amending this Section to clarify that it does not apply to credit monitoring services.[91] The Commission did not intend to limit the actions of such legitimate services, and does not believe this Section would prohibit such services.

Other commenters stated that this provision may inadvertently prohibit the telemarketing of secured credit cards, harming consumers who use such cards to develop a satisfactory credit record.[92] In fact, these commenters suggested an exemption to this provision for the telemarketing of secured credit cards by depository institutions. The Commission does not believe such an exemption is necessary, because banks, savings and loans, and Federal credit unions are outside of the jurisdiction of the FTC, and are therefore not covered by the Rule.[93]

(d) *Recovery room services.* The next abusive practice prohibited by the initially proposed Rule involved recovery room scams.[94] In these operations, a fraudulent telemarketer will call a consumer who has lost money in a previous scam and make false promises that the telemarketer can recover that money, in exchange for a fee paid in advance. After the fee is paid, the promised services are never provided. As law enforcement commenters noted, the recovery scheme is especially abusive, targeting particularly vulnerable victims, including the elderly.[95]

A number of financial institutions requested clarification that this Section does not apply to legitimate debt collection activities.[96] In addition, another commenter opined that this Section, as proposed, could impair the ability of newspapers to accept classified ads for lost and found items.[97] The Commission believes that changing the phrase "induce payment" to "induce purchase" in the definition of "telemarketing" clarifies that debt collection practices are not the types of telemarketing practices at issue in this Rule. Furthermore, the Commission is revising this Section to make it applicable only to recovery services that promise the return of money or other items of value paid for or promised to the consumer *in a previous telemarketing transaction.* Thus, this Section will not apply to attempts to recover money or items lost outside of telemarketing.

The initially proposed Rule prohibited sellers or telemarketers from requesting or receiving payment of any fee for recovery services until three days after the recovered money or other item is delivered to the consumer. AARP noted that the three-day period may be insufficient to protect consumers, and asked that the Rule allow the minimum time necessary for out-of-state checks to clear.[98] The Commission agrees, and has lengthened the time period that must elapse before providers of such services can request payment from consumers to seven business days after delivery of the recovered money or other item of value.

Finally, the initially proposed Rule provided an exemption from this Section for licensed attorneys or licensed private investigators pursuant to a written agreement with the consumer. Some commenters believed that private investigators should not be exempt, because such an exemption would only lead to fraudulent recovery services signing up with unscrupulous private investigators as a method of evading this prohibition.[99] The Commission agrees, and has removed the exemption for private investigators.

(e) *Advance fee loans.* Section 310.4(a)(5) of the initially proposed Rule prohibited any seller or telemarketer from requesting or receiving payment of any fee or consideration in advance of obtaining a loan or any credit service when the seller or telemarketer has guaranteed or represented a high likelihood of success in obtaining or arranging a loan or credit service for a person.[100] DMA urged that the Commission clarify that this Section does not apply to services, such as monitoring or counseling, that are not represented to improve a person's credit history.[101] The Commission did not intend for such services to be covered, and is changing the phrase "credit service," used in the initially proposed Rule, to "extension of credit." In this manner, the application of this prohibition only to loans or other extensions of credit will be clearer.[102]

(f) *Prize distribution.* The next prohibited abusive practice included in the initially proposed Rule concerned the distribution of prizes during a prize promotion. Section 310.4(a)(6) of the initially proposed Rule required any seller or telemarketer conducting such promotions to distribute all prizes or purported prizes offered within 18 months of the initial offer to any person. The Commission believes that this practice is adequately covered by the prohibition against misrepresenting any material aspect of a prize promotion in Section 310.3(a)(2)(v) of the revised proposed Rule. Because the practices included in this Section of the initially proposed Rule are addressed by other prohibitions, it has been deleted from the revised proposed Rule.

(g) *Reloading.* Section 310.4(a)(7) of the initially proposed Rule prohibited any seller or telemarketer from offering or selling goods or services through a telephone solicitation to a person who previously has paid the same seller for goods or services, until all terms and conditions of the initial transaction have been fulfilled, including but not limited to the distribution of all prizes or premiums offered in conjunction with the initial transaction.

This provision of the initially proposed Rule elicited nearly unanimous negative comments from industry representatives. The Commission learned from these comments that many legitimate businesses call their customers before full satisfaction has been made on a prior transaction. Indeed, cultivating established customers in this way is regarded as one of the most effective selling techniques by legitimate sellers. Commenters noted that the Section as proposed would preclude a seller or telemarketer from calling customers to renew subscriptions, warranties, service contracts, and a host of other ongoing services prior to their expiration.[103] Commenters also noted that this prohibition would be particularly burdensome for large, diversified companies with multiple divisions, sales offices and product lines.[104]

Given the fact there is nothing about this practice, in and of itself, that is inherently injurious to consumers, and given the widespread use of this practice by legitimate telemarketers, the Commission has dropped from the revised proposed Rule any attempt to restrict this practice. Reloading is a problem when there is deception in the sales offer. Because such deception is prohibited by the revised proposed Rule under Section 310.3(a), a separate prohibition of "reloading" is unnecessary. Accordingly, it has been deleted from the revised proposed Rule.

(h) *The Use of Shills.* Section 310.4(a)(8) of the initially proposed Rule prohibited identifying a person as a reference for a business venture unless: (1) Such person actually purchased the business venture; (2) such person operated that business venture for at least six months, or the seller or telemarketer disclosed the length of time the person operated such business venture; and (3) such person did not receive consideration for any statements made to prospective business venture purchasers. As stated in the discussion of Section 310.2 of the definition of "business venture," the Commission believes that consideration of such a prohibition is more appropriately included as part of its regulatory review of the Franchise Rule.

2. *Pattern of Calls.* Section 310.4(b)(1)(i) of the proposed Rule prohibited a seller or telemarketer from making a sales call to a person's residence more than once within any three month period. Many commenters stated that this was an unreasonable and arbitrary prohibition that was difficult to comply with, and that should be eliminated.[105] In addition, commenters noted that consumers already have the protections of the Telephone Consumer Protection Act ["TCPA"] rules, which require telemarketers to establish and maintain a "do not call" list of consumers who do not wish to be contacted by that seller.[106] Given the fact that calls more frequent than once per month are not, in and of themselves, injurious to consumers, and given the consumer protections afforded by the "do not call" requirements of the TCPA [107] and this Rule, the Commission agrees that this provision is unnecessary and has therefore deleted it.

In its place, the Commission proposes in revised Rule Section 310.4(b)(i) to prohibit any seller or telemarketer to cause any telephone to ring, or engage any person in telephone conversation, repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number. Such a prohibition is included in the FDCPA, [108]and the legislative history of the Telemarketing Act states that the Commission should consider the FDCPA in establishing prohibited abusive acts or practices.[109]

Section 310.4(b)(1)(ii) of the initially proposed Rule set forth the prohibition on calling a person's residence when that person previously has stated that he or she does not wish to receive such a call made by or on behalf of the seller whose goods or services are being offered. The Commission continues to believe that such a limitation, which is fully consistent with and complementary to similar provisions under the TCPA,[110] will effectively implement the Telemarketing Act's directive to include in this Rule "a requirement that telemarketers may not undertake a pattern of unsolicited telephone calls which the reasonable consumer would consider coercive or abusive of such consumer's right to privacy." [111] This Section did not elicit many comments; the only change made to this Section responds to the comments suggesting that the prohibition should apply to a particular person or telephone number, not to a residence (as the initially proposed version of this provision stated), because a residence may have more than one person who is a customer of a particular seller.[112] The revised proposed Rule states that the prohibition applies to calls made to a person, rather than a person's residence.

Section 310.4(b)(2) of the initially proposed Rule provided a limited safe harbor against liability for violating the "do not call" prohibitions included in Section 310.4(b)(1)(ii). This Section stated that a seller or telemarketer will not be liable for such violations once in any calendar year per person called if: (1) It has established and implemented written procedures to comply with the "do not call provisions"; (2) it has trained its personnel in those procedures; (3) the seller, or the telemarketer acting on behalf of the seller, has maintained and recorded lists of persons who may not be contacted; and (4) any subsequent call is the result of administrative error.

Two changes have been made to this Section. First, some commenters suggested that the safe harbor should not be limited to a certain number of violations per consumer or per year.[113] These commenters maintained that if the other enumerated steps are taken by a telemarketer in a reasonable manner, and a call is made erroneously, a Rule violation should not be found. The Commission agrees, and has deleted this limitation to the safe harbor. Second, the safe harbor will apply if the subsequent call is the result of any error, not just an administrative error. This responds to concerns raised that unintentional or accidental calls should also be covered by the safe harbor.[114]

3. *Calling Time Restrictions.* The initially proposed Rule prohibited any telemarketer from calling a person's residence, without the prior consent of the person, at any time other than between 8:00 a.m. and 9:00 p.m. local time at the called person's location. The Commission included this provision in the initially proposed Rule in response to the Telemarketing Act's directive that the Rule should include "restrictions on the hours of the day and night when unsolicited telephone calls can be made to consumers." [115] While some commenters suggested different time

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[91] ATA at 7; CUCI at 7; DMA at 25; Spiegel at 4.

[92] ABA at 8; Citicorp at 8–9; MasterCard at 11.

[93] *See* 15 U.S.C. 45(a)(2); revised proposed Rule Section 310.1.

[94] Initially proposed Rule Section 310.4(a)(4); revised proposed Rule Section 310.4(a)(3).

[95] *See, e.g.*, IA DOJ at 13–15; USPS at 13; NAAG at 24. In fact, NACAA believes there should be an outright prohibition against contacting any consumer to offer these services. NACAA at 4.

[96] Chase at 4; Chemical at 6; MasterCard at 11.

[97] Washington at 17.

[98] AARP at 15–16. Fraudulent recovery rooms may use checks, not backed by sufficient funds for them to be paid by the out-of-town banks on which they are drawn, to show consumer victims that the money has been "recovered."

[99] NAAG at 24; DSA-Nev., Tab B at 8; NCL at 39–40. Both DSA-Nev. and NCL also believed that licensed attorneys should not be exempt from this Section of the Rule. The Commission does not wish to hinder legitimate activities by licensed attorneys to recover funds lost by consumers through fraudulent telemarketing, and thus does not believe this prohibition should be applied to their services.

[100] Revised proposed Rule Section 310.4(a)(4).

[101] DMA at 25.

[102] Prudential noted that this Section could cover a bank's offer to a consumer of pre-approved loans. The Commission believes that revised Section 310.1 will address Prudential's concerns by clarifying that banks are excluded from coverage of the Rule because they are outside of the Commission's jurisdiction under the FTC Act, 15 U.S.C. 45(a)(2).

[103] ATA at 7–8; ANA at 14; DMA at 27–28; MPA at 14–15; Cox at 9–10; DMSI at 6; Hearst at 2; MSSC at 20; NAA at 13–14; AMCI at 2 (motor club memberships); CUCI at 8; ASAE at 15–16 (association memberships); GE at 4–6; IBM at 19–22 (computer leases); NCTA at 11–12 (cable services); Viacom at 10–11.

[104] ANA at 15; DMA at 27; NRF at 31; AmEx at 1–2.

[105] ATA at 8; APAC at 6; DMA at 28; DSA at 15; MPA at 16–18; NRF at 33; PMAA at 75–77; CUCI at 8; Fingerhut at 25; ADS at 1; AmEx at 1–2; AT&T at 20; NCL at 45–46; APAC at 6; AMCI at 1; IBM at 23; ANA at 17.

[106] *See, e.g.*, ANA at 17; Franklin at 1; Olan at 13. The FCC's rules, established pursuant to the TCPA, 47 U.S.C. 227, are codified at 47 CFR 64.1200. The revised proposed Rule includes similar "do not call" protections at Section 310.4(b)(1)(ii), discussed *infra.*

[107] 47 U.S.C. 227.

[108] 15 U.S.C. 1692d(5).

[109] *See, e.g.*, House Report at 8. Moreover, commenters suggested that such a provision would be appropriate. *See, e.g., NAA at 20; Cox at 10 (abusive conduct involves multiple calls over a short period of time, such as five calls in a day, or ten calls in a week).*

[110] *See* 47 U.S.C. 227; 47 CFR 64.1200(e).

[111] 15 U.S.C. 6102(a)(3)(A).

[112] *See, e.g.*, NRF at 33; Pacesetter at 4.

[113] *See, e.g.*, IBM at 24; SBTC at 10–11.

[114] NRF at 35; PMAA at 83; MSSC at 21. Other commenters suggested that the term "administrative error" was too broad, and that a clear definition should be provided. NACAA at 5; NAAG at 27; USP at 5. The Commission believes that any error should be excused here, as long as the seller or telemarketer is complying in good faith with the other requirements of the safe harbor.

[115] 15 U.S.C. 6102(a)(3)(B).

restrictions,[116] the FCC has established these calling time hours in its regulations implementing the TCPA,[117] and the Commission has been presented with no compelling reasons to change them. Accordingly, no substantive changes to Section 310.4(c) are proposed.[118]

4. *Required Oral Disclosures.*

(a) *All outbound telephone calls.* The Telemarketing Act requires the Commission to include in this Rule the following:

> A requirement that any person engaged in telemarketing for the sale of goods or services shall promptly and clearly disclose to the person receiving the call that the purpose of the call is to sell goods or services and make other such disclosures as the Commission deems appropriate.[119]

The initially proposed Rule, at Section 310.4(d)(1)(i), implemented this legislative directive by requiring all outbound telephone calls (or telephone solicitations, as they previously were called), to begin with the disclosure of the caller's true first and last name, the seller's name, and a statement that the purpose of the call is to sell goods or services. The divergence between the statutory language and that of the initially proposed Rule elicited significant comment.

Many industry representatives objected to these disclosures being required "at the beginning," rather than "promptly and clearly."[120] According to these commenters, requiring disclosures at the beginning disturbs the normal flow of a telephone call,[121] allows no time for a seller to establish, or reestablish, a relationship with the consumer,[122] infringes on the seller's ability to design and implement effective telemarketing sales presentations,[123] and is in effect a "kill message" that will result in most consumers hanging up when they hear the required disclosures.[124]

After considering these comments, the Commission has determined that requiring these disclosures "at the beginning" may be too rigid a standard for achieving the statutory purpose of providing important information to consumers while permitting the use of the telephone in making sales.[125] The revised proposed Rule adheres to the statutory requirement that the disclosures be prompt and clear. By adhering more closely to the statutory language, the Commission intends to permit some flexibility in the seller's telemarketing presentation. For example, a prompt disclosure would not preclude the seller or telemarketer from establishing some initial rapport with the customer before stating the purpose of the call. However, in "multiple purpose calls," where one purpose is to sell goods or services, the sales purpose must be disclosed promptly.

The requirement that all outbound telephone calls include the disclosure of the caller's true first and last name also elicited significant comment. Commenters noted that "desk names" are commonly used in the industry to protect the safety and privacy of employees, and to protect against potential prejudice or harassment.[126] Upon reconsideration, the Commission has determined that disclosure of the seller's identity is sufficient. Therefore, disclosure of the caller's identity need not be included in this Rule.

In addition to the disclosure of the identity of the seller and the fact that the purpose of the call is to sell goods or services, Section 310.4(d) of the revised proposed Rule now requires the prompt and clear disclosure of the nature of the goods and services that are the subject of the call. The Commission revised the language of Section 310.4(d) to more accurately reflect language from Section 3(a)(3)(C) of the Telemarketing Act setting forth those additional disclosures.

Section 310.4(d)(1)(ii) of the initially proposed Rule required a number of disclosures in any telephone solicitation that included a charitable solicitation.[127] Upon careful review of the comments, it is clear that separate treatment of such charitable solicitations is unnecessary. As ATFA suggested at the workshop, the sale of goods or services that includes a representation that a portion of the money paid for such goods or services will go to charity could be treated under the Rule as a sale of goods or services, rather than a charitable solicitation.[128] As a result, such a sale would be covered under the Rule without having to expressly cover charitable solicitations or donations. Because the initially proposed Rule attempted to encompass these specific types of sales, and given that such sales will be covered under the Rule's definition of "telemarketing," the Commission has decided to delete Section 310.4(d)(1)(ii) from the revised proposed rule.

Additionally, many comments indicated that former Section 310.4(d)(1)(ii) engendered a great deal of confusion on the part of nonprofit entities as to their coverage under the Rule. In including former Section 310.4(d)(1)(ii), the Commission did not intend to regulate nonprofit entities.[129] The Commission is mindful of the limitations on its jurisdiction in this area. Specifically, Section 4 of the FTC Act gives the Commission jurisdiction over corporations that are operated for their own profit or that of their members and over the business aspects of the activities of organizations serving both nonprofit and for-profit purposes.[130] Federal courts have construed this to bar the Commission from suing any *bona fide* nonprofit organization under the FTC Act, thereby removing most charitable organizations from the scope of the FTC's authority.[131] Section 6(a) of the Telemarketing Act states that "no activity which is outside the jurisdiction of [the FTC Act] shall be affected by this Act."[132] Accordingly, as explicitly stated in Section 310.1 of the revised proposed rule, the jurisdictional limitations of Section 4 of the FTC Act, including those regarding nonprofit organizations, will apply to the Telemarketing Sales Rule.

(b) *Verification calls.* The initially proposed Rule stated that if a caller verifies a telemarketing sale, that caller must repeat certain disclosures.[133] Many commenters argued forcefully that this Section was unnecessary and unduly burdensome, requiring duplicative disclosures that would add to the cost of the call and annoy potential customers.[134] In addition, commenters stated that this disclosure would discourage firms from making verification calls, due to increased costs.[135] After considering these comments, the Commission has determined that requiring duplicative verification disclosures is unnecessary and would unfairly burden legitimate telemarketers. It has therefore deleted this Section from the revised proposed Rule.

(c) *Outbound telephone calls that include a prize promotion.* The initially proposed Rule required the following three additional oral disclosures for any telemarketing that includes a prize promotion: (1) The fact that no purchase or payment is necessary to win; (2) the verifiable retail sales price of each prize offered, or a statement that the retail sales price of the prize offered is less than $20.00; and (3) the odds of winning each prize offered.[136]

The comments elicited by these requirements stressed the unnecessary costs that would result from duplicative disclosure requirements.[137] The Commission wishes to avoid imposing unnecessary requirements for oral disclosures that increase both the length and the cost of calls without a very clear consumer benefit.[138] Because the benefit to be derived from repeated disclosures of the same information is questionable, the Commission has narrowed the amount of information that must be disclosed orally. Oral disclosures now encompass only information that promises a clear-cut consumer benefit and that is not outweighed by the costs it imposes on legitimate industry. The revised proposed Rule requires a telemarketer making an outbound telephone call which includes a prize promotion to disclose clearly, in addition to the other disclosures required under revised proposed Rule Section 310.4(d), the fact that no purchase is necessary to win.

The Commission believes that this disclosure is so critical to consumer protection in a prize promotion that it should be stated during an outbound telephone call. In addition, the Commission, in response to concerns raised by NAAG, has specified in the revised proposed Rule that this disclosure must be made before the prize is described to the person called.[139] Such a disclosure will clearly inform consumers that a true, legitimate "prize" awarded in a game of chance does not require any purchase.[140] This disclosure will help dispel the false information provided during fraudulent prize promotions that a consumer must purchase some item in order to win the "fabulous" prize offered. In order to make this "no purchase necessary" disclosure meaningful, the revised proposed Rule also requires the telemarketer to disclose the no-purchase entry method for the prize promotion, if requested by the person called.

(d) *Outbound telephone calls that include a premium.* The initially proposed Rule required any telemarketing that includes an offer of a premium to make the additional disclosure of the verifiable retail sales price of such premium or comparable item, or a statement that the retail sales price of the premium is less than $20.00.[141] A number of commenters stated that this Section should be eliminated. They claimed that many premiums offered by legitimate telemarketers generally are not available for retail sale, and attempting to determine a retail sales price may be difficult and costly. They also predicted that this added cost may result in the elimination of premiums being offered, to the detriment of consumers.[142]

The Commission is persuaded by these arguments; in and of itself, non-disclosure of the value of an offered premium is not likely to be injurious to consumers, and imposition of the potential costs associated with such a disclosure requirement is not justified. The prohibition against misrepresentations in Section 310.3 is sufficient to protect consumers against false and misleading claims about the value of a premium.

5. *Other Required Disclosures.* The initially proposed Rule prohibited any seller or telemarketer conducting a prize promotion from requesting or accepting any payment from a person without first providing that person with a written disclosure, in duplicate, and receiving from that person a written acknowledgement that the person has read the disclosure.[143] Numerous commenters stated that such a written acknowledgement requirement would effectively ban prize promotions in telemarketing sales by increasing costs and negating the efficiency of those sales.[144] The Commission is persuaded that such an outcome would limit consumers' choices and would be inconsistent with Commission policy. Prize promotions in telemarketing, in and of themselves, are not deceptive, do not cause injury to consumers, and may, in fact, provide consumer benefits. The Commission has determined that these requirements would likely produce nominal consumer benefits that would be outweighed by the potential detrimental effects, and has therefore dropped them from the revised proposed Rule.

The initially proposed Rule also imposed written disclosure requirements on investment opportunities very similar to those for prize promotions. Specifically, any seller or telemarketer selling an investment opportunity was prohibited from requesting or accepting any payment from a person without first providing that person with a written disclosure, in duplicate, and receiving from that person a written acknowledgement that the person had read the disclosure.[145] Industry

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[116] DSA-Nev Tab B at 11 (7 a.m. to 10 p.m.); Monex at 15 (no restrictions for the precious metals market); NACAA at 5 and GA OCA at 2 (5:00 p.m. to 9:00 p.m. to protect vulnerable older consumers); NAAG at 27 (no calls before noon on Sunday).

[117] *See* 47 CFR 64.1200(e)(1).

[118] Certain commenters suggested that the safe harbor provisions of Section 310.4(b)(2) should apply to the calling time restrictions as well as the "do not call" requirements. *See, e.g.*, NRF at 35; ARDA at 31. The Commission believes that the calling time restrictions do not present the administrative compliance difficulties that the "do not call" restrictions impose, and therefore does not believe a safe harbor is necessary here.

[119] 15 U.S.C. 6102(a)(3)(C).

[120] ATA at 9; ANA at 21; NRF at 36; DMA at 30; Chemical at 7; CUCI at 9; Gannet at 4; Olan at 16.

[121] *See, e.g.*, NRF at 36.

[122] *See, e.g.*, ADS at 2.

[123] Ann Arbor at 2 (with numerous other newspapers submitting a substantially similar comment).

[124] *See, e.g.*, Citicorp at 8; Time Warner at 37–38. Not all industry representatives agreed. One telemarketer stated that requiring the disclosures at the beginning is very reasonable. "Rather than impeding business, disclosure of the information proposed by the Commission adds credibility to the legitimacy of the caller and increases consumer confidence [and] responsiveness to its telemarketing calls." TMGI at 2, 4.

[125] The Senate Report stated that the "prompt" disclosure requirement was added to the Telemarketing Act to address concerns raised by the market research industry (those who conduct surveys and public opinion polls without selling goods or services) that telemarketing calls should not be made under the guise of being calls solely for survey research or similar purposes. *See* Senate Report at 4.

[126] *See, e.g.*, ANA at 21; Cox at 7–8; APAC at 6; ADS at 2.

[127] The definition of "goods or services" in Section 310.2(i) of the initially proposed Rule included a statement that the term included "any charitable service promoted in conjunction with an offer of a prize, chance to win a prize, or the opportunity to purchase any other goods or services."

[128] *See* Tr. at 188–93 (ATFA).

[129] *See generally* ATFA; NFN.

[130] *See American Medical Ass'n v. FTC*, 94 F.T.C. 701, 982–93, *aff'd*, 638 F.2d 443, 448 (2d Cir. 1980), *aff'd mem. by equally divided court*, 455 U.S. 676 (1982).

[131] This jurisdictional limitation, however, does not prevent the Commission from suing a for-profit company that engages in deceptive practices to solicit charitable contributions from consumers. To this end, the Commission has recently sued several allegedly deceptive "telefunders"—companies that solicit charitable contributions by telephone—which allegedly misrepresented the use to which donations would be directed and allegedly misrepresented the value of certain prizes. *See FTC v. The Baylis Co.*, No. 94–0017–S-LMB (D. Idaho 1994); *FTC v. NCH, Inc.*, No. CV-S–94–00138–LDG (LRL) (D. Nev. 1994); *FTC v. International Charity Consultants*, No. CV-S–94–00195–DWH (LRL) (D. Nev. 1994); *FTC v. Heritage Publishing*, No. LR-C–94–416 (E.D. Ark. 1994). In addition, the Commission may sue a sham charity that is actually a for-profit enterprise. *FTC v. Voices for Freedom*, No. 91–1542–A (E.D. Va. July 13, 1992) (consent decree entered).

[132] 15 U.S.C. 6105(a).

[133] Section 310.4(d)(2) of the initially proposed Rule.

[134] ATA at 9; MPA at 20–21; ARDA at 33; NAA at 19; Spiegel at 5; ALIC at 3; MSSC at 22.

[135] AT&T at 22–23; MCI at 12; PCH at 4; SBTC at 13.

[136] Initially proposed Rule Section 310.4(d)(3).

[137] *See generally* PMAA, DMA; IMSP.

[138] *See, e.g.*, MPA at 21–22.

[139] NAAG at 28–29.

[140] *See e.g.*, 18 U.S.C. 1301. Additionally, PMAA, stated during the workshop that such a requirement would not be overly burdensome and would accurately distinguish deceptive prize promotions from legitimate prize promotions. Tr. at 608–10 (PMAA).

[141] Initially proposed Rule Section 310.4(d)(4).

[142] *See, e.g.*, MPA at 22–23; NAA at 19–20; MasterCard at 13–14; MBNA at 1.

[143] Initially proposed Rule Section 310.4(e)(1).

[144] *See, e.g.*, DMA at 33; MPA at 23–24; NRF at 38; PMAA at 49–51; CUCI at 10; IBM at 26; ITI at 8–10; Spiegel at 5–6; ADS at 3; SDRA at 1. In fact, one commenter noted that 73 percent of prize *winners* do not return an affidavit permitting the distribution of prizes to them. DW&Z at 2.

[145] Initially proposed Rule Section 310.4(e)(2).

representatives again stated that a signed acknowledgement from consumers is unjustifiably burdensome in advance of all investment transactions.[146] They also stated that the delay caused by this requirement is unfair to both the customer and the seller in certain volatile markets.[147]

After reviewing the comments in this area, and upon further reflection, the Commission, for reasons similar to those that prompted deletion of the written prize promotion disclosures, has deleted requirements for additional written disclosures for telemarketing investment opportunities. While the Commission is mindful that both prize promotions and investment opportunities are a major area of telemarketing fraud,[148] the costs imposed on legitimate industry by these mandatory disclosures is not justified. In addition, the prohibitions on misrepresentations, as well as the disclosures required before a customer pays for goods or services, included in Section 310.3 are sufficient to prohibit the deceptive conduct found in the telemarketing of prize promotions and investment opportunities.

6. *Distribution of Lists.* The initially proposed Rule prohibited any person who is subject to any federal court order resolving a case in which the complaint alleged a violation of certain provisions of the Rule, and in which the court did not dismiss or strike all such allegations from the case, from selling, renting, publishing, or distributing any list of customer contacts from that person.[149] Industry commenters stated that the original proposal was too great a penalty for Rule violations, would preclude settlements of law enforcement actions, and should be eliminated.[150] On the other hand, law enforcement and consumer representatives commented that the proposed provision does not go far enough, and should extend to all rule violations and to FTC enforcement actions.[151]

After considering the comments, the Commission believes that such a prohibition is better left to the discretion of law enforcement agencies to seek, and the courts to order, in individual law enforcement actions. This Section therefore has been deleted from the revised proposed Rule.

Section 310.5 Recordkeeping Requirements

The initially proposed Rule required any seller or telemarketer to keep certain records relating to telemarketing activities for a period of 24 months from the date the record is produced.

Many industry commenters stated that the 24-month retention period was burdensome and suggested that the period be shortened.[152] Others suggested that the recordkeeping provision be dropped altogether because Congress did not mandate that records be kept,[153] and because fraudulent telemarketers will most likely ignore the requirements. Those commenters suggested that recordkeeping requirements would only burden legitimate business.[154] On the other hand, law enforcement and consumer representatives commented that the recordkeeping provisions would be extremely helpful in preserving evidence of compliance, in identifying customers who may have been injured, and in identifying persons who might have been involved in any deceptive or abusive telemarketing practices.[155] In fact, several commenters suggested that the record retention period be lengthened to 36 months, which would parallel the IRS retention requirements.[156]

After careful consideration of the comments, the Commission has decided to keep a recordkeeping requirement in the revised proposed Rule. Without the required records, it would be difficult to ensure that sellers and telemarketers are complying with the requirements of the revised proposed Rule, or identify persons who are involved in the practices, or identify customers who may have been injured.

The Commission also has decided to leave the record retention period at 24 months in the revised proposed Rule. A record retention period shorter than a two-year period would be inadequate for the Commission and the States to complete investigations of noncompliance. Consumers who complain to an agency about alleged deceptive or abusive telemarketing practices often do not do so immediately. Therefore, there may already be a substantial "lag time" between the time the alleged violations occur and the time the Commission learns of the alleged violations. A two-year record retention period allows the Commission and State law enforcement agencies to gather information needed to pursue enforcement actions and to identify those persons who have most recently suffered injury from the alleged deceptive or abusive telemarketing practices.

The Commission is mindful, however, of the burden on business in maintaining these records. Therefore, the revised proposed Rule incorporates many of the suggestions from industry on how to minimize the recordkeeping burden.

First, the revised proposed Rule specifies that the records may be kept "in any form." This language addresses the suggestions from many commenters that the burden could be reduced if the sellers and telemarketers could keep the required records in electronic storage.[157]

Second, the revised proposed Rule specifies that sellers and telemarketers need to retain only *substantially different* advertising, brochures, telemarketing scripts, and promotional materials. Several commenters proposed this change in order to reduce the paper burden of maintaining large quantities of virtually identical documents.[158]

Third, the revised proposed Rule incorporates the suggestions of many commenters by requiring sellers and telemarketers to maintain a record only of the *last known* address of prize recipients, customers, and of current and former employees.[159]

Fourth, the revised proposed Rule sets a *de minimis* amount of $25 for record retention on prizes, as was suggested by at least one commenter.[160] Sellers and telemarketers will not have to maintain records on prize recipients and prizes awarded for prizes that have a value less than $25.00.

Fifth, the revised proposed Rule adds the requirement that sellers and telemarketers maintain a record of any fictitious name used by any current or former employee directly involved in telemarketing sales. This requirement would prevent deceptive telemarketers from hiding behind a fictitious identity and would aid law enforcement agencies in identifying possible defendants.

Some commenters requested clarification of certain recordkeeping

[146] *See, e.g.*, A-Mark at 2, 11–12; AFSA at 7–8.

[147] *See, e.g.*, Monex at 16–17.

[148] Approximately 60 percent of all telemarketing complaints received by NCL involve prize offers, while investment opportunities account for the greatest dollar volume of losses reported. NCL at 49–51.

[149] Initially proposed Rule Section 310.4(f).

[150] APAC at 7; DMA at 34; MSSC at 24–25; Spiegel at 6; Monex at 19; NRF at 38–39.

[151] AARP at 22; NACAA at 5 (apply it to state orders as well); GA OCA at 2.

[152] *See, e.g.*, DMA at 35; ANA at 24; IBM at 27; Olan at 14; NRF at 40; MSSC at 25; Ann Arbor at 2.

[153] Section 3(a)(3) of the Telemarketing Act authorizes the Commission to include recordkeeping requirements in the Rule. 15 U.S.C. 6102(a)(3).

[154] *See, e.g.*, RPI at 1; BSA at 14.

[155] *See, e.g.*, NCL at 54; USPS at 24; AARP at 23; NAAG at 36; CFA at 6.

[156] *See, e.g.*, NAAG at 36–37; CFA at 6.

[157] *See, e.g.*, ANA at 24; NRF at 40; Olan at 14; NCL at 54; IBM at 27–28; USPS at 24.

[158] *See, e.g.*, DMA at 35; Tr. at 761, 767, and 769.

[159] *See, e.g.*, ATA at 9–10; NRF at 40; Olan at 14; SCIC at 6; IBM at 27.

[160] *See* ARDA at 36–37.

requirements in order to reduce the burden on business. For example, several parties read the recordkeeping requirements to require them to maintain records of *all* customer contacts, regardless of whether the customer actually made a purchase.[161] They recommended that businesses only be required to maintain records relating to customers who actually made a purchase of goods or services. The Commission did not add clarifying language addressing this concern because it believes that the plain language in Section 310.5(a)(3) of the revised proposed Rule is sufficiently clear that only records relating to *actual sales* need be maintained. That Section specifically requires information to be maintained regarding the sales transaction: the identity of the goods or services purchased, the fulfillment, and the amount paid by the customer.

Other commenters asked that, in connection with the requirement to maintain employee records, the revised proposed Rule more clearly define who is "directly involved in telephone sales" in order to minimize the burden of maintaining records on employees who might be only tangentially involved in telemarketing activities.[162] In addition, some commenters asked that the Commission clarify that records on former employees be kept only on those persons who are employees on or after the effective date of the final Rule.[163]

The revised proposed Rule does not add clarifying language addressing these concerns. The Commission believes that the Rule is sufficiently clear about the types of telemarketing activities that would be subject to the Rule's provisions as to minimize the number and type of employees on whom records must be maintained. In addition, the Commission intends that any Rule requirements, including recordkeeping requirements, will commence with the effective date of the final Rule. Therefore, any records relating to employees and former employees would be required only for those persons who are or become employees or former employees on or after the effective date of the Rule.

The revised proposed Rule incorporates suggestions from some commenters to clarify that the seller and telemarketer need not duplicate those records that are already maintained in the ordinary course of business.[164] Additionally, Section 310.5(c) of the revised Rule permits a seller and telemarketer to allocate between themselves, by written agreement, responsibility for complying with the recordkeeping requirements. The revised proposed Rule further clarifies a seller's and a telemarketer's recordkeeping responsibilities. Under revised Section 310.5(d), absent a written agreement described in Section 310.5(c), a seller is responsible for complying with Sections 310.5(a) (1)–(3) and a telemarketer is responsible for complying with Section 310.5(a)(4). Revised Section 310.5(d) allows sellers and telemarketers to keep the required records in any manner, format, or place as they keep such records in the ordinary course of business.

Several commenters expressed concern that sellers and telemarketers may not have access to all of the information required to be maintained, and requested that the Rule set out which parties should have responsibility for maintaining certain types of records.[165] After considering these comments, the Commission has determined that the language in Section 310.5(b) is already sufficiently clear to convey that the parties may enter into a written agreement allocating responsibility for maintaining records. Thus, there is nothing in Section 310.5(b) that would prohibit the parties from maintaining only those records to which they would normally have access, as long as each of the required types of information is maintained by at least one of the parties. Indeed, several commenters supported this Section, noting that it strikes a reasonable balance between maintaining necessary documentation and avoiding overly burdensome requirements, as well as noting that it is consistent with the contractual nature of the relationship between sellers and telemarketers.[166]

Finally, the Commission has deleted former Section 310.5(a)(5) that required that "any written notices, disclosures, and acknowledgements required to be provided or received under this Rule" be kept. The Commission deleted this Section because the revised proposed Rule no longer requires specific written disclosures and acknowledgements.

Section 310.6 Exemptions

Section 310.6 of the initially proposed Rule exempts certain acts or practices from the Rule's provisions. This Section prompted considerable comment.

Law enforcement and consumer groups cautioned against any exemptions because of the additional burden of proof exemptions place on law enforcement and because of the potential danger that deceptive telemarketers will seize upon any perceived loophole to avoid coverage under the Rule.[167] At the workshop conference, DSA-Nev. explained Nevada's negative experience with legislative exemptions. DSA-Nev. stated that Nevada's telemarketing legislation exempted charitable solicitations. Shortly after its enactment, Nevada saw fraudulent telemarketers rushing to switch their operations to fraudulent "telefunding" in order to take advantage of that exemption.[168]

The business community, however, suggested that the Commission formulate exemptions that specifically differentiate between deceptive and legitimate telemarketing because of the broad coverage of the initially proposed Rule.[169] Industry suggested that the Commission take one or both of the following courses: (1) narrow the definition of "telemarketing" to include only outbound telephone calls; [170] or (2) if the Commission decides to continue including inbound telephone calls, set forth additional exemptions that would allow the legitimate telemarketing industry to operate without the restraints of additional regulation.[171]

After careful consideration, the Commission has decided that narrowly-tailored exemptions are necessary to avoid unduly burdening legitimate businesses and sales transactions that Congress specifically intended not to cover under the Rule. Section 310.6 enumerates these exemptions. The Commission determined the advisability of each exemption after considering the following factors: (1) Whether the conduct or business in question already is regulated extensively by Federal or State law; (2) whether Congress intended that a certain type of telemarketing activity be exempt under the Rule; (3) whether, based on the Commission's enforcement experience, the conduct or business lends itself easily to deception or abuse; and (4) whether requiring businesses to comply with the Rule would be unduly burdensome when weighed against the likelihood that deceptive sellers or telemarketers would use an exemption to circumvent the Rule's coverage.

[161] *See, e.g.*, Wachovia at 3; ARDA at 37; IBM at 27.

[162] *See, e.g.*, DMA at 35–36; ARDA at 37.

[163] *See, e.g.*, NB at 5; Citicorp at 9; ARDA at 37.

[164] *See, e.g.*, Comcast at 6.

[165] *See, e.g.*, MPA at 25; DSA at 21; OPC at 4.

[166] *See, e.g.*, NRF at 41; ARDA at 37–38.

[167] *See, e.g.*, NCL at 54–55; NAAG at 37. *See also* Tr. at 254–256, 704, and 725.

[168] Tr. at 82–84.

[169] *See, e.g.*, NRF at 9; Time Warner at 4–7; DMA at 10–12. *See also* Tr. at 79–81, 702–703, and 710–711.

[170] *See, e.g.*, MPA at 8–10; MSSC at 9–10; Olan at 19–20; ANA at 10; ACRA at 6–7.

[171] *See, e.g.*, NRF at 20–21; ICTA at 31–35; Time Warner at 28.

The revised proposed Rule incorporates the suggestions of numerous commenters and exempts transactions that are subject to extensive requirements under other Commission rules.[172] Section 310.6(a) exempts pay-per-call services subject to the FTC's 900 Number Rule.[173] Additionally, the Commission has clarified the definition of "investment opportunity" in Section 310.2(j) of the revised proposed Rule to expressly state that the term does not include sales of franchises subject to the FTC's Franchise Rule.[174]

Many commenters suggested exemptions based on other FTC rules, statutes, and regulations, for example, the Negative Option Rule, 16 CFR Part 425, FDCPA, 15 U.S.C. 1692, and the TILA, 15 U.S.C. 1601 *et seq.*).[175] The Commission believes that changing the phrase "induce payment" to "induce purchase" in the definition of "telemarketing" clarifies that debt collection practices are not covered by this Rule. With regard to credit statutes such as the TILA and the Consumer Leasing Act ["CLA"], 15 U.S.C. 1667, the Commission believes that the revised proposed Rule's disclosure requirements do not conflict or overlap with those statutes. It is therefore unnecessary to specifically exempt transactions subject to the TILA and CLA from the provisions of this Rule. Similarly, the Commission believes that the disclosure provisions of the Negative Option Rule do not conflict or overlap with the provisions of this Rule and therefore there is no need to exempt those transactions.

Other commenters asked that the Commission exempt those entities that are not subject to the FTC Act.[176] The revised proposed Rule has added language to Section 310.1 that clarifies the scope of the Rule in accordance with those comments. Many of these commenters, however, also asked that agents of exempt entities or of entities engaging in exempt activities similarly be exempted from the Rule's provisions.[177] The Commission rejects such an extension. Exemptions under the FTC Act are either based on "status," or a specific activity.[178] Exempting agents is contrary to the Commission's assertion of its jurisdiction under established case law. This Rule will cover sellers and telemarketers who do not fall within those status or activity-based exemptions of the FTC Act. Moreover, the Commission's decision is consistent with Congressional intent that the Telemarketing Act neither expand nor contract the Commission's authority.[179]

Section 310.6(b) of the revised proposed Rule exempts "telephone calls in which the sale of goods or services is not completed, and payment or authorization of payment is not required, until after a face-to-face sales presentation by the seller during which the customer has the opportunity to examine the goods or services offered." In addition to Congress' clear intent not to cover such transactions,[180] numerous commenters explained how face-to-face sales are not the type of telemarketing transactions that Congress was concerned about in passing the Telemarketing Act.[181] The Commission agrees that such face-to-face contacts where consumers have the opportunity to examine the goods or services should be exempt under the Rule. This exemption also applies to telephone contacts made subsequent to a face-to-face sales presentation to the extent such contacts are for the sole purpose of consummating the sale of goods or services that the customer had the opportunity to examine.

Section 310.6(c) of the revised proposed Rule exempts telephone calls initiated by a customer that are not the result of any solicitation by the seller or telemarketer. The Commission added this exemption to address many commenters' concerns that the definition of telemarketing might include an inbound call from a customer to make hotel, airline, car rental or similar reservations, to place carry-out or restaurant delivery orders, obtain information or customer technical support, or other incidental uses of the telephone that were not in response to a direct solicitation.[182] This exemption is consistent with Congress' intent not to cover transactions involving incidental use of the telephone.[183]

The Commission has replaced former Section 310.6(c) with revised Sections 310.6(d) and (e). Section 310.6(c) of the initially proposed Rule had exempted telephone contacts made by a person "when there has been no initial sales contact directed to that particular person, by telephone or otherwise, from the seller or telemarketer." Many commenters expressed confusion over what was meant by "initial sales contact" or "directed to that particular person," and requested that the Commission clarify the scope of this exemption.[184] The Commission agrees that clarification is needed as to the scope of this exemption. Revised proposed Sections 310.6(d) and (e) now treat separately calls prompted by advertisements in any media, other than direct mail solicitations, and calls prompted by direct mail solicitations. Revised Section 310.6(d) exempts "telephone calls initiated by a customer in response to an advertisement through any media, other than direct mail solicitations; provided, however, that this exemption does not apply to calls initiated by a customer in response to an advertisement relating to investment opportunities, goods or services described in Sections 310.4(a)(2)–(3), or advertisements that guarantee or represent a high likelihood of success in obtaining or arranging for extensions of credit, if payment of a fee is required in advance of obtaining the extension of credit." The revised language of Section 310.5(d) addresses some commenters' concerns that calls in response to television commercials, infomercials, magazine and newspaper advertisements, and other forms of mass media advertising would be covered by the Rule.[185] The Commission does not intend that telephone contacts in response to general media advertising be covered under the Rule. Rather, deceptive general media advertising will continue to be subject to enforcement actions under the FTC Act.

On the other hand, the Commission knows that some fraudulent sellers and telemarketers use mass media or general advertising to entice their victims to call, particularly in relation to the sale of investment opportunities, specific credit-related programs, and recovery rooms. Given the Commission's

[172] *See, e.g.*, IFA at 4; Time Warner at 44–45; CHC at 7; ISA at 20–27; PMAA at 34–38.

[173] "Trade Regulation Rule Pursuant to the Telephone Disclosure and Dispute Resolution Act of 1992," 16 CFR Part 308.

[174] "Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures," 16 CFR Part 436.

[175] *See, e.g.*, BOB at 2; ANA at 14; ABA at 3; ACA at 1; Advanta at 2; MBNA at 1.

[176] *See, e.g.*, GHAA at 3; AT&T at 6–13; AmEx at 3; ABA at 1; BOB at 1; ASAE at 2; SCIC at 7.

[177] *See, e.g.*, ABA at 1; Advanta at 1; Chase at 2; Citicorp at 3; NFN at 2.

[178] *See* 15 U.S.C. 44 and 45(a)(2). For examples of status exemptions, see *FTC v. Green Tree Acceptance Corp.*, No. CA–4–86–489–K, slip op. (N.D. Tx. Sep. 30, 1987); *Official Airlines Guides, Inc. v. FTC*, 630 F.2d 920 (2d Cir. 1980); *FTC v. Miller*, 549 F.2d 452 (7th Cir. 1977); *Breen Air Freight, Ltd. v. Air Cargo, Inc.*, 470 F.2d 767 (2d Cir. 1972). For an example of an activity exemption, see *Community Blood Bank of Kansas City, Inc. v. FTC*, 405 F.2d 1011 (8th Cir. 1969).

[179] *See* Senate Report at 14.

[180] House Report at 7; Senate Report at 7–8.

[181] *See, e.g.*, DSA.

[182] *See, e.g.*, ACRA at 6; DSA at 5; Olan at 19–20; Viacom at 6–7; MCI at 5–6.

[183] Senate Report at 8.

[184] *See, e.g.*, ANA at 10–11; Viacom at 6–7; Olan at 27; AFSA at 3–4; QVC at 13–14; DMA at 37; MPA at 9; Time Warner at 26–27.

[185] *See, e.g.*, INTV at 4; QVC at 2–3; NAA at 10–12; ANA at 10–11.

experience with these fraudulent telemarketing schemes being marketed through television commercials, infomercials, magazine and newspaper advertisements, and other forms of mass media advertising, the Commission has excluded these activities from the general media advertising exemption.

The revised proposed Rule no longer excludes "prize promotions" from the general media exemption because the Commission believes that the majority of fraudulent prize promotions do not employ mass media or general advertising. In addition, the revised proposed Rule has dropped "employment services" as one of the exceptions to the general media exemption. Although the Commission and other law enforcement agencies have brought actions against advance fee employment services that use mass media advertising, many legitimate employment services use the same type of mass media advertising and also require advance fees. The Commission believes that neither the legislative history of the Telemarketing Act nor the rulemaking record for the Rule provide a sufficient basis for singling out the employment service industry for an exception to the general media advertising exemption. Deceptive employment opportunity advertising will, however, still be subject to enforcement actions under the FTC Act.

Section 310.6(e) exempts telephone calls initiated by a customer in response to "a direct mail solicitation that clearly and conspicuously discloses all material information listed in Section 310.3(a)(1) of this Rule for any item offered in the direct mail solicitation; provided, however, that this exemption does not apply to calls initiated by a customer in response to a direct mail solicitation relating to investment opportunities, goods or services described in Sections 310.4(a)(2)–(3), or direct mail solicitations that guarantee or represent a high likelihood of success in obtaining or arranging for extensions of credit, if payment of a fee is required in advance of obtaining the extension of credit." Some commenters suggested that the Commission include under the general media exemption all direct mail solicitations—which, in effect, would have excluded all inbound calls from coverage under the Rule. However, the Commission's enforcement experience demonstrates that deceptive telemarketers frequently use direct mail solicitations as an integral part of their fraudulent schemes. Inbound calls prompted by such solicitations frequently result in the caller being subjected to the deceptive practices the Telemarketing Act is designed to address. Therefore, the Commission has determined that including all direct mail solicitations within the general media exemption is unworkable. The Commission acknowledges, however, that most direct mail solicitations are not deceptive. In particular, the likelihood of deception is greatly diminished when direct mail solicitations contain all material information about the offered goods or services. Revised Section 310.6(e) therefore exempts only those direct mail solicitations that disclose, clearly and conspicuously, all the information specified in Section 310.3(a)(1) as material to a person's purchase decision. As in the general media exemption, revised Section 310.6(e) excludes from this exemption direct mail solicitations relating to investment opportunities, specific credit-related programs, and recovery rooms because of the Commission's enforcement experience in these areas.

The Commission decided to delete the "*de minimis*" exemption for incidental telemarketing activity contained in former Section 310.6(a). Comments indicate that neither the law enforcement nor the business communities found such an exemption helpful or workable. Law enforcement agencies believed that the exemption would hamper quick law enforcement, while providing a loophole for fraudulent telemarketers who specialize in high-price scams directed at only a few victims.[186] The business community found the exemption to be so restrictive that it would be of little significance.[187] The Commission agrees with those observations and believes that revisions made elsewhere in the revised proposed Rule, including exemptions in Section 310.6, eliminate the need for this specific exemption.

Comments about the initially proposed "business-to-business" exemption[188] fell to opposite extremes. Several industry commenters asked that the exemption be expanded to include entities other than businesses.[189] Other commenters asked that the Commission clarify the type of office supplies excluded from the exemption.[190] Still other industry commenters suggested that a "business-to-business" exemption was only defensible if provided on an across-the-board basis, without exceptions.[191] On the other hand, law enforcement and consumer agencies urged the Commission to exclude additional goods or services from the business-to-business exemption.[192]

Because the Commission has extensive enforcement experience pertaining to deceptive telemarketing directed to businesses, it does not believe that an across-the-board exemption for business-to-business contacts is appropriate. The Commission does agree, however, that clarification of the goods or services that are *excluded* from this exemption is necessary. Revised Section 310.6(f) states that only the retail sale of *nondurable* office or cleaning supplies are excluded from the exemption.[193]

Many commenters suggested an exemption for transactions where the customer is able to examine the goods or services before paying for them but does not involve a face-to-face sales presentation.[194] The Commission does not believe such an exemption is necessary, given the changes elsewhere in the revised proposed Rule, as noted above.

Many commenters suggested an exemption based on a prior business relationship with the customer.[195] The Commission does not believe that such an exemption would be workable in the context of telemarketing fraud. A fraudulent telemarketer need only obtain an initial purchase from an unsuspecting victim to claim a "prior business relationship" exemption.

In addition, many commenters suggested an exemption for "established businesses," including businesses that offer basic customer protection policies such as a moneyback guarantee.[196] The Commission agrees with the comments of other law enforcement agencies that such broad-based "safe harbor" provisions are not appropriate.[197]

Such a "safe harbor" or "established business" exemption might have an anticompetitive effect on new businesses entering the market. In addition, the experience of law enforcement agencies indicates that much telemarketing fraud is perpetrated by so-called "established businesses." Furthermore, the existence of policies such as a moneyback guarantee is no assurance that the company is not fraudulent. Law enforcement agencies are well aware that fraudulent

[186] *See, e.g.*, NYSCPB at 13; NACAA at 6; NAAG at 38–40; IA DOJ at 21.

[187] *See, e.g.*, DMA at 36; Olan at 27; ICTA at 57; AAAA at 6.

[188] Initially proposed Rule Section 310.6(b).

[189] *See, e.g.*, Viacom at 9.

[190] *See, e.g.*, IBM at 28; BPIA at 4.

[191] See DMA at 36–37.

[192] See NAAG at 41; ID AG at 2; USPS at 25.

[193] *See, e.g.*, IBM at 28; BPIA at 4.

[194] *See, e.g.*, CHC at 8, 12.

[195] *See, e.g.*, ARDA at 39; ACRA at 9–10; MSSC at 27; Time Warner at 44; ADC at 2; DMA at 38.

[196] *See, e.g.*, Time Warner at 23–26; DMA at 38; AmEx at 2; APAC at 1–2,6; Viacom at 6; Olan at 28; ACRA at 10; ARDA at 40; NRF at 17–18.

[197] *See, e.g.*, Tr. at 705–26.

telemarketers often tout their "moneyback guarantees" and refund policies as part of the sales solicitation. Unfortunately, such companies rarely honor those moneyback guarantees. Therefore, the Commission has decided not to include a broad "safe harbor" or "established business" exemption in the revised proposed Rule. The Commission believes that changes made elsewhere in the revised proposed Rule, including exemptions set forth in Section 310.6, obviate the need for such an exemption or safe harbor.

Section 310.7 Actions by States and Private Persons

The Telemarketing Act permits certain State officials and private persons to bring civil actions in an appropriate Federal district court for violations of this Rule.[198] Section 310.7 of the initially proposed Rule set forth the notice such parties must provide to the Commission concerning those actions. The language regarding the notice has not changed in the revised proposed Rule. However, the revised proposed Rule has added Section 310.7(b), which clarifies that the Rule does not vest State officials or private persons with jurisdiction over any person or activity outside the jurisdiction of the FTC Act.

The Commission added this language in response to questions from a number of commenters regarding the scope of the Rule and the authority to bring actions for violations of the Rule.[199] When coupled with the new language in section 310.1 on the scope of the Rule, the language in Section 310.7(b) clarifies that the Rule does *not* apply to any person outside the jurisdiction of the FTC Act, and that neither the Commission nor any other party authorized to bring suit for violations of the Rule may bring an action against such persons.

This restriction on the scope of the Rule and authority to bring actions under the Rule tracks Section 6(b) of the Telemarketing Act: "[N]o activity which is outside the jurisdiction of [the FTC] Act shall be affected by this Act."[200] The language also is consistent with the legislative history of the Telemarketing Act and reflects the intent of Congress:

> [T]he legislation * * * does not vest the FTC, the State attorneys general, or private parties with jurisdiction over any person over whom the FTC does not otherwise have authority.[201]

[198] See 15 U.S.C. 6103 and 6104.

[199] *See, e.g.*, AARP at 3; ABA at 1; BOB at 2.

[200] 15 U.S.C. 6105(b).

[201] Senate Report at 14.

Section 310.8 Federal Preemption

Section 310.8 of the initially proposed Rule stated that nothing in the Rule shall be construed to preempt any State law that is not in direct conflict with any provision of the Rule. Several commenters asked that this Section clarify that the Rule establishes a threshold requirement that State laws can exceed as long as they do not conflict with the Rule's requirements.[202] At least one commenter expressed concern that they would be subject to making State-required disclosures that are similar to the Rule's requirements but not directly in conflict.[203]

The Commission does not believe any changes are necessary to this Section. The language in this Section is clear and provides sufficient guidance that additional State requirements and prohibitions would be permitted as long as they do not conflict directly with the Rule. Thus, State registration, certification, or licensing requirements for telemarketing most likely would not be preempted because they would not be in direct conflict with any provisions of this Rule.

Effective Date

The NPR asked for comments on whether 30 days would provide sufficient time to come into compliance with the initially proposed Rule provisions.[204] Most of the parties who commented on the effective date indicated that 30 days would be insufficient given the need "to make system changes, establish training programs [for] employees involved in telephone sales * * *, develop new recordkeeping procedures, prepare written disclosure and acknowledgement forms, draft and negotiate new contracts with service bureaus, [and] develop internal monitoring programs."[205] Most of the commenters who believed 30 days was insufficient suggested a 6-month time frame in order to achieve compliance.[206] NCL noted that some of the prohibited deceptive and fraudulent practices could be instituted immediately (for example, the prohibitions against misrepresentations), but that industry might need additional time to comply with certain other requirements of the initially proposed Rule.[207]

Because the revised proposed Rule eliminates many of the disclosure requirements that generated the foregoing compliance time predictions, the Commission proposes to set the effective date at 30 days from the date the final Rule is published. Thirty days should not unduly burden legitimate industry because, based on information provided by industry, legitimate sellers and telemarketers already comply with the revised proposed Rule. For example, legitimate industry represented that it already makes the affirmative disclosures required under Section 310.3(a)(1); it does not misrepresent material information pertaining to the sale of goods or services prohibited under Section 310.3(a)(2); it does not knowingly provide substantial assistance or support to deceptive sellers or telemarketers prohibited under Section 310.3(b); and it does not engage in credit card laundering prohibited under Section 310.3(c). Further, telemarketers have been required to comply with the TCPA since 1992 and should already have in place and be implementing the "do not call" procedures required under that Act. Such procedures therefore would comply with Section 310.4(b)(2) of this Rule, as well. Finally, the Commission understands from the workshop that participants already maintain the records required under Section 310.5. Because the Commission does not require that records be kept in any special form, legitimate industry is most likely already in compliance with Section 310.5 of the Rule. Based on the foregoing, the Commission does not believe that a further delayed effective date for the Rule is reasonable.

Section C. Invitation To Comment

Before adopting this revised proposed Rule as final, consideration will be given to any written comments submitted to the Secretary of the Commission on or before June 30, 1995. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act, 5 U.S.C. 552, and Commission regulations, on normal business days between the hours of 8:30 a.m. and 5 p.m. at the Public Reference Section, Room 130, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

[202] *See, e.g.*, AARP at 25; NYSCPB at 13–14; NAAG at 41–42; NACAA at 6.

[203] *See* Prudential at 4.

[204] 60 FR at 8328.

[205] NRF at 41. *See also* APAC at 9; NCL at 55; Olan at 29; NAA at 24; DMA at 40; SCIC at 71; ARDA at 41; Time Warner at 41. *But see* USPS at 26.

[206] *See, e.g.*, DMA at 40; Olan at 29; NRF at 41; SCIC at 7; Time Warner at 41.

[207] NCL at 55.

Section D. Communications by Outside Parties to Commissioners or Their Advisors

Pursuant to Commission Rule 1.26(b)(5), communications with respect to the merits of this proceeding from any outside party to any Commissioner or Commissioner advisor during the course of this rulemaking shall be subject to the following treatment. Written communications, including written communications from members of Congress, shall be forwarded promptly to the Secretary for placement on the public record. Oral communications, not including oral communications from members of Congress, are permitted only when such oral communications are transcribed verbatim or summarized at the discretion of the Commissioner or Commissioner advisor to whom such oral communications are made and are promptly placed on the public record, together with any written communications and summaries of any oral communications relating to such oral communications. Oral communications from members of Congress shall be transcribed or summarized at the discretion of the Commissioner or Commissioner advisor to whom such oral communications are made and promptly placed on the public record, together with any written communications and summaries of any oral communications relating to such oral communications.

Section E. Regulatory Flexibility Act

During the comment period, only a few commenters[208] asserted that the initially proposed Rule might have a significant economic impact on a substantial number of small entities. However, based on the revised proposed Rule's modified regulatory approach, the provisions of the Regulatory Flexibility Act relating to an initial and final regulatory analysis, 5 U.S.C. 603, 604, are not applicable to this document because it is believed that these revised regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities, 5 U.S.C. 605.

The Telemarketing Act requires the Commission to issue regulations, not later than 365 days after the date of enactment, prohibiting deceptive telemarketing acts or practices and other abusive telemarketing acts or practices. The Act limits the scope of the regulations to entities that engage in telemarketing through one or more *interstate* telephone calls; telemarketing sales by local companies to local customers would most likely be intrastate calls and thus outside the parameters of the proposed rule. The Act also exempts certain catalog sales operations from the scope of the regulations. In addition, the revised proposed rule exempts pay-per-call services subject to the Commission's "Trade Regulation Rule Pursuant to the Telephone Disclosure and Dispute Resolution Act of 1992," exempts telephone calls in which a payment is not required until after a face-to-face sales presentation has occurred, telephone calls initiated by a customer that are not in response to any solicitation, and customer telephone calls that are in response to mass media advertising.

As a result of these statutory and regulatory limitations, the Commission believes that many small entities will fall outside the scope of the regulations. In addition, any economic costs imposed on small entities remaining within the parameters of the rule are, in many instances, specifically imposed by statute. Where they are not, efforts have been made to make the revised proposed Rule's requirements flexible, in part to minimize any unforeseen burden on small entities, as described elsewhere in this notice.

To ensure that no substantial economic impact is being overlooked, public comment is requested on the effect of the proposed regulations on the costs to, profitability and competitiveness of, and employment in small entities. Subsequent to the receipt of public comments, it will be decided whether the preparation of a final regulatory flexibility analysis is warranted. Accordingly, based on available information, the Commission hereby certifies under the Regulatory Flexibility Act, 5 U.S.C. 605(b), that the proposed regulations will not have a significant economic impact on a substantial number of small entities. This notice serves as certification to that effect for the purposes of the Small Business Administration.

List of Subjects in 16 CFR Part 310

Telemarketing, Trade practices.

Accordingly, it is proposed that chapter I of 16 CFR be amended by adding a new part 310 to read as follows:

PART 310—TELEMARKETING SALES RULE

Sec.

310.1 Scope of regulations in this part.
310.2 Definitions.
310.3 Deceptive telemarketing acts or practices.
310.4 Abusive telemarketing acts or practices.
310.5 Recordkeeping requirements.
310.6 Exemptions.
310.7 Actions by states and private persons.
310.8 Federal preemption.
310.9 Severability.

Authority: 15 U.S.C. 6101–6108.

§ 310.1 Scope of regulations in this part.

This part implements the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. 6101–6108. This part does not apply to any activity outside the jurisdiction of the Federal Trade Commission Act, 15 U.S.C. 41, et seq.

§ 310.2 Definitions.

(a) *Acquirer* means a business organization, financial institution, or an agent of a business organization or financial institution that has authority from an organization that operates or licenses a credit card system to authorize merchants to accept, transmit, or process payment by credit card through the credit card system for money, goods or services, or anything else of value.

(b) *Attorney general* means the chief legal officer of a State.

(c) *Cardholder* means a person to whom a credit card is issued or who is authorized to use a credit card on behalf of or in addition to the person to whom the credit card is issued.

(d) *Commission* means the Federal Trade Commission.

(e) *Credit* means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

(f) *Credit card* means any card, plate, coupon book, or other credit device existing for the purpose of obtaining money, property, labor, or services on credit.

(g) *Credit card sales draft* means any record or evidence of a credit card transaction.

(h) *Credit card system* means any method or procedure used to process credit card transactions involving credit cards issued or licensed by the operator of that system.

(i) *Customer* means any person who is or may be required to pay for goods or services offered through telemarketing.

(j) *Investment opportunity* means anything, tangible or intangible, that is offered, offered for sale, sold, or traded based wholly or in part on representations, either expressed or implied, about past, present, or future income, profit, or appreciation. The term "investment opportunity" does not include sales of franchises subject to the Commission's Rule entitled "Disclosure Requirements and Prohibitions

[208] *See generally* Olan; ATFA; ANA; ABA.

Concerning Franchising and Business Opportunity Ventures," 16 CFR part 436.

(k) *Material* means likely to affect a person's choice of, or conduct regarding, goods or services.

(l) *Merchant* means a person who is authorized under a written contract with an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services.

(m) *Merchant agreement* means a written contract between a merchant and an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services.

(n) *Outbound telephone call* means a telephone call initiated by a telemarketer to induce the purchase of goods or services.

(o) *Person* means any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity.

(p) *Prize* means anything offered, or purportedly offered, and given, or purportedly given, to a person by chance. For purposes of this definition, chance exists if a person is guaranteed to receive an item and, at the time of the offer or purported offer, the telemarketer does not identify the specific item that the person will receive.

(q) *Prize promotion* means:

(1) A sweepstakes or other game of chance; or

(2) An oral or written express or implied representation that a person has won, has been selected to receive, or may be eligible to receive a prize or purported prize.

(r) *Seller* means any person who, in connection with a telemarketing transaction, provides or offers to provide goods or services to the customer in exchange for consideration.

(s) *State* means any State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, and any territory or possession of the United States.

(t) *Telemarketer* means any person who, in connection with telemarketing, initiates or receives telephone calls to or from a customer.

(u) *Telemarketing* means a plan, program, or campaign which is conducted to induce the purchase of goods or services by use of one or more telephones and which involves more than one interstate telephone call. The term does not include the solicitation of sales through the mailing of a catalog which: contains a written description or illustration of the goods or services offered for sale; includes the business address of the seller; includes multiple pages of written material or illustrations; and has been issued not less frequently than once a year, when the person making the solicitation does not solicit customers by telephone but only receives calls initiated by customers in response to the catalog and during those calls takes orders only without further solicitation. For purposes of the previous sentence, the term "further solicitation" does not include providing the customer with information about, or attempting to sell, any other item included in the same catalog which prompted the customer's call or in a substantially similar catalog.

§ 310.3 Deceptive telemarketing acts or practices.

(a) *Prohibited deceptive telemarketing acts or practices.* It is a deceptive telemarketing act or practice and a violation of this part for any seller or telemarketer to engage in the following conduct:

(1) Before a customer pays for goods or services offered, failing to disclose, in a clear and conspicuous manner, the following material information:

(i) The total costs to purchase, receive, or use, and the quantity of, any goods or services that are the subject of the sales offer;

(ii) All material restrictions, limitations, or conditions to purchase, receive, or use the goods or services that are the subject of the sales offer;

(iii) All material terms and conditions of the seller's refund, cancellation, exchange, or repurchase policies if a representation about any such policy is made a part of the sales offer; and

(iv) That no purchase is necessary to win if a prize promotion is offered in conjunction with a sales offer of goods or services;

(2) Misrepresenting, directly or by implication, any of the following material information:

(i) The total costs to purchase, receive, or use, and the quantity of, any goods or services that are the subject of a sales offer;

(ii) Any material restriction, limitation, or condition to purchase, receive, or use goods or services that are the subject of a sales offer;

(iii) Any material aspect of the performance, efficacy, nature, or central characteristics of goods or services that are the subject of a sales offer;

(iv) Any material aspect of the nature or terms of the seller's refund, cancellation, exchange, or repurchase policies;

(v) Any material aspect of a prize promotion including, but not limited to, the odds of winning, the nature or value of a prize, or that payment is required to receive a prize;

(vi) Any material aspect of an investment opportunity including, but not limited to, risk, liquidity, earnings potential, or profitability; or

(vii) A seller's or telemarketer's affiliation with, or endorsement by, any government or third-party organization; and

(3) Making a false or misleading statement to induce any person to pay for goods or services.

(b) *Assisting and facilitating.* It is a deceptive telemarketing act or practice and a violation of this part for a person to provide substantial assistance or support to any seller or telemarketer when that person knows or consciously avoids knowing that the seller or telemarketer is engaged in any act or practice that violates § 310.3 (a) or (c), or § 310.4 of this part, and such substantial assistance is related to the commission or furtherance of that act or practice.

(c) *Credit card laundering.* Except as expressly permitted by the applicable credit card system, it is a deceptive telemarketing act or practice, and a violation of this part, for:

(1) A merchant to present to or deposit into, or cause another to present to or deposit into, the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the merchant;

(2) Any person to employ, solicit, or otherwise cause a merchant or an employee, representative, or agent of the merchant, to present to or deposit into the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the merchant; or

(3) Any person to obtain access to the credit card system through the use of a business relationship or an affiliation with a merchant, when such access is not authorized by the merchant agreement or the applicable credit card system.

§ 310.4 Abusive telemarketing acts or practices.

(a) *Abusive conduct generally.* It is an abusive telemarketing act or practice and a violation of this part for any seller or telemarketer to engage in the following conduct:

(1) Threats, intimidation, or the use of profane or obscene language;

(2) Requesting or receiving payment of any fee or consideration for goods or services represented to remove derogatory information from, or improve, a person's credit history, credit record, or credit rating until:

(i) The time frame in which the seller has represented all of the goods or services will be provided to that person has expired; and

(ii) The seller has provided the person with documentation in the form of a consumer report from a consumer reporting agency demonstrating that the promised results have been achieved, such report having been issued more than six months after the results were achieved. Nothing in this part should be construed to affect the requirement in the Fair Credit Reporting Act, 15 U.S.C. 1681, that a consumer report may only be obtained for a specified permissible purpose;

(3) Requesting or receiving payment of any fee or consideration from a person, for goods or services represented to recover or otherwise assist in the return of money or any other item of value paid for by, or promised to, that person in a previous telemarketing transaction, until seven (7) business days after such money or other item is delivered to that person. This provision shall not apply to goods or services provided to a person by a licensed attorney; or

(4) Requesting or receiving payment of any fee or consideration in advance of obtaining a loan or other extension of credit when the seller or telemarketer has guaranteed or represented a high likelihood of success in obtaining or arranging a loan or other extension of credit for a person.

(b) *Pattern of calls.* (1) It is an abusive telemarketing act or practice and a violation of this part for a telemarketer to engage in, or for a seller to cause a telemarketer to engage in, the following conduct:

(i) Causing any telephone to ring, or engaging any person in telephone conversation, repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number; or

(ii) Initiating an outbound telephone call to a person when that person previously has stated that he or she does not wish to receive an outbound telephone call made by or on behalf of the seller whose goods or services are being offered.

(2) A seller or telemarketer will not be liable for violating § 310.4(b)(1)(ii) if:

(i) It has established and implemented written procedures to comply with § 310.4(b)(1)(ii);

(ii) It has trained its personnel in the procedures established pursuant to § 310.4(b)(2)(i);

(iii) The seller, or the telemarketer acting on behalf of the seller, has maintained and recorded lists of persons who may not be contacted, in compliance with § 310.4(b)(1)(ii); and

(iv) Any subsequent call is the result of error.

(c) *Calling time restrictions.* Without the prior consent of a person, it is an abusive telemarketing act or practice and a violation of this part for a telemarketer to engage in outbound telephone calls to a person's residence at any time other than between 8:00 a.m. and 9:00 p.m. local time at the called person's location.

(d) *Required oral disclosures.* It is an abusive telemarketing act or practice and a violation of this part for a telemarketer in an outbound telephone call to fail to disclose promptly and in a clear and conspicuous manner to the person receiving the call, the following information:

(1) The identity of the seller;

(2) That the purpose of the call is to sell goods or services;

(3) The nature of the goods or services; and

(4) That no purchase is necessary to win if a prize promotion is offered in conjunction with a sales offer of goods or services. This disclosure must be made before the prize is described to the person called. If requested by that person, the telemarketer must disclose the no-purchase entry method for the prize promotion.

§ 310.5 Recordkeeping requirements.

(a) Any seller or telemarketer shall keep, in any form, for a period of 24 months from the date the record is produced, the following records relating to its telemarketing activities:

(1) All substantially different advertising, brochures, telemarketing scripts, and promotional materials;

(2) The name and last known address of each prize recipient and the prize awarded for prizes that have a value of $25.00 or more;

(3) The name and last known address of each customer, the goods or services purchased, the date such goods or services were shipped or provided, and the amount paid by the customer for the goods or services; and

(4) The name, any fictitious name used, the last known home address and telephone number, and the job title(s) for all current and former employees directly involved in telephone sales.

(b) Failure to keep all records required by § 310.5(a) shall be a violation of this part.

(c) The seller and the telemarketer calling on behalf of the seller may, by written agreement, allocate responsibility between themselves for the recordkeeping required by this section. When a seller and telemarketer have entered into such an agreement, the terms of that agreement shall govern, and the seller or telemarketer, as the case may be, need not keep records that duplicate those of the other. If the agreement is unclear as to who must maintain any required record(s), the seller shall be responsible for keeping such records.

(d) Absent a written agreement described in section 310.5(c) between the seller and the telemarketer, the seller shall be responsible for complying with § 310.5(a) (1), (2) and (3); the telemarketer shall be responsible for complying with § 310.5(a)(4). The seller and telemarketer may keep any required records in the manner, format, or place as they keep such records in the ordinary course of business.

(e) In the event of any dissolution or termination of the seller's or telemarketer's business, the principal of that seller or telemarketer shall maintain all records as required under this section. In the event of any sale, assignment, succession, or other change in ownership of the seller's or telemarketer's business, the successor business shall maintain all records required under this section.

§ 310.6 Exemptions.

The following telemarketing acts or practices are exempt under this part:

(a) Pay-per-call services subject to the Commission's "Trade Regulation Rule Pursuant to the Telephone Disclosure and Dispute Resolution Act of 1992," 16 CFR part 308.

(b) Telephone calls in which the sale of goods or services is not completed, and payment or authorization of payment is not required, until after a face-to-face sales presentation by the seller during which the customer has the opportunity to examine the goods or services offered.

(c) Telephone calls initiated by a customer that are not the result of any solicitation by a seller or telemarketer.

(d) Telephone calls initiated by a customer in response to an advertisement through any media, other than direct mail solicitations; provided, however, that this exemption does not apply to calls initiated by a customer in response to an advertisement relating to investment opportunities, goods or services described in § 310.4(a)(2) or (3), or advertisements that guarantee or represent a high likelihood of success in obtaining or arranging for extensions of credit, if payment of a fee is required in advance of obtaining the extension of credit.

(e) Telephone calls initiated by a customer in response to a direct mail

solicitation that clearly and conspicuously discloses all material information listed in § 310.3(a)(1) of this part for any item offered in the direct mail solicitation; provided, however, that this exemption does not apply to calls initiated by a customer in response to a direct mail solicitation relating to investment opportunities, goods or services described in § 310.4(a)(2) or (3), or direct mail solicitations that guarantee or represent a high likelihood of success in obtaining or arranging for extensions of credit, if payment of a fee is required in advance of obtaining the extension of credit.

(f) Telephone calls between a telemarketer and any business, except calls involving the retail sale of nondurable office or cleaning supplies.

§ 310.7 Actions by States and private persons.

(a) Any attorney general or other officer of a State authorized by the State to bring an action under the Telemarketing and Consumer Fraud and Abuse Prevention Act, and any private person who brings an action under that Act, shall serve written notice of its action on the Commission, if feasible, prior to its initiating an action under this part. The notice shall be sent to the Office of the Director, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580, and shall include a copy of the State's or private person's complaint and any other pleadings to be filed with the court. If prior notice is not feasible, the State or private person shall serve the Commission with the required notice immediately upon instituting its action.

(b) This part does not vest the attorney general of any State or any private person with jurisdiction over any person or activity outside the jurisdiction of the Federal Trade Commission Act.

§ 310.8 Federal preemption.

Nothing in this part shall be construed to preempt any State law that is not in direct conflict with any provision of this part.

§ 310.9 Severability.

The provisions of this part are separate and severable from one another. If any provision is stayed or determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95–13814 Filed 6–7–95; 8:45 am]

BILLING CODE 6750–01–P

federal register

Thursday
June 8, 1995

Part IV

Department of the Interior

Bureau of Indian Affairs

Proposed Finding Against Federal Acknowledgment of the Golden Hill Paugussett Tribe; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Proposed Finding Against Federal Acknowledgment of the Golden Hill Paugussett Tribe

May 24, 1995.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of proposed finding.

SUMMARY: Pursuant to 25 CFR 83.10(e) of the revised Federal acknowledgment regulations, which became effective March 28, 1994, notice is hereby given that the Assistant Secretary—Indian Affairs (Assistant Secretary) proposes to decline to acknowledge that the Golden Hill Paugussett Tribe, P.O. Box 1645, Bridgeport, Connecticut 06601–1645 exists as an Indian tribe within the meaning of Federal law. This notice is based on a determination that the Golden Hill Paugussett Tribe does not meet one of the seven mandatory criteria set forth in 25 CFR 83.7, specifically, criterion 83.7(e). Therefore, the Golden Hill Paugussett Tribe does not meet the requirements necessary for a government-to-government relationship with the United States.

DATES: As provided by 25 CFR 83.10(e)(1) and 83.10(h) through 83.10(l), any individual or organization wishing to challenge the proposed finding may submit factual or legal arguments and evidence to rebut or support the evidence relied upon. This material must be submitted on or before December 5, 1995.

ADDRESSES: Comments on the proposed finding and/or requests for a copy of the report of evidence should be addressed to the Office of the Assistant Secretary, 1849 C Street, N.W., Washington, DC 20240, Attention: Branch of Acknowledgment and Research. Mail Stop 2611–MIB.

FOR FURTHER INFORMATION CONTACT: Holly Reckord, Chief, Branch of Acknowledgment and Research, (202) 208–3592.

SUPPLEMENTARY INFORMATION: This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary by 209 DM 8.

In order to meet criterion 83.7(e), the petitioner must demonstrate Indian ancestry through descent from a historical tribe, or from tribes which combined and functioned as a single entity. When documenting descent from members of the historical tribe or tribes, the petitioner must show that: (1) The persons claimed as Indian ancestors were of Indian descent from a particular tribe; and (2) Indian descent must be derived from more than one Indian person.

The Federal acknowledgment process is not intended to recognize single individuals or single extended families of Indian descent, even if of Indian ancestry. Nor is it intended to recognize the descendants of single individuals or families, no matter how large a body of such descendants exit. Criterion e is one of the criteria which is intended to insure continuous existence as a tribal body. Descent from a single Indian ancestor does not meet this requirement.

The petitioner does not meet criterion e for the following reasons: (1) The petitioner's single common ancestor, William Sherman, has not been documented conclusively to have Indian ancestry from the historic Golden Hill Paugussett Tribe or from any other historic Indian tribe; and (2) even if William Sherman were shown to have Indian ancestry, from the historic Golden Hill Paugussett or from any other historic Indian tribe, the present group would be descended from a single Indian individual. It, therefore, would not meet the requirements of criterion e which requires ancestry as a tribe, not simply Indian ancestry.

The Golden Hill Paugussett Tribe's petition for Federal acknowledgment claims that, "The Golden Hill Paugussett tribe has existed in the State of Connecticut since time immemorial, and has maintained its autonomy and unity as an American Indian tribe while interacting with non-Indian populations since the Colonial period."

The Golden Hill Paugussett Tribe's petition for Federal acknowledgment also maintains that as long as a single Golden Hill Paugussett descendant remains alive, the tribal entity continues to exist. This does not accord with the definition of tribal existence in 25 CFR part 83, and the underlying precedents in Federal law and judicial decisions.

A substantial body of documentation was available on the petitioning group and its ancestors. This extensive evidence does not demonstrate either the Paugussett Indian tribal ancestry claimed in the petition or other Indian tribal ancestry. Furthermore, had Indian ancestry been documented, Indian descent would remain from only one individual. One individual Indian ancestor does not qualify the group for Federal recognition as an Indian Tribe. Based on this factual determination, we conclude that the Golden Hill Paugussett tribe should not be granted Federal acknowledgment under 25 CFR part 83.

As provided by 25 CFR 83.10(h) of the revised regulations, a report summarizing the evidence, reasoning, and analyses that are the basis for the proposed decision will be provided to the petitioner and interested parties, and is available to other parties upon written request. Comments on the proposed finding and/or requests for a copy of the report of evidence should be addressed to the Office of the Assistant Secretary, Bureau of Indian Affairs, 1849 C Street, NW., Washington, DC 20240, Attention; Branch of Acknowledgment and Research. Mail Stop 2611–MIB. Third parties must simultaneously supply copies of their comments to the petitioner in order for them to be considered by the Department of the Interior.

During the response period. the Assistant Secretary shal provide technical advice concerning the proposed finding and shall make available to the petitioner in a timely fashion any records used for the proposed finding not already held by the petitioner, to the extent allowable by Federal law (83.10(j)(1)). In addition, the Assistant Secretary shall, if requested by the petitioner or any interested party, hold a formal meeting for the purpose of inquiring into the reasoning, analyses, and factual bases for the proposed finding. The proceedings of this meeting shall be on the record. The meeting record shall be available to any participating party and become part of the record considered by the Assistant Secretary in reaching a final determination (83.10(j)(2)).

If third party submissions are received during the regular response period, the petitioner shall have a minimum of 60 days to respond to these submissions This period may be extended at the Assistant Secretary's discretion if warranted by the nature and extent of the comments (83.10(k)).

At the end of the response periods for comment on this proposed finding, the Assistant Secretary shall consider the written arguments and evidence submitted during the response periods and issue a final determination. The Assistant Secretary shall consult with the petitioner and interested parties to determine an equitable timeframe for preparation of the final determination and notify the petitioner and interested parties of the date such consideration begins (83.10(l)). The Assistant Secretary may conduct any necessary additional research and may request additional information from the petitioner and commenting parties (83.10(l)(1)). A summary of the final determination will be published in the **Federal Register** within 60 days from the date on which the consideration of the written arguments and evidence

rebutting or supporting the proposed finding begins, as provided in 25 CFR 83.10 (l)(2).

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 95–13998 Filed 6–7–95; 8:45 am]

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federal register

Thursday
June 8, 1995

Part V

Department of Health and Human Services

Public Health Service

National Toxicology Program (NTP) Proposed Revised Criteria for Listing Substances in the Biennial Report on Carcinogens (BRC) and Notice of Meeting of the NTP Board of Scientific Counselors

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Toxicology Program (NTP) Proposed Revised Criteria for Listing Substances in the Biennial Report on Carcinogens (BRC) and Notice of Meeting of the NTP Board of Scientific Counselors

Background

A public meeting of the NTP Board of Scientific Counselors' ad hoc Working Group to Review the Criteria for Listing Substances in the Biennial Report on Carcinogens (BRC) was held on April 24 and 25, 1995, at the Washington Hilton and Towers Hotel, 1919 Connecticut Avenue NW., Washington DC. The purpose of the meeting was to receive public comments on the current criteria for listing substances in the BRC, and to review and make recommendations on these criteria. The issues addressed by this ad hoc group were: (1) The adequacy of existing criteria for listing substances in future Reports; and (2) the incorporation of mechanistic data as part of the criteria for listing substances in future Reports which may include the consideration of sensitive sub-populations as well as procedures to upgrade or downgrade the evaluation of the results of animal bioassay or epidemiology studies. A background and discussion document prepared by the NTP for use by the ad hoc working group and also for review and comment by the public, is available upon request. Copies of this document can be obtained by contacting the NTP Liaison Office at NIEHS, P.O. Box 12233, Research Triangle Park, NC 27709, or by FAX to (919) 541–0295.

This meeting was the first step in the review of the criteria and was open to the public. The meeting began with a plenary session which provided background on the BRC and a public comment session. The working group then broke into three breakout groups, with each breakout group addressing the same above listed issues. The final session of the meeting was a plenary session at which time each breakout group reported on their deliberations. The chairperson, rapporteur, and facilitator of the three breakout groups completed draft reports of their group's discussions and recommendations and submitted it to the Chairperson of the ad hoc working group. The Chairperson, working with NIEHS/NTP staff, completed a draft summary report of the criteria review meeting which subsequently was sent to all ad hoc working group members for editing and corrections. A copy of the revised summary report is printed below. Also printed below are the current and proposed revised criteria developed by the NIEHS/NTP based on the input of the NTP Board of Scientific Counselors' ad hoc working group.

Action-Request for Public Input on the Proposed Revised Criteria

The NTP seeks comments and views on the proposed revised criteria which follows. Public input concerning the proposed revised criteria for listing a substance in the BRC is important to the review process and is encouraged. A further opportunity for comment will be provided during a meeting of the NTP Board of Scientific Counselors in the NIEHS Conference Center, Building 101, South Campus, National Institute of Environmental Health Sciences, 111 Alexander Drive, Research Triangle Park, North Carolina, on June 29 , 1995. The primary agenda topic for this meeting concerns the summary report and recommendations of the ad hoc working group of the NTP Board from their review of the criteria for listing substances in the BRC on April 24 and 25, 1995. This meeting is open to the public, and public input concerning the criteria for listing a substance in the Biennial Report on Carcinogens is encouraged. Formal oral comments during the NTP Board meeting will be limited to five minutes to permit maximum participation. Written comments accompanying oral statements are encouraged. To assure consideration by the Board at this meeting, written comments must be submitted to Dr. Larry G. Hart, Executive Secretary for the NTP Board of Scientific Counselors and received by June 23, 1995. Registration to attend is not required; however, to ensure adequate seating, we ask that those planning to attend let us know. To register, submit written comments or announce intention to make oral comments on the criteria review report, receive information on the agenda, or be put on the mailing list for summary minutes subsequent to the meeting, please contact: Dr. L. G. Hart, P.O. Box 12233, Research Triangle Park, NC 27709; telephone: (919) 541–3971; FAX: (919) 541–0719.

Dated: May 30, 1995.

Kenneth Olden,

Director, National Toxicology Program.

Attachments

Summary Report of the Meeting of the National Toxicology Program's Board of Scientific Counselors' Ad Hoc Working Group To Review the Criteria for Listing Substances in the Biennial Report on Carcinogens, Washington Hilton and Towers Hotel, Washington, D.C., April 24 and 25, 1995

Background

The Biennial Report on Carcinogens is prepared in response to Section 301(b)(4) of the Public Health Service Act which stipulates that the Secretary of the Department of Health and Human Services shall publish a report which contains a list of all substances (i) which either are known to be human carcinogens or may reasonably be anticipated to be human carcinogens; and (ii) to which a significant number of persons residing in the United States are exposed. This responsibility has been delegated by the Secretary to the Director, National Toxicology Program (NTP). Dr. Ken Olden, Director of the National Institute of Environmental Health Sciences (NIEHS) and the National Toxicology Program, has initiated a review of the BRC to broaden input to its preparation, broaden the scope of scientific review associated with the Report, and provide review of the criteria used for inclusion of substances in the BRC.

An ad hoc working group of the NTP Board of Scientific Counselors was established to receive public comments on the existing criteria and review and make recommendations on the criteria for listing substances in the BRC. This ad hoc working group had a balance of expertise and views and included representatives from Academia; Industry; Labor; Federal, State and Local Agencies; and Private Organizations. The working group reviewed the criteria in an open, public meeting in Washington, D.C. on April 24 & 25, 1995.

Meeting Summary

The ad hoc working group was chaired by NTP Board of Scientific Counselors member Dr. Arnold Brown of the University of Wisconsin. The working group was divided into three breakout groups to allow for a more in depth discussion of the criteria and the public comments received. Each of the breakout groups were asked to address the following issues in their review of the criteria:

(a) The adequacy of existing criteria for listing substances in future Reports; and

(b) The incorporation of mechanistic data as part of the criteria for listing substances in future Reports that may include the consideration of sensitive sub-populations as well as procedures to upgrade or downgrade the evaluation of the results of animal bioassay or epidemiology studies.

Plenary Session I was chaired by Dr. George Lucier, Director, Environmental Toxicology Program, NIEHS/NTP and allowed for opening and background presentations by Dr. Kenneth Olden, Director, NIEHS and NTP, Dr. C. W. Jameson, NIEHS/NTP, and Dr. Marilyn Wind, CPSC (NTP Executive Committee BRC Working Group representative). Dr. Lucier then gave the charge to the ad hoc working group to address the two issues outlined above in their review of the criteria and identify areas of consensus, areas of debate, and the knowledge gaps that create the debate. Dr. Lucier then turned the meeting over to Dr. Brown.

Plenary Session II was devoted to the presentation of public comments concerning the BRC criteria. Written comments had been received from the following individuals/organizations and distributed to the ad hoc Working Group prior to the meeting:

North American Insulation Manufacturers Association
Chlorobenzene Producers Association
Dr. Stephen DeVito, US EPA
Dr. E. E. McConnell

Public comments were made during Plenary Session II by the following individuals:

Dr. Charles Axten—NAIMA
Dr. Nathan Karch—Karch & Associates
Dr. Matthew Bogdanffy—Haskell Laboratory
Dr. James Sherman—Chlorobenzene Producers Association
Dr. Myra Karstadt—Center for Science in the Public Interest
Dr. Frank Mirer—United Auto Workers
Dr. E. E. McConnell—Private Consultant

Comments made during the public comment period ranged from recommending retention of the current criteria with no change, to revising the existing criteria to require the incorporation of available mechanistic data. (A copy of the written public statements provided by the above listed individuals is available upon written request to the NTP Liaison Office, NIEHS, P.O. Box 12233, MD A3–01, Research Triangle Park, NC 27709–2233). Following the public comment session, Dr. Brown directed that each breakout group was to meet individually and, based on the charge given to the ad hoc Working Group by Dr. Lucier, address the BRC criteria.

Upon completion of the discussions of the three breakout groups, the full ad hoc Working Group reconvened in the final Plenary III session. Each breakout group made a report on their deliberations and recommendations.

Each breakout group had addressed the two issues outlined in the charge given by Dr. Lucier. Breakout group 1 stated in their report that the existing criteria were found not to be adequate and suggested revision of the criteria to include use of available mechanistic data that is relevant for improving hazard identification. The report from breakout group 2 stated there was unanimity from their members that the criteria should be updated and that mechanistic data should be utilized in the listing process. Group 2 recommended significant revisions to the existing criteria including the incorporation of additional listing categories. Breakout group 3 report stated that their members were of the general consensus that the current criteria are adequate for the stated purpose of the BRC, however minor revisions and clairifications to the existing criteria were considered to be appropriate. In summary, it was the recommendation of breakout groups 1 & 3 that the existing two categories of the current criteria for listing substances in the BRC should remain with revisions to category 2 to allow for all scientific evidence to be considered. This will allow for the best scientific judgment to be used in consideration of substances for listing in the BRC. Breakout group 2 recommended a more significant expansion of the current criteria which included the incorporation of additional listing categories of "presumptive evidence of carcinogenic activity" and "laboratory animal carcinogen presumed not to be a human carcinogen".

Based on the reports from the three breakout groups and the ensuing discussions during the final plenary session of the entire ad hoc Working Group, the NIEHS/NTP determined that, while there was not complete agreement concerning the adequacy of the current criteria for listing substances in the BRC, it was the general consensus of the entire ad hoc Working Group that the existing criteria should be revised and clarified. The recommended revisions are to permit consideration of more mechanistic information in listing substances in the BRC. As indicated in the three breakout group reports, the area of debate was how extensive the modifications should be. The discussions during Plenary Session III indicated that the majority of the ad hoc Working Group members felt the revised criteria should maintain the current 2 categories with revisions to assure that all scientific evidence is considered to allow for the best scientific judgment. It was also apparent from these discussions that there was consensus that the BRC is a hazard identification document and not to be used as a quantitative risk assessment for the listed substances. It is based on these considerations and recommendations that the NIEHS/NTP has proposed revised criteria for listing substances in the BRC. These proposed revisions are consistent with the discussion and recommendations of the majority of the ad hoc Working Group and the current legislation regarding the Biennial Report on Carcinogens. These proposed revised criteria will be available to the public for review and comment and presented to the NTP Board of Scientific Counselors at their June 29, 1995, meeting. The Board will review the report and recommendations; receive public comment on the report; and develop Board recommendations concerning the selection criteria. Further review will include the PHS Environmental Health Policy Committee and the NTP Executive Committee.

The ad hoc Working Group made several additional general recommendations concerning the Biennial Report on Carcinogens. These included recommending that a formal mechanism be established for the re-evaluation of substances previously listed in the BRC to determine if listing is still warranted. As a result of this recommendation, the NTP will evaluate the current procedures for de-listing a substance and, if necessary, revise it. It was also recommended by the Working Group that the NTP should stimulate discussion (e.g., workshops, discussion papers) on the use of mechanistic data in hazard identification. The recent NTP workshop on "Mechanism-Based Toxicology in Cancer Risk Assessment: Implications for Research, Regulation and Legislation" held January 11–13, 1995, and the upcoming Workshop on Validation and Regulatory Acceptance of Alternative Test Methods" planned for October 30–November 1, 1995 are examples of how this recommendation will be acted upon. The NTP plans to continue these types of activities in the future.

Current BRC Criteria

For the purpose of the BRC, the degrees of evidence are as follows:

1. *Known To Be Carcinogens*

There is sufficient evidence of carcinogenicity from studies in humans that indicates a causal relationship between the agent and human cancer.

2. *Reasonably Anticipated To Be Carcinogens*

a. There is limited evidence of carcinogenicity from studies in humans, which indicates that causal interpretation is credible, but that alternative explanations, such as chance, bias or confounding, could not adequately be excluded, or

b. There is sufficient evidence of carcinogenicity from studies in experimental animals that indicates that there is an increased incidence of malignant tumors: (a) in multiple species or strains, or (b) in multiple experiments (preferably with different routes of administration or using different dose levels), or (c) to an unusual degree with regard to incidence, site or type of tumor, or age at onset. Additional evidence may be provided by data concerning dose-response effects, as well as information on mutagenicity or chemical structure.

Proposed Revised BRC Criteria

For the purpose of the BRC, the degrees of evidence are as follows:

1. *Known To Be Human Carcinogens*

There is sufficient evidence of carcinogenicity from studies in humans that indicates a causal relationship between the substance and human cancer.

2. *Reasonably Anticipated To Be Human Carcinogens*

a. There is limited evidence of carcinogenicity from studies in humans which indicate that causal interpretation is credible but that alternative explanations such as chance, bias or confounding could not adequately be excluded, or

b. There is sufficient evidence of carcinogenicity from studies in experimental animals that indicates there is an increased incidence of malignant and/or combined benign and malignant tumors: (1) in multiple species or at multiple tissue sites, or (2) by multiple routes of exposure, or (3) to an unusual degree with regard to incidence, site or type of tumor or age at onset.

Conclusions regarding carcinogenicity in humans or experimental animals should be based on scientific judgment. Consideration may be given to relevant information on dose response, route of exposure, chemical structure, sensitive sub populations, genetic effects or other data relating to mechanism of action, and/or factors that may be unique to a given substance. There may be substances for which there is less than sufficient

evidence of carcinogenicity in humans or laboratory animals but for which there are compelling data indicating that the substance could reasonably be anticipated to cause cancer in humans. Conversely, there may be substances for which there is sufficient evidence of carcinogenicity in laboratory animals but there are compelling data indicating that the agent acts through mechanisms which do not operate in humans and would therefore reasonably be anticipated not to cause cancer in humans.

National Toxicology Program Board of Scientific Counselors' Ad Hoc Working Group for the Review of the Criteria for Listing Substances in the Biennial Report on Carcinogens

List of Ad Hoc Working Group Members

Dr. Arnold Brown(Chairman)—University of Wisconsin Medical School
Dr. Bill Allaben—FDA/NCTR
Dr. Carl Barrett—NIEHS
Dr. Eula Bingham—Univ. of Cincinnati
Dr. John Dement—Duke University Medical Center
Dr. Norman Drinkwater—McArdle Laboratory , Univ. of Wisconsin
Dr. Kathleen Dixon—Univ. of Cincinnati, Dept. of Environ. Health
Dr. Gerard Egan—Exxon Biomedical Sciences Inc.
Dr. Clay Frederick—Rohm & Haas
Dr. Thomas Goldsworthy—Chemical Industry Institute of Toxicology
Dr. Bryan Hardin—NIOSH
Dr. David Longfellow—NCI
Dr. Judith MacGregor—Toxicology Consulting Services
Dr. Roger McClellan—Chemical Industry Institute of Toxicology
Dr. Karen Medville—Cornell University
Dr. James Melius—Center to Protect Workers' Rights
Dr. Beth Mileson—NC State Department of Health
Dr. Franklin Mirer—International Union, UAW
Dr. Rafael Moure—University of Massachusetts / Lowell
Dr. Gunter Oberdorster—Univ. of Rochester, Dept. Env. Medicine
Dr. Jean Parker—EPA/ORD
Dr. Janet Phoenix—Environmental Health Center, Washington, DC
Dr. Resha Putzrath—Georgetown Risk Group, Washington, DC
Dr. David Rall—Asst. Surgeon General, USPHS (Ret.)
Dr. Larry Roslinski—Ford Motor Company
Mr. Sheldon Samuels—Workplace Health Fund
Dr. Regina Santella—Columbia University, Dept. Environ. Sciences
Dr. Loretta Schuman—OSHA
Dr. Ellen Silbergeld—Environmental Defense Fund and the U of MD
Dr. Thomas Sinks—Nat'l Center for Env. Health, CDC
Dr. Thomas Slaga—Univ. of Texas, M.D. Anderson Cancer Center
Ms. Yee Wan—Stevens ATSDR
Dr. Donald Stevenson—Former Director of Toxicology, Shell Oil Co.
Dr. Lorenzo Tomatis—Former Director, IARC
Dr. Harri Vainio—Institute of Occupational Health, Finland
Dr. Vanessa Vu—EPA/OPPTS
Dr. Bailus Walker—Howard University
Dr. Cheryl Walker—Univ. of Texas, M.D. Anderson Cancer Center
Dr. Jerry Ward—National Cancer Institute
Dr. Marilyn Wind—CPSC
Dr. Sidney Wolfe—Public Citizens Group, Washington, DC
Dr. Hiroshi Yamasaki—IARC
Dr. Lauren Zeise—State of California EPA

[FR Doc. 95-13874 Filed 6-7-95; 8:45 am]
BILLING CODE 4140-01-P

VOL 60 ISS 110 JE 8 995 UMI

federal register

Thursday
June 8, 1995

Part VI

Office of Management and Budget

5 CFR Part 1320
Controlling Paperwork Burdens on the Public; Regulatory Changes Reflecting Recodification of the Paperwork Reduction Act; Proposed Rule

OFFICE OF MANAGEMENT AND BUDGET

5 CFR Part 1320

Controlling Paperwork Burdens on the Public; Regulatory Changes Reflecting Recodification of the Paperwork Reduction Act

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice of proposed rulemaking.

SUMMARY: The recently enacted Paperwork Reduction Act of 1995 replaces the Paperwork Reduction Act of 1980, as amended by the Paperwork Reduction Reauthorization Act of 1986. The new Act redefines "collection of information" explicitly to include third-party and public disclosures, requires agencies to seek public comment concerning proposed collections of information through 60-day notice to the public before submission for clearance by the Office of Management and Budget (OMB) and thereafter to certify to OMB, e.g., that the proposed collection reduces to the extent practicable and appropriate the burden on respondents for small business, local government, and other small entities, and indicates for each recordkeeping requirement the length of time persons are required to maintain the records specified. The new Act also makes more explicit the responsibilities of agencies in developing proposed collections of information and submitting them for OMB review and approval, and changes a number of definitions and other provisions. OMB is proposing to amend its existing paperwork clearance rules to reflect these and the other legislative changes made by the Paperwork Reduction Act of 1995.

DATES: Comments must be received on or before August 7, 1995.

ADDRESSES: Please address all written comments to Jefferson B. Hill, Office of Information and Regulatory Affairs, OMB, Washington, D.C. 20503. Comments may be submitted via facsimile to 202/395–7285. Electronic mail comments may be submitted via SMTP to Hill_J@a1.eop.gov or via X.400 to G=Jefferson, S=Hill, PRMD=gov+eop, ADMD+telemail, C=us. Comments submitted via electronic mail should include the commenter's name, affiliation, postal address, and e-mail address in the text of the message.

FOR FURTHER INFORMATION CONTACT: Jefferson B. Hill, Office of Information and Regulatory Affairs, OMB, Washington, D.C. 20503 (202/395–7340). Inquiries may be submitted via facsimile to 202/395–7285. Electronic mail comments may be submitted via SMTP to Hill_J@a1.eop.gov or via X.400 to G=Jefferson, S=Hill, PRMD=gov+eop, ADMD+telemail, C=us. Inquiries submitted via electronic mail should include the commenter's name, affiliation, postal address, and e-mail address in the text of the message.

SUPPLEMENTARY INFORMATION:

A. Background

On May 10, 1988, the Office of Management and Budget (OMB) issued 5 CFR Part 1320—Controlling Paperwork Burden on the Public [53 FR 16618]. The 1988 rule implemented the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511, 44 U.S.C. Chapter 35), as amended by the Paperwork Reduction Reauthorization Act of 1986 (Pub. L. 99–500 (October 18, 1986) and 99–591 (October 30, 1986), section 101(m)), concerning agency responsibilities for obtaining OMB approval of their collection of information, and other paperwork control functions.

The Paperwork Reduction Act of 1995 (Pub. L. 104–13 (May 22, 1995)) replaces the Paperwork Reduction Act of 1980, as amended in 1986. The Paperwork Reduction Act of 1995 takes effect on October 1, 1995. The procedural requirements of the Paperwork Reduction Act of 1980, as amended in 1986, will continue to apply to collections of information approved by OMB on or before September 30, 1995, and which have a valid OMB control number expiring after that date.

OMB is proposing to amend 5 CFR Part 1320 in order to reflect the legislative recodification of the Paperwork Reduction Act. In proposing these amendments, OMB is fully cognizant of the legislative intent of the draftsmen: "To the extent the revision is a restatement of the Paperwork Reduction Act of 1980, as amended in 1986, the legislation is a reaffirmation of the law's scope, underlying purposes, requirements, and legislative history. It is the intent of the [Senate] Committee that the Act's prior legislative history remain unchanged and continue to be viewed an important explanation of the Congressional intent underpinning the Act's provisions" (S. Rpt. 104–8, p. 35; see H. Rpt. 104–37, p. 35; H. Rpt. 104–99, pp. 27–28).

These proposed amendments change the order and structure of the existing rules in order to clarify agency and OMB responsibilities, and to elaborate upon the various requirements of the Paperwork Reduction Act of 1995. The scope of these proposed changes, their legislative basis, and their relation to the existing rule are described below. The rationale supporting the existing rules is set forth at 53 FR 16618 (May 10, 1988), 52 FR 27768 (July 23, 1987), 48 FR 13666 (March 31, 1983), and 47 FR 39515 (September 8, 1982). References to "44 U.S.C. [section number]" are references to the Paperwork Reduction Act of 1995, Pub. L. 104–13, unless explicitly stated otherwise.

B. Proposed Section 1320.1—Purpose

Proposed § 1320.1 is equivalent to existing § 1320.1. Added to the proposed § 1320.1 is a statement that the new rule is designed to maximize the practical utility and public benefit of the collection of information, an addition reflecting the legislative changes in 44 U.S.C. 3501(2) and 44 U.S.C. 3504(c)(4). Deleted from the proposed § 1320.1 is a reference to inter-agency reporting, a deletion reflecting the proposed deletion of existing § 1320.17.

C. Proposed Section 1320.2—Effect

Proposed § 1320.2 serves the same function as existing § 1320.2. The proposed § states the effective date of the new rule, and is derived from section 4 of Pub. L. 104–13.

D. Proposed Section 1320.3—Definitions

Proposed § 1320.3 is equivalent to existing § 1320.7. While proposed § 1320.3 serves the same function, OMB is proposing a number of changes.

Proposed § 1320.3(a) defining "agency" is substantively identical to existing § 1320.7(a).

Proposed § 1320.3(b): This paragraph defining "burden" is equivalent to existing § 1320.7(b), except that it is amended to reflect the legislative changes in 44 U.S.C. 3502(2). The detail added by 44 U.S.C. 3502(2) clarifies the scope of this definition by codifying OMB practice and understanding. As the floor manager for the Paperwork Reduction Act of 1995, Senator Sam Nunn, stated at final Senate passage, this bill "modifies the Act's definition of burden to capture the full range of regulatory paperwork compliance costs" (141 Cong. Rec. S5399 (April 6, 1995)).

Proposed § 1320.3(c): This paragraph defining "collection of information" serves the same function as existing § 1320.7(c), but has been amended in one respect. Paragraph (c)(4) is equivalent to and a combination of existing § 1320.7(s) ("Ten or more persons") and the last two sentences in existing § 1320.7(n) ("Person"), but is moved to become a part of proposed § 1320.3(c) in order to make it clear that the limitations in paragraph (c)(4) apply only to the use of "person" in the context of "ten or more persons." In addition, the definition retains the "third-party" disclosure language found in existing § 1320.7(c)(2). OMB's interpretation of "collection of information" to include third-party disclosures had been rejected by the Supreme Court in *Dole* v. *United Steelworkers of America*, 494 U.S. 26 (1990), but was reaffirmed by Congress in the 1995 Act (see 44 U.S.C. 3502(3)). In this regard, one non-substantive change has been made. The reference to "disclosure requirements" in existing § 1320.7(c)(1) has been replaced by "posting, notification, labeling, or similar disclosure requirements" in proposed new § 1320.3(c)(1), in order to parallel the formulation in proposed new § 1320.3(c)(2) ("through posting, notification, labeling or similar disclosure requirements"), which is taken from existing § 1320.7(c)(2).

Proposed § 1320.3(d): This paragraph defining "conduct or sponsor" is equivalent to existing § 1320.7(r) ("Sponsor"), which defined both the conducting, and the sponsoring, of a collection of information. The definition is amended to reflect the legislative changes in 44 U.S.C. 3502(3)(A).

Proposed § 1320.3(e) defining "Director" is equivalent to existing § 1320.7(d).

Proposed § 1320.3(f): This paragraph defining "display" is equivalent to existing § 1320.7(e), but is amended in several ways to clarify that "display" can be interpreted in common-sense ways appropriate for electronic media, the **Federal Register**, and the Code of Federal Regulations. As the Conference Report explains, "[f]or collections of information contained in a rule, agencies must provide the required information in a manner reasonably calculated to inform the public. Notice may be provided in the preamble to a final rule containing the collection of information, or in a general notice in the volume of the Code of Federal Regulations in which the agency's regulations appear." H. Rep. 104–99, p. 37. These examples are illustrative; the information may also be set forth, as in existing § 1320.5(e)(2), in the regulatory text of the final rule (including through a technical amendment), or, as in proposed new § 1320.3(f)(2), in a separate notice in the **Federal Register** announcing OMB approval.

Proposed § 1320.3(g) defining "independent regulatory agency" is equivalent to existing § 1320.7(h).

Proposed § 1320.3(h): This paragraph defining "information" and the subparagraphs defining exemptions thereto are, with two changes, identical to existing § 1320.7(j). The exemption for "certifications" in existing § 1320.7(j)(1) is clarified in order to ensure that the exempted certification is used only to identify an individual in a routine, non-intrusive, non-burdensome way. The exemption will not be available for a certification that substitutes for a collection of information to collect evidence of, or to monitor, compliance with regulatory standards.

Proposed § 1320.3(i) defining "OMB" is added for clarity.

Proposed § 1320.3(j) defining "penalty" is equivalent to existing § 1320.7(m). The word "penalty" is used in proposed § 1320.6, and is based on 44 U.S.C. 3502(14).

Proposed § 1320.3(k): This paragraph defining "person" is equivalent to existing § 1320.7(n), except that the last two sentences in existing § 1320.7(n) have been moved to proposed § 1320.3(c)(4) ("collection of information"). The purpose for placing the limitations on the definition of "person" into proposed § 1320.3(c)(4) is to make it clear that the limitations in paragraph (c)(4) apply only to the use of the word "person" in the context of "ten or more persons."

Proposed § 1320.3(l): This paragraph defining "practical utility" is equivalent to existing § 1320.7(o), but is amended in the final sentence to incorporate the definition of "general purpose statistics" in existing § 1320.7(i).

Proposed § 1320.3(m): This paragraph defining "recordkeeping requirement" is equivalent to existing § 1320.7(p), but is amended to reflect the legislative changes in 44 U.S.C. 3502(13). As with the definition of "collection of information" in existing § 1320.5(p), although less explicitly, the definition of "recordkeeping requirement" in existing § 1320.7(p) included requirements that persons maintain information for third parties. The precise scope of existing § 1320.5(p) was placed into some question by the Supreme Court's decision in *Dole* v. *United Steelworkers of America*, 494 U.S. 26 (1990). However, in *Action Alliance of Senior Citizens of Greater Philadelphia* v. *Sullivan*, 930 F.2d 77 (D.C. Cir.), cert. denied, 502 U.S. 938 (1991), the Court of Appeals for the District of Columbia Circuit rejected a broad reading of *Dole*, in the context of a requirement to maintain (rather than disclose) information for third parties. In the 1995 Act, Congress clarified the scope of "recordkeeping requirement" in 44 U.S.C. 3502(13).

E. Proposed Section 1320.4—Coverage

Proposed § 1320.4 is equivalent to existing § 1320.3, but is amended to reflect the legislative rewording in 44 U.S.C. 3502(3)(B) and 3518(c)(i)(D). No substantive change is intended in this section.

Paragraph (b) is based on 44 U.S.C. 3518(c)(2). Agencies from time to time investigate general operations of their programs, to assess factors including performance against statutory or regulatory objectives, the effectiveness of financial systems, or the efficiency of automated data systems. These programmatic reviews often involve surveys or other means of posing identical questions to ten or more persons without a focus on "specific individuals or entities." Under 44 U.S.C. § 3518(c)(2) and proposed paragraph 1320.4(b), the collection of information during such general programmatic investigations (other than information collected in an antitrust investigation, as specified) are covered by the Act when "undertaken with reference to a category of individuals or entities such as a class of licensees or an entire industry." However, as is made clear in 44 U.S.C. § 3518(c)(1)(B)(ii) and proposed paragraph 1320.4(a)(2), investigations are exempt from the Act when they involve "an agency against specific individuals or entities."

Thus, for example, the Act does *not* apply to a law enforcement investigation to determine whether persons are in compliance with the law. *See, e.g., Phillips Petroleum Co.* v. *Lujan*, 963 F.2d 1380, 1382–83, 1386–87 (10th Cir. 1992) (Paperwork Act does not apply to "an audit of the propriety of the royalty and other payment made by" two mineral lessees; the audit "clearly falls within the parameters of th[e] exemption" for "an administrative action or investigation involving an agency against specific individuals or entities"); *United States* v. *Saunders*, 951 F.2d 1065, 1066–67 (9th Cir. 1991) (Paperwork Act does not apply to an IRS summons; "An IRS investigation of a taxpayer's failure to file her or his income tax return constitutes 'an agency action against specific individuals.'"); *Lonsdale* v. *United States*, 919 F.2d 1440, 1444–45 (10th Cir. 1990) (same as Saunders; "the Paperwork Reduction Act is inapplicable to 'information collection request' forms issued during an investigation against an individual to determine his or her tax liability"). However, the Act *does* apply to a general programmatic investigation to determine whether the agency's program achieves its statutory objectives.

Finally, when conducted by certain agency offices, including Chief Financial Officers or Inspectors General, an investigation often carries the title of "audit." OMB recognizes that the Inspectors General have an important statutory function that requires independence in the conduct of their investigations. OMB seeks public comment on how best to implement the objectives of the Paperwork Reduction Act of 1995 while maintaining the practical ability of the Inspectors General to perform their statutory functions.

F. Proposed Section 1320.5—General Requirements

In general, proposed § 1320.5 reflects a number of legislative changes to 44 U.S.C. 3506(c) and 3507(a), and in light of those legislative changes amends and consolidates provisions in existing § 1320.4, § 1320.6, § 1320.11, § 1320.15, and § 1320.21. The purpose of this section is to provide a road-map of agency clearance obligations under this Part.

Proposed § 1320.5(a): This paragraph, in subparagraph (1)(i)–(iii) and subparagraphs (2)–(3), provides an outline of agency and OMB obligations for clearing proposed collections of information under this Part, and reflects the legislative changes in 44 U.S.C. 3507(a).

Paragraph 1320.5(a)(1)(iii) identifies the information that an agency is to submit to OMB as part of its submission of a proposed collection of information for clearance.

In response to President Clinton's statement at the signing of the Paperwork Reduction Act of 1995, to direct agencies to permit electronic submission of responses, the agency, under proposed § 1320.5(a)(1)(iii)(E), is to include in its submission to OMB a statement about whether (and is so, to what extent) the proposed collection of information involves the use of automated collection techniques or other forms of information technology (including permitting electronic submission of responses); the agency is also to explain to OMB its basis for this decision. This builds on activities undertaken earlier in the process. Proposed § 1320.8(a)(5) requires the agency to evaluate this issue in its consideration of the collection of information, and proposed § 1320.8(d)(1)(iv) requires the agency to seek public comments on this issue.

In addition, the information to be submitted under paragraph 1320.5(a)(1)(iii)(C) includes an explanation of the decision that it would not be appropriate, under proposed § 1320.8(b)(1), for a proposed collection of information to display an expiration date. Under proposed § 1320.5(a)(1)(iii)(D), an agency is to explain a decision to provide for any payment or gift to respondents, other than remuneration of contractors or grantees. This information also includes, under proposed § 1320.5(a)(1)(iii)(F), a summary of the public comments received under proposed § 1320.8(d), including actions taken by the agency in response to the comments, and the date and page of publication in the **Federal Register** of the notice therefor.

This paragraph, in subparagraph (1)(iv), provides the information that agencies are to set forth in the **Federal Register** notice announcing that the agency has submitted a proposed information collection for OMB clearance. Subparagraph (1)(iv) is equivalent to existing § 1320.15, but is amended to reflect the legislative changes in 44 U.S.C. 3507(a)(1)(D). Subparagraph (1)(iv) also directs agencies, except as provided in proposed § 1320.13(d), to request public comments within 30 days of publication because, under 44 U.S.C. 3507(b), OMB is directed to provide at least 30 days for public comment prior to making its decision concerning the agency's clearance request.

Proposed § 1320.5(b): This paragraph stresses the agency's obligation, under 44 U.S.C. 3512, to display a currently valid OMB control number and to inform the persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number. This paragraph, in subparagraph (ii)(A)–(B), elaborates on possible ways in which the agency can so inform the respondents. This paragraph serves the same function in the first sentence in existing § 1320.4(a). As noted above, with respect to the definition of "display" in proposed new § 1320.3(f), the Conference Report explains that "[f]or collections of information contained in a rule, agencies must provide the required information in a manner reasonably calculated to inform the public. Notice may be provided in the preamble to a final rule containing the collection of information, or in a general notice in the volume of the Code of Federal Regulations in which the agency's regulations appear." H. Rep. 104–99, p. 37. These examples are illustrative; the information may also be set forth, as in existing § 1320.5(e)(2), in the regulatory text of the final rule (including through a technical amendment), or, as in proposed new § 1320.3(f)(2) and proposed new § 1320.5(b)(2)(ii)(B), in a separate notice in the **Federal Register** announcing OMB approval.

Proposed § 1320.5(c): This paragraph is equivalent to existing § 1320.11(e), and identifies the sections in this Part under which an agency should submit different kinds of proposed collections of information, specifically, for collections of information contained in proposed rules published for public comment in the **Federal Register** and for current regulations that were published as final rules in the **Federal Register**. Subparagraph (5) of this paragraph defines when a submission to OMB is deemed to have been received, and applies with respect to the time frames for OMB review. This subparagraph is equivalent to existing § 1320.11(j), except that it has been revised to clarify that it applies only to the receipt of a "properly submitted" package. If OMB concludes that a package has not been "properly submitted," OMB will notify the agency of this conclusion and indicate what corrective steps need to be taken.

Proposed § 1320.5(d)(1): Subparagraph (1) of this paragraph is equivalent to existing § 1320.4(b)(1), (b)(2), and the first two sentences of (b)(3). The third sentence of existing § 1320.4(b)(3) is no longer necessary. The guidelines set forth in existing § 1320.6 have been moved to proposed new § 1320.5(d)(2), which immediately follows, and the requirement to discuss the "practical steps" for consultation have been superseded by the 1995 Act's requirements for a comment period prior to submission to OMB.

Proposed § 1320.5(d)(2). Subparagraph (2) of this paragraph is equivalent to existing § 1320.6. Existing § 1320.6(e) is now reflected in proposed § 1320.5(a)(1)(iii)(D); existing § 1320.6 (h) and (j) are now reflected in proposed § 1320.9(c) and (f); and existing § 1320.6(k) is now reflected in proposed § 1320.5(a)(1)(iii)(D), § 1320.8(a)(5), and § 1320.8(d)(1)(iv). These guidelines are also amended by adding three new provisions. Subparagraph (2)(vi) directs agencies to avoid using statistical data classifications that have not been reviewed and approved by OMB. Subparagraph (2)(vii) directs agencies to avoid collecting information at the request of another country or an international organization unless such request has been reviewed, coordinated, and approved by OMB. Subparagraph (2)(viii) directs agencies not to make confidentiality pledges to respondents unless they have adequate authority to honor such pledges. An agency need not comply with each of the policy directives listed under subparagraph (2) of this paragraph if the agency is able to demonstrate, in its submission for OMB clearance, that such characteristic of the collection of information is necessary to satisfy statutory requirements or other substantial need.

Proposed § 1320.5(e) is substantively identical to existing § 1320.4(c).

Proposed § 1320.5(f) is substantively identical to a combination of existing § 1320.4(d) and § 1320.11(i).

Proposed § 1320.5(g) is equivalent to existing § 1320.11(h), but is amended to reflect the legislative changes in 44 U.S.C. 3507(h)(3).

Proposed § 1320.5(h) is added to request agencies to consult with OMB before continuing to use OMB-approved forms or other collections of information after the expiration date printed thereon (e.g., using copies of old forms to conduct a collection of information that OMB has reapproved for continued use). Continuing to use such forms may confuse the public which, under proposed § 1320.5(b) and proposed § 1320.6, is being advised that absent a valid OMB control number the collection of information is unenforceable.

G. Proposed Section 1320.6—Public Protection

Proposed § 1320.6 is equivalent to existing § 1320.5, but is amended to reflect the legislative changes in 44 U.S.C. 3512.

Proposed § 1320.6(a)(1) states that no person is to be subject to any penalty for failing to comply with a collection of information that is subject to the requirements of this Part if the collection of information does not display a currently valid OMB control number.

Proposed § 1320.6(a)(2) states that no person is to be subject to any penalty for failing to comply with a collection of information that is subject to the requirements of this Part if the agency fails to inform the person who is to respond to the collection of information that such person is not required to respond to the collection of information unless it displays a currently valid OMB control number.

Proposed § 1320.6(b) states that the protections provided by 44 U.S.C. 3512(a) and proposed § 1320.6(a) may be raised in the form of a complete, defense, bar, or otherwise to the imposition of such penalties at any time during the agency administrative process in which such penalty may be imposed or judicial action applicable thereto.

Proposed § 1320.6(c) is equivalent to existing § 1320.5(b).

Proposed § 1320.6(d) is identical to existing § 1320.5(c).

Proposed § 1320.6(e) is new. This paragraph points out that, under existing law, the public protections provided by proposed § 1320.6(a) do not preclude the imposition of a penalty on a person for failing to comply with a collection of information that is imposed on the person by statute, e.g., 26 U.S.C. 6011(a) (statutory requirement for person to file a tax return), 42 U.S.C. 6938(c) (statutory requirement for person to provide notification before exporting hazardous waste).

This paragraph is based on the principle announced by the courts in several cases which addressed the issue of whether the public protection provided by 44 U.S.C. 3512 could preclude the Federal government from prosecuting persons for their failure to perform paperwork duties imposed upon them by statute. See *Salberg* v. *United States*, 969 F.2d 379 (7th Cir. 1992); *United States* v. *Neff*, 954 F.2d 698 (11th Cir. 1992); *United States* v. *Dawes*, 951 F.2d 1189 (10th Cir. 1991); *United States* v. *Hicks*, 947 F.2d 1356 (9th Cir. 1991); *United States* v. *Wunder*, 919 F.2d 34 (6th Cir. 1990). In those cases, the courts concluded that Congress, in enacting the Paperwork Reduction Act, did not intend to require itself to comply with the requirements of that Act (and seek and obtain OMB approval) whenever Congress decides to impose a paperwork requirement on persons directly by statute.[1]

There is no legislative history pertinent to the Paperwork Reduction Act of 1995 that suggests that Congress intended to change this court interpretation for 44 U.S.C. 3512.

Accordingly, where Congress imposes a collection of information directly on persons, by statute (as, e.g., in 26 U.S.C. § 6011(a) and 42 U.S.C. § 6938(c)), then the public protection provided by proposed § 1320.6(a) would not preclude the imposition of penalties for a person's failure to comply with the statutory mandate. This principle, however, does not extend to situations in which a statute authorizes, or directs, an agency to impose a collection of information on persons, and the agency does so. In such cases, the agency is obligated to comply with the Paperwork Reduction Act of 1995 in imposing the paperwork requirement (just as the agency must comply with other applicable statutes—e.g., the Administrative Procedure Act in the case of regulations), and the public protection provided by proposed § 1320.6(a) would apply to such paperwork requirements.

H. Proposed Section 1320.7—Agency Head and Senior Official Responsibilities

Proposed § 1320.7 is equivalent to existing § 1320.8, but is amended to reflect the legislative changes in 44 U.S.C. 3506(a). Proposed § 1320.7(c) calls upon the Senior Official to head an office responsible for ensuring agency compliance with the implementation of the information policies and information resources management responsibilities established under the Paperwork Reduction Act of 1995, and reflects the legislative changes in 44 U.S.C. 3506(a)(3). Proposed § 1320.7(d) calls upon the Senior Official to establish a process within that office that is sufficiently independent of program responsibility to evaluate fairly whether proposed collections of information should be approved under this Part, and reflects the legislative changes in 44 U.S.C. 3506(c)(1).

I. Proposed Section 1320.8—Agency Collection of Information Responsibilities

In general, proposed § 1320.8 is new, and reflects the legislative changes in 44 U.S.C. 3506(c) (1) and (2). Basically, this proposed section sets forth the information collection development responsibilities for each agency.

Proposed § 1320.8(a) reflects the legislative changes in 44 U.S.C. 3506(c)(1)(A). In general, agencies need, in developing new collections of information and in deciding whether to continue existing ones, to evaluate the need for each aspect of the information collection, estimate respondent burdens, and, if appropriate, test the collection of information through a pilot program. Also, in response to President Clinton's statement at the signing of the

[1] See Salberg, supra, at 384 ("Salberg was convicted of violating a statute. It was a federal statute—26 U.S.C. § 7203—not a regulation or an instruction book that required Salberg to file an income tax return. Statutes are not subject to the PRA * * * ."); Neff, supra, at 700 ("Congress did not enact the PRA's public protection provision to allow OMB to abrogate any duty imposed by Congress. * * * So the PRA provides Neff no refuge from his statutorily-imposed duty to file income tax returns"); Dawes, supra, at 1192 ("We would be inclined to follow the general analysis of Wunder and Hicks and hold that the operation of the PRA in these circumstances did not repeal the criminal sanctions for failing to file an income tax return because the obligation to file is a statutory one."); Hicks, supra at 1359 ("where *Congress* sets forth an explicit statutory requirement that the citizen provide information, and provides statutory criminal penalties for failure to comply with the request, that is another matter. This is a legislative command, not an administrative request."); Wunder, supra, at 38 ("the requirement to file a tax return is mandated by statute, not regulation. Defendant was not convicted of violating a regulation, but of violating a statute which required him to file an income tax return.").

Paperwork Reduction Act of 1995, to direct agencies to permit electronic submission of responses, the agency is to evaluate whether (and if so, to what extent) the burden on respondents can be reduced through the use of automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. Subsequent in the process, proposed § 1320.8(d)(1)(iv) requires the agency to seek public comments on this issue, and proposed § 1320.5(a)(1)(iii)(D) requires the agency to state, in its eventual submission to OMB, whether (and to what extent) the collection of information involves such techniques, and the agency must explain to OMB the basis for its decision.

Proposed § 1320.8 (b) and (c) reflect the legislative changes in 44 U.S.C. 3506(c)(1)(B). Agencies need to ensure that each collection of information is inventoried, displays a currently valid OMB control number, and, if appropriate, an expiration date; and is reviewed by OMB in accordance with the clearance requirements of 44 U.S.C. 3507. As part of the information clearance package (through the means suggested in proposed § 1320.8(c)), the agency needs to inform and provide fair notice to potential respondents of the policy reasons for which the information is planned to be and/or has been collected; the way in which such information is planned to be and/or has been used for the proper performance of the functions of the agency; the estimated burden; whether responses are voluntary, required to obtain a benefit, or mandatory; and the fact that an agency may not conduct or sponsor, and the respondent is not required to respond to, a collection of information unless it displays a valid OMB control number. Together with the estimate of burden, agencies are to request that the public direct to the agency any comments concerning the accuracy of this burden estimate and any suggestions for reducing this burden; this request for public comments concerning the burden estimate is equivalent to that included in existing § 1320.21(a)(2).

Proposed § 1320.8(d) reflects the legislative changes in 44 U.S.C. 3506(c)(2). Unless the proposed collection of information is contained in a Notice of Proposed Rulemaking and the agency seeks OMB clearance under proposed § 1320.11, or unless exempted under proposed § 1320.13, the agency needs, for each new proposed collection of information or extension of an existing one to provide 60-day notice in the **Federal Register**, and otherwise consult with the members of the public and affected agencies. In this notice, under paragraph (d)(1) of this section, the agency needs to solicit comment on the need for the information, its practical utility, the accuracy of the agency's burden estimate, and on ways to minimize burden on respondents, including through the use of automated collection techniques or other forms of information technology. Under paragraph (d)(2) of this section, if an agency chooses not to publish the proposed collection of information in the **Federal Register**, the agency should provide more than a 60-day notice to permit timely receipt of a copy by mail, or should explain how interested persons may obtain a copy (including, if applicable, how to obtain electronic access to the proposed collection of information).

J. Proposed Section 1320.9—Agency Certifications for Proposed Collections of Information

In general, proposed § 1320.9 is new, and reflects the legislative changes in 44 U.S.C. 3506(c)(3). Basically, this proposed section sets forth the content of agency certifications accompanying proposed collections of information submitted for OMB clearance.

As part of an agency's submission of a proposed collection of information to OMB for clearance, an agency needs to send, along with the other information called for by proposed § 1320.5(a)(1)(iii)(B)–(E), a certification that the information collection meets certain standards and provide a record supporting such certification. The agency needs to certify that the proposed collection of information, e.g., is needed; not unnecessarily duplicative; reduces to the extent practicable and appropriate the burden on respondents, including, for small business, local government, and other small entities, the use of the techniques outlined in the Regulatory Flexibility Act; is written in unambiguous terminology; is to be implemented in ways consistent with the existing reporting and recordkeeping practices of the respondents; indicates for each recordkeeping requirement the length of time documents are to be retained; informs potential respondents of the information called for under proposed § 1320.8(b)(3); has been developed by an office that has planned for the efficient and effective management of the information to be collected; uses effective and efficient statistical survey methodology; and to the maximum extent practicable, uses appropriate information technology to reduce burden and improve data quality.

K. Proposed Section 1320.10—Clearance of Collections of Information, Other Than Those Contained in Proposed Rules or in Current Rules

Proposed § 1320.10 is equivalent to existing § 1320.12, but is amended to reflect the legislative changes in 44 U.S.C. 3507.

Proposed § 1320.10(a): This paragraph is equivalent to existing § 1320.12(a). This paragraph provides that the agency notice in the **Federal Register** required by proposed § 1320.5(a)(1)(iv) request that public comments be submitted within at least 30 days of publication to OMB. OMB is obligated to provide at least 30 days for public comment prior to making a decision under this proposed section under 44 U.S.C. 3507(b), but would like to receive public comments at the end of that period in order to be prepared to make a decision if the need so dictates.

Proposed § 1320.10(b): This paragraph is equivalent to existing § 1320.12(b). Reflecting 44 U.S.C. 3507(c)(2), this paragraph provides that OMB is obligated to make its decision within 60 days after receipt of the proposed collection of information or publication of the notice under paragraph (a) of this section, whichever is later.

Proposed § 1320.10(c): This paragraph is equivalent to existing § 1320.12(c). The maximum time period for OMB review is 60, rather than 90, days, reflecting the legislative change in 44 U.S.C. 3507(c)(3).

Proposed § 1320.10(d): This paragraph is equivalent to existing § 1320.12(d), except that it is expanded to reflect the legislative changes in 44 U.S.C. 3512(a)(2). An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential respondents that such respondents are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Proposed § 1320.10(e) is new, and reflects the legislative changes in 44 U.S.C. 3507(h)(1). This paragraph outlines the procedures an agency needs to follow before it seeks to extend an OMB approval for an ongoing collection of information. The agency needs to conduct the review established in proposed § 1320.8, including the seeking of comment from the public under § 1320.8(d), and submit, no later than 60 days before the expiration date, the collection of information for review and approval under this Part, which shall include an explanation of how the agency has used the information it has collected. This paragraph does not apply to a collection of information contained in a published current rule which has been approved by OMB and has a currently valid OMB control number because such a collection needs to be submitted for OMB clearance under proposed § 1320.12.

Proposed § 1320.10(f) is equivalent to the first five sentences in existing § 1320.11(f) (see proposed § 1320.12(i)).

Proposed § 1320.10(g) is equivalent to the sixth sentence in existing § 1320.11(f).

L. Proposed Section 1320.11—Clearance of Collections of Information in Proposed Rules

Proposed § 1320.11 is equivalent to existing § 1320.13, but is amended to reflect the legislative changes in 44 U.S.C. 3507(d).

Proposed § 1320.11(a): This paragraph is equivalent to existing § 1320.13(a). This paragraph provides that the agency notice in the **Federal Register**, required by proposed § 1320.5(a)(1)(iv), request that public comments be submitted to OMB within 30 days of the notice's publication. Under the 1995 Amendments, OMB is obligated to provide at least 30 days for public comment prior to making a decision, 44 U.S.C. 3507(b); however, OMB must make its decision within 60 days under 44 U.S.C. 3507(d)(1)(B). Therefore, while OMB will of course attempt to consider all comments that OMB receives before OMB makes its decision, a public comment is best assured of having maximum impact if it is received within 30 days of the notice's publication.

Proposed §§ 1320.11 (b), (c), and (d) are equivalent to existing §§ 1320.13 (b), (c), and (d).

Proposed § 1320.11(e) is new, reflecting the legislative change in 44 U.S.C. 3507(b) that OMB is obligated to provide at least 30 days for public comment prior to making a decision.

Proposed §§ 1320.11 (f), (g), (h), (i), and (j) are equivalent to existing §§ 1320.13 (e), (f), (g), (h), and (i).

Proposed § 1320.11(k) is equivalent to the first sentence in existing § 1320.13(j). Proposed § 1320.11(l) serves the same function as the second and third sentences in existing § 1320.13(j), but is amended to reflect the legislative change in 44 U.S.C. 3512(a)(2).

M. Proposed Section 1320.12—Clearance of Collections of Information in Current Rules

Proposed § 1320.12 is equivalent to existing § 1320.14, but is amended to reflect the legislative changes in 44 U.S.C. 3507.

Proposed § 1320.12(a): This paragraph is equivalent to existing § 1320.14(a), but is amended to reflect the legislative change in 44 U.S.C. 3507(h)(1). This paragraph outlines the procedures an agency needs to follow before it seeks to extend an OMB approval for a collection of information published current rule which has been approved by OMB and has a currently valid OMB control number. The agency needs to conduct the review established in proposed § 1320.8, including the seeking of comment from the public under § 1320.8(d), and submit, no later than 60 days before the expiration date, the collection of information for review and approval under this Part, which shall include an explanation of how the agency has used the information it has collected.

Proposed § 1320.12(b) is new. It is equivalent to proposed § 1320.12(a), except that it applies a collection of information contained in a published current rule that was not required to be submitted for OMB review under the Paperwork Reduction Act at the time the collection of information was made part of the rule, but which collection of information is now subject to the Paperwork Reduction Act of 1995. Specifically, this paragraph may apply to published current rule that contains a "disclosure to third parties or the public" (see proposed § 1320.3(c)) or particular kinds of "recordkeeping requirement" (see proposed § 1320.3(m)(2)–(4)), that were exempt from OMB review under *Dole* v. *United Steelworkers of America*, 494 U.S. 26 (1990), or a certification or other affirmation that the agency uses as a substitute for a collection of information to collect evidence of, or to monitor, compliance with regulatory standards (see proposed § 1320.3(h)(1)). Added at the end of proposed § 1320.12(b) is an instruction equivalent to proposed § 1320.11(l).

Proposed § 1320.12(c): This paragraph is equivalent to existing § 1320.14(b). This paragraph provides that the agency notice in the **Federal Register** required by proposed § 1320.5(a)(1)(iv) request that public comments be submitted within at least 30-days of publication to OMB. OMB is obligated to provide at least 30 days for public comment prior to making a decision under this proposed section under 44 U.S.C. 3507(b), but would like to receive public comments at the end of that period in order to be prepared to make a decision if the need so dictates.

Proposed § 1320.12(d): This paragraph is equivalent to existing § 1320.14(c). Reflecting 44 U.S.C. 3507(c)(2), this paragraph provides that OMB is obligated to make its decision within 60 days after receipt of the proposed collection of information or publication of the notice under paragraph (a) of this section, whichever is later. This paragraph also contains a new last sentence, reflecting the legislative change in 44 U.S.C. 3507(b) that OMB is obligated to provide at least 30 days for public comment prior to making a decision.

Proposed § 1320.12(e): This paragraph is equivalent to existing § 1320.14(e). The maximum time period for OMB review is 60, rather than 90, days, reflecting the legislative change in 44 U.S.C. 3507(c)(3).

Proposed § 1320.12(f): Paragraph (f)(1)(i) and (ii) is amended to reflect the legislative changes in 44 U.S.C. 3507(h)(2). Paragraph (f)(1)(iii) is equivalent to existing § 1320.14(f). Paragraph (f)(2) is equivalent to § 1320.14(g).

Proposed § 1320.12(g) is equivalent to existing § 1320.14(h).

Proposed § 1320.12(h): Paragraph (h)(1) is equivalent to existing § 1320.14(i). Paragraph (h)(2) is equivalent to the second sentence in existing § 1320.5(a)(2).

Proposed § 1320.12(i): This paragraph is equivalent to the first three sentences of existing § 1320.11(f) (see proposed § 1320.10(f)).

N. Proposed Section 1320.13—Emergency Processing

Proposed § 1320.13 is equivalent to existing § 1320.18, but is amended to reflect the legislative changes in 44 U.S.C. 3507(b), (c), and (j). OMB is proposing to delete existing § 1320.18(g) concerning "expedited" processing. Given the legislative changes in 44 U.S.C. 3507(b) and (c), OMB is obligated, unless OMB receives a request for emergency processing under this section, to provide at least 30 days for public comment prior to making a decision and make its decision within 60 days after receipt of the clearance request or publication of the notice in the **Federal Register** required by proposed § 1320.5(a)(1)(iv), whichever is later.

O. Proposed Section 1320.14—Public Access

Proposed § 1320.14(a) is equivalent to existing § 1320.19. Proposed § 1320.14(b) is equivalent to existing § 1320.11(b).

Proposed § 1320.14.(c) is new, and reflects the legislative changes in 44 U.S.C. 3517(b). Any person may request OMB to review any collection of

information conducted by or for an agency to determine, if a person is obligated to maintain, provide, or disclose the information to or for an agency. Unless the request is frivolous, OMB is, in coordination with the responsible agency, to respond to the request within 60 days (unless notice is given of an extension to a specified date) and to take appropriate remedial action, as necessary.

P. Proposed Section 1320.15—Independent Regulatory Agency Override Authority

Proposed § 1320.15 is equivalent to existing § 1320.20, except that it is amended to reflect the legislative changes in 44 U.S.C. 3507(f) and 44 U.S.C. 3512(a).

Q. Proposed Section 1320.16—Delegation of Approval Authority

Proposed § 1320.16 is equivalent to existing § 1320.9, except that it is amended to reflect the legislative changes in 44 U.S.C. 3506(a)(3).

R. Proposed Section 1320.17—Information Collection Budget

Proposed § 1320.17 is equivalent to the first and last sentences in existing § 1320.10.

S. Proposed Section 1320.18—Other Authority

Proposed § 1320.18 is equivalent to existing § 1320.22.

T. Appendix A—Agencies with Delegated Review and Approval Authority

Proposed new Appendix A is substantively identical to existing Appendix A. Appendix A contains the delegations to the Federal Reserve Board and to the Federal Communications Commission. OMB is proposing to make only conforming changes, e.g., to revise the section cross-references in the delegations to the proposed sections in the regulation. No substantive changes are proposed.

Q. Other Amendments

Other proposed amendments to 5 CFR Part 1320 include the deletion of terms that are no longer used in this Part, e.g., "Educational agency or institution" and "A Federal education program," and of sections that are no longer pertinent, e.g., existing § 1320.16, entitled "Collections of information prescribed by another agency," and existing § 1320.17, entitled "Interagency reporting."

Assessment of Potential Costs and Benefits and Regulatory Flexibility Act Analysis

OMB has analyzed the effects of this rule under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Copies of this analysis are available upon request. In summary, OMB has concluded that these amendments will have a salutary impact on small entities through the reduction of unnecessary paperwork.

For purposes of the Unfunded Mandates Reform Act of 1995 (P.L. 104–4), as well as Executive Order No. 12875, this rule does not include any Federal mandate that may result in increased expenditures by State, local, and tribal governments, or by the private sector.

Issued in Washington, D.C., May 31, 1995.

Sally Katzen,

Administrator, Office of Information and Regulatory Affairs.

List of Subjects in 5 CFR Part 1320

Reporting and recordkeeping requirements, Paperwork, Collections of information.

For the reasons set forth in the preamble, OMB proposes to revise 5 CFR Part 1320 as follows:

PART 1320: CONTROLLING PAPERWORK BURDENS ON THE PUBLIC

Sec.

1320.1 Purpose.
1320.2 Effect.
1320.3 Definitions.
1320.4 Coverage.
1320.5 General requirements.
1320.6 Public protection.
1320.7 Agency head and Senior Official responsibilities.
1320.8 Agency collection of information responsibilities.
1320.9 Agency certifications for proposed collections of information.
1320.10 Clearance of collections of information, other than those contained in proposed rules or in current rules.
1320.11 Clearance of collections of information in proposed rules.
1320.12 Clearance of collections of information in current rules.
1320.13 Emergency processing.
1320.14 Public access.
1320.15 Independent regulatory agency override authority.
1320.16 Delegation of approval authority.
1320.17 Information collection budget.
1320.18 Other authority.

Appendix A: Agencies With Delegated Review and Approval Authority

Authority: 31 U.S.C. Sec. 1111 and 44 U.S.C. Chs. 21, 25, 27, 29, 31, 35.

§ 1320.1 Purpose.

The purpose of this part is to implement the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) (the Act) concerning collections of information. It is issued under the authority of section 3516 of the Act, which provides that "The Director shall promulgate rules, regulations, or procedures necessary to exercise the authority provided by this chapter." It is designed to minimize and control burdens and maximize the practical utility and public benefit of the collection of information by or for Federal agencies from individuals, small businesses, educational and nonprofit institutions, Federal contractors, State, local and tribal governments, and other persons.

§ 1320.2 Effect.

(a) Except as provided in paragraph (b) of this section, this part takes effect on October 1, 1995.

(b)(1) In the case of a collection of information for which there is in effect on September 30, 1995, a control number issued by the Office of Management and Budget under 44 U.S.C. Chapter 35, the provisions of this part shall take effect beginning on the earlier of:

(i) The date of the first extension of approval for or modification of that collection of information after September 30, 1995; or

(ii) The date of the expiration of the OMB control number after September 30, 1995.

(2) Prior to such extension of approval, modification, or expiration, the collection of information shall be subject to 5 CFR part 1320, as in effect on September 30, 1995.

§ 1320.3 Definitions.

For purposes of implementing the Act and this part, the following terms are defined as follows:

(a) *Agency* means any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the government, or any independent regulatory agency, but does not include:

(1) The General Accounting Office;

(2) Federal Election Commission;

(3) The governments of the District of Columbia and the territories and possessions of the United States, and their various subdivisions; or

(4) Government-owned contractor-operated facilities, including laboratories engaged in national defense research and production activities.

(b)(1) *Burden* means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency, including:

(i) Reviewing instructions;

(ii) Developing, acquiring, installing, and utilizing technology and systems for the purpose of collecting, validating, and verifying information;

(iii) Developing, acquiring, installing, and utilizing technology and systems for the purpose of processing and maintaining information;

(iv) Developing, acquiring, installing, and utilizing technology and systems for the purpose of disclosing and providing information;

(v) Adjusting the existing ways to comply with any previously applicable instructions and requirements;

(vi) Training personnel to respond to a collection of information;

(vii) Searching data sources;

(viii) Completing and reviewing the collection of information; and

(ix) Transmitting, or otherwise disclosing the information.

(2) The time, effort, and financial resources necessary to comply with a collection of information that would be incurred by persons in the normal course of their activities (e.g., in compiling and maintaining business records) will be excluded from the "burden" if the agency demonstrates that the reporting, recordkeeping, or disclosure activities needed to comply are usual and customary.

(3) A collection of information conducted or sponsored by a Federal agency that is also conducted or sponsored by a unit of State, local, or tribal government is presumed to impose a Federal burden except to the extent that the agency shows that such State, local, or tribal requirement would be imposed even in the absence of a Federal requirement.

(c) *Collection of information* means, except as provided in § 1320.4, the obtaining, causing to be obtained, soliciting, or requiring the disclosure to an agency, third parties or the public of information by or for an agency by means of identical questions posed to, or identical reporting, recordkeeping, or disclosure requirements imposed on, ten or more persons, whether such collection of information is mandatory, voluntary, or required to obtain a benefit. "Collection of information" includes any requirement or request for persons to obtain, maintain, retain, report, or publicly disclose information. As used in this part, "collection of information" refers to the act of collecting or disclosing information, to the information to be collected or disclosed, to a plan and/or an instrument calling for the collection or disclosure of information, or any of these, as appropriate.

(1) "Collection of information" includes the use of report forms, application forms, schedules, questionnaires, surveys, reporting or recordkeeping requirements, or other similar methods. Similar methods may include contracts; agreements; policy statements; plans; rules or regulations; collections of information contained in, derived from, or authorized by such rules or regulations; planning requirements; circulars; directives; instructions; bulletins; requests for proposal or other procurement requirements; interview guides; oral communications; posting, notification, labeling, or similar disclosure requirements; telegraphic or telephonic requests; automated collection techniques; standard questionnaires used to monitor compliance with agency requirements; or any other techniques or technological methods used to monitor compliance with agency requirements. A "collection of information" may implicitly or explicitly include related recordkeeping requirements.

(2) Requirements by an agency for a person to obtain or compile information for the purpose of disclosure to members of the public or the public at large, through posting, notification, labeling or similar disclosure requirements constitute the "collection of information" whenever the same requirement to obtain or compile information would be a "collection of information" if the information were directly provided to the agency. The public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public is not included within this definition.

(3) "Collection of information" includes questions posed to agencies, instrumentalities, or employees of the United States, if the results are to be used for general statistical purposes.

(4) As used in paragraph (c) of this section, "ten or more persons" refers to the persons to whom a collection of information is addressed by the agency within any 12-month period, and to any independent entities to which the initial addressee may reasonably be expected to transmit the collection of information during that period, including independent State, territorial, tribal or local entities and separately incorporated subsidiaries or affiliates. For the purposes of this definition of "ten or more persons," "persons" does not include employees of the respondent acting within the scope of their employment, contractors engaged by a respondent for the purpose of complying with the collection of information, or current employees of the Federal government (including military reservists and members of the National Guard while on active duty) when acting within the scope of their employment, but it does include retired and other former Federal employees.

(i) Any recordkeeping, reporting, or disclosure requirement contained in a rule of general applicability is deemed to involve ten or more persons.

(ii) Any collection of information addressed to all or a substantial majority of an industry is presumed to involve ten or more persons.

(d) *Conduct or Sponsor.* A Federal agency is considered to "conduct or sponsor" a collection of information if the agency collects the information, causes another agency to collect the information, contracts or enters into a cooperative agreement with a person to collect the information, or requires a person to provide information to another person, or in similar ways causes another agency, contractor, partner in a cooperative agreement, or person to obtain, solicit, or require the disclosure to third parties or the public of information by or for an agency. A collection of information undertaken by a recipient of a Federal grant is considered to be "conducted or sponsored" by an agency only if:

(1) The recipient of a grant is conducting the collection of information at the specific request of the agency; or

(2) The terms and conditions of the grant require specific approval by the agency of the collection of information or collection procedures.

(e) *Director* means the Director of OMB, or his or her designee.

(f) *Display* means:

(1) In the case of forms, questionnaires, instructions, and other written collections of information sent or made available to potential respondents (other than in an electronic format), to place the currently valid OMB control number on the front page of the collection of information;

(2) In the case of forms, questionnaires, instructions, and other written collections of information sent or made available to potential respondents in an electronic format, to place the currently valid OMB control number in the instructions, near the title of the electronic collection instrument, or, foron-line applications, on the first screen viewed by the respondent;

(3) In the case of collections of information published in regulations, guidelines, and other issuances in the **Federal Register**, to publish the currently valid OMB control number in the **Federal Register** (for example, in the case of a collection of information in a

regulation, by publishing the OMB control number in the preamble or the regulatory text for the final rule, in a technical amendment to the final rule, or in a separate notice announcing OMB approval of the collection of information) and/or in the Code of Federal Regulations. For ease of future reference, OMB recommends that, even where an agency has already "displayed" the OMB control number by publishing it in the **Federal Register**, the agency also publish the currently valid OMB control number in the Code of Federal Regulations.

(4) In other cases, and where OMB determines in advance in writing that special circumstances exist, to use other means to inform potential respondents of the OMB control number.

(g) *Independent regulatory agency* means the Board of Governors of the Federal Reserve System, the Commodity Futures Trading Commission, the Consumer Product Safety Commission, the Federal Communications Commission, the Federal Deposit Insurance Corporation, the Federal Energy Regulatory Commission, the Federal Housing Finance Board, the Federal Maritime Commission, the Federal Trade Commission, the Interstate Commerce Commission, the Mine Enforcement Safety and Health Commission, the National Labor Relations Board, the Nuclear Regulatory Commission, the Occupational Safety and Health Review Commission, the Postal Rate Commission, the Securities and Exchange Commission, and any other similar agency designated by statute as a Federal independent regulatory agency or commission.

(h) *Information* means any statement of fact or opinion, regardless of form or format, whether in numerical, graphic, or narrative form, and whether oral or maintained on paper, electronic or other media. "Information" does not generally include items in the following categories; however, OMB may determine that any specific item constitutes "information":

(1) Affidavits, oaths, affirmations, certifications, receipts, changes of address, consents, or acknowledgments; provided that they entail no burden other than that necessary to identify the respondent, the date, the respondent's address, and the nature of the instrument (by contrast, a certification would likely involve the collection of "information" if an agency conducted or sponsored it as a substitute for a collection of information to collect evidence of, or to monitor, compliance with regulatory standards, because such a certification would generally entail burden in addition to that necessary to identify the respondent, the date, the respondent's address, and the nature of the instrument);

(2) Samples of products or of any other physical objects;

(3) Facts or opinions obtained through direct observation by an employee or agency of the sponsoring agency or through nonstandardized oral communication in connection with such direct observations;

(4) Facts or opinions submitted in response to general solicitations of comments from the public, published in the **Federal Register** or other publications, regardless of the form or format thereof, provided that no person is required to supply specific information pertaining to the commenter, other than that necessary for self-identification, as a condition of the agency's full consideration of the comment;

(5) Facts or opinions obtained initially or in follow-on requests, from individuals (including individuals in control groups) under treatment or clinical examination in connection with research on or prophylaxis to prevent a clinical disorder, direct treatment of that disorder, or the interpretation of biological analyses of body fluids, tissues, or other specimens, or the identification or classification of such specimens;

(6) A request for facts or opinions addressed to a single person;

(7) Examinations designed to test the aptitude, abilities, or knowledge of the persons tested and the collection of information for identification or classification in connection with such examinations;

(8) Facts or opinions obtained or solicited at or in connection with public hearings or meetings;

(9) Facts or opinions obtained or solicited through nonstandardized follow-up questions designed to clarify responses to approved collections of information; and

(10) Like items so designated by OMB.

(i) OMB refers to the Office of Management and Budget.

(j) Penalty includes the imposition by an agency or court of a fine or other punishment; a judgment for monetary damages or equitable relief; or the revocation, suspension, reduction, or denial of a license, privilege, right, grant, or benefit.

(k) Person means an individual, partnership, association, corporation (including operations of government-owned contractor-operated facilities), business trust, or legal representative, an organized group of individuals, a State, territorial, tribal, or local government or branch thereof, or a political subdivision of a State, territory, tribal, or local government or a branch of a political subdivision;

(l) Practical utility means the actual, not merely the theoretical or potential, usefulness of information to or for an agency, taking into account its accuracy, adequacy, and reliability, and the agency's ability to process the information it collects (or the public's ability to process the information it receives, in the case of a third-party or public disclosure) in a useful and timely fashion. In determining whether information will have "practical utility," OMB will take into account whether the agency demonstrates actual timely use for the information either to carry out its functions or make it available to third-parties or the public; either directly or by means of a third-party or public posting, notification, labeling, or similar disclosure requirement, for the use of persons who have an interest in entities or transactions over which the agency has jurisdiction. In the case of recordkeeping or general purpose statistics, which are those statistics collected chiefly for public and general government uses and without primary reference to policy or program operations of the agency collecting the information, "practical utility" means that actual uses can be demonstrated.

(m) Recordkeeping requirement means a requirement imposed by or for an agency on persons to maintain specified records, including a requirement to:

(1) Retain such records;

(2) Notify third parties, the Federal government, or the public of the existence of such records;

(3) Disclose such records to third parties, the Federal government, or the public; or

(4) Report to third parties, the Federal government, or the public regarding such records.

§ 1320.4 Coverage.

(a) The requirements of this Part apply to all agencies as defined in § 1320.3(a) and to all collections of information conducted or sponsored by those agencies, as defined in § 1320.3(c) and (d), wherever conducted or sponsored, but, except as provided in paragraph (b) of this section, shall not apply to collections of information:

(1) During the conduct of a Federal criminal investigation or prosecution, or during the disposition of a particular criminal matter;

(2) During the conduct of a civil action to which the United States or any official or agency thereof is a part, or during the conduct of an administrative action or investigation involving an agency against specific individuals or entities;

(3) By compulsory process pursuant to the Antitrust Civil Process Act and section 13 of the Federal Trade Commission Improvements Act of 1980; or

(4) During the conduct of intelligence activities as defined in section 3.4(e) of Executive Order No. 12333, issued December 4, 1981, or successor orders, or during the conduct of cryptologic activities that are communications security activities.

(b) The requirements of this part apply to the collection of information during the conduct of general investigations (other than information collected in an antitrust investigation to the extent provided in paragraph (a)(3) of this section) undertaken with reference to a category of individuals or entities such as a class of licensees or an entire industry.

(c) The exception in paragraph (a)(2) of this section applies during the entire course of the investigation or action, whether before or after formal charges or complaints are filed or formal administrative action is initiated, but only after a case file or equivalent is opened with respect to a particular party. In accordance with paragraph (b) of this section, collections of information prepared or undertaken with reference to a category of individuals or entities, such as a class of licensees or an industry, do not fall within this exception.

§ 1320.5 General requirements.

(a) An agency shall not conduct or sponsor a collection of information unless, in advance of the adoption or revision of the collection of information—

(1) The agency has—

(i) Conducted the review required in § 1320.8;

(ii) Evaluated the public comments received under § 1320.8(d) and § 1320.11;

(iii) Submitted to the Director, in accordance with such procedures and in such form as OMB may specify,

(A) The certification required under § 1320.9;

(B) The proposed collection of information in accordance with § 1320.10, § 1320.11, or § 1320.12, as appropriate;

(C) An explanation for the decision that it would not be appropriate, under § 1320.8(b)(1), for a proposed collection of information to display an expiration date;

(D) An explanation for the decision to provide for any payment or gift to respondents, other than remuneration of contractors or grantees;

(E) A statement indicating whether (and if so, to what extent) the proposed collection of information involves the use of automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and an explanation for the decision;

(F) A summary of the public comments received under § 1320.8(d), including actions taken by the agency in response to the comments, and the date and page of the publication in the **Federal Register** of the notice therefor; and

(G) Copies of pertinent statutory authority, regulations, and such related supporting materials as OMB may request; and

(iv) Published, except as provided in § 1320.13(d), a notice (requesting comments within 30 days) in the **Federal Register**—

(A) Stating that the agency has made such submission; and

(B) Setting forth—

(*1*) A title for the collection of information;

(*2*) A summary of the collection of information;

(*3*) A brief description of the need for the information and proposed use of the information;

(*4*) A description of the likely respondents and proposed frequency of response to the collection of information;

(*5*) An estimate of the total annual reporting and recordkeeping burden that shall result from the collection of information, which shall for each collection of information be disaggregated and set forth in terms of the estimated average burden hours per response, the proposed frequency of response, and the estimated number of likely respondents;

(*6*) Notice that comments may be submitted to the agency and OMB; and

(*7*) The time period within which the agency is requesting OMB to approve or disapprove the collection of information if, at the time of submittal of a collection of information for OMB review under § 1320.10, § 1320.11 or § 1320.12, the agency plans to request or has requested OMB to conduct its review on an emergency basis under § 1320.13; and

(2) OMB has approved the proposed collection of information, OMB's approval has been inferred under § 1320.10(c), § 1320.11(i), or § 1320.12(e), or OMB's disapproval has been voided by an independent regulatory agency under § 1320.15; and

(3) The agency has obtained from the Director a control number to be displayed upon the collection of information.

(b) In addition to the requirements in paragraph (a) of this section, an agency shall not conduct or sponsor a collection of information unless:

(1) The collection of information displays a currently valid OMB control number; and

(2)(i) The agency informs the potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

(ii) An agency shall provide the information described in paragraph (b)(2)(i) of this section in a manner that is reasonably calculated to inform the public.

(A) In the case of forms, questionnaires, instructions, and other written collections of information sent or made available to potential respondents (other than in an electronic format), the information described in paragraph (b)(2)(i) of this section is provided "in a manner that is reasonably calculated to inform the public" if the agency includes it either on the form, questionnaire or other collection of information, or in the instructions for such collection.

(B) In the case of forms, questionnaires, instructions, and other written collections of information sent or made available to potential respondents in an electronic format, the information described in paragraph (b)(2)(i) of this section is provided "in a manner that is reasonably calculated to inform the public" if the agency places the currently valid OMB control number in the instructions, near the title of the electronic collection instrument, or, for on-line applications, on the first screen viewed by the respondent;

(C) In the case of collections of information published in regulations, guidelines, and other issuances in the **Federal Register**, the information described in paragraph (b)(2)(i) of this section is "provided in a manner reasonably calculated to inform the public" if the agency publishes such information in the **Federal Register** (for example, in the case of a collection of information in a regulation, by publishing such information in the preamble or the regulatory text, or in a technical amendment to the regulation, or in a separate notice announcing OMB approval of the collection of information) and/or in the Code of Federal Regulations. For ease of future reference, OMB recommends that, even where an agency has already provided such information and informed the

public by publishing it in the **Federal Register**, the agency is encouraged to also publish such information in the Code of Federal Regulations.

(D) In other cases, and where OMB determines in advance in writing that special circumstances exist, to use other means to inform potential respondents of such information.

(c)(1) Agencies shall submit all collections of information, other than those contained in proposed rules published for public comment in the **Federal Register** or in current regulations that were published as final rules in the **Federal Register**, in accordance with the requirements in § 1320.10. Agencies shall submit collections of information contained in interim final rules or direct final rules in accordance with the requirements of § 1320.10.

(2) Agencies shall submit collections of information contained in proposed rules published for public comment in the **Federal Register** in accordance with the requirements in § 1320.11.

(3) Agencies shall submit collections of information contained in current regulations that were published as final rules in the **Federal Register** in accordance with the requirements in § 1320.12.

(4) Special rules for emergency processing of collections of information are set forth in § 1320.13.

(5) For purposes of time limits for OMB review of collections of information, any submission properly submitted and received by OMB after 12:00 noon will be deemed to have been received on the following business day.

(d)(1) To obtain OMB approval of a collection of information, an agency shall demonstrate that it has taken every reasonable step to ensure that the proposed collection of information:

(i) Is the least burdensome necessary for the proper performance of the agency's functions to comply with legal requirements and achieve program objectives;

(ii) Is not duplicative of information otherwise accessible to the agency; and

(iii) Has practical utility. The agency shall also seek to minimize the cost to itself of collecting, processing, and using the information, but shall not do so by means of shifting disproportionate costs or burdens onto the public.

(2) Unless the agency is able to demonstrate, in its submission for OMB clearance, that such characteristic of the collection of information is necessary to satisfy statutory requirements or other substantial need, OMB will not approve a collection of information—

(i) Requiring respondents to report information to the agency more often than quarterly;

(ii) Requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;

(iii) Requiring respondents to submit more than an original and two copies of any document;

(iv) Requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records, for more than three years;

(v) In connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;

(vi) Requiring the use of a statistical data classification that has not been reviewed and approved by OMB;

(vii) Collecting information at the request of another country or an international organization unless such request has been reviewed, coordinated, and approved by OMB;

(viii) That includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or

(ix) Requiring respondents to submit proprietary, trade secret, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law—

(e) OMB shall determine whether the collection of information, as submitted by the agency, is necessary for the proper performance of the agency's functions. In making this determination, OMB will take into account the criteria set forth in paragraph (d) of this section, and will consider whether the burden of the collection of information is justified by its practical utility. In addition:

(1) OMB will consider necessary any collection of information specifically mandated by statute or court order, but will independently assess any collection of information to the extent that the agency exercises discretion in its implementation; and

(2) OMB will consider necessary any collection of information specifically required by an agency rule approved or not acted upon by OMB under § 1320.11 or § 1320.12, but will independently assess any such collection of information to the extent that it deviates from the specifications of the rule.

(f) Except as provided in § 1320.15, to the extent that OMB determines that all or any portion of a collection of information is unnecessary, for any reason, the agency shall not engage in such collection or portion thereof. OMB will reconsider its disapproval of a collection of information upon the request of the agency head or Senior Official only if the sponsoring agency is able to provide significant new or additional information relevant to the original decision.

(g) An agency may not make a substantive or material modification to a collection of information after such collection of information has been approved by OMB, unless the modification has been submitted to OMB for review and approval under this art.

(h) An agency should consult with OMB before continuing to use OMB-approved forms or other collections of information after the expiration date printed thereon (in those cases for which an expiration date is printed thereon).

§ 1320.6 Public protection.

(a) Notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information that is subject to the requirements of this part if:

(1) The collection of information does not display, in accordance with § 1320.3(f) and § 1320.5(b)(1), a currently valid OMB control number assigned by the Director in accordance with the Act; or

(2) The agency fails to inform the potential person who is to respond to the collection of information, in accordance with § 1320.5(b)(2), that such person is not required to respond to the collection of information unless it displays a currently valid OMB control number.

(b) The protection provided by paragraph (a) of this section may be raised in the form of a complete defense, bar, or otherwise to the imposition of such penalty at any time during the agency administrative process in which such penalty may be imposed or in any judicial action applicable thereto.

(c) Whenever an agency has imposed a collection of information as a means for proving or satisfying a condition for the receipt of a benefit or the avoidance of a penalty, and the collection of information does not display a currently valid OMB control number or inform the potential persons who are to respond to the collection of information, as prescribed in § 1320.5(b), the agency shall not treat a person's failure to comply, in and of itself, as grounds for withholding the benefit or imposing the penalty. The agency shall instead permit respondents to prove or satisfy the legal conditions in any other reasonable manner.

(1) If OMB disapproves the whole of such a collection of information (and the disapproval is not overridden under § 1320.15), the agency shall grant the benefit to (or not impose the penalty on) otherwise qualified persons without requesting further proof concerning the condition.

(2) If OMB instructs an agency to make a substantive or material change to such a collection of information (and the instruction is not overridden under § 1320.15), the agency shall permit respondents to prove or satisfy the condition by complying with the collection of information as so changed.

(d) Whenever a member of the public is protected from imposition of a penalty under this section for failure to comply with a collection of information, such penalty may not be imposed by an agency directly, by an agency through judicial process, or by any other person through administrative or judicial process.

(e) The protection provided by paragraph (a) of this section does not preclude the imposition of a penalty on a person for failing to comply with a collection of information that is imposed on the person by statute—e.g., 26 U.S.C. 6011(a) (statutory requirement for person to file a tax return), 42 U.S.C. 6938(c) (statutory requirement for person to provide notification before exporting hazardous waste).

§ 1320.7 Agency head and Senior Official responsibilities.

(a) Except as provided in paragraph (b) of this section, each agency head shall designate a Senior Official to carry out the responsibilities of the agency under the Act and this part. The Senior Official shall report directly to the head of the agency and shall have the authority, subject to that of the agency head, to carry out the responsibilities of the agency under the Act and this part.

(b) An agency head may retain full undelegated review authority for any component of the agency which by statute is required to be independent of any agency official below the agency head. For each component for which responsibility under the Act is not delegated to the Senior Official, the agency head shall be responsible for the performance of those functions.

(c) The Senior Official shall head an office responsible for ensuring agency compliance with and prompt, efficient, and effective implementation of the information policies and information resources management responsibilities established under the Act, including the reduction of information collection burdens on the public.

(d) With respect to the collection of information and the control of paperwork, the Senior Official shall establish a process within such office that is sufficiently independent of program responsibility to evaluate fairly whether proposed collections of information should be approved under this part.

(e) Agency submissions of collections of information for OMB review, and the accompanying certifications under § 1320.9, may be made only by the agency head or the Senior Official, or their designee.

§ 1320.8 Agency collection of information responsibilities.

The office established under § 1320.7 shall review each collection of information before submission to OMB for review under this part.

(a) This review shall include:

(1) An evaluation of the need for the collection of information, which shall include, in the case of an existing collection of information, an evaluation of the continued need for such collection;

(2) A functional description of the information to be collected;

(3) A plan for the collection of information;

(4) A specific, objectively supported estimate of burden, which shall include, in the case of an existing collection of information, an evaluation of the burden that has been imposed by such collection;

(5) An evaluation of whether (and if so, to what extent) the burden on respondents can be reduced by use of automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses;

(6) A test of the collection of information through a pilot program, if appropriate; and

(7) A plan for the efficient and effective management and use of the information to be collected, including necessary resources.

(b) Such office shall ensure that each collection of information:

(1) Is inventoried, displays a currently valid OMB control number, and, if appropriate, an expiration date;

(2) Is reviewed by OMB in accordance with the clearance requirements of 44 U.S.C. 3507; and

(3) Informs and provides fair notice to the potential persons to whom the collection of information is addressed of—

(i) The policy reasons the information is planned to be and/or has been collected;

(ii) The way such information is planned to be and/or has been used to further the proper performance of the functions of the agency;

(iii) An estimate, to the extent practicable, of the average burden of the collection (together with a request that the public direct to the agency any comments concerning the accuracy of this burden estimate and any suggestions for reducing this burden);

(iv) Whether responses to the collection of information are voluntary, required to obtain or retain a benefit (citing authority), or mandatory (citing authority);

(v) The nature and extent of confidentiality to be provided, if any (citing authority); and

(vi) The fact that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

(c)(1) An agency shall provide the information described in paragraphs (b)(3) (i) through (v) of this section as follows:

(i) In the case of forms, questionnaires, instructions, and other written collections of information sent or made available to potential respondents (except in an electronic format), such information can be included either on the form, questionnaire or other collection of information, as part of the instructions for such collection, or in a cover letter or memorandum that accompanies the collection of information.

(ii) In the case of forms, questionnaires, instructions, and other written collections of information sent or made available to potential respondents in an electronic format, such information can be included either in the instructions, near the title of the electronic collection instrument, or, for on-line applications, on the first screen viewed by the respondent;

(iii) In the case of collections of information published in regulations, guidelines, and other issuances in the **Federal Register**, such information can be published in the **Federal Register** (for example, in the case of a collection of information in a regulation, by publishing such information in the preamble or the regulatory text to the final rule, or in a technical amendment to the final rule, or in a separate notice announcing OMB approval of the collection of information).

(iv) In other cases, and where OMB determines in advance in writing that special circumstances exist, agencies

may use other means to inform potential respondents.

(2) An agency shall provide the information described in paragraph (b)(3)(vi) of this section in accordance with § 1320.5(b)(2)(ii).

(d)(1) Before an agency submits a collection of information to OMB for approval, and except as provided in paragraphs (d)(3) and (d)(4) of this section, the agency shall provide 60-day notice in the **Federal Register**, and otherwise consult with members of the public and affected agencies concerning each proposed collection of information, to solicit comment to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

(2) If the agency does not publish a copy of the proposed collection of information, together with the related instructions, as part of the **Federal Register** notice, the agency should—

(i) Provide more than 60-day notice to permit timely receipt, by interested members of the public, of a copy of the proposed collection of information and related instructions; or

(ii) Explain how and from whom an interested member of the public can request and obtain a copy without charge, including, if applicable, how the public can gain access to the collection of information and related instructions electronically on demand.

(3) The agency need not separately seek such public comment for any proposed collection of information contained in a proposed rule to be reviewed under § 1320.11, if the agency provides notice and comment through the notice of proposed rulemaking for the proposed rule and such notice specifically includes the solicitation of comments for the same purposes as are listed under paragraph (d)(1) of this section.

(4) The agency need not seek or may shorten the time allowed for such public comment if OMB grants an exemption from such requirement for emergency processing under § 1320.13.

§ 1320.9 Agency certifications for proposed collections of information.

As part of the agency submission to OMB of a proposed collection of information, the agency (through the head of the agency, the Senior Official, or their designee) shall certify (and provide a record supporting such certification) that the proposed collection of information—

(a) Is necessary for the proper performance of the functions of the agency, including that the information to be collected will have practical utility;

(b) Is not unnecessarily duplicative of information otherwise reasonably accessible to the agency;

(c) Reduces to the extent practicable and appropriate the burden on persons who shall provide information to or for the agency, including with respect to small entities, as defined in the Regulatory Flexibility Act (5 U.S.C. 601(6)), the use of such techniques as:

(1) Establishing differing compliance or reporting requirements or timetables that take into account the resources available to those who are to respond;

(2) The clarification, consolidation, or simplification of compliance and reporting requirements; or

(3) An exemption from coverage of the collection of information, or any part thereof;

(d) Is written using plain, coherent, and unambiguous terminology and is understandable to those who are to respond;

(e) Is to be implemented in ways consistent and compatible, to the maximum extent practicable, with the existing reporting and recordkeeping practices of those who are to respond;

(f) Indicates for each recordkeeping requirement the length of time persons are required to maintain the records specified;

(g) Informs potential respondents of the information called for under § 1320.8(b)(3);

(h) Has been developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected, including the processing of the information in a manner which shall enhance, where appropriate, the utility of the information to agencies and the public;

(i) Uses effective and efficient statistical survey methodology appropriate to the purpose for which the information is be collected; and

(j) To the maximum extent practicable, uses appropriate information technology to reduce burden and improve data quality, agency efficiency and responsiveness to the public.

§ 1320.10 Clearance of collections of information, other than those contained in proposed rules or in current rules.

Agencies shall submit all collections of information, other than those contained either in proposed rules published for public comment in the **Federal Register** (which are submitted under § 1320.11) or in current rules that were published as final rules in the **Federal Register** (which are submitted under § 1320.12), in accordance with the following requirements:

(a) On or before the date of submission to OMB, the agency shall, in accordance with the requirements in § 1320.5(a)(1)(iv), forward a notice to the **Federal Register** stating that OMB approval is being sought. The notice shall direct requests for information, including copies of the proposed collection of information and supporting documentation, to the agency, and shall request that comments be submitted to OMB within 30 days of the notice's publication. The notice shall direct comments to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for [name of agency]. A copy of the notice submitted to the **Federal Register**, together with the date of expected publication, shall be included in the agency's submission to OMB.

(b) Within 60 days after receipt of the proposed collection of information or publication of the notice under paragraph (a) of this section, whichever is later, OMB shall notify the agency involved of its decision to approve, to instruct the agency to make a substantive or material change to, or to disapprove, the collection of information, and shall make such decision publicly available. OMB shall provide at least 30 days for public comment after receipt of the proposed collection of information before making its decision, except as provided under § 1320.13. Upon approval of a collection of information, OMB shall assign an OMB control number and, if appropriate, an expiration date. OMB shall not approve any collection of information for a period longer than three years.

(c) If OMB fails to notify the agency of its approval, instruction to make substantive or material change, or disapproval within the 60-day period, the agency may request, and OMB shall assign without further delay, an OMB control number that shall be valid for not more than one year.

(d) As provided in § 1320.5(b) and § 1320.6(a), an agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

(e)(1) In the case of a collection of information not contained in a published current rule which has been approved by OMB and has a currently valid OMB control number, the agency shall:

(i) Conduct the review established under § 1320.8, including the seeking of public comment under § 1320.8(d); and

(ii) After having made a reasonable effort to seek public comment, but no later than 60 days before the expiration date of the OMB control number for the currently approved collection of information, submit the collection of information for review and approval under this Part, which shall include an explanation of how the agency has used the information that it has collected.

(2) The agency may continue to conduct or sponsor the collection of information while the submission is pending at OMB.

(f) Prior to the expiration of OMB's approval of a collection of information, OMB may decide on its own initiative, after consultation with the agency, to review the collection of information. Such decisions will be made only when relevant circumstances have changed or the burden estimates provided by the agency at the time of initial submission were materially in error. Upon notification by OMB of its decision to review the collection of information, the agency shall submit it to OMB for review under this part.

(g) For good cause, after consultation with the agency, OMB may stay the effectiveness of its prior approval of any collection of information that is not specifically required by agency rule; in such case, the agency shall cease conducting or sponsoring such collection of information while the submission is pending, and shall publish a notice in the **Federal Register** to that effect.

§ 1320.11 Clearance of collections of information in proposed rules.

Agencies shall submit collections of information contained in proposed rules published for public comment in the **Federal Register** in accordance with the following requirements:

(a) The agency shall include, in accordance with the requirements in § 1320.5(a)(1)(iv), in the preamble to the Notice of Proposed Rulemaking a statement that the collections of information contained in the proposed rule, and identified as such, have been submitted to OMB for review under section 3507(d) of the Act. The statement shall request that comments be submitted to OMB within 60 days of the notice's publication. The notice shall direct comments to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for [name of agency].

(b) All such submissions shall be made to OMB not later than the day on which the Notice of Proposed Rulemaking is published in the **Federal Register**, in such form and in accordance with such procedures as OMB may direct. Such submissions shall include a copy of the proposed regulation and preamble.

(c) Within 60 days of publication of the proposed rule, but subject to paragraph (e) of this section, OMB may file public comments on collection of information provisions. The OMB comments shall be in the form of an OMB Notice of Action, which shall be sent to the Senior Official or agency head, or their designee, and which shall be made a part of the agency's rulemaking record.

(d) If an agency submission is not in compliance with paragraph (b) of this section, OMB may, subject to paragraph (e) of this section, disapprove the collection of information in the proposed rule within 60 days of receipt of the submission. If an agency fails to submit a collection of information subject to this section, OMB may, subject to paragraph (e) of this section, disapprove it at any time.

(e) OMB shall provide at least 30 days after receipt of the proposed collection of information before submitting its comments or making its decision, except as provided under § 1320.13.

(f) When the final rule is published in the **Federal Register**, the agency shall explain how any collection of information contained in the final rule responds to any comments received from OMB or the public. The agency shall include an identification and explanation of any modifications made in the rule, or explain why it rejected the comments. If requested by OMB, the agency shall include OMB's comments in the preamble to the final rule.

(g) If OMB has not filed public comments under paragraph (c) of this section, or has approved without conditions the collection of information contained in a rule before the final rule is published in the **Federal Register**, OMB may assign an OMB control number prior to publication of the final rule.

(h) On or before the date of publication of the final rule, the agency shall submit the final rule to OMB, unless it has been approved under paragraph (g) of this section (and not substantively or materially modified by the agency after approval). Not later than 60 days after publication, but subject to paragraph (e) of this section, OMB shall approve, instruct the agency to make a substantive or material change to, or disapprove, the collection of information contained in the final rule. Any such instruction to change or disapprove may be based on one or more of the following reasons, as determined by OMB:

(1) The agency has failed to comply with paragraph (b) of this section;

(2) The agency had substantially modified the collection of information contained in the final rule from that contained in the proposed rule without providing OMB with notice of the change and sufficient information to make a determination concerning the modified collection of information at least 60 days before publication of the final rule; or

(3) In cases in which OMB had filed public comments under paragraph (c) of this section, the agency's response to such comments was unreasonable, and the collection of information is unnecessary for the proper performance of the agency's functions.

(i) After making such decision to approve, to instruct the agency to make a substantive or material change to, or disapprove, the collection of information, OMB shall so notify the agency. If OMB approves the collection of information or if it has not acted upon the submission within the time limits of this section, the agency may request, and OMB shall assign an OMB control number. If OMB disapproves or instructs the agency to make substantive or material change to the collection of information, it shall make the reasons for its decision publicly available.

(j) OMB shall not approve any collection of information under this section for a period longer than three years. Approval of such collection of information will be for the full three-year period, unless OMB determines that there are special circumstances requiring approval for a shorter period.

(k) After receipt of notification of OMB's approval, instruction to make a substantive or material change to, disapproval of a collection of information, or failure to act, the agency shall publish a notice in the **Federal Register** to inform the public of OMB's decision.

(l) As provided in § 1320.5(b) and § 1320.6(a), an agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

§ 1320.12 Clearance of collections of information in current rules.

Agencies shall submit collections of information contained in current rules that were published as final rules in the **Federal Register** in accordance with the following procedures:

(a) In the case of a collection of information contained in a published current rule which has been approved by OMB and has a currently valid OMB control number, the agency shall:

(1) Conduct the review established under § 1320.8, including the seeking of public comment under § 1320.8(d); and

(2) After having made a reasonable effort to seek public comment, but no later than 60 days before the expiration date of the OMB control number for the currently approved collection of information, submit the collection of information for review and approval under this part, which shall include an explanation of how the agency has used the information that it has collected.

(b)(1) In the case of a collection of information contained in a published current rule that was not required to be submitted for OMB review under the Paperwork Reduction Act at the time the collection of information was made part of the rule, but which collection of information is now subject to the Act and this Part, the agency shall:

(i) Conduct the review established under § 1320.8, including the seeking of public comment under § 1320.(8)(d); and

(ii) After having made a reasonable effort to seek public comment, submit the collection of information for review and approval under this part, which shall include an explanation of how the agency has used the information that it has collected.

(2) The agency may continue to conduct or sponsor the collection of information while the submission is pending at OMB. In the case of a collection of information not previously approved, a control number shall be granted for such period, which shall not exceed 60 days, unless extended by the Director for an additional 60 days. Upon assignment of an interim OMB control number, and in accordance with § 1320.3(f) and § 1320.5(b), the agency shall display the number and inform the potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

(c) On or before the day of submission to OMB under paragraphs (a) or (b) of this section, the agency shall, in accordance with the requirements set forth in § 1320.5(a)(1)(iv), forward a notice to the **Federal Register** stating that OMB review is being sought. The notice shall direct requests for copies of the collection of information and supporting documentation to the agency, and shall request that comments be submitted to OMB within 30 days of the notice's publication. The notice shall direct comments to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for [name of agency]. A copy of the notice submitted to the **Federal Register**, together with the date of expected publication, shall be included in the agency's submission to OMB.

(d) Within 60 days after receipt of the collection of information or publication of the notice under paragraph (c) of this section, whichever is later, OMB shall notify the agency involved of its decision to approve, to instruct the agency to make a substantive or material change to, or to disapprove, the collection of information, and shall make such decision publicly available. OMB shall provide at least 30 days for public comment after receipt of the proposed collection of information before making its decision, except as provided under § 1320.13.

(e) (1) Upon approval of a collection of information, OMB shall assign an OMB control number and an expiration date. OMB shall not approve any collection of information for a period longer than three years. Approval of any collection of information submitted under this section will be for the full three-year period, unless OMB determines that there are special circumstances requiring approval for a shorter period.

(2) If OMB fails to notify the agency of its approval, instruction to make substantive or material change, or disapproval within the 60-day period, the agency may request, and OMB shall assign without further delay, an OMB control number that shall be valid for not more than one year.

(3) As provided in § 1320.5(b) and § 1320.6(a), an agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

(f) (1) If OMB disapproves a collection of information contained in an existing rule, or instructs the agency to make a substantive or material change to a collection of information contained in an existing rule, OMB shall:

(i) Publish an explanation thereof in the **Federal Register**; and

(ii) Instruct the agency to undertake a rulemaking within a reasonable time limited to consideration of changes to the collection of information contained in the rule and thereafter to subject the collection of information for approval or disapproval under § 1320.10 or § 1320.11, as appropriate; and

(iii) Extend the existing approval of the collection of information (including an interim approval granted under paragraph (b) of this section) for the duration of the period required for consideration of proposed changes, including that required for OMB approval or disapproval of the collection of information under § 1320.10 or § 1320.11, as appropriate.

(2) Thereafter, the agency shall, within a reasonable period of time not to exceed 120 days, undertake such procedures as are necessary in compliance with the Administrative Procedure Act and other applicable law to amend or rescind the collection of information, and shall notify the public through the **Federal Register**. Such notice shall identify the proposed changes in the collections of information and shall solicit public comment on retention, change, or rescission of such collections of information. If the agency employs notice and comment rulemaking procedures for amendment or rescission of the collection of information, publication of the above in the **Federal Register** and submission to OMB shall initiate OMB clearance procedures under section 3507(d) of the Act and § 1320.11. All procedures shall be completed within a reasonable period of time to be determined by OMB in consultation with the agency.

(g) OMB may disapprove, in whole or in part, any collection of information subject to the procedures of this section, if the agency:

(1) Has refused within a reasonable time to comply with an OMB instruction to subject the collection of information for review;

(2) Has refused within a reasonable time to initiate procedures to change the collection of information; or

(3) Has refused within a reasonable time to publish a final rule continuing the collection of information, with such changes as may be appropriate, or otherwise complete the procedures for amendment or rescission of the collection of information.

(h) (1) Upon disapproval by OMB of a collection of information subject to this section, except as provided in paragraph (f)(1)(iii) of this section, the OMB control number assigned to such collection of information shall immediately expire, and no agency shall conduct or sponsor such collection of information. Any such disapproval shall constitute disapproval of the collection of information contained in the Notice of Proposed Rulemaking or other submissions, and also of the preexisting information collection instruments directed at the same collection of information and therefore constituting essentially the same collection of information.

(2) The failure to display a currently valid OMB control number for a collection of information contained in a current rule, or the failure to inform the potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number, does not, as a legal matter, rescind or amend the rule; however, such absence will alert the public that either the agency has failed to comply with applicable legal requirements for the collection of information or the collection of information has been disapproved, and that therefore the portion of the rule containing the collection of information has no legal force and effect and the public protection provisions of 44 U.S.C. 3512 apply.

(i) Prior to the expiration of OMB's approval of a collection of information in a current rule, OMB may decide on its own initiative, after consultation with the agency, to review the collection of information. Such decisions will be made only when relevant circumstances have changed or the burden estimates provided by the agency at the time of initial submission were materially in error. Upon notification by OMB of its decision to review the collection of information, the agency shall submit it to OMB for review under this part.

§ 1320.13 Emergency processing.

An agency head or the Senior Official may request OMB to authorize emergency processing of submissions of collections of information.

(a) Any such request shall be accompanied by a written determination that:

(1) The collection of information:

(i) Is needed prior to the expiration of time periods established under this part; and

(ii) Is essential to the mission of the agency; and

(2) The agency cannot reasonably comply with the normal clearance procedures under this part because:

(i) Public harm is reasonably likely to result if normal clearance procedures are followed;

(ii) An unanticipated event has occurred; or

(iii) The use of normal clearance procedures is reasonably likely to prevent or disrupt the collection of information or is reasonably likely to cause a statutory or court ordered deadline to be missed.

(b) The agency shall state the time period within which OMB should approve or disapprove the collection of information.

(c) The agency shall submit information indicating that it has taken all practicable steps to consult with interested agencies and members of the public in order to minimize the burden of the collection of information.

(d) The agency shall set forth in the **Federal Register** notice prescribed by § 1320.5(a)(1)(iv), unless waived or modified under this section, a statement that it is requesting emergency processing, and the time period stated under paragraph (b) of this section.

(e) OMB shall approve or disapprove each such submission within the time period stated under paragraph (b) of this section, provided that such time period is consistent with the purposes of this Act.

(f) If OMB approves the collection of information, it shall assign a control number valid for a maximum of 90 days after receipt of the agency submission.

§ 1320.14 Public access.

(a) In order to enable the public to participate in and provide comments during the clearance process, OMB will ordinarily make its paperwork docket files available for public inspection during normal business hours. Notwithstanding other provisions of this part, and to the extent permitted by law, requirements to publish public notices or to provide materials to the public may be modified or waived by the Director to the extent that such public participation in the approval process would defeat the purpose of the collection of information; jeopardize the confidentiality of proprietary, trade secret, or other confidential information; violate State or Federal law; or substantially interfere with an agency's ability to perform its statutory obligations.

(b) Agencies shall provide copies of the material submitted to OMB for review promptly upon request by any person.

(c) Any person may request OMB to review any collection of information conducted by or for an agency to determine, if, under this Act and this part, a person shall maintain, provide, or disclose the information to or for the agency. Unless the request is frivolous, OMB shall, in coordination with the agency responsible for the collection of information:

(1) Respond to the request within 60 days after receiving the request, unless such period is extended by OMB to a specified date and the person making the request is given notice of such extension; and

(2) Take appropriate remedial action, if necessary.

§ 1320.15 Independent regulatory agency override authority.

(a) An independent regulatory agency which is administered by two or more members of a commission, board, or similar body, may by majority vote void:

(1) Any disapproval, instruction to such agency to make material or substantive change to, or stay of the effectiveness of OMB approval of, any collection of information of such agency; or

(2) An exercise of authority under § 1320.10(g) concerning such agency.

(b) The agency shall certify each vote to void such OMB action to OMB, and explain the reasons for such vote. OMB shall without further delay assign an OMB control number to such collection of information, valid for the length of time requested by the agency, up to three years, to any collection of information as to which this vote is exercised. No override shall become effective until the independent regulatory agency, as provided in § 1320.5(b) and § 1320.6(2), has displayed the OMB control number and informed the potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

§ 1320.16 Delegation of approval authority.

(a) OMB may, after complying with the notice and comment procedures of the Administrative Procedure Act, delegate OMB review of some or all of an agency's collections of information to the Senior Official, or to the agency head with respect to those components of the agency for which he or she has not delegated authority.

(b) No delegation of review authority shall be made unless the agency demonstrates to OMB that the Senior Official or agency head to whom the authority would be delegated:

(1) Is sufficiently independent of program responsibility to evaluate failure whether proposed collections of information should be approved;

(2) Has sufficient resources to carry out this responsibility effectively; and

(3) Has established an agency review process that demonstrates the prompt, efficient, and effective performance of collection of information review responsibilities.

(c) OMB may limit, condition, or rescind, in whole or in part, at any time, such delegations of authority, and reserves the right to review any individual collection of information, or part thereof, conducted or sponsored by an agency, at any time.

(d) Subject to the provisions of this part, and in accordance with the terms and conditions of each delegation as specified in appendix A to this part, OMB delegates review and approval authority to the following agencies:

(1) Board of Governors of the Federal Reserve System; and

(2) Managing Director of the Federal Communications Commission.

§ 1320.17 Information collection budget.

Each agency's Senior Official, or agency head in the case of any agency for which the agency head has not delegated responsibility under the Act for any component of the agency to the Senior Official, shall develop and submit to OMB, in such form, at such time, and in accordance with such procedures as OMB may prescribe, an annual comprehensive budget for all collections of information from the public to be conducted in the succeeding twelve months. For good cause, OMB may exempt any agency from this requirement.

§ 1320.18 Other authority.

(a) OMB shall determine whether any collection of information or other matter is within the scope of the Act, or this part.

(b) In appropriate cases, after consultation with the agency, OMB may initiate a rulemaking proceeding to determine whether an agency's collection of information is consistent with statutory standards. Such proceedings shall be in accordance with the informal rulemaking procedures of the Administrative Procedure Act.

(c) Each agency is responsible for complying with the information policies, principles, standards, and guidelines prescribed by OMB under this Act.

(d) To the extent permitted by law, OMB may waive any requirements contained in this part.

(e) Nothing in this part shall be interpreted to limit the authority of OMB under this Act, or any other law. Nothing in this part or this Act shall be interpreted as increasing or decreasing the authority of OMB with respect to the substantive policies and programs of the agencies.

Appendix A—Agencies With Delegated Review and Approval Authority

1. The Board of Governors of the Federal Reserve System

(a) Authority to review and approve collection of information requests, collection of information requirements, and collections of information in current rules is delegated to the Board of Governors of the Federal Reserve System.

(1) This delegation does not include review and approval authority over any new collection of information or any modification to an existing collection of information that:

(i) Is proposed to be collected as a result of a requirement or other mandate of the Federal Financial Institutions Examination Council, or other Federal executive branch entities with authority to require the Board to conduct or sponsor a collection of information.

(ii) Is objected to by another Federal agency on the grounds that agency requires information currently collected by the Board, that the currently collected information is being deleted from the collection, and the deletion will have a serious adverse impact on the agency's program, provided that such objection is certified to OMB by the head of the Federal agency involved, with a copy to the Board, before the end of the comment period specified by the Board on the **Federal Register** notices specified in paragraph (a)(3)(i) of this section 1.

(iii) Would cause the burden of the information collections conducted or sponsored by the Board to exceed by the end of the fiscal year the Information Collection Budget allowance provided to the Board by OMB for the fiscal year-end.

(2) The Board may ask that OMB review and approve collections of information covered by this delegation.

(3) In exercising delegated authority, the Board will:

(i) Provide the public, to the extent possible and appropriate, with reasonable opportunity to comment on collections of information under review prior to taking final action approving the collection. Reasonable opportunity for public comment will include publishing a notice in the **Federal Register** informing the public of the proposed collection of information, announcing the beginning of a 60-day public comment period, and the availability of copies of the "clearance package," to provide the public with the opportunity to comment. Such **Federal Register** notices shall also advise the public that they may also send a copy of their comments to the Federal Reserve Board and to the OMB/OIRA Desk Officer.

(A) Should the Board determine that a new collection of information or a change in an existing collection must be instituted quickly and that public participation in the approval process would defeat the purpose of the collection or substantially interfere with the Board's ability to perform its statutory obligation, the Board may temporarily approve of the collection of information for a period not to exceed 90 days without providing opportunity for public comment.

(B) At the earliest practical date after approving the temporary extension to the collection of information, the Board will publish a **Federal Register** notice informing the public of its approval of the collection of information and indicating why immediate action was necessary. In such cases, the Board will conduct a normal delegated review and publish a notice in the **Federal Register** soliciting public comment on the intention to extend the collection of information for a period not to exceed three years.

(ii) Provide the OMB/OIRA Desk Officer for the Federal Reserve Board with a copy of the Board's **Federal Register** notice not late than the day the Board files the notice with the Office of the **Federal Register**.

(iii) Assure that approved collections of information are reviewed not less frequently than once every three years, and that such reviews are normally conducted before the expiration date of the prior approval. Where the review has not been completed prior to the expiration date, the Board may extend the report, for up to three months, without public notice in order to complete the review and consequent revisions, if any. There may also be other circumstances in which the Board determines that a three-month extension without public notice is appropriate.

(iv) Take every reasonable step to conduct the review established under 5 CFR 1320.8, including the seeking of public comment under 5 CFR 1320.8(d). In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies. The Board will not approve a collection of information that it determines does not satisfy the guidelines set forth in 5 CFR 1320.5(d)(2), unless it determines that departure from these guidelines is necessary to satisfy statutory requirements or other substantial need.

(v)(A) Assure that each approved collection of information displays, as required by 5 CFR 1320.6, a currently valid OMB control number and the fact that a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

(B) Assure that all collections of information, except those contained in regulations, display the expiration date of the approval, or, in case the expiration date has been omitted, explain the decision that it would not be appropriate, under 5 CFR 1320.5(a)(1)(iii)(C), for a proposed collection of information to display an expiration date.

(C) Assure that each collection of information, as required by 5 CFR 1320.8(b)(3), informs and provides fair notice to the potential respondents of why the information is being collected; the way in which such information is to be used; the estimated burden; whether responses are voluntary, required, required to obtain a benefit, or mandatory; the confidentiality to be provided; and the fact that an agency may not conduct or sponsor, and the respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

(vi) Assure that each approved collection of information, together with a completed form OMB 83-I, a supporting statement, a copy of each comment received from the public and other agencies in response to the Board's **Federal Register** notice or a summary of these comments, the certification required by 5 CFR 1320.9, and a certification that the Board has approved of the collection of information in accordance with the provisions of this delegation is transmitted to OMB for incorporation into OMB's public docket files. Such transmittal shall be made as soon as practical after the Board has taken final action approving the collection. However, no collection of information may be instituted until the Board receives written or oral notification from OMB or OMB staff that the transmittal has been received.

(b) OMB will:

(1) Provide the Board in advance with a block of control numbers which the Board will assign in sequential order to and display on, new collections of information.

(2) Provide a written notice of action to the Board indicating that the Board approvals of collections of information that have been received by OMB and incorporated into OMB's public docket files and an inventory of currently approved collections of information.

(3) Review any collection of information referred by the Board in accordance with the provisions of section 1(a)(2) of this appendix.

(c) OMB may review the Board's paperwork review process under the delegation. The Board will cooperate in carrying out such a review. The Board will respond to any recommendations resulting from such review and, if it finds the recommendations to be appropriate, will either accept the recommendations or propose an alternative approach to achieve the intended purpose.

(d) This delegation may, as provided by 5 CFR 1320.16(c), be limited, conditioned, or rescinded, in whole or in part at any time. OMB will exercise this authority only in unusual circumstances and, in those rare instances, will do so, subject to the provisions of 5 CFR 1320.10(f) and 1320.10(g), prior to the expiration of the time period set for public comment in the Board's **Federal Register** notices and generally only if:

(1) Prior to the commencement of a Board review (e.g., during the review for the Information Collection Budget). OMB has notified the Board that it intends to review a specific new proposal for the collection of information or the continued use (with or without modification) of an existing collection;

(2) There is substantial public objection to a proposed information collection: or

(3) OMB determines that a substantially inadequate and inappropriate lead time has been provided between the final announcement date of the proposed requirement and the first date when the information is to be submitted or disclosed. When OMB exercises this authority it will consider that the period of its review began the date that OMB received the **Federal Register** notice provided for in section 1(a)(3)(i) of this appendix.

(e) Where OMB conducts a review of a Board information collection proposal under section 1(a)(1), 1(a)(2), or 1(d) of this appendix, the provisions of 5 CFR 1320.13 continue to apply.

2. The Managing Director of the Federal Communications Commission.

(a) Authority to review and approve currently valid (OMB-approved) collections of information, including collections of information contained in existing rules, that have a total annual burden of 5,000 hours or less and a burden of less than 500 hours per respondent is delegated to the Managing Director of the Federal Communications Commission.

(1) This delegation does not include review and approval authority over any new collection of information, any collections whose approval has lapsed, any substantive or material modification to existing collections, any reauthorization of information collections employing statistical methods, or any information collections that exceed a total annual burden of 5,000 hours or an estimated burden of 500 hours per respondent.

(2) The Managing Director may ask that OMB review and approve collections of information covered by the delegation.

(3) In exercising delegated authority, the Managing Director will:

(i) Provide the public, to the extent possible and appropriate, with reasonable opportunity to comment on collections of information under review prior to taking final action on reauthorizing an existing collection. Reasonable opportunity for public comment will include publishing a notice in the **Federal Register** and an FCC Public Notice informing the public that a collection of information is being extended and announcing the beginning of a 60-day comment period, notifying the public of the "intent to extend an information collection," and providing the public with the opportunity to comment on the need for the information, its practicality, the accuracy of the agency's burden estimate, and on ways to minimize burden, including the use of automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. Such notices shall advise the public that they may also send a copy of their comments to the OMB/Office of Information and Regulatory Affairs desk officer for the Commission.

(A) Should the Managing Director determine that a collection of information that falls within the scope of this delegation must be reauthorized quickly and that public participation in the reauthorization process interferes with the Commission's ability to perform its statutory obligation, the Managing Director may tenporarily reauthorize the extension of an information collection, for a period not to exceed 90 days, without providing opportunity for public comment.

(B) At the earliest practical date after granting this temporary extension to an information collection, the Managing Director will conduct a normal delegated review and publish a **Federal Register** notice soliciting public comment on its intention to extend the collection of information for a period not to exceed three years.

(ii) Assure that approved collections of information are reviewed not less frequently than once every three years and that such reviews are conducted before the expiration date of the prior approval. When the review is not completed prior to the expiration date, the Managing Director will submit the lapsed information collection to OMB for review and reauthorization.

(iii) Assure that each reauthorized collection of information displays an OMB control number and, except for those contained in regulations or specifically designated by OMB, displays the expiration date of the approval.

(iv) Inform and provide fair notice to the potential respondents, as required by 5 CFR 1320.8(b)(3), of why the information is being collected; the way in which such information is to be used; the estimated burden; whether responses are voluntary, required, required to obtain a benefit, or mandatory; the confidentiality to be provided; and the fact that an agency may not conduct or sponsor, and the respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

(v) Transmit to OMB for incorporation into OMB's public docket files, a report of delegated approval certifying that the Managing Director has reauthorized each collection of information in accordance with the provisions of this delegation. The Managing Director shall also make the certification required by 5 CFR 1320.9, e.g., that the approved collection of information reduces to the extent practicable and appropriate, the burden on respondents, including, for small business, local government, and other small entities, the use of the techniques outlined in the Regulatory Flexibility Act. Such transmittals shall be made no later than 15 days after the Managing Director has taken final action reauthorizing the extension of an information collection.

(vi) Ensure that the personnel in the Commission's functional bureaus and offices responsible for managing information collections receive periodic training on procedures related to meeting the requirements of this part and the Act.

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(b) OMB will:

(1) Provide notice to the Commission acknowledging receipt of the report of delegated approval and its incorporation into OMB's public docket files and inventory of currently approved collections of information.

(2) Act upon any request by the Commission to review a collection of information referred by the Commission in accordance with the provisions of section 2(a)(2) of this appendix.

(3) Periodically assess, at its discretion, the Commission's paperwork review process as administered under the delegation. The Managing Director will cooperate in carrying out such an assessment. The Managing Director will respond to any recommendations resulting from such a review and, if it finds the recommendations to be appropriate, will either accept the recommendation or propose an alternative approach to achieve the intended purpose.

(c) This delegation may, as provided by 5 CFR 1320.16(c), be limited, conditioned, or rescinded, in whole or in part at any time. OMB will exercise this authority only in unusual circumstances.

[FR Doc. 95–14007 Filed 6–7–95; 8:45 am]

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Federal Register

Vol. 60, No. 110

Thursday, June 8, 1995

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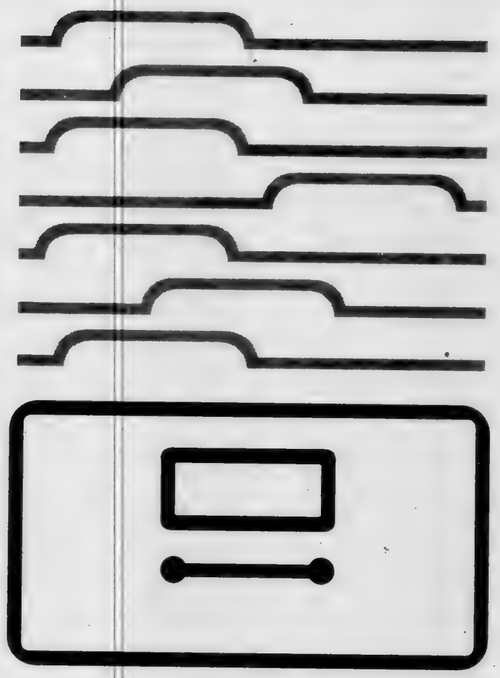
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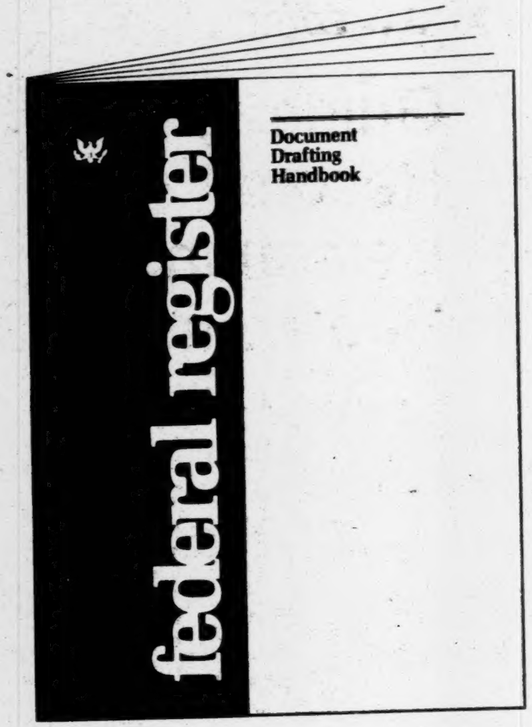
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